

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jun 05 2020 09:13 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

JAMES HOWARD HAYES, JR.,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: C-16-315718-1

Docket No: 81076

RECORD ON APPEAL VOLUME 1

ATTORNEY FOR APPELLANT
JAMES HAYES # 1175077,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

I N D E X

<u>VOLUME:</u>	<u>PAGE NUMBER:</u>
1	1 - 240
2	241 - 480
3	481 - 720
4	721 - 831

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
3	02/24/2020	"MOTION FOR RULING" FOR "MOTION TO CORRECT AN ILLEGAL SENTENCE"; HEARING REQUESTED	704 - 709
3	09/09/2019	"MOTION IN THE NATURE OF A WRIT OF CORAM NOBIS"	595 - 601
3	12/16/2019	"MOTION TO CORRECT AN ILLEGAL SENTENCE"	674 - 681
4	06/01/2020	"MOTION TO VACATE SENTENCE" (CONVICTION INVALID)	763 - 771
3	10/17/2019	"REPLY" TO THE STATE'S OPPOSITION" MOTION FOR A WRIT OF CORAM NOBIS	631 - 636
4	05/04/2020	"RULE 60B MOTION" FOR RELIEF FROM THE MARCH 18, 2020 ORDER WHICH DENIED MR. HAYES MOTION TO "CORRECT ILLEGAL SENTENCE"	745 - 760
3	10/28/2019	AFFIDAVIT OF " NO MATERIAL DISPUTE AS TO THE MISTAKE OF FACT" "MOTION IN THE NATURE OF A WRIT OF CORAM NOBIS"	637 - 663
3	01/06/2020	AFFIDAVIT OF GRANTING "MOTION TO CORRECT AN ILLEGAL SENTENCE" OF THE WRONGFULLY CONVICTED"	691 - 694
3	09/26/2019	AFFIDAVIT OF GRANTING MOTION IN THE NATURE OF A WRIT OF CORAM NOBIS	612 - 615
2	04/06/2018	AMENDED COURTESY FILING OF DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS	390 - 398
2	11/07/2018	AMENDED INFORMATION	425 - 426
2	08/29/2017	AMENDED NOTICE OF INTENT TO SEEK PUNISHMENT AS A HABITUAL CRIMINAL	367 - 368
2	10/10/2018	CASE APPEAL STATEMENT	423 - 424
3	04/12/2019	CASE APPEAL STATEMENT	488 - 489
3	08/09/2019	CASE APPEAL STATEMENT	592 - 593
3	12/11/2019	CASE APPEAL STATEMENT	672 - 673

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
4	04/23/2020	CASE APPEAL STATEMENT	742 - 743
2	06/01/2017	CERTIFICATE OF MAILING	365 - 365
3	06/14/2019	CERTIFICATE THAT NO TRANSCRIPT IS BEING REQUESTED	533 - 533
4	06/05/2020	CERTIFICATION OF COPY AND TRANSMITTAL OF RECORD	
2	03/01/2018	COURTESY FILING OF DEFENDANT'S PRO PER PETITION	381 - 389
1	06/14/2016	CRIMINAL BINDOVER (CONFIDENTIAL)	1 - 52
1	11/18/2016	DEFENDANT'S MOTION FOR DISCOVERY	101 - 113
2	05/07/2018	DEFENDANT'S NOTICE OF WITNESSES, PURSUANT TO NRS 174.234	405 - 406
2	05/07/2018	DEFENDANT'S SUPPLEMENTAL NOTICE OF WITNESSES PURSUANT TO NRS 174.234	407 - 408
3	11/19/2019	DESIGNATION OF RECORD ON APPEAL	668 - 668
4	06/05/2020	DISTRICT COURT MINUTES	788 - 831
4	06/05/2020	DOCUMENTARY EXHIBITS (UNFILED)	773 - 787
2	11/07/2018	GUILTY PLEA AGREEMENT PURSUANT TO ALFORD	427 - 435
1	06/17/2016	INFORMATION	53 - 55
2	03/12/2019	JUDGMENT OF CONVICTION (PLEA OF GUILTY-ALFORD)	471 - 471
2	07/30/2018	MOTION TO WITHDRAW AS ATTORNEY OF RECORD	411 - 413
2	05/31/2017	MOTION TO WITHDRAW AS ATTORNEY OF RECORD FOR DEFENDANT	358 - 364
3	04/29/2019	MOTION TO WITHDRAW COUNSEL	500 - 505
3	02/25/2020	NEVADA SUPREME COURT CLERK'S CERTIFICATE/REMITTITUR JUDGMENT - AFFIRMED	711 - 715
2	01/11/2019	NEVADA SUPREME COURT CLERK'S	447 - 451

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
		CERTIFICATE/REMITTITUR JUDGMENT - DISMISSED	
2	09/26/2018	NOTICE OF APPEAL	419 - 422
3	03/28/2019	NOTICE OF APPEAL	483 - 487
3	11/19/2019	NOTICE OF APPEAL	664 - 667
3	03/30/2020	NOTICE OF APPEAL (CONTINUED)	716 - 720
4	03/30/2020	NOTICE OF APPEAL (CONTINUATION)	721 - 739
3	07/31/2019	NOTICE OF APPEAL (2ND)	571 - 591
3	12/04/2019	NOTICE OF CHANGE OF ADDRESS	669 - 671
2	02/10/2017	NOTICE OF DEPARTMENT REASSIGNMENT	350 - 350
2	09/18/2018	NOTICE OF ENTRY OF ORDER	416 - 418
1	11/21/2016	NOTICE OF INTENT TO SEEK PUNISHMENT AS A HABITUAL CRIMINAL	114 - 115
3	04/29/2019	NOTICE OF MOTION	506 - 506
3	09/09/2019	NOTICE OF MOTION	602 - 602
3	12/16/2019	NOTICE OF MOTION	682 - 682
3	02/24/2020	NOTICE OF MOTION	710 - 710
4	05/04/2020	NOTICE OF MOTION	744 - 744
4	06/01/2020	NOTICE OF MOTION	772 - 772
1	12/12/2016	NOTICE OF MOTION AND MOTION FOR JOINDER OF CASE C315718 INTO CASE C315125	140 - 234
1	12/16/2016	NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF OTHER ACTS (CONTINUED)	238 - 240
2	12/16/2016	NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF OTHER ACTS (CONTINUATION)	241 - 332

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	08/26/2016	NOTICE OF RESCHEDULING OF HEARING	99 - 100
1	11/21/2016	NOTICE OF WITNESSES [NRS 174.234(1)(A)]	116 - 118
1	12/16/2016	NOTICE OF WITNESSES [NRS 174.234(1)(A)]	235 - 237
2	08/29/2017	NOTICE TO INTRODUCE CERTIFIED COPIES [NRS 52.260(4)]	369 - 370
2	12/20/2016	OPPOSITION TO THE STATE'S MOTION TO ADMIT EVIDENCE OF OTHER ACTS	333 - 343
4	04/07/2020	ORDER DENYING DEFENDANT'S PRO PER MOTION FOR RULING ON MOTION TO CORRECT AN ILLEGAL SENTENCE	740 - 741
3	10/17/2019	ORDER DENYING DEFENDANT'S PRO PER MOTION IN THE NATURE OF A WRIT OF CORAM NOBIS	629 - 630
4	05/12/2020	ORDER DENYING DEFENDANT'S PRO PER MOTION TO CORRECT AN ILLEGAL SENTENCE	761 - 762
2	09/12/2018	ORDER DENYING DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS	414 - 415
2	01/20/2017	ORDER DENYING STATE'S MOTION TO ADMIT EVIDENCE OF OTHER ACTS	344 - 346
2	06/12/2018	ORDER FOR PRODUCTION OF INMATE JAMES HOWARD HAYES, AKA, JAMES HOWARD HAYES, JR., BAC #2796708	409 - 410
2	03/23/2017	ORDER FOR PRODUCTION OF INMATES	351 - 357
3	08/30/2019	ORDER FOR TRANSCRIPT	594 - 594
3	07/29/2019	ORDER GRANTING DEFENDANT'S PRO PER MOTION TO WITHDRAW COUNSEL	569 - 570
2	12/18/2018	PRE-SENTENCE INVESTIGATION REPORT (UNFILED) CONFIDENTIAL	436 - 446
2	08/29/2017	RECEIPT OF COPY	366 - 366
2	10/24/2017	RECEIPT OF COPY	371 - 371

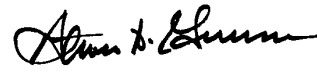
I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
3	01/27/2020	REPLY TO STATE'S OPPOSITION TO "MOTION TO CORRECT AN ILLEGAL SENTENCE"	695 - 703
2	04/25/2018	STATE'S NOTICE OF MOTION AND MOTION TO DISMISS DEFENDANT'S AMENDED COURTESY FILING OF DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS	399 - 404
2	01/31/2019	STATE'S NOTICE OF MOTION AND MOTION TO REVOKE BAIL	452 - 470
3	10/01/2019	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR A WRIT OF CORAM NOBIS	616 - 624
3	12/30/2019	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO CORRECT AN ILLEGAL SENTENCE	683 - 690
1	12/05/2016	STATE'S RESPONSE TO DEFENDANT'S MOTION FOR DISCOVERY, AND STATE'S REQUEST FOR RECIPROCAL DISCOVERY	119 - 139
2	02/08/2017	SUBSTITUTION OF ATTORNEY	347 - 349
1	07/29/2016	TRANSCRIPT OF HEARING HELD ON JUNE 14, 2016	56 - 98
3	09/25/2019	TRANSCRIPT OF HEARING HELD ON NOVEMBER 7, 2018	603 - 611
2	03/27/2019	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/COPY OF UNFILED MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE AND NOTICE OF MOTION (CONTINUED)	472 - 480
3	03/27/2019	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/COPY OF UNFILED MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE AND NOTICE OF MOTION (CONTINUATION)	481 - 482
3	04/15/2019	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/COPY OF UNFILED MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE "ADDENDUM" AND UNFILED NOTICE OF MOTION	490 - 499
3	06/04/2019	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/COPY OF UNFILED MOTION TO MODIFY AND/OR CORRECT ILLEGAL	508 - 532

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
		SENTENCE AND UNFILED NOTICE OF MOTION	
3	06/18/2019	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/COPY OF UNFILED MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE AND UNFILED NOTICE OF MOTION	534 - 559
3	07/15/2019	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/COPY OF UNFILED MOTION TO WITHDRAW PLEA "ALFORD PLEA" AND UNFILED NOTICE OF MOTION	560 - 568
2	02/07/2018	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/COPY OF UNFILED PETITION FOR WRIT OF HABEAS CORPUS	372 - 380
3	10/04/2019	UNFILED DOCUMENT(S) - INMATE CORRESPONDENCE W/COPY OF UNFILED DEFAULT	625 - 628
3	04/29/2019	UNSIGNED DOCUMENT(S) - ORDER	507 - 507

THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
1 - 52
WILL FOLLOW VIA
U.S. MAIL



CLERK OF THE COURT

1 INFM
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL DICKERSON
6 Deputy District Attorney
7 Nevada Bar #013476
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

12 I.A. 6/23/16
13 10:00 AM
14 PD

DISTRICT COURT
CLARK COUNTY, NEVADA

15 THE STATE OF NEVADA,
16 Plaintiff,

17 -vs-

18 JAMES HOWARD HAYES,
19 aka James Howard Hayes, Jr., #2796708

20 Defendant.

CASE NO: C-16-315718-1

DEPT NO: XII

INFORMATION

21 STATE OF NEVADA }
22 COUNTY OF CLARK } ss.

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

25 That JAMES HOWARD HAYES, aka James Howard Hayes, Jr., the Defendant(s)
26 above named, having committed the crime of BURGLARY (Category B Felony - NRS
27 205.060 - NOC 50424), on or about the 9th day of April, 2013, within the County of Clark,
28 State of Nevada, contrary to the form, force and effect of statutes in such cases made and
provided, and against the peace and dignity of the State of Nevada, did then and there wilfully,
unlawfully, and feloniously enter, with intent to commit larceny, Room No. 17151, of the

///

///

///

///

1 EXCALIBUR HOTEL & CASINO, located at 3850 South Las Vegas Boulevard, Las Vegas,
2 Clark County, Nevada, occupied by JOSHUA JARVIS.

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

5
6 BY *M.A. Dickerson*
MICHAEL DICKERSON
7 Deputy District Attorney
Nevada Bar #013476
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

NAME

ADDRESS

CUSTODIAN OF RECORDS
OR DESIGNEE

Clark County Detention Center,
330 S. Casino Center Blvd., Las Vegas, NV

CUSTODIAN OF RECORDS
OR DESIGNEE

LVMPD Communications

CUSTODIAN OF RECORDS
OR DESIGNEE

LVMPD Dispatch

CUSTODIAN OF RECORDS
OR DESIGNEE

LVMPD Records, 400 S. Martin Luther King Blvd.,
Las Vegas, NV

CUSTODIAN OF RECORDS
OR DESIGNEE

LVMPD Project Management & Video Bureau

CUSTODIAN OF RECORDS
OR DESIGNEE

Nevada DMV

BARLOW, DAWN OR DESIGNEE Clark County District Attorney's Office-Investigator

ERMILIO, JOHN

Excalibur Hotel, 3850 S. Las Vegas Blvd., Las Vegas, NV

JARVIS, JOSHUA

46 Kenneth St., Hartford, CT

ORTIZ, JESSICA

Unknown

RADER, D.

LVMPD P#4918

RADER, W.

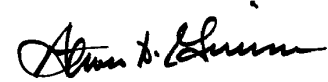
LVMPD P#5468

RAMIREZ, DAISY

Unknown

13F10723X /cc/L2
LVMPD EV#1304090843
(TK5)

Electronically Filed
07/29/2016 01:22:22 PM



CLERK OF THE COURT

TRAN

Case No. C-16-315718-1

Dept. 5

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,)

Plaintiff,)

vs.)

JAMES HOWARD HAYES,)

Defendant.)

PRELIMINARY HEARING
JC Case No. 13F10723X

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE JUDGE CYNTHIA CRUZ, JUSTICE OF THE PEACE
Tuesday, June 14, 2016, 9:00 a.m.

APPEARANCES:

For the State: Michael Dickerson, Esq.
Deputy District Attorney

For the Defendant: Kelli DeVaney-Sauter, Esq.
Deputy Public Defender

REPORTED BY: BILL NELSON, RMR, CCR No. 191

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESS	DR	CR	RDR	RCR
Joshua Jarvis	5	21	31	

1 LAS VEGAS, NEVADA; TUESDAY, JUNE 14, 2016

2
3 P R O C E E D I N G S

4
5 THE COURT: Let's get everybody moving.

6 And we're going to get going on James Howard
7 Hayes, unless we have a final resolution.

8 All right. So let's transport the in-custodies
9 out, so that we can get going on the preliminary
10 hearing.

11 James Howard Hayes, 13F10723X.

12 He's present out of custody with the assistance
13 of the Public Defender.

14 This is the time and date set for the preliminary
15 hearing.

16 MS. DEVANEY-SAUTER: Your Honor, the Defense is
17 ready to proceed.

18 MR. DICKERSON: The State's ready to proceed,
19 Your Honor.

20 THE COURT: All right. Any preliminary motions
21 to make at this particular juncture?

22 MS. DEVANEY-SAUTER: Your Honor, I would ask the
23 exclusionary rule be invoked at this time.

24 THE COURT: Counsel invoked the exclusionary
25 rule.

1 All witness, aside from the State's first
2 witness, please step outside the courtroom.

3 State, call your first witness.

4 MR. DICKERSON: The State's first witness is
5 Joshua Jarvis.

6 THE MARSHAL: Please step up to the witness
7 stand.

8 Remain standing, and face the clerk to be sworn.

9

10 **JOSHUA JARVIS,**

11

12 who, being first duly sworn to tell

13 the truth, the whole truth, and

14 nothing but the truth, was examined

15 and testified as follows:

16 THE CLERK: Please be seated.

17 Please state your full name, spelling both your
18 first and last name for the record.

19 THE WITNESS: Joshua Jeremiah Jarvis,
20 J-o-s-h-u-a, last name Jarvis, J-a-r-v-i-s, middle name
21 Jeremiah, J-e-r-e-m-i-a-h.

22

23

24

25

- - - -

DIRECT EXAMINATION OF JOSHUA JARVIS

BY MR. DICKERSON:

Q. Mr. Jarvis, on April 9th, 2013 were you here in Las Vegas on vacation?

A. Yes.

Q. And at that point in time were you staying at the Excalibur Hotel casino?

A. Yes, I was.

Q. Located at 3850 south Las Vegas Boulevard?

A. That's correct.

Q. And specifically that is here in Clark County, Nevada?

A. Yeah.

Q. And the room that you were staying in was room 17151?

A. I believe so.

I'm not -- It was a while ago, I'm not sure exactly.

Q. That rings a bell to you?

A. Yes.

Q. At that point in time in the morning hours of April 9th, 2013 where were you?

A. I was in the room the whole time.

Q. In that hotel room?

1 A. Yes.

2 Q. At the Excalibur Hotel?

3 A. That's correct.

4 Q. The one you were staying in?

5 A. Yes.

6 Q. And did something out of the ordinary happen in
7 the early morning hours of April 9th, 2013?

8 A. I heard some rattling, which was kind of
9 upsetting because my sister and her friends were out, so
10 I was guessing it was them, until I saw him in the room,
11 and I was wondering if he was with the people I was
12 with -- on vacation with, and then I noticed that there
13 was no one else there besides him, so that's when I got
14 up, and he proceeded to run out the door -- or tried to
15 run out the door.

16 Q. Okay. So you're saying, he, you saw he in the
17 room.

18 Who are you referring to?

19 A. James, that guy right there.

20 MR. DICKERSON: Your Honor, if the record could
21 reflect, the witness just identified the Defendant?

22 THE COURT: It will.
23
24
25

1 BY MR. DICKERSON:

2 Q. So the Defendant is the individual you saw in
3 your room?

4 A. That's correct.

5 Q. And in the -- early in the morning?

6 A. That's correct.

7 Q. What did you happen to see when you wake up?

8 A. I just heard rattling, I saw him going through
9 luggage.

10 I kind of yelled at him, and then he ran through
11 the door.

12 I ran towards him.

13 He didn't seem to be aggressive at all.

14 I turned around, patted him down, and then I took
15 his wallet out. At that time I told him to sit down on
16 the bed and put the license right in front of the camera
17 and took a picture of him.

18 Q. Okay. So we'll get to all of that.

19 Firstly, who were you staying with in the hotel
20 room?

21 A. It was my sister, her friend, which was in the
22 hotel room, she was pretty much knocked out, and my
23 girlfriend at the time.

24 Q. Okay. What is your sister's name?

25 A. Jessica Jarvis.

1 Q. And what is -- or what was your girlfriend at the
2 time, her name?

3 A. Misty Mustafa.

4 Q. And you were staying with both of them in that
5 room 17151?

6 A. That's correct.

7 Q. Now, it's approximately 7:05 a.m. when these
8 events start?

9 A. That's correct.

10 Q. Who's in the room at that point in time?

11 A. At that time it was just me and my sister's
12 friend, Daisy.

13 Q. Daisy is who?

14 A. My sister's friend, she's the third person that
15 was on vacation with us.

16 Q. Okay. Is she staying in that room?

17 A. Yes, that's correct.

18 Q. And are you guys awake?

19 A. I was awake the whole time.

20 She was asleep.

21 Q. So were you awake prior to this event, or asleep?

22 A. Negative.

23 I was asleep.

24 Q. So at approximately 7:05 a.m. you hear something?

25 A. That --

1 Q. What exactly does it sound like?

2 A. Just rustling around under -- I didn't hear any
3 door open, just really sounds I'm not accustomed to
4 because usually my sister's -- or her friends come in
5 really loud.

6 Q. Okay. So it was quiet?

7 A. Yes, it was quiet.

8 Q. Rustling?

9 A. Yes.

10 Q. Where did you hear that sound coming from?

11 A. From like the lower end of my bed towards the
12 wall.

13 Q. Okay. What -- or where is this area?

14 A. When you walk in, there's the dresser with the
15 TV.

16 When you first walk in, that's where tall luggage
17 was at.

18 So it's like there's two beds, and then the
19 hallway is right there at the end of the bed next to the
20 wall, next to the TV.

21 Q. Okay. And the luggage was next to the wall.

22 Is there a window there as well?

23 A. Negative.

24 Q. If you could, describe the room from the point of
25 entry from the door, could you do that for the Court?

1 A. Standing up or --

2 Q. No, describing if you're looking into the room
3 from the door to the room.

4 A. When you look into the room, there's a window
5 facing 12:00.

6 To the right side there's two beds.

7 As soon as you pass the hallway, there's a TV on
8 the left side, just before you get to the window, and
9 there's luggage right before you get to the TV.

10 Q. Okay. So the luggage was directly in front of
11 the bed?

12 A. That's correct.

13 Q. And is that the bed you were sleeping on?

14 A. Yes.

15 Q. Was the individual you identified as Daisy, was
16 she also sleeping in that bed?

17 A. Negative.

18 On the bed to the right of me.

19 Q. Was there anybody else sleeping in that room?

20 A. Negative.

21 Just me and her.

22 Q. Okay. Now, when you wake up, what was the first
23 thing you see?

24 A. I see him going through the luggage, that's the
25 first thing I see.

1 Q. The Defendant?

2 A. Yes.

3 Q. So you see the Defendant going through luggage
4 that you identified as being at the foot of your bed?

5 A. That's correct.

6 Q. Can you see what part of his body at this point
7 in time?

8 A. I just saw his back, didn't see his face.

9 Q. Okay. And what did he look like at that point in
10 time?

11 A. At that point in time?

12 I don't really understand.

13 Q. What did you see, what did you recognize the
14 individual to be?

15 A. Just a guy, older male, going through my luggage,
16 or my sister's luggage.

17 Q. Did you recognize him?

18 A. Not from any time frame when we were in Vegas,
19 no.

20 That was the first time I ever seen him, when he
21 went into the hotel room.

22 Q. So you didn't know the Defendant before
23 approximately 7:05 a.m. on April 9th, 2013?

24 A. No.

25 Q. And when you wake up, you see this, what do you

1 do?

2 A. I just freaked out, just reacted and asked who he
3 is.

4 Q. What did he say?

5 A. He just stared at me and made a run for the door.

6 Q. What did you do?

7 A. I ran to the door to stop him, and at that time
8 he wasn't aggressive at all.

9 Q. How was it that you stopped him?

10 A. Just turned him around, patted him down, and then
11 at the bed sat him down at the bed, and he said, sorry.

12 MS. DEVANEY-SAUTER: Objection, Your Honor.

13 Narrative.

14 MR. DICKERSON: I don't believe so.

15 THE COURT: Overruled.

16 BY MR. DICKERSON:

17 Q. Go ahead, sir.

18 So you stopped him how?

19 A. I stopped him before he got to the door and then
20 just patted him down, and then as soon as I patted him
21 down I took his wallet out, took a picture with the
22 phone.

23 Q. So he's heading towards the door, you have to
24 grab him, you get in front of him?

25 A. I get in front of him.

1 Q. And as soon as you get in front of him what does
2 he do?

3 A. He wasn't aggressive, just --

4 Q. He just stopped?

5 A. He just stopped.

6 Q. And then you took the steps to pat him down?

7 A. That's true.

8 Q. How did you pat him down?

9 A. Just from left to right, and then took his wallet
10 out, and took his ID out, and took a picture.

11 Q. Was he facing you, or facing away from you, when
12 you patted him down?

13 A. I'm pretty sure he was facing away from me at the
14 beginning.

15 Q. Okay. So you had him turned away from you when
16 you patted him down?

17 A. That's correct.

18 Q. And while you're patting him down, you take his
19 wallet out?

20 A. That's correct.

21 Q. And once you take his wallet out, do you see
22 whether there's any identification in that wallet?

23 A. Yes, that's correct.

24 Q. And did you retrieve that identification?

25 A. That's correct.

1 Q. Did you recognize that identification as a Nevada
2 driver's license?

3 A. From the picture, yeah.

4 Q. The picture you took?

5 A. That's correct.

6 Q. So you say you pulled the wallet out, pulled the
7 ID out, then you take a picture.

8 What do you take a picture with?

9 A. With my phone.

10 Q. Your cell phone?

11 A. That's correct.

12 Q. It has a standard camera on it?

13 A. That's correct.

14 MR. DICKERSON: I'm going to ask to approach,
15 Your Honor.

16 I'll be showing him State's Proposed Exhibit a
17 and 2.

18 MS. DEVANEY-SAUTER: No objection, Your Honor.

19 MR. DICKERSON: I've already shown this to
20 Defense counsel.

21 THE COURT: Go ahead.

22 BY MR. DICKERSON:

23 Q. Sir, take a look at State's Proposed Exhibits 1
24 and 2.

25 Do you recognize these two documents?

1 A. That's correct.

2 Q. Okay.

3 A. I also seen that she was sleeping over there the
4 whole time.

5 Q. How do you recognize first State's Exhibit 1,
6 what do you recognize it to be?

7 A. This is what I took the picture of and told him
8 to sit down, and this --

9 Q. So State's Exhibit 1 is a picture you took?

10 A. That.

11 Q. Of the Defendant?

12 A. Yes, that's correct.

13 Q. And State's Exhibit 2, do you recognize this?

14 A. Yeah, I took that picture as well. It has my
15 finger on it.

16 MR. DICKERSON: Okay. The state moves for
17 admission of State's Exhibit 1 and 2, Your Honor.

18 MS. DEVANEY-SAUTER: No objection.

19 THE COURT: 1 and 2 will be admitted for the
20 purposes of the preliminary hearing only.

21 BY MR. DICKERSON:

22 Q. First we'll go into State's Exhibit 1, which is
23 right there in front of you.

24 What is that?

25 A. That's a picture of him on the bed with me taking

1 a picture of his driver's license that I took out of his
2 pocket.

3 Q. So the foreground is that the Defendant's
4 driver's license?

5 A. That's correct.

6 Q. That's the driver's license you pulled out of his
7 wallet?

8 A. Yeah.

9 Q. All right. And in the background sitting on the
10 bed, who is that?

11 A. That's my sister's friend Daisy.

12 Q. Sitting on the bed?

13 A. Sitting on the bed is the Defendant.

14 Q. That's that same individual you identified today
15 as being in your room?

16 A. Yes.

17 Q. And this is the picture you took of him in your
18 room?

19 A. That's correct.

20 Q. How long after you awoke was it you took this
21 picture?

22 A. I want to say, within like five to ten minutes.

23 Q. Okay. And at that point in time did you also
24 take another picture?

25 A. Yes, I did.

1 Q. Looking at State's Exhibit 2, is that the other
2 picture that you took?

3 A. That's correct.

4 Q. What is that a picture of?

5 A. His driver's license.

6 I took a second picture because I wasn't sure if
7 the first picture was good.

8 Q. So you took the second picture, so you could get
9 a better view of the license?

10 A. That's correct.

11 Q. And, in fact, this was the same license you
12 pulled out of the Defendant's wallet?

13 A. That's correct.

14 Q. You see the Defendant's name on that license?

15 A. Yes, I do.

16 Q. What does it say?

17 A. It says, James -- This one is black and white, so
18 I can't really see the middle one, Howard, Jr.

19 Q. Okay. And after you took these two photographs,
20 what did you do?

21 A. He wasn't aggressive, and he didn't seem like he
22 was --

23 Q. Did you say anything to him?

24 A. I can't remember much of what I said to him.

25 I just I remember him saying he was sorry.

1 Q. How many times did he tell you he was sorry?

2 A. A multiple amount of times. I can't remember
3 exactly how many times.

4 Q. That is the primary substance of what he said?

5 A. Yes, that's correct.

6 Q. Do you recall him saying anything else?

7 A. Negative.

8 Q. Did you at any point in time decide to call for
9 assistance?

10 A. From the time I apprehended him, no, and then
11 after that we called I guess the authorities within the
12 building.

13 Q. Okay. That would be security at the Excalibur
14 Hotel?

15 A. Yes.

16 Q. So you called security at Excalibur Hotel?

17 A. That's correct.

18 Q. And does anything happen during that time you're
19 calling security?

20 A. No, just they wanted to have us explain what
21 happened and a report, and that was it.

22 Q. Had the Defendant already run out of the room by
23 then?

24 A. Yeah, he left.

25 Q. How did he leave?

1 A. I just let him leave.

2 Q. He walked right out the front door?

3 A. Yeah.

4 Q. And how long after he left was it that you called
5 security?

6 A. I want to say, within like 20 minutes.

7 Q. Very short?

8 A. Yes.

9 Q. Now, you pointed out on State's Exhibit 1 that
10 Daisy was on the other bed?

11 A. Yes, that's correct.

12 Q. Was that the opposite bed that you -- that she
13 was originally on?

14 A. She was on the right side of me.

15 Q. Is that the bed that is closest to the wall?

16 A. Yeah, that's to the wall to the doorway on the
17 right side.

18 Q. Is that the bed that is directly -- or the
19 luggage that the Defendant was going through was
20 directly in front of you?

21 A. No, it was in front of my bed.

22 Q. In front of the bed close to the door?

23 A. Yes.

24 Q. The same bed he's seen sitting on in State's
25 Exhibit 1?

1 A. Yes, that's correct.

2 Q. Okay. Now, the items that he was going through
3 in front of that bed, what were they?

4 A. I don't know, that's not my luggage. That was my
5 sister and her friends' luggage.

6 Q. Okay. Do you have any idea -- or do you know at
7 all what was in there?

8 A. All I know is, she took out extra money, which I
9 told her not to do, and I don't know anything else that
10 was inside that luggage.

11 Q. Do you know how much extra money?

12 A. I think a hundred bucks or something like that.

13 MR. DICKERSON: Okay. Court's brief indulgence.

14 THE COURT: Yes.

15 BY MR. DICKERSON:

16 Q. Did you ever give the Defendant permission to be
17 in your room at Excalibur Hotel on April 9th, 2013?

18 A. Negative.

19 Q. Do you have knowledge of whether any of your
20 roommates staying in that room at that time gave the
21 Defendant permission to be in that room on April 9th,
22 2013?

23 A. Actually, no, one of them was actually crying
24 when she found out she was asleep the whole time someone
25 actually entered the room.

1 Q. Who was that?

2 A. That was Daisy.

3 Q. And so your answer whether any of your roommates
4 gave the Defendant permission to be in the room?

5 A. No, there was no permission given.

6 Q. And Daisy, why was she crying?

7 A. She felt like if I wasn't there, something could
8 have happened to her.

9 Q. Were there any steps taken after security was
10 called as far as relation to Daisy?

11 A. Just to calm her down, that was pretty much it,
12 like gave her a bottle of water and just talked to her,
13 and that was it.

14 MR. DICKERSON: The State will pass the witness.

15 THE COURT: Cross.

16 - - - -

17 **CROSS-EXAMINATION OF JOSHUA JARVIS**

18 BY MS. DEVANEY-SAUTER:

19 Q. Mr. Jarvis, there had been three other people
20 staying in this hotel room with you?

21 A. Correct.

22 Q. And to make sure I'm clear, the first is your
23 sister, Jessica Jarvis?

24 A. Yes.

25 Q. The second is Jessica's friend, Daisy Ramirez?

1 A. That's correct.

2 Q. And the third was your girlfriend?

3 A. Yes.

4 Q. And then would you repeat her name again?

5 A. Misty Mustafa.

6 Q. Thank you.

7 Okay. And how long had you known Ms. Ramirez at
8 this point?

9 A. Daisy?

10 Q. Yes.

11 A. I have known her since I was little.

12 Q. Since you were a child?

13 A. Yeah.

14 Q. How long had the four of you been in Las Vegas?

15 A. Let me see.

16 That's was our first night.

17 Q. Your first night in town?

18 A. We were coming back from California.

19 Q. What time did you arrive at the Excalibur?

20 A. Afternoonish.

21 I can't be exactly sure, that was like three
22 years ago.

23 Q. But it was daylight you think when you arrived?

24 A. Yeah, it was.

25 Q. And had you all gone out to do any partying after

1 arriving in Las Vegas?

2 A. No, not me.

3 I was the one driving, so --

4 Q. So you opted to stay behind, make sure you're the
5 designated driver and sober?

6 A. Yes, that's correct.

7 Q. And then the three ladies went out on The Strip?

8 A. The three ladies went out.

9 One of them came back at first, was Daisy, and
10 the other two stood out.

11 Q. So Misty and Jessica had remained out on the The
12 Strip?

13 A. That's correct.

14 Q. Do you remember what time Daisy had returned to
15 the hotel room?

16 A. I do not recall exactly what time.

17 I would say, probably around 1:00 -- 1:00.

18 Q. And at the time of this incident Misty and
19 Jessica had not yet returned to the hotel room?

20 A. No.

21 Q. But you had been asleep during these hours?

22 A. While they were out, yes.

23 Q. When do you believe you fell asleep?

24 A. I was pretty much -- So they took like three
25 hours to get ready, so I fell asleep around probably

1 9:00.

2 When they were ready to go out, which was around
3 I want to say 11:00, I told them to go out, they were
4 taking too long, and I have to drive in the morning.

5 The other two decided to stay out, and the other
6 one came back, and that's when I went back to sleep.

7 Q. To make sure I have it clear then, you went to
8 sleep at 9 p.m., you awoke again at 11 when the ladies
9 were ready to go out?

10 A. Yeah, I woke up, and one other person came back.

11 Q. You fell asleep again at some point after they
12 had gone out?

13 A. Exactly.

14 Q. From there, did you stay asleep until about 7
15 a.m.?

16 A. I stayed asleep until he came in.

17 MS. DEVANEY-SAUTER: Court's brief indulgence.

18 THE COURT: Yes.

19 BY MS. DEVANEY-SAUTER:

20 Q. When you were woken up, you didn't see anybody
21 going through your luggage?

22 A. No.

23 I kept all my luggage inside the vehicle.

24 Q. So this was just the ladies' luggage then in the
25 hotel room?

1 A. Exactly, most of it, yes.

2 Q. And had it all been collected at the foot of the
3 bed?

4 A. Most of it, yes.

5 The girls would leave everything all over the
6 room, so --

7 Q. So they had property kind of strewn about?

8 A. In the bathroom and stuff like that.

9 Q. Clothes everywhere, that kind of getting ready to
10 go out mess?

11 A. Not particularly, like mostly in the bathroom.

12 Q. Okay. And do you know if you didn't know what
13 was in this luggage?

14 A. Yes, I didn't know, besides she took extra money
15 out.

16 Q. Okay. And so you had patted down Mr. Hayes after
17 waking to find him in the room?

18 A. Yes, that's correct.

19 Q. But first you had been yelling and using
20 profanity you noted?

21 A. Yes, I did.

22 Q. Do you remember what you had said?

23 A. Do you want me to say verbatim?

24 Q. I don't mind profanity, yes.

25 A. I told him -- I said, who the fuck are you, and

1 what are you doing in here, and he looked at me and with
2 like just a deer in the headlights, and he tried to make
3 a run for the door, and so I patted him down to make
4 sure he didn't have any weapons or anything like that.

5 Q. And you had been then very freaked out to be
6 yelling at the stranger in your room?

7 A. Me or him?

8 Q. You.

9 A. Yeah.

10 I don't know, you would be freaked out if someone
11 came into your hotel, tried to rob you.

12 Q. Understandable.

13 A. Okay.

14 Q. So you, even though you noted that he had not
15 been aggressive, you had been aggressive?

16 A. I'm sorry?

17 Rephrase that.

18 Q. You noted earlier that the man in your room had
19 not been aggressive towards you?

20 A. When I say, he wasn't aggressive, I mean in terms
21 of when he ran for the door, and I stopped him, he
22 didn't try to hit me, or try to do anything, that's what
23 I meant by not being aggressive.

24 Q. So you took control of the situation?

25 A. Exactly.

1 Q. All right. And at this time then you patted him
2 down?

3 A. Correct.

4 Q. You noted earlier you were afraid of any sort of
5 a weapon?

6 A. Exactly.

7 Q. So you had been I take it moving quickly patting
8 him down?

9 A. Well, yeah, fairly quickly.

10 Q. You wanted to make sure as quickly as possible
11 there wasn't any sort of a weapon on his person?

12 A. Yes, that's correct.

13 Q. So --

14 MS. DEVANEY-SAUTER: Court's indulgence.

15 BY MS. DEVANEY-SAUTER:

16 Q. So you didn't do a very thorough search of this
17 person?

18 A. Ma'am, I've done a lot of searches in the past,
19 my search was good enough to know he didn't have a
20 weapon on him that could hurt me or Daisy that was in
21 the room.

22 Q. That's okay.

23 A. Can I ask you a question?

24 Do you find him innocent?

25 MS. DEVANEY-SAUTER: Well, actually --

1 THE COURT: No, you can't ask her questions.

2 It's for her to ask questions of you.

3 Don't answer that question.

4 BY MS. DEVANEY-SAUTER:

5 Q. So backing up a bit, you had not gone out with
6 the women onto The Strip?

7 A. No, not with my sister and her friends.

8 Q. So you don't know whether or not they were
9 drinking that night?

10 A. It's Vegas I'm pretty sure they were.

11 Q. You don't have any reason to know whether they
12 had met anybody out on The Strip?

13 A. I'm pretty sure that they did not know this guy.

14 Q. But you couldn't say for sure?

15 A. No, I couldn't say for sure.

16 Q. Because you had not gone out with the ladies?

17 A. No, because I know them, I grew up with them.

18 They are not stupid, they are street smart.

19 Q. But you weren't with them to see if they talked
20 to anybody while out on The Strip?

21 A. First of all, they ain't going to find him
22 attractive, so they're not going to talk to him.

23 Q. I'm simply asking you, confirming you had not
24 been with them and seen their interactions with anybody
25 that night?

1 A. I told you I was in the hotel.

2 Q. So you're telling me today then you don't believe
3 that they would have had a drink with this gentleman
4 here today?

5 MR. DICKERSON: Speculation, Your Honor.

6 THE COURT: Sustained.

7 THE WITNESS: No, I don't think so at all.

8 THE COURT: You don't have to answer that.

9 BY MS. DEVANEY-SAUTER:

10 Q. The three women staying in the hotel room with
11 you were all adults, correct?

12 A. I hope so, yeah.

13 Q. And each one then had the ability to go out on
14 their own on The Strip?

15 A. Yes, that's correct.

16 Q. Okay. And you had not been with them every
17 moment of the trip?

18 A. No.

19 Q. And as each of them was an adult in the room,
20 each would have the ability to invite someone back to
21 the room?

22 A. They would never do that.

23 Q. But they have the ability to invite people back?

24 A. They would not do that.

25 Q. But you're not making the statement today based

1 on anything you had witnessed on the night of May 28th
2 to the morning of May 29th?

3 MR. DICKERSON: Vague, Your Honor.

4 THE COURT: Actually --

5 MS. DEVANEY-SAUTER: My apologies on the date.

6 THE COURT: Why don't you rephrase the question.

7 BY MS. DEVANEY-SAUTER:

8 Q. You were not basing that statement though on
9 having been with them through the night and into the
10 early morning before this incident?

11 A. In terms of a lot, so you are saying that --
12 you're asking me, or stating that they met this guy, and
13 somehow invited him --

14 Q. Well, I'm not stating anything.

15 I'm asking you questions, sir.

16 A. Rephrase the question then.

17 Q. You say that these young women would not have had
18 any interaction with Mr. Hayes, or anyone?

19 A. Interaction?

20 Q. I'm clarifying your basis for that statement that
21 it is based on your impression of these women and your
22 opinion about Mr. Hayes, not about anything that you had
23 witnessed on the night or early morning leading into
24 this incident?

25 A. I'm basing it on my knowledge of my sister and

1 her friends, that I know that they did not meet after
2 speaking with him.

3 After the incident, they never seen the person,
4 after showing the picture that I took, so yes, I'm
5 basing it on the fact I was not with them that night.

6 MS. DEVANEY-SAUTER: No other questions, Your
7 Honor.

8 THE COURT: Redirect?

9 MR. DICKERSON: Thank you, Your Honor.

10 - - - -

11 **REDIRECT EXAMINATION OF JOSHUA JARVIS**

12 BY MR. DICKERSON:

13 Q. Mr. Jarvis, you said that you conducted a lot of
14 searches?

15 A. Yes, that's correct.

16 Q. What did you mean by that?

17 A. I did searches in Afghanistan for people trying
18 to come inside, that I was conducting a detail.

19 Q. What do you do for a living?

20 A. Right now -- I used to be in the military for
21 nine years.

22 I'm switching over to a cop.

23 Q. Doing what?

24 A. Special forces.

25 Q. And on April 9th, 2013 can you estimate how many

1 searches you've done before that date?

2 A. I don't know, probably like 60.

3 Q. Were those searches when you were in Afghanistan
4 for weapons?

5 A. That's correct.

6 Q. The search you conducted on April 9th, 2013 of
7 the Defendant, was that also a search for weapons?

8 A. That's right.

9 Q. Did you search the Defendant for any property
10 that he may have stolen?

11 A. Negative, no.

12 Q. So if there was something that was concealed upon
13 his person that was not a weapon, your search was not
14 designed to detect that?

15 A. Negative, no.

16 Q. That's correct?

17 A. Yes.

18 Q. And, in fact, you didn't find any weapons on him?

19 A. No, I did not.

20 Q. And so at that point in time was when you had him
21 sit down on the bed, you took the pictures?

22 A. That's correct.

23 Q. And to your knowledge nobody that you were here
24 in Las Vegas with gave the Defendant permission to be in
25 that room?

1 A. That's correct.

2 MR. DICKERSON: The State has no further
3 questions for this witness.

4 MS. DEVANEY-SAUTER: Court's indulgence.
5 No questions, Your Honor.

6 THE COURT: Mr. Jarvis, thank very much for your
7 time and testimony today.

8 You're excused.

9 You may step down.

10 Please don't discuss your testimony with anybody,
11 aside from a representative of the Public Defenders
12 office or District attorneys office. Both will identify
13 themselves appropriately.

14 State, call your next witness.

15 MR. DICKERSON: The State has no further
16 witnesses in this matter, Your Honor.

17 THE COURT: The State rests?

18 MR. DICKERSON: Prior to resting, the State's
19 going to strike Count 2, attempt grand larceny count.

20 THE COURT: All right. Count 2 is stricken by
21 the State.

22 MR. DICKERSON: If I could, Your Honor, Mr.
23 Jarvis, can you could just wait outside?

24 Thanks.

25 THE COURT: The State rests as to Count 1?

1 MR. DICKERSON: The State rests as to Count 1.

2 THE COURT: All right.

3 MS. DEVANEY-SAUTER: Court's brief indulgence.

4 THE COURT: Any witnesses or evidence on behalf
5 of the Defense today?

6 MS. DEVANEY-SAUTER: No, Your Honor.

7 I have advised Mr. Hayes of his right to testify
8 in this matter, and he's opting not to testify in
9 accordance with my advice.

10 THE COURT: Mr. Hayes, is that correct, you had a
11 discussion with your attorney, and you are following her
12 advice today?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. The Defense rests?

15 MS. DEVANEY-SAUTER: The Defense rests.

16 THE COURT: State.

17 MR. DICKERSON: The State will waive and rebut.

18 THE COURT: Defense.

19 MS. DEVANEY-SAUTER: Your Honor, I will note that
20 the State has failed to meet its burden of establishing
21 probable cause as to entering the hotel room on the
22 count of burglary.

23 While Mr. Jarvis here today was able to testify
24 that he had not given Mr. Hayes permission to enter the
25 room, or go through any property, he simply is unable to

1 state whether or not the other ladies in the room whose
2 luggage it was actually could have given him that
3 permission.

4 He is only able to say that he doesn't think they
5 would have been attracted to Mr. Hayes, but not that he
6 had been present with them the whole night, and did not
7 know to his knowledge -- Court's indulgence -- He's not
8 able to say he had been present with him the entire
9 night, or he had not, or he had been in a position to
10 know whether they would have actually permitted someone
11 access to the room in order to obtain property for them.

12 THE COURT: State.

13 MR. DICKERSON: Your Honor, the intent element of
14 burglary is well established by the Defendant's actions
15 once inside the room.

16 Upon first being seen in the room, the Defendant
17 was seemingly rummaging through the property of the
18 occupants of the room, which lends to the reasonable
19 inference that in rummaging through property that is not
20 yours he was there to commit a larceny of that property.

21 Upon being confronted, he looked like a deer in
22 the headlights, and he attempted to run for the door,
23 also showing his intent that was not above board intent,
24 showing what he was doing with that luggage was likely
25 trying to commit a larceny.

1 Then after being confronted by Mr. Jarvis, the
2 Defendant said, I'm sorry, which only indicates more
3 that he was not supposed to be in that room an had
4 felonious intent to be in that room.

5 It's pretty clear, Your Honor, the reasonable
6 inference is drawn, and the preliminary hearing slight
7 or marginal evidence is met for the intent element of
8 burglary.

9 THE COURT: Mr. Hayes, I do find the State has
10 met their burden of proof to hold you to answer in the
11 Eighth Judicial District Court on the charges of
12 burglary.

13 You will appear with your attorney in the Lower
14 Level Arraignment Court on the following date and time.

15 THE CLERK: June 23rd, 10 a.m., lower level
16 District Court arraignment.

17 THE COURT: My suggestion is, Mr. Hayes, stay out
18 of the resort corridor.

19 Sir, stay in contact with your attorney.

20 Make sure you make your lower level arraignment.

21 All right?

22 THE DEFENDANT: Yes, ma'am.

23 (Proceedings concluded.)
24
25

REPORTER'S CERTIFICATE

I, Bill Nelson, a Certified Court Reporter in and for the State of Nevada, hereby certify that pursuant to NRS 2398.030 I have not included the Social Security number of any person within this document.

I further Certify that I am not a relative or employee of any party involved in said action, nor a person financially interested in said action.

/s/ Bill Nelson

Bill Nelson, RMR, CCR 191

C E R T I F I C A T E

STATE OF NEVADA)

) ss.

CLARK COUNTY)

I, Bill Nelson, RMR, CCR 191, do hereby certify
that I reported the foregoing proceedings; that the same
is true and correct as reflected by my original machine
shorthand notes taken at said time and place.

/s/ Bill Nelson

Bill Nelson, RMR, CCR 191
Certified Court Reporter
Las Vegas, Nevada

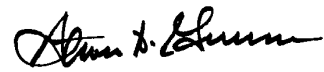
/	9	attempt ^[1] - 33:19 attempted ^[1] - 35:22 Attorney ^[1] - 1:19 attorney ^[3] - 34:11, 36:13, 36:19 attorneys ^[1] - 33:12 attracted ^[1] - 35:5 attractive ^[1] - 28:22 authorities ^[1] - 18:11 awake ^[3] - 8:18, 8:19, 8:21 awoke ^[2] - 16:20, 24:8	camera ^[2] - 7:16, 14:12 Case ^[2] - 1:2, 1:10 casino ^[1] - 5:8 CCR ^[4] - 1:23, 37:15, 38:9, 38:16 cell ^[1] - 14:10 CERTIFICATE ^[1] - 37:3 Certified ^[2] - 37:5, 38:17 certify ^[2] - 37:6, 38:9 Certify ^[1] - 37:9 charges ^[1] - 36:11 child ^[1] - 22:12 clarifying ^[1] - 30:20 Clark ^[1] - 5:12 CLARK ^[2] - 1:6, 38:6 clear ^[3] - 21:22, 24:7, 36:5 CLERK ^[2] - 4:16, 36:15 clerk ^[1] - 4:8 close ^[1] - 19:22 closest ^[1] - 19:15 clothes ^[1] - 25:9 collected ^[1] - 25:2 coming ^[2] - 9:10, 22:18 commit ^[2] - 35:20, 35:25 concealed ^[1] - 32:12 concluded ^[1] - 36:23 conducted ^[2] - 31:13, 32:6 conducting ^[1] - 31:18 confirming ^[1] - 28:23 confronted ^[2] - 35:21, 36:1 contact ^[1] - 36:19 control ^[1] - 26:24 cop ^[1] - 31:22 correct ^[43] - 5:11, 6:3, 7:4, 7:6, 8:6, 8:9, 8:17, 10:12, 11:5, 13:17, 13:20, 13:23, 13:25, 14:5, 14:11, 14:13, 15:1, 15:12, 16:5, 16:19, 17:3, 17:10, 17:13, 18:5, 18:17, 19:11, 20:1, 21:21, 22:1, 23:6, 23:13, 25:18, 27:3, 27:12, 29:11, 29:15, 31:15, 32:5, 32:16, 32:22, 33:1, 34:10, 38:11 corridor ^[1] - 36:18 counsel ^[2] - 3:24, 14:20 count ^[2] - 33:19, 34:22 Count ^[4] - 33:19, 33:20, 33:25, 34:1 County ^[1] - 5:12 COUNTY ^[2] - 1:6, 38:6 Court ^[6] - 9:25, 36:11, 36:14, 36:16, 37:5, 38:17 COURT ^[30] - 1:5, 3:5, 3:20, 3:24, 6:22, 12:15, 14:21, 15:19, 20:14, 21:15, 24:18, 28:1, 29:6, 29:8, 30:4, 30:6, 31:8, 33:6, 33:17, 33:20, 33:25, 34:2, 34:4,
/s ^[2] - 37:14, 38:15	9 ^[1] - 24:8 9:00 ^[2] - 1:15, 24:1 9th ^[8] - 5:4, 5:23, 6:7, 11:23, 20:17, 20:21, 31:25, 32:6		
1	A	B	
1 ^[10] - 14:23, 15:5, 15:9, 15:17, 15:19, 15:22, 19:9, 19:25, 33:25, 34:1 10 ^[1] - 36:15 11 ^[1] - 24:8 11:00 ^[1] - 24:3 12:00 ^[1] - 10:5 13F10723X ^[2] - 1:10, 3:11 14 ^[2] - 1:15, 3:1 17151 ^[2] - 5:16, 8:5 191 ^[4] - 1:23, 37:15, 38:9, 38:16 1:00 ^[2] - 23:17	a.m ^[6] - 1:15, 8:7, 8:24, 11:23, 24:15, 36:15 ability ^[3] - 29:13, 29:20, 29:23 able ^[3] - 34:23, 35:4, 35:8 access ^[1] - 35:11 accordance ^[1] - 34:9 accustomed ^[1] - 9:3 action ^[2] - 37:10, 37:11 actions ^[1] - 35:14 admission ^[1] - 15:17 admitted ^[1] - 15:19 adult ^[1] - 29:19 adults ^[1] - 29:11 advice ^[2] - 34:9, 34:12 advised ^[1] - 34:7 Afghanistan ^[2] - 31:17, 32:3 afraid ^[1] - 27:4 afternoonish ^[1] - 22:20 aggressive ^[9] - 7:13, 12:8, 13:3, 17:21, 26:15, 26:19, 26:20, 26:23 ago ^[2] - 5:18, 22:22 ahead ^[2] - 12:17, 14:21 ain't ^[1] - 28:21 amount ^[1] - 18:2 answer ^[4] - 21:3, 28:3, 29:8, 36:10 apologies ^[1] - 30:5 appear ^[1] - 36:13 APPEARANCES ^[1] - 1:17 apprehended ^[1] - 18:10 approach ^[1] - 14:14 appropriately ^[1] - 33:13 April ^[8] - 5:4, 5:23, 6:7, 11:23, 20:17, 20:21, 31:25, 32:6 area ^[1] - 9:13 Arraignment ^[1] - 36:14 arraignment ^[2] - 36:16, 36:20 arrive ^[1] - 22:19 arrived ^[1] - 22:23 arriving ^[1] - 23:1 aside ^[2] - 4:1, 33:11 asleep ^[10] - 8:20, 8:21, 8:23, 20:24, 23:21, 23:23, 23:25, 24:11, 24:14, 24:16 assistance ^[2] - 3:12, 18:9	background ^[1] - 16:9 backing ^[1] - 28:5 based ^[2] - 29:25, 30:21 basing ^[3] - 30:8, 30:25, 31:5 basis ^[1] - 30:20 bathroom ^[2] - 25:8, 25:11 bed ^[24] - 7:16, 9:11, 9:19, 10:11, 10:13, 10:16, 10:18, 11:4, 12:11, 15:25, 16:10, 16:12, 16:13, 19:10, 19:12, 19:15, 19:18, 19:21, 19:22, 19:24, 20:3, 25:3, 32:21 beds ^[2] - 9:18, 10:6 BEFORE ^[1] - 1:15 beginning ^[1] - 13:14 behalf ^[1] - 34:4 behind ^[1] - 23:4 bell ^[1] - 5:20 better ^[1] - 17:9 Bill ^[6] - 37:5, 37:14, 37:15, 38:9, 38:15, 38:16 BILL ^[1] - 1:23 bit ^[1] - 28:5 black ^[1] - 17:17 board ^[1] - 35:23 body ^[1] - 11:6 bottle ^[1] - 21:12 Boulevard ^[1] - 5:10 brief ^[3] - 20:13, 24:17, 34:3 bucks ^[1] - 20:12 building ^[1] - 18:12 burden ^[2] - 34:20, 36:10 burglary ^[4] - 34:22, 35:14, 36:8, 36:12 BY ^[14] - 1:23, 5:3, 7:1, 12:16, 14:22, 15:21, 20:15, 21:18, 24:19, 27:15, 28:4, 29:9, 30:7, 31:12	
		C	
		C-16-315718-1 ^[1] - 1:2 California ^[1] - 22:18 calm ^[1] - 21:11	

34:10, 34:14, 34:16, 34:18, 35:12, 36:9, 36:17 court's [2] - 20:13, 34:3 Court's [4] - 24:17, 27:14, 33:4, 35:7 courtroom [1] - 4:2 CR [1] - 2:2 cross [1] - 21:15 CROSS [1] - 21:17 CROSS-EXAMINATION [1] - 21:17 CRUZ [1] - 1:15 crying [2] - 20:23, 21:6 custodies [1] - 3:8 custody [1] - 3:12 CYNTHIA [1] - 1:15 D Daisy [13] - 8:12, 8:13, 10:15, 16:11, 19:10, 21:2, 21:6, 21:10, 21:25, 22:9, 23:9, 23:14, 27:20 date [4] - 3:14, 30:5, 32:1, 36:14 daylight [1] - 22:23 decide [1] - 18:8 decided [1] - 24:5 deer [2] - 26:2, 35:21 Defendant [19] - 1:12, 1:20, 6:21, 7:2, 11:1, 11:3, 11:22, 15:11, 16:13, 18:22, 19:19, 20:16, 20:21, 21:4, 32:7, 32:9, 32:24, 35:16, 36:2 DEFENDANT [2] - 34:13, 36:22 Defendant's [4] - 16:3, 17:12, 17:14, 35:14 Defender [2] - 1:21, 3:13 Defenders [1] - 33:11 Defense [6] - 3:16, 14:20, 34:5, 34:14, 34:15, 34:18 Dept [1] - 1:3 Deputy [2] - 1:19, 1:21 describe [1] - 9:24 describing [1] - 10:2 designated [1] - 23:5 designed [1] - 32:14 detail [1] - 31:18 detect [1] - 32:14 DEVANEY [21] - 3:16, 3:22, 12:12, 14:18, 15:18, 21:18, 24:17, 24:19, 27:14, 27:15, 27:25, 28:4, 29:9, 30:5, 30:7, 31:6, 33:4, 34:3, 34:6, 34:15, 34:19 DeVaney [1] - 1:20 DEVANEY-SAUTER [21] -	3:16, 3:22, 12:12, 14:18, 15:18, 21:18, 24:17, 24:19, 27:14, 27:15, 27:25, 28:4, 29:9, 30:5, 30:7, 31:6, 33:4, 34:3, 34:6, 34:15, 34:19 DeVaney-Sauter [1] - 1:20 DICKERSON [26] - 3:18, 4:4, 5:3, 6:20, 7:1, 12:14, 12:16, 14:14, 14:19, 14:22, 15:16, 15:21, 20:13, 20:15, 21:14, 29:5, 30:3, 31:9, 31:12, 33:2, 33:15, 33:18, 33:22, 34:1, 34:17, 35:13 Dickerson [1] - 1:18 DIRECT [1] - 5:2 directly [3] - 10:10, 19:18, 19:20 discuss [1] - 33:10 discussion [1] - 34:11 District [4] - 1:19, 33:12, 36:11, 36:16 document [1] - 37:8 documents [1] - 14:25 done [2] - 27:18, 32:1 door [15] - 6:14, 6:15, 7:11, 9:3, 9:25, 10:3, 12:5, 12:7, 12:19, 12:23, 19:2, 19:22, 26:3, 26:21, 35:22 doorway [1] - 19:16 down [19] - 7:14, 7:15, 12:10, 12:11, 12:20, 12:21, 13:6, 13:8, 13:12, 13:16, 13:18, 15:8, 21:11, 25:16, 26:3, 27:2, 27:8, 32:21, 33:9 DR [1] - 2:2 drawn [1] - 36:6 dresser [1] - 9:14 drink [1] - 29:3 drinking [1] - 28:9 drive [1] - 24:4 driver [1] - 23:5 driver's [5] - 14:2, 16:1, 16:4, 16:6, 17:5 driving [1] - 23:3 duly [1] - 4:12 during [2] - 18:18, 23:21 E early [4] - 6:7, 7:5, 30:10, 30:23 Eighth [1] - 36:11 element [2] - 35:13, 36:7 employee [1] - 37:10 end [2] - 9:11, 9:19 enter [1] - 34:24 entered [1] - 20:25 entering [1] - 34:21	entire [1] - 35:8 entry [1] - 9:25 Esq [2] - 1:18, 1:20 established [1] - 35:14 establishing [1] - 34:20 estimate [1] - 31:25 event [1] - 8:21 events [1] - 8:8 everywhere [1] - 25:9 evidence [2] - 34:4, 36:7 exactly [9] - 5:19, 9:1, 18:3, 22:21, 23:16, 24:13, 25:1, 26:25, 27:6 EXAMINATION [3] - 5:2, 21:17, 31:11 examined [1] - 4:14 Excalibur [6] - 5:8, 6:2, 18:13, 18:16, 20:17, 22:19 exclusionary [2] - 3:23, 3:24 excused [1] - 33:8 Exhibit [9] - 14:16, 15:5, 15:9, 15:13, 15:17, 15:22, 17:1, 19:9, 19:25 Exhibits [1] - 14:23 explain [1] - 18:20 extra [3] - 20:8, 20:11, 25:14 F face [2] - 4:8, 11:8 facings [4] - 10:5, 13:11, 13:13 fact [3] - 17:11, 31:5, 32:18 failed [1] - 34:20 fairly [1] - 27:9 far [1] - 21:10 fell [3] - 23:23, 23:25, 24:11 felonious [1] - 36:4 felt [1] - 21:7 final [1] - 3:7 financially [1] - 37:11 finger [1] - 15:15 first [19] - 4:1, 4:3, 4:4, 4:12, 4:18, 9:16, 10:22, 10:25, 11:20, 15:5, 15:22, 17:7, 21:22, 22:16, 22:17, 23:9, 25:19, 28:21, 35:16 firstly [1] - 7:19 five [1] - 16:22 following [2] - 34:11, 36:14 follows [1] - 4:15 foot [2] - 11:4, 25:2 forces [1] - 31:24 foregoing [1] - 38:10 foreground [1] - 16:3 four [1] - 22:14 frame [1] - 11:18 freaked [3] - 12:2, 26:5, 26:10	friend [5] - 7:21, 8:12, 8:14, 16:11, 21:25 friends [4] - 6:9, 9:4, 28:7, 31:1 friends' [1] - 20:5 front [11] - 7:16, 10:10, 12:24, 12:25, 13:1, 15:23, 19:2, 19:20, 19:21, 19:22, 20:3 fuck [1] - 25:25 full [1] - 4:17 G gentleman [1] - 29:3 girlfriend [3] - 7:23, 8:1, 22:2 girls [1] - 25:5 given [3] - 21:5, 34:24, 35:2 grab [1] - 12:24 grand [1] - 33:19 grew [1] - 28:17 guess [1] - 18:11 guessing [1] - 6:10 guy [4] - 6:19, 11:15, 28:13, 30:12 guys [1] - 8:18 H hallway [2] - 9:19, 10:7 Hayes [11] - 3:7, 3:11, 25:16, 30:18, 30:22, 34:7, 34:10, 34:24, 35:5, 36:9, 36:17 HAYES [1] - 1:11 heading [1] - 12:23 headlights [2] - 26:2, 35:22 hear [3] - 8:24, 9:2, 9:10 heard [2] - 6:8, 7:8 HEARING [1] - 1:10 hearing [4] - 3:10, 3:15, 15:20, 36:6 hereby [2] - 37:6, 38:9 hit [1] - 26:22 hold [1] - 36:10 Honor [19] - 3:16, 3:19, 3:22, 6:20, 12:12, 14:15, 14:18, 15:17, 29:5, 30:3, 31:7, 31:9, 33:5, 33:16, 33:22, 34:6, 34:19, 35:13, 36:5 hope [1] - 29:12 Hotel [5] - 5:8, 6:2, 18:14, 18:16, 20:17 hotel [12] - 5:25, 7:19, 7:22, 11:21, 21:20, 23:15, 23:19, 24:25, 26:11, 29:1, 29:10, 34:21 hours [4] - 5:22, 6:7, 23:21, 23:25
---	--	--	--

HOWARD ^[1] - 1:11 Howard ^[3] - 3:6, 3:11, 17:18 hundred ^[1] - 20:12 hurt ^[1] - 27:20 I ID ^[2] - 13:10, 14:7 idea ^[1] - 20:6 identification ^[3] - 13:22, 13:24, 14:1 identified ^[4] - 6:21, 10:15, 11:4, 16:14 identify ^[1] - 33:12 impression ^[1] - 30:21 IN ^[1] - 1:5 in-custodies ^[1] - 3:8 incident ^[4] - 23:18, 30:10, 30:24, 31:3 included ^[1] - 37:7 indicates ^[1] - 36:2 individual ^[4] - 7:2, 10:15, 11:14, 16:14 indulgence ^[6] - 20:13, 24:17, 27:14, 33:4, 34:3, 35:7 inference ^[2] - 35:19, 36:6 innocent ^[1] - 27:24 inside ^[4] - 20:10, 24:23, 31:18, 35:15 intent ^[5] - 35:13, 35:23, 36:4, 36:7 interaction ^[2] - 30:18, 30:19 interactions ^[1] - 28:24 interested ^[1] - 37:11 invite ^[2] - 29:20, 29:23 invited ^[1] - 30:13 invoked ^[2] - 3:23, 3:24 involved ^[1] - 37:10 items ^[1] - 20:2	Joshua ^[3] - 2:3, 4:5, 4:19 JOSHUA ^[5] - 4:10, 4:20, 5:2, 21:17, 31:11 Jr ^[1] - 17:18 JUDGE ^[1] - 1:15 Judicial ^[1] - 36:11 juncture ^[1] - 3:21 June ^[2] - 1:15, 36:15 JUNE ^[1] - 3:1 JUSTICE ^[2] - 1:5, 1:15	M ma'am ^[3] - 27:18, 34:13, 36:22 machine ^[1] - 38:11 male ^[1] - 11:15 man ^[1] - 26:18 marginal ^[1] - 36:7 MARSHAL ^[1] - 4:6 matter ^[2] - 33:16, 34:8 mean ^[2] - 26:20, 31:16 meant ^[1] - 26:23 meet ^[2] - 31:1, 34:20 mess ^[1] - 25:10 met ^[4] - 28:12, 30:12, 36:7, 36:10 Michael ^[1] - 1:18 middle ^[2] - 4:20, 17:18 military ^[1] - 31:20 mind ^[1] - 25:24 minutes ^[2] - 16:22, 19:6 Misty ^[4] - 8:3, 22:5, 23:11, 23:18 moment ^[1] - 29:17 money ^[3] - 20:8, 20:11, 25:14 morning ^[7] - 5:22, 6:7, 7:5, 24:4, 30:2, 30:10, 30:23 most ^[2] - 25:1, 25:4 mostly ^[1] - 25:11 motions ^[1] - 3:20 moves ^[1] - 15:16 moving ^[2] - 3:5, 27:7 MR ^[26] - 3:18, 4:4, 5:3, 6:20, 7:1, 12:14, 12:16, 14:14, 14:19, 14:22, 15:16, 15:21, 20:13, 20:15, 21:14, 29:5, 30:3, 31:9, 31:12, 33:2, 33:15, 33:18, 33:22, 34:1, 34:17, 35:13 MS ^[21] - 3:16, 3:22, 12:12, 14:18, 15:18, 21:18, 24:17, 24:19, 27:14, 27:15, 27:25, 28:4, 29:9, 30:5, 30:7, 31:6, 33:4, 34:3, 34:6, 34:15, 34:19 multiple ^[1] - 18:2 Mustafa ^[2] - 8:3, 22:5	Nelson ^[6] - 37:5, 37:14, 37:15, 38:9, 38:15, 38:16 NEVADA ^[4] - 1:6, 1:8, 3:1, 38:4 Nevada ^[4] - 5:13, 14:1, 37:6, 38:17 never ^[2] - 29:22, 31:3 next ^[4] - 9:19, 9:20, 9:21, 33:14 night ^[10] - 22:16, 22:17, 28:9, 28:25, 30:1, 30:9, 30:23, 31:5, 35:6, 35:9 nine ^[1] - 31:21 nobody ^[1] - 32:23 note ^[1] - 34:19 noted ^[4] - 25:20, 26:14, 26:18, 27:4 notes ^[1] - 38:12 nothing ^[1] - 4:14 noticed ^[1] - 6:12 NRS ^[1] - 37:7 number ^[1] - 37:8
J J-e-r-e-m-i-a-h ^[1] - 4:21 JAMES ^[1] - 1:11 James ^[4] - 3:6, 3:11, 6:19, 17:17 Jarvis ^[13] - 2:3, 4:5, 4:19, 4:20, 5:4, 7:25, 21:19, 21:23, 31:13, 33:6, 33:23, 34:23, 36:1 JARVIS ^[5] - 4:10, 4:20, 5:2, 21:17, 31:11 JC ^[1] - 1:10 Jeremiah ^[2] - 4:19, 4:21 Jessica ^[4] - 7:25, 21:23, 23:11, 23:19 Jessica's ^[1] - 21:25	K Kelli ^[1] - 1:20 kept ^[1] - 24:23 kind ^[4] - 6:8, 7:10, 25:7, 25:9 knocked ^[1] - 7:22 knowledge ^[4] - 20:19, 30:25, 32:23, 35:7 known ^[2] - 22:7, 22:11 L ladies ^[5] - 23:7, 23:8, 24:8, 28:16, 35:1 ladies' ^[1] - 24:24 larceny ^[3] - 33:19, 35:20, 35:25 LAS ^[2] - 1:5, 3:1 Las ^[6] - 5:5, 5:10, 22:14, 23:1, 32:24, 38:17 last ^[2] - 4:18, 4:20 leading ^[1] - 30:23 leave ^[3] - 18:25, 19:1, 25:5 left ^[4] - 10:8, 13:9, 18:24, 19:4 lends ^[1] - 35:18 level ^[2] - 36:15, 36:20 Level ^[1] - 36:14 license ^[9] - 7:16, 14:2, 16:1, 16:4, 16:6, 17:5, 17:9, 17:11, 17:14 likely ^[1] - 35:24 living ^[1] - 31:19 located ^[1] - 5:10 look ^[3] - 10:4, 11:9, 14:23 looked ^[2] - 26:1, 35:21 looking ^[2] - 10:2, 17:1 loud ^[1] - 9:5 Lower ^[1] - 36:13 lower ^[3] - 9:11, 36:15, 36:20 luggage ^[19] - 7:9, 9:16, 9:21, 10:9, 10:10, 10:24, 11:3, 11:15, 11:16, 19:19, 20:4, 20:5, 20:10, 24:21, 24:23, 24:24, 25:13, 35:2, 35:24	N name ^[8] - 4:17, 4:18, 4:20, 7:24, 8:2, 17:14, 22:4 narrative ^[1] - 12:13 negative ^[8] - 8:22, 9:23, 10:17, 10:20, 18:7, 20:18, 32:11, 32:15 NELSON ^[1] - 1:23	O objection ^[3] - 12:12, 14:18, 15:18 obtain ^[1] - 35:11 occupants ^[1] - 35:18 OF ^[10] - 1:5, 1:6, 1:8, 1:14, 1:15, 5:2, 21:17, 31:11, 38:4 office ^[2] - 33:12 older ^[1] - 11:15 once ^[2] - 13:21, 35:15 one ^[10] - 6:4, 6:13, 17:17, 17:18, 20:23, 23:3, 23:9, 24:6, 24:10, 29:13 open ^[1] - 9:3 opinion ^[1] - 30:22 opposite ^[1] - 19:12 opted ^[1] - 23:4 opting ^[1] - 34:8 order ^[1] - 35:11 ordinary ^[1] - 6:6 original ^[1] - 38:11 originally ^[1] - 19:13 outside ^[2] - 4:2, 33:23 overruled ^[1] - 12:15 own ^[1] - 29:14 P p.m ^[1] - 24:8 part ^[1] - 11:6 particular ^[1] - 3:21 particularly ^[1] - 25:11 party ^[1] - 37:10

partying [1] - 22:25 pass [2] - 10:7, 21:14 past [1] - 27:18 pat [2] - 13:6, 13:8 patted [9] - 7:14, 12:10, 12:20, 13:12, 13:16, 25:16, 26:3, 27:1 patting [2] - 13:18, 27:7 PEACE [1] - 1:15 people [4] - 6:11, 21:19, 29:23, 31:17 permission [7] - 20:16, 20:21, 21:4, 21:5, 32:24, 34:24, 35:3 permitted [1] - 35:10 person [6] - 8:14, 24:10, 27:11, 27:17, 31:3, 32:13, 37:8, 37:11 phone [3] - 12:22, 14:9, 14:10 photographs [1] - 17:19 picture [21] - 7:17, 12:21, 13:10, 14:3, 14:4, 14:7, 14:8, 15:7, 15:9, 15:14, 15:25, 16:1, 16:17, 16:21, 16:24, 17:2, 17:4, 17:6, 17:7, 17:8, 31:4 pictures [1] - 32:21 place [1] - 38:12 Plaintiff [1] - 1:9 pocket [1] - 16:2 point [12] - 5:7, 5:22, 8:10, 9:24, 11:6, 11:9, 11:11, 16:23, 18:8, 22:8, 24:11, 32:20 pointed [1] - 19:9 position [1] - 35:9 possible [1] - 27:10 preliminary [5] - 3:9, 3:14, 3:20, 15:20, 36:6 PRELIMINARY [1] - 1:10 present [3] - 3:12, 35:6, 35:8 pretty [7] - 7:22, 13:13, 21:11, 23:24, 28:10, 28:13, 36:5 primary [1] - 18:4 probable [1] - 34:21 proceed [2] - 3:17, 3:18 proceeded [1] - 6:14 proceedings [2] - 36:23, 38:10 PROCEEDINGS [1] - 1:14 profanity [2] - 25:20, 25:24 proof [1] - 36:10 property [7] - 25:7, 32:9, 34:25, 35:11, 35:17, 35:19, 35:20 Proposed [2] - 14:16, 14:23 Public [3] - 1:21, 3:13, 33:11 pulled [4] - 14:6, 16:6, 17:12	purposes [1] - 15:20 pursuant [1] - 37:6 put [1] - 7:16 Q questions [6] - 28:1, 28:2, 30:15, 31:6, 33:3, 33:5 quickly [3] - 27:7, 27:9, 27:10 quiet [2] - 9:6, 9:7 R Ramirez [2] - 21:25, 22:7 ran [4] - 7:10, 7:12, 12:7, 26:21 rattling [2] - 6:8, 7:8 RCR [1] - 2:2 RDR [1] - 2:2 reacted [1] - 12:2 ready [6] - 3:17, 3:18, 23:25, 24:2, 24:9, 25:9 really [4] - 9:3, 9:5, 11:12, 17:18 reason [1] - 28:11 reasonable [2] - 35:18, 36:5 rebut [1] - 34:17 recognize [7] - 11:13, 11:17, 14:1, 14:25, 15:5, 15:6, 15:13 record [2] - 4:18, 6:20 redirect [1] - 31:8 REDIRECT [1] - 31:11 referring [1] - 6:18 reflect [1] - 6:21 reflected [1] - 38:11 relation [1] - 21:10 relative [1] - 37:9 remain [1] - 4:8 remained [1] - 23:11 remember [5] - 17:24, 17:25, 18:2, 23:14, 25:22 repeat [1] - 22:4 rephrase [3] - 26:17, 30:6, 30:16 report [1] - 18:21 REPORTED [1] - 1:23 reported [1] - 38:10 Reporter [2] - 37:5, 38:17 REPORTER'S [2] - 1:14, 37:3 representative [1] - 33:11 resolution [1] - 3:7 resort [1] - 36:18 resting [1] - 33:18 rests [5] - 33:17, 33:25, 34:1, 34:14, 34:15	retrieve [1] - 13:24 returned [2] - 23:14, 23:19 rings [1] - 5:20 RMR [4] - 1:23, 37:15, 38:9, 38:16 rob [1] - 26:11 room [48] - 5:15, 5:24, 5:25, 6:10, 6:17, 7:3, 7:20, 7:22, 8:5, 8:10, 8:16, 9:24, 10:2, 10:3, 10:4, 10:19, 11:21, 16:15, 16:18, 18:22, 20:17, 20:20, 20:21, 20:25, 21:4, 21:20, 23:15, 23:19, 24:25, 25:6, 25:17, 26:6, 26:18, 27:21, 29:10, 29:19, 29:21, 32:25, 34:21, 34:25, 35:1, 35:11, 35:15, 35:16, 35:18, 36:3, 36:4 roommates [2] - 20:20, 21:3 rule [2] - 3:23, 3:25 rummaging [2] - 35:17, 35:19 run [6] - 6:14, 6:15, 12:5, 18:22, 26:3, 35:22 rustling [2] - 9:2, 9:8 S sat [1] - 12:11 SAUTER [21] - 3:16, 3:22, 12:12, 14:18, 15:18, 21:18, 24:17, 24:19, 27:14, 27:15, 27:25, 28:4, 29:9, 30:5, 30:7, 31:6, 33:4, 34:3, 34:6, 34:15, 34:19 Sauter [1] - 1:20 saw [5] - 6:10, 6:16, 7:2, 7:8, 11:8 search [6] - 27:16, 27:19, 32:6, 32:7, 32:9, 32:13 searches [5] - 27:18, 31:14, 31:17, 32:1, 32:3 seated [1] - 4:16 second [3] - 17:6, 17:8, 21:25 Security [1] - 37:7 security [5] - 18:13, 18:16, 18:19, 19:5, 21:9 see [15] - 7:7, 10:23, 10:24, 10:25, 11:3, 11:6, 11:8, 11:13, 11:25, 13:21, 17:14, 17:18, 22:15, 24:20, 28:19 seem [2] - 7:13, 17:21 seemingly [1] - 35:17 set [1] - 3:14 short [1] - 19:7 shorthand [1] - 38:12 showing [4] - 14:16, 31:4, 35:23, 35:24	shown [1] - 14:19 side [4] - 10:6, 10:8, 19:14, 19:17 simply [2] - 28:23, 34:25 sister [6] - 6:9, 7:21, 20:5, 21:23, 28:7, 30:25 sister's [6] - 7:24, 8:11, 8:14, 9:4, 11:16, 16:11 sit [3] - 7:15, 15:8, 32:21 sitting [4] - 16:9, 16:12, 16:13, 19:24 situation [1] - 26:24 sleep [2] - 24:6, 24:8 sleeping [4] - 10:13, 10:16, 10:19, 15:3 slight [1] - 36:6 smart [1] - 28:18 sober [1] - 23:5 Social [1] - 37:7 someone [4] - 20:24, 26:10, 29:20, 35:10 soon [3] - 10:7, 12:20, 13:1 sorry [5] - 12:11, 17:25, 18:1, 26:16, 36:2 sort [2] - 27:4, 27:11 sound [2] - 9:1, 9:10 sounds [1] - 9:3 south [1] - 5:10 speaking [1] - 31:2 special [1] - 31:24 specifically [1] - 5:12 speculation [1] - 29:5 spelling [1] - 4:17 ss [1] - 38:5 stand [1] - 4:7 standard [1] - 14:12 standing [2] - 4:8, 10:1 stared [1] - 12:5 start [1] - 8:8 STATE [3] - 1:6, 1:8, 38:4 state [7] - 4:3, 4:17, 15:16, 33:14, 34:16, 35:1, 35:12 State [12] - 1:18, 21:14, 33:2, 33:15, 33:17, 33:21, 33:25, 34:1, 34:17, 34:20, 36:9, 37:6 State's [14] - 3:18, 4:1, 4:4, 14:16, 14:23, 15:5, 15:9, 15:13, 15:17, 15:22, 17:1, 19:9, 19:24, 33:18 statement [3] - 29:25, 30:8, 30:20 stating [2] - 30:12, 30:14 stay [5] - 23:4, 24:5, 24:14, 36:17, 36:19 stayed [1] - 24:16 staying [9] - 5:7, 5:15, 6:4, 7:19, 8:4, 8:16, 20:20, 21:20, 29:10
---	---	---	--

step ^[3] - 4:2, 4:6, 33:9 steps ^[2] - 13:6, 21:9 stolen ^[1] - 32:10 stood ^[1] - 23:10 stop ^[1] - 12:7 stopped ^[6] - 12:9, 12:18, 12:19, 13:4, 13:5, 26:21 stranger ^[1] - 26:6 street ^[1] - 28:18 strewn ^[1] - 25:7 stricken ^[1] - 33:20 strike ^[1] - 33:19 Strip ^[6] - 23:7, 23:12, 28:6, 28:12, 28:20, 29:14 stuff ^[1] - 25:8 stupid ^[1] - 28:18 substance ^[1] - 18:4 suggestion ^[1] - 36:17 supposed ^[1] - 36:3 sustained ^[1] - 29:6 switching ^[1] - 31:22 sworn ^[2] - 4:8, 4:12	TRAN ^[1] - 1:1 TRANSCRIPT ^[1] - 1:14 transport ^[1] - 3:8 tried ^[3] - 6:14, 26:2, 26:11 trip ^[1] - 29:17 true ^[2] - 13:7, 38:11 truth ^[3] - 4:13, 4:14 try ^[2] - 26:22 trying ^[2] - 31:17, 35:25 TUESDAY ^[1] - 3:1 Tuesday ^[1] - 1:15 turned ^[3] - 7:14, 12:10, 13:15 TV ^[4] - 9:15, 9:20, 10:7, 10:9 two ^[6] - 9:18, 10:6, 14:25, 17:19, 23:10, 24:5	32:7, 32:18 white ^[1] - 17:17 whole ^[6] - 4:13, 5:24, 8:19, 15:4, 20:24, 35:6 window ^[3] - 9:22, 10:4, 10:8 WITNESS ^[3] - 2:2, 4:19, 29:7 witness ^[9] - 4:1, 4:2, 4:3, 4:4, 4:6, 6:21, 21:14, 33:3, 33:14 witnessed ^[2] - 30:1, 30:23 witnesses ^[2] - 33:16, 34:4 woke ^[1] - 24:10 woken ^[1] - 24:20 women ^[4] - 28:6, 29:10, 30:17, 30:21 wondering ^[1] - 6:11
T	U	Y
tall ^[1] - 9:16 ten ^[1] - 16:22 terms ^[2] - 26:20, 30:11 testified ^[1] - 4:15 testify ^[3] - 34:7, 34:8, 34:23 testimony ^[2] - 33:7, 33:10 THE ^[39] - 1:5, 1:8, 1:15, 3:5, 3:20, 3:24, 4:6, 4:16, 4:19, 6:22, 12:15, 14:21, 15:19, 20:14, 21:15, 24:18, 28:1, 29:6, 29:7, 29:8, 30:4, 30:6, 31:8, 33:6, 33:17, 33:20, 33:25, 34:2, 34:4, 34:10, 34:13, 34:14, 34:16, 34:18, 35:12, 36:9, 36:15, 36:17, 36:22 themselves ^[1] - 33:13 third ^[2] - 8:14, 22:2 thorough ^[1] - 27:16 three ^[6] - 21:19, 22:21, 23:7, 23:8, 23:24, 29:10 today ^[8] - 16:14, 29:2, 29:4, 29:25, 33:7, 34:5, 34:12, 34:23 took ^[25] - 7:14, 7:17, 12:21, 13:6, 13:9, 13:10, 14:4, 15:7, 15:9, 15:14, 16:1, 16:17, 16:20, 17:2, 17:6, 17:8, 17:19, 20:8, 23:24, 25:14, 26:24, 31:4, 32:21 towards ^[4] - 7:12, 9:11, 12:23, 26:19 town ^[1] - 22:17 TOWNSHIP ^[1] - 1:5	unable ^[1] - 34:25 under ^[1] - 9:2 understandable ^[1] - 26:12 unless ^[1] - 3:7 up ^[10] - 4:6, 6:14, 7:7, 10:1, 10:22, 11:25, 24:10, 24:20, 28:5, 28:17 upsetting ^[1] - 6:9	years ^[2] - 22:22, 31:21 yelled ^[1] - 7:10 yelling ^[2] - 25:19, 26:6 young ^[1] - 30:17
	V	
	vacation ^[3] - 5:5, 6:12, 8:15 vague ^[1] - 30:3 Vegas ^[8] - 5:5, 5:10, 11:18, 22:14, 23:1, 28:10, 32:24, 38:17 VEGAS ^[2] - 1:5, 3:1 vehicle ^[1] - 24:23 verbatim ^[1] - 25:23 view ^[1] - 17:9 vs ^[1] - 1:10	
	W	
	wait ^[1] - 33:23 waive ^[1] - 34:17 wake ^[3] - 7:7, 10:22, 11:25 waking ^[1] - 25:17 walk ^[2] - 9:14, 9:16 walked ^[1] - 19:2 wall ^[5] - 9:12, 9:20, 9:21, 19:15, 19:16 wallet ^[9] - 7:15, 12:21, 13:9, 13:19, 13:21, 13:22, 14:6, 16:7, 17:12 water ^[1] - 21:12 weapon ^[4] - 27:5, 27:11, 27:20, 32:13 weapons ^[4] - 26:4, 32:4,	



CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

State of Nevada,

Plaintiff

vs

James Hayes,

Defendant.

CASE NO: C-16-315718-1

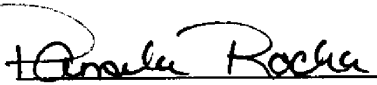
Department 12

NOTICE OF RESCHEDULING OF HEARING

Please be advised that the date and time of hearing set before the **Honorable Michelle Leavitt** has been changed. The calendar call which was scheduled on December 27th 2016 has been **rescheduled** to **December 20, 2016 at 8:30 AM.**

DATED: August 26, 2016

By:


Pamela Rocha
Judicial Executive Assistant
to Judge Michelle Leavitt
Department XII

8-26-16
MICHELLE LEAVITT
DISTRICT JUDGE
DEPT XII

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

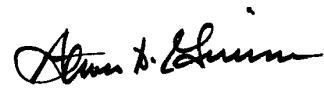
CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2016, I caused the foregoing Notice to be served by facsimile, e-filing through wiznet, by placing a copy in the attorney's folder in the Court clerk's office, or by mailing, to:

Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155
Fax: 702-455-5935

Clark County Public Defender
309 S. Third Street, Second floor
Las Vegas, Nevada 89101
Fax: 702-471-1527


Pamela Rocha
Judicial Executive Assistant



CLERK OF THE COURT

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
KELLI M. DEVANEY-SAUTER, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 13101
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
Kelli.Devaney-Sauter@ClarkCountyNV.gov
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,)
)
v.)
)
JAMES HOWARD HAYES,)
)
Defendant,)
)

CASE NO. C-16-315718-1

DEPT. NO. XII

DATE:
TIME: 8:30 a.m.

DEFENDANT'S MOTION FOR DISCOVERY

COMES NOW, the Defendant, JAMES HOWARD HAYES, by and through
KELLI M. DEVANEY-SAUTER, Deputy Public Defender and hereby files this Motion for
Discovery.

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

DATED this 18th day of November, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: : /s/ Kelli M. DeVaney-Sauter
KELLI M. DEVANEY-SAUTER, #13101
Deputy Public Defender

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

James Howard Hayes is currently charged with one count of Burglary (Category B Felony), arising from the State's assertion that Mr. Hayes committed a "door push" hotel room burglary at the Excalibur Hotel & Casino on April 9, 2013.

II. ARGUMENT

A. BOTH THE UNITED STATES AND NEVADA CONSTITUTIONS OBLIGE THE STATE TO PROVIDE THE DEFENDANT WITH DISCOVERY.

The State must provide the defense with all evidence favorable to an accused in its actual or constructive possessive prior to trial. *United States v. Blanco*, 392 F.3d 382, 393-94 (9th Cir. 2004). The State's failure to do so violates Due Process guarantees afforded to criminal defendants by the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, Section 8 of the Nevada Constitution. *Brady v. Maryland*, 373 U.S. 83, 87 (1963) ("[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good or bad faith of the prosecutor."); *Lay v. State*, 116 Nev. 1185, 1194 (2000). The State's obligation in this regard exists regardless of how the State has chosen to structure its discovery process, and regardless of whether the Defense has tendered a specific request. *Kyles v. Whitley*, 514 U.S. 419, 433 (1995); *United States v. Agurs*, 427 U.S. 97, 106-07 (1976).

Under the law, the State must turn over to the Defense any and all evidence that is (1) favorable to an accused in that it is either exculpatory or impeachment evidence, and (2) within the actual or constructive possession, including evidence possessed by the police or any other state agency. *Giglio v. United States*, 405 U.S. 150, 154-55 (1972); *Brady*, 373 U.S. at 87; *Blanco*, 392 at 393-94 (finding that exculpatory evidence in the possession of an investigating

1 agency cannot be kept out of the hands of the Defense just because a prosecutor does not have
2 it).

3
4 **B. THE STATE MUST TURN OVER ALL INFORMATION THAT IS FAVORABLE TO THE**
5 **ACCUSED, WHETHER IT IS THE SUBJECT OF A SPECIFIC DISCOVERY REQUEST OR**
6 **NOT.**

7 The State's constitutional obligation to provide material evidence to the defense exists
8 whether or not the Defendant has filed a discovery motion or tendered specific discovery
9 requests. *Agurs*, 427 U.S. 106-07, 110 ("[T]here are situations in which evidence is obviously of
10 such substantial value to the defense that elementary fairness requires it to be disclosed even
11 without a specific request."). This rule recognizes that "exculpatory information in the
12 possession of the prosecutor may be unknown to defense counsel," precipitating either defense
13 counsel's lack of a request for exculpatory evidence, or her general request for the same. *Id.* at
14 106.

15 Given the inevitable imprecision of the foregoing standard, the significance of the Due
16 Process rights involved, and the likelihood of reversal if those rights are violated, the U.S.
17 Supreme Court has long counseled that "the prudent prosecutor will resolve doubtful questions
18 in favor of disclosure." *Id.* at 108; *Mazzan v. Warden*, 116 Nev. 48, 67 (2000) ("[A] prosecutor
19 anxious about tacking too close to the wind will disclose a favorable piece of evidence.").

20
21 **i. Evidence "favorable to the accused" includes all information**
22 **material to the issue of guilt or punishment, including**
23 **impeachment evidence.**

24 The Nevada Supreme Court has squarely addressed what constitutes evidence "favorable
25 to the accused." In *Mazzan*, the court stated:

26 Due process does not require simply the disclosure of 'exculpatory'
27 evidence. Evidence also must be disclosed if it provides grounds for the
28 defense to attach the reliability, thoroughness, and good faith of the police
investigation, to impeach the credibility of the state's witnesses, or to
bolster the defense case against prosecutorial attacks. Furthermore,

1 ‘discovery in a criminal case is not limited to investigative leads or reports
2 that are admissible in evidence.’ Evidence ‘need not have been
3 independently admissible to have been material.’

4 116 Nev. at 67, quoting Carriger v. Stewart 132 F.3d 463, 481 (9th Cir. 1997) and State v.
5 Jiminez, 112 Nev. 610, 620 (1996); see also Strickler v. Greene, 527 U.S. 263, 281-82 (1999)
6 (holding that a Brady violation occurs where evidence favorable to the accused, defined as
7 exculpatory or impeachment evidence, is willfully or inadvertently suppressed by the prosecutor,
8 resulting in prejudice to the defendant).

9 The following is a non-exclusive list of the type of evidence that must be turned over
10 under the Mazzan standard:

- 11 1. Forensic testing that was ordered but not completed, or that was completed but did not
12 inculcate the defendant—e.g., fingerprint analysis that returned as “inconclusive”;
- 13 2. Criminal records, or other evidence concerning the State’s witnesses, that might suggest a
14 witness’s bias, motive to lie, or otherwise impeach credibility—e.g., civil litigation;
- 15 3. Evidence that the alleged victim in the instant case has claimed to be a victim in other
16 cases;
- 17 4. Leads, evidence, or investigations that law enforcement discounted or failed to pursue;
- 18 5. Evidence that suggests an alternate suspect, or calls into question whether a crime
19 actually occurred;
- 20 6. Anything that is inconsistent with prior or present statements of a State’s witness,
21 including the initial failure to make a statement that is later made or testified to.

22 Brady material applies not only to evidence regarding the Defendant’s innocence or guilt,
23 but also to mitigation evidence. See, e.g., State v. Bennett, 119 Nev. 589, 600-03 (2003)
24 (describing a case in which the prosecutor’s failure to turn over a codefendant’s statement to an
25 informant constituted a Brady violation because the content of the statement was relevant to
26 mitigation at sentencing). Consider a case in which the victim of a robbery identifies a defendant
27 as one of two people who robbed her. The victim reports to police that this defendant actively
28

1 prevented his codefendant from hitting her during the robbery. Although the victim's statement
2 is inculpatory, it nevertheless constitutes Brady material because, if ultimately convicted, the
3 defendant's effort to aid the victim might justifiably mitigate the punishment imposed. Thus, any
4 information that could either convince a court to impose less than a maximum sentence or rebut
5 alleged aggravating circumstances is relevant to punishment and, therefore, must be produced by
6 the State. Jiminez, 112 Nev. at 619, quoting Roberts v. State, 110 Nev. 1121, 1127 (1994)
7 (specifying that a prosecutor's duty to disclose favorable evidence includes evidence material to
8 punishment).

10 **ii. The State's disclosure obligation is the same regardless of the**
11 **specificity of the Defendant's requests.**

12 In Nevada, the standard for determining the materiality of evidence withheld by the
13 prosecution—i.e., whether a Brady violation has occurred—varies depending upon whether the
14 Defendant's discovery request was general or specific. Id. However, the State's constitutional
15 obligation to turn over favorable evidence that is material either to guilt or punishment does not
16 change. See Kyles, 514 U.S. 419, 433 (1995) (indicating that, regardless of the nature of
17 Defendant's discovery request, favorable evidence is material); U.S. v. Bagley, 473 U.S. 667,
18 682 (1985) (plurality) (concluding that the prosecution's constitutional duty to disclose favorable
19 evidence is not limited to situations where defendant requests favorable evidence). The State
20 must disclose all favorable, material evidence in its actual or constructive possession to the
21 defense, regardless of the instant Motion's specificity or lack thereof.

23 As more fully explicated below, the prosecutor's disclosure obligation further requires
24 her to meet with detectives, crime scene analysts, investigators, and/or any other State actors or
25 potential witnesses prior to trial to determine whether they possess evidence favorable to the
26 accused. See Strickler, 527 U.S. at 281, quoting Kyles, 514 U.S. at 437 ("In order to comply with
27 Brady . . . 'the individual prosecutor has a duty to learn of any favorable evidence known to
28

1 other acting on the government's behalf in this case, including police.''). This facet of the
2 prosecutor's disclosure obligation is likewise static, regardless of this Motion's specificity or
3 lack thereof.

4 **C. THE STATE IS RESPONSIBLE FOR ALL EVIDENCE IN ITS ACTUAL OR**
5 **CONSTRUCTIVE POSSESSION, AND HAS AN AFFIRMATIVE DUTY TO OBTAIN SUCH**
6 **EVIDENCE.**

7 In Kyles, the United States Supreme Court imposed upon prosecutors the affirmative duty
8 to obtain and turn over to the defense Brady material, even if a prosecutor is initially unaware of
9 its existence. 514 U.S. at 437. The Court also made plain the existence of this prosecutorial
10 obligation whether the defense lodges no request, a general request, or specific requests. Id.
11 (''[T]he prosecution's responsibility for failing to disclose known, favorable evidence rising to a
12 material level is inescapable.') (emphasis added). In finding that the State committed a Brady
13 violation in Kyles, the Court discussed the prosecutor's "affirmative duty" in detail:

14 [T]he prosecution, which alone can know what is undisclosed . . . has a
15 duty to learn of any favorable evidence known to the others acting on the
16 government's behalf in the case, including the police. . . . Since, then, the
17 prosecutor has the means to discharge the government's Brady
18 responsibility if he will, any argument for excusing a prosecutor from
19 disclosing what he does not happen to know about boils down to a plea to
20 substitute the police for the prosecutor, and even for the courts themselves,
as the final arbiters of the government's obligation to ensure fair trials.

21 Kyles, 514 U.S. at 437, 438.

22 The Nevada Supreme Court has also expounded upon this affirmative prosecutorial
23 obligation. In Jimenez, it concluded that a due process violation results when a prosecutor
24 withholds exculpatory evidence, and deemed the prosecutor's motive for failing to disclose
25 exculpatory evidence immaterial. 112 Nev. at 618, citing Wallace v. State, 88 Nev. 549, 551-52
26 (1972). "Moreover," the court counseled, "even if the detectives withheld their reports without
27 the prosecutor's knowledge, 'the state attorney is charged with constructive knowledge and
28

1 possession of evidence withheld by other state agents, such as law enforcement officers.” Id. at
2 620, quoting *Gorham v. State*, 597 So.2d 782, 784 (Fla. 1995).

3 This affirmative duty means that a prosecutor may not enlist ignorance to excuse any
4 failure to meet her constitutional discovery obligations. A prosecutor’s lack of subjective
5 knowledge neither excuses nor assuages a discovery violation because the individual prosecutor
6 is legally obligated to contact any and all State agents. Furthermore, the scope of this legal
7 obligation demands more than a placing a call to the local police department or chatting with the
8 lead detective. See *Kyles*, 514 U.S. at 432-39 (placing on the prosecutor the duty to become
9 aware of exculpatory or impeachment evidence, assess its materiality, and disclose evidence
10 material to guilt or punishment to the defense).

12 Moreover, evidence in the prosecutor’s constructive possession includes evidence
13 actually possessed by a jurisdictionally diverse law enforcement agent that is cooperating with
14 local law enforcement. In *Bennett*, the Nevada Supreme Court concluded that a Utah police
15 detective was aware of evidence favorable and material to the defense. 119 Nev. at 603. The
16 court deemed it “appropriate to charge the State with constructive knowledge of the evidence
17 because the Utah police assisted in the investigation of this crime” Id. Extrapolating this
18 principal, out-of-state law enforcement officers and agencies, parole and probation officers,
19 welfare agents, employees of Child Protective Services, and correctional facility personnel, inter
20 alia, are all potential State agents from whom prosecutors must affirmatively collect Brady
21 material.
22
23

24 Exculpatory evidence cannot be kept out of the hands of the defense just
25 because the prosecutor does not have it, where an investigative agency
26 does. That would undermine Brady by allowing the investigating agency
27 to prevent production by keeping the report out of the prosecutor’s hands
28 until the agency decided the prosecutor ought to have it, and by allowing
the prosecutor to tell the investigators not to give him certain material
unless he asked for them.

1 United States v. Zuno-Arce, 44 F.3d 1420, 1427 (9th Cir. 1995).

2 This affirmative obligation is entrusted to prosecutors in the interest of justice. See Brady,
3 373 U.S. at 87-88 (“A prosecution that withholds evidence on demand of an accused which, if
4 made available, would tend to exculpate him or reduce the penalty . . . casts the prosecutor in the
5 role of an architect of a proceeding that does not comport with standards of justice . . .”). When
6 prosecutors fail to uphold this affirmative obligation, they violate constitutional Due Process. See
7 U.S. Const. amend. V, XIV; Nev. Const. Art. 1, §8.
8

9 **D. THE STATE MUST PROVIDE THE DEFENSE WITH ALL INFORMATION REQUIRED**
10 **UNDER NRS 174.235, INCLUDING THE DEFENDANT’S DIRECT AND VICARIOUS**
11 **STATEMENTS.**

12 NRS 174.235 requires the State to provide the Defendant with discovery and obliges the
13 State to permit inspection of a defendant’s written or recorded statements. In the interest of
14 fundamental fairness, NRS 174.235 should be read to compel the State’s disclosure of any and
15 all statements allegedly made by the Defendant, or for which the Defendant can be held
16 vicariously liable.

17 Courts have recognized the fundamental fairness of “granting the accused equal access to
18 his own words, no matter how the Government came by them.” See United States v. Caldwell,
19 543 F.2d 1333, 1353 (D.D.C. 1974) (emphasis added). This principle of “fundamental fairness”
20 should expand the scope of the State’s obligation regarding the Defendant’s statements to
21 include the Defendant’s oral statements and statements for which the Defendant is vicariously
22 liable.
23

24 Under NRS 51.035(3)(a) and (e), a defendant can be vicariously liable for a statement
25 made by a third party in a representative capacity or by a coconspirator in furtherance of the
26 conspiracy. Because a Defendant may be held accountable for these statements as if they were
27 his own, and because NRS 174.235 requires the State to permit inspection of a Defendant’s
28

1 written or recorded statements, fundamental fairness dictates that statements for which the
2 Defendant could be vicariously liable under NRS 51.035(3)(a) and (e) should be included within
3 the definition of a Defendant's "statement."

4 **E. DEFENDANT'S SPECIFIC REQUESTS**

5 The following specific requests are meant only to assist the State in its duty to locate and
6 disclose required discovery material. The following enumerated requests do not in any way limit
7 or supplant the foregoing generalized duties, nor do they alleviate any legal obligation placed
8 upon the prosecution by the United States and Nevada Constitutions and relevant, interpretive
9 case law.
10

11 The following requests should be read to encompass any evidence related to the instant
12 matter, as well as any other instances, acts, incidents, or information the State intends to
13 introduce at trial—e.g., other acts or prior bad acts evidence. The State must produce:
14

- 15 1. NOTES, REPORTS & DOCUMENTATION - Any and all notes, documents, and
16 records in connection with this case.¹ This request includes the formal documents
17 and raw notes of any law enforcement or state agent related to this case. It
18 includes all documents recording what physical evidence was taken in the case,
19 where it was stored, and any related chain of custody documents. In addition, the
20 request encompasses any photographs, videos, or audio recordings related to this
21 case, whether to be introduced by the state at trial or not.
- 22 2. WITNESS INFORMATION - All updated witness contact information in the
23 case, including the witnesses' last known address and telephone number.² If need
24 be, this information can be provided to defense counsel under seal for privacy and
25 security concerns, and will not be shared with the Defendant or other parties.
- 26 3. WITNESS STATEMENTS (Recordings and Notes) - Any and all notes or
27 recordings of interviews of any witnesses and any potential witnesses in the case,
28 including notes/recordings of interviews of the Defendant.³ This includes any and
all audio and video recordings of any and all witness interviews and any notes of

1 This is required under NRS 171.1965 1(b) and NRS 174.235 1(b).

2 NRS 174.234; 174.235.

3 NRS 174.235; Kyles, 514 U.S. 419, Brady, 373 U.S. 83 (and their progeny).

interviews that were not later recorded, notes of patrol officers, notes of phone calls made to potential witnesses, or attempts to contact such witnesses, including the Defendant. The State must produce any police reports, notes, or other documents that contain information pertaining to this case or any witnesses in this case (including the Defendant), no matter what the form or title of the report.

4. WITNESS STATEMENTS (Inconsistent with State's case) - Any inconsistent statements made by any material witnesses in the case to any State actor, including but not limited to any employee or representative of the District Attorney's office or the police department.⁴ Even if not recorded, written down or otherwise memorialized, the State must disclose to the Defense all details of the inconsistent statement. The request also encompasses any prior inconsistent statement that the witness' trial testimony will not reflect, and the failure of any witness to provide the police or the State with information testified to at trial. This includes any law enforcement officers' or state agents' raw notes related to any witness statements.
5. WITNESS STATEMENTS (Defendant Specific) - Defendant is entitled to any and all statements (both exculpatory and inculpatory) that he, or any other witness made, related to this case to any State actor, including but not limited to any employee or representative of the District Attorney's office or the police department. This includes any statement allegedly made by the Defendant, or for which the Defendant can be held vicariously liable.⁵ Any notes of any statements by the Defendant, to include any raw notes of law enforcement officers or other agents of the State who have had contact with the Defendant in this case.
6. WITNESS BENEFITS - Any and all records and notes regarding any benefits or assistance given to any informant or witness related to the case, as well as any other evidence of bias of State informants or witnesses. This includes any monetary benefits received, services or favors, or promises of favorable treatment, witness fees, and payments for pretrial interviews. This also includes an estimate of future benefits to be received during or after the trial.⁶
7. INCONSISTENT INFORMATION - Any and all information that tends to show the defendant did not commit the crimes alleged or that presents the possibility of another perpetrator or explanation for the acts/harm alleged.⁷ This includes

⁴ NRS 174.235; Kyles, 514 U.S. 419, Brady, 373 U.S. 83 (and their progeny).

⁵ Under NRS 51.035(3)(a)(e), a defendant can be vicariously liable for a statement made by a third party. Thus, NRS 174.235 should be construed to include within the definition of a defendant's "statement" both the words actually uttered by the Defendant and any statements for which the defendant may be held vicariously liable. See *United States v. Caldwell*, 543 F.2d 1333, 1353 (D.D.C. 1974) (finding that there is a fundamental fairness involved in "granting the accused equal access to his own words, no matter how the Government came by them").

⁶ This is relevant to issues regarding possible bias, credibility, motive to lie, and impeachment. See *Davis v. Alaska*, 415 U.S. 308 (1974).

⁷ NRS 174.235; Kyles, 514 U.S. 419, Brady, 373 U.S. 83 (and their progeny); see also *Holmes v. South Carolina*, 547 U.S. 319 (2006) (preventing a defendant from presenting evidence of third-party guilt deprives him of a

information regarding any informants or witnesses who do not fully corroborate the State's case, as well as witnesses or documents that serve to impeach the State's evidence. In addition, the request encompasses any information concerning an investigation and/or arrest of any other individual for the charged crime and any information suggesting a possible suspect other than the defendant.

8. WITNESSES CRIMINAL HISTORY - Any information regarding the criminal history of any witness in the case.⁸ This includes any juvenile record, misdemeanors, or any other information that would go to the issue of credibility, veracity and bias, whether or not the information is admissible by the rules of evidence.⁹

9. UNRELIABILITY OF WITNESSES - Any information tending to show the unreliability of a State informant or witness in the case.¹⁰ This includes information that would tend to discredit the testimony of a State informant or witness, including any citizen complaints against the officers involved in this incident.

10. INFORMANT TIPS - Any information related to the case given by anyone to any police department, state agency, or crime tip organization such as Crime Stoppers, and any reward or benefit received for such tip¹¹

11. PRESERVATION OF EVIDENCE - All relevant reports of chain of custody and all reports of any destruction of evidence or failure to collect and/or preserve evidence in the case.¹²

meaningful right to present a complete defense under the 14th and 6th Amendments of the United States Constitution).

⁸ NRS 174.235; Kyles, 514 U.S. 419, Brady, 373 U.S. 83 (and their progeny).

⁹ The State is frequently operates under the mistaken impression that they need only disclose felony convictions from the last ten (10) years that can be used as impeachment under NRS 50.095. However, in Davis, 415 U.S. 308, the United States Supreme Court found that a witness can be attacked by

revealing possible biases, prejudices, or ulterior motives of the witnesses as they may relate directly to the issues or personalities on the case at hand. The partiality of a witness is...always relevant as discrediting the witness and affecting the weight of his testimony.

Id. at 354. The Court found that the State's policy interest in protecting the confidentiality of a juvenile offender's record must yield to the Defendant's right to cross examine as to bias. *Id.* at 356. See also, Lobato v. State, 120 Nev. 512 (2004) (discussing the nine basic modes of impeachment). Therefore, juvenile records, misdemeanors and older criminal records may yield information relevant to many forms of impeachment other than that outlined in NRS 50.095.

¹⁰ *Id.*

¹¹ NRS 174.235; Kyles, 514 U.S. 419, Brady, 373 U.S. 83 (and their progeny).

¹² Destruction of evidence can result in dismissal of the case or a jury instruction stating such evidence is presumed favorable to the accused. *Sanborn v. State*, 107 Nev. 399, 409 (1991); *Sparks v. State*, 104 Nev. 316, 319 (1988); *Crockett v. State*, 95 Nev. 859, 865 (1979).

1 12. ELECTRONIC COMMUNICATIONS - Any and all electronic communications in the
2 case, as well as any reports related to those communications.¹³ This includes recordings
3 and transcripts of any 911 telephone calls, 311 telephone calls, or any other recorded
4 police telephone calls related to this case, LVMPD Call and Dispatch Log (“CAD Log”) and related reports, a key for the codes used in CAD Logs and related reports, as well as any radio runs.

5 a. Specifically, albeit nonexclusively, the defense requests
6 production of the following: Any electronic communications,
7 recorded communications, CAD Log, and/or transcripts of
communications related to LVMPD Event No. 130409-0843.

8 13. WARRANTS / AFFIDAVITS - Copy of any and all warrants obtained and or used in
9 connection with the instant offense, to include affidavits and any recording or writings
10 related to the affidavits and/or warrants.

11 DATED this 18th day of November, 2016.

12 PHILIP J. KOHN
13 CLARK COUNTY PUBLIC DEFENDER

14
15 By: /s/ Kelli M. DeVaney-Sauter
16 KELLI M. DEVANEY-SAUTER, #13101
17 Deputy Public Defender
18
19
20
21
22
23
24
25
26
27

28 ¹³ Id.

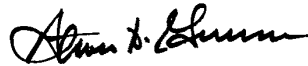
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing MOTION on for hearing before the Court on the 12-6-16, 2016, at 8:30 a.m.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

CERTIFICATE OF ELECTRONIC SERVICE

By: /s/ Patty Barber-Bair
An employee of the
Clark County Public Defender's Office



CLERK OF THE COURT

1 **NOTC**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL R. DICKERSON
6 Deputy District Attorney
7 Nevada Bar #13476
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,

11 -vs-

12 JAMES HOWARD HAYES, aka,
13 James Howard Hayes, Jr., #2796708
14 Defendant.

CASE NO: C-16-315718-1

DEPT NO: XII

15 **NOTICE OF INTENT TO SEEK PUNISHMENT AS**
16 **A HABITUAL CRIMINAL**

17 TO: JAMES HOWARD HAYES, aka, James Howard Hayes, Jr., Defendant; and

18 TO: KELLI DEVANEY-SAUTER, DEPUTY PUBLIC DEFENDER,

19 Counsel of Record:

20 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that pursuant to NRS
21 207.010, the STATE OF NEVADA will seek punishment of Defendant JAMES HOWARD
22 HAYES, aka, James Howard Hayes, Jr., as a habitual criminal in the event of a felony
23 conviction in the above-entitled action.

24 That in the event of a felony conviction in the above-entitled action, the STATE OF
25 NEVADA will ask the court to sentence Defendant JAMES HOWARD HAYES, aka, James
26 Howard Hayes, Jr. as a habitual criminal based upon the following felony convictions, to-wit:

27 ///

28 ///

1 1. That on or about 2007, the Defendant was convicted in the State of Texas,
2 for the crime of TWO (2) counts of FRAUDULENT USE/POSSESSION OF PERSONAL
3 IDENTIFICATION INFORMATION (felony).

4 2. That on or about 2007, the Defendant was convicted in the State of Texas,
5 for the crime of TWO (2) counts of CREDIT CARD ABUSE (felony).

6 3. That on or about 2011, the Defendant was convicted in the State of
7 Nevada, for the crime of ATTEMPT POSSESSION OF CREDIT OR DEBIT CARD
8 WITHOUT CARDHOLDER'S CONSENT (felony) in C270308.

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

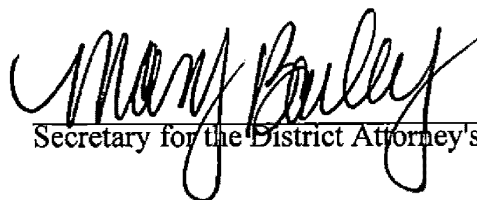
12 BY


13 MICHAEL R. DICKERSON
14 Deputy District Attorney
15 Nevada Bar #13476

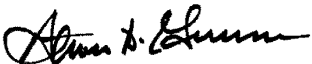
16 **CERTIFICATE OF ELECTRONIC FILING**

17 I hereby certify that service of NOTICE OF INTENT TO SEEK PUNISHMENT AS
18 A HABITUAL CRIMINAL, was made this 18th day of November, 2016, by Electronic Filing
19 to:

20 KELLI DEVANEY-SAUTER, Deputy Public Defender
21 EMAIL: kelli.devaney-sauter@clarkcountynv.gov;
22 pdclerk@clarkcountynv.gov

23 
24 Secretary for the District Attorney's Office

25
26
27
28 13F10723X/mlb/L-2


CLERK OF THE COURT

NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHAEL R. DICKERSON
Deputy District Attorney
Nevada Bar #13476
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES HOWARD HAYES, aka,
James Howard Hayes, Jr., #2796708

Defendant.

CASE NO: C-16-315718-1

DEPT NO: XII

NOTICE OF WITNESSES
[NRS 174.234(1)(a)]

TO: JAMES HOWARD HAYES, aka, James Howard Hayes, Jr., Defendant; and

TO: KELLI DEVANEY-SAUTER, DEPUTY PUBLIC DEFENDER,

Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call the following witnesses in its case in chief:

<u>NAME</u>	<u>ADDRESS</u>
ALBRIGHT, T.	LVMPD P#12930
BROMLEY, J.	LVMPD P#13723
COLE, R.	LVMPD P#13351
CUSTODIAN OF RECORDS	LVMPD, Records, 400 So. Martin Luther King
Or Designee	Blvd., LV, NV

///

1	CUSTODIAN OF RECORDS	LVMPD, Communications, 400 So. Martin Luther
2	Or Designee	King Blvd., LV, NV
3	CUSTODIAN OF RECORDS	CCDC, Records, 330 So. Casino Center Blvd.,
4	Or Designee	LV, NV
5	CUSTODIAN OF RECORDS	NV DMV, 555 Wright Way, Carson City, NV
6	Or Designee	
7	CUSTODIAN OF RECORDS	EXCALIBUR HOTEL & CASINO
8	Or Designee	3850 Las Vegas Blvd., LV, NV
9	DESOUZA, C.	LVMPD P#13979
10	DODDER, RYAN	EXCALIBUR HOTEL & CASINO, Security, LVN
11	DRIVER, J.	LVMPD P#9790
12	ERMILIO, JOHN	c/o CCDA, 200 Lewis Ave., LV, NV
13	GARRIS, D.	LVMPD P#5985
14	HAYES, J.	LVMPD P#14010
15	HENDREX, C.	LVMPD P#9995
16	JARVIS, JESSICA	c/o CCDA, 200 Lewis Ave., LV, NV
17	JARVIS, JOSHUA	c/o CCDA, 200 Lewis Ave., LV, NV
18	MCFERRIN, J.	LVMPD P#13719
19	MUSTAFAT, MESTIANA	c/o CCDA, 200 Lewis Ave., LV, NV
20	PERALTA, T.	LVMPD P#13912
21	PILETTE, CHARLES	EXCALIBUR HOTEL & CASINO, Security, LVN
22	RADER, D.	LVMPD P#4918
23	RADER, W.	LVMPD P#5468
24	RAMIREZ, DAISY	c/o CCDA, 200 Lewis Ave., LV, NV
25	SHAMIRZA, ALFRED	DISTRICT ATTORNEY INVESTIGATOR
26	STALEY, L.	LVMPD P#14734
27	WHITTY, ALAN	EXCALIBUR HOTEL & CASINO, Security, LVN
28	WILSON, M.	LVMPD P#14035

1 These witnesses are in addition to those witnesses endorsed on the Information or
2 Indictment and any other witness for which a separate Notice of Witnesses and/or Expert
3 Witnesses has been filed.

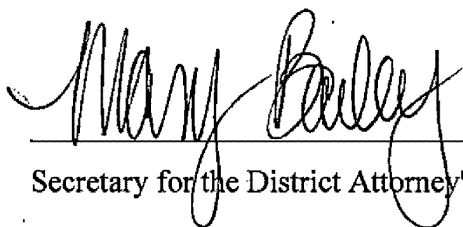
4 STEVEN B. WOLFSON
5 DISTRICT ATTORNEY
6 Nevada Bar #001565

7 BY 
8 MICHAEL R. DICKERSON
9 Deputy District Attorney
10 Nevada Bar #13476

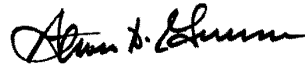
11 **CERTIFICATE OF ELECTRONIC FILING**

12
13 I hereby certify that service of Notice of Witnesses, was made this 21st day of
14 November, 2016, by Electronic Filing to:

15
16 KELLI DEVANEY-SAUTER, Deputy Public Defender
17 EMAIL: kelli.devaney-sauter@clarkcountynv.gov;
18 pdclerk@clarkcountynv.gov

19
20 
21 Secretary for the District Attorney's Office

22
23
24
25
26
27
28 13F10723X/mlb/L-2



CLERK OF THE COURT

1 RSPN
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL R. DICKERSON
6 Deputy District Attorney
7 Nevada Bar #013476
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 - -vs-

12 JAMES HOWARD HAYES, aka,
13 James Howard Hayes, Jr., #2796708,
14 Defendant.

CASE NO: C-16-315718-1

DEPT NO: XII

15 **STATE'S RESPONSE TO DEFENDANT'S MOTION FOR DISCOVERY, AND**
16 **STATE'S REQUEST FOR RECIPROCAL DISCOVERY**

17 DATE OF HEARING: 12/5/16
18 TIME OF HEARING: 8:30 A.M.

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through MICHAEL R. DICKERSON, Deputy District Attorney, and hereby
21 submits the attached Points and Authorities in Response to Defendant's Motion for Discovery.

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

25 //

26 //

27 //

28 //

1

2

1

5

6

7

3

7

1 in its possession. As the State has complied with NRS 174.235, the Court must deny the
2 motion in its entirety.

3 Moreover, Defendant seeks to compel items which are not discovery. Defendant
4 predicates the Court's authority on a line of cases beginning with Brady v. Maryland.
5 However, Brady and its progeny are not cases granting the Court the authority to compel
6 discovery, but cases defining remedies upon the failure of the State to fulfill its constitutional
7 obligations. Thus, the Court should not be in the business of usurping the constitutional
8 authority of the State in making Brady determinations. As such, the Court should deny the
9 motion in its entirety.

10 **II. BRADY AND ITS PROGENY IN NEVADA**

11 The State understands that its obligation to Defendant in this and every other case is to
12 provide discovery pursuant to the provisions of NRS 174.235 et seq., together with any
13 exculpatory material pursuant to Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963) and
14 its progeny.

15 NRS 174.235 states:

16 1. Except as otherwise provided in NRS 174.233 to NRS 174.295
17 inclusive, at the request of a defendant, the prosecuting attorney
18 shall permit Defendant to inspect and to copy or photograph any:

19 (a) Written or recorded statements or confessions made by
20 Defendant, or any written or recorded statements made by a
21 witness the prosecuting attorney intends to call during the case in
22 chief of the state, or copies thereof, within the possession, custody
23 or control of the state, the existence of which is known, or by the
24 exercise of due diligence may become known, to the prosecuting
25 attorney;

26 (b) Results or reports of physical or mental examinations,
27 scientific tests or scientific experiments made in connection with
28 the particular case, or copies thereof, within the possession,
custody or control of the state, the existence of which is known, or
by the exercise of due diligence may become known, to the
prosecuting attorney; and

(c) Books, papers, documents, tangible objects, or copies thereof,
which the prosecuting attorney intends to introduce during the
case in chief of the state and which are within the possession,
custody or control of the state, the existence of which is known, or
by the exercise of due diligence may become known, to the
prosecuting attorney.

2. Defendant is not entitled, pursuant to the provisions of this
section, to the discovery or inspection of:

(a) An internal report, document or memorandum that is prepared
by or on behalf of the prosecuting attorney in connection with the
investigation or prosecution of the case.

1 (b) A statement, report, book, paper, document, tangible object or
2 any other type of item or information that is privileged or protected
3 from disclosure or inspection pursuant to the constitution or laws
4 of this state or the Constitution of the United States.

5 3. The provisions of this section are not intended to affect any
6 obligation placed upon the prosecuting attorney by the
7 constitution of this state or the Constitution of the United States to
8 disclose exculpatory evidence to Defendant.

9 In the case of Riddle v. State, 96 Nev. 589, 613 P.2d 1031 (1980) the Nevada Supreme
10 Court reaffirmed the strictures of the provisions of Nevada's discovery statutes by making the
11 following statement:

12 The trial court is vested with the authority to order the discovery
13 and inspection of materials in the possession of the State. The
14 exercise of the court's discretion however is predicated on a
15 showing that the evidence sought is material to the presentation of
16 the defense and the existence of the evidence is known or, by the
17 exercise of due diligence may become known to the District
18 Attorney. Id. at 390.

19 The Nevada Supreme Court further addressed what items must be disclosed in Mazzan
20 v. Warden, 116 Nev. 48, 993 P.2d 25 (2000). "Brady and its progeny require a prosecutor to
21 disclose evidence favorable to the defense when that evidence is **material** either to guilt or to
22 punishment." Id. (citing Jimenez v. State, 112 Nev. 610, 618-19, 918 P.2d 687, 692 (1996))
23 (emphasis added). "In other words, evidence is material if there is a reasonable probability
24 that the result would have been different if the evidence had been disclosed. Mazzan, 116
25 Nev. at 66, 993 P.2d at 36. A reasonable probability is shown when the nondisclosure
26 undermines confidence in the outcome of the trial. Id.

27 In determining its materiality, the undisclosed evidence must be considered
28 collectively, not item by item. Kyles v. Whitley, 514 U.S. at 436, 115 S.Ct. 1555. "[T]he
character of a piece of evidence as favorable will often turn on the context of the existing or
potential evidentiary record." Id. at 439, at 1555. "In sum, there are three components to a
Brady violation: the evidence at issue is favorable to the accused; the evidence was withheld
by the state, either intentionally or inadvertently; and prejudice ensued, i.e., the evidence was
material." Mazzan, 116 Nev. at 67, 993 P.2d at 37; See also Strickler v. Greene, 527 U.S.
263, 119 S.Ct. 1936, 1948, (1999) (emphasis added).

1 **III. BRADY DOES NOT REQUIRE THE STATE TO PREPARE AND SUPPLY**
2 **THE DEFENDANT WITH A DEFENSE**

3 The State notes that neither Brady nor any of its progeny require disclosure of evidence
4 that defense through their own efforts could obtain. If the defendant requests documents or
5 evidence from the State which is obtainable through his own efforts, the State has no obligation
6 to disclose them. Defense counsel is required to utilize his or her ability and resources to
7 obtain necessary information and evidence to prepare a defense and not simply rely upon the
8 disclosures of the State. The State has no obligation to disclose “reasonably available”
9 evidence to the defense. Steese v State, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998); see
10 Browning v. State, 120 Nev. 347, 370, 91 P.3d 39, 55 (2004). The Nevada Supreme Court
11 has repeatedly held that, “The State is under no obligation to accommodate a defendant’s
12 desire to flail about in a fishing expedition” Matter of Halverson, 123 Nev. 493, 169 P.3d 1161
13 (2007) (quoting Sonner v. State, 112 Nev. 1328, 1340-41, 930 P.2d 707, 715 (1996)).

14 **IV. DEFENDANT’S REQUESTS**

15 Defendant makes thirteen (13) specific requests for discovery, while providing no
16 explanation as to why the requested information is relevant and material and/or whether it is
17 even in the custody and control of the State. Prior to addressing Defendant’s requests the State
18 notes that without first making a showing of materiality for each of the items requested, there
19 is no obligation for the State to disclose them. Defendant fails to identify why the requested
20 items would be material and exculpatory and thus the State technically at this point has no
21 obligation to disclose such items. “A defendant must advance some factual predicate which
22 makes it reasonably likely the requested file will bear information material to his or her
23 defense. A bare assertion that a document ‘might’ bear such fruit is insufficient.” See Matter
24 of Halverson, 123 Nev. 493, 169 P.3d 1161 (2007). Nonetheless, the State will address each
25 of Defendant’s bare requests for purposes of efficiency.

26 The State previously subpoenaed the case records from the Las Vegas Metropolitan
27 Police Department. The State subsequently provided Defendant all such records on or about
28 November 21, 2016.

1 **1. Notes, Reports and Documentation**

2 Defendant requests the notes of all police officers in the case. This request is not
3 covered by a single line of any discovery statute. If there is exculpatory information, the State
4 obviously must produce it, however, there is no requirement that the notes of all officers be
5 produced and the State requests that this Court not expand the statutory text to include such a
6 requirement.

7 Courts have held that officer notes are not subject to discovery statutes. In State v.
8 Bray, 569 P.2d 688 (Ore. App. 1977), an officer arrested a suspect on a DUI charge. He
9 recorded observations in a booklet. He later prepared a report from his penciled notes and
10 erased the notes. The final report was furnished to the defense. At trial, the court ruled that
11 because the officer had taken notes while speaking to a witness and those notes had been
12 destroyed, the State would be precluded from calling the witness at trial. The issue on appeal
13 was whether the fragmentary notes of the officer constituted a statement within the meaning
14 of the state discovery statutes. The Appellate Court reversed the trial court:

15 We construe the statute to require production of any "statement" which is
16 intended by its maker as an account of an event or a declaration of a fact. The
17 statutory purposes of providing witness statements are to minimize surprise,
18 avoid unnecessary trial, provide adequate information for informed pleas and to
19 promote truthful testimony by allowing examination based on prior inconsistent
20 statements. . . Requiring preservation and availability of fragmentary notes
21 intended only as a touchstone for memory would be more likely to discourage
22 police officers from taking notes, with a consequent reduction in accuracy, than
23 to promote the statutory goals. Furthermore, it would be unfair and misleading
24 to allow cross-examination of a witness based upon fragmentary or cryptic notes
25 which were never intended to express a complete statement. For these reasons,
26 we hold that fragmentary notes are not subject to production under discovery
27 statutes.

28 Id. at 690; State v. Wrisley, 909 P.2d 877 (Ore. App. 1995) (noting that police notes are not
discoverable when their substance is incorporated into a report disclosed to the defendant); see
also State v. Jackson, 571 P.2d 523 (Ore. App. 1978) (holding that a rough draft of a report an
officer dictated to a stenographer was not discoverable).

///

1 **2. Witness Information**

2 The State objects to this request as it requests the State provide information outside
3 the scope of its obligation under NRS 174.234. NRS 174.234 provides the law regarding the
4 notice of witnesses. It provides that both sides must disclose witness names and addresses it
5 intends to call in its case-in-chief not less than five (5) judicial days before trial. See NRS
6 174.234 (1) (a) (2). The State will continue to comply with NRS 174.234.

7 **3. Witness Statements**

8 The State has no objection to this request as it pertains to written or recorded witness
9 statements and those statements made by witnesses to police officers during the investigation
10 that were audio or video recorded, or memorialized in a police report. While the State usually
11 voluntarily provides all written or recorded statements of witnesses, except those protected as
12 confidential and attorney work product, the State's decision to over include discovery does
13 not expand the nature of those items subject to mandatory disclosure by court order based
14 upon statutory or constitutional authority. The State objects to rest of this request as being
15 vague, overbroad, and compound. Additionally, portions of the request fall outside the scope
16 of the State's obligations under NRS 174.235, as well as Brady v. Maryland, 373 U.S. 83
17 (1963) and Giglio v. United States, 405 U.S. 150 (1972). To the extent that the request and its
18 multiple subparts fall within the State's obligations under 174.235, Brady and Giglio, they are
19 not specific requests.

20 The State objects to any order requiring the State to present to the defense any attorney
21 work product, including attorney notes and notes regarding attempts to contact witnesses, and
22 statements made to the State during a pretrial conference. The State will not be taping its
23 pretrial conferences with witnesses. Should the defense wish to interview these witnesses
24 prior to trial, the defense is free to contact any witnesses noticed by the State and conduct their
25 own interviews. Should the witnesses say anything that is inconsistent with the statements
26 previously provided, the State will provide that information to the defense.

27 ///

28 ///

1 Additionally, the State objects to Defendant's request for "raw notes" of law
2 enforcement officers or other agents. This request is improper and additionally seeks attorney
3 work product. The State addressed Defendant's request for notes *supra* in Subsection 1.

4 **4. Witness Statements (Inconsistent with State's case)**

5 NRS 174.235 states that:

6 1. Except as otherwise provided in NRS 174.233 to 174.295,
7 inclusive, at the request of a defendant, the prosecuting attorney shall permit the
8 defendant to inspect and to copy or photograph any:

9 (a) Written or recorded statements or confessions made by the
10 defendant, or any written or recorded statements made by a witness the
11 prosecuting attorney intends to call during the case in chief of the State, or copies
12 thereof, within the possession, custody or control of the State, the existence of
13 which is known, or by the exercise of due diligence may become known, to the
14 prosecuting attorney;...

15 (Emphasis Added)

16 Defendant, in his motion, specifically requests that the State produce any oral
17 statements or statements "not recorded, written down, or memorialized" of the defendant or
18 of any State witnesses including those for which Defendant may be vicariously liable. This
19 request would seem to include any oral statement which may also be obtained during pretrial
20 conferences. Defendant further requests documentation and disclosure of any interactions
21 with outside agencies, such as child protective services or other family services agency, and
22 also requests that the State provide documentation and disclosure of any oral communications
23 between any witness and any said outside agency(s). Such a request far exceeds the State's
24 discovery obligations outlined in NRS 174.235, and does not comport with Nevada law.

25 More specifically, the Nevada Supreme Court has rejected Defendant's assertion that
26 he is entitled to oral statements of Defendant:

27 "Pretrial discovery of the accused's statements is not constitutionally compelled by the
28 Fourteenth Amendment." Mears v. State, 83 Nev. 3, 7, 422 P.2d 230, 232 (1967). Further,
voluntary disclosure is not contemplated by our statutory provisions concerning criminal
discovery. See NRS 174.235(1).

1 Thompson v. State, 93 Nev. 342, 565 P.2d 1011 (1977). As such, there is no authority
2 to order discovery of oral statements of Defendant which have not be memorialized in any
3 manner, and the same rationale applies for oral statements of other witnesses. Additionally,
4 to the extent that this request may be construed as a request for statements of witnesses made
5 during the course of pretrial conferences with the State, such materials are explicitly protected
6 from disclosure pursuant to NRS 174.235(2). See also, Lisle v. State, 113 Nev. 679, 696, 941
7 P.2d 459 (1997)(Prosecutor's notes from pretrial conference of witness constituted attorney
8 work product and were not subject to disclosure.), *holding limited on other grounds by*,
9 Middleton v. State, 114 Nev. 1089, 1117 n. 9, 968 P.2d 296, n. 9 (1998).

10 As to the defense's request for documents/records/oral statements pertaining to
11 witnesses' interactions with outside, agencies, the State objects. While, the State
12 acknowledges that its Brady obligations not only apply to materials in its possession, but also
13 extends to materials in the hands of its agents, the State maintains that rather than being
14 accountable for all evidence in the hands of all State agencies, it is only accountable for that
15 evidence in the hands of State agencies who are actually acting on its behalf in the investigation
16 and prosecution of the case. See, Kyles v. Whitley, 514 U.S. 419, 437, 115 S.Ct. 1555, 1567
17 (1995)("This in turn means that the individual prosecutor has a duty to learn of any favorable
18 evidence known to the others *acting on the government's behalf in the case, including the*
19 *police.*"); Carriger v. Stewart, 132 F.3d 463, 479 (9th Cir. 1997)("[T]he prosecution has a duty
20 to learn of any exculpatory evidence known to others *acting on the government's behalf.*").

21 In light of the foregoing authority, and Defendant's failure to cite to any statute or case
22 which would provide authority for his request for said oral statements, said request should be
23 denied.

24 **5. Defendant's Statements**

25 The State has no objection to this request as it applies to statements made by the
26 Defendant that are covered under the State's obligations under NRS 174.235, as well as Brady
27 v. Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 405 U.S. 150 (1972). This
28 request is addressed in detail above, see subsection 4 *supra*. The State objects as the

1 Defendant's request seeks raw notes, see subsection 1 *supra*, and those statements not
2 memorialized.

3 The State does, at this time and in this Response, provide the following information
4 related to a statement made by the Defendant:

- 5 • On June 14, 2016, after Defendant was leaving the courtroom following the
6 preliminary hearing, Defendant approached victim Joshua Jarvis, who was
7 standing with Detective W. Rader, and told Mr. Jarvis in the presence of Det.
8 W. Rader: "I apologize, but I didn't mean to take anything from you."

9 **6. Witness Benefits**

10 The State objects to all requests for records under this request as being vague,
11 overbroad, compound, and duplicative. However, if the State intends to call an individual at
12 trial who was offered an inducement, pursuant to Giglio, the State must disclose the
13 inducement. The State has no objection to this request as it relates to Giglio and will contact
14 the Victim Witness Office to determine what, if any, funds were provided to the witnesses in
15 this case. Aside from the statutorily required witness fees, the undersigned is not aware of any
16 other promises or benefits provided to the witnesses in this case.

17 Courts recognize that "[p]romises made by the state to a witness in exchange for his
18 testimony relate directly to the credibility of the witness." Alderman v. Zant, 22, F.3d 1541,
19 1554 (11th Cir.), cert. denied 115 S. Ct. 673 (1994). Therefore, "pursuant to Giglio, the
20 Government must disclose impeachment evidence, including all promises, inducements, or
21 threats made to a witness in order to gain the cooperation of that witness in the investigation
22 or prosecution of the defendant." United States v. Mathur, 2012 U.S. Dist. LEXIS 7085 (Nev.
23 2012). The rule requires that the jury know of any "promise which induces a key government
24 witness to testify on the government's behalf." United States v. Cawley, 481 F.2d 702 (5th
25 Cir. 1973). However,

26 The [Giglio] rule does not address nor require the disclosure of all factors which
27 may motivate a witness to cooperate. The simple belief by a defense attorney
28 that his client may be in a better position to negotiate a reduced penalty should
he testify against a codefendant is not an agreement within the purview of Giglio.

1 Alderman, 22 F.3d at 1555.

2 The United States Supreme Court has recognized three “promises” to witnesses that
3 constitute an inducement. Napue v. Illinois, 360 U.S. 264, 266 (1959) (promise of a reduced
4 sentence); Giglio v. United States, 405 U.S. 150, 151 (1972) (promise of nonprosecution);
5 United States v. Bagley, 473 U.S. 667, 671 (1985) (promise to pay informant money
6 commensurate with services rendered). While the undersigned is not aware of any such
7 inducements in this case, the State will provide that information if it exists.

8 **7. Inconsistent Information**

9 The State has will continue to abide by its obligations under NRS 174.235, as well as
10 Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 405 U.S. 150 (1972), but
11 objects to this request as s being vague, overbroad, compound, and duplicative. As addressed
12 in subsection 3 *supra*, should the witnesses say anything that is inconsistent with the
13 statements previously provided, the State will provide that information to the defense.

14 **8. Witness Criminal History**

15 The State objects to this request in so far as it is incredibly broad and outside of Nevada
16 Law. Defendant requests the criminal history of all witnesses whether or not resulting in a
17 conviction including, the NCIC for these witnesses, mental health records, criminal
18 convictions outside of the ten (10) year time-frame, juvenile records, any evidence of bad
19 character of any witness known to the State, and any other information that would go to
20 credibility and bias, whether or not that information is admissible by the rules of evidence.

21 Defendant’s request is extremely overbroad and amounts to requiring that the State
22 conduct an investigation for him so that he can conduct a smear campaign upon the victim.
23 Contrary to Defendant’s belief, the State is not required to go on a fishing expedition to help
24 Defendant develop a “self-defense argument” or to blacken the character of the victim. Sonner
25 v. State, 112 Nev. 1328, 1340-41, 930 P.2d 707, 715 (1996); NRS 50.095; Jones v. State, 93
26 Nev. 287, 564 P.2d 605 (1977). The defense is entitled to felony convictions within the last
27 ten years as well as any crimes involving moral turpitude. NRS 50.095. The State is not aware
28 of any felonies that fall within that range for any of the State’s lay witnesses.

1 The State will also provide information it has regarding convictions for crimes
2 involving moral turpitude, however, the State is not currently aware of any such convictions.

3 Pursuant to NRS 50.085, evidence of a witness's character is admissible only if it goes
4 to truthfulness or untruthfulness. Moreover, extrinsic evidence, other than a prior criminal
5 conviction, may not be used for the purpose of attacking the credibility of a witness. NRS
6 50.095 addresses the issue of impeachment by evidence of conviction of a crime as follows:

7
8 1. For the purpose of attacking the credibility of a witness,
9 evidence that the witness has been convicted of a crime is
10 admissible but only if the crime was punishable by death or
11 imprisonment for more than 1 year under the law under which the
12 witness was convicted.

13 2. Evidence of a conviction is inadmissible under this section if a
14 period of more than 10 years has elapsed since:

15 (a) The date of the release of the witness from confinement; or
16 (b) The expiration of the period of the witness's parole, probation
17 or sentence, whichever is the later date.

18 3. Evidence of a conviction is inadmissible under this section if
19 the conviction has been the subject of a pardon.

20 **4. Evidence of juvenile adjudications is inadmissible under
21 this section.**

22 5. The pendency of an appeal therefrom does not render evidence
23 of a conviction inadmissible. Evidence of the pendency of an
24 appeal is admissible.

25 6. A certified copy of a conviction is prima facie evidence of the
26 conviction.

27 (emphasis added).

28 The State opposes the release of any and all criminal history of the State's witnesses
that is outside the mandates of the Nevada Revised Statutes. It is clear that Nevada's discovery
statutes are to be strictly construed and adhered to since no Common Law right of discovery
exists in Nevada. The rule of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963), which
requires the State to disclose to the Defendant any exculpatory evidence, is founded on the
constitutional requirement of a fair trial. Brady is not a rule of discovery, however, as the
Supreme Court held in Weatherford v. Bursy, 429 U.S. 545, 559, 97 S.Ct. 837, 846 (1977):

1 There is no generally constitutional right to discovery in a criminal
2 case, and Brady did not create one [. . .] ‘the Due Process Clause
3 has little to say regarding the amount of discovery which the
4 parties must be afforded [. . .]’ Wardius v. Oregon, 412 U.S. 470,
 474, 93 S.Ct. 2208, 2212, 37 L.Ed.2d 82 (1973).

5 Thus, non-exculpatory evidence, such as the existence of any criminal record of a prosecution
6 witness and documents or papers within the possession of the State, is obtainable in advance
7 of trial only by virtue of discovery statutes. United States v. Kaplan, 554 F.2d 544 (3rd Cir.
8 1977).

9 In the case of Riddle v. State, 96 Nev. 589, 613 P.2d 1031 (1980), the Nevada Supreme
10 Court reaffirmed the structures of the provisions of NRS 174.234, et. seq. by making the
11 following statement:

12 The trial court is vested with the authority to order the discovery
13 and inspection of materials in the possession of the state. The
14 exercise of the court’s discretion, however, is predicated on the
15 showing that the evidence sought is material to the preparation of
16 the defense and the existence of the evidence is known or, by the
 exercise of due diligence, may become known to the district
 attorney.

17 Riddle, 96 Nev. at 590, 613 P.2d at 1032 (citing NRS 174.235, 174.245). In Riddle, the
18 defendant was charged with the offense of murder and filed a motion for discovery requesting
19 evidence pertaining to the decedent’s character. The trial court denied the motion and the
20 Supreme Court in affirming said denial stated, after citing the relevant provisions of NRS
21 174.235 and 174.245 that “evidence of the decedent’s predisposition for violence would only
22 be material if appellant had known of it at the time of the incident.” Id. at 590, 613 P.3d at
23 1032-33. The Court held that since the defendant’s knowledge was not alleged in her motion
24 for discovery, the denial of the motion was not an abuse of discretion. Id.

25 In addition, several Federal cases have interpreted Federal Rule of Criminal Procedure
26 16(c), from which the Nevada statute at issue was adopted. While these cases are not binding
27 on Nevada courts, they illustrate the uniform approach the federal courts have taken with
28 discovery issues. In general, the criminal records of government witnesses are not

1 discoverable under federal discovery rules absent a claim of materiality. United States v.
2 Rodgers, 549 F.2d 490 (8th Cir. 1976).

3 In United States v. Conder, 423 F.2d 904 (6th Cir. 1970), the Sixth Circuit held that the
4 required showing of materiality is not satisfied by mere conclusory allegations that the
5 requested information is material to the preparation of the defense. Likewise, the Fifth Circuit
6 in United States v. Ross, 511 F.2d 757, 762 (5th Cir. 1975), held that materiality means more
7 than an abstract logical relationship to the issues of a case. In that case, defendant's conviction
8 would not have enabled the defendant to alter the quantum of proof in his favor.

9 Defendant's motion lacks an assertion that his discovery request is reasonable.
10 Moreover, he is not entitled to the juvenile records he seeks. Davis v. Alaska, 415 U.S. 308,
11 94 S.Ct. 1105 (1974). Should Defendant seek to locate any juvenile records outside of the
12 State he is just as capable of requesting a court order to unseal those records as the State is.

13 As to Defendant's blanket request for arrests or misdemeanor convictions, "mere
14 arrests and convictions for misdemeanors may not ordinarily be admitted even for the limited
15 purpose of attacking a witness's credibility." Sheriff, Washoe County v. Hawkins, 104 Nev.
16 70, 76, 752 P.2d 769, 773 (1988); see also Azbill v. State, 88 Nev. 240, 246-47, 495 P.2d 1064,
17 1068 (1064). Defendant is not entitled to the information he is seeking. Accordingly, his
18 request should be denied.

19 The State is not required to engage in a fishing expedition for the defense. See Matter
20 of Halverson, 123 Nev. 48, 169 P.3d 1161 (2007). For example, in United States v. Flores,
21 540 F.2d 432 (9th Cir. 1976), the defendants moved prior to trial to compel the government to
22 disclose the criminal history of the names and numbers of prior cases in which an informant-
23 witness had testified on behalf of the government. The purpose of this evidence was to
24 impeach the credibility of the informant. The Ninth Circuit affirmed the trial court's denial of
25 that motion by holding that the defendant had made no showing of reasonableness. The Court
26 stated, "[t]heir request was tantamount to asking the government to fish throughout public
27 records and collate information which was equally available to the defense." Id. at 437.

28 ///

1 Although a witnesses' criminal record may be material under some circumstances, it is
2 not always relevant. Hill v. Superior Court, 112 Cal Rptr. 257, 518 P.2d 1353 (1974). In Hill,
3 the defense sought production of a witness's felony conviction record. Because the witness
4 was the only eyewitness other than the defendants, and the corroboration of his report was not
5 strong, the court found the requisite materiality and granted the defense motion. However, the
6 court concluded, "[w]e do not hold that good cause exists in every case in which a defendant
7 charged with a felony seeks discovery of any felony convictions any "rap sheet" of prosecution
8 witnesses." Id. at 1358.

9 In the present case, Defendant has requested the victim's criminal background
10 information. The State strenuously objects to defense requests that the State provide this
11 information.

12 Although Defendant liberally touts Brady v. Maryland, 373 U.S. 83 (1963) as the basis
13 for his criminal background request, the defense has failed, however, to establish that the
14 requested information falls within the scope of Brady, that is, that it might in some way be
15 exculpatory or that it might somehow constitute impeachment evidence. Moreover, Defendant
16 has not shown how such information might be "material." In other words, the defense has
17 failed to show that the lack of any State witnesses' criminal background information will
18 somehow result in an unfair trial or will produce a verdict that is not worthy of confidence.
19 See Kyles v. Whitley, 514 U.S. 419, 434 (1995).

20 The Supreme Court has stated that information is considered material if there is a
21 "reasonable probability that, had the evidence been disclosed to the defense, the result of the
22 proceeding would have been different." U.S. v. Bagley, 473 U.S. 667, 682 (1985). The
23 Supreme Court defined reasonable probability as probability sufficient to "undermine
24 confidence in the outcome" of the trial. Id. In addition, the Court in Bagley, stated that
25 "[i]mpeachment evidence . . . as well as exculpatory evidence, falls within the Brady rule." Id.
26 at 675. The Court defined impeachment evidence as "evidence favorable to an accused . . . so
27 that, if disclosed and used effectively, it may make the difference between conviction and
28 acquittal." Id. (internal quotes omitted).

1 In the present case, Defendant has failed to articulate even an arguable use of the
2 victim's criminal background information that would comport with the requirements as
3 outlined by the Supreme Court in Brady, Kyles and Bagley. Defendant is simply looking for
4 any information that he can use to cloud the facts of the case at bar and to cast aspersions on
5 the victim.

6 Defendant further requests discovery of all criminal histories of "any witnesses." As
7 in Flores, such a shotgun request is inherently unreasonable as the State cannot be expected to
8 go on a fishing expedition for all the documents requests. Moreover, Defendant has failed to
9 provide how the requested information related to any and all criminal history of the State's
10 witnesses is reasonable.

11 As noted above, Defendant is only entitled to felony convictions within the last ten (10)
12 years as well as convictions for crimes involving moral turpitude. Anything else is outside the
13 scope of information the State is required to provide. Should the defense wish to know more
14 about witnesses or the defendant himself than the State of Nevada is legally obligated to
15 provide, the defense should conduct an investigation of their own.

16 To the extent that the defense is requesting additional information to support their
17 defense claim, the defense is perfectly capable of conducting their own investigation.

18 **9. Unreliability of Witnesses**

19 The State objects to this request as being vague, overbroad, compound, and duplicative.
20 Witness information may be gleaned by discovery as addressed in subsections 2 through 8
21 *supra* and by way of defense investigation. As this overbroad request relates to the State's
22 obligations under NRS 174.235, Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. United
23 States, 405 U.S. 150 (1972), it has already been addressed and the State has made clear that it
24 will provide said material as it becomes available.

25 **10. Informant Tips**

26 The State objects to this request as being vague, overbroad, duplicative, and without
27 factual support. At this time, the state is not aware of any informant tips which play even the
28 slightest roll in this case or that exist at all. Witness information has been addressed in

1 subsections 2 through 8 *supra*. As this vague, irrelevant and overbroad request relates to the
2 State's obligations under NRS 174.235, Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v.
3 United States, 405 U.S. 150 (1972), State has made clear that it will provide said material as
4 it becomes available.

5 **11. Preservation of, and Access to, Raw Evidence**

6 The State objects to this request as being vague, overbroad, compound, and duplicative.
7 Additionally, this is not a request for discovery at all, it is a request that the State not destroy
8 evidence, without specifically noting what the evidence in question is. Even absent an order
9 from this Court, the State is under legal and ethical obligations not to destroy evidence. Given
10 that the instant request is not for discoverable information, and the fact that the defense has
11 not been denied access to any evidence in this case, the State requests that this Court deny the
12 request outright.

13 **12. Crime Scene Analysis, Evidence Collection, and Forensic Testing**

14 The State has no objection to this request as it pertains to crime scene investigation,
15 forensic testing, and photographs, however, the evidence does not exist. No crime scene
16 analysis was conducted in this case and no forensic testing was requested.

17 In so far as Defendant is requesting records from the "Urgent Care" and their perceived
18 "payments or deals" with the victim, the State objects to this request as it is overly broad. The
19 State has turned over the records from the urgent care facility that it recived and Defendant is
20 free to conduct his own investigation and subpoena urgent care facility, as it is a private entity.
21 The State does not have any evidence of "payments or deals" made by the urgent care facility
22 to the victim in this case. The State objects to any order requiring the State to provide this
23 information to the defense since they are perfectly capable of exercising due diligence and
24 requesting that information from the Las Vegas Urgent Care themselves. Should the State
25 come into possession of this evidence, and intend to use it, the State will provide it to the
26 defense.

27 ///

28 ///

1 **13. Preservation of Evidence**

2 The State objects to this request as being vague, overbroad, compound, and duplicative.
3 Additionally, many of the subparts of this request are boilerplate, having nothing to do with
4 the instant case (ex. the request for “Photographic negatives”). Furthermore, this is not a
5 request for discovery at all, it is a request that the State not destroy evidence, without
6 specifically noting what the evidence in question is, and that the State provide “access” to the
7 evidence, without specifically noting what type of access is being sought. Also, even absent
8 an order from this Court, the State is under legal and ethical obligations not to destroy
9 evidence. Given that the instant request is not for discoverable information, and the fact that
10 the defense has not been denied access to any evidence in this case, the State requests that this
11 Court deny the request outright.

12 **14. Electronic Communications**

13 The State has already provided Defendant with 911/311 audio, dispatch and officer
14 logs from the requested event (LVMPD 130409-0843) and two (2) additional events (LVMPD
15 130610-0461 & 130402-0522). To the State’s knowledge and inquiry, transcripts of these
16 communications do not exist. To the extent Defendant requests additional discovery under
17 this request, the State objects to this request as being vague and overbroad, but as it relates to
18 the State’s obligations under NRS 174.235, Brady v. Maryland, 373 U.S. 83 (1963) and Giglio
19 v. United States, 405 U.S. 150 (1972), State has made clear that it will provide said material
20 as it becomes available.

21 **15. Warrants/Affidavits**

22 The State objects to this request as being vague, overbroad, duplicative, and without
23 factual support. At this time, the state is not aware of any warrants or affidavits that have not
24 been provided to Defendant, including as early as March 20, 2015, when Defendant was first
25 provide the Declaration of Warrant/Summons for which his arrest warrant was based upon.
26 To the State’s knowledge and inquiry, the Declaration of Warrant/Summons is the only such
27 document that exists in this case. As this vague, irrelevant and overbroad request relates to
28 the State’s obligations under NRS 174.235, Brady v. Maryland, 373 U.S. 83 (1963) and Giglio

1 v. United States, 405 U.S. 150 (1972), State has made clear that it will provide said material
2 as it becomes available.

3 **V. REQUEST FOR RECIPROCAL DISCOVERY**

4 The State is entitled to reciprocal discovery under NRS 174.245. The United States
5 Supreme Court has observed that: "Discovery, like cross-examination, minimizes the risk that
6 a judgment will be predicated on incomplete, misleading, or even deliberately fabricated
7 testimony. The 'State's interest in protecting itself against an eleventh-hour defense' is merely
8 one component of the broader public interest in a full and truthful disclosure of critical facts."
9 Taylor v. Illinois, 484 U.S. 400, 411-412, 108 S.Ct. 646, 654 (1988). Justice Traynor of the
10 California Supreme Court once noted: "absent the privilege against self-incrimination or other
11 privileges provided by law, the defendant in a criminal case has no valid interest in denying
12 the prosecution access to evidence that can throw light on issues in the case." Jones v. Superior
13 Court, 58 Cal.2d 56, 59, 22 Cal.Rptr. 879, 372 P.2d 919 (1962). The State hereby moves for
14 an order that Defendant comply with his reciprocal discovery obligations under NRS 174.245,
15 and otherwise be barred from introducing any covered material at trial should he not comply
16 with those obligations.

17 NRS 174.245 governing "Disclosure by defendant of evidence relating to defense;
18 limitations," provides in pertinent part:

19 1. Except as otherwise provided in NRS 174.233 to 174.295,
20 inclusive, at the request of the prosecuting attorney, the defendant
21 shall permit the prosecuting attorney to inspect and to copy or
22 photograph any:

23 (a) Written or recorded statements made by a witness the
24 defendant intends to call during the case in chief of the
25 defendant, or copies thereof, within the possession, custody or
26 control of the defendant, the existence of which is known, or
27 by the exercise of due diligence may become known, to the
28 defendant;

(b) Results or reports of physical or mental examinations,
scientific tests or scientific experiments that the defendant
intends to introduce in evidence during the case in chief of the
defendant, or copies thereof, within the possession, custody or
control of the defendant, the existence of which is known, or
by the exercise of due diligence may become known, to the
defendant; and

(c) Books, papers, documents or tangible objects that the
defendant intends to introduce in evidence during the case in
chief of the defendant, or copies thereof, within the possession,

1 custody or control of the defendant, the existence of which is
2 known, or by the exercise of due diligence may become
3 known, to the defendant.

4 Thus, the Court should order Defendant and his counsel to comply with these statutory
5 obligations prior to trial, particularly in the event Defendant plans to testify at trial or introduce
6 evidence in his case-in-chief, such as percipient or expert witnesses, including testimony of
7 individuals who will attempt to sponsor facts or evidence that Defendant did not commit the
8 instant crimes. Because the State will have no recourse to an appeal should Defendant be
9 acquitted in whole or part by withholding information he is obliged to turn over, only an order
10 barring him from introducing late or never-disclosed evidence will ensure his compliance with
11 his statutory obligations.

12 In particular, the State emphasizes that NRS 174.245 requires Defendant to turn over
13 any witness statements or other statements by Defendant should Defendant's own testimony
14 or witness testimony be presented during the trial. This extends to any notes the defense
15 investigator may have obtained in the course of interviewing witnesses if the investigator or
16 those witnesses will be testifying at trial. Neither the Fifth Amendment nor attorney-
17 client/work product privilege shields such material from production. U.S. v. Nobles, 422 U.S.
18 225, 95 S.Ct. 2160 (1975) (where defense counsel sought to impeach credibility of key
19 prosecution witnesses by testimony of defense investigator regarding statements previously
20 obtained from witnesses by the investigator, investigator's contemporaneous report might
21 provide critical insight into the issues of credibility that investigator's testimony would raise,
22 and court had inherent power to require production of the report without Fifth Amendment or
23 work product privilege being implicated); accord Izazaga v. Superior Court, 54 Cal.3d 356,
24 815 P.2d 304 (Cal. 1991).

25 Likewise, should Defendant's investigator or witnesses produce material bearing on the
26 credibility of witnesses testifying at trial for Defendant, including himself, that material must
27 be turned over to the State. Should Defendant fail to comply with the Court's order, exclusion
28 of his evidence is an appropriate remedy. Taylor v. Illinois, 484 U.S. at 412-418, 108 S.Ct. at

1 654-658 (recognizing that exclusion rather than granting the prosecution a continuance is a
2 permissible remedy where a defendant fails to comply with his discovery obligations).

3 The State requests that the defense comply with the statute and provide the State with
4 any and all evidence they intend to admit at trial.

5 **CONCLUSION**

6 The State will comply with Brady, its progeny, the Nevada Revised Statutes, and the
7 Nevada and United States Constitutions. Based upon the foregoing, this Honorable Court
8 should DENY Defendant's Motion per the State's Response and order Defenadnt to provide
9 reciprocal discovery to the State.

10
11 DATED this 5th day of December, 2016.

12
13 STEVEN B. WOLFSON
14 Clark County District Attorney
15 Nevada Bar #001565

16 BY M.R. Dickerson
17 MICHAEL R. DICKERSON
18 Deputy District Attorney
19 Nevada Bar #013476

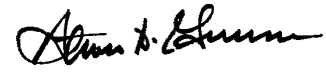
20 **CERTIFICATE OF ELECTRONIC FILING**

21 I hereby certify that service of STATE'S RESPONSE TO DEFENDANT'S MOTION
22 FOR DISCOVERY, AND STATE'S REQUEST FOR RECIPROCAL DISCOVERY, was
23 made this 5th day of December, 2016, by Electronic Filing to:

24 KELLI DEVANEY-SAUTER, Deputy Public Defender
25 EMAIL: kelli.devaney-sauter@clarkcountynv.gov;
26 pdclerk@clarkcountynv.gov

27 Mary Bailey
28 Secretary for the District Attorney's Office

13F10723X/MD/mlb/L-2



CLERK OF THE COURT

MOT

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
WILLIAM C. ROWLES
Deputy District Attorney
Nevada Bar #13577
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

JAMES HOWARD HAYES, JR.,
#2796708

Defendant.

CASE NO: C-16-315718-1

DEPT NO: XII

NOTICE OF MOTION AND MOTION FOR JOINDER OF CASE C315718
INTO CASE C315125

DATE OF HEARING: January 3, 2017
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through WILLIAM C. ROWLES, Deputy District Attorney, and files this Notice of Motion and Motion to Motion for Joinder of Case C315718 into Case C315125.

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

///

///

///

///

///

[illegible]

DATED this 12 day of December, 2016.

BY

STATEMENT OF FACTS AND CASES

On April 2, 2016, security investigators were conducting an integrity check at the Harrah's Hotel and Casino. See State's 1 at 6-7. An integrity check occurs when hotel security investigators "set up a room to make it look like an occupied room and place it with money and other valuable items." Id. The investigators left the door slightly ajar (to make it appear as if a guest may have forgotten to close the door) and conducted surveillance on the hotel room. Id.

//

1 On May 26, 2016, the State filed an Information charging Defendant with one count of
2 Burglary. The trial is currently set in this Court for January 9, 2017.

3 **2. CASE NO. C315718 – Excalibur Hotel and Casino**

4 On April 9, 2013, Joshua Jarvis was staying at the Excalibur Hotel and Casino while on
5 vacation here in Las Vegas, Nevada. See State’s 2 at 5. While sleeping in his hotel room, Mr.
6 Jarvis heard some “rattling.” Id. at 6. Mr. Jarvis then noticed the Defendant inside the hotel
7 room searching through luggage. Id. Mr. Jarvis “freaked out,” jumped out of bed and asked
8 who Defendant he was. Id. at 12. Defendant immediately attempted to run for the door. Id.
9 Mr. Jarvis proceeded to stop Defendant, pat him down, and detain him. Id. Defendant then
10 apologized to Mr. Jarvis multiple times. Id. at 18. Defendant did not have permission to be
11 inside the hotel room. Id. at 20.

12 On June 17, 2016, the State filed an Information Charging Defendant with one count
13 of Burglary. The trial is currently set in Department 12 for January 3, 2017.

14 **ARGUMENT**

15 **I.**

16 **JOINDER IS PROPER**

17 NRS 174.155 gives this Court discretion to consolidate charges:

18 “The court may order two or more indictments or information’s or
19 both to be tried together if the offenses, and the defendants if there
20 is more than one, could have been joined in a single indictment or
information. The procedure shall be the same as if the prosecution
were under such single indictment or information.”

21 NRS 173.115 provides that two or more offenses may be charged in the same
22 information if the offenses charged are: 1) based on the same act or transaction; or 2) based
23 on two or more acts or transactions *connected together or constituting parts of a common*
24 *scheme or plan*. See NRS 173.115 (emphasis added).

25 Joinder is to be broadly construed in the interest of more efficient administration of
26 justice and in favor of initial joinder. United States v. Ford, 632 F.2d 1354, 1373 (9th Cir.
27 1980). Joinder of offenses is a means of avoiding expensive duplicative trials and such joinder
28 is favored where there are common elements of proof in the joined offenses, and where the

1 interests of judicial economy outweigh any prejudice to the defendant. United States v.
2 Wilson, 715 F.2d 1165, 1171 (7th Cir. 1983). Further, there must be more prejudice shown
3 than is inherent in any joinder of counts. United States v. Bright, 630 F.2d 804 (5th Cir.
4 1980). It is insufficient to show that severance gives the defendant a better defense. He must
5 show prejudice of such a magnitude that he is denied a fair trial. United States v. Martinez,
6 486 F.2d 15 (5th Cir. 1973).

7 "In assessing the potential prejudice created by joinder, [the Nevada Supreme Court]
8 has held [t]he test is whether joinder is so manifestly prejudicial that it outweighs the dominant
9 concern with judicial economy and compels the exercise of the court's discretion to sever."
10 Tabish v. State, 72 P.3d 584, 591 (2003) (quoting Honeycutt v. State, 118 Nev. 660, 56 P.3d
11 362, 367 (2002)). Honeycutt further clarified that:

12 To require severance, the defendant must demonstrate that a joint trial would be
13 "manifestly prejudicial." The simultaneous trial of the offenses must render the
14 trial fundamentally unfair, and hence, result in a violation of due process. In this
15 case, in a trial of the sexual assault and kidnapping would be admissible to
16 establish motive, and in a trial of the sexual assault and kidnapping charges, the
17 solicitation to commit murder would be admissible to show consciousness of
18 guilt. Cross-admissibility of the evidence in the two separate charges is one of
19 the key factors in determining whether joinder is appropriate. As this court said
in Middleton v. State, "[i]f ... evidence of one charge would be cross-admissible
in evidence at a separate trial on another charge, then both charges may be tried
together and need not be severed."

20 Honeycutt, 118 Nev. at 668 (overruled on other grounds by Carter v. State, 121 Nev. 759, 121
21 P.3d 592 (2005)).

22 Here, review of the Defendant's actions in the aforementioned District Court cases
23 shows they are woven together with the same common scheme. Defendant's plan was to gain
24 entrance to both hotel rooms to commit larceny therein. As will be explored further in this
25 Motion, evidence of Defendants common scheme is extremely probative of his intent, which
26 is an element of the charged crimes in both cases, and to rebut his probable defense of mistake.
27 Moreover, nothing about the joinder of these two cases comes close to raising to the level of
28 being so manifestly prejudicial that it would preclude the charges being tried together.

1 **1. Judicial Economy Encourages Joinder**

2 From the outset, in considering whether to allow joinder, courts have looked at the
3 conflicting policies of economy and efficiency in judicial administration (e.g., a court's
4 calendar) and any resulting prejudice to the defendant. See Cantano v. United States, 176 F.2d
5 820 (4th Cir. 1948); United States v. Fletcher, 195 F. Supp. 634 (D. Conn. 1960). Indeed, the
6 Eighth Judicial District Court promotes judicial economy, as the Court rules read as follows:

- 7 (a) When an indictment or information is filed against a defendant
8 who has other criminal cases pending in the court, the new case
9 may be assigned directly to the department wherein a case against
10 that defendant is already pending;
11 (b) Unless objected to by one of the judge's concerned, criminal
cases, writs or motions may be consolidated or reassigned to any
criminal department for trial, settlement or other resolution.

12 See EDCR 3.10. It is clear that when a case can be properly joined, the NRS and Eighth
13 Judicial District Court Rules encourage consolidation. Thus, in determining whether joinder
14 is proper, this Court must look into whether the acts were connected together or constituted a
15 common scheme or plan.

16 **2. Defendant's Actions Constitute a Common Scheme or Plan**

17 In order for a crime to constitute a common "scheme or plan," as used in NRS
18 173.115(2), there must exist some "design or plan formed to accomplish some purpose; a
19 system. A plan is a method of design or action, procedure, or arrangement for accomplishment
20 of a particular act or object. Method of putting into effect an intention or proposal." Weber
21 v. State, 121 Nev. 554, 572, 119 P.3d 107, 119-20 (2005) (internal quotations omitted).
22 Essentially, the Court noted that purposeful design is central to a scheme or plan. Id.
23 Nonetheless, the Court noted that "this does not mean that every scheme or plan must exhibit
24 rigid consistency or coherency...." Id. Indeed, the Court noted that "a scheme or plan may
25 have to contend with contingencies, and therefore [] can in practice reflect some flexibility
26 and variation...." Id.

27 In Graves v. State, 112 Nev. 118 (1996), the defendant was charged with two counts of
28 burglary, first for entering the one casino and attempting to steal coins from a patron, and

1 second for entering another casino and attempting to steal money from a cashier's booth. This
2 Court held that the district court did not abuse its discretion in allowing the two charges to be
3 joined because the defendant "systematically walked from casino to casino and acted similarly
4 suspicious at each casino." Id. at 128, 912 P.2d at 239. This Court held that both offenses
5 were part of a common scheme or plan. Id.

6 Likewise, Defendant's actions in the instant matter, and in C315718 demonstrate a
7 systematic design by him to enter into hotel rooms and systematically rummage through the
8 contents inside the rooms in order to take any items of value he can find. As noted *supra*, in
9 both cases, Defendant enters a hotel room, begins to search the room and rummage through
10 luggage inside the room. This is no different than in Graves, when the defendant
11 systematically walked from casino to casino attempting to steal money. Here, Defendant
12 walked from hotel-casino to hotel-casino and entered room after room to steal money. Thus
13 the charges in both cases are properly joined as they constitute a common scheme or plan.

14 ***3. Defendant's Actions are Connected Together***

15 Furthermore, the charges are connected together because the charges are cross-
16 admissible at trial and must be joined as a result. In order for a crime to be "connected
17 together" under NRS 173.115(2), "a court must determine that evidence of either crime would
18 be admissible in a separate trial regarding the other crime." Weber, 121 Nev. at 573
19 (recognizing cross-admissibility of evidence as a basis for joinder). Indeed, "[c]harges with
20 mutually cross-admissible evidence are properly joined because in such a situation the accused
21 would fare no better from a severance and trial of the severed counts independently." Zana v.
22 State, 125 Nev. 541, 549 (2009) (internal quotations and citations omitted). This is due to the
23 fact that lack of joinder would "naturally result in separate trials presenting identical evidence
24 and consequentially result in needless judicial inefficiency." Id. (internal quotations and
25 citations omitted).

26 Here, joinder is proper because evidence for each charge would be admissible as
27 evidence in a separate trial for the other charges. In this case, Defendant is charged with the
28 crime of burglary. Burglary is a crime requiring proof of a specific intent rather than mere

1 general criminal intent. See NRS 205.060(1); Carr v. Sheriff, 95 Nev. 688, 690 (1979) ("The
2 offense of burglary is complete when the house or other building is entered with the specific
3 intent to commit larceny..."). In other words, the State is required to prove beyond a
4 reasonable doubt that Defendant possessed the specific intent to commit larceny the very
5 moment that he stepped into the rooms. See NRS 205.060(1).

6 Generally, evidence of other uncharged acts by a defendant are not admissible at trial
7 unless used for the purpose of proving motive, opportunity, intent, preparation, plan,
8 knowledge, identity, or absence of mistake or accident. NRS 48.045(2). When a defendant is
9 charged with a specific intent crime, his intent is inherently at issue. See Hubbard v. State,
10 Nev. App. 129 No. 66185 (2016) (unpublished) (Tao, J. concurring in part and dissenting in
11 part). In United States v. Gomez, 763 F.3d 845, 858-859 (7th Cir. 2014), the court noted that
12 "for general intent crimes, the defendant's intent can be inferred from the act itself, so intent
13 is not automatically at issue." (internal quotations and citations omitted). "In contrast, when
14 intent is at issue—in cases involving specific intent crimes...other-act evidence may be
15 admissible to prove intent." Id. (internal quotations and citations omitted); see United States
16 v. Tan, 254 F.3d 1204, 1212 n.8 (10th Cir. 2001) ("because specific intent cannot be inferred
17 from the charged conduct, other act evidence may be especially probative in cases where the
18 defendant is charged with a specific intent crime"); United States v. Van Metre, 150 F.3d 339,
19 350-51 (4th Cir. 1998) (bad acts evidence especially probative of specific intent); United
20 States v. Johnson, 27 F.3d 1186, 1192 (6th Cir. 1994) ("intent is in issue precisely because a
21 specific intent, separate and apart from underlying prohibited conduct, is made an element of
22 the crime charged.... In prosecuting specific intent crimes, prior acts evidence may often be
23 the only method of proving intent.") (citations omitted); United States v. Gruttadauro, 818
24 F.2d 1323, 1327-28 (7th Cir. 1987) ("Evidence of prior bad acts is admissible to prove intent
25 if intent is automatically in issue or if the defendant puts his or her intent in issue. We have
26 said that intent is automatically in issue in a criminal case . . . if the crime is a 'specific intent'
27 crime."). This is because the crime of burglary is commonly committed in secret. Edwards v.
28 State, 90 Nev. 255, 258 (1974). Rare is the case in which a defendant announces at the top of

1 his lungs "I am here to commit larceny." Because of this, the crime of burglary must
2 frequently be proved by circumstantial evidence. Id. Indeed, in determining the intent with
3 which entry was made is a question of fact which may be inferred from a defendant's conduct
4 before, during, and after, and all other circumstances disclosed by the evidence. See Flynn v.
5 State, 93 Nev. 247, 562 P.2d 1135 (1977).

6 Because intent is inherently at issue here, and Defendant's specific intent cannot solely
7 be inferred from the fact that he entered the hotel room, and so his conduct and participation
8 in strikingly similar crimes, both of which are identical in design, is relevant, probative and
9 material in demonstrating the existence of his specific intent to commit larceny inside each
10 hotel room. Therefore, evidence of each crime would be cross-admissible in separate trials
11 resulting in a waste of judicial resources.

12 **CONCLUSION**

13 Based upon the above and foregoing, the State respectfully requests this Court grant
14 the State's Motion and join cases C315718 and C315125. As C315125 is the lower case
15 number, the State requests that C315718 be consolidated into the instant case.

16 DATED this 12 day of December, 2016.

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

19
20 BY


21 WILLIAM Q. ROWLES
Deputy District Attorney
Nevada Bar #13577

22 //

23 //

24 //

25 //

26 //

27 //

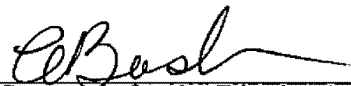
28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of Notice of Motion and Motion for Joinder of Case C315718 into Case C315125 was made this 12th day of December, 2016, by electronic filing to:

KELLI M. DEVANEY-SAUTER,
Deputy Public Defender
Email: Kelli.DeVaney-Sauter@clarkcountynv.gov

BY: 
Secretary for the District Attorney's Office

13F10723X: WCR/ckb/L4

EXHIBIT “1”

1 CASE NO. C315125

2 DEPARTMENT NO. 1

3
4 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
5 COUNTY OF CLARK, STATE OF NEVADA

6 * * * * *

Electronically Filed
10/13/2016 05:33:32 AM

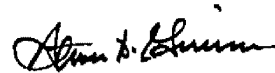
7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 vs.)

10 JAMES HOWARD HAYES, JR.,)

11 Defendant.)



CLERK OF THE COURT

CASE NO. 16F05242X

12
13 REPORTER'S TRANSCRIPT

14 OF

15 PRELIMINARY HEARING

16 BEFORE THE HONORABLE HOLLY STOBERSKI
17 JUSTICE OF THE PEACE PRO TEMPORE

18 MONDAY, MAY 23, 2016
19 9:00 A.M.

20 APPEARANCES:

21 For the State: WILLIAM ROWLES, ESQ.
Deputy District Attorney

22 For the Defendant: TYLER GASTON, ESQ.
23 Deputy Public Defender

24
25 Reported by: Shawna J. McIntosh, CCR No. 770

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1	I N D E X				
2	STATE OF NEVADA v. JAMES HOWARD HAYES, JR.				
3	CASE NO. 16F05242X				
4					
5					
6		<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
7	<u>STATE'S WITNESS:</u>				
8	David Travis	6	14	28	29
9					
10					
11	<u>DEFENSE WITNESSES:</u>				
12	(No Witnesses)	--	--	--	--
13					
14					
15	<u>EXHIBITS MARKED AND ADMITTED:</u>		<u>Marked</u>	<u>Admitted</u>	
16	(No Exhibits)		--	--	
17					
18					
19					
20	<u>MISCELLANEOUS</u>				
21				<u>Page</u>	
22	Closing Argument by Mr. Gaston.....				32
23	Rebuttal Argument by Mr. Rowles.....				34
24		*	*	*	*
25					

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 LAS VEGAS, NEVADA, MAY 23, 2016

2 * * * * *

3
4
5 THE COURT: This is the date and time
6 scheduled for the preliminary hearing in the matter of
7 James Howard Hughes, Jr., Case Number 16F05242X.

8 It's the Court's understanding that
9 both parties are ready to proceed; is that correct?

10 MR. ROWLES: Yes, Your Honor.

11 And before the State calls its first
12 witness, there are a few housekeeping matters that I'd
13 like to put on the record. Do you want me to do that
14 now?

15 THE COURT: Go ahead.

16 MR. ROWLES: Your Honor, I would just like to
17 note for the record that the State did extend an offer
18 to plead guilty to a Category B felony in this matter,
19 16F05242X. The State would agree to make no
20 recommendation at the time of sentencing. In
21 addition, the State would agree to dismiss 13F10723X
22 after rendition of sentence in this, which is also
23 another Category B felony, and also another burglary
24 charge that the defendant, Mr. Hayes, currently faces.

25 Additionally, I was provided video

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 surveillance this morning. I have it. I informed
2 defense counsel that I am in possession of the video
3 surveillance. There are a number of copies that I'd
4 like to sort out before I provide that over to him. I
5 think what I have is a copy of each camera that was
6 used. I did inform Mr. Gaston that I do not intend to
7 use these, and I will provide these to him as soon as
8 possible.

9 MR. GASTON: He actually -- he actually gave
10 me a chance to view them this morning, too, if I
11 wanted, and he was going to give me his copies. But I
12 think that was all the copies, so he said he would go
13 back to his office and send an e-mail and whatnot. I
14 haven't had an opportunity to review them, just this
15 morning, but I don't think that's a basis to continue
16 the prelim. And he indicated that they're not going
17 to be used in preliminary hearing.

18 MR. ROWLES: Yes.

19 THE COURT: Thank you.

20 How many witnesses does the State
21 anticipate calling?

22 MR. ROWLES: One to two.

23 THE COURT: One to two.

24 MR. ROWLES: I believe this may be able to be
25 done in one witness, Your Honor.

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 THE COURT: Go ahead and call your first
2 witness.

3 MR. ROWLES: The State's first witness would
4 be David Travis, Your Honor.

5 MR. GASTON: And I'd just invoke the
6 exclusionary rule at this point.

7 THE COURT: If there are any parties in the
8 courtroom today that are anticipated to testify in the
9 preliminary hearing or the trial in this matter, I'm
10 going to ask you to please step outside until your
11 name is called.

12 MR. ROWLES: I do believe, just for the
13 record, there is one additional witness,
14 Richard Lazo, who is in the courtroom. He will be
15 present outside.

16 THE COURT: Great. Thank you.

17 MR. GASTON: Thank you, Your Honor.

18

19 Whereupon,

20 DAVID TRAVIS,
21 having been first duly sworn to testify to the truth,
22 the whole truth, and nothing but the truth, was
23 examined and testified as follows:

24

25 THE CLERK: Please be seated. I'll have you

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 state your name and spell it for the record.

2 THE WITNESS: My name is David Travis.

3 D-a-v-i-d. My last name is T-r-a-v-i-s.

4 THE COURT: Please proceed.

5 MR. ROWLES: Thank you, Your Honor.

6

7 DIRECT EXAMINATION

8 BY MR. ROWLES:

9 Q. Sir, how are you currently employed?

10 A. I'm the security investigator at Harrah's
11 Las Vegas.

12 Q. And how long have you been employed?

13 A. I've been employed by Caesar's Entertainment
14 for 15 years.

15 Q. Okay. Sir, I'd like to turn your attention
16 to April 2, 2016. On that day were you employed by
17 the Harrah's Hotel and Casino?

18 A. Yes, sir.

19 Q. And were you located at the Harrah's Hotel
20 and Casino?

21 A. Yes, sir.

22 Q. And is that located here in Clark County,
23 Nevada?

24 A. Yes, sir.

25 Q. Okay. What's the address?

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 A. 3475 Las Vegas Boulevard South.

2 Q. Sir, and were you working in your capacity as
3 a security investigator on that day?

4 A. Yes, sir.

5 Q. And on that day, were you conducting an
6 integrity check?

7 A. Yes, sir.

8 Q. And could you just briefly describe for the
9 Court what an integrity check is?

10 A. What we do is that we set up a room to make
11 it look like an occupied room and place it with money
12 and other valuable items in it. And then we'll leave
13 the door open, ajar, to make it look like a guest may
14 have forgot to close the door.

15 Q. Okay. And where within the hotel were you
16 conducting that integrity check?

17 A. That would have been done on the Mardi Gras,
18 9th floor.

19 THE COURT REPORTER: I'm sorry. Mardi Gras?

20 THE WITNESS: Mardi Gras.

21 THE COURT REPORTER: Okay. Thank you.

22 BY MR. ROWLES:

23 Q. And what is the Mardi Gras? Is that in one
24 of the towers?

25 A. That's the name of the towers we have. We

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 have three -- we have two towers. We have the Mardi
2 Gras tower and the Carnival tower.

3 Q. What rooms were you specifically occupying?

4 A. I believe it was Mardi Gras 946 and 948.

5 Q. Okay. And what room were you present in?

6 A. I believe I was in Mardi Gras 946.

7 Q. Okay. And so the -- the integrity check
8 would have been in?

9 A. Mardi Gras 948.

10 Q. Okay. While conducting the integrity check,
11 did you come into contact with anyone that you see
12 here in the courtroom?

13 A. Yes, sir.

14 Mr. Hayes walked into our room about
15 1:49 at night.

16 Q. You referenced Mr. Hayes. Can you please
17 point to that individual and describe an article of
18 clothing?

19 A. (Indicating) He's in the white suit, the
20 gentleman in the white suit.

21 MR. ROWLES: Your Honor, may the record
22 reflect the identification of the defendant?

23 MR. GASTON: No objection.

24 THE COURT: I just want to make sure that --
25 the color of the suit.

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 THE WITNESS: White or beige or --

2 THE COURT: Green perhaps?

3 THE WITNESS: Green.

4 THE COURT: All right. So noted.

5 THE WITNESS: The light colored suit.

6 THE COURT: The defendant has -- I

7 apologize -- the witness has identified the defendant.

8 Thank you.

9 BY MR. ROWLES:

10 Q. You testified that you came into contact with
11 Mr. Hayes while conducting the integrity check. Can
12 you describe how you came into contact with the
13 defendant?

14 A. What we do is that we set two cameras up
15 inside the room. And one is on our luggage that we
16 have on the wall inside, and the other one is on the
17 door. We also have a camera in the hallway that we
18 use.

19 Q. And these -- these cameras, during the
20 integrity check, are you watching this in realtime?

21 A. Yes. We're watching it live from the
22 observation room, which was Mardi Gras 946.

23 Q. And you're personally watching this; correct?

24 A. Yes. I am personally watching it at all
25 times.

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 Q. You referenced that in the integrity check
2 room, 948, there was luggage. What was inside the
3 luggage?

4 A. The luggage had a white ladies' wallet with
5 \$350 in it, costume jewelry, and other ladies'
6 articles of clothing.

7 Q. And the room, 948, is the door -- is it
8 closed? Or ajar?

9 A. It's ajar. We leave it ajar.

10 Q. Okay. And so while you're conducting this
11 integrity check, what do you see the defendant do?

12 A. He comes down the hallway. He sees the door
13 open. He pushes the door. He walks into the room.
14 He closes the door behind him. He comes up to our
15 luggage. He looks in the luggage and sees the wallet,
16 appears to see the wallet. Walks over to our
17 electronics, but doesn't appear to touch the
18 electronics. Goes back to the wallet.

19 MR. GASTON: I'm going to object at this
20 point. It seems like he's giving a narrative. If he
21 can just answer questions asked by the State.

22 THE COURT: I agree.

23 Mr. Travis, can you please make sure
24 that you limit your answers --

25 THE WITNESS: Okay.

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 THE COURT: -- to the questions that are
2 asked? And the State's attorney will go ahead and ask
3 you the appropriate questions.

4 THE WITNESS: Okay.

5 THE COURT: All right.

6 BY MR. ROWLES:

7 Q. We'll break this down step by step.

8 A. Okay.

9 Q. Sir, you mentioned that you saw the defendant
10 approach the room?

11 A. Yes, sir.

12 Q. Did he enter the room?

13 A. Yes, sir. He pushed the door open and
14 entered the room.

15 Q. And after he entered the room, where did he
16 go?

17 A. He went over to the luggage.

18 Q. What did he do when he went to the luggage?

19 A. He looked at the luggage at that point but
20 didn't touch anything at that second.

21 Q. What was inside the luggage?

22 A. A white ladies' wallet, clothing, and costume
23 jewelry.

24 Q. So you're saying he didn't grab anything
25 inside the luggage, he was just looking at it?

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 A. At that time.

2 Q. What does he do after that?

3 A. He walked over to where we had electronics,
4 an iPad, and another piece of reading material.

5 Q. What did he do when he was in that area?

6 A. He didn't touch that part of the item either.

7 Q. Okay. And so after he was looking at the
8 electronics, what did he do?

9 A. He walked back over to the luggage, picked up
10 the white wallet, took the money out of the white
11 wallet, turned around, and put it into his left
12 pocket, turned around and checked the costume
13 jewelry -- checked through the jewelry, checked
14 through the rest of the jewelry, and then closed the
15 lid to the luggage.

16 Q. Okay. You referenced that he grabbed the
17 money out of the wallet. How much money was there?
18 How much money did you guys place in there before --

19 A. \$350.

20 Q. Okay. And so he placed that money -- where
21 did you place that money?

22 A. The left front pocket of his pants.

23 Q. Okay. And then so he also -- you also
24 mentioned that he looked at some jewelry; did he take
25 any of the jewelry?

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 A. He didn't take any of the jewelry.
2 Q. Okay. What did he do after that?
3 A. He went through the rest of the luggage, the
4 ladies' luggage. When he was done, he closed the lid.
5 Q. After closing the lid, where did he go?
6 A. He started heading out. Once he opened the
7 door, he exited.
8 Q. Okay. And so after he exited the room, was
9 he subsequently detained by security officials?
10 A. He was detained by security as soon as he
11 opened the door to leave, yes, sir.
12 Q. Did you -- after detaining the defendant, was
13 Metro contacted?
14 A. Yes, they were.
15 Q. And did Metro respond?
16 A. Yes, sir.
17 Q. Were you present when Metro was speaking with
18 the defendant?
19 A. Yes, sir.
20 Q. And did you observe anything at that time?
21 A. Metro -- we searched him, read him his
22 rights, searched him, and removed the money from his
23 left pocket. And they verified the money with our
24 photo copies.
25 Q. And did you personally observe the money that

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 was confiscated from the defendant?

2 A. Yes, sir.

3 Q. And was that the money that you placed in the
4 luggage?

5 A. Yes, sir.

6 Q. Sir, did -- with regards to Room 248, who was
7 the registered occupant of that room?

8 A. Do you mean 948? That would have been --

9 Q. 948.

10 A. It was under a fictitious name. And it was
11 my room, but we used a different name in case an
12 employee is involved.

13 Q. And did you give the defendant permission to
14 enter Room 948?

15 A. I did not.

16 MR. ROWLES: Court's indulgence, Your Honor.

17 (Pause in proceedings)

18 MR. ROWLES: I'll pass the witness,
19 Your Honor.

20 THE COURT: Cross-examination.

21

22 CROSS-EXAMINATION

23 BY MR. GASTON:

24 Q. Where do you work, again?

25 A. Harrah's Las Vegas.

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 Q. And how long have you been working there?
2 A. I've been at Harrah's Las Vegas for 15 -- for
3 13 years. Excuse me.
4 Q. What's your job title?
5 A. Security investigator.
6 Q. What does that mean?
7 A. I'm responsible for investigating any crimes
8 or activities -- illegal activities on property.
9 Q. Okay. And you call this an "integrity
10 check"; correct?
11 A. Yes, sir.
12 Q. What it really is, is, like, kind of, a bait
13 operation; right?
14 THE COURT REPORTER: I'm sorry. Could you
15 please repeat that?
16 BY MR. GASTON:
17 Q. What it really is, kind of, like, a bait
18 operation; right?
19 A. You can call it that. Yes, sir.
20 Q. So you guys essentially set up bait and watch
21 it on cameras and wait for someone to come and take
22 it; right?
23 A. Yes, sir.
24 Q. Okay. About how many of these integrity
25 checks, just a guesstimate, would you say you've done?

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 MR. ROWLES: Objection, Your Honor.
2 Relevance.

3 MR. GASTON: I think it goes to their
4 procedures, and it goes to what their actions are and
5 whatnot.

6 THE COURT: I'm going to overrule the
7 objection.

8 THE WITNESS: I have done probably --
9 probably a dozen of them

10 BY MR. GASTON:

11 Q. A dozen of them. Okay.

12 And that's over about 13 years?

13 A. No, sir. That's over the last 4 years
14 probably.

15 Q. Okay. Is there a reason you didn't do any of
16 them prior to 4 years ago?

17 A. Before I was an investigator, I was only a
18 supervisor.

19 Q. So --

20 A. I've been an investigator for 4 years.

21 Q. So it just wasn't your job function?

22 A. Yes, sir.

23 Q. But the security office itself was still
24 doing integrity checks; right?

25 A. Excuse me?

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 Q. The security office itself --
2 A. The security department, yes, sir.
3 THE COURT REPORTER: I need you to both go
4 one at a time, please.
5 MR. GASTON: I'm sorry.
6 THE COURT REPORTER: Thank you.
7 BY MR. GASTON:
8 Q. How many -- how many cameras did you set up
9 in the room?
10 A. I had two in the room and one in the hallway.
11 Q. Okay. And did you provide all of that
12 surveillance video to the State?
13 A. Yes, I did.
14 Q. Is that the surveillance video that you --
15 A. There is two copies of each. I could show
16 you which ones are which.
17 Q. That's okay.
18 A. There is two copies of each. Yes, sir.
19 Q. So they should have gotten six disks; right?
20 A. Actually -- sorry -- actually, the video is
21 small enough that they were put on the same disk, and
22 then you have the interviewing disk. So you've got
23 three cameras on one disk and they each have a
24 separate disk.
25 Q. Okay. How many people were in this room

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 watching the video?

2 A. Three of us.

3 Q. And who were those people?

4 A. It was myself, Richard Lazo, and then

5 Anthony Maliwat.

6 Q. Okay. And what were the items set up in the

7 room again? You have ladies' luggage; right?

8 A. Ladies' luggage.

9 Q. And what's in there, just clothing items?

10 A. We have two suitcases, ladies' luggage, with

11 clothing in it.

12 Q. Okay.

13 A. Costume jewelry, various hygiene products.

14 There's a ladies' wallet in this case and the money.

15 We also had an iPad, and a reading device that was on

16 the table.

17 Q. What's a reading device?

18 A. This one -- this device I used was a

19 hearing-impaired reading device.

20 Q. So, if you know, what's the approximate value

21 of the costume jewelry?

22 A. I haven't -- can't answer. I don't know.

23 Q. Okay. If you know, what's the approximate

24 value of the wallet itself?

25 A. The wallet we valued at \$25.

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 Q. Okay. Was there anything else in the wallet
2 other than just cash?

3 A. There was gift cards or -- correction -- it
4 was, I guess, a Smiths, kind of, reward card. There
5 was also a Sam's Club card. There was some -- a fake
6 ID in there that we used. And there was also other
7 items inside the bait that made it look like a real
8 wallet.

9 Q. Were there any credit cards inside?

10 A. No, sir. We don't use credit cards in that
11 wallet.

12 Q. Any actual gift cards?

13 A. No, sir. Nothing with actual value in it.

14 Q. If you know --

15 A. Besides the money.

16 Q. If you know, let's talk about the suitcase
17 that has the clothing inside. What is the approximate
18 value of that suitcase?

19 A. \$20, approximately.

20 Q. What about the other suitcase?

21 A. Probably about \$10.

22 Q. Okay. What about the clothing inside?

23 A. I can't answer that.

24 Q. Okay. Excuse me. I'm sorry. I'm not
25 feeling very well.

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 What's the approximate value of the
2 iPad?

3 A. That iPad was valued at \$200.

4 Q. Okay. What about the hearing-impaired
5 reading device?

6 A. I don't have a value on that, sir.

7 Q. So originally the defendant looked through
8 the luggage; right?

9 A. Yes, sir.

10 Q. And he looked through the wallet; right?

11 A. He doesn't look -- he looks at the luggage
12 originally, but doesn't go through it until he comes
13 back to it.

14 Q. Okay. So when is the first time he saw the
15 wallet?

16 A. That would be speculative. I'm assuming he
17 saw it when he first walked by.

18 Q. Okay. So he walked by the wallet. He didn't
19 take it out at that point; right?

20 A. No.

21 Q. He goes and he looks at the iPad and the
22 electronic devices; right?

23 A. Yes, sir.

24 Q. But he didn't try to pocket any of those or
25 anything; right?

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 A. No, sir.

2 Q. He didn't try to conceal them under his shirt
3 or his jacket or something like that?

4 A. No, sir.

5 Q. And he didn't take anything else from the
6 room; right?

7 A. No, sir.

8 Q. So then he goes back to the luggage; right?

9 A. Yes, sir.

10 Q. And then he checked the wallet?

11 A. Yes, sir.

12 Q. At that point he sees the cash inside?

13 A. Yes, sir.

14 Q. And he takes the cash?

15 A. Yes, sir.

16 Q. But he doesn't take anything else from the
17 wallet; right?

18 A. No, sir.

19 Q. And he doesn't take anything from the
20 luggage; right?

21 A. No, sir.

22 Q. So nothing else was taken from the room other
23 than the cash?

24 A. Correct.

25 Q. What exactly happens when someone falls for

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 your integrity check?

2 A. I --

3 Q. What do -- what do you do when you --

4 A. We --

5 Q. -- the room, what do you do?

6 A. -- we arrest them. We detain them.

7 Q. And you have authority to do that?

8 A. Yes, sir.

9 Q. So what does that mean? What do you do?

10 A. We detain them, we bring them down, and we

11 call Metro.

12 Q. Do you place them in handcuffs?

13 A. Yes, sir.

14 Q. Do you guys have handcuffs?

15 A. Yes, sir.

16 Q. And you guys -- and it's your understanding

17 that the law allows you to handcuff the individual?

18 A. Yes, sir.

19 Q. And detain them?

20 A. Yes, sir.

21 Q. Which means prevent them from leaving?

22 A. Yes, sir.

23 Q. And you put them in, kind of, a room, or what

24 do you do with them?

25 A. We put them in the room, sir, and wait for

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 Metro.

2 Q. And then you said you call Metro?

3 A. Yes, sir.

4 Q. And then Metro comes out and does what they

5 do; right?

6 A. Yes, sir.

7 Q. Okay. If you know, you've had some

8 experience with this job function. You were a

9 supervisor before this; right?

10 A. Yes, sir.

11 Q. So, if you know, I'm not asking you to guess,

12 but if you know, why do you guys do this operation

13 instead of Metro doing the operation?

14 MR. ROWLES: Objection, Your Honor.

15 Relevance.

16 MR. GASTON: I think it's relevant to an

17 entrapment defense on statute because we're going to

18 talk about whether it's a state action or not. And

19 because the first element of entrapment is government

20 instigation. And in this case if we want to go with

21 an entrapment defense, we have to show government

22 instigation. In this case I think security is so

23 intertwined with Metro and especially its operations

24 as to amount to state action. So I'm trying to follow

25 and develop that.

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 MR. ROWLES: Your Honor, if I may respond?

2 THE COURT: Yes.

3 MR. ROWLES: Your Honor, what we're here for
4 is the preliminary hearing. It's the justice court's
5 jurisdiction to determine whether or not there's
6 slight or marginal evidence that a crime was committed
7 and this defendant committed the crime. Any
8 constitutional issues are best left to the district
9 court. And on that, I'll submit it.

10 MR. GASTON: If I can respond?

11 A couple points. Number one,
12 constitutional issues are relevant in justice court.
13 There are statutes on point, they are the subject of
14 litigation, and there's disagreement among various
15 justice courts. Judge Lippis is under the position,
16 which she's made very clear, that she does consider
17 justice court to have jurisdiction on constitutional
18 issues.

19 Additionally, the confrontation clause
20 doesn't apply to preliminary hearings in Nevada;
21 however, in Colorado it does. And when deciding that,
22 the Nevada Supreme Court ultimately decided that when
23 we do a preliminary hearing in Nevada, we give
24 attorneys much more leeway on the questioning and
25 whatnot, rather than Colorado, which is one reason why

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 the confrontation clause doesn't apply at prelim, but
2 it would apply at Colorado. And on that, I'd submit.

3 THE COURT: I'm going to go ahead and
4 overrule the objection and allow Mr. Gaston to
5 continue questioning.

6 MR. GASTON: Thank you.

7 BY MR. GASTON:

8 Q. If you know -- if you know, in your
9 experience and whatnot, is there a reason that you
10 guys conduct these operations instead of just letting
11 Metro try to do it?

12 A. I have no clue, sir. We have always done
13 them.

14 Q. You have always done them?

15 A. Well, yes, sir. As long as I've been around.

16 MR. GASTON: Court's indulgence.

17 (Pause in proceedings)

18 BY MR. GASTON:

19 Q. Now, you said that you didn't give him
20 permission to enter the room; correct?

21 A. Correct.

22 Q. Do you know if any of the other people gave
23 him permission to enter the room?

24 A. No one gave him permission to enter our room.

25 Q. But, I mean, you don't know for sure, though;

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 right?

2 A. I know for sure. No one gave him permission
3 to enter my room.

4 Q. Okay. How do you know that nobody gave him
5 permission to enter the room?

6 A. Because only three people knew it was our
7 room. And it was -- I was sitting in the room all by
8 myself. And in order to enter the room, someone had
9 to give him permission; for example, if you don't have
10 your key, you don't have whatever, we send an officer
11 up to do a check, we verify through the front desk
12 that your name is correct, and then we have you enter
13 the room.

14 Q. We can agree, though, it's possible that some
15 other individual told him, Hey, my money's up in that
16 room. Will you go get it for me? Right?

17 A. I don't know that, sir.

18 Q. You don't know one way or the other?

19 A. I don't know.

20 Q. You said you've done about 12 or 13 integrity
21 checks?

22 A. Approximately, that many, yes, sir.

23 Q. And in those 12 or 13 times, how many times
24 did somebody not enter the room?

25 A. (No verbal response)

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 Q. So you guys just sat there and, kind of,
2 watched TV for a while?

3 A. Probably -- probably four sets.

4 Q. I'm sorry?

5 A. Probably four -- four sets.

6 Q. How long do you run the operation until you
7 guys, kind of, give up?

8 A. We have a set period of time depending on
9 what shift we're looking at. At this operation, for
10 this one, was 16 hours.

11 Q. And about how long -- you were into the
12 operation for about 16 hours before my client entered
13 the room?

14 A. Not -- no. We were only on this -- this
15 one before he walked into the room was 10 hours,
16 10 1/2 hours.

17 Q. So then you took care of all of the stuff you
18 had to do with him, and then you resume the operation?

19 A. Yes, sir.

20 Q. Did anyone else get arrested that day
21 entering that room?

22 A. No, sir.

23 Q. Did anyone else try to enter that room?

24 A. No, sir.

25 Q. He never actually left the room, though;

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 correct? With the property?

2 A. He opened the door. And as soon as he opened
3 the door, we detain him right as he was leaving the
4 room. Yes, sir.

5 Q. Okay. So as soon as he opened the door, you
6 guys rushed in?

7 A. Yes, sir.

8 MR. GASTON: No further questions.

9 THE COURT: Redirect?

10

11 REDIRECT EXAMINATION

12 BY MR. ROWLES:

13 Q. Sir, you work for the Harrah's Hotel and
14 Casino; is that correct?

15 A. Yes, sir.

16 Q. And is that a private corporation?

17 A. It's --

18 MR. GASTON: Objection. Foundation. If he
19 knows.

20 THE COURT: I'm going to sustain the
21 objection.

22 BY MR. ROWLES:

23 Q. Were you directed by the Metropolitan Police
24 Department to conduct this operation?

25 A. No, we were not.

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 Q. When you observed the defendant enter the
2 room, did he use a room key?

3 A. No, sir.

4 Q. Did he punch in a code?

5 A. No, sir.

6 Q. When he was subsequently detained, did he
7 present the room key to you?

8 A. No, sir.

9 Q. Did he present a receipt showing access --
10 that he had purchased the room?

11 A. No, sir.

12 MR. ROWLES: I'll pass the witness,
13 Your Honor.

14 MR. GASTON: Really brief recross.
15

16 RECROSS-EXAMINATION

17 BY MR. GASTON:

18 Q. Did he say anything to you? When you
19 arrested him, did he say anything to you?

20 A. I don't remember the conversation we might
21 have had up in the hallway.

22 Q. But he didn't -- but it's your understanding
23 that you don't remember whether he said anything or
24 not?

25 A. I was -- I was the one watching the camera.

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 The officer detained him. But he didn't say nothing
2 to me at the hallway or in the hallway.

3 Q. If he had said something, like a reason for
4 entering the room or vice versa, if he said anything
5 admitting that he was trying to steal stuff, you would
6 have put that into your report; correct?

7 A. I would. If he said something before we took
8 him down, yes, sir. And I don't remember the
9 conversation in the interview room, but the interview
10 room was recorded.

11 Q. I'm sorry?

12 A. I don't remember the conversation we had with
13 him in the interview room, but the interview room is
14 recorded.

15 Q. All right. Thank you.

16 Do we have video surveillance of that
17 interview?

18 A. Yes, you do.

19 Q. And you provided that to the State?

20 A. Yes, sir.

21 MR. GASTON: No further questions.

22 THE COURT: Great. Thank you.

23 Mr. Travis, a quick point. You
24 indicated that you personally provided those CDs?

25 THE WITNESS: Yes, ma'am.

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 THE COURT: And just as a housekeeping thing,
2 can you, just by looking at them, tell them what is
3 what?

4 THE WITNESS: Yes, ma'am.

5 MR. ROWLES: Your Honor, I think I know where
6 you're going with this. I was going to have
7 Mr. Travis wait a little bit so that he can sort these
8 out, and then provide them to the defense.

9 THE COURT: Okay. All right.

10 MR. GASTON: And I think he's going to do
11 that.

12 THE COURT: I thought that as long as he's
13 here.

14 THE WITNESS: They're marked. I can do it,
15 yes, ma'am.

16 THE COURT: All right. Great. Thank you.
17 Neither side has any further questions. Thank you for
18 your time.

19 THE WITNESS: Thank you.

20 THE COURT: State, are there any other
21 witnesses that you wish to present at this time?

22 MR. ROWLES: No, Your Honor. I'll rest.

23 THE COURT: Great. Thank you.

24 Does the defense have any witnesses
25 that it wishes to put on?

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 MR. GASTON: No, Your Honor. I've advised my
2 client of his right to testify. Based on my advice,
3 he's going to decline to do so today. And the defense
4 would rest.

5 THE COURT: Great.

6 Mr. Hayes, I just want to make sure
7 that information is correct. You have been informed
8 by your counsel that you have the right to testify and
9 the right to remain silent and that cannot be held
10 against you?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you understand that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And you've elected not to
15 testify; is that correct?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Great. Thank you.

18 The Court is ready to hear closing
19 arguments.

20 State.

21 MR. ROWLES: Submit and reserve, Your Honor.

22 MR. GASTON: Court's indulgence.

23 (Pause in proceedings)

24 MR. GASTON: Your Honor, at this time I'm
25 going to move to dismiss this case. I don't think

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 they've met their burden of probable cause to show
2 that when he entered the room, he intended to commit a
3 larceny. We've heard about what he did when we was
4 actually in the room. We've also heard it was, kind
5 of, a bait set up. He originally didn't take the
6 wallet when he first saw it. He didn't take the
7 electronic devices when he had the opportunity to do
8 so. He didn't take any jewelry. He didn't take
9 anything else. Ultimately, yes. Did he give into
10 temptation? According to the evidence and light most
11 favorable to the State, did he give into temptation
12 and take the cash? Yes, he did. But there's nothing
13 to show that he intended to do so when he entered the
14 room.

15 Now, I know that officer said he
16 didn't give him specific permission to enter that
17 room, but he doesn't know if someone else might have
18 told him to go get the cash for him in the room
19 because they're gambling downstairs or what his reason
20 was for going into the room. The State didn't present
21 any evidence to show the intent. If he had been
22 charged with petty larceny here or theft or something,
23 then they would be in a different situation. But they
24 have to show his intent when he enters the room, and
25 all they have to do so is his eventual actions. And I

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 think that's pretty -- that's countered by the fact
2 that he didn't take the cash when he first entered the
3 room. He didn't take everything. In fact, it shows a
4 man who was looking for -- we don't know what he was
5 doing, but when he was in that room, he ultimately
6 gave in to temptation. But he still only took the
7 cash. An iPad is obviously valuable, and he didn't
8 take that. And on that, I would submit.

9 MR. ROWLES: Your Honor, the question with
10 which the defendant enters with any intent is a
11 question left for the jury. I will touch briefly upon
12 this right now. With regards to any affirmative
13 defense with regard to entrapment, that is an
14 affirmative defense. That's a question for the jury,
15 not for here.

16 Intent, the crime is completed for
17 burglary when he enters the room. You're well aware.
18 Defendants don't enter rooms saying, I am here to
19 commit larceny. You look at the circumstances and
20 conduct before, during, and after. In fact, even the
21 mere fact that a crime was committed after entry is
22 sufficient to prove intent with regards to that. And
23 the fact that it's a question that's left for the
24 ultimate trier of fact, the jury, I'll submit it,
25 Your Honor.

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

1 THE COURT: Great. Thank you.

2 Mr. Hayes.

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: The Court having heard the
5 evidence that's been presented, including the
6 testimony of Mr. David Travis in this matter, finds
7 that at this time the State has met its burden by
8 establishing by slight or marginal evidence that the
9 crime of burglary occurred in this matter. We're
10 going to bind this case over to district court. You
11 are to appear in district court to answer these
12 charges on the date that we provide you.

13 THE CLERK: June 1st, 10 a.m., lower level,
14 district court arraignment.

15 (Proceedings concluded)

16 --o0o--

17

18 Attest: Full, true, and accurate transcript of
19 proceedings.

20

21 /s/ Shawna J. McIntosh

22 Shawna J. McIntosh, CCR No. 770

23

24

25

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

\$	9	
\$10 [1] - 19:21 \$20 [1] - 19:19 \$200 [1] - 20:3 \$25 [1] - 18:25 \$350 [2] - 10:5, 12:19	946 [3] - 8:4, 8:6, 9:22 948 [7] - 8:4, 8:9, 10:2, 10:7, 14:8, 14:9, 14:14 9:00 [1] - 1:18 9th [1] - 7:18	articles [1] - 10:6 assuming [1] - 20:16 attention [1] - 6:15 Attest [1] - 35:18 Attorney [1] - 1:21 attorney [1] - 11:2 attorneys [1] - 24:24 authority [1] - 22:7 aware [1] - 34:17
/	A	B
/s [1] - 35:21	A.M [1] - 1:18 a.m [1] - 35:13 able [1] - 4:24 access [1] - 29:9 according [1] - 33:10 accurate [1] - 35:18 action [2] - 23:18, 23:24 actions [2] - 16:4, 33:25 activities [2] - 15:8 actual [2] - 19:12, 19:13 addition [1] - 3:21 additional [1] - 5:13 additionally [2] - 3:25, 24:19 address [1] - 6:25 ADMITTED [1] - 2:15 Admitted [1] - 2:15 admitting [1] - 30:5 advice [1] - 32:2 advised [1] - 32:1 ago [1] - 16:16 agree [4] - 3:19, 3:21, 10:22, 26:14 ahead [4] - 3:15, 5:1, 11:2, 25:3 ajar [4] - 7:13, 10:8, 10:9 allow [1] - 25:4 allows [1] - 22:17 amount [1] - 23:24 AND [1] - 2:15 answer [4] - 10:21, 18:22, 19:23, 35:11 answers [1] - 10:24 Anthony [1] - 18:5 anticipate [1] - 4:21 anticipated [1] - 5:8 apologize [1] - 9:7 appear [2] - 10:17, 35:11 APPEARANCES [1] - 1:20 apply [3] - 24:20, 25:1, 25:2 approach [1] - 11:10 appropriate [1] - 11:3 approximate [4] - 18:20, 18:23, 19:17, 20:1 April [1] - 6:16 area [1] - 12:5 Argument [2] - 2:21, 2:22 arguments [1] - 32:19 arraignment [1] - 35:14 arrest [1] - 22:6 arrested [2] - 27:20, 29:19 article [1] - 8:17	bait [5] - 15:12, 15:17, 15:20, 19:7, 33:5 based [1] - 32:2 basis [1] - 4:15 BEFORE [1] - 1:16 behind [1] - 10:14 beige [1] - 9:1 best [1] - 24:8 bind [1] - 35:10 bit [1] - 31:7 Boulevard [1] - 7:1 break [1] - 11:7 brief [1] - 29:14 briefly [2] - 7:8, 34:11 bring [1] - 22:10 burden [2] - 33:1, 35:7 burglary [3] - 3:23, 34:17, 35:9 BY [12] - 6:8, 7:22, 9:9, 11:6, 14:23, 15:16, 16:10, 17:7, 25:7, 28:12, 28:22, 29:17
1		C
1 [1] - 1:2 1/2 [1] - 27:16 10 [3] - 27:15, 27:16, 35:13 12 [2] - 26:20, 26:23 13 [4] - 15:3, 16:12, 26:20, 26:23 13F10723X [1] - 3:21 14 [1] - 2:8 15 [2] - 6:14, 15:2 16 [2] - 27:10, 27:12 16F05242X [4] - 1:9, 2:3, 3:7, 3:19 1:49 [1] - 8:15 1st [1] - 35:13		C315125 [1] - 1:1 Caesar's [1] - 6:13 camera [3] - 4:5, 9:17, 29:25 cameras [5] - 9:14, 9:19, 15:21, 17:8, 17:23 cannot [1] - 32:9 capacity [1] - 7:2 card [2] - 19:4, 19:5 cards [4] - 19:3, 19:9, 19:10, 19:12 care [1] - 27:17 Carnival [1] - 8:2 case [5] - 14:11, 18:14, 23:20, 23:22, 32:25, 35:10 Case [1] - 3:7 CASE [3] - 1:1, 1:9, 2:3 cash [2] - 19:2, 21:12, 21:14, 21:23, 33:12, 33:18, 34:2, 34:7 Casino [3] - 6:17, 6:20, 28:14 Category [2] - 3:18, 3:23 CCR [2] - 1:25, 35:22 CDs [1] - 30:24 chance [1] - 4:10 charge [1] - 3:24 charged [1] - 33:22 charges [1] - 35:12
2		
2 [1] - 6:16 2016 [3] - 1:17, 3:1, 6:16 23 [2] - 1:17, 3:1 248 [1] - 14:6 28 [1] - 2:8 29 [1] - 2:8		
3		
3475 [1] - 7:1		
4		
4 [3] - 16:13, 16:16, 16:20		
6		
6 [1] - 2:8		
7		
770 [2] - 1:25, 35:22		

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

checkup 7:6 7:8 7:16 8:7 9:10	15:14 16:6 17:3 17:6 24:7 25:3	disbe m 17:10
-------------------------------	--------------------------------	---------------

check [12] - 7:6, 7:9, 7:16, 8:7, 8:10, 9:11, 9:20, 10:1, 10:11, 15:10, 22:1, 26:11 checked [4] - 12:12, 12:13, 21:10 checks [3] - 15:25, 16:24, 26:21 circumstances [1] - 34:19 Clark [1] - 6:22 CLARK [1] - 1:5 clause [2] - 24:19, 25:1 clear [1] - 24:16 CLERK [2] - 5:25, 35:13 client [2] - 27:12, 32:2 close [1] - 7:14 closed [3] - 10:8, 12:14, 13:4 closes [1] - 10:14 Closing [1] - 2:21 closing [2] - 13:5, 32:18 clothing [7] - 8:18, 10:6, 11:22, 18:9, 18:11, 19:17, 19:22 Club [1] - 19:5 clue [1] - 25:12 code [1] - 29:4 color [1] - 8:25 Colorado [3] - 24:21, 24:25, 25:2 colored [1] - 9:5 commit [2] - 33:2, 34:19 committed [3] - 24:6, 24:7, 34:21 completed [1] - 34:16 conceal [1] - 21:2 concluded [1] - 35:15 conduct [3] - 25:10, 28:24, 34:20 conducting [5] - 7:5, 7:16, 8:10, 9:11, 10:10 confiscated [1] - 14:1 confrontation [2] - 24:19, 25:1 consider [1] - 24:16 constitutional [3] - 24:8, 24:12, 24:17 contact [3] - 8:11, 9:10, 9:12 contacted [1] - 13:13 continue [2] - 4:15, 25:5 conversation [3] - 29:20, 30:9, 30:12 copies [6] - 4:3, 4:11, 4:12, 13:24, 17:15, 17:18 copy [1] - 4:5 corporation [1] - 28:16 correct [12] - 3:9, 9:23, 15:10, 21:24, 25:20, 25:21, 26:12, 28:1, 28:14, 30:6, 32:7, 32:15 correction [1] - 19:3 costume [3] - 10:5, 11:22, 12:12, 18:13, 18:21 counsel [2] - 4:2, 32:8 countered [1] - 34:1 County [1] - 6:22 COUNTY [1] - 1:5 couple [1] - 24:11 Court [4] - 7:9, 24:22, 32:18, 35:4 COURT [40] - 1:4, 3:5, 3:15, 4:19, 4:23, 5:1, 5:7, 5:16, 6:4, 7:19, 7:21, 8:24, 9:2, 9:4, 9:6, 10:22, 11:1, 11:5, 14:20, 15:14, 16:6, 17:3, 17:6, 24:2, 25:3, 28:9, 28:20, 30:22, 31:1, 31:9, 31:12, 31:16, 31:20, 31:23, 32:5, 32:12, 32:14, 32:17, 35:1, 35:4 court [5] - 24:9, 24:12, 24:17, 35:10, 35:11, 35:14 Court's [3] - 3:8, 14:16, 32:22 court's [2] - 24:4, 25:16 courtroom [3] - 5:8, 5:14, 8:12 courts [1] - 24:15 credit [2] - 19:9, 19:10 crime [5] - 24:6, 24:7, 34:16, 34:21, 35:9 crimes [1] - 15:7 Cross [1] - 2:6 cross [1] - 14:20 CROSS [1] - 14:22 cross-examination [1] - 14:20 CROSS-EXAMINATION [1] - 14:22	15:14, 16:6, 17:3, 17:6, 24:2, 25:3, 28:9, 28:20, 30:22, 31:1, 31:9, 31:12, 31:16, 31:20, 31:23, 32:5, 32:12, 32:14, 32:17, 35:1, 35:4 court [5] - 24:9, 24:12, 24:17, 35:10, 35:11, 35:14 Court's [3] - 3:8, 14:16, 32:22 court's [2] - 24:4, 25:16 courtroom [3] - 5:8, 5:14, 8:12 courts [1] - 24:15 credit [2] - 19:9, 19:10 crime [5] - 24:6, 24:7, 34:16, 34:21, 35:9 crimes [1] - 15:7 Cross [1] - 2:6 cross [1] - 14:20 CROSS [1] - 14:22 cross-examination [1] - 14:20 CROSS-EXAMINATION [1] - 14:22	disks [1] - 17:19 dismiss [2] - 3:21, 32:25 district [4] - 24:8, 35:10, 35:11, 35:14 District [1] - 1:21 done [3] - 4:25, 7:17, 13:4, 15:25, 16:8, 25:12, 25:14, 26:20 door [13] - 7:13, 7:14, 9:17, 10:7, 10:12, 10:13, 10:14, 11:13, 13:7, 13:11, 28:2, 28:3, 28:5 down [4] - 10:12, 11:7, 22:10, 30:8 downstairs [1] - 33:19 dozen [2] - 16:9, 16:11 duly [1] - 5:21 during [2] - 9:19, 34:20
D		
D-a-v-i-d [1] - 6:3 date [2] - 3:5, 35:12 DAVID [1] - 5:20 David [4] - 2:8, 5:4, 6:2, 35:6 decided [1] - 24:22 deciding [1] - 24:21 decline [1] - 32:3 defendant [15] - 3:24, 8:22, 9:6, 9:7, 9:13, 10:11, 11:9, 13:12, 13:18, 14:1, 14:13, 20:7, 24:7, 29:1, 34:10 Defendant [2] - 1:11, 1:22 DEFENDANT [4] - 32:11, 32:13, 32:16, 35:3 defendants [1] - 34:18 Defender [1] - 1:23 defense [3] - 4:2, 23:17, 23:21, 31:8, 31:24, 32:3, 34:13, 34:14 DEFENSE [1] - 2:11 department [1] - 17:2 DEPARTMENT [1] - 1:2 Department [1] - 28:24 Deputy [2] - 1:21, 1:23 describe [3] - 7:8, 8:17, 9:12 desk [1] - 26:11 detain [4] - 22:6, 22:10, 22:19, 28:3 detained [4] - 13:9, 13:10, 29:6, 30:1 detaining [1] - 13:12 determine [1] - 24:5 develop [1] - 23:25 device [5] - 18:15, 18:17, 18:18, 18:19, 20:5 devices [2] - 20:22, 33:7 different [2] - 14:11, 33:23 Direct [1] - 2:6 DIRECT [1] - 6:7 directed [1] - 28:23 disagreement [1] - 24:14 disk [4] - 17:21, 17:22, 17:23, 17:24	D-a-v-i-d [1] - 6:3 date [2] - 3:5, 35:12 DAVID [1] - 5:20 David [4] - 2:8, 5:4, 6:2, 35:6 decided [1] - 24:22 deciding [1] - 24:21 decline [1] - 32:3 defendant [15] - 3:24, 8:22, 9:6, 9:7, 9:13, 10:11, 11:9, 13:12, 13:18, 14:1, 14:13, 20:7, 24:7, 29:1, 34:10 Defendant [2] - 1:11, 1:22 DEFENDANT [4] - 32:11, 32:13, 32:16, 35:3 defendants [1] - 34:18 Defender [1] - 1:23 defense [3] - 4:2, 23:17, 23:21, 31:8, 31:24, 32:3, 34:13, 34:14 DEFENSE [1] - 2:11 department [1] - 17:2 DEPARTMENT [1] - 1:2 Department [1] - 28:24 Deputy [2] - 1:21, 1:23 describe [3] - 7:8, 8:17, 9:12 desk [1] - 26:11 detain [4] - 22:6, 22:10, 22:19, 28:3 detained [4] - 13:9, 13:10, 29:6, 30:1 detaining [1] - 13:12 determine [1] - 24:5 develop [1] - 23:25 device [5] - 18:15, 18:17, 18:18, 18:19, 20:5 devices [2] - 20:22, 33:7 different [2] - 14:11, 33:23 Direct [1] - 2:6 DIRECT [1] - 6:7 directed [1] - 28:23 disagreement [1] - 24:14 disk [4] - 17:21, 17:22, 17:23, 17:24	either [1] - 12:6 elected [1] - 32:14 electronic [2] - 20:22, 33:7 electronics [4] - 10:17, 10:18, 12:3, 12:8 element [1] - 23:19 employed [4] - 6:9, 6:12, 6:13, 6:16 employee [1] - 14:12 enter [14] - 11:12, 14:14, 25:20, 25:23, 25:24, 26:3, 26:5, 26:8, 26:12, 26:24, 27:23, 29:1, 33:16, 34:18 entered [3] - 11:14, 11:15, 27:12, 33:2, 33:13, 34:2 entering [2] - 27:21, 30:4 enters [3] - 33:24, 34:10, 34:17 Entertainment [1] - 6:13 entrapment [4] - 23:17, 23:19, 23:21, 34:13 entry [1] - 34:21 especially [1] - 23:23 ESQ [2] - 1:21, 1:22 essentially [1] - 15:20 establishing [1] - 35:8 eventual [1] - 33:25 evidence [5] - 24:6, 33:10, 33:21, 35:5, 35:8 exactly [1] - 21:25 examination [1] - 14:20 EXAMINATION [4] - 6:7, 14:22, 28:11, 29:16 examined [1] - 5:23 example [1] - 26:9 exclusionary [1] - 5:6 excuse [3] - 15:3, 16:25, 19:24 EXHIBITS [1] - 2:15 Exhibits [1] - 2:16 exited [2] - 13:7, 13:8 experience [2] - 23:8, 25:9 extend [1] - 3:17

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

F faces [1] - 3:24 fact [6] - 34:1, 34:3, 34:20, 34:21, 34:23, 34:24 fake [1] - 19:5 falls [1] - 21:25 favorable [1] - 33:11 felony [2] - 3:18, 3:23 few [1] - 3:12 fictitious [1] - 14:10 first [6] - 3:11, 5:1, 5:3, 5:21, 20:14, 20:17, 23:19, 33:6, 34:2 floor [1] - 7:18 follow [1] - 23:24 follows [1] - 5:23 forgot [1] - 7:14 foundation [1] - 28:18 four [3] - 27:3, 27:5 front [2] - 12:22, 26:11 Full [1] - 35:18 function [2] - 16:21, 23:8	Harrah's [5] - 6:10, 6:17, 6:19, 15:2, 28:13 hayes [5] - 8:14, 8:16, 9:11, 32:6, 35:2 Hayes [1] - 3:24 HAYES [2] - 1:10, 2:2 heading [1] - 13:6 hear [1] - 32:18 heard [3] - 33:3, 33:4, 35:4 hearing [7] - 3:6, 4:17, 5:9, 18:19, 20:4, 24:4, 24:23 HEARING [1] - 1:15 hearing-impaired [2] - 18:19, 20:4 hearings [1] - 24:20 held [1] - 32:9 HOLLY [1] - 1:16 Honor [2] - 3:10, 3:16, 4:25, 5:4, 5:17, 6:5, 8:21, 14:16, 14:19, 16:1, 23:14, 24:1, 24:3, 29:13, 31:5, 31:22, 32:1, 32:21, 32:24, 34:9, 34:25 HONORABLE [1] - 1:16 hotel [1] - 7:15 Hotel [3] - 6:17, 6:19, 28:13 hours [4] - 27:10, 27:12, 27:15, 27:16 housekeeping [2] - 3:12, 31:1 HOWARD [2] - 1:10, 2:2 Howard [1] - 3:7 Hughes [1] - 3:7 hygiene [1] - 18:13	investigating [1] - 15:7 investigator [5] - 6:10, 7:3, 15:5, 16:17, 16:20 invoke [1] - 5:5 involved [1] - 14:12 iPad [5] - 12:4, 18:15, 20:2, 20:3, 20:21, 34:7 issues [3] - 24:8, 24:12, 24:18 item [1] - 12:6 items [4] - 7:12, 18:6, 18:9, 19:7 itself [3] - 16:23, 17:1, 18:24
G gambling [1] - 33:19 GASTON [27] - 1:22, 4:9, 5:5, 5:17, 8:23, 10:19, 14:23, 15:16, 16:3, 16:10, 17:5, 17:7, 23:16, 24:10, 25:6, 25:7, 25:16, 25:18, 28:8, 28:18, 29:14, 29:17, 30:21, 31:10, 32:1, 32:22, 32:24 gaston [2] - 4:6, 25:4 Gaston.....32 [1] - 2:21 gentleman [1] - 8:20 gift [2] - 19:3, 19:12 government [2] - 23:19, 23:21 grab [1] - 11:24 grabbed [1] - 12:16 Gras [5] - 7:17, 7:19, 7:20, 7:23, 8:2, 8:4, 8:6, 8:9, 9:22 great [7] - 5:16, 30:22, 31:16, 31:23, 32:5, 32:17, 35:1 green [2] - 9:2, 9:3 guess [2] - 19:4, 23:11 guesstimate [1] - 15:25 guest [1] - 7:13 guilty [1] - 3:18 guys [5] - 12:18, 15:20, 22:14, 22:16, 23:12, 25:10, 27:1, 27:7, 28:6	I ID [1] - 19:6 identification [1] - 8:22 identified [1] - 9:7 illegal [1] - 15:8 impaired [2] - 18:19, 20:4 IN [1] - 1:4 including [1] - 35:5 Indicated [2] - 4:16, 30:24 indicating [1] - 8:19 individual [3] - 8:17, 22:17, 26:15 indulgence [3] - 14:16, 25:16, 32:22 inform [1] - 4:6 information [1] - 32:7 informed [2] - 4:1, 32:7 inside [10] - 9:15, 9:16, 10:2, 11:21, 11:25, 19:7, 19:9, 19:17, 19:22, 21:12 instead [2] - 23:13, 25:10 instigation [2] - 23:20, 23:22 integrity [14] - 7:6, 7:9, 7:16, 8:7, 8:10, 9:11, 9:20, 10:1, 10:11, 15:9, 15:24, 16:24, 22:1, 26:20 intend [1] - 4:6 intended [2] - 33:2, 33:13 intent [5] - 33:21, 33:24, 34:10, 34:16, 34:22 intertwined [1] - 23:23 interview [5] - 30:9, 30:13, 30:17 interviewing [1] - 17:22	J jacket [1] - 21:3 JAMES [1] - 1:10 James [1] - 3:7 JAMES [1] - 2:2 jewelry [1] - 10:5, 11:23, 12:13, 12:14, 12:24, 12:25, 13:1, 18:13, 18:21, 33:8 job [3] - 15:4, 16:21, 23:8 JR [2] - 1:10, 2:2 Jr [1] - 3:7 judge [1] - 24:15 June [1] - 35:13 jurisdiction [2] - 24:5, 24:17 jury [3] - 34:11, 34:14, 34:24 JUSTICE [2] - 1:4, 1:16 justice [4] - 24:4, 24:12, 24:15, 24:17
H hallway [6] - 9:17, 10:12, 17:10, 29:21, 30:2 handcuff [1] - 22:17 handcuffs [2] - 22:12, 22:14 harrah's [1] - 14:25		K key [3] - 26:10, 29:2, 29:7 kind [7] - 15:12, 15:17, 19:4, 22:23, 27:1, 27:7, 33:4 knows [1] - 28:19 L ladies' [5] - 10:4, 10:5, 11:22, 13:4, 18:7, 18:8, 18:10, 18:14 larceny [3] - 33:3, 33:22, 34:19 Las [4] - 6:11, 7:1, 14:25, 15:2 LAS [2] - 1:4, 3:1 last [2] - 6:3, 16:13 law [1] - 22:17 Lazo [2] - 5:14, 18:4 leave [3] - 7:12, 10:9, 13:11 leaving [2] - 22:21, 28:3 leeway [1] - 24:24 left [7] - 12:11, 12:22, 13:23, 24:8, 27:25, 34:11, 34:23 letting [1] - 25:10 level [1] - 35:13 lid [3] - 12:15, 13:4, 13:5 light [2] - 9:5, 33:10 limit [1] - 10:24 Lippis [1] - 24:15

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

22-25 30-6 31-25	Richard M. 5-14 18-4	8000000000 15-21 21-25 26-8 22-17
------------------	----------------------	-----------------------------------

22:25, 30:6, 31:25	Richard [2] - 5:14, 18:4	someone [4] - 15:21, 21:25, 26:8, 33:17
Q	rights [1] - 13:22	soon [4] - 4:7, 13:10, 28:2, 28:5
questioning [2] - 24:24, 25:5	room [61] - 7:10, 7:11, 8:5, 8:14, 9:15, 9:22, 10:2, 10:7, 10:13, 11:10, 11:12, 11:14, 11:15, 13:8, 14:7, 14:11, 17:9, 17:10, 17:25, 18:7, 21:6, 21:22, 22:5, 22:23, 22:25, 25:20, 25:23, 25:24, 26:3, 26:5, 26:7, 26:8, 26:13, 26:16, 26:24, 27:13, 27:15, 27:21, 27:23, 27:25, 28:4, 29:2, 29:7, 29:10, 30:4, 30:9, 30:10, 30:13, 33:2, 33:4, 33:14, 33:17, 33:18, 33:20, 33:24, 34:3, 34:5, 34:17	sorry [7] - 7:19, 15:14, 17:5, 17:20, 19:24, 27:4, 30:11
questions [8] - 10:21, 11:1, 11:3, 28:8, 30:21, 31:17	rooms [2] - 8:3, 34:18	sort [2] - 4:4, 31:7
quick [1] - 30:23	ROWLES [27] - 1:21, 3:10, 3:16, 4:18, 4:22, 4:24, 5:3, 5:12, 6:5, 8:8, 7:22, 8:21, 9:9, 11:6, 14:16, 14:18, 16:1, 23:14, 24:1, 24:3, 28:12, 28:22, 29:12, 31:5, 31:22, 32:21, 34:9	South [1] - 7:1
R	Rowles34 [1] - 2:22	speaking [1] - 13:17
rather [1] - 24:25	rule [1] - 5:6	specific [1] - 33:16
read [1] - 13:21	run [1] - 27:6	specifically [1] - 8:3
reading [5] - 12:4, 18:15, 18:17, 18:19, 20:5	rushed [1] - 28:6	speculative [1] - 20:16
ready [2] - 3:9, 32:18	Sam's [1] - 19:5	spell [1] - 6:1
real [1] - 19:7	sat [1] - 27:1	started [1] - 13:6
really [3] - 15:12, 15:17, 29:14	saw [4] - 11:9, 20:14, 20:17, 33:6	STATE [3] - 1:5, 1:7, 2:2
realtime [1] - 9:20	scheduled [1] - 3:6	state [5] - 6:1, 23:18, 23:24, 31:20, 32:20
reason [5] - 16:15, 24:25, 25:9, 30:3, 33:19	searched [2] - 13:21, 13:22	State [12] - 1:21, 3:11, 3:17, 3:19, 3:21, 4:20, 10:21, 17:12, 30:19, 33:11, 33:20, 35:7
Rebuttal [1] - 2:22	seated [1] - 5:25	STATE'S [1] - 2:7
receipt [1] - 29:9	second [1] - 11:20	State's [2] - 5:3, 11:2
recommendation [1] - 3:20	security [5] - 6:10, 7:3, 13:9, 13:10, 15:5, 16:23, 17:1, 17:2, 23:22	statute [1] - 23:17
record [5] - 3:13, 3:17, 5:13, 6:1, 8:21	see [3] - 8:11, 10:11, 10:16	statutes [1] - 24:13
recorded [2] - 30:10, 30:14	sees [3] - 10:12, 10:15, 21:12	steal [1] - 30:5
Recross [1] - 2:6	send [2] - 4:13, 26:10	step [3] - 5:10, 11:7
recross [1] - 29:14	sentence [1] - 3:22	still [2] - 16:23, 34:6
RECROSS [1] - 29:16	sentencing [1] - 3:20	STOBERSKI [1] - 1:16
RECROSS-EXAMINATION [1] - 29:16	separate [1] - 17:24	stuff [2] - 27:17, 30:5
Redirect [1] - 2:6	set [7] - 7:10, 9:14, 15:20, 17:8, 18:6, 27:8, 33:5	subject [1] - 24:13
redirect [1] - 28:9	sets [2] - 27:3, 27:5	submit [5] - 24:9, 25:2, 32:21, 34:8, 34:24
REDIRECT [1] - 28:11	Shawna [3] - 1:25, 35:21, 35:22	subsequently [2] - 13:9, 29:6
referenced [3] - 8:16, 10:1, 12:16	shift [1] - 27:9	sufficient [1] - 34:22
reflect [1] - 8:22	shirt [1] - 21:2	suit [4] - 8:19, 8:20, 8:25, 9:5
regard [1] - 34:13	show [5] - 17:15, 23:21, 33:1, 33:13, 33:21, 33:24	suitcase [3] - 19:16, 19:18, 19:20
regards [3] - 14:6, 34:12, 34:22	showing [1] - 29:9	suitcases [1] - 18:10
registered [1] - 14:7	shows [1] - 34:3	supervisor [2] - 16:18, 23:9
relevance [2] - 16:2, 23:15	side [1] - 31:17	Supreme [1] - 24:22
relevant [2] - 23:16, 24:12	silent [1] - 32:9	surveillance [5] - 4:1, 4:3, 17:12, 17:14, 30:16
remain [1] - 32:9	sitting [1] - 26:7	sustain [1] - 28:20
remember [4] - 29:20, 29:23, 30:8, 30:12	situation [1] - 33:23	sworn [1] - 5:21
removed [1] - 13:22	six [1] - 17:19	
rendition [1] - 3:22	slight [2] - 24:6, 35:8	
repeat [1] - 15:15	small [1] - 17:21	
report [1] - 30:6	Smiths [1] - 19:4	
Reported [1] - 1:25		
REPORTER [5] - 7:19, 7:21, 15:14, 17:3, 17:6		
REPORTER'S [1] - 1:13		
reserve [1] - 32:21		
respond [3] - 13:15, 24:1, 24:10		
response [1] - 26:25		
responsible [1] - 15:7		
rest [4] - 12:14, 13:3, 31:22, 32:4		
resume [1] - 27:18		
review [1] - 4:14		
reward [1] - 19:4		
	S	T
		T-r-a-v-i-s [1] - 6:3
		table [1] - 18:16
		TEMPORE [1] - 1:16
		temptation [3] - 33:10, 33:11, 34:6
		testified [2] - 5:23, 9:10
		testify [5] - 5:8, 5:21, 32:2, 32:8, 32:15
		testimony [1] - 35:6
		THE [57] - 1:4, 1:7, 1:16, 1:16, 3:5, 3:15, 4:19, 4:23, 5:1, 5:7, 5:16, 6:2, 6:4, 7:19, 7:20, 7:21, 8:24, 9:1, 9:2, 9:3, 9:4, 9:5, 9:6, 10:22, 11:1, 11:4, 11:5, 14:20, 15:14, 16:6, 16:8, 17:3, 17:6, 24:2, 25:3, 28:9, 28:20, 30:22, 30:25, 31:1, 31:4, 31:12, 31:14, 31:16, 31:19, 31:20, 31:23, 32:11, 32:12, 32:13,

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

32:14, 32:16, 32:17, 35:1, 35:3, 35:4, 35:13 theft [1] - 33:22 they've [1] - 33:1 three [4] - 8:1, 17:23, 18:2, 26:6 title [1] - 15:4 today [2] - 5:8, 32:3 took [4] - 12:10, 27:17, 30:7, 34:6 touch [4] - 10:17, 11:20, 12:6, 34:11 tower [2] - 8:2 towers [3] - 7:24, 7:25, 8:1 TOWNSHIP [1] - 1:4 transcript [1] - 35:18 TRANSCRIPT [1] - 1:13 TRAVIS [1] - 5:20 travis [3] - 10:23, 30:23, 31:7 Travis [4] - 2:8, 5:4, 6:2, 35:6 trial [1] - 5:9 trier [1] - 34:24 true [1] - 35:18 truth [3] - 5:21, 5:22 try [4] - 20:24, 21:2, 25:11, 27:23 trying [2] - 23:24, 30:5 turn [1] - 6:15 turned [2] - 12:11, 12:12 TV [1] - 27:2 two [8] - 4:22, 4:23, 8:1, 9:14, 17:10, 17:15, 17:18, 18:10 TYLER [1] - 1:22	W wait [3] - 15:21, 22:25, 31:7 walked [8] - 8:14, 12:3, 12:9, 20:17, 20:18, 27:15 walks [2] - 10:13, 10:16 wall [1] - 9:16 wallet [20] - 10:4, 10:15, 10:16, 10:18, 11:22, 12:10, 12:11, 12:17, 18:14, 18:24, 18:25, 19:1, 19:8, 19:11, 20:10, 20:15, 20:18, 21:10, 21:17, 33:6 watch [1] - 15:20 watched [1] - 27:2 watching [8] - 9:20, 9:21, 9:23, 9:24, 18:1, 29:25 whatnot [4] - 4:13, 16:5, 24:25, 25:9 white [7] - 8:19, 8:20, 9:1, 10:4, 11:22, 12:10 whole [1] - 5:22 WILLIAM [1] - 1:21 wish [1] - 31:21 wishes [1] - 31:25 WITNESS [13] - 2:7, 6:2, 7:20, 9:1, 9:3, 9:5, 10:25, 11:4, 16:8, 30:25, 31:4, 31:14, 31:19 witness [8] - 3:12, 4:25, 5:2, 5:3, 5:13, 9:7, 14:18, 29:12 witnesses [3] - 4:20, 31:21, 31:24 WITNESSES [1] - 2:11 Witnesses [1] - 2:12
U	Y
ultimate [1] - 34:24 ultimately [3] - 24:22, 33:9, 34:5 under [3] - 14:10, 21:2, 24:15 up [12] - 7:10, 9:14, 10:14, 12:9, 15:20, 17:8, 18:6, 26:11, 28:15, 27:7, 29:21, 33:5	years [8] - 6:14, 15:3, 16:12, 16:13, 16:16, 16:20
V	
valuable [2] - 7:12, 34:7 value [8] - 18:20, 18:24, 19:13, 19:18, 20:1, 20:6 valued [2] - 18:25, 20:3 various [2] - 18:13, 24:14 VEGAS [2] - 1:4, 3:1 Vegas [4] - 6:11, 7:1, 14:25, 15:2 verbal [1] - 26:25 verified [1] - 13:23 verify [1] - 26:11 versa [1] - 30:4 vice [1] - 30:4 video [7] - 3:25, 4:2, 17:12, 17:14, 17:20, 18:1, 30:16 view [1] - 4:10 vs [1] - 1:9	

SHAWNA J. MCINTOSH, CCR NO. 770
(702) 671-3464

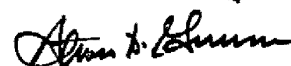
EXHIBIT “2”

1 TRAN

Electronically Filed
07/29/2016 01:22:22 PM

2 Case No. C-16-315718-1

3 Dept. 5



CLERK OF THE COURT

4

5

6

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

7

8

9

THE STATE OF NEVADA,)

10

Plaintiff,)

11

vs.)

PRELIMINARY HEARING

12

JAMES HOWARD HAYES,)

JC Case No. 13F10723X

13

Defendant.)

14

REPORTER'S TRANSCRIPT OF PROCEEDINGS

15

BEFORE JUDGE CYNTHIA CRUZ, JUSTICE OF THE PEACE
Tuesday, June 14, 2016, 9:00 a.m.

16

17

APPEARANCES:

18

For the State: Michael Dickerson, Esq.
Deputy District Attorney

19

20

For the Defendant: Kelli DeVaney-Sauter, Esq.
Deputy Public Defender

21

22

23

REPORTED BY: BILL NELSON, RMR, CCR No. 191

24

25

BILL NELSON & ASSOCIATES
Certified Court Reporters702.360.4677
Fax 360.2844

I N D E X

WITNESS	DR	CR	RDR	RCR
Joshua Jarvis	5	21	31	

BILL NELSON & ASSOCIATES
Certified Court Reporters

702.360.4677
Fax 360.2844

1 LAS VEGAS, NEVADA; TUESDAY, JUNE 14, 2016

2
3 P R O C E E D I N G S

4
5 THE COURT: Let's get everybody moving.

6 And we're going to get going on James Howard
7 Hayes, unless we have a final resolution.

8 All right. So let's transport the in-custodies
9 out, so that we can get going on the preliminary
10 hearing.

11 James Howard Hayes, 13F10723X.

12 He's present out of custody with the assistance
13 of the Public Defender.

14 This is the time and date set for the preliminary
15 hearing.

16 MS. DEVANEY-SAUTER: Your Honor, the Defense is
17 ready to proceed.

18 MR. DICKERSON: The State's ready to proceed,
19 Your Honor.

20 THE COURT: All right. Any preliminary motions
21 to make at this particular juncture?

22 MS. DEVANEY-SAUTER: Your Honor, I would ask the
23 exclusionary rule be invoked at this time.

24 THE COURT: Counsel invoked the exclusionary
25 rule.

1 All witness, aside from the State's first
2 witness, please step outside the courtroom.

3 State, call your first witness.

4 MR. DICKERSON: The State's first witness is
5 Joshua Jarvis.

6 THE MARSHAL: Please step up to the witness
7 stand.

8 Remain standing, and face the clerk to be sworn.

9
10 JOSHUA JARVIS,

11
12 who, being first duly sworn to tell
13 the truth, the whole truth, and
14 nothing but the truth, was examined
15 and testified as follows:

16 THE CLERK: Please be seated.

17 Please state your full name, spelling both your
18 first and last name for the record.

19 THE WITNESS: Joshua Jeremiah Jarvis,
20 J-o-s-h-u-a, last name Jarvis, J-a-r-v-i-s, middle name
21 Jeremiah, J-e-r-e-m-i-a-h.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- - - -

DIRECT EXAMINATION OF JOSHUA JARVIS

BY MR. DICKERSON:

Q. Mr. Jarvis, on April 9th, 2013 were you here in Las Vegas on vacation?

A. Yes.

Q. And at that point in time were you staying at the Excalibur Hotel casino?

A. Yes, I was.

Q. Located at 3850 south Las Vegas Boulevard?

A. That's correct.

Q. And specifically that is here in Clark County, Nevada?

A. Yeah.

Q. And the room that you were staying in was room 17151?

A. I believe so.

I'm not -- It was a while ago, I'm not sure exactly.

Q. That rings a bell to you?

A. Yes.

Q. At that point in time in the morning hours of April 9th, 2013 where were you?

A. I was in the room the whole time.

Q. In that hotel room?

1 A. Yes.

2 Q. At the Excalibur Hotel?

3 A. That's correct.

4 Q. The one you were staying in?

5 A. Yes.

6 Q. And did something out of the ordinary happen in
7 the early morning hours of April 9th, 2013?

8 A. I heard some rattling, which was kind of
9 upsetting because my sister and her friends were out, so
10 I was guessing it was them, until I saw him in the room,
11 and I was wondering if if he was with the people I was
12 with -- on vacation with, and then I noticed that there
13 was no one else there besides him, so that's when I got
14 up, and he proceeded to run out the door -- or tried to
15 run out the door.

16 Q. Okay. So you're saying, he, you saw he in the
17 room.

18 Who are you referring to?

19 A. James, that guy right there.

20 MR. DICKERSON: Your Honor, if the record could
21 reflect, the witness just identified the Defendant?

22 THE COURT: It will.
23
24
25

1 BY MR. DICKERSON:

2 Q. So the Defendant is the individual you saw in
3 your room?

4 A. That's correct.

5 Q. And in the -- early in the morning?

6 A. That's correct.

7 Q. What did you happen to see when you wake up?

8 A. I just heard rattling, I saw him going through
9 luggage.

10 I kind of yelled at him, and then he ran through
11 the door.

12 I ran towards him.

13 He didn't seem to be aggressive at all.

14 I turned around, patted him down, and then I took
15 his wallet out. At that time I told him to sit down on
16 the bed and put the license right in front of the camera
17 and took a picture of him.

18 Q. Okay. So we'll get to all of that.

19 Firstly, who were you staying with in the hotel
20 room?

21 A. It was my sister, her friend, which was in the
22 hotel room, she was pretty much knocked out, and my
23 girlfriend at the time.

24 Q. Okay. What is your sister's name?

25 A. Jessica Jarvis.

1 Q. And what is -- or what was your girlfriend at the
2 time, her name?

3 A. Misty Mustafa.

4 Q. And you were staying with both of them in that
5 room 17151?

6 A. That's correct.

7 Q. Now, it's approximately 7:05 a.m. when these
8 events start?

9 A. That's correct.

10 Q. Who's in the room at that point in time?

11 A. At that time it was just me and my sister's
12 friend, Daisy.

13 Q. Daisy is who?

14 A. My sister's friend, she's the third person that
15 was on vacation with us.

16 Q. Okay. Is she staying in that room?

17 A. Yes, that's correct.

18 Q. And are you guys awake?

19 A. I was awake the whole time.

20 She was asleep.

21 Q. So were you awake prior to this event, or asleep?

22 A. Negative.

23 I was asleep.

24 Q. So at approximately 7:05 a.m. you hear something?

25 A. That --

1 Q. What exactly does it sound like?

2 A. Just rustling around under -- I didn't hear any
3 door open, just really sounds I'm not accustomed to
4 because usually my sister's -- or her friends come in
5 really loud.

6 Q. Okay. So it was quiet?

7 A. Yes, it was quiet.

8 Q. Rustling?

9 A. Yes.

10 Q. Where did you hear that sound coming from?

11 A. From like the lower end of my bed towards the
12 wall.

13 Q. Okay. What -- or where is this area?

14 A. When you walk in, there's the dresser with the
15 TV.

16 When you first walk in, that's where tall luggage
17 was at.

18 So it's like there's two beds, and then the
19 hallway is right there at the end of the bed next to the
20 wall, next to the TV.

21 Q. Okay. And the luggage was next to the wall.

22 Is there a window there as well?

23 A. Negative.

24 Q. If you could, describe the room from the point of
25 entry from the door, could you do that for the Court?

1 A. Standing up or --

2 Q. No, describing if you're looking into the room
3 from the door to the room.

4 A. When you look into the room, there's a window
5 facing 12:00.

6 To the right side there's two beds.

7 As soon as you pass the hallway, there's a TV on
8 the left side, just before you get to the window, and
9 there's luggage right before you get to the TV.

10 Q. Okay. So the luggage was directly in front of
11 the bed?

12 A. That's correct.

13 Q. And is that the bed you were sleeping on?

14 A. Yes.

15 Q. Was the individual you identified as Daisy, was
16 she also sleeping in that bed?

17 A. Negative.

18 On the bed to the right of me.

19 Q. Was there anybody else sleeping in that room?

20 A. Negative.

21 Just me and her.

22 Q. Okay. Now, when you wake up, what was the first
23 thing you see?

24 A. I see him going through the luggage, that's the
25 first thing I see.

1 Q. The Defendant?

2 A. Yes.

3 Q. So you see the Defendant going through luggage
4 that you identified as being at the foot of your bed?

5 A. That's correct.

6 Q. Can you see what part of his body at this point
7 in time?

8 A. I just saw his back, didn't see his face.

9 Q. Okay. And what did he look like at that point in
10 time?

11 A. At that point in time?

12 I don't really understand.

13 Q. What did you see, what did you recognize the
14 individual to be?

15 A. Just a guy, older male, going through my luggage,
16 or my sister's luggage.

17 Q. Did you recognize him?

18 A. Not from any time frame when we were in Vegas,
19 no.

20 That was the first time I ever seen him, when he
21 went into the hotel room.

22 Q. So you didn't know the Defendant before
23 approximately 7:05 a.m. on April 9th, 2013?

24 A. No.

25 Q. And when you wake up, you see this, what do you

1 do?

2 A. I just freaked out, just reacted and asked who he
3 is.

4 Q. What did he say?

5 A. He just stared at me and made a run for the door.

6 Q. What did you do?

7 A. I ran to the door to stop him, and at that time
8 he wasn't aggressive at all.

9 Q. How was it that you stopped him?

10 A. Just turned him around, patted him down, and then
11 at the bed sat him down at the bed, and he said, sorry.

12 MS. DEVANEY-SAUTER: Objection, Your Honor.

13 Narrative.

14 MR. DICKERSON: I don't believe so.

15 THE COURT: Overruled.

16 BY MR. DICKERSON:

17 Q. Go ahead, sir.

18 So you stopped him how?

19 A. I stopped him before he got to the door and then
20 just patted him down, and then as soon as I patted him
21 down I took his wallet out, took a picture with the
22 phone.

23 Q. So he's heading towards the door, you have to
24 grab him, you get in front of him?

25 A. I get in front of him.

1 Q. And as soon as you get in front of him what does
2 he do?

3 A. He wasn't aggressive, just --

4 Q. He just stopped?

5 A. He just stopped.

6 Q. And then you took the steps to pat him down?

7 A. That's true.

8 Q. How did you pat him down?

9 A. Just from left to right, and then took his wallet
10 out, and took his ID out, and took a picture.

11 Q. Was he facing you, or facing away from you, when
12 you patted him down?

13 A. I'm pretty sure he was facing away from me at the
14 beginning.

15 Q. Okay. So you had him turned away from you when
16 you patted him down?

17 A. That's correct.

18 Q. And while you're patting him down, you take his
19 wallet out?

20 A. That's correct.

21 Q. And once you take his wallet out, do you see
22 whether there's any identification in that wallet?

23 A. Yes, that's correct.

24 Q. And did you retrieve that identification?

25 A. That's correct.

1 Q. Did you recognize that identification as a Nevada
2 driver's license?

3 A. From the picture, yeah.

4 Q. The picture you took?

5 A. That's correct.

6 Q. So you say you pulled the wallet out, pulled the
7 ID out, then you take a picture.

8 What do you take a picture with?

9 A. With my phone.

10 Q. Your cell phone?

11 A. That's correct.

12 Q. It has a standard camera on it?

13 A. That's correct.

14 MR. DICKERSON: I'm going to ask to approach,
15 Your Honor.

16 I'll be showing him State's Proposed Exhibit a
17 and 2.

18 MS. DEVANEY-SAUTER: No objection, Your Honor.

19 MR. DICKERSON: I've already shown this to
20 Defense counsel.

21 THE COURT: Go ahead.

22 BY MR. DICKERSON:

23 Q. Sir, take a look at State's Proposed Exhibits 1
24 and 2.

25 Do you recognize these two documents?

1 A. That's correct.

2 Q. Okay.

3 A. I also seen that she was sleeping over there the
4 whole time.

5 Q. How do you recognize first State's Exhibit 1,
6 what do you recognize it to be?

7 A. This is what I took the picture of and told him
8 to sit down, and this --

9 Q. So State's Exhibit 1 is a picture you took?

10 A. That.

11 Q. Of the Defendant?

12 A. Yes, that's correct.

13 Q. And State's Exhibit 2, do you recognize this?

14 A. Yeah, I took that picture as well. It has my
15 finger on it.

16 MR. DICKERSON: Okay. The state moves for
17 admission of State's Exhibit 1 and 2, Your Honor.

18 MS. DEVANEY-SAUTER: No objection.

19 THE COURT: 1 and 2 will be admitted for the
20 purposes of the preliminary hearing only.

21 BY MR. DICKERSON:

22 Q. First we'll go into State's Exhibit 1, which is
23 right there in front of you.

24 What is that?

25 A. That's a picture of him on the bed with me taking

1 a picture of his driver's license that I took out of his
2 pocket.

3 Q. So the foreground is that the Defendant's
4 driver's license?

5 A. That's correct.

6 Q. That's the driver's license you pulled out of his
7 wallet?

8 A. Yeah.

9 Q. All right. And in the background sitting on the
10 bed, who is that?

11 A. That's my sister's friend Daisy.

12 Q. Sitting on the bed?

13 A. Sitting on the bed is the Defendant.

14 Q. That's that same individual you identified today
15 as being in your room?

16 A. Yes.

17 Q. And this is the picture you took of him in your
18 room?

19 A. That's correct.

20 Q. How long after you awoke was it you took this
21 picture?

22 A. I want to say, within like five to ten minutes.

23 Q. Okay. And at that point in time did you also
24 take another picture?

25 A. Yes, I did.

1 Q. Looking at State's Exhibit 2, is that the other
2 picture that you took?

3 A. That's correct.

4 Q. What is that a picture of?

5 A. His driver's license.

6 I took a second picture because I wasn't sure if
7 the first picture was good.

8 Q. So you took the second picture, so you could get
9 a better view of the license?

10 A. That's correct.

11 Q. And, in fact, this was the same license you
12 pulled out of the Defendant's wallet?

13 A. That's correct.

14 Q. You see the Defendant's name on that license?

15 A. Yes, I do.

16 Q. What does it say?

17 A. It says, James -- This one is black and white, so
18 I can't really see the middle one, Howard, Jr.

19 Q. Okay. And after you took these two photographs,
20 what did you do?

21 A. He wasn't aggressive, and he didn't seem like he
22 was --

23 Q. Did you say anything to him?

24 A. I can't remember much of what I said to him.

25 I just I remember him saying he was sorry.

1 Q. How many times did he tell you he was sorry?

2 A. A multiple amount of times. I can't remember
3 exactly how many times.

4 Q. That is the primary substance of what he said?

5 A. Yes, that's correct.

6 Q. Do you recall him saying anything else?

7 A. Negative.

8 Q. Did you at any point in time decide to call for
9 assistance?

10 A. From the time I apprehended him, no, and then
11 after that we called I guess the authorities within the
12 building.

13 Q. Okay. That would be security at the Excalibur
14 Hotel?

15 A. Yes.

16 Q. So you called security at Excalibur Hotel?

17 A. That's correct.

18 Q. And does anything happen during that time you're
19 calling security?

20 A. No, just they wanted to have us explain what
21 happened and a report, and that was it.

22 Q. Had the Defendant already run out of the room by
23 then?

24 A. Yeah, he left.

25 Q. How did he leave?

1 A. I just let him leave.

2 Q. He walked right out the front door?

3 A. Yeah.

4 Q. And how long after he left was it that you called
5 security?

6 A. I want to say, within like 20 minutes.

7 Q. Very short?

8 A. Yes.

9 Q. Now, you pointed out on State's Exhibit 1 that
10 Daisy was on the other bed?

11 A. Yes, that's correct.

12 Q. Was that the opposite bed that you -- that she
13 was originally on?

14 A. She was on the right side of me.

15 Q. Is that the bed that is closest to the wall?

16 A. Yeah, that's to the wall to the doorway on the
17 right side.

18 Q. Is that the bed that is directly -- or the
19 luggage that the Defendant was going through was
20 directly in front of you?

21 A. No, it was in front of my bed.

22 Q. In front of the bed close to the door?

23 A. Yes.

24 Q. The same bed he's seen sitting on in State's
25 Exhibit 1?

1 A. Yes, that's correct.

2 Q. Okay. Now, the items that he was going through
3 in front of that bed, what were they?

4 A. I don't know, that's not my luggage. That was my
5 sister and her friends' luggage.

6 Q. Okay. Do you have any idea -- or do you know at
7 all what was in there?

8 A. All I know is, she took out extra money, which I
9 told her not to do, and I don't know anything else that
10 was inside that luggage.

11 Q. Do you know how much extra money?

12 A. I think a hundred bucks or something like that.

13 MR. DICKERSON: Okay. Court's brief indulgence.

14 THE COURT: Yes.

15 BY MR. DICKERSON:

16 Q. Did you ever give the Defendant permission to be
17 in your room at Excalibur Hotel on April 9th, 2013?

18 A. Negative.

19 Q. Do you have knowledge of whether any of your
20 roommates staying in that room at that time gave the
21 Defendant permission to be in that room on April 9th,
22 2013?

23 A. Actually, no, one of them was actually crying
24 when she found out she was asleep the whole time someone
25 actually entered the room.

1 Q. Who was that?

2 A. That was Daisy.

3 Q. And so your answer whether any of your roommates
4 gave the Defendant permission to be in the room?

5 A. No, there was no permission given.

6 Q. And Daisy, why was she crying?

7 A. She felt like if I wasn't there, something could
8 have happened to her.

9 Q. Were there any steps taken after security was
10 called as far as relation to Daisy?

11 A. Just to calm her down, that was pretty much it,
12 like gave her a bottle of water and just talked to her,
13 and that was it.

14 MR. DICKERSON: The State will pass the witness.

15 THE COURT: Cross.

16 - - - -

17 CROSS-EXAMINATION OF JOSHUA JARVIS

18 BY MS. DEVANEY-SAUTER:

19 Q. Mr. Jarvis, there had been three other people
20 staying in this hotel room with you?

21 A. Correct.

22 Q. And to make sure I'm clear, the first is your
23 sister, Jessica Jarvis?

24 A. Yes.

25 Q. The second is Jessica's friend, Daisy Ramirez?

1 A. That's correct.

2 Q. And the third was your girlfriend?

3 A. Yes.

4 Q. And then would you repeat her name again?

5 A. Misty Mustafa.

6 Q. Thank you.

7 Okay. And how long had you known Ms. Ramirez at
8 this point?

9 A. Daisy?

10 Q. Yes.

11 A. I have known her since I was little.

12 Q. Since you were a child?

13 A. Yeah.

14 Q. How long had the four of you been in Las Vegas?

15 A. Let me see.

16 That's was our first night.

17 Q. Your first night in town?

18 A. We were coming back from California.

19 Q. What time did you arrive at the Excalibur?

20 A. Afternoonish.

21 I can't be exactly sure, that was like three
22 years ago.

23 Q. But it was daylight you think when you arrived?

24 A. Yeah, it was.

25 Q. And had you all gone out to do any partying after

1 arriving in Las Vegas?

2 A. No, not me.

3 I was the one driving, so --

4 Q. So you opted to stay behind, make sure you're the
5 designated driver and sober?

6 A. Yes, that's correct.

7 Q. And then the three ladies went out on The Strip?

8 A. The three ladies went out.

9 One of them came back at first, was Daisy, and
10 the other two stood out.

11 Q. So Misty and Jessica had remained out on the The
12 Strip?

13 A. That's correct.

14 Q. Do you remember what time Daisy had returned to
15 the hotel room?

16 A. I do not recall exactly what time.

17 I would say, probably around 1:00 -- 1:00.

18 Q. And at the time of this incident Misty and
19 Jessica had not yet returned to the hotel room?

20 A. No.

21 Q. But you had been asleep during these hours?

22 A. While they were out, yes.

23 Q. When do you believe you fell asleep?

24 A. I was pretty much -- So they took like three
25 hours to get ready, so I fell asleep around probably

1 9:00.

2 When they were ready to go out, which was around
3 I want to say 11:00, I told them to go out, they were
4 taking too long, and I have to drive in the morning.

5 The other two decided to stay out, and the other
6 one came back, and that's when I went back to sleep.

7 Q. To make sure I have it clear then, you went to
8 sleep at 9 p.m., you awoke again at 11 when the ladies
9 were ready to go out?

10 A. Yeah, I woke up, and one other person came back.

11 Q. You fell asleep again at some point after they
12 had gone out?

13 A. Exactly.

14 Q. From there, did you stay asleep until about 7
15 a.m.?

16 A. I stayed asleep until he came in.

17 MS. DEVANEY-SAUTER: Court's brief indulgence.

18 THE COURT: Yes.

19 BY MS. DEVANEY-SAUTER:

20 Q. When you were woken up, you didn't see anybody
21 going through your luggage?

22 A. No.

23 I kept all my luggage inside the vehicle.

24 Q. So this was just the ladies' luggage then in the
25 hotel room?

1 A. Exactly, most of it, yes.

2 Q. And had it all been collected at the foot of the
3 bed?

4 A. Most of it, yes.

5 The girls would leave everything all over the
6 room, so --

7 Q. So they had property kind of strewn about?

8 A. In the bathroom and stuff like that.

9 Q. Clothes everywhere, that kind of getting ready to
10 go out mess?

11 A. Not particularly, like mostly in the bathroom.

12 Q. Okay. And do you know if you didn't know what
13 was in this luggage?

14 A. Yes, I didn't know, besides she took extra money
15 out.

16 Q. Okay. And so you had patted down Mr. Hayes after
17 waking to find him in the room?

18 A. Yes, that's correct.

19 Q. But first you had been yelling and using
20 profanity you noted?'

21 A. Yes, I did.

22 Q. Do you remember what you had said?

23 A. Do you want me to say verbatim?

24 Q. I don't mind profanity, yes.

25 A. I told him -- I said, who the fuck are you, and

1 what are you doing in here, and he looked at me and with
2 like just a deer in the headlights, and he tried to make
3 a run for the door, and so I patted him down to make
4 sure he didn't have any weapons or anything like that.

5 Q. And you had been then very freaked out to be
6 yelling at the stranger in your room?

7 A. Me or him?

8 Q. You.

9 A. Yeah.

10 I don't know, you would be freaked out if someone
11 came into your hotel, tried to rob you.

12 Q. Understandable.

13 A. Okay.

14 Q. So you, even though you noted that he had not
15 been aggressive, you had been aggressive?

16 A. I'm sorry?

17 Rephrase that.

18 Q. You noted earlier that the man in your room had
19 not been aggressive towards you?

20 A. When I say, he wasn't aggressive, I mean in terms
21 of when he ran for the door, and I stopped him, he
22 didn't try to hit me, or try to do anything, that's what
23 I meant by not being aggressive.

24 Q. So you took control of the situation?

25 A. Exactly.

1 Q. All right. And at this time then you patted him
2 down?

3 A. Correct.

4 Q. You noted earlier you were afraid of any sort of
5 a weapon?

6 A. Exactly.

7 Q. So you had been I take it moving quickly patting
8 him down?

9 A. Well, yeah, fairly quickly.

10 Q. You wanted to make sure as quickly as possible
11 there wasn't any sort of a weapon on his person?

12 A. Yes, that's correct.

13 Q. So --

14 MS. DEVANEY-SAUTER: Court's indulgence.

15 BY MS. DEVANEY-SAUTER:

16 Q. So you didn't do a very thorough search of this
17 person?

18 A. Ma'am, I've done a lot of searches in the past,
19 my search was good enough to know he didn't have a
20 weapon on him that could hurt me or Daisy that was in
21 the room.

22 Q. That's okay.

23 A. Can I ask you a question?

24 Do you find him innocent?

25 MS. DEVANEY-SAUTER: Well, actually --

1 THE COURT: No, you can't ask her questions.

2 It's for her to ask questions of you.

3 Don't answer that question.

4 BY MS. DEVANEY-SAUTER:

5 Q. So backing up a bit, you had not gone out with
6 the women onto The Strip?

7 A. No, not with my sister and her friends.

8 Q. So you don't know whether or not they were
9 drinking that night?

10 A. It's Vegas I'm pretty sure they were.

11 Q. You don't have any reason to know whether they
12 had met anybody out on The Strip?

13 A. I'm pretty sure that they did not know this guy.

14 Q. But you couldn't say for sure?

15 A. No, I couldn't say for sure.

16 Q. Because you had not gone out with the ladies?

17 A. No, because I know them, I grew up with them.

18 They are not stupid, they are street smart.

19 Q. But you weren't with them to see if they talked
20 to anybody while out on The Strip?

21 A. First of all, they ain't going to find him
22 attractive, so they're not going to talk to him.

23 Q. I'm simply asking you, confirming you had not
24 been with them and seen their interactions with anybody
25 that night?

1 A. I told you I was in the hotel.

2 Q. So you're telling me today then you don't believe
3 that they would have had a drink with this gentleman
4 here today?

5 MR. DICKERSON: Speculation, Your Honor.

6 THE COURT: Sustained.

7 THE WITNESS: No, I don't think so at all.

8 THE COURT: You don't have to answer that.

9 BY MS. DEVANEY-SAUTER:

10 Q. The three women staying in the hotel room with
11 you were all adults, correct?

12 A. I hope so, yeah.

13 Q. And each one then had the ability to go out on
14 their own on The Strip?

15 A. Yes, that's correct.

16 Q. Okay. And you had not been with them every
17 moment of the trip?

18 A. No.

19 Q. And as each of them was an adult in the room,
20 each would have the ability to invite someone back to
21 the room?

22 A. They would never do that.

23 Q. But they have the ability to invite people back?

24 A. They would not do that.

25 Q. But you're not making the statement today based

1 on anything you had witnessed on the night of May 28th
2 to the morning of May 29th?

3 MR. DICKERSON: Vague, Your Honor.

4 THE COURT: Actually --

5 MS. DEVANEY-SAUTER: My apologies on the date.

6 THE COURT: Why don't you rephrase the question.

7 BY MS. DEVANEY-SAUTER:

8 Q. You were not basing that statement though on
9 having been with them through the night and into the
10 early morning before this incident?

11 A. In terms of a lot, so you are saying that --
12 you're asking me, or stating that they met this guy, and
13 somehow invited him --

14 Q. Well, I'm not stating anything.

15 I'm asking you questions, sir.

16 A. Rephrase the question then.

17 Q. You say that these young women would not have had
18 any interaction with Mr. Hayes, or anyone?

19 A. Interaction?

20 Q. I'm clarifying your basis for that statement that
21 it is based on your impression of these women and your
22 opinion about Mr. Hayes, not about anything that you had
23 witnessed on the night or early morning leading into
24 this incident?

25 A. I'm basing it on my knowledge of my sister and

1 her friends, that I know that they did not meet after
2 speaking with him.

3 After the incident, they never seen the person,
4 after showing the picture that I took, so yes, I'm
5 basing it on the fact I was not with them that night.

6 MS. DEVANEY-SAUTER: No other questions, Your
7 Honor.

8 THE COURT: Redirect?

9 MR. DICKERSON: Thank you, Your Honor.

10 - - - -

11 REDIRECT EXAMINATION OF JOSHUA JARVIS

12 BY MR. DICKERSON:

13 Q. Mr. Jarvis, you said that you conducted a lot of
14 searches?

15 A. Yes, that's correct.

16 Q. What did you mean by that?

17 A. I did searches in Afghanistan for people trying
18 to come inside, that I was conducting a detail.

19 Q. What do you do for a living?

20 A. Right now -- I used to be in the military for
21 nine years.

22 I'm switching over to a cop.

23 Q. Doing what?

24 A. Special forces.

25 Q. And on April 9th, 2013 can you estimate how many

1 searches you've done before that date?

2 A. I don't know, probably like 60.

3 Q. Were those searches when you were in Afghanistan
4 for weapons?

5 A. That's correct.

6 Q. The search you conducted on April 9th, 2013 of
7 the Defendant, was that also a search for weapons?

8 A. That's right.

9 Q. Did you search the Defendant for any property
10 that he may have stolen?

11 A. Negative, no.

12 Q. So if there was something that was concealed upon
13 his person that was not a weapon, your search was not
14 designed to detect that?

15 A. Negative, no.

16 Q. That's correct?

17 A. Yes.

18 Q. And, in fact, you didn't find any weapons on him?

19 A. No, I did not.

20 Q. And so at that point in time was when you had him
21 sit down on the bed, you took the pictures?

22 A. That's correct.

23 Q. And to your knowledge nobody that you were here
24 in Las Vegas with gave the Defendant permission to be in
25 that room?

1 A. That's correct.

2 MR. DICKERSON: The State has no further
3 questions for this witness.

4 MS. DEVANEY-SAUTER: Court's indulgence.
5 No questions, Your Honor.

6 THE COURT: Mr. Jarvis, thank very much for your
7 time and testimony today.

8 You're excused.

9 You may step down.

10 Please don't discuss your testimony with anybody,
11 aside from a representative of the Public Defenders
12 office or District attorneys office. Both will identify
13 themselves appropriately.

14 State, call your next witness.

15 MR. DICKERSON: The State has no further
16 witnesses in this matter, Your Honor.

17 THE COURT: The State rests?

18 MR. DICKERSON: Prior to resting, the State's
19 going to strike Count 2, attempt grand larceny count.

20 THE COURT: All right. Count 2 is stricken by
21 the State.

22 MR. DICKERSON: If I could, Your Honor, Mr.
23 Jarvis, can you could just wait outside?

24 Thanks.

25 THE COURT: The State rests as to Count 1?

1 MR. DICKERSON: The State rests as to Count 1.

2 THE COURT: All right.

3 MS. DEVANEY-SAUTER: Court's brief indulgence.

4 THE COURT: Any witnesses or evidence on behalf
5 of the Defense today?

6 MS. DEVANEY-SAUTER: No, Your Honor.

7 I have advised Mr. Hayes of his right to testify
8 in this matter, and he's opting not to testify in
9 accordance with my advice.

10 THE COURT: Mr. Hayes, is that correct, you had a
11 discussion with your attorney, and you are following her
12 advice today?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. The Defense rests?

15 MS. DEVANEY-SAUTER: The Defense rests.

16 THE COURT: State.

17 MR. DICKERSON: The State will waive and rebut.

18 THE COURT: Defense.

19 MS. DEVANEY-SAUTER: Your Honor, I will note that
20 the State has failed to meet its burden of establishing
21 probable cause as to entering the hotel room on the
22 count of burglary.

23 While Mr. Jarvis here today was able to testify
24 that he had not given Mr. Hayes permission to enter the
25 room, or go through any property, he simply is unable to

1 state whether or not the other ladies in the room whose
2 luggage it was actually could have given him that
3 permission.

4 He is only able to say that he doesn't think they
5 would have been attracted to Mr. Hayes, but not that he
6 had been present with them the whole night, and did not
7 know to his knowledge -- Court's indulgence -- He's not
8 able to say he had been present with him the entire
9 night, or he had not, or he had been in a position to
10 know whether they would have actually permitted someone
11 access to the room in order to obtain property for them.

12 THE COURT: State.

13 MR. DICKERSON: Your Honor, the intent element of
14 burglary is well established by the Defendant's actions
15 once inside the room.

16 Upon first being seen in the room, the Defendant
17 was seemingly rummaging through the property of the
18 occupants of the room, which lends to the reasonable
19 inference that in rummaging through property that is not
20 yours he was there to commit a larceny of that property.

21 Upon being confronted, he looked like a deer in
22 the headlights, and he attempted to run for the door,
23 also showing his intent that was not above board intent,
24 showing what he was doing with that luggage was likely
25 trying to commit a larceny.

1 Then after being confronted by Mr. Jarvis, the
2 Defendant said, I'm sorry, which only indicates more
3 that he was not supposed to be in that room an had
4 felonious intent to be in that room.

5 It's pretty clear, Your Honor, the reasonable
6 inference is drawn, and the preliminary hearing slight
7 or marginal evidence is met for the intent element of
8 burglary.

9 THE COURT: Mr. Hayes, I do find the State has
10 met their burden of proof to hold you to answer in the
11 Eighth Judicial District Court on the charges of
12 burglary.

13 You will appear with your attorney in the Lower
14 Level Arraignment Court on the following date and time.

15 THE CLERK: June 23rd, 10 a.m., lower level
16 District Court arraignment.

17 THE COURT: My suggestion is, Mr. Hayes, stay out
18 of the resort corridor.

19 Sir, stay in contact with your attorney.

20 Make sure you make your lower level arraignment.

21 All right?

22 THE DEFENDANT: Yes, ma'am.

23 (Proceedings concluded.)
24
25

1
2
3 REPORTER'S CERTIFICATE
4

5 I, Bill Nelson, a Certified Court Reporter in and
6 for the State of Nevada, hereby certify that pursuant to
7 NRS 2398.030 I have not included the Social Security
8 number of any person within this document.

9 I further Certify that I am not a relative or
10 employee of any party involved in said action, nor a
11 person financially interested in said action.
12
13

14 /s/ Bill Nelson

15 Bill Nelson, RMR, CCR 191
16
17
18
19
20
21
22
23
24
25

BILL NELSON & ASSOCIATES
Certified Court Reporters

702.360.4677
Fax 360.2844

C E R T I F I C A T E

STATE OF NEVADA)

) ss.

CLARK COUNTY)

I, Bill Nelson, RMR, CCR 191, do hereby certify
that I reported the foregoing proceedings; that the same
is true and correct as reflected by my original machine
shorthand notes taken at said time and place.

/s/ Bill Nelson

Bill Nelson, RMR, CCR 191
Certified Court Reporter
Las Vegas, Nevada

BILL NELSON & ASSOCIATES
Certified Court Reporters

702.360.4677
Fax 360.2844

I	9	attempt [1] - 33:19 attempted [1] - 35:22 Attorney [1] - 1:19 attorney [3] - 34:11, 36:13, 36:19 attorneys [1] - 33:12 attracted [1] - 35:5 attractive [1] - 28:22 authorities [1] - 18:11 awake [3] - 8:18, 8:19, 8:21 awoke [2] - 16:20, 24:8	camera [2] - 7:16, 14:12 Case [2] - 1:2, 1:10 casino [1] - 5:8 CCR [4] - 1:23, 37:15, 38:9, 38:16 cell [1] - 14:10 CERTIFICATE [1] - 37:3 Certified [2] - 37:5, 38:17 certify [2] - 37:6, 38:9 Certify [1] - 37:9 charges [1] - 36:11 child [1] - 22:12 clarifying [1] - 30:20 Clark [1] - 5:12 CLARK [2] - 1:6, 38:6 clear [3] - 21:22, 24:7, 36:5 CLERK [2] - 4:16, 36:15 clerk [1] - 4:8 close [1] - 19:22 closest [1] - 19:15 clothes [1] - 25:9 collected [1] - 25:2 coming [2] - 9:10, 22:18 commit [2] - 35:20, 35:25 concealed [1] - 32:12 concluded [1] - 36:23 conducted [2] - 31:13, 32:6 conducting [1] - 31:18 confirming [1] - 28:23 confronted [2] - 35:21, 36:1 contact [1] - 36:19 control [1] - 28:24 cop [1] - 31:22 correct [43] - 5:11, 6:3, 7:4, 7:6, 8:6, 8:9, 8:17, 10:12, 11:5, 13:17, 13:20, 13:23, 13:25, 14:5, 14:11, 14:13, 15:1, 15:12, 16:5, 16:19, 17:3, 17:10, 17:13, 18:5, 18:17, 19:11, 20:1, 21:21, 22:1, 23:6, 23:13, 25:18, 27:3, 27:12, 29:11, 29:15, 31:15, 32:5, 32:16, 32:22, 33:1, 34:10, 38:11 corridor [1] - 36:18 counsel [2] - 3:24, 14:20 count [2] - 33:19, 34:22 Count [4] - 33:19, 33:20, 33:25, 34:1 County [1] - 5:12 COUNTY [2] - 1:6, 38:6 Court [8] - 9:25, 36:11, 36:14, 36:16, 37:5, 38:17 COURT [30] - 1:5, 3:5, 3:20, 3:24, 6:22, 12:15, 14:21, 15:19, 20:14, 21:15, 24:18, 28:1, 29:6, 29:8, 30:4, 30:6, 31:8, 33:6, 33:17, 33:20, 33:25, 34:2, 34:4,
/s [2] - 37:14, 38:15	9 [1] - 24:8 9:00 [2] - 1:15, 24:1 9th [8] - 5:4, 5:23, 6:7, 11:23, 20:17, 20:21, 31:25, 32:6	B background [1] - 18:9 backing [1] - 28:5 based [2] - 29:25, 30:21 basing [3] - 30:8, 30:25, 31:5 basis [1] - 30:20 bathroom [2] - 25:8, 25:11 bed [24] - 7:16, 9:11, 9:19, 10:11, 10:13, 10:16, 10:18, 11:4, 12:11, 15:25, 16:10, 16:12, 16:13, 19:10, 19:12, 19:15, 19:18, 19:21, 19:22, 19:24, 20:3, 25:3, 32:21 beds [2] - 9:18, 10:6 BEFORE [1] - 1:15 beginning [1] - 13:14 behalf [1] - 34:4 behind [1] - 23:4 bell [1] - 5:20 better [1] - 17:9 Bill [8] - 37:5, 37:14, 37:15, 38:9, 38:15, 38:16 BILL [1] - 1:23 bit [1] - 28:5 black [1] - 17:17 board [1] - 35:23 body [1] - 11:6 bottle [1] - 21:12 Boulevard [1] - 5:10 brief [3] - 20:13, 24:17, 34:3 bucks [1] - 20:12 building [1] - 18:12 burden [2] - 34:20, 36:10 burglary [4] - 34:22, 35:14, 36:8, 36:12 BY [14] - 1:23, 5:3, 7:1, 12:16, 14:22, 15:21, 20:15, 21:18, 24:19, 27:15, 28:4, 29:9, 30:7, 31:12	
1	A a.m [8] - 1:15, 8:7, 8:24, 11:23, 24:15, 36:15 ability [3] - 29:13, 29:20, 29:23 able [3] - 34:23, 35:4, 35:8 access [1] - 35:11 accordance [1] - 34:9 accustomed [1] - 9:3 action [2] - 37:10, 37:11 actions [1] - 35:14 admission [1] - 15:17 admitted [1] - 15:19 adult [1] - 29:19 adults [1] - 29:11 advice [2] - 34:9, 34:12 advised [1] - 34:7 Afghanistan [2] - 31:17, 32:3 afraid [1] - 27:4 afternoonish [1] - 22:20 aggressive [9] - 7:13, 12:8, 13:3, 17:21, 26:15, 26:19, 26:20, 26:23 ago [2] - 5:18, 22:22 ahead [2] - 12:17, 14:21 ain't [1] - 28:21 amount [1] - 18:2 answer [4] - 21:3, 28:3, 29:8, 36:10 apologies [1] - 30:5 appear [1] - 36:13 APPEARANCES [1] - 1:17 apprehended [1] - 18:10 approach [1] - 14:14 appropriately [1] - 33:13 April [8] - 5:4, 5:23, 6:7, 11:23, 20:17, 20:21, 31:25, 32:6 area [1] - 9:13 Arraignment [1] - 36:14 arraignment [2] - 36:16, 36:20 arrive [1] - 22:19 arrived [1] - 22:23 arriving [1] - 23:1 aside [2] - 4:1, 33:11 asleep [10] - 8:20, 8:21, 8:23, 20:24, 23:21, 23:23, 23:25, 24:11, 24:14, 24:16 assistance [2] - 3:12, 18:9	C C-16-315718-1 [1] - 1:2 California [1] - 22:18 calm [1] - 21:11	
2	2 [8] - 14:17, 14:24, 15:13, 15:17, 15:19, 17:1, 33:19, 33:20 20 [1] - 19:6 2013 [8] - 5:4, 5:23, 6:7, 11:23, 20:17, 20:22, 31:25, 32:6 2016 [2] - 1:15, 3:1 21 [1] - 2:3 2398.030 [1] - 37:7 23rd [1] - 36:15 28th [1] - 30:1 29th [1] - 30:2		
3	31 [1] - 2:3 3850 [1] - 5:10		
5	5 [2] - 1:3, 2:3		
6	60 [1] - 32:2		
7	7 [1] - 24:14 7:05 [3] - 8:7, 8:24, 11:23		

BILL NELSON & ASSOCIATES
Certified Court Reporters

702.360.4677
Fax 360.2844

34:10, 34:14, 34:16, 34:18, 35:12, 36:9, 36:17 court's [2] - 20:13, 34:3 Court's [4] - 24:17, 27:14, 33:4, 35:7 courtroom [1] - 4:2 CR [1] - 2:2 cross [1] - 21:15 CROSS [1] - 21:17 CROSS-EXAMINATION [1] - 21:17 CRUZ [1] - 1:15 crying [2] - 20:23, 21:6 custodies [1] - 3:8 custody [1] - 3:12 CYNTHIA [1] - 1:15 D Daisy [13] - 8:12, 8:13, 10:15, 16:11, 19:10, 21:2, 21:6, 21:10, 21:25, 22:9, 23:9, 23:14, 27:20 date [4] - 3:14, 30:5, 32:1, 36:14 daylight [1] - 22:23 decide [1] - 18:8 decided [1] - 24:5 deer [2] - 26:2, 35:21 Defendant [19] - 1:12, 1:20, 6:21, 7:2, 11:1, 11:3, 11:22, 15:11, 16:13, 18:22, 19:19, 20:16, 20:21, 21:4, 32:7, 32:9, 32:24, 35:16, 36:2 DEFENDANT [2] - 34:13, 36:22 Defendant's [4] - 16:3, 17:12, 17:14, 35:14 Defender [2] - 1:21, 3:13 Defenders [1] - 33:11 Defense [8] - 3:16, 14:20, 34:5, 34:14, 34:15, 34:18 Dept [1] - 1:3 Deputy [2] - 1:19, 1:21 describe [1] - 9:24 describing [1] - 10:2 designated [1] - 23:5 designed [1] - 32:14 detail [1] - 31:18 detect [1] - 32:14 DEVANEY [21] - 3:16, 3:22, 12:12, 14:18, 15:18, 21:18, 24:17, 24:19, 27:14, 27:15, 27:25, 28:4, 29:9, 30:5, 30:7, 31:6, 30:7, 31:6, 33:4, 34:3, 34:6, 34:15, 34:6, 34:15, 34:19 DeVaney [1] - 1:20 DEVANEY-SAUTER [21] -	3:16, 3:22, 12:12, 14:18, 15:18, 21:18, 24:17, 24:19, 27:14, 27:15, 27:25, 28:4, 29:9, 30:5, 30:7, 31:6, 33:4, 34:3, 34:6, 34:15, 34:19 DeVaney-Sauter [1] - 1:20 DICKERSON [26] - 3:18, 4:4, 5:3, 6:20, 7:1, 12:14, 12:16, 14:14, 14:19, 14:22, 15:16, 15:21, 20:13, 20:15, 21:14, 29:5, 30:3, 31:9, 31:12, 33:2, 33:15, 33:18, 33:22, 34:1, 34:17, 35:13 Dickerson [1] - 1:18 DIRECT [1] - 5:2 directly [3] - 10:10, 19:18, 19:20 discuss [1] - 33:10 discussion [1] - 34:11 District [4] - 1:19, 33:12, 36:11, 36:16 document [1] - 37:8 documents [1] - 14:25 done [2] - 27:18, 32:1 door [15] - 6:14, 6:15, 7:11, 9:3, 9:25, 10:3, 12:5, 12:7, 12:19, 12:23, 19:2, 19:22, 26:3, 26:21, 35:22 doorway [1] - 19:16 down [19] - 7:14, 7:15, 12:10, 12:11, 12:20, 12:21, 13:6, 13:8, 13:12, 13:16, 13:18, 15:8, 21:11, 25:16, 26:3, 27:2, 27:8, 32:21, 33:9 DR [1] - 2:2 drawn [1] - 36:6 dresser [1] - 9:14 drink [1] - 29:3 drinking [1] - 28:9 drive [1] - 24:4 driver [1] - 23:5 driver's [5] - 14:2, 16:1, 16:4, 16:6, 17:5 driving [1] - 23:3 duly [1] - 4:12 during [2] - 18:18, 23:21 E early [4] - 6:7, 7:5, 30:10, 30:23 Eighth [1] - 36:11 element [2] - 35:13, 36:7 employee [1] - 37:10 end [2] - 9:11, 9:19 enter [1] - 34:24 entered [1] - 20:25 entering [1] - 34:21	entire [1] - 35:8 entry [1] - 9:25 Esq [2] - 1:18, 1:20 established [1] - 35:14 establishing [1] - 34:20 estimate [1] - 31:25 event [1] - 8:21 events [1] - 8:8 everywhere [1] - 25:9 evidence [2] - 34:4, 36:7 exactly [3] - 5:19, 9:1, 18:3, 22:21, 23:16, 24:13, 25:1, 26:25, 27:6 EXAMINATION [3] - 5:2, 21:17, 31:11 examined [1] - 4:14 Excalibur [6] - 5:8, 6:2, 18:13, 18:16, 20:17, 22:19 exclusionary [2] - 3:23, 3:24 excused [1] - 33:8 Exhibit [9] - 14:16, 15:5, 15:9, 15:13, 15:17, 15:22, 17:1, 19:9, 19:25 Exhibits [1] - 14:23 explain [1] - 18:20 extra [3] - 20:8, 20:11, 25:14 F face [2] - 4:8, 11:8 facing [4] - 10:5, 13:11, 13:13 fact [3] - 17:11, 31:5, 32:18 failed [1] - 34:20 fairly [1] - 27:9 far [1] - 21:10 fell [3] - 23:23, 23:25, 24:11 felonious [1] - 36:4 felt [1] - 21:7 final [1] - 3:7 financially [1] - 37:11 finger [1] - 15:15 first [19] - 4:1, 4:3, 4:4, 4:12, 4:18, 9:16, 10:22, 10:25, 11:20, 15:5, 15:22, 17:7, 21:22, 22:16, 22:17, 23:9, 25:19, 28:21, 35:16 firstly [1] - 7:19 five [1] - 16:22 following [2] - 34:11, 36:14 follows [1] - 4:15 foot [2] - 11:4, 25:2 forces [1] - 31:24 foregoing [1] - 38:10 foreground [1] - 16:3 four [1] - 22:14 frame [1] - 11:18 freaked [3] - 12:2, 26:5, 26:10	friend [5] - 7:21, 8:12, 8:14, 16:11, 21:25 friends [4] - 6:9, 8:4, 28:7, 31:1 friends' [1] - 20:5 front [11] - 7:16, 10:10, 12:24, 12:25, 13:1, 15:23, 19:2, 19:20, 19:21, 19:22, 20:3 fuck [1] - 25:25 full [1] - 4:17 G gentleman [1] - 29:3 girlfriend [3] - 7:23, 8:1, 22:2 girls [1] - 25:5 given [3] - 21:5, 34:24, 35:2 grab [1] - 12:24 grand [1] - 33:19 grew [1] - 28:17 guess [1] - 18:11 guessing [1] - 6:10 guy [4] - 6:19, 11:15, 28:13, 30:12 guys [1] - 8:18 H hallway [2] - 9:19, 10:7 Hayes [11] - 3:7, 3:11, 25:16, 30:18, 30:22, 34:7, 34:10, 34:24, 35:5, 36:9, 36:17 HAYES [1] - 1:11 heading [1] - 12:23 headlights [2] - 26:2, 35:22 hear [3] - 8:24, 9:2, 9:10 heard [2] - 6:8, 7:8 HEARING [1] - 1:10 hearing [4] - 3:10, 3:15, 15:20, 36:6 hereby [2] - 37:6, 38:9 hit [1] - 26:22 hold [1] - 36:10 Honor [19] - 3:16, 3:19, 3:22, 6:20, 12:12, 14:15, 14:18, 15:17, 29:5, 30:3, 31:7, 31:9, 33:5, 33:16, 33:22, 34:6, 34:19, 35:13, 36:5 hope [1] - 29:12 Hotel [5] - 5:8, 6:2, 18:14, 18:16, 20:17 hotel [12] - 5:25, 7:19, 7:22, 11:21, 21:20, 23:15, 23:19, 24:25, 26:11, 29:1, 29:10, 34:21 hours [4] - 5:22, 6:7, 23:21, 23:25
--	--	---	--

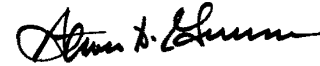
HOWARD [1] - 1:11 Howard [3] - 3:6, 3:11, 17:18 hundred [1] - 20:12 hurt [1] - 27:20 I ID [2] - 13:10, 14:7 idea [1] - 20:6 identification [3] - 13:22, 13:24, 14:1 identified [4] - 6:21, 10:15, 11:4, 16:14 identify [1] - 33:12 impression [1] - 30:21 IN [1] - 1:5 in-custodies [1] - 3:8 incident [4] - 23:18, 30:10, 30:24, 31:3 included [1] - 37:7 indicates [1] - 36:2 individual [4] - 7:2, 10:15, 11:14, 16:14 indulgence [3] - 20:13, 24:17, 27:14, 33:4, 34:3, 35:7 inference [2] - 35:19, 36:6 innocent [1] - 27:24 inside [4] - 20:10, 24:23, 31:18, 35:15 intent [5] - 35:13, 35:23, 36:4, 36:7 interaction [2] - 30:18, 30:19 interactions [1] - 28:24 interested [1] - 37:11 invite [2] - 29:20, 29:23 invited [1] - 30:13 invoked [2] - 3:23, 3:24 involved [1] - 37:10 items [1] - 20:2	Joshua [3] - 2:3, 4:5, 4:19 JOSHUA [5] - 4:10, 4:20, 5:2, 21:17, 31:11 Jr [1] - 17:18 JUDGE [1] - 1:15 Judicial [1] - 36:11 junction [1] - 3:21 June [2] - 1:15, 36:15 JUNE [1] - 3:1 JUSTICE [2] - 1:5, 1:15 K Kelli [1] - 1:20 kept [1] - 24:23 kind [4] - 6:8, 7:10, 25:7, 25:9 knocked [1] - 7:22 knowledge [4] - 20:19, 30:25, 32:23, 35:7 known [2] - 22:7, 22:11	M ma'am [3] - 27:18, 34:13, 36:22 machine [1] - 38:11 male [1] - 11:15 man [1] - 26:18 marginal [1] - 36:7 MARSHAL [1] - 4:6 matter [2] - 33:16, 34:8 mean [2] - 26:20, 31:16 meant [1] - 26:23 meet [2] - 31:1, 34:20 mess [1] - 25:10 met [4] - 28:12, 30:12, 36:7, 36:10 Michael [1] - 1:18 middle [2] - 4:20, 17:18 military [1] - 31:20 mind [1] - 25:24 minutes [2] - 16:22, 19:6 Misty [4] - 8:3, 22:5, 23:11, 23:18 moment [1] - 29:17 money [3] - 20:8, 20:11, 25:14 morning [7] - 5:22, 6:7, 7:5, 24:4, 30:2, 30:10, 30:23 most [2] - 25:1, 25:4 mostly [1] - 25:11 motions [1] - 3:20 moves [1] - 15:16 moving [2] - 3:5, 27:7 MR [2] - 3:18, 4:4, 5:3, 6:20, 7:1, 12:14, 12:16, 14:14, 14:19, 14:22, 15:16, 15:21, 20:13, 20:15, 21:14, 29:5, 30:3, 31:9, 31:12, 33:2, 33:15, 33:18, 33:22, 34:1, 34:17, 35:13 MS [2] - 3:16, 3:22, 12:12, 14:18, 15:18, 21:18, 24:17, 24:19, 27:14, 27:15, 27:25, 28:4, 29:9, 30:5, 30:7, 31:6, 33:4, 34:3, 34:6, 34:15, 34:19 multiple [1] - 18:2 Mustafa [2] - 8:3, 22:5	Nelson [3] - 37:5, 37:14, 37:15, 38:9, 38:15, 38:16 NEVADA [4] - 1:6, 1:8, 3:1, 38:4 Nevada [4] - 5:13, 14:1, 37:6, 38:17 never [2] - 29:22, 31:3 next [4] - 9:19, 9:20, 9:21, 33:14 night [10] - 22:16, 22:17, 28:9, 28:25, 30:1, 30:9, 30:23, 31:5, 35:6, 35:9 nine [1] - 31:21 nobody [1] - 32:23 note [1] - 34:19 noted [4] - 25:20, 26:14, 26:18, 27:4 notes [1] - 38:12 nothing [1] - 4:14 noticed [1] - 6:12 NRS [1] - 37:7 number [1] - 37:8
J J-e-r-e-m-i-a-h [1] - 4:21 JAMES [1] - 1:11 James [4] - 3:6, 3:11, 6:19, 17:17 Jarvis [13] - 2:3, 4:5, 4:19, 4:20, 5:4, 7:25, 21:19, 21:23, 31:13, 33:6, 33:23, 34:23, 36:1 JARVIS [5] - 4:10, 4:20, 5:2, 21:17, 31:11 JC [1] - 1:10 Jeremiah [2] - 4:19, 4:21 Jessica [4] - 7:25, 21:23, 23:11, 23:19 Jessica's [1] - 21:25	L ladies [5] - 23:7, 23:8, 24:8, 28:16, 35:1 ladies' [1] - 24:24 larceny [3] - 33:19, 35:20, 35:25 LAS [2] - 1:5, 3:1 Las [3] - 5:5, 5:10, 22:14, 23:1, 32:24, 38:17 last [2] - 4:18, 4:20 leading [1] - 30:23 leave [3] - 18:25, 19:1, 25:5 left [4] - 10:8, 13:9, 18:24, 19:4 lends [1] - 35:18 level [2] - 36:15, 36:20 Level [1] - 36:14 license [3] - 7:16, 14:2, 16:1, 16:4, 16:6, 17:5, 17:9, 17:11, 17:14 likely [1] - 35:24 living [1] - 31:19 located [1] - 5:10 look [3] - 10:4, 11:9, 14:23 looked [2] - 26:1, 35:21 looking [2] - 10:2, 17:1 loud [1] - 9:5 Lower [1] - 36:13 lower [3] - 9:11, 36:15, 36:20 luggage [19] - 7:9, 9:16, 9:21, 10:9, 10:10, 10:24, 11:3, 11:15, 11:16, 19:19, 20:4, 20:5, 20:10, 24:21, 24:23, 24:24, 25:13, 35:2, 35:24	N name [3] - 4:17, 4:18, 4:20, 7:24, 8:2, 17:14, 22:4 narrative [1] - 12:13 negative [3] - 8:22, 9:23, 10:17, 10:20, 18:7, 20:18, 32:11, 32:15 NELSON [1] - 1:23	O objection [3] - 12:12, 14:18, 15:18 obtain [1] - 35:11 occupants [1] - 35:18 OF [10] - 1:5, 1:6, 1:8, 1:14, 1:15, 5:2, 21:17, 31:11, 38:4 office [2] - 33:12 older [1] - 11:15 once [2] - 13:21, 35:15 one [10] - 6:4, 6:13, 17:17, 17:18, 20:23, 23:3, 23:9, 24:6, 24:10, 29:13 open [1] - 9:3 opinion [1] - 30:22 opposite [1] - 19:12 opted [1] - 23:4 opting [1] - 34:8 order [1] - 35:11 ordinary [1] - 6:6 original [1] - 38:11 originally [1] - 19:13 outside [2] - 4:2, 33:23 overruled [1] - 12:15 own [1] - 29:14 P p.m [1] - 24:8 part [1] - 11:6 particular [1] - 3:21 particularly [1] - 25:11 party [1] - 37:10

partying [1] - 22:25 pass [2] - 10:7, 21:14 past [1] - 27:18 pat [2] - 13:6, 13:8 patted [4] - 7:14, 12:10, 12:20, 13:12, 13:16, 25:16, 26:3, 27:1 patting [2] - 13:18, 27:7 PEACE [1] - 1:15 people [4] - 6:11, 21:19, 29:23, 31:17 permission [7] - 20:16, 20:21, 21:4, 21:5, 32:24, 34:24, 35:3 permitted [1] - 35:10 person [8] - 8:14, 24:10, 27:11, 27:17, 31:3, 32:13, 37:8, 37:11 phone [3] - 12:22, 14:9, 14:10 photographs [1] - 17:19 picture [21] - 7:17, 12:21, 13:10, 14:3, 14:4, 14:7, 14:8, 15:7, 15:9, 15:14, 15:25, 16:1, 16:17, 16:21, 16:24, 17:2, 17:4, 17:6, 17:7, 17:8, 31:4 pictures [1] - 32:21 place [1] - 38:12 Plaintiff [1] - 1:9 pocket [1] - 16:2 point [12] - 5:7, 5:22, 8:10, 9:24, 11:6, 11:9, 11:11, 16:23, 18:8, 22:8, 24:11, 32:20 pointed [1] - 19:9 position [1] - 35:9 possible [1] - 27:10 preliminary [5] - 3:9, 3:14, 3:20, 15:20, 36:6 PRELIMINARY [1] - 1:10 present [3] - 3:12, 35:6, 35:8 pretty [7] - 7:22, 13:13, 21:11, 23:24, 28:10, 28:13, 36:5 primary [1] - 18:4 probable [1] - 34:21 proceed [2] - 3:17, 3:18 proceeded [1] - 6:14 proceedings [2] - 36:23, 38:10 PROCEEDINGS [1] - 1:14 profanity [2] - 25:20, 25:24 proof [1] - 36:10 property [7] - 25:7, 32:9, 34:25, 35:11, 35:17, 35:19, 35:20 Proposed [2] - 14:16, 14:23 Public [3] - 1:21, 3:13, 33:11 pulled [4] - 14:6, 16:6, 17:12	purposes [1] - 15:20 pursuant [1] - 37:6 put [1] - 7:16 Q questions [8] - 28:1, 28:2, 30:15, 31:6, 33:3, 33:5 quickly [3] - 27:7, 27:9, 27:10 quiet [2] - 9:6, 9:7 R Ramirez [2] - 21:25, 22:7 ran [4] - 7:10, 7:12, 12:7, 26:21 rattling [2] - 6:8, 7:8 RCR [1] - 2:2 RDR [1] - 2:2 reacted [1] - 12:2 ready [8] - 3:17, 3:18, 23:25, 24:2, 24:9, 25:9 really [4] - 9:3, 9:5, 11:12, 17:18 reason [1] - 28:11 reasonable [2] - 35:18, 36:5 rebut [1] - 34:17 recognize [7] - 11:13, 11:17, 14:1, 14:25, 15:5, 15:6, 15:13 record [2] - 4:18, 6:20 redirect [1] - 31:8 REDIRECT [1] - 31:11 referring [1] - 6:18 reflect [1] - 6:21 reflected [1] - 38:11 relation [1] - 21:10 relative [1] - 37:9 remain [1] - 4:8 remained [1] - 23:11 remember [5] - 17:24, 17:25, 18:2, 23:14, 25:22 repeat [1] - 22:4 rephrase [3] - 26:17, 30:6, 30:16 report [1] - 18:21 REPORTED [1] - 1:23 reported [1] - 38:10 Reporter [2] - 37:5, 38:17 REPORTER'S [2] - 1:14, 37:3 representative [1] - 33:11 resolution [1] - 3:7 resort [1] - 36:18 resting [1] - 33:18 rests [5] - 33:17, 33:25, 34:1, 34:14, 34:15	retrieve [1] - 13:24 returned [2] - 23:14, 23:19 rings [1] - 5:20 RMR [4] - 1:23, 37:15, 38:9, 38:16 rob [1] - 26:11 room [48] - 5:15, 5:24, 5:25, 6:10, 6:17, 7:3, 7:20, 7:22, 8:5, 8:10, 8:16, 9:24, 10:2, 10:3, 10:4, 10:19, 11:21, 16:15, 16:18, 18:22, 20:17, 20:20, 20:21, 20:25, 21:4, 21:20, 23:15, 23:19, 24:25, 25:6, 25:17, 26:6, 26:18, 27:21, 29:10, 29:19, 29:21, 32:25, 34:21, 34:25, 35:1, 35:11, 35:15, 35:16, 35:18, 36:3, 36:4 roommates [2] - 20:20, 21:3 rule [2] - 3:23, 3:25 rummaging [2] - 35:17, 35:19 run [8] - 6:14, 6:15, 12:5, 18:22, 26:3, 35:22 rustling [2] - 9:2, 9:8 S sat [1] - 12:11 SAUTER [21] - 3:16, 3:22, 12:12, 14:18, 15:18, 21:18, 24:17, 24:19, 27:14, 27:15, 27:25, 28:4, 29:9, 30:5, 30:7, 31:6, 33:4, 34:3, 34:6, 34:15, 34:19 Sauter [1] - 1:20 saw [5] - 6:10, 6:16, 7:2, 7:8, 11:8 search [6] - 27:16, 27:19, 32:6, 32:7, 32:9, 32:13 searches [5] - 27:18, 31:14, 31:17, 32:1, 32:3 seated [1] - 4:16 second [3] - 17:6, 17:8, 21:25 Security [1] - 37:7 security [5] - 18:13, 18:16, 18:19, 19:5, 21:9 see [15] - 7:7, 10:23, 10:24, 10:25, 11:3, 11:6, 11:8, 11:13, 11:25, 13:21, 17:14, 17:18, 22:15, 24:20, 28:19 seem [2] - 7:13, 17:21 seemingly [1] - 35:17 set [1] - 3:14 short [1] - 19:7 shorthand [1] - 38:12 showing [4] - 14:16, 31:4, 35:23, 35:24	shown [1] - 14:19 side [4] - 10:6, 10:8, 19:14, 19:17 simply [2] - 28:23, 34:25 sister [6] - 6:9, 7:21, 20:5, 21:23, 28:7, 30:25 sister's [6] - 7:24, 8:11, 8:14, 9:4, 11:16, 16:11 sit [3] - 7:15, 15:8, 32:21 sitting [4] - 16:9, 16:12, 16:13, 19:24 situation [1] - 26:24 sleep [2] - 24:6, 24:8 sleeping [4] - 10:13, 10:16, 10:19, 15:3 slight [1] - 36:6 smart [1] - 28:18 sober [1] - 23:5 Social [1] - 37:7 someone [4] - 20:24, 26:10, 29:20, 35:10 soon [3] - 10:7, 12:20, 13:1 sorry [5] - 12:11, 17:25, 18:1, 26:16, 36:2 sort [2] - 27:4, 27:11 sound [2] - 9:1, 9:10 sounds [1] - 9:3 south [1] - 5:10 speaking [1] - 31:2 special [1] - 31:24 specifically [1] - 5:12 speculation [1] - 29:5 spelling [1] - 4:17 ss [1] - 38:5 stand [1] - 4:7 standard [1] - 14:12 standing [2] - 4:8, 10:1 stared [1] - 12:5 start [1] - 8:8 STATE [3] - 1:6, 1:8, 38:4 state [7] - 4:3, 4:17, 15:16, 33:14, 34:16, 35:1, 35:12 State [12] - 1:18, 21:14, 33:2, 33:15, 33:17, 33:21, 33:25, 34:1, 34:17, 34:20, 36:9, 37:6 State's [14] - 3:18, 4:1, 4:4, 14:16, 14:23, 15:5, 15:9, 15:13, 15:17, 15:22, 17:1, 19:9, 19:24, 33:18 statement [3] - 29:25, 30:8, 30:20 stating [2] - 30:12, 30:14 stay [5] - 23:4, 24:5, 24:14, 36:17, 36:19 stayed [1] - 24:16 staying [9] - 5:7, 5:15, 6:4, 7:19, 8:4, 8:16, 20:20, 21:20, 29:10
---	--	---	---

step [3] - 4:2, 4:6, 33:9 steps [2] - 13:6, 21:9 stolen [1] - 32:10 stood [1] - 23:10 stop [1] - 12:7 stopped [6] - 12:9, 12:18, 12:19, 13:4, 13:5, 26:21 stranger [1] - 26:6 street [1] - 28:18 strewn [1] - 25:7 stricken [1] - 33:20 strike [1] - 33:19 Strip [6] - 23:7, 23:12, 28:6, 28:12, 28:20, 29:14 stuff [1] - 25:8 stupid [1] - 28:18 substance [1] - 18:4 suggestion [1] - 36:17 supposed [1] - 36:3 sustained [1] - 29:6 switching [1] - 31:22 sworn [2] - 4:8, 4:12 T tall [1] - 9:16 ten [1] - 16:22 terms [2] - 26:20, 30:11 testified [1] - 4:15 testify [3] - 34:7, 34:8, 34:23 testimony [2] - 33:7, 33:10 THE [39] - 1:5, 1:8, 1:15, 3:5, 3:20, 3:24, 4:6, 4:16, 4:19, 6:22, 12:15, 14:21, 15:19, 20:14, 21:15, 24:18, 28:1, 29:6, 29:7, 29:8, 30:4, 30:6, 31:8, 33:6, 33:17, 33:20, 33:25, 34:2, 34:4, 34:10, 34:13, 34:14, 34:16, 34:18, 35:12, 36:9, 36:15, 36:17, 36:22 themselves [1] - 33:13 third [2] - 8:14, 22:2 thorough [1] - 27:16 three [6] - 21:19, 22:21, 23:7, 23:8, 23:24, 29:10 today [8] - 16:14, 29:2, 29:4, 29:25, 33:7, 34:5, 34:12, 34:23 took [25] - 7:14, 7:17, 12:21, 13:6, 13:9, 13:10, 14:4, 15:7, 15:9, 15:14, 16:1, 16:17, 16:20, 17:2, 17:6, 17:8, 17:19, 20:8, 23:24, 25:14, 26:24, 31:4, 32:21 towards [4] - 7:12, 9:11, 12:23, 26:19 town [1] - 22:17 TOWNSHIP [1] - 1:5	TRAN [1] - 1:1 TRANSCRIPT [1] - 1:14 transport [1] - 3:8 tried [3] - 6:14, 26:2, 26:11 trip [1] - 29:17 true [2] - 13:7, 38:11 truth [3] - 4:13, 4:14 try [2] - 26:22 trying [2] - 31:17, 35:25 TUESDAY [1] - 3:1 Tuesday [1] - 1:15 turned [3] - 7:14, 12:10, 13:15 TV [4] - 9:15, 9:20, 10:7, 10:9 two [6] - 9:18, 10:6, 14:25, 17:19, 23:10, 24:5 U unable [1] - 34:25 under [1] - 9:2 understandable [1] - 26:12 unless [1] - 3:7 up [10] - 4:6, 6:14, 7:7, 10:1, 10:22, 11:25, 24:10, 24:20, 28:5, 28:17 upsetting [1] - 6:9 V vacation [3] - 5:5, 6:12, 8:15 vague [1] - 30:3 Vegas [8] - 5:5, 5:10, 11:18, 22:14, 23:1, 28:10, 32:24, 38:17 VEGAS [2] - 1:5, 3:1 vehicle [1] - 24:23 verbatim [1] - 25:23 view [1] - 17:9 vs [1] - 1:10 W wait [1] - 33:23 waive [1] - 34:17 wake [3] - 7:7, 10:22, 11:25 waking [1] - 25:17 walk [2] - 9:14, 9:16 walked [1] - 19:2 wall [5] - 9:12, 9:20, 9:21, 19:15, 19:16 wallet [9] - 7:15, 12:21, 13:9, 13:19, 13:21, 13:22, 14:6, 16:7, 17:12 water [1] - 21:12 weapon [4] - 27:5, 27:11, 27:20, 32:13 weapons [4] - 26:4, 32:4,	32:7, 32:18 while [1] - 17:17 whole [9] - 4:13, 5:24, 8:19, 15:4, 20:24, 35:6 window [3] - 9:22, 10:4, 10:8 WITNESS [3] - 2:2, 4:19, 29:7 witness [9] - 4:1, 4:2, 4:3, 4:4, 4:6, 6:21, 21:14, 33:3, 33:14 witnessed [2] - 30:1, 30:23 witnesses [2] - 33:16, 34:4 woke [1] - 24:10 woken [1] - 24:20 women [4] - 28:6, 29:10, 30:17, 30:21 wondering [1] - 6:11 Y years [2] - 22:22, 31:21 yelled [1] - 7:10 yelling [2] - 25:19, 26:6 young [1] - 30:17
--	--	--

1 NWEW
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL R. DICKERSON
6 Deputy District Attorney
7 Nevada Bar #13476
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

Electronically Filed
12/16/2016 02:09:13 PM


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 JAMES HOWARD HAYES, aka,
13 James Howard Hayes, Jr., #2796708
14 Defendant.

CASE NO: C-16-315718-1

DEPT NO: XII

NOTICE OF WITNESSES
[NRS 174.234(1)(a)]

17 TO: JAMES HOWARD HAYES, aka, James Howard Hayes, Jr., Defendant; and
18 TO: KELLI DEVANEY-SAUTER, DEPUTY PUBLIC DEFENDER, Counsel of

19 Record:

20 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
21 NEVADA intends to call the following witnesses in its case in chief:

<u>NAME</u>	<u>ADDRESS</u>
22 ALBRIGHT, T.	LVMPD P#12930
23 BROMLEY, J.	LVMPD P#13723
24 COLE, R.	LVMPD P#13351
25 CUSTODIAN OF RECORDS	LVMPD, Records, 400 So. Martin Luther King
26 Or Designee	Blvd., LV, NV

27
28 ///

1	CUSTODIAN OF RECORDS	LVMPD, Communications, 400 So. Martin Luther
2	Or Designee	King Blvd., LV, NV
3	CUSTODIAN OF RECORDS	CCDC, Records, 330 So. Casino Center Blvd.,
4	Or Designee	LV, NV
5	CUSTODIAN OF RECORDS	NV DMV, 555 Wright Way, Carson City, NV
6	Or Designee	
7	CUSTODIAN OF RECORDS	EXCALIBUR HOTEL & CASINO
8	Or Designee	3850 Las Vegas Blvd., LV, NV
9	DESOUZA, C.	LVMPD P#13979
10	DODDER, RYAN	EXCALIBUR HOTEL & CASINO, Security, LVN
11	DRIVER, J.	LVMPD P#9790
12	ERMILIO, JOHN	c/o CCDA, 200 Lewis Ave., LV, NV
13	GARRIS, D.	LVMPD P#5985
14	HAYES, J.	LVMPD P#14010
15	HENDREX, C.	LVMPD P#9995
16	JARVIS, JESSICA	c/o CCDA, 200 Lewis Ave., LV, NV
17	JARVIS, JOSHUA	c/o CCDA, 200 Lewis Ave., LV, NV
18	MCFERRIN, J.	LVMPD P#13719
19	MUSTAFAT, MESTIANA	c/o CCDA, 200 Lewis Ave., LV, NV
20	PERALTA, T.	LVMPD P#13912
21	PILETTE, CHARLES	EXCALIBUR HOTEL & CASINO, Security, LVN
22	RADER, D.	LVMPD P#4918
23	RADER, W.	LVMPD P#5468
24	RAMIREZ, DAISY	c/o CCDA, 200 Lewis Ave., LV, NV
25	SHAMIRZA, ALFRED	DISTRICT ATTORNEY INVESTIGATOR
26	STALEY, L.	LVMPD P#14734
27	WHITTY, ALAN	EXCALIBUR HOTEL & CASINO, Security, LVN
28	WILSON, M.	LVMPD P#14035

1 These witnesses are in addition to those witnesses endorsed on the Information or
2 Indictment and any other witness for which a separate Notice of Witnesses and/or Expert
3 Witnesses has been filed.

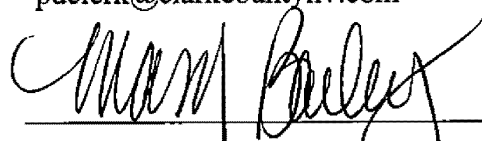
4 STEVEN B. WOLFSON
5 DISTRICT ATTORNEY
6 Nevada Bar #001565

7 BY 
8 MICHAEL R. DICKERSON
9 Deputy District Attorney
10 Nevada Bar #13476

11 **CERTIFICATE OF ELECTRONIC FILING**

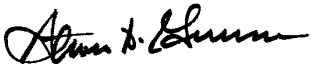
12
13 I hereby certify that service of Notice of Witnesses, was made this 16th day of
14 December, 2016, by Electronic Filing to:

15
16 KELLI DEVANEY-SAUTER, Deputy Public Defender
17 EMAIL: kelli.devaney-sauter@clarkcountynv.com
18 pdclerk@clarkcountynv.com

19 
20 Secretary for the District Attorney's Office
21
22
23
24
25
26
27

28 13F10723X/mlb/L-2

MOT
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHAEL R. DICKERSON
Deputy District Attorney
Nevada Bar #13476
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES HOWARD HAYES, aka,
James Howard Hayes, Jr. #2796708

Defendant.

CASE NO: C-16-315718-1

DEPT NO: XII
DEPARTMENT XII

NOTICE OF HEARING
DATE 12-22-16 TIME 8:30 am
APPROVED BY [Signature]

NOTICE OF MOTION AND MOTION TO ADMIT EVIDENCE OF OTHER ACTS

DATE OF HEARING: December 22, 2016
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MICHAEL R. DICKERSON, Deputy District Attorney, and files this Notice of Motion and Motion to Motion To Admit Evidence of Other Acts.

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

///

///

///

///

///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

DATED this 16th day of December, 2016.

BY M.R. Dickerson
MICHAEL R. DICKERSON
Deputy District Attorney
Nevada Bar #13476

STATEMENT OF FACTS AND CASES

On April 9, 2013, Joshua Jarvis was staying at the Excalibur Hotel and Casino while on vacation here in Las Vegas, Nevada. See Exhibit 1 at 5. While sleeping his hotel room, Mr. Jarvis heard some “rattling.” Id. at 6. Mr. Jarvis then notice the Defendant inside the hotel room searching through luggage. Id. Mr. Jarvis “freaked out,” jumped out of bed and asked who Defendant Hayes he was. Id. at 12. Defendant immediately attempted to run for the door. Id. Mr. Jarvis proceeded to stop Defendant, pat him down, and detain him. Id. Defendant then apologized to Mr. Jarvis multiple times. Id. at 18. Defendant did not have permission to be inside the hotel room. Id. at 20.

2. CASE NO. C315125 – Harrah’s Hotel and Casino

On April 2, 2016, security investigators were conducting an integrity check at the Harrah's Hotel and Casino. See Exhibit 2 at 6-7. An integrity check occurs when hotel

1 security investigators “set up a room to make it look like an occupied room and place it with
2 money and other valuable items.” Id. The investigators left the door slightly ajar, to make it
3 appear as if a guest may have forgotten to close the door, and conducted surveillance on the
4 hotel room. Id.

5 While conducting the integrity check, security investigators observed Defendant James
6 Hayes walk down the hallway, push the door open, and walk into the hotel room. Id. at 10.
7 Once inside, Defendant surveyed the items inside, and subsequently stole \$350 in bait money
8 from a wallet inside the room. Id. at 9-12. Defendant then proceeded to search through the
9 other items, including luggage, in the room before leaving. Id. at 13. Security investigators
10 subsequently detained the Defendant with the bait money in his possession. Id. 14. Defendant
11 did not have permission to be inside the hotel room or take property. Id. at

12 On May 26, 2016, the State filed an Information charging Defendant with one count of
13 Burglary. The State currently has a motion for joinder of the instant case and Case. No.
14 C315125 set to be heard before District Court Department XX on December 22, 2016. The
15 trial is currently set to begin January 9, 2017.

16 II.
17 ARGUMENT

18 Evidence of the Harrah’s Hotel and Casino burglary is admissible in the instant case to
19 show Defendant James Hayes’s intent when he entered the Excalibur Hotel and Casino hotel
20 room, Defendant’s common plan/scheme of committing door-push burglaries, and
21 Defendant’s absence of mistake when he entered the victim’s Excalibur hotel room. Said
22 evidence is admissible pursuant to well-established case law and NRS 48.045, the other-
23 admissible-acts statute. NRS 48.045(2) provides,

24 Evidence of other crimes, wrongs or acts is not admissible to prove the character
25 of a person in order to show that the person acted in conformity therewith. It
26 may, however, be admissible for other purposes, such as proof of motive,
27 opportunity, **intent**, preparation, **plan**, knowledge, identity, or **absence of**
mistake or accident.

28 See NRS 48.045(2) (emphasis added).

**PLEADING
CONTINUES
IN NEXT
VOLUME**