

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILBER ERNESTO MARTINEZ
GUZMAN,

Petitioner,

v.

No. 81842 Electronically Filed
Dec 11 2020 02:33 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

THE SECOND JUDICIAL
DISTRICT COURT, IN AND
FOR THE COUNTY OF WASHOE;
THE HONORABLE
CONNIE J. STEINHEIMER,
DISTRICT JUDGE,

Respondents,

and

THE STATE OF NEVADA

Real Party in Interest.

_____ /

REAL PARTY IN INTEREST'S APPENDIX VOLUME 2

TABLE OF CONTENTS

	<u>Page</u>
1. Motion to Dismiss – Improper Venue, Filed 11/01/2019.....	259-263
2. Opposition to Motion to Dismiss, Filed 11/13/2019.....	264-295
3. Reply to Opposition to Motion to Dismiss, Filed 11/19/2019.....	296-307
4. Order Denying Motion to Dismiss – Improper Venue, Filed 1/12/2020.....	308-319

CODE: 2315
JOHN L. ARRASCADA, # 4517
GIANNA VERNES, # 7084
JOSEPH GOODNIGHT, #8472
KATHERYN HICKMAN, #11460
350 S. CENTER STREET, 5TH FLOOR
RENO, NV 89520-3083
(775) 337-4800
Attorney for Petitioner

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN
AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,

CASE NO: CR19-0447

v.

DEPT. NO.: 4

WILBER ERNESTO MARTINEZ GUZMAN,

Defendant.

MOTION TO DISMISS – IMPROPER VENUE (D-14)

Wilber Ernesto Martinez-Guzman, by and through his attorneys, John L. Arrascada, Gianna Vernes, Joseph Goodnight and Kathryn Hickman, requests this Honorable Court to for an Order dismissing Counts three, four, five and six of the Indictment as Washoe County is the improper venue for these alleged acts. This motion is based upon the attached points and authorities, and any argument, if necessary, to be presented at a hearing on this matter.

POINTS AND AUTHORITIES

On March 13, 2019, the Washoe County grand jury indicted Mr. Martinez-Guzman on ten counts. Four of the counts occurred in their entirety in Douglas County, Nevada. These include Count Three, Murder with the Use of a Deadly Weapon; Count Four, Burglary while in Possession of a Firearm; Count Five,

1 Murder with the Use of a Deadly Weapon; and Count Six, Burglary while in
2 Possession of a Firearm.

3 NRS 171.010 *Jurisdiction of offense committed in State* provides, in relevant
4 part, “Every person. . . is liable to punishment by the laws of this state for a public
5 offense committed by him therein, except where it is by law cognizable exclusively
6 in the courts of the United States.” Thus, the jurisdiction is the State of Nevada.
7 However, the venue for Counts Three, Four, Five and Six properly lies in Douglas
8 County rather than Washoe County.

9 It is up to a defendant to raise a claim if improper venue, or the issue is
10 waived.¹ The State has “a duty to prove venue. Venue may be established by
11 circumstantial evidence and need not be shown beyond a reasonable doubt.” Dixon
12 v. State, 83 Nev. 120, 122, 424 P.2d 100, 101 (1967) (citations omitted).

13 Although referencing an Information rather than Indictment, NRS 173.045
14 provides, “All informations must be filed in the court having jurisdiction of the
15 offenses specified therein, . . . by the district attorney of the proper county as
16 informant.” Additional statutes discussing criminal procedure, including NRS
17 171.010 et seq., are enlightening as well. Absent falling under specific exceptions,
18 it appears that the legislature assumed in passing these statutes that venue lies in
19 the county where the offense occurred.

20 This assumption is supported in Nevada case law where it has long been held
21 that venue lies with the county where the offense occurred. In Eureka County Bank
22 Habeas Corpus Cases, 35 Nev. 80, 126 P. 655 (1912), the Nevada Supreme County

23
24
25 ¹ See also United States v. Bishop, 38 F.R.D.317, 320 (1965), claim of improper venue for alleged
26 violation of a particular U.S.C. provision. (“28 U.S.C. § 41, 1940 Ed. (now 18 U.S.C. §3231) expressly
confers upon the district court of the United States original jurisdiction of all offenses against the
laws of the United States. Hence the question presented is one of venue, not jurisdiction. The right
of an accused to be tried in a particular venue is a personal privilege which may be waived.”

1 observed that “[t]he committing magistrate and grand jury at Eureka had complete
2 jurisdiction over all felonies committed in that county; and it is not the purpose of
3 the writ of habeas corpus to determine in advance of trial whether a felony has been
4 committed there, if the prosecuting officers of the state bona fide claim and have
5 evidence to show that a crime has been committed in that county.” Id. at. 662.

6 Additionally, the Court considered this issue of venue where a defendants
7 criminal acts occurred in two separate counties in Zebe v. County of Lander, 112
8 Nev. 1482, 929 P.2d 927 (1996). Zebe engaged in criminal conduct in both Lander
9 and Nye Counties (stole two vehicles and burgled a house in Lander County, then
10 drove to Nye County in stolen vehicle where he was arrested by Nye County sheriff’s
11 deputies, then escaped arrest and stole another car which he crashed into a patrol
12 vehicle). Zebe pleaded guilty in Nye County to escape and grand larceny, with the
13 state agreeing not to pursue any additional charges arising out of this incident.
14 When the Lander County District Attorney filed charges for the conduct occurring
15 in Lander County, Zebe argued that the state could not prosecute him in Lander
16 County because of the plea agreement entered with the State in Nye County. In
17 denying Zebe’s petition for writ of prohibition, the Nevada Supreme Court stated:

18 Nevada law provides that each county, acting through its district
19 attorney, has specific jurisdiction over acts conducted within its
20 borders. See Southwest Gas v. District Court, 85 Nev. 40, 42, 449 P.2d
21 259, 260 (1969) (holding that, pursuant to NRS 252.110, Lander
22 County District Attorney has no authority represent other counties).
23 For purposes of prosecuting a single criminal act which crosses count
24 lines, venue will lie in either county. *See e.g.* NRS 171.030. Here, in
25 contrast, petitioner completed certain acts in Nye County and other
distinct criminal acts in Lander County. . . These statutes reflect a
legislative assumption that each county will have independent
jurisdiction over a criminal offender for conduct occurring in that
county.

26 Id. at 1484. Emphasis added.

1 In the instant case, the criminal acts alleged in Counts Three, Four, Five and
2 Six occurred in their entirety in Douglas County. In accordance with long standing
3 holdings of the Nevada Supreme Court, Washoe County is not the appropriate venue
4 for these matters to be heard.

5 **CONCLUSION**

6 Based on the foregoing, Mr. Martinez-Guzman respectfully requests that this
7 Honorable Court grant the instant motion, and dismiss Counts Three, Four, Five
8 and Six of the Indictment.

9 **AFFIRMATION PURSUANT TO NRS 239B.030**

10 The undersigned does hereby affirm that the preceding document does not
11 contain the social security number of any person.

12 DATED this 1st Day of November, 2019.

13 JOHN L. ARRASCADA
14 Washoe County Public Defender

15 By: John L. Arrascada
16 JOHN L. ARRASCADA
17 Washoe County Public Defender

18 By: Gianna Verness
19 GIANNA VERNESS
20 Chief Deputy Public Defender

21 By: Joseph Goodnight
22 JOSEPH GOODNIGHT
23 Chief Deputy Public Defender

24 By: Katheryn Hickman
25 KATHERYN HICKMAN
26 Chief Deputy Public Defender

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

CERTIFICATE OF SERVICE

I, Jessica Haro, hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date I forwarded a true copy of the foregoing document through inter-office mail to:

DISTRICT ATTORNEY
1 SOUTH SIERRA STREET
RENO, NV

DATED this 1st Day of November, 2019.

/s/ Jessica Haro
JESSICA HARO

CODE 2645
Christopher J. Hicks
#7747
P.O. Box 11130
Reno, NV 89520
(775) 328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No: CR19-0447

v.

Dept.: D04

WILLIAM ERNESTO MARTINEZ GUZMAN,

Defendant.

**OPPOSITION TO MOTION TO DISMISS COUNTS III-VI OF THE INDICTMENT FOR
IMPROPER VENUE (D-14)**

COMES NOW, the State of Nevada, by and through CHRISTOPHER J. HICKS, District Attorney of Washoe County, and MARK JACKSON, District Attorney of Douglas County, and respectfully submits this "Opposition to Motion to Dismiss Counts III-VI of the Indictment for Improper Venue (D-14)," in response to the pleading filed on November 1, 2019. This filing¹ is based on the following Points and

¹ Due to the nature of the issues presented, the scope of the legal analysis involved, as well as in the interest of providing a thorough record upon which the Court can make its ruling, the State would respectfully request that the Court permit the expansion of the scope of this filing pursuant to Local Criminal Rule 7(h).

1 Authorities, all pleadings and papers on file herein, and any further
2 evidence that may be presented at a hearing.

3 **POINTS AND AUTHORITIES**

4 **I. PROCEDURAL HISTORY**

5 On January 28, 2019, a Warrant of Arrest was issued for
6 WILBER ERNESTO MARTINEZ GUZMAN (hereafter Defendant). That same day,
7 a Criminal Complaint was filed in the Reno Justice Court alleging the
8 Defendant's commission of multiple felony offenses.

9 On March 13, 2019, the State presented evidence to the
10 Washoe County Grand Jury in connection with ten (10) counts contained
11 in a proposed indictment. At the conclusion of the presentation of
12 evidence, the Washoe County Grand Jury returned a true bill and an
13 Indictment was subsequently filed that same day.² The Defendant
14 stands accused of a single count of Burglary, four (4) counts of
15 Burglary While Gaining or in Possession of a Firearm, four (4) counts
16 of Murder with the use of a Deadly Weapon, and a single count of
17 Possession of a Stolen Firearm.

18 The Defendant was arraigned on March 19, 2019. A plea of
19 "not guilty" was entered on his behalf and the case was set for jury
20 trial to commence April 6, 2020.

21 On April 18, 2019, the Defendant filed a Motion to Dismiss
22 Counts Three, Four, Five and Six of the Indictment for Lack of
23 Jurisdiction (D-1). Contemporaneously therewith, the Defendant also
24 filed a Pretrial Petition for Writ of Habeas Corpus. The Defendant
25 made the same arguments in subsection IV of the Petition as he did in

26 ² As a result of the Grand Jury's determination, the Court entered an Order Staying Proceedings for the case pending in the Reno Justice Court.

1 the Motion to Dismiss for Lack of Jurisdiction. A hearing on both
2 the Motion to Dismiss and the Writ was held in this Court on May 20,
3 2019. This Court subsequently issued orders denying the Motion to
4 Dismiss as well as the Writ. The Defendant subsequently filed with
5 the Nevada Supreme Court on July 1, 2019, an Original Petition for
6 Writ of Prohibition or, in the Alternative, Writ of Mandamus. On
7 July 26, 2019, the Nevada Supreme Court ordered the Real Party in
8 Interest, State of Nevada, to file and serve an Answer against
9 issuance of the requested Writ. The State filed an Answer on August
10 22, 2019, and the Defendant/Petitioner filed a Reply on September 2,
11 2019. Oral arguments on the Petition were held before the Supreme
12 Court on November 5, 2019, and the parties are awaiting a decision.

13 On November 1, 2019, the Defendant filed the instant Motion
14 to Dismiss Counts Three, Four, Five and Six of the Indictment for
15 Improper Venue (D-14).

16 **II. STATEMENT OF FACTS³**

17 **A. TIMELINE OVERVIEW**

18 During an approximate two-week period in January of 2019,
19 the Defendant committed ten (10) related felonies throughout northern
20 Nevada, with specific acts or effects thereof constituting or
21 requisite to the consummation of the offenses occurring in Washoe
22 County, Douglas County, and/or Carson City.

23 On January 3, 2019, the Defendant committed a burglary in

24 ³ Except where otherwise specifically noted, the facts articulated in this pleading
25 are derived from the reports and witness statements compiled in all reports
26 completed by the Carson City Sheriff's Office, the Douglas County Sheriff's Office,
the Sparks Police Department, the Reno Police Department, and the Washoe County
Sheriff's Office well as the testimony adduced at the March 13, 2019 Grand Jury
Proceeding.

1 Washoe County, Nevada. On January 4, 2019, the Defendant committed
2 another burglary at the same location, this time stealing a firearm
3 amongst other items. Just five (5) days later, on January 9, 2019,
4 the Defendant burglarized a residence in Douglas County, Nevada,
5 while in possession of the stolen firearm. During this burglary, he
6 stole several items and murdered an occupant of the home with the
7 stolen firearm. On January 13, 2019, the defendant burglarized
8 another home in Douglas County, Nevada. During that burglary, he
9 murdered the resident of that home with the same stolen firearm.
10 Three (3) days later, on January 16, 2019, the Defendant returned to
11 the location of the first two burglaries in Washoe County and
12 burglarized the residence wherein he murdered the two occupants of
13 the home with the same stolen firearm he had taken less than two
14 weeks before. He also stole multiple items including more firearms.

15 Throughout the Defendant's spree of burglaries, thefts and
16 murders, he possessed and maintained stolen property from the
17 aforementioned locations in his vehicle, in his apartment in Carson
18 City, and in the foothills of Carson City where he buried multiple
19 stolen firearms taken in Washoe County.

20 **B. INITIAL BURGLARIES AT LA GUARDIA LANE.**

21 At 760 La Guardia Lane sits a single-family residence
22 located on approximately two (2) acres of property.⁴ For roughly
23 fifty (50) years this was the home of Gerald and Sharon David
24 (hereafter Mr. David and Mrs. David, or collectively referred to as
25 ///

26 _____
⁴ Interview with John Hicks, January 16, 2019, pg. 26: 7.

1 the Davids).⁵ In addition to the Davids' home, the property contained
2 a number of sheds, barns, out-buildings and trailers.

3 In early January of 2019, those out-buildings, sheds, barns
4 and trailers were burglarized and various items were stolen from the
5 Davids. Mr. David discussed these events with a number of his family
6 members and friends. Amongst the people he told was VAL DIAZ
7 (hereafter Mr. Diaz). Due to their ages and physical limitations,
8 Mr. Diaz assisted the Davids with caring for their horses and
9 property in general. With respect to the burglaries, Mr. David
10 explained to Mr. Diaz what he discovered. He recounted having been
11 burglarized over a two (2) day period.⁶ With respect to the first
12 event, Mr. David explained to Mr. Diaz that the thief went through
13 various sheds, taking fishing poles and some tools.⁷ With respect to
14 the tools, Mr. Diaz was informed that a circular saw was amongst the
15 items missing.⁸ On the second night, the perpetrator burglarized two
16 (2) trailers parked between the aforementioned sheds.⁹ It was during
17 this second event that Mr. David believed the thief to have taken a
18 bag containing items used for hunting, which possibly contained a
19 handgun as well.¹⁰

20 Detectives found corroboration of Mr. David's statements
21 inside his home at La Guardia Lane. During a subsequent search of
22 the residence, detectives located a calendar on a table in the
23 Davids' kitchen. As Mr. Diaz told the Grand Jury, he was familiar

24 ⁵ Interview with Diane Hicks, January 16, 2019, pg. 4: 1-20.

25 ⁶ Grand Jury Transcript, March 19, 2019, pg. 86: 20.

⁷ Grand Jury Transcript, March 19, 2019, pg. 87: 11-15.

⁸ Grand Jury Transcript, March 19, 2019, pg. 88: 4.

26 ⁹ Grand Jury Transcript, March 19, 2019, pg. 88: 22-23.

¹⁰ Grand Jury Transcript, March 19, 2019, pg. 91: 6 - pg. 92: 6.

1 with the calendar having seen Mr. David refer to the calendar when
2 making plans and writing down appointments.¹¹ The occurrence of the
3 burglaries were reflected on that same calendar. For the date of
4 January 3, 2019, detectives observed a handwritten entry stating,
5 "Barns broken into skillsaw/charger." For the date of January 4,
6 2019, another handwritten note was observed stating, "Barns Broken
7 into All Fishing Poles Wells Cargo." Of significance, a Wells Cargo
8 brand trailer was located on the David's property near the area of
9 the barns.

10 The Defendant was ultimately apprehended on January 19,
11 2019. Following his arrest, Washoe County Sheriff's Detective
12 STEFANIE BRADY (hereafter Detective Brady) interviewed the Defendant
13 while in custody at the Carson City Sheriff's Office.¹² Throughout
14 the course of the interview, the Defendant implicated himself in the
15 commission of the burglaries at the Davids' property in early January
16 of 2019.

17 Specifically, the Defendant mentioned taking a revolver and
18 fishing poles on the same day.¹³ With respect to the issue of when he
19 procured these items, the Defendant stated that it was before he
20 killed CONSTANCE KOONTZ (hereafter Ms. Koontz) and Mr. and Mrs.
21 David.¹⁴ To this end, the Defendant clarified that the first time he
22

23 ¹¹ Grand Jury Transcript, March 19, 2019, pg. 118: 1-21.

24 ¹² The interview was conducted with the assistance of a Court-certified Spanish
25 interpreter. Prior to the onset of any questions related to the investigation, the
26 Defendant was afforded his rights pursuant to Miranda and acknowledged his
understanding of the same. He then voluntarily spoke with Detective Brady.

¹³ Interview with Defendant, January 19, 2019, at 3:52:14.

¹⁴ Interview with Defendant, January 19, 2019, at 4:09:10. Ms. Koontz was killed on
or about January 9 and/or January 10, 2019, and Mr. and Mrs. David were killed on
or about January 15 and/or January 16, 2019.

1 only took a small machine to "cut things" and the second night he
2 returned and took the revolver and fishing poles from inside a
3 trailer.¹⁵

4 As a result of the foregoing, the Defendant stands charged
5 with a count of Burglary (Count I of the Indictment) for his entry
6 into the barn and/or out-building on January 3, 2019, wherein he
7 procured a saw, and a second count of Burglary While Gaining
8 Possession of a Firearm (Count II of the Indictment) for his entry
9 into the trailer on January 4, 2019, wherein he procured fishing
10 poles and/or a revolver.

11 **C. THE MURDER OF CONSTANCE KOONTZ.**

12 In the morning hours of January 10, 2019, deputies with the
13 Douglas County Sheriff's Office were dispatched to a home at 1439
14 James Road, Gardnerville, Nevada, on report of a female who was not
15 conscious and not breathing. Upon entry, law enforcement made
16 contact with EVELYN HARMON¹⁶ (hereafter Ms. Harmon). Ms. Harmon
17 indicated that she is the mother of Ms. Koontz. Ms. Harmon explained
18 that, due to her medical condition, she is bound to a wheelchair and
19 rarely left her room. On the morning of the 10th, she ventured from
20 her room as far as she could when she witnessed the scene which
21 precipitated her call to her other daughter, Candy Rankin, who, in
22 turn, called 911. As law enforcement continued through the home,
23 they discovered the lifeless body of Ms. Koontz in a kitchen /
24 laundry room area. Her head was resting in a pool of blood.

25
26 ¹⁵ Interview with Defendant, January 19, 2019, at 4:09:10.

¹⁶ Ms. Harmon's last contact with her daughter was the previous day.

1 Throughout the residence, investigators observed signs of
2 theft. For example, property was displaced in the home. An empty
3 television stand was seen in the living room and, in the same room
4 where Ms. Koontz was killed, a television was found on the floor.
5 Additionally, the investigation revealed that various items belonging
6 to Ms. Koontz had been taken. These include numerous items of
7 jewelry, an Apple iWatch, an iPhone, and an iMac computer.

8 The following day, Dr. JULIE SCHRADER (hereafter Dr.
9 Schrader) performed an autopsy on Ms. Koontz. A single entry wound
10 was observed to Ms. Koontz's head, just above her right ear. Dr.
11 Schrader did not see a corresponding exit wound. Further examination
12 resulted in a bullet being recovered from the area of Ms. Koontz's
13 left eye. Ultimately, Dr. Schrader opined that the cause of death
14 was a gunshot wound to the head in the manner of a homicide.¹⁷

15 Throughout the course of the Defendant's interview by
16 Detective Brady on January 19, 2019, the Defendant implicated himself
17 in the commission of a burglary at Ms. Koontz's residence, as well as
18 her murder. One of the many items stolen during the burglary of Ms.
19 Koontz' residence on January 9 or 10, 2019, was an Apple iWatch.
20 Initially, the Defendant acknowledged his possession of an iWatch,
21 indicating it was in his room.¹⁸ At first, the Defendant maintained
22 that he found the iWatch along with some other property.¹⁹ Through
23 the course of his interview his story changed. With respect to the
24 iWatch, the Defendant ultimately explained that he stole the item

25
26 ¹⁷ Grand Jury Transcript, March 19, 2019, pg. 168: 16 - pg. 169: 3.

¹⁸ Interview with Defendant, January 19, 2019, at 3:38:40.

¹⁹ Id.

1 when he "shot this woman in Gardnerville."²⁰ The Defendant told
2 Detective Brady that he entered the home through the back door which
3 was open and unlocked.²¹ He stated that he wanted to take some items
4 in order to sell them so that he would have money to purchase drugs.²²
5 The Defendant also confirmed that he murdered Ms. Koontz, telling
6 Detective Brady that a woman had come out and he shot her.²³ As
7 mentioned in the preceding section, the Defendant stated that he shot
8 the woman with a revolver that he had obtained on the same date as
9 the fishing rods.²⁴ Lastly, he corroborated much of the evidence
10 observed during the investigation. For example, he indicated that he
11 shot only once which is consistent with Dr. Schrader's observations
12 during the autopsy of Ms. Koontz.²⁵ The defendant stated that he took
13 the items from the woman's bedroom - again consistent with the
14 missing iWatch and other items.²⁶ Finally, he acknowledged the
15 presence of Ms. Harmon, indicating that there was "another woman" in
16 another room which he believed to be the decedent's mother.²⁷ With
17 respect to Ms. Harmon, the Defendant told Detective Brady that he did
18 not believe that she had seen him and that he took the items and left
19 the home.²⁸

20 The Defendant stands accused of Burglary While in
21 Possession of a Firearm (Count IV of the Indictment) for entering Ms.

23 ²⁰ Interview with Defendant, January 19, 2019, at 3:52:14.

24 ²¹ Id.

25 ²² Id.

26 ²³ Id.

27 ²⁴ Id.

28 ²⁵ Interview with Defendant, January 19, 2019, at 3:52:14.

²⁶ Id.

²⁷ Id.

²⁸ Id.

1 Koontz's home on January 9th or 10th of 2019, with the intent to commit
2 larceny while in possession of a revolver, and of Murder with the Use
3 of a Deadly Weapon (Count III of the Indictment), for killing Ms.
4 Koontz during that same event.

5 **D. THE MURDER OF SOPHIA RENKEN.**

6 JEFFERY HARRIS (hereafter Mr. Harris) had known SOPHIA
7 RENKEN (hereafter "Ms. Renken") for approximately fifty (50) years.
8 On January 13, 2019, Mr. Harris called his friend multiple times but
9 received no answer.²⁹ Concerned, Mr. Harris went to Ms. Renken's home
10 located at 943 Dresslerville Road, Gardnerville, Nevada. Upon his
11 arrival, he immediately noticed that various things were out of place
12 as a number of gates were open which were ordinarily closed, and the
13 back door to the home was open.

14 Mr. Harris cautiously entered the home of Ms. Renken.
15 While making entry, he continued to call out the name of Ms. Renken
16 but received no answer. Inside the residence, Mr. Harris observed
17 blood on the hallway floor. Further inside, Mr. Harris saw the
18 lifeless body of Ms. Renken on the floor of her bedroom. Mr. Harris
19 immediately exited the home and contacted 911.

20 Given the similarities between the scene at Ms. Renken's
21 home and the investigation into the murder of Ms. Koontz roughly one
22 (1) mile away, law enforcement began to believe the murders were
23 related. When law enforcement officers arrived at Ms. Renken's
24 residence, they observed a trail of blood from the hallway toward the
25 room where Ms. Renken's body was found. Additionally, an expended
26

²⁹ Mr. Harris' last contact with Mrs. Renken was the day prior.

1 bullet, appearing to be a .22 caliber round, was located on the floor
2 of that same hallway. Investigators also saw a bullet hole -
3 consistent with a .22 caliber round - in the moulding of a panty door
4 jamb. Further investigation produced a bullet which was lodged into
5 the interior moulding of that same door. Despite the number of
6 expended bullets found in the home, as well as the observations of
7 the fatal injuries to Ms. Renken, investigators found no shell
8 casings in the residence, suggesting that the perpetrator had used a
9 revolver. Finally, it appeared to investigators that no items of
10 value were taken from Ms. Renken's home. Specifically, all of the
11 closets and drawers were closed and Ms. Renken's purse and other
12 valuables appeared undisturbed.

13 On January 14, 2019, an autopsy was performed on Ms. Renken
14 by Dr. KATHERINE CALLAHAN (hereafter Dr. Callahan). Dr. Callahan
15 observed a large number of entrance wounds on the left side of Ms.
16 Renken's face consisting of shot pellets embedded into Ms. Renken's
17 skin and scalp tissue. On the right side of Ms. Renken's face, Dr.
18 Callahan observed similar entrance wounds consisting of the same shot
19 pellets described above. On Ms. Renken's right shoulder, Dr.
20 Callahan observed an entrance wound. Ultimately, the bullet
21 responsible for this injury was collected from Ms. Renken's right-
22 upper back. Dr. Callahan opined that this bullet was most typical of
23 a small caliber round, consistent with a .22 caliber.³⁰ On Ms.
24 Renken's lower back was another entry wound. Dr. Callahan traced the
25 pathway of this injury through Ms. Renken's right lung and the right
26

³⁰ Grand Jury Transcript, March 19, 2019, pg. 185: 17-22.

1 side of her heart before it ultimately exited through Ms. Renken's
2 chest. Based on the foregoing, Dr. Callahan opined that the cause of
3 Ms. Renken's death was multiple gunshot wounds in the manner of a
4 homicide.³¹

5 During the Defendant's interview by Detective Brady on
6 January 19, 2019, the Defendant initially denied any knowledge or
7 culpability as to Ms. Renken's murder and the burglary of her home.
8 However, towards the end of his interview, the Defendant's story
9 changed and the Defendant confessed to murdering Ms. Renken.

10 The Defendant explained to Detective Brady that he "did her
11 in" but denied taking anything from her home.³² In addition, the
12 Defendant was able to provide details which corresponded to what was
13 observed at the residence. For example, he indicated that he made
14 entry to the home through a back door which was unlocked which is
15 consistent with Mr. Harris' observations of the condition of the
16 premises upon his arrival. Additionally, he indicated that he shot
17 several times; again, consistent with the multiple rounds recovered
18 from within the home as well as Dr. Callahan's observations during
19 the autopsy.³³

20 The Defendant stands accused of Burglary While in
21 Possession of a Firearm (Count VI of the Indictment), for entering
22 Ms. Renken's home on January 12th or 13th of 2019 with the intent to
23 commit larceny while in possession of a revolver, and of Murder with
24

25
26 ³¹ Grand Jury Transcript, March 19, 2019, pg. 185: 10-16.

³² Interview with Defendant, January 19, 2019, at 4:12:40.

³³ Interview with Defendant, January 19, 2019, at 4:12:40.

1 the Use of a Deadly Weapon (Count V of the Indictment), for killing
2 Ms. Renken during that same event.

3 **E. THE MURDERS OF SHARON DAVID AND GERALD DAVID.**

4 In January of 2019, GERALD DAVID (hereafter Mr. David) was
5 eighty one (81) years old, and his wife, SHARON DAVID (hereafter Mrs.
6 David) was eighty (80) years old. Mr. and Mrs. David were married
7 approximately fifty three (53) years, and, for roughly that same
8 duration of time, made a home for themselves at 760 La Guardia Lane,
9 Washoe County, Nevada. For five decades, Mr. and Mrs. David raised
10 children, pets, and horses on their property. On January 15 or 16³⁴
11 of 2019, an intruder entered their home and shot both Mr. and Mrs.
12 David to death.

13 Given their ages and physical limitations, Mr. and Mrs.
14 David enlisted the help of VAL DIAZ (hereafter "Mr. Diaz") to assist
15 with caring for their horses. Generally, Mr. Diaz would go to the
16 David's property every other day. On January 16, 2019, Mr. Diaz
17 arrived at the David's property to assist with their horses at
18 roughly 4:00 p.m. Upon his arrival, Mr. Diaz immediately noticed
19 things were unusual. For example, he observed that the horse's
20 stalls were not clean, the horses were away from the stall area, a
21 screen was removed from a window and laying on the ground nearby, the
22 window which contained the aforementioned screen was fully open, a
23 gate was open and the Davids' cats were locked in their pen earlier
24

25
26 ³⁴ According to Mr. David's daughter, her last contact with her father was on
January 15, 2019 around 11:00am. Interview with Diane Hicks, January 16, 2019, pg.
14: 2-6.

1 than usual. Concerned, Mr. Diaz began to shout the couple's names
2 and calling their phone numbers; he received no response.

3 Walking into the backyard of the home, Mr. Diaz noticed the
4 door leading through a mudroom and into the home was open. Mr. Diaz
5 briefly entered the residence through this same door, stepping over a
6 blanket on the floor covering a then-unknown object. Inside, he
7 observed cabinets opened in the area of the kitchen and living room.
8 He immediately backed out of the home and called 911.

9 With the assistance of cover units, Washoe County Sheriff's
10 Deputy STEVE DECARLI (hereafter Deputy DeCarli) made entry into the
11 Davids' home through the same back door described above. Lying on
12 the floor of the mudroom connecting the back door of the residence to
13 the kitchen and living room, Deputy DeCarli found what appeared to be
14 the deceased body of Mrs. David covered by a blanket. While clearing
15 the home to make sure there were no intruders on scene, Deputy
16 DeCarli also noted that the residence appeared to have been
17 burglarized or ransacked. Finally, Deputy DeCarli discovered what
18 appeared to be the deceased body of Mr. David lying in his bed with
19 bedding covering his corpse.

20 Not long after the discovery of Mr. and Mrs. David, law
21 enforcement began to believe that the killings were connected with
22 the homicides of Ms. Koontz and Ms. Renken. The similarities began
23 with the respective ages of all four (4) victims. Also, a common
24 thread was believed to exist in that all killings appeared to have
25 occurred during the perpetration or attempted perpetration of a
26 burglary. Additionally, it appeared that all four (4) homicides

1 possessed similarities with respect to the weapon used. For example,
2 on the kitchen floor of the David's home, Deputy DeCarli observed an
3 unspent .22 caliber "snake shot" round. "Snake shot" is a term
4 colloquially used to refer to handgun or rifle cartridges which are
5 loaded with small lead shot pellets. Similarly sized pellets were
6 observed on the right and left aspects of Ms. Renken's face during
7 her autopsy. Lastly, no spent casings were found leading to the
8 hypothesis that the Davids' killer likewise used a revolver.

9 On January 17, 2019, Dr. Callahan performed an autopsy on
10 Mrs. David. Dr. Callahan observed a single entrance gunshot wound to
11 the right side of her nose with no corresponding exit wound. This
12 wound was consistent with that caused by a small caliber bullet. Dr.
13 Callahan located a deformed, small caliber bullet within Mrs. David's
14 cranial cavity. Through the course of her examination, Dr. Callahan
15 determined that the bullet traveled through Mrs. David's sinus,
16 entering her cranial cavity and injuring her brain stem resulting in
17 her instantaneous death. With respect to Mrs. David, Dr. Callahan
18 opined that her cause of death was a gunshot wound to the head in the
19 manner of a homicide.³⁵

20 That same day, Dr. Callahan performed an autopsy on Mr.
21 David. Generally, Dr. Callahan observed five (5) gunshot wounds to
22 Mr. David's head and one (1) gunshot wound to his chest. With
23 respect to the head, Mr. David displayed a number of gunshot wounds
24 which penetrated his skull, injuring his brain. One other round
25 traveled through Mr. David's face injuring his facial tissue. As it
26

³⁵ Grand Jury Transcript, March 19, 2019, pg. 193: 1-3, and 194: 1-5.

1 pertains to the wound on his chest, Dr. Callahan observed that bullet
2 had traveled through Mr. David's lungs, aorta, and exited through his
3 back. Based on the nature of the wounds as well as some of the
4 bullets and bullet fragments recovered during her examination, Dr.
5 Callahan opined that a small caliber weapon was used in the murder of
6 Mr. David. To that end, it was her opinion that Mr. David's cause of
7 death was multiple gunshot wounds to the head and chest in the manner
8 of a homicide.³⁶

9 Throughout the course of the Defendant's interview by Detective
10 Brady on January 19, 2019, the Defendant implicated himself in the
11 commission of multiple burglaries at the Davids' residence, as well
12 as their murders. The Defendant explained that on the morning of
13 their murders, that he, the defendant, entered the Davids' residence
14 through the backdoor.³⁷ He stated that, while he was entering the
15 Davids' home, a female was coming out.³⁸ He then indicated that he
16 "got scared" and "shot her" before quickly going inside and shooting
17 the man while he was changing.³⁹ The Defendant also provided details
18 as to the weapon he used during the murders. He explained to
19 Detective Brady that he used a revolver and, upon further
20 questioning, acknowledged that it was the same revolver he used in
21 the murder of Ms. Koontz.⁴⁰

22 Throughout the interview, the Defendant's remarks were
23 consistent with law enforcement's observations of the scene. For
24

25 ³⁶ Grand Jury Transcript, March 19, 2019, pg. 208: 10-16.

³⁷ Interview with Defendant, January 19, 2019, at 3:58:15.

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

1 example, he indicated that he shot the female near the backdoor;
2 consistent with the discovery of Mrs. David's body. Also, he
3 indicated that the male was sitting on the bed; again, the exact same
4 location where Mr. David's body was found. Lastly, the Defendant
5 explained that he took "weapons" and everything he thought he could
6 use before exiting the residence,⁴¹ mirroring the observations of Mr.
7 Diaz and law enforcement that the home appeared to be ransacked. To
8 this same end, he even acknowledged leaving some items behind as
9 observed by the bag containing miscellaneous valuables belonging to
10 the Davids left behind in the residence.

11 The Defendant stands accused of Burglary While in
12 Possession of a Firearm (Count IX of the Indictment), for entering
13 the David's home on January 15 or 16 of 2019 with the intent to
14 commit larceny while in possession of a revolver, and of two (2)
15 counts of Murder with the Use of a Deadly Weapon for killing Mrs.
16 David (Count VII of the Indictment) and Mr. David (Count VIII of the
17 Indictment) during that same event.

18 **F. DISCOVERY OF WEAPONS STOLEN FROM DAVID RESIDENCE.**

19 A significant amount of property was taken from the Davids'
20 residence following their murder. This consisted of miscellaneous
21 items of memorabilia from the Reno Rodeo, jewelry, and weapons,
22 including a pistol, long rifles, and shotguns.

23 The final count in the Defendant's Indictment relates to
24 these same guns. He stands charged with Possession of a Stolen
25 Firearm (Count X of the Indictment) for the revolver taken on or
26

⁴¹ Id.

1 about January 4th as well as the various rifles and shotguns taken
2 from the Davids' home on or about January 15 or 16, 2019.

3 **G. SEARCH OF DEFENDANT'S VEHICLE.**

4 When the Defendant was apprehended in Carson City on
5 January 19, 2019, he was in his BMW vehicle. His BMW was sealed and
6 transported to the Washoe County for processing. Pursuant to a
7 search warrant, investigators searched the BMW. Located underneath
8 the front driver's side seat was the firearm used to commit each
9 murder. Additionally, investigators found a cache of stolen property
10 belonging to Ms. Koontz and the Davids.

11 **H. SEARCH OF DEFENDANT'S APARTMENT, CARSON CITY.**

12 Subsequent to the Defendant's apprehension, the apartment
13 where he lived with his mother and teenage sister in Carson City was
14 also searched pursuant to a search warrant. Within the apartment,
15 investigators from the Carson City Sheriff's Office, the Douglas
16 County Sheriff's Office and the Washoe County Sheriff's Office
17 discovered a vast amount of property stolen from Ms. Koontz and the
18 Davids, including jewelry, western memorabilia, collectibles, tools,
19 and other items bearing the names of the victims.

20 **III. ARGUMENT**

21 **A. VENUE IS APPROPRIATE IN WASHOE COUNTY FOR ALL CHARGED**
22 **OFFENSES.**

23 The State finds it ironic that the Defendant basically
24 conceded venue on May 20, 2019, during the oral argument before this
25 Court on the Defendant's Motion to Dismiss for Lack of Jurisdiction
26 (D-1) by arguing that all Counts in the Indictment could be joined at

1 a later date, but that the State needed to follow the process.⁴² See
2 May 20, 2019 Transcript of Proceedings Motion to Dismiss/Writ of
3 Habeas Corpus, pg. 7: 23-24; pg. 8: 1-2. Now, several months later,
4 the Defendant challenges venue as to Counts III through VI of the
5 Indictment by making a single bare reference to NRS 171.010
6 (jurisdiction for offenses committed in the State) and misplaced
7 reliance on Eureka County Bank Habeas Corpus Cases, 35 Nev. 80, 126
8 P. 655 (1912) and Zebe v. County of Lander, 112 Nev. 1482, 929 P.2d
9 927 (1996) for the belief that Washoe County is not the proper venue
10 for Counts III through VI.

11 The Defendant first cites Eureka County Bank Habeas Corpus
12 Cases, supra, for the general proposition "that venue lies with the
13 county where the offense occurred." Motion to Dismiss (D-14), pg. 2:
14 20-22. The Defendant's reliance on this case, however, is
15 inappropriate and misleading.

16 First, Eureka County Bank Habeas Corpus Cases is not a
17 venue case. At issue in that case were multiple claims by
18 petitioners after being arrested in Washoe County by the sheriff of
19 Eureka County, under warrants of arrest issued by the Justice of the
20 Peace in Eureka County. The petitioners applied for writs of habeas
21 corpus in the district court in Washoe County, and then after being
22 admitted to bail, dismissed their petitions in the district court and
23 immediately applied for writs before the Nevada Supreme Court. There
24 ///

25
26 ⁴² Defense counsel stated, "We are not saying this case cannot at some point in time be joined, but that is somewhere down the road. Right now we are dealing with the process of the inception of this case."

1 are zero factual comparisons between this 1912 case and the case at
2 hand.

3 Moreover, in State v. Steward, 74 Nev. 65, 323 P.2d 23
4 (1958), the Nevada Supreme Court rejected a defendant's misplaced
5 reliance on Eureka County Bank Habeas Corpus Case for the proposition
6 that venue had to be in the county where the crime was committed. In
7 Steward, the defendant was prosecuted in Elko County for a murder
8 committed in Nevada while in a moving van traveling eastward across
9 the state on a trip terminating in Elko County. In challenging the
10 venue being in Elko County, the defendant in Steward attempted to
11 convince the Nevada Supreme Court that venue lied elsewhere in the
12 State. In refusing to accept the defendant's argument, the Court in
13 Steward stated:

14
15 "Nor do we find anything in the Eureka
16 County Bank Habeas Corpus Cases, 35 Nev.
17 80, 126 P. 655, 129 P. 308, upon which
18 respondent also relies, supporting the
 contention that venue may not be fixed by
 the legislature in a county other than
 that in which the offense was committed."

19 Just as the Defendant's reliance on Eureka County Bank
20 Habeas Corpus Cases is faulty, so too is the Defendant's dependence
21 on Zebe, supra. Zebe is not a venue case; rather, the case stands
22 for the proposition that one county cannot bind another county to the
23 terms of a plea agreement without the second county's express
24 consent. Zebe, 112 Nev. at 1485, 929 P.2d at 928.

25 In Zebe, the defendant engaged in criminal conduct in both
26 Nye County and Lander County. The defendant stole two vehicles and

1 burglarized a home in Lander County and then drove into Nye County in
2 one of the stolen vehicles. The defendant was arrested in Nye
3 County, handcuffed and placed in a patrol car; the defendant kicked
4 his way out of the patrol car, stole another vehicle, and fled. The
5 defendant was apprehended almost immediately when he crashed the
6 third stolen car into a patrol car.

7 The defendant in Zebe was charged in Nye County with grand
8 larceny of the vehicle he stole in Nye County, possession of the
9 stolen vehicle he drove from Lander County into Nye County, assault
10 with a deadly weapon for crashing the third stolen vehicle into the
11 patrol car in Nye County, burglary for entering the vehicle in Nye
12 County, escape, and possession of burglary tools. The defendant
13 subsequently entered a plea of guilty in Nye County to one count of
14 grand larceny and one count of escape. All other charges were
15 dismissed. Following the defendant's guilty pleas in Nye County, the
16 Lander County District Attorney filed charges against the defendant
17 for the house burglary in Lander County, grand larceny of both
18 vehicles in Lander County, burglary of both vehicles in Lander County
19 and also charged the defendant with being a habitual criminal. The
20 defendant then filed a petition for writ of prohibition asserting
21 that the State should be precluded from prosecuting him in Lander
22 County as he had already entered guilty pleas in Nye County and that
23 the plea agreement stated that the State would not pursue any other
24 criminal charges arising out of the facts and circumstances upon
25 which the charges were based.

1 In denying the petition, the Nevada Supreme Court held that
2 one county may not bind another county to the terms of a plea
3 agreement without the second county's express consent. Zebe, 112
4 Nev. at 1484, 929 P.2d at 928. In reaching that conclusion, the
5 Court conducted an analysis as to why the Nye County District
6 Attorney could not bind the Lander County District Attorney to a plea
7 agreement in Nye County that took away the Lander County District
8 Attorney's ability to prosecute the defendant for the crimes
9 committed in Lander County. The Defendant in this case cites a
10 portion of the Court's analysis in Zebe while failing to put the
11 cited portion in context, i.e., that the analysis was about the chief
12 prosecutor in one county not being bound by the plea agreement
13 between a defendant and a chief prosecutor in another county. Zebe,
14 112 Nev. at 1484-85, 929 P.2d at 929. Simply stated, Zebe is not
15 applicable to the case at hand.

16 The Defendant's Motion to Dismiss (D-14) is disingenuous in
17 that the Defendant relies on two cases that are inapplicable to the
18 issue presented, the Defendant fails to address the applicable venue
19 statutes, and the Defendant has previously acknowledged that Washoe
20 County is the proper venue for all Counts within the Indictment.
21 Furthermore, the Defendant continues to mistakenly allege that all of
22 the Defendant's plans, preparation, acts and intent as to Counts III-
23 VI occurred in their entirety in Douglas County. Motion to Dismiss
24 (D-14), pg. 1: 24-26; pg. 4: 1-2. The Defendant's continued
25 erroneous assertion is belied by the facts of this case, including
26 the acts or effects of the Defendant in Washoe County over the course

1 of several days leading up to the murders of Constance Koontz and
2 Sophia Renken which were requisite to the consummation of those
3 offenses.

4 The evidence is overwhelming and uncontroverted, including
5 admissions by the Defendant himself, that the predicate act which
6 begat the offenses in Douglas County actually occurred within Washoe
7 County - in that the Defendant stole the .22 caliber revolver from a
8 cargo trailer owned by the Davids and stored on the Davids' real
9 property located on La Guardia Lane in Washoe County and then
10 subsequently used that stolen revolver to commit all crimes as
11 alleged in Counts III-X of the Indictment. Following the illegal
12 acquisition of the murder weapon, the Defendant then went on a six
13 and one-half (6 ½) day crime spree traversing back and forth across
14 three counties (Carson City, Washoe County and Douglas County)
15 committing four (4) murders, and multiple other charged and uncharged
16 crimes.

17 Furthermore, this Court has previously determined as to
18 Counts III-VI of the Indictment that "[t]he formation of intent and
19 preparatory acts were in Washoe County even though they culminated in
20 the charged crimes that took place in Douglas County." See June 22,
21 2019 Order Denying Petition for Writ of Habeas Corpus, pg. 14: 6-8.

22 ///

23 ///

24 ///

25 ///

26 ///

1 **i. VENUE IS APPROPRIATE IN WASHOE COUNTY PURSUANT TO**
2 **NRS 171.030**

3 The Defendant cites to NRS 171.010 in his instant motion
4 (D-14), but fails to acknowledge or address one of two venue statutes
5 specifically relevant to this case - NRS 171.030, which provides:

6 "When a public offense is committed in
7 part in one county and in part in another
8 or the acts or effects thereof
9 constituting or requisite⁴³ to the
consummation of the offense occur in two
or more counties, the venue is in either
county."

10 NRS 171.030 is unambiguous on its face, squarely applicable
11 to the facts of this case, and supports the State's position that
12 Washoe County is the appropriate venue for all ten Counts in the
13 Indictment. It is clear that NRS 171.030 permits venue to be in
14 either county whenever the acts or effects requisite or necessary to
15 the consummation of the crime occur in two or more counties. In this
16 case, the act requisite to the Defendant shooting and killing both
17 Ms. Koontz and Ms. Renken in Gardnerville was the Defendant's
18 procurement of a firearm in Washoe County, as well as the Defendant's
19 planning and preparation for committing the crimes in Gardnerville
20 while in Washoe County and Carson City. Since the acts or effects
21 requisite to the murders of Ms. Koontz and Ms. Renken occurred in two
22 or more counties, in that the Defendant procured the weapon in Washoe
23 County and used it in Gardnerville to extinguish the life of two (2)
24 ///

25 _____
26 ⁴³ Per Google, defined as, "A thing that is necessary for the achievement of a
specified end."

1 people, a plain reading of the statute allows for the filing of those
2 charges in either location.⁴⁴

3
4 **ii. VENUE IS APPROPRIATE IN WASHOE COUNTY PURSUANT TO
NRS 171.060**

5 The Defendant also fails to acknowledge or address the
6 other venue statute specifically relevant to this case - NRS 171.060,
7 which provides:

8
9 "When property taken in one county by
10 burglary, robbery, larceny or
11 embezzlement has been brought into
12 another, the venue of the offense is in
13 either county, but if, at any time before
14 the conviction of the defendant in the
latter, the defendant is indicted in the
former county, the sheriff of the latter
county must, upon demand, deliver the
defendant to the sheriff of the former."

15 NRS 171.060 is likewise unambiguous on its face, squarely
16 applicable to the facts of this case, and supports the State's

17 ⁴⁴ In addressing the topic, the Nevada Supreme Court has provided illustrative
18 language. As taken from Walker v. State, 78 Nev. 463, 471-72 (1962) , "In State v.
19 O'Shea, 28 N.J.Super. 374, 100 A.2d 772, 774, the court after holding that venue,
20 although it must be proved by the state, is not an element of a crime, went on to
21 say: 'The tendency of the law, at any event in those jurisdictions not tied down by
22 constitutional or statutory limitations, Blume, The Place of Trial of Criminal
Cases, 43 Mich.L.Rev. 59 (1944), is not to allow technical questions of venue to be
made a refuge for the guilty. Cf. the new rule, R.R. 3:6-1(b). Chief Justice
Beasley, in the course of his remarks in State v. Le Blanch, 31 N.J.L. 82
(Sup.Ct.1864), speaks of a 'mere question of venue—a matter so pliant that it would
expand under the slight pressure of convenience.' "

23 The Court in Walker also addressed the applicability of NRS 171.030 to the facts of
24 that matter, concluding, "Even if [the jury] determined that the acts resulting in
25 the death were committed in part in one county, and in part in another, or in two
26 or more counties, of which Washoe County was one, then, under NRS 171.030, venue
was properly laid in Washoe County. The killing was admittedly committed by
appellant, and "the acts or effects thereof constituting or requisite to the
consummation of the offense" could have occurred in two or more counties, one of
which was Washoe County.

1 position that Washoe County is the appropriate venue for this case.
2 It is clear that NRS 171.060 permits venue to be in either county
3 whenever someone commits burglary or larceny in one county and then
4 takes property from that crime into another county. In this case,
5 the Defendant committed burglaries in Washoe County and took stolen
6 property from those burglaries into Douglas County, and then the
7 Defendant subsequently committed burglaries in Douglas County and
8 took stolen property from at least one of those burglaries back to
9 Washoe County.

10 The evidence in this case, as adduced at the Grand Jury
11 proceeding, is that the Defendant committed a burglary in Washoe
12 County on or about January 4, 2019, wherein the Defendant stole a
13 firearm. The Defendant then took that stolen property - the firearm
14 - and subsequently drove to Gardnerville where he used that stolen
15 firearm to burglarize the homes of Ms. Koontz and Ms. Renken, and to
16 shoot and kill both Ms. Koontz and Ms. Renken on or about January 9-
17 10 and January 12-13, 2019, respectively. Since the initial burglary
18 resulting in the Defendant's procurement of the firearm happened in
19 Washoe County, and was consummated upon his entry into the homes in
20 Douglas County, venue is proper in either location.⁴⁵

21 ///

22
23 ⁴⁵ While not the subject of the Defendant's pleading, the same logic extends to
24 Count X related to the Defendant's possession of a stolen firearm; again,
25 referencing the same revolver which he possessed in Washoe County on the date he
26 stole it from the Davids' trailer, possessed it in Douglas County when he entered
the homes of Ms. Koontz and Ms. Renken, used it to kill both victims, before
returning to Washoe County where he entered the Davids' home with that same gun,
again using it to murder both Mr. and Mrs. David, before ultimately being
apprehended in Carson City while in possession of that same stolen revolver.

1 Furthermore, the evidence presented to the Grand Jury
2 established that the Defendant stole numerous items of property while
3 burglarizing Ms. Koontz's home in Gardnerville and that he
4 subsequently pawned numerous items of Ms. Koontz's property. Other
5 items of Ms. Koontz' stolen property were subsequently recovered
6 during a search of the Defendant's apartment and BMW vehicle. The
7 search of the Defendant's BMW occurred several days after the
8 Defendant murdered the Davids at their home in Washoe County.

9 It is important to note that the Defendant drove this same
10 BMW to the initial burglaries of the Davids' outbuilding and trailers
11 in Reno on January 3 and 4, 2019; he drove this same BMW to
12 Gardnerville when he burglarized Ms. Koontz's home and murdered her
13 on January 9 or 10, 2019; he drove this same BMW to Gardnerville
14 when he burglarized Ms. Renken's home and murdered her on January 12
15 or 13, 2019; he drove this same BMW to the Davids' home in Reno when
16 he burglarized their home and killed them on January 15 or 16, 2019;
17 and he was driving this same BMW three days later in Carson City on
18 January 19, 2019 when he was arrested for these crimes.

19 There is direct evidence in this case that the Defendant
20 had the firearm he stole in Reno on or about January 4, 2019, in his
21 possession when he committed the crimes alleged in Counts III-X of
22 the Indictment, as well as when he was arrested on January 19, 2019.
23 There is also direct evidence in this case that numerous items of
24 property stolen from the Koontz residence on January 9 or 10 were
25 found and recovered inside the Defendant's BMW during a search
26 pursuant to a warrant following his arrest. These items stolen from

1 the Koontz residence that were found in the Defendant's BMW included
2 miscellaneous jewelry items including an item bearing the name
3 "Connie" and a U.S. Airways boarding pass with the name "Madison
4 Winkleman" (daughter of Constance Koontz).

5 As acknowledged by the Defendant in his Motion to Dismiss
6 (D-14), venue may be established by circumstantial evidence and need
7 not be shown beyond a reasonable doubt. Motion to Dismiss (D-14),
8 pg. 2: 1-12, citing Dixon v. State, 83 Nev. 120, 122, 424 P.2d 100,
9 101 (1967). The circumstantial evidence in this case is compelling
10 and overwhelming that the items stolen by the Defendant during the
11 burglary of the Koontz's residence on January 9 or 10, 2019, and that
12 were subsequently located and recovered from the Defendant's BMW
13 after his arrest ten (10) days later, remained inside his BMW while
14 he continued his crime spree through Douglas County, Carson City and
15 Washoe County during that same ten (10) day period following the
16 burglary and murder of Ms. Koontz. It is clear that NRS 171.060
17 provides that venue may be in Washoe County or Douglas County as the
18 property taken by burglary in Douglas County was brought into Washoe
19 County.

20
21 **B. FUNDAMENTAL FAIRNESS, JUDICIAL ECONOMY, AND NEVADA'S**
22 **VICTIMS' BILL OF RIGHTS FURTHER SUPPORTS THAT VENUE IS**
APPROPRIATE IN WASHOE COUNTY.

23 Additional support for the State's position extends beyond
24 The plain language of the statute. First, venue in Washoe County is
25 fundamentally fairer to the Defendant. Washoe County has a larger
26 population and thus a larger jury pool from which to find unbiased,

1 qualified jurors. Secondly, by prosecuting the case in Washoe
2 County, the State has only one chance at prosecuting the Defendant
3 for these crimes.⁴⁶ The compelling force of this notion is found in
4 consideration of its alternative: if the State elected to charge each
5 murder separately, in the County in which the decedents were found,
6 the Defendant would be subject to up to three (3) separate
7 prosecutions for Murder in the First Degree. Thus, the Defendant
8 would effectively have to defeat three (3) separate murder trials as
9 the State would have three (3) distinct opportunities to convict the
10 Defendant of Murder in the First Degree as opposed to one (1).

11 Moreover, considerations of judicial economy bolster the
12 State's position. Should the Defendant's motion be denied, a single
13 trial will be held which would resolve effectively three (3) separate
14 homicides involving a total of four (4) decedents. If venue were
15 altered, there would in essence be at least three (3) separate
16 trials; one for the location of each homicide. Along these same
17 lines, should each killing be tried individually, the evidence from
18 the other murders would be cross-admissible.⁴⁷ The entire factual
19 underpinnings of the Defendant's criminal spree are so intertwined
20 that witnesses in an individual trial would not be able to describe
21 the investigation without reference to other acts, crimes, or
22 evidence. This would also include the evidence related to the
23 recovery of the weapons buried by the Defendant. Stating the

24 ⁴⁶ See NRS 171.075, barring subsequent prosecution for an offense within the venue
25 of two or more counties following a conviction or acquittal.

26 ⁴⁷ See NRS 48.045 discussing the admissibility of other act evidence to prove
motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of
mistake or accident; and NRS 48.035(3) related to *res gestae* evidence.

1 obvious, the evidence adduced from each individual case is germane
2 across all events as it relates to the Defendant's intent, his use of
3 a weapon, his identity as the perpetrator, and so forth. What's
4 more, a myriad of examples exist where cross-admissible evidence
5 would be adduced from each event in order to tell the complete story
6 of the crime.

7 As a consequence, should venue be split amongst each
8 County, each trial would likely include evidence gathered across the
9 entire scope of all four (4) killings, resulting in each respective
10 murder trial being a presentation of the evidence gathered in all
11 four (4) murders. This scenario equates to considerable cost both
12 fiscal and temporal.

13 Finally, recent additions to the Nevada Constitution
14 provide compelling support for the State's position. Now, the
15 Constitution allows a victim - defined to include their family - the
16 right to a timely disposition of a criminal matter.⁴⁸ Here, the
17 family members of all four (4) victims have, at a minimum, implicitly
18 invoked this right through their conversations with the State's
19 representatives. If venue were altered, multiple trials would
20 unavoidably take place. However, they would not occur concurrently.
21 As such, it is reasonable to forecast years of delay until all crimes
22 could be adjudicated. Such a result, when the law clearly supports
23 the contrary, would be a violation of the Victims' Bill of Rights in
24 Nevada.

25 ///

26 _____
⁴⁸ Nev. Const. art. 8A § (1)(i).

1 **III. CONCLUSION**

2 In light of the foregoing, the State respectfully requests
3 that the Defendant's Motion to Dismiss (D-14) be denied in its
4 entirety.

5 **AFFIRMATION PURSUANT TO NRS 239B.030**

6 The undersigned does hereby affirm that the preceding
7 document does not contain the social security number of any person.

8 DATED this 13th day of November, 2019.

9
10
11 /s/ Christopher Hicks
12 CHRISTOPHER HICKS
13 DISTRICT ATTORNEY

14
15
16 /s/ Mark Jackson
17 MARK JACKSON
18 DISTRICT ATTORNEY
19
20
21
22
23
24
25
26

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6

295

CODE: 3795
JOHN L. ARRASCADA, #4517
GIANNA VERNES, #7084
JOSEPH GOODNIGHT, #8472
KATHERYN HICKMAN, #11460
350 S. CENTER STREET, 5TH FLOOR
RENO, NV 89520-3083
(775) 337-4800
Attorney for Defendant

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,

CASE NO: CR19-0447

v.

DEPT. NO.: 4

WILBER ERNESTO MARTINEZ GUZMAN,
Defendant.

**REPLY TO OPPOSITION TO MOTION TO DISMISS COUNTS III-VI OF
THE INDICTMENT FOR IMPROPER VENUE (D-14)**

Wilber Ernesto Martinez Guzman, by and through his attorneys, John L. Arrascada, Gianna Verness, Joseph Goodnight and Kathryn Hickman, files this Reply to Opposition to the Motion to Dismiss Counts III-VI of the Indictment for Improper Venue (D-14). This reply is based upon the attached points and authorities, and any argument, if necessary, to be presented at a hearing on this matter.

///

///

1 addresses offenses occurring on a boat, train, aircraft or in a vehicle, permitting
2 venue in any county through which they pass or where the trip terminates. In
3 Steward, the Nevada Supreme Court considered the claim that NRS 171.040
4 violated the constitutional right to a trial by jury, with Steward arguing that there
5 is a *constitutional right* to be tried in the county where the crime occurred. Id. at
6 67-68, 74 (emphasis added). Steward suggested that the holding in Eureka County,
7 supra, supported this constitutional right. However, the Court declined to find that
8 Eureka County, supra supported the “contention that venue may not be fixed by the
9 legislature in a county other than that in which the offense was committed.” Id. at
10 71. Thereby upholding the statutory exception of NRS 171.040, to the requirement
11 that venue lies with the county where the offense occurs. Absent this type of
12 statutory exception, the appropriate venue for the Douglas County counts is in
13 Douglas County.

14 **B. NRS 171.030 does not apply to the instant case**

15 The State suggests that venue is appropriate in Washoe County for the
16 Douglas County counts under NRS 171.030 and/or NRS 171.060. As discussed
17 below, this claim is without merit.

18 First, NRS 171.030 provides, “When a public offense is committed in part in
19 one county and in part in another or the acts or effects thereof constituting or
20 requisite to the consummation of the offense occur in two or more counties, the
21 venue is in either county.” In its Opposition, the State argues that this statute
22 provides this Court jurisdiction over Counts III-VI. See Opposition p. 24. The State
23 then makes the specious argument that the “acts or effects requisite to the murders
24 of Ms. Koontz and Ms. Renken occurred in two or more counties, *in that the*
25 *Defendant procured the weapon in Washoe County and used it in Gardnerville*” in
26 the murders of Ms. Koontz and Ms. Renken. See Opposition at p. 24 ll. 20-23.

1 (emphasis added). Because this weapon was later used to murder Ms. Koontz and
2 Ms. Renken, the State claims authority to file the charges in either Douglas or
3 Washoe County pursuant to NRS 171.030.

4 However, this overbroad interpretation of NRS 171.030 is simply not
5 supported by law. First, the State cites no authority in support of its position that
6 the *mere procurement* of a weapon used much later in a murder in another county
7 satisfies the requirement that it is an act or effect “constituting or requisite to the
8 consummation of” the subsequent murder. *Id.* If adopted by the Court, such an
9 expansive interpretation of NRS 171.030 would lead to an absurd result. Under the
10 States reading, in any murder where a weapon is used, procurement of this weapon
11 is an act requisite to the consummation of the murder. Thus, in every murder where
12 a weapon is used, if that weapon was procured in a different county than where the
13 murder occurs, pursuant to NRS 171.030, venue for the prosecution of that murder
14 would lay in the county where the weapon was obtained or the county where the
15 murder occurred, regardless of the passage of time or distance between obtaining
16 the weapon and committing the murder.

17 The States interpretation of NRS 171.030 is also in contradiction to the case
18 law that does exist on this issue. The Nevada Supreme Court briefly touched upon
19 NRS 171.030 in Walker v. State, 78 Nev. 463, 376 P.2d 137 (1962). While the Walker
20 case is factually distinguishable from the instant matter, it provides some direction
21 for this Court in interpreting NRS 171.030. The Walker Court was confronted with
22 a case where it was unclear where the murder took place. In finding that the case
23 was properly filed within Washoe County, the Court noted that the “jury could have
24 determined that the homicide took place in Washoe County as alleged.” *Id.* at 471.
25 No such claim can be made in the instant case. It is without argument that the
26 murders of Ms. Koontz and Ms. Renken occurred in Douglas County.

1 As part of its analysis, the Walker Court looked for guidance in other
2 jurisdictions. The Court cited State v. Wilson, 38 Wash.2d 593, 231 P.2d 288, a case
3 from Washington State whose statute at issue is identical to NRS 171.030. The
4 Walker Court cited with approval the holding that “where it cannot be determined
5 with certainty in which county the death occurred there would be no bar to
6 prosecution for murder in the county where the kidnapping took place.” Walker at
7 470-471, citing Wilson supra. Other jurisdictions with the same or similar statutes
8 have reached this same conclusion. See State v. Zimmer, 198 Kan. 479, 426 P.2d
9 267 (1967) (venue for murder prosecution while engaged in a kidnapping is proper
10 in county where initial abduction occurred even though body discovered in another
11 county), People v. Abbott, 47 Ca.2d 362, 303 P.2d 730 (1956) (charges of kidnapping
12 and murder may proceed in county where kidnapping occurred), State v. Ring, 54
13 Wash.2d 250, 339 P.2d 461 (1959) (challenge to venue denied in prosecution for rape
14 occurring in moving vehicle where jury had evidence that supported finding
15 jurisdiction in prosecuting county). These holdings demonstrate that “acts or effects
16 thereof constituting or requisite to the consummation of the offense” as
17 contemplated by NRS 171.030 is much more than the mere procurement of the
18 murder weapon. Rather, they contemplate the actual abduction of the victim prior
19 to the commission of murder, or cases where evidence suggests more than one
20 location for the commission of the public offense at issue. Neither of those
21 circumstances are present in the instant case.

22 The Nevada Supreme Court also briefly considered application of NRS
23 171.030 to the facts of Zebe v. County of Lander, 112 Nev. 1482, 929 P.2d 927 (1996).
24 Here, the Court stated:

25 For purposes of prosecuting *a single criminal act* which crosses
26 county lines, venue will lie in either county. See, e.g. NRS 171.030.

1 Here, in contrast, petitioner completed certain criminal acts in
2 Nye County and other distinct criminal acts in Lander County.

3 Id. at 1484 (emphasis added). In the instant case, the acts for which Mr. Martinez
4 Guzman stands accused cannot realistically be characterized as a single criminal
5 act. Rather, like Zebe, Mr. Martinez Guzman completed certain criminal acts in
6 Douglas County and other distinct criminal acts in Washoe County.

7 Despite the State's assertion to the contrary, the fact that Mr. Martinez
8 Guzman is alleged to have come into possession of a gun in Washoe County does not
9 support Washoe County jurisdiction over a murder that occurred days later in
10 Douglas County. Further, the State fails to point to any other facts or evidence to
11 support a finding that the specific intent to commit the murders of Ms. Koontz or
12 Ms. Renken was formulated by Mr. Martinez Guzman while in Washoe County. In
13 fact, Mr. Martinez Guzman's own statement to the police is squarely in contradiction
14 to such a suggestion. While discussing with Detective Brady the murder of Ms.
15 Koontz, Mr. Martinez Guzman states that he wanted to take a few things and sell
16 them and get some money, but Ms. Koontz surprised him and so he shot her. See
17 Transcript of interview of Wilbur Martinez Guzman p. 187 ll 19, p. 188 ll. 2-11.
18 (previously filed as exhibit 1 to Motions filed by the State regarding Other Act
19 Evidence, numbered 1, 2, and 3). Later in the interview, Mr. Martinez Guzman
20 indicates that he did not know Ms. Koontz, but just went to her door and saw that
21 it was open. See Transcript at p. 203 ll.12-18, See also Opposition p. 9 ll. 1-4 (citing
22 Mr. Martinez Guzman's Interview on January 19, 2019). Accordingly, there is no
23 factual basis in the record to support a finding that "acts or effects thereof
24 constituting or requisite to the consummation of the offense" as contemplated by
25 NRS 171.030 for Counts III-VI occurred in Washoe County.

26 ///

///

1 **C. NRS 171.060 does not apply to the instant case.**

2 The State next argues that NRS 171.060 also supports inclusion of the
3 Douglas County counts. However, if applicable, NRS 171.060 is limited to property
4 taken by burglary and brought to another jurisdiction, then venue will lie in either
5 county. Id. In the instant case, this could only potentially apply to Counts IV,
6 Burglary While in Possession of a Firearm (home of Ms. Koontz), and County VI,
7 Burglary of a Firearm (home of Ms. Renken) as permissible under NRS 171.060. See
8 Indictment of Mr. Martinez Guzman (Exhibit 1). Reliance upon NRS 171.060 is
9 again misplaced.

10 The State initially argues that property taken during burglaries in Washoe
11 County was then taken to Douglas County and then burglaries were committed in
12 Douglas County and “property from at least one of those burglaries” was then taken
13 back to Washoe County. See Opposition p. 26 ll. 2-9. Therefore, the State concludes,
14 NRS 171.060 applies. However, this conclusion is not supported by the facts.

15 First, as to Count VI Burglary While in Possession of a Firearm, alleging a
16 burglary at the home of Ms. Renken, it is undisputed that there is no evidence that
17 any property was taken. See Opposition, p. 11 ll. 9-10 and Indictment of Mr.
18 Martinez Guzman p. 4 ll.1-10. Thus, NRS 171.160 does not apply. Next, the State
19 argues that a gun was taken from Washoe County to Douglas County and allegedly
20 used to murder Ms. Koontz and Ms. Renken. If taken as true, this would support a
21 possible claim by *Douglas County* of jurisdiction over Count II, the burglary of the
22 David’s home wherein he is alleged to have taken a revolver. See Opposition p.7 ll.
23 1-3, p. 26 ll. 17-20, and Indictment of Mr. Martinez Guzman p.2. ll. 1-10. Therefore,
24 NRS 171.160 does not support venue in Washoe County for either of these counts.

25 Finally, as to Count IV, Burglary While in Possession of a Firearm, alleging
26 a burglary at the home of Ms. Koontz, it is argued that several items were taken

1 during this burglary on January 9, 2019 and /or January 10, 2019. Some of these
2 items were pawned, some were recovered from the apartment of Mr. Martinez
3 Guzman and some were recovered from the BMW that Mr. Martinez Guzman was
4 driving when he was arrested in Carson City on January 19, 2019. See Opposition
5 p.8 ll. 6-7, p. 18 ll. 4-19, p.27 ll. 23-26 Indictment of Mr. Martinez Guzman p. 3 ll. 1-
6 9. The State generally refers to these items as “miscellaneous jewelry items
7 including an item bearing the name “Connie” and a U.S. Airways boarding pass with
8 the name “Madison Winkleman” (daughter of Constance Koontz)” Opposition at p.
9 28 ll. 2-4 Without identifying exactly which items and the date(s) when these
10 “items” were in Washoe County, the State requests this Court take a giant leap and
11 conclude that some property that was taken during the commission of the residence
12 of Ms. Koontz was then brought by Mr. Martinez Guzman to Washoe County at some
13 point before his arrest in Carson City on January 19, 2019. However, this is far too
14 speculative and tangential for this Court to make such a finding and is unsupported
15 by the record before this Court. Accordingly, NRS 171.060 is inapplicable to Count
16 IV.

17 **D. The State has failed to follow the appropriate process to join the**
18 **Douglas County Charges with the Washoe County Charges**

19 Finally, the State argues that fundamental fairness, judicial economy and the
20 Nevada Victim’s Bill of Rights justify trying all charges in Washoe County.
21 However, this entire argument is unsupported by any accompanying statutory
22 authority or case law to support these claims. The arguments also fail to
23 acknowledge the due process rights that the State has continued to ignore since the
24 inception of this case.

25 Without citation to authority, the State suggest that a larger jury pool in
26 Washoe County compared to that of Douglas County is fundamentally fairer to Mr.

1 Martinez Guzman. First, there is no legal basis upon which this is an appropriate
2 consideration for this Court to permit the case to proceed on Counts III-VI. Second,
3 there is a process under NRS 174.455 which addresses changing the venue of a trial
4 where a fair and impartial jury cannot be found.¹ Is the State suggesting that all
5 defendants in smaller jurisdictions are fundamentally prejudiced based upon the
6 smaller jury pool of lesser populated counties in Nevada?

7 Next, without citation to any authority, the State argues that judicial
8 economy justifies the filing of all charges in Washoe County. While joinder of the
9 counts might be appropriate pursuant to NRS 173.115, the State has failed to follow
10 the appropriate process in order to request such joinder,² which would allow for
11 judicial review and determination of appropriateness of such joinder. As further
12 alleged in the prior filings of Mr. Martinez Guzman, and the instant motion, simply
13 filing all the charges in one criminal complaint, indictment or information is
14 improper in this case. Mr. Martinez Guzman continues to maintain that the State
15 has skipped several necessary steps required to properly present all charges in
16 Washoe County. Finally, reference to the Nevada Victim's Bill of Rights regarding
17 a timely disposition of criminal matters, is unsupported by citation to any legal
18 authority and again ignores appropriate legal process.

19
20 ¹ Specifically, NRS 174.455 provides, in relevant part:

21 1. A criminal action prosecuted by indictment, information or complaint may be
22 removed from the court in which it is pending, on application of the defendant or state, on the
ground that a fair and impartial trial cannot be had in the county where the indictment,
information or complaint is pending.

23 2. An application for removal of a criminal action shall not be granted by the court until
24 after the voir dire examination has been conducted and it is apparent to the court that the
selection of a fair and impartial jury cannot be had in the county where the indictment,
information or complaint is pending.

25 ² Namely, empaneling a grand jury in Douglas County, seeking an Indictment as to Counts III-
26 VI, and then moving for joinder pursuant to NRS 173.115 of all counts to be heard collectively
in either Douglas or Washoe County.

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

- 2
- 3
- 4

5

6
7

8

9

10

11

12

13

14

15

16

18

19

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

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada; that on this 19th day of November, 2019, I electronically filed the foregoing documents with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

DISTRICT ATTORNEY
1 SOUTH SIERRA STREET
RENO, NV

/s/ Jeremy Rutherford
JEREMY RUTHERFORD

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

INDEX OF EXHIBITS

	<u>Pages</u>
1. Indictment of Mr. Martinez Guzman filed on 3/13/2019	8

1
2
3
4
5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**

8 THE STATE OF NEVADA,

9 Plaintiff,

CASE NO.: CR19-0447

10 vs.

DEPT. NO.: 4

11 WILBER ERNESTO MARTINEZ GUZMAN,

12 Defendant.
13

14 **ORDER DENYING MOTION TO DISMISS - IMPROPER VENUE (D-14)**

15 On March 13, 2019, the Washoe County Grand Jury returned an
16 Indictment against WILBER ERNESTO MARTINEZ GUZMAN (hereinafter
17 "Mr. Guzman") for Count I-Burglary, County II-Burglary While
18 Gaining Possession of a Firearm, Count III-Murder With the Use of
19 a Deadly Weapon, Count IV-Burglary While in Possession of a
20 Firearm, Count V-Murder With the Use of a Deadly Weapon, Count VI-
21 Burglary While in Possession of a Firearm, Count VII-Murder With
22 the Use of a Deadly Weapon, Count VIII-Murder With the Use of a
23 Deadly Weaspon, Count IX-Burglary While in Possession of a Firearm,
24 and Count X-Possession of a Stolen Firearm.

25 On March 19, 2019, Mr. Guzman was arraigned on the Indictment,
26 wherein Mr. Guzman stood mute and the Court entered a "not guilty"
27 plea on his behalf. Jury Trial is set to commence on April 6,
28 2020. The State of Nevada (hereinafter "the State") is represented

1 by and through Christopher J. Hicks, Washoe County District
2 Attorney, Mark Jackson, Douglas County District Attorney, and
3 Travis Lucia, Washoe County Deputy District Attorney. Mr. Guzman
4 is represented by John Arrascada, Washoe County Public Defender,
5 Joseph Goodnight, Washoe County Chief Deputy Public Defender, and
6 Katheryn Hickman, Washoe County Chief Deputy Public Defender.

7 On November 1, 2019, Mr. Guzman, filed a *Motion to Dismiss -*
8 *Improper Venue (D14)*. On November 13, 2019, the State filed an
9 *Opposition to the Motion to Dismiss-Improper Venue (D14)*. That
10 same day, Mr. Guzman formally submitted the motion. On November
11 25, 2019, November 26, 2019 and November 27, 2019, the Court held
12 an evidentiary hearing and oral arguments on several pending
13 motions, including this one. After the conclusion of that hearing,
14 the Court took the matter under advisement.

15 Generally, Mr. Guzman is requesting that Counts III, IV, V,
16 and VI of the Indictment in this matter be dismissed. He is
17 alleging that based upon several Nevada Revised Statutes ("NRS")
18 and certain decisional law, proper venue to prosecute a crime is
19 only in the county in which the criminal act is alleged to have
20 occurred.

21 In opposition, the State argues that the venue issue was
22 conceded by Mr. Guzman at the May 20, 2019 hearing based upon the
23 argument of counsel that all counts in the Indictment could be
24 joined at a later date but the state had not followed the proper
25 "process" to do so. Further, the State argues that based upon the
26 timeline of when these acts took place as well as the connection
27 between the acts, venue is proper in Washoe County on all charges.
28 Further, the State claims Mr. Guzman's reliance on certain statutes

1 and cases is misplaced and argues the reasons for that conclusion.
2 The State also argues that fundamental fairness, judicial economy
3 and Nevada's Victims' Bill of Rights supports finding that venue
4 for all charges is appropriate in Washoe County.

5 Mr. Guzman replies that he never conceded that Washoe County
6 was the proper venue for the Douglas County charges. His argument
7 was intended to mean that the charges might be joined at some
8 point, if the required "process" was followed. He continues to
9 argue the State failed to follow that appropriate process. In
10 addition, Mr. Guzman argues a different interpretation of the
11 statutes cited by the State and provides additional case law in
12 support of his motion. He further cites decisional law from other
13 jurisdictions that support his request that this Court find that
14 the consummation of an offense is more the proper venue for trial
15 than the location where the instrument to commit the offense was
16 procured.

17 The Court has considered the following legal authority in
18 deciding this matter.

19 NRS 171.010 provides, in relevant parts:

20 Every person, whether an inhabitant of this state, ... is
21 liable to punishment by the laws of this state for a
22 public offense committed therein

23 NRS 171.020, provides:

24 Whenever a person, with intent to commit a crime, does
25 any act within this State in execution or part execution
26 of such intent, which culminates in the commission of a
27 crime, either within or without this State, such person
28 is punishable for such crime in this State in the same
manner as if the same had been committed entirely within
this State.

29 ///

30 ///

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

NRS 171.030 states:

When a public offense is committed in part in one county and in part in another or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, *the venue is in either county.*
(Emphasis added.)

NRS 171.040, in relevant parts, provides:

2. On a railroad train, car, stage or other public conveyance, or on a private motor vehicle, prosecuting its trip, *the venue is in any county through which the car, stage or other public conveyance, or private motor vehicle, passes in the course of its trip, or in the county where the trip terminates*
(Emphasis added.)

NRS 171.060 provides in relevant parts:

Venue when property is taken in one county and brought into another. When property taken in one county by burglary, robbery, larceny or embezzlement has been brought into another, *the venue of the offense is in either county* (Emphasis added.)

NRS 173.045 provides, in relevant parts:

1. All *informations* must be filed in the court having jurisdiction of the offenses specified therein, by the Attorney General when acting pursuant to a specific statute or by the district attorney of the proper county as informant, and his or her name must be subscribed thereto by him or her or by his or her deputy. (Emphasis added.)

NRS 173.115, in relevant parts, provides:

1. Two or more offenses may be charged in the same indictment in a separate count for each offense if the offenses charged, whether felonies or gross misdemeanors or both, are:

- (a) Based on the same act or transaction; or
- (b) Based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

///
///
///

1 NRS 174.455 provides:

2 1. A criminal action prosecuted by indictment,
3 information or complaint may be removed from the court
4 in which it is pending, on application of the defendant
or state, on the ground that a fair and impartial trial
cannot be had in the county where the indictment,
information or complaint is pending.

5 2. An application for removal of a criminal action shall
6 not be granted by the court until after the voir dire
7 examination has been conducted and it is apparent to the
8 court that the selection of a fair and impartial jury
cannot be had in the county where the indictment,
information or complaint is pending.

9 3. An order in a criminal action changing or refusing
to change the place of trial is appealable only on appeal
from the final judgment.

10 Nevada Constitution, Art. 1 §8 provides:

11 1. No person shall be tried for a capital or other
12 infamous crime . . . (and in cases of petit larceny, under
13 the regulation of the Legislature) except on presentment
or indictment of the grand jury and in any
14 trial, in any court whatever, the party accused shall be
allowed to appear and defend in person, and with counsel
15 No person shall be subject to be twice put in
jeopardy for the same offense

16 2. No person shall be deprived of life, liberty, or
property, without due process of law.

17 Nevada Constitution, Art. 1, §8A states, in relevant parts:

18 1. Each person who is the victim of a crime is entitled
to the following rights:

19 (a) To be treated with fairness and respect for his
or her privacy and dignity, and to be free from
20 intimidation, harassment and abuse, throughout the
criminal or juvenile justice process.

21 (b) To be reasonably protected from the defendant
and persons acting on behalf of the defendant.

22 (f) To reasonably confer with the prosecuting
agency, upon request, regarding the case.

23 (g) To reasonable notice of all public proceedings,
including delinquency proceedings, upon request, at
24 which the defendant and the prosecutor are entitled
to be present and of all parole or other
25 postconviction release proceedings, and to be
present at all such proceedings.

26 (h) To be reasonably heard, upon request, at any
public proceeding

27 (i) To the timely disposition of the case following
the arrest of the defendant.

28 ...

(k) To be informed, upon request, of the conviction, sentence, place and time of incarceration

(l) To full and timely restitution.

(m) To the prompt return of legal property when no longer needed as evidence.

...

(o) To have the safety of the victim, the victim's family and the general

...

(q) To be specifically informed of the rights enumerated in this section, and to have information concerning those rights be made available to the general public.

...

5. The granting of these rights to victims must not be construed to deny or disparage other rights possessed by victims.

...

7. As used in this section, "victim" means any person directly and proximately harmed by the commission of a criminal offense under any law of this State. If the victim is less than 18 years of age, incompetent, incapacitated or deceased, the term includes the legal guardian of the victim or a representative of the victim's estate, member of the victim's family or any other person who is appointed by the court to act on the victim's behalf, except that the court shall not appoint the defendant as such a person.

Nevada Constitution, Art. 6, §6, provides, in relevant parts:

1. The District Courts in the several Judicial Districts of this State have original jurisdiction in all cases excluded by law from the original jurisdiction of justices' courts.

Dixon v. State, 83 Nev. 120 (1967).

Eureka County Bank Habeas Corpus Cases, 35 Nev. 80 (1912).

Zebe v. County of Lander, 112 Nev. 1482 (1996).

Southwest Gas Corp. v. Third Judicial District Court, 85 Nev. 40, 42 (1969).

State v. Steward, 74 Nev. 65, 67, 73 (1958).

Walker v. State, 78 Nev. 463 (1962).

State v. Zimmer, 198 Kan. 479 426 P.2d 267 (1967).

1 People v. Abbott, 47 Ca. 2d 362, 303 P. 2d 730 (1956).

2 State v. Ring, 54 Wash. 2d 250, 339 P.2d 461 (1959).

3 Smith v. State, 101 Nev. 167 (1985).

4 Shannon v. State, 105 Nev. 782, 791-792 (1989).

5 Heath v. Alabama, 474 U.S. 82, 106 S. Ct. 433, 88 L.Ed.2d
6 (1985).

7 McNamara v. State, 132 Nev. 606 (2016).

8 The circumstances and timeline of the crimes are alleged to
9 have occurred during a two-week period. This timeline was
10 presented by the State in the opposition to the motion (D14).

11 There does not appear to be any argument from Mr. Guzman as
12 to the accuracy of the timeline presented by the State. Further,
13 the evidence as well as Mr. Guzman's statement support this
14 statement of the facts regarding the timing of the alleged events.
15 Thus, for purposes of the decision on this motion, the Court finds
16 that the facts as alleged by the State are incorporated herein and
17 will be used in determining if venue of all the charges in the
18 Indictment is proper in Washoe County.

19 The State's allegations are that Mr. Guzman committed the
20 first crime on January 3, 2019, a burglary in Washoe County. The
21 next day, he committed another burglary at the same location and
22 stole a firearm (revolver), among other items. On January 9, 2019,
23 Mr. Guzman burglarized a Douglas County residence, took items, and
24 murdered the resident with the stolen firearm from Washoe County.
25 On January 13, 2019, Mr. Guzman burglarized another Douglas County
26 residence and murdered the resident with the same stolen firearm.
27 On January 16, 2019, Mr. Guzman returned to the original Washoe
28 County house and property of the January 3, 2019 and January 4,

1 2019 crimes, murdered the two residents with the stolen firearm
2 and took multiple additional items, including other firearms.
3 During these two weeks, Mr. Guzman kept the stolen property in his
4 BMW automobile, in his Carson City apartment and/or in the Carson
5 City foothills, where he buried multiple other firearms stolen
6 from the Washoe County residence. The State presented evidence on
7 each crime scene in detail and the searches of Mr. Guzman's vehicle
8 and apartment, and of the items found. The State asserts the
9 revolver used to commit the alleged murders was found in his car.

10 The Court having reviewed the pleadings, testimony and
11 evidence adduced at the hearings conducted on this matter, as well
12 as the oral argument and legal authority provided in support of
13 and in opposition to the motion (D14), and considering the facts
14 as discussed above, the Court finds as follows.

15 Guzman cites cases on jurisdiction and venue to support his
16 claims of improper venue in Washoe County on the Douglas County
17 charges. The Court finds *jurisdiction* is defined as the area where
18 the court has power to exercise its authority, while *venue* is the
19 appropriate place for a case to be heard.

20 Based on the Nevada Constitution, Art. 6, §6.1 the district
21 courts in the several judicial districts of Nevada have original
22 jurisdiction in all cases excluded by law from the original
23 jurisdiction of justices' courts, this Court finds it has
24 jurisdiction over all the charges in the Indictment. However,
25 separate from determining jurisdiction, the Court must in this
26 decision decide on the proper venue for the Douglas County charges.

27 The Court finds Eureka County Bank Habeas Corpus Cases, 35
28 Nev. 80, 128 (1912) not applicable to Mr. Guzman. He was allegedly

1 present in Douglas County and directly involved in committing the
2 alleged crimes there.

3 Southwest Gas v. District Court, 85 Nev. 40, 42 (1969),
4 wherein the Lander County district attorney filed a case alleging
5 a class action claim on behalf of the other counties is not
6 supportive of the motion to dismiss. Unlike the Southwest case,
7 in the instant case, the district attorneys of Douglas and Washoe
8 counties agreed that the Washoe County district attorney shall
9 prosecute all the Douglas County charges.

10 The Court also finds Zebe v. County of Lander, 112 Nev. 1482
11 (1996) has no implications for the instant case. In Mr. Guzman's
12 case, the Douglas and Washoe County district attorneys have agreed
13 that the Washoe County district attorney will prosecute all the
14 Douglas County charges.

15 In considering similar issues relating to crimes partially
16 committed in Nevada and partially committed in another state, the
17 Nevada Supreme Court has found that NRS 171.020 should be given
18 full interpretation as intended by the Legislature. Meaning that
19 the statute gives jurisdiction to Nevada courts whenever a person
20 with intent to commit a crime does any act within this state in
21 pursuance or partial pursuance *of the intent* which culminates in
22 a crime either in or out of this state. The statute does not
23 require that there be partial execution of the actual crime; it
24 only requires some carrying out of the criminal intent in Nevada.
25 See, Shannon v. State, 105 Nev. 782, 791-792 (1989); Vincze v.
26 Sheriff, 86 Nev. 474, 477 (1970); Smith v. State, 101 Nev. 167
27 (1985); McNamara v. State, 132 Nev. 606 (2016).

1 The Nevada Supreme Court has found jurisdiction in this state
2 for crimes that began in Nevada or elsewhere that were completed
3 in Nevada or in another state.

4 The Court finds that the cases involving crimes committed in
5 two different states are similar to Mr. Guzman's charges. Nevada
6 court's jurisdiction extends to crime sprees or common plans over
7 state lines. It follows that crime sprees or common plans over
8 county lines would allow that the crimes could be tried in one
9 county.

10 The Court finds that while the Douglas acts and the Washoe
11 acts took place in different counties, the offenses are allegedly
12 part of a common scheme or plan. In Washoe County, Mr. Guzman
13 allegedly stole the revolver and drove his BMW to Douglas County
14 and back again to Washoe County to commit the alleged murders and
15 burglaries in both counties. The stealing of the revolver and
16 knowledge of property to steal in Douglas County were all part of
17 his plan to gain money.

18 The Court finds the joinder of the Washoe and Douglas County
19 crimes in the same Indictment is proper. The allegations are
20 alleged to be connected together or constitute parts of a common
21 scheme or plan. Washoe County the proper venue to try Counts III,
22 IV, V, and VI of the Indictment.

23 As to Guzman's argument on removal based on NRS 174.455, that
24 statute covers removal from a court to another, if the defendant
25 applies for removal because he or she cannot secure a fair and
26 impartial trial in the first venue. Such an application may only
27 be made after voir dire has been conducted. The Court finds this
28 argument premature because no trial has begun.

1 Further, the Court finds venue for all the counts in the
2 Indictment in this matter is appropriate in Washoe County pursuant
3 to NRS 171.030.

4 When a public offense is committed in part in one county
5 and in part in another or the acts or effects thereof
6 constituting or requisite to the consummation of the
7 offense occur in two or more counties, the venue is in
8 either county.

9 In addition, the Court finds NRS 171.060 establishes Washoe
10 County as the proper venue for the charges.

11 When property taken in one county by burglary, robbery,
12 larceny or embezzlement has been brought into another,
13 the venue of the offense is in either county, but if, at
14 any time before the conviction of the defendant in the
15 latter, the defendant is indicted in the former county,
16 the sheriff of the latter county must, upon demand,
17 deliver the defendant to the sheriff of the former.

18 The Court also finds that judicial economy, and Nevada
19 Victims' Bill of Rights support venue in Washoe County as argued
20 by the State.

21 Thus, the Court finds that by a preponderance of the
22 circumstantial evidence the State has proven Washoe County is the
23 proper venue for Counts III, IV, V and VI of the Indictment. The
24 State has shown that the Douglas and Washoe County allegations are
25 connected and part of an alleged common scheme or plan.

26 Based on the foregoing, good cause appearing and in the
27 interest of justice,

28 IT IS HEREBY ORDERED that the Motion to Dismiss - Improper
Venue (D-14) is DENIED.

DATED this 12 day of January, 2020.

Connie J. Stenheimer
DISTRICT JUDGE

CERTIFICATE OF SERVICE

CASE NO. CR19-0447

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 12 day of January, 2020, I filed the **ORDER DENYING MOTION TO DISMISS - IMPROPER VENUE (D-14)** with the Clerk of the Court.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 Personal delivery to the following: [NONE]

 Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User Agreement.

CHRISTOPHER HICKS, ESQ. for STATE OF NEVADA

MARK JACKSON, ESQ. for STATE OF NEVADA

TRAVIS LUCIA, ESQ. for STATE OF NEVADA

JOHN ARRASCADA, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)

KATHERYN HICKMAN, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)

GIANNA VERNES, ESQ. for WILBER ERNESTO MARTINEZ GUZMAN (TN)

DIV. OF PAROLE & PROBATION

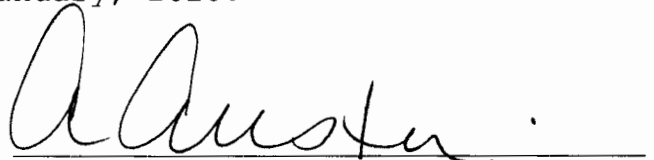
 Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]

 Placed a true copy in a sealed envelope for service via:

 Reno/Carson Messenger Service - [NONE]

 Federal Express or other overnight delivery service [NONE]

DATED this 12 day of January, 2020.



CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on December 11, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

John Reese Petty
Chief Deputy Public Defender

I further certify I served a copy of this document by e-mailing a true and correct copy to:

Hon. Connie J. Steinheimer
Second Judicial District Court, Dept. 4

John Arrascada
Washoe County Public Defender

Katheryn Hickman
Chief Deputy Public Defender

Gianna Verness
Chief Deputy Public Defender

Joseph W. Goodnight
Chief Deputy Public Defender

/s/ Tatyana Kazantseva
TATYANA KAZANTSEVA