

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO MIXON,)	No. 78900 Electronically Filed
)	Aug 28 2019 01:40 p.m.
Appellant,)	Elizabeth A. Brown
)	Clerk of Supreme Court
v.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
)	

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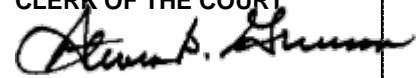
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9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 STATE OF NEVADA,

12 Plaintiff,

13 v.

14 ANTONIO LEE MIXON, ID #1968172,

15 Defendant.
16

Case No.: C-17-327439-1

Dept. No.: 17

Hearing Date: March 15, 2018

Hearing Time: 8:30 AM

17 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE**

18 ADAM PAUL LAXALT, Attorney General for the State of Nevada, through Deputy Attorney
19 General, Chelsea Kallas, hereby submits the State's Opposition to Defendant's Motion to Dismiss With
20 Prejudice. This motion is made and based upon the pleadings on file, the following memorandum of points
21 and authorities, and any oral arguments the Court may allow.

22 Dated this 14th day of March, 2018.

23 SUBMITTED BY:

24 ADAM PAUL LAXALT
25 Attorney General

26 By: /s/ Chelsea Kallas
27 CHELSEA KALLAS (Bar No. 13902)
28 Deputy Attorney General

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 On October 25, 2017, Antonio Lee Mixon (hereinafter “Defendant”) was charged by way of
3 Information with the following: Count 1 – Battery By A Prisoner (Category B Felony – NRS
4 200.482(2)(f)); and Count 2 – Possession or Control of Dangerous Weapon or Facsimile By An
5 Incarcerated Person (Category B Felony – NRS 212.185(c)). On November 1, 2017, Defendant pled not
6 guilty and invoked his right to a speedy trial. On November 14, 2017, Defendant filed a Motion to Compel
7 Production of Discovery and Brady Material. On December 1, 2017, the State filed its Opposition. On
8 December 5, 2017, the Court issued a minute order directing the State to turn over, among other things, all
9 witness statements. The Court requested that Defendant file the order. On January 2, 2018, Defendant’s
10 trial commenced. On that same day, the Court declared a mistrial. On January 4, 2018, two days after a
11 mistrial was granted, Defendant filed the discovery order. On March 5, 2018, Defendant filed the instant
12 Motion to Dismiss With Prejudice (hereinafter “Motion”), arguing that retrial is barred by the Double
13 Jeopardy Clause. The State responds as follows.

14 **ARGUMENT**

15 Defendant’s present Motion is based on a misrepresentation of the facts and the applicable law.
16 Defendant begins the Motion by falsely stating that the Court granted a mistrial because the State failed
17 “to make mandatory discovery disclosures as required by *Brady*.” Motion at 2. The Court most certainly
18 did not find that the State failed to turn over exculpatory evidence, in violation of *Brady*; instead, the Court
19 – noting that there was no evidence that the State acted with intent or even negligence – found that, after
20 the Court issued its discovery order, the State failed to turn over a witness statement that needed to be
21 disclosed pursuant to said order. (Exhibit A – Reporter’s Transcript, January 2, 2018 (“RT”) at 46).

22 As will be explained in further detail below, Defendant then attempts to persuade the Court to
23 apply an inapplicable standard when analyzing the double jeopardy issue.

24 “Generally, a state may not put a defendant in jeopardy twice for the same offense.” *Thomas v.*
25 *Eighth Judicial District Court, in and for County of Clark*, 204 P.3d 619, 624 (Nev. 2017) (citing U.S.
26 Const. amend. V; Nev. Const. art. 1, § 8). While defense counsel cites *Thomas* in the present Motion, she
27 does not simply fail to point out that in that case, the Nevada Supreme Court explained that the applicable
28 standard for analyzing double jeopardy issues when the prosecutor requests a mistrial is different from the

1 standard that applies when the defense requests a mistrial, *see Thomas*, 204 P.3d, at 624-25; defense
2 counsel actually takes it a step further and attempts to persuade the Court to apply the standard applicable
3 to cases where the prosecutor requests the mistrial. Motion at 4-6. In *Thomas*, the defendant moved for a
4 mistrial. 204 P.3d, at 622. The Nevada Supreme Court first stated that, under the Double Jeopardy Clause
5 of the United States Constitution, “a defendant’s motion for, or consent to, a mistrial generally removes
6 any double jeopardy bar to reprosecution.” *Id.*, at 624. The Court then acknowledged “a narrow
7 exception,” where, “in those circumstances where the prosecutor **intentionally** provokes or ‘goad[s]’ the
8 defendant into moving for a mistrial, a defendant may raise double jeopardy as a defense to subsequent
9 reprosecution.” *Id.*, at 624 (quoting *Oregon v. Kennedy*, 456 U.S. 667, 673-74 (1982)) (emphasis added).

10 In the present case, the State quite clearly did not intend to cause a mistrial, as evidenced by the
11 fact that the State vigorously opposed the defense’s request for a mistrial. (Exhibit A – RT at 29-47).
12 Moreover, in the present Motion, the defense does not even accuse the State of **intentionally** causing the
13 mistrial. Thus, the present Motion does not assert any factual allegations – let alone include any
14 evidentiary support – sufficient to support a finding that retrial is barred under the Double Jeopardy Clause
15 of the United States Constitution.

16 These same shortcomings nullify any argument that retrial is barred under the Double Jeopardy
17 Clause of the Nevada Constitution. In *Thomas*, the Court opined that:

18 [W]hen evaluating a double jeopardy claim [under the Nevada Constitution] **following a**
19 **defendant’s motion for mistrial**, courts should consider whether:

20 1. Mistrial is granted because of improper conduct or actions by the
21 prosecutor; and

22 2. such conduct is not merely the result of legal error, **negligence**, mistake,
23 or insignificant impropriety, but, taken as a whole, amounts to **intentional**
24 **conduct** which the prosecutor knows to be improper and prejudicial, and
25 which he pursues for any improper purpose with indifference to a significant
26 resulting danger of mistrial . . .; and

27 3. the conduct causes prejudice to the defendant which cannot be cured by
28 means short of a mistrial.

402 P.3d, at 626-27 (quoting *Pool v. Superior Court*, 139 Ariz. 98, 677 P.2d 261, 271-72 (1984)
(interpreting Arizona’s Double Jeopardy Clause)) (emphasis added). Applying that standard with respect
to Defendant’s present Motion, it is clear that Defendant has failed to allege the intent required by *Thomas*,

1 let alone provide any evidentiary support for such an allegation. Moreover, any prejudice could have been
2 cured by a short continuance of the trial.

3 With respect to the first prong of the *Thomas* analysis, it is quite clear that the mistrial was not the
4 product of any improper conduct by the State. There is not a shred of evidence that, prior to the issue being
5 raised on cross examination, the State was aware that the witness made a statement in relation to a
6 workers' compensation claim. Workers' compensation claims are made when a worker is injured. In all of
7 the evidence provided to the State prior to the trial, there is no mention of the witness being injured, let
8 alone him making a statement in relation to a workers' compensation claim. Failure to turn over a
9 statement that was not known to have existed cannot be a basis for a finding of improper conduct. In fact,
10 after the Court granted Defendant's motion for a mistrial, the State was informed that Defendant possibly
11 did have knowledge about these statements prior to the commencement of trial. If so, then Defendant, not
12 the State, acted improperly.

13 With respect to the second prong of the *Thomas* analysis, as explained above, there is simply no
14 basis to find that the State **intentionally** acted improperly. In fact, in the present Motion, Defendant does
15 not even make that allegation. Instead, Defendant characterizes the State's conduct as "inexcusably
16 negligent." Motion at 6. Setting aside the fact that, Defendant cites to no **evidence** whatsoever in support
17 of that characterization, it is clear that the defense's Motion is defeated by its own allegations (or lack
18 thereof); by failing to allege that the mistrial was a product of the State's **intentional** conduct, the defense
19 has failed to allege – much less support – conduct that bars retrial under Nevada's Double Jeopardy
20 Clause.

21 Seemingly in recognition of the weakness of the present Motion, Defendant: (1) ignores the
22 "intent" requirement of the second prong of the *Thomas* analysis; and (2) cites *Hylton v. Eighth Judicial*
23 *Dist. Court*, 103 Nev. 418 (1987) – a case the *Thomas* Court made clear "relates to those instances in
24 which the **State requests** a mistrial" – to support the argument that mere negligence can satisfy the second
25 prong of the *Thomas* analysis. Motion at 4-6. In other words, Defendant's entire argument is based upon a
26 misrepresentation of the applicable law. Thus, it is clear that, in the present case, the defense has not and
27 cannot (and has not even attempted to) satisfy the "intent" requirement of the second prong of the *Thomas*
28 analysis. Moreover, Defendant appears to blatantly disregard the Court's multiple rulings at trial that it did

1 not find the State's conduct intentional. (Exhibit A – RT at 33, 35, 37, 40, 42, and 46). Because the Court
2 has already ruled that there was no intentional conduct by the State, any allegations by Defendant to the
3 contrary should be denied. Additionally, Defendant conveniently forgets his own representations at trial
4 that he did not believe the State's conduct was intentional:

5 MS. SISOLAK: *--I'm not making the accusation that it was*
6 *intentionally withheld.*

7 (Exhibit A – RT at 33) (emphasis added). In fact, Defendant specifically asked the Court to find the State's
8 conduct was *unintentional*:

9 THE COURT: I'm saying there's nothing in front of me at this time
10 to show intentional (indiscernible).

11 MS. KALLAS: And then that's –

12 MS. SISOLAK: *Not intentional. I'm asking if you would deem it*
grossly negligent which is unintentional negligence.

(Exhibit A – RT at 42) (emphasis added).

13 Here, the State did not engage in any bad faith conduct or intend to act in any way that could
14 possibly result in a mistrial. The State did not intentionally withhold CO Ontiveros' C1 packet from
15 Defendant as the State never had it in its possession, which the Court noted during trial (Exhibit A – RT at
16 46).

17 Defendant argues the State should have made a simple inquiry regarding this evidence. If such
18 inquiry is as simple as Defendant asserts, the State is unclear why Defendant did not make the inquiry
19 himself.¹ Moreover, the State did in fact reach out to the assigned criminal investigator in the instant case

20
21 ¹ Defendant has an obligation to investigate and obtain exculpatory and impeachment information. It cannot simply sit on its
22 hands and then claim a *Brady* violation if the information was equally available through the exercise of due diligence:

23 It is well-settled that the government does not violate *Brady* by failing to disclose
24 exculpatory or impeaching evidence that is available to the defense from other sources in
25 the exercise of due diligence. *See, e.g., United States v. Hicks*, 848 F.2d 1, 4 (1st Cir.1988)
26 (no *Brady* violation for failure to disclose grand jury testimony of potential witness not
27 called to testify at trial because defense knew of and had access to witness and thus was "on
28 notice of the essential facts required to enable him to take advantage of [the] exculpatory
testimony") (citation omitted); *Lugo v. Munoz*, 682 F.2d 7, 9-10 (1st Cir.1982) (government
has no *Brady* burden when facts are readily available to a diligent defender); *United States*
v. Jackson, 6 F.3d 911, 918 (2d Cir.1993) ("Evidence is not "suppressed" if the defendant
either knew, or should have known, of the essential facts permitting him to take advantage
of any exculpatory evidence."); *United States v. Perdomo*, 929 F.2d 967, 973 (3d Cir.1991)
(*dicta*) ("Evidence is not considered suppressed if the defendant either knew or should have
known of the essential facts permitting him to take advantage of any exculpatory
evidence."); *United States v. Todd*, 920 F.2d 399, 405 (6th Cir.1990) (nondisclosure of
possible exculpatory material does not violate *Brady* when the "defendant was aware of the

1 to ascertain whether the State had all discovery. The investigator confirmed to the State that they had the
2 “entire file.” (See Exhibit B). Additionally, the State spoke with CO Ontiveros multiple times before trial
3 and at no point did he mention filling out a C-1 packet. In fact, the State did not become aware that CO
4 Ontiveros filled out this packet until he testified to doing so during trial. (Exhibit A – RT at 30, 32, 33, 34,
5 45 and 46). Because the State (1) did not have possession of the C-1 packet; and (2) was entirely unaware
6 of the C-1 packets existence it could not possibly have intentionally withheld such statements from
7 Defendant.

8 With respect to the third prong of the *Thomas* analysis, it is clear that any prejudice caused by the
9 failure to turn over a brief and non-exculpatory statement could have easily been cured by means short of a
10 mistrial. The statement at issues is a mirror image of the prior statements made by CO Ontiveros (See
11 Exhibit C and Exhibit D). The Court could have ordered a brief continuance of the trial to allow the
12 defense to review the statement – a review that should have taken minutes, not days. *See Thomas*, 402
13 P.3d, at 627-29 (Noting that, while such a continuance may be proper, it was not proper in *Thomas*, given,
14 *inter alia*, “the exculpatory nature and volume of the documents disclosed, and the number of witnesses
15 that had already testified . . .”). Because Defendant has undeniably failed to meet the three prong test
16 under *Thomas*, he may be retried without implicating the Double Jeopardy Clause and his Motion should
17 be denied.

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26 essential facts that would enable him to take advantage of the exculpatory evidence.”);
27 *United States v. Romo*, 914 F.2d 889, 899 (7th Cir.1990) (when defense counsel knows
28 about a witness with possible exculpatory information, and has an opportunity to subpoena
that witness, prosecutor has no obligation to seek out and provide the information).

U.S. v. Ringwalt, 213 F.Supp.2d 499, 517 (E.D.Pa., 2002).

1 CONCLUSION

2 For the foregoing reasons, the State respectfully requests that the Court deny Defendant's Motion
3 to Dismiss With Prejudice.

4 DATED this 14th day of March, 2018.

5
6 SUBMITTED BY:

7
8 ADAM PAUL LAXALT
Attorney General

9 By: /s/ Chelsea Kallas
10 CHELSEA KALLAS (Bar No. 13902)
11 Deputy Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE with the Clerk of the Court by using the electronic filing system on the 14th day of March, 2018.

The following participants in this case are registered electronic filing system users and will be served electronically:

Ashley Sisolak

/s/ Salvador Heredia
An employee of the Office of the Attorney General

EXHIBIT A

EXHIBIT A

- 1
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THE STATE OF NEVADA,
Plaintiff,
vs.
ANTONIO LEE MIXON,
Defendant.

VS.

TUESDAY, JANUARY 2, 2018

[STATE'S OPENING; DIRECT AND CROSS-EXAMINATION OF DEAN ONTIVEROS]

For the State:

For the Defendant:

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

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1 Las Vegas, Nevada, Tuesday, January 2, 2018

2 [Jury trial began at 11:20 a.m.- not transcribed]

3 [State's opening statement begins at 3:57 p.m.]

4 [Inside the presence of the jury]

5 THE COURT: All right, welcome back ladies and gentlemen.

6 State, are you ready for your opening?

7 MS. KALLAS: Court's indulgence, Your Honor.

8 THE COURT: Sure.

9 MS. KALLAS: I apologize.

10 [Colloquy between State and Defense Counsel]

11 MS. SISOLAK: Thank you, Your Honor.

12 THE COURT: Go ahead, State.

13 **[STATE OPENING STATEMENT]**

14 MR. GUNNELL: Good afternoon, ladies and gentlemen.

15 On December 4th, 2015 it started out as an average day for
16 Officer Ontiveros and Officer Mcaninch. Officer Mcaninch had just came
17 on board at NDOC. It was his third day on his job. He hadn't even gone
18 to training. Officer Ontiveros had a little more experience and you'll see
19 him testify today. He's now a sergeant with Nevada Department of
20 Corrections. At the time, he was kind of the trainee training Officer
21 Mcaninch.

22 They're up at High Desert State Prison. They're out on the
23 yard, the exercise place for the inmates up there, and they notice
24 something kind of -- something going along with the Defendant sitting at
25 the table. And as they approached him, the Defendant picked up one of

1 the rocks that's on the yard -- southern Nevada there was a lot of rocks
2 everywhere -- picked up one of the rocks and threw it and it struck Officer
3 Ontiveros. After that, he pulled out what we call is a shank or weapon, a
4 homemade weapon, a prison weapon out of his shoe. He brandished
5 that. At that time, and you'll hear the testimony of the two corrections
6 officers who were involved in that, their discussions with these individuals
7 -- they told him to get on the ground. Certain things happened not that
8 long in time and then he actually went to the ground. He dropped the
9 shank and they actually put him in custody.

10 Ladies and gentlemen, this is a simple case. That's it. That's
11 what happened and that's why we're here today. It's not complex and
12 you're not going to hear from the State a bunch of craziness occurring.
13 You're not going to see crazy CSI what you -- on TV or anything like that.
14 It's a simple case.

15 A correction officer was struck by a rock and then the
16 Defendant had in his possession a shank, a tool, you know, used to stick
17 -- you know stab people or things like that in prison and --

18 MS. MACHNICK: Your Honor, I'm going --

19 MR. GUNNELL: -- that's it.

20 MS. MACHNICK: -- to object to argumentative at this point. I don't
21 know if what if this is within --

22 THE COURT: Sustained.

23 MS. MACHNICK: Thank you.

24 THE COURT: Okay.

25 MR. GUNNELL: Ladies and gentlemen, the evidence will show, and

1 you'll hear testimony of that today, the evidence will show through three
2 witnesses that we're going to call, the two corrections officers and a third
3 who was there at the scene and overheard some statements, and he'll
4 discuss those statements. Ladies and gentlemen, we'll just ask you at the
5 end of the evidence that you find the Defendant guilty.

6 Thank you.

7 THE COURT: All right, thank you, Counsel.

8 Does the Defense wish to exercise their right for an opening at
9 this time?

10 MS. MACHNICK: Your Honor, at this time, the Defense will be
11 reserving the right for an opening statement to the opening of the
12 Defense case.

13 THE COURT: All right.

14 MS. MACHNICK: Thank you.

15 THE COURT: Thank you.

16 State, call your first witness, please.

17 MS. KALLAS: The state's first witness is Dean Ontiveros. Oh, Your
18 Honor, did you want to do the stipulations first --

19 THE COURT: Yes, we can -- go ahead and do the stipulation.

20 [Colloquy between State and Defense counsel]

21 The Defense and the State have stipulated that on December
22 4, 2015, Defendant Antonio Lee Mixon was in lawful custody at the
23 Nevada Department of Corrections and was incarcerated at the
24 Henderson -- or High Desert State Prison as a prisoner.

25 THE COURT: Is that correct, Defense Counsel? You are entering

1 into that stipulation?

2 MS. SISOLAK: That is correct, Your Honor.

3 THE COURT: Ladies and gentlemen, I had previously advised you
4 that the evidence in this case comes from the witness testimony and any
5 exhibits admitted into evidence, and also stipulated facts. The stipulation
6 just read to you by the Deputy Attorney General is a stipulated fact by
7 both sides. You are to consider that fact as proof for this case.

8 **DEAN ONTIVEROS**

9 [Having been called as a witness and first being duly sworn testified as
10 follows:]

11 THE CLERK: Please state and spell your first and last name for the
12 record.

13 THE WITNESS: First name Dean Ontiveros.

14 THE CLERK: Spell your name, please?

15 THE WITNESS: Last name, O-N-T-I-V as in Victor-E-R-O-S.

16 THE COURT: Go ahead, Counsel.

17 MS. KALLAS: Court's indulgence.

18 Your Honor, may we approach?

19 THE COURT: All right.

20 [Bench conference begins]

21 MS. KALLAS: Are you going to read the instruction not --

22 THE COURT: I'm sorry?

23 MS. KALLAS: Were you going to read the instruction that Jason
24 gave regarding the stipulation?

25 MR. GUNNELL: Yeah; we just need that read 'cause it's a --

1 THE COURT: Okay, I'll read it now.

2 MR. GUNNELL: Yeah.

3 THE COURT: Okay.

4 MS. SISOLAK: Thank you.

5 [Bench conference ends]

6 THE COURT: Ladies and gentlemen, as I had mentioned before,
7 the parties have stipulated to the fact that the Defendant is an inmate, or
8 was at the time of the alleged offense -- was an inmate in lawful custody
9 in the Nevada Department of Corrections as a prisoner and he was
10 incarcerated at High Desert State Prison at the time of the incident. You
11 should not guess or speculate as to the reason why the Defendant was in
12 the custody of the Nevada Department of Corrections. You cannot use
13 the fact the Defendant was incarcerated or any fact that resulted in his
14 incarceration for any purpose other than to establish the Defendant was
15 in fact incarcerated at the time of the alleged -- that the events alleged.
16 You may not convict a person simply because you believe he may have
17 committed some other act at another time. Keep in mind that the
18 Defendant is on trial for the crimes charged in this case and for these
19 crimes only.

20 Go ahead, Counsel.

21 **DIRECT EXAMINATION**

22 BY MS. KALLAS:

23 Q Sir, how are you employed?

24 A [Indiscernible]

25 Q How are you employed?

1 A How? I don't understand the question.

2 Q What do you do for a living?

3 A Oh, what I do. Oh, my bad. I'm a correctional officer at the
4 High Desert State Prison.

5 Q And how long have you been a correction officer with the
6 prison?

7 A 12 years and some change, coming up on 13 in October.

8 Q As a correction officer, do you work at the Nevada Department
9 of Corrections?

10 A Yes, ma'am.

11 Q Specifically, what are your job responsibilities as a corrections
12 officer?

13 A Public safety, inmate safety, staff safety.

14 Q Could you take me through a typical day what you do exactly?

15 A Oh, if we're talking about the incident at hand, when I was --

16 Q Not at hand, just in general.

17 A Just in general --

18 Q Just your general specific responsibilities.

19 A As a sergeant for the Department of Corrections I'm
20 responsible for about approximately 10 to 11 officers right now in the
21 section that I work at. We prepare close to 4000 meals -- well, more than
22 -- about 4000 meals a day for the incarcerated inmates. A typical day we
23 just do what we do, you know, feed, get things ready, you know, um feed
24 the inmates and go home.

25 Q And in December 2015 were you employed in that capacity?

1 A No; at that time I was a senior correctional officer.

2 Q And what were your job responsibilities at that time?

3 A I was basically a, like a junior sergeant within the unit. There
4 was approximately -- we had approximately 168 inmates. I was in charge
5 of training young officers, security of the officers and inmates, shake
6 down, you know, searches, looking for whatever we had to do, walk
7 medical personnel around when they do their pill calls and stuff like that.
8 So, basically just oversee the whole unit of 168 inmates on a normal day,
9 just make sure they're safe.

10 Q Mr. Ontiveros, are you familiar with the person by the name of
11 Antonio Mixon?

12 A Yes, ma'am.

13 Q How is it that you're familiar with Mr. Mixon?

14 A Mr. Mixon was a inmate in my unit.

15 Q And do you see Mr. Mixon in the courtroom today?

16 A Yes, ma'am.

17 Q Could you please point to him and identify an article of
18 clothing he's wearing?

19 A Tie and a, looks like a gray shirt or something. I can't --

20 MS. KALLAS: Your Honor, may the record reflect the witness has
21 identified the Defendant?

22 THE COURT: Yes, it will.

23 BY MS. KALLAS:

24 Q Directing your attention to December 4th, 2015, were you
25 working your capacity as a corrections officer on that day?

1 A Yes.

2 Q And what shift were you working?

3 A Working day shift.

4 Q And what hours does that entail?

5 A I was working twelves. I -- it was 5 to 5, 5:00 a.m. to 5:00 p.m.

6 Q And was that your normal shift?

7 A Yes, ma'am.

8 Q And which prison facility were you working at?

9 A High Desert State Prison.

10 Q Is High Desert State Prison located in Clark County, Nevada?

11 A Yes.

12 Q And could you just take me through the beginning of your day,
13 how the day started?

14 A It starts every day we relieve the off going shift. We get a brief
15 in what's been happening, you know, throughout the night. We end up
16 feeding -- you know we have to feed the inmates. And basically, like I
17 said, when they bring new officers in my job is to train them, ensure that I
18 go through the operational procedures and everything else. And then we
19 have different schedules like tier schedules for inmates to go out on tier
20 or inmates to go out on yard. We have to ensure and, you know, make
21 sure that we're watching them, you know, for any type of illegal activities
22 that they might be doing, gambling or whatever the case may be. And it
23 goes on all day with one hundred -- you got an officer upstairs and you
24 got two on the floor.

25 Q And would you classify that as part of your normal routine?

1 A Yes.

2 Q And specifically on December 4, 2015, where in the prison
3 were you working around 9:00 a.m. that morning?

4 A We had just -- I was -- we just let a group of inmates go out to
5 the inner quad -- or inner yard for their yard time.

6 Q Could you describe what the, what did you say, the inner yard
7 is?

8 A Yes, ma'am. It's a -- High Desert State Prison you have a --
9 you have quads. You have a unit called 5AB, 5CD, 6AB and 6CD. And
10 the inner quad is where we let the inmates go out to get their exercise,
11 handball, and do push-ups or whatever they want to do for recreation.

12 Q Could you describe, I guess, what it looks like, what the rec
13 yard looks like?

14 A It's basically you have pull up bars on one side, cement slabs
15 here in front of like 6AB, a cement slab in front of 5CD, cement slab in my
16 unit which is 6CD where the inmates play handball. You got walkways
17 and a lot of dirt and rocks.

18 Q And when you're out on the yard, did you see the Defendant
19 at that time?

20 A Yes.

21 Q And was he alone or was he by himself?

22 A He was by himself.

23 Q And what, if anything, unusual happen when you saw the
24 Defendant that morning?

25 A Well, it's just-- like I said, it was just like a real normal day. I

1 had an officer with me, his third day on the yard and I was teaching him
2 the -- you know, the lay of the land --

3 Q And what was this --

4 A -- so to speak.

5 Q I apologize for interrupting; what was this--

6 A Right.

7 Q -- officer's name?

8 A Officer Macinnich.

9 Q Okay, I apologize. So, what if anything unusual happen?

10 A So, you know I was showing him the lay of the land of what
11 inmates do what and just something about Mr. Mixon pacing back and
12 forth. I said -- you know, it seemed like a red flag to me and I told him
13 that's -- this is the kind of behavior you need to watch because when
14 you're out there you'll see a routine of officers -- oh, excuse me, inmates
15 doing their thing, handball, exercising, pull ups. One group always walks
16 around in a, you know, clockwise circle and he was just by himself just
17 pacing.

18 Q And what if anything happened next?

19 A Well, he just approached me. So like if we're standing in front
20 of my unit when inmates want to go in to use the bathroom or anything
21 like that they walk up to you and say, hey, oh, I need to go to the
22 bathroom. I yell up at my officer upstairs to open up the door, let him in.
23 And I thought that's what Mr. Mixon was going to do but he came up,
24 stopped within I don't know 10 - 15 feet from me, reached down, picked
25 up a rock and just threw it at me.

1 Q And when Mr. Mixon threw that rock, did he say anything to
2 you?

3 A Nothing.

4 Q Had you said anything -- prior to him throwing that rock, had
5 you said anything --

6 A No, ma'am.

7 Q -- to him? Okay, so he throws a rock at you. How big is that
8 rock?

9 A About that big [witness demonstrates with his hands]. I
10 couldn't even tell you. I don't know how big would that be; a little more
11 than a golf ball.

12 Q And what happened after that?

13 A I was in shock. I never had that happen to me before. So, I
14 took a couple of steps towards him and when I did that he reached down
15 picked up another rock. And at this time I was like, what is he going to do
16 with this rock and I started doing that dodge ball kind of thing. And when
17 he just chucked it again, I kind of like twisted this way to -- you know,
18 'cause he hit me once in the abdomen, I was able to twist enough to
19 where he hit my left thigh with the rock.

20 Q Okay, so you said that he hit you once in the abdomen and
21 then he hit you once in the thigh?

22 A Yes, ma'am.

23 Q Okay, and how far away was the Defendant while he was
24 throwing those rocks?

25 A I'd say anywhere between 10 to 15 feet away from me.

1 Q And at any time did you consent to the Defendant hitting you
2 with those rocks?

3 A No, ma'am.

4 Q And prior to him -- the Defendant hitting you with the rocks,
5 had you ever spoken to him?

6 A No, ma'am.

7 Q Had you ever met him?

8 A Nah, I --

9 Q And to your knowledge, did you and the Defendant have any
10 issues?

11 A No, ma'am. I had no knowledge.

12 Q So at any time during this incident or prior to this incident, had
13 you ever consented to the Defendant hitting you with rocks?

14 A No.

15 Q And did the Defendant say anything to you at all while he was
16 throwing rocks at you?

17 A Nothing.

18 Q And did you say anything to the Defendant?

19 A When he hit me I said you -- I -- all I could do was react and I
20 started walking towards him. Then when I started walking towards him
21 he -- I quickened the pace after the second rock. Then he reached down
22 before he hit the -- there's a sidewalk that leads to unit 5AB, right before
23 he hit -- he had reached that sidewalk, he reached down, picked up
24 another handful of dirt and rock and threw it in my direction again.

25 Q And did any of those rocks hit you?

1 A Yes, ma'am.

2 Q Where?

3 A Just all over the -- all over my body. It's just like -- it was like
4 picking up a handful of dirt and rock. So when he did it I shield myself
5 and when I went to pursue him again that's when I noticed him taking off
6 his shoe and brandished that prison made weapon.

7 MS. SISOLAK: Your Honor, I'd object. May we approach?

8 THE COURT: Okay.

9 [Bench conference begins]

10 MS. SISOLAK: Your Honor, he's not charged with brand --

11 THE COURT: I'm sorry?

12 MS. SISOLAK: He's not charged with brandishing the shank. He's
13 charged with having the shank. I would ask that this witness not be able
14 to testify to something he's not charged with.

15 MS. KALLAS: It's his perception why he does it --

16 THE COURT: I'm sorry?

17 MS. KALLAS: -- brandishing -- it's his perception of what the
18 Defendant was doing with that, how he was holding it, but [indiscernible]
19 it's just a descriptive word of how he was holding a shank. I think its --

20 MS. SISOLAK: It's also a crime.

21 MS. KALLAS: It's a crime he's not charged with. It's called
22 [indiscernible] possession which it also entails holding a shank. It's the
23 same thing as brandishing.

24 MS. SISOLAK: But possession doesn't necessarily [indiscernible]
25 than holding a shank though.

1 MS. KALLAS: I don't think the jury is going to be misled in regards
2 to another bad act and the decision based on the fact that he's using the
3 word brandishing.

4 MS. SISOLAK: [Indiscernible].

5 THE COURT: I'm sorry?

6 MS. SISOLAK: [Indiscernible] that the word brandishing is
7 prejudicial.

8 THE COURT: I can't hear you. Say --

9 MS. SISOLAK: That the word brandishing is prejudicial. Holding is a
10 different word than brandishing. Brandishing in and of itself is another
11 bad act that they could have been charged.

12 THE COURT: Are you asking for a cautionary instruction at this time
13 or just for me to direct him to -- walk him through that he just had, you
14 know, [indiscernible] he's not using the word brandishing. [Indiscernible]
15 request it.

16 MS. KALLAS: I mean I have a feeling he's going to say it again if we
17 don't advise him not to obviously. I mean that's his way he described the
18 -- it's his perception of the act.

19 MS. MACHNICH: [Indiscernible].

20 THE COURT: I'm sorry?

21 MS. MACHNICH: [Indiscernible] that we [indiscernible] to you,
22 disregard that and want him to go [indiscernible].

23 THE COURT: Can you say was he [indiscernible] it, where was it?
24 You can get around it. Just -- okay?

25 MS. KALLAS: Okay.

1 THE COURT: I'll instruct the jury to disregard the [indiscernible].

2 MS. SISOLAK: Thank you.

3 [Bench conference ends]

4 THE COURT: Ladies and gentlemen, the witness used the word
5 brandishing. I am instructing you to disregard that answer.

6 Go ahead.

7 MS. KALLAS: May I proceed, Your Honor?

8 THE COURT: Yes.

9 BY MS. KALLAS:

10 Q So, you said the Defendant he hit you with a bunch of rocks
11 and then you're walking towards him -- and you start walking towards
12 him, what happened after that?

13 A He took off his shoe and reached into one of them. I was
14 going to tell you exactly what shoe he picked up and pulled out a knife, a
15 prison made weapon.

16 MS. KALLAS: Court's indulgence.

17 BY MS. KALLAS:

18 Q Could you describe what that item looked like?

19 A It's a shiny object to a point wrapped up with something so he
20 wouldn't -- I don't know, just like -- I couldn't even explain what a prison
21 made weapon is. It's just folded metal sharpened up to a point with this --
22 that's all I could see in his hand, just something shiny.

23 Q And where did you say he pulled that item out of?

24 A One of his shoes.

25 Q And is there a common term used to describe a prison made

1 weapon like this?

2 A Just a shank.

3 MS. KALLAS: Your Honor, may I approach the witness?

4 THE COURT: Yes.

5 BY MS. KALLAS:

6 Q I'm showing what's been previously marked State's proposed
7 Exhibit number 2; will you take a look at that?

8 THE COURT: Defense, have you seen this?

9 MS. SISOLAK: Yes, Your Honor.

10 THE COURT: Okay.

11 MS. KALLAS: I provided them [indiscernible], Your Honor.

12 BY MS. KALLAS:

13 Q Do you recognize what's in that picture?

14 A It looks like the shiny object he had.

15 Q And is -- and again, what did you refer to this object as?

16 A A shank.

17 Q And is that a fair and accurate depiction of the shank you saw
18 the Defendant holding?

19 A Yes, ma'am

20 MS. KALLAS: Your Honor, I'd move to admit this picture into
21 evidence.

22 THE COURT: Defense?

23 MS. MACHNICH: No, objection.

24 MS. SISOLAK: No, objection, Your Honor.

25 THE COURT: It will be admitted.

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[State Exhibit 2 admitted]

BY MS. KALLAS:

Q Now, did the Defendant say anything as he pulled the shank from his shoe?

A Nothing.

Q Were you saying anything to the Defendant?

A I tell you it happened so fast I probably could have said something but I think I said something like, that's it. I don't know.

Q And what did you mean by that's it?

A I -- when you start -- something like that happens, your adrenaline goes so high because now you're talking -- you know we have this thing -- use of force thing, a use of force to contain your men. When you start talking a weapon, its --

MS. MACHNICH: Objection, --

THE WITNESS: -- life or limb --

MS. MACHNICH: -- Your Honor, may we --

THE WITNESS: -- kind of stuff.

MS. MACHNICH: -- approach?

THE COURT: There is an objection?

MS. MACHNICH: Yes, Your Honor.

MS. SISOLAK: Yes, Your Honor.

THE COURT: What is the objection?

MS. MACHNICH: Relevance.

THE COURT: Overruled.

Go ahead; next question.

1 BY MS. KALLAS:

2 Q You can finish, --

3 A Oh, so --

4 Q -- Mr. Ontiveros.

5 A -- anyway, it was just -- it happened so quick and stuff like
6 that. We just react. What I meant by what I said you're -- that's it, I was
7 going to do everything possible to actually protect myself and probably
8 him too just because there was a weapon involved, part of my training
9 and job that I need to do.

10 Q All right. So, after the Defendant pulled a shank out of his
11 shoe, what happened next?

12 A Apparent -- I heard other officers -- okay, I don't even know if
13 it's true or not or what happened 'cause it happened so fast.

14 Q I need --

15 A Go ahead.

16 Q -- you to testify to what you do know to your knowledge.

17 A Okay, what I do know --

18 Q What you remember.

19 A -- is I heard somebody yell, get down on the ground. Then
20 that's when the Defendant went ahead and threw himself to the ground
21 and that's when I approached him. I -- per protocol, put my knee to hold
22 him down and put him in a wrist lock until restraints can be put on him. I
23 held him there because -- in that wrist lock because there's still a weapon
24 in the area.

25 Q Okay, I just want to go back actually a little bit when the

1 Defendant pulls the shank out of his shoe; how is he holding it?

2 A Like this [witness demonstrates with his hands] -- in his right
3 hand and just looking at me like -- you know.

4 Q Okay. So, after you said that he drop -- he eventually drops it?

5 A When he heard the responding officer say get on the ground.

6 Q Okay, and then after you put your knee on him, what
7 happened?

8 A I just grabbed his right hand, put it in a wrist lock until other
9 officers come by and one of my other officers said, I got this, and then he
10 -- I let him go. He -- I gave control over to the other officer. They
11 restrained him and that was the end of it, you know.

12 Q When you say restrained him, what do you mean?

13 A Put the wrist restraints, handcuffs on him.

14 Q And did you see where that -- the Defendant threw the shank?

15 A It was just in the area. I couldn't tell you exactly where it was
16 but it was in front of him while he was on the ground.

17 Q And was there anyone else around while this was happening,
18 any other inmates?

19 A We had a yard full of inmates. Well, I couldn't give you an
20 exact amount, but there were inmates -- yes, they were out -- inmates
21 around us.

22 Q How far away was the closest inmate to the Defendant while
23 this was happening?

24 A I'd say maybe from here to that wall, the corner.

25 Q About how many feet would you estimate? I'm not good at it.

1 A I couldn't even tell you.

2 UNKNOWN SPEAKER: 30?

3 BY MS. KALLAS:

4 Q About 30 feet?

5 A Maybe 25 yards.

6 Q And that -- and so as this was going on was the Defendant
7 saying anything to you?

8 A Once we put restraints on him and I stood up and the other
9 officers were holding him down, he said something to the point that
10 you're lucky my friends were here.

11 MS. SISOLAK: Objection, Your Honor.

12 THE COURT: He said what?

13 MS. SISOLAK: May we approach?

14 THE WITNESS: You're lucky my friends are here.

15 THE COURT: Approach.

16 [Bench conference begins]

17 MR. GUNNELL: [Indiscernible].

18 THE COURT: Who's going to argue? Come closer to the mic.

19 MS. MACHNICH: Okay, um, Your Honor, we're going to object as to
20 one discovery violation. This was not provided us. Something like this
21 was mentioned this morning in passing by the AG and actually a different
22 version of the statement was told to us right before they started their case
23 so we didn't know that this happened. All this threat-ish statement was
24 not in the officer's report and it was not provided to us as a statement of
25 the Defendant at any point and an incorrect version of it was provided to

1 us earlier today, and so we would object pursuant to *Brady*, pursuant to
2 the discovery law and --

3 MS. SISOLAK: Your order.

4 MS. KALLAS: And, Your Honor, I did tell them almost specifically
5 [indiscernible] that you did say that you're lucky your friends were around,
6 so I don't understand it.

7 THE COURT: I'm sorry; say --

8 MS. SISOLAK: That's not --

9 MS. KALLAS: I did let them know this morning that he did say that
10 you're lucky your friends are around, so I don't think that was provided to
11 them this morning.

12 UNKNOWN SPEAKER: [Indiscernible] --

13 MS. KALLAS: As far as *Brady*, I don't think its exculpatory
14 whatsoever and it goes -- but there[s] also a statement that have been
15 provided to them that you're lucky -- along the lines of you're lucky I had
16 that shank or I would have stuck your [indiscernible]. I think this is
17 essentially in accordance with that same type of behavior. It's not a bad
18 act. It's not a threat.

19 MS. MACHNICH: Well, he --

20 MS. KALLAS: He's talking trash.

21 MS. MACHNICH: What that officer just testified to is not the same
22 thing she just said. He said you're lucky my friends aren't around.

23 MR. GUNNELL: [Indiscernible].

24 MS. MACHNICH: Those are two different things.

25 THE COURT: You [indiscernible] two people -- who's handling the

1 witness?

2 MS. MACHNICH: What?

3 THE COURT: You're handing the witness and you're handling the
4 witness?

5 MS. MACHNICH: You handle this.

6 MS. SISOLAK: I'm handling this, Your Honor.

7 THE COURT: Okay. [Indiscernible] --

8 MS. SISOLAK: I understand.

9 THE COURT: The parties who handle the witness argue the motion.

10 MS. SISOLAK: I understand. The issue I have, Your Honor, is that
11 we were -- [indiscernible] Ms. Kallas [indiscernible] similar understanding
12 this morning. It is in none of the reports and it is not in any of the
13 discovery provided per your order. I have never heard it until this morning
14 and it's a violation. If it was disclosed to me this morning it's a violation.

15 MS. KALLAS: And, Your Honor, I do [indiscernible] was disclosed. I
16 -- Mr. Ontiveros acknowledged to me that he didn't put it in his report and
17 he didn't think -- I think he thought it was [indiscernible] whatever his
18 reasons [indiscernible] when I found out about it. I disclosed it to them
19 this morning. I don't think it's prejudicial in any way. She can discuss it --
20 with him during cross-examination. And, again, he made that same
21 statement, you're lucky, you know I would have stuck you in the
22 [indiscernible] if you didn't have that knee.

23 THE COURT: Okay, [indiscernible]--

24 MS. SISOLAK: And

25 MS. KALLAS: He's making threat and talking --

1 THE COURT: -- you turned over --

2 MS. KALLAS: -- trash.

3 THE COURT: -- all reports this morning, its not in any of your
4 reports?

5 MS. KALLAS: No.

6 MS. SISOLAK: And, Your Honor, I do want to clarify. If the statement
7 is you're lucky your friends were around are referring to the officers, co-
8 officers, we have a completely different story then if the statement is
9 you're lucky my friends weren't around, as in my client's friends.

10 MS. KALLAS: I can ask him. I'm not sure which one is --

11 MS. SISOLAK: The violation is the same but one is obviously more
12 prejudicial than the other.

13 MS. KALLAS: I have --

14 MS. SISOLAK: And we can inquire which it was.

15 THE COURT: How does he remember this after a year and a half to
16 two years?

17 MS. KALLAS: I'm sorry, what?

18 THE COURT: How does he remember this if it's not in any report?

19 MS. KALLAS: [Indiscernible], not sure, Your Honor. I can ask him
20 again. I'm not sure if he said my friend. I can ask him to explain what he
21 meant by my friends, if he was talking about --

22 MS. SISOLAK: It's still a *Brady* violation.

23 MR. GUNNELL: Again, it's not *Brady*.

24 MS. KALLAS: It's *Brady*; it's not exculpatory.

25 MR. GUNNELL: It's exculpatory.

1 MS. SISOLAK: All [indiscernible] -- discovery.
2 MR. GUNNELL: That -- it [indiscernible].
3 MS. SISOLAK: *Brady* is not exculpatory.
4 MR. GUNNELL: It's not *Brady*. It's a different rule -- discovery --
5 MS. SISOLAK: It is a --
6 MS. KALLAS: And its --
7 MS. SISOLAK: -- statement --
8 MS. KALLAS: -- not prejudicial --
9 MS. SISOLAK: -- by my client --
10 MS. KALLAS: -- [indiscernible].
11 MS. SISOLAK: -- that I am entitled to --
12 THE COURT: Okay.
13 MS. SISOLAK: -- that you ordered me to have.
14 THE COURT: So what are you requesting?
15 MS. KALLAS: And, Your Honor, I did find out about it after when I
16 did my witness prep after your order.
17 MS. SISOLAK: I would ask that it be stricken and that he not be
18 able to -- that the State may not be allowed to inquire any further into that
19 statement in any way.
20 MS. MACHNICH: [Indiscernible].
21 MS. SISOLAK: And that the jury disregard it.
22 THE COURT: Does this go to any other issues by the Defense?
23 MS. SISOLAK: Not that I can [indiscernible] at this point, Your
24 Honor.
25 THE COURT: No, I'm going to allow it, okay.

1 MS. KALLAS: Okay, thank you, Your Honor.

2 MS. SISOLAK: Thank you, Your Honor.

3 [Bench conference ends]

4 THE COURT: Objection overruled.

5 MS. KALLAS: Okay, and, Your Honor, may I approach the witness?

6 THE COURT: Yes.

7 BY MS. KALLAS:

8 Q Mr. Ontiveros, I'm showing what's previously marked State's
9 proposed Exhibit number 1. Can you take a look at that picture; do you
10 recognize what's in that picture?

11 A Yes.

12 Q And what is that?

13 A An officer pointing at the shank. He put a pen there to see how
14 long -- you know, to verify the length of it more or less.

15 Q And is that the shank that you saw the Defendant holding?

16 A Yes.

17 Q Okay. And what else do you recognize in that picture?

18 A Mr. Mixon.

19 Q And do you -- is that a fair and accurate depiction of the
20 Defendant and the shank he was holding after he was placed in those
21 restraints?

22 A Yes.

23 MS. KALLAS: Your Honor, I move to admit State's Exhibit 1.

24 MS. SISOLAK: No, objection, Your Honor.

25 THE COURT: It will be admitted.

1 **[State's Exhibit 1 admitted]**

2 MS. KALLAS: Court's indulgence.

3 [Colloquy between State Counsel]

4 MS. KALLAS: I'll pass the witness, Your Honor.

5 THE COURT: Any cross-examination?

6 MS. SISOLAK: Yes, Your Honor. Court's indulgence.

7 **CROSS-EXAMINATION**

8 BY MS. SISOLAK:

9 Q Mr. Ontiveros, so in talking about that day, after Mr. Mixom
10 was cuffed, what was your next action?

11 A Waiting for the -- waiting for people to come and you know like
12 the incident commander and whoever. Medical was called so I can get
13 assessed at the scene.

14 Q Did you have any injuries?

15 A Just a sore stomach and a sore thigh.

16 Q Were any pictures taken of those injuries?

17 A No, but I was sent to Concentra.

18 Q What does that mean?

19 A Concentra is like if anything that happens within the prison
20 and you get hurt, injured, slip, fall, whatever, it's a protocol that we use
21 with a C-1 packet that we have to go to see to Concentra to ensure that
22 you know there's no injuries.

23 Q And you took part in a C-1 packet interview or you filled out a
24 C-1 packet?

25 A Yes.

1 Q Did you provide that to the State?

2 A No.

3 Q Do you have a copy of that?

4 A No, ma'am.

5 Q Does the prison keep a copy of that?

6 A They should.

7 MS. SISOLAK: Your Honor, may we approach?

8 THE COURT: Okay.

9 [Bench conference begins]

10 THE COURT: The C-1 forms are a worker's comp form, just so

11 [Indiscernible] familiar with that; that's what it is.

12 MS. SISOLAK: Your Honor, but its directly related to any injuries
13 that the victim had in this case.

14 THE COURT: [Indiscernible].

15 MS. SISOLAK: But the statement of --

16 MR. GUNNELL: It's a what?

17 MS. SISOLAK: -- it's directly --

18 MS. KALLAS: We can't hear.

19 MS. SISOLAK: -- related to the incident. I mean I've had -- I filed a
20 workman's comp claim. I had to write a statement of what happened. And
21 the witness testified that he provided a statement in the C-1 packet and
22 conducted a -- potentially an interview and a C-1 packet.

23 THE COURT: So in the C-1 form you have to write down what
24 happened.

25 MR. GUNNELL: I think he already did that as [indiscernible].

1 MS. SISOLAK: That's our client's medical record.
2 MR. GUNNELL: Yeah, but our guy didn't get any injuries.
3 MS. SISOLAK: But he still filed a workman's comp claim.
4 THE COURT: No, but the C-1 form --
5 MS. KALLAS: And that's the [indiscernible] that we're hearing
6 about, that he filed a [indiscernible] because it was our understanding
7 that he didn't have any injuries and we spoke to the prison and we asked
8 if there was any medical records in regards to this happening --
9 THE COURT: Well, --
10 MS. KALLAS: -- but [indiscernible] not had any treatment. He didn't,
11 so --
12 THE COURT: I'm not concerned about the injury. In the C-1 form it
13 says what do you injuries or how did it happen. So he would have wrote
14 down whatever, and his take of how it happened.
15 MS. SISOLAK: It's an additional statement [indiscernible].
16 MS. KALLAS: I understand. That's -- it's just our first, to be honest,
17 ever hearing about the fact that he ever filed the claim and that he would
18 ever had any kind of [indiscernible].
19 MR. GUNNELL: Who filed the worker's comp?
20 MS. SISOLAK: He did.
21 THE COURT: [Indiscernible] but I know he [indiscernible] false. He's
22 has a, you know, a bruised ego --
23 MS. SISOLAK: I was --
24 THE COURT: -- he fell on the ground.
25 MR. GUNNELL: Well, my understanding --

1 THE COURT: It's tough to fill out the C-1 form. He says he filled one
2 out.

3 MR. GUNNELL: My understanding of this, Your Honor, the form he
4 filled out wasn't -- it was the -- it was for the Defendant. It wasn't for
5 [indiscernible]. That's --

6 MS. MACHNICH: No, you're thinking of a medical form
7 [indiscernible] because [indiscernible] separate from a worker's comp.

8 MR. GUNNELL: But he just testified that that was scrapes and
9 bruises and --

10 MS. SISOLAK: He testified to his sores to make his sore thigh. And
11 he said what did you do next; he said I went to Concentra --

12 MR. GUNNELL: Okay.

13 MS. SISOLAK: -- and filled out a C-1.

14 THE COURT: A C-1 form.

15 MR. GUNNELL: Okay.

16 MS. SISOLAK: I'd ask that the witness' testimony be stricken.

17 THE COURT: On his entire testimony or --

18 MS. SISOLAK: Any testimony as to what occurred. He filled out a
19 statement that we don't have.

20 THE COURT: Regarding the C-1 form?

21 MS. SISOLAK: He shouldn't be able to testify to anything included
22 in that statement which was the entire event.

23 THE COURT: Okay, I'm not sure, are you asking just that the
24 testimony regarding him going to the office and filling out a C-1 form be
25 stricken or what?

1 MS. SISOLAK: I'm asking that his testimony as to the incident that
2 was memorialized in the C-1, so the entire event be stricken. I don't have
3 it.

4 THE COURT: So all of his testimony?

5 MS. SISOLAK: Yes.

6 MS. KALLAS: And, Your Honor, I object to that. She can obviously
7 cross [indiscernible] what he wrote and what he stated in -- on that form
8 [indiscernible] but I don't think his entire testimony needs to be stricken.

9 MS. SISOLAK: We don't know what's in that statement.

10 THE COURT: All right.

11 MS. SISOLAK: Chances are, quite frankly, Your Honor, two years
12 later [indiscernible].

13 THE COURT: Are you seeking a mistrial?

14 MS. MACHNICH: Potentially with prejudice [indiscernible].

15 THE COURT: I mean potentially, yes or no? I --

16 MS. SISOLAK: With --

17 MS. MACHNICH: It would be [indiscernible] --

18 MS. SISOLAK: It would be --

19 MS. MACHNICH: -- prejudice, --

20 MS. SISOLAK: -- prejudice.

21 MS. MACHNICH: -- not without prejudice. [Indiscernible] direct
22 violation and the [indiscernible], something [indiscernible]. This case is
23 going on for two years. The State's known about it and they didn't turn
24 this over in a timely manner and this is their complaining witness.

25 MS. KALLAS: And, Your Honor, since this is our first time that we've

1 ever heard about him [indiscernible] making a worker's comp claim or
2 anything like that, it was our understanding he didn't have any injuries
3 from it so why would we look into whether or not he needed a --

4 MS. MACHNICH: It's --

5 MS. KALLAS: -- worker's comp if he didn't have any --

6 MS. MACHNICH: -- Your Honor, its --

7 MR. GUNNELL: Why would he --

8 THE COURT: Okay, wait, wait. Who's talking?

9 UNKNOWN SPEAKER: [Indiscernible].

10 THE COURT: The point is it's not the injuries because he wrote a
11 witness -- he may not have written a statement. [Indiscernible] typically
12 what happened. That's what --

13 MS. KALLAS: But I don't think its --

14 THE COURT: -- I've seen them.

15 MS. KALLAS: -- our duty to investigate every single thing that -- how
16 would we have known that he ever did a worker's comp?

17 THE COURT: I'm not making any statement right now that it was
18 intentionally withheld by your office.

19 MS. SISOLAK: No, Your Honor, --

20 THE COURT: I'm not making that.

21 MS. SISOLAK: -- I'm not making the accusation that it was
22 intentionally withheld. I making the accusation that for whatever reason
23 nobody inquired what happened next because what happened next was
24 he went to a place where he filled out a statement that we know now. It
25 absolutely is the State's responsibility to inquire into is there anything

1 else that you wrote down in your version of the story.

2 MS. KALLAS: And, Your Honor, even if somehow -- obviously, we
3 don't think that his testimony should be stricken and I don't think there
4 needs to be a mistrial yet. Other witnesses who've witnessed the event
5 can still testify as to what happened.

6 THE COURT: But they don't have his statement. So, --

7 MS. KALLAS: I understand.

8 MS. SISOLAK: And, quite --

9 MS. KALLAS: But, Your Honor, I'd like --

10 THE COURT: -- it's a motion for --

11 MS. SISOLAK: -- frankly, Your Honor, --

12 THE COURT: -- discovery.

13 MS. KALLAS: -- to ask him about [indiscernible]. We don't know
14 anything about this [indiscernible] and so I'd ask --

15 MS. SISOLAK: Quite frankly, Your Honor, the next witness they're
16 calling -- I don't have a statement from either. I have no statement from
17 this officer. My --

18 MR. GUNNELL: He didn't make a statement.

19 MS. SISOLAK: But my entire line of --

20 THE COURT: Okay, hang on, hang on.

21 MS. KALLAS: He didn't make a statement because --

22 THE COURT: But the problem is the injuries [indiscernible].

23 MR. GUNNELL: Yeah.

24 THE COURT: Okay. No, but in the C-1 form that asks what did
25 you -- what happened and he would have wrote down what happened

1 which is a statement by him. You had a motion for discovery in this case?

2 MS. SISOLAK: We did and you granted the order. I prepared --

3 THE COURT: Okay.

4 MS. SISOLAK: -- the order and the State signed off on it and its
5 been filed.

6 THE COURT: You know, this may say -- this may be 100%
7 consistent with what he's testified to, okay? It may be. But it was
8 supposed to be turned over. I'm not saying you guys were [indiscernible].
9 I'm not saying it was intentional. I'm not making that finding now, okay?
10 But it was supposed to have been turned over. If you're on their side you
11 would say, hey, you didn't turn over the statement you would have been
12 making the same motion.

13 MS. KALLAS: Well, did he even testify that he made a statement?
14 Didn't he just say that he filled out a form?

15 MS. SISOLAK: He said he completed --

16 MS. KALLAS: Do we know that --

17 MS. SISOLAK: -- an interview --

18 MS. KALLAS: -- he actually --

19 MS. SISOLAK: -- and filled out a statement. I'll ask him again.

20 THE COURT: Why don't you ask to clarify; okay?

21 MS. SISOLAK: Thank you.

22 [Bench conference ends]

23 THE COURT: All right, next question, Counsel.

24 BY MS. SISOLAK:

25 Q Mr. Ontiveros, when you proceeded to, I think you said it was

1 Concentra --

2 A Yes.

3 Q -- and you began the C-1 proceedings, did you fill out a
4 statement?

5 A Yeah. We have to do our reports before we leave the
6 institution.

7 Q So, when you got to Concentra, did you fill out a C-1 packet?

8 A You fill it out before you go.

9 Q So, at some point you wrote down on a C-1 form various
10 information pertaining to this incident?

11 A The C-1 packet -- for me to explain what that is, it's a --
12 basically, it's an injury report as -- you know 'cause -- I don't know, you
13 slam your finger, you slip and fall, you have to fill out a C-1 form.

14 Q So, if you are injured in any matter -- in any manner, you fill
15 out a document as to how you were injured?

16 A Yes.

17 Q Do you, in that document, give any sort of narrative as to how
18 the injury occurred? For instance, would you say I was exiting my car
19 door and as I slammed the door my finger got caught; is that something
20 that you would include in the report?

21 A Sure.

22 MS. SISIOLAK: Your Honor, may we approach?

23 THE COURT: Okay; both Counsel.

24 [Bench conference begins]

25 MS. SISOLAK: I would ask if Your Honor is not inclined to grant a

1 mistrial with prejudice or dismiss the entire -- the witness' entire
2 testimony, I'd ask for a curative instruction and that the jury be --

3 THE COURT: I'm not going to strike his testimony. I have to grant a
4 mistrial and I don't want to but there's a report that was ordered. It's not --
5 I'm sure it's not in your packet.

6 MS. KALLAS: It's absolutely not. We --

7 THE COURT: No, I'm not --

8 MS. KALLAS: -- reached out to the Inspector General's Office.

9 THE COURT: Your office has never had a reputation --

10 MS. KALLAS: This is literally the first we've ever --

11 THE COURT: -- of withholding evidence. I'm not aware of any, but
12 this form, he just testified [indiscernible] as to how it occurred. It was not
13 turned over --

14 MS. SISOLAK: And --

15 THE COURT: -- to you which in turn was not turned over to them.

16 MS. SISOLAK: -- I'm not insinuating that Ms. Kallas or Mr.
17 Gunnell --

18 THE COURT: I know. I'm not making any finding.

19 MS. SISOLAK: I'm just [indiscernible] --

20 MS. KALLAS: Is there any way we can just strike his testimony --

21 MS. SISOLAK: -- it was grossly --

22 MS. KALLAS: -- and then have --

23 MS. SISOLAK: -- negligent.

24 MS. KALLAS: -- another witness testify?

25 MR. GUNNELL: There could be an issue with [indiscernible] turning

1 over because if it's his medical records --

2 MS. SISOLAK: It can be --

3 MR. GUNNELL: -- that could be HIPAA.

4 THE COURT: No, it's not a --

5 MS. SISOLAK: It can be turned over, redacted.

6 THE COURT: -- medical form. It's a form that you fill out. It says I
7 hurt my knee, I slipped on a banana.

8 MS. SISOLAK: I only know about this because I was exposed to
9 measles at trial and I had to fill it out but I didn't get measles but I had to
10 say my client breathed on me.

11 MS. KALLAS: Your Honor, if you do [indiscernible], I was just asking
12 if -- I'd rather his testimony be stricken. We do have other witnesses that
13 could come testify in --

14 MS. SISOLAK: Your Honor, --

15 MS. KALLAS: -- regards to this event. I think a curative instruction
16 would cure any type of prejudice that the jury possibly -- is possibly
17 hearing his testimony. There was another witness to this event.

18 MS. MACHNICH: The [indiscernible].

19 MS. KALLAS: Defense is aware of that.

20 THE COURT: Is there other witnesses who would say they saw him
21 throw rocks and hit him?

22 MS. KALLAS: Absolutely; there's a person who testified that there
23 was someone standing right next to him.

24 MS. SISOLAK: Your Honor, this person --

25 MS. KALLAS: I think that he's not -- they're not going to be

1 prejudiced. I think the curative instruction -- essentially, his testimony is
2 going to be the exact same [indiscernible] so I think if you strike his
3 testimony and give a curative instruction he's not going to be prejudiced
4 by --

5 MS. SISOLAK: Your Honor, I'm still asking --

6 MS. KALLAS: -- and -- all --

7 MS. SISOLAK: -- for --

8 THE COURT: Hang on. Let her finish.

9 MS. SISOLAK: Go ahead; I'm sorry.

10 MS. KALLAS: And not only that, obviously I don't feel that this -- we
11 don't feel that these statements are exculpatory and [indiscernible] made.
12 I don't think the Defendant's prejudiced -- I mean I don't think that --

13 THE COURT: Well --

14 MS. KALLAS: -- the jury is going to -- [indiscernible] the jury
15 [indiscernible] file a curative instruction. I think that, again, they're going
16 to hear the same testimony from someone else. There's nothing that they
17 heard that they're not going to hear from Officer Mcannich. We have
18 [indiscernible] making a statement inconsistent with what he has already
19 testified to.

20 THE COURT: But we don't know what he said.

21 MS. SISOLAK: But, Your Honor, --

22 THE COURT: That's the problem and I ordered the State to
23 [indiscernible] any statements --

24 MS. SISOLAK: And --

25 THE COURT: -- to be turned over.

1 MS. SISOLAK: But, Your Honor --

2 MS. KALLAS: And strike his testimony but I don't think we need a
3 mistrial based on that fact, Your Honor.

4 MS. SISOLAK: But, Your Honor, then they're asking you to move
5 forward with the trial with no victim.

6 THE COURT: Well, they can --

7 MS. KALLAS: We absolutely still have a victim. You don't need --

8 THE COURT: They can still --

9 MS. KALLAS: -- a victim to testify just to --

10 MS. SISOLAK: I -- understand that they can have this other witness
11 testify to what he believes is [indiscernible] -- [indiscernible], I'm still
12 asking for a mistrial with prejudice. They didn't turn over a statement. At
13 very best, it's grossly negligent.

14 MS. KALLAS: And its -- but it's not exculpatory [indiscernible].

15 THE COURT: Well, we don't -- see, the --

16 MS. KALLAS: -- and I think its --

17 THE COURT: -- problem is I ordered all statements to be turned
18 over. You were not aware of this. This is not -- I don't find it intentional
19 but the bottom line is if the roles were reversed and you have a witness
20 who probably filled out statements and lo and behold they didn't turn
21 them over to you, you would scream bloody murder because they're
22 ordering reciprocal discovery to turn over documents to you.

23 MS. KALLAS: Well then, Your Honor, I'd ask that a curative
24 instruction be given and I would ask that his -- I'd rather his testimony be
25 stricken.

1 MS. SISOLAK: It's not a problem we can cure.
2 THE COURT: Right. Right.
3 MS. KALLAS: I think it's absolutely a problem --
4 THE COURT: I'm going to --
5 MS. KALLAS: -- we can cure.
6 THE COURT: -- declare it a mistrial; okay?
7 MS. SISOLAK: Is that going to be with prejudice, Your Honor?
8 THE COURT: No. You can file a motion later on that I didn't find
9 any intentional act of bad faith or outrageous conduct on behalf of the
10 Attorney General's Office.
11 MS. SISOLAK: But --
12 MS. KALLAS: Are we going to pick the next jury tomorrow?
13 THE COURT: We'll do it in --
14 MS. KALLAS: And, Your Honor, as a [indiscernible] finding --
15 MS. MACHNICH: Can we -- are we going [indiscernible] and pick
16 the jury tomorrow?
17 MS. SISOLAK: Another jury?
18 THE COURT: What?
19 MS. MACHNICH: Are we going to try this case again tomorrow? I
20 mean can we start over again [indiscernible] --
21 MS. KALLAS: We'll look into the statement [indiscernible] --
22 THE COURT: I don't know.
23 MS. SISOLAK: I mean --
24 MS. KALLAS: It's still a day and a half --
25 THE COURT: I doubt it because you know the jury commissioner

1 [indiscernible] tomorrow is Wednesday. Normally, we [indiscernible]
2 Tuesday for the --

3 MS. SISOLAK: I understand, Your Honor. But the issue --

4 THE COURT: I'll set a short trial date --

5 MS. SISOLAK: -- but Your Honor, --

6 THE COURT: -- if you can put this together in two weeks.

7 MS. SISOLAK: Part of the issue is --

8 THE COURT: You can file any motions for dismissal.

9 MS. SISOLAK: Your Honor, I'm set in your department every week
10 from now till kingdom come. Like, I have a trial set every week until
11 March.

12 MS. KALLAS: We can get the statement. We can look into it
13 [indiscernible] statements today hopefully if we get out of here and --

14 MS. SISOLAK: Your Honor, --

15 MS. KALLAS: -- get [indiscernible] them, get it done.

16 THE COURT: We're just -- I'm going to put this on calendar for
17 Thursday for resetting a trial date.

18 MS. SISOLAK: Your Honor, can we get on the record that you're
19 considering the conduct grossly negligent?

20 THE COURT: I'm sorry?

21 MS. SISOLAK: That we're considering the --

22 THE COURT: I'm saying there's nothing in front of me at this time to
23 show intentional [indiscernible].

24 MS. KALLAS: And then that's --

25 MS. SISOLAK: Not intentional. I'm asking if you would deem it

1 grossly negligent which is unintentional negligence.

2 THE COURT: No, I'm not making any finding on that. You can file a
3 motion [indiscernible] you have other information, but right now I don't
4 have enough evidence to make that finding.

5 MS. KALLAS: And, Your Honor, I would --

6 MS. SISOLAK: Thank you, Your Honor.

7 MS. KALLAS: -- ask that since you are going to grant a mistrial that
8 it be on the record why the jury is somehow so prejudiced that a mistrial
9 was necessary --

10 THE COURT: I'm just going to advise --

11 MS. KALLAS: -- and a curative instruction.

12 THE COURT: -- then there's a legal issue to grant a mistrial.

13 MS. SISOLAK: Thank you, Your Honor.

14 MS. KALLAS: Thank you.

15 [Bench conference ends]

16 THE COURT: Ladies and gentlemen, during trials legal -- various
17 legal issues arise and in this case a legal issue has arisen which is
18 requiring me to declare a mistrial. It's not something that I do lightly. And
19 unfortunately, I feel it's to protect everyone's constitutional rights in this
20 matter that I do declare a mistrial. I do find it a manifest necessity that I
21 do declare a mistrial. I apologize to all of you. You were here ready,
22 willing, and able to serve and unfortunately we can't go forward.

23 So, you are discharged with my thanks for being here today. I
24 hope this doesn't sour, you know, sour you for future jury service. I have
25 been advised by the Jury Commissioner, after someone's been

1 empaneled, you are out of the computer for about 18 months so you
2 should not be receiving another jury summons either in federal court or
3 state court and we welcome you back when you get your next jury
4 summons.

5 So, again, thank you very much for your time today. The
6 marshal will pick up your badges.

7 [Colloquy between Court and clerk]

8 THE COURT: Okay, what we're going to do, ladies and gentlemen,
9 the marshal's just going to escort you to the jury room and he'll give you
10 further information; if you could just follow the marshal. Leave your
11 notepads, your badges, and your pens on your chair and just follow the
12 marshal, please.

13 THE MARSHAL: All rise for the exiting of the jury.

14 [Outside the presence of the jury]

15 MS. KALLAS: Your Honor, may we make a brief record on this?

16 THE COURT: Yes, that's why we're going to do that -- the --
17 everything is recorded in my courtroom. However, the recording system
18 at the bench is not the best --

19 MS. SISOLAK: Understood.

20 THE COURT: -- and so that's why I was going to have the officer
21 leave and then I'll put it on the record.

22 Ms. Sisolak, you made a motion for a mistrial which I granted.
23 Would you please put it on the record the basis for that motion?

24 MS. SISOLAK: Your Honor, I did ask Your Honor to grant us a
25 mistrial based on the fact that there is a statement in a C-1 form that was

1 filled out by Officer Ontiveros that would have been required to be turned
2 over in discovery. The Defense would allege that because it is protected
3 by the order and we did not receive the statement, we are entitled to the
4 mistrial. We did ask Your Honor to issue that mistrial with prejudice, and I
5 believe we discussed that I would file a motion and we would determine
6 that at another time.

7 THE COURT: All right, State.

8 MS. KALLAS: And, Your Honor, we're obviously going to be
9 objecting to the declaration of a mistrial. As I stated at the bench, the very
10 first time we ever heard about any type of workers comp claim was today
11 when Officer Ontiveros made that statement on the stand. It's the first
12 time I've ever heard it. We reached out to the Inspector General's Office
13 which is the investigators on this case. We've asked for every and
14 anything that they have in relation to this case and they told us that we
15 had everything. In Mr. -- in Officer Ontiveros' report and any statements
16 he's ever made to me I don't -- he didn't write about any injuries. He -- I
17 mean he essentially was hit by a rock. We didn't have any reason to
18 believe that he would then have to make a workers comp claim about
19 this, that he wasn't working anymore, anything like that. So obviously it
20 wasn't intentional whatsoever.

21 Also, we obviously don't think that it was anything exculpatory
22 and we don't believe it was a *Brady* violation. He didn't make any
23 comments that were inconsistent with the statements that he has
24 previously made.

25 So, I would be objecting to a mistrial based on that. I think that

1 a curative instruction could have cured any type of prejudice in regards to
2 Officer Ontiveros' testimony. And -- Court's indulgence.

3 [Colloquy between State Counsel]

4 MS. KALLAS: Just brief indulgence, Your Honor. We're just looking
5 at the discovery motion.

6 THE COURT: Sure.

7 [Colloquy between Court, recorder, and clerk]

8 MS. KALLAS: And again, Your Honor, I just want to emphasize the
9 fact this wasn't a statement that we had that was in our possession that
10 we just decided not to turn over. We were absolutely unaware of it.

11 Officer Ontiveros, I've spoken with him a couple of times, has never once
12 mentioned it. The Inspector General's Office has never mentioned it. No
13 one in relation to this case ever has. So, again, it wasn't an intentional
14 violation.

15 THE COURT: Well, at this point I don't find any intentional act on
16 behalf of the State, nor do I find any -- actually, I don't find any egregious
17 conduct or recklessness on behalf of the State because it wasn't part --
18 I'm assuming -- well, I know the C-i [sic] form is strictly a worker's comp
19 slap in the face, a trip and fall, or a broken leg. Its -- I'm sure it -- unless
20 I've been proven otherwise, it's not part of the investigation files. It's more
21 of an administrative file, something internal. However, the Court did order
22 that all statements by the witnesses be turned over and this is a
23 statement by the witness that was not turned over. I don't believe at this
24 point that the State was aware that there was a C-i [sic] form, and so I'm
25 not dismissing this case with prejudice. And so, that's my ruling. We'll

1 come back on Thursday for resetting of new trial date.

2 THE CLERK: January 4th, at 8:30.

3 MS. MACHNICH: Your Honor,

4 MS. SISOLAK: Your Honor, --

5 MS. MACHNICH: -- just to clarify that your ruling that the State has
6 not acted with bad faith or gross negligence at this time and you're not
7 granting a mistrial with prejudice; is that a ruling without prejudice
8 allowing us to brief the matter and potentially file a motion?

9 THE COURT: Well, if you can -- if you have any evidence that they
10 were aware of this, that it's intentional or gross negligence, then file the
11 appropriate motion.

12 MS. SISOLAK: Will do, Your Honor.

13 MS. KALLAS: Thank you.

14 THE COURT: Thank you, everybody.

15 THE MARSHAL: All rise. Department 17 is now adjourned.

16 [Proceedings concluded at 4:46 p.m.]

17 * * * * *

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

20 
21 CYNTHIA GEORGILAS
22 Court Recorder/Transcriber
23 District Court Dept. XVII
24
25

EXHIBIT B

EXHIBIT B

From: Victor Daniel
To: Jennifer M. Shumway
Subject: Re: FW: FW: State of Nevada v Antonio Mixon / Your File No. HDSP-17-03-AG / Our File No. 11801-2558.01
Date: Wednesday, December 13, 2017 4:00:52 PM

Yes that should be the entire file. I will be available Wednesday after 1 pm to meet if that works.

Victor Daniel
Criminal Investigator
Nevada Department of Corrections
Office of the Inspector General
Fusion Information Sharing Team Coordinator
Office: (702) 486-9932
Cell : (702) 249-1821

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>>> On 12/13/2017 at 3:43 PM, in message
<be26b3db49124d7f9e9abba5f6ffadf4@AGEXCHANGE13.AGOF.STATE.NV.US>, "Jennifer M. Shumway"
<JShumway@ag.nv.gov> wrote:

Mr. Daniel,

I hope your training in California went well. As you know, this matter is going to trial next month and we want to make sure that we have produced the entire investigative file to opposing counsel.

This is everything that was given to us by your office. We also have video footage that was taken after the incident which is too large to email. Can you please confirm that we have the complete file?

Also, Ms. Kallas would like to meet with you next week to prepare for the trial. Are you available Wednesday or Thursday afternoon?

Thank you

Jennifer Shumway
Legal Researcher
Bureau of Criminal Justice
Office of the Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Email: jshumway@ag.nv.gov
Direct: (702) 486-0659
Facsimile: (702) 486-0660

From: Jennifer M. Shumway
Sent: Wednesday, December 13, 2017 2:14 PM

To: 'James Jones' <jjones@doc.nv.gov>

Cc: 'Dean Ontiveros' <dontiveros@doc.nv.gov>; Chelsea N. Kallas <CKallas@ag.nv.gov>

Subject: FW: FW: State of Nevada v Antonio Mixon / Your File No. HDSP-17-03-AG / Our File No. 11801-2558.01

Mr. Jones,

Thank you for providing Mixon's medical form. I just wanted to double check and see if there were any medical forms for Ontiveros?

Thank you

Jennifer Shumway

Legal Researcher

Bureau of Criminal Justice

Office of the Attorney General

555 E. Washington Avenue, Suite 3900

Las Vegas, Nevada 89101

Email: jshumway@ag.nv.gov

Direct: (702) 486-0659

Facsimile: (702) 486-0660

From: James Jones [<mailto:jjones@doc.nv.gov>]

Sent: Monday, December 4, 2017 12:58 PM

To: Jennifer M. Shumway <JShumway@ag.nv.gov>

Subject: RE: FW: State of Nevada v Antonio Mixon / Your File No. HDSP-17-03-AG / Our File No. 11801-2558.01

Here is the medical form

James K. Jones

Supervisory Criminal Investigator

Office of the Inspector General

Nevada Department of Corrections

Office: 702-486-9924

Cell: 702-525-4942

jjones@doc.nv.gov

This message, including any attachments, is the property of the Nevada Department of Corrections and is solely for the use of the individual or entity intended to receive it. It may contain confidential and proprietary information and any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient(s) or if you have received this message in error, please contact the sender by reply email and permanently delete it.

>>>

If this is an unsolicited spam message, please click this link to report it: [Report Spam](#)

EXHIBIT C

EXHIBIT C

**STATE OF NEVADA DEPARTMENT OF CORRECTIONS
INCIDENT 028 REPORT**

REPORT OF INCIDENT

INCIDENT DATE AND TIME	INSTITUTION	LOCATION
12-04-2015 0905HRS	High Desert State Prison	UNIT 5/6 SMALL YARD

THE FOLLOWING IS A COPY OF THE 028 SUBMITTED IN NOTIS BY SENIOR CORRECTIONAL OFFICER DEAN ONTIVEROS

On December 4, 2015 at approximately 0900, I Senior Correctional Officer (SC/O) D. Ontiveros was assigned to unit 6C/D floor. While supervising yard, Officer Mcaninch and myself noticed and inmate, later identified as Mixon, Antonio #1019828, housed in cell 6D-27A, pacing the yard and acting as if he was upset with someone or something. I advised Officer Mcaninch to keep an eye on him. After stating this, inmate Mixon approached us in an aggressive manner and Within approximately 10 to 15 feet from us picked up a good sized rock, then threw it in our direction, hitting me in the lower abdomen. Officer Mcaninch and I then pursued him to where he backed up and reached down and picked up another rock. He again threw it in our direction, hitting me on my upper left thigh. Officer Mcaninch and I quickened the pace driving him towards the walkway in front of unit 5A/B. Mixon then reached down and picked up a hand full of dirt threw it in our direction, then removed his left shoe, reached inside of it and brandished a prison made weapon (shank). I immediately removed the OC spray from my belt and gave inmate Mixon several orders to get on the ground to which he refused. Once he heard the responding Officers yell out to the yard to get on the ground, Mixon complied then dropped the weapon to ground. I then placed my right knee on his upper back between his shoulder blade, holding his right wrist in a wrist-lock until wrist restraint could be applied. -End of Report-

IN-2015-467

REPORTING STAFF: SC/O ONTIVEROS	DATE: 12-04-2015
REVIEWING ADMINISTRATOR:	DATE:

EXHIBIT D

EXHIBIT D

INCIDENT/STAFF REPORT

☐ Accident/Injury (Staff or Inmate)
☒ Assault (Physical or Sexual)
☐ Contraband
☐ Use of Force
☐ Forced Medication Order
☐ Destruction of State Property

- ☐ Drugs/Syringe
- ☐ Foods/Culinary
- ☐ Alcohol/Pruno
- ☐ Information
- ☐ Keys/Locks
- ☐ Security Concern

☐ Search
☐ Visiting Problem
☐ Weapon
☐ Maintenance Issue
☐ Other

Inmate involved: Mixon, A 1019828 Housing Assignment: HDSP-U6-D-27-B
 Name Number

December 4, 2015 0905 _____
Date of Incident Time of Incident Signature of Reporting Employee/ID Number

Location of Incident: 5/6 recreation yard SC/O D. Ontiveros
Printed Name of Reporting Employee

Witness: _____

DETAILED DESCRIPTION OF INCIDENT: (Print or Type) – Include: What happened, where, when, how and why:

On December 4, 2015 at approximately 0900, I Senior Correctional Officer (SC/O) D. Ontiveros was assigned to unit 6C/D floor. While supervising yard, Officer Mcaninch and myself noticed and inmate, later identified as Mixon, Antonio #1019828, housed in cell 6D-27A, pacing the yard and acting as if he was upset with someone or something. I advised Officer Mcaninch to keep an eye on him. After stating this, inmate Mixon approached us in an aggressive manner and within approximately 10 to 15 feet from us picked up a good sized rock, then threw it in our direction, hitting me in the lower abdomen. Officer Mcaninch and I then pursued him to where he backed up and reached down and picked up another rock. He again threw it in our direction, hitting me on my upper left thigh. Officer Mcaninch and I quickened the pace driving him towards the walkway in front of unit 5A/B. Mixon then reached down and picked up a hand full of dirt threw it in our direction, then removed his left shoe, reached inside of it and brandished a prison made weapon (shank). I immediately removed the OC spray from my belt and gave inmate Mixon several orders to get on the ground to which he refused. Once he heard the responding Officers yell out to the yard to get on the ground, Mixon complied then dropped the weapon to ground. I then placed my right knee on his upper back between his shoulder blade, holding his right wrist in a wrist-lock until wrist restraint could be applied. -End of Report-

Supervisor's Comments and Action Taken:

Entered into NOTIS.

DISTRIBUTION:

Original – Daily Folder
Copy – Associate Warden of Operations/Designee
Warden

Lt. K. McKeehan
Shift Supervisor Signature

12/04/2015
Date

RECEIVED

• CERTIFICATE OF SERVICE

I HEREBY CERTIFY PURSUANT E.O.N.R.C.P. 56) THAT I
AM THE PETITIONER / PLAINTIFF IN THE FORGOING MOTION
FOR WITHDRAWAL OF ATTORNEY OF RECORD, REQUEST
TO OBTAIN COPY OF DEFENDANT'S FILE, AND REQUEST

FOR SELF-REPRESENTATION, & SUBMISSION OF MOTION,

AND THAT ON THIS ^{15th day of} ~~12th day of~~ MARCH, 2018,

I did serve a true and correct copy of the
ABOVE MENTIONED DOCUMENT, BY GIVING IT TO A PRISON
OFFICIAL AT THE HIGH DESERT STATE PRISON TO

DEPOSIT IN THE U.S. MAIL, SEALED IN AN

ENVELOPE, POSTAGE PRE-PAID AND ADDRESSED

AS FOLLOWS: STEVEN D. GRIFFIN, CLERK OF THE COURT

200 LEWIS AVENUE, 3RD FLOOR

LAS VEGAS, NV 89155-1100

• AFFIRMATION PURSUANT TO NRS. 239B.030

I ANTONIO LEE MIXON, NDOC # 1019828,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL

AND THAT THE ATTACHED DOCUMENT ENTITLED

MOTION FOR WITHDRAWAL OF ATTORNEY OF

RECORD

DOES NOT CONTAIN THE SOCIAL SECURITY

NUMBER OF ANY PERSONS, UNDER THE PAINS

AND PENALTIES OF PERJURY.

DATED THIS ^{15th day of} ~~12th day of~~ MARCH, 2018.

SIGNATURE: *A. L. Mixon*

INMATE PRINTED NAME: MIXON, ANTONIO

INMATE NDOC #: 1019828

INMATE ADDRESS: P.O. Box 650, Indian Springs, NV 89070

(2) OF 2

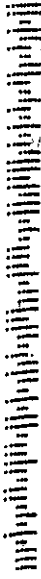
Antelope 1. N. 1st St # 1019220
P.O. Box 650
Indio, NV 89202

LAS VEGAS NV 89000

16 MAR 2018 PM 5 L

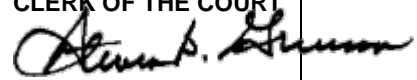
Steven D. Garerson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1100

5200 0003010152



* Urgent matter to Clerk, in you put this on ~~Calendar~~ Calendar A.S.A.P.

HIGH DESERT STATE PRISON
MAR 15 2018
UNIT 4 A



DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada
vs
Antonio Mixon

Case No.: C-17-327439-1

Department 17

NOTICE OF HEARING

TO: Antonio Lee Mixon et. al.,

Please be advised that the above-entitled matter has been scheduled for **Motion to Withdraw as Counsel**, to be heard by the Honorable Michael Villani, at the Regional Justice Center, 200 Lewis Ave, Las Vegas, Nevada 89101, on the 17th day of April, 2018, at the hour of 8:30 AM, in Department 17.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Miriam Vazquez
Miriam Vazquez, Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that this 4th day of April, 2018

☒ The foregoing Notice of Hearing was electronically served to all registered parties for case number C-17-327439-1.

/s/ Miriam Vazquez
Miriam Vazquez, Deputy Clerk of the Court

Steven D. Grierson

DISTRICT Court

Clark County, Nevada

STATE OF Nevada,
Plaintiff,

Case No.: C-17-327439-1
Dept. NO. 517

Antonio Lee Mixon

DATE: ~~MAY~~ 06-05-18

Defendant.

TIME: 8:30 a.m.

Defendant's Motion For Expert Witnesses/transport order

Comes now, the Defendant, Antonio Mixon, by

and through Self-representation, and hereby requests
this Honorable Court to grant this Motion For Expert Witnesses
in whole.

These Points And Authorities are made and
based upon all the papers and pleadings on file hereto,
and oral argument at the time set for hearing.

Dated this 6th day of May, 2018.

Antonio Lee Mixon
Self-representative

By: Antonio Lee Mixon, #1019828
A. L. Mixon Jr. Self-Representative

CLERK OF THE COURT

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MAY 14 2018

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MAY 10 2018

CLERK OF THE COURT

Introduction

1
2
3 ON April —, 2018, the defendant moved For SELF-representation
4 Under 28 U.S.C. 1654, the Court's canvass granted self-represent
5 tion. The Court ordered Counsel of record to send defendant
6 the complete FILE. ON receiving the FILE ON April 13, 2018, the
7 defendant thoroughly examined FILE. After examining the FILE
8 the compulsory process For obtaining witnesses in Defendant's
9 Favor is more than NECESSARY, And that a private investigator/
10 expert witness(es) Would be essential in assisting obtaining said
11 witnesses. Furthermore, On being granted SELF-representation
12 defendant contacted the Law library Supervisor in regards to
13 preparing the Documents, the summary of the Facts of the
14 case, the relevant laws, and the arguments on how the law
15 applies to the factual situations, Defendant has been deprived
16 of access to law library And has not been granted access to
17 Law Library since April 19th, 2018 what-so-ever this coupled
18 with the Conflict of Interest; that being the Victim in this case
19 is An employee of the same Department of corrections, The expert
20 witness/paralegal is NECESSARY in dealing with the prepara-
21 tion of the document's Forensics.
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Legal Argument

1
2 The Amendment VI of the United States of America
3 guarantees the defendant a Constitutional right
4 In all criminal prosecutions to have compulsory process
5 for obtaining witnesses in his favor. See Amendment 6th of
6 the United States of America. Given that this right is a
7 guarantee a private investigator is necessary plus needed.
8 given the totality of the circumstances in this case. The private
9 investigator would be of service to the indigent defendant,
10 the court, and the state in gathering witnesses in defendant's
11 favor which would assist in sharpening the issues in the case,
12 shaping examination of witnesses, and ultimately shortening
13 trial and assisting in the just determination. At the states
14 expense should the service of this expert witness be financed.
15 In that the defendant is indigent. This expert witness has
16 the ability to investigate crucial factors.

17 A paralegal is needed in this case in that defendant
18 isn't being granted access to the prison law library whatsoever.
19 Defendant made calls to law library supervisor plus went through
20 all process to attend law library still to no avail. Also, the law
21 as to what is needed and required in a prison law library has been
22 addressed and settled by federal courts here in Nevada. See *Craig v.*
23 *Hocher*, 405 F. Supp. 656 (D. Nev. 1975). There are also Ninth Circuit cases
24 that deal with the requirements of law library: *Johnson v. Moore*, 948 F.
25 2d 517, 521 n. 2, (9th Cir. 1991); *Lindquist v. Idaho State Bd. of Corrections*,
26 976 F.2d 851, 856 n. 1, (9th Cir. 1985); and holding that inmates ~~must~~
27 need not make a showing of prejudice where core Bounds requirements
28 are denied, see *Harris v. Malachuk*, 877 F. Supp. 1488 (D. Mont. 1993).

Legal Argument cont'd

1
2 The service of the paralegal would be of service to the
3 indigent defendant at the expense of the state.
4 on April 19th 2018 Defendant moved to check out NRS,
5 Title One chapters 1-7 as one Book, NRS. Title 3
6 chapters 34; Habeas Corpus, NRS. Title 4 chapters 47-56,
7 NRS. title 14 chapters 169-189, NRS. title 15 chapters
8 193-207, All these separate titles of the NRS with chapters
9 as one Book. To the extent the state wants to argue that
10 these books are being owed/or being put together for check out,
11 or they don't have it or whatever any excuse they can come
12 up with given that in preparing documents in three other
13 active cases the expert witness in this case would be of
14 service to the indigent defendant. respectfully Submitted,
15 The memorandum of law is crucial in preparing for trial,

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2 CONCLUSION

3 Therefore, the just and fair result would be for this court
4 to grant defendant's motion And appoint Mr. Milton the
5 services of said expert witnesses At state's expense. And
6 grant transportation order for defendant's presence for oral argument.

7 Dated this 6th day of May, 2018.

8 ANTONIO LEE MITON
9 Self-representative

10 By: ANTONIO LEE MITON

11 S. L. Nixon Jr., #1019028
12 Self-representative
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NOTICE OF MOTION

TO: OFFICE OF THE Attorney General, Attorney For Plaintiff,
you will please take notice that the Self-representative
will bring the above add foregoing Motion on for hearing
before the court on the Jun. 5 2018 at 8:30 am
Dated this 6th day of May, 2018.

Antonio LEE Milton
Self-representative

By: Antonio LEE Milton
A. L. Milton Jr. #1019828
Self-representative

Certificate of ~~Service~~ Service

I hereby certify that service of the above and
foregoing motion was mailed on the 6th day of May, 2018
to the Clark County's Attorney General office.

A. L. Milton Jr.

Transport order request

1 ANTONIO LEE MITON Sr. #1019828

2 High Desert State Prison

3 22010 Cold Creek Rd.

4 P.O. Box 650

5 INDIAN SPRINGS, NV 89070

6 In the 8th Judicial District Court of the State of

7 Nevada in and for the County of Clark in the matter

8 of Antonio Milton, Defendant v. State of Nevada, Plaintiff

9 asks this Court for an order to transport and produce

10 inmate for hearing Based on the circumstances of (a)

11 argument, the presence of Antonio Lee Milton is necessary

12 for the hearing on this matter scheduled in this case

13 on the ____ day of ____, 2018 at the hour of ____

14 o'clock ____ m. at the following address Michael P. Villani,

15 District Judge, Eighth Judicial District Court, Regional

16 Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155.

17 Therefore this Court should grant the order that pursuant to

18 NRS. 209.274 and any other applicable NRS, Warden, Brian L.

19 Williams High Desert State Prison, 22010 Cold Creek Rd.,

20 Indian Springs, NV 89070 should be ordered to have

21 Antonio Lee Milton Sr. #1019828 transported to appear

22 before this Court, as specified as Court directs. Upon

23 completion of the hearing, Antonio Lee Milton Sr. #1019828,

24 will be and should be transported to the above-named

25 institution.

26 Dated this 6th day of May, 2018.

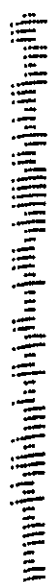
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A



Steven P. Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89101



5200 0063610169

NEVADA STATE PRISON
MAY 06 2018
UNIT 4 A/B

Mr. Antonio Leo Milow Sr. #1019828
High Desert State Prison
P.O. Box 650
Enterprise, NV 89070

Steven D. Grierson

1 ANTONIO LEE MIXON

2 / In Propria Personam

3 Post Office Box 650 [HDSP]
4 Indian Springs, Nevada 89018

5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7
8 State of Nevada

9 Plaintiff,

10 vs.

11 ANTONIO LEE MIXON, ID#1968172

12 Defendant

Case No. C-17-327439-1

Dept No. 17

Docket _____

13
14 **NOTICE OF MOTION**

15 **YOU WILL PLEASE TAKE NOTICE, that** ANTONIO LEE MIXON
16 (For a status check)

17 will come on for hearing before the above-entitled Court on the ____ day of August 30, 2018,
18 at the hour of 8:30 am o'clock ____ M. In Department 17, of said Court.

19
20 CC:FILE

21
22 **DATED:** this ____ day of _____, 2018.

23
24 BY: ANTONIO LEE MIXON

A. A. MIXON JR. #1968172

/In Propria Personam

PP

DA

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RECEIVED
AUG 08 2018

RECEIVED
AUG 01 2018

CLERK OF THE COURT

1968172
Antonio Lee Nixon ID NO. 1019828

Steven D. Grierson

HIGH DESERT STATE PRISON
22010 COLD CREEK ROAD
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89018

District Court
Clark County, Nevada

August 30, 2018 @ 8:30 am

State of Nevada

Plaintiff

CASE NO.: 6-17-327439-1

v.

DEPT. NO.: 17

Antonio Lee Nixon

Defendant

DOCKET: -

Motion For Status Check;
Trial Readiness; Discovery Issue; Transportation
order. Oral argument requested. (Re-set trial date.)

COMES NOW, Defendant Antonio Lee Nixon, herein above respectfully
moves this Honorable Court for an order granting Defendants
appearance and an order granting the Motion
for status check; Trial readiness; Discovery issue.

This Motion is made and based upon the accompanying Memorandum of Points and
Authorities.

DATED: this 29th day of July, 2018

BY: Antonio Lee Nixon

A. L. Nixon Jr. # 1019828
Defendant/In Proper Personam 1968172

CLERK OF THE COURT

AUG 08 2018

RECEIVED

RECEIVED

AUG 10 2018

CLERK OF THE COURT

Statement of Case

In preparing for trial Defendant went through state's witness list and came across two witnesses that are not on any documents in the discovery Defendant received which leaves The Defense without any idea of what said witnesses are expected to testify there to. Said witnesses listed on the witness list of the information filed by the state are: 1) Dustin Murnpower Correctional Sergeant 2) Kurt Krohm Correctional officer. Defendant contacted the state's Attorney General's office requesting from them what these said witnesses are expected to testify thereto so defendant could prepare for trial. The Attorney General's office has failed to respond. Defendant files this instant motion, in good faith to receive what said witnesses are expected to testify thereto. May the local Rules of this Court and NRCR govern over said motion.

Memorandum of Points and Authorities

(1) Discovery

Prior to Filing this discovery motion Defendant First Undertook a good Faith effort to resolve ^{DISCOVERY} any dispute among the parties. The Defendant has in good Faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without Court order. After written personal consultation and sincere effort to do so, the parties have been unable to resolve the matter without Court action, while Courts recognizes an inmate might not be able to meet personally with opposing counsel, nevertheless an inmate will still be required to attempt to resolve any discovery dispute either by a telephone consultation or a written communication whereby the inmate sincerely attempted to resolve the discovery dispute. The discovery Originally Sought are what are witnesses 1.) Dustin Mumpower and 2.) Kurt Krohn expected to testify thereto. State never respond back to defendant.

(2) Conclusion

(a) A statement specifying (From the state) the discovery completed by the state as of the date of motion. (b) A specific description of the discovery which remains to be completed; (c) The reasons why said and such remaining discovery was not completed within the existing discovery; and A proposed schedule for the completion of all remaining discovery, including what 1.) Dustin Mumpower and 2.) Kurt Krohn are expected to testify thereto so Defendant can prepare examinations of witnesses.

CERTIFICATE OF SERVICE

I, Antonio Lee Milton Sr., hereby certify that I am the ~~petitioner~~ ^{Defendant} in this matter and I am representing myself in propria persona.

On this 29th day of July, 2018, I served copies of the Motion For status check; trial readiness; Discovery issue; transportation order; re-set trial date. in case number: C-17-327439-1 and placed said motion(s) in U.S. First Class Mail, postage pre-paid:

Address: 200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

Sent to: STEVEN D. Grierson, clerk of the Court
Address: 555 S. Washington Ave., ste. 3900
LV, NV 89101-1068

Sent to: Chelsea N. Kallas (Bar No. 13902)

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the petitioner in the above-entitled action, and he, the defendant has read the above CERTIFICATE OF SERVICE and that the information contained therein is true and correct. 28 U.S.C. §1746, 18 U.S.C. §1621.

Executed at H.D.S.P.
on this 29th day of July, 2018.

A. L. Milton Sr.

1968172

10/9828

DOP#

Defendant

~~PETITIONER~~ -- In Proper Person

Atlanta Lee Milton 10/19898

H.O.S.P.

22010 Cold Creek Road

P.O. Box 650

Indian Springs, Nevada 89018

LAS VEGAS NV 890

30 JUL 2018 PM 5 L



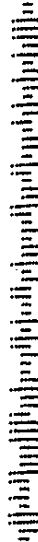
STEVEN D. GELARSON, Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

HIGH DESERT STATE PRISON

JUL 29 2018

UNIT 4 AVE

89101-8300000



ANTONIO L. MIXON 1968172
ANTONIO L. MIXON ID NO. 1019828

Steven D. Grierson

HIGH DESERT STATE PRISON
22010 COLD CREEK ROAD
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89018

District Court
Clark County, Nevada

STATE OF NEVADA

Plaintiff

v.

ANTONIO L. MIXON JR.

Defendant

CASE NO.: C-17-327439-1

DEPT. NO.: 17

DOCKET: _____

Date: 09/18/18 Time: 8:30 AM

"Urgent Motion"

Motion for Discovery, for Trial date to be rescheduled and for
order transporting inmate for oral argument at the time
of this hearing. "AMENDED"

COMES NOW, Antonio Mixon Defendant, herein above respectfully
moves this Honorable Court for an order granting Motion.

This Motion is made and based upon the accompanying Memorandum of Points and
Authorities.

DATED: this 21st day of Aug., 2018

BY: Antonio L. Mixon Jr.

Antonio L. Mixon Jr. #1019828

Defendant / Not for Personam

RECEIVED

AUG 24 2018

CLERK OF THE COURT

PP
DA
MC

RECEIVED

AUG 27 2018

CLERK OF THE COURT

Statement of Case

1 In preparing for preliminary hearings on evidence pursuant to 47,090
2 and preparing for trial the Defense went through the states witness
3 list and came across two witnesses that are not on any documents in
4 the Discovery Defendant received from Public Defender. Defendant contacted
5 the state Attorney General's office requesting what these witnesses were
6 expected to testify there to. The Attorney General's office has been failing to
7 communicate and has not yet responded.

Memorandum of Points and Authorities

9 Pursuant to 47,090. Preliminary hearings on evidence allegedly
10 unlawfully obtained shall be conducted outside the hearing of the jury.
11 Pursuant to 50,025 1. A witness may not testify to a matter unless:
12 (a) evidence is introduced sufficient to support a finding that
13 the witness has personal knowledge of the matter.
14 Accordingly merely just placing those witnesses on a witness list is not
15 sufficient to support the finding mandated above. Pursuant to
16 50,025 (2) Evidence to prove personal knowledge may, but not need
17 to consist of the testimony of the witness. Court here the Defendant
18 only requested the state turn over to the Defense what those witnesses
19 are expected to testify to there to and not the testimony itself.
20 The state is entitled to present a full and accurate account of the
21 circumstances of the commission of a crime. See 94 Nev. 461; 100 N.P. 536.
22 Court without handing over to the defense what those two witnesses
23 are to testify there to is not a full and accurate account as mention
24 above. Therefore for the foregoing reason listed above the state should
25 be ordered to fulfill the Defense's request.

26 In preparing for trial Your Honor the Defense is still gathering
27 witnesses and evidence in preparing Defense's case in Chief and pretrial motions
28 the date for trial re-set should be granted.

Memorandum of Points and Authorities Continued

Those two witnesses are: (1) Kurt Krohm (2) Dustin Mumpower.

Depending on the nature of the evidence requested of the state its admissibility may come into light it may present some credibility issues

pursuant to 50.075 The credibility of a witness may be attacked by any party, including the party calling the witness. That has got to do with perception, memory, truthfulness. The remoteness in this case between

December 4, 2015 the date the state alleged ~~permitted or committed~~ the Defendant committed or completed all of the acts alleged is almost three years. The Defense knows remoteness goes to credibility not admissibility. But pursuant to NRS 50.075

what these witnesses are to testify what to is warrant in preparing for trial and for all the foregoing reason in all of the memorandum of Points and Authorities this motion should be granting ordering

the state to fulfill the Defendant's request. Accordingly all pursuant's are of NRS's ~~local~~ that are listed herein.

Declaration of Defendant

I Antonio Lee Milton the Defendant in this case attempted to contact the Attorney General in this case via letter requesting what witnesses: (1) Kurt Krohm. and (2) Dustin Mumpower are to testify ~~there to~~ there to. I have in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court order and that, after personal consultation and sincere attempted efforts to do so, the parties have been unable to resolve the matter without court action. Executed at H.O.S.P. on or about 08/21/2018.

pursuant to penalty ~~and~~ Perjury, a.k.a. Milton Jr. The Defendant hereby Declare and Certify the above contents of the Declaration Under penalty of

Declaration of Defendant Continued

1. perjury.

Memorandum of Law Continued

4. General rule for transport of inmate for court appearance

5. The Nevada Department of Corrections is required to transport the
6. inmate to and from the courthouse if the inmate is

7. required or requested to appear before the court per NRS 209.274.

8. Here the Defendant is required to be at court in that the Defendant
9. is the lawyer in this case and oral argument is requested.
10. Therefore, court the motion for transport order should be granted.

11. For the time, date, place as court deems appropriate for Defendant's
12. appearance.

13. NOTICE OF MOTION

14. You will please take notice, that Antonio Lee Milton Sr.

15. will come on for hearing before the court Dept 17 on the day
16. and year at the hour and time in Dept 17 as court
17. deems appropriate. Dated on or about 08/21/2018

18. Certificate of Mailing

19. I, Antonio Lee Milton, hereby certify, pursuant to NRC P 5(b), that on
20. or about 08/21/2018 I mailed a true and correct copy of the foregoing
21. "Notice of Motion" by depositing it in the high desert state prison
with first-class postage, fully prepaid, addressed as follows:

22. Steven D. Garrison, Clerk of the Court
23. 200 Lewis Avenue, 3rd Floor
24. LV, NV 89155-1160

ONE copy to be stamped,
Filed and returned.

25. Chelsea N. Kallas (Bar No. 13902)

Dated: this on or about the 21st day
of Aug. 2018. A. Lee Milton Sr.
Self-representative.

26. Deputy Attorney General

27. 555 E. Washington Ave., Ste. 3900

28. LV, NV 89101-1008

Memorandum of Law Continued
Certification

1. Fed. R. Civ. P. 37(a)(1) mandates that any discovery motion must
2. include a certification that the movant has in good faith conferred
3. or attempted to confer with the person or party failing to make
4. disclosure or discovery in an effort to obtain it without court order
5. I certify that the movant has complied with
6. Fed. R. Civ. P. 37(a)(1) and Local Rule 26-7(c) and see 9/10
7. LR 1A 5-3(f) of the District Courts of Nevada U.S.
8. District Courts in preparing this Motion. Under penalty of perjury
9. ~~executed on or about 08/21/2018~~ executed on or about 08/21/2018 at Las Vegas
10. The request complied with NRCP 34 contents of request

Affirmation

11. Pursuant to NRS 239B.030, the undersigned does hereby
12. affirm that the preceding "Mixed Motion" filed in
13. District Court Case Number 17-327439-1 does not contain
14. the Social Security of any person.

15. Lee R. Mison Jr. 08/21/2018
16. Mison, Antonio Lee R.R.
17. Self-representative.

- 18.
- 19.
- 20.
- 21.
- 22.
- 23.
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- 28.

Conclusion

- 1 In regards to the motion for discovery (a) a statement specifying the
- 2 discovery completed by the state as of date of this motion
- 3 (b) A specific description of the discovery which remains to be
- 4 completed; (c) The reasons why such remaining discovery was not completed
- 5 within the existing discovery; (d) A proposed schedule for the
- 6 completion of all remaining discovery. And The Defendant's request
- 7 for what witnesses Kurt Krohn and Dustin Mumpower are expected
- 8 to testify there to.

- 9 The motion for new trial date should be granted
- 10 because im still gathering witnesses and evidence in preparing
- 11 for pre-trial motions and my "Case in chief"

- 12 The motion for transport of inmate
- 13 should be granted because the Defendant's appearance
- 14 is required in that defendant is the lawyer in this case
- 15 and oral argument is requested at the time of hearing.

- 16 The state hands over the requested discovery.

17
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28

Antonio L. Milton Jr 10/5/820

H.O.S.P.

P.O. Box 650

Indian Springs, NV 89070

LAS VEGAS, NV

22 AUG 2018 PM



Steven D. Grieron, Clerk of the Court
200 Lewis Avenue, 3rd Floor
NV, NV 89111-5518

9510183300 0075 0003310158

HIGH DESERT STATE PRISON
AUG 21 2018
UNIT 4 A/B

1 Antonio Lee Mixon
2 / In Propria Personam
3 Post Office Box 650 [HDSP]
4 Indian Springs, Nevada 89018

FILED
SEP 19 2018

John L. Johnson
CLERK OF COURT

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 The State of Nevada

9 Plaintiff,

10 vs.

11 Antonio Lee Mixon Jr.

12 Defendant

October 11, 2018
@ 8:30 AM

Case No. C-17-327439-1

Dept. No. 17

Docket _____

13
14 "Motion To Suppress" And/or pursuant to
15 NRS 47.090

16
17
18
19 COMES NOW, Antonio Mixon Defendant herein above respectfully
20 moves this Honorable Court for an order granting Motion

21
22 oral argument requested

23 This Motion is made and based upon the accompanying Memorandum of Points and Authorities.

24
25 DATED: this 13th day of Sep., 20 18.

26 BY: Antonio Lee Mixon Jr.
27 n. y. m. m. Jr. #1960172
28 Defendant/In Propria Personam

RECEIVED

SEP 19 2018

CLERK OF THE COURT

1

C-17-327439-1
MOT
Motion
4780855



Memorandum of Points And Authorities

The motion to suppress is normally used to preclude the introduction of evidence at trial which is claimed to be inadmissible for constitutional reasons. This motion is directed to the alleged confession the state alleges the defendant in regards to possession of a weapon which what the state alleged to have been said by the defendant is: "You lucky you had that OC spray or I woulda stuck your bitch ass!" First Court that alleged statement has no relevance to the charge of Battery By a Prisoner NRS 200.481 (2)(F) in that the element of that charge is that state allege defendant battered the victim by throwing a rock at said victim Furthermore in the victim's report victim describes what he alleged to have occurred that is he ~~was~~ allege he was struck with a rock then he goes on to allege defendant came off of his person brandishing a weapon. That alleged statement is not relevant to the issue of Battery, to no circumstances surrounding the issue of Battery. In fact irrelevant evidence is inadmissible see NRS 48.025. (2). In the event the Court denies this motion part The defense asks for the Jury gets a cautionary warning explaining the reason for its admission when evidence of another allegation is not closely related to the act in controversy or accusation charged that an ordinary witness cannot describe without referring to the other alleged act or crime

Memorandum of Points And Authorities Contr'd,
see NRS 48.085(3). Furthermore in regards to the alleged
statement state alleges defendant made and that's "You
lucky you had that OC or I would stuck your bitch
ass!" Amend. V. of the Constitution of America
is well settled that no person shall be compelled in
any criminal case to be a witness against himself.
See Amend. V. of the U.S. Const. The term "compelled"
today is used as the synonymic term "compulsion"; see *Bram*
v. United States, 168 U.S. 532. Whatever may have been
the character of the compulsion the confession must
be excluded. See *Bram v. United States*, 168 U.S. 532,
42 L.ed 560, 18 S.Ct. 183, 266 US, at 14-15, 69 L.ed at 148.
Given that in the Roy Allen Stewart Case the Court in
that case would not presume that the defendant
have been advised of his right to remain silent. See
10 A.L.R. 3d 974, on a record that any warnings had
been given or that any effective alternative had been
employed The Supreme Court held that the confession
was not admissible see 10 A.L.R. 3d 974. This being
the case the "Compulsion" can be merely "no caution-
ary warnings" on record given (absent a showing on the
record) by accused officer to the accused aside from
an officers words and actions which were not to illicit
incriminating replies see 62 Cal 2d 571, 43 Cal Rptr 201,
400 P2d 97. see STATE OF California, Petitioner VS. Roy
Allen Stewart 10 A.L.R. 3d 974. The practice of the FBI

1 Memorandum of points and authorities Cont'd. The practice of
2 the FBI which requires that any statement made be given by
3 accused without questioning by police requires a Cautionary
4 warning see 384 U.S. 486 - 384 U.S. 488. That practice
5 can readily be emulated by state and local law enforcement agenci-
6 es see 384 U.S. 488. Accordingly Nevada Department of Corre-
7 ctions is a state agency. The public officer (that is defendant
8 in restraints ^{right} after they ~~defendant~~ allege defendant committed
9 a criminal act) is ~~constituted~~ ~~was~~ must go by the practice
10 mentioned above. That public officer didn't as the record reflects.
11 As recently strengthened the rules require that a Cautionary warning be
12 given by a police officer "public officer" as soon as he has evidence
13 that affords him reasonable grounds for suspicion ^{see} 384 U.S. 488.
14 The defendant in this case did not knowingly and
15 intelligently waive his right to remain silent because
16 he was never given the Cautionary warning mandated by
17 law. In fact the alleged Confession alleged made by the
18 defendant were more reflective of defendant's frustration
19 at being put in restraints "Arrested" than demonstrative of
20 his consciousness of guilt. The public officer words and
21 actions caused the frustration. Instead of the public
22 officer given the defendant a Cautionary warning his words
23 and actions were otherwise disrespectful conduct. Furthermore Ex
24 1, 2, and the videotape in this case ^{those} ~~came~~ witnesses came after the
25 alleged ~~that~~ ~~confession~~ alleged confession was allegedly made. Given the
26 Custodial settings and the defendant being deprived of his freedom significantly
27 that statement should be suppressed and any witness ^{the} ~~that~~ state wishes to
28 testify as to what defendant ~~page~~ allegedly said should be precluded from
doing so.

CERTIFICATE OF SERVICE BY MAILING

I, Antonio Lee Milton Jr., hereby certify, pursuant to NRCP 5(b), that on this 13th
day of Sep., 2018, I mailed a true and correct copy of the foregoing, "Motion to
Suppress"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Attorney General's Office
Bureau of Public Affairs
And Public Safety Division
Attn: Chelsea Hallas
Deputy Attorney General
555 East Washington Ave. Suite #3900
Las Vegas, NV 89101

Steven D. Grierson
Clerk of the Court
200 Lewis Avenue 3rd Floor
Las Vegas, NV 89155-1160

CC: FILE

DATED: this 13th day of Sep., 2018.

Milton Antonio Jr.
A. L. Milton Jr. # 1968122
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion to

Suppress
(Title of Document)

filed in District Court Case number 6-17-327439-1

☐ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-or-

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

A. I. Milder Jr.
Signature

04/13/2018
Date

Antonio Lee Milder Jr.
Print Name

Defendant.
Title

DECLARATION OF PROBABLE CAUSE FOR ARREST

FILED

STATE OF NEVADA

COUNTY OF CLARK

ss:

2017 AUG 18 A 9 04

JUSTICE COURT
CLARK COUNTY, NEVADA
BY GEG
DEPUTY

I, Victor Daniel, based upon information and belief, do hereby swear the assertions of this declaration are true:

1. That I am a Criminal Investigator for the State of Nevada, Office of the Inspector General, in Clark County, Nevada.
2. That I believe the following facts and circumstances give rise for finding probable cause to believe that the crime of BATTERY BY A PRISONER, a Category "B" felony in violation of NRS 200.481(2)(f), and POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACSIMILE BY AN INCARCERATED PERSON, a Category "B" felony in violation of NRS 212.185(c) occurred within the County of Clark, State of Nevada.
3. That according to the official investigation, the following occurred: On December 4, 2015, at approximately 0905 hrs, on the Unit 5/6 recreation yard at High Desert State Prison, Correctional Officer Brian Crooks called via radio for emergency assistance. Officer Crooks reported that he observed inmate Antonio Mixon #1019828 throwing rocks at Senior Correctional Officer Dean Ontiveros and Correctional Officer Tyler Mcaninch.

According to Senior Correctional Officer Ontiveros, inmate Mixon struck him in the abdomen with one of the rocks that was being thrown at him. At that time, Senior Correctional Officer Ontiveros called for assistance via radio. Officers instructed inmates in that area to get on the ground. Senior Correctional Officer Ontiveros and other responding correctional staff reported that inmate Mixon retrieved a prison made weapon, commonly referred to as a "shank," from his shoe. Other officers arrived on scene and inmate Mixon dropped the weapon and was restrained. According to reports, while inmate Mixon was in restraints he stated, "You lucky you had that OC or I woulda stuck your bitch ass!"

EXHIBIT 3

EX 3

1

pg 8

**STATE OF NEVADA DEPARTMENT OF CORRECTIONS
INCIDENT 028 REPORT**

REPORT OF INCIDENT

INCIDENT DATE AND TIME	INSTITUTION	LOCATION
12-04-2015 0905HRS	High Desert State Prison	UNIT 5/6 SMALL YARD
<p>THE FOLLOWING IS A COPY OF THE 028 SUBMITTED IN NOTIS BY CORRECTIONAL SERGEANT DUSTIN MUMPOWER</p> <p>On December 4, 2015 I, CERT Sergeant D. Mumpower was on duty at High Desert State Prison. At approximately 9:05 am a call for officer assistance in the 5/6 quad was transmitted via institutional radio. CERT Officer Krohm and I immediately responded to the incident. Upon entering the 5/6 yard gate all inmates were laying on the ground prone and compliant. One inmate later identified as Mixon #1019828 was in mechanical wrist restraints and under video coverage by Officer Johnson. I was briefed that the inmate was in possession of a weapon that was on the ground next to his person. It is alleged that inmate Mixon was purposely throwing rocks at Senior Officer Ontiveros. Upon being struck with a rock Ontiveros approached inmate Mixon and at that time the weapon was displayed. Multiple officers responded along with the attention of the 5/6 gun rail officer. Due to officer response and presence Inmate Mixon lay on the ground and submitted to wrist restraints with no shots fired and no force utilized. The inmate did state, "You lucky you had that OC or I woulda stuck your bitch ass!" I proceeded to take multiple photographs of the inmate, incident area, and the weapon inmate Mixon was in possession of. The weapon is approximately 5 inches in length made from a metal outlet cover and wrapped with a white sheet for a handle. The weapon was placed in evidence bag #B 0000070181 by CERT Officer Krohm to be transported to the HDSP evidence vault. Mixon was afforded a medical assessment by HDSP medical staff and was released back to custody with no injury noted. Mixon was then escorted to administrative segregation unit 1 D-22 per Lt. McKeehan pending disciplinary charges by CERT Officer Krohm and me. All video footage and photographs will be uploaded and distributed accordingly.</p>		
IN-2015-467		
REPORTING STAFF: SGT MUMPOWER	DATE: 12-04-2015	
REVIEWING ADMINISTRATOR:	DATE:	

~~EX-12~~
EX-12
P. 9

**STATE OF NEVADA DEPARTMENT OF CORRECTIONS
INCIDENT 028 REPORT**

REPORT OF INCIDENT

INCIDENT DATE AND TIME	INSTITUTION	LOCATION
12-04-2015 0905HRS	High Desert State Prison	UNIT 5/6 SMALL YARD

THE FOLLOWING IS A COPY OF THE 028 SUBMITTED IN NOTIS BY CORRECTIONAL OFFICER KURT KROHM

On Friday December 4th 2015 at approximately 09:05, while on duty. I Officer K. Krohm assigned to C.E.R.T. at High Desert State Prison. Responded with C.E.R.T. Sgt D. Mumpower to a 1033(Staff assault) in 5/6 Quad. Upon walking into the 5/6 Quad all I/M's were lying on the ground. S C/O D. Ontiveros, S C/O F. Dickens, C/O B. Estill, LT K. McKeenan and R. Hesler were standing around I/M Antonio Mixon #1019828. I/M Mixon #1019828 assaulted S C/O Ontiveros with Rocks and a Shank (Prison Made Weapon). In a aggressive tone I/M Mixon told S C/O D. Ontiveros "you are lucky you had that can of O.C. Spray or I would have stuck your bitch ass" The shank looked to be an outlet cover that was bent, sharpened and wrapped in a cloth type material. The Shank was approximately five inches in length. Sgt D Mumpower took pictures of where the incident took place as well as where the Shank was found. The Shank was put into evidence bag B0000070181 by myself and placed into Evidence Vault. I/M Mixon #1019828 was evaluated by medical staff before being escorted by C.E.R.T. Sgt D. Mumpower and K. Krohm to Intake. I/M Mixon #1019828 was then stripped out and taken out of his State blues, and placed into an orange jumpsuit. I/M Mixon #1019828 was then brought to Unit 1-D-22. END of REPORT

IN-2015-467

REPORTING STAFF: C/O KROHM

DATE: 12-04-2015

REVIEWING ADMINISTRATOR:

DATE:

Exhibit one 1

8910

STATE000009

334

Transport order request

1. Antonio Lee Milton Jr. #1019828
2. High Desert State Prison
3. 22010 Cold Creek Rd.
4. P.O. Box 650
5. Indian Springs, NV 89070
6. In the 8th Judicial District Court of the State of
7. Nevada in and for the County of Clark in the matter
8. of Antonio Milton, Defendant v. State of Nevada, Plaintiff
9. asks this Court for an order to transport and produce
10. inmate for hearing based on the circumstances for oral
11. argument, the presence of Antonio Lee Milton is
12. necessary for the hearing on this motion scheduled in
13. this case on the 3rd day of Oct. 2018 at the hour
14. of 10 A.M. O'clock, at the following address Michael
15. P. Villani, District Judge, EDC, Regional Justice Center,
16. 200 Lewis Avenue, LV, NV 89155. Therefore this Court should
17. grant the order that pursuant to NRS, 209.274 and any
18. other applicable NRS, Warden Brian L. Williams High Desert
19. State Prison, 22010 Cold Creek Rd., Indian Springs, NV 89070
20. should be ordered to have Mr. Milton #1019828 transported
21. to appear before this Court, as specified as Court directs.
22. Upon completion of the hearing, Mr. Milton #1019828,
23. will be and should be transported to the above-named
24. institution.
25. Dated this day 13th day of Sep. 2018.

Antonio Lee Mita Jr. #1019828
HDSP P.O. Box 650
Indian Springs, NV 89070



LAS VEGAS P&DC 89199
FRI 14 SEP 2018 PM

Steven D. Grierson, Clerk of the Court
200 Lewis Ave, 3rd Floor
LV, NV 89155-1160

UNIT DESERT STATE PROJ
SEP 13 2010
INIT 4 A/B

Case No. C-17-327439-1

Dept. No. 17

FILED

SEP 19 2018

Antonio Lee Milton Sr.
CLERK OF COURT

IN THE Eighth JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF Clark

The State of Nevada

Plaintiff

vs.

Antonio Lee Milton Sr.

Defendant

Case No. C-17-327439-1

Dept No. 17

Docket _____

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that Antonio Lee Milton Sr.

October 11, 2018

will come on for hearing before the above-entitled Court on the 3rd day of Sept ~~2018~~
at the hour of 10 o'clock A. M. In Department 17, of said Court.

@ 8:30
AM

CC: FILE

DATED: this 13th day of Sept., 2018.

BY: Antonio Lee Milton Sr.

Antonio Lee Milton Sr. #196612
/In Propria Personam

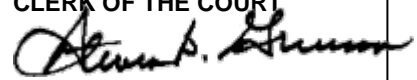
RECEIVED

SEP 19 2018

CLERK OF THE COURT

C-17-327439-1
NOTM
Notice of Motion
4780856





OPPM
ADAM PAUL LAXALT
Attorney General
Jason Gunnell (Bar No. 13997)
Senior Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-3904
F: (702) 486-0660
jgunnell@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

v.

ANTONIO LEE MIXON, ID #1968172,

Defendant.

Case No.: C-17-327439-1

Dept. No.: XVII

Hearing Date: October 11, 2018

Hearing Time: 8:30 A.M.

OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

ADAM PAUL LAXALT, Attorney General for the State of Nevada, through Senior Deputy Attorney General, Jason Gunnell, hereby submits the State's Opposition to Defendant's Motion to Suppress. This motion is made and based upon the pleadings on file, the following memorandum of points and authorities, and any oral arguments the Court may allow.

Dated this 26th day of September, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Jason Gunnell
JASON GUNNELL (Bar No. 13997)
Senior Deputy Attorney General

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I.

3 **FACTS AND RELEVANT PROCEDURAL HISTORY**

4 On October 25, 2017, Antonio Lee Mixon (hereinafter “Defendant”) was charged by way of
5 Information with the following: Count 1 – Battery By A Prisoner (Category B Felony – NRS
6 200.482(2)(f)); and Count 2 – Possession or Control of Dangerous Weapon or Facsimile By An
7 Incarcerated Person (Category B Felony – NRS 212.185(c)).

8 According to the Information, on December 4, 2015, Defendant – an NDOC inmate – possessed a
9 prison made weapon (hereinafter “shank”) and threw a rock at a corrections officer on the prison yard at
10 High Desert State Prison. The Defendant also threatened the officers with the shank. In order to safely
11 deescalate the situation, a correction officer deployed Oleoresin capsicum (OC) or pepper spray. The target
12 of the spray was the Defendant. After the deployment of the OC spray, the Defendant was placed in hand
13 restraints on the ground. At some point during the incident, a corrections officer was tasked with recording
14 the event via a handheld video camera. The video shows at about the three minute mark, the defendant
15 being asked to identify himself. After thirty seconds of conversation (3:30 mark), all dialogue with the
16 Defendant ceased. At that point the officers focused their attention on processing the crime scene. The
17 officers did not interaction with the Defendant again until after he uttered the phrase. At approximately
18 five minutes into the recording, the Defendant states without provocation: “your lucky you had the mace I
19 would’a have stuck your bitch ass” (herein after the “phrase”).

20 II.

21 **ARGUMENT**

22 The State requests this Court deny the Defense’s Motion to suppress, because the phrase is (1)
23 relevant, (2) a statement against interest, (3) and a spontaneous declaration.

24 a. **Relevance:**

25 NRS 48.015: “‘relevant evidence’ means evidence having any tendency to make the existence of
26 any fact that is of consequence to the determination of the action more or less probable than it would
27 be without the evidence.” NRS 48.25(1) states “all relevant evidence is admissible,” except where
28 certain rules prohibit its admission.

1 Here, the phrase (among other things) is relevant to show the Defendant was in possession of the
2 shank, because the phrase refers to Defendant use of the shank to “stick” the correction officer’s “bitch
3 ass.” The phrase tends to prove Defendant possessed a shank.

4 **b. Statement Against Interest:**

5 Party statements are non-hearsay when offered against the party who made them. See NRS
6 51.035(3)(a). Here, the phrase is admissible, because the statement would be offered by the State
7 (opposing party) and it was made by the defendant.

8 **c. Spontaneous Declaration:**

9 Statements made by a defendant in custody are admissible pre *Miranda* if the statement (among
10 other things) is a spontaneous declaration. *Miranda* requires a custodial interrogation.¹ “The United
11 States Supreme Court has declared that ‘interrogation’ need not take the form of express questioning, but
12 may also be conduct amounting to the ‘functional equivalent’ of express questioning.”²

13 [T]he term “interrogation” under *Miranda* refers not only to
14 express questioning, but also to any words or actions on the part of
15 the police (other than those normally attendant to arrest and
16 custody) that the police should know are reasonably likely to elicit
17 an incriminating response from the suspect. The latter portion of
18 this definition focuses primarily upon the perceptions of the
19 suspect, rather than the intent of the police.

20 [T]he definition of interrogation can extend only to words or
21 actions on the part of police officers that they *should have known*
22 were reasonably likely to elicit an incriminating response.
23 *Rhode Island v. Innis*, 446 U.S. 291, 301–02, 100 S.Ct. 1682, 1689–
24 90, 64 L.Ed.2d 297 (1980) (emphasis in original).

25 In *Innis*, the police arrested the defendant for robbing a
26 taxicab driver. The defendant had used a shotgun in the robbery.
27 The police immediately advised him of his rights. The defendant
28 refused to waive his right to remain silent, and two policemen
escorted the defendant toward the police station. While en route, the
officers engaged in a discussion concerning the whereabouts of the
shotgun. One officer said, “God forbid one of [the handicapped
children] might find a weapon and shells and they might hurt
themselves.” The defendant interrupted the conversation and led the
officers to the shotgun. The Court found that this did not violate the
Fifth Amendment because “the conversation was, at least in form,

¹ *Miranda v. Arizona*, 384 U.S. 436, 445, 86 S. Ct. 1602, 1612, 16 L. Ed. 2d 694 (1966)

² *Weathers v. State*, 105 Nev. 199, 201, 772 P.2d 1294, 1296 (1989)

1 nothing more than a dialogue between the two officers to which no
2 response from the [defendant] was invited.” *Weathers v. State*, 105
3 Nev. 199, 201, 772 P.2d 1294, 1296 (1989) Citing *Innis* at 302, 100
S.Ct. at 1690.

4 Although the Defendant was in custody, an interrogation as articulated in *Weathers* and *Innis* did
5 not occur. The officers’ were merely processing the crime scene when the Defendant uttered the phrase.
6 They were not interacting with the Defendant nor trying to elicit any kind of statement from him, nor did
7 they invite the Defendant to join their conversation. This shows the officers’ actions (processing the crime
8 scene) were unlikely to elicit an incriminating response. In other words, *Miranda* does not apply, because
9 a custodial interrogation did not occur. Express questioning did not occur nor did the words or actions on
10 the part of the officers elicit an incriminating response from the suspect.

11
12 III.
CONCLUSION

13 For the foregoing reasons, the State respectfully requests that the Court deny Defendant’s
14 Motion to Suppress, because the phrase is (1) relevant, (2) a statement against interest, (3) and a
15 spontaneous declaration.

16 DATED this 26th day of September, 2018.

17
18 SUBMITTED BY:

19
20 ADAM PAUL LAXALT
Attorney General

21 By: /s/ Jason Gunnell
22 JASON GUNNELL (Bar No. 13997)
23 Senior Deputy Attorney General
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I electronically filed the foregoing State's OPPOSITION TO DEFENDANT'S
3 MOTION TO SUPPRESS with the Clerk of the Court by using the electronic filing system on the 26th day
4 of September, 2018.

5 I certify that some of the participants in the case are not registered electronic filing system users. I
6 have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or
7 e-mail; or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the
8 following unregistered participants:

9
10 Antonio Mixon, Inmate ID #1019828
11 High Desert State Prison
12 P.O. Box 650
Indian Springs, NV 89070

13 /s/ A.Reber
An employee of the Office of the Attorney General

October 25, 2018
@ 8:30 AM

FILED

OCT 01 2018

CLERK OF COURT

C-17-327439-1
MOT
Motion
4784775



1 Antonio Lee Milton

2 In Propria Personam

3 Post Office Box 650 H.D.S.P.

4 Indian Springs, NV 89070

5 District Court

6 Clark County, Nevada

7 PP
AA

8 The State of Nevada

9 Plaintiff,

10 vs.

11 Antonio Lee Milton Jr.

12 Defendant.

13 Case No. C-17-327439-1

14 Motion For leave to File an

15 amended "Motion to Suppress" And "Motion For

16 expert witnesses", oral argument requested

17

18

19 Comes, Now, Antonio Lee Milton Defendant, herein above
20 respectfully moves this honorable Court For an order
21 granting motion.

22

23 This Motion is made and based upon the accompanying
24 Memorandum of Points and Authorities. ~~with the proposed~~
25 ~~amended "motion to suppress" attached to be filed.~~

26 Dated: this 26th day of Sep., 2018. And motion For
27 ~~expert witnesses removed.~~ By: Antonio Lee Milton

28 Defendant/In Propria Personam. A. L. Milton Jr.

Memorandum of points And Authorities

Do to the typographical error's in the mentioned motions in this motion which is The term "allege" is type "a l l e d g e". To make sure the Facts and claims in both motions are not construed The Defense ask permission From this Court to grant said motion for leave to File the amended motions to cure the every deficiency. The said deficiency is throughout both motions ~~and is to be corrected.~~ are in need of that correction.

Respectfully Submitted
a. L. Miron Jr.

Certificate of service By mailing

I, Antonio Lee Mixon Jr., hereby certify, pursuant to NRCOP 5(B), that on this 26th day of Sep., 2018, I mailed a true and correct copy of the foregoing, "Motion for leave to File Amended Motions" by depositing it in the high desert state prison, Legal library, First-class Postage, fully prepaid, addressed as follows:

Attorney General's office

Chelsea Kallas

Deputy Attorney General

555 East Washington Ave. Suite #3900

LV, NV 89101

Steven D. Grierson

Clerk of the Court

200 Lewis Avenue, 3rd Floor

LV, NV 89155-1160

Transport order request

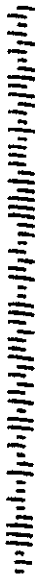
1. Antonio Lee Mixon Jr. #1019828
2. High Desert State Prison
3. 22010 Cold Creek Rd.
4. P.O. Box 650
5. Indian Springs, NV 89070
6. In the 8th Judicial District Court of the State of
7. Nevada in and for the County of Clark in the matter
8. of Antonio Mixon, Defendant v. State of Nevada, Plaintiff
9. asks this Court for an order to transport and produce
10. inmate for hearing ~~at this motion scheduled in this case~~
11. Based on the circumstances oral agreement, the presence
12. of Antonio Lee Mixon is necessary for the hearing on this
13. motion scheduled in this case on the ~~3rd day~~ 11th day of
14. Oct., 2018. at the hour of ~~10 A.M.~~ 8:30 a.m. at the
15. following address Michael P. Villani, District Court
16. Judge, E.S.C. regional Justice Center, 200 Lewis Ave.,
17. Las Vegas, NV 89155. Therefore this Court should grant
18. the order pursuant to NRS. 209.274 and any other applicable
19. NRS, warden Brian E. Williams High Desert State Prison,
20. 22010 Cold Creek Rd., Indian Springs, NV 89070 should be
21. ordered to have Antonio Lee Mixon Jr. #1019828 transported
22. to appear before this Court, as specified as Court directs.
23. Upon completion of the hearing, Antonio Lee Mixon Jr. #1019828
24. will be and should be transported to the above-named institution.
25. Dated this ~~13th~~ 11th day of Sep., 2018,

ANTONIO LEE MILTON JR. 10/9828
H.D.S.P.
P.O. BOX 650
Indian Springs, NV 89070

STEVEN D. GRIERSON
CLERK OF THE COURT
200 LEWIS AVENUE, 3RD FLOOR
LV, NV 89155-1160

348

00000000-10166



HIGH DESERT STATE PRISON

SEP 2 5 2018

UNIT 4 A/B

Case NO. C-17-327439-1

Dept. NO. 17

FILED

OCT 01 2018

CLERK OF COURT

IN the Eighth Judicial District Court of
The STATE OF Nevada in and For the County of Clark

The state of Nevada

Plaintiff

VS.

Antonio Lee Mixon Jr.

Defendant

Case NO. C-17-327439-1

Dept. No. 17

October 25 2018

@ 8:30 AM

NOTICE OF MOTION

You will please take notice, that Antonio Mixon
Defendant will come before the above-entitled Court on
the 11th day of Oct., 2018, at the hour of 8 o'clock 8:30
o'clock A.M. In Department 17, of said Court.

CL: File

DATED: this 26th day of Sep., 2018.

By: Antonio LEE MIXON

Antonio L. Mixon Jr. #1968172
in propria personam

C-17-327439-1
NOTM
Notice of Motion
4784776



350

RECEIVED

OCT 01 2018

CLERK OF THE COURT

Dear clerk of the Court,

Enclosed please find the motion to be filed. Pursuant to ESDC Rule 3.20(8) this motion is in need of emergency attention from the court and so I ask if you could put the motion on calendar for 8:30 A.M. Dept. 17 on Oct. 11th 2018 in that its asking the Court for leave to amended motions you've already placed on calendar Oct. 11th, 2018 in Dept. 17 at 8:30 A.M. Thx.

M. L. Mason Jr.

FILED

OCT 09 2018

CLERK OF COURT

District Court

Clark County, Nevada

STATE OF NEVADA

Plaintiff,

v.

Antonio Lee Milton, ID #1966172
Defendant.

Case No.: C-17-327439-1

Dept. No.: XVII

Hearing Date: October 11, 2018

Hearing Time: 8:30 A.M.

Reply to State's Opposition to Defendant's
Motion to Suppress.

Antonio Lee Milton, Self-representative, through
Self-representation, pro se, hereby submits the ~~State's~~
Defendant's Reply to State's Opposition to Defendant's
Motion to Suppress. This motion is made and based upon
the pleadings on file, the following memorandum of points
and authorities, and any oral arguments the Court may
allow.

Dated this 26th and day of October, 2018.

C-17-327439-1
ROPP
Reply to Opposition
4786582



352

memorandum of Points And Authorities

1.

Facts And Relevant Procedural history.

on October 25, 2017, Antonio Lee Mixon (hereinafter "Defendant") was charged by way of Information with the following: Count 1 - Battery By A Prisoner (Category B Felony - NRS 200.482(2)(F)); and Count 2 - Possession or Control of Dangerous Weapon or Facsimile By An Incarcerated Person (Category B Felony - NRS 212.185(4)).

According to the information, all of the acts alleged have been committed, or completed on or about December 4, 2015, by the above-named defendant, within the County of Clark, State of Nevada; in the following manner: Count 1 Battery by prisoner Category "B" Felony - NRS 200.481(2)(F). That the Defendant, ANTONIO LEE MIXON, on or about December 4, 2015, in the County of Clark, State of Nevada, did willfully, unlawfully, and Feloniously use Force or violation upon the person of another, while being held in lawful custody of Nevada Department of Corrections as a prisoner to wit; the Defendant, while incarcerated at High Desert State Prison, struck Senior Correctional Officer Dean Ontiveros in the abdomen with a rock. Count 11 Possession or Control of Dangerous Weapon or Facsimile By An incarcerated Person Category "B" Felony - NRS 212.185(4). That the Defendant, Antonio Lee Mixon, on or about December 4, 2015, while incarcerated at High Desert State Prison, did possess or have in his custody or control any dirk, dagger, switchblade knife or sharp instrument to wit; the Defendant did possess or have in his custody or control a sharp instrument commonly referred to as a "shank".

Memorandum of Points And Authorities Continued

11.

Argument

The Defendant respectfully requests this Court grant the Defendant's Motion to Suppress, because the phrase is (1) ^{irrelevant} ~~not relevant~~ to Count 1 and should be ~~not~~ held inadmissible see NRS 48.025, it's irrelevant because the evidence contained within that phrase ^{do not} tends to make the existence of any ~~fact~~ allegation there-in Count 1. (2) The Defense is not alleging the ^{phrase} ~~statement~~ is inadmissible because it's hearsay. The phrase/statement violates the Defendant's V Amendment Constitutional right that no person shall be compelled in any Criminal case to be a witness against himself see ~~U.S.C.A.~~ United States Constitutional Amendment Five. (3) and is not a spontaneous declaration ~~But a phrase uttered~~ because of the provocation of interacting officers.

A. Relevance: Evidence which is not relevant is not admissible see 48.025(2). NRS. 48.035 states ~~not relevant~~ Exclusion of relevant evidence on grounds of prejudice, confusion or waste of time. (1) Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, or confusion of the issues or of misleading the jury. Here The Defense argued that the phrase/statement is not relevant to Count 1 because the evidence contained within that phrase do not tend to make the existence of any of the allegation there-in Count 1 and in the event the Court dismissed this motion in part that the Court should give a cautionary ~~warning~~ instruction explaining the reason for its admission. In the event the State argues it's relevant to Count one The excessive prejudicial

Memorandum of Points And Authorities Continued

11.

Argument Continued

1 Nature of the evidence: (1) The evidence confuses the issues, (2).
2 it misleads the jury, (3) The witness's ~~give~~ can describe what
3 they alleged to have seen or alleged to have heard without referring
4 to the other alleged act or alleged crime and/or alleged count. ~~Given~~
5 the nature of the evidence mandates exclusion preventing the state
6 from using the phrase as evidence For count one see NRS 4B.035(3).

7 B. The Defendant's Constitutional rights have been Violated.
8 Without any questioning by the police and preceding an interview the
9 practice of the FBI is that a Cautionary Warning be given see 384
10 U.S. 488. Miranda do not apply to the circumstances in This case.
11 Miranda requires a custodial interrogation, ^{The} Practice of the
12 FBI is that a Cautionary warning be given preceding an
13 interview see 384 U.S. 488. Milton's case it is "custodial
14 surroundings" not "custodial interrogation." That same Cautionary
15 warning is to be given without any questioning by the police. see
16 384 U.S. 488. Case Innis do not apply to the circumstances in
17 Milton's case neither. In Innis case police arrested defendant
18 the police immediately advised him of his rights. Milton's case,
19 officers apprehended defendant put him in restraints and never
20 advised him of his rights preceding an interview. The Law that do
21 apply to Milton's circumstances are as follows: The practice of the
22 FBI see 384 U.S. 486 ~~384 U.S. 488~~ - 384 U.S. 488. This practice can readily
23 be emulated by State and local law enforcement agencies. see 384 U.S. 488.
24 The officers in Milton's case didn't go by the FBI's Practice. Amendment
25 V of the U.S. Constitution states which states no person shall be

Memorandum of Points And Authorities Continued

Compelled in any criminal case to be a witness against himself
See U.S. Constitution V. The term "Compelled" today is used as
"Compulsion" see *Bram v. United States*, 168 U.S. 532. The compulsion
in Milton's case is that the officers did not give a "Cautionary Warning"
preceding an interview and without questioning by police which is mandated
by Law see 384 U.S. 488. And whatever may have been the character
of the compulsion the phrase in Milton's case must be excluded see
Bram v. United States, 168 U.S. 532, 42 L.ed. 568, 18 S.Ct. 183, 266 U.S.,
at 14-15, 46 L.ed. at 148. The "Custodial Surroundings" in Milton's
case is ~~After~~ Milton being apprehended and put in restraints by officers.
The Supreme Court has held that ~~if~~ IN the event officers fail to
go by the practice of The FBI when it comes to the U.S. Constitution V,
the confession is not admissible see 62 Cal 2d 571, 43 Cal Rptr 207,
400 P.2d 97 see also *State of California, Petitioner vs. Roy Allen Stewart*
10 A.L.R. 3d 974. The Cave Weathers don't apply neither, because the Const. law
doesn't care what the character ~~Conclusion~~ or of the compulsion is. Conclusion
Because of the foregoing reasons in this Reply The Defense asks this
Court to grant Defendant's Motion to suppress and exclude the and all
witnesses including the videotape in regards to the phrase because it
violates Defendant Fifth Amendment Right of the U.S. Constitution
that protects Defendant's From being compelled in any criminal
case to be a witness against himself.

Certificate ~~Service~~ of Service

I hereby certify that I Antonio Lee Milton, on this 2nd day of Oct. 2018,
I mailed a true and correct copy of the foregoing ~~Motion to~~ "Reply
to state's opposition to Defendant's motion to suppress by depositing
it in the High Desert State Prison, First-class Postage, Fully prepaid,
addressed as follows:

Attorney General's office

Steven D. Grierson

Bureau of Public Affairs

clerk of the Court

Attn: Chelsea Kallas

200 Lewis Avenue 3rd Floor

Deputy Attorney General

LV, NV 89155-1160

555 East Washington Ave. Suite #3900

LV, NV 89101

Antonio Lee Milton
Self-representative
A.L. Milton Sr.

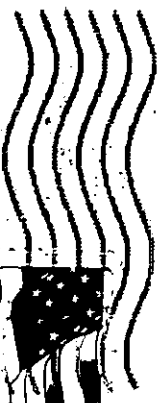
CC; File

Dated: this 2nd day of Oct. 2018

Anthony 400 Milton 10/14/82
H.O.S.P.
P.O. Box 650
Indian Springs, W 89070

LAS VEGAS, NV 890

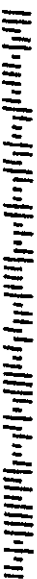
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358

Steven D. Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
W, NV 89155-7160

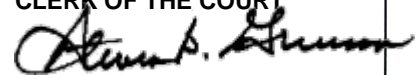
89101-630000



HIGH DESERT STATE PRISON

OCT 02 2018

UNIT 4 A/B



1 **ORDD**

2 ADAM PAUL LAXALT

3 Attorney General

4 Jason Gunnell (Bar No. 13997)

5 Senior Deputy Attorney General

6 State of Nevada

7 Office of the Attorney General

8 555 E. Washington Ave., Ste. 3900

9 Las Vegas, Nevada 89101-1068

10 P: (702) 486-3904

11 jgunnell@ag.nv.gov

12 Attorneys for the State of Nevada

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 STATE OF NEVADA,

16 Plaintiff,

17 v.

18 ANTONIO LEE MIXON, ID #1968172

19 Defendant.

Case No.: C-17-327439-1


Dept. No.: XVII

20 **ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS**

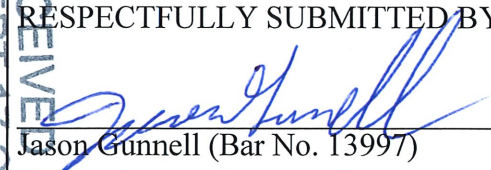
21 The above entitled matter having come on for hearing before this Honorable Court on the 11th day
22 of October, 2018, with the Defendant Antonio Mixon representing himself, and Senior Deputy Attorney
23 General Jason Gunnell appearing on behalf of Plaintiff State of Nevada, and the Court having considered
24 all pleadings and documents on file herein; the Court makes the following order:

25 IT IS HEREBY ORDERED that Defendant's Motion to Suppress is DENIED.

26 DATED this 18th day of October, 2018.

27 
28 THE HONORABLE Nancy Saitta for
Judge Michael Vittani

29 RESPECTFULLY SUBMITTED BY:

30 
31 Jason Gunnell (Bar No. 13997)

32 Senior Deputy Attorney General

1 Mixon, Antonio Jr.
2 / In Propria Personam
3 Post Office Box 650 [HDSP]
4 Indian Springs, Nevada 89018

FILED

SEP 19 2018

John L. ...
CLERK OF COURT

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 The STATE OF Nevada

9 Plaintiff,

10 vs.

11 Antonio Lee Mixon Jr. 1968172

12 Defendant

october 11, 2018
@ 8:30 AM

Case No. G-17-327439-1

Dept. No. 17

Docket _____

13
14 MOTION FOR Expert Witnesses

15
16
17
18
19 COMES NOW, Antonio Lee Mixon Jr. Defendant herein above respectfully
20 moves this Honorable Court for an order granting motion for
21 the expert witnesses described herein.

22
23 This Motion is made and based upon the accompanying Memorandum of Points and Authorities.

24
25 DATED: this 13th day of September, 2018.

26 BY: Mixon Jr., Antonio
27 A. L. Mixon Jr. #1968172
28 Defendant/In Propria Personam

RECEIVED

SEP 19 2018

CLERK OF THE COURT

1

C-17-327439-1
MOT
Motion
4780882



361

Declaration

1. I am the attorney with the Constitutional right to practice law in the state of Nevada; I am a self-representative assigned to represent myself in the instant matter. 2. That the instant motion springs from my review and my consultations ^{over} ~~about~~ discovery with the state in this matter. On the date preceding of court preceding this motion the state was asked by the defense is there any reports in regards to Finger Prints obtained if any from the weapon state alledge the defendant possessed. The state replied they didn't believe a report was made. The Defense believes the defendants Fingerprints isn't on the weapon state alledge Defendant possessed. Also Victim ^{LIEPHER} ~~LEPHER~~ ^{LEPHER} ~~LEPHER~~ to explain why he believed Defendants Fingerprints weren't on the weapon. So this motion follows for the assistance of Fingerprint expert. Given that the defendant has a right to expect, inspect, examine, or test physical evidence in possession of prosecution the need for a Forensic linguistics expert in regards to evidence of linguistics or typing style as basis of identification of typist or author in regards to incident report state alledge witnesses made, when there's a report in this matter that clearly would lead a reasonable mind to believe the said reports aren't genuine. I declare under penalty of perjury that I believe the foregoing is true and correct. CNRS 53.045). Executed this 13th day of Sep, 2018 W. M. M. J.

Argument

Right of Accused to Compulsory Process.

Sixth Amendment right to notice, Confrontation and compulsory process, taken together, guarantee that criminal charge may be answered in manner now considered fundamental to fair administration of American Justice, through calling and interrogation of favorable witnesses, cross-examination of adverse witnesses, and orderly introduction of evidence; in short, Sixth Amendment Constitutionalizes right in an adversary criminal trial to make defense as we know it, see U.S.C.A. Const. Amend. 6. Opinions: Experts. 1). The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. 2). If of a type reasonable relied upon by experts in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence, see NRS 50.205. Expert Witnesses: 3). The court may order defendant or the state or both to show cause why expert witnesses should not be appointed, and may request parties to submit nominations. 4). A witness so appointed shall advise the parties of the witness's findings, if any, and may thereafter be called to testify by the court. see NRS 174.271. The defendant has a right as an indigent defendant in state criminal cases to assistance of fingerprint expert, see 72 A.L.R. 4th 874. Admissibil-

Argument Continued

1
2 -ity and weight of fingerprint evidence obtained or
3 visualized by chemical, laser, and digitally enhanced
4 imaging processes, see 110 A.L.R. 5th 213. The defense
5 asked state for or if state had report in regards
6 to any evidence mentioned above state said they
7 didn't believe a report was made. Also Victim testified
8 explaining why Defendants Fingerprints isn't on the
9 weapon. Accordingly The Defense would need expert
10 to make a report and testify to the findings because
11 the defendants Fingerprints are not on that weapon.
12 There's no fingerprints on that weapon. That report is
13 crucial for defendants defense. Secondly Right of accused
14 in state courts to have expert inspect, examine or test
15 physical evidence in possession of prosecution. see A.L.R.
16 4th. 1108. Admissibility of evidence as to linguistics
17 or typing style (Forensic linguistics) as basis of identification
18 of typist or author. see 36 A.L.R. 4th 598. In this
19 case there's report that indicate that there is
20 only one ~~initial~~ initial report made about this incident
21 when it occurred now twenty months later the state
22 has a lot more reports in regards to this incident. The
23 only report was of the victim's.

CERTIFICATE OF SERVICE BY MAILING

I, Antonio Lee Milton Jr., hereby certify, pursuant to NRCP 5(b), that on this 13th
day of Sep., 2018, I mailed a true and correct copy of the foregoing, "Motion
for expert witnesses."

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Attorney General's Office
Bureau of Public Affairs
and Public Safety Division
ATTN: Chelsea Kallas
Deputy Attorney General
555 Washington East
Washington Ave. Suite #3900
LV, NV 89101

Steven D. Grierson,
Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

CC:FILE

DATED: this 13th day of Sep., 2018.

Antonio Lee Milton Jr.
A. L. Milton Jr.

1918B12

/In Propria Personam

Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion

For Expert Witnesses

(Title of Document)

filed in District Court Case number C-17-327439-1

- ☐ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-or-

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

i. i. Nixon Jr.
Signature

09/13/2018
Date

Milton, Antonio Jr

Print Name

Defendant.

Title

Transport order request

1. Antonio Lee Mixon Jr. #1019828
2. High Desert State Prison
3. 22010 Cold Creek Rd.
4. P.O. Box 650
5. Indian Springs, NV 89070
6. In the 8th Judicial District Court of the State of
7. Nevada in and for the County of Clark in the matter
8. of Antonio Mixon, Defendant v. State of Nevada, Plaintiff
9. asks this Court for an order to transport and produce
10. inmate for hearing on this motion scheduled in this case
11. Based on the circumstances oral argument, the presence
12. of Antonio Lee Mixon is necessary for the hearing on this
13. motion scheduled in this case on the 3rd day of
14. Oct., 2018, at the hour of 10 A.M. o'clock, at the
15. Following address Michael P. Villani, District Court
16. Judge, E.S.C. Regional Justice Center, 200 Lewis Ave.,
17. Las Vegas, NV 89155. Therefore this Court should grant
18. the order pursuant to NRS. 209.274 and any other applicable
19. NRS, Warden Brian E. Williams High Desert State Prison,
20. 22010 Cold Creek Rd., Indian Springs, NV 89070 should be
21. ordered to have Antonio Lee Mixon Jr. #1019828 transported
22. to appear before this Court, as specified as Court directs.
23. Upon completion of the hearing, Antonio Lee Mixon Jr. #1019828,
24. will be and should be transported to the above-named institution,
25. Dated this 13th day of Sep., 2018,

Antonio Lee Milton #1019828
HOSP P.O. Box 650
Indian Springs, NV 89018



Las Vegas P3DC 89199

FRI 14 SEP 2018 PM

Steven D. Grier, Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

INT 4MB

SEP 13 200

PRISU

Case No. C-17-327439-1

Dept. No. 17

FILED

SEP 19 2018

Alvin L. Blum
CLERK OF COURT

IN THE Eighth JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark

The State of Nevada

Plaintiff

vs.

Defendant

Case No. C-17-327439-1

Dept No. 17

Docket _____

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that Antonio LEE Mixon Jr.

Pursuant Eighth Judicial Court rules, Rule 3.20

will come on for hearing before the above-entitled Court on the 3rd day of October, 2018,
at the hour of 10 o'clock A.M. In Department 17, of said Court.

CC:FILE

October 11, 2018
@ 8:30 AM

DATED: this 13th day of September, 2018.

BY: MIXON, ANTONIO JR.
A. L. Mixon Jr. #146612
/In Propria Personam

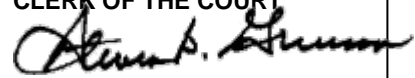
RECEIVED

SEP 19 2018

CLERK OF THE COURT

C-17-327439-1
NOTM
Notice of Motion
4780864





OPPM
ADAM PAUL LAXALT
Attorney General
Jason Gunnell (Bar No. 13997)
Senior Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-3904
F: (702) 486-0660
jgunnell@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff,

v.

ANTONIO LEE MIXON, ID #1968172,
Defendant.

Case No.: C-17-327439-1

Dept. No.: XVII

Hearing Date: October 11, 2018

Hearing Time: 8:30 A.M.

OPPOSITION TO DEFENDANT'S MOTION FOR EXPERT WITNESSES

ADAM PAUL LAXALT, Attorney General for the State of Nevada, through Senior Deputy Attorney General, Jason Gunnell, hereby submits the State's Opposition to Defendant's Motion for Expert Witnesses. This motion is made and based upon the pleadings on file, the following memorandum of points and authorities, and any oral arguments the Court may allow.

Dated this 26th day of September, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Jason Gunnell
JASON GUNNELL (Bar No. 13997)
Senior Deputy Attorney General

1 **DECLARATION**

2 JASON GUNNELL makes the following declaration:

- 3 1. I am an attorney duly licensed to practice law in the State of Nevada; I am a Senior Deputy
4 Attorney General assigned as one of the prosecutors in this instant matter.
- 5 2. I am more than 18 years of age and am competent to testify as to the matters stated herein. I also
6 have personal knowledge of the facts stated herein or I have been informed of these facts and
7 believe them to be true.

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

9 EXECUTED this 25th day of September, 2018.

10
11 /s/ Jason Gunnell
12 JASON GUNNELL
13
14

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 I.
17 FACTS AND RELEVANT PROCEDURAL HISTORY

18 On October 25, 2017, Antonio Lee Mixon (hereinafter "Defendant") was charged by way of
19 Information with the following: Count 1 – Battery By A Prisoner (Category B Felony – NRS
20 200.482(2)(f)); and Count 2 – Possession or Control of Dangerous Weapon or Facsimile (hereinafter
21 shank) By An Incarcerated Person (Category B Felony – NRS 212.185(c)).

22 According to the Information, on December 4, 2015, Defendant – an NDOC inmate – possessed a
23 shank and threw a rock at a corrections officer. The possession of the shank was witnessed by a number
24 individuals to include two correction officers. The shank possessed by the defendant was seized by prison
25 officials. The shank was never submitted for analysis to determine whether any latent fingerprints were
26 found on the shank.

27 On or about September 19, 2018, the Defendant filed a Motion for Expert Witnesses. In the
28 motion, Defendant assumes the shank was tested for latent finger prints. However, the shank was never

1 submitted for latent fingerprint analysis.

2 II.
3 ARGUMENT

4 The State requests the Defendant's Motion for Expert Witnesses be denied. The shank was never
5 submitted for fingerprint testing. Consequently, testimony from a latent print expert is not required to
6 show any issues arose out of testing.

7 III.
8 CONCLUSION

9 For the foregoing reasons, the State respectfully requests that the Court deny Defendant's Motion
10 for Expert Witnesses.

11 DATED this 26th day of September, 2018.

12
13 SUBMITTED BY:

14 ADAM PAUL LAXALT
15 Attorney General

16 By: /s/ Jason Gunnell
17 JASON GUNNELL (Bar No. 13997)
18 Senior Deputy Attorney General
19
20
21
22
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27
28

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on
3 September 26, 2018, I filed the foregoing OPPOSITION TO DEFENDANT’S MOTION FOR EXPERT
4 WITNESSES via this Court’s electronic filing system.

5 I certify that some of the participants in the case are not registered electronic filing system users. I
6 have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or
7 e-mail; or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the
8 following unregistered participants:

9
10 Antonio Mixon, Inmate ID #1019828
11 High Desert State Prison
12 P.O. Box 650
13 Indian Springs, NV 89070

14 /s/ A. Reber
15 An employee of the Office of the Attorney General
16
17
18
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20
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28

FILED

OCT 09 2018

CLERK OF COURT

District Court
Clark County, Nevada

STATE OF Nevada,
Plaintiff,

v.

Antonio Lee Milton, IO#1960172
Defendant,

Case No.: C-17-327439-1

Dept. No.: XVII

Hearing Date: October 11, 2018

Hearing Time: 8:30 A.M.

Reply To state's Opposition to Defendant's

Motion For expert witnesses.

Antonio Lee Milton, self-representative, through himself,

hereby submits the Defenses Reply to state's opposition to

Defendant's Motion For expert witnesses. This Motion is

based upon the pleadings on File, the following memorandum

of points and authorities, and any oral arguments the Court

may allow. Dated this 2nd day of Oct. 2018.

Submitted by:

Antonio Lee Milton Jr.

n. s. Milton Jr.

C-17-327439-1
RPLY
Reply
4786561



375

Memorandum of Points And Authorities

Argument 1.

~~There is no where in the information~~ The report made by the victim in this case asked Victim to list any witnesses that witnessed what the Victim alleged to have occurred, the victim left that space Blank. Furthermore, Court, The Victim used a metal detector on the defendant For a "shank" before Defendant exited the Unit and entered the yard area with a Wand, thoroughly, the defendant was cleared by the victim to go to the yard. Not only that ~~some of~~ the state's witnesses that allege to have witnessed defendant possess "shank" Didn't sign their incident reports. Also these Search and Escort personnel is A witness with a witness in this case that is a ~~defendant~~ ^{witness} in a wrongful death ~~lawsuit~~ ~~in that~~ he covered up a prisoners death with other NDOC C/O's For Six Months without reporting the incident to Family of the inmate and public, to ~~the~~ lie. The expert opinion would be needed in the Defendant's Defense because the Defendant's Fingerprints is not on that "shank" And the jury has a right to know that and why is that. As For the other expert witness the Defense Requested it should be granted because the state made no opposition to the motion which state agrees the Defense should be granted that ~~witness~~ witness see EJDOR 3.20(c).

Certificate of Service by Mailing

I, Antonio Lee Milton Jr., hereby certify, that on this 2nd day of Oct., 2018,
I mailed a true and correct copy of the foregoing, "Reply to state's
opposition to Defendant's Motion For expert witnesses" by depositing
it in the high Desert State Prison, First-Class Postage, fully prepared,
addressed as follows:

Attorney General's office
Bureau of public Affairs
Attn: Chelsea N. Kallas
Deputy Attorney General

Steven D. Grierson
Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

555 East Washington Ave. Suite. #3900
LV, NV 89101

CC: File

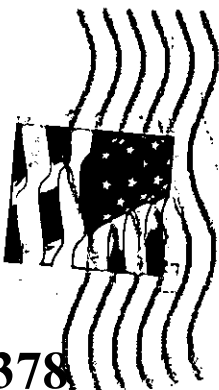
Dated: this 2nd day of Oct., 2018.

Antonio Lee Milton Jr.
Self-representative

Antonio Lee Mason Jr. 10/9828
H.D.S.R.
P.O. Box 650
Indian Springs, NV 89070

LAS VEGAS NV 890

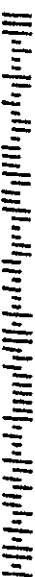
03 OCT 2018 PM 3 L



378

Steven D. Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

89101-630000



HIGH DESERT STATE PRISON
OCT 02 2018
UNIT 4 A/B

Steven D. Grierson

IN THE Eighth Judicial District Court
For the County of Clark in Nevada

2 ----- X
3 ANTONIO LEE MIXON JR. :

4 Defendant :

5 V. : NOTICE OF Appeal

6 THE STATE OF NEVADA : Date of Hearing: Oct. 25th, 2018

7 Plaintiffs : Time of Hearing: 8:30 A.M.

8 Case No.: C-17-327439-1 Dept. 17

9 Notice is hereby given that Antonio Lee Mixon
10 Jr, Defendant in the above named case, hereby Appeal
11 to the SUPREME Court OF NEVADA From the Final
12 Judgment, From an order denying Defendant's
13 MOTION TO Suppress Entered in this action on
14 the 11th day of October, 2018

15

16

17

18

19 Dated: 10/11/2018

20

A. L. Mixon Jr.

21

ANTONIO LEE MIXON JR

22

High Desert State Prison

23

P.O. BOX 650

24

Indian Springs, Nevada 89070

25

26

27

28

RECEIVED
OCT 15 2018
CLERK OF THE COURT

Memorandum of Points And Authorities

Notice is hereby given that the Defendant
in the named case, hereby Appeal to the Supreme Court
of Nevada From the Final Judgment, From an order
denying denying Defendant's Motion to Suppress Entered in
this action on the 11th day of October, 2018.

Certificate of Service

I certify that I am the Defendant /pro-se and that on this 11th day of October, 2018, I caused to be deposited for mailing a true and correct copy of the foregoing, Notice of Appeal, to the following:

Chelsa N. Kallas	STEVEN D. BRIPSON,
Deputy Attorney General	Clerk of the Court
Office of the Attorney General	200 Lewis Avenue, 3 rd Floor
555 E. Washington Ave., STE. 3900	Las Vegas, NV 89155-1760
Las Vegas, Nevada 89101-1068	

CC: Filp

Dated: 10/11/2018

s. L. Nixon Tn.

Defendant

Self-representative

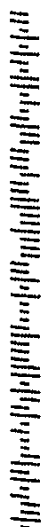
Andante Milton 10/19/28
H.D.S.O.
P.O. Box 650
Indian Springs, NV 89070

LAS VEGAS NV 890
12 OCT 2018 PM 34



Steven D. GRIERSON,
Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

69101-630000



HIGH DESERT STATE PRISON

OCT 11 2018

UNIT 4 A/B

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO LEE MIXON, JR.
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 77206
District Court Case No. C327439

FILED

NOV 29 2018

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER this appeal DISMISSED."

Judgment, as quoted above, entered this 2nd day of November, 2018.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
November 27, 2018.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll
Chief Deputy Clerk

C-17-327439-1
CCJD
NV Supreme Court Clerks Certificate/Judge
4799738



IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO LEE MIXON, JR.
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77206

FILED

NOV 02 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a district court order denying a pretrial motion to suppress. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

This court's review of this appeal reveals a jurisdictional defect. Specifically, no statute or court rule allows a defendant to appeal from an order denying a pretrial motion to suppress evidence. *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990) (right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists); *see also* NRS 177.015(2) (only the state may appeal from an order granting or denying a pretrial motion to suppress). Accordingly, we conclude that lack jurisdiction over this appeal, and we

ORDER this appeal DISMISSED.

Pickering, J.
Pickering

Gibbons J.
Gibbons

Hardesty, J.
Hardesty

cc: Hon. Michael Villani, District Judge
Antonio Lee Mixon, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.
DATE 11/27/18
Supreme Court Clerk, State of Nevada
By [Signature] Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO LEE MIXON, JR.
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 77206
District Court Case No. C327439

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: November 27, 2018

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll
Chief Deputy Clerk

cc (without enclosures):
Hon. Michael Villani, District Judge
Antonio Lee Mixon, Jr.
Attorney General/Carson City
Clark County District Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on NOV 29 2018.

Deputy HEATHER UNGERMANN
District Court Clerk 

**RECEIVED
APPEALS**

NOV 29 2018

CLERK OF THE COURT

Steven D. Grierson

1 MEOT

2 ANTONIO LEE MIXON JR.

3 SELF-representative

4 High Desert State Prison

5 P.O. BOX 650

6 Indian Springs, Nevada 89070

7

8

District Court

9

Clark County, Nevada

10 ANTONIO LEE MIXON JR.

Case No.: C-17-327439-1

11 Defendant

Dept. No.: 17

12 V.

Date of Hearing: 10/25/2018 Time: 8:30 A.M.

13 The STATE OF Nevada

Motion For Extension of

14 Plaintiff

time

15

November 6, 2018 at 8:30 am

16

Comes Now, the Defendant, Antonio Lee Mixon Jr.,

17 by and through SELF-representation, and hereby requests this

18 Honorable Court to grant this motion For an Extension of

19 time.

20

These Points And Authorities are made and based

21 Upon all the papers and pleadings on File herein, and oral argument

22 at the time set for hearing.

23

Dated this 11th day of October, 2018

24

Antonio Lee Mixon Jr

25

SELF-representative

26

By: Antonio Lee Mixon, #1019828

27

A. L. Mixon Jr. SELF-Representative

28

RECEIVED

OCT 15 2018

CLERK OF THE COURT

Memorandum of Points and Authorities

Defendant is preparing a Writ of Certiorari in Case No 17-17496 of the Ninth Circuit. Defendant is preparing a writ of Habeas Corpus (post-conviction) 2255 in case G-11-277977-1 of the Eighth Judicial District Court Dept 17 (Federal Writ). Defendant is preparing the Notice of Witnesses in case no. G-17-327439-1; ~~Quintana Nunez~~, Notice of Confirmation of Expert Witnesses, Curriculum Vitae's, Defense's Private investigator is in the process of gathering witnesses in Defense's Favor. Defendant is preparing ~~for~~ an informal Brief For the Ninth Circuit in case number 18-16084 of the Ninth Circuit. Defendant is preparing Subpoenas in case number G-17-327439-1 in this Court and for all the foregoing reason defendant ask this Court for an 365 day Extension of time do to the legal research and convenience of the defense team. This is the defendant's Declaration.

a. L. Milan Jr.

Certificate of Service

I certify that I am the ~~to~~ Defendant and
Self-representative, and that on the 11th day of October,
2018, I caused to be deposited for mailing a true and
correct copy of the Foregoing, ~~under~~ Motion For Extension of
time, to the following:

Attorney General's office
Chelsea N. Kallas

Deputy Attorney General
555 East Washington Ave. STE. 3900
LV, NV 89101

Steven D. Grierson,
Clerk of the Court
200 Lewis Avenue 3rd Floor
LV, NV 89155-1160

CC: File

Transport order request

Antonio LEE MIXON JR #1019028

H.O.S.P.

22010 Cold creek rd.

P.O. box 650

Indian Springs, NV 89070

in the 9th Judicial District Court of the state of Nevada
in and for the County of Clark in the matter of Antonio Mixon,
Defendant v. State of Nevada, plaintiff asks this Court for
an order to transport and produce inmate for hearing Based
on the circumstances of oral argument, the presence of
Defendant is necessary for the hearing on this Motion
scheduled in this case on the 25th day of October, 2018 at
the hour of 8 o'clock 30 a.m. at the following address Michael P.
Villani, District Judge, 9th Judicial District Court, Regional
Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155.

Therefore this Court should grant the order that pursuant to
NRS 209.204 and any other ~~applicable~~ applicable NRS, Warden
Brian E. Williams H.O.S.P., 22010 Cold Creek Rd., Indian
Springs, NV 89070 should be ordered to have Defendant transported
to appear before this Court, as specified as Court directs. Upon
completion of the hearing, Defendant, will be and should be
transported to the above-named Courtroom.

Dated: 10/11/2018

POA

NOVEMBER 8 2018 @ 8:30 AM

FILED

OCT 15 2018

CLERK OF COURT

1 MEOT
2 ANTONIO LEE MIXON JR.
3 SELF-representative
4 High Desert State Prison
5 P.O. BOX 650
6 Indian Springs, Nevada 89070

District Court

Clark County, Nevada

C-17-327439-1
MOT
Motion
4789072



10 ANTONIO LEE MIXON JR.

Case No.: C-17-327439-1

11 Defendant

Dept. No.: 17

12 V.

Date of Hearing: 10/25/2018 Time: 8:30 AM

13 The STATE OF Nevada

Motion For Extension of

14 Plaintiff

time

16 Comes Now, the Defendant, Antonio Lee Mixon Jr.,
17 by and through SELF-representation, and hereby requests this
18 Honorable Court to grant this motion For an Extension of
19 time.

20 These Points And Authorities are made and based
21 Upon all the papers and pleadings on File herein, and oral argument
22 at the time set for hearing.

Dated this 11th day of October, 2018

Antonio Lee Mixon Jr

SELF-representative

By: Antonio LEE Mixon, #1019828

A. L. Mixon Jr. SELF-Representative

RECEIVED

OCT 15 2018

CLERK OF THE COURT

Memorandum of Points and Authorities

Defendant is preparing a Writ of Certiorari in Case No 17-17496 of the Ninth Circuit. Defendant is preparing a writ of Habeas Corpus (post-conviction) 2255 in case G-11-277977-1 of the Eighth Judicial District Court Dept 17 (Federal Writ). Defendant is preparing the Notice of Witnesses in case no. G-17-327439-1; ~~QUANTANA KULLAN~~, Notice of Confirmation of Expert Witnesses, Curriculum Vitae's, Defense's Private investigator is in the process of gathering witnesses in Defense's Favor. Defendant is preparing ~~for~~ an informal Brief for the Ninth Circuit in case number 18-16084 of the Ninth Circuit. Defendant is preparing Subpoenas in case number G-17-14.327439-1 in this Court and for all the foregoing reason defendant ask this Court for an 365 day Extension of time do to the legal research and convenience of the defense team. This is the defendant's Declaration.

s/ Li Milan Ju.

Certificate of Service

I certify that I am the Defendant and
Self-representative, and that on the 11th day of October,
2018, I caused to be deposited for mailing a true and
correct copy of the Foregoing, ~~under~~ Motion For Extension of
Time, to the following:

Attorney General's office

Chelsea N. Kallas

Deputy Attorney General

555 East Washington Ave. Ste. 3900

LV, NV 89101

Steven D. Grierson,

Clerk of the Court

200 Lewis Avenue 3rd Floor

LV, NV 89155-1160

CC: File

FILED
OCT 29 2018

CLERK OF COURT

1 MFLA
2 Antonio Lee Mixon Jr. 1019828
3 Pro-se
4 H.D.S.P.
5 P.O. Box 650
6 Indian Springs, NV 89070

District Court
Clark County, NV

10 Antonio Lee Mixon Jr.	Case No.: C-17-327439-1
11 Defendant	Dept No.: 17
12 v.	Date of Hearing: 11-20-18
13 The State of Nevada	Time of Hearing: 8:30 AM
14 Plaintiff	Motion For Leave To Amend

16 Comes now, the Defendant, Antonio Lee Mixon Jr., by
17 and through self-representation, and hereby requests this honorable court
18 to grant the motion for leave to amend Defendant's Motion
19 ~~for extension of time~~ "Amended Motion For Extension of Time"
20 ~~is attached~~ which is attached.

Dated 24th October, 2018
A.L. Mixon Jr.

RECEIVED
OCT 29 2018
CLERK OF THE COURT

1 MEOT
2 ANTONIO LEE MIXON JR.
3 PRO-SE
4 H.D.S.P.
5 P.O. BOX 650
6 INDIAN SPRINGS, NV 89070

FILED
OCT 29 2018
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NV

10 ANTONIO LEE MIXON JR.
11 Defendant
12 v.
13 The State of Nevada
14 Plaintiff

CASE NO.: C-17-327439-1
Dept No.: 17
DATE OF HEARING: 11-20-18
TIME OF HEARING: 8:30 AM
AMENDED
MOTION FOR EXTENSION
OF TIME.

17 Comes Now, the Defendant, Antonio Lee Mixon Jr., by and
18 through self-representation, and hereby requests this Honorable Court
19 to grant this motion for an extension of time.

20 These points and authorities are made and
21 based upon all the papers and pleadings on file herein, and oral
22 argument at the time set for hearing.

23 DATED this 24th day of October, 2018

24 Antonio Lee Mixon Jr.

25 Self-representative

26 by: Antonio Lee Mixon, # 10/9826
27 a. s. Mixon Jr.
28

RECEIVED
OCT 29 2018
CLERK OF THE COURT

C-17-327439-1
MOT
Motion
4791974



Memorandum of Points and Authorities

Defendant is preparing a Writ of Certiorari in case no.: 17-17496 of the Ninth Circuit. Defendant is preparing a writ of Habeas Corpus (post-conviction) ²⁰⁵⁴ ~~2052~~ in case C-11-277977-1 of The Eighth Judicial District Court Dept. 17, Federal writ. Defendant is preparing the Notice of witnesses in case no.: C-17-327439-1 in the Eighth Judicial District Court Dept. 17; notice of confirmation of expert witnesses, Curriculum -m Vitae's. Defense's Private investigator is in the process of gathering witnesses in Defense's Favor. Defendant is preparing an ~~Informal Brief For the~~ Writ of Certiorari from the Ninth Circuit case no.: 18-16884 and case U.S. District Court Case District of Nevada ~~case no.:~~ Reno, Nevada No.: 3:17-cv-00146-MMD-CBG. Defendant is preparing Subpoenas in case number C-17-327439-1 in this Court and for all the foregoing reason defendant ask this Court for an 365 day Extension of Time to do legal research and for the convenience of all party's concerned. This is the Defendant's Declaration.

a. L. Milton Jr.

Certificate of Service

I certify that I am the Defendant the Self-represented in this case and that on the 24th day of October, 2018, I caused to be deposited for mailing a true and correct copy of the foregoing, Motion for extension of time, to the following:

Attorney General's Office
Chelsea N. Kallas
Deputy Attorney General
Office of the Attorney General
555 East Washington Ave. Ste. 3900
Las Vegas, Nevada 89101

STEVEN D. GRIERSON,
Clerk of the Court
200 LEWIS AVENUE 3rd Floor
LV, NV 89155-1160

cc: File

Transport order request

Antonio LEE Mixon Jr. #1019028

High Desert State Prison

22010 Cold Creek Rd.

P.O. Box 650

Indian Springs, NV 89070

IN the 8th Judicial District Court of the state of Nevada
in and For the County of Clark in the matter of Antonio LEE Mixon, Defendant
v. State of Nevada, plaintiff asks this court for an order to transport and
produce inmate for hearing based on the circumstances for oral argument,
the presence of Antonio LEE Mixon is necessary for the hearing on this
motion scheduled in this case on the 20 day of Nov, 2018 at the
hour of 8:30 o'clock a.m. at the following address Michael P.
Villani, District Judge Dept. 17 of the Eighth Judicial District Court,
Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155.

Therefore this court should grant the order that pursuant to NRS 209.274
and any other applicable NRS, Warden, Brian E. Williams High Desert State
Prison, 22010 Cold Creek Rd., Indian Springs, NV 89070 should be ordered
to have Antonio LEE Mixon Jr. #1019028 transported to appear before
this court, as specified as court directs. Upon completion of the hearing,
Antonio LEE Mixon Jr. #1019028, will be and should be transported to the
above-named institution.

Dated this 24th day ~~October~~ of October, 2018.

Antoine L. Wilson 10/19/2018
H. P. S.P.
P.O. Box 650
Indian Springs, NV 89070

Postage and Fees
10/25/2018
US POSTAGE \$000.45
ZIP 89101
01E12650/8
401

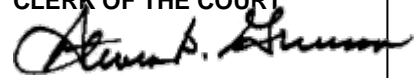
Steven D. Grierson,
Clerk of the Court
200 Lewis Avenue 3rd Floor
Las Vegas, NV 89155-1160

3762

33 HRPENP 89155

High Desert State Prison

HIGH DESERT STATE PRISON
OCT 24 2018
UNIT 4 A/B



OPPM
ADAM PAUL LAXALT
Attorney General
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-5707
F: (702) 486-0660
Ckallas@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff,

v.

ANTONIO LEE MIXON, 1019828,
Defendant.

Case No.: C-17-327439-1

Dept. No.: XVII

Hearing Date: November 20, 2018

Hearing Time: 8:30 AM

STATE'S OPPOSITION TO DEFENDANT'S AMENDED MOTION FOR EXTENSION OF TIME

ADAM PAUL LAXALT, Attorney General for the State of Nevada, through Deputy Attorney General, Chelsea Kallas, hereby submits the State's Opposition to Defendant's Amended Motion for Extension of Time. This motion is made and based upon the pleadings on file, the following memorandum of points and authorities, and any oral arguments the Court may allow.

Dated this 15th day of November, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 On October 25, 2017, Antonio Lee Mixon (hereinafter “Defendant”) was charged by way of
3 Information with the following: Count 1 – Battery By A Prisoner (Category B Felony – NRS
4 200.482(2)(f)); and Count 2 – Possession or Control of Dangerous Weapon or Facsimile By An
5 Incarcerated Person (Category B Felony – NRS 212.185(c)). On November 1, 2017, Defendant pled not
6 guilty and invoked his right to a speedy trial. On November 14, 2017, Defendant filed a Motion to Compel
7 Production of Discovery and Brady Material. On December 1, 2017, the State filed its Opposition. On
8 December 5, 2017, the Court issued a minute order directing the State to turn over, among other things, all
9 witness statements. The Court requested that Defendant file the order. On January 2, 2018, Defendant’s
10 trial commenced. On that same day, the Court declared a mistrial. A new trial was scheduled to commence
11 on March 26, 2018. However, on March 15, 2018, the Court vacated Defendant’s upcoming trial date due
12 to Defendant acting out in Court.

13 On March 28, 2018, Defendant filed a Motion to Withdrawl of Attorney of Record, Request to
14 Obtain Copy of Defendant’s File, and Request for Self-Representation. On April 6, 2018, the Court
15 administered a Farretta Canvass and Defendant’s Motion was granted. At this time, Defendant informed
16 the Court he would need 120 days to prepare for trial. A new trial was scheduled to commence on August
17 27, 2018. On June 19, 2018, Defendant requested a continuance of trial and a new trial date was scheduled
18 to commence on October 28, 2018. On August 8, 2018, Defendant filed a Motion for Status Check; Trial
19 Readiness; Discovery Issue; Transportation Order; Oral Agreement Requested. On August 30, 2018,
20 Defendant’s Motion was granted and at the request of Defendant, the trial date was again vacated.
21 Calendar Call is set for January 3, 2019, and trial is scheduled to commence on January 7, 2019.

22 On October 15, 2018, Defendant filed a Motion for Extension of Time, where he requested
23 a 365 day trial extension. On October 25, 2018, Defendant’s Motion was denied. On October 29, 2018,
24 Defendant filed a Motion for Leave to Amend and an Amended Motion for Extension of Time. The State
25 responds as follows.

26 **ARGUMENT**

27 Defendant again requests a trial continuance so he can file documents in the instant case, as well as
28 his other cases. The Court already denied this request on October 25, 2018. Defendant fails to cite any new

1 reasons for a continuance in his instant Motion. Additionally, this case has been continued several times
2 already, providing Defendant with plenty of time to file any necessary documents related to the instant
3 case. Further, Defendant's request for more time so he can prepare documents in another unrelated case is
4 not good cause to continue trial in the instant matter. As such, Defendant's Motion should be denied.

5 **CONCLUSION**

6 For the foregoing reasons, the State respectfully requests that the Court deny Defendant's
7 Amended Motion for Extension of Time.

8 DATED this 15th day of November, 2018.

9
10 SUBMITTED BY:

11 ADAM PAUL LAXALT
12 Attorney General

13 By: /s/ Chelsea Kallas
14 CHELSEA KALLAS (Bar No. 13902)
15 Deputy Attorney General
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I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or e-mail; or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following unregistered participants:

/s/ A. Reber
An employee of the Office of the Attorney General

27

FILED
OCT 29 2018
CLERK OF COURT

1 NOM
2 Antonio Lee Mixon Jr.
3 Pro-se
4 H.O.S.P.
5 P.O. Box 650
6 Indian Springs, NV 89070

Distated Court
Clark County, Nevada

10 Antonio Lee Mixon Jr
11 Defendant
12 v.
13 The state of Nevada
14 Plaintiff

CASE NO.: C-17-327439-1
Dept. No.: 17
Date of Hearing: 11-20-18
Time of Hearing: 8:30 AM

NOTICE OF MOTION

17 You will please take notice, that Antonio Lee Mixon
18 Jr. will come in for hearing before the Court Dept. 17 on the day
19 and year at the hour and time in Dept. 17 as the Court Deems
20 appropriate. ~~"MOTION For Extension of Time"~~ is attached.
21 "Amended MOTION For Extension of Time" is attached"

Dated this 24th of Oct, 2018

A. L. Mixon Jr.

RECEIVED
OCT 29 2018
CLERK OF THE COURT

C-17-327439-1
NOTM
Notice of Motion
4791956



1 MFJI

2 ANTONIO LEE MIXON

3 H.O.S.P.

4 P.O. BOX 650

5 Indian Springs, NV 89070

6 PR-SE

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FILED 7

NOV 02 2018

CLERK OF COURT

District Court

Clark County, Nevada

The State of Nevada } Case No.: C-17-327439-1

Plaintiff } Dept. No.: 17

vs. } Date of Hearing: NOV 27 2018

Antonio Lee Mixon Sr. } Time of Hearing: 8:30 AM

Defendant }

Motion For Jury Instructions

Comes Now, The Defendant, Antonio Lee Mixon,

by and through self-representation, and hereby requests

this honorable Court to grant this Motion. ~~Therefore~~

These memorandum of Points and Authorities

are made and based upon all the papers and pleadings on

File herein, and oral argument.

RECEIVED
NOV 02 2018

CLERK OF THE COURT

C-17-327439-1
MOT
Motion
4793467



Memorandum of Points and Authorities

I. The Defense request the following Jury instruction:

(1) Jury should render a not guilty verdict for Count one IF Majority of the jury believe state did not meet it's burden of proving beyond a reasonable doubt that Victim Did not report that the Defendant had attempted to Batter Victim because Defendant had prepat ability to do so. And because the state did not charge Defendant with attempt Battery or assault coupled with Majority of the jury believing state Did not meet it's burden mentioned above, jury should render a not guilty verdict for The charge of battery by prisoner.

(2). Jury instruction request number two the Defense request the following Jury instruction:

Court should instruct jury on actual possession by theory, that consist of, " IF Someone seen or heard Someone had possession or control of a weapon ^{THEN} ~~Because~~ At the time Suspect was apprehended, then put into restraints, that person is not in possession or control of any weapon. And therefore jury should render a verdict of not guilty to Count Two which is possession or control of Dangerous Weapon or Facsimile By AN INCARCERATED PERSON.

Court Defendant Did not say he had possession or control of Dangerous weapon or Facsimile By AN INCARCERATED PERSON.

Certificate of Mailings of Service

I hereby certify that in the representation for the Defendant
in this instant case and sent a copy of Motion For Jury Instructions
on 10/29/2018 by placing said motion in mailing addressed to the
following:

Chelsea Hallas	Steven D. Grierson,
Deputy Attorney General	Clerk of Court
555 East Washington Ave., Suite #3900	200 Lewis Avenue, 31 st Floor
Las Vegas, NV 89101	Las Vegas, NV 89155-1160

cc: File

Transport order request

Antonio LEE Mixon Jr. #1019828

High Desert state Prison

22010 Gold creek rd.

P.O. Box 650

Indian Springs, NV 89070

In the 8th Judicial District Court of the State of Nevada in and for the County of Clark in the matter of Antonio Mixon, Defendant v. State of Nevada. Plaintiff asks this Court for an order to transport and produce inmate for hearing based on the circumstances of and argument, the presence of Antonio LEE Mixon is necessary for the hearing on this motion scheduled in this case on the — day of —, 2018 at the hour of — o'clock —.m. at the following address Michael P. Villani, District Judge, Eighth Judicial District Court, Regional Justice Center, Dept. 17, 200 Lewis Avenue, Las Vegas, Nevada 89155. Therefore this Court should grant the order that pursuant to NRS, 209.274 and any other applicable NRS(s) warden Brian S. Williams, High desert state prison, 22010 Gold creek rd., Indian Springs, NV 89070 should be ordered to have Antonio LEE Mixon Jr. #1019828 transported to appear before this Court, as specified as Court directs. Upon completion of the hearing, Antonio LEE Mixon Jr. #1019828, will be and should be transported to the above-named institution.

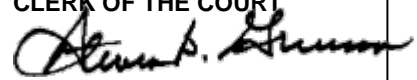
Dated this 29th day of Oct., 2018

ANTHONY LEE NIXON #10100000
H.D.S.P.
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89070

9/10/1971
OCT 9 2 130
HIGH DESERT STATE PRISON

STEVEN D. GRIFFINSON,
Clerk of the Court
200 LEWIS AVENUE 3rd Floor
Las Vegas, NEVADA 89155-1160





OPPM
ADAM PAUL LAXALT
Attorney General
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-5707
F: (702) 486-0660
Ckallas@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

v.

ANTONIO LEE MIXON, ID #1019828

Defendant.

Case No.: C-17-327439-1

Dept. No.: XVII

Hearing Date: November 27, 2018

Hearing Time: 8:30 AM

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR JURY INSTRUCTIONS

ADAM PAUL LAXALT, Attorney General for the State of Nevada, through Deputy Attorney General, Chelsea Kallas, hereby submits the State's Opposition to Defendant's Motion for Jury Instructions. This motion is made and based upon the pleadings on file, the following memorandum of points and authorities, and any oral arguments the Court may allow.

Dated this 19th day of November, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 On October 25, 2017, Antonio Lee Mixon (hereinafter “Defendant”) was charged by way of
3 Information with the following: Count 1 – Battery By A Prisoner (Category B Felony – NRS
4 200.482(2)(f)); and Count 2 – Possession or Control of Dangerous Weapon or Facsimile By An
5 Incarcerated Person (Category B Felony – NRS 212.185(c)). On November 1, 2017, Defendant pled not
6 guilty and invoked his right to a speedy trial. On November 14, 2017, Defendant filed a Motion to Compel
7 Production of Discovery and Brady Material. On December 1, 2017, the State filed its Opposition. On
8 December 5, 2017, the Court issued a minute order directing the State to turn over, among other things, all
9 witness statements. The Court requested that Defendant file the order. On January 2, 2018, Defendant’s
10 trial commenced. On that same day, the Court declared a mistrial. On March 28, 2018, Defendant filed a
11 “Motion to Withdrawl of Attorney of Record, Request to Obtain Copy of Defendant’s File, and Request
12 for Self-Representation.” On April 6, 2018, the Court administered a Farretta Canvass and Defendant’s
13 Motion was granted. Calendar Call is set for January 3, 2019, and Jury Trial is scheduled to commence on
14 January 7, 2019.

15 On November 2, 2018, Defendant filed a Motion for Jury Instructions. The State responds as
16 follows.

17 **ARGUMENT**

18 Defendant’s request for jury instructions is premature. Additionally, Defendant fails to provide any
19 argument whatsoever as to why the jury should be provided with these instructions. It is not the State’s job
20 to make Defendant’s arguments for him. As such, Defendant’s Motion should be denied.

21 **CONCLUSION**

22 For the foregoing reasons, the State respectfully requests that the Court deny Defendant’s Motion
23 for Jury Instructions.

24 DATED this 19th day of November, 2018.

25 SUBMITTED BY:

26 ADAM PAUL LAXALT
27 Attorney General

28 By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on
3 November 19, 2018, I filed the foregoing STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR
4 JURY INSTRUCTIONS via this Court's electronic filing system.

5 I certify that some of the participants in the case are not registered electronic filing system users. I
6 have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or
7 e-mail; or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the
8 following unregistered participants:

9 Antonio Mixon, Inmate ID #1019828
10 High Desert State Prison
11 P.O. Box 650
Indian Springs, NV 89070

12 /s/ A. Reber
13 An employee of the Office of the Attorney General
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1 MAILED
2 ANTONIO LEE MIXON JR.
3 H.D.S.P.
4 P.O. BOX 650
5 Indian Springs, NV 89070
6 Pro-SE

FILED
NOV 02 2018
Clerk of Court
CLERK OF COURT

7 District Court
8 Clark County, Nevada

9 The State of Nevada
10 Plaintiff,
11 vs.
12 ANTONIO LEE MIXON JR.
13 Defendant

Case No.: C-17-327439-1
Dept. No.: XVII
Date of Hearing: NOV 27 2018
Date of Time: 8:30 AM
Time of Hearing:

14 MOTION FOR VOIR DIRE

15 Comes now, The Defendant, ANTONIO LEE MIXON, by and through
16 self-representation, and hereby requests this Honorable Court to grant this
17 Motion For Voir Dire Examination OF Jurors.

18
19 These Memorandum of Points and Authorities are made and
20 based upon all the papers and pleadings on file herein, and oral argument
21 at the time set for hearing.

22 Dated this 26th day of Oct., 2018.

23 ANTONIO L. MIXON

24 Pro-SE

25 A. L. Mixon Jr.

26 RECEIVED

NOV 02 2018

CLERK OF THE COURT

C-17-327439-1
MOT
Motion
4793462



415

Memorandum of Points and Authorities

STATEMENT OF CASE

Defense had a motion for extension of time to reset the trial schedule ^{that} on calendar for November and the motion was heard by this Court and denied, the request was for 365 days to prepare for trial. That motion was heard on ~~October 2~~ or about October 25th, 2018. The original trial schedule stands.

Since the denial of the motion to reschedule trial dates that requested 365 days to interview witnesses, seek and file confirmation of expert witnesses, test evidence in possession of prosecution, gather subpoenas and send to clerk of this Court to process service of, do legal research for prep in additional motions by the defense, list with expert witnesses, all this plus in sixty days would not be complete given the schedules of all ^{parties} ~~party~~ concerned and that the Defense has no computer access, its 4,000 plus prisoners in H.D.S.P., the law library supervisor has no time to answer requests, the state gave Defense no opposition to Defense's paralegal request that this Court denied, which the paralegal was to be given subject matter and was to issue Defense Citations and cross-references citations to have Defendant prepare motions, so this instant motion follows.

Memorandum of Points and Authorities

I. THE DEFENSE REQUEST THE FOLLOWING VOIR DIRE

EXAMINATION: VOIR DIRE EXAMINATION NUMBER ONE, BY THE DEFENSE,

Q1.) DO ANY OF YOU JURORS WATCH THE T.V.

PROGRAM Judge Judy, Judge Joe Brown,
Judge Mathis and/or Judge Jackie Glass?

YES, NO, MAYBE SO?

Court the Defense wishes to ask the Jurors this question in regards
to Defendant's Constitutional Right to Represent himself because in those
shows from what the Defense seen watching those programs is individuals
representing themselves in the Court of law.

Q2 By the Defense

Q2.) SO HAVE ANY OF YOU ALL JURORS HERE TODAY EVER
REPRESENTED YOURSELF(S) IN ANY COURT OF LAW?

Q3. By the Defense

Q3.) IS THERE ANY JUROR HERE TODAY THAT DOES NOT
KNOW THAT THE BURDEN OF PROOF IS ON THE STATE OF
NEVADA'S ATTORNEY(S) AND NOT THE DEFENSE'S REPRESENTATION?

Q4 By the Defense

Q4.) IS THERE ANY JUROR HERE TODAY THAT DOES NOT KNOW
WHAT THAT BURDEN IS?

Q5 DEFENSE REQUEST THE COURT TO GIVE TO THE JURORS, IN THE
EVENT THIS REQUEST IS DENIED, THEN THE DEFENSE WISHES TO ASK THIS QUESTION
WITH ALL THE OTHER PROPOSED, IF GRANTED.

Q5.) WOULD ANY JUROR HERE TODAY LIGHTEN THE STATE'S
BURDEN OF PROVING THEIR CASE BEYOND A REASONABLE DOUBT OR MAKE THE STATE'S
BURDEN OF PROVING THEIR CASE BEYOND A REASONABLE DOUBT MORE BURDEN SOME
GIVING THE FACT THAT THE ATTORNEY(S) FOR THE STATE OF NEVADA IS/ARE DULY

1 Memorandum of Points and Authorities Continued
2 licensed to practice law here in Nevada and experts versus the
3 attorney for the defense not duly licensed to practice law herein
4 Nevada but has the Constitutional right to represent himself
5 Under the Constitution of Nevada and Under the Constitution of
6 the United States of America?

7 Q6) By the Defense

8 Q6) Giving that the defendant is mormon
9 and you all will probably hear that within
10 this trial, would that prevent any of you
11 jurors here today from adjudicating on the
12 facts fairly?

13 These Voir dire examination questions are to examine the
14 jurors and for any prejudice to an individual(s) Constitutional
15 right to self-representation.

16
17 Respectfully
18 Submitted
19 ANTONIO LEE MIXON

20 Pro-Se

21 A.L. Mixon Jr.

22 DATED: Oct., 26th 2018.

23

24

25

26

27

28

Certificate of mailing, of service

I hereby certify that in the representation for the Defendant in this instant case and sent a copy of the Motion For Voir Dire on 10/29/2018 by placing said motion in mailing addressed to the following:

Charles Kallas

Deputy Attorney General

555 East Washington Ave., Suite #3900

Las Vegas, NV 89101

Steven D. Grierson,

Clerk of Court

200 Lewis Avenue, 3rd Floor

Las Vegas, NV 89155-1160

CC: Frlg.

Transport order request

1 Antonio Lee Mixon Sr #1019828

2 High Desert state Prison

3 22010 Cold creek rd.

4 P.O. Box 650

5 Indian Springs, NV 89070

6 IN THE 8th Judicial District Court of the State of Nevada in and For
7 the County of Clark in the matter of Antonio Mixon, Defendant v. State
8 of Nevada, Plaintiff asks this Court for an order to transport and produce
9 inmate for hearing. Based on the circumstances of oral argument, the presence of
10 Antonio Lee Mixon is necessary for the hearing on this Motion scheduled in this
11 case on the — day of —, 2018 at the hour of — o'clock — m. at
12 the following address: Michael P. Villani, District Judge, Eighth Judicial
13 District Court, Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada
14 89155, in Dept. 17. Therefore this Court should grant the order that pursuant
15 to NRS 209.274 and any other applicable NRS(s), Warden, Brian E. Williams
16 High Desert State Prison, 22010 Cold Creek Rd., Indian Springs, NV 89070
17 should be ordered to have Antonio Lee Mixon Sr. #1019828 transported to
18 appear before this Court, as specified as Court directs. Upon complete proof
19 of the hearing, Antonio Lee Mixon Sr., #1019828 will be and
20 should be transported to the above-named institution.

21 Dated this 29th day of Oct. 2018

1 MOTION

2 ANTONIO LEE MIXON JR.

3 H.D.S.R., P.O. Box 650

4 Indian Springs, NV 89070

5 Pro-se

FILED

NOV 02 2018

Ann L. Blum
CLERK OF COURT

District Court

Clark County, Nevada

9 The State of Nevada

10 Plaintiff,

11 vs

12 ANTONIO LEE MIXON JR.

13 Defendant

Case NO.: C-17-327439-1

Dept. NO.: 17

DATE OF HEARING: NOV 27 2018

TIME OF HEARING: 8:30 AM

15 MOTION TO DISMISS

16 Comes now, the Defendant, Antonio Lee Mixon, by and
17 through self-representation, and hereby requests this honorable
18 Court to grant this Motion TO Dismiss.

19
20 These memorandum of points and authorities are
21 made and based upon all the papers and pleadings on file herewith,
22 and oral argument at the time set for hearing.

24 DATED this ^{27th} ~~26th~~ day of Oct., 2018

ANTONIO LEE MIXON

Pro-se

Antonio Lee Mixon Jr.

C-17-327439-1
MDSM
Motion to Dismiss
4793483



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NOV 02 2018
CLERK OF THE COURT

Memorandum Points of Authorities

Statement of Case

1 Court December 4th, 2015 Defendant was placed in administrative
2 segregation pending investigation. December 7th, 2015 Defendant was
3 served a notice of ^{administrative} charges By Correctional officer Eric Romero.
4 That same day Summary of Hearing officer's inquiry and disposition
5 was prepared By officer Eric Romero. His statement is that the
6 Evidence Relied ^{on} At the time of his report is officer's report, weapon
7 recovered and booked into the evidence vault, video recording of the
8 aftermath of the incident, officer's alleged injuries resulting in a CI
9 packet needing to be filled out. None of the reports by additional
10 officers about the incident, ^{was} prepared the day of incident existed
11 at the time Romero made his statement as to what evidence
12 existed at the time of the Summary of Hearing officer's inquiry
13 and disposition he prepared, which the state acts as if the reports
14 did as they submitted them for evidence. Later on December 7th, 2015
15 officer Barth, Jay requested that Defendant be criminally
16 prosecuted. December 17th, 2015 The Defendant Filed a grievance
17 that the Findings of probable cause for ^{criminal} ~~criminal~~ prosecution was
18 in error and that ~~that~~ sanction is extremely harsh, cruel, and
19 Unusual Punishment in violation of Defendant's 8th United States
20 Constitutional right to be Free From cruel and unusual punishment.
21 December 23, 2015 B. Stroud acting Warden issued a memorandum
22 responding to Defendant's grievance stating a referral for Criminal
23 Prosecution is cruel, harsh, and unusual and ^{giving the circumstances} ~~overturning~~ changed
24 the Sanctions ^{issuing} ~~stating~~ that the prison ^{isn't going} ~~wouldn't~~ ^{fitting to file a referral} ~~file a referral~~
25 For Criminal prosecution and that the memorandum Frees Defendant
26 From any arbitrary action by the state under the 8th and 14th of
27 amendments of the U.S. Constitution. Twenty Months later

Memorandum of points and Authorities Continued

STATEMENT OF CASE CONTINUED

Defendant received a motion for initial arraignment in Justice Court to ~~Count~~^{Count 1} NRS 200.491(2)(F) and Count Two NRS 212.185(c), which is not within Title FIFTEEN of the Nevada Revised Statutes Chapters 193-202 and title FIFTEEN governs over all crimes and punishment here in Nevada so that's not a charge and should be dismissed. Defendant then appeared in Justice Court for arraignment their Counsel for Defendant being a friend ~~the~~ of the Court wanted defendant to take in consideration an offer from the state. Defendant refused to take any offer from the state into consideration. Defendant put on record the issue with the memorandum, Defendant mention this issue to Public Defender and nothing. Defendant then had a preliminary hearing Defendant requested Counsel waive it so it was waived. At lower Court arraignment Defendant asked Counsel again before hearing commenced to file a motion about the issue with the memorandum it was ignored, ~~was~~ arraigned and case transferred to Dept 17 District Court. A speedy trial date was given. The Counsel made motions about the issue calendar^{call} came that day the jury was selected, trial commenced, there was^a mistrial. Counsel then filed three motions to dismiss court and/or in the alternative requested Court issue Counsel Defense a jury instruction. Two of Counsel's motions were denied, one being in stay Court never ^{adjudicated} adjudicated on because Defendant had to be excused from the courtroom. Defendant then ~~request~~^{requested} self-representation and before this or between this, Court decided Defendant could add to ~~Court~~^{prior Counsel's} motion to dismiss. Defendant was granted the

Memorandum Points And Authorities

Statement of Case Continued

Constitutional right to represent himself, court ordered ^{previous} Counsel
send entire file to Defendant. Upon going through the file
received from previous counsel coupled with all of ^{the} times i've
requested prior counsel to file motion about the issue ~~6000~~
which counsel ignored, i read the state's response to previous
counsel's motion to dismiss and ~~they~~ their argument said that
the motion this court ruled Defendant could add to should be
denied because ~~prior~~ previous counsel failed to raise that before
the first trial, court i requested numerous times ~~for~~ prior counsel
about the issue had counsel filed the motion i requested when it
would of been on time ^{and not procedurally barred} the state wouldn't have that argument
and i kinda agree with the state in regards to ^{that} ~~barrier~~ prior
counsel should have filed motion about those issues which the
issue i requested ^{of prior counsel} ~~to file and attach exhibits~~
of prior counsel to file and ~~attach~~ attach memorandum was
within her motion so that leads ~~my~~ ^{Exhibit} ~~my~~ in Jeopardy of
not getting consider because prior ^{counsel's} ~~is~~ ineffective ^{assistance} ~~assistance~~, so
instead of Defendant filing a motion to place prior counsel's motion
back on calendar to submit prior counsel's ^{argument} ~~argument~~ and to
attach memo would be me at lost of justice so this
instant motion follows and ^{Exhibit} ~~is~~ to be consider once
Defendant appears for oral argument in this matter
Because Defendant have problems with the law library
supervisor ~~to~~ receiving important documents ^{to} ~~for~~ copy
so ~~to~~ have to bring memorandum and returning
so i have to bring memorandum. This is Defendants Declaration.

Memorandum of Points And Authorities

Legal Argument

I. The Defendant invoked the Federal Constitution's Eighth Amendment and the equal protection clause of 14th Amendment. See Memorandum

Drawing upon the internal prison grievance system procedure see Exhibit Memorandum and Prisons and Convicts § 1, where there is sufficient evidence significant enough to give rise to a Liberty Interest the Defendant Prisoners is entitled to procedural protections under due-process clause of the Federal's Constitution's 14th Amendment. See Evidence § 504.3 and for 904.3.

The Liberty Interest here is the criminal prosecution and the prosecution and the being subjected to a loss of liberty. referred For criminal. The Procedural protections required to be given to prisoners when prison subject prisoner to a loss of Liberty is that prisoner to a loss of Liberty is that prisoner is to be given "notice". Here ~~these~~ ^{these} things (1) the prisoner being subjected to a conviction and sentence of a lot years ~~on the~~ ^{these} gives rise to the liberty interest spoken of above. (2) The liberty interest analysis ~~is applied~~ should be applied here because this is not a situation a case where the defendant is subjected to relative "Delayed release From the parole board" or a already existing judgment of conviction separate from the allegations in this instant case, as a direct result of the allegations in this instant case, rather here in this case prisoner is subjected to a criminal prosecution, a loss of

Memorandum of Points and Authorities
Legal Argument

1 Liberty on entire new Judgment of Conviction, a lot of more
2 years in prison. Defendant was issued a Memorandum
3 ~~that~~ Frees Defendant from arbitrary action by the
4 State, that action is this criminal prosecution. Once state
5 infringed upon that Right of Defendant state was to and for
6 Prison. Prison was to put Defendant on notice after
7 he received the memorandum Defendant didn't receive
8 no notice of the prosecution which is in violation of
9 Defendant Due-process Rights of the 14th amendment.

For all the foregoing reasons Defense asks this court
1 to apply the "Liberty Interest" analysis to these circumstances
2 and that court finds that Defendant was Freed From
3 this criminal prosecution and Defendant was not put on notice
4 from the time memorandum issued and since Defendant's
5 Rights have been Violated by the Prison and state this
6 case should be dismissed. The Prison Violated Defendant's
7 14th amendment Right to be put on notice when it subjects Prisoners
8 to a loss of liberty because after the ~~Memorandum~~ memorandum
9 issued ^{which stated} ~~and~~ state Prison, is not Filing ~~Subpoena~~ For criminal
10 Prosecution twenty Months later, state issued a Motion For initial
11 arraignment. State Violated defendant's 14th and 8th amendment
12 Right to ~~Free~~ be Free From arbitrary actions of the state when
13 after the memorandum issued by the prison ^{stating} ~~stated~~ defendant
14 is to ~~Free~~ be Free From criminal prosecution, the state went
15 ahead and prosecuted defendant criminally in total
16 disregard of the Memo. Whomever this Fault is For the
17 Defendant's Rights being Violated who knows ~~that~~ what
18 Matter Must Here is Defendant's Rights, Respectfully Submitted

Memorandum of Points and Authorities

Legal argument

II. Court two NRS 212.105(e) isn't an NRS. Title Fifteen governs over all crimes and punishments from NRS Chapter 193 until NRS Chapter 202. "NRS" defined - Nevada Revised statutes. Given that prior counsel didn't challenge this issue before last trial and before lower court arraignment commenced coupled with just ^{today} Defendant became aware of this issue, ^{Defendant} and was granted self-representation on or about April the charge should be dismissed see NRS 174.105(1) provides: "Defenses and objections based on defects in the institution of the prosecution, other than insufficiency of the evidence to warrant an indictment, or in the indictment, information or complaint, other than it fails to show jurisdiction in the court or to charge an offense may be raised only by motion before trial." Defendant possessed Memorandum before last trial but it wasn't Defendant's duty to set up defenses in fact it was prior counsel's defense. Prior counsel visited Defendant where prior ^{counsel} was made aware of Memorandum because prior counsel viewed it and asked Defendant to bring it with him to trial. This was time before prior counsel had been made aware that Memo existed so if prior counsel didn't already have it from the state then prior counsel could have filed Motion. Defendant brought Memo down to CCDC for trial on a week before Glen-Calendar call Defendant filled out a property transaction form to receive Memo but nothing. ^{this} day of Calendar call Defendant was asked by prior counsel for Memo. Memo was still in property. Prior counsel asked

Memorandum of Points and Authorities

Legal argument

The CCDC officer to get MEMO with Defendant then filled out another Property transaction Form and didn't receive ~~that~~ MEMO until the like the middle of trial during recess of trial. So DID Prior Counsel have MEMO before the first trial? well when Prior Counsel sent entire file the MEMO was numbered with state ~~trans~~ Exhibit numbers on them But there was a page within their Defendant never received from the Prison and the Prison was whom issued the MEMO. So it's NOT The Defendants Fault about these issues being now raised.

For all the foregoing Reasons

this Motion should be granted.

And Court should dismiss the criminal Prosecution with prejudice.

And dismiss case with prejudice.

Respectfully

Submitted

Dated; this 27th day of October
2018.

Certificate of Mailing, of service

I hereby that in the representation For the Defendant in
this instant case and sent a copy of Motion to Dismiss by placing
~~said motion in mailing addressed to the following~~ on 10/29/2018
by placing said motion in mailing addressed to the following:

Chelsea Kallas

Deputy Attorney General

555 East Washington Ave., Suite #3900

Las Vegas, NV 89101

Steven D. Gerson,

clerk of Court

200 Lewis Avenue, 3rd Floor

Las Vegas, NV 89155-1160

CC: Filp

Transport order request

1 Antonio Lee Milton Jr. #1019828

2 High Desert State Prison

3 22010 Cold Creek Rd.

4 P.O. Box 650

5 Indian Springs, NV 89070

6
7 to the 8th Judicial District Court of the State of Nevada in and for the
8 County of Clark in the matter Antonio Milton, Defendant v. State of Nevada,
9 Plaintiff asks this court for an order to transport and produce inmate for
10 hearing Based on the circumstances of oral argument, the presence of Antonio
11 Lee Milton is necessary for the hearing on this motion scheduled in this case
12 on the _____ day of _____, 2019 at the hour of _____ o'clock _____ m. at the
13 following address Michael P. Villani, District Judge, Eighth Judicial District
14 Court, Regional Justice Center, Dept. 17, 200 Lewis Avenue, Las Vegas, Nevada,
15 89155. Therefore this court should grant the order that pursuant to NRS
16 209.274 and any other applicable ~~statutes~~ NRS(s), Warden Brian S.
17 Williams High Desert State Prison, 22010 Cold Creek Rd, Indian Springs,
18 NV 89070 should be ordered to have Antonio Lee Milton Jr. #1019828
19 transported to appear before this court, as specified as court directs. Upon
20 completion of the hearing, Antonio Lee Milton Jr. #1019828, will be and
21 should be transported to the above-named institution.

1 MTD

2 Antonio LEE Miron Jr.

3 H.D.S.P.

4 P.O. Box 650

5 Indian Springs, NV 89070

6 Pro-se

FILED

NOV 02 2018

CLERK OF THE COURT

7

District Court

8

Clark County, Nevada

9 The State of Nevada

10

Plaintiff,

11 vs.

12 Antonio LEE Miron Jr.

13

Defendant

14

15

NOTICE OF MOTION

16

TO OFFICE OF THE Attorney General and Attorney For plaintiff,

17 and department XVII, you will ~~take~~ please take notice that the Defendant

18 will bring the attached Foregoing Motion on for hearing before the Court

19 on the 21 day of NOV, 2018 at o'clock 8:30 AM

20

21

DATED this ^{27th} day of Oct., 2018

22

Antonio Miron Jr.

23

Pro-se.

24

25

26

27

28

CLERK OF THE COURT

C-17-327439-1
NOTM
Notice of Motion
4793468



NORM
NOTES
M.R.V.A.

ANTONIO LEE MILTON JR.

3 H.O.S.P.

P.O. Box 650

Indian Springs, NV 89070

PRO-SE

FILED

NOV 02 2018

CLERK OF COURT

District Court

Clark County, Nevada

The State of Nevada

Plaintiff,

VS.

2 Antonio Lee Milton Jr.

Defendant

Case No.: C-17-327439-1

Dept. No.: 17

DATE OF HEARING:

DATE OF TIME:

TIME OF HEARING:

NOTICE OF MOTION

TO OFFICE OF THE ATTORNEY GENERAL AND ATTORNEY FOR PLAINTIFF,

And Department XVII, you will please take notice that the Defendant
will bring the ^{attached} ~~above~~ and foregoing Motion on for hearing before the
Court on the 27 day of Nov, 2018 at 8 o'clock 8:30 AM.

Dated this 26th day of Oct, 2018

a. I. Milton Jr.

PRO-SE.

RECEIVED

NOV 02 2018

CLERK OF THE COURT

C-17-327439-1
NOTM
Notice of Motion
4793469



P.P. DA

1 NOTM

2 ANTONIO LEE MIXON JR.

3 H.P.S.P.

4 P.O. BOX 650

5 Indian Springs, NV 89070

6 Pro - SE

FILED

NOV 02 2018

CLERK OF COURT

District Court
Clark County, Nevada

9 The State of Nevada

10 Plaintiff,

11 vs.

12 ANTONIO LEE MIXON JR.

13 DEFENDANT

CASE NUMBER C-17-327439-1

Dept. NO. 17

DATE OF HEARING:

TIME OF HEARING:

NOTICE OF MOTION

TO OFFICE OF THE ATTORNEY GENERAL, and Dept. 17 and
Attorney For Plaintiff, you will please take notice that the
SELF-Representative will bring the ^{attached} ~~above~~ and foregoing Motion
on for hearing before the court on the 27 day of Nov,
2018 at o'clock 8:30 AM

DATED this 27th day of Oct, 2018

A. K. Mixon Jr.

RECEIVED
NOV 02 2018

CLERK OF THE COURT

C-17-327439-1
NOTM
Notice of Motion
4793470



op
AA

Antonio L. Mixon ID NO. 1019028

HIGH DESERT STATE PRISON
22010 COLD CREEK ROAD
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89018

FILED

NOV 19 2018

Alvin L. Blum
CLERK OF COURT

Eighth Judicial District Court
Clark County, Nevada

Antonio LEE Mixon
Defendant
v.
The State of Nevada
Plaintiff

CASE NO.: C-17-327439-1
DEPT. NO.: XV11
DOCKET: _____

December 11, 2018 @ 8:30 AM

Motion For stay of Trial setting and/or Motion for
Time extension.

COMES NOW, Defendant, Antonio L. Mixon Pro-se, herein above respectfully
moves this Honorable Court for an Order granting a stay of trial
Setting and/or order for an extension of time to prepare
for trial.

This Motion is made and based upon the accompanying Memorandum of Points and
Authorities.

DATED: this 15th day of November, 2018

BY: Antonio LEE Mixon Sr.
A. L. Mixon Jr. # 1019028
Defendant/In Proper Personam

RECEIVED

NOV 19 2018

CLERK OF THE COURT

C-17-327439-1
MSTY
Motion to Stay
4797311



1 Memorandum of Points and Authorities

2 STATEMENT OF CASE

3 Since the granting of the Motion for Forensic Expert Witnesses
4 Defense has tried everything in its power to locate A Forensic
5 Expert. Defense attempted Consultation TWICE to Private investigator
6 to get impeaching evidence of state's witnesses and ^{to get} witnesses for
7 Defense's Defense. Defense has also tried to locate a business, company,
8 or corp./agency that will service process of subpoenas so witness
9 will attend trial. The Defendant as of today only been the
10 representation for like seven months for the Defendant in
11 this case.

13
14 Argument I.

15 Your honor as far as the Forensic Expert situation goes
16 If Defendant has to be the Forensic Expert then Defendant request
17 this court And/or state to pay for the enrollment in Stratford
18 Career Institute For Forensic Science. The course can be fitted
19 studied from a cell and a diploma can issue in as little as six months.
20 The course covers everything from processing the crime scene to
21 the fundamentals of DNA analysis, and handwriting and Document
22 examinations. It's An Affordable Education, in your honor, on
23 Your terms, Student Get 50% off the Regular tuition Price,
24 Evelyn Daymond is the Director of admissions. Can call 1-800-
25 363-0058 EXT. 9973 / www.scitraining.com. The tuition is
26 \$544.50 per program (15 monthly payments @ \$34.96). Defendant, once
27 diploma is received, charges \$2,600 for the expert opinion/testimony.

Argument II.

Your honor the issue with the evidence Defense is seeking, is the Defendant is invoking his right to impeach witnesses the state wishes to call. The credibility of a witness may be ^{attacked} ~~attacked~~ by any party, including the party calling the witness, See NRS 50.075. THE Evidence sought is the fact that the correctional officers the state wishes to call to testify in this case are participants in a wrongful death cover-up of a prison official(s) killing a prisoner and attempting to kill another prisoner. The Defense believes that since those witnesses of the state which are correctional officers are part of that type of corruption those witnesses wouldn't have a problem coming to Defendant's trial to tell a little white lie. And Evidence of character and conduct of witness can be inquired into on cross-examination for truthfulness or untruthfulness see NRS 50.085. In the event state wishes not to call said witnesses Defense ask permission of this court to call witnesses to the direct examination of Defense's case in chief to interrogate by leading questions in cross-examining said witnesses see NRS 50.115 3(a), NRS 50.115 4(a), 4(b), for the ascertainment of the truth, see NRS 50.115 3(a) also see NRS 50.115 4(a) and 4(b). Giving these arguments and the fact ^{CONCLUSION} Defendant needs time to subpoena, Defense believes this request is not for delay and this motion should be granted. Defense Request any extension of time court deems appropriate. Defendant wishes to be his own Forensic expert. Defense request that the trial setting is stayed and/or an extension of time should be granted to prepare for trial. Defense is seeking a S.E., C.E.R.T., and maybe a coroner witness(es) and a Nurse.

1 Notice of Motion / Hearing

2 to office of the Attorney General, and Dept. 17 and
3 Attorney For Plaintiff, you will please take notice that
4 the Self-representative will bring the foregoing Motion on for
5 hearing before the court on the — day of —, 2018
6 at o'clock ~~8:30~~ A.M. —: A.M..

7
8
9 DATED this 15th day of NOV. 2018,
10 in & before me,

11 Transportation order

12 IN the 8th Judicial District Court of the state of Nevada in and for
13 the County of Clark in the matter of Antonio Mixon, Defendant v.
14 state of Nevada, Defendant asks this court for an order to transport
15 and produce inmate for hearing based on the circumstances of oral argument,
16 the presence of Antonio Lee Mixon is necessary for the hearing on this Motion
17 scheduled in this case on the — day of —, 2018 at the hour of — o'clock
18 —. M. at the following address Michael P. Villani, District Judge, Eighth Judicial
19 District Court, Regional Justice Center, Dept. 17, 200 Lewis Avenue, Las Vegas, Nevada
20 89155. Therefore this court should grant the order that pursuant to NRS. 209.
21 274 and any other applicable NRS(s) • Warden Bryan E. Williams, High Desert
22 state prison, 22010 Cold Creek Rd., Indian Springs, NV 89070 should be ordered
23 to have Antonio LEE Mixon Jr. #1019628 transported to appear before
24 this court, as specified as court directs upon completion of the hearing,
25 Antonio LEE Mixon Jr. #1019628, will be and should be transported to
26 the above-named place.

27 DATED this 15th day of NOV. 2018.

CERTIFICATE OF SERVICE

I, Antonia I. Mixon, hereby certify that I am the ~~Defendant~~ ^{Defendant} ~~petitioner~~ in this matter and I am representing myself in propria persona.

On this 16th day of November, 2018, I served copies of the Motion For stay of trial Setting and/or Motion For Time extension.

in case number: C-17-327439-1 and placed said motion(s) in U.S. First Class Mail, postage pre-paid:

Address: <u>200 Lewis Avenue 3rd Floor</u>	Address: <u>555 East Washington Ave,</u>
<u>LV, NV 89155-1160</u>	<u>Suite #3900</u>
Sent to: <u>STEVEN D. BRIERSON</u>	<u>LV, NV 89101</u>
<u>clerk of the court</u>	Sent to: <u>Chelsea Kallas</u>
	<u>Deputy Attorney General</u>

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the ~~Defendant~~ ^{Defendant} ~~petitioner~~ in the above-entitled action, and he, the defendant has read the above CERTIFICATE OF SERVICE and that the information contained therein is true and correct. 28 U.S.C. §1746, 18 U.S.C. §1621.

Executed at H.D.S.P.

on this 16th day of November, 2018.

Antonia I. Mixon

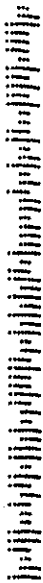
11/9/2018
DOP#

Defendant
PETITIONER -- In Proper Person

Mr. Antonio Lee Milton #7019428
P.O. Box 650
Indian Springs, NV 89070

439

6666666666



STAN D. GRIERSON, Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160



~~STAN D. GRIERSON, Clerk of the Court~~
~~200 Lewis Avenue, 3rd Floor~~
~~Las Vegas, NV 89155-1160~~
~~STAN D. GRIERSON, Clerk of the Court~~
~~200 Lewis Avenue, 3rd Floor~~
~~Las Vegas, NV 89155-1160~~

HIGH DESERT STATE PRISON
NOV 14 2018
UNIT 4 A/B

1 SMTO/JE

2 ANTONIO LEE MIXON JR.
3 SELF-REPRESENTATIVE

4 HIGH DESERT STATE PRISON

5 POST OFFICE BOX 650

6 INDIAN SPRINGS, NEVADA 89070

FILED

DEC 04 2018

John L. Blum
CLERK OF COURT

7 Eighth Judicial District Court
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA

CASE NO. C-17-327439-1

10 PLAINTIFF,

DEPT. XVII

11 VS.

12 ANTONIO LEE MIXON

13 DEFENDANT.

14

15 SUPPLEMENT TO MOTION TO DISMISS AND SUPPLEMENT TO JURY
16 INSTRUCTIONS OF THE DEFENDANTS.

17 EXHIBIT H "MEMO" ATTACHED

18 COMES NOW, ANTONIO L. MIXON JR., DEFENDANT THROUGH SELF-
19 REPRESENTATION AND MOVES THIS HONORABLE COURT FOR AN ORDER GRANTING
20 DEFENDANT A DISMISSAL OF THIS CASE IN WHOLE OR IN PART OR IN THE
21 ALTERNATIVE AN ORDER GRANTING JURY INSTRUCTIONS.

22 THIS MOTION IS BASED ON ALL PAPERS AND PLEADINGS
23 ON FILE AND THE MEMORANDUM OF POINTS AND AUTHORITIES HEREIN AND
24 ANY ORAL ARGUMENT THE COURT MAY ALLOW AT THE TIME OF HEARING.
25 AND EXHIBIT H ATTACHED. SUBMITTED BY: MIXON, ANTONIO

26 A. L. MIXON JR.

27 DATED THIS: 11/29/2018

28 RECEIVED

DEC - 4 2018

C-17-327439-1
SUPPL
Supplement
4800867



CLERK OF THE COURT

441

1 OF 6

25

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF ~~THE~~ FACTS

NOVEMBER 20, 2018, ON OR ABOUT, THE DEFENDANT PRESENT IN COURT
DEFENDANT MOTION TO DISMISS WAS STAYED UNTIL MARCH 05, 2019
ORDERED BY THE COURT FOR DEFENDANT TO FILE SUPPLEMENTAL TO DEFENDANT'S
MOTION TO DISMISS FOR COURT TO CONSIDER MEMORANDUM. THIS
INSTANT MOTION FOLLOWS AND EXHIBIT MEMORANDUM ATTACHED, IN
SUPPORT OF BOTH DEFENDANT'S SUPPLEMENTAL TO MOTION TO DISMISS
OF DEFENDANT'S AND DEFENDANT'S SUPPLEMENTAL TO DEFENDANT'S
MOTION FOR JURY INSTRUCTIONS.

Argument I

MOTION TO DISMISS

COURT THERE IS NO CONTROLLING PRECEDENT FOR THE COURT TO WGH
IN COURTS DEFERENCE WHICH THE GRANTING OF THIS MOTION IS OF THE
COURTS DISCRETION IN THAT THE UNITED STATES SUPREME COURT HAS NOT EVER
VENTURED AN EXAMPLE OF SUCH CIRCUMSTANCES. THE EXAMPLE THE
SUPREME COURT MENTIONED THEY HAVE YET TO VENTURE IS A PRISONER
SUBJECTED TO A CRIMINAL PROSECUTION RATHER A DELAYED RELEASE
FROM THE PAROLE BOARD WITHOUT ANY PROCEDURE OR NOT ENOUGH
PROCEDURE SUCH AS A NOTICE FROM PRISON TO PRISONER IN REGARDS
TO A LOSS OF LIBERTY FOR MANY YEARS VIOLATES DUE-PROCESS. THE EXAMPLE
MENTIONED ABOVE EXISTS IN THIS INSTANT CASE. WHAT'S MORE STRIKING
IS COUPLED WITH THAT EXAMPLE IS THAT THE DEFENDANT WAS ISSUED
THE ATTACHED MEMORANDUM STATING THAT THE EXAMPLE SUPREME COURT
HAS YET TO VENTURE DEFENDANT IS TO BE FREE FROM AND THAT IT WOULDN'T
COMMENCE AND YET THE STATE COMMENCED A CRIMINAL PROSECUTION
REGARDLESS OF THE FACTS ABOVE AND IN TOTAL DISREGARD OF
THE CONSTITUTION OF THE STATE AND AMERICA.

MEMORANDUM OF POINTS AND AUTHORITIES CONTINUED

ARGUMENT I CONTINUED

TWO important Supreme Court cases govern due-process rights for prisoners THE DEFENSE WANTS THE COURT TO LOOK AT: THE FIRST CASE WOLFF V. McDONNELL, 418 U.S. 539 (1974). THE SECOND important case is Scadin v. Connor, 515 U.S. 472 (1995). IN SCADIN, 515 U.S. 472 (1995) the decision in WOLFF was sharply limited and set a higher standard that you have to meet in order to show that you have a liberty interest.

THIS INSTANT DEFENDANT MIXON'S CASE exceeds the higher standard that has to be met in Scadin, 515 U.S. 472 (1995).

COURT ONCE THIS COURT READS THE EXHIBIT MEMORANDUM THATS ATTACHED DEFENSE believes considering THAT, THIS MOTION, THE INITIAL MOTION TO DISMISS IT IS CONCLUDED THAT THIS CASE IS TO BE DISMISSED REGARDLESS OF ANY ARGUMENT OF THE STATE.

ARGUMENT II.

MOTION FOR JURY INSTRUCTIONS

THE SAME EXHIBIT MEMORANDUM IS USED TO support grounds THAT THE JURY INSTRUCTION FOR THE BATTERY charge be granted IN THE EVENT COURT DENIES DEFENDANTS MOTION TO DISMISS CASE.

Conclusion

(1) Relief Sought From Defense is This case be dismissed with prejudice.

(2) A. The institutional transfer From Medium/MAX custody TO A Super MAX custody be reversed.

B. The Restitution that's been "TO BE DETERMINED" For almost THREE YEARS be reversed.

THE RELIEF in Subsection 1, 2 (A), 2 (B) THE MEMORANDUM Supports EXHIBIT MEMORANDUM Supports THAT RELIEF Should be granted.

C. The parole referral be reversed.

THIS COURT has Jurisdiction to order such relief pursuant to Edwards v. Balisok, 520 U.S. 641 (1997), IN Edwards v. Balisok, 520 U.S. 641 (1997) the Court held that the results of a disciplinary hearing can be reversed in a state proceeding AND the relief sought ABOVE should be and could be granting EVEN though some of the relief Sought affects Prisoner's length OF CONFINEMENT, coupled with any other Jurisdiction COURT CAN USE TO GRANT ALL THE RELIEF Sought.

IN ALTERNATIVE GRANT THE JURY

INSTRUCTIONS IN THE EVENT COURT DENIES THE RELIEF ABOVE LINE 20 OF THIS CONCLUSION.

NOTICE OF HEARING / MOTION

TO: STATE OF NEVADA ATTORNEY GENERAL, ATTORNEY
FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE
THAT THE DEFENDANT WILL BRING THE
ABOVE AND FORGOING MOTION ON FOR
HEARING BEFORE THE COURT ON THE DATE
AND TIME OF DEC. 11, 2018 8:30 a.m. OR
MARCH 05, 2019 AT 8:30 a.m.

DATED THIS 29th day of NOV., 2018.

L. Z. Mison Jr.

Self-Representative

CERTIFICATE OF SERVICE BY MAILING

I HEREBY CERTIFY THAT SERVICE OF THE ABOVE AND FORGOING
MOTION WAS MAILED TO THE FOLLOWING ADDRESSES ON THIS
29th day of NOVEMBER, 2018:

Chelsea N. Kallas	STEVEN D. BRIPSON,
Deputy Attorney General	clerk of the court
OFFICE OF ATTORNEY GENERAL	200 LEWIS AVENUE, 3 rd FLOOR
555 WASHINGTON AVE., SUITE #3900	LAS VEGAS, NEVADA 89155-1160
LAS VEGAS, NEVADA 89101-1068	

Transportation order

ANTONIO LEE MISON JR. #1019828

High Desert State Prison

22010 COLD CREEK RD.

POST OFFICE BOX 650

INDIAN SPRINGS, NEVADA 89070

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF

Transportation order Continued

NEVADA IN AND FOR THE COUNTY OF CLARK IN THE MATTER
OF ANTONIO LEE MIXON JR., DEFENDANT V. STATE OF NEVADA,
DEFENDANT ASK THIS COURT FOR AN ORDER TO HAVE HIGH DESERT STATE
PRISON TRANSPORT AND PRODUCE INMATE FOR HEARING BASED ON THE
CIRCUMSTANCES OF ORAL ARGUMENT AND DEFENDANT'S PRESENCE
IS NEEDED AT EVERY HEARING GIVEN THE FACT DEFENDANT IS THE
ATTORNEY IN THIS INSTANT CASE, THE PRESENCE OF ANTONIO LEE
MIXON IS NECESSARY FOR THE HEARING ON THIS MOTION ATTACHED
THAT PRECEDES THIS ORDER SCHEDULED IN THIS INSTANT CASE
ON DEC 11, 2018 AT 8:30AM AND/OR MARCH 05, 2019 AT
8:30AM, AT THE FOLLOWING ADDRESS: JUDGE MICHAEL P. VILLARI,
DISTRICT JUDGE, DEPT. XVII, EIGHTH JUDICIAL DISTRICT COURT,
REGIONAL JUSTICE CENTER, 200 LEWIS AVENUE, LAS VEGAS, NEVADA 89155.
THEREFORE THIS COURT SHOULD GRANT THIS ORDER PURSUANT TO
NRS 209.274 AND ANY OTHER APPLICABLE TRANSPORTATION & PRISONER
STATUTES THAT WARDEN BRIAN E. WILLIAMS AT HIGH DESERT STATE
PRISON, 20010 COLD CREEK RD., INDIAN SPRINGS, NEVADA 89070
SHOULD BE ORDERED TO HAVE WARDEN BRIAN E. WILLIAMS TRANSPORT
ANTONIO LEE MIXON TO APPEAR BEFORE THIS COURT, AS SPECIFIED AS
COURT DIRECTS. UPON COMPLETION OF THE HEARING DEFENDANT
WILL BE AND SHOULD BE TRANSPORTED TO THE ABOVE-NAMED
INSTITUTION.

Michael P. Villari,
DISTRICT JUDGE



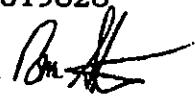
**STATE OF NEVADA
DEPARTMENT OF CORRECTIONS**

High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070-0208
Phone (702)-879-6789 Fax (702)-879-6518
D.W. NEVEN
WARDEN



1D-22A

MEMORANDUM

TO: Mixon, Antonio NDOC #1019828
FROM: B. Stroud, Acting Warden 
DATE: December 23, 2015
RE: Disciplinary Appeal/Grievance 2006-30-13886

CHARGES:

- MJ-10- Security threat Group Activities: A validated Security Threat Group member who has engaged or is engaging in criminal activities, threatens the order and security of the institution and/or promotes racism. (Class A)
- MJ-26- Possession of contraband, including items that present a threat to safety and security of the institutions, excluding drugs or drug paraphernalia. (Class A).
- MJ-41- Gathering around, blocking, or impeding any correctional employee or visitor, in a threatening or intimidating manner and exhibiting conduct, which causes the person to fear for his safety. (Class A)
- MJ-2- Assault: unlawful attempt coupled with present ability to commit a violent injury on the person of another. (Class A)

FINDINGS: On 12/07/2015 you appeared before Disciplinary Hearing Officer Sgt. Barth and were found guilty of MJ-10 Gang activities, MJ-26 Possession of contraband, MJ-41 blocking/Threatening Staff & MJ-2 Assault.

SANCTIONS:

- 24 months Disciplinary Segregation for MJ-2. 18 months Disciplinary Segregation for the MJ-26. 18 months Disciplinary Segregation for MJ-41. 18 months Disciplinary Segregation for MJ-10.
- Stat A Loss Referral for MJ-26, Stat Loss Referral for MJ-41, Stat Loss Referral for the MJ-10, Stat A Loss referral for MJ-2
- Property Forfeiture for MJ-26
- Restitution

- Attorney General Referral
- Institutional Transfer

BASIS FOR APPEAL:

- Inmate claims that the sanctions are extremely harsh.
- Inmate claims that there is nothing in the officer's report to support the finding of guilty for any of the charges.
- Inmate claims that he never had an altercation or incident with C/O Brown

WARDEN'S FINDINGS:

- The Hearing Officer's decision was based on Officer's Report and pictures. The inmate hit the officer with a rock and through several rocks at the officers, then pulled out a prison made weapon (shank out of his shoe) and threatened the officer with it. However after review of the sanctions the MJ-2, MJ-10, MJ-26 & MJ-41; you will receive 24 months Total & Stat A Loss referral.
- The Hearing Officer conducted the disciplinary hearing in accordance with AR707.
- **WARDEN'S DECISION:** The decision of the Hearing Officer is upheld with changes to sanction: MJ-2, MJ-10, MJ-26 & MJ-41 you will receive 24 months Total & Stat A Loss referral.

cc: grievance file



State of Nevada
Department of Corrections

INMATE GRIEVANCE REPORT

ISSUE ID# 20063013886

ISSUE DATE: 12/18/2015

INMATE NAME		NDOC ID	TRANSACTION TYPE	ASSIGNED TO	
MIXON, ANTONIO LEE		1019828	RTRN_L1	BSTROUD	
LEVEL	TRANSACTION DATE	DAYS LEFT	FINDING	USER ID	STATUS
1	03/11/2016		Denied	MVELEZ	A

INMATE COMPLAINT

OFFICIAL RESPONSE

On 12/07/2015 you appeared before Disciplinary Hearing Officer Sgt. Barth and were found guilty of MJ-10 Gang activities, MJ-26 Possession of contraband, MJ-41 blocking/Threatening Staff & MJ-2 Assault.

- * 24 months Disciplinary Segregation for MJ-2. 18 months Disciplinary Segregation for the MJ-26. 18 months Disciplinary Segregation for MJ-41. 18 months Disciplinary Segregation for MJ-10.
- * Stat A Loss Referral for MJ-26, Stat Loss Referral for MJ-41, Stat Loss Referral for the MJ-10, Stat A Loss referral for MJ-2
- * Property Forfeiture for MJ-26
- * Restitution
- * Attorney General Referral
- * Institutional Transfer

The decision of the Hearing Officer is upheld with changes to sanction: MJ-2, MJ-10, MJ-26 & MJ-41 you will receive 24 months Total & Stat A Loss referral.


GRIEVANCE RESPONDER

Report Name: NVRIGR
Reference Name: NOTIS-RPT-OR-0217.2
Run Date: MAR-23-16 11:28 AM

Page 3 of 3

STATE000450

NEVADA DEPARTMENT OF CORRECTIONS
FIRST LEVEL GRIEVANCE

NAME: MILAN, ANTONIO I.D. NUMBER: 1019820

INSTITUTION: H.O.S.P. UNIT: 1 D-22

I REQUEST THE REVIEW OF THE GRIEVANCE, LOG NUMBER _____, IN A FORMAL MANNER. THE ORIGINAL COPY OF MY GRIEVANCE AND ALL SUPPORTING DOCUMENTATION IS ATTACHED FOR REVIEW.

SWORN DECLARATION UNDER PENALTY OF PERJURY

INMATE SIGNATURE: _____ DATE: 12/17/15

WHY DISAGREE: THE FINDINGS OF GUILT ARE IN ERROR INMATE
MILAN IS INNOCENT OF M32, M34, M326, M310. THE
SANCTIONS ARE EXTREMELY HARSH AND CRUEL AND
UNUSUAL PUNISHMENT IN VIOLATION OF THE 8TH U.S.C.A.
DATE OF SERVICE OF NOTICE OF CHARGES IS 12/04/2015

GRIEVANCE COORDINATOR SIGNATURE: [Signature] DATE: 12-18-15

FIRST LEVEL RESPONSE: _____

_____☒ GRIEVANCE UPHeld ☐ GRIEVANCE DENIED ☐ ISSUE NOT GRIEVABLE PER AR 740

WARDEN'S SIGNATURE: [Signature] TITLE: WARDEN DATE: 3/28/16

GRIEVANCE COORDINATOR SIGNATURE: [Signature] DATE: 3/17/16

_____☒ INMATE AGREES ☐ INMATE DISAGREES

INMATE SIGNATURE: _____ DATE: 04/13/16

FAILURE TO SIGN CONSTITUTES ABANDONMENT OF THE CLAIM. A SECOND LEVEL GRIEVANCE MAY BE PURSUED IN THE EVENT THE INMATE DISAGREES.

Original: To inmate when complete, or attached to formal grievance
Canary: To Grievance Coordinator
Pink: Inmate's receipt when formal grievance filed
Gold: Inmate's initial receipt

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451

NEVADA DEPARTMENT OF CORRECTIONS FIRST LEVEL GRIEVANCE

NAME: David M. Davis I.D. NUMBER: 10000INSTITUTION: H.D.S.P. UNIT: 10-23

I REQUEST THE REVIEW OF THE GRIEVANCE, LOG NUMBER _____, IN A FORMAL MANNER. THE ORIGINAL COPY OF MY GRIEVANCE AND ALL SUPPORTING DOCUMENTATION IS ATTACHED FOR REVIEW.

SWORN DECLARATION UNDER PENALTY OF PERJURY

INMATE SIGNATURE: _____ DATE: 12/17/15

WHY DISAGREE: The findings of guilt are in error and
did not meet M32, M33, M34, M35, M36, M37, M38, M39, M40, M41, M42
and are extremely harsh and cruel and
Unusual punishment in violation of the 8th U.S. Const.
Bill of Rights. NOTICE OF CHARGES 11/12/15

GRIEVANCE COORDINATOR SIGNATURE: _____ DATE: 12/17/15

FIRST LEVEL RESPONSE: _____

_____ GRIEVANCE UPHELD ☒ _____ GRIEVANCE DENIED _____ ISSUE NOT GRIEVABLE PER AR 740

WARDEN'S SIGNATURE: _____ TITLE: _____ DATE: 12/17/15GRIEVANCE COORDINATOR SIGNATURE: _____ DATE: 12/17/15

_____ INMATE AGREES ☒ _____ INMATE DISAGREES

INMATE SIGNATURE: _____ DATE: 12/17/15

FAILURE TO SIGN CONSTITUTES ABANDONMENT OF THE CLAIM. A SECOND LEVEL GRIEVANCE MAY BE PURSUED IN THE EVENT THE INMATE DISAGREES.

Original: To inmate when complete, or attached to formal grievance
 Canary: To Grievance Coordinator
 Pink: Inmate's receipt when formal grievance filed
 Gold: Inmate's initial receipt

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452

12/17/15

NEVADA DEPARTMENT OF CORRECTIONS
GRIEVANT'S STATEMENT CONTINUATION FORM

NAME: Mixon, Antonio I.D. NUMBER: 1019826

INSTITUTION: HDSP UNIT #: 1D-22

GRIEVANCE #: _____ GRIEVANCE LEVEL: Disciplinary Appeal

GRIEVANT'S STATEMENT CONTINUATION: PG. 1 OF 1

INMATE MIXON DIDN'T RECEIVE ALL DISCIPLINARY
FORMS UNTIL ONE OR TWO DAYS BEFORE TODAY'S
DATE. OFFICER BARTH MENTIONED 15 DAYS TO
APPEAL DURING THE RECORDED PROCEEDING. THERES
NOTHING IN THE OFFICERS REPORT TO SUPPORT
THE FINDING OF GUILT FOR M52. THERES NOTHING
IN THE OFFICERS REPORT TO SUPPORT A FINDING
OF GUILT FOR M34. THERES NOTHING IN THE OFFICERS
REPORT TO SUPPORT THE FINDING OF GUILT FOR M526.
THERES NOTHING IN THE OFFICERS REPORT TO SUPPORT
THE FINDING OF GUILT FOR M510. THE BEHAVIORAL
CHARACTERISTICS THAT CAN BE DERIVED FROM
THE OFFICERS REPORT (IN THE EVENT, ^{IF} WERE TRUE)
THAT WOULD CONSTITUTE A MENTAL EVALUATION IS
SOLELY UP TO THE MEDICAL DEPARTMENT. THE RESTITUTION
IS A P. SCHEME. RESPECTFULLY SUBMITTED.

Original: Attached to Grievance
Pink: Inmate's Copy

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HDSP

DOC - 3097 (01/02)

453

Log Number 20063013886

NEVADA DEPARTMENT OF CORRECTIONS
INFORMAL GRIEVANCE

NAME: Mixon, Antonio I.D. NUMBER: 1019878

INSTITUTION: H.D.S.P UNIT: 1D

GRIEVANT'S STATEMENT: _____

"FOR TRACKING PURPOSES ONLY"

SWORN DECLARATION UNDER PENALTY OF PERJURY

INMATE SIGNATURE: _____ DATE: 12/17/15 TIME: _____

GRIEVANCE COORDINATOR SIGNATURE: JNcm DATE: 12-18-15 TIME: 10³⁰ AM

GRIEVANCE RESPONSE: Tracking

CASEWORKER SIGNATURE: _____ DATE: _____

☐ GRIEVANCE UPHELD ☐ GRIEVANCE DENIED ☐ ISSUE NOT GRIEVABLE PER AR 740

GRIEVANCE COORDINATOR APPROVAL: JNcm DATE: 12-18-15

☐ INMATE AGREES ☐ INMATE DISAGREES

INMATE SIGNATURE: _____ DATE: _____

FAILURE TO SIGN CONSTITUTES ABANDONMENT OF THE CLAIM. A FIRST LEVEL GRIEVANCE MAY BE PURSUED IN THE EVENT THE INMATE DISAGREES.

Original: To inmate when complete, or attached to formal grievance
Canary: To Grievance Coordinator
Pink: Inmate's receipt when formal grievance filed
Gold: Inmate's initial receipt

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DOC 3091-4541

Log Number 20003013886

NEVADA DEPARTMENT OF CORRECTIONS
INFORMAL GRIEVANCE

NAME: Mison, Antonio I.D. NUMBER: 1019828

INSTITUTION: H.D.S.P UNIT: 10

GRIEVANT'S STATEMENT: _____

"FOR TRACKING PURPOSES ONLY"

SWORN DECLARATION UNDER PENALTY OF PERJURY

INMATE SIGNATURE: _____ DATE: 12/18/15 TIME: _____

GRIEVANCE COORDINATOR SIGNATURE: JNcm DATE: 12-18-15 TIME: 10:30 AM

GRIEVANCE RESPONSE: Tracking

CASEWORKER SIGNATURE: _____ DATE: _____

___ GRIEVANCE UPHELD ___ GRIEVANCE DENIED ___ ISSUE NOT GRIEVABLE PER AR 740

GRIEVANCE COORDINATOR APPROVAL: JNcm DATE: 12-18-15

___ INMATE AGREES ___ INMATE DISAGREES

INMATE SIGNATURE: _____ DATE: _____

FAILURE TO SIGN CONSTITUTES ABANDONMENT OF THE CLAIM. A FIRST LEVEL GRIEVANCE MAY BE PURSUED IN THE EVENT THE INMATE DISAGREES.

- Original: To inmate when complete, or attached to formal grievance
- Canary: To Grievance Coordinator
- Pink: Inmate's receipt when formal grievance filed
- Gold: Inmate's initial receipt

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DOC 3091 455(1)

Log Number 5000313000

NEVADA DEPARTMENT OF CORRECTIONS
INFORMAL GRIEVANCE

NAME: Maria Antone I.D. NUMBER: 1019970

INSTITUTION: H.A.S.P. UNIT: 1D

GRIEVANT'S STATEMENT: _____

"For Tracking purposes only"

SWORN DECLARATION UNDER PENALTY OF PERJURY

INMATE SIGNATURE: _____ DATE: 12/12/15 TIME: _____

GRIEVANCE COORDINATOR SIGNATURE: [Signature] DATE: 12-12-15 TIME: 10:30 AM

GRIEVANCE RESPONSE: Tracking

CASEWORKER SIGNATURE: _____ DATE: _____

☐ GRIEVANCE UPHELD ☐ GRIEVANCE DENIED ☐ ISSUE NOT GRIEVABLE PER AR 740

GRIEVANCE COORDINATOR APPROVAL: [Signature] DATE: 12-12-15

☐ INMATE AGREES ☐ INMATE DISAGREES

INMATE SIGNATURE: _____ DATE: _____

FAILURE TO SIGN CONSTITUTES ABANDONMENT OF THE CLAIM. A FIRST LEVEL GRIEVANCE MAY BE PURSUED IN THE EVENT THE INMATE DISAGREES.

- Original: To inmate when complete, or attached to formal grievance
- Canary: To Grievance Coordinator
- Pink: Inmate's receipt when formal grievance filed
- Gold: Inmate's initial receipt

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DOC 3091 (456)



State of Nevada
Department of Corrections

DISCIPLINARY FORM I
NOTICE OF CHARGES

INMATE INFORMATION	VIOLATION INFORMATION
INMATE NAME: MIXON, ANTONIO 1019828	CHARGING EMPLOYEE SC/O Ontiveros
CURRENT LOCATION: HDSP-U1-D-22-A; :NC	DATE OF INCIDENT: 12/04/2015
OIC#: 400461	DATE CHARGES WRITTEN: 12/04/2015

CHARGES AND EVIDENCE			
Chrg	Description	Evidence	Evidence Disposition
MJ2:	Assault		
MJ41:	Blocking / Threatening Staff		
MJ26:	Possession of contraband	photo	imported into OIC
MJ10:	Gang Activities	validated Crip	

REPORT OF VIOLATION

On December 4, 2015 at approximately 0900, I Senior Correctional Officer (SC/O) D. Ontiveros was assigned to unit 6C/D floor. While supervising yard, Officer Mcaninch and myself noticed and inmate, later identified as Mixon, Antonio #1019828, housed in cell 6D-27A, pacing the yard and acting as if he was upset with someone or something. I advised Officer Mcaninch to keep an eye on him. After stating this, inmate Mixon approached us in an aggressive manner and Within approximately 10 to 15 feet from us picked up a good sized rock, then threw it in our direction, hitting me in the lower abdomen. Officer Mcaninch and I then pursued him to where he backed up and reached down and picked up another rock. He again threw it in our direction, hitting me on my upper left thigh. Officer Mcaninch and I quickened the pace driving him towards the walkway in front of unit 5A/B. Mixon then reached down and picked up a hand full of dirt threw it in our direction, then removed his left shoe, reached inside of it and brandished a prison made weapon (shank). I immediately removed the OC spray from my belt and gave inmate Mixon several orders to get on the ground to which he refused. Once he heard the responding Officers yell out to the yard to get on the ground, Mixon complied then dropped the weapon to ground. I then placed my right knee on his upper back between his shoulder blade, holding his right wrist in a wrist-lock until wrist restraint could be applied. -End of Report-

CHARGING EMPLOYEE SIGNATURE	SUPERVISOR SIGNATURE

SERVICE OF NOTICE OF CHARGES	DISTRIBUTION
DATE OF SERVICE: 12/7/15 TIME OF SERVICE: 0855	Primary Hearing Officer (Original)
PRINTED NAME OF HEARING OFFICER Remero EM	Charging employee (Copy)
SIGNATURE OF HEARING OFFICER	Inmate (Copy)
SIGNATURE OF INMATE	

(Signature indicates receipt of notice only. It is not a plea; refusal to sign should be noted)



State of Nevada
Department of Corrections

DISCIPLINARY FORM II
SUMMARY OF HEARING OFFICER'S INQUIRY AND DISPOSITION

INMATE INFORMATION		HEARING INFORMATION	
INMATE NAME:	MIXON, ANTONIO 1019828	DATE OF HEARING	12/07/2015 TIME OF HEARING 08:59 am
CURRENT LOCATION:	HDSP-U1-D-22-A::NC	NAME OF HEARING OFFICER	ROMERO, ERIC
OIC#:	400461	DATE OF SERVICE OF NOTICE OF CHARGES:	12/04/2015

IF LATE, PROVIDE EXPLANATION OF EXCEPTIONAL CIRCUMSTANCE

Within Timeframe

CHARGES		
Chrg	Description	Plea
MJ2	Assault	Not Guilty
MJ41	Blocking / Threatening Staff	Not Guilty
MJ26	Possession of contraband	Not Guilty
MJ10	Gang Activities	Not Guilty

PRELIMINARY STATEMENT OF OFFENDER

I would like to remain silent

PRELIMINARY INSTITUTION PRESENTATION

PRELIMINARY HEARING OFFICER ACTION

Chrg	Description	RChrg	Description	Finding
MJ2	Assault	MJ2	Assault	Refer to Disciplinary Hearing
MJ41	Blocking / Threatening Staff	MJ41	Blocking / Threatening Staff	Refer to Disciplinary Hearing
MJ26	Possession of contraband	MJ26	Possession of contraband	Refer to Disciplinary Hearing
MJ10	Gang Activities	MJ10	Gang Activities	Refer to Disciplinary Hearing

RESULTS OF INFORMAL SUMMARY HEARING

Line	Description	Mths	Days	Eff. Date	End Date	SSL	Rest. Act	Penalty Comment
------	-------------	------	------	-----------	----------	-----	-----------	-----------------

EVIDENCE RELIED ON FOR PRELIMINARY HEARING

Date	UserName	Statement
12/07/2015	S C/O Romero E.	Officer's report, weapon recovered and booked into the evidence vault, video recording of the aftermath of incident, Officer's injuries resulting in a C-1 packet needing to be filled out

ADVISEMENT TO DISCIPLINARY COMMITTEE

Counsel Substitute Requested: ☐ Name of Counsel Substitute: no

WITNESS INFORMATION

Witness Decision Justification:	Name	NDOC/ID#	Decision	Reason	Table
Not at this time					

Report Name: NVRSID
Reference Name: NOTIS-RPT-OR-0062.8
Run Date: DEC-14-15 11:38 AM

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Revised
DEC 16 2015
H458



State of Nevada
Department of Corrections

DISCIPLINARY FORM II

SUMMARY OF HEARING OFFICER'S INQUIRY AND DISPOSITION

INMATE INFORMATION		HEARING INFORMATION	
INMATE NAME:	MIXON, ANTONIO 1019828	DATE OF HEARING	12/07/2015 TIME OF HEARING 08:59 am
CURRENT LOCATION:	HDSP-U1-D-22-A::NC	NAME OF HEARING OFFICER	ROMERO, ERIC
OIC#:	400461	DATE OF SERVICE OF NOTICE OF CHARGES:	12/04/2015

SIGNATURES AND RECEIPT		DISTRIBUTION	
DATE OF SERVICE: _____	TIME OF SERVICE: _____	Primary Hearing Officer (Original)	
PRINTED NAME OF HEARING OFFICER _____		Charging employee (Copy)	
SIGNATURE OF HEARING OFFICER _____		Inmate (Copy)	
SIGNATURE OF INMATE _____			

(Signature indicates receipt only. It is not a plea; refusal to sign should be noted)

Report Name: NVRSID
Reference Name: NOTIS-RPT-OR-0062.8
Run Date: DEC-14-15 11:38 AM

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Department of Corrections

DISCIPLINARY FORM III
SUMMARY OF DISCIPLINARY HEARING

INMATE INFORMATION	HEARING INFORMATION
INMATE NAME: MIXON, ANTONIO 1019828	DATE OF HEARING 12/07/2015 TIME OF HEARING 09:09 am
CURRENT LOCATION: HDSP-U1-D-22-A::NC	NAME OF HEARING OFFICER: BARTH, JAY
LOCATION OF INCIDENT HIGH DESERT STATE PRISON Unit 6 Recreation	DATE OF SERVICE OF NOTICE OF CHARGES: 12/04/2015
OIC#: 400461	CHARGING EMPLOYEE: MCKEEHAN, KEITH

CHARGES AND PLEAS			ADDITIONAL HEARING INFORMATION
Chrg	Description	Plea	Counsel Substitute Requested: <input type="checkbox"/>
MJ2	Assault	Not Guilty	Name of Counsel Substitute:
MJ41	Blocking / Threatening Staff	Not Guilty	Proceeding Recorded: <input checked="" type="checkbox"/>
MJ26	Possession of contraband	Not Guilty	Stat Forfeiture Possible: <input checked="" type="checkbox"/>
MJ10	Gang Activities	Not Guilty	Potential Category: <input type="checkbox"/>
			Offender Cautioned Regarding Possible Criminal Charges and Right to Remain Silent: <input checked="" type="checkbox"/>

WITNESS INFORMATION				
Name	NDOC/ID#	Decision	Reason	Table
CONFIDENTIAL INFORMATION (CI) CHECKLIST (BOTH A & B MUST BE 'YES' TO RELY ON CI)				
A CI RELIABLE <input type="checkbox"/> CHECK AT LEAST ONE BOX BELOW				
<input type="checkbox"/>	INVESTIGATION OFFICER TESTIFIES PERSONALLY AS TO THE TRUTHFULNESS OF THE CONFIDENTIAL INFORMATION IN HIS REPORT.			
<input type="checkbox"/>	CORROBORATING TESTIMONY			
<input type="checkbox"/>	DISCIPLINARY CHAIR HAS FIRST HAND KNOWLEDGE OF SOURCE AND SOURCE HAS BEEN RELIABLE IN THE PAST			
<input type="checkbox"/>	IN-CAMERA REVIEW OF DOCUMENTS FOUND RELIABLE			
B STATEMENT BY CORRECTIONAL OFFICIAL: SAFETY PREVENTS DISCLOSURE OF CI <input type="checkbox"/>				

DISCIPLINARY STATEMENT OF OFFENDER		
I AM WILLING TO WAIVE MY RIGHTS TO 24 HR BETWEEN PH AND DH. I HAVE THE RIGHT TO REMAIN SILENT.		
INSTITUTION PRESENTATION		
EVIDENCE RELIED ON FOR DISCIPLINARY HEARING		
Date	UserName	Statement
12/07/2015	SGT BARTH	OFFICER REPORT AND PICTURES

Report Name: NVRSDH
Reference Name: NOTIS-RPT-OR-0066.9
Run Date: DEC-14-15 11:38 AM

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State of Nevada Department of Corrections

DISCIPLINARY FORM III SUMMARY OF DISCIPLINARY HEARING

INMATE INFORMATION		HEARING INFORMATION	
INMATE NAME:	MIXON, ANTONIO 1019828	DATE OF HEARING	12/07/2015 TIME OF HEARING 09:09 am
CURRENT LOCATION:	HDSP-U1-D-22-A; NC	NAME OF HEARING OFFICER:	BARTH, JAY
LOCATION OF INCIDENT	HIGH DESERT STATE PRISON Unit 6 Recreation	DATE OF SERVICE OF NOTICE OF CHARGES:	12/04/2015
OIC#:	400461	CHARGING EMPLOYEE:	MCKEEHAN, KEITH

DISCIPLINARY HEARING ACTION				
Chrg	Description	RChrg	Description	Finding
MJ2	Assault	MJ2	Assault	Guilty
MJ2	Assault	MJ2	Assault	Refer to Disciplinary Hearing
MJ41	Blocking / Threatening Staff	MJ41	Blocking / Threatening Staff	Guilty
MJ41	Blocking / Threatening Staff	MJ41	Blocking / Threatening Staff	Refer to Disciplinary Hearing
MJ26	Possession of contraband	MJ26	Possession of contraband	Guilty
MJ26	Possession of contraband	MJ26	Possession of contraband	Refer to Disciplinary Hearing
MJ10	Gang Activities	MJ10	Gang Activities	Guilty
MJ10	Gang Activities	MJ10	Gang Activities	Refer to Disciplinary Hearing

RESULTS OF DISCIPLINARY HEARING								
Line	Description	Mths	Days	Eff. Date	End Date	SSL	Rest. Act	Penalty Comment
12	REST			12/07/2015			ALL_RES T	Your account will be frozen until the amount is determined and posted
13	AG_REF			12/07/2015				
14	DS	24		12/07/2015	12/07/2017			
15	INST_TRN			12/07/2015				
16	STAT_REF			12/07/2015				STAT A
20	DS	18		06/07/2019	12/07/2020			
21	STAT_REF			12/07/2015				
17	DS	18		12/07/2017	06/07/2019			
18	STAT_REF			12/07/2015			ALL_RES T	Your account will be frozen until the amount is determined and posted
19	PRP_FORT			12/07/2015				
22	DS	18		12/07/2020	06/07/2022			
23	STAT_REF			12/07/2015				

ANCILLARY INFORMATION AND INSTRUCTIONS	
<input checked="" type="checkbox"/>	STAT FORFEITURE REFERRAL
<input type="checkbox"/>	RECOMMENDED CATEGORY
<input checked="" type="checkbox"/>	POST DISCIPLINARY CLASSIFICATION

Report Name: NVRSDH
Reference Name: NOTIS-RPT-OR-0066.9
Run Date: DEC-14-15 11:38 AM

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State of Nevada
Department of Corrections

DISCIPLINARY FORM III
SUMMARY OF DISCIPLINARY HEARING

INMATE INFORMATION	HEARING INFORMATION
INMATE NAME: MIXON, ANTONIO 1019828	DATE OF HEARING 12/07/2015 TIME OF HEARING 09:09 am
CURRENT LOCATION: HDSP-U1-D-22-A::NC	NAME OF HEARING OFFICER: BARTH, JAY
LOCATION OF INCIDENT HIGH DESERT STATE PRISON Unit 6 Recreation	DATE OF SERVICE OF NOTICE OF CHARGES: 12/04/2015
OIC#: 400461	CHARGING EMPLOYEE: MCKEEHAN, KEITH

HEARING QUESTIONS:

Inmate Defendant Present?	Yes
Counsel Substitute Requested	No
Stat forfeiture possible?	
Proceedings Recorded?	Yes
Stat Referral Sent	Yes
Recommended Category?	Cat A
Potential Category?	CAT A
Cautioned for Possible Criminal Charges?	Yes
Reminded of Right to Remain Silent?	Yes
Corroboration Testimony for CI Info?	No
Does Investigator Validate CI?	No
Does Chair Validate CI Source?	No
Are CI Documents Reliable?	No
Does Safety Prevent Disclosure of CI?	No
Was CI Info Accepted?	No
Parole Board Referral?	Yes
Post Disciplinary Classification?	Yes
Director Review Required?	Yes
Does the offender want a witness	Was asked and does not want a witness

HEARING ANSWERS:

Report Name: NVRSDH
Reference Name: NOTIS-RPT-OR-0066.9
Run Date: DEC-14-15 11:38 AM

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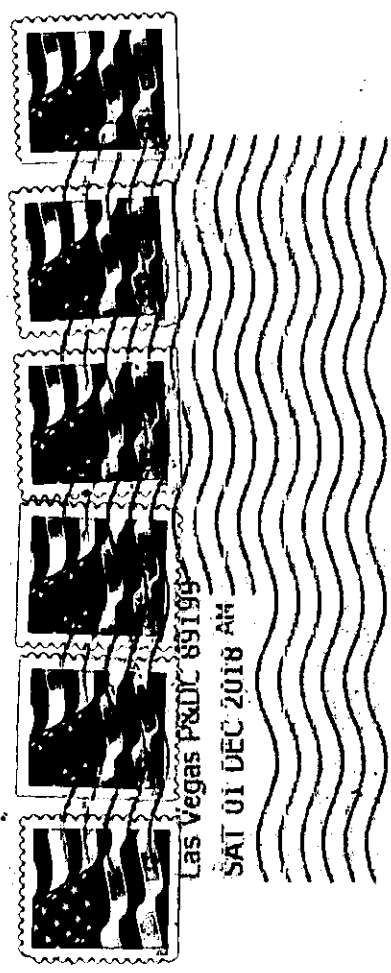
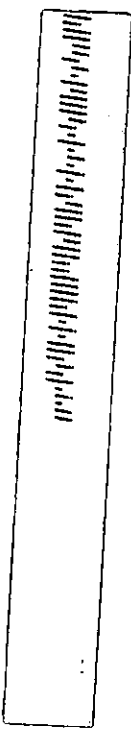
DISCIPLINARY FORM III
SUMMARY OF DISCIPLINARY HEARING

INMATE INFORMATION	HEARING INFORMATION
INMATE NAME: MIXON, ANTONIO 1019828	DATE OF HEARING 12/07/2015 TIME OF HEARING 09:09 am
CURRENT LOCATION: HDSP-U1-D-22-A; ;NC	NAME OF HEARING OFFICER: BARTH, JAY
LOCATION OF INCIDENT HIGH DESERT STATE PRISON Unit 6 Recreati	DATE OF SERVICE OF NOTICE OF CHARGES: 12/04/2015
OIC#: 400461	CHARGING EMPLOYEE: MCKEEHAN, KEITH

SIGNATURES AND RECEIPT	DISTRIBUTION
DATE OF SERVICE: _____ TIME OF SERVICE: _____	I-FILE (Original)
PRINTED NAME OF HEARING OFFICER _____	Inmate Services (Copy)
SIGNATURE OF HEARING OFFICER _____	Inmate (Copy)
SIGNATURE OF INMATE _____	
(Signature indicates receipt only. It is not a plea; refusal to sign should be noted)	
WARDEN/DESIGNEE _____	

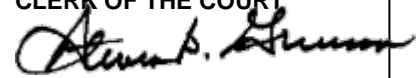
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ANTONIO LEE MILTON JR. #1019028
HIGH DESERT STATE PRISON
POST OFFICE BOX 650
INDIAN SPRINGS, NEVADA 89070



STEVEN D. GRIERSON,
CLERK OF THE COURT
200 LEWIS AVENUE, 3rd Floor
LAS VEGAS, NEVADA 89155-1160

HIGH LEVEL SECURITY
NOV 29 2018
UNIT 4 A/B



OPPM
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Attorney General
CHELSEA KALLAS (Bar No. 13902)
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Office of the Attorney General
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F: (702) 486-0660
Ckallas@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff,

v.

ANTONIO LEE MIXON, ID #1019828
Defendant.

Case No.: C-17-327439-1

Dept. No.: XVII

Hearing Date: March 5, 2019

Hearing Time: 8:30 AM

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, SUPPLEMENTAL
MOTION TO DISMISS AND SUPPLEMENT TO JURY INSTRUCTIONS**

AARON D. FORD, Attorney General for the State of Nevada, through Deputy Attorney General, Chelsea Kallas, hereby submits the State's Opposition to Defendant's Motion to Dismiss, Supplemental Motion to Dismiss and Supplement to Jury Instruction. This motion is made and based upon the pleadings on file, the following memorandum of points and authorities, and any oral arguments the Court may allow.

Dated this 15th day of January, 2019.

SUBMITTED BY:

AARON D. FORD
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 On October 25, 2017, Antonio Lee Mixon (hereinafter “Defendant”) was charged by way of
3 Information with the following: Count 1 – Battery By A Prisoner (Category B Felony – NRS
4 200.482(2)(f)); and Count 2 – Possession or Control of Dangerous Weapon or Facsimile By An
5 Incarcerated Person (Category B Felony – NRS 212.185(c)). On November 1, 2017, Defendant pled not
6 guilty and invoked his right to a speedy trial. On November 14, 2017, Defendant filed a Motion to Compel
7 Production of Discovery and Brady Material. On December 1, 2017, the State filed its Opposition. On
8 December 5, 2017, the Court issued a minute order directing the State to turn over, among other things, all
9 witness statements. The Court requested that Defendant file the order. On January 2, 2018, Defendant’s
10 trial commenced. On that same day, the Court declared a mistrial. On March 28, 2018, Defendant filed a
11 “Motion to Withdrawl of Attorney of Record, Request to Obtain Copy of Defendant’s File, and Request
12 for Self-Representation.” On April 6, 2018, the Court administered a Farretta Canvass and Defendant’s
13 Motion was granted. Calendar Call is set for January 3, 2019, and Jury Trial is scheduled to commence on
14 January 7, 2019. On November 2, 2018, Defendant filed a Motion for Jury Instructions and a Motion for
15 Voir Dire. On November 20, 2018, the Court ruled that jury instructions and voir dire will be dealt with at
16 the start of trial.

17 Defendant filed a Motion to Dismiss (“Motion”) on November 2, 2018, and filed a “Supplement to
18 Motion to Dismiss and Supplement to Jury Instructions” (“Supplemental Motion”) on December 4, 2018.
19 The State responds as follows.

20 **ARGUMENT**

21 Defendant appears to allege in his Motion and Supplemental Motion that the charges in the instant
22 case should be dismissed because a memorandum he received supposedly bars the State from criminally
23 prosecuting him.¹ However, this claim is without merit, as there is no place in the memorandum that
24 discusses how or why the State is not permitted to criminally prosecute Defendant. (See Defendant’s
25 Supplemental Motion, Exhibit H). In fact, the memorandum specifically states that the instant case would
26
27

28

¹Defendant also appears to allege that his “liberty interests” pursuant to the Due Process Clause of the Fourteenth Amendment to the Federal Constitution were violated, thus the instant case should be dismissed. Defendant’s arguments appear to be misplaced, as the “liberty interest” and case law Defendant cites to in his Motion and Supplemental Motion, specifically apply to prison disciplinary proceedings *not* criminal prosecution proceedings. As such, this claim should be denied.

1 be referred to the Attorney General's Office and that Defendant was "cautioned regarding possible
2 criminal charges." As such, this claim should be denied.

3 Defendant also appears to allege the instant case should be dismissed because he is not charged
4 with actual crimes. As discussed above, Defendant is charged with Battery By A Prisoner and Possession
5 or Control of Dangerous Weapon of Facsimile by an Incarcerated Person, both crimes pursuant to NRS
6 200.482(2)(f) and NRS 212.185(c), respectively. As such, this claim should be denied.²

7 CONCLUSION

8 For the foregoing reasons, the State respectfully requests that the Court deny Defendant's Motion
9 to Dismiss, Supplemental Motion to Dismiss and Supplement to Jury Instructions.

10 DATED this 15th day of January, 2019.

11 SUBMITTED BY:

12 AARON D. FORD
13 Attorney General

14 By: /s/ Chelsea Kallas
15 CHELSEA KALLAS (Bar No. 13902)
16 Deputy Attorney General
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19
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28 ² Defendant also requests the Court to use the "the same exhibit memorandum" to "support grounds that the jury instruction for the battery charge be granted in the event the Court denies Defendant's Motion to Dismiss." The Court has already found Defendant's request for jury instructions to be premature, with the Court specifically noting that jury instructions would be dealt with the day of trial. As such, this request should be denied.

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on
3 January 15, 2019, I filed the foregoing STATE'S OPPOSITION TO DEFENDANT'S MOTION TO
4 DISMISS, SUPPLEMENTAL MOTION TO DISMISS AND SUPPLEMENT TO JURY
5 INSTRUCTIONS this Court's electronic filing system.

6 I certify that some of the participants in the case are not registered electronic filing system users. I
7 have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or
8 e-mail; or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the
9 following unregistered participants:

10 Antonio Mixon, Inmate ID #1019828
11 High Desert State Prison
12 P.O. Box 650
Indian Springs, NV 89070

13 /s/ A. Reber
14 An employee of the Office of the Attorney General
15
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ROPP

ANTONIO LEE MIXON 1019828

High Desert State Prison

4 INDIAN SPRINGS, NV 89070

"NO FAX NUMBER" and/or no "e-mail address."

Attorney FOR: ANTONIO LEE MIXON JR.

FILED

FEB 04 2019

CLERK OF COURT

C-17-327439-1
ROPP
Reply to Opposition
4814189



DISTRICT COURT

Clark County, Nevada

0 The State of Nevada

11 Plaintiff,

2 vs.

3 ANTONIO LEE MIXON,

4 Defendant.

Case No. C-17-327439-1

Dept. XVII

DATE OF HEARING: March 5, 2019

TIME OF HEARING: 8:30 A.M.

5 Reply ~~STATE~~ TO STATE'S OPPOSITION TO DEFENDANT'S
16 MOTION TO DISMISS, SUPPLEMENTAL MOTION TO DISMISS
17 AND Supplement TO JURY INSTRUCTIONS.

18 Antonio LEE MIXON JR. through self-representation hereby
19 submits the Defendant's Reply to state's opposition to Defendant's
20 Motion to Dismiss, Supplemental Motion to Dismiss and Supplement to
21 Jury ~~instructions~~ instructions. This motion /reply is made and
22 based upon the pleadings on file, the following memorandum
23 of points and authorities of points and authorities, and any
24 oral arguments the court may allow.

25 Dated this 23rd day of January, 2019.

26 FEB 04 2019

Submitted By: Antonio Lee Mixon

27 RECEIVED

1 I certify Under penalty of perjury that to the best of my belief
 2 and knowledge the following Facts and Circumstances are true and correct
 3 pursuant to NRS 53.045. Executed on Jan, 23rd, 2019. G. L. Miron Sr.
 4 (Signature)

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MEMORANDUM OF POINTS AND AUTHORITIES

The motion's state opposed to are vacated. Defendant is granted leave by this court to place back on calendar the motion(s) Defendant withdrew.

ARGUMENT

The Defendant has no intentions to place said motions back on calendar whatsoever, only a new Supplemental to The initial Request For Jury instructions will be submitted. Court Defense will have that Filed before Feb. 23rd, 2019. Other than that Filing in between now and Feb. 23rd, 2019 the only other Filings if necessary are a notice of witnesses and/or Subpoenas.

Conclusion

The state's opposition is moot, premature, and for no reason. The plaintiff's action on motion should be denied for Failure to state a cause of action upon which relief can be granted.

Certificate of Service Mailing

I hereby Certify under penalty of perjury that to the best of my belief and knowledge I caused My ROPP to be deposited in the Prisons regular mailing system First-class prepaid postage to the following addressees:
Chelsea N. Kallas, Deputy Attorney General, State of Nevada, Office of Attorney General, 555 E. Washington Ave., STE. 3900, Las Vegas, Nevada 89101-7068
STEVEN D. GRIERSON, Clerk of the Court, 200 Lewis Avenue, 3rd floor Las Vegas, NV 89155-1160. And that this Certificate of Service by Mailing is true and correct. Exploited on Jan. 23rd, 2019. A. L. Miron Jan
(Signature)

CC: File

1 MOT

2 ANTONIO LEE MIXON

3 PROPER PERSON

4 P.O. BOX 650

5 INDIAN SPRINGS, NV 89070

6 "NO FAX NUMBER" and/or "no email address"

7 ATTORNEY FOR: ANTONIO LEE MIXON

DISTRICT COURT

FILED

DEC 10 2018

CLERK OF COURT

January 8 2019
@ 8:30 AM

9

10

CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA

CASE NO.: C-17-327439-1

12 PLAINTIFF, et al.

DEPT. XVII

13 VS.

14 ANTONIO LEE MIXON

15 DEFENDANT.

16

DEFENDANT'S MOTION TO CONTINUE TRIAL SETTINGS AND ORDER(S)

17 COMES NOW, ANTONIO LEE MIXON, DEFENDANT, herein above respectfully

18 moves this Honorable Court for an order for continuing trial settings.

19

oral argument requested.

20

This motion is made and based upon the accompanying

21

Memorandum of Points and Authorities.

22

DATED: This 6th of December, 2018.

23

BY: ANTONIO LEE MIXON JR.

24

G. I. Mixon Jr. #1968172

25

Defendant in Proper Person
proper person

26

27

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RECEIVED
DEC 10 2018
CLERK OF THE COURT

C-17-327439-1
MTCT
Motion to Continue Trial
4802003



473

Memorandum of Points and Authorities

This motion for continuance is made on the ground that witnesses is or will be absent at time of trial.

Declaration

(1). Mark Preusch a licensed Private investigator in the state of Nevada. Home address unknown. Global Reliance investigations, present employment, location 9811 W. Charleston, Ste. 2-774 Las Vegas, Nevada 89117. Witness has been absent I led to believe from since on or about 06/27/2018 about Five months now. I have sent two letters to his place of employment within this absence and made a phone call to 702-320-2964 which I'm led to believe that is his contact info by phone and not his FAX. I need this witness to secure witnesses deposition and attendance for trial. The causes I believe is the cause of Failure to procure the same are the absent of funds maybe. Apart of my diligence to procure mister Preusch's attendance, I today on Dec. 06, 2018 prepared a Law library request form requesting Title 18 Chapter 226 of the Nevada Revised statutes' index to see if I could find any funding from the STATE EXECUTIVE DEPARTMENT; STATE TREASURER. Also requesting Title 20 chapter 249 of the Nevada Revised statutes' index to see if I could find any funding from the Counties and Townships; Formation, Government and officers; County Treasurers, and County assessors. The absent witness testimony is to be of his findings and the same facts are to be proven by witnesses this witness is supposed to procure and for his findings. I can't obtain none of my witnesses without Mr Preusch. Days after I sent letters and received no response on or about mid or late October I believe. This Application is made in good faith and not merely for delay. I declare Under penalty of perjury that the foregoing is true and correct. EXECUTED on Dec. 06, 2018. Pursuant to 28 USC 1746. 90 days requested. S. G. Nixon Jr.
Defendant's Signature

~~90 days~~

NOTICE OF HEARING / Motion

TO: Deputy Attorney General; Attorney For Plaintiff:

You will please take notice that the Foregoing Motion to Continue trial settings will be heard on the 11th day of Dec, 2018.
at 2:30 o'clock a.m. and/or the on the — day of —, 20—.
in Department No. 17 District Court.

Dated this 6th day of December, 2018.

BY: Antonio L. Mixon
Defendant pro se

Accordingly, the Court Finds defendant is entitled to a Continuance and his motion is granted.

ORDER

Therefore, it is HEREBY ORDERED that the Motion to continue trial settings shall be, and it is hereby granted.

DATED this — day of —, 20—.

District Judge Signature

ANTONIO LEE MIXON JR

Defendant Prose

#1466172

BY A. L. Mixon Jr.

Defendant Prose

Certificate of Service by Mailing

I certify that on December 6th, 2018, I mailed a copy of the foregoing proposed Motion to Continue trial settings and order(s) to: (First-class postage paid)

Chelsea N. Kaller

STEVEN D. GRIERSON, Clerk of Court

Deputy Attorney General

200 Lewis Avenue, 3rd Floor

555 E. Washington Ave., STE 3900, Las Vegas, NV 89101-1068

Las Vegas, NV 89155-1160

Transportation order

The Court orders Warden Brian E. Williams of High Desert State Prison on 22010 Cold Creek Rd., Indian Springs, NV 89070, where Defendant is located, to transport and produce inmate Nixon for hearing to appear before the Court in District Court Eighth Judicial (Dept. 17) District Court, Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155 pursuant to NRS 209.274 and pursuant to any other applicable NRS for the hearing on this Motion scheduled in this case on the 11th day of Dec., 2018 at the hour of 8:00 a.m. and/or 8:30 a.m. and/or as specified as Court directs. Upon completion of the hearing, Defendant will be and should be transported to the above-named institution.

Dated this 6th day of Dec., 2018.

District Judge

Declaration Under PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the Defendant in the entitled action, and he, the defendant has read the above Certificate of Service and that the information contained therein is true and correct. 28 U.S.C. § 1746

EXECUTED AT High Desert State Prison
on this 6th day of Dec., 2018.

C. G. Nixon Jr
Defendant

pro se

CC: File

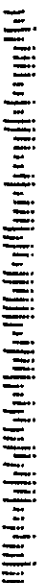
Antonia Lee Milton Jr. 1019628
High Desert State Prison
P.O. Box 650
Thomas Springs, NV 89070

LAS VEGAS NV 890

STEVEN D. GREENSON, Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160



8910136300 0075



RECEIVED
DEC 06 2000
UNIT 4, A

100A

1 MOT.

2 ANTONIO LEE MIXON

3 pro se

4 High Desert State Prison

5 P.O. Box 650

6 Indian Springs, NV 89470

7 IN THE FIFTH JUDICIAL DISTRICT COURT

8 Clark County, NV

9 The State of Nevada

10 Plaintiff

11 vs.

12 Antonio Lee Mixon #1968172

13 Defendant

Case No. 1-17-327439-1

Dept. XII

January 8 2019

@ 8:30 AM

14 MOTION FOR LEAVE TO AMEND

15 ~~Motion to Amend Supplemental~~ Defendant's

16 Supplemental to Defendant's Motion to Dismiss

17 And Defendant's Motion to Dismiss And order

18 comes now, the Defendant Antonio Mixon, by and through

19 self-representation, and hereby moves the court to enter an order

20 granting Defendant's Motion to Amend said Motions to Amend

21 Defendant's Supplemental to Defendant's Motion to Dismiss

22 And Defendant's Motion to Dismiss.

23 DATED this 6th day of Dec 2018.

24 ANTONIO LEE MIXON JR.

25 pro se

26 ~~Antonio Lee Mixon Jr.~~

ANTONIO LEE MIXON JR.

pro se

FILED

DEC 11 2018

CLERK OF COURT

RECEIVED
DEC 11 2018

CLERK OF THE COURT

C-17-327439-1
NAME
Motion to Amend
4802492



DECLARATION

ANTONIO LEE MIXON makes the following declaration:

I am the Defendant pro se assigned to represent myself
in the instant matter, and the Defendant has represented the following
facts and circumstances of this case.

I declare under penalty of perjury that the foregoing is
true and correct. Pursuant to 28 USC 1746 and
MR 53.045.

EXECUTED AT High Desert STATE PRISON
on the 6th day of December, 2018.

ANTONIO LEE MIXON
Pro se
Antonio Lee Mixon Jr.

MEMORANDUM OF POINTS AND AUTHORITIES.

STATEMENT OF FACTS

Defendant Filed Motion to dismiss court ordered Defendant
Supplement motion for court to consider Exhibit. To court
all jurisdictional defect matters have this instant motion follows.

Argument -

To make sure motion to dismiss is not dismissed based on the jurisdictional
defect of lack of personal jurisdiction Defendant asks this court for
leave to amend various motions to assist court in determining merits
of pending motions to dismiss see *Dominguez v. American Home Prods. Corp.*
(In re Norplant Contraceptive Lib. Litig.) (1995, E.D. TEX.) 900 F. Supp. 92, motion for
motion den sub nom *Thomson v. American Home Prods. Corp.* (In re Norplant
Contraceptive Prods. Lib. Litig.) (1995, E.D. TEX.) 907 F. Supp. 744, motion den sub nom
Bugwell v. Wyeth-Ayerst Lab. (In re Norplant Contraceptive Prods. Lib. Litig.)
(1995 E.D. TEX.) 907 F. Supp. 743.

Also to make sure that said motions ~~amended~~ conform
with courts requirements of showing that ~~motion~~ motions ~~are~~ is
timely filed. see *Ashburn v. Janeky* (2009, CA10NM) 2009 US App Lexis
3093.

Also to assure persons to whom "Certificate" is presented
that the certificate of service comply with statutes see *Miller v. Advantage
Credit Counseling Service* (In re Miller) (2006, BC WD ^{PA} ~~PA~~) (2006, BC WD Pa.)
336 BR 232.

Also to show Defendant's use of prison's regular mail system
which documents is given to prison authorities and attesting
that postage is prepaid see *Price v. Philpot* (2005, 1410 OK16) 420 F.3d 1158

Requested Relief

Based upon the foregoing, Mr. Milton request that this Court grant him leave to amend said motion so Court can review them

DATED 6th December, 2019.

ANTONIA LEE MITON SR.
PRO SE / DEFENDANT

C. J. Milton JR.
Defendant PRO SE

NOTICE OF HEARING / Motion

TO: Attorney General, Deputy Attorney General, Attorney For Plaintiff:-

You will please take notice that the foregoing Motion for leave to amend Defendant's Supplemental to Defendant's Motion to dismiss and Defendant's motion to dismiss will be heard on the ____ day of ____ 20__ at 6:30 a.m. in Department 311 District Court

Transportation order

Court order to have Warden Brian E. Williams transport Defendant to appear before this Court pursuant to NRS 209.279 and all other NRS applicable. Upon completion of hearing Defendant will be and should be transported to the High Desert state Prison.

Distressed Judge

Dated 6th Dec, 2019.

Certificate of Service by mailing

I hereby certify that I ~~am~~ placed a true and correct copy of the foregoing mail system at prison with First-Class postage prepaid on the 6th day of Dec, 2018 to the following addresses:-

Chof/sr N. Kallas, Deputy Attorney General, 555 E. Washington Ave, STE. 3900
WV, WV, 26101-1068. STEVEN D. GRIFFIN, clerk of the court, 700 Lewis Ave. 3rd Floor, WV 26102

Declaration Under Penalty of Perjury

The undersigned declares Under penalty of perjury that he
is the Defendant in the above-captioned action, and he, the defendant
has read the above Certificate of Service and that the information
contained therein is true and correct. Pursuant to 28 U.S.C. § 1746.
~~Executed~~ AND NRS 50.53.045.

Executed at High Point state prison
on this 6th day of Dec., 2018.

Antonio Lee Mixon Sr.

Pro se Defendant.

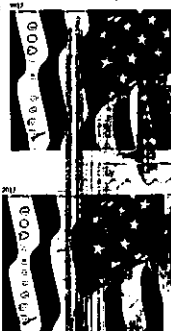
Antonio Lee Mixon Jr.

Pro se Defendant.

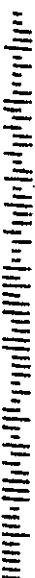
Antonio Lee Milton Sr. 1019628
H.D.S.P.
P.O. Box 650
Indian Springs, NV 89028

STEVEN D. GRIERSON, Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

LAS VEGAS NV 890



89101-630000



WICHITA STATE
DEC 06 2018
UNIT 4 A/B

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO MIXON,)	No. 78900
)	
Appellant,)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
)	

APPELLANT’S APPENDIX – VOL. II – PAGES 238-485

DARIN F. IMLAY
Clark County Public Defender
309 South Third Street
Las Vegas, Nevada 89155-2610

Attorney for Appellant

STEVEN B. WOLFSON
Clark County District Attorney
200 South Third Street
Las Vegas, Nevada 89155

AARON FORD
Attorney General
100 North Carson Street
Carson City, Nevada 89701
(702) 687-3538

Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 28 day of August, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT
STEVEN S. OWENS

HOWARD S BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:
ANTONIO MIXON, NDOC No. 1019828, c/o High Desert State Prison,
P.O. Box 650, Indian Springs, NV 89018.

BY /s/ Carrie M. Connolly
Employee, Clark County Public Defender’s Office