

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAMON DORADO,  
Appellant,

v.

THE STATE OF NEVADA,  
Respondent.

Electronically Filed  
Apr 13 2020 08:37 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No. 79559

**RESPONDENT'S APPENDIX**  
**Volume 2**

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## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 13<sup>th</sup> day of April, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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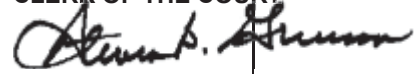
KAREN MISHLER  
Deputy District Attorney

*/s/ J. Garcia*

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RAMON DORADO

**DISTRICT COURT  
CLARK COUNTY NEVADA**

**STATE OF NEVADA,**

Plaintiff,

vs.

**RAMON DORADO,**

Defendant.

Case No.: C323098

District Court Department 29.

**MOTION TO SUPPRESS DNA  
EVIDENCE DUE TO UNRELIABLE  
TESTING METHODS**

(Evidentiary Hearing Requested)

**COMES NOW** the defendant, **RAMON DORADO**, by and through his attorney of record, **DUSTIN R. MARCELLO, ESQ.**, of the law firm **PITARO & FUMO, CHTD.**, and hereby moves this Court to enter an order suppressing the buccal swab obtained from Mr. Dorado on January 27, 2016, due to improper testing methods and tainting of the evidence

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

**DATED** this 7<sup>th</sup> day of November 2018.

/S/ Dustin R. Marcello  
**DUSTIN R. MARCELLO, ESQ.**  
Nevada Bar No. 010134

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

**8:30**

**/S/ Dustin R. Marcello**  
**DUSTIN R. MARCELLO, ESQ.**  
 Nevada Bar No. 010134

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 On April 24, 1999, Michelle Lehr contacted Las Vegas Metropolitan Police Department  
4 and reported that she had been sexually assaulted by a man she knew casually. The alleged  
5 assault had occurred earlier in the morning on April 24, 1999.

6  
7 Lehr went to the Las Vegas Metropolitan Department substation on St. Louis and made  
8 a report and was transported to University Medical Center (UMC) for a medical exam. (GJT  
9 13). Swabs were taken from Ms. Lehr during the medical exam and stored. That all occurred on  
10 April 24, 1999.

11  
12 Fast forward 16 years to October 27, 2015 when Ms. Lehr's sexual assault kit was  
13 submitted to the LVMPD forensic lab for testing. On December 15, 2015 and hit from the  
14 Combined DNA Index System (CODIS) identified Ramon Muric Dorado as a potential source  
15 for the male DNA which was found in Ms. Lehr's SANE kit.

16  
17 Based on this information, Detective Lora Cody, filed an Application for Search  
18 Warrant seeking to obtain a buccal swab from the Defendant Ramon Dorado ("Dorado") on  
19 January 27, 2016. (*See Affidavit of Search Warrant*, 9-1-2016 attached as Exhibit "A"). A  
20 supplemental report had to be issued because of a request for correction of an allele at the  
21 D16S539 locus for Dorado's testing. The error was only corrected after the buccal swab was  
22 taken out of evidence on February 29, 2016 to confirm forensic lab testing.

23  
24 Due to the fact this information was unknown to the court, Judge Nancy Alf granted the  
25 search warrant on January 27, 2016. Police executed the warrant that very same day. (*See*  
26 *Search Warrant Return*, 1-27-2016, attached as Exhibit "B"). The DNA seized as a result of the  
27 search gave rise to the current charges against Dorado. Specifically, the Indictment charges  
28

1 Dorado with: three (3) counts of Sexual Assault. (*See Indictment 4/27/2017* attached as Exhibit  
2 “C”). Dorado was arraigned on May 4, 2017. This motion follows.

### 3 ARGUMENT

4  
5 An expert witness cannot testify unless the court meets three requirements: being  
6 qualified in an area of scientific, technical, or specialized knowledge, it would assist the jury in  
7 understanding evidence or determining a fact, and the testimony would be limited to matters  
8 within the scope of the specialized knowledge. *Hallmark v. Eldridge*, 124 Nev. 492, 499, 189  
9 P.3d 646, 650 (2008). The testimony is only admissible when it is the product of reliable  
10 methodology. *Id.* To determine if the methodology reliable, a district court should consider  
11 whether the opinion is within a recognized field of expertise; testable and has been tested;  
12 published and subjected to peer review; generally accepted in the scientific community and  
13 based more on particularized facts rather than assumption, conjecture, or generalization. *Id.*  
14 When the expert formed the opinion based upon the results of a technique, experiment, or  
15 calculation, then a district court should consider whether the technique, experiment, or  
16 calculation was controlled by known standards; the testing conditions were similar to the  
17 conditions at the time of the incident; the technique, experiment, or calculation had a known  
18 error rate; and it was developed by the proffered expert for purposes of the present dispute. *Id.*  
19 at 501–02. The factors are not exhaustive and are accorded various weight. *Id.* at 502.

20  
21 Here, the DNA evidence obtained from the buccal swab testing cannot be considered  
22 reasonably reliable because it was not produced using reliable methodology. Specifically, the  
23 DNA evidence had to be removed from evidence on February 29, 2016 to fix an error regarding  
24 the D16S539 allele locus. Despite knowing this, in determining whether Dorado was the source  
25 of the sample the LVMPD Forensic Laboratory still relied on D16S539, the allele locus that had  
26  
27  
28



1 to be corrected, during the October 27, 2016 test. In relying on this allele to make their  
2 determination about whether Dorado was a match for the sample, the standards used to perform  
3 the test did not meet known standards of the scientific community as required by *Hallmark*. The  
4 test relied information that required a second opinion in determining if the allele was in that  
5 location. Relying on an allele that had to be corrected would affect the error rate of the  
6 calculation if the allele was not at the D16S539 location. No expert witness would be able to  
7 rely on or discuss the swab because the buccal swab testing was produced using reliable  
8 methodology. For these reasons, the results of the buccal swab testing, should be suppressed.  
9  
10

### 11 CONCLUSION

12 The defense respectfully requests that the Court suppress all evidence related to the  
13 buccal swab testing as it was not reliably obtained. Alternatively, the defense requests an  
14 evidentiary hearing be held to determine the admissibility of the evidence.  
15  
16

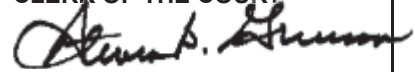
17 **DATED** this 7<sup>th</sup> day of November 2018.

18 /S/ Dustin R. Marcello  
19 **DUSTIN R. MARCELLO, ESQ.**  
20 Nevada Bar No. 010134  
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**/S/ Dustin R. Marcello**  
**DUSTIN R. MARCELLO, ESQ.**  
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**OPPS**

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Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

**RAMON MURIL DORADO,  
#1673321**

Defendant.

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

DEPT NO: **XXIX**

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS DNA  
EVIDENCE DUE TO UNRELIABLE TESTING METHODS**

DATE OF HEARING: NOVEMBER 20, 2018  
TIME OF HEARING: 8:30 A.M.

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 Suppress DNA Evidence Due to Unreliable Testing Methods.

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  
7 right 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.

11 On November 7, 2018, Defendant filed the instant Motion to Suppress DNA Evidence  
12 Due to Unreliable Testing Methods.

### 13 **STATEMENT OF FACTS**

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

25 Around 7:00 am the group decided to leave for PT's. Id. Joanna went with the bartender  
26 in his car. Id. Candy decided last minute to call her boyfriend to pick her up and agreed to  
27 meet up with M.L. in front of the house by 10:00am so the kids would not think anything. GJT  
28 p. 9. On the way to PT's Defendant said he had to cash his paycheck and stop by his house to

1 call in to work. Id. Not thinking anything of it at that time, M.L. drove to Defendant's house.  
2 Id. When they got there, Defendant asked M.L. to come inside. Id. Inside the house was a  
3 young man who did not speak English. Id. Defendant spoke to the young man in Spanish and  
4 from what M.L. could understand, Defendant sent him to the store to get something. Id. When  
5 the young man left, Defendant picked M.L. up and dragged her into the bedroom as she was  
6 telling him to put her down. Id. Defendant refused to listen and brought M.L. into the bedroom.  
7 GJT p. 10.

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

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

because he was unable to keep his erection. Id. After a couple of minutes of trying, Defendant got up and allowed M.L. to get her stuff. Id. As Defendant sat there, he kept saying “she’s right, she’s right”, while M.L. asked him what part of “no means no” did he not understand. Id. Defendant responded that he was not talking about what just happened but about his ex-wife telling him he will never be able to have sex with another woman again. GJT 12-13. As M.L. walked out, she saw that the young man was back from the store. GJT p. 13.

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

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

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

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

On November 17, 2016, the Buccal swab obtained from Defendant pursuant to the search warrant was compared to the DNA profile developed from the vaginal swabs of M.L.’s SAK and found to be a match with the probability of selecting a random individual with the same DNA profile being 1 in 1.45 sextillion (1 in 1,450,000,000,000,000,000). For comparison, the odds of winning *both* the Mega Million (1 in 302.6 million) and Powerball (1 in 292 million) lottery jackpots is “only” 1 in 88 quadrillion (1 in 88,000,000,000,000,000).

## ARGUMENT

**I. DEFENDANT HAS FAILED TO PROVIDE THIS COURT WITH SUFFICIENT INFORMATION UPON WHICH TO BASE A RULING**

Defendant cites a single case, Hallmark v. Eldridge, 124 Nev. 492 (2008), to support his argument that the DNA evidence in this case should be suppressed because of “unreliable testing methods.” In Hallmark, a personal injury case, the decedent suffered severe injuries when an employee backed a company truck into decedent's vehicle. *Id.* at 495. The district

allowed the employer's biomechanical expert to testify. Id. at 496. The Supreme Court of Nevada found that substantial evidence supported the district court's determination that the biomechanical engineer qualified as an expert under NRS 50.275 because the expert had academic degrees, was licensed to practice medicine, and had ten years of surgical experience. Id. at 499. However, it was not shown that the expert's testimony was based on a reliable methodology; thus, the Court held that his testimony did not assist the jury in understanding the source of decedent's injury. Id. at 502. The Court found the expert's opinion was highly speculative because he did not know (1) the vehicles' starting positions, (2) their speeds at impact, or (3) the angle at which the vehicles collided. Id. In reversing, the Court held but for the erroneous admission of the expert testimony, the jury probably would have awarded more damages. Id.

Here, Defendant's claim is based upon the premise that the DNA evidence in this case cannot be relied upon, with no supporting evidence or argument whatsoever. Defendant claims that "the DNA evidence had to be removed from evidence on February 29, 2016 to fix an error regarding the D16S539 allele locus," (Motion, p. 4) but provides no context to this Court as to what this means. Defendant attached no supporting exhibits to his motion showing when the evidence was allegedly "removed," where the alleged "correction" was, why the allele needed to be "corrected," or what significance the "correction" had on the analyst's ultimate conclusion that the DNA from the SAK matched Defendant's DNA. Defendant failed to provide any expert reports or affidavits indicating that the results of the examination were rendered unreliable because of the "correction." Defendant also failed to provide this Court with any explanation whatsoever regarding how an "unreliable" testing method could ultimately lead to identifying the correct suspect when the probability of randomly choosing the correct suspect from the general population is 1 in 1.45 sextillion.

Defendant has failed to make a logical argument regarding how the correction of an allele by a DNA analyst renders Defendant's DNA evidence unreliable. Defendant's argument is especially perplexing because Defendant has previously argued in pleadings that the victim consented to sex with him. *See* Defendant's Motion to Dismiss Indictment, filed 10/19/18, p.



9, Ins. 19-26. Because Defendant has failed to meet his burden of showing this Court why suppression is warranted in this case, his motion should be denied at the outset.

**II. THE D16 ALLELE NOTED IN THE TABLE IN THE INITIAL REPORT DID NOT RENDER THE DNA COMPARISON IN THIS CASE UNRELIABLE**

As Defendant has not given sufficient information in his motion, the State is forced to speculate regarding the basis for his argument. Defendant's instant Motion argues – with no supporting documentation – this Court should suppress the DNA evidence in this case because “[a] supplemental report had to be issued because of a request for correction of an allele at the D16S539 locus for Dorado's testing.” Motion, p. 3. Defendant's argument is misinformed.

The “correction” to which Defendant is referring was an “administration only,” or “clerical error” – otherwise known as a typo. The typo was not contained in the DNA profile uploaded into CODIS, and had no effect whatsoever on the reliability of the analysis conducted. An explanation as to how the typo was discovered and corrected follows.

Pursuant to funding received from the Sexual Assault Kit Initiative (SAKI), M.L.'s previously-untested SAK was outsourced with a batch of similar kits to Cellmark Forensics ("Cellmark") for testing. On September 21, 2015, Cellmark issued the report attached as Exhibit 1. In that report, Cellmark noted that it subjected M.L.'s vaginal swabs and blood to PCR<sup>1</sup> amplification. The report also notes that the vaginal swabs were positive for seminal fluid. The report notes that the epithelial fraction of the vaginal swab was consistent with M.L. This is to be expected as M.L.'s epithelial tissue is expected to be found in her own vagina. The report also notes that the sperm fraction of the vaginal swab was a mixture of two individuals: the major profile being from an unknown male and the minor alleles being consistent with M.L. A chart was then provided on Page 3 of the report with four rows and 16 columns. Each row gives the identifier for the four different items tested: (1) the epithelial fraction of the vaginal swab; (2) the sperm fraction of the vaginal swab; (3) the major profile from the sperm fraction of the vaginal swab; and (4) the known sample from M.L. Each of the

16 columns contains a different allele loci. The particular allele where the correction had to be made was D16S539 (“D16”) at the major contributor row (3<sup>rd</sup> row down). In the chart on Page 3 of Exhibit 1, the identifier reads “9, 11”, and this is a typo.

The typo becomes apparent when looking at Exhibit 2, the underlying data that formed the basis for the Cellmark report and chart. Exhibit 2 shows the “peaks,” this is how the specific identifiers are identified. When looking under D16S539 in Exhibit 2, there are two peaks noted: a very small peak labeled as “9” and a comparatively very tall peak labeled as “11.”<sup>2</sup> However, only the “11” label has a dot next to it. The bottom-left of Exhibit 2 says that a dot indicates a “major allele,” and this would be the DNA not consistent with the minor contributor (in this case, M.L.). When transferring the numbers from the peaks in Exhibit 2 to the chart in Exhibit 1, the Cellmark examiner incorrectly identified both the 9 and the 11 as being major alleles; however, even her own underlying data indicates “9” is not a major allele at the D16 locus.

After Cellmark performed the analysis, the data was sent to the LVMPD lab for verification and uploading into the CODIS system. LVMPD does not rely upon the report (Exhibit 1) when uploading a CODIS profile, they rely upon the underlying data. During review of the underlying data, an LVMPD analyst noticed the typo discussed, *supra*, and requested Cellmark issue a supplemental report fixing the typo. *See* Exhibit 3.

Bode Cellmark Forensics<sup>3</sup> (Bode-Cellmark) issued a supplemental report dated October 27, 2016. *See* Exhibit 4. This report fixed the typo, noting correctly that only the identifier “11” appears as a major component at the D16 allele locus.

Upon receiving the supplemental report, the LVMPD analyst filled out an “Outsourcing Laboratory Technical and Administrative Review Form.” *See* Exhibit 5. Notably, this form stated: “There is no technical data to review. Allele table amended for correction at D16 locus.

<sup>2</sup> It is important to note that some of M.L.'s DNA is expected to be present in the sperm fraction due to carry-over contamination from the PCR amplification process. This is why there are "minor" and "major" contributors identified in a DNA report. A review of the corresponding identifiers at each loci reveals that the identifiers not belonging to M.L. belong to Defendant, and vice versa.

<sup>3</sup> Sometime between September 21, 2015 and October 27, 2016, Cellmark Forensics was acquired by Bode Forensics to form the new company Bode Cellmark Forensics. This is why the format of the report in Exhibit 1 differs from Exhibit 4.

1 Administrative review completed.” There was “no technical data to review” because the  
2 incorrect entry in the table in Exhibit 1 was a typo, not an issue with the data or analysis.

3 The profile uploaded into CODIS by the LVMPD forensic lab was based off the data  
4 received from Cellmark (the peaks), not the data in the table contained in the report. It was  
5 this data that was uploaded into CODIS with the correct identifier of “11” at the D16 locus. It  
6 was this data that resulted in a “hit” in the CODIS system identifying Defendant as matching  
7 the major profile from the sperm fraction of the vaginal swabs from M.L.’s SAK. *See* Exhibit  
8 6.

9 Defendant makes baseless claims in his motion that are incorrect and misleading to this  
10 Court. On page 4, lines 25-26 Defendant claims: “DNA evidence had to be removed from  
11 evidence on February 29, 2016 to fix an error regarding the D16S539 allele locus.” This is  
12 incorrect. No DNA evidence was “removed” or even touched at all to fix the typo, and  
13 Defendant has provided no evidence to the contrary. Additionally, on page 5, lines 1-4  
14 Defendant claims: “In relying on this allele to make their determination about whether Dorado  
15 was a match for the sample, the standards used to perform the test did not meet known  
16 standards of the scientific community as required by *Hallmark*.” This is also incorrect. The  
17 identifier relied upon in making the match to Defendant at the D16 locus was “11,” as indicated  
18 in Exhibit 6. The identifier “9” was never used to identify Defendant because the CODIS entry  
19 used the underlying data developed, not the table attached to the September 21, 2015 report.  
20 Defendant has not provided this Court any evidence to support his claim that the incorrect data  
21 was relied upon or somehow otherwise made the analysis unreliable; thus, his claim lacks  
22 merit.

23 Basically, a typo was caught through an administrative review process specifically set  
24 up to ensure the reliability of reports and data submitted to the CODIS system. The typo had  
25 no effect on the accuracy or reliability of the data used to identify Defendant in the CODIS  
26 system, and Defendant has failed to support his claim to the contrary with any evidence  
27 whatsoever. Therefore, the correction of a typo did not somehow render the DNA comparison  
28 in this case unreliable, and Defendant’s motion should be denied.

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**CONCLUSION**

Based upon the foregoing argument and attached exhibits, the State respectfully requests that this Court deny Defendant's Motion to Suppress DNA Evidence Due to Unreliable Testing Methods.

DATED this 14th day of November, 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

**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I hereby certify that service of the above and foregoing was made this 14th day of November, 2018, by electronic transmission to:

TOM PITARO, ESQ.  
Email Address: pitaro@gmail.com

BY: /s/ J. Georges  
Secretary for the District Attorney's Office

JV/jg/SVU

# Report of Laboratory Examination

September 21, 2015

DNA Manager Kellie Gauthier  
Las Vegas Metropolitan Police Department  
5605 W. Badura Avenue  
#120B

**SUBJECT:** M [REDACTED] L [REDACTED] (Victim)

Las Vegas, NV 89118

**CELLMARK FORENSICS NO:** LV15-0347

**AGENCY CASE NO:** 99 0424-1124

**ADD'L AGENCY NO:** 15-02847

## EXHIBITS

Client Item	CF Item	Received	Item Description	PCR
99 0424-1124-SAK	LV15-0347-01	4/23/2015	Vaginal Swabs	Y
99 0424-1124-SAK	LV15-0347-02	4/23/2015	Liquid Blood - M [REDACTED] L [REDACTED] (Victim)	Y
99 0424-1124-SAK	NOT EXAMINED	4/23/2015	Rectal Swabs and Smears Envelope : Not Collected	N
99 0424-1124-SAK	NOT EXAMINED	4/23/2015	Oral Swabs and Smears Envelope	N
99 0424-1124-SAK	NOT EXAMINED	4/23/2015	Moist/Dried Secretions on Skin Envelope : Breasts	N
99 0424-1124-SAK	NOT EXAMINED	4/23/2015	Debris Collection Envelope	N
99 0424-1124-SAK	NOT EXAMINED	4/23/2015	Pubic Hair Combing Envelope	N
99 0424-1124-SAK	NOT EXAMINED	4/23/2015	Underpants Bag : Not Collected	N
99 0424-1124-SAK	NOT EXAMINED	4/23/2015	Known Saliva Sample Envelope : M [REDACTED] L [REDACTED]	N
99 0424-1124-SAK	NOT EXAMINED	4/23/2015	Pulled Pubic Hairs Envelope : M [REDACTED] L [REDACTED]	N
99 0424-1124-SAK	NOT EXAMINED	4/23/2015	Pulled Head Hairs Envelope : M [REDACTED] L [REDACTED]	N
99 0424-1124-SAK	NOT EXAMINED	4/23/2015	Blood Tube : M [REDACTED] L [REDACTED]	N
99 0424-1124-SAK	NOT EXAMINED	4/23/2015	Blood Tube : M [REDACTED] L [REDACTED]	N

## SEROLOGY TABLE

Sample No.	Description	Seminal Fluid (Sperm Search)
LV15-0347-01	Vaginal Swabs	Pos

Key: Pos = Positive Neg = Negative Inc = Inconclusive NT = Not Tested

## RESULTS

DNA testing using the polymerase chain reaction (PCR) and the AmpFISTR Identifiler Plus™ Amplification Kit was performed on the indicated exhibit(s). The loci tested and the results obtained for each tested sample are listed in Table 1 (see attachment).

# EXHIBIT "1"



## CONCLUSIONS

### LV15-0347-01.01.1-EF

The DNA profile obtained from the epithelial fraction of the vaginal swabs is consistent with the DNA profile obtained for M [REDACTED] L [REDACTED].

### LV15-0347-01.01.1-SF

The DNA profile obtained from the sperm fraction of the vaginal swabs is a mixture consistent with two individuals. The major profile originated from an unknown male and the minor alleles are consistent with the DNA profile obtained for M [REDACTED] L [REDACTED].

## DISPOSITION

In the absence of specific instruction, evidence will be returned to the submitting agency by Federal Express or another appropriate carrier.

## REVIEW

The results described in this report have been reviewed by the following individuals:

Analyst: Dana K. Warren  
Dana K. Warren / Senior Forensic DNA Analyst

Technical  
Reviewer: Kelli Byrd  
Kelli Byrd / Supervisor - Forensic Casework

Procedures used in the analysis of this case adhere to the Quality Assurance Standards for Forensic DNA Testing Laboratories. Cellmark Forensics is accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board. The results in this report relate only to the items tested.



LabCorp Specialty Testing Group

## Report of Laboratory Examination

9/21/2015

13988 Diplomat Dr. Suite 100  
Dallas TX 75234  
Phone: 1-800-752-2774  
Fax: 214-271-8322

CELLMARK FORENSICS NO: LV15-0347  
AGENCY CASE NO: 99 0424-1124  
ADD'L AGENCY NO: 15-02847

Table 1 Identifier Plus

Sample Name	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	AMEL	D5S818	FGA
Vaginal Swabs LV15-0347-01.01.1-EF 99 0424-1124-SAK	11, 13	30, 30.2	9, 13	9, 10	17	6	13	9	18, 20	14	15, 16	10, 11	13, 20	X	12	19, 22
Vaginal Swabs LV15-0347-01.01.1-SF 99 0424-1124-SAK	11, 13, 14, 15	28, 30, 30.2, 31	9, 10*	9, 10, 11, 12	14, 16, 17	6	9, 13	9, 11	18, 19, 20, 25	13, 14	16, 17	8, 11, 12*	19, 20, 23*	X, Y	11, 12	22, 27*
Vaginal Swabs- Major LV15-0347-01.01.1-SF 99 0424-1124-SAK	14, 15	28, 31	9, 10	11, 12	14, 16	6	9	9, 11	19, 25	13	16, 17	8, 12	19, 23	X, Y	11	22, 27
M L (Victim) LV15-0347-02.01.1 99 0424-1124-SAK	11, 13	30, 30.2	9, 13	9, 10	17	6	13	9	18, 20	14	15, 16	10, 11	13, 20	X	12	19, 22

EF = Epithelial Fraction

SF = Sperm Fraction

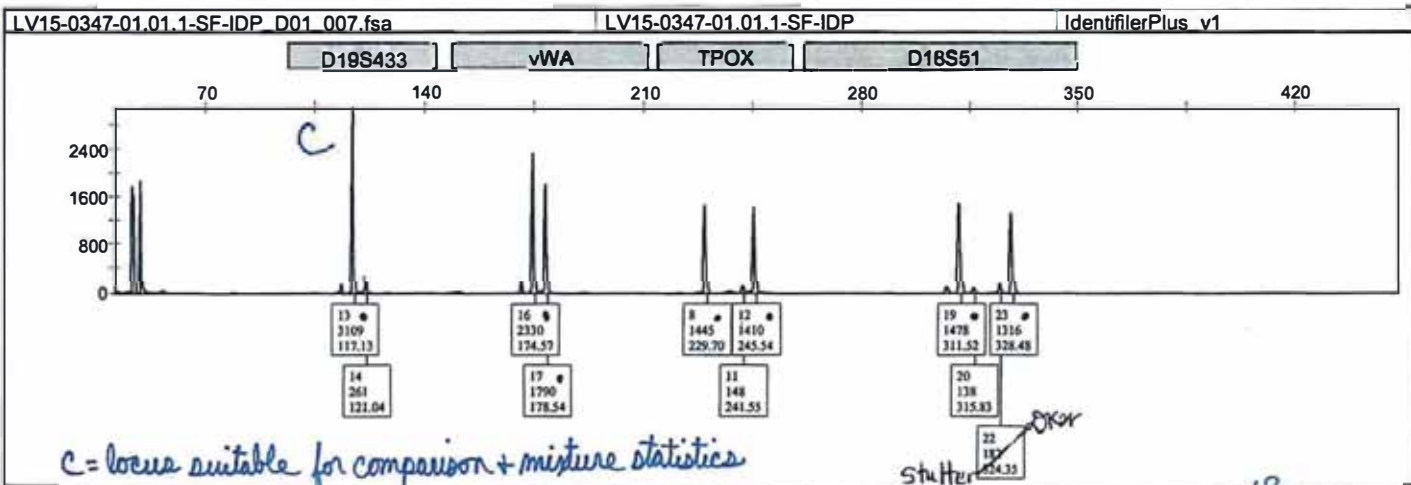
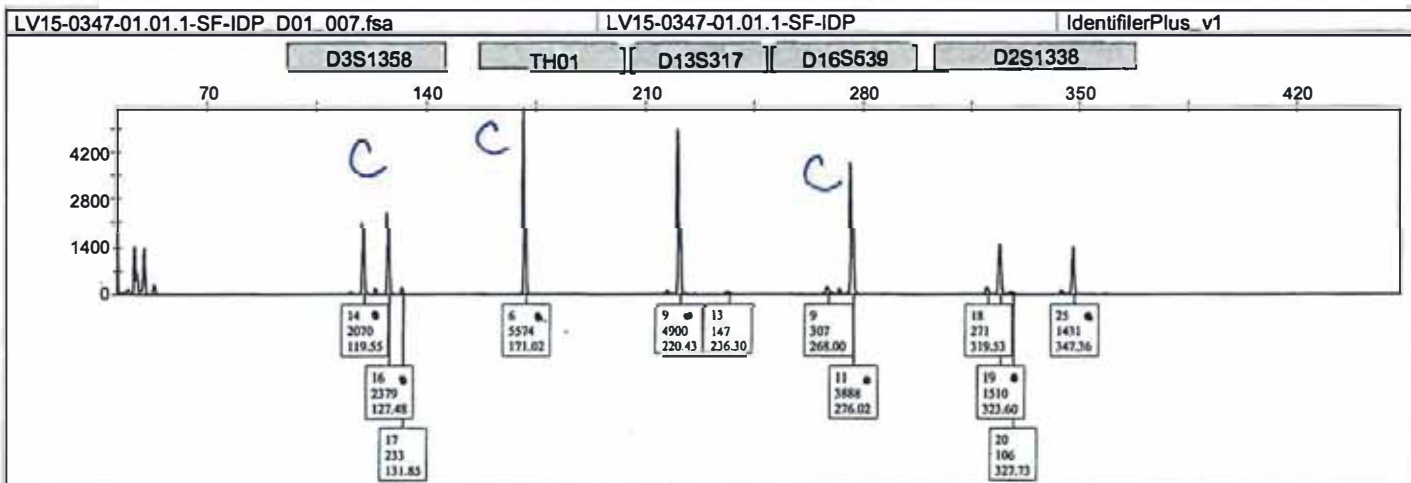
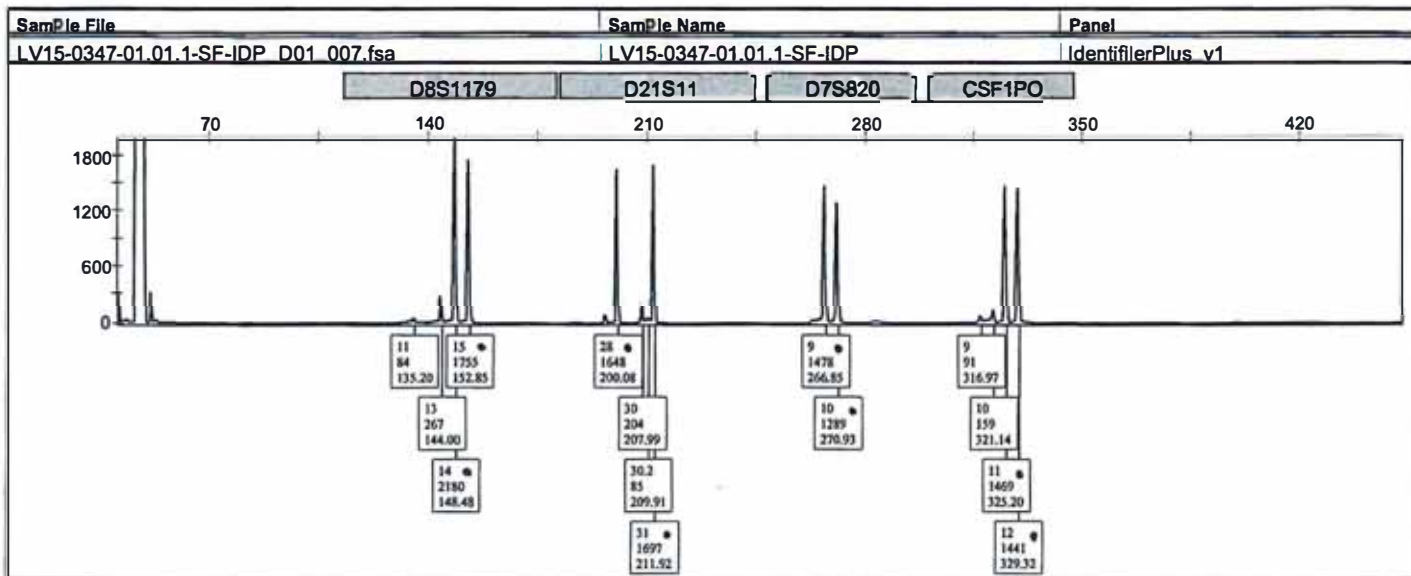
X = Female

X, Y = Male

\* = Possible additional allele(s) below threshold

Major = This represents the best determination of a major profile.

The results listed in the table do not depict intensity differences. Only alleles exceeding validated analysis threshold are included in table.



*C = locus suitable for comparison + mixture statistics*

• = major allele

USED FOR REPORT

*DKW*  
stutter

*KB*  
SEP 16 2015



## Stephana Larkin

---

**From:** Clement, Meghan <Clemenm@LabCorp.com>  
**Sent:** Tuesday, October 25, 2016 2:54 PM  
**To:** Carol Retamozo; Gulliksen, Joan  
**Subject:** RE: Cellmark Forensics case # LV15-0347

I'll ask one of our old Dallas employees to get you a corrected report.

Sent from my Windows Phone

---

**From:** [Carol Retamozo](#)  
**Sent:** 10/25/2016 5:52 PM  
**To:** [Clement, Meghan](#); [Gulliksen, Joan](#)  
**Subject:** Cellmark Forensics case # LV15-0347

Good afternoon Meghan/Joan –

Please note that we need an amended allele table for Cellmark case # LV15-0347. Please see attachment.

As one of our analysts was writing a supplemental report on this case, she noticed that the major alleles reported on the allele table (page 3) at locus D16 were inconsistent with the major documented in the electropherogram (page 5).

Can you please review attachment and let us know how you would like to proceed?

Thank you

***Carol J. Retamozo, B.S., F-ABC***  
*Forensic Laboratory Supervisor - Biology/DNA Detail*  
*LVMPD - Criminalistics Bureau*  
**Phone:** 702-828-3929  
**E-mail:** [c14280r@lvmpd.com](mailto:c14280r@lvmpd.com)  
**Front Desk:** 702-828-3292  
**Fax:** 702-828-3948

**Note:** Correspondence referencing cases may be retained as part of the Forensic Laboratory's case record and are subject to Information Disclosure Requests.

-This e-mail and any attachments may contain CONFIDENTIAL information, including PROTECTED HEALTH INFORMATION. If you are not the intended recipient, any use or disclosure of this information is STRICTLY PROHIBITED; you are requested to delete this e-mail and any attachments, notify the sender immediately, and notify the LabCorp Privacy Officer at [privacyofficer@labcorp.com](mailto:privacyofficer@labcorp.com) or call (877) 23-HIPAA / (877) 234-4722.

EXHIBIT "3"



LabCorp Specialty Testing Group  
10430 Furnace Road, Suite 107  
Lorton, VA 22079  
Phone: 703-646-9740

NOV 07 2016

**Supplemental Forensic Case Report  
October 27, 2016**

To:  
DNA Manager Kellie Gauthier  
Las Vegas Metropolitan Police Dept.  
5605 W. Badura Avenue  
#120B  
Las Vegas, NV 89118

**Bode Cellmark Case #:** LV15-0347  
**Agency Case #:** 99 0424-1124  
**Additional Agency Case #:** 15-02847

**Victim:** M [REDACTED] L [REDACTED]

**List of Evidence Received on April 23, 2015 for possible DNA analysis:**

<u>Orchid Cellmark Sample #</u>	<u>Agency Item #</u>	<u>Agency Description</u>
LV15-0347-01	99 0424-1124-SAK	Vaginal Swabs
LV15-0347-02	99 0424-1124-SAK	Liquid Blood- M [REDACTED] L [REDACTED] (Victim)
NOT EXAMINED	99 0424-1124-SAK	Rectal Swabs & Smears Envelope: Not Collected
NOT EXAMINED	99 0424-1124-SAK	Oral Swabs & Smears Envelope
NOT EXAMINED	99 0424-1124-SAK	Moist/Dried Secretions on Skin
NOT EXAMINED	99 0424-1124-SAK	Envelope: Breasts
NOT EXAMINED	99 0424-1124-SAK	Debris Collection Envelope
NOT EXAMINED	99 0424-1124-SAK	Pubic Hair Combing Envelope
NOT EXAMINED	99 0424-1124-SAK	Underpants Bag: Not Collected
NOT EXAMINED	99 0424-1124-SAK	Known Saliva Sample Envelope: M [REDACTED] L [REDACTED]
NOT EXAMINED	99 0424-1124-SAK	Pulled Pubic Hairs Envelope: M [REDACTED] L [REDACTED]
NOT EXAMINED	99 0424-1124-SAK	Pulled Head Hairs Envelope: M [REDACTED] L [REDACTED]
NOT EXAMINED	99 0424-1124-SAK	Blood Tube: M [REDACTED] L [REDACTED]
NOT EXAMINED	99 0424-1124-SAK	Blood Tube: M [REDACTED] L [REDACTED]

**DNA Processing, Results, and Conclusions:**

The evidence was processed for DNA typing by analysis of the 13 CODIS Short Tandem Repeat loci, the D2S1338 locus, the D19S433 locus, and the Amelogenin locus using the Applied Biosystems AmpFLSTR® Identifier® Plus kit.

1. A DNA profile was previously obtained from sample LV15-0347-02.01.1 [M [REDACTED] L [REDACTED]].
2. The previously obtained DNA profile from the epithelial fraction (EF) of sample LV15-0347-01.01.1-EF is consistent with the DNA profile obtained for M [REDACTED] L [REDACTED].
3. The previously obtained DNA profile from the sperm fraction (SF) of sample LV15-0347-01.01.1-SF is consistent with a mixture of two individuals. The major profile originated from an unknown male and the minor alleles are consistent with the DNA profile obtained for M [REDACTED] L [REDACTED].

See **Table 1** for summary of alleles reported for each sample.

Bode Cellmark Case #: LV15-0347  
 Agency Case #: 99 0424-1124  
 Additional Agency Case #: 15-02847

Date: October 27, 2016

**Notes:**

1. Testing performed for this case is in compliance with accredited procedures under the laboratory's ISO/IEC 17025 accreditation issued by ASCLD/LAB and ANAB. Refer to certificates and scopes of accreditation for certificate numbers ALI-231-T and AT-1672, respectively.
2. The DNA profiles reported in this case were determined by procedures that have been validated according to the standards established in the FBI's Quality Assurance Standards for Forensic DNA Testing Laboratories.
3. Any reference to body fluids in evidence descriptions are based on the written descriptions of the samples by the submitting agency.
4. The DNA extracts and submitted evidence were previously returned to Las Vegas Metropolitan Police Department.
5. A supplemental report was issued due to a request for correction of an allele call at the D16S539 locus for sample LV15-0347-01.01.1-SF (Major). Please see previous Orchid Cellmark report LV15-0347 dated September 21, 2015.

Report submitted by,

*Dana Warren*

Dana Warren, BS, F-ABC  
 Senior Forensic DNA Analyst

**Table 1. Analysis of Short Tandem Repeat Loci**

Locus	LV15-0347- 01.01.1-EF	LV15-0347- 01.01.1-SF	LV15-0347- 01.01.1-SF [Major Component]	LV15-0347- 02.01.1 [Michelle Lehr]
D8S1179	11,13	11,13, 14, 15	14, 15	11,13
D21S11	30, 30.2	28, 30, 30.2, 31	28, 31	30, 30.2
D7S820	9, 13	9, 10*	9, 10	9, 13
CSF1PO	9, 10	9, 10, 11, 12	11, 12	9, 10
D3S1358	17	14, 16, 17	14, 16	17
TH01	6	6	6	6
D13S317	13	9, 13	9	13
D16S539	9	9, 11	11	9
D2S1338	18, 20	18, 19, 20, 25	19, 25	18, 20
D19S433	14	13, 14	13	14
vWA	15, 16	16, 17	16, 17	15, 16
TPOX	10, 11	8, 11, 12*	8, 12	10, 11
D18S51	13, 20	19, 20, 23*	19, 23	13, 20
Amelogenin	X, X	X, Y	X, Y	X, X
D5S818	12	11, 12	11	12
FGA	19, 22	22, 27*	22, 27	19, 22

\* Possible additional allele(s) below threshold



**Las Vegas Metropolitan Police Department Forensic Laboratory  
Outsourcing Laboratory Technical and Administrative Review Form**

Outsourcing Lab #: LV15-0347  
Lab #: 15-02847  
Event #: 990424-1124

**Batch Technical and Second Read Review Checklist**

- |  |     |     |
|--|-----|-----|
| 1 Chain of Custody documented and reviewed   | N/A | YES |
| 2 Ladders, internal lane standards, and associated negative/positive controls reviewed | N/A | YES |
| 3 Vendor lab technical and administrative review completed and documented              | N/A | YES |

Comments:

*N/A C14280R*

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**Technical and Second Read Review Checklist**

- |   |     |     |
|---|-----|-----|
| 1 Evidence described in sufficient detail   | N/A | YES |
| 2 Presumptive/Confirmatory testing documented to include lot numbers                                  | N/A | YES |
| 3 Evidentiary allele call results reviewed and supported by the data                                  | N/A | YES |
| 4 Samples requiring additional work after first pass-through have the appropriate associated controls | N/A | YES |
| 5 True off-ladder allele(s) and/or tri-alleles confirmed  | N/A | YES |
| 6 Electropherograms and DNA types in chart are consistent   | N/A | YES |
| 7 EF/SF pair(s) consistent with originating from a single sample                                      | N/A | YES |
| 8 Agree with interpretation (inclusions, exclusions, inconclusives)                                   | N/A | YES |
| 9 Interpretation and conclusions are supported by the data  | N/A | YES |
| 10 Statistics have been reviewed and are complete   | N/A | YES |
| 11 Report reflects correct results/conclusions as supported by the data                               | N/A | YES |
| 12 Report addresses each item sent to vendor lab for analysis   | N/A | YES |
| 13 "Scope of work" adhered to   | N/A | YES |
| 14 Profile(s) selected for CODIS entry are eligible   | N/A | YES |
| 15 CODIS profiles have the correct DNA type and appropriate specimen category                         | N/A | YES |

*N/A C14280R*

Comments:

*11.7.16 - There is no technical data to review. Allele table amended for correction at D16 loci. Administrative review completed.*

*C14280R*

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

**Administrative Review Checklist**

- |  |            |            |
|--|------------|------------|
| 1 Outsourcing laboratory report reviewed for clerical errors                 | N/A        | <u>YES</u> |
| 2 Outsourcing laboratory report signed by analyst                            | N/A        | <u>YES</u> |
| 3 CODIS Data Entry packet including Specimen Detail Report reviewed          | <u>N/A</u> | YES        |
| 4 CODIS profiles have the correct DNA type and appropriate specimen category | <u>N/A</u> | YES        |
| 5 CODIS Entry Notification Report reviewed                                   | <u>N/A</u> | YES        |

Signed: \_\_\_\_\_

*14280*

Date: \_\_\_\_\_

*November 7, 2016*

**EXHIBIT "5"**

# Local Match Detail Short Report

Match Date: 10/26/2015 10:44

Match ID: NL0000059808

STR Locus	Target NV0022632 SA1502847-1-SF-MAJ Forensic, Unknown	Candidate NV0022632 SN08820 Convicted Offender	Locus Match Stringency
D8S1179	14,15	14,15	High
D21S11	28,31	28,31	High
D7S820	9,10	9,10	High
CSF1PO	11,12	11,12	High
D3S1358	14,16	14,16	High
TH01	6	6	High
D13S317	9	9	High
D16S539	11	11	High
D2S1338	19,25	19,25	High
D19S433	13	13	High
vWA	16,17	16,17	High
TPOX	8,12	8,12	High
D18S51	19,23	19,23	High
Amelogenin	X,Y	X,Y	High
D5S818	11	11	High
FGA	22,27	22,27	High
16 STR Loci Match		Match Stringency: High	

Source ID:	Yes	Yes
Partial Profile:	No	No
Disposition:	Offender Hit	Offender Hit
Invest. Aided:	0	0

## Search Configuration:

Search Program: Autosearcher

Maximum number of candidates to return from search: return all candidates

Evaluate STR: True

Minimum number of matching loci required to report a match: 6

Include candidate specimens that match on all but 1 loci.

Use STR as match filter: False

Require STR to report a match: False

Evaluate Y-STR: False

Evaluate mtDNA: False

# EXHIBIT "6"

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Felony/Gross Misdemeanor

## COURT MINUTES

November 20, 2018

C-17-323098-1      State of Nevada  
vs  
Ramon Dorado

November 20, 2018	08:30 AM	Defendant's Motion to Suppress DNA Evidence Due to Unreliable Testing Methods (Evidentiary Hearing Requested)
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**HEARD BY:** Jones, David M                      **COURTROOM:** RJC Courtroom 15A

**COURT CLERK:** Skinner, Linda

**RECORDER:** Murphy-Delgado, Melissa

**REPORTER:**

**PARTIES PRESENT:**

**Dustin R. Marcello** **Attorney for Defendant**

**Jacob J. Villani** **Attorney for Plaintiff**

**Ramon Muril Dorado** **Defendant**

**State of Nevada** **Plaintiff**

## JOURNAL ENTRIES

Mr. Marcello appeared for Mr. Pitaro. Arguments by Mr. Marcello and Mr. Villani in support of their respective positions. Following, COURT ORDERED, Motion DENIED.

## CUSTODY





MOTN  
YAMPOLSKY & MARGOLIS  
MACE J. YAMPOLSKY, ESQ.  
Nevada Bar No. 001945  
JASON R. MARGOLIS, ESQ.  
Nevada Bar No. 012439  
625 South Sixth Street  
Las Vegas, Nevada 89104  
(702) 385-9777; Fax No. (702) 385-3001  
Attorneys for Defendant

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

RAMON M. DORADO,

Defendant.

Case No. C-17-323098-1  
Dept. No. XXIX

**DEFENDANT RAMON DORADO'S MOTION IN LIMINE**

COMES NOW, Defendant Ramon Dorado, by and through undersigned counsel, and hereby provides and timely files the foregoing Motion in Limine in preparation for trial currently set for June 17, 2019. This Motion in Limine is supported by all pleadings and papers on file herein, the attached Points and Authorities, and any oral argument the Court may permit at the time of the hearing on the Motion.

DATED this 12<sup>th</sup> day of June, 2019.

YAMPOLSKY & MARGOLIS

/s/ Mace J. Yampolsky, Esq.  
MACE J. YAMPOLSKY, ESQ.  
Nevada Bar No. 001945  
625 South Sixth Street  
Las Vegas, Nevada 89101  
Attorney for Defendant

1 **NOTICE OF MOTION**

2 TO: THE STATE OF NEVADA, Plaintiff;

3 TO: OFFICE OF THE DISTRICT ATTORNEY, Attorney for Plaintiff

4 YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the  
5 above and foregoing Motion on for hearing before the Court at the Courtroom of the above-entitled Court  
6 on the \_\_\_\_ day of \_\_\_\_\_, 2019, at the hour of \_\_\_\_\_.m., or as soon thereafter as counsel  
7 can be heard.

8 DATED this 12<sup>th</sup> day of June, 2019.

9 YAMPOLSKY & MARGOLIS

10 /s/ Mace J. Yampolsky, Esq.  
11 MACE J. YAMPOLSKY, ESQ.  
12 Nevada Bar No. 001945  
13 JASON R. MARGOLIS, ESQ.  
14 Nevada Bar No. 012439  
15 625 So. Sixth Street  
16 Las Vegas, Nevada 89101  
17 Attorney for Defendant

18 **POINTS AND AUTHORITIES**

19 **I. STATEMENT OF THE CASE**

20 On or about April 24, 1999, the State of Nevada alleges that Defendant Ramon Dorado sexually  
21 assaulted complaining victim witness Michelle Lehr following a night of partying at the Silver Saddle.  
22 In his defense, Mr. Dorado seeks to cross examine Ms. Lehr regarding a conviction she sustained for  
23 gross misdemeanor Conspiracy to Commit Theft in Case No. C237093. Mr. Dorado further seeks to  
24 cross examine Ms. Lehr about the grant of probation she received therein as well as any and all  
25 potential violations of that grant of probation which led to potential revocation of Ms. Lehr's probation  
26 and the subsequent reinstatement of the same on October 23, 2019. Please see attached Probation  
27 Agreement in Case No. C237093, attached hereto as Exhibit "A".  
28

**II. STATEMENT OF FACTS**

29 This is, essentially, a very simple case of an alleged sexual assault which has been complicated  
30 by the passage of nearly two decades. Mr. Dorado and counsel would submit that, in a wide variety of  
31 ways, his ability to locate and call witnesses in his defense, recall specifics of the evening in question,



1 and mount a complete and vigorous defense has been severely hamstrung by this extraordinary passage  
2 of time. What this scarcity of information and witnesses does in Mr. Dorado's humble opinion is  
3 accentuate the importance of complaining victim Michelle Lehr's testimony and make confrontation of  
4 his accuser and zealous cross examination of her will now be even more critical in mounting a  
5 meaningful and vigorous defense to the charges. It is hard for counsel to overstate the importance of  
6 the complaining victim-witness' credibility in what amounts to a "he said, she said," sexual assault  
7 case like the one at bar. Michelle Lehr is the State's case. Its that simple.

8         The State of Nevada may argue that this case arose from a cold case investigation after a rape  
9 kit taken in April 1999 following the SANE nurse's examination of Michelle Lehr was retested and the  
10 DNA therein proved to be a match to Defendant Ramon Dorado. In a manner of speaking, this is  
11 certainly true. Twenty years ago Michelle Lehr made a police report accusing a bass player whom she  
12 knew only as "Ray" of sexually assaulting her in his apartment after she gave him a ride home from the  
13 Silver Saddle, where his band regularly performed. Of course, after little investigation and an outright  
14 failure to contact even the most easily found witnesses, the detective initially running the case,  
15 Detective Hnatuck, concluded there were no investigative leads and recommended closure of the case.  
16 That is, in a nutshell, where we find ourselves today, on the eve of trial in this matter.

17         Nothing is more relevant in a sexual assault case than the credibility of the victim. Mr. Dorado  
18 ought to be given wide latitude to confront his accuser under the Confrontation Clause regarding  
19 matters which shed light on the veracity of Michelle Lehr, her reputation for truthfulness in the  
20 community, and any criminal convictions which may suggest a tendency toward dishonesty or  
21 fabrication when threatened with undesirable consequences of her actions. Mr. Dorado and counsel  
22 would argue vociferously that a conviction for the crime of Conspiracy to Attempt Theft and  
23 subsequently facing a probation revocation hearing in the same case bear on the truthfulness of Ms.  
24 Lehr and given the saliency of her testimony to the case against Mr. Dorado he seeks to cross examine  
25 her on this issue.

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### III. ARGUMENT

NRS 50.085(3) specifically provides that “[S]pecific instances of the conduct of a witness, for the purpose of attacking or supporting his or her credibility, other than conviction of a crime, may not be proved by extrinsic evidence. They may, however, if relevant to truthfulness, be inquired into on cross-examination of the witness himself or herself or the cross examination of a witness who testifies to an opinion of his character or truthfulness.” The Nevada Supreme Court has long held that “NRS 50.085(3) permits impeaching a witness on cross-examination with questions about specific acts as long as the impeachment pertains to truthfulness or untruthfulness.” *Butler v. State*, 120 Nev. 879, 890-91, 102 P.3d 71, 79-80, 2004 LEXIS 142, \*19-21, 120 Nev. Adv. Rep. 93 (Nev. December 20, 2004).

In determining whether to admit such matters, the Court must weigh the probative value of this type of testimony against the danger of unfair prejudice to the defendant. *Wesley v. State*, 112 Nev. 503, 916 P.2d 793 (1996) and *Anderson v. State*, 92 Nev. 21, 544 P.2d 1200, 1201 (1976). In *Wesley*, the Court recognized that “the Nevada Legislature intended district courts to admit evidence of prior convictions for crimes that reflect untruthfulness after balancing the probative value and prejudicial affect of the convictions.” *Wesley*, 916 P.2d at 798.

In the case at hand the defense is not seeking to admit the misdemeanor gun crimes, but instead only the gross misdemeanor conviction that relates to truthfulness to protect the accused’s right to a fair trial under the Due Process Clause. Criminal conduct generally, and Attempt Theft specifically, albeit later pled down to Conspiracy to Commit a Crime, are probative and a prejudice to the alleged victim if any is far outweighed by the accused’s liberty interests. Here, State witness Michelle Lehr is the linchpin of the sexual assault case, she is the complaining victim, the only percipient witness, and really the only way there is any case at all. The presence of Mr. Dorado’s DNA in the kit compiled and taken from Ms. Lehr’s SANE examination establishes some sexual contact—nothing more. In a case such as this, where the defense is consent of the victim and the victim claims rape, the word of the victim as measured against the credibility of the defendant becomes the primary (if not only) issue of material fact in the case. One is lying—simple.

Mr. Dorado feels plainly that Conspiracy to Commit a Crime (pled down from Attempt Theft and involving the misappropriation of some nearly \$10,000.00) is a crime involving dishonesty and



1 therefore represents conduct which goes directly to Ms. Lehr's truthfulness as a witness. Mr. Dorado is  
2 entitled to ask Ms. Lehr questions about her prior criminal conviction on cross examination. The  
3 questions on this issue pertain to her general reputation for truthfulness, are not overly invasive or  
4 intended to embarrass, and cut to the core of Mr. Dorado's right to confront his accuser with her  
5 previous lies, especially those where legal consequences followed.

6 The Nevada Supreme Court, in addressing character evidence pursuant to the statutory  
7 provisions of NRS 48.045, stated in pertinent part: [B]efore any evidence is admissible, it must be  
8 relevant. NRS 48.045(2). Character evidence is no exception. *Coombs v. State*, 91 Nev 489, 538 P.2d  
9 162 (1975).

10 "Relevant evidence" means evidence having any tendency to make the existence of any fact that  
11 is of consequence to the determination of the action more or less probable than it would be without the  
12 evidence. NRS 48.015. Further, determinations of relevancy are within the discretion of the trial court.  
13 *Brown v. State*, 107 Nev. 27 (1991).

14 Moreover, there is a requirement that even if a showing of relevance can be made, this court  
15 must determine whether the probative value outweighs the prejudicial effect of such evidence. *People*  
16 *of Territory of Guam v. Ted Taotao*, 896 F.2d 371 (9<sup>th</sup> Cir. 1990); *State v. Vierra*, 872 P.2d 728 (Idaho  
17 App. 1994). Here, allowing the State of Nevada to keep hidden from the jury the fact that Ms. Lehr was  
18 convicted of the crime of Conspiracy to Commit a Crime in Case No. C237093, allows the State to  
19 impermissibly prop up and substantiate Ms. Lehr's character, and specifically relieves her character of  
20 the blemish that a criminal conviction for a crime of dishonesty may carry. Mr. Dorado is entitled to  
21 have the jury see a full and fair depiction of Ms. Lehr's character and veracity—not a burnished and  
22 shined one, relieved of all impurities which may call into question the ultimate truthfulness of her hotly  
23 contested account of the events of April 24, 1999.

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1 Mr. Dorado respectfully requests that this Court therefore issue an Order permitting counsel for  
2 Mr. Dorado to cross examine Ms. Lehr on her previous criminal conviction for Conspiracy to Commit  
3 a Crime and the pall it casts on her reputation for truthfulness generally, and specifically in the context  
4 of her allegations against Mr. Dorado.

5 DATED this 12<sup>th</sup> day of June, 2019.

6 YAMPOLSKY & MARGOLIS

7 /s/ Mace J. Yampolsky, Esq.

8 MACE J. YAMPOLSKY, LTD.

9 Nevada State Bar No. 001945

10 JASON R. MARGOLIS, ESQ.

11 Nevada State Bar No. 012439

12 625 South Sixth Street

13 Las Vegas, Nevada 89101

14 Attorneys for Defendant

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that service of the above and foregoing, was made this 12<sup>th</sup> day of June, 2019,  
3 via electronically filing to:

4 Genevieve Craggs  
5 Deputy District Attorney  
6 Email: genevieve.craggs@clarkcountyda.com

7 Bryan Schwartz  
8 Deputy District Attorney  
9 E-Mail: bryan.schwartz@clarkcountyda.com

10 Motions@clarkcountyda.com

11 /s/ Theresa J. Muzgay  
12 An employee of  
13 YAMPOLSKY & MARGOLIS  
14  
15  
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*Exhibit A*

*Exhibit A*



State of Nevada  
DEPARTMENT OF PUBLIC SAFETY  
Division of Parole and Probation  
Carson City, NV 89706

File #: V08-1827

Required to pay \$25 Administrative Assessment Fee and all other Court ordered Fees to the County Clerk's Office, 200 Lewis Ave., Las Vegas, NV, 89155.

Criminal Case No. C237093

THE STATE OF NEVADA Plaintiff,  
vs.  
LEHR, Michelle,  
aka: Defendant

PROBATION AGREEMENT AND RULES  
ORDER ADMITTING DEFENDANT TO PROBATION  
AND FIXING THE TERMS THEREOF

REINSTATED

FILED

OCT 23 2009

*[Signature]*  
CLERK OF COURT

DEFENDANT is guilty of the Crime of Conspiracy to Commit Theft, a Gross Misdemeanor.

DEFENDANT is sentenced to a term of imprisonment in Clark County Detention Center for 12 months and pay \$9,500.00 Restitution. Execution of that sentence is suspended and the DEFENDANT is hereby admitted to probation for a Fixed 3 years under the following conditions:

1. **Reporting:** You are to report in person to the Division of Parole and Probation as instructed by the Division or its agent. You are required to submit a written report each month on forms supplied by the Division. This report shall be true and correct in all respects.
2. **Residence:** You shall not change your place of residence without first obtaining permission from the Division of Parole and Probation, in each instance.
3. **Intoxicants:** You shall not consume any alcoholic beverages to excess. Upon order of the Division of Parole and Probation or its agent, you shall submit to a medically recognized test for blood/breath alcohol content. Test results of .08 blood alcohol content or higher shall be sufficient proof of excess.
4. **Controlled Substances:** You shall not use, purchase or possess any illegal drugs, or any prescription drugs, unless first prescribed by a licensed medical professional. You shall immediately notify the Division of Parole and Probation of any prescription received. You shall submit to drug testing as required by the Division or its agent.
5. **Weapons:** You shall not possess, have access to, or have under your control, any type of weapon.
6. **Search:** You shall submit your person, place of residence, vehicle or areas under your control to search at any time, with or without a search warrant or warrant of arrest, for evidence of a crime or violation of probation by the Division of Parole and Probation or its agent.
7. **Associates:** You must have prior approval by the Division of Parole and Probation to associate with any person convicted of a felony, or any person on probation or parole supervision. You shall not have any contact with persons confined in a correctional institution unless specific written permission has been granted by the Division and the correctional institution.
8. **Directives and Conduct:** You shall follow the directives of the Division of Parole and Probation and your conduct shall justify the opportunity granted to you by this community supervision.
9. **Laws:** You shall comply with all municipal, county, state, and federal laws and ordinances.
10. **Out-of-State Travel:** You shall not leave the state without first obtaining written permission from the Division of Parole and Probation.
11. **Employment/Program:** You shall seek and maintain legal employment, or maintain a program approved by the Division of Parole and Probation and not change such employment or program without first obtaining permission. All terminations of employment or program shall be immediately reported to the Division.
12. **Financial Obligation:** You shall pay fees, fines, and restitution on a schedule approved by the Division of Parole and Probation. Any excess monies paid will be applied to any other outstanding fees, fines, and/or restitution, even if it is discovered after your discharge.
13. **Special Conditions:** ordered by the Court as set forth in the attached Judgment of Conviction and incorporated herein by reference.

The Court reserves the right to modify these terms of Probation at any time and as permitted by law. DATED this \_\_\_\_\_ day of \_\_\_\_\_, in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark.

*[Signature]* 10/20/09  
District Judge: Kathy A. Hardcastle Date

AGREEMENT BY PROBATIONER

I do hereby waive extradition to the State of Nevada from any State in the Union, and I will not contest any effort to return me to the State of Nevada. I have read, or have had read to me, the forgoing conditions of my probation, and fully understand them and I agree to abide by and strictly follow them. I fully understand the penalties involved should I in any manner violate the foregoing conditions. I have received a copy of this document and NRS 176A.850.

*[Signature]* 10/13/09  
Probationer: Michelle Lehr/Date

Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

APPROVED *[Signature]* 10/13/09  
Probation Officer: E. Dominguez/Date

RECEIVED  
OCT 23 2009  
CLERK OF THE COURT

ED/kmd

Felony/Gross Misdemeanor

COURT MINUTES

June 17, 2019

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C-17-323098-1      State of Nevada  
   vs  
   Ramon Dorado

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June 17, 2019      11:00 AM      Defendant Ramon Dorado's Motion in Limine

HEARD BY:      Jones, David M      COURTROOM: RJC Courtroom 15A

COURT CLERK: Maldonado, Nancy

RECORDER:      Murphy-Delgado, Melissa

REPORTER:

PARTIES PRESENT:

Bryan A. Schwartz	Attorney for Plaintiff
Genevieve C. Craggs	Attorney for Plaintiff
Jason Margolis	Attorney for Defendant
Mace J. Yampolsky	Attorney for Defendant
Ramon Muril Dorado	Defendant
State of Nevada	Plaintiff

**JOURNAL ENTRIES**

## OUTSIDE THE PRESENCE OF THE POTENTIAL JURY PANEL

Court advised a motion in limine was filed late last night. Upon Court's inquiry counsel advised they were ready to argue the motion. Following arguments by counsel, COURT ORDERED, motion GRANTED IN PART; questions in regards to the conviction, will be allowed, as it goes to dishonesty, noting as far as revocations, will not be allowed, and anything beyond that will not be allowed.

CUSTODY



# ORIGINAL

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

JUN 18 2019

BY, Nancy Maldonado  
NANCY MALDONADO, DEPUTY

NOTM  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
GENEVIEVE CRAGGS  
Chief Deputy District Attorney  
Nevada Bar #013469  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

C-17-323098-1  
NOTM  
Notice of Motion  
4843909



THE STATE OF NEVADA,  
Plaintiff,

-vs-

RAMON DORADO  
#1673321

Defendant.

CASE NO: C-17-323098-1

DEPT NO: XXIX

**NOTICE OF MOTION AND MOTION TO PRECLUDE  
TESTIMONY OF DEFENSE WITNESS ROBERT BUB**

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through GENEVIEVE CRAGGS, Chief Deputy District Attorney, will bring a **Motion To Preclude Testimony Of Defense Witness Robert Bub** before the above entitled Court on the 18th day of June, 2019, at the hour of 10:00 o'clock AM, or as soon thereafter as counsel may be heard.

This Motion 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 **LEGAL ARGUMENT**

3 In the instant case, Defendant has noticed Robert Bub as an expert witness that will  
4 testify regarding missed investigative opportunities, particularly leads that law enforcement  
5 did not follow up on, including failure to collect physical evidence and investigate the crime  
6 scene, failure to interview a "vital" witness, and failure to identify and arrest the suspect. The  
7 State seeks to preclude Robert Bub from testifying as an expert because his testimony will not  
8 assist the jury to either (1) understand the evidence, or (2) determine a fact in issue. The State  
9 files this Motion to Strike after receiving Mr. Bub's report on Friday.

10 NRS 50.275, governing "Testimony by experts," permits expert witness testimony in  
11 the following circumstances:

12 If scientific, technical or other specialized knowledge will assist the  
13 trier of fact to understand the evidence or to determine a fact in issue,  
14 a witness qualified as an expert by special knowledge, skill,  
experience, training or education may testify to matters within the  
scope of such knowledge.

15 In Perez v. State, 313 P.3d 862, 129 Nev.Adv.Op. 90 (2013), the Nevada Supreme  
16 Court addressed the admissibility of expert testimony and stated, in relevant portion:

17 **The threshold test for the admissibility of testimony by a qualified**  
18 **expert is whether the expert's specialized knowledge will assist the**  
19 **trier of fact to understand the evidence or determine a fact in**  
20 **issue.** Townsend v. State, 103 Nev. 113, 117, 734 P.2d 705, 708  
21 (1987); *see* NRS 50.275 ("If scientific, technical or other specialized  
22 knowledge will assist the trier of fact to understand the evidence or to  
23 determine a fact in issue, a witness qualified as an expert by special  
knowledge, skill, experience, training or education may testify to  
matters within the scope of such knowledge."). Expert testimony is  
admissible if it meets the following three requirements, which we  
have described as the "qualification," "assistance," and "limited  
scope" requirements:

24 (1) [the expert] must be qualified in an area of "scientific, technical or  
25 other specialized knowledge" (the qualification requirement); (2) his  
26 or her specialized knowledge must "assist the trier of fact to  
27 understand the evidence or to determine a fact in issue" (the assistance  
28 requirement); and (3) his or her testimony must be limited "to matters  
within the scope of [his or her specialized] knowledge" (the limited  
scope requirement).

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1 Hallmark v. Eldridge, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008)  
2 (second alteration in original) (quoting NRS 50.275); *see also Higgs*  
3 *v. State*, 126 Nev. \_\_\_, \_\_\_, 222 P.3d 648, 658 (2010). We review a  
district court's decision to allow expert testimony for an abuse of  
discretion. Hallmark, 124 Nev. At 498, 189 P.3d at 650.

4 Perez, *supra*, 313 P.3d 862 at 866 (emphasis added). Here, Defendant's proposed expert  
5 testimony does not meet even the threshold test for admissibility.

6 Expert testimony is generally admissible at trial when the subject matter of inquiry is  
7 sufficiently beyond the common experience of an average juror and is one in which only  
8 persons of skill and experience in the area are capable of forming a correct judgment regarding  
9 a connected fact. People v. Johnson, 423 N.E.2d 1206, 1216, (Ill.App., 1981). Expert opinions  
10 may not be admitted on matters of common knowledge unless the subject is difficult in  
11 comprehension and explanation. Id.

12 The "assistance" requirement has two components: whether the testimony is (1)  
13 relevant and (2) the product of reliable methodology. Hallmark, 124 Nev. at 500, 189 P.3d at  
14 651 ("An expert's testimony will assist the trier of fact only when it is relevant and the product  
15 of reliable methodology." (footnote omitted))." Perez, 313 P.3d 862 at 867. The Perez Court  
16 articulated five factors to use in evaluating the second component of the "assistance"  
17 requirement—whether an expert's opinion is the product of reliable methodology. Id., 313  
18 P.3d 862 at 869. These factors include whether the opinion is (1) within a recognized field of  
19 expertise; (2) testable and has been tested; (3) published and subjected to peer review; (4)  
20 generally accepted in the scientific community (not always determinative); and (5) **based**  
21 **more on particularized facts rather than assumption, conjecture, or generalization.**  
22 Hallmark, 124 Nev. at 500-01, 189 P.3d at 651-52 (footnotes omitted) (emphasis added).  
23 Relevant evidence is not admissible if its probative value is substantially outweighed by the  
24 danger of unfair prejudice or misleading the jury, or if it amounts to needless presentation of  
25 cumulative evidence. NRS 48.035.

26 Mr. Bub will not be able to testify to conclusions "beyond the common experience of  
27 an average juror." In fact, Mr. Bub's testimony is invading the province of the jury. His  
28 conclusions are essentially that if the witnesses had been interviewed and the crime scene had

1 been preserved, this case would potentially be better for the State or potentially better for the  
2 defense. This is assumption, conjecture, or generalization. Mr. Bub's report is rife with  
3 conjecture and generalization.

4 Mr. Bub states conclusions such as, "[d]elaying a crime scene investigation can result  
5 in the loss of important evidence. This investigation went beyond delaying the follow-up and  
6 appeared to ignore it. An investigation which could have resulted in the interview and  
7 identification of a vital witness, the recovery of physical evidence, the corroboration of the  
8 victim's story, and the identification and potentially the arrest of the suspect was not  
9 completed." Expert Report, pg. 12 (emphasis added). Mr. Bub additionally states, "[I]n the  
10 investigation of cold cases, the loss of contemporaneous information can prove disastrous. A  
11 single new lead, from any source, may become useless without the ability to locate pertinent  
12 witnesses or inform a new investigator as to the details of a case." *Id.* (emphasis added).

13 When discussing potential investigative leads from 1999, Mr. Bub states that "[e]ven a  
14 basic request for information on the name "Ray" or "Ramon" in connection with the Silver  
15 Saddle Saloon or the apartment address of 2101 Sunrise Avenue. [sic] Either of those two  
16 searched may have provided a lead as to the identity of the suspect." Expert Report, pg. 13  
17 (emphasis added). He also states, "there appeared to be a sense of apathy toward locating and  
18 arresting the suspect... [and] that the overall quality of this investigation tends to show there  
19 was no interest in adhering to any solid principles and rules of criminal investigation." *Id.* at  
20 14 (emphasis added). Mr. Bub's report is essentially sixteen pages pointing out that there were  
21 investigative leads that Mr. Bub feels could have been followed that may have potentially  
22 created new leads. These conclusions do not assist the jury in any way through expertise, as it  
23 is assumption and conjecture.

24 It is the jury's duty to balance the factors which go into law enforcement's investigation  
25 of a crime; and, the credibility of the witnesses. As such, permitting Mr. Bub to testify as an  
26 expert witness regarding the matters for which he has been noticed will result in unfair  
27 prejudice regarding "what-ifs" substantially outweighing any probative value Mr. Bub's  
28 testimony may have. The jury will be instructed that they cannot speculate, and that is



1 essentially what Mr. Bub has been noticed to do – speculate as to what could have/should have  
2 happened had the investigating officers done what he thinks they should have.

3 Moreover, about the “reliable methodology” component in the “assistance”  
4 requirement, any opinion testimony from Mr. Bub regarding his perceived missed  
5 investigative opportunities in this case would be improper because that testimony will  
6 necessarily be based less on particularized facts and more on assumption, conjecture, and  
7 generalization. Courts do not generally permit testimony from experts in eyewitness  
8 identification for this same reasoning. Defendant can also fully explore these issues during his  
9 closing argument. The subject matter is not difficult in comprehension or explanation, is not  
10 sufficiently beyond the common experience of an average juror, and is not one in which only  
11 persons of skill and experience in the area are capable of forming correct judgments. As such,  
12 Mr. Bub should be precluded from testifying as noticed by Defendant.


### 13 CONCLUSION

14 Based upon the above and foregoing Points and Authorities, the State respectfully this  
15 Court grant its Notice of Motion and Motion to Preclude Testimony of Defense Witness  
16 Robert Bub.

17 DATED this 18th day of JUNE, 2019.

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

20 BY

  
21 GENEVIEVE CRAGGS  
22 Chief Deputy District Attorney  
Nevada Bar #013469

1 CERTIFICATE OF SERVICE

2 I hereby certify that service of the above and foregoing was made this 18th day of  
3 JUNE, 2019, to:

4 MACY YAMPOLSKY, ESQ.  
5 mace@macelaw.com

6  
7 BY /s/ HOWARD CONRAD  
8 Secretary for the District Attorney's Office  
9 Special Victims Unit  
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28 hjc/SVU

**EXHIBIT "1"**

## **CASE REVIEW AND ANALYSIS**

June 14, 2019

**TO:** Yampolsky & Margolis, Attorneys at Law.

**FROM:** Robert Bub, RJ Bub Consulting

**SUBJECT:** RE: State of Nevada, County of Clark v Ramon Dorado.  
CASE NO. C-17-323098

### **I. PURPOSE**

This review was conducted at the request of Yampolsky & Margolis, Attorneys at Law, regarding County of Clark v. Ramon Dorado, Case No. C-17-323098. The review is to analyze the original investigation into the Sexual Assault of Victim Michelle Lehr, with an emphasis on the investigative process and procedure.

### **II. METHODOLOGY**

A review of all available reports, interview statements and transcripts, and documentation regarding this incident was completed. After completing a review of the below, the information was analyzed and compared to sound and established investigative procedure and process. The material examined consisted of the following:

Las Vegas Metropolitan Police Department Officers report, completed by Detective Hnatuick (and related under #990424-1124)

Las Vegas Metropolitan Police Department Case Monitoring and Closure Form, completed by Investigator Reddon (#990424-1124)

Las Vegas Police Department Voluntary Statement, transcribed from interview by Detective Hnatuick (#990424-1124)

Las Vegas Metropolitan Police Department Declaration of Warrant/Summons (#990424-1124)

University Medical Center of Southern Nevada Emergency Department report (SANE Exam report under Patient name Michelle Lehr)

Winnemucca Police Department Search Warrant Return (Case Number 16-0092)

Grand Jury Testimony of Michelle Lehr, GJ No. 16BGJ116X, April 26, 2017

Bode Cellmark Laboratories Reports and Findings - Various



The conclusions and opinions drawn within this report are based on my examination of all the information available at the time of the review. Those same conclusions and opinions rely upon my knowledge, experience, and expertise and are expressed to a reasonable degree of professional certainty. I reserve the right to amend this report upon receipt of any additional relevant material related to this matter. Any additional reference documents considered in this report are identified in the ADDENDA section.

### III. SYNOPSIS

#### ORIGINAL CRIME AND INVESTIGATION:

At an unspecified time on the evening of April 23, 1999, the victim, Michelle Lehr and a friend, Maria Perez<sup>1</sup>, "decided to go out for the evening."<sup>i</sup> Around 1:00 AM on the morning of April 24, 1999, Maria Perez and Michelle Lehr arrived at the Silver Saddle Saloon, 2510 E. Charleston Boulevard, Las Vegas. According to Lehr, Perez was a frequent patron of the Silver Saddle and many people knew her there.<sup>ii</sup> Lehr and Perez danced, talked, and drank with the suspect Ray, other members of the band, the bartender<sup>2</sup>, and a security guard from the saloon. Lehr was paged by a babysitter that Lehr's son was awake, so she left the saloon for a short period to see her son and reassure him everything was okay. Lehr returned to the saloon to pick up Maria. Lehr stated she was the designated driver, but later stated she'd had at least three drinks alternating with drinking regular water while at the saloon.

The bartender suggested everyone from the group meet at another bar after he "gets off work" at 7:00 AM., to which they all agreed. They left the bar between 7:00-7:15 AM, and Maria decided she wanted to see a friend named "Beto," so she called him to pick her up. Maria Perez told Lehr to meet at Perez's house around 10:00 AM "that way, you know, the kids don't think anything of us, you know we don't wanna give them a wrong impression, we show up at different times."<sup>iii</sup> Some members of the group went with the bartender, and Lehr drove Ray in her car. Ray asked her to stop by a friend's house so he could call into his work and tell them he was not "coming in." Lehr drove to an apartment building at 2101 Sunrise Avenue. Ray asked Lehr if she would want to come into the apartment and Lehr responded she be more comfortable doing that than remaining in the car.

NOTE: There are gaps (long underlined portions) within the transcription of the taped interview which make an exact understanding of events difficult. There is no indication as to whether the gaps are pauses or should be attributed to incomprehensible words or phrases. A copy of the recording itself was not available to review for purposes of this report.

Lehr was unable to remember the apartment number but was able to provide an approximate location within the building.<sup>iv</sup> Once inside the apartment, Lehr met Ray's friend, who's name she

<sup>1</sup> At various times during the interview, Lehr referred to "Candy." Lehr stated that Maria Perez's nickname is "Candy."

<sup>2</sup> Lehr indicated she only remembered the bartender's name started with "A."

## STATE OF NEVADA v. RAMON DORADO.

could not remember, but who she described as "very nice." Ray and the friend had a conversation in Spanish and were talking very quickly. Lehr indicated she understands Spanish and the friend agreed to go to the store for Ray and would come right back. Ray also called his job and stated he wouldn't be coming in that day.

After talking for a "few minutes" Ray stood and stated he wanted to dance. Lehr indicated she didn't want to and said she wanted to leave. Ray picked her up and carried her to a bedroom. Ray placed Lehr on the bed and laid on top of her. Lehr continued to protest while Ray attempted to lift Lehr's blouse. Lehr pushed Ray off and attempted to leave, but Ray "pinned" her against the wall. Lehr continued to fight with Ray and was knocked to the floor where she kicked him. Lehr continued to fight with Ray and remembered stabbing Ray in the back with "it."<sup>3</sup> Lehr continued to fight with Ray and eventually "blanked out."

Lehr stated Ray performed oral sex on her, but she pushed him away. At that time, he unbuckled his pants, "threw my [her] legs up and that's when I blanked out."<sup>4</sup> Lehr stated Ray either attempted to or did vaginally penetrate her with his penis. Lehr did not believe he ejaculated but "all of a sudden just got off her [me]." Afterward, she stated Ray apologized to her.

As she left the bedroom, Lehr observed Ray's friend had returned, but she didn't know how long he had been back in the apartment. Lehr stated the friend saw her attempting to dress and how upset she was. Lehr stated she saw two older women as she was leaving the apartment building, both of whom also noticed how distraught she was. Lehr drove to Maria Perez's home where she changed clothing and then drove herself to Las Vegas Metropolitan Police Department (LVMPD) Southeast Area Command to report the crime. Lehr believed she arrived at the apartment at around 8:00 – 8:15 AM.<sup>5</sup> She also said she asked what time it was and was told it was 8:30 AM, but that was an unknown time after she had been there.<sup>6</sup> Lehr believed she remained at the apartment until sometime around 10:00AM, a time period of approximately one hour and fifteen to one hour and fifty-five minutes. She based the time she left the apartment on her estimation of when she returned to Maria Perez's apartment. After speaking to LVMPD uniformed Officers V. Williams, Serial No. P#4896, and K. Wiley, Serial No. P#2663, Officer Wiley contacted LVMPD Detective Hnatuick, Serial No. P#3582, who advised the officers to complete a crime report and transport the victim to the University Medical Center of Southern Nevada.<sup>7</sup>

While Lehr was being examined Maria Perez arrived at the hospital with the clothing worn by Lehr during the evening. Detective Hnatuick recovered and booked the clothing into evidence.<sup>8</sup> Hnatuick further requested a photographer respond to document the injuries to Lehr and he completed a recorded interview with Lehr at 3:05 PM.

On May 3, 1999, the Michelle Lehr investigation was assigned to Investigator M. Reddon, Serial No. 4884. Reddon reviewed the case file and left a voicemail message for Lehr. Later that same day Reddon spoke with Lehr. On May 4, 1999 Reddon contacted the Silver Saddle Saloon and noted that "Charlie Howell" would call Reddon back with the names of the band members. The next day, May 5<sup>th</sup>, 1999, Howell called Reddon and advised him "Ray" was Ramon and that the

<sup>3</sup> A gap in the transcript precludes identifying the weapon used to stab Ray.

<sup>4</sup> Later in the interview, Lehr clarified she did not lose consciousness.



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other members of the band had fired him.<sup>ix</sup> These three, apparently telephonic conversations, were the only follow up interviews documented by Investigator Reddon.

The next notation in the Case Monitoring and Closure Report indicated, on June 7, 1999, "leads exhausted." The last notation on that report is an indication that "dispo orders" were completed on the property in this case.

In October of 2015, the SANE kit containing the evidence recovered during the University Hospital visit was submitted to the LVMPD Forensic Laboratory (and ultimately sent to Cellmark Forensic Labs along with forty-nine (49) other sexual assault kits<sup>x</sup>) for testing.<sup>xi</sup> In December of 2015, LVMPD Detective L. Cody received notification of a CODIS match to Ramon Dorado. She later determined Dorado to be living in a half-way house in Winnemucca, Nevada. Detective Cody obtained a search warrant, and with the help of Winnemucca Police Department Detective Cory Dunkhorst, obtained a buccal swab from Dorado. In November of 2017, Det. Cody was notified of a DNA match between Dorado and the Lehr evidence. Det. Cody obtained an arrest warrant for Dorado. Dorado was subsequently arrested on that warrant.

There were no investigative reports, notes, interviews or interrogation statements provided for the LVMPD during time period after the CellMark DNA tests had been completed and reported.

**IV. INVESTIGATIVE BIOPSY**

When investigating any sexual assault, there are realistically three sources (scenes) of physical evidence. The victim, the suspect, and the physical location of the crime. It is incumbent on the detective to ensure every reasonable attempt to locate and recover evidence from every source is made. It is unacceptable, when immediately actionable leads are presented, that no attempt was made to accomplish this task. In this case, though the information was readily available on the latter two sources, there appeared to be no effort to investigate. The lack of documented investigation suggests a disinterest in the crime and places an unfair burden on the defense in any subsequent prosecution. Witnesses who may hold in- or exculpatory information may be unable to be located, deceased, or may be unable to remember critical details or the event entirely.

In addition, because the credibility of the victim is often at the center of a successful prosecution or defense, identifying and interviewing any and all direct, peripheral, and identification witnesses is of the utmost importance. As true as this is today, historically, it was a greater factor in the late 1990s.

**FAILURE TO LOCATE, IDENTIFY, OR INTERVIEW ADDITIONAL WITNESSES**

This began with the initial contact with the victim and continued throughout the forty-five (45) day initial investigation. Neither the uniformed officers, the responding detective, nor the

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assigned detective(s)<sup>5</sup> in 1999 appeared to conduct more than a perfunctory interview of the victim. And no substantive interviews of the other potential witnesses or involved parties in this case has been presented.

Michelle Lehr reported the sexual assault to police within hours after the incident occurred. She responded to the Southeast Area Command and was initially interviewed by officers Williams and Wiley. The patrol officers, believing the crime was serious enough to warrant a detective's response, notified Detective M. Hnatuick who was working the General Assignment Detail. Detective Hnatuick advised them to take a sexual assault crime report and to transport the victim for a Sexual Assault Nurse Examination (SANE). He advised he would respond to the hospital to conduct an interview with the victim. While Detective Hnatuick did record his interview with Lehr, no immediate follow up was done to attempt to locate or interview any of the witnesses Lehr mentioned.

During the time period Michelle Lehr was inside the Sunrise Avenue apartment, she provided information regarding a witness, a resident of the crime location. Lehr's interview with Det. Hnatuick revealed this witness had a conversation with the suspect in rapid Spanish. This resulted in the witness leaving to go "to the store real quick for him [Ray] and coming back,"<sup>xii</sup> leaving Dorado and Lehr alone in the apartment. Lehr related that upon her ultimately leaving the apartment, she noted the witness had returned and that she didn't know how long he had been back. Lehr had a conversation with the witness during which she told him what had occurred, and he reacted to her story. This male Hispanic is singularly the most important witness in this incident. He would have been able to either corroborate Lehr's recounting of the morning by physical appearance and demeanor as she left the apartment. He also may have been able to provide information as to the factual basis of the assault itself based upon what he may have heard or seen prior to his leaving and upon returning. Further, the witness could have potentially provided identification information, including vehicle information for the suspect. This information, in turn, could have been broadcast to patrol units to attempt to locate and detain the suspect. Det. Hnatuick did not ask Lehr for a detailed description or identifiers with regard to the witness. Nor had he been identified or interviewed as of the writing of this report. Further, Hnatuick did not request Officers Williams and Wiley to follow up to the Sunrise Avenue address to attempt to identify in which apartment the crime occurred and the occupants or residents of the apartment. And lastly, the later-assigned detective apparently never sought to locate, identify, and/or interview this most important witness.

Arguably the next most important witness, who was also not interviewed, was Maria "Candy" Perez. Perez was described by Lehr as being someone who was a regular<sup>xiii</sup> at the Silver Saddle Saloon, and because of this familiarity, made Lehr feel comfortable with the people there. Lehr stated Perez had been dancing with Ray earlier in the evening. Maria could have provided information not only about the suspect, having had close contact with him and possibly knowing him; but about the identities of others working at the bar who would have more information about

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<sup>5</sup> Detective Barry Jenson was purportedly assigned to the investigation of this case at some point. However, aside from a signature, apparently "B. J---," at the bottom of the Case Monitoring and Closure Form and the Serial No. 3662, it is not possible from the reports to verify that information. Nor is it indicated in the "Activity" portion of the report itself who was making the notations.



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the suspect's identity. There was no obstacle to interviewing Perez that morning, as she went to the University Medical Center to bring the clothing Lehr had been wearing.<sup>xiv</sup> Det. Hnatuick took custody of the clothing<sup>6</sup> from Perez.<sup>xv</sup> During the course of that contact Det. Hnatuick could have inquired about the earlier portion of the evening, before she and the victim arrived at the Silver Saddle Saloon. The time frame around a sexual assault incident is always important in order to frame the victim's demeanor, actions, and to establish the degree of vulnerability and susceptibility. There is no documentation, beyond recovering the victim's clothing, that Det. Hnatuick had any substantive communication with Perez.

Lehr further mentioned seeing two "ladies" outside the apartment as she left.<sup>xvi</sup> Lehr indicated the women saw her condition and stared at her as she left. Those two women would have been independent, and thus very strong, witnesses with regard to Lehr's appearance and demeanor immediately after the assault. Det. Hnatuick made no attempt to inquire as to a description of the women so they could possibly be located and interviewed. Further compounding the issue is the fact that Hnatuick neglected to include the information about these two women in his report, relying solely on the transcript of his interview to convey the information to any later assigned detective.

Det. Hnatuick not only didn't attempt to locate and/or interview any of these individuals, he apparently didn't obtain descriptive information for the eventual assigned detective to utilize in any subsequent investigation.

An in-person follow up to the Silver Saddle Saloon could have been a valuable source of information to determine the identity of the suspect. As a member of the band employed by the club, the potential for identity information from either the saloon or the other band members was enough incentive to require a physical visit to the location. A telephone call to a manager nine days after the occurrence is unacceptable, as it would be impossible to verify the identity of the person interviewed and that he held the position he purported. And the failure to identify any member of the band in the attempt to identify the suspect is also inadequate. Lastly, a comprehensive canvass of those people Michelle Lehr related she had contacted at the bar might also have revealed new or previously unknown or overlooked witnesses. In her 2017 Grand Jury testimony Michelle Lehr related she had gone to the Silver Saddle Saloon with "my friends Candy and Joanna for dancing."<sup>xvii</sup> She further testified that upon returning to the bar after checking on her child she "went back to go get Candy and Joanna ..."<sup>xviii</sup> This testimony as to the presence of "Joanna" at the bar with the victim and Candy is the first mention of "Joanna." An interview of Maria "Candy" Perez on the morning of the incident, or at any time during the follow up investigation may have revealed her existence to the detectives. "Joanna" may have had important information to convey, but no follow up was ever completed.

On May 3, 1999, approximately nine (9) days after the crime, the investigation was assigned to Detective M. Reddon. Reddon reviewed the case and left a voicemail for the victim to contact him. Later that day, it is indicated the detective spoke with the victim. No notes or

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<sup>6</sup> Although the neither the Officer's Report nor the Property Report specifically stated Det. Hnatuick directly received the clothing from Perez, it must be assumed from the wording of the reports that this is the chain of custody for the evidence.



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documentation with regard to the substance or length of that contact are listed in the report. On May 4, the detective contacted the Silver Saddle Saloon and spoke to "Charlie Howell." There is no indication as to the position Howell held within the business, however Howell promised to call back and provide the names of the band members. The following day, May 5, Howell called the detective and stated that the suspect, "Ray," was an accordion player named "Ramon" and he was "let go" by the band.<sup>xix</sup>

That contact with Howell was the last notation until June 7, 1999, approximately thirty-three (33) days later, when it was indicated that the "leads exhausted."<sup>xxx</sup> In that time period, there was no indication that the detective, be it Reddon or Jenson, attempted to:

- Locate and interview Maria "Candy" Perez
- Locate, identify, and interview the resident at 2101 Sunrise Avenue
- Locate, identify, and interview the two "ladies" who saw Lehr leave the apartment building
- Locate, identify, and interview the bartender, the security guard "A," nor the other band members who were with "Ray" during the evening of the assault.
- Canvass the area of the Sunrise Avenue apartment building for additional potential witnesses.

Overall, the information recorded in the Case Monitoring form with regard to the bar patrons, employees, and the investigative steps undertaken was substandard.

**FAILURE TO FOLLOW UP WITH PHYSICAL CRIME SCENE OR ATTEMPT TO LOCATE AND ARREST THE SUSPECT**

A direct result of the lack of immediate follow up is the missed opportunity to secure the physical crime scene and recover evidence. The singularly best opportunity to properly handle a crime scene is as soon as possible after the discovery of the crime. Every passing minute, hour, and/or day adds to the likelihood of losing physical evidence. That loss of physical evidence can be disastrous to a successful prosecution. And devastating to the ability to present a proper defense.

The two initial interviews by the patrol officers and Detective Hnatuick provided the exact address of the attack, and though she was not able to remember an apartment number, she was able to describe the location of the apartment within the building. By responding to the location, the officers or detective could have located and recovered physical evidence which, in addition to any potential witness statements, could have positively identified the suspect extremely early in the investigation. That physical evidence is also essential in avoiding a misidentification from a potential witness identification error at a later point in the investigation.

Furthermore, the potential amount of physical evidence missed is enormous. Because of the lack of immediate follow up, there was no opportunity to recover trace evidence such as hairs, clothing fibers, etc. from bed linens, possible abandoned clothing, suspect and victim's

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fingerprints, and/or additional DNA from areas in which the victim had related there was contact between her and the suspect. Additionally, detectives could have found the "weapon" Michelle Lehr indicated she used to "stab" "Ray."<sup>xxi</sup> Had the immediate effort been made to locate, question, and potentially arrest Ray, the stab wounds, scratches, and other physical evidence detailed in the victim's story may have proven the allegations to be true or provided the suspect with valuable exculpatory information.

The lack of investigation lost the opportunity to photograph and diagram the crime scene. These locations would include the apartment building itself, the location of the apartment within the building, the layout of the apartment, the location of the bedroom within the apartment, and the layout of furniture within the apartment and bedroom. This documentation not only would assist the detectives in describing and detailing the scene to a court or jury during a prosecution, but they would also bolster the credibility of the victim's observations in identifying particular aspects of the crime scene. Photographs of the scene immediately after a crime has occurred prevents the scene from being altered to and/or evidence removed or destroyed either accidentally or intentionally.

There is no indication detectives attempted or completed a canvass of the crime location for additional witnesses. Apart from the two women the victim stated she saw upon leaving the apartment building, there may have been numerous other witnesses within the building who heard noises or voices, saw the victim and/or the suspect before and/or after the crime. The crime itself occurred on a Sunday morning when many people are characteristically at home. A later canvass by Detective Reddon, either during the week, or on the following Sunday should have been completed.

Michelle Lehr's car was another source of potentially identifying physical evidence which was ignored. The victim related in her initial telling to Officers Wiley and Williams, and in the interview with Detective Hnatuick she had driven the suspect to the 2101 Sunrise Avenue location. Detectives could have processed Lehr's car for fingerprints and trace to attempt to determine the suspect's identity.

While these investigative steps would have been best completed on April 24<sup>th</sup>, Detective Reddon should have begun to follow up even after nine days. The crime scene may still have had some value forensically and a canvass of the apartment building is a standard procedure in violent crime investigation.

**FAILURE TO FOLLOW UP WITH PHYSICAL EVIDENCE LEADS**

Between the SANE Exam on April 24, 1999, and the case review on May 3, 1999, the SANE kit, as well as the clothing worn by the victim, had been booked into evidence at the LVMPD. Upon that review, at minimum, a request to test the swabs from the kit for DNA evidence could and should have been made. The delay in not making the request is inexplicable. This is keeping with normal and accepted investigatory practice and in accordance with the Las Vegas



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Metropolitan Police Department Manual which states, in part,<sup>xxii</sup> “To obtain laboratory analysis of evidence, the officer having primary investigative authority in the case will be responsibility for ensuring that a request is submitted to the forensic lab in the proper manner, usually on a Forensic Laboratory Examination Request, LVMPD 63. *Requests are to be submitted in a timely manner concurrent with the ongoing investigation.*”<sup>7</sup>

It is unclear when the Manual section quoted here and used for reference was written. And while it is understood that utilizing any standards or practices enacted after an incident used to critique it is unfair, the investigative step being addressed is not a new and/or previously unknown procedure. The introduction of DNA evidence in the criminal forensic arena had been used for years prior to the 1999 incident. It’s value in the area of criminal investigations, specifically in sexual assault and homicide cases, is well documented, both with regard to conviction and exoneration.

Additionally, the case review should have notified the assigned detective of the need for follow up in other areas.

The assigned detective should also have sought to test additional items within the SANE kit. Fingernail scrapings were obtained and booked in the SANE Kit under Step 3 – Debris Collection. Coupled with the weapon used to stab “Ray” during the incident, powerful evidence of resistance could have been obtained. An immediate identification and arrest of the suspect could have shown the “newer” scratches<sup>8</sup> and stab wounds to verify Lehr’s report. Conversely, the lack of the described injuries, either in totality or in degree could have provided substance to the suspect’s eventual version of events. But both these possibilities were lost to the insufficiency of the investigation.

Although the victim was photographed to document her injuries on the day of the SANE exam and interview, an accepted investigative practice is to have the victim re-photographed within twenty-four to forty-eight hours after the incident. It is very common for bruises and other injuries to not fully manifest until hours or days after being suffered. Those newer photographs would tend to better show the degree of severity in a victim’s injuries. The lack of substantiating injuries would also be necessary for both sides.

Additionally, Detective Reddon should have made the request that the clothing recovered by Detective Hnatuick on the day of the incident be examined for forensic evidence and photographed to show their condition whether damaged or undamaged.

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<sup>7</sup> Italics added.

<sup>8</sup> In the recorded interview with Det. Hnatuick Lehr reported “Ray” had scratches approximately four to five days old on his face at the time of the incident.

**THE FAILURE TO DETAIL VICTIM'S MOVEMENTS AND CORROBORATE HER STORY**

The credibility of the victim can be one of the most important factors in a successful investigation and prosecution. Although a victim should not be the person placed "on trial," this is the reality of sexual assault cases. The response and interview by a detective demonstrated the importance initially placed upon the investigation, however, the relatively short length<sup>9</sup> of the interview raises concerns. Detectives have to establish, as best they can, the movements and actions of the victim before and after the incident. The more thorough this examination, the less likely the victim will have to suffer accusations of improper conduct. Further, the corroboration or disproving of an accusation can serve to free resources to other critical investigations. The fifteen (15) minute interview by Det. Hnatuick, and unknown duration contact between Det. Reddon and the victim, sought to cover an approximate incident time estimate of, at minimum, nine (9) hours.

Michelle Lehr related she and Maria Perez had gone out for the evening and eventually met "Ray," as well as the other members of the band, after arriving at the Silver Saddle Saloon at approximately 1:00 AM. She described the number of alcoholic beverages she'd consumed, the time frame between drinks, and that she'd also drunk water while at the Saloon. What was not determined was the time she and Perez had begun their evening, where they were, and how many drinks they'd consumed prior to the Silver Saddle Saloon. There was also no inquiry with regard to any other substances which might have been ingested during the course of the evening. This information could be crucial in establishing the cognitive abilities of the victim and witnesses to recall details of the incident. This does become an issue when the victim, in her interview with Det. Hnatuick, made statements as to "blacking out."<sup>xxiii</sup> Though Lehr later responded to a question by stating she never lost consciousness, the issue of what she meant by "blacking out" was not clarified.

The notations and observations of the SANE nurse during their exams is a valuable source of confirmation in an investigation. Because of the nature and source of the inquiry, a victim may be more open to discussing details with a medical professional than a law enforcement one. Conversely, information can be obtained which should cause a detective to recognize inconsistencies and discrepancies of the crime. Detectives have to address these discrepancies. In the case of this investigation there is information within the SANE Report which, coupled with information from the victim, need to be considered and addressed. The first of which is the time frame in which the incident, within the Sunrise Avenue apartment, occurred. Michelle Lehr described arriving inside the apartment at approximately 8:00 to 8:15 AM.<sup>xxiv</sup> She then stated she had asked the time and was told it was approximately 8:30 AM. Later in her recorded interview, Lehr indicated the incident occurred between approximately 8:45 and 9:55 AM, and she arrived at Maria Perez's apartment around 10:20 AM. This incident was variously described as occurring over an an hour and ten-minute to an almost two-hour time period. This is a large amount of time when considering the actions it is alleged the suspect took against Lehr's will and objections, and with the potential for a witness to be in the same apartment. This time period needed to be examined and explained in more detail.

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<sup>9</sup> The interview was begun at 2:50 PM and concluded at 3:05 PM, totaling fifteen minutes.



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Secondly, the substantiation of the elements of a victim's story is necessary in sexual assault cases. One which a detective will have to address with sympathy to the victim. SANE Nurse Marian Adams stated to Detective Hnatuick that the injuries she observed were "not definitive for sexual assault."<sup>xxv</sup> A thorough investigation should have moved forward with the knowledge that consent would be at the center of a defense. Compounding the substantiation issue is a notation which appears in the SANE report indicating there was masturbation of the suspect.<sup>xxvi</sup> Because this was not related to Detective Hnatuick in the interview, it should have been reviewed and addressed with a subsequent interview of the victim by Det. Reddon. While possibly a result of embarrassment, the appearance of concealed information on the part of the victim could have a negative bearing on her veracity. Information to address why this notation was made should have been elicited from the victim.

## V. SUMMARY OF OPINIONS

The following comprehensive opinions and conclusions are based upon the analysis and deductions as outlined and articulated in the previous sections of this report. These opinions are presented with the knowledge that the initial investigation had been conducted with knowledge the procedures, practices, and methods of the time period. Simultaneous with the point of view that a detective cannot be held responsible for procedures implemented after an investigation has occurred, is the observation that an investigation also has to be examined under the similar contemporary public opinions and perceptions.

The primary purpose of investigating a crime or series of crimes is to identify and arrest the correct perpetrator in order to provide for the safety of the public. This duty should be carried out without delay in order to ensure that public safety. This is a basic investigative concept and is specifically addressed within the LVMD Manual.

### 4/102.03 PERFORMANCE OF DUTY

#### A.S. 26.1.1

Members are required to discharge their duties in a calm and firm manner, and they shall act together and assist and protect each other in the maintenance of law and order.

Members shall act with promptness, firmness, fairness, and decisiveness at the scenes of crimes, disorders, accidents, disasters, or when dealing with suspects or other situations that require police action. *When the police purpose might be jeopardized by delay, immediate action shall be taken, even though the incident would ordinarily be dealt with by some other office or bureau.* (7/73)<sup>10</sup>

### 4/102.05 PROTECTION OF CRIME SCENES

#### A.S. 42.2.2

*Members assigned to, or assuming control at, a crime scene shall immediately take steps to apprehend the violator, care for any injured person, detain witnesses, and keep the area or premises secure from intrusion by unauthorized persons.*

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<sup>10</sup> Italics emphasis added.



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*They shall take all necessary steps to maintain the scene without change in appearance or character, and to prevent the destruction, mutilation, concealment or contamination of any physical evidence. (7/73)*<sup>11</sup>

Theories are developed within any investigation based upon a detective's knowledge, experience, and expertise. These working ideas do not necessarily need to be proven correct, but their consideration provide the basis for thorough investigative work. One such concern in this case would be the idea that a sexual assault may not be the first (nor the last) perpetrated by a suspect. This idea must remain a possibility in the mind of the investigator. For this reason, the lack of urgency in moving on the actionable facts is distressing.

Furthermore, the detective should always be working to ensure that the evidence gathered, the witnesses interviewed, and the investigation itself identify the correct suspect. The conviction of innocent person does not guarantee the public safety, conversely, it allows a criminal to potentially victimize others. The failure in conducting an immediate comprehensive investigation also burdens an accused who is, sometimes, years later asked to defend his actions. The person who does not know he has been accused of a crime has no reason to attempt to mount a defense or memorialize an incident. And when a person is accused weeks, months, or years later, the lack of the contemporary information, hinders that ability.

There is only one "best" chance to properly investigate a crime scene. That occasion should be as near to the time of the crime as possible. Delaying a crime scene investigation can result in the loss of important evidence. This investigation went beyond delaying the follow-up and appeared to ignore it. An investigation which could have resulted in the interview and identification of a vital witness, the recovery of physical evidence, the corroboration of the victim's story, and the identification and potentially the arrest of the suspect was not completed.

The investigative process should be a search for the truth. No crime should go unsolved or unpunished, but neither should a person should be falsely accused and /or convicted of a crime because the investigator failed to properly, effectively, and promptly performed his duties. An accused person is denied the ability to "prove" his or her innocence when the people or evidence needed in that quest are long lost to halfhearted or poor police work. Proper and thorough documentation is essential to any criminal investigation. Accurate note taking and report writing not only assists in the prosecution of a criminal case, it is vital for those cases in which a solution is not immediately forthcoming. In the investigation of cold cases, the loss of contemporaneous information can prove disastrous. A single new lead, from any source, may become useless without the ability to locate pertinent witnesses or inform a new investigator as to the details of a case. Failure to document which investigative steps were taken, what locations were examined, who was interviewed, theories which were examined and potentially discarded, and what evidence was recovered can deny justice. Without the proper documentation of the previous investigative steps, an investigator can waste valuable investigative time and effort in retreading a lead which might have already been addressed.

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<sup>11</sup> Italics emphasis added.

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The Las Vegas Metropolitan Police Department Case Monitoring and Closure Form contains a twenty (20) point check list of potential investigative steps. While each of these steps may not be relevant to every investigation, it should be noted that a number of them were relevant to this investigation and support the issues and opinions related above. And while they were relevant and necessary, they were simultaneously unheeded.

4	NO	ACTIVITY	5	NO	ACTIVITY
	1	Victim/Witness(es) 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/Press Releases Checked		16	Suspect(s) Interviewed
	7	Department Members/Other Police Departments Checked		17	ATLUSCOPE/NCIC Entries Made
	8	SCOPE/WYSOC/BNIC/PSI Checked		18	Warrant Served or Attempted
	9	Pawn Files Checked		19	Warrant Information to Other Units
	10	DMV Files Checked		20	Other:

1 From the Las Vegas Metropolitan Police Department Form ISD 53 Case Monitoring and Closure Form

Numbers One through Four have all been addressed in detail in the separate "issues" sections of this report. The victim interview did not address inconsistencies and discrepancies, nor was a follow up interview documented if those issues were addressed. There were no substantive witness interviews, even though there were a multitude of people who might provide information regarding various aspects of the incident. The building and area where the crime was committed was never canvassed for additional witnesses. The physical crime scene itself was never established, even though there was enough information on the day of the assault to locate, secure, and investigate it.

Number 13 – FI Files/Crime Analysis Checked, is another opportunity missed within the investigation. In any attempt to locate persons connected to an area, the Crime Analysis Unit and Field Interview cards can often reveal names of persons who have been contacted at various locations by other officers over time. Even a basic request for information on the name "Ray" or "Ramon" in connection with the Silver Saddle Saloon or the apartment address of 2101 Sunrise Avenue. Either of those two searched may have provided a lead as to the identity of the suspect. Nor were any previously reported sexual assaults searched to attempt to link this crime to any similar cases by method of operation, suspect description, etc.

Fischer & Fischer's 5<sup>th</sup> Edition of Techniques of Crime Scene Investigation, written in 1993 states, "Few crimes rely so heavily on physical evidence as does the crime of rape. There are not many other instances in which the testimony of the victim viewed with as much mistrust by juries, courts, and sometimes even prosecutors and police. It is for this very reason that physical evidence is so important to the investigation and prosecution of this crime." Including the substitution of "sexual assault" for "rape," this definition has not changed significantly through the current revisions of the text.



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Contemporaneous witness observations are and were considered invaluable in establishing credibility for the victim. Conversely, by not identifying those same witnesses, it becomes almost impossible for the accused to substantiate a defense. It is a detective's responsibility to corroborate the victim with independent physical evidence and/or as many independent witness statements. The detective must also assess weaknesses or prepare for potential legal defenses. Among the things a detective could and should consider are alibis and alibi witnesses, exculpatory evidence, contextual or mitigating motivations or actions, and conflicting witness statements. It is their duty to determine, by examining contradictory evidence and conducting interviews, the veracity of victims. Although the numbers of false reports are statistically low, the potential for any report to be untrue is always a possibility which must be addressed. This is not to say that a victim should be doubted when the report is made, but great care should be taken to verify information to make eventual "re-living" of the incident in subsequent prosecution as reduced from stress as possible. False reports take valuable investigative time and resources away from investigations which might result in a suspect being arrested and taken off the streets.

Particular to sexual assault crimes, the issue of consent, and not necessarily identification, has been historically problematic. In spousal, date, or acquaintance rape, the identification and apprehension of a suspect has not been as difficult as establishing consent. In today's society, there is a marked progress in that area as evidenced by the dictate, "No means No." However, in the late 1990's and before, consent was not as respected an issue. "Stranger" rapes have always been of the highest priority in capturing a suspect. The possibility of continued danger to the public should be foremost to law enforcement. Sexual assault detectives should always be mindful of suspect descriptions, methods of operation, signatures, corroborating physical evidence, and contemporaneous witness statements, etc.

The initial investigation into the sexual assault of Michelle Lehr was minimal and perfunctory, and the subsequent follow up appeared halfhearted and lacking a sense of obligation. The first contact with law enforcement provided numerous leads which could have resulted in the identification of the suspect. There was information which provided the geographic location of the assault, which, in turn, could provide additional physical evidence. Further, there appeared to be no documented effort to develop and collect evidence, identify and interview numerous witnesses, nor corroborate the victim's story. Finally, there appeared to be a sense of apathy toward locating and arresting the suspect.

The overall quality of this investigation tends to show there was no interest in adhering to any solid principles and rules of criminal investigation. If the duty of an investigator and the policy of the department is "to use all means necessary to ensure all investigations are thorough and complete," as stated in Section 5/206.34 of the LVMPD Manual, it is clear this was not accomplished.

STATE OF NEVADA v. RAMON DORADO.

**VI. ADDENDA**

Any outside media which is used to support the conclusions and opinions detailed within the report should be listed here.

In addition to those items listed in Section II, the following reports, articles, and publications were reviewed in the formulation of the above opinions.

*Las Vegas Metropolitan Police Department Manual, "Partners With the Community"*

Hazelwood, Robert R., and Ann Wolbert Burgess. *Practical Aspects of Rape Investigation: a Multidisciplinary Approach*. 5th ed., CRC Press, 2017.

Fisher, Barry A. J., and David R. Fisher. *Techniques of Crime Scene Investigation*. 5th ed., CRC Press, 1993.

Fisher, Barry A. J., and David R. Fisher. *Techniques of Crime Scene Investigation*. 8th ed., CRC Press, 2012.

The conclusions and opinions drawn within this report are based on my examination of all the information available at the time of the review. Those same conclusions and opinions rely upon my knowledge, experience, and expertise and are expressed to a reasonable degree of professional certainty. I reserve the right to amend this report upon receipt of any additional relevant material related to this matter.

COMPLETED:

A handwritten signature in black ink, appearing to read 'R. J. Bub', with a stylized flourish at the end.

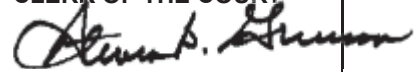
ROBERT BUB

## STATE OF NEVADA v. RAMON DORADO.

## CITATIONS/ENDNOTES

- <sup>i</sup> Las Vegas Metropolitan Police Department Officer's Report, page 5
- <sup>ii</sup> Las Vegas Metropolitan Police Department Voluntary Statement – Michelle Lehr, page 4
- <sup>iii</sup> *Ibid.*, page 4
- <sup>iv</sup> *Ibid.*, page 6
- <sup>v</sup> *Ibid.*, page 7
- <sup>vi</sup> *Ibid.*, page 7
- <sup>vii</sup> Las Vegas Metropolitan Police Department Officer's Report, pages 3 - 4
- <sup>viii</sup> *Ibid.*, page 4
- <sup>ix</sup> Las Vegas Metropolitan Police Department Case Monitoring and Closure Form, page 1
- <sup>x</sup> Las Vegas Metropolitan Police Department Correspondence Regarding Cellmark Forensics 2014-DN-BX-0032 Batch #4 – Cold Case Sexual Assaults, dated April 22, 2015
- <sup>xi</sup> Las Vegas Metropolitan Police Department Declaration for Warrant/Summons, Event # 990424-1124, page 2
- <sup>xii</sup> Las Vegas Metropolitan Police Department Voluntary Statement – Michelle Lehr, page 7
- <sup>xiii</sup> Las Vegas Metropolitan Police Department Voluntary Statement – Michelle Lehr, page 4
- <sup>xiv</sup> Las Vegas Metropolitan Police Department Officer's Report, page 4
- <sup>xv</sup> Las Vegas Metropolitan Police Department Property Report, Event # 99-0424-1124
- <sup>xvi</sup> Las Vegas Metropolitan Police Department Voluntary Statement – Michelle Lehr, page 11
- <sup>xvii</sup> Clark County Grand Jury Proceeding, GJ No. 16BGJ116X, page 7
- <sup>xviii</sup> *Ibid.*, page 8
- <sup>xix</sup> Las Vegas Metropolitan Police Department Case Monitoring and Closure Form, page 1
- <sup>xx</sup> *Ibid.*, page 1
- <sup>xxi</sup> Las Vegas Metropolitan Police Department Voluntary Statement – Michelle Lehr, page 9
- <sup>xxii</sup> Las Vegas Metropolitan Police Department Manual, 5/209.03
- <sup>xxiii</sup> Las Vegas Metropolitan Police Department Voluntary Statement – Michelle Lehr, pages 9 -10
- <sup>xxiv</sup> Las Vegas Metropolitan Police Department Officer's Report, page 5; Las Vegas Metropolitan Police Department Voluntary Statement – Michelle Lehr, page 7
- <sup>xxv</sup> Las Vegas Metropolitan Police Department Officer's Report, page 4
- <sup>xxvi</sup> Sexual Assault Nurse Examination Report, LVS Form 102, Medical History And Assault Information, "Step 2"





OPPS  
YAMPOLSKY & MARGOLIS  
MACE J. YAMPOLSKY, ESQ.  
Nevada Bar No. 001945  
JASON R. MARGOLIS, ESQ.  
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625 South Sixth Street  
Las Vegas, Nevada 89101  
(702) 385-9777; Fax: (702) 385-3001  
Attorney for Defendant RAMON DORADO

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA	)	Case No.: C-17-323098-1
	)	Dept. No.: XXIX
Plaintiff,	)	
vs.	)	Hearing Date: June 18, 2019
	)	Hearing Time: 10:00 a.m.
RAMON DORADO,	)	
	)	
Defendant	)	
	)	

**DEFENDANT'S OPPOSITION TO STATE'S MOTION TO PRECLUDE TESTIMONY  
OF DEFENSE WITNESS ROBERT BUB**

COMES NOW, Defendant RAMON DORADO, by and through his attorney MACE J.  
YAMPOLSKY, ESQ., and hereby files the foregoing Opposition to the State's Motion to  
Preclude Testimony of Defense Witness Robert Bub.

///

///

///

///

1 The grounds for Defendant's Opposition are set forth in the attached Memorandum of  
2 Points and Authorities.

3 DATED this 18<sup>th</sup> day of June, 2019.

4 YAMPOLSKY & MARGOLIS

5 /s/ Mace J. Yampolsky, Esq.  
6 MACE J. YAMPOLSKY, LTD.  
7 Nevada State Bar No. 001945  
8 JASON R. MARGOLIS, ESQ.  
9 Nevada State Bar No. 012439  
10 625 South Sixth Street  
Las Vegas, Nevada 89101  
Attorneys for Defendant

11 **POINTS AND AUTHORITIES**

12 **LEGAL ARGUMENT**

13 Defendant Ramon Dorado is fighting for his life defending against twenty year old  
14 sexual assault allegations that were summarily dismissed by the detectives initially assigned to  
15 investigate them in 1999. The State seeks to preclude Robert Bub from testifying at the eleventh  
16 hour because, quite frankly, the State of Nevada is not happy with what he plans to say. The  
17 State alleges that Mr. Bub's testimony will neither assist the jury in (1) understanding the  
18 evidence; or (2) determining a fact in issue.

19  
20 Mr. Dorado respectfully and vehemently disagrees with the State's conclusory  
21 statements and believes Mr. Bub's testimony will be critical in helping the jury understand and  
22 weigh the evidence (or the lack thereof) and may also help the jury to determine one or more  
23 facts in issue, such as the notion that Ms. Lehr consented to sexual contact during the early  
24 morning hours of April 24, 1999. Mr. Bub is of the quite plain opinion that had more been done  
25 in this investigation the ability to both prosecute and defend the case would have been greatly  
26 enhanced—the crime scene, physical evidence, and potentially percipient witnesses would have  
27  
28

1 been identified, examined, and an investigation would have led to the apprehension of Mr.  
2 Dorado—provided all that was uncovered justified the same.

3       The State argues that Mr. Bub does not possess sufficiently specialized knowledge and  
4 that any assertions and conclusions he may make could be made by the jurors themselves  
5 through their exercise of ordinary common sense. This is patently untrue given that Mr. Bub  
6 investigated murders, sexual assaults, robberies, and other violent crimes with the Los Angeles  
7 Police Department for well over twenty years. Mr. Bub knows a bit more about the course of  
8 these investigations than do the jurors. Mr. Bub does not seek to invade the province of the jury,  
9 merely to enable them to understand what ought to have happened, what did happen, and how  
10 that may or may not have impacted the case before them today.  
11

12       The State cites to *People v. Johnson*, 423 N.E.2d 1206, 1216 (Ill. App. 1981) for the  
13 proposition that expert testimony is only warranted when the subject matter of inquiry is  
14 sufficiently beyond the common experience of an average juror. Mr. Dorado submits the steps  
15 and course of a sexual assault investigation are precisely the types of subject matter about  
16 which the lay juror knows very little.  
17

18       The average juror has not been sexually assaulted, has not been well acquainted with a  
19 sexual assault victim, and certainly does not know the basic steps of a competent sex assault  
20 investigators—this is why SANE nurses, forensic interviewers, and law enforcement personnel  
21 are such ubiquitous witnesses in criminal trials. These professionals have specialized scientific  
22 and technical knowledge that the lay juror does not. Ironically enough, jurors have about the  
23 same knowledge base about these topics perhaps that the average lay juror has about DNA from  
24 watching CSI, to paraphrase a common tactic of District Attorneys in Nevada seeking to modify  
25 (i.e., lower) the expectations of jurors for physical and forensic evidence.  
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1           The State cites favorably to *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650  
2 (2008), for the premise that Mr. Bub’s testimony will not “assist” the jury in evaluating the  
3 evidence. The Nevada Supreme Court has identified several nonexclusive factors that are useful  
4 in determining whether a witness “is qualified in an area of scientific, technical, or other  
5 specialized knowledge” and therefore may testify as an expert. *Hallmark*, 124 Nev. at 499, 189  
6 P.3d at 650. Those factors include “(1) formal schooling and academic degrees, (2) licensure,  
7 (3) employment experience, and (4) practical experience and specialized training.” *Id.* at 499,  
8 189 P.3d at 650–51 (footnotes omitted).

10           Here, Mr. Bub’s qualifications are beyond reproach. He has served as an expert witness  
11 in jurisdictions throughout the country, testifying on police procedure and investigations. He  
12 has conducted cold case sex assault investigations very akin to the one at bar, and has seen the  
13 kind of barren investigative file present in this case. He is more than qualified to opine on what  
14 steps should have been taken to ensure a full and fair investigation occurred and that the gaps in  
15 the timeline and holes in Ms. Lehr’s tory may have given the initial investigators pause as he  
16 has conducted the same investigations, observed the same pratfalls, and is better suited to  
17 making meaning from the same than lay jurors.

20           The State cites favorably to *Hallmark*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008), for  
21 the premise that Mr. Bub’s testimony will not “assist” the jury in evaluating the evidence. The  
22 State decries Mr. Bub’s report as a collection of “assumptions, conjectures, and  
23 generalizations,” the likes of which are verboten by the *Hallmark* holding. For Mr. Bub, a  
24 veteran of 33 years with LAPD, who spent the last 22 years on the force investigating only the  
25 most serious of felonies, there is not conjecture or speculation involved in his opinions. Mr.  
26 Bub is basing his opinions, inferences, and any conclusions on decades of actual investigation  
27 of cases just like the one at bar involving Mr. Dorado and Ms. Lehr.



1 Mr. Bub is pointing out to the jury that Mr. Dorado cannot prove a negative—it is not  
2 Mr. Dorado’s obligation to prove that he did not sexually assault Ms. Lehr on April 24, 1999.  
3 The perfunctory investigation done in 1999 has caused real difficulties for Mr. Dorado in terms  
4 of mounting a defense. Everyone *except* Mr. Dorado knew about sexual assault allegations in  
5 1999—nobody ever told him. Mr. Dorado has been deemed guilty until proven innocent.  
6

7 In part, this is a direct result of initial investigators either not believing Ms. Lehr or  
8 being too otherwise disinterested to canvas for as yet unidentified witnesses, such as the man in  
9 the apartment when Ms. Lehr arrived with Mr. Dorado, or the women present outside when she  
10 left, or even going to the Silver Saddle to speak with or arrest Mr. Dorado. Mr. Bub can tell the  
11 jury that he would or would not have done likewise—and the reasons why based upon his  
12 lengthy experience.  
13

14 DATED this 18<sup>th</sup> day of June, 2019.

15 YAMPOLSKY & MARGOLIS

16 /s/ Mace J. Yampolsky, Esq.  
17 MACE J. YAMPOLSKY, LTD.  
18 Nevada State Bar No. 001945  
19 JASON R. MARGOLIS, ESQ.  
20 Nevada State Bar No. 012439  
21 625 South Sixth Street  
22 Las Vegas, Nevada 89101  
23 Attorneys for Defendant  
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**CERTIFICATE OF SERVICE**

I hereby certify that service of the above and foregoing, was made this 18<sup>th</sup> day of June, 2019, via electronically filing to:

Genevieve Craggs  
Deputy District Attorney  
Email: [genevieve.c.craggs@clarkcountyda.com](mailto:genevieve.c.craggs@clarkcountyda.com)

Bryan Schwartz  
Deputy District Attorney  
E-Mail: [bryan.schwartz@clarkcountyda.com](mailto:bryan.schwartz@clarkcountyda.com)

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

\_\_\_\_\_  
/s/ Theresa J. Muzgay  
An employee of  
YAMPOLSKY & MARGOLIS

1 INST

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

JUN 20 2019 at The hour of 1:09pm

BY: Nancy Maldonado  
NANCY MALDONADO, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 RAMON MURIL DORADO,  
#1673321

11 Defendant.

CASE NO: C-17-323098-1

DEPT NO: XVII

12 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

13 MEMBERS OF THE JURY:

14  
15 It is now my duty as judge to instruct you in the law that applies to this case. It is  
16 your duty as jurors to follow these instructions and to apply the rules of law to the facts as  
17 you find them from the evidence.

18 You must not be concerned with the wisdom of any rule of law stated in these  
19 instructions. Regardless of any opinion you may have as to what the law ought to be, it  
20 would be a violation of your oath to base a verdict upon any other view of the law than that  
21 given in the instructions of the Court.

22 C-17-323098-1  
23 INST  
24 Instructions to the Jury  
25 4843912



26  
27  
28  
2 RA 000287

INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.



INSTRUCTION NO. 3

An Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Indictment that on or 24<sup>th</sup> day of April, 1999, the Defendant committed the offenses of SEXUAL ASSAULT (Category A Felony - NRS 200.364, 200.366 - NOC 50095).

It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the Defendant is guilty of one or more of the offenses charged, which are as follows:

COUNT 1

did then and there willfully, unlawfully, and feloniously sexually assault and subject M.L., a female person, to sexual penetration, to-wit: cunnilingus: by placing his mouth and/or tongue on or in the genital opening of the said M.L., against her will, or under conditions in which Defendant knew, or should have known, that M.L. was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

COUNT 2

did then and there willfully, unlawfully, and feloniously sexually assault and subject M.L., a female person, to sexual penetration, to-wit: sexual intercourse: by placing his penis into the genital opening of the said M.L., against her will, or under conditions in which Defendant knew, or should have known, that M.L. was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

COUNT 3

did then and there willfully, unlawfully, and feloniously sexually assault and subject M.L., a female person, to sexual penetration, to-wit: digital penetration: by placing his finger into the genital opening of the said M.L., against her will, or under conditions in which Defendant knew, or should have known, that M.L. was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

INSTRUCTION NO. 4

The Defendant is presumed innocent until the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

INSTRUCTION NO. 5

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

INSTRUCTION NO. 6

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.



INSTRUCTION NO. 7

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

1  
2 A person who subjects another person to sexual penetration or forces another person  
3 to make a sexual penetration on himself or herself or another, against the victim's will, or  
4 under conditions in which the perpetrator knows or should know that the victim is mentally  
5 or physically incapable of resisting or understanding the nature of his/her conduct, is guilty  
6 of sexual assault.

7 "Sexual penetration" means cunnilingus, fellatio, or any intrusion, however slight, of  
8 any part of a person's body or any object manipulated or inserted by a person into the genital  
9 or anal openings of the body of another, including sexual intercourse in its ordinary meaning.  
10 Evidence of ejaculation is not necessary.

11 Digital penetration is the placing of one or more fingers of the perpetrator into the  
12 genital or anal opening of another person.

13 Fellatio is a touching of the penis by the mouth or tongue of another person.

14 Sexual intercourse is the intrusion, however slight, of the penis into the genital  
15 opening of another person.

16 Anal intercourse is the intrusion, however slight, of the penis into the anal opening of  
17 another person.

INSTRUCTION NO. 9

Physical force is not necessary in the commission of sexual assault. The crucial question is not whether a person was physically forced to engage in a sexual assault but whether the act was committed without his/her consent or under conditions in which the defendant knew or should have known, the person was incapable of giving his/her consent or understanding the nature of the act. There is no consent where a person is induced to submit to the sexual act through fear of death or serious bodily injury.

INSTRUCTION NO. 10

A person is not required to do more than her age, strength, surrounding facts, and attending circumstances make it reasonable for her to do to manifest opposition to a sexual assault.



INSTRUCTION NO. 11

Submission is not the equivalent of consent. While consent inevitably involves submission, submission does not inevitably involve consent. Lack of protest by a victim is simply one among the totality of circumstances to be considered by the jury.

INSTRUCTION NO. 12

There is no requirement that the testimony of a victim of a sexual offense be corroborated, and her testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty.

INSTRUCTION NO. 13

Where multiple sexual acts occur as part of a single criminal encounter a defendant may be found guilty for each separate or different act of sexual assault.

Where a defendant commits a specific type of act constituting sexual assault, he may be found guilty of more than one count of that specific type of act of sexual assault if:

1. There is an interruption between the acts which are of the same specific type,
2. Where the acts of the same specific type are interrupted by a different specific type of sexual assault, or
3. For each separate object or body part manipulated or inserted into the genital or anal opening of another.

Only one sexual assault occurs when a defendant's actions were of one specific type of sexual assault and those acts were continuous and did not stop between the acts of that specific type.

INSTRUCTION NO. 14

It is a defense to the charge of sexual assault that the Defendant entertained a reasonable and good faith belief that the alleged victim consented to engage in sexual intercourse. If you find such reasonable, good faith belief, even if mistaken, you must give the Defendant the benefit of the doubt and find him not guilty of sexual assault.

A belief that is based upon ambiguous conduct by the alleged victim that is the product of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person of another is not a reasonable and good faith belief.



INSTRUCTION NO. 15

General intent is the intent to do that which the law prohibits. It is not necessary for the prosecution to prove that the defendant intended the precise harm or the precise result which eventuated if a crime is a general intent crime.

You are also instructed that Sexual Assault is a general intent crime.

INSTRUCTION NO.. 16

Voluntary use of drugs or alcohol is not a defense to general intent crimes. Thus, voluntary use of drugs or alcohol is not a defense to a charge of Sexual Assault.

INSTRUCTION NO. 17

1  
2 It is a constitutional right of a defendant in a criminal trial that he may not be  
3 compelled to testify. Thus, the decision as to whether he should testify is left to the  
4 Defendant on the advice and counsel of his attorney. You must not draw any inference of  
5 guilt from the fact that he does not testify, nor should this fact be discussed by you or enter  
6 into your deliberations in any way.  
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INSTRUCTION NO. 18

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.



INSTRUCTION NO. 19

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the State has proven the charges beyond a reasonable doubt.

During the course of this trial, and your deliberations, you are not to:

1. communicate with anyone in any way regarding this case or its merits-either by phone, text, Internet, or other means;
2. read, watch, or listen to any news or media accounts or commentary about the case;
3. do any research, such as consulting dictionaries, using the Internet, or using reference materials; or
4. make any investigation, test a theory of the case, re-create any aspect of the case, or in any other way investigate or learn about the case on your own.

INSTRUCTION NO. 21

When you retire to consider your verdict, you must select one of your member to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

INSTRUCTION NO. 22

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given you in the presence of, and after notice to, the district attorney and the Defendant and his/her counsel.

Playbacks of testimony are time-consuming and are not encouraged unless you deem it a necessity. Should you require a playback, you must carefully describe the testimony to be played back so that the court recorder can arrange his/her notes. Remember, the court is not at liberty to supplement the evidence.



INSTRUCTION NO.. 23

Portions of transcripts from court proceedings have been admitted as evidence in this case. The Court and the attorneys have all agreed that the relevant portions of the statement have been admitted.

The jury is not to consider or speculate on any of the portions of the statement that were not admitted.

INSTRUCTION NO. 24

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:

  
DISTRICT JUDGE



1 VER

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

JUN 20 2019 *at the hour of 3:03pm*

2  
3  
4  
5 DISTRICT COURT  
CLARK COUNTY, NEVADA

BY: *Nancy Maldonado*  
NANCY MALDONADO, DEPUTY

6 THE STATE OF NEVADA,

7 Plaintiff,

8 -vs-

9 RAMON MURIL DORADO,

10 Defendant.

CASE NO: C-17-323098-1

DEPT NO: XXIX

11  
12 VERDICT

13 We, the jury in the above entitled case, find the Defendant, RAMON MURIL  
14 DORADO, as follows:

15 COUNT 1 - SEXUAL ASSAULT

16 *(Please check the appropriate box, select only one)*

17 ☒ Guilty of Sexual Assault

18 ☐ Not Guilty

19  
20 COUNT 2 - SEXUAL ASSAULT

21 *(Please check the appropriate box, select only one)*

22 ☒ Guilty of Sexual Assault

23 ☐ Not Guilty

24 //

25 //

26 //

27 //

28 //

1 COUNT 3 - SEXUAL ASSAULT

2 *(Please check the appropriate box, select only one)*

3 ☒ Guilty of Sexual Assault

4 ☐ Not Guilty

5  
6 DATED this 20 day of June, 2019.

7   
8 \_\_\_\_\_  
9 FOREPERSON



1 NOAS  
2 Name: Ramon Muric-Dorado  
3 Address: H.D.S.P. - P.O. Box 650  
4 City/State/Zip: Indian Springs, NV 89070  
Phone: I.d.# 77774  
My New Address

FILED

SEP 03 2019

*John L. Johnson*  
CLERK OF COURT

5 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE  
6 STATE OF NEVADA IN  
7 AND FOR THE COUNTY OF CLARK

8 The State of Nevada

9 Plaintiff,

10 v.

CASE NO. C-17-323098-1

DEPT. NO. 29

11  
12 Ramon Muric-Dorado

13 Defendant.

14  
15 \* NOTICE OF APPEAL

16 Notice is hereby given that Ramon Muric Dorado, Defendant above-named,  
17 hereby appeals to the Supreme Court of Nevada from A Judgment of Conviction  
18 of Two Consecutive Sentences of 10 To Life, Prison Confinement  
19 IN THE NEVADA Department of corrections.

20 entered in this action on the 13 day of August, 2019.

21  
22  
23 DATED this 27 day of August, 2019.

24 

Defendant's Signature

25  
26  
27  
28  
RECEIVED  
CLERK OF THE COURT

NOTE: list either the Final Judgment or an Order (describe it) on the lines above.

→ \* CERTIFICATE of MAIL RECEIPT Requested

I Respectfully Request A file stamp certificate of Mail Receipt  
to be mailed to Above Referenced Address Please. 2 RA 0003138/27/19

## "Judicial Notice"

I Ramon Muric-Dorado N.S.P. # 77774 do assert that I AM UNSURE on how to correctly file A Notice of Appeal At this stage of my CRIMINAL CASE, I've been sentenced to 2 Consecutive 10 To Life Prison Sentences because I Refused to be Coerced into Pleading Guilty to something I never did. I WAS convicted on 6/20/19 And sentenced on 8/13/19, I had already filed A Motion to dismiss my Counsel Prior to Sentencing. That Motion is scheduled for 9/5/2019 d.c. dept 29, I know that theres A time limit to file A notice of Appeal, so im sending this simple Notice of Appeal in Hopes that it be correctly sufficient to stay the Notice of Appeal Ant Procedure Rule 3 and Rule 4(b). Im trying to get A Court Appointed Attorney who specializes in Appeals. However I dont know how long this will take. Im trying to figure out how to do the case Appeal Statement And All the other stuff that goes with the Appeal. Ive included what I think is Relevant Exhibits pertaining to this 20 Year old Case in which I find myself Today Wrongfully convicted of. Please Advise. Respectfully Submitted

8-27-2019 / Ramon Muric-Dorado



## LIST OF EXHIBITS Pursuant to N.R.A.P. 3(9)(A)

- Exhibit 1 - 1999 Lumped Crime Scene Report // Voluntary statements // G.P.S. and Case Monitor Form // Closure Forms // Letter
- Exhibit 2 - CASE Review and ANALYSIS by Expert Witness Robert Bub. Credits of MR. Bub
- Exhibit 3 - CRIMINAL Conviction History of Ramon Muric-Dorado-2003-2012.
- Exhibit 4 - Proof of NAME LEGAL Documents for Ramon Dorado Muric.
- Exhibit 5 - CELLMARK Forensic List of 50 Lumped S.A.N.E. Medical Kits-1998-2017.
- Exhibit 6 - CELLMARK Lab Results Report and CODIS Hit Notification Report-2015-2016.
- Exhibit 7 - APPLICATION/Affidavit for Search WARRANT - Chain of Custody of buccal Swab.
- Exhibit 8 - Declaration of WARRANT-Summons // Original CRM-Complaint // Arrest date // And  
- N.D.O.C. Violation // Transport And Booking intake into C.C.D.C.-facility.
- Exhibit 9 - Grand Jury Transcripts of 4-26-2017 // Medical Report - new CRM-Complaint // List of questions
- Exhibit 10 - COURT transcripts of D.C-dept 2 on 6-15-2017.
- Exhibit 11 - C.C.D.C. - Log for Attorney Contact Visits - 5-10-2017.
- Exhibit 12 - Assertion of the Right to Remain Silent - 5<sup>th</sup> - 6<sup>th</sup> Amendments. U.S. Const. // And  
- Exculpatory Evidence of Original 1999-Lumped-Voluntary Witness Statements.
- Exhibit 13 - SYNOPSIS / DANCE Floor Schematics & Dance Body Contact Areas.
- Exhibit 14 - CRIMINAL Conviction History of Michelle Lehr // And Welfare -  
- Paternity Affidavit - Stemming from illegitimate Baby son with  
- A MEXICAN-MARRIED MAN - Lehr did not know MAN WAS MARRIED.
- Exhibit 15 - INADEQUATE MARITAL Notice Given 4-21-2017
- Exhibit 16 - JURY instructions / Audio & Video Transcripts for Complete Trial Requested // NOT include  
- DOCKET ENTRIES / COURT MINUTES
- Exhibit 17 Pro-se motion to dismiss counsel // Pro se Motion to dismiss Indictment // Suppress Evidence
- Exhibit 18 O.R motion // Exhibit 19 Mot to dismiss // Exhibit 20 motion to suppress Evid // Exhibit 21 Motion to compel  
- Discovery & Brady Materials // Exhibit 22 motion to dismiss destruction Evid // Exhibit 23 motion for O.R. - Bail Reduction
- Exhibit 24 Pro se Motion to dismiss Counsel // Exhibit 25 2<sup>nd</sup> Motion to dismiss Pre indict. delay // Exhibit 26 2<sup>nd</sup> Mot. to suppress //  
Exhibit 27 motion to suppress d.N.A. UNRELIABLE Testing.

Ramon Music-DeRado # 72724  
High desert-side Prison P.O. Box 650  
Indian Springs, Nevada 89070

Hasler  
08/29/2019  
FIRST-CLASS MAIL PERMIT  
US POSTAGE \$000.45  
ZIP 89101  
01E12650764

THE Eighth Judicial District Court  
200 Lewis Ave  
Las Vegas, Nevada 89101

UNIT 1  
C/D  
AUG 28 2019  
UNIT 1 C/D

CLARK COUNTY STATE PRISON