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THE PARIENTE LAW FIRM, P.C.
MICHAEL D. PARIENTE, ESQ.
Nevada Bar No. 9469
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Attorneys for Defendant

Electronically Filed
Dec 10 2019 02:44 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

vs.

JACK BANKA,

Defendant

Case No: **C-18-333254-1**
Dept No: **5**

NOTICE OF APPEAL

TO: THE STATE OF NEVADA, Plaintiff;

TO: CLARK COUNTY DISTRICT ATTORNEY, Plaintiff's attorney; and

TO: DEPARTMENT V OF THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK:

NOTICE is hereby given that Jack Banka, hereby appeals to the
Nevada Supreme Court from the Orders of the District Court denying the Motion in
Arrest of Judgment on the 18th day of November and the Amended Motion to
Withdraw Previously Plea of Guilty on the 4th day of December, 2019.

DATED this 4th day of December, 2019.



MICHAEL D. PARIENTE, ESQ.
JOHN G. WATKINS, ESQ., OF COUNSEL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of December, 2019, that I electronically filed the foregoing Notice with the Clerk of the Court by using the electronic filing system.

The following participants in this case are registered electronic filing system users and will be served electronically:

Michael Giles – District Attorney
michael.giles@clarkcountyda.com
200 Lewis Avenue
Third Floor
Las Vegas, Nevada 89101



Chris Barden, an employee
of Pariente Law Firm, P.C.

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY
CASE NO. C-18-333254-1

State of Nevada
vs
Jack Banka

§ Location: **Department 5**
§ Judicial Officer: **Ellsworth, Carolyn**
§ Filed on: **07/06/2018**
§ Cross-Reference Case **C333254**
§ Number:
§ Defendant's Scope ID #: **8353273**
§ ITAG Case ID: **2173105**
§ Lower Court Case # Root: **16FH2036**
§ Lower Court Case Number: **16FH2036x**

CASE INFORMATION

Offense	Statute	Deg	Date	Case Type:	Felony/Gross Misdemeanor
1. DRIVING AND/OR BEING IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF*..*	484C.430	F	12/01/2016	Case Status:	07/06/2018 Open
Arrest: 07/06/2018					
2. LEAVING THE SCENE OF AN CRIME	484E.010	F	12/01/2016		

Bonds

Surety #AG16-004972 \$153,000.00
12/6/2016 Active
Counts: 1

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	C-18-333254-1
Court	Department 5
Date Assigned	07/06/2018
Judicial Officer	Ellsworth, Carolyn

PARTY INFORMATION





		Lead Attorneys
Defendant	Banka, Jack Paul	Pariente, Michael D. <i>Retained</i> 702-966-5310(W)
Plaintiff	State of Nevada	Wolfson, Steven B 702-671-2700(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

07/06/2018	 Criminal Bindover
07/06/2018	 Criminal Bindover - Confidential
07/09/2018	 Information Party: Plaintiff State of Nevada <i>Information</i>
07/10/2018	 Amended Information <i>Amended Information</i>

CASE SUMMARY
CASE NO. C-18-333254-1

02/12/2019	 Reporters Transcript <i>Reporter's Transcript of Preliminary Hearing</i>
02/20/2019	 Notice of Witnesses and/or Expert Witnesses Filed By: Plaintiff State of Nevada <i>State's Notice of Witnesses</i>
03/22/2019	 Notice of Witnesses and/or Expert Witnesses Filed By: Plaintiff State of Nevada <i>State's First Supplemental Notice of Witnesses and/or Expert Witnesses</i>
03/22/2019	 Notice of Witnesses and/or Expert Witnesses Filed By: Plaintiff State of Nevada <i>State's Notice of Witnesses and/or Expert Witnesses</i>
05/06/2019	 Notice of Witnesses and/or Expert Witnesses Filed By: Plaintiff State of Nevada <i>State's Third Supplemental Notice of Witnesses and/or Expert Witnesses</i>
06/24/2019	 Guilty Plea Agreement <i>Guilty Plea Agreement Pursuant to Alford</i>
06/24/2019	 Amended Information <i>Second Amended Information</i>
07/25/2019	 Substitution of Attorney Filed by: Defendant Banka, Jack Paul <i>Substitution of Attorney</i>
07/29/2019	 PSI
07/30/2019	 Motion Filed By: Defendant Banka, Jack Paul <i>Motion for Substitution of Attorney</i>
07/30/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
07/30/2019	 PSI - Victim Impact Statements
08/01/2019	 Recorders Transcript of Hearing Party: Defendant Banka, Jack Paul <i>Recorder's Transcript of Hearing: Entry of Plea June 24, 2019</i>
10/23/2019	 Motion Filed By: Defendant Banka, Jack Paul <i>Defendants Motion in Arrest of Judgment Pursuant to NRS 176.525</i>
10/23/2019	 Clerk's Notice of Nonconforming Document <i>Clerk's Notice of Nonconforming Document</i>
11/06/2019	 Opposition

CASE SUMMARY
CASE NO. C-18-333254-1

State's Opposition To Defendant's Motion In Arrest Of Judgment Pursuant To NRS 176.525

11/12/2019	 Reply Filed by: Defendant Banka, Jack Paul <i>Reply to State's Opposition to Defendant's Motion for Arrest in Judgment</i>
11/12/2019	 Reply Filed by: Defendant Banka, Jack Paul <i>Reply to State's Opposition to Defendant's Motion for Arrest in Judgment</i>
11/15/2019	 Motion to Withdraw Plea Filed By: Defendant Banka, Jack Paul <i>Motion to Withdraw Previously Entered Plea of Guilty</i>
11/15/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
11/18/2019	 Supplement Filed by: Defendant Banka, Jack Paul <i>Supplemental Motion</i>
11/19/2019	 Amended Filed By: Defendant Banka, Jack Paul <i>Amended Motion to Withdraw Guilty Plea</i>
11/19/2019	 Clerk's Notice of Nonconforming Document and Curative Action <i>Clerk's Notice of Curative Action</i>
11/22/2019	 Recorders Transcript of Hearing <i>Transcript of Proceedings: Re: Motion to Arrest Judgment, Sentencing -- 11-18-19</i>
11/25/2019	 Opposition <i>State's Opposition To Defendant's Amended Motion To Withdraw Previously Entered Plea Of Guilty</i>
12/02/2019	 Reply to Opposition Filed by: Defendant Banka, Jack Paul <i>Reply State's Opposition to Defendant's Amended Motion to Withdraw Previously Entered Plea of Guilty</i>
12/04/2019	 Notice of Appeal (criminal) Party: Defendant Banka, Jack Paul <i>Notice of Appeal</i>
12/04/2019	 Motion for Bond Pending Appeal Filed By: Defendant Banka, Jack Paul <i>Motion for Bail Pending Appeal Pursuant to NRS 178.488 and Nevada Case Law</i>
12/05/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
	<p><u>DISPOSITIONS</u></p>
06/24/2019	<p>Disposition (Judicial Officer: Ellsworth, Carolyn)</p> <p>2. LEAVING THE SCENE OF AN CRIME</p>

CASE SUMMARY

CASE NO. C-18-333254-1

Amended Information Filed/Charges Not Addressed

PCN: Sequence:

HEARINGS

07/10/2018



Initial Arraignment (10:00 AM) (Judicial Officer: De La Garza, Melisa)

Plea Entered;

Journal Entry Details:

Deputized Law Clerk, Ashley Lacher, appearing for the State. Amended Information FILED IN OPEN COURT. DEFT. BANKA ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript. COURT FURTHER ORDERED, Deft.'s request for discovery and State's request for reciprocal discovery pursuant to Statute and E.D.C.R. is GRANTED. BOND 4/8/19 9:00 A.M. CALENDAR CALL (DEPT. 5) 4/15/19 1:30 P.M. JURY TRIAL (DEPT. 5) ;

04/08/2019



Calendar Call (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Trial Date Set;

Journal Entry Details:

Deft. present at liberty on Bond. Mr. Boley stated he had tried to file a motion to continue the trial. Ms. Lavell stated she had no opposition to the continuance. Colloquy regarding the motion not getting filed due to the order show cause being dropped off late on Thursday. Ms. Lavell conveyed the offer made to the Deft., that would have to be accepted within the next two weeks, otherwise there will be no other offers. Mr. Boley acknowledged that was his understanding of the offer conveyed. COURT ORDERED, defense motion to continue GRANTED; jury trial VACATED and RESET. BOND 6/17/19 - 9:00 AM - CALENDAR CALL 6/24/19 - 1:30 PM - JURY TRIAL;

04/15/2019

CANCELED Jury Trial (1:30 PM) (Judicial Officer: Ellsworth, Carolyn)

Vacated

06/17/2019



Calendar Call (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

06/17/2019, 06/19/2019

Continued;

Matter Heard;

Journal Entry Details:

APPEARANCES CONTINUED: Deft. not present. John Watkins, Esq. and Michael Pariente, Esq. present. Upon Court's inquiry, Mr. Watkins stated the Deft. was on his way. Further, Mr. Watkins stated he was not ready for trial and requested the trial be reset in the ordinary course. Ms. Pandukht stated an Alford plea agreement had been prepared. COURT ADVISED, the trial was not getting continued, as the rule indicated it shall not allow a substitution of counsel, if it resulted in a trial continuance. Mr. Watkins argued the Deft. was entitled to have the attorney of his choice and noted a conflict had arisen. COURT FURTHER ADVISED, it was not continuing the trial. Mr. Watkins stated there was no way he could be ready for trial. Mr. Boley stated this was the first he had heard about the substitution of counsel; additionally, advised he would do whatever the Court directed him to do. Deft. now present at liberty on Bond. Ms. Pandukht stated she and Ms. Lavell were not aware of the substitution, there wasn't an agreement to continue the trial and the State objected to a trial continuance, and if the Deft. does not enter a plea, she had been advised to withdraw the offer; further, announced ready for trial. Matter TRAILED for the other calendar call matters to be called. Matter RECALLED. Same parties present as before. Upon Court's inquiry, Deft. stated he did not want to enter into the plea agreement. Upon Court's further inquiry regarding whether counsel was ready for trial, Mr. Boley stated he had the same information as the State when he came in for today's hearing. Further, Mr. Boley stated there was a conflict that had arisen with respect to a difference of view on the case. Upon Court's further inquiry regarding whether Mr. Boley had not prepared for trial, Mr. Boley stated if the Court orders him to go to trial he will; however, advised he believed it would prejudice the Deft. COURT ADVISED, counsel could associate in to help Mr. Boley with the trial; however, it was not continuing the trial. Ms. Pandukht stated as the Deft. rejected the plea she was revoking the offer. Counsel anticipated one week for trial. Matter TRAILED for the other calendar call matter to be called. Matter RECALLED. Same parties present as before, with the exception of Mr. Giles who is now present on behalf of the

CASE SUMMARY**CASE NO. C-18-333254-1**

State. COURT ADVISED, there were no other trials going forward except this case; therefore, ORDERED, jury trial SET to begin at 1:00 PM on Monday. Further statement by Mr. Boley regarding the difference in trial strategies; therefore, advised he should hire an expert and requested the trial be CONTINUED. COURT ADVISED, the time to hire an expert was before today's date. Trial date STANDS. Mr. Boley stated he would be ready if the court orders him to be. Mr. Giles announced ready. BOND 6/24/19 - 1:00 PM - JURY TRIAL;

Continued;

Matter Heard;

Journal Entry Details:

Deft. present at liberty on bond. Mr. Boley stated the matter had been negotiated and summarized the negotiations. Ms. Pandukht stated she would agree to dismiss any additional charges. Upon Court's canvass of the Deft. regarding the circumstances related to the crime, counsel requested a CONFERENCE AT THE BENCH. Matter TRAILED for Mr. Boley to discuss the plea further with the Deft. Matter RECALLED. Same parties present as before. At the request of Mr. Boley COURT ORDERED, matter CONTINUED to Wednesday. Guilty plea agreement RETURNED to Mr. Boley. BOND CONTINUED TO: 6/19/19 - 9:00 AM;

06/24/2019

**Entry of Plea (9:00 AM)** (Judicial Officer: Ellsworth, Carolyn)

Plea Entered;

Journal Entry Details:

Second Amended Information FILED IN OPEN COURT. Deft. present at liberty on Bond. COURT ORDERED, the substitution of counsel that was filed is STRICKEN. Mr. Boley stated the Deft. was going to enter a Guilty plea pursuant to the Alford Decision. Ms. Lavell stated the second count listed was stricken by interlineation. Mr. Boley stated he would waive any defects. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. BANKA ARRAIGNED AND PLED GUILTY TO DRIVING AND OR BEING IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICATING LIQUOR OR ALCOHOL RESULTING IN SUBSTANTIAL BODILY HARM (F), pursuant to the ALFORD DECISION. State gave an offer of proof. Court ACCEPTED plea and ORDERED, matter REFERRED to the Division of Parole and Probation (P & P) and SET for sentencing. Jury Trial VACATED. BOND 10/23/19 - 9:00 AM - SENTENCING;

06/24/2019

CANCELED Jury Trial (1:00 PM) (Judicial Officer: Ellsworth, Carolyn)

Vacated - per Judge

08/14/2019

**Motion (9:00 AM)** (Judicial Officer: Ellsworth, Carolyn)

Defendant's Motion for Substitution of Attorney

Motion Granted;

Journal Entry Details:

Deft. present at liberty on Bond. Upon Court's inquiry regarding whether the substitution would result in the sentencing date being continued or the plea being withdrawn, Mr. Pariente stated it would not. Mr. Watkins stated that was not his intention at the present time. COURT ORDERED, motion GRANTED. Mr. Watkins stated the substitution of counsel had already been filed. BOND 10/23/19 - 9:00 AM - SENTENCING;

10/23/2019

**Sentencing (9:00 AM)** (Judicial Officer: Ellsworth, Carolyn)**10/23/2019, 11/18/2019, 12/04/2019**

Continued;

Continued;

Defendant Sentenced;

Continued;

Continued;

Defendant Sentenced;

Continued;

Continued;

Defendant Sentenced;


Journal Entry Details:

Deft. present at liberty on Bond. Mr. Watkins orally argued that the information did not charge a crime. Mr. Villani argued in opposition to the oral motion; noting there was a stipulated sentence. Further, Mr. Watkins requested to file a motion to arrest judgment in open court. COURT ADVISED it would not allow the document to be filed in open court, as he could not


CASE SUMMARY**CASE NO. C-18-333254-1**

ambush the state by filing the motion; however, advised counsel he could e-file something if he wanted to withdraw the plea. Mr. Watkins further argued regarding comingling a gross misdemeanor with a felony, that there was no offense charged, and the Court had no jurisdiction to adjudicate the Deft. Mr. Villani orally moved to remand the Deft. into custody, or in the alternative order breath interlock monitoring; further, argued in opposition to the motion being filed, due to its untimeliness. Mr. Watkins argued that the Deft. should remain out of custody, as he was not a flight risk and had appeared to all of the hearings. Further arguments regarding whether the motion was a delay tactic. COURT ADVISED, there was not a good reason to remand the Deft. into custody, and as to the additional monitoring, nothing had changed with the Deft.; ADDITIONALLY, the state had the right to file a response to the motion; therefore, ORDERED, sentencing CONTINUED and motion SET for hearing; briefing schedule IMPOSED as follows: Deft.'s motion DUE BY today 10/23/19, State's response DUE BY 11/6/19, Deft.'s reply DUE BY 11/13/19. BOND 11/18/19 - 9:00 AM - SENTENCING ... MOTION TO ARREST JUDGMENT CLERK'S NOTE: The foregoing minutes were updated to correct two grammatical errors (11/13/19 amn).;

11/18/2019 **Motion (9:00 AM)** (Judicial Officer: Ellsworth, Carolyn)
Motion to Arrest Judgment
 Motion Denied;

11/18/2019  **All Pending Motions (9:00 AM)** (Judicial Officer: Ellsworth, Carolyn)
 Matter Heard;
 Journal Entry Details:
SENTENCING ... MOTION TO ARREST JUDGMENT Deft. present in custody. Colloquy regarding issues with the 10/23/19 Motion in Arrest of Judgment Pursuant to NRS 176.525 and the related Clerk's Notice of Non-conforming Document. Mr. Pariente and Mr. Giles both confirmed receiving an emailed copy of the filed document; provided for the Court's review. Clerk advised she would attempt to have the document replaced with the conforming copy. Mr. Watkins requested to file in open court two exhibits so they could be added to the motion. COURT ADVISED, Mr. Watkins he needed to file it; FURTHER, they needed to be timely filed. Mr. Watkins summarized the content of the exhibits, which were two cases, that show the State knew how to file a charging document. Mr. Giles stated he was aware of the Vitale case as he was assigned to that case. COURT ADVISED, Mr. Watkins he needed to put a cover sheet on the document if he wanted to file it; FURTHER, it would take his word that counsel was assigned to the other cases. Argument by Mr. Watkins regarding comingling by the State and that an offense was not charged, the motion was valid, and the Court did not have jurisdiction. Mr. Giles argued there were sufficient facts to place the Deft. on notice of what he would be presenting at trial. COURT ADVISED it adjudicated the Deft. before it proceeded to the sentencing, which was before the motion had been requested to be filed in open court. Further arguments by Mr. Watkins. COURT FURTHER ADVISED, there was a statute which made it a crime to DUI, that caused an accident, causing substantial bodily harm or death, that was alleged, and it thought there were separate statutes that overlapped; therefore, FINDS the charging document is sufficient and ORDERED, motion to arrest judgment DENIED. Colloquy regarding the motion to withdraw plea that was filed Friday. Mr. Giles stated the motion to withdraw plea incorporated the same elements of this motion; however, he didn't have time to respond. Mr. Watkins stated there were other issues involved in the motion, he felt the Deft.'s rights needed to be protected, and the motion had merit. Colloquy regarding the hearing where defense counsel asked to substitute in as counsel. Mr. Giles moved to remand the Deft., or place him on House Arrest, noting there was a delay, and further there was no BIID or SCRAM monitoring. Mr. Watkins argued in opposition to the States request. COURT FURTHER ORDERED, State's oral request DENIED; however, counsel could file a motion before the next hearing. COURT ORDERED, sentencing CONTINUED and the motion to withdraw plea, currently set November 27, 2019 is VACATED and RESET for the same date. BOND 12/4/19- 9:00 AM - SENTENCING ... MOTION TO WITHDRAW PREVIOUSLY ENTERED PLEA OF GUILTY ;

12/04/2019 **Motion to Withdraw Plea (9:00 AM)** (Judicial Officer: Ellsworth, Carolyn)
Defendant's Motion to Withdraw Previously Entered Plea of Guilty
 State unavailable
 Motion Denied;

12/04/2019  **All Pending Motions (9:00 AM)** (Judicial Officer: Ellsworth, Carolyn)
 Matter Heard;
 Journal Entry Details:

CASE SUMMARY**CASE NO. C-18-333254-1**

SENTENCING ... DEFT.'S MOTION TO WITHDRAW PREVIOUSLY ENTERED PLEA OF GUILTY Upon Court's inquiry, as to whether the Stated wanted to orally respond, or prepare a written response, to the additional items raised by the Defense in their reply, Mr. Giles requested to proceed with oral argument. Argument by Mr. Watkins in support of the motion to withdraw the guilty plea. Argument by Mr. Giles in opposition to the motion and in support of proceeding with sentencing. COURT stated its FINDINGS and ORDERED, there is NO REASON to allow the Deft. to withdraw the plea. Mr. Watkins stated he had already prepared an appeal and a bail motion for filing; therefore, argued in opposition to proceeding with sentencing today, or in the alternative, if the sentencing proceeds today to stay the matter, for the Court to rule on the bail motion pending the appeal. Mr. Giles argued in opposition to the defense oral motions and requested to proceed with sentencing today. COURT ADVISED, the appeal cannot proceed until the judgment of conviction (JOC) is filed; however, advised counsel he could proceed with filing the motion. DEFT BANKA ADJUDGED GUILTY of DRIVING AND OR BEING IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICATING LIQUOR OR ALCOHOL RESULTING IN SUBSTANTIAL BODILY HARM (F). Argument by Mr. Giles. Statement by Mr. Watkins. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, a \$60.00 Chemical Drug Analysis Fee, a \$150.00 DNA Analysis fee including testing to determine genetic markers, a \$3.00 DNA Collection fee, and a \$2,000.00 fine, Deft. SENTENCED to a MINIMUM of FORTY-EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of Corrections (NDC), with SIX (6) DAYS credit for time served. COURT FURTHER ORDERED, pursuant to NRS 484C.340 and NRS 484C.460, prior to reinstatement of the Defendant's driving privileges, an interlock device shall be installed and inspected on his vehicle at the Defendant's expense for a period of 24 months, said period to commence after any period of imprisonment, residential confinement, confinement in a treatment facility, or on parole or probation. Mr. Watkins argued to stay the incarceration for two weeks, to allow the Deft. to get his business affairs together and to allow him to file the bail motion. COURT ORDERED, Deft. REMANDED and ADVISED, Mr. Watkins he can file the motion and it would sign an order shortening time. BOND, if any, EXONERATED. NDC;

12/11/2019

Motion for Bond Pending Appeal (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)*Defendant's Motion for Bail Pending Appeal Pursuant to NRS 178.488 and Nevada Case Law*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 10, 2018

C-18-333254-1 State of Nevada
vs
Jack Banka

July 10, 2018 10:00 AM Initial Arraignment

HEARD BY: De La Garza, Melisa

COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Kristen Brown
Shannon Emmons

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT: Banka, Jack Paul Defendant
Boley, Thomas D Attorney

JOURNAL ENTRIES

- Deputized Law Clerk, Ashley Lacher, appearing for the State.

Amended Information FILED IN OPEN COURT. DEFT. BANKA ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript. COURT FURTHER ORDERED, Deft.'s request for discovery and State's request for reciprocal discovery pursuant to Statute and E.D.C.R. is GRANTED.

BOND

4/8/19 9:00 A.M. CALENDAR CALL (DEPT. 5)

4/15/19 1:30 P.M. JURY TRIAL (DEPT. 5)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 08, 2019

C-18-333254-1 State of Nevada
 vs
 Jack Banka

April 08, 2019 9:00 AM Calendar Call

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Andrea Natali

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Banka, Jack Paul Defendant
 Boley, Thomas D Attorney

JOURNAL ENTRIES

- Deft. present at liberty on Bond. Mr. Boley stated he had tried to file a motion to continue the trial. Ms. Lavell stated she had no opposition to the continuance. Colloquy regarding the motion not getting filed due to the order show cause being dropped off late on Thursday. Ms. Lavell conveyed the offer made to the Deft., that would have to be accepted within the next two weeks, otherwise there will be no other offers. Mr. Boley acknowledged that was his understanding of the offer conveyed. COURT ORDERED, defense motion to continue GRANTED; jury trial VACATED and RESET.

BOND

6/17/19 - 9:00 AM - CALENDAR CALL

6/24/19 - 1:30 PM - JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 17, 2019

C-18-333254-1 State of Nevada
 vs
 Jack Banka

June 17, 2019

9:00 AM

Calendar Call

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16D

COURT CLERK: Andrea Natali
Jeanette Velazquez

RECORDER: Rubina Fedra

REPORTER:

PARTIES

PRESENT:	Banka, Jack Paul	Defendant
	Boley, Thomas D	Attorney
	Pandukht, Taleen R	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. present at liberty on bond. Mr. Boley stated the matter had been negotiated and summarized the negotiations. Ms. Pandukht stated she would agree to dismiss any additional charges. Upon Court's canvass of the Deft. regarding the circumstances related to the crime, counsel requested a CONFERENCE AT THE BENCH. Matter TRAILED for Mr. Boley to discuss the plea further with the Deft.

Matter RECALLED. Same parties present as before. At the request of Mr. Boley COURT ORDERED, matter CONTINUED to Wednesday. Guilty plea agreement RETURNED to Mr. Boley.

BOND

CONTINUED TO: 6/19/19 - 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 19, 2019

C-18-333254-1 State of Nevada
vs
Jack Banka

June 19, 2019 9:00 AM Calendar Call

HEARD BY: Ellsworth, Carolyn**COURTROOM:** RJC Courtroom 16D

COURT CLERK: Andrea Natali
Jeanette Velazquez

RECORDER: Lara Corcoran**REPORTER:****PARTIES**

PRESENT: Pandukht, Taleen R Attorney
State of Nevada Plaintiff

JOURNAL ENTRIES

- APPEARANCES CONTINUED: Deft. not present. John Watkins, Esq. and Michael Pariente, Esq. present.

Upon Court's inquiry, Mr. Watkins stated the Deft. was on his way. Further, Mr. Watkins stated he was not ready for trial and requested the trial be reset in the ordinary course. Ms. Pandukht stated an Alford plea agreement had been prepared. COURT ADVISED, the trial was not getting continued, as the rule indicated it shall not allow a substitution of counsel, if it resulted in a trial continuance. Mr. Watkins argued the Deft. was entitled to have the attorney of his choice and noted a conflict had arisen. COURT FURTHER ADVISED, it was not continuing the trial. Mr. Watkins stated there was no way he could be ready for trial. Mr. Boley stated this was the first he had heard about the substitution of counsel; additionally, advised he would do whatever the Court directed him to do. Deft. now present at liberty on Bond. Ms. Pandukht stated she and Ms. Lavell were not aware of the substitution, there wasn't an agreement to continue the trial and the State objected to a trial continuance, and if the Deft. does not enter a plea, she had been advised to withdraw the offer; further, announced ready for trial. Matter TRAILED for the other calendar call matters to be called.

Matter RECALLED. Same parties present as before. Upon Court's inquiry, Deft. stated he did not want to enter into the plea agreement. Upon Court's further inquiry regarding whether counsel was ready for trial, Mr. Boley stated he had the same information as the State when he came in for today's hearing. Further, Mr. Boley stated there was a conflict that had arisen with respect to a difference of view on the case. Upon Court's further inquiry regarding whether Mr. Boley had not prepared for trial, Mr. Boley stated if the Court orders him to go to trial he will; however, advised he believed it would prejudice the Deft. COURT ADVISED, counsel could associate in to help Mr. Boley with the trial; however, it was not continuing the trial. Ms. Pandukht stated as the Deft. rejected the plea she was revoking the offer. Counsel anticipated one week for trial. Matter TRAILED for the other calendar call matter to be called.

Matter RECALLED. Same parties present as before, with the exception of Mr. Giles who is now present on behalf of the State. COURT ADVISED, there were no other trials going forward except this case; therefore, ORDERED, jury trial SET to begin at 1:00 PM on Monday. Further statement by Mr. Boley regarding the difference in trial strategies; therefore, advised he should hire an expert and requested the trial be CONTINUED. COURT ADVISED, the time to hire an expert was before today's date. Trial date STANDS. Mr. Boley stated he would be ready if the court orders him to be. Mr. Giles announced ready.

BOND

6/24/19 - 1:00 PM - JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 24, 2019**

C-18-333254-1 State of Nevada
vs
Jack Banka

June 24, 2019 9:00 AM Entry of Plea

HEARD BY: Ellsworth, Carolyn**COURTROOM:** RJC Courtroom 16D

COURT CLERK: Andrea Natali
Jeanette Velazquez

RECORDER: Lara Corcoran**REPORTER:****PARTIES**

PRESENT:	Banka, Jack Paul	Defendant
	Lavell, Maria	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Second Amended Information FILED IN OPEN COURT.

Deft. present at liberty on Bond. COURT ORDERED, the substitution of counsel that was filed is STRICKEN. Mr. Boley stated the Deft. was going to enter a Guilty plea pursuant to the Alford Decision. Ms. Lavell stated the second count listed was stricken by interlineation. Mr. Boley stated he would waive any defects. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. BANKA ARRAIGNED AND PLED GUILTY TO DRIVING AND OR BEING IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICATING LIQUOR OR ALCOHOL RESULTING IN SUBSTANTIAL BODILY HARM (F), pursuant to the ALFORD DECISION. State gave an offer of proof. Court ACCEPTED plea and ORDERED, matter REFERRED to the Division of Parole and Probation (P & P) and SET for sentencing. Jury Trial VACATED.

BOND

10/23/19 - 9:00 AM - SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 14, 2019

C-18-333254-1 State of Nevada
 vs
 Jack Banka

August 14, 2019 9:00 AM Motion

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Andrea Natali

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Banka, Jack Paul	Defendant
	Pandukht, Taleen R	Attorney
	Pariente, Michael D.	Attorney
	State of Nevada	Plaintiff
	Watkins, John G.	Attorney

JOURNAL ENTRIES

- Deft. present at liberty on Bond. Upon Court's inquiry regarding whether the substitution would result in the sentencing date being continued or the plea being withdrawn, Mr. Pariente stated it would not. Mr. Watkins stated that was not his intention at the present time. COURT ORDERED, motion GRANTED. Mr. Watkins stated the substitution of counsel had already been filed.

BOND

10/23/19 - 9:00 AM - SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****October 23, 2019**

C-18-333254-1 State of Nevada
vs
Jack Banka

October 23, 2019 9:00 AM Sentencing

HEARD BY: Ellsworth, Carolyn**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Andrea Natali**RECORDER:** Lara Corcoran**REPORTER:****PARTIES**

PRESENT:	Banka, Jack Paul	Defendant
	Pariente, Michael D.	Attorney
	State of Nevada	Plaintiff
	Villani, Jacob J.	Attorney
	Watkins, John G.	Attorney

JOURNAL ENTRIES

- Deft. present at liberty on Bond. Mr. Watkins orally argued that the information did not charge a crime. Mr. Villani argued in opposition to the oral motion; noting there was a stipulated sentence. Further, Mr. Watkins requested to file a motion to arrest judgment in open court. COURT ADVISED it would not allow the document to be filed in open court, as he could not ambush the state by filing the motion; however, advised counsel he could e-file something if he wanted to withdraw the plea. Mr. Watkins further argued regarding comingling a gross misdemeanor with a felony, that there was no offense charged, and the Court had no jurisdiction to adjudicate the Deft. Mr. Villani orally moved to remand the Deft. into custody, or in the alternative order breath interlock monitoring; further, argued in opposition to the motion being filed, due to its untimeliness. Mr. Watkins argued that the Deft. should remain out of custody, as he was not a flight risk and had appeared to all of the hearings. Further arguments regarding whether the motion was a delay tactic. COURT ADVISED, there was not a good reason to remand the Deft. into custody, and as to the additional monitoring, nothing had changed with the Deft.; ADDITIONALLY, the state had the right to file a response to the motion; therefore, ORDERED, sentencing CONTINUED and motion SET for hearing; briefing

schedule IMPOSED as follows:

Deft.'s motion DUE BY today 10/23/19,

State's response DUE BY 11/6/19,

Deft.'s reply DUE BY 11/13/19.

BOND

11/18/19 - 9:00 AM - SENTENCING ... MOTION TO ARREST JUDGMENT

CLERK'S NOTE: The foregoing minutes were updated to correct two grammatical errors (11/13/19 amn).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****November 18, 2019**

C-18-333254-1 State of Nevada
vs
Jack Banka

November 18, 2019 9:00 AM**All Pending Motions****HEARD BY:** Ellsworth, Carolyn**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Andrea Natali**RECORDER:** Lara Corcoran**REPORTER:****PARTIES**

PRESENT:	Banka, Jack Paul	Defendant
	Giles, Michael G	Attorney
	Pariente, Michael D.	Attorney
	State of Nevada	Plaintiff
	Watkins, John G.	Attorney

JOURNAL ENTRIES**- SENTENCING ... MOTION TO ARREST JUDGMENT**

Deft. present in custody. Colloquy regarding issues with the 10/23/19 Motion in Arrest of Judgment Pursuant to NRS 176.525 and the related Clerk's Notice of Non-conforming Document. Mr. Pariente and Mr. Giles both confirmed receiving an emailed copy of the filed document; provided for the Court's review. Clerk advised she would attempt to have the document replaced with the conforming copy. Mr. Watkins requested to file in open court two exhibits so they could be added to the motion. COURT ADVISED, Mr. Watkins he needed to file it; FURTHER, they needed to be timely filed. Mr. Watkins summarized the content of the exhibits, which were two cases, that show the State knew how to file a charging document. Mr. Giles stated he was aware of the Vitale case as he was assigned to that case. COURT ADVISED, Mr. Watkins he needed to put a cover sheet on the document if he wanted to file it; FURTHER, it would take his word that counsel was assigned to the other cases. Argument by Mr. Watkins regarding comingling by the State and that an offense was not charged, the motion was valid, and the Court did not have jurisdiction. Mr. Giles argued there

were sufficient facts to place the Deft. on notice of what he would be presenting at trial. COURT ADVISED it adjudicated the Deft. before it proceeded to the sentencing, which was before the motion had been requested to be filed in open court. Further arguments by Mr. Watkins. COURT FURTHER ADVISED, there was a statute which made it a crime to DUI, that caused an accident, causing substantial bodily harm or death, that was alleged, and it thought there were separate statutes that overlapped; therefore, FINDS the charging document is sufficient and ORDERED, motion to arrest judgment DENIED. Colloquy regarding the motion to withdraw plea that was filed Friday. Mr. Giles stated the motion to withdraw plea incorporated the same elements of this motion; however, he didn't have time to respond. Mr. Watkins stated there were other issues involved in the motion, he felt the Deft.'s rights needed to be protected, and the motion had merit. Colloquy regarding the hearing where defense counsel asked to substitute in as counsel. Mr. Giles moved to remand the Deft., or place him on House Arrest, noting there was a delay, and further there was no BIID or SCRAM monitoring. Mr. Watkins argued in opposition to the States request. COURT FURTHER ORDERED, State's oral request DENIED; however, counsel could file a motion before the next hearing. COURT ORDERED, sentencing CONTINUED and the motion to withdraw plea, currently set November 27, 2019 is VACATED and RESET for the same date.

BOND

12/4/19- 9:00 AM - SENTENCING ... MOTION TO WITHDRAW PREVIOUSLY ENTERED PLEA OF GUILTY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****December 04, 2019**

C-18-333254-1 State of Nevada
vs
Jack Banka

December 04, 2019 9:00 AM All Pending Motions

HEARD BY: Ellsworth, Carolyn**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Andrea Natali**RECORDER:** Lara Corcoran**REPORTER:****PARTIES**

PRESENT:	Banka, Jack Paul	Defendant
	Giles, Michael G	Attorney
	Pariante, Michael D.	Attorney
	State of Nevada	Plaintiff
	Watkins, John G.	Attorney

JOURNAL ENTRIES

- SENTENCING ... DEFT.'S MOTION TO WITHDRAW PREVIOUSLY ENTERED PLEA OF GUILTY

Upon Court's inquiry, as to whether the Stated wanted to orally respond, or prepare a written response, to the additional items raised by the Defense in their reply, Mr. Giles requested to proceed with oral argument. Argument by Mr. Watkins in support of the motion to withdraw the guilty plea. Argument by Mr. Giles in opposition to the motion and in support of proceeding with sentencing. COURT stated its FINDINGS and ORDERED, there is NO REASON to allow the Deft. to withdraw the plea. Mr. Watkins stated he had already prepared an appeal and a bail motion for filing; therefore, argued in opposition to proceeding with sentencing today, or in the alternative, if the sentencing proceeds today to stay the matter, for the Court to rule on the bail motion pending the appeal. Mr. Giles argued in opposition to the defense oral motions and requested to proceed with sentencing today. COURT ADVISED, the appeal cannot proceed until the judgment of conviction (JOC) is filed; however, advised counsel he could proceed with filing the motion.

DEFT BANKA ADJUDGED GUILTY of DRIVING AND OR BEING IN ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICATING LIQUOR OR ALCOHOL RESULTING IN SUBSTANTIAL BODILY HARM (F). Argument by Mr. Giles. Statement by Mr. Watkins. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, a \$60.00 Chemical Drug Analysis Fee, a \$150.00 DNA Analysis fee including testing to determine genetic markers, a \$3.00 DNA Collection fee, and a \$2,000.00 fine, Deft. SENTENCED to a MINIMUM of FORTY-EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of Corrections (NDC), with SIX (6) DAYS credit for time served.

COURT FURTHER ORDERED, pursuant to NRS 484C.340 and NRS 484C.460, prior to reinstatement of the Defendant's driving privileges, an interlock device shall be installed and inspected on his vehicle at the Defendant's expense for a period of 24 months, said period to commence after any period of imprisonment, residential confinement, confinement in a treatment facility, or on parole or probation.

Mr. Watkins argued to stay the incarceration for two weeks, to allow the Deft. to get his business affairs together and to allow him to file the bail motion. COURT ORDERED, Deft. REMANDED and ADVISED, Mr. Watkins he can file the motion and it would sign an order shortening time.

BOND, if any, EXONERATED.

NDC



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

MICHAEL D. PARIENTE, ESQ.
3960 HOWARD HUGHES PKWY., SUITE 615
LAS VEGAS, NV 89169

DATE: December 5, 2019
CASE: C-18-333254-1

RE CASE: STATE OF NEVADA vs. JACK PAUL BANKA

NOTICE OF APPEAL FILED: December 4, 2019

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:



Case Appeal Statement

- NRAP 3 (a)(1), Form 2



Orders



Notice of Entry of Orders

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

STATE OF NEVADA,

Plaintiff(s),

vs.

JACK PAUL BANKA,

Defendant(s).

Case No: C-18-333254-1

Dept No: V

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 5 day of December 2019.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk