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Electronically Filed  
Mar 16 2020 05:16 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

RAMON MURIL DORADO,	)	Supreme Court Case No.: 79556
	)	Dist. Ct. Case No.: C-17-323098-1
Petitioner,	)	
	)	
vs.	)	
	)	
THE STATE OF NEVADA,	)	
	)	
Respondent.	)	

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**APPELLANT'S APPENDIX**

Volume 1

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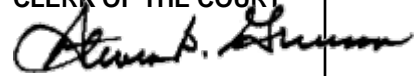
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0205  
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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C-17-323098-1
	)	
v.	)	DEPT. NO. II
	)	
RAMON MURIL DORADO,	)	July 26, 2017
	)	DATE: June ,2017
Defendant,	)	TIME: 9:00 a.m.
	)	

**MOTION TO DISMISS FOR FAILURE  
TO PRESERVE EVIDENCE**

COMES NOW, the Defendant, RAMON MURIL DORADO, by and through his attorney, VIOLET R. RADOSTA, Deputy Public Defender, and moves this Honorable Court for an order dismissing the indictment for failure to preserve evidence during the initial investigation of this case in April 1999 thereby violating his constitutional rights to due process and a fair trial.

This Motion is based upon the attached Declaration of Counsel, any documents attached hereto, argument of Counsel and any information provided to the Court at the time set for hearing this motion.

DATED this 20<sup>th</sup> of June, 2017.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Violet R Radosta  
VIOLET R. RADOSTA, #5747  
Deputy Public Defender



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**POINTS AND AUTHORITIES**

**FACTS**

On April 24, 1999, Michelle Lehr contacted Las Vegas Metropolitan Police and reported that she had been sexually assaulted by a man she knew casually. She had met up with friends at the Silver Saddle bar around midnight on April 24, 1999. At approximately 7 am, Ms. Lehr and her male acquaintance left the Silver Saddle in her car purportedly to meet up with friends at a PT's pub. Instead, Ms. Lehr drove to the man's apartment at 2101 Sunrise Ave. They went inside the apartment where there was at least one other man, who was younger than Ms. Lehr. Shortly after she arrived at the apartment, the younger man left to go to the store. Soon after arriving, Ms. Lehr claims that the man who she knew casually picked her up and dragged her into the bedroom where he proceeded to sexually assault her. (GJT 9-11). She claims she stabbed him with a safety pin to get him to let her go, but it didn't work. Eventually, the man moved away from her and she was able to walk out of the bedroom and the apartment. (GJT 13). She got into her car and told the other roommate, who had returned at some point and followed her outside, that she was going to report the incident to the police. (GJT 13).

She went to the Las Vegas Metropolitan Police Department substation on St. Louis, after stopping at her friend's apartment to check on her son. She made a report and was transported to University Medical Center for a medical exam. (GJT 13). All of that occurred on April 24, 1999.

Michelle Lehr was interviewed by LVMPD M. Hnatuick on April 24, 1999. The interview was conducted at the University Medical Center quiet room. During her interview, Ms. Lehr was able to provide a specific address of the apartment building where the alleged assault took place as 2101 Sunrise Avenue. She was also able to identify the location of the

1 apartment as the lower right downstairs apartment. She identified the casual male acquaintance  
2 as a Hispanic male named Raymond, 5'6 or 5'7, black hair, brown eyes, medium complexion  
3 wearing a light shirt, black pants, black tie and brown cowboy boots. She told Detective  
4 Hnatuick that the individual had scratches all over his face, but that the scratches had been on his  
5 face when she had met man earlier in the evening.

6 Fast forward 16 years to October 27, 2015 and Ms. Lehr's sexual assault examination kit  
7 was submitted to the LVMPD forensic lab for testing. On December 15, 2015, a hit from the  
8 Combined DNA Index System (CODIS) identified Ramon Muric Dorado a potential for the male  
9 DNA in Ms. Lehr's SANE kit. Based on that information, in January 2016 LVMPD obtained a  
10 search warrant signed by Judge Nancy Alf and requesting a buccal swab be obtained from  
11 Ramon Muric Dorado.  
12

13 On November 17, 2016, LVMPD forensic lab tested the buccal swab and determined that  
14 one of the swabs taken in the SANE kit potentially contained DNA from Mr. Dorado.  
15

16 On April 17, 2017, Mr. Dorado was arrested on charges of sexual assault. He appeared in  
17 Las Vegas Justice Court on April 19, 2017 and the Public Defender's office was appointed to  
18 represent him. A preliminary hearing date was set for May 26, 2017.

19 On April 26, 2017, Deputy District Attorney Jake Villani presented evidence in this  
20 matter to the grand jury. After hearing the evidence presented by the prosecution, the grand jury  
21 deliberated for less than 1 minute and then indicted Mr. Dorado on 3 counts of Sexual Assault.  
22

23 Mr. Dorado first appeared in the Eighth Judicial District Court Department II on May 4,  
24 2017. The matter was continued 2 weeks at Mr. Dorado's request. On May 18, 2017, Mr.  
25 Dorado requested one more week to review the case with his attorney before entering a plea and  
26 to allow his attorney the opportunity to file a motion for own recognizance release to be heard at  
27 the same time as his entry of plea. That request was denied by the Court and the Court entered a  
28



1 not guilty plea on behalf of Mr. Dorado. The Court also instructed Mr. Dorado and his counsel  
2 that an own recognizance motion would still be heard by the Court if it was filed.

3 Mr. Dorado invoked his right to a speedy trial and his trial date was set for July 17, 2017  
4 with a calendar call date of July 11, 2017.

5 This Motion to Dismiss all charges pending against Mr. Dorado follows.  
6

7  
8 **ARGUMENT**

9 All criminal defendants are entitled to a fair trial pursuant to the Due Process Clauses of  
10 the Fifth and Fourteenth Amendments of the U.S. Constitution and Article I, Section 8 of the  
11 Nevada Constitution. Due to the complete and total lack of investigation by the Las Vegas  
12 Metropolitan Police Department in 1999, when Ms. Lehr first reported this alleged crime, Mr.  
13 Dorado is unable to receive a fair trial. The actions or lack of action by the Las Vegas  
14 Metropolitan Police Department warrant dismissal of all charges against Mr. Dorado.  
15

16 Injustice arises from the State's failure to gather evidence. *State v. Ware*, 118 N.M. 319,  
17 881 P.2d 679 (N.M. 1994). In a criminal investigation, police officers generally have no duty to  
18 collect all potential evidence. . . however, this rule is not absolute. *Randolph v. State*, 117 Nev.  
19 970, 987, 36 P.3d 424, 435 (2001) (internal citations omitted). *Daniels v. State*, 114 Nev. 262,  
20 956 P.2d 111 (1998). In certain cases, “a failure to gather evidence may warrant sanctions  
21 against the State.” *Daniels v. State*, 114 Nev. 262, 268, 956 P.2d 111, 115 (1998).  
22

23 The Nevada Supreme Court has adopted a two-part test to determine when dismissal of  
24 charges is warranted due to the State's failure to gather or preserve evidence. *Daniels*. at 267-68,  
25 956 P.2d at 115. First, the defense must “show that the evidence was material, i.e., that there is a  
26 reasonable probability that the result of the proceedings would have been different if the  
27 evidence had been available.” Second, “if the evidence was material, the court must determine  
28

1 whether the failure to gather it resulted from negligence, gross negligence, or bad faith.” *See id.*;  
2 *see also Randolph*, 117 Nev. at 987, 36 P.3d at 435. In the case of mere negligence, no  
3 sanctions are imposed, but the defense may question the State's witnesses about their  
4 investigative deficiencies. *See id.* If the Court determines that the State acted with gross  
5 negligence, the defense is entitled to a presumption that the evidence would have been  
6 unfavorable to the State. Finally, in the case of bad faith, dismissal of the charges may be  
7 warranted. *Randolph*, 117 Nev. at 987, 36 P.3d at 435 (citing *Daniels*, 114 Nev. at 267, 956 P.2d  
8 at 115).

9  
10 As stated above, Ms. Lehr was interviewed by LVMPD Detective Hnatuick on April 24,  
11 1999 at 2:50 in the afternoon. (Ms. Lehr’s interview is attached as Exhibit #1). She reported that  
12 at approximately 7am, she drove herself and a man she had been drinking and dancing with  
13 earlier in the night at the Silver Saddle, to his apartment at 2101 Sunrise Ave. She didn’t know  
14 the specific apartment number, but told the detective that it was the downstairs apartment on the  
15 right-hand side. Detectives never went to that apartment or even to that apartment building to  
16 investigate if anyone had heard screaming or witnessed Ms. Lehr leaving the apartment earlier  
17 that day.

18  
19 Ms. Lehr also told detectives that when she entered the apartment with the unidentified  
20 man, there was another younger man in the apartment who was approximately 20 years old. She  
21 was introduced to the younger man by the man she had driven to the apartment, but she couldn’t  
22 recall his name for detectives. Prior to Ms. Lehr allegedly being picked up and taken into the  
23 bedroom, the young man left the apartment to go to the store. Ms. Lehr told the detective that  
24 upon leaving the bedroom after the alleged assault, she discovered the young man had returned  
25 to the apartment. She allegedly left the bedroom crying which the young man would have seen.  
26 Ms. Lehr told detectives she didn’t simply leave the bedroom and the apartment, but took the  
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1 time to speak to the young man. She even remembered that she called the man that had allegedly  
2 attacked her an 'asshole' and then the young man asked what happened. Per her statement to  
3 detectives, Ms. Lehr told the young man what had just happened in the bedroom.

4 After speaking with the young man in the living room, Ms. Lehr left the apartment in a  
5 hurry with the young man following after her asking if she was mad at him. Ms. Lehr noticed  
6 that two women in the apartment complex were so surprised by her appearance or her rushing  
7 out of the apartment or the young man following after her or her hurriedly adjusting her clothes  
8 that the two ladies just stared at her as she got into her car and drove away.  
9

10 According to Ms. Lehr, there is one potential witness who was inside the apartment when  
11 she arrived and could verify her presence in the apartment with the unidentified man. That same  
12 person left for a short period of time, but was inside the apartment at the moment Ms. Lehr left  
13 the bedroom. He could have been a witness to her demeanor and her appearance as well as those  
14 of the unidentified man who appears to be a roommate of this young man. Beyond that, Ms.  
15 Lehr TOLD HIM WHAT HAPPENED. He could have been a confirmatory witness for the State  
16 had the detectives gone to the apartment and simply made some inquiries. Finally, there are two  
17 other potential witnesses who saw her leave the apartment potentially upset and adjusting her  
18 clothes. She was noticeable enough in her description that the two ladies stared. Once again,  
19 those women might have been located had the detectives simply gone to the apartment complex  
20 after taking Ms. Lehr's statement.  
21  
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23 To look at it from the opposite view, had the detectives gone to that apartment complex  
24 and spoken with the young man, he may not have corroborated Ms. Lehr's statement. He may  
25 not have heard anything that sounded like a struggle or been told that his roommate was an  
26 'asshole' as Ms. Lehr recalled. Furthermore, the two ladies may have had a different version of  
27 what they saw had they been located and interviewed by the detectives. Multiple eye-witnesses  
28

1 to the alleged attack or the moments immediately following the alleged attack could provide an  
2 immense amount of information that is no longer available to the defense. This is directly due to  
3 the lack of investigation by the Las Vegas Metropolitan Police Department. At this point, the  
4 defense is left to speculate what those witnesses saw and heard that day.

5 Evidence is material when there is a reasonable probability that had the evidence been  
6 available to the defense the result of the proceedings would have been different. *Randolph v.*  
7 *State*, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001). An eyewitness who was present at the actual  
8 time of the assault, or who could testify about the appearance and demeanor of the Ms. Lehr  
9 upon leaving the bedroom or the apartment, or could repeat the story she told immediately after  
10 leaving the bedroom the eyewitness is material evidence standing on its own. In this case, there  
11 isn't simply one eyewitness but many and none of them were interviewed by the police despite  
12 the police knowing they existed within a few hours of the alleged assault when their memories  
13 would have been the freshest. Now, the State will be able to present the uncontroverted  
14 testimony of the complaining witness to the jury, which is not a fair or accurate portrayal of the  
15 allegations. The State is able to present this snowy white version due to their own failings. The  
16 cumulative nature of so much material evidence not being available to the defense clearly rises to  
17 the level of bad faith on the part of the detectives in this case, which requires dismissal of the  
18 charges. Had the detectives simply missed one witness interview then maybe the State could  
19 argue it was negligence or gross negligence on the part of the investigating officers. This is an  
20 example of bad faith due to the amount of uninvestigated information and the nature of that  
21 uninvestigated information.  
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25 Beyond likely witnesses to the alleged assault, there is other evidence that was not  
26 gathered or even looked for in this case. Ms. Lehr tells of a struggle in the bedroom where her  
27 clothes were forcibly taken off her including her pantyhose. She kicked at the man and even  
28

1 stabbed him on the hand with a safety pin from her clothes. She described a struggle around the  
2 bedroom room that was at times on the bed and at times on the floor. She said she tried reaching  
3 for something to use to get him off her but only found clothes around the room.

4 Based on her description, the police could have sought a search warrant and gone to that  
5 apartment to look for signs of a struggle. This was a few hours after the alleged assault. They  
6 also could have looked for injuries to the hand or hands of the men who lived at the apartment or  
7 safety pins on the floor in an effort to corroborate Ms. Lehr's version of events. Instead, they did  
8 nothing. And, as a result of them doing nothing, there are no crime scene photos, no crime scene  
9 analysis of the bedsheets and no way for the defense to forensically challenge Ms. Lehr's version  
10 of what occurred that day 18 years ago. Once again, the lack of investigation allows the State to  
11 present a distorted version of the events that allegedly occurred that morning 19 years ago. The  
12 lack of investigation also precludes the defense from having the ability to present a full and  
13 complete defense.  
14  
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16 In yet another example of how the evidence was disregarded, Ms. Lehr told detectives  
17 that she had met the man at the Silver Saddle the night before when she was hanging out with her  
18 friend Candy. Per her interview, Ms. Lehr's friend Candy had been dancing with the man that  
19 had allegedly attacked Ms. Lehr. Ms. Lehr also told detectives that the individual had been in a  
20 band, played bass or drums and his name was Raymond. Detectives failed to go to the Silver  
21 Saddle to see if there was any video footage from the night before that would corroborate Ms.  
22 Lehr's story. They also could have spoken to bartenders to see how much each of them had to  
23 drink. Ms. Lehr told detectives she had only one drink because she didn't like to get drunk.  
24 Perhaps that wasn't the case. Had detectives gone to the Silver Saddle and asked a few questions  
25 Ms. Lehr's details about the hours leading up to the alleged attack would have been confirmed or  
26 would have been shown to be not true, but detectives didn't bother.  
27  
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1 Finally, Ms. Lehr told detectives that after the incident she went to her friend Candy's  
2 house to pick up her son and it was decided then that Metro would be contacted. Detectives  
3 didn't bother to interview a witness who could have been a benefit to the State's case in that she  
4 was a friend of Ms. Lehr's.

5 This is a case where not a single piece of evidence wasn't gathered or investigated. The  
6 Las Vegas Metropolitan Police Department didn't investigate anything connected to this  
7 allegation. They merely took a statement and did nothing else to investigate this case. While it  
8 is anticipated that the State will argue, they have no duty to investigate a case in order to produce  
9 exculpatory evidence for a potential criminal defendant, this is a very unique situation due to the  
10 age of the case and lack of investigation. Mr. Dorado is an individual accused of a crime  
11 allegedly committed 18 years ago. He is at a complete disadvantage to locate potential witnesses  
12 and evidence to defend himself and show that he did not commit the crime he is accused of  
13 committing. There is no 911 call on file with LVMPD anymore due to their policy of destroying  
14 calls after a certain period of time. Perhaps someone heard a woman yelling and screaming as  
15 she left the apartment and threatening Mr. Dorado. We will never know. It appears that the  
16 apartment building located at 2101 Sunrise Avenue may have been torn down sometime in the  
17 last 18 years, so the defense cannot subpoena the lease records of anyone living at that address in  
18 1999. If there were any potential witnesses at that address, we will never know. For the sake of  
19 argument, if the defense is able to locate someone who had relevant information, their memory is  
20 not as fresh as it would have been in 1999. Witnesses should be interviewed as close in time to  
21 the alleged incident when their memory was fresh.

22 The State may argue that Mr. Dorado's DNA was purportedly identified as part of Ms.  
23 Lehr's sexual assault kit, so there is no need for all the superlative evidence the defense is  
24 pointing out. Even if that result is correct, the case doesn't end there. The details of that night  
25  
26  
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1 Fourteenth Amendments of the U.S. Constitution and Article I, Section 8 of the Nevada  
2 Constitution. Due to the complete and total lack of investigation by the Las Vegas Metropolitan  
3 Police Department in 1999, when Ms. Lehr first reported this alleged crime, Mr. Dorado's  
4 constitutional rights are being violated simply by the State's decision to prosecute this case. The  
5 actions or lack of action by the Las Vegas Metropolitan Police Department warrant dismissal of  
6 all charges against Mr. Dorado.

7 DATED this 20<sup>th</sup> day of June, 2017.

8 PHILIP J. KOHN  
9 CLARK COUNTY PUBLIC DEFENDER

10 By: /s/ Violet R Radosta  
11 VIOLET R. RADOSTA, #5747  
12 Deputy Public Defender



1 **NOTICE OF MOTION**

2 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

3 YOU WILL PLEASE TAKE NOTICE that the foregoing Motion To Dismiss will  
4 be heard on July 6, 2017, at 9:00 am in District Court Department II.

5 DATED this 20<sup>th</sup> day of June, 2017.

6 PHILIP J. KOHN  
7 CLARK COUNTY PUBLIC DEFENDER

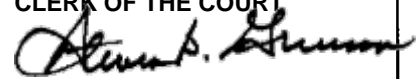
8  
9 By: /s/ Violet R Radosta  
10 VIOLET R. RADOSTA, #5747  
11 Deputy Public Defender

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17 **CERTIFICATE OF ELECTRONIC FILING**

18 I hereby certify that service of the above and foregoing was served via electronic  
19 e-filing to the Clark County District Attorney's Office on the 20<sup>th</sup> day of June, 2017 by  
20 Electronic Filing to:  
21

22 District Attorneys Office  
23 E-Mail Address:  
[Jaclyn.Motl@clarkcountyda.com](mailto:Jaclyn.Motl@clarkcountyda.com)

24  
25 /s/ Anita H Harrold  
26 Secretary for the Public Defender's Office  
27  
28



1 **OPPS**  
2 STEVEN B. WOLFSON  
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4 Nevada Bar #001565  
5 JACOB J. VILLANI  
6 Chief Deputy District Attorney  
7 Nevada Bar #011732  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7  
8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA,  
11 Plaintiff,

12 -vs-

13 **RAMON MURIL DORADO,**  
14 **#1673321**

15 Defendant.

CASE NO: **C-17-323098-1**

DEPT NO: **II**

16  
17 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO**  
18 **DISMISS FOR FAILURE TO PRESERVE EVIDENCE**

19 DATE OF HEARING: **JULY 6, 2017**  
20 TIME OF HEARING: **9:00 AM**

21 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
22 District Attorney, through JACOB J. VILLANI, Chief Deputy District Attorney, and hereby  
23 submits the attached Points and Authorities in Opposition to Defendant's Motion to Dismiss  
24 for Failure to Preserve Evidence.

25 This Opposition is made and based upon all the papers and pleadings on file herein, the  
26 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
27 deemed necessary by this Honorable Court.

28 //

//

1 POINTS AND AUTHORITIES

2 STATEMENT OF FACTS

3 In the late hours of April 23, 1999, into the morning of April 24, 1999, M.L. went out  
4 dancing with her friends Candy and Joanna to the Silver Saddle bar. Grand Jury Transcript  
5 (“GJT”) p. 7. While at the bar, M.L. met one of the members of the band playing that night,  
6 who was introduced to her as Raymond aka Ray, later identified as Ramon Muril Dorado  
7 (“Defendant”). Id. After talking to Defendant for a bit, M.L. left briefly to check on her son  
8 who was staying at Candy’s house right down the street. Id. When M.L. came back to the bar,  
9 Candy, Joanna and others, including Defendant, were sitting down at the bar in the back. GJT  
10 p. 8. M.L. sat between Candy and Defendant. Id. Later on in the night, the group discussed  
11 going to PT’s Pub when the bartender, who was hanging out with the group, got off work. Id.  
12 M.L., who was the designated driver for Candy and Joanna, agreed to go as long as she was  
13 back home by 10:00 am. Id.

14 Around 7:00 am the group decided to leave to PT’s. Id. Joanna went with the bartender  
15 in his car. Id. Candy last minute decided to call her boyfriend to pick her up and agreed to  
16 meet up with M.L. in front of the house by 10:00am so the kids would not think anything. GJT  
17 p. 9. On the way to PT’s Defendant said that he had to cash his paycheck and stop by his  
18 house to call in to work. Id. Not thinking anything of it at that time, M.L. drove to Defendant’s  
19 house. Id. When they got there, Defendant asked M.L. to come inside. Id. Inside the house  
20 was a young man that did not speak English. Id. Defendant spoke to the young man in Spanish  
21 and from what M.L. could understand, Defendant sent him to the store to get something. Id.  
22 When the young man left, Defendant picked M.L. up and dragged her into the bedroom as she  
23 was telling him to put her down. Id. Defendant refused to listen and brought M.L. into the  
24 bedroom. GJT p. 10.

25 In the bedroom Defendant proceeded to try to kiss M.L. while she pushed him away.  
26 Id. M.L. told Defendant that she had not done anything to suggest that is what she wanted and  
27 that she was going to be leaving. Id. However, when M.L. went to walk out the door,  
28 Defendant grabbed her and threw her on to the bed. Id. Defendant then laid on top of her and

1 started to try to kiss her neck again. Id. M.L. again pushed Defendant off and rushed to the  
2 door. Id. Defendant grabbed M.L. again, pulled her shirt up and proceeded to try to take her  
3 pants off. Id. M.L. fell to her side, once again pushed Defendant off and tried running for the  
4 door. Id. Defendant grabbed her again, threw her against the wall and pulled her pants down  
5 even more. Id. Defendant threw M.L.'s legs over her head and pulled her panty hose down.  
6 Id. Defendant then put his mouth on M.L.'s vagina using both his mouth and tongue. GJT 10-  
7 11. M.L. pushed Defendant forward and tried to find something to throw at him or something  
8 to hit him with. GJT p.11. M.L. tried to shove clothes in Defendant's face, attempting to  
9 smother him. Id.

10 As M.L. continued to struggle with Defendant, he got one of her legs out of her panty  
11 hose, flipped her back on the ground and laid on top of her trying to push her legs apart. Id.  
12 As M.L. was trying to hold her legs together, Defendant held her arms, pulled her legs apart  
13 and proceeded to try to insert his penis inside her vagina. Id. M.L. continued to fight  
14 Defendant and using her one free hand tried to find something to hit him with. GJT p. 12.  
15 M.L. was ultimately able to find one of the safety pins from her pants, which held her pants  
16 up, and stabbed Defendant in the shoulder and hand. Id. However, that did not stop Defendant  
17 and he proceeded to use one of his hands to move his penis inside her vagina. Id. M.L. could  
18 feel his penis and hand inside and outside of her vagina. Id. Defendant was not able to keep  
19 his penis inside M.L.'s vagina because he was unable to keep his erection. Id. After a couple  
20 of minutes of trying, Defendant got up and allowed M.L. to get her stuff. Id. As Defendant  
21 sat there, he kept saying "she's right, she's right", while M.L. asked him what part of no means  
22 no did he not understand. Id. Defendant responded that he was not talking about what just  
23 happened but about his ex-wife telling him he will never be able to have sex with another  
24 woman again. GJT 12-13. As M.L. walked out, she saw that the young man was back from  
25 the store. GJT p. 13.

26 M.L. returned to Candy's house to check on her son and they immediately took her to  
27 the police station. Id. M.L. told the police what happened and they took her to UMC, where  
28 a Sexual Assault Nurse Examine ("SANE exam") was conducted. Id.

1 ARGUMENT

2 I. LAW ENFORCEMENT HAS NO DUTY TO COLLECT ALL POTENTIAL  
3 EVIDENCE IN AN INVESTIGATION

4 Defendant's request to dismiss this case is largely based upon an alleged failure to  
5 "preserve evidence." Motion at 5. However, throughout his motion Defendant fails to  
6 distinguish between collection and preservation of evidence. See Daniels v. State, 956 P.2d  
7 111, 114-115 (1998).

8 In order to establish a due process violation resulting from the State's *loss or*  
9 *destruction of evidence*, a defendant must demonstrate either (1) that the state lost the evidence  
10 in bad faith; or (2) that the loss of evidence unduly prejudiced the defendant's case **and** the  
11 evidence possessed an exculpatory value that was apparent before the evidence was destroyed.  
12 Sheriff, Clark County v. Warner, 112 Nev. 1234, 1239-1240 (1996); *citing* State v. Hall, 105  
13 Nev. 7, 9 (1989). Under these circumstances, it is Defendant's burden to show "that it could  
14 be reasonably anticipated that the evidence sought would be exculpatory and material to the  
15 defense." Sparks v. State, 104 Nev. 316 (1988), *citing* Boggs v. State, 95 Nev. 911 (1979).

16 Regarding *gathering potential evidence* in a case, law enforcement has no duty to  
17 collect all potential evidence in an investigation. Randolph v. State, 117 Nev. 970, 987 (2001);  
18 Jackson v. State, 128 Nev. 598 (2012). Failure to gather evidence may result in sanctions, but  
19 only under very limited circumstances. Id. First, it is a defendant's burden to show that the  
20 potential evidence at issue was material, meaning that that there is a reasonable probability  
21 that the result of the proceedings would be different if the evidence was available. Randolph  
22 *citing* Daniels v. State, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998). Only if a defendant can  
23 meet that burden does the court need to determine whether such failure resulted from mere  
24 negligence, gross negligence or bad faith. Id. If it is a case of mere negligence, no sanctions  
25 are imposed. If gross negligence is shown, the defense is entitled to a presumption that the  
26 evidence would have been unfavorable to the State. Finally, if bad faith is shown dismissal  
27 may be warranted depending on the case. Id.

28 //

1           In Randolph, the defendant robbed and murdered a bartender in Las Vegas. A witness  
2 testified that early in the morning on May 5, 1998, Randolph and Garner returned to a trailer  
3 where the two had been earlier in the evening smoking crack cocaine. 117 Nev. at 986. The  
4 trailer was a location where people regularly came to use cocaine. Id. Upon his return, Garner  
5 changed out of a brown shirt and brown pants and put on a green shirt and green pants. Id.  
6 After Garner's arrest, the green shirt and pants were impounded at the city jail and later tested  
7 for the presence of blood. Id. The test was negative. Id. Garner's shoes were not impounded or  
8 tested. Id. Although investigators were aware that Garner had changed out of brown clothes  
9 after the crimes, they never searched for the clothes. Id. The trunk of Garner's car contained a  
10 pile of clothing, but investigators did not look through the clothing to see if it included the  
11 brown shirt and pants. Id.

12           On appeal, Randolph argued that it was error for the court to reject his proposed jury  
13 instruction that stated because the State failed to seize and test brown clothing worn by Garner  
14 on the night of the crimes "for the existence of blood evidence, the clothing is irrefutably  
15 presumed to have contained blood evidence." Id. at 986. Randolph asserted that the State failed  
16 to gather potentially exculpatory evidence because a finding of blood on Garner's clothing or  
17 shoes would have supported Randolph's defense that Garner was the shooter. Id. at 987.  
18 Randolph argued that he therefore had a right to the proposed jury instruction. Id. The Court  
19 stated that if the evidence was material and the police acted out of gross negligence or bad  
20 faith in not preserving it, Randolph would have had a right to an instruction that the ungathered  
21 evidence was presumed to be unfavorable to the State. Id. However, the Court concluded that  
22 Randolph did not show that the ungathered evidence was material. Id.

23           The Court found that if testing of Garner's clothing or shoes had revealed the victim's  
24 blood, it was possible that Randolph might not have received a death sentence. Id. However,  
25 Randolph did not demonstrate a reasonable probability that such testing would have revealed  
26 any blood. Id. The Court found that Randolph offered no evidence to corroborate his allegation  
27 that Garner was the shooter, and the possibility that testing Garner's clothing and shoes would  
28 have been favorable to his case was mere speculation. Id. The Court went on to opine that even

1 assuming, *arguendo*, the evidence was material, the failure to collect it was “at worst”  
2 negligent. Id. at 988. First, Randolph did not show that police could have collected the brown  
3 shirt and pants, he simply assumed that a search of the trailer or the clothing in the trunk of  
4 Garner's car would have uncovered them. Id. Second, Randolph did not show that the potential  
5 evidentiary significance of Garner's shoes, which were available to police, was so obvious that  
6 it was gross negligence not to impound and test them. Id. Thus, the Court held that even  
7 assuming the evidence was material and police were negligent in not gathering it, Randolph's  
8 remedy was to examine witnesses regarding the deficiency of the investigation, and the record  
9 showed that he did so. Id.

10 Likewise, in Jackson v. State, 128 Nev. 598 (2012), the defense brought a similar  
11 motion claiming that the State failed to preserve all video footage that defense believed  
12 relevant to the proceedings. Defendant Jackson went to a tavern intending to rob the bar. Id.  
13 at 602. Jackson coerced employee Duffy into helping him try to disable the security cameras.  
14 Id. During the robbery, Jackson forced Duffy into the restroom and shot Duffy. Id. The two  
15 men struggled, Jackson fled, and Duffy called police. Id. The bar's surveillance manager was  
16 contacted by police and offered to provide a complete video for the evening. Id. The police  
17 declined and asked him to prepare a composite video including only frames that showed  
18 Jackson or Duffy, which resulted in omission of 12 to 15 hours of recordings from the  
19 surveillance cameras. Id.

20 On appeal, Jackson claimed that the video surveillance was erroneously admitted. Id.  
21 at 613. The Supreme Court disagreed and found that the exculpatory value of the omitted video  
22 was minimal. Id. Jackson suggested that Duffy was complicit in the robbery and that the  
23 omitted footage might somehow prove that. Id. The Court found that argument lacked merit  
24 because the State provided all video footage that featured Duffy and Jackson, including  
25 footage of their interaction before and during the robbery. Id. The surveillance manager also  
26 testified that the omitted video did not contain any relevant footage. Id. Given that the omitted  
27 footage had no apparent exculpatory value, the Court held that the evidence did not affect the  
28 result of the trial, especially in light of the substantial evidence presented by the State. Id. at

1 614. The Court also found that Jackson did not establish bad faith, and nothing in the record  
2 on appeal indicated bad faith. Id. According to the Court, the decision to compile only parts  
3 of the surveillance recordings appeared to be the product of concern for efficiency, not bad  
4 faith. Id. Thus, the Court held that the State's failure to gather the full video surveillance  
5 footage did not result in injustice and the district court did not err by denying Jackson's motion  
6 to strike the video evidence or grant a mistrial. Id.

7 Here, Defendant cites the following "unpreserved" evidence that he believes would be  
8 material to his case: (1) information regarding the male witness who was present at the  
9 apartment before and after the rape; (2) information regarding the two ladies who were staring  
10 at the victim as she drove from the scene of the rape; (3) service of a search warrant on the  
11 residence to look for "signs of a struggle" and safety pins; (4) crime scene photos and analysis  
12 of the bedsheets; (5) video footage from the Silver Saddle that would corroborate M.L.'s story;  
13 (6) interviews with bartenders to see how much each party had to drink; (7) interview with  
14 M.L.'s friend "Candy" whom she was with the night in question; and (8) the lack of a 911 call.  
15 With regard to everything but the 911 call, Defendant's argument is limited to the standard for  
16 alleged failure to *gather* evidence, not alleged failure to *preserve* evidence.

17 **1. Information regarding the male witness who was present at the apartment**  
18 **before and after the rape.**

19 Defendant claims that police should have interviewed an unknown male witness, which  
20 may be true. However, there is nothing in the reports indicating that the police were aware of  
21 the identity of this unknown male. In fact, the police did not know Defendant's identity either.  
22 (*See* Case Monitoring Form attached as Exhibit 1). According to the Case Monitoring Form,  
23 LVMPD only knew the suspect as "Ray" or "Raymond" until they contacted the Silver Saddle  
24 Saloon on May 5, 1999 and received information that he was "Ramon accordion player who  
25 the band let go." Exhibit 1.

26 Additionally, LVMPD was unaware of the location of the rape. All the victim was able  
27 to tell them was the rape occurred at an "unknown apartment" located at 2101 Sunrise Ave.  
28 (*See* Officer's Report attached as Exhibit 2). Also, M.L. told officers that Defendant told her



1 the apartment was a “friend’s apartment,” not his. So, with the victim unable to tell police  
2 which apartment she was in, they had information that there was an “unknown Latin male”  
3 (not known if he was the owner or he was just visiting) in the apartment who had a friend  
4 named “Ray.” Exhibit 2, p. 5. This is simply not enough information to identify the “unknown  
5 Latin male.”

6 Moreover, Defendant is the person who is in the best position to identify this “unknown  
7 Latin male” if he exists. M.L. certainly did not know who he was, and Defendant was  
8 apparently familiar enough with the “unknown Latin male” that the “unknown Latin male”  
9 was comfortable leaving Defendant in the apartment by himself with a woman. The State  
10 would like to have information regarding this individual, but the fact that he remains  
11 unidentified does not indicate there was a grossly negligent investigation. It would have been  
12 excellent police work for detectives to go out to the apartment complex and knock on random  
13 doors until they found Ray’s Latin friend, but the fact that they did not is not negligent, and it  
14 certainly does not rise to the level of bad faith. Neither the State nor Defendant knows what  
15 resources LVMPD had available in 1999 to follow-up on such leads.

16 Using the Daniels standard, *supra*, it is a defendant’s burden to show that the evidence  
17 at issue was material. Here, neither Defendant nor the State has any information regarding  
18 what the “unknown Latin male” saw or heard other than the information provided by the  
19 victim. If the victim’s version of events is accurate, it is very unlikely that the “unknown Latin  
20 male’s” statement would be favorable to the defense. This, coupled with the fact Defendant is  
21 in the best position to identify this person, makes it impossible for Defendant to show that the  
22 evidence would be material to his case. Therefore, with regard to the “unknown Latin male,”  
23 Defendant cannot meet the first Daniels prong. While the fact that the “unknown Latin male”  
24 was not interviewed may be good fodder for cross-examination, Defendant’s claim that the  
25 case should be dismissed because the “unknown Latin male” was not interviewed lacks merit.

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1           **2. Information regarding the two ladies who were staring at the victim as she drove**  
2           **from the scene of the rape.**

3           Likewise, Defendant cannot meet the first Daniels prong with regard to the two  
4 unknown ladies who the victim said saw her walk out of the apartment when she was upset.  
5 This information is referenced in M.L.'s voluntary statement on page 11 wherein she said: "I  
6 know two ladies saw me walk out upset and they just stared at me ... ." This is the only time  
7 these potential witnesses are mentioned. Police had even less information to go on regarding  
8 the identity of the "two ladies" than the "unknown Latin male." Thus, the same analysis applies  
9 as the failure to interview the "unknown Latin male," *supra*. Given this, Defendant's claim  
10 that the case should be dismissed because the two unidentified females were not interviewed  
11 lacks merit.

12           **3. Service of a search warrant on the residence to look for "signs of a struggle" and**  
13           **safety pins.**

14           Defendant claims the case should be dismissed because LVMPD failed to serve a search  
15 warrant on the unknown residence and look for "signs of a struggle" and safety pins, which  
16 M.L. said she tried to defend herself with.

17           First, the exact apartment where these events occurred was unknown to LVMPD. Thus,  
18 a search warrant could not be obtained because the place to be searched for potential evidence  
19 was unknown.

20           Second, even without searching the unknown residence LVMPD had evidence that a  
21 struggle took place. Page 4 of Exhibit 2 notes:

22                           As a result of this struggle and sexual assault, [M.L.] showed me a  
23                           small vertical scratch that appeared on her chest. [M.L.] also had  
24                           several fingernails that were broken. Upon further examination, it was  
25                           learned that [M.L.] had bruises on her left forearm, upper left arm,  
                              right wrist, and the back of her right arm. There was redness on  
                              [M.L.'s] lower back and a bruise on her right lower back. [M.L.]  
                              indicated that these injuries were a result of the struggle.

26           The injuries referenced above were documented in photographs taken by LVMPD.

27           //

28           //

1 Finally, officers did not have the information that M.L. used safety pins in an attempt  
2 to defend herself at the time of the investigation. M.L. did not mention the safety pins other  
3 than to say she was wearing black pants “and there’s safety pins ... because I lost weight and  
4 I wanted to fit them ... .” Exhibit 3, p. 8 (Voluntary Statement of M.L.). The fact that the safety  
5 pins were used as weapons was first mentioned during M.L.’s grand jury testimony in April  
6 of 2017. *See* Reporter’s Transcript of Proceedings filed 5/15/2017, p. 12, ln. 3. Thus, assuming  
7 LVMPD located residence and could establish probable cause for a search warrant, safety pins  
8 would not have been the focus of that search warrant.

9 Again, Defendant has failed to show the materiality or even what potential evidence a  
10 search warrant would have obtained and cannot meet the first Daniels prong. It is possible that  
11 Defendant cleaned up the scene after the rape and nothing would be found. Regardless, the  
12 residence was unknown, a search warrant cannot be obtained on an unknown residence, and  
13 failure to serve an impossible search warrant is not negligence. Therefore, Defendant’s claim  
14 that the case should be dismissed because “signs of a struggle” and safety pins were not  
15 documented lacks merit.

#### 16 **4. Crime scene photos and analysis of the bed sheets.**

17 Defendant claims the case should be dismissed because LVMPD did not take photos of  
18 the crime scene or analyze the bed sheets. Similar to the “signs of a struggle” issue, *supra*,  
19 Defendant fails to address the fact that LVMPD did not know the exact residence and could  
20 not have taken photographs of an unknown residence. Thus, the absence of crime scene photos  
21 of an unknown residence is not negligent.

22 Regarding the bed sheets, no relevant information would have been obtained even  
23 assuming the sheets were collected. Assuming, *arguendo*, that Defendant’s DNA was not  
24 found on swabs of the bed sheets, this would not change the fact that Defendant’s DNA *was*  
25 found inside M.L.’s vagina. Exhibit 4. The probability that the DNA found inside M.L.’s  
26 vagina did not belong to Defendant is approximately 1 in 1.45 sextillion. Given Defendant’s  
27 DNA was found inside M.L.’s vagina, whether it was also on the bed sheets is irrelevant.

28 //

1 Again, Defendant has failed to offer any basis for the materiality of the evidence he  
2 complains was not collected. Documenting an unknown scene was impossible, and Defendant  
3 has not shown that the evidence obtained from such documentation would have been favorable  
4 to him and cannot meet the first Daniels prong. Also, the presence or absence of DNA on the  
5 bed sheets would not change the presence of DNA in M.L.'s vagina. Therefore, Defendant's  
6 claim that the case should be dismissed because crime scenes photos were not taken and bed  
7 sheets were not collected lacks merit.

8 **5. Video footage from the Silver Saddle that would corroborate M.L.'s story.**

9 Defendant claims the case should be dismissed because LVMPD did not obtain video  
10 footage from the Silver Saddle that would corroborate M.L.'s story. Again, Defendant chooses  
11 to focus on evidence that is inculpatory instead of evidence that would be material to his case.

12 The State is not aware of any evidence that the Silver Saddle had a surveillance system  
13 in use in 1999, or if it had such a system that the camera angles would have captured M.L. and  
14 her friends. The evidence the State does have indicates Defendant played the accordion in a  
15 band at the Silver Saddle in 1999. *See* Exhibit 1. This information tends to corroborate M.L.'s  
16 account that she met Defendant at the Silver Saddle and he was in a band.

17 Again, Defendant has failed to show the materiality or even the existence of video  
18 surveillance and cannot meet the first Daniels prong. There is no evidence that video  
19 surveillance existed, or if it did exist that it would be favorable to Defendant. Therefore,  
20 Defendant's claim that the case should be dismissed because video footage was not obtained  
21 lacks merit.

22 **6. Interviews with bartenders to see how much each party had to drink.**

23 Defendant claims the case should be dismissed because LVMPD did not interview  
24 bartenders to determine how much M.L. and Defendant had to drink. Sexual assault is a  
25 general intent crime, thus voluntary intoxication is not a defense. *See* Manning v. Warden,  
26 Nev. State Prison, 99 Nev. 82 (1983). Therefore, determining how much "Ray the accordion  
27 player" had to drink that night was not germane to the investigation.

28 //

1 Likewise, whether LVMPD determined M.L.'s level of intoxication is irrelevant.  
2 During M.L.'s interview, she noted that she was the designated driver, had one-and-a-half  
3 drinks, and does not like to get drunk around people. *See* Exhibit 3, pp. 3, 12. There was no  
4 intoxication noted in any other reports.

5 Again, Defendant has failed to show the materiality or exculpatory nature of the  
6 bartenders' potential statements and cannot meet the first Daniels prong. There is no evidence  
7 that the bartenders would have remembered anything, or if they did that it would be favorable  
8 to Defendant. Therefore, Defendant's claim that the case should be dismissed because  
9 bartenders were not interviewed lacks merit.

10 **7. Interview with M.L.'s friend "Candy" whom she was with the night in question.**

11 Defendant claims the case should be dismissed because LVMPD did not interview  
12 M.L.'s friend "Candy." "Candy" is identified by name in the discovery, and may still be  
13 available to interview. Therefore, if Defendant feels interviewing "Candy" will help his case,  
14 he should do so.

15 Again, Defendant has failed to show the materiality or exculpatory nature of "Candy's"  
16 potential statements and cannot meet the first Daniels prong. According to M.L.'s statement,  
17 "Candy" would corroborate M.L.'s version of events. Moreover, if Defendant thinks  
18 "Candy's" testimony will be helpful to him, he should seek her out and have an investigator  
19 interview her, or at least have her subpoenaed to testify at trial. Unlike the "unknown Latin  
20 male," "Candy" is identifiable. Therefore, Defendant's claim that the case should be dismissed  
21 because "Candy" was not interviewed lacks merit.

22 **8. The lack of a 911 call.**

23 Defendant claims the case should be dismissed because LVMPD did not retain the 911  
24 call in this case. Unlike Defendant's other claims, this claim is subject to analysis under the  
25 "loss or destruction of evidence" standard set forth by State v. Hall, *supra*. This is because if  
26 a 911 call existed, it was not retained by LVMPD due to their policy regarding retention of  
27 911 calls.

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The issue with this claim, however, is there is no solid indication that a 911 call was placed by M.L. In fact, the information available indicates that M.L. drove to Southeast Area Command to report the rape. *See* Exhibit 2, pp. 2, 6; Grand Jury Transcript, p. 13.

Even assuming, *arguendo*, that a 911 call was made, pursuant to Hall defendant must demonstrate either (1) that the state lost the evidence in bad faith; or (2) that the loss of evidence unduly prejudiced the defendant's case **and** the evidence possessed an exculpatory value that was apparent before the evidence was destroyed. Here, even Defendant acknowledges that any 911 call would have been purged pursuant to LVMPD policy, so "bad faith" is not in play. Moreover, Defendant can't show that his case is unduly prejudiced or that the evidence was exculpatory. The most likely scenario if a 911 call was made is that it would corroborate M.L.'s statement given within hours of the alleged call. If the statements were inconsistent, it is extremely unlikely that this fact would not be documented somewhere in a report. Therefore, because Defendant cannot show with certainty that a 911 call was placed, or if one was placed that it would be exculpatory, his claim that the case should be dismissed because the State cannot produce the alleged 911 call lacks merit.

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1 CONCLUSION

2 None of Defendant's claims address the most powerful evidence the State has in this  
3 case: Defendant's DNA inside of M.L.'s vagina. Regardless of whether any of the evidence  
4 Defendant cites as error existed, this fact does not change. One of the closest witnesses to the  
5 rape who was present at the time, the "unknown Latin male," is known only to Defendant.  
6 Everything else argued as error by Defendant does not change the fact that his DNA was in  
7 M.L.'s vagina, and she reported a man matching Defendant's description raped her on the  
8 night in question and had injuries consistent with being raped that were documented.  
9 LVMPD's investigation into this rape was not perfect, but this is not the standard. Defendant  
10 has failed to show that an imperfect investigation divested him of material evidence, and this  
11 is his burden under the law. Defendant's claim that this case should be dismissed due to an  
12 alleged failure to preserve evidence lacks merit, as Defendant has failed to meet his burden of  
13 showing that the evidence was material. Therefore, the State respectfully requests that this  
14 Court deny Defendant's motion.

15 DATED this 29th day of June, 2017.

16 Respectfully submitted,

17 STEVEN B. WOLFSON  
18 Clark County District Attorney  
Nevada Bar #001565

19 BY /s/ JACOB J. VILLANI  
20 JACOB J. VILLANI  
21 Chief Deputy District Attorney  
22 Nevada Bar #011732  
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**CERTIFICATE OF SERVICE**

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I hereby certify that service of the above and foregoing was made this 29th day of JUNE  
2017, to:

VIOLET RADOSTA, DPD  
harrolah@ClarkCountyNV.gov

BY /s/ HOWARD CONRAD  
Secretary for the District Attorney's Office  
Special Victims Unit

hjc/SVU



**EXHIBIT "1"**

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**CASE MONITORING AND CLOSURE FORM**

99093 01.484

Misd.       G. Misd.       Felony

Crime: SEXUAL ASSAULT

Event #: 990424-1124

Victim: ██████████

Investigator: M. REDDON 4684

Date Assigned: 05/03/99

Review Date: 05/03/99

Suspect 1: RAY

Suspect 2:

Suspect 3:

Suspect 4:

**Case/Suspect Status Section**

Date	Case/Susp	Status	Dispo		Date	Case/Susp	Status	Dispo
06-08-99	CLOSED							

Evidence Section:

Was Evidence Impounded?:

Yes       No

A	NO	ACTIVITY		X	NO	ACTIVITY
	1	Victim/Witness(s) Interviewed			11	County Clerk Records Checked
	2	Area of Crime/Neighborhood Canvassed			12	City/County Business License Checked
	3	Crime Scene Searched/Visited			13	FI Files/Crime Analysis Checked
	4	Fingerprint Search Conducted			14	Photos Ordered
	5	Photo Line-up with Victim/Witness			15	Social Services Checked
	6	P&P Files/Prison Releases Checked			16	Suspect(s) Interviewed
	7	Department Members/Other Police Departments Checked			17	AT/SCOPE/NCIC Entries Made
	8	SCOPE/WVBC/WHI/NCIC/FBI Checked			18	Warrant Served or Attempted
	9	Pawn Files Checked			19	Warrant Information to Other Units
	10	DMV Files Checked			20	Other:

ACT#	DATE	Activity/Property and Evidence Release
1	05/03/99	CASE REVIEWED, MSG LEFT ON VICTIMS RECORDER TO CALL ME
	5-3-99	spoke w/ VICT.
	5-4-99	CONTACTED SILVER SADDLE SALOON 474-2900 CHARLIE HOWELL WILL RECALL WITH BAND MEMBERS NAMES.
	5-5-99	HOWELL CALLED SAID "RAY" IS RAYMOND ANACORDIAN PLAYER WHO THE BAND LET GO
	06-07-99	LEADS EXHAUSTED
	01-05-00	Dispo orders completed on Property in ACE K28046

Cleared by:

*[Signature]* 3662

Date: 06-08-99

Supervisor Initials:

*[Signature]*

**EXHIBIT "2"**

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
OFFICER'S REPORT

99028 01.181  
DISTR. *blw*  
INDEX  
STATS

EVENT #: 990424-1124

SEXUAL ASSAULT  
SUBJECT

DIVISION REPORTING: ISD DIVISION OF OCCURRENCE: PD

DATE AND TIME OCCURRED: 04-24-99/0800HRS LOCATION OF OCCURRENCE: 2101 SUNRISE AVE.  
UNK APT. #  
LAS VEGAS, NV 89101

DICTATING OFFICER: DETECTIVE M. HNATUICK, P#3582  
GENERAL ASSIGNMENT DETAIL

VICTIM: [REDACTED]  
DOB: [REDACTED]  
SSN: [REDACTED]  
WFA: 5'6", 165#, bro/haz  
RES: [REDACTED]  
Las Vegas, NV 89102  
RES PH: [REDACTED]

SUSPECT: RAY (first name only)  
LMA, 28-30 yoa, 5'6", 180#, blk/bro  
BUS: Silver Saddle Saloon  
2510 E. Charleston Blvd.  
Las Vegas, NV

I. SYNOPSIS:

On 04-24-99 at approximately 0800 hours [REDACTED] became the victim of a sexual assault at 2101 Sunrise Avenue in an unknown apartment.

II. PERSONS AT SCENE:

A. PATROL OFFICERS

1. OFFICER V. WILLIAMS, P#4896
2. OFFICER K. WILEY, P#2663

Date and Time of Report: 04-25-99 Officer: M. HNATUICK P#: 3582

Approved: \_\_\_\_\_ Officer: \_\_\_\_\_ P#: \_\_\_\_\_

LVMPD 82 (REV. 1-81) - AUTOMATED

SIGNATURE: *M. Hnatuick*

000032

99028 01.181

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**CONTINUATION REPORT**

ID/Event Number: 990424-1124

Page 2 of 6

**B. ISD PERSONNEL**

1. DETECTIVE M. HNATUICK, P#3582

**C. CRIMINALISTICS**

1. C.S.A. FLETCHER, P#5221

**D. UNIVERSITY MEDICAL CENTER**

1. S.A.N.E. NURSE MARIAN ADAMS

**E. C.A.A.R. REPRESENTATIVE**

1. ARLENE JEROUSEK

**III. WITNESS/PERSON CONTACTED:**

**A. PEREZ, MARIA**

DOB: 06-05-68

LFA, 4'9", 175#, blk/bro

RES: 2851 E. Bonanza, Apt. 2156  
Las Vegas, NV 89101

RES PH: 385-1438

BUS: 2400 Las Vegas Boulevard South'  
Las Vegas, NV 89109

**IV. EVIDENCE IMPOUNDED:**

Pkg. 1, Item 1: Sexual assault kit recovered by S.A.N.E. Nurse Marian Adams  
and retained at University Medical Center.

Pkg. 2, Item 2: One (1) pair of black pantyhose.  
Item 3: One (1) brown halter top.  
Item 4: One (1) pair of black stretch pants.  
Item 5: One (1) black jacket

**V. DETAILS:**

On 04-24-99 at approximately 1124 hours LVMPD Dispatch was notified by a [REDACTED] who stated she had been the victim of a sexual assault earlier in the morning. [REDACTED] responded to the Southeast Area Command where she was met by Officers Williams, P#4896, and Wiley, P#2663. And incident report was created

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**CONTINUATION REPORT**

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under the above event number. [REDACTED] informed officers that she had been sexually assaulted in an unknown apartment located at 2101 Sunrise Avenue. She stated that the suspect was known to her only as Ray. [REDACTED] stated she had met Ray at the Silver Saddle Saloon located at 2501 East Charleston. Lehr stated that Ray was a band member who was playing at the saloon. At this time Officer Wiley made a determination to notify General Assignment Detail.

**VI. CRIME SCENE INVESTIGATION:**

**A. NOTIFICATION OF GENERAL ASSIGNMENT DETAIL.**

On 04-24-99 at approximately 1345 hours I, Detective Hnatuick, P#3582, received a phone call from Officer Wiley who informed me that she was calling from the Southeast Area Command where she had a victim of a sexual assault present with her. Officer Wiley identified the victim as [REDACTED]

During this phone conversation with Officer Wiley, she informed me of the facts as she knew them. At that time I advised Officer Wiley to complete a crime report for sexual assault and transport victim [REDACTED] to University Medical Center where a sexual assault examination could be conducted. I informed Officer Wiley that I would meet them at the hospital.

I responded to University Medical Center where I was met by Officers Wiley and Williams, and the victim [REDACTED]. Officer Williams had completed a crime report under the above event number listing [REDACTED] as the victim of a sexual assault. I brought [REDACTED] into the quiet room at University Medical Center where we had a discussion reference her incident. Inside the quiet room I conducted a taped interview with [REDACTED]

During this taped interview [REDACTED] informed that at approximately 0800 hours she was inside an unknown apartment located at 2101 Sunrise Avenue with a male subject that she had just met that morning. [REDACTED] described the male subject as a Latin male adult, 28 to 30 years of age, known to her only as Ray. [REDACTED] stated that there was another unidentified Latin male adult inside the apartment whom she stated she did not know.

[REDACTED] stated that while they were inside this apartment, suspect Ray picked her up in a cradle-type position and carried her into the bedroom where he then forced himself on her sexually. During the struggle, [REDACTED] was pushed down to the ground, where suspect Ray pulled down her pants and her pantyhose below her knees. During the struggle, [REDACTED] stated she told Ray that she did not want this to happen and that she wanted to go. [REDACTED] stated

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**CONTINUATION REPORT**

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she told the suspect this numerous times. [REDACTED] stated that once Ray had her pants and pantyhose below her knees, he performed oral sex on her, penetrating her vaginally with his tongue. [REDACTED] stated that when the suspect was finished doing this, he then attempted to penetrate her vaginally with his penis; however, [REDACTED] complained that he could not get hard enough to make full penetration.

As a result of this struggle and sexual assault, [REDACTED] showed me a small vertical scratch that appeared on her chest. [REDACTED] also had several fingernails that were broken. Upon further examination, it was learned that [REDACTED] had bruises on her left forearm, upper left arm, right wrist, and the back of her right arm. There was redness on [REDACTED] lower back and a bruise on her right lower back. [REDACTED] indicated that these injuries were a result of the struggle.

After my interview with [REDACTED], she was taken to Fast Track where S.A.N.E. Nurse Marian Adams completed a sexual assault examination. After completing the examination, Adams informed me that the victim had little bruising in the vaginal area and that it was not definitive for sexual assault. The sexual assault kit was recovered by Nurse Adams and retained at University Medical Center.

While [REDACTED] was being examine, her friend Maria Perez responded to University Medical Center with the clothing the victim was wearing earlier in the morning. This clothing was the same clothing she had on during the assault earlier in the morning. After the incident occurred, [REDACTED] originally responded to her friend's house where she changed clothing. It was at University Medical Center, Fast Track, where I took possession of this clothing and impounded it as evidence. The clothing included one pair of black pantyhose, one brown halter top, one pair of black stretch pants, and a black jacket.

**B. VISIBLE EVIDENCE AT CRIME SCENE**

C.S.A. Fletcher, P#5221, responded to University Medical Center where I had her photograph the injuries that [REDACTED] had sustained during her altercation and sexual assault. Those injuries included the vertical scratch on her chest, the broken fingernails, and the above-mentioned bruising. For further information reference the photographs, please refer to the completed C.S.A. Report under the above event number.

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**VII. INTERVIEW OF \_\_\_\_\_ BY DETECTIVE HNATUICK:**

While at University Medical Center, I had an opportunity to conduct a taped interview with the victim \_\_\_\_\_ inside the quiet room adjacent to the emergency room.

During this taped interview, \_\_\_\_\_ informed me that she had had a baby approximately two years ago and had not gone out since that time. On the night of 04-23-99, she and her friend Maria Perez decided to go out for the evening. At approximately 0100, on 04-24-99, the victim \_\_\_\_\_ and Maria Perez were at the Silver Saddle Saloon located at 2501 East Charleston Boulevard. It was there that \_\_\_\_\_ was introduced to a Latin male adult known only to her as Ray. Ray was a member in the band that was playing at the saloon for the evening.

\_\_\_\_\_ stated that she had conversations with Ray and several drinks during the evening. Sometime around 0700 hours, it was decided by a group of people, to include \_\_\_\_\_, Perez, Ray, and some of the other employees of the Silver Saddle Saloon, that they would go out for the morning and go to another bar. \_\_\_\_\_ stated that she was a little unsure about this; however, she was assured that Ray was a decent person. Shortly after this, \_\_\_\_\_ went out to her vehicle and Ray went with her. It was determined that \_\_\_\_\_ would drive and Ray would get a ride with her. While in the vehicle, Ray informed her that he needed to stop by a friend's apartment and that it would only take a minute. He then directed \_\_\_\_\_ to drive to 2101 Sunrise Avenue.

Upon arriving at this address, suspect Ray stated that he would go in only for a minute and asked if \_\_\_\_\_ wanted to join him. \_\_\_\_\_ stated that she was not comfortable with the area of town that she was in and felt that it would be safer to go inside the apartment than to remain sitting in her vehicle. At that time she entered the unknown apartment with Ray. Inside this apartment was another Latin male adult, unknown to \_\_\_\_\_. \_\_\_\_\_ stated she was in the apartment for a short period of time when Ray picked her up in a cradling position and carried her into the bedroom. She stated this was approximately 0800 hours.

Once inside the bedroom of this apartment, Ray began fondling her breasts, attempting to take her clothes off. \_\_\_\_\_ stated that she told him numerous times that she did not want to do this and that he was to stop. It was at this time that Ray pushed her down to the ground and began removing her pants and pantyhose. Once the pants and pantyhose were down below her knees, Ray performed oral sex on her, penetrating her vaginally with his tongue and then attempted to penetrate her vaginally with his penis; however, \_\_\_\_\_ complained that he could not get enough of an erection to do so.

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Once the incident was over, [REDACTED] left the apartment and went to her friend Maria Perez's house located at 2851 East Bonanza, Apt. 2156, where she changed clothing and subsequently later notified the police department.

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**EXHIBIT "3"**

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 1

ENTERED  
RD

EVENT #: 990424-1124

**SPECIFIC CRIME:** SEXUAL ASSAULT

**DATE OCCURRED:** 04-24-99

**TIME OCCURRED:** 0800-1000

**LOCATION OF OCCURRENCE:** 2101 Sunrise Ave., Las Vegas, NV 89101 (unknown apartment number)

**CITY OF LAS VEGAS**

**CLARK COUNTY**

**NAME OF PERSON GIVING STATEMENT:** [REDACTED]

**DOB:** [REDACTED]

**SOCIAL SECURITY #:** [REDACTED]

**RACE:** W

**SEX:** F

**HEIGHT:** 5'6"

**WEIGHT:** 165

**HAIR:** BRO

**EYES:** HAZ

**WORK SCHEDULE:**

**DAYS OFF:**

**HOME ADDRESS:** [REDACTED]

**HOME PHONE:** [REDACTED]

Las Vegas, NV 89102

**WORK ADDRESS:**

**WORK PHONE:**

**BEST PLACE TO CONTACT:** residence

**BEST TIME TO CONTACT:**

RECEIVED  
LVMPD  
RECORDS SECTION  
2000 JAN -6 P 6:12

The following is the transcription of a tape-recorded interview conducted by Detective M. Hnatuick, P#3582, LVMPD General Assignment Detail, on 04-24-99 at 1450 hours. The persons present during this interview are [REDACTED] and Detective Hnatuick

Q. Okay, [REDACTED], if we could start, uh, just by, uh, I, I read the crime report and I understand a little bit about what happened. Start from the time that you and your friend arrived at the, uh, Silver Saddle is it, last night?

A. Uhm, we went to the Silver Saddle. We got there about 1 a.m. and we were dancing and then I know she, early on that night had been dancing with him. He's a band member. I think he plays drums and bass and--

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
VOLUNTARY STATEMENT

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STATEMENT OF: [REDACTED]

Q. Do you know his name?

A. His name is Raymond. \_\_\_\_\_ Raymond.

Q. Okay. Can you describe for me?

A. Mhmm. He's a Hispanic male, about five six, five seven, uh, short black hair, black, uh, brown, brown \_\_\_\_\_ eyes, uh, dark color, medium-colored complexion. Uh, he was wearing a light shirt, black pants, uh, black tie and brown cowboy boots.

Q. Okay. Anything unusual about him? Uh, scars, marks, tattoos?

A. \_\_\_\_\_ all over his face.

Q. Scratches that he had--

A. \_\_\_\_\_

Q. Prior to you meeting him?

A. Prior to me meeting him.

Q. Okay. They look like new scratches, \_\_\_\_\_ scratches?

A. They looked like, uh, they had happened about four, five days ago.

Q. Okay. Were they--were they fairly deep scratches?

A. \_\_\_\_\_

Q. Okay.

A. \_\_\_\_\_

Q. Okay. Any other scars, marks, tattoos that you noticed?

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**VOLUNTARY STATEMENT**

PAGE 3

EVENT #: 990424-1124

STATEMENT OF: [REDACTED]

- A. Uh, no. \_\_\_\_\_ tattoos. He had been discussing that at the bar around... I turned around 5 a.m., checking on my son. Uh, I returned to the bar to pick up Candy and they were all talking and he discussed tattoos. He said he didn't have none. I didn't see any.
- Q. Okay. So there's a point in time after one o'clock in the morning that you left the bar and then came back.
- A. I returned my-- I had got a, my friend got a page that was with us that my son was awake and this first time I've ever left him alone in two years \_\_\_\_\_ gone out and I went and checked on him, made sure, he was upset and reassured him \_\_\_\_\_ back to sleep and returned to pick up Candy 'cause I was the designated driver. And I came back and she was here at the bar talking to them and they were very nice. There was bartender. \_\_\_\_\_ name starts with an A. And him, uh, Ray and off and on a security guard \_\_\_\_\_ I don't--I'm not re--really aware of them. They were all just sittin' there talking and then the bartender asked if after seven when he gets off work, if we all wanted to go to this other bar and--
- Q. I'm sorry. Who asked you that?
- A. The bartender.
- Q. \_\_\_\_\_
- A. I wanna say \_\_\_\_\_ or, uh, \_\_\_\_\_ with an A though.
- Q. Who was the friend that you were with at Silver Saddle?

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**VOLUNTARY STATEMENT**

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EVENT #: 990424-1124

STATEMENT OF: [REDACTED]

A. Uh, Maria. Maria. Call her Candy though, it's her nickname. I've known her for two years and we were--she, she goes there a lot, so everybody knows her. And I mean I felt comfortable with her and with the people there. Everyone was like yeah, he's a good guy, you know, \_\_\_\_\_, you know he'll take care of you, you know. And the bartender was really nice. He was a really nice gentleman. And Ray just very nice, you know never did anything disrespect any of us. And we had all decided that sure, we'll go. And I said I wanna be \_\_\_\_ you know back at Candy's house at ten, you know, and earlier than that because of my son and everything and they said okay. That's when \_\_\_\_\_ my son usually wakes up.

Q. What time did you leave the Silver Saddle with everyone?

A. We went outside approximately about seven, 7:15. Candy decided that she wanted to go see her friend Beto and have him come pick her up and she said meet me back at the house at ten, that way you know the kids don't think anything of us, you know we don't wanna give 'em a wrong impression, we show up at different times and anything like that. So I said okay, I'll meet you at your house at ten, okay. I'll meet you out, you know at, on the, at the parking lot. Says okay. And so I went with Ray.

Q. Did Ray drive? Was it his car?

A. \_\_\_\_\_ my car.

Q. Was your car. Okay.

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**VOLUNTARY STATEMENT**

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EVENT #: 990424-1124

STATEMENT OF: [REDACTED]

A. Yes. Was my car. And he went with me and the bartender and his friend, which I had met yet, uh, we drive together and then there were other members of the bar that \_\_\_\_\_ also and wanna say P.T.'s Pub \_\_\_\_\_ and Ray said hey, he mentioned he had to go cash his paycheck \_\_\_\_\_ you know really \_\_\_\_\_ I said well, go to Showboat, they don't \_\_\_\_\_ okay. Now we were all gonna follow over there but the bartender forgot to take the stuff out of his car and I said well, why don't \_\_\_\_\_ just go there and head over there and cash paycheck and \_\_\_\_\_ you know \_\_\_\_\_ to the Showboat, we'll follow 'em over or... He says well, I know the bar too and then he just rolled down his window and said hey, you know what, we're gonna go ahead and take off. And I'm assuming that we're gonna go \_\_\_\_\_ at the bar, cash the check, you know at the bar. \_\_\_\_\_ stop by a friend's house real quick and \_\_\_\_\_ call my job and let them know that, uh, that you know he had option to come in or not on weekends and said I'm gonna call and tell I'm not gonna come in today, you know, \_\_\_\_\_ and I said okay. So he went over to Sunrise and 21st and \_\_\_\_\_ this neighborhood \_\_\_\_\_ He goes well, you wanna come in. I said yeah, I felt more comfortable being inside than I would sittin' out in my car. And so I went in there and \_\_\_\_\_ a young \_\_\_\_\_ 20-year-old Hispanic male. I don't remember his name. He was very nice.

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**VOLUNTARY STATEMENT**

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EVENT #: 990424-1124

STATEMENT OF: \_\_\_\_\_

Q. Do you remember the apartment number?

A. \_\_\_\_\_ the apartment number. I know when you come in down Sunrise, that very first orange building with that pool and you got buildings to your right and buildings to your left. As you walk in, you go to the building on your left, door on your right \_\_\_\_\_.

Q. Now you say when you're heading down Sunrise, driving away from downtown or towards downtown?

A. Uh, I, I know how I got there was I took, uh, from, you go down Eastern from Bonanza going towards like Oakey and all that. Uh, you're gonna take a, a right on the street before that one-way and you go down and then it's, it's the second street. I think it's called Sunrise \_\_\_\_ it's one-way. You can only go one way. It's that first building, ah, on your left-hand side.

Q. Okay. Do you know if it's 2101 Sunrise?

A. Yes. It is 2101 Sunrise. I know that that's the particular building and it's the door on your right downstairs.

Q. Okay. So there came a time when you went into this apartment with him.

A. I went in there with him assuming that was gonna be just a couple minutes and you know I didn't feel any suspicions and he never touched me, never did anything to make me feel uncomfortable.

Q. About what time do you think this was?

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STATEMENT OF: [REDACTED]

A. Probably between about I'd say maybe eight, 8:15, in that area. Uh, I did ask the time and they had said 8:30 and but it was like \_\_\_\_\_ minutes after I had been there and he said, uh, he talked to him and he introduced me to his friend. I don't remember the name. His friend was very nice, you know, tried to make me \_\_\_\_\_ I'm okay. And he said, they were speaking Spanish. I can't understand when they talk really, really fast. I \_\_\_\_\_ understand Spanish. They said something about him going \_\_\_\_\_, uh, him going, his friend going to the store real quick for him and coming back and I sat there, I said okay. You know he called his job and everything and we sat down for a few minutes talking and then, uh, he got up and started wantin' to dance. I said no, I think I need to go. \_\_\_\_\_ pick me up and started \_\_\_\_\_ in the bedroom and I said you know what, I don't need to go there, there's no reason for me to go there, can you put me down please. And I was trying to be nice, you know. And he just, said no, let's go in there. I said I have no reason to go in there.

Q. How many bedrooms were in apartment?

A. Uhm, I'm assuming two. He took me to the bedroom on, on \_\_\_\_\_ on the right. When you're walking in, you go to your right. And took me in there and I, I did struggle and attempt to try and get down but he had me on cradle position and he put me on the bed and lay on top of me and I said you know what, I never ever

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**VOLUNTARY STATEMENT**  
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STATEMENT OF: [REDACTED]

suggested this, gave you that impression, I was assuming we were going to meet your friends at the bar. I said will you please get off me, I don't do this.

Q. What type of clothing are you wearing \_\_\_\_\_

A. Uhm, I'm wearing a black cropped jacket. I have black pants and there's safety pins \_\_\_\_\_ because I lost weight and I wanted to fit them and I had a, uh, had a bra on and I had this, I wore the jacket because I had like a, it was a T-top but I don't feel comfortable having that much skin out, so I had this jacket to cover me. And I mean it wasn't anything \_\_\_\_\_ I mean it was sexy but it was not, you know revealing or anything like that and--

Q. Did you have any undergarments on?

A. Ahm, I had pantyhose on and... yeah, I had pantyhose on and my bra. And I had my black shoes. And he, uh, proceeded to try and \_\_\_\_\_ pushed him off and said \_\_\_\_\_ please stop, I don't wanna do this, I don't know you that well. And he started going to my neck and trying to lift up my shirt. I struggled and I know I pushed him off the bed and I got up to go and he turned me around and pinned me up against the wall and started \_\_\_\_\_ I said I don't care, you need to let me go. He wouldn't let me move \_\_\_\_\_ and that's when he flipped me over somehow and you know, uh, picking up my jacket, my shirt on my back and everything and, uhm, I tried to kick him and push him away and I don't remember but somehow I wound up on the floor and, uh, I did kick him. I kicked-- he got, he

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STATEMENT OF:

started trying to pull off my pants \_\_\_\_\_ I remember stabbing  
him with it.

Q. Do you remember where?

A. Uhm, \_\_\_\_\_ right hand. It was kinda like on \_\_\_\_\_ back area. Didn't do anything.  
Didn't affect him. And, uh, I was just \_\_\_\_\_ I tried looking for things I could  
do to push him off and we did struggle. He kept trying to \_\_\_\_\_ my pants off. I kept  
grabbing them. Uhm, it was a back and forth battle. I tried kicking him. I couldn't  
get any leverage 'cause he was heavy and, uh, \_\_\_\_\_ I blanked out. He  
somehow got my pants down and had my legs up in the air and I tried taking him  
off and I mean I tried pushing him, squeezing my legs and \_\_\_\_\_. And, uh, I just  
blanked out after that. I bit my tongue and just cried. \_\_\_\_\_  
Ahm, I tried reaching for objects. I got clothing. Nothing \_\_\_\_\_, you know I tried to  
put the clothing on his face and was just...

Q. Okay. Do you remember what sexual acts he performed on you?

A. Uhm, he did, uhm, \_\_\_\_\_ my breasts, uh, he did perform oral sex, tried to, I mean  
he did touch me there with his mouth and everything and I \_\_\_\_--

Q. You're talking on your vagina.

A. Yeah.

Q. Okay.

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**VOLUNTARY STATEMENT**

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EVENT #: 990424-1124

STATEMENT OF: \_\_\_\_\_

A. And I did kicked him and pushed him away, did what I could and I mean that's when he started unbuckling his pants, just threw my legs up and that's when I blanked out. And I remember \_\_\_\_\_

Q. So, so there came a time when he either penetrated you vaginally with his penis or he attempted to.

A. Uh-huh.

Q. Okay. Do you know if he ejaculated?

A. No, he did not. He didn't \_\_\_\_\_ He got up off me and I just... all of a sudden got up off me and just sat there \_\_\_\_\_ and I just grabbed my stuff and I kicked him and I said-- he kept saying, uh, I shoulda listened, I shoulda listened and I said you're right, you shoulda listened, when I said no, no means no and now you're gonna get it. And \_\_\_\_\_--

Q. How-- (Talking at same time)

A. His head.

Q. Do you know if he tried to put a condom on or anything like that?

A. \_\_\_\_\_

Q. Okay. About how long, from the time that he took you into the bedroom, 'til the incident was over? How long do you think that took?

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STATEMENT OF: \_\_\_\_\_

A. About 8:45, uhm, maybe approximately five minutes 'til ten or some-- I know when I got home at Candy's house, I went upstairs and I looked at the clock and it's 10:20

\_\_\_\_\_

Q. And what happened after he apologized \_\_\_\_\_

A. He, he just sat there and he just was talking \_\_\_\_\_ when I say no, means no.

He goes I wasn't referring to that. You know I'm like well, excuse me, I am, you know and grabbed my stuff. He said hey, don't you believe in fate. \_\_\_\_\_

just like off this rocker and he's like I guess my ex-wife was right, I'll never be able to have sex with another woman again. \_\_\_\_\_ I just looked at him

and I said you know what, I don't care \_\_\_\_\_ I'm outta here \_\_\_\_\_

and took off and his friend was in the living room at the time and I was, I didn't even know he was back. And he saw me upset in tears and I was still struggling to, you

know, arrange my clothes as I was walking out the door. I know two ladies saw me walk out upset and they just stared at me, you know, and like oh, God, I felt so dirty

and I went in my car and he, the kid was asking me \_\_\_\_\_ was mad at him or somethin'. I'm like no, I'm not mad at you 'cause you know what, calling the police.

\_\_\_\_\_ what, what, what. I told him \_\_\_\_\_ your friend's an asshole and he says what happened, I said, and I told him, he doesn't speak any English \_\_\_\_\_ Spanish.

\_\_\_\_\_ tell him no, no is no. And he got the hint \_\_\_\_\_

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STATEMENT OF: [REDACTED]

- Q. Okay. When you talk about being in the room, blacking out, did you actually lose consciousness?
- A. I didn't lose consciousness, I just couldn't believe this was happening.
- Q. You were just very, very upset?
- A. I was, I was in shock. I mean I was like, you know, I mean two years, I've not gone out two years, I had my son. The very first night I actually go out, this happens, you know.
- Q. Okay. While you were at Silver Saddle, did you have any drinks? Did anyone provide you with any drinks?
- A. Uhm, I had, when I first got there, I had a Nidori (phonetic spelling) that I didn't finish 'cause \_\_\_\_\_ too strong and I had one water. And then when I went back at five, I had, I ordered another one and I told make it lighter and still too strong. I never finished that. And we all did a shot \_\_\_\_\_ and that didn't even faze me. I mean it wasn't \_\_\_\_\_ to drink. I, I drank mostly water the whole night.
- Q. Do you normally drink alcohol?
- A. I, I don't feel comfortable getting drunk or out of my limit. Mean all that 'cause you're not in control of yourself. I did that when I was young, learned my lesson.
- Q. Okay. If you saw Ray again, you would remember what he looks like?
- A. Oh, yes, I would.
- Q. Okay. And you do wanna press charges, correct?

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**VOLUNTARY STATEMENT**

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STATEMENT OF: [REDACTED]

A. I do.

Q. Okay. That ends this interview. Date and time is 04-24-99, at approximately 1505 hours.

**I HAVE READ THIS STATEMENT CONSISTING OF 13 PAGES AND AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS VOLUNTARY STATEMENT WAS COMPLETED AT UNIVERSITY MEDICAL CENTER, 1800 WEST CHARLESTON BOULEVARD, LAS VEGAS, NEVADA 89102 ON THE 24TH DAY OF APRIL, 1999 AT 1505 HOURS.**

WITNESS: \_\_\_\_\_

WITNESS: \_\_\_\_\_

MH/im  
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**EXHIBIT "4"**



<b>Las Vegas Metropolitan Police Department</b> <b>Forensic Laboratory</b>  <b>Report of Examination</b>  <b>Biology/DNA Forensic Casework</b>	<b>Distribution Date:</b> November 17, 2016 <b>Agency:</b> LVMPD <b>Location:</b> Homicide & Sex Crimes Bureau <b>Primary Case #:</b> 990424-1124 <b>Incident:</b> Sexual Assault-Project <b>Requester:</b> Lora J Cody <b>Lab Case #:</b> 15-02847.3 <b>Supplemental 1</b>
	<b>Subject(s):</b> RAMON DORADO (Suspect) <span style="background-color: black; color: black;">[REDACTED]</span> (Victim)

The following evidence was examined and results are reported below.

Lab Item #	Impound Pkg #	Impound Item #	Description
Item 6	007294 - 1	1	Reference standard from Ramon Dorado
*Refer to the supplemental report issued by Bode Cellmark Forensics dated 10/27/2016 for related information.			

**DNA Results and Conclusions:**

Item 6 was subjected to PCR amplification at the following STR genetic loci: D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S539, D2S1338, D19S433, vWA, TPOX, D18S51, D5S618, and FGA. The sex-determining Amelogenin locus was also examined.

**LV15-0347-01.01.1-EF\***

The full DNA profile obtained from the epithelial fraction of the vaginal swabs (LV15-0347-01.01.1-EF\*) is consistent with [REDACTED] (LV15-0347-02.01.1\*).

**LV15-0347-01.01.1-SF\***

The DNA profile obtained from the sperm fraction of the vaginal swabs (LV15-0347-01.01.1-SF\*) is consistent with a mixture of two individuals with at least one contributor being a male. The major DNA profile is consistent with Ramon Dorado (Item 6). The probability of randomly selecting an unrelated individual from the general population having a DNA profile that is consistent with the major DNA profile obtained from the evidence sample is approximately 1 in 1.45 sextillion. The minor alleles are consistent with [REDACTED] (LV15-0347-02.01.1\*). The major DNA profile was previously searched against the Local DNA Index System (CODIS) and uploaded to the National DNA Index System (CODIS) for comparison.

The evidence is returned to secure storage.

Statistical probabilities were calculated using the recommendations of the National Research Council (NRC II) utilizing the FBI database (J Forensic Sci 44 (6) (1999): 1277-1286 and J Forensic Sci doi: 10.1111/1556-4029.12806; J Forensic Sci 46 (3) (2001) 453-489 and Forensic Science Communications 3 (3) (2001)). The probability that has been reported is the most conservative value obtained from the US Caucasian (CAU), African American (BLK), and Southwest Hispanic (SWH) population databases. These numbers are an estimation for which a deviation of approximately +/- 10-fold may exist. All random match probabilities, combined probability of inclusions/exclusions, and likelihood ratios calculated by the LVMPD are truncated to three significant figures.

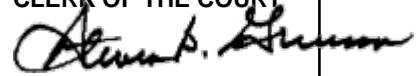
Evidence collected directly from the body or personal items removed directly from the body are intimate sample(s); therefore, the donor may be reasonably assumed to be present should the item produce a DNA profile that is suitable for comparison. In instances in which contributors can be assumed, no statistical calculations were performed for the assumed contributors.

---This report does not constitute the entire case file. The case file may be comprised of worksheets, images, analytical data and other documents.---



Kimberly D. Dannenberger, #13772  
Forensic Scientist II

- END OF REPORT -



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7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 THE STATE OF NEVADA, )  
10 Plaintiff, ) CASE NO. C-17-323098-1  
11 v. ) DEPT. NO. II  
12 RAMON MURIL DORADO, )  
13 Defendant, )  
14 \_\_\_\_\_ )

15 **REPLY TO STATE’S OPPOSITION TO DEFENSE**  
16 **MOTION TO DISMISS FOR DESTRUCTION OF EVIDENCE**

17 COMES NOW, the Defendant, RAMON MURIL DORADO, by and through his  
18 attorney, VIOLET R. RADOSTA, Deputy Public Defender, and files this Reply to the State’s  
19 Opposition to Defense’s Motion to Dismiss for Destruction of Evidence and moves this Honorable  
20 Court for an order dismissing the charges for destroying the audio copy of the initial interview  
21 with M.L. and the violation of Mr. Dorado’s constitutional right to Due Process by destroying  
22 material and exculpable evidence.

23 DATED this 14<sup>th</sup> of August, 2017.

24  
25 PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

26  
27 By: /s/Violet R. Radosta  
VIOLET R. RADOSTA, #5747  
28 Deputy Public Defender



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**POINTS AND AUTHORITIES**

**ARGUMENT**

**A. The destruction of the audio recording was done in bad faith**

The Nevada Supreme Court has never outlined a specific test to determine if the State acted in bad faith. Rather, the analysis must be done on a case-by-case basis. In this case, there were many avenues of investigation that were not explored as previously argued in Defense Motion to Dismiss for Failure to Preserve Evidence filed 6/29/17. Considering the investigation done and not done in this case, the words and testimony of complaining witness M.L. are the centerpiece of the State's case against Mr. Dorado.

In this case, Detective Hnatuick, interviewed M.L on the day of the alleged assault and made the decision to audio record the interview. There was no requirement that he record the interview, but presumably, Detective Hnatuick took that extra step so the details of the interview would be fully and accurately memorialized. Afterwards, he submitted the audio recording for transcription, once again presumably so the details of the interview would be properly memorialized. Unfortunately, portions of the interview were not transcribed<sup>1</sup>, thereby making the transcript of the audio recording essentially worthless.

The State argues that Detective Hnatuick's action in submitting the tape for transcription shows that his failure to preserve the only audio copy of M.L.'s interview wasn't done in bad faith. While he did attempt to get a transcript, it is Hnatuick's lack of action that shows his bad faith. After receiving the transcript, the audio recording was returned to him. Upon seeing the multiple blanks in the relatively short transcript, he opted to simply throw the tape in his desk drawer rather than take 10 minutes to book it into evidence. Even if it wasn't common to impound tapes after transcription, as the State argues, it certainly wasn't prohibited. To allow the only memorialization of an interview with an alleged victim in a sexual assault case to simply be tossed into a drawer

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<sup>1</sup> The State declares the reason there are blanks in the transcript is due to the quality of the recording and the professional transcriber could not make out the words on the tape. (Opposition, p. 7). There is nothing to support this claim.

1 and then thrown in the trash upon the Detective's retirement amounts to bad faith on the  
2 Detective's part.

3 Furthermore, if the value was in the transcript alone, then why was the audio-recording not  
4 destroyed immediately after the transcript was produced? Logically, it wasn't destroyed because  
5 LVMPD knew they had a duty to preserve all evidence collected in a case. The determination of  
6 "bad faith" is done on a case-by-case basis and given the lack of investigation in this case and the  
7 length of time between accusation and prosecution, the destruction of the only copy of the  
8 statement by the alleged victim rises to the level of bad faith.

9  
10 **B. Mr. Dorado is Prejudiced by the Destruction of this Evidence**

11 If the Court does not agree that there was bad faith on the part of Detective Hnatuick, there  
12 is also strong evidence of the prejudicial effect the loss of this evidence will have on the defense.  
13 In its Opposition, the prosecution repeatedly argued that it was mere speculation on the part of the  
14 defense that the audio recording would have been helpful had it been turned over to the defense.  
15 In a he said/she said case like this one, the details of the alleged incidents are of vital importance  
16 and the destruction of the audio recording of M.L.'s statement prevents the defense from knowing  
17 the details as she recalled them within hours of the alleged assault. The State argues that M.L will  
18 be present to testify at the trial and the defense is able to cross examine her regarding any  
19 inconsistencies in her testimony (Opposition, p. 6), but that is simply not true. Without a complete  
20 transcript of her original statement to police, how does the defense even know about  
21 inconsistencies? Given the length in time between the accusation and the prosecution, there are  
22 bound to be inconsistencies in M.L.'s story, but without the destroyed recording the defense  
23 doesn't know what she said originally. This stifles the defense's ability to effectively cross  
24 examine M.L.

25 In Sanborn v. State, the defense was claiming self-defense in a homicide case. The  
26 prosecution mishandled a gun that *possibly* could have supported the self-defense defense. The  
27 self-defense claim was only supported at trial by the testimony of Sanborn because there were no  
28

1 witnesses to the homicide. The Nevada Supreme Court stated in that case that the State's case was  
2 'buttressed by the absence of that evidence.' The court also stated that the prosecution 'cannot be  
3 allowed to benefit in such a manner from its failure to preserve evidence.' Sanborn v. State, 107  
4 Nev. 399, (1991) citing Sparks v. State, 104 Nev. 316 (1988). Due to the destruction of the  
5 original recording, the State is clearly benefitting. They will be able to hold M.L. up as a credible  
6 witness because it will appear as though M.L. has consistently told the same version of the alleged  
7 assault for the last 19 years. The value of M.L.'s initial statement to the police cannot be  
8 emphasized strongly enough.

9 The allegations of sexual assault make this case different from most others. "The crime of  
10 rape is rarely perpetrated in the presence of witnesses other than the defendant and the victim and  
11 great reliance must be placed on the testimony of the victim, and, if given, the defendant. Thus, the  
12 presence or absence of other evidence which would support or refute the testimony of the involved  
13 parties has the potential for great significance." Cook v. State, 114 Nev. 120 (1998), citing State v.  
14 Havas, 95 Nev. 706 (1979). In Cook, the Nevada Supreme Court reversed a conviction for sexual  
15 assault because the State failed to preserve the alleged victim's initial statement to police as well as  
16 other pieces of evidence in the case.

17 Finally, the State places a high value on the presence of the DNA in M.L.'s vagina in this  
18 case and argues that evidence takes this case out of the he said/she said category. That might be  
19 the correct if the facts of this case were different and M.L. and Mr. Dorado did not know each  
20 other. The potential presence of DNA does not prove the sexual assault. The circumstances  
21 surrounding the sexual activity that day will prove or disprove the sexual assault, which is once  
22 again why the audio recording of M.L.'s initial statement to police is exculpatory and the loss and  
23 destruction of it is prejudicial to Mr. Dorado. The defense respectfully requests the charges be  
24 dismissed due to the State's destruction of the audio recording of M.L.'s interview.

25 ...

26 ...

27 ...

1 **CONCLUSION**

2 These charges must be dismissed if the Court finds *either* bad faith on part of the government  
3 or that Mr. Dorado was unduly prejudiced by the destruction of apparent exculpable evidence.  
4 Here, Mr. Dorado has shown both. The evidence was destroyed in direct disregard for Metro's  
5 normal procedure and it could have been reasonably anticipated that the contents of the audio were  
6 material and exculpable before the audio was destroyed. As such, Mr. Dorado's Due Process  
7 rights have been violated and these charges must be dismissed.

8 DATED this 14<sup>th</sup> day of August, 2017.

9 PHILIP J. KOHN  
10 CLARK COUNTY PUBLIC DEFENDER

11  
12 By: /s/ Violet R Radosta  
13 VIOLET R. RADOSTA, #5747  
14 Deputy Public Defender

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19 **CERTIFICATE OF ELECTRONIC FILING**

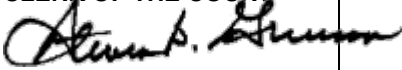
20 I hereby certify that service of the above and foregoing was served via electronic e-  
21 filing to the Clark County District Attorney's Office on the 14<sup>th</sup> day of August, 2017 by Electronic  
22 Filing to:

23 District Attorneys Office  
24 E-Mail Address:  
25 [Jaelyn.Motl@clarkcountyda.com](mailto:Jaelyn.Motl@clarkcountyda.com)

26 /s/ Anita H Harrold  
27 Secretary for the Public Defender's Office

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11 Attorney for Defendant

12 **IN THE DISTRICT COURT OF**  
13 **CLARK COUNTY, NEVADA**

14 \* \* \*

15 STATE OF NEVADA	)	
	)	
16 Plaintiff	)	Case No: 17-C323098-1
	)	
17 v.	)	Dept: XVIII
	)	
18 RAMON DORADO	)	MOTION TO DISMISS
	)	FOR PRE-INDICTMENT DELAY
19 Defendant	)	AND LACK OF JURISIDITION
	)	

20 **MOTION TO DISMISS INDICTMENT**

21 COMES NOW the defendant, RAMON DORADO, by and through his attorney of  
22 record, Thomas F. Pitaro, Esq., and Dustin R. Marcello, Esq. of the law firm, Pitaro & Fumo,  
23 Chtd. who moves this court for immediate dismissal of the indictment.

24 ///

25 ///

1 This motion is based on the attached Memorandum of Points and Authorities together  
2 with the pleadings and papers on file herein and any argument, testimony and evidence that may  
3 be presented at the hearing on this Motion.  
4

5 DATED: 10/19/2018

6 s/ Thomas Pitaro  
7 THOMAS F. PITARO ESQ  
8 Nevada Bar No. 1332

9 **NOTICE OF MOTION**

10  
11 TO: THE STATE OF NEVADA, Plaintiff; and

12 TO: STEVE WOLFSON, DISTRICT ATTORNEY, by and through  
13 his Deputy District Attorney.

14 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing  
15 Motion on for hearing on the 30 day of October, 2018 at 8:30 A.M., or as  
16 soon thereafter as counsel may be heard, in the above-entitled Court.  
17

18 DATED: 10/19/2018

19 s/ Thomas Pitaro  
20 THOMAS F. PITARO ESQ  
21 Nevada Bar No. 1332

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 In November of 2016, the defendant, Ramon Dorado, was charged with Sexual Assault  
4 in violation of NRS 200.364 and 200.366. The alleged incident took place over 18 years ago  
5 on April 24, 1999. The victim, Michelle Lehr, reported the assault to the Las Vegas  
6 Metropolitan Police Department that same evening.  
7

8 Lehr gave the police incredibly detailed information regarding the alleged assailant.  
9 She told police his name was Raymond and that he went by Ray. She indicated he was a  
10 member of the band playing at the Silver Saddle Saloon on April 23, 1999. Specifically, she  
11 told police he played the drums. She went on to tell police that he was Latino, 5’6”,  
12 approximately 180 pounds, and that on the evening in question, he was dressed in a light shirt,  
13 black pants, a black tie, and brown cowboy boots.  
14

15 Lehr told the police exactly where to find Ray. She gave police his address (2101  
16 Surprise Ave.) and told them that his apartment was located on the downstairs right side of  
17 the orange building with a pool. She said he lived with a roommate who was also Hispanic  
18 and who appeared to be about 20 years old.  
19

20 Lehr also gave police a list of witnesses who saw her and Ray together on the night in  
21 question. She told police they could speak to her friend Maria “Candy” Perez because she had  
22 also been talking to Ray that evening. She also told police that she was talking to a security  
23 guard and bartender at the Saddle Saloon that evening. She could not remember the  
24 bartender’s name, but she knew it started with “A”. After providing all of this information to  
25 the detectives, Lehr was taken to University Medical Center where a sexual assault  
26 examination was performed.  
27  
28

1           Despite the wealth of information provided by Ms. Lehr, LVMPD and the District  
2 Attorney's office failed to adequately follow up of the case. The LVMPD Case Monitoring  
3 and Closure form indicates that detectives spoke with the victim again approximately a week  
4 after the assault. They then contacted the Silver Saddle Saloon and were told that the Ray in  
5 question was Ramon, the accordion player from the band. There are no other notes in the file  
6 to indicate that detectives followed up on this lead or made any attempts to contact Ray.  
7 Moreover, there is nothing to indicate that detectives followed up on any other leads including  
8 the apartment address provided by Lehr. Instead, the case was cleared by Detective Barry  
9 Jensen (PN 3662) on June 8, 1999. On January 5, 2000, Detective Jensen signed the Evidence  
10 Disposition Order for the items related to the case.  
11

12  
13           There were no attempts to indict Mr. Dorado for over 17 years, until there was a  
14 political push to process a large number of untested Nevada rape kits in 2016. Ms. Lehr's  
15 sexual assault kit was among those tested. The DNA in that kit was a match to the defendant,  
16 Ramon Dorado. Mr. Dorado's DNA was in the system from a previous, unrelated charge. Due  
17 to the matching DNA, the District Attorney's office filed charges against Mr. Dorado, despite  
18 the incident having occurred 17 years previously.  
19

20  
21           On the night in question, Mr. Dorado and Lehr engaged in consensual sexual activity  
22 after enjoying the evening together at the bar. Lehr agreed to leave the bar with him and  
23 willingly went to his house to engage in sexual activity. Despite Lehr's timely reports to the  
24 police, the police chose not to indict Mr. Dorado, not for failure of knowing his identity. The  
25 newly found DNA matching Mr. Dorado does not provide the police with new evidence  
26 against Mr. Dorado, as his identity was never in question. There exists the same amount of  
27 evidence against Mr. Dorado as existed when Lehr accused him of sexual assault, and the  
28

1 state chose not to pursue indictment. However, due to the huge delay between the incident and  
2 the indictment, Mr. Dorado is severely disadvantaged in his attempts to clear his name of this  
3 heinous charge.  
4

5 **ARGUMENT**

6 **THE COURT LACKS JURISDICTION BECAUSE THE STATUTE OF**  
7 **LIMITATIONS BARS PROSECUTION IN THIS CASE**

8 **Statute of Limitations**

9 NRS 171.085 (1) provides a four year statute of limitations for filing a criminal  
10 complaint based on an allegation of sexual assault.<sup>1</sup>  
11

12 The allegations in this case are stated in the Information to have occurred in 1999. A  
13 complaint was required to have been filed sometime prior to 2003. This case was filed in 2016,  
14 well outside the statute of limitations. Accordingly, the Court does not have jurisdiction and  
15 must dismiss the case against Dorado.  
16

17 **NRS 171.083**

18 NRS 171.083 essentially exempts sexual assault allegations from any statute of  
19 limitations if a person “files with a law enforcement officer a written report” concerning a  
20 sexual assault. Specially the statute  
21

22 NRS 171.083(1) states in relevant part:

23 If, at any time during the period of limitation prescribed in NRS 171.085 and  
24 171.095, a victim of sexual assault. . . files with a law enforcement officer a  
25 written report concerning the sexual assault or sex trafficking, the period of  
26

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27 <sup>1</sup> A recent amendment(2015 Nev. AB 212) has expanded the time period to 20 years, but only if  
28 the act occurred prior to October 1, 2015, if the applicable statute of limitations has commenced  
but has not yet expired on October 1, 2015. Neither condition applies in this case.

1 limitation prescribed in NRS 171.085 and 171.095 is removed and there is no  
2 limitation of time within which a prosecution for the sexual assault of sex  
3 trafficking must be commenced.

4 Under this statute, an allegation can be made and charges can be filed after all witnesses  
5 have passed or disappeared and all evidence of innocence or guilt has long expired. The only  
6 protection of an accused is that the allegation and/or investigation may have been memorialized  
7 and allow for at least some ability to investigate and possibly gather evidence to prove  
8 innocence.

9 However, in the present case, there isn't a memorialization. The State claims but cannot  
10 produce a police report from 1999. Given that NRS 171.083 specially requires a "written report"  
11 and no such report exists, the statute of limitations applies and the case must be dismissed for  
12 lack of jurisdiction.  
13

14  
15 **THE STATE'S PRE-INDICTMENT DELAY IN CHARGING DORADO**  
16 **VIOLATES DUE PROCESS AND HAS EFFECTIVELY PRECLUDED HIM**  
17 **FROM PRESENTING A DEFENSE**

18 "The Fifth Amendment guarantees that defendants will not be denied due process as a  
19 result of excessive preindictment delay." *United States v. Sherlock*, 962 F.2d 1349, 1353 (9th  
20 Cir. 1989). Statutes of limitations are the primary protection against prosecutorial delay. *Id.* By  
21 enumerating a specific amount of time that the government has to charge an individual, a statute  
22 of limitations protects the defendant against the possibility of prejudice due to the prosecution of  
23 overly stale criminal charges." *United States v. Huntley*, 976 F.2d 1287, 1290 (9th Cir. 1992).  
24 Further, the United States Supreme Court has stated that statutes of limitations are said to  
25 represent legislative assessments of the relative interests of the government and the defendant in  
26 administering and receiving criminal justice and to protect the defendant against possible, as  
27  
28

1 opposed to actual, prejudice from the prosecution of overly stale criminal charges. *United*  
2 *States v. Marion*, 404 U.S. 307, 322 (1971). Still, even when prosecution is instituted within the  
3 statute of limitations, the Due Process Clause still protects a defendant from prejudice resulting  
4 from government delay. *Id.* Specifically, the court *must* dismiss the charges if the pre-indictment  
5 delay prejudices the defendant and violates the Due Process Clause of the Fifth Amendment.  
6 *United States v. De Jesus Corona-Verbera*, 509 F.3d 1105, 1109 (9th Cir. 2007).

8 The allegations in this case are that Dorado and the complaining witness engaged in  
9 sexual activity and that she did not consent. According to the State's theory, Dorado met the  
10 woman at the club he was performing at as a jazz musician. The pair went to an apartment one  
11 evening and had sex. The woman claims it was not consensual.

13 The complaint was filed some 17-years after the alleged incident. According to the  
14 information provided by the State, police were aware of Dorado's place of employment, that he  
15 was a musician for the club and his name. No attempt was made to speak to Dorado and no  
16 attempt was made to bring this case against him until 17-years later.

18 Witnesses are now gone or can't be located. Evidence lost to time. Under the State's  
19 theory this case is one of consent. It would be necessary to present witnesses who were present  
20 when the couple were at the club, how they interacted that may have shown the encounter was  
21 consensual, people who were talked to later, individuals that may have been present in the  
22 apartment where it took place, patrons who saw their interactions and basically any witnesses at  
23 all other than who the State wishes to call.

25 Most shocking, under NRS 171.083, there is no requirement that police inform an  
26 individual that they are a suspect of a crime. This ensures that the suspects will not have the  
27 chance to memorialize any witness statements or collect any evidence of their own. This further  
28

1 violates the rights of the truly innocent suspect, who has no reason to think that he or she might  
2 need to collect evidence or memorialize their alibi.

3 NRS 171.083 cannot stand. As written, it legalizes prosecutorial prejudice in clear  
4 violation of the Fifth Amendment and interferes with a defendant's right to call their own  
5 witnesses in violation of the Sixth Amendment.  
6

7 **Actual Prejudice**

8 Another purpose of statutes of limitations is to limit pre-indictment delays by forcing  
9 prosecutors to either file or abandon charges against crime suspects. *United States v. De Jesus*  
10 *Corona-Verbera*, 509 F.3d 1105, 1109 (9th Cir. 2007). Even when an indictment is brought  
11 within the statute of limitations, the court must dismiss the charges if the pre-indictment delay  
12 prejudices the defendant and violates the Due Process Clause of the Fifth Amendment. *Id.*  
13

14 In order to show a due process violation, a defendant need only show that (1) he has  
15 suffered prejudice as a result of the delay; and (2) when weighted against the reasons for the  
16 delay, the delay offends "those fundamental conceptions of justice which lie at the base of our  
17 civil and political institutions." *United States v. Lovasco*, 431 U.S. 783, 788-90 (1977). The  
18 actual prejudice which must be shown "will inevitably be the loss of witnesses and/or physical  
19 evidence or the impairment of their use, e.g., dimming of the witness's memory." *United States*  
20 *v. Mays*, 549 F.2d 670, 677 (9th Cir. 1977). The longer the delay, the more likely it is to be  
21 prejudicial. *United States v. De Jesus Corona-Verbera*, 509 F.3d 1105, 1109 (9th Cir. 2007).  
22  
23

24 The determination of whether a pre-indictment delay has violated due process is  
25 essentially decided under a balancing test. *United States v. Moran*, 759 F.2d 777, 779 (9th Cir.  
26 1985). A defendant need not show that the government intentionally or recklessly delayed the  
27 indictment. *Id.* On the contrary, a defendant need only show the government acted negligently in  
28



1 delaying the case and that the delay prejudiced the defendant. *Id.* Ultimately, the court must  
2 balance the length of the delay against the reasons for it and inquire “whether the Government’s  
3 action in prosecuting after substantial delay violates ‘fundamental conceptions of justice’ or ‘the  
4 community’s sense of fair play and decency.’” *Lovasco*, 431 U.S. at 790. Furthermore, reckless  
5 delay with disregard for the likelihood that a defendant will suffer prejudice, will violate due  
6 process, regardless of the length of the delay, so long as actual prejudice has been proved. *Id.*, at  
7 789-90.  
8

9  
10 Here, it is obvious that a due-process violation has occurred. Using the factors  
11 articulated by the Supreme Court in *Lovasco*, the defendant has been prejudiced as a result of  
12 the delay by the state, and the reasons for the delay offend fundamental conceptions of justice.  
13 The state waited 18 years to indict Mr. Dorado, during which time, the majority of the physical  
14 evidence was destroyed, the defense’s key eyewitness died, and most of the witnesses moved  
15 away and were lost. Furthermore, the original investigators on the case have all since retired and  
16 the police report from that night was lost. All of which could have been avoided but for the  
17 state’s negligence and reckless disregard for the defendant’s rights.  
18

19 These witnesses would have exonerated Dorado by showing his interactions with the  
20 witness were consensual and that her actions before, during, and after showed that the entire  
21 encounter was consensual in nature. The witnesses 15-years ago would have testified as to the  
22 interactions between Dorado and the witness the night in in question, that she indicated she was  
23 leaving to go home with Dorado and that later when she expressed anger to them when he did  
24 not wish to have a relationship with her.  
25

26  
27 The pendulum has swung, it is no longer sufficient to simply say I am innocent.  
28 Individuals charged with sexual assault are charged by society with the burden of showing

1 evidence of consent. As all acts in this case occurred between the individuals, the only people  
2 that can provide evidence of consent are those that were at the club or at the apartment the night  
3 in question. Because of the significant delay – solely at the discretion of Metro to close the  
4 matter in 2000 – the Defendant is precluded from finding or presenting these witnesses to show  
5 consent.  
6

7 LVMPD had more than enough information to find not only Mr. Dorado, but several  
8 other witnesses during their original 1999 investigation. Rather than finding those witnesses and  
9 memorializing their statements, police negligently chose not to pursue the case. Their  
10 negligence should not be Dorado’s downfall. *See, State v. Autry*, 103 Nev. 552 (1987).  
11

12 However, the fact that detectives at the time did not believe the victim and chose not to  
13 pursue the case does not indemnify the prosecution from dismissal for pre-indictment delay. On  
14 the contrary, the government’s possession of the necessary information to find key witnesses is  
15 analogous to cases where illegal aliens were “found” in by U.S. law enforcement years prior to  
16 their indictment by immigration officials. Several circuit courts have held that the statute of  
17 limitations in those cases begins to run not at the point when the alien was actually found, but at  
18 the point where the government should have found them. *See United States v. Gomez* , 38 F.3d  
19 1031, 1037 (8th Cir. 1994) (statute of limitations begins when immigration could have  
20 discovered the violation, using diligence typical of law enforcement authorities); and *United*  
21 *States v. Clarke*, 312 F.3d 1343, 134748 (11th Cir. 2002) (statute of limitations starts when  
22 immigration authorities could have discovered alien’s illegal presence ). Similarly here, the fact  
23 that the government had the information necessary to find Mr. Dorado and other key witnesses  
24 yet did nothing with it was negligence at best. Furthermore, it demonstrates a reckless disregard  
25 for the likelihood that a defendant will suffer prejudice as a result of the delay.  
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1           It is well known that many sexual assault cases hinge on eyewitness testimony and  
2 hearsay evidence. In the present case, there were no fewer than four eyewitnesses who saw the  
3 defendant and Ms. Lehr interacting on the night in question. Had they been interviewed by  
4 detectives, these individuals would have testified that Ms. Lehr and the defendant were flirting  
5 all evening; that the two had kissed, held hands, and displayed affection all night; and that Ms.  
6 Lehr left the club with the defendant willingly and expressed her intention to have sex with him.  
7 However, the police were negligent in their investigation and chose not to interview those  
8 individuals or to memorialize their testimony in any way. Now, eighteen years following the  
9 incident, three of those eyewitnesses have moved and cannot be located. This is an unacceptable  
10 prejudice against the defendant.  
11

12           Furthermore, the witness with the most exculpatory evidence for the defendant has died.  
13 Mariam Adams was the nurse who performed the sexual assault examination on Ms. Lehr.  
14 Unfortunately, Ms. Adams died in 2011. Her death precludes cross examination regarding her  
15 observations during the examination. Specifically, she told detectives that “the victim had little  
16 bruising...and that it was *not* definitive for sexual assault.” The fact that the defense can no  
17 longer call a key witness due to the negligence of the state is a violation of Mr. Dorado’s Fifth  
18 and Sixth Amendment rights.  
19

20           Further, the detectives exhibited both negligence and recklessness by ordering the  
21 destruction of the physical evidence from that evening, including the clothing Ms. Lehr was  
22 wearing. As a result of the detectives’ misconduct, Mr. Dorado has been denied the opportunity  
23 for an unbiased, expert witness to analyze some of the most crucial evidence in the case. The  
24 destruction of the victim’s clothing and other personal effects irreconcilably prejudices the  
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28

1 defense. Allowing the charges against Mr. Dorado to move forward despite the state's actions  
2 would clearly violate the notions fair play and substantial justice.

3  
4 There is little doubt that Mr. Dorado has suffered prejudice as a result of the state's delay  
5 in this case. Some of the most crucial evidence to his exoneration was destroyed and his key  
6 eyewitness have died. Furthermore, the government cannot provide any legitimate reason for the  
7 delay. This is not a case where key information was unavailable to the state, on the contrary,  
8 their failure to follow up on key information shows negligence on the part of LVMPD and a  
9 reckless disregard for Mr. Dorado's rights. NRS 171.083 cannot indemnify the state from the  
10 consequences of their actions. The only solution that conforms with fairness and justice is to  
11 dismiss the charges with prejudice.  
12

13  
14 **CONCLUSION**

15  
16 Based on the foregoing, memo requests that he be released from custody and that the  
17 Indictment be dismissed.

18 DATED: 10/19/2018

19 s/ Thomas Pitaro  
20 THOMAS F. PITARO ESQ  
21 Nevada Bar No. 1332  
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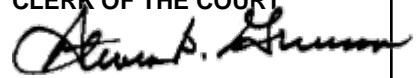
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of October 2018 I did serve the forgoing Motion to Sever on the Clark County District Attorney’s Office through electronic service by filing in the E-File system with the Clark County Court, and provided a courtesy copy to the following email:

[motions@clarkcountyda.com](mailto:motions@clarkcountyda.com)

s/ Thomas Pitaro  
THOMAS F. PITARO ESQ  
Nevada Bar No. 1332



1 **OPPS**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JACOB J. VILLANI  
6 Chief Deputy District Attorney  
7 Nevada Bar #011732  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

12  
13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 THE STATE OF NEVADA,  
16  
17 Plaintiff,

18 -vs-

19 **RAMON MURIL DORADO,**  
20 **#1673321**

21 Defendant.

CASE NO: **C-17-323098-1**

DEPT NO: **XXIX**

22 **STATE'S OPPOSITION TO DEFENDANT'S**

23 **MOTION TO DISMISS INDICTMENT**

24 DATE OF HEARING: **OCTOBER 30, 2018**

25 TIME OF HEARING: **9:00 AM**

26 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
27 District Attorney, through JACOB J. VILLANI, Chief Deputy District Attorney, and hereby  
28 submits the attached Points and Authorities in this State's Opposition to Defendant's Motion  
To Dismiss Indictment.

This Opposition is made and based upon all the papers and pleadings on file herein, the  
attached points and authorities in support hereof, and oral argument at the time of hearing, if  
deemed necessary by this Honorable Court.

//

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1 **POINTS AND AUTHORITIES**

2 **PROCEDURAL HISTORY**

3 On April 27, 2017, the State of Nevada (“State”) filed an Indictment charging  
4 Defendant Ramon Muril Dorado (“Defendant”) with three (3) counts of Sexual Assault.

5 On May 18, 2017, Defendant was arraigned. Because Defendant refused to participate  
6 in the process, the Court entered a plea of not guilty and invoked Defendant’s 60-day trial right  
7 on his behalf. Defendant’s trial was set to begin on July 17, 2017.

8 On June 12, 2017, Defendant filed a Motion for Own Recognizance Release, which  
9 was denied on June 15, 2017.

10 On June 20, 2017, Defendant filed a Motion to Dismiss for Failure to Preserve  
11 Evidence, which was denied on July 6, 2017.

12 On June 30, 2017, Defendant filed a Motion to Suppress Evidence Obtained Pursuant  
13 to Search Warrant, which was denied on July 13, 2017.

14 On July 12, 2017, Defendant filed a Motion to Compel Production of Discovery and  
15 Brady Material, which was denied without prejudice on July 18, 2017.

16 On July 13, 2017, Defendant’s trial was continued by the Court for one week to  
17 accommodate the Court’s schedule. Defendant’s trial was set to begin on July 24, 2017.

18 On July 17, 2017, Defendant filed a Motion to Dismiss for Destruction of Evidence,  
19 which was denied on August 15, 2017.

20 On July 18, 2017, Defendant waived his 60-day trial right and requested that his trial  
21 be continued. Defendant’s trial was set to begin on November 27, 2017.

22 On August 21, 2017, Defendant’s case was reassigned from Department II to  
23 Department XVIII.

24 On November 9, 2017, Defendant filed another Motion for Own Recognizance Release  
25 or Bail Reduction, which was denied on November 16, 2017.

26 On December 29, 2017, Defendant filed, in proper person, a Motion to Dismiss  
27 Counsel. Defendant’s counsel at the time was Public Defender Violet Radosta.

28 //

1 On January 11, 2018, the court granted Defendant's Motion to Dismiss Counsel over  
2 the State's objection.

3 On January 25, 2018, current counsel confirmed as counsel of record and Defendant's  
4 trial date was vacated and reset to January 14, 2019.

5 On July 2, 2018, Defendant's case was again reassigned from Department 18 to this  
6 Court.

7 On October 19, 2018, Defendant filed a **second** Motion to Suppress Evidence Obtained  
8 Pursuant to Search Warrant, arguing the same issues presented in his June 30, 2017 motion.

9 Also on October 19, 2018, Defendant filed a Motion to Dismiss Indictment arguing the  
10 same issues presented in his June 20, 2017 motion, attached as Exhibit 1.

### 11 **STATEMENT OF FACTS**

12 In the late hours of April 23, 1999, into the morning of April 24, 1999, M.L. went out  
13 dancing with her friends Candy and Joanna at the Silver Saddle bar. Grand Jury Transcript  
14 ("GJT") p. 7. While at the bar, M.L. met one of the members of the band playing that night  
15 who was introduced to her as Raymond aka Ray, later identified through DNA evidence as  
16 Ramon Muril Dorado ("Defendant"). Id. After talking to Defendant for a bit, M.L. left briefly  
17 to check on her son who was staying at Candy's house right down the street. Id. When M.L.  
18 came back to the bar, Candy, Joanna and others, including Defendant, were sitting down in  
19 the back of the bar. GJT p. 8. M.L. sat between Candy and Defendant. Id. Later on in the  
20 night, the group discussed going to PT's Pub when the bartender, who was hanging out with  
21 the group, got off work. Id. M.L., who was the designated driver for Candy and Joanna, agreed  
22 to go as long as she was back home by 10:00 am. Id.

23 Around 7:00 am the group decided to leave for PT's. Id. Joanna went with the bartender  
24 in his car. Id. Candy decided last minute to call her boyfriend to pick her up and agreed to  
25 meet up with M.L. in front of the house by 10:00am so the kids would not think anything. GJT  
26 p. 9. On the way to PT's Defendant said he had to cash his paycheck and stop by his house to  
27 call in to work. Id. Not thinking anything of it at that time, M.L. drove to Defendant's house.  
28 Id. When they got there, Defendant asked M.L. to come inside. Id. Inside the house was a



1 young man who did not speak English. Id. Defendant spoke to the young man in Spanish and  
2 from what M.L. could understand, Defendant sent him to the store to get something. Id. When  
3 the young man left, Defendant picked M.L. up and dragged her into the bedroom as she was  
4 telling him to put her down. Id. Defendant refused to listen and brought M.L. into the bedroom.  
5 GJT p. 10.

6 In the bedroom Defendant attempted to kiss M.L. while she pushed him away. Id. M.L.  
7 told Defendant she had not done anything to suggest she wanted him to kiss her and she was  
8 going to be leaving. Id. When M.L. attempted to walk out the door, Defendant grabbed her  
9 and threw her on to the bed. Id. Defendant laid on top of her and attempted to kiss her neck  
10 again. Id. M.L. again pushed Defendant off and rushed to the door. Id. Defendant grabbed  
11 M.L. again, pulled her shirt up and attempted to take her pants off. Id. M.L. fell to her side,  
12 once again pushed Defendant off and tried running for the door. Id. Defendant grabbed her  
13 again, threw her against the wall and pulled her pants down even more. Id. Defendant threw  
14 M.L.'s legs over her head and pulled her panty hose down. Id. Defendant then put his mouth  
15 on M.L.'s vagina using both his mouth and tongue. GJT 10-11. M.L. pushed Defendant forward  
16 and tried to find something to throw at him or hit him with. GJT p.11. M.L. tried to shove  
17 clothes in Defendant's face, attempting to smother him. Id.

18 As M.L. continued to struggle with Defendant, he got one of her legs out of her panty  
19 hose, flipped her back on the ground and laid on top of her trying to push her legs apart. Id.  
20 As M.L. was trying to hold her legs together, Defendant held her arms, pulled her legs apart  
21 and attempted to insert his penis inside her vagina. Id. M.L. continued to fight Defendant and  
22 using her one free hand tried to find something to hit him with. GJT p. 12. M.L. was ultimately  
23 able to find one of the safety pins from her pants, which held her pants up, and stabbed  
24 Defendant in the shoulder and hand. Id. However, that did not stop Defendant and he used one  
25 of his hands to move his penis inside her vagina. Id. M.L. could feel his penis and hand inside  
26 and outside of her vagina. Id. Defendant was not able to keep his penis inside M.L.'s vagina  
27 because he was unable to keep his erection. Id. After a couple of minutes of trying, Defendant  
28 got up and allowed M.L. to get her stuff. Id. As Defendant sat there, he kept saying "she's

1 right, she's right", while M.L. asked him what part of "no means no" did he not understand.  
2 Id. Defendant responded that he was not talking about what just happened but about his ex-  
3 wife telling him he will never be able to have sex with another woman again. GJT 12-13. As  
4 M.L. walked out, she saw that the young man was back from the store. GJT p. 13.

5 M.L. returned to Candy's house to check on her son and they immediately took her to  
6 the police station. Id. M.L. told the police what happened and they took her to UMC, where  
7 a Sexual Assault Kit ("SAK") was conducted. Id.

8 On October 27, 2015, the resulting DNA profile developed from the vaginal swabs of  
9 M.L.'s SAK was uploaded into the local and national DNA index system ("CODIS").

10 On December 23, 2015, the DNA profile returned a match to Defendant's known DNA  
11 profile.

12 On January 27, 2016, LVMPD Detective Lora Cody drafted a Search Warrant for a  
13 Buccal swab or blood sample from Defendant's person in order to confirm the CODIS match.  
14 The warrant was signed by the Honorable Nancy Allf, District Court Judge.

15 On November 17, 2016, the Buccal swab obtained from Defendant pursuant to the  
16 search warrant was compared to the DNA profile developed from the vaginal swabs of M.L.'s  
17 SAK and found to be a match with the probability of selecting a random individual with the  
18 same DNA profile being 1 in 1.45 sextillion (1 in 1,450,000,000,000,000,000).

## 19 ARGUMENT

### 20 **I. DEFENDANT'S MOTION SHOULD BE DENIED BECAUSE THE ISSUES** 21 **RAISED HAVE ALREADY BEEN DECIDED BY THE PREVIOUS** 22 **COURT.**

23 Defendant's instant Motion argues that this Court should dismiss the Indictment in this  
24 case for two reasons: (1) This Court lacks jurisdiction because the Statute of Limitations bars  
25 prosecution; and (2) The delay in filing this case has precluded Defendant from presenting a  
26 defense. Defendant is mistaken as to a key fact regarding his first claim, and his second claim  
27 raises the same issues previously raised in Defendant's June 30, 2017 Motion to Dismiss for  
28 Failure to Preserve Evidence. Therefore, Defendant's motion should be denied.

//

1           **A. The Statute of Limitations Does Not Divest this Court of Jurisdiction in this**  
2           **Case**

3           Defendant claims that NRS 171.085 provided for a four-year statute of limitations prior  
4 to the October 1, 2015 amendment, which is correct. Motion, p. 5. Defendant also  
5 acknowledges that NRS 171.083 exempts the crime of sexual assault from any statute of  
6 limitations if a written report is filed by law enforcement concerning the sexual assault within  
7 the time period statute of limitations, which is also correct. Id.

8           However, Defendant claims that the provisions of NRS 171.083 do not apply to the  
9 instant case because “[t]he State claims but cannot produce a police report from 1999.”  
10 Motion, p. 6. This assertion is incorrect. The police report in question was contained within  
11 the PDF document titled “EV - Archived Events - LLV990424001124 - - 4846 - PEREZ -  
12 MARIA - 4\_24\_1999” which the State produced in discovery and Defendant acknowledged  
13 receiving on June 27, 2017. *See* Receipt of Copy attached as Exhibit 3 to this Opposition and  
14 filed with this Court on June 27, 2017. In fact, the State even attached the police report from  
15 1999 as Exhibit 2 to State’s Opposition to Defendant’s Motion to Dismiss for Failure to  
16 Preserve Evidence, which was filed on June 29, 2017. *See* Exhibit 2 to Exhibit 2, attached to  
17 the instant opposition.

18           As the entire premise for Defendant’s argument that NRS 171.083 does not apply to  
19 this case is false, his claim lacks merit and should be denied.

20           **B. Defendant Previously Raised The Balance of The Issues in His Instant Motion**  
21           **With the Previous Court, and They Were Denied**

22           Defendant claims that the State’s pre-indictment delay in charging him violates due  
23 process and has effectively precluded him from presenting a defense. Motion, p. 6. Defendant  
24 made these same claims in his June 20, 2017 Motion to Dismiss for Failure to Preserve  
25 Evidence. *See* Exhibit 1.

26           Generally, matters that have been heard and disposed of shall not be renewed in the  
27 same cause, nor shall such matters be reheard. EDCR 2.24(a). Furthermore, a party seeking  
28 reconsideration of a ruling of the court....”must file a motion for such relief within 10 days

1 after services of written notice of the order or judgement unless the time is shortened or  
2 enlarged by order...” *See generally*, EDCR 2.24(b). In this case, the District Court was  
3 previously briefed by both parties as to the issues raised in Defendant’s Motion to Dismiss for  
4 Failure to Preserve Evidence, and that motion was denied by the previous court after extensive  
5 argument.

6 Defendant argues in his current motion that because Defendant’s identity was not  
7 known for 17-years, he is now prejudiced due to the delay in filing the case.<sup>1</sup> However, as  
8 discussed, *supra*, NRS 171.083 specifically provides there is no statute of limitations under  
9 the circumstances of this case. Defendant attempts to shoehorn an argument that NRS 171.083  
10 is unconstitutional with the single line in his motion: “NRS 171.083 cannot stand.” Motion, p.  
11 8. However, the provisions at issue in NRS 171.083 have been the law since October of 1997,  
12 and Defendant has not set forth a valid challenge to the constitutionality of the statute.

13 Statutes are presumed to be valid, and the challenger bears the burden of showing that  
14 a statute is unconstitutional. Silvar v. Eighth Judicial Dist. Court, 122 Nev. 289, 292-293  
15 (2006). In order to meet that burden, the challenger must make a clear showing of invalidity.  
16 Id. Here, Defendant has not made a cognizable argument as to how NRS 171.083 is  
17 unconstitutionally vague or overbroad, and has not provided the State or this Court with any  
18 authority upon which to base such an argument.

19 Defendant claims he has suffered “actual prejudice” as a result of the delay in filing  
20 this case, but all arguments of such alleged prejudice were previously argued by his former  
21 counsel in front of the former court and found to lack merit. Defendant argues in the instant  
22 motion that he is prejudiced because evidence and witnesses have been lost during the time  
23 his identity was unknown. These are the same issues he argued in his Motion to Dismiss for  
24 Failure to Preserve Evidence, and the previous court considered the argument and found the  
25 arguments lacked merit. *See* Exhibit 1 for Defendant’s prior claims, and Exhibit 2, pp. 7-13  
26 for the State’s specific responses to Defendant’s claims. Therefore, Defendant is now  
27

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28 <sup>1</sup> More specifically, Defendant argues that his identity was known at the time by stating “The newly found DNA matching Mr. Dorado does not provide the police with new evidence against Mr. Dorado, as his identity was never in questions.” Motion, p. 4. This statement is patently false. Detectives did not know Defendant’s identity until the information was received from the CODIS notification. The closest Detectives got to an actual name in 1999 was “Ray the accordion player,” with a possible alias of “Raymond.”

1 precluded from re-raising the same issues in front of this Court.

2 Defendant previously made the argument that "... witnesses would have exonerated  
3 Dorado by showing his interactions with the witness were consensual ..." throughout his  
4 previous motion. The State argued extensively that it is Defendant's burden to show the  
5 evidence at issue was material to his case under Daniels v. State, 114 Nev. 261 (1998). The  
6 previous court found Defendant was unable to meet this burden and denied the motion.  
7 Defendant does not now get a second bite at the apple simply because he is in front of a new  
8 Court.

9 The State implores this Court to read the previous briefing in this case, which the State  
10 has attached to the instant opposition. If there is an issue that this Court determines requires  
11 further briefing, the State is happy to provide this Court further briefing on specific issues.  
12 However, Defendant should not get to re-argue all of the issues previously decided in his case  
13 simply because his case was reassigned to a different court. For these reasons, Defendant's  
14 instant motion should be denied.

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**CONCLUSION**

The State respectfully requests that this Court deny Defendant’s instant motion, as all of the issues raised were previously litigated in this case. Alternatively, if this Court feels there are further issues the Court needs briefed, the State requests leave to file an amended opposition addressing the specific issues the Court feels were inadequately briefed in the first instance. The State has ordered but not yet received the transcripts from the previous extensive oral arguments regarding these matters, and the transcripts should be available to access in Odyssey when complete.

DATED this 29th day of October, 2018.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY /s/ JACOB J. VILLANI  
JACOB J. VILLANI  
Chief Deputy District Attorney  
Nevada Bar #011732

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**CERTIFICATE OF SERVICE**

I hereby certify that service of the above and foregoing was made this 29th day of  
OCTOBER, 2018, to:

THOMAS PITARO, ESQ.  
kristine.fumolaw@gmail.com

BY /s/ HOWARD CONRAD  
Secretary for the District Attorney's Office  
Special Victims Unit

hjc/SVU

**EXHIBIT "1"**







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**POINTS AND AUTHORITIES**

**FACTS**

On April 24, 1999, Michelle Lehr contacted Las Vegas Metropolitan Police and reported that she had been sexually assaulted by a man she knew casually. She had met up with friends at the Silver Saddle bar around midnight on April 24, 1999. At approximately 7 am, Ms. Lehr and her male acquaintance left the Silver Saddle in her car purportedly to meet up with friends at a PT's pub. Instead, Ms. Lehr drove to the man's apartment at 2101 Sunrise Ave. They went inside the apartment where there was at least one other man, who was younger than Ms. Lehr. Shortly after she arrived at the apartment, the younger man left to go to the store. Soon after arriving, Ms. Lehr claims that the man who she knew casually picked her up and dragged her into the bedroom where he proceeded to sexually assault her. (GJT 9-11). She claims she stabbed him with a safety pin to get him to let her go, but it didn't work. Eventually, the man moved away from her and she was able to walk out of the bedroom and the apartment. (GJT 13). She got into her car and told the other roommate, who had returned at some point and followed her outside, that she was going to report the incident to the police. (GJT 13).

She went to the Las Vegas Metropolitan Police Department substation on St. Louis, after stopping at her friend's apartment to check on her son. She made a report and was transported to University Medical Center for a medical exam. (GJT 13). All of that occurred on April 24, 1999.

Michelle Lehr was interviewed by LVMPD M. Hnatuick on April 24, 1999. The interview was conducted at the University Medical Center quiet room. During her interview, Ms. Lehr was able to provide a specific address of the apartment building where the alleged assault took place as 2101 Sunrise Avenue. She was also able to identify the location of the

1 apartment as the lower right downstairs apartment. She identified the casual male acquaintance  
2 as a Hispanic male named Raymond, 5'6 or 5'7, black hair, brown eyes, medium complexion  
3 wearing a light shirt, black pants, black tie and brown cowboy boots. She told Detective  
4 Hnatuick that the individual had scratches all over his face, but that the scratches had been on his  
5 face when she had met man earlier in the evening.

6 Fast forward 16 years to October 27, 2015 and Ms. Lehr's sexual assault examination kit  
7 was submitted to the LVMPD forensic lab for testing. On December 15, 2015, a hit from the  
8 Combined DNA Index System (CODIS) identified Ramon Muric Dorado a potential for the male  
9 DNA in Ms. Lehr's SANE kit. Based on that information, in January 2016 LVMPD obtained a  
10 search warrant signed by Judge Nancy Alf and requesting a buccal swab be obtained from  
11 Ramon Muric Dorado.  
12

13 On November 17, 2016, LVMPD forensic lab tested the buccal swab and determined that  
14 one of the swabs taken in the SANE kit potentially contained DNA from Mr. Dorado.  
15

16 On April 17, 2017, Mr. Dorado was arrested on charges of sexual assault. He appeared in  
17 Las Vegas Justice Court on April 19, 2017 and the Public Defender's office was appointed to  
18 represent him. A preliminary hearing date was set for May 26, 2017.

19 On April 26, 2017, Deputy District Attorney Jake Villani presented evidence in this  
20 matter to the grand jury. After hearing the evidence presented by the prosecution, the grand jury  
21 deliberated for less than 1 minute and then indicted Mr. Dorado on 3 counts of Sexual Assault.  
22

23 Mr. Dorado first appeared in the Eighth Judicial District Court Department II on May 4,  
24 2017. The matter was continued 2 weeks at Mr. Dorado's request. On May 18, 2017, Mr.  
25 Dorado requested one more week to review the case with his attorney before entering a plea and  
26 to allow his attorney the opportunity to file a motion for own recognizance release to be heard at  
27 the same time as his entry of plea. That request was denied by the Court and the Court entered a  
28

1 not guilty plea on behalf of Mr. Dorado. The Court also instructed Mr. Dorado and his counsel  
2 that an own recognizance motion would still be heard by the Court if it was filed.

3 Mr. Dorado invoked his right to a speedy trial and his trial date was set for July 17, 2017  
4 with a calendar call date of July 11, 2017.

5 This Motion to Dismiss all charges pending against Mr. Dorado follows.  
6

7  
8 **ARGUMENT**

9 All criminal defendants are entitled to a fair trial pursuant to the Due Process Clauses of  
10 the Fifth and Fourteenth Amendments of the U.S. Constitution and Article I, Section 8 of the  
11 Nevada Constitution. Due to the complete and total lack of investigation by the Las Vegas  
12 Metropolitan Police Department in 1999, when Ms. Lehr first reported this alleged crime, Mr.  
13 Dorado is unable to receive a fair trial. The actions or lack of action by the Las Vegas  
14 Metropolitan Police Department warrant dismissal of all charges against Mr. Dorado.  
15

16 Injustice arises from the State's failure to gather evidence. *State v. Ware*, 118 N.M. 319,  
17 881 P.2d 679 (N.M. 1994). In a criminal investigation, police officers generally have no duty to  
18 collect all potential evidence. . . however, this rule is not absolute. *Randolph v. State*, 117 Nev.  
19 970, 987, 36 P.3d 424, 435 (2001) (internal citations omitted). *Daniels v. State*, 114 Nev. 262,  
20 956 P.2d 111 (1998). In certain cases, “a failure to gather evidence may warrant sanctions  
21 against the State.” *Daniels v. State*, 114 Nev. 262, 268, 956 P.2d 111, 115 (1998).  
22

23 The Nevada Supreme Court has adopted a two-part test to determine when dismissal of  
24 charges is warranted due to the State's failure to gather or preserve evidence. *Daniels*. at 267-68,  
25 956 P.2d at 115. First, the defense must “show that the evidence was material, i.e., that there is a  
26 reasonable probability that the result of the proceedings would have been different if the  
27 evidence had been available.” Second, “if the evidence was material, the court must determine  
28

1 whether the failure to gather it resulted from negligence, gross negligence, or bad faith.” *See id.*;  
2 *see also Randolph*, 117 Nev. at 987, 36 P.3d at 435. In the case of mere negligence, no  
3 sanctions are imposed, but the defense may question the State's witnesses about their  
4 investigative deficiencies. *See id.* If the Court determines that the State acted with gross  
5 negligence, the defense is entitled to a presumption that the evidence would have been  
6 unfavorable to the State. Finally, in the case of bad faith, dismissal of the charges may be  
7 warranted. *Randolph*, 117 Nev. at 987, 36 P.3d at 435 (citing *Daniels*, 114 Nev. at 267, 956 P.2d  
8 at 115).

9  
10 As stated above, Ms. Lehr was interviewed by LVMPD Detective Hnatuick on April 24,  
11 1999 at 2:50 in the afternoon. (Ms. Lehr’s interview is attached as Exhibit #1). She reported that  
12 at approximately 7am, she drove herself and a man she had been drinking and dancing with  
13 earlier in the night at the Silver Saddle, to his apartment at 2101 Sunrise Ave. She didn’t know  
14 the specific apartment number, but told the detective that it was the downstairs apartment on the  
15 right-hand side. Detectives never went to that apartment or even to that apartment building to  
16 investigate if anyone had heard screaming or witnessed Ms. Lehr leaving the apartment earlier  
17 that day.

18  
19 Ms. Lehr also told detectives that when she entered the apartment with the unidentified  
20 man, there was another younger man in the apartment who was approximately 20 years old. She  
21 was introduced to the younger man by the man she had driven to the apartment, but she couldn’t  
22 recall his name for detectives. Prior to Ms. Lehr allegedly being picked up and taken into the  
23 bedroom, the young man left the apartment to go to the store. Ms. Lehr told the detective that  
24 upon leaving the bedroom after the alleged assault, she discovered the young man had returned  
25 to the apartment. She allegedly left the bedroom crying which the young man would have seen.  
26 Ms. Lehr told detectives she didn’t simply leave the bedroom and the apartment, but took the  
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1 time to speak to the young man. She even remembered that she called the man that had allegedly  
2 attacked her an 'asshole' and then the young man asked what happened. Per her statement to  
3 detectives, Ms. Lehr told the young man what had just happened in the bedroom.

4 After speaking with the young man in the living room, Ms. Lehr left the apartment in a  
5 hurry with the young man following after her asking if she was mad at him. Ms. Lehr noticed  
6 that two women in the apartment complex were so surprised by her appearance or her rushing  
7 out of the apartment or the young man following after her or her hurriedly adjusting her clothes  
8 that the two ladies just stared at her as she got into her car and drove away.

9  
10 According to Ms. Lehr, there is one potential witness who was inside the apartment when  
11 she arrived and could verify her presence in the apartment with the unidentified man. That same  
12 person left for a short period of time, but was inside the apartment at the moment Ms. Lehr left  
13 the bedroom. He could have been a witness to her demeanor and her appearance as well as those  
14 of the unidentified man who appears to be a roommate of this young man. Beyond that, Ms.  
15 Lehr TOLD HIM WHAT HAPPENED. He could have been a confirmatory witness for the State  
16 had the detectives gone to the apartment and simply made some inquiries. Finally, there are two  
17 other potential witnesses who saw her leave the apartment potentially upset and adjusting her  
18 clothes. She was noticeable enough in her description that the two ladies stared. Once again,  
19 those women might have been located had the detectives simply gone to the apartment complex  
20 after taking Ms. Lehr's statement.  
21

22  
23 To look at it from the opposite view, had the detectives gone to that apartment complex  
24 and spoken with the young man, he may not have corroborated Ms. Lehr's statement. He may  
25 not have heard anything that sounded like a struggle or been told that his roommate was an  
26 'asshole' as Ms. Lehr recalled. Furthermore, the two ladies may have had a different version of  
27 what they saw had they been located and interviewed by the detectives. Multiple eye-witnesses  
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1 to the alleged attack or the moments immediately following the alleged attack could provide an  
2 immense amount of information that is no longer available to the defense. This is directly due to  
3 the lack of investigation by the Las Vegas Metropolitan Police Department. At this point, the  
4 defense is left to speculate what those witnesses saw and heard that day.

5 Evidence is material when there is a reasonable probability that had the evidence been  
6 available to the defense the result of the proceedings would have been different. *Randolph v.*  
7 *State*, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001). An eyewitness who was present at the actual  
8 time of the assault, or who could testify about the appearance and demeanor of the Ms. Lehr  
9 upon leaving the bedroom or the apartment, or could repeat the story she told immediately after  
10 leaving the bedroom the eyewitness is material evidence standing on its own. In this case, there  
11 isn't simply one eyewitness but many and none of them were interviewed by the police despite  
12 the police knowing they existed within a few hours of the alleged assault when their memories  
13 would have been the freshest. Now, the State will be able to present the uncontroverted  
14 testimony of the complaining witness to the jury, which is not a fair or accurate portrayal of the  
15 allegations. The State is able to present this snowy white version due to their own failings. The  
16 cumulative nature of so much material evidence not being available to the defense clearly rises to  
17 the level of bad faith on the part of the detectives in this case, which requires dismissal of the  
18 charges. Had the detectives simply missed one witness interview then maybe the State could  
19 argue it was negligence or gross negligence on the part of the investigating officers. This is an  
20 example of bad faith due to the amount of uninvestigated information and the nature of that  
21 uninvestigated information.  
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25 Beyond likely witnesses to the alleged assault, there is other evidence that was not  
26 gathered or even looked for in this case. Ms. Lehr tells of a struggle in the bedroom where her  
27 clothes were forcibly taken off her including her pantyhose. She kicked at the man and even  
28



1 stabbed him on the hand with a safety pin from her clothes. She described a struggle around the  
2 bedroom room that was at times on the bed and at times on the floor. She said she tried reaching  
3 for something to use to get him off her but only found clothes around the room.

4         Based on her description, the police could have sought a search warrant and gone to that  
5 apartment to look for signs of a struggle. This was a few hours after the alleged assault. They  
6 also could have looked for injuries to the hand or hands of the men who lived at the apartment or  
7 safety pins on the floor in an effort to corroborate Ms. Lehr's version of events. Instead, they did  
8 nothing. And, as a result of them doing nothing, there are no crime scene photos, no crime scene  
9 analysis of the bedsheets and no way for the defense to forensically challenge Ms. Lehr's version  
10 of what occurred that day 18 years ago. Once again, the lack of investigation allows the State to  
11 present a distorted version of the events that allegedly occurred that morning 19 years ago. The  
12 lack of investigation also precludes the defense from having the ability to present a full and  
13 complete defense.  
14

15  
16         In yet another example of how the evidence was disregarded, Ms. Lehr told detectives  
17 that she had met the man at the Silver Saddle the night before when she was hanging out with her  
18 friend Candy. Per her interview, Ms. Lehr's friend Candy had been dancing with the man that  
19 had allegedly attacked Ms. Lehr. Ms. Lehr also told detectives that the individual had been in a  
20 band, played bass or drums and his name was Raymond. Detectives failed to go to the Silver  
21 Saddle to see if there was any video footage from the night before that would corroborate Ms.  
22 Lehr's story. They also could have spoken to bartenders to see how much each of them had to  
23 drink. Ms. Lehr told detectives she had only one drink because she didn't like to get drunk.  
24 Perhaps that wasn't the case. Had detectives gone to the Silver Saddle and asked a few questions  
25 Ms. Lehr's details about the hours leading up to the alleged attack would have been confirmed or  
26 would have been shown to be not true, but detectives didn't bother.  
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1 Finally, Ms. Lehr told detectives that after the incident she went to her friend Candy's  
2 house to pick up her son and it was decided then that Metro would be contacted. Detectives  
3 didn't bother to interview a witness who could have been a benefit to the State's case in that she  
4 was a friend of Ms. Lehr's.

5 This is a case where not a single piece of evidence wasn't gathered or investigated. The  
6 Las Vegas Metropolitan Police Department didn't investigate anything connected to this  
7 allegation. They merely took a statement and did nothing else to investigate this case. While it  
8 is anticipated that the State will argue, they have no duty to investigate a case in order to produce  
9 exculpatory evidence for a potential criminal defendant, this is a very unique situation due to the  
10 age of the case and lack of investigation. Mr. Dorado is an individual accused of a crime  
11 allegedly committed 18 years ago. He is at a complete disadvantage to locate potential witnesses  
12 and evidence to defend himself and show that he did not commit the crime he is accused of  
13 committing. There is no 911 call on file with LVMPD anymore due to their policy of destroying  
14 calls after a certain period of time. Perhaps someone heard a woman yelling and screaming as  
15 she left the apartment and threatening Mr. Dorado. We will never know. It appears that the  
16 apartment building located at 2101 Sunrise Avenue may have been torn down sometime in the  
17 last 18 years, so the defense cannot subpoena the lease records of anyone living at that address in  
18 1999. If there were any potential witnesses at that address, we will never know. For the sake of  
19 argument, if the defense is able to locate someone who had relevant information, their memory is  
20 not as fresh as it would have been in 1999. Witnesses should be interviewed as close in time to  
21 the alleged incident when their memory was fresh.

22 The State may argue that Mr. Dorado's DNA was purportedly identified as part of Ms.  
23 Lehr's sexual assault kit, so there is no need for all the superlative evidence the defense is  
24 pointing out. Even if that result is correct, the case doesn't end there. The details of that night  
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1 Fourteenth Amendments of the U.S. Constitution and Article I, Section 8 of the Nevada  
2 Constitution. Due to the complete and total lack of investigation by the Las Vegas Metropolitan  
3 Police Department in 1999, when Ms. Lehr first reported this alleged crime, Mr. Dorado's  
4 constitutional rights are being violated simply by the State's decision to prosecute this case. The  
5 actions or lack of action by the Las Vegas Metropolitan Police Department warrant dismissal of  
6 all charges against Mr. Dorado.

7 DATED this 20<sup>th</sup> day of June, 2017.

8 PHILIP J. KOHN  
9 CLARK COUNTY PUBLIC DEFENDER

10 By: /s/ Violet R Radosta  
11 VIOLET R. RADOSTA, #5747  
12 Deputy Public Defender  
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1 **NOTICE OF MOTION**

2 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

3 YOU WILL PLEASE TAKE NOTICE that the foregoing Motion To Dismiss will  
4 be heard on July 6, 2017, at 9:00 am in District Court Department II.

5 DATED this 20<sup>th</sup> day of June, 2017.

6 PHILIP J. KOHN  
7 CLARK COUNTY PUBLIC DEFENDER

8  
9 By: /s/ Violet R Radosta  
10 VIOLET R. RADOSTA, #5747  
11 Deputy Public Defender

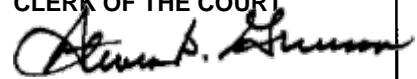
12  
13  
14  
15  
16  
17 **CERTIFICATE OF ELECTRONIC FILING**

18 I hereby certify that service of the above and foregoing was served via electronic  
19 e-filing to the Clark County District Attorney's Office on the 20<sup>th</sup> day of June, 2017 by  
20 Electronic Filing to:  
21

22 District Attorneys Office  
23 E-Mail Address:  
[Jaclyn.Motl@clarkcountyda.com](mailto:Jaclyn.Motl@clarkcountyda.com)

24  
25 /s/ Anita H Harrold  
26 Secretary for the Public Defender's Office  
27  
28

**EXHIBIT "2"**



1 **OPPS**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JACOB J. VILLANI  
6 Chief Deputy District Attorney  
7 Nevada Bar #011732  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

12  
13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 THE STATE OF NEVADA,  
16  
17 Plaintiff,

18 -vs-

19 **RAMON MURIL DORADO,**  
20 **#1673321**  
21  
22 Defendant.

CASE NO: **C-17-323098-1**  
DEPT NO: **II**

23  
24 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO**  
25 **DISMISS FOR FAILURE TO PRESERVE EVIDENCE**

26 DATE OF HEARING: **JULY 6, 2017**  
27 TIME OF HEARING: **9:00 AM**

28 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
District Attorney, through JACOB J. VILLANI, Chief Deputy District Attorney, and hereby  
submits the attached Points and Authorities in Opposition to Defendant's Motion to Dismiss  
for Failure to Preserve Evidence.

This Opposition is made and based upon all the papers and pleadings on file herein, the  
attached points and authorities in support hereof, and oral argument at the time of hearing, if  
deemed necessary by this Honorable Court.

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