

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
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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 2

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1 ***1. Evidence of the Harrah's Hotel Room Burglary is Admissible, Non-Propensity Evidence***
2 ***of Defendant's Intent Regarding the Burglary in this Case.***

3 Here, Defendant is charged with the crime of burglary. Burglary is a crime requiring
4 proof of a specific intent rather than mere general criminal intent. See NRS 205.060(1); Carr
5 v. Sheriff, 95 Nev. 688, 690 (1979) ("The offense of burglary is complete when the house or
6 other building is entered with the specific intent to commit larceny..."). In other words, the
7 State is required to prove beyond a reasonable doubt that Defendant possessed the specific
8 intent to commit larceny the very moment that he stepped into the Excalibur hotel room. See
9 NRS 205.060(1).

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 App. 129 No. 66185 (2016) (unpublished) (Tao, J.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

1 commonly committed in secret. Edwards v. State, 90 Nev. 255, 258 (1974). Rare is the case
2 in which a defendant announces at the top of his lungs "I am here to commit larceny." Because
3 of this, the crime of burglary must frequently be proven by circumstantial evidence. Id.
4 Indeed, in determining the intent with which entry was made is a question of fact, which may
5 be inferred from a defendant's conduct before, during, and after the entry, and all other
6 circumstances disclosed by the evidence. See Flynn v. State, 93 Nev. 247, 562 P.2d 1135
7 (1977).

8 In Darnell v. State, 92 Nev. 680, 558 P.2d 624 (1976). The Court held that evidence
9 that the defendant had previously purchased stolen property was properly admitted to prove
10 he intended to possess stolen property in a subsequent prosecution for Attempted Possession
11 of Stolen Property. Id. (citing Richardson v. State, 91 Nev. 266, 534 P.2d 913 (1975); Wallace
12 v. State, 77 Nev. 123, 359 P.2d 749 (1961); cf. State v. Carner, 541 P.2d 947 (Ariz.App.
13 1975)). Like the prosecution for Attempt Possession of Stolen Property in Darnell, the
14 prosecution of Burglary in this case requires proof of Defendant's specific intent, and so the
15 evidence of the Harrah's burglary is properly admissible here.

16 In United States v. Beechum, 582 F.2d 898 (CA5 1978), the case of a United States
17 Postal Service letter carrier unlawfully possessing a 1890 silver dollar that had been stolen
18 from the mail, the government introduced evidence of defendant's possession of two credit
19 cards stolen from addresses on the defendant's mail route some ten months earlier. The court
20 held in that:

21 Where the issue addressed is defendant's intent to commit the
22 offense charged, the relevancy of the extrinsic offense derives
23 from the defendant's indulging himself in the same state of mind
24 in the perpetration of both the extrinsic and charged offenses. The
reasoning is that because the defendant had unlawful intent in the
extrinsic offense, it is less likely that he had lawful intent in the
present offense.

25 Id., 582 F.2d at 911.

26 As to the time period between the 2013 Excalibur hotel room burglary and the 2016
27 Harrah's hotel room burglary, the court in United States v. Kirk, 528 F.2d 1057 (CA5 1976),
28 held that the fact that another offense occurred three years prior to the charged offense does

1 not make it inadmissible. In Kirk, defendant was charged with threatening the life of the
2 President of the United States of America. At trial, the prosecution presented evidence
3 showing that three years earlier defendant had committed the same crimes. The court ruled
4 this evidence to be properly admissible to show defendant's intent, holding as follows:

5 Whether the prior intended to show that defendant made this threat
6 intentionally or as the result of "alcohol taking," was a matter for
7 the jury's termination. The fact that the former offense occurred
 three years prior to the offense charged does not make it so remote
 as to be excluded.

8 528 F.2d at 1061. Likewise, in United States v. Wilson, 732 F.2d 404 (CA5 1984), defendant
9 was convicted of conspiracy and illegal shipping of explosives to Libya in 1977. The
10 prosecution introduced evidence concerning extraneous offenses and incidents involving
11 terrorism, including a 1979 incident and a 1982 incident in which similar explosives were
12 discovered. The court ruled the evidence concerning the extraneous offenses and incidents
13 were properly admissible to establish defendant's motive, intent, and plan.

14 In this case, Defendant committed the same crime in the same exact manner almost
15 three years to the day after he committed the burglary charged in this case. Especially given
16 the specific and unique crime the Defendant is charged with, namely two hotel room door-
17 push burglaries, Defendant's criminal intent in one is relevant to show his criminal intent in
18 the other. Because intent is inherently at issue here, and Defendant's specific intent cannot
19 solely be inferred from the fact that he entered the hotel room, and so his conduct and
20 participation in strikingly similar crimes, both of which are identical in design, is relevant,
21 highly probative and material in demonstrating the existence of his specific intent to commit
22 larceny inside the Excalibur hotel room. Therefore, evidence of the Harrah's burglary is
23 properly admissible, non-propensity evidence of Defendant's intent.

24 **2. Evidence of the Harrah's Hotel Room Burglary is Admissible, Non-Propensity Evidence**
25 **of Defendant's Common Plan or Scheme Regarding the Burglary in this Case.**

26 In order for a crime to constitute a common "scheme or plan," there must exist some
27 "design or plan formed to accomplish some purpose – a system. A plan is a method of design
28 or action, procedure, or arrangement for accomplishment of a particular act or object. Method

1 of putting into effect an intention or proposal.” Weber v. State, 121 Nev. 554, 572, 119 P.3d
2 107, 119-20 (2005) (internal quotations omitted). Essentially, the Court noted that purposeful
3 design is central to a scheme or plan. Id. Nonetheless, the Court noted that “this does not
4 mean that every scheme or plan must exhibit rigid consistency or coherency ...” Id. Indeed,
5 the Court noted that “a scheme or plan may have to contend with contingencies, and therefore
6 [] can in practice reflect some flexibility and variation....” Id.

7 In Graves v. State, 112 Nev. 118 (1996), the defendant was charged with two counts of
8 burglary, first for entering the one casino and attempting to steal coins from a patron, and
9 second for entering another casino and attempting to steal money from a cashier’s booth. The
10 Court held that the district court did not abuse its discretion in allowing the two charges to be
11 joined because the defendant “systematically walked from casino to casino and acted similarly
12 suspicious at each casino.” Id. at 128, 912 P.2d at 239. This Court held that both offenses
13 were part of a common scheme or plan. Id.

14 In Brinkley v. State, 101 Nev. Adv. Op. 135 (1985), defendants Brinkley and
15 Drummond were convicted of five (5) counts of Unlawfully Obtaining a Controlled Substance
16 and one (1) count of Unlawful Conspiracy to Obtain a Controlled Substance. The prosecution
17 successfully offered evidence revealing that subsequent to the occurrence of the substantive
18 crimes, Drummond attempted to pass a forged prescription while Brinkley waited outside in a
19 car. Under these facts, the high court stated:

20 Evidence under the “**common plan or scheme**” exception must
21 tend to prove the charged crimes by revealing that the defendant
22 planned to commit the crimes . . . [t]he offense must tend to
establish a preconceived plan which resulted in the commission of
the charged crime . . .

23 In Thompson v. State, 102 Nev. Ad. Op. 79 (1986) the Court affirmed a conviction for
24 Murder, Attempt Murder, Robbery, and Attempt Robbery all with use of a deadly weapon and
25 imposition of the death penalty. Thompson shot, killed and robbed a man he met camping
26 beside the railroad tracks near Reno. Later, he shot and attempted to rob two woman of their
27 car in a parking lot outside of a Reno casino. At the time of the commission of these crimes,
28 Thompson knew police were looking for him concerning a double homicide in California. The

1 trial court allowed evidence of the two collateral homicides in California under NRS 48.045(2)
2 stating in 102 Nev. Adv. Op. 79, at 3:

3 That statute provides for the admission of such evidence when
4 used for certain limited purposes. One of the listed exceptions
5 concerns evidence tending to show that a defendant's crime was
6 committed in furtherance of a **plan**. The State offered the evidence
7 in question to show Thompson's plan to obtain money to allow
him to flee the state because he knew that law enforcement officers
were looking for him concerning another homicide. The evidence
was admitted for this purpose. The district court did not err in
allowing the admission of such evidence.

8 Defendant's actions in the instant burglary and in the Harrah's burglary demonstrate a
9 systematic design by him to unlawfully enter into hotel rooms and systematically search
10 through the contents inside the rooms in order to steal any items of value. As noted, in both
11 cases, Defendant enters a hotel room by pushing open the door, begins to search the room and
12 luggage inside the room. This is no different than in Graves, when the defendant
13 systematically walked from casino to casino attempting to steal money. Here, Defendant
14 entered multiple hotels searching for hotel rooms to burglarize. Review of the Defendant's
15 actions in the both cases shows they are woven together with the same common scheme.
16 Defendant's plan was to gain entrance to both hotel rooms to commit larceny therein.
17 Evidence of Defendants common scheme is extremely probative of his intent, which is an
18 element of the charged crimes in both cases, and to rebut his probable defense of mistake.
19 Therefore, evidence of the Harrah's burglary is properly admissible, non-propensity evidence
20 of Defendant's common plan or scheme of committing hotel room door-push burglaries.

21 **3. Evidence of the Harrah's Hotel Room Burglary is Admissible, Non-Propensity Evidence**
22 **of Defendant's Absence of Mistake Regarding the Burglary in this Case.**

23 In Petrocelli v. State, 101 Nev. 46 (1985) the defendant was convicted of First Degree
24 Murder and the death penalty was imposed. The Court affirmed the verdict. One issue raised
25 on appeal concerned the admissibility of testimony relating to the prior killing of Petrocelli's
26 girlfriend. Petrocelli had gotten into an argument with his fiancé and tried to drag her away
27 from work; she refused and a struggle ensued. Petrocelli pulled out a gun and killed his fiancé
28 in a flurry of shots; he claimed the death was accidental. After killing his fiancé, Petrocelli

1 fled Washington and eventually ended up in Reno, Nevada. While test driving a vehicle in
2 Reno, Petrocelli shot and killed the car dealer with the same gun used on his fiancé, robbed
3 the victim, and hid the car dealer's body under rocks and sagebrush. At trial for the murder
4 of the car dealer, Petrocelli claimed he had gotten into an argument with the car dealer and as
5 they struggled for the gun it went off two or three times. The Court held the testimony was
6 properly admissible under NRS 48.045(2) to show **absence of mistake or accident** stating:

7 . . . that the "two killings with the same gun involving the same
8 person, Mr. Petrocelli, who within a short period of time
9 [committed both killings]" bore sufficient similarity to admit the
evidence at trial.

10 101 Nev. at 50.

11 In United States v. DeLoach, 654 F.2d 763 (D.C.C.A. 1980), defendants were convicted
12 for submitting false application for labor certification of an alien. The court allowed admission
13 of testimony of three government witnesses, all undocumented immigrants, that defendant was
14 a swindler who took their money with false promises to find them jobs and labor certifications.
15 The testimony showed that defendant's swindling conduct occurred over a year and a half
16 prior to the offense charged. The court held in 654 F.2d at 769:

17 These prior acts were instead introduced to show intent. In this
18 case, where intent was the only real issue, and where appellant
19 predictably raised the defense of mistake, the admissible bad acts
evidence need not show incidents identical to the events charged,
so long as they are closely related to the offense and tend to rebut
the defense of mistake.

20 In this case, it became apparent at the preliminary hearing that Defendant intends to
21 predictably raise a defense of mistake – e.g. Defendant mistakenly walked in to the victim's
22 hotel room and searched through the victims' luggage, but did not intend to commit larceny.
23 This defense of mistake is quickly rebutted by the relevant and highly probative evidence of
24 Defendant's nearly identical hotel room burglary at the Harrah's hotel three years later. For
25 this reason, the Court should permit the State to admit evidence of the Harrah's burglary as it
26 is necessary to rebut the deceiving defense of mistake or accident.

27 ///

28 ///

1 **4. Evidence of the Harrah's Hotel Room Burglary is**

2 The State bears the burden of requesting the admission of the evidence and
3 establishing its admissibility. Tavares v. State, 117 Nev. 725, 731, 30 P.3d 1128, 1131 (2001).
4 To accomplish this task, the State must demonstrate, at a hearing outside the presence of the
5 jury, that: "(1) the incident is relevant to the crime charged; (2) the act is proven by clear and
6 convincing evidence; and (3) the probative value of the evidence is not substantially
7 outweighed by the danger of unfair prejudice." Rhymes v. State, 107 P.3d 1278, 1281 (2005);
8 Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

9 For the foregoing reasons, the State has shown that the Harrah's burglary is relevant to
10 show Defendant's intent, common scheme/plan, and absence of mistake. As follows, after a
11 court finds that evidence of other crimes does not violate NRS 48.045(2), the court must then
12 review the evidence in regard to NRS 48.035. This statute requires a weighing of probative
13 value against prejudicial effect. Tucker v. State, 82 Nev. 127 (1966). The court in Tucker
14 then went on to state how the balancing of "probative vs. prejudicial" is to occur in 8 Nev. at
15 130:

16 The reception of such evidence is justified by necessity and, if
17 other evidence has substantially established the element of the
18 crime involved (motive, intent, identity, absence of mistake, etc.),
 the probative value of showing another offense is diminished, and
 the trial court should rule it inadmissible even though relevant and
 within an exception to the rule of exclusion.

19 As demonstrated above, the evidence of Defendant's intent and absence of mistake are not
20 established by other substantial evidence. Therefore, evidence of the Harrah's burglary is
21 necessary to establish the burglary-element of intent and to rebut the defense of mistake in the
22 case of the Excalibur burglary at issue.

23 The State must also show by clear and convincing evidence that the defendant
24 committed the other crime, Petrocelli v. State, *supra*. The State has attached the preliminary
25 hearing transcripts of the Harrah's burglary (Exhibit 2) for this Honorable Court to review. At
26 that hearing, the Defendant had the full opportunity cross-examination and so it is properly
27 relied upon to determine whether the Harrah's burglary is proven by clear and convincing
28 evidence. Nonetheless, the State is happy to present the evidence to this Honorable Court by

1 way of hearing, should this Honorable Court so desire. In sum, the Court should admit
2 evidence of the Harrah's burglary because it is relevant to show Defendant James Hayes's
3 intent and absence of mistake, its extraordinary probative value outweighs any chance of
4 undue prejudice, and it is patently established by clear and convincing evidence.

5 III.

6 CONCLUSION

7 Based upon the above and foregoing, the State respectfully requests this Honorable
8 Court find the other acts requested for admission have been proven by clear and convincing
9 evidence by review of the preliminary hearing transcript attached as Exhibit 2 or, if deemed
10 necessary, a hearing before Your Honor, and grant the State's Motion to admit evidence of the
11 Defendant's nearly identical crime perpetrated at the Harrah's hotel.

12 DATED this 16th day of December, 2016.

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

15
16 BY M.R. Dickerson

MICHAEL R. DICKERSON
Deputy District Attorney
Nevada Bar #13476

17
18 CERTIFICATE OF ELECTRONIC FILING

19 I hereby certify that service of NOTICE OF MOTION AND MOTION TO ADMIT
20 EVIDENCE OF OTHER ACTS, was made this 16th day of December, 2016, by Electronic
Filing to:

21 KELLI DEVANEY-SAUTER, Deputy Public Defender
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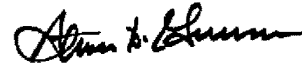
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Case No. C-16-315718-1

Dept. 5



CLERK OF THE COURT

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

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EXHIBIT "1"

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I N D E X

WITNESS	DR	CR	RDR	RCR
Joshua Jarvis	5	21	31	

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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

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

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

Q. Located at 3850 south Las Vegas Boulevard?

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

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

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 and 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

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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
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/s/ Bill Nelson

Bill Nelson, RMR, CCR 191
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Las Vegas, Nevada

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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 * * * * *

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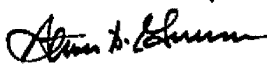
7 THE STATE OF NEVADA,)

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

EXHIBIT "2"

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I N D E X

STATE OF NEVADA v. JAMES HOWARD HAYES, JR.

CASE NO. 16F05242X

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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STATE'S WITNESS:

David Travis	6	14	28	29
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DEFENSE WITNESSES:

(No Witnesses)	--	--	--	--
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EXHIBITS MARKED AND ADMITTED:

	<u>Marked</u>	<u>Admitted</u>
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(No Exhibits)	--	--
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MISCELLANEOUS

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* * * * *

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

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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.

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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 DÁVID 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

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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?

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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

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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.

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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.

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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.

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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?

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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?

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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

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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.

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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?

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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?

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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

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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.

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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.

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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?

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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

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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

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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.

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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

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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;

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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)

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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;

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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.

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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.

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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.

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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?

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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

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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

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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.

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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

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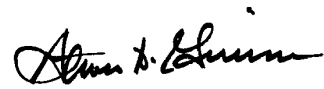
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CLERK OF THE COURT

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

9 THE STATE OF NEVADA,)
10)
11 Plaintiff,) CASE NO. C-16-315718-1
12)
13 v.) DEPT. NO. XII
14 JAMES HOWARD HAYES,)
15)
16 Defendant,)
17)
18)
19)
20)
21)
22)
23)
24)
25)
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27)
28)

15 **OPPOSITION TO THE STATE'S MOTION TO ADMIT EVIDENCE OF OTHER ACTS**

16 COMES NOW, the Defendant, JAMES HOWARD HAYES, by and through
17 KELLI M. DEVANEY-SAUTER, Deputy Public Defender and hereby requests that this
18 Honorable Court DENY the State's Motion to Admit Evidence of Other Acts.

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

21 DATED this 20th day of December, 2016.

22 PHILIP J. KOHN
23 CLARK COUNTY PUBLIC DEFENDER

24
25 By: /s/ Kelli M. DeVaney-Sauter
26 KELLI M. DEVANEY-SAUTER, #13101
27 Deputy Public Defender
28

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1. I am an attorney duly licensed to practice law in the State of Nevada; I am a Deputy Public Defender for the Clark County Public Defender's Office appointed to represent Defendant James Howard Hayes in the present matter;

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

/s/ Kelli M. DeVaney-Sauter
KELLI M. DEVANEY-SAUTER

PROCEDURAL HISTORY

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. The instant case was set for Calendar Call on December 20, 2016 and set for trial on January 3, 2016.

On December 12, 2016, the State filed its Motion for Joinder of Case C315718 into Case C315125. On December 16, 2016, the State filed the instant motion, giving the same arguments in support of the introduction of bad act evidence as those which were given in support of consolidating the instant case with Mr. Hayes' other case, C315125. The State's Motion for Joinder of Case C315718 into Case C315125 is set for argument in District Court Department 20 on December 22, 2016 at 9:00 am.

LEGAL ARGUMENT

The Nevada Supreme Court has consistently held that the use of bad act evidence to convict a defendant is heavily disfavored in our criminal justice system. Tavares v. State, 117 Nev. 725, 730, 30 P.3d 1128, 1131 (2001) holding modified on other grounds by McLellan v. State, 124 Nev. 263, 182 P.3d 106 (2008); Knipes v. State, 124 Nev. 927, 936, 192 P.3d 1178, 1184 (2008); Weber v. State, 121 Nev. 554, 589, 119 P.3d 107, 130-31 (2005) (concurring opinion); Richmond v. State, 118 Nev. 924, 932, 59 P.3d 1249, 1254-55 (2002). The Court's primary concern with the admission of such acts is that juries are often unduly influenced by the evidence, and thus convict the accused because they believe the accused is a bad person. Richmond, 118 Nev. at 932, 59 P.3d at 1254-55; Weber, 121 Nev. at 589-90, 119 P.3d at 130-31.

"Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith." Richmond, 118 Nev. at 932, 59 P.3d at 1254-55. Under NRS 48.045, evidence of a defendant's prior bad acts may only be used for purposes which do not relate to the defendant's propensity to commit the crime charged, and instead may only relate be used for non-propensity purposes. NRS 48.045; Weber, 121 Nev. at 589-90, 119 P.3d at 130-31.

1 Based on the foregoing, evidence of uncharged bad acts is **presumed to be inadmissible**.
2 Rosky v. State, 121 Nev. 184, 195, 111 P.3d 690, 697 (2005). In order to overcome the
3 presumption of inadmissibility of a prior bad act, the State must request a hearing. Id. The State
4 has the burden of establishing at a hearing outside the jury's presence that (1) the incident is
5 relevant to the crime charged for a purpose *other than establishing the defendant's propensity*
6 **to commit the crimes charged**, (2) the act is proven by clear and convincing evidence, and (3)
7 the probative value of the evidence is not substantially outweighed by the danger of unfair
8 prejudice to the defendant. Tavares, 117 Nev. at 730, 30 P.3d at 1131. However, there is no
9 need for a hearing in this instant case because the State simply cannot meet this burden.

10 Here, the State cannot establish the prerequisites to allow admission of the acts
11 referenced in the State's motion. The State asserts that the alleged bad acts are relevant to Mr.
12 Hayes' innocence or guilt in the current offenses – however, the prior bad act which the State
13 seeks to admit is not admissible for any non-propensity purpose which would be acceptable
14 under NRS 48.045(2). And most importantly, any limited probative value of the Mr. Hayes'
15 alleged prior bad acts is substantially outweighed by the danger of unfair prejudice to Mr. Hayes.

16 **I. EVIDENCE OF THE ALLEGED HARRAH'S BURGLARY IS NOT**
17 **ADMISSIBLE FOR ANY NON-PROPENSITY PURPOSE**

18 When the State requests the introduction of bad act evidence, it must thoroughly explain
19 how one or more of the specific exceptions contained in NRS 48.045(2) apply to the facts of the
20 case. "A mere recitation of the statute is not sufficient justification for the admission of prior
21 acts." Taylor v. State, 109 Nev. 849, 854 (1993). NRS 48.045 and all the jurisprudence
22 stemming from this statute is based on the fundamental principle of our criminal judicial system
23 that bad acts cannot be used to show that a defendant acted in conformity therewith. However,
24 this prohibited use is precisely why the State seeks to admit the bad act evidence in this case.
25

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1 **A. EVIDENCE OF THE ALLEGED HARRAH’S BURGLARY DOES NOT**
2 **CONSTITUTE EVIDENCE OF INTENT; INSTEAD, IT IS MERELY**
3 **PROPENSITY EVIDENCE.**

4 The State asserts that the alleged Harrah’s burglary establishes Mr. Hayes’ intent to
5 commit burglary in the instant case because Mr. Hayes’ alleged “conduct and participation in
6 strikingly similar crimes” establishes Mr. Hayes’ “specific intent to commit larceny” upon entry
7 into the hotel room in the instant case. State’s Motion at 6. Such a purpose is impermissible
8 under NRS 48.045(2).

9 The fact that Mr. Hayes entered a different hotel room, on a different date, and allegedly
10 intended to steal is of little to no relevance to prove that he had the intent when he entered the
11 hotel rooms in the instant case. Rather than to prove intent in the instant case, the only thing this
12 prior bad act evidence can be offered to prove is conformity with prior conduct: that Mr. Hayes
13 is accused of burglarizing a hotel room in 2016, so he must have also done the same in the
14 instant case.

15 And while the State notes that specific intent offenses are more difficult to prove, the
16 State cites no authority to suggest that it may improperly present evidence of prior bad acts in
17 order to lessen its burden. While a defendant’s intent is at issue in a Burglary trial, the State is
18 not excused from the prohibitions against the introduction of propensity evidence set out in NRS
19 48.045.

20 The cases cited by the State in its Motion are readily distinguishable from the case at
21 hand. In each of the cases cited by the State, the Supreme Court concluded that admission of
22 evidence of other bad acts was permissible where the bad act occurred at the same time or
23 involved the same set of actors. See Darnell v. State, 92 Nev. 680 (1976) (evidence that
24 defendant had previously purchased firearms he knew to be stolen was admissible when
25 defendant was on trial for purchasing firearms from the same individual, as the evidence of the
26 defendant was on trial for purchasing firearms from the same individual, as the evidence of the
27 defendant was on trial for purchasing firearms from the same individual, as the evidence of the
28 defendant was on trial for purchasing firearms from the same individual, as the evidence of the

1 prior purchase and his knowledge that the individual sold stolen firearms evidenced his intent to
2 buy a stolen firearm); see also, United States v. Beechum, 582 F.2d 898 (5th Cir. 1978) (evidence
3 that postal employee/defendant had in his possession two credit cards, which were known to
4 have been stolen from his route 10 months prior to the charged incident, was admissible where
5 defendant had the credit cards in his possession at the same time he had the silver dollar he was
6 charged with stealing in his possession, in order to show that defendant did not have intent to
7 return items to their rightful owners); see also, United States v. Kirk, 528 F.2d 1057 (5th Cir.
8 1976) (evidence of a previous threat to kill the President of the United States made by the
9 defendant was admissible at trial where defendant was once again charged with threatening to
10 kill the President of the United States, with the court noting that the incidents surrounding the
11 prior threat evidenced the defendant's knowledge at the serious nature of such a statement).
12 Here, we are not dealing with the same time frame or same sets of actors. Instead, the State is
13 asking this Court to extend the "intent exception" to ensure that an individual accused of
14 burglary can never enter a building again without that prior accusation being used to establish
15 intent: essentially that, if he did it once, he will do it again.

16
17
18 The State proposes the introduction of pure propensity evidence masquerading as a non-
19 propensity purpose. It is propensity evidence in sheep's clothing, and it is the **exact** type of
20 analysis that NRS 48.045 forbids. Therefore, evidence of the alleged 2016 Harrah's burglary is
21 not admissible in the instant case under NRS 48.045.
22

23
24 **B. EVIDENCE OF THE ALLEGED HARRAH'S BURGLARY DOES NOT
CONSTITUTE EVIDENCE OF A COMMON SCHEME OR PLAN.**

25 Under NRS 173.115(2), Nevada case law defines a common scheme or plan as a method
26 of design or procedure for accomplishment of a specific act or object. Weber, 121 Nev. at 572.
27 "The test is not whether the other offense has certain elements in common with the crime
28

1 charged, but whether it tends to establish a preconceived plan which resulted in the commission
2 of that crime.” Nester v. State, 75 Nev. 41, 47 (1959) abrogated on other grounds by Bigpond v.
3 State, 128 Nev. Adv. Op. 10, 270 P.3d 1244 (2012). Therefore, the Supreme Court of Nevada
4 has stated that District Courts must engage in a fact-specific analysis before they may determine
5 whether a common plan or scheme exists. Weber, 121 Nev. at 572.

6 In its Motion, the State cites to Graves v. State, 112 Nev. 118 (1996), as support for its
7 assertion that the crimes allegedly committed by Mr. Hayes constitute part of a common scheme
8 or plan. This is likely in acknowledgement of the fact that Mr. Hayes is accused of committing
9 “door push” hotel room burglaries, a crime of opportunity which requires no true planning to
10 execute. The State notes that in Graves, the defendant was found to have a common scheme or
11 plan after skulking around downtown casinos, seeking crimes of opportunity. However, the
12 State fails to note the massive distinction between Graves and Mr. Hayes’ two cases: the time
13 frame within which these crimes of opportunity are said to have occurred. In Graves, there was
14 only one night between the two incidents which were joined at trial. Id. at 120, 128. Whereas, in
15 Mr. Hayes’ cases, the alleged crimes are separated by a span of **over three years**.

16 This extreme gap in time between alleged crimes is significant. The Supreme Court of
17 Nevada has previously concluded that similar offenses do not automatically constitute a common
18 scheme or plan, especially where the two alleged offenses are remote in time. Tabish v. State,
19 119 Nev. 293, 303 (2003), citing Mitchell, 105 Nev. 735. The combination of the alleged crimes
20 being “door push” burglaries, which are crimes of opportunity that require little to no planning,
21 and the time in between the alleged crimes precludes joinder on the grounds that the two alleged
22 burglaries being part of a “common scheme or plan.”

23 Further, the Nevada Supreme Court held that a perpetrator’s purpose of attaining money
24 in multiple crimes does not alone sufficiently connect crimes to create a common scheme or plan
25 behind them. Tabish, 119 Nev. at 303. Therefore, any assertion by the State that Mr. Hayes’
26 entry into hotel rooms to obtain private property and money cannot support a joinder, either.

27 //

28 //

1
2 **C. EVIDENCE OF THE ALLEGED HARRAH'S BURGLARY DOES NOT**
3 **CONSTITUTE EVIDENCE ON THE ABSENCE OF A MISTAKE OR**
4 **ACCIDENT.**

5 Lack of mistake is in issue **only when** a defendant is claiming his acts were a mistake or
6 an accident. An example of this is classic case where the husband shoots the wife with his
7 shotgun and he alleges it accidentally went off while he was cleaning the gun. In that case, the
8 State needs to prove that the shooting was not a mistake or an accident. Per NRS 48.045, the
9 State would be allowed to admit evidence of prior incidents where the defendant shot his
10 previous wives with firearms. There is no conceivable correlation from that example to this
11 instant case.

12
13 Mr. Hayes is not alleging that there is any mistake or accident in this case. There will be
14 no defense that Mr. Hayes accidentally tripped and entered a hotel room, or that he erroneously
15 believed Mr. Jarvis' luggage to be his own. Without the existence of a mistake or accident being
16 an issue in this case, any evidence seeking to prove the absence of a mistake or accident is
17 simply irrelevant. Thus, this alleged bad act evidence is not admissible under the guise of having
18 to prove the absence of mistake or accident. The State's Motion must be denied.
19

20 **II. INTRODUCING EVIDENCE OF THE ALLEGED HARRAH'S BURGLARY**
21 **WOULD UNDULY PREJUDICE MR. HAYES; FURTHER, THAT UNDUE**
22 **PREJUDICE WOULD SUBSTANTIALLY OUTWEIGH THE PROBATIVE**
23 **VALUE OF THE BAD ACT EVIDENCE.**

24 The primary concern with the admission of such acts is that juries are often unduly
25 influenced by the evidence, "and thus convict the accused because they believe the accused is a
26 bad person" rather than on a factual or evidentiary showing of guilt beyond a reasonable doubt.
27 Richmond, 118 Nev. at 932, 59 P.3d at 1254-55; Weber, 121 Nev. at 589-90, 119 P.3d at 130-31.
28 It cannot be denied that showing the jury evidence that Mr. Hayes is alleged to have committed a
second burglary will unduly and unfairly prejudice Mr. Hayes while offering **no probative value**

1 to any of the elements or facts at issue in the instant case. Under such circumstances, the jury
2 would not be analyzing the weight and sufficiency of the evidence in this case, but rather, would
3 be quick to punish Mr. Hayes for his alleged other bad acts.

4 These prior bad acts are presented under the guise of establishing intent, absence of
5 mistake or accident, or identity and are purely a pretextual attempt to prejudice the jury. The
6 State seeks to offer the prior bad act evidence solely for the prejudicial effect it will have on the
7 jury, all but ensuring a guilty verdict regardless of the proof presented as to the instant offense.
8 The defense implores this Honorable Court to consider the insurmountable prejudicial effect the
9 admission of prior bad acts will have on jurors, particularly in comparison to the minimal
10 relevance the prior bad acts have as to intent, common scheme or plan, or lack of mistake or
11 accident.

12 Here, it is apparent that the State only seeks to introduce evidence relating to the alleged
13 Harrah's burglary in order to inflame the passions of the jury and to lead the jury to conclude
14 that, if Mr. Hayes had committed such a crime once, he would do it again. ***In the State's Motion***
15 **to Admit Evidence of Other Acts, the State concedes that it does not have sufficient evidence to**
16 **secure a conviction in each of the cases alone, by acknowledging the difficulty it would have**
17 **in establishing intent in the offenses at issue.** See State's Motion pg. 10, line 19-22. Allowing
18 for the introduction of the bad acts evidence relating to the alleged Harrah's burglary would
19 serve as a tool to have to jury find Mr. Hayes guilty because of the fact that he has been accused
20 of a similar crime, rather than based on the evidence relating to the instant charges. The law
21 does not allow for the State to unfairly prejudice Mr. Hayes through the use of prior bad act
22 evidence in order to bolster the weaknesses in the State's case.

23 **III. THE STATE'S MOTION CANNOT BE GRANTED WITHOUT A**
24 **PETROCELLI HEARING; PRELIMINARY HEARING TESTIMONY DOES**
25 **NOT SATISFY THE PETROCELLI REQUIREMENTS.**

26 "Before admitting evidence of a prior bad act or collateral offense, the district court **must**
27 conduct a hearing outside the presence of the jury." Armstrong v. State, 110 Nev. 1322, 1323-24
28 (1994) (citing Petrocelli v. State, 101 Nev. 46 (1985) (emphasis added). The Supreme Court
demands a Petrocelli hearing to enable adequate appellate review, Meek v. State, 12 Nev. 1288,

1 1293 (1996); see Knipes v. State, 124 Nev. 927, 931–32 (2008) (confirming the purpose of
2 requiring on-the-record determinations in Petrocelli hearings), and the Supreme Court will
3 reverse a conviction and order a new trial if a Petrocelli hearing is not held. Id., at 1297.

4 The State asserts that merely attaching the transcript from the preliminary hearing on a
5 charge satisfies the requirements of Petrocelli; this is wholly inaccurate. First and most
6 importantly, the standard the State must meet differs between a Preliminary Hearing and a
7 Petrocelli Hearing. At the Preliminary Hearing stage, the State must only establish probable
8 cause that a crime occurred, and this may be satisfied by a showing of **slight or marginal**
9 **evidence**. Sheriff v. Middleton, 112 Nev. 956, 961-62 (1996). However, in a Petrocelli Hearing,
10 the standard is significantly higher, requiring the State to establish that the bad act occurred by a
11 showing **clear and convincing evidence**. Petrocelli, 101 Nev. at 52. Thus, attaching a copy of
12 the preliminary hearing transcript cannot satisfy the requirements of Petrocelli, as it was only
13 established at the hearing that there was slight or marginal evidence supporting the finding of
14 probable cause; not the clear and convincing evidence demanded by Petrocelli. Second, the
15 purpose of the two hearings is entirely distinct and involve different considerations and inquiries.

16 And finally, the State asserts that somehow, because defense counsel had the opportunity
17 to cross examine witnesses at the Preliminary Hearing, this somehow justifies using the
18 transcript in lieu of conducting a Petrocelli Hearing. The State cites no authority as to why such
19 a substitution for a Petrocelli Hearing is permissible on those grounds, and actually seems to be
20 conflating the opportunity to cross-examine consideration from Crawford v. Washington, 541
21 US 36 (2004), which addressed the use of prior statements by an unavailable witness. Crawford
22 does not address the introduction of bad act evidence and is wholly unrelated to NRS 48.045.

23 Based on the foregoing, if the State is not inclined to immediately deny the State's
24 motion, a Petrocelli hearing is required.

25 //

26 //

27 //

28 //

1
2 **CONCLUSION**

3 In order for JAMES HAYES to get a fair trial, free from undue prejudice, this Court should
4 DENY the State's request to introduce evidence of the alleged Harrah's burglary.

5
6 DATED this 20th day of December, 2016.

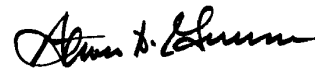
7 PHILIP J. KOHN
8 CLARK COUNTY PUBLIC DEFENDER

9
10 By: /s/ Kelli M. DeVaney-Sauter
11 KELLI M. DEVANEY-SAUTER, #13101
12 Deputy Public Defender
13
14
15
16

17 **CERTIFICATE OF ELECTRONIC SERVICE**

18 I hereby certify that service of the above and forgoing MOTION was served via
19 electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountydade.com
20 on this 20th day of December, 2016

21 By: /s/ Melissa A. Boudreault
22 An employee of the
23 Clark County Public Defender's Office
24
25
26
27
28



CLERK OF THE COURT

1 ORDR
2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR NO. 0556
4 KELLI M. DEVANEY-SAUTER, DEPUTY PUBLIC DEFENDER
5 NEVADA BAR NO. 13101
6 **PUBLIC DEFENDERS OFFICE**
7 309 South Third Street, Suite 226
8 Las Vegas, Nevada 89155
9 Telephone: (702) 455-4685
10 Facsimile: (702) 455-5112
11 Kelli.Devaney-Sauter@ClarkCountyNV.gov
12 *Attorneys for Defendant*

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 THE STATE OF NEVADA,)
16)
17 Plaintiff,) CASE NO. C-16-315718-1
18)
19 v.) DEPT. NO. XII
20)
21 JAMES HOWARD HAYES,)
22)
23 Defendant,)
24)

25 **ORDER DENYING STATE'S MOTION TO ADMIT EVIDENCE OF OTHER ACTS**

26 Whereas, the State of Nevada filed a Motion to Admit Evidence of Other Acts Pursuant
27 and whereas Defendant James Hayes filed an Opposition to Motion to Admit Evidence of Other
28 Bad Acts and

Whereas, the matter came before the Court on January 12, 2017 with the Defendant
present and represented by Clark County Deputy Public Defender Kelli M. DeVaney-Sauter, and
the State of Nevada represented by Clark County Deputy District Attorney Michael Dickerson
and

Whereas, the Court heard the arguments of counsel;

///

///

RECEIVED
JAN 13 2017
DEPT.12

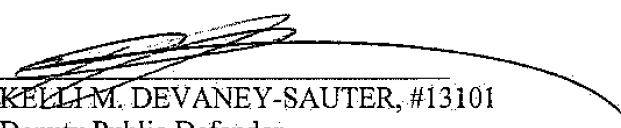
1 IT IS HEREBY ORDERED THAT THE MOTION TO ADMIT EVIDENCE OF
2 OTHER ACTS IS DENIED.

3 DATED 9 day of January, 2017.

4
5 
6 DISTRICT COURT JUDGE
7 PL

8 Submitted by:

9 PHILIP J. KOHN
10 CLARK COUNTY PUBLIC DEFENDER

11 By 
12 KELLI M. DEVANEY-SAUTER, #13101
13 Deputy Public Defender
14
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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and forgoing COURT ORDER was served via electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountvda.com on this 20 day of January, 2017

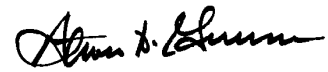
By: /s/Kelli M. DeVaney-Sauter -PD

An employee of the
Clark County Public Defender's Office

Case Name: James Howard Hayes

Case No.: C-16-315718-1

Dept. No.: XII



CLERK OF THE COURT

1 SUBT

2 Tony Abbatangelo, Esq.

3 Nevada Bar No.: 003897

4 COLQUITT & ABBATANGELO, LTD.

5 321 S. Casino Center Blvd., Ste. 112

6 Las Vegas, Nevada 89101

7 Tel: (702) 384-1000

8 Fax: (702) 543-2197

9 Email: LasVegasLawOffice@gmail.com

10 Attorney Defendant

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 STATE OF NEVADA,

14 Plaintiff,

Case No.: C-16-315718-1

Dept No.: XII

15 Vs.

16 HAYES, JAMES,

17 Defendant.

SUBSTITUTION OF ATTORNEY

18 COMES NOW, DEFENDANT, JAMES HAYES, and hereby substitutes
19 TONY L. ABBATANGELO, ESQ., as his counsel of record in the above
20 entitled matter in place and instead of his prior counsel,
21 PUBLIC DEFENDER'S OFFICE.

22 DATED this ____ day of January, 2017.

23
24 
25 JAMES HAYES, Defendant
26
27
28

COLQUITT & ABBATANGELO, LTD.

321 S. Casino Center Blvd., Ste. 112

Las Vegas, Nevada 89101

Tel: (702) 384-1000 FAX: (702) 543-2197

COLQUITT & ABBATANGELO, LTD.

321 S. Casino Center Blvd., Ste. 112

Las Vegas, Nevada 89101

Tel: (702) 394-1000 FAX: (702) 543-2197

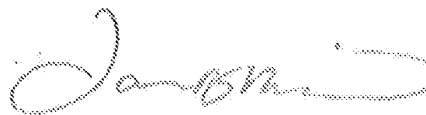
1 I hereby consent to said substitution and agree to
2 represent the Defendant, JAMES HAYES, in the above-entitled
3 matter in place and instead of counsel, PUBLIC DEFENDER'S
4 OFFICE.

5 COLQUITT & ABBATANGELO, LTD.

6
7 

8 Tony L. Abbatangelo, Esq.
9 Nevada Bar No. 3897
10 321 S. Casino Center Blvd.,
11 Ste. 112
12 Las Vegas, Nevada 89101
13 Tel: (702) 384-1000
14 Fax: (702) 543-2197

15 I, PUBLIC DEFENDER'S OFFICE, do hereby agree to the
16 substitution of TONY L. ABBATANGELO, ESQ., in the above-entitled
17 matter in my place and stead.

18 

19 Public Defender's Office
20 309 S. Third Street
21 Las Vegas, NV 89101
22 Phone: (702) 455-4685
23 Fax: (702) 455-5112
24
25
26
27
28

COLQUITT & ABBATANGELO, LTD.

321 S. Casino Center Blvd., Ste. 112

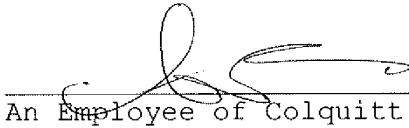
Las Vegas, Nevada 89101

Tel: (702) 384-1000 FAX: (702) 543-2197

CERTIFICATE OF SERVICE

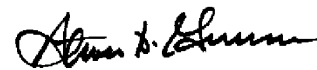
I hereby certify that service of the above and foregoing
was made this 8th day of February, 2017 to:

Office of the District Attorney
Motions@clarkcountyda.com

By: 

An Employee of Colquitt & Abbatangelo, Ltd.

**DISTRICT COURT
CLARK COUNTY, NEVADA**
* * * *


CLERK OF THE COURT

STATE OF NEVADA

VS

JAMES HAYES

Case No.: C-16-315718-1

DEPARTMENT 19

NOTICE OF DEPARTMENT REASSIGNMENT

NOTICE IS HEREBY GIVEN that the above-entitled action has been reassigned to Judge William D. Kephart.

☒ This reassignment is due to the recusal of Judge Michelle Leavitt. See minutes in file.

ANY TRIAL DATE AND ASSOCIATED TRIAL HEARINGS STAND BUT MAY BE RESET BY THE NEW DEPARTMENT. PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE FILINGS.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Diana Matson

Diana Matson,
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that this 10th day of February, 2017

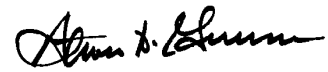
☒ The foregoing Notice of Department Reassignment was electronically served to all registered parties for case number C-16-315718-1.

☒ I placed a copy of the foregoing Notice of Department Reassignment in the appropriate attorney folder located in the Clerk of the Court's Office:

Anthony L Abbatangelo
Steven B Wolfson

/s/ Diana Matson

Diana Matson
Deputy Clerk of the Court



CLERK OF THE COURT

1 OPI

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

5 CHRISTOPHER J. LALLI
6 Assistant District Attorney
7 Nevada Bar #005398
8 200 Lewis Avenue
9 Las Vegas, Nevada, 89155-2211
10 (702) 671-2500
11 Attorney for Plaintiff

12
13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 THE STATE OF NEVADA,

16 Plaintiff,

17 -vs-

18 See Attached

19 Defendant.

Case No. C-17-321716-1
17FN0146X
17F03122X
C-16-315406-1
C-17-321969-1
C-17-321781-1
C-16-318587-1
C-17-320909-1
C-17-321100-1
C-16-315718-1
C-17-322045-1
17F02955X
16F20009X
17F02957A
09C256426

Dept No. See Attached

21
22 ORDER FOR PRODUCTION OF INMATES

23 TO: Nevada Department of Correction, Central Transportation Division

24 TO: Joseph Lombardo, Sheriff of Clark County, Nevada

25 Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEVEN
26 B. WOLFSON, District Attorney, and good cause appearing therefor,

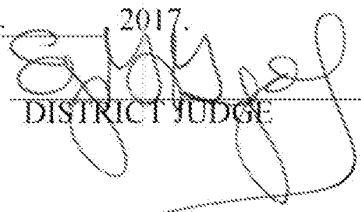
27 //

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1 IT IS HEREBY ORDERED that Nevada Department of Correction, Central
2 Transportation Division shall be, and is, hereby directed to produce the Defendants listed on
3 the attached document at such time and place as is designated thereon.

4 IT IS FURTHER ORDERED that Joseph Lombardo, Sheriff of Clark County,
5 Nevada, shall accept and retain custody of the said Defendants in the Clark County
6 Detention Center, Las Vegas, Nevada, pending completion of said matter in Clark County,
7 or until the further Order of this Court; or in the alternative shall make all arrangements for
8 the transportation of the said Defendants to and from the Nevada Department of Corrections
9 which are necessary to insure the Defendants' appearance in Clark County pending
10 completion of said matter, or until further Order of this Court.

11 DATED this 21st day of March 2017.

12 
13 DISTRICT JUDGE
14

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

17 BY 
18 CHRISTOPHER J. LALLI
19 Assistant District Attorney
Nevada Bar #005398
20
21
22
23
24
25
26
27

28 kb
031717

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

Inter-Office Memorandum

To: All Personnel

Date: 3/16/17

From: Field Services Sgt.

Subject: Pending court dates of inmates sentenced to
NDOC/HIGH DESERT and were transferred on: MONDAY, MARCH 20, 2017.

The inmates listed below were transferred to Nevada Dept of Corrections and will have the following court dates.

	<u>NAME/ACTION</u>	<u>ID#</u>	<u>CASE #</u>	<u>CRT DATE/ TIME</u>	<u>DEPT #</u>
1	BEEL, CARL PRELIM	1683254	17FN0146X	4/26/17 0930	NLV#2
2	ORTIZ, ANTHONY SENTENCING	2595726	C-17-321716-1	4/27/17 0930	DC#21
3	SANCHEZ, MARIO TO APPEAR	2858691	17F03122X	4/10/17 0800	JC#8

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

Inter-Office Memorandum

To: All Personnel

Date: 3/16/17

From: Field Services Sgt.

Subject: Pending court dates of inmates sentenced to
NDOC/HIGH DESERT and were transferred on: TUESDAY, MARCH 21, 2017.

The inmates listed below were transferred to Nevada Dept of Corrections and will have the following court dates.

	<u>NAME/ACTION</u>	<u>ID#</u>	<u>CASE #</u>	<u>CRT DATE/ TIME</u>	<u>DEPT #</u>
1	SYKES, LEE HEARING	5700197	C-16-315406-1	6/27/17 0830	DC#20
2	ORTEZA, ANTHONY SENTENCING	1399812	C-17-321969-1	4/4/17 0900	DC#3
3	DUPUIS, MARK SENTENCING	5757513	C-17-321781-1	4/6/17 0900	DC#4
4	PETERSON, JASON STATUS CHECK	2795950	C-16-318587-1	4/26/17 0830	DC#10

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

Inter-Office Memorandum

To: All Personnel

Date: 3/20/17

From: Field Services Sgt.

Subject: Pending court dates of inmates sentenced to
NDOC/HIGH DESERT and were transferred on: WEDNESDAY, MARCH 22, 2017.

The inmates listed below were transferred to Nevada Dept of Corrections and will have the following court dates.

	<u>NAME/ACTION</u>	<u>ID#</u>	<u>CASE #</u>	<u>CRT DATE/ TIME</u>	<u>DEPT #</u>
1	GEIGGAR, TRYQUAN SENTENCING	2758726	C-17-320909-1	4/3/17 0900	DC#1
2					
3					

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

Inter-Office Memorandum

To: All Personnel

Date: 3/22/17

From: Field Services Sgt.

Subject: Pending court dates of inmates sentenced to
NDOC/HIGH DESERT and were transferred on: **FRIDAY, MARCH 24, 2017.**

The inmates listed below were transferred to Nevada Dept of Corrections and will have the following court dates.

	<u>NAME/ACTION</u>	<u>ID#</u>	<u>CASE #</u>	<u>CRT DATE/ TIME</u>	<u>DEPT #</u>
1	CHAIYAKUL, CHUCK SENTENCING	2509509	C-17-321100-1	4/7/17 0900	DC#4
2	HAYES, JAMES STATUS CHECK	2796708	C-16-315718-1	4/3/17 0830	DC#19
3	COOPER, WILLIAM SENTENCING STATUS CEHCK	1230038	C-17-322045-1 17F02955X	4/11/17 0900 4/18/17 0730	DC#2 JC#11
4	FARNI, SCOTTY STATUS CHECK	7017321	16F20009X	6/26/17 0730	JC#11
5	BISHOP, DERRICK PRELIM	857142	17F02957A	4/10/17 0930	JC#8

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

Inter-Office Memorandum

To: All Personnel Date: 3/22/17
From: Field Services Sgt.
Subject: Pending court dates of inmates sentenced to
WOMEN'S PRISON and were transferred on: **FRIDAY, MARCH 24, 2017.**

	<u>NAME/ACTION</u>	<u>ID#</u>	<u>CASE #</u>	<u>CRT DATE</u>	<u>DEPT</u>
1	BYERS, SAMANTHA REVOCATION	2690695	09C256426	4/17/17 0930	DC#23
2					
3					
4					



MWCN
Tony Abbatangelo, Esq.
Nevada Bar No.: 003897
COLQUITT & ABBATANGELO, LTD.
321 S. Casino Center Blvd., Ste. 112
Las Vegas, Nevada 89101
Tel: (702) 384-1000
Fax: (702) 543-2197
Email: LasVegasLawOffice@gmail.com
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

HAYES, JAMES HOWARD,
ID#: 2796708,

Defendant.

Case No.: C-16-315718-1

Dept No.: XIX

MOTION TO WITHDRAW AS ATTORNEY
OF RECORD FOR DEFENDANT

COMES NOW Defendant by and through Tony Abbatangelo, Esq.
with the instant motion for an order withdrawing as attorney of
record for Defendant.

This Motion is made and based upon the following Memorandum
of Points and Authorities, the Affidavit of Counsel, argument at
the time of hearing and all pleadings and papers on file herein.

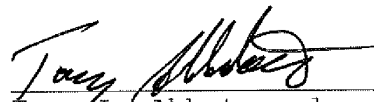
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1 DATED this 31st day of May, 2017.

2 COLQUITT & ABBATANGELO, LTD.

3
4 

5 Tony L. Abbatangelo, Esq.
6 Nevada Bar No. 3897
7 321 S. Casino Center Blvd.
8 Ste. 112
9 Las Vegas, Nevada 89101
10 Tel: (702) 384-1000
11 Fax: (702) 543-2197
12 LasVegasLawOffice@gmail.com
13 Attorney of Defendant

14 NOTICE OF MOTION

15 TO: THE STATE OF NEVADA, Plaintiff; and

16 TO: CLARK COUNTY DISTRICT ATTORNEY'S OFFICE, Plaintiff's
17 attorney; and

18 TO: JAMES HOWARD HAYES, Defendant.

19 PLEASE TAKE NOTICE that the attorney for Defendant will
20 bring MOTION TO WITHDRAW AS ATTORNEY OF RECORD FOR DEFENDANT on
21 for hearing before the above-entitled Court on the 12 day of
22 JUNE, 2017, at the hour of 8:30A .m. or as soon
23 thereafter as counsel may be heard.

24 DATED this 31st day of May, 2017.

25 COLQUITT & ABBATANGELO, LTD.

26 

27 Tony L. Abbatangelo, Esq.
28 Nevada Bar No. 3897

POINTS & AUTHORITIES

I. Eighth Judicial District Court Rule 7.40 provides in pertinent part:

EDCR Rule 7.40 states, in pertinent part, as follows:

(2) When no attorney has been retained to replace the attorney withdrawing, by order of the court, granted upon written motion therefore, and

1. If the application is made by the attorney, he must include in an affidavit the address, or last known address, at which the client may be served with notice of further proceedings taken in the case in the event the application for withdrawal is granted, and he must serve a copy of the application upon the client and all other parties to the action or their attorneys. . .

3. No application for withdrawal...may be granted if a delay of the trial or of the Hearing of any other matter in the case would result.

Attached hereto is an Affidavit of Tony L. Abbatangelo, Esq., setting forth the reasons for withdrawal from Defendant's representation. Most notably, Defendant has wholly and totally failed to maintain communication with counsel in this matter and has failed to meet all of his obligations to counsel's office necessary to allow for the preparation of a defense in this matter, financial and otherwise. Due to the facts set forth in that affidavit, counsel, Tony L. Abbatangelo, respectfully requests that he be allowed to withdraw as attorney of record for Defendant in the above matter.

//

//

//

//

//

COLQUITT & ABBATANGELO, LTD.

321 S. Casino Center Blvd., Ste. 112
Las Vegas, Nevada 89101
Tel: (702) 384-1000 FAX: (702) 543-2197

CONCLUSION

Based upon the above and foregoing, Affiant and this law firm respectfully request an Order Granting the Motion to Withdraw as Attorney of Record for James Howard Hayes.

RESPECTFULLY SUBMITTED.

DATED this 31st day of May, 2017.

COLQUITT & ABBATANGELO, LTD.



Tony L. Abbatangelo, Esq.
Nevada Bar No. 3897
321 S. Casino Center Blvd.
Ste. 112
Las Vegas, Nevada 89101
Tel: (702) 384-1000
Fax: (702) 543-2197
LasVegasLawOffice@gmail.com
Attorney of Defendant

AFFIDAVIT OF TONY L. ABBATANGELO, ESQ.

IN SUPPORT OF MOTION TO WITHDRAW

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Tony L. Abbatangelo, Esq., being first duly sworn under oath, subject to the penalty for perjury pursuant to Nevada law, and in conformity with N.R.S. 53.045, hereby deposes and says:

1. I am the attorney of record for the Defendant, JAMES HOWARD HAYES, in the above-entitled matter and I am an attorney duly licensed to practice before all Courts in the State of Nevada;

2. I make this Affidavit based upon facts within my own knowledge, save and except as to those matters alleged upon information and belief, and as to those matters, I believe them to be true.

3. At the commencement of my representation of the Defendant, JAMES HOWARD HAYES, he and I entered into an agreement for payment of the professional services being rendered in his defense. Defendant has wholly and completely failed to meet all of his financial obligations to my office since entering into said agreement.

//

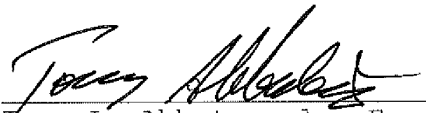
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1 4. The Defendant's last known address is as follows:

2 James Howard Hayes, ID# 2796708
3 High Desert State Prison
4 P.O. Box 650
Indian Springs, NV 89070

5 5. That Defendant, JAMES HOWARD HAYES, refuses to cooperate
6 with this firm and follow legal advice. That Defendant
7 has refused numerous attempts by this firm to negotiate
8 with the State. That the lines of communication have
9 been severed and Defendant has exhibited a lack of
10 cooperation such that I can no longer adequately
11 represent Defendant, JAMES HOWARD HAYES, in this matter.

12 6. If called upon to testify regarding any of the above,
13 your Affiant could do so confidently;
14

15 
16 Tony L. Abbatangelo, Esq.

17
18 Signed in conformity with N.R.S. 53.045 this
19 31st day of May, 2017 in Las Vegas, Nevada.
20
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COLQUITT & ABBATANGELO, LTD.

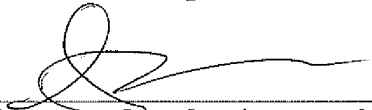
321 S. Casino Center Blvd., Ste. 112
Las Vegas, Nevada 89101
Tel: (702) 384-1000 FAX: (702) 543-2197

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing
was made this 31st day of May, 2017 to:

Office of the District Attorney
Motions@clarkcountyda.com

By:


An Employee of Colquitt & Abbatangelo, Ltd.



1 CERT

2 Tony Abbatangelo, Esq.

3 Nevada Bar No.: 003897

4 COLQUITT & ABBATANGELO, LTD.

5 321 S. Casino Center Blvd., Ste. 112

6 Las Vegas, Nevada 89101

7 Tel: (702) 384-1000

8 Fax: (702) 543-2197

9 Email: LasVegasLawOffice@gmail.com

10 Attorney for Defendant

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 STATE OF NEVADA,

14 Plaintiff,

15 vs.

16 HAYES, JAMES HOWARD,

17 Defendant.

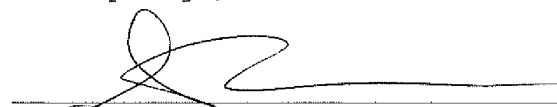
Case No.: C-16-315718-1

Dept No.: XIX

CERTIFICATE OF MAILING

18 I hereby certify that service of a filed copy of the Motion
19 to Withdraw as Attorney of Record was made this 1st day of June,
20 2017, by depositing a true and correct copy thereof in the U.S.
21 Mail in a sealed envelope, first class postage, prepaid,
22 addressed as follows:
23

24 James Howard Hayes, ID#1175077
25 High Desert State Prison
26 P.O. Box 650
27 Indian Springs, NV 89070-0650

28 
An employee of Colquitt & Abbatangelo, Ltd.



1 **ROC**
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

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

CASE NO: C-16-315718-1

11 -vs-

DEPT NO: XII

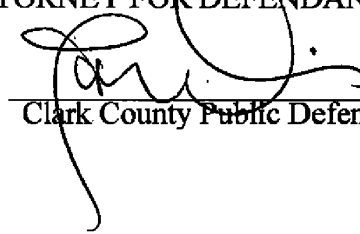
12 JAMES HOWARD HAYES,
13 aka James Howard Hayes, Jr., #2796708
14 Defendant.

15 RECEIPT OF COPY

16 Certified records of the State of Nevada Department of Motor Vehicles Drivers License
17 Data of James Howard Hayes, Jr., including photo (7 pages).

18 RECEIPT OF COPY of the above and foregoing is hereby acknowledged this
19 28th day of August, 2017.

20 JESSICA MURPHY, ESQ.
21 ATTORNEY FOR DEFENDANT

22 BY 
23 Clark County Public Defender

24
25
26
27 md/L2
28



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 #013476**
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 **AMENDED 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: JESSICA W. MURPHY, Deputy Public Defender, Counsel of Record:**

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

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

26 **///**

27 **///**

1 1. That on or about 2007, the Defendant was convicted in the State of Texas,
2 for the crime of CREDIT CARD ABUSE (Felony) in Case No. 108378501010.

3 2. That on or about 2011, the Defendant was convicted in the State of
4 Nevada, for the crime of ATTEMPT POSSESSION OF CREDIT OR DEBIT CARD
5 WITHOUT CARDHOLDER'S CONSENT (Category E Felony) in Case No. C270308.

6 3. That on or about 2017, the Defendant was convicted in the State of
7 Nevada, for the crime of BURGLARY (Category B Felony) in Case No. C315125.

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

10 BY


11 MICHAEL R. DICKERSON
12 Deputy District Attorney
 Nevada Bar #013476

13
14 **CERTIFICATE OF ELECTRONIC FILING**

15 I hereby certify that service of AMENDED NOTICE OF INTENT TO SEEK
16 PUNISHMENT AS A HABITUAL CRIMINAL, was made this 29th day of August, 2017,
17 by Electronic Filing to:

18 JESSICA W. MURPHY, Deputy Public Defender
19 EMAIL: murphyjw@clarkcountynv.gov;
20 pdclerk@clarkcountynv.gov

21 
22 Secretary for the District Attorney's Office

23
24
25
26
27
28 13F10723Xpm/L-2



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 #013476
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,
13 aka, James Howard Hayes, Jr., #2796708
14 Defendant.

CASE NO: C-16-315718-1

DEPT NO: XII

15 NOTICE TO INTRODUCE CERTIFIED RECORDS
16 [NRS 52.260(4)]

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

19 TO: JESSICA W. MURPHY, Deputy Public Defender, Counsel of Record:

20 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
21 NEVADA intends to introduce in its case in chief records made in course of regularly
22 conducted activity and supporting affidavits/declarations pursuant to NRS 52.260 and NRS
23 51.135 from the following custodians of records/employers:

- 24 1. Clark County Detention Center;
- 25 2. Nevada Department of Motor Vehicles; and
- 26 3. Excalibur Hotel & Casino.

27 ///

28 ///

W:\2013\2013F\10723\13F10723-NOTC-(CERT_RECORDS)-001.DOCX

1 The substance of each record made in course of regularly conducted activity and
2 supporting affidavits/declarations have been provided in discovery.

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

6 BY M.R. Dickerson
7 MICHAEL R. DICKERSON
8 Deputy District Attorney
9 Nevada Bar #013476

10 CERTIFICATE OF ELECTRONIC FILING

11 I hereby certify that service of NOTICE TO INTRODUCE CERTIFIED
12 RECORDS [NRS 52.260(4)], was made this 29th day of August, 2017, by

13 Electronic Filing to:

14 JESSICA W. MURPHY
15 DEPUTY PUBLIC DEFENDER
16 EMAIL: murphyjw@clarkcountynv.gov,
17 pdclerk@clarkcountynv.gov,

18 P. Manis
19 P. Manis
20 Secretary for the District Attorney's Office
21
22
23
24
25
26
27

28 pm/L-2

Steven D. Grierson

1 **ROC**
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

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

CASE NO: C-16-315718-1

11 -vs-

DEPT NO: XII

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

15 RECEIPT OF COPY

- 16 1. Excalibur Security Incident File Full Report #IN20130017158 (15 pages).
17 2. Hotel room door lockout records (5 pages).
18 3. Room # 17151 guest records 4/5/13-4/15/13 (3pages).
19 4. Two (2) discs containing surveillance footage of complainants in holding room.

20 RECEIPT OF COPY of the above and foregoing is hereby acknowledged this

21 27 day of ~~August~~, 2017.

JESSICA MURPHY, ESQ.
ATTORNEY FOR DEFENDANT

22 *September*
23 BY *[Signature]*
24 Clark County Public Defender

25
26
27 md/L2
28



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Acting Court Division Administrator

February 07, 2018

Attorney: Public Defender
309 S Third Street
PO Box 552610
Las Vegas NV 89155

Case Number: C-16-315718-1
Department: Department 19

Defendant: JAMES HOWARD HAYES

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

Pleadings: **Petition For Writ Of Habeas Corpus**

Rule 3.70. Papers which May Not be Filed

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,
DC Criminal Desk # 56
Deputy Clerk of the Court

C-16-315718-1
LSF
Left Side Filing
4718698



Case No. C-16-315718-1

Dept No. 19

IN the 8th Judicial District Court of the State
of Nevada IN and for the County of Clark

Petition for Writ of Habeas Corpus

IN the Matter of the Application of
JAMES A HAYES (Prose)

for a writ of Habeas Corpus

State of Nevada; District Court, Clark County

Comes Now, the petitioner proceeding Prose in the
forma pauperis with the assistance of the jail house
lawyer whose activities are protected by law. see Johnson v.
Avery, 393 U.S. 483, 21 L. Ed 2d 718, 89 S. Ct 747 (1969) and
Wolfe v. McDonnell, 418 U.S. 538 (1974). The movant is not
trained in the letter of the law, and thus the petitioner
prays to this court for wide latitude, see Higgs v. State,
222 3d 648, 653 Nevada (2010). As a prose petitioner see
Hollis vs State, 96 Nev 664 (1979) and Beingold vs. Wolf
N' Wild Nev Inc, 113 Nev 967, and that treatment for this
writ of Habeas Corpus constitutes a cognizable claim
and shall be liberally construed. see Belistree vs.

CLERK OF THE COURT

RECEIVED

JAN 29 2018

CLERK OF THE COURT

1/1/08

Pacific Police Dept, 901 F.2d 696, 699 (9th Cir 1990) and the U.S. Supreme Court on less stringent standards than formal pleadings drafted by lawyers. See Hughes v. Rowe, 449 U.S. 5, 9 (1980) and Haines v. Kerner et al, 404 U.S. 519, 92 S.Ct. 594 (1971)

The Petitioner (Defendant) waives the 60 day limitation for bringing the accused to trial.

If the petition is not decided within 15 days before the date set for trial, the petitioner consents that the court may, without notice or hearing continue the trial indefinitely or to a date designated by the court.

Points and Authorities

Petitioner contends that the evidence by the state at the preliminary hearing was not sufficient to satisfy the burden of probable cause, and that the defendant participated in a burglary was insufficient evidence for a magistrate to bind over defendant for trial on that charge. Nev. Rev. Stat. § 34.500, Ex Parte Bell, 71 Nev. 276, 288 P.2d 450; Ex Parte Kline, 71 Nev. 124, 282 P.2d 367.

Whereas, the rape crime was said to have taken place on or about the 9th day of April 2013, at Excalibur hotel and casino room 17151 that was registered to guests Misty Mustafa, Daisy Ramirez, Jessica Ortiz Jarvis.

WHEREAS, the petitioner contends that there was no other proof of the corpus delicti or the venue of the action. In which, the state did not present all registered guests of said room 17151 giving statements or testimony that the petitioner did not have their consent to be in said room.

WHEREAS, the state only introduced Joshua Jarvis at preliminary hearing that stated he was awake by petitioner. then took picture of petitioner and his drivers license at 7:08AM with petitioners consent and there was no sign of disturbance of breaking into the room. then ask petitioner to leave the room and stated as petitioner was leaving with consent that if anything is missing when he awakes that he was calling the police

WHEREAS, the state did not prove cause that petitioner wilfully, unlawfully, and feloniously enter, with intent to commit larceny said room 17151 when hotel lock integrity showed that door was showed left open at 4:23AM and closed at 7:06AM, and the room was devoid of wrongful entry. Robert O. Hutchinson 76 Nev. 478, 357 P.2d 589; 1960 Nev. Lexis 141

WHEREAS, the state's charging information was the crime(s) of Burglary (category B felony NRS. 205.060) and attempt Grand larceny (NRS. 205.222) the state drop the latter charge. Petitioner contends that there was no intent to commit

larceny. A criminal intent formulated after a lawful entry will not satisfy the statute. State v The Adams, 94 Nev. 503; 581 P.2d 868; 1978 Nev. Leds 599. One of the essential elements of burglary is the entry of a building with the "intent to commit grand or petit larceny, or any felony NRS 205.010 subsection 1. The state has predicated the necessary intent to commit "any felony" on the charge of attempted grand larceny. Since the state dropped the grand larceny count, the count of burglary as it is presently drafted is fatally defective and too must be dropped. Simpson v. District Court, 88 Nev. 654; 503 P.2d 1225 (1972). The district attorney failed to prove that a crime was committed under the information filed, as there is no independent evidence of the corpus delicti or that the crime was committed within the jurisdiction.

Whereas, the states witness Joshua Jarvis testimony was filled with hearsay and secondary evidence that was contradictory from police report day of alleged event took place to detectives investigation to his preliminary hearing testimony. Witness must testify to the evidentiary facts and not to his conclusion, opinion, or inferences has been so long and so well recognized by this and all other courts in the country as not

(4) Your

to require discussions §283 P.2d.6143. NRS 172.260(2) commands that the jury can receive none but legal evidence and the best evidence in degree, to the exclusion of hearsay or secondary evidence. Joshua Jarvis testimony was contrary to the law.

Whereas, petitioner contends that the district court is without jurisdiction to proceed further with the trial since it is the absence of evidence that supplies the cause for the challenge via habeas.

WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 23 day of the month of JAN, 2018

James H. Hayes

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

James H. Hayes

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number C-16-319718-1 Does not contain the social security number of any person.

James H. Hayes

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

CERTIFICATE OF SERVICE BY MAIL

JAMES H. HAYES, hereby certify pursuant to N.R.C.P. 5(b), that on this 23 day of the month of JANUARY, 2018 I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

D.W. Neven, Warden High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada 89701

Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

James H. Hayes #1125077

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

* Print your name and NDOC back number and sign

(6) SIX

1-23-18

DEAR, CLERK OF THE COURT

I, JAMES H. HAYES # 1175077 ask that you
PLEASE file my prose writ of Habeas Corpus
with this said court. Also I ask of a big favor
as I am unavailable to make copies to forward
to the following so I beg of you at this time
to PLEASE make copies and forward

THANKS AND GOD BLESS
James H Hayes

JAMES H. HAYES # 1175077
H.D.S.P

P.O. Box 650
Indian Springs, NV 89020

CC: Clark County Dist Atty
200 LEWIS AVE
LAS VEGAS, NV 89155

CLERK OF THE COURT

FEB 07 2018

RECEIVED

Atty General of Nevada
100 North Carson Street
Carson City, NV 89701

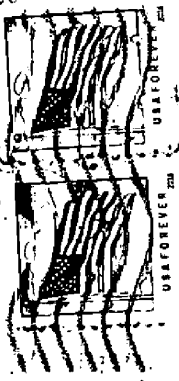
RECEIVED

JAN 29 2018

CLERK OF THE COURT

JAMES HAYES 41175077
H.D.S.P.
P.O. BOX 650
MILWAUKEE SPRINGS, NC 27070

LAS VEGAS NV 890
25 JAN 2018 PM 3 L



Clark County District Court
Attn: Clerk of the Court
200 LEADS AVE 3RD FLOOR
LAS VEGAS, NEVADA 89155

WJH
2/1/18
RECEIVED
JAN 24 2018
UNIT 8 CND



1 PHILIP J. KOHN, PUBLIC DEFENDER
2 NEVADA BAR NO. 0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
5 (702) 455-4685
6 *Attorneys for Defendant*

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

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

12 JAMES HOWARD HAYES,

13 Defendant,

CASE NO. C-16-315718-1

DEPT. NO. XII

14 **COURTESY FILING OF DEFENDANT'S PRO PER PETITION**

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By: /s/Melissa Boudreault
An employee of the
Clark County Public Defender's Office

CASE No. C-16-315218-1

DEPT No. 19

IN the 8th Judicial District Court of the State
of Nevada IN and for the County of Clark

Petition for Writ of Habeas Corpus

IN the Matter of the Application of
James H Hayes (Prose)
for a Writ of Habeas Corpus
State of Nevada, District Court, Clark County

Comes Now, the petitioner proceeding Prose in the
same papers with the assistance of the jail house
lawyer whose activities are protected by law. see Johnson v.
Avery, 393 U.S. 485, 21 L. Ed 2d 718, 89 S. Ct 747 (1969) and
Wolf v. Mc Donald, 418 U.S. 538 (1974). The movement is not
termined in the letter of the law, and thus the petitioner
pays to this court for wide latitude, see Hogg v. State,
222 3d 648, 533 Nevada (2010). As a prose petitioner see
DeHaven vs. State, 91 Nev 664 (1989) and Berglund vs. State,
113 Nev 967, and that treatment for this
Writ of Habeas Corpus constitutes a cognizable claim
and shall be liberally construed. see Ballistree vs.

CLERK OF THE COURT

RECEIVED
JAN 29 2018

CLERK OF THE COURT

(1) ONE

8

Petitioner Police Dept, 701 P.2d 196, 199 (9th Cir 1992) and the U.S. Supreme Court has less stringent standards than formal pleadings drafted by lawyers see Hughes v. Rowe, 449 U.S. 59 (1981) and Moines v. Kerner 401 U.S. 519, 92 S.Ct. 394 (1971)

The Petitioner (Defendant) waives the 60 day limitation for bringing the Petition to trial.

If the Petition is not decided within 15 days before the date set for trial, the Petitioner consents that the Court may, without notice or hearing, continue the trial indefinitely or to a date designated by the Court.

Facts and Authorities

Petitioner contends that the evidence by the State at the preliminary hearing was not sufficient to satisfy the burden of probable cause, and that the defendant participated in a burglary was insufficient evidence for a magistrate to bind over defendant for trial on that charge. Nev. Rev. Stat. § 34.500, Ex Parte Ralls, 71 Nev. 276, 286 P.2d 450; Ex Parte Kline, 71 Nev. 124, 282 P.2d 317.

Whereas, the rape date crime was said to have taken place on or about the 9th day of April 2003, at Excelsior hotel and casino room 17151 that was registered to guests Misty Mustafa, Dany Ramirez, Jessica Ortiz Torres.

(2) two

Whereas, the petitioner contends that there was no other proof of the corpus delicti or the venue of the actions, in which, the state did not present all registered guests of said room 17161 giving statements or testimony that the petitioner did not have their consent to be in said room.

Whereas, the state only introduced Joshua Jones at preliminary hearing that stated he was woken by petitioner. That took picture of petitioner and his drivers license at 7:00am with petitioner's consent and there was no sign of disturbance of breaking into the room. That ask petitioner to leave the room and stated as petitioner was leaving with consent that if anything is missing when he wakes that he was calling the police.

Whereas, the state did not prove cause that petitioner willfully, unlawfully, and feloniously enter, with intent to commit larceny said room 17161 which hotel lock integrity showed that door was showed left open at 4:29am and closed at 7:00am, and the room was cleared of everything early. Blood & State v. Jones 72 N.W. 428, 357 P.2d 587; 1960 NW 141

Whereas, the state's charging information was the crimes of Burglary (Neb. 285.20) and Attempt Burglary (Neb. 285.21) the state drop the latter charge. Petitioner contends that there was no intent to commit

(3) three

larceny. A criminal intent formulated after a lawful entry will not satisfy the statute. State v. The Adams, 94 N.H. 505; 381 P.2d 844; 1968 N.H. LEBN 371. One of the essential elements of burglary is the entry of a building with the "intent to commit grand or petit larceny, or any felony" NRS 205.010 subsection 1. The state has predicated the necessary intent to commit "any felony" on the charge of attempted grand larceny. Since the state drops the grand larceny count, the count of burglary as it is presently drafted is fatally defective and it must be dropped. Simpson v. District Court, 86 N.H. 654; 365 P.2d 1225 (1962). The district attorney fails to prove that a crime was committed under the information filed, as there is no independent evidence of the corpus delicti or that the crime was committed within the jurisdiction.

Whereas, the states wherein Joshua Tovey's testimony was taken with hearsay and circumstantial evidence that was contradictory from police report and of alleged event took place & detectives investigation to his preliminary hearing testimony. Witness must testify to the actual facts and not to his conclusion, opinion, or inferences has been so long and so well recognized by this and all other courts in the country as not

(4) Zane

to require discussions 2243 & 22.4143. NRS 172.240(2) comments that the jury can receive none but legal evidence and the best evidence in degree, to the exclusion of hearsay or secondary evidence. Joshua Jones testimony was contrary to the law.

Whereas petitioner contends that the district court is without jurisdiction to proceed further with the trial since it is the absence of evidence that supplies the cause for the challenge voir. habeas.

(5) FIVE

WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 23 day of the month of JAN, 2012

James H. Hayes

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

James H. Hayes

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number C-11-318712-1 Does not contain the social security number of any person.

James H. Hayes

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

CERTIFICATE OF SERVICE BY MAIL

James H. Hayes, hereby certify pursuant to N.R.C.P. 5(b), that on this 23 day of the month of JANUARY, 2012, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

D.W. Neven, Warden High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada 89701

Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

James H. Hayes

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

* Print your name and NDOC back number and sign

-80-

(6) 51X

1-23-88

DEER, CLERK OF THE COURT

I, JAMES H. HAYES * 1175077 ask that you
PLEASE file my prose list of HAYES' copies
with this said court. Also I ask of a DEER
as I am UNABLE to make copies to YOU
in the following so I beg of you at this time
to please make copies and return

THANKS AND GOD BLESS
James H. Hayes

JAMES H. HAYES * 1175077
H.D. 47
P.O. Box 66
Lafayette, LA 70502

cc: Clerk County Dist 424

208 LEWIS AVE

LOS VEGAS, NV 89105

RECEIVED
JAN 25 1988
ATTY GENERAL of NEVADA
100 NORTH CARSON STREET
CARSON CITY, NV 89701
RECEIVED

JAN 25 1988

CLERK OF THE COURT



1 PHILIP J. KOHN, PUBLIC DEFENDER
2 NEVADA BAR NO. 0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
5 (702) 455-4685
6 *Attorneys for Defendant*

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

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

12 JAMES HOWARD HAYES,

13 Defendant,

CASE NO. C-16-315718-1

DEPT. NO. XIX

Date: 04/23/18 Time: 8:30 AM

14 **AMENDED COURTESY FILING OF DEFENDANT'S PRO PER**
15 **PETITION FOR WRIT OF HABEAS CORPUS**

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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing PRO PER MOTION on for hearing before the District Court, Department XIX, on the 23 day of April, 2018 at 8:30 a.m.

DATED this 6th day of April, 2018

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Jessica Murphy
JESSICA W. MURPHY, #8587
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and forgoing COURTESY FILING was served via electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountydak.com on this 6th day of April, 2018.

By: /s/Melissa Boudreault
An employee of the
Clark County Public Defender's Office

CASE NO. C-16-31528-1

DEPT NO. 19

IN THE 8th Judicial District Court of the State
of Nevada IN AND FOR THE County of Clark

Petition for Writ of Habeas Corpus

IN the Matter of the Application of
James H. Hayes (Pro Se)

for a Writ of Habeas Corpus

State of Nevada, District Court, Clark County

Comes Now, the petitioner proceeding Pro Se in the
former proceedings with the assistance of the jail house
lawyer whose activities are protected by law. see Johnson v.
Avery, 393 U.S. 488, 21 L. Ed. 2d 718, 89 S. Ct. 747 (1969) and
Walt v. M^o Dawson, 418 U.S. 538 (1974). The motion is not
termined in the letter of the law, and thus the petitioner
pays to this court for wide latitude, see Hogg v. State,
222 3d 648, 553 Nevada (2010). As a pro se petitioner see
Boyle v. State, 71 Nev 664 (1999) and Benjamin v. State,
113 Nev 967, and that treatment for the
Writ of Habeas Corpus constitutes a cognizable claim
and shall be liberally construed. see Bohannon v.

RECEIVED
JAN 29 2019
CLERK OF THE COURT

(1) one

8

Practice Rule Book, 701 & 2d 196, 199 (9th Cir 1990) and the U.S. Supreme Court has less stringent standards than Federal pleadings drafted by lawyers see Hughes v. Boise, 449 U.S. 59 (1980) and Haines v. Kerner 404 U.S. 519, 92 S.Ct. 594 (1971).

The Petitioner (Defendant) waives the 60 day limitation for bringing the Petition to trial.

If the Petition is not decided within 15 days before the date set for trial, the petitioner consents that the court may, without notice or hearing, continue the trial indefinitely or to a date designated by the court.

Petitioner's Authorities

Petitioner contends that the evidence by the state at the preliminary hearing was not sufficient to satisfy the burden of probable cause, and that the defendant participated in a burglary was insufficient evidence for a magistrate to bind over defendant for trial on that charge. Nev. Rev. Stat. § 34.520, Ex Parte Rollis, 71 Nev. 276, 288 P.2d 465; Ex Parte Kline, 71 Nev. 124, 282 P.2d 327.

Whereas, the above said crime was said to have taken place on or about the 9th day of April 2013, at Las Vegas hotel and casino room 22161 that was registered to guests Misha Mustafa, Dany Ramirez, Jessica Ortiz Torres.

(2) two

Whereas, the petitioner contends that there was no other proof of the corpus delicti or the venue of the act(s) in which, the state did not present all registered guests of said room 17151 giving statements or testimony that the petitioner did not have their consent to be in said room.

Whereas, the state only introduced Thomas Jones at preliminary hearing that stated he was coerced by petitioner. That took picture of petitioner and his drivers license at 7:00 PM with petitioner's consent and there was no sign of disturbance of breaking into the room. That ask petitioner to leave the room and stated as petitioner was leaving with consent that if anything is missing when he wakes that he was calling the police.

Whereas, the state did not prove crime that petitioner actually, unlawfully, and feloniously enter, with intent to commit larceny said room 17151 which hotel lock always showed that door was always left open at 4:30 AM and closed at 7:00 AM, and the room was cleared of wrongful entry. Reid v. State 2012 WL 428, 307 P.3d 587; 1960 WL 1215 141

Whereas, the state's charging information was the crimes of Burglary (Ariz. R. Crim. P. 205.6) and Attempt (Felon) Larceny (Ariz. R. Crim. P. 205.22) the state drop the latter charge. Petitioner contends that there was no intent to commit

(3) There

larceny. A criminal intent formulated while a lawful entry will not satisfy the statute. State v. The Adams, 94 Neb. 505; 381 P.2d 846; 188 Neb. 1005 371. One of the essential elements of burglary is the entry of a building with the "intent to commit grand or petit larceny, or any felony" NRS 205.100 Subsection 1. The state has proven the necessary intent to commit "any felony" on the charge of attempted grand larceny. Since the state drops the grand larceny count, the count of burglary as it is presently drafted is fatally defective and it must be dropped. Simpson v. District Court, 86 Neb. 604; 507 P.2d 1225 (1972). The district attorney fails to prove that a crime was committed under the information filed, as there is no independent evidence of the corpus delicti or that the crime was committed within the jurisdiction.

Whereas, the state witness Joshua J. Jones testimony was filled with hearsay and contradictory evidence that was contradictory from police report and of alleged about the state & detectives investigation to his preliminary hearing testimony. Witness must testify to the facts only facts and not to his conclusion, opinion, or inferences has been so long and so well recognized by this and all other courts in the country as not

(4) Zane

to require discussion 2003 & 2004's. NBS 172-2002
commands that the jury can receive none but legal
evidence and the best evidence in degree, to the
exclusion of hearsay or secondary evidence. Joshua
James testimony was contrary to the law.

Wherein petitioners contends that the district court
is without jurisdiction to proceed further with the
trial since it is the absence of evidence that
supplies the cause for the challenge via motion.

(c) five

WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 23 day of the month of DEC, 2012

James H. Hayes

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

James H. Hayes

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number 12-11972 Does not contain the social security number of any person.

James H. Hayes

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

CERTIFICATE OF SERVICE BY MAIL

James H. Hayes hereby certify pursuant to N.R.C.P. 5(b), that on this 23 day of the month of January, 2012, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

D.W. Neven, Warden High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada 89701

Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

James H. Hayes

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

Print your name and NDOC back number and sign

(6) SIX

1-23-88

Deed, Clerk of the Court

I, James H. Hayes "HAYES" ask that you
please file my prose with of HAYES copy
with this court. Also I ask of a D.C. order
as I am unable to make copies to forward
to the following so I beg of you at this time
to please make copies and forward

Thanks and God Bless
James H. Hayes

James H. Hayes "HAYES"
H.D.P.
P.O. Box 100
Clark County, NV 89302

cc: Clark County Dist. Ct.
200 LEVINE AVE
LAS VEGAS, NV 89101

RECEIVED
APR 14 1988

Very Respectfully,
100 NORTH CROWN STREET
CARSON CITY, NV 89701

RECEIVED

APR 25 1988

CLERK OF THE COURT



MOT
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHAEL R. DICKERSON
Deputy District Attorney
Nevada Bar #013476
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: XIX

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

DATE OF HEARING: May 9, 2018
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 Dismiss Defendant's Amended Courtesy Filing Of Defendant's Pro Per Petition For Writ Of Habeas Corpus.

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

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NOTICE OF HEARING

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing motion on for setting before the above entitled Court, in Department XIX thereof, on Tuesday, the 9TH day of MAY, 2018, at the hour of 8:30 AM, or as soon thereafter as counsel may be heard.

DATED this 25TH day of April, 2018.

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

BY /s/ Michael R. Dickerson
MICHAEL R. DICKERSON
Deputy District Attorney
Nevada Bar #013476

PROCEDURAL HISTORY

On June 23, 2016, Defendant James Howard Hayes appeared in District Court for Initial Arraignment, his first appearance, in this case. At that time, the magistrate ordered "if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript." Thirty-six (36) days later, on July 29, 2016, the preliminary hearing transcript, entitled "Reporter's Transcript of Proceedings Preliminary Hearing 6/14/16," was filed.

Jury trial was initially scheduled for January 3, 2017, with Calendar Call set for December 27, 2018.

On November 18, 2016, Defendant filed Defendant's Motion For Discovery. On December 5, 2016, the State filed State's Response to Defendant's Motion for Discovery, and State's Request for Reciprocal Discovery. That Motion was ultimately adjudicated on December 8, 2016.

On December 12, 2016, the State filed Notice of Motion and Motion for Joinder of Case C315718 into Case C315125. That motion was adjudicated and denied in Case No. C315125.

1 Calendar Call was moved up to December 20, 2016. On December 20, 2016, at the
2 Calendar Call, Defendant requested a continuance due to pending motions and their request
3 for time to complete "additional investigation."

4 On December 16, 2016, the State filed Notice of Motion and Motion to Admit Evidence
5 of Other Acts. On December 20, 2016, Defendant filed Opposition To The State's Motion To
6 Admit Evidence Of Other Acts. That Motion was untimely heard and denied on January 12,
7 2017. On January 20, 2017, an Order Denying State's Motion To Admit Evidence Of Other
8 Acts was filed.

9 On January 26, 2017, trial was scheduled to begin on March 21, 2017.

10 On February 8, 2017, Substitution of Attorney. On February 9, 2017, recusal of the
11 court was ordered. On February 10, 2017, Notice of Department Reassignment issued
12 assigning this case to this Honorable Court.

13 On March 6, 2017, trial was scheduled by this Court to begin on March 27, 2018, with
14 Calendar Call on March 22, 2018. On March 22, 2018, at Calendar Call, the Defendant
15 requested trial be vacated and a status check be set for negotiation of the case. The State was
16 ready for trial, but did not oppose the request.

17 After a number of status checks, defense counsel filed Tony Abbatangelo, Esq's Motion
18 to Withdraw as Attorney of Record on May 31, 2017. After that Motion was granted, the
19 Public Defender re-confirmed on the case on July 10, 2017.

20 On August 30, 2017, Pretrial Conference was heard by this Court. On September 27,
21 2017, Calendar Call was held and Defendant advised there is an offer Defendant wants to
22 accept; however, Defendant filed an appeal which a decision has not been reached. Trial was
23 vacated and the case was set for a Status Check as to the Supreme Court Decision. On October
24 25, 2017. On October 25, 2017, Defendant asked for a new trial setting, stating that the Court
25 of Appeals dismissed his pro per writ petition. Trial was scheduled to begin on May 14, 2018.

26 On March 1, 2018, five-hundred-eighty (580) days after the filing of the preliminary
27 hearing transcript, Defendant filed Courtesy Filing Of Defendant's Pro Per Petition.
28

1 On April 6, 2018, six-hundred-sixteen (616) days after the filing of the preliminary
2 hearing transcript, Defendant filed Amended Courtesy Filing Of Defendant's Pro Per Petition
3 For Writ Of Habeas Corpus.

4 On April 11, 2018, Pretrial Conference was held.

5 On April 23, 2018, the Court heard Defendant's Amended Courtesy Filing Of
6 Defendant's Pro Per Petition For Writ Of Habeas Corpus and requested a written response
7 from the State. This matter is set to be heard on May 9, 2018.

8 Trial is scheduled to begin on May 14, 2018.

9 **POINTS AND AUTHORITIES**

10 **I. DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS IS**
11 **PROCEDURALLY BARRED**

12 Defendant has failed to properly file his petition for writ of habeas corpus. As such,
13 the Court lacks jurisdiction to consider the petition. NRS 34.700 is mandatory and states:

14 1. Except as provided in subsection 3, a pretrial petition for a writ
15 of habeas corpus based on alleged lack of probable cause or
16 otherwise challenging the court's right or jurisdiction to proceed
to the trial of a criminal charge may not be considered unless:

17 (a) The petition and all supporting documents are filed within 21
18 days after the first appearance of the accused in the district court;
and

19 (b) The petition contains a statement that the accused:

20 (1) Waives the 60-day limitation for bringing an accused to trial;
or

21 (2) If the petition is not decided within 15 days before the date set
22 for trial, consents that the court may, without notice or hearing,
continue the trial indefinitely or to a date designated by the court.

23 2. The arraignment and entry of a plea by the accused must not be
24 continued to avoid the requirement that a pretrial petition be filed
within the period specified in subsection 1.

25 3. The court may extend, for good cause, the time to file a petition.
26 Good cause shall be deemed to exist if the transcript of the
27 preliminary hearing or of the proceedings before the grand jury is
not available within 14 days after the accused's initial appearance
and the court shall grant an ex parte application to extend the time
28 for filing a petition. All other applications may be made only after
appropriate notice has been given to the prosecuting attorney.

1 (Emphasis Added).

2 Any petition which is not filed in conformance with NRS 34.700 is not cognizable and
3 cannot be considered by the Court. NRS 34.710. See also Gatlin v. State, 96 Nev. 303, 608
4 P.2d 1100, 1980 Nev. LEXIS 576 (Nev. 1980); Sheriff, Clark County v. Marshall, 96 Nev.
5 304, 608 P.2d 1101, 1980 Nev. LEXIS 577 (Nev. 1980). As such, the petition must be
6 dismissed. Sheriff, Clark County v. Jensen, 95 Nev. 595, 600 P.2d 222, 1979 Nev. LEXIS
7 690 (Nev. 1979); see also Sheriff v. Toston, 93 Nev. 394, 566 P.2d 411 (1977) (holding that a
8 pre-trial writ of habeas corpus that did not meet the requirements imposed on habeas
9 petitioners by the NRS was not cognizable in the district court); see also Sheriff of Washoe
10 County v. Chumphol, 95 Nev. 818, 603 P.2d 690 (Nev. 1979) (pre-trial petition for a writ of
11 habeas corpus not containing the consent required by subdivision 1(b) of this section and not
12 verified as required by statute was not cognizable in the district court); see also State v. Eighth
13 Judicial Dist. Court (Riker), 121 Nev. 225, 231-33, 112 P.3d 1070, 1074-75 (2005)
14 (“[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is
15 mandatory,” and “cannot be ignored [by the district court] when properly raised by the State.”)
16 (emphasis added); see also Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002)
17 (post-conviction writ for petition of habeas corpus rejected by the Nevada Supreme Court filed
18 two days late, despite evidence presented by the defendant that he purchased postage through
19 the prison and mailed the notice within the one-year time limit).

20 A review of the Court’s electronic filing system shows that Defendant never sought an
21 extension of time for the filing of the petition, either ex parte or otherwise. As such, his time
22 for filing the petition ran on August 19, 2016, twenty-one (21) days after the filing of the
23 preliminary hearing transcript. Defendant filed the instant Petition five-hundred-ninety-five
24 (595) days late. Since no request was filed, and no extension was granted, the writ is
25 procedurally barred.

26 As the Court lacks jurisdiction to hear the writ, the State will not be responding to the
27 substantive allegations without further order of the Court.

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CONCLUSION

Based upon the foregoing, the Court should discharge the writ as being procedurally barred.

DATED this 25th day of April, 2018.

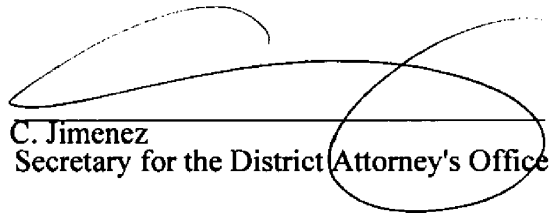
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ Michael R. Dickerson
MICHAEL R. DICKERSON
Deputy District Attorney
Nevada Bar #013476

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of STATE'S NOTICE OF MOTION AND MOTION TO DISMISS DEFENDANT'S AMENDED COURTESY FILING OF DEFENDANT'S PROPER PETITION FOR WRIT OF HABEAS CORPUS, was made this 25th day of April, 2018, by Electronic Filing to:

JESSICA MURPHY, Deputy Public Defender
murphyjw@clarkcountynv.gov


C. Jimenez
Secretary for the District Attorney's Office

MRD/cmj/L2



1 NOTC
2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR NO. 0556
4 JESSICA W. MURPHY, DEPUTY PUBLIC DEFENDER
5 NEVADA BAR NO. 8587
6 **PUBLIC DEFENDERS OFFICE**
7 309 South Third Street, Suite 226
8 Las Vegas, Nevada 89155
9 Telephone: (702) 455-4685
10 MurphyJW@clarkcountynv.gov
11 *Attorneys for Defendant*

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

9 THE STATE OF NEVADA,	)	
	)	
10 Plaintiff,	)	CASE NO. C-16-315718-1
	)	
11 v.	)	DEPT. NO. XIX
	)	
12 JAMES HOWARD HAYES,	)	
	)	
13 Defendant,	)	
	)	

14 **DEFENDANT'S NOTICE OF WITNESSES,**
15 **PURSUANT TO NRS 174.234**

16 TO: CLARK COUNTY DISTRICT ATTORNEY:

17 You, and each of you, will please take notice that the Defendant, JAMES HOWARD
18 HAYES, intends to call the following witness in his case in chief:

19 KEVIN GENE, Investigator,	Clark County Public Defender
	309 S. Third Street
	Las Vegas, NV 89155

21 CUSTODIAN OF RECORDS or Designee,	EXCALIBUR HOTEL
22 C/O; CSC SERVICES OF NEVADA, INC.	2215-B Renaissance Drive
	Las Vegas, NV 89119

23
24 ALL WITNESSES NOTICED BY THE STATE IN ANY FILED WITNESS NOTICES

25 DATED this 7th day of May, 2018.

26 PHILIP J. KOHN
27 CLARK COUNTY PUBLIC DEFENDER

28 By: /s/Jessica W. Murphy
JESSICA W. MURPHY, #8587
Deputy Public Defender

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By: /s/Melissa Boudreault
An employee of the
Clark County Public Defender's Office

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1 NOTC
2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR NO. 0556
4 JESSICA W. MURPHY, DEPUTY PUBLIC DEFENDER
5 NEVADA BAR NO. 8587
6 **PUBLIC DEFENDERS OFFICE**
7 309 South Third Street, Suite 226
8 Las Vegas, Nevada 89155
9 Telephone: (702) 455-4685
10 MurphyJW@clarkcountynv.gov
11 *Attorneys for Defendant*

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

9 THE STATE OF NEVADA,	)	
	)	
10 Plaintiff,	)	CASE NO. C-16-315718-1
	)	
11 v.	)	DEPT. NO. XIX
	)	
12 JAMES HOWARD HAYES,	)	
	)	
13 Defendant,	)	
	)	

14 **DEFENDANT'S SUPPLEMENTAL NOTICE OF WITNESSES**
15 **PURSUANT TO NRS 174.234**

16 TO: CLARK COUNTY DISTRICT ATTORNEY:

17 You, and each of you, will please take notice that the Defendant, JAMES HOWARD
18 HAYES, intends to call the following witness in his case in chief:

19 ALAN WHITTY,	EXCALIBUR HOTEL
20 Security Assistant Manager or Designee,	2215-B Renaissance Drive
C/O CSC SERVICES OF NEVADA, INC.	Las Vegas, NV 89119

21 ROBERT ZIPAT,	EXCALIBUR HOTEL
22 Excalibur Hotel and Security Investigator or Designee,	2215-B Renaissance Drive
C/O CSC SERVICES OF NEVADA, INC.	Las Vegas, NV 89119

23
24 DATED this 7th day of May, 2018.

25 PHILIP J. KOHN
26 CLARK COUNTY PUBLIC DEFENDER

27 By: /s/Jessica W. Murphy
28 JESSICA W. MURPHY, #8587
Deputy Public Defender

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By: /s/Melissa Boudreault
An employee of the
Clark County Public Defender's Office

408



OPI
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHAEL R. DICKERSON
Deputy District Attorney
Nevada Bar #013476
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: XIX

**ORDER FOR PRODUCTION OF INMATE
JAMES HOWARD HAYES, aka, James Howard Hayes, Jr., BAC #2796708**

DATE OF HEARING: July 11, 2018
TIME OF HEARING: 8:30 A.M.

TO: BRIAN WILLIAMS, Warden of the High Desert State Prison;

TO: JOSEPH LOMBARDO, Sheriff of Clark County, Nevada

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEVEN B. WOLFSON, Clark County District Attorney, through MICHAEL R. DICKERSON, Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that BRIAN WILLIAMS, Warden of the High Desert State Prison shall be, and is, hereby directed to produce JAMES HOWARD HAYES, aka, James Howard Hayes, Jr., in Case Number C-16-315718-1, wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as the said JAMES HOWARD HAYES, aka, James Howard Hayes, Jr. is currently incarcerated in the High Desert State Prison located in Indian Springs, Nevada and

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1 his/her presence will be required in Las Vegas, Nevada commencing on July 11, 2018, at the
2 hour of 8:30 o'clock A.M. and continuing until completion of the prosecution's case against
3 the said Defendant.

4 IT IS FURTHER ORDERED that JOSEPH LOMBARDO, Sheriff of Clark County,
5 Nevada, shall accept and retain custody of the said JAMES HOWARD HAYES, aka, James
6 Howard Hayes, Jr. in the Clark County Detention Center, Las Vegas, Nevada, pending
7 completion of said matter in Clark County, or until the further Order of this Court; or in the
8 alternative shall make all arrangements for the transportation of the said JAMES HOWARD
9 HAYES, aka, James Howard Hayes, Jr. to and from the Nevada State Prison facility which are
10 necessary to insure the JAMES HOWARD HAYES, aka, James Howard Hayes, Jr.'s
11 appearance in Clark County pending completion of said matter, or until further Order of this
12 Court.

13 DATED this 11th day of June, 2018.

14 
15 _____
16 DISTRICT JUDGE 

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

20 BY 
21 MICHAEL R. DICKERSON
22 Deputy District Attorney
23 Nevada Bar #013476
24
25
26
27

28 cmj/L2

Steven D. Grierson

0042
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
JESSICA W. MURPHY, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 8587
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
MurphyJW@clarkcountynv.gov
Attorneys for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

**DEPARTMENT XIX
NOTICE OF HEARING**
DATE 8/15/18 TIME 8:30 A.M.
APPROVED BY *[Signature]*

THE STATE OF NEVADA,

Plaintiff,

v.

JAMES HOWARD HAYES,

Defendant,

CASE NO. C-16-315718-1
DEPT. NO. XIX

DATE: August 15, 2018
TIME: 8:30 a.m.

MOTION TO WITHDRAW AS ATTORNEY OF RECORD

COMES NOW, the Defendant, JAMES HOWARD HAYES, by and through JESSICA W. MURPHY, Deputy Public Defender, and hereby moves this Court to withdraw the Public Defender's Office and appoint alternate counsel.

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

DATED this 27th of July, 2018.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/ Jessica W. Murphy*
JESSICA W. MURPHY, #8587
Deputy Public Defender

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DECLARATION

JESSICA W. MURPHY makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and I am familiar with the facts and circumstances of this case.

2. That, Mr. Hayes has left me numerous voicemail messages accusing me of being racist, and has yelled "black lives matter" numerous times.

3. That Mr. Hayes believes I have not shared discovery with him because he is black. I have informed him many times that I have provided him all the discovery I have received. However he refuses to believe me.

4. That Mr. Hayes believes that I have not investigated his case because he is black. I have updated him regarding the investigation with him numerous times and repeatedly asked for his input and direction.

5. That Mr. Hayes continually files his own pleadings both in the Nevada Supreme Court and this Court because he does not think I am litigating his case.

6. That there is a complete breakdown in the attorney-client relationship. At this point my representation is detrimental to Mr. Hayes and it is in his best interest to have new counsel so he can feel properly represented and focus on his case.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 27th day of July, 2018.

/s/Jessica W. Murphy
JESSICA W. MURPHY

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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the foregoing MOTION TO WITHDRAW
AS ATTORNEY OF RECORD will be heard on August, 15, 2018, at 8:30 a.m. in District Court,
Department XIX.

DATED this 27th day of July, 2018.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/Jessica W. Murphy
JESSICA W. MURPHY, #8587
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and forgoing MOTION was served via
electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountyda.com
on this 27th day of July, 2018.

By: /s/Melissa Boudreault
An employee of the
Clark County Public Defender's Office



ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHAEL R. DICKERSON
Deputy District Attorney
Nevada Bar #013476
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

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

Defendant.

CASE NO: C-16-315718-1

DEPT NO: XIX

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

DATE OF HEARING: August 29, 2018
TIME OF HEARING: 08:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the
29th day of August, 2018, the Defendant not being present, represented by MICHAEL W.
SANFT, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney,
through MICHAEL R. DICKERSON, Deputy District Attorney, without argument, based on
the pleadings and good cause appearing therefor,

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1 The Court finds the Defendant's Pro Per Petition for Writ of Habeas Corpus was not
2 filed within the statutory timeframe required by NRS 34.700 and, therefore, is not cognizable
3 by this Court.

4 IT IS HEREBY ORDERED that the Defendant's Pro Per Petition for Writ of Habeas
5 Corpus shall be, and it is DENIED.

6 DATED this 7th day of September, 2018.

7
8 Will Keith
DISTRICT JUDGE

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

11
12 BY Michael R. Dickerson
13 MICHAEL R. DICKERSON
Deputy District Attorney
14 Nevada Bar #013476

15
16 CERTIFICATE OF SERVICE

17 I certify that on the 12th day of September, 2018, I mailed a copy of the foregoing Order
18 to:

19 JAMES HOWARD HAYES, aka
20 James Howard Hayes, Jr., #1175077
High Desert State Prison
21 P.O. Box 650
Indian Springs, NV 89070

22
23 BY C. Garcia
24 C. Garcia
Secretary for the District Attorney's Office

25
26
27
28 cg/L2



1 NEOJ

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4 JAMES HAYES,

5
6 Petitioner,

Case No: C-16-315718-1

Dept. No: XIX

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

NOTICE OF ENTRY OF ORDER

10
11 **PLEASE TAKE NOTICE** that on September 12, 2018, the court entered a decision or order in this
12 matter, a true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on September 18, 2018.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 /s/ Courtnie Hoskin

18 Courtnie Hoskin, Deputy Clerk

19 **CERTIFICATE OF E-SERVICE / MAILING**

20 I hereby certify that on this 18 day of September 2018, I served a copy of this Notice of Entry on the
21 following:

22 ☒ By e-mail:

23 Clark County District Attorney's Office
24 Attorney General's Office – Appellate Division-

25 ☒ The United States mail addressed as follows:

26 James Hayes # 1175077
27 P.O. Box 650
28 Indian Springs, NV 89070

Michael W. Sanft, Esq.
228 S. 4th St., 3rd Fl
Las Vegas, NV 89101

/s/ Courtnie Hoskin

Courtnie Hoskin, Deputy Clerk



ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHAEL R. DICKERSON
Deputy District Attorney
Nevada Bar #013476
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

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

Defendant.

CASE NO: C-16-315718-1

DEPT NO: XIX

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29th day of August, 2018, the Defendant not being present, represented by MICHAEL W.
SANFT, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney,
through MICHAEL R. DICKERSON, Deputy District Attorney, without argument, based on
the pleadings and good cause appearing therefor,

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1 The Court finds the Defendant's Pro Per Petition for Writ of Habeas Corpus was not
2 filed within the statutory timeframe required by NRS 34.700 and, therefore, is not cognizable
3 by this Court.

4 IT IS HEREBY ORDERED that the Defendant's Pro Per Petition for Writ of Habeas
5 Corpus shall be, and it is DENIED.

6 DATED this 7th day of September, 2018.

7
8 Will Keith
DISTRICT JUDGE

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

11
12 BY Michael R. Dickerson
13 MICHAEL R. DICKERSON
Deputy District Attorney
14 Nevada Bar #013476

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16 CERTIFICATE OF SERVICE

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18 to:

19 JAMES HOWARD HAYES, aka
20 James Howard Hayes, Jr., #1175077
High Desert State Prison
21 P.O. Box 650
Indian Springs, NV 89070

22
23 BY C. Garcia
24 C. Garcia
Secretary for the District Attorney's Office

25
26
27
28 cg/L2

1 Hayes James #1175077

2 In Proper Person
3 P.O. Box 650 H.D.S.P.
4 Indian Springs, Nevada 89018

FILED

SEP 26 2018

John L. Williams
CLERK OF COURT

5 8th Judicial DISTRICT COURT
6 Clerk COUNTY NEVADA

7
8 State of Nevada
9 Plaintiff

Case No. C-16-315718-1
Dept. No. XIX
Docket _____

10 -v-
11 James H. Hayes
12 Defendant

13
14 NOTICE OF APPEAL

15 Notice is hereby given that the defendant James H.
16 Hayes, by and through himself in proper person, does now appeal
17 to the Supreme Court of the State of Nevada, the decision of the District
18 Court ORDER DENYING DEFENDANT'S PRO PER PETITION FOR
19 INLET OF HABEAS CORPUS (PRE-TRIAL)

20
21 Dated this date, 9-20-2018

22
23 Respectfully Submitted,

24
25 James H. Hayes

26 In Proper Person

C-16-316718-1
NOASC
Notice of Appeal (criminal)
4786546

27 RECEIVED
28 APPEALS

OCT 10 2018

CLERK OF THE COURT

RECEIVED

SEP 26 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

OPENED BY
SUPREME COURT
CLERKS OFFICE



CERTIFICATE OF SERVICE BY MAILING

I, JAMES H. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 20th
day of SEPTEMBER, 2018, I mailed a true and correct copy of the foregoing, "Notice
of Appeal"

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

SUPERIOR COURT of Nevada
201 SOUTH CAHILL ST. STE 201
CARSON CITY, NEVADA
89401
ATTN: CLERK OF THE COURT

DATED: this 20th day of September, 2018.

James H. Hayes
JAMES H. HAYES # 111470142
/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018

The undersigned does hereby affirm that the preceding Notice

of A_{00E2}

filed in District Court Case number C-16-315718-1

-OR-

(State specific law)

-05-

Signature

9-20-2018
Date

James H. Hayes
Print Name

PRO PER
Title

James Hayes #1175092
HDSP
P.O. Box 650
Indian Springs, NV 89270

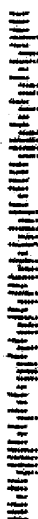
LAS VEGAS NV 890
24 SEP 2018 PM 5 L



LEG
MAY

Supreme Court of Nevada
"Office of the Clerk"
201 South Carson St, Suite 201
Carson City, Nevada
89201

89701-478051



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SEP 23 2018
U.S. MAIL
FIRST CLASS PERMIT NO. 1000 LAS VEGAS NV



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6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**

9 STATE OF NEVADA,

10 Plaintiff(s),

11 vs.

12
13 JAMES HOWARD HAYES
14 aka JAMES HOWARD HAYES, JR.,

15 Defendant(s),

Case No: C-16-315718-1

Dept No: XIX

16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): James H. Hayes

19 2. Judge: William D. Kephart

20 3. Appellant(s): James H. Hayes

21 Counsel:

22
23 James H. Hayes #1175077
24 P.O. Box 650
Indian Springs, NV 89070

25 4. Respondent: The State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.

Las Vegas, NV 89101
(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: Yes

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: June 14, 2016

10. Brief Description of the Nature of the Action: Criminal

Type of Judgment or Order Being Appealed: Writ of Habeas Corpus

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 73436, 75173

12. Child Custody or Visitation: N/A

Dated This 10 day of October 2018.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: James H. Hayes

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

1 AINF
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

NOV 07 2018
BY: 
TIA EVERETT, DEPUTY

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. XIX

AMENDED
INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss:

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

19 That JAMES HOWARD HAYES, aka, James Howard Hayes Jr., the Defendant(s)
20 above named, having committed the crime of **ATTEMPT GRAND LARCENY (Category**
21 **D Felony/Gross Misdemeanor - NRS 205.220.1, 205.222.2, 193.330 - NOC 56025/56026),**
22 on or about the 9th day of April, 2013, within the County of Clark, State of Nevada, contrary
23 to the form, force and effect of statutes in such cases made and provided, and against the peace
24 and dignity of the State of Nevada, did willfully, unlawfully, feloniously, and intentionally,
25 with intent to deprive the owner permanently thereof, attempt to steal, take and carry away
26 lawful money of the United States in an amount of \$650.00, or greater, owned by another

27 ///

28 ///

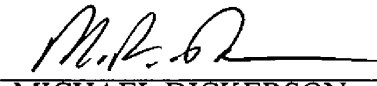
C-16-315718-1
AINF
Amended Information
4794959



1 person, to wit: JOSHUA JARVIS, by attempting to steal lawful money of the United States,
2 an iPhone and other personal items from the said JOSHUA JAVIS.

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

5
6 BY



7 MICHAEL DICKERSON
8 Deputy District Attorney
9 Nevada Bar #013476
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27 DA#13F10723X /cmj/L2
28 LVMPD EV#1304090843
(TK3)

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

NOV 07 2018

BY: 
TIA EVERETT, DEPUTY

1 **GPA**
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, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

CASE NO: C-16-315718-1

DEPT NO: XIX

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

Defendant.

GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty, pursuant to North Carolina v. Alford, 400 U.S. 25 (1970),
17 to: **ATTEMPT GRAND LARCENY (Category D Felony/Gross Misdemeanor - NRS**
18 **205.220.1, 205.222.2, 193.330 - NOC 56025/56026)**, as more fully alleged in the charging
19 document attached hereto as Exhibit "1".

20 My decision to plead guilty by way of the Alford decision is based upon the plea
21 agreement in this case which is as follows:

22 The State has agreed to make no recommendation at the time of sentencing. The State
23 has no opposition to probation with the only condition being thirty (30) days in the Clark
24 County Detention Center (CCDC), with thirty (30) days credit for time served.

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

28 ///

C-16-315718-1
GPA
Guilty Plea Agreement
4794960

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1 I understand and agree that, if I fail to interview with the Department of Parole and
2 Probation (P&P), fail to appear at any subsequent hearings in this case, or an independent
3 magistrate, by affidavit review, confirms probable cause against me for new criminal charges
4 including reckless driving or DUI, but excluding minor traffic violations, the State will have
5 the unqualified right to argue for any legal sentence and term of confinement allowable for the
6 crime(s) to which I am pleading guilty, including the use of any prior convictions I may have
7 to increase my sentence as an habitual criminal to five (5) to twenty (20) years, Life without
8 the possibility of parole, Life with the possibility of parole after ten (10) years, or a definite
9 twenty-five (25) year term with the possibility of parole after ten (10) years.

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

12 CONSEQUENCES OF THE PLEA

13 By pleading guilty pursuant to the Alford decision, it is my desire to avoid the
14 possibility of being convicted of more offenses or of a greater offense if I were to proceed to
15 trial on the original charge(s) and of also receiving a greater penalty. I understand that my
16 decision to plead guilty by way of the Alford decision does not require me to admit guilt, but
17 is based upon my belief that the State would present sufficient evidence at trial that a jury
18 would return a verdict of guilty of a greater offense or of more offenses than that to which I
19 am pleading guilty.

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

22 I understand that as a consequence of my plea of guilty by way of the Alford decision
23 the Court may elect to treat this offense as a felony or as a gross misdemeanor. If the Court
24 elects to treat this offense as a felony I may be imprisoned in the Nevada Department of
25 Corrections for a minimum term of not less than one (1) year and a maximum term of not more
26 than four (4) years. In addition, I may be fined up to \$5,000.00. I further understand that the
27 minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of
28 imprisonment. If the Court elects to treat this offense as a gross misdemeanor, I may be

1 imprisoned in the Clark County Detention Center for a period of not more than three hundred
2 sixty-four (364) days. In addition, I may be fined up to \$2,000.00. I understand that the law
3 requires me to pay an Administrative Assessment Fee.

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

8 If the Court elects to treat this offense as a felony or as a gross misdemeanor, I
9 understand that I am eligible for probation for the offense(s) to which I am pleading guilty. I
10 understand that, except as otherwise provided by statute, the question of whether I receive
11 probation is in the discretion of the sentencing judge.

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

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

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

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

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

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

27 I understand that if the offense(s) to which I am pleading guilty was committed while I
28 was incarcerated on another charge or while I was on probation or parole that I am not eligible

1 for credit for time served toward the instant offense(s).

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

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

10
11 Regardless of what I have been told by any attorney, no one can promise me that this
12 conviction will not result in negative immigration consequences and/or impact my ability to
13 become a United States citizen and/or a legal resident.

14 I understand that P&P will prepare a report for the sentencing judge prior to sentencing.
15 This report will include matters relevant to the issue of sentencing, including my criminal
16 history. This report may contain hearsay information regarding my background and criminal
17 history. My attorney and I will each have the opportunity to comment on the information
18 contained in the report at the time of sentencing. Unless the District Attorney has specifically
19 agreed otherwise, then the District Attorney may also comment on this report.

20 WAIVER OF RIGHTS

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

- 23 1. The constitutional privilege against self-incrimination, including the right
24 to refuse to testify at trial, in which event the prosecution would not be
allowed to comment to the jury about my refusal to testify.
- 25 2. The constitutional right to a speedy and public trial by an impartial jury,
26 free of excessive pretrial publicity prejudicial to the defense, at which
27 trial I would be entitled to the assistance of an attorney, either appointed
or retained. At trial the State would bear the burden of proving beyond
a reasonable doubt each element of the offense(s) charged.
- 28 3. The constitutional right to confront and cross-examine any witnesses who
would testify against me.

- 1 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 2 5. The constitutional right to testify in my own defense.
- 3 6. The right to appeal the conviction with the assistance of an attorney,
- 4 either appointed or retained, unless specifically reserved in writing and
- 5 agreed upon as provided in NRS 174.035(3). I understand this means I
- 6 am unconditionally waiving my right to a direct appeal of this conviction,
- 7 including any challenge based upon reasonable constitutional,
- jurisdictional or other grounds that challenge the legality of the
- proceedings as stated in NRS 177.015(4). However, I remain free to
- challenge my conviction through other post-conviction remedies
- including a habeas corpus petition pursuant to NRS Chapter 34.

8 VOLUNTARINESS OF PLEA

9 I have discussed the elements of all of the original charge(s) against me with my

10 attorney and I understand the nature of the charge(s) against me.

11 I understand that the State would have to prove each element of the charge(s) against

12 me at trial.

13 I have discussed with my attorney any possible defenses, defense strategies and

14 circumstances which might be in my favor.

15 All of the foregoing elements, consequences, rights, and waiver of rights have been

16 thoroughly explained to me by my attorney.

17 I believe that pleading guilty and accepting this plea bargain is in my best interest, and

18 that a trial would be contrary to my best interest.

19 I am signing this agreement voluntarily, after consultation with my attorney, and I am

20 not acting under duress or coercion or by virtue of any promises of leniency, except for those

21 set forth in this agreement.

22 ///

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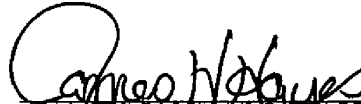
27 ///

28 ///

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

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

6 DATED this 7 day of ^{NOVEMBER}~~September~~, 2018.

7
8 
9 JAMES HOWARD HAYES, aka
James Howard Hayes, Jr.
10 Defendant

11 AGREED TO BY:

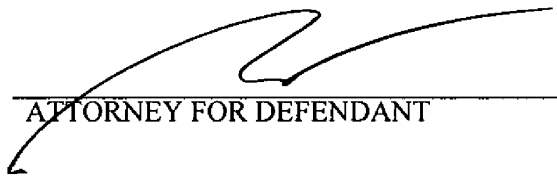
12 
13 MICHAEL R. DICKERSON
14 Deputy District Attorney
Nevada Bar #013476
15
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1 CERTIFICATE OF COUNSEL:

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

- 4 1. I have fully explained to the Defendant the allegations contained in the
charge(s) to which Alford pleas are being entered.
- 5 2. I have advised the Defendant of the penalties for each charge and the restitution
6 that the Defendant may be ordered to pay.
- 7 3. I have inquired of Defendant facts concerning Defendant's immigration status
and explained to Defendant that if Defendant is not a United States citizen any
8 criminal conviction will most likely result in serious negative immigration
consequences including but not limited to:
- 9 a. The removal from the United States through deportation;
- 10 b. An inability to reenter the United States;
- 11 c. The inability to gain United States citizenship or legal residency;
- 12 d. An inability to renew and/or retain any legal residency status; and/or
- 13 e. An indeterminate term of confinement, by with United States Federal
14 Government based on the conviction and immigration status.
- 15 Moreover, I have explained that regardless of what Defendant may have been
told by any attorney, no one can promise Defendant that this conviction will not
16 result in negative immigration consequences and/or impact Defendant's ability
to become a United States citizen and/or legal resident.
- 17 4. All pleas of Alford offered by the Defendant pursuant to this agreement are
consistent with the facts known to me and are made with my advice to the
18 Defendant.
- 19 5. To the best of my knowledge and belief, the Defendant:
- 20 a. Is competent and understands the charges and the consequences of
pleading Alford as provided in this agreement,
- 21 b. Executed this agreement and will enter all Alford pleas pursuant hereto
22 voluntarily, and
- 23 c. Was not under the influence of intoxicating liquor, a controlled
substance or other drug at the time I consulted with the Defendant as
24 certified in paragraphs 1 and 2 above.

25 Dated: This 7 day of ~~September~~^{NOVEMBER}, 2018.

26 
ATTORNEY FOR DEFENDANT

27
28 cg/L2

1 AINF
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

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. XIX

AMENDED
INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss:

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

19 That JAMES HOWARD HAYES, aka, James Howard Hayes Jr., the Defendant(s)
20 above named, having committed the crime of **ATTEMPT GRAND LARCENY (Category**
21 **D Felony/Gross Misdemeanor - NRS 205.220.1, 205.222.2, 193.330 - NOC 56025/56026),**
22 on or about the 9th day of April, 2013, within the County of Clark, State of Nevada, contrary
23 to the form, force and effect of statutes in such cases made and provided, and against the peace
24 and dignity of the State of Nevada, did willfully, unlawfully, feloniously, and intentionally,
25 with intent to deprive the owner permanently thereof, attempt to steal, take and carry away
26 lawful money of the United States in an amount of \$650.00, or greater, owned by another

27 ///

28 ///

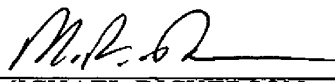
EXHIBIT "L" 99

W:\2013\2013F\10723\13F10723-AINF-(Hayes___James)-002.docx

1 person, to wit: JOSHUA JARVIS, by attempting to steal lawful money of the United States,
2 an iPhone and other personal items from the said JOSHUA JAVIS.

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

6 BY


7 MICHAEL DICKERSON
8 Deputy District Attorney
9 Nevada Bar #013476
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27 DA#13F10723X /cmj/L2
28 LVMPD EV#1304090843
(TK3)

THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
436 - 446
WILL FOLLOW VIA
U.S. MAIL

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES HOWARD HAYES, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 77151
District Court Case No. C315718

FILED

JAN 11 2019

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

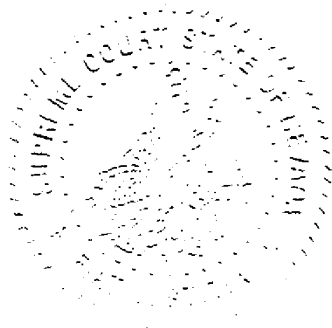
"ORDER this appeal DISMISSED."

Judgment, as quoted above, entered this 12th day of December, 2018.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
January 07, 2019.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll
Chief Deputy Clerk



C-16-316718-1
CCJD
NV Supreme Court Clerks Certificate/Judgment
4808127



IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES HOWARD HAYES, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77151

FILED

DEC 12 2018

ELIZABETH A. GROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from an order of the district court denying appellant's pretrial petition for writ of habeas corpus. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

Our review of this appeal reveals a jurisdictional defect. Specifically, no appeal lies from an order denying a pretrial petition for a writ of habeas corpus. *Gary v. Sheriff*, 96 Nev. 78, 605 P.2d 212 (1980). The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists. *See Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). Accordingly, we conclude that we lack jurisdiction to consider this appeal, and we

ORDER this appeal DISMISSED.

Cherry, J.
Cherry

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

cc: Hon. William D. Kephart, District Judge
James Howard Hayes, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

SUPREME COURT
OF
NEVADA

(C) 1947A 

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: 1/5/19

Supreme Court Clerk, State of Nevada

By *[Signature]* Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES HOWARD HAYES, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 77151
District Court Case No. C315718

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: January 07, 2019

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll
Chief Deputy Clerk

cc (without enclosures):

Hon. William D. Kephart, District Judge
James Howard Hayes, Jr.
Clark County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JAN 11 2019.

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS

JAN 11 2019

CLERK OF THE COURT

Steven B. Wolfson

1 **MOT**
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**

DEPARTMENT XIX
NOTICE OF HEARING
DATE 2/4/19 TIME 8:30 AM
APPROVED BY *ML*

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

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

CASE NO: C-16-315718-1
DEPT NO: XIX

15 **STATE'S NOTICE OF MOTION AND MOTION TO REVOKE BAIL**

16 DATE OF HEARING: February 4, 2019
17 TIME OF HEARING: 8:30 AM

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through MICHAEL R. DICKERSON, Deputy District Attorney, and files
20 this Notice Of Motion And Motion To Revoke Bail.

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

24 ///

25 ///

26 ///

27 ///

28 ///

1 (GPA at 2:1-9 (emphasis added)).

2 Prior to the GPA being entered, the State filed Amended Notice of Intent to Seek
3 Punishment as a Habitual Criminal on August 29, 2017. That notice lists the Defendant's prior
4 convictions as follows:

5 1. That on or about 2007, the Defendant was convicted in the State of Texas,
6 for the crime of CREDIT CARD ABUSE (Felony) in Case No. 108378501010.

7 2. That on or about 2011, the Defendant was convicted in the State of
8 Nevada, for the crime of ATTEMPT POSSESSION OF CREDIT OR DEBIT
9 CARD WITHOUT CARDHOLDER'S CONSENT (Category E Felony) in Case
10 No. C270308.

11 3. That on or about 2017, the Defendant was convicted in the State of
12 Nevada, for the crime of BURGLARY (Category B Felony) in Case No.
13 C315125.

14 (Amended Notice of Intent to Seek Punishment as a Habitual Criminal, August 29, 2017).

15 The Defendant is currently scheduled to be sentenced by Your Honor on March 6, 2019.

16 **STATEMENT OF FACTS AND RELEVANT BACKGROUND**

17 **1. The Instant Case – Excalibur Hotel and Casino Burglary**

18 The underlying facts of the this case stem from April 9, 2013, when victim Joshua
19 Jarvis was sleeping his hotel room at the Excalibur Hotel and Casino while on vacation here
20 in Las Vegas, Nevada. (See Reporter's Transcript of Proceedings Preliminary Hearing
21 6/14/16). Mr. Jarvis awoke to hear some "rattling," then notice the Defendant inside the hotel
22 room searching through luggage. Mr. Jarvis "freaked out," jumped out of bed and asked the
23 Defendant who he was. Id. Defendant immediately attempted to run for the door. Id. Mr.
24 Jarvis, a United States military Special Forces operator, proceeded to stop the Defendant, pat
25 him down, and detain him. Defendant then apologized to Mr. Jarvis multiple times. Id. Mr.
26 Jarvis photographed the Defendant and the Defendant's Nevada identification, then allowed
27 the Defendant to leave. Id. Security and police officers eventually responded to Mr. Jarvis'
28 hotel room and an arrest warrant was subsequently issued for the Defendant for the crimes of
Burglary and Attempt Grand Larceny.

//

1 The Defendant remained at large and the arrest warrant active until April 2, 2016, when
2 the Defendant was arrested at the Harrah's Hotel and Casino perpetrating yet another burglary
3 of a hotel room.

4 **2. Case No. C315125 – Harrah's Hotel and Casino Burglary**

5 On April 2, 2016, Harrah's security investigators were conducting an integrity check at
6 the Harrah's Hotel and Casino. (See Docket of Case No. C315125: Transcript of Proceedings
7 Jury Trial - Day 1, January 9, 2017; Transcript of Proceedings Jury Trial - Day 2, January 10,
8 2017). An integrity check occurs when hotel security investigators stage a room to appear
9 occupied, including placing money and other valuable items within. Id. The investigators left
10 the door slightly ajar, to make it appear as if a guest may have forgotten to close the door, and
11 conducted surveillance on the hotel room. Id. While conducting surveillance, security
12 investigators observed Defendant James Hayes walk down the hallway, push the door open,
13 and walk into the hotel room. Id. Once inside, Defendant surveyed the items inside, and
14 subsequently stole \$350 in bait money from a wallet inside the room. Id. Defendant then
15 proceeded to search through the other items, including luggage, in the room before leaving.
16 Security investigators subsequently detained the Defendant with the bait money in his
17 possession. Id. Defendant did not have permission to be inside the hotel room or take
18 property. Id. The Defendant was arrested and charged with Burglary of the Harrah's hotel
19 room.

20 On January 10, 2017, following jury trial in which the Defendant testified untruthfully
21 about his entry into the hotel room, a jury found the Defendant guilty of Burglary. On
22 February 23, 2017, the court sentenced the Defendant to 21 to 72 months in prison. The
23 Defendant was released to parole on October 1, 2018.

24 **3. LVMPD Event 190100120467 – Mirage Hotel Burglary**

25 On January 26, 2019, the Defendant yet again committed another hotel-room burglary,
26 this time at the Mirage Hotel in a room occupied by victim James McGroth. (See Exhibit 1 –
27 Declaration of Arrest, 190100120467; Exhibit 2 – Voluntary Statement of James McGroth;
28 Exhibit 3 – Show-up Witness Instructions of McGroth identification of Defendant; Exhibit 4

1 – Voluntary Statement of Ryan Erhart; Exhibit 5 – Voluntary Statement of James Huang).
2 Approximately 2:00 A.M., the Defendant entered Mr. McGroth's room, saw Mr. McGroth,
3 said "sorry" and exited. Id. The Defendant was uncooperative with security when contacted
4 in the hotel and gave a story that he was meeting a friend in valet. Id. The story did not check
5 out, as security escorted the Defendant to valet and there was no friend located there. Id. The
6 Defendant was also found in possession of a Mirage hotel room key, but was not found to be
7 currently, or ever in history, a Mirage hotel guest. Id.

8 In Las Vegas Township Justice Court case number 19F01534X, The Defendant has
9 been charged by way of Criminal Complaint with Burglary. On January 27, 2019, Justice of
10 the Peace De La Garza found probable cause for the charge. (See Exhibit 6 - Court Minutes,
11 19F01534X, 1/27/19).

12 A status check in that matter is scheduled to be heard on February 2, 2019, regarding
13 Defendant's revocation of bail in this case. The Defendant is currently being held in the Clark
14 County Detention Center on the aforementioned charge with no bail and is schedule for
15 preliminary hearing on February 12, 2019.

16 ARGUMENT

17 Pursuant to NRS 178.487:

18 Every release on bail with or without security is conditioned upon the
19 defendant's good behavior while so released, and upon a showing that the proof
20 is evident or the presumption great that the defendant has committed a felony
21 during the period of release, the defendant's bail may be revoked, after a hearing,
22 by the magistrate who allowed it or by any judge of the court in which the
original charge is pending. Pending such revocation, the defendant may be held
without bail by order of the magistrate before whom the defendant is brought
after an arrest upon the second charge.

23 Here, the underlying event charged in 19F01534X, which are detailed for Your Honor
24 in the sworn declarations attached as Exhibit 1 through 5 show the proof is evident and the
25 presumption great that the Defendant has committed a felony during the period of his release
26 from custody in the instant case. Probable cause has been found on that charge by an
27 independent magistrate. As a result, the condition precedent in the Guilty Plea Agreement has
28 been met for the State to regain the right to argue at sentencing and seek habitual criminal

1 treatment. The State will be arguing for habitual criminal treatment and, therefore,
2 incarceration in the Nevada Department of Corrections. Accordingly, the State requests
3 revocation of the Defendant's release in the instant case in light of Defendant's continued
4 felony criminal behavior.

5 **CONCLUSION**

6 In light of the foregoing, the State respectfully requests the Court to grant State's
7 Motion to Revoke Bail and hold the Defendant in custody without bail until he can be
8 sentenced in the instant case.

9 DATED this 31st day of January, 2019.

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

12
13 BY /s/ MICHAEL R. DICKERSON
14 MICHAEL R. DICKERSON
Deputy District Attorney
Nevada Bar #13476

15
16 **CERTIFICATE OF ELECTRONIC FILING**

17 I hereby certify that service of the foregoing, was made this 31st day of January, 2019,
18 by Electronic Filing to:

19 MICHAEL SANFT, ESQ.
20 E-mail Address: michael@sanftlaw.com

21 /s/ Laura Mullinax
22 Secretary for the District Attorney's Office

23
24
25
26
27
28 MRD/llm/M-4

Exhibit 1

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF ARREST REPORT**

TCR1003254

☐ County Jail ☐ City Jail ☐ Adult ☐ Juvenile Bureau: CCAC

ID# 2796708		EVENT # LLV190100120467		ARRESTEE'S NAME (LAST) HAYES		(FIRST) JAMES		(MIDDLE) HOWARD		SSN#	
RACE B	SEX M	DOB 2/2/1970	HGT 5'10"	WGT 220	HAIR BLK	EYES BRO	POB TOLEDO				
ARRESTEE'S ADDRESS 4735 DECKOW						CITY LAS VEGAS		STATE NV		ZIP CODE 89169	
OCCURRED DATE: 1/26/2019		TIME: 02:00		ARREST DATE: 1/26/2019		TIME: 03:45		LOCATION OF ARREST (NUMBER, STREET, CITY, STATE, ZIP CODE) 3400 LAS VEGAS BLVD S LAS VEGAS NEVADA 89			
LOCATION OF CRIME (NUMBER, STREET, CITY, STATE, ZIP CODE) 3400 LAS VEGAS BLVD S LAS VEGAS NEVADA 89109											
CHARGES / OFFENSES PC - JC - 50442 - F - ATT BURGLARY											
CONNECTING REPORTS (TYPE OR EVENT NUMBER) FELONY ARREST PACKET											

The undersigned makes the following declarations subject to the penalty of perjury and says: That I am a peace officer with the Las Vegas Metropolitan Police Department, Clark County, Nevada, being so employed for a period of approximately 2 year(s).

That I learned the following facts and circumstances which lead me to believe that the above named subject committed or was committing the offenses above at the location of 3400 LAS VEGAS BLVD S LAS VEGAS NEVADA 89109 and that the offense(s) occurred at approximately 02:00 hours on the 26th day of January, 2019.

Details for Probable Cause:

(Body Worn Camera Available)

On January 26th, 2019 while operating as marked patrol units 7M94, Officers E. Varsin P#16252 and A. Fox P#16559 along with marked patrol unit 7M96, Officers L. Jex P#16622 and D. McElroy P#16995 responded to a call for service at The Mirage Hotel 3400 S Las Vegas Blvd reference a subject in custody for a possible attempted burglary.

Upon officers arrival we made contact with Mirage hotel security. Security stated that a victim had called the front desk and reported a black male that had entered his room without his permission while he was sleeping. Hotel security had a subject in custody that had been identified via his California Driver's License as HAYES, JAMES DOB 2/2/1970. Mirage Security Officer Apolonio Batoon said that around 0256 hours via security surveillance footage, Hayes was seen entering elevator bank 9-16 and then seen exiting from elevator bank 2-8. Security said that this means that Hayes had to have taken the elevator to another floor in order to enter at one bank and exit at another.

Security Officer Brandon Huang was contacted and stated the following:

On 26 January 2019 at approximately 0300 I, Security Officer Brandon Huang, responded to a report of a man entering a persons room without permission. The man refused to identify himself and attempted to leave property. At main valet Officer Erhart read the man a trespass warning in accordance with NRS 207.200. Control instructed us to bring the man to processing. He refused and was placed in mechanical restraints. I secured and double locked the restraints. We walked back to the processing without further issue.

Officers then made contact with the victim who identified himself verbally as McGroth, James DOB 4/18/1956. McGroth stated the following:

I was asleep at approximately 2:00 AM on 1/26/19. I heard my door open. A man walked in approximately 5 feet into my room. I was startled and sat up in bed. The man was dark complected and wearing a white jacket. The man saw me. He Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are misdemeanor).

Arresting Officer: E. VARSIN

P#: 16252

LVMPD 602 (Rev 02/18) Word 2013

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT**

SCOPE ID: 2796708 EVENT #: LLV190100120467
Page 2 of 2

said "sorry" then left my room and closed door.

Officers then conducted a Show-Up Witness (via LVMPD 497) with McGroth and he stated the following:

I was asked to identify subject. He appeared to be the man that entered my room at approx 2 AM. He was also wearing the same white jacket I saw. I am approximately 80% sure this was same person.

Hayes was read his Miranda Rights via LVMPD 148 at 0331 hours by Officer Fox, to which he replied "yes". When asked about what took place tonight, he stated he had nothing to say. Security also told officers that when Hayes was confronted he told security that he was meeting a friend in valet, but when they escorted him to valet there was no friend there. Once Hayes was escorted back to security located on him was a Mirage Hotel room key. However security stated that Hayes was not located in their system as a hotel guest, nor was he ever a hotel guest at Mirage

Hayes is a two time convicted ex-felon in Nevada for Burglary and Att/Poss CC W/O Owner's Consent. He is also a two time convicted ex-felon in Texas for Fraud Use/Poss of Identifying Info and Credit Card Abuse.

Due to the fact that Hayes by night entered a hotel room without the owners consent with the intent to commit grand or petit larceny, assault or battery on any person or any felony, or to obtain money or property by false pretenses, he was arrested and charged with Attempted Burglary. Hayes was transported to CCDC where he was booked accordingly.

***** End *****

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are misdemeanor).

Arresting Officer: E VARSIN

P#: 16252

LVMPD 602 (Rev 02/18) Word 2013

Exhibit 2

Page 1 of 1

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

VOLUNTARY STATEMENT

Event #

190100120467

THIS PORTION TO BE COMPLETED BY OFFICER

Specific Crime <u>ATTEMPT BURGLARY</u>	Date Occurred <u>01-26-2019</u>	Time Occurred <u>0300</u>
Location of Occurrence <u>3400 S LAS VEGAS BLVD LV NV 89109 THE MIRAGE</u>	Sector/Beat <u>M2</u>	☐ City ☒ County

Your Name (Last / First / Middle) <u>X McGrath / James / J</u>						Date of Birth <u>4/18/58</u>	Social Security # _____
Race <u>cauc.</u>	Sex <u>M</u>	Height <u>6'</u>	Weight _____	Hair _____	Eyes _____	Work Sched. (Hours) _____	(Days Off) _____
Business / School <u>Customatic</u>							
Residence Address: (Number & Street) _____				Bldg./Apt.# _____	City _____	State _____	Zip Code _____
Bus. (Local) Address: (Number & Street) _____				Bldg./Apt.# _____	City _____	State _____	Zip Code _____
Best place to contact you during the day _____				Best time to contact you during the day _____		Can You Identify the Suspect? ☒ Yes ☐ No	

DETAILS X I was asleep at approximately 2:00 AM on 1/26/19. I heard my door open. A man walked in approximately 5' into my room. I was startled and sat up in bed. The man was dark complexioned and wearing a white jacket. The man saw me. He said "sorry" then left my room and closed door.

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) 3400 S LAS VEGAS BLVD LV NV 89109 THE MIRAGE ON THE 26TH DAY OF January AT 0359 (AM / PM), 2019.

Witness/Officer: [Signature] (SIGNATURE)

Witness/Officer: E. VARSIN PE 16252 (PRINTED)

LVMPD 66 (REV. 6-08)

X Jim McGrath SIGNATURE OF PERSON GIVING STATEMENT

Exhibit 3

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
SHOW-UP WITNESS INSTRUCTIONS**

EVENT #: 190100120467

NAME: JAMES J. Mc Gough INTERVIEWED BY: A. FOX

ADDRESS: 3400 S. LAS VEGAS BLVD LV NV 89109 LOCATION: THE MIRAGE

PHONE NUMBER: _____ DATE: 01-26-2019 TIME: 0333

"In a moment I am going to show you a person who is being detained. This person may or may not be a person who committed the crime now being investigated. The fact that this person is detained should not cause you to believe or guess that he/she is guilty. You do not have to identify anyone. It is just as important to free innocent persons from suspicion as it is to identify those who are guilty. Please keep in mind that clothing can be easily changed. Please do not talk to anyone other than police officers while viewing this person. You must make up your own mind and not be influenced by other witnesses, if any. When you have viewed the person, please tell me whether or not you can make identification. If you can, tell me in your own words how sure you are of your identification. Please do not indicate in any way to other witnesses that you have or have not made an identification. Thank you."

James J. Mc Gough 1-26-19 03:33
Witness Signature Date/Time

Statement:

I was asked to identify subject. He appeared to be the man that entered my room at approx 2AM. He was also wearing the same white jacket I saw. I am approximately 80% sure this was same person.

James J. Mc Gough 1-26-19 0342
Witness Signature Date/Time

[Signature] 01-26-2019 0342
Officer Signature Date/Time

*** Below to be completed ONLY after Show-Up has been completed and NOT in the presence of the witness. ***

Detainee Name: <u>HAYES, JAMES</u>		DOB: <u>2/21/1970</u>	ID or SSN: <u>304 278,708</u>
Address: <u>4735 DECKOWE E #21</u>		City: <u>Winn</u>	Phone Number: _____
Mode of transportation used to take witness to Show-Up:			
☐ Marked Patrol Unit	☐ Unmarked Unit	☐ Private Conveyance	☒ Other <u>Security Office</u>
# of Officers present at Show-Up: <u>2</u>		Uniformed: <u>2</u>	Plain Clothes: _____
Lighting Conditions:			
☐ Daytime	☒ Nighttime	with ☐ Spotlights	☐ Streetlight
		☒ Other <u>LOCATED INSIDE SECURITY OFFICE</u>	
Identification Made: ☒ Yes ☐ No		Suspect Arrested: ☒ Yes ☐ No	Arresting Officer # <u>16252</u>

Exhibit 4

Page 1 of 1LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENTEvent #
19010020467

THIS PORTION TO BE COMPLETED BY OFFICER			
Specific Crime <u>ATTEMPT BURGLARY</u>		Date Occurred <u>01-26-19</u>	Time Occurred <u>0300</u>
Location of Occurrence <u>3400 S. LAS VEGAS BLVD. LV, NV 89109 MIRAGE</u>		Sector/Beat <u>M2</u>	☐ City ☒ County

Your Name (Last / First / Middle) <u>GRHART, RYAN, ALEX</u>						Date of Birth <u>02-11-1978</u>		Social Security #	
Race <u>WHITE</u>	Sex <u>M</u>	Height <u>6'0"</u>	Weight <u>220 lbs</u>	Hair <u>BRN.</u>	Eyes <u>BRN.</u>	Work Schdl. (Hours)	(Days Off)	Business / School <u>THE MIRAGE</u>	
Residence Address: (Number & Street)		Bldg./Apt.#		City		State		Zip Code	
Bus. (Local) Address: (Number & Street)		Bldg./Apt.#		City		State		Zip Code	
Best place to contact you during the day <u>THE MIRAGE</u>		Best time to contact you during the day		Occupation <u>SECURITY</u>		Depart Date (if visitor)		Can You Identify the Suspect? ☒ Yes ☐ No	

DETAILS On Saturday 1/26/18, at approximately 0300 hrs, I made contact with a middle aged black male adult in front of the Atrium and requested to see his legal I.D. The subject in question claimed his I.D. was in his vehicle. He claimed to be meeting a friend in the main Valet. When we arrived in main Valet, I informed him that he was going to be trespassed from the property. I then read the subject in question the NRS. 207.200 trespass. ^{Dispatch} ~~Contact~~ then instructed myself and Security Officer Huang to place the subject in mechanical restraints, and escort him to processing for questioning. I used the rear wrist lock to restrain the subject so he could be placed in mechanical restraints.

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) 3400 S. LAS VEGAS BLVD. LV, NV 89109
ON THE 26th DAY OF JANUARY AT 0359 (AM / PM), 2019.

Witness/Officer: [Signature] (SIGNATURE)Witness/Officer: F. VARSINO (PRINTED)P# 116252
[Signature]
SIGNATURE OF PERSON GIVING STATEMENT

Exhibit 5

Page 1 of 1

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT

Event # 190100120467

THIS PORTION TO BE COMPLETED BY OFFICER	
Specific Crime <u>ATTEMPT BURGLARY</u>	Date Occurred <u>01-26-2019</u>
Location of Occurrence <u>3400 S. LAS VEGAS BLVD LV, NV 89109 THE MIRAGE</u>	Time Occurred <u>0300</u>
	Sector/Beat <u>M2</u>
	☐ City ☒ County

Your Name (Last / First / Middle) <u>Huang, Brandon, James</u>						Date of Birth		Social Security #	
Race	Sex	Height	Weight	Hair	Eyes	Work Sched. (Hours)	(Days Off)	Business / School	
Residence Address: (Number & Street)				Bldg./Apt.#		City		State Zip Code	
Bus. (Local) Address: (Number & Street)				Bldg./Apt.#		City		State Zip Code	
Best place to contact you during the day <u>Mirage</u>				Best time to contact you during the day <u>2245-0645</u>				Can You Identify the Suspect? ☒ Yes ☐ No	

DETAILS On 26 January 2019 at approximately 0300 I, Security Officer Brandon Huang, responded to a report of a man entering a person's room without permission. The man refused to identify himself and attempted to leave property. At main valet officer Erhart read the man a trespass warning in accordance with NRS 207.200. Control instructed us to bring the man to processing. He refused and was placed in mechanical restraints. I secured and double locked the restraints. We walked back to processing without further issue.

I HAVE READ THIS STATEMENT AND I AFFIRM TO THE TRUTH AND ACCURACY OF THE FACTS CONTAINED HEREIN. THIS STATEMENT WAS COMPLETED AT (LOCATION) Mirage ON THE 26 DAY OF January AT 0329 (AM / PM), Am.

Witness/Officer: [Signature]
(SIGNATURE)
Witness/Officer: E. VARSIN PE 16252
(PRINTED)

[Signature]
SIGNATURE OF PERSON GIVING STATEMENT

Exhibit 6

**Justice Court, Las Vegas Township
Clark County, Nevada**

Department: PC

Court Minutes



L010455593

PC19F01534X State of Nevada vs. HAYES JR, JAMES HOWARD

**1/27/2019 9:00:00 AM Initial Appearance Justice
Court (PC Review)**

Result: Matter Heard

PARTIES	State Of Nevada	Fattig, John
PRESENT:	Defendant	HAYES JR, JAMES HOWARD

Judge: De La Garza, Melisa

Court Clerk: Cardenas, Pompeya

PROCEEDINGS

Hearings:	1/29/2019 8:30:00 AM: Status Check on Filing of Criminal Complaint	Added
------------------	--	-------

Events: **Probable Cause Found**

72-Hour Hearing Completed

Counsel Provisionally Appointed

J. Roblson, Esq- Public Defender provisionally appointed for limited purposes of first appearance hearing.

Bail Argument Heard

The Court has heard arguments from the prosecution and defense counsel regarding custody of the Defendant

Bail Reset - Cash or Surety

Counts: 001 - \$0.00/\$0.00 Total Bail

Motion to Continue - State

Granted

Continued for Status Check on filing of Criminal Complaint

Steven D. Grlerson

1 JOCP

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 THE STATE OF NEVADA,

5 *Plaintiff,*

6 -VS-

CASE NO: C-16-315718-1

7 JAMES HOWARD HAYES aka
8 James Howard Hayes, Jr.
9 #2796708

DEPT NO: XIX

10 *Defendant.*

11 JUDGMENT OF CONVICTION
12 (PLEA OF GUILTY-ALFORD)

13 The Defendant previously appeared before the Court with counsel and entered a plea of
14 guilty pursuant to Alford Decision to the crime of ATTEMPT GRAND LARCENY (Category D
15 Felony/Gross Misdemeanor) in violation of NRS 205.220.1, 205.222.2 193.330; thereafter, on the 6th
16 day of March, 2019, the Defendant was present in court for sentencing with counsel MICHAEL W.
17 SANFT, ESQ., and good cause appearing,

18 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense under the felony
19 statute and SMALL HABITUAL Criminal Statute and, in addition to \$25.00 Administrative
20 Assessment Fee plus the \$3.00 DNA Collection Fee, the Defendant is sentenced to - a MAXIMUM
21 of ONE HUNDRED SEVENTY-FOUR (174) MONTHS and a MINIMUM of SIXTY (60)
22 MONTHS in the Nevada Department of Corrections (NDC), CONSECUTIVE to C315125; with
23 TEN (10) DAYS credit for time served. As the \$150.00 DNA Analysis Fee and Genetic Testing
24 have been previously imposed, the Fee and Testing in the current case are WAIVED.

25 DATED this 12th day of March, 2019.

26 *William D. Kephart*
27 WILLIAM D. KEPHART
28 DISTRICT COURT JUDGE

☐ Nolle Prosequi (before trial)	☐ Bench (Non-Jury) Trial
☐ Dismissed (after diversion)	☐ Dismissed (during trial)
☐ Dismissed (before trial)	☐ Acquittal
☒ Guilty Plea with Sent. (before trial)	☐ Guilty Plea with Sent. (during trial)
☐ Transferred (before/during trial)	☐ Conviction
☐ Other Manner of Disposition	



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

March 27, 2019

Attorney:	Michael W. Sanft Sanft Law Attn Michael W Sanft 324 South 3rd Street - 2nd Floor Las Vegas NV 89101	Case Number:	C-16-315718-1
		Department:	Department 19

Defendant: James Howard Hayes

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

Pleadings: **Motion To Modify And Correct Illegal Sentence**

Rule 3.70. Papers which May Not be Filed

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,
DC Criminal Desk # 7
Deputy Clerk of the Court

1 Hayes, James H #1175077
2 Defendant/ In Propria Person
3 Post Office Box 650
4 Indian Springs, Nevada 89018

5 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE
6 OF NEVADA IN AND FOR THE COUNTY OF Clark

7
8 The State of Nevada,
9 Plaintiff,

10 VS

11 JAMES H HAYES,
12 Defendant.

Case No. C-16-315218-1

Dept NO. XIX 19

13
14
15 MOTION TO MODIFY AND/OR CORRECT
16 ILLEGAL SENTENCE

17 Date of hearing :

18 Time of hearing :

19
20 COMES NOW, DEFENDENT, James H. Hayes, proceeding
21 in proper person, hereby motion this Honorable Court
22 pursuant to N.R.S 176.555 and Edwards v. state.

23 This motion is made in based upon all papers and pleadings
24 on file, the points and authorities and exhibits attached
25 here to.

26
27 Dated; this 23 day of March, 2019.

28
James H. Hayes #1175077
James H. Hayes
DEPENDENT/

1 Case No. C-16-315718-1

2 Dept. No. XIX

3
4
5 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6
7 IN AND FOR THE COUNTY OF _____

8 The State of Nevada

9 Plaintiff,

10 vs.

11 James H. Hayes

12 Defentdant,

Case No. C-16-315718-1

Dept No. XIX

Docket _____

13
14 **NOTICE OF MOTION**

15 **YOU WILL PLEASE TAKE NOTICE**, that MOTION TO MODIFY AND/OR

16 CORRECT ILLEGAL SENTENCE

17 will come on for hearing before the above-entitled Court on the 23 day of March, 2019.

18 at the hour of _____ o'clock _____ M. In Department _____, of said Court.

19
20 CC:FILE

21
22 DATED: this 23 day of March, 2019.

23
24 BY: James H. Hayes
25 James H. Hayes #1193077
26 /In Propria Personam
27
28

POINTS AND AUTHORITIES

"Motion to modify sentence" is limited in scope to sentences based on mistaken assumptions about defendant's criminal record which work to defendant's extreme detriment, while " Motion to correct illegal sentence " addresses only facial legality of sentence. State v. District Court, 100 nev. 90, 97, 677 p.2d 1044 1048 (1984), and Edwards v. State, 918 p.2d 321 (nev. 1996).

Further N.R.S 176.555 Motion to Modify and/or Correct a sentence, may be filed at any time.

Defendant herein alleges that his sentence should be modified and/or corrected pursuant to the following facts.

WHEREAS, the State Clark County Nevada violated the U.S. Constitution 5, 6, 8, & 14th Amendments in the Judgment of conviction for attempt grand larceny by subjecting defendant to "Double Jeopardy" through prosecution and/or punishment twice for the same offense. WHEREAS, the defendant was arrested April 2, 2016 and charged with the crime(s) of burglary and attempt grand larceny by the way of a criminal complaint in Justice Court for the alleged event that took place on or about April 9, 2013 that defendant posted bond on both charges. WHEREAS, the State at preliminary hearing prosecuted defendant for the crimes of burglary and attempt grand larceny and at completion of the hearing only the charge of burglary was bound over to district court leaving the charge of attempt grand larceny dropped/dismitted for No Corpus delicti, slight

or marginal evidence to bound over to district court for the
1st time defendant was subjected to jeopardy and defendant's
bond for attempt grand larceny was exonerated. Inheres,
the defendant was subjected to jeopardy for the 2nd time when
the state by the way of amended information in District
Court XIX drop the charge of burglary and again charge
defendant with attempt grand larceny that was filed in
open court on November 7, 2018. The state further subjected
defendant to jeopardy for the 3rd time on February 4, 2019
by a ~~rebook~~ rebook on the charge of attempt grand larceny
and issued a No bond. Finally, the state convicted the
defendant on the charge of attempt grand larceny on
March 6, 2019 to again for the 4th time subject the defendant
to jeopardy for the same offense by the way of prosecution
and for punishment which is blatantly a 5th amendment
violation of the U.S. Constitution and a clear miscarriage
of justice. Wherefore based on the foregoing facts and
constitutional violations of the United States and
Nevada constitutions this Honorable Court is respectfully
urged to overturn/void the defendant's judgment
against him.

Incorrect information on defendant's PSI
dated 12-18-18 prepared by V. Miller and approved by
Ladree LeBranche that prejudice defendant to his extreme

James H. Hayes # 1195097
James H. Hayes #
Defendant in proper person

detriment as follows :- Convictions should read: Felony: 1
Not 4 Misd: 2 Not 3 State Jail: 2.

- Incarcerations should read Prison: 0 Not 1
Jail: 3 Not 5

- Supervision history Current Parole: 0 Not 1

Instant offense, C-16-315718-1 INA 1. Burglary 1st (7)
2. Attempt Grand Larceny (7)

Should be dated 04-09-2013 Not 04-02-2016
Crime in Texas No. 1083785 and 1083786 Credit Card Abuse and
Fraudulent use/pass of identifying information is (ONE) 1 event
Not 2; Not felonies but state jail convictions.

Whereas, the defendant and his counsel objected to the
incorrect P.S.I. to the Honorable Judge Kephart to no avail.

Whereas, the state violated the US constitution 8th
amendment by adjudicating the defendant as a habitual
criminal that easily "shock the conscience" as being disproportionate
to the crime convicted attempt grand larceny (category D felony/
gross misdemeanor) which is a clear miscarriage of justice.
When in fact this would be the first time defendant went
to prison and never been convicted or charge with a violent
or serious crime.

Whereas, the state deemed the defendant's conviction in
Texas as a felony and the defendant argued that it's Not a
felony by a simple test: Is there any felony in the USA that
does not carry a prison term, mandatory supervision or parole?
As you have with the conviction in Texas that does Not carry a
prison term, mandatory supervision, or parole so at the very

least you would have to decide that its ambiguous as being a felony conviction as its a state jail crime in Texas that only carry jail time as a 2nd gross misdemeanor here in Nevada so in the light most favorable to the defendant it would not be a felony conviction. Moreover, it was one event not two as listed on defendant's PSI.

Whereas, the state violated U.S. Constitution Amendments 6 & 14th where the state breached the Guilty Plea Agreement (GPA) on Impalpable and highly suspect evidence that allegedly took place January 2019 that greatly prejudice the defendant. Whereby, the victim testifies at preliminary hearing under oath feeling the penalty of perjury that the defendant was NOT the perpetrator who committed the alleged assault and said was 100% sure not 80%. So there was no corpus delicti or slight or marginal evidence leaving no causation for the state to breach the terms and spirit of agreement that does not serve the interests of justice. In addition, the sentencing judge considered a conviction that took place after the time and date that the adjudicated crime took place namely a Burglary conviction that occur in April 2016 sum three years to the letter.

Whereas, defendant never violated a provision of a statute that would have allowed the district court to not stand by the sentence agreed upon by the parties set forth in the GPA. Furthermore the defendant was never given notice that the district court would seek habitual treatment if defendant violated a provision of a statute making this an illegal sentence.

Theraby, pursuant to the facts and the law stated herein,
Defendant, request that his sentence be modified/corrected as
follows: by being overturned and retried for 5th amendment
violation "Double Jeopardy". Due to INCORRECT PSI and
constitutional violations and impelpeble and highly
suspect evidence that the agreed upon GPA by both
parties be enforced.

Dated; this 23 DAY OF March, 20 19.

JAMES H NAYES #2796708
James H NAYES #
Defendant/propria person

CERTIFICATE OF SERVICE BY MAILING

I, James H. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 23
day of March, 2019, I mailed a true and correct copy of the foregoing, "Motion to
Modify and/or Correct Illegal Sentence"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Clerk of the Courts
200 LEWIS AVE 3RD FLOOR
LAS VEGAS, NV
89155

CC:FILE

DATED: this 23 day of March, 2019.

James H. Hayes #1175077
James H. Hayes #

In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

**PLEADING
CONTINUES
IN NEXT
VOLUME**