

IN THE SUPREME COURT OF THE STATE OF NEVADA

GUSTAVO RAMOS,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

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Supreme Court Case No. 79781

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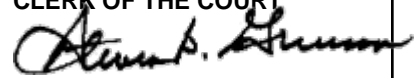
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GUSTAVO RAMOS,
#1516662

Defendant.

CASE NO: C-10-269839-1

DEPT NO: III

**STATE'S SUPPLEMENTAL OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS**

DATE OF HEARING: 03/20/19
TIME OF HEARING: 9:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through PAMELA WECKERLY, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion To Dismiss.

This Supplemental 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 Helen was wearing only a nightgown which was pulled above her breasts. Her
2 underwear were off and found under her head. Her bra was off and found near her body. There
3 was fecal matter on the carpet near her leg.

4 Helen's apartment was in disarray. Among other items, was a chair, with apparent
5 blood, turned upside down on Helen's bed. Helen was stabbed numerous times to her head,
6 face, torso, left thigh, and buttock. Two knives were found near the body. One under her leg
7 and one at the foot of her bed. An autopsy revealed that she died by stab wounds to her heart
8 and pulmonary artery.

9 A man's grey t-shirt and white muscle shirt were found near Helen. Both had blood
10 transfer on them. Police developed no suspects and the case was cold for 12 years.

11 On June 26, **2009**, DNA from the two shirt found in the Sabraw scene was submitted
12 for testing. DNA was recovered from the armpit area of the grey t-shirt and the profile was
13 uploaded into CODIS. CODIS produced a match to Gustavo Ramos. Thereafter, a search
14 warrant was used to get a buccal swab from Ramos and the CODIS results were confirmed.
15 The estimated frequency of DNA in the population is rarer than 1 in 30 billion. Once Ramos
16 was identified, his fingerprints were compared to the bloody print found on the Las Vegas
17 Review journal page in Wallace Siegel's apartment. The examiner concluded that the print
18 was consistent with the right palm print of Gustavo Ramos.

19 Prior to the DNA hit in 2009, Metro detectives documented a contact interview with
20 Jack Siegel on June 22, 2004. The contact was documented in a police report. Defendant
21 Ramos complains that the interview, although documented in a police report, was not
22 recorded. Jack also had paperwork that was not impounded or collected by detectives. The
23 defense has not indicated whether they attempted to contact Jack Siegel to get copies of this
24 paperwork. The case was in district court in January 2011. The current attorneys for Gustavo
25 Ramos were appointed in May 2014. Apparently, in the ensuing four years they made no
26 effort to secure the documents nor contact with Jack Siegel.

1 On November 29, 2018 and December 4, 2018, Judge Togliatti held a hearing on the
2 Motion to Dismiss for Failure to collect evidence. Judge Togliatti held that the only issue in
3 the hearing would be regarding the paperwork, not the fact that the interview was not recorded.
4 On the first hearing date, Detective Clifford Mogg testified that he participated in the interview
5 of Jack Siegel. Hearing Transcript I at 6. He explained that Jack Siegel reported to detectives
6 that he believed someone was setting him up to “take the fall” for the homicide. Id. at 10.
7 Detective Mogg further explained that the documents that Siegel brought with him, however,
8 dealt with an account at a credit union. Id. He further testified that based on the report
9 documenting the interview with Siegel, detectives “would have looked at the documentation
10 that Mr. Siegel would have brought in to us and if it would have been relevant in the course
11 of our investigation as to a possible suspect or motive in the case, then we would have acted
12 on that.” Id. at 27. He further explained, “We would not necessarily had made copies of
13 anything nor documented anything in a recording if there was nothing of relevant to a suspect
14 in the case or a motive in the case in which case, based on the officer’s report that was written
15 two days later and my recollection of what was in the report, there is nothing in there that
16 indicated to us that he specifically knew a person who was involved in the murder of his father
17 or a motive behind the murder of his father.” Id. at 27. Finally, defense counsel simply asked
18 Mogg, “What was the downside of collecting it?” and Detective Mogg answered, “It had no
19 evidentiary value and what were we going to do with it. It had no value to us.” Id. at 29.
20 Jack Siegel also testified on the first day of the hearing. In fact, the State secured his presence
21 at the hearing for the defense. He explained that in 2004, six years after the homicides, he
22 wanted detectives to look at some paperwork. Id. at 53. “I wanted to meet with them because
23 of documentation of record of integrity of L.A. County who is also my tax collector and my
24 employer and discrepancies in monies missing.” Id. He said the documents he brought “was
25 a false tax lien.” Id. at 55. Later, Mr. Siegel stated, “The paperwork was from how—we have
26 a code of equity—code of conduct within L.A. County that talks about—sorry—talks about
27 record integrity.” Id. at 58. Mr. Siegel also said that some of the documents pertained to
28 savings bonds in his own name that were cashed in San Francisco. Id. at 60. He agreed that

1 all of the documents related to government entities and his employment in California. Id. at
2 71. Mr. Siegel also explained that although he has moved a lot since 2004, he still was in
3 possession of some of the documents. Id. at 62.

4 The third witness on the first hearing date was, Jack Siegel's sister, Leslee Siegel. She
5 explained that her brother, Jack, is mentally ill. Id. at 78. She testified that he is fixated on
6 the idea that L.A. County has done something wrong to him. Id. at 79.

7 Retired Detective Ken Hardy testified on December 4, 2018. He noted that as of 2004,
8 the case was still unsolved so potentially Jack Siegel was still in the pool of suspects. Hearing
9 Transcript II at 29. He testified that the papers brought by Jack Siegel to the meeting were
10 neither copied nor impounded because "I don't believe anything there had the relevance to
11 impound them in relation to the case." Id. at 32. Defense counsel asked, "And also fair to say
12 that other than storing the paperwork, there's no—there would have been no downside in
13 collecting it; is that fair to say?" Id. at 34. Detective Hardy also explained that as of 2004,
14 the primary piece of forensic evidence in the case was a bloody fingerprint from a newspaper
15 at the scene. Id. at 36. Importantly, as of 2004, Jack Siegel had been eliminated as the person
16 who left that bloody fingerprint. Id. at 37. He also stated that Jack Siegel was a little
17 "different" and that if he had "thought that [the paperwork] was relevant to the identification
18 of the suspect, yes, we would have obtained that paperwork." Id. at 38.

19 ARGUMENT

20 As previously argued, Defendant Ramos' motion is based on a failure to collect
21 paperwork from a 2004 interview with Jack Siegel as the basis for dismissal. None of this
22 relates to the Sabraw crimes, so dismissal is inappropriate. In addition, as Jack Siegel
23 explained, at least some of this paperwork is still accessible if the defense wanted to request it
24 from him. There is no evidence in the record that they have made any such request. The
25 defense is free to contact Mr. Siegel and request that he bring the paperwork at issue.

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1 A. Destruction of Evidence Versus Failure to Gather Evidence

2 The Nevada Supreme Court has characterized the distinction between instances in
3 which the police fail to preserve evidence versus fail to gather evidence as a question of
4 whether the police or the State ever had possession and control over the evidence. See
5 Johnson v. State, 117 Nev. 153, 167, 17 P.3d 1008, 1017 (2001). In this case, detectives met
6 with Jack Siegel and did not impound the paperwork he had with him. As mentioned above,
7 this does not mean that the paperwork no longer exists. Nonetheless, because they never had
8 control over the paperwork, the issue must be analyzed according to case law which focuses
9 on a “failure to gather” evidence if at all.

10 B. Failure to Gather Evidence

11 The Nevada Supreme Court clearly articulated the rule regarding the State’s failure to
12 gather evidence in Daniels v. State, 114 Nev. 261, 956 P.2d 111 (1998). Generally, the Nevada
13 Supreme Court explained that police officers have no duty to collect all potential evidence
14 from a crime scene, id. at 268, 956 P.2d at 115, but noted that some injustices could arise from
15 the State’s failure to gather evidence under certain circumstances. Id. at 267, 956 P.2d at 115.
16 In Daniels, the court explained a two-part test. The first prong of the test “requires the defense
17 to show that the evidence was ‘material,’ meaning that there was a reasonable probability that,
18 had the evidence been available to the defense, the result of the proceeding would have been
19 different.” Id., 956 P.2d at 115. If the evidence is found to be “material” then the court must
20 “determine whether the failure to gather evidence was the result of mere negligence, or a bad
21 faith attempt to prejudice the defendant’s case.” Id. Significantly, in situations involving mere
22 negligence, “no sanctions are imposed, but the defendant can still examine the prosecution’s
23 witnesses about investigative deficiencies.” Id. (citation omitted). If the court finds gross
24 negligence, “the defense is entitled to a presumption that the evidence would have been
25 unfavorable to the State.” Id. (citation omitted). “In cases of bad faith . . . dismissal of the
26 charges may be an available remedy based upon an evaluation of the case as a whole.” Id.

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1 1. Defendant Ramos Fails the First Prong of the Test.

2 The test enunciated in Daniels provides that in case where the defense is claiming the
3 State failed to gather evidence, the defense has the burden of establishing that the evidence
4 was “material.” Id. Thus, it is the burden of the defense to illustrate to a reasonable probability
5 that, had the evidence been available to the defense, the result of the proceeding would have
6 been different.” Id. In applying this test, the Nevada Supreme Court has clearly held that
7 mere speculation on the part of the defense that a particular piece of evidence might have been
8 exculpatory is insufficient to satisfy this prong of the test.

9 For instance, in Daniels, after a jury convicted Daniels of first degree murder, Daniels
10 raised a claim regarding the detective’s failure to draw his blood upon arrest. According to
11 Daniels, had the State gathered this evidence, it would have revealed that he had ingested PCP
12 prior to the crime and bolstered his defense that he lacked capacity to specifically intend the
13 murder be committed. Id. at 266, 956 P.2d at 114. The Nevada Supreme Court rejected the
14 claim that the blood evidence was even “material.” Instead the court concluded that “whether
15 the blood evidence would likely have prevented Daniel’s conviction is pure speculation.” Id.
16 at 268, 956 P.2d at 115.

17 In Randolph v. State, 117 Nev. 970, 36 P.3d 424 (2001), The Nevada Supreme Court
18 again rejected a defendant’s speculative claims about the materiality of evidence that was not
19 gathered by the police. In Randolph, both Randolph and his co-defendant, Garner, were
20 charged with multiple crimes including murder with use of a deadly weapon for the shooting
21 murder of Shelly Lokken while she worked as a graveyard shift bartender. A witness who
22 saw both Randolph and Garner return to a trailer after the murder saw Garner change out of
23 his clothing. The clothing that Garner was wearing upon arrest tested negative for blood. Id.
24 at 986, 36 P.3d at 435. When police arrested Garner, they noted that the trunk of his car
25 contained a pile of clothing, but they did not look through it to see if it included the clothing
26 originally worn by Garner as described by the witness. Id. On appeal, Randolph claimed that
27 the State failed to gather “potentially exculpatory” evidence because if the police had found
28 the clothing and if Garner’s clothing had tested positive for blood, it would have supported

1 Randolph's claim that Garner was, in fact, the shooter. Randolph argued that he was entitled
2 to a jury instruction that the "ungathered evidence was presumed to be unfavorable to the
3 State." Id. at 987, 36 P.3d 435.

4 The Nevada Supreme Court concluded that Randolph failed to satisfy the first prong of
5 the Daniels test. The court explained:

6 Randolph has not shown that the ungathered evidence was material. If testing
7 of Garner's clothing or shoes had revealed the victim's blood, it is possible that
8 Randolph might not have received the death sentence. However, Randolph has
9 not demonstrated a reasonable probability that such testing would have
10 revealed any blood. He offers no evidence to corroborate his allegation that
Garner was the shooter. The possibility that Garner's clothing and shoes
would have been favorable to his case remains mere speculation.

11 Id. at 987, 36 P.3d at 435.

12 Applying the foregoing analysis to the instant case, Defendant Ramos fails to satisfy
13 the first prong of the Daniels test. The most that Ramos established at the evidentiary hearing
14 was that "there would have been no downside" to impounding the irrelevant paperwork
15 brought to the 2004 interview by Jack Siegel. Ramos can point to nothing that would change
16 the facts of this case that implicate him: that in a closed setting, his fingerprint was found in
17 blood at one murder scene and that his DNA was found at another scene, within 24 hours, at
18 a locked down facility. No paperwork in the possession of Jack Siegel changes those essential
19 facts. Thus, Ramos fails prong of the Daniels test.

20
21 2. Defendant Ramos fails the Second Prong of the Daniels Test.

22 Although unnecessary to discuss given that Defendant Ramos's claim does not meet
23 the first prong of the test required in failure to gather evidence cases, the State also notes that
24 Defendant Ramos also would not be entitled to any of the "remedies" discussed in Daniels
25 because Defendant Ramos does not satisfy the second prong of the test as well. As previously
26 discussed, the second inquiry in failure to gather evidence situations is whether the failure to
27 gather evidence is the produce of negligence, gross negligence, or bad faith. See Daniels, 114
28 Nev. at 267, 956 P.2d at 115. If the failure to gather evidence was the product of negligence,

1 no sanction is imposed. If the failure to gather evidence amounts to gross negligence, then the
2 defense is entitled to a presumption that the evidence would have been unfavorable to the
3 State. If the failure to gather was done in bad faith, dismissal is “an available remedy based
4 upon an evaluation of the case as a whole.” Id.

5 After being convicted of first degree murder with use of a deadly weapon and other
6 charges, Daniels alleged that the police failed to gather his blood. According to Daniels, had
7 his blood been collected, he could have demonstrated that he lacked the specific intent to
8 commit murder because he had ingested and was under the influence of PCP at the time of the
9 crime. After concluding that Daniels had not satisfied the first part of the prescribed analysis
10 in failure to gather evidence cases, the Nevada Supreme Court also noted that “Daniels failed
11 to establish that the State’s failure to gather blood evidence was caused by negligence, gross
12 negligence, or bad faith.” Id. at 268, 956 P.2d at 116. The court reasoned that although the
13 detective had been aware that witnesses had described Daniels’s behavior as strange, he also
14 knew that the nurse who performed Daniels’s initial medical screening did not notice any signs
15 that Daniels was under the influence of a controlled substance and that Daniels had told her
16 that he had not taken any drugs. The detective also explained that prior to his interview of
17 Daniels, Daniels had admitted to smoking marijuana the previous day, but denied recent drug
18 use. Id. Therefore, the court found that “a reasonable jury could not find the detective was
19 negligent, grossly negligent or acted in bad faith by deferring to the nurse’s professional
20 judgment and Daniels’ own assertion that he was not intoxicated.” Id.

21 The Nevada Supreme Court conducted the same analysis in Randolph v. State, 117
22 Nev. 970, 36 P.3d 424 (2001). Once again, after finding that Randolph had not met the first
23 prong of the failure to gather evidence test in complaining that the police did not attempt to
24 gather Garner’s clothing and shoes, the Nevada Supreme Court found that Randolph did not
25 show that the failure to gather the evidence was the product of gross negligence or bad faith.
26 The court explained:

27 ///

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1 Even assuming the evidence was material, the failure to collect it was
2 at worst negligent. First, Randolph had not shown that the police
3 could have collected the brown shirt and pants. He simply assumes
4 that a search of the trailer or the clothing in the trunk of Garner's car
5 would have uncovered them. Second, Randolph has not shown that
6 the potential evidentiary significance of Garner's shoes, which were
7 available to police, was so obvious that it was gross negligence not to
8 impound and test them.

9 Id. at 987-88, 36 P.3d at 435.

10 The instant crimes occurred in 1998. The cases were unsolved. In 2004, Jack Siegel
11 met with detectives. At this time, the detectives had no leads nor identification of an individual
12 via forensic testing results—certainly not Gustavo Ramos. They did know that Jack Siegel
13 was not the source of the bloody print in the scene. After meeting with Jack Siegel, they
14 conclude that the paperwork he brought had no relevance and they did not impound it. Five
15 years later, in 2009, forensic testing results come in and Defendant Ramos was identified. It
16 is impossible for the detectives to have acted in bad faith. In 2004, they had no way of knowing
17 who the suspect would be and that only Ramos would be forensically linked to both homicides.

18 CONCLUSION

19 Based on the foregoing, the State asks the Court to deny the instant motion.

20 DATED this 21st day of February, 2019.

21 Respectfully submitted,

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

25 BY /s/PAMELA WECKERLY
26 PAMELA WECKERLY
27 Chief Deputy District Attorney
28 Nevada Bar #6163

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CERTIFICATE OF ELECTRONIC TRANSMISSION

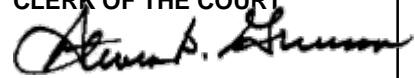
I hereby certify that service of the above and foregoing was made this 21st day of February, 2019, by electronic transmission to:

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,)
)
v.)
)
GUSTAVO RAMOS)
#1516662)
)
Defendant.)
)

CASE NO: C-10-269839-1

DEPT. NO: IX

**REPLY SUPPLEMENT TO STATE'S SUPPLEMENTAL OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS**

COMES NOW, the Defendant, GUSTAVO RAMOS, by and through his attorneys, Ivette Amelburu Maningo, of the Law Offices of Ivette Amelburu Maningo, and Abel M. Yanez, Esq., of the Nobles & Yanez Law Firm, and hereby submits his Reply Supplement to the State of Nevada's Supplemental Opposition to Defendant's Motion to Dismiss.

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1 This Reply is made based upon all the papers and pleadings on file herein, the attached
2 Memorandum of Points and Authorities in support hereof, and oral argument at the time set for
3 hearing Defendant's Motion.

4
5 DATED this 27th day of February, 2019.

6 **Nobles & Yanez Law Firm**

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1 **POINTS AND AUTHORITIES**

2 **FACTS**

3 Defendant, GUSTAVO RAMOS (hereinafter “RAMOS”), hereby incorporates by reference
4 the statements of facts detailed in his original Motion, Reply, and Supplement.

5 **ARGUMENT**

6 Preliminarily, the State claims in its Supplemental Opposition that dismissal is
7 inappropriate as a remedy because none of the paperwork the detectives failed to collect “relates to
8 the Sabraw crimes.” *Supp. Opp.*, pg. 5, lns. 20-22. However, the testimony at the evidentiary
9 hearing was to the contrary.
10

11 First, Detective Hardy (hereinafter “Hardy”) testified that Jack Siegel was a “primary”
12 suspect in his father’s murder in 1998, and remained within the “pool of suspects” at the time of
13 the June 2004 interview. *See Trans. 12/4/18*, pg. 14, 29. Second, both Hardy and Detective Mogg
14 (hereinafter “Mogg”) testified that, based on their investigation, they believed that the murder of
15 Wallace Siegel and Helen Sabraw were connected.¹ *See Trans. 11/29/18*, pgs. 9-10; *Trans.*
16 *12/4/18*, pgs. 6-7, 10. In other words, Hardy and Mogg both believed that the person who killed
17 Mr. Siegel also killed, or was involved in the death of, Ms. Sabraw. Consequently, any failure to
18 collect evidence in the Wallace Siegel case concomitantly and equally affects the Helen Sabraw
19 case.
20

21 The State further argues that because Jack Siegel testified² that “some of the paperwork is
22 still accessible,” the defense could request it from him and that there is no evidence that the
23
24

25 ¹ Additionally, the detectives were aware that Jack Siegel had supposedly told his sister (who then
26 told the detectives) that he knew that Ms. Sabraw was killed by a person named “Ax.” *See Trans.*
12/4/18, pg. 9.

27 ² Interestingly, the State wants the Court to believe the testimony of Jack Siegel on this point that
28 the paperwork is available. Yet, at the evidentiary hearing, the State called witness Leslee Siegel,
Jack’s sister, to testify that her brother is either mentally unstable or paranoid and should therefore
not be believed about his belief that someone was trying to frame him for his father’s murder.

1 defense has “made any such request.” *Supp. Opp.*, pg. 5, lns. 22-25. Further, the State claims that
2 the “defense is free to contact Mr. Siegel and request that he bring the paperwork at issue.” *See id.*

3 However, to be accurate, regarding the whereabouts of the documents he tried to present to
4 Hardy and Mogg, Jack Siegel testified that he’s moved around so much since 2004, that “I could
5 not tell you where they are.” *See Trans. 11/29/18*, pg. 62. He immediately then did testify that he
6 had “some” of the documents. *See id.*

7
8 Nevertheless, the State’s argument that the defense should try to contact Jack Siegel is
9 disingenuous. In its filed Amended Information, the State has noticed Jack as its witness and,
10 pursuant to N.R.S. §174.234 (1)(a)(2), disclosed that contact with Jack should be made “c/o” the
11 Clark County District Attorney Victim Witness Assistance Center at 200 Lewis Avenue.
12 Additionally, the State is well-aware that the defense has previously tried to interview Jack but he
13 has denied all attempts by the defense to meet with him. Consequently, it is the State, not the
14 defense, who should be contacting Jack to request that he provide the paperwork he tried to bring
15 to the detectives in 2004.
16

17 **I. The Evidence the Detectives Failed to Collect was Material**

18 The State claims that RAMOS has failed to prove that the evidence Jack Siegel tried to
19 provide Hardy and Mogg was material. *Supp. Opp.*, pg. 8, lns. 12-15. However, based on what we
20 do know about the paperwork Jack tried to provide the detectives, the evidence was in fact material.
21

22 First, both detectives testified that they had no independent recollection of the meeting and
23 the paperwork Jack tried to provide them. However, based on Hardy’s brief 2-page report on the
24 2004 meeting with Jack, we do know what some of the documents related to. In particular, the
25 documents included “copies of United States Savings Bonds in his [Jack’s] name but cashed in San
26 Francisco, California.” Jack told the detectives that he never purchased those Savings Bonds.
27 Therefore, these Bonds likely had information about who cashed them and where specifically they
28

1 were cashed. All information that leads to an alternate suspect.

2 Hardy's report reveals that Jack tried to provide the detectives with a copy of a credit report
3 showing a credit card account in his name, but was never opened by him. Additionally, Jack tried to
4 give the detectives documents pertaining to a Water and Power Credit Union account opened in his
5 father's name, the day after his father's murder, in Inglewood, California. Jack reasonably believed
6 that these incidents of fraud, committed by an unknown person, were done as part of a greater plan
7 to frame him for the murders so that Jack would be imprisoned and not able to challenge these
8 fraudulent transactions.
9

10 In sum, whether this known evidence was further inculpatory as to Jack—who already had a
11 cloud of suspicion hanging over his head, whether the evidence created another suspect who
12 committed the murders as Jack believed, or a combination of the two, the missing evidence shows a
13 reasonable probability that the proceedings would be different if the detectives would have collected
14 it and made it available to the defense.
15

16 **II. The State's Failure to Collect Evidence Warrants Dismissal of the Information**

17 The second prong of Daniels requires the Court to “determine whether the failure to gather
18 evidence was the result of mere negligence, gross negligence, or a bad faith attempt to prejudice the
19 defendant's case.” See Daniels, 114 Nev. 261, 267, 956 P.2d 111, 115. At the time of Jack's second
20 interview in 2004, the police had a mountain of evidence pointing to Jack as the person who
21 murdered his father and Ms. Sabraw. Consequently, the detectives' failure to collect and impound
22 the exculpatory documents he provided them is bad faith.
23

24 The State's reliance on Randolph v. State, 117 Nev. 970, 36 P.3d 424 (2001), is misplaced.
25 Although the Court in Randolph did find that the police's failure to collect the missing evidence was
26 “at worst negligent,” the Court did so because the defendant did not show that the “police could have
27 collected” the missing evidence. Randolph, 117 Nev. at 987-88, 36 P.3d at 435. Here, unlike
28

1 Randolph, and as even the State concedes, Hardy clearly testified that he could have easily collected
2 Jack's piles of paperwork and there would have been no "downside" in doing so. *Trans. 12/4/18*,
3 pg. 34. Consequently, Randolph does not support the State's argument.

4 **CONCLUSION**

5 Based on RAMOS's original Motion, Reply, Supplement and the foregoing reasons, he
6 respectfully submits that because the State failed to collect material evidence in this case, he requests
7 that the Court:

8 (1) Dismiss the Information with prejudice; or, in the alternative
9

10 (2) Require a jury instruction declaring that a presumption applies that the missing evidence
11 would have been unfavorable to the State and/or favorable to RAMOS.

12 DATED this 27th day of February, 2019.

13
14 **Nobles & Yanez Law Firm**

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25
26
27 *Attorneys for Defendant Gustavo Ramos*
28

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of February, 2019, I served a true and correct copy of the foregoing document, **Reply Supplement to State's Supplemental Opposition to Defendant's Motion to Dismiss**, by submitting electronically for filing and/or service within the Eighth Judicial District Court pursuant to Administrative Order 14-02 for e-service to the following:

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
vs.
GUSTAVO RAMOS,
Defendant.

CASE#: C-10-269839-1
DEPT. III

BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE
WEDNESDAY, MARCH 20, 2019

RECORDER'S TRANSCRIPT:
HEARING RE: DEFENSE MOTION TO DISMISS
STATUS CHECK: TRIAL READINESS

APPEARANCES:

For the State: PAMELA WECKERLY, ESQ.
GIANCARLO PESCI, ESQ.
Chief Deputy District Attorneys

For the Defendant: IVETTE A. MANINGO, ESQ.
ABEL M. YANEZ, ESQ.

ALSO PRESENT: ALICIA HERRERA
Spanish Interpreter

RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, March 20, 2019

2 [Hearing began at 10:12 a.m.]

3 THE COURT: Gustavo Ramos, 269839. He's present, in
4 custody. He can remain seated, that's okay.

5 MR. YANEZ: He's going to need, --

6 THE COURT: He needs an interpreter as well.

7 MR. YANEZ: -- she's coming.

8 THE COURT: All right. The interpreter is present. This is on
9 today for the hearing regarding the motion to dismiss.

10 MR YANEZ: Abel Yanez and Ivette Maningo on behalf of
11 Mr. Gustavo Ramos, Judge.

12 THE COURT: Thank you.

13 MS. WECKERLY: Pam Weckerly on behalf of the State,
14 Your Honor.

15 THE COURT: All right. You guys can go ahead.

16 MR. YANEZ: Thank you. I'm assuming, Judge, you had an
17 opportunity to review everything.

18 THE COURT: I did.

19 MR. YANEZ: And we first filed this case, there was a lot of
20 information we didn't have. It was originally filed based on a motion to
21 dismiss but we didn't know if it was a failure to preserve evidence or a
22 failure to collect evidence.

23 Based on the testimony that was provided at the evidentiary
24 hearing, it appears that this is a failure to collect evidence that the
25 government never actually collected. The piles of paperwork that

1 Jack Siegel tried to provide the police officers.

2 So that helps in at least finding out which test this court needs
3 to apply. But still a little difficult is the actual test that needs to apply, at
4 least the first part, is a reasonable probability that if the evidence had
5 been collected, the outcome of the proceeding would have been
6 different. That sounds like a post-conviction type analysis which makes
7 it a little difficult in this case since we haven't even had the trial in this
8 case.

9 The way I analyzed it in my supplemental and the original
10 motion to dismiss is kind of just weighing the evidence that was before
11 the detectives at the point they decided not to collect the evidence.

12 THE COURT: Right.

13 MR. YANEZ: I think that is important to put this into context
14 both as to whether we meet the standard of reasonable probability. And
15 if so, the second part of the test, what is the proper analysis based on
16 was this just near negligence, gross negligence, or bad faith on the part
17 of the detective in failure to collect the evidence.

18 Just briefly, Judge, because I know Your Honor has read the
19 transcripts, but this is a case where there was a large amount of
20 evidence pointing to the culpability of Jack Siegel involvement in the
21 death of the father. I just want to touch on a few points. He had
22 been -- Jack had been caring for his father for approximately three
23 months before the murder occurred. During that time, the police
24 became aware of evidence after the fact but during those three months
25 that Jack was very frustrated and tired of caring for his father. In fact, at

1 one point he actually I think took a break of a week to get away from the
2 stress of caring for his father. There were some financial issues, there
3 was a lot of concern that he was frustrated for caring for his dad.

4 On top of that when he's actually interviewed by the detectives
5 in this case back in 1998, the police asked him directly is there any
6 reason for there to be any blood in your father's car. And this point is
7 important for several reasons, but namely, Jack, his story to the police is
8 I wasn't there when his -- when my father was murdered. I went to the
9 hospital, I drove my father's car. He testified at the evidentiary hearing
10 that he was the only one driving that car for the past three months before
11 the murder. At that point they ask him any reason for there blood to
12 be -- any reason for there to be blood in the car? He says no. The
13 police later find out that there was blood. There was blood that was
14 presumptively -- it was a stain and then they tested it was presumptively
15 blood in the steering wheel and the carpet.

16 THE COURT: Right.

17 MR. YANEZ: That's never followed up upon. So that's
18 obviously fair -- it's pretty suspicious when you're saying -- when your
19 father was just murdered, blood is found in the car when you say there's
20 not supposed to be any blood and you had sole exclusive possession of
21 that car.

22 In addition, the interviews that the police did with the family
23 members who were very suspicious of Jack Siegel being involved in the
24 murder. According to the sister, Jack provided them with information
25 that he knew supposedly who committed the murder, that the person

1 who committed the murder also committed the murder of the other
2 decedent in this case, the female who was upstairs, Sabraw,
3 Helen Sabraw.

4 So based on that, Judge, the interview in 2004 is in itself
5 suspicious as well. After six years, one of your suspects in the case is
6 reaching out to the police believing he's being framed for his father's
7 murder, he wants to meet with the detectives and provide them with
8 paperwork.

9 Now the unfortunate part in this case is because the police
10 didn't collect the paperwork, we just have a few items that were
11 identified in the officer's report of what was collected. And it's a very
12 small fraction. According to the detectives, they described it as piles of
13 paperwork. Jack Siegel said it was duffel bags of paperwork. That's
14 been lost forever now, obviously, because the detectives didn't collect it.
15 And we have to, I think, unfairly rely on the detectives in this case
16 because their testimony is I have no memory of what actually was
17 collected. They didn't -- I believe Detective Hardy didn't even have a
18 memory of the meeting. Their testimony was simply I know if it was
19 relevant, I would have collected it.

20 So basically, I'm a government officer, just trust me. If it was
21 relevant, I would have collected it. Unfortunately, that puts us from a
22 defense perspective at a bad position because besides the items that
23 were -- I think three items that were detailed in the police report, we
24 don't know for sure. However, the fact that Jack Siegel, a suspect in his
25 father's murder with I would say reasonable suspicion if not probable

1 cause that he's involved based on the blood, based on what his siblings
2 are saying. It is either suspicious as to him, why is he setting up this
3 meeting and what's in this paperwork? Or it's suspicious if you believe
4 Jack's testimony that someone was trying to frame him for his father's
5 murder.

6 Those are all documents, information that would be
7 immeasurable of importance to us in reviewing that now. And the
8 standard is a reasonable probability. So more likely than not is the way I
9 would interpret a reasonable probability. So it's not proof beyond a
10 reasonable doubt, it's not clear and convincing evidence, it's a
11 reasonable probability. So I think we've met our burden based on those
12 facts and circumstances as I've just detailed.

13 The second part of the *Daniels* analysis takes us to, is it
14 negligence, is it gross negligence, or is it bad faith? At a minimum, I
15 believe this is gross negligence based on how I just detailed what the
16 police knew during that interview in 2004. I would go a step further and
17 say it's bad faith in this extent. And Detective Hardy testified it was very
18 easy for them to collect this. This was -- this is not a case where
19 perhaps they'd have to go on a fishing expedition, go to California, go to
20 different states and try to get this information. This was presented to
21 them right there at their office. And Detective Hardy testified it's very
22 simple for them to have collected it. They didn't because based on their
23 memory, they didn't think back then that it was relevant. I think that rises
24 to the level of bad faith. I would ask the Court to dismiss this case. If
25 not, I know that's a very severe consequence, I would ask the Court, at a

1 minimum, for instruction indicating that that information that wasn't
2 collected, those documents would have been favorable to Gustavo's
3 case and unfavorable to the State.

4 THE COURT: So how do you distinguish the conduct here
5 from what was contemplated in *Daniels* and *Randolph*, why the police
6 failed to collect certain things? Because I know there's always that
7 you're in a bind, obviously, to be able to say well, I can't really talk too
8 much about materiality because we don't have it to really -- to review it
9 to decide materiality. But they didn't have it there either. I mean, at
10 least here there was some examination of it and a determination by the
11 detective saying we didn't think it was relevant.

12 MR. YANEZ: Right.

13 THE COURT: In *Daniels*, the blood that wasn't taken from
14 *Daniels* obviously could never be examined. The clothes that weren't
15 collected from *Randolph* could obviously never be examined.

16 MR. YANEZ: Right. I think the fact that -- that Jack was such
17 a primary suspect in this case is the difference. Just the fact of him
18 bringing that paperwork, as I explained earlier, is, to me, evidence of
19 either his further involvement in this case and him trying to draw
20 attention away from his culpability or in fact what he said was true.

21 So I think perhaps that's the difference without knowing all of
22 the details that were in those documents. I think the -- we're not
23 analyzing this in a vacuum. In other words, if this evidence -- the
24 evidence that the police were aware of back in 2004, of the blood, of his
25 family member suspecting his involvement, if we didn't have that, then I

1 think our case would be a lot weaker. But we're not analyzing it in that
2 vacuum. Thankfully we do have some evidence and we have some
3 context. So I think that analysis has to be side by side with what did the
4 police know in June of 2004? And in my opinion, based on what they
5 knew -- I guess we could maybe even give them a benefit of the doubt
6 that at that point a police officer didn't think it was relevant. Well, they
7 very well knew that this is a type of information that defense attorneys
8 rely on, that this is information that courts rely on. Detective Hardy
9 admitted as such.

10 THE COURT: Okay.

11 MR. YANEZ: So I think in that context, Judge, we've met our
12 standard of reasonable probability.

13 THE COURT: All right. Ms. Weckerly.

14 MS. WECKERLY: I think the timing is really important on this
15 case. As the Court's aware, this crime occurred in 1998. The meeting
16 with Jack Siegel is six years later. By then there is a bloody print in the
17 scene that is not matched to Jack Siegel. So he's eliminated -- I mean, I
18 guess he could be a coconspirator but he's not the print that's in that
19 scene and they know that six years later.

20 On top of that, he told detectives at the -- at the time of the
21 incident that he had gone to the hospital and filled a prescription at the
22 relevant time for the murder and he produced medical records and a
23 receipt from Walgreens indicating or substantiating his alibi. Now that
24 doesn't happen at the immediate time of the homicide but they certainly
25 have that by the six-year mark when they meet with him.

1 The next thing I would dispute according to the facts
2 represented by counsel is, these pieces of paper, even at this date,
3 Jack Siegel testified at the hearing that we held a couple of months ago
4 he still has all this paperwork or most of it. Defense counsel investigated
5 this case, they've met with Mr. Siegel in the prior couple of years, they
6 talked to him at the evidentiary hearing and absolutely no effort or
7 request was made by them to secure this paperwork that's so critical to
8 the defense according to them at this point. They've been on this case
9 for four years. He said at the hearing he still has some of that
10 paperwork and no one, you know, they didn't ask him for it. The most
11 that was produced at the hearing was a question to the detectives
12 regarding, hey, it wouldn't have hurt to impound this paperwork. That is
13 insufficient under *Daniels* and *Randolph*, absolutely, to meet the
14 standard for dismissal.

15 The other thing I would note is they don't even -- the police
16 don't even identify a suspect through the DNA on the shirt in the other,
17 for the second homicide until like 2009. So I don't know how you could
18 attribute bad faith to them. At that point, they're investigating the case,
19 they're trying to find out who might be responsible for this. But the
20 meeting with Jack Siegel where there's all this paperwork produced is
21 sort of irrelevant to the investigation at that point, they make that
22 determination. And they have to make more of a showing before the
23 extreme remedy of dismissal or even gross negligence at this point
24 regarding what is contained in that paperwork that's so favorable to the
25 defense. I haven't heard any specificity which is what they're required to

1 do under *Daniels* and *Randolph* regarding what that is. What it is -- what
2 is it that makes it favorable to the defense?

3 MR. YANEZ: And, Judge, just briefly. I did want to clarify and
4 I did point this out in my supplemental as to our actions in trying to
5 obtain these documents. So I want the Court to have a little bit of
6 context.

7 A few years ago when this was still a death penalty case, we
8 went out to California to try to personally interview Jack. He refused to
9 talk to us. We spoke to him briefly on the phone, he said no thank you, I
10 don't want to talk to you.

11 We also spoke to his sister Leslie who testified at the
12 evidentiary hearing.

13 THE COURT: Okay.

14 MR. YANEZ: Told her who we were. Within hours, she was
15 calling the District Attorney's office saying that we had somehow duped
16 her and we're doing improper things and we get an e-mail from the
17 District Attorney indicating as such.

18 Want to further point, Judge, that the State doesn't point out is
19 in the notice of witnesses in this case, they have noted Jack Siegel as
20 their witness and in care of the Clark County District Attorney's office.
21 So we have no address from them.

22 I'm assuming the State, as part of their duty under *Brady*,
23 would reach out to a witness that they have put their address down as
24 their witness to see if this information is available because it's their duty,
25 if it's favorable, obviously, to provide it to us.

1 So based on our prior contact with Jack, he has refused any
2 type of contact with us. The only reason we're able to question him is
3 because the State agreed to bring him in after I drew it to their attention
4 that he is noted at the Clark County District Attorney's office. I'm more
5 than willing to reach out to Jack again. However, he's made it clear he
6 doesn't want to talk to us. And when we spoke to his sister, we got
7 bombarded with accusations that we were somehow misrepresenting
8 and trying to force her into talking to us.

9 THE COURT: All right.

10 MS. WECKERLY: Well the only thing I would say with regard
11 to that is --

12 THE COURT: I could tell that you wanted to say something.
13 Go ahead.

14 MS. WECKELRY: Is we produced Jack Siegel as a courtesy
15 for them for this evidentiary hearing. We had some relationship with him
16 so we thought we could produce him for the hearing, that was their
17 obligation to go find him. He's not a police agency, he's not the FBI,
18 they have as much access to him as we do. And besides that, he was
19 on the witness stand in front of Judge Togliatti and could have been
20 ordered at their request to produce this paperwork.

21 THE COURT: All right. Well, look, I mean, when you bring
22 something to the Court that premises itself on a loss of evidence,
23 whether it's failure to collect or failure to preserve, I mean it is important,
24 obviously, to ascertain whether the evidence is in fact lost or in
25 existence. So not satisfied that it's lost, but on the other hand, I

1 recognize that you don't have a burden in that regard. Doesn't mean
2 you can't do your investigation and seek to obtain things, obviously, but
3 it's still kind of potentially there or maybe not potentially there. I think
4 Mr. Siegel's testimony wasn't that it -- at least my understanding of all
5 this, and I have after I inherited it from Judge Togliatti, reviewed all the
6 transcripts of all the evidentiary hearing witnesses as well as the original
7 briefing and the subsequent briefing when it came over to this court and
8 I agreed to honor what Judge Togliatti was going to do in terms of
9 having a bench trial.

10 But I think his testimony wasn't necessarily that he had all the
11 paperwork, that he's not sure where all of it is, but that he believes he
12 still has a significant portion of it or most of it. I can't remember exactly
13 what his term was.

14 But I mean, there's a couple of thoughts that I have in terms of
15 what's been said today. One of them is I agree with you that when
16 *Daniels* talks about the standard and it talks about rendering a different
17 result, a reasonable probability of a different result, you are kind of
18 reviewing it from the standpoint of post-conviction relief, i.e., there was
19 this result and now would this evidence render a different result?

20 I disagree, however, that if we're dealing with it in the context
21 of pretrial, you view it as a standard, Abel, as you were saying kind of
22 weighing the evidence known to the detective at the time they didn't
23 collect this evidence. I mean, I still think what *Daniels* is talking about is
24 a result standard in court. So you kind of need to look at it in terms of
25 weighing the sufficiency of the evidence that would result in a guilty

1 verdict and balancing it with what this proposed evidence would be and
2 would that render that likely result different somehow. I mean, that's
3 kind of the weighing test that the Court gets involved with not necessarily
4 what did the detective know at the time he did or didn't, you know,
5 collect a certain thing.

6 I don't honestly think this is something where you all can meet
7 the standard of materiality. I mean, we're talking about balancing this
8 gentleman's I think it references a duffle bag full of financial documents
9 from credit unions and whatnot versus how that would render a different
10 result where Mr. Ramos is charged with a homicide in large part based
11 on a bloody palm print found at the scene of one of the homicides and
12 DNA on shirts -- DNA related to Mr. Ramos found on shirts at the scene
13 of the second homicide.

14 Additionally, as I kind of alluded to earlier, under *Daniel* -- I
15 mean, you can stand if you want on the proposition that maybe the law
16 enforcement agency should just collect truckloads of everything
17 everywhere. And obviously the case law doesn't support that they have
18 to take in everything that potentially has any evidentiary value.

19 But in *Daniels*, the blood sample that wasn't taken from the
20 defendant, who was also the suspect there, never got examined or
21 tested anyway because it was never even drawn and the court still drew
22 that distinction of we don't think this meets materiality standard because
23 there hasn't been any showing that it would have revealed anything
24 other than speculation that would have rendered a different result
25 probable.

1 And in *Randolph* it was -- I think it was the other guy's clothes,
2 Gardner's clothes that *Randolph* was alleging, you know, if you would
3 have seized his clothes, then you probably would have found blood
4 which would have led me not to get the death penalty because the jurors
5 would have found that he was the shooter. Those clothes were there,
6 they were seen, there was a pile of clothes in the trunk of the car, I
7 believe, and none of it was seized so none of it was examined.

8 Here at least, and I know it's not optimal to have them
9 testifying 12 years later, but at least the testimony was at the time of that
10 interview, that there was some examination of what was provided and
11 they just didn't believe as best as they can tell from reviewing reports
12 that it was relevant to anything. In addition to the fact that I think
13 everybody kind of seemed to characterize Mr. Siegel as being odd and
14 eccentric, maybe at best. And maybe incredibly paranoid and delusional
15 at worst, even his sister kind of described that.

16 So at that time with an unsolved double homicide, I would also
17 expect that if they thought anything was remotely relevant, they would
18 have seized it. And I know that that somewhat relies on kind of what
19 you're referring to with gee, are we just supposed to trust the police
20 officers? But I would think in this -- in the context of this case, that,
21 yeah, had that seemed to be remotely, you know, relevant to either of
22 the two homicide scenes that they were dealing with, it would have been
23 seized.

24 I think -- I just mentioned that as somewhat of corroboration
25 on saying I question the materiality of it. And I agree that at the time of

1 the interview, the bloody print had been excluded as Jack Siegel's but
2 the DNA hadn't been done yet to --

3 MS. WECKERLY: Well, it was in CODIS, there was no hit.

4 THE COURT: -- that wasn't until many, many years later. So
5 potentially they didn't have anybody as a suspect on the other homicide.

6 But anyway, I don't think that based on the totality of what we
7 have here that I can find that there was materiality to the financial
8 paperwork such that you can meet first prong. I also think that in the
9 grand scheme of everything here, it's a situation where I would say, at
10 best you're dealing with hey, this is something that maybe somebody
11 might want to look at down the road and might have some interest in but
12 not anything that I could say would be grossly negligent or bad faith for
13 them failing to collect it at that time.

14 So at best it would be negligent, and you guys can certainly
15 argue that, obviously, at trial in terms of how it impacts things and the
16 nature of the investigation but not such that it would warrant any type of
17 dismissal or adverse instruction, which really would just be an adverse
18 instruction to me since we're not dealing with a jury trial since the
19 agreement's been to do a nonjury trial.

20 So I'm going to deny the motion. Okay.

21 MR. YANEZ: Just a couple of points. One following up on
22 that issue the fact that the State has noticed Jack Siegel as their witness
23 and an address. I'd ask the state be required to give an updated or
24 amended notice of witness indicating what the address is to see if we
25 can perhaps reach out to him.

1 THE COURT: Okay.

2 MR. YANEZ: As of right now, it's just the Clark County District
3 Attorney's office. They've obviously secured his testimony so they know
4 where he's at. I'd ask that that information be provided.

5 THE COURT: My experience is generally, then, that the DA
6 office is used as the address when maybe we haven't located people.
7 But go ahead.

8 MS. WECKERLY: I'm not positive -- I'm not positive we had
9 an address. I think we have a cell phone and he agreed to come to the
10 airport and get the ticket.

11 THE COURT: Okay.

12 MS. WECKERLY: But I'll double check on that and provide it
13 if we have it.

14 THE COURT: Okay. Well, yeah, if you have any updated
15 phone number or updated address information, just please let them
16 know so they can talk to him.

17 MS. WECKERLY: Sure.

18 MR. YANEZ: Thank you. And just the second point, Judge, so
19 that you're aware because we do have a trial date coming up. The
20 District Attorney's office just recently provided us with some additional
21 DNA testing results and information, we're sending that out to our expert.

22 We don't anticipate right now that's going to delay the trial but
23 we just wanted to bring it to the Court's attention.

24 THE COURT: Related to the shirts that were tested or
25 something else from the D --

1 MR. YANEZ: Other matters.

2 THE COURT: Other matters? Okay.

3 MR. YANEZ: Well, it's all somewhat related but other testing
4 matters, Judge.

5 THE COURT: Okay. All right. And that is things that are
6 being tested or they provide you --

7 MS. WECKERLY: It's done.

8 MR. YANEZ: Have been tested.

9 THE COURT: Have been tested.

10 MR. YANEZ: Correct.

11 THE COURT: And you guys are reviewing to see if you want
12 to do anything in light of that?

13 MR. YANEZ: Yeah. We're going to submit it to our expert,
14 obviously, and then see where we're at with it.

15 THE COURT: Okay. So since I'm also just kind of getting up
16 to speed since it came over from Judge Togliatti, since the agreement to
17 withdraw the death notice and do the nonjury trial, have there been
18 discussions about negotiations? Are there offers that have been
19 conveyed, not conveyed, outstanding, not outstanding?

20 MR. YANEZ: Nothing from that, Judge, nothing new.

21 MS. WECKERLY: Well, in the conversation where we agreed
22 to do a bench trial, there was an offer made --

23 THE COURT: Okay.

24 MS. WECKERLY: -- which was rejected by the defendant.

25 THE COURT: Okay.

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MS. WECKERLY: And so that's where we're at.

THE COURT: Okay. So there isn't -- there hasn't been any subsequent offers, there's nothing outstanding, right?

MS. WECKERLY: No.

MR. YANEZ: Can I have the Court's indulgence?

THE COURT: Okay.

MR. YANEZ: Yes, I agree pre taking the death penalty -- that agreement, there was an offer, but since then no. I'm in agreement. I just wanted to clarify that, Judge.

THE COURT: No worries. Okay.

We're going to go ahead and -- I'm not going to set another status check in 30 days. Your calendar call is on for May 2nd, that's the date I would have set anyway. If anything comes up with the DNA testing or anything that's going to impact our trial date, please go ahead and let me know and I'll put it right on calendar. But otherwise, I'll leave that calendar call date in place.

MS. WECKERLY: Thank you.

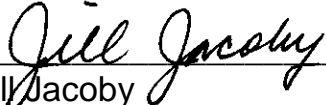
MR. YANEZ: May 2nd. Thank you.

THE COURT: Thank you

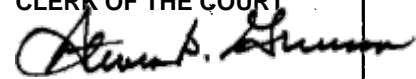
[Hearing concluded at 10:36 a.m.]

* * * * *

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



Jill Jacoby
Court Recorder



ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #7135
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

GUSTAVO RAMOS,
#1516662

Defendant.

CASE NO: C-10-269839-1

DEPT NO: III

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

DATE OF HEARING: 3/20/19
TIME OF HEARING: 9:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 20th day of March, 2019, the Defendant being present, REPRESENTED BY ABEL YANEZ, ESQ. and IVETTE MANINGO, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

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1 IT IS HEREBY ORDERED that the Defendant's Motion to Dismiss, shall be, and it is
2 DENIED.

3 DATED this 27 day of March, 2019.

4
5 
DISTRICT JUDGE

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

9 BY

10 GIANCARLO PESCI
11 Chief Deputy District Attorney
12 Nevada Bar #7135
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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
vs.
GUSTAVO RAMOS,
Defendant.

CASE#: C-10-269839-1
DEPT. III

BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE
THURSDAY, MAY 2, 2019

**RECORDER'S TRANSCRIPT:
CALENDAR CALL**

APPEARANCES:

For the State: PAMELA WECKERLY, ESQ.
GIANCARLO PESCI, ESQ.
Chief Deputy District Attorneys

For the Defendant: IVETTE A. MANINGO, ESQ.
ABEL M. YANEZ, ESQ.

ALSO PRESENT: XIMENA FIENE
Spanish Interpreter

RECORDED BY: JILL JACOBY, COURT RECORDER

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Las Vegas, Nevada, Thursday, May 2, 2019

[Hearing began at 9:58 a.m.]

THE COURT: Gustavo Ramos, 269839. Gentleman is present, in custody. Ms. Maningo, Mr. Yanez on his behalf. Mr. Pesci and Ms. Weckerly for the State.

This matter is on for calendar call. This is the homicide trial that we're conducting as a nonjury trial. I had a meeting with the attorneys a week or so ago.

MR. PESCI: Judge, I apologize, can we trail for a second --

THE COURT: Oh, we need the interpreter.

MR. PESCI: -- I think the interpreter's --

THE INTERPRETER: Oh, I'm sorry --

THE COURT: That's okay.

MS. MANINGO: I just realized that.

MR. PESCI: -- on her way.

THE INTERPRETER: Sorry, Judge.

THE COURT: That's okay.

Okay. We are on the record. Mr. Ramos is present with his attorneys Ms. Maningo and Mr. Yanez. The State's attorneys are present as well.

This is on for calendar call today. It is a case that we have set as a bench trial for May 13th. I had a meeting a week or so ago with the attorneys on the case, and we had some discussion about moving our date. And we agreed to move the date and try the case beginning on

1 May 28th, that's Tuesday since Monday is a holiday, correct?

2 MS. MANINGO: Yes.

3 MR. YANEZ: Yes, Judge.

4 THE COURT: All right. And the anticipation of everybody
5 seemed to be that we thought that we could get it done within that
6 week.

7 MS. WECKERLY: Correct.

8 THE COURT: Correct?

9 MS. WECKERLY: Yes.

10 MR. YANEZ: Yes.

11 MR. PESCI: Yes.

12 THE COURT: Okay. I did not have a chance to look at the
13 case that you had provided but I will make sure that I go through it --

14 MS. WECKERLY: Thank you.

15 THE COURT: -- and we'll go through it before we start the
16 trial.

17 MS. WECKERLY: Okay. Thank you. It's just a -- it's just a
18 little bit extra colloquy between the Court and the Defendant --

19 THE COURT: Did it involve a written waiver as well as the
20 Court's colloquy or?

21 MS. WECKERLY: We filed a written waiver.

22 THE COURT: Right.

23 MS. WECKERLY: It's just the most recent Nevada Supreme
24 Court case on the waiver and it talks about engagement with the
25 Court --

1 THE COURT: Okay.

2 MS. WECKERLY: -- on certain rights.

3 THE COURT: Okay. So we'll make sure before we get
4 started. I mean, I can do it the week before if you want to or we can
5 just do it the Tuesday before we actually start the nonjury trial.

6 MS. WECKERLY: I think we can do it the Tuesday before.

7 THE COURT: Is that okay?

8 MR. YANEZ: That's fine, Judge.

9 THE COURT: Okay. So we'll plan on starting Tuesday, the
10 28th at 10:30.

11 MS. WECKERLY: Thank you.

12 THE COURT: And then as I said when we had our meeting
13 as well, we also need to -- if you guys would provide me with copies of
14 proposed jury instructions that you're going to want me to be bound by
15 so we can make sure we get those ahead of time and we can get those
16 settled before we have any kind of closing argument.

17 It may be that we don't have closing argument that week as I
18 said. If you all want to get trial transcripts before we do that since it's a
19 nonjury trial, we can do that. But I just want to get the instructions
20 ahead of time. Okay?

21 MS. WECKERLY: Thank you.

22 MS. MANINGO: Do you want the instructions by a certain
23 date, Your Honor?

24 THE COURT: No, I just meant before, like around the
25 Tuesday that we start the trial --

1 MS. MANINGO: Okay.

2 THE COURT: -- it doesn't have to be way in advance of that.

3 MR. YANEZ: One housekeeping matter, Judge. I believe the
4 State needs to file an Amended Information. This case has a long
5 history but after the prelim, one of the charges was dismissed. There
6 was an Amended Information filed by affidavit. One of the charges, I
7 think it was the SA charge with a dead human being charge --

8 THE COURT: Okay.

9 MR. YANEZ: -- was left on there. And that was dismissed by
10 Judge Bell who originally had the case back then. So I think an
11 Amended Information needs to be filed to reflect that charge is no
12 longer going forward.

13 THE COURT: So there was an Amended Information filed in
14 2011.

15 MS. WECKERLY: Yeah, I think that's -- that's --

16 THE COURT: That has all four charges in it, I believe.

17 MS. WECKERLY: Yeah. Yes.

18 MR. YANEZ: Right. And it shouldn't have four.

19 THE COURT: So Count 4 is the one that got dismissed?

20 MS. WECKERLY: The SA would be there but not the --

21 THE COURT: Well, I'm showing two SAs; one of them being
22 based on weapon and age and the other being the body.

23 MS. MANINGO: The reason it was amended is because the
24 first time the Information was filed, both of those charges were
25 dismissed at the original -- at the preliminary hearing.

1 MR. YANEZ: Right.

2 THE COURT: Okay.

3 MS. MANINGO: They were revisited later and then two

4 charges were added. And Bell dismissed the one --

5 THE COURT: Why don't you guys approach the bench.

6 MS. MANINGO: -- so it'd be a Second Amended.

7 [Bench Conference Begins]

8 THE COURT: So that's what we're reflecting, so I'm

9 assuming it's four --

10 MR. YANEZ: Yes.

11 THE COURT: -- that you believe was dismissed.

12 MR. YANEZ: It was.

13 THE COURT: Do you guys agree?

14 MS. WECKERLY: It's the dead body one is dismissed.

15 THE COURT: Yeah, that's correct.

16 MS. WECKERLY: Yeah.

17 THE COURT: Okay.

18 MS. WECKERLY: But not the SAs.

19 THE COURT: All right.

20 [Bench Conference Concludes]

21 THE COURT: So I will ask the State to prepare a Second

22 Amended Information that lists just the three charges that we're

23 proceeding to trial on with that fourth charge that's currently in the

24 Amended Information being dismissed.

25 MS. WECKERLY: We will, Your Honor.

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THE COURT: Okay.

MR. YANEZ: Thank you.


MS. MANINGO: Thank you.

THE COURT: All right. Thank you, folks. We'll see you on
Tuesday the 28th.

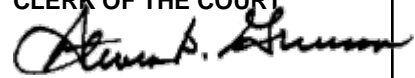
[Hearing concluded at 10:02 a.m.]

* * * * *

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



Jill Jacoby
Court Recorder



MOT
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
PAMELA WECKERLY
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Nevada Bar #6163
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

GUSTAVO RAMOS,
#1516662

Defendant.

CASE NO: C-10-269839-1

DEPT NO: III

**STATE'S NOTICE OF MOTION
AND MOTION TO ADMIT PRIOR PRELIMINARY HEARING TESTIMONY OF
JERRY AUTREY**

DATE OF HEARING: MAY 28, 2019
TIME OF HEARING: 10:30 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through PAMELA WECKERLY, Chief Deputy District Attorney, and files this Notice Of Motion And Motion For Prior Testimony Of Jerry Autrey.

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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DATED this 14th day of May, 2019.

BY /s/PAMELA WECKERLY
PAMELA WECKERLY
Chief Deputy District Attorney
Nevada Bar #6163

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On May 17, 1998, at approximately 11:10 a.m., 86 year old Helen Sabraw was found murdered in unit 212 of the Camlu Retirement Home located at 4255 South Spencer.

In May 1998, Wallace Siegel was recovering from hip replacement surgery. During his recovery, his son, Jack Siegel, was staying with him in his apartment at the Camlu Retirement Home. The complex is a dormitory style complex with locked public access doors that were designed to prevent access to the individual housing units.

Jack left his dad alone late at night on May 15 and into the early morning hours of May 16, 1998. Jack left to have his swollen knee drained at a local hospital (which was later verified by medical records). He left the door to his dad's apartment unlocked. Upon returning at 4:50 a.m., Jack saw the dead body of his father – now covered in blood—sitting in a reclining chair where Wallace typically slept. Wallace has massive head trauma. Jack immediately called 911.

1 Police personnel found a 25 pound dumbbell on the floor near Wallace. It was covered
2 in blood. The dumbbell belonged to Jack Siegel. The “matching” dumbbell was in Jack’s
3 room. An autopsy later revealed that Wallace suffered a skull fracture and died of blunt force
4 trauma. Wallace’s money clip and wallet were empty. Robbery appeared to be the motive.
5 A patent bloody palm print was observed on the Las Vegas Review Journal page found on the
6 floor near Wallace’s body. See Exhibit 1. Although the print did not belong to Jack, he was
7 considered a suspect given his alibi. Police developed no evidence implicating Jack and the
8 case was cold for 12 years.

9 On May 17, 1998, Peggy Parks arrived at unit 212 of the Camlu Retirement Home to
10 check on her friend, 86 year old Helen Sabraw. The door to Helen’s apartment was unlocked.
11 Peggy entered the apartment and found her friend lying on the floor. Helen was covered in
12 blood.

13 Helen was wearing only a nightgown which was pulled above her breasts. Her
14 underwear were off and found under her head. Her bra was off and found near her body. There
15 was fecal matter on the carpet near her leg.

16 Helen’s apartment was in disarray. Among other items, was a chair, with apparent
17 blood, turned upside down on Helen’s bed. Helen was stabbed numerous times to her head,
18 face, torso, left thigh, and buttock. Two knives were found near the body. One under her leg
19 and one at the foot of her bed. An autopsy revealed that she died by stab wounds to her heart
20 and pulmonary artery.

21 A man’s grey t-shirt and white muscle shirt were found near Helen. Both had blood
22 transfer on them. Police developed no suspects and the case was cold for 12 years.

23 On June 26, 2009, DNA from the two shirt found in the Sabraw scene was submitted
24 for testing. DNA was recovered from the armpit area of the grey t-shirt and the profile was
25 uploaded into CODIS. CODIS produced a match to Gustavo Ramos. Thereafter, a search
26 warrant was used to get a buccal swab from Ramos and the CODIS results were confirmed.
27 The estimated frequency of DNA in the population is rarer than 1 in 30 billion. Once Ramos
28 was identified, his fingerprints were compared to the bloody print found on the Las Vegas

1 Review journal page in Wallace Siegel's apartment. The examiner concluded that the print
2 was consistent with the right palm print of Gustavo Ramos.

3 The State seeks to admit the preliminary hearing testimony of Crime Scene Analyst Jerry
4 Autrey as he died between the preliminary hearing and trial dates.

5 ARGUMENT

6 NRS 171.198(6)(b) codifies the former testimony exception to the hearsay rule. It
7 provides that preliminary hearing testimony may be used:

8 By the State if the defendant was represented by counsel or affirmatively waived his
9 right to counsel, upon the trial of the cause, and in all proceedings therein, when the witness
10 is sick, out of the state, dead, or persistent in refusing to testify despite an order of the judge
11 to do so, or when his personal attendance cannot be had in court. See also Funches v. State,
12 113 Nev. 916, 920, 944 P.2d 775, 777 (1997). Although NRS 171.198(6)(b) does not impose
13 a cross-examination requirement for the admissibility of such testimony at a criminal trial, the
14 Nevada Supreme Court imposed the requirement in Drummond v. State, 86 Nev. 4, 7, 462
15 P.2d 1012, 1014 (1970), when it reasoned that:

16 [T]he transcript of the testimony of a material witness given at the
17 preliminary examination may be received in evidence at the trial if
18 three preconditions exist: first, that the defendant was represented by
19 counsel at the preliminary hearing; second, that counsel cross-
examined the witness; third, that the witness is shown to be actually
unavailable at the time of trial.

20 See also Aesoph v. State, 102 Nev. 316, 721 P.2d 379 (1986). Consequently, there are three
21 elements necessary before a witness's preliminary hearing testimony may be admitted as
22 evidence at trial: (1) the defendant must have had counsel represent him at the preliminary
23 hearing; (2) the defendant's counsel must have had the opportunity to cross-examine the
24 witness who is later unavailable for trial; and (3) the witness is actually "unavailable" at trial.
25 Funches v. State, 113 Nev. 916, 920-21, 944 P.2d 775, 777-78 (1997); see also Drummond,
26 86 Nev. at 7, 462 P.2d at 1014.

27 In the instant case a preliminary hearing was held on December 16, 2010, in which the
28 now unavailable witnesses testified. In the hearing, the Defendant was represented by

1 Attorneys Scott Coffee and Abel Yanez. Defendant was given an opportunity to cross examine
2 each witness after they testified. As such, clearly the first two requirements for the admission
3 of preliminary hearing testimony in a subsequent trial (representation of counsel and
4 opportunity for cross- examination) have been satisfied. The State has learned that witness
5 Jerry Autrey is deceased.

6 CONCLUSION

7 For the foregoing reasons the State respectfully requests this Court admit the
8 preliminary hearing testimony of Jerry Autrey.

9 DATED this 14th day of May, 2019.

10
11 STEVEN B. WOLFSON
12 Clark County District Attorney
Nevada Bar #001565

13 BY /s/PAMELA WECKERLY
14 PAMELA WECKERLY
15 Chief Deputy District Attorney
16 Nevada Bar #6163
17
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19 CERTIFICATE OF ELECTRONIC FILING

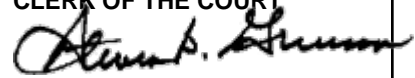
20 I hereby certify that service of the above and foregoing, was made this 14th day of May,
21 2019, by Electronic Filing to:

22 IVETTE MANINGO, ESQ.
23 iamaningo@iamlawnv.com

24 ABEL YANEZ, ESQ.
25 ayanez@noblesyanezlaw.com

26 BY: /s/ Deana Daniels
27 Employee of the District Attorney's Office
28

10F19783X/PW/dd/MVU



AINF
STEVEN B. WOLFSON
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200 Lewis Avenue
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(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GUSTAVO RAMOS,
#1516662

Defendant.

Case No: C-10-269839-1

Dept No: III

**SECOND AMENDED
INFORMATION**

STATE OF NEVADA }
COUNTY OF CLARK } ss.

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That GUSTAVO RAMOS, the Defendant above named, having committed the crimes of MURDER WITH USE OF A DEADLY WEAPON, VICTIM 65 YEARS OF AGE OR OLDER (Felony - NRS 200.010, 200.030, 193.165, 193.167); SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON, VICTIM 65 YEARS OF AGE OR OLDER (Felony – NRS 200.364, 200.366, 193.165, 193.167), on or between May 15, 1998 and May 16, 1998, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,
COUNT 1 – OPEN MURDER WITH USE OF A DEADLY WEAPON, VICTIM 65 YEARS OF AGE OR OLDER

did then and there wilfully, feloniously, without authority of law, and with malice

1 aforethought, kill WALLACE SIEGEL, a human being, the victim being 65 years of age or
2 older, by striking the head of the said WALLACE SIEGEL, with a deadly weapon, to-wit: a
3 dumbbell weight and/or unknown heavy blunt object, the actions of Defendant resulting in the
4 death of the said WALLACE SIEGEL, said killing having been (1) willful, deliberate and
5 premeditated; and/or (2) committed during the perpetration or attempted perpetration of
6 burglary and/or robbery.

7 COUNT 2 – OPEN MURDER WITH USE OF A DEADLY WEAPON, VICTIM 65 YEARS
8 OF AGE OR OLDER

9 did then and there willfully, feloniously, without authority of law, and with malice
10 aforethought, kill HELEN SABRAW, a human being, the victim being 65 years of age or
11 older, by stabbing at and into the body of the said HELEN SABRAW, with a deadly weapon,
12 to-wit: a knife, the actions of Defendant resulting in the death of said HELEN SABRAW, said
13 killing having been (1) willful, deliberate and premeditated; and/or (2) committed during the
14 perpetration or attempted perpetration of burglary and/or robbery and/or sexual assault.

15 COUNT 3 – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON VICTIM 65
16 YEARS OF AGE OR OLDER

17 did then and there willfully, unlawfully, and feloniously sexually assault and subject
18 HELEN SABRAW, a female person, the victim being 65 years of age or older, to sexual
19 penetration, to-wit: anal intercourse, by inserting his penis and/or an unknown object into the
20 anal opening of said HELEN SABRAW, with a deadly weapon, to-wit: a knife.

21
22 STEVEN B. WOLFSON
23 Clark County District Attorney
24 Nevada Bar #001565

25 BY /s/PAMELA WECKERLY
26 PAMELA WECKERLY
27 Chief Deputy District Attorney
28 Nevada Bar #6163

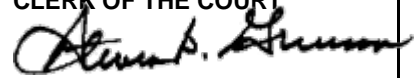
Names of witnesses known to the District Attorney's Office at the time of filing this
Information are as follows:

<u>NAME</u>	<u>ADDRESS</u>
ALBY, ROCKY	LVMPD P#1810
ATKIN, MICHAEL	LVMPD P#5409
BENOIT, LEANITTIA	LVMPD P#6784
BRAGG, ALMEDIA	LVMPD P#4150
BRANDON, JACK	LVMPD P#3419
CHANDLER, ROY	LVMPD P#712
COLEMAN, LUCY	4255 SPENCER, LVN
COLEMAN, THOMAS	4255 SPENCER, LVN
CRAIG, MICHAEL	LVMPD P#5585
CUSTODIAN OF RECORDS	CCDC
CUSTODIAN OF RECORDS	CCFD, 575 E. FLAMINGO RD., LVN
CUSTODIAN OF RECORDS	LVMPD – DISPATCH
CUSTODIAN OF RECORDS	LVMPD RECORDS
FLYNN, DENNIS	LVMPD P#3028
FOX, STEPHANIE	LVMPD P#5712
GARLEY, THOMAS	UNKNOWN ADDRESS
GONZALES, FNU	CCFD/575 E. FLAMINGO RD., LVN
HALL, RICHARD	LVMPD P#6756
HERIFORD, R.	CCME, 1704 PINTO LN., LVN
JOHNSON, DAVID	LVMPD P#9933
JOHNSON, THOMAS	LVMPD P#3171
JOSEPH, MARC	LVMPD P#3383
KYGER, TERESA	LVMPD P#4191
LAUER, DEAN	LVMPD P#5613

1	LEMASTER, DEAN	LVMPD P#4243
2	MANNING, KEVIN	LVMPD P#2434
3	MARSCHNER, JULIE	LVMPD P#8806
4	MIKOLAINIS, J.	LVMPD P#1511
5	NEVIN, KATHLEEN	LVMPD P#900
6	OLSON, ALANE	CCME, 1704 PINTO LN., LVN
7	PARKS, PEGGY	c/o CCDA/VWAC, 200 LEWIS, LVN
8	PETERSEN, WAYNE	LVMPD P#1913
9	PORTER, R.	CCFD/575 E. FLAMINGO RD., LVN
10	RAETZ, DEAN	LVMPD P#4234
11	RAMOS, PHILLIP	LVMPD P#799
12	REED, GARY	LVMPD P#3731
13	REEDER, ROBERT	4800 E. TROPICANA, LVN
14	SIEGEL, JACK	c/o CCDA/VWAC, 200 LEWIS AVE., LVN
15	SPRAGUE, FNU	CCFD/575 E. FLAMINGO RD., LVN
16	SZUKIEWICZ, JOSEPH	LVMPD P#5411
17	THOMPSON, MICHAEL	LVMPD P#1988
18	VACCARO, JAMES	c/o CCDA/MVU, 200 Lewis Ave., LVN
19	WILSON, MICHAEL	LVMPD P#5319

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980517-0848; 980516-0400
(TK5)



OPPM

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Attorneys for Defendants Gustavo Ramos

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO: C-10-269839-1
)	
v.)	DEPT. NO: III
)	
GUSTAVO RAMOS)	
#1516662)	
)	
Defendant.)	
_____)	

**OPPOSITION TO STATE'S MOTION TO ADMIT PRIOR PRELIMINARY HEARING
TESTIMONY OF JERRY AUTREY**

COMES NOW, the Defendant, GUSTAVO RAMOS, by and through his attorneys, Ivette Amelburu Maningo, of the Law Offices of Ivette Amelburu Maningo, and Abel M. Yanez, Esq., of the Nobles & Yanez Law Firm, and hereby submits his Opposition to the State of Nevada's Motion to Admit Preliminary Hearing Testimony of Jerry Autrey.

1 This Opposition is made based upon all the papers and pleadings on file herein, the attached
2 Memorandum of Points and Authorities in support hereof, and oral argument at the time set for
3 hearing the State's Motion.

4 DATED this 21st day of May, 2019.

5 **Nobles & Yanez Law Firm**

Law Offices of Ivette Amelburu Maningo

6 /s/ Abel Yanez

/s/ Ivette Maningo

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1 **POINTS AND AUTHORITIES**

2 **FACTS**

3 Defendant, GUSTAVO RAMOS (hereinafter “RAMOS”), is charged with Open Murder
4 with Use of a Deadly Weapon, Victim 65 Years of Age or Older (Count 1), Open Murder with Use
5 of a Deadly Weapon, Victim 65 Years of Age or Older (Count 2), and Sexual Assault with Use of a
6 Deadly Weapon Victim 65 Years of Age or Older (Count 3). This case revolves around two different
7 alleged crime scenes at the Camlu Retirement Apartments in Las Vegas, Nevada. The State claims
8 that Wallace Siegel was found murdered inside his room on May 16, 1998, and Helen Sabraw was
9 found murdered inside her room on May 17, 1998.
10

11 On May 14, 2019, the State of Nevada filed its Motion to Admit Preliminary Hearing
12 Testimony of Jerry Autrey. In its Motion, the State seeks to admit the preliminary hearing testimony
13 of its witness, crime scene analyst Jerry Autrey (hereinafter “Autrey”), based on N.R.S. § 171.198.¹
14

15 RAMOS was arraigned in Justice Court on October 18, 2010. The preliminary hearing was
16 held on December 16, 2010. However, as is common in criminal cases, there is no information about
17 what exact discovery the State had provided RAMOS—in particular, reports generated by Autrey—
18 prior to the preliminary hearing. Autrey authored the crime scene report for the Wallace Siegel
19 murder. Autrey also impounded critical pieces of evidence from the Wallace Siegel crime scene.
20 However, based on the questions asked by RAMOS’ counsel to Autrey at the preliminary hearing,
21 it’s apparently clear that RAMOS was not provided critical discovery at the time of the hearing.

22 Furthermore, after the preliminary hearing in 2010, the State conducted additional DNA-
23 forensic testing based on pieces of evidence impounded by Autrey, including Forensic Laboratory
24 Reports issued on June 5, 2012, October 9, 2012, and August 4, 2016. It is anticipated that the State
25 will seek to introduce at trial the conclusions reached in these Reports.
26

27 _____
28 ¹ Specifically, the State cites to N.R.S. § 171.198 (6)(b). However, in 2009, the Nevada Legislature
amended the statute and moved the language of section 6 into a new section 7. *See* 2009 Statutes
of Nevada, Page 634 (Chapter 173, SB 34)

Consequently, RAMOS respectfully requests that the Court deny the State's Motion based on the Sixth Amendment to the U.S. Constitution and the Due Process Clause of the Nevada Constitution.

ARGUMENT

I. Introduction

Although not mentioned by the State in its Motion, the State’s request is governed by the Confrontation Clause of the Sixth Amendment to the U.S. Constitution, as interpreted by the U.S. Supreme Court in Crawford v. Washington, 541 U.S. 36 (2004). The Sixth Amendment mandates that RAMOS “shall enjoy the right . . . to be confronted with the witnesses against him.” Additionally, the Nevada Supreme Court guarantees RAMOS Due Process pursuant to Article I, §8 (5) of the Nevada Constitution.

In Crawford, the Supreme Court explained that the Confrontation Clause prevents the “admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had an opportunity for cross-examination.” Crawford, 541 U.S. at 53-54. Similarly, the Nevada Supreme Court has held that before testimonial statements may be admitted at trial from an unavailable witness, it must be shown that the defendant had an adequate opportunity to cross-examine the witness whose statements are sought to be introduced. The Nevada Supreme Court has explained that “discovery is a component of an effective cross-examination.” *See* Estes v. State, 122 Nev. 1123, 1140, 146 P.3d 1114, 1126 (2006).

More recently, in the Nevada Supreme Court has made clear that courts should “determine the adequacy of the opportunity [to cross-examine] on a case-by-case basis, taking into consideration such factors as the extent of discovery that was available to the defendant at the time of cross examination and whether the magistrate judge allowed the defendant a thorough opportunity to

cross-examine the witness.” Chavez v. State, 125 Nev. 328, 338-39, 213 P.3d 476, 483-84 (2009).

II. Lack of Discovery Available Denied RAMOS Adequate Cross-Examination

The State has failed to articulate in its Motion what discovery it provided RAMOS before the preliminary hearing. However, based on the questions of RAMOS’ counsel, it appears that at the time of the preliminary hearing, RAMOS did not have any of the crime scene nor evidence impound reports, including those authored by Autrey:

Q: Same thing with – you said you took photographs of a newspaper?

A: Yes.

Q: And the photographs are black and white?

A: Yes.

Q: That’s for high contrast for a print examiner?

A: For contrast purposes, yes.

Q: Do you know if the actual print in the newspaper itself was impounded?

A: Yes, it was.

Q: That should also be in the crime lab someplace if somebody wanted to examine it?

A: Yes.

(PHT, pg. 41, lns. 10-22).

RAMOS’s counsel asked Autrey about whether several other pieces of evidence were impounded, which further evidences that the State did not provide this discovery to RAMOS before the preliminary hearing. Obviously, if the State had done so, there would be no need for RAMOS’ counsel to ask Autrey what was or wasn’t impounded.

Furthermore, the State failed to provide RAMOS with Autrey’s Evidence Impound Report regarding a white undershirt he impounded from Wallace Siegel’s room. This undershirt is suspiciously similar to the undershirt found at the Helen Sabraw crime scene and which was extensively tested for DNA-forensic evidence. Because the State failed to provide RAMOS with this Report before the preliminary hearing, RAMOS was prevented from cross-examining Autrey about this critical piece of evidence, the reason(s) he collected it, and the subsequent forensic testing that was done on it.

1 Lastly, after the preliminary hearing, the State conducted additional forensic testing based
2 on pieces of evidence impounded by Autrey, including Reports issued on June 5, 2012, October 9,
3 2012, and August 4, 2016. RAMOS never had the opportunity to cross-examine Autrey about the
4 items he impounded and how they were impounded. Because this impounded evidence was, at
5 least in part, the basis of these additional forensic tests, RAMOS is prevented from questioning
6 Autrey about important issues such as cross contamination as it relates to the method of collection.
7

8 In sum, based on the totality of the circumstances in this case, and taking into consideration
9 the extent of discovery that was not available to RAMOS at the time of the preliminary hearing, he
10 did not have an adequate opportunity to cross-examine Autrey. Consequently, allowing the State to
11 admit Autrey's preliminary hearing testimony would be a violation of the Sixth Amendment's
12 Confrontation Clause and Due Process.

13 CONCLUSION

14
15 Based on the foregoing reasons, RAMOS respectfully submits that the Court deny the State's
16 Motion.

17 DATED this 21st day of May, 2019.

18
19 **Nobles & Yanez Law Firm**

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CERTIFICATE OF SERVICE

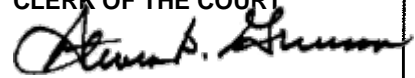
I hereby certify that on the 21st day of May, 2019, I served a true and correct copy of the foregoing document, **Opposition to the State of Nevada's Motion to Admit Preliminary Hearing Testimony of Jerry Autrey**, by submitting electronically for filing and/or service within the Eighth Judicial District Court pursuant to Administrative Order 14-02 for e-service to the following:

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/s/ Andrea Jelks
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Attorneys for Defendants Gustavo Ramos

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

v.

GUSTAVO RAMOS
#1516662

Defendant.

CASE NO: C-10-269839-1

DEPT. NO: III

HEARING REQUIRED

DATE: 5-28-19

TIME: 1:00 pm



MOTION TO SUPPRESS

COMES NOW, the Defendant, GUSTAVO RAMOS, by and through his attorneys, Ivette Amelburu Maningo, of the Law Offices of Ivette Amelburu Maningo, and Abel M. Yanez, Esq., of the Nobles & Yanez Law Firm, , and hereby moves this Honorable Court to suppress all statements allegedly made by the Defendant to officers of the Las Vegas Metropolitan Police Department.

1 This Motion is made based upon all the papers and pleadings on file herein, the attached
2 Memorandum of Points and Authorities in support hereof, and oral argument at the time set for
3 hearing this Motion.

4 DATED this 24th day of May, 2019.

5 **Nobles & Yanez Law Firm**

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6 /s/ Abel Yanez

/s/ Ivette Maningo

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11 *Attorneys for Defendant Gustavo Ramos*

12
13 **NOTICE OF MOTION**

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

15 YOU WILL PLEASE TAKE NOTICE that Abel M. Yanez, Esq., of the Nobles & Yanez
16 Law Firm, will bring the following Motion to Suppress on for hearing before the Court on the
17 _____ day of May, 2019, at ____:____ a.m.

18
19 DATED this 24th day of May, 2019.

20 **Nobles & Yanez Law Firm**

Law Offices of Ivette Amelburu Maningo

21 /s/ Abel Yanez

/s/ Ivette Maningo

22 ABEL M. YANEZ, ESQ.

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26 *Attorneys for Defendant Gustavo Ramos*

1 POINTS AND AUTHORITIES

2 FACTS

3 Defendant, GUSTAVO RAMOS (hereinafter "RAMOS"), is charged with Open Murder
4 with Use of a Deadly Weapon, Victim 65 Years of Age or Older (Count 1), Open Murder with Use
5 of a Deadly Weapon, Victim 65 Years of Age or Older (Count 2), and Sexual Assault with Use of a
6 Deadly Weapon Victim 65 Years of Age or Older (Count 3). This case revolves around two different
7 alleged crime scenes at the Camlu Retirement Apartments in Las Vegas, Nevada, in May of 1998.

8
9 RAMOS agreed to waive his right to a jury trial in exchange for the State withdrawing its
10 notice of intent to seek the death penalty. As a result, the fact that this case is to be tried by the
11 Court—normally the arbiter of what potentially unconstitutional evidence a jury should be exposed
12 to—creates difficult issues with motions similar to the instant one. That is, the same Court RAMOS
13 does not want exposed to unconstitutional evidence, is the same Court deciding whether that
14 evidence was unconstitutionally obtained in the first place. For this reason, and the fact that the State
15 on many occasions will not seek to introduce a defendant's statement in its case-in-chief, in the
16 hopes of forcing a Defendant to testify at trial, RAMOS was hopeful that it would not have to file
17 this Motion.
18

19 It has recently come to the defense's attention that the State will seek to admit RAMOS'
20 statement to the police. Although the State may agree to RAMOS' proposed redactions, he is
21 nevertheless obligated to file this Motion even though he is potentially asking the Court to consider
22 the harm sought to be prevented (i.e., not exposing unconstitutional evidence to the trier of fact).
23 Consequently, it is respectfully requested that an associate Judge consider and rule on the instant
24 motion.
25

26 According to the police reports provided by the State of Nevada, RAMOS was taken into
27 custody by Detectives Hall and Depaulis (hereinafter "Hall" and "Depaulis") and transported to a
28 police station at 9:30 a.m. on October 13, 2010. The police reports claim that RAMOS was read his

1 *Miranda* rights by Hall at approximately 10:15 a.m. However, this claim cannot be independently
2 verified because Hall did not record his supposed reading of RAMOS' *Miranda* rights.¹
3 Additionally, according to the transcribed portions of RAMOS' interrogation, the detectives did not
4 begin questioning RAMOS until two hours after his rights were read to him.

5 RAMOS now moves this Honorable Court seeking to exclude all evidence—verbal or
6 tangible—obtained from his being interrogated while in custody, which was in violation of the rights
7 afforded RAMOS by the Fifth Amendment and the Due Process Clause of the Fourteenth
8 Amendment of the U.S. Constitution and Article I, § 8 (5) of the Nevada Constitution.
9

10 **ARGUMENT**

11 **I. RAMOS' Fifth Amendment Right was Violated**

12 A person's right not to incriminate himself is protected by the Fifth Amendment to the U.S.
13 Constitution and Art. 1, § 8 of the Nevada Constitution. See Holyfield v. Townsell, 101 Nev. 793,
14 795, 711 P.2d 834, 835 (1985). In the seminal case of Miranda v. Arizona, the U.S. Supreme Court
15 held that "when an individual is taken into custody or otherwise deprived of his freedom by the
16 authorities in any significant way and is subjected to questioning, the privilege against self-
17 incrimination is jeopardized." Miranda v. Arizona, 384 U.S. 436, 478 (1966). As a result, an
18 individual "must be warned prior to any questioning that he has the right to remain silent, that
19 anything he says can be used against him in a court of law, that he has the right to the presence of
20 an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any
21 questioning if he so desires." *Id.* at 479.
22

23 Stated differently, a person who is (1) "in custody" and (2) questioned by a police officer
24 must be informed of the aforementioned "rights" or "warnings" prior to any questioning. These rights
25
26

27
28 ¹ Consequently, it is unknown whether the warnings given by the detectives reasonably conveyed
to RAMOS his rights as required by *Miranda*. See Duckworth v. Eagan, 492 U.S. 195, 203 (1989)
(quoting California v. Prysock, 453 U.S. 355, 361 (1981)).

1 or warnings are prerequisites to the admissibility of any statement made by a defendant or tangible
2 evidence obtained as a result thereof. *See id.* at 476. These are "concrete constitutional guidelines
3 for law enforcement agencies and courts to follow." *Id.* at 442. The U.S. Supreme Court has adhered
4 to this rule and re-affirmed Miranda in many subsequent cases. *See Dickerson v. United States*, 530
5 U.S. 428, 444 (2000) ("[W]e conclude that *Miranda* announced a constitutional rule that Congress
6 may not supersede legislatively. Following the rule of *stare decisis*, we decline to overrule *Miranda*
7 ourselves.").

9 **A. RAMOS was in Custody and Questioned for Purposes of Miranda**

10 In order for the requirements of *Miranda* to apply, an individual must be "in custody." The
11 *Miranda* Court explained that "in custody" means that an individual has been taken into custody "or
12 otherwise deprived of his freedom of action in any significant way." *Id.* at 444. The Court
13 subsequently held in other decisions that an objective standard should be used to determine whether
14 an individual was in custody. That is, the "relevant inquiry is how a reasonable man in the suspect's
15 position would have understood his situation." Berkemer v. McCarty, 468 U.S. 420, 442 (1984).

17 Additionally, "the *Miranda* safeguards come into play whenever a person in custody is
18 subjected to either express questioning or its functional equivalent." Rhode Island v. Innis, 446 U.S.
19 291, 300-01 (1980). In other words, "the term 'interrogation' under *Miranda* refers not only to express
20 questioning, but also to any words or actions on the part of the police . . . that the police should know
21 are reasonably likely to elicit an incriminating response from the suspect." *Id.*

23 Here, it is unquestionable that RAMOS was "in custody" for purposes of *Miranda* and
24 thereafter questioned by Hall and Depaulis. RAMOS was taken into custody for suspicion of murder
25 and transported by police car to an interrogation room at a police station. The police report explicitly
26 states that RAMOS was taken to the police station for questioning and for service of a search warrant.
27
28

1 Consequently, based on a reading of the interrogation transcript and police reports, the detectives
2 questioned RAMOS with the clear intent to elicit incriminating responses while being in custody.

3 **B. RAMOS Should Have Been Re-Read his *Miranda* Rights**

4 Admittedly, there is no *per se* rule requiring that a suspect be re-advised of his *Miranda*
5 rights after a time lapse between reading and questioning. Rather, the U.S. Supreme Court has
6 adopted a totality of the circumstances approach under similar circumstances. *See Wyrick v. Fields*,
7 459 U.S. 42, 48-49 (1982). Here, the State claims that RAMOS—a person who did not clearly speak
8 English—was taken into custody at approximately 9:30 a.m., allegedly read his *Miranda* rights at
9 10:15 a.m., but not questioned until two hours later. Furthermore, Hall and Depaulis failed to remind
10 RAMOS of his *Miranda* rights or make any reference to them once the audio recorder was turned
11 on and the interrogation started. This, in effect, rendered any prior reading of *Miranda* rights
12 forgotten and thereby worthless. Consequently, any statement made by RAMOS to the detectives
13 must be suppressed.
14
15

16 **C. RAMOS Invoked His Right to Remain Silent and to an Attorney**

17 “Once warnings have been given, the subsequent procedure is clear. If the individual
18 indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent,
19 the interrogation must cease.” *Miranda*, 384 U.S. at 473-74. Here, after being bombarded with
20 several questions, RAMOS told the detectives in his broken English: “I don’t got nothing to say
21 about it.” This is a clear invocation of RAMOS’ right to remain silent. However, the detectives
22 ignored his invocation and tried to continue interrogating him. This time, RAMOS told the detectives
23 “I think I should get my lawyer and then talk to him.”
24

25 The Supreme Court in *Miranda* stated that a putative defendant’s assertion of the right to
26 counsel is a significant event and that once exercised, “the interrogation must cease until an attorney
27 is present.” *Miranda*, 384 U.S. at 474; *see also Koza v. State*, 102 Nev. 181, 185, 718 P.2d 671, 674
28

1 (1986) ("Once an accused has asserted the right to counsel, all interrogation must cease until an
2 attorney is present."). "A request for counsel must be, at a minimum, 'some statement that can
3 reasonably be construed to be an expression of a desire for the assistance of an attorney.'" Dewey
4 v. State, 123 Nev. 483, 488-89, 169 P.3d 1149, 1152 (2007) (quoting McNeil v. Wisconsin, 501 U.S.
5 171, 178 (1991)). Here, RAMOS unambiguously invoked his right to counsel and therefore any
6 statement obtained thereafter must be suppressed.

7 CONCLUSION

8
9 Based on the foregoing reasons, RAMOS respectfully submits that after reviewing all the
10 evidence adduced at a hearing on this Motion, together with the foregoing Points and Authorities,
11 this Court will be impelled to grant his Motion to Suppress.

12 DATED this 24th day of May, 2019.

13
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16 /s/ Abel Yanez

/s/ Ivette Maningo

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CERTIFICATE OF SERVICE

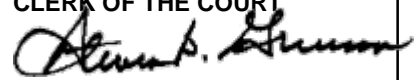
I hereby certify that on the 24th day of May, 2019, I served a true and correct copy of the foregoing document, **Motion to Suppress**, by submitting electronically for filing and/or service within the Eighth Judicial District Court pursuant to Administrative Order 14-02 for e-service to the following:

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/s/ Andrea Jelks
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Attorneys for Defendants Gustavo Ramos

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,)
)
Plaintiff,)
)
v.)
)
GUSTAVO RAMOS)
#1516662)
)
Defendant.)
_____)

CASE NO: C-10-269839-1

DEPT. NO: III

TRIAL BRIEF

COMES NOW, the Defendant, GUSTAVO RAMOS, by and through his attorneys, Ivette Amelburu Maningo, of the Law Offices of Ivette Amelburu Maningo, and Abel M. Yanez, Esq., of the Nobles & Yanez Law Firm, and hereby submits the following Trial Brief.

///

///

1 This Trial Brief is made for the purpose of providing the Court with legal authority for some
2 of the anticipated disagreements the parties will have over certain evidentiary issues.

3 DATED this 24th day of May, 2019.

4 **Nobles & Yanez Law Firm**

Law Offices of Ivette Amelburu Maningo

5 /s/ Abel Yanez

/s/ Ivette Maningo

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10 *Attorneys for Defendant Gustavo Ramos*

POINTS AND AUTHORITIES

INTRODUCTION

Defendant, GUSTAVO RAMOS (hereinafter “RAMOS”), is charged with Open Murder with Use of a Deadly Weapon, Victim 65 Years of Age or Older (Count 1), Open Murder with Use of a Deadly Weapon, Victim 65 Years of Age or Older (Count 2), and Sexual Assault with Use of a Deadly Weapon Victim 65 Years of Age or Older (Count 3). This case revolves around two different alleged crime scenes at the Camlu Retirement Apartments in Las Vegas, Nevada. The State claims that Wallace Siegel was found murdered inside his room on May 16, 1998, and Helen Sabraw was found murdered inside her room on May 17, 1998.

Although the murders of Mr. Siegel and Ms. Sabraw occurred in 1998, the case remained a “cold case” for approximately 12 years. RAMOS was not arrested until 2010 after when, the State claims, DNA evidence and a palm print implicated RAMOS in the crimes.

Due to the many years that have passed since the crimes and time of trial—slightly over 21 years—some witnesses have either passed away, moved outside of Nevada, or are simply unavailable. From a Defendant’s perspective and his constitutional right to present a defense, concerns for due process are raised and paramount. Additionally, although it is often overlooked, the Constitution and Nevada rules of evidence do not treat a criminal defendant and the State equally. Indeed, the law gives a criminal defendant advantages that it does not give the government. Consequently, RAMOS is providing the Court with this Trial Brief so that binding legal precedent can be elucidated on some of the evidentiary issues that are likely to be contested at trial.

ARGUMENT

I. No “Preconceived” List of Hearsay Exceptions Exists

Hearsay is defined as a “statement offered in evidence to prove the truth of the matter asserted.” N.R.S. §51.035. In general, hearsay is inadmissible. *See* N.R.S. §51.065 (“This section constitutes the hearsay rule.”).

1 Whether a witness is available or unavailable to testify at trial, the hearsay rule does not
2 exclude a Statement “if its nature and the special circumstances under which it was made offer
3 assurances of accuracy not likely to be enhanced by calling the declarant as a witness. . . .” N.R.S.
4 §51.075 (1); N.R.S. §51.315 (1)(a) (“A statement is not excluded by the hearsay rule if . . . Its
5 nature and the special circumstances under which it was made offer strong assurances of
6 accuracy”). In interpreting these statutes, the Nevada Supreme Court explained: “Our evidence
7 Code explicitly disavows any attempt to limit hearsay rule exceptions to some preconceived list;
8 for it twice declares that expressly stated exceptions are ‘illustrative and not restrictive.’”
9 Johnstone v. State, 92 Nev. 241, 244, 548 P.2d 1362, 1364 (1976).

11 The facts and holding in Johnstone will very likely be applicable to some of the evidentiary
12 issues the Court will consider in RAMOS’s case. In Johnstone, the police were investigating the
13 murder of two tourists stabbed to death at a hotel. *See id.*, 92 Nev. at 242, 548 P.2d at 1362. The
14 investigating detective interviewed a married couple also staying at the hotel. *See id.*, 92 Nev. at
15 243, 548 P.2d at 1363. The couple provided the investigating detective with information that was
16 “important, if not essential” to the defendant’s defense. *Id.* However, defendant’s counsel could
17 not locate the married couple to testify at trial and consequently attempted to admit their
18 statements through the investigating detective. *See id.* The trial court denied the defendant’s
19 request based on the hearsay rule. *See id.*

21 The Nevada Supreme Court overruled the trial court, based on N.R.S. §51.075, and held
22 that the hearsay evidence was admissible. *See id.*, 92 Nev. at 244, 548 P.2d at 1363. The Court
23 explained that Nevada’s rules of evidence “endorse Judge Learned Hand’s observation that ‘the
24 requisites of an exception to the hearsay rule are necessity and circumstantial guaranty of
25 trustworthiness.’” *See id.*, 92 Nev. at 244, 548 P.2d at 1364 (quoting G. & C. Merriam Co. v.
26 Syndicate Pub. Co., 207 F. 515, 518 2nd Cir. 1913). The Court reasoned that neither the
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1 investigating detective nor the absent witnesses “had any motivation to lie, or to assist [the
2 defendant] in any way.” *See id.* The Court further reasoned that it was “doubtful that cross-
3 examination of the witnesses would have altered critical aspects of the witness’s story.” *See id.*, 92
4 Nev. at 245, 548 P.2d at 1363.

5 **II. The Hearsay Rule Cannot Deny a Defendant Due Process**

6 “Few rights are more fundamental than that of an accused to present witness in his own
7 Defense.” Chambers v. Miss., 410 U.S. 284, 302 (1973). In Chambers, the U.S. Supreme Court did
8 not “establish no new principle of constitutional law.” *Id.* Rather, it reiterated that an exception to
9 the hearsay rule for statements that bear “persuasive assurances of trustworthiness” exists. *Id.* And,
10 when that hearsay evidence is critical to a defendant’s defense, and directly affects the
11 ascertainment of guilt, “the hearsay rule may not be applied mechanistically to defeat the ends of
12 justice.” *Id.*; *see also Johnstone*, 92 Nev. at 245, 548 P.2d at 1364 (“[A] serious argument might be
13 made that exclusion of the [hearsay] evidence would violate the due process clause by withholding
14 evidence favorable to the defendant . . .”). In short, RAMOS respectfully requests that the Court
15 take this binding legal authority into consideration when making its evidentiary rulings throughout
16 trial.
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19 Furthermore, it must be underscored that this precedent is not a two-way street. In other
20 words, the holding in Chambers cannot be used by the State against RAMOS. While the State may
21 try to argue that it also should be allowed to admit hearsay that bears persuasive assurances of
22 trustworthiness, RAMOS is protected by the Confrontation Clause of the U.S Constitution. The
23 State is not. *See Johnstone*, 92 Nev. at 245, 548 P.2d at 1364 (“[N]o Sixth Amendment
24 confrontation problem exists, where, as here, [hearsay] evidence favorable to an accused is
25 offered.”).
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1 **III. A Police Officer’s “Statement” Offered Against the State is not Hearsay**

2 As stated above, hearsay is a statement offered in evidence to prove the truth of the matter
3 asserted, and, in general, hearsay is inadmissible. However, the Nevada Legislature has prescribed
4 that a statement offered against a party is not hearsay if the statement is “the party’s own statement,
5 in either the party’s individual or a representative capacity.” N.R.S. §51.035 (3)(a).

6 The State of Nevada and officers of the Las Vegas Metropolitan Police Department are both
7 a “party” against RAMOS. *See United States v. Kattar*, 840 F.2d 118, 130 (1st Cir. 1988) (holding
8 that the federal government and the U.S. Justice Department “is a party-opponent of the defendant
9 in criminal cases.”); *United States v. Morgan*, 581 F.2d 933, 938 (D.C. Cir. 1978); *United States v.*
10 *Warren*, 42 F.3d 647, 655 (D.C. Cir. 1994).

11 In interpreting Indiana’s hearsay statute regarding the “party-opponent” provision, which is
12 written identically to Nevada’s, an Indiana Court of Appeals held that the provision “applies in
13 criminal cases to statements by government employees concerning matters within the scope of their
14 agency of employment.” *Allen v. State*, 787 N.E.2d 473, 479 (Ind. Ct. App. 2003) (“[W]e conclude
15 that the trial court in this case erred be excluding a statement made by a police officer of a matter
16 within the scope of the officer’s employment because that statement is not hearsay.”); see also
17 *Bellamy v. State*, 941 A.2d 1107, 1115-17 (Md. App. 2007). The Indiana Court explained that
18 applying this provision against the government—as the State can do against a defendant—“advances
19 a general concept of fairness:
20 a general concept of fairness:
21 a general concept of fairness:
22 a general concept of fairness:

23 The evenhandedness of justice as between subject and sovereign is a reassuring
24 doctrine, and especially so its corollary; that, at a minimum the law of evidence
25 regulates the mode of proof impartially for the subject and the sovereign. The hearsay
26 rule that troubles the former equally vexes the latter; the exceptions to the hearsay
27 rule that ease the latter equally comfort the former.”

28 *Id.* (quoting *Garland v. State*, 834 So.2d 265, 267 (Fla. Dist. Ct. App. 2002).

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9 In conclusion, as detailed in this Brief, the Constitution and Nevada rules of evidence do not
10 treat RAMOS and the State symmetrically. The law gives RAMOS advantages that it does not give
11 the State and is embedded in the founding document of this Nation. RAMOS respectfully submits
12 that the Court apply this binding authority when making its evidentiary rulings so that RAMOS is
13 assured a fundamentally fair trial.

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/s/ Ivette Maningo

Attorneys for Defendant Gustavo Ramos

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of May, 2019, I served a true and correct copy of the foregoing document, **Trial Brief**, by submitting electronically for filing and/or service within the Eighth Judicial District Court pursuant to Administrative Order 14-02 for e-service to the following:

District Attorneys Office
E-Mail Address:

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giancarlo.pesci@clarkcountyda.com

Attorneys for Plaintiff

/s/ Andrea Jelks
Secretary for Nobles & Yanez Law Firm

DISTRICT COURT
CLARK COUNTY, NEVADA

MAY 28 2019

BY Kory Schlitz
KORY SCHLITZ, DEPUTY

THE STATE OF NEVADA,
Plaintiff,

-VS-

GUSTAVO RAMOS, #1516662,
Defendant.

CASE NO: C-10-269839-1

DEPT NO: III

**STIPULATION AND ORDER WAIVING DEFENDANT'S RIGHT TO
TRIAL BY JURY AND PENALTY HEARING BY JURY**

COMES NOW, the Defendant, GUSTAVO RAMOS, by and through his counsel, IVETTE AMELBURU MANINGO, and ABEL YANEZ, and the State of Nevada, by and through PAMELA WECKERLY, Chief Deputy District Attorney, and enters into the following stipulations:

1. The State of Nevada hereby agrees to withdraw its Notice of the Intent to Seek the Death Penalty.
2. In exchange for the State's withdrawal of its intent to seek the death penalty, the defendant, Gutavo Ramos, his counsel and the prosecutors all stipulate and agree to allow the case to proceed to trial before the court without a jury.
3. The defendant acknowledges that he has been fully informed of his right to trial by jury and has had sufficient opportunity to discuss with his attorneys the issue of waiving that right and have any questions he had sufficiently answered by his attorneys.

C-10-269839-1
SAO
Stipulation and Order
4838957



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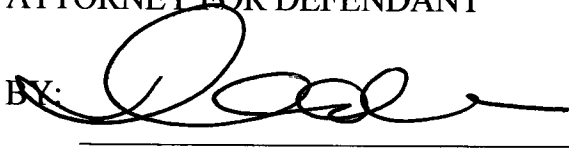
4. The defendant acknowledges that he has been adequately advised of the benefits and consequences of proceeding with either a trial by jury or a trial before the court alone and he has had the opportunity to give thoughtful consideration to the decision to waive his right to trial by jury.
5. The defendant acknowledges that he understands that a trial by jury would involve twelve (12) members of the community, plus one (1) or more alternate members, who would sit in judgment of whether he was guilty or not guilty of any offenses he is charged with.
6. The defendant acknowledges that he understands that he would have the opportunity in a trial by jury to assist his attorneys and take part in the selection of the members of the community who would make up the jury hearing his trial.
7. The defendant acknowledges that he understands that a trial by jury would involve deliberation and decision-making by twelve (12) jurors and any verdict they reach would need to be unanimous.
8. The defendant acknowledges that he understands that by waiving his right to a trial by jury, then the court alone would sit in judgement of whether the defendant was guilty or not guilty of any offenses he is charged with.
9. The defendant further acknowledges that he understands that pursuant to NRS 175.552(2), he is also stipulating and agreeing to waive his right to have any potential penalty hearing conducted by a jury. Specifically, the defendant stipulates and agrees that:
 - a. Should the court in the above-captioned case return a verdict of guilty of First Degree Murder, the defendant, his counsel and the state hereby waive the penalty hearing before the jury as normally required under NRS 175.552(1)(a); and

b. Pursuant to NRS 175.552(2), the defendant, his counsel and the state agree that the sentence on any charge for which the Defendant may be convicted shall be imposed by this Honorable Court after a pre-sentence investigation is conducted by the Department of Parole and Probation;

DATED this 28th day of May 2019.

ATTORNEY FOR DEFENDANT

BY:


Ivette Amelburu Maningo
Attorney for Defendant
Nevada Bar #7076

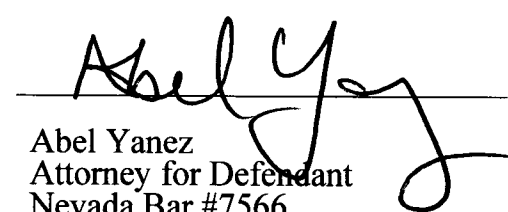
CLARK COUNTY DISTRICT
ATTORNEY

BY:


Pamela Weckerly
Chief Deputy District Attorney

ATTORNEY FOR DEFENDANT

BY:


Abel Yanez
Attorney for Defendant
Nevada Bar #7566

DEFENDANT

BY:


Gustavo Ramos - Defendant

IT IS SO ORDERED.


DISTRICT JUDGE

IN THE SUPREME COURT OF THE STATE OF NEVADA

GUSTAVO RAMOS,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No. 79781

APPELLANT'S APPENDIX

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 31st day of March, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven Wolfson, Clark County District Attorney's Office

Aaron Ford, Nevada Attorney General

Jamie J. Resch, Resch Law, PLLC d/b/a Conviction Solutions

By: 

Employee, Resch Law, PLLC d/b/a Conviction Solutions