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Elizabeth A. Brown
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IN THE SUPREME COURT OF THE STATE OF NEVADA

JAIDEN CARUSO,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Case No. 80361

APPELLANT'S APPENDIX VOLUME I

MACE J. YAMPOLSKY, ESQ.
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ATTORNEY FOR APPELLANT
JAIDEN CARUSO

ATTORNEYS FOR RESPONDENT
THE STATE OF NEVADA

ALPHABETIC APPENDIX FOR APPELLANT'S APPENDIX

<u>DOCUMENT</u>	<u>VOLUME</u>	<u>PAGE NOS.</u>
Defendant Harlan's Motion to Sever or in the Alternative Motion to Deem Statements of the Co-Defendant Inadmissible filed April 8, 2019	I	0001-0013
Defendant Jaiden Caruso's Joinder to Defendant Kody Harlan's Motion to Set Aside Guilty Verdict as to Counts One and Two; In the Alternative Motion for a New Trial filed August 28, 2019	I	0014-0015
Defendant Jaiden Caruso's Joinder to Defendant Kody Harlan's Motion to Sever or in the Alternative Motion to Deem Statements of the Co-Defendant Inadmissible filed April 22, 2019	I	0016-0017
Defendant Jaiden Caruso's Supplemental Points and Authorities in Support of His Joinder to Defendant Kody Harlan's Motion to Set Aside Guilty Verdict as to Counts One and Two; In the Alternative Motion for a New Trial filed September 12, 2019	I	0018-0033
Information filed July 17, 2018	I	0034-0037
Judgment of Conviction filed December 12, 2019	I	0038-0039
Notice of Appeal filed January 2, 2020	I	0040-0041
Notice of Motion to Place on Calendar to Set Aside Guilty Verdict as to Counts One and Two; In the Alternative Motion for a New Trial and to Request Additional Time for Supplemental Briefing filed August 13, 2019	I	0042-0046
Notice of Non-Filed Plea Agreements of Jaiden Caruso and Kody Harlan filed May 27, 2020	I	0046A-0046W
Order Denying Defendant's Motion to Sever, or in the Alternative, Motion to Deem Statements of the Co-Defendant Inadmissible filed May 15, 2019	I	0047-0048
Order Denying Defendant's Pretrial Petition for Writ of Habeas Corpus (as to Defendant Caruso) filed October 23, 2018	I	0049-0050
Petition for Writ of Habeas Corpus (as to Defendant Caruso) filed August 29, 2018	I	0051-0062

<u>DOCUMENT</u>	<u>VOLUME</u>	<u>PAGE NOS.</u>
Recorder's Transcript of Hearing: Hearing Re: Motion to Set Aside Guilty Verdict as to Counts One and Two, in the Alternative Motion for a New Trial filed January 22, 2020	I	0063-0087
Recorder's Transcript of Hearing Re: Status Check; Negotiations filed June 4, 2020	I	0087A-0087G
Reporter's Transcript of Preliminary Hearing before the Honorable Samuel G. Bateman filed July 30, 2018	II	0088-0303
Recorder's Transcript of Proceedings: All Pending Motions filed January 22, 2020	III	0304-0375
Recorder's Transcript of Proceedings: Sentencing filed January 22, 2020	III	0376-0418
Response to State's Opposition to Harlan's Supplemental Briefing for Motion for a New Trial filed October 3, 2019	III	0419-0429
State's Opposition to Defendant Harlan's Motion to Sever or in the Alternative Motion to Deem Statements of the Co-Defendant Inadmissible filed April 11, 2019	III	0430-0442
State's Opposition to Defendant's Motion to Set Aside Jury Verdict as to Counts One and Two; or in the Alternative, Motion for New Trial and Supplemental Briefing filed August 20, 2019	III	0443-0460
State's Return to Writ of Habeas Corpus filed September 11, 2018	III	0461-0472
State's Supplemental Opposition to Defendant's Motion for New Trial filed September 26, 2019	III	0473-0500
Supplemental Briefing for Motion for New Trial of Defendant Kody Harlan filed September 12, 2019	III	0501-0521
Transcript of Proceedings Jury Trial Day 1 filed January 22, 2020	IV V	0522-0682 & 0683-0843

<u>DOCUMENT</u>	<u>VOLUME</u>	<u>PAGE NOS.</u>
Transcript of Proceedings Jury Trial Day 2 filed January 22, 2020	VI	0844-1039
Transcript of Proceedings Jury Trial Day 3 filed January 22, 2020	VII VIII	1040-1168 & 1169-1294
Transcript of Proceedings Jury Trial Day 4 filed January 22, 2020	IX	1295-1486
Transcript of Proceedings Jury Trial Day 5 filed January 22, 2020	X	1487-1715
Transcript of Proceedings Jury Trial Day 6 filed January 22, 2020	XI	1716-1835
Transcript of Proceedings Jury Trial Day 7 filed January 22, 2020	XI	1836-1843
Verdict filed August 7, 2019	XI	1844-1845

INDEX FOR APPELLANT'S APPENDIX

<u>DOCUMENT</u>	<u>VOLUME</u>	<u>PAGE NOS.</u>
Information filed July 17, 2018	I	0034-0037
Reporter's Transcript of Preliminary Hearing before the Honorable Samuel G. Bateman filed July 30, 2018	II	0088-0303
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State's Opposition to Defendant's Motion to Set Aside Jury Verdict as to Counts One and Two; or in the Alternative, Motion for New Trial and Supplemental Briefing filed August 20, 2019	III	0443-0460

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Transcript of Proceedings Jury Trial Day 3 filed January 22, 2020	VII VIII	1040-1168 & 1169-1294
Transcript of Proceedings Jury Trial Day 4 filed January 22, 2020	IX	1295-1486
Transcript of Proceedings Jury Trial Day 5 filed January 22, 2020	X	1487-1715
Transcript of Proceedings Jury Trial Day 6 filed January 22, 2020	XI	1716-1835

<u>DOCUMENT</u>	<u>VOLUME</u>	<u>PAGE NOS.</u>
Transcript of Proceedings Jury Trial Day 7 filed January 22, 2020	XI	1836-1843
Recorder's Transcript of Hearing: Hearing Re: Motion to Set Aside Guilty Verdict as to Counts One and Two, in the Alternative Motion for a New Trial filed January 22, 2020	I	0063-0087
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6 EIGHTH JUDICIAL DISTRICT COURT

7 CLARK COUNTY, NEVADA
8


9 THE STATE OF NEVADA,)
)
10 Plaintiff,) Case No: C-18-333318-2
)
11 vs.)
) Dept No: 3
12 KODY HARLAN,)
)
13 Defendant.)
14)

15 **DEFENDANT HARLAN'S MOTION TO SEVER OR IN THE ALTERNATIVE MOTION**
16 **TO DEEM STATEMENTS OF THE CO-DEFENDANT INADMISSABLE**

17 COMES NOW, Defendant KODY HARLAN, by and through his attorney of record, K.
18 RYAN HELMICK, with the RICHARD HARRIS LAW FIRM, LLC., does hereby move this
19 Honorable Court to sever Mr. Harlan's ("Harlan"), trial from that of his co-defendant Caruso, or in
20 the alternative deem the statements of Harlan's co-defendant inadmissible.

21 Dated this 8 day of April 2019.
22

23 RICHARD HARRIS LAW FIRM, LLP.

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27 (702) 333-3333
Attorney for Defendant
28

1
2 **NOTICE OF MOTION**


3 The above-referenced matter is to be placed on calendar on the _____ day of _____,
4 2019, at the hour of _____ a.m. in Department ____.

5
6 CLERK OF THE COURT

7
8 By:

9 DATED this 8 day of April, 2019.

10 RICHARD HARRIS LAW FIRM, LLP.

11 
12 K. RYAN HELMICK, ESQ.
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14 801 S. 4th St.
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16 (702) 333-3333
Attorney for Defendant

17 **PROCEDURAL HISTORY**

18 On July 9, 2018, Harlan was bound over to the District Court after his pre-liminary hearing.
19 He was charged by way of Information with the following counts: 1) Robbery With the Use of a
20 Deadly Weapon, 2) Murder With the Use of a Deadly Weapon and 3) Accessory to Murder With
21 Use of a Deadly Weapon. On July 18, 2018, Harlan entered a plea of Not Guilty. This counsel
22 substituted in as attorney of record on March 29, 2019. A jury trial is presently set to commence
23 May 13, 2019. This motion follows.

24
25 **FACTS**

26 On June 8, 2018, my client Mr. Kody Harlan (Harlan) was at 2736 Cool Lilac house. He was
27 there with co-defendant Jaiden Caruso, Matthew Minkler, Kymani Thompson, Alaric Oliver, Traceo
28 Meadows and a few others. While they are at this house, Harlan as well as Caruso and Minkler were

1 smoking marijuana and taking Xanax. (Preliminary Hearing Transcript 35, 39, 41, 53; hereinafter
2 PHT). While they are there, Caruso had a revolver handgun that he is taking the bullets in and out
3 and "dry firing" the gun. (PHT 45, 46, 75). Specifically, Caruso removed all the bullets except for
4 one and then aimed the gun at nearly everyone in the room and squeezed the trigger. (Gunner
5 Methvin Interview, P. 30-31 of Det. Nichols report). At one-point Caruso shoots a bullet into the
6 ceiling. (PHT 45-46). A little bit later in the afternoon, Minkler had possession of Caruso's revolver
7 which he was just observing. (Methvin Interview, P.32, Det. Nichols Report). Minkler then sets the
8 gun down on the kitchen counter. (Id). After Minkler sets the gun down, Caruso picks up the gun,
9 points it at Minkler and shoots him. (Id).

11 At the time Minkler is shot, Harlan was on the couch basically sleeping. (PHT 53-54). This
12 was corroborated through multiple witness statements during their interviews. Methvin stated that
13 "Kody was laying on the couch almost passed out from the Xanax when Caruso fired the first shot
14 into the ceiling (Methvin Interview, P.33 of Det. Nichols Report). Harlan's demeanor only became
15 more lethargic as Oliver stated, "Harlan was sleeping at the time Minkler was shot and as soon as he
16 heard the bang he popped up." (Thompson Interview, P.39 of Det. Calvano's Report).

18 Shortly after Minkler is killed by Caruso, videos of Minkler deceased were taken. The videos
19 were taken by Caruso from his cell phone. (PHT 172, 174-175). In one video Caruso says "Bro, **"I"**
20 just caught a body." (PHT 172) (Emphasis added). Caruso then calls Methvin's phone in which
21 Thompson answers and Caruso tells Thompson that "**He** just killed Matt bro," "**I** killed him bro, **I**
22 shot him." (Thompson Interview P. 39, Det. Calvano's Report) (Emphasis added). Caruso also tells
23 his other friend Nathaniel Planells that "**He** just caught a body" and sent him a video of the
24 deceased. (See Nathan Planells Audio Interview- not transcribed at this time) (Emphasis added).
25 Even after the shooting when Traceo Meadows arrives, Harlan was still in some type of drugged out
26 state where "he couldn't even comprehend, like he didn't even know what was going on, he was just
27 standing there." (Traceo Meadows Interview, P. 19).

1 Later that night Harlan and Caruso are arrested. During Caruso's first interview with Det.
2 Nichols, he literally tries to pin every aspect of the murder on Harlan because Harlan was a "lesser
3 person" and "homeless." (PHT 192). Even after Caruso is confronted with the videos from his cell
4 phone showing that he killed Minkler he still tries to pin the taking of Minkler's wallet and phone on
5 Harlan. (Jaiden Caruso Interview #2 (Audio) 20:25).

6 POINTS AND AUTHORITIES

7 ARGUMENT

8 1. HARLAN'S CASE REQUIRES SEVERANCE TO PROTECT HIM FROM 9 UNFAIR PREJUDICE, OR IN THE ALTERNATIVE, THE CO-DEFENDANT'S 10 STATEMENTS SHOULD BE SUPRESSED SO AS TO NOT FORCE HARLAN 11 TO DEFEND AGAINST EVIDENCE THAT WOULD BE INADMISSABLE 12 AGAINST HIM AT A SEPARATE TRIAL.

13 **A. Harlan's Case Requires Severance In Order To Protect Him From Unfair** 14 **Prejudice**

15 The Nevada Revised Statutes authorize severance, and state in pertinent part as follows:

16 If it appears that a Defendant or the State of Nevada is prejudiced by a joinder of
17 offenses or of Defendants in an indictment or information, or by such joinder for
18 trial together, the court may order an election or separate trials of counts, grant a
19 severance of Defendants or provide whatever other relief justice requires.

20 NRS 174.165(1) (emphasis added). Severance of defendants is required "if there is a serious risk that
21 a joint trial would compromise a specific trial right of one of the defendants or prevent the jury from
22 making a reliable judgment about guilt or innocence." Marshall v. State, 118 Nev. 642, 647 (2002)
23 (*quoting* Zafiro v. United States, 506 U.S. 534, 113 S.Ct. 933 (1993)). The decisive factor in any
24 severance analysis remains prejudice to the defendant. Id. Thus, courts should grant severance when
25 joined defendants have "conflicting and irreconcilable defenses and there is danger that the jury will
26 unjustifiably infer that this conflict alone demonstrates that both are guilty." Id. at 647 (*quoting*
27 Jones v. State, 111 Nev. 848, 854, 899 P.2d 544, 547 (1995)). While Defendant Harlan is mindful
28 that joinder promotes judicial economy and efficiency as well as consistent verdicts and is preferred,
it is preferred only *as long as it does not compromise a defendant's right to a fair trial.* Id.; *see also*

1 Brown v. State, 114 Nev. 1118, 1126, 967 P.2d 1126, 1131 (1998); Jones, 111 Nev. at 853–54, 899
2 P.2d at 547; Zafiro v. United States, 506 U.S. 534, 537, 113 S.Ct. 933, 122 L.Ed.2d 317 (1993).
3 Additionally, despite the concern for efficiency and consistency, the district court has “a continuing
4 duty at all stages of the trial to grant a severance if prejudice does appear.” Id.¹

5 Furthermore, conflicting defenses may cause prejudice warranting severance if the
6 defendant seeking severance shows that the codefendants have “conflicting and irreconcilable
7 defenses and that there is a danger that the jury will unjustifiably infer that this conflict alone
8 demonstrates that both are guilty.” Chartier v. State, 124 Nev. 760, 765 (2008) (reversing
9 defendant’s judgment of conviction where the defendant’s theory of defense was that he was not
10

11 ¹ The issue of antagonistic defenses is explored in Zafiro v. United States, where
12 the United States Supreme Court defined the right to trial severance under Federal
13 Rule of Criminal Procedure 14. Zafiro v. United States, 506 U.S. 534, 537, 113 S.Ct.
14 933, 122 L.Ed.2d 317 (1993). Rule 14 is essentially the same as NRS 174.165(1),
15 providing that a court may grant a severance of defendants or other relief if it appears
16 that a defendant is prejudiced by a joinder of defendants for trial. Marshall v. State,
17 118 Nev. 642, 647 (2002) (*quoting* Zafiro v. United States, 506 U.S. 534, 113 S.Ct. 933
18 (1993)).

19 In Zafiro, Zafiro and her co-defendants challenged their convictions based upon
20 the misjoinder by the District Court. Zafiro v. United States, 506 U.S. 534, 113 S.Ct.
21 933 (1993). The Supreme Court upheld the trial court’s decision to have one trial with
22 the multiple defendants. The Court declined to adopt a bright line rule allowing for
23 severance based upon inconsistent defenses. Instead, the Court addressed those
24 occasions when a trial court should sever defendants.

25 A district court should grant a severance . . . if there is a serious risk that a
26 joint trial would compromise a specific trial right of one of the defendants or prevent
27 the jury from making a reliable judgment about guilt or innocence. Such a risk might
28 occur when evidence that the jury should not consider against a defendant and that
would not be admissible if a defendant were tried alone is admitted against a co-
defendant. For example, evidence of a co-defendant’s wrongdoing in some
circumstances erroneously could lead a jury to conclude that a defendant was guilty.
When many defendants are tried together in a complex case and they have markedly
different degrees of culpability, this risk of prejudice is heightened. . . Evidence that is
probative of a defendant’s guilt but technically admissible only against a co-defendant
also might present a risk of prejudice. . . The risk of prejudice will vary with the facts
in each case, and district courts may find prejudice in situations not discussed here.
Id. at 539.

1 involved in the crimes at any stage and that the co-defendant acted alone, but the co-defendants
2 theory of defense was that the defendant was the mastermind who was present at the scene and was
3 the attacker). The Chartier Court found that Chartier suffered significant prejudice when his co-
4 defendant implicated him as part of a conspiracy. Id.

5 As demonstrated above, this Court must sever Harlan's case from that of his co-defendant.
6 Harlan and Caruso have mutually exclusive, antagonistic defenses, which are revealed in the police
7 reports, witness statements and pre-liminary hearing transcripts. The witness statements
8 specifically reveal the antagonistic nature of the various defenses for the co-defendant.
9

10 We know beyond a shadow of a doubt that Caruso killed Minkler and did so alone. The
11 video from his own phone shows us that. Caruso doesn't say "We"..... "caught a body," he says "I"
12 ... "caught a body." The message he sent to Nathan Planells also says, "He just caught a body." The
13 phone call to Thompson says, "He just killed Matt," "I killed him," "I shot him." These statements
14 by Caruso right after the murder indicate he was acting alone. Harlan was laying down on the
15 couch sleeping when Caruso shot and killed Minkler. Caruso was the only one playing this
16 modified game of Russian Roulette where he would empty all but one bullet then point the gun at
17 people in the room including himself and squeeze the trigger. There was no testimony that Harlan
18 was doing this. Caruso's actions and his actions alone were what led to Minkler being killed.
19

20 Counsel is sure that it is obvious to the Court that Harlan's defense at trial is that he had
21 nothing to do with Minkler's death as he was laying down on the couch passed out at the time. The
22 State will surely argue this Felony Murder theory wherein the murder was a consequence of some
23 intended robbery. The problem with that theory is that it is solely based on the speculation of one
24 witness, Kymani Thompson. Thompson stated at the prelim that I just told them what I think
25 happened," and that "he wasn't there," so he didn't "know." (PHT 107). That is the only string that
26 the State has too tie Caruso and Harlan together, but Counsel submits that the string is that of a
27 thread. However, if Harlan is faced to stand trial sitting next to Caruso, that thread, at least in the
28

1 jury's eyes, will become an illusion of a steel chain, binding the two together. We would be trying
2 Harlan along side a confessed killer-someone who video taped the deceased, someone who bragged
3 about it to others- the jury will surely hate Caruso. And that hate against Caruso will infect
4 Harlan's case by way of prejudice.

5 Lastly, Counsel submits that the Defense's between these two defendants couldn't be more
6 different. The Defense will surely be pointing the finger at Caruso many times during this trial to
7 show that he committed this heinous act as a result of his reckless behavior. Counsel can envision
8 that he may feel at some points during this trial that he will be sitting at the prosecutors table. When
9 you have a complex case like this one where the roles of the Defendant's are so uniquely different
10 it is hard to just allow justice to proceed in the normal fashion with one trial. The stakes are far to
11 great here. Harlan's right to a fair, partial and un-biased trial is at a severe risk of being taken away
12 from him if he is forced to try this case along side Caruso.

13
14
15 **B. In The Alternative, The Co-Defendants' Statements Should Be Suppressed So As**
16 **To Not Force Harlan To Defend Against Evidence That Would Be Inadmissible**
17 **Against Him At A Separate Trial**

18 Again, severance of defendants may be required when evidence that the jury should not
19 consider against a defendant and that would not be admissible if a defendant were tried
20 alone, is admissible in a joint trial, or when essential exculpatory evidence that would be available
21 to a defendant tried alone were unavailable in a joint trial, handicapping a defendant in presenting a
22 defense theory. See Zafiro v. U.S., 506 U.S. 534 (1993), Buff v. State, 114 Nev. 1237, 1244-45
23 (1998). A defendant's right of cross-examination, secured by the Sixth Amendment's
24 Confrontation Clause, is violated when, at a joint trial, the trial court admits a non-testifying co-
25 defendant's confession inculcating the defendant, regardless of jury instructions admonishing
26 jurors to disregard the co- defendant's confession in determining the defendant's guilt. Bruton v.
27 U.S., 391 U.S. 123, 137 (1968). The Court explained:
28

1 [T]here are some contexts in which the risk that the jury will not, or cannot,
2 follow instructions is so great, and the consequences of the failure so vital to the
3 defendant, that the practical and human limitations of the jury system cannot be
4 ignored. Such a context is presented here, where the powerfully incrimination
5 extrajudicial statements of a co-defendant, who stands accused side-by-side with
6 the defendant, are deliberately spread before the jury in a joint trial. Not only are
7 the incriminations devastating to the defendant, but their credibility is inevitably
8 suspect, a fact recognized when accomplices do take the stand and the jury is
9 instructed to weigh their testimony carefully given the recognized motivation to
10 shift blame onto others. The unreliability of such evidence is intolerably
11 compounded when the alleged accomplice, as here, does not testify and cannot be
12 tested by cross-examination. Id.

13 In Bruton, the Court found that the co-defendant's confession constituted such a
14 "powerfully incriminating extrajudicial statement," and that its introduction into evidence, insulated
15 from cross-examination, violated Bruton's Sixth Amendment rights. Id. at 135. The Court also
16 found that the confession was so prejudicial that a limiting instruction was not enough to shield the
17 defendant from the prejudicial effects of a co-defendant's confession. Id. Under Bruton, because
18 joinder of defendants for the purpose of obtaining the overlapping consideration of evidence or use
19 of innuendo based on the strength of one case is fundamentally unfair, at a minimum, the statements
20 of the co-defendants should be suppressed. Id. A joint trial will necessarily force Harlan to defend
21 against evidence not otherwise admissible against him.

22 Caruso, even after being confronted by the videos he took from his phone showing that he
23 committed the murder tells Det. Nichols that Harlan was the one who took Minkler's wallet and
24 phone. Just a little earlier in the day during his first interview with the detective he completely lied
25 throughout the entire thing and tried to pin it all on Harlan because Harlan life wasn't a meaningful
26 as his. (Caruso Interview #2 (Audio), 11:07). We know Caruso is still lying even in this second
27 interview because he tells the detective that Kymani Thompson shot the bullet into the ceiling
28 when all the other people there said it was him. (Id at 8:10). Det. Nichols goes so far as to call
Caruso a "pathological liar." (Id at 22:15).

1 Caruso says other things that if allowed in would severely prejudice Harlan such as "stolen
2 cars are Harlan's way of life." (Id at 30:25). Additionally, he states that Harlan "'probably" used
3 some of the money he stole from Minklers wallet to buy some shoes at the mall." A statement
4 based on pure speculation and made to shift culpability to anyone but him.

5 Courts have recognized that "a great disparity in the amount of evidence introduced against
6 joined defendants may, in some cases, be grounds for severance." U.S. v. Patterson, 819 F.2d 1495,
7 1503 (9th cir. 1987). The 'spillover' or 'rub-off' theory involves the questions of whether a jury's
8 unfavorable impression of [one] defendant will affect others. Lisle v. State, 113 Nev. 679, 689
9 (1997) (overruled on other grounds by Middleton v. State, 114 Nev. 1089, 1117 (1998) (*quoting*
10 State v. Rendon, 715 P.2d 777, 782 (Ariz. App. 1986)) (Emphasis added). To test this, courts are
11 concerned with whether the jury can keep separate the evidence that is relevant to each defendant
12 and render a fair and impartial verdict. Rendon, at 782; Lisle, at 689 ("the ultimate issue is 'whether
13 a jury can reasonably be expected to compartmentalize the evidence as it relates to separate
14 defendants.'" (*quoting* Jones v. State, 111 Nev. 848, 854 (1995))). When defendants are tried
15 together, and they have markedly different degrees of culpability, this risk of prejudice is
16 heightened. *See* Zafiro, 506 U.S. at 540. Jurors cannot be reasonably expected to compartmentalize
17 the evidence in this case, and the co-defendant's statements should be suppressed. Here, Harlan will
18 be unfairly prejudiced by the evidence against Caruso.

19 Additionally, simple redaction of a co-defendant's statements has been disapproved by the
20 United States Supreme Court. Gray v. Maryland, 523 U.S. 185, 118 S. Ct. 1151 (1999). In Gray,
21 the Court addressed a situation where a co-defendant's confession had been redacted but, as it
22 demonstrated obvious indication of deletion, it still directly referred to the existence of a non-
23 confessing defendant, thereby linking the defendant to the crime. The Court stated, "Unless the
24 prosecutor wishes to hold separate trials or to use separate juries or to abandon use of the
25 confession, he must redact the confession to reduce or to eliminate the special prejudice that the
26
27
28

1 Bruton Court found.” Id. at 192, 118 S. Ct. at 1155. Cf. Richardson v. Marsh, 481 U.S. 200, 211,
2 107 S. Ct. 1702 (1987) (admission at a joint trial of co-defendant’s confession that is redacted to
3 omit all reference to defendant’s existence, does not violate defendant’s confrontation rights).

4 The Nevada Supreme Court has also recognized that redaction or limiting instructions are
5 not always enough to cure the prejudice to a defendant from the admission of confessions of a non-
6 testifying co-defendant. Stevens v. State, 97 Nev. 443, 444, 634 P.2d 662 (1981). In Stevens,
7 although the State had excised all references to defendant Stevens before admitting the non-
8 testifying co-defendant’s confession at a joint trial, the Court reversed Stevens’ conviction
9 pursuant to the Bruton rule. Id. The Court reasoned:

11 It appears likely that the jury read the appellant’s [Stevens] name into the blanks
12 in each of the [co-defendant] Oliver’s statements introduced at the trial below.
13 The circumstantial links between Oliver and Stevens, referred to by the
14 prosecutor, and the fact that Oliver and appellant were being tried together made
it not only natural, but seemingly inevitable that the jury would infer appellant to
be the person referred to in the blanks of Oliver’s statement.

15 Id. at 444.

16 The Nevada Supreme Court again addressed the issue in Ducksworth State, 113 Nev. 780,
17 942 P.2d 157 (1997). Here the Supreme Court held that the district court erred in refusing to sever
18 defendant Martin’s trial from his co-defendant Ducksworth’s. Id. “The evidence against Martin was
19 **largely circumstantial and was much less convincing than was the evidence against**
20 **Ducksworth.** Id. (Emphasis added). Most damaging to Martin was the testimony of Crawl and Al
21 concerning Ducksworth’s confessions which mentioned, both directly and by inference that
22 Ducksworth acted with an accomplice. Id. at 794, 942 P.2d at 166. Because Ducksworth did not
23 testify, the introduction of his confession, violated co-defendant Martin’s Sixth Amendment rights.
24 Id. at 795, 942 P.2d at 167. The evidence against Harlan, like Martin, supra, is largely circumstantial
25 and based on pure speculation. As such, the evidence against Harlan is much less convincing than
26 that against his co-defendant Caruso.
27
28

1 If the State argues that the statements can be “sanitized” or redacted in order to prevent the
2 co-defendants’ statement from directly implicating Harlan, it would still dramatically and
3 completely destroy Harlan’s right to confront his accusers. Further the statements of the co-
4 defendant, even if redacted, would still imply that the other person that they are sitting in trial with,
5 are the other people to whom they are referring to. The Jury would quickly pick up on the fact that
6 there are holes in the statement and start to fill the holes in on their own.
7

8 There are some contexts in which the risk that the jury will not, or cannot, follow
9 instructions is so great, and the consequences of failure so vital to the defendant that the practical
10 and human limitations of the jury system cannot be ignored. See Gray v. Maryland, 523 U.S. 185,
11 190, 118 S.Ct. 1151, 1154 (1998); (*citing Bruton v. United States*, 391 U.S. 123,135-36, 88 S.Ct.
12 1620, 1627-28 (1968)). Such a context is presented here, where the powerfully incriminating
13 extrajudicial statements of a codefendant, who stands accused side-by-side with the defendant, are
14 deliberately spread before the jury in a joint trial. Id. Not only are the incriminations devastating to
15 the defendant, but their credibility is inevitably suspect . . . The unreliability of such evidence is
16 intolerably compounded when the alleged accomplice, as here, does not testify and cannot be
17 tested by cross-examination. Id.
18

19 Attempts to get around the holding of Bruton by simply removing a codefendants name and
20 leaving a blank space or inserting ‘we’ or ‘they’ or other pronoun is a violation under Bruton. The
21 Nevada Supreme Court considered the constitutionality of introducing a non-testifying
22 codefendant’s confession in which references to the appellant were simply redacted with a blank
23 space, as is the case here. Stevens v. State, 91 Nev. 443, 444 634 P.2d 662, 663 (1981). Given that
24 the appellant in Stevens had been jointly tried with the non-testifying codefendant, the Supreme
25 Court concluded that it was “not only natural, but seemingly inevitable, that the jury would infer
26 appellant to be the person referred to in in the blanks in [the codefendant’s] statements. Id.
27 Consequently, the Supreme Court determined that a Bruton violation had occurred. Id. at 445, 634
28

1 P.2d 662, 634, *cf. Gray v. Maryland*, 523 U.S. 185, 195-96, 118 S.Ct. 1151 (1998) (*finding a Bruton*
2 *violation under a similar fact pattern*); *see also Ducksworth v. State*, 114 Nev. 951 (1998) (wherein
3 the Nevada Supreme Court was concerned with statements made by one codefendant that either
4 implicitly or specifically referred to the other codefendant).

5 If Caruso's statement is allowed in, Harlan's defense would now, not only have to hold the
6 State to its burden of proof beyond a reasonable doubt, but with the co-defendants' statements
7 being allowed into evidence, Harlan would have to battle any information that the co-defendant
8 stated to the police after the fact. Harlan would not have an opportunity to explore the truthfulness
9 of those statements without the co-defendant violating their own Fifth Amendment Rights. As a
10 result, Harlan's ability to get a fair trial if any portion of the co-defendants' statements are used is
11 non-existent.
12

13 CONCLUSION

14 Under the authority set forth above, this Court must sever Harlan's case from co-defendant
15 Caruso.
16

17 In the alternative, any mention of Harlan and his purported role in the charged crimes as
18 told by Caruso is not something that can be redacted from their statements without betraying an
19 obvious indication of deletion. Accordingly, absent an agreement by prosecutors not to use
20 Caruso's statements at the upcoming trial of this matter, the suppression of the co-defendant's
21 statements sought herein is required.
22

23 Dated this 8 day of April 2019.

24 RICHARD HARRIS LAW FIRM, LLP.

25 

26 K. RYAN HELMICK, ESQ.
27
28

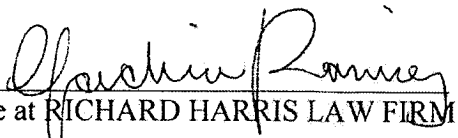
Nevada Bar No. 12769
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Attorney for Defendant

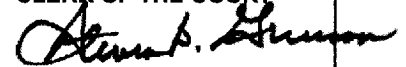
CERTIFICATE OF SERVICE

I hereby certify that on the 8 day of April, 2019, I served a true and correct copy of the foregoing **DEFENDANT HARLAN'S MOTION TO SEVER OR IN THE ALTERNATIVE MOTION TO DEEM STATEMENTS OF THE CO-DEFENDANT INADMISSABLE**, addressed to the following counsel of record at the following address(es), as follows:

X E-MAIL on April 8, 2019, by emailing the address below:

Giancarlo Pesci
CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
200 E. Lewis Ave.
Las Vegas, NV 89155
giancarlo.pesci@clarkcountynvda.com


An employee at RICHARD HARRIS LAW FIRM



JMOT
YAMPOLSKY & MARGOLIS
MACE J. YAMPOLSKY, ESQ.
Nevada Bar No. 001945
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625 South Sixth Street
Las Vegas, Nevada 89101
(702) 385-9777; Fax No. (702) 385-3001
Attorney for Defendant Caruso

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAIDEN CARUSO, #8213339,

Defendant.

Case No. C-18-333318
Dept. No. III

Date: 8/29/19
Time: 9:00 a.m.

**DEFENDANT JAIDEN CARUSO'S JOINDER TO DEFENDANT KODY HARLAN'S
MOTION TO SET ASIDE GUILTY VERDICT AS TO COUNTS ONE AND
TWO; IN THE ALTERNATIVE MOTION FOR A NEW TRIAL**

COMES NOW Defendant Jaiden Caruso, by and through his counsel, Mace J. Yampolsky, Esq., and hereby joins in Defendant Kody Harlan's Motion to Set Aside Guilty Verdict as to Counts One and Two; in the Alternative Motion for a New Trial.

DATED this 28th day of August, 2019.

YAMPOLSKY & MARGOLIS

/s/ Mace J. Yampolsky, Esq.
MACE J. YAMPOLSKY, ESQ.
Nevada Bar No. 001945
JASON R. MARGOLIS, ESQ.
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625 South Sixth Street
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Attorney for Defendant Caruso

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CERTIFICATE OF ELECTRONIC SERVICE

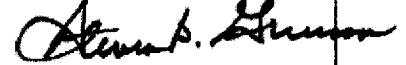
I hereby certify that I am an employee of YAMPOLSKY & MARGOLIS, and that on the 28th day of August, 2019, I served a true and accurate copy of the foregoing, upon the following interested parties:

Giancarlo Pesci
Chief Deputy District Attorney
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K. Ryan Helmick, Esq.
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Attorney for Defendant Harlan

/s/ Theresa J. Muzgay



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Attorney for Defendant Caruso
6

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 -vs-)

12 JAIDEN CARUSO, #8213339,)

13 Defendant.)
14

Case No. C-18-333318
Dept. No. III

Date: 4/23/19
Time: 1:00 p.m.

15 **DEFENDANT JAIDEN CARUSO'S JOINDER TO DEFENDANT KODY HARLAN'S**
16 **MOTION TO SEVER OR IN THE ALTERNATIVE MOTION TO DEEM**
STATEMENTS OF THE CO-DEFENDANT INADMISSABLE

17 COMES NOW Defendant Jaiden Caruso, by and through his counsel, Mace J. Yampolsky, Esq.,
18 and hereby joins in Defendant Kody Harlan's Motion to Sever or in the Alternative Motion to Deem
19 Statements of the Co-Defendant Inadmissible.

20 DATED this 22nd day of April, 2019.

21 YAMPOLSKY & MARGOLIS

22 /s/ Mace J. Yampolsky, Esq.
23 MACE J. YAMPOLSKY, ESQ.
Nevada Bar No. 001945
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CERTIFICATE OF ELECTRONIC SERVICE

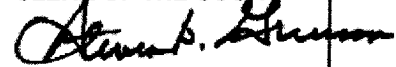
I hereby certify that I am an employee of YAMPOLSKY & MARGOLIS, and that on the 22nd day of April, 2019, I served a true and accurate copy of the foregoing, upon the following interested parties:

Giancarlo Pesci
Chief Deputy District Attorney
E-Mail: giancarlo.pesci@clarkcountyda.com

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Ryan@richardharrislaw.com
Attorney for Defendant Harlan

/s/ Theresa J. Muzgay



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Attorney for Defendant Caruso

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 JAIDEN CARUSO, #8213339,

13 Defendant.
14

Case No. C-18-333318
Dept. No. III

Date: 10/10/19
Time: 9:00 a.m.

15 **DEFENDANT JAIDEN CARUSO'S SUPPLEMENTAL POINTS AND AUTHORITIES IN**
16 **SUPPORT OF HIS JOINDER TO DEFENDANT KODY HARLAN'S**
17 **MOTION TO SET ASIDE GUILTY VERDICT AS TO COUNTS ONE AND**
TWO; IN THE ALTERNATIVE MOTION FOR A NEW TRIAL

18 COMES NOW the Defendant Jaiden Caruso, by and through his counsel, Mace J. Yampolsky,
19 Esq., and hereby submits the foregoing Supplemental Points and Authorities in Support of his Joinder to
20 Defendant Kody Harlan's Motion to Set Aside Guilty Verdict as to Counts One and Two; in the
21 Alternative Motion for a New Trial.

22 DATED this 12th day of September, 2019.

23 YAMPOLSKY & MARGOLIS

24 /s/ Mace J. Yampolsky, Esq.
MACE J. YAMPOLSKY, ESQ.
25 Nevada Bar No. 001945
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625 South Sixth Street
27 Las Vegas, Nevada 89101
Attorney for Defendant Caruso
28

1 **SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO SET**
2 **ASIDE JUDGMENT OR IN THE ALTERNATIVE, FOR A NEW TRIAL**

3 **I. INTRODUCTION**

4 On Friday, August 30, 2019, counsel for both Jaiden Caruso and Kody Harlan met with juror
5 Shayra Esparza to discuss some lingering reservations she had about the verdict she helped return in
6 this case on August 8, 2019. During this meeting, Ms. Esparza shared her insights regarding the degree
7 to which extrinsic evidence may have made its way into the deliberations in the jury room, the fact that
8 more than one juror resorted to their cellular phone(s) to clarify or supplement the evidence, including
9 her, and ultimately that she felt bullied into changing her support for a manslaughter verdict by several
10 other jurors. Most significantly, two other jurors, Sarah and Karen, expressed exasperation at what
11 "Shayra didn't get," and ultimately presented Ms. Esparza with a jury instruction which purportedly
12 stated that if a gun is used it has to be felony first degree murder. Of course, there was no such
13 instruction.

14 Counsel inquired as to why Ms. Esparza capitulated, why she affirmed the verdict in the
15 courtroom, and why she did not review the allegedly clinching jury instruction for herself. Ms. Esparza
16 recalled feeling "exhausted," "defeated," "overwhelmed by fighting 11-1," and reported that when "the
17 video turned (fellow juror) Ronald, she knew that she was "all alone". Since leaving the courtroom on
18 August 8th after pronouncing the verdict, Ms. Esparza has had persistent trouble sleeping, has had
19 recurring bouts of anxiety, and has had trouble putting the gauntlet of being a juror in this tragic and
20 high profile case behind her. In no uncertain terms, Ms. Esparza now feels as if she was browbeaten
21 into changing her mind. What's worse, she is becoming more and more certain that the jury instruction
22 utilized by Sarah and Karen to finally convince her did not say what they insisted it said. Counsel
23 agrees. An Affidavit reflecting her assertions is attached hereto as Exhibit "A".

24 **II. LEGAL ARGUMENT**

25 NRS 176.515 provides that a court may grant a new trial to a defendant if required as a matter
26 of law or on the ground of newly discovered evidence. The grant or denial of a new trial is within the
27 trial court's discretion and will not be reversed on appeal absent its abuse. *Funches v. State*, 113 Nev.
28 916, 923, 944 P.2d 775 (1997); *Domingues v. State*, 112 Nev. 683, 695, 917 P.2d 1364 (1996) ("The

1 decision to grant or deny a motion for a new trial rests within the sound discretion of the trial court and
2 will not be disturbed on appeal absent palpable abuse.").

3 Of course, not every incidence of juror misconduct requires the grant of a new trial. *Tanksley v.*
4 *State*, 113 Nev. 997, 1003, 946 P.2d 148, 151 (1997), citing *Barker v. State*, 95 Nev. 309, 313, 594
5 P.2d 719, 721 (1979). "The test is whether or not the misconduct has prejudiced the defendant to the
6 extent that he has not received a fair trial." *United States v. Armstrong*, 900 F.2d 1238, 1244 (9th Cir.
7 1990) citing *United States v. Klee*, 494 F.2d 394, 396 (9th Cir. 1974). A new trial need not be granted
8 if it appears beyond a reasonable doubt that no prejudice occurred. *Tanksley, supra*. Whether prejudice
9 occurred is a determination of fact for the court and will not be reversed on appeal absent an abuse of
10 discretion.

11 It is axiomatic that fundamental to the administration of justice is a fair and impartial jury.
12 *United States v. Bagnariol*, 665 F.2d 877, 884 (9th Cir. 1981). Jurors have a duty to consider only the
13 evidence which is presented to them in open court. Once a juror has breached this duty by infecting the
14 deliberations with extrinsic material, a new trial is warranted if there is a "reasonable possibility" that it
15 could have affected the verdict. *Bayramoglu v. Estelle*, 806 F.2d 880, 887 (9th Cir. 1986).

16 To prevail on a motion for a new trial alleging juror misconduct, "the defendant must present
17 admissible evidence sufficient to establish: (1) the occurrence of juror misconduct, and (2) a showing
18 that the misconduct was prejudicial. *Bowman v. State*, 387 P.3d 205, 132 Nev. Adv. Op. 74 (Nev.
19 2016); citing *Meyer v. State*, 119 Nev. 563-64, 80 P. 3d at 455. The determination of juror misconduct
20 is a factual inquiry. *Id.* at 206. Citing *Meyers* 119 Nev. at 566. In *Bowman*, two jurors stated in
21 affidavits to the Court that they conducted independent experiments to other jurors prior to the jury
22 rendering a verdict. *Id.* at 205. In analyzing the first factor, the Court in *Bowman* stated that "it is
23 uncontested that juror misconduct occurred." *Id.* at 206. Thus, the first factor of establishing whether
24 juror misconduct occurred was satisfied.

25 Similarly, in *Meyer, supra*, the Court stated that jurors are prohibited from conducting an
26 independent investigation. *Meyer* at 460. The facts in *Meyer* showed that a juror admitted in her
27 affidavit that she consulted the *Physician's Desk Reference* book (hereinafter "PDR") during trial and
28 then reported her findings to fellow jurors during deliberations. *Id.* The Court then stated this clearly

1 amounted to extraneous influence on the jury and therefore constituted misconduct.

2 Of course, a finding that juror misconduct occurred does not end the inquiry and, quite literally,
3 constitutes only half the battle. The next hurdle that a defendant must clear is the demonstration that
4 the juror misconduct prejudiced him or her and denied a fair trial. That is what occurred in the case at
5 bar, as will be thoroughly detailed in the coming pages. In *Bowman*, supra, the Court indicated that the
6 determination of prejudice is a legal inquiry. *Id.*, supra, at 206. Prejudice is shown whenever there is a
7 reasonable probability or likelihood that juror misconduct affected the verdict. *Id.* at 205. The Court in
8 *Bowman* applied the *Meyer* factors and came to the conclusion that Bowman presented sufficient
9 evidence to show there was a reasonable probability that the independent experiments affected the
10 jury's verdict and he fulfilled the remaining requirement necessary to prevail on a motion for a new
11 trial. *Id.*

12 With respect to the *Meyer* case, the Nevada Supreme Court looked to whether there was a
13 reasonable probability that the juror's introduction of the PDR book affected the jury's verdict. *Meyer*
14 at 460. The Court stated that the misconduct in the case involved both extrinsic information as well as
15 intrinsic communications (disregard of jury instruction prohibiting independent research). *Id.* The
16 Court, in considering all of the circumstances put before it, concluded that the average, hypothetical
17 juror could have been affected by this extraneous information, and therefore found a **reasonable**
18 **probability** that the reference the jury received from the PDR book from the juror may have affected
19 the verdict. *Id.* (Emphasis Added).

20
21 **A. The District Court Should Set Aside the Verdict or Alternatively Declare a**
22 **Mistrial and Grant Mr. Caruso a New Trial Based on the Jury's Consideration of**
23 **Extrinsic Items**

24 In *People v. Martinez*, 82 Cal.App.3d 1,22 (1978), the California Court of Appeals held that
25 whether a defendant has been injured by jury misconduct in receiving evidence outside of court
26 necessarily depends upon whether the jury's impartiality has been adversely affected, whether the
27 prosecution's burden of proof has been lightened and whether any asserted defense has been
28 contradicted. If the answer to any of these questions is in the affirmative, the defendant has been
prejudiced and the conviction must be reversed. On the other hand, since jury misconduct is not per se

1 reversible, if a review of the entire record demonstrates that the defendant has suffered no prejudice
2 from the misconduct, a reversal is not compelled. *Id.*

3 More importantly, the trial court is in the very best possible position to appraise the probable
4 effect of information on the jury, the materiality of the extraneous material, and its prejudicial nature.
5 The trial court observes the jurors throughout the trial, is aware of the defenses asserted, and has heard
6 the evidence. The judge's conclusion about the effect of the alleged juror misconduct deserves
7 substantial weight. *Bagnariol*, 665 F.2d at 885.

8 CELL PHONE USE DURING DELIBERATIONS

9 In this case, during deliberations in the jury room which went on for six plus hours, multiple
10 jurors, including but not limited to Shayra Esparza herself, Bridget Hocker, Chris Young, Sarah Evans,
11 and Karen Rice, used cell phones at various times to "supplement" the evidence. For instance, during
12 deliberations the spray painted messages on the walls of the home where Matthew Minkler was found
13 included various abbreviations. Ms. Esparza looked up these abbreviations and provided the meaning
14 of various acronyms and slang terms to her fellow jurors.

15 Specifically, Ms. Esparza used her phone to look up the slang terms "BDN," "FTO," "Fuck 12,"
16 "OTF," and "GDK". Each of these acronyms or phrases were spray painted on the walls within the
17 Cool Lilac house. Once Ms. Esparza found that "BDN" meant "Blood Disciple Nigga," she showed the
18 phone to her fellow jurors, sharing the meaning with them. This continued in the same fashion with the
19 successive terms of: "FTO," which translated to "Fuck the Opps," "Fuck 12," which translated to
20 "Fuck the Police," "OTF," which meant "Only the Family," and, finally, "GDK," meaning Gangster
21 Disciple Killer.

22 The spray painting of these terms by either Kody Harlan or Jaiden Caruso would invite the jury
23 to make some devastatingly bad inferences about either of both of these young man and would likely
24 inflame the passions of the jurors against them. The use of the cell phone by Ms. Esparza, amongst
25 others on the jury, was impermissible and illegal use of extrinsic information in jury deliberations. The
26 jury should not have been permitted to supplement the evidence presented at trial with their impromptu
27 cell phone research and their doing of the same is prejudicial jury misconduct entitling Mr. Caruso to a
28 new trial in accordance with Constitutionally protected rights to due process of law under both the 5th

1 and 14th amendments to the United States Constitution.

2 **DISCUSSION OF STOLEN CAR DURING DELIBERATIONS**

3 The lead detective in this case made reference to a stolen Mercedes being operated by the
4 defendants at the time of their arrest. Your honor admonished the jury not to consider this mention of
5 the stolen Mercedes during deliberations and denied a motion for a prosecutorily created mistrial by
6 both defendants. The jurors all heard this damaging statement and despite the Court's stern
7 admonishment not to consider the same during deliberations, the bell could not be unrung and this
8 stolen Mercedes was absolutely a topic of some discussion in the deliberation room. According to Ms.
9 Esparza, as more fully outlined in her affidavit, she and fellow juror Hector Martinez discussed the
10 stolen car. Furthermore, juror Ronald Feriancek mentioned the stolen car during his discussion in
11 deliberations pertaining to the felony murder rule, a misapplication of the law to facts which were not
12 allowed consideration.

13 At another point during deliberations, there was some discussion about the Mercedes that was
14 driven and crashed by the defendants—this discussion occurred amongst Hector Martinez, Shayra
15 Esparza, and a couple of other jurors. This mention of the stolen car during testimony was a major
16 point in the trial—objections were made and motions for a mistrial as well—and Judge Herndon was
17 exceptionally clear with regard to that testimony being disregarded entirely. Clearly, despite the court's
18 strong admonition, this evidence of a stolen Mercedes did enter, impermissibly, into the jury's
19 deliberations. This was unfairly prejudicial and there is a reasonable probability that it illegally
20 influenced the verdict reached.

21 **B. The District Court Should Set Aside the Verdict or Alternatively Declare a** 22 **Mistrial and Grant Mr. Caruso a New Trial Based on the Jury's** 23 **Misunderstanding and Misapplication of Jury Instructions In Addition to** **Extrinsic Items**

24 A motion for new trial may be premised upon juror misconduct where such misconduct is
25 readily ascertainable from objective facts and overt conduct without regard to the state of mind and
26 mental processes of any juror. *State v. Thacker*, 95 Nev. 500, 501, 596 P.2d 508 (1979). In *Thacker*, the
27 Nevada Supreme Court reaffirmed the principle that jurors are confined to the facts and evidence
28 regularly elicited in the course of the trial proceedings. *Thacker*, 95 Nev. at 501. In *Thacker*, the Court

1 noted that no evidence was presented at trial concerning the subject of the juror's personal knowledge.
2 *Id.* at 502. Here, on the other hand, information regarding what a particular jury instruction said and
3 meant was twisted by jurors Sarah and Karen, and used to browbeat and manipulate juror Shayra
4 Esparza to change her verdict from manslaughter to first degree felony murder.

5 **ATTEMPTS TO INFLUENCE DELIBERATIONS BY THIRD PARTIES AND BULLYING**
6 **DURING DELIBERATIONS**

7 In what Ms. Esparza perceived as an effort to placate her, from the second hour of deliberations
8 on she would get shoulder and back rubs from various other jurors to assuage her anxiety about the
9 deliberations and about being the lone hold out. The foreperson of the jury, Karen Rice, shared a
10 personal anecdote about her nephew's untimely death at the hands fo a drunk driver and seemed to
11 suggest that this made her more empathetic to the feelings of Matthew Minkler's mother, who was very
12 visibly pleading with jurors for help avenging her son. As she continued to hold out, her fellow jurors
13 became increasingly upset with her. Bridget, Karen, and Theresa, in particular, were tired of waiting
14 around for Ms. Esparza to see the light. Chris and Ronald were comforting Ms. Esparza as the room
15 steadily turned more vehemently against her.

16 Karen Rice turned to emotional manipulation in order to influence Ms. Esparza and play on her
17 passions, much like Mrs. Minkler sought to do all trial. At one point, Ms. Rice's tattoo became a topic
18 of discussion and it appears that Ms. Rice lost a close family murder to a drunk driver. She seemed to
19 be indicating that Mrs. Minkler's grief was real and could be causing her to be overbearing in her pleas
20 with jurors as they entered and exited the courtroom every day. The combination of Ms. Rice's
21 revelation and her prominence on this jury, when viewed alongside the actions of Mrs. Minkler on a
22 daily basis, reflect impropriety bordering on illegality infected this jury's deliberations.

23 ///

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1 Save for the fact that counsel was unaware of Ms. Rice's loss during voir dire (and likely would
2 have appraised her usefulness to the defense as a potential juror differently had we known), this was an
3 overt attempt to normalize, sanitize, and make less obtrusive Mrs. Minkler persistent pleading with
4 members of the jury for "justice" for her son—which for her would only come with maximum
5 punishment and first degree murder convictions for both of these young men. Ms. Esparza, and other
6 jurors, felt the oppressive weight of her stare for several days and could endure no more.

7 DATED this 12th day of September, 2019.

8 YAMPOLSKY & MARGOLIS

9 /s/ Mace J. Yampolsky, Esq.

10 MACE J. YAMPOLSKY, ESQ.

11 Nevada Bar No. 001945

12 JASON R. MARGOLIS, ESQ.

13 Nevada Bar No. 012439

14 625 South Sixth Street

15 Las Vegas, Nevada 89101

16 Attorney for Defendant Caruso

1
2 **CERTIFICATE OF ELECTRONIC SERVICE**

3 I hereby certify that I am an employee of YAMPOLSKY & MARGOLIS, and that on the 12th
4 day of September, 2019, I served a true and accurate copy of the foregoing, upon the following
5 interested parties:

6 Giancarlo Pesci
7 Chief Deputy District Attorney
E-Mail: giancarlo.pesci@clarkcountyda.com

8 Office of the District Attorney
9 motions@clarkcountyda.com

10 K. Ryan Helmick, Esq.
Ryan@thedefenders.net
11 Attorney for Defendant Harlan

12 /s/ Theresa J. Muzgay
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Exhibit “A”

Exhibit “A”

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AFFIDAVIT FACTS

I. DECLARATION OF SHAYRA ESPARZA

I, the undersigned, Shayra Esparza, declare under the penalty of perjury as follows:

I am over the age of 18 years, and I am competent to make this declaration. All statements contained herein are true and accurate to the best of my knowledge.

Facts

I was a juror on the Kody Harlan and Jaiden Caruso case number C-18-333318-2. My verdict for 1st Degree Murder with Use of a Deadly Weapon was only given as a result of being misled about the law through the use of the jury instructions. Specifically, I was told by another Juror, Sarah Fox that they (the other jurors who wanted a guilty verdict for 1st Degree Murder with Use of a Deadly Weapon) could overrule me, so it didn't matter what my vote was. Had I not been so wrongfully misled, I would have voted for Involuntary Manslaughter with Use of a Deadly Weapon for Jaiden Caruso and Accessory to Murder with Use of a Deadly Weapon for Kody Harlan.

The juror that read a completely wrong interpretation of the law on 1st Degree Murder and Felony Murder was Ms. Fox. By her side and in agreement with her was Karen Rice (foreperson). Specifically, Ms. Rice said, "listen up guys Sarah found something." Then Ms. Rice looked right at me as Ms. Fox read the alleged "overrule you" part of the jury instructions. Once Ms. Fox was done reading, she looked at me and told me that since they didn't have to be unanimous on whether it was premeditated first degree murder or whether it was felony murder AND because there was a deadly weapon involved, they could simply overrule me. Ms. Fox was the one that read this out loud and did so while holding the jury instruction in her hand which would make it appear (whether intentional or not) that this was the exact law that she was being read.

1 At the time this false rendition of the law was read to me, the jury had been
2 deliberating for about 6 hours. During this 6-hour time period, I had been standing
3 strong in my position against any kind of 1st degree murder conviction. I had been on the
4 verge of feeling that I was about to get into a physical altercation with another female
5 juror named Theresa Houston because of the way they had been treating me, given me
6 differing opinion on what the verdict should be. There were multiple times where I had
7 to take a cigarette break so that I could cool down. Likewise, there were several times
8 where I broke down in tears during the deliberations. One time in particular, Ms. Rice,
9 the foreperson would rub my back and tell me everything was going to be fine, all the
10 while expressing her own view of how she believed it was first degree murder. This
11 physical touching by the foreperson could be looked at two ways: 1) just a simply good-
12 natured effort to console me during a time of high emotions or 2) using physical touch in
13 combination with words in an effort to manipulate me so that I would join in with Ms.
14 Rice and the others in their first degree murder point of view. I felt it was the latter.

15
16 By the time I was read and reiterated this "overrule you" misstatement of the
17 law, I felt defeated. I felt that my hard-fought efforts and battle that I had invested
18 myself into for the past 6 hours of deliberation had been for nothing. The misstatement
19 of the law was read to me in such a way that it was as if it were an "ah ha!!" moment.
20 Ms. Fox "found" this "overrule you law" and made it seem like she found a hidden gem
21 that allowed her and the foreperson Ms. Rice to get what they wanted without the need
22 for my vote or opinion. I felt emotionally drained and completely defeated- I felt
23 powerless. I basically said to myself "well if that's the law, then I have no choice in the
24 matter." This was the breaking point for me.

25
26 When I walked into the courtroom with all the others so that the verdict could be
27 read, I was wearing dark sunglasses. I had never worn sunglasses throughout the entire
28 trial. When His Honor read the verdict and asked all the jurors at once to raise their

1 hands if this was the agreed upon verdict, I flung my arm up in a less than caring way, in
2 way someone who would fling their arm up as if to say "whatever." The only reason that
3 I felt like I had to raise my hand in agreement with the verdict that was read was because
4 I was told I could be overruled and so my position didn't matter. But for this extreme
5 and egregious misstatement of the law involved in this case, I would not have raised my
6 hand with all the other jurors when the judge asked about the verdict ruling.
7

8 Moments after the verdict was read I, who was sitting in the front row started to
9 cry, then I immediately got up and out of order from the other jurors before me, and
10 stormed out of the courtroom. I continued to cry even in the back of the courtroom,
11 while they all waited for the judge to come back and talk to them. Once I was free to
12 leave, I immediately left the courthouse.

13 That night I felt sick to my stomach and depressed as well as angry about what
14 happened to Mr. Harlan and Mr. Caruso. I wanted to help them from being convicted of
15 a crime that I felt was unjustified but felt I was powerless in doing so. The next day I
16 told my boss Maria Boyd how I wouldn't be coming into work that day and how I hated
17 the State of Nevada Criminal Justice system so much for what had happened to those 2
18 boys. My feelings were so strong that I contemplated moving from the State because of
19 the injustice I felt I had been tricked into.
20

21 On August 27, 2019, I received a phone call from Mr. Harlan's attorney K. Ryan
22 Helmick. The phone call was on speaker phone and Mr. Helmick's associate attorney
23 Hayley Price was present. It was on this initial phone call that I told Mr. Helmick as well
24 as Mrs. Price about some of the information laid out in this affidavit. Then on August
25 30, 2019, Mr. Helmick, Mrs. Price, Mr. Helmick's investigator, Maybeth Andrade, Mr.
26 Caruso's other attorney Jason Margolis and attorney William Terry all talked to me and
27 took detailed notes. During this August 30, 2019 meeting with me, many facts above as
28

1 well as many other important facts were discovered. These other important facts were
2 the following:

3
4 1) Prior to the deliberations taking place, I witnessed Karen Rice (foreman), and
5 Sarah Fox talking about the case while going up the escalators. Ms. Esparza overheard
6 talk about a comment that another juror Christopher Young made to both Ms. Rice as
7 well as Ms. Fox where Mr. Young told them that "this was not going to be a very easy
8 case to decide, and that there was going to be some conflicting stuff here." I heard Ms.
9 Rice and Ms. Fox talk about how they didn't like Mr. Young's comment and about how
10 they thought this was going to be an easy decision.

11 2) I stated that I felt harassed by the mother of Matthew Minkler and another
12 unknown individual that is believed to be a part of the Minkler family. I feel I was
13 harassed because there were many times, at least 4, where Matthew Minkler's mom
14 would stare directly at me (outside the courtroom) and appear to be on the verge of
15 crying. I felt it was a look of pity that was displayed upon her in an effort to get me to
16 sympathize more with Mr. Minkler's family. The look sent a message in essence to me
17 and I felt very uncomfortable. Additionally, at one of the lunch breaks during trial,
18 another relative, who was a young girl of mixed ethnicity, likely between 18-19 years,
19 who was a part of Mr. Minkler's family in some way, walked directly by me while at the
20 pizza restaurant and gave me a long stare in an effort in seek favoritism and pity from
21 me. Again, this made me feel very uncomfortable.

22 3) Another piece of misconduct that I talked about was something that I did
23 myself during the deliberations. I confessed to using my cell phone during the
24 deliberations to look up certain facts of the case and told those facts to some of the other
25 jurors. Specifically, I used my cell phone to do research during the deliberations. I
26 looked up the meaning of many of the abbreviated words that were graffitied all over the
27 Cool Lilac house involved in this case. Once I found their meaning, I let all the other
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1 jurors know what I found out. I even turned my cell phone around and showed some of
2 them. Many of the graffiti abbreviations were such things as: "BDN" meaning Blood
3 Disciple Nigga, "FTO" meaning Fuck the Opps; "Fuck 12" meaning Fuck the Police;
4 "OTF" meaning Only the Family; and "GDK" meaning Gangster Disciple Killer.
5

6 4) Another incident of cell phone use during deliberations came from Bridget
7 Hocker. I stated that I saw Ms. Hocker using her cell phone during the breaks in the
8 deliberation process.

9 5) In regard to the stolen car fact that the lead detective in the case talked about
10 in the trial and the judge ruled, as well as admonished the jury not to talk about, also
11 came into the deliberation room and played a major role. Hector Martinez and I both
12 discussed and asked questions about whose car was the Mercedes Benz, since it was
13 possibly stolen. Additionally, Ronald Feriancek (another juror) mentioned the fact of the
14 stolen car in the deliberations. The idea that some of these people had, was that if Mr.
15 Harlan and Mr. Caruso were out stealing cars then they probably robbed Matthew
16 Minkler too. And if the robbery was believed then the Felony Murder Rule would apply.
17 I also stated that juror Gabriel Bernardo talked about the stolen car comment and how I
18 remembered it being in regard to the pre-meditation element.
19

20 6) In addition to the facts mentioned above that reference a form of bullying of
21 me by some of the other juror members, I specifically remember another juror Bridget
22 Hocker impatiently say to me when she would share her differing point of view "what is
23 it you don't understand Shayra!" and "what do you not understand Shayra!"


24 7) Lastly, I stated that some of the jurors talked in deliberations about a letter that
25 Mr. Caruso wanted to read to them. The reason this came about was because some of the
26 jurors saw Mr. Caruso hand his attorney Mace Yampolsky a handwritten letter and then
27 heard Mr. Yampolsky say in what respectively was not a good effort by him to whisper
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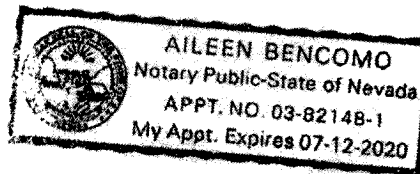
1 "no you can't read that to the jury or no were not going to read your letter to the jury." I
2 stated that this comment by Mr. Yampolsky and this letter that Mr. Caruso wanted to
3 read to the jury was talked about in deliberations by some of the other jurors including
4 myself.
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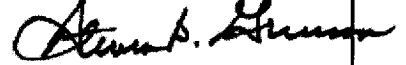
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8 
SHAYRA ESPARZA

9 STATE OF NEVADA
10 COUNTY OF CLARK

11 SUBSCRIBED and SWORN to before me this 12th day of September 2019.

12 
13 NOTARY PUBLIC in and for said
14 County and State.





1 **INFM**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 GIANCARLO PESCI
6 Chief Deputy District Attorney
7 Nevada Bar #7135
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

1 I.A. 7/18/18
2 10:00 AM
3 W.B. TERRY, ESQ.
4 K. BROWER, ESQ.

5 THE STATE OF NEVADA,
6
7 Plaintiff,

CASE NO: C-18-333318-1

8 -vs-

DEPT NO: III

9 **JAIDEN CARUSO #8213339,**
10 **KODY HARLAN, aka,**
11 **Kody W. Harlan #5124517,**

INFORMATION

12 Defendants.

13 STATE OF NEVADA)
14) ss.
15 COUNTY OF CLARK)

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

18 That JAIDEN CARUSO and KODY HARLAN, aka, Kody W. Harlan, the
19 Defendant(s) above named, having committed the crimes of MURDER WITH USE OF A
20 DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001);
21 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380,
22 193.165 - NOC 50138) and ACCESSORY TO MURDER WITH USE OF A DEADLY
23 WEAPON (Category C Felony - NRS 195.030, 195.040, (NRS 200.010, 200.030) - NOC
24 53090), on or about the 8th day of June, 2018, within the County of Clark, State of Nevada,
25 contrary to the form, force and effect of statutes in such cases made and provided, and against
26 the peace and dignity of the State of Nevada,
27
28

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1 COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON

2 Defendants JAIDEN CARUSO and KODY HARLAN, did willfully, unlawfully,
3 feloniously and with malice aforethought, kill MATTHEW MINKLER, a human being, with
4 use of a deadly weapon, to wit: a firearm, by shooting at and/or into the head and/or body of
5 the said MATTHEW MINKLER, the said killing having been (1) willful, deliberate and
6 premeditated, and/or (2) committed during the perpetration or attempted perpetration of a
7 robbery, the Defendant(s) being criminally liable under one or more of the following principles
8 of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or
9 abetting in the commission of this crime, with the intent that this crime be committed, by
10 counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other
11 to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent
12 that this crime be committed, Defendants aiding or abetting and/or conspiring by Defendants
13 acting in concert throughout.

14 COUNT 2 - ROBBERY WITH USE OF A DEADLY WEAPON

15 Defendants JAIDEN CARUSO and KODY HARLAN, aka, Kody W. Harlan did
16 willfully, unlawfully, and feloniously take personal property, to wit: a wallet and contents,
17 from the person of MATTHEW MINKLER, or in his presence, by means of force or violence,
18 or fear of injury to, and without the consent and against the will of MATTHEW MINKLER,
19 with use of a deadly weapon, to wit: a firearm, Defendant using force or fear to obtain or retain
20 possession of the property, to prevent or overcome resistance to the taking of the property,
21 and/or to facilitate escape; the Defendant(s) being criminally liable under one or more of the
22 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
23 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
24 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
25 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
26 crime, with the intent that this crime be committed, Defendants aiding or abetting and/or
27 conspiring by Defendants acting in concert throughout.

28 ///

COUNT 3 - ACCESSORY TO MURDER WITH USE OF A DEADLY WEAPON

Defendant KODY HARLAN, aka, Kody W. Harlan, did willfully, unlawfully, and feloniously, after the commission of a murder with use of a deadly weapon, a felony, conceal and/or destroy and/or aid in the destruction or concealment of material evidence, to wit: the body of MATTHEW MINKLER and/or the crime scene, with the intent that JAIDEN CARUSO might avoid or escape arrest, trial, conviction, and/or punishment, having knowledge that JAIDEN CARUSO had committed the murder and/or was liable to arrest therefore.

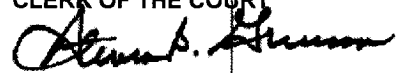
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/GIANCARLO PESCI
GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #7135

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

<u>NAME</u>	<u>ADDRESS</u>
AMEZCUA, L.	HPD P#2395
CALVANO, N.	HPD P#1339
COCHRAN, K.	HPD P#2390
CONDRATOVICH, M.	HPD P#924
CUSTODIAN OF RECORDS	CCDC
CUSTODIAN OF RECORDS	CCME
CUSTODIAN OF RECORDS	HENDERSON DETENTION CENTER
CUSTODIAN OF RECORDS	HENDERSON POLICE DEPARTMENT
CUSTODIAN OF RECORDS	HENDERSON POLICE DISPATCH
CUSTODIAN OF RECORDS	HENDERSON POLICE RECORDS
FRESHOUR, JACY	UNKNOWN ADDRESS

1	HIGGINS, ANNE	UNKNOWN ADDRESS
2	HONAKER, JAMIE	CCDA INVESTIGATOR
3	HORNBACK, J.	HPD P#1826
4	KNOX, ANGELINA	UNKNOWN ADDRESS
5	LEON, RUTH	CCDA INVESTIGATOR
6	LIPPISCH, K.	HPD P#1710
7	MANCUSO, O.	HPD P#2382
8	MBOGO, REXVIN	UNKNOWN ADDRESS
9	MEADOWS, TRACEO	UNKNOWN ADDRESS
10	METHVIN, GHUNNER	UNKNOWN ADDRESS
11	MINKLER, STEVEN	c/o CCDA VWAC, 200 LEWIS AVE., LVN
12	NEWBOLD,	HPD P#1951
13	NICHOLS, W.	HPD P#1242
14	OLIVER, ALARIC	2267 MILLBRAE DR., HENDERSON, NV
15	OSURMAN, CHARLES	UNKNOWN ADDRESS
16	PLANELLS, NATHANIEL	UNKNOWN ADDRESS
17	PRENTISS, KRISTIN	UNKNOWN ADDRESS
18	ROQUERO, DR. LEONARD	CCME, 1704 PINTO LN., LVN
19	SHANKIN, JAMIE	9580 SUMMERSWEET CT., LVN
20	SPANGLER, J.	HPD P#1211
21	STAUFFENBERG, PATRICK	UNKNOWN ADDRESS
22	THOMPSON, KAYMARI	2615 W. GARY AVE. #2050, LVN
23	TROIANO, JOSEPH	UNKNOWN ADDRESS
24	VALENTINE, SAMANTHA	c/o CCDA VWAC, 200 LEWIS AVE., LVN
25		
26		
27	18FH1236A-B/dd-MVU	
28	HPD EV#1812238 (TK)	



DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAIDEN CARUSO, #8213339,

Defendant.

CASE NO. C-18-333318-1

DEPT. NO. III

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered pleas of not guilty to the crimes of MURDER WITH USE OF A DEADLY WEAPON (Category A Felony – NRS 200.010, 200.030, 193.165), and ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony – NRS 200.380) and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON and COUNT 2 – ROBBERY WITH USE OF A DEADLY WEAPON, thereafter, on the 10th day of December, 2019, the Defendant was present in court for sentencing with his counsel, MACE J. YAMPOLSKY, Esq., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said crimes as set forth in the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee, \$150.00 DNA Analysis fee, including testing to determine genetic markers, \$750.00 Indigent Defense Civil Assessment Fee, \$3.00 DNA Collection Fee, \$250.00 Fine, the Defendant is SENTENCED as follows:

COUNT 1 - LIFE in the Nevada Department of Corrections (NDC) with a MINIMUM parole eligibility of TWENTY (20) YEARS; plus a CONSECUTIVE term of a

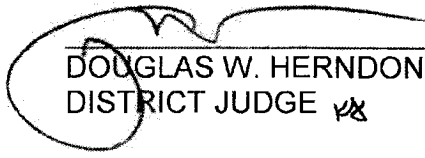
Jury Trial
☐ Dismissed (during trial)
☐ Acquittal
☐ Guilty Plea with Sent. (during trial)
☒ Conviction

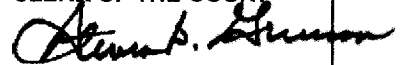
1 MINIMUM of FORTY-EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED
2 TWENTY (120) MONTHS for the deadly weapon enhancement;

3 COUNT 2 – a MINIMUM of FORTY-EIGHT (48) MONTHS and a MAXIMUM of
4 ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of Corrections
5 (NDC); plus a CONSECUTIVE term of a MINIMUM of FORTY-EIGHT (48) MONTHS
6 and a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS for the deadly weapon
7 enhancement; CONCURRENT to Count 1; with FIVE HUNDRED FORTY-NINE (549)
8 DAYS credit for time served.

9
10 DATED this 10th day of December, 2019.

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DOUGLAS W. HERNDON
DISTRICT JUDGE *pk*



Electronically Filed
Jan 09 2020 10:34 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

NOASC
YAMPOLSKY & MARGOLIS
MACE J. YAMPOLSKY, ESQ.
Nevada Bar No. 001945
JASON R. MARGOLIS, ESQ.
Nevada Bar No. 012439
625 South Sixth Street
Las Vegas, Nevada 89101
(702) 385-9777; Fax No. (702) 385-3001
Attorney for Defendant Caruso

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAIDEN CARUSO, #8213339,

Defendant.

Case No. C-18-333318
Dept. No. III

NOTICE OF APPEAL

TO: The Honorable Douglas W. Herndon, District Court, Dept. III; and

TO: The Office of the District Attorney

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that pursuant to NRS 177.075, the Defendant herein, Jaiden Caruso, does hereby appeal the Conviction and Sentencing imposed upon him on December 12, 2019, by the Honorable Douglas W. Herndon, in the above-referenced matter.

DATED this 2nd day of January, 2020.

YAMPOLSKY & MARGOLIS

/s/ Mace J. Yampolsky, Esq.
MACE J. YAMPOLSKY, ESQ.
Nevada Bar No. 001945
JASON R. MARGOLIS, ESQ.
Nevada Bar No. 012439
625 South Sixth Street
Las Vegas, Nevada 89101
Attorney for Defendant Caruso

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CERTIFICATE OF SERVICE

A copy of the foregoing **NOTICE OF APPEAL**, was served upon counsel of record via Electronic Case Filing, as well as first class mail on this 2nd day of January, 2020, as follows:

Giancarlo Pesci
Chief Deputy District Attorney
E-Mail: giancarlo.pesci@clarkcountyda.com

Office of the District Attorney
motions@clarkcountyda.com

Office of the Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

The Douglas W. Herndon
DISTRICT COURT, DEPARTMENT III
200 Lewis Avenue
Las Vegas, Nevada 89155

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



1 K. RYAN HELMICK, ESQ.
2 Nevada Bar # 12769
3 RICHARD HARRIS LAW FIRM, LLP.
4 801 S.4th St.
5 Las Vegas, NV 89101
6 (702) 333-3333 Fax (702) 444-4466
7 Ryan@thedefenders.net
8 Attorney for Defendant

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

v.

KODY HARLAN,

Defendant.)

Case No.: C-18-333318-2


Dept. No.: 3

**NOTICE OF MOTION TO PLACE ON CALENDER TO SET ASIDE GUILTY
VERDICT AS TO COUNTS ONE AND TWO; IN THE ALTERNATIVE MOTION FOR
A NEW TRIAL AND TO REQUEST ADDITIONAL TIME FOR SUPPLEMENTAL
BRIEFING.**

COMES NOW the Defendant, **KODY HARLAN**, by and through his attorney, **K. RYAN HELMICK, ESQ.**, of the **RICHARD HARRIS LAW FIRM, LLP.**, and moves this court to vacate the guilty verdicts returned by the jury on Counts 1 and 2, pursuant to NRS 175.381, and to find Mr. Harlan to be deemed Not Guilty on both Counts 1 and 2 or in the alternative set a new trial date and to request additional time for supplemental briefing.

This motion is made and based upon the following memorandum of points and authorities and all the papers and filed herein.

DATED this 13 day of AUGUST, 2019



K. RYAN HELMICK, ESQ.
Nevada Bar # 12769
RICHARD HARRIS LAW FIRM, LLP.

1 **NOTICE OF MOTION**

2 **TO: THE HONORABLE JUDGE DOUGLAS HERNDON**, District Court, Department 3;
3 and

4 **TO: STEVEN B. WOLFSON, ESQ.**, Attorney for Plaintiff.

5 **YOU, AND EACH OF YOU, SHALL PLEASE TAKE NOTICE** that the undersigned
6 will bring the above and forgoing **MOTION TO PLACE ON CALENDAR** on for hearing before
7 the Court at the Courtroom of the above entitled Court on the ____ day of _____, 2019, at
8 _____ a.m.

9
10 **DATED** this 13 day of AUGUST, 2019

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14 K. RYAN HELMICK, ESQ.
15 Nevada Bar # 12769
16 RICHARD HARRIS LAW FIRM, LLP
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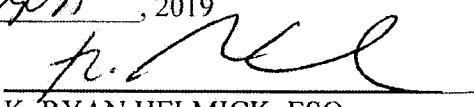
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1 the defendant on appeal may assert error in that denial, and if the judgment is reversed on appeal,
2 subsequent proceedings must be in accordance with the order of the appellate court.

3 It is Harlan's contention that the guilty verdicts in regard to Count 1 and Count 2 were not
4 supported by the evidence presented at Trial. Multiple witnesses in this trial clearly stated that
5 there was never any conversation about a planned Robbery by Harlan. It was uncontested that
6 Harlan was asleep the majority of the time that day and was asleep when Matthew Minkler was
7 killed by Jaiden Caruso. Additionally, Ghunnar Methvin's statement about remembering hearing
8 talk about a robbery only came from Jaiden Caruso. Lastly, the State's "star witness" if you will,
9 Kymani Thompson said that he based his opinion off of what he read on the news. Essentially the
10 jury was improperly mis-led. If Harlan was not intentionally involved in any planned robbery, he
11 cannot be guilty of 1st Degree- Felony Murder. Harlan would also ask this court for additional time
12 to provide the court supplemental briefing on this issue as directed by the Court.
13
14

15 DATED this 13 day of AUGUST, 2019

16
17 
18 K. RYAN HELMICK, ESQ.
Nevada Bar # 12769

19 RICHARD HARRIS LAW FIRM, LLP
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CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of August 2019, I served a true and correct copy of the foregoing **MOTION TO PLACE ON CALENDAR**, addressed to the following counsel of record at the following address(es), as follows:

X E-MAIL on August 13 2019, by emailing the address below:

Giancarlo Pesci
CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
200 E. Lewis Ave.
Las Vegas, NV 89155
giancarlo.pesci@clarkcountyda.com


An employee at RICHARD HARRIS LAW FIRM



1 NOT
2 MACE J. YAMPOLSKY, LTD.
3 MACE J. YAMPOLSKY, ESQ.
4 Nevada Bar No. 01945
5 JASON R. MARGOLIS
6 Nevada Bar No. 12439
7 Las Vegas, Nevada 89101
8 Telephone: (702) 385-9777;
9 Fax: (702) 385-3001
10 Attorneys for Defendant JAIDEN CARUSO

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

Case No. C-18-333318-1
Dept. No. III

vs.

JAIDEN CARUSO,

Defendant.

NOTICE OF NON-FILED PLEA AGREEMENTS OF JAIDEN CARUSO AND
KODY HARLAN

COMES NOW, Defendant JAIDEN CARUSO, by and through his counsel of record
MACE J. YAMPOLSKY, ESQ., of the law firm YAMPOLSKY & MARGOLS, and hereby files
the foregoing Notice of Non-Filed Plea Bargain (No Hearing Required or Requested) for the
Court's inclusion in the Record on Appeal.

DATED this 26th day of May, 2020.

YAMPOLSKY & MARGOLIS,

/s/ Mace J. Yampolsky, Esq.
MACE J. YAMPOLSKY, ESQ.
Nevada Bar No. 001945
JASON R. MARGOLIS, ESQ.
Nevada Bar No. 012439
625 South Sixth Street
Las Vegas, Nevada 89101
Attorneys for Defendant JAIDEN CARUSO

1
2
3 **NOTICE OF NON-FILED PLEA AGREEMENTS OF JAIDEN CARUSO AND**
4 **KODY HARLAN**

5 On March 22, 2019, Defendant Jaiden Caruso signed a Guilty Plea Agreement, a true and
6 accurate copy of which is attached hereto as Exhibit "A". On April 2, 2019, Mr. Caruso appeared
7 in District Court at the time set for Calendar Call and/or Change of Plea. Mr. Caruso was
8 prepared, at that time, to enter into a Guilty Plea Agreement whereby he would plead guilty to a
9 lone count of Second Degree Murder and to serve a term of imprisonment in the Nevada
10 Department of Corrections ranging from 10 to 25 years. (See Declaration of Mace J. Yampolsky
11 attached hereto as Exhibit "B").

12 On or about the same time Kody Harlan was offered a plea agreement to voluntary
13 manslaughter with use of a deadly weapon, with a sentence of imprisonment in the Nevada
14 Department of Corrections for a minimum term of not less than 1 year and a maximum term of
15 not more than 10 years. Plus, a consecutive term of 1 year to 10 years for the deadly weapon
16 enhancement. A true and correct copy of the Guilty Plea Agreement is attached hereto as Exhibit
17 "C".

18 Wholly owing to circumstances outside his control, specifically the extension of a
19 contingent plea offer by the Clark County District Attorney and the backing out of the contingent
20 plea agreement by co-defendant Kody Harlan, Mr. Caruso was unable to enter this plea
21 agreement as scheduled. Forced to proceed to trial at great risk, the worst fears of counsel and
22 Mr. Caruso and his family were realized when the jury returned a guilty verdict on all counts.
23 But for the actions of independent third parties over whom Mr. Caruso and counsel had no sway
24 or influence, Mr. Caruso's signed Guilty Plea Agreement would have been filed and executed.
25 This would have resulted in a substantially shorter prison sentence and, as such, caused Mr.
26 Caruso severe and unfair prejudice, and violate his consecutive rights. Please see Affidavit of

27 ///

28 ///

1 Mace J. Yampolsky, Esq., a true and accurate copy of which is attached hereto as Exhibit "B".
2 This invalidated negotiation resulted in a travesty of justice for Mr. Caruso and ought to be
3 remedied.

4 **CONCLUSION**

5 For the reasons set forth above, Mr. Caruso and counsel respectfully request that the
6 foregoing Notice of Non-Filed Plea Bargain be added to the Court record to facilitate Mr.
7 Caruso's making use of the same in his pending direct appeal.

8
9 DATED this 26th day of May, 2020.

10 YAMPOLSKY & MARGOLIS

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

19 **CERTIFICATE OF ELECTRONIC SERVICE**

20 I hereby certify that I am an employee of YAMPOLSKY & MARGOLIS, and that on the
21 26th day of May, 2020, I served a true and accurate copy of the foregoing, **NOTICE OF NON-**
22 **FILED PLEA BARGAIN OF JAIDEN CARUSO AND KODY HARLAN**, via the electronic
23 filing system upon the following interested parties:

24 Motions@clarkcountyda.com

25 Giancarlo Pesci
26 Chief Deputy District Attorney
27 E-Mail: giancarlo.pesci@clarkcountyda.com
28 Attorney for Plaintiff STATE OF NEVADA

/s/ Marina A. Alvarez
An employee of
YAMPOLSKY & MARGOLIS

EXHIBIT A

1 **GPA**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **GIANCARLO PESCI**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #7135**
8 **200 Lewis Avenue**
9 **Las Vegas, NV 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

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

9 **THE STATE OF NEVADA,**
10 **Plaintiff,**

11 **-vs-**

12 **JAIDEN CARUSO,**
13 **#8213339**

14 **Defendant.**

CASE NO: C-18-333318-1

DEPT NO: III

15 **GUILTY PLEA AGREEMENT**

16 I hereby agree to plead guilty to: **MURDER (SECOND DEGREE)** (Category A Felony
17 - NRS 200.010, 200.030.2 - NOC 50010), as more fully alleged in the charging document
18 attached hereto as Exhibit "1".

19 My decision to plead guilty is based upon the plea agreement in this case which is as
20 follows:

21 The State retains the right to argue. Defendant agrees that this deal is contingent upon
22 the Co-Defendant accepting his negotiation. Both defendants must enter guilty pleas in order
23 to receive the benefit of the negotiations.

24 I agree to the forfeiture of any and all weapons or any interest in any weapons seized
25 and/or impounded in connection with the instant case and/or any other case negotiated in
26 whole or in part in conjunction with this plea agreement.

27 I understand and agree that, if I fail to interview with the Department of Parole and
28 Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate,

1 by affidavit review, confirms probable cause against me for new criminal charges including
2 reckless driving or DUI, but excluding minor traffic violations, the State will have the
3 unqualified right to argue for any legal sentence and term of confinement allowable for the
4 crime(s) to which I am pleading guilty, including the use of any prior convictions I may have
5 to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without
6 the possibility of parole, life with the possibility of parole after ten (10) years, or a definite
7 twenty-five (25) year term with the possibility of parole after ten (10) years.

8 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
9 plea agreement.

10 CONSEQUENCES OF THE PLEA

11 I understand that by pleading guilty I admit the facts which support all the elements of
12 the offense(s) to which I now plead as set forth in Exhibit "1".

13 I understand that as a consequence of my plea of guilty the Court must sentence me to
14 Life in the Nevada Department of Corrections with the possibility of parole eligibility
15 beginning at ten (10) years or a definite term of twenty-five (25) years with parole eligibility
16 beginning at ten (10) years. The minimum term of imprisonment may not exceed forty percent
17 (40%) of the maximum term of imprisonment.

18 I understand that the law requires me to pay an Administrative Assessment Fee.

19 I understand that, if appropriate, I will be ordered to make restitution to the victim of
20 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
21 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
22 reimburse the State of Nevada for any expenses related to my extradition, if any.

23 I understand that I am not eligible for probation for the offense to which I am pleading
24 guilty.

25 I understand that I must submit to blood and/or saliva tests under the Direction of the
26 Division of Parole and Probation to determine genetic markers and/or secretor status.

27 I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home,
28 Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or

1 Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation
2 and may receive a higher sentencing range.

3 I understand that if more than one sentence of imprisonment is imposed and I am
4 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
5 the sentences served concurrently or consecutively.

6 I understand that information regarding charges not filed, dismissed charges, or charges
7 to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

8 I have not been promised or guaranteed any particular sentence by anyone. I know that
9 my sentence is to be determined by the Court within the limits prescribed by statute.

10 I understand that if my attorney or the State of Nevada or both recommend any specific
11 punishment to the Court, the Court is not obligated to accept the recommendation.

12 I understand that if the offense(s) to which I am pleading guilty was committed while I
13 was incarcerated on another charge or while I was on probation or parole that I am not eligible
14 for credit for time served toward the instant offense(s).

15 I understand that if I am not a United States citizen, any criminal conviction will likely
16 result in serious negative immigration consequences including but not limited to:

- 17 1. The removal from the United States through deportation;
- 18 2. An inability to reenter the United States;
- 19 3. The inability to gain United States citizenship or legal residency;
- 20 4. An inability to renew and/or retain any legal residency status; and/or
- 21 5. An indeterminate term of confinement, with the United States Federal
22 Government based on my conviction and immigration status.

23 Regardless of what I have been told by any attorney, no one can promise me that this
24 conviction will not result in negative immigration consequences and/or impact my ability to
25 become a United States citizen and/or a legal resident.

26 I understand that the Division of Parole and Probation will prepare a report for the
27 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
28 sentencing, including my criminal history. This report may contain hearsay information

1 regarding my background and criminal history. My attorney and I will each have the
2 opportunity to comment on the information contained in the report at the time of sentencing.
3 Unless the District Attorney has specifically agreed otherwise, the District Attorney may also
4 comment on this report.

5 WAIVER OF RIGHTS

6 By entering my plea of guilty, I understand that I am waiving and forever giving up the
7 following rights and privileges:

- 8 1. The constitutional privilege against self-incrimination, including the right
9 to refuse to testify at trial, in which event the prosecution would not be
10 allowed to comment to the jury about my refusal to testify.
- 11 2. The constitutional right to a speedy and public trial by an impartial jury,
12 free of excessive pretrial publicity prejudicial to the defense, at which
13 trial I would be entitled to the assistance of an attorney, either appointed
14 or retained. At trial the State would bear the burden of proving beyond
15 a reasonable doubt each element of the offense(s) charged.
- 16 3. The constitutional right to confront and cross-examine any witnesses who
17 would testify against me.
- 18 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 19 5. The constitutional right to testify in my own defense.
- 20 6. The right to appeal the conviction with the assistance of an attorney,
21 either appointed or retained, unless specifically reserved in writing and
22 agreed upon as provided in NRS 174.035(3). I understand this means I
23 am unconditionally waiving my right to a direct appeal of this conviction,
24 including any challenge based upon reasonable constitutional,
25 jurisdictional or other grounds that challenge the legality of the
26 proceedings as stated in NRS 177.015(4). However, I remain free to
27 challenge my conviction through other post-conviction remedies
28 including a habeas corpus petition pursuant to NRS Chapter 34.

22 VOLUNTARINESS OF PLEA

23 I have discussed the elements of all of the original charge(s) against me with my
24 attorney and I understand the nature of the charge(s) against me.

25 I understand that the State would have to prove each element of the charge(s) against
26 me at trial.

27 I have discussed with my attorney any possible defenses, defense strategies and
28 circumstances which might be in my favor.

1 All of the foregoing elements, consequences, rights, and waiver of rights have been
2 thoroughly explained to me by my attorney.

3 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
4 that a trial would be contrary to my best interest.

5 I am signing this agreement voluntarily, after consultation with my attorney, and I am
6 not acting under duress or coercion or by virtue of any promises of leniency, except for those
7 set forth in this agreement.

8 I am not now under the influence of any intoxicating liquor, a controlled substance or
9 other drug which would in any manner impair my ability to comprehend or understand this
10 agreement or the proceedings surrounding my entry of this plea.

11 My attorney has answered all my questions regarding this guilty plea agreement and its
12 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

13 DATED this 22 day of March, 2019.

14
15 Jaiden Caruso
16 JAIEN CARUSO
Defendant

17 AGREED TO BY:

18
19 [Signature]
20 GIANCARLO PESCI
21 Chief Deputy District Attorney
22 Nevada Bar #7135
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CERTIFICATE OF COUNSEL:

I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court hereby certify that:

1. I have fully explained to the Defendant the allegations contained in the charge(s) to which guilty pleas are being entered.
2. I have advised the Defendant of the penalties for each charge and the restitution that the Defendant may be ordered to pay.
3. I have inquired of Defendant facts concerning Defendant's immigration status and explained to Defendant that if Defendant is not a United States citizen any criminal conviction will most likely result in serious negative immigration consequences including but not limited to:
 - a. The removal from the United States through deportation;
 - b. An inability to reenter the United States;
 - c. The inability to gain United States citizenship or legal residency;
 - d. An inability to renew and/or retain any legal residency status; and/or
 - e. An indeterminate term of confinement, by with United States Federal Government based on the conviction and immigration status.

Moreover, I have explained that regardless of what Defendant may have been told by any attorney, no one can promise Defendant that this conviction will not result in negative immigration consequences and/or impact Defendant's ability to become a United States citizen and/or legal resident.

4. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent with the facts known to me and are made with my advice to the Defendant.
5. To the best of my knowledge and belief, the Defendant:
 - a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement,
 - b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily, and
 - c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with the Defendant as certified in paragraphs 1 and 2 above.

Dated: This 21 day of March, 2019.


M. YAMPOLSKY, ESQ.

18FH1236A/dd/MVU

1 a human being, by shooting at and/or into the head and/or body of the said MATTHEW
2 MINKLER.

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

6 BY 
7 GIANCARLO PESCI
8 Chief Deputy District Attorney
9 Nevada Bar #7135
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27 18FH1236A/44-MVU
28 HPD EV#1812238
(TK)

EXHIBIT B

1 **DECLARATION OF MACE J. YAMPOLSKY IN SUPPORT OF NOTICE OF NON-**
2 **FILED PLEA AGREEMENT OF JAIDEN CARUSO**

3 MACE J. YAMPOLSKY, ESQ., hereby declares:

- 4 1. That I was appointed to represent Defendant Jaiden Caruso in the above-
- 5 captioned case.
- 6 2. That I negotiated a Guilty Plea Agreement on behalf of Mr. Caruso in the
- 7 aforementioned case for a lone count of Second-Degree Murder carrying a
- 8 potential sentence of 10-25 years in the Nevada State Department of Corrections.
- 9 3. That Mr. Caruso, undersigned counsel, and counsel from the Clark County
- 10 District Attorney's Office, Giancarlo Pesci, Esq., all signed the aforementioned
- 11 Guilty Plea Agreement on or before the date of Calendar Call on April 2, 2019.
- 12 4. That on April 2, 2019, the Guilty Plea Agreement of the parties was not filed and
- 13 executed due to the failure of co-defendant Kody Harlan to plead guilty in a
- 14 corresponding, contingent Guilty Plea Agreement; and
- 15 5. That the Clark County District Attorney, through Chief Deputy District Attorney
- 16 Giancarlo Pesci, chose to forego and foreclose the Guilty Plea Agreement signed
- 17 by Mr. Caruso due to failure of one or more contingencies in the agreement,
- 18 namely that identified above.

19 DATED this 26th day of May, 2020.

20 YAMPOLSKY & MARGOLIS,

21 /s/ Mace J. Yampolsky, Esq.

22 MACE J. YAMPOLSKY, ESQ.

23 Nevada Bar No. 001945

24 JASON R. MARGOLIS, ESQ.

25 Nevada Bar No. 012439

26 625 South Sixth Street

27 Las Vegas, Nevada 89101

28 Attorneys for Defendant JAIDEN CARUSO

EXHIBIT C

1 **GPA**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **GIANCARLO PESCI**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #7135**
8 **200 Lewis Avenue**
9 **Las Vegas, NV 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

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

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

11 **-vs-**

CASE NO: C-18-333318-2

12 **KODY HARLAN, aka**
13 **Kody W. Harlan, #5124517**

DEPT NO: III

14 **Defendant.**

15 **GUILTY PLEA AGREEMENT**

16 I hereby agree to plead guilty to: **VOLUNTARY MANSLAUGHTER WITH USE OF**
17 **A DEADLY WEAPON (Category B Felony - NRS 200.040, 200.050, 200.080, 193.165 -**
18 **NOC 54722), as more fully alleged in the charging document attached hereto as Exhibit "1".**

19 My decision to plead guilty is based upon the plea agreement in this case which is as
20 follows:

21 The State retains the right to argue. Defendant agrees that this deal is contingent upon
22 the Co-Defendant accepting his negotiation. Both defendants must enter guilty pleas in order
23 to receive the benefit of the negotiations.

24 I agree to the forfeiture of any and all weapons or any interest in any weapons seized
25 and/or impounded in connection with the instant case and/or any other case negotiated in
26 whole or in part in conjunction with this plea agreement.

27 I understand and agree that, if I fail to interview with the Department of Parole and
28 Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate;

DOCUMENT2

AA 0046P

1 by affidavit review, confirms probable cause against me for new criminal charges including
2 reckless driving or DUI, but excluding minor traffic violations, the State will have the
3 unqualified right to argue for any legal sentence and term of confinement allowable for the
4 crime(s) to which I am pleading guilty, including the use of any prior convictions I may have
5 to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without
6 the possibility of parole, life with the possibility of parole after ten (10) years, or a definite
7 twenty-five (25) year term with the possibility of parole after ten (10) years.

8 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
9 plea agreement.

10 CONSEQUENCES OF THE PLEA

11 I understand that by pleading guilty I admit the facts which support all the elements of
12 the offense(s) to which I now plead as set forth in Exhibit "1".

13 I understand that as a consequence of my plea of guilty the Court must sentence me to
14 imprisonment in the Nevada Department of Corrections for a minimum term of not less than
15 ONE (1) year and a maximum term of not more than TEN (10) years, plus a consecutive term
16 of ONE (1) year to TEN (10) years for the deadly weapon enhancement. The minimum term
17 of imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment.
18 I understand that I may also be fined up to \$10,000.00.

19 I understand that the law requires me to pay an Administrative Assessment Fee.

20 I understand that, if appropriate, I will be ordered to make restitution to the victim of
21 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
22 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
23 reimburse the State of Nevada for any expenses related to my extradition, if any.

24 I understand that I am eligible for probation for the offense to which I am pleading
25 guilty. I understand that, except as otherwise provided by statute, the question of whether I
26 receive probation is in the discretion of the sentencing judge.

27 I understand that I must submit to blood and/or saliva tests under the Direction of the
28 Division of Parole and Probation to determine genetic markers and/or secretor status.

1 I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home,
2 Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or
3 Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation
4 and may receive a higher sentencing range.

5 I understand that if more than one sentence of imprisonment is imposed and I am
6 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
7 the sentences served concurrently or consecutively.

8 I understand that information regarding charges not filed, dismissed charges, or charges
9 to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

10 I have not been promised or guaranteed any particular sentence by anyone. I know that
11 my sentence is to be determined by the Court within the limits prescribed by statute.

12 I understand that if my attorney or the State of Nevada or both recommend any specific
13 punishment to the Court, the Court is not obligated to accept the recommendation.

14 I understand that if the offense(s) to which I am pleading guilty was committed while I
15 was incarcerated on another charge or while I was on probation or parole that I am not eligible
16 for credit for time served toward the instant offense(s).

17 I understand that if I am not a United States citizen, any criminal conviction will likely
18 result in serious negative immigration consequences including but not limited to:

- 19 1. The removal from the United States through deportation;
- 20 2. An inability to reenter the United States;
- 21 3. The inability to gain United States citizenship or legal residency;
- 22 4. An inability to renew and/or retain any legal residency status; and/or
- 23 5. An indeterminate term of confinement, with the United States Federal
24 Government based on my conviction and immigration status.

25 Regardless of what I have been told by any attorney, no one can promise me that this
26 conviction will not result in negative immigration consequences and/or impact my ability to
27 become a United States citizen and/or a legal resident.

28 I understand that the Division of Parole and Probation will prepare a report for the

1 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
2 sentencing, including my criminal history. This report may contain hearsay information
3 regarding my background and criminal history. My attorney and I will each have the
4 opportunity to comment on the information contained in the report at the time of sentencing.
5 Unless the District Attorney has specifically agreed otherwise, the District Attorney may also
6 comment on this report.

7 WAIVER OF RIGHTS

8 By entering my plea of guilty, I understand that I am waiving and forever giving up the
9 following rights and privileges:

- 10 1. The constitutional privilege against self-incrimination, including the right
11 to refuse to testify at trial, in which event the prosecution would not be
allowed to comment to the jury about my refusal to testify.
- 12 2. The constitutional right to a speedy and public trial by an impartial jury,
13 free of excessive pretrial publicity prejudicial to the defense, at which
14 trial I would be entitled to the assistance of an attorney, either appointed
or retained. At trial the State would bear the burden of proving beyond
a reasonable doubt each element of the offense(s) charged.
- 15 3. The constitutional right to confront and cross-examine any witnesses who
16 would testify against me.
- 17 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 18 5. The constitutional right to testify in my own defense.
- 19 6. The right to appeal the conviction with the assistance of an attorney,
20 either appointed or retained, unless specifically reserved in writing and
21 agreed upon as provided in NRS 174.035(3). I understand this means I
22 am unconditionally waiving my right to a direct appeal of this conviction,
including any challenge based upon reasonable constitutional,
23 jurisdictional or other grounds that challenge the legality of the
proceedings as stated in NRS 177.015(4). However, I remain free to
24 challenge my conviction through other post-conviction remedies
including a habeas corpus petition pursuant to NRS Chapter 34.

24 VOLUNTARINESS OF PLEA

25 I have discussed the elements of all of the original charge(s) against me with my
26 attorney and I understand the nature of the charge(s) against me.

27 I understand that the State would have to prove each element of the charge(s) against
28 me at trial.

1 I have discussed with my attorney any possible defenses, defense strategies and
2 circumstances which might be in my favor.

3 All of the foregoing elements, consequences, rights, and waiver of rights have been
4 thoroughly explained to me by my attorney.

5 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
6 that a trial would be contrary to my best interest.

7 I am signing this agreement voluntarily, after consultation with my attorney, and I am
8 not acting under duress or coercion or by virtue of any promises of leniency, except for those
9 set forth in this agreement.


10 I am not now under the influence of any intoxicating liquor, a controlled substance or
11 other drug which would in any manner impair my ability to comprehend or understand this
12 agreement or the proceedings surrounding my entry of this plea.

13 My attorney has answered all my questions regarding this guilty plea agreement and its
14 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

15 DATED this ____ day of March, 2019.

16
17
18 KODY HARLAN, aka Kody W. Harlan
Defendant

19 AGREED TO BY:

20
21 
22 GIANCARLO PESCI
23 Chief Deputy District Attorney
24 Nevada Bar #7135
25
26
27
28

CERTIFICATE OF COUNSEL:

I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court hereby certify that:

- 1. I have fully explained to the Defendant the allegations contained in the charge(s) to which guilty pleas are being entered.**
- 2. I have advised the Defendant of the penalties for each charge and the restitution that the Defendant may be ordered to pay.**
- 3. I have inquired of Defendant facts concerning Defendant's immigration status and explained to Defendant that if Defendant is not a United States citizen any criminal conviction will most likely result in serious negative immigration consequences including but not limited to:**
 - a. The removal from the United States through deportation;**
 - b. An inability to reenter the United States;**
 - c. The inability to gain United States citizenship or legal residency;**
 - d. An inability to renew and/or retain any legal residency status; and/or**
 - e. An indeterminate term of confinement, by with United States Federal Government based on the conviction and immigration status.**

Moreover, I have explained that regardless of what Defendant may have been told by any attorney, no one can promise Defendant that this conviction will not result in negative immigration consequences and/or impact Defendant's ability to become a United States citizen and/or legal resident.

- 4. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent with the facts known to me and are made with my advice to the Defendant.**
- 5. To the best of my knowledge and belief, the Defendant:**
 - a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement,**
 - b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily, and**
 - c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with the Defendant as certified in paragraphs 1 and 2 above.**

Dated: This ____ day of March, 2019.

K. BROWER, ESQ.

18FH1236B/dd/MVU

1 **AINF**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **GIANCARLO PESCI**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #7135**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

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

9 **THE STATE OF NEVADA,**
10 **Plaintiff,**

CASE NO: C-18-333318-2

11 **-vs-**

DEPT NO: III

12 **KODY HARLAN, aka,**
13 **Kody W. Harlan #5124517,**

AMENDED
INFORMATION

14 **Defendant.**

15 **STATE OF NEVADA** }
16 **COUNTY OF CLARK** } **ss.**

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

19 **That KODY HARLAN, aka, Kody W. Harlan, the Defendant above named, having**
20 **committed the crimes of VOLUNTARY MANSLAUGHTER WITH USE OF A DEADLY**
21 **WEAPON (Category B Felony - NRS 200.040, 200.050, 200.080, 193.165 - NOC 54722), on**
22 **or about the 8th day of June, 2018, within the County of Clark, State of Nevada, contrary to**
23 **the form, force and effect of statutes in such cases made and provided, and against the peace**
24 **and dignity of the State of Nevada, did with co-offender JAIDEN CARUSO, willfully,**
25 **unlawfully, and feloniously, without malice and without deliberation kill MATTHEW**

26 **///**

27 **///**

28 **///**

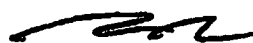
EXHIBIT 1

W:\2018\2018\FH1236\1\FH1236-ADP-(HARLAN_KODY_ADP)-001.DOCX

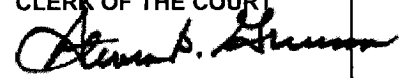
1 MINKLER, a human being, with use of a deadly weapon, to wit: a firearm, by shooting at
2 and/or into the head and/or body of the said MATTHEW MINKLER.

3
4 STEVEN B. WOLFSON
5 Clark County District Attorney
6 Nevada Bar #001565

7 BY


8 GIANCARLO PESCI
9 Chief Deputy District Attorney
10 Nevada Bar #7135
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27 18FH1236B/dd-MVU
28 HPD EV#1812238
(TK)



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

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

JAIDEN CARUSO #8213339
KODY HARLAN #5124517

Defendants.

CASE NO: C-18-333318-1/2

DEPT NO: III

**ORDER DENYING DEFENDANT'S MOTION TO SEVER, OR IN THE
ALTERNATIVE, MOTION TO DEEM STATEMENTS OF THE CO-DEFENDANT
INADMISSABLE**

DATE OF HEARING: 4/23/19
TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 23rd day of April, 2019, the Defendant being present, REPRESENTED BY RYAN HELMICK, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

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1 IT IS HEREBY ORDERED that the Defendant's Motion to Sever or in the Alternative,
2 Motion to Deem Statements of the Co-Defendant Inadmissible, shall be, and it is DENIED.

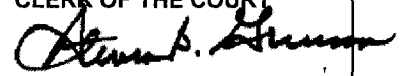
3 DATED this 2nd day of April, 2019.

4
5 
DISTRICT JUDGE

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

8
9 BY 
10 GIANCARLO PESCI
Chief Deputy District Attorney
11 Nevada Bar #7135
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ORDER
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #7135
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAIDEN CARUSO,
#8213339

Defendant.

CASE NO: C-18-333318-1

DEPT NO: III

**ORDER DENYING DEFENDANT'S PRETRIAL PETITION FOR WRIT OF
HABEAS CORPUS**

DATE OF HEARING: 9/13/18
TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 13th day of September, 2018, the Defendant being present, REPRESENTED BY MACE YAMPOLSKY, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

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1 IT IS HEREBY ORDERED that the Defendant's Pretrial Petition for Writ of Habeas
2 Corpus, shall be, and it is Denied.

3 DATED this 14th day of September, 2018.

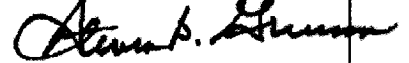
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5 
DISTRICT JUDGE

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

8
9 BY 

GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #7135

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1 PTN
MACE J. YAMPOLSKY, LTD.
2 MACE J. YAMPOLSKY, ESQ.
Nevada State Bar No. 001945
3 JASON R. MARGOLIS, ESQ.
Nevada State Bar No. 012439
4 625 South Sixth Street
Las Vegas, Nevada 89101
5 (702) 385-9777: FAX (702) 385-3001
Attorneys for Petitioner JAIDEN CARUSO
6

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA
9

10 JAIDEN CARUSO,)	Case No.:	C-18333318
)	Dept. No.:	III
11 Petitioner,)		
)		
12 vs.)		
)		
13 STATE OF NEVADA)		
)		
14 Respondents.)		
)		

15
16 **PETITION FOR WRIT OF HABEAS CORPUS**

17 TO: THE HONORABLE JUDGE DOUGLAS HERNDON OF THE EIGHTH JUDICIAL
18 DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY
OF CLARK:

19 TO: SHERIFF LOMBARDO, CLARK COUNTY DETENTION CENTER, AND
20 HIS COUNSEL OF RECORD, DISTRICT ATTORNEY STEVE WOLFSON

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COMES NOW, the above-named Petitioner JAIDEN CARUSO, by and through his attorney of record MACE J. YAMPOLSKY, ESQ., of the law firm MACE J. YAMPOLSKY, LTD., and hereby submits his Petition for Writ of Habeas Corpus.

1. Name of Institution and County in which Petitioner is presently imprisoned: Clark County Detention Center, Clark County, Nevada.
2. Name and Location of court which entered judgment under attack: Justice Court, Henderson Township, Clark County, Nevada.
3. Date of Preliminary Hearing: July 9, 2018.
4. Case Number: 18FH1326A/B
5. (a) Sentence: N/A
- (b) If sentence is death, state any date upon which execution is scheduled: N/A.
6. Is Petitioner presently serving a sentence for conviction other than the conviction under attack in this Petition? No.
7. Nature of offense(s) involved and Probable Cause being challenged: Robbery.
8. What was Petitioner's plea? Not Guilty.
9. If Petitioner entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details: N/A.
10. If Petitioner was found guilty after a plea of not guilty, who was the finding made by: N/A
11. Did Petitioner testify at trial? No.
12. Did Petitioner appeal from judgment of conviction? N/A
13. If Petitioner did appeal, answer the following: N/A
14. If Petitioner did not appeal, explain briefly why Petitioner did not: N/A.
15. Other than direct appeal from the judgment of conviction and sentence, has Petitioner previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? No.
16. If the answer to Number 15 was yes, give the following information: N/A.

- 1 17. Has any ground raised in this petition been previously presented to this or any other court
2 by way of petition for writ of habeas corpus, motion, application or any other post-
3 conviction proceeding? No.
- 4 18. If any of the grounds listed in numbers 23(a), (b), (c), and (d), or listed on any additional
5 pages attached, were not previously presented in any other court, state or federal, list briefly
6 what grounds were not so presented, and give reasons for not presenting them: None.
- 7 19. Is Petitioner filing this Petition more than 21 days following the filing of the transcript of
8 the preliminary hearing? No.
- 9 20. Does Petitioner have any petition or appeal now pending in any court, either state or
10 federal, as to the judgment under attack? No.
11 Give the name of each attorney who represented Petitioner in the proceeding resulting in
12 Petitioner's bind over to District Court: Mace J. Yampolsky, Esq.
13 Preliminary Hearing Counsel: William Terry, Esq.
- 14 21. Does Petitioner have any future sentences to serve after Petitioner completes the sentence
15 imposed by the judgment under attack? No.
- 16 22. State concisely every ground on which you claim that you are being held unlawfully.
17 Summarize briefly the facts supporting each ground.
18 (a) Ground One: There is insufficient factual support in the record to bind petitioner over
19 to District Court to answer the charge of Robbery because the scant testimony adduced
20 at the Preliminary Hearing fails to amount to slight or marginal evidence that Mr.
21 Caruso committed a robbery.
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3 **NOTICE OF MOTION**

4 TO: STATE OF NEVADA

5 NOTICE is hereby given that the foregoing Petition for Writ of Habeas Corpus will be
6 heard on the 13th day of Sept, 2018, at 9:00 a.m. /p.m. in Department III of the
7 Eighth Judicial District Court.

8 DATED this 29th day of August, 2018.

9 MACE J. YAMPOLSKY, LTD.

10 /s/ Mace J. Yampolsky, Esq.
11 MACE J. YAMPOLSKY, ESQ.
12 Nevada State Bar No. 001945
13 JASON R. MARGOLIS, ESQ.
14 Nevada State Bar No. 012439
15 625 South Sixth Street
16 Las Vegas, Nevada 89101
17 *Attorneys for Petitioner* JAIDEN CARUSO

18 **AFFIDAVIT OF COUNSEL**

19 STATE OF NEVADA)
20) ss:
21 COUNTY OF CLARK)

22 MACE J. YAMPOLSKY, ESQ., being first duly sworn, according to law, upon oath, deposes
23 and says:

24 1. AFFIANT represents the Defendant/Petitioner, JAIDEN CARUSO, in the above-entitled
matter;

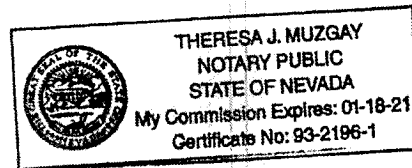
2. AFFIANT has read the foregoing Petition and knows the contents thereof; that the same is
true of his own knowledge, except as to those matters therein stated upon information and belief, and
as to those matters he believes them to be true;

1 3. Defendant/Petitioner, JAIDEN CARUSO, has authorized AFFIANT to make the foregoing
2 application for relief.

3
4 MACE J. YAMPOLSKY, ESQ.

5 SUBSCRIBED and SWORN to before me
6 this 29 day of August, 2018.

7
8 NOTARY PUBLIC in and for said
9 COUNTY and STATE



10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 The Instant Petition is first and foremost filed in order to preserve Petitioner Jaiden Caruso's
12 constitutional rights and to reserve an appealable issue pending trial or plea in this case. It is further
13 filed at this early juncture in order to afford Petitioner and his counsel to have their arguments heard as
14 soon as possible. Justice demands that the robbery charge involving the theft of decedent Matthew
15 Minkler's wallet and its contents be dismissed as it relates to Defendant Jaiden Caruso. This robbery
16 charge should be dismissed because there is insufficient evidence that the wallet did not end up in the
17 vehicle where it was found by other means—for instance, Mr. Minkler had been in the car earlier that
18 day and simply could have accidentally left the wallet in the car, it could have fallen out of his pocket,
19 and so forth. *Please See Preliminary Hearing Transcript* at p. 197, ll. 4-10. The reality is that witness
20 Kymani Thompson's vague and uncertain testimony about overhearing a conversation between Mr.
21 Caruso and Mr. Harlan about doing a "lick," does not even rise to the easily attained level of slight or
22 marginal evidence. *Please See Preliminary Hearing Transcript* at pp. 101, ll. 2-5 and pp. 105, ll. 12-
23 25.

24 Even if the Court finds a robbery occurred, no testimony was adduced at the Preliminary
Hearing to indicate which of the two charged defendants took the wallet. *Please See Preliminary
Hearing Transcript* at pp.199-200, ll. 15-25, 1-15. There is no testimony from the Preliminary Hearing

1 specifying when or how the wallet came to be in the Mercedes the defendants were arrested in. *Id.*
2 There was no testimony at the Preliminary Hearing as to which defendant, if either, removed the wallet
3 from decedent Matthew Minkler's person. *Id.* There was no testimony given at the Preliminary
4 Hearing that the wallet was recovered in either the possession of Mr. Caruso or of Mr. Harlan—rather,
5 the wallet was simply strewn in the backseat of the Mercedes. *Id.* Finally, while the State hypothesizes
6 that a theft took place, there was no testimony advanced at the Preliminary Hearing which indicated
7 that anything was actually missing or removed from the wallet—only that the wallet contained nothing
8 more than a Silverado High School student ID card in the name of Matthew Minkler. *Id.* The State
9 pursues a robbery charge on gossamer threads of rumor, innuendo, and presumption—nothing more.

10 The foregoing was filed following extensive consultation with Petitioner Jaiden Caruso, his
11 codefendant and his counsel, discussions with counsel at the Preliminary Hearing, and following a
12 thorough and exhaustive review of the robbery case law in this jurisdiction. For the reasons set forth
13 below, Petitioner Jaiden Caruso hereby seeks that this Honorable Court issue a Writ of Habeas Corpus
14 as to the robbery charge immediately, asking that this Honorable Court issue an Order dismissing this
15 count with prejudice.

16 I. BACKGROUND

17 State courts have long struggled to define the facts and circumstances which give rise to the
18 criminal charge of robbery, yet in almost every version this State has insisted upon many of the
19 hallmarks present in our current law, “an unlawful taking or personal property from the person of
20 another, or in the person's presence, against his or her will, by means of force or violence or fear of
21 injury, immediate or future, to his person or property, or the person or property of a member of his or
22 her family...” . NRS 200.380. Specifically, several courts have been called upon to determine when
23 property is “taken unlawfully from the person of another,” or when the taking of some piece or pieces
24 of property has been “by means of force, or violence, or fear of injury,” because many robberies are
not the street muggings we have come to view them as. Here, there are no facts in evidence to
demonstrate that either Mr. Caruso or Mr. Harlan unlawfully took Mr. Minkler's property, as he could
have just as easily left the wallet in the car when Caruso and Harlan picked him up.

1 Similarly, there is no testimony in the Preliminary Hearing transcript which specifies any
2 menacing or threatening behavior by either defendant toward Mr. Minkler designed to inspire fear and
3 make him turn over his wallet. There were no witnesses that testified that Mr. Caruso or Mr. Harlan
4 removed the wallet from Mr. Minkler's person—either before or after the accidental shooting—nor is
5 there any testimony whatsoever about either defendant removing any items or monies from the wallet.
6 Simply put, the State intends to hold Mr. Caruso to stand for trial for a robbery charge where the only
7 evidence to speak of is the existence of the wallet in the backseat of a Mercedes that we know the
8 decedent was in previously that same day. There is no evidence or testimony in support of an unlawful
9 taking by force or fear of violence as to either defendant, and certainly no evidence or testimony
specific to Mr. Caruso as pertains to the alleged robbery of decedent Matthew Minkler.

10 II. PROCEDURAL STATEMENT OF FACTS

11 Petitioner and his codefendant were bound over to District Court from Henderson Justice Court
12 with the multiple counts including Murder with a Deadly Weapon, Robbery with a Deadly Weapon,
13 and Accessory to Murder with a Deadly Weapon. A criminal complaint was filed on June 15, 2018.
14 An Amended Criminal Complaint was filed in open court on June 20, 2018. A Second Amended
15 Criminal Complaint was filed almost immediately thereafter, in large part based upon statements made
16 by Mr. Caruso's codefendant Kody Harlan. The Second Amended Criminal Complaint contains the
17 same charges as those ultimately pursued at Preliminary Hearing and are the same charges on which
both defendants were bound over to District Court.

18 On July 9, 2018, the Preliminary Hearing was held before Judge Bateman in Henderson Justice
19 Court. The State of Nevada made a motion to amend the complaint to include the accessory murder
20 charge as to defendant Kody Harlan. At that time, Mr. Caruso was represented by William Terry, Esq.,
21 and Mr. Harlan was represented by Keith Brower, Esq. The defendants were held to answer all charges
22 after Judge Bateman found probable cause for all charges, opining that the alternate means by which
23 the wallet could have come to be in the Mercedes are appropriately decided at trial, by the finders of
24 fact.

1 On July 24, 2018, undersigned counsel was appointed to represent Mr. Caruso at the District
2 Court level and through the remainder of these proceedings. That same day, petitioner appeared in
3 District Court and entered a not guilty plea to all charges. Counsel for petitioner broached the
4 negotiation of a potential resolution to the case with Chief Deputy District Attorney Giancarlo Pesci, as
5 did counsel for petitioner's codefendant. Despite the most earnest efforts of all parties, resolution was
6 unreachable.

7 On July 31, 2018, Judge Herndon extended the deadline to file this Writ until September 14,
8 2018. A Status Check on trial readiness is presently scheduled for November 7, 2018—this petition
9 for writ of habeas corpus follows. Petitioner understands and accepts that the filing of this petition
10 could potentially result in a continuance of the scheduled trial date beyond the sixty (60) day
11 window—and accordingly waives this speedy trial demand for the limited purpose of hearing the
12 foregoing petition.

13 **III. ARGUMENT**

14 **A. The Justice Court Erred When It Bound Petitioner Over to District Court to Answer the** 15 **Robbery with a Deadly Weapon Charge**

16 Petitioner argues that the evidence and testimony put forth by the State of Nevada at the
17 Preliminary Hearing is plainly insufficient to sustain his bindover to District Court on the robbery
18 charge. Petitioner contends that there was no testimony or evidence adduced at the Preliminary
19 Hearing which satisfactorily demonstrated that he removed decedent Matthew Minkler's wallet from
20 his person, that he removed any items or articles from said wallet, nor even that Mr. Minkler had not
21 simply left the wallet in the Mercedes earlier that same day when petitioner and his codefendant went
22 to pick him up and bring him to the house where they were all hanging out. As such, even the low bar
23 of slight or marginal evidence remains unmet so long as there are equally plausible explanations for the
24 discovery of the wallet in the Mercedes which do not include robbery. It is also illustrative that the
wallet was not found on the person of petitioner—nor of Mr. Harlan—but merely laying in the
backseat of the car.

///

1 NRS § 200.380 defines robbery as follows:

2
3 Robbery is the unlawful taking of personal property from the person of another or in his
4 presence against his will by means of force or violence or fear of injury, immediate or future, to
5 his person or property, or the person or property of a member of his family or of anyone in his
6 company at the time of the robbery. A taking is by means of force or fear. A force or fear is
7 used to: (a) obtain or retain possession of the property; (b) prevent or overcome resistance to
8 the taking; or (c) facilitate escape.

9 It seems clear then, in order to commit the crime of robbery in Nevada, an individual must take
10 the personal property of another by force, threats, or fear of violence. This did not occur in this case.
11 The Preliminary Hearing transcript is largely devoid of any of these elements—the State of Nevada
12 cannot say which defendant, petitioner herein or Kody Harlan, took the wallet, nor that either one of
13 them did, quite frankly. The witnesses that the State of Nevada did call, such as Kymani Thompson,
14 could not credibly testify to having heard any threats or arguments, nor did any witness that took the
15 stand ever indicate any kind of beef, animosity, or ill will between either of the defendants and the
16 decedent. The State of Nevada should not be able to bind over petitioner on a robbery when it cannot
17 demonstrate that one occurred—the State of Nevada did not put forth evidence substantiating a taking
18 from Matthew Minkler’s person, nor did the State ever actually succeed in putting the aforementioned
19 wallet into the hands of *either* defendant.

20 The State charges Robbery with a Deadly Weapon based on the presence of Mr. Minkler’s
21 wallet in the Mercedes and the presence of his body in the house. Counsel finds it difficult to
22 comprehend how one can commit a robbery with a deadly weapon by force or fear without any
23 evidence of any kind, testimonial or otherwise, that the victim was ever placed in fear of harm. The
24 witnesses the State of Nevada called, namely Alaric Oliver and Kymani Thompson, were in accord in
25 that neither observed any fight, disagreement, or ill will between the decedent and the petitioner.
26 Similarly, no witness testified having observed either petitioner or Mr. Harlan take anything from Mr.
27 Minkler’s person, either before or after the shooting incident. Any fear or force employed took the
28 form of the accidental gunshot—and bore no reasonable relationship to the alleged theft at issue
29 involving Mr. Minkler’s wallet.

1 The Nevada Supreme Court ruled in *Albitre v. State*, 103 Nev. 281, 738 P.2d 1307 (1987), that
2 the Courts [must] look to the gravamen of all charges as to whether or not charges are redundant based
3 on an [existing] code of conduct. The *Albitre* Court stated:

4 [W]e are convinced that the legislature never intended to permit the State to proliferate charges
5 as to one course of conduct by adorning it with a chameleonic attire. Although charging to the
6 limit may be justified to cover developing nuances of proof, the Jury should have received an
instruction limiting the number of conviction alternatives.

7 This case is about a shooting incident which the State of Nevada characterizes as a murder
8 while the petitioner contends the death was the result of a tragic accident. There is no real belief on
9 either side that a robbery was at the heart of this case and the self-serving vagaries about the discussion
10 of a "lick," put forth by the State do little to change that fact. This was not a hold up and the theft,
11 insofar as a theft occurred, did not rise to the level of a robbery as there is absolutely no evidence in the
12 record to support that presumptive leap. In fact, on cross-examination, counsel for Kody Harlan
13 effectively challenged the whole "lick," theory as it were, pointing out that it was really witness
14 Kymani Thompson's supposition and "theory," more than anything for which tangible evidence
existed in support. *Please See Preliminary Hearing Transcript* at pp. 105, ll. 12-25.

15 There was no force. There was no threat of force. There was no fear of violence, either
16 immediate or at some later as yet unknown time. There was no robbery with a deadly weapon. There
17 was an accidental shooting, a house full of drug addled teenagers largely unable to function, and this
18 resulted in an astonishing exhibition of poor judgment and flawed decision-making in the aftermath of
19 the same. The evidence put forth at the preliminary hearing requires great and incredible inferential
20 leaps in order to potentially meet the elements for a common law, general intent, robbery under
21 Nevada law. The State cannot wildly bootstrap the violence from its alleged murder onto an unrelated
robbery in order to show the required "force" demanded by the elements.

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1 **IV. CONCLUSION**

2 Petitioner and counsel respectfully request that the robbery with a deadly weapon charge
3 against him be dismissed with prejudice and that this Court issue an order to that effect immediately.

4
5 DATED this 29th day of August, 2018.

6 MACE J. YAMPOLSKY, LTD.

7 /s/ Mace J. Yampolsky, Esq.

8 MACE J. YAMPOLSKY, ESQ.

9 Nevada State Bar No. 001945

JASON R. MARGOLIS, ESQ.

Nevada State Bar No. 012439

10 625 South Sixth Street

Las Vegas, Nevada 89101

11 *Attorneys for Petitioner* JAIDEN CARUSO
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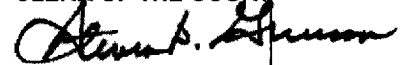
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that service of the above and foregoing, was made this 29th day
3 of August, 2018, via electronically filing to:

4 Giancarlo Pesci, Chief Deputy District Attorney
5 giancarlo.pesci@clarkcountyda.com

6 MACE J. YAMPOLSKY, LTD.

7 /s/ Theresa J. Muzgay
8 An employee of
9 MACE J. YAMPOLSKY, LTD.
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1 RTRAN

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4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6
7 THE STATE OF NEVADA,
8 Plaintiff,

CASE#: C-18-333318-1

CASE#: C-18-333318-2

DEPT. III

9 vs.

10 JAIDEN CARUSO,
11 KODY HARLAN,

12 Defendants.

13 BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE
14 THURSDAY, OCTOBER 10, 2019

15 **RECORDER'S TRANSCRIPT OF HEARING:**
16 **HEARING RE: MOTION TO SET ASIDE GUILTY VERDICT**
17 **AS TO COUNTS ONE AND TWO, IN THE ALTERNATIVE**
18 **MOTION FOR A NEW TRIAL**

19 APPEARANCES:

20 For the State:

GIANCARLO PESCI, ESQ.

SARAH OVERLY, ESQ.

Chief Deputy District Attorneys

22 For Defendant Jaiden Caruso:

JASON R. MARGOLIS, ESQ.

23 For Defendant Kody Harlan:

RYAN K. HELMICK, ESQ.

24
25 RECORDED BY: JILL JACOBY, COURT RECORDER

1 Las Vegas, Nevada, Thursday, October 10, 2019

2
3 [Hearing began at 11:06 a.m.]

4 THE COURT: Harlan and Caruso, 333318, gentlemen are
5 both present in custody with their attorneys; this is on pages 8 and 9.

6 This is time set for the motion, set aside guilty verdict, in the
7 alternative for new trial.

8 Mr. Helmick.

9 MR. HELMICK: Good morning, Your Honor.

10 I wanted to first address, I guess, whether Your Honor felt that
11 the motion was proper in regard to the response that I gave, I guess
12 before I should get started.

13 THE COURT: Yeah, and so -- so let -- let me make a little bit
14 of a record, because I don't know if you guys have had a conversation
15 about this.

16 When Ryan first filed the motion very -- shortly thereafter was
17 an ex parte request to get jury information as well for them to pursue
18 what they were ultimately pursuing here. I didn't think it was appropriate
19 to bring that up when we were in court the very last time we were in
20 court, in part, because what I said was, I don't think it's proper for an ex
21 parte issue because if -- and basically my thought process -- which I
22 didn't express to you-all, because I can't really talk to you ex parte -- but
23 my thought process was, if I'm going to provide this, everybody's going
24 to need it if they want to go out and talk to all these people.

25 So I said, look, if you need that to kind of do your

1 investigation, it needs to be a motion in court that we can address and
2 decide the propriety of releasing that information.

3 And so then when we came back in court there was, I believe,
4 the statement by Mr. Helmick about, look, there's other issues I'm trying
5 to look into. I wanted to preserve the motion and we need more time
6 talking about finishing up whatever investigation was done.

7 So I -- I kind of knew that there was going to be more to the
8 motion than just, we want to reverse the conviction based on a
9 sufficiency of the evidence.

10 And it -- I mean, I'm not saying you've abandoned that --

11 MR. HELMICK: Sure.

12 THE COURT: -- but I would agree that the motion that was
13 supplemented is essentially not a lot about that and more about this juror
14 misconduct issue.

15 MR. HELMICK: Okay.

16 THE COURT: Fair?

17 MR. HELMICK: Fair enough, yes. Thank you.

18 THE COURT: Okay. All right.

19 MR. HELMICK: The first thing that I wanted to talk about
20 really the key here is the cumulative effect of everything because we
21 have a lot of little instances of juror misconduct, each one carrying its
22 own respective weight.

23 I was trying to think of an analogy here and it's -- it's kind of
24 like boxing where maybe the first headbutt the fight goes on. But then
25 when you have a headbutt after a headbutt after a headbutt, which we

1 have here, the fighter is unable to properly perform. And I'm comparing
2 that to the jury here, they were unable to properly perform their duties
3 given the misconduct that was -- that took place in that deliberation
4 room, given the misconduct that was brought into that deliberation room
5 through the use of the cell phones, through the talking about the stolen
6 vehicle that Your Honor had admonished them not to discuss, through
7 the Caruso letter, which is a form of whether or not he testified or didn't
8 testify, in my opinion that's kind of a form of touching on something that
9 shouldn't be talked about.

10 And then -- I mean, here's the thing, the theme of the State's
11 case was that it was a robbery. That's the theme. Our theme was that it
12 was an accidental, in a nutshell.

13 THE COURT: Correct.

14 MR. HELMICK: And so for putting more stuff out there to -- to
15 fit into this theme of a robbery, then that is prejudicial when that
16 information or that evidence shouldn't have been brought in. Whether
17 they say it's not material or whether it's not significant. It's another -- it's
18 another piece of their theme to this robbery that was interjected
19 improperly into that deliberation.

20 And so we feel that that has severely prejudiced Mr. Harlan. I
21 get the case law and the intrinsic conduct but there are -- there's an
22 exception. Mr. Pesci and Ms. Overly talked about it, it had to be
23 extreme.

24 In my opinion this was extreme. We're dealing with a very
25 serious case here, with a complex case here, and we want to have -- at

1 the end of a case like this we want to have a juror not walk into the
2 verdict wearing sunglasses and -- and walking out of the -- after the
3 verdict, out of the courtroom, out of order, in tears. We don't want her --
4 we don't want a jury member to go home and tell her boss that she can't
5 come to work the next day because she's sick to her -- excuse me -- to
6 her stomach over the verdict that she had rendered. That she wants to
7 move out of the State of Nevada because of -- of what had happened to
8 her.

9 We don't want that. We want it to be fair. And in a case like
10 this it's got to be fair. And we feel that it was not fair and Mr. Harlan was
11 absolutely prejudiced here.

12 And if Your Honor -- the burden shifts to the State at this point,
13 in our opinion, but if we -- and that's according to the case law. But if
14 Your Honor feels that, you know, maybe I've got to see the prejudice.
15 We've heard it from Ms. Esparza but we haven't heard it from the other
16 jurors. Maybe I've got to see the prejudice --

17 THE COURT: Well, I was going to ask, I mean, and so she's
18 the only one you-all have interviewed; correct?

19 MR. HELMICK: I talked to Stephen Libauska --

20 THE COURT: Okay.

21 MR. HELMICK: -- but he didn't really remember much.

22 THE COURT: But none of the other people --

23 MR. HELMICK: No.

24 THE COURT: -- that she was mentioning that got mentioned
25 in the pleadings --

1 MR. HELMICK: I couldn't get --

2 THE COURT: -- nobody's talked to any of them?

3 MR. HELMICK: -- I couldn't get the information and so I guess
4 that'll be an additional request today after we talk about everything, for
5 both parties.

6 But, you know, we're asking for an evidentiary hearing to -- to
7 go through and see whether these factors were actually met.

8 THE COURT: Okay.

9 Anything, Jason?

10 MR. MARGOLIS: I mean, very briefly, look, I understand
11 extrinsic evidence, in and of itself, is often not enough. But the
12 cumulative effect of several items of extrinsic evidence that all kind of
13 combine forces to support a state theory being advanced by a number of
14 jurors was kind of used to bamboozle and mislead Ms. Esparza. And
15 that's certainly how she felt.

16 Now, I understand there's a fine line between bullying in the
17 jury room and a good vigorous debate 12 Angry Men style. But when
18 we call upon extrinsic evidence and a misinterpretation of jury
19 instructions in order to prevail in that argument, I think we might be
20 generating the very prejudice and the very undermine competence in the
21 verdict that we're seeking to avoid.

22 And that's kind of where I would leave it.

23 THE COURT: All right. Mr. Pesci or Ms. Overly.

24 MR. PESCI: Thank you, Your Honor.

25 I apologize, my question is intended to try to flush out the

1 record.

2 THE COURT: Sure.

3 MR. PESCI: So, please, receive it that way.

4 You just asked if they were able to talk to the other individuals,
5 the State was not a party to any communications that Your Honor had
6 with defense counsel providing information.

7 So -- so, I know, how much did you give them because --

8 THE COURT: I didn't give them anything.

9 MR. PESCI: Okay. All right.

10 THE COURT: And I'm sorry to interrupt. But that's a good
11 question.

12 MR. PESCI: Because it would really --

13 THE COURT: My -- my sense was that when they submitted
14 the ex parte request they had already talked to a juror.

15 MR. PESCI: Right.

16 THE COURT: I didn't -- I don't think they named Ms. Esparza
17 at that time but -- and they were seeking to get contact information for
18 the whole jury.

19 MR. PESCI: Right.

20 THE COURT: And I -- I didn't communicate with them. I had
21 my law clerk tell them, if you want to pursue this, you need to do it by
22 open motion in court so that we can decide the propriety of this and get
23 both sides, in my thinking.

24 Like I said, I didn't express this. My thinking was, that's a
25 motion for open court, both sides get an opportunity to be involved in it,

1 and if there's anything to be divulged, both sides are entitled to get it.

2 And so thereafter there was no follow-up on that so I assumed
3 that they were satisfied with who they had interviewed or maybe on their
4 own they had got in contact with other folks.

5 MR. PESCI: And based on us not knowing that you could see
6 why in our supplemental opposition --

7 THE COURT: Yeah.

8 MR. PESCI: -- we took that position.

9 THE COURT: Sure.

10 MR. PESCI: So we were not trying to be flippant.

11 THE COURT: No, no, no --

12 MR. PESCI: We didn't know that.

13 THE COURT: -- not at all.

14 MR. PESCI: I also wanted that information because in
15 essence, as I've heard it now, they've had, what, over a month to try to
16 get this done, and they haven't, when the statute says one week.

17 THE COURT: Right.

18 MR. PESCI: You provided them more time. You have the
19 right under the statute. With that time they haven't gotten it done.

20 So we object to any continuance or any evidentiary hearing to
21 try -- for them to get more witnesses. Because there's already been
22 testimony -- or not testimony -- representations by counsel that they
23 spoke to one of the others and that person didn't remember it. So they
24 didn't support what they were saying.

25 So as far as continuing this for them to have another shot, the

1 State objects.

2 THE COURT: Well, I'm --

3 MR. PESCI: Whatever you rule, you rule.

4 THE COURT: -- not of that mindset. But you would agree
5 that if -- that if a side interviews a juror who alleges a variety of things
6 that would conduct juror misconduct, even if that side can't interview
7 everybody else, I mean, it's incumbent to kind of flush out what that one
8 jurors had to say, whether it's critical or not, to figure out whether there's
9 juror misconduct that warrants a new trial.

10 MR. PESCI: There -- there could be a situation where it
11 merits that. I understand that.

12 THE COURT: Okay.

13 MR. PESCI: And we're talking about difference cases,
14 *Maestas*, that was the case --

15 THE COURT: Right.

16 MR. PESCI: -- where they had 11 jurors come in; right. But
17 there's no rule that requires that.

18 And the State's position, and the angst that you're feeling right
19 now, is that there's been time for them to do that. And in the face of not
20 being able to do that, the State feels it speaks volumes.

21 THE COURT: Okay.

22 MR. PESCI: That they can't get somebody else to -- to
23 corroborate Ms. Esparza's feelings about being coerced because
24 somebody rubbed her back. Or Ms. Esparza's feeling that there's
25 non-verbal communication by a family member who never violated the

1 Court's order, who behaved the entire time, and did nothing to
2 communicate to this jury.

3 So, to us, it speaks volumes and bolstering to the fact that this
4 is a spurious claim, there is nothing to support it.

5 And let's go to what they just told you, which is this cumulative
6 error. What's interesting is they cite to these cases about cumulative
7 error, specifically they cite to *Maestas*.

8 Judge, when you look at the cumulative error analysis within
9 that case, it's as to prosecutorial misconduct. Not to juror misconduct.
10 There is juror misconduct alleged in that case.

11 Which, by the way, the district court did not find and the
12 Supreme Court upheld the not finding of it.

13 It's about cumulative error of prosecutorial misconduct. But
14 you see we blur these lines and make it sound as if it's somehow better.
15 Because when you go to their next representation, in the same motion,
16 they talk about how -- and this is really crucial, Judge -- they cite to
17 *Meyer* to say that, could have affected the hypothetical juror. That is
18 dead wrong. And that is inappropriate to present that to this Court as
19 the standard. It is, would have. The very case that they cited to, *Meyer*,
20 says, would have.

21 In fact, the most recent case, *Bowman*, which they did cite to,
22 which goes through what the standard is, says that, it would have
23 influenced the average hypothetical juror. Not could. Because could
24 anything could have. It's would have.

25 So let's look at what she actually says. Why would we need a

1 hearing? We've already heard from her via the affidavit. Now all of a
2 sudden we're hearing something about allegations of her being willing to
3 or wanting to move. That's nowhere in the affidavit. That's why we don't
4 need to have a hearing because it's just going to keep going and keep
5 going with her talking about how she feels uncomfortable.

6 It has to be extrinsic. Her feelings of being coerced because
7 someone, I don't know, crazily rubbed her back, doesn't rise to the level
8 of extrinsic. That's intrinsic. The Statute and the case law is very clear.
9 You cannot go into the deliberative process. Everything she said is the
10 deliberative process. The only thing arguably that's extrinsic --

11 THE COURT: Hold -- go ahead.

12 MR. PESCI: -- is her use of the cell phone. Her use of the
13 cell phone to look up graffiti, not the part that says, F the victim, not that
14 part, that's the only part the State tied the defendants to.

15 The other part that had no bearing on the case was in the
16 room. It was in the house. It's impossible to show this evidence without
17 that coming up. She looked into that. That's not material. Under the
18 case law, when you're looking at extrinsic -- or intrinsic, it has to be
19 material. We never -- we never argued, you know what, they're robbers
20 because these -- these guys just spray painted somebody else's house.

21 We did argue they said, F Matt. And that's what we tied them
22 to.

23 So it doesn't matter that she seemingly violated this -- the rule
24 about not doing that. When you look at what she even says it doesn't
25 qualify. All the rest of this is -- is intrinsic. And it's not to be gone into

1 with her deliberative process.

2 And you already know what it is because they put it in the
3 affidavit. So there's no reason to have a hearing. And none of this rises
4 to the level to grant the motion --

5 THE COURT: What about --

6 MR. PESCI: -- because --

7 THE COURT: -- what about the allegation that the jury
8 discussed things they weren't supposed to discuss? That there was
9 discussion made about the stolen vehicle after I had admonished them
10 that can't be a part of your deliberation. And that there was this
11 allegation that one of the jurors brought up something or failed to
12 disclose something about a nephew's death in a DUI accident.

13 MR. PESCI: Okay. Starting with the DUI --

14 THE COURT: So those aren't -- those aren't so much
15 Ms. Esparza's feelings about things, which I tend to agree with you on,
16 but those are allegations that there was some things brought up in jury
17 deliberations that shouldn't have been.

18 MR. PESCI: Okay. There's no evidence that a juror held
19 something back. There is the attorney's opinion that it might or might
20 not have been addressed. That is not the basis to reverse a conviction.
21 They don't have evidence to support it.

22 And even if they did, let's assume that they did; right? There's
23 nothing even from their juror and her feelings that shows it had anything
24 to do with this determination. The fact that somebody in the family might
25 have been killed in a DUI, and that person got a tattoo, doesn't say that,

1 oh, because of that she, Esparza, went to guilty. She didn't even allege
2 that in there. It was the fact that it was discussed.

3 But for her it was this whole concept of this instruction being
4 given to her by one juror and how she says she was misled. That's the
5 deliberative process. That is the deliberation. That's literally the jurors
6 talking, trying to figure it out, and coming to a conclusion.

7 How do we go against the statute to flush that out? I don't see
8 how we do that.

9 THE COURT: All right. And then the other thing was the
10 issue of the stolen vehicle.

11 MR. PESCI: Right.

12 And the stolen vehicle, again, we've highlighted it before, but
13 the State didn't introduce that; right?

14 THE COURT: Right.

15 MR. PESCI: I understand that it came out, but the State didn't
16 introduce it. There was an instruction given to -- to disregard it. And
17 there's nothing other than this particular juror's position that that had
18 something to do with in the deliberative process. It's the same analysis,
19 Judge. We just keep going back to a violation of -- of NRS 50, where it
20 says you can't get into the deliberative process.

21 And it's the -- their -- they bear the burden, as we put in our
22 brief, to show that there's a reasonable probability or likelihood that the
23 juror misconduct affected the verdict.

24 THE COURT: All right. Mr. Helmick.

25 MR. HELMICK: Yes.

1 Let me just start with a few things here, they talked about us
2 having a month to -- to work on this. I haven't been able to get the
3 contact information for the -- we were given other names of jurors that
4 may be able to corroborate what Ms. Esparza said.

5 THE COURT: Okay.

6 MR. HELMICK: And so the reason that I didn't go any further
7 after Your Honor's order on the ex parte motion is I just figured we just
8 do it -- we just do it orally. If I'm going to ask for it, then Mr. Pesci is
9 probably going to want it as well. And so I've kind of just backed off of it
10 until we had this hearing today.

11 If I had the contact information, then I could call them and say,
12 hey, did this happen, did this not happen, which is the point of asking for
13 an evidentiary hearing to determine the credibility of Ms. Esparza's
14 statements in her affidavit.

15 So I think that's -- that's big for us to do that, to determine that
16 we have one juror who has said a lot of different things and we've got to
17 determine that, I think, on the record, an evidentiary hearing to
18 determine whether or not it had a prejudicial impact on Mr. Harlan.

19 In regard to the cell phone, it was alleged that Ms. Hocker,
20 another juror, was on her cell phone. What she was doing, we don't
21 know. This is something that we'd have to flush out. But they're not
22 supposed to be on their cell phone during the deliberation process.

23 You know, they keep talking about the back rub and stuff like
24 this, it's -- it's their way of minimizing what happened. Yes, the
25 intrinsicness of some of these misconducts is difficult to get into with the

1 case law. However, if it's extreme, we can get into it and we can at least
2 test the waters with an evidentiary hearing, which we haven't had the
3 ability to do because I've only been able to get ahold of one, the contact
4 information for only Ms. Esparza, and like I said, Mr. Libauska, which --
5 which nothing was gained from that. He just didn't remember really
6 much of it to begin with, whether or not it was corroborative or not.
7 That's all there was to it.

8 But I think that the case law, and I put that at the end of the
9 motion, warrants -- when you have an allegation in a serious case like
10 this, warrants an evidentiary hearing for us to determine the credibility of
11 what was stated in her affidavit to be questioned by myself, to be
12 questioned by Mr. Pesci, and to have the other jurors, at least be able to
13 get ahold of them, through Your Honor maybe giving us the contact
14 information for that and having them testify.

15 So that's what we're asking for. I think that's completely
16 appropriate in a case like this and what's been alleged.

17 THE COURT: So here's what I'll say, I'm going to grant you a
18 limited evidentiary hearing and it's going to be very limited and it's based
19 on one thing that's being alleged to have been said by Ms. Esparza.

20 But what I will also say is, kind of moving forward, I think it's --
21 it was incumbent upon you to come back to the Court on written motion.
22 Not just wait until this hearing and say, well, orally request to get more
23 juror information at this point. I mean, it is at the time that you're
24 preparing that motion, your kind of burden to do your investigation and --
25 and try and identify those other people.

1 In regard to the things that -- that Ms. Esparza has alleged, I
2 don't think that there -- there warrants any evidentiary hearing in regard
3 to the cell phone issues. I would agree that there wasn't any testimony
4 at the time of trial that either these individuals were responsible for any
5 other abbreviations that were painted in places in that house. It wasn't
6 their house. It was an abandoned house. I believe the testimony was
7 that those were there before the date in question anyway.

8 So the fact that she is the one that apparently on her own
9 started trying to look things up about -- about these -- these
10 abbreviations that were painted in various places, doesn't give rise to
11 anything that would rise to the level of prejudice in terms of the verdict
12 that was returned based on the evidence in the case.

13 Additionally, her statement that she saw some other juror
14 using her phone, that's it, using her phone at some point during a break
15 or during -- while they were deliberating but at some point, doesn't rise
16 to the level of impropriety. I never told the jurors you can't ever use your
17 phone or anything while you're here in the buildings.

18 So if a juror checks a text message, you know, answers a
19 phone call from their child and -- and they're smoking on the balcony or
20 even if it rings in the deliberation room, the fact that people have the
21 device doesn't mean they've used the device improperly to -- to research
22 the case. That's the admonition of the Court, don't research the case.

23 So I don't think there's anything in regard to that allegation on
24 the cell phone use.

25 I would also agree that in terms of her statements about

1 disregarding jury instructions and jurors telling her -- or pointing out to
2 her things about the instructions that say we don't have to be unanimous
3 on theories, that -- that's correct. That's the -- that is the jury
4 instructions. But that does go into the jury deliberation process.

5 So her feeling like somehow they could return a verdict
6 without her, well logically then she would maintain whatever her verdict
7 was going to be and think that we're going to go back into court and
8 return an 11 to 1 verdict because I'm not agreeing.

9 So, I mean, I don't think it's appropriate to have an evidentiary
10 hearing on those issues because they are a part of the jury deliberating,
11 interpreting jury instructions, and coming up with what they think an
12 appropriate verdict is.

13 The allegation about discussing the case prior to deliberations
14 is another one that I think is without merit. There wasn't any allegation
15 that anybody discussed the case. She says she overheard a couple of
16 jurors commenting about it's going to be a difficult case to decide,
17 maybe it's an easy case to decide. But that's not, hey, here's what I
18 think about this evidence and that witness and here's what my verdicts
19 going to be, things like that.

20 I don't -- even if you could say that was an improper statement
21 for a juror to make, I don't think it rises to the level of warranting any type
22 of evidentiary hearing.

23 We have to remember, yes, it's a serious case, very serious
24 case, that doesn't change the standard of the evaluation of these
25 extrinsic evidence issues and how you have to view things. The fact that

1 it's a serious case you're still looking at any kind of juror issue from a
2 serious thing.

3 I don't think that there's any merit to the allegations that
4 somehow there should be an evidentiary hearing because of attempts by
5 third parties to influence anything. There was a lot of family members on
6 both sides in the courtroom. They're always looking at the jurors. I'm
7 watching people during the trial process. They're looking at the jurors.
8 They're kind of what -- what kind of body language am I getting from
9 jurors. Sometimes they're looking at witnesses.

10 The fact that she says people looked at her, stared at her
11 when they saw her, I mean, they were looking at all of the jurors. There
12 is nothing improper about family members of a defendant or a victim
13 being in the court, outside the court, and looking at the jurors that are
14 deciding the case that deals with loved ones on either side of the case.

15 So I don't see anything about that, including her -- her
16 statements or beliefs that somehow somebody was -- was looking at her
17 for the purpose of somehow influencing her. I'm not sure how you glean
18 that from somebody simply looking in your direction.

19 And I don't think any allegation that other jurors who were
20 saying, what is it you don't understand, Shayra, is somehow bullying her.
21 I mean, to me that's jurors doing what they're supposed to do. They go
22 through the deliberation and if one person is having some kind of
23 confusion or misunderstanding and other jurors feel that it's one certain
24 way, you're going to ask that person, what is it that you don't
25 understand, what is it that you need clarification on, what is your -- what

1 are your feelings about this.

2 Nor do I think a juror expressing some type of empathy
3 towards another juror and rubbing their back if -- if things are getting,
4 you know, difficult in a -- in a jury deliberation process. I don't think
5 that's bullying or improper at all.

6 I also don't think that there's any impropriety or -- or need for
7 an evidentiary hearing regarding this allegation that jurors reference
8 something Mr. Caruso did in front of the jury with his attorney.
9 Everybody has to own their conduct; right? And if a defendant decides
10 to act up in some fashion in court, jurors are going to notice that, they're
11 going to see that.

12 If a defendant is speaking loud enough for them to overhear
13 what the defendant has said, sometimes that can be to the prejudice of
14 that defendant.

15 So the fact that Mr. Caruso may have made some kind of
16 statement to his attorney in court about some document, and the
17 attorney said something back to him about not reading that document,
18 there's no evidence of what that was or how it would have affected, you
19 know, prejudicially or otherwise particularly.

20 And there isn't any explanation of how, from Ms. Esparza's
21 standpoint, somehow that somehow caused some prejudice to the
22 verdict.

23 So I don't think the burden is met in any kind of extreme
24 nature in that either.

25 The last thing, I believe, -- no, I would also say that the

1 allegation that one of the jurors referenced something about having a
2 nephew that died and she got a tattoo from that, I don't think that rises to
3 the level of impropriety and juror conduct or necessitates a need for any
4 type of evidentiary hearing.

5 The one thing I'm going to grant the limited evidentiary hearing
6 on is Ms. Esparza's statement that there was discussion about the
7 stolen vehicle and how it made it more likely that there was a robbery
8 and a murder.

9 Now, whether that's a completely credible statement or not,
10 how it was discussed, did somebody bring it up, and the foreperson
11 says, hey, we can't discuss that. I mean, there's -- there hasn't been
12 anything flushed out about that. But the statement in and of itself is
13 concerning to me such that I think you-all would be entitled to have a
14 limited evidentiary hearing on that issue to bring Ms. Esparza in and
15 have some discussion about that, including bringing in any other jurors
16 that you guys want to bring in on that.

17 So I'm assuming both parties kind of what to be able to
18 contact folks to be able to interview them and potentially bring them in.

19 MR. PESCI: Yes.

20 THE COURT: So, I mean, it would kind of be a joint request
21 at this time to go ahead and get the juror contact information.

22 MR. HELMICK: Yes, Your Honor.

23 MR. MARGOLIS: Yes, please.

24 MR. PESCI: If your -- yes, if the hearing is ordered, yes.

25 THE COURT: Yeah, okay.

1 So we will go ahead and release that to you. I'll just ask that
2 you get with Jen and she will get with Mariah and get that information for
3 you.

4 And just -- one side or the other, just prepare an order that's
5 saying it's a joint request for the side to get the juror contact information,
6 that'll be kept confidential, and we'll provide, you know, phone numbers
7 and whatnot to you so you can reach out to people.

8 MR. HELMICK: I'll do the order, Your Honor.

9 THE COURT: Okay.

10 And then -- I mean, we can set a hearing date today or we can
11 set a status check, if you want, to get that information. I would kind of
12 like to keep on top of it and get it done quicker rather than later.

13 MR. PESCI: Court's pleasure.

14 THE COURT: So why don't we then set a hearing in maybe
15 30 days. And if for any reason you guys aren't having success in
16 contacting people and we need to move that, we can. But I don't want to
17 delay things.

18 So we are going to go ahead and set a hearing date then on
19 the motion to set aside verdict.

20 THE CLERK: It will be November 13th at 9:30.

21 THE COURT: And the other thing, I mean, since the original
22 motion dealt with sufficiency of the evidence, and I know you haven't
23 brought that up today.

24 MR. HELMICK: Right.

25 THE COURT: I don't know if you're still pursuing that or.

1 MR. HELMICK: Well, I'd still like to, I mean, I still did put it out
2 there with some facts involved.

3 THE COURT: Okay.

4 MR. HELMICK: And so certainly I'd still want to preserve it
5 before the Court.

6 THE COURT: Okay. Well, then -- then go ahead. If there's
7 anything else you want to add on that issue, I'll listen to that as well.

8 MR. HELMICK: Nothing other than -- then I put in the motion
9 thus far --

10 THE COURT: Okay.

11 MR. HELMICK: -- at this time.

12 THE COURT: State.

13 MR. PESCI: I'm sorry, I was just trying to see if the date --

14 THE COURT: On the sufficiency of the evidence, Ryan was
15 basically just saying I'll submit it on the pleading that I gave.

16 MR. PESCI: Yeah, we've already responded to that that there
17 was more than sufficient evidence to support the verdict.

18 THE COURT: All right. I do think on the totality of evidence
19 presented to the jury there was a reasonable basis for reasonable jurors
20 to render the verdicts that they rendered. So I think there was sufficient
21 evidence for them to reply upon in coming up with their verdicts.

22 I mean, it's all about the disagreement and apparent
23 agreement of the jurors that there was sufficient evidence to believe, at
24 least, that there was some discussion of this robbery such that it gave
25 rise to felony murder on both of the defendants under the various

1 theories that were alleged, separate from the, you know, the
2 premeditated and deliberative aspect of things. So I do think there was
3 certainly sufficient evidence.

4 So that part of the motion is going to be denied.

5 MR. HELMICK: Okay.

6 [Colloquy between the Court and the Court Clerk]

7 THE COURT: How about Friday, November 15th?

8 MR. PESCI: Okay. So the 13th is that just -- is that another
9 date or we're just changing it to the 15th?

10 THE COURT: What -- the what, I'm sorry?

11 MR. PESCI: I thought we were told the 13th.

12 MR. HELMICK: Yeah, yeah, I'm confused too.

13 THE COURT: Oh, did you mention a date?

14 THE CLERK: I did.

15 THE COURT: Oh, she mentioned a date, I'm sorry. I didn't --

16 MR. PESCI: No, my fault --

17 THE COURT: -- I didn't -- no, no, no --

18 MR. PESCI: -- my fault --

19 THE COURT: -- I didn't hear Cory, I apologize.

20 MR. PESCI: The 15 is great.

21 THE COURT: So, no, no status check, we're just going to set
22 the hearing. If you guys are having any issue, let us know --

23 MR. HELMICK: Sure.

24 THE COURT: -- and we can talk about moving that hearing
25 date to accommodate you.

1 But we'll plan on having the hearing the morning of the 15th
2 and we'll set that at 9:00. I'm anticipating I'm going to be in Mata's
3 capital case during then, so I would hope that it would be a hearing we
4 could get done in a morning.

5 MR. PESCI: Okay.

6 THE COURT: Okay.

7 MR. HELMICK: I think so.

8 THE COURT: All right.

9 MR. HELMICK: In regard to the sentencing, are we going --

10 THE COURT: Yeah, we're going to -- I'm sorry, thank you,
11 Ryan.

12 MR. HELMICK: Okay.

13 THE COURT: We'll vacate the sentencing dates that were set
14 for -- I don't know why I gave two dates, I apologize -- but the sentencing
15 dates that were set next week we'll vacate those. We will reset
16 sentencing when we come back for the motion hearing.

17 If I deny the motion, it doesn't have to go forward that day
18 because I'll give you both an opportunity to contact whomever you want
19 to have present at sentencing.

20 MR. PESCI: I appreciate it.

21 THE COURT: But we'll reset it when we come back on
22 November 15th; okay.

23 MR. HELMICK: Okay. Thank you.

24 MR. PESCI: Thank you very much, Your Honor.

25 MR. MARGOLIS: Thank you, Your Honor.

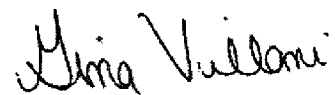
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THE COURT: Thank you.

[Hearing concluded at 11:34 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.



Gina Villani
Court Recorder/Transcriber
District Court Dept. IX



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE NO: C-18-333318-1
C-18-333318-2

DEPT. III

10 vs.

11 JAIDEN CARUSO and KODY
12 HARLAN,

Defendants.

13
14 BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE
15 WEDNESDAY, APRIL 3, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING RE:**
17 **STATUS CHECK; NEGOTIATIONS**

18 APPEARANCES:

19 For the State: GIANCARLO PESCI, ESQ.
20 Chief Deputy District Attorney

21 For Defendant Caruso: MACE J. YAMPOLSKY, ESQ.

22
23 For Defendant Harlan: RYAN HELMICK, ESQ.

24
25 RECORDED BY: STACEY RAY, COURT RECORDER

1 **Las Vegas, Nevada; Wednesday, April 3, 2019**

2 [Proceeding commenced at 9:58 a.m.]

3
4 MR. YAMPOLSKY: Your Honor?

5 THE COURT: Yes.

6 MR. YAMPOLSKY: Call Mr. Caruso and Mr. Harlan, please?

7 THE COURT: Yes. Page 10 -- 10 and 11. 333318. Mr. Caruso and
8 Mr. Harlan are both present in custody with Mr. Yampolsky and Mr. Helmick; Mr.
9 Pesci for the State. This is on for status check on negotiations. What do we got?

10 MR. HELMICK: Your Honor, I had spoken to Mr. Harlan about the
11 negotiation and I'll let Mr. Pesci put that on the record. We talked about it
12 thoroughly. He has decided to reject the negotiation at this time and proceed
13 with trial.

14 THE COURT: Okay.

15 MR. YAMPOLSKY: And, Your Honor, for the record my client did
16 accept the negotiation. Unfortunately, it was contingent.

17 THE COURT: Okay.

18 MR. YAMPOLSKY: So apparently we're going to trial also.

19 THE COURT: Okay.

20 MR. PESCI: So Judge, previously defense counsel asked for an offer.
21 I made an offer and provided guilty plea agreements. And I was under the
22 impression that the Defendants were both going to be pleading. As to Mr.
23 Caruso, the offer is a second degree murder, right to argue. So that's
24 unenhanced. As to Mr. Harlan it was a voluntary manslaughter with use of a
25 deadly weapon, right to argue on both. But it was contingent on both of them.

1 And I was informed that Mr. Caruso intended to but then I was informed that new
2 counsel had come in for Mr. Harlan.

3 THE COURT: All right. And I'm sorry, I was trying to write and you
4 were talking fast. Mr. Harlan's offer was voluntary manslaughter with weapon or
5 no?

6 MR. PESCI: Voluntary with use of a deadly weapon --

7 THE COURT: Okay.

8 MR. PESCI: -- right to argue.

9 THE COURT: All right.

10 MR. PESCI: And as to Mr. Caruso, second degree murder right to
11 argue.

12 THE COURT: But no weapon enhancement?

13 MR. YAMPOLSKY: No use.

14 MR. PESCI: No weapon.

15 THE COURT: Got it. All right. So Mr. Caruso, is that correct that you
16 had decided that you wanted to accept the offer that had been relayed?

17 DEFENDANT CARUSO: Yes it is, Your Honor.

18 THE COURT: And Mr. Harlan, is it correct that you had decided after
19 consulting with your attorney that you did not want to accept that offer?

20 DEFENDANT HARLAN: Yes sir.

21 THE COURT: All right. And the offers remain open or are they
22 withdrawn at this point?

23 MR. PESCI: Here -- here's my position on that, Judge. I don't,
24 respectfully, I don't think defense counsel for Mr. Harlan has all the discovery yet.

25 THE COURT: Okay.

1 MR. PESCI: I don't think he's been able to get everything from the
2 prior counsel. So --

3 THE COURT: Do -- is that -- I'm sorry to interrupt. Is that -- do you
4 have everything from --

5 MR. HELMICK: No --

6 THE COURT: -- Mr. Brower?

7 MR. HELMICK: -- I don't have everything. I have the police report. I
8 have the preliminary hearing transcripts. Some of the witness statements.

9 THE COURT: Okay.

10 MR. HELMICK: I've been reading as much as I could over the past
11 week.

12 THE COURT: Okay.

13 MR. HELMICK: And so Mr. Pesci -- I just gave him some USB's.
14 He's gonna get me the rest of it. So I understand his concern. But we have
15 talked about the case very thoroughly.

16 THE COURT: Okay.

17 MR. PESCI: I'm sure that they have. And I'm not trying to say they
18 haven't. I'm just concerned, potentially, the record, later on, if they don't have all
19 the discovery. So as far as an answer to your question about the offer, my intent
20 -- my suggestion is that we keep it open for two maybe three weeks.

21 THE COURT: Okay.

22 MR. PESCI: Defense counsel could then digest the remainder of the
23 discovery. And then a decision can be made. If the defense still wants to reject
24 it, that's fine. We'll go to trial.

25 THE COURT: Well that, I mean, in light of that statement about

1 potential discovery issues and that would've my request anyway. So here --
2 here's what I'll do. The calendar call is set for May the 2nd. I can't do it two
3 weeks, but we'll -- we'll set it over to April 23rd for another status check.

4 MR. YAMPOLSKY: Your Honor --

5 THE COURT: Yep.

6 MR. YAMPOLSKY: I start a federal murder trial on the 22nd of April. I
7 guess I could send Jason or depending on what time we start.

8 THE COURT: Why don't you do so, I mean, because that's less
9 about Mr. Caruso than it is --

10 MR. YAMPOLSKY: Right.

11 THE COURT: -- just about Mr. Helmick to potentially have an
12 opportunity to get any other discovery, if there is any. And -- and have any
13 further discussion. So, that we know whether we're proceeding to that trial on
14 April 3rd, excuse me, May 13th if it's not resolved. So, we'll set a status check on
15 April 23rd at 9:00 a.m. And thereafter the next date will just be our calendar call
16 on May 2nd. Okay?

17 MR. HELMICK: Okay.

18 MR. PESCI: Thank you, Your Honor.

19 MR. HELMICK: All right. Thank you.

20 THE COURT: All right, guys. Thank you.

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1 MR. YAMPOLSKY: Thank you, Your Honor.

2 [Proceeding concluded at 9:59 a.m.]

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

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24 _____
25 Stacey Ray
Court Recorder/Transcriber