

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jul 01 2019 08:42 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

WILBER ERNESTO MARTINEZ
GUZMAN,
Petitioner,

No.

vs.

THE SECOND JUDICIAL DISTRICT
COURT, IN AND FOR THE
COUNTY OF WASHOE; THE
HONORABLE CONNIE J.
STEINHEIMER, DISTRICT JUDGE,
Respondents,
and,
THE STATE OF NEVADA,
Real Party In Interest.

PETITIONER'S APPENDIX

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Washoe County Public Defender
Nevada State Bar Number 4517

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Attorneys for Petitioner

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¹ Excluding exhibit (Defendant's Statement).

² Excluding exhibit (Interview Clip – Grand Jury).

CR19-0447
STATE VS. WILBER ERNESTO MARTINEZ GUZMAN
District Court
Washoe County
DC-0900086127-049
MAR 8 Pages
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DA #18-4852

RPD RP18-008545

CODE 1795

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FILED

MAR 13 2019

JACQUELINE BRYANT, CLERK
By: M. Conway
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

WILBER ERNESTO MARTINEZ GUZMAN,

Defendant.

Case No.: CR 19-0447

Dept. No.: 4

INDICTMENT

The defendant, WILBER ERNESTO MARTINEZ GUZMAN, is accused
by the Grand Jury of Washoe County, State of Nevada, of the
following:

COUNT I. BURGLARY, a violation of NRS 205.060, a category B
felony, (50424) in the manner following, to wit:

That the said defendant, WILBER ERNESTO MARTINEZ GUZMAN, on
or about January 3, 2019, within the County of Washoe, State of
Nevada, did willfully and unlawfully enter a barn and/or other
building belonging to SHARON DAVID and/or GERALD DAVID, located at
760 La Guardia Lane, Washoe County, Nevada with the intent to commit
larceny therein.

1 COUNT II. BURGLARY WHILE GAINING POSSESSION OF A FIREARM, a
2 violation of NRS 205.060, a category B felony, (50425) in the manner
3 following, to wit:

4 That the said defendant, WILBER ERNESTO MARTINEZ GUZMAN, on
5 or about January 4, 2019, within the County of Washoe, State of
6 Nevada, did willfully and unlawfully enter a trailer and/or other
7 building belonging to SHARON DAVID and/or GERALD DAVID, located at
8 760 La Guardia Lane, Washoe County, Nevada with the intent to commit
9 larceny therein, and at any time during the commission of the crime
10 did gain possession of a firearm.

11 COUNT III. MURDER WITH THE USE OF A DEADLY WEAPON, a
12 violation of NRS 200.010, NRS 200.030, and NRS 193.165, a category A
13 felony, (50001) in the manner following, to wit:

14 That the said defendant, WILBER ERNESTO MARTINEZ GUZMAN, on
15 or about January 9, 2019 and/or January 10, 2019, within the County
16 of Douglas, State of Nevada, did willfully, unlawfully, and with
17 malice aforethought, deliberation and premeditation, kill CONSTANCE
18 KOONTZ, a human being, by shooting CONSTANCE KOONTZ with a firearm;

19 and/or that the said defendant, WILBER ERNESTO MARTINEZ
20 GUZMAN, on or about January 9, 2019 and/or January 10, 2019, within
21 the County of Douglas, State of Nevada, did willfully and unlawfully
22 enter the home of CONSTANCE KOONTZ, located at 1439 James Road,
23 Gardnerville, Nevada, with the intent to commit larceny therein and,
24 during the perpetration of said crime, did kill CONSTANCE KOONTZ by
25 shooting her with a firearm.

26 ///

1 COUNT IV. BURGLARY WHILE IN POSSESSION OF A FIREARM, a
2 violation of NRS 205.060, a category B felony, (50425) in the manner
3 following, to wit:

4 That the said defendant, WILBER ERNESTO MARTINEZ GUZMAN, on
5 or about January 9, 2019 and/or January 10, 2019, within the County
6 of Douglas, State of Nevada, did willfully and unlawfully enter the
7 home of CONSTANCE KOONTZ, located at 1439 James Road, Gardnerville,
8 Nevada, with the intent to commit larceny and, at any time during the
9 commission of the crime, did have in his possession a firearm.

10 COUNT V. MURDER WITH THE USE OF A DEADLY WEAPON, a
11 violation of NRS 200.010, NRS 200.030, and NRS 193.165, a category A
12 felony, (50001) in the manner following, to wit:

13 That the said defendant, WILBER ERNESTO MARTINEZ GUZMAN, on
14 or about January 12, 2019 and/or January 13, 2019, within the County
15 of Douglas, State of Nevada, did willfully, unlawfully, and with
16 malice aforethought, deliberation and premeditation, kill SOPHIA
17 RENKEN, a human being, by shooting SOPHIA RENKEN with a firearm;

18 and/or that the said defendant, WILBER ERNESTO MARTINEZ
19 GUZMAN, on or about January 12, 2019 and/or January 13, 2019, within
20 the County of Douglas, State of Nevada, did willfully and unlawfully
21 enter the home of SOPHIA RENKEN, located at 943 Dresslerville Road,
22 Gardnerville, Nevada, with the intent to commit larceny therein and,
23 during the perpetration of said crime, did kill SOPHIA RENKEN by
24 shooting her with a firearm.

25 ///

26 ///

1 COUNT VI. BURGLARY WHILE IN POSSESSION OF A FIREARM, a
2 violation of NRS 205.060, a category B felony, (50425) in the manner
3 following, to wit:

4 That the said defendant, WILBER ERNESTO MARTINEZ GUZMAN, on
5 or about January 12, 2019 and/or January 13, 2019, within the County
6 of Douglas, State of Nevada, did willfully and unlawfully enter the
7 home of SOPHIA RENKEN, located at 943 Dresslerville Road,
8 Gardnerville, Nevada, with the intent to commit larceny and, at any
9 time during the commission of the crime, did have in his possession a
10 firearm.

11 COUNT VII. MURDER WITH THE USE OF A DEADLY WEAPON, a
12 violation of NRS 200.010, NRS 200.030, and NRS 193.165, a category A
13 felony, (50001) in the manner following, to wit:

14 That the said defendant, WILBER ERNESTO MARTINEZ GUZMAN, on
15 or about January 15, 2019 and/or January 16, 2019, within the County
16 of Washoe, State of Nevada, did willfully, unlawfully, and with
17 malice aforethought, deliberation and premeditation, kill and murder
18 SHARON DAVID, a human being, by shooting SHARON DAVID with a firearm;

19 and/or that the said defendant, WILBER ERNESTO MARTINEZ
20 GUZMAN, on or about January 15, 2019 and/or January 16, 2019, within
21 the County of Washoe, State of Nevada, did willfully and unlawfully
22 enter the home of SHARON DAVID and/or GERALD DAVID, located at 760 La
23 Guardia Lane, Washoe County, Nevada, with the intent to commit
24 larceny therein and, during the perpetration of said crime, did kill
25 SHARON DAVID by shooting her with a firearm.

26 ///

1 COUNT VIII. MURDER WITH THE USE OF A DEADLY WEAPON, a
2 violation of NRS 200.010, NRS 200.030, and NRS 193.165, a category A
3 felony, (50001) in the manner following, to wit:

4 That the said defendant, WILBER ERNESTO MARTINEZ GUZMAN, on
5 or about January 15, 2019 and/or January 16, 2019, within the County
6 of Washoe, State of Nevada, did willfully, unlawfully, and with
7 malice aforethought, deliberation and premeditation, kill and murder
8 GERALD DAVID, a human being, by shooting GERALD DAVID with a firearm;

9 and/or that the said defendant, WILBER ERNESTO MARTINEZ
10 GUZMAN, on or about January 15, 2019 and/or January 16, 2019, within
11 the County of Washoe, State of Nevada, did willfully and unlawfully
12 enter the home of SHARON DAVID and/or GERALD DAVID, located at 760 La
13 Guardia Lane, Washoe County, Nevada, with the intent to commit
14 larceny therein and, during the perpetration of said crime, did kill
15 GERALD DAVID by shooting him with a firearm.

16 COUNT IX. BURGLARY WHILE IN POSSESSION OF A FIREARM, a
17 violation of NRS 205.060, a category B felony, (50425) in the manner
18 following, to wit:

19 That the said defendant, WILBER ERNESTO MARTINEZ GUZMAN, on
20 or about January 15, 2019 and/or January 16, 2019, within the County
21 of Washoe, State of Nevada, did willfully and unlawfully enter the
22 home of SHARON DAVID and/or GERALD DAVID, located at 760 La Guardia
23 Lane, Washoe County, Nevada, with the intent to commit larceny
24 therein and, at any time during the commission of the crime, did have
25 in his possession a firearm.

26 ///

1 COUNT X. POSSESSION OF A STOLEN FIREARM, a violation of NRS
2 205.275, a category B felony, (56060) in the manner following, to
3 wit:

4 That the said defendant, WILBER ERNESTO MARTINEZ GUZMAN, on
5 or between January 4, 2019 and January 19, 2019, within the County of
6 Washoe, and/or the County of Douglas, and/or Carson City, State of
7 Nevada, did willfully and unlawfully, for his own gain or to prevent
8 the owner from again possessing the owner's property, have in his
9 possession a firearm, belonging to SHARON DAVID and/or GERALD DAVID,
10 knowing that the property was stolen specifically a High Standard
11 Sentinel .22 caliber revolver and/or a Savage Sporter Model 23AA .22
12 caliber long rifle and/or a Cherry's Inc. GSO INC. 7.62x39 rifle
13 and/or an Ithaca Gun Company M-49 .22 caliber long rifle and/or a
14 Remington Model 11-87 20 gauge shotgun and/or a Savage Model 93R17
15 .17HMR rifle and/or a Ranger 20 gauge side by side shotgun and/or a
16 Remington Model 870 Wingmaster Magnum 12 gauge shotgun and/or an Iver
17 Johnson Arms Champion .410 Bore shotgun and/or a Steyr Mannlicher
18 Safebolt 7x64 rifle and/or a Weatherby Mark V .270 Magnum rifle
19 and/or a Remington 11-87 12 gauge shotgun.

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26 ///

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED this 13th day of March, 2019.



CHRISTOPHER HICKS
WASHOE COUNTY DISTRICT ATTORNEY



MARK JACKSON
DOUGLAS COUNTY DISTRICT ATTORNEY

PCN:

1 CODE 2600
2 Christopher J. Hicks
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6 (775) 328-3200
7 Attorney for Plaintiff

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No.: CR19-0447

15 v.

Dept. No.: 4

16 WILBER ERNESTO MARTINEZ GUZMAN,

17 Defendant.
18
19

20 NOTICE OF INTENT TO SEEK DEATH PENALTY

21 COMES NOW, the State of Nevada, by and through
22 CHRISTOPHER HICKS, District Attorney of Washoe County, and MARK
23 JACKSON, District Attorney of Douglas County, and gives the following
24 notice pursuant to NRS 200.033, NRS 175.552, and S.C.R. 250(4)(c).

25 YOU ARE HEREBY NOTIFIED that the State of Nevada, by and
26 through the Office of the Washoe County District Attorney and the
Office of the Douglas County District Attorney, intends to seek the
imposition of the death penalty against the Defendant upon his
convictions for Murder of the First Degree.

YOU ARE HEREBY FURTHER NOTIFIED that the State of Nevada
intends to produce evidence concerning aggravating circumstances

1 relative to the murders, victims, Defendant, and on other matters
2 relevant to conviction and sentence to allow a jury to set the
3 penalty upon conviction for Murder in the First Degree at death.

4 In addition to seeking the death penalty against the
5 Defendant for each of the murders alleged in Counts III, V, VII, and
6 VIII of the Indictment filed based upon the aggravating nature of the
7 offenses, the State intends to present the following aggravating
8 circumstances pursuant to NRS 200.033 as allowed by NRS 175.552:

9 AGGRAVATING CIRCUMSTANCE NO. 1: THE DEFENDANT HAS, IN THE
10 IMMEDIATE PROCEEDING, BEEN CONVICTED OF MORE THAN ONE OFFENSE OF
11 MURDER IN THE FIRST OR SECOND DEGREE¹

12 The Defendant is charged with four counts of murder alleged
13 alternatively under both the open-murder and felony-murder theory.
14 Count III alleges the murder of CONSTANCE KOONTZ; Count V alleges the
15 murder of SOPHIA RENKEN; Count VII alleges the murder of SHARON
16 DAVID; and Count VIII alleges the murder of GERALD DAVID. As to each
17 individual count of which the Defendant is convicted, the State of
18 Nevada will rely upon the other convictions to establish this
19 aggravating circumstance.² The prosecution will rely on the evidence
20 that will be presented to the jury during the guilt phase of the
21 trial to prove this aggravating circumstance. This includes forensic
22 evidence, evidence linking the defendant to all the crime scenes, and
23 admissions by the defendant to the crimes charged.³

24 ¹ See NRS 200.033(12)

25 ² For example, if the Defendant is convicted of Counts III, V, VII, and VIII, the
26 State would rely upon the convictions for Counts V, VII, and VIII to establish this
aggravating circumstance for the penalty as to Count III; and the State would in
turn rely upon the convictions as to Count III, Count VII, and Count VIII to
establish this aggravating circumstance for the penalty as to Count V.

³ See Transcript of Proceedings: Grand Jury, CR19-0447, March 13, 2019 [The content
of this transcript is hereby incorporated by reference as if fully set forth

1 AGGRAVATING CIRCUMSTANCE NO. 2: THE MURDERS WERE COMMITTED
2 TO RECEIVE MONEY OR ANY OTHER THING OF VALUE⁴

3 The State of Nevada will produce evidence that the
4 Defendant committed the murders of CONSTANCE KOONTZ, SOPHIA RENKEN,
5 SHARON DAVID and GERALD DAVID in order to receive money and property.
6 In support of this aggravating circumstance the prosecution intends
7 to prove that the Defendant planned to steal and/or stole money and
8 property from the aforementioned victims upon their murder. The
9 evidence to support this fact includes stolen property from CONSTANCE
10 KOONTZ, SHARON DAVID, and GERALD DAVID found in the possession of the
11 Defendant after the murders and/or pawned by the Defendant after the
12 murders. Moreover, evidence of his own admissions to targeting the
13 aforementioned victims for money and property will prove this
14 aggravating circumstance.⁵

15 AGGRAVATING CIRCUMSTANCE NO. 3: MURDER COMMITTED IN THE
16 COMMISSION OF A BURGLARY⁶

17 The Defendant is charged with multiple counts of Burglary
18 related to the four Murder counts. The State of Nevada intends to
19 produce evidence that the Defendant murdered CONSTANCE KOONTZ, SOPHIA
20 RENKEN, SHARON DAVID and GERALD DAVID during the commission of the

21 _____
22 herein]. Affidavit in Support of Complaint and Warrant of Arrest, subscribed and
23 sworn to before Reno Justice Court Justice of the Peace Pierre Hascheff on January
24 28, 2019, by Washoe County Sheriff's Detective Stefanie Brady. Transcript and
25 recording of Defendant's interview with Detective Stefanie Brady, January 19, 2019,
26 which has been previously provided to defense in discovery.

⁴ See NRS 200.033(6)

⁵ See Affidavit in Support of Complaint and Warrant of Arrest, subscribed and sworn
to before Reno Justice Court Justice of the Peace Pierre Hascheff on January 28,
2019, by Washoe County Sheriff's Detective Stefanie Brady. Transcript and
recording of Defendant's interview with Detective Stefanie Brady, January 19, 2019,
which has been previously provided to defense in discovery.

⁶ See NRS 200.033(4)

1 felony crime of Burglary. This includes forensic evidence, evidence
2 linking the defendant to all the crime scenes, and admissions by the
3 defendant to the crimes charged.⁷

4 In light of the alleged alternate theories of murder and
5 consistent with McConnell v. State, 120 Nev. 1043, 102 P.3d 606
6 (2004), the State of Nevada intends to offer "special verdict" forms
7 that will allow the jury "to indicate whether they find First Degree
8 Murder based on deliberation and premeditation, felony Murder, or
9 both." Id. at 1069. In the event that the jury unanimously finds
10 the Defendant guilty of First Degree Murder based upon deliberation
11 and premeditation the State will properly present this aggravator.
12 If the jury is not unanimous in this theory, the State will be
13 precluded from seeking to prove this aggravator as McConnell
14 provides.

15 The State asserts that the documented aggravating
16 circumstances are not outweighed by any mitigating circumstances and,
17 thus, the death penalty is appropriate for the Defendant.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ⁷ See Affidavit in Support of Complaint and Warrant of Arrest, subscribed and sworn
25 to before Reno Justice Court Justice of the Peace Pierre Hascheff on January 28,
26 2019, by Washoe County Sheriff's Detective Stefanie Brady. Transcript and
recording of Defendant's interview with Detective Stefanie Brady, January 19, 2019,
which has been previously provided to defense in discovery.

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED this 14th day of March, 2019.

/s/ Christopher Hicks
CHRISTOPHER HICKS
WASHOE COUNTY DISTRICT ATTORNEY

/s/ Mark Jackson
MARK JACKSON
DOUGLAS COUNTY DISTRICT ATTORNEY

1 CERTIFICATE OF SERVICE BY E-FILING

2 Pursuant to NRCP 5(b), I certify that I am an employee of
3 the Washoe County District Attorney's Office and that, on this date,
4 I electronically filed the foregoing with the Clerk of the Court. A
5 notice will be sent electronically to the following:

6
7 JOHN ARRASCADA, WASHOE COUNTY PUBLIC DEFENDER
8 KATE HICKMAN, DEPUTY WASHOE COUNTY PUBLIC DEFENDER
9 GIANNA VERNES, DEPUTY WASHOE COUNTY PUBLIC DEFENDER

10 Dated this 14th day of March, 2019.

11 /s/ Lori Delano
12 LORI DELANO
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 CODE 2290
2 JOHN L. ARRASCADA, # 4517
3 GIANNA VERNES, # 7084
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5 350 S. CENTER STREET, 5TH FLOOR
6 RENO, NV 89520-3083
7 (775) 337-4800
8 Attorney for Petitioner
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12
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14
15
16

17 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN
18
19 AND FOR THE COUNTY OF WASHOE
20
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26

THE STATE OF NEVADA,

Plaintiff,

CASE NO: CR19-0447

v.

DEPT. NO.: 4

WILBER ERNESTO MARTINEZ GUZMAN,

Defendant.

MOTION TO DISMISS COUNTS THREE, FOUR, FIVE AND SIX OF THE
INDICTMENT FOR LACK OF JURISDICTION (D-1)

Comes now, Wilber Ernesto Martinez Guzman, by and through his attorneys
of record, John L. Arrascada, Gianna Verness, and Katheryn Hickman, and hereby
moves this Court for an Order dismissing Counts three, four, five and six of the
Indictment, due to the lack of jurisdiction of the Second Judicial District grand jury
to inquire into these alleged offenses.

1 This motion is based upon the attached Points and Authorities, and any oral
2 or documentary evidence that may be presented at a hearing on this matter.
3 Further, if necessary, Mr. Martinez Guzman requests a hearing on this motion.
4

5 POINTS AND AUTHORITIES

6 On March 13, 2019, the State presented a proposed indictment to the sitting
7 Washoe County grand jury. The proposed indictment contained ten counts, four of
8 which occurred in their entirety in Douglas County, Nevada. These include Count
9 Three, Murder with the Use of a Deadly Weapon; Count Four, Burglary while in
10 Possession of a Firearm; Count Five, Murder with the Use of a Deadly Weapon;
11 and Count Six, Burglary while in Possession of a Firearm. These four counts will
12 be referred to in this motion collectively as the "Douglas County Charges."
13

14 The Washoe County grand jury did not have jurisdiction to consider or
15 indict Mr. Martinez Guzman on the Douglas County Charges. Each of the alleged
16 acts relating to the Douglas County charges occurred solely in Douglas County.
17 None of the alleged acts specifically related to the Douglas County charges
18 occurred in Washoe County. *See Grand Jury Transcript.* Because the Douglas
19 County charges did not occur in Washoe County, the Washoe County grand jury
20 did not have jurisdiction or authority to consider whether to indict Mr. Martinez
21 Guzman on Counts three, four, five or six.
22

23 The grand jury is a body created by, and empowered by statute, and is
24 therefore limited to the power granted to it in the plain language of those statutes.
25 By statute a grand jury is authorized to "inquire into all public offenses triable in
26

1 the district court or in a Justice Court, *committed within the territorial jurisdiction*
2 *of the district court for which it is impaneled.*" NRS 172.105(2) (italics added).
3 Douglas County is in the Ninth Judicial District of the State of Nevada while
4 Washoe County constitutes the Second Judicial District. See NRS 3.010.
5


6 Pursuant to statute, a grand jury empaneled in the Second Judicial District
7 only has the jurisdiction to consider an indictment alleging criminal conduct that
8 occurred within Washoe County. By considering and indicting on evidence of
9 actions that allegedly occurred solely in Douglas County, the grand jury exceeded
10 the clear expressed statutory authority of its jurisdiction. The indictment as to the
11 Douglas County Charges must be dismissed.
12

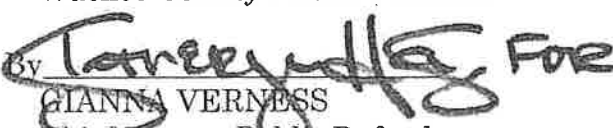
13 CONCLUSION

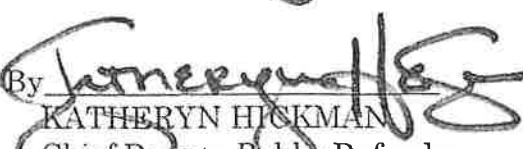
14 Based on the foregoing, the Douglas County Charges should be dismissed.
15

16 DATED this 18 Day of April, 2019.
17

18 JOHN L. ARRASCADA
19 Washoe County Public Defender

20 By 
21 JOHN L. ARRASCADA
22 Washoe County Public Defender

23 By  FOR
24 GIANNA VERNES
25 Chief Deputy Public Defender

26 By 
KATHERYN HICKMAN
Chief Deputy Public Defender

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED this 18 Day of April, 2019.

JOHN L. ARRASCADA
Washoe County Public Defender

By 

JOHN L. ARRASCADA
Washoe County Public Defender

By  FOR

GIANNA VERNES
Chief Deputy Public Defender

By 

KATHERYN HICKMAN
Chief Deputy Public Defender

CERTIFICATE OF SERVICE

I, , hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date I forwarded a true copy of the foregoing document through inter-office mail to:

Chris Hicks, District Attorney
District Attorney's Office

Travis Lucia, Deputy District Attorney

Marc Jackson, District Attorney

DATED this 18 Day of April, 2019.



Branda Gomez

1 CODE 3585
2 JOHN L. ARRASCADA, # 4517
3 GIANNA VERNES, # 7084
4 KATHERYN HICKMAN, #11460
5 350 S. CENTER STREET, 5TH FLOOR
6 RENO, NV 89520-3083
7 (775) 337-4800
8 Attorney for Petitioner
9

10
11 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN
12
13 AND FOR THE COUNTY OF WASHOE
14

15 THE STATE OF NEVADA,

16 Plaintiff,

CASE NO: CR19-0447

17 v.

DEPT. NO.: 4

18 WILBER ERNESTO MARTINEZ GUZMAN,

19 Defendant.
20 _____/

21 PETITION FOR WRIT OF HABEAS CORPUS

22 TO: THE HONORABLE CONNIE STEINHEIMER, JUDGE OF THE SECOND
23 JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE
24 COUNTY OF WASHOE;

25 TO: SHERIFF OF WASHOE COUNTY, DARIN BALAM; HIS COUNSEL,
26 DISTRICT ATTORNEY CHRISTOPHER HICKS;

COMES NOW, the petitioner, Wilber Ernesto Martinez Guzman, by and
through his counsel, John L. Arrascada, Gianna Verness, and Kathryn Hickman,
and pursuant to NRS 34.360 to NRS 34.710, inclusive, states:

1. That attorneys for petitioner are duly qualified and licensed and permitted to practice in the Second Judicial District Court of the State of Nevada;
2. That petitioner makes application for a writ of habeas corpus;
3. That petitioner is in custody and subject to restraint of his liberty pursuant to *Jacobson v. State*, 89 Nev. 197, 200, 510 P.2d 856, 858 (1973);
4. That the evidence presented at the Grand Jury was insufficient to establish probable cause to believe that Petitioner committed the offenses with which Petitioner is charged;
5. That the petitioner waives the 60-day limitation for bringing him to trial,
6. That petitioner consents that if this petition is not decided within 15 days before the date set for trial, the court may, without notice or hearing, continue the trial to such date as it designates.
7. That petitioner has personally authorized the filing of this petition.

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1 8. A previous petition for writ of habeas corpus has not been filed.
2

3 Respectfully submitted this 18 day of April, 2019
4

5 JOHN L. ARRASCADA
6 Washoe County Public Defender

7 By 
8 JOHN L. ARRASCADA
9 Washoe County Public Defender

10 By  FOR
11 GIANNA VERNES
12 Chief Deputy Public Defender

13 By 
14 KATHERYN HICKMAN
15 Chief Deputy Public Defender
16
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21
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25
26

AFFIDAVIT OF JOHN L. ARRASCADA

STATE OF NEVADA)
) ss:
COUNTY OF WASHOE)

JOHN L. ARRASCADA, being first duly sworn, hereby deposes and says:

1. That affiant is the attorney for the petitioner in the above-entitled matter; that affiant has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes them to be true. Further, that petitioner has authorized him to make the foregoing application for relief.

Further Affiant Sayeth Naught.


JOHN L. ARRASCADA

Subscribed and Sworn to before me

This 18th day of April, 2019, by John L. Arrascada.


NOTARY PUBLIC



1 MEMORANDUM OF POINTS AND AUTHORITIES SUPPORTING
2 PETITION FOR WRIT OF HABEAS CORPUS

3 FACTS AND PROCEDURAL HISTORY

4 The State presented this case to the Grand Jury on March 13, 2019, alleging
5 10 counts against Mr. Martinez Guzman. According to the testimony presented at
6 Grand Jury, Investigator Young from the Douglas County Sheriff's Office
7 (hereinafter "DCSO") was dispatched to a report of a deceased person on January
8 10, 2019, at 1439 James Road in Gardnerville, Nevada. Grand Jury Transcript
9 (hereinafter "GJT") pg. 26, ln 4-18. He discovered Constance Koontz laying on the
10 threshold from the kitchen into the laundry room. GJT, pg 43, ln 10-15. It was
11 determined that she had been shot once in the head, and was deceased. Gjt, PG
12 168, LN 21-22. During the investigation into her death, it was determined that
13 an iMac All-in-One computer, an Apple iPhone, an iWatch, a necklace, and a box of
14 jewelry containing numerous items of jewelry had been stolen. GJT, pg 39, ln 1-8.

15
16
17 Investigator Williamson from DCSO was then dispatched on January 13,
18 2019 to 943 Dresslerville Road, in Gardnerville, Nevada on a report of a deceased
19 person. GJT, pg 52, ln 1-12. When he entered the home, he noticed that there was
20 a purse, sitting on stool, undisturbed. GJT, pg 63, ln 10-12. The purse contained a
21 wallet, money, mobile phone, and credit cards. GJT, pg 63, ln 13-18. Sophia
22 Renken was discovered deceased in the home. GJT, pg 66, ln 7. Investigator
23 Williamson testified that he believed that 5 shots were fired within the home, and
24 2 different types of bullets were used, including a basic .22-caliber slug, and snake
25 shot. GJT, pg 67, ln 6-18. It is unknown if the rounds were fired from the same
26

1 gun. GJT, pg 68, ln 7. Ms. Renken was shot a total of 4 times, twice with snake
2 shot and twice with .22 slugs. GJT, pg 70, ln 1-2. There is no evidence that
3 anything was stolen from Ms. Renken's home, and it did not appear as though the
4 house had been gone through or ransacked. GJT, pg 75, ln 18-22.

5
6 Val Diaz, a caretaker for Gerald and Sharon David testified regarding two
7 alleged burglaries that Mr. David told him occurred in early January of 2019. GJT,
8 pg 85-89. Mr., Diaz testified that Mr. David told him that he didn't really know
9 what had been taken, but that a handgun could have possibly been taken. GJT, pg
10 92, ln1-5. Mr. Diaz had no personal knowledge regarding these burglaries; he just
11 testified about what he was told by Mr. David. He never testified to seeing a
12 handgun of Mr. David's, or identified any of the firearms in this case as belonging
13 to Mr. David.

14
15 Mr. Diaz further testified that he went to Mr. and Mrs. David's home on
16 January 16, 2019, and noticed a number of things that made him suspicious, so he
17 called 911. GJT, pg 112, ln 1-24.

18
19 Detective Brady of the Washoe County Sheriff's Office (Hereinafter
20 "WCSO") was assigned as the lead detective in the deaths of Gerald David and
21 Sharon David. She testified that on January 16, 2019 there were a number of
22 items out of place at 760 La Guardia Lane that indicated to her that a burglary
23 had taken place. GJT, pg 133, ln 1-24. Detective Brady could tell that certain items
24 were moved, because there was dust around where they had been, but were no
25 longer there. GJT, pg 133, ln 5-7. She also noticed that items inside of cabinets had
26

1 been disturbed, leaving dust around where they had been. GJT, pg 136, ln 4-6.
2 Detective Brady testified regarding a gun case that was in a back storage area,
3 that was open and empty. GJT, pg 139, ln 10-12. She did not testify regarding dust
4 outlines in that cabinet, how many guns could fit in there, or if guns had ever been
5 in that gun cabinet. No testimony was provided regarding the guns that may have
6 been kept in this gun case.
7

8 Detective Brady testified that Jerry David was discovered deceased on a
9 bed. GJT, pg 140, ln 21-24. He had been shot five times. GJT, pg 143, ln 16. Shari
10 David was discovered at the entry way, in the mudroom. GJT, pg 141, ln 3-5. She
11 had been shot once, right next to her nose. GJT, pg 146, ln 5.
12

13 Shaun Braly, a criminalist with the WCSO testified regarding a BMW car
14 that he processed. GJT, pg 212, ln 21. In the BMW, Mr. Braly found a box of CCI
15 .22 ammunition, with 9 cartridges missing. GJT, pg 219, ln 1-11. He also found a
16 High Standard Revolver under the front driver's seat. GJT, pg 220, ln 2-9. The
17 original owner of this High Standard Revolver was not identified, and no one
18 identified it as belonging to any of the alleged victims in this case. Additionally,
19 Mr. Braly found a charm with the name "Connie" on it, a U.S. Airways document
20 with the name Madison Winkelman, and a Reno Rodeo name tag with the name
21 Jerry David. GJT, pg 221, ln 10-24.
22

23 Detective Digesti with the WCSO testified that he participated in a search
24 for firearms which Mr. Martinez Guzman indicated had been buried in the hills
25 around Carson City. GJT, pg 228, ln 7-8. Following directions generally given by
26

1 Mr. Martinez Guzman, a number of firearms were discovered buried, wrapped in a
2 brown tarp. GJT, pg 233, ln 12-14. Detective Digesti participated in inventorying
3 the firearms found buried, and testified to 11 separate firearms. GJT, pg 237, ln
4 19-24, pg 238, ln 1-24, pg 239, ln 1-4. Detective Digesti did not testify as to the
5 owner of these firearms, or if they were stolen. No testimony was provided that
6 any of these guns belonged to Jerry or Shari David or that they were stolen from
7 them.
8

9 Detective Brady testified regarding her custodial interview of Mr. Martinez
10 Guzman. This interview took place with the assistance of an interpreter; because
11 Mr. Martinez- Guzman speaks Spanish. GJT, pg 244, ln 11-14. She testified that
12 Mr. Guzman admitted to shooting Constance Koontz and Shari and Jeri David.
13 GJT, pg 256, ln 1-15. He admitted to stealing several things, including fishing
14 poles, a revolver, a machine and a lot of stuff that he thought would be useful to
15 him. GJT, pg 256, ln 20-24. Detective Brady testified that she believed Mr.
16 Martinez Guzman admitted that he took firearms from the Davids, separate and
17 apart from a revolver, and that he admitted to two burglaries earlier in January of
18 2019, that he stole a handgun during those burglaries, and that he used that
19 revolver to kill Constance Koontz and the Davids. GJT, pg 257, ln 1-24. Mr.
20 Martinez Guzman did not initially admit to the murder of Sophia Renken, but
21 eventually he did. GJT, pg 258, ln 4-10. Finally, Detective Brady testified that Mr.
22 Martinez Guzman drew a map of where items were buried. GJT, pg 261, ln 2-4.
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ARGUMENT

I. THERE WAS INSUFFICIENT EVIDENCE PRESENTED TO SUPPORT COUNT ONE AND COUNT TWO.

At a Grand Jury proceeding, the State must establish that probable cause exists to believe that (1) a crime has been committed, and (2) that the accused committed the crime. *Marcum v. Sheriff*, 85 Nev. 175, 178, 451 P.2d 845, 846 (1969). These hearings are held “to weed out groundless or unsupported charges of grave offenses and to relieve the accused of the degradation and the expense of criminal trial.” *State v. Von Brincken*, 86 Nev. 769, 772, 476 P.2d 733, 735 (1970). Accordingly, the State must establish “probable cause to believe that an offense has been committed and that the defendant committed it.” *Id.* And while probable cause can be based on slight or marginal evidence, *Sheriff v. Badillo*, 95 Nev. 593, 600 P.2d 221 (1979), probable cause also “requires that there shall be more evidence for guilt than against.” *Von Brincken*, 86 Nev. at 773, 476 P.2d at 735.

A court may only consider legal evidence in determining whether the State has met its burden of proof. *State v. Fuchs*, 78 Nev. 63, 65, 368 P.3d 869, 869 (1962). The State is required to provide some evidence of the elements of the charged offense to support a finding of probable cause. Failure to properly support the charge requires the writ requested herein be granted. *Loretta v. Sheriff, Clark County*, 93 Nev. 344, 565 P.2d 2008 (1977). Probable cause must be established for each and every count.

Hearsay, generally, is inadmissible evidence. Hearsay is defined in both NRS 172.135(2) and NRS 51.035 as an “out of court statement, offered to prove the

1 truth of the matter asserted.” NRS 172.135(2) precludes a grand jury from
2 considering hearsay evidence. *Rugamas v. Eighth Jud. Dist. Ct. ex rel. County of*
3 *Clark*, 129 Nev. 424, 431, 305 P.3d 887, 892 (2013). NRS 172.135(2) provides that
4 “[t]he grand jury can receive none but legal evidence, and the best evidence, in
5 degree, to the exclusion of hearsay, or secondary evidence.” A finding of probable
6 cause cannot be based on no evidence or inadmissible evidence. *Sheriff, Clark*
7 *County v. Richardson*, 103 Nev. 180 734 P.2d 735 (1987).

8
9 While generally, an indictment need not be dismissed solely because some
10 inadmissible evidence was received, sufficient legal evidence must be presented to
11 the grand jury to sustain the indictment. *Robertston v. State*, 84 Nev. 559, 445
12 P.2d 352 (1968). Where the failure to comply with the law regarding evidence to be
13 received by the grand jury “destroy[s] the existence of an independent and
14 informed grand jury and irreparably impairs its function,” dismissal of the
15 indictment is warranted. *Sheriff, Clark County v. Frank*, 103 Nev. 160, 165-66, 734
16 P.2d 1241, 1244-45 (1987).

17
18
19 In this case, Counts one and two allege that Mr. Martinez Guzman entered
20 a barn or other building belonging to Sharon David or Gerald David on or about
21 January 3, 2019 and January 4, 2019, with the intent to commit larceny within,
22 and that on January 4, 2019, during the commission of that crime, Mr. Martinez
23 Guzman gained possession of a firearm. To support these allegations, the State
24 presented the Grand Jury with testimony of Val Diaz, a photo of a calendar that
25 the State purports was written on by Mr. David documenting an alleged burglary
26

1 (Grand Jury exhibit 82), and Mr. Martinez Guzman's own statements regarding a
2 burglary.

3 Mr. Diaz testified that he has known Mr. and Mrs. David for approximately
4 six or seven years, but for one year, he has been helping them take care of their
5 horses. GJT, pg 80. Regarding the alleged burglaries, Mr. Diaz testified that he
6 had spoken with Mr. David regarding some burglaries that Mr. David thought had
7 happened in early January of 2019. GJT, Pg 86-86. Mr. Diaz did not have any
8 personal knowledge of an alleged burglary; he only testified as to what he was
9 told.
10

11 For example:
12

13 Q: But I would like to know what Jerry David told you about the burglaries.

14 A: We talked about it, who it could possibly be. I basically was asking him, "
15 What did they take?" He told me it was through a two day period. That the
16 first day the person came in and took some fishing poles, ransacked his
17 back sheds. And then he didn't—never thought of it, but the second day he
18 came back and ransacked his trailers." GJT, Pg 86, ln 16-24.

19 ...

20 Q: You indicated that Jerry David told you that he believed that some tools
21 had been taken. Did he tell you anything about what type of tools?

22 A: I do know he mentioned—and this was later down the road—he
23 mentioned a circular saw was taken. He really didn't know, because it was
24 hard for him to go through, because my understanding is the tool shed was
25 ransacked. GJT, pg 88, ln 1-7
26

...

1 Q: Now, referring to the second night that he spoke to you about when he
2 believed he had been burglarized, did he indicate where on his property he
3 believed had been burglarized that night?

4 A: Yes. And that was the two trailers that were parked right outside
5 between the sheds. GJT, Pg 88, ln 18-23.

6 ***

7 Q: Did he have any idea of what might have been in the bag that he thought
8 was taken?

9 A: He couldn't remember for sure, but he said possibly a handgun was
10 taken.

11 Q: So, from what I heard you testify to, he told you that he believed some
12 tools were taken on one of the two nights, some fishing poles on one of the
13 two nights, and a bag, with possibly a handgun in it. GJT, Pg 91, ln 22-24,
14 Pg 92, ln 1-6.

15 Mr. Diaz did not identify the revolver found in Mr. Martinez Guzman's car
16 as a revolver that belonged to Mr. David, or as the handgun that may have
17 possibly been stolen in early January. The State did not call any other witnesses
18 regarding these alleged burglaries, and no legally competent evidence was
19 provided that a handgun was actually stolen from Mr. David on January 3, 2019
20 or January 4, 2019.

21 The State introduced a number of exhibits of Mr. and Mrs. David's home
22 through Mr. Diaz. Grand Jury Exhibit 82 is a photo of a calendar, which is on a
23 table in front of where Mr. David typically would sit. GJT, pg 118, ln 10-11. Mr.
24 Diaz testified that he recognized the calendar as Mr. David's, however, he did not
25
26

1 testify to recognizing the handwriting shown as Mr. David's, nor did he testify
2 that he would be able to make such an identification.

3 The State also called Detective Stephanie Brady to testify. In regards to
4 Counts 1 and 2, the State showed Detective Brady Grand Jury Exhibit 82.
5 Detective Brady described the notes on the calendar relevant to the alleged
6 burglaries as "actual handwritten notes we believed to be written by Mr. David."
7 GJT, Pg 131, ln 6-7. She then read what was written on the calendar. On January
8 3, 2019, the notes reflect "barn broken into, Skilsaw, charger," and on January 4,
9 2019, the notes reflect "the barns broken into, all fishing poles, Wells Cargo." GJT
10 pg, 131, ln 15-19. None of the notes reflect that a handgun was stolen.
11

12
13 The State also introduced Mr. Martinez Guzman's statement to Detective
14 Brady. He stated that he found the revolver on the same day he found the fishing
15 rods, that he got the revolver and fishing poles from a house in Reno, and
16 answered affirmatively when Detective Brady asked him if he took the revolver and
17 fishing poles on a different night than the night Mr. Martinez Guzman killed the
18 Davids. Transcript of Interview, Pg 189, ln1. (Exhibit one). ¹
19

20 The testimony of Mr. Diaz- that 2 separate burglaries had taken place,
21 consists entirely of inadmissible hearsay. Mr. Diaz has no personal knowledge of
22 the burglaries or what may have been taken. He is simply repeating what he was
23 told to him by Mr. David, and the out of court statements were introduced to prove
24

25
26 ¹ The State did not present the interview in its entirety. The portion showed to the grand jury
begins on pg 177, ln 10 of the transcript, and ends on pg 222, ln 20 of the transcript.

1 the matter asserted- namely, that two separate burglaries had taken place, and
2 that during the second burglary, a handgun was taken. This is not legal evidence
3 on which the grand jury can return an indictment and is expressly prohibited by
4 statute.
5

6 Without the hearsay statements of Mr. Diaz regarding the burglaries, the
7 Grand Jury was left with the statements of Mr. Martinez Guzman. However, the
8 principle of *corpus delicti* precludes the State from using the statements of the
9 defendant to prove its charge before it establishes the offense occurred through
10 criminal agency. *Frutiger v. State*, 111 Nev. 1385, 907 P.2d 158 (1995); *Hicks. V.*
11 *Sheriff*, 86 Nev. 67, 464 P.2d 462 (1970). In assessing whether there is sufficient
12 independent evidence of the corpus delecti, this Court should assume the truth of
13 the state's evidence, and all reasonable inferences from it in a light most favorable
14 to the State. *Sheriff v. Dhadda*, 115 Nev. 175, 180, 980 P.2d 1062, 1064 (1999).
15 However, *corpus delecti* must be demonstrated by evidence independent of the
16 confessions or admissions of the defendant. *Id.* at 181, 980 P.2d at 1065. This
17 protects against an accused's conviction being based solely upon an
18 uncorroborated confession. *Id.*
19
20

21 In this case, the State did not present any legal evidence that a burglary
22 occurred at the David's residence prior to the alleged homicides, nor did it provide
23 any legal evidence that during one of those burglaries, Mr. Martinez Guzman
24 gained possession of a firearm. Because the State failed to prove its charge prior to
25 the admission of Mr. Martinez Guzman's statements, the Court cannot consider
26

1 the statements made by Mr. Martinez Guzman in reviewing the finding of
2 probable cause as to Counts one and two. Without the inadmissible hearsay
3 statements of Mr. Diaz, the lack of foundation and hearsay statements regarding
4 the calendar and the lack of corroborating evidence to allow consideration of Mr.
5 Martinez Guzman's statements, the State failed to provide sufficient evidence as
6 to Counts one and two, and the Court should grant the writ.

8 **II. THERE WAS INSUFFICIENT EVIDENCE PRESENTED TO SUPPORT**
9 **THE "FELONY MURDER" THEORY OF PROSECUTION AS TO COUNT**
10 **FIVE, AND INSUFFICIENT EVIDENCE OF A BURGLARY PRESENTED**
11 **AS TO COUNT SIX.**

12 Count five of the Indictment alleges Murder with the Use of Deadly Weapon
13 with two separate theories of prosecution. The second theory of prosecution is
14 known as "felony murder" in violation of NRS 200.300(1), which is when murder
15 occurs in the perpetration, or attempted perpetration, of certain felonies, including
16 burglary. Specifically, the State alleges that Wilber Ernesto Martinez Guzman,
17 on or about January 12, 2019 and/or January 13, 2019, within the County of
18 Douglas, State of Nevada, did willfully and unlawfully enter the home of Sophia
19 Renken, located at 943 Dresslerville Road, Gardnerville, Nevada, with the intent
20 to commit larceny therein, and during the perpetration of said crime, did kill
21 Sophia Renken by shooting her with a firearm. Count six of the Indictment alleges
22 the predicate burglary while in possession of a firearm, in that Wilber Ernesto
23 Martinez Guzman willfully and unlawfully entered the home of Sophia Renken
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1 with the intent to commit larceny and during the commission of the crime, he had
2 in his possession a firearm.

3 The State must prove that Mr. Martinez Guzman willfully and unlawfully,
4 perpetrated or attempted to perpetrate the crime of burglary, and the killing of
5 Ms. Renken occurred during the perpetration or attempted perpetration of the
6 burglary. *Sanchez-Dominguez v. State*, 130 Nev. 85, 94-95, 318 P.3d 1068, 1075
7 (2014). The crime of burglary consists of the following: a person who, by day or
8 night, enters any dwelling, with the intent to commit grand or petit larceny,
9 assault or battery on any person or any felony, or to obtain money or property by
10 false pretenses, is guilty of burglary. NRS 205.060.

13 Here, the State failed to prove by slight or marginal evidence the
14 perpetration or attempted perpetration of a burglary. Brandon Williamson
15 testified regarding the investigation into the death of Sophia Renken. He testified
16 that her house was meticulously kept and clean and that he went through Ms.
17 Renken's purse, which was in plain view and undisturbed, finding that her purse,
18 wallet, money, mobile phone were all undisturbed. GJT, pg 63, ln 5-18.
19 Investigator Williamson also testified that there were no signs of forced entry into
20 the home. GJT, pg 75, 7-9. He further testified that the house was spotless- none
21 of the drawers were open, the closets were all closed, and that nothing in the
22 house appeared to have been gone through. GJT, pg 75, ln 18-22. To date, there
23 are no allegations that anything was removed from Ms. Renken's home.
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1 The offense of burglary requires the showing of the specific intent
2 designated in the statute. Intention is manifested by the circumstances connected
3 with the perpetration of the offense, and the sound mind and discretion of the
4 person accused. *Moore v. State*, 122 Nev. 27, 35-36, 126 P.3d 508, 513 (2006).
5 Intent need not be proved by positive or direct evidence, but may be inferred from
6 the conduct of the parties, and the other facts and circumstances disclosed by the
7 evidence. *Id.*

9 In this case, there was no evidence presented, regarding counts five and six,
10 from which the grand jury could infer Mr. Martinez Guzman's intent when
11 entering into the home of Ms. Renken. Ms. Renken's purse, containing money,
12 credit cards, and a mobile phone where in plain view and was not disturbed. The
13 closet doors and drawers were all closed, and did not appear to have been gone
14 through. Nothing was stolen.² Without any evidence to allow the grand jury to
15 infer Mr. Martinez Guzman's intent when allegedly entering the home, the writ as
16 to the felony murder theory of prosecution in Count five, and Count six, burglary
17 while in possession of a firearm, should be granted.
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23 ² Statements by Mr. Martinez Guzman were presented via video regarding the alleged murder of
24 Ms. Renken. On this video, Detective Brady told Mr. Martinez-Guzman that they would find out
25 what was stolen. Trans. of Mr. Martinez Guzman's interview, pg 218, ln 8-15 Mr. Guzman replied
26 that he didn't take anything, because he was really scared. Trans. of Mr. Martinez Guzman's
interview, pg 221, ln 9. Mr. Martinez Guzman stated that he stopped at the lady's house because he
knew she had machines or tools in the garage. Trans. of Mr. Martinez Guzman's interview, pg 222,
ln 7-8. There was no evidence presented that Mr. Martinez Guzman went into the garage, or that
there were machines or tools in the house.

1 **III. INSUFFICIENT EVIDENCE WAS PRESENTED TO SUPPORT COUNT**
2 **TEN**

3 Count ten of the Indictment alleges Possession of a Stolen Firearm, in that
4 Wilbur Ernesto Martinez Guzman, within the County of Washoe, and/or the
5 County of Douglas, and/or Carson City, State of Nevada, did willfully and
6 unlawfully, for his own gain or to prevent the owner from again possession the
7 owner's property, having in his possession a firearm, belonging to Sharon David
8 and/or Gerald David, knowing that the property was stolen. The indictment lists
9 twelve separate firearms that are alleged to have been stolen from Sharon David
10 and/or Gerald David.
11

12 Detective Digesti from WCSO testified that he found a buried tarp which
13 contained a number of firearms. GJT, pg 235, ln 3-6. He knew where to look based
14 on statements from Mr. Martinez Guzman that he had placed some firearms in
15 the hills around Carson City. GJT, pg 228, ln 7-9. He listed twelve firearms,
16 mentioning that on one of the shotguns, there was a sticker that said "Jerry
17 David." GJT, pg 239, ln 12-13.
18

19 No one identified any of the twelve guns as belonging to Mr. and Mrs.
20 David, or any other owner. There was no testimony regarding the type of guns Mr.
21 and Mrs. David had, where they were kept, or that they were stolen, or that the
22 guns that were recovered were guns that had belonged to the Davids. The State
23 did present exhibit 95, which is an empty gun case, but was unable to link this
24 empty gun case with any of the guns located. It is unknown if any of the guns that
25
26

1 were recovered were ever in this gun case.³ Without establishing ownership of the
2 firearms or establishing that the firearms were ever stolen, the State failed to
3 provide probable cause upon which an Indictment could have been returned, and
4 the Court should grant the writ as to Count ten.

5
6 **IV. THE WASHOE COUNTY GRAND JURY DID NOT HAVE**
7 **JURISDICTION TO INQUIRE INTO CRIMES THAT ARE ALLEGED TO**
8 **HAVE OCCURRED IN DOUGLAS COUNTY.**

9 A writ must be granted regarding Counts three, four, five and six of the
10 indictment because the grand jury did not have jurisdiction to consider or indict
11 Mr. Martinez Guzman on these counts. The State alleges that Counts three, four,
12 five and six all occurred, in their entirety, in Douglas County, which is the Ninth
13 Judicial District of the State of Nevada. See NRS 3.010. The Indictment and the
14 testimony presented show that no part of the crimes alleged in Counts three, four,
15 five and six occurred in Washoe County, which constitutes the Second Judicial
16 District. *Id.* No evidence was presented that any part of the crimes alleged in
17 Counts three, four, five and six occurred in Washoe County.

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21 ³ The State presented statements of Mr. Martinez Guzman through a taped interview. Mr.
22 Martinez Guzman stated that he took the weapons and everything he thought he could use after
23 shooting Mr. David. Trans. of Mr. Martinez Guzman's interview, pg 199, ln 3. He also told
24 Detective Brady that he 'buried all the weapons, all the firearms that I found.' Trans. of Mr.
Martinez Guzman's interview, pg 217, ln 5. He also stated that those firearms are from "the
gentleman in Reno."

25 However, as argued above, the Court cannot consider Mr. Martinez Guzman's statements
26 unless, and until the State establishes the offense occurred through criminal agency. Here, the
State failed to establish that the firearms were owned by the Davids, or stolen from them, prior to
the introduction of Mr. Martinez Guzman's statements.

1 A grand jury is authorized to only "inquire into all public offenses triable in
2 the district court or in a Justice Court, *committed within the territorial*
3 *jurisdiction of the district court for which it is impaneled.*" See NRS 172.105(2)
4 (italics added). Washoe County comprises the Second Judicial District. As such, a
5 grand jury empaneled in the Second Judicial District, pursuant to statute, only
6 has the jurisdiction to consider an indictment alleging criminal conduct that
7 occurred within in that district.
8

9 Because the grand jury in this case was not statutorily authorized to
10 consider evidence of actions that allegedly occurred solely in Douglas County,
11 Counts three, four, five and six must be dismissed, and this Court should grant
12 the writ as to these counts.
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CONCLUSION

Based on the foregoing, each count not supported by testimony in the indictment must be dismissed.

DATED this 18 Day of April, 2019.

JOHN L. ARRASCADA
Washoe County Public Defender

By 
JOHN L. ARRASCADA
Washoe County Public Defender

By 
GIANNA VERNES
Chief Deputy Public Defender


By 
KATHERYN HICKMAN
Chief Deputy Public Defender

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED this 18 Day of April, 2019.

JOHN L. ARRASCADA
Washoe County Public Defender

By 
JOHN L. ARRASCADA
Washoe County Public Defender

By 
GIANNA VERNESSE
Chief Deputy Public Defender

By 
KATHERYN HICKMAN
Chief Deputy Public Defender

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Chris Hicks, District Attorney
District Attorney's Office

Travis Lucia, Deputy District Attorney

Marc Jackson, District Attorney


Brianda Gomez

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INDEX OF EXHIBITS

1. Defendant's Statement 258 pages

CODE 2645
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P.O. Box 11130
Reno, NV 89520
(775) 328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No: CR19-0447

v.

Dept.: D04

WILLIAM ERNESTO MARTINEZ GUZMAN,

Defendant.

OPPOSITION TO MOTION TO DISMISS COUNTS THREE, FOUR, FIVE AND SIX OF
THE INDICTMENT FOR LACK OF JURISDICTION (D-1)

COMES NOW, the State of Nevada, by and through CHRISTOPHER J. HICKS, District Attorney of Washoe County, and MARK JACKSON, District Attorney of Douglas County, and respectfully submits this "Opposition to Motion to Dismiss Counts Three, Four, Five and Six of the Indictment for Lack of Jurisdiction (D-1)", in response to the pleading filed on April 18, 2019. This filing¹ is based on the

¹ Due to the nature of the issues presented, the scope of the legal analysis involved, as well as in the interest of providing a thorough record upon which the Court can make its ruling, the State would respectfully request that the Court permit the expansion of the scope of this filing pursuant to Local Criminal Rule 7(h).

1 following Points and Authorities, all pleadings and papers on file
2 herein, and any further evidence that may be presented at a hearing.

3 **POINTS AND AUTHORITIES**

4 **I. PROCEDURAL HISTORY**

5 On January 28, 2019, a Warrant of Arrest was issued for
6 WILBER ERNESTO MARTINEZ GUZMAN (hereafter Defendant). That same day,
7 a Criminal Complaint was filed in the Reno Justice Court alleging the
8 Defendant's commission of multiple felony offenses.

9 On March 13, 2019, the State presented evidence to the
10 Washoe County Grand Jury in connection with ten (10) counts contained
11 in a proposed indictment. At the conclusion of the presentation of
12 evidence, the Washoe County Grand Jury returned a true bill and an
13 Indictment was subsequently filed that same day.² The Defendant
14 stands accused of a single count of Burglary, four (4) counts of
15 Burglary While Gaining or in Possession of a Firearm, four (4) counts
16 of Murder with the use of a Deadly Weapon, and a single count of
17 Possession of a Stolen Firearm.

18 The Defendant was arraigned on March 19, 2019. A plea of
19 "not guilty" was entered on his behalf and the case was set for jury
20 trial to commence April 6, 2020.

21 On April 18, 2019, the Defendant filed the instant Motion
22 to Dismiss Counts Three, Four, Five and Six of the Indictment for
23 Lack of Jurisdiction (D-1). Contemporaneously therewith, the
24 Defendant also filed a Petition for Writ of Habeas Corpus. The
25 Defendant makes the same arguments in subsection IV of the Petition

26 ² As a result of the Grand Jury's determination, the Court entered an Order Staying
Proceedings for the case pending in the Reno Justice Court.

1 as he does in the instant Motion. For the following reasons, the
2 Defendant's Motion should be denied in its entirety.

3 **II. STATEMENT OF FACTS³**

4 **A. TIMELINE OVERVIEW**

5 In two weeks in January of 2019, the Defendant committed
6 ten (10) related felonies in Washoe County, Douglas County, and
7 Carson City, including five (5) burglaries and four (4) murders.

8 On January 3, 2019, the Defendant committed a burglary in
9 Washoe County, Nevada. On January 4, 2019, the Defendant committed
10 another burglary at the same location, this time stealing a firearm
11 amongst other items. Just five (5) days later, on January 9, 2019,
12 the Defendant burglarized a residence in Douglas County, Nevada,
13 while in possession of the stolen firearm. During this burglary, he
14 stole several items and murdered an occupant of the home with the
15 stolen firearm. On January 13, 2019, the defendant burglarized
16 another home in Douglas County, Nevada. During that burglary, he
17 murdered the resident of that home with the same stolen firearm.
18 Three (3) days later, on January 16, 2019, the Defendant returned to
19 the location of the first two burglaries in Washoe County and
20 burglarized the residence wherein he murdered the two occupants of
21 the home with the same stolen firearm he had taken less than two
22 weeks before. He also stole multiple items including more firearms.

23 Throughout the Defendant's spree of burglaries, thefts and

24 ³ Except where otherwise specifically noted, the facts articulated in this pleading
25 are derived from the reports and witness statements compiled in all reports
26 completed by the Carson City Sheriff's Office, the Douglas County Sheriff's Office,
the Sparks Police Department, the Reno Police Department, and the Washoe County
Sheriff's Office well as the testimony adduced at the March 13, 2019 Grand Jury
Proceeding.

1 murders, he possessed and maintained stolen property from the
2 aforementioned locations in his vehicle, in his apartment in Carson
3 City, and in the foothills of Carson City where he buried multiple
4 stolen firearms taken in Washoe County.

5 **B. INITIAL BURGLARIES AT LA GUARDIA LANE.**

6 At 760 La Guardia Lane sits a single family residence
7 located on approximately two (2) acres of property.⁴ For roughly
8 fifty (50) years this was the home of Gerald and Sharon David
9 (hereafter Mr. David and Mrs. David, or collectively referred to as
10 the Davids).⁵ In addition to the Davids' home, the property contained
11 a number of sheds, barns, out-buildings and trailers.

12 In early January of 2019, those out-buildings, sheds, barns
13 and trailers were burglarized and various items were stolen from the
14 Davids. Mr. David discussed these events with a number of his family
15 members and friends. Amongst the people he told was VAL DIAZ
16 (hereafter Mr. Diaz). Due to their ages and physical limitations,
17 Mr. Diaz assisted the Davids with caring for their horses and
18 property in general. With respect to the burglaries, Mr. David
19 explained to Mr. Diaz what he discovered. He recounted having been
20 burglarized over a two (2) day period.⁶ With respect to the first
21 event, Mr. David explained to Mr. Diaz that the thief went through
22 various sheds, taking fishing poles and some tools.⁷ With respect to
23 the tools, Mr. Diaz was informed that a circular saw was amongst the
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25 ⁴ Interview with John Hicks, January 16, 2019, pg. 26: 7.

26 ⁵ Interview with Diane Hicks, January 16, 2019, pg. 4: 1-20.

⁶ Grand Jury Transcript, March 19, 2019, pg. 86: 20.

⁷ Grand Jury Transcript, March 19, 2019, pg. 87: 11-15.

1 items missing.⁸ On the second night, the perpetrator burglarized two
2 (2) trailers parked between the aforementioned sheds.⁹ It was during
3 this second event that Mr. David believed the thief to have taken a
4 bag containing items used for hunting, which possibly contained a
5 handgun as well.¹⁰

6 Detectives found corroboration of Mr. David's statements
7 inside his home at La Guardia Lane. During a subsequent search of
8 the residence, detectives located a calendar on a table in the
9 Davids' kitchen. As Mr. Diaz told the Grand Jury, he was familiar
10 with the calendar having seen Mr. David refer to the calendar when
11 making plans and writing down appointments.¹¹ The occurrence of the
12 burglaries were reflected on that same calendar. For the date of
13 January 3, 2019, detectives observed a handwritten entry stating,
14 "Barns broken into skillsaw/charger." For the date of January 4,
15 2019, another handwritten note was observed stating, "Barns Broken
16 into All Fishing Poles Wells Cargo." Of significance, a Wells Cargo
17 brand trailer was located on the David's property near the area of
18 the barns.

19 The Defendant was ultimately apprehended on January 19,
20 2019. Following his arrest, Washoe County Sheriff's Detective
21 STEFANIE BRADY (hereafter Detective Brady) interviewed the Defendant
22 while in custody at the Carson City Sheriff's Office.¹² Throughout

23 ⁸ Grand Jury Transcript, March 19, 2019, pg. 88: 4.

24 ⁹ Grand Jury Transcript, March 19, 2019, pg. 88: 22-23.

25 ¹⁰ Grand Jury Transcript, March 19, 2019, pg. 91: 6 - pg. 92: 6.

26 ¹¹ Grand Jury Transcript, March 19, 2019, pg. 118: 1-21.

¹² The interview was conducted with the assistance of a Court-certified Spanish interpreter. Prior to the onset of any questions related to the investigation, the Defendant was afforded his rights pursuant to Miranda and acknowledged his understanding of the same. He then voluntarily spoke with Detective Brady.

1 the course of the interview, the Defendant implicated himself in the
2 commission of the burglaries at the Davids' property in early January
3 of 2019.

4 Specifically, the Defendant mentioned taking a revolver and
5 fishing poles on the same day.¹³ With respect to the issue of when he
6 procured these items, the Defendant stated that it was before he
7 killed CONSTANCE KOONTZ (hereafter Ms. Koontz) and Mr. and Mrs.
8 David.¹⁴ To this end, the Defendant clarified that the first time he
9 only took a small machine to "cut things" and the second night he
10 returned and took the revolver and fishing poles from inside a
11 trailer.¹⁵

12 As a result of the foregoing, the Defendant stands charged
13 with a count of Burglary for his entry into the barn and/or out-
14 building on January 3, 2019, wherein he procured a saw, and a second
15 count of Burglary While Gaining Possession of a Firearm for his entry
16 into the trailer on January 4, 2019, wherein he procured fishing
17 poles and/or a revolver.

18 **C. THE MURDER OF CONSTANCE KOONTZ.**

19 In the morning hours of January 10, 2019, deputies with the
20 Douglas County Sheriff's Office were dispatched to a home at 1439
21 James Road, Gardnerville, Nevada, on report of a female who was not
22 conscious and not breathing. Upon entry, law enforcement made
23 contact with EVELYN HARMON¹⁶ (hereafter Ms. Harmon). Ms. Harmon

24 ¹³ Interview with Defendant, January 19, 2019, at 3:52:14.

25 ¹⁴ Interview with Defendant, January 19, 2019, at 4:09:10. Ms. Koontz was killed on
or about January 9 and/or January 10, 2019, and Mr. and Mrs. David were killed on
26 or about January 15 and/or January 16, 2019.

¹⁵ Interview with Defendant, January 19, 2019, at 4:09:10.

¹⁶ Ms. Harmon's last contact with her daughter was the previous day.

1 indicated that she is the mother of Ms. Koontz. Ms. Harmon explained
2 that, due to her medical condition, she is bound to a wheelchair and
3 rarely left her room. On the morning of the 10th, she ventured from
4 her room as far as she could when she witnessed the scene which
5 precipitated her call to her other daughter, Candy Rankin, who, in
6 turn, called 911. As law enforcement continued through the home,
7 they discovered the lifeless body of Ms. Koontz in a kitchen /
8 laundry room area. Her head was resting in a pool of blood.

9 Throughout the residence, investigators observed signs of
10 theft. For example, property was displaced in the home. An empty
11 television stand was seen in the living room and, in the same room
12 where Ms. Koontz was killed, a television was found on the floor.
13 Additionally, the investigation revealed that various items belonging
14 to Ms. Koontz had been taken. These include numerous items of
15 jewelry, an Apple iWatch, an iPhone, and an iMac computer.

16 The following day, Dr. JULIE SCHRADER (hereafter Dr.
17 Schrader) performed an autopsy on Ms. Koontz. A single entry wound
18 was observed to Ms. Koontz's head, just above her right ear. Dr.
19 Schrader did not see a corresponding exit wound. Further examination
20 resulted in a bullet being recovered from the area of Ms. Koontz's
21 left eye. Ultimately, Dr. Schrader opined that the cause of death
22 was a gunshot wound to the head in the manner of a homicide.¹⁷

23 The Defendant was ultimately apprehended on January 19,
24 2019. Following his arrest, the Defendant was interviewed by
25 Detective Brady while in custody at the Carson City Sheriff's
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¹⁷ Grand Jury Transcript, March 19, 2019, pg. 168: 16 - pg. 169: 3.

1 Office.¹⁸ Throughout the course of the interview, the Defendant
2 implicated himself in the commission of a burglary at Ms. Koontz's
3 residence, as well as her murder.

4 One of the many items stolen during the burglary of Ms.
5 Koontz' residence on January 9 or 10, 2019, was an Apple iWatch.
6 Initially, the Defendant acknowledged his possession of an iWatch,
7 indicating it was in his room.¹⁹ At first, the Defendant maintained
8 that he found the iWatch along with some other property.²⁰ Through
9 the course of his interview his story changed. With respect to the
10 iWatch, the Defendant ultimately explained that he stole the item
11 when he "shot this woman in Gardnerville."²¹ The Defendant told
12 Detective Brady that he entered the home through the back door which
13 was open and unlocked.²² He stated that he wanted to take some items
14 in order to sell them so that he would have money to purchase drugs.²³
15 The Defendant also confirmed that he murdered Ms. Koontz, telling
16 Detective Brady that a woman had come out and he shot her.²⁴ As
17 mentioned in the preceding section, the Defendant stated that he shot
18 the woman with a revolver that he had obtained on the same date as
19 the fishing rods.²⁵ Lastly, he corroborated much of the evidence
20 observed during the investigation. For example, he indicated that he
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22 ¹⁸ The interview was conducted with the assistance of a Court-certified Spanish
23 interpreter. Prior to the onset of any questions related to the investigation, the
24 Defendant was afforded his rights pursuant to Miranda and acknowledged his
25 understanding of the same. He then voluntarily spoke with Detective Brady.

26 ¹⁹ Interview with Defendant, January 19, 2019, at 3:38:40.

²⁰ Id.

²¹ Interview with Defendant, January 19, 2019, at 3:52:14.

²² Id.

²³ Id.

²⁴ Id.

²⁵ Id.

1 shot only once which is consistent with Dr. Schrader's observations
2 during the autopsy of Ms. Koontz.²⁶ The defendant stated that he took
3 the items from the woman's bedroom - again consistent with the
4 missing iWatch and other items.²⁷ Finally, he acknowledged the
5 presence of Ms. Harmon, indicating that there was "another woman" in
6 another room which he believed to be the decedent's mother.²⁸ With
7 respect to Ms. Harmon, the Defendant told Detective Brady that he did
8 not believe that she had seen him and that he took the items and left
9 the home.²⁹

10 The Defendant stands accused of Burglary While in
11 Possession of a Firearm for entering Ms. Koontz's home on January 9th
12 or 10th of 2019, with the intent to commit larceny while in possession
13 of a revolver, and of Murder with the Use of a Deadly Weapon, for
14 killing Ms. Koontz during that same event.

15 **D. THE MURDER OF SOPHIA RENKEN.**

16 JEFFERY HARRIS (hereafter Mr. Harris) had known SOPHIA
17 RENKEN (hereafter "Mrs. Renken") for approximately fifty (50) years.
18 On January 13, 2019, Mr. Harris called his friend multiple times but
19 received no answer.³⁰ Concerned, Mr. Harris went to Mrs. Renken's
20 home located at 943 Dresslerville Road, Gardnerville, Nevada. Upon
21 his arrival, he immediately noticed that various things were out of
22 place as a number of gates were open which were ordinarily closed,
23 and the back door to the home was open.

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25 ²⁶ Interview with Defendant, January 19, 2019, at 3:52:14.

26 ²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ Mr. Harris' last contact with Mrs. Renken was the day prior.

1 Mr. Harris cautiously entered the home of Mrs. Renken.
2 While making entry, he continued to call out the name of Mrs. Renken
3 but received no answer. Inside the residence, Mr. Harris observed
4 blood on the hallway floor. Further inside, Mr. Harris saw the
5 lifeless body of Mrs. Renken on the floor of her bedroom. Mr. Harris
6 immediately exited the home and contacted 911.

7 Given the similarities between the scene at Mrs. Renken's
8 home and the investigation into the murder of Ms. Koontz roughly one
9 (1) mile away, law enforcement began to believe the murders were
10 related. When law enforcement officers arrived to Mrs. Renken's
11 residence, they observed a trail of blood from the hallway toward the
12 room where Mrs. Renken's body was found. Additionally, an expended
13 bullet, appearing to be a .22 caliber round, was located on the floor
14 of that same hallway. Investigators also saw a bullet hole -
15 consistent with a .22 caliber round - in the moulding of a panty door
16 jamb. Further investigation produced a bullet which was lodged into
17 the interior moulding of that same door. Despite the number of
18 expended bullets found in the home, as well as the observations of
19 the fatal injuries to Mrs. Renken, investigators found no shell
20 casings in the residence, suggesting that the perpetrator had used a
21 revolver. Finally, it appeared to investigators that no items of
22 value were taken from Mrs. Renken's home. Specifically, all of the
23 closets and drawers were closed and Mrs. Renken's purse and other
24 valuables appeared undisturbed.

25 On January 14, 2019, an autopsy was performed on Mrs.
26 Renken by Dr. KATHERINE CALLAHAN (hereafter Dr. Callahan). On the

1 left side of Mrs. Renken's face, Dr. Callahan observed a large number
2 of entrance wounds consisting of shot pellets embedded into Mrs.
3 Renken's skin and scalp tissue. On the right side of Mrs. Renken's
4 face, Dr. Callahan observed similar entrance wounds consisting of the
5 same shot pellets described above. On Mrs. Renken's right shoulder,
6 Dr. Callahan observed an entrance wound. Ultimately, the bullet
7 responsible for this injury was collected from Mrs. Renken's right-
8 upper back. Dr. Callahan opined that this bullet was most typical of
9 a small caliber round, consistent with a .22 caliber.³¹ On Mrs.
10 Renken's lower back was another entry wound. Dr. Callahan traced the
11 pathway of this injury through Mrs. Renken's right lung and the right
12 side of her heart before it ultimately exited through Mrs. Renken's
13 chest. Based on the foregoing, Dr. Callahan opined that the cause of
14 Mrs. Renken's death was multiple gunshot wounds in the manner of a
15 homicide.³²

16 As mentioned above, the Defendant was apprehended on
17 January 19, 2019 and interviewed by Detective Brady. Throughout much
18 of the interview, the Defendant initially denied any knowledge or
19 culpability in the event at Mrs. Renken's home. However, towards the
20 end of his interview, the Defendant's story changed and the Defendant
21 confessed to murdering Mrs. Renken.

22 The Defendant explained to Detective Brady that he "did her
23 in" but denied taking anything from her home.³³ In addition, the
24 Defendant was able to provide details which corresponded to what was
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26 ³¹ Grand Jury Transcript, March 19, 2019, pg. 185: 17-22.

³² Grand Jury Transcript, March 19, 2019, pg. 185: 10-16.

³³ Interview with Defendant, January 19, 2019, at 4:12:40.

1 observed at the residence. For example, he indicated that he made
2 entry to the home through a back door which was unlocked which is
3 consistent with Mr. Harris' observations of the condition of the
4 premises upon his arrival. Additionally, he indicated that he shot
5 several times; again, consistent with the multiple rounds recovered
6 from within the home as well as Dr. Callahan's observations during
7 the autopsy.³⁴

8 The Defendant stands accused of Burglary While in
9 Possession of a Firearm, for entering Mrs. Renken's home on January
10 12th or 13th of 2019 with the intent to commit larceny while in
11 possession of a revolver, and of Murder with the Use of a Deadly
12 Weapon, for killing Mrs. Renken during that same event.

13 **E. THE MURDERS OF SHARON DAVID AND GERALD DAVID.**

14 In January of 2019, GERALD DAVID (hereafter Mr. David) was
15 eighty one (81) years old, and his wife, SHARON DAVID (hereafter Mrs.
16 David) was eighty (80) years old. Mr. and Mrs. David were married
17 approximately fifty three (53) years, and, for roughly that same
18 duration of time, made a home for themselves at 760 La Guardia Lane,
19 Washoe County, Nevada. For five decades, Mr. and Mrs. David raised
20 children, pets, and horses on their property. On January 15 or 16³⁵
21 of 2019, an intruder entered their home and shot both Mr. and Mrs.
22 David to death.

23 Given their ages and physical limitations, Mr. and Mrs.
24 David enlisted the help of VAL DIAZ (hereafter "Mr. Diaz") to assist

25 ³⁴ Interview with Defendant, January 19, 2019, at 4:12:40.

26 ³⁵ According to Mr. David's daughter, her last contact with her father was on
January 15, 2019 around 11:00am. Interview with Diane Hicks, January 16, 2019, pg.
14: 2-6.

1 with caring for their horses. Generally, Mr. Diaz would go to the
2 David's property every other day. On January 16, 2019, Mr. Diaz
3 arrived at the David's property to assist with their horses at
4 roughly 4:00 p.m. Upon his arrival, Mr. Diaz immediately noticed
5 things were unusual. For example, he observed that the horse's
6 stalls were not clean, the horses were away from the stall area, a
7 screen was removed from a window and laying on the ground nearby, the
8 window which contained the aforementioned screen was fully open, a
9 gate was open and the Davids' cats were locked in their pen earlier
10 than usual. Concerned, Mr. Diaz began to shout the couple's names
11 and calling their phone numbers; he received no response.

12 Walking into the backyard of the home, Mr. Diaz noticed the
13 door leading through a mudroom and into the home was open. Mr. Diaz
14 briefly entered the residence through this same door, stepping over a
15 blanket on the floor covering a then-unknown object. Inside, he
16 observed cabinets opened in the area of the kitchen and living room.
17 He immediately backed out of the home and called 911.

18 With the assistance of cover units, Washoe County Sheriff's
19 Deputy STEVE DECARLI (hereafter Deputy DeCarli) made entry into the
20 Davids' home through the same back door described above. Lying on
21 the floor of the mudroom connecting the back door of the residence to
22 the kitchen and living room, Deputy DeCarli found what appeared to be
23 the deceased body of Mrs. David covered by a blanket. While clearing
24 the home to make sure there were no intruders on scene, Deputy
25 DeCarli also noted that the residence appeared to have been
26 burglarized or ransacked. Finally, Deputy DeCarli discovered what

1 appeared to be the deceased body of Mr. David lying in his bed with
2 bedding covering his corpse.

3 Not long after the discovery of Mr. and Mrs. David, law
4 enforcement began to believe that the killings were connected with
5 the homicides of Ms. Koontz and Mrs. Renken. The similarities began
6 with the respective ages of all four (4) victims. Also, a common
7 thread was believed to exist in that all killings appeared to have
8 occurred during the perpetration or attempted perpetration of a
9 burglary. Additionally, it appeared that all four (4) homicides
10 possessed similarities with respect to the weapon used. For example,
11 on the kitchen floor of the David's home, Deputy DeCarli observed an
12 unspent .22 caliber "snake shot" round. "Snake shot" is a term
13 colloquially used to refer to handgun or rifle cartridges which are
14 loaded with small lead shot pellets. Similarly sized pellets were
15 observed on the right and left aspects of Mrs. Renken's face during
16 her autopsy. Lastly, no spent casings were found leading to the
17 hypothesis that the Davids' killer likewise used a revolver.

18 Avid fans of rodeos and all things western, Mr. and Mrs.
19 David accumulated a significant amount of collectibles in their home.
20 Similar was their love for the outdoors, with Mr. David owning a
21 sizeable collection of hunting equipment ranging from pistols to
22 shotguns and long rifles. Throughout the residence, investigators
23 observed signs of theft. For example, property was displaced in the
24 home with a number of cabinets and drawers left open. In a room
25 adjoining Mr. David's bedroom, investigators observed an empty gun
26 case for holding and displaying long rifles. Near that same area, a

1 bag was found containing jewelry and other valuables which appeared
2 to have been packed and eventually left behind by the intruder.

3 On January 17, 2019, Dr. Callahan performed an autopsy on
4 Mrs. David. Dr. Callahan observed a single entrance gunshot wound to
5 the right side of her nose with no corresponding exit wound. This
6 wound was consistent with that caused by a small caliber bullet. Dr.
7 Callahan located a deformed, small caliber bullet within Mrs. David's
8 cranial cavity. Through the course of her examination, Dr. Callahan
9 determined that the bullet traveled through Mrs. David's sinus,
10 entering her cranial cavity and injuring her brain stem resulting in
11 her instantaneous death. With respect to Mrs. David, Dr. Callahan
12 opined that her cause of death was a gunshot wound to the head in the
13 manner of a homicide.³⁶

14 That same day, Dr. Callahan performed an autopsy on Mr.
15 David. Generally, Dr. Callahan observed five (5) gunshot wounds to
16 Mr. David's head and one (1) gunshot wound to his chest. With
17 respect to the head, Mr. David displayed a number of gunshot wounds
18 which penetrated his skull, injuring his brain. One other round
19 traveled through Mr. David's face injuring his facial tissue. As it
20 pertains to the wound on his chest, Dr. Callahan observed that bullet
21 had traveled through Mr. David's lungs, aorta, and exited through his
22 back. Based on the nature of the wounds as well as some of the
23 bullets and bullet fragments recovered during her examination, Dr.
24 Callahan opined that a small caliber weapon was used in the murder of
25 Mr. David. To that end, it was her opinion that Mr. David's cause of
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³⁶ Grand Jury Transcript, March 19, 2019, pg. 193: 1-3, and 194: 1-5.

1 death was multiple gunshot wounds to the head and chest in the manner
2 of a homicide.³⁷

3 The Defendant was ultimately apprehended on January 19,
4 2019. Following his arrest, the Defendant was interviewed by
5 Detective Brady while in custody at the Carson City Sheriff's
6 Office.³⁸ Throughout the course of the interview, the Defendant
7 implicated himself in the commission of multiple burglaries at the
8 David's residence, as well as their murders.

9 First, the Defendant explained that on the morning of their
10 murders, that he, the defendant, entered the Davids' residence
11 through the backdoor.³⁹ He stated that, while he was entering the
12 Davids' home, a female was coming out.⁴⁰ He then indicated that he
13 "got scared" and "shot her" before quickly going inside and shooting
14 the man while he was changing.⁴¹ The Defendant also provided details
15 as to the weapon he used during the murders. He explained to
16 Detective Brady that he used a revolver and, upon further
17 questioning, acknowledged that it was the same revolver he used in
18 the murder of Ms. Koontz.⁴²

19 Throughout the interview, the Defendant's remarks were
20 consistent with law enforcement's observations of the scene. For
21 example, he indicated that he shot the female near the backdoor;

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23 ³⁷ Grand Jury Transcript, March 19, 2019, pg. 208: 10-16.

24 ³⁸ The interview was conducted with the assistance of a Court-certified Spanish
25 interpreter. Prior to the onset of any questions related to the investigation, the
26 Defendant was afforded his rights pursuant to Miranda and acknowledged his
understanding of the same. He then voluntarily spoke with Detective Brady.

³⁹ Interview with Defendant, January 19, 2019, at 3:58:15.

⁴⁰ Id.

⁴¹ Id.

⁴² Id.

1 consistent with the discovery of Mrs. David's body. Also, he
2 indicated that the male was sitting on the bed; again, the exact same
3 location where Mr. David's body was found. Lastly, the Defendant
4 explained that he took "weapons" and everything he thought he could
5 use before exiting the residence,⁴³ mirroring the observations of Mr.
6 Diaz and law enforcement that the home appeared to be ransacked. To
7 this same end, he even acknowledged leaving some items behind as
8 observed by the bag containing miscellaneous valuables belonging to
9 the Davids left behind in the residence.

10 The Defendant stands accused of Burglary While in
11 Possession of a Firearm, for entering the David's home on January 15
12 or 16 of 2019 with the intent to commit larceny while in possession
13 of a revolver, and of two (2) counts of Murder with the Use of a
14 Deadly Weapon for killing Mrs. David and Mr. David during that same
15 event.

16 **F. DISCOVERY OF WEAPONS STOLEN FROM DAVID RESIDENCE.**

17 A significant amount of property was taken from the Davids'
18 residence following their murder. This consisted of miscellaneous
19 items of memorabilia from the Reno Rodeo, jewelry, and weapons.
20 Turning the Court's attention to the latter, the weapons consisted of
21 a pistol, long rifles, and shotguns.

22 As cited in the preceding section, during his interview the
23 Defendant acknowledged having taken weapons from the Davids'
24 residence, outbuildings or trailers on two occasions. First, he
25 stated that he stole a revolver from a trailer on the Davids'

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⁴³ Id.

1 property before subsequently returning and taking more weapons after
2 shooting and killing both Mr. and Mrs. David.⁴⁴ With respect to the
3 revolver, law enforcement searched the BMW vehicle the Defendant was
4 driving upon his arrest in Carson City. Located underneath the front
5 driver's side seat near the center console was a High Standard, .22
6 caliber, nine (9) shot revolver. Turning the Court's attention to
7 the weapons taken from the David's home following their murder, the
8 Defendant provided Detective Brady with the location of where those
9 weapons were buried.⁴⁵ With this map, law enforcement officers went
10 out in search of the buried property on January 20, 2019.

11 Washoe County Sheriff's Detective JOE DIGESTI (hereafter
12 Detective Digesti) was part of the search team. Off a dirt road in
13 Carson City near the location provided by the Defendant on a map,
14 Detective Digesti observed what he believed to be drag marks. These
15 marks lead to an area where discolored and disturbed dirt lay
16 encircled by sage brush. It was there that Detective Digesti began
17 to dig.

18 Law enforcement unearthed a tarp wrapped around a large
19 quantity of weapons and ammunition. A total of twelve (12) weapons
20 were found in the tarp of varying types, to include rifles, shotguns,
21 and air rifles. In addition to the Defendant's statements about
22 having taken the weapons from the David's home, the guns were linked
23 to the Davids in other ways. For example, one of the shotguns bore
24 the name "JERRY DAVID" on the grip of the barrel.

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26 ⁴⁴ Interview with Defendant, January 19, 2019, at 3:52:14 and 3:58:15.

⁴⁵ Id. at 4:46:10.

1 The final count in the Defendant's Indictment relates to
2 these same guns. He stands charged with Possession of a Stolen
3 Firearm for the revolver taken on or about January 4th as well as the
4 various rifles and shotguns taken from the Davids' home on or about
5 January 15 or 16, 2019.

6 **G. SEARCH OF DEFENDANT'S VEHICLE.**

7 When the Defendant was apprehended in Carson City on
8 January 19, 2019, he was in his BMW vehicle. His BMW was sealed and
9 transported to the Washoe County for processing. Pursuant to a
10 search warrant, investigators searched the BMW. Located underneath
11 the front driver's side seat was the firearm used to commit each
12 murder. Additionally, investigators found a cache of stolen property
13 belonging to Ms. Koontz and the Davids.

14 **H. SEARCH OF DEFENDANT'S APARTMENT, CARSON CITY.**

15 Subsequent to the Defendant's apprehension, the apartment
16 where he lived with his mother and teenage sister in Carson City was
17 also searched pursuant to a search warrant. Within the apartment,
18 investigators from the Carson City Sheriff's Office, the Douglas
19 County Sheriff's Office and the Washoe County Sheriff's Office
20 discovered a vast amount of property stolen from Ms. Koontz and the
21 Davids, including jewelry, western memorabilia, collectibles, tools,
22 and other items bearing the names of the victims.

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1 **III. ARGUMENT**

2 **A. THE DEFENDANT'S JURISDICTIONAL CLAIMS ARE MORE**
3 **PROPERLY VETTED THROUGH A PETITION FOR WRIT OF HABEAS**
4 **CORPUS.**

5 Nevada law provides for a very specific method through
6 which an accused may attack the propriety of a Grand Jury's
7 determination of probable cause. NRS 34.700. That same statute
8 additionally directs the accused to the same vehicle - a pretrial
9 petition for writ of habeas corpus - to "otherwise challeng[e] the
10 court's right or jurisdiction to proceed to the trial [...]." Id.

11 Equally important, the law related to the Grand Jury does
12 contemplate the filing of a motion to dismiss, however limits the
13 subject matter upon which such a motion can be made. Specifically,
14 NRS 172.065 allows a party to move to dismiss an indictment but only
15 based on objections to the array or lack of qualification of an
16 individual juror. Id. Nowhere else in Chapter 172 is a motion to
17 dismiss referenced, let alone allowed for a jurisdictional challenge.

18 Here, the Defendant elected to challenge jurisdiction on
19 two fronts. First, by filing the instant Motion to Dismiss and
20 again, by reiterating those same arguments within his Petition. As
21 set forth above, the proper vehicle for the challenge is the pretrial
22 petition for writ of habeas corpus. For that reason, the State would
23 respectfully submit that the Court should deny the instant Motion.
24 Nevertheless, should the Court wish to consider the merits of the
25 Defendant's request, the State offers the following.

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1 B. THE GRAND JURY IS VESTED WITH THE SAME JURISDICTIONAL
2 AUTHORITY AS THE DISTRICT COURT FOR WHICH IT IS
3 IMPANELED AND WASHOE COUNTY IS THE PROPER VENUE FOR
4 ALL ALLEGATIONS.

5 Generally, the Defendant argues that none of the alleged
6 acts specifically related to the Douglas County charges occurred in
7 Washoe County. Motion, pg. 2: 18-19. Therefore, the Defendant
8 incorrectly presumes that those charges must be dismissed as the
9 Grand Jury lacks jurisdiction over those offenses. Motion, pg. 3: 6-
10 12.

11 As an initial observation, the Defendant's averment that
12 none of the acts related to the Douglas County charges occurred in
13 Washoe County is simply incorrect. As will be argued more completely
14 below, the predicate act which begat the offenses in Douglas County
15 actually occurred within the County of Washoe - in that the Defendant
16 obtained the firearm used in the commission of all crimes from a
17 cargo trailer owned by the Davids and stored on the Davids' real
18 property located on La Guardia Lane. Following the illegal
19 acquisition of the murder weapon, the Defendant then went on a six
20 and one-half (6 ½) day crime spree traversing back and forth across
21 three counties (Carson City, Washoe County and Douglas County)
22 committing four (4) murders, and multiple other charged and uncharged
23 crimes. Yet, by making this argument the Defendant is blurring two
24 (2) distinct concepts: jurisdiction and venue.⁴⁶ The State will
25 address each in kind.

26

⁴⁶ "In this state, where indictments are returnable in the district court,
jurisdiction and venue are to be distinguished." Walker v. State, 376 P.2d 137
(1962).

1 i. **THE GRAND JURY IS VESTED WITH THE SAME**
2 **JURISDICTIONAL AUTHORITY AS THE DISTRICT COURT**
3 **FOR WHICH IT IS IMPANELED.**

4 The jurisdictional authority of the Grand Jury is provided
5 by NRS 172.105. The plain language of the law establishes that the
6 jurisdictional reach of the Grand Jury is akin to that of the
7 District Court, as it is expressly granted the authority to inquire
8 into "all public offenses triable in the district court [...] within
9 the territorial jurisdiction of the district court for which it is
10 impaneled." Therefore, to appreciate the jurisdictional reach of the
11 Grand Jury, it becomes necessary to understand the bounds of the
12 territorial jurisdiction of the District Court.

13 Territorial jurisdiction is a question of law reserved for
14 the court. Shannon v. State, 783 P.2d 942, 948 (1989); McNamara v.
15 State, 377 P.3d 106, 112 (2016). In arriving at a determination
16 regarding the topic, the State need only prove territorial
17 jurisdiction by a preponderance of the evidence. McNamara at 113.

18 The expansive nature of the District Court's jurisdiction
19 is grounded in the Nevada Constitution. The District Court has
20 original jurisdiction in all cases, excluded only by law from the
21 original jurisdiction of justices' courts. See, Nev. Const. art. 6 §
22 6. By law, the only criminal matters over which the justice court
23 possesses jurisdiction are misdemeanor offenses. NRS 4.370(3).
24 Therefore, District Courts within the State possess exclusive
25 jurisdiction over felony crimes.

26 While the Nevada Constitution provides for the
establishment of Judicial Districts, the law is silent with respect

1 to any language which would limit the jurisdictional authority of a
2 District Court to the strict confines of its respective county. This
3 dearth of legal authority supporting the Defendant's contention is
4 echoed throughout the body of the Nevada Revised Statutes as well.
5 To the contrary, consideration of Nevada Supreme Court authority
6 conclusively establishes the opposite to be true.

7 The issue of cross-county jurisdiction came to bear in the
8 case of Walker v. State, 376 P.2d 137 (1962). In Walker, the
9 defendant was hitchhiking in Elko when he was picked up by the victim
10 Paul Allison. The two drove through various counties within the
11 State of Nevada. Roughly five (5) days later, Mr. Allison was found
12 dead in the camper of the vehicle in a parking lot in Reno.
13 According to the defendant, a fight ensued between the two somewhere
14 in the general vicinity of Lovelock, Pershing County, where the
15 victim was mortally wounded. According to the charging document, the
16 offense took place in Washoe County. At the close of evidence, the
17 defendant moved for an acquittal in which he argued that jurisdiction
18 had not been proven or, in the alternative, that the court cede
19 jurisdiction to Pershing County. The district court denied the
20 request and the defendant was convicted.⁴⁷ On appeal, the Nevada
21 Supreme Court upheld the lower court's ruling noting the distinction

22
23 ⁴⁷ While the facts of the instant case are rare, they are not unprecedented. In the
24 case of the State of Nevada v. Jeremiah Bean, similar events unfolded. In that
25 case, Mr. Bean was alleged to have killed five (5) people with one of the killings
26 and subsequent criminal acts occurring in Washoe County and the balance occurring
in Lyon County. Mr. Bean was charged with all offenses in a single charging
document, tried and convicted by a jury in Lyon County for all offenses. Mr. Bean
never challenged the Lyon County Court's jurisdiction over all allegations and, now
on appeal, he equally has not challenged the authority of the Court to hear all
charged crimes.

1 between jurisdiction and venue. Id. at 472, 141. With respect to
2 the issue of jurisdiction, the same issue raised by the Defendant in
3 this case, the Supreme Court offered the following:

4 "There is no question concerning the
5 jurisdiction of the Washoe County court.
6 Nev. Const. art. 6, sec. 6, gives the
7 district courts in the several judicial
8 districts in this state jurisdiction in
9 all criminal cases not otherwise provided
10 by law."⁴⁸

11 Along similar lines, statewide jurisdiction is conferred
12 over criminal offenders for public offenses committed within the
13 State of Nevada. Pursuant to NRS 171.010, the law provides that
14 "every person [...] is liable to punishment by the laws of this state
15 for a public offense committed therein [...]." Id. The only statutory
16 exception is for those offenses which are the exclusive province of
17 the Federal Court. Id.

18 Moreover, NRS 3.220 provides that district judges possess
19 coextensive and concurrent jurisdiction and power, that they have the
20 power to hold court in any county in the State, and to exercise and
21 perform the powers, duties and functions of the court at any place in
22 the State.

23 As such, the principle is simple and unadulterated:
24 District Courts within the State of Nevada enjoy jurisdiction over

25 ⁴⁸ Several years later, Walker was back for additional appellate litigation. There,
26 once again, the issue of jurisdiction was raised with the defendant arguing that
the offense for which he was charged occurred in a county other than Washoe and,
therefore, he could not be tried in Washoe County. Once again, the Court
reiterated that which it held before; namely, that venue could be properly laid in
Washoe County and that "there is no question concerning the jurisdiction of the
Washoe County court." Walker v. State, 85 Nev. 337, 343, 455 P.2d 34, 37-38
(1969), vacated in part, 408 U.S. 935, 92 S. Ct. 2855, 33 L. Ed. 2d 750 (1972).

1 felony offenses, unbound by the confines of their respective county
2 district, for every person who commits a public offense within the
3 State. Against this backdrop, it is useful to revisit the authority
4 conveyed to the Grand Jury by statute:

5
6 "The grand jury may inquire into all
7 public offenses triable in the district
8 court or in a Justice Court, committed
9 within the territorial jurisdiction of
10 the district court for which it is
11 impaneled."

12 NRS 172.105.

13 Thus, if the Grand Jury may inquire into all public
14 offenses triable in the district court committed within the
15 territorial jurisdiction of the district court for which it is
16 impaneled, and the Second Judicial District Court's territorial
17 jurisdiction extends on a statewide basis to all felony offenses,
18 logic compels the conclusion that the Grand Jury possesses that same
19 authority. Thus, the Defendant's instant contention that a Washoe
20 County Grand Jury is without authority to hear a felony charge that
21 occurs within the same State, albeit a different county, is simply
22 contrary to the law.

23 Further support for the State's position is found within
24 historic precepts of statutory construction. The doctrine of
25 *expressio unius est exclusion alterius* begins the State's analysis in
26 this regard. Standing for the proposition that the explicit mention
of one thing means the exclusion of another, the maxim has been
repeatedly confirmed by the Supreme Court of Nevada.⁴⁹ A shining

⁴⁹ See, Galloway v. Truesdell, 83 Nev. 12, 26, 422 P.2d 237 (1967); In re Bailey's

1 example of the doctrine at work is found within comparison of NRS
2 172.105 and NRS 172.175 and their respective jurisdictional
3 differences.

4 Both statutes bear on the authority of the Grand Jury. The
5 former speaks to the ability of the Grand Jury to inquire into
6 "public offenses" and provides broad scope to that authority as set
7 forth above. With respect to NRS 172.175, the function of the Grand
8 Jury is more specialized, speaking to specific scenarios for the body
9 to perform investigative functions. Of critical import to the
10 instant analysis, the statutes approach the issue of jurisdiction in
11 vastly different ways. As the law set forth above makes clear, NRS
12 172.105 confers jurisdiction to the Grand Jury in the same manner as
13 that of the District Court for which it is impaneled. Divergently,
14 NRS 172.175 specifically limits the jurisdictional reach of the Grand
15 Jury in those instances by precise and repeated use of the term
16 "county." For example, the Grand Jury may investigate the condition
17 and management of any public prison *located within the county*. NRS
18 172.175(1)(b) (emphasis added). Under NRS 172.175, each subsection is
19 specifically tailored to subjects specifically within the territorial
20 confines of the county. This specific term - and thus limitation -
21 is wholly absent from NRS 172.105. By drafting NRS 172.175 in a
22 manner which tailors the Grand Jury's abilities to investigate those
23 matters occurring within the specific county, and drafting NRS
24 172.105 in a manner which makes no limiting reference whatsoever to

25 Estate, 31 Nev. 377, 103 P. 232 (1909); Leake v. Blasdel, 6 Nev. 40 (1870); State
26 v. Arrington, 18 Nev. 412, 4 P. 735 (1884); Ex parte Arascada, 44 Nev. 30, 189 P.
169 (1920).

1 the county in which the acts are alleged to have occurred, the maxim
2 is found both literally and figuratively.⁵⁰ Thus, principles of
3 statutory construction confirm that which the law above makes so
4 obviously clear: there is simply no merit to the Defendant's
5 contention that the Grand Jury is hobbled to preside over public
6 offenses strictly occurring within the county limits in which they
7 sit.

8 The issue of alleging jurisdiction in a proposed indictment
9 has come before the Nevada Supreme Court in the past and is
10 consistent with the State's position on the matter. In Application
11 of Alexander, 80 Nev. 354, 393 P.2d 615, 617 (1964) the primary issue
12 was whether the district court ever obtained jurisdiction over the
13 defendant due to how the charge was pleaded in the indictment. In
14 Alexander the indictment set forth a charge of murder, but was
15 completely silent with respect to any jurisdictional allegation.
16 While the Nevada Supreme Court found this failure terminal, the more
17 applicable portion of the analysis in Alexander to the instant case
18 is found in the Court's expression of how jurisdiction was to be
19 pleaded in the indictment. On that topic, the Court stated:

20
21 We are compelled to hold that the failure
22 of the indictment to allege that the

23 ⁵⁰ A similar principle emerges from other cases authored by the Nevada Supreme
24 Court. For example, in State, Dep't of Motor Vehicles & Public Safety v. Brown,
25 104 Nev .524, 526, 762 P.2d 882 (1988), the Court declined to read language into a
26 statute that did not exist, reasoning, "Had the legislature intended that voluntary
intoxication be a condition rendering a driver incapable of refusal, language to
that effect could easily have been inserted in the statute. Clearly, there is no
reference in NRS 484.383(3) to intoxication as a condition rendering a driver
incapable of refusal, and we decline to create such a reference judicially where,
for the most obvious of policy reasons, the legislature has chosen not to."

1 crime was committed in the State of
2 Nevada was fatal and that the district
3 court never acquired jurisdiction to try
4 the case, and that its judgment was void.
5 It is ordered that the petitioner be
6 discharged from custody. However, as it
7 is apparent from the evidence that the
8 homicide has been committed and that
9 there is probable cause to believe that
10 petitioner is the one who committed the
homicide and that such homicide was
committed within the State of Nevada, the
district attorney is not precluded from
submitting the matter to another grand
jury, or in lieu thereof, from proceeding
by filing an information, or from
immediately rearresting the petitioner
in contemplation of such charge.

11 Id. at 358-59, 617 (emphasis added).

12 There are several important implications of the Court's
13 analysis as it relates to the present case. First is what the Court
14 provides regarding jurisdictional allegations in an indictment. The
15 Court specifically provides that the indictment should provide that
16 the offense was committed "in the State of Nevada." Later within
17 that same section, the Court reiterates the point, noting that the
18 district attorney would not be prohibited from submitting the matter
19 to another grand jury as it was apparent that a homicide was
20 committed, the petitioner was responsible, and that the homicide was
21 committed "within the State of Nevada." Twice, the Court provides
22 that a charging document must set forth that the offense occurred
23 within the State of Nevada expressly.

24 Equally as critical is what the Court does not say. For
25 example, there is nothing indicating that jurisdictional allegations
26 in an indictment must be tailored to the respective county where the

1 body sits. Said another way, if it were necessary for purposes of
2 the grand jury attaining jurisdiction over a case that the
3 allegations provide for the specific county in which they are
4 impaneled, the State submits that the Supreme Court would have simply
5 said so.

6 What is also gleaned from the case is that this method -
7 alleging statewide jurisdiction - is proper before a grand jury.
8 Here, the Court specifically references the charging document of the
9 grand jury, an indictment. Moreover, the Court grants advance
10 blessing to the State to correct the omission; that is, to prepare
11 another indictment in which jurisdiction is provided within the State
12 of Nevada, and then present the matter to another grand jury.

13 In sum, Alexander finds the Supreme Court passing on the
14 propriety of asserting jurisdiction in an indictment. On that topic
15 it is repetitively stated that the allegation must be within the
16 State of Nevada expressly; and therefore declining to direct that the
17 same be county-specific to the county where the grand jury is
18 impaneled. In so doing, the Nevada Supreme Court lends conclusive
19 credence to the State's position - that the grand jury is afforded
20 jurisdiction commensurate to the territorial jurisdiction of the
21 district court for which it is impaneled; namely the State of Nevada.

22
23 **ii. VENUE IS APPROPRIATE IN WASHOE COUNTY FOR ALL
CHARGED OFFENSES.**

24 In support of his argument regarding jurisdiction, the
25 Defendant makes factual averments which implicate a different
26 concept, venue. Generally, the Defendant argues that none of the

1 alleged acts specifically related to the Douglas County charges
2 occurred in Washoe County. Motion, pg. 2: 18-19. This is the
3 primary justification in support of his position that those charges
4 be dismissed. As this notion stands in stark contrast to the facts
5 in the record, and the law applicable to venue, it should be denied
6 insofar as it could be interpreted as a rationale for dismissing a
7 number of counts contained within the Indictment.

8
9 **a. NRS 171.030 SUPPORTS CHARGING ALL OFFENSES
WIHTIN A SINGLE INDICTMENT IN WASHOE COUNTY.**

10 A plain reading of NRS 171.030 supports the charging of all
11 offenses within a single Indictment in Washoe County. The law
12 provides:

13
14 "When a public offense is committed in
15 part in one county and in part in another
16 or the acts or effects thereof
17 constituting or requisite⁵¹ to the
consummation of the offense occur in two
or more counties, the venue is in either
county."

18 The statute is squarely applicable to the facts of this
19 case and unambiguous on its face. Said another way, the law permits
20 venue to be in either county where a public offense is committed
21 partly in one and partly in another, or the acts or effects requisite
22 or necessary to the consummation of the crime occur in two or more
23 counties.

24 Here, the act requisite to the Defendant shooting and
25

26

⁵¹ Per Google, defined as, "A thing that is necessary for the achievement of a
specified end."

1 killing both Ms. Koontz and Mrs. Renken is his procurement and
2 possession of a firearm. Said differently, in order for the
3 Defendant to shoot and kill both Ms. Koontz and Mrs. Renken, he must
4 first procure and possess a firearm. Pursuant to his admissions and
5 the evidence observed at both scenes, the Defendant procured and
6 possessed the firearm used in the aforementioned murders at the
7 Davids' trailer - in Washoe County. Since the acts or effects
8 requisite to the murders of Ms. Koontz and Mrs. Renken occur in two
9 or more counties, in that the Defendant procured the weapon in Washoe
10 County and used it in Douglas County to extinguish the life of two
11 (2) people, a plain reading of the statute allows for the filing of
12 those charges in either location.⁵²

13 The same logic can be applied with equal force to the
14 Burglary charges for his acts in Douglas County. In both instances
15 he is accused of Burglary While in Possession of a Firearm.
16 Specifically, in order for the Defendant to enter the residence of

17 ⁵² In addressing the topic of venue, the Nevada Supreme Court has provided
18 illustrative language. As taken from Walker v. State, 78 Nev. 463, 471-72 (1962)
19 , "In State v. O'Shea, 28 N.J. Super. 374, 100 A.2d 772, 774, the court after holding
20 that venue, although it must be proved by the state, is not an element of a crime,
21 went on to say: 'The tendency of the law, at any event in those jurisdictions not
22 tied down by constitutional or statutory limitations, Blume, The Place of Trial of
Criminal Cases, 43 Mich.L.Rev. 59 (1944), is not to allow technical questions of
venue to be made a refuge for the guilty. Cf. the new rule, R.R. 3:6-1(b). Chief
Justice Beasley, in the course of his remarks in State v. Le Blanch, 31 N.J.L. 82
(Sup.Ct.1864), speaks of a 'mere question of venue—a matter so pliant that it would
expand under the slight pressure of convenience.'"

23 The Court in Walker also addressed the applicability of NRS 171.030 to the facts of
24 that matter, concluding, "Even if [the jury] determined that the acts resulting in
25 the death were committed in part in one county, and in part in another, or in two
26 or more counties, of which Washoe County was one, then, under NRS 171.030, venue
was properly laid in Washoe County. The killing was admittedly committed by
appellant, and [']the acts or effects thereof constituting or requisite to the
consummation of the offense['] could have occurred in two or more counties, one of
which was Washoe County."

1 Ms. Koontz and/or Mrs. Renken with a firearm, he must first procure
2 and possess said firearm. Since that procurement happened in Washoe
3 County, and was consummated upon his entry into the homes in Douglas
4 County, venue is proper in either location.⁵³

5 Contrary to the Defendant's assertion, the acts which
6 occurred in Washoe County were requisite to all of the crimes the
7 Defendant committed in Douglas County. Through express application
8 of those facts to the law,⁵⁴ the Defendant's motion must be denied.

9 **b. FUNDAMENTAL FAIRNESS, JUDICIAL ECONOMY, AND**
10 **NEVADA'S VICTIMS' BILL OF RIGHTS FURTHER**
11 **SUPPORTS CHARGING ALL OFFENSES WITHIN A**
12 **SINGLE INDICTMENT IN WASHOE COUNTY.**

13 Additional support for the State's position extends beyond
14 The plain language of the statute. First, charging all offenses in
15 Washoe County is fundamentally fairer to the Defendant. Washoe
16 County has a larger population and thus a larger jury pool from which
17 to find unbiased, qualified jurors. Secondly, by charging the case
18 in this manner, the State has only one chance at prosecuting the
19 Defendant for these crimes.⁵⁵ The compelling force of this notion is

20 ⁵³ While not the subject of the Defendant's pleading, the same logic extends to
21 Count X related to the Defendant's possession of a stolen firearm; again,
22 referencing the same revolver which he possessed in Washoe County on the date he
23 stole it from the Davids' trailer, possessed it in Douglas County when he entered
the homes of Ms. Koontz and Mrs. Renken, used it to kill both victims, before
returning to Washoe County where he entered the Davids' home with that same gun,
again using it to murder both Mr. and Mrs. David, before ultimately being
apprehended in Carson City while in possession of that same stolen revolver.

24 ⁵⁴ Even more support for the State's position on venue - and the fact that the
25 District Court enjoys statewide jurisdiction - is found in NRS 171.060 as well; that
specific statute allows for venue to be proper in any county where property taken by
burglary from one county is brought into another.

26 ⁵⁵ See NRS 171.075, barring subsequent prosecution for an offense within the venue
of two or more counties following a conviction or acquittal.

1 found in consideration of its alternative: if the State elected to
2 charge each murder separately, in the County in which the decedents
3 were found, the Defendant would be subject to up to three (3)
4 separate prosecutions for Murder in the First Degree. Thus, the
5 Defendant would effectively have to defeat three (3) separate murder
6 trials or, said another way, the State would have three (3) distinct
7 opportunities to convict the Defendant of Murder in the First Degree
8 as opposed to one (1).

9 Moreover, considerations of judicial economy bolster the
10 State's position. Should the Defendant's motion be denied, a single
11 trial will be held which would resolve effectively three (3) separate
12 homicides involving a total of four (4) decedents. If venue were
13 altered, there would in essence be at least three (3) separate
14 trials; one for the location of each homicide. Along these same
15 lines, should each killing be tried individually, the evidence from
16 the other murders would be cross-admissible.⁵⁶ The entire factual
17 underpinnings of the Defendant's criminal spree are so intertwined
18 that witnesses in an individual trial would not be able to describe
19 the investigation without reference to other acts, crimes, or
20 evidence. This would also include the evidence related to the
21 recovery of the weapons buried by the Defendant. Stating the
22 obvious, the evidence adduced from each individual case is germane
23 across all events as it relates to the Defendant's intent, his use of
24 a weapon, his identity as the perpetrator, and so forth. What's

25 ⁵⁶ See NRS 48.045 discussing the admissibility of other act evidence to prove
26 motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of
mistake or accident; and NRS 48.035(3) related to *res gestae* evidence.

1 more, a myriad of examples exist where cross-admissible evidence
2 would be adduced from each event in order to tell the complete story
3 of the crime.

4 As a consequence, should venue be split amongst each
5 County, each trial would likely include evidence gathered across the
6 entire scope of all four (4) killings, resulting in each respective
7 murder trial being a presentation of the evidence gathered in all
8 four (4) murders. This scenario equates to considerable cost both
9 fiscal and temporal.

10 Finally, recent additions to the Nevada Constitution
11 provide compelling support for the State's position. Now, the
12 Constitution allows a victim - defined to include their family - the
13 right to a timely disposition of a criminal matter.⁵⁷ Here, the
14 family members of all four (4) victims have, at a minimum, implicitly
15 invoked this right through their conversations with the State's
16 representatives. If venue were altered, multiple trials would
17 unavoidably take place. However, they would not occur concurrently.
18 As such, it is reasonable to forecast years of delay until all crimes
19 could be adjudicated. Such a result, when the law clearly supports
20 the contrary, would be a violation of the Victims' Bill of Rights in
21 Nevada.

22 ///

23 ///

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26

⁵⁷ Nev. Const. art. 8A § (1)(i).

1 III. CONCLUSION

2 In light of the foregoing, the State would respectfully
3 resubmit that the Defendant's Motion be denied in its entirety.

4 AFFIRMATION PURSUANT TO NRS 239B.030

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

7 DATED this 2nd day of May, 2019.

8
9
10 /s/ Christopher Hicks
11 CHRISTOPHER HICKS
DISTRICT ATTORNEY

/s/ Mark Jackson
MARK JACKSON
DISTRICT ATTORNEY

1 CERTIFICATE OF SERVICE BY E-FILING

2 I certify that I am an employee of the Washoe County
3 District Attorney's Office and that, on this date, I electronically
4 filed the foregoing with the Clerk of the Court by using the ECF
5 system which will send a notice of electronic filing to the
6 following:

7 PUBLIC DEFENDER'S OFFICE

8 John Arrascada, Public Defender
9 Kate Hickman, Esq.
 Gianna Verness, Esq.

10
11 DATED this 2nd day of May, 2019.

12
13 /s/ *Lori Delano*
 Lori Delano

1 CODE 2645
2 Christopher J. Hicks
3 #7747
4 P.O. Box 11130
5 Reno, NV 89520
6 (775) 328-3200
7 Attorney for Plaintiff

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE.

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No: CR19-0447

15 v.

Dept.: D04

16 WILLIAM ERNESTO MARTINEZ GUZMAN,

17 Defendant.
18 _____/

19 **RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

20 COMES NOW, the State of Nevada, by and through CHRISTOPHER
21 J. HICKS, District Attorney of Washoe County, and MARK JACKSON,
22 District Attorney of Douglas County, and hereby enters this "Response
23 to Petition for Writ of Habeas Corpus". This filing is based on the
24 following Points and Authorities, all pleadings and papers on file
25 herein, and any further evidence that may be presented at a hearing.

26 ///

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1 **POINTS AND AUTHORITIES**

2 **I. PROCEDURAL HISTORY**

3 On January 28, 2019, a "Warrant of Arrest" was issued for
4 WILBER ERNESTO MARTINEZ GUZMAN (hereafter "Defendant"). That same
5 day, a "Criminal Complaint" was filed in the Reno Justice Court
6 alleging the Defendant's commission of multiple felony offenses.

7 On March 13, 2019, the Defendant's case was presented to
8 the Washoe County Grand Jury. At the conclusion of that hearing a
9 true bill was returned and an "Indictment" filed that same day.¹ The
10 Defendant stands accused of a single count of Burglary, four (4)
11 counts of Burglary While Gaining or in Possession of a Firearm, four
12 (4) counts of Murder with the use of a Deadly Weapon, and a single
13 count of Possession of a Stolen Firearm.

14 The Defendant was arraigned on March 19, 2019. A plea of
15 "not guilty" was entered on his behalf and the case was set for jury
16 trial to commence on April 6, 2020.

17 **II. STATEMENT OF FACTS**

18 **A. INITIAL BURGLARIES AT LA GUARDIA LANE - COUNTS I & II.**

19 In January of 2019, GERALD DAVID (hereafter "Mr. David")
20 and his wife SHARON DAVID (hereafter "Mrs. David" and collectively as
21 the "Davids") lived in a home at 760 La Guardia Lane in Washoe County
22 Nevada. Grand Jury Transcript, pg. 79: 12-19. At the property, the
23 Davids had a number of pets, including horses. GJT, pg. 81: 19-21.
24 Due to their age and physical condition, the Davids enlisted the help
25

26 ¹ As a result of the Grand Jury's determination, the Court entered an "Order Staying Proceedings" for the case pending in the Reno Justice Court.

1 of VAL DIAZ (hereafter "Mr. Diaz") to assist with the care of the
2 horses beginning in February of 2018. GJT, pg. 3-10.

3 Mr. Diaz would assist the Davids approximately every other
4 day. GJT, pg. 83: 19-24. While his primary function was to assist
5 with the animals, it was often the case that Mr. Diaz would spend a
6 couple hours inside the Davids' home conversing. GJT, pg. 84: 1-2.
7 When asked if was familiar with the Davids' property, Mr. Diaz
8 answered, "Very much so." GJT, pg. 7: 18-19.

9 While shoveling snow with Mr. David on his back patio in
10 early January of 2019, Mr. David told Mr. Diaz about some break-ins
11 that had occurred on his property. GJT, pg. 86: 7-11. Mr. David
12 explained that the burglaries occurred over a two (2) day period;
13 that on the first day the thief ransacked some sheds in Mr. David's
14 backyard before returning the second day to ransack Mr. David's
15 trailers. GJT, pg. 86: 20-24. While the two were discussing the
16 location of the burglaries, Mr. Diaz indicated that Mr. David was
17 pointing out the location where the intruder went through his
18 property. GJT, pg. 87: 5-7.

19 With respect to the events of the first night, Mr. David
20 told Mr. Diaz that the person came through the back stalls, holding
21 close to the shed area in the backyard. GJT, pg. 87: 11-12. Mr.
22 David went on to explain to Mr. Diaz that the person went through
23 three (3) sheds, which Mr. David referred to as his tool shed,
24 ransacking the inside, before stealing some fishing rods and tools.
25 GJT, pg. 87: 11-15. In subsequent conversation, Mr. David told Mr.
26 Diaz that a circular saw was amongst the items taken although it was

1 difficult for him to discern what was missing given the ransacked
2 condition of his property. GJT, pg. 88: 1-8.

3 In addition to Mr. David's statements, Mr. Diaz observed
4 things which caused him to conclude the circular saw was indeed
5 missing. Specifically, Mr. Diaz testified to an occasion where a
6 tree branch broke and Mr. David was using a hand saw to fell the
7 limb. GJT, pg. 88: 9-12. Mr. Diaz understood that Mr. David's
8 chainsaws had been winterized and were thus not capable of being used
9 and Mr. David explained that he had no other means of cutting the
10 branch. GJT, pg. 88: 13-17.

11 With respect to the second event, Mr. David explained that
12 the two (2) trailers located between the sheds were burglarized.
13 GJT, pg. 88: 18-23. Mr. David explained to Mr. Diaz that he found
14 the events involving the trailers strange as some of the items taken
15 had little to no value while more expensive items were left behind.
16 GJT, pg. 91: 6-8. Amongst the items taken was a bag that Mr. David
17 referred to as his camping bag. GJT, pg. 91: 9-11. Mr. Diaz
18 testified that he knew the bag had hunting items in it, referring to
19 his knowledge that Mr. David had drawn a hunting tag which, due to
20 his health, he was never able to fill but was nevertheless prepared
21 to go on the hunt. GJT, pg. 91: 12-14. While Mr. David could not
22 remember to a certainty what was in the bag, he believed it contained
23 a pistol. GJT, pg. 91: 22-24 and pg. 92: 1.

24 Mr. Diaz also testified to changes in Mr. David's property
25 that he noticed shortly after their discussion about these
26 burglaries. Specifically, on one of Mr. David's sheds in the

1 backyard known as a "pump house" was a brand new door. GJT, pg. 89:
2 1-11. During his prior visits to their property, Mr. Diaz had
3 noticed that the old door for this shed did not close nor shut
4 properly. GJT, pg. 89: 12-24. As mentioned previously, after Mr.
5 David told him about the burglaries, Mr. Diaz noticed that the new
6 door was affixed to the shed in the backyard. Id. In addition to
7 the new door on the shed, Mr. Diaz observed items which were "staged"
8 or left behind by the burglar during the perpetration of these
9 events. In a barn located near the sheds where Mr. David explained a
10 burglary occurred, Mr. Diaz observed a scanner or fax machine and a
11 box containing gun shells. GJT, pg. 109: 4-24 and pg. 87: 21-23.
12 Mr. Diaz was similarly told by Mr. David that the burglar had moved
13 those items to that location. Id. Finally, Mr. Diaz testified as to
14 other observations he made after being informed of the burglaries.
15 He indicated that the intruder opened up stalls where the horses were
16 kept and they were left to roam. GJT, pg. 109: 24 and pg. 110: 1-2.
17 In the course of their having free range, they "wiped out the area,"
18 tearing up alfalfa and hay. GJT, pg. 110: 2-4.

19 Finally, and as mentioned above, Mr. Diaz was very familiar
20 with the Davids' property. The Davids had a table in the kitchen
21 area of their residence, and the Davids kept a monthly desk pad
22 calendar on that table. Asked if he was familiar with the calendar,
23 Mr. Diaz responded, "Very." GJT, pg. 117: 22-24. Mr. Diaz explained
24 to the Grand Jury that when he would make arrangements with Mr. and
25 Mrs. David for dinner or breakfast, they would refer to that
26

1 calendar.² In addition, Mr. Diaz testified that he had been in that
2 room on many prior occasions when the couple would get a call from a
3 doctor or some similar type of appointment and he would see Mr. David
4 note the event on the calendar. GJT, pg. 118: 5-9. According to Mr.
5 Diaz, Mr. David was, "[...] to a date, to a time, very organized."
6 GJT, pg. 118: 16-18.

7 Washoe County Sheriff's Detective STEFANIE BRADY (hereafter
8 "Detective Brady") was assigned as the lead investigator for the
9 subsequent murders of Mr. and Mrs. David. As a result, she had an
10 opportunity to view the Davids' residence on January 16, 2019.

11 Inside the Davids' home, Detective Brady observed the same
12 calendar authenticated and discussed by Mr. Diaz. GJT, pg. 131: 1-
13 14. On this calendar, for the dates of January 3, 2019 and January
14 4, 2019, respectively, a series of handwritten notes were observed
15 pertaining to the burglaries discussed by Mr. David and Mr. Diaz.
16 Id. Specifically, for January 3, 2019, Detective Brady observed a
17 note, "Barns broken into Skilsaw/charger." GJT, pg. 131: 15-16. The
18 following day on the calendar - January 4, 2019 - she observed
19 another note, "the barns broken into, all fishing poles, Wells
20 Cargo." GJT, pg. 131 17-19. Also on the 4th was a note indicating,
21 "Door on pump house." GJT, pg. 132: 5. Detective Brady observed a
22 Wells Cargo brand cargo trailer on the Davids' property, located
23 between their residence and their barn. GJT, pg. 131: 22-24.

24 The Defendant was apprehended in Carson City on January 19,
25 2019. That same date, Detective Brady conducted an interview of the
26

² Exhibit 81 and 82, respectively.

1 Defendant at the Carson City Sheriff's Office. Throughout the course
2 of the interview the Defendant implicated himself in the commission
3 of the aforementioned burglaries at the Davids' residence.³

4 Specifically, the Defendant mentioned taking a revolver and
5 fishing poles on the same day.⁴ With respect to the issue of when he
6 procured these items, the Defendant stated that it was before he
7 killed CONSTANCE KOONTZ (hereafter "Ms. Koontz") and Mr. and Mrs.
8 David.⁵ The Defendant clarified that the first time he only took a
9 small machine to "cut things" and returned a second night where he
10 took the revolver and fishing poles from inside a trailer.⁶ When
11 asked about the revolver, the Defendant indicated it was inside a
12 case.⁷

13 When the Defendant was apprehended in Carson City on
14 January 19, 2019, he was sitting on the driver's seat inside a BMW
15 vehicle. As part of the investigation, that BMW vehicle attributed
16 to the Defendant was subsequently searched and processed for
17 potential evidence. GJT, pg. 212: 18-24 and pg. 213: 1-2. Washoe
18 County Sheriff's Office Criminalist SHAUN BRALY (hereafter
19 "Criminalist Braly") was responsible for this part of the
20 investigation. Id.

23 ³ A portion of the Defendant's interview was played to the Grand Jury. The
24 citations provided correspond to the times referenced on the interview clip
attached hereto as Exhibit 1.

⁴ Interview with Defendant, January 19, 2019, at 3:52:14.

25 ⁵ Interview with Defendant, January 19, 2019, at 4:09:10. Mrs. Koontz was killed on
or about January 9 and/or January 10, 2019, and Mr. and Mrs. David were killed on
26 or about January 15 and/or January 16, 2019.

⁶ Interview with Defendant, January 19, 2019, at 4:09:10.

⁷ Id.

1 During his search of the car, Criminalist Braly found a
2 number of items associated with Mr. David. He found a .22 caliber,
3 nine (9) shot revolver located under the driver's seat. GJT, pg.
4 219: 14-16, pg. 220: 2-13, and pg. 222: 13-14. During the interview
5 with Detective Brady, the Defendant was asked if this was the
6 revolver he used in the commission of the murders of Ms. Koontz and
7 Mr. and Mrs. David - the Defendant indicated in the affirmative.⁸
8 Criminalist Braly also located a Reno Rodeo name tag bearing the name
9 "JERRY DAVID" in a backpack within the BMW. GJT, pg. 222: 4-5.

10 **B. THE MURDER OF CONSTANCE KOONTZ - COUNTS III & IV.**

11 Douglas County Sheriff's Investigator RYAN YOUNG (hereafter
12 "Investigator Young") testified before the Grand Jury to the
13 investigation into the murder of Ms. Koontz. Investigator Young
14 testified about his investigation into a call for service on January
15 10, 2019 at a residence located at 1439 James Road in Gardnerville,
16 Douglas County, Nevada. GJT, pg. 25: 4-20.

17 Investigator Young described the premises as a single
18 family residence. GJT, pg. 28: 6-7. During his investigation, it
19 was determined that Ms. Koontz lived at the home with her mother,
20 EVELYN HARMON (hereafter "Mrs. Harmon"). GJT, pg. 29: 8-11.
21 Approximately six (6) months before the January 10th date, Ms.
22 Koontz's daughter also resided at the home; she was identified as
23 MADISON WINKELMAN-KOONTZ (hereafter "Ms. Winkelman"). GJT, pg. 29:
24 16-18.

25
26

⁸ Interview with Defendant, January 19, 2019, at 3:52:14 and 3:58:15.

1 After providing an overview of the home and its various
2 points of ingress and egress, Investigator Young testified to
3 specific things he observed inside the residence. First, he
4 testified to a television stand located within the living room of the
5 home. GJT, pg. 37: 21-23. Investigator Young noted that the
6 television was missing from the stand. Id. Along similar lines,
7 Investigator Young was also able to testify to determinations made
8 during the investigation that specific items of property were taken
9 from Ms. Koontz's home. Specifically, it was discovered that an iMac
10 computer, an iWatch, a necklace, and a box containing various items
11 of jewelry were stolen from the home. GJT, pg. 39: 1-8.

12 Near the living room was the entry into the kitchen
13 separated by a sheet of blue cloth. GJT, pg. 41: 21-22. In the
14 kitchen, Investigator Young observed a television sitting on the
15 floor that appeared to have been moved from the now empty television
16 stand. GJT, pg. 1-16. In that same kitchen area, Investigator Young
17 observed the deceased body of Ms. Koontz. GJT, pg. 43: 10-15.

18 An autopsy was performed by Washoe County Assistant Medical
19 Examiner JULIE SCHRADER (hereafter "Dr. Schrader"). GJT, pg. 154: 3-
20 7. The Grand Jury heard evidence related to Dr. Schrader's
21 observations and opinions with respect to the death of Ms. Koontz.

22 Dr. Schrader testified to observing a large amount of blood
23 around the right side of Ms. Koontz's head. GJT, pg. 155: 2-5.
24 Additionally, she observed a defect consistent with a bullet entry
25 wound just above and slightly behind Ms. Koontz's right ear. Id.
26 With respect to this wound, Dr. Schrader observed no corresponding

1 exit wound. GJT, pg. 166: 23-24. Upon further examination, Dr.
2 Schrader was able to testify to the path of the bullet. She
3 concluded that the projectile entered through Ms. Koontz's skull, and
4 traveled through the left and right hemispheres of her brain. GJT,
5 pg. 166: 17-19. According to Dr. Schrader, this was a fatal wound.
6 GJT, pg. 166: 20-24 and pg. 167: 1. Dr. Schrader further opined that
7 the wound was inflicted by a firearm. GJT, pg. 167: 2-5. Based on
8 her examination, it was the opinion of Dr. Schrader that the cause of
9 Ms. Koontz's death was a gunshot wound to the head in the manner of a
10 homicide. GJT, pg. 167: 16-24 and pg. 168: 1-3. Upon questioning by
11 a member of the Grand Jury, Dr. Schrader indicated that a pistol
12 could be responsible for the injuries she observed during her autopsy
13 of Ms. Koontz and that it is not uncommon for a lower caliber round
14 to not exit the body due to the energy lost from traveling through
15 the human skull. GJT, pg. 169: 13-24 and pg. 170: 7.

16 During his search of the center console in the Defendant's
17 BMW vehicle, Criminalist Braly observed a charm or pendant that would
18 ordinarily be associated with a necklace or bracelet. GJT, pg. 221:
19 10-11. The name "CONNIE" was on the charm. Id. Criminalist Braly
20 found additional property inside the Defendant's BMW connected to Ms.
21 Koontz's residence. He located a U.S. Airways document in the name
22 of "MADISON WINKELMAN."

23 During the Defendant's interview by Detective Brady, the
24 Defendant implicated himself in the murder of Ms. Koontz as well as
25 the burglary of her home.⁹ GJT, pg. 148: 5-10.

26 ⁹ A portion of the Defendant's interview was played to the Grand Jury. The
citations provided correspond to the times referenced on the interview clip

1 The Defendant also acknowledged his possession of an
2 iWatch during the interview, indicating it was in his room.¹⁰ At
3 first, the Defendant maintained that he found the iWatch along with
4 some other property.¹¹ Through the course of his interview, his story
5 changed. With respect to the iWatch, the Defendant ultimately
6 explained that he obtained the item when he "shot this woman in
7 Gardnerville."¹² The Defendant told Detective Brady that he entered
8 the home through the back door which was open and unlocked.¹³ He
9 stated that he wanted to take some items in order to sell them so
10 that he would have money to purchase drugs.¹⁴ The Defendant also
11 confirmed that he murdered Ms. Koontz, telling Detective Brady that a
12 woman had come out and he shot her.¹⁵ The Defendant stated that he
13 shot the woman with a revolver that he had obtained on the same date
14 as the fishing rods.¹⁶ Lastly, he corroborated much of the evidence
15 observed during the investigation. For example, he indicated that he
16 shot only once which is consistent with Dr. Schrader's observations.¹⁷
17 He stated that he took the items from the woman's bedroom - again
18 consistent with the missing iWatch and other items.¹⁸ Finally, he
19 acknowledged the presence of Mrs. Harmon, indicating that there was
20 "another woman" in another room which he believed to be the

21
22 _____
attached hereto as Exhibit 1.

23 ¹⁰ Interview with Defendant, January 19, 2019, at 3:38:40.

24 ¹¹ Id.

25 ¹² Interview with Defendant, January 19, 2019, at 3:52:14.

26 ¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Interview with Defendant, January 19, 2019, at 3:52:14.

¹⁸ Id.

1 decedent's mother.¹⁹ With respect to Mrs. Harmon, the Defendant told
2 Detective Brady that he did not believe that she had seen him and
3 that he took the items and left the home.²⁰

4 **C. THE MURDER OF SOPHIA RENKEN - COUNTS V & VI.**

5 Douglas County Sheriff's Investigator BRANDON WILLIAMSON
6 (hereafter "Investigator Williamson") testified before the Grand Jury
7 to the investigation into the murder of SOPHIA RENKEN (hereafter
8 "Mrs. Renken"). Investigator Williamson explained that he was
9 dispatched to 943 Dresslerville Road in Gardnerville, Douglas County,
10 Nevada on January 13, 2019. GJT, pg. 52: 1-13.

11 Investigator Williamson described the premises as a home
12 set on a parcel of property which contained horses, a barn, and
13 various other out-buildings. GJT, pg. 53: 14-22. Additionally, he
14 identified the sole resident at this location to be Mrs. Renken.
15 GJT, pg. 54: 11-14.

16 Upon making entry into the home, Investigator Williamson
17 noted that the residence was well kept and clean. GJT, pg. 63: 5.
18 Investigator Williamson also observed a purse belonging to Mrs.
19 Renken which appeared to be undisturbed. GJT, pg. 63: 10-18. While
20 moving through the home, Investigator Williamson observed signs of
21 activity in a hallway adjacent to a bathroom. GJT, pg. 64: 1-14.
22 Upon closer examination, he observed multiple drops of blood on the
23 floor and crumpled carpet runners. GJT, pg. 64 and 65. Inside a
24 bedroom within the home, Investigator Williamson found the lifeless
25 body of Mrs. Renken. GJT, pg. 66: 7-9.

26 ¹⁹ Id.

²⁰ Id.

1 Based on his investigation, Investigator Williamson
2 determined that a total of five (5) shots were fired within Mrs.
3 Renken's home. GJT, pg. 67: 6-8. These rounds were not all similar.
4 GJT, pg. 67: 14-15. Some of the bullets found within the home were
5 basic, .22 caliber slugs. GJT, pg. 67: 15. Additionally,
6 Investigator Williamson observed snake shot rounds as well. GJT, pg.
7 67: 18. Investigator Williamson described this snake shot as being
8 similar to bird shot for a shotgun, consisting of small flecks of
9 lead but only in the form of a pistol round. GJT, pg. 67: 18-22.
10 Investigator Williamson testified that Mrs. Renken was shot four (4)
11 times - twice with basic .22 caliber rounds and twice with snake shot
12 rounds. GJT, pg. 70: 2.

13 On January 14, 2019, Washoe County Assistant Medical
14 Examiner KATHERINE CALLAHAN (hereafter "Dr. Callahan") performed an
15 autopsy on Mrs. Renken. GJT, pg. 174: 19. On the left side of Mrs.
16 Renken's face, Dr. Callahan observed a number of small red marks
17 constituting individual entrance wounds from shot pellets. GJT, pg.
18 178: 12-15. On the right side of Mrs. Renken's face, Dr. Callahan
19 observed more of the same entrance wounds consisting of small
20 pellets. GJT, pg. 181: 2-5. Dr. Callahan testified to an additional
21 entrance gunshot wound to Mrs. Renken's lateral right shoulder. GJT,
22 pg. 181: 21-22. This bullet was found in Mrs. Renken's right-upper
23 back and was consistent with a .22 caliber round. GJT, pg. 182: 4
24 and pg. 185: 21-22. Finally, Dr. Callahan observed an entrance
25 gunshot wound on Mrs. Renken's lower back. GJT, pg. 184: 4-8. The
26 path of this bullet was traced through Mrs. Renken's right lung and

1 the right side of her heart before exiting through the front of her
2 chest. Id. Dr. Callahan ultimately opined that a firearm was used
3 in the infliction of the wounds to Mrs. Renken, and that the cause of
4 her death was multiple gunshot wounds in the manner of a homicide.
5 GJT, pg. 185: 10-16.

6 As mentioned above, the Defendant was apprehended on
7 January 19, 2019 and interviewed by Detective Brady. Throughout much
8 of the interview, the Defendant denied any knowledge or culpability
9 in the event at Mrs. Renken's home. GJT, pg. 258: 4-10. However,
10 towards the end of his interview, the Defendant's story changed and
11 he proceeded to implicate himself in the murder of Mrs. Renken. Id.

12 The Defendant explained to Detective Brady that he "did her
13 in" but denied taking anything from her home due to his becoming
14 scared.²¹ With respect to how the event unfolded, the Defendant
15 admitted to entering Mrs. Renken's home through an unlocked back
16 door, when she woke up and came out.²² He then admitted to shooting
17 her several times.²³ When asked why he selected her home, the
18 Defendant indicated that he knew she had machines or tools in her
19 garage as he had previously performed yard work at her residence.²⁴

20 **D. THE MURDERS OF SHARON DAVID AND GERALD DAVID - COUNTS**
21 **VII, VIII, and IX.**

22 As he stated to the Grand Jury, Mr. Diaz had been assisting
23 the Davids with their horses for approximately one (1) year as of
24 June 16, 2019. GJT, pg. 80: 1-9. On that day, as he had done

25 ²¹ Interview with Defendant, January 19, 2019, at 4:12:40.

26 ²² Id.

²³ Id.

²⁴ Id.

1 roughly every other day for that past year, Mr. Diaz went to the
2 Davids' home on La Guardia Lane to assist with their animals. GJT,
3 pg. 100: 3-9. Upon his arrival, he immediately noticed things were
4 unusual. For example, he observed that the horse's stalls were not
5 clean, the horses were away from the stall area, a screen was removed
6 from a window and laying on the ground nearby, the window which
7 contained the aforementioned screen was fully open, a gate was open
8 and the Davids' cats were locked in their pen earlier than usual.
9 GJT, pg. 100: 10 thru pg. 104: 13. Concerned, Mr. Diaz began to
10 shout the couple's names and calling their phone numbers; he received
11 no response. GJT, pg. 112: 9-11.

12 Moving into the backyard of the home, Mr. Diaz noticed the
13 door leading through a mudroom and into the home was open. GJT, pg.
14 112: 17-19. Mr. Diaz briefly entered the residence through this same
15 door, stepping over a blanket on the floor covering a then-unknown
16 object. GJT, pg. 113: 15-24. Inside, he observed cabinets opened in
17 the area of the kitchen and living room. GJT, pg. 114: 15-22. He
18 immediately backed out of the home and called 911. GJT, pg. 119: 1-
19 7.

20 Detective Brady was assigned as the lead detective to the
21 events at La Guardia Lane. On January 16, 2019, Detective Brady was
22 dispatched to the Davids' residence in Washoe County on a report of a
23 double homicide. GJT, pg. 124: 22-24 and pg. 130: 2-5.

24 During her investigation, Detective Brady observed numerous
25 things inside the Davids' home that suggested a burglary had
26 occurred. GJT, pg. 133: 1-5. For example, items were strewn about

1 the residence or taken out of cabinets and drawers. GJT, pg. 133: 2-
2 7. Detective Brady began moving toward the back of the home, noting
3 her observations along the way. On a rug located in the kitchen,
4 Detective Brady observed an unspent .22 caliber snake shot round.
5 GJT, pg. 135: 2-5. Detective Brady explained that snake shot
6 contains very small pellets of shot in the tip of the round. GJT,
7 pg. 135: 19-20. Continuing into the area of Mrs. David's room,
8 Detective Brady observed a purse lying on the bed with its contents
9 strewn about. GJT, pg. 137: 7-8. Prior to entering the room where
10 Mr. David slept, there was a smaller adjoining room. GJT, pg. 139:
11 1-5. In this room, Detective Brady observed an empty gun cabinet
12 with its door open. GJT, pg. 140: 1-5. Detective Brady also
13 observed a bag in this same room that was packed with various items
14 such as ammunition, jewelry, and so forth. GJT, pg. 146: 12-22.
15 Detective Brady continued into Mr. David's room where she made
16 similar observations. For example, various things were strewn about
17 with drawers open and their contents appearing thrown on the ground.
18 GJT, pg. 140: 12-18. Also, in a closet adjoining Mr. David's room,
19 she observed more items having appeared to been strewn about as well
20 as another empty gun case. GJT, pg. 141: 6-24.

21 Inside Mr. David's room, Detective Brady observed his
22 lifeless body lying on the bed. GJT, pg. 140: 21-24. Mrs. David's
23 lifeless body was also found in the home, covered by a blanket; she
24 was found lying on the floor of the mudroom which connected the
25 kitchen to the backyard door of the residence. GJT, pg. 141: 1-5 and
26 pg. 144: 17-19.

1 On January 17, 2019, Dr. Callahan performed an autopsy on
2 Mrs. David. GJT, pg. 186: 1-18. Dr. Callahan observed a single
3 entrance gunshot wound to the right side of her nose with no
4 corresponding exit wound. GJT, pg. 189: 15-24. This wound was
5 consistent with that caused by a small caliber bullet. GJT, pg. 191:
6 21-24. Dr. Callahan located a deformed, small caliber bullet within
7 Mrs. David's cranial cavity. GJT, pg. 191: 13-18. Through the
8 course of her examination, Dr. Callahan determined that the bullet
9 traveled through Mrs. David's sinus, entering her cranial cavity and
10 injuring her brain stem resulting in her instantaneous death. GJT,
11 pg. 192: 5-16. With respect to Mrs. David, Dr. Callahan opined that
12 a firearm was used in the infliction of this wound, further
13 concluding that Mrs. David's cause of death was a gunshot wound to
14 the head in the manner of a homicide. GJT, pg. 192: 22-24, pg. 193:
15 1-3 and pg. 194: 1-5.

16 That same day, Dr. Callahan performed an autopsy on Mr.
17 David. GJT, pg. 193: 4-6. Generally, Dr. Callahan observed five (5)
18 gunshot wounds to Mr. David's head and one (1) similar wound to his
19 chest. GJT, pg. 209: 1-5. With respect to the head, Mr. David
20 displayed a number of gunshot wounds which penetrated his skull,
21 injuring his brain. GJT, pg. 198: 12-15, pg. 202: 1-23, pg. 203: 6-
22 24. One other round traveled through Mr. David's face injuring his
23 facial tissue. GJT, pg. 200: 1-24. As it pertains to the wound on
24 his chest, Dr. Callahan observed that bullet had traveled through Mr.
25 David's lungs, aorta, and exited through his back. GJT, pg. 206: 7-
26 11. Based on the nature of the wounds as well as some of the bullets

1 and bullet fragments recovered during her examination, Dr. Callahan
2 opined that a small caliber weapon was used in the murder of Mr.
3 David. GJT, pg. 196: 10-18. To that end, it was her opinion that
4 Mr. David's cause of death was multiple gunshot wounds to the head
5 and chest in the manner of a homicide. GJT, pg. 208: 10-16.

6 When the Defendant was interviewed by Detective Brady on
7 January 19, 2019, he implicated himself in the commission of a
8 burglary at the Davids' residence as well as their murders.

9 First, the Defendant explained that he entered the Davids'
10 residence through the backdoor.²⁵ He stated that, while he was
11 entering the Davids' home, a female was coming out.²⁶ He then
12 indicated that he "got scared" and "shot her" before quickly going
13 inside and shooting the man while he was changing.²⁷ He told
14 Detective Brady that he shot the female by the backdoor and shot the
15 male while he was sitting on bed.²⁸ The Defendant explained that he
16 also took items from the Davids' residence, consisting of weapons and
17 everything he thought he could use, in the process also acknowledging
18 having left some items behind.²⁹ On the topic of weapons, the
19 Defendant also provided details as to the weapon he used during the
20 murders. He explained to Detective Brady that he used a revolver
21 and, upon further questioning, acknowledged that it was the same
22 revolver he used in the murder of Ms. Koontz.³⁰

23
24 ²⁵ Interview with Defendant, January 19, 2019, at 3:58:15.

25 ²⁶ Id.

26 ²⁷ Id.

27 ²⁸ Id.

28 ²⁹ Id.

29 ³⁰ Id. Of note, this is the same revolver the Defendant acknowledges having taken
from the Davids' trailer prior to the murder of Mrs. Koontz.

1 During the search of the Defendant's BMW, Criminalist Braly
2 located a box of .22 caliber ammunition that was missing nine (9)
3 rounds. GJT, pg. 218: 12-16 and pg. 219: 11. Also, he located a .22
4 caliber High Standard revolver under the driver's seat. GJT, pg.
5 219: 24 and pg. 220: 1-10. During the interview with Detective
6 Brady, the Defendant was asked if this was the revolver he used in
7 the commission of the murders of Ms. Koontz and Mr. and Mrs. David -
8 he indicated in the affirmative.³¹ Criminalist Braly also located a
9 Reno Rodeo name tag bearing the name "JERRY DAVID" in a backpack
10 within the car. GJT, pg. 222: 4-5.

11
12 **E. DISCOVERY OF WEAPONS STOLEN FROM DAVID RESIDENCE -
 COUNT X.**

13 As cited in the preceding sections, the Defendant
14 acknowledged during his interview to having taken weapons from the
15 Davids' home on two occasions. First, he stated that he stole a
16 revolver from a trailer on the Davids' property before subsequently
17 returning and taking more weapons following his killing of both Mr.
18 and Mrs. David.³² The murder weapon, the High Standard, .22 caliber,
19 nine (9) shot revolver, was located underneath the front driver's
20 side seat of the Defendant's BMW near the center console. GJT, pg.
21 219: 24 and pg. 220: 1-10. With respect to the weapons taken by the
22 Defendant following the Davids' murders, the Defendant provided
23 Detective Brady with the location of where those weapons were buried,
24 actually drawing a map to the location of the cache.³³ With this map,
25

26 ³¹ Interview with Defendant, January 19, 2019, at 3:52:14 and 3:58:15.

³² Interview with Defendant, January 19, 2019, at 3:52:14 and 3:58:15.

³³ Id. at 4:46:10.

1 law enforcement officers went out in search of the buried property on
2 January 20, 2019. GJT, pg. 228: 1-9.

3 Washoe County Sheriff's Detective JOE DIGESTI (hereafter
4 "Detective Digesti") was part of the search team. Id. Off a dirt
5 road in Carson City near the location provided by the Defendant on a
6 map, Detective Digesti observed what he believed to be drag marks.
7 GJT, pg. 231: 1-24. These marks led to an area where discolored and
8 disturbed dirt lay encircled by sage brush. GJT, pg. 232: 1-5. It
9 was there that Detective Digesti began to dig. GJT, pg. 233: 4.

10 Law enforcement unearthed a tarp wrapped around a large
11 quantity of weapons and ammunition. GJT, pg. 234: 19-24. A total of
12 twelve (12) weapons were found in the tarp of varying types, to
13 include rifles, shotguns, and air rifles. GJT, pg. 236: 20-23. In
14 addition to the Defendant's statements about having taken the weapons
15 from the Davids' home, the guns were linked to the Davids' in other
16 ways. For example, one of the shotguns bore the name "JERRY DAVID"
17 on the grip of the barrel. GJT, pg. 239: 8-15.

18 The Defendant's final count relates to these same guns. He
19 stands charged with Possession of a Stolen Firearm for the revolver
20 taken on or about January 4th as well as the various rifles and
21 shotguns taken from the Davids' home on or about January 15th and/or
22 16th.

23 ///

24 ///

25 ///

26 ///

1 III. APPLICABLE LEGAL STANDARDS

2 A. BURDEN OF PROOF AT GRAND JURY PROCEEDING.

3 The burden of proof at a grand jury proceeding is
4 considerably lower than at a subsequent trial. By law, the grand
5 jury "ought to find an indictment when all the evidence before them,
6 taken together, establishes probable cause to believe than an offense
7 has been committed and that the defendant has committed it."³⁴ A
8 determination of probable cause may be based on slight, or even
9 marginal evidence as it does not involve a determination of the
10 accused's guilt or innocence.³⁵

11 With respect to a determination of probable cause, the
12 Supreme Court of the United States has specifically noted that it is
13 not a particularly lofty standard.

14 "Probable cause, we have often told
15 litigants, is not a high bar: It requires
16 only the "kind of 'fair probability' on
17 which 'reasonable and prudent [people,]
18 not legal technicians, act.'" *Florida v.*
19 *Harris*, 568 U.S. ----, ----, 133 S.Ct.
20 1050, 1055, 185 L.Ed.2d 61 (2013)
21 (quoting *Illinois v. Gates*, 462 U.S.
22 213, 231, 238, 103 S.Ct. 2317, 76 L.Ed.2d
23 527 (1983)); see *Gerstein*, 420 U.S., at
24 121, 95 S.Ct. 854 (contrasting probable
25 cause to reasonable-doubt and
26 preponderance standards). That is why a
grand jury's finding of probable cause to
think that a person committed a crime
"can be [made] reliably without an
adversary hearing," *id.*, at 120, 95
S.Ct. 854; it is and "has always been
thought sufficient to hear only the
prosecutor's side," *United States v.*
Williams, 504 U.S. 36, 51, 112 S.Ct.

34 NRS 172.155(1).

35 See, *Etcheverry v. State*, 107 Nev. 782, 821 P.2d 350 (1991).

1735, 118 L.Ed.2d 352 (1992)."

Kaley v. United States, 571 U.S. 320, 338, 134 S. Ct. 1090, 1103, 188 L. Ed. 2d 46 (2014).

Such is the nature of a determination that probable cause exists to support an indictment like that in the instant case. For, as the United States Supreme Court has stated:

The probable cause decision, by its nature, is hard to undermine, and still harder to reverse.

Id. at 339, 1104.

In that vein, the standard of review that this Court must undertake of the Grand Jury's determination is similarly grounded. "A grand jury indictment will be sustained where the State submits sufficient legal evidence to establish probable cause, even though inadmissible evidence may have been offered."³⁶

B. ADMISSIBILITY OF HEARSAY EVIDENCE BEFORE GRAND JURY.³⁷

Pursuant to NRS 172.135(2), the grand jury can receive "none but legal evidence [...] to the exclusion of hearsay or secondary evidence." However, a number of cases before the Nevada Supreme Court have addressed the issue further. Without exception,

³⁶ Dettloff v. State, 120 Nev. 588, 595, 97 P.3d 586, 590 (2004); See also, Collins v. State, 113 Nev. 1177, 1182, 946 P.2d 1055, 1059 (1997) ("regardless of the presentation of inadmissible evidence, the indictment will be sustained if there is the slightest sufficient legal evidence").

³⁷ A defendant's right of confrontation is not at issue before the grand jury. See Kaley v. United States, 571 U.S. 320, 338, 134 S. Ct. 1090, 1103 (2014) (holding that the confrontation and cross-examination of witnesses is unnecessary in a grand jury proceeding); See also, Sheriff v. Witzenburg, 122 Nev. 1056, 145 P.3d 1002 (2006) (holding that there is no Sixth Amendment right to confrontation at a preliminary examination, essentially an analogous proceeding to that of the grand jury).

1 they all provide that the grand jury may receive hearsay evidence so
2 long as an exception to the general prohibition is present.

3 In Gordon v. Eighth Judicial Dist. Court of State of Nev.
4 In & For Cty. of Clark, 112 Nev. 216, 223-24, 913 P.2d 240, 245
5 (1996), the issue of a grand jury's consideration of hearsay evidence
6 was front and center. As taken verbatim:

7 Moreover, we assume the definition of
8 hearsay as used in NRS 172.135(2) is the
9 same as that found in NRS 51.035 and,
thus, is subject to the hearsay
exceptions.

10 Id. at 223-24, 245.

11 Another example is present within the very case cited by
12 the Defendant in support of his argument regarding a blanket
13 prohibition on the grand jury's receipt of hearsay evidence,³⁸ wherein
14 the Nevada Supreme Court provided the following:

15 Our conclusion that the statements were
16 hearsay is not dispositive of the
17 petition because the statutory exclusion
18 of hearsay in grand jury proceedings "is
subject to the hearsay exceptions" set
forth in NRS Chapter 51. *Gordon*, 112 Nev.
19 at 223, 913 P.2d at 245; see also
20 *Phillips v. Sheriff*, 93 Nev. 309, 312,
565 P.2d 330, 332 (1977) (concluding that
21 statements that fit hearsay exception for
dying declarations under NRS 51.335 may
22 be considered by grand jury).

23 Rugamas v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark, 129 Nev. 424,
24 432-33, 305 P.3d 887, 893-94 (2013).

25
26

³⁸ Petition for Writ of Habeas Corpus, pg. 10: 1-2.

1 Thus, the Grand Jury may receive hearsay evidence so long
2 as an enumerated exception applies.

3 **C. DOCTRINE OF CORPUS DELICTI.**

4 The corpus delicti doctrine is a rule of common law related
5 to the admissibility of an accused's confession. The doctrine
6 developed as a protection "against an accused's conviction based
7 solely upon an uncorroborated confession,"³⁹ by requiring the
8 prosecuting authority to make a threshold showing that the crime
9 which the accused has confessed to actually occurred pursuant to
10 evidence existing beyond simply the confession itself.⁴⁰

11 The quantum of proof necessary to establish corpus delicti
12 is modest, at best. "A slight or prima facie showing, permitting the
13 reasonable inference that a crime was committed, is sufficient."⁴¹ Of
14 course, this proof may be made by direct or circumstantial evidence.⁴²

15 Equally important, there is no specific order in which the
16 evidence of corpus delicti and the accused's confession must be
17 admitted. So long as the record contains sufficient evidence of the
18 corpus delicti independent of the contents of the confession the
19 doctrine is satisfied. As the Nevada Supreme Court stated:

20 Technically, we suppose, if it were
21 possible to conduct the proceedings in
22 such a precise manner, evidence should be
23 offered first to prove the corpus delicti
 and only after that was established by
 lawful evidence of the proper degree

24 ³⁹ Dominguez v. State, 112 Nev. 683, 692, 917 P.2d 1364, 1371 (1996).

25 ⁴⁰ See, Hicks v. Sheriff, 86 Nev. 67, 69, 464 P.2d 462, 464 (1970).

26 ⁴¹ Doyle v. State, 112 Nev. 879, 892, 921 P.2d 901, 910 (1996) (quoting with approval
People v. Alcalá, 685 P.2d 1126, 1136 (1984)), overruled on other grounds by
Kaczmarek v. State, 120 Nev. 314, 333, 91 P.3d 16, 29 (2004).

⁴² Id.

1 should the state turn to the proof of
2 probable cause. However, as any
3 prosecutor, defense counsel or judge
4 knows, it is often not practical to
5 present evidence in such a manner.

6 Thus evidence and testimony on both
7 points, corpus delicti and probable
8 cause, comes in often, if not always,
9 intermingled and without specific
10 control as to which of the points it is
11 offered to prove.

12 As demonstrated by the cases reviewing
13 whether corpus delicti was proved by
14 evidence lawful for that purpose, the
15 courts look at the entire record and
16 without regard to the order in which it
17 came in or that certain types of evidence
18 may not be considered in proving corpus
19 delicti (confessions for example) and
20 hold that there was sufficient evidence
21 to establish the corpus delicti
22 independent of confessions and possibly
23 admissions, but that the latter may then
24 be used to corroborate or strengthen the
25 proof of the corpus delicti. Sefton v.
26 State, 72 Nev. 106, 295 P.2d 385 (1956);
In re Kelly, 28 Nev. 491, 83 P. 223
(1905); People v. Jacobson, 63 Cal.2d
319, 46 Cal.Rptr. 515, 405 P.2d 555
(1965).

19 Azbill v. State, 84 Nev. 345, 351, 440 P.2d 1014, 1018 (1968).

20 Lastly, in addressing corpus delicti, the Nevada Supreme
21 Court has recognized the writings of other courts on the same topic.
22 Citing to the California case of People v. Alcala, 36 Cal. 3d 604,
23 205 Cal.Rptr. 775, 685 P.2d 1126 (1984), the Court acknowledged:

24 There need not be independent support for
25 each fact testified to by the suspect
26 witness; corroboration is sufficient for
this purpose if it "tends to connect the
defendant with the commission of the

1 offense [charged] in such a way as
2 reasonably may satisfy a jury that the
[witness] is telling the truth.

3 Doyle v. State, 112 Nev. 879, 892 (1996).

4 **D. JURISDICTIONAL AUTHORITY OF THE GRAND JURY.**

5 The State would reassert and incorporate by reference the
6 substantive arguments made in the "Opposition to Motion to Dismiss
7 Counts Three, Four, Five and Six of the Indictment for Lack of
8 Jurisdiction (D-1)" as filed.

9 **IV. ARGUMENT**

10 **A. INITIAL BURGLARIES AT LA GUARDIA LANE - COUNTS I & II.**

11 Generally, the Petitioner asserts that there was
12 insufficient evidence presented to support his being indicted on
13 Counts I and II. In support, he makes two assertions: that Mr.
14 Diaz's testimony of conversations between he and Mr. David related to
15 the burglaries is expressly prohibited by statute, and that
16 application of the corpus delicti doctrine prohibits the
17 consideration of his own admissions to these acts. The State will
18 address each argument in kind.

19 **i. HEARSAY**

20 Earlier, the State established that the statutory
21 prohibition on the grand jury's receipt of hearsay statements is
22 nevertheless subject to the hearsay exceptions provided by law.
23 Gordon at 223-24, 245 (finding that hearsay statements fell within
24 the exception codified in NRS 51.075(1), a statute nearly identical
25 to that which applies to the instant case, and thus there was no
26 error in the presentation of those statements to the grand jury).

1 In Nevada, a statement is not excluded by the hearsay rule
2 if its nature and the special circumstances under which it was made
3 offer strong assurances of accuracy and the declarant is unavailable
4 as a witness. NRS 51.315(1). Death is considered to be legally
5 sufficient to render a declarant "unavailable" as a witness for
6 purposes of this analysis. NRS 51.055(1)(c).

7 At the outset, it is important to note that the State has
8 no quarrel with the designation of the statements made by Mr. David
9 to Mr. Diaz as hearsay. They are out of court statements offered to
10 prove the truth of the matter asserted; namely that Mr. David's
11 property was burglarized on those dates with those specific items
12 being taken. The same rings true for the writings on the calendar⁴³
13 found in the Davids' home reflecting the occurrence of those same
14 acts.⁴⁴

15 However, where the Defendant ends his analysis, the State
16 continues. Those same statements - both to Mr. Diaz and collected on
17 the aforementioned calendar - are admissible pursuant to the
18 exception set forth in NRS 51.315.

20
21 ⁴³ Reference is made in passing to the notion that a "lack of foundation" exists
22 with respect to the calendar. Petition, pg. 15: 3-4. Authentication is satisfied
23 by evidence sufficient to support a finding that the matter in question - a
24 calendar in the Davids' home - is what its proponent claims. NRS 52.015. As to
25 who can provide this testimony, the law is equally non-restrictive allowing for a
26 witness who has personal knowledge that a matter is what it is claimed to be. NRS
52.025. Mr. Diaz testified at length to being "very" familiar with said calendar,
often referring to it along with the Davids' when making plans with the couple and
watching Mr. David write down doctor's appointments and the like on the same
calendar.

⁴⁴ Per NRS 51.045(1) a written assertion is akin to an oral assertion for purposes
of this analysis.

1 The first portion of this analysis begins with a
2 determination that the nature and special circumstances under which
3 the statement was made offer strong assurances of accuracy. NRS
4 51.315(1)(a). Numerous cases have considered this same element and
5 have provided guidance to aid in this determination.

6 "We have previously held that a statement
7 could be admitted under NRS 51.315 where
8 the persons making the statement had no
9 involvement with the police, the
10 defendant, or the victims; where neither
11 the declarants nor the police had any
12 apparent motive to lie; where the
13 declarants were unavailable for trial;
14 and where the statement, in its nature,
 was of a relatively simple kind which
 could be recorded with little prospect of
 later misinterpretation. See *Johnstone*
 v. State, 92 Nev. 241, 548 P.2d 1362
 (1976); and see also *Woods v. State*, 101
 Nev. 128, 696 P.2d 464 (1985).

15 Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

16 Consideration of the facts of the instant case in the light
17 of the authority cited above finds the two overlap nearly
18 identically. Here, Mr. David had no involvement with the police with
19 regard to either his statements to Mr. Diaz or the statements noted
20 on his calendar. Through the statements presented to the Grand Jury
21 both in the conversation had with Mr. Diaz as well as the notes on
22 the calendar, it would equally appear that Mr. David had no
23 substantial involvement with the Defendant. Perhaps most critical to
24 the instant analysis, there is simply no credible motive that could
25 be attributed to Mr. David falsifying this information either in his
26 conversation with Mr. Diaz or through his own entries on his

calendar. Engaging in simply the thought process of trying to attribute a motive to Mr. David to fabricate this information produces laughable results. One would have to accept as reasonable that, for some unknown reason, Mr. David would decide to perpetuate a farce involving two alleged burglaries of his shed and trailer, going so far as to author corresponding falsehoods on his calendar to further the canard, stage a fax machine and box in his barn for Mr. Diaz to discover, to use a hand saw to fell a tree limb in the presence of Mr. Diaz to further the fabrication, and to let his horses have free reign of the same barn structure resulting in a significant mess, all with an eye towards lying about the commission of either event is a concept simply beyond the capacity of rational thought or credible belief. Finally, the statements attributed to Mr. David with respect to the event, the time, and what was taken are, by their nature, simple. In essence, Mr. David informs Mr. Diaz that a person came to his home on successive nights, entering a barn and a trailer where he removed a saw and a bag which possibly contained a gun. With respect to those items, Mr. Diaz testified to his observations of Mr. David using a hand saw as his corroboration that the saw was, in fact, taken. As it relates to the bag containing the gun, Mr. Diaz likewise testified to the hunting tag that Mr. David had received and of his preparations to hunt. These two facts alone compel the conclusion that the nature of Mr. David's communication to Mr. Diaz could be recorded with little prospect of later misinterpretation as they are moored to Mr. Diaz's own observations and knowledge. The notes memorialized on the calendar

1 render this conclusion academic. In light of the foregoing, the
2 first provision of NRS 51.315(1)(a) is satisfied as the nature and
3 special circumstances under which the statement was made offer strong
4 assurances of accuracy.

5 Turning to the second statutory requirement regarding the
6 admission of these statements, it must be shown that Mr. David is
7 unavailable as a witness. Inarguably, Mr. David is now deceased;
8 ironically killed by the same person who admits to the crimes charged
9 in Counts I and II and who is now challenging the introduction of
10 statements which he divested himself of the ability to confront via
11 his own subsequent conduct. Within the meaning of the law, Mr. David
12 is "unavailable as a witness." NRS 51.055(1)(c) and NRS
13 51.315(1)(b).

14 Application of Rugamas, Gordon, NRS 51.315, NRS
15 51.055(1)(c), and Maresca all lead to the inescapable conclusion that
16 the statements related to Mr. Diaz by Mr. David were admissible. The
17 same conclusion is drawn as forcefully with respect to the calendar
18 entries. Therefore, as a basis to grant the Defendant's requested
19 relief for Counts I and II, the Petition should be denied.

20 **ii. CORPUS DELICTI**

21 The Defendant's second argument begins with a flawed
22 premise: that Mr. Diaz's testimony constituted inadmissible hearsay.
23 Petition, pg. 14: 5-6. This notion was thoroughly refuted by the
24 legal authority and analysis provided in the preceding section.
25 Nonetheless, this assumption is critical for the Defendant's
26

1 contention that the doctrine of corpus delicti was not satisfied as
2 to the burglaries referenced in Counts I and II.

3 In the event the Court determines - as Nevada case law and
4 statutory authority make clear - that the Grand Jury was able to
5 receive the testimony of Mr. Diaz as well as the notations on the
6 calendar in the Davids' home regarding the burglary of the barn and
7 the trailer where the revolver was stolen, then the Defendant's
8 argument as to corpus must necessarily fail. In that event, there
9 would be significantly more than the "slight or prima facie showing"
10 permitting the reasonable inference that a crime was committed.
11 Doyle at 892, 921. In that event, there would exist direct evidence
12 independent of the Defendant's statements establishing that both
13 offenses occurred.

14 Without conceding the merits of the State's position on the
15 matter, if one were to assume that Mr. Diaz never testified to any of
16 his conversations with Mr. David, the corpus delicti of the crimes
17 would nonetheless still be satisfied.

18 Here, Mr. Diaz testified to various things he observed at
19 the time the burglaries identified in Counts I and II were committed.
20 For example, the installation of a new, working door on the "pump
21 house" shed. GJT, pg. 89: 1-11. Observing a box containing used
22 ammunition, gun shells, and scanner/fax machine "staged" in a barn
23 near the location where the burglaries occurred. GJT, pg. 109: 4-24
24 and pg. 87: 21-23. The opening of the horse stalls which resulted in
25 the horses getting loose and tearing up the barn. GJT, pg. 110: 204.
26 This last fact being particularly noteworthy given Mr. Diaz's

1 observations of Mr. and Mrs. David being very regimented in their
2 behaviors with respect to their animals and how their enclosures were
3 latched. GJT, pg. 83: 1-8. Even more independent evidence exists
4 with respect to Mr. Diaz's observations of Mr. David using a hand saw
5 to cut down a damaged limb, which serves as the basis for his
6 knowledge that a saw was taken from the property. GJT, pg. 88: 9-12.
7 This analysis would necessarily include the evidence recovered from
8 the search of the Defendant's BMW in which a Reno Rodeo name tag
9 bearing the name "JERRY DAVID" was found inside a backpack within the
10 car, speaking to the fact that the Defendant took items from Mr.
11 David. GJT, pg. 222: 4-5.

12 As the law has made clear, there must simply be established
13 a slight or prima facie showing permitting the reasonable inference
14 that a crime has been committed. Id. In this analysis, the Court
15 should assume the truth of the State's evidence and all reasonable
16 inferences from it in a light most favorable to the State. Sheriff
17 v. Dhadha, 115 Nev. 175, 180, 980 P.2d 1062, 1064 (1999). Based
18 simply on what Mr. Diaz observed and what Criminalist Braly located,
19 more than ample evidence exists with respect to the corpus delicti
20 for Counts I and II without need to even resort to Mr. David's
21 statements regarding the same.

22 Under either analysis, there was more than sufficient
23 evidence adduced before the Grand Jury to satisfy the doctrine of
24 corpus delicti for Counts I and II. Therefore, the Grand Jury was
25 entitled to consider the Defendant's statements to Detective Brady
26 wherein he acknowledged entering the barn and trailer on the Davids'

1 property, on two (2) separate occasions, stealing a saw, fishing
2 poles, and a bag containing a revolver all prior to his using the
3 same revolver to murder Ms. Koontz and the Davids. Against that
4 backdrop, sufficient evidence was provided to the Grand Jury to
5 support their conclusion that probable cause existed with respect to
6 Counts I and II.

7 **B. MURDER OF SOPHIA RENKEN - COUNTS V & VI.**

8 This portion of the Petition finds the Defendant
9 challenging two (2) of the counts contained within the Indictment on
10 similar grounds. First, the Defendant contends that insufficient
11 evidence was adduced with respect to the State's felony murder theory
12 in Count V. Petition, pg. 15: 13-14. As a corollary, the Defendant
13 challenges the sufficiency of evidence regarding Count VI, consisting
14 of the allegation that the Defendant entered Mrs. Renken's home with
15 the intent to commit larceny therein while in possession of a
16 firearm. Both contentions are without merit.

17 With respect to Count V, the State has charged the
18 Defendant with the murder of Mrs. Renken under alternative theories.
19 The first theory is that the killing was after the Defendant had
20 formulated malice and was both premeditated and deliberate. This
21 theory is uncontested by the Defendant. The second theory is that
22 the killing occurred during the perpetration or attempted
23 perpetration of the crime of burglary. This is the only theory
24 challenged by the Defendant.

25 Ample authority exists for the notion that the State need
26 not establish every element of each alternative theory under a

1 specific charge to justify holding a defendant to answer in a
2 district court. See, Wrenn v. Sheriff, Clark Cty., 87 Nev. 85, 87,
3 482 P.2d 289, 291 (1971) (holding that an open murder complaint
4 charges murder in the first degree and all necessarily included
5 offenses, such as manslaughter where less than all the elements of
6 first degree murder are present and that there was no merit to an
7 argument that an accused cannot be held on an open murder charge
8 absent proof of malice aforethought); See also, Sheriff, Clark Cty.
9 V. Willoughby, 97 Nev. 90, 91-92, 624 P.2d 498, 498-99
10 (1981) (reiterating that there need not be evidence of all alternative
11 theories of murder presented to support an open murder charge);
12 Holmes v. State, 114 Nev. 1357, 1364, 972 P.2d 337, 342
13 (1998) (concluding that the State could proceed on a felony-murder
14 theory at trial even where the justice court dismissed the predicate
15 felony charge due to insufficient evidence).

16 It bears repeating, the Defendant is not challenging the
17 sufficiency of the evidence with respect to the State's first theory
18 of the killing of Mrs. Renken; namely that it was committed by the
19 Defendant with malice aforethought, deliberation and premeditation.
20 As such, and consistent with the authority provided above, the State
21 need not present evidence sufficient to establish probable cause for
22 every theory advanced in an open murder charge to support an
23 information or indictment. For that reason, the Defendant's argument
24 must fail.

25 Nevertheless, consideration of the evidence adduced before
26 the Grand Jury provides a generous amount of information from which

1 the Defendant's criminal intent to burglarize Mrs. Renken's home
2 could be drawn. As a matter of law, intent may be proven by direct
3 or circumstantial evidence and consideration of the defendant's
4 statements, acts done or omitted, and all other facts and
5 circumstances in evidence is proper. NRS 193.200; Powell v. State,
6 113 Nev. 258 (1997); Manning v. Warden, 99 Nev. 82 (1983); Owens v.
7 State, 100 Nev. 286, 289 (1984); Jensen v. Sheriff, 89 Nev. 123, 126
8 (1973); Wilson v. State, 85 Nev. 88, 90 (1969); State v. McNeil, 53
9 Nev. 428 (1931); State v. Rhodig, 101 Nev. 608, 611 (1985); Grant v.
10 State, 117 Nev. 427 (2001).

11 With respect to the Defendant's statements, he acknowledges
12 entering through the back door of her home. He also indicated that
13 she woke up prior to his shooting her numerous times, suggesting that
14 he entered the home in possession of a weapon, at night, and without
15 the consent or knowledge of the occupant. With respect to his reason
16 for selecting this house, the Defendant indicated that he knew there
17 were machines or tools in her garage having worked on her yard at
18 some prior time, leading to a reasonable inference that he was there
19 to presumably take items which he believed possessed value.⁴⁵ As to
20 the other facts in evidence, the Grand Jury was informed that the
21 Defendant initially denied knowledge or responsibility for the events
22 at Mrs. Renken's home. Such a denial can fairly be considered as
23 evidence of his consciousness of guilt. When asked what made him
24 select these people - in reference to the murders he had confessed to
25 at that point being Mr. Koontz and the Davids - the Defendant

26 ⁴⁵ It is worth noting that one of the items taken by the Defendant from the Davids' home was a saw.

1 indicated he wanted money for drugs and did not want to lose his
2 car.⁴⁶ This statement is equally probative of the Defendant's intent
3 at the time he entered the home of Mrs. Renken - to steal property
4 which he could later sell in order to support his drug habit or make
5 his car payment.

6 The Defendant's entire argument with respect to Counts V
7 and VI is founded in the misguided notion that, since he did not
8 steal anything from the home, he did not enter with the intent to
9 steal. Axiomatically, the offense is complete when entry is made
10 with the requisite intent without regard as to whether the intent is
11 actually consummated. Moreover, the Defendant actually explains why
12 he did not take anything, indicating he was scared after having shot
13 Mr. Renken to death and fled from the residence. As a basis for the
14 requested relief, the Defendant's argument in this regard falls
15 woefully short.

16 In sum, under cover of darkness the Defendant entered a
17 stranger's home armed with a gun. This entry was through a backdoor
18 and inferentially without the occupant's knowledge or consent. His
19 reasons for entry are clear and come directly from the source: he
20 knew she had machines and tools in her garage which only bolsters the
21 notion he had been planning the commission of this offense prior to
22 his arrival at Mrs. Renken's backdoor. Against this backdrop, the
23 only possible explanation of the Defendant's intent is that bent on
24 criminal acts. Any other possible explanation is simply divorced
25

26

⁴⁶ Interview with Defendant, January 19, 2019, at 4:04:20.

1 from common sense. For that reason, the Defendant's request with
2 respect to Counts V and VI must be denied.

3 **C. POSSESSION OF STOLEN FIREARMS - COUNT X.**

4 The Defendant's final substantive arguments take aim at the
5 final count of the Indictment. Here, the Defendant makes two
6 arguments with equal absence of merit.

7 First, the Defendant contends there was insufficient
8 evidence to establish ownership of the recovered firearms by another,
9 or that the guns were actually stolen. Petition, pg. 19: 1-2.
10 Consideration of the record presently before the Court renders this
11 assertion simply unbelievable.

12 The scene of the Davids' residence alone confirms the fact
13 that weapons were stolen from the Davids' home. Numerous witnesses
14 described the condition of the Davids' home on January 16, 2019. As
15 Mr. Diaz noted, the outside of the residence provided him with a
16 number of clues that suspicious activity had occurred. Inside, that
17 suspicion was confirmed without reservation. Throughout the interior
18 of the residence, drawers and cabinets were open with their contents
19 strewn all about. Simply stated, the home was ransacked. Supporting
20 the inescapable conclusion that some variety of theft had occurred,
21 multiple gun cases were located within the same residence. All were
22 empty and one was discovered with the door still open. Near one of
23 the empty weapon cases Detective Brady located a bag packed with
24 valuables attributed to Mr. and Mrs. David; this bag included
25 ammunition, suggesting that the party responsible was interested in
26 acquiring ammunition which only provides a logical inference that

1 this same person had a gun or several guns. Along those same lines,
2 two (2) people were shot to death inside the same home, again
3 suggesting that the intruder used some form of firearm to kill his
4 victims. As noted by Detective Brady, the gun cases were empty which
5 would beg the acceptance of the fact that, whatever weapon was used
6 to murder Mr. and Mrs. David, and possibly necessitating the
7 ammunition found in the bag left behind, was taken from the same
8 scene.

9 Whatever doubt may exist as to what transpired on the
10 Davids' property - both on January 4, 2019 and again on January 16,
11 2019 - is laid to rest by the Defendant's own admissions. Prior to
12 his first murder, he admits to entering a trailer on the Davids'
13 property and stealing a bag which contained a revolver. That same
14 revolver was found in the Defendant's car upon his arrest. The
15 Defendant also admits to stealing weapons from the Davids' home on
16 the day of their murder and burying those guns in Carson City. A map
17 drawn by the Defendant leads investigators to a buried cache of
18 weapons - all of which would be reasonably inferred to fit within the
19 empty gun cases at the Davids' home. Inexplicably, the Defendant
20 claims that "[n]o one identified any of the twelve guns as belonging
21 to Mr. and Mrs. David, or any other owner"⁴⁷ immediately after noting
22 that Detective Digesti testified that one of the shotguns had a
23 sticker which said "JERRY DAVID." The only absence of evidence with
24 respect to the weapons located in Carson City is the absence of the
25

26

⁴⁷ Petitoin, pg. 18 16-18.

1 possibility that they belonged to - or were stolen from - anyone
2 other than Mr. and Mrs. David.

3 Via footnote, the Defendant again invokes the concept of
4 corpus delicti as a basis for his position. Petition, pg. 19,
5 footnote 3. Throughout his Petition, the Defendant would have the
6 Court believe that the timing of the introduction of evidence
7 establishing the corpus of the offense is critical. For example, he
8 argues, "Because the State failed to prove its charge prior to the
9 admission of Mr. Martinez Guzman's statements, the Court cannot
10 consider the statements made by Mr. Martinez Guzman in reviewing the
11 finding of probable cause [...],"⁴⁸ and again "Here, the State failed
12 to establish that the firearms were owned by the Davids, or stolen
13 from them, prior to the introduction of Mr. Martinez Guzman's
14 statements." Petition, page 19, footnote 3: 26.

15 As the law makes irrefutably clear, the order in which the
16 evidence is presented has no bearing whatsoever on the determination
17 that corpus delicti has been established. The Nevada Supreme Court
18 has instructed the Court to "look at the entire record and without
19 regard to the order in which [the evidence] came in [...]." Azbill at
20 351, 1018. The Defendant omits this binding precedent from his
21 Petition and, in similar fashion, fails to provide any meaningful
22 argument or legal authority which should compel this Court to ignore
23 what constitutes as binding legal precedent. In that vein, proof of
24 corpus delicti for Count X is found in all of the factual averments
25 the State set forth earlier with respect to not only the theft of the
26

⁴⁸ Petition, page. 14: 25-26

1 revolver from the Davids' trailer, but also the observations of the
2 Davids' home on the day of their murders and particularly with
3 respect to Mr. David's name being affixed to one of the buried
4 weapons.

5 In sum, the entirety of the Defendant's position with
6 respect to Count X of the Indictment is belied by the facts and by
7 the law. For those simple reasons, it should be summarily denied.

8 **D. JURISDICTIONAL OBJECTION TO COUNTS III, IV, V, & VI.**

9 The State would reassert and incorporate by reference the
10 substantive arguments made in the "Opposition to Motion to Dismiss
11 Counts Three, Four, Five and Six of the Indictment for Lack of
12 Jurisdiction (D-1)" as filed.

13 AFFIRMATION PURSUANT TO NRS 239B.030

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

16 DATED this 2nd day of May, 2019.

17
18
19 /s/ Christopher Hicks
20 CHRISTOPHER HICKS
21 DISTRICT ATTORNEY

22 /s/ Mark Jackson
23 MARK JACKSON
24 DISTRICT ATTORNEY
25
26

1 CERTIFICATE OF SERVICE BY E-FILING

2 I certify that I am an employee of the Washoe County
3 District Attorney's Office and that, on this date, I electronically
4 filed the foregoing with the Clerk of the Court by using the ECF
5 system which will send a notice of electronic filing to the
6 following:

7 PUBLIC DEFENDER'S OFFICE
8 John Arrascada, Public Defender
9 Kate Hickman, Esq.
 Gianna Verness, Esq.

10
11 DATED this 2nd day of May, 2019.

12
13 /s/ *Lori Delano*
14 Lori Delano
15
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INDEX OF EXHIBITS

Exhibit 1 Interview Clip - Grand Jury

1 CODE 3795
2 JOHN L. ARRASCADA, # 4517
3 GIANNA VERNES, # 7084
4 KATHERYN HICKMAN, #11460
5 350 S. CENTER STREET, 5TH FLOOR
6 RENO, NV 89520-3083
7 (775) 337-4800
8 Attorney for Petitioner

9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN
11
12 AND FOR THE COUNTY OF WASHOE
13

14 THE STATE OF NEVADA,

15 Plaintiff,

CASE NO: CR19-0447

16 v.

DEPT. NO.: 4

17 WILBER ERNESTO MARTINEZ GUZMAN,

18 Defendant.
19 _____

20 **REPLY IN SUPPORT OF MOTION TO DISMISS COUNTS THREE, FOUR,**
21 **FIVE AND SIX OF THE INDICTMENT FOR LACK OF JURISDICTION (D-1)**

22 Comes now, WILBER ERNESTO MARTINEZ GUZMAN, by and through his
23 attorneys of record, John L. Arrascada, Gianna Verness, and Katheryn Hickman,
24 and hereby files this reply in support of the Motion requesting an Order Dismissing
25 Counts Three, Four, Five and Xix of the Indictment, due to the Lack of Jurisdiction
26 of the Second Judicial District Grand Jury to inquire into these alleged offenses.

This Reply is based upon the attached Points and Authorities, and any oral or
documentary evidence that may be presented at the hearing on this matter.

///

///

1 POINTS AND AUTHORITIES

2 A. The Motion to Dismiss is the Proper Vehicle to Challenge the
3 Jurisdiction of the Grand Jury.

4 Nevada law provides a specific method to attack the Grand Jury's finding of
5 probable cause. NRS 34.700. However, in this case, the Motion to Dismiss does not
6 challenge that finding. Instead, the Motion challenge's the *power* of the Grand
7 Jury to make any determination regarding the "Douglas County Charges." The
8 *power* of the Grand Jury is defined by NRS 172.105, which directs that the Grand
9 Jury "may inquire into all public offenses triable in the District Court or in the
10 Justice Court, *committed within the territorial jurisdiction of the district court* for
11 which it is empaneled." *Shuster v. Eighth Judicial Dist. Court*, 123 Nev. 187, 192,
12 160 P.3d 873, 876 (2007). (italics added). Because the Motion does not challenge
13 the finding of probable cause, a Motion to Dismiss is the proper vehicle to
14 challenge the indictment in this case.

15 B. NRS 172.105 Limits the Authority of the Grand Jury

16 The power and the limitations of the Grand Jury are found in NRS 172.105.
17 The State argues that the plain language of this statute gives the Grand Jury the
18 same jurisdictional power of the District Court. This analysis is incorrect.

19 Statutory interpretation is a question of law. *State v. Catanio*, 120 Nev.
20 1030, 1033, 102 P.2d 588, 590 (2004); *Wingco v. Gov't Emps. Inc. Co.*, 130 Nev. 177,
21 179, 321 P.3d 855, 856 (2014). When a statute is clear and unambiguous, courts
22 give effect to the plain and ordinary meaning of the words and do not resort to
23 rules of construction. *Seput v. Lacayo*, 122 Nev. 499, 502, 134 P.3d 733, 735 (2006),
24 abrogated on other grounds by *Buzz Stew, LL,C c. City of Las Vegas*, 124 Nev. 224,
25 228 n.6, 181 P.3d 670, 671 n.6 (2008); *Schuster*, 123 Nev. at 190, 160 P.3d at 875
26 ("[W]hen the words in a statute are clear on their face, they should be given their

1 plain meaning unless such a reading violates the spirit of the act.” *See Seput at*
2 *134* (internal quotations omitted). When interpreting statutes, the primary
3 consideration is the Legislature’s intent. *Schuster*, 123 Nev. at 191, 160 P.3d at
4 875. A court must not read the statute’s language so as to produce absurd or
5 unreasonable results. *Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007).
6 “[C]ourts should not add things to what a statutory text states or reasonably
7 implies.” *Douglas v. State*, 130 Nev. 285, 293, 327 P.3d 492, 498 (2014). In this
8 case, the statutory language regarding the limitations of a grand jury’s
9 jurisdictional authority is clear, unambiguous, and not subject to interpretation.

10 A grand jury’s power is cabined to “triable public offenses” that have been
11 “committed within the territorial jurisdiction of the district court for which it was
12 empaneled.” NRS 172.105. The Washoe County Grand Jury was empaneled by the
13 Second Judicial District Court whose “territorial jurisdiction” is Washoe County.
14 See NRS 3.010 (“The State is hereby divided into 11 judicial districts, as follows:
15 Second Judicial District. The County of Washoe constitutes the Second Judicial
16 District.”). Thus, triable public offenses committed outside of Washoe County are
17 not within the power or purview of the Washoe County Grand Jury to consider or
18 indict. NRS 172.105 codifies the common law rule that requires that an indictment
19 be found in the county in which the crime has been committed. *State v. Pray*, 30
20 Nev. 206, 221 (1906) (overruled on other grounds by *Knight v. State*, 116 Nev. 140,
21 993 P.2d 67 (2000)).¹

22
23
24 ¹ Under NRS 3.010 there are three judicial districts in Nevada that consist of more than one
25 county: the Fifth (Esmeralda, Nye); the Seventh (Eureka, White Pine, Lincoln); and the Eleventh
26 (Lander, Mineral, Pershing). A duly empaneled grand jury in any of these districts could return an
indictment across county lines, but only as to those counties within its district.

1 The State's reliance on *Walker v. State*, 78 Nev. 463, 469, 376 P.2d 137, 139-
2 40 (1962) to support its position is misguided for a number of reasons. First,
3 *Walker* is a venue case and does not address the jurisdictional power of the grand
4 jury. Second, the facts of *Walker* are significantly different from the facts in the
5 Douglas County Cases. In *Walker*, no one could say with certainty where the
6 killing took place. *Id.* at 471. There was evidence that could place the homicide in
7 Pershing, Churchill, Lyon, or Washoe County. *Id.* The Court found that the case
8 could be tried in Washoe County because "[t]here was evidence from which a jury
9 could have properly found that [an allegation that the offense took place in
10 Washoe County] was true. *Id.*

11 Here, it is clear that the crimes alleged in the Douglas County Counts
12 occurred in Douglas County, not in Washoe County. There is no evidence to argue
13 that the crimes alleged in the Douglas County cases occurred in any county other
14 than Douglas County. *Walker* does not affect the statutorily defined territorial
15 jurisdictional limitations of the Washoe County Grand Jury to consider the
16 Douglas County counts.

17 Similarly, the State's misreads *Application of Alexander*, 80 Nev. 354, 393
18 P.2d 615 (1964). In *Alexander*, the indictment failed to allege that the murder "was
19 committed in the State of Nevada." Based on existing case law, the Court
20 concluded that there can be no conviction without a formal and sufficient
21 accusation and without a formal and sufficient accusation the Court does not
22 acquire jurisdiction. In Nevada the rule is "the allegation in the indictment" must
23 allege that the crime occurred "within the State of Nevada." This rule has nothing
24 to do with the power of a grand jury to inquire into triable offense in its territorial
25 district. It only requires that any indictment returned by a grand jury have the
26 "within the State of Nevada" language.

1 Finally, the State's comparison of NRS 172.105 with NRS 172.175—which
2 requires the grand jury to inquire concerning the case of every person "imprisoned
3 in the jail of the county, on a criminal charge" *where* "an indictment has not been
4 found or an information or a complaint filed," is not correct. NRS 172.175(1)(a)
5 mandates that the grand jury inquire into why there is a prisoner in a county jail
6 who has not been charged. That is a county-specific special duty to the grand jury
7 mandated by statute and the use of "county" in that statute does not impinge on
8 the plain reading of NRS 172.105. The same holds true for the other special
9 assignments in that statute, *i.e.*, NRS 172.175(1)(b) (public prison in county) and
10 (1)(c) (alleged misconduct of "public officers" within the county). Notably, the next
11 statute, NRS 172.185 grants a grand jury "free access" to all "public prisons" and
12 to examine "all public records" that are "within its district."

13 The power and limitations of the Grand Jury is confined by the plain
14 language of NRS 172.105. It is not coextensive with the power of a District Court
15 Judge to sit and hear cases throughout the State. The Grand Jury of the Second
16 Judicial District is limited to inquire only into triable offenses that have been
17 committed within the territorial limits of the Second Judicial District, which is
18 Washoe County. None of the arguments or legal authority cited by the State
19 support the contrary. In this case, the Grand Jury exceeded its statutory power in

20 ///

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1 returning a True Bill as to the Douglas County counts. Counts Three, Four, Five
2 and Six of the indictment must be dismissed.

3 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

6 DATED this 9th day of May, 2019.

7 JOHN L. ARRASCADA
8 Washoe County Public Defender

9 By /s/ John L. Arrascada
10 JOHN L. ARRASCADA
11 Washoe County Public Defender

12 By /s/ Gianna Verness
13 GIANNA VERNES
14 Chief Deputy Public Defender

15 By /s/ Katheryn Hickman
16 KATHERYN HICKMAN
17 Chief Deputy Public Defender

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Chris Hicks
District Attorney
Via ECF System

Marc Jackson
Deputy District Attorney
Via ECF System

DATED this 9th day of May, 2019.

/s/ Karen Nelson
KAREN NELSON

1 4185

2 JUDITH ANN SCHONLAU

3 CCR #18

4 75 COURT STREET

5 RENO, NEVADA

6
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9 BEFORE THE HONORABLE CONNIE J. STEINHEIMER, District Judge

10 -oOo-

11 THE STATE OF NEVADA,)

12 Plaintiff,)

13 vs.)

14 WILBER MARTINEZ GUZMAN,)

15 Defendant.)

CASE NO. CR19-0447
DEPARTMENT NO. 4

16
17 TRANSCRIPT OF PROCEEDINGS

18 MOTION TO DISMISS/WRIT OF HABEAS CORPUS

19 MONDAY, MAY 20, 2019, 9:00 A.M.

20 Reno, Nevada

21
22 Reported By: JUDITH ANN SCHONLAU, CCR #18
23 NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
24 Computer-aided Transcription

A P P E A R A N C E S

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RENO, NEVADA; MONDAY, MAY 20, 2019; 9:00 A.M.

-000-

THE COURT: Thank you. Please be seated. This is the time set for hearing on a Motion to Dismiss as well as on a hearing on the Writ. Present is the defendant with the previously sworn court interpreter. Counsel, would you like to make your appearances for the record?

MR. HICKS: Chris Hicks on behalf of the State.

MR. LUCIA: Travis Lucia on behalf of the State of Nevada.

MR. JACKSON: Mark Jackson on behalf of the State.

MR. ARRASCADA: John Arrascada on behalf of Mr. Martinez Guzman.

MS. HICKMAN: Good morning, Your Honor, Kate Hickman on behalf of Mr. Martinez Guzman.

MS. VERNES: Good morning. Gianna Verness on behalf of Mr. Martinez Guzman.

THE INTERPRETER: And, Your Honor, Jessica Escobar certified court interpreter, certification number NVJ 100.

THE COURT: Counsel is there any preliminary matters before we begin argument?

MR. ARRASCADA: Just one, Your Honor. We ask the Court order, have it as a continuing order, Mr. Martinez Guzman's left hand, he's left-hand, be unshackled for purposes

1 of writing.

2 THE COURT: Okay. I don't think there is any
3 problem with that, so we'll release his left hand so the
4 defendant can write. And if at some point the security people
5 think there is a problem, they can rectify it and bring it to
6 our attention.

7 MR. ARRASCADA: Very well, Your Honor.

8 THE INTERPRETER: While we wait, my colleague is
9 here as well and will be interpreting.

10 THE COURT: Introduce yourself.

11 THE INTERPRETER: Good morning, Joseph Miller, NVMJ
12 501 certification number.

13 THE COURT: Counsel, if you have no objection, I am
14 going to allow the interpreters to replace each other on an
15 ongoing basis without making any record. Any objection?

16 MR. ARRASCADA: No, Your Honor.

17 MR. HICKS: No, Your Honor.

18 THE COURT: All right. Thank you.

19 THE COURT: Okay. Counsel, are you prepared now?

20 MR. ARRASCADA: Yes, Your Honor.

21 THE COURT: Okay. Mr. Arrascada, would you like to
22 begin with your Motion to Dismiss?

23 MR. ARRASCADA: Yes, Your Honor. Thank you. Your
24 Honor, I am tempted to say I will be brief, but I know what

1 occurs at the time that is said by a lawyer, so I will just
2 present my argument.

3 Your Honor, the Motion to Dismiss deals with the
4 issue of what is the power of the Grand Jury, Washoe County
5 Grand Jury, to indict Mr. Martinez Guzman regarding offenses
6 that are alleged and arguably committed in total in Douglas
7 County. That is related to Counts III, IV, V and VI. I will
8 reference them as the Douglas County charges from here
9 throughout if that is okay with the Court.

10 Your Honor, in the Opposition by the State, what has
11 occurred, the State is conflating the statutory jurisdiction
12 of the District Court or a District Judge with the statutory
13 powers of the Grand Jury that is seated within a judicial
14 district. The key to all of this argument, Your Honor, it is
15 governed by statute. It is clear and unambiguous. NRS 172.105
16 gives power to the Grand Jury. The powers are the Grand Jury
17 may inquire into all public offenses triable in the District
18 Court or in a Justice Court committed within the territorial
19 jurisdiction of the District Court for which it is empaneled.
20 The territorial jurisdiction of the Second Judicial District
21 Court is established by statute under NRS 3.010. It is Washoe
22 County. Therefore, Judge, just by matter of statute, the State
23 cannot indict or the Grand Jury could not. It was outside the
24 scope of their powers to indict Mr. Martinez Guzman regarding

1 the Douglas County charges.

2 Now really what this boils down to is what is
3 territorial jurisdiction. And we have found several cases that
4 define territorial jurisdiction, Your Honor, or establish
5 jurisdiction. It originates in common law. I actually found
6 last night, and I provided it to the State, Your Honor, People
7 v. Gleason, 1 Nevada 173 which states the common law principle
8 that a Grand Jury of Lander County can have no jurisdiction of
9 a case in Storey County. What that is doing, it is
10 establishing what is the jurisdiction of different counties,
11 and can they preside over matters. It is very clear from
12 Gleason, as they said, it is well settled the allegation of
13 venue in a criminal case is a material allegation and must be
14 proved, and it states: "A Grand Jury of Lander County can have
15 no jurisdiction of a case in Storey County." That same
16 premise was also found in Pray v. State which then references
17 the codification of the territorial jurisdiction. Your Honor,
18 the State relies on several cases regarding territorial
19 jurisdiction. Primarily, they rely upon McNamera and Shannon.
20 Significant in those cases, and they address NRS 171.020 which
21 is jurisdiction, and significant with both those cases, Your
22 Honor, is McNamara and Shannon deal with interstate
23 jurisdiction between Nevada and California or Nevada and
24 Arizona. And when they discuss the proving of jurisdiction in

1 McNamara, it addresses proving territorial jurisdiction under
2 NRS 171.020. Within that, it actually modifies Gleason
3 because there has been statute and a U.S. Supreme Court case
4 that NRS 171.020 as stated in McNamara addresses territorial
5 jurisdiction in the context of interstate crimes, not
6 intrastate. So NRS 171.020 is modified to allow jurisdiction
7 of crimes that occur say in McNamara he came from Illinois.
8 It was a kidnapping and it ended here in Nevada and was
9 prosecuted. And in Shannon, it was a case where some of the
10 allegations occurred on the Arizona side of Lake Mead and the
11 Court said, based on the expansion of NRS 171.020 regarding
12 interstate jurisdiction, that there was jurisdiction. We don't
13 have that situation here, Your Honor. We are dealing with
14 counties. And as I said, the common law is very clear from
15 Gleason and Pray that a crime committed to quote again
16 Gleason, in Lander County cannot be prosecuted in Storey
17 County. We cannot extend that scope of the Grand Jury powers
18 to events or allegations that are occurring in another county.

19 Your Honor, this common law principle is true
20 throughout. Both McNamara and Shannon support our position
21 regarding intrastate jurisdiction which is Washoe County,
22 which is Douglas County, regarding the Douglas County charges,
23 Washoe county regarding the Washoe County charges. We are not
24 saying this case cannot at some point in time be joined, but

1 that is somewhere down the road. Right now we are dealing
2 with the process of the inception of this case. And there was
3 another case the State relied upon, I believe it is Alexander.
4 The main premise from that case, we can take from it, Your
5 Honor, is this: Process matters is the main premise you can
6 take from Alexander. And when you look at that in conjunction
7 with our statutes, it is very clear statutorily where a
8 homicide is suppose to be tried. NRS 200.110 states: "A
9 homicide is to be tried, (1) if the injury has been inflicted
10 in one county and the party die within another or without the
11 state, the accused shall we tried in the county where the act
12 was done and the cause of death was administered.

13 (2) If the party killing shall be in one county and
14 the party killed in another county at the time the cause of
15 death shall be administered, the accused may be tried in
16 either county. We don't have either of those situations here.
17 The allegations regarding the Douglas County charges is they
18 occurred in Douglas County, so the place for trial of the
19 homicide would be Douglas County. That is established by
20 statute.

21 As you go through the statutory hopscotch of how do
22 we get here when we determine territorial jurisdiction, it is
23 very clear what the common law principle is. It is very clear
24 that principle has not been expanded. And Shannon states that

1 because Shannon referred to NRS 171.020 as applying to
2 interstate not intrastate.

3 From that, Your Honor, we ask you grant our Motion
4 to Dismiss the Douglas County charges.

5 THE COURT: Have you provided to the Court the cite
6 for Pray v. State?

7 MR. ARRASCADA: It is cited within our brief, Your
8 Honor.

9 THE COURT: I didn't see it.

10 MR. ARRASCADA: Court's indulgence. It is in our
11 Reply 30 Nevada 206. I also have a copy of Gleason if the
12 Court would like that.

13 THE COURT: You can provide that to the court clerk.

14 MR. ARRASCADA: I already provided that to the
15 State.

16 THE COURT: That's fine. Counsel.

17 MR. JACKSON: Good morning, Your Honor. Mark Jackson
18 on behalf of the State. I will be addressing the arguments
19 raised by the Defendant in their Motion to Dismiss Counts III,
20 IV, V, and VI of the Indictment, and that issue that has both
21 been framed by the defense in their Motion to Dismiss as well
22 as in their Reply is whether or not a Grand Jury that was
23 empaneled in Washoe County has the "jurisdiction" to inquire
24 into the offenses in the Indictment of those four specific

1 Counts, III, IV, V and VI. As part of my argument, I will
2 begin by giving the Court just a brief overview. I know there
3 were a lot of facts that were contained in our Opposition to
4 the Motion to Dismiss as well as the factual statements in the
5 Petition for Writ of Habeas Corpus. But, nevertheless,
6 because some of those facts are important for this Court to
7 understand and how they all relate together in connection with
8 the State's Opposition to the motion, I just wanted to give a
9 brief overview of that, then I will address some of the
10 misguided assertions in both the Motion to Dismiss as well as
11 in the Reply Points and Authorities, and then I will get to
12 the primary issue, and that is what is the territorial
13 jurisdiction of this Court in reference to NRS 172.105.

14 In answering that question, I will have to review
15 and I want to take an opportunity to discuss several
16 principles of statutory construction, several tenants or
17 maxims of statutory construction that the Court should
18 consider in reaching an ultimate resolution with respect to
19 this motion. So as to the brief overview of those counts in
20 the Indictment, Count III charges the defendant with murder
21 with the use of a deadly weapon, and it is alleged that the
22 Defendant, on or about January 9th or January 10th of this
23 year, that he used a deadly weapon, a firearm, and he shot and
24 killed Connie Koontz at her residence that was located in

1 Douglas County, and that he committed that crime of murder
2 with the use of a deadly weapon either with premeditation and
3 deliberation or in the alternative, during the perpetration of
4 a burglary, the Felony Murder Rule.

5 Count IV of the Indictment charges the Defendant
6 with burglary while in possession of a firearm, and that
7 particular count alleges that during the same time period of
8 on or about January 9th or January 10th that he burglarized
9 the home that Connie Koontz occupied, and he did so while in
10 possession of a firearm.

11 Count V is similar to Count III, although it is
12 alleged that on or about January 12th or 13th that the
13 Defendant entered a home that was occupied by Sophia Renken,
14 and he did so while in possession of a firearm, and that he
15 shot and killed Sophia Renken at her home in Douglas County,
16 and that that was committed either with premeditation and
17 deliberation or during the perpetration of a burglary, again
18 under the Felony Murder Rule.

19 And Count VI charges the Defendant with burglary
20 while in possession of a firearm and during the commission of
21 the crime of the murder of Sophia Renken, that he had entered
22 that residence with the intent to commit larceny and he did so
23 while in possession of a firearm. The importance of those
24 particular facts is, in all four of those counts, the firearm

1 that was possessed and used by the Defendant is the same
2 firearm that he had stolen just days prior to the murder of
3 Connie Koontz, and he had stolen that firearm by entering upon
4 the real property owned by Sharry and Gerry David, and he
5 burglarized a cargo trailer on January 4th, and during the
6 burglary of the cargo trailer, that he had stole a firearm, a
7 .22 revolver and then later used that revolver during the
8 commission of those murders and burglaries that occurred in
9 Douglas County. And it is the same firearm that the Defendant
10 had in his possession at the time he was arrested on January
11 19th of this year in Carson City while he was apprehended by
12 that local law enforcement agency sitting in the driver's seat
13 of his BMW vehicle with that murder weapon in his ready reach
14 underneath the seat and in the center console. So it is
15 important to recognize those basic facts at the beginning of
16 the argument, because the defense is under the misguided
17 assumption in both their Motion to Dismiss as well as their
18 Reply Points and Authorities that those acts that are alleged
19 in Counts III, IV, V and VI occurred solely in Douglas County.
20 That argument, that statement simply is not true, Your Honor.

21 Over a several day period in January of this year,
22 the Defendant terrorized residents of northern Nevada by
23 traveling and traversing across an area of northern Nevada
24 from Carson city to Washoe county; from Washoe County to

1 Carson City; from Carson City to Washoe County; from Washoe
2 County to Carson City; from Carson City to Douglas County;
3 from Douglas County to Carson City; from Carson City to
4 Douglas County; from Douglas County to Carson City; from
5 Carson City to Washoe County and back to Carson City over a
6 six and a half day period. And during the course of the
7 Defendant's criminal conduct, he was preparing to commit the
8 burglaries and the murders. He was planning to, prepared or
9 planning to commit the burglaries and murders. He was
10 conducting surveillance. He was committing burglaries. He
11 shot and killed four people. He was hiding property in Carson
12 City that was burglarized during his criminal acts that
13 occurred both in Douglas County and Washoe County over that
14 six and a half day period. He specifically buried some weapons
15 that were stolen from the Davids. Again, he buried those in
16 Carson City. He was pawning these stolen items from both the
17 Carson, excuse me, the Douglas County burglaries as well as
18 the Washoe County burglaries. He was pawning those items in
19 Carson City, and he did all of this while in possession of
20 that stolen revolver, the same revolver he used to shoot and
21 kill Connie Koontz, Sophia Renken, Gerry and Sharry David.

22 Your Honor, the facts of this case are so
23 intertwined that the part of the crime committed in Washoe
24 County, the stealing of that murder weapon, was an act

1 constituting or a requisite to the consummation of the crimes
2 that occurred in Douglas County between January 9th and/or
3 January 13th. So to claim those crimes, Counts III through VI
4 of the Indictment occurred solely in Douglas County is
5 disingenuous. The defense mistakenly argues in his Motion and
6 Reply that the Washoe County Grand Jury did not have
7 "jurisdiction" to consider or indict the Defendant on Counts
8 III through VI of the Indictment. There are two points I would
9 like to briefly touch upon about how the defense has couched
10 this issue especially in their Reply. First of all the,
11 defense has renamed the Washoe County Grand Jury as the
12 "Second Judicial District Grand Jury," in its Reply. Renaming
13 the Grand Jury and giving it a new name of the Second Judicial
14 District Grand Jury does nothing to advance the defense
15 argument. Rather, it tends to highlight some of the inherent
16 weaknesses they have raised in both their Motion to Dismiss as
17 well as their Reply.

18 Secondly, and most importantly, Your Honor, the
19 defense argues that the Grand Jury "lacked jurisdiction." And
20 I know, during the oral argument today, Mr. Arrascada kind of
21 pulled away from that and instead was focusing more on the
22 powers and authorities, because I think there is an
23 understanding what they have written in their Reply isn't
24 actually factually accurate. The statute in question,

1 NRS 172.105, it is not a jurisdictional statute. It is a
2 statute that provides for powers or authority of a Grand Jury
3 in Nevada. And while it broadly defines the powers of a Grand
4 Jury, it is not exclusive authority, and it does not govern
5 its exclusive authority which now brings us back to the sole
6 issue really in the Motion to Dismiss, and that is for this
7 Court to decide what is the territorial jurisdiction of the
8 Court as it relates to NRS 172.105. When you look at the
9 statute that references territorial jurisdiction, it is not
10 tied to a Grand Jury. It is tied to the Court and, therefore,
11 the authority or power of the Grand Jury is tied then to the
12 territorial jurisdiction of this Court. So getting into some
13 of the principles, tenants or maxims of statutory
14 construction, the courts always begin by looking at the plain
15 meaning or plain language of a statute. And if the statute is
16 not ambiguous, then the courts will apply that plain language
17 and will not look any further than just the plain meaning of
18 that particular statute.

19 NRS 172.105 is clear on its face. It is not
20 ambiguous. The territorial jurisdiction of this Court is
21 statewide, and that is pursuant to Article 6, Section 6 of the
22 Nevada Constitution. It is that way based upon current case
23 law, not case law from 1865 or 1908 cited by the defense in
24 the Gleason and the Pray, P-R-A-Y case. Those are common law

1 principles that have long since been abandoned based upon
2 legislative enactment and also interpretation of that
3 legislative enactment by our Nevada Supreme Court. And it is
4 also statewide jurisdiction based upon NRS 3.220 which
5 provides that you as well as all other District Court judges
6 in the state have and possess equal coextensive and concurrent
7 jurisdiction throughout the State, and that you, as well as
8 all other District Court judges in this State have the power
9 to sit as District Court judges and hear cases in any county
10 in this particular state. Again, since the powers are or
11 authority of a Grand Jury in the State of Nevada is now tied
12 to the territorial jurisdiction of the District Court for
13 criminal public offenses, for felony offenses, then the
14 authority and power of the Grand Jury also would be statewide
15 to be able to hear evidence such as the inquiry in Counts III
16 through VI which, again, are not based solely upon what
17 happened in Douglas County, but understanding and recognizing
18 there were acts committed in Washoe County that were
19 requisites to the completion of those offenses in Douglas
20 County.

21 The term "territorial jurisdiction" has been defined
22 by our Nevada Supreme Court as recently in a criminal case
23 cited by the State in McNamara, M-c-N-A-M-A-R-A at 377 P.3rd
24 106 page 112. And there was also references to territorial

1 jurisdiction just last year in the civil case of Quinn,
2 Q-U-I-N-N versus Eighth Judicial District Court at 410 P.3rd
3 984. Looking at the McNamara case, it is very clear that
4 territorial jurisdiction does mean statewide jurisdiction. And
5 I now Mr. Arrascada in his argument was trying to point out
6 that this is an interstate type of case. There is no doubt
7 that that is a case that deals with crimes that straddle state
8 lines, but that is not the important part of the case. The
9 important part of the case is the Court looking at and
10 examining what in fact territorial jurisdiction is and how the
11 legislature had enacted laws to overcome these common law
12 principles, these outdated, archaic common law types of
13 principles dealing with jurisdiction that existed in the
14 1800's up until the first decade of the 1900's. Because the
15 reality is, Your Honor, the jurisdictional statutes that were
16 enacted in Nevada began in 1911, so three years after the
17 State versus Pray case was decided based upon these very
18 narrow and limited common law jurisdiction principles and
19 decades past when the Gleason case was decided in 1865.

20 In his Reply Points and Authorities, the defense
21 incorrectly states that NRS 172.105 codified a common law rule
22 that an Indictment be found in the county in which the crime
23 has been committed, then again cites to the 1908 case of State
24 versus Pray. I am sure they would add to it the same would go

1 with the Gleason case that was reviewed by Mr. Arrascada last
2 night. But, Your Honor, that is an absolute misstatement why
3 NRS 172.105 was enacted. It was enacted again to move away
4 from those very narrow principles of common law jurisdiction
5 that prevailed across the country, not just in Nevada, in the
6 1800's and again, the first decade of the 1900's. You can look
7 at McNamara, again, the 2016 case. In that, the legislature
8 was looking at a different statute, but it was NRS 171.020,
9 and that was enacted in 1927. And the purpose behind that was
10 to give broader powers and jurisdiction over interstate crimes
11 than had existed over the very narrow confines of the common
12 law.

13 Similarly, in this case, Your Honor, when we look at
14 NRS 172.105, that was also enacted in order to overcome the
15 narrow application of jurisdiction which had been discussed by
16 the Supreme Court in 1865 in the Gleason case as well as in
17 the Pray case. It is important to note that when you look at
18 the Gleason case on page 178, that the narrow common law
19 principles that applied at that time was the territorial
20 jurisdiction of the Court and the Grand Jury. When
21 NRS 172.105 was enacted in 1967, they specifically removed the
22 words "and Grand Jury," and instead, because again that would
23 have been much more limiting as far as the jurisdiction issue
24 that we are faced with in this particular case, but would have

1 been much more limiting back in that time. But the whole idea
2 was to let the venue statutes breathe life into what is the
3 proper place for trial. Instead, we are looking at statewide
4 jurisdiction of the District Courts when we are examining and
5 considering the powers or authority of Grand Juries that are
6 empaneled in this state. It is also important to note, Your
7 Honor, like many of the statutes in Nevada, they've been acted
8 over the past 100 plus years. We tend to be a copy-cat state
9 and we borrow language. NRS 172.105 was borrowed from the
10 State of California when it was enacted in 1967. So it was
11 not, as the defense would like for this Court to believe, it
12 was not done for the purpose of trying to codify this very
13 archaic, very narrow common law rule that existed in between
14 1865 and 1910, therefore NRS 172.105 is clear on its face, and
15 the Court does not need to go beyond that language in
16 determining what the Legislature's intent was.

17 However, if the Court were to consider or wanted to
18 look at whether or not there was still some ambiguity as to
19 NRS 172.105, the the first thing the Court should do is look
20 at the act as a whole. That is one of the tenants or
21 principles of statutory construction is to look at the
22 statutes or acts as a whole. And the case law that is often
23 cited on that is Colello, C-O-L-E-L-L-O versus Administrator,
24 Real Estte Division at 100 Nevada 344. It is a 1984 case. So

1 when you look at the act as a whole, you need to go and look
2 at the legislative history of when NRS 172.105 was enacted in
3 1967. It was enacted as part of perhaps the most comprehensive
4 omnibus criminal procedure bill ever enacted in the State of
5 Nevada. It was Assembly Bill 81, and it was comprised of 468
6 sections that either enacted as new law and new chapters or
7 amended every single chapter that currently existed at the
8 time and under Title 14 of Nevada Revised Statutes. And the
9 Court is well aware Title 14 is criminal procedure in Nevada.
10 Those chapters are from Chapter 169 through 189. So part of
11 this omnibus bill was looking at, and you can realize that the
12 Legislature understood the difference between the terms
13 territorial jurisdiction, judicial districts, districts, and
14 counties, because three of those four terms were specifically
15 used as part of this omnibus bill. And then the other
16 judicial district which was defined in Chapter 3 of breaking
17 up the State of Nevada into specific judicial districts, and
18 there is a purpose and reason behind that, but those laws
19 existed at the time. And so another principle of statutory
20 construction is the Legislature knew there were judicial
21 districts, and if they wanted to use that term, they could
22 have used that term, just as they could have gone back to the
23 very narrow type of jurisdiction that the defense has cited to
24 in the 1865 Gleason case and 1908 Pray case. But they did not

1 do that.

2 So NRS 172.105 gives a Grand Jury the authority to
3 inquire into public offenses. And this is the nonexclusive
4 authority or power of a Grand Jury pursuant to that particular
5 statute, but to inquire as to public offenses that are
6 committed within the territorial jurisdiction of the District
7 Court. When you use this principle of statutory construction
8 and you look at the act as a whole under that same Chapter
9 172, that entire Chapter was enacted in 1967. And the purpose,
10 part of that statute again was to fall in line with what the
11 Legislature had been doing over the decades starting in 1911
12 which was to get rid of these narrow type of jurisdictions
13 that had existed in the State of Nevada.

14 So if you look at NRS 172.175, this is limiting a
15 Grand Jury and what they can do in non-criminal offenses. So
16 in criminal offenses where the power and authority of a Grand
17 Jury is tied to the territorial jurisdiction of a District
18 Court in other cases such as inquiring into misconduct of a
19 public official, it has to be in the county where the Grand
20 Jury was empaneled, not the territorial jurisdiction of the
21 District Court where it was empaneled, but the county. So it
22 was more limiting in these non-criminal types of offenses.

23 In addition, if the Grand Jury wanted to look at a
24 prison that was located within that specific county, then they

1 could only do that within the county, again, not within the
2 territorial jurisdiction of the District Court.

3 Looking at NRS 172.105, part of this omnibus
4 criminal procedure bill, if the Grand Jury wants to enter upon
5 a prison located within the county and examine records within
6 that prison, they were limited to the district, not the
7 territorial jurisdiction of the District Court, but the
8 district where the Grand Jury was empaneled. The mandates
9 associated with the statutory construction looking at the Act
10 as a whole, we know that from those there is a difference
11 between those terms, territorial jurisdiction, again, judicial
12 district, district and county. Those terms all must be given
13 that meaning, plain meaning or meaning understood such as
14 territorial jurisdiction through years, centuries or decades
15 or even into centuries of jurist prudence once the narrow
16 common law principles had been abandoned.

17 So if the Legislature, knowing all of that in 1967,
18 had wanted to limit the authority or power of a Grand Jury
19 that was empaneled in any county within the State, if they
20 wanted to limit their inquiry as to public offenses to felony
21 offenses that are now tied to the territorial jurisdiction of
22 the District Court, then they could have done that. So
23 instead, how the statute currently reads, "committed within
24 the territorial jurisdiction of the District Court for which

1 it was empaneled," the Legislature could have instead written
2 "committed within the judicial district of the District Court
3 for which it was empaneled." Or, it could have said "committed
4 within the county of the District Court in which it was
5 empaneled." Or it could have said, "committed within the
6 judicial district or county for which it was empaneled," in
7 order to be able to recognize some of the judicial district to
8 span multiple counties. They didn't do that. Instead, the
9 authority of the Grand Jury of the Washoe County Grand Jury is
10 tied to the territorial jurisdiction of the Court, and that is
11 statewide.

12 In essence, Your Honor, the defense is somewhat
13 arguing that the jurisdiction of this Court would be limited
14 if you were to accept their definition of the term territorial
15 jurisdiction. But they often go beyond that. They are going
16 so far beyond the plain meaning. They are asking the Court,
17 when you read 172.105, to just remove the words "territorial
18 jurisdiction" and instead to insert the words "Judicial
19 District" because that is the only way the defense can win on
20 this issue. We have our venue laws in place for a purpose. We
21 have case law such as has been cited by the State in our
22 Opposition in Walker of looking at those particular
23 principles, as to give them meaning, to give our venue
24 statutes meaning and not lead to an absurd result or be able

1 to follow the maxim of Expressio Unius Est Exclusio Alterius
2 meaning the explicit mention of one thing is the exclusion of
3 the other. In order to give all of that meaning, it can only
4 be, again, the power and authority of the Grand Jury is tied
5 to your territorial jurisdiction which is statewide.

6 And the last principle or tenant of the statutory
7 construction I will address this morning is the courts also
8 look at if there is a declaration of policy or some
9 declaration of intent in that act when enacting legislation.
10 And that exists in this case, Your Honor, as part of Assembly
11 Bill 81, as part of that omnibus bill on criminal procedure
12 that was enacted in 1967. Section 4 of the bill states:
13 "This title is intended to provide for the just determination
14 of every criminal proceeding. Its provisions shall be
15 construed to secure simplicity and procedure, fairness in
16 administration and the elimination of unjustifiable expense
17 and delay."

18 Your Honor, the defense is not contesting venue. In
19 fact, the defense has tacitly agreed that venue for all of
20 those counts can in fact be here in Washoe County. What they
21 are contending now is the process based upon a very narrow
22 common law type of principle construction that they want this
23 court to adopt and look past the fact our State of Nevada had
24 moved far beyond that over the past fifty to eighty years.

1 The Washoe County Grand Jury returned a True Bill as
2 to all ten counts that are contained within the Indictment,
3 and that those occurred over that six and a half day period
4 primarily Douglas County, Carson City and Washoe County as
5 part of Defendant's continued course of criminal conduct.

6 Your Honor, this provides for a just determination
7 of the criminal proceedings. You can think of how ridiculous
8 it would be in order to separate and hold many Preliminary
9 Hearings in two other counties which could not occur as long
10 as the Defendant was being detained in the Washoe County Jail.
11 So we couldn't, even if we could get the Defendant to Carson
12 City and ultimately in Douglas County to be able to do later
13 joinder, we are talking about absolute years of delay
14 associated with that process which would circumvent and be in
15 violation of that principle or that intent, that policy that
16 the Nevada Legislature was so wise in bringing out in 1967. It
17 also secures simplicity in the procedure, and in fact has
18 secured simplicity in the procedure. It provides for fairness
19 in the administration of justice, and it also recognizes the
20 Constitutional right of the victims and of the families of the
21 victims that has the right pursuant to Marsy's Law that is now
22 made part of our Nevada Constitution. That the victims are
23 entitled to a timely disposition of case. This jurisdiction
24 issue, this authority or power no matter how they want to

1 couch it by the defense is not a Constitutional right of the
2 Defendant. We have victims who have Constitutional rights,
3 and they also need to be recognized. And, Your Honor,
4 following with those policies and the intent of the Nevada
5 Legislature in 1967 to eliminate the unjustifiable expense and
6 delay in prosecuting these intertwined crimes that occurred
7 between Douglas County, Carson City and Washoe County in
8 January of this year, and for the reasons that we have stated
9 in our Opposition that is on file with the Court as well as
10 the oral argument this morning, the State respectfully
11 requests this Court to deny the Defendant's Motion to Dismiss.

12 THE COURT: Thank you. Mr. Arrascada.

13 MR. ARRASCADA: Your Honor, statutes matter and the
14 common law matters. Here is something that is very significant
15 in McNamara which the State has relied upon. It discusses
16 territorial jurisdiction, and as I said, it is regarding
17 interstate. We are dealing with Illinois to Nevada. And with
18 McNamara, which is a 2016 case, it states: "Territorial
19 jurisdiction has long been required in criminal case. First,
20 territorial jurisdiction was a creature of common law and the
21 prosecution had the burden to affirmatively prove the crime
22 was committed within the territorial jurisdiction of the Court
23 and Grand Jury where the Indictment was found." That is our
24 common law principle. NRS 171.020 which McNamara relates to

1 then states: "The Nevada Legislature modified the common law
2 rule by enacting NRS 171.020 to address territorial
3 jurisdiction in the context of interstate crimes." Nothing
4 more. And when we have statutes that specifically state the
5 place of trial for a homicide which in this case would be
6 Douglas County, when we are looking at everything, Judge, I
7 think you also need to consider the essential elements of the
8 crime. Pray addresses this as does the other cases cited by
9 the State, I believe Shannon and McNamara. Each and every
10 essential element of burglaries and the homicides related to
11 the Douglas County charges, each of them occurred in Douglas
12 County. Now curious is that throughout time, statutes have
13 been acted to have venue or have jurisdiction in different
14 counties such as our possession of stolen property or
15 burglary, robbery and larceny statutes. Venue when property
16 is taken. That is NRS 171.060. It talks it can be either in
17 the county where it occurs or ends up. The Legislature
18 addressed that. The Legislature in NRS 171.020 addresses
19 interstate. But common law still prevails today regarding
20 territorial jurisdiction of the Grand Jury. And the Grand Jury
21 territorial jurisdiction for the Second Judicial District
22 Court happens to be Washoe County. So, Your Honor, we don't
23 have, and they do not have a statute that allows for them to
24 do what they are trying to do, have a Grand Jury in Washoe

1 County indict and have Mr. Guzman stand charges for offenses
2 that occurred. All the essential, each and every essential
3 element happened in Douglas County.

4 Your Honor, the State also, they said, you know,
5 they mentioned we borrowed a statute or the verbiage was from
6 California. Curiously enough, Your Honor, I think the lack of
7 case law speaks volumes, that the State cannot produce a
8 single case that stands for the principle that they are
9 promoting to this Court and asking this Court to embrace in
10 denying our Motion to Dismiss based on this lack of
11 territorial jurisdiction within the powers of the Grand Jury.
12 That is because they do not exist. The common law still
13 prevails which is still in Pray and Gleason. There has been
14 no statute enacted to allow the State to do what they are
15 trying to do. As a matter of fact, the statutes that exist are
16 contrary to that, and it starts with NRS 200.110 which
17 establishes by statute the place of trial for a homicide. That
18 is Douglas County.

19 The Grand Jury exercised powers by indicting Mr.
20 Guzman regarding Counts III, IV, V and VI that they did not
21 have, Your Honor, by statute or by case law.

22 As I said, the State relied, Your Honor, quite a bit
23 on a case called -- I am sorry. Let me distinguish first the
24 Walker case, Your Honor. Walker is a venue case. They, no one

1 could determine whether the homicide occurred in Pershing,
2 Lander or Washoe, and the Supreme Court said it is just as
3 reasonable to believe it occurred in Washoe as it did in
4 Lander or Pershing, therefore the prosecution was okay. We
5 don't have that situation here. Everything occurred in Douglas
6 County, so Walker is distinguished by that.

7 As I said, Your Honor, Alexander which they cite to,
8 what at the end of the day Alexander stands for is process
9 matters. In Alexander, so the Court knows, that was a murder
10 case. He was convicted. The Grand Jury, when the Indictment
11 was handed down, it failed to state all acts occurred in
12 Nevada in the state, and so the Supreme Court vacated it, said
13 the Court has no jurisdiction because there never was any
14 allegation made the jurisdiction was in Nevada. And the Court
15 went to great lengths saying that doesn't mean that the case
16 is over. You can recharge him. You can rearrest him. You can
17 re-Indictment him. That goes back to my original comment about
18 Alexander. The Supreme Court is saying loud and clear that
19 process matters.

20 Your Honor, I can think of nothing more in
21 contravention to the spirit of Marsy's Law than to ignore the
22 common law and what the statutes now provide for and what we
23 have as far as the powers of the Grand Jury and territorial
24 jurisdiction at this juncture to say process be darn, we are

1 doing this, and if everything goes exactly as the State has
2 alleged in their charges and have noticed, that we could be
3 back here 20 years later addressing this issue of process and
4 how this could be -- how the Indictment was handed down and
5 where was the territorial jurisdiction. We need to start this
6 case off properly. The Grand Jury in Washoe County exceeded
7 the powers it is authorized to utilize when they indicted
8 Mr. Martinez Guzman for the Douglas County charges.

9 We would ask that you grant our Motion to Dismiss.

10 THE COURT: You argued, Mr. Arrascada, each and
11 every essential element of the murders occurred in Douglas
12 County. However, we don't know that for sure. The essential
13 elements of murder in the first degree is premeditation and a
14 deliberate intent to commit a burglary. All of that could
15 easily have occurred in Washoe County when the guns were
16 stolen or in Carson City. How can we argue every essential
17 element of the murder occurred for sure in Douglas County?

18 MR. ARRASCADA: All due respect, Your Honor, how can
19 we not? We don't know that. But what was provided to the
20 Grand Jury, what we see based on the police reports, based on
21 Mr. Guzman's statement, would be the essential elements
22 occurred in Douglas County.

23 THE COURT: Okay. Thank you. I am going to take
24 the Motion to Dismiss under submission, and we'll proceed with

1 the Writ of Habeas corpus argument. We'll go a little time
2 before we take a recess unless you would like to have a recess
3 before you begin those arguments.

4 MR. ARRASCADA: Your Honor, I suggest a brief recess
5 right now.

6 THE COURT: No problem. We can take a short recess
7 now. Court's in recess.

8 (Short recess taken.)

9 THE COURT: Thank you. Please be seated. We'll
10 continue with argument at this time.

11 MS. HICKMAN: Judge, in addressing the Petition for
12 Writ of Habeas Corpus that was filed, I am going to kind of go
13 in order as the arguments came.

14 As to Counts I and II, the challenges to the
15 sufficiency of the evidence that was provided to the Grand
16 Jury, as to those two counts, at the outset both parties agree
17 that the statements made by Mr. Diaz to the Grand Jury were
18 hearsay. Obviously, they are out-of-court statements offered
19 to prove the truth of the matter asserted. The State's
20 argument essentially is those should still come in because
21 under NRS 51.315, they have a strong assurance of accuracy
22 that the Court should rely on in admitting those statements.
23 That is sort of the catch-all of that statute. It is very
24 rarely used, obviously, because it forces the Court to assume

1 so much about the accuracy of the statements. The way that is
2 presented with the Writ and then the State's argument is a
3 little bit backward than presented if we were going to trial.
4 We obviously would have a hearing before hand where the Court
5 could rule whether or not it has those strong assurances of
6 accuracy. But in this case, those statements do not carry a
7 strong assurance of accuracy. They are not clear. They are
8 not strong. They are inconsistent in between the testimony of
9 Mr. Diaz. They are inconsistent between what Mr. Diaz says
10 happened and the notes that are reported to have been made by
11 Mr. David. So if they are incorrect, they are inconsistent,
12 they are somewhat wishy washy to what actually occurred, they
13 don't have a strong assurance of accuracy to fit that
14 exception and be admitted as an exception to the hearsay rule.

15 If you look at the Grand Jury quotes that were
16 included in the pleading, it is on pages 11 and 12 of that
17 filing that we made, you can see there is a lot of qualifiers
18 to all of the statements that were introduced regarding the
19 two burglaries. And, obviously, there are two separate counts.
20 First is just a burglary. The second is a burglary while in
21 possession of a firearm. Mr. Diaz consistently testified about
22 what he thought happened, what Mr. Diaz thought happened or
23 what Mr. David thought happened. So initially the question
24 posed to Mr. Diaz was:

1 "Q: I would like to know what Gerry David told you
2 about the burglaries." And he says, Mr. Diaz says:

3 "A: The first day the person came in and took some
4 fishing poles, ransacked his back sheds. And the second date
5 the person came back and ransacked his trailer."

6 That statement is inconsistent to what is then
7 introduced in Grand Jury Exhibit 82 which is a photo of the
8 calendar. Because, if you look at the writing on the calendar,
9 on the first day it says "barn, skill saw, charger." On the
10 second day it says, "fishing poles." So those statements are
11 inconsistent between Mr. Diaz and what the State purports to
12 say was written by Mr. David.

13 In addition, the State asked Mr. Diaz:

14 "Q: You indicated that Gerry David told you that he
15 believed some tools had been taken. Did he tell you anything
16 about what type of tools?" And then Mr. Diaz is talking about
17 the circular saw, but he says:

18 "A: He really didn't know, because it was hard for
19 him to go through, because my understanding is the tool shed
20 was ransacked."

21 That is not a strong assurance of accuracy to say,
22 even the initial statement was that the person didn't really
23 know what was taken.

24 In addition, the State asked the question of

1 Mr. Diaz:

2 "Q: Did he have any idea of what might have been in
3 the bag that he thought was taken?"

4 Judge, that is a qualifier. "He thought was taken."
5 Not that he knew was taken, not that Mr. Diaz knew was taken,
6 not that he later went through and inventoried his things and
7 said this bag was taken. He thought it was taken. That is
8 not a strong assurance of accuracy. That doesn't even
9 indicate the State believes it is a strong assurance of
10 accuracy when they are qualifying their own question by saying
11 "he thought was taken."

12 And if we are focusing just on Count II which is the
13 burglary involving a firearm, there is no testimony introduced
14 at the Grand Jury that a handgun was even taken. And on top of
15 that, there is slightly no testimony that a revolver was ever
16 taken. And then to go down the line, there is no testimony
17 that connects the revolver that was taken, outside of
18 Mr. Guzman's statements, to the Davids. Nobody ever comes in
19 and says, yes, I recognize that revolver, that was
20 Mr. David's. Not his family, not Mr. Diaz, not some person
21 who has seen him use it. There is nothing that says the actual
22 revolver found was ever stolen from the Davids' home outside
23 of the statement of Mr. Guzman. But the most that the State is
24 able to introduce at the Grand Jury regarding the handgun is

1 is did he have any idea of what he thought was taken, and the
2 answer is he couldn't remember for sure but he said possibly a
3 handgun was taken. Judge, that statement does not have a
4 strong assurance of accuracy. He thought a handgun was taken.
5 He thought possibly a handgun was taken, but he couldn't
6 remember for sure.

7 And then if we are looking at what the State wants
8 to say was Mr. David's handwriting, again, nobody ever said
9 that was Mr. David's handwriting. Nobody ever comes in and
10 says I can identify it. The foundation was never laid for
11 that to have been introduced. Even if we are looking at that,
12 for the State to try to bolster the statement by Mr. Diaz that
13 Mr. David couldn't, he didn't know for sure, but he thought
14 maybe a handgun was taken, there is no mention of a handgun on
15 this calendar that the State wants to say makes these
16 statements so reliable and it is the very strong assurance of
17 accuracy because Grand Jury Exhibit 82 reflects on the first
18 date which is January 3rd the barn is broken into, skill saw,
19 charger. No mention of a gun. No mention of a revolver,
20 handgun or nothing.

21 Then on January 4th, the notes reflect the barn is
22 broken into, all the fishing poles, Wells Cargo trailer. There
23 is no mention of a firearm. And that is, if we take the
24 State's argument as being true, those are actual statements of

1 Mr. David. There is nothing that tells you that a handgun was
2 stolen. So if those are the only actual statements that we
3 have from Mr. David outside of Mr. Diaz who says he doesn't
4 even know what was taken, it could have possibly been a
5 handgun, Mr. David's own statements per the State's argument,
6 do not reflect that a handgun was stolen or a revolver or that
7 it was the revolver that is later found with Mr. Martinez
8 Guzman according to the allegation.

9 So, Judge, when we get past the evidence that was
10 presented about those counts, there is no legally admissible
11 evidence regarding the gun. The State concedes they presented
12 pure hearsay to the Grand Jury regarding that. But what saves
13 it is it is an exception. And if you look at what is actually
14 their inconsistent statements, qualifiers about what he
15 thought was taken, what may have been taken, that someone was
16 unsure what was taken, and even the own handwritten statements
17 the State argues are Mr. David's, there is no legally
18 admissible evidence regarding that gun.

19 So then the State asked the Court to obviously
20 consider Mr. Martinez Guzman's own statement. Obviously, the
21 Court is familiar with corpus delecti. We cannot consider
22 Mr. Guzman's statements until the State has provided the
23 necessary evidence to support the charge. Outside of
24 Mr. Martinez Guzman's statements, without the hearsay, there

1 is nothing to support those two charges, so the Court cannot
2 consider his statements in determining whether or not the
3 Grand Jury had sufficient evidence to indict Mr. Martinez
4 Guzman on Counts I and II.

5 As to the next counts that are challenged in the
6 Writ, we have challenged counts-- we challenged the felony
7 murder theory prosecution as to Count V, and there is
8 insufficient evidence to support a burglary as to Count VI.
9 These are the counts, these are part of the Douglas County
10 counts referred to earlier, and these are the counts regarding
11 the murder of Sophia Renken. If the Court has reviewed the
12 Grand Jury transcript and reviewed the facts in both
13 pleadings, you can see that that house was not disturbed in
14 any way that suggests a burglary. Her purse is in plain view.
15 It is not disturbed. It is not gone through. There are
16 valuable things in the house. There is nothing in the closets,
17 or the clothes aren't gone through. There is nothing
18 indicating this house was treated in the same way as the first
19 house that we are talking about or the David house where the
20 house is ransacked and where things are taken, or like in the
21 case of Ms. Koontz where her things are actually pawned. This
22 isn't true in Ms. Renken's case.

23 In the interview of Mr. Martinez Guzman that was
24 presented to the Grand Jury, at some point detective Brady

1 says, "We know things are stolen. We are going to find
2 those." As the Court knows, that is not true. Nothing was
3 stolen from that home. They never found anything was stolen.
4 And one of the things that the Court has to consider is the
5 Court cannot depend on the other two counts to say, well, I
6 can see arguably while the allegations say Mr. Martinez Guzman
7 went into both of those homes to commit a burglary, right,
8 they are ransacked, things are in taken, so I am going to
9 assume that the same intent is present here. The Court can't
10 rely on those, because the State must provide probable cause
11 for each count individually. They can't say we have shown this
12 in a different count so you can carry it over to those counts.

13 Finally, Judge, the last count that we charge, I am
14 sorry, the last count that we challenge is Count X which is
15 the count involving the stolen firearms. What is interesting
16 here is we have the firearms that are alleged to have been
17 stolen. We have all of them. The State lays out twelve of
18 them in the charging document. And if you look at the photos
19 that are introduced in the Grand Jury exhibit, there is not a
20 photo of all twelve guns laid out. There is not even a photo
21 of the firearm that they are saying has some sort of a label
22 that says "Gerry David" on it. We don't even know which one
23 that is. We don't know anything about them other than we can
24 see them kind of clumped together in the ground. So what the

1 State's argument is, what is present prior to the statement of
2 Mr. Martinez Guzman, is it was obvious that the home was
3 ransacked. It was obvious that there were things taken from
4 the home based on the condition of the home. There is gun
5 cases in the house. There is a bag with ammunition in it
6 indicating that someone was interested in acquiring
7 ammunition. And there is an empty gun case. But, Judge, where
8 that argument falls apart is there are some pretty major
9 assumptions the Court has to make in order to show that is
10 enough to provide probable cause to the Grand Jury to allow
11 the Court to then consider the statement of Mr. Martinez
12 Guzman. The biggest thing is there is no evidence about what
13 guns were in the Davids' home prior to anybody going in and
14 taking them. There is no argument those gun cases were full of
15 guns. There is no argument or there is no evidence presented
16 one gun case had one gun and one was completely full. There is
17 not even evidence about how many guns could fit in each gun
18 case matching up twelve guns to the gun cases. I mean let's
19 say those gun cases between all of them could have held thirty
20 guns. Where are the rest of them? Let's say they only hold
21 five guns. Where did the rest of them come from? We don't
22 know any of that information because it wasn't presented.

23 Further, the State asked the Court to make an
24 assumption because there is ammunition left in the home it

1 indicates the party responsible is interested in ammunition.
2 The Court obviously can draw whatever assumptions it deems,
3 but that is not a legal assumption that the Court can draw
4 from that. We can say maybe they are are not interested in
5 ammunition. We can say they are because they put it there.
6 Maybe they are not interested in the ammunition because it is
7 not part of the guns they have. There is a million things you
8 can do from that. When you look at that home, especially
9 where those gun cabinets are, look at all the Grand Jury
10 photos, there is portions of the home, while not dirty but
11 very messy, things are not where they belong. To say the
12 simple fact a gun case, an empty case was at some point full
13 of guns goes too far.

14 In addition, if you look at the Grand Jury
15 transcript, there is a portion where detective Brady states it
16 was very obvious that the home had been ransacked because when
17 she looked at certain cabinets, she could see certain things
18 had been moved because there was a dusty outline where they
19 had been and moved. There is nothing similar to that in the
20 gun case.

21 Finally, what we don't know is the condition of the
22 gun cases prior to somebody going in on the night that
23 somebody went into the home. Were they empty? Were they
24 full? Were they partially empty? Were guns ever kept there?

1 We don't know any of that, Judge. That evidence was not
2 presented to the Grand Jurors.

3 And, finally, with all twelve guns including even
4 the one that detective Digesti testified had the name Gerry
5 David text on it, there is no evidence that those guns, all
6 twelve of those belong to Mr. David or Mrs. David. That those
7 came from that house, every single one of them. We don't even
8 know which one of those twelve had that name on it.

9 So, Judge, the State fails to provide sufficient
10 evidence outside of Mr. Martinez Guzman's statement and they
11 cannot rely on his statement to prove the probable cause. Even
12 if we are looking at Mr. Martinez Guzman's statement, he does
13 not say "I took twelve guns from those gun cases. I took those
14 twelve guns." He says -- He says it very generally. But as
15 to each and every one of those which are separate, the
16 evidence is just not there as presented to the Grand Jury, and
17 I would ask the Court to grant the Writ.

18 Oh, and as to the last issue, I am just going to
19 incorporate the statements of Mr. Arrascada. I am not going to
20 reargue the jurisdiction of the Grand Jury. I would just put
21 if the Court decides that the Writ is the proper place to
22 consider that, you can only consider the facts presented to
23 the Grand Jury not any of the other facts Mr. Jackson argued
24 that should give them jurisdiction or whatever it may be. You

1 are limited to the transcript of the Grand Jury.

2 THE COURT: All right. Thank you.

3 MR. HICKS: Thank you, Your Honor.

4 THE COURT: Wait just a second. Okay, go ahead.

5 MR. HICKS: Before I start my argument, I would like
6 to get one of the Grand Jury exhibits so I may show some of
7 the exhibits.

8 THE COURT: That is fine.

9 MR. HICKS: If I may approach, I believe the clerk
10 has Grand Jury Exhibit 173. This is the thumb drive of all the
11 exhibits that were admitted. We used it as a Power Point
12 example during the Grand Jury presentation. I will get to
13 those in just a second.

14 THE COURT: That was Exhibit 73 of the Grand Jury?

15 MR. HICKS: 173.

16 THE COURT: 173. Thank you.

17 MR. HICKS: So, Your Honor, what I would start off
18 with is our answer to their Writ of Habeas Corpus is
19 exhaustive. It covers all these issues very well I would
20 suggest, briefs them well. I am going to touch on some high
21 points. I would be happy to go into any further detail if the
22 Court likes, but I am confident in the manner in which our
23 Answer lays out the law and its application to the facts.

24 As Ms. Hickman was arguing to you, I was thinking

1 the defense is asking the Court to hold us, the prosecution,
2 to beyond a reasonable doubt standard at the Grand Jury.
3 There was numerous examples of there was no evidence, they
4 didn't explain this away, they didn't explain that away. That
5 is not our burden at a Grand Jury presentation, as Your Honor
6 well knows.

7 So what they have challenged here, the challenge
8 they have made is insufficient evidence was presented to
9 support these various counts. And as Your Honor well knows,
10 the standard at a Grand Jury, they need to determine if there
11 is probable cause or not, and that standard the State has to
12 meet is slight or marginal evidence. It is not beyond a
13 reasonable doubt. It is with that back drop in mind we look
14 at all these arguments they made. Slight or marginal evidence
15 to support the charge.

16 So their first argument as to Mr. David's
17 statements, now there are two statements that were admitted.
18 There was his handwriting on his calendar. We concede that is
19 hearsay. And there is the statements he made to his
20 caretaker, Val Diaz. We also submit that is hearsay.

21 In regards to -- Well, let me say this: They are
22 hearsay, and they are being offered to prove that two
23 burglaries occurred. And so the first one I want to talk
24 about, Your Honor, is the calendar. So although they didn't

1 argue it in their Writ, they kind of left it as hearsay is not
2 admissible at Grand Jury. End of story. As we know by our
3 Answer, hearsay exceptions are clearly admissible at Grand
4 Jury, and, Your Honor, we rely on NRS 51.315. That is a
5 general exception. There are two prongs. The first one is
6 easy. That is the declarant is unavailable, and we know that
7 Mr. David is unavailable. Mr. David is unavailable because he
8 was murdered, and as we have charged, he was murdered by the
9 Defendant, and now the Defendant is seeking to exclude those
10 statements by the person that he made unavailable. That flies
11 in the face of what our judicial system wants to see where
12 someone can get rid of a witness and now we can no longer use
13 their testimony or their statements. Now of course it has to
14 be reliable, or as the statute says, its nature and special
15 circumstances under which it was made offers strong assurances
16 of accuracy.

17 So if you look at the case we cited in our answer,
18 the Maresca, M-A-R-E-S-C-A case, the Court looked at factors,
19 if you will, that you can consider in seeing whether or not
20 there are strong assurances of accuracy. I want to go through
21 those as we look at some of these exhibits and we talk about
22 Mr. David's statement. The first one is, the first
23 consideration in Maresca is no involvement with the police.
24 Mr. David did not report this to the police. He did not share

1 this with the police. It is not testimonial in anyway these
2 statements.

3 No involvement with the Defendant. These
4 statements, this is very important to consider when you are
5 looking at the reliability, they are not accusatory in any
6 way. If you are looking at whether or not someone may be
7 misleading or fabricating a statement, there has to be an end
8 game to it, an accusation. These are purely statements
9 memorializing the burglaries that occurred to him. But there
10 is no accusation as to who did it. That further bolsters the
11 reliability.

12 No apparent motive to lie. The nature of the
13 statements simple with little prospect of misrepresentation.
14 When you look at these statements individually and as a whole,
15 it is very clear there is little prospect of
16 misrepresentation. And, of course, Mr. David had no reason to
17 lie that the record would suggest in any way in making these
18 statements.

19 So first looking at the calendar. That is Exhibit
20 83, Your Honor. So exhibit -- This is actually Exhibit 82,
21 Your Honor. And that shows the calendar that was in the
22 Davids' home. And as Mr. Diaz testified to, he was very much
23 a friend of the family. He had known them for years in
24 addition to being their caretaker. He testified he often sat

1 at that table with the Davids and would see Mr. David write on
2 this calendar, make notations on this calendar as he would
3 write down medical appointments or dinner plans, something
4 along those lines. This is a close-up of the calendar. What
5 is relevant here, Your Honor, these are the dates we are
6 talking about. These are the dates of the very initial
7 burglaries that occurred at the David home that started this
8 whole crime spree that occurred over the course of a week. So
9 by looking at that calendar, you can see Mr. David wrote down
10 interesting items. He wrote down the temperature each day.
11 You can see he wrote on January 10th "beautiful day. 50
12 degrees." On Saturday the 5th, "Cold. Light drizzling." On
13 the 4th he had "oil delivery" that was coming. But when we
14 get into -- So his meticulous nature of writing the events of
15 the day down, we get into these burglaries. The first one
16 written on the 3rd, "Barn is broken into. Skill saw,
17 charger," and there is an arrow that carries over into the
18 4th. Your Honor, I would suggest it is reasonable to infer
19 that is his way of marking the burglary occurred overnight on
20 the 3rd over to the 4th. Again, on the next day he writes the
21 second burglary, "barn is broken into. All fishing poles,
22 Wells Cargo," and yet another arrow that carries over to the
23 5th.

24 Now, Your Honor, we have no accusation as to who may

1 have committed these burglarize. We have no testimony to an
2 officer investigating a burglary. This is merely just a man,
3 80 plus year old man writing down what he had discovered,
4 burglaries that occurred on his property. He doesn't have to
5 know every single thing that was taken from his barn. What we
6 are offering these for is to prove a burglary occurred and
7 that is precisely what these show.

8 Secondly, the statements he made to Val Diaz which,
9 frankly, you can't consider one without considering the other
10 because they only corroborate each other, so Mr. Diaz
11 testified that he regularly came to the Davids' home to do
12 work on their property, to help them out with their horses and
13 the like. And he didn't come every day. Sometimes a couple
14 days would occur. And so it had been a couple of days, this
15 again is his testimony, I am paraphrasing but you have the
16 record before you and the transcript, that he came to the home
17 after these burglaries had occurred and he was shoveling snow
18 with Mr. David, and Mr. David explained to him, "I was the
19 victim of some burglaries." He pointed out where the burglar
20 had come through the property. He pointed out where the
21 burglaries occurred in the sheds and in the trailer. He
22 explained how the burglar, he believed the burglar came to the
23 back stall, went through some sheds. Importantly, stole a
24 circular saw. Again, that is what he told Mr. Diaz. That is

1 what he wrote on this calendar.

2 Now he also told Mr. Diaz that he believed one of
3 the bags that was stolen from the trailer had a pistol in it.
4 And he believed that, because he had drawn a hunting tag
5 earlier in the year, and he prepared his equipment to go,
6 although he wasn't able to go on the hunting trip, he believed
7 he had put that gun, that pistol in some of his packing so it
8 would be available, and he thought that it was gone.

9 Now when you take these statements, you consider
10 these statements and look at the corroborative statements that
11 make them even more reliable, I would suggest this calendar in
12 and of itself under the special circumstances in which he
13 wrote it, and in light of Maresca, is completely admissible
14 hearsay under NRS 51.315 as his statement to Val Diaz. Even
15 if you take those in a vacuum, they are reliable. He's
16 pointing out where they happened. Look, these burglaries just
17 occurred to me. He's not saying -- There really is no
18 rational interpretation you could make he's fabricating a
19 story to set somebody up. It just doesn't make any sense. But
20 when you look at all of them together, now you look at the
21 corroborative evidence. I am going to take you to Exhibit 64.
22 So one of the things Mr. Diaz testified to is when he came
23 back in early January to help the Davids and he realized that
24 in fact when Mr. David told him the burglaries had occurred,

1 he noticed, if you look in the back of the picture, I have it
2 magnified on the screen here.

3 THE COURT: I can see it.

4 MR. HICKS: There was a brand new door on the pump
5 house. And Mr. Diaz knew there used to be a rickety door that
6 couldn't even close. Now there was a brand new door placed on
7 the pump house, which, if you look at the calendar, Mr. David
8 wrote "pump house." That is a reaction of his to protect his
9 property because he was afraid the burglar or burglars, he
10 didn't know, would come. That corroborates his statement,
11 makes them even more reliable.

12 If you go to Exhibit 65. Now as Mr. Diaz testified,
13 what is depicted in that photo on the far right is the barn
14 Mr. David believed the burglar had come through. Right in the
15 middle just off to the right there is a white trailer there.
16 That is a Wells Cargo trailer which again is written on the
17 calendar and is what is a location where Mr. David stores
18 fishing poles, hunting equipment, and he had put that down on
19 his calendar as a location that had been burglarized.

20 And then I am going to Exhibit 66. This is the barn.
21 Again, as Mr. Diaz testified to, this is the location that
22 Gerry David said the burglar had entered the property. Now
23 separate and apart from what Mr. David told Mr. Diaz about the
24 burglary, Mr. Diaz' regular duties as caretaker was to go in

1 those barns, feed the horses, clean up, and he had gone in
2 here, and what he had discovered in that far shed is this
3 random staged property that had been left there. That is a
4 Fax machine and a box that had various items in it to include
5 ammunition. Mr. Diaz immediately noticed that was out of
6 place, not something that was there when he had been there
7 before. When he subsequently talked to Mr. David about it,
8 Mr. David said don't touch it, leave it there, because he
9 thought they might be coming back to get it.

10 Then the last, that is the last exhibit I will show
11 you on this particular argument, Your Honor. But so all of the
12 different -- all the two elements of hearsay in and of
13 themselves are wholly reliable. If you take them altogether,
14 it most certainly, pursuant to the statute, offers strong
15 assurances of accuracy.

16 Then last and not least when you look at the
17 corroborative evidence that supports that, you have the
18 Defendant who admits to doing these exact burglaries. He
19 admits to going there twice. He admits to stealing a revolver.
20 There is no, Ms. Hickman said there is no evidence of a theft
21 of a revolver in addition to Mr. David telling Mr. Diaz he
22 believed the revolver was in there. You also have the
23 Defendant saying "I took a revolver from there when I took the
24 fishing poles," just like the calendar says.

1 So, Your Honor, this is clearly admissible hearsay.
2 It was okay for the Grand Jury to hear it, and it most
3 certainly meets the level of slight or marginal evidence of
4 burglaries occurring.

5 Now as they cited and their motion basically
6 suggests, well, you take the hearsay out and now you can't
7 consider his statements. Your Honor, I really drove the point
8 home on the hearsay being admissible, but if you were to
9 disagree with me, there is ample evidence a burglary occurred.
10 We laid that out in our motion. Even without the hearsay
11 evidence, the Defendant's statement comes in. Once we
12 establish that slight or prima facie showing permitting a
13 reasonable inference a crime was committed, that is
14 sufficient. And, Your Honor, the new door, the staged
15 property, the horses that were loose inside the barn as
16 Mr. Diaz testified to and subsequently the property that was
17 found in the Defendant's vehicle that was stolen from the
18 David home, all of that establishes the corpus of a burglary
19 and allows his admissions to come in.

20 Your Honor, their second argument as to Counts V and
21 VI, first and foremost what I would just say as to Count V
22 which charges him with murder with alternate theories, an open
23 murder charge, an alternate theory of a felony murder, and
24 this is the murder of Sophia Renken, Nevada law is clear we

1 don't have to establish every element of each alternative
2 theory for the Grand Jury. The fact they don't even challenge
3 the open murder component, that eliminates their argument of
4 the felony murder, because they don't have to find one or the
5 other, and the law is clear on that.

6 But what I will say, because they challenge Count VI
7 as well, which is naturally attached to V as far as the
8 burglary, Ms. Hickman argued that the house was not disturbed.
9 There is no requirement you have to have a disrupted house to
10 prove a burglary occurred. That burglary is committed the
11 minute he enters the house with the intent to commit one of
12 the crimes we charged him with therein. Yes, the house wasn't
13 disturbed, but we had a very gruesome murder scene and Sophia
14 Renken's body. And we know that he went in there in the middle
15 of the night through his own admissions, with a gun, and he
16 even says when detective Brady asks him why that house, "I had
17 seen she had tools and machines in her garage I needed to
18 support my drug habit. I needed to pay for my car." The
19 inference is obvious. He went into that house with the intent
20 to commit a burglary. The record is very clear again with that
21 back drop of slight or marginal evidence, that particular
22 argument absolutely does not hold water.

23 Lastly, their final argument, insufficient evidence
24 to support Count X, alleging that we did not establish

1 ownership or proof of theft. Again, Your Honor, I am going to
2 show you just one other exhibit the Grand Jury was able to
3 see. This is Exhibit 95. Now in addition to this particular
4 exhibit, the Grand Jury saw numerous photos of the house being
5 ransacked. There was testimony it was very consistent with the
6 burglary. This is one example of an empty gun case, doors
7 flung open, left open, no guns. Then if you go to Exhibit 101,
8 yet another gun case, no guns inside, and the door left open.
9 So, Your Honor, the fact you have a burglarized home with
10 empty gun cases, that in and of itself establishes the corpus
11 of a burglary occurring and firearms being stolen. Again, we
12 are not talking about a reasonable doubt standard here. And
13 then what you have is the Defendant's admission that he took
14 the guns from that house. And moreover, you have him drawing a
15 map for detectives telling them where he buried the guns. And
16 I will show you this is Exhibit 171. This was shown to the
17 Grand Jury, Your Honor. This is what the detectives dug up
18 out of the ground based on his map up in the hills in Carson
19 City. Within there are eleven of the guns that he was alleged
20 to have stolen from the Davids. The twelfth gun in that
21 particular count is the revolver that he stole on January 4th
22 that was found in his vehicle. Within these guns, within these
23 eleven long guns there was one that had a sticker on it that
24 had Gerry David's name. So the suggestion of insufficient

1 evidence to support Count X that was presented to the Grand
2 Jury is just erroneous. The Defendant admitted to it. The
3 Defendant drew a map for the detectives. There was a house
4 that was ransacked. There were gun cases that were open with
5 no guns in it, so clearly the State met its burden of slight
6 or marginal evidence in that regard.

7 So with that, unless Your Honor has any questions,
8 that is all I have.

9 THE COURT: Okay. Thank you. Ms. Hickman.

10 MS. HICKMAN: Thank you, Judge. Getting back in the
11 beginning where the State started, obviously the burden isn't
12 beyond a reasonable doubt. The burden is, though, the State
13 must, must present legal evidence to the Grand Jury. There
14 must be some, and without hearsay statements coming from
15 allegedly Mr. David, there is no legal competent evidence
16 presented regarding Counts I and II. Obviously, I suggested
17 things they could have done not to prove it beyond a
18 reasonable doubt, but to provide probable cause to that Grand
19 Jury.

20 The State mentioned Mr. David is unavailable. He
21 said that not admitting those statements flies in the face of
22 justice, getting rid of a witness just to exclude his
23 statement. Obviously, we know that while that statement is
24 passionate, it also is not true. There is no evidence that

1 any homicide was done to get rid of a witness to a crime that
2 had been charged or anything that would fit any kind of
3 exception that would allow that to come in.

4 The State pointed the Court to Maresca,
5 M-A-R-E-S-C-A which is cited in their Opposition. The thing
6 about Maresca, it lists sort of factors that must be present
7 in order for the State to meet the requirement under
8 NRS 51.315. And it says that the person making the statement
9 had no involvement with the police, the Defendant or the
10 victims. Well, in this case, this is the person who is alleged
11 to be a victim, so, obviously, the person has involvement with
12 the victim.

13 Where there is no apparent motive to lie. Where
14 they are unavailable for trial. And in its nature was of a
15 relatively simple kind which could be recorded with little
16 prospect of later misinterpretation. The statement starts to
17 fall apart with that factor under Maresca, because we know
18 that this isn't of the simple kind which could be recorded
19 with little prospect of later misinterpretation, because that
20 is present, right? Mr. Diaz' statements are inconsistent with
21 what is on the calendar. What is on the calendar doesn't
22 reflect what Mr. Diaz says was told to him. The calendar of
23 which we are saying is a very credible piece of evidence is
24 obviously subject to later misinterpretation because it

1 doesn't even mention a gun of any kind. And, Judge, the State
2 is arguing there is no reason for Mr. Diaz to fabricate these
3 statements or no reason for Mr. David to fabricate the
4 statement. But fabrication isn't the only thing, right? We
5 don't have to say he's lying for them to be kept out. It has
6 to also have the strong assurance of accuracy, and in this
7 case it doesn't. We don't have a strong assurance of accuracy
8 when you look at the inconsistencies. What is on the calendar
9 doesn't match the allegations. There is nothing about a gun
10 on that calendar. And the statements about the gun in and of
11 themselves don't assure accuracy. He didn't know for sure, but
12 he thought maybe. Even in the State's argument he talks about,
13 the argument today, he says that Mr. David told Val Diaz that
14 he believed a bag with a pistol in it was taken. He believed
15 he put a pistol in it, and he thought it was gone. Those
16 statements, Judge, arguing what was there, do not have a
17 strong assurance of accuracy that a revolver was ever stolen
18 from Mr. David.

19 Judge, when the State closed up their argument, the
20 final thing they said was even if you don't consider the
21 statements of Mr. Diaz reflecting the purported statements of
22 Mr. David, there is still evidence that a burglary occurred,
23 that there was a burglary, that there were things taken from
24 that house, at some point someone went in with the intent.

1 They had the corpus of burglary. Even if that is true, they
2 definitely don't have the corpus of a firearm being stolen
3 during the commission of one of those burglaries.

4 As to Counts V and VI the State argued there is no
5 requirement the house be disturbed in order to support
6 probable cause for a burglary to have occurred. However, there
7 must be probable cause showing the specific intent. That is
8 designated in that statute. And that intent in proving that
9 obviously has to be manifested by the circumstances connected
10 with the perpetration of the offense. So the circumstances
11 connected with this offense are that the house is in pristine
12 condition. There are things of value left near the door where
13 the person that came in allegedly came in and out. Obviously,
14 intent doesn't have to be proved by positive or direct
15 evidence, but it may be inferred from the conduct of the party
16 and other facts and circumstances disclosed by the evidence.

17 Judge, you don't have the conduct of the person that
18 indicates what the intent was regarding a burglary upon
19 entering that home or other facts and circumstances to rely on
20 in determining whether or not the Grand Jury had probable
21 cause.

22 Finally, as to Count X, the simple fact there were
23 gun cases in the home does not show that there is probable
24 cause that there were guns ever in those gun cases. The

1 exhibits that were shown to you by the State showing a messy
2 portion of the home, especially the second photo that was
3 shown, there are other things either in that gun case or near
4 the ground of that gun case that are not guns. The simple fact
5 that we have an empty gun case does not provide the corpus
6 necessary for the possession of stolen firearms.

7 Thank you.

8 THE COURT: Okay. Thank you. Okay. Mr. Hicks, would
9 you return the exhibit to the clerk?

10 MR. HICKS: For the record, I am handing the court
11 clerk Exhibit 173.

12 THE CLERK: Thank you.

13 THE COURT: Are there any other exhibits either
14 party would like me to review other than the ones you have
15 noted previously?

16 MR. ARRASCADA: Judge, the Court already has the
17 Grand Jury transcript.

18 THE COURT: Right.

19 MR. ARRASCADA: Nothing further then.

20 THE COURT: All right. So the Court appreciates
21 your arguments here today and the legal theories upon which we
22 have heard arguments. It is essential that I consider your
23 oral arguments before I reach a determination as to the Motion
24 to Dismiss or the Writ, therefore, I am going to take this

1 matter under submission, and I will notify you of my decision
2 as soon as I have reached one.

3 If there is nothing further, I think today we were
4 suppose to set some calendar dates; is that correct?

5 MR. ARRASCADA: That is correct, Your Honor. We
6 addressed having continuing status hearings on a monthly
7 basis.

8 THE COURT: Okay. So it is a little premature to ask
9 you how your discovery is going, although I think at the last
10 hearing there was ongoing discovery. Where are we at in
11 regard to the discovery?

12 MR. HICKS: Your Honor, the discovery in the case has
13 been going very smoothly. I don't believe Mr. Arrascada would
14 disagree. I don't believe there has been any new discovery
15 since the last time we were here.

16 MR. ARRASCADA: I will agree, Your Honor, with
17 Mr. Hicks.

18 THE COURT: And so, counsel, you had originally
19 asked for monthly status hearings, and so we can set that. I
20 am just looking at a month from now to see if that works. I am
21 going to confer with the court clerk.

22 MR. ARRASCADA: Your Honor, may I grab my calendar?

23 THE COURT: Sure. Yes. We are looking at Monday,
24 June 24th at 9:00 o'clock in the morning.

1 MR. ARRASCADA: Your Honor, that works on behalf of
2 the defense.

3 MR. HICKS: That's fine with the State, Your Honor.

4 THE COURT: Okay. What I would like to do at the
5 next status, of course we hopefully will have a decision on
6 these things that have been taken under submission, we also
7 need to set a briefing schedule for other charges if these
8 charges remain or as to the charges that do remain. One of
9 the things I am going to be looking at doing is setting an
10 earlier date than statutorily required for you all to notice
11 your experts and opposition to that and hearings in regard to
12 experts. I want to get those resolved fairly early in the
13 course of the process. So I am thinking of setting a date for
14 disclosing experts in the early Fall so that we can get the
15 disclosure done, get the briefing done and get those resolved
16 in sufficient time to make sure we hold onto our trial date.

17 If you have some ideas, please come forward with
18 that in June and let me know what your ideas are. I am going
19 to come up with what I think would be a reasonable briefing
20 schedule, but I certainly want to hear from you as to your
21 opinion. So think about that before the next scheduled status
22 hearing.

23 Is there anything else either party would like to
24 discuss at the next status hearing that you need to give

1 notice to each other?

2 MR. ARRASCADA: No, Your Honor, not at this time. If
3 anything does come up, we'll alert the Court and the State.

4 THE COURT: Okay.

5 MR. HICKS: Nothing at this time, Your Honor.

6 THE COURT: All right. Anything else for the Court
7 today? Nothing?

8 MR. JACKSON: Nothing, Your Honor.

9 THE COURT: Then we'll be in recess and we'll see
10 you in June. Courts in recess.

11 (Whereupon, the proceedings were concluded.)

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1 STATE OF NEVADA,)
2) ss.
3 COUNTY OF WASHOE.)

4 I, Judith Ann Schonlau, Official Reporter of the
5 Second Judicial District Court of the State of Nevada, in and
6 for the County of Washoe, DO HEREBY CERTIFY:

7 That as such reporter I was present in Department
8 No. 4 of the above-entitled court on Monday, May 20, 2019, at
9 the hour of 9:00 a.m. of said day and that I then and there
10 took verbatim stenotype notes of the proceedings had in the
11 matter of THE STATE OF NEVADA vs. WILBER MARTINEZ GUZMAN, Case
12 Number CR19-0447.

13 That the foregoing transcript, consisting of pages
14 numbered 1-62 inclusive, is a full, true and correct
15 transcription of my said stenotypy notes, so taken as
16 aforesaid, and is a full, true and correct statement of the
17 proceedings had and testimony given upon the trial of the
18 above-entitled action to the best of my knowledge, skill and
19 ability.

20 DATED: At Reno, Nevada this 20th day of May, 2019.

21
22 /s/ Judith Ann Schonlau
23 JUDITH ANN SCHONLAU CSR #18
24

2842

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

THE STATE OF NEVADA,

Plaintiff,

vs.

WILBER ERNESTO MARTINEZ GUZMAN,

Defendant.

CASE NO.: CR19-0447

DEPT. NO.: 4

ORDER DENYING MOTION TO DISMISS

On March 13, 2019, the Washoe County Grand Jury returned an Indictment against WILBER ERNESTO MARTINEZ GUZMAN (hereinafter "Mr. Guzman") for Count I-Burglary, Count II-Burglary While Gaining Possession of a Firearm, Count III-Murder With the Use of a Deadly Weapon, Count IV-Burglary While in Possession of a Firearm, Count V-Murder With the Use of a Deadly Weapon, Count VI-Burglary While in Possession of a Firearm, Count VII-Murder With the Use of a Deadly Weapon, Count VIII-Murder With the Use of a Deadly Weapon, Count IX-Burglary While in Possession of a Firearm, and Count X-Possession of a Stolen Firearm.

On March 19, 2019, Mr. Guzman was arraigned on the Indictment represented by the Washoe County Public Defender, John L. Arrascada. The State of Nevada (hereinafter "the State") was present by and through Christopher J. Hicks, Washoe County District Attorney, Mark Jackson, Douglas County District Attorney and Travis Lucia, Washoe County Deputy District Attorney.

At the arraignment, a plea of "not guilty" was entered on Mr. Guzman's behalf to all the charges and the case was set for jury trial to begin on April 6, 2020.

1 On April 18, 2019, Mr. Guzman filed a *Motion to Dismiss Counts Three, Four, Five and Six*
2 *of the Indictment for Lack of Jurisdiction (D-1)*. On May 2, 2019, the State filed its *Opposition to*
3 *Motion to Dismiss Counts Three, Four, Five and Six of the Indictment for Lack of Jurisdiction (D-1)*.
4 On May 9, 2019, Guzman filed his *Reply in Support of Motion to Dismiss Counts Three, Four, Five*
5 *and Six of the Indictment for Lack of Jurisdiction (D-1)*. The matter was set for oral argument on
6 May 20, 2019.

7 On May 20, 2019, Mr. Guzman was present in court and represented by John L. Arrascada,
8 Washoe County Public Defender, Katheryn Hickman, Chief Deputy Washoe County Public
9 Defender, and Gianna Verness, Deputy Washoe County Public Defender. The State appeared at the
10 hearing represented by Christopher J. Hicks, Washoe County District Attorney, Mark Jackson,
11 Douglas County District Attorney, and Travis Lucia, Deputy Washoe County District Attorney. At
12 the hearing, Mr. Arrascada argued the motion, and the opposition was argued by Mr. Jackson.

13 Defendant contends that a motion to dismiss is the proper procedure for challenging the
14 Washoe County Grand Jury's jurisdiction to indict him on the Douglas County charges. He argues
15 that NRS 172.065 and Shuster v. Eighth Judicial District Court, 123 Nev. 187, 192 (2007) permit the
16 use of a motion to dismiss because he is not challenging the finding of probable cause, as defined in
17 NRS 34.700. Mr. Guzman further argues that the Washoe County Grand Jury did not have
18 jurisdiction over Counts III, IV, V and VI because these counts occurred solely in Douglas County,
19 and none of these alleged crimes are related to the charges contained in Counts I, II, VII, VIII, IX,
20 and X in the Indictment. Defendant contends that the grand jury is a creature of statute and only has
21 the limited powers granted to it by the Legislature. He continues, that since the grand jury was
22 impaneled in Washoe County, the grand jury exceeded its jurisdiction when it indicted him on the
23 Douglas County acts. To support his argument, Mr. Guzman relies on NRS 172.105 that states:

24 The grand jury may inquire into all public offenses triable in the district court or in a
25 Justice Court, *committed within the territorial jurisdiction of the district court for*
which it is impaneled. (emphasis added).

26 He claims the meaning of *territorial jurisdiction of the district court* limits the grand jury's
27 jurisdiction to Washoe County, and not to the alleged crimes committed in Douglas County.
28 Defendant points out Douglas County is not in Washoe County nor within the Second Judicial District

1 Court boundaries. Asserting that the meaning of the words *territorial jurisdiction* in the statute is
2 clear and unambiguous. He contends the statute's language should be given the plain meaning of the
3 words, unless such reading violates the spirit of the act, citing Shuster, 123 Nev. at 191. Therefore,
4 he concludes that the Washoe County Grand Jury did not have *territorial jurisdiction* to indict him
5 on the alleged Douglas County crimes, so he seeks dismissal of the four Douglas County counts.

6 Mr. Guzman's final claim on jurisdiction is based on NRS 172.175. He asserts the statute
7 limits the grand jury's jurisdiction to Washoe County offenses. Based on this law, he concludes the
8 grand jury enpaneled in Washoe County has limited jurisdiction to only Washoe County and not
9 beyond its borders.

10 The State responds by first requesting permission to expand the number of pages in its
11 opposition, pursuant to the Criminal Rules of Practice for the Second Judicial District Court of the
12 State of Nevada ("LCR") 7(h). This rule states on pretrial motions "[e]xcept as permitted by the
13 presiding judge, legal memoranda in support of a motion, opposition or reply shall not exceed 10
14 pages, exclusive of exhibits." Defendant did not object to this request. Thus, the Court grants
15 permission to the State to submit the additional pages and will consider the arguments after page 10
16 of the State's opposition.

17 The State contends that pursuant to NRS 172.065 this motion should be dismissed on
18 procedural grounds. The dismissal claim should be brought through a writ of habeas corpus because
19 Defendant is actually challenging the court's jurisdiction under NRS 34.700(1). The State
20 acknowledges a motion to dismiss is appropriate in certain circumstances, however, not here.

21 The State continues, arguing, the motion to dismiss should also be denied on substantive
22 grounds. The State reflects that territorial jurisdiction is a question of law. Shannon v. State, 105
23 Nev. 782, 791 (1989). Further, territorial jurisdiction must be proven by a preponderance of the
24 evidence. McNamara v. State, 132 Nev. 606, 614 (2016). The State submits that there is more than
25 enough evidence before the Court to find by a preponderance of the evidence standard that the
26 Washoe County Grand Jury had jurisdiction to indict Mr. Guzman on all the counts found in the
27 charging document. The argument is that a grand jury when inquiring into public offenses is vested
28 with the same jurisdictional authority as the District Court for which it is impaneled. NRS 172.105

1 grants authority to inquire into "all public offenses triable in the district court [...] within the territorial
2 jurisdiction of the district court for which it is impaneled." The State points to several cases which
3 support this conclusion. See, Walker v. State, 78 Nev. 463 (1962).

4 In addition, the State points out NRS 3.220 provides district judges with coextensive and
5 concurrent jurisdiction and power to hold court in any county of the state. Consequently, Ninth
6 Judicial District Court Judges (Douglas County) and Second Judicial District Court Judges (Washoe
7 County) have identical authority and jurisdiction on felony charges and may preside in court in either
8 county. Therefore, the Washoe County Grand Jury's territorial jurisdiction includes indictment of
9 crimes allegedly committed in Douglas County.

10 The State invites the Court to compare NRS 172.105 and NRS 172.175 and their respective
11 jurisdictional differences. Although both statutes grant authority to the grand jury, NRS 172.105
12 gives broad authority to inquire into "public offenses." Whereas, NRS 172.175 relates to more
13 specialized authority of the grand jury to conduct investigative functions.

14 In additional opposition to the motion to dismiss, the State offers two further arguments in
15 support of prosecuting the Douglas and Washoe crimes together in one Indictment. The State argues
16 it can join all the offenses together relying on the venue laws. NRS 171.030; NRS 171.040(2); NRS
17 171.060. Continuing that the Nevada Supreme Court has affirmed cases where a single prosecution
18 has taken place on crimes committed in different counties.

19 Second, the State asserts fundamental fairness, judicial economy and the Nevada's Victims'
20 Bill of Rights supports charging all the offenses in one Washoe County indictment. The State relies
21 on several statutes and the Nevada Constitution in support of its position. NRS 171.095; NRS
22 173.025; NRS 48.045(2); Nev. Const. Art. 8A §(1)(i).

23 The State submits that charging all offenses in Washoe County is fundamentally fairer to the
24 Defendant, because of the larger population and thus a larger jury pool from which to find unbiased,
25 qualified jurors in Washoe County. Also, by charging the case in this manner, there is only one
26 prosecution of the Defendant for these crimes. The State argues this is compelling. If the State
27 elected to charge each murder separately, in the County in which the decedents were found, the
28 Defendant would be subject to up to three (3) separate prosecutions for Murder in the First Degree.

1 The Defendant would then have to defend three (3) separate murder trials giving the State more
2 opportunities to convict the Defendant. The State contends evidence from each murder would be
3 cross-admissible, and could result in more cost because each trial would likely include evidence
4 gathered across the entire scope of all four (4) killings.¹

5 Finally, the State addresses recent additions to the Nevada Constitution as support for its
6 position. The Constitution allows a victim – defined to include their family – the right to a timely
7 disposition of a criminal matter.² The State notifies the Court that the family members of all four (4)
8 victims have invoked this right through their conversations with the State’s representatives. If venue
9 were altered, multiple trials would unavoidably take place. However, they would not occur
10 concurrently. As such, it is reasonable to expect years of delay until all crimes could be adjudicated.
11 Such a result would be a violation of the Victims’ Bill of Rights to a timely disposition of a criminal
12 matter.

13 The relevant counts of the indictment which are the subject of this motion to dismiss are:

14 The Douglas County charges:

15 Count III. Murder with the Use of a Deadly Weapon, a violation of NRS
16 200.010, NRS 200.030 and NRS 193.165, a category A felony, (50001) of
Constance Koontz, killed with a firearm;

17 Count IV. Burglary while in Possession of a Firearm, a violation of NRS
18 205.060, a category B felony, (50425) for entering [Koontz’s house] with
intent to commit larceny while in possession of a firearm;

19 Count V. Murder with the Use of a Deadly Weapon, a violation of NRS
20 200.010, NRS 200.030 and NRS 193.165, a category A felony, (50001) of
Sophia Renken, killed with a firearm;

21 Count VI. Burglary while in Possession of a Firearm, a violation of NRS
22 205.060, a category B felony, (50425) for entering [Renken’s house] with
intent to commit larceny while in possession of a firearm.

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26 ¹ See NRS 48.045 discussing the admissibility of other act evidence to prove motive, opportunity, intent,
27 preparation, plan, knowledge, identity, or absence of mistake or accident; and NRS 48.035(3) related to *res gestae*
evidence.

28 ² Nev. Const. art. 8A §(1)(i).

1 The Court has considered the following statutes in the decision herein:

- 2 • NRS 3.220 states:

3 The district judges shall possess equal coextensive and concurrent
4 jurisdiction and power. They each shall have power to hold court in any
5 county of this State. They each shall exercise and perform the powers, duties
6 and functions of the court and of judges thereof and of judges at chambers.
7 The decision in an action or proceeding may be written or signed at any place
8 in the State by the judge who acted on the trial and may be forwarded to and
9 filed by the clerk, who shall thereupon enter judgment as directed in the
10 decision, or judgment may be rendered in open court, and, if so rendered,
11 shall be entered by the clerk accordingly. If the public business requires, each
12 judge may try causes and transact judicial business in the same county at the
13 same time. Each judge shall have power to transact business which may be
14 done in chambers at any point within the State, and court shall be held in
15 each county at least once in every 6 months and as often and as long as the
16 business of the county requires. All of this section is subject to the provision
17 that each judge may direct and control the business in his or her own district
18 and shall see that it is properly performed

- 11 • NRS 34.700(1) provides, in relevant part:

12 [A] pretrial petition for a writ of habeas corpus based on alleged lack of
13 probable cause or otherwise challenging the court's right or jurisdiction to
14 proceed to the trial of a criminal charge may not be considered unless

- 15 • NRS 48.045(2) which provides:

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

- 19 • NRS 171.020. Whenever a person, with intent to commit a crime, does any
20 act within this State in execution or part execution of such intent, which
21 culminates in the commission of a crime, either within or without this State,
22 such person is punishable for such crime in this State in the same manner as
23 if the same had been committed entirely within this State.

- 22 • NRS 171.030. When a public offense is committed in part in one county
23 and in part in another or the acts or effects thereof constituting or requisite
24 to the consummation of the offense occur in two or more counties, the
25 venue is in either county.

- 24 • NRS 171.040(2) states in part:

25 When an offense is committed in this state:

26 On acar Or on a private motor vehicle, prosecuting its trip, the
27 venue is in any county through which the ...car ... or private motor
28 vehicle, passes in the course of its trip, or in the county where the trip
terminates

- 1 • NRS 171.060 provides:

2 When property taken in one county by burglary, robbery, larceny, or
3 embezzlement has been brought into another, the venue of the offense is in
4 either county, but if, at any time before the conviction of the defendant in
5 the latter, the defendant is indicted in the former county, the sheriff of the
6 latter county must, upon demand, deliver the defendant to the sheriff of the
7 former.

- 8 • NRS 171.075 provides:

9 When an offense is within the venue of two or more counties, a conviction
10 or acquittal thereof in one county is a bar to the prosecution or indictment
11 therefor in another.

- 12 • NRS 172.065 states:

13 A motion to dismiss the presentment or indictment may be based on
14 objections to the array or on the lack of legal qualification of an individual
15 juror, if not previously determined upon challenge. A presentment or
16 indictment shall not be dismissed on the ground that one or more members
17 of the grand jury were not legally qualified if it appears from the record
18 kept pursuant to NRS 172.075 that 12 or more jurors, after deducting the
19 number not legally qualified, concurred in finding the presentment or
20 indictment.

- 21 • NRS 172.105 states, in relevant part:

22 1. An indictment is an accusation in writing, presented by a grand jury to
23 a competent court, charging a person with a public offense.

24 2. A presentment is an informal statement in writing, by the grand jury,
25 representing to the court that a public offense has been committed, which
26 is triable within the district, and that there is reasonable ground for
27 believing that a particular person, named or described, has committed it.

- 28 • NRS 172.175(1) Each grand jury that is not impaneled for a specific limited purpose
 shall inquire into:

 (a) The case of every person imprisoned *in the jail of the county*, on a
 criminal charge, against whom an indictment has not been found or an
 information or complaint filed.

 (b) The condition and management of any public prison *located within
the county*.

 (c) The misconduct in office of public officers of every description
within the county which may constitute a violation of a provision of chapter
197 of NRS.

 2. A grand jury that is not impaneled for another specific limited
purpose may inquire into any and all matters affecting the morals, health
and general welfare of the inhabitants *of the county, or of any administrative
division thereof, or of any township, incorporated city, irrigation district or
town therein.* (emphasis added).

- 1 • NRS 173.025 which provides, in part:

2 The several courts of this state shall have and may exercise the same
3 power and jurisdiction to try and determine prosecutions upon information
4 for crimes offenses, to issue writs and process and do all other acts
5 therein as in cases of like prosecution under indictment.

- 6 • NRS 173.115 provides, in relevant parts:

- 7 1. Two or more offenses may be charged in the same indictmentin a
8 separate count for each offense if the offenses charged, whether felonies or
9 misdemeanors or both, are:
10 2. Based on two or more acts or transactions connected together or
11 constituting parts of a common scheme or plan.

- 12 • NRS 174.155 provides:

13 The court may order two or more indictments or informations or both to
14 be tried together if the offenses, and the defendants, if there is more than
15 one, could have been joined in a single indictment or information. The
16 procedure shall be the same as if the prosecution were under such single
17 indictment or information.

18 The Court has also reviewed and considered the following Nevada Constitution sections.

- 19 • Nev. Const. art. 6, §6.1 that provides, in relevant parts:

20 The District Courts in the several Judicial Districts of this State have
21 original jurisdiction in all cases excluded by law from the original
22 jurisdiction of justices' courts

- 23 • Nev. Const. art 8A §(1)(i) that in relevant parts, provides:

- 24 1. Each person who is the victim of a crime is entitled to the following rights:
25 (i) To the timely disposition of the case following the arrest of the defendant.

26 The Court will decide this motion on substantive grounds, declining the request of the State
27 to rule on it on procedural grounds. The Court notes that Mr. Guzman has in fact raised the same
28 issues in his pending petition under NRS 34.700(1). Although the Court finds the better course
would have been to proceed on this issue in a pretrial petition for a writ of habeas corpus pursuant
to NRS 34.700(1). The Court understands Mr. Guzman's desire to proceed under both methods.
Thus, rather than dispose of the motion on procedural grounds, the better course is to consider the
substance of the motion, the Court's reasoning will be incorporated in its findings on the same
issues where applicable in the pending petition also before the Court.

1 The Court considers the legislative history of NRS 172.105 as it provides clarity to the
2 meaning of *territorial jurisdiction*, the crux of the matter before the Court on this motion.

3 Between statehood and 1965, the original law on judicial officers stated “[t]he District
4 Courts shall have jurisdiction to inquire, by intervention of a grand jury, of all public offenses,
5 *committed or triable in their respective districts*, to try and determine all indictments found therein
6(emphasis added).” 1 Statutes of Nevada 1864-1865.

7 The words *committed or triable in their respective districts* remained in the Nevada law
8 until 1965, then the Legislature adopted an omnibus revision of the Substantive Criminal Law and
9 Procedure [Act] in Criminal Cases in Assembly Concurrent Resolution No. 9. The amended law
10 was based on a review of the Illinois and California penal codes, and the Federal Rules of Criminal
11 Procedure. In 1967, the actual changes to Nevada criminal law were adopted in Bill Draft Request
12 (BDR) 14-43 and became effective on all criminal complaints, information and indictments filed on
13 or after January 1, 1968.

14 The updated criminal code in BDR 14-43, §83 contains the exact and current language of
15 NRS 172.105.

16 The grand jury may inquire into all public offenses triable in the district court or in a
17 Justice Court, committed *within the territorial jurisdiction of the district court for
which it is impaneled*.

18 The Court notes that this revision by the Legislature eliminated the reference to offenses
19 *committed or triable in the district* and replaced those words with *within the territorial jurisdiction*
20 *of the court*.

21 The California statute the legislature was reviewing in 1965 had also previously been
22 modified from the original common law statute. In 1951, California Penal Code section 777 was
23 amended by replacing the words *county wherein it [the crime] is committed* with the words in *any*
24 *competent court within the jurisdictional territory of which it [the crime] is committed*. At that
25 time, the legislature of California clearly understood that the language *territorial jurisdiction* was
26 more expansive than to limit the jurisdiction to the confines of the counties geographical boundary
27 lines. By the same token, the Nevada Legislature clearly understood they were making a change in
28 the Grand Jury’s jurisdiction to inquire into crimes when they adopted the changes to the statute.

1 The United State Supreme Court had recognized and defined territorial jurisdiction as early
2 as 1911. In Strassheim v. Daily, 31 S. Ct. 558 (1911), the court found that the criminal need only to
3 commit part of a criminal act, not the complete act, within a state for the state to have jurisdiction to
4 prosecute the criminal for the offense.

5 If the criminal does an overt act within a state which is and is intended to be a
6 material step toward accomplishing the crim, and then absents himself from the state
7 and does the rest elsewhere, he becomes a fugitive from justice when the crime is
8 complete. Acts done outside a jurisdiction, but intended to produce and producing
9 detrimental effects within it, justify a state in punishing the cause of the harm as if he
10 had been present at the effect, if the state should succeed in getting him within its
11 power.

12 Strassheim, at 560; See also U.S. v. Columba-Corella, 604 F.2d 356, 358-59 (1979); U.S. ex rel.
13 Pascarella v. Radakovich, 548 F. Supp. 125, 126 (1982).

14 The Nevada Supreme Court has analyzed the legislative changes to the meaning of
15 *territorial jurisdiction* in a recent case involving a crime committed both within and outside of
16 Nevada. McNamara v. State, 132 Nev. at 610, 613.

17 The McNamara court reviewed early cases and found that, originally, the Nevada Supreme
18 Court stated that *territorial jurisdiction* was a creature of common-law, and the rule required an
19 indictment be found in the county in which the crime had been committed. State v. Pray, 30 Nev.
20 206 (1908). See also, People v. Gleason, 1 Nev. 173 (1865). In McNamara, the court held these
21 findings are no longer valid because the Legislature abrogated them when it passed NRS 171.020 in
22 1911 and further amended the law in 1927.

23 Nevada courts obtain territorial jurisdiction whenever: (1) a defendant has
24 criminal intent (irrespective of where it was formed); and (2) he or she performs
25 any act in this state in furtherance of that criminal intent. The broad language of
26 NRS 171.020 demonstrates a legislative objective to confer territorial jurisdiction
27 over a crime having a sufficient connection to Nevada.

28 McNamara, at 611.

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1 The McNamara court cited Shannon v. State, 105 Nev. at 791 holding:

2 The language of the statute gives jurisdiction to Nevada courts whenever the
3 criminal intent is formed and *any act* is accomplished in this state in pursuance or
4 partial pursuance *of the intent*. The statute does not require that there be partial
execution of the actual crime; it only requires some carrying out of the criminal
intent.³

5 California has followed the same analysis as the Nevada Supreme Court in its discussion of
6 jurisdiction in cases involving acts within and outside the state. Further, it has used the similar
7 analysis in cases involving acts in multiple counties within the state. People v. Price, 821 P.2d 610
8 (CA 1991) found Humboldt County had jurisdiction to try a murder committed in Los Angeles
9 where the defendant stole weapons in Humboldt County and a few days later used the stolen
10 weapon in the Los Angeles murder. Since the preparatory acts of the murder were committed in
11 Humboldt County, even though the essential elements of the murder were not, the stealing of the
12 weapons in one county that were used in a murder in another was a sufficient preparatory act to
13 establish jurisdiction.⁴

14 The Court declines to accept the defense argument that the Washoe County Grand Jury did
15 not have jurisdiction to indict Mr. Guzman on the charges relating to events taking place in Douglas
16 County. District Courts within the State of Nevada have jurisdiction over felony offenses, not
17 confined to the respective county or counties that are part of their district. The Grand Jury may
18 inquire into all public offenses triable in the district court committed within the territorial
19 jurisdiction of the district court for which it is impaneled, and the Second Judicial District Court's
20 territorial jurisdiction extends statewide to all felony offenses. The Grand Jury possesses the same
21 authority. Although the State offers many arguments as to why Washoe County is the proper venue

22
23 ³ Shannon was convicted of three counts of lewdness with a minor based upon three acts that took place on the
24 Arizona side of Lake Mead. Court found that Nevada retained jurisdiction. See also, Vincze v. Sheriff, Clark County,
25 86 Nev. 474, 477-78 (1970)- Defendant conceived, oriented and culminated a plan to deprive victim of his money in
26 Nevada; however, the false pretenses took place in Oregon. Court found sufficient acts took place in Nevada to vest
27 jurisdiction in Nevada to lawfully prosecute appellant; Smith v. State, 101 Nev. 167, 169-170 (1985) – Defendant
28 kidnapped victim from her home in Reno, drove her 10 miles over the state border to California. In California, he sexually
assaulted her and attempted to murder her, but ultimately abandoned her. Formulated his intent to assault and murder her
in Nevada when he kidnapped her. Court found his Nevada acts were committed to “partially execute” his plan, so
Nevada had jurisdiction over all the crimes.

⁴ See also, Fortner v. Superior Court, 217 Cal. App. 4th 1360, 1364 (2013); People v. Betts, 34 Cal.4th 1039,
1047-48 (2005).

1 to try this matter, the issue of improper venue was not raised by Mr. Guzman. Therefore, the Court
2 will decline to rule on venue at this time.

3 In consideration of all the pleadings, arguments, Constitution and statutes of Nevada, legal
4 precedent and analysis in prior cases, and the above discussion, the Court finds by a preponderance
5 of the evidence that the Washoe County Grand Jury had territorial jurisdiction to find "A True Bill"
6 on all the offenses charged in the Indictment, including the alleged crimes in Count III, IV, V and
7 VI committed in Douglas County.

8 Based on the foregoing, good cause appearing, and in the interest of justice,

9 IT IS HEREBY ORDERED that the State's Motion to submit more than 10 pages in its
10 Opposition is GRANTED, and the arguments on the subsequent pages shall be considered.

11 IT IS HEREBY FURTHER ORDERED that the Motion to Dismiss is DENIED.

12 DATED this 21 day of June, 2019.

13 Connie J. Steinheimer
14 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

CASE NO. CR19-0447

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 21 day of June, 2019, I filed the **ORDER DENYING MOTION TO DISMISS** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

 Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.

CHRISTOPHER HICKS, ESQ. for STATE OF NEVADA

MARK JACKSON, ESQ. for STATE OF NEVADA

TRAVIS LUCIA, ESQ. for STATE OF NEVADA

JOHN ARRASCADA, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)

KATHERYN HICKMAN, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)

GIANNA VERNES, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)

DIV. OF PAROLE & PROBATION

 Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]

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 Reno/Carson Messenger Service – [NONE]

 Federal Express or other overnight delivery service [NONE]

DATED this 21 day of June, 2019.



IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

CASE NO.: CR19-0447

vs.

DEPT. NO.: 4

WILBER ERNESTO MARTINEZ GUZMAN,

Defendant.

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

On March 13, 2019, the Washoe County Grand Jury returned an Indictment against WILBER ERNESTO MARTINEZ GUZMAN (hereinafter "Mr. Guzman") for Count I-Burglary, Count II-Burglary While Gaining Possession of a Firearm, Count III-Murder With the Use of a Deadly Weapon, Count IV-Burglary While in Possession of a Firearm, Count V-Murder With the Use of a Deadly Weapon, Count VI-Burglary While in Possession of a Firearm, Count VII-Murder With the Use of a Deadly Weapon, Count VIII-Murder With the Use of a Deadly Weapon, Count IX-Burglary While in Possession of a Firearm, and Count X-Possession of a Stolen Firearm.

On March 19, 2019, at the Arraignment on the Indictment, Defendant was present in Court with appointed counsel, the Washoe County Public Defender, John L. Arrascada. The State of Nevada (hereinafter "the State") was present by and through Christopher J. Hicks, Washoe County District Attorney, Mark Jackson, Douglas County District Attorney, and Travis Lucia, Washoe County Deputy District Attorney. Mr. Guzman was arraigned and a plea of "not guilty" was entered on his behalf. The case was set for trial to start April 6, 2020.

1 On April 18, 2019, Mr. Guzman filed a *Petition for Writ of Habeas Corpus*, wherein he seeks
2 a Writ for insufficient evidence on Counts I and II, Count V with regard to the “felony murder”
3 theory, VI and X; and Counts III, IV, V and VI for lack of Grand Jury jurisdiction. On May 5, 2019,
4 the State filed its *Response to Petition for Writ of Habeas Corpus*.

5 The matter was set for oral argument on May 20, 2019. That day, the Defendant was present
6 and represented by John L. Arrascada, Washoe County Public Defender, Katheryn Hickman, Chief
7 Deputy Washoe County Public Defender, and Gianna Verness, Deputy Washoe County Public
8 Defender. The State appeared represented by Christopher J. Hicks, Washoe County District Attorney,
9 Mark Jackson, Douglas County District Attorney, and Travis Lucia, Deputy Washoe County District
10 Attorney. At the hearing, Ms. Hickman argued the Petition, and the opposition was argued by Mr.
11 Hicks. At the conclusion of the arguments, the Court took the matter under submission.

12
13 For purposes of the Decision on the Petition for Writ of Habeas Corpus, the Court will not
14 restate the evidence that was presented to the Grand Jury and cited in the briefs by counsel. The
15 Court accepts and incorporates herein all of the factual citations to the record (“GJT” and
16 “Defendant’s interview played for the Grand Jury”) before the Grand Jury which were provided to
17 the Court by Mr. Guzman and the State in the Petition and the Response thereto. Further, the Court
18 notes that the citation in the pleadings of “Defendant’s interview played for the Grand Jury” is Grand
19 Jury Exhibit 172, a copy of which was attached to the State’s response as Exhibit 1¹

20
21 In support of his Petition for Writ of Habeas Corpus, Mr. Guzman argues there was
22 insufficient evidence presented to the Grand Jury to support Count I and Count II of the Indictment.
23 Defendant contends the State offered only inadmissible hearsay evidence on Count I, the burglary on
24 or about January 3, 2019 of Sharon and Gerald David’s barn and/or other building wherein it is
25 alleged Defendant intended to commit larceny therein, and on Count II, the burglary on January 4,
26 2019 of Sharon and Gerald David’s trailer and/or other building where it is alleged Defendant gained

27
28 ¹ States’ Points and Authorities in Response to Defendant’s Writ of Habeas Corpus filed May 2, 2019.

1 possession of a firearm. Mr. Guzman argues Val Diaz's (hereinafter "Diaz") testimony on Gerald
2 David's hand written comments on his calendar noting the dates of the burglaries and on the items
3 taken, including fishing poles, Skilsaw and charger, a photo of the calendar, and Diaz's testimony on
4 Gerald David's statements to him about the burglaries is inadmissible hearsay, pursuant to NRS
5 51.035 and NRS 172.135(2); Rugamas v. Eighth Jud. Dist. Ct. ex rel. County of Clark, 129 Nev. 424,
6 431 (2013).

7 Mr. Guzman contends that without these hearsay statements regarding the burglaries, the only
8 evidence the Grand Jury was left with was his own statements.

9 Mr. Guzman argues that the principle of corpus delicti precludes the State from using the
10 Defendant's statements to prove its charge before it establishes the offense occurred through criminal
11 agency. Frutiger v. State, 111 Nev. 1385 (1995); Hicks v. Sheriff, 86 Nev. 67 (1970). Mr. Guzman
12 declares the State did not present any legal evidence to support Count I or Count II. Further, Mr.
13 Guzman claims that because the State failed to prove the charges with legally admissible evidence
14 prior to the admission of his statement the Court cannot consider his statement when deciding the
15 sufficiency of the evidence to establish probable cause supporting Count I and Count II.

16 The second argument presented by Mr. Guzman in his Writ asserts the State offered
17 insufficient evidence to support the second theory of Murder of Sophia Renken (commonly referred
18 to as "felony murder") in Count V nor that he entered Mrs. Renken's home while in possession of a
19 firearm with the intent to commit larceny as alleged in Count VI of the Indictment. Mr. Guzman
20 states no evidence was presented to the Grand Jury from which it could infer what intent he had when
21 he allegedly entered the home. He argues that without any evidence to support a finding of probable
22 cause of his intent when he allegedly entered the Renken residence the Writ as to the felony murder
23 theory in Count V and Count VI, burglary while in possession of a firearm, should be granted.

24 The third area Petitioner argues in his Writ where there was insufficient evidence presented
25 to the Grand Jury to find probable cause is as to Count X, Possession of a Stolen Firearm. Mr.
26 Guzman argues the State did not establish ownership of the firearms or establish the firearms were
27 stolen through any evidence but his statements. He states his statements may not be considered to
28

1 find probable cause until the State establishes the offense occurred through criminal agency, again
2 arguing the principle of corpus delicti.

3 Lastly, Petitioner alleges the Washoe County Grand Jury did not have jurisdiction to inquire
4 into crimes that are alleged to have occurred in Douglas County, requesting the Court grant the Writ
5 discharging Counts III, IV, V, and VI from the Indictment. Mr. Guzman bases his request on his
6 reading of NRS 172.105(2) arguing that the Grand Jury was not statutorily authorized to consider
7 evidence of actions allegedly occurring in Douglas County.

8 In opposition to the granting of the Petition for Writ of Habeas Corpus in this matter, the State
9 responds to all of the Defendant's arguments. The State agrees hearsay was admitted to the Grand
10 Jury in support of finding probable cause to indict the Defendant as to Count I and Count II. The
11 State argues, however, hearsay may be presented to the Grand Jury so long as an exception to the
12 general prohibition is present.

13 The State cites numerous cases and statutes to support the appropriateness of the Grand Jury's
14 consideration of Diaz's testimony about Gerald David's calendar, the calendar exhibit, and Mr.
15 David's statements to Diaz about the burglaries and items taken. Maresca v. State, 103 Nev. 669,
16 673 (1987); Rugamas, 129 Nev. at 432-433; Gordon v. District Court, 112 Nev. 216, 223-24 (1996);
17 NRS 51.315(1)(a) and (b), NRS 51.055(1)(c); NRS 51.045.

18 The State continues that the doctrine of corpus delicti developed as a protection "against an
19 accused's conviction based solely upon an uncorroborated confession." Dominques v. State, 112
20 Nev. 683, 692 (1996). The State is required to make a threshold showing that the crime which the
21 accused has confessed to actually occurred with evidence beyond the confession itself. Hicks, 86
22 Nev. at 69. However, "a slight or prima facie showing, permitting the reasonable inference that a
23 crime was committed is sufficient." Doyle v. State, 112 Nev. 879, 892 (1996)(quoting with approval
24 People v. Alcala, 685 P.2d 1126, 1136 (1984), overruled on other grounds by Kaczmarek v. State,
25 120 Nev. 314, 333 (2004).

26 The State continues that there is no specific order in which the accused's confession and the
27 evidence of corpus delicti must be admitted. Azbill v. State, 84 Nev. 345, 351 (1968). The State also
28 presented the argument that "there need not be independent support for each fact testified to by the

1 suspect witness; corroboration is sufficient for this purpose if it “tends to connect the Defendant with
2 the commission of the offense [charged] in such a way as reasonably may satisfy a jury that the
3 [witness] is telling the truth.” Doyle, 112 Nev. at 892. The State argues because the testimony about
4 the calendar, the calendar itself, and Diaz’s testimony about what Mr. David told him are not excluded
5 by the hearsay rule as the nature and special circumstances under which the statements were made
6 are strong assurances of their accuracy.

7 The State encourages the Court to find there was sufficient evidence presented to the Grand
8 Jury even without Daiz’s testimony regarding what Mr. David said to him about the burglaries or the
9 calendar, to fulfill the requirements of the corpus delicti rule. The State points to the observations of
10 Diaz of the property at the time of the burglaries, and many observations of the property after the
11 murders, and the evidence recovered in the search of the Defendant’s vehicle where a Reno Rodeo
12 name tag bearing the name “Jerry David” was found as establishing that there was a slight, prima
13 facia showing sufficient to support a reasonable inference that a crime was committed in both Count
14 I and Count II. For all the above reasons, the State argues the Grand Jury was entitled to consider the
15 Defendant’s statements when it found probable cause to indict on Count I and Count II.

16 The State counters Petitioner’s arguments regarding dismissing Count V and Count VI by
17 first discussing Count V as being pled under two alternate theories of Murder of Sophia Renken; a
18 “felony-murder”, and/or murder with malice aforethought, deliberation and premeditation. The State
19 argues that it is not required to establish every element of each alternative theory of a specific charge
20 to justify proceeding on that charge in district court. Wrenn v. Sheriff, Clark Cty., 87 Nev. 85, 87
21 (1971); Sheriff, Clark Cty. v. Willoughby, 97 Nev. 90, 91-92 (1981); Holmes v. State, 114 Nev. 1357,
22 1364 (1998). The State proceeds to further offer that it is proper to prove intent by direct or
23 circumstantial evidence and consideration of the Defendant’s statements, acts done or omitted, and
24 all other facts and circumstances in evidence.²

25
26
27 ² NRS 193.200; Powell v. State, 113 Nev. 258 (1997); Manning v. Warden, 99 Nev. 82 (1983); Owens v. State,
28 100 Nev. 286, 289 (1984); Jensen v. Sheriff, 89 Nev. 123, 126 (1973); Wilson v. State, 85 Nev. 88, 90 (1969); State v.
McNeil, 53 Nev. 428 (1931); State v. Rhodig, 101 Nev. 608, 611 (1985); Grant v. State, 117 Nev. 427 (2001).

1 The State argues the evidence presented to the Grand Jury as cited in their opposition supports
2 a finding of circumstantial evidence of intent. The Defendant's statements and his acts done or
3 omitted, were further proof of intent sufficient to satisfy the burden of showing there was sufficient
4 evidence presented to the Grand Jury to support the Grand Jury Indictment of Counts V and VI.

5 The State counters the Defendant's argument in the petition as to Count X by reminding the
6 Court the order in which the evidence is presented has no bearing on the determination of whether
7 corpus delicti has been established. The State represents that the evidence it has cited to the court is
8 ample evidence in the record that the guns, the subject of Count X, were not owned by the Defendant
9 and were in fact stolen. The evidence cited by it in opposition, along with the corroborated and
10 properly admitted evidence of Defendant's statement support the denial of the Writ as to Count X.

11 As to the issue regarding jurisdiction of the Washoe County Grand Jury to indict on Counts
12 III, IV, V, and VI, the State reasserted and incorporated by reference the substantive arguments made
13 in the previously filed Opposition to Motion to Dismiss Counts III, IV, V and VI of the Indictment
14 for Lack of Jurisdiction.

15
16 The Court has considered the following statutes in the decision herein:

17 • NRS 3.220 states:

18 The district judges shall possess equal coextensive and concurrent
19 jurisdiction and power. They each shall have power to hold court in any
20 county of this State. They each shall exercise and perform the powers,
21 duties and functions of the court and of judges thereof and of judges at
22 chambers. The decision in an action or proceeding may be written or
23 signed at any place in the State by the judge who acted on the trial and
24 may be forwarded to and filed by the clerk, who shall thereupon enter
25 judgment as directed in the decision, or judgment may be rendered in open
26 court, and, if so rendered, shall be entered by the clerk accordingly. If the
27 public business requires, each judge may try causes and transact judicial
28 business in the same county at the same time. Each judge shall have power
to transact business which may be done in chambers at any point within
the State, and court shall be held in each county at least once in every 6
months and as often and as long as the business of the county requires. All
of this section is subject to the provision that each judge may direct and
control the business in his or her own district and shall see that it is
properly performed

- 1 • NRS 51.035 states in relevant part:
2 “Hearsay” defined. “Hearsay” means a statement offered in evidence to
3 prove the truth of the matter asserted ...”
- 4 • NRS 51.045 provides:
5 “Statement” defined. “Statement” means:
6 1. An oral or written assertion; or
7 2. Nonverbal conduct of a person, if it is intended as an assertion.
- 8 • NRS 51.055 provides in relevant part:
9 “Unavailable as a witness” defined:
10 1. A declarant is “unavailable as a witness” if the declarant is:
11 ...
12 (c) Unable to be present or to testify at the hearing because of death
13
- 14 • NRS 51.067 provides:
15 Hearsay within hearsay. Hearsay included within hearsay is not excluded under the
16 hearsay rule if each part of the combined statements conforms to an exception to the
17 hearsay rule provided in this chapter.
- 18 • NRS 51.315(1) provides:
19 1. A statement is not excluded by the hearsay rule if:
20 (a) Its nature and the special circumstances under which it was made
21 offer strong assurances of accuracy; and
22 (b) The declarant is unavailable as a witness.
- 23 • NRS 171.020 provides:
24 Act within this State culminating in crime in this or another state.
25 Whenever a person, with intent to commit a crime, does any act within
26 this State in execution or part execution of such intent, which culminates
27 in the commission of a crime, either within or without this State, such
28 person is punishable for such crime in this State in the same manner as if
 the same had been committed entirely within this State.
- NRS 171.030 provides:
 Offense committed partly in one county and partly in another.
 When a public offense is committed in part in one county and in part in
 another or the acts or effects thereof constituting or requisite to the
 consummation of the offense occur in two or more counties, the venue is
 in either county.

- NRS 171.060 provides:

Burglary, robbery, larceny or embezzlement: Venue when property is taken in one county and brought into another.

When property taken in one county by burglary, robbery, larceny, or embezzlement has been brought into another, the venue of the offense is in either county, but if, at any time before the conviction of the defendant in the latter, the defendant is indicted in the former county, the sheriff of the latter county must, upon demand, deliver the defendant to the sheriff of the former.

- NRS 171.075 provides:

Conviction or acquittal in another county is bar where venue is concurrent. When an offense is within the venue of two or more counties, a conviction or acquittal thereof in one county is a bar to the prosecution or indictment therefor in another.

- NRS 172.105 provides:

Powers: The grand jury may inquire into all public offenses triable in the district court or in a Justice Court, *committed within the territorial jurisdiction of the district court* for which it is impaneled. (emphasis added).

- NRS 172.135(2) provides in relevant part:

2. Except as otherwise provided in this subsection, the grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence....

- NRS 172.155(1) provides:

1. The grand jury ought to find an indictment when all the evidence before them, taken together, establishes probable cause to believe that an offense has been committed and that the defendant has committed it.

- NRS 172.175 provides:

Matters into which grand jury shall and may inquire.

1. Each grand jury that is not impaneled for a specific limited purpose shall inquire into:

(a) The case of every person imprisoned *in the jail of the county*, on a criminal charge, against whom an indictment has not been found or an information or complaint filed.

(b) The condition and management of any public prison *located within the county*.

(c) The misconduct in office of public officers of every description *within the county* which may constitute a violation of a provision of chapter 197 of NRS.

2. A grand jury that is not impaneled for another specific limited purpose may inquire into any and all matters affecting the morals, health and general welfare of the inhabitants *of the county, or of any administrative division thereof, or of any township, incorporated city, irrigation district or town therein*. (emphasis added).

- 1 • NRS 173.025 provides:
- 2 Courts may act upon information for all offenses.
- 3 The several courts of this state shall have and may exercise the same
- 4 power and jurisdiction to try and determine prosecutions upon information
- 5 for crimes, misdemeanors and offenses, to issue writs and process and do
- 6 all other acts therein as in cases of like prosecution under indictment.
- 7 • NRS 173.115 provides, in relevant part:
- 8 1. Two or more offenses may be charged in the same indictmentin a
- 9 separate count for each offense if the offenses charged, whether felonies or
- 10 misdemeanors or both, are:
- 11 (a) Based on the same act or transaction; or
- 12 (b) Based on two or more acts or transactions connected together or
- 13 constituting parts of a common scheme or plan.
- 14 • NRS 193.200 provides
- 15 Intent: How Manifested.
- 16 Intention is manifested by the circumstances connected with the
- 17 perpetration of the offense, and the sound mind and discretion of the
- 18 person accused.
- 19 • NRS 200.030 provides in relevant part:
- 20 1. Murder of the first degree is murder which is:
- 21 (b) Committed in the perpetration or attempted perpetration of ...
- 22 burglary
- 23 • NRS 205.060(1) provides in relevant part:
- 24 1. ... a person who, by day or night, enters any house, room, ... barn,
- 25 stable, outhouse or other building ... vehicle, vehicle trailer, ... or house
- 26 trailer ... with the intent to commit grand or petit larceny, assault or
- 27 battery on any person or any felony, or to obtain money or property by
- 28 false pretenses, is guilty of burglary.
- 29 • NRS 205.065 provides in relevant part:
- 30 Inference of burglarious intent.
- 31 Every person who unlawfully breaks and enters or unlawfully enters any
- 32 house, room, ... barn, stable, outhouse or other building, ... vehicle,
- 33 vehicle trailer, ... or house trailer ... may reasonably be inferred to have
- 34 broken and entered or entered it with intent to commit grand or petit
- 35 larceny, assault or battery on any person ... or a felony therein, unless the
- 36 unlawful breaking and entering or unlawful entry is explained by evidence
- 37 satisfactory to the jury to have been made without criminal intent.

1 The Court has also reviewed and considered the following Nevada Constitution sections.

- 2 • Nev. Const. art. 6, §6.1 provides in relevant part:

3 The District Courts in the several Judicial Districts of this State have
4 original jurisdiction in all cases excluded by law from the original
jurisdiction of justices' courts

- 5 • Nev. Const. art 8A §(1)(i) provides:

6 1. Each person who is the victim of a crime is entitled to the
following rights:

7 (i) To the timely disposition of the case following the arrest of the
8 defendant.

9 The burden of proof at a grand jury proceeding in Nevada is established by NRS 172.155(1)
10 and the case law regarding what constitutes probable cause. To find probable cause the Grand Jury
11 must believe an offense has been committed and who committed it.³ The finding of probable cause
12 may be based on slight, even "marginal evidence."⁴ The State is not required to negate all inferences
13 which might explain [his] conduct but only present enough evidence to support a reasonable inference
14 that the accused committed the offense.⁵ Further, "a grand jury indictment will be sustained where
15 the State submits sufficient legal evidence to establish probable cause, even though inadmissible
16 evidence may have been offered." Dettloff v. State, 120 Nev. 588, 595 (2004)⁶

17 In considering the evidence as cited and argued by the Defendant and the State in their
18 pleadings as well as the statutory and case law provided by them, the Court finds the State's analysis
19 compelling. As such, the Court adopts and incorporates the analysis and the reasoning in support
20 thereof by the State as to the evidence presented to the Grand Jury in support of the True Bill in this
21 matter. Further, the Court agrees with, adopts and incorporates the law presented by the State in its
22 Response to the Petition for Writ of Habeas Corpus.

23
24 ³ Marcum v. Sheriff, 85 Nev. 175, 178-179 (1969) (burden of proof at a preliminary hearing is to show probable
25 cause to believe an offense has been committed and the defendant committed it.); State v. von Brincken, 86 Nev. 769,
772 (1970).

26 ⁴ Sheriff v. Badillo, 95 Nev. 593, 594 (1979); Etcheverry v. State, 107 Nev. 782 (1991).

27 ⁵ Sheriff v. Burcham, 124 Nev. 1247, 1258 (2008).

28 ⁶ See also, Collins v. State, 113 Nev. 1177, 1182 (1997) ("regardless of the presentation of inadmissible evidence,
the indictment will be sustained if there is the slightest sufficient legal evidence").

1 The evidence presented to the Grand Jury related to Diaz by Mr. David, as well as Mr. David's
2 calendar with entries, was properly considered by the Grand Jury due to exception to the exclusion
3 of hearsay. The nature and special circumstances under which the statements to Diaz were made and
4 the calendar created offer strong assurances of accuracy. Further, Mr. David is unavailable to testify.
5 NRS 51.315(1); NRS 51.055(1)(c); Maresca v. State, 103 Nev. at 673; Rugamas, 129 Nev. at 431;
6 Gordon, 112 Nev. at 223-24.

7 The doctrine of corpus delicti was satisfied in this case with at least a slight, prima facie
8 showing by the evidence discussed above that the crimes charged in Count I and Count II actually
9 happened and were committed by the Defendant. Also, once the corpus delicti is determined to have
10 been proven by lawful evidence, Mr. Guzman's confession may be considered as part of the probable
11 cause supporting the Grand Jury Indictment Count I and Count II.⁷

12 Further, when considering all the circumstantial evidence of intent presented to the Grand
13 Jury including the Defendant's statements and his acts done as argued by the State, there was
14 sufficient evidence presented to the Grand Jury to find probable cause to support the indictment as to
15 Count V and Count VI.

16 The Court also agrees with the State's argument that the evidence it cited in its pleadings
17 which had been presented to the Grand Jury was sufficient to satisfy corpus delicti as to the guns
18 being stolen and not being owned by the Defendant. Specifically, the theft of the revolver from the
19 David's trailer, the observations of the David's home on the day of their deaths and Mr. David's name
20 being affixed to one of the buried weapons. Thus, the Defendant's statement along with all the other
21 evidence presented to the Grand Jury supports the Court determining that the Grand Jury had
22 sufficient evidence to find probable cause to indict the Defendant for Count X.

23 Lastly, the Court declines to accept the defense argument that the Washoe County Grand Jury
24 did not have jurisdiction to indict Mr. Guzman on the charges relating to events taking place in
25 Douglas County. District Courts within the State of Nevada have jurisdiction over felony offenses,
26 not confined to the respective county or counties that are part of their district. The Grand Jury may
27

28 ⁷ Azbill, 84 Nev. at 351.

1 inquire into all public offenses triable in the district court committed within the territorial jurisdiction
2 of the district court for which it is impaneled, and the Second Judicial District Court's territorial
3 jurisdiction extends statewide. The Grand Jury possesses the same authority, regarding inquiring into
4 public offenses.

5 The original law at statehood on judicial officer jurisdiction stated "[t]he District Courts shall
6 have jurisdiction to inquire, by intervention of a grand jury, of all public offenses, *committed or*
7 *triable in their respective districts*, to try and determine all indictments found therein(emphasis
8 added)." 1 Statutes of Nevada 1864-1865.

9 The words *committed or triable in their respective districts* remained in the Nevada law
10 until 1965, then the Legislature adopted an omnibus revision of the Substantive Criminal Law and
11 Procedure [Act] in Criminal Cases in Assembly Concurrent Resolution No. 9. The amended law
12 was based on a review of the Illinois and California penal codes, and the Federal Rules of Criminal
13 Procedure. In 1967, the actual changes to Nevada criminal law were adopted in Bill Draft Request
14 (BDR) 14-43 and became effective on all criminal complaints, information and indictments filed on
15 or after January 1, 1968.

16 The updated criminal code in BDR 14-43, §83 contains the exact and current language of
17 NRS 172.105.

18 The grand jury may inquire into all public offenses triable in the district court or in a
19 Justice Court, committed *within the territorial jurisdiction of the district court for*
which it is impaneled.

20 The Court notes that this revision by the Legislature eliminated the previous reference in the
21 earlier law on the grand jury powers to offenses *committed or triable in the district* and replaced
22 those words with *within the territorial jurisdiction of the court*.

23 The California statute the legislature was reviewing in 1965 had also previously been
24 modified from the original common law statute. In 1951, California Penal Code section 777 was
25 amended by replacing the words *county wherein it [the crime] is committed* with the words in *any*
26 *competent court within the jurisdictional territory of which it [the crime] is committed*. At that
27 time, the legislature of California clearly understood that the language *territorial jurisdiction* was
28 more expansive than to limit the jurisdiction to the confines of the counties geographical boundary

1 lines. By the same token, the Nevada Legislature clearly understood they were making a change in
2 the Grand Jury's jurisdiction to inquire into crimes when they adopted the changes to the statute.

3 The Nevada Supreme Court has discussed the meaning of *territorial jurisdiction* in a recent
4 case involving a crime committed both within and outside of Nevada. McNamara v. State, 132
5 Nev. 610, 613 (2016).

6 The McNamara court reviewed early cases and found that earlier findings by the Court
7 which required an indictment to be found in the county in which the crime had been committed,
8 under the creature at common law of territorial jurisdiction, are no longer valid because the
9 Legislature abrogated them when it passed NRS 171.020 in 1911 and further amended the law in
10 1927.⁸

11 Nevada courts obtain territorial jurisdiction whenever: (1) a defendant has
12 criminal intent (irrespective of where it was formed); and (2) he or she performs
13 any act in this state in furtherance of that criminal intent. The broad language of
NRS 171.020 demonstrates a legislative objective to confer territorial jurisdiction
over a crime having a sufficient connection to Nevada.

14 McNamara at 611.

15 The McNamara court continued citing Shannon v. State, 105 Nev. 782, 791 (1989) which
16 held:

17 The language of the statute gives jurisdiction to Nevada courts whenever the
18 criminal intent is formed and *any act* is accomplished in this state in pursuance or
19 partial pursuance *of the intent*. The statute does not require that there be partial
execution of the actual crime; it only requires some carrying out of the criminal
intent.⁹

20 California has followed the same analysis as the Nevada Supreme Court in its discussion of
21 jurisdiction in cases involving acts within and outside the state. Further, it has used the similar
22 analysis in cases involving acts in multiple counties within the state. People v. Price, 821 P.2d 610
23 (CA 1991) found Humboldt County had jurisdiction to try a murder committed in Los Angeles
24 where the defendant stole weapons in Humboldt County and a few days later used the stolen
25 weapon in the Los Angeles murder. Since the preparatory acts of the murder were committed in

26
27 ⁸ State v. Pray, 30 Nev. 206 (1908). See also, People v. Gleason, 1 Nev. 173 (1865).

28 ⁹ Nevada retained jurisdiction for acts that originated in Nevada and culminated on the Arizona side of Lake
Mead.

1 Humboldt County, even though the essential elements of the murder were not, the stealing of the
2 weapons in one county that were used in a murder in another was a sufficient preparatory act to
3 establish jurisdiction.¹⁰

4 This Court agrees with the reasoning of these cited cases. The crimes charged in the
5 Indictment in Counts III, IV, V, and VI were properly considered by the Washoe County Grand Jury
6 which had jurisdiction to enter a True Bill as to those crimes. The formation of intent and preparatory
7 acts were in Washoe County even though they culminated in the charged crimes that took place in
8 Douglas County.

9 For all the reasons stated herein, the Court finds that the State has met its burden of proof on
10 Counts I-X of the Indictment by slight, marginal, and admissible evidence of probable cause sufficient
11 to sustain the indictment. In addition, the Washoe County Grand Jury's True Bill as to Counts III,
12 IV, V, and VI was properly found and sent to the Second Judicial District Court.

13 Based on the foregoing, good cause appearing, and in the interest of justice,

14 IT IS HEREBY ORDERED that the Petition for a Writ of Habeas Corpus based on
15 insufficient evidence on Counts I, II, V, VI and X is DENIED.

16 IT IS HEREBY FURTHER ORDERED that the Petition for a Writ of Habeas Corpus based
17 on lack of jurisdiction of the Washoe County Grand Jury on Counts III, IV, V and VI is DENIED.

18 DATED this 22 day of June, 2019.

19 Connie J. Steinheimer
20 DISTRICT JUDGE
21
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26

27 ¹⁰ See also, Fortner v. Superior Court, 217 Cal.App.4th 1360, 1364 (2013); People v. Betts, 34 Cal.4th 1039,
28 1047-48 (2005).

CERTIFICATE OF SERVICE

CASE NO. CR19-0447

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 22 day of June, 2019, I filed the **ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

 P **Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.**

CHRISTOPHER HICKS, ESQ. for STATE OF NEVADA

TRAVIS LUCIA, ESQ. for STATE OF NEVADA

MARK JACKSON, ESQ. for STATE OF NEVADA

GIANNA VERNES, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)

DIV. OF PAROLE & PROBATION

JOHN PETTY, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)

JOHN ARRASCADA, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)

JOSEPH GOODNIGHT, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)

KATHERYN HICKMAN, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)

MARILEE CATE, ESQ. for STATE OF NEVADA

 Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]

 Placed a true copy in a sealed envelope for service via:

 Reno/Carson Messenger Service – [NONE]

 Federal Express or other overnight delivery service [NONE]

DATED this 22 day of June, 2019.



2842

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

vs.

WILBER ERNESTO MARTINEZ GUZMAN,

Defendant.

CASE NO.: CR19-0447

DEPT. NO.: 4

CORRECTED ORDER DENYING MOTION TO DISMISS

On March 13, 2019, the Washoe County Grand Jury returned an Indictment against WILBER ERNESTO MARTINEZ GUZMAN (hereinafter "Mr. Guzman") for Count I-Burglary, Count II-Burglary While Gaining Possession of a Firearm, Count III-Murder With the Use of a Deadly Weapon, Count IV-Burglary While in Possession of a Firearm, Count V-Murder With the Use of a Deadly Weapon, Count VI-Burglary While in Possession of a Firearm, Count VII-Murder With the Use of a Deadly Weapon, Count VIII-Murder With the Use of a Deadly Weapon, Count IX-Burglary While in Possession of a Firearm, and Count X-Possession of a Stolen Firearm.

On March 19, 2019, Mr. Guzman was arraigned on the Indictment represented by the Washoe County Public Defender, John L. Arrascada. The State of Nevada (hereinafter "the State") was present by and through Christopher J. Hicks, Washoe County District Attorney, Mark Jackson, Douglas County District Attorney and Travis Lucia, Washoe County Deputy District Attorney.

At the arraignment, a plea of "not guilty" was entered on Mr. Guzman's behalf to all the charges and the case was set for jury trial to begin on April 6, 2020.

1 On April 18, 2019, Mr. Guzman filed a *Motion to Dismiss Counts Three, Four, Five and Six*
2 *of the Indictment for Lack of Jurisdiction (D-1)*. On May 2, 2019, the State filed its *Opposition to*
3 *Motion to Dismiss Counts Three, Four, Five and Six of the Indictment for Lack of Jurisdiction (D-1)*.
4 On May 9, 2019, Guzman filed his *Reply in Support of Motion to Dismiss Counts Three, Four, Five*
5 *and Six of the Indictment for Lack of Jurisdiction (D-1)*. The matter was set for oral argument on
6 May 20, 2019.

7 On May 20, 2019, Mr. Guzman was present in court and represented by John L. Arrascada,
8 Washoe County Public Defender, Katheryn Hickman, Chief Deputy Washoe County Public
9 Defender, and Gianna Verness, Deputy Washoe County Public Defender. The State appeared at the
10 hearing represented by Christopher J. Hicks, Washoe County District Attorney, Mark Jackson,
11 Douglas County District Attorney, and Travis Lucia, Deputy Washoe County District Attorney. At
12 the hearing, Mr. Arrascada argued the motion, and the opposition was argued by Mr. Jackson.

13 The Order Denying Motion to Dismiss was entered on June 21, 2019 containing a
14 typographical error concerning NRS 172.105 on page 7. Therefore to correct the clerical error, the
15 Court enters this Corrected Order Denying Motion to Dismiss, with proper citation to NRS 172.105
16 on page 7.

17 Defendant contends that a motion to dismiss is the proper procedure for challenging the
18 Washoe County Grand Jury's jurisdiction to indict him on the Douglas County charges. He argues
19 that NRS 172.065 and Shuster v. Eighth Judicial District Court, 123 Nev. 187, 192 (2007) permit the
20 use of a motion to dismiss because he is not challenging the finding of probable cause, as defined in
21 NRS 34.700. Mr. Guzman further argues that the Washoe County Grand Jury did not have
22 jurisdiction over Counts III, IV, V and VI because these counts occurred solely in Douglas County,
23 and none of these alleged crimes are related to the charges contained in Counts I, II, VII, VIII, IX,
24 and X in the Indictment. Defendant contends that the grand jury is a creature of statute and only has
25 the limited powers granted to it by the Legislature. He continues, that since the grand jury was

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1 impaneled in Washoe County, the grand jury exceeded its jurisdiction when it indicted him on the
2 Douglas County acts. To support his argument, Mr. Guzman relies on NRS 172.105 that states:

3 The grand jury may inquire into all public offenses triable in the district court or in a
4 Justice Court, *committed within the territorial jurisdiction of the district court for
which it is impaneled.* (emphasis added).

5 He claims the meaning of *territorial jurisdiction of the district court* limits the grand jury's
6 jurisdiction to Washoe County, and not to the alleged crimes committed in Douglas County.
7 Defendant points out Douglas County is not in Washoe County nor within the Second Judicial District
8 Court boundaries. Asserting that the meaning of the words *territorial jurisdiction* in the statute is
9 clear and unambiguous. He contends the statute's language should be given the plain meaning of the
10 words, unless such reading violates the spirit of the act, citing Shuster, 123 Nev. at 191. Therefore,
11 he concludes that the Washoe County Grand Jury did not have *territorial jurisdiction* to indict him
12 on the alleged Douglas County crimes, so he seeks dismissal of the four Douglas County counts.

13 Mr. Guzman's final claim on jurisdiction is based on NRS 172.175. He asserts the statute
14 limits the grand jury's jurisdiction to Washoe County offenses. Based on this law, he concludes the
15 grand jury impaneled in Washoe County has limited jurisdiction to only Washoe County and not
16 beyond its borders.

17 The State responds by first requesting permission to expand the number of pages in its
18 opposition, pursuant to the Criminal Rules of Practice for the Second Judicial District Court of the
19 State of Nevada ("LCR") 7(h). This rule states on pretrial motions "[e]xcept as permitted by the
20 presiding judge, legal memoranda in support of a motion, opposition or reply shall not exceed 10
21 pages, exclusive of exhibits." Defendant did not object to this request. Thus, the Court grants
22 permission to the State to submit the additional pages and will consider the arguments after page 10
23 of the State's opposition.

24 The State contends that pursuant to NRS 172.065 this motion should be dismissed on
25 procedural grounds. The dismissal claim should be brought through a writ of habeas corpus because
26 Defendant is actually challenging the court's jurisdiction under NRS 34.700(1). The State
27 acknowledges a motion to dismiss is appropriate in certain circumstances, however, not here.

1 The State continues, arguing, the motion to dismiss should also be denied on substantive
2 grounds. The State reflects that territorial jurisdiction is a question of law. Shannon v. State, 105
3 Nev. 782, 791 (1989). Further, territorial jurisdiction must be proven by a preponderance of the
4 evidence. McNamara v. State, 132 Nev. 606, 614 (2016). The State submits that there is more than
5 enough evidence before the Court to find by a preponderance of the evidence standard that the
6 Washoe County Grand Jury had jurisdiction to indict Mr. Guzman on all the counts found in the
7 charging document. The argument is that a grand jury when inquiring into public offenses is vested
8 with the same jurisdictional authority as the District Court for which it is impaneled. NRS 172.105
9 grants authority to inquire into “all public offenses triable in the district court [...] within the territorial
10 jurisdiction of the district court for which it is impaneled.” The State points to several cases which
11 support this conclusion. See, Walker v. State, 78 Nev. 463 (1962).

12 In addition, the State points out NRS 3.220 provides district judges with coextensive and
13 concurrent jurisdiction and power to hold court in any county of the state. Consequently, Ninth
14 Judicial District Court Judges (Douglas County) and Second Judicial District Court Judges (Washoe
15 County) have identical authority and jurisdiction on felony charges and may preside in court in either
16 county. Therefore, the Washoe County Grand Jury’s territorial jurisdiction includes indictment of
17 crimes allegedly committed in Douglas County.

18 The State invites the Court to compare NRS 172.105 and NRS 172.175 and their respective
19 jurisdictional differences. Although both statutes grant authority to the grand jury, NRS 172.105
20 gives broad authority to inquire into “public offenses.” Whereas, NRS 172.175 relates to more
21 specialized authority of the grand jury to conduct investigative functions.

22 In additional opposition to the motion to dismiss, the State offers two further arguments in
23 support of prosecuting the Douglas and Washoe crimes together in one Indictment. The State argues
24 it can join all the offenses together relying on the venue laws. NRS 171.030; NRS 171.040(2); NRS
25 171.060. Continuing that the Nevada Supreme Court has affirmed cases where a single prosecution
26 has taken place on crimes committed in different counties.

27 Second, the State asserts fundamental fairness, judicial economy and the Nevada’s Victims’
28 Bill of Rights supports charging all the offenses in one Washoe County indictment. The State relies

1 on several statutes and the Nevada Constitution in support of its position. NRS 171.095; NRS
2 173.025; NRS 48.045(2); Nev. Const. Art. 8A §(1)(i).

3 The State submits that charging all offenses in Washoe County is fundamentally fairer to the
4 Defendant, because of the larger population and thus a larger jury pool from which to find unbiased,
5 qualified jurors in Washoe County. Also, by charging the case in this manner, there is only one
6 prosecution of the Defendant for these crimes. The State argues this is compelling. If the State
7 elected to charge each murder separately, in the County in which the decedents were found, the
8 Defendant would be subject to up to three (3) separate prosecutions for Murder in the First Degree.
9 The Defendant would then have to defend three (3) separate murder trials giving the State more
10 opportunities to convict the Defendant. The State contends evidence from each murder would be
11 cross-admissible, and could result in more cost because each trial would likely include evidence
12 gathered across the entire scope of all four (4) killings.¹

13 Finally, the State addresses recent additions to the Nevada Constitution as support for its
14 position. The Constitution allows a victim – defined to include their family – the right to a timely
15 disposition of a criminal matter.² The State notifies the Court that the family members of all four (4)
16 victims have invoked this right through their conversations with the State’s representatives. If venue
17 were altered, multiple trials would unavoidably take place. However, they would not occur
18 concurrently. As such, it is reasonable to expect years of delay until all crimes could be adjudicated.
19 Such a result would be a violation of the Victims’ Bill of Rights to a timely disposition of a criminal
20 matter.

21 The relevant counts of the indictment which are the subject of this motion to dismiss are:

22 The Douglas County charges:

23 Count III. Murder with the Use of a Deadly Weapon, a violation of NRS
24 200.010, NRS 200.030 and NRS 193.165, a category A felony, (50001) of
25 Constance Koontz, killed with a firearm;

26 ¹ See NRS 48.045 discussing the admissibility of other act evidence to prove motive, opportunity, intent,
27 preparation, plan, knowledge, identity, or absence of mistake or accident; and NRS 48.035(3) related to *res gestae*
evidence.

28 ² Nev. Const. art. 8A §(1)(i).

1 Count IV. Burglary while in Possession of a Firearm, a violation of NRS
2 205.060, a category B felony, (50425) for entering [Koontz's house] with
intent to commit larceny while in possession of a firearm;

3 Count V. Murder with the Use of a Deadly Weapon, a violation of NRS
4 200.010, NRS 200.030 and NRS 193.165, a category A felony, (50001) of
Sophia Renken, killed with a firearm;

5 Count VI. Burglary while in Possession of a Firearm, a violation of NRS
6 205.060, a category B felony, (50425) for entering [Renken's house] with
intent to commit larceny while in possession of a firearm.

7
8 The Court has considered the following statutes in the decision herein:

- 9 • NRS 3.220 states:

10 The district judges shall possess equal coextensive and concurrent
11 jurisdiction and power. They each shall have power to hold court in any
county of this State. They each shall exercise and perform the powers, duties
12 and functions of the court and of judges thereof and of judges at chambers.
The decision in an action or proceeding may be written or signed at any place
13 in the State by the judge who acted on the trial and may be forwarded to and
filed by the clerk, who shall thereupon enter judgment as directed in the
14 decision, or judgment may be rendered in open court, and, if so rendered,
shall be entered by the clerk accordingly. If the public business requires, each
15 judge may try causes and transact judicial business in the same county at the
same time. Each judge shall have power to transact business which may be
16 done in chambers at any point within the State, and court shall be held in
each county at least once in every 6 months and as often and as long as the
17 business of the county requires. All of this section is subject to the provision
that each judge may direct and control the business in his or her own district
18 and shall see that it is properly performed

- 19 • NRS 34.700(1) provides, in relevant part:

20 [A] pretrial petition for a writ of habeas corpus based on alleged lack of
probable cause or otherwise challenging the court's right or jurisdiction to
21 proceed to the trial of a criminal charge may not be considered unless

- 22 • NRS 48.045(2) which provides:

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

- 26 • NRS 171.020. Whenever a person, with intent to commit a crime, does any
act within this State in execution or part execution of such intent, which
27 culminates in the commission of a crime, either within or without this State,
such person is punishable for such crime in this State in the same manner as
28 if the same had been committed entirely within this State.

- 1 • NRS 171.030. When a public offense is committed in part in one county
2 and in part in another or the acts or effects thereof constituting or requisite
3 to the consummation of the offense occur in two or more counties, the
4 venue is in either county.
- 5 • NRS 171.040(2) states in part:
6 When an offense is committed in this state:
7 On a ...car Or on a private motor vehicle, prosecuting its trip, the
8 venue is in any county through which the ...car ... or private motor
9 vehicle, passes in the course of its trip, or in the county where the trip
10 terminates
- 11 • NRS 171.060 provides:
12 When property taken in one county by burglary, robbery, larceny, or
13 embezzlement has been brought into another, the venue of the offense is in
14 either county, but if, at any time before the conviction of the defendant in
15 the latter, the defendant is indicted in the former county, the sheriff of the
16 latter county must, upon demand, deliver the defendant to the sheriff of the
17 former.
- 18 • NRS 171.075 provides:
19 When an offense is within the venue of two or more counties, a conviction
20 or acquittal thereof in one county is a bar to the prosecution or indictment
21 therefor in another.
- 22 • NRS 172.065 states:
23 A motion to dismiss the presentment or indictment may be based on
24 objections to the array or on the lack of legal qualification of an individual
25 juror, if not previously determined upon challenge. A presentment or
26 indictment shall not be dismissed on the ground that one or more members
27 of the grand jury were not legally qualified if it appears from the record
28 kept pursuant to NRS 172.075 that 12 or more jurors, after deducting the
number not legally qualified, concurred in finding the presentment or
indictment.
- NRS 172.105 states
The grand jury may inquire into all public offenses triable in the district
court or in a Justice Court, *committed within the territorial jurisdiction of
the district court* for which it is impaneled. (emphasis added).
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- 1 • NRS 172.175(1) Each grand jury that is not impaneled for a specific limited purpose
2 shall inquire into:
- 3 (a) The case of every person imprisoned *in the jail of the county*, on a
4 criminal charge, against whom an indictment has not been found or an
5 information or complaint filed.
6 (b) The condition and management of any public prison *located within*
7 *the county*.
8 (c) The misconduct in office of public officers of every description
9 *within the county* which may constitute a violation of a provision of chapter
10 197 of NRS.
- 11 2. A grand jury that is not impaneled for another specific limited
12 purpose may inquire into any and all matters affecting the morals, health
13 and general welfare of the inhabitants *of the county, or of any administrative*
14 *division thereof, or of any township, incorporated city, irrigation district or*
15 *town therein.* (emphasis added).
- 16 • NRS 173.025 which provides, in part:
- 17 The several courts of this state shall have and may exercise the same
18 power and jurisdiction to try and determine prosecutions upon information
19 for crimes offenses, to issue writs and process and do all other acts
20 therein as in cases of like prosecution under indictment.
- 21 • NRS 173.115 provides, in relevant parts:
- 22 1. Two or more offenses may be charged in the same indictmentin a
23 separate count for each offense if the offenses charged, whether felonies or
24 misdemeanors or both, are:
25 2. Based on two or more acts or transactions connected together or
26 constituting parts of a common scheme or plan.
- 27 • NRS 174.155 provides:
- 28 The court may order two or more indictments or informations or both to
 be tried together if the offenses, and the defendants, if there is more than
 one, could have been joined in a single indictment or information. The
 procedure shall be the same as if the prosecution were under such single
 indictment or information.
- The Court has also reviewed and considered the following Nevada Constitution sections.
- Nev. Const. art. 6, §6.1 that provides, in relevant parts:
- The District Courts in the several Judicial Districts of this State have
 original jurisdiction in all cases excluded by law from the original
 jurisdiction of justices' courts
- Nev. Const. art 8A §(1)(i) that in relevant parts, provides:
1. Each person who is the victim of a crime is entitled to the following rights:
- (i) To the timely disposition of the case following the arrest of the defendant.

1 The Court will decide this motion on substantive grounds, declining the request of the State
2 to rule on it on procedural grounds. The Court notes that Mr. Guzman has in fact raised the same
3 issues in his pending petition under NRS 34.700(1). Although the Court finds the better course
4 would have been to proceed on this issue in a pretrial petition for a writ of habeas corpus pursuant
5 to NRS 34.700(1). The Court understands Mr. Guzman's desire to proceed under both methods.
6 Thus, rather than dispose of the motion on procedural grounds, the better course is to consider the
7 substance of the motion, the Court's reasoning will be incorporated in its findings on the same
8 issues where applicable in the pending petition also before the Court.

9 The Court considers the legislative history of NRS 172.105 as it provides clarity to the
10 meaning of *territorial jurisdiction*, the crux of the matter before the Court on this motion.

11 Between statehood and 1965, the original law on judicial officers stated "[t]he District
12 Courts shall have jurisdiction to inquire, by intervention of a grand jury, of all public offenses,
13 *committed or triable in their respective districts*, to try and determine all indictments found therein
14(emphasis added)." 1 Statutes of Nevada 1864-1865.

15 The words *committed or triable in their respective districts* remained in the Nevada law
16 until 1965, then the Legislature adopted an omnibus revision of the Substantive Criminal Law and
17 Procedure [Act] in Criminal Cases in Assembly Concurrent Resolution No. 9. The amended law
18 was based on a review of the Illinois and California penal codes, and the Federal Rules of Criminal
19 Procedure. In 1967, the actual changes to Nevada criminal law were adopted in Bill Draft Request
20 (BDR) 14-43 and became effective on all criminal complaints, information and indictments filed on
21 or after January 1, 1968.

22 The updated criminal code in BDR 14-43, §83 contains the exact and current language of
23 NRS 172.105.

24 The grand jury may inquire into all public offenses triable in the district court or in a
25 Justice Court, committed *within the territorial jurisdiction of the district court for*
which it is impaneled.

26 The Court notes that this revision by the Legislature eliminated the reference to offenses
27 *committed or triable in the district* and replaced those words with *within the territorial jurisdiction*
28 *of the court.*

1 The California statute the legislature was reviewing in 1965 had also previously been
2 modified from the original common law statute. In 1951, California Penal Code section 777 was
3 amended by replacing the words *county wherein it [the crime] is committed* with the words in *any*
4 *competent court within the jurisdictional territory of which it [the crime] is committed*. At that
5 time, the legislature of California clearly understood that the language *territorial jurisdiction* was
6 more expansive than to limit the jurisdiction to the confines of the counties geographical boundary
7 lines. By the same token, the Nevada Legislature clearly understood they were making a change in
8 the Grand Jury's jurisdiction to inquire into crimes when they adopted the changes to the statute.

9 The United State Supreme Court had recognized and defined territorial jurisdiction as early
10 as 1911. In Strassheim v. Daily, 31 S. Ct. 558 (1911), the court found that the criminal need only to
11 commit part of a criminal act, not the complete act, within a state for the state to have jurisdiction to
12 prosecute the criminal for the offense.

13 If the criminal does an overt act within a state which is and is intended to be a
14 material step toward accomplishing the crime, and then absents himself from the
15 state and does the rest elsewhere, he becomes a fugitive from justice when the crime
16 is complete. Acts done outside a jurisdiction, but intended to produce and producing
detrimental effects within it, justify a state in punishing the cause of the harm as if he
had been present at the effect, if the state should succeed in getting him within its
power.

17 Strassheim, at 560; See also U.S. v. Columba-Corella, 604 F.2d 356, 358-59 (1979); U.S. ex rel.
18 Pascarella v. Radakovich, 548 F. Supp. 125, 126 (1982).

19 The Nevada Supreme Court has analyzed the legislative changes to the meaning of
20 *territorial jurisdiction* in a recent case involving a crime committed both within and outside of
21 Nevada. McNamara, 132 Nev. at 610, 613.

22 The McNamara court reviewed early cases and found that, originally, the Nevada Supreme
23 Court stated that *territorial jurisdiction* was a creature of common-law, and the rule required an
24 indictment be found in the county in which the crime had been committed. State v. Pray, 30 Nev.
25 206 (1908). See also, People v. Gleason, 1 Nev. 173 (1865). In McNamara, the court held these

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1 findings are no longer valid because the Legislature abrogated them when it passed NRS 171.020 in
2 1911 and further amended the law in 1927.

3 Nevada courts obtain territorial jurisdiction whenever: (1) a defendant has
4 criminal intent (irrespective of where it was formed); and (2) he or she performs
5 any act in this state in furtherance of that criminal intent. The broad language of
NRS 171.020 demonstrates a legislative objective to confer territorial jurisdiction
over a crime having a sufficient connection to Nevada.

6 McNamara, at 611.

7 The McNamara court cited Shannon, 105 Nev. at 791 holding:

8 The language of the statute gives jurisdiction to Nevada courts whenever the
9 criminal intent is formed and *any act* is accomplished in this state in pursuance or
10 partial pursuance *of the intent*. The statute does not require that there be partial
execution of the actual crime; it only requires some carrying out of the criminal
intent.³

11 California has followed the same analysis as the Nevada Supreme Court in its discussion of
12 jurisdiction in cases involving acts within and outside the state. Further, it has used the similar
13 analysis in cases involving acts in multiple counties within the state. People v. Price, 821 P.2d 610
14 (CA 1991) found Humboldt County had jurisdiction to try a murder committed in Los Angeles
15 where the defendant stole weapons in Humboldt County and a few days later used the stolen
16 weapon in the Los Angeles murder. Since the preparatory acts of the murder were committed in
17 Humboldt County, even though the essential elements of the murder were not, the stealing of the
18 weapons in one county that were used in a murder in another was a sufficient preparatory act to
19 establish jurisdiction.⁴

20 The Court declines to accept the defense argument that the Washoe County Grand Jury did
21 not have jurisdiction to indict Mr. Guzman on the charges relating to events taking place in Douglas

22
23 ³ Shannon was convicted of three counts of lewdness with a minor based upon three acts that took place on the
24 Arizona side of Lake Mead. Court found that Nevada retained jurisdiction. See also, Vincze v. Sheriff, Clark County,
86 Nev. 474, 477-78 (1970). Defendant conceived, oriented and culminated a plan to deprive victim of his money in
25 Nevada; however, the false pretenses took place in Oregon. Court found sufficient acts took place in Nevada to vest
jurisdiction in Nevada to lawfully prosecute appellant; Smith v. State, 101 Nev. 167, 169-170 (1985) – Defendant
26 kidnapped victim from her home in Reno, drove her 10 miles over the state border to California. In California, he sexually
assaulted her and attempted to murder her, but ultimately abandoned her. Formulated his intent to assault and murder her
27 in Nevada when he kidnapped her. Court found his Nevada acts were committed to “partially execute” his plan, so
Nevada had jurisdiction over all the crimes.

28 ⁴ See also, Fortner v. Superior Court, 217 Cal. App. 4th 1360, 1364 (2013); People v. Betts, 34 Cal.4th 1039,
1047-48 (2005).

1 County. District Courts within the State of Nevada have jurisdiction over felony offenses, not
2 confined to the respective county or counties that are part of their district. The Grand Jury may
3 inquire into all public offenses triable in the district court committed within the territorial
4 jurisdiction of the district court for which it is impaneled, and the Second Judicial District Court's
5 territorial jurisdiction extends statewide to all felony offenses. The Grand Jury possesses the same
6 authority. Although the State offers many arguments as to why Washoe County is the proper venue
7 to try this matter, the issue of improper venue was not raised by Mr. Guzman. Therefore, the Court
8 will decline to rule on venue at this time.

9 In consideration of all the pleadings, arguments, Constitution and statutes of Nevada, legal
10 precedent and analysis in prior cases, and the above discussion, the Court finds by a preponderance
11 of the evidence that the Washoe County Grand Jury had territorial jurisdiction to find "A True Bill"
12 on all the offenses charged in the Indictment, including the alleged crimes in Count III, IV, V and
13 VI committed in Douglas County.

14 Based on the foregoing, good cause appearing, and in the interest of justice,

15 IT IS HEREBY ORDERED that the State's Motion to submit more than 10 pages in its
16 Opposition is GRANTED, and the arguments on the subsequent pages shall be considered.

17 IT IS HEREBY FURTHER ORDERED that the Motion to Dismiss is DENIED.

18 DATED this 22 day of June, 2019.

19 Connie J. Steinheimer
20 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

CASE NO. CR19-0447

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 22 day of June, 2019, I filed the **CORRECTED ORDER DENYING MOTION TO DISMISS** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

 X Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.

CHRISTOPHER HICKS, ESQ. for STATE OF NEVADA
TRAVIS LUCIA, ESQ. for STATE OF NEVADA
MARK JACKSON, ESQ. for STATE OF NEVADA
GIANNA VERNES, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)
DIV. OF PAROLE & PROBATION
JOHN PETTY, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)
JOHN ARRASCADA, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)
JOSEPH GOODNIGHT, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)
KATHERYN HICKMAN, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)
MARILEE CATE, ESQ. for STATE OF NEVADA

 Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]

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DATED this 22 day of June, 2019.



CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 28th day of June 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows: Jennifer P. Noble, Chief Appellate Deputy and Marilee Cate, Appellate Deputy, Washoe County District Attorney's Office.

I certify that I served a copy of this document by e-mailing a true and correct copy thereof to:

Hon. Connie J. Steinheimer
Second Judicial District Court, Dept. 4

Christopher J. Hicks
Washoe County District Attorney

Mark Jackson
Douglas County District Attorney

John Reese Petty
John Reese Petty
Washoe County Public Defender's Office