

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

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LARRY DECORLEON BROWN,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
COUNTY OF CLARK, THE  
HONORABLE VALERIE ADAIR,  
DISTRICT COURT JUDGE – Dept. XXI

Respondent,

and

THE STATE OF NEVADA,

Real Party in Interest,

No.

(DC. No. C-17-316247)

Electronically Filed  
Nov 26 2019 09:26 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPENDIX TO PETITION FOR WRIT OF MANDAMUS**

**ATTORNEYS FOR PETITIONER**

MONICA R. TRUJILLO

Chief Deputy Special Public Defender  
Nevada Bar #11301

JEREMY W. STORMS

Chief Deputy Special Public Defender  
Nevada Bar #10772

JONELL THOMAS

Special Public Defender  
Nevada Bar #004771

Clark County Special Public Defender  
330 South 3rd Street  
Las Vegas, Nevada 89155  
(702) 455-6265

**ATTORNEY FOR RESPONDENT**

STEVEN B. WOLFSON

Clark County District Attorney  
Nevada Bar #001565

Regional Justice Center  
200 Lewis Ave.

Post Office Box 552212  
Las Vegas, Nevada 89155

(702) 671-2500  
State of Nevada

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ORIGINAL

1 IND

2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JOHN GIORDANI  
6 Chief Deputy District Attorney  
7 Nevada Bar #012381  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

FILED IN OPEN COURT

SEPT. 6, 2017

STEVEN D. GRIERSON  
CLERK OF THE COURT

BY

DULCE MARIE ROMEA DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 LARRY DECORLEON BROWN,  
13 #8376788  
14 ANTHONY CARTER #1976097

Defendants.

CASE NO: C-17-326247-1

DEPT NO: III

INDICTMENT

15 STATE OF NEVADA )  
16 COUNTY OF CLARK ) ss.

17 The Defendant above named, LARRY DECORLEON BROWN and ANTHONY  
18 CARTER, accused by the Clark County Grand Jury of the crime(s) of CONSPIRACY TO  
19 COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147);  
20 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380,  
21 193.165 - NOC 50138); MURDER WITH USE OF A DEADLY WEAPON (Category A  
22 Felony - NRS 200.010, 200.030, 193.165 - NOC 50001); POSSESSION OF CONTROLLED  
23 SUBSTANCE WITH INTENT TO SELL (Category D Felony - NRS 453.337 - NOC 51141);  
24 and OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category  
25 B Felony - NRS 202.360 - NOC 51460), committed at and within the County of Clark, State  
26 of Nevada, on or between February 21, 2017 and March 20, 2017 as follows:

27 ///

28 ///

C-17-326247-1  
IND  
Indictment  
4679711



1 COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

2 Defendants LARRY DECORLEON BROWN and ANTHONY CARTER did on or  
3 about February 21, 2017 willfully, unlawfully, and feloniously conspire with each other to  
4 commit a robbery, by the defendants committing the acts as set forth in Counts 2 and 3, said  
5 acts being incorporated by this reference as though fully set forth herein.

6 COUNT 2 - ROBBERY WITH USE OF A DEADLY WEAPON

7 Defendants LARRY DECORLEON BROWN and ANTHONY CARTER did on or  
8 about February 21, 2017 willfully, unlawfully, and feloniously take personal property, to wit:  
9 U.S. Currency and/or vehicle keys and/or vehicle, from the person of KWAME BANKS, or  
10 in his presence, by means of force or violence, or fear of injury to, and without the consent and  
11 against the will of KWAME BANKS, with use of a deadly weapon, to wit: a firearm, defendant  
12 using force or fear to obtain or retain possession of the property, to prevent or overcome  
13 resistance to the taking of the property, and/or to facilitate escape, the Defendants being  
14 criminally liable under one or more of the following principles of criminal liability, to-wit: (1)  
15 by directly committing this crime; and/or (2) by aiding or abetting in the commission of this  
16 crime, with the intent that this crime be committed, by counseling, encouraging, hiring,  
17 commanding, inducing and/or otherwise procuring the other to commit the crime, whereby  
18 Defendant ANTHONY CARTER lured and/or set up a meeting with KWAME BANKS under  
19 the ruse of a drug deal, thereafter, Defendants LARRY DECORLEON BROWN and/or  
20 ANTHONY CARTER robbed and/or attempted to rob the said KWAME BANKS; and/or (3)  
21 pursuant to a conspiracy to commit this crime, with the intent that this crime be committed.

22 COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON

23 Defendants LARRY DECORLEON BROWN and ANTHONY CARTER did on or  
24 about February 21, 2017 willfully, unlawfully, feloniously and with malice aforethought, kill  
25 KWAME BANKS, a human being, with use of a deadly weapon, to wit: firearm, by shooting  
26 at or into the body of the said KWAME BANKS, the said killing having been (1) willful,  
27 deliberate and premeditated, and/or (2) committed during the perpetration or attempted  
28 perpetration of a robbery and/or attempt robbery, the Defendants being criminally liable under

one or more of the following principles of criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime, whereby Defendant ANTHONY CARTER lured and/or set up a meeting with KWAME BANKS under the ruse of a drug deal, thereafter, Defendants LARRY DECORLEON BROWN and/or ANTHONY CARTER robbed and/or attempted to rob the said KWAME BANKS, thereafter the said KWAME BANKS was shot in the chest and killed during the course of the robbery and/or attempted robbery by Defendants LARRY DECORLEON BROWN and/or ANTHONY CARTER; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed.

COUNT 4 - POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO SELL

Defendant ANTHONY CARTER did on or about March 20, 2017 willfully, unlawfully, and feloniously possess, for the purpose of sale, a controlled substance, to wit: Marijuana.

COUNT 5 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

Defendant ANTHONY CARTER did on or about March 20, 2017 willfully, unlawfully, and feloniously own, or have in his possession and/or under his custody or control, a firearm, to wit: a Springfield 9mm handgun bearing Serial No. MG975091, the Defendant being a convicted felon, having in 2006, been convicted of Trafficking in Controlled Substance and Forgery (2 Counts), in Case No. C225371, in the Eighth Judicial District Court, Clark County, a felony under the laws of the State of Nevada.

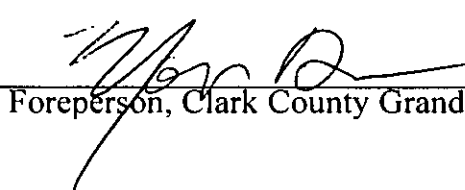
DATED this 5<sup>th</sup> day of September, 2017.

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

BY

 12.19.15  
JOHN GIORDANI  
Chief Deputy District Attorney  
Nevada Bar #012381

ENDORSEMENT: A True Bill

  
Foreperson, Clark County Grand Jury

Names of Witnesses and testifying before the Grand Jury:

CARTER, TIFFANY, c/o CCDA, 200 Lewis Avenue, Las Vegas, NV

COOK, DARIN, LVMPD #5730

DOSCH, MITCHELL, LVMPD #7907

ENGLISH, TIMOTHY, LVMPD #13404

MERRICK, FRED, LVMPD #7549

NELSON, DEREKA, c/o CCDA, 200 Lewis Avenue, Las Vegas, NV

TRAWICKI, JOSEPH, c/o CCDA, 200 Lewis Avenue, Las Vegas, NV

WRIGHT, NICOLE, c/o CCDA, 200 Lewis Avenue, Las Vegas, NV

Additional Witnesses known to the District Attorney at time of filing the Indictment:

BANKS, LAQUANDA, c/o CCDA, 200 Lewis Avenue, Las Vegas, NV

CODY, LORA, LVMPD #7294

CUSTODIAN OF RECORDS, CCDC

CUSTODIAN OF RECORDS, LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS, LVMPD RECORDS

CUSTODIAN OF RECORDS, METRO PCS

CUSTODIAN OF RECORDS, SPRINT WIRELESS

CUSTODIAN OF RECORDS, T-MOBILE

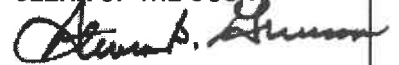
CUSTODIAN OF RECORDS, VERIZON WIRELESS

JAEGER, RYAN, LVMPD #5587

LONG, DANIEL, LVMPD #3969

RYDER, ANGELISA, c/o CCDA, 200 Lewis Avenue, Las Vegas, NV

17AGJ060A-B/17F07976X/17F09115X/mc-GJ  
LVMPD EV# 1702214563; 1703200757  
(TK2)



**MOT**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JOHN GIORDANI  
Chief Deputy District Attorney  
Nevada Bar #012381  
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-

LARRY DECORLEON BROWN,  
#8376788  
  
Defendant.

CASE NO: C-17-326247-1

DEPT NO: III

**STATE'S NOTICE OF MOTION AND MOTION TO  
COMPEL DEFENDANT BROWN'S CELLULAR PHONE PASSCODE,  
OR ALTERNATIVELY, TO COMPEL FINGERPRINT**

DATE OF HEARING:  
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JOHN GIORDANI, Chief Deputy District Attorney, and files this Notice Of Motion And Motion To Compel Defendant Brown's Cellular Phone Passcode, Or Alternatively, To Compel Fingerprint.

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 23rd day of April, 2018.

BY /s// JOHN GIORDANI  
JOHN GIORDANI  
Chief Deputy District Attorney  
Nevada Bar #012381

On September 7, 2017, the Indictment returned charging Defendants Larry Decorleon Brown and Anthony Carter with the crimes of Count 1 - Conspiracy To Commit Robbery (Category B Felony - NRS 200.380, 199.480), Count 2 - Robbery With Use Of A Deadly Weapon (Category B Felony - NRS 200.380, 193.165) and Count 3 - Murder With Use Of A Deadly Weapon (Category A Felony - NRS 200.010, 200.030, 193.165). Additionally, Anthony Carter was charged individually with the crimes of Count 4 - Possession Of Controlled Substance With Intent To Sell (Category D Felony - NRS 453.337) and Count 5 - Ownership Or Possession Of Firearm By Prohibited Person (Category B Felony - NRS 202.360). During the initial grand jury investigation, the following witnesses testified: Sprint custodian of records Joseph Trawicki, Verizon custodian of record Nicole Wright, Detective Mitchell Dosch, eyewitness Dereka Nelson, Anthony Carter's ex-wife Tiffany Carter, Detective Fred Merrick, Police Officer Melvin English, and Detective Darin Cook.

On September 28, 2017, an arraignment hearing was held. Defendants' arraignment was continued to October 19, 2017. On October 4, 2017, the Superseding Indictment returned charging Defendants Larry Brown and Anthony Carter with the same aforementioned crimes.

On September 28, 2017, an arraignment hearing was held. Defendants' arraignment was continued to October 19, 2017. On October 4, 2017, the Superseding Indictment returned charging Defendants Larry Brown and Anthony Carter with the same aforementioned crimes.

1 At that subsequent grand jury presentation, Larry Brown's girlfriend, Angelisa Ryder,  
2 testified.

3 On October 11, 2017, the Second Superseding Indictment returned charging  
4 Defendants Larry Brown and Anthony Carter with the same aforementioned crimes and Larry  
5 Brown with the additional crime of Court 6 - Ownership Or Possession Of Firearm By  
6 Prohibited Person (Category B Felony - NRS 202.360). At the preceding grand jury  
7 presentation, no additional witnesses testified, only a judgment of conviction related to the  
8 new crime was admitted.

9 On October 19, 2017, the continued arraignment hearing was held and both Defendants  
10 pled not guilty to the charges and waived their speedy-trial right.

11 On November 30, 2017, Defendant Carter filed his Petition for Writ of Habeas Corpus,  
12 which was subsequently denied via minute order.

13 On December 13, 2017, the Third Superseding Indictment returned charging  
14 Defendants Larry Brown and Anthony Carter with the same aforementioned crimes – Counts  
15 1 through 6. At the preceding grand jury presentation, Anthony Carter's friend, Carnell Cave,  
16 testified.

17 Jury Trial is currently scheduled to begin on June 18, 2018.

## 18 **II. STATEMENT OF RELEVANT FACTS**

19 On February 21, 2017, at approximately 10:47 PM, victim Kwame Banks was robbed and  
20 murdered in the parking lot of the Sky Pointe Landing Apartment Homes apartment complex  
21 located at 5850 Sky Pointe Drive, Las Vegas, Clark County, Nevada. Banks's lifeless body  
22 was found in the parking lot with his pants pockets turned inside out and his vehicle having  
23 been stolen. Banks's cause of death was a single gunshot wound to his chest that exited his  
24 back. (Reporter's Transcript Volume 1 ("RT1"), August 29, 2017, at 14-26). Defendant  
25 Anthony Carter does not dispute that Kwame Banks was robbed and murdered. (Def.'s  
26 Petition at 10:14-15). Further, evidence presented to the Grand Jury clearly shows probable  
27 cause that Larry Brown robbed and murdered Kwame Banks. What follows are the facts  
28 presented to the Grand Jury to establish probable cause that Defendant Carter and Larry Brown

1 entered into a conspiracy to rob Kwame Banks, and that Defendant Carter aided and abetted  
2 Larry Brown in furtherance of the conspiracy by setting up Kwame Banks in the robbery that  
3 ultimately ended in Banks's murder.

4 Defendant Carter had known Kwame Banks for some time. Carter's ex-wife, who he still  
5 lives with, Tiffany Carter, testified that Carter knew Kwame Banks. (RT1 at 55:18-20).  
6 Defendant Carter also told detectives that he knew Kwame Banks and had communicated with  
7 Banks via cellphone about purchasing marijuana on the night of Banks's murder. (RT1 at 33).  
8 Cellphone evidence also showed multiple daily contacts between Defendant Carter and  
9 Kwame Banks. (Reporter's Transcript Volume 2 ("RT2"), September 5, 2017, at 22).

10 Defendant Carter was present at or near the scene of the crime at the time of the murder.  
11 Defendant Carter himself, Tiffany Carter, and Carter's friend Carnell Cave all establish that  
12 Defendant Carter was visiting Cave's apartment located within the Sky Pointe Landing  
13 apartment complex on the night of the murder. (RT1 at 32-36, 52-54).

14 Additionally, when interviewed by detectives, Defendant Carter provided three different  
15 stories about his contact with Kwame Banks on the night of the murder. First, Defendant  
16 Carter told detectives he was supposed to purchase marijuana from Banks that evening, but  
17 the meeting ending up getting cancelled and the two men were discussing doing the transaction  
18 the following day. (RT1 33-36). Next, Defendant Banks told detectives there actually was a  
19 marijuana transaction, Kwame Banks came inside Cave's apartment to conduct the transaction  
20 and, following the transaction, Banks left. Id. Finally, Defendant Carter told detectives there  
21 was a marijuana transaction, but that transaction occurred at Banks's vehicle in the parking lot  
22 of the Sky Pointe Landing apartment complex basketball court, which is located on the  
23 opposite side of the building from Cave's apartment. Id. Defendant Carter further told  
24 detectives that after the transaction, while he was in Cave's apartment, he heard gunshots and  
25 looked outside to see police cars and Banks's vehicle parked out front of Cave's apartment.  
26 (RT1 34). Notably, Banks's vehicle was taken in the robbery and was gone from the apartment  
27 complex before police officers arrived. Id. Defendant Carter hid inside Cave's residence until  
28

1 the police cleared the scene, and snuck out the following morning. (Reporter's Transcript  
2 Volume 3 (RT3), December 12, 2017, at 10).

3 In addition to knowing Kwame Banks, Defendant Carter admits to knowing Larry Brown  
4 since the 1990s from their home state of Georgia. (RT1 36). Additionally, Defendant Carter  
5 told detectives that he and Brown had not been in contact in some time but had recently began  
6 to associate again. (RT1 37).

7 Evidence presented to the Grand Jury shows there were three cellphones found at the  
8 murder scene. (RT1 21-22). The first cellphone was found under Banks's body and identified  
9 as belonging to Kwame Banks. (RT1 21; RT2 10). The second cellphone was found about  
10 15 feet away from Banks's body in a disturbed landscape area and was identified as belonging  
11 to Larry Brown. (RT1 21-22, 27; RT2 10). The third cellphone was found about 100 feet  
12 from Banks's body, near the exit of the apartment complex. (RT1 22-23). That third cellphone  
13 was identified as also belonging to Kwame Banks. (RT2 10).

14 Cellphone data and pen register evidence indicate Defendant Carter was in constant and  
15 increasing telephone communication with both Kwame Banks and Larry Brown in the hours  
16 leading up to Banks's murder. (RT2 13-16). However, Kwame Banks and Larry Brown were  
17 never in telephone contact and no evidence exists to indicate they knew each other. Id.  
18 Specifically, beginning at about 7:30 PM, Defendant Carter had several telephone contacts  
19 with Kwame Banks and followed up each contact with a telephone contact to Larry Brown.  
20 (RT2 15-16). Shortly after Defendant Carter began telephone contact with Kwame Banks,  
21 cellphone-tower location data shows the phones belonging to Defendant Carter and Larry  
22 Brown both converge upon the area of the Sky Pointe Landing apartment complex where  
23 Kwame Banks was ultimately murdered. (RT2 17-19). At 10:06 PM, there is a phone call  
24 between Defendant Carter and Kwame Banks. (RT2 15). Immediately following that phone  
25 call, Defendant Carter made several phone calls to Larry Brown. (RT2 15-16). Ultimately,  
26 the telephone communication between Defendant Carter and Larry Brown totally stops after  
27 10:47 PM, which is the time independent witnesses first called 9-1-1 to report Kwame Banks's  
28 shooting death. (RT2 12, 16). Defendant Carter destroyed his cellphone, which he had used

1 to communicate with Banks that evening to set up the robbery, within 24 hours of Kwame  
2 Banks's murder. (RT1 38-39, RT3 11).

3 Subsequent to the initial grand jury proceedings, the LVMPD DNA lab authored its report  
4 regarding the results of DNA testing conducted on several items of evidence from the scene.  
5 Most damning, Defendant Brown's DNA was found on the torn latex glove that was located  
6 underneath the victim's body. Not only does this fact seal Defendant Brown's fate, but it also  
7 demonstrates that Brown and Carter pre-planned the robbery.

8 As of the date of the filing of this Motion, Detectives have exhausted all known avenues  
9 in order to gain access to Defendant Brown's passcode-protected cellphone, to no avail. The  
10 State believes that further attempts to break into the phone could destroy vital evidence in the  
11 case. Due to the fact that Defendant Carter destroyed his cellphone, and the fact that the  
12 cellphone records for both Carter's and Brown's phones do not contain the content of text  
13 messages, the State does not currently know the content of the text messages sent and received  
14 between Brown and Carter in the minutes leading up to the robbery and murder of Kwame  
15 Banks. The State seeks an Order compelling Defendant Brown to: 1) provide his cellphone  
16 passcode to the State, or 2) provide his cellphone passcode to the Court in camera, who can  
17 then provide it to the LVMPD lab directly. Alternatively, the State requests an Order  
18 compelling Defendant Brown to place his thumb on the cellphone in order to access it.

## 19 20 LEGAL ARGUMENT

### 21 **I. Defendant Brown should be compelled to provide his passcode or fingerprint** 22 **to unlock his cellular phone because his Fifth Amendment right against self-** 23 **incrimination is not implicated.**

24 The Fifth Amendment right against self-incrimination applies only where three elements  
25 are met: 1) compulsion, 2) a testimonial communication or act, and 3) incrimination. *Fisher v.*  
26 *United States*, 425 U.S. 391, 408 (1976). Testimony is defined as when a person is compelled  
27 to be a witness against himself. *Doe v. United States*, 487 U.S. 201, 210 (1988). The defendant  
28 must be asserting a fact or disclosing information. *Id.* An exception to this rule is the foregone  
conclusion. The foregone conclusion exception applies when the State can prove: 1) the

1 document exists, 2) the defendant possessed or controlled the document, and 3) the document  
2 is authentic. *Fisher*, 425 U.S. at 410–13.

3 Where a fingerprint or passcode is required to unlock a cell phone, it is not testimonial for  
4 a defendant to provide either of those to allow law enforcement to unlock that phone. As to a  
5 fingerprint, a defendant has no Fifth Amendment right against providing his physical features  
6 to law enforcement and so it is not testimonial. *See Schmerber v. California*, 384 U.S. 757,  
7 763–65 (1966). As to a passcode, even if the court finds that revealing it is testimonial, the  
8 foregone conclusion exception applies in certain circumstances. *Fisher*, 425 U.S. at 410–13.  
9 When law enforcement is aware that information exists on the cell phone, is aware that a  
10 passcode is needed, knows that the defendant controlled or possessed that phone and passcode,  
11 and the technology is self-authenticating, the foregone conclusion exception applies and the  
12 defendant should provide the passcode.

13 **a. Providing a fingerprint is not testimonial.**

14 The Supreme Court has held that compelling a defendant to display physical features  
15 does not violate the right against self-incrimination. *United States v. Wade*, 388 U.S. 218, 223  
16 (1967) (compelled to speak the same words as the witnesses heard at the bank robbery);  
17 *Schmerber*, 384 U.S. at 763–65 (compelled to provide blood sample and fingerprints); *Holt v.*  
18 *United States*, 218 U.S. 245, 252–53 (1910) (compelled to wear shirt to see if it fit).  
19 Compelling a fingerprint to unlock a phone should not be treated differently. *Com. v. Baust*,  
20 89 Va. Cir. 267 (2014). Thus, the defendant’s right against self-incrimination is not violated  
21 by being compelled to provide a fingerprint.

22 The Fifth Amendment and court-imposed safeguards protect the defendant’s right  
23 against self-incrimination when he is compelled to provide a fingerprint. In *Commonwealth v.*  
24 *Baust*, the Virginia Supreme Court found that compelling a fingerprint did not violate a  
25 defendant’s Fifth Amendment right against self-incrimination. *Baust*, 89 Va. Cir. 267. His  
26 physical characteristics were non-testimonial in nature and did not divulge anything of his  
27 mental processes. *Id.* Other courts have also recognized that compelling a fingerprint was non-  
28 testimonial. *Com. N. Marian Islands v. Bowie*, 243 F.3d 1109, 1120 n.5 (9th Cir. 2001); *State*

1 *v. Diamond*, 905 N.W.2d 870, 875–76 (Minn. 2018). Courts have reached this decision  
2 through two justifications. One, by noting that the prosecution did not present evidence at trial  
3 that the defendant was the one who opened the phone with his fingerprint. *Diamond*, 905  
4 N.W.2d at 872. Two, by finding that compelling a fingerprint does not make the defendant  
5 admit that he had exclusive use of the phone or that only his fingerprint would unlock the  
6 phone. *State v. Diamond*, 809 N.W.2d 143, 150–51 (Minn. App. 2017).

7 Here, Defendant’s Fifth Amendment right would not be implicated by compelling him  
8 to provide a fingerprint. The State is requesting that he provide one of his physical  
9 characteristics. He is not divulging any information as to the charges against him by placing  
10 his finger on the phone screen. Thus, the State should be able to compel the defendant’s  
11 fingerprint to open his cell phone.

12 **b. Providing a passcode is not testimonial; and even if it was, the foregone**  
13 **conclusion exception would apply.**

14 The few cases addressing this topic have used two analyses. One court has held that  
15 fingerprints and passcodes—in the context of technology—should not be given different  
16 protections under the Fifth Amendment. *State v. Stahl*, 206 So. 3d 124 (Fla. Dist. Ct. App.  
17 2016). Other courts have held that while revealing a passcode may be testimonial,  
18 circumstances may allow the prosecution to compel the passcode because of the foregone  
19 conclusion exception. *E.g., Com. v. Davis*, 176 A.3d 869 (Pa. Super. 2017). One solution to  
20 further protect the defendant is that if the defendant discloses or uses the passcode to open the  
21 phone or computer, then the prosecution will not present at trial that he opened the phone or  
22 computer with a passcode. *Diamond*, 905 N.W.2d at 872. Another solution is to compel the  
23 defendant to use the passcode to open the phone, but to not directly disclose the passcode to  
24 the prosecution. *United States v. Fricosu*, 841 F. Supp. 2d 1232, 1237 (D. Colo. 2012).

25 **1. Providing a passcode is not testimonial.**

26 The Fifth Amendment does not provide more protection for passcodes than it does for  
27 fingerprints. In *State v. Stahl*, the court found that compelling the defendant to disclose his  
28 passcode did not violate his Fifth Amendment right against self-incrimination. *Stahl*, 206 So.

1 3d at 134–35. The court reasoned that there should not be greater protection for passcodes  
2 over fingerprints. *Id.* at 134. The defendant would not be acknowledging that any  
3 incriminating information exists by simply providing his passcode. *Id.* The court found that  
4 because the government already tied the potential evidence to the source—the cell phone—  
5 the defendant would not be admitting anything as to the charges against him by entering a  
6 passcode. *Id.* If a statement is not testimonial, then the mere assertion that it will lead to  
7 incriminating evidence does not make it testimonial. *Id.* The passcode had no value or  
8 significance as to the charges against the defendant. *Id.* Thus, the Fifth Amendment provides  
9 the same protection for both passcodes and fingerprints. *Id.*

10 If the defendant provided the passcode to unlock his cell phone, then his right against  
11 self-incrimination would not be violated. He would not be acknowledging that any evidence  
12 found on his phone exists. The State has independently linked the text messages and phone  
13 calls to the defendant’s phone through the cell phone records. The passcode has no significance  
14 as to the charges against the defendant. Just because entering the passcode may lead to  
15 incriminating evidence that does not make entering the passcode testimonial. Using a  
16 fingerprint or entering a passcode to open the phone should not be treated differently. Thus,  
17 the defendant would not be making a testimonial statement by disclosing the passcode.

18 **2. Even if providing a passcode was testimonial, the foregone conclusion**  
19 **exception applies because revealing the passcode would add little to**  
20 **nothing to the State’s information.**

21 To compel a passcode under the foregone conclusion exception, the State must prove  
22 three elements: 1) the evidence’s existence, 2) the defendant’s control or possession of that  
23 evidence, and 3) authenticity. *Fisher*, 425 U.S. at 410–13. Those elements must be shown with  
24 a reasonable particularity. *In re Grand Jury Subpoena Duces Tecum Dated March 25, 2011*,  
25 670 F.3d 1335, 1344 (11th Cir. 2012). One rationale for the foregone conclusion exception is  
26 that the information provided by the defendant “adds little or nothing” to the government’s  
27 information. *Fisher*, 425 U.S. at 411. The question then becomes one “not of testimony but of  
28 surrender.” *Id.*



1                   **i. The State independently knows that the passcode and information**  
2                   **on the phone exists.**

3                   Under certain factual circumstances, courts have allowed the prosecution to compel a  
4                   defendant to reveal a passcode to open a cell phone or computer. The prosecution must show  
5                   that the State is aware that a passcode is required to unlock the phone or computer and that the  
6                   information on the device exists. *United States v. Apple MacPro Computer*, 851 F.3d 238, 248  
7                   (3d Cir. 2017); *Davis*, 176 A.3d at 876; *Stahl*, 206 So. 3d at 136. The foregone conclusion  
8                   exception does not apply in circumstances where the prosecution is unaware of what it is  
9                   looking for on the phone or if any information exists on the phone. *Grand Jury Subpoena*  
10                  *Duces Tecum Dated March 25, 2011*, 670 F.3d at 1346–47. But where the officers know that  
11                  information related to the offenses is on the phone, the first element of the foregone conclusion  
12                  exception is met. *Gelfgatt*, 11 N.E. 3d at 614–15. The prosecution does not need to know the  
13                  exact contents, just the existence. *Fricosu*, 841 F. Supp. 2d at 1237.

14                  For example, in *Commonwealth v. Gelfgatt*, the defendant had spoken to officers.  
15                  *Gelfgatt*, 11 N.E. 3d at 615. He told them that he had files on the computer that were related  
16                  to the offenses, that the computer was encrypted, and that he had access to the computer  
17                  unencrypted. *Id.* Giving his passcode would not reveal any more information than what he had  
18                  told the officers because they knew that information existed. *Id.* at 615–16.

19                  Even if compelling the defendant to provide the passcode was testimonial, then the  
20                  passcode would fall under the foregone conclusion exception. As to the first element, the State  
21                  has independently uncovered the evidence’s existence on the defendant’s phone. The cell  
22                  phone records indicate two incoming phone calls from his co-defendant and 15 text messages  
23                  between the defendant and his co-defendant shortly before the murder. While the State has the  
24                  time-stamped phone calls and messages, there is no content in those cell phone records. But  
25                  because the State has had custody of that phone since the night of the murder, the content of  
26                  those messages are preserved on the phone. The State also knows that the phone has passcode  
27                  protection. The State has been unable to access the phone after trying other means to decrypt  
28                  it. Thus, the State has proven the existence of the passcode and the information that it is  
                    seeking.

1                                   **ii. The State independently knows that the defendant controlled and**  
2                                   **possessed the phone and passcode.**

3           When the prosecution has proven that the defendant was the owner and user of the  
4 phone or computer, the court has found that the prosecution satisfied the foregone conclusion  
5 exception's second element. If the defendant tells officers that he owned and used the device,  
6 or other testimony proves that the defendant owned and possessed the phone, then the second  
7 element is met. *United States v. Gavegnano*, 305 Fed. Appx. 954, 956 (4th Cir. 2009); *In re*  
8 *Grand Jury Investigation*, 88 N.E. 3d 1178, 1182 (Mass. App. Ct. 2017); *Davis*, 176 A.3d at  
876; *Gelfgatt*, 11 N.E. 3d at 615.

9           As to the second element, the State has independently proven that the defendant had  
10 control and possession of that phone. His girlfriend testified at the grand jury hearing that the  
11 defendant has owned and used the phone for about two years. The only time that she reached  
12 him on a different number was after the night of the murder when the defendant purchased a  
13 new phone. The cell phone records also indicate that the defendant is the owner of the cell  
14 phone number. The defendant is aware of the passcode because he has used the phone for two  
15 years and a cell phone user knows the passcode to his own phone. Thus, the State has met the  
16 second element that the defendant owned and possessed the phone and knows the passcode  
17 exists.

18                                   **iii. The passcode is self-authenticating.**

19           Technology does not squarely fit within the authenticity requirement and must be  
20 considered self-authenticating. *Davis*, 176 A.3d at 876 (citing *Stahl*, 206 So. 3d at 134–36). If  
21 the passcode allows access to the phone, then the passcode is authentic. *Id.*

22           As to the third element, the passcode is self-authenticating. The defendant's cell phone  
23 requires a passcode to allow access. And because the passcode allows access to the phone,  
24 then it is self-authenticating. The State has proven the third element of authenticity. Overall,  
25 the defendant providing a passcode would be adding little or nothing to the State's information  
26 because the State is already aware that a passcode exists, the information exists on the phone,  
27 and the defendant owned and used the phone. Thus, the defendant's right to self-incrimination  
28

1 would not be implicated because the State has met its burden to show that information revealed  
2 on the defendant's phone is a foregone conclusion.

3 **3. As an alternative, providing a decrypted version of the phone can**  
4 **resolve any potential Fifth Amendment issue.**

5 While the defendant's right against self-incrimination would not be violated by  
6 providing a passcode, there are alternative ways of providing a passcode that would further  
7 protect the defendant's right. Some courts have allowed the prosecution to compel a defendant  
8 to provide a decrypted version of the phone or computer. *Fricosu*, 841 F. Supp. 2d at 1237; *In*  
9 *re Boucher*, No. 2:06-MJ-91, 2009 WL 424718 (D. Vt. Feb. 19, 2009). That would require the  
10 defendant to unlock the phone with the passcode, but not directly reveal the passcode to the  
11 prosecution. *Fricosu*, 841 F. Supp. 2d at 1237. A further layer of protection that the courts  
12 have required is to prohibit the prosecution from presenting at trial that the defendant was the  
13 one who entered the passcode. *Id.* at 1238.

14 Therefore, the defendant should be compelled to provide a fingerprint or passcode  
15 because his Fifth Amendment right is not implicated and can be thoroughly protected.  
16 Providing a fingerprint is not testimonial. Providing a passcode is not testimonial, and even if  
17 it is, the foregone conclusion applies. The State is independently aware of the phone's  
18 passcode, is aware of the information on the phone, knows the defendant possessed and used  
19 the phone, and the passcode is self-authenticating. Further, the court could compel the  
20 defendant to enter the passcode without disclosing it to the State. The court may also prohibit  
21 the State from presenting at trial that the defendant opened the phone with his fingerprint or  
22 passcode, in order to cure any issue relating to ownership of the item, should the defense  
23 choose to go that route.

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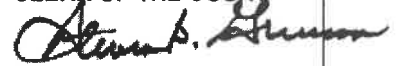
DATED this 23rd day of April, 2018.

BY /s/ JOHN GIORDANI  
JOHN GIORDANI  
Chief Deputy District Attorney  
Nevada Bar #012381

I hereby certify that service of the above and foregoing was made this 23rd day of April, 2018, by electronic transmission to:

BY /s/ E. DEL PADRE  
E. DEL PADRE  
Secretary for the District Attorney's Office

JG/ed/GCU



OPPM  
JONELL THOMAS  
SPECIAL PUBLIC DEFENDER  
Nevada Bar #4771  
MONICA R. TRUJILLO  
Chief Deputy Special Public Defender  
Nevada Bar #11301  
330 So. Third Street, Suite #800  
Las Vegas, Nevada 89155  
(702) 455-6265  
FAX: (702) 455-6273  
EMAIL: trujilmr@clarkcountynv.gov  
Attorney for Larry Decorleon Brown

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,	)	CASE NO. C-17-326247-1
	)	DEPT. NO. 21
Plaintiff,	)	
	)	
vs.	)	
	)	
LARRY DECORLEON BROWN,	)	
ID 8376788,	)	
	)	
Defendant.	)	

**OPPOSITION TO STATE'S MOTION TO COMPEL DEFENDANT BROWN'S  
CELLULAR PHONE PASSCODE, OR ALTERNATIVELY, TO COMPEL  
FINGERPRINT**

DATE: May 22, 2018  
TIME: 9:30 a.m.

COMES NOW, Defendant Larry Decorleon Brown, by and through his attorneys JoNell Thomas, Special Public Defender, and Monica R. Trujillo, Chief Deputy Special Public Defender, and hereby moves this Honorable Court pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, Article 1, Section 8, of the Nevada Constitution, and applicable state law, to deny the State's request for this Court to order Mr. Brown to provide his passcode or fingerprint.

### PROCEDURAL HISTORY

On September 14, 2017, Mr. Brown was arraigned on an Indictment in District Court, Department 3. Mr. Brown entered a plea of Not Guilty and waived his state right to a speedy trial. Thereafter, the State filed a Second Superseding Indictment, adding one count as to Mr. Brown. On October 19, 2017, Mr. Brown again entered a plea of Not Guilty and waived his state right to a speedy trial. On December 19, 2017, this Honorable Court received a Third Superseding Indictment. At that hearing, this Court noted that it did not need to arraign Mr. Brown because there were no charges added, only additional evidence and testimony regarding the charges. At a status check on October 31, 2017, this Court scheduled trial for June 18, 2018. On April 11, 2018, Nicholas Wooldridge filed a Motion to Withdraw as Attorney of Record. This Court granted Mr. Wooldridge's motion on April 24, 2018 and appointed the Special Public Defender's Office. Thereafter on April 26, 2018, the Special Public Defender's Office confirmed as counsel. At a status check on May 8, 2018, counsel informed this Court that while Mr. Wooldridge provided the discovery in his possession, several items were missing. The State agreed to provide counsel with complete discovery as well as agreed that counsel could file an opposition to the instant motion on May 18, 2018.

Mr. Brown is charged by way of Third Superseding Indictment with one count of Conspiracy to Commit Robbery, one count of Robbery with Use of a Deadly Weapon, one count of Murder with Use of a Deadly Weapon and one count of Ownership or Possession of Firearm by Prohibited Person.

### PERTINENT FACTS

On February 21, 2017, officers responded to the parking lot of Sky Pointe Landing Apartments at 5850 Sky Pointe Drive. See, Declaration of Warrant, p. 1 (hereafter referred to as Exhibit A). Upon arrival, officers discovered the body of Kwame Banks deceased from a

1 gunshot wound. Exh. A, p. 1. While canvassing the scene, officers found three cell phones in  
2 the area. Exh. A, p. 2. The first cell phone was located under Banks' body. Exh. A, p. 2. The  
3 second cell phone was located approximately ten to fifteen feet from Banks' body in a landscaped  
4 area. Exh. A, p. 2. The third cell phone was located approximately one hundred feet north of  
5 Banks' body. Exh. A, p. 2. According to officers, two of the cell phones were examined, but  
6 forensic analysts were unable to examine the third cell phone. Exh. A, p. 5. Detectives obtained  
7 the integrated circuit card identifier from that phone and sent the information to Sprint who  
8 subsequently identified the subscriber as Larry Brown. Exh. A, p. 5. Sprint further identified  
9 the number associated with the account. Exh. A, p. 5.

#### 11 LEGAL ARGUMENT

##### 12 **I. COMPELLING MR. BROWN TO PROVIDE THE STATE WITH HIS** 13 **PASSWORD OR FINGERPRINT WOULD VIOLATE HIS FIFTH** 14 **AMENDMENT RIGHT AGAINST SELF-INCRIMINATION**

15 It is well-settled that the Fifth Amendment protects a person in any criminal from being  
16 a witness against himself. The United States Supreme Court has held that the Fifth Amendment  
17 covers testimonial communications. Doe v. United States, 487 U.S. 201, 207 (1988).  
18 Testimonial communications are those in which the communication explicitly or implicitly  
19 relates a factual assertion or discloses information. Id. at 210.

21 The High Court has further extended the privilege to cover acts. "It is clear that the  
22 protection of the privilege reaches an accused's communications, whatever form they might take,  
23 and the compulsion of responses which are also communications, for example, compliance with  
24 a subpoena to produce one's papers." Schmerber v. Cal., 384 U.S. 757, 763-64 (1966) (citing  
25 Boyd v. United States, 116 U.S. 616). "The touchstone of whether an act of production is  
26 testimonial is whether the government compels the individual to use 'the contents of his own  
27 mind' to explicitly or implicitly communicate some statement of fact." United States v. Doe,  
28 670 F.3d 1335, 1345 (11th Cir. 2012) (citations omitted).

1           **A.     The Act of Producing a Fingerprint is Testimonial**

2           While counsel for the State asserts that providing a fingerprint to unlock a phone is non-  
3 testimonial and merely a physical act not protected by the Fifth Amendment, this so-called  
4 “physical act” goes beyond what the United States Supreme Court has held is a permissible use  
5 of a physical characteristic.

6           In reviewing the historical underpinnings of the Fifth Amendment, the Court in Doe v.  
7 United States noted,

8                     [t]he Self-Incrimination Clause reflects “a judgment...that the prosecution  
9 should [not] be free to build up a criminal case, in whole or in part, with  
10 the assistance of enforced disclosures by the accused.”

11 487 U.S. 201, 212 (1988) (citations omitted). The Court also acknowledged the instances where  
12 the Fifth Amendment is not implicated, namely compelling a suspect to: 1) furnish a blood  
13 sample, 2) provide handwriting exemplars, 3) provide voice exemplars, 4) stand in a line-up or  
14 5) try on clothing. Id. at 210. The distinction between courts and the legal process to compel a  
15 defendant to provide physical characteristics or attributes versus actual communications is that  
16 the former is used solely for a comparison of the physical properties, “not for the testimonial or  
17 communicative content of what was to be said.” United States v. Dionisio, 410 U.S. 1 (1973).  
18 Undoubtedly, if the State successfully obtains anything of evidentiary value, the contents of  
19 those messages will be used a trial to inculcate Mr. Brown. Furthermore, production of the  
20 password in this case is not sought for comparative purposes as the State has nothing to compare  
21 it to. This fact is what distinguishes the act of producing a password from the “physical acts”  
22 described by various courts. Rather the State seeks the password to access the contents of the  
23 phone to aid in its prosecution.

24           Counsel for the State cites Commonwealth v. Baust as support for its argument that  
25 compelling a defendant to produce his fingerprint to unlock a phone was not testimonial. 89 Va.  
26 Cir. 267 (2014). There, the victim in the case told officers that the defendant recorded the assault



1 on his phone. Id. at 267. Officers recovered the phone and received affirmation from both the  
2 defendant and the victim that the phone “‘could have possibly’ recorded the assault and the  
3 recording ‘may exist’ on the phone.” Id. at 267-68. Ultimately, the goal was to retrieve the  
4 alleged video to aid in prosecution.

5 While the Court ordered the motion to compel the fingerprint granted, the Court also  
6 cautioned that the Commonwealth had not requested that the defendant be compelled to provide  
7 the unencrypted video, the ultimate goal and the reason the Commonwealth sought the password  
8 to begin with. Baust, 89 Va. Cir. 267 at 271. The Court determined that the existence and  
9 location of the recording was not a foregone conclusion and compelling the defendant to produce  
10 an unencrypted video would be self-incriminating. “Defendant’s production of the unencrypted  
11 recording would be testimonial because Defendant would be admitting the recording exists, it  
12 was in his possession and control, and that the recording is authentic.” Id. at 271. The Court  
13 also unequivocally concluded that compelling the defendant to produce his password forced him  
14 to ‘disclose the contents of his own mind’ and therefore was both compelled and testimonial. Id.  
15 at 271. The Court denied the Commonwealth’s request to compel production of the password.

16 Most importantly, while the Court in Baust granted the motion to compel the fingerprint,  
17 it also recognized the inherent danger and implication of the Fifth Amendment in actually  
18 accessing the contents of the phone. The Court held that while the Commonwealth had not  
19 actually asked to compel the video recording, it ultimately could not ask because it would violate  
20 the Fifth Amendment. Baust, 89 Va. Cir. 267 at 271. While the dissection of the issue by the  
21 Court is an interesting approach, the result is clear: production of the video is testimonial and  
22 implicates the Fifth Amendment. The only way the video would be produced is by the fingerprint  
23 providing access to the phone. If this Court is to follow the analysis in Baust, the conclusion  
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1 would be to compel Mr. Brown to unlock the phone with his fingerprint, but not allow the State  
2 to access his text messages as that act would be self-incriminating.

3 **B. The Act of Producing a Password is Testimonial**

4 The act of producing a password is testimonial in and of itself. In United States v.  
5 Hubbell, the United States Supreme Court stressed that the privilege against Self-Incrimination  
6 extends to answers that would, “furnish a link in the chain of evidence needed to prosecute the  
7 claimant for a federal crime.” 530 U.S. 27, 38 (2000) (citing Hoffman v. United States, 341 U.S.  
8 479, 486 (1951)). Specifically, “[c]ompelled testimony that communicates information that may  
9 ‘lead to incriminating evidence’ is privileged even if the information itself is not inculpatory.”  
10 Id. (citations omitted). “The touchstone of whether an act of production is testimonial is whether  
11 the government compels the individual to use ‘the contents of his own mind’ to explicitly or  
12 implicitly communicate some statement of fact.” United States v. Doe (In re Jury Subpoena  
13 Duces Tecum), 670 F.3d 1335, 1345 (2012) (citations omitted).

16 Here, Mr. Brown would actually be required to communicate a statement, namely the  
17 password. Therefore, the statement is a testimonial communication and is protected by the Fifth  
18 Amendment. In United States v. Doe, the United States Court of Appeals for the Eleventh Circuit  
19 held that the act of requiring Doe to decrypt the hard drives he was ordered to produce implicated  
20 the Fifth Amendment. 670 F.3d 1335, 1346 (11th Cir. 2012). The Court stressed that the act of  
21 decryption, essentially providing a password, was not just a physical act but would require him  
22 to use the contents of his mind. Id. In discussing the foregone conclusion doctrine, the Court  
23 determined that the Government did not know whether any files even existed on the hard drives.  
24 Specifically, while the Government there possessed the drives, it did not know what, if anything,  
25 was on those drives. Id. at 1346-47. Similarly here, by the State’s own admission, it does not  
26 know what, if anything, is on Mr. Brown’s cell phone. According to the State, Co-Defendant  
27 Carter destroyed his phone, the cell phone records do not contain the contents of any messages  
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1 and there is no other independent evidence that any information is on the password protected  
2 cell phone. State's Motion, p. 6. Like in Doe, the act of compelling Mr. Brown to communicate  
3 his password would require him to "use the contents of his mind". Therefore, being compelled  
4 to provide a password to unlock a cell phone is without question testimonial.

5 **II. THE FOREGONE CONCLUSION DOCTRINE DOES NOT APPLY UNDER**  
6 **THESE FACTS**

7 "Where the location, existence, and authenticity of the purported evidence is known with  
8 reasonable particularity, the contents of the individual's mind are not used against him, and  
9 therefore no Fifth Amendment protection is available." United States v. Doe, 670 F.3d 1335,  
10 1344 (11th Cir. 2012). The existence of text messages is not a foregone conclusion in this case.

11  
12 To begin, the information provided by Mr. Brown, if compelled to do so, potentially adds  
13 significant information to the State's case. Namely, providing the password or fingerprint would  
14 provide the link in the chain to constitute the Conspiracy to Commit Robbery charge and possibly  
15 other charges. The State has made clear that its theory is that, "Defendant Carter destroyed his  
16 cellphone, which he had used to communicate with Banks that evening to set up the robbery..."  
17 State's Motion, pp. 5-6. The State further believes that the contact between Mr. Brown and Mr.  
18 Carter's phone the night of the incident has something to do with Mr. Banks' death. State's  
19 Motion, p. 5. Finally, and perhaps most evident is that the password cannot be a foregone  
20 conclusion, because if it were, the State would not need Mr. Brown to access the phone.

21  
22 **A. The State has No Independent Knowledge that Mr. Brown Possessed the**  
23 **Phone and Password or that Any Evidence Exists on Mr. Brown's Cell Phone**  
24 **with Reasonable Particularity (the existence and location prong)**

25 The act of producing a password or fingerprint is comparable to the compelled production  
26 of documents by way of subpoena. The State does not know that Mr. Brown possessed the phone  
27 and password independent of him acknowledging that he did. By the State's own recitation of  
28 facts, the cell phone in question was not in Mr. Brown's possession at the time it was found near

1 the scene. Furthermore, Mr. Brown has never admitted to having possessed the phone on the  
2 day of the incident or ever for that matter. While the State suggests that testimony by his  
3 girlfriend before the Grand Jury establishes he had control and possession of the phone,  
4 interestingly enough there appears to be no statement that he had his phone on the day of the  
5 incident, knows the password to that phone or that any evidence exists on the phone.

6  
7 Furthermore, there is no independent evidence that anything of evidentiary value exists  
8 on Mr. Brown's cell phone. Mr. Carter's phone does not exist. The State assumes that there is  
9 something of evidentiary value on the cell phone it seeks to access, but such speculation is not  
10 independent corroboration. While the State cites to United States v. Fricosu as authority for  
11 merely needing to know about the existence of evidence, that case is distinguishable from the  
12 instant facts. 841 F. Supp. 2d 1232 (2012). The Court in that case specifically found that during  
13 a recorded phone call the defendant made admissions which confirmed the existence of the  
14 specific evidence the State sought on her laptop, and divulged that the information was password  
15 protected and that she could access the information. Id. at 1235-36. Here, the State has no such  
16 information. Mr. Brown has never acknowledged that anything exists on the cell phone he once  
17 used. Here, the State merely has a suspicion that the messages exist and if they do exist, the  
18 State assumes the messages would likely be in Mr. Brown's cell phone. That suspicion does not  
19 establish existence and location aside from Mr. Brown's "testimony" that he in fact possesses  
20 the information and can access it.

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22  
23 The State cites to Fisher v. United States in support of its argument that Mr. Brown's  
24 password or fingerprint is a foregone conclusion. The State, however, failed to point out that in  
25 Fisher the documents sought were documents possessed by both the attorneys and accountants  
26 in the case. The United States Supreme Court in United States v. Hubbell later analyzed the  
27 facts in Fisher and stressed that the Government in Fisher, "already knew that the documents  
28

1 were in the attorneys' possession and could independently confirm their existence and  
2 authenticity through the accountants who created them..." 530 U.S. 27 at 44-45. That is simply  
3 not the case here. The State cannot independently establish that Mr. Brown has the password to  
4 the cell phone or that any evidence exists on it without him incriminating himself and implicitly  
5 acknowledging that something of evidentiary value is located on the phone.

6  
7 **B. The State Cannot Authenticate the Password Without Mr. Brown**

8 According to the Court of Appeals for the Ninth Circuit,

9 [t]he authenticity prong of the foregone conclusion doctrine requires the  
10 government to establish that it can independently verify that the compelled  
documents 'are in facts what they purport to be'

11 Doe v. United States, (In re Grand Jury Subpoena) 383, F.3d 905, 912 (9th Cir. 2004). Part of  
12 that analysis requires the State to show that the object compelled would be admissible  
13 independent of the witness' production. Clearly, the State cannot make that showing. Again, if  
14 the password were independently admissible, the State would not have filed the instant motion  
15 and it would be able to access the contents of the phone.

16  
17 **III. THERE IS NO ALTERNATIVE TO CIRCUMVENT THE FIFTH AMENDMENT**

18 Regardless of how the password or fingerprint is provided, the result is the same. The  
19 product of compulsion would provide the link in the chain of evidence needed to prosecute Mr.  
20 Brown. The State repeatedly notes in its motion that if this Court compels Mr. Brown to provide  
21 his password or fingerprint it will not present that fact as evidence in a trial against him. The  
22 State, however, misses the point.

23  
24 The question, however, is not whether the response to the subpoena may be  
25 introduced into evidence at his criminal trial...But the fact that the Government  
26 intends no such use of the act of production leaves open the separate question  
27 whether it has already made 'derivative use' of the testimonial aspect of that act in  
obtaining the indictment against respondent and in preparing its case for trial.

28 Hubbell, 530 U.S. 27 at 41. While the United States Supreme Court in Hubbell analyzed the  
foregone conclusion doctrine in the context of derivative use immunity and the response to a

1 subpoena to produce documents, the analysis remains the same. Forcing Mr. Brown to produce  
2 either a password or fingerprint is a testimonial act in and of itself and the State will use the  
3 results of that search to aid in its prosecution.

4 If the United States Supreme Court has concluded that the privilege extends to targets of  
5 a grand jury investigation when questioned about the existence of sources of potentially  
6 incriminating evidence as well as to the response to subpoenas seeking discovery of similar  
7 sources, then this Court should likewise conclude that the privilege also extends to a court order  
8 requiring a defendant to give the State access to potentially incriminating evidence against  
9 himself. Hubbell, 530 U.S. 27 at 43.

#### 11 **IV. ACCESS TO THE CELL PHONE IMPLICATES PRIVACY CONCERNS**

12 The Court should not allow the State to have unfettered access to the cell phone in the  
13 instant case. The Court in Riley v. California held that officers must generally secure a warrant  
14 before searching a cell phone unless a particular warrantless exception applies. 134 S. Ct. 2473,  
15 2485 (2014). The Court based its ruling, in part, on the fact that cell phones are essentially,  
16 “minicomputers that also happen to have the capacity to be used as a telephone.” Id. at 2489.  
17 Specifically, “the sum of an individual’s private life can be reconstructed” through their immense  
18 storage capacity. Id. From photographs, internet searches, contacts, historical location  
19 information, specific applications and personal records of everyday life, access to this most  
20 private possession requires a warrant for a reason. Id. at 2489-90. Access to a cell phone’s  
21 contents invades one’s privacy.

22 Defense counsel recognizes that the State obtained a warrant to search the instant cell  
23 phone; however, because the State is unable to access the contents, the inquiry should end there.  
24 Allowing the State to have complete access to extensive personal data, not only forces Mr. Brown  
25 to implicate himself with regard to the alleged text messages that may be on the phone, but can  
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1 also force him to incriminate himself with anything on the phone that dates back to when it was  
2 first operable. The risk to Mr. Brown is far too great and an intrusion of his privacy.

3 **CONCLUSION**

4 Based on the foregoing, Mr. Brown respectfully requests that this Court deny the State's  
5 Motion to Compel Mr. Brown to provide his passcode or fingerprint to access the cell phone as  
6 it would violate his Fifth Amendment right against Self-Incrimination.  
7

8 Dated: May 18, 2018

9 SUBMITTED BY

10 /s/ MONICA R. TRUJILLO

11  
12 MONICA R. TRUJILLO  
13 Attorney for Brown

14 **CERTIFICATE OF ELECTRONIC FILING**

15 I hereby certify that service of the above mentioned matter was made pursuant to  
16 EDCR 7.26 on the attorney for the named parties by means of electronic mail to the email  
17 address provided to the court's electronic filing system for this case. Proof of Service is the  
18 date service is made by the court's electronic filing system by email to the parties and contains  
19 a link to the file stamped document.  
20

21 PARTY  
22 STATE OF NEVADA

EMAIL  
DISTRICT ATTORNEY'S OFFICE email:  
[motions@clarkcountynyda.com](mailto:motions@clarkcountynyda.com)

23 Dated: 5/18/2018

24 /s/ ELIZABETH ARAIZA

25 An employee of the Special Public Defender  
26  
27  
28

# **EXHIBIT A**



LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**DECLARATION OF WARRANT/SUMMONS**  
(N.R.S. 171.106)  
(N.R.S. 53 amended 7/13/1993)  
**"PRINT"**

"Click to Add/Edit Event # on All Pages"

Event Number: 170221-4563

STATE OF NEVADA     )     Larry Decorleon Brown  
                              ) ss: ID#: 8376788  
COUNTY OF CLARK     )     [REDACTED]

Darin Cook P# 5730, being first duly sworn, deposes and says:

That he is a Detective with the Las Vegas Metropolitan Police Department, being so employed for a period of 19 years, assigned to investigate the crime(s) of Murder E/DW NRS 200.010, Robbery E/DW NRS 200.380 committed on or about 02/21/17, which investigation has developed Larry Decorleon Brown as the perpetrator thereof.

**THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME, TO WIT:**

On February 21, 2017, at approximately 2247 hours, the LVMPD Communications Center received several 9-1-1 callers who reported a shooting in the parking lot of the Sky Pointe Landing Apartment Homes located at 5850 Sky Pointe Drive in Las Vegas. Patrol officers and emergency medical personnel were dispatched to the scene under LVMPD event 170221-4563. Patrol officers and emergency medical personnel arrived and discovered the body of an adult black male, later identified as Kwame Banks ID #2690931, deceased from an apparent gunshot wound. Patrol officers contacted witnesses, secured the crime scene with yellow crime scene tape and awaited the arrival of homicide personnel.

Homicide personnel responded to the crime scene and assume investigatory responsibility. Detective Cook and Detective Dosch examined the crime scene for evidence and noted the body was located in a parking space under a carport in front of building [REDACTED]. Evidence at the crime scene consisted of apparent blood, foot impressions in apparent blood, a .40 caliber cartridge case, a black latex glove and a black cloth glove. Banks' pants pockets were pulled out, which suggested the decedent was also the victim of a robbery. Banks' body was lying almost face-down on the ground. There was an apparent shoe impression in the victim's blood. The shoe impressions continued south from the body and appeared to end at carport spot [REDACTED]. This suggested the suspect stepped in the victim's blood

**CONTINUATION**Event #: 170221-4563

and ran due to the stride distance between shoe impressions. This suggested the suspect ran to a vehicle that may have been parked in the now-vacant carport spot.

There were three cell phones located in the crime scene. A black LG Samsung cell phone with a cracked screen and apparent blood was located under Banks' body. A black Samsung cell phone in a black case was found approximately 10 to 15 feet away from the Banks' body in a landscaped area, which appeared to have been disturbed and suggested a fight took place. The third cell phone, a black cell phone with a cracked screen and apparent blood was found approximately 100' north of Banks' body in the parking lot near the main entrance. The phone was in three pieces (phone, battery and battery cover). Just west of the dismantled or broken cell phone was another latex glove with apparent blood and a \$10.00 bill.

Detective D. Cook took possession of the cell phones and turned them over to the custody of the LVMPD Computer Forensics Lab (CFL). Detective M. Dosch obtained a search warrant for the cell phones, which was signed by District Court Judge Douglas Smith. The search warrant authorized a forensic examination of the cell phones for digital evidence and to determine ownership.

During the investigation homicide detectives contacted and interviewed several witnesses. On February 22, 2017, at approximately 0150 hours, Detective Dosch conducted an audio-recorded interview with Dereka Nelson, who stated round 2240 hours Nelson heard what sounded like a male yelling for help, which was followed by a gunshot. Nelson went to her bedroom, called 9-1-1 and looked outside her bedroom window. Underneath the carport and next to her white Toyota Solara were two men involved in a physical altercation. The fight moved onto the top of her hood and the victim was under the suspect. Nelson heard a second gunshot, but did not see a weapon. The suspect was wearing a dark colored cap, a dark colored hooded sweatshirt, dark colored pants, and "shiny" gloves. Nelson retreated to her closet for cover and spoke to the dispatcher. About one minute later Nelson returned to the window as saw the victim lying motionless on the ground next to her car.

A male then approached the victim's body from the east and began searching the victim's pants pockets. Nelson believed the person going through the victim's pockets was most likely the same suspect the victim had fought with. The suspect walked away and within approximately 10 seconds Nelson saw a navy blue or black four-door sedan southbound through the parking lot toward the south entrance. The vehicle had tinted windows and appeared to be an older model. Nelson did not see the suspect's face and cannot make an identification. Nelson said the

## CONTINUATION

Event #: 170221-4563

vehicles parked to the south of her car and to the north of the victim's body belonged to other tenants in the complex.

On February 22<sup>nd</sup>, 2017 at approximately 0214 hours, Detective Merrick obtained a recorded statement from Jakhai Smith at 5850 Sky Pointe Drive [REDACTED], Jakhai lives in a second floor apartment and his bedroom window looks out to the parking lot where the victim was lying. Smith was in his bedroom and heard people arguing outside his window, so he got up and peered out through the blinds. Smith saw two males engaged in a fight. Smith described the victim as a black male adult wearing gray sweat pants and red "air force" shoes. Smith described the suspect as a black male adult wearing all black clothing and had a chrome semi-auto handgun in his right hand. The suspect and the victim were fighting over the gun when the suspect shot the victim one time in the stomach. The suspect told the victim not to move prior to shooting him. The suspect then went through the victim's front pant pockets and took some money. The suspect then walked out of sight and proceeded south bound through the parking lot. Also present during the recorded statement was Smith's mother, Lonneta Smith, DOB: [REDACTED].

On February 22, 2017, at approximately 0141 hours, Detective Merrick obtained a recorded statement from Branden Kohler who stated he was inside his apartment which is located near the tennis courts. Kohler's wife, Kelly Kohler, yelled at him to come back outside. Once on the patio, Kohler heard two men arguing in the direction where the victim was located. One of the men was yelling "no, no, no", then Kohler heard one gunshot. Kohler then went back into his apartment and retrieved his firearm, then went back outside to his patio. Kohler heard the two men arguing again, then heard a second gunshot. Kohler then saw a male stand up and start to walk north bound towards the leasing office. The male was wearing a dark hoody with white lettering. Kohler lost sight of the male and then saw a vehicle back out of a covered parking spot which is south of the victim's location. The vehicle then exited south through the parking lot. Kohler believed the vehicle was a dark colored Nissan Maxima or Altima.

On February 22<sup>nd</sup>, 2017, at approximately 0157 hours, Detective Merrick obtained a recorded statement from Kelly Kohler who was sitting on her patio when she heard screaming and a male voice saying "help, help, help". Kohler told her husband to come outside and then she heard a female screaming. Kohler then heard a gunshot and Kohler went inside her

**CONTINUATION**Event #: 170221-4563

apartment. Kohler called 911 and while she was talking to the operator she heard a second gunshot.

On February 22<sup>nd</sup> Detective Cook and Detective Dosch attended Banks' autopsy at the Clark County Coroner's Office. A search of the clothes worn by Banks at the time of his death revealed \$1,880 dollars in his jacket pocket. Dr. Olson determined Banks' cause of death as a gunshot wound to the chest and Banks' death was ruled a homicide.

On February 23<sup>rd</sup> Detective Cook and Detective Dosch located Banks' Nissan Altima parked on the west end of a business complex located at 7495 Azure Drive, which was less than a mile from the crime scene. The vehicle's license plates were missing and the interior of the vehicle had been set on fire in an attempt to destroy evidence. Detective Dosch contacted businesses across the street, which had video surveillance of the adjacent business complex where Banks' vehicle had been dumped. The video surveillance showed Banks' vehicle pulling into the business complex on February 21<sup>st</sup>, at approximately 2332 hours, which was approximately 45 minutes after the murder was reported to law enforcement. At approximately 2356 hours a newer model, mid-size white sport utility vehicle (SUV) arrived and parked next to Nissan Altima. Six minutes later, at approximately 0002 hours, a marked LVMPD vehicle pulled into the same parking lot just as the white SUV exited the business complex. The marked LVMPD unit pulled up behind the Nissan Altima and appeared to shine a spotlight on the vehicle.

Detective Dosch received information from LVMPD that the officer who arrived in the business complex just as the white SUV was leaving was Officer English. Officer English ran Banks' California license plate at approximately 0003 hours. The existence of Banks' stolen vehicle was not known to detectives at that time and was not put into NCIC until later that day. Detective Dosch contacted Officer English and asked him about the incident. Officer English said he was westbound on Azure Drive when he looked into the parking lot and saw a black male standing next to a black Nissan Altima. Officer English described the black male as having a large frame, 230+ pounds, over 6'0" and wearing all dark clothing. It appeared suspicious to Officer English who then pulled into the parking lot. At the same time a newer model white SUV drove next to him, which was driven by an apparent black female. Officer English did not see the black male in the white SUV and could not get the SUV's license plate before it drove away on Azure Drive. Officer English pulled in behind Banks' vehicle and found it was unoccupied and the black male was gone.

## CONTINUATION

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The video surveillance also showed Banks' Nissan Altima still parked in the parking lot on the early morning hours of February 23<sup>rd</sup>, at approximately 0243 hours, the vehicle appeared to be set on fire. A vehicle could not be seen entering the business complex before the fire. However, a white SUV, similar to the one depicted on video surveillance on February 21<sup>st</sup>, was observed driving in both directions on Azure Drive. The vehicle appeared to be set on fire three separate times. Each time the vehicle was set on fire the white SUV was seen driving by.

On February 24<sup>th</sup> the forensic examination of the cell phones were completed for two of the three cell phones. The third cell phone, which was found in the scuffed rocks approximately five to six feet away from Banks' body, was locked. Detectives were able to obtain the cell phone's integrated circuit card identifier (ICCID) from the subscriber identity module (SIM card). The ICCID was the serial number for the SIM card. The ICCID was sent to Sprint who identified the subscriber as Larry Brown, date of birth [REDACTED], and social security number [REDACTED]. Brown was a black male and his address was in Atlanta, Georgia. Brown's phone number was identified as [REDACTED].

A records check on Brown showed he had served prison time in Georgia for bank robbery and narcotics-related offenses. It also showed Brown attempted to get a Nevada identification card on June 24<sup>th</sup>, 2016 through Nevada DMV, which was denied for incomplete documents. The address listed by Brown was [REDACTED], in Las Vegas. Brown also listed his cell phone number of [REDACTED]. Brown's possible girlfriend was then identified as Angelisa Ryder ID #8376789. Ryder lives at the same address, [REDACTED], and had been there since 2014. Ryder listed a 2015 Jeep SUV bearing Nevada registration [REDACTED] registered at the same address.

The other two cell phones had phone numbers of [REDACTED] and [REDACTED]. From the contact list of cell phone [REDACTED], Detectives located a name "Poe ATL". The corresponding cell phone number was [REDACTED]. Detective Cook obtained the phone records from T-Mobile, which identified the subscriber of 7 [REDACTED] as Anthony Carter with an address of [REDACTED] in Las Vegas. A SCOPE records check on Carter revealed he was a black male born in Atlanta, Georgia and his listed moniker was "Poke."

The decedent Kwame Banks' cell phone showed a lot of activity between his phone number [REDACTED] and Anthony Carter's phone number [REDACTED]. Detective Cook obtained a pen register for [REDACTED] and a court order for [REDACTED]. Both legal

## CONTINUATION

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documents were signed by District Court Judge Jerry Wiese. The pen register was sent to T-Mobile for service and the court order was sent to Sprint for service.

Detective Cook and Detective Dosch reviewed Carter's cell phone records and at the time of the murder his calls hit off a cell tower located less than 1/2 a mile northwest of the crime scene. A further review of the call records revealed significant text message activity between Carter's cell phone and Brown's cell phone between 2207 hours and 2222 hours, which was right before the murder. Then at 2240 hours there was another text message sent from Carter's phone to Brown's phone. After that there was no more contact between the two cell phones and Carter turned off his phone by 1230 hours on February 22<sup>nd</sup>. Carter's phone at the time of the incident was an HTC Desire 530 cell phone.

Detective Cook and Detective Dosch reviewed Brown's phone records. The last voice call Brown made was at 2017 hours. The call hit off a cell phone tower located less than 1/4 of a mile south of the crime scene. That was then followed by exclusive text message activity between Brown's cell phone and Carter's cell phone, which was between 2206 hours and 2240 hours. Then on February 22<sup>nd</sup> between 0427 hours and 0523 hours Brown's cell phone received several text messages from phone number [REDACTED], which belonged to Angelisa Ryder. A LVMPD records check revealed Brown never made a report for a lost or stolen cell phone.

On February 25<sup>th</sup> Detective Dosch conducted an on-line records check of the VIN number of Ryder's vehicle. The records check revealed the vehicle was listed for sale by Enterprise Car Rental in 2016. The on-line flyer included several images of the vehicle, which was a white 2015 Jeep Compass. The vehicle bared a strong resemblance to the white SUV depicted in the video surveillance recovered from across the street of the business complex where Banks' vehicle was dumped and burned.

On March 18<sup>th</sup> Detective Dosch drafted a search warrant for the residences connected to Anthony Carter and Larry Brown. The search warrant was signed by the honorable Judge Jerry Wiese. On March 20<sup>th</sup> the LVMPD SWAT unit conducted service of the search warrant. Anthony Carter and Tiffany Carter were taken into custody at [REDACTED] after leaving the residence at [REDACTED]. Anthony and Tiffany Carter were transported to LVMPD Headquarters for interview.

At approximately 1030 hours Detective Cook and Detective Dosch conducted an interview in the family interview room with Tiffany Carter. The door was unlocked and Tiffany

## CONTINUATION

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was told she is able to leave at any time. Tiffany said in summary, she works as a patient coordinator at Mountain View Hospital. She was at home with her parents and children all night on February 21<sup>st</sup>. Her ex-husband, Anthony Carter, also lives at the residence and shares her bed. On the night of February 21<sup>st</sup> Anthony left the house and did not return all night. She woke up in the morning of February 22<sup>nd</sup>, and Anthony was still gone. She saw on the morning news that a shooting had taken place at the apartment complex located on Sky Pointe Drive. She knew that Anthony had a friend by the moniker of "Biggs," who she identified from a photograph as Carnell Cave. She knew Biggs lived at the apartments on Sky Pointe Drive. She said Anthony had recently taken her to Cave's apartment located at 5850 Sky Pointe Drive.

On the morning of February 22<sup>nd</sup> she went to work at Mountain View Hospital and returned home at approximately 1730 hours, Anthony had returned home and told her how there was a shooting near Biggs' (Carnell Cave) apartment and Kwame Banks was killed. She claimed she didn't ask any further question but she admitted Banks was an acquaintance of Anthony's. She admitted she has known Anthony to go out all night to sell drugs however she keeps that part of his life at a distance. She has known for several years that Anthony sells narcotics and she has rented vehicles for Anthony to make narcotic runs to northern California to purchase marijuana. She claimed on occasions to have gone to northern California, while Anthony was picking up quantities of marijuana, but claimed she does not have any part in the sales.

She recall Anthony having another friend that had recently been to her house. Tiffany said the friend drove a white SUV. She was shown a photographs of Larry Brown and the white Jeep Compass owned by Angelisa Ryder. She replied, "Yes," this is the friend that she has seen over at the house and he drove a white SUV. She gave two cell phone number for Anthony, she said Anthony changes phone frequently because of the drug sales. She gave a phone number of [REDACTED] as the phone number he previously used prior to the shooting. Tiffany said Anthony normally keeps his marijuana in the garage in a blue suite case.

Detective Cook and Detective Dosch conducted an audio and video interview with Anthony Carter. Anthony was read his Miranda rights at 1139 hours, which he stated he understood his rights and agreed to speak to Detectives. Anthony Carter said in summary: He lives with his wife, Tiffany Carter, and his three children at [REDACTED]. He has lived in Las Vegas for approximately 17 years. Anthony is not employed and sells small amounts of marijuana. He recently purchased a small amount of marijuana from a person in

## CONTINUATION

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Redding California. He recently drove to Redding and brought back two large plastic baggies of marijuana. Detectives explained a search warrant was issued for his residence at [REDACTED] and Detectives located a large amount of marijuana and a Firearm described as a (Springfield 9mm handgun serial number MG975091 with (3) three magazines). Anthony said that he had just purchased the firearm and said he only sells small bags of marijuana.

Anthony said on February 21<sup>st</sup>, he was at his friend's apartment who he named as Carnell Cave, who lives at 5850 Sky Pointe Drive [REDACTED]. He received a ride to the apartment from a friend he referred to as Dakota. Anthony stayed at Cave's apartment waiting for a male known to him as "B" (Kwame Banks) who was going to deliver (3) three quarter pounds of marijuana. Anthony said Banks had texted him earlier in the day but later text that he didn't have any marijuana and he would have to wait until the next day. Anthony then changed his statement to say Banks arrived outside Cave's apartment in a dark, 4 door, Nissan Altima. Banks had parked his vehicle under the covered parking facing west towards Cave's apartment building. Banks' then brought (3) three quarter pound plastic baggies of marijuana into Cave's apartment and delivered it to Anthony. Anthony said the (3) three baggies were intended for Larry Brown, Dakota and himself. Banks' delivered the marijuana and left.

Anthony said a few minutes later he heard (4) four to (5) five gunshots and looked outside. Anthony saw Police officers at the bottom of the stairs and he saw Banks' vehicle still parked under the covered parking. Anthony stayed inside Cave's apartment all night playing video games until the next morning. Anthony changed his story and said Banks' did not actually come inside Cave's apartment, he met him at the basketball court. Banks' had backed his vehicle into the parking stall next to the basketball court and his vehicle was facing west. Anthony walked up to Banks' driver's window and purchased (3) three quarter pounds of marijuana from Banks. Anthony watched as Banks drove out of the complex. Anthony said he returned to Caves' apartment where he and Cave was playing video games. Anthony then heard (4) four to (5) five gunshots and looked out the door to see police and Banks' vehicle parked under the cover parking just below Caves stairway entrance. Anthony could not explain how he saw Banks drive away, then saw his vehicle parked in front of Cave's apartment after hearing the gunshots and saw police outside.

Anthony statement changed several times and had many inconsistencies. Anthony gave two different cell numbers he used [REDACTED]. Anthony said the day



## CONTINUATION

Event #: 170221-4563

after Banks' was killed he discarded his HTC Desire 530 cell phone with a cellular number [REDACTED], because he knew Detectives would come and investigate Banks murder and learn about the drug sales between him and Banks. Anthony was asked about sending and receiving text and phone messages to Larry Brown at phone [REDACTED] Anthony said he has known Larry Brown for many years and they are both from Decatur, Georgia. Anthony recently heard that Brown was in town and only recently began hanging out with Brown.

Anthony was shown a photograph of Larry Brown DOB [REDACTED]. Anthony identified Brown and said he recently came by his house at [REDACTED]. Anthony identified the white Jeep Compass, which Brown is known to drive. Anthony admitted to being in Brown's vehicle recently. Anthony denied having any knowledge of being present when Banks' was murder or being outside when the shooting took place. Anthony said he was in Cave's apartment all night and never heard Detectives knocking on the door. Anthony left Cave's apartment early the next morning on February 22<sup>nd</sup> and walked to the nearby Sinclair gas station and got coffee, then walked home. Anthony could not explain how he knew Kwame Banks was the victim of the shooting prior to the coroner releasing the information to the media.

On March 20<sup>th</sup>, at approximately 0917 hours, Detective Jaeger conducted a taped interview with Angelisa Ryder in front of her apartment. Ryder said in summary, Larry Brown and Angelisa Ryder lived in Atlanta, Georgia before moving to Las Vegas. Ryder has known Brown for the last four years, and lived with him for the last 18 months. Ryder and Brown share the master bedroom, and Brown has a "man cave" in the spare bedroom. Brown works as a mobile car detailer and drove a white Chevrolet Express van. The van was recently towed due to mechanical issues and was being repaired. Brown normally drives Ryder to work at Summerlin Hospital in her 2015 Jeep Compass, with NV License [REDACTED], and picks her up after work so Brown can use her vehicle while she is at work. Ryder works nights at the hospital as a monitor technician from 1900 hours to 0700 hours in the Telemetry Room.

On February 22<sup>nd</sup>, at approximately 0500 hours, Ryder was working at the hospital and received a message that Brown was at the hospital and wanted to see her. Ryder left the Telemetry Room and met Brown. Ryder described Brown as visibly shaken, walking with a limp, he had a swollen knee and scratches on both arms, and complained of a headache. Brown claimed he was with his friend "Poke" (Anthony Carter), when two unknown men tried to rob and kill him. One of the men pointed a gun at Brown, so Brown tossed his phone in the

**CONTINUATION**Event #: 170221-4563

rocks as a distraction and fought with the man. Ryder told Brown to call police and Brown replied, "Don't ask too many questions." Ryder gave Brown some aspirin for his headache and returned to work. A few days later Brown went to the Sprint store located on Lake Mead Boulevard and obtained a replacement cell phone. Ryder said Brown recently left to Georgia on Allegiant Airlines.

Due to the above facts and circumstances Larry Brown did willfully and unlawfully use force and violence against the person of Kwame Banks by using a .40 Caliber semi-auto handgun to shoot Banks in the chest causing his death, constituting Murder with the Use of a Deadly Weapon NRS 200.010

Larry Brown did willfully and unlawfully take personal property from the person of Kwame Banks by going through Banks pockets, while Banks was shot and lying face down on the pavement. Brown then took Banks' Nissan Altima and fled the crime scene which constitutes the crime of Robbery with Use of a Deadly Weapon in violation of NRS 200.380

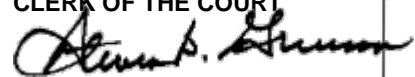
Wherefore, Declarant prays that a Warrant of Arrest be issued for suspect Larry Decorleon Brown on the charge(s) of Murder E/DW, Robbery E/DW.

**I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.**

**Executed on this 2nd day of May, 2017.**

**DECLARANT** \_\_\_\_\_

**WITNESS:** \_\_\_\_\_ **DATE:** \_\_\_\_\_



**MOT**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JOHN GIORDANI  
Chief Deputy District Attorney  
Nevada Bar #012381  
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-

LARRY DECORLEON BROWN,  
#8376788  
  
Defendant.

CASE NO: C-17-326247-1  
DEPT NO: XXI

**STATE'S NOTICE OF MOTION  
AND MOTION IN LIMINE TO ADDRESS CELLEBRITE TESTIMONY  
PERTAINING TO ADVANCED PROPRIETARY SOFTWARE**

DATE OF HEARING: 08/20/2019  
TIME OF HEARING: 9:30 AM  
**HEARING REQUESTED**

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JOHN GIORDANI, Chief Deputy District Attorney, and files this Notice Of Motion And Motion In Limine To Address Cellebrite Testimony Pertaining To Advanced Proprietary Software.

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 2nd day of August, 2019.

BY /s/ John Giordani  
JOHN GIORDANI  
Chief Deputy District Attorney  
Nevada Bar #012381

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Evidence presented to the Grand Jury shows there were three cellphones found at the murder scene. (RT1 21-22). The first cellphone was found under Banks's body and identified as belonging to Kwame Banks. (RT1 21; RT2 10). The second cellphone was found about 15 feet away from Banks's body in a disturbed landscape area and was identified as belonging to Larry Brown. (RT1 21-22, 27; RT2 10). The third cellphone was found about 100 feet from Banks's body, near the exit of the apartment complex. (RT1 22-23). That third cellphone was identified as also belonging to Kwame Banks. (RT2 10).

1           Cellphone data and pen register evidence indicate Defendant Carter was in constant and  
2 increasing telephone communication with both Kwame Banks and Larry Brown in the hours  
3 leading up to Banks's murder. (RT2 13-16). However, Kwame Banks and Larry Brown were  
4 never in telephone contact and no evidence exists to indicate they knew each other. Id.  
5 Specifically, beginning at about 7:30 PM, Defendant Carter had several telephone contacts  
6 with Kwame Banks and followed up each contact with a telephone contact to Larry Brown.  
7 (RT2 15-16). Shortly after Defendant Carter began telephone contact with Kwame Banks,  
8 cellphone-tower location data shows the phones belonging to Defendant Carter and Larry  
9 Brown both converge upon the area of the Sky Pointe Landing apartment complex where  
10 Kwame Banks was ultimately murdered. (RT2 17-19). At 10:06 PM, there is a phone call  
11 between Defendant Carter and Kwame Banks. (RT2 15). Immediately following that phone  
12 call, Defendant Carter made several phone calls to Larry Brown. (RT2 15-16). Ultimately,  
13 the telephone communication between Defendant Carter and Larry Brown totally stops after  
14 10:47 PM, which is the time independent witnesses first called 9-1-1 to report Kwame Banks's  
15 shooting death. (RT2 12, 16).

16           Although the above-referenced information could be gathered directly from the service  
17 providers for the phones, the service providers do not retain *text message content*. So, although  
18 the records indicated that there was text communication between the co-conspirators, the  
19 content of those texts was unavailable, unless it could be retrieved directly from the cellphones  
20 themselves. It was later learned that Defendant Carter destroyed his cellphone after the  
21 robbery/murder. (RT1 38-39, RT3 11). Defendant Brown's cellphone, and the text message  
22 content within it, was obviously preserved, because the phone was dropped during the robbery  
23 and left behind at the scene.

24           The LVMPD Computer Forensics Lab ("CFL") was unable to access Brown's phone  
25 because it was password protected. LVMPD CFL Sgt. Mangione sent Brown's cellphone to  
26 engineers at Cellebrite in order to determine whether they could break into the phone using  
27 advanced proprietary software. After several months, the State learned that Cellebrite was able  
28 to access Brown's cellphone using advanced proprietary software. The contents were copied

1 onto a drive and sent back to LVMPD for examination. LVMPD CFL Examiners examined  
2 the phone and authored a report.

### 3 ISSUE

4 The State files the instant Motion in Limine in order to address whether Cellebrite should be  
5 required to testify publicly regarding the advanced proprietary software and trade secrets they  
6 used to access Brown's cellphone. After accessing the cellphone, Cellebrite made an exact  
7 copy of the contents of the phone and placed the data on an encrypted Drive. The cellphone  
8 and the Drive were then placed into a sealed Cellebrite evidence bag, and sent back to  
9 LVMPD, along with a "Certification and Business Record of Cellebrite Inc." See Exhibit 1  
10 *attached hereto*.

11 Importantly, *Cellebrite did not examine the phone in any way, nor did the Cellebrite*  
12 *engineer alter any information or data on the phone in order to copy the contents onto the*  
13 *Drive*. See Exhibit 1, paragraph 8. The cellphone was simply accessed and copied onto a Drive  
14 by Cellebrite, and the cellphone and Drive were then sent back to the LVMPD CFL Lab for  
15 examination. Moreover, the Certification indicates that from April 30, 2018, through  
16 December 10, 2018, the cellphone at no time left the custody and control of Cellebrite. See  
17 Exhibit 1, paragraph 9.

18 The Certification clearly states that it, along with the information contained therein, is  
19 a "record of regularly conducted activity by Cellebrite" that is kept in the "ordinary course of  
20 business." See Exhibit 1, paragraph 11. The State brings this Motion due to Cellebrite's  
21 concern that they will be asked to divulge trade secrets and/or discuss confidential proprietary  
22 software. It is the State's position that the issue presented is essentially a chain of custody  
23 issue. If the Court agrees, then the Certification itself is sufficient to establish proper chain of  
24 custody. Alternatively, if the Court or defense has concerns regarding laying the proper  
25 foundation for the content of cellphone, it is the State's position that Cellebrite can lay  
26 sufficient foundation by stating that 1) they received the cellphone, 2) they accessed the  
27 cellphone using advanced proprietary software, 3) once the phone was accessed, they made an  
28 exact copy of what was on the cellphone, and 4) they then sent that information to LVMPD

1 for examination. Cellebrite should not be required to discuss or divulge trade secrets in order  
2 to establish that they accessed the phone and copied its contents to a Drive. At trial, the State  
3 will be calling LVMPD CFL Examiners in order to discuss the results of the phone  
4 examination itself. The State seeks to address Cellebrite's role in the process prior to trial in a  
5 sealed proceeding.

6 DATED this 2nd day of August, 2019.

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

10 BY /s/ Johns Giordani  
11 JOHN GIORDANI  
12 Chief Deputy District Attorney  
13 Nevada Bar #012381

14  
15  
16 CERTIFICATE OF ELECTRONIC TRANSMISSION

17 I hereby certify that service of the above and foregoing was made this 2nd day of  
18 August, 2019, by electronic transmission to:

19 NICHOLAS WOOLDRIDGE  
20 nicholas@wooldridgelawlv.com

21 BY /s/ Stephanie Johnson  
22 Secretary for the District Attorney's Office

23  
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27  
28 17F07976A/JG/saj/MVU-GCU

# EXHIBIT 1



**CONFIDENTIAL**

**Certification and Business Record of Cellebrite Inc.**

CBFL Case Number: 00186567

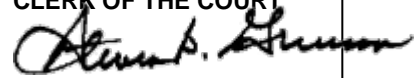
I, Joe Raspante, certify the following:

1. I am the CBFL Administrator for Cellebrite Inc. ('Cellebrite') in the Americas.
2. I am familiar with, and oversee Cellebrite's processes and procedures concerning the intake, processing, and return of mobile devices provided by Cellebrite customers to Cellebrite for work.
3. On or about 4/17/18 Cellebrite was engaged by Las Vegas Metropolitan Police Department (the 'Requesting Entity') to determine the passcode for a Samsung SM-G920P Galaxy S6 with (IMEI: 256691573506447512 ; ) (the 'Device'), and perform a forensic extraction of the data contained on the Device.
4. On or about 4/30/18, Cellebrite received a package via UPS, with tracking number 1ZT7T7698795196331, from the Requesting Entity. I then performed a normal intake process by opening and inspecting the package, confirming that the package contained the Device, and delivering the Device to the Forensic Specialist assigned to the matter.
5. On or about 05/01/2018, using Cellebrite's trade secrets, proprietary and confidential software, techniques, and equipment, the Forensic Specialist was able to determine the passcode of the Device, and make a forensic copy of the data contained on the Device. The Forensic Specialist copied the data of the Device onto an encrypted Drive (the 'Drive'). A .ufd file was also loaded to help open the image of the Device's data on the Drive.
6. On or about 12/10/18, the Forensic Specialist placed the Device in a sealed Cellebrite evidence bag. The forensic copy of the data contained on the Device was placed on the Drive. I then packaged everything into a transport kit which was then shipped to the Requesting Entity via UPS with tracking number 1ZAA18070119762707.
7. Prior to securing the Device and the Drive in the sealed Cellebrite evidence bag, the Forensic Specialist compared the hash values associated with the data of the Device with the hash values associated with the data on the Drive and determined that the hash values matched.
8. Cellebrite did not examine the applications on, or the data of the Device. Nor did Cellebrite alter any of the applications on, or the data of the Device.
9. From on or about 4/30/18 through the return of the Device on or about 12/10/18, at no time did the Device leave the custody or control of Cellebrite.
10. After receipt of the Device, the Customer can log into Cellebrite's secure Portal to access and acknowledge receipt of the Device, at which time the passcode for the Device is provided to the Customer.
11. This Certification and the information referenced herein constitutes a record of regularly conducted activity by Cellebrite, because making this record is a regular practice of the regularly conducted activity, and this record is also made at or near the time of the regularly conducted activity in the ordinary course of business by Cellebrite personnel with knowledge of these matters. In addition, this business record is kept in the course of a regularly conducted activity of Cellebrite.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on 12/10/2018.

*Joseph Raspante*

Joe Raspante



**MLIM**  
JONELL THOMAS  
SPECIAL PUBLIC DEFENDER  
Nevada Bar #4771  
MONICA R. TRUJILLO  
Chief Deputy Special Public Defender  
Nevada Bar #11301  
330 So. Third Street, Suite #800  
Las Vegas, Nevada 89155  
(702) 455-6265  
FAX: (702) 455-6273  
EMAIL: trujilmr@clarkcountynv.gov  
Attorney for Larry Decorleon Brown

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,	)	CASE NO. C-17-326247-1
	)	DEPT. NO. 21
Plaintiff,	)	
	)	
vs.	)	
	)	
LARRY DECORLEON BROWN,	)	
ID 8376788,	)	
	)	
Defendant.	)	

**DEFENDANT LARRY BROWN'S MOTION IN LIMINE TO PRECLUDE THE  
STATE FROM PRESENTING AS EVIDENCE SPECIFIC ITEMS  
RECOVERED FROM THE SEARCH OF ANGELISA RYDER'S  
RESIDENCE ON MARCH 20, 2017**

COMES NOW, Defendant Larry Brown, by and through his attorneys, JoNell Thomas, Special Public Defender, and Monica R. Trujillo, Chief Deputy Special Public Defender, and hereby moves this Honorable Court, pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, Article 1, Section 8, of the Nevada Constitution, and applicable state law, to preclude the State from presenting as evidence a pair of metal knuckles and a pair of Ralph Lauren Polo Sport shoes with reddish-brown stains on the bottom impounded from the search of Angelisa Ryder's residence.

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TO: District Attorney, Attorney for Plaintiff

## PROCEDURAL HISTORY

Mr. Brown is charged by way of Third Superseding Indictment with one count of Conspiracy to Commit Robbery, one count of Robbery with Use of a Deadly Weapon, one count

1 of Murder with Use of a Deadly Weapon and one count of Ownership or Possession of Firearm  
2 by Prohibited Person. Trial is currently scheduled for August 26, 2019.

### 3 **PERTINENT FACTS**

4 On March 20, 2017, employees of the Las Vegas Metropolitan Police Department  
5 executed a search warrant at the residence of Mr. Brown's girlfriend, Angelisa Ryder. During  
6 that search, Crime Scene Analyst M. McIntyre impounded a pair of yellow metal knuckles from  
7 the top drawer of the nightstand located in the master bedroom. See Evidence Impound Report,  
8 dated 3/20/17 (Exhibit A). Crime Scene Analyst M. McIntyre also impounded a pair of red and  
9 black "Ralph Lauren Polo Sport" shoes, size 13 D, with reddish brown stains on the bottom of  
10 the right shoe. Id. The presumptive blood test with Phenolphthalein yielded negative results.  
11  
12 Id.

### 14 **ARGUMENT**

15 This Court should preclude the State from presenting as evidence the metal knuckles and  
16 Ralph Lauren Polo Sport shoes impounded as a result of the search of Angelisa Ryder's  
17 residence. Presentation of both of these items is unfairly prejudicial to Mr. Brown.

18 The above-listed items are irrelevant to the instant case. Only relevant evidence is  
19 admissible, and irrelevant evidence is inadmissible. N.R.S. 48.025 (2). Relevant evidence is  
20 defined as "evidence having any tendency to make the existence of any fact that is of  
21 consequence to the determination of the action more or less probable than it would be without  
22 the evidence." N.R.S. 48.015. Here, the recovery of each item is of no consequence to the  
23 charges before this Court. There is no allegation that metal knuckles were used in this case.  
24 With regard to the shoes, the impound report itself indicates a negative presumptive blood test.  
25 There is absolutely no reason to present either item to the jury. Rather, any attempt to present  
26  
27  
28

1 each item would only serve as a means for the State to suggest to the jury that Mr. Brown should  
2 be viewed in a negative light.

3 Even assuming arguendo that these items are somehow relevant, their presentation to the  
4 jury is highly prejudicial and any probative value the items may have is substantially outweighed  
5 by that prejudice. Therefore, each item should be precluded pursuant to N.R.S. 48.035(1).  
6

7 **CONCLUSION**

8 Based on the foregoing reasons, Mr. Brown respectfully requests that this Honorable  
9 Court preclude the State from presenting as evidence the pair of metal knuckles and the pair of  
10 Ralph Lauren Polo Sport shoes with reddish-brown stains on the bottom impounded from the  
11 search of Angelisa Ryder's residence.  
12

13 Dated: August 9, 2019

14 SUBMITTED BY

15 /s/ MONICA R. TRUJILLO

16 

---

MONICA R. TRUJILLO  
17 Attorney for Brown

18 **CERTIFICATE OF ELECTRONIC FILING**

19 I hereby certify that service of the above mentioned matter was made pursuant to EDCR  
20 7.26 on the attorney for the named parties by means of electronic mail to the email address  
21 provided to the court's electronic filing system for this case. Proof of Service is the date service  
22 is made by the court's electronic filing system by email to the parties and contains a link to the  
23 file stamped document.  
24

25 PARTY  
26 STATE OF NEVADA

27 Dated: 8/9/2019

EMAIL  
DISTRICT ATTORNEY'S OFFICE email:  
[motions@clarkcountynvda.com](mailto:motions@clarkcountynvda.com)

28 /s/ ELIZABETH (LISA) ARAIZA

---

An employee of the Special Public Defender

# **EXHIBIT A**

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**EVIDENCE IMPOUND REPORT**

**EVIDENCE****FOUND PROPERTY****SAFEKEEPING**Event Number: **170221-4563**

Incident: <b>HOMICIDE FOLLOW-UP (SEARCH WARRANT)</b>	Requesting Officer: <b>M. DOSCH #7907</b>	Division: <b>ISD</b>	Date: <b>03/20/2017</b>
Victim(s): <b>KWAME BANKS [REDACTED]</b>			
Location: <b>[REDACTED]</b>			
Vehicle(s): <b>2015 WHITE JEEP COMPASS, NV [REDACTED]</b>			
Additional Information:			

Description of EvidenceLocation of Recovered Evidence**Package #1**

Item #1 – One (1) pair of red and black "Ralph Lauren Polo Sport" shoes, size 13D, with reddish-brown stains on the bottom of the right shoe (presumptive tested for blood with Phenolphthalein, with negative results).

On the floor in the northeast area of the garage.

Item #2 – One (1) pair of brown "Ralph Lauren Polo Sport" shoes, size 13D.

On a shoe rack along the south wall of the master bedroom closet.

**Package #2**

Item #3 – One (1) black "HP" laptop computer, serial #2CE8296J9D.

In a black fabric bag on the northeast floor of the garage.

**Package #3**

Item #4 – One (1) gray "Dell Inspiron" laptop computer, unknown serial number.

On the west upper shelf in the master bedroom closet.

**Package #4**

Item #5 – One (1) black and red "Sandisk Cruzer 4GB" USB flash drive.

In the left bottom drawer of the dresser in the master bedroom.

**Package #5**

Item #6 – One (1) pair of yellow metal knuckles.

In the top drawer of the nightstand in the master bedroom.

**Package #6**

Item #7 – One (1) black "Atlanta Falcons" lanyard.

On the rearview mirror in the above listed vehicle.

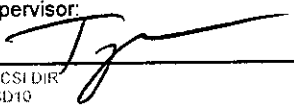
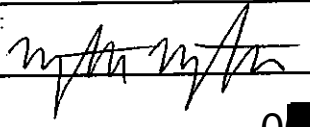
Item #8 – One (1) connecting piece of a black "Atlanta Falcons" lanyard.

From the hands of Detective R. Ochsenhirt #5438.

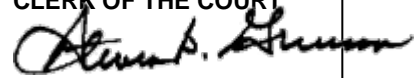
**Package #7**

Item #9 – One (1) buccal swab kit.

From the mouth of the subject Angelisa Ryder (DOB [REDACTED])

CSA Supervisor: 	P#: <b>5141</b>	Date Approved <b>3-27-17</b>	Crime Scene Analyst: <b>M. MCINTYRE</b> 	P#: <b>13207</b>
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**MLIM**  
JONELL THOMAS  
SPECIAL PUBLIC DEFENDER  
Nevada Bar #4771  
MONICA R. TRUJILLO  
Chief Deputy Special Public Defender  
Nevada Bar #11301  
330 S. Third Street, Suite #800  
Las Vegas, Nevada 89155  
(702) 455-6265  
FAX: (702) 455-6273  
EMAIL: trujilmr@clarkcountynv.gov  
Attorney for Larry Decorleon Brown

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,	)	CASE NO. C-17-326247-1
	)	DEPT. NO. 21
Plaintiff,	)	
	)	
vs.	)	
	)	
LARRY DECORLEON BROWN,	)	
ID 8376788,	)	
	)	
Defendant.	)	
	)	

**DEFENDANT LARRY BROWN'S MOTION IN LIMINE TO PRECLUDE ALL CELL  
PHONE INFORMATION OBTAINED BY CELLEBRITE AND RESPONSE TO  
STATE'S MOTION IN LIMINE TO ADDRESS CELLEBRITE TESTIMONY  
PERTAINING TO ADVANCED PROPRIETARY SOFTWARE**

COMES NOW, Defendant Larry Brown, by and through his attorneys, JoNell Thomas, Special Public Defender, and Monica R. Trujillo, Chief Deputy Special Public Defender, and hereby moves this Honorable Court, pursuant to the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, Article 1, Section 8, of the Nevada Constitution, and applicable state law, to preclude the State from presenting as evidence any cell phone information obtained by Cellebrite in CBFL Case Number 00186567.

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TO: District Attorney, Attorney for Plaintiff

### PERTINENT FACTS

Thereafter, on April 17, 2018, the Las Vegas Metropolitan Police Department retained the services of Cellebrite to “determine the passcode for a Samsung SM-G920P Galaxy S6 with (IMEI: 256691573506447512 ;) (the ‘Device’), and perform a forensic extraction of the data contained on the Device.” See Affidavit in support of State’s Motion in Limine to Address Cellebrite Testimony Pertaining to Advanced Proprietary Software, filed August 2, 2019.

1 According to Joe Raspante, using their software, a Forensic Specialist determined the passcode  
2 using Cellebrite's trade secrets and accessed the contents of the cell phone. Id. The Forensic  
3 Specialist then copied the data on an encrypted device and returned it to the Las Vegas  
4 Metropolitan Police Department. Id. The affidavit states, "[c]ellebrite did not examine the  
5 applications on, or the data of the Device. Nor did Cellebrite alter any of the applications on, or  
6 the data of the Device." Id. Cellebrite had this cell phone in its possession from April 30, 2018  
7 through December 10, 2018.  
8

### 9 ARGUMENT

10 The Sixth Amendment to the United States Constitution guarantees a criminal defendant  
11 not only the right to a public trial but also the right to confront the witnesses against him. Davis  
12 v. Alaska, 415 U.S. 308, 315 (1974). It is undisputed that confrontation includes the right to  
13 cross-examine witnesses. To be sure, the United States Supreme Court has long held,  
14

15 "[t]he right of an accused in a criminal trial to due process is, in essence, the right  
16 to a fair opportunity to defend against the State's accusations. The rights to  
17 confront and cross-examine witnesses and to call witnesses in one's own behalf  
have long been recognized as essential to due process."

18 Chamber v. Mississippi, 410 U.S. 284, 294 (1973). Cross-examination is imperative because it  
19 is, "the principal means by which the believability of a witness and the truth of his testimony are  
20 tested." Davis v. Alaska, 415 U.S. at 316. The right to cross-examine witnesses is so  
21 fundamental that the United States Supreme Court has stressed that,  
22

23 "its denial or significant diminution calls into question the ultimate ""integrity of  
24 the fact-finding process"" and requires that the competing interest be closely  
examined."

25 Chambers v. Mississippi, 410 U.S. at 295 (citing Berger v. California, 393 U.S. 314, 315 (1969)).

26 Mr. Brown has a constitutional right to cross-examine the witnesses against him in a  
27 public trial to effectively challenge the State's evidence against him in front of a jury of his peers.  
28 As this Court is aware, Mr. Brown is facing serious charges with the most severe penalties. The

1 State asserts no legal authority that would allow for corporate trade secrets to take priority over  
2 a full-fleshed, public and fair trial. Therefore, corporate monetary interests cannot take  
3 precedence over his constitutional rights.

4 One aspect of cross-examination is challenging the chain of custody related to evidence  
5 presented by the State. The Nevada Supreme court has held,  
6

7 “to establish chain of custody and competent identification of evidence Nevada  
8 law requires (1) reasonable showing that substitution, alteration or tampering of  
9 the evidence did not occur; and (2) the offered evidence is the same, or  
10 reasonably similar to the substance seized.”

11 Burns v. Sheriff, 92 Nev. 533, 534-535;554 P.2d 257, 258 (1976). Here, Cellebrite had the  
12 phone in question for several months. The affidavit in support of the State’s motion states clearly  
13 that Cellebrite did not examine the phone. How then can the State present testimony to the effect  
14 that the contents of the phone were preserved and were maintained in its original form? The  
15 State simply cannot make that assertion. Failing to present Cellebrite employees as witnesses  
16 clearly creates a reliability issue with regard to this cell phone and any purported contents derived  
17 from it.

18 In addition to the chain of custody issue, authentication is a condition precedent to the  
19 admissibility of messages obtained from cellular phones. Rodriguez v. State, 273 P.3d 845, 848;  
20 128 Nev. Adv. Op. 14 (2012). Presumably, the State intends to present certain text messages to  
21 the jury in this case. Authentication requires the purpose for which the message is being offered  
22 and sufficient evidence of authorship. Id. at 849. Because of the reliability issues stated above,  
23 the State cannot properly authenticate any of the contents obtained from the cell phone.

24 Finally, cell phone extraction and analysis clearly falls under N.R.S. 50.275, which  
25 provides in pertinent part, “scientific, technical or other specialized knowledge will assist the  
26 trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an  
27 expert by special knowledge, skill, experience, training or education may testify to matters  
28

1 within the scope of such knowledge.” The State’s Third Supplemental Notice of Witnesses  
2 And/Or Expert Witnesses filed on July 22, 2019 identified several experts in the area of cell  
3 phone and records analysis. Counsel cannot properly challenge an expert under N.R.S. 50.275  
4 and Hallmark v. Eldridge, 189 P.3d 646, 650 (2008), without understanding how Cellebrite and  
5 its designees accessed the cell phone in question, handled the data and how it was stored during  
6 the months Cellebrite possessed the cellphone.  
7

### 8 CONCLUSION

9 Based on the foregoing, this Court should allow counsel for Brown to cross-examine  
10 Cellebrite during trial regarding their access to the cell phone in question or in the alternative  
11 preclude the State from presenting as evidence any of its contents to the jury to protect his rights  
12 to due process of law and a fair trial.  
13

14 Dated: August 12, 2019

15 SUBMITTED BY

16 /s/ MONICA R. TRUJILLO

17 \_\_\_\_\_  
18 MONICA R. TRUJILLO

19 Attorney for Brown  
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**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that service of the above mentioned matter was made pursuant to EDCR 7.26 on the attorney for the named parties by means of electronic mail to the email address provided to the court's electronic filing system for this case. Proof of Service is the date service is made by the court's electronic filing system by email to the parties and contains a link to the file stamped document.

PARTY  
STATE OF NEVADA

EMAIL  
DISTRICT ATTORNEY'S OFFICE email:  
[motions@clarkcountyda.com](mailto:motions@clarkcountyda.com)

Dated: 8/12/2019

/s/ ELIZABETH (LISA) ARAIZA

---

An employee of the Special Public Defender

# **EXHIBIT A**

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**DECLARATION OF WARRANT/SUMMONS**  
(N.R.S. 171.106)  
(N.R.S. 53 amended 7/13/1993)

Event Number: 170221-4563

STATE OF NEVADA     )     Larry Decorleon Brown

                              ) ss: ID#: 8376788

COUNTY OF CLARK     )     DOB: [REDACTED] SS#: [REDACTED]

Darin Cook P# 5730, being first duly sworn, deposes and says:

That he is a Detective with the Las Vegas Metropolitan Police Department, being so employed for a period of 19 years, assigned to investigate the crime(s) of Murder E/DW NRS 200.010, Robbery E/DW NRS 200.380 committed on or about 02/21/17, which investigation has developed Larry Decorleon Brown as the perpetrator thereof.

**THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME, TO WIT:**

On February 21, 2017, at approximately 2247 hours, the LVMPD Communications Center received several 9-1-1 callers who reported a shooting in the parking lot of the Sky Pointe Landing Apartment Homes located at 5850 Sky Pointe Drive in Las Vegas. Patrol officers and emergency medical personnel were dispatched to the scene under LVMPD event 170221-4563. Patrol officers and emergency medical personnel arrived and discovered the body of an adult black male, later identified as Kwame Banks ID # [REDACTED] deceased from an apparent gunshot wound. Patrol officers contacted witnesses, secured the crime scene with yellow crime scene tape and awaited the arrival of homicide personnel.

Homicide personnel responded to the crime scene and assume investigatory responsibility. Detective Cook and Detective Dosch examined the crime scene for evidence and noted the body was located in a parking space under a carport in front of building 21. Evidence at the crime scene consisted of apparent blood, foot impressions in apparent blood, a .40 caliber cartridge case, a black latex glove and a black cloth glove. Banks' pants pockets were pulled out, which suggested the decedent was also the victim of a robbery.

Banks' body was lying almost face-down on the ground. There was an apparent shoe impression in the victim's blood. The shoe impressions continued south from the body and appeared to end at carport spot 301. This suggested the suspect stepped in the victim's blood



## CONTINUATION

Event #: 170221-4563

and ran due to the stride distance between shoe impressions. This suggested the suspect ran to a vehicle that may have been parked in the now-vacant carport spot.

There were three cell phones located in the crime scene. A black LG Samsung cell phone with a cracked screen and apparent blood was located under Banks' body. A black Samsung cell phone in a black case was found approximately 10 to 15 feet away from the Banks' body in a landscaped area, which appeared to have been disturbed and suggested a fight took place. The third cell phone, a black cell phone with a cracked screen and apparent blood was found approximately 100' north of Banks' body in the parking lot near the main entrance. The phone was in three pieces (phone, battery and battery cover). Just west of the dismantled or broken cell phone was another latex glove with apparent blood and a \$10.00 bill.

Detective D. Cook took possession of the cell phones and turned them over to the custody of the LVMPD Computer Forensics Lab (CFL). Detective M. Dosch obtained a search warrant for the cell phones, which was signed by District Court Judge Douglas Smith. The search warrant authorized a forensic examination of the cell phones for digital evidence and to determine ownership.

During the investigation homicide detectives contacted and interviewed several witnesses. On February 22, 2017, at approximately 0150 hours, Detective Dosch conducted an audio-recorded interview with Dereka Nelson, who stated round 2240 hours Nelson heard what sounded like a male yelling for help, which was followed by a gunshot. Nelson went to her bedroom, called 9-1-1 and looked outside her bedroom window. Underneath the carport and next to her white Toyota Solara were two men involved in a physical altercation. The fight moved onto the top of her hood and the victim was under the suspect. Nelson heard a second gunshot, but did not see a weapon. The suspect was wearing a dark colored cap, a dark colored hooded sweatshirt, dark colored pants, and "shiny" gloves. Nelson retreated to her closet for cover and spoke to the dispatcher. About one minute later Nelson returned to the window as saw the victim lying motionless on the ground next to her car.

A male then approached the victim's body from the east and began searching the victim's pants pockets. Nelson believed the person going through the victim's pockets was most likely the same suspect the victim had fought with. The suspect walked away and within approximately 10 seconds Nelson saw a navy blue or black four-door sedan southbound through the parking lot toward the south entrance. The vehicle had tinted windows and appeared to be an older model. Nelson did not see the suspect's face and cannot make an identification. Nelson said the

## CONTINUATION

Event #: 170221-4563

vehicles parked to the south of her car and to the north of the victim's body belonged to other tenants in the complex.

On February 22<sup>nd</sup>, 2017 at approximately 0214 hours, Detective Merrick obtained a recorded statement from Jakhai Smith at [REDACTED] Jakhai lives in a second floor apartment and his bedroom window looks out to the parking lot where the victim was lying. Smith was in his bedroom and heard people arguing outside his window, so he got up and peered out through the blinds. Smith saw two males engaged in a fight. Smith described the victim as a black male adult wearing gray sweat pants and red "air force" shoes. Smith described the suspect as a black male adult wearing all black clothing and had a chrome semi-auto handgun in his right hand. The suspect and the victim were fighting over the gun when the suspect shot the victim one time in the stomach. The suspect told the victim not to move prior to shooting him. The suspect then went through the victim's front pant pockets and took some money. The suspect then walked out of sight and proceeded south bound through the parking lot. Also present during the recorded statement was Smith's mother, Lonnetta Smith, DOB: [REDACTED]

On February 22, 2017, at approximately 0141 hours, Detective Merrick obtained a recorded statement from Branden Kohler who stated he was inside his apartment which is located near the tennis courts. Kohler's wife, Kelly Kohler, yelled at him to come back outside. Once on the patio, Kohler heard two men arguing in the direction where the victim was located. One of the men was yelling "no, no, no", then Kohler heard one gunshot. Kohler then went back into his apartment and retrieved his firearm, then went back outside to his patio. Kohler heard the two men arguing again, then heard a second gunshot. Kohler then saw a male stand up and start to walk north bound towards the leasing office. The male was wearing a dark hoody with white lettering. Kohler lost sight of the male and then saw a vehicle back out of a covered parking spot which is south of the victim's location. The vehicle then exited south through the parking lot. Kohler believed the vehicle was a dark colored Nissan Maxima or Altima.

On February 22<sup>nd</sup>, 2017, at approximately 0157 hours, Detective Merrick obtained a recorded statement from Kelly Kohler who was sitting on her patio when she heard screaming and a male voice saying "help, help, help". Kohler told her husband to come outside and then she heard a female screaming. Kohler then heard a gunshot and Kohler went inside her

## CONTINUATION

Event #: 170221-4563

apartment. Kohler called 911 and while she was talking to the operator she heard a second gunshot.

On February 22<sup>nd</sup> Detective Cook and Detective Dosch attended Banks' autopsy at the Clark County Coroner's Office. A search of the clothes worn by Banks at the time of his death revealed \$1,880 dollars in his jacket pocket. Dr. Olson determined Banks' cause of death as a gunshot wound to the chest and Banks' death was ruled a homicide.

On February 23<sup>rd</sup> Detective Cook and Detective Dosch located Banks' Nissan Altima parked on the west end of a business complex located at 7495 Azure Drive, which was less than a mile from the crime scene. The vehicle's license plates were missing and the interior of the vehicle had been set on fire in an attempt to destroy evidence. Detective Dosch contacted businesses across the street, which had video surveillance of the adjacent business complex where Banks' vehicle had been dumped. The video surveillance showed Banks' vehicle pulling into the business complex on February 21<sup>st</sup>, at approximately 2332 hours, which was approximately 45 minutes after the murder was reported to law enforcement. At approximately 2356 hours a newer model, mid-size white sport utility vehicle (SUV) arrived and parked next to Nissan Altima. Six minutes later, at approximately 0002 hours, a marked LVMPD vehicle pulled into the same parking lot just as the white SUV exited the business complex. The marked LVMPD unit pulled up behind the Nissan Altima and appeared to shine a spotlight on the vehicle.

Detective Dosch received information from LVMPD that the officer who arrived in the business complex just as the white SUV was leaving was Officer English. Officer English ran Banks' California license plate at approximately 0003 hours. The existence of Banks' stolen vehicle was not known to detectives at that time and was not put into NCIC until later that day. Detective Dosch contacted Officer English and asked him about the incident. Officer English said he was westbound on Azure Drive when he looked into the parking lot and saw a black male standing next to a black Nissan Altima. Officer English described the black male as having a large frame, 230+ pounds, over 6'0" and wearing all dark clothing. It appeared suspicious to Officer English who then pulled into the parking lot. At the same time a newer model white SUV drove next to him, which was driven by an apparent black female. Officer English did not see the black male in the white SUV and could not get the SUV's license plate before it drove away on Azure Drive. Officer English pulled in behind Banks' vehicle and found it was unoccupied and the black male was gone.

## CONTINUATION

Event #: 170221-4563

The video surveillance also showed Banks' Nissan Altima still parked in the parking lot on the early morning hours of February 23<sup>rd</sup>, at approximately 0243 hours, the vehicle appeared to be set on fire. A vehicle could not be seen entering the business complex before the fire. However, a white SUV, similar to the one depicted on video surveillance on February 21<sup>st</sup>, was observed driving in both directions on Azure Drive. The vehicle appeared to be set on fire three separate times. Each time the vehicle was set on fire the white SUV was seen driving by.

On February 24<sup>th</sup> the forensic examination of the cell phones were completed for two of the three cell phones. The third cell phone, which was found in the scuffed rocks approximately five to six feet away from Banks' body, was locked. Detectives were able to obtain the cell phone's integrated circuit card identifier (ICCID) from the subscriber identity module (SIM card). The ICCID was the serial number for the SIM card. The ICCID was sent to Sprint who identified the subscriber as Larry Brown, date of birth [REDACTED] and social security number [REDACTED]. Brown was a black male and his address was in Atlanta, Georgia. Brown's phone number was identified as [REDACTED].

A records check on Brown showed he had served prison time in Georgia for bank robbery and narcotics-related offenses. It also showed Brown attempted to get a Nevada identification card on June 24<sup>th</sup>, 2016 through Nevada DMV, which was denied for incomplete documents. The address listed by Brown was [REDACTED] in Las Vegas. Brown also listed his cell phone number of [REDACTED]. Brown's possible girlfriend was then identified as Angelisa Ryder ID # [REDACTED]. Ryder lives at the same address, [REDACTED] and had been there since 2014. Ryder listed a 2015 Jeep SUV bearing Nevada registration [REDACTED] registered at the same address.

The other two cell phones had phone numbers of [REDACTED] and [REDACTED]. From the contact list of cell phone [REDACTED] Detectives located a name "Poe ATL". The corresponding cell phone number was [REDACTED]. Detective Cook obtained the phone records from T-Mobile, which identified the subscriber of [REDACTED] as Anthony Carter with an address of [REDACTED] in Las Vegas. A SCOPE records check on Carter revealed he was a black male born in Atlanta, Georgia and his listed moniker was "Poke."

The decedent Kwame Banks' cell phone showed a lot of activity between his phone number [REDACTED] and Anthony Carter's phone number [REDACTED]. Detective Cook obtained a pen register for [REDACTED] and a court order for [REDACTED]. Both legal

## CONTINUATION

Event #: 170221-4563

documents were signed by District Court Judge Jerry Wiese. The pen register was sent to T-Mobile for service and the court order was sent to Sprint for service.

Detective Cook and Detective Dosch reviewed Carter's cell phone records and at the time of the murder his calls hit off a cell tower located less than 1/2 a mile northwest of the crime scene. A further review of the call records revealed significant text message activity between Carter's cell phone and Brown's cell phone between 2207 hours and 2222 hours, which was right before the murder. Then at 2240 hours there was another text message sent from Carter's phone to Brown's phone. After that there was no more contact between the two cell phones and Carter turned off his phone by 1230 hours on February 22<sup>nd</sup>. Carter's phone at the time of the incident was an HTC Desire 530 cell phone.

Detective Cook and Detective Dosch reviewed Brown's phone records. The last voice call Brown made was at 2017 hours. The call hit off a cell phone tower located less than 1/4 of a mile south of the crime scene. That was then followed by exclusive text message activity between Brown's cell phone and Carter's cell phone, which was between 2206 hours and 2240 hours. Then on February 22<sup>nd</sup> between 0427 hours and 0523 hours Brown's cell phone received several text messages from phone number [REDACTED] which belonged to Angelisa Ryder. A LVMPD records check revealed Brown never made a report for a lost or stolen cell phone.

On February 25<sup>th</sup> Detective Dosch conducted an on-line records check of the VIN number of Ryder's vehicle. The records check revealed the vehicle was listed for sale by Enterprise Car Rental in 2016. The on-line flyer included several images of the vehicle, which was a white 2015 Jeep Compass. The vehicle bared a strong resemblance to the white SUV depicted in the video surveillance recovered from across the street of the business complex where Banks' vehicle was dumped and burned.

On March 18<sup>th</sup> Detective Dosch drafted a search warrant for the residences connected to Anthony Carter and Larry Brown. The search warrant was signed by the honorable Judge Jerry Wiese. On March 20<sup>th</sup> the LVMPD SWAT unit conducted service of the search warrant. Anthony Carter and Tiffany Carter were taken into custody at [REDACTED] after leaving the residence at [REDACTED] Anthony and Tiffany Carter were transported to LVMPD Headquarters for interview.

At approximately 1030 hours Detective Cook and Detective Dosch conducted an interview in the family interview room with Tiffany Carter. The door was unlocked and Tiffany

## CONTINUATION

Event #: 170221-4563

was told she is able to leave at any time. Tiffany said in summary, she works as a patient coordinator at Mountain View Hospital. She was at home with her parents and children all night on February 21<sup>st</sup>. Her ex-husband, Anthony Carter, also lives at the residence and shares her bed. On the night of February 21<sup>st</sup> Anthony left the house and did not return all night. She woke up in the morning of February 22<sup>nd</sup>, and Anthony was still gone. She saw on the morning news that a shooting had taken place at the apartment complex located on Sky Pointe Drive. She knew that Anthony had a friend by the moniker of "Biggs," who she identified from a photograph as Carnell Cave. She knew Biggs lived at the apartments on Sky Pointe Drive. She said Anthony had recently taken her to Cave's apartment located at [REDACTED]

On the morning of February 22<sup>nd</sup> she went to work at Mountain View Hospital and returned home at approximately 1730 hours, Anthony had returned home and told her how there was a shooting near Biggs' (Carnell Cave) apartment and Kwame Banks was killed. She claimed she didn't ask any further question but she admitted Banks was an acquaintance of Anthony's. She admitted she has known Anthony to go out all night to sell drugs however she keeps that part of his life at a distance. She has known for several years that Anthony sells narcotics and she has rented vehicles for Anthony to make narcotic runs to northern California to purchase marijuana. She claimed on occasions to have gone to northern California, while Anthony was picking up quantities of marijuana, but claimed she does not have any part in the sales.

She recall Anthony having another friend that had recently been to her house. Tiffany said the friend drove a white SUV. She was shown a photographs of Larry Brown and the white Jeep Compass owned by Angelisa Ryder. She replied, "Yes," this is the friend that she has seen over at the house and he drove a white SUV. She gave two cell phone number for Anthony, she said Anthony changes phone frequently because of the drug sales. She gave a phone number of [REDACTED] as the phone number he previously used prior to the shooting. Tiffany said Anthony normally keeps his marijuana in the garage in a blue suite case.

Detective Cook and Detective Dosch conducted an audio and video interview with Anthony Carter. Anthony was read his Miranda rights at 1139 hours, which he stated he understood his rights and agreed to speak to Detectives. Anthony Carter said in summary: He lives with his wife, Tiffany Carter, and his three children at [REDACTED] He has lived in Las Vegas for approximately 17 years. Anthony is not employed and sells small amounts of marijuana. He recently purchased a small amount of marijuana from a person in

## CONTINUATION

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Redding California. He recently drove to Redding and brought back two large plastic baggies of marijuana. Detectives explained a search warrant was issued for his residence at [REDACTED] and Detectives located a large amount of marijuana and a Firearm described as a (Springfield 9mm handgun serial number [REDACTED] with (3) three magazines). Anthony said that he had just purchased the firearm and said he only sells small bags of marijuana.

Anthony said on February 21<sup>st</sup>, he was at his friend's apartment who he named as Carnell Cave, who lives at [REDACTED]. He received a ride to the apartment from a friend he referred to as Dakota. Anthony stayed at Cave's apartment waiting for a male known to him as "B" (Kwame Banks) who was going to deliver (3) three quarter pounds of marijuana. Anthony said Banks had texted him earlier in the day but later text that he didn't have any marijuana and he would have to wait until the next day. Anthony then changed his statement to say Banks arrived outside Cave's apartment in a dark, 4 door, Nissan Altima. Banks had parked his vehicle under the covered parking facing west towards Cave's apartment building. Banks' then brought (3) three quarter pound plastic baggies of marijuana into Cave's apartment and delivered it to Anthony. Anthony said the (3) three baggies were intended for Larry Brown, Dakota and himself. Banks' delivered the marijuana and left.

Anthony said a few minutes later he heard (4) four to (5) five gunshots and looked outside. Anthony saw Police officers at the bottom of the stairs and he saw Banks' vehicle still parked under the covered parking. Anthony stayed inside Cave's apartment all night playing video games until the next morning. Anthony changed his story and said Banks' did not actually come inside Cave's apartment, he met him at the basketball court. Banks' had backed his vehicle into the parking stall next to the basketball court and his vehicle was facing west. Anthony walked up to Banks' driver's window and purchased (3) three quarter pounds of marijuana from Banks. Anthony watched as Banks drove out of the complex. Anthony said he returned to Caves' apartment where he and Cave was playing video games. Anthony then heard (4) four to (5) five gunshots and looked out the door to see police and Banks' vehicle parked under the cover parking just below Caves' stairway entrance. Anthony could not explain how he saw Banks drive away, then saw his vehicle parked in front of Cave's apartment after hearing the gunshots and saw police outside.

Anthony statement changed several times and had many inconsistencies. Anthony gave two different cell numbers he used [REDACTED] and [REDACTED]. Anthony said the day

## CONTINUATION

Event #: 170221-4563

after Banks' was killed he discarded his HTC Desire 530 cell phone with a cellular number [REDACTED] because he knew Detectives would come and investigate Banks murder and learn about the drug sales between him and Banks. Anthony was asked about sending and receiving text and phone messages to Larry Brown at phone [REDACTED] Anthony said he has known Larry Brown for many years and they are both from Decatur, Georgia. Anthony recently heard that Brown was in town and only recently began hanging out with Brown.

Anthony was shown a photograph of Larry Brown DOB [REDACTED] Anthony identified Brown and said he recently came by his house at [REDACTED] Anthony identified the white Jeep Compass, which Brown is known to drive. Anthony admitted to being in Brown's vehicle recently. Anthony denied having any knowledge of being present when Banks' was murder or being outside when the shooting took place. Anthony said he was in Cave's apartment all night and never heard Detectives knocking on the door. Anthony left Cave's apartment early the next morning on February 22<sup>nd</sup> and walked to the nearby Sinclair gas station and got coffee, then walked home. Anthony could not explain how he knew Kwame Banks was the victim of the shooting prior to the coroner releasing the information to the media.

On March 20<sup>th</sup>, at approximately 0917 hours, Detective Jaeger conducted a taped interview with Angelisa Ryder in front of her apartment. Ryder said in summary, Larry Brown and Angelisa Ryder lived in Atlanta, Georgia before moving to Las Vegas. Ryder has known Brown for the last four years, and lived with him for the last 18 months. Ryder and Brown share the master bedroom, and Brown has a "man cave" in the spare bedroom. Brown works as a mobile car detailer and drove a white Chevrolet Express van. The van was recently towed due to mechanical issues and was being repaired. Brown normally drives Ryder to work at Summerlin Hospital in her 2015 Jeep Compass, with NV License [REDACTED] and picks her up after work so Brown can use her vehicle while she is at work. Ryder works nights at the hospital as a monitor technician from 1900 hours to 0700 hours in the Telemetry Room.

On February 22<sup>nd</sup>, at approximately 0500 hours, Ryder was working at the hospital and received a message that Brown was at the hospital and wanted to see her. Ryder left the Telemetry Room and met Brown. Ryder described Brown as visibly shaken, walking with a limp, he had a swollen knee and scratches on both arms, and complained of a headache. Brown claimed he was with his friend "Poke" (Anthony Carter), when two unknown men tried to rob and kill him. One of the men pointed a gun at Brown, so Brown tossed his phone in the



## CONTINUATION

Event #: 170221-4563

rocks as a distraction and fought with the man. Ryder told Brown to call police and Brown replied, "Don't ask too many questions." Ryder gave Brown some aspirin for his headache and returned to work. A few days later Brown went to the Sprint store located on Lake Mead Boulevard and obtained a replacement cell phone. Ryder said Brown recently left to Georgia on Allegiant Airlines.

Due to the above facts and circumstances Larry Brown did willfully and unlawfully use force and violence against the person of Kwame Banks by using a .40 Caliber semi-auto handgun to shoot Banks in the chest causing his death, constituting Murder with the Use of a Deadly Weapon NRS 200.010

Larry Brown did willfully and unlawfully take personal property from the person of Kwame Banks by going through Banks pockets, while Banks was shot and lying face down on the pavement. Brown then took Banks' Nissan Altima and fled the crime scene which constitutes the crime of Robbery with Use of a Deadly Weapon in violation of NRS 200.380

Wherefore, Declarant prays that a Warrant of Arrest be issued for suspect Larry Decorleon Brown on the charge(s) of Murder E/DW, Robbery E/DW.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on this 2nd day of May, 2017.

DECLARANT

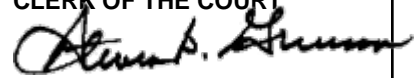
*Dan Cook* PN 5730

WITNESS:

*R. Juega* #5582

DATE:

5/2/17



**OPPS**

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JOHN GIORDANI  
Chief Deputy District Attorney  
Nevada Bar #012381  
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-

LARRY DECORLEON BROWN,  
#8376788

Defendant.

CASE NO: C-17-326247-1

DEPT NO: XXI

**STATE'S OPPOSITION TO DEFENDANT'S MOTION TO  
PRECLUDE THE STATE FROM PRESENTING EVIDENCE  
OF SHOES AND BRASS KNUCKLES**

DATE OF HEARING: 10/1/2019  
TIME OF HEARING: 9:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JOHN GIORDANI, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion To Preclude the State From Presenting Evidence of Shoes and Brass Knuckles.

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

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1 **POINTS AND AUTHORITIES**

2 Defendant seeks to prevent the State from presenting evidence of brass knuckles and  
3 Ralph Lauren Polo Shoes seized from Defendant's wife's home. The State does not intend to  
4 seek to admit photos or testimony related to the brass knuckles, as they appear to be irrelevant  
5 to the charged crimes. However, the State will seek to admit evidence of the Ralph Lauren  
6 Polo Shoes.

7 Relevant evidence is generally admissible, so long as its probative value is not  
8 substantially outweighed by the risk of unfair prejudice. NRS 48.015, 025, 035. In the instant  
9 case, the person who robbed and murdered the victim walked through the victim's blood at  
10 the crime scene. The State will seek to admit the photographs of the shoes seized at  
11 Defendant's wife's residence in order to visually compare them to the bloody impressions at  
12 the scene. While the State will not be admitting expert testimony related to footwear  
13 impressions, the jury must be permitted to visually inspect the photographs of the shoes in  
14 order to compare them to the footwear impressions at the scene. Said evidence is therefore  
15 relevant and admissible.

16 DATED this 3rd day of September, 2019.

17 Respectfully submitted,

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

20  
21 BY /s// JOHN GIORDANI  
22 JOHN GIORDANI  
23 Chief Deputy District Attorney  
24 Nevada Bar #012381  
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CERTIFICATE OF ELECTRONIC TRANSMISSION

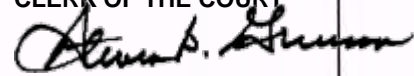
I hereby certify that service of the above and foregoing was made this 3rd day of  
September, 2019, by electronic transmission to:

WILLIAM STORMS  
[stormswj@clarkcountynv.gov](mailto:stormswj@clarkcountynv.gov)

MONICA TRUJILLO  
[trujilmr@clarkcountynv.gov](mailto:trujilmr@clarkcountynv.gov)

BY /s// E. DEL PADRE  
Secretary for the District Attorney's Office

JG/ed/GCU



1 **MDIS**  
2 JONELL THOMAS  
3 SPECIAL PUBLIC DEFENDER  
4 Nevada Bar #4771  
5 MONICA R. TRUJILLO  
6 Chief Deputy Special Public Defender  
7 Nevada Bar #11301  
8 W. JEREMY STORMS  
9 Chief Deputy Special Public Defender  
10 Nevada Bar #10772  
11 330 So. Third Street, Suite #800  
12 Las Vegas, Nevada 89155  
13 (702) 455-6265  
14 FAX: (702) 455-6273  
15 EMAIL: [monica.trujillo@clarkcountynv.gov](mailto:monica.trujillo@clarkcountynv.gov)  
16 EMAIL: [Jeremy.storms@clarkcountynv.gov](mailto:Jeremy.storms@clarkcountynv.gov)  
17 Attorney for Larry Decorleon Brown

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

13 STATE OF NEVADA, ) CASE NO. C-17-326247-1  
14 ) DEPT. NO. 21  
15 Plaintiff, )  
16 vs. )  
17 )  
18 LARRY DECORLEON BROWN, )  
19 ID 8376788, )  
20 Defendant. )

21 **DEFENDANT LARRY BROWN'S MOTION FOR**  
22 **DISCLOSURE OF CORRECTIVE ACTION REPORTS**

23 DATE: November 14, 2019  
24 TIME: 9:30 a.m.

DEPARTMENT XXI  
NOTICE OF HEARING  
DATE 11/14/19 TIME 9:30 AM  
APPROVED BY SS JEA

25 COMES NOW, Defendant Larry Brown, by and through his attorneys, JoNell Thomas,  
26 Special Public Defender, Monica R. Trujillo, Chief Deputy Special Public Defender, and W.  
27 Jeremy Storms, Chief Deputy Special Public Defender and hereby requests pursuant to Brady v.  
28 Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963), the Due Process Clause to the Fourteenth  
Amendment to the United States Constitution, the Confrontation Clause and the Nevada

1 Constitution Article 1 § 8, that this Court order the Las Vegas Metropolitan Police Department  
2 (hereinafter "LVMPD") Crime lab to produce Corrective Action Reports for the technicians  
3 working at the lab during the time period testing was performed in this case.

4 This Motion is made and based upon all the papers and pleadings on file herein, the  
5 attached Declaration of Counsel and Exhibit A, and oral argument at the time set for hearing this  
6 Motion.  
7

8 **NOTICE OF MOTION**

9 TO: STATE OF NEVADA, Plaintiff; and

10 TO: District Attorney, Attorney for Plaintiff

11 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and  
12 foregoing MOTION on November 14, 2019 at the hour of 9:30 a.m., or as soon thereafter as  
13 counsel may be heard.  
14

15 **PROCEDURAL HISTORY**

16 On September 14, 2017, Mr. Brown was arraigned on an Indictment in District Court,  
17 Department 3. Mr. Brown entered a plea of Not Guilty and waived his state right to a speedy  
18 trial. Thereafter, the State filed a Second Superseding Indictment, adding one count as to Mr.  
19 Brown. On October 19, 2017, Mr. Brown again entered a plea of Not Guilty and waived his  
20 state right to a speedy trial. On December 19, 2017, this Honorable Court received a Third  
21 Superseding Indictment. At that hearing, this Court noted that it did not need to arraign Mr.  
22 Brown because there were no charges added, only additional evidence and testimony regarding  
23 the charges. At a status check on October 31, 2017, this Court scheduled trial for June 18, 2018.  
24 On April 11, 2018, Nicholas Wooldridge filed a Motion to Withdraw as Attorney of Record.  
25 This Court granted Mr. Wooldridge's motion on April 24, 2018 and appointed the Special Public  
26  
27  
28

1 Defender's Office. Thereafter on April 26, 2018, the Special Public Defender's Office  
2 confirmed as counsel.

3 Mr. Brown is charged by way of Third Superseding Indictment with one count of  
4 Conspiracy to Commit Robbery, one count of Robbery with Use of a Deadly Weapon, one count  
5 of Murder with Use of a Deadly Weapon and one count of Ownership or Possession of Firearm  
6 by Prohibited Person.  
7

### 8 **PERTINENT FACTS**

9 The State alleges that on February 21, 2017, Mr. Brown and Mr. Carter killed Kwame  
10 Banks in the parking lot of the Sky Pointe Landing Apartments located at 5850 Sky Pointe Drive.  
11 Defense counsel has reviewed the Las Vegas Metropolitan Police Department detective files on  
12 this case. Counsel has also been in communication with Chief Deputy District Attorney John  
13 Giordani who has facilitated obtaining readable and accessible formats of cell phone records and  
14 DNA records. Our respective experts have also communicated regarding discovery in the instant  
15 case. A request for the corrective action reports associated with the case, for the analyst, as well  
16 as corrective action reports regarding contamination of other items with the CSA's DNA was  
17 previously made to the District Attorney. Although the State did provided the Corrective Action  
18 Report for the CSA's DNA found on the accelerator of the 2015 Nissan who was in no way  
19 involved in the evidence collection in this case, the request was otherwise denied. Based upon  
20 counsel's experience, as well as e-mail correspondence provided the defense, LVMPD will not  
21 disclose corrective action reports without a court order. See Exhibit A.  
22  
23  
24

### 25 **ARGUMENT**

#### 26 **PRECLUDING A DEFENDANT FROM OBTAINING EVIDENCE OF THE OVERALL 27 RELIABILITY OF THE LVMPD CRIME LAB IS IMPROPER.**

28 In a recent opinion by the Nevada Supreme Court, the court made it clear that it is error  
for a defendant to be precluded from questioning a DNA analyst about mistakes made in other

1 LVMPD lab cases unrelated to the one at trial. Hover v. State, No. 63888, 2016 WL 699871;  
2 2016 Nev. Unpub. LEXIS 468 (Nev. Feb. 19, 2016). In Hover, the defendant argued that the  
3 district court abused its discretion in preventing him from cross-examining the DNA analyst  
4 about errors made during the forensic analysis process in other cases. Id. The record indicates  
5 that the analyst questioned by the defendant had worked at the lab at the time when significant  
6 errors were revealed. Id. Hover claimed that the district court abused its discretion in concluding  
7 that the events of which Hover complained were irrelevant without conducting an evidentiary  
8 hearing. Id.; see also Patterson v. State, 129 Nev., Adv. Op. 17, 298 P.3d 433,439 (2013) (“[A]n  
9 abuse of discretion occurs whenever a court fails to give due consideration to the issues at  
10 hand.”).

11 The Nevada Supreme Court agreed that the district court should have allowed the  
12 consideration of this matter in Hover’s case, but ultimately concluded in that instance the error  
13 was harmless. See Valdez v. State, 124 Nev. 1172, 1189, 196 P.3d 465. 476 (2008) (“If the error  
14 is of constitutional dimension, then ... [this court] will reverse unless the State demonstrates,  
15 beyond a reasonable doubt, that the error did not contribute to the verdict.”).

16 Here, the Defendant is asking for the right to examine the exact type of information  
17 sought by the defendant in Hover. The Corrective Action Reports for any analyst who took part  
18 in reviewing the forensic evidence in his case, including the reviewers, and for any analyst  
19 employed by the LVMPD crime lab during the period that testing was performed in this case is  
20 necessary to allow the defense to determine the level of reliability of the forensic evidence  
21 provided by the State in this case. It is also necessary to have this information for the defendant  
22 to make a thorough inquiry on cross-examination of the analysts who will be questioned in this  
23 case.

24 Larry is burdened with not only challenging the specific DNA evidence presented by the  
25 state, but of educating the jury on the reality that DNA evidence is not perfect or immune from  
26 fallibility. Based on the holding and reasoning in Hover, Larry asks this Court to grant his  
27 motion.  
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Dated: November 8, 2019

/s/ W. JEREMY STORMS

W. JEREMY STORMS  
MONICA R. TRUJILLO  
Attorneys for Brown

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PARTY  
STATE OF NEVADA

EMAIL  
DISTRICT ATTORNEY'S OFFICE email:  
[motions@clarkcountyda.com](mailto:motions@clarkcountyda.com)

/s/ ELIZABETH (LISA) ARAIZA

An employee of the Special Public Defender

# **EXHIBIT A**

## Stephana Larkin

---

**From:** Stephana Larkin  
**Sent:** Thursday, October 4, 2018 12:33 PM  
**To:** 'john.giordani@clarkcountyda.com'  
**Cc:** Cassandra Robertson; Kellie Gauthier; Margaret Metten  
**Subject:** RE: Brown, Larry  
**Attachments:** 1702214563 Chain of Custody and Note History Report.pdf

Hello John,

Per policy, we do not complete Corrective Action Reports for attributable contamination by Crime Scene Analysts. We also do not release any CARs that are not related to the case. They received everything that would be considered a part of the case record. They didn't ask for them, but I can supply the raw electronic data, however they must have the software to be able to open the files. The electronic Chain of Custody and note history report is attached. We also don't typically include this as part of the case record unless specifically asked, that's why it wasn't included the first time. Let me know if they the expert wants the raw data files.

Thank you!

*Stephana*

Stephana Larkin  
Forensic Scientist II/Quality Assistant TDY  
LVMPD Forensic Laboratory  
702.828.0181  
[S13315L@LVMPD.COM](mailto:S13315L@LVMPD.COM)

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

---

**From:** Kellie Gauthier  
**Sent:** Thursday, October 4, 2018 11:09 AM  
**To:** Stephana Larkin <[S13315L@LVMPD.COM](mailto:S13315L@LVMPD.COM)>  
**Cc:** Cassandra Robertson <[C14653R@LVMPD.COM](mailto:C14653R@LVMPD.COM)>; 'john.giordani@clarkcountyda.com' <[john.giordani@clarkcountyda.com](mailto:john.giordani@clarkcountyda.com)>  
**Subject:** FW: Brown, Larry

Stephana – see email from John below about discovery.

**Kellie M. Gauthier**  
**LVMPD Forensic Laboratory – DNA Manager**  
**Phone:** 702-828-5665  
**Email:** [K8691G@lvmpd.com](mailto:K8691G@lvmpd.com)

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

### *LVMPD Security Notice*

*This email is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent*

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**From:** John Giordani [<mailto:John.Giordani@clarkcountyda.com>]  
**Sent:** Thursday, October 4, 2018 10:22 AM  
**To:** Kellie Gauthier <[K8691G@LVMPD.COM](mailto:K8691G@LVMPD.COM)>  
**Subject:** FW: Brown, Larry

Good morning Kellie,

The below email is from the PD reference event 170221-4563. The defense expert has obtained the underlying case file, but is claiming that it is incomplete. He/she is asking for the following items. Do you know if these items are available, and if so, do I need to re-subpoena the entire casefile?

Thank you,

**John Giordani**  
**Chief Deputy District Attorney**  
**Gun Crimes Unit**  
*Clark County District Attorney's Office*  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
Tel: (702) 671-2775  
Fax: (702) 477-2936



---

**From:** Monica R. Trujillo [<mailto:trujilmr@ClarkCountyNV.gov>]  
**Sent:** Thursday, October 04, 2018 8:12 AM  
**To:** John Giordani <[John.Giordani@clarkcountyda.com](mailto:John.Giordani@clarkcountyda.com)>  
**Subject:** Brown, Larry

Morning,

My DNA expert requests the following:

- 1) Any of the following items not already disclosed in the DNA lab file including, but not limited to: All worksheets; handwritten notes; digital images (2<sup>nd</sup> generation with meta data); bench notes; serology notes/worksheets; extraction worksheets; quantification worksheets and data; amp set up sheets; genetic analyzer load sheets; evidence and reference electropherograms; extraction or reagent blank, amplification negative control, and amplification positive control electropherograms; STR tables; statistic worksheets or datasheets; technical review forms; administrative review forms; communications; and chain of custody documents.

**\*\*He indicated that the file we currently have does contain some chain of custody info, but he wanted to make sure we have everything.**

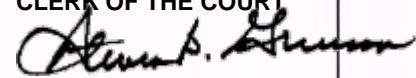
- 2) Any corrective actions associated with this case

- 3) The root cause analysis of how the CSA's DNA contaminated the car pedal
- 4) Any other corrective actions regarding contamination of other items with the CSA's DNA
- 5) Any corrective actions or discrepant results associated with the analysts in this case

**\*\*we do have some email communications, but again he wanted to be sure all communications and phone calls (that were documented via notes) were included.**

Thanks for your help! Let me know if I need to do anything else.

Monica



1 **MDIS**  
2 JONELL THOMAS  
3 SPECIAL PUBLIC DEFENDER  
4 Nevada Bar #4771  
5 MONICA R. TRUJILLO  
6 Chief Deputy Special Public Defender  
7 Nevada Bar #11301  
8 W. JEREMY STORMS  
9 Chief Deputy Special Public Defender  
10 Nevada Bar #10772  
11 330 So. Third Street, Suite #800  
12 Las Vegas, Nevada 89155  
13 (702) 455-6265  
14 FAX: (702) 455-6273  
15 EMAIL: [monica.trujillo@clarkcountynv.gov](mailto:monica.trujillo@clarkcountynv.gov)  
16 EMAIL: [jeremy.storms@clarkcountynv.gov](mailto:jeremy.storms@clarkcountynv.gov)  
17 Attorney for Larry Decorleon Brown

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

13 STATE OF NEVADA, ) CASE NO. C-17-326247-1  
14 ) DEPT. NO. 21  
15 Plaintiff, )  
16 vs. )  
17 LARRY DECORLEON BROWN, )  
18 ID 8376788, )  
19 Defendant. )

20 **DEFENDANT'S MOTION TO DECLARE THE COURT'S ORDER**  
21 **FINDING THAT THE STATE MAY PRESENT FOOTWEAR IMPRESSION**  
22 **EVIDENCE TO THE JURY THROUGH LAY WITNESSES VOID AS IT VIOLATES**  
23 **MR. BROWN'S DUE PROCESS AND FAIR TRIAL RIGHTS**

23 DATE: November 21, 2019  
24 TIME: 9:30 a.m.

DEPARTMENT XXI  
NOTICE OF HEARING  
DATE 11/21/19 TIME 9:30 AM  
APPROVED BY SS JEA

25 COMES NOW, Defendant Larry Brown, by and through his attorneys, JoNell Thomas,  
26 Special Public Defender, Monica R. Trujillo, Chief Deputy Special Public Defender, and W.  
27 Jeremy Storms, Chief Deputy Special Public Defender and hereby requests this court rescind its  
28 order finding that the "Court took the issue of whether the photos of the Ralph Lauren Polo shirt

1 (sic) should be admitted. Court FINDS the evidence to be more probative than (sic) prejudicial  
2 and that the photos of the bloody footprint can be understood and interpreted by lay jurors” as  
3 footwear impression evidence is a specialized field of forensic science that, if it has any  
4 evidentiary value, is based upon methodologies beyond the realm of the everyday experience of  
5 a lay juror, such evidence requires the context of the special skill and knowledge of an expert for  
6 the evidence to have any probative value to the jury’s fact-finding. Allowing the State to present  
7 such evidence outside of the context of expert testimony will deprive Mr. Brown his substantive  
8 fair trial and due process rights. In the alternative, the defense request the court allow Mr. Brown  
9 to late-notice and reserve the right to call an expert on footwear impression analysis.  
10

11 This Motion is made and based upon all the papers and pleadings on file herein and oral  
12 argument at the time set for hearing this Motion.  
13

#### 14 **NOTICE OF MOTION**

15 TO: STATE OF NEVADA, Plaintiff; and

16 TO: District Attorney, Attorney for Plaintiff  
17

18 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and  
19 foregoing MOTION on November 21, 2019 at the hour of 9:30 a.m., or as soon thereafter as  
20 counsel may be heard.

#### 21 **PROCEDURAL HISTORY**

22 On September 14, 2017, Mr. Brown was arraigned on an Indictment in District Court,  
23 Department 3. Mr. Brown entered a plea of Not Guilty and waived his state right to a speedy  
24 trial. Thereafter, the State filed a Second Superseding Indictment, adding one count as to Mr.  
25 Brown. On October 19, 2017, Mr. Brown again entered a plea of Not Guilty and waived his  
26 state right to a speedy trial. On December 19, 2017, this Honorable Court received a Third  
27 Superseding Indictment. At that hearing, this Court noted that it did not need to arraign Mr.  
28

1 Brown because there were no charges added, only additional evidence and testimony regarding  
2 the charges. At a status check on October 31, 2017, this Court scheduled trial for June 18, 2018.  
3 On April 11, 2018, Nicholas Wooldridge filed a Motion to Withdraw as Attorney of Record.  
4 This Court granted Mr. Wooldridge's motion on April 24, 2018 and appointed the Special Public  
5 Defender's Office. Thereafter on April 26, 2018, the Special Public Defender's Office  
6 confirmed as counsel.  
7

8 Mr. Brown is charged by way of Third Superseding Indictment with one count of  
9 Conspiracy to Commit Robbery, one count of Robbery with Use of a Deadly Weapon, one count  
10 of Murder with Use of a Deadly Weapon and one count of Ownership or Possession of Firearm  
11 by Prohibited Person.  
12

### 13 **PERTINENT FACTS**

14 On February 22, 2017, Crime Scene Analyst, K. Thomas, took photographs of partial  
15 footwear impressions in apparent blood located on the pavement at the south end of the covered  
16 parking space where the decedent was found as well as partial footwear impressions leading  
17 away from the decedent. On March 20, 2017, employees of the Las Vegas Metropolitan Police  
18 Department executed a search warrant at the residence of Mr. Brown's girlfriend, Angelisa  
19 Ryder. Crime Scene Analyst M. McIntyre impounded a pair of red and black "Ralph Lauren  
20 Polo Sport" shoes, size 13 D, with reddish brown stains on the bottom of the right shoe. The  
21 presumptive blood test with Phenolphthalein yielded negative results. Counsel is unaware if the  
22 State requested forensic comparison between the partial footwear impressions from the crime  
23 scene and the shoes impounded at Mr. Brown's girlfriend's residence. The State did not endorse  
24 any experts on footwear impression for the trial.  
25  
26

27 The defense filed a motion to exclude evidence of the shoes obtained at Mr. Brown's  
28 girlfriend's house on the basis that said evidence was not probative and that, given that there was



1 no blood found on the shoe, any probative value the evidence might have was outweighed by  
2 the prejudice this evidence might inject in to the trial. The court issued the following order after  
3 expert notices were due:

4 COURT ORDERED, Motion DENIED in its entirety. Court took the issue of  
5 whether the photos of the Ralph Lauren Polo shirt should be admitted. Court  
6 FINDS the evidence to be more probative then prejudicial and that the photos of  
the bloody footprint can be understood and interpreted by lay jurors.

7 Minute Order, November 4<sup>th</sup>, 2019. (Errors in original).

### 8 ARGUMENT

#### 9 **FOOTWEAR IMPRESSION COMPARISION IS A FIELD OF FORENSIC SCIENCE** 10 **BEYOND THE GRASP OF A LAY PERSON'S COMMON EXPERIENCE, REQUIRING** 11 **EXPERT TESTIMONY.**

12 Precedent in Nevada strongly supports the notion that the footwear impression evidence  
13 the State intends to present should be introduced through an expert witness.<sup>1</sup> In Burnside v.  
14 State, 352 P.3d 627 (2015), the State used a Sprint/Nextel record custodian to explain how cell  
15 phone signals are transmitted from cell sites, including circumstances when the cell site nearest  
16 the cell phone is not used. The records custodian was not noticed as an expert. As the custodian's  
17 testimony concerned "matters beyond the common knowledge of the average layperson" his  
18 testimony was found by the Nevada Supreme Court to constitute expert testimony. In Burnside,  
19 the court found that since Burnside did not explain what he would do differently if proper notice  
20 had been given and did not request a continuance pursuant to the guidelines of NRS 174.295(2),  
21 the Supreme Court did not ascertain that there was prejudice. Burnside, at 637.  
22  
23  
24

---

25 <sup>1</sup> Five Nevada cases reference footwear impression evidence. Out of those five, three specifically mention expert  
26 testimony on the subject. The other two cases do not mention such testimony and the issue wasn't in controversy.  
27 Richardson v. State, No. 56450, 2011 Nev. Unpub. LEXIS 182, at \*2-3 (Mar. 18, 2011)(please note this case is not  
28 citable as legal precedent); Doyle v. State, 116 Nev. 148, 158, 995 P.2d 465, 471 (2000)(no mention of expert  
testimony); Walker v. State, 113 Nev. 853, 861, 944 P.2d 762, 767 (1997); Williams v. State, 113 Nev. 1008, 1016,  
945 P.2d 438, 443 (1997); Atkins v. State, 112 Nev. 1122, 1125, 923 P.2d 1119, 1121 (1996)(no mention of expert  
testimony).

1 Here, the State intends to present the jury photographs of partial footwear impressions in  
2 blood and either photographs or the impounded shoes that tested negative for blood. These items  
3 will be presented without any expert testimony. As the matching of a particular tread wear  
4 pattern in a footwear impression to a shoe is a process of “feature-comparison,” such a process  
5 involves the same sort of analytic comparison utilized in latent fingerprint analysis, hair analysis,  
6 firearm analysis and DNA analysis.  
7

8 In 2016, the President’s Counsel of Advisors on Science and Technology issued a report  
9 titled “Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison  
10 Methods” that examined the scientific support for various feature-comparison methods presented  
11 in criminal trials. The report did not examine “whether examiners can reliably determine class  
12 characteristics—for example, whether a particular shoeprint was made by a size 12 shoe of a  
13 particular make” noting that studies still needed to be undertaken to estimate the reliability of  
14 footwear analysis aimed at class characteristics. Instead the report focused on reliability  
15 conclusions for analysis that purport to be able to match a footwear impression to a specific piece  
16 of footwear. See Presidential Counsel of Advisors on Science and Technology “Forensic  
17 Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods”,  
18 pages 114-5 (2016). The report noted that there are no empirical studies that measure the  
19 examiners accuracy as to the soundness of their forensic methodology to “identify” a particular  
20 piece of footwear as the source of an impression, noting that the claims made lack any scientific  
21 foundation. Id. at 115. The report noted that the process of identifying an impression as coming  
22 from a particular shoe relies “entirely on an examiner’s subjective judgment.” Id. at 116. As  
23 this is the state of affairs in this area of forensics, the report urges that it is, “essential that the  
24 scientific validity of the method and estimates of its reliability be established by multiple,  
25 appropriate black-box studies.” Id.  
26  
27  
28

It is fair to say we do not let juries decide whether a latent print match the defendants, or that jurors, unaided, get to evaluate if the hammer-strike pattern on a spent shell case matches the hammer on a suspect murder weapon. We may all wear shoes and thus be more familiar with their features than the ridges of fingerprints but asking a jury to decide whether a partial print matches either a broad-category of characteristics similar to the shoe impounded in this case or a specific shoe is beyond the capacity of jurors. Given that what if any value footwear impression evidence has to a fact-finder would be based upon the subjective experience and expertise of a trained professional, jurors cannot be asked to make such a comparison on their own.

## CONCLUSION

Based on the foregoing, Mr. Brown requests that the Court either grant the instant motion and exclude the evidence of partial shoeprints and the shoes seized from Mr. Brown's girlfriend's house, or, in the alternative, allow the defense to late-notice and potentially call expert on this area of forensic science.

Dated: November 15, 2019

SUBMITTED BY

/s/ W. JEREMY STORMS

W. JEREMY STORMS  
MONICA R. TRUJILLO  
Attorneys for Brown

**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that service of the above mentioned matter was made pursuant to EDCR 7.26 on the attorney for the named parties by means of electronic mail to the email address provided to the court's electronic filing system for this case. Proof of Service is the date service is made by the court's electronic filing system by email to the parties and contains a link to the file stamped document.

PARTY  
STATE OF NEVADA

EMAIL  
DISTRICT ATTORNEY'S OFFICE email:  
[motions@clarkcountyda.com](mailto:motions@clarkcountyda.com)

Dated: 11/15/2019

/s/ ELIZABETH (LISA) ARAIZA

---

An employee of the Special Public Defender

NOV 21 2019

BY, A. Trujillo  
ATHENA TRUJILLO, DEPUTY

ORD  
JONELL THOMAS  
SPECIAL PUBLIC DEFENDER  
NV Bar No. 4771  
W. JEREMY STORMS  
CHIEF DEPUTY SPECIAL PUBLIC DEFENDER  
NV Bar No. 10772  
MONICA R. TRUJILLO  
CHIEF DEPUTY SPECIAL PUBLIC DEFENDER  
NV Bar No. 11301  
330 S. Third Street, 8<sup>th</sup> Floor  
Las Vegas, NV 89155  
Phone: (702) 455-6265  
Fax: (702) 455-6273  
Jeremy.storms@clarkcountynv.gov  
Monica.trujillo@clarkcountynv.gov  
Attorneys for Defendant Larry Brown

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,	)	CASE NO. C-17-326247-1
	)	DEPT. NO. 21
Plaintiff,	)	
	)	
vs.	)	
	)	
LARRY DECORLEON BROWN,	)	
ID 8376788,	)	
	)	
Defendant.	)	

**ORDER GRANTING DEFENDANT LARRY BROWN'S MOTION FOR  
DISCLOSURE OF CORRECTIVE ACTION REPORTS**

DATE OF HEARING: 11/14/2019  
TIME OF HEARING: 9:00 A.M.

THIS MATTER having come before the Court for a hearing before the above entitled Court on the 14<sup>th</sup> day of November, 2019, the Defendant being present, represented by MONICA R. TRUJILLO and W. JEREMY STORMS of the Special Public Defender's Office, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through

1 MICHAEL DICKERSON, and, the Las Vegas Metropolitan Police Department being  
2 represented by MATTHEW CHRISTIAN, and the Court having heard the arguments of  
3 counsel and good cause appearing therefor,

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the DEFENDANT  
5 LARRY BROWN'S MOTION FOR DISCLOSURE OF CORRECTIVE ACTION  
6 REPORTS, shall be, and is GRANTED, IN PART, to wit:

8 Pursuant to this ORDER, the Las Vegas Metropolitan Police Department is directed to  
9 produce an aggregate five (5) years of Corrective Action Reports, beginning four years (4),  
10 six (6) months prior to the testing in this case and ending six (6) months after said testing in  
11 this matter.

13 IT IS FURTHER ORDERED THAT, the Las Vegas Metropolitan Police Department  
14 is directed to produce corrective action reports falling in the aforementioned five (5) year  
15 timeframe for both the forensic scientists who conducted the primary analyses as well as the  
16 forensic scientists who conducted the technical analyses performed on evidence in this case.

18 IT IS FURTHER ORDERED THAT, the Las Vegas Metropolitan Police Department  
19 is directed to produce corrective action reports falling in the aforementioned five (5) year  
20 timeframe for the Crime Scene Analysts who worked on the documentation and collection of  
21 evidence in this case.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///


1 IT IS ALSO FURTHER ORDERED THAT, the aforementioned corrective action  
2 reports be provided to the Court's chambers for in camera review to determine what if any of  
3 the material the Las Vegas Metropolitan Police Department is directed to produce to the  
4 defense. Any corrective action reports directed to be produced to the defense shall remain  
5 strictly confidential and not be provided to any person other than counsel unless and until the  
6 Court orders otherwise and only after the Las Vegas Metropolitan Police Department has had  
7 an opportunity to be heard.  
8

9 IT IS FURTHER ORDERED THAT, the Las Vegas Metropolitan Police Department  
10 may make customary redactions and need not provide an unredacted version to chambers.  
11

12 DATED this 21 day of November, 2019.

13   
14 \_\_\_\_\_  
15 DISTRICT COURT JUDGE

16 SUBMITTED BY:

17   
18 \_\_\_\_\_  
19 W. JEREMY STORMS  
20 MONICA R. TRUJILLO  
21 Attorneys for Defendant Brown

22 APPROVED AS TO FORM AND CONTENT:

23   
24 \_\_\_\_\_  
25 MICHAEL DICKERSON  
26 Chief Deputy District Attorney

27   
28 \_\_\_\_\_  
29 MATTHEW CHRISTIAN  
30 Assistant General Counsel  
31 LVMPD

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,  
vs.  
LARRY DECORLEON BROWN,  
Defendant.

)  
)  
) CASE NO. C-17-326247-1  
)  
) DEPT. NO. XXI  
)  
)  
)  
)  
)  
)

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

THURSDAY, NOVEMBER 21, 2019

**TRANSCRIPT OF PROCEEDINGS RE:**

DEFENDANT'S MOTION TO DECLARE THE COURT'S ORDER FINDING THAT THE  
STATE MAY PRESENT FOOTWEAR IMPRESSION EVIDENCE TO THE JURY THROUGH  
LAY WITNESSES VOID AS IT VIOLATES MR. BROWN'S DUE PROCESS AND FAIR  
TRIAL RIGHTS; CALENDAR CALL

APPEARANCES:

For the State: JOHN GIORDANI, ESQ.,  
MICHAEL R. DICKERSON, ESQ.,  
Deputy District Attorneys

For the Defendant: MONICA R. TRUJILLO, ESQ.,  
W. JEREMY STORMS, ESQ.,  
Deputy Public Defenders

RECORDED BY: ROBIN PAGE, COURT RECORDER



1 LAS VEGAS, CLARK COUNTY, NEVADA; THURSDAY, NOVEMBER 21, 2019

2 [Proceeding commenced at 10:12 a.m.]

3  
4 THE COURT: All right. Mr. Brown is present in custody  
5 with Ms. Trujillo and Mr. Storms. This is on for calendar call as  
6 well as the recent motion relating to the photo and ask the Court  
7 to reconsider it's order as well as asking for an expert. I don't  
8 really need to hear from the State on reconsidering the order  
9 unless you're not opposing it. On the photo on the footprint.

10 MR. GIORDANI: I'm opposing the reconsideration, yes.

11 THE COURT: Right. That's -- I don't need to hear from  
12 you --

13 MR. GIORDANI: Okay.

14 THE COURT: -- because I'm not reconsidering it.

15 MR. GIORDANI: Okay.

16 THE COURT: Look, I considered all of it and to me it's  
17 pretty clear. I mean, you don't even need two eyes. You need one  
18 eye to look at that footprint. And I think any lay person can look  
19 at the footprint and evaluate it.

20 Now, clearly, they can't argue anything about, you know,  
21 the weight or somebody's apparent size based on the print or their  
22 gait or whether their right handed or left hand. Anything like  
23 that. And that clearly is now expert. Or if they were running or  
24 walking, but just to look at the print and the blood, to me it's  
25 pretty clear. And I don't think you need any kind of expert

1 training to see what's to me in my mind perfectly clear.

2 Now again, if they want to get into well, he pronates  
3 this way or, you know, he's pigeon toed or something like that,  
4 then that's clearly beyond the, you know, understanding of a lay  
5 person and that's expert. But if they just limit it to showing the  
6 photo and showing the sneaker, I think it's really obvious.

7 MR. GIORDANI: Understood.

8 THE COURT: And as long as they don't argue beyond on  
9 that anything about like I said somebody's size, whether they're  
10 tall, whether they're fat, whether they're short, I think we're  
11 good. So that's -- I'm not willing to reconsider it.

12 MR. STORMS: So --

13 THE COURT: I think it's fair --

14 MR. STORMS: -- so that the jury --

15 THE COURT: -- and I thought about that and I think a lot  
16 of the issue is brought up by me. And so, you know, I think the  
17 jury can look at the footprint. If you compare it with the sneaker  
18 print, I don't know. To me it's pretty darn clear.

19 MR. STORMS: But it's the same shoe is what you're  
20 saying, Your Honor?

21 THE COURT: Yeah. Now they can opine in terms of I don't  
22 know how -- you know, how common that shoe is. I mean maybe it's  
23 like a shoe a lot of people wear. I don't know. That's more  
24 expert, you know, is this -- it's like -- you know, like the O.J.  
25 shoe, that was a really rare shoe. I don't know. Is this like a

1 shoe, a common shoe that everybody, you know, is really popular  
2 right now and everybody's wearing? I have no idea.

3 So that to me is more like unless, you know it's  
4 something everybody can look around and say, this is -- you know, I  
5 see these shoes all the time.

6 MR. STORMS: Understood.

7 THE COURT: Like an Air Jordan previously was a really  
8 popular shoe.

9 MR. STORMS: That's right.

10 THE COURT: So, you know, I don't know what -- I --  
11 offhand I don't. That might be something. But, you know, if  
12 you're really getting -- if they're going to get into this is a  
13 rare shoe and it's only sold here or something like that, then  
14 that's expert.

15 MR. STORMS: But otherwise you're saying --

16 THE COURT: But if you guys --

17 MR. STORMS: -- they could argue that the shoe --

18 THE COURT: -- get into --

19 MR. STORMS: -- that was found --

20 THE COURT: Right.

21 MR. STORMS: -- is the shoe -- is -- could left that  
22 particular bloody footprint?

23 THE COURT: Right. And the jury can compare and look at  
24 itself because I think it's pretty clear and I don't think you need  
25 an expert to just visually compare, you know, does this tread look

1 similar. Like I said, anything beyond that, you know, how his  
2 gait, does he pronate, I think that's now expert and I don't think  
3 they intended to get into that, but they can't --

4 MR. GIORDANI: Got it.

5 THE COURT: -- because that I think you definitely would  
6 need an expert for. That's beyond the understanding --

7 MR. STORMS: So you're saying they can't --

8 THE COURT: -- [indiscernible - simultaneous speech] --

9 MR. STORMS: -- so you're saying they couldn't from the  
10 shoe say that based upon his gait that they can say that he was  
11 wearing --

12 THE COURT: Right. Exactly.

13 MR. STORMS: -- but they can say that that shoe created  
14 that print; is what you're saying?

15 THE COURT: Right.

16 MR. STORMS: Okay.

17 THE COURT: But they can't say he was running, he was --  
18 I mean to me that's like really getting into expert kind of  
19 territory; was he running, was he walking, you know, is he --

20 MR. STORMS: Well --

21 THE COURT: -- a tall person, is he not a tall person, is  
22 he, you know, a heavy person. You know, that's expert. They can't  
23 get into that from just --

24 MR. STORMS: That's fine.

25 THE COURT: -- that bloody print.

1 MR. STORMS: I just want to be clear, Judge, that, you  
2 know, I didn't make it as clear in my motion, but ultimately this  
3 is -- we would -- we would suggest that this burden shifting for us  
4 to have to bring in an expert to get into any of those things that  
5 would have to do with --

6 THE COURT: No. I know.

7 MR. STORMS: -- identifying the shoe of a particular  
8 class or as to commonality or all these things you're talking  
9 about.

10 THE COURT: I don't think its burden shifting.

11 MR. STORMS: And for us to have to bring in -- someone in  
12 to do that it was to make us have to prove -- to show --

13 THE COURT: Well that's any --

14 MR. STORMS: -- the flaws and their -- and their -- and  
15 their --

16 THE COURT: -- that's any evidence though. I mean they  
17 can put the evidence on --

18 MR. STORMS: But their --

19 THE COURT: -- this was the print and this is a sneaker  
20 we found.

21 MR. STORMS: -- but the DA's obligation is to seek  
22 justice which would give the jury the -- the ability, you know,  
23 through an expert to understand is this a common shoe, is this  
24 something that you can really say based upon one print and, you  
25 know, like -- you know, on -- on a particular type of surface

1 that's uneven that this is actually one in the same with the shoe  
2 that's found in the -- in the -- in this --

3 THE COURT: Yeah. But it's circumstantial evidence --

4 MR. STORMS: -- this place.

5 THE COURT: -- and it's part of the picture. It's -- you  
6 know, it's -- it's circumstantial evidence that he did it. It's  
7 consistent with his sneaker. Now does that mean he absolutely did  
8 it? No. But it's circumstantial evidence that somebody who has  
9 this sneaker made a footprint in the blood.

10 Now could have somebody else with the sneaker had made a  
11 foot -- it's just like fingerprints. You know, sometimes maybe  
12 there's a fingerprint on a water bottle and the defense's argument,  
13 well that print could have been left at any time. You know, we  
14 don't know that the print was left, you know, at the time of the  
15 killing or whatever. That's not burden shifting. I mean that's  
16 the just weight to go to the evidence, so you can argue that the  
17 weight should be slight.

18 MR. STORMS: But we --

19 THE COURT: I don't think its burden shifting.

20 MR. STORMS: -- but we don't let jurors decide whether or  
21 not the -- the -- you know, the -- the fingerprint on the water  
22 bottle matches the -- the --

23 MS. TRUJILLO: The ridges --

24 MR. STORMS: -- the ridges on --

25 THE COURT: Well that's because that's more technical.

1 MS. TRUJILLO: -- on a photograph.

2 THE COURT: Yeah. But that's exactly the issue I took  
3 under advisement as to whether or not you can look at it and say  
4 it's similar. It's similar. I mean it's -- okay. It's the same,  
5 you know.

6 MS. TRUJILLO: And I think it's also --

7 THE COURT: I mean I think, you know, unless you're going  
8 to get a blind person, it's -- they're going to say it's the same  
9 footprint. To me, it's pretty clear. But again, they can't talk  
10 about, you know, the size of the person or anything like that. But  
11 I think a regular -- look, the issue is can a person of ordinary  
12 understanding, an average person look at this evidence and  
13 interpret it without the benefit of any specialized skill,  
14 knowledge, training or education? The answer is yes. That's my  
15 answer. So you don't agree with it or whatever, but -- that -- you  
16 know, to me it's like, you know, this robe is black. Now an  
17 ordinary person of ordinary intellect and knowledge and  
18 understanding can understand that.

19 Now if you want to get into how the lights refracted off  
20 the robe, you might need a physicist to do that. But that's not --  
21 you know, to me like I said, just -- it's pretty apparent. And,  
22 you know, there are things you can just say, you know. Like you  
23 said, this is a black robe.

24 Now if somebody wants to explain how lights refracted  
25 from the robe and absorb, now you're getting into science. But I -

1 - I don't think you have to get into scientific understanding on  
2 that footprint. So I considered it.

3 I think like I said I came up with a lot of these  
4 arguments.

5 MR. STORMS: And, Judge --

6 MS. TRUJILLO: And, Judge, but --

7 THE COURT: And I waive them --

8 MS. TRUJILLO: -- for the -- for the record --

9 THE COURT: -- well I mean a lot of, you know, is it more  
10 like a fingerprint? I don't remember you saying that. I remember  
11 me saying that in our last argument saying this is -- I don't  
12 remember. Maybe you did say it.

13 MR. STORMS: That was in our motion.

14 MS. TRUJILLO: No. No. No.

15 THE COURT: Okay. I -- I thought I came up with that.

16 MS. TRUJILLO: To begin, we filed the motion. It was a  
17 motion.

18 THE COURT: No. No. No. And is it --

19 MS. TRUJILLO: Secondly --

20 THE COURT: -- that it was an expert issue. And that it  
21 was something beyond that. And I considered all of that. I  
22 thought I came up with the fingerprint. You -- I -- I didn't  
23 review your original motion again. But no, I considered  
24 everything. I looked at it. When I had the picture of the boot  
25 and the footprint here in Court that day, I said, oh wow, this is



1 all confusing. But when they gave me the foot -- the sneaker and  
2 the bloody footprint or foot, you know, footprint, I think it's  
3 pretty apparent. You don't agree, but I considered all of that.

4 And like I said on the fingerprint, I didn't recall it  
5 was in your original motion.

6 MR. STORMS: Well the motion --

7 THE COURT: But I --

8 MR. STORMS: -- there was a motion that I filed because  
9 when this was originally raised --

10 THE COURT: Right.

11 MR. STORMS: -- you know, we weren't -- it wasn't clear  
12 to me. We didn't talk about this in terms of an expert.

13 MS. TRUJILLO: Correct.

14 MR. STORMS: And then --

15 THE COURT: Well that's why --

16 MR. STORMS: -- and then --

17 THE COURT: -- I'm saying it. Who -- go look at --

18 MR. STORMS: -- and then the Court raised that idea.

19 THE COURT: That's why I'm saying --

20 MR. STORMS: And then in the minute order --

21 THE COURT: -- I raised the idea. I came up with the  
22 argument.

23 MR. STORMS: -- decided the issue and we didn't get a  
24 chance to speak -- speak --

25 THE COURT: Right.

1 MR. STORMS: -- on it essentially.

2 THE COURT: Yeah. No. Well I --

3 MR. STORMS: And so I filed this motion --

4 THE COURT: -- well I came up --

5 MR. STORMS: -- for that effect --

6 THE COURT: -- so I am right --

7 MR. STORMS: -- to that effect.

8 THE COURT: -- I came up with it.

9 MR. STORMS: Yes. Yes, you did. You raise the issue of

10 whether or not, you know, an expert would be needed for this.

11 THE COURT: Right.

12 MR. STORMS: And then -- and then, you know, then said it

13 wouldn't be necessary. Well we never said anything to that effect.

14 MS. TRUJILLO: No. I'm pretty sure --

15 THE COURT: Well I'm the one --

16 MS. TRUJILLO: -- it was in the motion in limine.

17 MR. STORMS: Okay. I'm sorry.

18 THE COURT: -- again, I'm the one -- I'm the one who came

19 up with it and I was concerned about that. And that's what I

20 wanted to consider, is this something that just an ordinary person

21 is going to be able to look at? Because again, it was concerning

22 to me a lot of times you do have an expert on these prints. And I

23 looked at it and I thought it was very apparent and any ordinary

24 person sitting on the jury can interpret it and understand it. And

25 that's -- that's the standard.

1 MS. TRUJILLO: And, Judge, to be clear, I did bring up  
2 the expert issue and there was originally a motion in limine  
3 because I believe its irrelevant evidence because the presumptive  
4 blood test was negative. So there's like multiple attacks --

5 THE COURT: Right.

6 MS. TRUJILLO: -- on this issue.

7 THE COURT: No.

8 MS. TRUJILLO: One, it shouldn't be admitted into  
9 evidence. It's irrelevant.

10 THE COURT: Well I -- and I said last time on the  
11 presumptive blood test that that would go to the weight --

12 MS. TRUJILLO: Weight.

13 THE COURT: -- of the evidence. And --

14 MS. TRUJILLO: I understand. I'm just laying out my  
15 argument. And then when you --

16 THE COURT: No. No. I --

17 MS. TRUJILLO: -- and when the Court went further into  
18 the impressions --

19 THE COURT: The fingerprints, is it --

20 MS. TRUJILLO: -- and we started discussing --

21 THE COURT: -- like a fingerprint.

22 MS. TRUJILLO: -- expert --

23 THE COURT: Right.

24 MS. TRUJILLO: -- expert testimony, we did not supplement  
25 the Court's argument because that's the exact argument that we were

1 going to make. I mean obviously it's a science for a reason. It's  
2 a science under attack. I think its problematic that you're going  
3 to allow them to look at photographs when the science itself, they  
4 get actual impressions in lays of what is left on the surface. We  
5 don't have that here.

6 THE COURT: Right.

7 MS. TRUJILLO: So it's worst --

8 THE COURT: But --

9 MS. TRUJILLO: -- to look at a photograph.

10 THE COURT: -- but a lot of the science that's in dispute  
11 right now is well what can you tell from a fingerprint like that's  
12 embedded into dirt as I understand. Not a fingerprint. A  
13 footprint. And that's when they're extrapolating, oh, this was a  
14 big person. This is a person who pronates.

15 MS. TRUJILLO: No. It's --

16 MR. STORMS: It's not.

17 THE COURT: This is a person --

18 MS. TRUJILLO: -- it's the actual impression that's under  
19 attack.

20 THE COURT: Okay. I -- I was aware of --

21 MR. STORMS: The study that ---

22 THE COURT: -- some of the issues and I think those are  
23 legitimate issues. Like I said, what can you tell about the print.

24 MR. STORMS: -- the study that I cited, Your Honor ---

25 THE COURT: But, you know --

1 MR. STORMS: -- had to do with -- it's just saying, you  
2 know, that -- the idea that you could say that this -- that this  
3 print matches this particular shoe, that is very much challenged.

4 MS. TRUJILLO: There is no foundation --

5 MR. STORMS: There's no --

6 MS. TRUJILLO: -- or validity.

7 MR. STORMS: -- there's no foundation for it.

8 THE COURT: Right. Well I think one thing to consider is  
9 the extent of the print. And, you know, if you're looking at like  
10 a tiny little portion of a shoe, I think that that's problematic  
11 and you would definitely need some kind of an expert.

12 But again, you know, I think maybe part of this is what  
13 the limitations would be on the State's ability to use the  
14 footprint. This is a footprint. This is his sneaker.

15 MR. STORMS: Yeah.

16 THE COURT: And they can't argue, you know, beyond that.  
17 It's consistent with the footprint. That's all that they can say.  
18 It's not necessarily made by that shoe. He's not the only person  
19 who has that shoe. It's not inconsistent.

20 MR. STORMS: Judge, based upon this decision --

21 THE COURT: That's -- that's my opinion as to the  
22 utilization of the evidence. You can't go beyond that.

23 MR. STORMS: Okay.

24 THE COURT: It's consistent.

25 MR. STORMS: We will be moving at this time to appeal

1 this issue before we have a trial to continue the trial to do that  
2 under these circumstances. So there's other issues besides that,  
3 but --

4 THE COURT: Okay.

5 MR. STORMS: -- but given --

6 THE COURT: Well on --

7 MR. STORMS: -- what the Court's saying --

8 THE COURT: -- so you're requesting --

9 MR. STORMS: -- here today --

10 THE COURT: -- a stay in order to file --

11 MR. STORMS: Yes.

12 THE COURT: -- a writ with the Supreme Court on the use  
13 of the shoe print?

14 MR. STORMS: Correct.

15 THE COURT: So your oral request which I know you have to  
16 make is -- is the, State, opposing their oral request for a stay?

17 MR. GIORDANI: Yes.

18 THE COURT: That is denied. So now you can seek a stay  
19 before the Supreme Court on that issue.

20 Issue number two, you said there are other problems.

21 MR. STORMS: So we -- also the issue with the corrective  
22 action reports, Your Honor, I have the orders finally signed here  
23 that I can submit for the Court's signature which was the issue  
24 that we had last week?

25 [Off the record discussions]

1 MR. GIORDANI: I didn't get a chance to update Mr. Storms  
2 and Ms. Trujillo. Right before Court we were talking and I reached  
3 out to Matthew and I forget his last name. That is counsel with --

4 THE COURT: The Metro attorney.

5 MR. DICKERSON: Christian, yes.

6 MS. TRUJILLO: Christian.

7 MR. GIORDANI: Christian. And he just responded to me  
8 and indicated they've been working on this all along. He said  
9 they're making great progress both him and the CSA lab, so the fact  
10 that this is getting signed now isn't going to be an issue.

11 THE COURT: Well okay. That's an issue because I don't  
12 know how voluminous these records are.

13 MR. STORMS: And, Your Honor, we -- when we talked to our  
14 expert about this just with the kind of the window we're talking  
15 about right on the eve of trial, just even if he got that very  
16 quickly, it would be really hard to kind of evaluate and figure out  
17 how we could use this in our defense at this point in time.

18 THE COURT: Well the other problem is I have to look at  
19 it.

20 MR. STORMS: That's correct. And that -- I was saying --

21 THE COURT: And I was -- I was actually --

22 MR. STORMS: -- even excluding that step --

23 THE COURT: -- not here although I was willing to take it  
24 all home and review it at home, but -- over the holiday, you know,  
25 whatever. But yeah --

1 MS. TRUJILLO: And we have ---

2 THE COURT: -- and we still wouldn't get it. And, you  
3 know, that kind of brings up another issue; why the late request?  
4 Because we've had I don't know how many status checks in this case  
5 and the issue was just brought up at our what, how -- I don't  
6 remember how many weeks ago, but at our last hearing on this. So  
7 why -- I mean why --

8 MS. TRUJILLO: Well quite frankly --

9 THE COURT: -- why did you bring it up so late?

10 MS. TRUJILLO: -- quite frankly we were brainstorming the  
11 issue with our office as we typically do and we realized that  
12 someone else in our office recently did the same thing and they  
13 suggested we do it and we did it.

14 And finally the third issue we have is yesterday the  
15 State filed their ninth supplemental notice of witnesses including  
16 an additional expert witness that has not been previously been --  
17 been noticed. And they gave us a firearm's report yesterday. And  
18 so at this point, we would orally move to preclude that evidence.

19 THE COURT: All right. So your -- what I'm hearing is  
20 you're asking for a continuance based on the information from the  
21 Metro lab because even if this Court gets it in time to review it,  
22 you're telling me that your expert is not going to have the time to  
23 review it; is that what you're telling me?

24 MS. TRUJILLO: Yes.

25 MR. STORMS: That's correct.



1 THE COURT: And your second issue was that you're saying  
2 that their notice of the firearm is untimely and you either want a  
3 continuance or you want to have that stricken. Obviously if the  
4 matter's continued, it's not going to be stricken.

5 MS. TRUJILLO: Correct.

6 THE COURT: I just signed the order if you want to  
7 approach with that.

8 MS. TRUJILLO: Thank you.

9 THE COURT: All right. So those are the two issues. The  
10 first is the issue I'm going to turn over to the State. The first  
11 is the issue on the late request for the DNA information of the --  
12 I'm going to -- I misspoke -- the crime lab information and whether  
13 or not they can have -- get enough time for their expert to review  
14 it and whether or not that request is sort of I guess waived by  
15 virtue of the fact that they didn't request it in a timely fashion.

16 And the second issue is the untimeliness according to  
17 them of your turn over of the firearm's information. So start with  
18 the first thing on the Metro lab.

19 MR. GIORDANI: As to the Metro lab, I don't know how  
20 anyone can stand up and say an expert needs more time to review it  
21 when we don't even know what's going to be turned over.

22 My understanding is when this was done in the *Clay*  
23 [phonetic] case previously, it wasn't voluminous at all. It was  
24 ordered five years back similar to this case and the -- the  
25 majority of them are hey, this CSA had a water -- water bottle at a

1 crime scene and left it on the table at a crime scene. I mean it's  
2 -- it's -- at this point kind of not ripe yet to ask for a  
3 continuance based upon what we don't know what we're going to get.

4 So secondly, they requested it late. The lab has been  
5 busting their chops to try to get this done as ordered. And they  
6 seem to be making great progress according to Mr. Christian. So I  
7 don't mean to be flipping in any way, but I think this is  
8 ultimately going to be a non-issue based upon prior experience or  
9 what I've heard happened in other cases.

10 It's -- it's not voluminous records. They're going to go  
11 to the Court. It'll probably take, you know, an hour at most  
12 'cause my understanding --

13 THE COURT: Okay.

14 MR. GIORDANI: -- is they're one single page for one  
15 single incident or maybe a page and a half instead of --

16 THE COURT: Okay. I had no idea. I mean sometimes we  
17 get records and they're two feet high. So you think it's just  
18 going to be a couple of --

19 MR. GIORDANI: Right.

20 THE COURT: -- things, couple of reprimands or --

21 MR. GIORDANI: Now, you know --

22 THE COURT: -- corrective actions.

23 MR. GIORDANI: -- I don't want to speak out of both sides  
24 of my mouth. I don't know what we're getting either, but based on  
25 prior experience in a similar order, a five-year order --

1 THE COURT: Okay.

2 MR. GIORDANI: -- it wasn't much at all.

3 THE COURT: All right.

4 MR. GIORDANI: And there are corrective action reports  
5 that point out any time a CSA or a forensic analyst has made a  
6 mistake or something to that effect.

7 And again, that was the defense's request. Everyone's  
8 been bending over backward -- late request and everyone's been  
9 bending over backwards to make sure it happens and I think it's  
10 going to happen at this point.

11 Number two, as to the firearm's report. If you will  
12 recall this was a firm -- firm setting last time.

13 THE COURT: Right.

14 MR. GIORDANI: It was not continued at our request, but  
15 when it was continued although we were technically ready to go back  
16 then, we just cleaned up a couple of things and one of those things  
17 was the two cart cases from the scene. They are the same caliber,  
18 but they are a different head stand for a different make. So we  
19 submitted a request to the firearm's lab to compare the two. They  
20 determined yesterday that they were fired from the same weapon.

21 We turned over the report and the bench brief as timely  
22 as, you know, the moment we got it and then we filed an expert  
23 notice yesterday. By my calculation, since a continuance could be  
24 the remedy, we would have to continue the trial eight days which  
25 would put us starting on the 9<sup>th</sup> instead of the 2<sup>nd</sup>. If that's the

1 case, I'm happy to do it. It's just -- this thing has been dragged  
2 out and dragged out and dragged out over and over and, you know, we  
3 continue to set up these pre-trials with witnesses, arranged travel  
4 for five, ten --

5 THE COURT: Well I thought everyone had arranged travel.

6 MS. TRUJILLO: We've arranged travel.

7 THE COURT: I know that --

8 MR. GIORDANI: We have.

9 MR. DICKERSON: Yeah.

10 THE COURT: -- the defense was concerned. They have out-  
11 of-state witnesses. You have out-of-state witnesses.

12 MR. GIORDANI: Right. So I don't fault them for asking  
13 for the continuance, but if anything it's a seven-day continuance.  
14 So order the trial to start on the 9<sup>th</sup> and then they can make a  
15 decision if they --

16 THE COURT: Well --

17 MR. GIORDANI: -- would rather it start on the 2<sup>nd</sup>.

18 THE COURT: -- okay. Then we have the Christmas holiday  
19 coming up --

20 MR. GIORDANI: Right.

21 THE COURT: -- which Christmas eve this year falls on  
22 Tuesday. And I'm sure we don't want jurors sitting on Tuesday on  
23 Christmas eve.

24 MR. GIORDANI: Oh, there's no way. There's no way --

25 THE COURT: So --

1 MR. GIORDANI: -- even if it started on the 9<sup>th</sup>.

2 THE COURT: -- if we started on the 9<sup>th</sup>, would we  
3 definitely finish this case including penalty if it gets to that by  
4 the 20<sup>th</sup>?

5 MR. GIORDANI: Oh, before that I would think.

6 THE COURT: I mean I'm just saying because --

7 MR. GIORDANI: We're still discussing waiving penalty  
8 too.

9 THE COURT: Okay. What's -- I'm not inclined to continue  
10 it for the reasons that have been stated by the State as well as  
11 what I've stated myself. But if it's not continued, does the  
12 defense want to move it to the week of the 9<sup>th</sup> as opposed to the 2<sup>nd</sup>  
13 or do you want to keep it on the 2<sup>nd</sup> and try to get the stay from  
14 the Supreme Court? I mean either way, you're free to obviously  
15 seek a stay and we'll be seeking the stay because you clearly want  
16 this issue of the expert litigated.

17 So for right now I'm assuming the Supreme Court doesn't  
18 grant the stay, but they very well may.

19 MR. STORMS: Mm-hmm.

20 THE COURT: In which case the start date is irrelevant.  
21 So for the right now assuming they don't grant the stay, like I  
22 said they very well may, do you want the 2<sup>nd</sup> or do you want the 9<sup>th</sup>?

23 MS. TRUJILLO: Judge, I think we should have a continued  
24 calendar call to Tuesday and then make a decision at that time  
25 because --

1 THE COURT: Court's dark on Tuesday.

2 MS. TRUJILLO: I don't think we can take a position. So  
3 the Court -- because we're asking for the continuance, I rather not  
4 say I prefer anything because I prefer a continuance and I don't  
5 want to have any issues for his appeal, so I'll let the Court  
6 decide.

7 THE COURT: What's the State's preference, the 2<sup>nd</sup> or the  
8 9<sup>th</sup>? I know you're in a capital murder case or did that just  
9 finish?

10 MR. GIORDANI: Just finished last night. Technically  
11 it's not a 21-day notice, so to cure any issue for appellate  
12 purposes, we should probably start on the 9<sup>th</sup>.

13 THE COURT: All right. I'm going to go ahead and set --

14 [Colloquy between the Court and the Clerk]

15 THE COURT: All right. I'm going to go ahead then --  
16 either way the case set for the 9<sup>th</sup> wouldn't have been able to go in  
17 here because this would have hit into that other week. So I'm  
18 going to go ahead and continue your calendar call to Thursday,  
19 December 5<sup>th</sup> at --

20 MR. GIORDANI: We need a calendar call? I thought you  
21 were just setting the trial date?

22 THE COURT: Well I was. You're right. I don't have to.

23 MR. GIORDANI: Okay. Thank you.

24 THE COURT: To December 9<sup>th</sup> at 9 a.m.

25 [Colloquy between the Court and the Clerk]

1 THE COURT: All right. And then one final thing the  
2 State estimates -- estimates that even with the penalty  
3 potentially, we can do this in two weeks. Does the defense think  
4 that even with the possible penalty phase we would get it done in -  
5 -

6 MR. GIORDANI: Less.

7 THE COURT: -- in two --

8 MR. GIORDANI: Our position was seven even with -- seven  
9 days.

10 THE COURT: Even with penalty?

11 MR. GIORDANI: Yeah.

12 MS. TRUJILLO: I think that's accurate.

13 THE COURT: Okay.

14 MS. TRUJILLO: We'll be done by the 20<sup>th</sup>.

15 THE COURT: All right. So we'll see everyone unless the  
16 Supreme Court issues a stay, we'll see everybody back on December  
17 9<sup>th</sup> --

18 MR. GIORDANI: Okay. I'm sorry. I have one more thing.

19 THE COURT: -- at 9 a.m.

20 MR. GIORDANI: Okay. I should have mentioned this. The  
21 -- member -- remember the motion the State filed regarding the  
22 Cellebrite, the advanced proprietary software the witness is in New  
23 Jersey?

24 THE COURT: Okay.

25 MR. GIORDANI: And we had discussed previously. The

1 Court took it under advisement and then indicated that you would  
2 allow the witness to testify under seal and outside the presence.

3 THE COURT: Okay.

4 MR. GIORDANI: I had that person prepared to address that  
5 via CourtCall today.

6 THE COURT: Okay.

7 MR. GIORDANI: But if the Court would prefer that we do  
8 that on December 9<sup>th</sup> just before we start with jury selection, we  
9 can also do that too.

10 THE COURT: Maybe -- well we could do it today, but we're  
11 still obviously in the middle of --

12 MR. STORMS: I mean --

13 THE COURT: -- a calendar. So you would want to do it at  
14 obviously the end of the calendar and then we are finishing up the  
15 murder trial that I'm currently in at 12:30. So the only time we  
16 would be able to do it is some time between whenever this calendar  
17 ends and 12:30.

18 MR. GIORDANI: I would defer to --

19 THE COURT: So I don't know how -- I don't know when the  
20 calendar's going to end. We might --

21 MR. GIORDANI: I'm going to leave that up to them. I  
22 think it's something we should probably address prior to the first  
23 day of trial.

24 MS. TRUJILLO: I agree, today. So we can wait around,  
25 Judge.



1 THE COURT: Okay. How long do we anticipate that's going  
2 to take?

3 MR. GIORDANI: Not long.

4 THE COURT: Okay.

5 MR. GIORDANI: My -- my anticipation is that we don't  
6 really have subpoena power over him. He's in New Jersey. So I  
7 think that what's going to happen is the Court's going to tell him  
8 what you intend is to have this expert testify under seal outside  
9 the presence. He's going to state his position as to why they  
10 shouldn't be asked about advanced proprietary software and then the  
11 Court will make it's ruling. So I don't think it will take too  
12 long.

13 THE COURT: Okay. All right. If you don't mind hanging  
14 around.

15 MR. GIORDANI: Sure.

16 [Matter trailed]

17 [Matter recalled at 11:18 a.m.]

18 THE COURT: [indiscernible] question the witness as to  
19 why --

20 MR. GIORDANI: Okay

21 THE COURT: -- he needs the protective order and then  
22 defense counsel can question and then I'll just pipe up as I think  
23 of questions is that fine?

24 MS. TRUJILLO: No. My understanding was this was just to  
25 tell him why he needed -- why we prefer that he come in person that

1 we were going to do a hearing under seal. Not an opportunity --  
2 THE COURT: Oh, I'm sorry. I thought this --  
3 MS. TRUJILLO: -- to cross him.  
4 THE COURT: -- is that all is today?  
5 MR. GIORDANI: Right.  
6 MR. STORMS: Yes.  
7 THE COURT: Is I thought today was to discuss the  
8 protective order.  
9 MR. GIORDANI: No.  
10 THE COURT: Okay. Hold on one second.  
11 THE COURT: Wait, don't do it yet. I was confused. I  
12 apologize.  
13 MR. GIORDANI: No. So --  
14 THE COURT: So today is just for me to tell him he needs  
15 to show up?  
16 MR. GIORDANI: Yes.  
17 THE COURT: Okay.  
18 MR. GIORDANI: I mean really --  
19 THE COURT: I was confused.  
20 MR. GIORDANI: He's not the guy though. He's not -- so  
21 let me just make a record real quick.  
22 THE COURT: Right. Okay. I was a little unsure. I  
23 thought we were doing something different today.  
24 MR. GIORDANI: I'm sorry.  
25 THE COURT: Okay.

1 MR. GIORDANI: So when we were able to get into this  
2 phone.

3 THE COURT: Mm-hmm.

4 MR. GIORDANI: It was through Advanced Services --

5 THE COURT: And I remember all that that it's the  
6 software and they want a protective order so that the defense can't  
7 question them and I remember all that.

8 MR. GIORDANI: Right.

9 THE COURT: So. This gentleman, Mr. Jake McDermott, is  
10 legal counsel for Cellebrite.

11 THE COURT: Okay.

12 MR. GIORDANI: The analyst who did the phone who actually  
13 accessed the phone, my understanding is he made a mirror image of  
14 the phone and then sent it would be the chain of custody person  
15 from our position that would be necessary.

16 THE COURT: Okay. So this is just the -- no offense this  
17 is just the lawyer.

18 MS. TRUJILLO: Just a lawyer, yeah.

19 MR. GIORDANI: Yeah. Right. So --

20 MR. STORMS: So we get it all the time.

21 MR. GIORDANI: -- the issue from our end is I don't know  
22 that I have much power to compel him to send this person from New  
23 Jersey. And kind of the hope was that the Court could assure him  
24 that this is the parameters kind of what we're going to get into.  
25 It's not going to be in front of the jury or in public.

1 THE COURT: Right.

2 MR. GIORDANI: And then he would make that analyst --

3 THE COURT: So he would just be --

4 MR. GIORDANI: -- available for us.

5 THE COURT: -- just testify in front of the jury as to

6 chain of custody and we were just making a record out of the

7 presents in a sealed hearing as to whether or not he would have to

8 testify on this so-called privileged --

9 MR. GIORDANI: Right.

10 THE COURT: -- information. And basically if I say well,

11 they can ask him if this, they would have an opportunity heard by

12 counsel.

13 MR. GIORDANI: Fair.

14 THE COURT: Fair?

15 MS. TRUJILLO: That was my understanding.

16 THE COURT: Okay.

17 MS. TRUJILLO: But -- but all that being said was that we

18 still wanted to be able to cross-examine him. It was the Court who

19 said well --

20 THE COURT: The analyst.

21 MS. TRUJILLO: Correct. Correct. The analyst not this

22 person.

23 THE COURT: So when are we going to set the hearing for

24 the analyst; has that been set?

25 MR. GIORDANI: No. We --

1 MS. TRUJILLO: He just said --

2 THE COURT: Okay.

3 MS. TRUJILLO: Go ahead.

4 THE COURT: We had just suggested the 9<sup>th</sup>, you know,  
5 before the jury or we could do it I guess once we get a jury.

6 MS. TRUJILLO: We didn't say a time. We just said when  
7 he flew in for trial that we would --

8 THE COURT: Okay.

9 MS. TRUJILLO: -- make time to do a hearing outside the  
10 presents.

11 MR. GIORDANI: Yeah. So we can do it --

12 THE COURT: How long --

13 MR. GIORDANI: -- during the course of the trial.

14 THE COURT: Well when are you planning on having him here  
15 since he's flying in from New Jersey?

16 MR. GIORDANI: Well I think we are putting the cart  
17 before the horse a little bit 'cause I don't think they've agreed  
18 yet to send anybody. I just want him to get these assurances that  
19 this is how the process is going to go.

20 THE COURT: Okay. But --

21 MR. GIORDANI: And then we were going to arrange travel.

22 THE COURT: Okay. Would you be flying him at the  
23 beginning? I mean assuming he agrees -- they agree to send him.

24 MR. GIORDANI: I would -- well since the trial's going to  
25 start the 9<sup>th</sup>, I would say the safest bet would be the 12<sup>th</sup> which is

1 that Thursday.

2 THE COURT: Okay.

3 MR. GIORDANI: And we get all our lay people out of jury  
4 selection, lay people out of the way and --

5 THE COURT: I would say I would prefer to have a full day  
6 on Monday and not do the hearing on the Monday, but --

7 MR. GIORDANI: Okay.

8 THE COURT: -- if counsel wants the hearing at 9 o'clock  
9 on Monday, we could do it then, but --

10 MS. TRUJILLO: No.

11 THE COURT: Okay.

12 MR. GIORDANI: All right. Ready?

13 THE COURT: All right. Now you can call him now that I  
14 know who we're talking to.

15 [Colloquy between the Court and the Marshal]

16 THE COURT: And, Mr. Giordani, why don't you start 'cause  
17 you've had okay friendly contact with him.

18 [Colloquy between the Court and the Marshal]

19 MR. McDERMOTT: This is Jay.

20 MR. GIORDANI: Hello, Mr. McDermott.

21 MR. McDERMOTT: Hello. Yeah. This is Jay.

22 MR. GIORDANI: Hi. I have you on conference call with  
23 Judge Valerie Adair and the defense counsel in the case of State  
24 versus Larry Brown.

25 MR. McDERMOTT: Okay. Great.

1 MR. GIORDANI: And just --

2 THE COURT: And good morning. This is Judge Adair  
3 speaking. We're here with counsel in open court, Monica Trujillo  
4 and Jeremy Storms.

5 MR. GIORDANI: Mr. McDermott, can you just tell us your  
6 title, position for the record?

7 MR. McDERMOTT: Sure. I'm Director of legal for North  
8 America for Cellebrite Incorporated.

9 MR. GIORDANI: And, Mr. McDermott, in the course of  
10 preparation for this trial I had issue a subpoena to you for  
11 basically testimony from the analyst regarding how they accessed  
12 the phone in question and you had voiced concern about any analyst  
13 being required to testify to any advanced proprietary software or  
14 anything that could be considered privileged; is that right?

15 MR. McDERMOTT: Correct.

16 MR. GIORDANI: And we're kind of -- we're here today.  
17 We're not in front of a jury. We are just in Court with counsel  
18 and the Judge and the defendant and we wanted to get your concerns  
19 kind of on the record. I'm going to try to state where we are with  
20 the Court's order.

21 The intent is to bring in the analyst to have a closed  
22 sealed proceeding outside the presence of the public and the jury  
23 to testify to kind of generally what he did.

24 THE COURT: Right.

25 MR. GIORDANI: And then basically in front of the jury,

1 he would testify to the chain of custody. Meaning he received the  
2 phone. He had possession of it. And then he sent it back.

3 THE COURT: Right. And basically in front of the jury he  
4 would be testifying to the fact that he had the phone, he, you  
5 know, do whatever he did with the information. Just sort of  
6 generically. And that the phone was then sent back here and that's  
7 really just for chain of custody purposes.

8 And anything else would be mainly not getting into the  
9 science or the programming of it, but just for the Court to  
10 understand what is proprietary about this. So I think that's where  
11 we are because counsel -- defense counsel wanted to get into it  
12 more than just the chain of custody aspect; does that --

13 MS. TRUJILLO: Well I think where we left off was, we're  
14 not sure what we know which is why we want to do a sealed hearing  
15 and then the Judge is going to further rule on the parameters of  
16 the testimony before the jury.

17 THE COURT: Right. Right. But at -- you know, for right  
18 now the analyst would only be testifying really as to change  
19 custody. Basically, you know, where he works, what his job title  
20 is, that he received the phone, you know, whether it was in his  
21 sole, care, custody and control or what he did with it and then  
22 that he sent it back.

23 So that really obviously would not get into any kind of  
24 proprietary or trade secrets.

25 Anything that we did in the closed session hearing if the



1 Court -- if the Court determines that somehow they can ask  
2 something beyond that narrow parameter that I just told you, you  
3 folks would have an opportunity to be heard on that. And  
4 anything's that said in the closed session hearing would be sealed  
5 by court order and it could only be opened either by order of the  
6 District Court or the Appellate Court for appellate review or  
7 potentially down the road a Federal Court in a federal habeas  
8 petition. So that would be the parameters of who would ever be  
9 able to see this.

10 And, you know, I already stated we're not going to get  
11 really into detail about the programming or the science because  
12 frankly none of us are going to understand it. So, you know, I  
13 think in terms of real trade secrets were not going to be getting  
14 into that because I don't really think that would further anything  
15 in my opinion. What's your position in terms of A, just having the  
16 analysts come out here for that limited purpose in front of the  
17 jury chain of custody and B, a closed or closed session sealed  
18 proceeding which obviously is the State, the Court, just my Court  
19 staff and the defendant and counsel and in terms of -- and the  
20 corrections officers obviously, that would be it?

21 MR. McDERMOTT: Sure. Absolutely. So -- so Cellebrite  
22 is always open and willing to help the Court as best we can.

23 THE COURT: I'm sorry. Can you state that again? I  
24 couldn't hear you.

25 MR. McDERMOTT: Sure. Cellebrite is always willing and,

1 you know, we always hope to help the Court as best we can.  
2 Obviously, we want to be involved in this process. I would have to  
3 go back -- we've had -- we had a fair amount of turnover in our  
4 Cellebrite Advanced Services or CAS team the team that does this  
5 type of work recently. I will need to discuss with the team to  
6 find out their availability. I do not know it off the top of my  
7 head unfortunately and really get guidance from them.

8           Is there -- as far as the closed session goes, is there  
9 any chance that we could see the list of questions to be asked in  
10 advance of that session so that we know what will be discussed?

11           THE COURT: You're asking for the questions is that what  
12 you just --

13           MR. McDERMOTT: Yeah. The questions for the closed  
14 session. And I obviously understand that the answers will lead to  
15 follow-up questions that you might not be able to provide, but we  
16 definitely would like some knowledge of what will be asked. It  
17 sounds like --

18           THE COURT: As I said --

19           MR. McDERMOTT: -- there may be --

20           THE COURT: -- as I said we're not going to, you know,  
21 ask him to do the programming for us on the blackboard, not that we  
22 have one, an easel, because we would know what he's -- you know, I  
23 mean that would, you know, not further anything. I don't think we  
24 have -- any of us have the expertise for that.

25           I think it's really something more generic for the Court

1 to make a determination as to whether or not their, you know, their  
2 proprietary secrets and that would be really the point of the  
3 hearing. Mr. Giordani?

4 MR. GIORDANI: And let me just take a step back for a  
5 moment, Mr. McDermott. First, do you have any objection to sending  
6 someone --

7 THE COURT: Wait 'til the first.

8 MR. GIORDANI: -- for a chain of custody type preceding?

9 MR. McDERMOTT: We don't. I believe you and I have or at  
10 least I've discussed with someone in your office the fees that we  
11 have associated with testimony.

12 MR. GIORDANI: Yeah. Yeah. That's not an issue. I'm  
13 just talking about generally any objection to having someone  
14 testify to that.

15 MR. McDERMOTT: No. No.

16 MR. GIORDANI: Okay.

17 MR. McDERMOTT: That should be fine.

18 MR. GIORDANI: So that step is done. We don't need to  
19 worry about that.

20 The -- the proceeding that would be sealed would you have  
21 an objection to sending someone for that assuming they could have  
22 open communication with you prior to and if anything comes up then  
23 maybe we could take a break and have them contact you or other  
24 counsel?

25 THE COURT: Well he can be present telephonically --

1 MR. GIORDANI: Or yeah.

2 THE COURT: -- on CourtCall. I mean there's no reason in  
3 the world that counsel can't be appearing in the closed door  
4 session by way of CourtCall or like we're doing today. CourtCall  
5 wasn't working today on the cell phone so I have no -- I have no  
6 problem with that or if you have Skyping capabilities again watch  
7 it.

8 So we don't have contemporaneous JAVS transmission, but  
9 like I said I -- I don't have a problem with counsel being present  
10 that way.

11 MR. GIORDANI: Does that work for you, Mr. McDermott?

12 MR. McDERMOTT: Yeah. I believe that should ---

13 MR. GIORDANI: Okay.

14 MR. McDERMOTT: all be fine.

15 MR. GIORDANI: Okay. Then how about this, we'll -- the  
16 day we select for the witness to testify to the chain of custody  
17 issue, that's the day we'll have him flown out and then we'll hold  
18 the closed hearing the same day, but we'll include you on  
19 CourtCall?

20 MR. McDERMOTT: Okay. And will you -- will you work with  
21 us to figure out the -- the timing of that or ---

22 MR. GIORDANI: Oh yeah.

23 MR. McDERMOTT: Okay.

24 MR. GIORDANI: We'll do that on --

25 MR. McDERMOTT: Okay.

1 MR. GIORDANI: -- my end the District Attorney's end.  
2 Yeah. We'll figure the travel out and get that all arranged. I  
3 just wanted it on the record --

4 MR. McDERMOTT: Okay.

5 MR. GIORDANI: -- that you didn't have objection to  
6 sending someone out here pursuant to our request.

7 THE COURT: Right. Because it's important that your --  
8 that your analyst testify live in front of the jury just on the  
9 chain of custody issues with, you know, he got off the phone, what  
10 he, you know, what he did with it and then that he sent it right  
11 back is essentially --

12 MR. McDERMOTT: Yeah.

13 THE COURT: -- the issue there.

14 MR. McDERMOTT: But sure. That's just to make clear that  
15 the matter that's all being on the record to make clear that it is  
16 dependent on payment of fees and also the protective order that  
17 this will all be occurring.

18 MR. GIORDANI: Oh yeah. And we'll as we do with all out-  
19 of-state witnesses will arrange travel and get it all figured out  
20 through are out-of-state desk.

21 MR. McDERMOTT: Okay. Then -- then yeah. It should be  
22 fine internally for us. And we'll assist as best we can.

23 MR. GIORDANI: Thank you, sir.

24 THE COURT: All right. Thank you.

25 MS. TRUJILLO: Thank you.

1 MR. McDERMOTT: Yeah.

2 MR. GIORDANI: Have a good day.

3 MR. McDERMOTT: You too.

4 THE COURT: All right. Easy enough.

5 MR. GIORDANI: Easy enough. Thank you.

6 THE COURT: Thank you.

7 MR. STORMS: Judge, so we have two more issues. We'd

8 like to move for -- to move to stay proceedings to appeal on. One

9 is the issue of -- of this closed to hearing with respect to the

10 Cellebrite.

11 THE COURT: I think that's premature to be honest with

12 you because we don't know what the information is going to be. So

13 in my opinion your request is somewhat premature.

14 MR. STORMS: Okay. I'm still making it though and would

15 ask to stay for that and then --

16 THE COURT: I mean I think you need to state more of a

17 basis because we don't know what they're going to say. And as I

18 already said, you know, without an expert even if he were to write

19 down the program for all of this is not going to make sense to any

20 of us.

21 MR. STORMS: Well, Judge, we're --

22 THE COURT: Well unless I'm --

23 MR. STORMS: -- we're precluded from --

24 THE COURT -- unless you have some advanced degree in

25 computer science or even not an advanced degree some specialized

1 knowledge of programming, I don't think any of us and certainly not  
2 the jury is going to understand it anyway. S I don't know what the  
3 -- I guess --

4 MR. STORMS: If I can speak of --

5 THE COURT: Right.

6 MR. STORMS: -- the process that the Court is setting up  
7 here doesn't allow us to have an expert look as -- allow us to  
8 interpret it in any way because it's happening during the trial  
9 whenever we're going to be getting the chain of custody of this  
10 issue. We have a cross-examination due process right to get into  
11 these things in front of a jury and so we're going to ask the stay  
12 and writ this to the Supreme Court on that issue.

13 And we also are going to challenge the order that the --  
14 that the Court issued with respect to the corrective action reports  
15 and that you just limit it to the people that were on this  
16 particular case. Whereas we'd ask for the corrective action  
17 reports at the office so we can challenge the office which is what  
18 the *Hover* case suggest we can do.

19 THE COURT: State, do you want to respond to the A, the  
20 issue of whether or not that he's being deprived of his due process  
21 rights because the hearing on the protective aspect or the  
22 confidential aspects of the analyst potential testimony is being  
23 held in a closed door session, and two, the corrective action  
24 reports?

25 And I would just note, you know, there was no --

1 everybody knew that there was some technology involved in this.  
2 Why are we just talking about potentially an expert and all of  
3 this? We all knew that it was scientific information that probably  
4 certainly is beyond our understanding and would be beyond the  
5 understanding of the jurors even if it were all disclosed in here.  
6 So why are we now just talking about an expert? Why wasn't this  
7 addressed?

8 I mean everybody knew that something was done --

9 MR. STORMS: Well, Judge, we've all --

10 THE COURT: -- to get this information.

11 MR. STORMS: -- we've already raised --

12 THE COURT: Do you see what I'm saying? I mean why --

13 MR. STORMS: I mean we -- I mean we also would raise it  
14 on the *Crawford* issues we've previously raised that we -- that this  
15 is done for the purposes of prosecution and that this -- this  
16 doesn't meet any hearsay exception that exist in Nevada.

17 And we -- our position has always been it should be in an  
18 open hearing. The Courts ruled otherwise and we have objected --

19 THE COURT: Right.

20 MR. STORMS: -- but --

21 THE COURT: But what I'm saying is let's just say that  
22 the analyst got up there on the easel and wrote down all the codes  
23 and the program and everything like that, none of us would know --  
24 know what to do with it. The jury certainly a collection of random  
25 people from across the community aren't going to know what to do



1 with it. So if that were to happen, it would be -- my point is it  
2 would be meaningless without an expert to interpret it.

3 MR. STORMS: I would agree and that's why we want one.

4 THE COURT: And so -- and so, you know, to say well it's  
5 a *Crawford* violation without putting any context on the programming  
6 and the, you know, I'm just going to use generically science  
7 behind, to me -- I mean to me that would be a problem if you're  
8 asking lay people to try to figure out this, you know, coding or  
9 programming or whatever.

10 And so my I guess my -- my issue is well we all knew that  
11 this download happened and I understand you're opposed to the whole  
12 idea of it, but, you know, why are we now talking about I guess an  
13 expert at this late stage? Do you see what I'm saying?

14 MS. TRUJILLO: Well -- well --

15 THE COURT: Because without an expert to interpret it and  
16 provide context, it doesn't matter anyway if we're getting into the  
17 actual science of it which ordinary people couldn't understand.

18 I mean you're opposed to a footprint with, you know,  
19 somebody with, you know, eyes can see and now you want to show  
20 computer science to the jury, you know, random people from our  
21 community which are people from across the board, people with, you  
22 know, no post high school education, people with some post high  
23 school education in an unrelated field and probably, you know, you  
24 may have occasionally you get people up there that are in involved.

25 But again, now you want to put that in front of the jury

1 and you say they can't understand a footprint and we expect them to  
2 understand this advanced computer science?

3 MR. GIORDANI: I would just -- number one, just object to  
4 both requests for the stay. And number two, as it relates to the  
5 cell phone, I agree with the Court's ruling and the way we're  
6 handling this, so I don't have additional record to make. I'm the  
7 one that filed the motion to address this in advance of trial.

8 And with regard to the corrective action reports, I  
9 wasn't here for the argument for that, but I --

10 THE COURT: I know. Refresh my memory who was here.

11 MR. GIORDANI: Mr. Dickerson.

12 THE COURT: Okay. Yeah. He didn't want to turn over  
13 anything.

14 MR. GIORDANI: My -- my understanding was the Court's  
15 order was five years' worth --

16 THE COURT: Yeah.

17 MR. GIORDANI: -- of CAR's with regards --

18 THE COURT: Which was -- I'm sorry to interrupt you --  
19 which was consistent with an order that Judge Leavitt had issued in  
20 another case.

21 MR. GIORDANI: Right.

22 MS. TRUJILLO: Correct.

23 MR. GIORDANI: And with -- those CAR's would be for all  
24 of the analyst who prepared or did work. In this case which would  
25 our position that --

1 THE COURT: And I would just note that there was a time  
2 constraint as well based on the late request made by defense  
3 counsel which had nothing to do with this Court or the State. You  
4 know, that was one of the things the Metro lawyer, whose name  
5 escapes everybody --

6 MS. TRUJILLO: Matthew.

7 MR. STORMS: Christian.

8 MS. TRUJILLO: Matthew Christian.

9 THE COURT: -- was arguing about. And so, you know, the  
10 other thing I would just note was there was an intent to set a  
11 parameter so that we could actually get the information.

12 MR. GIORDANI: Right. So I would submit it on that. One  
13 thing though I do need to add because I don't know that the Supreme  
14 Court will grant a stay for the other issue earlier, but I should  
15 make a record with regard to the footprints. I never really spoke  
16 up when it came to that. Just to be clear if this does get heard  
17 by the Supreme Court, the State's intent is to hold up the photo of  
18 the evidence the crime scene with and an apparent footprint in the  
19 blood, hold up a photo of the shoes found in the defendant's wife's  
20 home and ask them to draw a reasonable inference from the evidence.

21 We're not going to go any further and say, you know, his  
22 gait is this or his size --

23 THE COURT: He's a tall guy or whatever.

24 MR. GIORDANI: Yeah. So just for the record in case it  
25 does get a stay is granted and the Supreme Court addresses it on

1 its merits, that's our position.

2 THE COURT: Okay. And then obviously the State is  
3 opposing the request for a continuance on the other ground?

4 MR. GIORDANI: Yes.

5 THE COURT: And is the -- are you alternatively  
6 requesting a stay to appeal the parameters on the corrective action  
7 reports as well as a parameter which again we don't know exactly  
8 what I'm going to rule based on the closed door hearing, but are  
9 you also requesting a stay to appeal, write those two issues to the  
10 Supreme Court?

11 MS. TRUJILLO: Yeah. Judge, we are. But I also want to  
12 go back to the Cellebrite issue. I just want -- because I know the  
13 Court was concerned about, you know, we're bringing this up late.  
14 You know, I'm going to start with the basic premise. It's not my  
15 job to aid the State in prosecuting my client --

16 THE COURT: I agree.

17 MS. TRUJILLO: -- for a life offense. So what -- what  
18 procedurally --

19 THE COURT: I'm talking about an expert issue because --

20 MS. TRUJILLO: I know. I know.

21 THE COURT: -- because my point is even if the State  
22 didn't file that motion and even if the State brought the analyst  
23 to say, well this is our coding and blah, blah, blah, it wouldn't  
24 mean anything without an expert; that's what I'm saying.

25 MS. TRUJILLO: I understand.

1 THE COURT: And so if you were concerned about that and  
2 wanted to challenge it, you well knew that they were going to be  
3 utilizing that information; that's what I'm saying. Why didn't you  
4 --

5 MS. TRUJILLO: No. No. No.

6 THE COURT: -- ask for an expert months ago?

7 MS. TRUJILLO: Because there was no information  
8 disclosed. So the way procedurally it works is the State discloses  
9 their information --

10 THE COURT: Right.

11 MS. TRUJILLO: -- reports, underlying data. Therefore  
12 that triggers the defense to hire an expert. That didn't happen  
13 because Cellebrite doesn't want to give all their information to  
14 the State. It's not my job to aid in the prosecution.

15 And typically I don't go looking for evidence against my  
16 clients. So now that we're in a position where the State filed  
17 their motion saying Cellebrite is refusing to even talk about basic  
18 information about chain of custody which also is a separate --

19 THE COURT: Well they've agreed to --

20 MS. TRUJILLO: -- evidence --

21 THE COURT: -- come in for chain of custody.

22 MS. TRUJILLO: I know. I'm saying --

23 THE COURT: So it's not an issue.

24 MS. TRUJILLO: -- I'm going back to where --

25 THE COURT: Right. But what I'm saying --

1 MS. TRUJILLO: -- from the beginning.

2 THE COURT: -- counsel, is this let's just say okay --  
3 that the State intend -- the witness they didn't ask for a  
4 protective order, you knew about the witness; correct? They didn't  
5 file a notice of expert on the witness; correct?

6 MR. GIORDANI: Yeah. We did.

7 MS. TRUJILLO: Correct.

8 THE COURT: Oh, you did.

9 MR. GIORDANI: Oh yeah.

10 THE COURT: And so there was no known attempt --

11 MS. TRUJILLO: There was no reports or additional  
12 information.

13 MR. GIORDANI: No.

14 MS. TRUJILLO: There was the CFL report; that's it.

15 MR. GIORDANI: Right. I don't mean to interrupt. When  
16 they broke into the phone using whatever software they used, they  
17 did what they did. They sent the phone back to Metro who analyzed  
18 and did a DFL dump once the phone was open. When Cellebrite sent  
19 that back, there was a certificate associated with it which said  
20 the analyst had sole possession of it the entire time and a whole  
21 bunch of things. It's a page long certificate that I did disclose  
22 --

23 MS. TRUJILLO: Correct.

24 MR. GIORDANI: -- back when we did this year or two ago.  
25 So there was no underlying data that we've ever seen or that

1 we've ever seen or that has been requested. I don't know what --

2 MS. TRUJILLO: And we do have a cell phone expert who  
3 looked at it and believed that the affidavit itself was problematic  
4 which is why we're now here.

5 THE COURT: Okay.

6 MS. TRUJILLO: I did notice an expert and we do have one  
7 that intends to testify.

8 THE COURT: Well I -- okay. I think that the record is  
9 what it is in terms of the timing of everybody's motions and  
10 everybody's disclosures and when this Court is, you know, set the  
11 hearing and so I don't think we all need to try to remember what  
12 was done when. You know, the record speaks for itself.

13 And so you know the dates you filed various things or  
14 they made disclosures are in the record.

15 MS. TRUJILLO: Correct.

16 THE COURT: I don't think that there's anything else. If  
17 it was filed in your notice, then that's the date. So I don't know  
18 that there's any quote behind the scenes, dates that need to be put  
19 on the record; correct?

20 MR. GIORDANI: Right.

21 THE COURT: I mean if there's something that was done and  
22 isn't part of the record, meaning a written motion, a notice of  
23 witnesses, a Court's status check, any other hearing, then you can  
24 put the date. But other than that I don't think we all need to  
25 try to remember what dates or what.

1           So your oral request for a stay is denied. Your oral  
2 request for a continuance is denied. And we'll see whether or not  
3 the Supreme Court files, you know, files a stay or not. And then,  
4 Mr. Giordani, you can't decide what you're going to do.

5           MR. GIORDANI: Understood.

6           THE COURT: Right.

7           MR. GIORDANI: We'll see you on the 9<sup>th</sup>.

8           THE COURT: Right. Counsel, approach.

9           [Bench conference - not on the record]

10          MR. GIORDANI: Will your Clerk have the order in the  
11 system so I can email them to the lab?

12          THE CLERK: [indiscernible - simultaneous speech]

13          THE COURT: Okay. So the Clerk's filing the order in  
14 open -- I'm sorry. Mr. Storms, your filing the order I just signed  
15 an open court. I have one more comment then we're done and that is  
16 on the CAR's I indicated at the bench. If the CAR's indicate that  
17 a particular employee had a problem and that might have been  
18 ongoing, then I may expand the order on the CAR's. But if we have  
19 five --

20          MR. GIORDANI: Sure.

21          THE COURT: -- years with no problems or one little  
22 problem, then I'm probably not going to expand it so part of this  
23 depends on what I get in the five-year period to say whether or not  
24 somebody, you know, may have -- may have had issues with their work  
25 performance or contaminating the scene or whatever, so okay.



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MR. GIORDANI: Understood. Thank you.

MS. TRUJILLO: Thank you.

THE COURT: I think that's it.

[Proceeding concluded at 11:49 a.m.]

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

  
Michelle Ramsey  
Transcriber

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**May 31, 2018**

C-17-326247-1      State of Nevada  
                                 vs  
                                 Larry Brown

**May 31, 2018      9:30 AM      All Pending Motions**

**HEARD BY:** Adair, Valerie

**COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Tia Everett

**RECORDER:** Susan Schofield

**PARTIES**

<b>PRESENT:</b>	Brown, Larry Decorleon	Defendant
	Giordani, John	Attorney for Plaintiff
	State of Nevada	Plaintiff
	Trujillo, Monica R.	Attorney for Defendant

**JOURNAL ENTRIES**

- APPEARANCES CONTINUED: Defendant Carter present in custody and represented by Conor Slife,DPD.

Court noted there is pending decision for the Motion to Suppress and the minute order prepared was not posted. Court stated she has listened to the statement several times and FINDS the statements are ambiguous at best and the right to counsel was not requested; therefor, COURT ORDERED, Motion to Suppress DENIED; State to prepare and submit the appropriate order.

AS TO STATE'S MOTION TO COMPEL DEFENDANT BROWN'S CELLULAR PHONE PASSCODE, OR IN THE ALTERNATIVE, TO COMPEL FINGERPRINT :

Mr. Giordani argued in support of motion stating the cell phone was found under the victim's body and came back registered to Defendant Brown. Further, based on cell phone records there were conversations between Defendant Brown, Defendant Carter and the victim; however, after obtaining a search warrant the State has been unable to get into the cell phone. Colloquy regarding the

PRINT DATE: 02/04/2019

Page 1 of 2

Minutes Date: May 31, 2018

passcode versus fingerprint. Ms. Trujillo argued in opposition stating there were three phones found and the cell phone registered to Defendant Brown was not found under the victim's body. Additionally, ordering a passcode would be testimonial and not permitted and stated by compelling the fingerprint there is no comparative purpose in this situation and the only purpose is to aide the State in their prosecution. Further arguments by counsel. COURT ORDERED, Motion GRANTED IN PART as to the fingerprint and DENIED WITHOUT PREJUDICE as to the passcode; State to prepare and submit the appropriate order.

STATUS CHECK: TRIAL READINESS:

Mr. Giordani advised he has no opposition to continuing the trial date. Mr. Slife advised he is unable to announce ready without the cell phone information. Colloquy regarding scheduling. COURT ORDERED, trial date VACATED and matter SET for Status Check in order for all parties to have their trial schedules present.

CUSTODY (BOTH)

6/07/2018 9:30 AM STATUS CHECK: TRIAL SETTING

C-17-326247-1

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

August 30, 2018

C-17-326247-1      State of Nevada  
                                 vs  
                                 Larry Brown

August 30, 2018      09:30 AM      Status Check: Phone Records

HEARD BY:      Adair, Valerie      COURTROOM: RJC Courtroom 11C

COURT CLERK: Chambers, Jill

RECORDER:      Schofield, Susan

REPORTER:

**PARTIES PRESENT:**

John Giordani	Attorney for Plaintiff
Larry Decorleon Brown	Defendant
Monica R. Trujillo	Attorney for Defendant
State of Nevada	Plaintiff

**JOURNAL ENTRIES**

Mr. Giordani stated that he spoke to the detective about the information on the phone and was told it was still on the machine and he would be notified when it is done. He also stated that a personal file Ms. Trujillo requested was never received and the detective will follow up on it. Ms. Trujillo stated that she sent case notes, lab reports and the forensic analysis to her DNA expert and has a cell phone expert ready to go but that she was just waiting on the cell phone records. Mr. Slife stated that he was only waiting on cell phone records. COURT ORDERED, MATTER CONTINUED.

CUSTODY

CONTINUED TO: 11/27/18 9:30 AM

**C-17-326247-1**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**November 27, 2018**

C-17-326247-1      State of Nevada  
                                 vs  
                                 Larry Brown

**November 27, 2018      09:30 AM      Status Check: Phone Records**

**HEARD BY:**      Adair, Valerie      **COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Chambers, Jill

**RECORDER:**      Schofield, Susan

**REPORTER:**

**PARTIES PRESENT:**

<b>John Giordani</b>	<b>Attorney for Plaintiff</b>
<b>Larry Decorleon Brown</b>	<b>Defendant</b>
<b>Monica R. Trujillo</b>	<b>Attorney for Defendant</b>
<b>State of Nevada</b>	<b>Plaintiff</b>

**JOURNAL ENTRIES**

Mr. Giordani stated that there was still no phone data off of the phone but that when he is notified records become available, he will let the defense know. Mr. Slife stated that he would need the information to proceed. Mr. Slife also stated that he filed a Motion to Sever and added that if he had the information about the phone, he would be ready for trial. Mr. Giordani stated that Metro had to outsource the phone records retrieval. COURT ORDERED, MATTER CONTINUED.

CUSTODY

CONTINUED TO: 1/17/19 9:30 AM

Felony/Gross Misdemeanor

COURT MINUTES

August 20, 2019

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C-17-326247-1      State of Nevada  
                                 vs  
                                 Larry Brown

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August 20, 2019      09:30 AM      Status Check: Phone Records

HEARD BY:      Adair, Valerie      COURTROOM: RJC Courtroom 11C

COURT CLERK: Trujillo, Athena

RECORDER:      Page, Robin

REPORTER:

PARTIES PRESENT:

John Giordani      Attorney for Plaintiff

Larry Decorleon Brown      Defendant

Monica R. Trujillo      Attorney for Defendant

State of Nevada      Plaintiff

William J. Storms      Attorney for Defendant

**JOURNAL ENTRIES**

CONFERENCE AT THE BENCH. Matter TRAILED.

Matter RECALLED. CONFERENCE AT THE BENCH. COURT ORDERED, matter CONTINUED, noting the matter will be heard at the end of the calendar. State advised it believes the trial will continue and advised parties have agreed to vacate and reset the trial. Colloquy regarding motions. COURT ORDERED, Motion VACATED and RESET; State to respond by 9/17/19. COURT FURTHER ORDERED, trial date VACATED and RESET and matter SET for status check.

CUSTODY

8/22/19 9:30 AM STATUS CHECK: EX PARTE APPLICATION

10/1/19 9:30 AM DEFENDANT LARRY BROWN'S MOTION IN LIMINE REQUESTING THIS COURT PRECLUDE THE STATE AND ITS WITNESSES FROM REFERRING TO THE DECEDENT AS "THE VICTIM" DEFENDANT LARRY BROWN'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM PRESENTING UNDULY PREJUDICIAL AND/OR CUMULATIVE PHOTOGRAPHS TO THE JURY STATE'S NOTICE OF MOTION AND MOTION IN LIMINE TO ADDRESS CELLEBRITE TESTIMONY PERTAINING TO ADVANCED PROPRIETARY SOFTWARE DEFENDANT LARRY BROWN'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM REFERRING TO THE TRIAL PHASE AS THE "GUILT PHASE" DEFENDANT LARRY BROWN'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM PRESENTING DETAILS OF THE CONDITION OF DECEDENT'S NISSAN ALTIMA LOCATED IN A BUSINESS COMPLEX AT 7495 AZURE DRIVE AND MOTION TO STRIKE EXPERTS L. BROWN, H. HARRAD, S. SAUCEDO, AND J. SYPNIEWICZ DEFENDANT LARRY BROWN'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM PRESENTING AS EVIDENCE SPECIFIC ITEMS RECOVERED FROM THE SEARCH OF ANGELISA RYDER'S RESIDENCE ON MARCH 20, 2017 DEFENDANT LARRY BROWN'S

MOTION IN LIMINE TO PRECLUDE THE STATE FROM PRESENTING AS EVIDENCE  
UNCLEAR VIDEO SURVEILLANCE OF WHAT APPEARS TO BE A WHITE SUV  
DEFENDANT LARRY BROWN'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM  
PRESENTING TO THE JURY ANY EVIDENCE THAT SUGGESTS FLIGHT PRIOR TO THIS  
COURT RULING ON WHETHER TO ALLOW A FLIGHT INSTRUCTION DEFENDANT  
LARRY BROWN'S MOTION IN LIMINE TO PRECLUDE ALL CELL PHONE INFORMATION  
OBTAINED BY CELLEBRITE, AND RESPONSE TO STATE'S MOTION IN LIMINE TO  
ADDRESS CELLEBRITE TESTIMONY PERTAINING TO ADVANCED PROPRIETARY  
SOFTWARE

11/21/19 9:30 AM CALENDAR CALL

12/2/19 9:00 AM JURY TRIAL

Felony/Gross Misdemeanor

COURT MINUTES

October 29, 2019

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C-17-326247-1      State of Nevada  
                                 vs  
                                 Larry Brown

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October 29, 2019      09:30 AM      All Pending Motions

HEARD BY:      Adair, Valerie      COURTROOM: RJC Courtroom 11C

COURT CLERK: Trujillo, Athena

RECORDER:      Page, Robin

REPORTER:

PARTIES PRESENT:

John Giordani      Attorney for Plaintiff

Larry Decorleon Brown      Defendant

Monica R. Trujillo      Attorney for Defendant

State of Nevada      Plaintiff

William J. Storms      Attorney for Defendant

**JOURNAL ENTRIES**

DEFENDANT LARRY BROWN'S MOTION IN LIMINE REQUESTING THIS COURT PRECLUDE THE STATE AND ITS WITNESSES FROM REFERRING TO THE DECEDENT AS "THE VICTIM"  
COURT ORDERED, motion DENIED.

DEFENDANT LARRY BROWN'S MOTION IN LIMINE TO PRECLUDE ALL CELL PHONE INFORMATION OBTAINED BY CELLEBRITE, AND RESPONSE TO STATE'S MOTION IN LIMINE TO ADDRESS CELLEBRITE TESTIMONY PERTAINING TO ADVANCED PROPRIETARY SOFTWARE  
COURT ORDERED, Ruling RESERVED until the time of trial. Ms. Trujillo requested a hearing outside the presence of the jury. COURT SO ORDERED.

DEFENDANT LARRY BROWN'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM PRESENTING AS EVIDENCE SPECIFIC ITEMS RECOVERED FROM THE SEARCH OF ANGELISA RYDER'S RESIDENCE ON MARCH 20, 2017  
Upon Court's inquiry, Ms. Trujillo provided copies of the photos. COURT ORDERED, matter UNDER ADVISEMENT and CONTINUED for DECISION. State directed to submit what they intend to show the jury.

DEFENDANT LARRY BROWN'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM PRESENTING AS EVIDENCE UNCLEAR VIDEO SURVEILLANCE OF WHAT APPEARS TO BE A WHITE SUV  
COURT ORDERED, motion DENIED.

DEFENDANT LARRY BROWN'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM PRESENTING DETAILS OF THE CONDITION OF DECEDENT'S NISSAN ALTIMA LOCATED IN A BUSINESS COMPLEX AT 7495 AZURE DRIVE AND MOTION TO STRIKE EXPERTS L. BROWN, H. HARRAD, S. SAUCEDO, AND J. SYPNIEWICZ



COURT ORDERED, motion DENIED.

DEFENDANT LARRY BROWN'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM PRESENTING TO THE JURY ANY EVIDENCE THAT SUGGESTS FLIGHT PRIOR TO THIS COURT RULING ON WHETHER TO ALLOW A FLIGHT INSTRUCTION  
COURT ORDERED, motion DENIED.

DEFENDANT LARRY BROWN'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM PRESENTING UNDULY PREJUDICIAL AND/OR CUMULATIVE PHOTOGRAPHS TO THE JURY  
COURT ORDERED, Ruling RESERVED until the time of trial.

DEFENDANT LARRY BROWN'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM REFERRING TO THE TRIAL PHASE AS THE "GUILT PHASE"  
COURT ORDERED, motion DENIED.

STATE'S NOTICE OF MOTION AND MOTION IN LIMINE TO ADDRESS CELLEBRITE TESTIMONY PERTAINING TO ADVANCED PROPRIETARY SOFTWARE  
COURT ORDERED, Ruling RESERVED until the time of trial. Ms. Trujillo requested a hearing outside the presence of the jury. COURT SO ORDERED.

STATUS CHECK: TRIAL READINESS  
Upon Court's inquiry, counsel indicated 5-6 days for trial and 1-2 days for the penalty phase.  
COURT ORDERED, matter CONTINUED.

CUSTODY

11/4/19 (CHAMBERS) DECISION: DEFENDANT LARRY BROWN'S MOTION IN LIMINE TO PRECLUDE THE STATE FROM PRESENTING AS EVIDENCE SPECIFIC ITEMS RECOVERED FROM THE SEARCH OF ANGELISA RYDER'S RESIDENCE ON MARCH 20, 2017

11/5/19 9:30 AM STATUS CHECK: TRIAL READINESS

**DISTRICT COURT  
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****November 04, 2019**

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C-17-326247-1      State of Nevada  
                                 vs  
                                 Larry Brown

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**November 04, 2019      03:00 AM      Defendant Larry Brown's Motion in Limine to Preclude the State from Presenting as Evidence Specific Items Recovered from the Search of Angelisa Ryder's Residence on March 20, 2017**

**HEARD BY:**      Adair, Valerie

**COURTROOM:** RJC Courtroom 11C

**COURT CLERK:** Trujillo, Athena

**RECORDER:**

**REPORTER:**

**PARTIES PRESENT:**

**JOURNAL ENTRIES**

No parties present.

COURT ORDERED, Motion DENIED in its entirety. Court took the issue of whether the photos of the Ralph Lauren Polo shirt should be admitted. Court FINDS the evidence to be more probative than prejudicial and that the photos of the bloody footprint can be understood and interpreted by lay jurors.

CLERK S NOTE: Minute order electronically served to all registered parties through the Eighth Judicial District Court s EFT System. -amt

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**November 05, 2019**

C-17-326247-1      State of Nevada  
                                 vs  
                                 Larry Brown

**November 05, 2019      9:30 AM**

**Status Check: Trial  
Readiness**

**HEARD BY:**    Adair, Valerie

**COURTROOM:**    RJC Courtroom 11C

**COURT CLERK:**    Michaela Tapia  
                                 Michaela Tapia

**RECORDER:**    Robin Page

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Brown, Larry Decorleon	Defendant
	Giordani, John	Attorney
	State of Nevada	Plaintiff
	Storms, William J.	Attorney
	Trujillo, Monica R.	Attorney

**JOURNAL ENTRIES**

- Ms. Trujillo advised there may be an issue with the State's expert, noting he is requesting expert witness fees in the Smith case. Further, Ms. Trujillo advised there is no outstanding discovery and anticipates being ready for trial. State advised trial will take 5 - 6 days, noting some witnesses are from out of state. CONFERENCE AT THE BENCH. COURT ORDERED, matter CONTINUED.

**CUSTODY**

**CONTINUED TO:** 11/14/19 9:30 AM

**CLERK S NOTE:** Minutes completed via JAVS. AMT 11/6/19

**PRINT DATE:**    11/07/2019

**Page 1 of 2**

**Minutes Date:**    November 05, 2019

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Felony/Gross Misdemeanor

COURT MINUTES

November 14, 2019

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C-17-326247-1      State of Nevada  
                                 vs  
                                 Larry Brown

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November 14, 2019      09:30 AM      All Pending Motions

HEARD BY:      Adair, Valerie      COURTROOM: RJC Courtroom 11C

COURT CLERK: Trujillo, Athena

RECORDER:      Page, Robin

REPORTER:

PARTIES PRESENT:

Larry Decorleon Brown	Defendant
Michael Dickerson	Attorney for Plaintiff
Monica R. Trujillo	Attorney for Defendant
State of Nevada	Plaintiff
William J. Storms	Attorney for Defendant

**JOURNAL ENTRIES**

Also present on behalf of Metro: Matthew Christian, Esq.

DEFENDANT LARRY BROWN'S MOTION FOR DISCLOSURE OF CORRECTIVE ACTION  
REPORTS ... STATUS CHECK: TRIAL READINESS

Mr. Christian advised they will provide the CAR's if it is related to the prosecution. Colloquy. State noted the CAR issue was related to a contaminated water bottle at the CSA lab, not the forensic lab. COURT ORDERED, motion GRANTED for an in camera review of all CAR's for anyone working on the case, signing off on testing, or performed any testing for a period of five years. Defense counsel to submit the order to opposing counsel before final submission to the Court. COURT FURTHER ORDERED, calendar call date STANDS.

CUSTODY