IN THE SUPREME COURT OF THE STATE OF NEVADA

HAROLD EDWARDS,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: C-15-310695-1

Docket No: 83046

RECORD ON APPEAL
VOLUME
5

ATTORNEY FOR APPELLANT
HAROLD EDWARDS # 1169986,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

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

C-15-310695-1 STATE OF NEVADA vs. HAROLD EDWARDS

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DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **November 13, 2015**

C-15-310695-1 State of Nevada
vs
Harold Edwards

November 13, 2015 10:00 AM Initial Arraignment

HEARD BY: Weed, Randall F. **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Kristen Brown

RECORDER: Kiara Schmidt

REPORTER:

PARTIES PRESENT:

Edwards, Harold	Defendant
Public Defender	Attorney
Savage, Jordan S.	Attorney

JOURNAL ENTRIES

- Deputized Law Clerk Kathleen Wilde appearing for the State.

Colloquy between Court, counsel and the deft. regarding the deft. representing himself. COURT ORDERED, matter CONTINUED and set in front of Department 8 to conduct a Faretta Canvass.

CUSTODY (COC)

11/18/15 8:00 AM ARRAIGNMENT CONTINUED...FARETTA CANVASS (DEPT. 8)

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**November 18, 2015**

C-15-310695-1 State of Nevada
vs
Harold Edwards

November 18, 2015 8:00 AM All Pending Motions

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Tena Jolley

RECORDER: Jill Jacoby

REPORTER:

PARTIES PRESENT:

Glasgow, Justin	Attorney
Jones, Tierra D.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- ARRAIGNMENT CONTINUED...FARETTA CANVASS

Defendant not present, in custody. Correction Officer advised that the Defendant was to be transported to Department 17. COURT ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 11/23/15 8:00 AM

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**November 23, 2015**

C-15-310695-1 State of Nevada
vs
Harold Edwards

November 23, 2015 8:00 AM All Pending Motions

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Tena Jolley

RECORDER: Jill Jacoby

REPORTER:

PARTIES PRESENT:

Edwards, Harold	Defendant
Graham, Elana L.	Attorney
O'Brien, Robert E, ESQ	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- ARRAIGNMENT CONTINUED...FARETTA CANVASS

Court conducted a Faretta Canvass of the Defendant. Court strongly recommended that Defendant be defended by a trained lawyer and not represent himself. COURT FOUND Defendant competent to waive his Constitutional right to be represented by an attorney; is waiving his right to counsel freely, voluntarily and knowingly; has a full appreciation and understanding of the waiver and its consequence; and ORDERED, Defendant will be allowed to represent himself. Court DIRECTED Mr. O'Brien to provide the Defendant with all of the discovery, excluding any disks.

DEFT. EDWARDS ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter SET for Trial.

CUSTODY (COC)

1/13/16 8:00 AM CALENDAR CALL

1/25/16 9:30 AM JURY TRIAL

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**January 13, 2016**

C-15-310695-1 State of Nevada
vs
Harold Edwards

January 13, 2016 **8:00 AM** **Calendar Call**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Jennifer Kimmel

RECORDER: Jill Jacoby

REPORTER:

PARTIES PRESENT:

Edwards, Harold	Defendant
Flinn, William W.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Ms. Hojjat, Esq. confirming that all discovery (except the DVD's which are not allowed at Clark County Detention Center (CCDC) to the Defendant. Defendant requested trial be RESET and moved for appointment of Stand-by Counsel. COURT ORDERED, Trial is RESET and the request for Stand-by Counsel is DENIED as the Defendant has completed the Faretta Canvass. COURT FURTHER ORDERED, Mr. Robert Lawson is appointed as investigator. Mr. McCubbin requested the Court clarify how the Defendant will watch the DVD, to which the Court responded the Defendant had the opportunity to see the DVD at the preliminary hearing and his investigator can assist him with further review.

CUSTODY (COC)

3/2/16 8:00 A.M. CALENDAR CALL

3/14/16 9:30 A.M. JURY TRIAL

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**February 22, 2016**

C-15-310695-1 State of Nevada
vs
Harold Edwards

February 22, 2016 **8:00 AM** **Motion to Dismiss**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Shelley Boyle

RECORDER: Jill Jacoby

REPORTER:

PARTIES PRESENT:

Lexis, Agnes	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. not present. Upon Court's inquiry, Ms. Lexis advised the State has not responded as Deft. will enter a plea that will resolve all three of his outstanding cases. COURT ORDERED, a Status Check SET; Matter CONTINUED.

CUSTODY (COC)

03/07/16 8:00 A.M. STATUS CHECK: RESOLUTION....DEFT'S PRO SE MOTION TO DISMISS

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**March 02, 2016**

C-15-310695-1 State of Nevada
vs
Harold Edwards

March 02, 2016 **8:00 AM** **Calendar Call**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Tena Jolley

RECORDER: Jill Jacoby

REPORTER:

PARTIES PRESENT:

Edwards, Harold	Defendant
Flinn, William W.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. Flinn stated that the Defendant is looking taking a plea in another case which would include a dismissal of this case. Court noted it would see the parties back on March 7, the time set for Defendant's Pro Se Motion to Dismiss and Status Check regarding possible resolution. Defendant stated he had provided the investigator with the Writ of Habeas Corpus and requested it be returned to him. COURT SO ORDERED.

CUSTODY (COC)

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**March 07, 2016**

C-15-310695-1 State of Nevada
vs
Harold Edwards

March 07, 2016 **8:00 AM** **All Pending Motions**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Tena Jolley

RECORDER: Jill Jacoby

REPORTER:

PARTIES PRESENT:

Edwards, Harold	Defendant
Kochevar, Brian J.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- STATUS CHECK: RESOLUTION...DEFT'S PRO SE MOTION TO DISMISS

Mr. Kochevar advised that Defendant is set to enter a plea in C310166 on March 9th which will dismiss this case and two other cases. Court noted it reviewed the Motion to Dismiss and Defendant's position that the State has no proof beyond a reasonable doubt indicating that the State need only slight or marginal evidence, a lower threshold; based on Defendant's Motion, COURT ORDERED, Motion DENIED. Defendant inquired regarding return of his writ and Court DIRECTED the State to have investigator, Robert Lawson, return Defendant's Writ of Habeas Corpus document to the Defendant.

CUSTODY (COC)

3/9/16 8:00 AM STATUS CHECK: RESOLUTION

CLERK'S NOTE: Following the hearing and at the request of the District Attorney's Office, COURT ORDERED, matter SET for Status Check regarding resolution.

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**March 09, 2016**

C-15-310695-1 State of Nevada
vs
Harold Edwards

March 09, 2016 **8:00 AM** **Status Check**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Keri Cromer

RECORDER: Jill Jacoby

REPORTER:

PARTIES PRESENT:

Edwards, Harold	Defendant
Flinn, William W.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Statement by Deft. regarding his Guilty Plea Agreement and motions. Court advised it did not have any motions from the Deft. State advised there was no longer an offer available; announced ready to proceed with 3-5 witnesses. COURT ORDERED, trial date of 3/14/2016 VACATED; matter REFERRED to OVERFLOW.

CUSTODY (COC)

3/11/2016 - 8:30 AM - OVERFLOW (DEPT 18)

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**March 11, 2016**

C-15-310695-1 State of Nevada
vs
Harold Edwards

March 11, 2016 **8:30 AM** **Overflow**

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Edwards, Harold	Defendant
State of Nevada	Plaintiff
Villani, Jacob J.	Attorney

JOURNAL ENTRIES

- State estimated trial will take two days. Further, State noted it's concern for the appellate record that the case was sent to overflow after the Defendant requested a continuance. Defendant requested a continuance, advising he hasn't received all the discovery or seen all the videos. Further, Defendant advised this case was to be dismissed as part of negotiations. State advised there are no negotiations in place. Further, State advised the Defendant has waived all claims as to ineffective assistance of counsel, however, it is concerned about the preparedness prong. Defendant requested to withdraw his Pro Se status and advised the motion was sent to the Clerk's Office. Matter TRAILED. Matter RECALLED. Upon Court's inquiry, State advised it can get a computer to allow the Defendant to view the videos today. Court advised the Defendant that if his oral request is granted, the Public Defender would be re-appointed to represent him and that he would receive the same attorney. Defendant advised he will be able to work with her. Court noted this appears to be a delay, but it also does not like the record and the fact that there is outstanding discovery. COURT FINDS under Thomas vs State ground to GRANT the oral request of the Defendant to withdraw self representation and ORDERED, Public Defender APPOINTED. COURT FURTHER ORDERED, matter SET for

Further Proceedings in Department 8.

CUSTODY (COC)

3/16/16 8:00 AM FURTHER PROCEEDINGS

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**March 16, 2016**

C-15-310695-1 State of Nevada
vs
Harold Edwards

March 16, 2016 **8:00 AM** **Further Proceedings**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Tena Jolley

RECORDER: Jill Jacoby

REPORTER:

PARTIES PRESENT:

Edwards, Harold	Defendant
Glasgow, Justin	Attorney
State of Nevada	Plaintiff
Villani, Jacob J.	Attorney

JOURNAL ENTRIES

- Mr. Villani advised that Judge Barker reappointed the Public Defender on this case down in Overflow when the Defendant asked to withdraw his Faretta Canvass. COURT ORDERED Trial date SET.

CUSTODY (COC)

5/18/16 8:00 AM CALENDAR CALL

5/23/16 9:30 AM JURY TRIAL

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**April 06, 2016**

C-15-310695-1 State of Nevada
vs
Harold Edwards

April 06, 2016 **8:00 AM** **All Pending Motions**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Phyllis Irby

RECORDER: Jill Jacoby

REPORTER:

PARTIES PRESENT:

McCubbin, TJ	Attorney
State of Nevada	Plaintiff
Villani, Jacob J.	Attorney

JOURNAL ENTRIES

- The Court noted Judge Barker appointed counsel for Deft therefore, Motion to Appoint Counsel is MOOT. Mr. McCubbin advised he will refile Motion for Discovery. COURT ORDERED, MATTERS RESOLVED.

CUSTODY (COC)

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**May 18, 2016**

C-15-310695-1 State of Nevada
vs
Harold Edwards

May 18, 2016 **8:00 AM** **Calendar Call**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Tena Jolley

RECORDER: Jill Jacoby

REPORTER:

PARTIES PRESENT:

Edwards, Harold	Defendant
Jones, Tierra D.	Attorney
Machnich, Tegan	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Ms. Machnich advised they still had pending investigation. No objection by the State. COURT ORDERED, trial date VACATED and RESET.

CUSTODY (COC)

8/17/2016 - 8:00 AM - CALENDAR CALL

8/22/2016 - 9:30 AM - JURY TRIAL

CLERK'S NOTE: The minutes for this hearing have been prepared by a review of the JAVS recording. kc/7/1/16

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**August 17, 2016**

C-15-310695-1 State of Nevada
vs
Harold Edwards

August 17, 2016 **8:00 AM** **All Pending Motions**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Phyllis Irby

RECORDER: Jill Jacoby

REPORTER:

PARTIES PRESENT:

Edwards, Harold	Defendant
Flinn, William W.	Attorney
O'Brien, Robert E, ESQ	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mr. O'Brien announced not ready for trial; advised he is moving to continue the trial. The State announced ready for trial. Mr. O'Brien advised Deft is being convicted in DC 21 on another case and therefore, is moving to consolidate. COURT ORDERED, TRIAL DATE STANDS.

CUSTODY (COC)

8-22-16 9:30 AM JURY TRIAL (DEPT. VIII)

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**August 17, 2016**

C-15-310695-1 State of Nevada
vs
Harold Edwards

August 17, 2016	**9:30 AM**	**Motion to Consolidate**	**Defendant's Notice Of Motion And Motion To Consolidate [C-15-310166-1/C-15-310695-1]**

HEARD BY: Miley, Stefany **COURTROOM:** RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES PRESENT:

Edwards, Harold	Defendant
Flinn, William W.	Attorney
Lexis, Chad N.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deputy Public Defender Jasmin Spells (counsel in case C310166) advised they filed motion in order to consolidate two cases as they are the same allegations and noted the State had filed a Motion to Consolidate in Department 17. Court inquired of Department 8 trial. Counsel advised if matters are consolidated, the trial in Department 8 would be vacated. Court believed it was too late to consolidate cases. Counsel advised they would be requesting a stay in the matter if the motion is denied. Court inquired why defense was not ready to proceed to trial. Argument by counsel. State advised they were prepared for trial in Department 8 and Department 23 and noted they had never received defense's Motion to Continue. COURT ORDERED, Motion to Consolidate DENIED. State

pointed out there were no offers in these cases. COURT SO NOTED.

CUSTODY (COC)

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**August 19, 2016**

C-15-310695-1 State of Nevada
vs
Harold Edwards

August 19, 2016 **10:00 AM** **Entry of Plea**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Louisa Garcia

RECORDER: Jill Jacoby

REPORTER:

PARTIES PRESENT:

Edwards, Harold	Defendant
Flinn, William W.	Attorney
McCubbin, TJ	Attorney
O'Brien, Robert E, ESQ	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Counsel advised the matter was resolved. Mr. Flinn stated negotiations for the record. Court thoroughly canvassed Defendant on the facts and plea. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. EDWARDS ARRAIGNED AND PLED GUILTY TO BURGLARY (F). Court ACCEPTED plea, and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing. FURTHER ORDERED, trial date VACATED.

CUSTODY (COC)

10/10/16 8:00 AM SENTENCING

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**October 05, 2016**

C-15-310695-1 State of Nevada
vs
Harold Edwards

October 05, 2016	**8:00 AM**	**Motion to Dismiss**	**Deft.'s Pro Se Motion to Dismiss Counsel and Motion for a Faretta Hearing**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Jill Jacoby

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- William Flinn, Dep DA, present on behalf of the State and TJ McCubbin, Dep PD, present on behalf of Deft. Edwards, who is also present.

This is the time set for hearing on Deft.'s Motion to Dismiss Counsel and Motion for a Faretta Hearing. Deft. is set for sentencing on October 10, 2016. Upon Court's inquiry, Deft. stated that he wanted to represent himself at sentencing; he has submitted a Motion to Withdraw his Plea.

Court noted that it had previously conducted a Faretta Canvass for this Deft. and informed him that it is never advisable to represent yourself. Mr. Flinn advised that in the instant case the Deft. has gone back and forth between representing himself and being represented by counsel. In Deft.'s other case (C311212), he represented himself at trial and now he has a Motion to Appoint Counsel for Sentencing. Although the Deft. was found guilty at trial in C311212, it is now part of the negotiations in this case.

Court noted that the Deft. has passed a Faretta Canvass in the past. Therefore, COURT ORDERED, Deft.'s Motion to Dismiss Counsel and Motion for Faretta Canvass is GRANTED; the Public Defender shall turn over Deft.'s file to him.

Deft.'s Notice of Motion and Motion to Withdraw Guilty Plea and Motion for a Faretta Hearing FILED IN OPEN COURT. Although this matter is set for sentencing on October 10, 2016, the Court will instead hear Deft.'s Motion to Withdraw Guilty Plea. Therefore, COURT ORDERED, sentencing date VACATED; the sentencing date will be rescheduled next date, if necessary.

CUSTODY (COC)

10/10/16 8:00 AM DEFT.'S MOTION TO WITHDRAW GUILTY PLEA

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**October 10, 2016**

C-15-310695-1 State of Nevada
vs
Harold Edwards

October 10, 2016	**8:00 AM**	**Motion**	**Deft.'s Motion to WIthdrt**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Jill Jacoby

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Taleen Pandukht, Chf Dep DA, present on behalf of the State; Deft. Edwards present pro se.

This is the time set for hearing on Deft.'s Motion to Withdraw Guilty Plea. Court will hear no oral argument, it will base its decision on the pleadings. Court noted that Deft. entered his plea on August 19, 2016.

The Court reviewed Deft.'s Motion and believes he has failed to present a sufficient reason to permit withdrawal of his guilty plea. The Court reviewed Deft.'s August 19, 2016, plea transcript on the record; Deft. answered 'Yes" five separate time; there is no ineffective assistance. The Court is ready to proceed with sentencing. Deft. represented that he was advised by his counsel to answer "Yes" to everything, he was following counsel's advice. Deft. stated he did not agree with a lot of things said in the plea agreement but he just did what his counsel advised him do to.

Ms. Pandukht inquired as to whether or not, based on Steventon vs. State, if the Court had reviewed the totality of the circumstances and found that there is no fair and just reason for the Deft. to

withdraw his plea. Court CONCURRED; COURT ORDERED, Motion DENIED.

Colloquy regarding sentencing and Stockmeier; Deft. stated there are a bunch of mistakes in the Presentence Investigation (PSI) report. COURT FURTHER ORDERED, matter set for status check. Court directed the Deft. to make a list of all the errors in the PSI, bring them back next date, and the State will get them to Parole and Probation (P&P) so the PSI can be supplemented. A new sentencing date will be set next date.

CUSTODY

10/17/16 8:00 AM STATUS CHECK: CORRECTIONS TO PRESENTENCE INVESTIGATION (PSI) REPORT/SET SENTENCING DATE

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**October 17, 2016**

C-15-310695-1 State of Nevada
vs
Harold Edwards

October 17, 2016	**7:30 AM**	**Status Check**	**Corrections to Presentence Investigation (PSI) Report/Set Sentencing Date**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Debbie Winn

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Genevieve Craggs, Dep DA, present on behalf of the State; Deft. is present pro se.

This is the time set for the Status Check on Corrections to the Presentence Investigation (PSI) report. Court noted that the Deft. was going to provide the Court with a list of corrections to the PSI.

Colloquy; since the Deft. does not have a written list of corrections to the PSI, pursuant to Stockmeier, the Court is ready to proceed with sentencing. Court requested that the Deft. refer to the sentencing recommendation in the PSI and argue whether the Court should or should follow said recommendation. Ms. Craggs advised that the State is seeking habitual treatment and has certified copies of Deft.'s prior Judgments of Conviction (JOC's). Deft. stated that he has not seen the JOC's.

Court noted that pursuant to the negotiations, both parties were stipulating to adjudication under the Large Habitual Criminal Statute; the State has provided at least ten (10) prior felony convictions. The

Judgments of Conviction were marked for identification collectively as State's Exhibit 1 and ADMITTED. The Deft. agreed to a ten (10)- to twenty-five (25)-year sentence. Argument by Deft., he is challenging the sufficiently of the JOC.'s. It appears that he no longer wants to stipulate to the terms of the Guilty Plea Agreement and wants the original charges restored so he can then proceed to trial. COURT ORDERED, matter set for status check. A copy of the JOC's will be made and provided to the Deft. for review.

CUSTODY (COC)

11/21/16 8:00 AM STATUS CHECK: SENTENCING

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **November 21, 2016**

C-15-310695-1 State of Nevada
vs
Harold Edwards

November 21, 2016 8:00 AM Sentencing

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Jill Jacoby

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Tierra Jones, Dep DA, present on behalf of the State; Deft. Edwards present pro se

DEFT. EDWARDS ADJUDGED GUILTY of BURGLARY (F). Ms. Jones advised that this matter was continued from October 17, 2016, at which time the State presented the Court with the certified Judgments of Conviction (JOC's) in regards to the Deft. Court acknowledged receipt of JOC's and advised they were checked. Deft. represented that he also received a copy.

Additionally, Ms. Jones advised that based upon the JOC's, the State would request that the Court follow the terms of the plea agreement and sentence the Deft. ten (10) to twenty-five (25) years under the Large Habitual Criminal Statute. The Deft. was sentenced in his other case, C311212, on October 27, 2016. Pursuant to the negotiations, the instant case it to run concurrent with his other case. Argument by the Deft. regarding the validity of the JOC's; Deft.'s review of JOC's shows that he was not represented by counsel in the criminal proceedings in Illinois, the records just show Public Defender but no name and there are no transcripts to show affirmatively that he was represented by counsel. Therefore, the District Attorney has failed to comply with the statutory requirements for the enhancement; if the convictions are unconstitutional then the recommended enhanced sentence is

null and void. Deft. is requesting concurrent time with C311212 and a sixteen (16)- to seventy-two (72)-month sentence, which is what is recommended by Parole and Probation (P&P). COURT ORDERED, sentencing CONTINUED; the Court will hear no oral argument, it will issue its decision next date. The Court would like to review the JOC's again.

CUSTODY (COC)

CONTINUED TO: 11/23/16 8:00 AM

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**November 23, 2016**

C-15-310695-1 State of Nevada
vs
Harold Edwards

November 23, 2016 8:00 AM Sentencing

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Jill Chambers

RECORDER: Jill Jacoby

REPORTER:

PARTIES PRESENT:

Edwards, Harold	Defendant
Kochevar, Brian J.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. requested the Court allow him to argue. Court advised Deft. that argument was already heard at the previous hearing. Deft. continued to argue. COURT CONTINUED MATTER.

CUSTODY

CONTINUED TO: 12/7/16 8:00 AM

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**December 07, 2016**

C-15-310695-1 State of Nevada
vs
Harold Edwards

December 07, 2016 8:00 AM Sentencing

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Jill Jacoby

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Tierra Jones, Dep DA, present on behalf of the State; Deft. Edwards present pro se.

Court noted that this is the time set for Sentencing; argument was held back on November 21, 2016, and the Deft. and the Court were provided certified copies of Deft.'s prior Judgments of Conviction (JOC's) on October 17, 2016. The matter was continued from November 21 because the Deft. brought up some issues with his prior JOC's and the Court wanted to review them again. Pursuant to the Deft.'s Guilty Plea Agreement, this is a stipulated sentence. Negotiations: Both parties stipulate to adjudication under the Large Habitual Criminal Statute with a sentence of ten (10) to twenty-five (25) years. The instance case is to run concurrent with C311212. The Court is following the stipulation and has reviewed all pertinent documents. Additionally, the Court is satisfied that the State has met their responsibility with regard to the JOC's and the Deft.'s rights have not been violated. The Court indicated on November 21 that it would hear no oral argument.

Therefore, DEFT. EDWARDS is ADJUDGED GUILTY of BURGLARY (F). COURT ORDERED, pursuant to the Habitual Criminal Statute, Deft. shall be adjudicated as a LARGE HABITUAL CRIMINAL OFFENDER and, in addition to the $25.00 Administrative Assessment fee, $150.00 DNA

Analysis fee including testing to determine genetic markers, and the $3.00 DNA Collection fee, Deft. SENTENCED to a MAXIMUM of TWENTY-FIVE (25) YEARS and a MINIMUM of TEN (10) YEARS, in the Nevada Department of Corrections (NDC), CONCURRENT with C311212, with FOUR HUNDRED FIFTY (450) DAYS credit for time served.

BOND, if any, EXONERATED

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**April 19, 2017**

C-15-310695-1 State of Nevada
vs
Harold Edwards

April 19, 2017	**8:00 AM**	**Motion**	**Deft.'s Ex-Parte Motion for Immediate Release**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Vivian Luong, Dep DA, present on behalf of the State; Deft. Edwards is incarcerated in the Nevada Department of Corrections (NDC) and not present.

This is the time set for hearing on Deft.'s Motion for Immediate Release, which he filed pro se. The Deft. is requesting that he be given all the color photographs from the Bellagio Hotel and Casino that were given to his counsel. COURT ORDERED, the Motion is DENIED because it is premature. Deft.'s Petition for Writ of Habeas Corpus has not been granted and an evidentiary hearing has not been set. Additionally, Deft. failed to cite any case law in his Motion and he has not shown good cause.

State to prepare Findings of Fact and Conclusions of Law consistent with their opposition.

NDC

CLERK'S NOTE: A copy of this minute order was mailed to Harold Edwards #7024721, High Desert

State Prison, P.O. Box 650, Indian Springs, Nevada, 89070.

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**May 01, 2017**

C-15-310695-1 State of Nevada
vs
Harold Edwards

May 01, 2017	**8:00 AM**	**Motion**	**Ex-Parte Motion for Court to Order that Transcripts for the Court Dates of 11/21 and 12/7 and 10/10 and 8/17/16 be Released to Deft.**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Karen Mishler, Dep DA, present on behalf of the State; Deft. Edwards is incarcerated in the Nevada Department of Corrections (NDC) and not present.

This is the time set for hearing on the Ex-Parte Motion for Court to Order that Transcripts from the Court Dates of 11/21 and 12/7 and 10/10 and 8/17/2016, be Released to Deft. COURT ORDERED, Motion GRANTED.

NDC

CLERK'S NOTE: A copy of this minute order along with the requested transcripts were mailed to Harold Edwards #1169986, High Desert State Prison, P.O. Box 650, Indian Springs, Nevada, 89070.

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**May 24, 2017**

C-15-310695-1 State of Nevada
vs
Harold Edwards

May 24, 2017 **8:00 AM** **Petition for Writ of Habeas Corpus**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Vivian Luong, Dep DA, present on behalf of the State; Deft. Edwards is incarcerated in the Nevada Department of Corrections (NDC) and is not present.

This is the time set for hearing on Deft.'s Petition for Writ of Habeas Corpus; however, Court noted that it has received an Order from the Nevada Supreme Court Directing Transmission of Record. The Order was filed on May 10, 2017, and it appears that the Clerk of the District Court has thirty (30) days, from the date of this Order, to transmit a certified copy of the complete trial court record of the appeal.

Ms. Luong inquired as to whether the Court was going to hear the Deft.'s Writ today, the State filed a Response. COURT ORDERED, matter OFF CALENDAR as this Court has been stripped of jurisdiction due to the Deft.'s filing with the Supreme Court.

NDC

CLERK'S NOTE: A copy of this minute order was mailed to Harold Edwards #1169986, High Desert State Prison, P.O. Box 650, Indian Springs, Nevada, 89070.

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**February 05, 2018**

C-15-310695-1 State of Nevada
vs
Harold Edwards

February 05, 2018	**8:00 AM**	**Status Check**	**Supreme Court Order of Reversal**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Jonathan Cooper, Chf Dep DA, present on behalf of the State; Deft. Howard is incarcerated in the Nevada Department of Corrections (NDC) and is not present.

This is the time set for the Status Check on the Supreme Court Order of Reversal. The Deft. filed a document entitled "Defendant/Petitioner Intends to Present the Following Issues in his Post-Conviction Writ of Habeas Corpus" on December 16, 2016. This Court construed the document as a Post-Conviction Petition for Writ of Habeas Corpus and DISMISSED it; however, it appears the document was only a Notice to the District Court on the claims Deft. intended to raise. Subsequently, the Deft. filed a Petition for Writ of Habeas Corpus on March 6, 2017.

Court directed the State to obtain the above-mentioned Petition and respond to it within the next sixty (60) days. COURT ORDERED, matter set for status check. If the Deft. has filed a Reply, the matter can go forward, if not, the matter may have to be continued again.

NDC

04/09/18 8:00 AM STATUS CHECK: STATE'S RESPONSE TO DEFT.'S PETITION FOR WRIT OF HABEAS CORPUS FILED 03/06/17

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**April 09, 2018**

C-15-310695-1 State of Nevada
vs
Harold Edwards

April 09, 2018	**8:00 AM**	**Status Check**	**State's Response to Deft.'s Petition for Writ of Habeas Corpus filed 03/06/17**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Kelsey Einhorn, Dep DA, present on behalf of the State; Deft. Edwards is not present, he is incarcerated in the Nevada Department of Corrections (NDC).

This is the time set for the Status Check on the State's Response to Deft.'s Petition for Writ of Habeas Corpus. The Deft. filed on December 16, 2016, a document entitled Deft. Intends to Present the Following Issues in His Post-Conviction Writ of Habeas Corpus; it was treated as a Petition for Writ of Habeas Corpus and dismissed on December 21, 2016. The Deft. then filed a Notice of Appeal on January 25, 2017, but voluntarily dismissed the appeal and on February 28, 2018, the Nevada Supreme Court filed an Order Dismissing Appeal and the appeal was closed. The Deft. then filed a Petition for Writ of Habeas Corpus (Post-Conviction) on March 6, 2017, the State's Response was filed on April 18, 2017, and the Court continued the matter for the State to supplement their response and the Deft. to file a Reply but nothing has been filed.

Deft. fails to establish good cause to overcome the procedural default; all the necessary facts and law were available for direct appeal but the Deft. instead chose to withdraw his appeal and forever forego his claims.

Deft. fails to substantiate prejudice to excuse his procedural default because there were no violations of the Deft.'s due process rights or judicial error in his sentencing; he claims his sentence is cruel and unusual because it is disproportionate to the crime but he misapprehends the purpose of his sentence. The Deft.'s ten (10)- to twenty-five (25)-year sentence is not for taking a lunch bag but for being an habitual criminal. The ten (10)- to twenty-five (25)-year sentence for Burglary does not shock the conscience and is, therefore, not unconstitutional.

Deft. fails to substantiate prejudice to excuse his procedural default because there was no requirement that the Deft. sign an Amended Information.

Deft. fails to substantiate prejudice to excuse his procedural default because the Court properly DENIED his Motion to Withdraw his Guilty Plea, which is in the sound discretion of the Court. The Deft. claim that he was coerced into signing the guilty plea is belied by the record; in the Deft.'s Guilty Plea Agreement he acknowledged that he was signing the agreement voluntarily.

There was no prosecutorial misconduct; the Deft. indicates in his pleadings that the State was vindictive because the prosecutor displayed his personal animus towards him in a statement he made to him; however, he failed to raise that issue on appeal and has, therefore, lost that assertion.

The Deft. received effective assistance of counsel; he claims counsel failed to investigate his claim of innocence; however, that is belied by the record and said claim should have been raised on direct appeal. Therefore, COURT ORDERED, Deft.'s Petition is DENIED.

State to prepare Findings of Fact and Conclusions of Law consistent with their Response.

NDC

CLERK'S NOTE: A copy of this minute order was mailed to Harold Edwards #1169986, Southern Desert Correctional Center, P.O. Box 208, Indian Springs, 89070.

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**December 02, 2019**

C-15-310695-1 State of Nevada
vs
Harold Edwards

December 02, 2019	**8:30 AM**	**Motion**	**Deft.'s Motion to Extend Prison Copywork Limit**

HEARD BY: Silva, Cristina D. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Jory Scarborough, Dep DA, present on behalf of the State; Deft. Edwards is incarcerated in the Nevada Department of Corrections (NDC) and not present.

This is the time set for hearing on Deft.'s Motion to Extend Prison Copywork Limit, which he filed pro se. The Court has reviewed the Motion. Upon Court's inquiry, Mr. Scarborough advised the State takes no position. COURT ORDERED, the Motion is GRANTED up to $500. If the Deft. needs more than that, he will have to file another motion with additional information as to what he is seeking copies of and for what purpose.

NDC

CLERK'S NOTE: A copy of this minute order was mailed to Harold Edwards #1169986, Southern Desert Correctional Center, P.O. Box 208, Indian Springs, Nevada, 89070.

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**April 20, 2020**

C-15-310695-1 State of Nevada
vs
Harold Edwards

April 20, 2020	**1:45 PM**	**Motion**	**Motion for the Court to Order Southern Desert's Correctional Center Gang Intelligence Department to Release Petitioner's Corrections File and Prison Records**

HEARD BY: Silva, Cristina D. **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Jacob Villani, Chf Dep DA, present on behalf of the State; Petitioner Harold Edwards is incarcerated in the Nevada Department of Corrections (NDC) and is not present.

This is the time set for hearing on the Motion for the Court to Order Southern Desert's Correctional Center Gang Intelligence Department to Release Petitioner's Corrections File and Prison Records, which he filed pro se.

The Court advised that it has reviewed the Motion but there was no response from the State; however, they were not served and, upon further consideration, it appears that this is a matter for the

Attorney General's office in lieu of the District Attorney's office. Mr. Villani CONCURRED; therefore, COURT ORDERED, the Motion is DENIED without prejudice. The Deft. is free to re-file his Motion; however, he must serve the Motion on the Attorney General's office and the Warden for the Southern Desert Correctional Center before this Court can consider it.

NDC

CLERK'S NOTE: A copy of this minute order was mailed to Harold Edwards #1169986, Southern Desert Corrections Center, P.O. Box 208, Indian Springs, Nevada, 89070.

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**June 01, 2020**

C-15-310695-1 State of Nevada
vs
Harold Edwards

June 01, 2020	**3:00 AM**	**Motion for Order**	**Motion for Order to SDCC Gang Intelligence Department to Release Petitioner's Correction File and Prison Records**

HEARD BY: Silva, Cristina D. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- The Motion for Order to SDCC Gang Intelligence Department to Release Petitioner's Correction File and Prison Records, which he filed pro se, came before this Court on its June 1, 2020, Chamber Calendar. The Petitioner submitted a similar motion on March 20, 2020. On April 20, 2020, the Court DENIED that Motion without prejudice, noting that the Petitioner must serve the Nevada Attorney General's Office and the Warden for the Southern Desert Correctional Center before this Court can consider the Motion. COURT ORDERED, the Motion is DENIED without prejudice, for the same reason. The Court will mail another copy of the April 20, 2020, Order to the Petitioner.

CLERK S NOTE: A copy of this minute order was mailed to Harold Edwards #1169986, Southern Desert Corrections Center, P.O. Box 208, Indian Springs, Nevada, 89070.

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**September 14, 2020**

C-15-310695-1 State of Nevada
vs
Harold Edwards

September 14, 2020	**1:45 PM**	**Motion**	**Motion to Extend Prison Copywork Limit**

HEARD BY: Silva, Cristina D. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Kory Schlitz

RECORDER: Gina Villani

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Defendant not present and in custody in the Nevada Department of Corrections; Deputy District Attorney Dena Rinetti present on behalf of the State.

Ms. Rinetti informed the Court this matter is meant for the Attorney General's Office. COURT ORDERED, Motion to Extend Prison Copywork Limit DENIED WITHOUT PREJUDICE, FINDINGS there is no basis as to why the Defendant needs to exceed the threshold. COURT STATED the Defendant indicated they are litigating a Habeas Corpus actions, however there is no pending Motion and the Court feels the Attorney General's Office was not properly served; adding if the Court wants to file the Motion again, however the AG's Office needs to be served.

NDC

CLERK'S NOTE: This Minute Order has been mailed to: Harold Edwards #1169986, PO BOX 208, Indian Springs, Nevada 89018. (9-15-2020 ks)

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**October 05, 2020**

C-15-310695-1 State of Nevada
vs
Harold Edwards

October 05, 2020	**1:45 PM**	**Motion**	**Motion Asking the Court to Order SDCC Law Library to Grant Defendant Access to the Law Library Five Days Per Week or in the Alternative 3 days a week.**

HEARD BY: Silva, Cristina D. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Kory Schlitz

RECORDER: Gina Villani

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Defendant not present; Deputy District Attorney Dena Rinetti present on behalf of the State.

COURT ORDERED, Motion DENIED and FINDS the Defendant can access the law library pursuant to the detention center rules and regulations, and the Defendant must comply with those rules of the Detention center, adding if the Defendant needs an exception to the rules, they will need to file a Motion as well as why the permitted time is not sufficient, noting it cannot be a blanket request, and the Court cannot dictate to the facility about how to run it.

NDC

CLERK'S NOTE: A copy of this Minute Order has been sent to Harold Edwards #1169986, PO BOX 208, Indian Springs, Nevada 89070. (10-6-2020 ks)

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**May 10, 2021**

C-15-310695-1 State of Nevada
vs
Harold Edwards

May 10, 2021	**11:00 AM**	**Motion for Order**	**Motion for Order to Order Southern Desert Correctional Center's Gang Intelligence Department to Release Petitioner's Correctional File and Prison Records**

HEARD BY: Clark Newberry, Tara **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carina Bracamontez-Munguia

RECORDER: Robin Page

REPORTER:

PARTIES PRESENT:

Scarborough, Michael J.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Court noted Deft. was in custody at the Nevada Department of Correction (NDC) and not transported. Upon Court's inquiry, Mr. Scarborough stated they were not served with a copy of the motion. Further, Mr. Scarborough mentioned it seems to be a time calculation issue, so he consulted with the appellate unit and was advised this matter is appropriate for the Attorney General to handle; he noted he was unsure if they were served. Based on not having evidence of proper service, COURT ORDERED, motion DENIED WITHOUT PREJUDICE; Deft. may re-file and serve the motion. Court Advised it would prepare the order.

NDC

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	**COURT MINUTES**	**May 19, 2021**

C-15-310695-1 State of Nevada
vs
Harold Edwards

May 19, 2021	**11:00 AM**	**Motion to Modify Sentence**	**Motion to Modify and or Correct Illegal Sentence**

HEARD BY: Silva, Cristina D. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Kory Schlitz

RECORDER: Gina Villani

REPORTER:

PARTIES PRESENT:

Scarborough, Michael J.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Defendant not present and in custody in the Nevada Department of Corrections.

COURT ORDERED, Defendant's presence WAIVED. COURT STATED the Defendant filed this instant Motion on April 27, 2021 and the State filed their Opposition on May 12, 2021, adding they have reviewed the documents and ORDERED, Defendant's Motion to Modify and or Correct Illegal Sentence DENIED. COURT FURTHER STATED as set forth in the State's Opposition the Defendant has not demonstrated that his sentence is not facially illegal, therefor the Court does not have a basis to grant of modify the relief the Defendant is seeking, as well as, the Court lacks jurisdiction since he has already started serving his sentence. COURT NOTED for the record, the issues raised in this Motion were also raised on Direct Appeal and was address by the Supreme Court on April 15, 2019, where the Supreme Court affirmed the denial of a Post Conviction Petition for Writ of Habeas Corpus. COURT INFORMED the State the challenges in this Motion were in the Supreme Court decision, and that information was not part of the State's Opposition, and requested it be in the

Order.

NDC

CLERK'S NOTE: A copy of this Minute Order has been mailed to: Harold Edwards #1169986, PO BOX 208, Indian Springs, Nevada 89070. (5-20-2021 ks)

Certification of Copy and Transmittal of Record

State of Nevada
County of Clark } **SS:**

Pursuant to the Supreme Court order dated July 28, 2021, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises five volumes with pages numbered 1 through 1046.

STATE OF NEVADA,

Plaintiff(s),

vs.

HAROLD EDWARDS,

Defendant(s),

Case No: C-15-310695-1

Dept. No: IX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 4 day of August 2021.

Steven D. Grierson, Clerk of the Court

Amanda Hampton, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

HAROLD EDWARDS,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: C-15-310695-1

Docket No: 83046

RECORD ON APPEAL
VOLUME
4

ATTORNEY FOR APPELLANT
HAROLD EDWARDS # 1169986,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

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

C-15-310695-1 STATE OF NEVADA vs. HAROLD EDWARDS

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Harold Edwards

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When the State moved previously to consolidate another burglary case into Judge Miley's courtroom, was that forum shopping? Why is it forum shopping when I do it and not for them?

THE COURT: If they call you, if the -- they have to ask the other judge -- the judge that has the case, Mr. O'Brien, whether you have any objection to the consolidation. And I'm not going to consolidate this one. I'm going to try this one.

MR. O'BRIEN: I understand. But I am asking a question of the Court --

THE COURT: I don't know the facts of the other case, sorry.

MR. O'BRIEN: Okay. You just accused us of forum shopping, and I'm asking, why is it forum shopping when I do it and not when they do?

THE COURT: Well, they have to ask the Court as well.

MR. O'BRIEN: Okay. But Your Honor just said that the motion will be denied because it's forum shopping. What I'm asking --

THE COURT: No, I said it is forum shopping.

I'm ready to go to trial on this case. You asked for a continuance because of the conviction in Department 21 and that isn't a reason to continue a case. He's got a case. We'll go to trial on Monday at 9:30.

MR. O'BRIEN: Your Honor, he has six cases.

THE COURT: Right.

THE DEFENDANT: Your Honor, can I speak, sir?

THE COURT: No, you talk to your attorney. You have a good attorney.

MR. FINN: Your Honor, to make it -- just to add to the record as well, the motion to consolidate was filed on Friday. So it was grossly untimely to begin with. The State's ready for trial next week.

MR. O'BRIEN: And, just again, object to any discussion with motion to

consolidate from another department. While I respect the authority of this Court, I do believe in a motion to consolidate rather than accepting jurisdiction from another judge. The motion to consolidate is based on the idea that because the cases are so similar, strategically it makes sense to be tried together. It is a common practice for the State do to this.

THE COURT: Often happens.

MR. O'BRIEN: Yes, and Your Honor --

THE COURT: Often happens.

MR. O'BRIEN: -- we're engaging in exact same --

THE COURT: But --

MR. O'BRIEN: -- in the exact same.

THE COURT: I'm going to go to trial on Monday at 9:30.

MR. O'BRIEN: In that case, Your Honor, I would ask that the Court adopt the pro per discovery motion that Mr. Edwards has made. It was not ruled upon when he was pro per in this case. He filed a discovery motion. We are willing to adopt that discovery motion. We think it's well written. However, at the time when he was pro per, somehow, and I don't understand how, the State blocked the filing of the pro per motion even though Mr. Edwards was his own attorney at the time, that was improper. I'm asking that motion be granted. And that the State --

THE COURT: Brady and statutory --

MR. O'BRIEN: -- be ordered to turn over everything today.

THE COURT: Do you have about an inch and a half file in front of you?

MR. O'BRIEN: Most of that is prior convictions for Mr. Edwards. So, unless that's their trial, I don't have much information.

THE COURT: All right.

MR. O'BRIEN: So I'd ask that you grant the pro per discovery motion.

THE COURT: Make sure -- you know calendar call isn't the date that you ask for the discovery, as you know. I know you're angry. Meet with the State and get prepared.

MR. O'BRIEN: With all due respect, Your Honor, what happens -- as common practice in this jurisdiction, is that the State pre-trials its witnesses after it says ready at calendar call. Now, maybe they know of other information and maybe they don't. But when there is --

THE COURT: Why don't you sit down with them and go over it?

MR. O'BRIEN: Okay.

THE COURT: And you make sure you give him everything he asks for.

MR. FLINN: Well, the PD's been on this case for quite some time now.

THE COURT: All right.

MR. FLINN: And I had no requests. And I didn't think there's anything that I haven't turned over already that wasn't done before [indiscernible].

THE COURT: All right.

MR. O'BRIEN: So to be --

THE COURT: Mr. Edwards wants to talk.

MR. O'BRIEN: I understand and I'll talk to Mr. Edwards.

To be clear, the statutory deadline has passed for the State to turnover evidence they're going to use in the trial. If there's a single piece of evidence that comes out next week, it should be excluded because it was not produced. Every single party here was originally planning on continuing this case to see what happened to sentencing in September. The State took offense to our motion to consolidate, that's their right, certainly not a cooperative system. It's an adversarial

system. But that's how we got here.

MR. FLINN: Well, the State took offense to defense counsel saying he wanted to continue and not mentioning a motion to consolidate and not being forthcoming. So the State is ready to go. I'm done playing games with Mr. Harold Edwards' case. I'm ready to go. Perhaps Mr. Harold Edwards is ready to go as well and get this over with.

MR. O'BRIEN: And, Your, Honor that's -- it's fine for the State --

THE COURT: All right.

MR. O'BRIEN: -- to take offense to whatever they want. But as the Court once reminded me, when the attorneys get personal about things, pretty much everything suffers.

THE COURT: It's not personal. We're going to go to trial. This has been ongoing for -- and set several times.

Do you want to go chat with him? He's kind of anxious to talk.

MR. O'BRIEN: Sure.

THE DEFENDANT: I'm not anxious, sir.

MR. O'BRIEN: Trail this matter.

[Brief pause in proceedings]

MR. O'BRIEN: And, Your Honor, just for the record, we are going to again repeat the request that this -- that the Court grant the discovery request made by Mr. Edwards.

THE COURT: I granted it. I granted it.

MR. O'BRIEN: Okay.

THE COURT: Brady and statutory should be provided.

Go sit with him and they'll provide whatever you don't have in your file.

MR. O'BRIEN: Okay. And we'll address any issues --

THE COURT: We will.

MR. O'BRIEN: -- with anything that hasn't been turned over on Monday morning, Your Honor.

THE COURT: We will.

[Proceeding concluded at 9:37 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual recording in the above-entitled case to the best of my ability.

Gina Villani
Court Recorder

Electronically Filed
5/8/2017 3:48 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

HAROLD EDWARDS,

Defendant.

CASE NO. C310695

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

WEDNESDAY, DECEMBER 7, 2016

TRANSCRIPT OF PROCEEDINGS
SENTENCING

APPEARANCES:

For the State: TIERRA D. JONES, ESQ.
Deputy District Attorney

For the Defendant: PRO SE

RECORDED BY: JILL JACOBY, COURT RECORDER

WEDNESDAY, DECEMBER 7, 2016 AT 9:15 A.M.

THE COURT: C310695, Harold Edwards.

This is time set for rendition of sentence. We had argument a couple of weeks ago. I continued it so I could review -- because Mr. Edwards brought up some issues about his convictions that were used to enhance his sentence. This is a stipulated sentence. Looking at his Guilty Plea Agreement, which shall become part of the record, both parties stipulate to adjudication under the large habitual criminal statute to a 10-to-25 year sentence, and then there's another case, and my case is to go concurrent to that case. I'm following that stipulation.

I've reviewed the commitment papers. I've reviewed the statement of facts, the fingerprints that accompanied the Guilty Plea -- or the certified copies of convictions from the other states, the photographs, the most recent taken at the time that he was convicted on those cases. I reviewed the verification of incarceration and the certification. I'm satisfied that the State has met their responsibility on the Judgments of Conviction. I'm satisfied that Mr. Edwards is wrong, that they did not violate any of his rights in filing that.

Mr. Edwards is adjudged guilty --

THE DEFENDANT: Your Honor, can I --

THE COURT: -- of felony burglary, together with a $25 --

THE DEFENDANT: -- can I address the Court --

THE COURT: -- administrative assessment fee --

THE DEFENDANT: -- pursuant to --

THE COURT: -- a $3 DNA --

THE DEFENDANT: -- pursuant to --

THE COURT: -- assessment --

THE DEFENDANT: -- pursuant to -- pursuant to -- Your Honor, can I address the Court?

THE COURT: No.

THE DEFENDANT: I've got a right to speak --

THE COURT: No, you don't.

THE DEFENDANT: -- before sentence.

THE COURT: You don't.

THE DEFENDANT: -- the federal rules of --

THE COURT: $150 --

THE DEFENDANT: -- the federal rules of criminal --

THE COURT: $150 DNA analysis --

THE DEFENDANT: -- the federal rules state that I got a right to speak before I'm sentenced, Your Honor.

THE COURT: A $250 -- you did --

THE DEFENDANT: I didn't speak --

THE COURT: -- three weeks ago.

THE DEFENDANT: -- that wasn't sentencing.

THE COURT: You're sentenced to 120 days --

THE DEFENDANT: Today is sentencing. That wasn't sentencing, Your Honor. That wasn't sentencing.

THE COURT: 10 to 25 years. Credit for time served of --

THE DEFENDANT: That was not sentencing. That was not sentencing, Your Honor. That was not a sentence.

MS. JONES: 450.

THE DEFENDANT: That was not a sentence, man.

THE COURT: He's adjudged guilty as a habitual criminal.

THE DEFENDANT: And I got -- I got --

THE COURT: Get him out.

THE DEFENDANT: I've got to [indiscernible] my issues and [indiscernible] with this case. The --

THE COURT: Out.

THE DEFENDANT: Your Honor, this is straight up bogus, man. That's why your ass is -- why you keep on getting -- why you keep on getting reversed, man. Because you keep abusing your authority, man. You're playing games on the bench, man, to sentencing people you ain't -- you ain't even seen these bitches, man. Goofy ass dude, man.

THE COURT: The sentence is 120 to 300.

MS. JONES: 450 days' credit.

THE COURT: 450 days' credit.

THE CLERK: 450?

MS. JONES: Yes.

THE COURT: It'll be concurrent to C311212.

[Matter trailed at 9:58 a.m.]

[Matter recalled at 10:00 a.m.]

THE COURT: All right. This is time -- everybody is gone. Mr. Edwards has left the courtroom. I -- and it's C310695. It's about three weeks ago we argued his sentencing, and at the time I -- he challenged the Judgments of Conviction.

Now, I had reviewed them when the State filed the notice of habitual but I hadn't looked at them since. Because Mr. Edwards challenged them at the

sentencing I told him that I would go back and review them a second time and continued it and that I wanted no argument at that time. It just had to do with the verification that those Judgment of Convictions -- because I hadn't seen them for a couple of months.

So I did review them and two weeks ago I -- was the return to sentence him and he wanted to argue at that time and he kept talking over me. And I said, no, I don't want to take argument anymore. We took the argument prior to. So he has argued his sentence. He didn't bring *Stockmeier* up until I think the last time he spoke over me he did. So I had him removed last week and stopped the sentencing. And then -- or two weeks ago and put it on today.

But I had previously taken argument from both parties and continued it again just to review the JOC's a second time to give him that benefit. And I did review them and I'm satisfied that they meet the criteria. He continues to argue and speak over the Court as the transcript will show.

And it was a stipulated judgement. He has been sentenced in Department 21 and the other department. And because it was a good plea and that the Judgments of Conviction met the criteria, they should be made a part of this record. All hearings should be made a part of this record to go to the Supreme Court. I'm sure it's going to be appealed.

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But I didn't do this with the intent of violating anyone's rights. I had listened to the arguments because it's a stipulated sentence. He just is angry.

[Proceeding concluded at 10:03 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual recording in the above-entitled case to the best of my ability.

Gina Villani
Court Recorder

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DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

HAROLD EDWARDS,

Defendant.

CASE NO. C310695

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

MONDAY, OCTOBER 10, 2016

TRANSCRIPT OF PROCEEDINGS
DEFENDANT'S PRO SE MOTION TO WITHDRAW GUILTY PLEA

APPEARANCES:

For the State: TALEEN R. PANDUKHT, ESQ.
Chief Deputy District Attorney

For the Defendant: PRO SE

RECORDED BY: JILL JACOBY, COURT RECORDER

MONDAY, OCTOBER 10, 2016 AT 9:06 A.M.

THE COURT: C310695, Harold Edwards.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: Good morning. Mr. Edwards' pro se motion to withdraw guilty plea.

Are you prepared to respond? I don't need argument. I've looked at both pleadings.

And Mr. Edwards, I've read through your motion, it's well written, but it really doesn't address the issue of why -- sufficient to withdraw a plea. You've terminated your attorney, you want to represent yourself, and so what I did was went back and looked at -- I have a copy of your transcript of your plea.

And that occurred on August 19th, 2016, at 10:34 a.m.

And your attorney says: the parties will stipulate to adjudication under the large habitual criminal statute and to a 10-to-25 year sentence in Nevada Department of Corrections in Case 310695, and the same sentence, 10 to 25, in Counts 1 through 5 in Case 311211. Both parties also stipulate -- the one ending in 95 is our case. Both parties will stipulate to the 364 gross misdemeanor sentence served -- to be served on Count 6 and the other case, will be concurrent, everything will be run concurrent.

The State will not oppose dismissal of two felonies, C310166 and C312326 at rendition of sentence.

And I said to you: Is that your understanding?

Yes, sir.

You accept those negotiations?

And you stopped me in midsentence. You said: Yes, sir.

After discussing the matter fully with your attorneys?

And you said: Yes, sir.

You read, write, and understand English?

Yeah.

And I'm on page 3 of your plea.

You read through your information, your information is a Category B felony, you've discussed it with your attorneys, they answered all your questions to your satisfaction, you're satisfied with their services?

Your answer: Yeah.

You want me to accept this negotiation?

Your answer to me: Yeah.

I charge you information Category B felony, occurring September 17th.

Then we go through the plea and you plead.

And you went in, I said, to commit a felony.

Rather than a felony, the State stops me, a larceny.

Is that right Mr. -- and you again stopped me.

Yes, sir.

Mr. Edwards.

And you accept those negotiations after discussing the matter fully with your attorney?

The Defendant: Yes, sir.

The Court then says: Then your attorney gave you a copy of the Guilty Plea Agreement, you read through that?

Yeah.

And discussed it with them, they answered all your questions.

Yeah.

Again you stopped me. You answered before I could finish the sentence.

To your satisfaction?

Yeah.

You answered that question twice.

Do you have any questions of the Court?

Which I never ask anyone, almost never.

Do you have any questions of the Court about your Guilty Plea Agreement?

You said: No, I don't have any.

Not just no. No, I don't have any.

And then I -- and I'm in the Guilty Plea Agreement. Rather than question you about the difference between consecutive and concurrent, I said I will follow -- I didn't get involved in the negotiation earlier, but I'm in the middle of the discussion. And we're in page -- I think it's page 2 of the Guilty Plea Agreement that instructs you on what the difference is a consecutive and concurrent.

And I said: I will follow the recommendation you negotiated with your -- with the District Attorneys. I just want you to know that up front.

And that didn't have anything to do with the plea, but it had to do with the plea transcript.

Because both parties stipulate to adjudication under large

habitual statute and you will receive a 10-to-25 year sentence and a concurrent one on C311212. Both parties stipulate to 364 days.

Is that your understanding?

Your answer: Yes, sir.

Then later on page 12 of your transcript. All right.

You still want me to accept this deal?

Yeah.

That's the second time you said that.

You understand as a consequence of your plea, and we go through that.

Now, on page -- line 25.

You're not eligible for probation, do you understand that?

Your answer: Yeah

And I said: I will follow the concurrent requirements -- or negotiation.

Other than what we've talked about here in Court, no one's promised you a sentence have they?

No.

And then we talk about citizenship.

Now, by pleading guilty -- and I'm on page 6 of your plea agreement -- you understand you're giving up the right to the privilege against self-incrimination, including the right to refuse to testify at trial.

Do you understand that?

Yeah.

You're giving up the right to a speedy and a public trial by

an impartial jury, free of excessive pretrial publicity prejudicial to the defense.

Do you understand that?

Yeah.

You're giving up the right to confront and cross-examine witnesses who would testify against you; the right to testify in your own behalf; the right to subpoena witnesses to testify for you; and the right to appeal your conviction with the assistance of an attorney, either appointed or retained.

Do you understand?

And your answer: Yes, sir.

And I asked you again, the third time.

Do you still want me to accept this deal? Actually, you still want me accept it?

Your answer: Yes, sir.

Third time.

You discussed the elements of the original charges against you with your attorney; you understand what's going on today?

Your answer: Yeah.

Do you understand the State would have to prove each element of the charge against you at trial beyond a reasonable doubt to convict you?

Your answer: Yes, sir.

You've discussed with your attorneys any possible defenses, defense strategies, and circumstance which might be in your favor?

Your answer: Yeah.

All the foregoing elements, consequences, rights, and

waiver of rights have been thoroughly explained to you by your attorney?

Your answer: Yeah.

You believe pleading guilty and accepting this plea bargain is in your best interest and a trial would be contrary to your best interest?

Your answer: Yeah.

You still want me to accept it?

Fourth time.

Yeah.

You've signed the Guilty Plea Agreement voluntarily after consultation with your attorneys; you're not acting under duress or coercion by virtue of promises of any other leniency except for those set out in the agreement?

Your answer: Yeah.

You're not under the influence of anything right now that would impair your ability to understand what's going on?

No.

And your attorney, again, has answered all your questions regarding this Guilty Plea Agreement and its consequences to your satisfaction; you're satisfied with their services?

Your answer: Yeah.

And you want me to accept it?

Fifth time.

Yeah.

It's dated, signed by you, all right.

And then I said, line 22, Mr. Edwards, on September 17th, 2015, did you go into -- tell me why you're pleading guilty.

I don't want to get life without parole.

Did you go into the Bellagio with intent to commit larceny?

Yeah.

That was a pretty clear plea.

Five times I asked you if you wanted me to accept the deal and you said yeah.

It's not ineffective assistance. We're ready for trial -- or for sentencing.

Is there anything you want to say?

MS. PANDUKHT: Yes, Your Honor --

THE DEFENDANT: Yes, yes I would like to say something, Your Honor.

MS. PANDUKHT: If I could just -- I'll be quick.

THE COURT: Hold on.

MS. PANDUKHT: I don't mean to interrupt you. I'll be quick. I'll be quick.

Your Honor, for the record, based on *Stevenson versus State* have you reviewed the totality of the circumstances and found that there is no fair and just reason for withdrawal of the plea, Your Honor?

THE COURT: Yes.

MS. PANDUKHT: Go ahead.

THE DEFENDANT: Your Honor, I was advised by my counsel to answer yes to everything you said. So I was following the advice of my counsel on the plea agreement. I didn't agree with a lot of things that they said in the plea agreement, but I just did what my counsel advised me to do.

Also, Your Honor --

THE COURT: It's okay to say right now --

THE DEFENDANT: Okay.

THE COURT: -- but you said yeah five times.

THE DEFENDANT: And, also, Your Honor, before we go into sentencing, there's a bunch of mistakes or errors in the counsel's -- in the prosecutor's -- according to -- pursuant to *Stockmeier*, there's a bunch of errors in --

THE COURT: Hold on. All right. Write -- here's what you're going to do, write all the errors down, you bring it back in one week.

THE DEFENDANT: And, also, Your Honor --

THE COURT: We'll give them to P&P. Before we do the sentencing, I want to make it clear, you get *Stockmeier* issues and you get it to me in one week. And I'll give it to the State; the State will have it cleared up.

Thanks.

THE DEFENDANT: Your Honor, I also want to say, Your Honor, you didn't give me time to respond to a lot of things you just stated in going through the -- canvass of the --

THE COURT: No, that was the Guilty Plea Agreement.

THE DEFENDANT: -- agreement.

THE COURT: There was no need for response.

Thank you.

THE DEFENDANT: Okay. Okay. When is the court date?

Also, Your Honor, I gave you a copy of my -- my only copy of my motion and I would like to have a copy of that same -- the original one back. I never got a copy of the -- I gave you --

THE COURT: Of what?

THE DEFENDANT: I gave you a copy of my motion last -- the last time I was --

THE COURT: For the *Faretta* canvass?

THE DEFENDANT: The motion you just got through saying you read. The motion that -- I gave you a copy of that. And I need a copy -- I want the original one back.

THE COURT: Give him a copy.

THE DEFENDANT: Thank you, very much, sir.

THE COURT: You can't have the original back, you get a copy.

THE DEFENDANT: Why can't I have my original back?

THE COURT: Because you filed it with the Court. It is now an exhibit with the Court.

THE DEFENDANT: But it wasn't really filed with the Court?

THE COURT: It was filed with the Court, in open court --

THE DEFENDANT: Oh, okay.

THE COURT: -- because you asked me to do it and I did it.

Thank you. Have a seat.

THE DEFENDANT: [indiscernible] copy of that.

MS. PANDUKHT: So October 17th?

[Colloquy between Court and Clerk]

MS. PANDUKHT: Are we doing sentencing on October 17th, Your Honor?

THE COURT: No.

THE DEFENDANT: When is my court date, Miss?

MS. PANDUKHT: October 17th.

THE DEFENDANT: 17th.

THE CLERK: There's issues with the PSI.

THE COURT: There's issues with the PSI.

MS. PANDUKHT: Normally we'll bring them to the sentencing.

THE COURT: Pardon?

MS. PANDUKHT: We'll bring the priors to the sentencing.

THE COURT: All right.

MS. PANDUKHT: I just wanted to make sure it wasn't the 17th.

[Proceeding concluded at 9:17 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual recording in the above-entitled case to the best of my ability.

Gina Villani
Court Recorder

IN THE SUPREME COURT OF THE STATE OF NEVADA

HAROLD EDWARDS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 72267
District Court Case No. C310695

FILED
JAN 16 2018
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

"ORDER the judgment of the district court REVERSED."

Judgment, as quoted above, entered this 14th day of December, 2017.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this January 09, 2018.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll
Chief Deputy Clerk

C-15-310695-1
CCJV
NV Supreme Court Clerks Certificate/Judgn
4712348

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HAROLD EDWARDS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 72267

FILED

DEC 14 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF REVERSAL

Harold Edwards appeals from an order of the district court dismissing a postconviction petition for a writ of habeas corpus.[1] Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

Edwards filed a document entitled "defendant/petitioner intends to present the following issues in his post-conviction writ of habeas corpus" on December 16, 2016. The district court construed the document as a postconviction petition for a writ of habeas corpus and dismissed it for failure to conform to the requirements of NRS 34.735. Substantively, the document consisted of only four headings and no details or argument. Thus it appears the pleading was not intended to be a postconviction petition. Rather, it appears it was only intended to notify the district court of the

[1]This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

claims Edwards intended to raise. The record reflects Edwards has since filed a timely and substantive postconviction habeas petition. Because it appears the document was only intended to put the court on notice of the issues Edwards intended to raise, we conclude the district court erred by construing the document as a postconviction petition and dismissing it. Accordingly, we

ORDER the judgment of the district court REVERSED.

_____, C.J.
Silver

_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Douglas Smith, District Judge
Harold Edwards
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

CERTIFIED COPY
This document is a full, true and correct copy of the original on file and of record in my office.
DATE: Jan 9 2018
Supreme Court Clerk, State of Nevada
By _____ Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

HAROLD EDWARDS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 72267
District Court Case No. C310695

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

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

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

DATE: January 09, 2018

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll
Chief Deputy Clerk

cc (without enclosures):
Hon. Douglas Smith, District Judge
Harold Edwards
Clark County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on JAN 16 2018.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED
APPEALS
JAN 12 2018
CLERK OF THE COURT

Electronically Filed
6/21/2018 10:58 AM
Steven D. Grierson
CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAROLD EDWARDS,
#7024721

Defendant.

CASE NO: C-15-310695-1

DEPT NO: VIII

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: APRIL 9, 2018
TIME OF HEARING: 8:00 AM

THIS CAUSE having come on for hearing before the Honorable DOUGLAS E. SMITH, District Judge, on the 9th day of April, 2018, the Petitioner not being present, PROCEEDING IN PROPER PERSON, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through KELSEY R. EINHORN, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On November 12, 2015, the State filed an Information charging Defendant Harold Edwards ("Defendant") with one count of Burglary (Category B Felony - NRS 205.060-NOC

50424). On January 5, 2016, the State filed a Notice of Intent to Seek Punishment as Habitual Criminal. On August 19, 2016, Defendant agreed to plead guilty to Burglary and five counts of Possession of Credit or Debit Card Without Cardholder's Consent (Category D Felony - NRS 205.690-NOC 50790) and Battery on a Protected Person (Gross Misdemeanor - NRS 200.481-NOC 50221) in Case No. C311212.

On September 13, 2016, Defendant filed a Notice of Motion and Motion to Dismiss Counsel and Motion for a Faretta Hearing, which was granted by the Court on October 5, 2016. Defendant also filed a Notice of Motion and Defendant's Pro Per Motion to Withdraw Guilty Plea and Motion for Faretta Hearing on October 5, 2016. On October 7, 2016, the State filed an Opposition to Defendant's Motion to Withdraw Guilty Plea. On October 10, 2016, the Court denied Defendant's Motion to Withdraw Guilty Plea.

On November 21, 2016, the Court held Defendant's sentencing hearing. During the hearing, Defendant argued that the Judgments of Conviction were invalid. The Court twice continued sentencing, to review the Judgements of Conviction. On December 7, 2016, the Court adjudicated Defendant as a habitual criminal under the large habitual criminal statute and sentenced him to the Nevada Department of Corrections for the stipulated term of 10 to 25 years, concurrent to Case No. C311212, with 450 days credit for time served.

On December 15, 2016, Defendant filed a Notice of Appeal in the Nevada Supreme Court. On February 13, 2017, Defendant withdrew his appeal. On February 28, 2017, the Nevada Supreme Court filed its Order dismissing the appeal.

On March 28, 2017, Defendant filed an Ex Parte Motion for Immediate Release. The State responded on April 13, 2017. The Court denied Defendant's Motion for Immediate Release on April 19, 2107. An Order Denying Defendant's Ex Parte Motion for Immediate Release was filed on May 5, 2017.

On March 6, 2017, Defendant filed a Petition for Writ of Habeas Corpus. The State's Response followed on April 18, 2017.

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On December 14, 2017, the Nevada Court of Appeals filed an Order of Reversal directing the District Court to hear Defendant's Post-Conviction Petition for Writ of Habeas Corpus without dismissing it for failure to conform with NRS 34. 735.

On April 9, 2018, this Court denied Defendant's Petition for Writ of Habeas Corpus as follows.

FACTUAL BACKGROUND

At sentencing, this Court relied on the following offense synopsis, included in the Pre-Sentence Investigation Report (PSI):

On September 23, 2016, Bellagio security personnel notified police that an employee had been the victim of a burglary which occurred near the Gelato Café on September 17, 2015.

Upon arrival at the Bellagio the police met with security personnel and they viewed the video surveillance footage of the burglary incident. Police observed a male suspect loitering in the area clearly marked, "Not a Public Area, Access Restricted". The suspect loitered for several minutes and then he entered the back door of the Café Gelato and moments later he exits the doorway carrying the victims backpack and then he re-enters the hallway and enters the back door of the Arcade. When the suspect exits from the shadows, he is no longer in possession of the backpack. The backpack is later located just inside the back door of the Arcade and was returned to the victim.

The video surveillance then shows the suspect walking around the Casino without anything in his hands, and he then walks out of camera range and is shortly thereafter seen holding an Apple IPad and sitting at a slot machine, opening the IPad and swiping his finger across the screen. The suspect is seen looking around and then setting the down the IPad in front of a slot machine. The suspect then gets up from his seat and walks away from the IPad. After he is gone for several minutes, one of the casino cleaners locates the IPad and turns it into Security.

The suspect notices the IPad is missing and approaches the Security Officer in an attempt to retrieve the IPad. The Security Officer fills out a statement in which the suspect

claims the IPad belongs to a friend of his. The Security Officer tells the suspect his friend would have to come to claim the IPad.

The true owner a female victim at the Bellagio later claimed the IPad and it was returned to her. The female victim told police during an interview, that her IPad was in a zippered bag which she hung from a chair while she was gambling. She said she never saw anyone removed the IPad from her bag.

While viewing the video surveillance footage of the suspect, the police recognize the male suspect to be the defendant, Harold Edwards.

Mr. Edwards was subsequently arrested and transported to the Clark County Detention Center where he was booked accordingly.

PSI at 6.

ANALYSIS

I. DEFENDANT'S SUBSTANTIVE CLAIMS MUST BE DENIED BECAUSE THEY EXCEED THE SCOPE OF A PETITION FOR WRIT OF HABEAS CORPUS

Substantive claims of sentencing error, judicial error, and prosecutorial misconduct are procedurally barred as waived since each claim should have been raised on direct appeal. NRS 34.724(2)(a); Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). A showing of good cause and prejudice may overcome procedural bars. "To establish good cause, appellants must show that an impediment external to the defense prevented their compliance with the applicable procedural rule. A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available at the time of default." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). This Court finds that Defendant fails to establish good cause to overcome his procedural default because all of the necessary facts and law were available for a direct appeal. Indeed, Defendant had an opportunity to raise these issues on direct appeal; however, he chose to withdraw his appeal and forever forego his claims.

Moreover, this Court finds that Defendant fails to establish prejudice. In order to establish prejudice, the defendant must show "'not merely that the errors of [the proceedings] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings with error of constitutional dimensions.'" Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there must be a "substantial reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). As discussed, infra, each of Defendant's claims is meritless.

a. Defendant Fails to Substantiate Prejudice to Excuse His Procedural Default Because There Were No Violations of Due Process or Judicial Error in Sentencing Defendant

In relevant part, NRS 207.010 provides that any individual convicted of a felony, who has been previously convicted of three felonies "is a habitual criminal and shall be punished by imprisonment for ... a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served." NRS 207.010(b)(3). The Nevada Legislature created the habitual criminality statute to enable the criminal justice system to deal determinedly with career criminals who pose a serious threat to public safety. Sessions v. State, 106 Nev. 186, 789 P.2d 1242 (1990). A court may impose an adjudication of habitual criminality based upon a stipulation of the parties. See Hodges v. State, 119 Nev. 479, 483, 78 P.3d 67, 69 (2003) (citing NRS 207.016(6)).

Defendant complains that he never stipulated to the predicate offenses for his treatment under the large habitual criminal statute and that the State never presented certified copies of his conviction. Petition, pp. 9, 11-12. However, the State presented the Court with four certified conviction records on October 17, 2016, which the Court considered and determined were valid. Transcript of Proceedings ("Tr."), 11/21/16, pp. 2-3; Court Minutes, 11/21/16, 12/07/16. Accordingly, the Court complied with the strictures of NRS 201.010(b)(3) and, as such, this Court finds that Defendant's claim is belied by the record. Hargrove v. State, 100

Nev. 498, 502, 686 P.2d 222, 225 (1984) (claims belied by the record cannot support post-conviction relief). Moreover, Defendant cannot establish prejudice to ignore his procedural default because his stipulation to treatment under the large habitual criminal statute waived any substantive error. Woods v. State, 114 Nev. 468, 477, 958 P.2d 91, 97 (1998); Reuben C. v. State, 99 Nev. 845, 845-46, 673 P.2d 493, 493 (1983); Powell v. Sheriff, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969).

Further, Defendant's claim that the Court denied him an opportunity to argue at sentencing is utterly belied by the record. Petition, pp. 9, 12-13, 18-19. Defendant focuses on the November 23, 2016, and December 7, 2016, sentencing dates for the proposition that he was silenced. However, the record clearly shows he was given ample opportunity to argue his concerns to the Court at the November 21, 2016, hearing. Tr., 11/21/16, pp. 3-8. Indeed, based on Defendant's representations, the Court continued sentencing to November 23, 2016, to review the certified Judgments of Conviction. Id. at 8. At the conclusion of the hearing, the Court informed Defendant and the State that there would be no further argument on the issue. Id. at 8. At the November 23, 2016, hearing, Defendant attempted to continue to argue; the Court simply continued sentencing until December 7, 2016. Court Minutes, 11/21/16. Consequently, Defendant's claim is meritless; this Court finds that he had a full opportunity to argue his claims. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

Likewise, Defendant's claim that the State failed to present a sufficient number of predicate convictions is belied by the record. Petition, pp. 18. The State provided the Court with four prior convictions from Illinois; even if two were from the same act, transaction, or occurrence as Defendant asserts, the State still met its burden under NRS 207.010(b). Tr., 11/21/16, pp. 2-3; Petition, pp. 18. Moreover, Defendant had been convicted and sentenced in Case No. C311212 on October 27, 2016. Id. at 3. Accordingly, this Court finds that Defendant's claim that the State failed to meet its burden is belied. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

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Similarly, Defendant raises a meritless complaint that his sentence violates the Eighth Amendment's prohibition on cruel and unusual punishment because it is disproportionate to the crime. See Petition, pp. 34, 36-37. This Court finds that Defendant misapprehends the purpose of his sentence; his 10 to 25 year sentence under the large habitual criminal statute is not for taking a lunch bag, Petition, pp. 34, but for being a habitual criminal. Moreover, the Nevada Supreme Court has previously held that a 10 to life sentence for Burglary does not shock the conscience and is, therefore, not unconstitutional. White v. State, 105 Nev. 121, 771 P.2d 152 (1989), overruled in part, Hightower v. State, 123 Nev. 55, 154 P.3d 639 (2007). Accordingly, the Court should deny Defendant's claim.

b. Defendant Fails to Substantiate Prejudice to Excuse His Procedural Default Because There is No Requirement that He Sign an Amended Information

Defendant complains that the Court lacked jurisdiction to sentence him under the large habitual criminal statute because the State did not file an Amended Information. Petition, pp. 19. There is no requirement that the State file an Amended Information; the State is only required to provide Defendant with notice. NRS 207.010(2). Defendant's reliance on Grey v. State, 124 Nev. 110, 178 P.3d 154 (2008), is misplaced. Grey held that "before a defendant may be sentenced as a habitual criminal under NRS 207.010, the State must duly file an allegation of habitual criminality." Id. at 124, 178 P.3d at 164. That allegation may be in the Information or in a separate notice. See id.; NRS 207.010(2).

Here, the State filed a Notice of Intent to Seek Punishment as Habitual Criminal on January 5, 2016. Accordingly, the State met its obligations and Defendant's claim is belied by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Moreover, Defendant's stipulation o treatment under the large habitual criminal statute waived any substantive error; he clearly was on notice that he could-and would-be sentenced as a habitual criminal. Woods, 114 Nev. at 477, 958 P.2d at 97; Reuben C., 99 Nev. at 845-46, 673 P.2d at 493; Powell, 85 Nev. at 687, 462 P.2d at 758. Accordingly, this Court denies Defendant's claim.

c. Defendant Fails to Substantiate Prejudice to Excuse His Procedural Default Because the Court Properly Denied His Motion to Withdraw Guilty Plea

Defendant next complains that the Court improperly denied his Motion to Withdraw Guilty Plea. Petition, pp. 25-26. A plea of guilty is presumptively valid, particularly where it is entered into on the advice of counsel. Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295-96 (1975). A defendant may move to withdraw a guilty plea before sentencing, NRS 176.165, and "a district court may grant a defendant's motion to withdraw his guilty plea before sentencing for any reason where permitting withdrawal would be fair and just." Stevenson v. State, 131 Nev. ___, ___, 354 P.3d 1277, 1281 (2015). The granting or denial of such an application rests within the sound discretion of the trial judge, and his or her decision will not be disturbed on review, absent a clear abuse of that discretion. Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995); Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." State v. Smith, 131 Nev. Adv. Rep. 63, ___, 356 P.3d 1092, 1094 (2015).

Defendant asserted in his Motion that his plea was entered "improvidently" and was "coerced." Motion to Withdraw Guilty Plea, pp. 1. However, a defendant has the burden of proving that the plea was not entered knowingly or voluntarily. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); Wynn v. State, 96 Nev. 673, 675, 615 P.2d 946, 947 (1980).

In determining whether a defendant's guilty plea is knowingly and voluntarily entered, a reviewing court is required to review the totality of the circumstances surrounding the plea. Bryant, 102 Nev. at 272, 721 P.2d at 367. In Bryant, the Nevada Supreme Court made it clear that in reviewing the sufficiency of plea canvasses, a court is permitted to review the "totality of the facts and circumstances of a defendant's case." Id. at 274, 721 P.2d at 369. In so doing, the reviewing court may look at matters which extend beyond the formal entry of the plea. See id. at 276, 721 P.2d at 370. In Bryant, the Court considered matters which were presented at the preliminary hearing, in the petition for writ of habeas corpus filed in district court and statements made at time of sentencing. Id. at 273-75, 721 P.2d at 368-69.

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Furthermore, the Nevada Supreme Court has stated that determining the voluntariness of pleas of guilty "do[es] not require the articulation of talismanic phrases." Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1405 (1973). It requires only "that the record must affirmatively disclose that a defendant who pled guilty entered his plea understandingly and voluntarily." Brady v. United States, 397 U.S. 742, 747 n.4, 90 S. Ct. 1463, 1468 n.4 (1970).

A thorough plea canvass, coupled with a detailed, consistent, and written plea agreement supports a finding that a defendant pleaded guilty voluntarily and knowingly. See Woods v. State, 114 Nev. 468, 476, 958 P.2d 91, 96 (1998); see also Freese v. State, 116 Nev. 1097, 1106, 13 P.3d 442, 448 (2000). Moreover, in Wilson v. State, 99 Nev. 362, 664 P.2d 328 (1983), the Nevada Supreme Court explained that:

[C]ertain minimum requirements must be met when a judge canvasses a defendant regarding the voluntariness of a guilty plea ... [T]he record must affirmatively show the following: (1) the defendant knowingly waived his privilege against self-incrimination, the right to trial by jury, and the right to confront his accusers; (2) the plea was voluntary, was not coerced, and was not the result of a promise of leniency; (3) the defendant understood the consequences of his plea and the range of punishment; and (4) the defendant understood the nature of the charge, i.e., the elements of the crime.

(internal citations omitted).

Here, the plea canvass and the Guilty Plea Agreement ("GPA") establish the Wilson factors and demonstrate that Defendant and knowingly pleaded guilty. Defendant signed the GPA on August 19, 2016. In his GPA, Defendant acknowledged he was waiving:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about [his] refusal to testify.

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial [he] would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.

3. The constitutional right to confront and cross-examine any witnesses who would testify against [him].

4. The constitutional right to subpoena witnesses to testify on [his] behalf.

5. The constitutional right to testify in [his] own defense.

GPA, pp. 5.

Additionally, the district court's plea canvass confirmed Defendant's understanding of the rights he was waiving. During the plea canvass, Defendant repeatedly told the district court, he wanted to plead guilty and accept the offer, despite the stipulation to the habitual criminal treatment. Tr., 08/19/16, pp. 2-7. During the canvass, the district court carefully ensured Defendant understood the rights he was waiving in his GPA:

THE COURT: Now, by pleading guilty, you understand you're giving up the right, the privilege against self-incrimination, including the right to refuse to testify at trial.

Do you understand?

THE DEFENDANT: Yeah.

THE COURT: You're giving up the right to a speedy and a public trial by impartial jury, free of excessive pretrial publicity prejudicial to the defense?

Do you understand?

THE DEFENDANT: Yeah.

THE COURT: You're giving up the right to confront and cross-examine witnesses who would testify against you; the right to testify in your behalf; the right to subpoena witnesses to testify for you; and the right to appeal your conviction with assistance of an attorney, either appointed or retain?

You understand?

THE DEFENDANT: Yes, sir.

THE COURT: Still want me to accept it?

THE DEFENDANT: Yes, sir.

Tr., 08/19/16, pp. 6-7.

Likewise, both the GPA and plea canvass establish that Defendant understood the nature of the crimes to which he was pleading. Tr., 08/19/16, pp. 7. Moreover, he fully understood the consequences of the plea and the range of punishment. The signed Guilty Plea Agreement informed Defendant that:

[A]s a consequence of [his] plea of guilty the Court must sentence [him] to imprisonment in the Nevada Department of Corrections for a minimum term of not less than ONE (1) year and a maximum term of not more than TEN (10) years....

[...]

Further, ... if [he was] sentenced under the "large" habitual criminal enhancement the Court must sentence [him] to Life without the possibility of parole; Life with the possibility of parole, parole eligibility begins after a minimum term of ten (10) years has been served; or a definite term of twenty-five (25) years, parole eligibility begins after a minimum of ten (10) years has been served.

GPA, pp. 2-3.

This Court finds that Defendant's claim that his plea was coerced is belied by the record. The GPA and plea canvass demonstrate that Defendant voluntarily entered his plea on August 19, 2016. In his signed GPA, Defendant acknowledged that:

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

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

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

GPA, pp. 6.

Moreover, counsel joined in Defendant's voluntariness declaring:

1. I have fully explained to the Defendant the allegations contained in the charge(s) to which guilty pleas are being entered.

2. I have advised [Shannon] of the penalties for each charge and the restitution that the Defendant may be ordered to pay.

[...]

5. To the best of my knowledge and belief, the Defendant:

a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement,

b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily, and

c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with [him]...

GPA, pp. 7.

Importantly, during the plea canvass, Defendant told the district court that he was pleading voluntarily. Tr., 08/19/16, pp. 7-8. Accordingly, the totality of the circumstances establishes that Defendant pleaded guilty voluntarily and knowingly. Nothing in the plea canvass or the GPA remotely supports Defendant's assertions that his plea was not voluntarily or intelligently entered into on August 19, 2016. Moreover, the Court based its decision on these same circumstances when it considered his Motion to Withdraw Guilty Plea; there is no requirement that the Court review the entire record, especially when the Court lived the record. See Petition, pp. 25. Therefore, this Court denies Defendant's claim.

d. Defendant Fails to Substantiate Prejudice to Excuse His Procedural Default Because there Was No Prosecutorial Misconduct

Defendant complains that he was vindictively prosecuted because he elected to go to trial. Petition, pp. 31. First, this complaint should have been raised on direct appeal; as such, it is waived. NRS 34.724(2)(a); Franklin, 110 Nev. 750, 877 P.2d 1058. Moreover, "there is no constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial." Lafler v. Cooper, 566 U.S. 156, 180, 132 S. Ct. 1376, 1395 (2012) (quoting Weatherford v.

Bursey, 429 U.S. 545, 561, 97 S. Ct. 837 (1977)). As such, it follows that offers tend to get worse for defendants the closer they get to trial. Such a scheme does not offend the Constitution. Indeed, the United States Supreme Court has held that Due Process is not violated when a prosecutor carries out a threat made during plea negotiations to reindict the accused on more serious charges on which he is plainly subject to prosecution if he does not plead guilty to the offense with which he was originally charged. Bordenkircher v. Hayes, 434 U.S. 357, 358, 98 S. Ct. 663, 665 (1978). Ultimately, however, this Court finds that Defendant's claim is belied by the record as there were no offers in Defendant's cases until the negotiated settlement on August 19, 2016. Court Minutes, 08/17/16 ("State pointed out there were no offers in these cases"). As such, this Court denies Defendant's claim.

Defendant also asserts the State was vindictive because the prosecutor said "I'm tired of playing with Mr. Edwards." Petition, pp. 31. Defendant fails to provide any support for his claim. The burden of production lies solely with the defendant in post-conviction proceedings. Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995) (citing NRS 34.370(4)). Thus, Defendant's assertion is a bare allegation suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

II. DEFENDANT RECEIVED THE EFFECTIVE ASSISTANCE OF COUNSEL

Defendant alleges multiple instances of ineffective assistance of counsel. Nevada has adopted the standard outlined in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), for determinations regarding the effectiveness of counsel. Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984); Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996). Under Strickland, in order to assert a claim of ineffective assistance of counsel, the defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying a two-pronged test. Strickland 466 U.S. at 686-687, 104 S. Ct. at 2064; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the defendant must show that his counsel's representation fell below an objective standard of reasonableness, and

that, but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. See Strickland, 466 U.S. at 687-688, 694, 104 S. Ct. at 2064, 2068.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney's representations amounted to incompetence under prevailing professional norms, "not whether it deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 88, 131 S. Ct. 770, 778 (2011). Furthermore, "[e]ffective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

A court begins with a presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 35 (2004). The role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (emphasis added) (citing Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)).

In considering whether trial counsel was effective, the court must determine whether counsel made a "sufficient inquiry into the information . . . pertinent to his client's case." Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996); citing, Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066. Once this decision is made, the court will consider whether counsel made "a reasonable strategy decision on how to proceed with his client's case." Doleman, 112 Nev. at 846, 921 P.2d at 280; citing Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066. Counsel's strategy decision is a "tactical" decision and will be "virtually unchallengeable absent extraordinary circumstances." Doleman, 112 Nev. at 846, 921 P.2d at

280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691, 104 S. Ct. at 2066.

This analysis does not indicate that the court should "second guess reasoned choices between trial tactics, nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711; citing Cooper, 551 F.2d at 1166 (9th Cir. 1977). In essence, the court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. However, counsel cannot be deemed ineffective for failing to make futile objections, file futile motions, or for failing to make futile arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

Even if a defendant can demonstrate that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

Finally, claims asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id.

Defendant complains that counsel was ineffective because he: (1) allowed Defendant to plead guilty and stipulate to the habitual offender status without reviewing the documents for proof of convictions; (2) failed to investigate Defendant's claim of innocence; and (3) failed

to investigate and prepare for trial. Petition, pp. 26. This Court finds that Defendant fails to establish deficient performance or prejudice with respect to each of his claims.

First, the decision to plead guilty and stipulate to habitual criminal treatment belonged entirely to Defendant. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). As such, counsel cannot be deemed ineffective for a decision that belonged solely to Defendant. Moreover, Defendant's complaint is belied by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Both the GPA and plea canvass establish that Defendant fully understood and agreed to plead guilty and stipulate to habitual criminal treatment after discussing the case with counsel. GPA, pp. 1-3; Tr., 08/19/16, pp. 2-6. As such, this Court finds that Defendant is not entitled to relief.

Second, Defendant's claim that counsel was ineffective for failing to investigate his innocence is meritless. Defendant's claim is belied by the record; he pleaded guilty and admitted that he was, in fact, guilty. Tr., 08/19/16, pp. 8-9; Hargrove, 100 Nev. at 502, 686 P.2d at 225. Moreover, Defendant fails to show how a better investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at 192, 87 P.3d at 538. His claim that he would have gone to trial is nothing more than a bare assertion, not warranting consideration by this Court. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, this Court denies Defendant's claim.

Finally, Defendant's complaint that counsel failed to adequately investigate and prepare for trial must fail. Defendant alleges counsel's ineffectiveness is demonstrated by his unwillingness to file a discovery motion. See Petition, pp. 28. On March 16, 2016, Defendant filed a pro per Notice of Motion and Motion to Compel Discovery. Although counsel stated he would refile the motion, he was under no obligation. Rhyne, 118 Nev. at 8, 38 P.3d at 167 (counsel cannot be ineffective for strategic decisions, including what motions to file and arguments to make). Accordingly, this Court denies Defendant's claim of ineffectiveness assistance of counsel.

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ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, hereby denied.

DATED this 20th day of June, 2018.

DISTRICT JUDGE

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

BY for
JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528

CERTIFICATE OF SERVICE

I certify that on the 20th day of June, 2018, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

HAROLD EDWARDS, BAC #1169986
SOUTHERN DESERT CORRECTIONAL CENTER
PO BOX 208
INDIAN SPRINGS, NV 89070-0208

BY
M. HERNANDEZ
Secretary for the District Attorney's Office

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Steven D. Grierson
CLERK OF THE COURT

NEO

DISTRICT COURT
CLARK COUNTY, NEVADA

HAROLD EDWARDS,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-15-310695-1

Dept No: VIII

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

PLEASE TAKE NOTICE that on June 21, 2018, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on June 25, 2018.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Courtnie Hoskin
Courtnie Hoskin, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 25 day of June 2018, I served a copy of this Notice of Entry on the following:

☑ By e-mail:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☑ The United States mail addressed as follows:
Harold Edwards # 1169986
P.O. Box 208
Indian Springs, NV 89070

/s/ Courtnie Hoskin
Courtnie Hoskin, Deputy Clerk

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6/21/2018 10:58 AM
Steven D. Grierson
CLERK OF THE COURT

FCL
STEVEN B. WOLFSON
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Nevada Bar #006528
200 Lewis Avenue
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAROLD EDWARDS,
#7024721

Defendant.

CASE NO: C-15-310695-1

DEPT NO: VIII

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: APRIL 9, 2018
TIME OF HEARING: 8:00 AM

THIS CAUSE having come on for hearing before the Honorable DOUGLAS E. SMITH, District Judge, on the 9th day of April, 2018, the Petitioner not being present, PROCEEDING IN PROPER PERSON, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through KELSEY R. EINHORN, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT, CONCLUSIONS OF LAW

PROCEDURAL HISTORY

On November 12, 2015, the State filed an Information charging Defendant Harold Edwards ("Defendant") with one count of Burglary (Category B Felony - NRS 205.060-NOC

50424). On January 5, 2016, the State filed a Notice of Intent to Seek Punishment as Habitual Criminal. On August 19, 2016, Defendant agreed to plead guilty to Burglary and five counts of Possession of Credit or Debit Card Without Cardholder's Consent (Category D Felony - NRS 205.690-NOC 50790) and Battery on a Protected Person (Gross Misdemeanor - NRS 200.481-NOC 50221) in Case No. C311212.

On September 13, 2016, Defendant filed a Notice of Motion and Motion to Dismiss Counsel and Motion for a Faretta Hearing, which was granted by the Court on October 5, 2016. Defendant also filed a Notice of Motion and Defendant's Pro Per Motion to Withdraw Guilty Plea and Motion for Faretta Hearing on October 5, 2016. On October 7, 2016, the State filed an Opposition to Defendant's Motion to Withdraw Guilty Plea. On October 10, 2016, the Court denied Defendant's Motion to Withdraw Guilty Plea.

On November 21, 2016, the Court held Defendant's sentencing hearing. During the hearing, Defendant argued that the Judgments of Conviction were invalid. The Court twice continued sentencing, to review the Judgements of Conviction. On December 7, 2016, the Court adjudicated Defendant as a habitual criminal under the large habitual criminal statute and sentenced him to the Nevada Department of Corrections for the stipulated term of 10 to 25 years, concurrent to Case No. C311212, with 450 days credit for time served.

On December 15, 2016, Defendant filed a Notice of Appeal in the Nevada Supreme Court. On February 13, 2017, Defendant withdrew his appeal. On February 28, 2017, the Nevada Supreme Court filed its Order dismissing the appeal.

On March 28, 2017, Defendant filed an Ex Parte Motion for Immediate Release. The State responded on April 13, 2017. The Court denied Defendant's Motion for Immediate Release on April 19, 2107. An Order Denying Defendant's Ex Parte Motion for Immediate Release was filed on May 5, 2017.

On March 6, 2017, Defendant filed a Petition for Writ of Habeas Corpus. The State's Response followed on April 18, 2017.

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On December 14, 2017, the Nevada Court of Appeals filed an Order of Reversal directing the District Court to hear Defendant's Post-Conviction Petition for Writ of Habeas Corpus without dismissing it for failure to conform with NRS 34. 735.

On April 9, 2018, this Court denied Defendant's Petition for Writ of Habeas Corpus as follows.

FACTUAL BACKGROUND

At sentencing, this Court relied on the following offense synopsis, included in the Pre-Sentence Investigation Report (PSI):

On September 23, 2016, Bellagio security personnel notified police that an employee had been the victim of a burglary which occurred near the Gelato Café on September 17, 2015.

Upon arrival at the Bellagio the police met with security personnel and they viewed the video surveillance footage of the burglary incident. Police observed a male suspect loitering in the area clearly marked, "Not a Public Area, Access Restricted". The suspect loitered for several minutes and then he entered the back door of the Café Gelato and moments later he exits the doorway carrying the victims backpack and then he re-enters the hallway and enters the back door of the Arcade. When the suspect exits from the shadows, he is no longer in possession of the backpack. The backpack is later located just inside the back door of the Arcade and was returned to the victim.

The video surveillance then shows the suspect walking around the Casino without anything in his hands, and he then walks out of camera range and is shortly thereafter seen holding an Apple IPad and sitting at a slot machine, opening the IPad and swiping his finger across the screen. The suspect is seen looking around and then setting the down the IPad in front of a slot machine. The suspect then gets up from his seat and walks away from the IPad. After he is gone for several minutes, one of the casino cleaners locates the IPad and turns it into Security.

The suspect notices the IPad is missing and approaches the Security Officer in an attempt to retrieve the IPad. The Security Officer fills out a statement in which the suspect

claims the IPad belongs to a friend of his. The Security Officer tells the suspect his friend would have to come to claim the IPad.

The true owner a female victim at the Bellagio later claimed the IPad and it was returned to her. The female victim told police during an interview, that her IPad was in a zippered bag which she hung from a chair while she was gambling. She said she never saw anyone removed the IPad from her bag.

While viewing the video surveillance footage of the suspect, the police recognize the male suspect to be the defendant, Harold Edwards.

Mr. Edwards was subsequently arrested and transported to the Clark County Detention Center where he was booked accordingly.

PSI at 6.

ANALYSIS

I. DEFENDANT'S SUBSTANTIVE CLAIMS MUST BE DENIED BECAUSE THEY EXCEED THE SCOPE OF A PETITION FOR WRIT OF HABEAS CORPUS

Substantive claims of sentencing error, judicial error, and prosecutorial misconduct are procedurally barred as waived since each claim should have been raised on direct appeal. NRS 34.724(2)(a); Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). A showing of good cause and prejudice may overcome procedural bars. "To establish good cause, appellants must show that an impediment external to the defense prevented their compliance with the applicable procedural rule. A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available at the time of default." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). This Court finds that Defendant fails to establish good cause to overcome his procedural default because all of the necessary facts and law were available for a direct appeal. Indeed, Defendant had an opportunity to raise these issues on direct appeal; however, he chose to withdraw his appeal and forever forego his claims.

Moreover, this Court finds that Defendant fails to establish prejudice. In order to establish prejudice, the defendant must show "'not merely that the errors of [the proceedings] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings with error of constitutional dimensions.'" Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there must be a "substantial reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). As discussed, infra, each of Defendant's claims is meritless.

a. Defendant Fails to Substantiate Prejudice to Excuse His Procedural Default Because There Were No Violations of Due Process or Judicial Error in Sentencing Defendant

In relevant part, NRS 207.010 provides that any individual convicted of a felony, who has been previously convicted of three felonies "is a habitual criminal and shall be punished by imprisonment for ... a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served." NRS 207.010(b)(3). The Nevada Legislature created the habitual criminality statute to enable the criminal justice system to deal determinedly with career criminals who pose a serious threat to public safety. Sessions v. State, 106 Nev. 186, 789 P.2d 1242 (1990). A court may impose an adjudication of habitual criminality based upon a stipulation of the parties. See Hodges v. State, 119 Nev. 479, 483, 78 P.3d 67, 69 (2003) (citing NRS 207.016(6)).

Defendant complains that he never stipulated to the predicate offenses for his treatment under the large habitual criminal statute and that the State never presented certified copies of his conviction. Petition, pp. 9, 11-12. However, the State presented the Court with four certified conviction records on October 17, 2016, which the Court considered and determined were valid. Transcript of Proceedings ("Tr."), 11/21/16, pp. 2-3; Court Minutes, 11/21/16, 12/07/16. Accordingly, the Court complied with the strictures of NRS 201.010(b)(3) and, as such, this Court finds that Defendant's claim is belied by the record. Hargrove v. State, 100

Nev. 498, 502, 686 P.2d 222, 225 (1984) (claims belied by the record cannot support post-conviction relief). Moreover, Defendant cannot establish prejudice to ignore his procedural default because his stipulation to treatment under the large habitual criminal statute waived any substantive error. Woods v. State, 114 Nev. 468, 477, 958 P.2d 91, 97 (1998); Reuben C. v. State, 99 Nev. 845, 845-46, 673 P.2d 493, 493 (1983); Powell v. Sheriff, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969).

Further, Defendant's claim that the Court denied him an opportunity to argue at sentencing is utterly belied by the record. Petition, pp. 9, 12-13, 18-19. Defendant focuses on the November 23, 2016, and December 7, 2016, sentencing dates for the proposition that he was silenced. However, the record clearly shows he was given ample opportunity to argue his concerns to the Court at the November 21, 2016, hearing. Tr., 11/21/16, pp. 3-8. Indeed, based on Defendant's representations, the Court continued sentencing to November 23, 2016, to review the certified Judgments of Conviction. Id. at 8. At the conclusion of the hearing, the Court informed Defendant and the State that there would be no further argument on the issue. Id. at 8. At the November 23, 2016, hearing, Defendant attempted to continue to argue; the Court simply continued sentencing until December 7, 2016. Court Minutes, 11/21/16. Consequently, Defendant's claim is meritless; this Court finds that he had a full opportunity to argue his claims. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

Likewise, Defendant's claim that the State failed to present a sufficient number of predicate convictions is belied by the record. Petition, pp. 18. The State provided the Court with four prior convictions from Illinois; even if two were from the same act, transaction, or occurrence as Defendant asserts, the State still met its burden under NRS 207.010(b). Tr., 11/21/16, pp. 2-3; Petition, pp. 18. Moreover, Defendant had been convicted and sentenced in Case No. C311212 on October 27, 2016. Id. at 3. Accordingly, this Court finds that Defendant's claim that the State failed to meet its burden is belied. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

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Similarly, Defendant raises a meritless complaint that his sentence violates the Eighth Amendment's prohibition on cruel and unusual punishment because it is disproportionate to the crime. See Petition, pp. 34, 36-37. This Court finds that Defendant misapprehends the purpose of his sentence; his 10 to 25 year sentence under the large habitual criminal statute is not for taking a lunch bag, Petition, pp. 34, but for being a habitual criminal. Moreover, the Nevada Supreme Court has previously held that a 10 to life sentence for Burglary does not shock the conscience and is, therefore, not unconstitutional. White v. State, 105 Nev. 121, 771 P.2d 152 (1989), overruled in part, Hightower v. State, 123 Nev. 55, 154 P.3d 639 (2007). Accordingly, the Court should deny Defendant's claim.

b. Defendant Fails to Substantiate Prejudice to Excuse His Procedural Default Because There is No Requirement that He Sign an Amended Information

Defendant complains that the Court lacked jurisdiction to sentence him under the large habitual criminal statute because the State did not file an Amended Information. Petition, pp. 19. There is no requirement that the State file an Amended Information; the State is only required to provide Defendant with notice. NRS 207.010(2). Defendant's reliance on Grey v. State, 124 Nev. 110, 178 P.3d 154 (2008), is misplaced. Grey held that "before a defendant may be sentenced as a habitual criminal under NRS 207.010, the State must duly file an allegation of habitual criminality." Id. at 124, 178 P.3d at 164. That allegation may be in the Information or in a separate notice. See id.; NRS 207.010(2).

Here, the State filed a Notice of Intent to Seek Punishment as Habitual Criminal on January 5, 2016. Accordingly, the State met its obligations and Defendant's claim is belied by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Moreover, Defendant's stipulation o treatment under the large habitual criminal statute waived any substantive error; he clearly was on notice that he could-and would-be sentenced as a habitual criminal. Woods, 114 Nev. at 477, 958 P.2d at 97; Reuben C., 99 Nev. at 845-46, 673 P.2d at 493; Powell, 85 Nev. at 687, 462 P.2d at 758. Accordingly, this Court denies Defendant's claim.

c. Defendant Fails to Substantiate Prejudice to Excuse His Procedural Default Because the Court Properly Denied His Motion to Withdraw Guilty Plea

Defendant next complains that the Court improperly denied his Motion to Withdraw Guilty Plea. Petition, pp. 25-26. A plea of guilty is presumptively valid, particularly where it is entered into on the advice of counsel. Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295-96 (1975). A defendant may move to withdraw a guilty plea before sentencing, NRS 176.165, and "a district court may grant a defendant's motion to withdraw his guilty plea before sentencing for any reason where permitting withdrawal would be fair and just." Stevenson v. State, 131 Nev. ___, ___, 354 P.3d 1277, 1281 (2015). The granting or denial of such an application rests within the sound discretion of the trial judge, and his or her decision will not be disturbed on review, absent a clear abuse of that discretion. Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995); Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." State v. Smith, 131 Nev. Adv. Rep. 63, ___, 356 P.3d 1092, 1094 (2015).

Defendant asserted in his Motion that his plea was entered "improvidently" and was "coerced." Motion to Withdraw Guilty Plea, pp. 1. However, a defendant has the burden of proving that the plea was not entered knowingly or voluntarily. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); Wynn v. State, 96 Nev. 673, 675, 615 P.2d 946, 947 (1980).

In determining whether a defendant's guilty plea is knowingly and voluntarily entered, a reviewing court is required to review the totality of the circumstances surrounding the plea. Bryant, 102 Nev. at 272, 721 P.2d at 367. In Bryant, the Nevada Supreme Court made it clear that in reviewing the sufficiency of plea canvasses, a court is permitted to review the "totality of the facts and circumstances of a defendant's case." Id. at 274, 721 P.2d at 369. In so doing, the reviewing court may look at matters which extend beyond the formal entry of the plea. See id. at 276, 721 P.2d at 370. In Bryant, the Court considered matters which were presented at the preliminary hearing, in the petition for writ of habeas corpus filed in district court and statements made at time of sentencing. Id. at 273-75, 721 P.2d at 368-69.

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Furthermore, the Nevada Supreme Court has stated that determining the voluntariness of pleas of guilty "do[es] not require the articulation of talismanic phrases." Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1405 (1973). It requires only "that the record must affirmatively disclose that a defendant who pled guilty entered his plea understandingly and voluntarily." Brady v. United States, 397 U.S. 742, 747 n.4, 90 S. Ct. 1463, 1468 n.4 (1970).

A thorough plea canvass, coupled with a detailed, consistent, and written plea agreement supports a finding that a defendant pleaded guilty voluntarily and knowingly. See Woods v. State, 114 Nev. 468, 476, 958 P.2d 91, 96 (1998); see also Freese v. State, 116 Nev. 1097, 1106, 13 P.3d 442, 448 (2000). Moreover, in Wilson v. State, 99 Nev. 362, 664 P.2d 328 (1983), the Nevada Supreme Court explained that:

[C]ertain minimum requirements must be met when a judge canvasses a defendant regarding the voluntariness of a guilty plea ... [T]he record must affirmatively show the following: (1) the defendant knowingly waived his privilege against self-incrimination, the right to trial by jury, and the right to confront his accusers; (2) the plea was voluntary, was not coerced, and was not the result of a promise of leniency; (3) the defendant understood the consequences of his plea and the range of punishment; and (4) the defendant understood the nature of the charge, i.e., the elements of the crime.

(internal citations omitted).

Here, the plea canvass and the Guilty Plea Agreement ("GPA") establish the Wilson factors and demonstrate that Defendant and knowingly pleaded guilty. Defendant signed the GPA on August 19, 2016. In his GPA, Defendant acknowledged he was waiving:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about [his] refusal to testify.

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial [he] would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.

3. The constitutional right to confront and cross-examine any witnesses who would testify against [him].

4. The constitutional right to subpoena witnesses to testify on [his] behalf.

5. The constitutional right to testify in [his] own defense.

GPA, pp. 5.

Additionally, the district court's plea canvass confirmed Defendant's understanding of the rights he was waiving. During the plea canvass, Defendant repeatedly told the district court, he wanted to plead guilty and accept the offer, despite the stipulation to the habitual criminal treatment. Tr., 08/19/16, pp. 2-7. During the canvass, the district court carefully ensured Defendant understood the rights he was waiving in his GPA:

THE COURT: Now, by pleading guilty, you understand you're giving up the right, the privilege against self-incrimination, including the right to refuse to testify at trial.

Do you understand?

THE DEFENDANT: Yeah.

THE COURT: You're giving up the right to a speedy and a public trial by impartial jury, free of excessive pretrial publicity prejudicial to the defense?

Do you understand?

THE DEFENDANT: Yeah.

THE COURT: You're giving up the right to confront and cross-examine witnesses who would testify against you; the right to testify in your behalf; the right to subpoena witnesses to testify for you; and the right to appeal your conviction with assistance of an attorney, either appointed or retain?

You understand?

THE DEFENDANT: Yes, sir.

THE COURT: Still want me to accept it?

THE DEFENDANT: Yes, sir.

Tr., 08/19/16, pp. 6-7.

Likewise, both the GPA and plea canvass establish that Defendant understood the nature of the crimes to which he was pleading. Tr., 08/19/16, pp. 7. Moreover, he fully understood the consequences of the plea and the range of punishment. The signed Guilty Plea Agreement informed Defendant that:

[A]s a consequence of [his] plea of guilty the Court must sentence [him] to imprisonment in the Nevada Department of Corrections for a minimum term of not less than ONE (1) year and a maximum term of not more than TEN (10) years....

[...]

Further, ... if [he was] sentenced under the "large" habitual criminal enhancement the Court must sentence [him] to Life without the possibility of parole; Life with the possibility of parole, parole eligibility begins after a minimum term of ten (10) years has been served; or a definite term of twenty-five (25) years, parole eligibility begins after a minimum of ten (10) years has been served.

GPA, pp. 2-3.

This Court finds that Defendant's claim that his plea was coerced is belied by the record. The GPA and plea canvass demonstrate that Defendant voluntarily entered his plea on August 19, 2016. In his signed GPA, Defendant acknowledged that:

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

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

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

GPA, pp. 6.

Moreover, counsel joined in Defendant's voluntariness declaring:

1. I have fully explained to the Defendant the allegations contained in the charge(s) to which guilty pleas are being entered.

2. I have advised [Shannon] of the penalties for each charge and the restitution that the Defendant may be ordered to pay.

[...]

5. To the best of my knowledge and belief, the Defendant:

a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement,

b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily, and

c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with [him]...

GPA, pp. 7.

Importantly, during the plea canvass, Defendant told the district court that he was pleading voluntarily. Tr., 08/19/16, pp. 7-8. Accordingly, the totality of the circumstances establishes that Defendant pleaded guilty voluntarily and knowingly. Nothing in the plea canvass or the GPA remotely supports Defendant's assertions that his plea was not voluntarily or intelligently entered into on August 19, 2016. Moreover, the Court based its decision on these same circumstances when it considered his Motion to Withdraw Guilty Plea; there is no requirement that the Court review the entire record, especially when the Court lived the record. See Petition, pp. 25. Therefore, this Court denies Defendant's claim.

d. Defendant Fails to Substantiate Prejudice to Excuse His Procedural Default Because there Was No Prosecutorial Misconduct

Defendant complains that he was vindictively prosecuted because he elected to go to trial. Petition, pp. 31. First, this complaint should have been raised on direct appeal; as such, it is waived. NRS 34.724(2)(a); Franklin, 110 Nev. 750, 877 P.2d 1058. Moreover, "there is no constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial." Lafler v. Cooper, 566 U.S. 156, 180, 132 S. Ct. 1376, 1395 (2012) (quoting Weatherford v.

Bursey, 429 U.S. 545, 561, 97 S. Ct. 837 (1977)). As such, it follows that offers tend to get worse for defendants the closer they get to trial. Such a scheme does not offend the Constitution. Indeed, the United States Supreme Court has held that Due Process is not violated when a prosecutor carries out a threat made during plea negotiations to reindict the accused on more serious charges on which he is plainly subject to prosecution if he does not plead guilty to the offense with which he was originally charged. Bordenkircher v. Hayes, 434 U.S. 357, 358, 98 S. Ct. 663, 665 (1978). Ultimately, however, this Court finds that Defendant's claim is belied by the record as there were no offers in Defendant's cases until the negotiated settlement on August 19, 2016. Court Minutes, 08/17/16 ("State pointed out there were no offers in these cases"). As such, this Court denies Defendant's claim.

Defendant also asserts the State was vindictive because the prosecutor said "I'm tired of playing with Mr. Edwards." Petition, pp. 31. Defendant fails to provide any support for his claim. The burden of production lies solely with the defendant in post-conviction proceedings. Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995) (citing NRS 34.370(4)). Thus, Defendant's assertion is a bare allegation suitable only for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

II. DEFENDANT RECEIVED THE EFFECTIVE ASSISTANCE OF COUNSEL

Defendant alleges multiple instances of ineffective assistance of counsel. Nevada has adopted the standard outlined in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), for determinations regarding the effectiveness of counsel. Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984); Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996). Under Strickland, in order to assert a claim of ineffective assistance of counsel, the defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying a two-pronged test. Strickland 466 U.S. at 686-687, 104 S. Ct. at 2064; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the defendant must show that his counsel's representation fell below an objective standard of reasonableness, and

that, but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. See Strickland, 466 U.S. at 687-688, 694, 104 S. Ct. at 2064, 2068.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney's representations amounted to incompetence under prevailing professional norms, "not whether it deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 88, 131 S. Ct. 770, 778 (2011). Furthermore, "[e]ffective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

A court begins with a presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 35 (2004). The role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (emphasis added) (citing Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)).

In considering whether trial counsel was effective, the court must determine whether counsel made a "sufficient inquiry into the information . . . pertinent to his client's case." Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996); citing, Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066. Once this decision is made, the court will consider whether counsel made "a reasonable strategy decision on how to proceed with his client's case." Doleman, 112 Nev. at 846, 921 P.2d at 280; citing Strickland, 466 U.S. at 690-691, 104 S. Ct. at 2066. Counsel's strategy decision is a "tactical" decision and will be "virtually unchallengeable absent extraordinary circumstances." Doleman, 112 Nev. at 846, 921 P.2d at

280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691, 104 S. Ct. at 2066.

This analysis does not indicate that the court should "second guess reasoned choices between trial tactics, nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711; citing Cooper, 551 F.2d at 1166 (9th Cir. 1977). In essence, the court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. However, counsel cannot be deemed ineffective for failing to make futile objections, file futile motions, or for failing to make futile arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

Even if a defendant can demonstrate that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

Finally, claims asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id.

Defendant complains that counsel was ineffective because he: (1) allowed Defendant to plead guilty and stipulate to the habitual offender status without reviewing the documents for proof of convictions; (2) failed to investigate Defendant's claim of innocence; and (3) failed

to investigate and prepare for trial. Petition, pp. 26. This Court finds that Defendant fails to establish deficient performance or prejudice with respect to each of his claims.

First, the decision to plead guilty and stipulate to habitual criminal treatment belonged entirely to Defendant. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). As such, counsel cannot be deemed ineffective for a decision that belonged solely to Defendant. Moreover, Defendant's complaint is belied by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Both the GPA and plea canvass establish that Defendant fully understood and agreed to plead guilty and stipulate to habitual criminal treatment after discussing the case with counsel. GPA, pp. 1-3; Tr., 08/19/16, pp. 2-6. As such, this Court finds that Defendant is not entitled to relief.

Second, Defendant's claim that counsel was ineffective for failing to investigate his innocence is meritless. Defendant's claim is belied by the record; he pleaded guilty and admitted that he was, in fact, guilty. Tr., 08/19/16, pp. 8-9; Hargrove, 100 Nev. at 502, 686 P.2d at 225. Moreover, Defendant fails to show how a better investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at 192, 87 P.3d at 538. His claim that he would have gone to trial is nothing more than a bare assertion, not warranting consideration by this Court. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, this Court denies Defendant's claim.

Finally, Defendant's complaint that counsel failed to adequately investigate and prepare for trial must fail. Defendant alleges counsel's ineffectiveness is demonstrated by his unwillingness to file a discovery motion. See Petition, pp. 28. On March 16, 2016, Defendant filed a pro per Notice of Motion and Motion to Compel Discovery. Although counsel stated he would refile the motion, he was under no obligation. Rhyne, 118 Nev. at 8, 38 P.3d at 167 (counsel cannot be ineffective for strategic decisions, including what motions to file and arguments to make). Accordingly, this Court denies Defendant's claim of ineffectiveness assistance of counsel.

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///

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ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, hereby denied.

DATED this 20th day of June, 2018.

DISTRICT JUDGE

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

BY for
JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528

CERTIFICATE OF SERVICE

I certify that on the 20th day of June, 2018, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

HAROLD EDWARDS, BAC #1169986
SOUTHERN DESERT CORRECTIONAL CENTER
PO BOX 208
INDIAN SPRINGS, NV 89070-0208

BY
M. HERNANDEZ
Secretary for the District Attorney's Office

mah/L1

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7/30/2018 11:30 AM
Steven D. Grierson
CLERK OF THE COURT

Harold Edwards 1169986
Saguaro Correctional Center
1252 E. Arica Rd.
Eloy, AZ. 85131

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff.

vs.

HAROLD EDWARDS,
Defendant.

Case No. C15-310695-1
Dept No. VIII

NOTICE OF APPEAL

COMES NOW, Petitioner Harold Edwards in Propria Persona and hereby submit this Notice Of Appeal.

DATED THIS 19th day of July 2018.

I Harold Edwards do Solemnly Swear under the peralty of perjury that the above Notice Of Appeal is accurate, Correct, and true to the best of my knowledge NRS 171.102 and NRS 208.165.

Respectfully Submitted
Pro'Se defendant Harold Edwards.

I am filing this Notice Of Appeal to be Safe from the state district Court's allegations that the Nevada Court Of Appeals directed that Court to hear Petitioner's Post-Conviction Petition for writ of habeas corpus in their Reversal Order. No such directions were given in the Nevada Court Of Appeals Reversal Order filed on December 14th 2017. The Nevada Supreme Court issued a Remittitur Closing the Case on January 9, 2018

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Case Number: C-15-310695-1

Harold Edwards 1169986
Saguaro Correctional Center
1250 East Arica Rd.
Eloy AZ. 85131

PHOENIX AZ 852

26 JUL 2018 PM 10 L

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ASTA

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

STATE OF NEVADA, Plaintiff(s), vs. HAROLD EDWARDS, Defendant(s),	Case No: C-15-310695-1 Dept No: VIII

CASE APPEAL STATEMENT

1. Appellant(s): Harold Edwards

2. Judge: Douglas E. Smith

3. Appellant(s): Harold Edwards

Counsel:

Harold Edwards #1169986
Saguaro Correctional Center
1252 E. Arica Rd.
Eloy, AZ 85131

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101

(702) 671-2700

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

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

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

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

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

9. Date Commenced in District Court: November 10, 2015

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

    Type of Judgment or Order Being Appealed: Post-Conviction Relief

11. Previous Appeal: Yes

    Supreme Court Docket Number(s): 71957, 72267

12. Child Custody or Visitation: N/A

Dated This 1 day of August 2018.

Steven D. Grierson, Clerk of the Court

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

cc: Harold Edwards

IN THE SUPREME COURT OF THE STATE OF NEVADA

HAROLD EDWARDS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 76590
District Court Case No. C310695

FILED
APR 15 2019
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 15th day of March, 2019.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this April 10, 2019.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll
Chief Deputy Clerk

C-15-310695-1
CCJA
NV Supreme Court Clerks Certificate/Judgn
4829459

IN THE SUPREME COURT OF THE STATE OF NEVADA

HAROLD EDWARDS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76590

FILED

MAR 15 2019

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

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order denying a postconviction petition for a writ of habeas corpus.[1] Eighth Judicial District Court, Clark County; Douglas Smith, Judge.

In his March 6, 2017, petition, appellant claimed: (1) the habitual criminal adjudication violated his due process rights, (2) the district court did not let him argue at sentencing or address errors in the presentence investigation report, (3) the State improperly filed a notice of intent to seek habitual criminal adjudication instead of amending the information to include a count of habitual criminality, (4) the district court abused its discretion in denying his presentence motion to withdraw a guilty plea, (5) the prosecution was vindictive and the prosecutor committed

[1]Having considered the pro se brief filed by appellant, we conclude that a response is not necessary. NRAP 46A(c). This appeal therefore has been submitted for decision based on the pro se brief and the record. *See* NRAP 34(f)(3).

misconduct, and (6) the large habitual criminal adjudication constituted cruel and unusual punishment. These claims fell outside the scope of claims permissible in a postconviction petition for a writ of habeas corpus challenging a judgment of conviction based on a guilty plea. *See* NRS 34.810(1)(a). And contrary to appellant's assertions, the appeal-waiver language in the guilty plea agreement permitted appellant to challenge his conviction through a postconviction petition but only in compliance with the procedural rules set out in NRS chapter 34. Because these claims exceed the scope of the petition, the district court did not err in rejecting them.

Next, appellant claims that he received ineffective assistance of trial counsel.[2] To prove ineffective assistance of counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must demonstrate that his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and resulting prejudice such that there is a reasonable probability that, but for counsel's errors, petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 697 (1984). We give deference to the court's factual findings if supported by substantial evidence and not clearly erroneous but review the court's application of the law to those facts de novo. *Lader v. Warden*, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005).

---

[2]We note that appellant represented himself at the sentencing hearings.

Appellant claims that trial counsel failed to meaningfully investigate his claim of innocence and prepare for trial. Appellant asserts that counsel did not file a discovery motion, did not file a timely motion to consolidate cases, delayed in filing a motion to access the crime scene, and visited him only a couple of times. Appellant fails to demonstrate that his trial counsel's performance was deficient because he did not identify what information trial counsel would have discovered with a more thorough or timely investigation. *See Molina v. State*, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004). Consequently, appellant did not demonstrate a reasonable probability that he would have gone to trial absent trial counsel's performance. We further note that appellant's stated dissatisfaction with the timing of the motion to consolidate is that he would have preferred to have this case transferred to a different department and not that he would have insisted on going to trial. Thus, the district court did not err in denying these claims.

Appellant next claims that trial counsel was ineffective for allowing him to plead guilty and stipulate to habitual criminal status without reviewing the prior convictions. Appellant argues that the prior convictions were constitutionally infirm because two of the prior convictions did not list the name of the attorney, two of the prior convictions were prosecuted in the same information, and one of the prior convictions was not a felony in Nevada. Appellant fails to demonstrate that his trial counsel's performance was deficient because the three prior convictions that

were submitted for consideration,[3] involving three separate judgments of conviction, were constitutionally valid on their face and appellant failed to rebut the presumption of constitutional firmity. *See* NRS 207.010(1)(b) (setting forth that a prior conviction may be considered a felony when it is a felony in this state or in the situs state); NRS 207.016(5) (stating that a certified copy of a felony conviction is prima face evidence of conviction of a prior felony); *Dressler v. State*, 107 Nev. 686, 693, 819 P.2d 1288, 1292-93 (1991) (recognizing that a judgment of conviction is entitled to a presumption of regularity and holding that after the State has presented valid records of a judgment of conviction which do not, on their face, raise a presumption of constitutional infirmity, it is the defendant's burden to establish by a preponderance of the evidence that the conviction is constitutionally infirm). No authority requires the specific name of an attorney appear in the documents in order to establish that a defendant was represented by counsel in the prior proceedings. Appellant further fails to demonstrate a reasonable probability that he would have insisted on going to trial absent counsel's alleged error given the benefit he received, a stipulation to the least harsh sentence under NRS 207.010(1)(a), the dismissal of two other cases, and the agreement to run the sentence in this case concurrently with another district court case. Therefore, the district court did not err in denying this claim.

---

[3]The district court heard appellant's argument challenging the validity of the prior convictions and continued sentencing for an examination of the facial validity of the prior convictions.

Appellant next claims that trial counsel coerced his guilty plea by informing him that no one would believe his story and the district court could sentence him to life without the possibility of parole. Appellant also complains that he was not presented sufficient time to consider the offer. The record does not support appellant's contention that his plea was coerced or involuntarily entered. It is not deficient for trial counsel to inform a client of the maximum possible sentence. During the plea canvass, appellant affirmatively acknowledged that his plea was entered voluntarily and that he was not acting under duress or coercion. Therefore, the district court did not err in denying this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Hardesty

_____, J.
Stiglich

_____, J.
Silver

cc: Hon. Douglas Smith, District Judge
Harold Edwards
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

CERTIFIED COPY
This document is a full, true and correct copy of the original on file and of record in my office.
DATE: 4/10/19
Supreme Court Clerk, State of Nevada
By Hrguez Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

HAROLD EDWARDS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 76590
District Court Case No. C310695

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

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

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

DATE: April 10, 2019

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll
Chief Deputy Clerk

cc (without enclosures):
Hon. Douglas Smith, District Judge
Harold Edwards
Clark County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on APR 15 2019.

HEATHER UNGERMANN
Deputy District Court Clerk

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APPEALS
APR 15 2019
CLERK OF THE COURT

PP
DA

Harold Edwards #1169986
SOUTHERN DESERT CORRECTIONAL CENTER
Post OFFICE Box 208
INDIAN SPRINGS, NEVADA 89070-0208

FILED
NOV 04 2019
CLERK OF COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

* * * * *

HAROLD EDWARDS,
Petitioner,
-vs-
Southern Desert Corr. Center et al.,
Respondents.

Case No. C-15-310695-1

MOTION TO EXTEND PRISON COPYWORK LIMIT

December 2, 2019
8:30 AM

COMES NOW, Petitioner, HAROLD EDWARDS, in pro se, and submits his Motion to Extend Prison Copywork Limit, moving the Court to order the Nevada Department of Corrections ("NDOC") to extend his copywork limit for the narrow purposes of the instant habeas corpus proceedings.

This motion is based upon NDOC Administrative Regulation ("AR") 722; all papers and documents on file herein; and the following points and authorities.

POINTS AND AUTHORITIES

Petitioner is an indigent prisoner, as demonstrated by the Motion for Leave to Proceed In Forma Pauperis on record herein. NDOC AR 722.01(7)(D) allows Petitioner to accrue a $100.00 debt against his account towards legal copywork which, once reached, prohibits him from accumulating any further indebtedness for

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CLERK OF THE COURT

such copywork. "Exceptions to this rule would be a court order received directly from the courts..." Id. The AR therefore gives this Court authority to issue an order allowing Petitioner to exceed his copywork limit.

Petitioner has reached or exceeded the $100.00 limit of AR 722.12. As such, NDOC has prohibited him at this time from receiving any further legal copywork in the instant proceeding unless the Court issues an order allowing him to do so.

Petitioner's grounds have merit. As such, he is entitled to relief in the instant habeas proceedings; however, he requires copywork services in order to litigate his instant petition. In addition to his originals of all pleadings, motions and other documents in this case, he will need copies to serve upon Respondents per FRCP 5, LR 5-1 and LR 7-2. Additionally, he will require a copy of same for his own records. See e.g. Gluth v. Kangas 951 F.2d 1504, 1510 (9th Cir. 1991)(a reasonable amount of copywork for prisoners is found in that required to file, serve opponents and maintain copy for inmate's records).

Petitioner does not herein seek a blanket order for unlimited copywork, but seeks only a reasonable allowance of copywork for documents relevant to the instant proceeding, including, but not limited to, supplemented/amended pleadings, motions, responses, replies, notices, etc. Id.

As Petitioner's liberty is at the heart of these proceedings, he should be provided an extension of his copywork limitation in order to render him reasonably capable of fairly litigating this habeas action.

CONCLUSION

For the reasons set forth above, the Court should direct the NDOC to extend Petitioner's copywork limitations towards the allowance of receiving copies of documents pertinent to the instant habeas proceedings.

Dated this 30TH day of November, 2019.

Harold Edwards
Harold Edwards #1169986

S.D.C.C.
Indian Springs, Nevada 89070
Petitioner In Pro Se

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing to the below address on this 30TH day of November, 2019, by placing same in the hands of prison law library staff for posting in the U.S. Mail:

Attorney For Respondents

Harold Edwards
1169986

Petitioner In Pro Se

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION TO EXTEND Prison Copy limit
(Title of Document)

filed in District Court Case number C-15 310695-1

☑ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

Harold Edwards — 10. 30 19.
Signature — Date

Harold Edwards
Print Name

Pro Se Defendant
Title

CERTFICATE OF SERVICE BY MAILING

I, Harold Edwards, hereby certify, pursuant to NRCP 5(b), that on this ____ day of November, 2019, I mailed a true and correct copy of the foregoing, "MOTION TO EXTEND PRISON CAMWORK LIMIT"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

STEVEN D. GRIERSON
200 LEWIS AVENUE 3RD Floor
LAS VEGAS NV. 89155-1160

CC:FILE

DATED: this 3rd day of November, 2019.

Harold Edwards
Harold Edwards # 1164986
/In Propria Personam
Post Office Box 208,S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

Harold Edwards #1169986
SDCC P.O. BOX 208
Indian Springs, NV. 89070

2359724
3763

STEVEN D. GRIERSON Clerk of the Court
200 LEWIS AVENUE 3RD FLOOR
LAS VEGAS, NV. 89155-1160

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12/23/2019 1:09 PM
Steven D. Grierson
CLERK OF THE COURT

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JORY SCARBOROUGH
Deputy District Attorney
Nevada Bar #014265
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAROLD EDWARDS,
#7024721

Defendant.

CASE NO: C-15-310695-1
DEPT NO: IX

ORDER GRANTING DEFENDANT'S MOTION TO EXTEND PRISON COPYWORK LIMIT

DATE OF HEARING: December 2, 2019
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 2nd day of December, 2019, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through JORY SCARBOROUGH, Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

///

///

///

///

IT IS HEREBY ORDERED that the Defendant's Motion to Extend Prison Copywork Limit, shall be, and it is GRANTED up to $500.00. If the Deft. needs more than that, he will have to file another motion with additional information as to what he is seeking copies of and for what purpose.

DATED this 19th day of December, 2019.

DISTRICT JUDGE

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

BY
JORY SCARBOROUGH
Deputy District Attorney
Nevada Bar #014265

CERTIFICATE OF SERVICE

I certify that on the 23rd day of December, 2019, I mailed a copy of the foregoing Order to:

HAROLD EDWARDS, BAC #1169986
SO. DESERT CORRECTIONAL CENTER
PO BOX 208
INDIAN SPRINGS, NV 89070

BY J. Robertson
Secretary for the District Attorney's Office

mah/L1

FILED
MAR 2 0 2020
CLERK OF COURT

Harold, Edwards ID NO. 1169986

SOUTHERN DESERT CORRECTIONAL CTN.
20825 COLD CREEK RD.
P.O. BOX 208
INDIAN SPRINGS, NV 89070

IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK

HAROLD EDWARDS
Petitioner

v.

SOUTHERN DESERT CORRECTIONAL
CENTER GANG INTELLIGENCE DEPT

CASE NO.: C15310695-1
DEPT. NO.:
DOCKET: April 20, 2020 At 1:45pm

NOTICE OF MOTION AND MOTION FOR THE COURT TO ORDER SOUTHERN DESERT'S CORRECTIONAL CENTER GANG INTELLIGENCE DEPARTMENT TO RELEASE PETITIONER'S CORRECTIONS FILE AND PRISON RECORDS

COMES NOW, Harold, Edwards, herein above respectfully moves this Honorable Court for an ORDER Compelling Southern Desert Correctional Center Gang Intelligence Department To Release Petitioner's Corrections File and Prison Records

This Motion is made and based upon the accompanying Memorandum of Points and Authorities,

DATED: this 16th day of February, 2020

BY: Harold Edwards
Harold Edwards #1169986
Defendant In Proper Personam

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CLERK OF THE COURT

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MAR 2 0 2020
CLERK OF THE COURT

Petitioner arrived to Southern Desert Correctional Center on April 10th 2017 from High Desert Correctional Center. Petitioner heard from several inmates that Correctional officers were telling other inmates that petitioner masturbates while his cellmate is sleep. This kind of slander in prison can cause alot of serious harm. It could cause problems with petitioner assignments to cells, it can cause problems with petitioner being assigned jobs within the institution because prison is a Cess Pool for gossip and rumors about staff and inmates alot of inmates gossip with Correctional officers and spread rumors that they've heard and officers spread rumors about what they've heard about inmates and their Co-workers. These rumors are Circulated around the prison, so medical, School and the other programs that this institution has hears these rumors and it can cause petitioner to not be able to get over to medical(on time) not be accepted into some programs where females work and to be looked upon with disdain. Defendants are deliberately exposing petitioner to harm at the hands of other inmates by spreading false information about him masturbating to female officers and while his cellmate is asleep in violation of U.S. Constitution Amendment VIII. It is widely known that when new recruits are hired the older veteran officers can tell them (the new recruits) anything and they'll believe it with a rigor that no evidence to the Contrary can penetrate. Simply put the new recruits want to fit entirely into program. That's exactly what goes on inside these prison gates. You have peace officers who believe that they can say anything about an inmate and get away with it because they also believe that they will be believed over an inmate. Defendants are most definitely aware of the obvious danger associated with these kinds of reputations. Clearly established law provides that defendants are violating petitioner's Constitutional right to protection

from Violence at the hands of other prisoners. The fact that petitioner was not actually assaulted is irrelevant since defendant's alleged deliberate indifference to the substantial risk of serious harm to petitioner established the Constitutional violation. Senior officers and Gang Intelligence Department, here at Southern Desert Correctional Center who don't even know petitioner (because he is from a foreign jurisdiction) are promulgating false information that they've promiscuously gathered from jail house snitches and other Gang intelligence departments in an effort to excite adverse derogatory and unpleasant feeling and Opinions about petitioner. These false stories about petitioner are spread by the jailhouse snitches and other officers to the newly recruited peace officers as well as free staff. These newly recruited peace officers are encouraged by peer-pressure among the veteran guards to believe and further perpetuate this false libelous information around and this is facilitated by indifference on the part of the administration. They perform different ruses to give the false information they 'poss around the appearance of truth like reassigning female officers to other units, not letting female officers post up outside the dining area where they use to stand. The false information again, Comes from jailhouse snitches. it is recognized that Criminals who are awarded by prison officials for information are inherently untrustworthy. The majority of informers inside prisons are cut from an untrustworthy cloth. They will tell on anyone for a telephone call, a bed move, to be able to unit visit other prisoners. Coffee almost anything they are highly unreliable and should not be trusted. these jailhouse snitches are Commonly manipulative and untruthful. They will make up stories about another person Simply because they don't like them for a

plethora of mostly girlish reasons. And the officers that they spend alot time around, will believe the gossip these snitches spread.

Prison officials have a duty to protect prisoners from violence at the hands of other prisoners. A prison officials deliberate indifference to a substantial risk of serious harm to an inmate violates U.S. Constitutional amendment VIII. Rather than a purely objective test, the deliberate indifference. Standard under U.S. Constitution Amendment VIII has a subjective Component. A prison official who knows of and disregards an excessive risk to an [redacted] inmates health or Safety is deliberate indifferent for these purposes. Therefore, in order for petitioner to establish a Cognizable U.S. Constitution Amendment VIII Claim for failure to protect. a plaintiff or in this case petitioner must show that he is incarcerated under Conditions posing a substantial risk of serious harm. the objective Component and [redacted] that the defendants are deliberately indifferent to petitioners Safety the Subjective Component. Benefield V. McDowall 241 F. 3d 1267 (10th Cir 2001). Spreading these kinds of lies can cause naive administrative people to believe these rumors and then it is passed around (as if it is real) to people on the streets, and the defendants know this kind of stuff.

CONCLUSION

Petitioner beseeches this Honorable Court to grant his Motion to help him prepare for Legal action in the Civil Court against these defendants.

Dated 2.20.20

By Harold Edwards

Pro'se Petitioner

CERTFICATE OF SERVICE BY MAILING

I, Harold Edwards, hereby certify, pursuant to NRCP 5(b), that on this 20th day of February, 2020, I mailed a true and correct copy of the foregoing, "Notice of Motion and Motion for the Court to order Southern Desert Corr. Center Gang Intelligance to release Petitioner's Corrections file and Prison Record." by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Steven D. Grierson Clerk of the Court
200 Lewis Avenue 3rd Floor
Las Vegas Nevada 89155-1160

CC:FILE

DATED: this 20 day of February, 2020.

Harold Edwards
Harold Edwards #1169986
/In Propria Personam
Post Office Box 208,S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion for the Court to order Southern Desert Corr. Center to release petitioner's prisonrecords (Title of Document) Corrections File.

filed in District Court Case number _____

☑ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

_____
(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

Harold Edwards
Signature

2.2020
Date

Harold. Edwards
Print Name

Pro se
Title

Harold Edwards #1169986
SDCC P.O. BOX 208
Indian Springs, Nv. 89070

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STEVEN D. GRIERSON Clerk of the Court
200 LEWIS AVENUE 3rd FL.
Las Vegas, NV. 89155-1160

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4/29/2020 10:48 AM
Steven D. Grierson
CLERK OF THE COURT

Harold, Edwards ID NO. 1169986

SOUTHERN DESERT CORRECTIONAL CTN.
20825 COLD CREEK RD.
P.O. BOX 208
INDIAN SPRINGS, NV 89070

May 27, 2020 @8:30 AM

IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK

HAROLD EDWARDS
Petitioner

v.

SOUTHERN DESERT CORRECTIONAL CENTER GANG INTELLIGENCE DEPT.

CASE NO.: C310695-1
DEPT. NO.: VIII
DOCKET:

NOTICE OF MOTION AND MOTION FOR THE COURT TO ORDER SOUTHERN DESERT'S CORRECTIONAL CENTER GANG INTELLIGENCE DEPARTMENT TO RELEASE PETITIONER'S CORRECTIONS FILE AND PRISON RECORDS

COMES NOW, Harold, Edwards, herein above respectfully moves this Honorable Court for an ORDER Compelling Southern Desert Correctional Center Gang Intelligence Department To Release Petitioner's Corrections File and Prison Records.

This Motion is made and based upon the accompanying Memorandum of Points and Authorities,

DATED: this 16th day of February, 2020

BY: Harold Edwards
Harold Edwards #1169986
Defendant In Proper Personam

RECEIVED
MAR 30 2020
CLERK OF THE COURT

Petitioner arrived to Southern Desert Correctional Center on April 10th 2017 from High Desert Correctional Center. Petitioner heard from several inmates that Correctional officers were telling other inmates that petitioner masturbates while his cellmate is sleep. This kind of slander in prison can cause alot of serious harm. It could cause problems with petitioner assignments to cells. it can cause problems with petitioner being assigned jobs within the institution because prison is a Cess Pool for gossip and rumors about staff and inmates alot of inmates gossip with Correctional officers and spread rumors that they've heard and officers spread rumors about what they've heard about inmates and their Co-workers. These rumors are Circulated around the prison. So medical, School and the other programs that this institution has hears these rumors and it can cause petitioner to not be able to get over to medical(on time) not be accepted into some programs where females work and to be looked upon with disdain. Defendants are deliberately exposing petitioner to harm at the hands of other inmates by spreading false information about him masturbating to female officers and while his cell mate is asleep in violation of U.S. Constitution Amendment VIII. It is widely known that when new recruits are hired the older veteran officers can tell them (the new recruits) anything and they'll believe it with a rigor that no evidence to the Contrary can penetrate. Simply put, the new recruits want to fit entirely into program. That's exactly what goes on inside these prison gates. You have peace officers who believe that they can say anything about an inmate and get away with it because they also believe that they will be believed over an inmate. Defendants are most definitely aware of the obvious danger associated with these kinds of reputations. Clearly established law provides that defendants are violating petitioner's Constitutional right to protection

from violence at the hands of other prisoners. The fact that petitioner was not actually assaulted is irrelevant since defendant's alleged deliberate indifference to the substantial risk of serious harm to petitioner established the constitutional violation. Senior officers and Gang Intelligence Department, here at Southern Desert Correctional Center who don't even know petitioner (because he is from a foreign jurisdiction) are promulgating false information that they've promiscuously gathered from jail house snitches and other Gang intelligence Departments in an effort to excite adverse derogatory and unpleasant feeling and opinions about petitioner. These false stories about petitioner are spread by the jailhouse snitches and other officers to the newly recruited peace officers as well as free staff. These newly recruited peace officers are encouraged by peer-pressure among the veteran guards to believe and further perpetuate this false libelous information around and this is facilitated by indifference on the part of the administration. They perform different ruses to give the false information they pass around the appearance of truth like reassigning female officers to other units, not letting female officers post up outside the dining area where they use to stand. The false information again, comes from jailhouse snitches. it is recognized that Criminals who are awarded by prison officials for information are inherently untrustworthy. The majority of informers inside prisons are cut from an untrustworthy cloth. They will tell on anyone for a telephone call, a bed move, to be able to unit visit other prisoners. Coffee, almost anything; they are highly unreliable and should not be trusted, these jailhouse snitches are commonly manipulative and untruthful. They will make up stories about another person simply because they don't like them for a

plethora of mostly girlish reasons. And the officers that they spend alot time around, will believe the gossip these snitches spread.

Prison officials have a duty to protect prisoners from violence at the hands of other prisoners. A prison officials deliberate indifference to a substantial risk of serious harm to an inmate violates U.S. Constitutional amendment VIII. Rather than a purely objective test, the deliberate indifference standard under U.S. Constitution Amendment VIII has a subjective Component. A prison official who knows of and disregards an excessive risk to an [redacted] inmates health or Safety is deliberate indifferent for these purposes. Therefore, in order for petitioner to establish a Cognizable U.S. Constitution Amendment VIII Claim for failure to protect, a plaintiff or in this case petitioner must show that he is incarcerated under conditions posing a substantial risk of serious harm, the objective Component and [redacted] that the defendants are deliberately indifferent to petitioners Safety the Subjective Component, Benefield v. McDowall 241 F. 3d 1267 (10th Cir 2001). Spreading these kinds of lies can cause naive administrative people to believe these rumors and then it is passed around (as if it is real) to people on the streets, and the defendants know this kind of stuff.

CONCLUSION

Petitioner beseeches this Honorable Court to grant his Motion to help him prepare for Legal action in the Civil Court against these defendants.

Dated 2.20.20

By Harold Edwards

Pro'se Petitioner

CERTFICATE OF SERVICE BY MAILING

I, Harold Edwards, hereby certify, pursuant to NRCP 5(b), that on this 20th day of February, 2020, I mailed a true and correct copy of the foregoing, "Notice of Motion or Motion for the Court to order Southern Desert Corr. Center Gang Intelligence to release Petitioner's Corrections File and Prison Record." by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Steven D. Grierson Clerk of the Court
200 Lewis Avenue 3rd Floor
Las Vegas Nevada 89155-1160

CC:FILE

DATED: this 20 day of February, 2020.

Harold Edwards
Harold Edwards #1169986
/In Propria Personam
Post Office Box 208,S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion for the Court to order Southern Desert Corr. Center to release petitioner's prisonrecords
(Title of Document) Corrections File.

filed in District Court Case number _____

☑ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

_____
(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

Harold Edwards
Signature

2.20.20
Date

Harold. Edwards
Print Name

Pro' se
Title

Harold Edwards #1169986
SDCC P.O. BOX 208
Indian springs, NV. 89070

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MAR 30 2020
CLERK OF THE COURT

STEVEN D. GRIERSON Clerk of The Court
200 Lewis Ave. 3rd floor
Las Vegas, NV. 89155-1160

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LEGAL MAIL

828

Name Harold Edwards NDOC #1169936

Southern Desert Correctional Center
Post Office Box 208
Indian Springs, Nevada 89070-208

FILED
AUG 24 2020
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

September 14, 2020
1:45 PM

* * * * *

HAROLD EDWARDS,
Petitioner,

-vs-

STATE OF NEVADA et al.,
Respondents.

Case No. C-15-310695-1

MOTION TO EXTEND PRISON COPYWORK LIMIT

COMES NOW, Petitioner, Harold Edwards, in pro se, and submits his Motion to Extend Prison Copywork Limit, moving the Court to order the Nevada Department of Corrections ("NDOC") to extend his copywork limit for the narrow purposes of the instant habeas corpus proceedings.

This motion is based upon NDOC Administrative Regulation ("AR") 722; all papers and documents on file herein; and the following points and authorities.

POINTS AND AUTHORITIES

Petitioner is an indigent prisoner, as demonstrated by the Motion for Leave to Proceed In Forma Pauperis on record herein. NDOC AR 722.01(7)(D) allows Petitioner to accrue a $100.00 debt against his account towards legal copywork which, once reached, prohibits him from accumulating any further indebtedness for

RECEIVED
AUG 17 2020
CLERK OF THE COURT

such copywork. "Exceptions to this rule would be a court order received directly from the courts..." Id. The AR therefore gives this Court authority to issue an order allowing Petitioner to exceed his copywork limit.

Petitioner has reached or exceeded the $100.00 limit of AR 722.12. As such, NDOC has prohibited him at this time from receiving any further legal copywork in the instant proceeding unless the Court issues an order allowing him to do so.

Petitioner's grounds have merit. As such, he is entitled to relief in the instant habeas proceedings; however, he requires copywork services in order to litigate his instant petition. In addition to his originals of all pleadings, motions and other documents in this case, he will need copies to serve upon Respondents per FRCP 5, LR 5-1 and LR 7-2. Additionally, he will require a copy of same for his own records. See e.g. Gluth v. Kangas 951 F.2d 1504, 1510 (9th Cir. 1991)(a reasonable amount of copywork for prisoners is found in that required to file, serve opponents and maintain copy for inmate's records).

Petitioner does not herein seek a blanket order for unlimited copywork, but seeks only a reasonable allowance of copywork for documents relevant to the instant proceeding, including, but not limited to, supplemented/amended pleadings, motions, responses, replies, notices, etc. Id.

As Petitioner's liberty is at the heart of these proceedings, he should be provided an extension of his copywork limitation in order to render him reasonably capable of fairly litigating this habeas action.

CONCLUSION

For the reasons set forth above, the Court should direct the NDOC to extend Petitioner's copywork limitations towards the allowance of receiving copies of documents pertinent to the instant habeas proceedings.

Dated this 3rd day of August, 2020.

Harold Edwards

Harold Edwards # 1169986

S.D.C.C.
Indian Springs, Nevada 89070
Petitioner In Pro Se

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing to the below address on this 3rd day of August, 2020, by placing same in the hands of prison law library staff for posting in the U.S. Mail:

Attorney For Respondents

Harold Edwards

Harold Edwards

Petitioner In Pro Se

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding "MOTION TO EXTEND PRISON COPY WORK LIMIT"
(Title of Document)

filed in District Court Case number C15310695-1

☑ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

Harold Edwards
Signature

8. 3. 2020
Date

Harold Edwards
Print Name

pro se Defendant
Title

6.

CERTFICATE OF SERVICE BY MAILING

I, Harold Edwards, hereby certify, pursuant to NRCP 5(b), that on this 3rd day of August, 2020, I mailed a true and correct copy of the foregoing, "Motion To Extend Prison Copywork Limit"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

STEVEN D. GRIERSON
200 LEWIS AVE. 3rd Floor
Las Vegas, NV. 89155-1160

CC:FILE

DATED: this 3rd day of August, 2020

Harold Edwards
Harold Edwards # 1169986
/In Propria Personam
Post Office Box 208,S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

Harold Edwards 1169986
SDCC P.O. BOX 208
Indian Springs, NV. 89070

Steven D. Grierson clerk of the Court
200 Lewis Ave. 3rd floor
Las Vegas, NV. 89155-1160

CONFIDENTIAL
OUTGOING MAIL

Harold Edwards #1169986
Southern Desert Corr. Center
P.O. BOX 208
Indian Springs, NV. 89070

FILED
SEP 14 2020
CLERK OF COURT

October 5, 2020
1:45 PM

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

Harold Edwards, Defendant.	Case No. C15-310695-1
	Dept. No.
VS.	
State of Nevada, Respondents.	

NOTICE OF MOTION AND MOTION ASKING THE COURT TO ORDER SOUTHERN DESERT CORRECTIONAL CENTER'S LAW LIBRARY TO GRANT DEFENDANT ACCESS TO THE LAW LIBRARY FIVE DAYS (5) PER WEEK; OR IN THE ALTERNATIVE THREE DAYS (3)

COMES NOW Defendant Harold Edwards asking this Honorable Court to order the Law Library Supervisor at Southern Desert Correctional Center to allow the above named Defendant access to the Law Library five (5) days per week. or in the alternative Three (3) daus

Defendant bases this Motion on the following Points and Authorities.

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SEP - 8 2020
CLERK OF THE COURT

POINTS AND AUTHORITIES

The fundamental Constitutional Right of access to the Courts ~~requir~~ requires State prison authorities to assist inmates in the preparation and filing of meaningful Legal papers by providing prisoners with adequate Law Libraries or adequate assistance from persons who are trained in Law. Bounds Vs. Smith 430 US 817. 52 L. Ed 2d 72, 97 S. Ct. 1491.

Defendant files this motion because Roshonda Smith the acting Law Library Supervisor at Southern Desert Correctional Center is denying him access to the Court Violating his 14th Amendment right by her failure to allow him access to the Legal Research facilities at SDCC.

Southern Desert Correctional Center is [redacted] to be in abeyance with Nevada Department of Corrections Administrative Regulation 722 which states: The Warden at each institution is responsible to: (A) Ensure that inmates have access to the judicial process by providing for reasonable access to the law libraries. No changes in the hours of operation of the Law library absent exigent Circumstances are authorized.

The Warden Will assign an [redacted] employee to manage the institutions Law Library if no Law Library Supervisor is available.

Because Defendant has a Constitutional Right to access the Courts and therefore to use this institutions Law Library he [redacted] beseeches the Honorable Court here to Grant his Motion.

Respectfully Submitted

Dated this 31st Day of August 2020 By: Harold Edwards

Pro'Se Defendant

CERTIFICATE OF SERVICE

I, Harold Edwards, hereby certify that I am the Petitioner in this matter and I am representing myself *in propria persona*.

On this 1st day of SEPTEMBER, 2020, I served copies of the Motion Asking the Court To Order Southern Desert Correctional Center's law library to Grant Defendant, in Case No. C153106 95-1, and placed said document(s) in the United States Mail, first-class postage prepaid, addressed as follows:

Steven D. Grierson
200 Lewis Ave 3rd Flr.
Las Vegas, NV. 89155-1160
~~Las Vegas~~

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the Petitioner in the above-entitled action, and he has read this Certificate of Service and the information contained therein is true and correct.

Executed pursuant to 28 U.S.C. § 1746 and 18 U.S.C. § 1621 at Southern Desert Corr. Center on this 1st day of September, 2020.

Harold Edwards 1169996
NDOC No.

Petitioner – *In Propria Persona*

Harold Edwards #1169986
Southern Desert Corr. Center
P.O. BOX 208
Indian Springs, NV. 89070

LAS VEGAS
NV 890
02 SEP '20
PM 4 L

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BS 2488846

STEVEN D. GRIERSON, CLERK of The Clerk
200 LEWIS AVENUE 3rd Floor
Las Vegas NV. 89155-1160

89101-630000

Harold Edwards ID NO. 1169986

SOUTHERN DESERT CORRECTIONAL CTN.
20825 COLD CREEK RD.
P.O. BOX 208
INDIAN SPRINGS, NV 89070

FILED
APR 15 2021
CLERK OF COURT

IN THE EIGHTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK

HARALD EDWARDS.
Petitioner / Defendant,
v.
SOUTHERN DESERT CORRECTIONAL CENTER'S GANG INTELLIGENCE DEPARTMENT ET AL;

CASE NO.: C15310695-1
DEPT. NO.: VIII
DOCKET:
May 10, 2021
11:00 AM

NOTICE OF MOTION AND MOTION FOR THE COURT TO ORDER SOUTHERN DESERT CORRECTIONAL CENTER'S GANG INTELLIGENCE DEPARTMENT TO RELEASE PETITIONER'S CORRECTIONAL FILE AND PRISON RECORDS (C-FILE)

COMES NOW, Defendant Harold Edwards, herein above respectfully moves this Honorable Court for an ORDER Compelling Southern Desert Correctional Center's Gang Intelligence to release his (C file) and prison record.

This Motion is made and based upon the accompanying Memorandum of Points and Authorities,

DATED: this 4th day of April, 2021

BY: Harold Edwards
Harold Edwards # 1169986
Defendant In Proper Personam

Petitioner arrived to Southern Desert Correctional Center on April 10th 2017 from High Desert Correctional Center. Petitioner heard from several inmates that Correctional officers were telling other inmates that petitioner masturbates while his cellmate is sleep. This kind of slander in prison can cause alot of serious harm. It could cause problems with petitioner assignments to cells, it can cause problems with petitioner being assigned jobs within the institution because prison is a Cess Pool for gossip and rumors about staff and inmates. Alot of inmates gossip with Correctional officers and spread rumors that they've heard and officers spread rumors about what they've heard about inmates and their Co-workers. These rumors are circulated around the prison. So medical, School and the other programs that this institution has, hears these rumors and it can cause petitioner to not be able to get over to medical(on time) not be accepted into some programs where females work and to be looked upon with disdain. Defendants are deliberately exposing petitioner to harm at the hands of other inmates by spreading false information about him masturbating to female officers and while his cellmate is asleep in violation of U.S. Constitution Amendment VIII. It is widely known that when new recruits are hired the older veteran officers can tell them (the new recruits) anything and they'll believe it with a rigor that no evidence to the Contrary can penetrate. Simply put, the new recruits want to fit entirely into program. That's exactly what goes on inside these prison gates. You have peace officers who believe that they can say anything about an inmate and get away with it because they also believe that they will be believed over an inmate. Defendants are most definitely aware of the obvious danger associated with these kinds of reputations. Clearly established law provides that defendants are violating petitioner's Constitutional right to protection

from violence at the hands of other prisoners. The fact that petitioner was not actually assaulted is irrelevant since defendant's alleged deliberate indifference to the substantial risk of serious harm to petitioner established the Constitutional violation. Senior officers and Gang Intelligence Department, here at Southern Desert Correctional Center who don't even know petitioner (because he is from a foreign jurisdiction) are promulgating false information that they've promiscuously gathered from jail house snitches and other Gang intelligence Departments in an effort to excite adverse derogatory and unpleasant feeling and opinions about petitioner. These false stories about petitioner are spread by the jailhouse snitches and other officers to the newly recruited peace officers as well as free staff. These newly recruited peace officers are encouraged by peer-pressure among the veteran guards to believe and further perpetuate this false libelous information around and this is facilitated by indifference on the part of the administration. They perform different ruses to give the false information they pass around the appearance of truth like reassigning female officers to other units, not letting female officers post up outside the dining area where they use to stand. The false information again, comes from jailhouse snitches. it is recognized that Criminals who are awarded by prison officials for information are inherently untrustworthy. The majority of informers inside prisons are cut from an untrustworthy cloth. They will tell on anyone for a telephone call, a bed move, to be able to unit visit other prisoners, Coffee almost anything. they are highly unreliable and should not be trusted. these jailhouse snitches are commonly manipulative and untruthful. They will make up stories about another person simply because they don't like them for a

plethora of mostly girlish reasons. And the officers that they spend alot time around, will believe the gossip these snitches spread.

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CONCLUSION

Petitioner beseeches this Honorable Court to grant his Motion to help him prepare for Legal action in the Civil Court against these defendants.

Dated ~~4.00.00~~ 4.4.21

By Harold Edwards

Pro'se Petitioner

CERTIFICATE OF SERVICE BY MAILING

I, Harold Edwards, hereby certify, pursuant to NRCP 5(b), that on this 20th day of February, 2020, I mailed a true and correct copy of the foregoing, "Notice of Motion and Motion for the Court to order Southern Desert Corr. Center Gang Intelligence to release Petitioner's Corrections file and Prison Record." by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Steven D. Grierson Clerk of the Court
200 Lewis Avenue 3rd Floor
Las Vegas Nevada 89155-1160

CC:FILE

DATED: this ~~20~~ 4th day of ~~February~~ April, 2020.

Harold Edwards
Harold Edwards #1169986
/In Propria Personam
Post Office Box 208,S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion for the Court to order Southern Desert Corr. Center to release petitioner's prisonrecords
(Title of Document) Corrections File.

filed in District Court Case number _____

☑ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

_____
(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

Harold Edwards
Signature

~~2.0020~~ 1.4.21
Date

Harold. Edwards
Print Name

Pro' se
Title

6

Harold Edwards 1169986
SDCC P.O. BOX 208
Indian Springs, NV. 89070

3763
BS249313

STEVEN D. Grierson Clerk of the Court
200 LEWIS Ave. 3rd Floor
Las Vegas, NV. 89155-1160

845

Harold Edwards
Defendent/ In Propria Person
Post Office Box 208
Indian Springs, Nevada 89070

FILED
APR 27 2021
CLERK OF COURT

IN THE 8th JUDICAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

The State of Nevada ,
Plaintiff,

VS

HAROLD EDWARDS ,
Defendent,

Case No. C15310695-1

Dept NO.

May 19, 2021
11:00 AM

MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE

Date of hearing :

Time of hearing :

COMES NOW, DEFENDENT, Harold Edwards , proceeding in proper person, hereby motion this Honorable Court pursuant to N.R.S 176.555 and Edwards v. state.

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

RECEIVED
APR 21 2021
CLERK OF THE COURT

Dated; this 8th day of April , 2021.

Harold Edwards
Harold Edwards 116998
DEFENDENT/

ADDITIONAL FACTS OF THE CASE:

POINTS AND AUTHORITIES

"Motion to modify Sentence" is limited in scope to Sentences based on mistaken assumptions about defendant's Criminal record which work to defendant's extreme detriment, while Motion to Correct illegal Sentence, addresses only facial legality of Sentence. State v. District Court, 677 P.2d 1044 and Edwards v. State, 918 P.2d 321. Further NRS 176.555 Motion to Modify and/or Correct a Sentence, may be filed at any time. Defendant herein alleges that his Sentence should be modified and/or Corrected pursuant to the following facts: (1) one:

On August 19th 2016 on the advice of then Counsel, Edwards entered into a Guilty Plea Agreement (hereinafter referred to as GPA) The GPA laid out that both parties agreed that Edwards was to plead guilty to Five (5) Counts of Possession of Credit or Debit Card without Cardholder's Consent Category D felony and one (1) Count of Battery on a Protected Person (Gross Misdemeanor) along with the Charge of Burglary which is the Charge defendant is Seeking Modification and/or Correction of. Both parties stipulated to adjudication under the large habitual Criminal statute and to a ten to twenty-five year Sentence in the Nevada Department of Corrections NDOC in Case No. C15310695 and Counts 1-5 in Case No. C311212. Further, both parties stipulate to a three hundred and Sixty-four day Sentence in Clark County Detention Center (CCDC) on Count 6 in case No 311212. Additionally, both parties agreed that all cases and Counts are to run Concurrent with each other. The State will not oppose the dismissal of Case No. C310166 and Case No. C312326 after rendition of Sentence. Defendant Edwards filed a Motion To Withdraw his GPA on October 5th 2016 two months before the imposition of Sentence. The State filed opposition to Edwards motion on October 7th 2016.

Through due diligence defendant learned that two of the three (3) "Specific Prior Convictions" that came as a result of guilty pleas in a foreign jurisdiction had been charged in a single information because they arose out of a single Criminal Episode, so these two convictions constitutes only one prior conviction for purposes of enhancement under the habitual Criminal Statute. See Halbower V. State 6016 P. 2d 536 (1980) U.S. V. Smith 991 F. 2d 1468 (9th Cir. 1993) and U.S. V. Hummasti, 986 F. 2d 337 (9th Cir. 1993) "where two or more Convictions result from the same act, transaction or occurrence and are prosecuted in the same indictment or information those several convictions may be utilized only as a single prior Conviction for purposes of habitual Criminal statute." The information relied on at defendant's first Sentencing was incorrect. This mistakened assumption about defendant's criminal record worked to defendant's extreme detriment. Had this been known and established before sentencing the state only had [redacted] prior conviction. Due process violation arises only when the Errors result [redacted] in 'materially untrue' assumptions about a defendant's record. State V. District Court, 677 P.2d 1044.

TWO: (2) THE STATE USED TWO PRESUMPTIVE UNCONSTITUTIONAL PRIOR CONVICTIONS THAT CAME AS A RESULT OF GUILTY PLEAS WHERE COUNSEL FOR DEFENDANT WAS NEVER DEFINITIVELY ESTABLISHED:

Defendant Contends that a 1988 Conviction for theft does not definitively show that he was represented by Counsel.

See Exhibit [A]. The Nevada Supreme Court determined in McAnulty v. State, 826 P.2d 567. that no matter what the plea bargain, the determination has to be made as to the Constitutional validity of the "SPECIFIC PRIOR CONVICTIONS" offered by the State for a recividist Sentence, and the recividist punishment which follows is dependent on the number of VALID CONVICTIONS. Defendant Edwards Contends that (3) three of the "SPECIFIC PRIOR CONVICTIONS" were improperly used as predicate offenses for the enhancement of his sentence because two (2) of those convictions were obtained without the assistance of Counsel and the 1988 Conviction for theft of Seventy-five $75 dollars is not a felony in the State of Nevada. Had this conduct that occurred thirty (30) years ago in the State of Illinois occurred in the State of Nevada, Edwards would have been charged with a misdemeanor under NRS 205.240 which States: A person Commits petit larceny if the person intentionally Steals, takes and Carries away or drives away personal goods or property with a value of less than $600 dollars owned by another person. Carter V. State 378 P.2d 876 The GPA in this case agreed to run case No. 311212 Concurrent with the instant Case. Deputy District Attorney William Flinn Jr. who orchestrated the GPA, appeared at the Sentencing on Case No. 311212 and argued on behalf of the State, presented three (3) "SPECIFIC PRIOR CONVICTIONS" from the State of Illinois, a 1988 thirty(30) year old Conviction for theft of $75 dollars, a 1992 twenty-Six (26) year old Conviction for Burglary and a 1995 twenty-three (23) year old Conviction for possession of a Stolen motor vehicle. The 1988 Conviction has no attorney's name attached to it. See Exhibit [B] also it is not a felony in Nevada. The 1995 Conviction for possession of a Stolen motor Vehicle (which came as a result of a guilty plea) does not have a named attorney of record on it. nor did the State as is required for prior Convictions used for enhancement of Sentence (See Rudolph V. Parke, 856 F.2d 738) Sentencing transcripts from those prior Convictions reflecting that defendant Edwards was not coerced into accepting these pleas and that defendant Edwards' Voluntary and also his informed ——→ See Exhibit [C]

waiver of his federal rights. His right to a jury trial, his right not to incriminate himself and his right of Confrontation. Boykin V. Alabama, 395 U.S 238, 23 L.Ed 2d, 274, 89 S.Ct. 1709 (1969) Rudolph V. Parke, 856 F.2d 738. Due Process prohibits a Court from imposing a Sentence based on prior Convictions if those prior Convictions are unconstitutional. U.S. V. Craven. 239 F.3d 91 (1 Cir. 2001) Nevada Supreme Court spelled out in their decision in McAnulty V. State 826 P.2d 567 that no matter what the plea bargain the determination has to be made as to the Constitutional validity of the "Specific Prior Convictions" offered by the State for a recividist Sentence and the recividist punishment which follows is dependent on the number of Valid Convictions. A Sentencing judge CANNOT Consider prior Convictions obtained Without the assistance of Counsel. Tucker V. U.S., 404 U.S. 443. Nevada's habitual offender Statute which defendant Edwards was Sentenced under Contemplates Constitutionally valid underlying Convictions, NOTHING LESS WILL DO. Both federal and State laws makes it abundantly clear that if a defendant was not informed of his right to Counsel at one or more of the Convictions underlying a recividist Sentence, or if the records of those Convictions are Silent as to Counsel, then the habitual offender Conviction is Null and Void. U.S. ex rel. Savini V. Jackson, 250 F. 2d 349 (2d Cir) Not having a "NAMED COUNSEL OF RECORD" on the judgment of Convictions raises a presumption of deficiency and a sentencing Court CANNOT presume Constitutional Correctness from a presumptive Silent record as to Counsel. NO attorney is going to sign a legal document with only Attorney, Lawyer Public Defenders Office or simply P.D.. No District Attorney is going to sign a Court document with only D.A., States Attorney's Office, Prosecutor, Deputy District Attorney or D.D.A.. And Certainly no judge anywhere from any Court is going to sign Orders with only judge, your honor, or District Court and describe the defendant as prisoner or Convict. There

HAS TO BE a NAMED ATTORNEY OF RECORD, DISTRICT ATTORNEY OF RECORD and a JUDGE OF RECORD also a DEFENDANT OF RECORD. If no name is on a document from a Court it raises problems with that document. In every Courtroom in America, whenever an attorney appears in a Courtroom they'll announce their name and then announce for THE RECORD who they are on behalf of. The ambiguous letters P.D., or the words Public Defenders office on a judgment of Conviction are too imprecise to Constitute evidence that defendant Edwards was represented by Counsel. The Clerk of the Illinois Court was given clear instructions how to fill out the order of Sentence and Commitment to Illinois Department of Corrections form. The instructions at the bottom of the form states: Clerk is requested to insert in the appropriate spaces above (1) each Sentence and Conditions that the Sentence Shall run Concurrently or Consecutively as the Case may be with other Sentences imposed by the Court in this Case, or other Sentences imposed by Courts in other Cases. and (2) fill in the following information: "Name and Address of Counsel for defendant" on two of the Judgment Of Convictions the state were erroneously allowed to use for the enhanced Sentence pursuant to Nev. Rev. Stat. 207.010 NO NAME of an Attorney appears on the line that the Clerk was instructed to put it. On one of the JOC's there is the ambiguous letters P.D. and on the other one there are the words Public Defenders Office. Edwards Sentence is found in part upon misinformation of Constitutional magnitude. Having the letters P.D or the words Public Defenders Office written in the Space where a Named Attorney was Suppose to have been written is insufficient to make a finding that the Judgment Of Convictions are on their face Constitutionally firm. Someone writing the letters P.D. or Someone writing the words Public Defenders Office in that Space "Could be" instructing the Clerk that the Defendant needs a P.D. or Someone from the Public Defenders Office. See Illinois Order of Sentence and Commitment

and because the Court here in Nevada cannot say exactly what those ambiguous letters P.D is indicating the Court CANNOT presume Constitutional Correctness from a presumptive silent record as to Counsel. Dressler v. State, 819 P.2d 1288, Burgett v. Texas, 389 U.S. 109. Nevada's Supreme Court announced in Hamlett V. State, in following the mandate of the high Court in Burgett v. Texas that there must be an affirmative showing that the defendant was represented by Counsel in those prior convictions or that the defendant waived his right to Counsel in the prior felony proceedings. If the record does not so show, that Conviction may not be considered in determining whether the defendant is a habitual Criminal. If the state is unable to establish presence of Counsel or valid waiver, punishment shall be imposed in accordance with the Statutory requirements but WITHOUT recividist enlargement. Hamlet v. State 455 P.2d 915. To permit a Conviction obtained in violation of Gideon v. Wainwright to be used either to support guilt or to enhance punishment for another offense would erode the principles of that case and allow an Unconstitutional procedure to injure a defendant twice. The inference to be drawn from a presumptive silent record is that the defendant was not represented by Counsel and the inference is of such magnitude that the ordinary presumption of Constitutional correctness is dispelled. These prior Convictions are challenged because there is no evidence to show the pleas were taken in accordance with the Safeguards set out in Boykin v. Alabama, 395 U.S. 238. There is no dispute to Edwards' assertion that these two Convictions lack accompanying transcripts evincing his voluntary waiver of his right to a jury trial, his right not to incriminate himself, and his right of Confrontation. Edwards relies on United States v. Gipson 553 F.2d 453 (5th Cir. 1977) Edwards was prejudiced by this because had it been proven that two of the three "Specific Prior Convictions" the state used to

recommend the large habitual sentence were (1) prosecuted in the same information and counted as only one Conviction, the State would have only been left with two prior convictions, then had it been proven that those two "Specific Prior Convictions" were unconstitutional because Edwards never had Counsel in those Convictions the State would of had only one Conviction and not been able to even recommend the large habitual Sentence and Edwards would have very likely been Sentenced to what P and P recommended in this Case, 16 to 72 months. Petitioner/defendant also Contends that the Sentencing Judge Could have & Sentenced Edwards under the little habitual Criminal Statute rather than the major habitual Criminal statute. The mistaken assumption about defendant's Criminal Record worked to defendant's extreme detriment therefore his Sentence should be modified and/or Corrected.

Information relied on at defendant's first Sentencing was incorrect, that being the number of VALID PRIOR CONVICTIONS used to enhance the defendant's Sentence. Due Process Violation arises only when the errors result in 'materially untrue' assumptions about defendant's record. State V. District Court, 677 P.2d 1044. In Tucker, the United States Supreme Court held that the Case dealt not with a Sentence imposed by the informed discretion of a judge, but with a sentence founded in part upon misinformation of Constitutional magnitude. United States v. Tucker 404 U.S. 443; 92 S.Ct. 589 30 L.Ed 2d 592

Even though Edwards was facing Such a Sentence imposed he tries to better himself throughout the six years he's been incarcerated. He completed GREAT TRUTHS OF THE BIBLE, Cognitive Skills, Anger Management, here at SDCC as well as Saguaro Correctional Center, Interactive Journal of Corecivic's GO FURTHER PROCESS, CORECIVIC'S GO FURTHER REENTRY PROGRAM and The ON RAMP INTERACTIVE JOURNAL OF CORECIVIC'S GO FURTHER process. Edwards disciplinary record reveals five infractions. The most serious

occurred just recently for being in possession of a television left to him by another inmate who went home. Edwards has the mildest of disciplinary records. As Stated above there were several infractions, but none of them are violent or involve drugs. Your Honor, defendant is politic of the fact that doing justice, can be hard. It requires careful Consideration especially of the Circumstances of particular Crimes and often the relevant events that occurred in the past. It requires hard decisions, including some that will be criticized, This case is a perfect example. Edwards was convicted of a burglary, not of Someone's home or Car or an apartment, but for entering legally into the Bellagio Hotel and Casino and then accused of taking a lunch bag that was reported missing but found in a lost and found area and returned to the owner (who had reported this Same lunch bag missing before) and NOTHING WAS MISSING from this bag. [See trans. from preliminary hearing pg. 26 lines 11-25. pg. 27 lines 19-23] Exhibit [B] There is Something that Can be said and done about this present Sentence and that is give Mr. Edwards who is 56 years old and Suffers from Type 2 Diabetes, High Blood pressure and Benign Prostatic Hyperplasmia, an opportunity to make Something of the rest of his life. Edwards is one of those inmates who is Serving grotesquely Severe Sentences, even though there was no physical injury to others, in Edwards Case there was not even Financial harm. The petit larceny that the State's Burglary Charge was predicated on, was dismissed on May 10th 2016. and Edwards' entry (which is the gravamen of a Burglary Charge) was Concedely LEGAL. No Burglary actually occurred. Even State prosecutors agree that many of these Sentences were and remain unjustly Severe.

Thereby, pursuant to the facts and the law stated herein, Defendant, request that his sentence be modified/corrected as follows: Resentence Edwards to what Parole and Probation requested Edwards should be sentenced to (16) Sixteen to (72) Seventy-two months.

Dated; this 8th DAY OF April, 2021.

Harold Edwards

Harold Edwards 1169986
Defendant/propria person

CERTFICATE OF SERVICE BY MAILING

I, Harold Edwards, hereby certify, pursuant to NRCP 5(b), that on this 9th day of April, 2021, I mailed a true and correct copy of the foregoing, "Motion to Modify and/or Correct Illegal Sentence." by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

STEVEN D. GRIERSON, Clerk of The Court 200 Lewis Ave 3rd Fl
Las Vegas, NV. 89070

CC:FILE

DATED: this 8th day of April, 2021.

Harold Edwards #1169982
/In Propria Personam
Post Office Box 208,S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

11

AFFIDAVIT OF: Harold Edwards

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

TO WHOM IT MAY CONCERN:

I, Harold Edwards the undersigned, do hereby swear that all statements, facts and events within my foregoing Affidavit are true and correct of my own knowledge, information and belief, and as to those, I believe them to be True and Correct. Signed under the penalty of perjury, pursuant to, NRS. 29.010; 53.045 ; 208.165, and state the following: I was not represented at two of the prior Convictions that Came as a result of guilty pleas. In the State of Illinois. There were no transcripts presented from these prior proceedings evincing that I definitively had Counsel. There was never any evidence presented by the State that my Federal rights were Safeguarded or that I waived any rights.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

EXECUTED At: Indian Springs, Nevada, this 8th Day Of April, 2021.

BY: Harold Edwards
Harold Edwards #1169986
Post Office Box-208(SDCC)
Indian Springs, Nevada. 89070.
Affiant, In Propria Personam

EXHIBIT A

CC305B REVISED
12-14-82-50M (4:9)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Cook (County) ~~(Municipal)~~ DEPARTMENT Criminal (Division) ~~(District)~~

People of the State of Illinois
v.
Defendant
Carliss Moore

No. 87CR15561 01

ORDER OF SENTENCE AND COMMITMENT TO
ILLINOIS DEPARTMENT OF CORRECTIONS

The defendant having been adjudged guilty of committing the offenses enumerated below,

IT IS ORDERED that the defendant Carliss Moore
and he is hereby sentenced to the Illinois Department of Corrections as follows:

Judge Jack G. Stein Sentenced Carliss Moore to a term of 4 years IDOC with Credit from Oct, 18, 1987 Mitt to Issue

2-17-165A

		Ill. Rev. Stat. Ch.	Sec.	Par.
Offense	Theft	38	16	A(1)
Offense				
Offense				
Offense				

IT IS FURTHER ORDERED that the Clerk of the Court shall deliver a copy of this order to the Sheriff of Cook County.

IT IS FURTHER ORDERED that the Sheriff of Cook County shall take the defendant into custody and deliver him to the Illinois Department of Corrections.

IT IS FURTHER ORDERED that the Illinois Department of Corrections shall take the defendant into custody and confine him in the manner provided by law until the above sentence is fulfilled.

PREPARED BY: Edward Dimid
Deputy Clerk

DATED: 5-10-88 ~~BRANCH~~ CT. Room H

ENTER: Jack G. Stein
Judge

INSTRUCTIONS

CLERK is requested to insert in the appropriate spaces above (1) each sentence and the conditions thereof, including the condition that the sentence shall run concurrently or consecutively, as the case may be, with other sentences imposed by the court in this case, or other sentences imposed by courts in other cases; and (2) fill in the following information:

Name and address of counsel for defendant PD

Police Individual Record No. 062 7031 Illinois Bureau Identification No.

MORGAN M. FINLEY, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

A. FILE IN DEFENDANT'S COURT CLERK'S JACKET AT TIME OF ENTRY.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The October, 1987 Grand Jury of the

Circuit Court of Cook County.

The Grand Jurors chosen, selected, and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about OCTOBER 18, 1987 at and within the County of Cook

CARLISS MOORE

committed the offense of THEFT

in that HE, KNOWINGLY OBTAINED AND EXERTED UNAUTHORIZED CONTROL OVER A PURSE AND UNITED STATES CURRENCY PROPERTY OF PATRICIA NIZZI FROM THE PERSON OF PATRICIA NIZZI INTENDING TO DEPRIVE HER PERMANENTLY OF THE USE AND BENEFIT OF SAID PROPERTY, IN VIOLATION OF CHAPTER 38, SECTION 16-1-A(1) OF THE ILLINOIS REVISED STATUTES 1985 AS AMENDED, AND

2-17-16 DA

contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

Charge ID Code: 1941

S.J. No. 1022
GENERAL NO. 87 CR- 15561

CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT
CRIMINAL DIVISION
October, 1987

The People of the State of
Illinois
v.
Carliss Moore et/

****
* INDICTMENT FOR *
****

THEFT

A TRUE BILL

Foreman of the Grand Jury

WITNESSES
S. FORTINO

Filed 11-4 19 87
Clerk
Bail $

2-17-16

627031 arr. d. 11/8/87 1709539

NOTIFICATION OF FELONY CONVICTION Form No. 6

Criminal Division

2650 South California Avenue, Chicago, Illinois 60608

DEFENDANT'S NAME: Carlis Moore AKA

Last Known Address: 9769 S. Marion

State

Arresting Agency ✓ Chicago Police Dept. Other: _____

Date of Birth: 12-10-64 Place of Birth Ill SEX: (Male) Female

RACE: White Chinese Mexican Puerto Rican (Negro) Indian Japanese

Other: _____

CONVICTION INFORMATION

Date: 5-10-88 Judge: Allen Indictment/Info. 87Cr.15561

Charging: Theft PLEA FINDING (VERDICT)

CONVICTED UNDER Chap. 38 Sec. 16-1 Par. A(1) CHARGE: Theft

SENTENCE:

DEATH Execution Date: _____

IMPRISONMENT To State Dept. of Corr. for 4 yrs to ____ yrs, Plus ____ Parole.

PER IMPRM ____ Yrs. Prob. and 1st ____ in Cty.

Department Correction - Under Work Release Program

PROBATION ____ Yrs. 1st ____ in Cty. Dept. Corr.

COURT SUPERVISION for ____ yr.

FOUND UNFIT Cr-from 10/18/87

DEPARTMENT OF MENTAL HEALTH

CONVICTED UNDER Chap. ____ Sec. ____ Par. ____ CHARGE:

SENTENCE:

DEATH Execution Date: _____

IMPRISONMENT To State Dept. of Corr. for ____ yrs to ____ yrs, Plus ____ Parole.

PER IMPRM ____ Yrs. Prob. and 1st ____ in Cty.

Department Correction - Under Work Release Program

PROBATION ____ Yrs. 1st ____ in Cty. Dept. Corr.

COURT SUPERVISION for ____ yr.

FOUND UNFIT

DEPARTMENT OF MENTAL HEALTH

CONVICTED UNDER Chap. ____ Sec. ____ Par. ____ CHARGE: ____

SENTENCE

DEATH EXECUTION Date: _____

IMPRISONMENT To State Dept. of Corr. for ____ yrs to ____ yrs, Plus ____ Parole.

EXHIBIT #2

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Cook (County) ~~(Municipal)~~ DEPARTMENT CRIMINAL (Division) ~~(District)~~

People of the State of Illinois
v.
Defendant

No. 90-CR-25002

MARIO THOMPSON

ORDER OF SENTENCE AND COMMITMENT TO
ILLINOIS DEPARTMENT OF CORRECTIONS

ARREST DATE 9-5-90

Real Name

The defendant having been adjudged guilty of committing the offenses enumerated below,

IT IS ORDERED that the defendant MARIO Thompson AKA HAROLD Moore be and he is hereby sentenced to the Illinois Department of Corrections as follows:

FEB 03 1992 The HONORABLE JAMES M. SCHREIER SENTENCED The deft To A TERM of (6) SIX YEARS Judgement Entered on The Plea. CREDIT For Time in CUSTody FROM 9-5-90 To 6-5-91 Also Credit FROM 6-28-91 To PRESENT.

		Ill. Rev. Stat. Ch.	Sec.	Par.
Offense	Burglary	38	19-1	A
Offense				
Offense				
Offense				

IT IS FURTHER ORDERED that the Clerk of the Court shall deliver a copy of this order to the Sheriff of Cook County.

IT IS FURTHER ORDERED that the Sheriff of Cook County shall take the defendant into custody and deliver him to the Illinois Department of Corrections.

IT IS FURTHER ORDERED that the Illinois Department of Corrections shall take the defendant into custody and confine him in the manner provided by law until the above sentence is fulfilled.

PREPARED BY: DIANE D OLYMPIA
Deputy Clerk

DATED: FEB 03 1992 BRANCH CT. 26th St

ENTER: James M. Schreier
Judge
JAMES M. SCHREIER

CODE #

INSTRUCTIONS

CLERK is requested to insert in the appropriate spaces above (1) each sentence and the conditions thereof, including the condition that the sentence shall run concurrently or consecutively, as the case may be, with other sentences imposed by the court in this case, or other sentences imposed by courts in other cases; and (2) fill in the following information:

Name and address of counsel for defendant BRIAN HEALY APD

Police Individual Record No. 627031 Illinois Bureau Identification No.

CLERK OF THE CIRCUIT COURT OF COOK COUNTY

****

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The October, 1990 Grand Jury of the

Circuit Court of Cook County.

The Grand Jurors chosen, selected, and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about SEPTEMBER 5, 1990 at and within the County of Cook

MARIO THOMPSON

committed the offense of BURGLARY

in that HE, WITHOUT AUTHORITY, KNOWINGLY ENTERED INTO A BUILDING, TO WIT: THE BUILDING OF WALGREENS DRUGS WITH THE INTENT TO COMMIT THE OFFENSE OF THEFT, THEREIN, IN VIOLATION OF CHAPTER 38, SECTION 19-1-A OF THE ILLINOIS REVISED STATUTES 1985, AS AMENDED, AND

2-17-1684

contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

Charge ID Code: 2155

1
2

****

The Grand Jurors chosen, selected, and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths aforesaid present that on or about SEPTEMBER 5, 1990 at and within the County of Cook

MARIO THOMPSON

committed the offense of POSSESSION OF BURGLARY TOOLS

in that HE HAD IN HIS POSSESSION, WITH INTENT TO ENTER INTO A BUILDING, AND WITH INTENT TO COMMIT A THEFT THEREIN, TOOLS SUITABLE FOR USE IN BREAKING INTO BUILDINGS, IN VIOLATION OF CHAPTER 38, SECTION 19-2-A OF THE ILLINOIS REVISED STATUTES 1985, AS AMENDED, AND

2-17-160A

contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

Charge ID Code: 2160

G.J. No. 551
GENERAL NO. 90 CR- 25002

CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT
CRIMINAL DIVISION
October, 1990

The People of the State of Illinois
v.
Mario Thompson

****
* INDICTMENT FOR *
****

BURGLARY, ETC

A TRUE BILL

Foreman of the Grand Jury

==========

WITNESSES
OFF. MCCOY

==========

Filed 10-29, 19 90 Clerk
Bail $ 10

==========

2-17-16

EXHIBIT # 2

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

(County) Cook (Municipal) DEPARTMENT (Division) Criminal (District)

People of the State of Illinois
v.
Defendant HAROLD Moore

No. 94cr 27797

ORDER OF SENTENCE AND COMMITMENT TO
ILLINOIS DEPARTMENT OF CORRECTIONS

The defendant having been adjudged guilty of committing the offenses enumerated below,

IT IS ORDERED that the defendant Harold Moore be and he is hereby sentenced to the Illinois Department of Corrections as follows:

On August 16, 1995. The Honorable Judge James Schreier sentenced the dft to a term of (6) six yrs IDOC - Credit time in custody from 10/16/94 to present - Sentenced as a Class X offender - Mitt to Issue

Offense	Poss Stolen Motor Vehicle	Ch. 625	Ill. Rev. Stat. Sec. 5/4	Par. 16-3(A)(1)
Offense		Ch.	Sec.	Par.
Offense		Ch.	Sec.	Par.
Offense		Ch.	Sec.	Par.

IT IS FURTHER ORDERED that the Clerk of the Court shall deliver a copy of this order to the Sheriff of Cook County.

IT IS FURTHER ORDERED that the Sheriff of Cook County shall take the defendant into custody and deliver him to the Illinois Department of Corrections.

IT IS FURTHER ORDERED that the Illinois Department of Corrections shall take the defendant into custody and confine him in the manner provided by law until the above sentence is fulfilled.

PREPARED BY: [signature] Deputy Clerk

DATED: 8/16/95 BRANCH CT. 704 ENTER: James M. Schreier Judge CODE #

INSTRUCTIONS

CLERK is requested to insert in the appropriate spaces above (1) each sentence and the conditions thereof, including the condition that the sentence shall run concurrently or consecutively, as the case may be, with other sentences imposed by the court in this case, or other sentences imposed by courts in other cases; and (2) fill in the following information:

Name and address of counsel for defendant Public Defenders Office

Police Individual Record No. 627031 Illinois Bureau Identification No.

CLERK OF THE CIRCUIT COURT OF COOK COUNTY

1 / (Court Branch) OCTOBER 17, 1994 (Court Date)

FELONY CCG-0662-225M-3-21-94(45291375)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

The People of State of Illinois
Plaintiff

v.

HAROLD MOORE
Defendant

COMPLAINT FOR PRELIMINARY EXAMINATION

NO. [illegible]

WILLIAM G. ARNOS (Complainant's Name Printed or Typed) complainant, now appears before The Circuit Court of Cook County and states that

HAROLD MOORE (defendant) 1502 N. TALMAN (address) has, on or about

OCTOBER 16, 1994 (date) at ~~1500~~ 65 N. WIELAND (place of offense)

committed the offense of POSSESSION OF STOLEN MOTOR VEHICLE in that he/~~she~~ NOT BEING ENTITLED TO POSSESSION OF A VEHICLE, TO WIT: A 1993 CHEVROLET GEO PRIZM 4DR, SEDAN BLACK IN COLOR, V.I.N. 1Y1SK5389PZ073595 POSSESSED SAID VEHICLE, KNOWING IT TO HAVE BEEN STOLEN.

in violation of 625 ILCS (Chapter) (Act) 5/4-103(1) (Section)

CHARGE CODE

FILED
OCT 17 1994
AURELIA PUCINSKI
CLERK OF CIRCUIT COURT

X William G. Arnos (Complainant's Signature)

302 REDWING DRIVE (Complainant's Address) 708-459-8407 (Telephone No.)

WILLIAM G. ARNOS (Complainant's Name Printed or Typed)

STATE OF ILLINOIS
COOK COUNTY } ss.

being first duly sworn, WGA on oath, deposes and says that he/she read the foregoing complaint by him/her subscribed and that the same is true.

X William G. Arnos (Complainant's Signature)

Subscribed and sworn to before me 16 Oct, 19 94

A Pucinski/A Nelson 7550 (Judge or Clerk)

I have examined the above complaint and the person presenting the same and have heard evidence thereon, and am satisfied that there is probable cause for filing same. Leave is given to file said complaint.

Summons issued, or Warrant Issued, or Bail set at ..... Judge ..... Judge's No.

Bail set at,

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

COURT FILE COPY

****

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
V.) INFO. NO. 94CR-27797
)
HAROLD MOORE)
)
)
)

ORIGINAL
THIS COPY
DO NOT REMOVE

INFORMATION

THE PEOPLE OF THE STATE OF ILLINOIS represented by the State's Attorney of Cook County, do hereby inform and charge that against the peace and dignity of the People of the State of Illinois and in violation of the laws of the State of Illinois the herein named defendant(s) contrary to the 1992 Illinois Compiled Statutes did violate said laws of Illinois as described herein.

2-17-1694

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

00 0073.0691

94

****

The State's Attorney of Cook County now appears before the Circuit Court of Cook County and in the name and by the authority of the People of the State of Illinois states that on or about OCTOBER 16, 1994, in the Cook County, Illinois

HAROLD MOORE

committed the offense of POSSESSION OF A STOLEN MOTOR VEHICLE

in that HE, NOT BEING ENTITLED TO THE POSSESSION OF A MOTOR VEHICLE, TO WIT: A 1993 CHEVROLET GEO PRIZM PROPERTY OF WILLIAM ARNOS POSSESSED SAID VEHICLE, KNOWING IT TO HAVE BEEN STOLEN OR CONVERTED IN VIOLATION OF CHAPTER 625, ACT 5, SECTION 4-103-A(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED, AND

contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

(Count No. 1)
Charge ID Code: 5710001
No: 94CR-27797

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

2-17-16 DH

00 0073.0692

94

EXHIBIT [0]

THE COURT: I'm sorry, I couldn't hear that.

THE WITNESS: Cafe Gelato.

THE COURT: Cafe Gelato, okay.

11:27AM Thank you.

Q (BY MR. FLINN) So on the 17th of September, were you working that day?

A **Yes.**

Q Around 1, 2 in the afternoon?

11:27AM A **Yes.**

Q Those hours you were at work?

A **Yes.**

Q Now is there an area there at the Bellagio where, while you are at work, you, as an employee, can

11:27AM store your personal belongings?

A **Yes.**

Q Where is -- what is that?

A **It's lockers. It's located in the back of the house.**

11:27AM Q So when you say back of the house, you mean an area that's not available to the general public, but behind the scenes?

A **Exactly.**

Q And there's a room that has lockers in it?

11:27AM A **Yes.**

Q And you can go and store your things in a locker while you are at work?

A **Yes.**

Q So on that day, September 17th, this is at

11:27AM the Bellagio, here in Clark County, did you put anything in a locker while you were at work?

A **Just, on my break time, I just opened it, got something, and my bag was still there.**

Q No, but did you store anything when you

11:28AM came to work in the locker?

A **Oh, yeah, my bag.**

Q What type of bag, like a duffel bag?

A **Lunch bag.**

Q I'm sorry?

11:28AM A **Lunch bag.**

Q And anything else?

A **Well, inside it had like my personal stuff, like, yeah, makeup.**

Q So you had a bag stored in the locker, you

11:28AM left it in the locker, and you went to work?

A **Yes.**

Q Did there come a time where you finished your shift and you went to go retrieve your bag from the locker?

11:28AM A **Yeah, my shift ended around 4:00 and**

that's when I noticed my bag was missing.

Q So you went back to the locker and your back wasn't there?

A **Yes.**

11:28AM Q When ...

discovered your bag was missing?

A **I notified my manager right away. She told me to go to the security office and make a report, so I did.**

11:28AM Q So you went to security and made a report?

A **Yes.**

Q Was your bag ever returned to you?

A **Yes, it was.**

Q That day or --

11:28AM A **No, they found it in like the arcade --**

Q Okay.

A **-- next to another department, so the next day.**

Q And they did give it back to you?

11:28AM A **Yes, uh-huh.**

Q Was anything of value missing from that bag?

A **No.**

Q Did you give anyone permission to go into

11:28AM your locker and take your bag?

A **No.**

Q Do you know anyone by the name of Harold Edwards?

A **No.**

11:28AM Q And so did you give Harold Edwards permission to take your bag?

A **No.**

THE DEFENDANT: I object, your Honor.

MR. FLINN: Nothing further.

11:28AM THE DEFENDANT: I object, your Honor.

THE COURT: What is the objection?

THE DEFENDANT: The objection is he is giving her the impression that I took her bag by saying, you know, did she give me permission. That's not -- that's

11:28AM not fair.

THE COURT: She has no idea who you are. She is not saying you had it. She didn't identify you.

THE DEFENDANT: I'm the only one sitting here.

11:29AM THE COURT: No, no, no, but the objection will be overruled. The objection will be overruled.

MR. FLINN: Thank you, your Honor. No further questions.

THE COURT: Do you have any questions of

11:30AM her?

Incident File Full Report Incident File #IN20150048175

EXHIBIT I

contained the following MAC products; lipstick, eyeliner, and mascara valued at approximately $70 where also missing. Ms. Jimenez stated her make-up bag was stored in her lunch bag. Ms. Jimenez stated she immediately notified her manager. Ms. Jimenez stated her manager said not to bring any more valuables to work because there was nothing more she could do about the lockers.

Ms. Jimenez stated she does have a lock on her locker but you can still open the locker when the lock is secured. Ms. Jimenez stated this was the 2nd time her lunch bag went missing [redacted] Ms. Jimenez was offered to speak with her Human Resources Representative which she accepted.

Lost and Found was checked by Clifton Baker with negative results.

Video coverage is pending.

Human Resources Representative Jessica Harbaugh was on scene.

Vice President of Security Ray Brown, Director of Security Jason Rucker, Investigations Manager Bethany Young, Security Manager Charles Cessop, and Security Supervisor Ruslan Shumlyakovskiy were notified.

Executive brief: At 4:30pm, I Investigator Wherrity responded to the Security Office and met with Café Gelato Employee Joanna Jimenez for a lost missing report. Ms. Jimenez stated her lunch bag which also contained her make-up bag where missing from her locker. The total value is approximately $90. Ms. Jimenez was offered to speak with her Human Resources Representative which she accepted.

Reporting Party:

Supervisor:

Printed: 17-Sep-2015 22:29

Exhibit #1

SECURITY DEPARTMENT
DR # 15-40175
DATE 9-17-15
M T W (T) F S S

BELLAGIO

GUEST/EMPLOYEE STATEMENT

NAME Rai Ellis ID # 696142

ADDRESS ~~W~~ On Thursday September 17 officer Rai Ellis was walking through Arcade vending storage area when I discovered a black and white purse on the floor by the vending machines. I approached the Arcade attendant and asked her if it was her bag. She stated it was not. I then notified Investigator Jay Hunt I had found a bag. Upon inventory we discovered it was Cafe ~~Cafe~~ Celeste employee Joana Jimenez purse. The items were turned over to lost and found.

[signature] 9-17-15
151 15118X - EDWARDS, HAROLD

[signature] 696142
EMPLOYEE SIGNATURE

EXHIBIT [C]

EXHIBIT(S) LIST

C311212

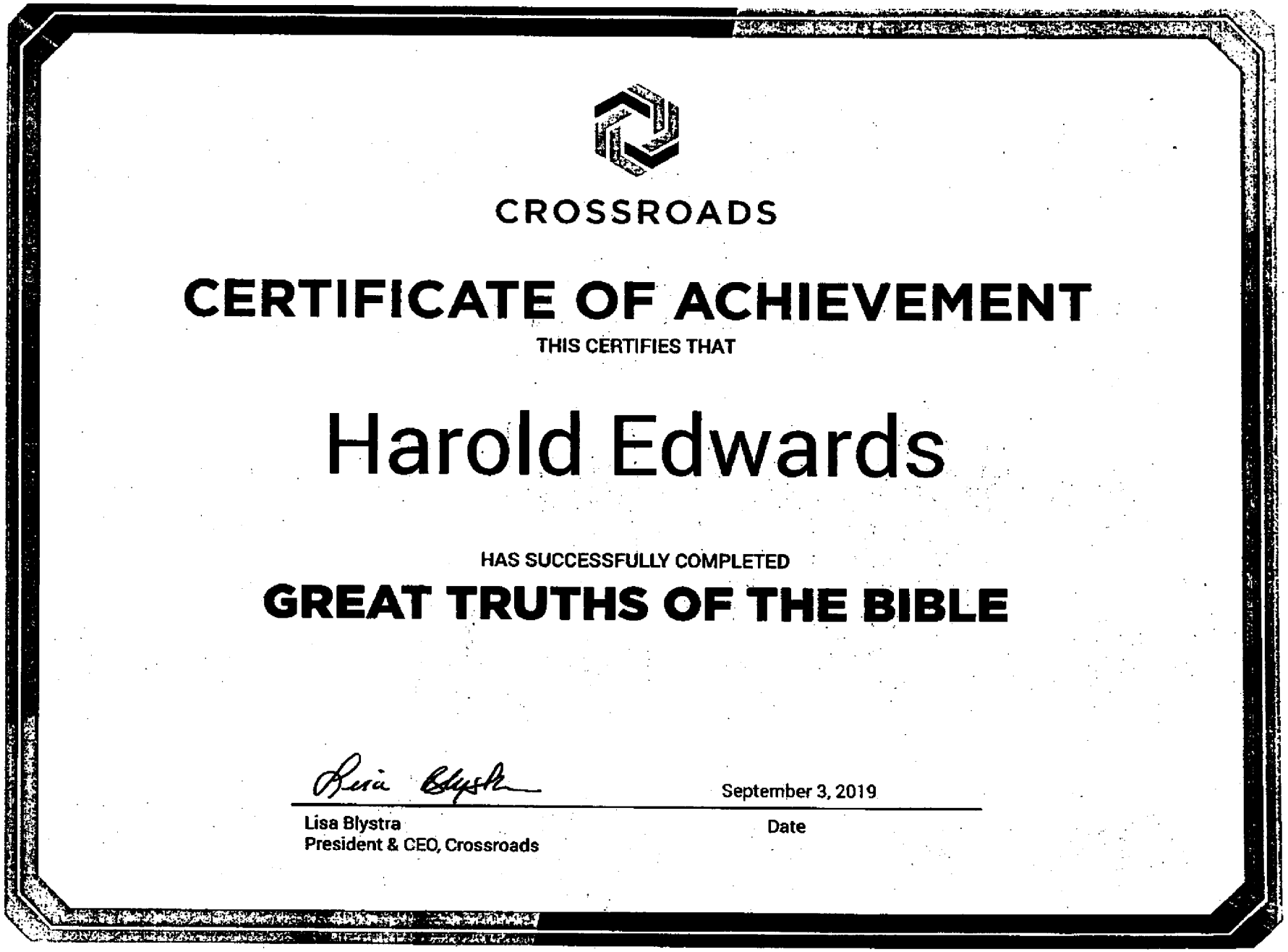
State of Nevada VS. Harold Edward

State's **EXHIBITS**

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
1	DOC IL 5/10/88	10-27-16		10-27-16
2	DOC IL 2/3/92			
3	DOC IL 8/16/95			
4	Records from IL DOC w/aliases			

Printed October 18, 2016

EXHIBIT [D]



CROSSROADS

CERTIFICATE OF ACHIEVEMENT

THIS CERTIFIES THAT

Harold Edwards

HAS SUCCESSFULLY COMPLETED

GREAT TRUTHS OF THE BIBLE

Lisa Blystra
President & CEO, Crossroads

September 3, 2019
Date

CodeCivic
Certificate of Completion
This is to certify that
Harold Edward Gordon
has satisfactorily completed the requirements prescribed for
CodeCivic Skills
Given on this, the Twentieth day of July, Two Thousand and Eighteen
Authorizing Person
0072018-0

CoreCivic

Certificate of Completion

This is to certify that

Harold Edwards

has satisfactorily completed the requirements prescribed for

Anger Management

Given on this, the Twentieth day of July, Two Thousand and Eighteen

Authorizing Person

Certificate printed in red and black on security paper with cutout feature on face and paper seal on back

CoreCivic

Certificate of Participation

This is to certify that

HAROLD K EDWARDS #116998

has satisfactorily completed the requirements prescribed for

the OFF RAMP

Interactive Journal of CoreCivic's *In further* process

Given on this, **14TH** *day of* **MARCH** *, Two Thousand and* **NINETEEN**

Warden

Authorizing Person

Certificate printed in black and blue ink only on security paper; security feature on face and back

CoreCivic

Certificate of Completion

This is to certify that

HAROLD K. EDWARDS

1169986

has satisfactorily completed the requirements prescribed for

CORECIVIC'S GO FURTHER REENTRY PROGRAM

Given on this, the 14TH *day of* MARCH *, Two Thousand and* NINETEEN

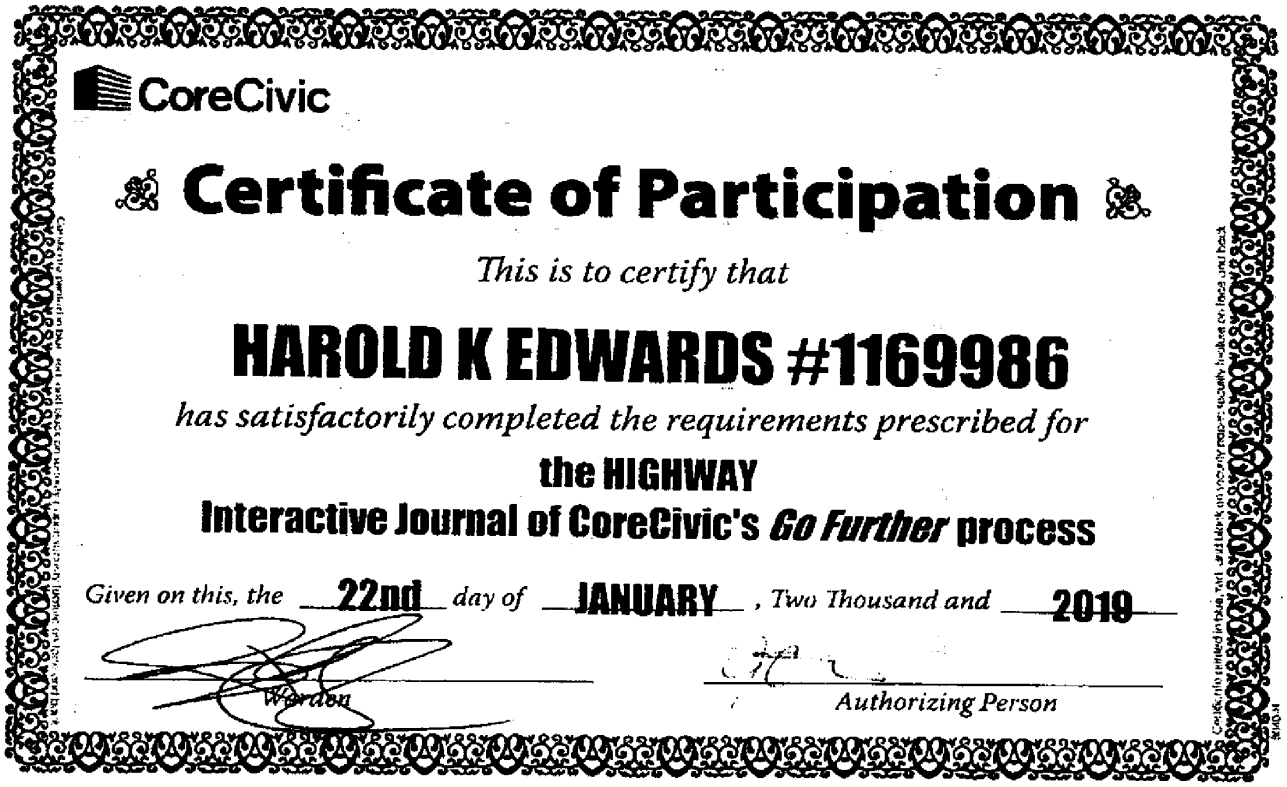
Warden

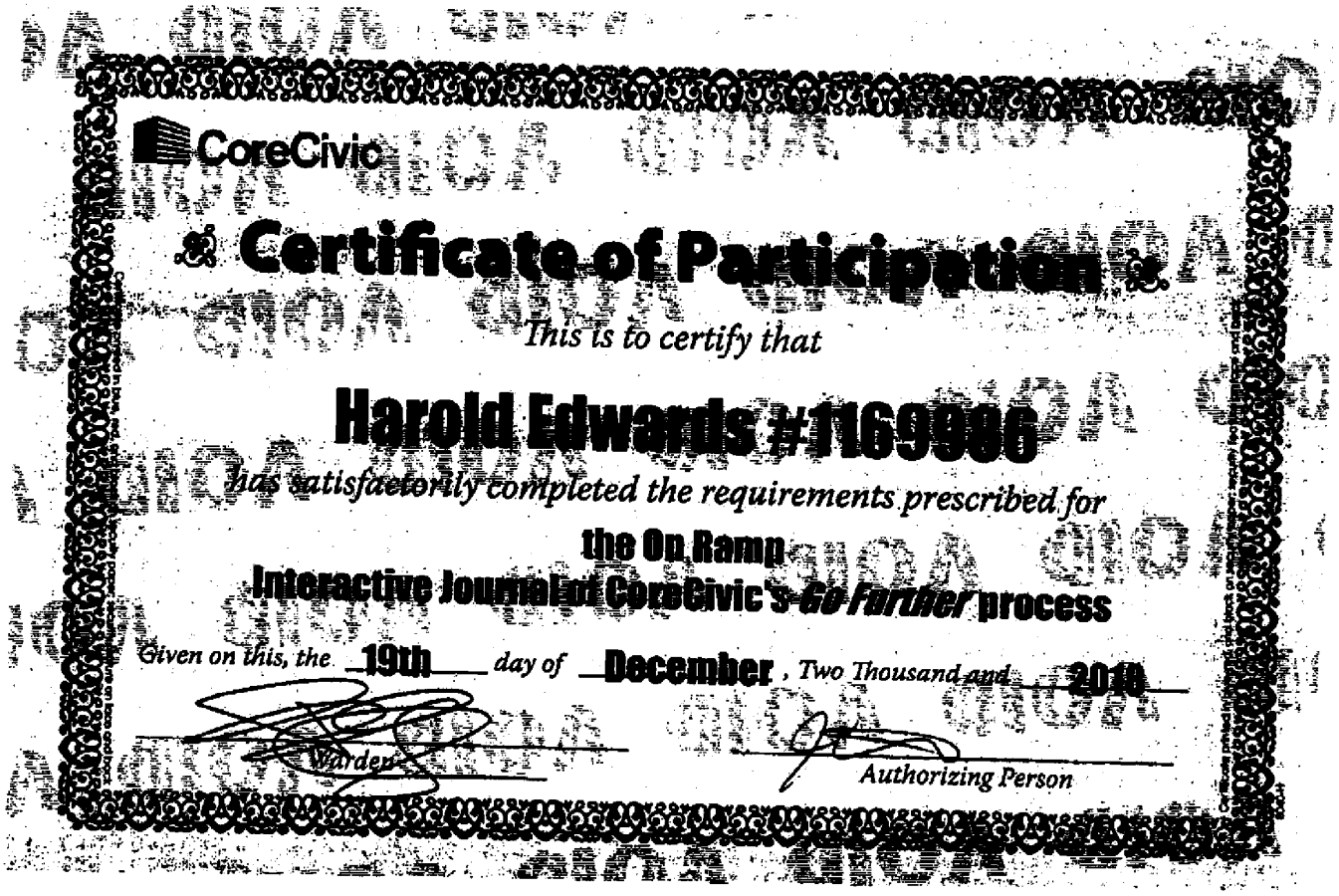
Authorizing Person

Certificate printed in red and black on security paper; security feature on face and back

Certificate printed in red and black on security paper; security feature on face and back

R039


CoreCivic
Certificate of Participation
This is to certify that
HAROLD K EDWARDS #1169986
has satisfactorily completed the requirements prescribed for
the HIGHWAY
Interactive Journal of CoreCivic's Go Further process
Given on this, the 22nd day of JANUARY, Two Thousand and 2019
Warden
Authorizing Person



CoreCivic

Certificate of Participation

This is to certify that

Harold Edwards #1169986

has satisfactorily completed the requirements prescribed for

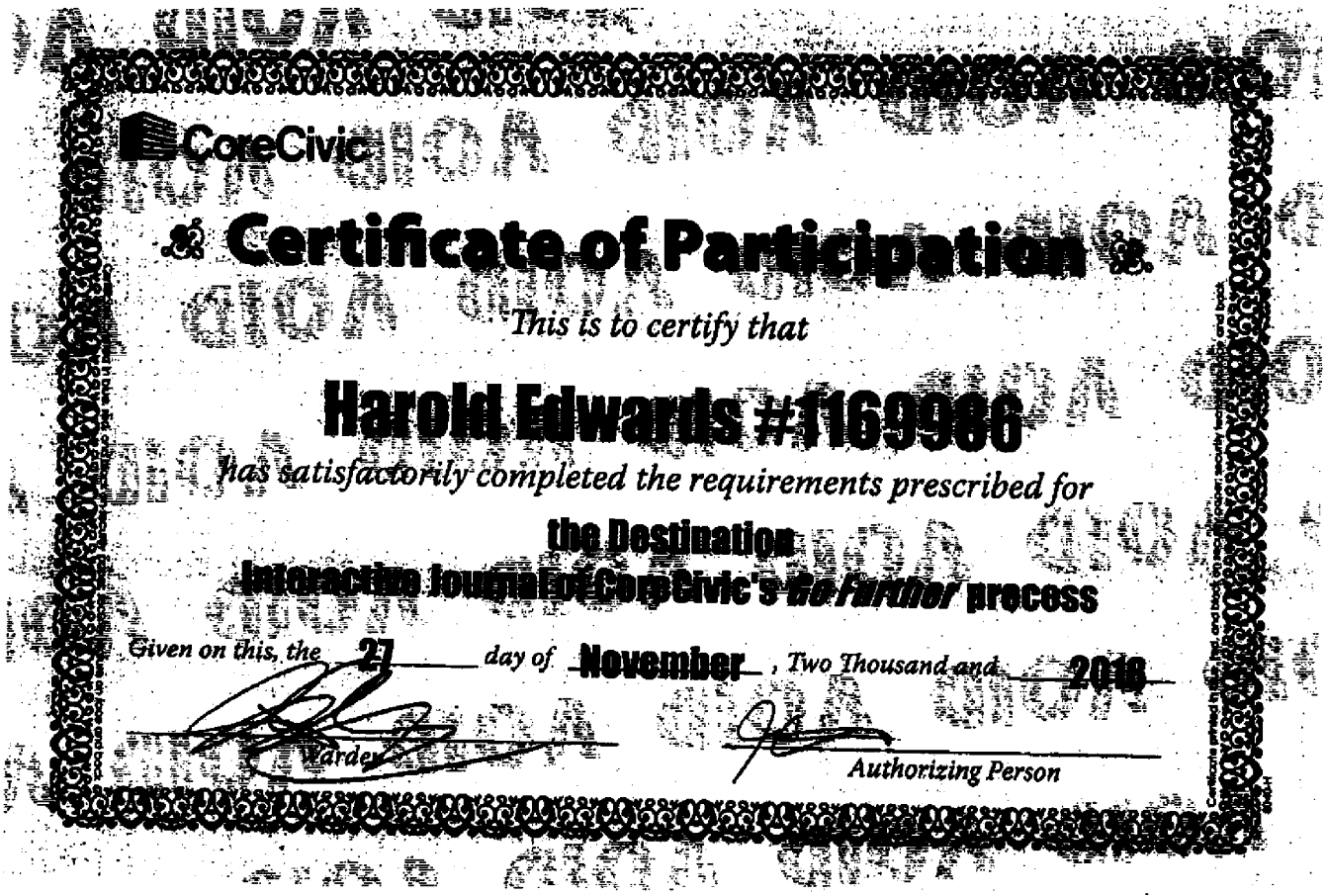
the On Ramp

Interactive Journal at CoreCivic's *Go Further* process

Given on this, the **19th** *day of* **December** *, Two Thousand and* **2018**

Warden

Authorizing Person


CoreCivic

Certificate of Participation

This is to certify that

Harold Edwards #1169966

has satisfactorily completed the requirements prescribed for

the Destination

Interactive Journal of CoreCivic's *Go Further* process

Given on this, the 27 *day of* November, *Two Thousand and* 2018

Warden

Authorizing Person

Harold Edwards #1169986
SDCC P.O. BOX 208
Indian Springs, NV. 89070

BS 2492145

1 of 2

FC PKG RTL
Hasler
04/15/2021
US POSTAGE $004.85⁰

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Steven D. Grierson
CLERK OF THE COURT

OPPM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #1565
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAROLD EDWARDS,
#7024721

Defendant.

CASE NO: C-15-310695-1

DEPT NO: IX

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE

DATE OF HEARING: MAY 19, 2021
TIME OF HEARING: 11:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through KAREN MISHLER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Modify and/or Correct Illegal Sentence.

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

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On November 12, 2015, Defendant Harold Edwards ("Defendant") was charged by way of Information with Burglary (Category B Felony – NRS 205.060). The State filed its Notice of Intent to Seek Punishment as a Habitual Criminal on January 5, 2016. On August 19, 2016, Defendant's Guilty Plea Agreement was filed, wherein he agreed to plead guilty to the count of Burglary contained in the Information, as well as five (5) counts of Possession of Credit or Debit Card without Cardholder's Consent (Category D Felony – NRS 205.690) and one (1) count of Battery on a Protected Person (Gross Misdemeanor – NRS 200.481) in Case No. C311212. The parties stipulated to adjudication under the large habitual criminal statute, as well as to a sentence of ten (10) to twenty-five (25) years in the Nevada Department of Corrections in Case No. C310695 and Counts 1 through 5 in Case No. C311212. Further, both parties stipulated to a three hundred sixty-four (364) day sentence in the Clark County Detention Center on Count 6 in Case No. C311212. All counts and cases were to run concurrently.

Defendant appeared before the court for sentencing on December 7, 2016, was adjudicated as a large habitual criminal, and sentenced as follows: to a maximum of twenty-five (25) years and a minimum of ten (10) years in the Nevada Department of Corrections, with four hundred fifty (450) days credit for time served. Defendant's Judgment of Conviction was filed on December 21, 2016. Defendant filed Notices of Appeal as it relates to the denial of petitions, however, Defendant did not file a direct appeal of his Judgment of Conviction.

Defendant filed the instant Motion to Modify on April 27, 2021.

ARGUMENT

I. DEFENDANT HAS NOT DEMONSTRATED THAT THIS SENTENCE IS FACIALLY ILLEGAL

"A district judge's pronouncement of judgment and sentence from the bench is not a final judgment and does not, without more, oust the district court of jurisdiction over the defendant. Only after a judgment of conviction is 'signed by the judge and entered by the

clerk,' as provided by NRS 176.105, does it become final and does the defendant begin to serve a sentence of imprisonment." Miller v. Hayes, 95 Nev. 927, 604 P.2d 117 (1979); NRS 176A.100.

Even should the Court consider Defendant's motion on the merits, a sentencing judge retains the power to reconsider a sentence only in certain limited situations. Under NRS 176.555, the court may at any time correct an illegal sentence. In addition, NRS 176.565 provides "Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omissions may be corrected by the court at any time and after such notice, if any, as the court orders."

Additionally, if substantial and material mistakes of fact were relied upon in rendering judgment, a judge may reconsider a sentence. State v. District Court, 100 Nev. 90, 677 P.2d 1044 (1984); Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967). When the sentencing court "makes a mistake in rendering a judgment which works to the extreme detriment of the defendant," the district court has jurisdiction to vacate or modify the suspect sentence or judgment. Id. at 95, citing Warden v. Peters, 83 Nev. 298, 429 P.2d 549 (1967).

"A motion to correct an illegal sentence is an appropriate vehicle for raising the claim that a sentence is facially illegal at any time; such a motion cannot be used as a vehicle for challenging the validity of a judgment of conviction or sentence based on alleged errors occurring at trial or sentencing." Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

Here, Defendant's claim that the district court erred at sentencing by accepting his prior convictions as proof that he was eligible for habitual criminal treatment is not one of facial illegality – he does not claim that his sentence exceeded the statutory maximum, was at variance with the controlling statute, or that the court acted in excess of its jurisdiction. The claim Defendant raises must be raised in a timely direct appeal or petition for writ of habeas corpus. Because Defendant's claim is improperly raised in the instant Motion, his Motion must be denied.

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II. DEFENDANT IS NOT ENTITLED TO MODIFICATION OF HIS SENTENCE

In general, a district court lacks jurisdiction to modify a sentence once the defendant has started serving it. Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992), overruled on other grounds by Harris v. State, 130 Nev. 435, 447, 329 P.3d 619, 627 (2014). However, a district court does have inherent authority to correct, vacate, or modify a sentence where the defendant can demonstrate the sentence violates due process because it is based on a materially untrue assumption or mistake of fact that has worked to the defendant's extreme detriment. Edwards v. State, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996); see also Passanisi, 108 Nev. at 322, 831 P.2d at 1373. Not every mistake or error during sentencing gives rise to a due process violation. State v. District Court, 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984). The Nevada Supreme Court has emphasized that a "motion to modify a sentence is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record which work to the extreme detriment of the defendant." Edwards, 112 Nev. at 708, 918 P.2d at 325.

Defendant has failed to show a materially untrue assumption or mistake of fact was considered and used against him at sentencing. See NRS 176.555; Edwards, 112 Nev. at 707, 918 P.2d at 324; Passanisi, 108 Nev. at 322, 831 P.2d at 1373. Defendant claims the sentencing judge improperly relied upon his prior convictions in adjudicating him as a habitual criminal. See Motion at 3.

On October 10, 2016, the district court heard Defendant's Motion to Withdraw Guilty Plea. Defendant asserted that there were "a bunch of mistakes" under Stockmeier in his Presentence Investigation Report. Reporter's Transcript, Defendant's Pro Se Motion to Withdraw Guilty Plea, filed May 8, 2017, at 9. The Court requested that Defendant write a list of the errors and present it to the court at the next hearing. Id. Accordingly, the court continued the matter in order to allow Defendant time to prepare additional information.

On October 17, 2016, a status check was held for the court to review the alleged errors in the Presentence Investigation Report. The Court Minutes indicate that Defendant did not have a written list of corrections. Court Minutes, Status Check: Corrections to Presentence Investigation Report/Set Sentencing Date, October 17, 2016. The court indicated it was

prepared to proceed with sentencing, however, Defendant claimed he had not seen the prior judgments of conviction prepared by the State. Id. Again, the court continued the matter to provide copies to Defendant and allow him time to review them. Id.

At the next court date of November 21, 2016, Defendant argued that the prior judgments of conviction presented by the State were constitutionally invalid. Reporter's Transcript, Sentencing, filed December 2, 2016, at 3–4. Defendant claimed the State did not prove he was represented by counsel in two of the prior convictions because the judgments of conviction simply stated he was represented by "PD" or "Public Defender." Id. at 4. Again, the district court continued the matter for the court to review the judgments of conviction and ensure a proper decision was made. Id. at 8. However, the court noted no argument would be permitted at the final hearing, as argument had been heard several times. Id.

Defendant appeared for sentencing on November 23, 2016. Contrary to the court's previous decision, Defendant requested to argue. Court Minutes, Sentencing, November 23, 2016. It appears Defendant argued in defiance of the court, so the court continued the matter once again after removing Defendant from the courtroom. Id.

Finally, Defendant appeared before the court for sentencing on December 7, 2016. The court attempted to sentence Defendant, but Defendant continued to interrupt. See generally Reporter's Transcript, Sentencing, filed May 8, 2017. The court was forced to wait until Defendant was removed from the courtroom to make a clear record of the sentencing decision. Id. at 4. The court stated,

> All right. This is time – everybody is gone. Mr. Edwards has left the courtroom. I – and it's C310695. It's about three weeks ago we argued his sentencing, and at the time I – he challenged the Judgments of Conviction. Now, I had reviewed them when the State filed the notice of habitual but I hadn't looked at them since. Because Mr. Edwards challenged them at the sentencing I told him that I would go back and review them a second time and continued it and that I wanted no argument at that time. It just had to do with the verification that those Judgment of Convictions – because I hadn't seen them for a couple of months. So I did review them and two weeks ago I – was the return to sentence him and he wanted to argue at that time and he kept talking over me. And I said, no, I don't want to take argument anymore. We took the argument prior to. So he has argued his

> sentence. He didn't bring *Stockmeier* up until I think the last time he spoke over me he did. So I had him removed last week and stopped the sentencing. And then – or two weeks and put it on today. But I had previously taken argument from both parties and continued it again just to review the JOC's a second time to give him that benefit. And I did review them and I'm satisfied that they meet the criteria. He continues to argue and speak over the Court as the transcript will show.

Id. at 4–5. Defendant also claims that two of the judgments of conviction fail to indicate whether or not Defendant had the assistance of counsel. Motion at 6–7. Defendant already raised this claim at his hearing on November 21, 2016. Reporter's Transcript, Sentencing, filed December 2, 2016, at 4.

Clearly, the district court fully considered whether the State sufficiently proved Defendant's prior convictions, as well as whether the State provided sufficient evidence that Defendant was represented by counsel. Defendant therefore cannot establish that the district court relied on any materially untrue assumptions before rendering Defendant's sentence. The district court continued Defendant's hearings no less than two times to review the judgments of conviction to ensure that they were proper and met the requirements prescribed by statute. Ultimately, the court determined that Defendant's prior felony convictions were sufficiently established.

Next, Defendant claims that two of his three prior convictions arose from the same criminal episode and can therefore only constitute one prior conviction for purposes of enhancement. Motion at 3. However, this claim is belied by the record. Attached to Defendant's Motion appears to be an Exhibit List from sentencing in his other case, C311212. Motion, Exhibit C. The list Defendant included describes three separate Judgments of Conviction from Illinois—each from a different year—1988, 1992, and 1995. Id. Clearly, Defendant's claim that two convictions arose from the same transaction has no merit because each of the three prior felony convictions used to enhance his sentence were from separate years. Id. Moreover, even assuming for the sake of argument that two of the convictions presented by the State *were* invalid, the record indicates Defendant had eight (8) prior felony convictions. See Notice of Intent to Seek Punishment as a Habitual Criminal, filed January 5,

2017. Even if the court ignores the two (2) that Defendant is currently complaining about, the State will still have shown the requisite number of convictions for large habitual treatment.

Lastly, Defendant fails to acknowledge that he was sentenced pursuant to the habitual criminal statute not only because the State presented sufficient proof of his prior convictions, but because he stipulated to a large habitual sentence in his Guilty Plea Agreement (GPA). The GPA states, "[b]oth parties stipulate to adjudication under the large habitual criminal statute and to a ten (10) to twenty-five (25) year sentence." GPA at 1. Thus, Defendant cannot show that his sentence was based upon a materially untrue assumption that worked to his extreme detriment. It was Defendant's free choice to stipulate to habitual criminal treatment and he received a benefit by doing so. For example, the State agreed not to oppose dismissal of Cases C310166 and C312326 as a result of Defendant's plea. Defendant is now requesting to receive a sentence lesser than what he agreed to, while still requiring the State to abide by the plea agreement. However, the Nevada Supreme Court consistently upholds specific clauses contained in plea agreements, recognizing the importance of contractual agreements. In Breault v. State, the Court upheld a sentence in which the minimum terms of each count exceed forty (40%) percent of the maximum terms for each count, because the sentences were imposed pursuant to a negotiated plea agreement. 116 Nev. 311, 314, 996 P.2d 888, 889–90 (2000). The Court stated, "we will not permit the defendant to manipulate the judicial system." Id. "[T]he sentences agreed upon by the parties, and which the court ultimately imposed, were part of a voluntary and knowing plea . . . . Under these circumstances, we will not interfere with the sentences imposed." Id. Thus, this Court should uphold Defendant's plea agreement and deny his Motion, as he stipulated to treatment as a large habitual criminal.

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CONCLUSION

For the foregoing reasons, the State respectfully requests this court DENY Defendant's Motion to Modify and/or Correct Illegal Sentence.

DATED this 12th day of May, 2021.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #1565

BY /s/ KAREN MISHLER
KAREN MISHLER
Chief Deputy District Attorney
Nevada Bar #013730

CERTIFICATE OF SERVICE

I hereby certify that service of the State's Opposition to Defendant's Motion to Modify and/or Correct Illegal Sentence was made this 12th day of May, 2021, by mail to:

HOWARD EDWARDS #1169986
SDCC
P.O. BOX 208
INDIAN SPRINGS, NV 89070

BY: /s/ E. GOMEZ
Employee of the District Attorney's Office

15F15118X/KM/hb/eg/L1

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6/8/2021 10:12 AM
Steven D. Grierson
CLERK OF THE COURT

Harold Edwards #1169986
In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

HAROLD EDWARDS,
Plaintiff,

vs. STATE OF NEVADA

Defendant.

Case No. C15-310695-1
Dept. No. II B
Docket ____

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant, Harold Edwards, in and through his proper person, hereby appeals to the Supreme Court of Nevada from the ORDER denying and/or dismissing the Motion to Modify and or Correct Illegal Sentence

ruled on the 19th day of May, 2021.

Dated this 1st day of June, 2021.

Respectfully Submitted.
Harold Edwards

RECEIVED
JUN - 7 2021
CLERK OF THE COURT

Harold Edwards # 1169986
SDCC . P.O. BOX 208
Indian Springs, NV. 89070

LAS VEGAS NV 890
3 JUN 2021 PM 5 L

STEVEN D. GRIERSON Clerk Of The Court
200 LEWIS Ave. 3rd Floor
Las Vegas, NV. 89155-1160

89101-630000

Electronically Filed
6/8/2021 10:14 AM
Steven D. Grierson
CLERK OF THE COURT

Harold Edwards, 1169986
Petitioner/In Propia Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070-0208

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark

HAROLD EDWARDS,
Plaintiff,

vs.

STATE OF NEVADA,
Defendant.

CASE No. C15310695-1
DEPT.No. 11 B

DESIGNATION OF RECORD ON APPEAL

TO: SUPREME COURT OF NEVADA

The above-named Plaintiff hereby designates the entire record of the above-entitled case, to include all the papers, documents, pleadings, and transcripts thereof, as and for the Record on Appeal.

DATED this 1st day of June, 2021.

RESPECTFULLY SUBMITTED BY:
Harold Edwards
Harold, Edwards # 1169986
Plaintiff/In Propria Persona

CERTIFICATE OF SERVICE BY MAILING

I, Harold Edwards, hereby certify, pursuant to NRCP 5(b), that on this 1st day of June, 2021, I mailed a true and correct copy of the foregoing, "Notice Of Appeal".

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

OFFICE OF THE CLERK SUPREME COURT OF NEVADA
201 S. Carson Street
Suite 201
Carson City, NV. 89701

CC:FILE

DATED: this 1st day of May, 2021.

Harold Edwards
Harold Edwards # 1169986
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL
(Title of Document)

filed in District Court Case number C153106 95-1

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application for a federal or state grant.

Harold Edwards
Signature

June 1st 2021
Date

Harold, Edwards
Print Name

pro' se Defendant
Title

Electronically Filed
6/9/2021 3:08 PM
Steven D. Grierson
CLERK OF THE COURT

ASTA

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

STATE OF NEVADA, Plaintiff(s), vs. HAROLD EDWARDS, Defendant(s),	Case No: C-15-310695-1 Dept No: IX

CASE APPEAL STATEMENT

1. Appellant(s): Howard Edwards

2. Judge: Cristina D. Silva

3. Appellant(s): Howard Edwards

Counsel:

Howard Edwards #1169986
P.O. Box 208
Indian Springs, NV 89070

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101

(702) 671-2700

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

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

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

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

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

9. Date Commenced in District Court: November 10, 2015

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

    Type of Judgment or Order Being Appealed: Misc. Order

11. Previous Appeal: Yes

    Supreme Court Docket Number(s): 71957, 72267, 76590

12. Child Custody or Visitation: N/A

Dated This 9 day of June 2021.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton

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

cc: Howard Edwards

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07/15/2021 11:26 AM
CLERK OF THE COURT

ORDD
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JORY SCARBOROUGH
Deputy District Attorney
Nevada Bar #014265
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAROLD EDWARDS,
#7024721

Defendant.

CASE NO: C-15-310695-1
DEPT NO: IX

ORDER DENYING DEFENDANT'S MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE

DATE OF HEARING: May 19, 2021
TIME OF HEARING: 11:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 19th day of May, 2021, the Defendant not being present, in custody in the Nevada Department of Corrections, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through JORY SCARBOROUGH, Deputy District Attorney, and the Court without argument, based on the pleadings and good cause appearing therefor,

///

///

///

///

IT IS HEREBY ORDERED that the Defendant's Motion to Modify and/or Correct Illegal Sentence, shall be, and it is DENIED~~, as the challenges in this Motion were addressed in the Supreme Court decision on April 15, 2019, and that information was not part of the State's Opposition~~.

Defendant fails to supply evidence to support the arguments contained in the Motion. Further, while not included in the State's opposition, the Court finds the same arguments raised in this Motion were previously addressed by the Nevada Supreme Court in its decision issued on April 15, 2019.

Dated this 15th day of July, 2021

DISTRICT JUDGE

EC

4CA 644 0719 EC78
Cristina D. Silva
District Court Judge

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

BY
JORY SCARBOROUGH
Deputy District Attorney
Nevada Bar #014265

CERTIFICATE OF SERVICE

I certify that on the 30th day of June, 2021, I mailed a copy of the foregoing Order to:

HAROLD EDWARDS, #1169986
P.O. BOX 208
INDIAN SPRINGS, NV 89070

BY
Secretary for the District Attorney's Office

15F15118X/eg/L1

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada	CASE NO: C-15-310695-1
vs	DEPT. NO. Department 9
Harold Edwards	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Denying Motion was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 7/15/2021

DA Motions .	Motions@clarkcountyda.com
DC 8 Law Clerk .	DEPT08LC@clarkcountycourts.us
TJ McCubbin .	TJ.McCubbin@clarkcountynv.gov
William Flinn	william.flinn@clarkcountyda.com

Harold, Edwards ID NO. 1169986

SOUTHERN DESERT CORRECTIONAL CTN.
20825 COLD CREEK RD.
P.O. BOX 208
INDIAN SPRINGS, NV 89070

FILED
JUL 19 2021
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT
[redacted] CLARK COUNTY

STATE OF NEVADA

v.

HAROLD EDWARDS

CASE NO.: C153106 95-1
DEPT. NO.: ~~H D~~ XV
DOCKET:
August 9, 2021
11:00 AM

MOTION TO BE GRANTED A COPY OF THE JUDGEMENT OF CONVICTION TO SHOW A D FELONY THE COURT ORDERED CHANGED FROM C FELONY ON JUNE 17 2021

COMES NOW, Harold, Edwards, herein above respectfully moves this Honorable Court for an Order to Kristin Duncan Courtroom Clerk to the Honoralbe Joe Hardy in Department XV of the District Court to Mail the above named defendant a Copy

This Motion is made and based upon the accompanying Memorandum of Points and Authorities,

DATED: this 5th day of July, 2021

BY: Harold Edwards
Harold, Edwards #1169986
Defendant In Proper Personam

RECEIVED
JUL 19 2021
CLERK OF THE COURT

CERTFICATE OF SERVICE BY MAILING

I, Harold Edwards, hereby certify, pursuant to NRCP 5(b), that on this 5th day of July, 2021, I mailed a true and correct copy of the foregoing, "Motion To Be Granted a Copy of New Judgement of Conviction" by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

STEVEN D. GRIERSON
200 LEWIS AVE 3rd Fl.
Las Vegas, NV. 89101

CC:FILE

DATED: this 5th day of July, 2021.

Harold Edwards
Harold Edwards # 1169986
/In Propria Personam
Post Office Box 208,S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

Harold Edwards #1169986
SDCC P.O. Box 208
Indian Springs, NV. 89070

BIS# 2608747

STEVEN D. GRIERSON, Clerk of the Court
200 LEWIS Ave. 3rd Floor
[redacted]
LAS VEGAS, NV. 89155-1160

33 DRDFNMP 89155

907

THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
908 - 960
WILL FOLLOW VIA
U.S. MAIL

PLEADING CONTINUES IN NEXT VOLUME

IN THE SUPREME COURT OF THE STATE OF NEVADA

HAROLD EDWARDS,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: C-15-310695-1

Docket No: 83046

RECORD ON APPEAL
VOLUME
3

ATTORNEY FOR APPELLANT
HAROLD EDWARDS # 1169986,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

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

C-15-310695-1 STATE OF NEVADA vs. HAROLD EDWARDS

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C-15-310695-1 State of Nevada
vs
Harold Edwards

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4	11/04/2019	APPLICATION TO PROCEED INFORMA PAUPERIS (CONFIDENTIAL)	801 - 810
3	12/15/2016	CASE APPEAL STATEMENT	501 - 502
3	01/27/2017	CASE APPEAL STATEMENT	519 - 520
4	08/01/2018	CASE APPEAL STATEMENT	785 - 786
4	06/09/2021	CASE APPEAL STATEMENT	900 - 901
5	08/04/2021	CERTIFICATION OF COPY AND TRANSMITTAL OF RECORD	
1	11/10/2015	CRIMINAL BINDOVER (CONFIDENTIAL)	1 - 21
3	12/16/2016	DEFENDANT/PETITIONER INTENDS TO PRESENT THE FOLLOWING ISSUES IN HIS POST-CONVICTION WRIT OF HABEAS CORPUS:	507 - 509
4	06/08/2021	DESIGNATION OF RECORD ON APPEAL	897 - 899
5	08/04/2021	DISTRICT COURT MINUTES	997 - 1046
4	08/04/2021	DOCUMENTARY EXHIBITS (UNFILED) CONFIDENTIAL (CONTINUED)	908 - 960
5	08/04/2021	DOCUMENTARY EXHIBITS (UNFILED) CONFIDENTIAL (CONTINUATION)	961 - 996
3	04/18/2017	EX PARTE MOTION FOR COURT TO ORDER THAT TRANSCRIPTS FOR THE COURT DATES OF 11.21. AND 12.7. AND 10.10. AND 8.17.16 BE RELEASED TO DEFENDANT	713 - 715
2	08/18/2016	EX PARTE MOTION FOR IMMEDIATE RELEASE	422 - 423
3	03/28/2017	EX PARTE MOTION FOR IMMEDIATE RELEASE	688 - 690
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C-15-310695-1 State of Nevada
vs
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4	06/21/2018	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	748 - 764
2	08/19/2016	GUILTY PLEA AGREEMENT	424 - 432
1	11/12/2015	INFORMATION	22 - 23
3	12/21/2016	JUDGMENT OF CONVICTION (PLEA OF GUILTY)	510 - 511
4	07/19/2021	MOTION TO BE GRANTED A COPY OF THE JUDGMENT OF CONVICTION TO SHOW A D FELONY THE COURT ORDERED CHANGED FROM C FELONY ON JUNE 17 2021	905 - 907
4	11/04/2019	MOTION TO EXTEND PRISON COPYWORK LIMIT	795 - 800
4	08/24/2020	MOTION TO EXTEND PRISON COPYWORK LIMIT	829 - 834
4	04/27/2021	MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE	846 - 886
4	01/16/2018	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGMENT - REVERSED	743 - 747
4	04/15/2019	NEVADA SUPREME COURT CLERK'S CERTIFICATE/REMITTITUR JUDGMENT - AFFIRMED	787 - 794
3	12/12/2016	NOTICE OF APPEAL	499 - 500
4	07/30/2018	NOTICE OF APPEAL	783 - 784
4	06/08/2021	NOTICE OF APPEAL	895 - 896
4	06/25/2018	NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	765 - 782
3	12/28/2016	NOTICE OF ENTRY OF ORDER	515 - 516
1	01/05/2016	NOTICE OF INTENT TO SEEK PUNISHMENT AS A HABITUAL CRIMINAL	134 - 135
4	09/14/2020	NOTICE OF MOTION AND MOTION ASKING THE COURT TO ORDER SOUTHERN DESERT CORRECTIONAL CENTER'S LAW LIBRARY TO GRANT DEFENDANT ACCESS TO THE LAW LIBRARY FIVE DAYS (5) PER WEEK; OR IN THE	835 - 838

C-15-310695-1 State of Nevada
vs
Harold Edwards

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VOL	DATE	PLEADING	PAGE NUMBER:
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4	04/15/2021	NOTICE OF MOTION AND MOTION FOR THE COURT TO ORDER SOUTHERN DESERT CORRECTIONAL CENTER'S GANG INTELLIGENCE DEPARTMENT TO RELEASE PETITIONER'S CORRECTIONAL FILE AND PRISON RECORDS (C-FILE)	839 - 845
1	03/16/2016	NOTICE OF MOTION AND MOTION FOR THE APPOINTMENT OF COUNSEL	161 - 163
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4	04/29/2020	NOTICE OF MOTION AND MOTION FOR THE COURT TO ORDER SOUTHERN DESERT'S CORRECTIONAL CENTER GANG INTELLIGENCE DEPARTMENT TO RELEASE PETITIONER'S CORRECTIONS FILE AND PRISON RECORDS	822 - 828
1	03/16/2016	NOTICE OF MOTION AND MOTION TO COMPEL DISCOVERY	149 - 160
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1	01/29/2016	NOTICE OF MOTION AND MOTION TO DISMISS	136 - 148
2	09/13/2016	NOTICE OF MOTION AND MOTION TO DISMISS COUNSEL AND MOTION FOR A FARETTA HEARING	442 - 444
2	10/05/2016	NOTICE OF MOTION AND MOTION TO WITHDRAW GUILTY PLEA AND MOTION FOR A FARETTA HEARING	455 - 461
2	08/16/2016	OPPOSITION TO DEFENDANT'S MOTION TO CONSOLIDATE	411 - 415
3	05/05/2017	ORDER DENYING DEFENDANT'S EX PARTE MOTION FOR IMMEDIATE RELEASE	716 - 717

C-15-310695-1 State of Nevada
vs
Harold Edwards

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VOL	DATE	PLEADING	PAGE NUMBER:
4	07/15/2021	ORDER DENYING DEFENDANT'S MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE	902 - 904
1	03/17/2016	ORDER DENYING DEFENDANT'S PRO PER MOTION TO DISMISS	164 - 165
3	12/21/2016	ORDER DISMISSING DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS	512 - 512
2	08/18/2016	ORDER FOR IMMEDIATE RELEASE	418 - 419
3	03/09/2017	ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS	687 - 687
4	12/23/2019	ORDER GRANTING DEFENDANT'S MOTION TO EXTEND PRISON COPYWORK LIMIT	813 - 814
2	08/18/2016	ORDER PERMITTING ACCESS	416 - 417
3	12/27/2016	ORDER TO PROCEED IN FORMA PAUPERIS (CONFIDENTIAL)	513 - 514
3	03/06/2017	PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION:	521 - 686
2	09/29/2016	PRE-SENTENCE INVESTIGATION REPORT (UNFILED) CONFIDENTIAL	445 - 454
3	01/25/2017	PROPER PERSON NOTICE OF APPEAL FROM AN ORDER OF THE EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY JUDGE DOUGLAS E. SMITH DENYING PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS: POST CONVICTION	517 - 518
4	05/12/2021	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE	887 - 894
2	10/07/2016	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA (CONTINUED)	471 - 480
3	10/07/2016	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA (CONTINUATION)	481 - 490
3	04/13/2017	STATE'S RESPONSE TO DEFENDANT'S EX PARTE MOTION	691 - 695

C-15-310695-1 State of Nevada
vs
Harold Edwards

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VOL	DATE	PLEADING	PAGE NUMBER:
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3	04/18/2017	STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS	696 - 712
3	05/08/2017	TRANSCRIPT OF HEARING HELD ON AUGUST 17, 2016 (CONTINUED)	718 - 720
4	05/08/2017	TRANSCRIPT OF HEARING HELD ON AUGUST 17, 2016 (CONTINUATION)	721 - 725
2	10/06/2016	TRANSCRIPT OF HEARING HELD ON AUGUST 19, 2016	462 - 470
4	05/08/2017	TRANSCRIPT OF HEARING HELD ON DECEMBER 7, 2016	726 - 731
1	12/28/2015	TRANSCRIPT OF HEARING HELD ON NOVEMBER 10, 2015	32 - 133
3	12/02/2016	TRANSCRIPT OF HEARING HELD ON NOVEMBER 21, 2016	491 - 498
4	05/08/2017	TRANSCRIPT OF HEARING HELD ON OCTOBER 10, 2016	732 - 742
2	09/02/2016	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/ COPY OF UNFILED NOTICE OF MOTION AND MOTION TO WITHDRAW GUILTY PLEA AND MOTION FOR A FARETTA HEARING:	433 - 441
1	11/24/2015	UNFILED DOCUMENT(S) - MOTION TO DISMISS	24 - 31
4	11/05/2019	UNSIGNED DOCUMENT(S) - ORDER TO PROCEED IN FORMA PAUPERIS (CONFIDENTIAL)	811 - 812

for you; and the right to appeal your conviction with assistance of an attorney, either appointed or retained. You understand?
THE DEFENDANT: Yes, sir.

THE COURT: Still want me to accept it?

THE DEFENDANT: Yes, sir.

THE COURT: You discussed the elements of the original charges against you with your attorney, you understand what's going on today?

THE DEFENDANT: Yeah.

THE COURT: Do you understand the State would have to prove each element of the charge against you at trial beyond a reasonable doubt to convict you?

THE DEFENDANT: Yes, sir.

THE COURT: You've discussed with your attorneys any possible defenses, defense strategies, and circumstance which might be in your favor?

THE DEFENDANT: Yeah.

THE COURT: All the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to you by your attorney?

THE DEFENDANT: Yeah.

THE COURT: You believe pleading guilty and accepting this plea bargain is in your best interest and a trial would be contrary to your best interest?

THE DEFENDANT: Yeah.

THE COURT: You still want me to accept it?

THE DEFENDANT: Yes, sir.

THE COURT: You've signed the Guilty Plea Agreement voluntarily after consultation with your attorneys and you're not acting under duress or coercion by virtue of promises of any other leniency except for those set forth in this agreement?

THE DEFENDANT: Yeah.

THE COURT: You're not under the influence of anything right now that would impair your ability to understand what's going on today?

THE DEFENDANT: No.

THE COURT: And your attorney, again, has answered all your questions regarding this Guilty Plea Agreement and its consequences to your satisfaction, you're satisfied with their services?

THE DEFENDANT: Yeah.

THE COURT: And you want me to accept it?

THE DEFENDANT: Yeah.

THE COURT: Now, it's not dated. It's signed by you. I'll write the date of the 19th in; is that all right?

MR. MCCUBBIN: Thank you, that is correct, Your Honor, it was signed today.

MR. FLINN: Your Honor, I apologize, I don't know if I missed it. I know you canvassed him on the facts and the Information but I didn't -- did I hear an actual, the actual plea to the charge?

THE COURT: No.

MR. FLINN: Or did I miss it?

THE COURT: No.

MR. FLINN: Okay. Thank you.

THE COURT: Mr. Edwards, on September 17th, 2015, did you go into the -- tell me why you're pleading guilty.

THE DEFENDANT: I don't want to get life without parole.

THE COURT: Did you go in to the Bellagio with intent to commit larceny?

THE DEFENDANT: Yeah.

THE COURT: Anything else?

MR. FLINN: No, Your Honor, thank you.

THE COURT: All right. I'll accept the negotiation. We'll set it out for sentencing for --

THE CLERK: October 10th at 8 a.m.

(Transcript Of Proceedings Entry Of Plea, dated August 19, 2016, hereinafter "RT").

Based on Defendant's representations on the record and the thorough plea canvass detailed above, the Court found Defendant's plea to have been freely and voluntarily entered and accepted Defendant's plea. In reviewing the totality of circumstances, it is clear that 1)

the defendant knowingly waived his privilege against self-incrimination, the right to trial by jury, and the right to confront his accusers; 2) the plea was voluntary, was not coerced, and was not the result of a promise of leniency; 3) the defendant understood the consequences of his plea and the range of punishment; and 4) the defendant understood the nature of the charge, i.e., the elements of the crime.

II. FREESTANDING ACTUAL INNOCENCE CLAIMS ARE NOT COGNIZABLE EVEN IN POST-CONVICTION PROCEEDINGS

Nevada state law does not recognize freestanding claims of actual innocence in a Petition for Writ of Habeas Corpus, but rather only provides for claims of actual innocence where a defendant is attempting to overcome a procedural bar caused by an untimely or successive petition. *See* Mitchell v. State, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006); *See also* Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525-26 (2003). This is consistent with the Nevada Supreme Court's adoption of the standard established in Schlup v. Delo. *See* 513 U.S. 238, 315, 115 S. Ct. 851, 861 (1995) (*quoting* Herrera v. Collins, 506 U.S. 390, 404, 113 S. Ct. 853, 862 (1993)) ("Schlup's claim of innocence is thus not itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits."). In contrast, a freestanding claim of actual innocence is a claim wherein a petitioner alleges actual innocence alone, rather than actual innocence supported by a claim of constitutional deficiency, warrants relief. *See* Herrera, 506 U.S. 390, 113 S. Ct. 853 (1993). The Herrera Court acknowledged that claims of actual innocence based on newly discovered evidence have never been held as a ground for habeas relief absent an independent constitutional violation in the underlying criminal proceeding. Id. The Court noted such claims were traditionally addressed in the context of requests for executive clemency, which power exists in every state and at the federal level. Id. at 414-15, 113 S. Ct. at 867-68. However, the Court assumed, arguendo, that a federal freestanding claim of actual innocence may exist where a petitioner was sentenced to death and state law precluded any relief. Herrera, 506 U.S. at 417, 113 S. Ct. at 869; Schlup, 513 U.S. at 317, 115 S. Ct. at 862. The United States

Supreme Court has never found a freestanding claim of actual innocence to be available in a non-capital case. *See, e.g.*, Herrera, 506 U.S. at 404-405, 416-417; House v. Bell, 547 U.S. 518, 554, 126 S. Ct. 2064, 2086 (2006); *see also* Carriger v. Stewart, 132 F.3d 463, 476 (9th Cir. 1997); Jackson v. Calderon, 211 F.3d 1148, 1165 (9th Cir. 2000).

"Actual innocence" is a term of art that should only be raised in the context of an attempt to overcome post-conviction procedural bars to petitions for writ of habeas corpus. Even in the post-conviction context, where at least "actual innocence" claims can be made in order to have other arguments heard on the merits, there is no such concept as a "freestanding" actual innocence claim where a person can claim they deserve some kind of relief solely because they proclaim their innocence.

As set forth in State v. District Court, 85 Nev. 381, "...the question of a defendant's guilt or innocence is not an issue on a motion to withdraw a guilty plea". This prohibition against addressing the issue of guilt or innocence on a motion to withdraw plea was set forth by the U.S. Supreme Court in Kercheval v. United States, 274 U.S. 220, 224 (1927) and remains precedent to date. In Hargrove v. State, 100 Nev. 498 (1988), the defendant pled guilty to the charges of making a bomb threat. The defendant filed a motion to withdraw his plea, in his motion the defendant alleged that he entered his plea without effective assistance of counsel, that his plea was a product of fear and that he in fact was innocent of the charge. The Nevada Supreme Court stated in its opinion:

> Appellant's contention that his plea should have been withdrawn because he is actually innocent of the charge is also without merit. The question of an accused's guilt or innocence is generally not at issue in a motion to withdraw guilty plea. *See* Kercheval v. United States, 274 U.S. 220, 224 (1927); State v. District Court, 85 Nev. 381, 455 p.2d 923 (1969). Even if the question were at issue in this case, appellant's argument is nevertheless without merit. The record of the pleas canvass shows that appellant essentially entered a guilty plea under the concept espoused in North Carolina v. Alford, 400 U.S. 25 (1970); appellant asserted his innocence of the bomb threat charge, but pleaded guilty to avoid punishment on the more

> serious charge of transportation of explosives and as an habitual criminal. As such, his claim of innocence is essentially academic.

Hargrove, 100 Nev. at 503.

In this case, Defendant alleges that his counsel failed to do various things related to trial preparation, claiming he "repeatedly expressed his innocence." However, Defendant fails to cite any Nevada authority which would allow him to raise a freestanding claim of actual innocence and improperly suggests such a claim before this Court. None of these grounds stated by Defendant are a proper basis for the withdrawal of his guilty plea.

III. DEFENDANT'S ALLEGATIONS OF ALLEGED INEFFECTIVENESS OF COUNSEL ARE INSUFFICIENT TO NULLIFY THIS COURT'S FINDING THAT HIS PLEA WAS VOLUNTARY

To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland. 466 U.S. at 686-87, 104 S.Ct. at 2063-64; see also Love, 109 Nev. at 1138, 865 P.2d at 323. Defendant must show: 1) that counsel's performance was deficient and 2) that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. Id. at 687-88, 694, 104 S.Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland test in Nevada). "A court may consider the two (2) test elements in any order and need not consider both prongs if the defendant makes an insufficient showing on either one." Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1997) (citing, Strickland, 466 U.S. at 697, 104 S.Ct. at 2069).

The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371, 130 S.Ct. 1473, 1485 (2010). The question is whether an attorney's representation

amounted to incompetence under prevailing professional norms, "not whether it deviated from best practices or most common custom." Harrington v. Richter, 131 S.Ct. 770, 788 (2011). Moreover, counsel is afforded wide latitude to employ various techniques or strategies. See Id. Counsel cannot be ineffective for failing to make futile objections or arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does not mean that a court should "second guess reasoned choices between trial tactics, nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Id. (internal citations omitted). What appears in hindsight to be a wrong or poorly advised decision of tactics or strategy is not sufficient to meet the defendant's heavy burden of proving ineffective counsel. Harrington, 131 S.Ct. at 779. Strategy or decisions regarding the defendant's case are "virtually unchallengeable absent extraordinary circumstances." Doleman v. State, 112 Nev. 843, 848, 921 P.2d 278, 281 (1996) (internal citations omitted). In essence, the court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S.Ct. at 2066. Even if a defendant can demonstrate that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice.

When a conviction is the result of a guilty plea, a defendant must show that there is a "reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have *insisted* on going to trial." Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370 (1985) (emphasis added); see also Kirksey v. State, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996); Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004).

//

In this case, Defendant claims that he should be permitted to withdraw his plea because his court appointed counsel Deputy Public Defender TJ McCubbin was coercive in that he did nothing exept coerce Defendant to make an ill-informed rushed decision with less than five (5) minutes to make the decision without clearly understanding the effect of the plea or of his rights. These allegations are belied by the record. First, on page 5 of the filed Guilty Plea Agreement, which Defendant signed and affirmed as true and accurate, it states: "I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement."

Second, this Court thoroughly canvassed Defendant prior to accepting his plea and Defendant specifically denied on the record the exact allegations he is currently making in the instant motion. The Court asked Defendant: "And you accept those negotiations after discussing the matter fully with your attorney?" to which Defendant responded: "Yes, sir." When the Court further inquired: "And discussed that with them, they answered all your questions to your satisfaction?" Defendant replied: "Yeah." The Court then asked Defendant: "You've signed the Guilty Plea Agreement voluntarily after consultation with your attorneys and you're not acting under duress or coercion by virtue of promises of any other leniency except for those set forth in this agreement?" Defendant stated: "Yeah." The Court again inquired: "And your attorney, again, has answered all your questions regarding this Guilty Plea Agreement and its consequences to your satisfaction, you're satisfied with their services?" to which Defendant replied: "Yeah."

Additionally, Defendant's counsel was able to negotiate a deal that saved Defendant from spending the rest of his life in prison. There was, indeed, a huge benefit obtained by Defendant's counsel on behalf of his client pursuant to negotiations in this case. On January 5, 2016, the State filed a Notice of Intent to Seek Punishment as a Habitual Criminal listing the following eight (8) prior felony convictions:

1. That in 1984, the Defendant was convicted in the State of Illinois, for the crime of Robbery (felony).

2. That in 1988, the Defendant was convicted in the State of Illinois, for the crime of Theft (felony).

3. That in 1992, the Defendant was convicted in the State of Illinois, for the crime of Burglary (felony).

4. That in 1995, the Defendant was convicted in the State of Illinois, for the crime of Theft (felony).

5. That in 1996, the Defendant was convicted in the State of Illinois, for the crime of Bank Robbery (felony).

6. That in 2003, the Defendant was convicted in the State of Illinois, for the crime of Escape (felony).

7. That in 2006, the Defendant was convicted in the State of Illinois, for the crime of Forgery (felony).

8. That in 2008, the Defendant was convicted in the State of Illinois, for the crime of Possession of Controlled Substance (felony).

In fact, when the Court asked Defendant to tell him why he was pleading guilty, Defendant stated: "I don't want to get life without parole." Defendant's current motion is evidence of "buyer's remorse," not evidence of an involuntary plea.

Most importantly, at the time he entered his plea, Defendant did not raise any of these alleged issues to this Court. In fact, Defendant represented both orally on the record and in writing by signing his detailed Guilty Plea Agreement that he had consulted with his attorney and that he was satisfied with the services provided. Given Defendant's oral and written representations to the Court, there is no question as to the voluntariness of his plea. Defendant should not be allowed to withdraw his guilty plea in this case as the entirety of Defendant's claims are belied by the record. The totality of the circumstances in this case clearly demonstrate that Defendant's plea was knowingly and voluntarily entered and that Defendant understood the nature of the offense and the consequences of his plea. Defendant's allegations of ineffectiveness are meritless, not supported by the record and do not form a basis to withdraw his guilty plea. As the Nevada Supreme Court recently stated

in Stevenson, permitting Defendant to withdraw his plea under the circumstances would allow the solemn entry of a guilty plea to become a mere gesture, a temporary and meaningless formality reversible at the defendant's whim, which the Court cannot allow.

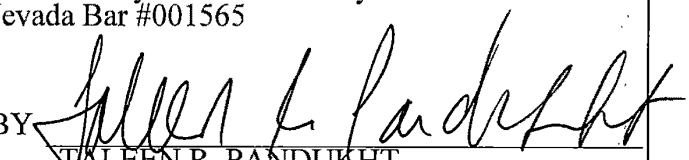
CONCLUSION

Defendant's claims are belied by the record and the representations Defendant made to this Court at the time he entered his plea. The totality of the circumstances in this case clearly demonstrate that Defendant's plea was knowingly and voluntarily made and that Defendant understood the nature of the offense and the consequences of his plea. Based upon the foregoing, the State respectfully requests that this Court deny Defendant's Motion to Withdraw Guilty Plea.

DATED this 7th day of October, 2016.

Respectfully submitted,

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

BY 
TALEEN R. PANDUKHT
Chief Deputy District Attorney
Nevada Bar #005734

CERTIFICATE OF SERVICE

I hereby certify that service of State's Opposition to Defendant's Motion to Withdraw Guilty Plea, was made this 7th day of October, 2016, by e-mail to:

T.J. MCCUBBIN, Deputy Public Defender
E-Mail: TJ.McCubbin@clarkcountynv.gov

HAROLD EDWARDS #7024721
Clark County Detention Center
330 S. Casino Center Blvd.
Las Vegas, Nevada

BY: J. Robertson
J. Robertson
Secretary for the District Attorney's Office

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, vs. HAROLD EDWARDS, Defendant.	CASE NO. C310695 DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

MONDAY, NOVEMBER 21, 2016

TRANSCRIPT OF PROCEEDINGS
SENTENCING

APPEARANCES:

For the State: TIERRA D. JONES, ESQ.
Deputy District Attorney

For the Defendant: PRO SE

RECORDED BY: JILL JACOBY, COURT RECORDER

MONDAY, NOVEMBER 21, 2016 AT 9:04 A.M.

THE COURT: C310695, page 11, Harold Edwards.

THE DEFENDANT: Good morning, Your Honor, Harold Edwards on behalf of Harold Edwards who's in custody.

THE COURT: This is time set for rendition of sentence. Is there any cause or reason why sentencing should not proceed today?

MS. JONES: State's ready.

THE COURT: You ready?

THE DEFENDANT: Yes, Your Honor. I would like to address the Court with my argument of my --

THE COURT: Not yet. Let me let her.

THE DEFENDANT: Oh.

THE COURT: We have to do it in the right order.

THE DEFENDANT: Yes, sir.

THE COURT: I'm going to let the State argue.

MS. JONES: And, Your Honor, it's my understanding that the State presented the certified Judgments of Conviction in regards to Mr. Edwards --

THE COURT: Do we have those?

MS. JONES: -- back when we were here on October 17th. Is the Court in possession of those?

THE CLERK: They are in the vault.

THE COURT: They're in the vault. Yes.

MS. JONES: Okay. So the Court is in --

THE COURT: They were checked. And they were checked --

THE CLERK: And then we --

THE COURT: -- I believe by Mr. Edwards.

THE DEFENDANT: I have them. I have them right here, Your Honor.

THE COURT: You have your copies there.

THE DEFENDANT: Yes, sir.

THE COURT: They're certified, yes.

MS. JONES: And based upon the State presenting those four certified Judgments of Conviction out of Illinois, the State would ask the Court to follow the terms of the plea agreement and sentence the Defendant to 10 to 25 years under the large habitual criminal statute based on the plea agreement that was entered in this case.

THE COURT: All right.

MS. JONES: And he was already sentenced in his other case out of Department 21, and that would be Case C311212. Judge Adair sentenced him on October 27th. The State would ask the Court to run his sentence concurrent with that one.

THE COURT: All right.

All right. Now it's your turn.

THE DEFENDANT: Okay. Thank you. Good morning again, Your Honor.

Your Honor, first I'd like -- I would like to address those Judgment of Convictions that the Deputy District Attorney is tendering to the Court to support their recommendation for enhanced sentencing. Your Honor, as I'm sure you are aware, in order to use prior convictions for enhancement purposes, it is essential that those convictions be constitutionally valid. Also, Your Honor, that the Court may not rely upon exemplified record either to impeach or enhance punishment

when a constitutional infirmity appears from the face of the record.

Your Honor, the Deputy District Attorney had ample time before sentencing to procure documentary proof as to whether I was, as is required by -- by law, represented by counsel in those prior proceedings. Two of the Judgment of Convictions does not show affirmatively that I was represented in those proceedings because there is no counsel of record attached to those cases. One of these Judgment of Convictions simply has PD on the line where it clearly instructs that the name and address of counsel for Defendant is supposed to go. And the other one has simply Public Defender.

Now, Your Honor, we witness every -- in every proceeding in Justice and District Court alike, when an attorney represents a client, they state their name and bar number clearly identifying for the record who they are and who they are representing. No Public Defender here is going to sign in with just PD or Public Defender. No District Attorney is going to sign in with just DA. No -- and no -- and, and, and certainly Your Honor would not sentence someone with just Defendant and sign just Judge. Harmony Letizia won the election with the slogan, "Justice has a Name." You have to have a name for those who represent justice. Therefore, those Judgment of Convictions are sided on the face as to counsel.

Also, Your Honor, Nevada Supreme Court followed the lead of United States Supreme Court has set forth requirements for convictions --

THE COURT: I need those -- I need those certified documents. I need those. Bring them up.

THE DEFENDANT: -- that came as a result of guilty plea to be constitutionally tendered for enhancement purposes. And these high courts held that in felony cases, an official court record must exist showing that the pleas were

taken in accordance with the safeguard set out in *Boykin v Alabama*. It states further that when reviewing evidence of convictions, the lack accompanying transcripts evince in Defendant's voluntary waiver of his right to a jury trial, his right not to incriminate himself, and his right to confrontation, a Court cannot presume or waiver of these three important federal rights from a side of the record. Thus the convictions cannot be presumed valid and may not be used against me.

To permit a conviction obtained in violation of *Gideon v Wainwright* to be used against me either to support guilt or to enhance punishment for another offense is to erode the principle of that case. And worst yet since the defect in the prior conviction was denied with my right to counsel, I would be in effect suffering anew from deprivation of that Sixth Amendment right.

Your Honor, Nevada Supreme Court has determined the Defendant must be allowed to challenge the constitutional sufficiency of a prior Judgment of Conviction in any proceeding where that Judgment of Conviction is altered by the prosecutor for enhancement purposes. It also states that a Court may not -- it also states that a Court may not rely upon exemplified record either to impeach or enhance punishment when the Constitution infirmity appears from the face of the record as it does here.

The inference should be drawn from a side of the record is that the accused was not represented by counsel and this inference is of such magnitude that the ordinary presumption of constitutional correctness is dismissed. The side of the record on these two convictions' face as to counsel presumes denial -- a denial of the right to counsel in those proceedings making these convictions void under *Gideon v Wainwright*. There are no transcripts from these proceedings from the foreign jurisdictions where these convictions occurred that shows affirmatively in that

record that I was represented by counsel.

And you, Your Honor, you stated on page 5 of the plea canvass: You understand that as a consequence to your plea, if they don't meet their requirements of filing the proper certified documents that the sentence is 1 to 10 for the burglary. Well, Your Honor, as is evidenced from the facts that I presented in my argument, the Deputy District Attorney has failed to comply with the statutory requirements for enhancement. If the convictions are unconstitutional, then the recommended enhanced sentence is null and void because it has lost one of the essential elements, the existence of a prior felony conviction legally obtained.

THE COURT: Thanks.

THE DEFENDANT: I'm not through, Your Honor.

THE COURT: Oh.

THE DEFENDANT: Okay. Your Honor, first, I'd like as -- that was my legal argument as my representing myself. Now I'm stepping to the side as the Defendant.

I say, Your Honor, first allow me to express my sincerest apologies to all parties involved in this matter. Your Honor, the Deputy District Attorney is recommending the Court impose the almost penultimate sentence for relatively minor criminal conduct especially considering the circumstances of this case. I'm accused -- I'm accused of what amounts to, if anything, attempting to take a bag, something that not only could be but was actually returned to the owner with absolutely nothing missing. But I've witnessed people walk right out of the courtroom for raping his own 11-year-old daughter and he took something far more sacred, something that can never be given back. This case is nowhere near the magnitude of that. Nothing about this case is outrageously and wantonly vile nor

is -- nor is it horrible inhumane, yet she's asking Your Honor to impose such a sentence.

There are -- there are two degrees of punishment higher in scale than the sentence she is recommending but they are degrees of homicide that are not punished as severely. No wise-minded prosecutor will recommend the same punishment for such a crime as this, which they does -- what they do for rape, home invasion, murder, and the like. The sentence they're recommending cannot be reasonably shown to be serving any penal purpose that cannot be served equally well by some less severe punishment.

Your Honor, the Nevada legislators -- the Nevada legislators -- hold it, hold my glasses right there, man. Excuse me, Your Honor. The Nevada legislatures created the recidivist statute not to be used capriciously but to enable the justice system to deal determinedly with a Defendant who pose a serious threat to public safety and afford less violent offenders an opportunity to reform. Again, in the instant case, absolutely nothing was taken nor was anyone physically hurt. There was -- this case is -- this is not a case where some dangerous offender is trying to circumvent the system to obtain unjustifiable lenient treatment. Nor am I some young hoodlum asking for a chance knowing he will be right back in front of Your Honor. On the contrary, I am someone who is finally admitting in front of everybody I have a serious heroin addiction, tired of the rigamarole, seeking a chance to get back to my life.

Your Honor, on the contrary to what the Deputy District Attorney is alleging, I am not beyond rehabilitation. And as you can hear, I emphatically oppose this disproportionate sentence recommended by Deputy District Attorney. And I ask Your Honor to sentence me according to what the P&P recommended, seventy --

either running sentence concurrent with the sentence out of 21, Your Honor, or sentence me to what the P&P recommended, 16 to 72 months ran concurrent with this sentence. Thank you.

THE COURT: Thank you, Mr. Edwards.

I'm going to get those certified documents out of our vault and I'll have a decision on Wednesday. There will be no argument.

MS. JONES: And, Your Honor, those documents are also filed in C311212 because this argument was made in front of Judge Adair at his sentencing.

THE COURT: Okay.

THE DEFENDANT: She didn't -- she didn't -- she didn't -- she didn't habitualize me, Your Honor. So it just shows that the --

THE COURT: I will look at them and I'll have a decision --

THE DEFENDANT: Well, if there's not going to be another argument, let me just put this on there, too, then. Because one of the convictions, Your Honor, is not proven in the state of Nevada to be even a felony, it's a 1987 theft.

THE COURT: I will look at them and I will make a decision. And there will be no argument. Thank you.

THE CLERK: That's November 23rd.

[Proceeding concluded at 9:13 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual recording in the above-entitled case.

Jill Jacoby
Court Recorder

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA	)	Case No.: C310695
Plaintiff,	)	Dept. No.: VIII
vs.	)	Docket No.:
Harold Edwards	)	
Defendant	)	

Notice of Appeal

On December 7th 2016 Defendant Harold Edwards #7024721 who represented himself was sentenced in District Court VIII Judge Douglas Smith's Courtroom for One Count of Burglary. Defendant now files this notice of Appeal from the Judgement of Conviction.

Dated This 7th day of December 2016

I Harold Edwards do Solemnly Swear, under the penalty of perjury, that the above Notice of Appeal is accurate Correct, and true to the best of my knowledge. NRS. 171.102 and NRS 208.165.

Respectfully Submitted
Defendant Harold Edward

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Harold Edwards #7024721
330 So. Casino Center Blvd.
Las Vegas, NV. 89101

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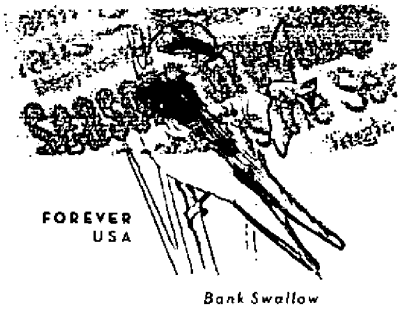

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CLERK OF THE COURT

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IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

STATE OF NEVADA,

Plaintiff(s),

vs.

HAROLD EDWARDS,

Defendant(s),

Case No: C-15-310695-1

Dept No: VIII

CASE APPEAL STATEMENT

1. Appellant(s): Harold Edwards

2. Judge: Douglas E. Smith

3. Appellant(s): Harold Edwards

Counsel:

Harold Edwards #7024721
330 S. Casino Center Blvd.
Las Vegas, NV 89101

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101

(702) 671-2700

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

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

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

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

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

9. Date Commenced in District Court: November 10, 2015

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

    Type of Judgment or Order Being Appealed: Judgment of Conviction

11. Previous Appeal: No

    Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

Dated This 15 day of December 2016.

Steven D. Grierson, Clerk of the Court

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

cc: Harold Edwards

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PP
DA

Harold Edwards #7024721
330 S. Casino Center Blvd.
Las Vegas, NV. 89101
Pro Per Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff,

v.

HAROLD EDWARDS,
Defendant.

CASE NO. C-15-310695-1

DEPT NO. VIII

DEFENDANT/PETITIONER INTENDS TO PRESENT THE FOLLOWING ISSUES IN HIS POST-CONVICTION WRIT OF HABEAS CORPUS:

1) District Court Violated defendant's Fourteenth Amendment Right Due Process:

2) District Court Judge Abused his discretion:

3) Sentence is substantially disproportionate to the underlying offense as to Constitute Cruel and Unusual: in Violation of the Eighth Amendment of the United States Constitution:

4) Ineffective Assistance of Counsel:

DEFENDANT IS ENTITLED TO REDRESS PURSUANT TO NEVADA REVISED STATUTE CHAPTER 34 defendant remains free to Challenge my Conviction through Post-Conviction Writ of Habeas Corpus:

Defendant does not Challenge the Conviction in his Writ

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Per Se, moreso the district Court's Sentencing decision or procedure he was sentence by.

DATED THIS 11 day of December, 2016.

I, Harold Edwards, do solemnly swear, under the penalty of perjury, that the above Facts he's Petitioning is accurate, correct, and true to the best of my knowledge.

NRS 171.102 and NRS 208.165.

Respectfully submitted,

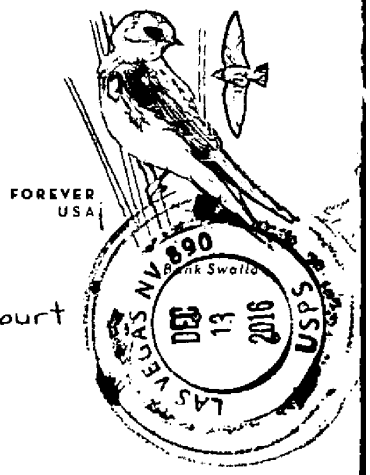
Harold Edwards

Defendant

Harold Edwards

Harold Edwards #7024721
330 South Casino Center Blvd.
Las Vegas, NV 89101

LEGAL MAIL



STEVEN D. GRIERSON, Clerk of the Court
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS NV 89155-1160

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JOCP

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAROLD EDWARDS
#7024721

Defendant.

CASE NO. C310695-1

DEPT. NO. VIII

JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of BURGLARY (Category B Felony) in violation of NRS 205.060; thereafter, on the 7th day of December, 2016, the Defendant representing himself was present in court for sentencing, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense under the LARGE HABITUAL CRIMINAL STATUTE and, in addition to the $25.00 Administrative Assessment Fee, and a $150.00 DNA Analysis Fee including testing to determine

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

genetic markers, plus a $3.00 DNA Collection Fee, the Defendant is sentenced to the Nevada Department of Corrections (NDC) as follows: TO A MAXIMUM of TWENTY-FIVE (25) YEARS with a MINIMUM parole eligibility of TEN (10) YEARS, sentence to run CONCURRENT with case C311212; with FOUR HUNDRED FIFTY (450) days credit for time served.

DATED this 19th day of December, 2016.

DOUG SMITH
DISTRICT COURT JUDGE

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ORDR

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA;

Plaintiffs,

v.

HAROLD EDWARDS,

Defendants.

Case No. C-310695
Dept. No. VIII

ORDER DISMISSING DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

THIS MATTER came before the Court on December 19, 2016. Before this Court was Defendant HAROLD EDWARDS' Order for Petition for Writ of Habeas Corpus (Post-Conviction). Harold Edwards appearing in Proper Person.

Defendant HAROLD EDWARDS' Petition fails to present the required form and content as set forth in NRS 34.735. The petition is therefore incognizable. The Court having reviewed the Petition and being fully advised in the premises and good cause appearing therefore:

IT IS HEREBY ORDERED that Defendant Harold Edwards' Petition for Writ of Habeas Corpus, filed on December 16, 2016 is DISMISSED.

Dated this 20 day of December, 2016.

DISTRICT COURT JUDGE

DOUGLAS E. SMITH
DISTRICT JUDGE

DEPARTMENT EIGHT
LAS VEGAS NV 89155

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DISTRICT COURT
CLARK COUNTY, NEVADA

HAROLD EDWARDS,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: C-15-310695-1

Dept. No: VIII

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on December 21, 2016, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on December 28, 2016.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 28 day of December 2016, I placed a copy of this Notice of Entry in:

☑ The bin(s) located in the Regional Justice Center of:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☑ The United States mail addressed as follows:
Harold Edwards # 1169986
P.O. Box 650
Indian Springs, NV 89070

/s/ Heather Ungermann
Heather Ungermann, Deputy Clerk

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ORDR

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA; Plaintiffs, v. HAROLD EDWARDS, Defendants.	Case No. C-310695 Dept. No. VIII

ORDER DISMISSING DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

THIS MATTER came before the Court on December 19, 2016. Before this Court was Defendant HAROLD EDWARDS' Order for Petition for Writ of Habeas Corpus (Post-Conviction). Harold Edwards appearing in Proper Person.

Defendant HAROLD EDWARDS' Petition fails to present the required form and content as set forth in NRS 34.735. The petition is therefore incognizable. The Court having reviewed the Petition and being fully advised in the premises and good cause appearing therefore:

IT IS HEREBY ORDERED that Defendant Harold Edwards' Petition for Writ of Habeas Corpus, filed on December 16, 2016 is DISMISSED.

Dated this 20 day of December, 2016.

DISTRICT COURT JUDGE

DOUGLAS E. SMITH
DISTRICT JUDGE
DEPARTMENT EIGHT
LAS VEGAS NV 89155

Harold Edwards #1169986
High Desert State Prison
P.O. Box 650
Indian Springs, NV. 89070
Appellant: Proper Person

FILED
JAN 25 2017
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

HAROLD EDWARDS,
Appellant.

VS.

THE STATE OF NEVADA,
Respondent.

CASE NO. C-15-310695-1
DEPT NO. VIII

C-15-310695-1
NOASC
Notice of Appeal (criminal)
4617725

PROPER PERSON NOTICE OF APPEAL FROM AN ORDER OF THE EIGHTH JUDICIAL DISTRICT COURT, CLARK COUNTY JUDGE DOUGLAS E. SMITH DENYING PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS: POST CONVICTION

Notice is hereby given that appellant above named, hereby appeals to the Supreme Court of Nevada from an Order of the eighth judicial District Court, Clark County judge, DOUGLAS E. SMITH denying appellant's petition For Writ of Habeas Corpus.

DATED THIS 20TH day of January 2017

I Harold Edwards, do Solemnly Swear, under the penalty of perjury, that the above NOTICE OF APPEAL is accurate, Correct, and true to the best of my knowledge.

Respectfully Submitted Harold Edwards
Appellant Pro Per: Harold Edwards #1169986

RECEIVED
JAN 25 2017
CLERK OF THE COURT

Harold Edwards #1169986
H.D.S.P.
P.O Box 650
Indian Springs, NV. 89070

Hasler
01/23/2017
US POSTAGE $000.45[3]
FIRST-CLASS MAIL
PRSRT
ZIP 89101
011E12650764

STEVEN D. GRIERSON, Clerk of the Court
200 LEWIS AVENUE 3RD FLOOR
LAS VEGAS NV 89155-1160

RETAKE
RSF 376

33 LRDFNMP 89155

HIGH DESERT STATE PRISON
JAN 22 2017
UNIT 6 A/B

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IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

STATE OF NEVADA,

Plaintiff(s),

vs.

HAROLD EDWARDS,

Defendant(s),

Case No: C-15-310695-1

Dept No: VIII

CASE APPEAL STATEMENT

1. Appellant(s): Harold Edwards

2. Judge: Douglas E. Smith

3. Appellant(s): Harold Edwards

Counsel:

Harold Edwards #1169986
P.O. Box 650
Indian Springs, NV 89070

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101

(702) 671-2700

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

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

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

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

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

9. Date Commenced in District Court: November 10, 2015

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

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

11. Previous Appeal: Yes

    Supreme Court Docket Number(s): 71957

12. Child Custody or Visitation: N/A

Dated This 27 day of January 2017.

Steven D. Grierson, Clerk of the Court

/s/ Amanda Hampton

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

cc: Harold Edwards

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DA
MC

Harold Edwards
High Desert State Prison
P.O. Box 650
Indian Springs, NV. 89070
Petitioner in Propria Persona

IN THE EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF CLARK, NEVADA

HAROLD EDWARDS,
Petitioner.

vs.

THE STATE OF NEVADA,
Respondent.

CASE NO. C-15-310695-1
DEPT NO. VIII

PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION:

TO: The Honorable judge _____ of The Eighth judicial district court of the state of Nevada. In and for the County of Clark:

Comes Now, Petitioner Harold Edwards in Propria Persona And Hereby submits petitioner Post-Conviction Writ of Habeas Corpus. This is Made And Based Upon All Pleadings And Papers On File Herein The Points And Authorities Attached Hereto And Oral Argument Adduced At The Time Of The Hearing On This Matter.

1) PETITIONER CONTENDS THAT HIS FOURTEENTH AMENDMENT DUE PROCESS RIGHTS WERE VIOLATED. VI. VIII and V. XIV

2) PETITIONER CONTENDS THAT DISTRICT COURT JUDGE DOUGLAS E. SMITH ERRED AND ABUSED HIS DISCRETION BY IMPOSING A LARGE HABITUAL SENTENCE ON PETITIONER ALSO WHEN HE VIOLATED PETITIONER'S DUE PROCESS RIGHTS BY REFUSING HIM HIS RIGHT TO ARGUE BEFORE SENTENCE WAS IMPOSED. PETITIONER WAS PRO PER

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6) Defendant _____ resides at _____,
(full name of first defendant) (address if first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
___ individual ____ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: _____

_____

7) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343 (a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional statutes, list them below.

_____

_____

- -

B. NATURE OF THE CASE

1) Briefly state the background of your case.

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C. CAUSE OF ACTION

3.) Petitioner contends that he never Signed an Amended Information Charging him as a Habitual Criminal and with a Category A Felony. Filing a Notice of intent to Seek Punishment as a Habitual Criminal in event of a Felony Conviction is not the same as filing an Amended Information Charging petitioner With being a Habitual Criminal and Amending the Charge from a B Category Felony to an A Category Felony

4.) District Court judge abused his Discretion when he denied petitioner's Pretrial Motion to Withdraw his guilty plea:

5.) Ineffective Assistance Of Counsel:

6.) Deputy District Attorney displayed Vindictive and Prosecutorial Misconduct:

7.) Petitioner Contends that the Large Habitual Sentence in this Case is excessive and Substantially Disproportionate to the underlying offense as to Constitute Cruel and Unusual Punishment in Violation of the Eighth Amendment:

STATEMENT OF FACTS:

On October 8TH 2015, a Criminal Complaint was filed against petitioner Charging him with One-Count of Burglary Category B Felony and Count two Petit Larceny, allegedly committed September 17TH 2015 at the Bellagio Las Vegas located at 3600 South Las Vegas Boulevard. Preliminary Hearing on the Burglary charge was held on November 10TH 2015, On this Same date petitioner was given a Faretta Canvass (there was No mention of Habitual Criminal treatment) petitioner was given leave to proceed in propria persona, and on the advise of former public defender Nadia Hajj at petitioner moved to have the Petit Larceny Charge Severed. Oral Motion was granted. The District Court found that the burden was met and petitioner was held to answer Count one (1) Burglary in the Eighth Judicial District Court, State of Nevada, County of Clark. The bifurcated Petit Larceny Charge was given the Court date of May 10TH 2016. Petitioner's initial arraignment was on November 13TH 2015 where he pleaded Not Guilty and Invoked the 60 day rule. March 11TH 2016 Public Defender T. J. McCubbins was appointed. May 18TH 2016 trial date was reset for August 22nd 2016.

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CLERK OF THE COURT

INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
WILLIAM FLINN, JR.
Deputy District Attorney
Nevada Bar #013119
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

I.A. 11/13/2015
10:00 A.M.
PD HOJJAT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAROLD EDWARDS,
#7024721

Defendant.

CASE NO: C-15-310695-1

DEPT NO: VIII

INFORMATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

That HAROLD EDWARDS, the Defendant(s) above named, having committed the crime of **BURGLARY (Category B Felony - NRS 205.060 - NOC 50424)**, on or about the 17th day of September, 20150, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did willfully, unlawfully, and feloniously enter, with intent to

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Calendar Call August 17TH 2016, August 17TH public defender announced not ready for trial and moved for Continuance of trial. State announced ready for trial. Public Defender O'Brien advised the Court that petitioner was being Convicted in District Court Department 21 on another Charge therefore, is moving to Consolidate. Court ordered trial date Stands August 19TH 2016 Counsel for petitioner T.J. MCCubbins advised that matter was resolved. Mr. William Flinn Jr. Deputy District Attorney stated negotiations for the record. Court thoroughly Canvassed petitioner on facts and plea. Trial date vacated. On September 1ST 2016 petitioner filed a pro per Motion to withdraw Guilty Plea and Motion for a Faretta Hearing. Motion was not filed then because petitioner still had Counsel of Record T.J. McCubbins. Motion was Subsequently filed in Open Court on October 5TH 2016. a Copy was provided to the state. Hearing on Motion to Withdraw Guilty Plea was set for October 10TH 2016, which was initially the Sentencing date. District Court judge Douglas E. Smith denied petitioner's Motion to Withdraw Guilty Plea, Without reviewing the entire record. Judge Smith simply reviewed the plea Canvass and in a vacuum Concluded that it indicated petitioner understood what he was doing and used that Conclusion as the Sole basis for denying petitioner's Motion to withdraw his Guilty Plea. On that date, No Sentence was imposed At the next three (3) Sentencing Hearings, Petitioner made judge Smith aware of inaccuracies in the presentence investigation Report, he made no ruling Concerning those issues, which mainly were pertaining to the Constitutionality of two (2) of the three (3) "Specific Prior Convictions" the State were offering for enhancement. At these Hearings the District Court judge did not have Copies of the three (3) "Specific Prior Convictions" the State were using for enhancement, nor did the state. Also at none of those Hearings was there an Amended Information presented to the District Court judge Douglas E. Smith for a Category A Felony.

				30-SEP-2015		14-Mar-16 14:15:00	14-Mar-16 14:45:00					
20	EDWARDS	HAROLD	0007024721	30-SEP-2015		24-Mar-16 14:00:00	24-Mar-16 14:30:00	LEG	INV	ANDRADE	MAYBETH	
21	EDWARDS	HAROLD	0007024721	30-SEP-2015		30-Mar-16 12:40:00	30-Mar-16 13:10:00	LEG	PD	MCCUBBIN	TIMOTHY	
22	EDWARDS	HAROLD	0007024721	30-SEP-2015		30-Mar-16 12:40:00	30-Mar-16 13:10:00	LEG	PD	SISOLAK	ASHLEY	
23	EDWARDS	HAROLD	0007024721	30-SEP-2015		04-Apr-16 14:35:00	04-Apr-16 15:05:00	LEG	INV	ANDRADE	MAYBETH	
24	EDWARDS	HAROLD	0007024721	30-SEP-2015		08-Apr-16 09:44:00	08-Apr-16 10:14:00	LEG	INV	ANDRADE	MAYBETH	
25	EDWARDS	HAROLD	0007024721	30-SEP-2015		27-Jul-16 13:30:00	27-Jul-16 14:00:00	LEG	INV	DOUGHERTY	EDWARD	JOHN
26	EDWARDS	HAROLD	0007024721	30-SEP-2015		08-Aug-16 19:30:00	08-Aug-16 20:00:00	LEG	INV	PREUSCH	MARK	
27	EDWARDS	HAROLD	0007024721	30-SEP-2015		10-Aug-16 09:31:00	10-Aug-16 09:32:00	LEG	INV	PREUSCH	MARK	
28	EDWARDS	HAROLD	0007024721	30-SEP-2015		18-Aug-16 19:00:00	18-Aug-16 19:30:00	LEG	PD	MCCUBBIN	TIMOTHY	
29	EDWARDS	HAROLD	0007024721	30-SEP-2015		18-Aug-16 19:00:00	18-Aug-16 19:30:00	LEG	PD	O'BRIEN	ROBERT	

ARGUMENT WITH POINTS AND AUTHORITIES:

Petitioner's UNITED STATES FOURTEENTH (14) AMENDMENT DUE PROCESS Rights were violated:

Petitioner challenges the Constitutionality of his 10(ten) to 25(Twenty Five) year Sentence under Nevada's Habitual Criminal Statute. The District Court judge Douglas E. Smith's failure to abide by it's procedure, Violated petitioner's due process rights. At petitioner's Sentencing Hearing, judge Smith Simply found that (or Stated that he found that) petitioner had been Convicted of the three (3) "Specific Prior Convictions" the state offered for enhancement and Concluded that petitioner Should be adjudicated a Habitual Criminal by reason of those threee (3) "Specific Prior Convictions". The District Court judge Douglas E. Smith's application of Nevada's Habitual Criminal Offender Statute for the Large Habitual 10 to 25 year Sentence in the instant Case was improperly applied. In Nevada, the decision to adjudicate a person as a Habitual Criminal is not an automatic one. Clark V. State, 851 P.2d 426 (1993). In particular having Committed three (3) felonies does not of itself a Habitual Criminal make. The Nevada Supreme Court has emphasized that the Simple finding of three (3) felonies "is not" the same as adjudication of Habitual Criminal Status, and is inadequate because it does not clearly disclose that the District Court judge weighed the appropriate factors for and against the Habitual Criminal Enhancement. The Sentencing judge therefore, is "required to make an actual judgement" on the question of whether it is "just and proper" for the defender to be punished and Segregated as a Habitual Criminal. John Walker V. George Weeds, 50 F.3d 670 (1995) also Clark V. State Supra. The District Court judge Douglas E. Smith did not disclose that he Weighed the appropriate factors for and against the Criminal enhancement. The District Court judge did not decide that it was "just and proper" based on the nature and gravity of the instant Case nor petitioner's prior Convictions to adjudge him a Habitual offender under the relevant Statute. Moreover, if the judge had weighed the three (3) "Specific Prior Convictions" used by the State for the basis for the Sentence enhancement offered

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by the State for the Large Habitual enhancement. Under Nevada's law, these three (3) "Specific Prior Convictions" for non-violent property Crimes, though reprehensible simply does not warrant the harsh Sanction available under the Habitual Criminality statute. Especially when Considering the Circumstances of the underlying offense. In the instant case. Nothing was taken. PHT pg 27 lines 19-23 and there was absolutely no Violence involved. This is a Victimless Case. The Nevada Supreme Court has determined that it may be an abuse of discretion to adjudge a defendant a Habitual Criminal if his "Specific Prior Convictions" are stale and remote in time (as they are in the instant case) 29, 26 and 21 years old respectively. Such a ruling serves neither the purpose of the Statute nor the interest of justice. Sessions V. State, 106 Nev. 186; 789 P.2d 1242 (1990 per curiam) In Hicks v. Oklahoma, 447 U.S. 343, 65 L.Ed 2d 175, 100 S. Ct. 2227. The Supreme Court held that state laws guaranteeing a defendant procedural rights at Sentencing may Create liberty interests protected against arbitrary deprivation by the due process Clause of the fourteenth amendment. Therefore, when a State has provided a Specific method for determining whether a Certain Sentence Shall be imposed, it is not Correct to Say that the defendant's interest in having that method adhered to is merely a matter of State procedural law. Fetterly V. Paskett, 997 F.2d 1295, 1300 (9th Cir 1993)(Citing Hicks V. Oklahoma) Cert. denied 115 S.Ct. 290 (1994). Based on Hicks, this Court found that State law requiring that the Washington Supreme Court review and make the particular findings before affirming [a] death Sentence" Created a Constitutionally protected liberty interest. See Campbell V. Blodgett, 997 F. 2d 512 (9th Circuit 1992) Cert denied 127 L. Ed 2d, 685, 114 S. Ct 1337 Nevada's Law requiring a Court to review and then make a particularized findings that it is "just and proper" for a Defendant who was Charged with being a Habitual Criminal and for him, (that is the person charged under the statute)

Vists With Visitor
(Contact Only after May 2010, Non-Contact in Renovo)
ID Number : '0007024721' , Start Date : '30-SEP-2015' , End Date : '06-SEP-2016'

	Inmate Last Name	Inmate First Name	Offender ID	Booking Begin Date	Booking End Date	Start Date/Time	End Date/Time	Visit Type	Relation Type	Visitor Last name	Visitor First name	Visitor Middle name
1	EDWARDS	HAROLD	0007024721	30-SEP-2015		28-Oct-15 13:26:00	28-Oct-15 13:56:00	LEG	PD	HOJJAT	NADIA	
2	EDWARDS	HAROLD	0007024721	30-SEP-2015		28-Oct-15 13:26:00	28-Oct-15 13:56:00	LEG	PD	SEABERRY	G.	DO NOT USE
3	EDWARDS	HAROLD	0007024721	30-SEP-2015		29-Dec-15 12:28:00	29-Dec-15 12:58:00	LEG	ATT	HENKE	DOUGLAS	SCOTT
4	EDWARDS	HAROLD	0007024721	30-SEP-2015		30-Dec-15 13:59:00	30-Dec-15 14:29:00	LEG	D/A	SHAMIRZA	ALFRED	
5	EDWARDS	HAROLD	0007024721	30-SEP-2015		30-Dec-15 13:59:00	30-Dec-15 14:29:00	LEG	D/A	LEXIS	CHAD	
6	EDWARDS	HAROLD	0007024721	30-SEP-2015		30-Dec-15 13:59:00	30-Dec-15 14:29:00	LEG	D/A	HAMNER	CHRISTOPHER	
7	EDWARDS	HAROLD	0007024721	30-SEP-2015		30-Dec-15 14:00:00	30-Dec-15 14:30:00	LEG	ATT	HENKE	DOUGLAS	SCOTT
8	EDWARDS	HAROLD	0007024721	30-SEP-2015		30-Dec-15 14:00:00	30-Dec-15 14:30:00	LEG	PD	SPELLS	JASMIN	DEANNA
9	EDWARDS	HAROLD	0007024721	30-SEP-2015		31-Dec-15 14:19:00	31-Dec-15 14:49:00	LEG	INV	WATTS	JOSEPH	
10	EDWARDS	HAROLD	0007024721	30-SEP-2015		12-Jan-16 09:20:00	12-Jan-16 09:50:00	LEG	INV	WATTS	JOSEPH	
11	EDWARDS	HAROLD	0007024721	30-SEP-2015		29-Jan-16 08:33:00	29-Jan-16 09:03:00	LEG	INV	ANDRADE	MAYBETH	
12	EDWARDS	HAROLD	0007024721	30-SEP-2015		01-Feb-16 13:24:00	01-Feb-16 13:54:00	LEG	INV	WATTS	JOSEPH	
13	EDWARDS	HAROLD	0007024721	30-SEP-2015		01-Feb-16 13:24:00	01-Feb-16 13:54:00	LEG	D/A	HAMNER	CHRISTOPHER	
14	EDWARDS	HAROLD	0007024721	30-SEP-2015		03-Feb-16 14:49:00	03-Feb-16 15:19:00	LEG	PD	FRASER	JENNIFER	ANNE
15	EDWARDS	HAROLD	0007024721	30-SEP-2015		05-Feb-16 13:15:00	05-Feb-16 13:45:00	LEG	INV	ANDRADE	MAYBETH	
16	EDWARDS	HAROLD	0007024721	30-SEP-2015		08-Feb-16 13:11:00	08-Feb-16 13:41:00	LEG	INV	ANDRADE	MAYBETH	
17	EDWARDS	HAROLD	0007024721	30-SEP-2015		10-Feb-16 12:57:00	10-Feb-16 13:27:00	LEG	INV	ANDRADE	MAYBETH	
18	EDWARDS	HAROLD	0007024721	30-SEP-2015		24-Feb-16 12:35:00	24-Feb-16 13:05:00	LEG	INV	ANDRADE	MAYBETH	
19	EDWARDS	HAROLD	0007024721					LEG	INV	ANDRADE	MAYBETH	

to be adjudged a habitual offender also Creates a Constitutionally protected liberty interest in a Sentencing procedure, So because the State Court judge Douglas E. Smith did not make the requisite individualized determination that it was "just and proper" that Petitioner Edwards be adjudged a habitual offender as mandated by Nevada's law, Edwards's due process rights were violated.

The State may argue that Petitioner stipulated to being Sentenced to the large habitual Sentence, but that argument fails for Several reasons. First, the Nevada Supreme Court Stated in McAnulty V. State, 108 Nev. 179 826 P.2d 567 "No matter what the plea bargain, the determination has to be made" as to the Constitutional Validity of the "Specific Prior Convictions" offered by the State for enhancement of Sentence, and the punishment which follows is dependent on the number of "Valid Convictions." The Nevada Supreme Court also recognizes that there is a distinction between Stipulating to the status of habitual Criminal and Stipulating to "Specific Prior Convictions." Stipulating to Status alone is not Sufficient basis for habitual Criminal adjudication. Petitioner in the instant Case Concedes to Stipulating Simply to the Status. The state in Hodges agreed that Nevada's Caselaw makes that distinction. The State in Hodges then argued that under NRS 207.016(6) Stipulations to Status alone Should be a Sufficient basis for habitual Criminal adjudication, the Nevada Supreme Court rejected this argument Stating "We are Concerned not only with Statutory requirements but also Constitutional guarantees of due process, there is less Chance for mistakes or abuse of the Stipulation process as long as the Defendant Must at least admit that he recieved "Specific Prior Convictions" not just that he is an habitual Criminal, before a District Court Can Consider adjudicating the Defendant a habitual Criminal.

The State in Hodges V. State, 119 Nev. 479; 78 P.3d 67 (2003)

Plainly the indictment of an accused -- perhaps even more so the indictment of a physician -- for the heinous and brutal murder of his pregnant wife and two small children is not a matter to be hastily arrived at either by the prosecution authorities or by a grand jury. The devastating consequences to an accused person from the very fact of such an indictment is a matter which responsible prosecutors must weigh carefully. The care obviously given the matter by the Justice Department is certainly not any indication of bad faith or deliberate delay.

[*11] The Court of Appeals acknowledged, and MacDonald concedes, that the delay between the civilian indictment and trial was caused primarily by MacDonald's own legal maneuvers and, in any event, was not sufficient to violate the Speedy Trial Clause. Accordingly, the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

Reversed and remanded.

CONCUR BY: STEVENS

CONCUR

JUSTICE STEVENS, concurring in the judgment.

For the reasons stated by JUSTICE MARSHALL in Part II of his opinion, I also conclude that MacDonald's constitutional right to a speedy trial **[***706]** was not suspended during the period between the Army's dismissal of its charges in 1970 and the return of the civilian indictment in 1975. JUSTICE MARSHALL also is clearly correct in stating that the question whether the delay was constitutionally unacceptable is "close." *Post*, at 21. Since his opinion fairly identifies the countervailing factors, **[**1504]** I need only state that the interest in allowing the Government to proceed cautiously and deliberately before making a final decision to prosecute for such a serious offense is of decisive importance for me in this case. I therefore concur in the Court's judgment.

DISSENT BY: MARSHALL

DISSENT

[*12] JUSTICE MARSHALL, with whom JUSTICE BRENNAN and JUSTICE BLACKMUN join, dissenting.

On February 17, 1970, in the early morning, Dr. Jeffrey R. MacDonald called military police and requested help. When police arrived at the family quarters, they found him unconscious and suffering from multiple stab wounds, including one that threatened his life. His wife and two young children had been murdered. On May 1, 1970, the Army formally charged him with the murders. The Army dropped those charges on October 23, 1970, but reopened the investigation at the request of the Justice Department and handed over a comprehensive report in June 1972. The Justice Department did not convene a grand jury until August 1974, more than two years later. The Court of Appeals charged this delay to Government "indifference, negligence, or ineptitude." *United States* v. *MacDonald*, 531 F.2d 196, 207 (CA4 1976) *(MacDonald I)*. On January 24, 1975, MacDonald was indicted by a civilian grand jury on three counts of murder, the same charges that the military authorities had dropped. Trial commenced in the summer of 1979.

Confronted with these facts, the majority reaches the facile conclusion that the speedy trial

right is not implicated at all when the same sovereign initiates, drops, and then reinitiates criminal charges. That conclusion is not justified by the language of the Speedy Trial Clause or the teachings of our cases, and it is hopelessly at odds with any sensible understanding of speedy trial policies. I must dissent.

I

Because the majority scants the relevant facts in this case, I review them in somewhat more detail. The initial investigation of the murders in this case was conducted by the Army's Criminal Investigation Division (CID) and the Federal Bureau of Investigation, as well as the local police. On May 1, 1970, the Army formally charged MacDonald with three specifications of murder, in violation of Article 118 of **[*13]** the Uniform Code of Military Justice, 10 U. S. C. § 918. The Army conducted a lengthy hearing during which 56 witnesses testified. MacDonald himself testified and was extensively cross-examined. At the conclusion of the hearing, the investigating officer filed an exhaustive report recommending that the charges against MacDonald be dismissed "because the matters set forth in all charges and specifications are not true." See *MacDonald I, supra*, at 200. He also recommended that the civilian authorities investigate Helena Stoeckley, who had told several persons that she **[***707]** was involved in the crime. On October 23, 1970, the Commanding General of MacDonald's unit accepted the recommendation and dismissed the charges. In December, MacDonald received an honorable discharge.

The prosecution did not, however, terminate on that date. Within a month of MacDonald's discharge, at the specific request of the Justice Department, the CID continued its investigation. The renewed investigation was extensive and wide-ranging. The CID conducted 699 interviews and, at the request of the Department, sent the weapons and the victims' clothing to the FBI laboratory in July 1971. In December 1971, the CID completed its investigation, and in June 1972, the CID submitted a 13-volume report to the Justice Department. Although supplemental reports were transmitted in November 1972 and August 1973, the Court of Appeals found that "no significant new investigation was undertaken during this period, and none was pursued from August 1973 until the grand jury was convened a year later." *MacDonald I, supra*, at 206. Indeed, the United States Attorney for the Eastern District of North Carolina recommended **[**1505]** that the matter be submitted to a grand jury within six months of June 1972, and in 1973, the CID suggested the convening of a grand jury before it conducted further investigation.

MacDonald was fully aware of these investigations. After his honorable discharge, MacDonald moved to California and resumed the practice of medicine. In 1971, the CID again interviewed **[*14]** him. From January 1972 to January 1974, he repeatedly requested the Government to complete its investigation, and offered to submit to further interviews. The Justice Department declined to question him or to advise him when the investigation would terminate. In January 1974, the Department wrote that "this case is under active investigation and will remain under consideration for the foreseeable future." *MacDonald I, supra*, at 201, n. 6. There was no further correspondence.

The Government did not present the case to a civilian grand jury until August 1974. MacDonald waived his right to remain silent and testified before the grand jury for a total of more than five days. Numerous other witnesses testified, the bodies of the victims were exhumed, and the FBI reinvestigated certain aspects of the crime. An indictment was returned on January 24, 1975. The indictment charged MacDonald with three counts of first-degree murder.

The Government offered no legitimate reason -- not even docket congestion -- for the delay between the submission of the June 1972 report and the presentation to the grand jury in August 1974. The Court of Appeals explained:

"The leisurely pace from June 1972 until the indictment was returned in January 1975 appears to have been primarily for the government's convenience. The Assistant United States Attorney

based their charge that Hodges was a Habitual Criminal on two(2) "Specific Prior Nevada Convictions" for Possession of Stolen Property in 1990 and in 1996 which were alleged in an Amended Information. These two (2) "Specific Prior Convictions" as well as others were reflected in both presentence reports. At the Sentencing hearing Defense Counsel for Hodges told the District Court that he had provided Copies of the presentence reports to Hodges and that there were No Major factual Corrections. At Hodge's Sentencing hearing the judge referred Specifically to the two (2) "Specific Prior Convictions" that served as the basis to adjudicate Hodge's a Habitual Criminal. Also in Seeking an Amended judgement to reflect Credit for time Served, Hodges Stipulated to the admission of the "Specific Prior Convictions" alleged in the Amended Information. At No point did Hodges dispute nor has he ever disputed the existence or Validity of the two (2) "Specific Prior Convictions". So Hodges in fact Stipulated to the Status as well as the two (2) "Specific Prior Convictions" the State offered for the Habitual Criminal sentence. In the instant Case, petitioner Edwards Concedes that the plea Canvass as well as the plea memorandum both Show that there was a Stipulated or Stipulation to being adjudicated under the Large Habitual Criminal Statute, but nowhere in both the plea Canvass nor the plea memorandum did petitioner Stipulate to any "Specific Prior Convictions." The Nevada Supreme Court Stated in McAnulty v. State, "No matter what the plea bargain, the District Court Must make its own determination as to the Constitutional Validity of a prior Conviction. In order to use prior Convictions for enhancement purposes, it is essential that those Convictions be Constitutionally Valid. and the punishment which follows is dependant on the number of Valid prior Convictions. In the instant Case, there was never an Amended Information filed

(e) Ground five:

Supporting Facts:

and presented to the Sentencing Court reflecting any "Specific Prior Convictions". Petitioner Edwards has always adamantly objected to all the prior Convictions mentioned in the presentence report as well as the three (3) "Specific Prior Convictions". It should be noted here that in Case No. 311212 the Case that was part of the guilty plea agreement, Petitioner was found guilty in a Jury Trial in August of 2016 for all the Charges in that Case in District Court Department 21, The Honorable Judge Valerie Adair's Courtroom. He was Sentenced on the Charges in Case No. 311212 on October 27th 2016. Because all the Charges in Case No. 311212 were to run Concurrent with the instant Case No. 310695 as part of a Stipulated plea, the Deputy District Attorney Mr. Flinn [redacted] was present representing the State during the October 27th 2016 Sentencing date for Case No. 311212. Mr. Flinn presented three (3) "Specific Prior Convictions" from Illinois, a 1987 Conviction for Theft 87Cr15561, a 1990 Conviction for Burglary 90Cr25002 (this Order of Sentence and Commitment has a "named" Counsel of record on it) and a 1994 Conviction for possession of Stolen Motor Vehicle 94Cr277 97 (there is no "named" Counsel of Record on this Order of Sentence and Commitment, nor is there a "Named Counsel of Record on Case No. 87Cr15561). Mr. Flinn offered these three (3) "Specific Prior Convictions" to support his determination Petitioner Should be habitualized and Sentenced to the large habitual 10-25 year Sentence. Petitioner's Public Defender argued that the 1987 Illinois Conviction for Theft (because of the amount which was $75 dollars) is not a felony in the State of Nevada and that that Conviction along with the 1994 Conviction for possession of Stolen Motor Vehicle, did not have a "Named Counsel of Record" on them. The Deputy District Attorney Mr. Flinn offered no opposition to that argument, Concerning those three (3) "Specific Prior Convictions" he offered in Support of his large habitual Sentence. Judge Adair did not even habitualize Petitioner, She (after hearing the argument presented by the Defense Counsel) Sentenced him

In none of the cases cited in the dissenting opinion, *post*, at 17-18, n. 2, from the First, Seventh, or Tenth Circuits did the Court of Appeals consider or discuss the issue before us.

[1502]** The Court identified the interests served by the Speedy Trial Clause in *United States* v. *Marion*, *supra*, at 320:

"Inordinate delay between arrest, indictment, and trial may impair a defendant's ability to present an effective **[*8]** defense. But the major evils protected against by the speedy trial guarantee exist quite apart from actual or possible prejudice to an accused's defense. To legally arrest and detain, the Government must assert probable cause to believe the arrestee has committed a crime. Arrest is a public act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends."

See also *Barker* v. *Wingo*, 407 U.S. 514, 532-533 (1972).

[*704]** The Sixth Amendment right to a speedy trial is thus not primarily intended to prevent prejudice to the defense caused by passage of time; that interest is protected primarily by the Due Process Clause and by statutes of limitations. The speedy trial guarantee is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges.

HN5 Once charges are dismissed, the speedy trial guarantee is no longer applicable. [8] At that point, the formerly accused is, at most, in the same position as any other subject of a criminal **[*9]** investigation. Certainly the knowledge of an ongoing criminal investigation will cause stress, discomfort, and perhaps a certain disruption in normal life. This is true whether or not charges have been filed and then dismissed. This was true in *Marion*, where the defendants had been subjected to a lengthy investigation which received considerable press attention. [9] But with no charges outstanding, personal liberty is certainly not impaired to the same degree as it is after arrest while charges are pending. After the charges against him have been dismissed, "a citizen suffers no restraints on his liberty and is [no longer] the subject of public accusation: his situation does not compare with that of a defendant who has been arrested and held to answer." *United States* v. *Marion*, 404 U.S., at 321. Following dismissal of charges, any restraint on liberty, disruption of employment, strain on financial resources, and exposure to public obloquy, stress and anxiety is no greater than it is upon anyone openly subject to a criminal investigation.

FOOTNOTES

[8] *Klopfer* v. *North Carolina*, 386 U.S. 213 (1967), is not to the contrary. There, under an unusual state procedure, a prosecutor was able to suspend proceedings on an indictment indefinitely. The prosecutor could activate the charges at any time and have the case restored for trial, "without further order" of the court. *Id.*, at 214. The charges against the defendant were thus never dismissed or discharged in any real sense so the speedy trial guarantee continued to apply.

[9] The *Marion* defendants were charged with operating a fraudulent home improvement business. The Court noted that the Washington Post ran a series of articles about the ongoing investigation of the business, and reported that the local United States Attorney predicted that indictments would be forthcoming. *United States* v. *Marion*, 404 U.S., at 309.

III

[*LEdHR1B]** LEdHN[1B] [1B] **[***LEdHR5A]** LEdHN[5A] [5A]The Court of Appeals held, in essence, that criminal charges were pending against MacDonald during the entire period between his military arrest and his later indictment on civilian charges. [10] We disagree. **[***705]** **[**1503]** In this case, the homicide charges initiated by the Army were terminated less than a **[*10]** year after the crimes were committed; after that, there was no criminal prosecution pending on which MacDonald could have been tried until the grand jury, in January 1975, returned the indictment on which he was tried and convicted. [11] During the intervening period, MacDonald was not under arrest, not in custody, and not subject to any "criminal prosecution." Inevitably, there were undesirable consequences flowing from the initial accusation by the Army and the continuing investigation after the Army charges were dismissed. Indeed, even had there been no charges lodged by the Army, the ongoing comprehensive investigation would have subjected MacDonald to stress and other adverse consequences. However, once the charges instituted by the Army were dismissed, MacDonald was legally and constitutionally in the same posture as though no charges had been made. [12] He was free to go about his affairs, to practice his profession, and to continue with his life.

FOOTNOTES

[10] The original Court of Appeals decision concluded "that MacDonald's military arrest was the functional equivalent of a civilian arrest" for Speedy Trial Clause purposes. *United States* v. *MacDonald*, 531 F.2d 196, 204 (CA4 1976). Judge Craven, dissenting, disagreed with that conclusion, stating that the military proceedings were equivalent to a grand jury investigation followed by a failure to file an indictment. *Id.*, at 209. In its petition for certiorari, the Government expressly declined to raise the issue of whether the military investigation triggered MacDonald's Sixth Amendment rights; we therefore do not express any opinion on that issue.

[*LEdHR5B]** LEdHN[5B] [5B]

FOOTNOTES

[11] The initial Court of Appeals panel held that the prosecution by the Army and that by the Justice Department were conducted "by the government in its single sovereign capacity . . . ." *Id.*, at 204. Of course, HN6 an arrest or indictment by one sovereign would not cause the speedy trial guarantees to become engaged as to possible subsequent indictments by another sovereign.

[12] There is no allegation here that the Army acted in bad faith in dismissing the charges. This is not a case where the Government dismissed and later reinstituted charges to evade the speedy trial guarantee. The Army clearly dismissed its charges because the Commanding General of MacDonald's unit, following the recommendation of the Article 32 investigating officer, concluded that they were untrue.

There is nothing to suggest that the Justice Department acted in bad faith in not securing an indictment until January 1975. After the Army dismissed its charges, it continued its investigation at the request of the Justice Department; the Army's initial 13-volume report was not submitted to the Justice Department until June 1972, and supplemental reports were filed as late as August 1973. Within a year, the Justice Department completed its review of the massive evidence thus accumulated and submitted the evidence to a grand jury. The grand jury returned the indictment five months later.

to 19-48 months, With Counts One thru three to run Concurrent, and Counts 4-5 to run Consecutively. Total aggregate Sentence is 144 months maximum with a minimum parole eligibility of 57 months. So it is Clear that petitioner has always adamantly objected to the three (3) "Specific Prior Convictions" the Nevada Supreme Court Stated a Defendant "Must At Least Admit to Recieving" before a District Court Can Consider adjudicating the Defendant a Habitual Criminal. The record in the instant Case will Shaw that petitioner "Never Stipulated" to any "Specific Prior Convictions". Therefore that argument fails. Nevada's legislature's Created the recividist Statute not to be used Capriciously, but to enable the justice System in the State of Nevada to deal determinedly with offenders who pose a "Serious threat to public Safety" and to afford a less Violent offender an opportunity to reform. Petitioner is not impolitic to the fact that Nevada's justice System is justified in punishing Someone charged with being a recividist more Severely than it punishes a first offender, however, the legislature's do not themselves mandate the penalty in any particular Class or Kind of Case. So they are not frustrated if the penalty is never imposed. They delegate the discretion Ideally to a District Court judge who they hope will use Solomonic Wisdom and who will be fair and just, and not a District Court judge who uses the discretion because of personal animus, bias, prejudice or Simply because he Can.

2) Petitioner Contends that his Sentence Should be reversed or modified, because the District Court judge denied him his right to argue, and the Sentence by this Court was based upon assumptions founded upon his Pre-Sentence Investigation Report that had Several factors in error and as Such, his Constitutional Right to due process was Violated. State V. District, Court, 677 P2d 1044; 100 Nev. 90. The District Courts inherent Authority to Correct a judgement or Sentence on mis-

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 3rd day of December, 2015, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

HAROLD EDWARDS #7024721
Clark County Detention Center
330 S. Casino Center Blvd.
Las Vegas, NV 89101

BY: _____
C. Cintola
Employee of the District Attorney's Office

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I hereby certify that service of Notice of Witnesses, was made this 3rd day of December, 2015, by electronic filing to:

JASMIN SPELLS, Deputy Public Defender
TO: lillyjd@ClarkCountyNV.gov

BY: _____
C. Cintola
Employee of the District Attorney's Office

cc/L3

take is in accord with the Constitutional Considerations underlying the Sentencing process. The United States Supreme Court has expressly held that where a defendant is Sentenced on the basis of materially untrue assumptions Concerning his Criminal record (" the) result whether caused by Carelessness or design, is inconsistent with due process of law." Townsend v. Burke, 736, 68 S. Ct. 12552, 1255, 92 L. Ed. 1690 (1948). Further, the Cases Clearly established that Constitutionally Violated "Materially untrue assumptions" Concerning a Criminal record may arise either as a result of a Sentencing Judge's Correct perception of Misapprehension. (Emphasis in original) Id. 677 P2d at 1408 n. 3. "We note that the trial Court has 'inherent authority to Correct a Sentence at any time if Such Sentence based on mistake of material fact that worked to the extreme detriment of the defendant. (Citations omitted) If the District Court has inherent authority to correct a Sentence, a fortiori, it has the power to entertain a motion or Writ requesting it to exercise that inherent authority.... Thus, the time limits and other restrictions with respect to a Post-Conviction relief do not apply to a motion or Writ to modify a Sentence based on a Claim that the Sentence was illegal or was based on an untrue assumption of the fact that amounted to denial of due process. (Emphasis added) Id. 831 P2d at 1372 n. 1. See Edwards v. State, 112 Nev. 704, 918 P2d 321. Petitioner ask this Honorable Court not to perceive this as pointing the finger at the Court and saying 'you were wrong' as that is not the Case. Petitioner is merely asking that this Court reconsider the Sentence that was pronounced based upon mistakes of fact in the PSI report and at Sentencing.

The Nevada Supreme Court has long recognized that District Court's have the power and jurisdiction to modify a Sentence. Staley V. State, 787 P.2d 396, 106 Nev. 75 (1990).

Petitioner was Scheduled to appear in district Court Department B On

06/10/16 1:30 PM

Confirmation #: 801798 **Status:**Completed **Visitation Time:**06/10/16 1:30 PM-1:59 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0007024721	Edwards, Harold	NT-9B-1	NT-7A:1W

Visitation Center	Visitor Station
Clark County Visitation	PD-Jennifer Fraser

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
C773-83540	Fraser, Jennifer	Attorney		

08/10/16 1:30 PM

Confirmation #: 818328 **Status:**Completed **Visitation Time:**08/10/16 1:30 PM-1:59 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0007024721	Edwards, Harold	NT-7A-3	NT-7A:1W

Visitation Center	Visitor Station
Clark County Visitation	PD-Jasmin Spells

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
SKAP-427	Spells, Jasmin	Attorney		

08/19/16 9:30 AM

Confirmation #: 820496 **Status:**Completed **Visitation Time:**08/19/16 9:30 AM-9:59 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0007024721	Edwards, Harold	NT-7A-2	NT-7A:1W

Visitation Center	Visitor Station
Clark County Visitation	PD-Robert Obrien

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
D00U-43522	O'brien, Robert E	Attorney		

November 21st 2016 for Sentencing on Case No. 310695. Sentencing was rescheduled because District Court judge did not have copies of the three "Specific Prior Convictions" the State were using for enhancement nor did the State have copies of the three "Specific Prior Convictions". on that above Court date petitioner advised the Court that there were inaccuracies in the pre-Sentence Investigation Report and that two of the three (3) "Specific Prior Convictions" offered by the State for enhancement of Sentence raised presumptions of Constitutional infirmity, two of those Convictions also were prosecuted in the same information and one of the three (3) "Specific Prior Convictions" offered by the State for enhancement was not a felony in the State of Nevada. District Court judge failed to make a ruling on the factual inaccuracies claimed by petitioner. This argument was offered at this hearing but no Sentence was imposed on that date. Nevada's Code of Judicial Conduct Rule 2.6 Ensuring the right to be heard (A) and Comment (1) is in agreement with Federal Rules Of Criminal Procedure Rule 32 (4)(A)(i). Nevada Code Of Judicial Conduct Rule 2.6 Ensuring the right to be heard (A) States: a judge "Shall" accord to every person who has a legal interest in a proceeding, or that person's lawyer (petitioner was Pro Per) the right to be heard according to law. Comment (1) States: The right to be heard is an essential Comparent of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed. Federal Rules Of Criminal Procedure Rule 32 (4) Opportunity To Speak (A) By a party. Before imposing Sentence the Court "Must:" (i) Provide the defendant's attorney an opportunity to speak on defendant's behalf (ii) address the defendant personally in order to permit defendant to present any information to mitigate

extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 3

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my _____ Amendment right to _____, based on these facts:

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Exhaustion of state court remedies regarding Ground 3:

< **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

the sentence. Petitioner Contends that he did in fact have information that if fairly heard could have mitigated the sentence. (i) The prosecutor did not present copies of the three (3) "Specific Prior Convictions" they presented at the sentencing hearing October 27TH 2016 on Case No. 311212 the other case that was part of the guilty plea agreement, along with Case No. 310695 for enhancement. District Court judge Douglas E. Smith did not have copies of these Judgement of Convictions also, so the Sentencing hearing was Continued Until November 23rd 2016. On that date Judge Smith still did not have copies of the three "Specific Prior Convictions" the State were offering for enhancement. So again the Sentencing date was reset for December 7th 2016, at this Court date Judge Smith still did not have copies of the three (3) "Specific prior Convictions" the State were relying on for enhancement, Nor did the State have copies of these three (3) "Specific Prior Convictions". Judge Smith Still had not addressed the factual inaccuracies petitioner had advised him of. and he would not allow petitioner (who represented himself) to speak. Petitioner had previously made the District Court aware that there were Stockmeier issues pertaining to the presentence Investigation Report. Judge Smith failed to make a ruling on these issues, he in fact failed to even address the issues petitioner made the Court aware of. It should be noted that the three (3) "Specific prior Convictions" the State relied on for enhancement were the same three (3) "Specific Prior Convictions" Deputy District Attorney William Flinn had offered in District Court 21 (where the other Case in the plea deal was at) during Sentencing in that Case for the basis for the 10-25 year large habitual Sentence recommended or stipulated to in the plea memorandum. Judge Smith would not allow petitioner to argue during imposition of Sentence against the three prior Convictions offered

150828-2

to enhance sentence. Again he did not have copies of these three (3) "Specific Prior Convictions", yet Judge Smith stated he had reviewed them and they (that is the three (3) "Specific Prior Convictions") met the requirement. Nevada Supreme Court has Concluded that a Defendant "Must Be" not "may be" afforded an Opportunity in any proceeding in which a prior judgement of Conviction is offered for enhancement purposes, to challenge the Constitutionality of the prior Convictions. Courts have Consistently acknowledged that Burgett, prohibits the use of Unconstitutional Uncounseled Convictions to enhance sentences particularly in the Context of recividist Sentencing Statutes. United States V. Burt, 802 F.2d 330 (9th Cir) 1986. Santillanes V. U.S. Parole Commission, 754 F.2d 887 (10th Cir 1985) Not having a named Counsel of Record on the record raises a presumption of deficiency and a Sentencing Court Cannot presume Constitutional Correctness from a presumptive Silent record as to Counsel. No Attorney Signs any Court document with just Attorney, Lawyer or Simply P.D.. No District Attorney is going to sign a Judgement and Commitment, Criminal Complaint or indictment with Simply D.A. or prosecutor. And Surely No Judge is going to sign Simply Judge, Your Honor and describing the person he is Sentencing to prison, probation etc. as Simply Defendant. There has to be a named Attorney of Record, District Attorney of Record and Judge of Record. If no name is on the record, it raises problems with that document, in this Case the presumption there was no Counsel for Petitioner and a Sentencing Court may not use the Judgement of Conviction. Dressler V. State, 107 Nev. 686 819 P2d 1288 Nevada Supreme Court Stated in McAnulty V. State. "No matter what the plea bargain the question of Validity of Convictions must be determined by the District Court after hearing evidence from Defendant and State. if the State is unable to establish presence of Counsel or

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Speedy Trial

Criminal Law & Procedure > Pretrial Motions & Procedures > Speedy Trial > Constitutional Right

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Speedy Trial

HN5 Pretrial delay is often both inevitable and wholly justifiable. More Like This Headnote | *Shepardize:* Restrict By Headnote

Constitutional Law > Bill of Rights > Fundamental Rights > Criminal Process > Speedy Trial

Criminal Law & Procedure > Pretrial Motions & Procedures > Speedy Trial > Constitutional Right

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Speedy Trial

HN6 Affirmative proof of particularized prejudice is not essential to every speedy trial claim. More Like This Headnote

Civil Procedure > Appeals > Records on Appeal

Criminal Law & Procedure > Appeals > Procedures > Records on Appeal

Criminal Law & Procedure > Appeals > Right to Appeal > Defendants

HN7 A criminal defendant has a right to a record on appeal that includes a complete transcript of the proceedings at trial. Where a portion of the transcript is missing and the defendant is represented by the same attorney at trial and on appeal, reversal is required only if the defendant can show that failure to record and preserve the specific portion of the trial proceedings visits a hardship upon him and prejudices his appeal. However, when a criminal defendant is represented on appeal by counsel other than the attorney at trial, the absence of a substantial and significant portion of the record, even absent any showing of specific prejudice or error, is sufficient to mandate reversal. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Appeals > Reviewability > Preservation for Review > General Overview

HN8 A transcript need not be correct in every detail. Instead, it need only report the proceedings with reasonable completeness and substantial accuracy. More Like This Headnote

Criminal Law & Procedure > Appeals > Reviewability > Preservation for Review > General Overview

HN9 The determination by the trial court that the transcript is accurate, absent a showing of intentional falsification or plain unreasonableness, is conclusive. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Pretrial Motions & Procedures > Joinder & Severance > Severance of Defendants

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion > General Overview

HN10 Denial of a motion for severance is reviewable only for an abuse of discretion. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Pretrial Motions & Procedures > Joinder & Severance > Severance of Defendants

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion > General Overview

HN11 In reviewing the district court's decision not to grant severance, the appellate court must remember the general rule that persons indicted together should be tried together, especially in conspiracy cases. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Pretrial Motions & Procedures > Joinder & Severance > Severance of Defendants

Criminal Law & Procedure > Appeals > Standards of Review > Harmless & Invited Errors > General Overview

Criminal Law & Procedure > Appeals > Standards of Review > Plain Error > General Overview

HN12 When defendants properly have been joined under Fed. R. Crim. P. 8(b), a district court should grant a severance only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Pretrial Motions & Procedures > Joinder & Severance > Severance of Defendants

HN13 A quantitative disparity in the evidence is clearly insufficient in itself to justify severance. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Pretrial Motions & Procedures > Joinder & Severance > Severance of Defendants

HN14 The mere presence of a spillover effect does not ordinarily warrant severance. More Like This Headnote

Criminal Law & Procedure > Pretrial Motions & Procedures > Joinder & Severance > Severance of Defendants

Criminal Law & Procedure > Jury Instructions > Particular Instructions > Use of Particular Evidence

HN15 Acquittals as to some defendants on some counts support an inference that the jury sorted through the evidence and considered each defendant and each count separately. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Pretrial Motions & Procedures > Joinder & Severance > Joinder of Defendants

Criminal Law & Procedure > Trials > Judicial Discretion

Criminal Law & Procedure > Defenses > Conflicting Defenses

HN16 In some circumstances, "mutually antagonistic" defenses may be so prejudicial as to mandate severance. However, mutually antagonistic defenses are not prejudicial per se. Moreover, Fed. R. Crim. P. 14 does not require severance even if prejudice is shown; rather, it leaves the tailoring of the relief to be granted, if any, to the district court's sound discretion. More Like This Headnote | *Shepardize:* Restrict By Headnote

Criminal Law & Procedure > Pretrial Motions & Procedures > Joinder & Severance > Severance of Defendants

HN17

Valid waiver, punishment shall be imposed in accordance with the Statutory requirements but without recividist enlargement Hamlet V. State, 85 Nev. 335; 455 P.2d 915. The Court also noted that where the Certified record of Conviction indicates on its face that the Conviction was unconstitutional, the Defendant's burden is automatically met and he need introduce no evidence at all Dressler V. State, 107 Nev. 686 819 2d 1288 Citing United States V. Gantt, 659 F. Supp. 73 W.D. Pa. 1987. A Court may not rely upon exemplified records, either to impeach or enhance a Defendants Sentance, when a Constitutional infirmity appears from the face of the record. Dressler Supra. If the record raises a presumption of Constitutional infirmity (as it does in the instant Case) because it appears that, there is, on the one hand Credible evidence indicating that Defendant in the instant Case, did not have Counsel, because there is no Counsel named on the Judgement of Commitment, and the State must present evidence to prove by a preponderance that the prior Convictions, were definitively proven to be Constitutionally obtained. But with there not being any Sentencing transcripts from the foreign jurisdiction where the Convictions occurred, there was no probative evidence offered by the state to show the Defendant did have Counsel during those proceedings. In Rudolph V. Parker, Citing Boykin V. Alabama the Supreme Court of the U.S. Stated: When reviewing evidence of Convictions that lacks accompanying transcripts evincing a defendant's waiver of his right to a jury trial, his right not to incriminate himself and his right of Confrontation, a Court Cannot presume a waiver of these (3) three important rights from a Silent record. Again, the three (3) "Specific Prior Convictions" offered by the State for enhancement, lacked accompanying Sentencing transcripts evincing that Defendant waived the aforementioned three Federal Rights set out in Boykin V. Alabama. presuming waiver from a Silent record is impermissible, the inference to be drawn from a presumptive Silent Record is that Defendant was not represented by Counsel and the inference is of Such magnitude that the

of a grand jury in August 1974. [7] Neither the District Court nor the Court of Appeals **[*22]** found any legitimate reason for this delay. As the Court of Appeals' second panel concluded: "The primary reason for the two-year delay was either a disagreement between two groups in the Justice Department as to whether the case should be prosecuted, or just simple government bureaucracy (the contention of the involved Assistant U.S. Attorney)." 632 F.2d 258, 262 (CA4 1980) *(MacDonald II)*. Although the FBI did conduct further tests and investigation after the grand jury was convened, the Government has not demonstrated that it could not have pursued those leads earlier.

FOOTNOTES

[7] Although the total period of delay between initial prosecution and trial is more than nine years, the period prior to dismissal of military charges is not chargeable to the Government because those charges were promptly resolved. The Court of Appeals properly also gave little weight to the period between the CID's initial reinvestigation and the submission of its report to the Justice Department in June 1972, since the prior dismissal for insufficient evidence warranted a more extensive investigation. The period subsequent to the civilian indictment was mainly consumed by judicial proceedings to evaluate MacDonald's speedy trial claims.

MacDonald undeniably asserted his right to a speedy trial vigorously and often, beginning in January 1972. Although the Government's delay in pressing formal civilian charges prevented MacDonald from filing a formal motion to dismiss on speedy trial grounds, he invoked his right in the only meaningful way **[***713]** open to him. Indeed, the strength of his efforts is a powerful indication that he has suffered serious personal prejudice. See *Barker* v. *Wingo*, 407 U.S., at 531.

The last speedy trial factor, and the most difficult to evaluate on this record, is prejudice to the accused. Proof of actual prejudice to the defense at trial is not, of course, necessary to demonstrate a speedy trial violation. *Moore* v. *Arizona*, 414 U.S. 25 (1973) *(per curiam)*. In *Moore*, this Court held that a defendant's speedy trial claim should not have been dismissed without further hearing, where the defendant was tried three years after he was first charged and 28 months after he demanded a speedy trial. In this case, the period of unjustified delay is at least two years, and MacDonald demanded an early disposition prior to that period. Because of this delay, a speedy trial violation could be found in this case, even without proof of actual prejudice at trial. **[*23]** The record is clear that the delay caused MacDonald to suffer other forms of substantial prejudice, including continuing anxiety, intrusive publicity, legal expense, and disruption of a new civilian career.

The proof of actual prejudice at trial in this case, although somewhat speculative, does buttress MacDonald's speedy trial claim. It is possible that Stoeckley's trial testimony would have been less confused and more helpful to MacDonald at an earlier date. This testimony was critical to MacDonald, whose principal defense was that she was one of a group of intruders who committed the murders. Although Stoeckley was hardly a reliable witness, she did testify at trial that she had no memory of the events that night, in contradiction **[**1510]** to some of her earlier out-of-court statements. See *MacDonald II*, 632 F.2d, at 264-265. Her claim of loss of memory obviously became more credible with the passage of time. It is likewise possible that the inevitable "coaching" of Government witnesses prior to their testimony would have had lesser adverse impact on the defense, and could have been minimized more effectively by cross-examination, had the trial occurred earlier. [8] See *id.*, at 263-264. The unusual facts of this case, recited by the majority, suggest that slight differences in trial testimony may well have influenced the verdict. [9]

FOOTNOTES

[8] For example, a babysitter who had testified in 1970 that she had not seen an ice pick in MacDonald's home had changed her story by the time of trial. Cross-examination by the defense did not cause her to reaffirm her earlier story. Tr. 3559-3560, 3567-3572.

[9] I therefore disagree with the majority that the speedy trial analysis should not be influenced by the evidentiary basis for the jury verdict. *Ante*, at 6, n. 6. Moreover it is obvious that respondent "does not challenge the jury verdict itself," *ibid.*, only because that issue is not directly presented on this petition.

Balancing these factors, I conclude that the Court of Appeals was correct in finding a speedy trial right violation. The Government undoubtedly has an interest in renewing the investigation of a charge that has been dismissed, in evaluating **[*24]** carefully whether a second prosecution should be brought, and in avoiding undue haste, especially when the charge is murder. By the same token, when such a serious charge has already been brought, and when the **[***714]** defendant is suffering the consequences of that public charge and of a renewed investigation, the Government must not delay its decision for reasons of indifference or neglect. The Government's interest in reaching an informed decision whether to prosecute is certainly legitimate; but vague, unexplained references to internal disagreement about prosecution cannot justify more than two years of indecision. Because the record in this case reveals no legitimate reason for a substantial period of pretrial delay, and because MacDonald may have suffered prejudice at trial and clearly suffered other forms of prejudice, I would affirm the Court of Appeals' ruling that his speedy trial right was violated.

IV

The majority's opinion in this case is a disappointing exercise in strained logic and judicial illusion. Suspending application of the speedy trial right in the period between successive prosecutions ignores the real impact of the initial charge on a criminal defendant and serves absolutely no governmental interest. This Court has warned before against "allowing doctrinaire concepts . . . to submerge the practical demands of the constitutional right to a speedy trial." *Smith* v. *Hooey*, 393 U.S. 374, 381 (1969). The majority fails to heed that advice.

For the foregoing reasons, I dissent.

REFERENCES

Accused's right to speedy trial under Federal Constitution

21 Am Jur 2d, Criminal Law 248

Federal Procedure, L Ed, Criminal Procedure 22:731

11 Am Jur Pl & Pr Forms (Rev), Federal Criminal Procedure, Forms 85, 86

7 Am Jur Proof of Facts 2d 477, Prejudice Resulting from Unreasonable Delay in Trial

USCS, Constitution, 6th Amendment

US L Ed Digest, Criminal Law 48

L Ed Index to Annos, Criminal Law

ordinary presumption of Constitutional Correctness is dispelled. The right to Counsel guaranteed by the Sixth Amendment is applicable to the states by virtue of the fourteenth Amendment, making it unconstitutional to try a person for a felony in a State Court unless he has a lawyer or has Validly waived one, and the ruling is not limited to perspective applications. The certified record of two(2) of Petitioner's Illinois Convictions raises the presumption he was denied Counsel, in those proceedings and those Convictions are void under Gideon V. Wainwright, 372 U.S.355. To permit a Conviction obtained in violation of Gideon V. Wainwright to be used either to support guilt or enhance punishment for another offense would erode the principle of that Case and allow an Unconstitutional procedure to injure a Defendant twice Burgett v. Texas, 389 U.S. 109. Such a Conviction is presumptively void and infirm from it's incipiency U.S. V. Lufman 457 F.2d 165 (1972) In Cases involving Criminal Sanctions a Court may not presume Constitutional Validity from a Silent record. If the record is Silent, the burden then shifts to the State which must then produce evidence to demonstrate that the Sixth Amendment requirement of assistance of Counsel has not been Violated. Ingram V. Wingo, 320 F. Supp. 1032 (1971) In the instant Case Petitioner made District Court Judge Douglas E. Smith aware that there were factual inaccuracies in the presentence report, largely Concerning the three (3) "Specific Prior Convictions" offered by the state for enhancement. Judge Smith failed to make any ruling on the inaccuries Claimed by Petitioner. One of the issues was Petitioner's right to Challenge the three (3) "Specific Prior Convictions" the State offered for the large habitual 10-25 year recommended Sentence. A Sentencing judge Cannot Consider prior Convictions obtained without the assistance of Counsel. Tucker v. United States, 404 U.S. 443 (1972).

The District Court judge abused his discretion and Showed prejudice when he denied Petitioner his right to Challenge the Constitutional Sufficiency of two (2) of the "Specific Prior Convictions the State offered for enhancement

ex rel. Toth v. *Quarles*, 350 U.S. 11 (1955).

At the request of the Justice Department, however, the CID continued its investigation. In June 1972, the CID forwarded a 13-volume report to the Justice Department recommending further investigation. Additional reports were submitted during November 1972 and August 1973. Following evaluation of those reports, in August 1974, the Justice Department presented the matter to a grand jury. On January 24, 1975, the grand jury returned an indictment charging MacDonald with the three murders.

Prior to his trial in Federal District **[***702]** Court, [4] MacDonald moved to dismiss the indictment, in part on the grounds that the delay in bringing him to trial violated his Sixth Amendment right to a speedy trial. The District Court denied the motion, but the Court of Appeals allowed an interlocutory appeal and reversed, holding that the delay between the June 1972 submission of the CID report to the Justice Department and the August 1974 convening of the grand jury violated MacDonald's constitutional right to a speedy trial. *MacDonald* v. *United States*, 531 F.2d 196 (CA4 1976). We granted certiorari and reversed, holding that a criminal defendant could not appeal the denial of a motion to dismiss on Speedy Trial Clause grounds until after the trial had been completed. *United States* v. *MacDonald*, 435 U.S. 850 (1978).

FOOTNOTES

[4] The District Court had jurisdiction because the crimes were committed on military property. 18 U. S. C. §§ 7(3), 1111.

[*6] MacDonald was then tried and convicted on two counts of second-degree murder and one count of first-degree murder. He was sentenced to three consecutive terms of life imprisonment. On appeal, a divided panel of the Fourth Circuit again held that the indictment violated MacDonald's Sixth Amendment right to a speedy trial and dismissed the indictment. 632 F.2d 258 **[**1501]** (1980). [5] The court denied rehearing en banc by an evenly divided vote. 635 F.2d 1115 (1980).

FOOTNOTES

[5] In addition to the Speedy Trial Clause issue, MacDonald raised a number of issues involving the conduct of the trial and rulings of the trial judge. He also claimed that the delay in bringing him to trial resulted in a denial of his Fifth Amendment due process rights. The Court of Appeals declined to reach those issues. Accordingly, we do not decide those issues, instead leaving them for the Court of Appeals on remand.

[*LEdHR2A]** LEdHN[2A]↑[2A]We granted certiorari, 451 U.S. 1016 (1981), and we reverse. [6]

[*LEdHR2B]** LEdHN[2B]↑[2B]

FOOTNOTES

[6] Our analysis of the speedy trial claim is not to be influenced by consideration of the evidentiary basis of the jury verdict. The jury that heard all of the witnesses and saw the evidence unanimously decided that respondent murdered his wife and children. Respondent

does not challenge the jury verdict itself.

II

HN1↑The Sixth Amendment provides that "[in] all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . ." A literal reading of the Amendment suggests that this right attaches only when a formal criminal charge is instituted and a criminal prosecution begins.

[*LEdHR3]** LEdHN[3]↑[3]In *United States* v. *Marion*, 404 U.S. 307, 313 (1971), we held that HN2↑the Speedy Trial Clause of the Sixth Amendment does not apply to the period before a defendant is indicted, arrested, or otherwise officially accused:

"On its face, the protection of the Amendment is activated only when a criminal prosecution has begun and extends only to those persons who have been 'accused' in the course of that prosecution. These provisions would seem to afford no protection to those not yet accused, **[*7]** nor would they seem to require the Government to discover, investigate, and accuse any **[***703]** person within any particular period of time. The Amendment would appear to guarantee to a criminal defendant that the Government will move with the dispatch that is appropriate to assure him an early and proper disposition of the charges against him."

HN3↑In addition to the period after indictment, the period between arrest and indictment must be considered in evaluating a Speedy Trial Clause claim. *Dillingham* v. *United States*, 423 U.S. 64 (1975). Although delay prior to arrest or indictment may give rise to a due process claim under the Fifth Amendment, see *United States* v. *Lovasco*, 431 U.S. 783, 788-789 (1977), or to a claim under any applicable statutes of limitations, no Sixth Amendment right to a speedy trial arises until charges are pending.

[*LEdHR4]** LEdHN[4]↑[4]Similarly, HN4↑the Speedy Trial Clause has no application after the Government, acting in good faith, formally drops charges. Any undue delay after charges are dismissed, like any delay before charges are filed, must be scrutinized under the Due Process Clause, not the Speedy Trial Clause. [7]

FOOTNOTES

[7] Our holding agrees with the determination made by Congress in enacting the Speedy Trial Act of 1974, 18 U. S. C. § 3161 *et seq.* The Act, intended "to give effect to the sixth amendment right to a speedy trial . . . ," S. Rep. No. 93-1021, p. 1 (1974), provides that if charges are initially dismissed and later reinstated, the period between the dismissal and the reinstatement is not to be included in computing the time within which a trial must commence. 18 U. S. C. §§ 3161(d), 3161(h)(6).

Most of the Courts of Appeals considering this issue have also reached the conclusion that the period after dismissal of initial charges is not included in determining whether the Speedy Trial Clause has been violated. See, *e. g.*, *United States* v. *Hillegas*, 578 F.2d 453, 457-458 (CA2 1978); *Arnold* v. *McCarthy*, 566 F.2d 1377, 1383 (CA9 1978); *United States* v. *Martin*, 543 F.2d 577 (CA6 1976), cert. denied, 429 U.S. 1050 (1977); *United States* v. *Bishton*, 150 U. S. App. D. C. 51, 55, 463 F.2d. 887, 891 (1972). The Fifth Circuit reached a seemingly contrary result in *United States* v. *Avalos*, 541 F.2d 1100 (1976), cert. denied, 430 U.S. 970 (1977). However in that case the court relied on unusual facts; the Government dismissed charges pending in one district in order to prosecute the defendants on those same charges in another district.

purposes. and the other "Specific Prior Conviction" because it does not amount to a felony in the State of Nevada. And lastly that two of the three (3) "Specific Prior Convictions" were prosecuted in the same information. Petitioner was prejudiced by this denial because if proven that two of the three (3) "Specific Prior Convictions" did not meet the appropriate Constitutional Standards, or that two of the three (3) "Specific Prior Convictions" offered by the State for enhancement were proven to have been prosecuted in the same information and Counted as only one Conviction and the last of the three (3) "Specific Prior Convictions" offered by the State for enhancement was shown not to be a felony in the State of Nevada, then Petitioner would not legally have been Sentenced to the large Habitual Sentence he recieved. Petitioner also Contends that it was in the discretion of the District Court to Sentence him under the little Habitual Criminal Statute rather than the major Habitual Criminal Statute, because the above mentioned Circumstances So warrant, as well as the Circumstances of the underlying Charge. Petitioner Showed here three (3) means of attacking the three (3) "Specific Prior Convictions" the State offered for enhancement or at least of ameliorating their effect. NRS. 207.010 provides that a Certified Copy of a felony Conviction is prima facie evidence of a prior felony. But Nevada's Law in Dressler v. State States, "States are prohibited from using a prior felony Conviction for "any purpose" if the record of that Conviction raises an unrebutted presumption that the prior Conviction was obtained in Violation of Specific federal Constitutional rights." A Court may not rely upon an exemplified record either to impeach or enhance punishment, when a Constitutional infirmity appears from the face of the record (as it does in the instant Case) on two of the three (3) "Specific Prior Convictions offered by the State for enhancement.

It has been pointed out that Courts indulge every reasonable presump-

substantial period of pretrial delay, and because the physician may have suffered prejudice at trial and clearly suffered other forms of prejudice--his speedy trial right was violated.

LAWYERS' EDITION HEADNOTES:

[*LEdHN1]**

LAW §48

speedy trial -- dismissal of military charges -- indictment on civilian charges --

Headnote: LEdHN[1A] [1A] LEdHN[1B] [1B]

A period of in excess of four years between the dismissal of military charges against an individual and his subsequent indictment on civilian federal criminal charges arising from events during his tenure in the military should not be considered in determining whether a delay in bringing the individual to trial violated his rights under the speedy trial clause of the Sixth Amendment where (1) criminal charges were not pending against the individual during the entire period between his arrest on military charges and later indictment on civilian charges, (2) once the charges instituted by the military were dismissed, the individual was legally and constitutionally in the same posture as though no charges had been made, (3) there is no indication that the military acted in bad faith in dismissing the charges, nor that the Department of Justice acted in bad faith in not securing an indictment at an earlier date, and (4) any delay between the civilian indictment and trial was caused primarily by the individual's own legal maneuvers. (Marshall, Brennan, and Blackmun, JJ., dissented from this holding.)

[*LEdHN2]**

LAW §48

speedy trial -- evidentiary basis -- jury verdict --

Headnote: LEdHN[2A] [2A] LEdHN[2B] [2B]

The United States Supreme Court's analysis of a claim under the speedy trial clause of the Sixth Amendment should not to be influenced by consideration of the evidentiary basis of the jury verdict in the case. (Marshall, Brennan, and Blackmun, JJ., dissented from this holding.)

[*LEdHN3]**

LAW §854

LAW §48

ACTIONS §209

speedy trial -- due process -- period between arrest and indictment --

Headnote: LEdHN[3] [3]

In addition to the period after indictment, the period between arrest and indictment must be considered in evaluating a claim under the speedy trial clause of the Sixth Amendment and although delay prior to arrest or indictment may give rise to a due process claim under the

Fifth Amendment or to a claim under any applicable statute of limitations, no Sixth Amendment right to a speedy trial arises until charges are pending.

[*LEdHN4]**

LAW §854

LAW §48

speedy trial -- period after charges dismissed -- due process --

Headnote: LEdHN[4] [4]

The speedy trial clause of the Sixth Amendment has no application after the Government, acting in good faith, formally drops charges, and any undue delay after charges are dismissed must be scrutinized under the due process clause, not the speedy trial clause; once charges are dismissed the speedy trial guaranty is no longer applicable since at that point, the formerly accused is, at most, in the same position as any other subject of a criminal investigation.

[*LEdHN5]**

LAW §48

speedy trial -- indictment by two sovereigns --

Headnote: LEdHN[5A] [5A] LEdHN[5B] [5B]

An arrest or indictment by one sovereign does not cause the guarantees of the speedy trial clause of the Sixth Amendment to become engaged as to possible subsequent indictments by another sovereign.

SYLLABUS

In May 1970, the Army formally charged respondent, a captain in the Army Medical Corps, with the murders earlier that year of his pregnant wife and two children on a military reservation. Later that year, the military charges were dismissed and the respondent was honorably discharged on the basis of hardship, but at the Justice Department's request the Army Criminal Investigation Division (CID) continued its investigation of the homicides. In June 1972, the CID forwarded a report recommending further investigation, and the Justice Department, in 1974, ultimately presented the matter to a grand jury, which returned an indictment in January 1975, charging respondent with the three murders. On an interlocutory appeal from the District Court's denial of respondent's motion to dismiss the indictment, the Court of Appeals reversed, holding that the delay between the June 1972 submission of the CID report to the Justice Department and the 1974 convening of the grand jury violated respondent's Sixth Amendment right to a speedy trial. After this Court's decision that respondent could not appeal the denial of his motion to dismiss on speedy trial grounds until after completion of the trial, 435 U.S. 850, respondent was tried and convicted. The Court of Appeals again held that the indictment violated respondent's right to a speedy trial and dismissed the indictment.

Held: The time between dismissal of the military charges and the subsequent indictment on civilian charges may not be considered in determining whether the delay in bringing respondent to trial violated his right to a speedy trial under the Sixth Amendment. Pp. 6-10.

tion against waiver of fundamental Constitutional Rights and do not presume acquiescence in the loss of fundamental rights. A waiver is ordinarily an intentional relinquishment or abandonment of a known right or priviledge. The determination of whether there has been an intelligent waiver of the right to Counsel must depend in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and Conduct of the accused. Johnson V. Zerbst. 304 U.S. 458 58 S. Ct. 1019: 82 L. Ed 1461. The Constitutional right of an accused to be represented by Counsel invokes, of itself, the protection of a trial Court, in which the accused -- whose life or liberty is at stake -- is without Counsel. This protecting duty imposes the serious and weighty responsibility upon the district Court judge of determining whether there is an intelligent and Competent waiver by the accused. While an accused may Waive the right to Counsel, whether there is a proper waiver, should be clearly determined by the district Court, and it would be fitting and appropriate for that determination to appear upon the record. The record is silent in the instant case, because two of the three (3) "Specific Prior Convictions" the state offered for enhancement does not have a name of any Counsel on behalf of petitioner in those matters, nor did the state present sentencing transcripts from the foreign jurisdiction where these convictions (that came as a result of guilty pleas) occurred, as probative evidence petitioner in fact did have Counsel during those proceedings. No named Counsel of Record, raises the presumption petitioner did not have Counsel during those proceedings and a Court "Cannot" presume he did. Boykin V. Alabama, supra. Nevada's Habitual offender Statute under which petitioner was sentenced Contemplates Constitutionally Valid underlying Convictions. Nothing less will do. Both Federal and State laws makes it abundantly Clear that if a petitioner was not informed of his right to Counsel at one or more of the Convictions underlying

				30-SEP-2015		14-Mar-16 14:15:00	14-Mar-16 14:45:00						
20	EDWARDS	HAROLD	0007024721	30-SEP-2015		24-Mar-16 14:00:00	24-Mar-16 14:30:00	LEG	INV	ANDRADE	MAYBETH		
21	EDWARDS	HAROLD	0007024721	30-SEP-2015		30-Mar-16 12:40:00	30-Mar-16 13:10:00	LEG	PD	MCCUBBIN	TIMOTHY		
22	EDWARDS	HAROLD	0007024721	30-SEP-2015		30-Mar-16 12:40:00	30-Mar-16 13:10:00	LEG	PD	SISOLAK	ASHLEY		
23	EDWARDS	HAROLD	0007024721	30-SEP-2015		04-Apr-16 14:35:00	04-Apr-16 15:05:00	LEG	INV	ANDRADE	MAYBETH		
24	EDWARDS	HAROLD	0007024721	30-SEP-2015		08-Apr-16 09:44:00	08-Apr-16 10:14:00	LEG	INV	ANDRADE	MAYBETH		
25	EDWARDS	HAROLD	0007024721	30-SEP-2015		27-Jul-16 13:30:00	27-Jul-16 14:00:00	LEG	INV	DOUGHERTY	EDWARD	JOHN	
26	EDWARDS	HAROLD	0007024721	30-SEP-2015		08-Aug-16 19:30:00	08-Aug-16 20:00:00	LEG	INV	PREUSCH	MARK		
27	EDWARDS	HAROLD	0007024721	30-SEP-2015		10-Aug-16 09:31:00	10-Aug-16 09:32:00	LEG	INV	PREUSCH	MARK		
28	EDWARDS	HAROLD	0007024721	30-SEP-2015		18-Aug-16 19:00:00	18-Aug-16 19:30:00	LEG	PD	MCCUBBIN	TIMOTHY		
29	EDWARDS	HAROLD	0007024721	30-SEP-2015		18-Aug-16 19:00:00	18-Aug-16 19:30:00	LEG	PD	O'BRIEN	ROBERT		

a recividist Sentence, or if the records of those Convictions are Silent as to Counsel. then the Habitual Offender Conviction is null and Void United States V. ex rel. Savini V. Jackson, 250 F.2d 349 (2d Cir 1957) Nevada's law States in Mc Anulty V. State, 108 Nev. 179: 826 P.2d 567 (1992) The question of validity of prior Convictions Must Be determined by the district Court as a matter of law: the punishment which follows is dependent on the number of valid prior Convictions. In the instant Case the large Habitual Sentence fails, because the State used two presumptively Un-Constitutional judgement of Convictions. Also two of the three (3) "Specific Prior Convictions" were prosecuted in the same information Case No. 90 Cr 25002 for Burglary and Case No. 94 Cr 27797 for possession of Stolen motor Vehicle, the Police Individual Record No. at the bottom of those two (2) judgement of Conviction are the Same Number # 627031 and they both have the exact Same Sentencing judge James M. Schreier. Those two Illinois Convictions fit Squarely within the Criteria set forth in Rezin V. State, 95 Nev. 461, 596 P.2d 226 (1979) where two or more Convictions result from the Same, act, transaction, or occurrence and are prosecuted in the Same indictment or information those Convictions may be Counted toward en-hancement under NRS 207.010 as only one prior Conviction. The State in the instant Case also used Case No. 87 Cr 15561, a 1987 Conviction for theft when (because of the amount $75 dollars) it does not Constitute a felony in the State of Nevada. If that Conduct would have occurred in Nevada Petitioner would have been charged With a Misdemeanor under NRS 205.240 which States: a person Commits petit larceny if the person: Intentionally Steals, takes and carries away, leads away or drives away personal goods or property, With a Value of less than $650 dollars owned by another person. Petitioner relies on Carter V. State, 79 Nev. 89 378 P.2d 876. District Court judge Douglas E. Smith denied petitioner his right to orgue the above facts, Ostensibly the reason the

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 1

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my _____ Amendment right to _____, based on these facts:

Exhaustion of state court remedies regarding Ground 1:

District Court judge Douglas E. Smith did not allow petitioner (who was pro per) to argue before imposing sentence Federal Rules Of Criminal Procedure Rule 32 (4)(A)(i) Opportunity To Speak. By a party before imposition of Sentence, the Court Must provide the defendant's attorney an opportunity to speak on Defendant's behalf (petitioner was pro per) (ii) address Defendant personally in order to permit Defendant to present any information to mitigate the sentence, thereby denying petitioner his right to speak: because judge Smith recognized that the judge on the other Case in the plea deal, had already heard the legal argument above pertaining to the same three(3) "Specific Prior Convictions" offered by the state for enhancement and did not believe that those Convictions met the requirement for the Large Habitual 10-25 year sentence the State recommended in the plea deal, and that that Sentence Could not be reasonably shown to be serving any penal purpose that Could not be served by Some less severe punishment equally well: hence the 19-48 month sentence that judge imposed and not the 10-25 year sentence recommended by the state in the plea deal. Petitioner's 19-48 month Sentence Came as a result of a jury trial and the sentencing judge did not habitualize petitioner.

3) Petitioner Further Contends That He Never Signed An Amended Information Charging Him As A Habitual Criminal And With A Category A Felony. Filing A Notice Of Intent To Seek Punishment As A Habitual Criminal Is Not The Same As Filing An Amended Information Charging Petitioner With Being A Habitual Criminal.

The District Court lacked Jurisdiction to Sentence petitioner As a Large Habitual Criminal under NRS 207.010 (1)(b) because the state failed to file an Amended Information actually Charging petitioner as a Large Habitual Criminal Gray Vs State, 124 Nev. 110 178 P.3d 154

The relevant statutory Scheme Clearly premises the District Court's authority to impose a Habitual Criminal Sentence on the state filing first, an allegation of Habitual Criminality before Sentence and that is

unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 2

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my _____ Amendment right to _____, based on these facts:

Exhaustion of state court remedies regarding Ground 2:

< **Direct Appeal:**

the filing of the Notice of Intent TO Seek Punishment as a Habitual Criminal, but the Statute permits Habitual Criminal Enhancement to be "Charged" after Conviction of the primary Charge, but Still requires that it be "Charged" before Sentencing. Simply filing an Intent To "Seek" Habitual Criminal Treatment is not an Amended Information "Charging" petitioner with being a Habitual Criminal Gray V. State, Supra. In the instant Case petitioner Edwards was sentenced to a large habitual Sentence, but the Stipulated plea was for petitioner to plead guilty to a Burglary Category B felony. The Sentence petitioner received is illegall because a 10-25 year Sentence is a Category A felony Sentence and no Amended Information was filed indicating that fact and petitioner Never Signed an Amended Information before Sentence was imposed. In Gray V. State, Nevada's Supreme Court Considered whether the State's failure to formally file an Amended Information Charging defendant with Habitual Criminality precludes the District Court from imposing an enhanced Sentence Under NRS 207.010. The Court Concluded that it Was plain error for the District Court to Sentence Gray as a Habitual Criminal under NRS 207.010 because the indictment did not Charge Gray as a Habitual Criminal. No Information or Indictment Charged petitioner with being a Habitual Criminal, it appears the State in this Case as well as the District Court judge depended Solely on the "Stipulated Status" petitioner Stipulated to, But the Nevada Supreme Court Stated in Hodges V. State, Stipulating to the Status alone is not a Sufficient basis for Habitual Criminal adjudication. Nevada Supreme Court Stated "We are Concerned not only with Statutory requirements but also Constitutional guarantee's of Due Process. there is less Chance for mistakes or abuse of the Stipulation process as long as the Defendant "Must at least admit" that he received "Specific Prior Convictions, before the District Court Can Consider adjudicating a Defendant a

outline).

a) Defendants: _____

b) Name of court and docket number: _____

c) Disposition (for example, was the case dismissed , appealed or is it still pending?):

_____

d) Issues raised: _____

_____

_____

e) Approximate date it was filed: _____

f) Approximate date of disposition: _____

2) Have you filed an action in federal court that was **dismissed because it was determined to be frivolous, malicious, or failed to state a claim upon which relief could be granted?** ____ Yes ____ No. If your answer is "Yes", describe each lawsuit. (If you had more than three actions dismissed based on the above reasons, describe the others on an additional page following the below outline.)

Lawsuit #1 dismissed as frivolous, malicious, or failed to state a claim:

a) Defendants: _____.

b) Name of court and case number: _____.

c) The case was dismissed because it was found to be (check one): _____ frivolous ____ malicious or ____ failed to state a claim upon which relief could be granted.

d) Issues raised: _____

_____

e) Approximate date it was filed: _____

f) Approximate date of disposition: _____

Lawsuit #2 dismissed as frivolous, malicious, or failed to state a claim:

a) Defendants: _____.

b) Name of court and case number: _____.

Habitual Criminal Hodges v. State, 119 Nev. 479; 78 P.3d 67 (2003) so stipulating to the status alone does not relieve the state of their obligation to file an Amended Information Charging petitioner with being a Habitual Criminal, which the relevant statutory scheme clearly premises the District Court's authority to impose a Habitual Criminal Sentence on. In Crutcher V. State, 111 Nev. 1286; 903 P.2d 823 (1995). Nevada's Supreme Court granted his Writ of Mandamus because real party in interest the state failed to present proof of his prior felony Convictions at his sentence hearings (as was done in the instant case) and the Criminal Information filed by the state did not charge petitioner with being a Habitual Criminal, and it did not list his specific prior Convictions for enhancement. The Court held that the State could not remedy this error by filing an Amended Information seeking to impose the Habitual Criminal Enhancement four (4) years after his sentence. It appears the state as well as the district Court judge relied Solely on petitioner's stipulation to the status of Habitual Criminal alone, failing to present an Amended Information Charging petitioner with being a Habitual Criminal as required by Nev. Rev. Stat. 207.010, failing also to present copies of petitioner's prior judgement of Convictions at two (2) of the Sentencing dates, failing to present the Sentencing transcripts from the foreign jurisdiction where the prior Convictions occurred, thereby failing to affirmatively establish that petitioner was represented by Counsel at those proceedings where the three (3) "Specific Prior Convictions" occurred. The Circumstances above, along with the fact the District Court judge Douglas E. Smith failed to follow the procedure of Rule 32 of the Federal Rules of Criminal Procedure, (which alone constitutes Clear error, because that rule is a Command) Should convince this Honorable Court to allow petitioner relief. Also the Circumstances of the Underlying Charge is mitigating alone. Edwards

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

INSTRUCTIONS FOR FILING A CIVIL RIGHTS COMPLAINT BY AN INMATE UNDER 42 U.S.C. § 1983

A. Who May Use This Form

You must use the attached form if you are an inmate. The attached 42 U.S.C. § 1983 civil rights complaint form is designed to help inmates prepare a complaint seeking relief for alleged violations of their federal civil rights. These complaints typically concern, but are not limited to, conditions of confinement.

Do not use this form if you are challenging the length of your sentence or the validity of your conviction. If you want to challenge a state conviction or sentence, you should file a petition under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered judgment.

B. Filing a § 1983 Civil Rights Action

To initiate a § 1983 civil rights action, you must submit: (1) a completed complaint form and (2) a check or money order for $400 (which includes the $350 filing fee and the $50 administrative fee), or an inmate application to proceed *in forma pauperis*.

If you have the money to pay the full $400 filing fee, please send a check or money order made payable to "CLERK, U.S. DISTRICT COURT" with your complaint.

If you are unable to pay the entire filing fee at the time you submit your complaint, please complete an inmate's application to proceed *in forma pauperis*. You may request the packet titled "Information for Filing an Application to Proceed *In Forma Pauperis* by an Inmate under 28 U.S.C. § 1915."

In civil actions filed by pro se (self-represented) inmates, the action must be filed in the unofficial division of the court in which the inmate is incarcerated when the complaint is submitted for filing. *See* Local Rules of Practice for the United States District Court for the District of Nevada ("LR") IA 1-6, 1-8. The Clerk of the Court maintains offices in Las Vegas and Reno at the following addresses:

Unofficial Southern Division (Clark, Esmeralda, Lincoln, & Nye counties):
U.S. District Court Office of the Clerk
333 Las Vegas Boulevard, South, Room #1334
Las Vegas, NV 89101

Unofficial Northern Division (all other counties):
U.S. District Court Office of the Clerk
400 S. Virginia Street, Room #301
Reno, NV 89501

If you are incarcerated at a facility that uses electronic filing, please continue to use electronic filing.

was convicted of a Burglary, Not what most people in Society Understands a Burglary to be, but to a Business Open To The Public. This Kind of Burglary requires that a person illegally enters the Business With a premeditated intent to Commit a Crime. The evidence in the Case at hand Clearly Shows Edwards Entering the business "Legally". That alone Clears Edwards of the Burglary, because the most important element of the Charge of Burglary is the entry. The next element that has to be proven is that petitioner had an intent to Commit a Crime the very moment he entered the place of Business. The Surveillance Video belies that. The petit larceny Charge which the prosecutor Charged Edwards with and based their Charge of Burglary on and What they believed Edwards's intent was When he entered this place of Business. That Charge was dismissed. Nothing was taken in this Case, So there is nothing missing PHT pg. 27 lines 19-23 nor was anyone injured. Edwards was punished more severely than persons in Nevada who Committed more serious Crimes or persons who committed a Similar crime in other American jurisdictions. According to Nevada's law, the gravamen of Burglary is the entry, petitioner entered the business legally, his actions once inside were Consistent with why the business is open. Even if Edwards who is shown entering the Bellagio Las Vegas legally later formulates an intent after legally entering, he is not guilty of Burglary Under Nevada's definition for Burglary, because he did not decide to take anything until after he had legally entered the Bellagio Las Vegas. State v. Adams, 94 Nev. 503 581 P.2d 868. Petitioner in the Case at hand, was accused of taking a "Lunch Bag" petitioner gave the Court a Credible Story on the issue of this "Lunch Bag" PHT pg. 86 lines 18-25 also pg. 87 lines 1-15. He explained that he found the Lunch Bag in the entrance door of a business he was seeking employment at PHT pg. 86 lines 18-25 also pg 87 lines 1-15 this Lunch Bag was turned in to a Storage

Part B: Nature of the Case

- Briefly give an overview of your case by providing general facts about your case. This is not the place to provide detailed information about what each defendant did to violate your rights (see Part C).

Part C: Cause of Action

- This is where you identify what rights you claim the defendant(s) violated. The form provides three pages for alleging three counts. If you are alleging more than three counts, then attach an additional page for each additional count (so that there is only one count per page). Number the additional pages "6-A", "6-B", etc. and insert the pages immediately behind page 6.

- You must identify which civil rights you claim have been violated.

- You need to state facts supporting the violation. You should be as specific as possible and describe what each individual defendant did to violate your rights. You should name the individual defendants and include dates when possible.

Part D: Previous Lawsuits and Administrative Relief

- You must identify any other lawsuit you have filed in either state or federal court that relates to the same or similar claims that you have alleged in this civil rights complaint.

- You must exhaust any available administrative remedies before you file a civil rights complaint. *See* 42 U.S.C. § 1997e. Consequently, you should disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each claim in your complaint. If the grievance procedures were not available for any of your claims, fully explain why on the lines provided.

Part E: Request for Relief

- Print the relief you are seeking in the space provided.

Signature

- You must sign your name and print the date you signed the complaint. Failure to sign the complaint will delay the processing of your action. If someone wrote this civil rights complaint for you (such as an inmate law clerk), that person must write their name on the line next to your signature.

D. Amended Complaints

If you need to change any information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights form. The amended complaint must be complete in itself and may not incorporate by reference any part of your prior complaint. Any allegations or defendants not included in the amended complaint are considered abandoned. Please refer to LR 15-1 and Fed. R. Civ. P. 15 for how and when a party may move the court to file an amended complaint.

area of a Business next door (An Arcade) where the arcade stored lost items. PHT pg. 27 lines 12-15. nothing was missing from this lunch bag PHT pg. 27 lines 19-23. This lunch Bag was reported lost or missing and not stolen. Las Vegas Metropolitan Police Incident File Full Report pg. 2 of 4 Exhibit one. This was the second time the owner of the Bag reported it missing. See Exhibit one. No one ever witnessed petitioner go into a locker and remove anything. Las Vegas Metropolitan Police Continuation Report pg. 3 also PHT pg. 29 lines 16-20 and PHT pg. 83 lines 15-17. Petitioner is shown on surveillance video exiting the Arcade with nothing belonging to anyone. "Though Circumstances may Create a Suspicion of guilt, these Same Circumstances are Consistent with the theory of innocence as they are with the theory of guilt" State of Nevada v. Cerfoglio, 46 Nev. 332, 205 P. 2d 791. In the Case at hand the pendulum strongly favors the petitioner. Roybal v. Colorado, 178 Colo. 259, 496 P.2d 1019. Petitioner Edwards Simply placed a lost/missing "Lunch Bag" in to an Arcade's Storage area where lost and found property was stored. It appears from the owner of the Lunch Bag's own statements she had a habit of misplacing her Lunch Bag See Exhibit one. Petitioner's presence in the employee's hall area with the Lunch Bag may appear to be Suspicious Circumstances, yet they do not prove petitioner intended to Commit a Petit Larceny. That Charged was dismissed. At the preliminary hearing in this Case, petitioner objected to the Deputy District Attorney Mr. Flinn's attempt to introduce an uncharged act in his attempt to establish (by any means) what petitioner's intent was when he entered the Bellagio Las Vegas. PHT pg. 43 lines 4-11 and the justice court judge the Honorable Eric Goodman agreed that Mr. Flinn Could not introduce this uncharged act PHT pg 43 lines 12-25 also pg. 44 lines 24-25. Judge Goodman asked Mr. Flinn if he had legal proof he could do what he was attempting to do PHT pg. 44 lines 24-25

_____
Name

_____

_____

_____
Prison Number

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

_____,
Plaintiff,

vs.

_____,

_____,

_____,

_____,

_____,
Defendant(s).

CASE NO. _____
(To be supplied by the Clerk)

CIVIL RIGHTS COMPLAINT
PURSUANT TO
42 U.S.C. § 1983

A. JURISDICTION

1) This complaint alleges that the civil rights of Plaintiff, _____,
(Print Plaintiff's name)

who presently resides at _____, were

violated by the actions of the below named individuals which were directed against

Plaintiff at _____ on the following dates
(institution/city where violation occurred)

_____, _____, and _____.
(Count I) (Count II) (Count III)

Mr. Flinn had no Caselaw. to prove he could do what he attempted to do. Mr. Flinn was searching for a way to make an uncharged act, (that hadn't been proven to be anything wrong) work to his advantage PHT pg. 47 lines 17-20. Judge Goodman had a problem with Mr. Flinn doing what he described as "Bootstrapping" an Uncharged act or incidence PHT pg. 45 lines 1-2 Mr. Flinn apologized for attempting to do what the justice Court judge accused him of doing or attempting to do. PHT pg. 45 lines 1-2 Judge Goodman clearly had a problem with what Mr. Flinn was attempting to do. PHT pg 46 lines 1-11. In any Hotel and Casino in Las Vegas, Customers, guest or tourist oftentimes leave or forget personal items money, keys, Wallets etc. lieing around, especially when they are focused on playing slot machine (SI), Cards. Craps or any number of a Casino's avocations. Petitioner is reported "finding" an ipad sitting by one of the Casino's slot Machines. PHT pg. 55 lines 12-14. Petitioner then puts the ipad back down where he found it and walks away from it PHT pg. 55 lines 19-20. The ipad was turned into the lost and found by a casino employee PHT pg. 32 lines 4-10. There was never a report made of a theft of an ipad PHT pg. 47 lines 17-20. Mr. Flinn's theories and allegations all fail, because both incidences he tried to use as the basis for the Burglary Charge (intent element) were disproved. Petitioner was not charged with taking an ipad PHT pg. 47 and Mr. Flinn's Witness Arvin Viacrussi testified that petitioner told him he would go and get the owner of the ipad PHT pg. 35 lines 9-15 and the Petit Larceny Charge was dismissed. You Cannot convict a person on what you believe they've done. There has to be proof. There is no proof, Petitioner did anything illegal. Contrary to what Mr. Flinn believes. No Witness Mr. Flinn produced or produces Can Say with "Personal Knowledge" that they observed petitioner take anything feloniously. Petitioner's Credible story PHT pg. 86 lines 18-21 Cannot

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EVENT SEARCH

16:07:53	EU	PD56	PU	FRM-LV/PD24		TO-LV/PD56		23	LV14760
16:07:56	USCL	PD24					414	23	LV14760
16:14:34	EU	PD176	PU	FRM-LV/PD56		TO-LV/PD176		23	LV14760
16:14:49	UO	PD56	Overdue: Operator: LV/14760		Console: 23				
16:16:01	USCL	PD56					414	23	LV14760
16:35:05	USCL	PD176					414	23	LV14760
16:35:05	CM		Route Closed: MAIN	C					
16:35:05	CM		Incident Closed: 15/09/19 16:35						
16:35:05	EU	PD176	D	FRM-		TO-C	MAIN	23	LV14760

HEREBY CERTIFY that this is a full, true and correct copy of the original on file with the Las Vegas Metropolitan Police Department, except for the information that is privileged and confidential by law.

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11/3/2015 11:44:57 AM

be contraverted. Petitioner found a Lunch Bag and left this Lunch Bag in a storage area of the Arcade next door where the Arcade stored lost items. Security Roi Ellis found the lost Lunch Bag and turned it in to the Bellagio's lost and found. Nothing was missing from this Lunch Bag PHT pg. 27 lines 19-23 See Exhibit one Guest / Employee Statement.

4.) District Court Judge Abused His Discretion When He Denied Petitioner's Pretrial Motion To Withdraw His Guilty Plea.

On October 5TH 2016 petitioner Edwards filed a pretrial motion to withdraw his guilty plea. District Court judge Douglas E. Smith abused his discretion when he denied petitioner's motion to withdraw his guilty plea, because he failed to review the entire record in deciding whether to allow petitioner to withdraw his guilty plea. and in doing so, the District Court judge failed to perform his duty as set forth by the Nevada Supreme Court in Bryant V. State. The Supreme Court noted that a Motion to withdraw a guilty plea when filed prior to Sentencing, avoids any prejudice to the state. Jezierski V State, 107 Nev. 395 (1991) Due to this fact, the Nevada Supreme Court holds that District Courts Must apply a more relaxed standard to presentence motions to withdraw guilty pleas than to Motions made post Sentencing NRS 176.165 A District Court may in its discretion grant a Defendant's Motion to Withdraw a guilty plea for any Substantial reason if it is fair Molina V. State, 120 Nev. 185 2004 Citing Woods V. State, 114 Nev. 468 (1998) When rendering it's decision to whether to allow the withdrawal of a guilty plea the District Court Must look to the totality of the Circumstances and the "Entire record" of the Case when rendering its decision. Crawford V. State, 117 Nev. 718 2001 Citing Mitchell V. State, 109 Nev. 137 848 P. 2d 1060 (1993) In Mitchell a Defendant appealed the denial of her Motion to Withdraw her guilty plea after the District Court only reviewed the Sentencing Canvass instead of the Entire Record of the Case.

9. Again, even though you properly allege everything in the above paragraphs, a civil rights action may be barred if it is not brought in a timely fashion, that is, within the time period designated by statute. The statute of limitations for civil rights actions filed in this court is two (2) years. Consequently, a civil rights action is barred if the complaint is not received by the court within the two (2) year deadline. For example, if a civil rights violation occurred on January 1, 2004, the complaint would have had to have been received by the clerk's office on or before January 1, 2006. If it was not received until January 2, 2006, the action would have to be dismissed as being barred by the statute of limitations.

C. Completing the Civil Rights Complaint Form:

Heading:

1. Print your name and mailing address on the lines provided. If you have a prison or jail inmate number, be sure to write it on the line provided.

2. Space is provided for you to name up to five (5) defendants. If you are attempting to sue more than five (5) individuals, then on the five lines provided in the heading write "see additional page for defendants"; on an additional page you must list in alphabetical order the names of all of the defendants. This additional page should be inserted after page 1 and numbered as page "1-A" at the bottom of the page. The original complaint must contain the names of all of the parties (plaintiffs as well as defendants) in the heading (or on the additional page if more than five defendants). See Rule 10(a) of the Federal Rules of Civil Procedure.

3. If you want a jury trial, then you must write "JURY TRIAL DEMANDED" on the line below "42 U.S.C. § 1983". A jury trial is not available if you are only seeking injunctive relief.

4. If you are filing a complaint in which you are naming as a defendant a federal officer instead of a state, county or city official, then you should cross-out "42 U.S.C. § 1983" and below it write "*BIVENS* ACTION".

Part A:

(This part of the form is designed for you to easily tell the court that it has the necessary jurisdiction over all of the parties and jurisdiction over the subject matter)

1. Fill-in all of the requested information about you on the spaces provided. Be sure to write the date(s) on which you allege your rights were violated in Counts I-III. If your complaint has more than three counts, then at the beginning of each additional Count be sure you write the necessary date(s).

2. Fill-in all of the requested information about each of the defendants in the spaces provided. Space is provided for you to give the necessary information for five (5) defendants. If you are naming more than five (5) defendants, then make a copy of page 2 of the form so you can provide the necessary information for the additional defendants. Label the page(s) as "2-A", "2-B", etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

3. This civil rights complaint form is designed so that it invokes the court's jurisdiction under 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under any other statutes, then you must list them at the top of page 3.

The Supreme Court of Nevada held that the district Court was incorrect in limiting its decision whether to grant her motion Solely on the Sentencing Canvass and remanded the Case accordingly. The Court specifically stated that a district Court may not Simply review a plea Canvass in a Vacuum and use Such information as a Sole basis for rendering a decision on Such a motion. Under the Circumstances of the instant Case just as in Mitchell V. State, it was Clear abuse of discretion for the District Court judge to deny appellant's Motion to Withdraw his guilty plea. Appellant Edwards provided the Court with a Credible Story PHT pg. 86 lines 12-23 also pg. 87 lines 1-15 explaining his actions and denying any Criminal intent. Nothing in the instant Case is missing PHT pg. 27 lines 19-23. Petitioner Edwards filed his motion to withdraw his plea before Sentencing thereby avoiding any prejudice to the State. Mitchell V. State and Jezierski V. State supra.

5) Ineffective Assistance of Counsel: VI-Violation

The right to Counsel is the right to effective assistance of Counsel. The Sixth Amendment recognizes the right to the assistance of Counsel. Strickland V. Washington. 466 U.S. 688; 104 S.Ct. 2052; 80 L.Ed 2d 674 (1984). A Convicted Defendant's Claim that Counsel's assistance was So defective as to require reversal of Conviction. First the Defendant must Show that Counsel's performance was deficient. In the Case at hand Public Defender T.J McCubbins was deficient for Several reasons. (1) He allowed petitioner to plead guilty and Stipulate to Habitual offender Stantus without reviewing the documents for proof of Convictions. two (2) He unreasonably failed to meaningfully investigate petitioner's Claim of innocence and Credible Story. three (3) He failed to adequately investigate the facts of the case and prepare for trial. Petitioner asserts that he received ineffective assistance of from Court appointed Public Defender T.J. McCubbins for the above mentioned reasons. Deputy Public Defendor T.J. McCubbins advised petitioner to accept

Part B:

1. Briefly state the general facts about your case. You should give an overview of what happened by informing the court of the background information relating to your claims. This is not the place to provide detailed information about what each defendant did to violate your rights--that should be done in Part C. Instead, all you are attempting to do in this part of the complaint is to tell the court the factual basis for your action. For example, in this part of the complaint you would inform the court that you allege that defendants failed to follow proper procedures in the disciplinary process.

2. You should not need additional space, but if you do, additional space is provided on the last page; and if that is not enough, then you may attach an additional page(s), labeled as page "3-A" at the bottom of the page and insert the additional page(s) immediately behind page 3. Remember, you are limited to a total of **two** (2) additional pages for Part B and Part C; if you have more than **two** (2) additional pages, you will also need to file a motion seeking permission from the court to file the complaint.

Part C:

1. This is where you identify what rights the defendant(s) violated. The form provides three (3) pages for alleging three (3) counts. If you are alleging more than three counts, use the additional space on the last page, and if that is not enough, then attach an additional page for each additional count (so that there is only one count per page). Number the additional pages "6-A", "6-B", etc., and inserted immediately behind page 6. Remember, you are limited to a total of two (2) additional pages for Part B and Part C; if you have more than two (2) additional pages, you will also need to file a motion seeking permission from the court to file the complaint.

2. To begin, you must identify which civil right was violated. YOU MAY ALLEGE THE VIOLATION OF ONLY ONE CIVIL RIGHT PER COUNT. Using the above example about the disciplinary process, you would state that your right to due process as guaranteed by the Fourteenth Amendment was violated.

3. After you have identified which civil right was violated, you need to state the supporting facts; and be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you need to identify by name which defendant did what act. Simply saying "the defendants" is insufficient; instead, you must say defendant X (insert the name of the defendant) did (tell what the defendant did), etc. for each named defendant. As best as possible, you also need to state the date(s) on which the act(s) occurred.

Part D:

1. You must identify any other action you have filed in either state or federal court that relates to the same or substantially similar claims you have alleged in this civil rights complaint. Also, if this civil rights complaint involves a claim relating to the conditions of confinement, then you must list any other action you have filed which relates to conditions of confinement.

2. Unlike habeas corpus actions, exhaustion of administrative remedies is generally not a prerequisite to filing a civil rights complaint. However, because the Inmate Grievance Procedures adopted by the Nevada Department of Prisons have been approved by the Attorney General of the United States pursuant to 42 U.S.C. § 1997e, if you are an inmate within the Nevada Department of Prisons you must exhaust the administrative remedies before you will be able to proceed with your case against the defendants. Consequently, you must disclose whether you have exhausted the inmate grievance procedures. If the basis for your complaint is exempt from the grievance procedures, be sure you fully explain why.

a plea deal, when petitioner has always maintained that he is innocent. PHT pg.86. Petitioner was relunctant to plead guilty, to Convince Edwards to plead guilty Mr. McCubbins along with Public Defender Robert D'Brien told Edwards stories of how district Court judge Douglas E. Smith would doctor Court transcripts, Would allow the State to introduce any evidence they wanted and if petitioner was found guilty he would(for Sure) get life without the possibility of parole. Petitioner pled guilty not because he was. See plea Canvass Transcripts pg 8 lines 22-24. Petitioner maintained that he was not guilty. Iaea V. Sunn, 800 F.2d 861 (1986). A Defendant's Counsel who abandons his duty of loyalty to his Client and effectively joins the prosecutor in effort to attain a Conviction Suffers from obvious Conflict of interest, Such an attorney, like unwanted Counsel, represents the defendant only through a tenous and Unacceptable legal fiction. Mr. McCubbins allowed Edwards to Stipulate to Habitual Offender Status absent review of proper documentary proof of prior Convictions. Seeing no loyalty from your own Counsel when undivided allegiance and faithful, devoted service to a Client are prized traditions of the American Lawyer will often encourage a defendant (as was done in this Case) to Surrender and make a rushed unintelligent plea to get it over with even if he Knows he is innocent. A defendant who pleads guilty upon the advice of Counsel may attack the validity of the guilty plea by showing that he received ineffective assistance of Counsel Under the Sixth Amendment to the United States Constitution. However, guilty pleas are presumptively valid, especially when entered on advice of Counsel, and a defendant has a heavy burden to Show the Court that he did not enter his plea Knowingly, intelligently or Voluntarily. To establish prejudice in the Context of a Challenge to a guilty plea based upon the assertion of ineffective assistance of Counsel, a defendant must demonstrate a reasonable probability that, but for Counsel's errors, he would not have

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Downtown
Fremont St
Great Basin Hwy
93
515
E Bonanza Rd
Las Vegas Expy
Oran K Gragson Fwy
95
Pearson Park
Ethel
578
W Washington Ave
E Washingt
N Main St
93
H St
Blvd
S Main St
S Las Vegas Blvd
John S. Parks
E Charleston Blvd
159
582
S Eastern Ave
E St Louis Ave
Jaycee Park

pled guilty and would have insisted on going to trial. Along with the above mentioned reasons Counsel's performance was deficient. Counsel McCubbins was assigned the instant Case in the middle of March 2016. in his first appearance before the district Court judge in Dept 8 on April 6th 2016. he was directed by the judge to refile a discovery motion. The record will show that he failed to that. He visited with petitioner once in March 2016 and did not visit again until August 18th 2016 See Exhibit #9. Mr. McCubbins never discussed any defense strategy and never filed any Motions in this Case Until after Calendar Call which was August 17th 2016. After Calendar Call August 17th 2016 trial was ordered in three (3) days and Mr. McCubbins was not prepared to proceed to trial Mr. McCubbins had over three months to file a Motion To Consolidate the instant Case 310695 (he was assigned to) with the oldest Case petitioner had in the system Case NO. 310166. But because he and the other Public Defender that was assigned to Case No. 310166 filed the Motion To Consolidate until (5) days before Calendar Call the motion to Consolidate was denied by the district court judge where the oldest case was, because the Motion was filed too late. See Exhibit #6 But for counsel McCubbins deficient performance petitioner would have been allowed to transfer out of District Court Dept 8 (where according to Mr. McCubbins. the judge in that department did all these unethical things) into District Court 23 where a more reasonable and fairer judge resided. But for Counsel McCubbins deficient performance of not re-viewing the proper proof of prior Convictions used by the state for en-hancement purposes. petitioner would not have stipulated to the Habitual Criminal Status. But for Counsel McCubbins deficient performance of not thoroughly investigating petitioner's Claim of innocence in the Burglary Charge petitioner would have proceeded to trial. Petitioner Edwards repeatedly advised his Counsel Mr Cubbins that he found a Lunch bag lieing on the hall entrance floor to a place petitioner was seeking employment at and

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16:07:53	EU	PD56	PU	FRM-LV/PD24		TO-LV/PD56		23	LV14760
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16:14:34	EU	PD176	PU	FRM-LV/PD56		TO-LV/PD176		23	LV14760
16:14:49	UO	PD56	Overdue: Operator: LV/14760		Console: 23				
16:16:01	USCL	PD56					414	23	LV14760
16:35:05	USCL	PD176					414	23	LV14760
16:35:05	CM		Route Closed: MAIN		C				
16:35:05	CM		Incident Closed: 15/09/19 16:35						
16:35:05	EU	PD176	D	FRM-		TO-C MAIN		23	LV14760

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turned the Lunch bag in to the Storage area of the Arcade next door where the Arcade stored lost property and where this Lunch Bag was found with nothing missing PHT pg. 27 lines 19-23 and returned to the owner who (it should be noted) had reported this same Lunch Bag lost or missing once before See Exhibit one. Edwards explained to Mr. McCubbins that he is observed on the Casino's Surveillance Video entering Legally. Once inside Edwards is shown taking pictures with his phone for almost an hour, acting Consistent with why this place of Business is open to the public, So Edwards's actions upon entering the Bellagio Las Vegas does not Show that he had any felonious intent. A formulated intent to do anything illegal after legally entering will not satisfy the Statute for Burglary State of Nevada V. Adams, 94 Nev. 503; 581 P.2d 868. This fact was adamantly articulated to Mr. McCubbins, but Mr. McCubbins Continued to State Coercive language in opposition to Correct legal facts Mr. Edwards expressed. (for example) "No jury will believe this story" "especially Nevada's jurors." placing himself in the mind of Nevada's jurors. Edwards asked Mr. McCubbins to Check out the Arcade in the Bellagio where the lunch bag was found to verify that the area where the Lunch Bag was found was in fact an area where the Arcade stored Lost Property. He waited until one day after Calendar Call to file the Motion to be permitted access. He had three months to file any Motions in this Case. He told Edwards in April 2016 that he had already Checked the Arcade out to verify whether it held Lost property where the Lunch Bag was found, [redacted] He told Edwards that he had good and bad news, the bad news was that the Arcade was closed which is highly Suspect, because why would he file a Motion To Be Permitted Access on August 18th 2016 four months after he told Edwards he had already Checked out the Arcade and that bad news was that it was closed. See Exhibit Seven. There was actually no good news at all. Mr. McCubbins tried to Coerce Edwards not to

outline).

a) Defendants: _____

b) Name of court and docket number: _____

c) Disposition (for example, was the case dismissed , appealed or is it still pending?):

_____

d) Issues raised: _____

_____

_____

e) Approximate date it was filed: _____

f) Approximate date of disposition: _____

2) Have you filed an action in federal court that was **dismissed because it was determined to be frivolous, malicious, or failed to state a claim upon which relief could be granted?** ____ Yes ____ No. If your answer is "Yes", describe each lawsuit. (If you had more than three actions dismissed based on the above reasons, describe the others on an additional page following the below outline.)

Lawsuit #1 dismissed as frivolous, malicious, or failed to state a claim:

a) Defendants: _____.

b) Name of court and case number: _____.

c) The case was dismissed because it was found to be (check one): _____ frivolous ____ malicious or ____ failed to state a claim upon which relief could be granted.

d) Issues raised: _____

_____

e) Approximate date it was filed: _____

f) Approximate date of disposition: _____

Lawsuit #2 dismissed as frivolous, malicious, or failed to state a claim:

a) Defendants: _____.

b) Name of court and case number: _____.

proceed with trial on the bifurcated Petit Larceny Charge the state based Edwards intent on when he entered the Bellagio Las Vegas for the instant Burglary Charge. Petitioner was prepared to move forward on the Petit Larceny Charge with trial but that charge was dismissed in justice Court on May 10th 2016. It has long been recognized that the right to Counsel is the right to effective assistance of Counsel. If no actual assistance for the accused defense is provided, then the Constitutional guarantee has been violated U.S. V. Cronic, 466 U.S. 648 But for Counselor McCubbins errors, the outcome of this matter would have been different. Of all the rights that an accused person has, the right to be represented by Counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have. The United States Constitution guarantees an accused adequate legal assistance. A Criminal Defendant has a Constitutional guarantee to Competent attorney U.S. V. Cronic supra. Standard #9 of the ADKT 411 States: Under No Circumstances Should the Defense Counsel recommend to a Client acceptance of a plea Unless appropriate investigation and Study of the case has been Completed, including an analysis of the offense and of the Controlling law and evidence likely to be introduced if there is a trial. Mr. McCubbins failed to adhere to this. ADKT page 33 (d) (2) Counsel Should not attempt to unduly influence a Defendant's decision (e) (1) (2 and 3) He should not be coercive, which is exactly what Counsel McCubbins was in this Case. The record of this Case will reveal that petitioner was Called to District Court Dept 8 for a Special Setting for Friday August 19th 2016 at 10:30 a.m. See Exhibit Six (6) and was given only minutes to decide on accepting the State's plea offer, never completely reading the entire Contents of the plea memorandum and advised by Counsel McCubbins to just answer yes to all the District Court judge's questions. United States V. Marzgliano, 588 F. 2d 395.

federal government. The capacity in which a defendant is sued, however, is concerned with whether the defendant is sued because of actions personally taken, or whether they are sued because they happen to be holding a certain office or title, such as governor, warden or chief of police. There can be no civil rights suit unless the defendant was "acting under color of law". After the "color of law" requirement has been met, then it must be determined in which capacity the defendant is sued.

The distinction between whether a defendant is sued in their individual or official capacity is important because it determines what type of facts must be stated in the complaint. To sue a defendant in their individual capacity, you must be able to state facts showing that the person was actually, personally involved in violating your civil rights. However, a suit against a defendant in their official capacity is in reality a suit against the office/position that the defendant holds, instead of being based on that person's own actions. For example, a warden is responsible for the conditions of confinement, so a suit against the person who happens to be the warden (because he holds the title of warden) is a suit based on their official capacity. However, if the suit is based on actions taken by a person who happens to be the warden (without regard to the fact that they are the warden), then the suit is an individual capacity suit.

The types of relief that can be granted by the court are also determined by the capacity in which the defendant is sued. All types of relief can be granted in an individual capacity suit, i.e., monetary damages as well as injunctive relief. All types of relief can also be granted in an official capacity suit against a county or city official, but only injunctive relief is available in an official capacity suit against a state official.

5. You should keep in mind that if your suit is an individual capacity suit you cannot include someone as a defendant simply because they are a supervisor. You must be able to allege facts that show that the supervisor was personally involved in violating your civil rights. This is because liability must be based on the personal involvement of the defendant; liability may not be based on *respondeat superior* (which simply means that a supervisor is responsible for the acts of their subordinates). Consequently, a complaint that fails to show how the person was personally involved, or simply states that they are liable because they are the supervisor of another, fails to properly allege liability.

6. You can claim that the defendants acted as part of a conspiracy to violate your civil rights; you must, however, state sufficient facts to support the claim. Simply saying that the defendants acted as part of a conspiracy is not sufficient. Although a private party does not act "under color of law", they can be sued in a civil rights action if they are a co-conspirator with a federal, state, county or city official. As a partner in a conspiracy, they act as the agent of the state official.

7. You can name someone as "John Doe" in the complaint if you do not know their true name. However, to properly name a "John Doe" Defendant, you must provide all of the information you would normally provide if you already knew their name. For example, the easiest way to allege "John Does" is according to their function or action, such as John Doe #1 was the arresting officer, John Doe #2 was the booking officer, John Doe #3 was the medical officer who treated my injuries on (date), or John Doe #4 was the officer who searched my cell. Simply saying "John Does 1-15" is totally meaningless.

8. Even though you properly allege everything in the above paragraphs, there are some individuals who cannot be sued in a civil rights suit, that is, they are immune from suit. There are, however, different degrees of immunity. Absolute immunity protects judges, prosecutors and court personnel (to name a few) from civil rights suits in any court for actions they take within the scope of their duties as an integral part of the judicial process. Similarly, a state and its agencies are protected from suit in federal court by the Eleventh Amendment to the United States Constitution; but the immunity does not preclude the suit from being litigated in a state court.

6) Petitioner Accuses Prosecutor of Vindictive Prosecution; And Misconduct

Petitioner asserts that before he went to trial on Case No. 311212, (Which is part of the instant plea deal along with Case No. 310695), There was a global guilty plea agreement extended to petitioner that was substantially lesser than the one petitioner was subsequently Sentenced to. Because the United States Supreme Court has reasoned that due process requires that a Defendant be free from fear of retailiatory action when he asserts procedural rights Blackledge V. Perry, 417 U.S. 21 94 S.Ct. 2098; 40 L.Ed 2d 628; (1974). Bordenkircher V. Hayes, 434 U.S. 357; 98 S.Ct. 663; 54 L. Ed 2d 604; (1978). Petitioner's due process rights Violated in the instant Case because he should not have been allowed to have been dealt with more harshly because he decided to exercise his Constitutional Right in Case No. 311212 when he proceeded to trial. To punish a person because he has done what the law plainly allows him to do is a due process Violation of the most basic sort, and for an agent of the state to persue a Course of action whose objective is to penalize a person's reliance on his legal rights is patently unconstitutional. Bordenkircher V. Hayes supra. Vindictiveness was Clearly Shown when on August 17th 2016 before the District Court Mr. Flinn displayed personal animus towards petitioner when he stated on record "I'm tired of playing with Mr. Edwards." It is improper for a prosecutor to display his personal animus towards a defendant. Collier V. State, 101 Nev. 473; 705 P.2d 1126 Supreme Court Rule 173(5) States that a lawyer Shall not express a personal Opinion. Witherow V. State, 104 Nev. 721; 765 P.2d 1153. The Statement made by Mr. Flinn was done for no other purpose except to delude the Court (who's duty everyone Knows is to safeguard the waste of judicial resources) into becoming inflammed with indifference towards petitioner. Prosecutor Committed patently prejudicial and inflammatory Misconduct. In Considering whether pros-

COUNT II

The following civil rights has been violated: _____

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

ecutorial misconduct warrants reversal of Conviction. the Supreme Court of Nevada Considers the nature of the evidence presented against defendant. If the issue of guilt or innocence is Close and the State's Case is not Strong (as is the case in the instant Charge) Prosecutorial misconduct will probably be considered prejudicial. However, where evidence of guilt is overwhelming even aggravated prosecutorial misconduct may Constitute harmless. error. Ellison V. State, 87 Nev. 479 P.2d 461. It is well Understood that if a prosecutor is obliged to choose his cases, it follows that he Can also choose his defendants. Herein is the most dangerous power of the prosecutor, because he picks people that he thinks he should get, rather than pick Cases that need to be prosecuted. It is in this realm - in which the prosecutor picks Some person (in this Case petitioner) whom he dislikes or desires to embarrass, this is where the greatest danger of abuse of prosecuting power lies and it is here that Law Enforcement becomes personal, and the real Crime becomes that of being unpopular with the prosecutor (as in this Case) because to him petitioner is obnoxious to or in the way of the prosecutor. Because Edwards did not or was not handling these Charges as Mr. Flinn wanted, gives him no right to utter Such Prejudicial Language as he did when he Stated on record "I'm tired of playing with Mr. Edwards." For Mr. Flinn to make Such bald and disparaging, inflammatory Comments has absolutely No place inside a Courtroom and Clearly Shows (because he raised the punishment offered previously) that his actions were Vindictive. Petitioner expected to be protected from the Vindictive exercise of Mr. Flinn's prosecutorial discretion. Prosecutor's Should not be allowed to behave in a manner that even Suggest a retiatory motive. Mr. Flinn's Statement is tantamount to him admitting Vindictive Motivation. By making that Statement, a Strong inference was Created

COUNT III

The following civil rights has been violated: _____

_____

_____

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

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D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

1) Have you filed other actions in state or federal courts involving the **same or similar facts** as involved in this action? ____ Yes ____ No. If your answer is "Yes", describe each lawsuit. (If more than one, describe the others on an additional page following the below

that the sole reason Mr. Flinn recommended a more severe penalty was vindictively motivated. Although a prosecutor may in the course of plea negotiations offer a Defendant a lesser punishment in a global negotiation... he may not threaten a Defendant with the consequence that a more severe punishment will be presented if he insists on going to trial. If a prosecutor recommends a less severe punishment at the beginning of a global negotiation because he determines that the interest of the state is best served by not having to expend judicial resources by going to trial, then after plea negotiations fail, he then recommends a more severe punishment a strong inference is created that the only reason for the more severe recommended sentence is vindictiveness. Under these circumstances, the prosecutor should be required to justify his actions. Hayes V. Cowan, 547 F. 2d. In this case, a vindictive motive need not be inferred, the prosecutor stating "I'm tired of playing with Mr. Edwards." Has admitted it. By that occurring it presents evidence that the more severe penalty from 5-12 years to 10 to 25 years is retaliatory for petitioner going to trial on the 311212 case which was part of the original plea offer first extended to petitioner. This same case 311212 (which petitioner was petitioner was found guilty on in trial) was made part of the new Guilty plea Agreement along with the instant case 310695. This too should show the kinds of tactics this Deputy District Attorney will resort to in an effort to secure a conviction. The legitimate purposes of plea bargaining are not served if a prosecutor abuses his powers in order to coerce an unwilling defendant (petitioner Edwards) into forgoing his Constitutional Right to trial See Hayes V. Cowan Supra. It is improper to refer to a defendant in a derogatory manner McGuire V. State, 100 Nev. 153; 677 P.2d, disparaging comments have absolutely no place in a Courtroom. it constitutes misconduct.

Electronically Filed
01/05/2016 10:27:10 AM

CLERK OF THE COURT

NOTC
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
WILLIAM FLINN, JR.
Deputy District Attorney
Nevada Bar #013119
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAROLD EDWARDS,
#7024721

Defendant.

CASE NO: C-15-310695-1

DEPT NO: VIII

NOTICE OF INTENT TO SEEK PUNISHMENT AS A HABITUAL CRIMINAL

TO: HAROLD EDWARDS, Defendant; and

TO: PRO PER, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that pursuant to NRS 207.010, the STATE OF NEVADA will seek punishment of Defendant HAROLD EDWARDS, as a habitual criminal in the event of a felony conviction in the above-entitled action.

That in the event of a felony conviction in the above-entitled action, the STATE OF NEVADA will ask the court to sentence Defendant HAROLD EDWARDS as a habitual criminal based upon the following felony convictions, to-wit:

1. That in 1984, the Defendant was convicted in the State of Illinois, for the crime of Robbery (felony).

2. That in 1988, the Defendant was convicted in the State of Illinois, for the crime of Theft (felony).

The Large Habitual Sentence In This Case is Excessive And Substantially Disproportionate To The Underlying offense As To Constitute Cruel And Unusual Punishment IN Violation Of The Eighth Amendment:

If we are construing a living Constitution, the sentence imposed upon petitioner would be viewed (because of the Circumstances envolved in the instant Case) as Substantially unjust by Virtually every layman and lawyer alike. The objective Criteria in the instant matter, Clearly will establish that a 10-25 year Sentence for finding a Lunch Bag in the entrance doorway of a business petitioner was Seeking employment at PHT pg. 86 lines 18-20 and turning this Lunch Bag in to a Storage Area of the Arcade next door where the Arcade Stored lost property. Nothing was missing from the Lunch Bag PHT pg. 27 lines 19-23. This was the Second time the owner of the Lunch Bag reported her Lunch Bag missing or lost. See Exhibit One: Also no one ever Saw petitioner go into any locker PHT pg. 83 lines 15-17. This Lunch Bag was reported lost or missing and not Stolen See Exhibit one: The bifurcated petit larceny charge which the State relied on as proof of petitioner's intent when he entered the Bellagio Las Vegas property that Charge was dismissed, So the gravaman of the State's Charge against petitioner was dismissed. The Sentence in question Crosses any rationally drawn line Separating punishment that lawfully may be imposed from that which is proscribed by the Eighth Amendment. The Sentence in this Case 10-25 years is Substantially disproportionate to the Crime alleged. Petitioner is charged with Burglary which at best is merely a possession of loss or mislaid property. On the Bellagio Las Vegas's Sur-

EVT#: 150919-1961

CCN: 15F14754X LAS VEGAS JUSTICE COURT **SEQ#:** 2 **CREATED:** 10/01/2015 20:32:40 **UPDATED:**
JUV/CERT/ADULT: ADULT

RN#: 0011 **CHARGE:** 3 **TYPE:** WA **OFF:** 50424 BURGLARY, (1ST) (F) **COUNTS:** 1 **EVT#:** 150828-2668
CCN: 15F13848X LAS VEGAS JUSTICE COURT **CREATED:** 10/01/2015 20:32:40 **UPDATED:** **JUV/CERT/ADULT:** ADULT

RN#: 0012 **CHARGE:** 4 **TYPE:** WA **OFF:** 56004 GRAND LARCENY, < $3500 (F) **COUNTS:** 1 **EVT#:** 150828-2668
CCN: 15F13848X LAS VEGAS JUSTICE COURT **CREATED:** 10/01/2015 20:32:40 **UPDATED:** **JUV/CERT/ADULT:** ADULT

ARREST DATE: 8/28/2015 **AGY: LAS VEGAS METRO PD** **PCN#: 25580390** **BK#: -**

RN#: 0003 **CHARGE:** 1 **TYPE:** PC **OFF:** 50221 BATTERY ON PROTECTED PERS (G) **COUNTS:** 1 **EVT#:** 150828-3771
CCN: 15F12890X LAS VEGAS JUSTICE COURT **SEQ#:** 1 **CREATED:** 08/29/2015 00:05:31 **UPDATED:**
JUV/CERT/ADULT: ADULT

RN#: 0004 **CHARGE:** 2 **TYPE:** PC **OFF:** 57432 PEDESTRIAN FTO COLORED LIGHTS/LIGHTED ARROWS (M) **COUNTS:** 1 **EVT#:** 150828-3771
CREATED: 08/29/2015 00:05:31 **UPDATED:** **JUV/CERT/ADULT:** ADULT

RN#: 0005 **CHARGE:** 3 **TYPE:** PC **OFF:** 57475 PEDESTRIAN CROSSING OTHER THAN AT CROSSWALK (M) **COUNTS:** 1 **EVT#:** 150828-3771
CREATED: 08/29/2015 00:05:31 **UPDATED:** **JUV/CERT/ADULT:** ADULT

RN#: 0006 **CHARGE:** 4 **TYPE:** PC **OFF:** 57198 RESIST PUB OFF (M) **COUNTS:** 1 **EVT#:** 150828-3771
CREATED: 08/29/2015 00:05:31 **UPDATED:** **JUV/CERT/ADULT:** ADULT

RN#: 0007 **CHARGE:** 5 **TYPE:** PC **OFF:** 57040 FALSE STMT TO/OBSTRUCT PUB OFF (M) **COUNTS:** 1 **EVT#:** 150828-3771
CREATED: 08/29/2015 00:05:31 **UPDATED:** **JUV/CERT/ADULT:** ADULT

ARREST DATE: 8/28/2015 **AGY: LAS VEGAS METRO PD** **PCN#: 25580418** **BK#: -**

RN#: 0008 **CHARGE:** 1 **TYPE:** PCR **OFF:** 50790 OBT/POSS CR/DEB CARD W/O C-HOLDRS CONSENT (F) **COUNTS:** 1 **EVT#:** 150828-3771
CCN: 15F12896X LAS VEGAS JUSTICE COURT **SEQ#:** 1 **CREATED:** 08/29/2015 08:24:08 **UPDATED:**
JUV/CERT/ADULT: ADULT

ARREST DATE: 8/19/2015 **AGY: LAS VEGAS METRO PD** **PCN#: 25578836** **BK#: -**

RN#: 0001 **CHARGE:** 1 **TYPE:** PC **OFF:** 50790 OBT/POSS CR/DEB CARD W/O C-HOLDRS CONSENT (F) **COUNTS:** 1 **EVT#:** 150819-4356
CCN: 15F12361X LAS VEGAS JUSTICE COURT **SEQ#:** 1 **CREATED:** 08/20/2015 09:47:54 **UPDATED:**
JUV/CERT/ADULT: ADULT

RN#: 0002 **CHARGE:** 2 **TYPE:** PC **OFF:** 51896 ENGAGE IN BIZ W/O PRMT/LIC (M) **COUNTS:** 1 **EVT#:** 150819-4356
CCN: 15F12361X LAS VEGAS JUSTICE COURT **SEQ#:** 2 **CREATED:** 08/20/2015 09:47:54 **UPDATED:**
JUV/CERT/ADULT: ADULT

FINAL DISPO DATE:	FINAL OFF:	DISPO:
11/25/2015	51896 ENGAGE IN BIZ W/O PRMT/LIC (M)	DENIED
CCN: 15F12361X		**UPDATED:**

FINE	EXCUSE	RESTITUTION
$	$	$

MIN	YRS	MOS	DAYS	HRS	MIN	YRS	MOS	DAYS	HRS

THE USE AND DISSEMINATION OF THIS RECORD IS REGULATED BY LAW. SECONDARY DISSEMINATION OF ANY KIND IS PROHIBITED AND COULI SUBJECT THE OFFENDER TO CRIMINAL AND CIVIL LIABILITY.
LAS VEGAS METRO PD MARIA JACKSON/M9282J 09/06/2016 10:11:52

RELEASE TO: EDWARDS, HAROLD

veillance video, petitioner is observed entering the Bellagio Las vegas (which is open twenty four (24) hours a day and everyday invites the public inside) legally. Anyone who enters this place of business is considered a guest. Petitioner is then viewed (after legally entering) taking pictures with his cellphone, acting very much consistent with why this business is open to the public. This fact is uncontraverted. But let's say (for argument sake) petitioner who entered the Bellagio Las Vegas legally then formulates an intent to commit some sort of larceny after the legal entry. this conduct does not satisfy the Burglary statute in Nevada. See State of Nevada V. Adams, 94 Nev. 503: 581 P. 2d 868. Clearly the the sentence in this case does not fit the alleged Conduct. The New Hampshire proportionality provision, by far the most detailed of the genre read "All penalties ought to be proportionate to the nature of the offense." No wise legislature will affix the same punishment to the Crimes of theft, forgery and the like, which they do to those of murder and other violent offenses. In the case at hand, there is absolutely no violence and nothing is missing in this case. PHT pg. 27 lines 19-27. This is a victimless case. The Eighth Amendment prohibits disproportionate sentences. All the past caselaw dealing with disproportionate sentences, are hugely different from the case here, again, there is no victim and nothing is missing in this case period. Petitioner is not attacking the habitual Criminal Statute itself, nor is he attacking Nevada's Burglary statute. The issue raised here is that the Large Habitual Criminal Sentence in this case (especially Considering the Circumstances in underlying offense) is excessive and disproportionate to the

TERM OF SENTENCE		COMMUNITY SERVICE	
CREDIT TIME SERVED	NO	PROBATION	

PER NEVADA REVISED STATUTES, LAS VEGAS METRO PD IS AUTHORIZED TO RELEASE OUR AGENCY'S CRIMINAL HISTORY INFORMATION ONLY. FOR OTHER AGENCY INFORMATION, CONTACT THE AGENCY DIRECTLY – OR – FOR COMPLETE BACKGROUND CHECKS, CONTACT THE STATE OF NEVADA REPOSITORY.

ENTERING AGENCY: LAS VEGAS METRO PD **CREATED BY:** BLOCKED ID3 – LVM 06/13/2013 05:57:29 **LAST MODIFIED BY:** R5253S 08/05/2016 14:36:49

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RELEASE TO: EDWARDS, HAROLD

Underlying Charge. as to Constitute Cruel and Unusual. It is not So Unusual to be Sentenced to 10 years for a Burglary, but the Circumstances envolved in this case does not warrant Such a Sentence as 10 to 25 years, after veiwing the circumstances in the case at hand 10 to 25 years would Shock any Society. this case is about a Lunch Bag being reported lost or missing See Exhibit one: This was the Second time the owner reported her Lunch Bag lost or missing See Exhibit one: The Lunch Bag was found in an area of the business next door (an Arcade) where the Arcade Stored lost property and nothing was missing from the Lunch Bag PHT pg. 27 lines 19-23 Nothing is missing and no one was injured, no property was destroyed petitioner Simply being Charged with a Burglary when Clearly the case is not. The public would be Shocked Seeing Someone Sentenced to that large amount of time for actually no Criminal Conduct. Davis V Zachradnick, 432 F. Supp. 444. Hart V. Coiner, 483 F. 2d 136. Thacker V. Garrison, 445 F. Supp. 376. Weems V. United States, 217 U.S. 349, Robinson V. California, 370 U.S. 660, Ashley V. State, 538 So. 2d 1181 (miss 1989) Clowers V. State, 522 So. 2d 762 (miss 1988) Solem V. Helm, 436 U.S 277. Nevada's recividist Scheme is Constitutional as written therefore this Court is not precluded from deciding this issue. A Concededly Validly created Statute may be applied in a particular Case in such a way as to Violate various Constitutional provisions. Edwards V. S. Carolina, 372 U.S. 229 (Speech and assembly). Yick Wo V. Hopkins, 118 U.S. 356 (Equal protection) Disproportionate punishment may Contravene the eighth amendment. Petitioner Contends that the Sentence 10-25 years is excessive as applied to the Circumstances of the

SCOPE II - R2I1 › Dissemination - Citizens

CITIZENS REPORT

SCOPE RESPONSE

PERSON BASE RECORD

ID #: 7024721

NAM: EDWARDS, HAROLD **DOB:** 12/10/1964

SEX: M **RAC:** B **HGT:** 504 **WGT:** 150 **HAIR:** BLK **EYE:** BRO

ADR: RS 3117 JUDICE AVE
LAS VEGAS NV 89101

AKA [2]

NAME	AGY	ENTRY DATE
EDWARD, HAROLD	LAS VEGAS METRO PD	10/1/2015
EDWARDS, HAROLD	LAS VEGAS METRO PD	8/20/2015

ADDITIONAL DOB [1]

DOB	AGY	ENTRY DATE
12/10/1964	LAS VEGAS METRO PD	8/20/2015

TYPE:	AGY:	EVENT DATE/TIME:	ENTERED:	EVENT#:
TR	LAS VEGAS METRO PD	09/11/2015 04:45:00	09/11/2015 15:58:40	150911-0470

BUSINESS NAME:
STRATOSPHERE
INCIDENT ADDRESS:
2000 S LAS VEGAS BLVD LAS VEGAS NV

CRIMINAL HISTORY **ARR [9] CIT [0] SUM [0]**

ARREST DATE: 1/15/2016 **AGY: LAS VEGAS METRO PD** **PCN#:** **BK#: -**

RN#: 0001 **CHARGE:** 1 **TYPE:** RMDR **OFF:** 50790 OBT/POSS CR/DEB CARD W/O C-HOLDRS CONSENT (F) **COUNTS:** 1 **EVT#:** 150819-4356
CCN: 15F12361X LAS VEGAS JUSTICE COURT **CREATED:** 01/16/2016 08:29:39 **UPDATED:** **JUV/CERT/ADULT:** ADULT

RN#: 0020 **CHARGE:** 2 **TYPE:** RMDR **OFF:** 50790 OBT/POSS CR/DEB CARD W/O C-HOLDRS CONSENT (F) **COUNTS:** 3
CCN: 15F12361X LAS VEGAS JUSTICE COURT **CREATED:** 01/16/2016 08:29:39 **UPDATED:** **JUV/CERT/ADULT:** ADULT

ARREST DATE: 10/20/2015 **AGY: LAS VEGAS METRO PD** **PCN#: 25585841** **BK#: -**

RN#: 0019 **CHARGE:** 1 **TYPE:** RMDR **OFF:** 50790 OBT/POSS CR/DEB CARD W/O C-HOLDRS CONSENT (F) **COUNTS:** 4
CCN: 15F14754X LAS VEGAS JUSTICE COURT **SEQ#:** 5-8 **CREATED:** 10/20/2015 19:13:13 **UPDATED:** **JUV/CERT/ADULT:** ADULT

ARREST DATE: 10/14/2015 **AGY: LAS VEGAS METRO PD** **PCN#: 25588254** **BK#: -**

RN#: 0016 **CHARGE:** 1 **TYPE:** PCR **OFF:** 56008 GRAND LARCENY, $3500+ (F) **COUNTS:** 1 **EVT#:** 150927-3210

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LAS VEGAS METRO PD MARIA JACKSON/M9282J 09/06/2016 10:11:52

RELEASE TO: EDWARDS, HAROLD

Underlying charge. Given the pronouncements of the United States Supreme Court on this subject, it becomes apparent that excessiveness is the hallmark of Cruel and Unusual punishment. Moreover, one of the primary Criteria's for evaluating the excessiveness, is the disproportionality of the Sentence in relation to the offense, O'neil V. Vermont, 144 U.S. 323 (1892) Weems V. United States, Furman V. Georgia and Hart V. Coiner, 483 F. 2d 136 (4th Cir 1973). Given the inescapable Conclusion that a Sentence may be excessive to one individual and appropriate to another, even though both individuals are similarly situated in terms of broad Statutory provisions, it seems only reasonable to infer that the length of an otherwise valid Sentence is not immune from Constitutional Scruting. The factors to be Considered in determining whether the Sentence is excessive are: nature of offense, the legislature purpose behind the statutorily permissible punishment, the Kind of punishment other jurisdictions impose for the Same Crime, and the Comparative punishment in the same jurisdiction for other offenses. Hart V. Coiner, Supra (a) Petitioner addresses the nature of the offense. In the case here for Burglary, is first a Crime that is Centered on the initial intent as explained Supra. Petitioner did not have the intent to Commit larceny when he legally entered the Bellagio Las Vegas, a business that invites the public inside. State of Nevada V. Adams, 94 Nev. 503; 581 P2d 868. A Burglary Usually envolves Burglary Tools. No Burglary Tools were found on petitioner Petitioner was arrested two (2) weeks later with nothing belonging to anyone. There was never any proof of petit larceny, the bifurcated charge of petit larceny was dismissed May 10th 2016

6) Defendant _____ (full name of first defendant) resides at _____ (address if first defendant), and is employed as _____ (defendant's position and title, if any). This defendant is sued in his/her ___ individual ___ official capacity. (Check one or both). Explain how this defendant was acting under color of law: _____

_____

7) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343 (a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional statutes, list them below.

_____

_____

B. NATURE OF THE CASE

1) Briefly state the background of your case.

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C. CAUSE OF ACTION

In examining the length of a sentence, it is not enough merely to look at how the crime may usually have been committed or to examine the elements of the crime. The facts and the circumstances of the particular underlying offense must be considered. See United States v. Bowser, 497 F.2d 1017 (4th Cir 1974). It is especially important to consider the amount of violence or threat of danger to people. Criminal Law makes clear, nonviolent crimes are less serious than crimes marked by violence or threat of violence. States recognize that criminal law is more protective of people than property. Hart v. Coiner, supra. In the case here, the threat of danger or danger to people does not exist period. (b) The legislature's purpose for the statutorily permissible punishment. Nevada's legislature created the recividist statute, not to be used capriciously, but to enable the justice system here in Nevada to deal determinedly with offenders who pose a "Serious Threat" to public safety, and to afford less violent offenders an opportunity to reform. Sessions v. State, 106 Nev. 186; 789 P2d 1242. also Rezin v. State, 95 Nev. 461 569 P2d 226. There are only two (2) degrees of punishment higher in scale than the sentence petitioner received. There are degrees of homicide that are not punished as severely. Petitioner Edwards was 51 years old when he was sentenced. He is not a professional criminal. The record indicates that he was addicted to Heroin and Alcohol, and consequently had difficulty holding a job. His record involves no instance of violence and incarcerating him for 10-25 years is highly unlikely to advance the goals of the Nevada Criminal justice system in any substantial way. The State could have look for an incentive to persue clearly needed

Part E:

1. Describe what relief you are seeking in the space provided. This should be kept very short--the form provides enough space without adding pages.

2. Generally, there are only two types of relief available in a civil rights action: monetary and injunctive. If you are seeking to prevent the defendants from doing a certain act, or to require them to do a certain act, then you should ask for injunctive relief. If you want to receive money from the defendants, then you should ask for monetary damages. You will need to specify how much in monetary damages you are seeking. Essentially, there are only two types of monetary damages: compensatory and punitive. Punitive damages are a form of punishment, and are rarely awarded in civil rights actions. Compensatory damages are intended to compensate the plaintiff for the violation of their civil rights. This includes lost wages, money which may have been wrongfully taken from you, as well as money for mental distress, pain and suffering, etc. You should be advised that in order to recover any compensatory damages, you must be able to prove that you have sustained the losses; consequently, you should be realistic about how much you claim. As an example, in a recent case an inmate was awarded twenty ($20.00) for each day he was held in punitive confinement when it was proved that the defendants had denied him the necessary disciplinary hearing prior to placing him there. If you are not able to actually prove any damages even though you are able to prove a violation of your civil rights, you are entitled to receive what is called nominal damages, which is one dollar ($1.00) for each violation.

3. You must sign your name and write your prison or jail number (if you have one) on the lines provided at the end of Part E. The signature must be an original signature, not a photocopy. Remember the warning at the beginning of these instructions about the requirements of Rule 11 of the Federal Rules of Civil Procedure. If someone wrote this civil rights complaint for you (such as an inmate law clerk or "jailhouse lawyer"), then that person must write their name on the line next to your signature.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint not being filed and considered by the court. Additional space is provided at the bottom of the last page for the continuation of information from Parts B or Part C. Be sure to identify what is being continued.

treatment for petitioner's Heroin addiction and alcohol problem or any other program of rehabilitation. Is it a rational exercise of Nevada's power to put petitioner away in prison for that amount of time at the age of 51 for finding a Lunch Bag and then turning that Lunch Bag over in to the business next door's lost and found with nothing missing from the Lunch Bag? PHT pg. 27 lines 19-23 at a tremendous expense to the State of Nevada because over 20 to 34 years ago petitioner Committed non-Violent property Crimes? The State of Nevada's tradition, Custom and Common Sense reserves a 10 to 25 year Sentence for those persons who are dangerous to others. Surely being accused of moving a Lunch Bag that was found and then returned with nothing missing does not warrant Such a sentence. Petitioner was punished more Severely than Criminals in this State who Committed more Serious Violent Crimes. This was not the purpose of the Nevada legislature. Robbery 2-15 Kidnapping 5-15 years, Use of a deadly weapon 1-20 years- Voluntary Manslauahter 1-10 years- involuntary Manslaughter 1-4 years. these are Some examples. (C) Punishment imposed in other jurisdictions for the same Crime. Going into a business that is open to the public and being accused of larceny, Usually ends with that person being charged with larceny. This is not like Burglary of Someone's Home, Apartment, Car or Breaking into an establishment. In the Case here, this Kind of Burglary, the State has to prove that the Very moment the person enters he has an intent to Commit a Crime. If that person enters the business legally and later formulates a Criminal intent, this does not Satisfy Nevada's Burglary Statute. Under these Circumstances,

SCOPE II - R2I1 ▸ Dissemination - Citizens

CITIZENS REPORT

SCOPE RESPONSE

PERSON BASE RECORD

ID #: 7024721

NAM: EDWARDS, HAROLD **DOB:** 12/10/1964

SEX: M **RAC:** B **HGT:** 504 **WGT:** 150 **HAIR:** BLK **EYE:** BRO

ADR: RS 3117 JUDICE AVE
LAS VEGAS NV 89101

AKA [2]

NAME	AGY	ENTRY DATE
EDWARD, HAROLD	LAS VEGAS METRO PD	10/1/2015
EDWARDS, HAROLD	LAS VEGAS METRO PD	8/20/2015

ADDITIONAL DOB [1]

DOB	AGY	ENTRY DATE
12/10/1964	LAS VEGAS METRO PD	8/20/2015

TYPE:	AGY:	EVENT DATE/TIME:	ENTERED:	EVENT#:
TR	LAS VEGAS METRO PD	09/11/2015 04:45:00	09/11/2015 15:58:40	150911-0470

BUSINESS NAME:
STRATOSPHERE
INCIDENT ADDRESS:
2000 S LAS VEGAS BLVD LAS VEGAS NV

CRIMINAL HISTORY **ARR [9] CIT [0] SUM [0]**

ARREST DATE: 1/15/2016 **AGY: LAS VEGAS METRO PD** **PCN#:** **BK#: -**

RN#: 0001 **CHARGE:** 1 **TYPE:** RMDR **OFF:** 50790 OBT/POSS CR/DEB CARD W/O C-HOLDRS CONSENT (F) **COUNTS:** 1 **EVT#:** 150819-4356
CCN: 15F12361X LAS VEGAS JUSTICE COURT **CREATED:** 01/16/2016 08:29:39 **UPDATED:** **JUV/CERT/ADULT:** ADULT

RN#: 0020 **CHARGE:** 2 **TYPE:** RMDR **OFF:** 50790 OBT/POSS CR/DEB CARD W/O C-HOLDRS CONSENT (F) **COUNTS:** 3
CCN: 15F12361X LAS VEGAS JUSTICE COURT **CREATED:** 01/16/2016 08:29:39 **UPDATED:** **JUV/CERT/ADULT:** ADULT

ARREST DATE: 10/20/2015 **AGY: LAS VEGAS METRO PD** **PCN#: 25585841** **BK#: -**

RN#: 0019 **CHARGE:** 1 **TYPE:** RMDR **OFF:** 50790 OBT/POSS CR/DEB CARD W/O C-HOLDRS CONSENT (F) **COUNTS:** 4
CCN: 15F14754X LAS VEGAS JUSTICE COURT **SEQ#:** 5-8 **CREATED:** 10/20/2015 19:13:13 **UPDATED:** **JUV/CERT/ADULT:** ADULT

ARREST DATE: 10/14/2015 **AGY: LAS VEGAS METRO PD** **PCN#: 25588254** **BK#: -**

RN#: 0016 **CHARGE:** 1 **TYPE:** PCR **OFF:** 56008 GRAND LARCENY, $3500+ (F) **COUNTS:** 1 **EVT#:** 150927-3210

THE USE AND DISSEMINATION OF THIS RECORD IS REGULATED BY LAW. SECONDARY DISSEMINATION OF ANY KIND IS PROHIBITED AND COULD SUBJECT THE OFFENDER TO CRIMINAL AND CIVIL LIABILITY.
LAS VEGAS METRO PD MARIA JACKSON/M9282J 09/06/2016 10:11:52

RELEASE TO: EDWARDS, HAROLD

would be charged with some degree of larceny State of Nevada V. Adams, Supra. Burglary in most states carry 1-6 years, especially when it's dealing with entering a place of business open to the public. The Circumstances of individual Cases play a huge part in the Sentence imposed. In the case at hand Petitioner's charge of petit larceny was dismissed. And the other uncharged act the State attempted to "bootstrap" at preliminary hearing was not reported as anything illegal. PHT pg. 55 lines 12-19 also lines 19-20, also PHT pg 47 lines 17-20 PHT. pg. 47 lines 17-20. (d) Punishment for other offenses Committed in Nevada. A person convicted for Murder in the second degree is guilty of a Category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, eligibility for parole begins when a minimum of 10 years has been served. NRS 205.075 having possession of explosives carry 1-20 years See Cases supra. Clearly comparing this instant Case's Sentence with these Violent Crime Sentences shows the disproportionality of the 10-25 year sentence that petitioner received and how the punishment does not fit the Crime in this Case.

CONCLUSION

It is Clear from the above facts and examples Shown, that there are Numerous grounds for reversal of Conviction in the Burglary charge or resentencing. Mr. Edwards humbly requests that this Court grant (out of fairness) Relief.

DATED THIS _____ day of _____ 2017

Harold Edwards
Pro Per Petitioner
Harold Edwards

Visitation Activity Report

09/30/2015 12:00 AM - 09/06/2016 11:59 PM

Report None

Visitation Center(s): All

Housing(s): All

12/03/15 3:17 PM

Confirmation #: 752652 **Status:** Completed **Visitation Time:** 12/03/15 3:17 PM-3:21 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0007024721	Edwards, Harold	NT-5EF-2	NT-7A:1W

Visitation Center	Visitor Station
Clark County Visitation	VS-49(Priv.)

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
VU7E-37671	Nadig, Benjamin J	Attorney	3:17 PM	

01/08/16 1:31 PM

Confirmation #: 761396 **Status:** Completed **Visitation Time:** 01/08/16 1:31 PM-2:01 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0007024721	Edwards, Harold	NT-9EF-2	NT-7A:1W

Visitation Center	Visitor Station
Clark County Visitation	VS-48(Priv.)

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
C773-83540	Fraser, Jennifer	Attorney	1:31 PM	

02/05/16 9:45 AM

Confirmation #: 767586 **Status:** Completed **Visitation Time:** 02/05/16 9:45 AM-10:15 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0007024721	Edwards, Harold	NT-9EF-2	NT-7A:1W

Visitation Center	Visitor Station
Clark County Visitation	VS-61 (Priv., Dual, ADA)

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
JTJ8-391	Lawson, Robert	Professional	9:46 AM	

03/15/16 9:52 AM

Confirmation #: 777903 **Status:** Completed **Visitation Time:** 03/15/16 9:52 AM-10:32 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0007024721	Edwards, Harold	NT-9B-1	NT-7A:1W

Visitation Center	Visitor Station
Clark County Visitation	VS-52 (Priv.)

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
C773-83540	Fraser, Jennifer	Attorney	9:52 AM	

Certificate of Service

I Harold Edwards, the undersigned. Certify that I Caused a true and Correct Copy of Post-Conviction Writ of Habeas Corpus to be served by U.S. Mail Postage Pre-Paid and Addressed to:

STEVEN B. WOLFSON
DISTRICT ATTORNEY
200 LEWIS AVENUE
LAS VEGAS, NV. 89155-1160

STEVEN D. GRIERSON
CLERK OF THE COURT
200 LEWIS AVENUE 3rd Floor
LAS VEGAS, NV. 89155

DATED THIS _____ day of _____, 2017

HAROLD EDWARDS
Petitioner Pro Per
Harold Edwards

Visitation Activity Report

09/30/2015 12:00 AM - 09/06/2016 11:59 PM

Report None
Visitation Center(s): All
Housing(s): All

12/03/15 3:17 PM

Confirmation #: 752652 **Status:**Completed **Visitation Time:**12/03/15 3:17 PM-3:21 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0007024721	Edwards, Harold	NT-5EF-2	NT-7A:1W

Visitation Center	Visitor Station
Clark County Visitation	VS-49(Priv.)

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
VU7E-37671	Nadig, Benjamin J	Attorney	3:17 PM	

01/08/16 1:31 PM

Confirmation #: 761396 **Status:**Completed **Visitation Time:**01/08/16 1:31 PM-2:01 PM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0007024721	Edwards, Harold	NT-9EF-2	NT-7A:1W

Visitation Center	Visitor Station
Clark County Visitation	VS-48(Priv.)

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
C773-83540	Fraser, Jennifer	Attorney	1:31 PM	

02/05/16 9:45 AM

Confirmation #: 767586 **Status:**Completed **Visitation Time:**02/05/16 9:45 AM-10:15 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0007024721	Edwards, Harold	NT-9EF-2	NT-7A:1W

Visitation Center	Visitor Station
Clark County Visitation	VS-61 (Priv., Dual, ADA)

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
JTJ8-391	Lawson, Robert	Professional	9:46 AM	

03/15/16 9:52 AM

Confirmation #: 777903 **Status:**Completed **Visitation Time:**03/15/16 9:52 AM-10:32 AM

Inmate ID	Inmate Name	Inmate Station	Inmate Housing
0007024721	Edwards, Harold	NT-9B-1	NT-7A:1W

Visitation Center	Visitor Station
Clark County Visitation	VS-52 (Priv.)

Visitor ID	Visitor Name	Relationship To Inmate	Check-in Time	Check-out Time
C773-83540	Fraser, Jennifer	Attorney	9:52 AM	

EXHIBIT "1"

contained the following MAC products; lipstick, eyeliner, and mascara valued at approximately $70 where also missing. Ms. Jimenez stated her make-up bag was stored in her lunch bag. Ms. Jimenez stated she immediately notified her manager. Ms. Jimenez stated her manager said not to bring any more valuables to work because there was nothing more she could do about the lockers.

Ms. Jimenez stated she does have a lock on her locker but you can still open the locker when the lock is secured. Ms. Jimenez stated this was the 2nd time her lunch bag went missing [redacted] Ms. Jimenez was offered to speak with her Human Resources Representative which she accepted.

Lost and Found was checked by Clifton Baker with negative results.

Video coverage is pending.

Human Resources Representative Jessica Harbaugh was on scene.

Vice President of Security Ray Brown, Director of Security Jason Rucker, Investigations Manager Bethany Young, Security Manager Charles Cessop, and Security Supervisor Ruslan Shumlyakovskiy were notified.

Executive brief:

At 4:30pm, I Investigator Wherrity responded to the Security Office and met with Café Gelato Employee Joanna Jimenez for a lost missing report. Ms. Jimenez stated her lunch bag which also contained her make-up bag where missing from her locker. The total value is approximately $90. Ms. Jimenez was offered to speak with her Human Resources Representative which she accepted.

Reporting Party:

Supervisor:

Incident File Full Report Exhibit #1 Incident File #IN20150048175

Participants Involved:

Personnel:	Jimenez, Joanna	Property:	
Role:	Employee, Missing Items	Department:	
Personnel:	Harbaugh, Jessica	Property:	
Role:	HOB Human Resources Representative, Notified	Department:	
Personnel:	Rucker, Jason	Property:	
Role:	Security Director, Notified	Department:	
Personnel:	Young, Bethany Jane	Property:	
Role:	Security Investigations Manager, Notified	Department:	
Personnel:	Wherrity, Jay	Property:	
Role:	Security Investigator, Report Writer	Department:	
Personnel:	Cessop, Charles	Property:	
Role:	Security Manager, Notified	Department:	
Personnel:	Shumlyakovskiy, Ruslan	Property:	
Role:	Security Supervisor, Notified ,	Department:	
Personnel:	Brown, Raymond	Property:	
Role:	Security Vice President, Notified	Department:	

Supplemental Entries:

SP20150020924 Attached by jwherrity on Sep 17, 2015 20:29

Description: On Thursday September 17, 2015 at approximately 7:50pm I, Investigator Wherrity received a call from Security Officer Roi Ellis [redacted] regarding a lost bag. Officer Ellis stated he found a bag matching the description of Joanna Jimenez's missing lunch bag. Officer Ellis found the bag in the vending Arcade storage area. The bag was inventoried and logged into Lost And Found under # 726044 with notes not to release per Investigations. Investigations took possession and placed the bag in Investigations Office.

Bag Found

At approximately 8:25pm I, Investigator Wherrity made telephonic contact with Employee Joanna Jimenez. Ms. Jimenez was able to identify all contents of the bag and will be picking up the bag after her shift tomorrow.

Reporting Party: Supervisor:

Exhibit #1

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

DECLARATION OF ARREST

Event #: 150923-2005

I.D. #: 7024721

True Name: EDWARDS, HAROLD Date of Arrest: 10/07/2015 Time of Arrest: 0900

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

Other Charges

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with the Las Vegas Metropolitan Police Department, Clark County, Nevada, being so employed for a period of 6 years.

That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or was committing) the offense(s) of BURGLARY - NRS 205.060.2, PETIT LARCENY - NRS 205.240 (2 counts) at the location of 3600 S. Las Vegas Blvd. Las Vegas, Nevada 89109, and that the offense(s) occurred at approximately 1357 hours on the 17th day of September, 2015, in the:

[X] County of Clark [ ] City of Las Vegas

DETAILS FOR PROBABLE CAUSE:

On 09/23/2015, I, Det. J. Clark, P# 13952, was notified by Bellagio Security Investigations that a burglary had occurred from the employee area of Cafe Gelato, located in the Bellagio Hotel and Casino, 3600 S. Las Vegas Blvd. Las Vegas, NV 89109, on 09/17/2015. The suspect in surveillance video appeared to be the same suspect in two prior burglaries from back of the house areas at two other major Strip casinos. (LVMPD Event numbers 150828-2668 and 150919-1961). The suspect in the surveillance video had been compared to and informational flyer sent to all casinos in an attempt to locate the suspect.

Upon arrival, I contacted Scott Reekie with Security Investigations, who allowed me to review surveillance footage of the suspect. I recognized the suspect to be Harold Edwards, ID# 7024721. Edwards entered the back hallways of the Bellagio through a door in the Arcade area. The door is clearly marked that the area is not a public area and that access is restricted. Edwards can be seen walking back and forth through the hallway. Each time a casino employee enters into view, Edwards can be seen turning his back to the employee and acting as if he is in deep conversation on the cell phone. After loitering in the hallway for several minutes, and once Edwards feels that he will not be seen by passing employees, Edwards can be seen entering the back door of Cafe Gelato. Moments later, Edwards emerges from the doorway carrying the victims backpack, then re-enters the back door of the arcade. When Edwards emerges from the shadows, he is no longer in possession of the backpack. (The backpack was later located just inside the back door of the arcade.)

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

[redacted]

J. CLARK

Print Declarant's Name

Declarant's Signature 13952

P#

simply shaking the lock and locking mechanism or by striking the locker. Jimenez did not see Edwards enter her place of business nor did she see Edwards take her bag. Jimenez stated that Security located her bag and returned it to her.

Summary:

Due to the fact that on 09/17/2015, Harold Edwards did enter the Bellagio Hotel and Casino with the intent to commit a larceny, Edwards entered employee only areas of both the Bellagio and Café Gelato, located within the Bellagio, with the intent to commit a larceny, Harold Edwards, ID# 7024721, was arrested for ***BURGLARY - NRS 205.060.2.***

Due to the fact that on 09/17/2015, at approximately 1357 hours, Harold Edwards, ID# 7024721, did enter the back hallway of Café Gelato, then emerged moments later carrying the back pack, valued at $25 containing approximately $70 worth of cosmetics he had stolen from the locker of Joanna Jimenez with the intent to deprive Jimenez permanently thereof, Harold Edwards, ID# 7024721 was arrested for ***PETIT LARCENY- NRS 205.240.***

Exhibit #1

SECURITY DEPARTMENT

DR # 15-48175

DATE 9-17-15

M T W (T) F S S

BELLAGIO

GUEST/EMPLOYEE STATEMENT

NAME Roi Ellis ID # 696192

ADDRESS ~~At~~ On Thursday September I officer Roi Ellis was walking through Arcade vending storage area when I discovered a black and white purse on the floor by the vending machines. I approached the Arcade attendant and asked her if it was her bag. She stated it was not. I then notified Investigator Jay West I had found a bag. Upon inventory we discovered it was Cafe ~~Cost~~ Gelato employee Joana Jimenez purse. The items were turned over to lost and found

[signature] 9/16/15
SECURITY OFFICER'S SIGNATURE AND ID#

[signature] 9-17-15 696192
GUEST/EMPLOYEE SIGNATURE

15F15118X - EDWARDS, HAROLD Page 25 of 31

EXHIBIT # 2

(9-81) Crim. Div. No. 93

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

vs.

CARLISS MOORE

GENERAL NO. 87CR-15561

CERTIFIED STATEMENT OF CONVICTION

I, AURELIA PUCINSKI, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the records of the Circuit Court of Cook County show that:

1. ☒ On ...NOVEMBER 4, 1987..... (date) the duly impanelled Cook County Grand Jury for .....OCTOBER....., 19.87. returned an indictment, number ....87CR 15561..... charging the above named defendant with .....THEFT..... (offense)

☐ On ..... (date) pursuant to statutory authorization, the State's Attorney of Cook County filed an information number ....., charging the above named defendant with ..... (offense)

2. On ...NOVEMBER 20, 1987..... (date) the above named defendant, while represented by counsel, was duly arraigned before the Honorable ..RICHARD J. FITZGERALD..... of the Circuit Court of Cook County and entered a plea of not guilty to the offense.

3. ☒ A jury was impanelled and thereafter returned against the defendant who was represented by counsel, a verdict of guilty of .....THEFT (FROM PERSON)..... (offense) on .....APRIL 8....., 19.88.

☐ A trial by jury was waived by the defendant, who was represented by counsel and thereafter the Court found the defendant guilty of ..... (offense) on ....., 19....

☐ The defendant, after having been fully advised of his rights, and while represented by counsel, withdrew his plea of not guilty and entered a plea of guilty to ..... (offense) on ....., 19....

4. on .....MAY 10, 1988..... (date) judgment was entered on the conviction and the defendant was sentenced by the Honorable .....JACK STEIN..... to A TERM OF (4) FOUR YEARS IN THE ILLINOIS DEPARTMENT OF CORRECTIONS.

I hereby certify that the foregoing has been entered of record on the above captioned case.

Date: .....December 31, ...1990.

.....Aurelia Pucinski C.C.....

AURELIA PUCINSKI

Clerk of the Circuit Court of Cook County

CC305B REVISED
12-14-82-50M (8:9)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Cook (County) ~~(Municipal)~~ DEPARTMENT Criminal (Division) ~~(District)~~

People of the State of Illinois
v.
Defendant Carliss Moore

No. 87CR15561 01

ORDER OF SENTENCE AND COMMITMENT TO
ILLINOIS DEPARTMENT OF CORRECTIONS

The defendant having been adjudged guilty of committing the offenses enumerated below,

IT IS ORDERED that the defendant Carliss Moore
be and he is hereby sentenced to the Illinois Department of Corrections as follows:

Judge Jack G. Stern Sentenced Carliss Moore to a term of 4 years IDOC with Credit from Oct, 18, 1987 Mitt to Issue

2-17-1654

		Ill. Rev. Stat.		
Offense Theft	Ch. 38	Sec. 16	Par. A(1)	
Offense	Ch.	Sec.	Par.	
Offense	Ch.	Sec.	Par.	
Offense	Ch.	Sec.	Par.	

IT IS FURTHER ORDERED that the Clerk of the Court shall deliver a copy of this order to the Sheriff of Cook County.

IT IS FURTHER ORDERED that the Sheriff of Cook County shall take the defendant into custody and deliver him to the Illinois Department of Corrections.

IT IS FURTHER ORDERED that the Illinois Department of Corrections shall take the defendant into custody and confine him in the manner provided by law until the above sentence is fulfilled.

PREPARED BY: Edward Daniel
Deputy Clerk

DATED: 5-10-88 ~~BRANCH~~ CT. Room H

ENTER: Jack G. Stern
Judge

INSTRUCTIONS

CLERK is requested to insert in the appropriate spaces above (1) each sentence and the conditions thereof, including the condition that the sentence shall run concurrently or consecutively, as the case may be, with other sentences imposed by the court in this case, or other sentences imposed by courts in other cases; and (2) fill in the following information:

Name and address of counsel for defendant PD

Police Individual Record No. 627031 Illinois Bureau Identification No.

MORGAN M. FINLEY, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The October, 1987 Grand Jury of the

Circuit Court of Cook County.

The Grand Jurors chosen, selected, and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about OCTOBER 18, 1987 at and within the County of Cook

CARLISS MOORE

committed the offense of THEFT

in that HE, KNOWINGLY OBTAINED AND EXERTED UNAUTHORIZED CONTROL OVER A PURSE AND UNITED STATES CURRENCY PROPERTY OF PATRICIA NIZZI FROM THE PERSON OF PATRICIA NIZZI INTENDING TO DEPRIVE HER PERMANENTLY OF THE USE AND BENEFIT OF SAID PROPERTY, IN VIOLATION OF CHAPTER 38, SECTION 16-1-A(1) OF THE ILLINOIS REVISED STATUTES 1985 AS AMENDED, AND

2-17-16 DA

contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

Charge ID Code: 1941

G.J. No. 1022
GENERAL NO. 87 CR- 15561

CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT
CRIMINAL DIVISION
October, 1987

The People of the State of
Illinois
v.
Carliss Moore et/

****
* INDICTMENT FOR *
****

THEFT

A TRUE BILL

Foreman of the Grand Jury

WITNESSES
S. FORTINO

Filed 11-4 19 87 Clerk
Bail $ /

2-17-16 DA

627031 arr. d. 11/8/87 1704539

NOTIFICATION OF FELONY CONVICTION

Form No.

Criminal Division
2650 South California Avenue, Chicago, Illinois 60608

DEFENDANT'S NAME: Carlis Moore AKA

Last Known Address: 9769 S. Marion State

Arresting Agency ✓ Chicago Police Dept. Other: _____

Date of Birth: 12-10-64 Place of Birth: Ill SEX: (Male) Female

RACE: White Chinese Mexican Puerto Rican (Negro) Indian Japanese

Other: _____

CONVICTION INFORMATION

Date: 5-10-88 Judge: Allen Indictment/Info: 87Cr 15561

Charging: Theft PLEA FINDING (VERDICT)

CONVICTED UNDER Chap. 38 Sec. 16-1 Par. A(1) CHARGE: Theft
SENTENCE:

DEATH Execution Date: _____

IMPRISONMENT To State Dept. of Corr. for 4 yrs to ____ yrs, Plus ____ Parole.

PER IMPRM ____ Yrs. Prob. and 1st ____ in Cty.
Department Correction - Under Work Release Program

PROBATION ____ Yrs. 1st ____ in Cty. Dept. Corr.

COURT SUPERVISION for ____ yr.

FOUND UNFIT Cr from 10/18/87

DEPARTMENT OF MENTAL HEALTH

CONVICTED UNDER Chap. ____ Sec. ____ Par. ____ CHARGE:
SENTENCE:

DEATH Execution Date: _____

IMPRISONMENT To State Dept. of Corr. for ____ yrs to ____ yrs, Plus ____ Parole.

PER IMPRM ____ Yrs. Prob. and 1st ____ in Cty.
Department Correction - Under Work Release Program

PROBATION ____ Yrs. 1st ____ in Cty. Dept. Corr.

COURT SUPERVISION for ____ yr.

FOUND UNFIT

DEPARTMENT OF MENTAL HEALTH

CONVICTED UNDER Chap. ____ Sec. ____ Par. ____ CHARGE: ____
SENTENCE

DEATH EXECUTION Date: _____

IMPRISONMENT To State Dept. of Corr. for ____ yrs to ____ yrs, Plus ____ Parole.

EXHIBIT #2

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Cook (County) ~~(Municipal)~~ DEPARTMENT CRIMINAL (Division) ~~(District)~~

People of the State of Illinois
v.
Defendant MARIO Thompson

No. 90-CR-25002

ORDER OF SENTENCE AND COMMITMENT TO
ILLINOIS DEPARTMENT OF CORRECTIONS

ARREST DATE 9-5-90

The defendant having been adjudged guilty of committing the offenses enumerated below,

Real NAME

IT IS ORDERED that the defendant MARIO THOMPSON AKA HAROLD Moore be and he is hereby sentenced to the Illinois Department of Corrections as follows:

FEB 03 1992 The HONORABLE JAMES M. SCHREIER SENTENCED The deft TO A TERM of (6) SIX YEARS JUDGEMENT Entered ON The Plea. CREDIT FOR TIME IN CUSTody FROM 9-5-90 TO 6-5-91 ALSO Credit FROM 6-28-91 TO PRESENT.

		Ill. Rev. Stat. Ch.	Sec.	Par.
Offense	Burglary	38	19-1	A
Offense				
Offense				
Offense				

IT IS FURTHER ORDERED that the Clerk of the Court shall deliver a copy of this order to the Sheriff of Cook County.

IT IS FURTHER ORDERED that the Sheriff of Cook County shall take the defendant into custody and deliver him to the Illinois Department of Corrections.

IT IS FURTHER ORDERED that the Illinois Department of Corrections shall take the defendant into custody and confine him in the manner provided by law until the above sentence is fulfilled.

PREPARED BY: DILARD OLYMPIA (Deputy Clerk)

DATED: FEB 03 1992 BRANCH CT. EVANSTON

ENTER: James M. Schreier (Judge) JAMES M. SCHREIER CODE #

INSTRUCTIONS

CLERK is requested to insert in the appropriate spaces above (1) each sentence and the conditions thereof, including the condition that the sentence shall run concurrently or consecutively, as the case may be, with other sentences imposed by the court in this case, or other sentences imposed by courts in other cases; and (2) fill in the following information:

Name and address of counsel for defendant BRIAN HEALY APD

Police Individual Record No. 627021 Illinois Bureau Identification No.

CLERK OF THE CIRCUIT COURT OF COOK COUNTY

****

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The October, 1990 Grand Jury of the

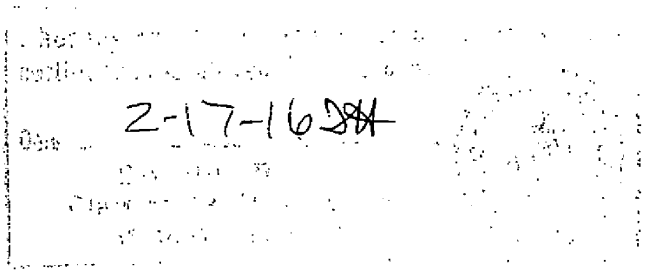
Circuit Court of Cook County.

The Grand Jurors chosen, selected, and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about SEPTEMBER 5, 1990 at and within the County of Cook

MARIO THOMPSON

committed the offense of BURGLARY

in that HE, WITHOUT AUTHORITY, KNOWINGLY ENTERED INTO A BUILDING, TO WIT: THE BUILDING OF WALGREENS DRUGS WITH THE INTENT TO COMMIT THE OFFENSE OF THEFT, THEREIN, IN VIOLATION OF CHAPTER 38, SECTION 19-1-A OF THE ILLINOIS REVISED STATUTES 1985, AS AMENDED, AND



contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

Charge ID Code: 2155

1
2

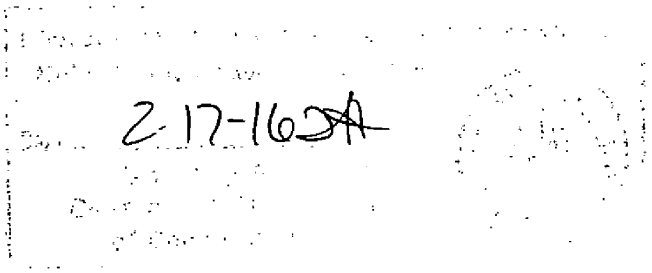
****

The Grand Jurors chosen, selected, and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths aforesaid present that on or about SEPTEMBER 5, 1990 at and within the County of Cook

MARIO THOMPSON

committed the offense of POSSESSION OF BURGLARY TOOLS

in that HE HAD IN HIS POSSESSION, WITH INTENT TO ENTER INTO A BUILDING, AND WITH INTENT TO COMMIT A THEFT THEREIN, TOOLS SUITABLE FOR USE IN BREAKING INTO BUILDINGS, IN VIOLATION OF CHAPTER 38, SECTION 19-2-A OF THE ILLINOIS REVISED STATUTES 1985, AS AMENDED, AND



contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

Charge ID Code: 2160

G.J. NO. 351
GENERAL NO. 90 CR- 25002

CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT
CRIMINAL DIVISION
October, 1990

The People of the State of
Illinois
v.
Mario Thompson

****
* INDICTMENT FOR *
****

BURGLARY, ETC

A TRUE BILL

Foreman of the Grand Jury

==========

WITNESSES

OFF. MCCOY

==========

Filed 10-29, 19 90
Clerk
Bail $ 80

==========

2-17-16

EXHIBIT # 2

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

(County) Cook (Municipal) DEPARTMENT (Division) Criminal (District)

People of the State of Illinois
v.
Defendant HAROLD Moore } No. 94cr 27797

ORDER OF SENTENCE AND COMMITMENT TO
ILLINOIS DEPARTMENT OF CORRECTIONS

The defendant having been adjudged guilty of committing the offenses enumerated below,

IT IS ORDERED that the defendant Harold Moore be and he is hereby sentenced to the Illinois Department of Corrections as follows:

On August 16, 1995, The Honorable Judge James Schreier sentences the dft to a term of (6) six yrs IDOC - Credit time in custody from 10/16/94 to present - Sentenced as a Class X offender - Mittimus to Issue

Offense Poss. Stolen Motor Vehicle Ch. 625 Sec. 5/4 Par. 16(A)(1) (Ill. Rev. Stat.)

Offense _____ Ch. _____ Sec. _____ Par. _____

Offense _____ Ch. _____ Sec. _____ Par. _____

Offense _____ Ch. _____ Sec. _____ Par. _____

IT IS FURTHER ORDERED that the Clerk of the Court shall deliver a copy of this order to the Sheriff of Cook County.

IT IS FURTHER ORDERED that the Sheriff of Cook County shall take the defendant into custody and deliver him to the Illinois Department of Corrections.

IT IS FURTHER ORDERED that the Illinois Department of Corrections shall take the defendant into custody and confine him in the manner provided by law until the above sentence is fulfilled.

PREPARED BY: Mazeka
Deputy Clerk

DATED: 8/16/95 BRANCH CT. 704 ENTER: James M. Schreier
Judge CODE #

INSTRUCTIONS

CLERK is requested to insert in the appropriate spaces above (1) each sentence and the conditions thereof, including the condition that the sentence shall run concurrently or consecutively, as the case may be, with other sentences imposed by the court in this case, or other sentences imposed by courts in other cases; and (2) fill in the following information:

Name and address of counsel for defendant Public Defenders Office

Police Individual Record No. 627031 Illinois Bureau Identification No. _____

CLERK OF THE CIRCUIT COURT OF COOK COUNTY

ONE RECORD - DOCKET CLERK WILL ATTACH TO FILE

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
V.) INFO. NO. 94CR-27797
)
HAROLD MOORE)
)
)
)

ORIGINAL
FILE COPY
DO NOT REMOVE

INFORMATION

THE PEOPLE OF THE STATE OF ILLINOIS represented by the State's Attorney of Cook County, do hereby inform and charge that against the peace and dignity of the People of the State of Illinois and in violation of the laws of the State of Illinois the herein named defendant(s) contrary to the 1992 Illinois Compiled Statutes did violate said laws of Illinois as described herein.

2-17-1994

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

1 F

00 0073.0691

94

****

The State's Attorney of Cook County now appears before the Circuit Court of Cook County and in the name and by the authority of the People of the State of Illinois states that on or about OCTOBER 16, 1994, in the Cook County, Illinois

HAROLD MOORE

committed the offense of POSSESSION OF A STOLEN MOTOR VEHICLE

in that HE, NOT BEING ENTITLED TO THE POSSESSION OF A MOTOR VEHICLE, TO WIT: A 1993 CHEVROLET GEO PRIZM PROPERTY OF WILLIAM ARNOS POSSESSED SAID VEHICLE, KNOWING IT TO HAVE BEEN STOLEN OR CONVERTED IN VIOLATION OF CHAPTER 625, ACT 5, SECTION 4-103-A(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED, AND

contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

(Count No. 1)
Charge ID Code: 5710001
No: 94CR-27797

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

2-17-16 DH

00 0073.0692

94

****

The State's Attorney of Cook County now appears before the Circuit Court of Cook County and in the name and by the authority of the People of the State of Illinois states that on or about OCTOBER 16, 1994, in the Cook County, Illinois

HAROLD MOORE

committed the offense of BURGLARY

in that HE, WITHOUT AUTHORITY, KNOWINGLY ENTERED INTO A MOTOR VEHICLE, TO WIT: A 1993 CHEVROLET GEO PRIZM PROPERTY OF WILLIAM ARNOS, WITH THE INTENT TO COMMIT THE OFFENSE OF THEFT THEREIN, IN VIOLATION OF CHAPTER 720, ACT 5, SECTION 19-1-A OF THE ILLINOIS COMPILED STATUTES 1992, AS AMENDED, AND

2-17-16 SA

contrary to the Statute, and against the peace and dignity of the same People of the State of Illinois.

(Count No. 2)
Charge ID Code: 1110000
No: 94CR-27797

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

00 0073.0693

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****

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS by the State's Attorney of Cook County, through his Assistant State's Attorney, after first being duly sworn on his oath, deposes and swears that the foregoing TWO count(s) in this information has/have been read and subscribed by him as evidenced by his signature below and that the same in each count hereby incorporated is true.

.....
Assistant State's Attorney

Subscribed and sworn (or affirmed) to before me NOV 09 1994, 19....
by .....

.....
Notary Public

OFFICIAL SEAL
RONALD W PULA
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXP. OCT 5,1997

The bail is fixed at .....

JUDGE: .....
Enter

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

2-17-16 DF

00 0073.0694

94

(Court Branch) (Court Date) / /

FELONY

CCG-0662-225M-3-21-94(45291375)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

The People of State of Illinois
Plaintiff

v.

HAROLD MOORE
Defendant

COMPLAINT FOR PRELIMINARY EXAMINATION

NO. 94-[illegible]

WILLIAM G. ARNOS (Complainant's Name Printed or Typed) complainant, now appears before The Circuit Court of Cook County and states that

HAROLD MOORE (defendant) 1502 N. TALMAN (address) has, on or about

OCTOBER 16, 1994 (date) at 1556 (65) N. WIELAND (place of offense)

committed the offense of POSSESSION OF STOLEN MOTOR VEHICLE in that he/~~she~~ NOT BEING ENTITLED TO POSSESSION OF A VEHICLE, TO WIT: A 1993 CHEVROLET GEO PRIZM 4DR, SEDAN BLACK IN COLOR, V.I.N. 1Y-~~1SK5384PZ073595~~ POSSESSED SAID VEHICLE, KNOWING IT TO HAVE BEEN STOLEN.

in violation of 625 (Chapter) ILCS (Act) 5/4-103(1) (Section)

CHARGE CODE

FILED
OCT 17 1994
AURELIA PUCINSKI
CLERK OF CIRCUIT COURT

X William G. Arnos
(Complainant's Signature)

302 REDWING DRIVE (Complainant's Address) 708-459-8407 (Telephone No.)

WILLIAM G. ARNOS
(Complainant's Name Printed or Typed)

STATE OF ILLINOIS
COOK COUNTY } ss.

being first duly sworn, HIS on oath, deposes and says that he/she read the foregoing complaint by him/her subscribed and that the same is true.

X William G. Arnos
(Complainant's Signature)

Subscribed and sworn to before me 16 Oct, 19 94

A. Pucinski/Ad Related 7550
(Judge or Clerk)

I have examined the above complaint and the person presenting the same and have heard evidence thereon, and am satisfied that there is probable cause for filing same. Leave is given to file said complaint.

Summons issued, Judge ..... Judge's No.
or
Warrant Issued, Bail set at, ...
or
Bail set at ..... Judge ..... Judge's No.

AURELIA PUCINSKI, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

COURT FILE COPY

EXHIBIT#3

CERTIFIED COPY

CASE NO. C 310695

DEPT. NO. 11

IN THE JUSTICE COURT OF THE LAS VEGAS TOWNSHIP

COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA, Plaintiff, Vs HAROLD EDWARDS, Defendant.	Case No. 15F15118X

REPORTER'S TRANSCRIPT
OF
FARETTA CANVASS & PRELIMINARY HEARING

BEFORE THE HONORABLE ERIC A. GOODMAN

JUSTICE OF THE PEACE

TAKEN ON TUESDAY, NOVEMBER 10, 2015
AT 9:00 A.M.

APPEARANCES:

For the State: WILLIAM FLINN
Deputy District Attorney

For the Defendant: NADIA HOJJAT
Deputy Public Defender
PROPER PERSON

REPORTED BY: PATSY K. SMITH, C.C.R. #190

CASE NO. C 310645

DEPT. NO. 11

CERTIFIED COPY

IN THE JUSTICE COURT OF THE LAS VEGAS TOWNSHIP

COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,
Plaintiff,
Vs
HAROLD EDWARDS,
Defendant.
Case No. 15F15118X

REPORTER'S TRANSCRIPT
OF
FARETTA CANVASS & PRELIMINARY HEARING

BEFORE THE HONORABLE ERIC A. GOODMAN

JUSTICE OF THE PEACE

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APPEARANCES:

For the State: WILLIAM FLINN
Deputy District Attorney

For the Defendant: NADIA HOJJAT
Deputy Public Defender
PROPER PERSON

REPORTED BY: PATSY K. SMITH, C.C.R. #190

PATSY K. SMITH, OFFICIAL COURT REPORTER
(702) 671-3795

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PATSY K. SMITH, OFFICIAL COURT REPORTER
(702) 671-3795

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PATSY K. SMITH, OFFICIAL COURT REPORTER
(702) 671-3795

LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 10, 2015

* * * * *

THE COURT: Harold Edwards.

09:29AM There are two cases for Mr. Edwards.

I know he was looking for some sort of a negotiation. Do we have something worked out with this?

MS. HOJJAT: Your Honor, I have not received an offer. I did talk to Mr. Giordani after the

09:29AM last preliminary hearing. Because there are so many cases in the system, they are not making an offer in this case.

So, at this point, my client would like to have a Faretta canvass done.

THE COURT: Okay.

09:30AM Sir, do you understand if I take her off the case, I mean you really have nobody to represent you in trying to get your case negotiated?

THE DEFENDANT: I'm going to represent myself, sir.

09:30AM THE COURT: Okay.

THE DEFENDANT: I mean by me being my own counsel, I'm quite sure -- I'm not at odds with the young man. I don't even know him. So if we can negotiate some type to get rid of these cases because these cases are

09:30AM lesser than the ones I'm already in District Court -- you

PATSY K. SMITH, OFFICIAL COURT REPORTER
(702) 671-3795

THE COURT: I'm sorry, I couldn't hear that.

THE WITNESS: Cafe Gelato.

THE COURT: Cafe Gelato, okay.

11:27AM Thank you.

Q (BY MR. FLINN) So on the 17th of September, were you working that day?

A **Yes.**

Q Around 1, 2 in the afternoon?

11:27AM A **Yes.**

Q Those hours you were at work?

A **Yes.**

Q Now is there an area there at the Bellagio where, while you are at work, you, as an employee, can

11:27AM store your personal belongings?

A **Yes.**

Q Where is -- what is that?

A **It's lockers. It's located in the back of the house.**

11:27AM Q So when you say back of the house, you mean an area that's not available to the general public, but behind the scenes?

A **Exactly.**

Q And there's a room that has lockers in it?

11:27AM A **Yes.**

Q And you can go and store your things in a locker while you are at work?

A **Yes.**

Q So on that day, September 17th, this is at

11:27AM the Bellagio, here in Clark County, did you put anything in a locker while you were at work?

A **Just, on my break time, I just opened it, got something, and my bag was still there.**

Q No, but did you store anything when you

11:28AM came to work in the locker?

A **Oh, yeah, my bag.**

Q What type of bag, like a duffel bag?

A **Lunch bag.**

Q I'm sorry?

11:28AM A **Lunch bag.**

Q And anything else?

A **Well, inside it had like my personal stuff, like, yeah, makeup.**

Q So you had a bag stored in the locker, you

11:28AM left it in the locker, and you went to work?

A **Yes.**

Q Did there come a time where you finished your shift and you went to go retrieve your bag from the locker?

11:28AM A **Yeah, my shift ended around 4:00 and**

that's when I noticed my bag was missing.

Q So you went back to the locker and your back wasn't there?

A **Yes.**

11:28AM Q When --

discovered your bag was missing?

A **I notified my manager right away. She told me to go to the security office and make a report, so I did.**

11:28AM Q So you went to security and made a report?

A **Yes.**

Q Was your bag ever returned to you?

A **Yes, it was.**

Q That day or --

11:29AM A **No, they found it in like the arcade --**

Q Okay.

A **-- next to another department, so the next day.**

Q And they did give it back to you?

11:29AM A **Yes, uh-huh.**

Q Was anything of value missing from that bag?

A **No.**

Q Did you give anyone permission to go into

11:29AM your locker and take your bag?

A **No.**

Q Do you know anyone by the name of Harold Edwards?

A **No.**

11:29AM Q And so did you give Harold Edwards permission to take your bag?

A **No.**

THE DEFENDANT: I object, your Honor.

MR. FLINN: Nothing further.

11:29AM THE DEFENDANT: I object, your Honor.

THE COURT: What is the objection?

THE DEFENDANT: The objection is he is giving her the impression that I took her bag by saying, you know, did she give me permission. That's not -- that's

11:29AM not fair.

THE COURT: She has no idea who you are. She is not saying you had it. She didn't identify you.

THE DEFENDANT: I'm the only one sitting here.

11:29AM THE COURT: No, no, no, but the objection will be overruled. The objection will be overruled.

MR. FLINN: Thank you, your Honor.

No further questions.

THE COURT: Do you have any questions of

11:30AM her?

THE DEFENDANT: Yes, I have a question for her.

THE COURT: Sure.

CROSS-EXAMINATION

BY THE DEFENDANT:

Q Good morning.

What is your name? Ms. Jimenez (sic)?

A **Jimenez.**

11:30AM Q Good morning, Ms. Jimenez.

A **Good morning.**

Q I just want to ask you, did you see someone take your bag?

You had a bag missing, right?

11:30AM A **Yes.**

Q Did you see anybody in the back take the bag?

Is anybody in this courtroom did you see that took your bag?

11:30AM A **No.**

THE DEFENDANT: That's all I got for her, your Honor.

THE COURT: Okay.

Any redirect?

11:30AM MR. FLINN: No, your Honor.

THE COURT: Okay, ma'am, thank you for testifying. You are free to stick around to find out what happens. You are free to take off.

THE WITNESS: Okay.

11:30AM THE COURT: Okay, thank you.

THE WITNESS: Thank you.

THE COURT: Did you sign her subpoena?

MR. FLINN: Did I give you a subpoena?

No, I don't think I did.

11:30AM Thank you, Judge.

(Off the record discussion not reported.)

MR. FLINN: State calls Arvin Viacrussi.

11:31AM THE COURT: Okay.

(Off the record discussion not reported.)

ARVIN VIACRUSSI,

having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified and said as follows:

THE CLERK: Please have a seat.

11:31AM THE WITNESS: Thank you.

THE CLERK: State your first and last name and spell both for the record.

THE WITNESS: My name is Arvin Viacrussi, A-R-V-I-N V-I-A-C-R-U-S-S-I.

11:32AM THE COURT: All right, State.

MR. FLINN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. FLINN:

11:32AM Q Sir, I want to direct your attention to September 17th of this year, how were you employed at that time?

A **I was a security officer and I was posted at our Lost & Found.**

11:32AM Q A security officer where?

A **At Bellagio.**

Q Bellagio, here in Las Vegas?

A **Uh-huh.**

Q So you were posted where?

11:32AM A **I was posted at the Check Bank, which is where we keep lost and found.**

Q So this is 2, 3 in the afternoon?

A **Yes.**

Q You are on duty posted at the Check Bank?

11:32AM A **Uh-huh.**

Q You said that's where you keep Lost & Found?

A **Yes.**

Q Did there come a time, during your shift

11:32AM that afternoon, where someone brought to you an iPad?

A **Yes, sir.**

Q Who was it that brought that to you, if you remember?

A **It was an EVS employee that turned in an**

11:32AM **iPad. It was found, he said, in between a slot machine.**

Q So, basically, an item found by one of your employees working the slot area brought you this item?

A **Yes, sir.**

Q And did there come a time, shortly

11:33AM thereafter, where an individual came to try to claim that iPad?

A **Yes.**

Q Do you recognize if that individual is in the courtroom today?

11:33AM A **Yes, sir.**

Q Could you identify where he or she is sitting and the clothing he is or she is wearing for the Court?

A **He's sitting right over there.**

11:33AM MR. FLINN: Would the record reflect he

identified the defendant?
THE COURT: It will.
Q (BY MR. FLINN) So the defendant approached you at the Lost & Found?
11:33AM A **Uh-huh.**
Q And what did he say?
A **He said he would like to claim his iPad.**
Q And what did you do?
A **I told him, Please identify the iPad, and since it has a pass code, I asked him for the pass code. He couldn't tell me what it is.**
Q So when you say pass code, like if you turn on the screen, you have to type in a pass code to use the device?
11:33AM A **Yes, sir.**
Q So you asked him, What's the pass code?
A **Uh-huh.**
Q Or something to that effect?
A **Yes, to verify that it is his iPad.**
11:33AM Q And he said he didn't know the pass code?
A **He said he didn't know and he told me that it actually belongs to his friend.**
Q So then he said it belonged to his friend?
A **Uh-huh.**
11:34AM Q And then what did the defendant do after

that?
A **He tried to claim it. I told him I can't give it to him. If it belongs to his friend, his friend has to come here and pick it up.**
11:34AM Q And so what happened next?
A **He said he's going to find her and he left and he never came back.**
Q He never came back to you?
A **Uh-huh.**
Q While you were on your shift?
A **Yes.**
MR. FLINN: Nothing further, your Honor.
THE COURT: All right, sir, do you have any questions of him?
11:34AM THE DEFENDANT: Yes, yes, sir, I have questions.
THE COURT: Okay.

CROSS-EXAMINATION

11:34AM BY THE DEFENDANT:
Q Good morning, sir.
A **Good morning.**
Q The day of this incident, you said a guy approached you and told you that the iPad -- that the iPad that was missing belonged to one of his friends, correct?

A **Uh-huh.**
THE REPORTER: Is that yes?
THE WITNESS: Yes. Sorry.
Q (BY THE DEFENDANT) You say -- you stated
11:34AM to the DA that you asked for the code to get into the computer --
A **Yes.**
Q -- correct?
And the defendant -- and the person that
11:35AM you say came and asked about the computer told you that he didn't know the code to the computer, correct?
A **Yes.**
Q And he would go get the person whose computer it actually was, correct?
11:35AM A **Yes.**
THE DEFENDANT: I rest.
THE COURT: Okay.
Do you have any questions, any redirect?
MR. FLINN: Court's indulgence, please,
11:35AM just a moment.

REDIRECT EXAMINATION

BY MR. FLINN:
Q Sir, after the defendant left and said he
11:35AM was going to go get his friend, did anyone come back while

you were on your shift to claim the iPad?
A **I was still at the same post when the lady came to the Check Bank to claim it. Same procedure, I asked her to describe the item and what the pass code is,**
11:35AM **she gave it to me, I opened it. She described what's the contents of the iPad. She even showed me a picture of her in the iPad.**
Q Was the defendant with her?
A **No.**
11:36AM MR. FLINN: Nothing further, your Honor.
THE COURT: Sir, do you have any questions about that before I let him go?
Do you have any other questions regarding what he just testified to?
11:36AM THE DEFENDANT: No, sir, no, sir.
THE COURT: Okay.
All right, sir, thank you for testifying.
THE WITNESS: Your welcome, sir.
THE COURT: You are free to stick around
11:36AM to find out what happens. You are free to take off.
THE WITNESS: Okay.
THE COURT: Did you sign his subpoena? Does he have a subpoena?
MR. FLINN: Did I sign your subpoena?
11:36AM

wait just a moment.
THE COURT: Okay.
MR. FLINN: May I approach the witness?
THE COURT: Sure, absolutely.
11:41AM And this is the video you showed to the defendant previously?
MR. FLINN: Yes. I'm going to confirm that with the witness.
Yes, these surveillance videos and the two
11:41AM disks we provided to the Public Defender's Office while he was still represented and that were represented earlier in court that he had watched with the Public Defender.
THE DEFENDANT: Well, your Honor, if it so please, your Honor, I would like to watch it also. I would
11:41AM like to see what they're showing.
MR. FLINN: As soon as I get it to come up, your Honor, I will show the witness and confirm with the witness that it's what it's represented to be, then I will walk over and show the defendant so that he knows that
11:42AM it's the same thing that we are looking at --
THE COURT: Okay.
MR. FLINN: -- and that he's seen it before.
THE COURT: Okay.
11:42AM MR. FLINN: But, obviously, for courtroom

procedure, I don't know if it's possible we all can look at it.
THE COURT: Sir, as soon as it comes up, he will come over and show it to you and then he will ask
11:42AM him his questions. So you will get a chance to look at it then.
THE DEFENDANT: Okay, okay.
THE COURT: Okay.
Q (BY MR. FLINN) Now, sir, do you recognize
11:42AM this menu screen?
A **Yes, I do.**
Q Is that just basically the software interface for your surveillance video?
A **Yes.**
11:42AM Q So from that, you can pick the clips that are loaded in that are shown on the disk and play those videos?
A **Yes.**
MR. FLINN: For the record, I'm showing
11:43AM the witness -- this is State's Proposed Exhibit 1, which the disk itself is marked Disk 1 of 2.
Q Does this disk and these videos, does this contain the surveillance video related to the theft of the backpack?
11:43AM A **No. This would be the iPad.**

Q This is the iPad?
A **Correct.**
Q Okay.
THE DEFENDANT: Your Honor, if I may
11:43AM object. The charges that I'm -- I received a copy of, doesn't have anything to do -- it doesn't say anything about an iPad. It's talking about Joanna Jimenez' bag.
THE COURT: I don't have any information about an iPad.
11:43AM THE DEFENDANT: So I don't know what they are talking about.
THE COURT: The only thing I have, you are right, is about the bag for Joanna. Are you thinking about the other case?
11:43AM MR. FLINN: No.
THE DEFENDANT: The other laptop.
MR. FLINN: No, it's not the other case. It occurs directly after the theft of the backpack and I'm offering it to show the defendant's intent for the burglary
11:44AM I have filed that his intent coming into the property was with the intent to commit larceny, stealing a backpack.
THE DEFENDANT: I object, your Honor.
MR. FLINN: That's what I'm going to be offering it for.
11:44AM THE COURT: How is he suppose to defend

this? It's not in this--
MR. FLINN: It's in the police discovery. It's fully documented.
THE COURT: No, he's not charged with
11:44AM attempting to steal an iPad.
MR. FLINN: No, he is charged with burglary on this date and at this time.
THE COURT: Right.
MR. FLINN: The police report outlines
11:44AM both incidents, which have been provided in the discovery. I'm not showing it to show him attempting to steal the iPad. I'm offering it to show, when he came in, the element of the offense is that he entered with the intent to commit larceny.
11:44AM I have two acts that does show his intent when he entered the premises, one of which being the backpack and the second of which being the iPad, which he is fully aware of because it's in all the discovery materials and he watched his video with his attorney
11:45AM related to the iPad.
So it should be no surprise to him that I'm talking about the iPad. I'm not bringing it up to try to charge him with a new crime here.
THE COURT: Do you have any case law that
11:45AM says you can bootstrap one to the other?

MR. FLINN: I don't know -- I apologize, I don't know what you are asking me about bootstrapping of?

THE COURT: Well, he's not charged with attempting to steal an iPad.

11:45AM MR. FLINN: No, but these aren't separate incidents. These are one right after the other at the same time and same place.

THE COURT: But you are using the iPad to try to allege that there is a burglary here.

11:45AM MR. FLINN: I'm trying to show -- the burglary doesn't allege a theft of a backpack. It alleges that he entered the Bellagio with the intent to commit a larceny therein.

I'm showing it through the use of the 11:45AM backpack, which is a bifurcated petty larceny case, and the iPad and his acts inside the casino to show that his intent, when he came into the casino, was to steal things and support the burglary charge.

I'm not trying to bootstrap a second 11:46AM offense, a second crime. There is no bootstrapping. I'm simply showing the intent to prove the burglary. We don't even have to show that a crime occurred, technically speaking, inside. We need to show that the person entered with the intent to commit the crime and that qualifies 11:46AM under the burglary statute.

THE COURT: The problem is even as I sit here looking at the Criminal Complaint here right now, it's a burglary with the intent to commit a larceny, then Count 2 is a petty larceny related to the bag that was taken from 11:46AM Joanna Jimenez.

So when I look at this, when I started this -- when I started the prelim and I'm looking at the document I have in front of me, I'm thinking the case revolves around the bag that was taken from Joanna Jimenez. 11:46AM That's the burglary coming up and then, all of a sudden, it's not, that it's something else.

THE DEFENDANT: That's true.

MR. FLINN: No, your Honor, the petty larceny has been severed. It's not part of what we're 11:47AM doing right now. It's evidence of the moment he enters the property and it's evidence to show what his purpose in coming to the property and entering the property was. It was to commit larceny and I'm showing evidence of him in the casino or in the casino hotel property performing acts 11:47AM that are consistent with someone who came in to commit larceny.

I'm not trying to prove the petty larceny or any other larceny. I'm required to prove that was his intent when he entered the casino and that was his intent, 11:47AM as demonstrated by his action, when he got into the casino

property and the fact that it's not charged in there, it is charged. It is charged.

The only count before your Honor right now, which is the burglary with the intent to commit a 11:47AM larceny, to prove that he entered with that intent, I'm showing two related acts, two things that occurred close in time to each other with the defendant inside the casino hotel property to show what his intent was when he entered.

THE COURT: But how come that wasn't 11:48AM charged as an attempt theft to show they were together to show this is why he entered it?

MR. FLINN: I don't have to charge anything, your Honor, other than what the State charged him with.

11:48AM THE COURT: But when I look at the charge, the charge in the charging document, you have --

MR. FLINN: But the State can't find the owner of the iPad for the theft. We shouldn't be precluded from charging other crimes that don't require the owner of 11:48AM that iPad to appear in court. Ask the question

THE DEFENDANT: Your Honor, if I can say something, your Honor?

The DA hasn't -- he hasn't even proven the theft of the laptop. How are you going to jump to 11:48AM something else? That was a Lost & Found property that was

taken. I went up to Lost & Found.

THE COURT: Whoa, whoa, whoa, don't talk about the facts like that because you are basically admitting you did that.

11:48AM THE DEFENDANT: Right.

THE COURT: That's why we like to have attorneys --

THE DEFENDANT: Okay. Well --

THE COURT: -- because stuff like that 11:48AM doesn't come in.

THE DEFENDANT: I'm being honest in the whole situation. I'm not trying to hide nothing. I'm not trying to hide around the law. I'm being frankly honest, you know what I'm saying. I'm not trying to hide nothing.

11:49AM MR. FLINN: Your Honor, the defendant is fully on notice --

THE DEFENDANT: He was making statements like he was there. You are making yourself a witness of the crime. You never witnessed anything. The only 11:49AM information you got was from somebody about a crime. You are saying I took something. You are making a bold statement that I took something.

THE COURT: He is not making a statement this is what happened. He is making a statement to show --

11:49AM MR. FLINN: I'm arguing what I'm trying to

very well.

A **(Witness complying.)**

(Off the record discussion not reported.)

Q (BY MR. FLINN) So you obtained surveillance video of an individual related to the iPad and to the backpack and then did you locate surveillance video of that same individual entering the casino property?

11:54AM A **Yes.**

Q And is that this video clip, this part?

A **Yes.**

Q Okay, can you please publish that, play that to the Court and point out to the Court the person you

11:54AM were looking at, as they entered the property.

(Video playing at this time.)

THE WITNESS: Over here, that's what I'm

11:54AM looking at.

Q (BY MR. FLINN) That's him first coming onto the casino property?

A **Correct. That's actually him walking right to the casino floor.**

11:54AM Q Okay.

Now, as far as this, this contains the footage related to the iPad, correct?

A **Correct.**

Q So what is the first clip that you have

11:54AM related to the iPad that you have pulled from your investigation?

A **The first clip we had was him appearing in the camera range with the iPad sitting at a machine.**

Q Can you please pull that clip, pull that

11:54AM clip up.

(Off the record discussion not reported.)

THE WITNESS: Okay.

11:55AM Q (BY MR. FLINN) And if you can play that video for the Court and just point out to the Court what you were looking at when you said you saw a person with the iPad.

THE DEFENDANT: Could you tilt it a little

11:55AM bit, the screen? I cannot see it.

There you go. Thank you.

(Video playing at this time.)

11:56AM MR. FLINN: Now I'm going to pause it for

just a moment.

Q We saw that there were a couple of women that walked across the screen. Did you, during the course of your investigation, learn who the women were?

11:56AM A **They were the owner of the iPad.**

Q The iPad we were talking about, those were the ones who had the iPad originally?

A **Correct.**

11:56AM (Video playing at this time.)

THE WITNESS: He sat down at a machine and he has the item in his hand. You will see when he opens it up, clearly it's an iPad.

11:57AM THE DEFENDANT: Excuse me, sir --

THE MARSHAL: Let the witness speak.

THE WITNESS: He opens up the iPad by trying -- I don't know if he was trying to put in the pass code or what he was doing, but then he puts the iPad down

11:57AM right by the machine and walks away.

Q (BY MR. FLINN) Now did you then obtain video of what happened to the iPad next?

A **Yes.**

Q And what was that from your observation?

11:57AM A **That the employee that was in the camera**

shot actually found the iPad and turned it into our Lost & Found Department.

Q Okay.

And do you have -- did you obtain a video

11:58AM of the Lost & Found Department with the same individual that placed the iPad there going and trying to claim it?

A **Yes.**

(Video playing at this time.)

Q (BY MR. FLINN) All right, I will hit play and then if you can tell the Court what you are looking at.

A **The employee that turned in the iPad, she's bringing Mr. Edwards over to the Check Bank. That's**

11:58AM **where we keep all our Lost & Found and he's trying to claim the iPad.**

Q And then there is another camera shot of a closer up of the Check Bank that shows that individual there trying to claim the iPad?

11:59AM You know what, that's okay. That one is not necessary at this point.

Now I want to switch for a moment to ask you questions about the backpack investigation.

A **Okay.**

11:59AM MR. FLINN: And, for the record, this is

Q Now from looking at that, could you please tell the Court where the access to the employee locker room is?

A **It's down here by these carts.**

(Video playing at this time.)

(Off the record discussion not reported.)

MR. FLINN: I'm going to fast forward a little bit here because this is a little bit lengthy.

Okay, that individual walking in the hallway coming through the office door is now walking back up the hallway.

(Video playing at this time.)

THE WITNESS: He hangs around this hallway for quite a bit of time talking on the phone, on his cell phone.

Q (BY MR. FLINN) As other employees are going by, correct?

A **Yes.**

Q And now there's nobody in the hallway but him and where does that person go?

A **He's going in the back where the employee lockers are.**

(Video continuing to play.)

Q (BY MR. FLINN) And does that person re-emerge?

A **Yes, he does.**

He goes back, I think, the first time just to look at things to see what is back there.

THE COURT: You can't comment why he is going back in there.

Q (BY MR. FLINN) But does he go back in the door a second time?

A **Yes, he does.**

Q In a door to the area where the lockers are?

A **Correct.**

Q So, again, there are employees in the hallway that come by and now that person goes back in the employee locker area?

A **Correct.**

(Video continuing to play.)

MR. FLINN: He now comes out.

(Video continuing to play.)

Q (BY MR. FLINN) And there's a point where he goes back in again?

A **Correct.**

MR. FLINN: Stop it where we see him go back in.

THE COURT: Is this fast forward?

Okay, there we go.

THE WITNESS: Okay, go ahead and play from there.

(Video playing at this time.)

Q (BY MR. FLINN) Again, there are employees in the hallway.

And that individual again enters that room with the employee lockers?

A **Correct.**

Q This time he comes out --

MR. FLINN: I think I still have it going fast. Let me back up.

Let's start it over. Let's get going.

THE COURT: If you want to play it, you can play it again, but it looked like he walked out quickly with something his hands when he walked out.

MR. FLINN: Just as long as the Court saw it. I didn't want to go fast because it was playing too fast.

THE COURT: No, I was able to view that, okay.

Q (BY MR. FLINN) So then did you follow the surveillance video from there and does the individual come back out on the arcade side?

A Yes, he does.

There was no pictures taken Prove the bag was found in this area

Q At that point does he have the bag?

A No.

Q So he had the bag going into the office room that is between the hallway and the arcade, but no longer has it?

A Correct.

THE COURT: Okay.

MR. FLINN: That's it.

THE COURT: Okay.

Are we going to view anything else that he has to see?

MR. FLINN: No, your Honor.

THE COURT: Okay, sir, you can have a

I'm through with him. Your Honor, I'm through with him.
THE COURT: Okay.
THE DEFENDANT: I just want to ask one more question.
12:17PM Q When you come in the Bellagio, where is the management office located, the management of the place where somebody comes in looking for employment or where the management office is located?
A **Which management office?**
12:18PM Q Any management office.
A **Management offices are scattered out throughout the whole Bellagio.**
Q Where are they located, sir? Where are they located?
12:18PM A **Specifically which offices?**
Q Office where somebody is trying to obtain employment. Let's say trying to obtain employment.
A **That's not on our property.**
Q But there is other managers located in
12:18PM that place, right?
A **What?**
MR. FLINN: I'm going to object to relevance.
Q (BY THE DEFENDANT) Any management. Is
12:18PM there a management office located in the place?

A **Sure. There is tons of management offices.**
Q Okay, where? Where are they located at, sir?
12:18PM A **Which office? You need to be specific, sir.**
THE COURT: Sir, apparently there are a number of management offices.
THE DEFENDANT: Let me rephrase the
12:18PM question.
Q Are there any management offices, through the employees only door, when you walk through the employees office?
A **Yes.**
12:18PM Q Okay, that's what I'm asking.
THE COURT: Okay.
Q (BY THE DEFENDANT) So if a person was seeking employment and didn't know he wasn't supposed to go in back there to turn it in to ask for employment --
12:18PM MR. FLINN: Objection. He's testifying here.
THE COURT: Sir, he stated that the employment offices aren't on the property. They are apparently at a different place.
12:19PM THE WITNESS: Yes, sir. They are out on

Grier Road. That's where you have to apply for a job.
THE COURT: Where is that?
THE WITNESS: Grier Road.
THE COURT: I'm not sure where that is.
12:19PM THE WITNESS: Over by the airport.
THE COURT: Oh, oh, okay.
THE DEFENDANT: Your Honor, if a person doesn't live in the city or town, he doesn't know.
MR. FLINN: Objection, argument.
12:19PM THE COURT: Okay, it's argument.
THE DEFENDANT: I rest then.
THE COURT: Sir, do you have any other questions?
THE DEFENDANT: No, sir.
12:19PM THE COURT: Okay, sir, thank you for testifying here today. You are free to stick around to find out what happens. You are free to take off.
Did you sign his subpoena?
MR. FLINN: Yeah, I did.
12:19PM THE DEFENDANT: Thank you.
THE COURT: Okay.
All right, any other witnesses?
MR. FLINN: Yes, one, your Honor.
Detective Clark.
12:19PM THE COURT: I'm sorry, I need to take a

recess.

(Off the record discussion not reported.)

12:20PM (Off the record at 12:25 P.M. and back on the record at 12:27 P.M.)

THE COURT: Let's go back on the record.
The Court took a short recess and we are
12:22PM back on the record.
Is this the last witness?
MR. FLINN: Yes, your Honor.
THE COURT: Let's get him sworn in.

DETECTIVE JEFF CLARK,
having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified and said as follows:

12:22PM THE CLERK: Please have a seat.
State your first and last name and spell both for the record.
THE WITNESS: Detective Jeff, J-E-F-F, Clark, C-L-A-R-K.
12:22PM THE COURT: State, go ahead.

my decision, you can't complain on appeal that you testified today?

So if you think there were any errors in what I do, you have the right to appeal it to the District Court, but if you decide to testify and you make statements that you don't really want in, if you make the mistake of testifying here today, you can't complain on appeal that you chose to testify here today. You don't have to say anything here today.

12:29PM THE DEFENDANT: I know what preponderance -- I know they have the burden of proving the case, your Honor. I just want to make for the record, you know, I want to make a statement for the record why some things occurred. I want it to be on the record so when I 12:29PM go upstairs, it is on the record.

THE COURT: Sir, if you are going to testify about intent, intent is not an issue for me. Intent is always an issue for a jury.

So if you are going to talk about the 12:29PM intent in walking into the Bellagio, anything you say, it's not for me, it's simply for a jury. I don't determine intent. It is simply there is some evidence that you committed the crimes alleged.

THE DEFENDANT: Okay.

12:29PM THE COURT: So any intent why you were

there that day, it's not for me. So if you want to testify --

THE DEFENDANT: Yes, I do.

I'm just going to go ahead and get this 12:30PM over, your Honor, because I already see where it's going.

THE COURT: Okay.

THE DEFENDANT: Go ahead, go ahead.

THE COURT: Okay.

All right, sir, do you have any arguments 12:30PM you want to make?

THE DEFENDANT: Yes, sir.

I want to say there's no proof that I took anything, your Honor. I never walked in -- the video played, you never see me walk out with anything that 12:30PM belongs to nobody in the video.

Also, your Honor, because I'm representing myself, I'm going to talk in the third person.

Mr. Edwards entered the place looking for employment. He was told you have to turn in the 12:30PM application in the back area. I'm not from here. My sister passed away. Mr. Edwards was visiting his sister. His sister passed away. He come in looking for employment, goes in the back with the intent to look for a job.

He goes in the back and now, all of a 12:30PM sudden, somebody is saying -- alleging that something is

missing, you know, and you don't see Mr. Edwards ever with this property. He leaves the property. He leaves the property with the game room or wherever it is, the arcade with nothing in his hand.

12:31PM Nobody, the lady didn't come in and tell you she witnessed it. She never seen nothing took, nothing. He told -- the detective said he never seen me, he didn't see nothing. The other guy right there told you -- right there, my man, the other guy right there said 12:31PM he never seen me take something.

So I don't know why I'm being held. No evidence was ever taken from me when I was arrested, nothing belonging to the lady. The bag was lost and one of the guys, according to the paperwork, one of the guys 12:31PM returned the lost property to her.

I didn't go in there with no intent to do anything but to play games and look for a job. So I don't know where this guy, he made some cases up because he might be mad about something. He made up a whole lot of cases, 12:31PM you know what I'm saying, so that's on him.

THE COURT: Okay.

THE DEFENDANT: With that, I rest.

THE COURT: All right.

State, any argument?

12:31PM MR. FLINN: Just briefly, your Honor.

I think the State has met its burden of slight or marginal evidence. The defendant entered the casino property, he proceeded to go into obviously an employee only area, avoided contact by being on the phone 12:32PM in the hallway.

THE DEFENDANT: I object, your Honor. I object to him saying --

THE COURT: Sir, it's already admitted. Just like you have the right to have a chance to argue, he 12:32PM is having a chance to argue.

MR. FLINN: He entered the employees only area, appeared to be on his phone until such time as employees would go by, then he would go in, scout the employee locker room area. He eventually went in there 12:32PM when no employees were around, took the backpack, left that room with the backpack.

The fact he didn't leave the casino with property, without the backpack is of no matter. He clearly went through it. He just didn't find anything valuable.

12:32PM THE DEFENDANT: I object, your Honor. I object to that too.

THE COURT: Sir, it's argument.

MR. FLINN: He took that.

A very short time later, he is then seen 12:32PM approaching the slot machine shortly after what appears to

Pg 97 line 17
Pg. 53 lines 24 I First he said this was when I First entered casino

as a question, how he knows you.
THE DEFENDANT: I didn't ask him to go into all the conversations. I asked --
THE COURT: He is trying to explain it.
12:26PM THE DEFENDANT: Okay, I'm going to leave that question alone, your Honor.
THE COURT: You asked him.
MR. FLINN: He gets to complete his answer, sir.
12:26PM THE COURT: Sir, if you ask questions, he is allowed to answer.
THE DEFENDANT: Go ahead, go ahead.
THE COURT: If you ask the question, he is allowed to answer it.
12:26PM THE DEFENDANT: That's a simple answer. That's a book. He's got a whole --
THE COURT: Sometimes you open the door, but once you open the door, you can't close it.
THE DEFENDANT: Your Honor, I didn't
12:26PM think, your Honor, sitting there would allow somebody going on like that.
THE COURT: He is allowed to put on the record how he knows you.
THE DEFENDANT: Okay.
12:26PM THE COURT: So you are allowed to answer

it.
THE WITNESS: Yes, sir.
Like I said, there is two previous cases involving hotel thefts and burglaries in which the suspect,
12:26PM again, Mr. Edwards, enters employee only areas.
THE DEFENDANT: I object, your Honor. I object, your Honor.
THE COURT: We will let you object, but he's allowed to answer.
12:27PM THE DEFENDANT: Okay.
THE WITNESS: The same MO, your Honor, where he goes back in the back employees only area.
THE DEFENDANT: I object, your Honor.
THE WITNESS: He goes in the back rooms.
12:27PM THE COURT: We will allow your objection.
THE DEFENDANT: Locker rooms, things such as that to steal employee belongings while they are so employed.
THE COURT: Okay.
12:27PM Did you have any other questions for him?
THE DEFENDANT: No, I don't got nothing for him, no.
THE COURT: Do you have any redirect?
MR. FLINN: No, your Honor.
12:27PM THE COURT: Okay, detective, thank you for

testifying here.
THE DEFENDANT: Oh, yeah, one more question for him that I want to put on the record.
Q Did you ever see Mr. Edwards take
12:27PM anything?
A **Yes, sir, I did.**
Q When did you see Mr. Edwards --
A **On the video, you entered --**
Q Did you see personally, not on the video,
12:27PM did you ever see Mr. Edwards take something? Not something you narrate yourself Mr. Edwards doing that you make up in your mind.
MR. FLINN: Objection, argumentative.
THE COURT: It is argumentative.
12:27PM Q (BY THE DEFENDANT) Did you personally see him take anything? Did you see him personally?
A **Your Honor, I was not in the Bellagio.**
THE DEFENDANT: I'm asking straight questions, a yes or no question.
12:27PM THE WITNESS: You have a good day, your Honor.
THE COURT: He said no. He said no.
THE DEFENDANT: Okay.
THE COURT: Thank you.
12:28PM Okay, does the State rest at this point?

MR. FLINN: Yes, your Honor.
THE COURT: Okay, the State has rested.
THE DEFENDANT: I want to testify. I want to make a statement. I want to testify.
12:28PM THE COURT: Sir, you understand this is a prelim, not a trial.
THE DEFENDANT: I know. I want to get some things on the record. So I'd appreciate it if I can say --
12:28PM THE COURT: You know if you testify today, they are going to have a chance to ask you questions.
THE DEFENDANT: Yeah, I want them to, I want them to. I want to tell you my story on the record.
THE COURT: It doesn't matter to me. This
12:28PM is a prelim. The standard is slight or marginal evidence.
THE DEFENDANT: Yes.
THE COURT: So I mean I'm not a jury.
THE DEFENDANT: Yeah.
THE COURT: I don't find you guilty, I
12:28PM don't find you innocent here today.
THE DEFENDANT: I still want to get what I'm going to say, what I'm going to say what I was doing on record.
THE COURT: Sir, you understand if you
12:28PM testify today, you can't complain on appeal, if you appeal

be two elderly ladies that did not appear to be with the defendant or have any contact with them, he sits down where the iPad is, starts looking around very nervously, he starts to drift to the iPad. It just so happens an employee sees it there, picks it up, turns it in.

He follows them, tries to claim it is his. He obviously doesn't know the pass code to the iPad, so they won't give it to him. One of the elderly ladies comes back later and identifies her iPad. He obviously tried to remove that during his course of time there.

So the State, as to its count of burglary, the State has proven, by slight or marginal evidence, that the defendant's intent, when he entered the property, was to commit a larceny therein, as demonstrated by his course and conduct while he was on the property.

THE COURT: All right.

Mr. Edwards, please stand.

Please stand, sir.

Sir, this is not a trial. I don't determine guilt or innocence, only whether there is some evidence to support the charges against you.

The Court finds that that burden has been met by the State, as to Count 1, burglary. We will hold Count 2. We have bifurcated that.

So we will hold you to answer Count 1,

burglary. We will hold you to answer that count in the Eighth Judicial District Court, State of Nevada, County of Clark on the following date and time.

THE CLERK: November 13, 10 A.M., District Court Lower Level Arraignment.

THE COURT: What day is that?

THE CLERK: Friday.

THE COURT: That's Friday.

Sir, you are going to have certain rights that accrue because I bound you up. You are going to have the right to file an appeal, basically, what is known as a Writ. You have got to get a copy of the transcript.

THE DEFENDANT: I got one right here.

THE COURT: No, no, what happened here today.

THE DEFENDANT: Oh, okay.

THE COURT: You have to get a copy of the transcript. What I'm going to do is order an expedited transcript so he has it on Friday.

So, Patsy, if you can do an expedited copy of the transcript, do an Order because he is not going to be able to do the Order, then we will get a copy of that for him on Friday. So it will come with the transcript on Friday when they see you downstairs in the District Court, okay?

THE DEFENDANT: All right. Thank you, thank you.

THE COURT: All right.

(Off the record discussion not reported.)

THE COURT: For the petty larceny, do you want to go out about six months? Four months, six months?

MR. FLINN: Six months is fine.

THE COURT: Okay, we will go out on the petty larceny. We will go out about six months because you have multiple felony cases in the system. Those will probably get wrapped up first, okay.

THE CLERK: May 10, 7:30.

(Off the record discussion not reported.)

THE DEFENDANT: You said I'm going to receive a copy of the transcript down in District Court?

THE COURT: Yeah, we will try to get that down to you, okay.

Thank you.

(Off the record at 12:40 P.M.)

* * * * * *

ATTEST: FULL, TRUE, ACCURATE AND CERTIFIED TRANSCRIPT OF PROCEEDINGS.

/s/ Patsy K. Smith

PATSY K. SMITH, C.C.R. #190

know, I'm already bound over in. I have been to preliminary hearings on two cases already, so I'm already in.

If we can resolve this down here. Then

09:30AM that's cool to me, you know, if we can resolve it. I've never received any offers from her saying she got offers from him or the State.

THE COURT: Sir, I think the problem is, you have six cases in the system.

09:30AM THE DEFENDANT: I know about that. I'm talking about the two today.

THE COURT: Wrapping up your cases, that's going to take awhile.

Do you represent yourself in the other

09:31AM cases?

THE DEFENDANT: I'm contemplating representing myself in one of my cases up there. I already took the Faretta in another case. So I passed the Faretta and I'm going to be representing my case with that one too

09:31AM also.

THE COURT: All right, sir.

THE DEFENDANT: If we can resolve this then with some -- you know, because I mean I wouldn't mind having a status check on the case and then find out if we

09:31AM can resolve it down here before we even go further.

THE COURT: Well, the problem is once the PD comes off your case, once you don't have an attorney on your case, they are not going to talk to you directly. They don't talk to you directly.

09:31AM THE DEFENDANT: I'm my own attorney.

THE COURT: They can't talk to you directly.

THE DEFENDANT: How come he's not negotiating with me? In the other courts, I have had the

09:31AM State attorney talk to me. I guess they don't feel like I'm not one of their peers.

THE COURT: No, no, not at all, but if she is coming off your case, they are going to act like you are prepared to fight your case, that you are just going to

09:31AM trial, that you are going to fight your case and go to trial.

THE DEFENDANT: But I'm willing to say -- he can hear me now. He hears me now.

THE COURT: Well, if you want to try to

09:32AM negotiate your case, why don't you keep somebody on your case, as a go-between, so they can talk with her.

THE DEFENDANT: Okay, your Honor.

We have been doing this, you know. We have been going back and forth. This has been set for

09:32AM preliminary. I don't know what this is.

THE COURT: Well, the problem is you feel you want to represent yourself and fight your case, then you tell us you want a negotiation.

THE DEFENDANT: I do. I want to resolve

09:32AM my case. If we can resolve it down here, that's cool --

THE COURT: Yeah.

THE DEFENDANT: -- but if I can't get it resolved, then I will represent myself and this deal should be open for some kind of negotiation with me.

09:32AM You know, I don't know what the deal is. With what you're saying, he is not being able to represent -- I mean to negotiate with me, you know what I'm saying?

MS. HOJJAT: Judge, can we approach

09:32AM briefly?

THE COURT: Sure, absolutely.

(Off the record discussion not reported.)

09:35AM THE COURT: All right, Mr. Edwards, have a seat. They are going to talk to you at the end of this to see if they can work something out, in terms of a negotiation. If they don't give you something you like, we will do the Faretta at the end of it, but we will let you

09:35AM talk.

MS. HOJJAT: Thank you, your Honor.

(Off the record discussion not reported.)

10:06AM THE COURT: Why don't we go back on Edwards.

MS. HOJJAT: Thank you, your Honor.

And, your Honor, I did speak with the District Attorney in this case. I did convey to him that

10:06AM Mr. Edwards would like an offer and would like an opportunity to negotiate these two cases separately. The District Attorney, at this time, is not willing to make an offer.

I spoke to Mr. Edwards, explained to him

10:06AM that, at this time, there's no offer on the table and I asked him what he would like to do. He would like to go forward with the Faretta canvass today.

THE COURT: Okay.

All right, sir, you have two different

10:06AM felony cases. I'll do one Faretta, but it will cover both cases.

Sir, for the record, what is your full legal name?

THE DEFENDANT: Harold Moore -- Edwards.

10:06AM THE COURT: I'm sorry?

Cross - examination

THE DEFENDANT: Harold Edwards.
THE COURT: How old are you?
THE DEFENDANT: 50.
THE COURT: How far did you go in school?
10:07AM THE DEFENDANT: Couple years of college.
THE COURT: Do you read, write, and understand the English language?
THE DEFENDANT: Yes, I do.
THE COURT: All right.
10:07AM Sir, do you have any health issues --
THE DEFENDANT: No, sir.
THE COURT: -- at this point?
THE DEFENDANT: No, sir.
THE COURT: Is your eyesight okay?
10:07AM THE DEFENDANT: Yes, sir.
THE COURT: Do you have any kind of history with mental health issues?
THE DEFENDANT: No, sir.
THE COURT: Are you on any kind of
10:07AM medication?
THE DEFENDANT: No, sir.
THE COURT: No medication whatsoever?
THE DEFENDANT: My primary doctor just discontinued my medicines, but I'm not taking medicine now,
10:07AM but it was for high blood pressure.

THE COURT: Sir, in 15F15118X, that's one of the cases in front of me, do you understand what you are charged with in that case?
THE DEFENDANT: Yes, sir.
10:07AM THE COURT: Okay.
Do you know what the elements of burglary are?
THE DEFENDANT: Yes, sir.
THE COURT: Okay, what are the elements of
10:07AM burglary?
THE DEFENDANT: The element is the intent to commit a felony or theft -- knowing to -- and without authority with the intent to commit a felony or theft.
THE COURT: Okay, the second case is a
10:08AM misdemeanor. The second part of that is a misdemeanor, it's a petty larceny. Do you know what the elements of a petty larceny are?
THE DEFENDANT: Petty larceny is the intent to take something from -- take something that --
10:08AM take something that doesn't belong to a person.
THE COURT: Do you know what the possible penalties are for a burglary?
THE DEFENDANT: The possible penalties for a burglary is a Category B, 1-to-10 years.
10:08AM THE COURT: What about petty larceny?

THE DEFENDANT: Petty larceny is a maximum -- maximum six months.
THE COURT: Okay, in 15F15588X, do you understand what you are charged with in that case?
10:08AM THE DEFENDANT: Yes, sir.
THE COURT: Okay, what are the charges?
THE WITNESS: You said 15F --
THE COURT: Yeah, 15588X.
THE DEFENDANT: Let me see.
10:08AM Okay, conspiracy to commit grand larceny -- conspiracy to commit larceny and grand larceny.
THE COURT: Okay.
Okay, sir, do you understand what the elements of grand larceny are?
10:09AM THE DEFENDANT: The elements of grand larceny are the intent to commit -- or the conspiracy or grand larceny? Which one are you asking me about?
THE COURT: All right, Count 2 because Count 1 is conspiracy. So Count 2, do you understand what
10:09AM a grand larceny is?
THE DEFENDANT: Yeah, grand larceny is a intent to take something from somebody that doesn't belong to you. It's simple.
THE COURT: Okay, what about the
10:09AM conspiracy charge, what does that mean?

THE DEFENDANT: Conspiracy is conspiring with another individual, with a co-defendant, whatever, to deprive someone of their property.
THE COURT: Okay, do you understand what
10:09AM the possible penalties are?
THE DEFENDANT: 1-to-5 years for grand larceny and the gross misdemeanor, one year.
THE COURT: Sir, do you understand that you have a constitutional right and a statutory right to
10:09AM the assistance of counsel?
THE DEFENDANT: Yes, sir.
THE COURT: Okay.
Do you understand that the attorney from the Public Defender's Office, the person who is assigned to
10:10AM your case, is a trial attorney with many years of experience, has handled numerous felony cases, and has practiced in front of both me and the judges upstairs for a long period of time?
THE DEFENDANT: Yeah.
10:10AM THE COURT: Okay, do you understand that these individuals are competent lawyers?
THE DEFENDANT: Okay, yes, I understand that.
THE COURT: Okay.
10:10AM Do you know that you have a right to

compel witnesses to testify on your own behalf?
THE DEFENDANT: Yes, sir.
THE COURT: Okay, how would you do that?
THE DEFENDANT: By asking the witnesses --
10:10AM to call them; ask them to appear or have your Honor
subpoena them to court.
THE COURT: Do you know how to subpoena
somebody?
THE DEFENDANT: I have to find out in the
10:10AM law library. I haven't done it yet, but I'm pretty sure I
can find out through the law -- to tell you, I know someone
that knows more about the law than me and, also, they have
a law library.
THE COURT: You have talked to somebody
10:10AM who has more experience than you have?
THE DEFENDANT: Yeah.
THE COURT: Like this person here?
THE WITNESS: I know people on the street.
THE COURT: Nothing better than a street
10:11AM lawyer, nothing better than a street lawyer.
THE DEFENDANT: Well, you put so much
emphasis on it. I know people just like you who know the
law. Not all criminals, everybody I know isn't a criminal
like what you are implying. You are implying because I'm
10:11AM in jail --

THE COURT: I'm saying this person is
representing you for free? They are willing to
represent --
THE DEFENDANT: I don't want them to
10:11AM represent me. That's why taking the Faretta.
THE COURT: Do you know you have a right
to cross-examine the State's witnesses?
THE DEFENDANT: Yes, sir.
THE COURT: Do you understand you have the
10:11AM right to confront all of the State's witnesses?
THE DEFENDANT: Yes, sir.
THE COURT: Do you know you have the right
to be informed of the nature and cause of the accusations?
THE DEFENDANT: Yes, sir.
10:11AM THE COURT: Okay -- sorry.
Do you know you will be required, while
representing yourself, to follow all procedural rules
attending to these matters?
THE DEFENDANT: Right.
10:11AM THE COURT: You get no special favors just
because you are representing yourself?
THE DEFENDANT: Right.
THE COURT: That means no extra time in
the law library?
10:11AM THE DEFENDANT: Right, right.

THE COURT: Whenever you get over there is
when you get to go over there?
THE DEFENDANT: Right.
THE COURT: It doesn't make a difference
10:11AM if you represent yourself?
THE DEFENDANT: They don't have a law
library you can go to. You can't go to one. It makes no
difference. I just have to plan on the Court --
THE COURT: Sir, do you understand
10:12AM self-representation is almost always unwise --
THE DEFENDANT: Okay.
THE COURT: -- and may be to your
detriment?
THE DEFENDANT: Yes, sir.
10:12AM THE COURT: Okay.
You know that you have to follow all the
technical rules of substantive law, criminal procedure, and
evidence?
THE DEFENDANT: Right.
10:12AM THE COURT: You are basically treated like
an attorney?
THE DEFENDANT: Yes, sir.
THE COURT: Do you have any questions
about that?
10:12AM THE DEFENDANT: No, sir.

THE COURT: Do you understand the
prosecutor, the prosecution will be represented by an
expert professional attorney?
THE DEFENDANT: Yes, sir.
10:12AM THE COURT: Okay, that you are not going
to get any favors from him?
THE DEFENDANT: Yes, sir.
THE COURT: Okay, have you ever seen or
participated in an actual jury trial?
10:12AM THE DEFENDANT: Yes, sir.
THE COURT: Have you ever represented
yourself?
THE DEFENDANT: I represented myself once.
THE COURT: Where was that?
10:12AM THE DEFENDANT: In Illinois. I won the
jury.
THE COURT: You represented yourself?
THE DEFENDANT: Yes.
THE COURT: Was it a felony case?
10:12AM THE DEFENDANT: Felony case, yes, your
Honor.
THE COURT: You don't have to tell me.
Was this something you could put on the record, what the
felony was?
10:13AM THE DEFENDANT: Do I have to? I don't

Cross

have to divulge --
THE COURT: You don't have to tell me what it was.
THE DEFENDANT: Yeah, let's leave it right there. Let's leave it right there.
THE COURT: Okay.
Okay, do you understand your right to self-representation will be vacated if you become disruptive in court?
10:13AM THE DEFENDANT: Yes, sir, I understand that.
THE COURT: Do you understand if you are convicted, you can't complain on appeal that you were an inadequate attorney?
10:13AM THE DEFENDANT: Right.
THE COURT: That you weren't a good attorney, you understand you can't appeal that issue?
THE DEFENDANT: Yes, sir.
THE COURT: I mean, apparently, you have
10:13AM already been given the Faretta canvass in a different Department. I think that was in front of Department 12?
THE DEFENDANT: Right.
THE COURT: You have already been found to be competent, you have already been found to be able to
10:13AM represent yourself.

Are you doing this freely and voluntarily --
THE DEFENDANT: Yes, sir.
THE COURT: -- of your own accord?
10:13AM Nobody's forcing you to represent yourself?
THE DEFENDANT: No, sir, no, sir.
THE COURT: Okay, he's already been given the Faretta canvass in other departments. He's been found competent to represent himself.
10:14AM So, at this point, I will let you represent yourself on those cases. We will find that you are competent. This is freely and voluntarily done.
We will simply reset this in 15 days. I will see you back here in 15 days.
10:14AM MS. HOJJAT: Your Honor, this was the preliminary hearing.
THE DEFENDANT: This was on for preliminary.
MR. FLINN: One of them was.
10:14AM MS. HOJJAT: Yeah.
THE COURT: Is that one going today?
MR. FLINN: We are ready to go.
THE COURT: Okay.
All right, does he have all the discovery?
10:14AM MS. HOJJAT: I have provided him a copy of

the discovery, your Honor. At that point, I redacted the victim's contact information. I don't know if you want him to have the unredacted copy. It has everything, phone numbers, addresses, social security numbers. This one is
10:14AM redacted.
THE COURT: You have to take everything out.
MS. HOJJAT: Yes.
THE COURT: Have you had a chance to look
10:14AM at the discovery?
THE DEFENDANT: Yes, sir. I seen the videos and I have also received from her most of the discovery.
MS. HOJJAT: I did. I also gave him a
10:14AM copy of everything. When I went to the jail, I played everything on the video for him.
THE DEFENDANT: Yeah, I have seen it.
THE COURT: We are not going to do this one first. We will make it towards the end of this, let
10:15AM the other prelims go --
THE DEFENDANT: Right.
THE COURT: -- so you can kind of see what is going on in here and then, okay, you are off.
MS. HOJJAT: Thank you.
10:15AM MR. FLINN: We need a prelim date in the

one case, in 15588.
THE COURT: Yeah, we need a prelim.
Which one is not going?
MR. FLINN: 15588.
10:15AM THE COURT: In 15F15588X, we will set a prelim in that one in 15 days.
THE CLERK: November 24th, 9 A.M.
THE COURT: Then it looks like the other one is going today.
10:15AM Okay, sir, have a seat.

(Off the record discussion not reported.)

THE DEFENDANT: Your Honor, can I get
10:15AM discovery on the other case?
THE COURT: Do you have a copy of the discovery to give to him?
THE DEFENDANT: Also, your Honor, the photos that I was given from the State, I guess these are
10:15AM copies from his photos. These -- I don't know what this is. Maybe you can tell me what that is? I don't even know what this is in the photo. Supposedly of somebody. Looks like it's a sonogram to me.
THE COURT: Maybe it's Batman.
10:16AM You tell me, who is that.

THE DEFENDANT: Who is this? You say that's me?

THE COURT: Look, we will get to it. We will get to it. You can't be disruptive. You can't be disruptive.

So we will get to you.

(Off the record discussion not reported.)

THE COURT: Do you want to give the copy to the marshal?

THE DEFENDANT: For the record, the marshal --

MR. FLINN: I did give a copy of the discovery to the marshal. He is going through it to make sure it's appropriate.

THE COURT: Okay, okay.

(Off the record discussion not reported.)

THE COURT: Let's go on the record with Mr. Edwards. This is 15F15118X.

Sir, we will have you come up here and take A seat at the defense table.

Sir, do you have any paper to write on?

Do you have any paper to write on?

THE DEFENDANT: I don't need that much paper, your Honor. I have enough. I have a sufficient amount of paper, but, also, before we start, before we begin to proceed, I'd like to move to sever the petty larceny case.

THE COURT: Yeah, we will do that.

THE DEFENDANT: Thank you.

THE COURT: We will sever it.

THE DEFENDANT: Thank you.

THE COURT: We will grant that motion. We will kind of trail that to see what happens with the felony.

THE DEFENDANT: Also, your Honor, before any video is shown, could you please admonish the DA to not narrate the video, just let it play. Whoever the witness is on the video, if they are one of his witnesses, they not be led with the video with his narrating the video. Just let's it play. You know, it's -- the video is self-explanatory.

THE COURT: Sir, it's a little bit early to ask that. If you see something that is a problem, you can object to it, but it's a little bit early to make any kind of rulings on the evidence.

THE DEFENDANT: Okay.

THE COURT: State, it's my understanding there is no offer?

MR. FLINN: That's correct, your Honor.

THE COURT: Okay.

All right, sir, Mr. Edwards, did you have any witnesses on your behalf?

THE DEFENDANT: Yes, I want to use the detective. I think his name is Jeffrey Clark. I want him to be my witness, one of my witness -- I want him as one of my witnesses.

THE COURT: Okay. So you are going to cross-examine him?

THE DEFENDANT: Yeah.

MR. FLINN: Yeah, the State intends to call him, so...

THE COURT: Okay.

All right, sir, have a seat. We are going to get this started.

State, it's my understanding you have four witnesses?

MR. FLINN: That's correct, your Honor.

THE COURT: All right, if you are a witness in this case, please remain outside until your name is called.

State, please call your first witness.

MR. FLINN: You two can go outside.

The State calls Joanna Jimenez.

JOANNA JIMENEZ,

having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified and said as follows:

THE CLERK: Please have a seat.

State your first and last name and spell both for the record.

THE WITNESS: Joanna Jimenez, J-O-A-N-N-A, 98 -- sorry, J-I-M-E-N-E-Z.

THE COURT: All right, State.

MR. FLINN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. FLINN:

Q Ms. Jimenez, I want to direct your attention back to September 17th of this year, how were you employed at that time?

Who did you work -- where did you work?

A **Oh, Bellagio.**

Q What area of the Bellagio?

A **Cafe Gelato.**

(Off the record discussion not reported.)

THE COURT: All right, next witness.

MR. FLINN: Yes, your Honor.

11:37AM Brief indulgence, just a moment.

Surveillance officer from the Bellagio.

For the record, your Honor, the State calls Jason Wherrity.

THE COURT: Okay.

11:38AM

JASON WHERRITY,

having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified and said as follows:

THE CLERK: Please have a seat.

State your first and last name and spell both for the record.

THE WITNESS: Jason Wherrity, J-A-S-O-N

11:38AM W-H-E-R-R-I-T-Y.

THE COURT: All right, State.

MR. FLINN: Thank you, your Honor.

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DIRECT EXAMINATION

BY MR. FLINN:

Q Sir, how are you employed?

A **I work at the Bellagio in Investigations.**

11:38AM Q And were you employed in that capacity back on September 17th of this year?

A **Yes.**

Q And, in the course of those duties, do you investigate crimes that occur within the casino or

11:38AM allegedly occur within the casino at various places?

A **Yes, I do.**

Q Now in reference to that date, in particular, September the 17th, did you investigate an employee's report that her backpack was taken from her

11:38AM locker?

A **Yes.**

Q And that's a locker in the employees only locker room?

A **Correct.**

11:39AM Q So did you investigate that?

A **Yes, I did.**

Q And did you also investigate an attempted theft of an iPad?

A **Yes.**

11:39AM Q And that was from the Lost & Found --

A **It was.**

Q -- ultimately?

A **Yes.**

Q And in an effort to investigate those

11:39AM complaints, did you view surveillance video from the casino?

A **Yes.**

Q And the casino, the hotel casino property?

A **Correct.**

11:39AM Q And were you able to compile surveillance video related to those two incidents?

A **Yes, I was.**

Q And are those videos of the areas involved both with the backpack where it was stored and the iPad at

11:39AM the Lost & Found?

A **Yes.**

Q Among other areas of the casino?

A **Correct.**

Q And were you able to identify, in

11:39AM reviewing the surveillance video, that there was a person -- a specific person involved with both incidents?

A **Yes.**

Q Was that the same person within your viewing?

11:40AM A **Yes.**

Q Now did you provide that video, surveillance video, the part that you compiled related to these incidents to law enforcement and the District Attorney's Office?

11:40AM A **I compiled the video. My partner is the one that showed it to Metro and then our Legal Department sent the video over to your department.**

Q Okay.

So shortly before this hearing today, you

11:40AM and I met, correct?

A **Correct.**

Q And I showed you some video on two CDs, right?

A **Correct.**

11:40AM Q Or DVDs.

And we watched portions of the video together from each of those disks, correct?

A **Correct.**

Q And are those disks and the video on them

11:40AM the fair and accurate copies of the surveillance video that you compiled from the Bellagio in the course of investigating these crimes?

A **Yes.**

MR. FLINN: Your Honor, at this time, I'm

11:41AM going to move to admit State's Exhibits -- well, I will

State's Proposed Exhibit 2 and if I could move for the admission of that exhibit?

THE COURT: Okay.

Sir, you saw this previously with your attorney?

THE DEFENDANT: Yes, sir, I saw that video.

THE COURT: Okay.

MR. FLINN: Sorry, your Honor.

THE COURT: It's all right. This always happens when we have video. It never works right.

(Off the record discussion not reported.)

Q (BY MR. FLINN) Okay, now in your investigation of the theft of the backpack, did you obtain surveillance video that showed an individual come out of that locker room with the backpack?

A **Yes.**

Q And did you, in your surveillance video, go back in time to see where that person first came into the picture or had access to the area where the backpack was?

A **Yes.**

Q And where was that? What part of the

casino was that?

A **He entered into the arcade and ended up going to the arcade office to the back house.**

Q Do you have video of that?

A **The arcade when he came in?**

Q The area of the arcade and going to the room where the backpack is.

(Video playing at this time.)

THE WITNESS: He's actually leaving. That's the wrong one.

Q (BY MR. FLINN) That's the wrong one?

A **He's actually leaving.**

Q We will show that now.

Is he leaving?

A **Leaving the arcade.**

Q Okay.

(Video playing at this time.)

THE WITNESS: Okay, so this is the arcade.

Q (BY MR. FLINN) As an investigator, you are familiar with all the areas of the casino property, right?

A **Yes.**

Q Rooms and routes and things like that?

A **Yes.**

Q Okay.

So, again, this is the arcade?

A **This is the arcade.**

Q All right.

A **And he's going toward the middle of the arcade.**

THE DEFENDANT: Where is that? Where is somebody at? I don't see nobody.

THE WITNESS: Right there.

THE DEFENDANT: Oh.

THE WITNESS: And there is an office door right here that he goes into.

Q (BY MR. FLINN) Okay, and behind that door, what is it again?

A **The arcade office and it goes into the back hallway, back of the house.**

Q And so there's an arcade office that goes into the back of the house. Is that near the room where the employee lockers are?

A **Correct.**

Q So you walk through the office and then you are in the room where the lockers are?

A **You walk through the office into the back hallway.**

Q Okay.

A **And there is other doors.**

Q Do you have from that office, do you then have video of the individual leaving the office and entering the back hall?

A **Yes.**

Q Could you please open that up.

A **(Witness complying.)**

(Video playing at this time.)

Q (BY MR. FLINN) All right, so this video here, as I hit play, this is the back hallway that you are talking about that the office connects to?

A **Correct.**

So he comes out the office door.

Q That's the individual that comes through the arcade, goes out the office through this side, and out in the back hallway?

A **Correct. This is all an employee area.**

Q And so the individual walking down the hallway?

A **Correct.**

seat.
MR. FLINN: Now I have handed what is admitted as State's Exhibit 1 and 2 back in their envelops to the court clerk.
12:09PM THE COURT: Okay.
THE DEFENDANT: Your Honor, if I may?
I want to question him with the video. I want to question him with the video, if it please the Court.
12:10PM THE COURT: Sure. You have to wait until he's done --
THE DEFENDANT: I know, I know.
THE COURT: -- then come back up.
THE DEFENDANT: I just wanted to make a
12:10PM note of that.
THE COURT: Okay.
MR. FLINN: Actually, your Honor, I don't have anything further for this witness.
THE COURT: Oh, okay.
12:10PM Sir, do you want to start off questioning, start off questioning about the video or do you have other questions first?
THE DEFENDANT: You know, I know people got things to do, so I'm just going to ask him a question.
12:10PM THE COURT: This is my job. I will sit

here all day for you on this.
THE DEFENDANT: I just wanted to show the video of when he's trying to indicate that I entered the place with my intent. I want to show that video of the
12:11PM lap -- what is it, iPad, the iPad. I wanted to show that video again to ask him some questions with showing that video.
MR. FLINN: I'm not sure which --
THE COURT: I think the first video we
12:11PM showed.
MR. FLINN: Right, but I'm not sure which part he is talking about.
THE DEFENDANT: I'm talking about when you see him sit down.
12:11PM THE COURT: Are you talking about the first part of it where you allegedly walk in and sit down at the gaming machine?
THE DEFENDANT: At the machine, yeah.
THE COURT: Okay.
12:11PM All right, everybody come back up here.
All right.
MR. FLINN: Sorry, Judge.
THE COURT: It's okay, it's okay.
MR. FLINN: I wouldn't have taken it all
12:11PM out.

THE COURT: It's okay.

(Off the record discussion not reported.)

12:12PM MR. FLINN: All right, for the record, this is State's Exhibit 1 that I pulled up for the defendant and do you want me just to play this?
THE DEFENDANT: If you can, you can play it.
12:13PM MR. FLINN: Okay.
THE DEFENDANT: Thank you.

(Video playing at this time.)

12:13PM THE DEFENDANT: Could you stop it right here.

CROSS-EXAMINATION
BY THE DEFENDANT:
12:13PM Q Now earlier, sir, you said this lady in the picture here was the owner of the laptop?
A **Correct.**
Q Okay.
It was my understanding it was two older
12:13PM ladies that was sitting at the --

MR. FLINN: Objection. He's testifying.
THE COURT: I thought it was two older ladies also.
THE DEFENDANT: Yeah.
12:13PM THE COURT: I thought the testimony was because there were multiple people who worked through here when he said that, I thought he was talking about the two older ladies walking through the scene.
MR. FLINN: Yeah, just a moment ago in the
12:14PM picture.
THE COURT: So far as I see, there was a woman.
MR. FLINN: That's not who he is talking about. There is two people who walked by a moment ago.
12:14PM THE DEFENDANT: Okay, I thought you were talking --
THE COURT: The problem is, there is a woman on the screen right here.
MR. FLINN: I apologize.
12:14PM THE COURT: That's where --
MR. FLINN: That's where the confusion is here. For the sake of clarity here, I will back it up in just a moment.
There is one of them right there in this
12:14PM frame.

THE DEFENDANT: Yes.
MR. FLINN: Is that who you are speaking of?
THE COURT: That's these two women?
12:14PM MR. FLINN: That's a gentleman. He has a flat hat on.
THE COURT: Okay.
MR. FLINN: This lady. I tried to show you there was another lady with her.
12:14PM THE DEFENDANT: Okay, your Honor, it's been clarified.
Okay, you can continue to play it, sir.
MR. FLINN: Okay.
THE DEFENDANT: Thank you.

(Video playing at this time.)

THE DEFENDANT: Now stop right here.
Q This young lady, I believe she is a worker
12:15PM at the Bellagio -- this is the Bellagio?
A **Yes.**
Q This young lady right here, I believe she's got a rag in her hand right there. She works for the place, right?
12:15PM A **Yes.**

Q Did you have a chance to question her?
A **I didn't, but my partner did.**
Q Did you receive any statements from the lady?
12:15PM A **Yes, I did.**
Q What were those statements?
A **I have no idea. I didn't read the statements.**
MR. FLINN: Objection.
12:15PM THE COURT: It would be hearsay, so the objection will be sustained.
MR. FLINN: Do you want me to keep playing this?
THE DEFENDANT: Yes, keep playing it.

(Video playing at this time.)

Q (BY THE DEFENDANT) Now you see Mr. Edwards sitting at the -- what are these, machines or
12:15PM slot machines?
A **Yes.**
Q Do you see him with anything -- when he came and sat there, do you see him with anything when he first came and sat there?
12:15PM A **Yes.**

Q What was that in his hand?
A **iPad.**
Q Where is it located at, sir? I don't see it.
12:16PM A **It was in your left hand.**
Q You see it? The iPad is sitting by me --
MR. FLINN: Objection. He is testifying.
THE COURT: Sir, you can't testify, okay.

12:16PM (Video playing at this time.)

THE WITNESS: Correction.
THE DEFENDANT: I couldn't hear you, sir, correction? What did you say, correction?
12:16PM THE WITNESS: Yes, I did, correction.
Q (BY THE DEFENDANT) Okay, that means you didn't see -- you swore under oath you did see something in my hands, right?
A **My mistake.**
12:16PM MR. FLINN: No, no, no.
Q (BY THE DEFENDANT) That's when you were asked the question earlier.
Excuse me, sir --
MR. FLINN: I'm making an objection.
12:16PM THE COURT: He is allowed to make an

objection.
THE DEFENDANT: But you didn't give the Judge a chance to speak or not. You just jumped right on in.
12:17PM MR. FLINN: That's how an objection works.
THE DEFENDANT: No, it's not how the objection --
THE COURT: Sir, sir, he is allowed to object.
12:17PM MR. FLINN: Objection, your Honor. That misstates the testimony because when he asked him the question earlier, we were watching a portion of the video where the defendant walked up to the slot machine, sat down, had the object in his hands, placed it below the slot
12:17PM machine. Now he is asking him to look at the portion where the defendant walked off and doesn't have the iPad in his hand and making it out as though that's the same thing they were talking about.
So what I just wanted to be clear was that
12:17PM misstates the testimony that we're talking about. We are looking at two different sections of the video here that he is asking about.
THE COURT: Okay, that will clarify it. I saw the exact same thing, so that will clarify that.
12:17PM THE DEFENDANT: You know what, your Honor,

MR. FLINN: Thank you, your Honor.

Just before we begin, I'm not sure it's entirely clear, for the record, I'd move to admit State's Proposed Exhibits 1 and 2.

12:23PM THE COURT: You did.

MR. FLINN: Are those admitted?

THE COURT: Uh-huh.

I can't say uh-huh, so yes.

THE REPORTER: That's my fault. I didn't

12:23PM hear the magic words earlier.

DIRECT EXAMINATION

BY MR. FLINN:

Q Where are you employed?

12:23PM **A I work for the Las Vegas Metropolitan Police Department. I'm currently assigned, as a detective, at the Convention Center Area of Command Patrol Investigation Center.**

Q Dating back to September 17th and

12:23PM thereafter of this year, were you assigned -- were you working in that capacity?

A Yes, sir, I was.

Q And did you have occasion to investigate several incidents that occurred on September 17th at the

12:23PM Bellagio, one of which involving a theft of a backpack and

the second involving the possible attempted theft of an iPad?

A Yes, sir.

Q And did you, during the course of that

12:23PM investigation, did you make contact with Bellagio security investigators?

A Yes, sir.

Q And did you obtain surveillance video from those investigations?

12:24PM **A Yes, sir, I did.**

Q Did you watch the video that they provided to you showing you those two incidents, one involving the backpack on September 17th and the other one involving the iPad on September 17th?

12:24PM **A Yes, sir, I did.**

Q And did you view the individual involved in both circumstances?

A Yes, sir, I did.

Q And did you recognize that individual?

12:24PM **A Yes, sir.**

Q How so?

A I have two previous cases involving Mr. Edwards -- well, as I know -- who I know as Mr. Edwards, yes.

12:24PM Q And do you recognize that person and

whether that person is present in the courtroom today?

A Yes.

Q Could you identify him for the Court, please?

12:24PM **A He's in the jail blues sitting at the other table, sir.**

MR. FLINN: Will the record reflect he identified the defendant?

THE COURT: It will.

12:24PM MR. FLINN: No further questions, your Honor.

THE COURT: Sir, do you have any questions?

THE DEFENDANT: Yeah, I have a question

12:24PM for him.

CROSS-EXAMINATION

BY THE DEFENDANT:

Q I would like to know where you know

12:24PM Mr. Edwards from?

Where was the first place you've ever seen Mr. Edwards at, sir?

You being so certain on these videos you are seeing Mr. Edwards, I want to know where the first

12:25PM place you knew Mr. Edwards, to identify him as on the

video, where you know him?

A **You want to know the first place I knew you from, sir?**

Q Where do you know Mr. Edwards from to be

12:25PM able to identify him on some videos that you have been saying and alleging crimes took place?

A As I said earlier, I work for the Las Vegas Metropolitan Police Department. I'm assigned, as a detective, to the Patrol Investigations Division.

12:25PM **One of my partners, Detective Burgundy (phonetic) and Detective Polson (phonetic) had previously come into contact with you. I had sent out fliers to other detectives, as well as to the hotels trying to identify Mr. Edwards on one previous case.**

12:25PM **Detectives Burgundy and Polson positively identified Mr. Edwards, who also goes by 44 other names, so if it's his true name, I'm not sure to say definitely, but is the person as I know Mr. Edwards. That's why I identified him.**

12:25PM **I have, on two previous videos, I watched at length to try to identify him. The MO in each of these events is the exact same.**

Q I didn't ask you all this, sir.

A You asked me how I identified you, sir.

12:26PM THE COURT: You did. You asked him how,

prove.

THE COURT: -- what he is trying to prove here.

THE DEFENDANT: He is saying a statement that makes yourself as a witness to something. Am I able to question you? You should be on the stand so I can question you.

THE COURT: You can't question him. This is what he is trying to prove.

I'm going to let you go ahead with this. I'm going to let you go ahead and ask those questions. This may be something that comes up in the District Court, but I will let you go ahead and ask the questions.

So you can ask the questions about the iPad then, okay?

MR. FLINN: All right. Thank you, your Honor.

THE COURT: All right.

Q (BY MR. FLINN) And so, sir, this video here, can you please pull up -- did you obtain a video of a suspect related to the backpack and the iPad entering the casino property?

A **Yes.**

Q Is that on this disk or the other disk?

A **It's on this disk.**

Q Could you please open that up and then we will wait just for a moment before playing it.

A **(Witness complying.)**

Q And without playing this, does this appear as a fair and accurate -- this is the video that you obtained from your surveillance system?

A **Yes.**

MR. FLINN: And, for the record, just before I begin playing this, your Honor, I'm going to show this general shot to the defendant so he can know that it's the same video that was provided to him and his attorney, when he had one, before the hearing.

THE DEFENDANT: It's not playing anything.

MR. FLINN: I'm going to play it for you up there so the Judge can see it.

THE DEFENDANT: Okay.

MR. FLINN: I'm letting you look at it before I start playing it. This is what it is and it's the video you have seen.

THE COURT: Okay.

THE DEFENDANT: Can I possibly see what the video is showing? He is showing me a still photograph. I don't know what video he has, but he's got --

THE COURT: How long is the video?

MR. FLINN: It's several clips, your

Honor, but I need the witness to keep coming up so he --

THE COURT: How much total time?

MR. FLINN: A couple minutes each, when you add the video up, but I don't think --

THE COURT: The problem is I can't have you physically come up here.

THE DEFENDANT: I was in another courtroom where I was allowed to see the video. They turned the video toward me and I forgot her name, the Judge.

THE COURT: We kind of have some concern of how it is so that everybody can see, including the defendant.

MR. FLINN: I'm mean I'm happy to -- I don't know how -- logistically, how everybody can do that.

THE DEFENDANT: I'm handcuffed, your Honor. If I have to stand right back at the steps, I can see the video. I'm not doing nothing. I just want to see what he's showing. You have got my word, I'm not going to do nothing. I'm just going to stand back up there to see the video.

THE COURT: Do you have any concerns yourself if he comes up here to take a look at it?

MR. FLINN: Me personally, no, but I'm not interfering with the marshal's decision of things and keeping the witnesses and others safe.

THE COURT: Do the marshals have any problem with him coming up and looking at the video to view it?

THE MARSHAL: I don't have a problem standing up here, your Honor.

THE COURT: All right.

All right, we will let you come up here.

THE DEFENDANT: Where do I stand? Right here?

THE COURT: You know, maybe put it over here. If you want to put it over here, then I can sit up here and watch, as he's playing it, and that way everybody can kind of see it.

MR. FLINN: Put it --

THE COURT: Put it here, then I will come over here and, okay, I can see it. I think everybody can see it.

Sir, can you see it?

THE DEFENDANT: Yes, sir. Thank you, your Honor.

THE COURT: Let's get going.

Q (BY MR. FLINN) As we were talking a moment ago, before we play that, we might have to move that window up higher because it's not fitting in the screen

Exhibit #4

Electronically Filed
11/18/2016 07:28:19 AM

CLERK OF THE COURT

JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAROLD EDWARDS
#7024721

Defendant.

CASE NO. C311212-1

DEPT. NO. XXI

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNTS 1, 2, 3, 4 and 5 – POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT (Category C Felony) in violation of NRS 205.690, and COUNT 6 – BATTERY ON A PROTECTED PERSON (Gross Misdemeanor) in violation of NRS 200.481; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNTS 1, 2, 3, 4 and 5 – POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT (Category C Felony) in violation of NRS 205.690, and COUNT 6 – BATTERY ON A PROTECTED PERSON (Gross Misdemeanor) in violation of NRS 200.481; thereafter, on the 27th day of October, 2016, the Defendant was present in court for sentencing with counsel JENNIFER FRASER, Deputy Public Defender, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the $25.00 Administrative Assessment Fee and $150.00 DNA Analysis Fee including testing to determine genetic markers plus $3.00 DNA Collection Fee, the Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows: **COUNT 1** - to a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM parole eligibility of NINETEEN (19) MONTHS; **COUNT 2** - to a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM parole eligibility of NINETEEN (19) MONTHS, CONCURRENT with COUNT 1; **COUNT 3** - to a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM parole eligibility of NINETEEN (19) MONTHS, CONCURRENT with COUNT 2; **COUNT 4** - to a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM parole eligibility of NINETEEN (19) MONTHS, CONSECUTIVE to COUNT 3; **COUNT 5** - to a MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM parole eligibility of NINETEEN (19)MONTHS, CONSECUTIVE to COUNT 4; **COUNT 6** – THREE HUNDRED SIXTY-FOUR DAYS in the Clark County Detention Center (CCDC), CONCURRENT with COUNT 5; with FOUR HUNDRED TWENTY-SEVEN (427) DAYS credit for time served. The AGGREGATE TOTAL sentence is ONE HUNDRED FORTY-FOUR (144) MONTHS MAXIMUM with a MINIMUM PAROLE ELIGIBILITY OF FIFTY-SEVEN (57) MONTHS.

DATED this 17 day of October, 2016

VALERIE P. ADAIR
DISTRICT COURT JUDGE

EXHIBIT #5

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

4. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent with the facts known to me and are made with my advice to the Defendant.

5. To the best of my knowledge and belief, the Defendant:

a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement,

b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily, and

c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with the Defendant as certified in paragraphs 1 and 2 above.

GPA, p. 7.

In addition to making the above representations by signing his GPA, Defendant was extensively and thoroughly canvassed by this Court when he entered his plea on August 19, 2016.

THE COURT: This is C310695, State of Nevada v Harold Edwards. Special setting for Friday at 10:30. It's my understanding this case is resolved; is that right?

MR. MCCUBBIN: That is correct, Your Honor.

THE COURT: What is the resolution?

MR. MCCUBBIN: The resolution, Your Honor, is that he's going to be entering a plea on this case to the Category B felony, burglary, and as charged in the Information. He's also going to be pleaing guilty to five counts of possession of credit card or debit card without cardholder's consent, Category D felony, and one count of battery on a protected person, a gross misdemeanor in Case Number 311212. The agreement is as follows: Parties will stipulate to adjudication under the large habitual criminal statute and to a 10- to 25-year sentence in the Nevada Department of Corrections in Case 310695 and Count -- and the same sentence, 10 to 25 years on Counts 1 through 5 in Case Number 311212. Both parties also stipulate that the 364-day gross misdemeanor sentence in CCDC will be served on Count 6 in 311212. And all counts and cases will run concurrent to one another. The State will not oppose dismissal of the remaining cases for Mr. Harold Edwards which are C310166 and C312326 after rendition of sentence in this case.

THE COURT: Is that your understanding of the negotiation, Mr. Edwards?

THE DEFENDANT: Yes, sir.

THE COURT: You accept those negotiation --

THE DEFENDANT: Yes, sir.

THE COURT: -- after discussing the matter fully with your attorneys?

THE DEFENDANT: Yes, sir.

THE COURT: You do read, write, and understand English?

THE DEFENDANT: Yeah.

THE COURT: You read through your Information -- if I've got it. Your Information on a Category B felony. You discussed it with your attorneys. They answered all your questions to your satisfaction, you're satisfied with their services?

THE DEFENDANT: Yeah.

THE COURT: You want me to accept this deal?

THE DEFENDANT: Yeah.

THE COURT: They charge you in this Information with a Category B felony, on or about the 17th day of September --

MR. FLINN: It appears to be a typo, Your Honor, with the year.

THE COURT: It's 2015?

MR. FLINN: It's 2015, not -- of course.

THE COURT: I'll scratch the O after that.

MR. FLINN: Thank you, Your Honor.

THE COURT: 2015 in Clark County, Nevada, contrary to form, force, and effect of statutes in such cases made provided that you did unlawfully, willfully, and feloniously enter Bellagio Las Vegas, Clark County, Nevada with intent to commit a felony therein. To that, how do you plead?

THE DEFENDANT: Guilty.

MR. FLINN: And, Your Honor, I apologize, it was with the intent to commit a larceny.

THE COURT: Larceny.

MR. FLINN: Rather than a felony.

THE DEFENDANT: Yes, sir.

THE COURT: -- after discussing the matter fully with your attorneys?

THE DEFENDANT: Yes, sir.

THE COURT: You do read, write, and understand English?

THE DEFENDANT: Yeah.

THE COURT: You read through your Information -- if I've got it. Your Information on a Category B felony. You discussed it with your attorneys. They answered all your questions to your satisfaction, you're satisfied with their services?

THE DEFENDANT: Yeah.

THE COURT: You want me to accept this deal?

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THE COURT: They charge you in this Information with a Category B felony, on or about the 17th day of September --

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MR. FLINN: Thank you, Your Honor.

THE COURT: 2015 in Clark County, Nevada, contrary to form, force, and effect of statutes in such cases made provided that you did unlawfully, willfully, and feloniously enter Bellagio Las Vegas, Clark County, Nevada with intent to commit a felony therein. To that, how do you plead?

THE DEFENDANT: Guilty.

MR. FLINN: And, Your Honor, I apologize, it was with the intent to commit a larceny.

virtue of promises of any other leniency except for those set forth in this agreement?

THE DEFENDANT: Yeah.

THE COURT: You're not under the influence of anything right now that would impair your ability to understand what's going on today?

THE DEFENDANT: No.

THE COURT: And your attorney, again, has answered all your questions regarding this Guilty Plea Agreement and its consequences to your satisfaction, you're satisfied with their services?

THE DEFENDANT: Yeah.

THE COURT: And you want me to accept it?

THE DEFENDANT: Yeah.

THE COURT: Now, it's not dated. It's signed by you. I'll write the date of the 19th in; is that all right?

MR. MCCUBBIN: Thank you, that is correct, Your Honor, it was signed today.

MR. FLINN: Your Honor, I apologize, I don't know if I missed it. I know you canvassed him on the facts and the Information but I didn't -- did I hear an actual, the actual plea to the charge?

THE COURT: No.

MR. FLINN: Or did I miss it?

THE COURT: No.

MR. FLINN: Okay. Thank you.

THE COURT: Mr. Edwards, on September 17th, 2015, did you go into the -- tell me why you're pleading guilty.

THE DEFENDANT: I don't want to get life without parole.

THE COURT: Did you go in to the Bellagio with intent to commit larceny?

[Possibilty of life without parole is the reason I pled guilty.] not because of guilt.

EXHIBIT #6

C-15-310695-1

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	April 06, 2016

C-15-310695-1 State of Nevada
vs
Harold Edwards

April 06, 2016 **8:00 AM** **All Pending Motions**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Phyllis Irby

RECORDER: Jill Jacoby

REPORTER:

PARTIES PRESENT:

McCubbin, TJ	Attorney for the Deft
State of Nevada	Plaintiff
Villani, Jacob J.	Attorney for the State

JOURNAL ENTRIES

- The Court noted Judge Barker appointed counsel for Deft therefore, Motion to Appoint Counsel is MOOT. Mr. McCubbin advised he will refile Motion for Discovery. COURT ORDERED, MATTERS RESOLVED.

CUSTODY (COC)

EXHIBIT #6

C-15-310695-1

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	August 17, 2016

C-15-310695-1 State of Nevada
vs
Harold Edwards

August 17, 2016	9:30 AM	Motion to Consolidate	Defendant's Notice Of Motion And Motion To Consolidate [C-15-310166-1/C-15-310695-1]

HEARD BY: Miley, Stefany **COURTROOM:** RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES PRESENT:

Edwards, Harold	Defendant
Flinn, William W.	Attorney for the State
Lexis, Chad N.	Attorney for the State

JOURNAL ENTRIES

- Deputy Public Defender Jasmin Spells (counsel in case C310166) advised they filed motion in order to consolidate two cases as they are the same allegations and noted the State had filed a Motion to Consolidate in Department 17. Court inquired of Department 8 trial. Counsel advised if matters are consolidated, the trial in Department 8 would be vacated. Court believed it was too late to consolidate cases. Counsel advised they would be requesting a stay in the matter if the motion is denied. Court inquired why defense was not ready to proceed to trial. Argument by counsel. State advised they were prepared for trial in Department 8 and Department 23 and noted they had never received defense's Motion to Continue. COURT ORDERED, Motion to Consolidate DENIED. State pointed out there were no offers in these cases. COURT SO NOTED.

Exhibit(6)

C-15-310695-1

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor COURT MINUTES **August 19, 2016**

C-15-310695-1 State of Nevada
vs
Harold Edwards

August 19, 2016 **10:00 AM** **Entry of Plea**

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Louisa Garcia

RECORDER: Jill Jacoby

PARTIES PRESENT:

Edwards, Harold	Defendant
Flinn, William W.	Attorney
McCubbin, TJ	Attorney
O'Brien, Robert E, ESQ	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Counsel advised the matter was resolved. Mr. Flinn stated negotiations for the record. Court thoroughly canvassed Defendant on the facts and plea. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. EDWARDS ARRAIGNED AND PLED GUILTY TO BURGLARY (F). Court ACCEPTED plea, and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing. FURTHER ORDERED, trial date VACATED.

CUSTODY (COC)

10/10/16 8:00 AM SENTENCING

EXHIBIT #[redacted] 7

Electronically Filed
08/18/2016 10:42:24 AM

CLERK OF THE COURT

EXMT
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
TJ MCCUBBIN
Deputy Public Defender
Nevada Bar #13723
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, HAROLD EDWARDS, Defendant.	CASE NO. C-15-310695-1 DEPT. NO. VIII

EX PARTE MOTION FOR IMMEDIATE RELEASE

COMES NOW, the Clark County Public Defender's Office, by PHILIP J. KOHN, through TJ MCCUBBIN, Deputy Public Defender, and moves this Honorable Court for an Order for Immediate Release to documentation possessed by BELLAGIO HOTEL AND CASINO for the purpose of defending the above referenced case charging the crime of BURGLARY (Category B Felony – NRS 205.060 – NOC 50424).

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Pursuant to 45CFR164.512(e), Movant represents that the information sought is relevant and material to a legitimate legal inquiry; that the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and the de-identified information could not reasonably be used.

DATED this 18th day of August, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By */s/ TJ McCubbin*
TJ MCCUBBIN, # 13723
Deputy Public Defender

EXHIBIT #1

Electronically Filed
08/18/2016 10:06:24 AM

CLERK OF THE COURT

EXMT
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
TJ MCCUBBIN, Deputy Public Defender
NEVADA BAR NO. 13723
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, HAROLD EDWARDS, Defendant,	CASE NO. C-15-310695-1 DEPT. NO. VIII

EX PARTE MOTION TO PERMIT ACCESS

COMES NOW, the Clark County Public Defender's Office, by PHILIP J. KOHN, through TJ MCCUBBIN, Deputy Public Defender, and moves this Honorable Court for an Order Permitting Access to areas of the BELLAGIO HOTEL AND CASINO to which the public is not permitted access, including, but not limited to the now-closed ARCADE, and EMPLOYEE BREAK ROOM nearest CAFÉ GELATO to a representative of the PUBLIC DEFENDER'S OFFICE for the purpose of defending the above referenced case charging the crime of BURGLARY (Category B Felony – NRS 205.060).

. . .

. . .

. . .

Pursuant to 45 CFR 164.512(e), Movant represents that the information sought is relevant and material to a legitimate legal inquiry; that the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and the de-identified information could not reasonably be used.

DATED this 18th day of August, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By /s/ TJ McCubbin
TJ MCCUBBIN, # 13723
Deputy Public Defender

EXHIBIT #9

Vists With Visitor
(Contact Only after May 2010, Non-Contact in Renovo)
ID Number : '0007024721' , Start Date : '30-SEP-2015' , End Date : '06-SEP-2016'

	Inmate Last Name	Inmate First Name	Offender ID	Booking Begin Date	Booking End Date	Start Date/Time	End Date/Time	Visit Type	Relation Type	Visitor Last name	Visitor First name	Visitor Middle name
1	EDWARDS	HAROLD	0007024721	30-SEP-2015		28-Oct-15 13:26:00	28-Oct-15 13:56:00	LEG	PD	HOJJAT	NADIA	
2	EDWARDS	HAROLD	0007024721	30-SEP-2015		28-Oct-15 13:26:00	28-Oct-15 13:56:00	LEG	PD	SEABERRY	G.	DO NOT USE
3	EDWARDS	HAROLD	0007024721	30-SEP-2015		29-Dec-15 12:28:00	29-Dec-15 12:58:00	LEG	ATT	HENKE	DOUGLAS	SCOTT
4	EDWARDS	HAROLD	0007024721	30-SEP-2015		30-Dec-15 13:59:00	30-Dec-15 14:29:00	LEG	D/A	SHAMIRZA	ALFRED	
5	EDWARDS	HAROLD	0007024721	30-SEP-2015		30-Dec-15 13:59:00	30-Dec-15 14:29:00	LEG	D/A	LEXIS	CHAD	
6	EDWARDS	HAROLD	0007024721	30-SEP-2015		30-Dec-15 13:59:00	30-Dec-15 14:29:00	LEG	D/A	HAMNER	CHRISTOPHER	
7	EDWARDS	HAROLD	0007024721	30-SEP-2015		30-Dec-15 14:00:00	30-Dec-15 14:30:00	LEG	ATT	HENKE	DOUGLAS	SCOTT
8	EDWARDS	HAROLD	0007024721	30-SEP-2015		30-Dec-15 14:00:00	30-Dec-15 14:30:00	LEG	PD	SPELLS	JASMIN	DEANNA
9	EDWARDS	HAROLD	0007024721	30-SEP-2015		31-Dec-15 14:19:00	31-Dec-15 14:49:00	LEG	INV	WATTS	JOSEPH	
10	EDWARDS	HAROLD	0007024721	30-SEP-2015		12-Jan-16 09:20:00	12-Jan-16 09:50:00	LEG	INV	WATTS	JOSEPH	
11	EDWARDS	HAROLD	0007024721	30-SEP-2015		29-Jan-16 08:33:00	29-Jan-16 09:03:00	LEG	INV	ANDRADE	MAYBETH	
12	EDWARDS	HAROLD	0007024721	30-SEP-2015		01-Feb-16 13:24:00	01-Feb-16 13:54:00	LEG	INV	WATTS	JOSEPH	
13	EDWARDS	HAROLD	0007024721	30-SEP-2015		01-Feb-16 13:24:00	01-Feb-16 13:54:00	LEG	D/A	HAMNER	CHRISTOPHER	
14	EDWARDS	HAROLD	0007024721	30-SEP-2015		03-Feb-16 14:49:00	03-Feb-16 15:19:00	LEG	PD	FRASER	JENNIFER	ANNE
15	EDWARDS	HAROLD	0007024721	30-SEP-2015		05-Feb-16 13:15:00	05-Feb-16 13:45:00	LEG	INV	ANDRADE	MAYBETH	
16	EDWARDS	HAROLD	0007024721	30-SEP-2015		08-Feb-16 13:11:00	08-Feb-16 13:41:00	LEG	INV	ANDRADE	MAYBETH	
17	EDWARDS	HAROLD	0007024721	30-SEP-2015		10-Feb-16 12:57:00	10-Feb-16 13:27:00	LEG	INV	ANDRADE	MAYBETH	
18	EDWARDS	HAROLD	0007024721	30-SEP-2015		24-Feb-16 12:35:00	24-Feb-16 13:05:00	LEG	INV	ANDRADE	MAYBETH	
19	EDWARDS	HAROLD	0007024721					LEG	INV	ANDRADE	MAYBETH	

				30-SEP-2015		14-Mar-16 14:15:00	14-Mar-16 14:45:00						
20	EDWARDS	HAROLD	0007024721	30-SEP-2015		24-Mar-16 14:00:00	24-Mar-16 14:30:00	LEG	INV	ANDRADE	MAYBETH		
21	EDWARDS	HAROLD	0007024721	30-SEP-2015		30-Mar-16 12:40:00	30-Mar-16 13:10:00	LEG	PD	MCCUBBIN *	TIMOTHY		
22	EDWARDS	HAROLD	0007024721	30-SEP-2015		30-Mar-16 12:40:00	30-Mar-16 13:10:00	LEG	PD	SISOLAK	ASHLEY		
23	EDWARDS	HAROLD	0007024721	30-SEP-2015		04-Apr-16 14:35:00	04-Apr-16 15:05:00	LEG	INV	ANDRADE	MAYBETH		
24	EDWARDS	HAROLD	0007024721	30-SEP-2015		08-Apr-16 09:44:00	08-Apr-16 10:14:00	LEG	INV	ANDRADE	MAYBETH		
25	EDWARDS	HAROLD	0007024721	30-SEP-2015		27-Jul-16 13:30:00	27-Jul-16 14:00:00	LEG	INV	DOUGHERTY	EDWARD	JOHN	
26	EDWARDS	HAROLD	0007024721	30-SEP-2015		08-Aug-16 19:30:00	08-Aug-16 20:00:00	LEG	INV	PREUSCH	MARK		
27	EDWARDS	HAROLD	0007024721	30-SEP-2015		10-Aug-16 09:31:00	10-Aug-16 09:32:00	LEG	INV	PREUSCH	MARK		
28	EDWARDS	HAROLD	0007024721	30-SEP-2015		18-Aug-16 19:00:00	18-Aug-16 19:30:00	LEG	PD	MCCUBBIN *	TIMOTHY		
29	EDWARDS	HAROLD	0007024721	30-SEP-2015		18-Aug-16 19:00:00	18-Aug-16 19:30:00	LEG	PD	O'BRIEN	ROBERT		

EXHIBIT #10

Harold Edwards #7024721
330 South Casino Center Blvd.
Las Vegas, Nevada 89101
Defendant Pro Se

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff.	CASE NO. C15-310695-1
VS.	DEPT NO. XIII
HAROLD EDWARDS, #7024721 Defendant.	DATE OF HEARING TIME OF HEARING

NOTICE OF MOTION AND MOTION TO WITHDRAW GUILTY PLEA AND MOTION FOR A FARETTA HEARING.

Now Comes the Defendant, HAROLD EDWARDS by and through himself acting in Propria Persona and respectfully moves to withdraw his plea of "Guilty" on the grounds that he is not guilty of the ~~offense~~ charged in the information and that the plea of "Guilty" was entered improvidently, and that defendant's Court appointed Counsel was coercive in that he did nothing except coerce defendant to make an ill-informed rushed decision with less than five (5) minutes to make the decision, without Clearly Understanding the effect of the Plea or of his rights.

This Motion is based upon all the papers, pleadings and documents on file, factual Statements Set forth in the Points and Authorities Contained therein and Oral argument if the Court deems it necessary.

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LEGAL ARGUMENT

Defendant moves this Court to accept his Motion to Withdraw his guilty plea for the following reasons: 1) Defendant argues he recieved ineffective assistance of Counsel from Court appointed Public Defendant T. J. McCubbins. Public Defender T. J. McCubbins advised defendant to accept this deal, when defendant always maintained he was innocent of the Charged offense. The public Defender Mr. McCubbins was assigned to the instant Case in late April 2016. He appeared in front of the District Court for Defendant for the first time in early May 2016 where he was ordered to resubmit a Discovery Motion originally filed by defendant in proper person. He never filed said motion, disobeying an order from the Court. He advised defendant not to move forward on the petit Larceny Charged which was bifurcated from the instant Charge. Defendant moved forward or was prepared to, but the Charge of petit larceny was dismissed. The owner of the missing Lunch bag (who is the alleged victim in the instant Burglary Charge) did not appear in Court. The Defendant presented to this public defender with proposed jury instructions for the lesser-offense of attempted petit larceny, stating the Correct law, but along with him rejecting all defendant's defense strategies, he rejected those proposed instructions. He advised defendant to waive his appellate rights in Case no. C-15-311212-1 where defendant was found guilty pursuant to a jury trial for Possession of Credit or debit Card without the Cardholder's Consent. He waited until after the Verdict in the above Case to start preparing or discussing the Motion to Consolidate the instant Case into the oldest Case number the defendant has in District Court Department XXIII.

When defendant appeared in District Court Department XIII Wednesday

August 17th 2016 for the instant Case's Calendar Call, the motion to Consolidate was denied by the Court and the judge ordered trial to commence in just three (3) days giving this deputy public public defender just (3) days to prepare for a jury trial, and he had not visited or discussed the case with defendant since mid-April 2016. Whenever this public Defender spoke with defendant it was to Coerce him into accepting Some unfair plea deal, there was a plea deal offered to defendant which he did feel was reasonable and he Signed it, expected that deal to go through but another public defender failed to turn that deal in to the prosecutor (when it was Signed and everything) that deal was the Small habitual 5-12½ years. This defendant repeatedly expressed his innocence in the instant which Can be Seen Clearly in the PHT pg. 86 lines 12-25 also lines 1-17 of pg. 87 The defendant repeatedly informed this deputy public defender that he in fact found a lunch bag lieing on the hall entrance to a place defendant was seeking employment at and turned in to a storage area next door at an Arcade where lost property was stored and where this lunch bag was found and turned into lost and found with nothing missing PHT. pg. 27 lines pg-23 defendant explained on more than one occassion that it was reported that this owner of the lunch bag had reported her bag missing before <u>incident File Report</u> pg. 2 of 4 The defendant alse explained to this public defender that he is Shown on Surveillance taking photo's with his phone entering the Bellagio Hotel and Casino legally and upon his entry he did not -intend to do anything illegal which is Shown by his actions On this Video, he is a tourist from out of State taking pictures enjoying the Scenery as any other tourist, which is Consistent

with why the Bellagio is open, a formulated intent after a legal entry will not Satisfy the Statute for burglary. this was articulated to public defender McCubbins, but he continued to State Coercive language in opposition to Correct legal information defendant was expressing to him e.g. "No jury will believe this Story." placing himself in the minds of jurors. (He got me in Court immediately, the Friday I was coerced into Signing the plea deal though). Public Defender McCubbins Visited defendant Thursday August 18th 2016 along with public Defender Robert O'Brian and the beginning, middle and Ending Conversation was based on defendant possibly or guaranteed Sentenced of Life without the possibility of parole if found guilty, it Should be noted here that on August 17, 2016 the day defendant appeared in Court for Calendar Call before defendant's Case was Called, T. J. McCubbins was not present, he eventually Showed up to the Courtroom, did not acknowledge defendant to explain anything. We Spoke with public Defender Robert O'Brian and then exited, again without explaining anything to defendant. after the Judge Denied the motion to Consolidate or did not agree with the motion to Consolidate Defendant appeared in District Court Department XXIII where the motion actually was filed and the motion was denied because it was filed (1) day before defendant was to appear in Court. Defendant returned to Clark County Detention Center. Thursday August 18, 2016 Defendant recieved a legal phone call from Mr. McCubbins and he immediately Stated "You Saw the Judge give that guy four Consecutive life Sentences Without parole?" this was rather anomalous, Seeing that Mr. McCubbins was not present during Sentencing of the defendant that recieved

the Sentence he spoke of. This however, Clearly shows the Coercive tactics of this Deputy Public Defender. This public Defender never filed a Single writ or motion on defendant's behalf, nor did he ever discuss a defensive Strategy which is a requirement ADKT 411 Exhibit A, page 36 Defense. Strategy Standard 12: Standard 14: Defendant also expressed to this Public Defender his reluctance about going to trial in District Court Department XIII. this public Defender who also expressed fear of going to Court or trial in this Judges Court and repeatedly told defendant (who is from out of State) Stories of unfairness in this Judge's Courtroom, used defendant's expressed reluctance to pressure or Coerce defendant into accepting a bad plea deal. He advised defendant on one visit with defendant to Write this Judge in Department XIII up. trying (I believe) to Cause this Judge to become raged against me. He once advised defendant to have the Federal Bureau of Investigation Come Sit through this Judge's proceedings. Standard 9: of the ADKT 411 Exhibit A Page 31 States: Under no Circumstances should defense Counsel recommend to a defendant acceptance of a plea unless appropriate investigation and study of the Case has been Completed, including an analysis of the Controlling law and the evidence likely to be introduced at trial. None of this was done by this Counselor. Standard 9 of ADKT (b) (2) He never fully explained to defendant the Constitutional rights that would be waived by a decision to enter into any agreement. (5) He didn't preserve Client's rights. ADKT 411 Exhibit A page 33 (d) (2) Counsel should not attempt to Unduly influence the decision. (e) (1) (2) & (3). He Should not be Coercive which is exactly what this Counsel did. Iaea V. Sun. 800 F. 2d 861 on one visit (he only visited twice) everytime defendant attempted to express a possible defense, this Public Defender become

Visibly upset, almost enraged because he Couldn't at first Convince me to take a deal the Deputy District Attorney was proposing This public Defender didn't even Know defendant didn't have a felony Conviction in the State of Nevada, He stated that he did. Defendant always alleged that he was innocent of the Charged Crime U.S. V. Campbell 778 F. 2d 764. The alleged Crime the instant Charge of burglary is predicated on, was dismissed, which was the bifurcated Petit Larceny of a Lunch bag that reportedly went missing from one location, but was found in another location with nothing missing. This Public Defender advised defendant that he Shouldn't go to trial for that misdemeanor Charged offense. when defendant expressed to him that the owner of the Lunch bag would not Show up to Court because She wasn't missing anything, he stated that he would have his Investigator locate this witness. Defendant also advised this public Defender that he found this Lunch bag in the doorway of a business establishment he was seeking employment at on the floor and that he left this lunch bag in a storage area next door where the Arcade stored lost items. Defendant asked this public Defender if he'd Check out the area in question by visiting the arcade. he stated that he did and phoned Defendant stating that he had bad news, the Arcade was closed. Defendant proceeded to Court May 10, 2016 to move forward on the bifurcated petty larceny Charge the burglary is premised on, and that Charge was Subsequently dismissed. How Can a defendant intend to do a crime that is based on Committing another act that was dismissed? Defendant has had several heated verbal exchanges with other Public Defenders, and it is defendant's belief that because of these exchanges T. J. Mc Cubbins deliberately placed defendant in this present position Coercing him to accept

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an unfair plea. FEDERAL RULES OF CRIMINAL PROCEDURE, RULE 11 (d) (2) (B) States that a defendant may withdraw a plea of guilty or Nolo Contendere after the Court accepts the plea, but before it imposes Sentence if Defendant Can Show a fair and just reason for the request of withdrawal. Clearly defendant has Shown Such reason. Evitts V. Lucey, 105 SUPREME COURT 830 (1985) Cuyler V. Sullivan, 100 S. Ct. 1708, Esslinger V. Davis, 44 F. 3d 1515 U.S. V. Marzgliano 588 F. 2d 395.

DEFENDANT'S REQUEST FOR FARETTA HEARING IS BASED ON FARETTA V. CALIFORNIA 442 U.S. 806

I Harold Edwards, being duly Sworn, deposes and Says:

1. I am the defendant in this proceeding. I was Charged with the Crime of Burglary in an information.

On November 15th 2015 I was arraigned in the District Court and entered a plea of Not Guilty.

2. When my Plea of [redacted] Not Guilty was entered, I was not represented by Counsel. during the Guilty Plea hearing on August 19 th 2016 I told my Counsel I was innocent, but accepted the plea because of Coercive Counsel from his Counsel about life without parole or life, if I went to trial. I am innocent of the Charged Crime and Seek my day in Court in order to prove my innocence.

DATED this 29th day of August 2016

Harold Edwards

Pro Se Defendant

Exhibit 10

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Harold Edwards
330 South Casino Center Blvd.
Las Vegas, Nevada 89101
Acting Pro Se:

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff.

VS.

HAROLD EDWARDS,
Defendant.

CASE NO. C15-311212-1
DEPT NO. XXI

DATE OF HEARING: 5-10-16
TIME OF HEARING: 9:30am

NOTICE OF MOTION AND MOTION TO DISMISS COUNSEL AND MOTION FOR A FARETTA HEARING:

NOW COMES HAROLD EDWARDS defendant acting in Propria persona in the above Captioned matter Pursuant to Faretta V. California 422 U.S. 806, 45 L. Ed 2d 562, 95 S. Ct. 2525. And

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Defendant Harold Edwards asserts that he is being denied his Constitutional right to effective representation due to wholly inadequate actions of his Court-appointed Counsel Jennifer Fraser. According to Nevada Rules of Professional Conduct ADOPTED BY THE SUPREME COURT OF Nevada CLIENT-LAWYER RELATIONSHIP Rule 1.1 Competence. A Lawyer Shall provide Competent representation to a Client. Competent representation requires the requisite legal Knowledge, skill, thoroughness and preparation reasonably necessary for the representation. Rule 1.2 Scope of Representation And Allocation of Authority Between Client and Lawyer (a) Subject to paragraphs (c) and (d). a lawyer "Shall" abide by a Client's decision Concerning the objectives of representation and. as required by Rule 1.4 "Shall" Consult with the Client as to the means by which they are to be pursued. A lawyer "Shall" abide by a Clients decision whether to settle a matter. In a Criminal Case. the Lawyer "Shall" abide by the Client's decision after Consultation with the Lawyer as to a plea to be entered, in this Case Deputy Public Defender Jennifer Fraser did not "abide" by Client Harold Edwards's decision as to a Guilty Plea Agreement extended to him by the Deputy District Attorney Christopher Hamner. In February 2015 defendant Harold Edwards Called Deputy Public Defender Jennifer Fraser who is Counsel-on Record for one of the Cases involving Mr. Edwards i.e. Case No. C-15-311212-1. Knowing that there was a global Negotiation in action to resolve all of Mr. Edwards's Cases, Mr. Edwards reached out to Deputy Public Defender Jennifer Fraser asking her to get in touch with Deputy District Attorney Christopher Hamner. to inform Mr. Hamrer that Mr. Edwards had decided that he would accept the State's Guilty Plea offer, Contingent upon Some Currency being returned to Mr. Edwards.

Ms. Fraser did in fact Contact Mr. Hamner and Mr. Hamner agreed to Mr. Edwards's wishes of having his Currency returned as part of the State's Guilty Plea Agreement. Deputy District Attorney Hamner gave Deputy Public Defender Jennifer Fraser the Guilty Plea Agreement which She brought with her the next day to visit with Mr. Edwards. Ms. Fraser Came over to CCDC and She and defendant Harold Edwards went over the entire Guilty Plea Agreement. After reading the entire Guilty Plea Agreement and having all of his questions answered to his Complete Satisfaction, Mr. Edwards then Signed the Guilty plea Agreement. Deputy Public Defender Jennifer Fraser's job was to turn that Signed Guilty Plea Agreement over to the State's office which She did not do, rendering her Service to her Client Mr. Edwards According to Nevada Rules of Professional Conduct Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer where it Clearly States: In a Criminal Case, the Lawyer "Shall" abide by the Client's decision after Consultation with the Lawyer as to a plea to be entered. Mr. Edwards Clearly after Signing the State's Guilty Plea Agreement had made a decision to accept the State's offer and plead guilty. Ms. Fraser did not abide by Client Harold Edwards decision. She did not turn the Signed GPA in, Rendering her Service as stated above: [INEFFECTIVE]

2.) In March 2016 Deputy Public Defender Jennifer Fraser Called Harold Edwards explaining to him that the Deputy District Attorney had extended another plea offer to Mr. Edwards, it Should be noted that Ms. Fraser Called Mr. Edwards on a Friday, late in the afternoon with this new information about another offer the State Allegedly had offered Mr. Edwards. Ms. Fraser Stated that Mr. Edwards [without haven't Seeing this alleged offer by the State] he had only Until

the coming monday to decide if he'd accept the alleged offer. Deputy Public Defender Jennifer Fraser Never Showed Mr. Edwards a Copy of any Guilty Plea Agreement yet She Claimed Mr. Edwards had only until Monday to accept the supposed deal, Once again Ms. Fraser is in Violation of Nevada's Rules of Professional Conduct Rule 1.2 where it States "after Consultation with the Lawyer as to a plea to be entered. Mr. Edwards Never read through any Guilty Plea Agreement. So why would he improvidently agree to a deal? Futhermore, What Lawyer would advise their Client to accept a Guilty Plea Agreement they've never Seen nor read? Clearly this is ineffective assistance of Counsel. Appointed Counsel for defendant unfairly represented him when she Suggested defendant make a rushed decision. Crandel V. Bunnell No. 92-5530 D.C. No. CV.-90-6419 WJR Filed May 25. 1994 9th Cir). This alone is Viable Claim as to the ineffectiveness of Counsel.

When Deputy Public Defender Jennifer Fraser Failed to turn over the Client Harold Edwards's Signed Guilty Plea Agreement in a timely fashion, She Completely went against the Client's wishes, not to mention the Conflicting Policies of judicial economy and efficiency of judicial administration's desire to Control Court Calendars in avoidance of multiple trials. Because Ms. Fraser did not turn in Mr. Edwards Signed Guilty Plea Agreement at the proper time. this Caused other things to occur, because of that delay, which Caused the Guilty Plea Deal to be withdrawn. at least for now that is.

Fundamental Fairness requires the abolition of prejudices which the defendant is presently Suffering. This is an actuality that the law must address. Anything Short of abdication would further a manifest of injustice. The effectiveness (in assistance) of Counsel is an

individual's most fundamental right. for without it. every other right defendant has to assert becomes affected.

DATED THIS 5th day of April 2016

I HAROLD EDWARDS, do Solemnly Swear, under Penalty of perjury that the above Motion is accurate. Correct and true to the best of my Knowledge.

NRS 171.102 and 208.165

Respectfully Submitted Harold Edwards

Pro Se defendant HAROLD EDWARDS

Harold Edwards #7024721
330 S. Casino Center Blvd.
Las Vegas, NV. 89101
CCDC 9th Fl. Rm. 34

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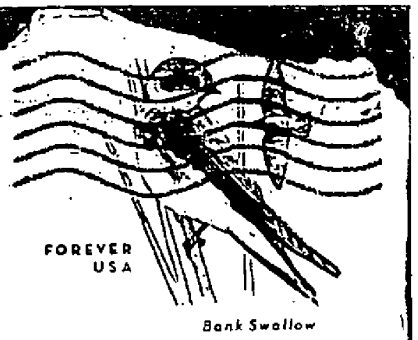

LEGAL MAIL

STEVEN D. GRIERSON Clerk of the Court
200 LEWIS AVENUE 3rd Floor
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PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
JASMIN D. SPELLS, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 11635
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
Lillyjd@clarkcountynv.gov
Attorneys for Defendant

HEARING REQUIRED
DATE: 8-17-16
TIME: 9:30am

Jhca/DC23

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

HAROLD EDWARDS,

Defendant,

CASE NO. C-15-310166-1

DEPT. NO. XXIII

DATE: August 17, 2016
TIME: 9:30 a.m.

NOTICE OF MOTION AND MOTION TO CONSOLIDATE

COMES NOW, the Defendant, HAROLD EDWARDS, by and through JASMIN D. SPELLS, Deputy Public Defender and hereby requests that this Honorable Court consolidate this case and case C-15-310695-1.

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

DATED this 11th day of August, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/ Jasmin Spells*
JASMIN D. SPELLS, #11635
Deputy Public Defender

DECLARATION

JASMIN D. SPELLS makes the following declaration:

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

2. I am more than 18 years of age and am competent to testify as to the matters stated herein. I am familiar with the procedural history of the case and the substantive allegations made by The State of Nevada. I also have personal knowledge of the facts stated herein or I have been informed of these facts and believe them to be true.

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

EXECUTED this 11th day of August, 2016.

/s/ Jasmin Spells
JASMIN D. SPELLS

STATEMENT OF RELEVANT FACTS

C310166- Venetian[1]

The Information on file shows that Defendant is charged with two counts of Burglary, four counts of Grand Larceny and six counts of Possession of Credit or Debit Card without Cardholder's Consent.[2] Part of the charges stem from what was originally case C310442, which was consolidated into the instant case.

The Venetian incident is alleged to have occurred on August 26, 2015 at the Rockhouse, located inside the Venetian hotel and casino.[3] At the preliminary hearing, the State presented four witnesses.[4] Two of those witnesses, were Custodian of Records. Id. The Custodian of Records for Sulek Managic testified that Mr. Edwards was seen on video in employee only areas inside the Rockhouse. PHT p. 8. He further testified that employees keep personal items in these employee only areas. Id. Venetian Custodian of Records testified that Mr. Edwards was on video going into public and restricted areas of the Venetian hotel and casino. PHT pp. 26-29.

Complaining witness Whitnee Tyson, testified that on August 26, 2015, she was a cocktail server at the Rockhouse. PHT p. 38. On that date, she placed her purse on a table in the employee back hallway, which was next to some lockers. PHT p. 39. My Tyson testified that she watched a video (in court) which showed a man, whom she identified in court as Harold Edwards, in the employee area where she left her purse. PHT pp. 39-41. Ms. Tyson further stated that when she returned to her purse, her wallet and all of the contents were missing. PHT p. 41.

Lastly, Detective J. Clark testified that he investigated this case. PHT p. 47. He further testified that the person on the Venetian video is in fact, the defendant, Harold Edwards. PHT pp. 47-48.

C310166-Wynn[5]

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[1] Defense utilizes many of the State's facts as recited in their Motion to Consolidate or in the Alternative Motion in Limine for the Admission of Other Bad Acts.
[2] *See* Information on file.
[3] *See* Information on file.
[4] *See* generally [Preliminary Hearing Transcript "PHT" (October 29, 2015) (attached hereto as Exhibit A)].
[5] All of the facts cited in this section come from the Preliminary Hearing "PHT" held on October 19, 2015 in front of the Honorable Judge Saragosa, attached hereto as Exhibit B.

The Wynn incident is alleged to have occurred on September 19, 2015 at the Claude Baruk Salon, located inside the Wynn hotel and casino. The alleged victims worked inside the salon at the time of this incident.

Complaining witness Christina Simons testified that upon entering the storage room/laundry room of the salon, an employee only area, she saw Mr. Edwards talking on the phone. PHT pp. 49-50]. Ms. Simons further testified that the storage room is where everyone keeps their purses at. PHT p. 50. Ms. Simons further testified that her IPhone 6 and case were stolen and are valued at more than $650. PHT p. 54.

Complaining witness Viviana Massis stated that she went into the back laundry room with Ms. Simons. PHT p. 63. Ms. Massis checked her belongings and stated that she found she was missing her cell phone, a cardholder and a wallet. PHT p. 65. She further testified that she was missing items out of her wallet, to include gifts cards and an identification card. Id. Upon being notified by her co-workers, complaining witness Sarah Caughell also went to the storage area to find her wallet and contents and iPhone missing. PHT p. 74.

Security Control Center Manager for the Wynn, Neal Gekeler testified that he reviewed video surveillance from the date of the incident. PHT p. 22. Mr. Gekeler testified that on the video he saw the man (later identified in Court as Mr. Edwards) walking in both public areas and employee only access areas on September 19, 2015. *See generally* PHT pp. 25-35.

The State also called Detective J. Clark as a witness at preliminary hearing. PHT pp. 40-49. Detective Clark is the assigned Detective to this case. Id. He testified that he reviewed video surveillance from the Wynn and identified Mr. Edwards as the person in the video. PHT pp. 45-46. He further testified that he was investigating other cases of Mr. Edwards, stating that they have the same "M.O." PHT p. 46.

The instant case is currently set for trial on August 29, 2016, with a calendar call date of August 17, 2016. Noteworthy, Mr. Edwards previously waived his right to a speedy trial.

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C310695[6]

In this case, the State has charged Mr. Edwards with one count of Burglary, alleged to have occurred on or about September 17, 2015 at the Bellagio.[7]

On September 23, 2015, Detective J. Clark[8] reviewed video surveillance provided by Bellagio Security Investigations. PHT p. 78. Detective Clark testified that the suspect in this video surveillance is the same suspect in two other burglaries, specifically LVMPD event numbers 150919-1961 and 150828-2668, the event numbers from the instant case. Declaration of Arrest, p. 1, (attached hereto as Exhibit D). Detective Clark testified that the video surveillance shows Mr. Edwards entering a back hallway of the Venetian and also the back door to Café Gelato; both areas having no public access. PHT pp. 60, 63. The State further alleges that Mr. Edwards took Ms. Joanna Jimenez's backpack from somewhere behind the Café Gelato. PHT p. 64. Ms. Jimenez informed officers that her backpack was in a locked locker in the back. PHT p. 26. This backpack was later recovered just inside the back door of an arcade. PHT p. 27.

ARGUMENTS

I. This Court Has Authority To Consolidate Mr. Edwards Cases.

Pursuant to Eight Judicial District Court Rule "EDCR" 2.50 and EDCR 3.10, this department is the proper department to hear this motion. The case first filed is the proper court to hear motions for consolidation and the proper court to try the consolidated case. *See* EDCR 2.50 and EDCR 3.10. This department has the lowest case number and thus should hear this motion and try the consolidated cases.

II. Prosecutors Are Encouraged To Seek Joinder To Save Taxpayer Money and Promote Judicial Economy.

Nev. Rev. Stat. § 174.155 provides:

> The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants if there is

[6] All facts cited in this section are from the Preliminary Hearing "PHT" held on November 10, 2015 in front of the Honorable Judge Goodman, and attached hereto as Exhibit C.
[7] *See Information on file.*
[8] The same Detective who testified at the other two preliminary hearings.

> more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.

In considering whether to allow consolidation, courts have looked to the conflicting policies of judicial economy and efficiency of judicial administration, controlling court calendars in avoidance of multiple trials, and any resulting prejudice to a defendant which may arise from consolidation. *See* United States v. Sancher, 195 F. Supp. 634 (d. Conn.) affirmed, 319 F.2d 604 (4th Cir. 1963).[9]

The Nevada Supreme Court has always recognized the need to promote judicial economy by ordering joinder of defendants or offenses. "The general rule favoring joinder has evolved for a specific reason-there is a substantial public interest in joint trials of persons charged together because of the judicial economy involved." In United States v. Brady, 579 F.2d 1121, 1128 (9th Cir.), *cert. denied*, 439 U.S. 1074, 99 S.Ct. 849, 59 L.Ed.2d 41 (1978), the court stated:

> we must be guided by our general rule that joint trials of persons charged with committing the same offense expedites the administration of justice, reduces the congestion of trial dockets, conserves judicial time, lessens the burdens upon citizens to sacrifice time and money to serve on juries and avoids the necessity of recalling witnesses who would otherwise be called upon to testify only once.

Jones v State, 111 Nev. 848, 899 P. 2d 544 (1995). The Nevada Supreme Court has also applied this rationale of judicial economy in ruling on the joinder of offenses. In joinder of offenses cases, judicial economy is normally weighed against prejudice to the defendant. *See* Brown v State, 114 Nev. 1118, 967 P.2d 1123 (1998), Tabish v State, 72 P.3d 584 (2003); Middleton v. State, 114 Nev. 1089, 968 P.2d 296 (1998); Tillema v State, 112 Nev. 266, 914 P.2d 605 (1996). In Tillema, the Nevada Supreme Court held that it was proper to join a vehicle burglary with another vehicle burglary and store burglary which happened 17 days later. Id. at 269. Given that the presumption is for joinder of cases when there is no prejudice, consolidation is proper in

[9] This is the same law the State relied upon in filing their Motion to Consolidate Or in the Alternative, Motion in Limine For the Admission of Other Bad Acts in case C-15-310442-1, filed on December 14, 2015, (attached hereto as Exhibit E).

this case.

Although it is not common for Defendants to request consolidation of cases, it is not unprecedented. In such cases, prosecutors are encouraged to use joinder provisions to save the taxpayers' money. Chaney v Oklahoma, 612 P.2d 269 (1980). In Chaney, the trial Court denied a defense motion to consolidate two death penalty cases. The Oklahoma Court of Appeals found that it was error to deny the consolidation. The Court reasoned:

> There are reasons, in addition to economic ones, why it would have been better to try these four cases together. Besides saving a great deal of expense for both the State and the defendant and reducing the District Court's caseload by three major cases, a single trial would have been less a burden on the witnesses, especially Mr. Ashmore, who had to relive the entire traumatic episode as well as identify his wife's clothing. The jury was told it was trying the defendant for one murder, but then it was given evidence that there were in fact two murders and two kidnappings.

Id. at 282. In Chaney, the trial judge was uncertain of his authority to consolidate over DA objection. The Court found that this misinterpretation of the statute amounted to an abuse of discretion. Id. at 283. Nevada law (Nev. Rev. Stat. § 174.155) also gives this Honorable Court the authority to consolidate Defendant's cases over DA objection. Nev. Rev. Stat. § 174.155 states "[t]he court may order two or more indictments or informations or both to be tried together if the offenses ... could have been joined in a single indictment or information." Additionally Nev. Rev. Stat. § 174.155 states that "[t]he procedure shall be the same as if the prosecution were under such single indictment or information." Furthermore, Nev. Rev. Stat. § 173.115 states:

> Two or more offense may be charged in the same indictment or information, in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both are:
>
> 1. Based on the same act or transaction; or
> 2. Based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

In the instant case, consolidation is warranted. All of the charges could have been filed in one single Indictment or Information here. Similar to Chaney, judicial economy and lack of prejudice to the State weigh in strong favor of consolidation in this case. It makes sense for only one jury to hear the facts of these cases since Eighth Judicial District Court caseloads are at an all-time high.

Moreover, the two cases overlap in both evidence and witnesses. Detective J. Clark testified at all three preliminary hearings and would be necessary for both trials in this case. Additionally, Detective Clark testified that all the cases have the same "M.O." *See supra* Statement of Relevant Facts. Thus, consolidation is warranted pursuant to Nev. Rev. Stat. § 17.115. Moreover, consistent with the State's argument, these cases happened within a month or less of each other.[10] Additionally, the fact pattern of each is consistent with the State's modus operandi argument, that Mr. Edwards targeted large hotel/casinos, entering them with the clear intent to seek out secured areas where employees kept their belongings. Id. The State goes on to argue as modus operandi the fact that Mr. Edwards demonstrated a common plan and/or scheme of roaming the secured access hallways for absolutely no reason other than finding personal belongings of employees and that upon finding personal belongings he would exit the building as soon as possible. Id. These are the same facts that the State will use to prove both cases, therefore consolidation is warranted.

III. The State Suffers No Prejudice From Consolidation.

A party is only entitled to have separate trials when he can show prejudice. NRS 174.165 (1) states:

> If it appears that a defendant or the State of Nevada is prejudiced by a joinder of offenses or defendants in an indictment or information, or by such joinder for trial together, the court may order an election

[10] *See* State's Motion to Consolidate or in the Alternative, Motion in Limine for the Admission of Other Bad Acts, filed December 14, 2015 in C-15-310442-1 p. 5.

or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.

Generally the defense is argues for separate trials based upon prejudice. Here, the defense is asking for consolidation because there is no prejudice. The defense has to do much more than claim it is a good strategy decision to get a severance. For severance, a party has to actual prejudice. The State must meet this standard; severance is not warranted simply because it is a good strategic decision. From the State's perspective, "prejudice in this context means detriment to one's legal rights or claims. Mere inconvenience or loss of strategic advantage caused by a jury trial does not constitute prejudice." State v Jones, 396 So.2d 1272 (1981).

The case at hand presents no prejudice to either party. When weighing all the factors: judicial economy, efficiency of judicial administration, avoidance of multiple trials, the rules allowing for consolidation, and prejudice, it is clear that the factors overwhelmingly support consolidation. Thus, Mr. Edwards humbly requests that this Court consolidate cases C310166 and C310695.

CONCLUSION

It is clear that there are numerous reasons to grant the Motion to Consolidate. Thus, based on the foregoing, Mr. Edwards humbly requests that this Court grant the instant motion.

DATED this 11th day of August, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/ Jasmin Spells*
JASMIN D. SPELLS, #11635
Deputy Public Defender

NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing MOTION on for hearing before the Court on the 17th day of August, 2016, at 9:30 a.m.

DATED this 11th day of August, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/ Jasmin Spells*
JASMIN D. SPELLS, #11635
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and forgoing MOTION was served via electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountyda.com on this 12th day of August, 2016

By: */s/ Erin Prisbrey*
An employee of the
Clark County Public Defender's Office

Harold Edwards #1169986
H.D.S.P.
P.D. Box 650
Indian Springs, NV. 89070

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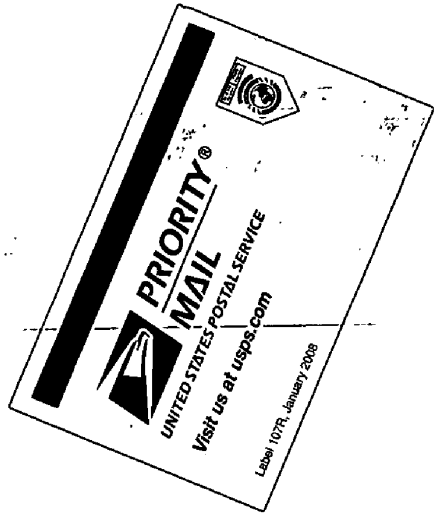

STEVEN D. GRIERSON Clerk of the Court
200 LEWIS AVENUE
LAS VEGAS, NEVADA 89155

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DISTRICT COURT
CLARK COUNTY, NEVADA

HAROLD EDWARDS,
Petitioner,
vs.
STATE OF NEVADA,
Respondent,

Case No: C-15-310695-1
Department 8

ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on March 06, 2017. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's Calendar on the 24 day of MAY, 2017, at the hour of 8 o'clock for further proceedings.

District Court Judge

C-15-310695-1
OPWH
Order for Petition for Writ of Habeas Corpu
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CLERK OF THE COURT

Harold Edwards #7024721
H. D. S. P. P.O. Box 650
Indian Springs, NV. 89070
Defendant: Pro Per

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff.

vs.

HAROLD EDWARDS,
Defendant.

Case No. C-15-310695-1
Dept No. VIII

April 19, 2017 at 8:00am

EX PARTE MOTION FOR IMMEDIATE RELEASE

COMES NOW, the Defendant acting Pro Per and Moves this Court for an Order for immediate Release of documentation possessed by BELLAGIO HOTEL AND CASINO for the purpose of defending the above referenced case charging the Crime of Burglary (Category B Felony - NRS 205.060 - NOC-50424).

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Pursuant to 45CFR164.512 (e). Movant represents that the information sought is relevant and material to a legitimate legal inquiry: that the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the pictures and other information is sought: and the pictures are needed in the Defendant's preparation for Post-Conviction litigation.

Defendant is requesting that he be given all COLOR PHOTO'S Originals (or Copies of the Original Color Photo's) that were given to Defendant's previous Counsel Mr. Mc Cubbins, that are related to this matter. and not Black and white copies that are unclear.

DATED this 22nd day of March 2017

HAROLD EDWARDS
Defendant in Propria Persona

Harold Edwards

HAROLD EDWARDS 1169986
HDSP P.O. BOX 650
Indian Springs, NV. 89070

Hasler FIRST-CLASS MAIL
PRSRT
03/22/2017
US POSTAGE $000.45³
ZIP 89101
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STEVEN D. GRIERSON, Clerk of the Court
200 LEWIS AVENUE 3rd FLOOR
LAS VEGAS, NV. 89155-1160

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CLERK OF THE COURT

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAROLD EDWARDS,
#7024721

Defendant.

CASE NO: C-15-310695-1

DEPT NO: VIII

STATE'S RESPONSE TO DEFENDANT'S EX PARTE MOTION FOR IMMEDIATE RELEASE

DATE OF HEARING: APRIL 19, 2017
TIME OF HEARING: 8:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JONATHAN VANBOSKERCK, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Ex Parte Motion For Immediate Release.

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

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On November 12, 2015, the State filed an Information charging Defendant Harold Edwards ("Defendant") with one count of Burglary (Category B Felony – NRS 205.060—NOC 50424). On January 5, 2016, the State filed a Notice of Intent to Seek Punishment as Habitual Criminal. On August 19, 2016, Defendant agreed to plead guilty to Burglary and five counts of Possession of Credit or Debit Card Without Cardholder's Consent (Category D Felony – NRS 205.690—NOC 50790) and Battery on a Protected Person (Gross Misdemeanor – NRS 200.481—NOC 50221) in Case No. C311212.

On September 13, 2016, Defendant filed a Notice of Motion and Motion to Dismiss Counsel and Motion for a Faretta[1] Hearing, which was granted by the Court on October 5, 2016. Defendant also filed a Notice of Motion and Defendant's Pro Per Motion to Withdraw Guilty Plea and Motion for Faretta Hearing on October 5, 2016. On October 7, 2016, the State filed an Opposition to Defendant's Motion to Withdraw Guilty Plea. On October 10, 2016, the Court denied Defendant's Motion to Withdraw Guilty Plea.

On November 21, 2016, the Court held Defendant's sentencing hearing. During the hearing, Defendant argued that the Judgments of Conviction were invalid. The Court twice continued sentencing to December 7, 2016, to review the Judgements of Conviction. On December 7, 2016, the Court adjudicated Defendant as a habitual criminal under the large habitual criminal statute and sentenced him to the Nevada Department of Corrections for the stipulated term of 10 to 25 years, concurrent to Case No. C311212, with 450 days credit for time served.

On December 15, 2016, Defendant filed a Notice of Appeal in the Nevada Supreme Court. On February 13, 2017, Defendant withdrew his appeal. On February 28, 2017, the Nevada Supreme Court filed its Order dismissing the appeal.

[1] Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525 (1975)

On March 6, 2017, Defendant filed a Petition for Writ of Habeas Corpus. The State is presently responding to the Petition. On March 28, 2017, Defendant filed the instant Ex Parte Motion for Immediate Release. The State's Response follows.

ARGUMENT

Under NRS 34.780(2), this Court may permit discovery upon a showing of good cause if the writ is granted and an evidentiary hearing set. Id. Here, the writ has not been granted and an evidentiary hearing has not been set. Accordingly, Defendant's motion is premature and only ripe for denial.

Moreover, Defendant presents no authority or facts demonstrating that good cause exists; he merely asserts that the pictures sought "are needed in the Defendant's preparation for post-conviction litigation." Motion, p. 2. The Nevada Supreme Court has yet to address the meaning of good cause in the context of discovery in a post-conviction habeas proceeding. Under the federal rule, good cause exists to allow discovery only where specific allegations provide reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is entitled to relief. NRS 34.780(2); see also Rule 6 of the Federal Rules Governing § 2254 Cases; McDaniel v. U.S. District Court (Jones), 127 F. 3d 886, 888 (9th Cir. 1997). However, "courts should not allow prisoners to use federal discovery for fishing expeditions to investigate mere speculation." Calderon v. U.S. District Court (Nicolaus), 98 F. 3d 1102, 1106 (9th Cir. 1996), cert. denied, 520 U.S. 1233, 117 S. Ct. 1830 (1997); see also, Stanford v. Parker, 266 F. 3d 442, 460 (6th Cir. 2001); Murphy v. Johnson, 205 F.3d 809, 814 (5th Cir. 2000), cert. denied, 531 U.S. 957, 121 S. Ct. 380 (2000).

Defendant fails to assert any good cause in his Motion. To the extent that he contends that he has established good cause because "the information sought is relevant and material to a legitimate legal inquiry," this argument is unavailing. Motion, p. 2. The State has no duty to support Defendant's allegations; it is his obligation to establish his claims. NRS 34.726(1); 34.800; 34.810(3). This is a burden that this Court may not shift. See Evans v. State, 117 Nev. 609, 627, 28 P.3d 498, 511 (2001), overruled on other grounds, Nika v. State, 124 Nev. 1272, 198 P.3d 839 (2008) ("Evans seems to assume that the State has a duty to compile information

or pursue an investigative lead merely because it could conceivably develop information helpful to the defense, but he offers no authority for this proposition, and we reject it.").

Nor does Defendant's specific discovery demand establish good cause under NRS 34.780(2). Defendant demands discovery of original color photographs given to prior counsel. Motion, p. 2. Defendant offers the naked assertion that the color photographs "are needed in the Defendant's preparation for post-conviction litigation." Id. Defendant's Motion contradicts his request for discovery from the State. In his Motion, Defendant admits that counsel, Mr. McCubbins was in possession of the photographs. Id. As noted above, the State is not required to conduct any investigation for Defendant. Evans, 117 Nev. at 627, 28 P.3d at 511. Defendant offers nothing to demonstrate that the State possesses evidence that he does not already possess or cannot obtain from counsel. Accordingly, discovery would add nothing to his attempt to demonstrate relief.

Ultimately, Defendant's request for discovery is premature and must be denied pursuant to NRS 34.780. Moreover, Defendant fails to demonstrate any semblance of good cause because he is in possession of the records related to his claim and should be able to obtain color copies of the photographs from prior counsel. It is not the State's responsibility to do Defendant's job for him. Accordingly, the Court should deny Defendant's fishing expedition.

CONCLUSION

For the foregoing reasons, Defendant's Ex Parte Motion for Immediate Release should be DENIED.

DATED this 13 day of April, 2017.

Respectfully submitted,

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

BY _____
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 13th day of April, 2017, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

HAROLD EDWARDS #7024721
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89070

BY J. Robertson
J. Robertson
Secretary for the District Attorney's Office

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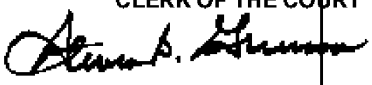
CLERK OF THE COURT



RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAROLD EDWARDS,
#7024721

Defendant.

CASE NO: C-15-310695-1

DEPT NO: VIII

STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

DATE OF HEARING: 05/24/17
TIME OF HEARING: 8:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JONATHAN VANBOSKERCK, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Petition for Writ of Habeas Corpus.

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

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On November 12, 2015, the State filed an Information charging Defendant Harold Edwards ("Defendant") with one count of Burglary (Category B Felony – NRS 205.060—NOC 50424). On January 5, 2016, the State filed a Notice of Intent to Seek Punishment as Habitual Criminal. On August 19, 2016, Defendant agreed to plead guilty to Burglary and five counts of Possession of Credit or Debit Card Without Cardholder's Consent (Category D Felony – NRS 205.690—NOC 50790) and Battery on a Protected Person (Gross Misdemeanor – NRS 200.481—NOC 50221) in Case No. C311212.

On September 13, 2016, Defendant filed a Notice of Motion and Motion to Dismiss Counsel and Motion for a Faretta[1] Hearing, which was granted by the Court on October 5, 2016. Defendant also filed a Notice of Motion and Defendant's Pro Per Motion to Withdraw Guilty Plea and Motion for Faretta Hearing on October 5, 2016. On October 7, 2016, the State filed an Opposition to Defendant's Motion to Withdraw Guilty Plea. On October 10, 2016, the Court denied Defendant's Motion to Withdraw Guilty Plea.

On November 21, 2016, the Court held Defendant's sentencing hearing. During the hearing, Defendant argued that the Judgments of Conviction were invalid. The Court twice continued sentencing, to review the Judgements of Conviction. On December 7, 2016, the Court adjudicated Defendant as a habitual criminal under the large habitual criminal statute and sentenced him to the Nevada Department of Corrections for the stipulated term of 10 to 25 years, concurrent to Case No. C311212, with 450 days credit for time served.

On December 15, 2016, Defendant filed a Notice of Appeal in the Nevada Supreme Court. On February 13, 2017, Defendant withdrew his appeal. On February 28, 2017, the Nevada Supreme Court filed its Order dismissing the appeal.

On March 28, 2017, Defendant filed an Ex Parte Motion for Immediate Release. The State responded on April 13, 2017. The Court's decision on the Motion for Immediate Release is pending.

[1] Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525 (1975)

On March 6, 2017, Defendant filed the instant Petition for Writ of Habeas Corpus. The State's Response follows.

STATEMENT OF FACTS

At sentencing, the District Court relied on the following offense synopsis, included in the Pre-Sentence Investigation Report (PSI):

> On September 23, 2016, Bellagio security personnel notified police that an employee had been the victim of a burglary which occurred near the Gelato Café on September 17, 2015.
>
> Upon arrival at the Bellagio the police met with security personnel and they viewed the video surveillance footage of the burglary incident. Police observed a male suspect loitering in the area clearly marked, "Not a Public Area, Access Restricted". The suspect loitered for several minutes and then he entered the back door of the Café Gelato and moments later he exits the doorway carrying the victims backpack and then he re-enters the hallway and enters the back door of the Arcade. When the suspect exits from the shadows, he is no longer in possession of the backpack. The backpack is later located just inside the back door of the Arcade and was returned to the victim.
>
> The video surveillance then shows the suspect walking around the Casino without anything in his hands, and he then walks out of camera range and is shortly thereafter seen holding an Apple IPad and sitting at a slot machine, opening the IPad and swiping his finger across the screen. The suspect is seen looking around and then setting the down the IPad in front of a slot machine. The suspect then gets up from his seat and walks away from the IPad. After he is gone for several minutes, one of the casino cleaners locates the IPad and turns it into Security.
>
> The suspect notices the IPad is missing and approaches the Security Officer in an attempt to retrieve the IPad. The Security Officer fills out a statement in which the suspect claims the IPad belongs to a friend of his. The Security Officer tells the suspect his friend would have to come to claim the IPad.
>
> The true owner a female victim at the Bellagio later claimed the IPad and it was returned to her. The female victim told police during an interview, that her IPad was in a zippered bag which she hung from a chair while she was gambling. She said she never saw anyone removed the IPad from her bag.
>
> While viewing the video surveillance footage of the suspect, the police recognize the male suspect to be the defendant, Harold Edwards.

Mr. Edwards was subsequently arrested and transported to the Clark County Detention Center where he was booked accordingly.

PSI at 6.

ARGUMENT

I. DEFENDANT'S SUBSTANTIVE CLAIMS MUST BE DENIED BECAUSE THEY EXCEED THE SCOPE OF A PETITION FOR WRIT OF HABEAS CORPUS

Substantive claims of sentencing error, judicial error, and prosecutorial misconduct are procedurally barred as waived since each claim should have been raised on direct appeal. NRS 34.724(2)(a); Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994), overruled on other grounds by Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). A showing of good cause and prejudice may overcome procedural bars. "To establish good cause, appellants *must* show that an impediment external to the defense prevented their compliance with the applicable procedural rule. A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available at the time of default." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). Defendant fails to establish good cause to overcome his procedural default because all of the necessary facts and law were available for a direct appeal. Indeed, Defendant had an opportunity to raise these issues on direct appeal; however, he chose to withdraw his appeal and forever forego his claims.

Moreover, Defendant fails to establish prejudice. In order to establish prejudice, the defendant must show "'not merely that the errors of [the proceedings] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings with error of constitutional dimensions.'" Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)). To find good cause there must be a "substantial reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). As discussed, *infra*, each of Defendant's claims is meritless.

///

a. Defendant Fails to Substantiate Prejudice to Excuse His Procedural Default Because There Were No Violations of Due Process or Judicial Error in Sentencing Defendant

In relevant part, NRS 207.010 provides that any individual convicted of a felony, who has been previously convicted of three felonies "is a habitual criminal and shall be punished by imprisonment for … a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served." NRS 207.010(b)(3). The Nevada Legislature created the habitual criminality statute to enable the criminal justice system to deal determinedly with career criminals who pose a serious threat to public safety. Sessions v. State, 106 Nev. 186, 789 P.2d 1242 (1990). A court may impose an adjudication of habitual criminality based upon a stipulation of the parties. See Hodges v. State, 119 Nev. 479, 483, 78 P.3d 67, 69 (2003) (citing NRS 207.016(6)).

Defendant complains that he never stipulated to the predicate offenses for his treatment under the large habitual criminal statute and that the State never presented certified copies of his conviction. Petition, pp. 9, 11-12. However, the State presented the Court with four certified conviction records on October 17, 2016, which the Court considered and determined were valid. Transcript of Proceedings ("Tr."), 11/21/16, pp. 2-3; Court Minutes, 11/21/16, 12/07/16. Accordingly, the Court complied with the strictures of NRS 201.010(b)(3) and, as such, Defendant's claim is belied by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (claims belied by the record cannot support post-conviction relief). Moreover, Defendant cannot establish prejudice to ignore his procedural default because his stipulation to treatment under the large habitual criminal statute waived any substantive error. Woods v. State, 114 Nev. 468, 477, 958 P.2d 91, 97 (1998); Reuben C. v. State, 99 Nev. 845, 845-46, 673 P.2d 493, 493 (1983); Powell v. Sheriff, 85 Nev. 684, 687, 462 P.2d 756, 758 (1969).

Further, Defendant's claim that the Court denied him an opportunity to argue at sentencing is utterly belied by the record. Petition, pp. 9, 12-13, 18-19. Defendant focuses on the November 23, 2016, and December 7, 2016, sentencing dates for the proposition that he was silenced. However, the record clearly shows he was given ample opportunity to argue his

concerns to the Court at the November 21, 2016, hearing. Tr., 11/21/16, pp. 3-8. Indeed, based on Defendant's representations, the Court continued sentencing to November 23, 2016, to review the certified Judgments of Conviction.[2] Id. at 8. At the conclusion of the hearing, the Court informed Defendant and the State that there would be no further argument on the issue. Id. at 8. At the November 23, 2016, hearing, Defendant attempted to continue to argue; the Court simply continued sentencing until December 7, 2016. Court Minutes, 11/21/16. Consequently, Defendant's claim is meritless; he had a full opportunity to argue his claims. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

Likewise, Defendant's claim that the State failed to present a sufficient number of predicate convictions is belied by the record. Petition, pp. 18. The State provided the Court with *four* prior convictions from Illinois; even if two were from the same act, transaction, or occurrence as Defendant asserts, the State still met its burden under NRS 207.010(b). Tr., 11/21/16, pp. 2-3; Petition, pp. 18. Moreover, Defendant had been convicted and sentenced in Case No. C311212 on October 27, 2016. Id. at 3. Accordingly, Defendant's claim that the State failed to meet its burden is belied. Hargrove, 100 Nev. at 502, 686 P.2d at 225.

Similarly, Defendant raises a meritless complaint that his sentence violates the Eighth Amendment's prohibition on cruel and unusual punishment because it is disproportionate to the crime. See Petition, pp. 34, 36-37. Defendant misapprehends the purpose of his sentence; his 10 to 25 year sentence under the large habitual criminal statute is not for taking a lunch bag, Petition, pp. 34, but for being a habitual criminal. Moreover, the Nevada Supreme Court has previously held that a 10 to life sentence for Burglary does not shock the conscience and is, therefore, not unconstitutional. White v. State, 105 Nev. 121, 771 P.2d 152 (1989), overruled in part, Hightower v. State, 123 Nev. 55, 154 P.3d 639 (2007). Accordingly, the Court should deny Defendant's claim.

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[2] Defendant complains throughout his Petition that the Judgments of Conviction were constitutionally invalid because several only reference "Public Defender" as his counsel of record, rather than the specific Deputy Public Defender assigned to his cases. Defendant's position is meritless. First, the Judgments of Conviction confirm he had counsel and, thus, his convictions were not unconstitutional. Dressler v. State, 107 Nev. 686, 819 P.2d 1288 (1991). Moreover, Defendant's Judgment of Conviction accurately reflected his actual attorney, the Public Defender. See New Jersey Div. of Child Prot. & Permanency v. G.S. (In re A.S.), 447 N.J. Super. 539, 557, 149 A.3d 816, 827 (N.J. Sup. Ct. App. Div. 2016) ("The Public Defender's Office has the ultimate responsibility to represent the client and is the client's attorney of record, regardless of whether the lawyers it assigns are staff or pool attorneys.")

b. Defendant Fails to Substantiate Prejudice to Excuse His Procedural Default Because There is No Requirement that He Sign an Amended Information

Defendant complains that the Court lacked jurisdiction to sentence him under the large habitual criminal statute because the State did not file an Amended Information. Petition, pp. 19. There is no requirement that the State file an Amended Information; the State is only required to provide Defendant with notice. NRS 207.010(2). Defendant's reliance on Grey v. State, 124 Nev. 110, 178 P.3d 154 (2008), is misplaced. Grey held that "before a defendant may be sentenced as a habitual criminal under NRS 207.010, the State must duly file an allegation of habitual criminality." Id. at 124, 178 P.3d at 164. That allegation may be in the Information or in a separate notice. See id.; NRS 207.010(2).

Here, the State filed a Notice of Intent to Seek Punishment as Habitual Criminal on January 5, 2016. Accordingly, the State met its obligations and Defendant's claim is belied by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Moreover, Defendant's stipulation o treatment under the large habitual criminal statute waived any substantive error; he clearly was on notice that he could—and would—be sentenced as a habitual criminal. Woods, 114 Nev. at 477, 958 P.2d at 97; Reuben C., 99 Nev. at 845-46, 673 P.2d at 493; Powell, 85 Nev. at 687, 462 P.2d at 758. Accordingly, Defendant's claim should be denied.

c. Defendant Fails to Substantiate Prejudice to Excuse His Procedural Default Because the Court Properly Denied His Motion to Withdraw Guilty Plea

Defendant next complains that the Court improperly denied his Motion to Withdraw Guilty Plea. Petition, pp. 25-26. A plea of guilty is presumptively valid, particularly where it is entered into on the advice of counsel. Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295-96 (1975). A defendant may move to withdraw a guilty plea before sentencing, NRS 176.165, and "a district court may grant a defendant's motion to withdraw his guilty plea before sentencing for any reason where permitting withdrawal would be fair and just." Stevenson v. State, 131 Nev. ___, ___, 354 P.3d 1277, 1281 (2015). The granting or denial of such an application rests within the sound discretion of the trial judge, and his or her decision will not be disturbed on review, absent a clear abuse of that discretion. Riker v. State, 111

Nev. 1316, 1322, 905 P.2d 706, 710 (1995); Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." State v. Smith, 131 Nev. Adv. Rep. 63, ___, 356 P.3d 1092, 1094 (2015).

Defendant asserted in his Motion that his plea was entered "improvidently" and was "coerced." Motion to Withdraw Guilty Plea, pp. 1. However, a defendant has the burden of proving that the plea was not entered knowingly or voluntarily. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); Wynn v. State, 96 Nev. 673, 675, 615 P.2d 946, 947 (1980).

In determining whether a defendant's guilty plea is knowingly and voluntarily entered, a reviewing court is required to review the totality of the circumstances surrounding the plea. Bryant, 102 Nev. at 272, 721 P.2d at 367. In Bryant, the Nevada Supreme Court made it clear that in reviewing the sufficiency of plea canvasses, a court is permitted to review the "totality of the facts and circumstances of a defendant's case." Id. at 274, 721 P.2d at 369. In so doing, the reviewing court may look at matters which extend beyond the formal entry of the plea. See id. at 276, 721 P.2d at 370. In Bryant, the Court considered matters which were presented at the preliminary hearing, in the petition for writ of habeas corpus filed in district court and statements made at time of sentencing. Id. at 273-75, 721 P.2d at 368-69.

Furthermore, the Nevada Supreme Court has stated that determining the voluntariness of pleas of guilty "do[es] not require the articulation of talismanic phrases." Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1405 (1973). It requires only "that the record must affirmatively disclose that a defendant who pled guilty entered his plea understandingly and voluntarily." Brady v. United States, 397 U.S. 742, 747 n.4, 90 S. Ct. 1463, 1468 n.4 (1970).

A thorough plea canvass, coupled with a detailed, consistent, and written plea agreement supports a finding that a defendant pleaded guilty voluntarily and knowingly. See Woods v. State, 114 Nev. 468, 476, 958 P.2d 91, 96 (1998); see also Freese v. State, 116 Nev. 1097, 1106, 13 P.3d 442, 448 (2000). Moreover, in Wilson v. State, 99 Nev. 362, 664 P.2d 328 (1983), the Nevada Supreme Court explained that:

> [C]ertain minimum requirements must be met when a judge canvasses a defendant regarding the voluntariness of a guilty plea … [T]he record must affirmatively show the following: (1) the defendant knowingly waived his privilege against self-incrimination, the right to trial by jury, and the right to confront his accusers; (2) the plea was voluntary, was not coerced, and was not the result of a promise of leniency; (3) the defendant understood the consequences of his plea and the range of punishment; and (4) the defendant understood the nature of the charge, i.e., the elements of the crime.

(internal citations omitted).

Here, the plea canvass and the Guilty Plea Agreement ("GPA") establish the Wilson factors and demonstrate that Defendant and knowingly pleaded guilty. Defendant signed the GPA on August 19, 2016. In his GPA, Defendant acknowledged he was waiving:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about [his] refusal to testify.
2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial [he] would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.
3. The constitutional right to confront and cross-examine any witnesses who would testify against [him].
4. The constitutional right to subpoena witnesses to testify on [his] behalf.
5. The constitutional right to testify in [his] own defense.

GPA, pp. 5.

Additionally, the district court's plea canvass confirmed Defendant's understanding of the rights he was waiving. During the plea canvass, Defendant repeatedly told the district court, he wanted to plead guilty and accept the offer, despite the stipulation to the habitual criminal treatment. Tr., 08/19/16, pp. 2-7. During the canvass, the district court carefully ensured Defendant understood the rights he was waiving in his GPA:

THE COURT:	Now, by pleading guilty, you understand you're giving up the right, the privilege against self-incrimination, including the right to refuse to testify at trial. Do you understand?
THE DEFENDANT:	Yeah.
THE COURT:	You're giving up the right to a speedy and a public trial by impartial jury, free of excessive pretrial publicity prejudicial to the defense? Do you understand?
THE DEFENDANT:	Yeah.
THE COURT:	You're giving up the right to confront and cross-examine witnesses who would testify against you; the right to testify in your behalf; the right to subpoena witnesses to testify for you; and the right to appeal your conviction with assistance of an attorney, either appointed or retain? You understand?
THE DEFENDANT:	Yes, sir.
THE COURT:	Still want me to accept it?
THE DEFENDANT:	Yes, sir.

Tr., 08/19/16, pp. 6-7.

Likewise, both the GPA and plea canvass establish that Defendant understood the nature of the crimes to which he was pleading. Tr., 08/19/16, pp. 7. Moreover, he fully understood the consequences of the plea and the range of punishment. The signed Guilty Plea Agreement informed Defendant that:

> [A]s a consequence of [his] plea of guilty the Court must sentence [him] to imprisonment in the Nevada Department of Corrections for a minimum term of not less than ONE (1) year and a maximum term of not more than TEN (10) years….
>
> […]
>
> Further, … if [he was] sentenced under the "large" habitual criminal enhancement the Court must sentence [him] to Life without the possibility of parole; Life with the possibility of parole, parole eligibility begins after a minimum term of ten (10) years has been served; or a definite term of twenty-five (25) years, parole eligibility begins after a minimum of ten (10) years has been served.

GPA, pp. 2-3.

Defendant's claim that his plea was coerced is belied by the record. The GPA and plea canvass demonstrate that Defendant voluntarily entered his plea on August 19, 2016. In his signed GPA, Defendant acknowledged that:

> I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of lenience, except for those set for this agreement.
>
> I am not now under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.
>
> My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

GPA, pp. 6.

Moreover, counsel joined in Defendant's voluntariness declaring:

> 1. I have fully explained to the Defendant the allegations contained in the charge(s) to which guilty pleas are being entered.
>
> 2. I have advised [Shannon] of the penalties for each charge and the restitution that the Defendant may be ordered to pay.
>
> [...]
>
> 5. To the best of my knowledge and belief, the Defendant:
>   a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement,
>   b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily, and
>   c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with [him]...

GPA, pp. 7.

Importantly, during the plea canvass, Defendant told the district court that he was pleading voluntarily. Tr., 08/19/16, pp. 7-8. Accordingly, the totality of the circumstances establishes that Defendant pleaded guilty voluntarily and knowingly. Nothing in the plea canvass or the GPA remotely supports Defendant's assertions that his plea was not voluntarily or intelligently entered into on August 19, 2016. Moreover, the Court based its decision on these same circumstances when it considered his Motion to Withdraw Guilty Plea; there is no requirement that the Court review the entire record, especially when the Court lived the record. See Petition, pp. 25. Therefore, Defendant's claim should be denied.

d. Defendant Fails to Substantiate Prejudice to Excuse His Procedural Default Because there Was No Prosecutorial Misconduct

Defendant complains that he was vindictively prosecuted because he elected to go to trial. Petition, pp. 31. First, this complaint should have been raised on direct appeal; as such, it is waived. NRS 34.724(2)(a); Franklin, 110 Nev. 750, 877 P.2d 1058. Moreover, "there is no constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial." Lafler v. Cooper, 566 U.S. 156, 180, 132 S. Ct. 1376, 1395 (2012) (quoting Weatherford v. Bursey, 429 U.S. 545, 561, 97 S. Ct. 837 (1977)). As such, it follows that offers tend to get worse for defendants the closer they get to trial. Such a scheme does not offend the Constitution. Indeed, the United States Supreme Court has held that Due Process is not violated when a prosecutor carries out a threat made during plea negotiations to reindict the accused on more serious charges on which he is plainly subject to prosecution if he does not plead guilty to the offense with which he was originally charged. Bordenkircher v. Hayes, 434 U.S. 357, 358, 98 S. Ct. 663, 665 (1978). Ultimately, however, Defendant's claim is belied by the record as there were no offers in Defendant's cases until the negotiated settlement on August 19, 2016. Court Minutes, 08/17/16 ("State pointed out there were no offers in these cases"). As such, his claim should be denied.

Defendant also asserts the State was vindictive because the prosecutor said "I'm tired of playing with Mr. Edwards." Petition, pp. 31. Defendant fails to provide any support for his claim. The burden of production lies solely with the defendant in post-conviction proceedings.

Ford v. Warden, 111 Nev. 872, 882, 901 P.2d 123, 129 (1995) (citing NRS 34.370(4)). Thus, Defendant's assertion is a bare allegation suitable only for summary denial.[3] Hargrove, 100 Nev. at 502, 686 P.2d at 225.

II. DEFENDANT RECEIVED THE EFFECTIVE ASSISTANCE OF COUNSEL

Defendant alleges multiple instances of ineffective assistance of counsel. Nevada has adopted the standard outlined in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), for determinations regarding the effectiveness of counsel. Warden v. Lyons, 100 Nev. 430, 432-33, 683 P.2d 504, 505 (1984); Kirksey v. State, 112 Nev. 980, 998, 923 P.2d 1102, 1113 (1996). Under Strickland, in order to assert a claim of ineffective assistance of counsel, the defendant must prove that he was denied "reasonably effective assistance" of counsel by satisfying a two–pronged test. Strickland 466 U.S. at 686–687, 104 S. Ct. at 2064; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the defendant must show that his counsel's representation fell below an objective standard of reasonableness, and that, but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. See Strickland, 466 U.S. at 687–688, 694, 104 S. Ct. at 2064, 2068.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney's representations amounted to incompetence under prevailing professional norms, "not whether it deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 88, 131 S. Ct. 770, 778 (2011). Furthermore, "[e]ffective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

[3] To the extent that the prosecutor did comment in the vein Defendant complains of, it was in the context of Defendant's attempts to delay litigation by accepting and then rejecting offers, firing counsel and representing himself pro per, and then rehiring counsel as trial approached. As such, it was not an inflammatory or prejudicial remark, but a comment on the State's position with respect to negotiations with Defendant.

A court begins with a presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011-12, 103 P.3d 25, 35 (2004). The role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (emphasis added) (citing Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)).

In considering whether trial counsel was effective, the court must determine whether counsel made a "sufficient inquiry into the information . . . pertinent to his client's case." Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996); citing, Strickland, 466 U.S. at 690–691, 104 S. Ct. at 2066. Once this decision is made, the court will consider whether counsel made "a reasonable strategy decision on how to proceed with his client's case." Doleman, 112 Nev. at 846, 921 P.2d at 280; citing Strickland, 466 U.S. at 690–691, 104 S. Ct. at 2066. Counsel's strategy decision is a "tactical" decision and will be "virtually unchallengeable absent extraordinary circumstances." Doleman, 112 Nev. at 846, 921 P.2d at 280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691, 104 S. Ct. at 2066.

This analysis does not indicate that the court should "second guess reasoned choices between trial tactics, nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711; citing Cooper, 551 F.2d at 1166 (9th Cir. 1977). In essence, the court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. However, counsel cannot be deemed ineffective for failing to make futile objections, file futile motions, or for failing to make futile arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

Even if a defendant can demonstrate that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. A defendant who contends his attorney was ineffective because he did not adequately investigate must show how a better investigation would have rendered a more favorable outcome probable. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533, 538 (2004).

Finally, claims asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id.

Defendant complains that counsel was ineffective because he: (1) allowed Defendant to plead guilty and stipulate to the habitual offender status without reviewing the documents for proof of convictions; (2) failed to investigate Defendant's claim of innocence; and (3) failed to investigate and prepare for trial. Petition, pp. 26. Defendant fails to establish deficient performance or prejudice with respect to each of his claims.

First, the decision to plead guilty and stipulate to habitual criminal treatment belonged entirely to Defendant. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). As such, counsel cannot be deemed ineffective for a decision that belonged solely to Defendant. Moreover, Defendant's complaint is belied by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Both the GPA and plea canvass establish that Defendant fully understood and agreed to plead guilty and stipulate to habitual criminal treatment after discussing the case with counsel. GPA, pp. 1-3; Tr., 08/19/16, pp. 2-6. As such, Defendant is not entitled to relief.

Second, Defendant's claim that counsel was ineffective for failing to investigate his innocence is meritless. Defendant's claim is belied by the record; he pleaded guilty and admitted that he was, in fact, guilty. Tr., 08/19/16, pp. 8-9; Hargrove, 100 Nev. at 502, 686

P.2d at 225. Moreover, Therefore, Defendant fails to show how a better investigation would have rendered a more favorable outcome probable. Molina, 120 Nev. at 192, 87 P.3d at 538. His claim that he would have gone to trial is nothing more than a bare assertion, not warranting consideration by this Court. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus, Defendant's claim should be denied.

Finally, Defendant's complaint that counsel failed to adequately investigate and prepare for trial must fail. Defendant alleges counsel's ineffectiveness is demonstrated by his unwillingness to file a discovery motion. See Petition, pp. 28. On March 16, 2016, Defendant filed a pro per Notice of Motion and Motion to Compel Discovery. Although counsel stated he would refile the motion, he was under no obligation. Rhyne, 118 Nev. at 8, 38 P.3d at 167 (counsel cannot be ineffective for strategic decisions, including what motions to file and arguments to make). Accordingly, Defendant's claim of ineffectiveness should be denied.

CONCLUSION

For the foregoing reasons, Defendant's Petition for Writ of Habeas Corpus should be DENIED.

DATED this 18th day of April, 2017.

Respectfully submitted,

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

BY /s/ Brian J. Kochevar for
JONATHAN VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528

///

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 18th day of April, 2017, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

HAROLD EDWARDS, #7024721
High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070-0650

BY: /s/ Stephanie Johnson
Employee of the District Attorney's Office

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CLERK OF THE COURT

Harold Edwards #1169986
H.D.S.P. P.O. BOX 650
Indian Springs, NV. 89070
Defendant: Pro Per

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

VS.

HAROLD EDWARDS,
Defendant.

CASE NO. C-15-310695-1
DEPT NO. VIII

Hearing: 5/1/17
8:00AM

EX PARTE MOTION FOR COURT TO ORDER THAT TRANSCRIPTS FOR THE COURT DATES OF 11.21. and 12.7. AND 10.10. AND 8.17.16 BE RELEASED TO DEFENDANT

COMES NOW, Defendant acting in Propria Persona and moves this Court for an Order for Release of Court transcripts for the dates of 8.17, 10.10., 11.21 and 12.7 a in Dept. VIII. for the above Case No. 310695.

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APR 18 2017
CLERK OF THE COURT

RECEIVED
APR 13 2017
CLERK OF THE COURT

RECEIVED
APR 17 2017
CLERK OF THE COURT

Pursuant to 45CFR164.512(e), Movant represents that the information sought is relevant and material to a legitimate legal procedure, that the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought.

Dated this 4th day of April, 2017.

Harold Edwards
Defendant acting Pro Per

Harold Edwards # 1169986
H. D. S. P. P. O. Box 650
Indian Springs, NV. 89070

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04/12/2017
FIRST-CLASS MAIL
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STEVEN D. GRIERSON Clerk of the Court
200 LEWIS AVENUE 3rd Floor
LAS VEGAS, NV. 89155-1160

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Steven D. Grierson
CLERK OF THE COURT

ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
VIVIAN LUONG
Deputy District Attorney
Nevada Bar #013912
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAROLD EDWARDS,
#7024721

Defendant.

CASE NO: C-15-310695-1

DEPT NO: VIII

ORDER DENYING DEFENDANT'S EX PARTE MOTION FOR IMMEDIATE RELEASE

DATE OF HEARING: 04/19/2017
TIME OF HEARING: 8:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 19th day of March, 2017, the Defendant not being present, he is incarcerated in the Nevada Department of Corrections (NDOC), the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through VIVIAN LUONG, Deputy District Attorney, and without argument, based on the pleadings and good cause appearing therefor,

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IT IS HEREBY ORDERED that the Defendant's Ex Parte Motion for Immediate Release, shall be, and it is DENIED; because it is premature. Defendant's Petition for Writ of Habeas Corpus has not been granted and an evidentiary hearing has not been set. Additionally, Defendant failed to cite any case law in his Motion and he has not shown good cause.

DATED this 2 day of May, 2017.

DISTRICT JUDGE

BA

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

BY for
VIVIAN LUONG
Deputy District Attorney
Nevada Bar #013912

CERTIFICATE OF SERVICE

I certify that on the 5th day of May, 2017, I mailed a copy of the foregoing Order to:

Harold Edwards #1169986
Southern Desert Correctional Center
P.O. Box 208
Indian Springs, Nevada 89070-0208

BY /s/ Stephanie Johnson
Secretary for the District Attorney's Office

15F15118X/saj/L-1

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Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

HAROLD EDWARDS,

Defendant.

CASE NO. C310695

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

WEDNESDAY, AUGUST 17, 2016

TRANSCRIPT OF PROCEEDINGS
CALENDAR CALL

APPEARANCES:

For the State: WILLIAM W. FLINN, JR. ESQ.
Deputy District Attorney

For the Defendant: ROBERT E. O'BRIEN, ESQ.
Deputy Public Defender

RECORDED BY: JILL JACOBY, COURT RECORDER

WEDNESDAY, AUGUST 17, 2016 AT 9:29 A.M.

THE COURT: Page 6, top, C310695, Harold Edwards.

Number 1, Monday 9:30.

MR. O'BRIEN: And, Your Honor, the defense is moving to continue this case.

THE COURT: No.

Why? This is a simple burglary. We're going to trial on Monday at 9:30.

MR. O'BRIEN: Okay. Your Honor, I do have an argument to make. I'd appreciate you hearing it before you deny it.

THE COURT: Okay.

MR. O'BRIEN: First of all, Mr. Edwards is facing a sentencing on September 22nd in Department 21, specifically Judge Adair's department. In that case he went to trial pro se. He was convicted of -- I believe it is six felonies. State filed habitual listing off the nine prior felonies that Mr. Edwards has been convicted of in his past. He's facing large habitual. That sentencing happens on September 22nd.

I'm suggesting that motion to continue is because honestly everyone should wait to see what happens in that case. It is a waste of resources for us to go to trial on Mr. Edwards. He may receive life from Judge Adair. There's a very realistic possibility. So why would we take a week of this Court's time --

THE COURT: Not going to take a week to try this case.

MR. O'BRIEN: It depends.

THE COURT: It'll take two days.

MR. O'BRIEN: Secondly, Your Honor, we have an issue with Mr. Edwards

who has not been -- he started here rather than being transported up to Judge Miley's courtroom, but there is a pending motion to consolidate in front of Judge Miley --

THE COURT: She has to ask my permission and the permission is -- I've heard about the motion to consolidate. I'm not agreeing to it.

MR. O'BRIEN: With all due respect it's not your choice.

THE COURT: Oh, yeah, it is.

MR. O'BRIEN: It's not.

THE COURT: It is.

MR. O'BRIEN: No, it's not, Your Honor.

THE COURT: No, we're going to trial then Monday at 9:30.

MR. O'BRIEN: And, Your Honor, for the record, we do oppose the request to go to trial on Monday. At this point that motion has not be heard, Judge Miley is -- does run her own department, she can decide whether the cases are similar. I'd point out --

THE COURT: No, you have to ask the other judge too. You can't just take cases out. That is forum shopping. You cannot --

MR. O'BRIEN: Can I ask a question, Your Honor?

THE COURT: Yes.

MR. O'BRIEN: Just an honest straightforward question?

THE COURT: Yes.

MR. O'BRIEN: When the State moved to consolidate this case into Judge Miley's courtroom, when they moved previously --

THE COURT: No, they didn't move this case.

MR. O'BRIEN: Sorry, I apologize, not this case.

PLEADING CONTINUES IN NEXT VOLUME

IN THE SUPREME COURT OF THE STATE OF NEVADA

HAROLD EDWARDS,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: C-15-310695-1

Docket No: 83046

RECORD ON APPEAL
VOLUME
2

ATTORNEY FOR APPELLANT
HAROLD EDWARDS # 1169986,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

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

C-15-310695-1 STATE OF NEVADA vs. HAROLD EDWARDS

I N D E X

VOLUME:	PAGE NUMBER:
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Q CAN YOU PLEASE POINT TO HIM, IDENTIFY FOR ME THE COLOR OF SHIRT HE'S WEARING?

A IT'S A DARK BLUE SHIRT, SIR.

MR. LEXIS: YOUR HONOR, LET THE RECORD REFLECT THE WITNESS HAS IDENTIFIED THE DEFENDANT?

THE COURT: IT WILL.

BY MR. LEXIS:

Q WERE YOU ABLE TO TALK TO THE ALLEGED VICTIMS?

A YES.

Q AND DID YOU GET VOLUNTARY STATEMENTS FROM ONE CHRISTINA SIMONS, VIVIANNA MASSIS AND SARAH CAUGHELL?

A YES, I DID.

Q WERE THEY COOPERATIVE?

A YES, SIR.

Q DID YOU GO TO THE LOCATION OF THIS INCIDENT?

A YES, I DID, SIR.

Q IS IT AN INCIDENT WHERE EMPLOYEES ARE ALLOWED TO GO IN?

A IT WAS A BACK ROOM --

Q IS IT OPEN TO THE PUBLIC?

A NO, IT WAS NOT OPEN TO THE PUBLIC, SIR. IT WAS A BACKROOM WHERE THE EMPLOYEES STORE ITEMS, AS WELL AS IT'S THEIR BREAK ROOM.

Q WAS THERE ANY ITEMS RECOVERED AS A RESULT OF THIS INVESTIGATION THAT WAS RETURNED TO THE VICTIM?

A YES. I WAS NOTIFIED TODAY THAT SECURITY WAS -- WERE ABLE TO LOCATE ONE OF THE YOUNG LADIES ITEMS IN THE STAIRWELL AT THE WYNN.

MR. LEXIS: NOTHING FURTHER, YOUR HONOR.

THE COURT: CROSS?

MS. LETIZIA: THANK YOU, JUDGE.

CROSS-EXAMINATION

BY MS. LETIZIA:

Q DETECTIVE, WHEN YOU WERE CONDUCTING YOUR FOLLOW-UP INVESTIGATION, DID YOU HAVE AN OPPORTUNITY TO SHOW ANY OF THE ALLEGED VICTIMS A SIX PACK THAT INCLUDED MR. EDWARDS'S PHOTO?

A NO, I DID NOT USE A SIX PACK, MA'AM.

Q OKAY. SO IF YOU DIDN'T USE A SIX PACK, WHAT DID YOU USE TO ASK THE WOMEN TO IDENTIFY MR. EDWARDS?

A AT THE TIME I DIDN'T ASK THEM TO IDENTIFY HIM. THEY GAVE ME DESCRIPTIONS, I DID THE VOLUNTARIES, AS WELL AS A TAPED STATEMENT WITH ALL OF THEM.

Q OKAY. ARE YOU AWARE IF ANY OFFICERS SHOWED THE LADIES A PHOTO OF MR. EDWARDS AT ANY POINT DURING THE INVESTIGATION?

A THEY MAY HAVE. I DON'T KNOW IF ANY OF THE PATROL OFFICERS DID OR DID NOT.

Q OKAY. AND CAN YOU TELL ME WHO THE PATROL OFFICERS WERE?

A THERE WAS OFFICER VARGAS AND OFFICER BANEZ?

Q CAN YOU SPELL THAT FOR ME?

A B-A-N-E-Z.

Q BANEZ, OKAY.

AND YOU INDICATED THAT YOU FOUND OUT TODAY THAT SOME OF THE PROPERTY WAS LOCATED IN THE STAIRWELL AT THE WYNN?

A CORRECT. ONE OF THE YOUNG LADIES TOLD ME THIS MORNING THAT SHE HAD RECOVERED HER IDENTIFICATION, INCLUDING HER BIRTH CERTIFICATE, BUT THAT THE CASH WAS REMOVED FROM THE WALLET.

MS. LETIZIA: OKAY, THANK YOU.

COURT'S BRIEF INDULGENCE?

(DISCUSSION BETWEEN MS. HARMONY AND THE DEFENDANT.)

MS. LETIZIA: NOTHING FURTHER. I'LL PASS THE WITNESS.

THE COURT: ANY REDIRECT?

REDIRECT EXAMINATION

BY MR. LEXIS:

Q THE VIDEO WAS A TRUE AND ACCURATE REPRESENTATION OF WHAT TOOK PLACE?

A YES, SIR.

Q OKAY. AND YOU OBSERVED THAT VIDEO?

A I DID, SIR.

MS. LETIZIA: I'M GOING TO OBJECT. I'M NOT SURE HOW THIS WITNESS WOULD HAVE ANY WAY TO KNOW IF THAT WAS A TRUE AND

ACCURATE DEPICTION OF WHAT TOOK PLACE, HE WASN'T THERE, HE DOESN'T WORK FOR THE WYNN.

THE COURT: I'M --

MR. LEXIS: I HAVE -- DO YOU WANT ME TO PLAY THE VIDEO? IF YOU WANT, THAT'S FINE.

MS. LETIZIA: WELL, I'M NOT SURE -- HE'S NOT THE CUSTODIAN OF RECORDS FOR THE VIDEO, SO I'M NOT SURE PLAYING THE VIDEO IS GOING TO HELP WITH THIS WITNESS.

THE COURT: WITH THAT BEING YOUR QUESTION --

MR. LEXIS: DID YOU SEE --

THE COURT: -- I AGREE, HE'S NOT GOING --

MR. LEXIS: ALL RIGHT, I'LL REPHRASE.

THE COURT: -- TO BE ABLE TO LAY A FOUNDATION FOR THE VIDEO.

BY MR. LEXIS:

Q SIR, DID YOU OBSERVE VIDEO OF THIS INCIDENT FROM THE WYNN CUSTODIAN OF RECORDS?

A YES, I DID.

Q AND FROM THAT VIDEO WERE YOU ABLE TO CORRECTLY IDENTIFY -- OR POSITIVELY IDENTIFY ONE HAROLD EDWARDS?

A YES.

MR. LEXIS: MAY I GET THE OTHER EXHIBIT, JUDGE?

THE COURT: YES, YOU MAY.

MR. LEXIS: MAY I APPROACH?

THE COURT: YOU MAY.

BY MR. LEXIS:

Q SIR, I'M SHOWING YOU STATE'S EXHIBIT 1. IS THAT A TRUE AND ACCURATE REPRESENTATION OF A STILL FROM THE VIDEO YOU'VE SEEN?

A YES, IT IS.

Q AND WHO IS THAT IN THE STILL?

A THAT'S HAROLD EDWARDS.

MR. LEXIS: NO FURTHER QUESTIONS.

THE COURT: DID YOU KNOW -- HOW DID YOU GO ABOUT TAKING WHAT YOU SAW IN THE VIDEO AND IDENTIFYING MR. EDWARDS?

THE WITNESS: THROUGH THE SCOPE OF MY EMPLOYMENT, MA'AM, I HAVE OTHER CASES INVOLVING MR. EDWARDS.

THE COURT: SO YOU -- OTHER THAN REVIEWING THE VIDEO, TALKING TO THE WITNESSES, GETTING THEIR DESCRIPTION OF WHAT HAPPENED, THAT WAS --

THE WITNESS: FROM THE WITNESSES --

THE COURT: -- ESSENTIALLY YOUR ROLE IN THE INVESTIGATION?

THE WITNESS: YES, MA'AM. FROM THE WITNESSES' STATEMENTS THEY COINCIDE WITH EVENTS THAT HAPPENED IN EARLIER CASES, THE M.O. IS EXACTLY THE SAME.

THE COURT: OKAY. I DON'T WANT TO GO INTO ANY FURTHER QUESTIONS OR -- OR --

THE WITNESS: YES, MA'AM.

THE COURT: -- ABOUT ANYTHING ELSE.

THE WITNESS: YES, MA'AM.

THE COURT: I JUST DIDN'T UNDERSTAND THAT LINK. SO IT WAS THROUGH OTHER WORK --

THE WITNESS: CORRECT.

THE COURT: -- THAT YOU WERE ABLE --

THE WITNESS: YES, MA'AM.

THE COURT: -- TO MAKE THAT CONNECTION?

OKAY. ANY FURTHER QUESTIONS?

MS. LETIZIA: NO, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. LEXIS: JUDGE?

REDIRECT EXAMINATION (CONTINUED)

BY MR. LEXIS:

Q AFTER THIS INCIDENT, WERE YOU THE ONE THAT BOOKED --

A YES, SIR.

Q -- THE DEFENDANT ON THIS CASE?

A YES.

Q OKAY. AND JUST DISREGARDING ALL THE PRIOR CONTACT, IF YOU JUST TAKE YOUR CONTACT WITH BOOKING HIM ON THAT, WERE YOU ABLE TO --

MS. LETIZIA: JUDGE, I THINK THIS IS OUTSIDE THE SCOPE OF THE QUESTIONS THAT THE COURT ASKED THE WITNESS.

THE COURT: LET ME -- HAVE HIM FINISH THE QUESTION FIRST.

BY MR. LEXIS:

Q WERE YOU ALLOWED -- WERE YOU ABLE TO IMMEDIATELY RECOGNIZE ONE HAROLD EDWARDS JUST BY THE VIDEO, AND BOOKING HIM AFTER THIS INCIDENT WHEN YOU CAUGHT UP WITH HIM?

THE WITNESS: YES.

MR. LEXIS: THAT'S IT.

THE COURT: ALL RIGHT. I'M GOING TO ALLOW THAT QUESTION AND --

MS. LETIZIA: I'LL WITHDRAW THE OBJECTION.

THE COURT: -- THE ANSWER.

SO THANK YOU FOR YOUR TESTIMONY, YOU'RE FREE TO STEP DOWN.

THE WITNESS: YES, MA'AM.

THE COURT: STATE, DO YOU HAVE ANY FURTHER --

MR. LEXIS: YES, JUDGE.

THE COURT: -- WITNESSES?

MR. LEXIS: CHRISTINA SIMONS.

THE MARSHAL: STAND HERE, FACE THE CLERK, RAISE YOUR RIGHT HAND.

MS. SIMONS: ALL RIGHT.

CHRISTINA SIMONS,

CALLED AS A WITNESS BY THE STATE, AND HAVING BEEN FIRST DULY SWORN TO TESTIFY TO THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIED AS FOLLOWS:

THE WITNESS: I DO.

THE CLERK: PLEASE BE SEATED.

STATE AND SPELL YOUR NAME FOR THE RECORD.

THE WITNESS: OKAY. IT'S CHRISTINA SIMONS, C-H-R-I-S-T-I-N-A, S-I-M-O-N-S.

THE COURT: GO AHEAD.

DIRECT EXAMINATION

BY MR. LEXIS:

Q MA'AM, ON SEPTEMBER 19TH, 2015, AT AROUND NOON, WHERE WERE YOU?

A I WAS LOADING MY TOWELS INTO THE TOWEL BIN, AND I HAD THE -- I WAS IN THE BACK OF THE SALON NEAR THE DOOR LOADING TOWELS.

Q IS THIS AT THE WYNN?

A YES, AT THE WYNN.

Q AND WHAT'S THE NAME OF THE SALON?

A CLAUDE BARUK SALON.

Q DO YOU WORK THERE?

A YES.

Q AND WHERE SPECIFICALLY WERE YOU AT?

A I WAS BY THE BACK DOOR TO THE SALON.

Q IN AN EMPLOYEE AREA?

A YES.

Q DOES THE PUBLIC HAVE ACCESS TO THAT AREA?

A NO.

Q WHAT DID YOU OBSERVE?

A I OBSERVED A MAN COME IN, AND HE WAS TALKING ON THE PHONE, AND SO I WAS WATCHING HIM AND HE PROCEEDED TO GO INTO OUR STORAGE ROOM. AND WHEN I SAW HIM GO IN THERE, THAT'S WHERE ME AND ALL THE GIRLS KEEP OUR PURSES, SO I RAN TO GO GET TWO OF MY COWORKERS TO COME WITH ME TO OPEN THE DOOR, BECAUSE I WAS AFRAID TO OPEN IT BY MYSELF. AND --

Q SO, LET ME ASK YOU. HE'S ALREADY IN AN EMPLOYEE AREA ONLY?

A YES.

Q AND THEN HE GOES FURTHER INTO A STORGE ROOM?

A YES.

Q AND I TAKE IT THAT'S EMPLOYEES ONLY?

A YES.

Q AND WHAT IS IN THAT? TELL ME -- DESCRIBE FOR ME THE ROOM.

A LIKE OUR WASHING MACHINES AND LIKE WHERE WE KEEP THE EXTRA DRINKS AND STRAWS AND THINGS LIKE THAT, AND THAT'S WHERE WE PUT OUR PURSES. ME AND --

Q IS THERE ANY OTHER EXIT TO THAT ROOM?

A NO, THERE'S ONLY ONE ENTRANCE.

Q OKAY.

A OR EXIT.

Q SO YOU OPEN THAT DOOR --

A UM-HUM.

Q -- YOU'RE GOING TO SEE WASHING MACHINES?

A YEAH, WASHING MACHINES AND --

Q AND?

A AND JUST LIKE SHELVING FOR STORAGE.

Q AND STORAGE SHELVING, THAT'S IT?

A UM-HUM.

Q DID HE PROCEED TO GO IN THAT ROOM?

A YES.

Q WHAT DID YOU OBSERVE?

A WELL, THE DOOR CLOSED BEHIND HIM, AND SO I WENT TO GO GET TWO OF MY COWORKERS TO COME WITH ME, AND I OPENED THE DOOR AND HE TOLD ME THAT -- LIKE HOW RUDE FOR YOU TO INTERRUPT MY PHONE CALL.

Q OKAY. LET ME STOP YOU THERE NOW.

A OKAY.

Q SO YOU SAY THAT HE OPENED THE DOOR TO THIS ROOM?

A YES.

Q AND IS IT A BIG ROOM?

A NO, IT'S A SMALL ROOM.

Q OKAY.

A IT'S LIKE -- MAYBE LIKE SIX BY SIX FEET, AROUND THERE.

Q AND INSTEAD OF OPENING THE DOOR, LOOKING IN AND TURNING BACK, HE ACTUALLY WENT INSIDE TO -- THE DOOR CLOSED?

A YEAH, HE WENT INSIDE THERE AND THE DOOR CLOSED BEHIND HIM, AND THAT'S WHEN I OPENED THE DOOR, AND THEN HE CAME AT ME LIKE I HAD INTERRUPTED HIS PHONE CALL AND SAID THAT I WAS REALLY RUDE.

Q DID HE STAY IN THE ROOM WHEN HE WAS TELLING YOU THIS?

A NO, HE STARTED TO COME OUT OF THE ROOM.

Q OKAY. AND DID YOU PROCEED TO GO GET OTHER PEOPLE BEFORE OR AFTER YOU HAD THIS CONSERVATION WITH HIM?

A BEFORE, BECAUSE I DIDN'T WANT TO OPEN THE DOOR BY MYSELF.

Q OKAY. SO THAT'S MY POINT. SO HE GOES IN, THE DOOR CLOSES, CORRECT?

A YES.

Q AND THEN YOU GO AND TELL SOMEBODY HE'S IN THERE?

A YES.

Q SO HE REMAINED IN THIS ROOM, WHICH IS STORAGE LOCKERS AND WASHING MACHINES, THE ENTIRE TIME WHILE YOU WENT--

A YES.

Q -- AND GOT SOMEBODY AND THEN CAME BACK?

A YES.

Q OKAY. ONCE YOU OPENED THE DOOR, THEN HE -- YOU HAVE THIS CONVERSATION WITH HIM?

A UM-HUM.

Q OKAY. WAS HE -- WAS HE ANGRY?

A YES.

Q AND WHAT SPECIFICALLY DID HE TELL YOU?

A HE -- HE SAID THAT, HOW DARE YOU INTERRUPT MY PHONE CALL. AND THEN THE TWO GIRLS THAT I WORK WITH THEY SAID, YOU KNOW, YOU'RE NOT --

MS. LETIZIA: OBJECTION, HEARSAY.

THE COURT: SUSTAINED.

BY MR. LEXIS:

Q DON'T TELL ME WHAT THEY SAID NOW --

A OKAY.

Q -- JUST TELL ME WHAT YOU SAID.

A OKAY. HE SAID THAT I'M REALLY RUDE AND HOW DARE I INTERRUPT HIS PHONE CALL.

Q OKAY. WHAT DID HE DO NEXT?

A THEN HE PROCEEDED TO GO TO -- INTO THE SALON, FROM THE BACK.

Q OKAY. AND WHAT HAPPENED NEXT?

A THEN I RAN BACK TO GO GET ONE OF MY MANAGERS FROM THE BACK ROOM, AND HE MADE HIS WAY OUT OF THE SALON.

Q DID YOU EVENTUALLY GO BACK IN THIS ROOM WHERE YOUR BELONGINGS WERE?

A YES.

Q AND WHAT DID YOU NOTICE?

A THERE WAS A LITTLE BIT OF MONEY ON TOP OF MY PURSE. I'M FIGURING THAT MY PURSE WAS THE LAST ONE THAT HE WENT

THROUGH, BECAUSE -- AND THEN WHEN I OPENED THE DOOR HE STOPPED AND DROPPED EVERYTHING, YOU KNOW? AND WE HAD BEEN IN THERE LIKE 15, 20 MINUTES BEFORE HE HAD EVER GONE IN THERE, WE WERE ON OUR PHONES AND EVERYTHING, AND THEN EVERYTHING WAS MISSING, ALL OF OUR -- WELL TWO OF THEIR WALLETS AND ALL THREE OF OUR PHONES.

Q OKAY. DID YOU HAVE AN IPHONE 6?

A YES.

Q AND DID YOU DO A VOLUNTARY STATEMENT IN THIS CASE?

A YES.

Q DID YOU PUT THE VALUE OF 650?

A YES.

Q AND THEN A CASE OF $20?

A YES.

Q AND THEN WAS YOUR WALLET STOLEN?

A NO, FORTUNATELY I HAD LEFT MY WALLET HOME BECAUSE I WAS PAYING A BILL.

Q OKAY. SO, EVEN THOUGH YOU PUT THAT IN YOUR VOLUNTARY STATEMENT, YOU WERE MISTAKEN --

A YES, I HAD THOUGHT THAT --

Q -- THAT YOUR WALLET WAS STOLEN?

A -- I HAD IT ON ME, BUT I DIDN'T, SO --

Q BUT YOU'RE SURE YOUR IPHONE VALUED AT 650 AND YOUR CASE AT $20 --

A YES.

Q -- WAS GONE?

A YES.

Q DID YOU -- YOU SAID YOU NOTIFIED YOUR MANAGER?

A YES.

Q WERE YOU ABLE TO EVER CATCH UP WITH THE DEFENDANT?

A NO.

Q DO YOU SEE THAT PERSON IN COURT TODAY THAT YOU DESCRIBED EARLIER --

A YES.

Q -- WHEN YOU WERE HAVING THIS CONVERSATION WITH?

A YES.

Q AND IN THAT ROOM?

A YES.

Q CAN YOU PLEASE POINT TO HIM, IDENTIFY FOR ME THE COLOR OF SHIRT HE'S WEARING?

A RIGHT HERE.

Q WHAT COLOR OF SHIRT IS HE WEARING?

A HE WAS WEARING A BLACK SHIRT AT THE TIME.

OH, RIGHT NOW?

Q YES.

A IT LOOKS LIKE BLACK OR NAVY BLUE.

MR. LEXIS: YOUR HONOR, LET THE RECORD REFLECT THE WITNESS IDENTIFIED THE DEFENDANT?

THE COURT: IT WILL.

(DISCUSSION BETWEEN MR. LEXIS AND MR. TURNER.)

MR. LEXIS: OKAY.

Q YOU TESTIFIED EARLIER, APPEARED TO BE AS IF PEOPLE WENT THROUGH THE PURSE?

A YES.

Q SOMEBODY WENT THROUGH THE PURSE?

A UH-HUH.

Q COULD YOU DESCRIBE FOR ME WHY YOU SAY THAT, WHAT DID IT LOOK LIKE?

A BECAUSE I HADN'T HAD MY MONEY OUT, BECAUSE I HAD HAD SOME MONEY IN A SIDE POCKET AND IT WAS -- THE MONEY WAS JUST LIKE LAYING ON TOP OF MY PURSE, IT WAS LIKE TWO $10 BILLS LIKE LAYING ON TOP OF EACH OTHER --

Q SO --

A -- AND I HADN'T HAD IT LIKE THAT.

Q SO IT LOOKED DISHEVELED?

A YES.

Q AND DID THE OTHER PURSES LOOKING DISHEVELED, TOO?

A I CAN'T RECALL WHAT THEIR PURSES LOOKED LIKE, BUT FOR MY OWN, YES, IT WAS DISHEVELED.

Q OKAY. WHEN WAS THE LAST TIME YOU ACTUALLY WERE IN YOUR PURSE?

A FIFTEEN, TWENTY MINUTES BEFORE THAT, BECAUSE I WAS PUTTING MY PHONE INTO MY PURSE.

Q AND DID YOU SEE ANYONE ELSE ENTER THAT -- THAT AREA BESIDES THE DEFENDANT?

A NO.

MR. LEXIS: NOTHING FURTHER, YOUR HONOR.

THE COURT: CROSS-EXAMINATION?

MS. LETIZIA: THANK YOU, JUDGE.

CROSS-EXAMINATION

BY MS. LETIZIA:

Q MA'AM, WHAT'S YOUR JOB TITLE AT THE WYNN SPA?

A I AM A SALON ASSISTANT.

Q SALON ASSISTANT. WHAT DO YOU DO AS A SALON ASSISTANT?

A I PICK UP TOWELS, I ASSIST IN BLOW DRYING, I SHAMPOO CLIENTS.

Q OKAY. AND SO YOU HAVE OPPORTUNITY, WHEN YOU'RE PICKING UP TOWELS, TO GO IN AND OUT OF THAT BACK STOREROOM; IS THAT CORRECT?

A YES.

Q OKAY. AND SO WHEN YOU'RE DOING OTHER THINGS, BLOW DRYING CLIENTS, YOU'RE NOT IN THE STOREROOM; IS THAT CORRECT?

A YES, I'M -- I'M NOT.

Q OKAY. AND THAT -- THE STATIONS WHERE CLIENTS ARE WITHIN THE SPA IS NOT IN THAT STOREROOM?

A NO.

Q OKAY. CAN YOU DESCRIBE FOR ME WHERE IT IS IN RELATION TO THE STOREROOM?

A WHERE THE?

Q WHERE YOU --

A WHERE THE STATIONS ARE?

Q THAT'S CORRECT.

A OKAY. OKAY. SO IT'S JUST THROUGH A DOOR. LIKE IT'S LITERALLY -- IT'S MAYBE LIKE -- THE STORAGE ROOM IS HERE AND THEN 15 FEET FROM THAT IS THE DOOR TO GET OUT TO THE SALON, AND THE STATIONS ARE RIGHT THERE.

Q OKAY. AND SO IN THE TIME THAT YOU WERE LAST IN THE STOREROOM, YOU SAID 15 TO 20 MINUTES WENT BY --

A UM-HUM.

Q -- BEFORE YOU WENT BACK IN THERE AGAIN, WHERE WERE YOU DURING THAT 15 TO 20 MINUTES?

A I HAD GONE DOWNSTAIRS TO GO GET TOWELS AND I WAS BRINGING THEM UP, AND AS I WAS LOADING THE TOWELS HE HAD WALKED IN.

Q OKAY. SO YOU DIDN'T PERSONALLY OBSERVE ANYBODY TAKE THOSE ITEMS FROM YOUR PURSE; IS THAT CORRECT?

A NO. NO, I DID NOT.

Q OKAY. AND YOU LISTED THE VALUE OF YOUR IPHONE TO BE $650; IS THAT CORRECT?

A YES.

Q OKAY. AND YOU LISTED A CELL PHONE CASE TO BE $20 --

A YES.

Q -- IS THAT ACCURATE?

A YES.

Q DO YOU HAVE RECEIPTS FOR THOSE ITEMS, WERE YOU ABLE TO PROVIDE THOSE?

A I DO FOR -- I HAVEN'T BEEN ABLE TO PROVIDE THEM, BUT I DO -- I HAVE SOMETHING SOMEWHERE FOR LIKE A RECEIPT FOR MY PHONE AND FOR THE CASE.

Q OKAY. BUT YOU DON'T HAVE THAT HERE TODAY?

A NO, I DON'T.

Q AND YOU DIDN'T USE THAT TO GENERATE THE AMOUNT WHEN YOU GAVE IT TO THE OFFICERS; IS THAT CORRECT?

A NO, IT WAS JUST BY WHAT I REMEMBERED THAT I PAID.

Q OKAY. COURT'S BRIEF INDULGENCE?

(DISCUSSION BETWEEN MS. LETIZIA AND THE DEFENDANT.)

BY MS. LETIZIA:

Q SO, MA'AM, WHEN YOU SAW AN INDIVIDUAL WALKING INTO THE BACK STOREROOM, DID YOU KNOW IMMEDIATELY THAT THAT INDIVIDUAL DID NOT WORK FOR THE WYNN?

A I THOUGHT IT -- YES. AND I THOUGHT IT COULD HAVE BEEN A GUEST, MAYBE, AND SO THAT'S WHY I DIDN'T REALLY LIKE LOOK INTO IT FOR -- I MEAN I WAS WATCHING HIM, BECAUSE I KNEW THAT I'D NEVER REALLY SEEN HIM THERE BEFORE, BUT I WASN'T POSITIVE, BECAUSE WE'VE HAD SOME GUESTS WALK IN THROUGH THE BACK BEFORE.

Q BY MISTAKE?

A YEAH.

Q OKAY. AND SO BEFORE YOU SAW THIS INDIVIDUAL ENTER THE BACK ROOM, YOU DIDN'T ASK IF HE NEEDED ASSISTANCE OR IF YOU COULD HELP HIM FIND ANYTHING, YOU JUST WAITED AND WENT AND LIKE GOT --

A YEAH, BECAUSE HE WAS ON THE PHONE, SO I WAS JUST WATCHING TO SEE WHAT WAS GOING TO HAPPEN, BECAUSE I MEAN HE WAS OBVIOUSLY OUT OF PLACE.

Q OKAY. AND HOW LONG HAVE YOU WORKED AT THE WYNN IN THE SPA?

A FOR ABOUT A YEAR NOW.

Q SO IN THE YEAR THAT YOU'VE WORKED THERE, YOU'VE SEEN OTHER INDIVIDUALS MISTAKENLY WALK IN THAT BACK ROOM; IS THAT CORRECT?

A ONE PERSON ACTUALLY. ONLY ONE PERSON HAVE I SEEN WALK BACK THERE.

MS. LETIZIA: OKAY. I'LL PASS THE WITNESS.

THE COURT: REDIRECT?

REDIRECT EXAMINATION

BY MR. LEXIS:

Q THE ONE PERSON YOU'VE SEEN IN THAT BACK ROOM, DID YOU EVER SEE ANYBODY GO FROM THE PRIVATE AREA BACK ROOM TO THE STORAGE ROOM?

A NO.

Q OKAY. LET ALONE CLOSE THEMSELVES IN WITH THE

DOOR --

A RIGHT, EXACTLY, AND THAT'S WHERE I FELT LIKE SOMETHING WAS WEIRD.

MR. LEXIS: NOTHING FURTHER, JUDGE.

THE COURT: ANY FURTHER RECROSS, MISS LETIZIA?

MS. LETIZIA: NO, YOUR HONOR.

THE COURT: THANK YOU FOR YOUR TESTIMONY, YOU'RE FREE TO STEP DOWN.

THE WITNESS: OKAY.

THE COURT: STATE?

MR. LEXIS: VIVIANA MASSIS.

THE MARSHAL: SAY IT AGAIN FOR ME, PLEASE?

MR. LEXIS: VIVIANA MASSIS.

MS. MASSIS: RIGHT HERE?

THE MARSHAL: RIGHT HERE.

VIVIANA MASSIS,

CALLED AS A WITNESS BY THE STATE, AND HAVING BEEN FIRST DULY SWORN TO TESTIFY TO THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIED AS FOLLOWS:

THE WITNESS: (NO AUDIBLE RESPONSE.)

THE COURT: I NEED YOU TO ANSWER OUT LOUD.

THE WITNESS: I DO.

THE COURT: OKAY. GO AHEAD AND HAVE A SEAT.

THE CLERK: AND STATE YOUR NAME FOR THE RECORD, PLEASE?

THE WITNESS: VIVIANA MASSIS.

THE COURT: YOU CAN HAVE A SEAT.

THE WITNESS: OKAY.

THE COURT: CAN YOU SPELL YOUR NAME FOR US?

THE WITNESS: V-I-V-I-A-N-A. LAST NAME, M-A-S-S-I-S.

THE COURT: THANK YOU.

MR. LEXIS, YOU MAY PROCEED.

DIRECT EXAMINATION

BY MR. LEXIS:

Q MA'AM, WHERE DO YOU WORK?

A I WORK AT THE WYNN HOTEL AT THE HAIR SALON, CLAUDE BARUK SALON.

Q AND WERE YOU WORKING ON SEPTEMBER 19TH, 2015?

A YES.

Q WHERE -- AND WHAT PARTICULAR AREA DO YOU WORK?

A I'M ASSISTANT INSIDE THE SALON.

Q DID SOMETHING OCCUR ON THAT DAY WHICH CAUSES YOU TO BE IN COURT?

A I WAS MISSING MY PHONE AND MY WALLET.

Q OKAY. AND HOW DID YOU FIND THAT OUT?

A MY MANAGER CALLED US, JUST TO MAKE SURE THAT INSIDE THE LAUNDRY ROOM, MY COWORKER WAS MISSING IT ALREADY, HER WALLET AND HER PHONE. SHE ENDED UP FINDING HER WALLET, IT WAS

JUST HER PHONE. AND THEN WHEN I WENT IN THERE AND I OPENED MY BAG I WAS MISSING MY PHONE AND MY WALLET, TOO.

Q DO YOU KNOW WHO A CHRISTINA SIMONS IS?

A YES.

Q DID YOU ENTER THE BACK ROOM AFTER CHRISTINA SIMONS APPROACHED YOU?

A YES.

Q DID YOU ENCOUNTER A MAN?

A YES.

Q OKAY. HAD YOU EVER SEEN THAT PERSON BEFORE?

A NO.

Q AND WHAT WAS CHRISTINA'S DEMEANOR WHEN SHE CAME UP TO YOU?

A EXCUSE ME?

Q WHAT WAS HER DEMEANOR? HOW WAS SHE ACTING WHEN SHE CAME UP --

A SHE WAS NERVOUS WHEN SHE CAME UP TO ME. I SAW HER VERY NERVOUS --

Q AND DID SHE --

A -- LIKE SOMETHING WAS GOING WRONG.

Q DID SHE DIRECT YOU TO A PARTICULAR AREA?

A YES.

Q AND --

A SHE TOOK ME TO THE BACK LAUNDRY ROOM.

Q AND DESCRIBE FOR ME WHAT THIS MAN LOOKED LIKE.

A I DON'T HAVE A CLEAR VISION OF HIM, TO BE HONEST, I JUST REMEMBER -- UM -- THE T-SHIRT, IT WAS A BLACK T-SHIRT WITH SOME DESIGN IN THERE. NOT TOO TALLER THAN ME.

Q MA'AM, WERE YOU SHOWN SOME SURVEILLANCE VIDEO BY THE WYNN?

A YES.

Q AND WERE YOU ABLE TO RECOGNIZE THAT T-SHIRT?

A YES.

Q BUT YOU WEREN'T ABLE TO RECOGNIZE THE PERSON?

A NO.

Q OKAY. BUT YOU SAY YOU GOT A GOOD VIEW OF THE --

A VISION OF.

Q -- ACTUAL SHIRT HE WAS WEARING?

A YES.

MR. LEXIS: JUDGE, MAY I APPROACH?

THE COURT: YOU MAY.

I THINK IT'S ALREADY OVER THERE.

MR. LEXIS: THANK YOU.

Q MA'AM, I'M SHOWING YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT 1. WHAT IS THAT?

A YEAH, THE T-SHIRT.

Q IS THAT A --

A I CAN RECOGNIZE --

Q -- TRUE AND ACCURATE REPRESENTATION OF WHAT THE T-SHIRT LOOKED LIKE ON THAT DAY?

A YES.

Q ROUGHLY HOW LONG AFTER YOU SAW THE PERSON WEARING THAT T-SHIRT IN THE AREA -- YOU SAID IT WAS A STORAGE AREA?

A YEAH, LIKE A STORAGE AREA.

Q OKAY. UNTIL YOU WENT AND CHECKED YOUR BELONGINGS?

A YES.

Q HOW -- ROUGHLY HOW LONG?

A MAYBE FIVE MINUTES AFTER THAT HAPPENED.

Q OKAY. AND WHAT DID YOU DISCOVER?

A I WAS MISSING MY CELL PHONE AND I WAS MISSING A CARDHOLDER AND A WALLET.

Q OKAY. AND WHAT'S THE -- WHAT DID YOU PAY FOR THE IPHONE 6?

A SEVEN HUNDRED AND SOMETHING DOLLARS.

Q OKAY. AND WHAT ELSE WERE YOU MISSING, MA'AM?

A A LITTLE WALLET WITH SOME GIFT CARDS INSIDE AND A IDENTIFICATION CARD, TOO.

Q YOUR IDENTIFICATION CARD?

A YEAH.

Q FROM A DIFFERENT COUNTRY?

A FROM A DIFFERENT COUNTRY.

Q WHERE ARE YOU FROM?

A GUATEMALA.

Q AND YOUR WALLET, WHAT KIND OF WALLET WAS IT?

A IT WAS A LEATHER WALLET, SMALL, LIGHT PINK.

Q HOW MUCH DID YOU PAY FOR THAT?
A AROUND $150 FOR IT.
Q AND DID YOU ALSO HAVE ANOTHER WALLET?
A IT WAS A LITTLE CARDHOLDER, GUCCI.
Q AND WAS THAT TAKEN AS WELL?
A YES.
Q HOW MUCH DID YOU PAY FOR THAT?
A $200.
Q AND WHAT KIND OF GIFT CARDS DID YOU HAVE, MA'AM?
A I THINK IT WAS ONE FROM PIER 1 AND THE OTHER ONE FROM TARGET.
Q WHAT WERE THE VALUE OF THOSE?
A THIRTY ON EACH ONE. THIRTY TO THIRTY-FIVE ON EACH ONE.
Q OKAY. DID YOU HAVE ANY CASH STOLEN?
A I CAN'T REMEMBER.
Q DID YOU FILL OUT A VOLUNTARY STATEMENT?
A I DID.
Q AND WOULD IT REFRESH YOUR MEMORY IF I SHOWED YOU YOUR VOLUNTARY STATEMENT?
A YES.
MR. LEXIS: JUDGE, MAY I APPROACH?
THE COURT: YOU MAY.
BY MR. LEXIS:
Q MA'AM, PLEASE READ THAT TO YOURSELF, DON'T SAY

ANYTHING, LET ME KNOW WHEN YOU'RE DONE.

DID THAT REFRESH YOUR MEMORY, MA'AM?

A YES.

Q HOW MUCH CASH?

A $200.

Q THAT WAS MISSING AS WELL?

A (NO AUDIBLE RESPONSE.)

Q IS THAT A YES?

A YES.

Q DID YOUR PURSE LOOK DISHEVELED OR ANYTHING, OR DID IT APPEAR OUT OF THE ORDINARY, BESIDES JUST BELONGINGS WERE JUST MISSING?

A YES. EVERYTHING WAS FINE, JUST THE BELONGINGS THAT WERE MISSING.

Q AND WHEN DID YOU PREVIOUSLY CHECK YOUR PURSE?

A MAYBE 20 MINUTES BEFORE THE INCIDENT HAPPENED --

Q AND DID YOU SEE --

A -- YEAH.

Q -- ANYONE IN THE AREA WHERE YOUR PURSE WAS BESIDES THE PERSON YOU RECOGNIZED WITH THE PRINTED SHIRT?

A I WAS OUTSIDE OF THE SALON SO I DIDN'T SEE ANYBODY ELSE.

Q DID YOU ALSO GIVE A GENERAL DESCRIPTION OF WHAT THAT PERSON LOOKED LIKE AS FAR AS RACE, HEIGHT, WEIGHT, ET CETERA, DID YOU GIVE ANY OF THAT DESCRIPTORS TO OFFICERS?

A I DID AT THAT MOMENT. LIKE I TOLD YOU, I REMEMBER THE VISION OF EVERYTHING, BUT NOT A CLEAR VISION OF IT.

Q OKAY.

A IT WAS --

Q DO YOU REMEMBER WHAT HE -- THE GENERAL DESCRIPTION AS FAR AS RACE, HEIGHT, WEIGHT?

A MAYBE LIKE 5 -- 5'5" OR 5'4" IN HEIGHT. ON WEIGHT I DON'T KNOW, I'D SAY LIKE 150, 160 POUNDS.

Q OKAY. DO YOU KNOW WHAT RACE HE WAS?

A AFRICAN-AMERICAN.

Q AND THIS STORAGE ROOM, WAS IT EMPLOYEE AREA --

A YES, DEFINITELY.

Q -- ONLY? ONLY EMPLOYEES?

A YES.

MR. LEXIS: NO FURTHER QUESTIONS, JUDGE.

THE COURT: CROSS-EXAMINATION?

MS. LETIZIA: THANK YOU, JUDGE.

CROSS-EXAMINATION

BY MS. LETIZIA:

Q MA'AM, YOU WERE LISTING THE ITEMS THAT WERE TAKEN, AND YOU WENT THROUGH, YOU SAID THE IPHONE PLUS; IS THAT CORRECT?

A YES.

Q AND YOU SAID YOU PAID 700 AND SOMETHING, IS THAT

ACCURATE?

A UM-HUM.

Q IS THAT A YES?

A YES.

Q YOU DON'T REMEMBER EXACTLY HOW MUCH IT WAS?

A EXACTLY NO.

Q OKAY. AND INITIALLY YOU DIDN'T REMEMBER HOW MUCH MONEY WAS TAKEN FROM YOUR WALLET; IS THAT CORRECT?

A CORRECT.

Q AND THEN JUST NOW THE DISTRICT ATTORNEY SHOWED YOU YOUR STATEMENT --

A HOW MUCH.

Q -- AND IT HELPED YOU REMEMBER?

A YES.

Q OKAY. SO THEN YOU TESTIFIED THAT IT WAS $200 CASH; IS THAT ACCURATE?

A YES.

Q OKAY. BUT THAT'S NOT ACTUALLY WHAT YOU WROTE IN YOUR STATEMENT, IS IT?

A IS IT? YES.

Q IT IS?

A YES.

MS. LETIZIA: OKAY. JUDGE, MAY I APPROACH?

THE COURT: YOU MAY.

MS. LETIZIA: I'M GOING TO SHOW HER HER VOLUNTARY

STATEMENT.

MR. LEXIS: OKAY.

BY MS. LETIZIA:

Q MA'AM, I'M SHOWING YOU A COPY OF YOUR VOLUNTARY STATEMENT. CAN YOU READ IT AND TELL ME, IS THAT EXACTLY WHAT YOU PUT IN YOUR STATEMENT WHETHER IT WAS $200 CASH?

A $150 OR $200 CASH.

Q OKAY. SO YOU DIDN'T KNOW FOR SURE HOW MUCH MONEY YOU HAD IN YOUR WALLET?

A EXACTLY, NO, BUT IT WAS AROUND THAT, 150 TO $200 CASH.

Q OKAY. AND THEN YOU TESTIFIED THAT YOU THINK YOU HAD A PIER 1 GIFT CARD AND A TARGET --

A I HAD DEFINITELY THAT. I DO HAVE THAT.

Q OKAY.

A I DID HAVE ONE.

Q YOU FOR SURE HAD THOSE, YOU DON'T THINK --

A PIER 1 AND TARGET FOR SURE, I DO REMEMBER THAT CLEARLY.

Q OKAY. AND YOU DIDN'T PERSONALLY OBSERVE ANYBODY TAKE YOUR ITEMS; IS THAT ACCURATE?

A YES, DEFINITELY, I DON'T.

Q OKAY. AND THE INDIVIDUAL THAT YOU SAW LEAVING THE ROOM YOU CAN'T CLEARLY IDENTIFY EITHER?

A NO.

Q OKAY. AND YOU WERE NOT WITH YOUR PERSONAL PROPERTY FOR APPROXIMATELY 20 MINUTES, YOU WOULD SAY, FROM THE TIME YOU SAW YOUR STUFF AND THEN DIDN'T, AND THEN WENT TO CHECK YOUR STUFF AGAIN?

A YEAH.

Q OKAY. WHO ALL HAS ACCESS TO THAT BACK ROOM?

A JUST EMPLOYEES OF THE WYNN.

Q OKAY. AND HOW MANY EMPLOYEES ON A REGULAR BASIS HAVE ACCESS TO THAT A BACK ROOM?

A NO MORE THAN FIVE PEOPLE A DAY.

Q FIVE PEOPLE A DAY?

A NO MORE THAN THAT, YEAH.

Q OKAY.

A WHOEVER DELIVERS OUR ORDERS AND THREE ASSISTANTS.

Q OKAY. AND YOUR PERSONAL ITEMS ARE KEPT IN A LOCKER?

A NO, OUTSIDE.

Q OUTSIDE? AND WHAT --

A YEAH.

Q -- ARE THEY KEPT IN?

A JUST ON TOP, NEXT TO THE -- NEXT TO THE DRYER AND THE WASHER.

Q OKAY. SO --

A WE JUST KEEP IT ON THE TOP. WE DON'T HAVE ANYTHING SECURE IN THERE.

Q THERE'S A SHELF ON TOP OF THE WASHER AND DRYER AND

THAT'S WHERE YOU KEEP YOUR PURSE?

A YEAH. YOU JUST OPEN IT AND THERE'S THREE PURSES IN THERE ALL THE TIME.

MS. LETIZIA: OKAY. ALL RIGHT, THANK YOU. NOTHING FURTHER.

THE COURT: ANY REDIRECT?

MR. LEXIS: NO, YOUR HONOR.

THE COURT: THANK YOU FOR YOUR TESTIMONY, YOU'RE FREE TO STEP DOWN.

MR. LEXIS: SARAH CAUGHELL. SARAH?

THE MARSHAL: JUST STAND RIGHT UP HERE, FACE THE CLERK, AND RAISE YOUR RIGHT HAND.

SARAH CAUGHELL,

CALLED AS A WITNESS BY THE STATE, AND HAVING BEEN FIRST DULY SWORN TO TESTIFY TO THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIED AS FOLLOWS:

THE WITNESS: YES.

THE CLERK: PLEASE BE SEATED.

STATE AND SPELL YOUR NAME FOR THE RECORD.

THE WITNESS: SARAH CAUGHELL, S-A-R-A-H, C-A-U-G-H-E-L-L.

THE COURT: GO AHEAD.

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DIRECT EXAMINATION

BY MR. LEXIS:

Q MA'AM, WHERE DO YOU WORK?

A AT THE WYNN CASINO.

Q WERE YOU WORKING THERE ON SEPTEMBER 19TH, 2015?

A YES.

Q IS THAT AT 3131 LAS VEGAS BOULEVARD, LAS VEGAS, NEVADA, CLARK COUNTY?

A YES.

Q WHAT PARTICULAR AREA IN THE WYNN DO YOU WORK?

A AT THE CLAUDE BARUK WYNN SALON.

Q AND WHAT IS YOUR DUTIES?

A I'M A SALON ASSISTANT.

Q WERE YOU INFORMED OF THE THEFT THAT OCCURRED THAT DAY?

A YES.

Q WHERE DO YOU KEEP YOUR BELONGINGS?

A WE KEEP IT IN THE BACK AREA IN OUR LAUNDRY ROOM.

Q IS THAT A EMPLOYEE ONLY ACCESS AREA?

A YES.

Q OR I SHOULD SAY, EMPLOYEES SHOULD ONLY BE IN THERE?

A CORRECT.

Q DID YOU GO LOOK THROUGH YOUR PURSE AND DISCOVER ANY ITEMS MISSING ON THAT DAY?

A YES.

Q AND WAS THAT AROUND NOON, A LITTLE AFTER?
A A LITTLE AFTER, YES.
Q WHAT DID YOU DISCOVER, MA'AM?
A MY PHONE AND MY WALLET WAS MISSING.
Q OKAY. WHAT KIND OF PHONE WAS IT?
A IT WAS AN IPHONE 6 PLUS.
Q HOW MUCH DID YOU PAY?
A IT WAS AROUND, I BELIEVE, EIGHT -- LIKE 860.
Q AND DID YOU HAVE A WALLET?
A YES.
Q WAS THAT MISSING AS WELL?
A YES.
Q WHAT KIND OF WALLET WAS IT AND HOW MUCH DID YOU PAY?
A IT WAS A LOUIS VUITTON WALLET, IT WAS ABOUT $500.
Q SOME CASH MISSING, OR DID YOU HAVE ANY CASH IN IT?
A YES, IT WAS $200 CASH.
Q OKAY. WHAT ELSE?
A INSIDE MY WALLET I HAD A LOT OF THINGS. I HAD MY BIRTH CERTIFICATE, MY SOCIAL SECURITY CARDS. I HAD MY TWO VISA CREDIT CARDS, A MASTERCARD AND A SEARS CARD.
Q SO YOU HAD A FULL TOTAL OF FOUR --
A FOUR.
Q -- CREDIT OR DEBIT CARDS?
A YES.
Q TWO VISAS YOU SAID?

A TWO VISAS, ONE MASTERCARD AND ONE SEARS CREDIT CARD.

Q AND BEFORE YOU CHECKED YOUR PURSE AND NOTICED THOSE ITEMS MISSING, WHEN WAS THE LAST TIME YOU CHECK YOUR PURSE?

A IT WAS LITERALLY LIKE A FEW MINUTES BEFORE IT EVEN HAPPENED.

Q OKAY.

A I WAS ACTUALLY ON MY PHONE.

Q YOU WERE ON YOUR PHONE MINUTES BEFORE --

A MINUTES BEFORE.

Q -- YOU WENT AND CHECKED IT AGAIN?

A UM-HUM. I WENT BACK THERE AND IT WAS GONE LIKE WHEN I WENT TO CHECK.

MR. LEXIS: NO FURTHER QUESTIONS, JUDGE.

THE COURT: OKAY.

MS. LETIZIA: THANK YOU, JUDGE.

CROSS-EXAMINATION

BY MS. LETIZIA:

Q I'M SORRY, DID YOU SAY THE EXACT AMOUNT OF CASH THAT WAS TAKEN FROM YOUR WALLET?

A IT WAS AROUND 200.

Q OKAY. DO YOU KNOW SPECIFICALLY HOW MUCH OR YOU BELIEVE IT WAS AROUND 200?

A I KNOW IT WAS AROUND 200.

Q OKAY. AND YOU DIDN'T PERSONALLY SEE ANYBODY ENTER

THE BREAK ROOM WHEN THIS HAPPENED?

A I DID NOT.

MS. LETIZIA: OKAY, THANK YOU. NOTHING FURTHER.

THE COURT: ANY RECROSS -- OR REDIRECT?

MR. LEXIS: NO, YOUR HONOR.

THE COURT: THANK YOU FOR YOUR TESTIMONY, YOU'RE FREE TO STEP DOWN.

MR. LEXIS: STATE RESTS, YOUR HONOR.

THE COURT: ALL RIGHT. STATE HAS RESTED.

MS. LETIZIA: THANK YOU, JUDGE.

SO I'VE ADVISED MR. EDWARDS OF HIS RIGHT TO TESTIFY HERE AT THIS HEARING TODAY, HE IS CHOOSING NOT TO DO SO, AND BASED ON THAT THE DEFENSE WOULD REST AS WELL.

THE COURT: ALL RIGHT. ARGUMENT?

MR. LEXIS: JUDGE, I'D MOVE TO ADD -- ADD A COUPLE COUNTS.

THE COURT: OKAY.

MR. LEXIS: I WOULD LIKE TO ADD FOUR COUNTS OF OBTAINING AND POSSESS -- POSSESSING CREDIT CARD OR DEBIT CARD OF ANOTHER, OF ONE SARAH CAUGHELL, TWO VISA CARDS, ONE MASTERCARD AND ONE SEARS CREDIT CARD.

THE COURT: SO YOU WANT TO ADD IT AS A CHARGE OF POSSESSION OF A CREDIT CARD WITHOUT THE CARDHOLDER'S CONSENT, THAT PARTICULAR STATUTE?

MR. LEXIS: YES, YOUR HONOR. THAT IS 205.690.

THE COURT: AND OTHERWISE WOULD YOU LIKE TO ARGUE OR --

MR. LEXIS: I RESERVE FOR REBUTTAL, JUDGE.

THE COURT: MISS LETIZIA?

MS. LETIZIA: THANK YOU, JUDGE.

FIRST I'M GOING TO ADDRESS THE POSSESSION OF DEBIT OR CREDIT CARD WITHOUT CARDHOLDER'S CONSENT, ALL FOUR COUNTS THAT THE STATE IS AMENDING TO ADD.

MR. EDWARDS WAS NOT FOUND IN POSSESSION OF EITHER OF THOSE CARDS. AND THE MAIN CRUX OF THAT STATUTE IS THAT HE'S GOT TO BE IN POSSESSION OF IT, HE WASN'T FOUND IN POSSESSION OF IT. I'M NOT SURE THAT THE EVIDENCE SHOWED THAT HE WAS IN POSSESSION OF THOSE DEBIT OR CREDIT CARDS.

AS TO COUNT 1, THE BURGLARY CHARGE, THE -- LET ME GET HIS NAME RIGHT, THE SECURITY, THE HEAD OFFICER OF THE WYNN, THE SECURITY OFFICER TESTIFIED THAT THEY DO NOT HAVE VIDEO SURVEILLANCE OF MR. EDWARDS ENTERING THE WYNN. SO AS FAR AS WHAT MR. EDWARDS DID WHEN HE ENTERED THE WYNN, IT'S UNKNOWN AT THIS POINT. OBVIOUSLY BURGLARY IS ENTRY WITH THE INTENT TO COMMIT THE LARCENY, THAT'S HOW IT'S BEEN CHARGED HERE. WE HAVE NOWAY TO SHOW WHETHER HE WALKED IN AND HE GAMBLED OR THAT HE WALKED IN AND USED THE RESTROOM, WE DON'T KNOW WHAT MR. EDWARDS DID BECAUSE IT'S NOT ON VIDEO. OBVIOUSLY ALL OF THE CASINOS HAVE THE ABILITY TO PULL VIDEO WHEN AN INCIDENT OCCURS FROM THE MOMENT THAT PERPETRATOR STEPS FOOT IN THE CASINO TO THE SECOND THEY LEAVE. THERE'S NO VIDEO OF THAT, SO

I THINK COUNT 1, BURGLARY, SHOULD BE DISMISSED AT THIS TIME.

AS TO COUNT 2, LET ME JUST CHECK MY NOTES HERE. MISS SIMONS WAS NOT ABLE TO SPECIFICALLY STATE THE AMOUNT, AND THIS ARGUMENT IS TRUE OF COUNTS 2, 3 AND 4, AS TO ALL THREE OF THE -- AS TO THE VALUE FOR ALL THREE OF THE GRAND LARCENY CHARGES. BUT STEVENS (PHONETIC) VERSUS STATE, IT'S A NEVADA SUPREME COURT CASE, STATES THAT THE OWNER MAY TESTIFY AS TO VALUE AS LONG AS THE OWNER HAS PERSONAL KNOWLEDGE OR THE ABILITY TO PROVIDE EXPERT PROOF OF VALUE.

ALL THREE OF THESE WOMEN GENERALIZE HOW MUCH THEIR PHONES COST. IT'S INTERESTING ALL THREE OF THEM HAD IPHONE 6'S, AND ALL THREE OF THE VALUES WERE DIFFERENT, NEITHER ONE OF THEM COULD SAY SPECIFICALLY HOW MUCH THEY WERE, AND NO ONE CAME PREPARED TO PROVE UP THAT VALUE WITH RECEIPTS FOR ANY OF THE ITEMS THAT WERE TAKEN TODAY, SO I BELIEVE THAT COUNTS 2, 3 AND 4 SHOULD BE DISMISSED.

AND I'M ASKING THE COURT NOT TO AMEND AND ADD THE CHARGES OF THE CREDIT OR DEBIT CARDS TODAY.

AND COURT'S BRIEF INDULGENCE, LET ME JUST SEE IF MR. EDWARDS HAS ANYTHING FURTHER.

THE COURT: SURE.

MS. LETIZIA: ALL RIGHT. WE'LL REST, THANK YOU.

THE COURT: OKAY. MR. LEXIS?

MR. LEXIS: JUDGE, AS FAR AS THE CREDIT CARDS, YOU HEARD HER STATE THAT SHE HAD FOUR CREDIT CARDS IN HER PURSE THAT

WERE TAKEN, TWO VISAS, ONE MASTERCARD AND ONE SEARS CARD. SO WHETHER YOU WANT TO GET TO THE BURGLARY WITH THE GRAND LARCENY OR THE FELONY OBTAINING OR POSSESSING CREDIT CARD WITHOUT CARDHOLDER'S CONSENT, CAN GET THERE EITHER WAY. IN ADDITION, I WOULD LIKE TO POINT OUT THAT SAME STATUTE SAYS THERE'S A PRESUMPTION WHEN THERE'S TWO OR MORE CARDS AT ISSUE.

AS FAR AS THE BURGLARY, JUDGE, YOU HEARD FROM THE DIRECTOR SAYING THIS GUY WAS NOT AN EMPLOYEE, NOR WAS HE A GUEST. I'D ALSO LIKE TO POINT OUT THE PRESUMPTION IN THE BURGLARY STATUTE, AS FAR AS THE INTENT WHEN YOU ENTER A ROOM THAT YOU'RE NOT SUPPOSE TO BE IN, UNAUTHORIZED, UNLAWFUL, YOU GO INTO A ROOM YOU'RE NOT SUPPOSE TO BE IN, WHICH HE CLEARLY WAS.

AND WHAT WAS HE DOING, JUDGE, WHEN HE WENT INTO THAT ROOM? I SAID SPECIFICALLY AND I TRIED TO LAY OUT SPECIFICALLY WHAT WAS IN THAT ROOM. WELL, THERE WAS A COUPLE WASHING MACHINES IN THERE AND THERE WAS SOME STORAGE THINGS. CLEARLY SOMEBODY COULD JUST OPEN UP THAT DOOR, REALIZE, HEY, THIS IS NOWHERE WHERE I'M SUPPOSE TO BE AT, I HAVE NO BUSINESS BEING IN HERE, SO I'M GOING TO TURN AROUND AND LEAVE.

WHAT DID HE DO? HE ENTERED IT, CLOSED THE DOOR AND STAYED IN THERE LONG ENOUGH FOR THAT GIRL TO GO GET SOMEBODY ELSE, ANOTHER EMPLOYEE, COME BACK, OPEN THE DOOR AND THEN SHE'S GOING TO HAVE THIS ALTERCATION WHERE HE'S GONNA ACT LIKE, OH, YOU'RE DISRUPTING MY PHONE CALL.

HE'S CLEARLY IN THERE TAKING THE ITEMS FROM THESE THREE WOMEN. YOU HEARD THEM STATE, JUST SO HAPPENS ALL THREE OF THEIR PURSES WERE SUBJECTED TO THIS THEFT. EVERY ONE OF THEM TESTIFIED AS TO THE AMOUNTS THEY PAID FOR THESE SPECIFIC ITEMS, WHICH IS CLEARLY IN EXCESS OF $650. I'D ASK YOU BIND HIM OVER ON ALL THE CHARGES.

MS. LETIZIA: STAND UP.

THE COURT: ALL RIGHT. MR. EDWARDS, WHILE THIS IS A PRELIMINARY HEARING, YOU UNDERSTAND THE THRESHOLD OF EVIDENCE THAT IS REQUIRED AT THIS HEARING IS NOT WHAT IS REQUIRED AT THE TIME OF TRIAL. IT IS PROBABLE CAUSE, AND SLIGHT OR MARGINAL EVIDENCE IS SUFFICIENT, THAT INCLUDES CIRCUMSTANTIAL EVIDENCE, AS WELL. AND I UNDERSTAND THE CIRCUMSTANTIAL EVIDENCE IN THIS CASE IS REALLY WHAT THE STATE IS RELYING UPON IN TERMS OF, YOU KNOW, FOR THE POSSESSION OF THE CREDIT CARDS AS WELL AS THE BURGLARY. I THINK THERE'S SUFFICIENT EVIDENCE FOR SLIGHT OR MARGINAL EVIDENCE AT THIS PHASE, AND THOSE ISSUES CAN BE CERTAINLY PRESENTED TO THE JURY AT THE TIME OF THE JURY TRIAL.

SO APPEARING TO ME FROM THE TESTIMONY ADDUCED AT THIS PRELIMINARY HEARING, THERE IS SUFFICIENT EVIDENCE TO BELIEVE THAT THE CRIMES OF BURGLARY, GRAND LARCENY IN COUNTS 2, 3 AND 4; THE AMENDED COUNTS OF POSSESSION OF CREDIT CARD WITHOUT CARDHOLDER'S CONSENT IN COUNTS 5, 6, 7 AND 8, HAVE BEEN COMMITTED AND THAT YOU COMMITTED SAID CRIMES. I HEREBY ORDER

THAT YOU BE HELD TO ANSWER IN THE EIGHTH JUDICIAL DISTRICT COURT ON THE FOLLOWING DATE AND TIME.

THE CLERK: THAT WILL BE OCTOBER THE 21ST AT 10 O'CLOCK A.M., DISTRICT COURT, LOWER LEVEL COURTROOM A.

CHAD, THE VIDEO, I JUST NEED THE VIDEO.

MR. LEXIS: YES, I'LL GET THAT.

THE CLERK: OH, OKAY.

(AT 12:28 A.M. THE PROCEEDINGS WERE RECESSED.)

* * * *

ATTEST: FULL, TRUE AND CERTIFIED TRANSCRIPT.

/S/KIT MACDONALD
KIT MACDONALD, C.C.R.
COURT REPORTER
C.C.R. NO. 65

REPORTER'S DECLARATION

STATE OF NEVADA)

COUNTY OF CLARK)

I, KIT MACDONALD, A CERTIFIED COURT REPORTER IN AND FOR THE STATE OF NEVADA, HEREBY DECLARE THAT PURSUANT TO NRS 239B.030 I HAVE NOT INCLUDED THE SOCIAL SECURITY NUMBER OF ANY PERSON WITHIN THIS DOCUMENT.

I FURTHER DECLARE THAT I AM NOT A RELATIVE OR EMPLOYEE OF ANY PARTY INVOLVED IN SAID ACTION, NOR A PERSON FINANCIALLY INTERESTED IN THE ACTION.

/S/KIT MACDONALD
KIT MACDONALD, C.C.R.
C.C.R. NO. 65

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EXHIBIT C

CASE NO. C310695

DEPT. NO. 11

IN THE JUSTICE COURT OF THE LAS VEGAS TOWNSHIP

COUNTY OF CLARK, STATE OF NEVADA

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CLERK OF THE COURT

THE STATE OF NEVADA,
Plaintiff,
Vs
HAROLD EDWARDS,
Defendant.

Case No. 15F15118X

REPORTER'S TRANSCRIPT
OF
FARETTA CANVASS & PRELIMINARY HEARING

BEFORE THE HONORABLE ERIC A. GOODMAN

JUSTICE OF THE PEACE

TAKEN ON TUESDAY, NOVEMBER 10, 2015
AT 9:00 A.M.

APPEARANCES:

For the State: WILLIAM FLINN
Deputy District Attorney

For the Defendant: NADIA HOJJAT
Deputy Public Defender
PROPER PERSON

REPORTED BY: PATSY K. SMITH, C.C.R. #190

PATSY K. SMITH, OFFICIAL COURT REPORTER
(702) 671-3795

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LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 10, 2015

* * * * *

THE COURT: Harold Edwards.

There are two cases for Mr. Edwards.

I know he was looking for some sort of a negotiation. Do we have something worked out with this?

MS. HOJJAT: Your Honor, I have not received an offer. I did talk to Mr. Giordani after the last preliminary hearing. Because there are so many cases in the system, they are not making an offer in this case.

So, at this point, my client would like to have a Faretta canvass done.

THE COURT: Okay.

Sir, do you understand if I take her off the case, I mean you really have nobody to represent you in trying to get your case negotiated?

THE DEFENDANT: I'm going to represent myself, sir.

THE COURT: Okay.

THE DEFENDANT: I mean by me being my own counsel, I'm quite sure -- I'm not at odds with the young man. I don't even know him. So if we can negotiate some type to get rid of these cases because these cases are lesser than the ones I'm already in District Court -- you

know, I'm already bound over in. I have been to preliminary hearings on two cases already, so I'm already in.

If we can resolve this down here. Then that's cool to me, you know, if we can resolve it. I've never received any offers from her saying she got offers from him or the State.

THE COURT: Sir, I think the problem is, you have six cases in the system.

THE DEFENDANT: I know about that. I'm talking about the two today.

THE COURT: Wrapping up your cases, that's going to take awhile.

Do you represent yourself in the other cases?

THE DEFENDANT: I'm contemplating representing myself in one of my cases up there. I already took the Faretta in another case. So I passed the Faretta and I'm going to be representing my case with that one too also.

THE COURT: All right, sir.

THE DEFENDANT: If we can resolve this then with some -- you know, because I mean I wouldn't mind having a status check on the case and then find out if we can resolve it down here before we even go further.

THE COURT: Well, the problem is once the PD comes off your case, once you don't have an attorney on your case, they are not going to talk to you directly. They don't talk to you directly.

THE DEFENDANT: I'm my own attorney.

THE COURT: They can't talk to you directly.

THE DEFENDANT: How come he's not negotiating with me? In the other courts, I have had the State attorney talk to me. I guess they don't feel like I'm not one of their peers.

THE COURT: No, no, not at all, but if she is coming off your case, they are going to act like you are prepared to fight your case, that you are just going to trial, that you are going to fight your case and go to trial.

THE DEFENDANT: But I'm willing to say -- he can hear me now. He hears me now.

THE COURT: Well, if you want to try to negotiate your case, why don't you keep somebody on your case, as a go-between, so they can talk with her.

THE DEFENDANT: Okay, your Honor.

We have been doing this, you know. We have been going back and forth. This has been set for preliminary. I don't know what this is.

THE COURT: Well, the problem is you feel you want to represent yourself and fight your case, then you tell us you want a negotiation.

THE DEFENDANT: I do. I want to resolve my case. If we can resolve it down here, that's cool --

THE COURT: Yeah.

THE DEFENDANT: -- but if I can't get it resolved, then I will represent myself and this deal should be open for some kind of negotiation with me.

You know, I don't know what the deal is. With what you're saying, he is not being able to represent -- I mean to negotiate with me, you know what I'm saying?

MS. HOJJAT: Judge, can we approach briefly?

THE COURT: Sure, absolutely.

(Off the record discussion not reported.)

THE COURT: All right, Mr. Edwards, have a seat. They are going to talk to you at the end of this to see if they can work something out, in terms of a negotiation. If they don't give you something you like, we will do the Faretta at the end of it, but we will let you talk.

MS. HOJJAT: Thank you, your Honor.

(Off the record discussion not reported.)

THE COURT: Why don't we go back on Edwards.

MS. HOJJAT: Thank you, your Honor.

And, your Honor, I did speak with the District Attorney in this case. I did convey to him that Mr. Edwards would like an offer and would like an opportunity to negotiate these two cases separately. The District Attorney, at this time, is not willing to make an offer.

I spoke to Mr. Edwards, explained to him that, at this time, there's no offer on the table and I asked him what he would like to do. He would like to go forward with the Faretta canvass today.

THE COURT: Okay.

All right, sir, you have two different felony cases. I'll do one Faretta, but it will cover both cases.

Sir, for the record, what is your full legal name?

THE DEFENDANT: Harold Moore -- Edwards.

THE COURT: I'm sorry?

THE DEFENDANT: Harold Edwards.
THE COURT: How old are you?
THE DEFENDANT: 50.
THE COURT: How far did you go in school?
THE DEFENDANT: Couple years of college.
THE COURT: Do you read, write, and understand the English language?
THE DEFENDANT: Yes, I do.
THE COURT: All right.
Sir, do you have any health issues --
THE DEFENDANT: No, sir.
THE COURT: -- at this point?
THE DEFENDANT: No, sir.
THE COURT: Is your eyesight okay?
THE DEFENDANT: Yes, sir.
THE COURT: Do you have any kind of history with mental health issues?
THE DEFENDANT: No, sir.
THE COURT: Are you on any kind of medication?
THE DEFENDANT: No, sir.
THE COURT: No medication whatsoever?
THE DEFENDANT: My primary doctor just discontinued my medicines, but I'm not taking medicine now, but it was for high blood pressure.

THE COURT: Sir, in 15F15118X, that's one of the cases in front of me, do you understand what you are charged with in that case?

THE DEFENDANT: Yes, sir.

THE COURT: Okay.

Do you know what the elements of burglary are?

THE DEFENDANT: Yes, sir.

THE COURT: Okay, what are the elements of burglary?

THE DEFENDANT: The element is the intent to commit a felony or theft -- knowing to -- and without authority with the intent to commit a felony or theft.

THE COURT: Okay, the second case is a misdemeanor. The second part of that is a misdemeanor, it's a petty larceny. Do you know what the elements of a petty larceny are?

THE DEFENDANT: Petty larceny is the intent to take something from -- take something that -- take something that doesn't belong to a person.

THE COURT: Do you know what the possible penalties are for a burglary?

THE DEFENDANT: The possible penalties for a burglary is a Category B, 1-to-10 years.

THE COURT: What about petty larceny?

THE DEFENDANT: Petty larceny is a maximum -- maximum six months.

THE COURT: Okay, in 15F15588X, do you understand what you are charged with in that case?

THE DEFENDANT: Yes, sir.

THE COURT: Okay, what are the charges?

THE WITNESS: You said 15F --

THE COURT: Yeah, 15588X.

THE DEFENDANT: Let me see.

Okay, conspiracy to commit grand larceny -- conspiracy to commit larceny and grand larceny.

THE COURT: Okay.

Okay, sir, do you understand what the elements of grand larceny are?

THE DEFENDANT: The elements of grand larceny are the intent to commit -- or the conspiracy or grand larceny? Which one are you asking me about?

THE COURT: All right, Count 2 because Count 1 is conspiracy. So Count 2, do you understand what a grand larceny is?

THE DEFENDANT: Yeah, grand larceny is a intent to take something from somebody that doesn't belong to you. It's simple.

THE COURT: Okay, what about the conspiracy charge, what does that mean?

THE DEFENDANT: Conspiracy is conspiring with another individual, with a co-defendant, whatever, to deprive someone of their property.

THE COURT: Okay, do you understand what the possible penalties are?

THE DEFENDANT: 1-to-5 years for grand larceny and the gross misdemeanor, one year.

THE COURT: Sir, do you understand that you have a constitutional right and a statutory right to the assistance of counsel?

THE DEFENDANT: Yes, sir.

THE COURT: Okay.

Do you understand that the attorney from the Public Defender's Office, the person who is assigned to your case, is a trial attorney with many years of experience, has handled numerous felony cases, and has practiced in front of both me and the judges upstairs for a long period of time?

THE DEFENDANT: Yeah.

THE COURT: Okay, do you understand that these individuals are competent lawyers?

THE DEFENDANT: Okay, yes, I understand that.

THE COURT: Okay.

Do you know that you have a right to

compel witnesses to testify on your own behalf?

THE DEFENDANT: Yes, sir.

THE COURT: Okay, how would you do that?

THE DEFENDANT: By asking the witnesses -- to call them, ask them to appear or have your Honor subpoena them to court.

THE COURT: Do you know how to subpoena somebody?

THE DEFENDANT: I have to find out in the law library. I haven't done it yet, but I'm pretty sure I can find out through the law -- to tell you, I know someone that knows more about the law than me and, also, they have a law library.

THE COURT: You have talked to somebody who has more experience than you have?

THE DEFENDANT: Yeah.

THE COURT: Like this person here?

THE WITNESS: I know people on the street.

THE COURT: Nothing better than a street lawyer, nothing better than a street lawyer.

THE DEFENDANT: Well, you put so much emphasis on it. I know people just like you who know the law. Not all criminals, everybody I know isn't a criminal like what you are implying. You are implying because I'm in jail --

THE COURT: I'm saying this person is representing you for free? They are willing to represent --

THE DEFENDANT: I don't want them to represent me. That's why taking the Faretta.

THE COURT: Do you know you have a right to cross-examine the State's witnesses?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand you have the right to confront all of the State's witnesses?

THE DEFENDANT: Yes, sir.

THE COURT: Do you know you have the right to be informed of the nature and cause of the accusations?

THE DEFENDANT: Yes, sir.

THE COURT: Okay -- sorry.

Do you know you will be required, while representing yourself, to follow all procedural rules attending to these matters?

THE DEFENDANT: Right.

THE COURT: You get no special favors just because you are representing yourself?

THE DEFENDANT: Right.

THE COURT: That means no extra time in the law library?

THE DEFENDANT: Right, right.

THE COURT: Whenever you get over there is when you get to go over there?

THE DEFENDANT: Right.

THE COURT: It doesn't make a difference if you represent yourself?

THE DEFENDANT: They don't have a law library you can go to. You can't go to one. It makes no difference. I just have to plan on the Court --

THE COURT: Sir, do you understand self-representation is almost always unwise --

THE DEFENDANT: Okay.

THE COURT: -- and may be to your detriment?

THE DEFENDANT: Yes, sir.

THE COURT: Okay.

You know that you have to follow all the technical rules of substantive law, criminal procedure, and evidence?

THE DEFENDANT: Right.

THE COURT: You are basically treated like an attorney?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions about that?

THE DEFENDANT: No, sir.

THE COURT: Do you understand the prosecutor, the prosecution will be represented by an expert professional attorney?

THE DEFENDANT: Yes, sir.

THE COURT: Okay, that you are not going to get any favors from him?

THE DEFENDANT: Yes, sir.

THE COURT: Okay, have you ever seen or participated in an actual jury trial?

THE DEFENDANT: Yes, sir.

THE COURT: Have you ever represented yourself?

THE DEFENDANT: I represented myself once.

THE COURT: Where was that?

THE DEFENDANT: In Illinois. I won the jury.

THE COURT: You represented yourself?

THE DEFENDANT: Yes.

THE COURT: Was it a felony case?

THE DEFENDANT: Felony case, yes, your Honor.

THE COURT: You don't have to tell me. Was this something you could put on the record, what the felony was?

THE DEFENDANT: Do I have to? I don't

have to divulge --

THE COURT: You don't have to tell me what it was.

THE DEFENDANT: Yeah, let's leave it right there. Let's leave it right there.

THE COURT: Okay.

Okay, do you understand your right to self-representation will be vacated if you become disruptive in court?

THE DEFENDANT: Yes, sir, I understand that.

THE COURT: Do you understand if you are convicted, you can't complain on appeal that you were an inadequate attorney?

THE DEFENDANT: Right.

THE COURT: That you weren't a good attorney, you understand you can't appeal that issue?

THE DEFENDANT: Yes, sir.

THE COURT: I mean, apparently, you have already been given the Faretta canvass in a different Department. I think that was in front of Department 12?

THE DEFENDANT: Right.

THE COURT: You have already been found to be competent, you have already been found to be able to represent yourself.

Are you doing this freely and voluntarily --

THE DEFENDANT: Yes, sir.

THE COURT: -- of your own accord? Nobody's forcing you to represent yourself?

THE DEFENDANT: No, sir, no, sir.

THE COURT: Okay, he's already been given the Faretta canvass in other departments. He's been found competent to represent himself.

So, at this point, I will let you represent yourself on those cases. We will find that you are competent. This is freely and voluntarily done.

We will simply reset this in 15 days. I will see you back here in 15 days.

MS. HOJJAT: Your Honor, this was the preliminary hearing.

THE DEFENDANT: This was on for preliminary.

MR. FLINN: One of them was.

MS. HOJJAT: Yeah.

THE COURT: Is that one going today?

MR. FLINN: We are ready to go.

THE COURT: Okay.

All right, does he have all the discovery?

MS. HOJJAT: I have provided him a copy of

the discovery, your Honor. At that point, I redacted the victim's contact information. I don't know if you want him to have the unredacted copy. It has everything, phone numbers, addresses, social security numbers. This one is redacted.

THE COURT: You have to take everything out.

MS. HOJJAT: Yes.

THE COURT: Have you had a chance to look at the discovery?

THE DEFENDANT: Yes, sir. I seen the videos and I have also received from her most of the discovery.

MS. HOJJAT: I did. I also gave him a copy of everything. When I went to the jail, I played everything on the video for him.

THE DEFENDANT: Yeah, I have seen it.

THE COURT: We are not going to do this one first. We will make it towards the end of this, let the other prelims go --

THE DEFENDANT: Right.

THE COURT: -- so you can kind of see what is going on in here and then, okay, you are off.

MS. HOJJAT: Thank you.

MR. FLINN: We need a prelim date in the

one case, in 15588.

THE COURT: Yeah, we need a prelim.

Which one is not going?

MR. FLINN: 15588.

THE COURT: In 15F15588X, we will set a prelim in that one in 15 days.

THE CLERK: November 24th, 9 A.M.

THE COURT: Then it looks like the other one is going today.

Okay, sir, have a seat.

(Off the record discussion not reported.)

THE DEFENDANT: Your Honor, can I get discovery on the other case?

THE COURT: Do you have a copy of the discovery to give to him?

THE DEFENDANT: Also, your Honor, the photos that I was given from the State, I guess these are copies from his photos. These -- I don't know what this is. Maybe you can tell me what that is? I don't even know what this is in the photo. Supposedly of somebody. Looks like it's a sonogram to me.

THE COURT: Maybe it's Batman.

You tell me, who is that.

THE DEFENDANT: Who is this? You say that's me?

THE COURT: Look, we will get to it. We will get to it. You can't be disruptive. You can't be disruptive.

So we will get to you.

(Off the record discussion not reported.)

THE COURT: Do you want to give the copy to the marshal?

THE DEFENDANT: For the record, the marshal --

MR. FLINN: I did give a copy of the discovery to the marshal. He is going through it to make sure it's appropriate.

THE COURT: Okay, okay.

(Off the record discussion not reported.)

THE COURT: Let's go on the record with Mr. Edwards. This is 15F15118X.

Sir, we will have you come up here and take A seat at the defense table.

Sir, do you have any paper to write on?

Do you have any paper to write on?

THE DEFENDANT: I don't need that much paper, your Honor. I have enough. I have a sufficient amount of paper, but, also, before we start, before we begin to proceed, I'd like to move to sever the petty larceny case.

THE COURT: Yeah, we will do that.

THE DEFENDANT: Thank you.

THE COURT: We will sever it.

THE DEFENDANT: Thank you.

THE COURT: We will grant that motion. We will kind of trail that to see what happens with the felony.

THE DEFENDANT: Also, your Honor, before any video is shown, could you please admonish the DA to not narrate the video, just let it play. Whoever the witness is on the video, if they are one of his witnesses, they not be led with the video with his narrating the video. Just let's it play. You know, it's -- the video is self-explanatory.

THE COURT: Sir, it's a little bit early to ask that. If you see something that is a problem, you can object to it, but it's a little bit early to make any kind of rulings on the evidence.

THE DEFENDANT: Okay.

THE COURT: State, it's my understanding there is no offer?

MR. FLINN: That's correct, your Honor.

THE COURT: Okay.

All right, sir, Mr. Edwards, did you have any witnesses on your behalf?

THE DEFENDANT: Yes, I want to use the detective. I think his name is Jeffrey Clark. I want him to be my witness, one of my witness -- I want him as one of my witnesses.

THE COURT: Okay. So you are going to cross-examine him?

THE DEFENDANT: Yeah.

MR. FLINN: Yeah, the State intends to call him, so...

THE COURT: Okay.

All right, sir, have a seat. We are going to get this started.

State, it's my understanding you have four witnesses?

MR. FLINN: That's correct, your Honor.

THE COURT: All right, if you are a witness in this case, please remain outside until your name is called.

State, please call your first witness.

MR. FLINN: You two can go outside.

The State calls Joanna Jimenez.

JOANNA JIMENEZ,

having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified and said as follows:

THE CLERK: Please have a seat.

State your first and last name and spell both for the record.

THE WITNESS: Joanna Jimenez, J-O-A-N-N-A, 98 -- sorry, J-I-M-E-N-E-Z.

THE COURT: All right, State.

MR. FLINN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. FLINN:

Q Ms. Jimenez, I want to direct your attention back to September 17th of this year, how were you employed at that time?

Who did you work -- where did you work?

A Oh, Bellagio.

Q What area of the Bellagio?

A Cafe Gelato.

THE COURT: I'm sorry, I couldn't hear that.

THE WITNESS: Cafe Gelato.

THE COURT: Cafe Gelato, okay.

Thank you.

Q (BY MR. FLINN) So on the 17th of September, were you working that day?

A Yes.

Q Around 1, 2 in the afternoon?

A Yes.

Q Those hours you were at work?

A Yes.

Q Now is there an area there at the Bellagio where, while you are at work, you, as an employee, can store your personal belongings?

A Yes.

Q Where is -- what is that?

A It's lockers. It's located in the back of the house.

Q So when you say back of the house, you mean an area that's not available to the general public, but behind the scenes?

A Exactly.

Q And there's a room that has lockers in it?

A Yes.

Q And you can go and store your things in a locker while you are at work?

A Yes.

Q So on that day, September 17th, this is at the Bellagio, here in Clark County, did you put anything in a locker while you were at work?

A Just, on my break time, I just opened it, got something, and my bag was still there.

Q No, but did you store anything when you came to work in the locker?

A Oh, yeah, my bag.

Q What type of bag, like a duffel bag?

A Lunch bag.

Q I'm sorry?

A Lunch bag.

Q And anything else?

A Well, inside it had like my personal stuff, like, yeah, makeup.

Q So you had a bag stored in the locker, you left it in the locker, and you went to work?

A Yes.

Q Did there come a time where you finished your shift and you went to go retrieve your bag from the locker?

A Yeah, my shift ended around 4:00 and

that's when I noticed my bag was missing.

Q So you went back to the locker and your back wasn't there?

A Yes.

Q When -- what did you do when you discovered your bag was missing?

A I notified my manager right away. She told me to go to the security office and make a report, so I did.

Q So you went to security and made a report?

A Yes.

Q Was your bag ever returned to you?

A Yes, it was.

Q That day or --

A No, they found it in like the arcade --

Q Okay.

A -- next to another department, so the next day.

Q And they did give it back to you?

A Yes, uh-huh.

Q Was anything of value missing from that bag?

A No.

Q Did you give anyone permission to go into your locker and take your bag?

A No.

Q Do you know anyone by the name of Harold Edwards?

A No.

Q And so did you give Harold Edwards permission to take your bag?

A No.

THE DEFENDANT: I object, your Honor.

MR. FLINN: Nothing further.

THE DEFENDANT: I object, your Honor.

THE COURT: What is the objection?

THE DEFENDANT: The objection is he is giving her the impression that I took her bag by saying, you know, did she give me permission. That's not -- that's not fair.

THE COURT: She has no idea who you are. She is not saying you had it. She didn't identify you.

THE DEFENDANT: I'm the only one sitting here.

THE COURT: No, no, no, but the objection will be overruled. The objection will be overruled.

MR. FLINN: Thank you, your Honor.

No further questions.

THE COURT: Do you have any questions of her?

THE DEFENDANT: Yes, I have a question for her.

THE COURT: Sure.

CROSS-EXAMINATION

BY THE DEFENDANT:

Q Good morning.

What is your name? Ms. Jimenez (sic)?

A Jimenez.

Q Good morning, Ms. Jimenez.

A Good morning.

Q I just want to ask you, did you see someone take your bag?

You had a bag missing, right?

A Yes.

Q Did you see anybody in the back take the bag?

Is anybody in this courtroom did you see that took your bag?

A No.

THE DEFENDANT: That's all I got for her, your Honor.

THE COURT: Okay.

Any redirect?

MR. FLINN: No, your Honor.

THE COURT: Okay, ma'am, thank you for testifying. You are free to stick around to find out what happens. You are free to take off.

THE WITNESS: Okay.

THE COURT: Okay, thank you.

THE WITNESS: Thank you.

THE COURT: Did you sign her subpoena?

MR. FLINN: Did I give you a subpoena?

No, I don't think I did.

Thank you, Judge.

(Off the record discussion not reported.)

MR. FLINN: State calls Arvin Viacrussi.

THE COURT: Okay.

(Off the record discussion not reported.)

ARVIN VIACRUSSI,

having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified and said as follows:

THE CLERK: Please have a seat.

THE WITNESS: Thank you.

THE CLERK: State your first and last name and spell both for the record.

THE WITNESS: My name is Arvin Viacrussi, A-R-V-I-N V-I-A-C-R-U-S-S-I.

THE COURT: All right, State.

MR. FLINN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. FLINN:

Q Sir, I want to direct your attention to September 17th of this year, how were you employed at that time?

A I was a security officer and I was posted at our Lost & Found.

Q A security officer where?

A At Bellagio.

Q Bellagio, here in Las Vegas?

A Uh-huh.

Q So you were posted where?

A I was posted at the Check Bank, which is where we keep lost and found.

Q So this is 2, 3 in the afternoon?

A Yes.

Q You are on duty posted at the Check Bank?

A Uh-huh.

Q You said that's where you keep Lost & Found?

A Yes.

Q Did there come a time, during your shift that afternoon, where someone brought to you an iPad?

A Yes, sir.

Q Who was it that brought that to you, if you remember?

A It was an EVS employee that turned in an iPad. It was found, he said, in between a slot machine.

Q So, basically, an item found by one of your employees working the slot area brought you this item?

A Yes, sir.

Q And did there come a time, shortly thereafter, where an individual came to try to claim that iPad?

A Yes.

Q Do you recognize if that individual is in the courtroom today?

A Yes, sir.

Q Could you identify where he or she is sitting and the clothing he is or she is wearing for the Court?

A He's sitting right over there.

MR. FLINN: Would the record reflect he

identified the defendant?

THE COURT: It will.

Q (BY MR. FLINN) So the defendant approached you at the Lost & Found?

A Uh-huh.

Q And what did he say?

A He said he would like to claim his iPad.

Q And what did you do?

A I told him, Please identify the iPad, and since it has a pass code, I asked him for the pass code. He couldn't tell me what it is.

Q So when you say pass code, like if you turn on the screen, you have to type in a pass code to use the device?

A Yes, sir.

Q So you asked him, What's the pass code?

A Uh-huh.

Q Or something to that effect?

A Yes, to verify that it is his iPad.

Q And he said he didn't know the pass code?

A He said he didn't know and he told me that it actually belongs to his friend.

Q So then he said it belonged to his friend?

A Uh-huh.

Q And then what did the defendant do after

that?

A He tried to claim it. I told him I can't give it to him. If it belongs to his friend, his friend has to come here and pick it up.

Q And so what happened next?

A He said he's going to find her and he left and he never came back.

Q He never came back to you?

A Uh-huh.

Q While you were on your shift?

A Yes.

MR. FLINN: Nothing further, your Honor.

THE COURT: All right, sir, do you have any questions of him?

THE DEFENDANT: Yes, yes, sir, I have questions.

THE COURT: Okay.

CROSS-EXAMINATION

BY THE DEFENDANT:

Q Good morning, sir.

A Good morning.

Q The day of this incident, you said a guy approached you and told you that the iPad -- that the iPad that was missing belonged to one of his friends, correct?

A Uh-huh.

THE REPORTER: Is that yes?

THE WITNESS: Yes. Sorry.

Q (BY THE DEFENDANT) You say -- you stated to the DA that you asked for the code to get into the computer --

A Yes.

Q -- correct?

And the defendant -- and the person that you say came and asked about the computer told you that he didn't know the code to the computer, correct?

A Yes.

Q And he would go get the person whose computer it actually was, correct?

A Yes.

THE DEFENDANT: I rest.

THE COURT: Okay.

Do you have any questions, any redirect?

MR. FLINN: Court's indulgence, please, just a moment.

REDIRECT EXAMINATION

BY MR. FLINN:

Q Sir, after the defendant left and said he was going to go get his friend, did anyone come back while

you were on your shift to claim the iPad?

A I was still at the same post when the lady came to the Check Bank to claim it. Same procedure, I asked her to describe the item and what the pass code is, she gave it to me, I opened it. She described what's the contents of the iPad. She even showed me a picture of her in the iPad.

Q Was the defendant with her?

A No.

MR. FLINN: Nothing further, your Honor.

THE COURT: Sir, do you have any questions about that before I let him go?

Do you have any other questions regarding what he just testified to?

THE DEFENDANT: No, sir, no, sir.

THE COURT: Okay.

All right, sir, thank you for testifying.

THE WITNESS: Your welcome, sir.

THE COURT: You are free to stick around to find out what happens. You are free to take off.

THE WITNESS: Okay.

THE COURT: Did you sign his subpoena? Does he have a subpoena?

MR. FLINN: Did I sign your subpoena?

(Off the record discussion not reported.)

THE COURT: All right, next witness.

MR. FLINN: Yes, your Honor.

Brief indulgence, just a moment.

Surveillance officer from the Bellagio.

For the record, your Honor, the State calls Jason Wherrity.

THE COURT: Okay.

JASON WHERRITY,

having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified and said as follows:

THE CLERK: Please have a seat.

State your first and last name and spell both for the record.

THE WITNESS: Jason Wherrity, J-A-S-O-N W-H-E-R-R-I-T-Y.

THE COURT: All right, State.

MR. FLINN: Thank you, your Honor.

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DIRECT EXAMINATION

BY MR. FLINN:

Q Sir, how are you employed?

A I work at the Bellagio in Investigations.

Q And were you employed in that capacity back on September 17th of this year?

A Yes.

Q And, in the course of those duties, do you investigate crimes that occur within the casino or allegedly occur within the casino at various places?

A Yes, I do.

Q Now in reference to that date, in particular, September the 17th, did you investigate an employee's report that her backpack was taken from her locker?

A Yes.

Q And that's a locker in the employees only locker room?

A Correct.

Q So did you investigate that?

A Yes, I did.

Q And did you also investigate an attempted theft of an iPad?

A Yes.

Q And that was from the Lost & Found --

A It was.
Q -- ultimately?
A Yes.
Q And in an effort to investigate those complaints, did you view surveillance video from the casino?
A Yes.
Q And the casino, the hotel casino property?
A Correct.
Q And were you able to compile surveillance video related to those two incidents?
A Yes, I was.
Q And are those videos of the areas involved both with the backpack where it was stored and the iPad at the Lost & Found?
A Yes.
Q Among other areas of the casino?
A Correct.
Q And were you able to identify, in reviewing the surveillance video, that there was a person -- a specific person involved with both incidents?
A Yes.
Q Was that the same person within your viewing?
A Yes.

Q Now did you provide that video, surveillance video, the part that you compiled related to these incidents to law enforcement and the District Attorney's Office?

A I compiled the video. My partner is the one that showed it to Metro and then our Legal Department sent the video over to your department.

Q Okay.

So shortly before this hearing today, you and I met, correct?

A Correct.

Q And I showed you some video on two CDs, right?

A Correct.

Q Or DVDs.

And we watched portions of the video together from each of those disks, correct?

A Correct.

Q And are those disks and the video on them the fair and accurate copies of the surveillance video that you compiled from the Bellagio in the course of investigating these crimes?

A Yes.

MR. FLINN: Your Honor, at this time, I'm going to move to admit State's Exhibits -- well, I will

wait just a moment.

THE COURT: Okay.

MR. FLINN: May I approach the witness?

THE COURT: Sure, absolutely.

And this is the video you showed to the defendant previously?

MR. FLINN: Yes. I'm going to confirm that with the witness.

Yes, these surveillance videos and the two disks we provided to the Public Defender's Office while he was still represented and that were represented earlier in court that he had watched with the Public Defender.

THE DEFENDANT: Well, your Honor, if it so please, your Honor, I would like to watch it also. I would like to see what they're showing.

MR. FLINN: As soon as I get it to come up, your Honor, I will show the witness and confirm with the witness that it's what it's represented to be, then I will walk over and show the defendant so that he knows that it's the same thing that we are looking at --

THE COURT: Okay.

MR. FLINN: -- and that he's seen it before.

THE COURT: Okay.

MR. FLINN: But, obviously, for courtroom

procedure, I don't know if it's possible we all can look at it.

THE COURT: Sir, as soon as it comes up, he will come over and show it to you and then he will ask him his questions. So you will get a chance to look at it then.

THE DEFENDANT: Okay, okay.

THE COURT: Okay.

Q (BY MR. FLINN) Now, sir, do you recognize this menu screen?

A Yes, I do.

Q Is that just basically the software interface for your surveillance video?

A Yes.

Q So from that, you can pick the clips that are loaded in that are shown on the disk and play those videos?

A Yes.

MR. FLINN: For the record, I'm showing the witness -- this is State's Proposed Exhibit 1, which the disk itself is marked Disk 1 of 2.

Q Does this disk and these videos, does this contain the surveillance video related to the theft of the backpack?

A No. This would be the iPad.

Q This is the iPad?
A Correct.
Q Okay.
THE DEFENDANT: Your Honor, if I may object. The charges that I'm -- I received a copy of doesn't have anything to do -- it doesn't say anything about an iPad. It's talking about Joanna Jimenez' bag.
THE COURT: I don't have any information about an iPad.
THE DEFENDANT: So I don't know what they are talking about.
THE COURT: The only thing I have, you are right, is about the bag for Joanna. Are you thinking about the other case?
MR. FLINN: No.
THE DEFENDANT: The other laptop.
MR. FLINN: No, it's not the other case. It occurs directly after the theft of the backpack and I'm offering it to show the defendant's intent for the burglary I have filed that his intent coming into the property was with the intent to commit larceny, stealing a backpack.
THE DEFENDANT: I object, your Honor.
MR. FLINN: That's what I'm going to be offering it for.
THE COURT: How is he suppose to defend

this? It's not in this --

MR. FLINN: It's in the police discovery. It's fully documented.

THE COURT: No, he's not charged with attempting to steal an iPad.

MR. FLINN: No, he is charged with burglary on this date and at this time.

THE COURT: Right.

MR. FLINN: The police report outlines both incidents, which have been provided in the discovery. I'm not showing it to show him attempting to steal the iPad. I'm offering it to show, when he came in, the element of the offense is that he entered with the intent to commit larceny.

I have two acts that does show his intent when he entered the premises, one of which being the backpack and the second of which being the iPad, which he is fully aware of because it's in all the discovery materials and he watched his video with his attorney related to the iPad.

So it should be no surprise to him that I'm talking about the iPad. I'm not bringing it up to try to charge him with a new crime here.

THE COURT: Do you have any case law that says you can bootstrap one to the other?

MR. FLINN: I don't know -- I apologize, I don't know what you are asking me about bootstrapping of?

THE COURT: Well, he's not charged with attempting to steal an iPad.

MR. FLINN: No, but these aren't separate incidents. These are one right after the other at the same time and same place.

THE COURT: But you are using the iPad to try to allege that there is a burglary here.

MR. FLINN: I'm trying to show -- the burglary doesn't allege a theft of a backpack. It alleges that he entered the Bellagio with the intent to commit a larceny therein.

I'm showing it through the use of the backpack, which is a bifurcated petty larceny case, and the iPad and his acts inside the casino to show that his intent, when he came into the casino, was to steal things and support the burglary charge.

I'm not trying to bootstrap a second offense, a second crime. There is no bootstrapping. I'm simply showing the intent to prove the burglary. We don't even have to show that a crime occurred, technically speaking, inside. We need to show that the person entered with the intent to commit the crime and that qualifies under the burglary statute.

THE COURT: The problem is even as I sit here looking at the Criminal Complaint here right now, it's a burglary with the intent to commit a larceny, then Count 2 is a petty larceny related to the bag that was taken from Joanna Jimenez.

So when I look at this, when I started this -- when I started the prelim and I'm looking at the document I have in front of me, I'm thinking the case revolves around the bag that was taken from Joanna Jimenez. That's the burglary coming up and then, all of a sudden, it's not, that it's something else.

THE DEFENDANT: That's true.

MR. FLINN: No, your Honor, the petty larceny has been severed. It's not part of what we're doing right now. It's evidence of the moment he enters the property and it's evidence to show what his purpose in coming to the property and entering the property was. It was to commit larceny and I'm showing evidence of him in the casino or in the casino hotel property performing acts that are consistent with someone who came in to commit larceny.

I'm not trying to prove the petty larceny or any other larceny. I'm required to prove that was his intent when he entered the casino and that was his intent, as demonstrated by his action, when he got into the casino

property and the fact that it's not charged in there, it is charged. It is charged.

The only count before your Honor right now, which is the burglary with the intent to commit a larceny, to prove that he entered with that intent, I'm showing two related acts, two things that occurred close in time to each other with the defendant inside the casino hotel property to show what his intent was when he entered.

THE COURT: But how come that wasn't charged as an attempt theft to show they were together to show this is why he entered it?

MR. FLINN: I don't have to charge anything, your Honor, other than what the State charged him with.

THE COURT: But when I look at the charge, the charge in the charging document, you have --

MR. FLINN: But the State can't find the owner of the iPad for the theft. We shouldn't be precluded from charging other crimes that don't require the owner of that iPad to appear in court.

THE DEFENDANT: Your Honor, if I can say something, your Honor?

The DA hasn't -- he hasn't even proven the theft of the laptop. How are you going to jump to something else? That was a Lost & Found property that was

taken. I went up to Lost & Found.

THE COURT: Whoa, whoa, whoa, don't talk about the facts like that because you are basically admitting you did that.

THE DEFENDANT: Right.

THE COURT: That's why we like to have attorneys --

THE DEFENDANT: Okay. Well --

THE COURT: -- because stuff like that doesn't come in.

THE DEFENDANT: I'm being honest in the whole situation. I'm not trying to hide nothing. I'm not trying to hide around the law. I'm being frankly honest, you know what I'm saying. I'm not trying to hide nothing.

MR. FLINN: Your Honor, the defendant is fully on notice --

THE DEFENDANT: He was making statements like he was there. You are making yourself a witness of the crime. You never witnessed anything. The only information you got was from somebody about a crime. You are saying I took something. You are making a bold statement that I took something.

THE COURT: He is not making a statement this is what happened. He is making a statement to show --

MR. FLINN: I'm arguing what I'm trying to

prove.

THE COURT: -- what he is trying to prove here.

THE DEFENDANT: He is saying a statement that makes yourself as a witness to something. Am I able to question you? You should be on the stand so I can question you.

THE COURT: You can't question him. This is what he is trying to prove.

I'm going to let you go ahead with this. I'm going to let you go ahead and ask those questions. This may be something that comes up in the District Court, but I will let you go ahead and ask the questions.

So you can ask the questions about the iPad then, okay?

MR. FLINN: All right. Thank you, your Honor.

THE COURT: All right.

Q (BY MR. FLINN) And so, sir, this video here, can you please pull up -- did you obtain a video of a suspect related to the backpack and the iPad entering the casino property?

A Yes.

Q Is that on this disk or the other disk?

A It's on this disk.

Q Could you please open that up and then we will wait just for a moment before playing it.

A (Witness complying.)

Q And without playing this, does this appear as a fair and accurate -- this is the video that you obtained from your surveillance system?

A Yes.

MR. FLINN: And, for the record, just before I begin playing this, your Honor, I'm going to show this general shot to the defendant so he can know that it's the same video that was provided to him and his attorney, when he had one, before the hearing.

THE DEFENDANT: It's not playing anything.

MR. FLINN: I'm going to play it for you up there so the Judge can see it.

THE DEFENDANT: Okay.

MR. FLINN: I'm letting you look at it before I start playing it. This is what it is and it's the video you have seen.

THE COURT: Okay.

THE DEFENDANT: Can I possibly see what the video is showing? He is showing me a still photograph. I don't know what video he has, but he's got --

THE COURT: How long is the video?

MR. FLINN: It's several clips, your

Honor, but I need the witness to keep coming up so he --

THE COURT: How much total time?

MR. FLINN: A couple minutes each, when you add the video up, but I don't think --

THE COURT: The problem is I can't have you physically come up here.

THE DEFENDANT: I was in another courtroom where I was allowed to see the video. They turned the video toward me and I forgot her name, the Judge.

THE COURT: We kind of have some concern of how it is so that everybody can see, including the defendant.

MR. FLINN: I'm mean I'm happy to -- I don't know how -- logistically, how everybody can do that.

THE DEFENDANT: I'm handcuffed, your Honor. If I have to stand right back at the steps, I can see the video. I'm not doing nothing. I just want to see what he's showing. You have got my word, I'm not going to do nothing. I'm just going to stand back up there to see the video.

THE COURT: Do you have any concerns yourself if he comes up here to take a look at it?

MR. FLINN: Me personally, no, but I'm not interfering with the marshal's decision of things and keeping the witnesses and others safe.

THE COURT: Do the marshals have any problem with him coming up and looking at the video to view it?

THE MARSHAL: I don't have a problem standing up here, your Honor.

THE COURT: All right.

All right, we will let you come up here.

THE DEFENDANT: Where do I stand? Right here?

THE COURT: You know, maybe put it over here. If you want to put it over here, then I can sit up here and watch, as he's playing it, and that way everybody can kind of see it.

MR. FLINN: Put it --

THE COURT: Put it here, then I will come over here and, okay, I can see it. I think everybody can see it.

Sir, can you see it?

THE DEFENDANT: Yes, sir. Thank you, your Honor.

THE COURT: Let's get going.

Q (BY MR. FLINN) As we were talking a moment ago, before we play that, we might have to move that window up higher because it's not fitting in the screen

very well.

A (Witness complying.)

(Off the record discussion not reported.)

Q (BY MR. FLINN) So you obtained surveillance video of an individual related to the iPad and to the backpack and then did you locate surveillance video of that same individual entering the casino property?

A Yes.

Q And is that this video clip, this part?

A Yes.

Q Okay, can you please publish that, play that to the Court and point out to the Court the person you were looking at, as they entered the property.

(Video playing at this time.)

THE WITNESS: Over here, that's what I'm looking at.

Q (BY MR. FLINN) That's him first coming onto the casino property?

A Correct. That's actually him walking right to the casino floor.

Q Okay.

Now, as far as this, this contains the footage related to the iPad, correct?

A Correct.

Q So what is the first clip that you have related to the iPad that you have pulled from your investigation?

A The first clip we had was him appearing in the camera range with the iPad sitting at a machine.

Q Can you please pull that clip, pull that clip up.

(Off the record discussion not reported.)

THE WITNESS: Okay.

Q (BY MR. FLINN) And if you can play that video for the Court and just point out to the Court what you were looking at when you said you saw a person with the iPad.

THE DEFENDANT: Could you tilt it a little bit, the screen? I cannot see it.

There you go. Thank you.

(Video playing at this time.)

MR. FLINN: Now I'm going to pause it for

just a moment.

Q We saw that there were a couple of women that walked across the screen. Did you, during the course of your investigation, learn who the women were?

A They were the owner of the iPad.

Q The iPad we were talking about, those were the ones who had the iPad originally?

A Correct.

(Video playing at this time.)

THE WITNESS: He sat down at a machine and he has the item in his hand. You will see when he opens it up, clearly it's an iPad.

THE DEFENDANT: Excuse me, sir --

THE MARSHAL: Let the witness speak.

THE WITNESS: He opens up the iPad by trying -- I don't know if he was trying to put in the pass code or what he was doing, but then he puts the iPad down right by the machine and walks away.

Q (BY MR. FLINN) Now did you then obtain video of what happened to the iPad next?

A Yes.

Q And what was that from your observation?

A That the employee that was in the camera

shot actually found the iPad and turned it into our Lost & Found Department.

Q Okay.

And do you have -- did you obtain a video of the Lost & Found Department with the same individual that placed the iPad there going and trying to claim it?

A Yes.

(Video playing at this time.)

Q (BY MR. FLINN) All right, I will hit play and then if you can tell the Court what you are looking at.

A The employee that turned in the iPad, she's bringing Mr. Edwards over to the Check Bank. That's where we keep all our Lost & Found and he's trying to claim the iPad.

Q And then there is another camera shot of a closer up of the Check Bank that shows that individual there trying to claim the iPad?

You know what, that's okay. That one is not necessary at this point.

Now I want to switch for a moment to ask you questions about the backpack investigation.

A Okay.

MR. FLINN: And, for the record, this is

State's Proposed Exhibit 2 and if I could move for the admission of that exhibit?

THE COURT: Okay.

Sir, you saw this previously with your attorney?

THE DEFENDANT: Yes, sir, I saw that video.

THE COURT: Okay.

MR. FLINN: Sorry, your Honor.

THE COURT: It's all right. This always happens when we have video. It never works right.

(Off the record discussion not reported.)

Q (BY MR. FLINN) Okay, now in your investigation of the theft of the backpack, did you obtain surveillance video that showed an individual come out of that locker room with the backpack?

A Yes.

Q And did you, in your surveillance video, go back in time to see where that person first came into the picture or had access to the area where the backpack was?

A Yes.

Q And where was that? What part of the

casino was that?

A He entered into the arcade and ended up going to the arcade office to the back house.

Q Do you have video of that?

A The arcade when he came in?

Q The area of the arcade and going to the room where the backpack is.

(Video playing at this time.)

THE WITNESS: He's actually leaving. That's the wrong one.

Q (BY MR. FLINN) That's the wrong one?

A He's actually leaving.

Q We will show that now.

Is he leaving?

A Leaving the arcade.

Q Okay.

(Video playing at this time.)

THE WITNESS: Okay, so this is the arcade.

Q (BY MR. FLINN) As an investigator, you are familiar with all the areas of the casino property, right?

A Yes.
Q Rooms and routes and things like that?
A Yes.
Q Okay.
So, again, this is the arcade?
A This is the arcade.
Q All right.
A And he's going toward the middle of the arcade.
THE DEFENDANT: Where is that? Where is somebody at? I don't see nobody.
THE WITNESS: Right there.
THE DEFENDANT: Oh.
THE WITNESS: And there is an office door right here that he goes into.
Q (BY MR. FLINN) Okay, and behind that door, what is it again?
A The arcade office and it goes into the back hallway, back of the house.
Q And so there's an arcade office that goes into the back of the house. Is that near the room where the employee lockers are?
A Correct.
Q So you walk through the office and then you are in the room where the lockers are?

A You walk through the office into the back hallway.

Q Okay.

A And there is other doors.

Q Do you have from that office, do you then have video of the individual leaving the office and entering the back hall?

A Yes.

Q Could you please open that up.

A (Witness complying.)

(Video playing at this time.)

Q (BY MR. FLINN) All right, so this video here, as I hit play, this is the back hallway that you are talking about that the office connects to?

A Correct.

So he comes out the office door.

Q That's the individual that comes through the arcade, goes out the office through this side, and out in the back hallway?

A Correct. This is all an employee area.

Q And so the individual walking down the hallway?

A Correct.

Q Now from looking at that, could you please tell the Court where the access to the employee locker room is?

A It's down here by these carts.

(Video playing at this time.)

(Off the record discussion not reported.)

MR. FLINN: I'm going to fast forward a little bit here because this is a little bit lengthy.

Okay, that individual walking in the hallway coming through the office door is now walking back up the hallway.

(Video playing at this time.)

THE WITNESS: He hangs around this hallway for quite a bit of time talking on the phone, on his cell phone.

Q (BY MR. FLINN) As other employees are going by, correct?

A Yes.

Q And now there's nobody in the hallway but him and where does that person go?

A He's going in the back where the employee lockers are.

(Video continuing to play.)

Q (BY MR. FLINN) And does that person re-emerge?

A Yes, he does.

He goes back, I think, the first time just to look at things to see what is back there.

THE COURT: You can't comment why he is going back in there.

Q (BY MR. FLINN) But does he go back in the door a second time?

A Yes, he does.

Q In a door to the area where the lockers are?

A Correct.

Q So, again, there are employees in the hallway that come by and now that person goes back in the employee locker area?

A Correct.

(Video continuing to play.)

MR. FLINN: He now comes out.

(Video continuing to play.)

Q (BY MR. FLINN) And there's a point where he goes back in again?

A Correct.

MR. FLINN: Stop it where we see him go back in.

THE COURT: Is this fast forward?

Okay, there we go.

THE WITNESS: Okay, go ahead and play from there.

(Video playing at this time.)

Q (BY MR. FLINN) Again, there are employees in the hallway.

And that individual again enters that room with the employee lockers?

A Correct.

Q This time he comes out --

MR. FLINN: I think I still have it going fast. Let me back up.

Let's start it over. Let's get going.

THE COURT: If you want to play it, you can play it again, but it looked like he walked out quickly with something his hands when he walked out.

MR. FLINN: Just as long as the Court saw it. I didn't want to go fast because it was playing too fast.

THE COURT: No, I was able to view that, okay.

Q (BY MR. FLINN) So then did you follow the surveillance video from there and does the individual come back out on the arcade side?

A Yes, he does.

Q At that point does he have the bag?

A No.

Q So he had the bag going into the office room that is between the hallway and the arcade, but no longer has it?

A Correct.

THE COURT: Okay.

MR. FLINN: That's it.

THE COURT: Okay.

Are we going to view anything else that he has to see?

MR. FLINN: No, your Honor.

THE COURT: Okay, sir, you can have a

seat.

MR. FLINN: Now I have handed what is admitted as State's Exhibit 1 and 2 back in their envelops to the court clerk.

THE COURT: Okay.

THE DEFENDANT: Your Honor, if I may?

I want to question him with the video. I want to question him with the video, if it please the Court.

THE COURT: Sure. You have to wait until he's done --

THE DEFENDANT: I know, I know.

THE COURT: -- then come back up.

THE DEFENDANT: I just wanted to make a note of that.

THE COURT: Okay.

MR. FLINN: Actually, your Honor, I don't have anything further for this witness.

THE COURT: Oh, okay.

Sir, do you want to start off questioning, start off questioning about the video or do you have other questions first?

THE DEFENDANT: You know, I know people got things to do, so I'm just going to ask him a question.

THE COURT: This is my job. I will sit

here all day for you on this.

THE DEFENDANT: I just wanted to show the video of when he's trying to indicate that I entered the place with my intent. I want to show that video of the lap -- what is it, iPad, the iPad. I wanted to show that video again to ask him some questions with showing that video.

MR. FLINN: I'm not sure which --

THE COURT: I think the first video we showed.

MR. FLINN: Right, but I'm not sure which part he is talking about.

THE DEFENDANT: I'm talking about when you see him sit down.

THE COURT: Are you talking about the first part of it where you allegedly walk in and sit down at the gaming machine?

THE DEFENDANT: At the machine, yeah.

THE COURT: Okay.

All right, everybody come back up here.

All right.

MR. FLINN: Sorry, Judge.

THE COURT: It's okay, it's okay.

MR. FLINN: I wouldn't have taken it all out.

THE COURT: It's okay.

(Off the record discussion not reported.)

MR. FLINN: All right, for the record, this is State's Exhibit 1 that I pulled up for the defendant and do you want me just to play this?

THE DEFENDANT: If you can, you can play it.

MR. FLINN: Okay.

THE DEFENDANT: Thank you.

(Video playing at this time.)

THE DEFENDANT: Could you stop it right here.

CROSS-EXAMINATION

BY THE DEFENDANT:

Q Now earlier, sir, you said this lady in the picture here was the owner of the laptop?

A Correct.

Q Okay.

It was my understanding it was two older ladies that was sitting at the --

MR. FLINN: Objection. He's testifying.
THE COURT: I thought it was two older ladies also.
THE DEFENDANT: Yeah.
THE COURT: I thought the testimony was because there were multiple people who worked through here when he said that, I thought he was talking about the two older ladies walking through the scene.
MR. FLINN: Yeah, just a moment ago in the picture.
THE COURT: So far as I see, there was a woman.
MR. FLINN: That's not who he is talking about. There is two people who walked by a moment ago.
THE DEFENDANT: Okay, I thought you were talking --
THE COURT: The problem is, there is a woman on the screen right here.
MR. FLINN: I apologize.
THE COURT: That's where --
MR. FLINN: That's where the confusion is here. For the sake of clarity here, I will back it up in just a moment.
There is one of them right there in this frame.

THE DEFENDANT: Yes.

MR. FLINN: Is that who you are speaking of?

THE COURT: That's these two women?

MR. FLINN: That's a gentleman. He has a flat hat on.

THE COURT: Okay.

MR. FLINN: This lady. I tried to show you there was another lady with her.

THE DEFENDANT: Okay, your Honor, it's been clarified.

Okay, you can continue to play it, sir.

MR. FLINN: Okay.

THE DEFENDANT: Thank you.

(Video playing at this time.)

THE DEFENDANT: Now stop right here.

Q This young lady, I believe she is a worker at the Bellagio -- this is the Bellagio?

A Yes.

Q This young lady right here, I believe she's got a rag in her hand right there. She works for the place, right?

A Yes.

Q Did you have a chance to question her?
A I didn't, but my partner did.
Q Did you receive any statements from the lady?
A Yes, I did.
Q What were those statements?
A I have no idea. I didn't read the statements.
MR. FLINN: Objection.
THE COURT: It would be hearsay, so the objection will be sustained.
MR. FLINN: Do you want me to keep playing this?
THE DEFENDANT: Yes, keep playing it.

(Video playing at this time.)

Q (BY THE DEFENDANT) Now you see Mr. Edwards sitting at the -- what are these, machines or slot machines?
A Yes.
Q Do you see him with anything -- when he came and sat there, do you see him with anything when he first came and sat there?
A Yes.

Q What was that in his hand?
A iPad.
Q Where is it located at, sir? I don't see it.
A It was in your left hand.
Q You see it? The iPad is sitting by me --
MR. FLINN: Objection. He is testifying.
THE COURT: Sir, you can't testify, okay.

(Video playing at this time.)

THE WITNESS: Correction.
THE DEFENDANT: I couldn't hear you, sir, correction? What did you say, correction?
THE WITNESS: Yes, I did, correction.
Q (BY THE DEFENDANT) Okay, that means you didn't see -- you swore under oath you did see something in my hands, right?
A My mistake.
MR. FLINN: No, no, no.
Q (BY THE DEFENDANT) That's when you were asked the question earlier.
Excuse me, sir --
MR. FLINN: I'm making an objection.
THE COURT: He is allowed to make an

objection.

THE DEFENDANT: But you didn't give the Judge a chance to speak or not. You just jumped right on in.

MR. FLINN: That's how an objection works.

THE DEFENDANT: No, it's not how the objection --

THE COURT: Sir, sir, he is allowed to object.

MR. FLINN: Objection, your Honor. That misstates the testimony because when he asked him the question earlier, we were watching a portion of the video where the defendant walked up to the slot machine, sat down, had the object in his hands, placed it below the slot machine. Now he is asking him to look at the portion where the defendant walked off and doesn't have the iPad in his hand and making it out as though that's the same thing they were talking about.

So what I just wanted to be clear was that misstates the testimony that we're talking about. We are looking at two different sections of the video here that he is asking about.

THE COURT: Okay, that will clarify it. I saw the exact same thing, so that will clarify that.

THE DEFENDANT: You know what, your Honor,

I'm through with him. Your Honor, I'm through with him.

THE COURT: Okay.

THE DEFENDANT: I just want to ask one more question.

Q When you come in the Bellagio, where is the management office located, the management of the place where somebody comes in looking for employment or where the management office is located?

A Which management office?

Q Any management office.

A Management offices are scattered out throughout the whole Bellagio.

Q Where are they located, sir? Where are they located?

A Specifically which offices?

Q Office where somebody is trying to obtain employment. Let's say trying to obtain employment.

A That's not on our property.

Q But there is other managers located in that place, right?

A What?

MR. FLINN: I'm going to object to relevance.

Q (BY THE DEFENDANT) Any management. Is there a management office located in the place?

A Sure. There is tons of management offices.

Q Okay, where? Where are they located at, sir?

A Which office? You need to be specific, sir.

THE COURT: Sir, apparently there are a number of management offices.

THE DEFENDANT: Let me rephrase the question.

Q Are there any management offices, through the employees only door, when you walk through the employees office?

A Yes.

Q Okay, that's what I'm asking.

THE COURT: Okay.

Q (BY THE DEFENDANT) So if a person was seeking employment and didn't know he wasn't supposed to go in back there to turn it in to ask for employment --

MR. FLINN: Objection. He's testifying here.

THE COURT: Sir, he stated that the employment offices aren't on the property. They are apparently at a different place.

THE WITNESS: Yes, sir. They are out on

Grier Road. That's where you have to apply for a job.

THE COURT: Where is that?

THE WITNESS: Grier Road.

THE COURT: I'm not sure where that is.

THE WITNESS: Over by the airport.

THE COURT: Oh, oh, okay.

THE DEFENDANT: Your Honor, if a person doesn't live in the city or town, he doesn't know.

MR. FLINN: Objection, argument.

THE COURT: Okay, it's argument.

THE DEFENDANT: I rest then.

THE COURT: Sir, do you have any other questions?

THE DEFENDANT: No, sir.

THE COURT: Okay, sir, thank you for testifying here today. You are free to stick around to find out what happens. You are free to take off.

Did you sign his subpoena?

MR. FLINN: Yeah, I did.

THE DEFENDANT: Thank you.

THE COURT: Okay.

All right, any other witnesses?

MR. FLINN: Yes, one, your Honor.

Detective Clark.

THE COURT: I'm sorry, I need to take a

recess.

(Off the record discussion not reported.)

(Off the record at 12:25 P.M. and back on the record at 12:27 P.M.)

THE COURT: Let's go back on the record. The Court took a short recess and we are back on the record.

Is this the last witness?

MR. FLINN: Yes, your Honor.

THE COURT: Let's get him sworn in.

DETECTIVE JEFF CLARK,

having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified and said as follows:

THE CLERK: Please have a seat.

State your first and last name and spell both for the record.

THE WITNESS: Detective Jeff, J-E-F-F, Clark, C-L-A-R-K.

THE COURT: State, go ahead.

MR. FLINN: Thank you, your Honor.

Just before we begin, I'm not sure it's entirely clear, for the record, I'd move to admit State's Proposed Exhibits 1 and 2.

THE COURT: You did.

MR. FLINN: Are those admitted?

THE COURT: Uh-huh.

I can't say uh-huh, so yes.

THE REPORTER: That's my fault. I didn't hear the magic words earlier.

DIRECT EXAMINATION

BY MR. FLINN:

Q Where are you employed?

A I work for the Las Vegas Metropolitan Police Department. I'm currently assigned, as a detective, at the Convention Center Area of Command Patrol Investigation Center.

Q Dating back to September 17th and thereafter of this year, were you assigned -- were you working in that capacity?

A Yes, sir, I was.

Q And did you have occasion to investigate several incidents that occurred on September 17th at the Bellagio, one of which involving a theft of a backpack and

the second involving the possible attempted theft of an iPad?

A Yes, sir.

Q And did you, during the course of that investigation, did you make contact with Bellagio security investigators?

A Yes, sir.

Q And did you obtain surveillance video from those investigations?

A Yes, sir, I did.

Q Did you watch the video that they provided to you showing you those two incidents, one involving the backpack on September 17th and the other one involving the iPad on September 17th?

A Yes, sir, I did.

Q And did you view the individual involved in both circumstances?

A Yes, sir, I did.

Q And did you recognize that individual?

A Yes, sir.

Q How so?

A I have two previous cases involving Mr. Edwards -- well, as I know -- who I know as Mr. Edwards, yes.

Q And do you recognize that person and

whether that person is present in the courtroom today?

A Yes.

Q Could you identify him for the Court, please?

A He's in the jail blues sitting at the other table, sir.

MR. FLINN: Will the record reflect he identified the defendant?

THE COURT: It will.

MR. FLINN: No further questions, your Honor.

THE COURT: Sir, do you have any questions?

THE DEFENDANT: Yeah, I have a question for him.

CROSS-EXAMINATION

BY THE DEFENDANT:

Q I would like to know where you know Mr. Edwards from?

Where was the first place you've ever seen Mr. Edwards at, sir?

You being so certain on these videos you are seeing Mr. Edwards, I want to know where the first place you knew Mr. Edwards, to identify him as on the

video, where you know him?

A You want to know the first place I knew you from, sir?

Q Where do you know Mr. Edwards from to be able to identify him on some videos that you have been saying and alleging crimes took place?

A As I said earlier, I work for the Las Vegas Metropolitan Police Department. I'm assigned, as a detective, to the Patrol Investigations Division.

One of my partners, Detective Burgundy (phonetic) and Detective Polson (phonetic) had previously come into contact with you. I had sent out fliers to other detectives, as well as to the hotels trying to identify Mr. Edwards on one previous case.

Detectives Burgundy and Polson positively identified Mr. Edwards, who also goes by 44 other names, so if it's his true name, I'm not sure to say definitely, but is the person as I know Mr. Edwards. That's why I identified him.

I have, on two previous videos, I watched at length to try to identify him. The MO in each of these events is the exact same.

Q I didn't ask you all this, sir.

A You asked me how I identified you, sir.

THE COURT: You did. You asked him how,

as a question, how he knows you.

THE DEFENDANT: I didn't ask him to go into all the conversations. I asked --

THE COURT: He is trying to explain it.

THE DEFENDANT: Okay, I'm going to leave that question alone, your Honor.

THE COURT: You asked him.

MR. FLINN: He gets to complete his answer, sir.

THE COURT: Sir, if you ask questions, he is allowed to answer.

THE DEFENDANT: Go ahead, go ahead.

THE COURT: If you ask the question, he is allowed to answer it.

THE DEFENDANT: That's a simple answer. That's a book. He's got a whole --

THE COURT: Sometimes you open the door, but once you open the door, you can't close it.

THE DEFENDANT: Your Honor, I didn't think, your Honor, sitting there would allow somebody going on like that.

THE COURT: He is allowed to put on the record how he knows you.

THE DEFENDANT: Okay.

THE COURT: So you are allowed to answer

it.

THE WITNESS: Yes, sir.

Like I said, there is two previous cases involving hotel thefts and burglaries in which the suspect, again, Mr. Edwards, enters employee only areas.

THE DEFENDANT: I object, your Honor. I object, your Honor.

THE COURT: We will let you object, but he's allowed to answer.

THE DEFENDANT: Okay.

THE WITNESS: The same MO, your Honor, where he goes back in the back employees only area.

THE DEFENDANT: I object, your Honor.

THE WITNESS: He goes in the back rooms.

THE COURT: We will allow your objection.

THE DEFENDANT: Locker rooms, things such as that to steal employee belongings while they are so employed.

THE COURT: Okay.

Did you have any other questions for him?

THE DEFENDANT: No, I don't got nothing for him, no.

THE COURT: Do you have any redirect?

MR. FLINN: No, your Honor.

THE COURT: Okay, detective, thank you for

testifying here.

THE DEFENDANT: Oh, yeah, one more question for him that I want to put on the record.

Q Did you ever see Mr. Edwards take anything?

A Yes, sir, I did.

Q When did you see Mr. Edwards --

A On the video, you entered --

Q Did you see personally, not on the video, did you ever see Mr. Edwards take something? Not something you narrate yourself Mr. Edwards doing that you make up in your mind.

MR. FLINN: Objection, argumentative.

THE COURT: It is argumentative.

Q (BY THE DEFENDANT) Did you personally see him take anything? Did you see him personally?

A Your Honor, I was not in the Bellagio.

THE DEFENDANT: I'm asking straight questions, a yes or no question.

THE WITNESS: You have a good day, your Honor.

THE COURT: He said no. He said no.

THE DEFENDANT: Okay.

THE COURT: Thank you.

Okay, does the State rest at this point?

MR. FLINN: Yes, your Honor.
THE COURT: Okay, the State has rested.
THE DEFENDANT: I want to testify. I want to make a statement. I want to testify.
THE COURT: Sir, you understand this is a prelim, not a trial.
THE DEFENDANT: I know. I want to get some things on the record. So I'd appreciate it if I can say --
THE COURT: You know if you testify today, they are going to have a chance to ask you questions.
THE DEFENDANT: Yeah, I want them to, I want them to. I want to tell you my story on the record.
THE COURT: It doesn't matter to me. This is a prelim. The standard is slight or marginal evidence.
THE DEFENDANT: Yes.
THE COURT: So I mean I'm not a jury.
THE DEFENDANT: Yeah.
THE COURT: I don't find you guilty, I don't find you innocent here today.
THE DEFENDANT: I still want to get what I'm going to say, what I'm going to say what I was doing on record.
THE COURT: Sir, you understand if you testify today, you can't complain on appeal, if you appeal

my decision, you can't complain on appeal that you testified today?

So if you think there were any errors in what I do, you have the right to appeal it to the District Court, but if you decide to testify and you make statements that you don't really want in, if you make the mistake of testifying here today, you can't complain on appeal that you chose to testify here today. You don't have to say anything here today.

THE DEFENDANT: I know what preponderance -- I know they have the burden of proving the case, your Honor. I just want to make for the record, you know, I want to make a statement for the record why some things occurred. I want it to be on the record so when I go upstairs, it is on the record.

THE COURT: Sir, if you are going to testify about intent, intent is not an issue for me. Intent is always an issue for a jury.

So if you are going to talk about the intent in walking into the Bellagio, anything you say, it's not for me, it's simply for a jury. I don't determine intent. It is simply there is some evidence that you committed the crimes alleged.

THE DEFENDANT: Okay.

THE COURT: So any intent why you were

there that day, it's not for me. So if you want to testify --

THE DEFENDANT: Yes, I do.

I'm just going to go ahead and get this over, your Honor, because I already see where it's going.

THE COURT: Okay.

THE DEFENDANT: Go ahead, go ahead.

THE COURT: Okay.

All right, sir, do you have any arguments you want to make?

THE DEFENDANT: Yes, sir.

I want to say there's no proof that I took anything, your Honor. I never walked in -- the video played, you never see me walk out with anything that belongs to nobody in the video.

Also, your Honor, because I'm representing myself, I'm going to talk in the third person.

Mr. Edwards entered the place looking for employment. He was told you have to turn in the application in the back area. I'm not from here. My sister passed away. Mr. Edwards was visiting his sister. His sister passed away. He come in looking for employment, goes in the back with the intent to look for a job.

He goes in the back and now, all of a sudden, somebody is saying -- alleging that something is

missing, you know, and you don't see Mr. Edwards ever with this property. He leaves the property. He leaves the property with the game room or wherever it is, the arcade with nothing in his hand.

Nobody, the lady didn't come in and tell you she witnessed it. She never seen nothing took, nothing. He told -- the detective said he never seen me, he didn't see nothing. The other guy right there told you -- right there, my man, the other guy right there said he never seen me take something.

So I don't know why I'm being held. No evidence was ever taken from me when I was arrested, nothing belonging to the lady. The bag was lost and one of the guys, according to the paperwork, one of the guys returned the lost property to her.

I didn't go in there with no intent to do anything but to play games and look for a job. So I don't know where this guy, he made some cases up because he might be mad about something. He made up a whole lot of cases, you know what I'm saying, so that's on him.

THE COURT: Okay.

THE DEFENDANT: With that, I rest.

THE COURT: All right.

State, any argument?

MR. FLINN: Just briefly, your Honor.

I think the State has met its burden of slight or marginal evidence. The defendant entered the casino property, he proceeded to go into obviously an employee only area, avoided contact by being on the phone in the hallway.

THE DEFENDANT: I object, your Honor. I object to him saying --

THE COURT: Sir, it's already admitted. Just like you have the right to have a chance to argue, he is having a chance to argue.

MR. FLINN: He entered the employees only area, appeared to be on his phone until such time as employees would go by, then he would go in, scout the employee locker room area. He eventually went in there when no employees were around, took the backpack, left that room with the backpack.

The fact he didn't leave the casino with property, without the backpack is of no matter. He clearly went through it. He just didn't find anything valuable.

THE DEFENDANT: I object, your Honor. I object to that too.

THE COURT: Sir, it's argument.

MR. FLINN: He took that.

A very short time later, he is then seen approaching the slot machine shortly after what appears to

be two elderly ladies that did not appear to be with the defendant or have any contact with them, he sits down where the iPad is, starts looking around very nervously, he starts to drift to the iPad. It just so happens an employee sees it there, picks it up, turns it in.

He follows them, tries to claim it is his. He obviously doesn't know the pass code to the iPad, so they won't give it to him. One of the elderly ladies comes back later and identifies her iPad. He obviously tried to remove that during his course of time there.

So the State, as to its count of burglary, the State has proven, by slight or marginal evidence, that the defendant's intent, when he entered the property, was to commit a larceny therein, as demonstrated by his course and conduct while he was on the property.

THE COURT: All right.

Mr. Edwards, please stand.

Please stand, sir.

Sir, this is not a trial. I don't determine guilt or innocence, only whether there is some evidence to support the charges against you.

The Court finds that that burden has been met by the State, as to Count 1, burglary. We will hold Count 2. We have bifurcated that.

So we will hold you to answer Count 1,

burglary. We will hold you to answer that count in the Eighth Judicial District Court, State of Nevada, County of Clark on the following date and time.

THE CLERK: November 13, 10 A.M., District Court Lower Level Arraignment.

THE COURT: What day is that?

THE CLERK: Friday.

THE COURT: That's Friday.

Sir, you are going to have certain rights that accrue because I bound you up. You are going to have the right to file an appeal, basically, what is known as a Writ. You have got to get a copy of the transcript.

THE DEFENDANT: I got one right here.

THE COURT: No, no, what happened here today.

THE DEFENDANT: Oh, okay.

THE COURT: You have to get a copy of the transcript. What I'm going to do is order an expedited transcript so he has it on Friday.

So, Patsy, if you can do an expedited copy of the transcript, do an Order because he is not going to be able to do the Order, then we will get a copy of that for him on Friday. So it will come with the transcript on Friday when they see you downstairs in the District Court, okay?

THE DEFENDANT: All right. Thank you, thank you.

THE COURT: All right.

(Off the record discussion not reported.)

THE COURT: For the petty larceny, do you want to go out about six months? Four months, six months?

MR. FLINN: Six months is fine.

THE COURT: Okay, we will go out on the petty larceny. We will go out about six months because you have multiple felony cases in the system. Those will probably get wrapped up first, okay.

THE CLERK: May 10, 7:30.

(Off the record discussion not reported.)

THE DEFENDANT: You said I'm going to receive a copy of the transcript down in District Court?

THE COURT: Yeah, we will try to get that down to you, okay.

Thank you.

(Off the record at 12:40 P.M.)

* * * * * *

ATTEST: FULL, TRUE, ACCURATE AND CERTIFIED TRANSCRIPT OF PROCEEDINGS.

/s/ Patsy K. Smith
PATSY K. SMITH, C.C.R. #190

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EXHIBIT D

DECLARATION OF ARREST

Event #: 150923-2005
I.D. #: 7024721

True Name: EDWARDS, HAROLD Date of Arrest: 10/07/2015 Time of Arrest: 0900

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:
Other Charges

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with the Las Vegas Metropolitan Police Department, Clark County, Nevada, being so employed for a period of 6 years.

That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or was committing) the offense(s) of BURGLARY - NRS 205.060.2, PETIT LARCENY - NRS 205.240 (2 counts) at the location of 3600 S. Las Vegas Blvd. Las Vegas, Nevada 89109, and that the offense(s) occurred at approximately 1357 hours on the 17th day of September, 2015, in the:

[X] County of Clark [ ] City of Las Vegas

DETAILS FOR PROBABLE CAUSE:

On 09/23/2015, I, Det. J. Clark, P# 13952, was notified by Bellagio Security Investigations that a burglary had occurred from the employee area of Cafe Gelato, located in the Bellagio Hotel and Casino, 3600 S. Las Vegas Blvd. Las Vegas, NV 89109, on 09/17/2015. The suspect in surveillance video appeared to be the same suspect in two prior burglaries from back of the house areas at two other major Strip casinos. (LVMPD Event numbers 150828-2668 and 150919-1961). The suspect in the surveillance video had been compared to and informational flyer sent to all casinos in an attempt to locate the suspect.

Upon arrival, I contacted Scott Reekie with Security Investigations, who allowed me to review surveillance footage of the suspect. I recognized the suspect to be Harold Edwards, ID# 7024721. Edwards entered the back hallways of the Bellagio through a door in the Arcade area. The door is clearly marked that the area is not a public area and that access is restricted. Edwards can be seen walking back and forth through the hallway. Each time a casino employee enters into view, Edwards can be seen turning his back to the employee and acting as if he is in deep conversation on the cell phone. After loitering in the hallway for several minutes, and once Edwards feels that he will not be seen by passing employees, Edwards can be seen entering the back door of Cafe Gelato. Moments later, Edwards emerges from the doorway carrying the victims backpack, then re-enters the back door of the arcade. When Edwards emerges from the shadows, he is no longer in possession of the backpack. (The backpack was later located just inside the back door of the arcade.)

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

Declarant must sign all page(s) with an original signature.

J. CLARK
Print Declarant's Name

Declarant's Signature 13952 *P#*

LVMPD 22A (Rev. 7/12) WORD 2010 (1) ORIGINAL - COURT

I also was shown surveillance video from the casino floor. Approximately fifteen minutes after Edwards leaves the arcade area, he can be seen walking around the casino. In the beginning of the video, Edwards can be seen without anything in his hands. He then walks out of camera view. When he returns, he is holding an Apple iPad. Edwards sits at a slot machine, opens the cover of the iPad and can be seen swiping his finger across the screen. Edwards is nervously looking around, then places the iPad on the shelf in front of the slot machine. Edwards gets up and walks away from the iPad and the machine. Edwards is gone for several moments. In the time Edwards is gone, one of the cleaners locates the iPad and turns it in to Security.

Edwards notices the iPad is missing, then approaches Security Officer Arvin Viacrusis in an attempt to retrieve the iPad. Viacrusis completed a voluntary statement in which he stated that a black male attempted to retrieve the iPad, claiming it belonged to a friend. Viacrusis advised the male that the owner would have to retrieve the iPad. The male stated he would go to get the friend but never returned. Viacrusis described the male to be 5'6" with a medium build, approximately 40-45 years old, having short hair and a mustache. Last seen wearing white shirt, blue jeans, and glasses.

The true owner, an unknown female, whose ownership was confirmed by personal papers located inside the iPad case, retrieved the iPad a short time later. She stated that she had the iPad within a zippered bag, which hung from her chair while she gambled. She never saw the person who removed the iPad from her bag. After retrieving her iPad, the patron did not fill out a voluntary statement with regards to the theft of her iPad.

I then interviewed Joanna Jimenez, who also filled out a voluntary statement. Jimenez is an employee of the Café Gelato, a coffee shop located within the Bellagio. Jimenez stated that she last saw her bag, which was located within a locked locker, on 09/17/2015, at approximately 1250 hours. When Jimenez returned to her locker at approximately 1400 hours, her bag was missing. Jimenez immediately notified her supervisor and Bellagio Security. Jimenez stated that although the lockers are locked, they can still be opened with ease by simply shaking the lock and locking mechanism or by striking the locker. Jimenez did not see Edwards enter her place of business nor did she see Edwards take her bag. Jimenez stated that Security located her bag and returned it to her.

Due to the fact that on 09/17/2015, Harold Edwards did enter the Bellagio Hotel and Casino with the intent to commit a larceny, Edwards entered employee only areas of both the Bellagio and Café Gelato, located within the Bellagio, with the intent to commit a larceny, Harold Edwards, ID# 7024721, was arrested for BURGLARY - NRS 205.060.2.

Due to the fact that on 09/17/2015, at approximately 1357 hours, Harold Edwards, ID# 7024721, did enter the back hallway of Café Gelato, then emerged moments later carrying the back pack, valued at $25 containing approximately $70

Declarant must sign all page(s) with an original signature.

J. CLARK
Print Declarant's Name

Declarant's Signature *P#*

Event #: 150923-2005

ID#: 7024721

worth of cosmetics he had stolen from the locker of Joanna Jimenez with the intent to deprive Jimenez permanently thereof, Harold Edwards, ID# 7024721 was arrested for PETIT LARCENY- NRS 205.240.

Declarant must sign all page(s) with an original signature.

J. CLARK

Print Declarant's Name

Declarant's Signature

13952

P#

EXHIBIT E

NOTC
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Attorney for Plaintiff

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
-vs-
HAROLD EDWARDS, #7024721
Defendant.

Case No. C-15-310442-1
Dept No. XVII

NOTICE OF MOTION AND MOTION TO CONSOLIDATE OR IN THE ALTERNATIVE, MOTION IN LIMINE FOR THE ADMISSION OF OTHER BAD ACTS

DATE OF HEARING: January ~~12~~ 14, 2016

TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by STEVE WOLFSON, District Attorney, through CHAD LEXIS, Deputy District Attorney, and files this Notice of Motion and Motion to Consolidate or in the Alternative, Motion in Limine for the Admission of Other Bad Acts.

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

///

///

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NOTICE OF HEARING

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing motion on for setting before the above entitled Court, in Department XVII thereof, on Tuesday, the ~~12th~~ 14th day of January, 2016, at the hour of 8:30 am, or as soon thereafter as counsel may be heard.

DATED this 14th day of December, 2015.

STEVE WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY _____
CHAD LEXIS
Deputy District Attorney
Nevada Bar #10391

STATEMENT OF FACTS

C310442

This incident occurred on August 26, 2015 at the Rockhouse located inside the Venetian Hotel and Casino. It was originally charged as a Burglary and Grand Larceny. At the Preliminary Hearing, the State added two counts of Obtaining/Possession of Credit/Debit Card without Cardholder Consent.

Rockhouse Custodian of Records Sulek Managic (hereinafter "Sulek") testified at the Preliminary Hearing and played the video that was provided to the police of the Defendant inside the Rockhouse. Preliminary Hearing Transcript (hereinafter "PHT") p. 4-5. The video clearly shows the Defendant in restricted access areas inside the Rockhouse where personal items are kept. PHT p. 8. Though it does not show the Defendant actually taking the items due to the positioning of the camera, it does show the Defendant right next to where the victim says her purse was and him going through something and putting something into his pocket. PHT p. 8-13. Sulek also stated that the Defendant is not an employee of the Rockhouse. PHT p. 15.

Venetian Custodian of Records Chris Caton (hereinafter "Chris") also testified and played the video that belongs to the Venetian. PHT p. 23-25. It also shows the Defendant

opening doors that are restricted access only. PHT p. 26-33. At one point, it shows him going from a Venetian restricted access area to where the Rockhouse video shows him entering another restricted access area. PHT p. 32. Chris also testified that the Defendant has never been a guest of the hotel, a player, or an employee. PHT p. 34.

The victim, Whitnee Tyson (hereinafter "Whitnee") is a cocktail server for the Rockhouse and stated that the person on the surveillance was at the exact location where she kept her purse. PHT p. 38-40. She said the items taken of value was a wallet, cash, as well as three credit cards of which the total value exceeded $650. PHT p. 41. She was positive that two of them were in her name. PHT p. 41.

Det. Jeffery Clark positively identified the person on the video as the Defendant. PHT p. 47-48. He also stated that when he presented the individual photos to the Defendant, the Defendant said "that wasn't shit until you show I'm doing shit, you don't have shit." PHT p. 48.

C310166

This incident took place on September 19, 2015 at the Claude Baruk Salon which is located inside the Wynn. The three victims, Christina Simons, Viviana Massis, and Sarah Caughell, all work at the Salon. This case was originally charged as a Burglary and three counts of Grand Larceny. At the Preliminary Hearing, the State added four counts of Obtaining/Possession of Credit/Debit Card without Cardholder Consent.

According to Claude Baruk Salon employee Christina Simons (hereinafter "Christina"), she entered the storage/laundry room of the Claude Baruk Salon which is an employee only area and saw the Defendant. Preliminary Hearing Transcript (hereinafter "PHT") p. 49-50. The Defendant appeared to be talking on the phone, then yelled at Christina, stating that Christina had interrupted his telephone conversation. PHT p. 50-51. Christina stated that she later realized that her iPhone 6 and wallet had been stolen which included credit cards, ID and cash of which the total value exceeded $650. PHT p. 53-54.

According to Claude Baruk Salon employee Vivana Massis (hereinafter "Vivana"), she was assisting one of the stylists in the salon when she saw Christina come from the back

hallway visibly upset. PHT p. 62-63. Christina approached Vivana to alert her that something was wrong due to a man being in in back laundry/storage room area. PHT p. 63. Vivana accompanied Christina to the back and when Christina opened the door, she saw the Defendant in the back laundry/storage room. PHT p. 63-64. Vivana also reported that her iPhone 6 and two small wallets had been taken which included her driver license, gift cards and cash of which the total value exceeded $650. PHT p. 65-67.

According to Sarah Caughell (hereinafter "Sarah"), she was notified by other employees that there had been a man in the storage/laundry room. PHT p. 73. Sarah went to the room to check her purse and found that her iPhone and wallet were stolen of which included cash, social security card, credit cards and her driver license of which the total value exceeded $650. PHT p. 74.

Head of Security for the Wynn, Anthony Scinta, says that the Defendant was never an employee or guest of the Wynn. PHT p. 37-38. Security Control Center Manager Neal Gekeler (hereinafter "Neal") was able to capture footage on the Wynn's surveillance systems of the Defendant on the day in question. PHT p. 21-22. The surveillance of this incident clearly demonstrates the Defendant walking around both the common area of the Salon and the restricted access areas with no goal other than to wander back into places he does not belong in order to engage in criminal activity. PHT p. 25-32. Neal was able to identify the Defendant as being as same person seen on the video. PHT p. 34.

Det. Jeffrey Clark arrived at the Wynn to investigate this incident. PHT p. 40-41. Upon looking at the surveillance, Det. Clark immediately recognized the suspect as the Defendant. PHT p. 41.

POINTS AND AUTHORITIES

In the interests of judicial economy, and there being no reason not to do so, these two cases should be consolidated.

NRS 174.155 provides:

///

///

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

In considering whether to allow consolidation, the courts have looked that the conflicting policies of judicial economy and efficiency of judicial administration, controlling court calendars in avoidance of multiple trials, and any resulting prejudice to a defendant which may arise from consolidation. See United States v. Fancher, 195 F. Supp. 634 (D. Conn.), affirmed, 319 F.2d 604 (4th Cir. 1963).

In this case, consolidation is completely warranted. These two cases happened within one month of one another and involve the same modus operandi. The Defendant targeted large hotel/casinos, one being the Wynn and the other being the Venetian. He entered these casinos with the clear intent to seek out secured areas where employees keep their belongings. Surveillance video of both cases demonstrate a common plan and/or scheme of roaming the secured access hallways for absolutely no reason other than find personal belongings of employees. Upon finding personal belongings of employees and stealing items, he would then leave the secured access areas as soon as possible in order to exit the building.

It is the State's position that all of the charged crimes should be joined together as they comprise the complete story of the Defendant's criminal activity and are connected together by a continuing course of conduct based upon Defendant's ongoing common scheme or plan.

NRS 173.115 provides:

> Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are:
>
> 1. Based on the same act or transactions, or
> 2. Based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

It is important to note that both NRS 174.155 and NRS 173.115 use the words "may order." By use of the word "may," it is obvious that the legislature had intended to give the Court broad discretion in applying the statute. Citing NRS 174.155, the Court in Lovell v.

State, 92 Nev. 128, 546 P.2d 1301 (1976), held that "joinder is within the discretion of the trial court and its actions will not be reversed absent an abuse of discretion." Where no prejudice will result from joinder of two Informations, no abuse of discretion is committed by a court who orders such a joinder. Moeller v. United States, 378 F.2d 14 (5th Cir. 1967).

The Nevada Statutes cited are identical to the Federal Rules of Criminal Procedure. NRS 174.155 is the same as Federal Rule 13, and NRS 173.115 is the same as Federal Rule 8(b). In considering whether to allow consolidation, the courts have looked at the conflicting policies of judicial economy and efficiency of judicial administration, looking to control court calendars in avoidance of multiple trials, and any resulting prejudice to a defendant which might arise from being prosecuted at trial by presentation of evidence of other crimes flowing from a common scheme or plan. Cantano v. United States, 176 F.2d 820, (4th Cir., 1948); United States v. Fencher, 195 F. Supp. 634 (D. Conn.); affirmed; 319 F.2d 604 (4th Cir., 1963).

In looking at the facts of the two cases it is abundantly clear that the Defendant's charges arise from a continuing course of conduct that began with the Defendant entering both the Wynn and the Venetian with the clear intent to seek out secured areas where employees keep their belongings. Surveillance video of both cases demonstrate a common plan and/or scheme of roaming the secured access hallways for absolutely no reason other than find personal belongings of employees. Upon finding personal belongings of employees and stealing items, he would then leave the secured access areas as soon as possible in order to exit the building. As such, the joinder of all offenses is appropriate under NRS 173.115.

The State would also point out that all of the evidence in the instant case is admissible under the theory of *res gestae*. Even when the State is charging just one criminal act when a series of interrelated crimes have occurred, the other criminal acts will be admissible when they complete the story of the crime charged. Allan v. State, 92 Nev. 318, 549 P.2d 1402 (1976). The Nevada Supreme Court reached this holding in Allan, *supra.*, because the other criminal acts proved the immediate context of happenings near in time and place to the crime charged and therefore complete the story of the crime charged.

Likewise, in his treatise on evidence, Professor John Strong notes that among the "permissible purposes" for allowing evidence of other crimes is "complet[ing] the story of the crime on trial by placing it in the context of nearby and nearly contemporaneous happenings." John W. Strong, ed., McCormick on Evidence, § 190 (4th ed. 1992) ("McCormick on Evidence"). The evidence of other crimes is part of the *res gestae* of the crime, and is admissible when it is necessary to a "coherent and intelligible description of the offense at bar." McCormick on Evidence, § 190 (*citing* Connecticut v. Brown, 505 A.2d 1225, 1229-1230 (Conn. 1986).

If this Court is not inclined to allow for consolidation, the State alternatively asks this Court to allow for the admission of evidence from the second case at trial. As this Court is well aware, NRS 48.045(2) provides:

> Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Once the court rules that such evidence is probative of one of the permissible issues under NRS 48.045(2), the court must decide whether the probative value of the evidence is substantially outweighed by its prejudicial effect. Significantly, courts have explained that evidence is not "prejudicial" simply because it is incriminating. For instance, in United States v. Harrison, 679 F.2d 942 (D.C.Cir. 1982), the prosecution presented evidence that the defendant had been engaged in past drug dealing over a period of time to show motive, intent, preparation, and absence of mistake on his current drug charges. The court held that allowing the extrinsic evidence was permissible explaining:

> ... There is nothing "unfair" in admitting direct evidence of the defendant's past acts by an eyewitness thereto that constituted substantive proof of the relevant intent alleged in the indictment. The intent with which a person commits an act on a given occasion can many times be best proven by testimony or evidence of his acts over a period of time prior thereto . . .

Id. at 948.

Nevada law makes it clear that evidence of other crimes, wrongs or bad acts may not be used as proof of a defendant's character. (NRS 48.045 (2)). NRS 48.045 (2) adds, however, that such evidence may "be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." This sentiment has been consistently upheld in Nevada courts, see Jones v. State, 85 Nev. 4, 5 (1969); Kimberly v. State, 104 Nev. 336, 337 (1988); Margetts v. State, 107 Nev. 616, 619 (1991), as well as in federal courts, when interpreting the identical Federal Rule of Evidence 404. *See, e.g.*, U.S. v. Hampton, 457 F.2d 299, 302 (7th Cir. 1972); Phillips v. U.S. I.R.S., 73 F.3d 939 (9th Cir. 1996); Coursen v. A.H. Robbins Co., Inc., 764 F.2d 1329 (9th Cir. 1985). "[Rule 404] is an inclusionary rule, which permits the introduction of all relevant acts except those that prove only character." Kopf v. Skyrm, 993 F.2d 374, 380 (4th Cir. 1993). The State wishes to admit the evidence because it exposes the Defendant's behavior in a manner that shows he had a common plan or scheme as well as the requisite knowledge, motive and intent to be found guilty of the charged offenses, and that he was not merely guilty of being in the wrong place at the wrong time.

There is a long line of consistent case history allowing such evidence to be admitted for the purpose of showing guilty knowledge, intent, and absence of mistake. In U.S. v. Dasilva, 725 F.2d 828 (2nd Cir. 1983), where the defendant denied knowing that gifts he was paid to deliver were stuffed with narcotics, evidence that he had successfully made other deliveries of similar packages for the same individual were admissible to show knowledge. In U.S. v. Hogan, 486 F.2d 222 (4th Cir. 1973), in a prosecution for distribution of heroin, evidence of prior transactions were admissible to show guilty knowledge. Evidence tending to prove knowledge was also allowed in Sears v. U.S., 490 F.2d 150 (8th Cir. 1974), where prior participation in bootlegging alcohol was admissible in prosecution for the sale of moonshine whisky. In United States v. Haxelett, 32 F3d 1313 (8th Cir. 1994), evidence of previous arrest for possession of crack cocaine was admissible to show knowledge and intent to distribute. In fact, despite the fact that the conviction was reversed in Haxelett, evidence of the arrest was deemed admissible in a subsequent trial. Similarly, in United States v. Ramirez-

Calderone, 810 F.Supp. 136 (MD Pa. 1992), the court held that evidence of a defendant's prior drug dealings was admissible under Rule 404(b) for purpose of showing previous relationship with a co-conspirator, background, familiarity with drug transactions, scheme, knowledge and intent. The court in Ramirez- Calderone further held that "admissibility for additional purposes including essential background information . . . has been recognized and approved by our Court of Appeals." Id. at 138 (*citing* U.S. v. Scarfo, 850 F.2d 1015, 1019 (3rd Cir.1988)).

Here, fairness, judicial economy, efficiency and administration all require that these cases be consolidated. Separate trials would be waste of resources. Accordingly, the State respectfully requests that the two cases be consolidated and set for trial forthwith.

CONCLUSION

It is clear that there are numerous reasons to grant the Motion to Consolidate. If the Court is not inclined to allow consolidation of the two incidents into one trial as provided for in NRS 173.115 and 174.155, then admission of the related crimes should be introduced to the trial jury under the doctrine of *res gestae* under the provisions of NRS 48.045(2).

DATED this 14th day of December, 2015.

STEVE WOLFSON
Clark County District Attorney
Nevada Bar #002781

BY _____
CHAD LEXIS
Deputy District Attorney
Nevada Bar #10391

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of NOTICE OF MOTION AND MOTION TO CONSOLIDATE OR IN THE ALTERNATIVE, MOTION IN LIMINE FOR THE ADMISSION OF OTHER BAD ACTS, was made this 14th day of December, 2015, by Electronic Filing to:

JESSICA MURPHY, Deputy Public Defender
murphyjw@clarkcountynv.gov

C. Jimenez
Secretary for the District Attorney's Office

CL/cmj/L3

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08/16/2016 07:59:19 AM

CLERK OF THE COURT

OPPS
STEVE WOLFSON
Clark County District Attorney
Nevada Bar #001565
CHAD LEXIS
Deputy District Attorney
Nevada Bar #010391
200 Lewis Avenue
Las Vegas, Nevada 89155-2211
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- HAROLD EDWARDS, #7024721 Defendant.	Case No. Dept No.	C-15-310166-1 XXIII

OPPOSITION TO DEFENDANT'S MOTION TO CONSOLIDATE

COMES NOW, the State of Nevada, by STEVE WOLFSON, District Attorney, through CHAD LEXIS, Deputy District Attorney, and files this Opposition to Defendant's Motion to Consolidate.

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

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STATEMENT OF FACTS

C-15-310166-1

On August 26, 2015 at the Rockhouse located inside the Venetian Hotel and Casino. It was originally charged as a Burglary and Grand Larceny. At the Preliminary Hearing, the State added two counts of Obtaining/Possession of Credit/Debit Card without Cardholder Consent.

Rockhouse Custodian of Records Sulek Managic (hereinafter "Sulek") testified at the Preliminary Hearing and played the video that was provided to the police of the Defendant inside the Rockhouse. The video clearly shows the Defendant in restricted access areas inside the Rockhouse where personal items are kept. Though it does not show the Defendant actually taking the items due to the positioning of the camera, it does show the Defendant right next to where the victim says her purse was and him going through something and putting something into his pocket. Sulek also stated that the Defendant is not an employee of the Rockhouse.

Venetian Custodian of Records Chris Caton (hereinafter "Chris") also testified and played the video that belongs to the Venetian. It also shows the Defendant opening doors that are restricted access only. At one point, it shows him going from a Venetian restricted access area to where the Rockhouse video shows him entering another restricted access area. Chris also testified that the Defendant has never been a guest of the hotel, a player, or an employee.

The victim, Whitnee Tyson (hereinafter "Whitnee") is a cocktail server for the Rockhouse and stated that the person on the surveillance was at the exact location where she kept her purse. She said the items taken of value was a wallet, cash, as well as three credit cards of which the total value exceeded $650. She was positive that two of them were in her name.

Det. Jeffery Clark positively identified the person on the video as the Defendant. He also stated that when he presented the individual photos to the Defendant, the Defendant said "that wasn't shit until you show I'm doing shit, you don't have shit."

On September 19, 2015 at the Claude Baruk Salon which is located inside the Wynn. The three victims, Christina Simons, Viviana Massis, and Sarah Caughell, all work at the Salon. This case was originally charged as a Burglary and three counts of Grand Larceny. At

the Preliminary Hearing, the State added four counts of Obtaining/Possession of Credit/Debit Card without Cardholder Consent.

According to Claude Baruk Salon employee Christina Simons (hereinafter "Christina"), she entered the storage/laundry room of the Claude Baruk Salon which is an employee only area and saw the Defendant. The Defendant appeared to be talking on the phone, then yelled at Christina, stating that Christina had interrupted his telephone conversation. Christina stated that she later realized that her iPhone 6 and wallet had been stolen which included credit cards, ID and cash of which the total value exceeded $650.

According to Claude Baruk Salon employee Vivana Massis (hereinafter "Vivana"), she was assisting one of the stylists in the salon when she saw Christina come from the back hallway visibly upset. Christina approached Vivana to alert her that something was wrong due to a man being in in back laundry/storage room area. Vivana accompanied Christina to the back and when Christina opened the door, she saw the Defendant in the back laundry/storage room. Vivana also reported that her iPhone 6 and two small wallets had been taken which included her driver license, gift cards and cash of which the total value exceeded $650.

According to Sarah Caughell (hereinafter "Sarah"), she was notified by other employees that there had been a man in the storage/laundry room. Sarah went to the room to check her purse and found that her iPhone and wallet were stolen of which included cash, social security card, credit cards and her driver license of which the total value exceeded $650.

Head of Security for the Wynn, Anthony Scinta, says that the Defendant was never an employee or guest of the Wynn. Security Control Center Manager Neal Gekeler (hereinafter "Neal") was able to capture footage on the Wynn's surveillance systems of the Defendant on the day in question. The surveillance of this incident clearly demonstrates the Defendant walking around both the common area of the Salon and the restricted access areas with no goal other than to wander back into places he does not belong in order to engage in criminal activity. Neal was able to identify the Defendant as being as same person seen on the video.

Det. Jeffrey Clark arrived at the Wynn to investigate this incident. Upon looking at the surveillance, Det. Clark immediately recognized the suspect as the Defendant.

C-15-310695-1

On September 23, 2015, the Defendant entered the Bellagio and made his way to the Café Gelato. He was caught on surveillance entering back hallways of the Bellagio through a restricted access area. The Defendant later emerges from a doorway carrying a backpack before he then re-enters a back door of the arcade and emerges without the backpack. The victim identified as Joanna Jimenez states that her backpack was in a locked locker in a restricted access area and that nobody had permission to take it. Upon looking at the surveillance, Det. Clark recognized the suspect as the Defendant.

POINTS AND AUTHORITIES

NRS 174.155 provides:

> The court **may** order two or more indictments or informations to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.

This instant motion is the defense latest tactic to get these cases continued. In addition to this motion being filed right before calendar call on both cases, the defense has no good faith reason as to why these cases should be consolidate other than judge shopping.

The defense is essentially asking for the State, in order to promote judicial economy, be allowed to have more evidence of motive and intent against the defendant by consolidating these cases. There is no NV Supreme Court case nor does NRS 174.155 state that the defense is allowed to consolidate when they believe that one Judge *may* be willing to sentence the Defendant more stringently than the other.

It is within this court discretion to allow a consolidation. The State urges the Court to not allow the defense to engage in such last minute tactics of trying to 1) get the case continued and 2) shop judges. The State is ready to proceed in both cases and objects to any more continuances.

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CONCLUSION

The State respectfully requests that the Defense Motion to Consolidate be Denied.

DATED this 15th day of August, 2016.

STEVE WOLFSON
Clark County District Attorney
Nevada Bar #002781

BY /s/CHAD LEXIS
CHAD LEXIS
Deputy District Attorney
Nevada Bar #10391

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing, was made this 15th day of August, 2016, by Electronic Filing to:

JASMIN D. SPELLS, Deputy Public Defender
Lillyjd@clarkcountynv.gov

BY /s/ Rochelle Jackson
R. JACKSON
Secretary for the District Attorney's Office

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CLERK OF THE COURT

ORDR
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
TJ MCCUBBIN
Deputy Public Defender
Nevada Bar #13723
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, HAROLD EDWARDS, Defendant.	CASE NO. C-15-310695-1 DEPT. NO. VIII

ORDER PERMITTING ACCESS

Upon the ex parte application and representation of PHILIP J. KOHN, Clark County Public Defender, by and through TJ MCCUBBIN, Deputy Public Defender, that access, for the purpose of observation and photographic documentation, to certain areas in the BELLAGIO HOTEL AND CASINO including, but not limited to, the now-closed ARCADE, and EMPLOYEE BREAK ROOM nearest CAFÉ GELATO, is necessary for the defense of the above-captioned criminal case; that said access is relevant and material to a legitimate legal inquiry; and that the application was specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought.

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NOW THEREFORE and GOOD CAUSE APPEARNING, BELLAGIO HOTEL AND CASINO, shall permit access to the ARCADE and EMPLOYEE BREAK ROOM, and any other relevant room or enclosed area of the hotel or casino by (a) representative(s) of the PUBLIC DEFENDER'S OFFICE.

IT IS HEREBY ORDERED.

DATED this 18th day of August, 2016.

DISTRICT COURT JUDGE

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By
TJ MCCUBBIN, # 13723
Deputy Public Defender

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CLERK OF THE COURT

ORDR
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
TJ MCCUBBIN
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309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, HAROLD EDWARDS, Defendant.	CASE NO. C-15-310695-1 DEPT. NO. VIII

ORDER FOR IMMEDIATE RELEASE

Upon the ex parte application and representation of PHILIP J. KOHN, Clark County Public Defender, by and through TJ MCCUBBIN, Deputy Public Defender, that any and all written or recorded documentation possessed by BELLAGIO HOTEL AND CASINO pertaining to incidents charged in the above matter is necessary for the defense of the above-captioned criminal case; that said documentation is relevant and material to a legitimate legal inquiry; and that the application was specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought.

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NOW THEREFORE, GOOD CAUSE APPEARNING, BELLAGIO HOTEL AND CASINO, shall immediately release all written and recorded documentation pertaining to the incident in the above-captioned case to a representative of the PUBLIC DEFENDER'S OFFICE.

IT IS HEREBY ORDERED.

DATED this 18 day of August, 2016.

DISTRICT COURT JUDGE

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By
TJ MCCUBBIN, # 13723
Deputy Public Defender

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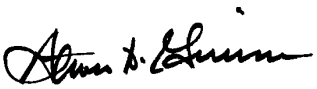

CLERK OF THE COURT

EXMT
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
TJ MCCUBBIN, Deputy Public Defender
NEVADA BAR NO. 13723
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, HAROLD EDWARDS, Defendant.	CASE NO. C-15-310695-1 DEPT. NO. VIII

EX PARTE MOTION TO PERMIT ACCESS

COMES NOW, the Clark County Public Defender's Office, by PHILIP J. KOHN, through TJ MCCUBBIN, Deputy Public Defender, and moves this Honorable Court for an Order Permitting Access to areas of the BELLAGIO HOTEL AND CASINO to which the public is not permitted access, including, but not limited to the now-closed ARCADE, and EMPLOYEE BREAK ROOM nearest CAFÉ GELATO to a representative of the PUBLIC DEFENDER'S OFFICE for the purpose of defending the above referenced case charging the crime of BURGLARY (Category B Felony – NRS 205.060).

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. . .

. . .

Pursuant to 45 CFR 164.512(e), Movant represents that the information sought is relevant and material to a legitimate legal inquiry; that the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and the de-identified information could not reasonably be used.

DATED this 18th day of August, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By /s/ TJ McCubbin
TJ MCCUBBIN, # 13723
Deputy Public Defender

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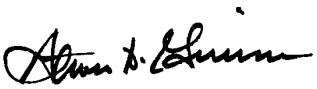

CLERK OF THE COURT

EXMT
PHILIP J. KOHN, PUBLIC DEFENDER
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309 South Third Street, Suite 226
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Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, HAROLD EDWARDS, Defendant.	CASE NO. C-15-310695-1 DEPT. NO. VIII

EX PARTE MOTION FOR IMMEDIATE RELEASE

COMES NOW, the Clark County Public Defender's Office, by PHILIP J. KOHN, through TJ MCCUBBIN, Deputy Public Defender, and moves this Honorable Court for an Order for Immediate Release to documentation possessed by BELLAGIO HOTEL AND CASINO for the purpose of defending the above referenced case charging the crime of BURGLARY (Category B Felony – NRS 205.060 – NOC 50424).

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Pursuant to 45CFR164.512(e), Movant represents that the information sought is relevant and material to a legitimate legal inquiry; that the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and the de-identified information could not reasonably be used.

DATED this 18th day of August, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By */s/ TJ McCubbin*
TJ MCCUBBIN, # 13723
Deputy Public Defender

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
AUG 19 2016
BY: Louisa Garcia
LOUISA GARCIA, DEPUTY

GPA
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
WILLIAM FLINN, JR.
Deputy District Attorney
Nevada Bar #013119
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

C-15-310695-1
GPA
Guilty Plea Agreement
4575266

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAROLD EDWARDS,
#7024721

Defendant.

CASE NO: C-15-310695-1

DEPT NO: VIII

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: **BURGLARY (Category B Felony - NRS 205.060 - NOC 50424)**, as more fully alleged in the charging document attached hereto as Exhibit "1".

I also hereby agree to plead guilty to: FIVE (5) counts of POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT (Category D Felony - NRS 205.690 - NOC 50790) and ONE (1) count of BATTERY ON A PROTECTED PERSON (Gross Misdemeanor - NRS 200.481 - NOC 50221) in Case No. C311212.

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

Both parties stipulate to adjudication under the large habitual criminal statute and to a ten (10) to twenty-five (25) year sentence in the Nevada Department of Corrections (NDOC) in Case No. C310695 and Counts 1 through 5 in Case No. C311212. Further, both parties stipulate to a three hundred and sixty-four (364) day sentence in the Clark County Detention Center (CCDC) on Count 6 in Case No. C311212. Additionally, both parties agree that all

cases and counts are to run concurrent with each other. The State will not oppose the dismissal of Case No. C310166 and Case No. C312326 after rendition of sentence in the instant case..

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

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

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

CONSEQUENCES OF THE PLEA

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

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

Further, I understand that if I am sentenced under the under the "small" habitual criminal enhancement, the Court must sentence me to a term not less than five (5) years and a maximum of twenty (20) years in the Nevada Department of Corrections (NDC). I understand that if I am sentenced under the "large" habitual criminal enhancement the Court must sentence

me to Life without the possibility of parole; Life with the possibility of parole, parole eligibility begins after a minimum term of ten (10) years has been served; or a definite term of twenty-five (25) years, parole eligibility begins after a minimum of ten (10) years has been served. I understand that the law requires me to pay an Administrative Assessment Fee.

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

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

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

I understand that if more than one (1) sentence of imprisonment is imposed and I am eligible to serve the sentences concurrently, the sentencing judge has the discretion to order the sentences served concurrently or consecutively.

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

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

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

I understand that if the State of Nevada has agreed to recommend or stipulate a particular sentence or has agreed not to present argument regarding the sentence, or agreed not to oppose a particular sentence, or has agreed to disposition as a gross misdemeanor when the

offense could have been treated as a felony, such agreement is contingent upon my appearance in court on the initial sentencing date (and any subsequent dates if the sentencing is continued). I understand that if I fail to appear for the scheduled sentencing date or I commit a new criminal offense prior to sentencing the State of Nevada would regain the full right to argue for any lawful sentence.

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

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

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

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

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

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WAIVER OF RIGHTS

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

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.

3. The constitutional right to confront and cross-examine any witnesses who would testify against me.

4. The constitutional right to subpoena witnesses to testify on my behalf.

5. The constitutional right to testify in my own defense.

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

VOLUNTARINESS OF PLEA

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

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

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

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

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

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

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

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

DATED this 19 day of August, 2016.

HAROLD EDWARDS
Defendant

AGREED TO BY:

WILLIAM FLINN, JR.
Deputy District Attorney
Nevada Bar #013119

CERTIFICATE OF COUNSEL:

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

1. I have fully explained to the Defendant the allegations contained in the charge(s) to which guilty pleas are being entered.

2. I have advised the Defendant of the penalties for each charge and the restitution that the Defendant may be ordered to pay.

3. I have inquired of Defendant facts concerning Defendant's immigration status and explained to Defendant that if Defendant is not a United States citizen any criminal conviction will most likely result in serious negative immigration consequences including but not limited to:

   a. The removal from the United States through deportation;

   b. An inability to reenter the United States;

   c. The inability to gain United States citizenship or legal residency;

   d. An inability to renew and/or retain any legal residency status; and/or

   e. An indeterminate term of confinement, by with United States Federal Government based on the conviction and immigration status.

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

4. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent with the facts known to me and are made with my advice to the Defendant.

5. To the best of my knowledge and belief, the Defendant:

   a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement,

   b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily, and

   c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with the Defendant as certified in paragraphs 1 and 2 above.

Dated: This 19th day of August, 2016.

ATTORNEY FOR DEFENDANT

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CLERK OF THE COURT

INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
WILLIAM FLINN, JR.
Deputy District Attorney
Nevada Bar #013119
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

I.A. 11/13/2015
10:00 A.M.
PD HOJJAT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAROLD EDWARDS,
#7024721

Defendant.

CASE NO: C-15-310695-1

DEPT NO: VIII

INFORMATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

That HAROLD EDWARDS, the Defendant(s) above named, having committed the crime of **BURGLARY (Category B Felony - NRS 205.060 - NOC 50424)**, on or about the 17th day of September, 2015, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did willfully, unlawfully, and feloniously enter, with intent to

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W:\2015F\151\18\15F15118-INFM-(EDWARDS_HAROLD)-001.DOCX

EXHIBIT "1"

commit larceny, that certain building occupied by BELLAGIO LAS VEGAS, located at 3600 South Las Vegas Boulevard, Las Vegas, Clark County, Nevada.

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

BY /s/ Agnes M. Lexis for
WILLIAM FLINN, JR.
Deputy District Attorney
Nevada Bar #013119

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

NAME	ADDRESS
CLARK, Jeffrey	LVMPD # 13952
CUSTODIAN OF RECORDS Surveillance	Bellagio Las Vegas 3600 S. Las Vegas Blvd., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	Clark County Detention Center, 330 S. Casino Center Blvd., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	Clark County Detention Center, Communications 330 S. Casino Center Blvd., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Communications, 400 E. Stewart Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Records, 400 E. Stewart Las Vegas, NV
DOUGHERTY, Ed OR DESIGNEE	INVESTIGATOR C.C. DISTRICT ATTORNEY
JIMENEZ, Joanna	Bellagio Las Vegas
VICARUSO, Arun Security	Bellagio Las Vegas 3600 S. Las Vegas Blvd., Las Vegas, NV

15F15118X /saj/L-1
LVMPD EV#1509232005
(TK11)

C-16-310695-1
LSF
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4579382

EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT

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

Steven D. Grierson
Clerk of the Court

Brandi J. Wendel
Court Division Administrator

September 02, 2016

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

Case Number: C-15-310695-1
Department: Department 8

Defendant: Harold Edwards

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

Pleadings: **Notice Of Motion And Motion To Withdraw Guilty Plea And Motion For A Faretta Hearing**

Rule 3.70. Papers which May Not be Filed

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

Cordially yours,

DC Criminal Desk # 8

Deputy Clerk of the Court

9

Harold Edwards #7024721
330 South Casino Center Blvd.
Las Vegas, Nevada 89101
Defendant Pro'Se

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff.	CASE No. C15-310695-1
	DEPT NO. XIII
VS.	
HAROLD EDWARDS, #7024721 Defendant.	DATE OF HEARING TIME OF HEARING

NOTICE OF MOTION AND MOTION TO WITHDRAW GUILTY PLEA AND MOTION FOR A FARETTA HEARING:

Now Comes the Defendant, HAROLD EDWARDS by and through himself acting in Propria Persona and respectfully moves to Withdraw his plea of "Guilty" on the grounds that he is not guilty of the offense Charged in the information and that the plea of "Guilty" was entered improvidently, and that defendant's Court appointed Counsel was Coercive in that he did nothing except Coerce defendant to make an ill-informed rushed decision with less than five (5) minutes to make the decision, without Clearly Understanding the effect of the Plea or of his rights.

This Motion is based upon all the papers, pleadings and documents on file, factual Statements Set forth in the Points and Authorities Contained therein and Oral argument if the Court deems it necessary.

RECEIVED
SEP 1 - 2016
CLERK OF THE COURT

LEGAL ARGUMENT

Defendant moves this Court to accept his Motion to Withdraw his guilty plea for the following reasons: 1) Defendant argues he recieved ineffective assistance of Counsel from Court appointed Public Defendant T. J. McCubbins. Public Defender T. J. McCubbins advised defendant to accept this deal. when defendant always maintained he was innocent of the Charged offense. The public Defendar Mr. McCubbins was assigned to the instant case in late April 2016. He appeared in front of the District Court for Defendant for the first time in early May 2016 where he was ordered to resubmit a Discovery Motion originally filed by defendant in proper person. He never filed said motion, disobeying an order from the Court. He advised defendant not to move forward on the petit Larceny charged which was bifurcated from the instant Charge. Defendant moved forward or was prepared to, but the Charge of petit larceny was dismissed. The owner of the missing Lunch bag (who is the alleged victim in the instant Burglary Charge) did not appear in Court. The Defendant presented to this public defender with proposed jury instructions for the lesser-offense of attempted petit larceny, stating the Correct law, but along with him rejecting all defendant's defense strategies, he rejected those proposed instructions. He advised defendant to Waive his appellate rights in Case no. C-15-311212-1 where defendant was found guilty pursuant to a jury trial for Possession of Credit or debit Card without the Cardholder's Consent. He waited until after the Verdict in the above Case to start preparing or discussing the Motion to Consolidate the instant Case into the oldest Case number the defendant has in District Court Department XXIII.

When defendant appeared in District Court Department XIII Wednesday

enjoying the Scenery as any other tourist, which is Cancel +

August 17TH 2016 for the instant Case's Calendar Call, the motion to Consolidate was denied by the Court and the judge ordered trial to Commence in just three (3) days giving this deputy public public defender just (3) days to prepare for a jury trial, and he had not Visited or discussed the Case with defendant Since mid-April 2016. Whenever this public Defender Spoke with defendant it was to Coerce him into accepting Some unfair plea deal, there was a plea deal offered to defendant which he did feel was reasonable and he Signed it, expected that deal to go through but another public defender failed to turn that deal in to the prosecutor (when it was Signed and everything) that deal was the Small habitual 5-12½ years. This defendant repeatedly expressed his innocence in the instant which Can be Seen Clearly in the PHT pg. 86 lines 12-25 also lines 1-17 of pg. 87 The defendant repeatedly informed this deputy public defender that he in fact found a lunch bag lieing on the hall entrance to a place defendant was seeking employment at and turned in to a Storage area next door at an Arcade where lost property was Stored and where this lunch bag was found and turned into lost and found with nothing missing PHT. pg. 27 lines pg-23 defendant explained on more than one occassion that it was reported that this owner of the lunch bag had reported her bag missing before <u>incident File Report</u> pg. 2 of 4 The defendant also explained to this public defender that he is Shown on Surveillance taking photo's with his phone entering the Bellagio Hotel and Casino legally and upon his entry he did not -intend to do anything illegal which is Shown by his actions On this Video, he is a tourist from out of State taking pictures enjoying the Scenery as any other tourist, which is Consistent

with why the Bellagio is open, a formulated intent after a legal entry will not Satisty the Statute for burglary. this was articulated to public defender McCubbins. but he Continued to State Coercive language in opposition to Correct legal information defendant was expressing to him e.g. "No jury will believe this Story." placing himself in the minds of jurors. (He got me in Court immediately, the Friday I was Coerced into Signing the plea deal though). Public Defender McCubbins Visited defendant Thursday August 18th 2016 along with public Defender Robert O'Brian and the beginning, middle and Ending Conversation was based on defendant possibly or guaranteed Sentenced of Life without the possibility of parole if found guilty, it Should be noted here that on August 17, 2016 the day defendant appeared in Court for Calendar Call before defendant's Case was Called, T. J. McCubbins was not present, he eventually Showed up to the Courtroom, did not acknowledge defendant to explain anything. He Spoke with public Defender Robert O'Brian and then exited, again without explaining anything to defendant. after the judge Denied the motion to Consolidate or did not agree with the motion to Consolidate Defendant appeared in District Court Department XXIII where the motion actually was filed and the motion was denied because it was filed (1) day before defendant was to appear in Court. Defendant returned to Clark County Detention Center. Thursday August 18, 2016 Defendant recieved a legal phone call from Mr. McCubbins and he immediately Stated "You Saw the Judge give that guy four Consecutive life Sentences without parole?" this was rather anomalous, Seeing that Mr. McCubbins was not present during Sentencing of the defendant that

the Sentence he Spoke of. This however, Clearly Shows the Coercive tactics of this Deputy Public Defender. This public Defender never filed a Single Writ or motion on defendant's behalf, nor did he ever discuss a defensive Strategy which is a requirement ADKT 411 Exhibit A, page 36 Defense Strategy Standard 12: Standard 14: Defendant also expressed to this Public Defender his relunctance about going to trial in District Court Department XIII, this public Defender who also expressed fear of going to Court or trial in this judge's Court and repeatedly told defendant (who is from out of State) Stories of unfairness in this judge's Courtroom, used defendant's expressed relunctance to pressure or Coerce defendant into accepting a bad plea deal. He advised defendant on one visit with defendant to Write this judge in Department XIII up. trying (I believe) to Cause this judge to become raged against me. He once advised defendant to have the Federal Bureau of Investigation Come Sit through this judge's proceedings. Standard 9: of the ADKT 411 Exhibit A Page 31 States: Under no Circumstances should defense Counsel recommend to a defendant acceptance of a plea unless appropriate investigation and study of the Case has been Completed, including an analysis of the Controlling law and the evidence likely to be introduced at trial. None of this was done by this Counselor. Standard 9 of ADKT (b) (2) He never fully explained to defendant the Constitutional rights that would be waived by a decision to enter into any agreement. (5) He didn't preserve Client's rights. ADKT 411 Exhibit A page 33 (d) (2) Counsel should not attempt to unduly influence the decision. (e) (1) (2) & (3). He should not be Coercive which is exactly what this Counsel did. Iaea V. Sun, 800 F. 2d 861 on one visit (he only visited twice) everytime defendant attempted to express a possible defense, this Public Defender became

Visibly upset, almost enraged because he couldn't at first convince me to take a deal the Deputy District Attorney was proposing This public Defender didn't even know defendant didn't have a felony Conviction in the State of Nevada, He stated that he did. Defendant always alleged that he was innocent of the charged Crime U.S. V. Campbell 778 F. 2d 764. The alleged Crime the instant Charge of burglary is predicated on, was dismissed, which was the bifurcated Petit Larceny of a Lunch bag that reportedly went missing from one location, but was found in another location with nothing missing. This Public Defender advised defendant that he shouldn't go to trial for that misdemeanor Charged offense. when defendant expressed to him that the owner of the Lunch bag would not show up to Court because she wasn't missing anything, he stated that he would have his Investigator locate this witness. Defendant also advised this public Defender that he found this Lunch bag in the doorway of a business establishment he was seeking employment at on the floor and that he left this lunch bag in a storage area next door where the Arcade stored lost items. Defendant asked this public Defender if he'd Check out the area in question by visiting the arcade, he stated that he did and phoned Defendant stating that he had bad news, the Arcade was closed. Defendant proceeded to Court May 10, 2016 to move forward on the bifurcated petty larceny Charge the burglary is premised on, and that Charge was Subsequently dismissed. How Can a defendant intend to do a crime that is based on Committing another act that was dismissed? Defendant has had several heated verbal exchanges with other Public Defenders, and it is defendant's belief that because of these exchanges T. J. Mc Cubbins deliberately placed defendant in this present position Coercing him to accept

6

an unfair plea. FEDERAL RULES OF CRIMINAL PROCEDURE, RULE 11 (d) (2) (B) States that a defendant may withdraw a plea of guilty or Nolo Contendere after the Court accepts the plea, but before it imposes Sentence if Defendant Can Show a fair and just reason for the request of withdrawal. Clearly defendant has Shown Such reason. Evitts V. Lucey, 105 SUPREME COURT 830 (1985) Cuyler V. Sullivan, 100 S. Ct. 1708, Esslinger V. Davis, 44 F. 3d 1515 U.S. V. Marzgliano 588 F. 2d 395.

DEFENDANT'S REQUEST FOR FARETTA HEARING IS BASED ON FARETTA V. CALIFORNIA 442 U.S. 806

I Harold Edwards, being duly Sworn, deposes and Says:

1. I am the defendant in this proceeding. I was Charged with the Crime of Burglary in an information.

On November 13th 2015 I was arraigned in the District Court and entered a plea of Not Guilty.

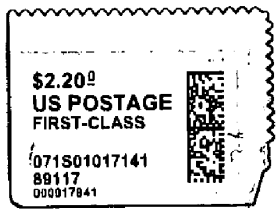
2. When my Plea of [redacted] Not Guilty was entered, I was not represented by Counsel. during the Guilty Plea hearing on August 19th 2016 I told my Counsel I was innocent, but accepted the plea because of Coercive Counsel from his Counsel about life without parole or life, if I went to trial. I am innocent of the Charged Crime and Seek my day in Court in order to prove my innocence.

DATED this 29th day of August 2016

Harold Edwards

Pro Se Defendant

HAROLD EDWARDS #7024721
CLARK COUNTY DETENTION CENTER
330 SOUTH CASINO CENTER BOULEVARD
LAS VEGAS, NV. 89101



STEVEN D. GRIERSON, Clerk of the Court
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS, NV. 89155-1160

441

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CLERK OF THE COURT

MC
OA
PP
PD

Harold Edwards #7024721
330 S. Casino Center Blvd
Las Vegas, Nevada 89101
Pro Per Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff

vs.

HAROLD EDWARDS, #7024721
Defendant

CASE NO. C 15 310695-1

DEPT. NO. XIII

DATE OF HEARING: 10/5/16

TIME OF HEARING: 8:00am

NOTICE OF MOTION AND MOTION TO DISMISS COUNSEL
AND MOTION FOR A FARETTA HEARING

Now comes the Defendant acting in Propria Persona and respectfully moves to dismiss Counsel and be granted a Faretta Hearing to exercise my Constitional Right to represent myself because of the ineffective Counsel from Court appointed Counsel T.J. McCubbins.

This Motion is based upon Faretta V. California 442 U.S. 806

RECEIVED
SEP 13 2016
CLERK OF THE COURT

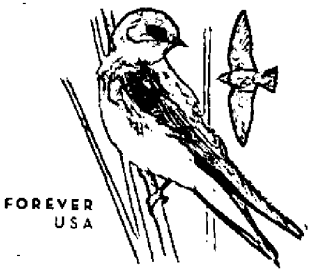
RECEIVED
SEP 12 2016
CLERK OF THE COURT

I Harold Edwards, being duly Sworn deposes and says
I am the defendant in this proceeding
DATED THIS 8th day of September 2016
do Solemnly Swear, under penalty of perjury, that
the above Motion to Dismiss Counsel and be granted a Faretta
Canvass is accurate, Correct and true to the best of my
Knowledge.
NRS 171.102 and NRS 208.165

Respectfully Submitted Harold Edwards

Pro Per Defendant Harold Edwards

HAROLD EDWARDS # 7024721
330 South Casino Center Blvd.
LAS Vegas, NEVADA 89101



STEVEN D. GRIERSON Clerk of the Court
200 LEWIS AVENUE
LAS VEGAS, NEVADA 89155

LEGAL MAIL

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U.S. MAIL

Harold Edwards #7024721
330 South Casino Center Blvd.
Las Vegas, Nevada 89101
Defendant Pro Se

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
OCT 05 2016
BY, Carol Donahoo
CAROL DONAHOO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff.	CASE No. C15-310695-1
vs.	DEPT NO. XIII
HAROLD EDWARDS, #7024721 Defendant.	DATE OF HEARING TIME OF HEARING

NOTICE OF MOTION AND MOTION TO WITHDRAW GUILTY PLEA AND MOTION FOR A FARETTA HEARING:

Now Comes the Defendant, HAROLD EDWARDS by and through himself acting in Propria Persona and respectfully moves to withdraw his plea of "Guilty" on the grounds that he is not guilty of the offense Charged in the information and that the plea of "Guilty" was entered improvidently, and that defendant's Court appointed Counsel was Coercive in that he did nothing except Coerce defendant to make an ill-informed rushed decision with less than five (5) minutes to make the decision, without Clearly Understanding the effect of the Plea or of his rights.

This Motion is based upon all the papers, pleadings and documents on file, factual Statements Set forth in the Points and Authorities Contained therein and Oral argument if the Court deems it necessary.

RECEIVED
SEP 1 - 2016
CLERK OF THE COURT

C-15-310695-1
MWPL
Motion to Withdraw Plea
4590991

LEGAL ARGUMENT

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August 17th 2016 for the instant Case's Calendar Call, the motion to Consolidate was denied by the Court and the judge ordered trial to commence in just three (3) days giving this deputy public public defender just (3) days to prepare for a jury trial, and he had not visited or discussed the case with defendant since mid-April 2016. Whenever this public Defender spoke with defendant it was to coerce him into accepting some unfair plea deal, there was a plea deal offered to defendant which he did feel was reasonable and he signed it, expected that deal to go through but another public defender failed to turn that deal in to the prosecutor (when it was signed and everything) that deal was the small habitual 5-12½ years. This defendant repeatedly expressed his innocence in the instant which can be seen clearly in the PHT pg. 86 lines 12-25 also lines 1-17 of pg. 87 The defendant repeatedly informed this deputy public defender that he in fact found a lunch bag lieing on the hall entrance to a place defendant was seeking employment at and turned in to a storage area next door at an Arcade where lost property was stored and where this lunch bag was found and turned into lost and found with nothing missing PHT. pg. 27 lines pg-23 defendant explained on more than one occasion that it was reported that this owner of the lunch bag had reported her bag missing before <u>Incident File Report</u> pg. 2 of 4 The defendant also explained to this public defender that he is shown on Surveillance taking photo's with his phone entering the Bellagio Hotel and Casino legally and upon his entry he did not -intend to do anything illegal which is shown by his actions On this Video, he is a tourist from out of State taking pictures enjoying the Scenery as any other tourist, which is Consistent

3

With why the Bellagio is open, a formulated intent after a legal entry will not Satisty the Statute for burglary. this was articulated to public defender McCubbins, but he Continued to State Coercive language in opposition to Correct legal information defendant was expressing to him e.g." No jury will believe this Story." placing himself in the minds of jurors. (He got me in Court immediately, the Friday I was Coerced into Signing the plea deal though). Public Defender McCubbins Visited defendant Thursday August 18th 2016 along with public Defender Robert O'Brian and the beginning, Middle and Ending Conversation was based on defendant possibly or guaranteed Sentenced of Life without the possibility of parole if found guilty, it Should be noted here that on August 17, 2016 the day defendant appeared in Court for Calendar Call before defendant's Case was Called, T. J. McCubbins was not present. he eventually Showed up to the Courtroom, did not acknowledge defendant to explain anything. He Spoke with public Defender Robert O'Brian and then exited, again without explaining anything to defendant. after the Judge Denied the motion to Consolidate or did not agree with the motion to Consolidate Defendant appeared in District Court Department XXIII where the motion actually was filed and the motion was denied because it was filed (1) day before defendant was to appear in Court. Defendant returned to Clark County Detention Center. Thursday August 18, 2016 Defendant recieved a legal phone call from Mr. McCubbins and he immediately Stated "You Saw the Judge give that guy four Consecutive life sentences without parole?" this was rather anomalous, Seeing that Mr. McCubbins was not present during Sentencing of the defendant that recieved

the Sentence he spoke of. This however, Clearly shows the Coercive tactics of this Deputy Public Defender. This public Defender never filed a Single writ or motion on defendant's behalf, nor did he ever discuss a defensive strategy which is a requirement ADKT 411 Exhibit A, page 36 Defense. Strategy Standard 12: Standard 14: Defendant also expressed to this Public Defender his relunctance about going to trial in District Court Department XIII. this public Defender who also expressed fear of going to Court or trial in this judges Court and repeatedly told defendant (who is from out of State) Stories of unfairness in this judge's Courtroom, used defendant's expressed relunctance to pressure or Coerce defendant into accepting a bad plea deal. He advised defendant on one Visit with defendant to Write this judge in Department XIII up. trying (I believe) to Cause this judge to become raged against me. He once advised defendant to have the Federal Bureau of Investigation Come Sit through this judge's proceedings. Standard 9: of the ADKT 411 Exhibit A Page 31 States: Under no Circumstances Should defense Counsel recommend to a defendant acceptance of a plea unless appropriate investigation and study of the Case has been Completed. including an analysis of the Controlling law and the evidence likely to be introduced at trial. None of this was done by this Counselor. Standard 9 of ADKT (b) (2) He never fully explained to defendant the Constitutional rights that would be waived by a decision to enter into any agreement. (5) He didn't preserve Client's rights. ADKT 411 Exhibit A page 33 (d) (2) Counsel Should not attempt to Unduly influence the decision (e) (1) (2) &(3). He Should not be Coercive which is exactly what this Counsel did. Iaea V. Sun. 800 F. 2d 861 on one visit (he only visited twice) everytime defendant attempted to express a possible defense, this Public Defender became

Visibly upset, almost enraged because he Couldn't at first Convince me to take a deal the Deputy District Attorney was proposing This public Defender didn't even Know defendant didn't have a felony Conviction in the State of Nevada, He stated that he did. Defendant always alleged that he was innocent of the Charged Crime U.S. V. Campbell 778 F. 2d 764. The alleged Crime the instant Charge of burglary is predicated on, was dismissed, which was the bifurcated Petit Larceny of a Lunch bag that reportedly went missing from one location, but was found in another location with nothing missing. This Public Defender advised defendant that he Shouldn't go to trial for that misdemeanor Charged offense. when defendant expressed to him that the owner of the Lunch bag would not Show up to Court because she wasn't missing anything, he stated that he would have his investigator locate this witness. Defendant also advised this public Defender that he found this Lunch bag in the doorway of a business establishment he was seeking employment at on the floor and that he left this lunch bag in a storage area next door where the Arcade Stored lost items. Defendant asked this public Defender if he'd Check out the area in question by visiting the arcade. he Stated that he did and phoned Defendant stating that he had bad news, the Arcade was closed. Defendant proceeded to Court May 10, 2016 to move forward on the bifurcated petty larceny Charge the burglary is premised on, and that Charge was Subsequently dismissed. How Can a defendant intend to do a crime that is based on Committing another act that was dismissed? Defendant has had several heated verbal exchanges with other Public Defenders, and it is defendant's belief that because of these exchanges T. J. Mc Cubbins deliberately placed defendant in this present position Coercing him to accept

6

an unfair plea. FEDERAL RULES OF CRIMINAL PROCEDURE, RULE 11 (d) (2) (B) States that a defendant may withdraw a plea of guilty or Nolo Contandere after the Court accepts the plea, but before it imposes Sentence if Defendant Can Show a fair and just reason for the request of withdrawal. Clearly defendant has Shown Such reason. Evitts V. Lucey, 105 SUPREME COURT 830 (1985) Cuyler V. Sullivan, 100 S. Ct. 1708; Esslinger V. Davis, 44 F. 3d 1515 U.S. V. Marzgliano 588 F. 2d 395.

DEFENDANT'S REQUEST FOR FARETTA HEARING IS BASED ON FARETTA V. CALIFORNIA 442 U.S. 806

I Harold Edwards, being duly Sworn, deposes and Says:

1. I am the defendant in this proceeding. I was Charged with the Crime of Burglary in an information.

On November 13th 2015 I was arraigned in the District Court and entered a plea of Not Guilty.

2. When my Plea of [redacted] Not Guilty was entered, I was not represented by Counsel during the Guilty Plea hearing on August 19 th 2016 I told my Counsel I was innocent, but accepted the plea because of Coercive Counsel from his Counsel about life without parole or life, if I went to trial. I am innocant of the Charged Crime and Seek my day in Court in order to preve my innocence.

DATED this 29th day of August 2016

Harold Edwards

Pro Se Defendant

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RTRAN

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, vs. HAROLD EDWARDS, Defendant.	CASE NO. C310695 DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

FRIDAY, AUGUST 19, 2016

TRANSCRIPT OF PROCEEDINGS
ENTRY OF PLEA

APPEARANCES:

For the State: WILLIAM W. FLINN, JR., ESQ.
CHAD N. LEXIS, ESQ.
Deputy District Attorneys

For the Defendant: TIMOTHY W. MCCUBBIN, ESQ.
ROBERT E. O'BRIEN, ESQ.
Deputy Public Defenders

RECORDED BY: JILL JACOBY, COURT RECORDER

FRIDAY, AUGUST 19, 2016 AT 10:34 A.M.

THE COURT: This is C310695, State of Nevada v Harold Edwards. Special setting for Friday at 10:30.

It's my understanding this case is resolved; is that right?

MR. MCCUBBIN: That is correct, Your Honor.

THE COURT: What is the resolution?

MR. MCCUBBIN: The resolution, Your Honor, is that he's going to be entering a plea on this case to the Category B felony, burglary, and as charged in the Information. He's also going to be pleaing guilty to five counts of possession of credit card or debit card without cardholder's consent, Category D felony, and one count of battery on a protected person, a gross misdemeanor in Case Number 311212.

The agreement is as follows: Parties will stipulate to adjudication under the large habitual criminal statute and to a 10- to 25-year sentence in the Nevada Department of Corrections in Case 310695 and Count -- and the same sentence, 10 to 25 years on Counts 1 through 5 in Case Number 311212. Both parties also stipulate that the 364-day gross misdemeanor sentence in CCDC will be served on Count 6 in 311212. And all counts and cases will run concurrent to one another.

The State will not oppose dismissal of the remaining cases for Mr. Harold Edwards which are C310166 and C312326 after rendition of sentence in this case.

THE COURT: Is that your understanding of the negotiation, Mr. Edwards?

THE DEFENDANT: Yes, sir.

THE COURT: You accept those negotiation --

THE DEFENDANT: Yes, sir.

THE COURT: -- after discussing the matter fully with your attorneys?

THE DEFENDANT: Yes, sir.

THE COURT: You do read, write, and understand English?

THE DEFENDANT: Yeah.

THE COURT: You read through your Information -- if I've got it. Your Information on a Category B felony. You discussed it with your attorneys. They answered all your questions to your satisfaction, you're satisfied with their services?

THE DEFENDANT: Yeah.

THE COURT: You want me to accept this deal?

THE DEFENDANT: Yeah.

THE COURT: They charge you in this Information with a Category B felony, on or about the 17th day of September --

MR. FLINN: It appears to be a typo, Your Honor, with the year.

THE COURT: It's 2015?

MR. FLINN: It's 2015, not -- of course.

THE COURT: I'll scratch the O after that.

MR. FLINN: Thank you, Your Honor.

THE COURT: 2015 in Clark County, Nevada, contrary to form, force, and effect of statutes in such cases made provided that you did unlawfully, willfully, and feloniously enter Bellagio Las Vegas, Clark County, Nevada with intent to commit a felony therein. To that, how do you plead?

THE DEFENDANT: Guilty.

MR. FLINN: And, Your Honor, I apologize, it was with the intent to commit a larceny.

THE COURT: Larceny.

MR. FLINN: Rather than a felony.

THE COURT: Okay. Larceny. Is that right, Mr. --

THE DEFENDANT: Yes, sir.

THE COURT: -- Edwards?

And you accept those negotiations after discussing the matter fully with your attorney?

THE DEFENDANT: Yes, sir.

THE COURT: And then your attorney gave you a copy of the Guilty Plea Agreement, and you read through that?

THE DEFENDANT: Yeah.

THE COURT: And discussed that with them, they answered all your questions --

THE DEFENDANT: Yeah.

THE COURT: -- to your satisfaction?

THE DEFENDANT: Yeah.

THE COURT: Do you have any questions of the Court about your Guilty Plea Agreement?

THE DEFENDANT: No, I don't have any.

THE COURT: I will follow whatever recommendation you've negotiated with your -- with the District Attorneys, I just want you to know that up front.

Both parties stipulate to adjudication under the large habitual criminal statute and you'll receive a 10- to 25-year sentence in Nevada Department of Corrections in this case and in Case C311212, concurrent.

Further, both parties stipulate to 364 days in Clark County Detention

Center on C311212. And they will all run concurrent to each other, and then they'll dismiss C310166 and 312326.

Is that your understanding?

THE DEFENDANT: Yes, sir.

THE COURT: You understand if you fail -- you agree that if you fail to interview with the Department of Parole and Probation or you fail to appear at any subsequent hearing in the case, they can argue for any sentence under the statute to increase your sentence to life without?

THE DEFENDANT: Yeah.

THE COURT: You'll talk to P&P, yeah?

THE DEFENDANT: Yeah.

THE COURT: All right. And you still want me to accept this deal?

THE DEFENDANT: Yeah.

THE COURT: You understand that as a consequence to your plea, if they don't meet their requirements of filing the proper certified documents, the sentence is 1 to 10 on this burglary, the minimum term of imprisonment may not exceed 40 percent of the maximum term, could be fined up to $10,000. I'm not going to fine you.

If you're sentenced under the small habitual, it's 5 to 20 years possibility. The large habitual criminal is life without the possibility of parole or parole -- life with the possibility of parole after 10 years, or a 10- to 25-year sentence and an administrative assessment fee.

Is that your understanding?

THE DEFENDANT: Yeah.

THE COURT: You're not eligible for probation, you understand that?

THE DEFENDANT: Yeah.

THE COURT: And I will follow the concurrent requirements -- or negotiation.

Other than what we've talked about here in Court, no one's promised you a sentence have they?

THE DEFENDANT: No.

THE COURT: Are you a citizen of the United States?

THE DEFENDANT: Yeah.

THE COURT: P&P is going to prepare a report for the sentencing judge, it will included hearsay information about your background and your criminal history. If there are mistakes, you can correct those mistakes, you and your attorney. But in essence, the Court relies on those.

Do you understand that?

THE DEFENDANT: Yeah.

THE COURT: Now, by pleading guilty, you understand you're giving up the right, the privilege against self-incrimination, including the right to refuse to testify at trial.

Do you understand?

THE DEFENDANT: Yeah.

THE COURT: You're giving up the right to a speedy and a public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense.

Do you understand?

THE DEFENDANT: Yeah.

THE COURT: You're giving up the right to confront and cross-examine witnesses who would testify against you; the right to testify in your behalf; the right to subpoena witnesses to testify for you; and the right to appeal your conviction with

assistance of an attorney, either appointed or retained.

You understand?

THE DEFENDANT: Yes, sir.

THE COURT: Still want me to accept it?

THE DEFENDANT: Yes, sir.

THE COURT: You discussed the elements of the original charges against you with your attorney, you understand what's going on today?

THE DEFENDANT: Yeah.

THE COURT: Do you understand the State would have to prove each element of the charge against you at trial beyond a reasonable doubt to convict you?

THE DEFENDANT: Yes, sir.

THE COURT: You've discussed with your attorneys any possible defenses, defense strategies, and circumstance which might be in your favor?

THE DEFENDANT: Yeah.

THE COURT: All the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to you by your attorney?

THE DEFENDANT: Yeah.

THE COURT: You believe pleading guilty and accepting this plea bargain is in your best interest and a trial would be contrary to your best interest?

THE DEFENDANT: Yeah.

THE COURT: You still want me to accept it?

THE DEFENDANT: Yes, sir.

THE COURT: You've signed the Guilty Plea Agreement voluntarily after consultation with your attorneys and you're not acting under duress or coercion by

virtue of promises of any other leniency except for those set forth in this agreement?

THE DEFENDANT: Yeah.

THE COURT: You're not under the influence of anything right now that would impair your ability to understand what's going on today?

THE DEFENDANT: No.

THE COURT: And your attorney, again, has answered all your questions regarding this Guilty Plea Agreement and its consequences to your satisfaction, you're satisfied with their services?

THE DEFENDANT: Yeah.

THE COURT: And you want me to accept it?

THE DEFENDANT: Yeah.

THE COURT: Now, it's not dated. It's signed by you. I'll write the date of the 19th in; is that all right?

MR. MCCUBBIN: Thank you, that is correct, Your Honor, it was signed today.

MR. FLINN: Your Honor, I apologize, I don't know if I missed it. I know you canvassed him on the facts and the Information but I didn't -- did I hear an actual, the actual plea to the charge?

THE COURT: No.

MR. FLINN: Or did I miss it?

THE COURT: No.

MR. FLINN: Okay. Thank you.

THE COURT: Mr. Edwards, on September 17th, 2015, did you go into the -- tell me why you're pleading guilty.

THE DEFENDANT: I don't want to get life without parole.

THE COURT: Did you go in to the Bellagio with intent to commit larceny?

THE DEFENDANT: Yeah.

THE COURT: Anything else?

MR. FLINN: No, Your Honor, thank you.

THE COURT: All right. I'll accept the negotiation. We'll set it out for sentencing for --

THE CLERK: October 10th at 8 a.m.

THE COURT: Thank you. Okay.

THE CLERK: Trial date vacated.

THE COURT: Trial date vacated.

MR. FLINN: Thank you, Your Honor.

MR. O'BRIEN: Thank you, Your Honor.

THE COURT: Thank you.

MR. FLINN: I'm sorry, what was the -- October --

THE CLERK: October 10th.

MR. FLINN: 10th. Thank you.

[Proceeding concluded at 10:43 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual recording in the above-entitled case.

Jill Jacoby
Court Recorder

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CLERK OF THE COURT

OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN R. PANDUKHT
Chief Deputy District Attorney
Nevada Bar #005734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAROLD EDWARDS,
ID# 7024721,

Defendant.

CASE NO: C-15-310695-1

DEPT NO: VIII

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA

DATE OF HEARING: 10-10-16
TIME OF HEARING: 8:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney, through TALEEN R. PANDUKHT, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Withdraw Guilty Plea.

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

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STATEMENT OF THE CASE

On October 8, 2015, a Criminal Complaint was filed against Defendant charging him with Count 1 – Burglary (Category B Felony) and Count 2 – Petit Larceny committed on September 17, 2015 at Bellagio Las Vegas, located at 3600 South Las Vegas Boulevard.

In Case No. C311212, on August 2, 2016, Defendant was found guilty by a jury of five (5) felony of counts of Possesion of Credit or Debit Card without Cardholders Consent and a Gross Misdemeanor count of Battery on a Protected Person. Sentencing was set for October 6, 2016, but was continued at the defense request to October 27, 2016.

On August 19, 2016, on the first day of jury trial in this case, Defendant's counsel Deputy Public Defender TJ McCubbin advised the Court that the matter was resolved. A Guilty Plea Agreement was filed in open court and Defendant pled guilty to Burglary (Category B Felony) with the following terms: "Both parties stipulate to adjudication under the large habitual criminal statute and to a ten (10) to twenty-five (25) year sentence in the Nevada Department of Corrections (NDOC) in Case No. C310695 and Counts 1 through 5 in Case No. C311212. Further, both parties stipulate to a three hundred and sixty-four (364) day sentence in the Clark County Detention Center (CCDC) on Count 6 in Case No. C311212. Additionally, both parties agree that all cases and counts are to run concurrent with each other. The State will not oppose the dismissal of Case No. C310166 and Case No. C312326 after rendition of sentence in the instant case." The Court thoroughly canvassed Defendant on the facts and plea. The Court accepted Defendant's plea and referred to matter to the Division of Parole and Probation (P&P) and set the matter for sentencing October 10, 2016.

Defendant submitted the instant Motion to Withdraw Guilty Plea without properly serving the State (said motion is still not entered into Odyssey, so it is unknown if and when it was actually filed). The Court provided the State with a copy of Defendant's motion on October 5, 2016 and set the hearing on October 10, 2016. The State's opposition follows.

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ARGUMENT

I. DEFENDANT'S PLEA WAS FREELY AND VOLUNTARILY ENTERED

A plea of guilty is presumptively valid, particularly where it is entered into on the advice of counsel. Jezierski v. State, 107 Nev. 395, 397, 812 P.2d 355, 356 (1991). The defendant has the burden of proving that the plea was not entered knowingly or voluntarily. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); Wynn v. State, 96 Nev. 673, 615 P.2d 946 (1980); Housewright v. Powell, 101 Nev. 147, 710 P.2d 73 (1985). In determining whether a guilty plea is knowingly and voluntarily entered, the court will review the totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721 P.2d at 367. The proper standard set forth in Bryant requires the trial court to personally address a defendant at the time he enters his plea in order to determine whether he understands the nature of the charges to which he is pleading. Id. at 271; State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). The guidelines for voluntariness of guilty pleas "do not require the articulation of talismanic phrases." Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973). It requires only "that the record affirmatively disclose that a defendant who pleaded guilty entered his plea understandingly and voluntarily." Brady v. United States, 397 U.S. 742, 747-748, 90 S.Ct. 1463, 1470 (1970); United States v. Sherman, 474 F.2d 303 (9th Cir. 1973).

Specifically, the record must affirmatively show the following: 1) the defendant knowingly waived his privilege against self-incrimination, the right to trial by jury, and the right to confront his accusers; 2) the plea was voluntary, was not coerced, and was not the result of a promise of leniency; 3) the defendant understood the consequences of his plea and the range of punishment; and 4) the defendant understood the nature of the charge, i.e., the elements of the crime. Higby v. Sheriff, 86 Nev. 774, 781, 476 P.2d 950, 963 (1970). Consequently, in applying the "totality of circumstances" test, the most significant factors for review include the plea canvass and the written guilty plea agreement. See Hudson v. Warden, 117 Nev. 387, 399, 22 P.3d 1154, 1162 (2001).

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The Nevada Supreme Court recently decided Stevenson v. State, 354 P.3d 1277, 131 Nev. Adv. Rep. 61 (2015), holding that the statement in Crawford v. State, 117 Nev. 718, 30 P.3d 1123 (2001), which focuses the "fair and just" analysis solely upon whether the plea was knowing, voluntary, and intelligent is more narrow than contemplated by NRS 176.165. The Nevada Supreme Court therefore disavowed Crawford's exclusive focus on the validity of the plea and affirmed that the district court must consider the totality of the circumstances to determine whether permitting withdrawal of a guilty plea before sentencing would be fair and just. However, the Court also held that appellant had failed to present a fair and just reason favoring withdrawal of his plea and therefore affirmed his judgment of conviction. Stevenson v. State, 354 P.3d 1277, 1281, 131 Nev. Adv. Rep. 61 (2015).

In Stevenson, the Nevada Supreme Court found that none of the reasons presented warranted the withdrawal of Stevenson's guilty plea, including allegations that the members of his defense team lied about the existence of the video in order to induce him to plead guilty. The Court found similarly unconvincing Stevenson's contention that he was coerced into pleading guilty based on the compounded pressures of the district court's evidentiary ruling, standby counsel's pressure to negotiate a plea, and time constraints. As the Court noted, undue coercion occurs when a defendant is induced by promises or threats which deprive the plea of the nature of a voluntary act. Id. at 1281, quoting Doe v. Woodford, 508 F. 3d 563, 570 (9th Cir. 2007).

The Nevada Supreme Court also rejected Stevenson's implied contention that withdrawal was warranted because he made an impulsive decision to plead guilty without knowing definitively whether the video could be viewed. Stevenson did not move to withdraw his plea for several months. The Court made clear that one of the goals of the fair and just analysis is to allow a hastily entered plea made with unsure heart and confused mind to be undone, not to allow a defendant to make a tactical decision to enter a plea, wait several weeks, and then obtain a withdrawal if he believes that he made a bad choice in pleading guilty. Id. at 1281-1282, quoting United States v. Alexander, 948 F.2d 1002, 1004 (6th Cir. 1991). The Court found that considering the totality of the circumstances, they had

no difficulty in concluding that Stevenson failed to present a sufficient reason to permit withdrawal of his plea. Permitting him to withdraw his plea under the circumstances would allow the solemn entry of a guilty plea to become a mere gesture, a temporary and meaningless formality reversible at the defendant's whim, which the Court cannot allow. Id. at 1282, quoting United States v. Barker, 514 F. 2d 208, 222 (D.C. Cir. 1975).

In this case, just as in Stevenson, considering the totality of the circumstances, Defendant has failed to present a sufficient reason to permit withdrawal of his guilty plea.

First, by signing his GPA, Defendant represented that he was fully aware of the plea agreement in this case:

> My decision to plead guilty is based upon the plea agreement in this case which is as follows: **Both parties stipulate to adjudication under the large habitual criminal statute and to a ten (10) to twenty-five (25) year sentence in the Nevada Department of Corrections (NDOC) in Case No. C310695 and Counts 1 through 5 in Case No. C311212. Further, both parties stipulate to a three hundred and sixty-four (364) day sentence in the Clark County Detention Center (CCDC) on Count 6 in Case No. C311212. Additionally, both parties agree that all cases and counts are to run concurrent with each other. The State will not oppose the dismissal of Case No. C310166 and Case No. C312326 after rendition of sentence in the instant case.**

GPA, p. 1-2.

Defendant also acknowledged that he did not enter his plea pursuant to any promises made to him:

> I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the Court within the limits prescribed by statute.
>
> I understand that if my attorney or the State of Nevada or both recommend any specific punishment to the Court, the Court is not obligated to accept the recommendation.

GPA, p. 3.

Defendant also acknowledged that he was waiving various rights pursuant to the agreement he entered into with the State. (See the section entitled "Waiver of Rights" on page 5 of Defendant's GPA). Moreover, in the section entitled "Voluntariness of Plea," Defendant acknowledged that the following statements are true:

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

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

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

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

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

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

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

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

GPA, p. 5-6.

Finally, Defendant's attorney executed a "Certificate of Counsel" as an officer of the Court affirming the following:

1. I have fully explained to the Defendant the allegations contained in the charge(s) to which guilty pleas are being entered.

2. I have advised the Defendant of the penalties for each charge and the restitution that the Defendant may be ordered to pay.

3. I have inquired of Defendant facts concerning Defendant's immigration status and explained to Defendant that if Defendant is not a United States citizen any criminal conviction will most likely result in serious negative immigration consequences including but not limited to:

a. The removal from the United States through deportation;

b. An inability to reenter the United States;

c. The inability to gain United States citizenship or legal residency;

d. An inability to renew and/or retain any legal residency status; and/or

e. An indeterminate term of confinement, by with United States Federal Government based on the conviction and immigration status.

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

4. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent with the facts known to me and are made with my advice to the Defendant.

5. To the best of my knowledge and belief, the Defendant:

   a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement,

   b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily, and

   c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with the Defendant as certified in paragraphs 1 and 2 above.

GPA, p. 7.

In addition to making the above representations by signing his GPA, Defendant was extensively and thoroughly canvassed by this Court when he entered his plea on August 19, 2016.

> THE COURT: This is C310695, State of Nevada v Harold Edwards. Special setting for Friday at 10:30. It's my understanding this case is resolved; is that right?
>
> MR. MCCUBBIN: That is correct, Your Honor.
>
> THE COURT: What is the resolution?
>
> MR. MCCUBBIN: The resolution, Your Honor, is that he's going to be entering a plea on this case to the Category B felony, burglary, and as charged in the Information. He's also going to be pleaing guilty to five counts of possession of credit card or debit card without cardholder's consent, Category D felony, and one count of battery on a protected person, a gross misdemeanor in Case Number 311212. The agreement is as follows: Parties will stipulate to adjudication under the large habitual criminal statute and to a 10- to 25-year sentence in the Nevada Department of Corrections in Case 310695 and Count -- and the same sentence, 10 to 25 years on Counts 1 through 5 in Case Number 311212. Both parties also stipulate that the 364-day gross misdemeanor sentence in CCDC will be served on Count 6 in 311212. And all counts and cases will run concurrent to one another. The State will not oppose dismissal of the remaining cases for Mr. Harold Edwards which are C310166 and C312326 after rendition of sentence in this case.

THE COURT: Is that your understanding of the negotiation, Mr. Edwards?

THE DEFENDANT: Yes, sir.

THE COURT: You accept those negotiation --

THE DEFENDANT: Yes, sir.

THE COURT: -- after discussing the matter fully with your attorneys?

THE DEFENDANT: Yes, sir.

THE COURT: You do read, write, and understand English?

THE DEFENDANT: Yeah.

THE COURT: You read through your Information -- if I've got it. Your Information on a Category B felony. You discussed it with your attorneys. They answered all your questions to your satisfaction, you're satisfied with their services?

THE DEFENDANT: Yeah.

THE COURT: You want me to accept this deal?

THE DEFENDANT: Yeah.

THE COURT: They charge you in this Information with a Category B felony, on or about the 17th day of September --

MR. FLINN: It appears to be a typo, Your Honor, with the year.

THE COURT: It's 2015?

MR. FLINN: It's 2015, not -- of course.

THE COURT: I'll scratch the O after that.

MR. FLINN: Thank you, Your Honor.

THE COURT: 2015 in Clark County, Nevada, contrary to form, force, and effect of statutes in such cases made provided that you did unlawfully, willfully, and feloniously enter Bellagio Las Vegas, Clark County, Nevada with intent to commit a felony therein. To that, how do you plead?

THE DEFENDANT: Guilty.

MR. FLINN: And, Your Honor, I apologize, it was with the intent to commit a larceny.

THE COURT: Larceny.

MR. FLINN: Rather than a felony.

THE COURT: Okay. Larceny. Is that right, Mr. --

THE DEFENDANT: Yes, sir.

THE COURT: -- Edwards? And you accept those negotiations after discussing the matter fully with your attorney?

THE DEFENDANT: Yes, sir.

THE COURT: And then your attorney gave you a copy of the Guilty Plea Agreement, and you read through that?

THE DEFENDANT: Yeah.

THE COURT: And discussed that with them, they answered all your questions --

THE DEFENDANT: Yeah.

THE COURT: -- to your satisfaction?

THE DEFENDANT: Yeah.

THE COURT: Do you have any questions of the Court about your Guilty Plea Agreement?

THE DEFENDANT: No, I don't have any.

THE COURT: I will follow whatever recommendation you've negotiated with your -- with the District Attorneys, I just want you to know that up front. Both parties stipulate to adjudication under the large habitual criminal statute and you'll receive a 10- to 25-year sentence in Nevada Department of Corrections in this case and in Case C311212, concurrent. Further, both parties stipulate to 364 days in Clark County Detention Center on C311212. And they will all run concurrent to each other, and then they'll dismiss C310166 and 312326. Is that your understanding?

THE DEFENDANT: Yes, sir.

THE COURT: You understand if you fail -- you agree that if you fail to interview with the Department of Parole and Probation or you fail to appear at any subsequent hearing in the case, they can argue for any sentence under the statute to increase your sentence to life without?

THE DEFENDANT: Yeah.

THE COURT: You'll talk to P&P, yeah?

THE DEFENDANT: Yeah.

THE COURT: All right. And you still want me to accept this deal?

THE DEFENDANT: Yeah.

THE COURT: You understand that as a consequence to your plea, if they don't meet their requirements of filing the proper certified documents, the sentence is 1 to 10 on this burglary, the minimum term of imprisonment may not exceed 40 percent of the maximum term, could be fined up to $10,000. I'm not going to fine you. If you're sentenced under the small habitual, it's 5 to 20 years possibility. The large habitual criminal is life without the possibility of parole or parole -- life with the possibility of parole after 10 years, or a 10- to 25-year sentence and an administrative assessment fee. Is that your understanding?

THE DEFENDANT: Yeah.

THE COURT: You're not eligible for probation, you understand that?

THE DEFENDANT: Yeah.

THE COURT: And I will follow the concurrent requirements -- or negotiation. Other than what we've talked about here in Court, no one's promised you a sentence have they?

THE DEFENDANT: No.

THE COURT: Are you a citizen of the United States?

THE DEFENDANT: Yeah.

THE COURT: P&P is going to prepare a report for the sentencing judge, it will included hearsay information about your background and your criminal history. If there are mistakes, you can correct those mistakes, you and your attorney. But in essence, the Court relies on those. Do you understand that?

THE DEFENDANT: Yeah.

THE COURT: Now, by pleading guilty, you understand you're giving up the right, the privilege against self-incrimination, including the right to refuse to testify at trial. Do you understand?

THE DEFENDANT: Yeah.

THE COURT: You're giving up the right to a speedy and a public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense. Do you understand?

THE DEFENDANT: Yeah.

THE COURT: You're giving up the right to confront and cross-examine witnesses who would testify against you; the right to testify in your behalf; the right to subpoena witnesses to testify

PLEADING CONTINUES IN NEXT VOLUME

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Aug 04, 2021 11:41 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

HAROLD EDWARDS,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: C-15-310695-1

Docket No: 83046

RECORD ON APPEAL
VOLUME
1

ATTORNEY FOR APPELLANT
HAROLD EDWARDS # 1169986,
PROPER PERSON
P.O. BOX 208
INDIAN SPRINGS, NV 89070

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

C-15-310695-1 STATE OF NEVADA vs. HAROLD EDWARDS

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vs
Harold Edwards

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vs
Harold Edwards

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vs
Harold Edwards

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INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
WILLIAM FLINN, JR.
Deputy District Attorney
Nevada Bar #013119
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

I.A. 11/13/2015
10:00 A.M.
PD HOJJAT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAROLD EDWARDS,
#7024721

Defendant.

CASE NO: C-15-310695-1

DEPT NO: VIII

INFORMATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

That HAROLD EDWARDS, the Defendant(s) above named, having committed the crime of **BURGLARY (Category B Felony - NRS 205.060 - NOC 50424)**, on or about the 17th day of September, 20150, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did willfully, unlawfully, and feloniously enter, with intent to

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///

///

commit larceny, that certain building occupied by BELLAGIO LAS VEGAS, located at 3600 South Las Vegas Boulevard, Las Vegas, Clark County, Nevada.

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

BY /s/ Agnes M. Lexis for
WILLIAM FLINN, JR.
Deputy District Attorney
Nevada Bar #013119

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

NAME	ADDRESS
CLARK, Jeffrey	LVMPD # 13952
CUSTODIAN OF RECORDS Surveillance	Bellagio Las Vegas 3600 S. Las Vegas Blvd., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	Clark County Detention Center, 330 S. Casino Center Blvd., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	Clark County Detention Center, Communications 330 S. Casino Center Blvd., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Communications, 400 E. Stewart Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Records, 400 E. Stewart Las Vegas, NV
DOUGHERTY, Ed OR DESIGNEE	INVESTIGATOR C.C. DISTRICT ATTORNEY
JIMENEZ, Joanna	Bellagio Las Vegas
VICARUSO, Arun Security	Bellagio Las Vegas 3600 S. Las Vegas Blvd., Las Vegas, NV

15F15118X /saj/L-1
LVMPD EV#1509232005
(TK11)

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DISTRICT COURT
CLARK COUNTY, NEVADA

PLEASE FILE
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STATE OF NEVADA) Case No.: C-15-310695-1
)
Plaintiff,) Dept. No.: VIII
)
vs.) Docket No.: _____
)
HAROLD EDWARDS,)
#7024721)
Defendant)

Last copy To dept's Rec 11/24/15

Motion To Dismiss

NOW Comes the Defendant, Harold Edwards #7024721 in proper person, with a Motion To Dismiss (1) Count of Burglary Category B Felony - NRS 205.060 - NOC 50424), as brought by Clark County District Attorney, State of Nevada.

it is the states Contention that on or about the 17th day of September 2015 within the County of Clark, State of Nevada, did willfully, unlawfully, and feloniously enter, With intent to Commit larceny, that Certain building occupied by Bellagio Las Vegas, located at 3600 South Las Vegas Boulevard, Las Vegas, Clark County, Nevada. The state further argues that Harold Edwards #7024721 entered the back door of Cafe Gelato with the intent to Commit Petit Larceny when he took a bag from a locker where Joanna Jimenez's bag was

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inside one of the lockers in the back of Cafe Gelato located inside the BELLAGIO HOTEL & CASINO.

DEFENDANT ASK the Court to dismiss the above charge based OF the following true facts. 1) The D.A. Clearly introduced information and Circumstances which were not mentioned in the charge Mr. Edwards is being charged with which is Burglary. He introduced an argument about an ipad laptop which the Judge clearly recognized was not mentioned in the Burglary charge against Mr. Edwards P. 43 lines 8 & 12-13 of the preliminary hearing transcripts. P. 43 line 25 the Judge stated "How is he suppose to defend this? it's not in this-- referring to Mr. Edwards charge of Burglary. P. 44 lines 24&25 The Judge Ask Mr. Flinn "Do you have any Case law that says you can bootstrap one to the other? Clearly meaning being able to use a Circumstance Mr. Edwards isn't being charged with to draw inferences from it to help Mr. Flinn establish intent which is unfavorable to the accused. Mr. Flinn Clearly went outside the Facts of the Burglary which Mr. Edwards is being Charged with. Further More How Can you Supposedly watch a Crime being Committed and not Charge the alledged perpetrator of that Crime with anything, then try to use Video From this to establish intent of another alledged Crime that the State did Charge the defendant With.

P. 45 lines 1-2 Mr. Flinn acknowledges his error by clearly apologizing. P. 45 lines 3 & 8 Judge Goodman argues with the State, Mr. Flinn stating "Well he's not Charged with attempting to steal an ipad. on line 8 of P. 45 of the prelim transcripts Judge Goodman argues further Stating " But You are using the ipad to try to allege that there is a burglary here." P. 46 lines 1-11 of preliminary hearing transcripts Judge Goodman Further Argues " The problem is even as I sit here looking at the Criminal Complaint here right now, it's a burglary with the intent to Commit a larceny, then Count 2 is a petit larceny related to the bag that was taken from Joanna Jimenez. So when I look at this, when I started this -- when I started the prelim and I'm looking at the document I have in front of me, I'm thinking the Case revolves around the bag that was taken from Joanna Jimenez. That's the burglary Coming up and then, all of a Sudden, it's not that it's Something else. Preliminary hearing transcripts pg. 47 lines 9-11 Judge Goodman Continues to argue " But how Come that wasn't Charged as an attempt theft to Show they were together to Show this is why he entered it?" it is Crystal Clear that Judge Goodman Knows that what Mr. Flinn is trying to do is outside the Charge Mr. Edwards is Charged with, but Judge Goodman allows Mr. Flinn to Continue with his questions. iT is error for the prosecuting attorney in his argument before a Judge to use Video of Something

the accused is not being charged with, to help him establish intent For the charge the defendant is being charged with.

2) Judge Goodman allowed the State to use video and oral testimony From Jason Wherrity and Arvin Viacrussi about an incident that occurred in the Casino of the Bellagio Captured on Video Surveillance but is not evidence to What Mr. Edwards is being Charged with in the Burglary and Petit Larceny of Joanna Jimenez's Lunch bag. Preliminary Hearing Transcripts pg. 42 lines 22-25 also prelim Transcripts pg. 43 lines 1-25 and pg. 44 lines 1-25 pg. 45 lines 1-9 pg. 46 lines 1-25 & pg. 47 lines 1-16 preliminary hearing p.g. 30 line 19 - pg. 32 lines 1-25 and pg. 33 lines 1-25 pg. 34 lines 1-25 and pg. 35 lines 1-15

3.) Mr. Edwards is Seen with Something in his hands as he enters the back doors leading to the Arcade, but if you watch the Surveillance Video as Mr. Edwards leave the Arcade he has in his hands the same thing he had in his hands in the hallway as he is Seen entering the back door that leads to the Arcade And that was "A BAG OF JELLY BEANS." When you Continue to Watch Mr. Edwards exit the Arcade area You'll See Mr. Edwards throwing Jelly beans from the bag into his mouth, then you'll See Mr. Edwards leave the bag on a table as he exits the Bellagio. You don't See Mr. Edwards With a lunch bag Mr. Edwards Never had a bag. For the above issues I Ask the Court to Dismiss the Charge OF Burglary. Cont.

This Court erred in admitting over defendants objection and exception, incompetent, irrelevant and immaterial evidence, which evidence so admitted, was highly prejudicial to the rights of the defendant. Under this heading I refer particularly to testimony admitted in reference to an ipad not Mentioned in the charge defendant had preliminary hearing on which was Burglary. IT is not being shown that the ipad testified to was in any way Connected with the alledged Crime of Burglary. and Such testimony had no place in the preliminary hearing of the Cause. preliminary hearing trans. pg. 42, 43, 44, 45, 46, 47, 48 & 49

4) The D.A. State's that they Can't Find the Owner of the ipad, So how is the Court going to Know that Mr. Edwards never tried to steal an ipad and that he did in Fact tell the owner of the ipad that they Could claim their ipad at the lost & found Window prelim. Transcripts pg. 47 lines 17-18 & pg. 34 lines 23-25 pg. 35 lines 1-25 & pg. 36 lines 1-9 The state doesn't want it to be known that Mr. Edwards intent Never was to claim that ipad for himself but to return it to the rightful owner's and this would have been Confirmed through the owner's of the ipad, So he could never use that Video to prove Mr. Edwards had Criminal or felonious intent when he entered the Bellagio.

DATED THIS 17th day of November, 2015.

I, Harold Edwards, do solemnly swear, under the penalty of perjury, that the above Facts is accurate, correct, and true to the best of my knowledge.

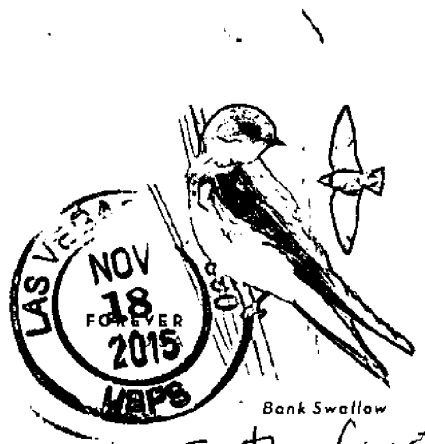
NRS 171.102 and NRS 208.165.

Respectfully submitted,

Harold Edwards

Defendant

Harold Edwards #7024721
330 , So. Casino Center Blvd.
Las Vegas, NV 89101



Steven D. Grierson Clerk of the Court
200 Lewis Avenue 3rd Fl.
Las Vegas NV 89155-1160

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CASE NO. C310695

DEPT. NO. 11

IN THE JUSTICE COURT OF THE LAS VEGAS TOWNSHIP

COUNTY OF CLARK, STATE OF NEVADA

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CLERK OF THE COURT

THE STATE OF NEVADA, Plaintiff,	)
Vs	) Case No. 15F15118X
HAROLD EDWARDS, Defendant.	)

REPORTER'S TRANSCRIPT
OF
FARETTA CANVASS & PRELIMINARY HEARING

BEFORE THE HONORABLE ERIC A. GOODMAN

JUSTICE OF THE PEACE

TAKEN ON TUESDAY, NOVEMBER 10, 2015
AT 9:00 A.M.

APPEARANCES:

For the State: WILLIAM FLINN
Deputy District Attorney

For the Defendant: NADIA HOJJAT
Deputy Public Defender
PROPER PERSON

REPORTED BY: PATSY K. SMITH, C.C.R. #190

PATSY K. SMITH, OFFICIAL COURT REPORTER
(702) 671-3795

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LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 10, 2015

* * * * *

THE COURT: Harold Edwards.

There are two cases for Mr. Edwards.

I know he was looking for some sort of a negotiation. Do we have something worked out with this?

MS. HOJJAT: Your Honor, I have not received an offer. I did talk to Mr. Giordani after the last preliminary hearing. Because there are so many cases in the system, they are not making an offer in this case.

So, at this point, my client would like to have a Faretta canvass done.

THE COURT: Okay.

Sir, do you understand if I take her off the case, I mean you really have nobody to represent you in trying to get your case negotiated?

THE DEFENDANT: I'm going to represent myself, sir.

THE COURT: Okay.

THE DEFENDANT: I mean by me being my own counsel, I'm quite sure -- I'm not at odds with the young man. I don't even know him. So if we can negotiate some type to get rid of these cases because these cases are lesser than the ones I'm already in District Court -- you

know, I'm already bound over in. I have been to preliminary hearings on two cases already, so I'm already in.

If we can resolve this down here. Then that's cool to me, you know, if we can resolve it. I've never received any offers from her saying she got offers from him or the State.

THE COURT: Sir, I think the problem is, you have six cases in the system.

THE DEFENDANT: I know about that. I'm talking about the two today.

THE COURT: Wrapping up your cases, that's going to take awhile.

Do you represent yourself in the other cases?

THE DEFENDANT: I'm contemplating representing myself in one of my cases up there. I already took the Faretta in another case. So I passed the Faretta and I'm going to be representing my case with that one too also.

THE COURT: All right, sir.

THE DEFENDANT: If we can resolve this then with some -- you know, because I mean I wouldn't mind having a status check on the case and then find out if we can resolve it down here before we even go further.

THE COURT: Well, the problem is once the PD comes off your case, once you don't have an attorney on your case, they are not going to talk to you directly. They don't talk to you directly.

THE DEFENDANT: I'm my own attorney.

THE COURT: They can't talk to you directly.

THE DEFENDANT: How come he's not negotiating with me? In the other courts, I have had the State attorney talk to me. I guess they don't feel like I'm not one of their peers.

THE COURT: No, no, not at all, but if she is coming off your case, they are going to act like you are prepared to fight your case, that you are just going to trial, that you are going to fight your case and go to trial.

THE DEFENDANT: But I'm willing to say -- he can hear me now. He hears me now.

THE COURT: Well, if you want to try to negotiate your case, why don't you keep somebody on your case, as a go-between, so they can talk with her.

THE DEFENDANT: Okay, your Honor.

We have been doing this, you know. We have been going back and forth. This has been set for preliminary. I don't know what this is.

THE COURT: Well, the problem is you feel you want to represent yourself and fight your case, then you tell us you want a negotiation.

THE DEFENDANT: I do. I want to resolve my case. If we can resolve it down here, that's cool --

THE COURT: Yeah.

THE DEFENDANT: -- but if I can't get it resolved, then I will represent myself and this deal should be open for some kind of negotiation with me.

You know, I don't know what the deal is. With what you're saying, he is not being able to represent -- I mean to negotiate with me, you know what I'm saying?

MS. HOJJAT: Judge, can we approach briefly?

THE COURT: Sure, absolutely.

(Off the record discussion not reported.)

THE COURT: All right, Mr. Edwards, have a seat. They are going to talk to you at the end of this to see if they can work something out, in terms of a negotiation. If they don't give you something you like, we will do the Faretta at the end of it, but we will let you talk.

MS. HOJJAT: Thank you, your Honor.

(Off the record discussion not reported.)

THE COURT: Why don't we go back on Edwards.

MS. HOJJAT: Thank you, your Honor.

And, your Honor, I did speak with the District Attorney in this case. I did convey to him that Mr. Edwards would like an offer and would like an opportunity to negotiate these two cases separately. The District Attorney, at this time, is not willing to make an offer.

I spoke to Mr. Edwards, explained to him that, at this time, there's no offer on the table and I asked him what he would like to do. He would like to go forward with the Faretta canvass today.

THE COURT: Okay.

All right, sir, you have two different felony cases. I'll do one Faretta, but it will cover both cases.

Sir, for the record, what is your full legal name?

THE DEFENDANT: Harold Moore -- Edwards.

THE COURT: I'm sorry?

THE DEFENDANT: Harold Edwards.
THE COURT: How old are you?
THE DEFENDANT: 50.
THE COURT: How far did you go in school?
THE DEFENDANT: Couple years of college.
THE COURT: Do you read, write, and understand the English language?
THE DEFENDANT: Yes, I do.
THE COURT: All right.
Sir, do you have any health issues --
THE DEFENDANT: No, sir.
THE COURT: -- at this point?
THE DEFENDANT: No, sir.
THE COURT: Is your eyesight okay?
THE DEFENDANT: Yes, sir.
THE COURT: Do you have any kind of history with mental health issues?
THE DEFENDANT: No, sir.
THE COURT: Are you on any kind of medication?
THE DEFENDANT: No, sir.
THE COURT: No medication whatsoever?
THE DEFENDANT: My primary doctor just discontinued my medicines, but I'm not taking medicine now, but it was for high blood pressure.

THE COURT: Sir, in 15F15118X, that's one of the cases in front of me, do you understand what you are charged with in that case?

THE DEFENDANT: Yes, sir.

THE COURT: Okay.

Do you know what the elements of burglary are?

THE DEFENDANT: Yes, sir.

THE COURT: Okay, what are the elements of burglary?

THE DEFENDANT: The element is the intent to commit a felony or theft -- knowing to -- and without authority with the intent to commit a felony or theft.

THE COURT: Okay, the second case is a misdemeanor. The second part of that is a misdemeanor, it's a petty larceny. Do you know what the elements of a petty larceny are?

THE DEFENDANT: Petty larceny is the intent to take something from -- take something that -- take something that doesn't belong to a person.

THE COURT: Do you know what the possible penalties are for a burglary?

THE DEFENDANT: The possible penalties for a burglary is a Category B, 1-to-10 years.

THE COURT: What about petty larceny?

THE DEFENDANT: Petty larceny is a maximum -- maximum six months.

THE COURT: Okay, in 15F15588X, do you understand what you are charged with in that case?

THE DEFENDANT: Yes, sir.

THE COURT: Okay, what are the charges?

THE WITNESS: You said 15F --

THE COURT: Yeah, 15588X.

THE DEFENDANT: Let me see.

Okay, conspiracy to commit grand larceny -- conspiracy to commit larceny and grand larceny.

THE COURT: Okay.

Okay, sir, do you understand what the elements of grand larceny are?

THE DEFENDANT: The elements of grand larceny are the intent to commit -- or the conspiracy or grand larceny? Which one are you asking me about?

THE COURT: All right, Count 2 because Count 1 is conspiracy. So Count 2, do you understand what a grand larceny is?

THE DEFENDANT: Yeah, grand larceny is a intent to take something from somebody that doesn't belong to you. It's simple.

THE COURT: Okay, what about the conspiracy charge, what does that mean?

THE DEFENDANT: Conspiracy is conspiring with another individual, with a co-defendant, whatever, to deprive someone of their property.

THE COURT: Okay, do you understand what the possible penalties are?

THE DEFENDANT: 1-to-5 years for grand larceny and the gross misdemeanor, one year.

THE COURT: Sir, do you understand that you have a constitutional right and a statutory right to the assistance of counsel?

THE DEFENDANT: Yes, sir.

THE COURT: Okay.

Do you understand that the attorney from the Public Defender's Office, the person who is assigned to your case, is a trial attorney with many years of experience, has handled numerous felony cases, and has practiced in front of both me and the judges upstairs for a long period of time?

THE DEFENDANT: Yeah.

THE COURT: Okay, do you understand that these individuals are competent lawyers?

THE DEFENDANT: Okay, yes, I understand that.

THE COURT: Okay.

Do you know that you have a right to

compel witnesses to testify on your own behalf?

THE DEFENDANT: Yes, sir.

THE COURT: Okay, how would you do that?

THE DEFENDANT: By asking the witnesses -- to call them, ask them to appear or have your Honor subpoena them to court.

THE COURT: Do you know how to subpoena somebody?

THE DEFENDANT: I have to find out in the law library. I haven't done it yet, but I'm pretty sure I can find out through the law -- to tell you, I know someone that knows more about the law than me and, also, they have a law library.

THE COURT: You have talked to somebody who has more experience than you have?

THE DEFENDANT: Yeah.

THE COURT: Like this person here?

THE WITNESS: I know people on the street.

THE COURT: Nothing better than a street lawyer, nothing better than a street lawyer.

THE DEFENDANT: Well, you put so much emphasis on it. I know people just like you who know the law. Not all criminals, everybody I know isn't a criminal like what you are implying. You are implying because I'm in jail --

THE COURT: I'm saying this person is representing you for free? They are willing to represent --

THE DEFENDANT: I don't want them to represent me. That's why taking the Faretta.

THE COURT: Do you know you have a right to cross-examine the State's witnesses?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand you have the right to confront all of the State's witnesses?

THE DEFENDANT: Yes, sir.

THE COURT: Do you know you have the right to be informed of the nature and cause of the accusations?

THE DEFENDANT: Yes, sir.

THE COURT: Okay -- sorry.

Do you know you will be required, while representing yourself, to follow all procedural rules attending to these matters?

THE DEFENDANT: Right.

THE COURT: You get no special favors just because you are representing yourself?

THE DEFENDANT: Right.

THE COURT: That means no extra time in the law library?

THE DEFENDANT: Right, right.

THE COURT: Whenever you get over there is when you get to go over there?

THE DEFENDANT: Right.

THE COURT: It doesn't make a difference if you represent yourself?

THE DEFENDANT: They don't have a law library you can go to. You can't go to one. It makes no difference. I just have to plan on the Court --

THE COURT: Sir, do you understand self-representation is almost always unwise --

THE DEFENDANT: Okay.

THE COURT: -- and may be to your detriment?

THE DEFENDANT: Yes, sir.

THE COURT: Okay.

You know that you have to follow all the technical rules of substantive law, criminal procedure, and evidence?

THE DEFENDANT: Right.

THE COURT: You are basically treated like an attorney?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions about that?

THE DEFENDANT: No, sir.

THE COURT: Do you understand the prosecutor, the prosecution will be represented by an expert professional attorney?

THE DEFENDANT: Yes, sir.

THE COURT: Okay, that you are not going to get any favors from him?

THE DEFENDANT: Yes, sir.

THE COURT: Okay, have you ever seen or participated in an actual jury trial?

THE DEFENDANT: Yes, sir.

THE COURT: Have you ever represented yourself?

THE DEFENDANT: I represented myself once.

THE COURT: Where was that?

THE DEFENDANT: In Illinois. I won the jury.

THE COURT: You represented yourself?

THE DEFENDANT: Yes.

THE COURT: Was it a felony case?

THE DEFENDANT: Felony case, yes, your Honor.

THE COURT: You don't have to tell me. Was this something you could put on the record, what the felony was?

THE DEFENDANT: Do I have to? I don't

have to divulge --

THE COURT: You don't have to tell me what it was.

THE DEFENDANT: Yeah, let's leave it right there. Let's leave it right there.

THE COURT: Okay.

Okay, do you understand your right to self-representation will be vacated if you become disruptive in court?

THE DEFENDANT: Yes, sir, I understand that.

THE COURT: Do you understand if you are convicted, you can't complain on appeal that you were an inadequate attorney?

THE DEFENDANT: Right.

THE COURT: That you weren't a good attorney, you understand you can't appeal that issue?

THE DEFENDANT: Yes, sir.

THE COURT: I mean, apparently, you have already been given the Faretta canvass in a different Department. I think that was in front of Department 12?

THE DEFENDANT: Right.

THE COURT: You have already been found to be competent, you have already been found to be able to represent yourself.

Are you doing this freely and voluntarily --

THE DEFENDANT: Yes, sir.

THE COURT: -- of your own accord? Nobody's forcing you to represent yourself?

THE DEFENDANT: No, sir, no, sir.

THE COURT: Okay, he's already been given the Faretta canvass in other departments. He's been found competent to represent himself.

So, at this point, I will let you represent yourself on those cases. We will find that you are competent. This is freely and voluntarily done.

We will simply reset this in 15 days. I will see you back here in 15 days.

MS. HOJJAT: Your Honor, this was the preliminary hearing.

THE DEFENDANT: This was on for preliminary.

MR. FLINN: One of them was.

MS. HOJJAT: Yeah.

THE COURT: Is that one going today?

MR. FLINN: We are ready to go.

THE COURT: Okay.

All right, does he have all the discovery?

MS. HOJJAT: I have provided him a copy of

the discovery, your Honor. At that point, I redacted the victim's contact information. I don't know if you want him to have the unredacted copy. It has everything, phone numbers, addresses, social security numbers. This one is redacted.

THE COURT: You have to take everything out.

MS. HOJJAT: Yes.

THE COURT: Have you had a chance to look at the discovery?

THE DEFENDANT: Yes, sir. I seen the videos and I have also received from her most of the discovery.

MS. HOJJAT: I did. I also gave him a copy of everything. When I went to the jail, I played everything on the video for him.

THE DEFENDANT: Yeah, I have seen it.

THE COURT: We are not going to do this one first. We will make it towards the end of this, let the other prelims go --

THE DEFENDANT: Right.

THE COURT: -- so you can kind of see what is going on in here and then, okay, you are off.

MS. HOJJAT: Thank you.

MR. FLINN: We need a prelim date in the

one case, in 15588.

THE COURT: Yeah, we need a prelim.

Which one is not going?

MR. FLINN: 15588.

THE COURT: In 15F15588X, we will set a prelim in that one in 15 days.

THE CLERK: November 24th, 9 A.M.

THE COURT: Then it looks like the other one is going today.

Okay, sir, have a seat.

(Off the record discussion not reported.)

THE DEFENDANT: Your Honor, can I get discovery on the other case?

THE COURT: Do you have a copy of the discovery to give to him?

THE DEFENDANT: Also, your Honor, the photos that I was given from the State, I guess these are copies from his photos. These -- I don't know what this is. Maybe you can tell me what that is? I don't even know what this is in the photo. Supposedly of somebody. Looks like it's a sonogram to me.

THE COURT: Maybe it's Batman.

You tell me, who is that.

THE DEFENDANT: Who is this? You say that's me?

THE COURT: Look, we will get to it. We will get to it. You can't be disruptive. You can't be disruptive.

So we will get to you.

(Off the record discussion not reported.)

THE COURT: Do you want to give the copy to the marshal?

THE DEFENDANT: For the record, the marshal --

MR. FLINN: I did give a copy of the discovery to the marshal. He is going through it to make sure it's appropriate.

THE COURT: Okay, okay.

(Off the record discussion not reported.)

THE COURT: Let's go on the record with Mr. Edwards. This is 15F15118X.

Sir, we will have you come up here and take A seat at the defense table.

Sir, do you have any paper to write on?

Do you have any paper to write on?

THE DEFENDANT: I don't need that much paper, your Honor. I have enough. I have a sufficient amount of paper, but, also, before we start, before we begin to proceed, I'd like to move to sever the petty larceny case.

THE COURT: Yeah, we will do that.

THE DEFENDANT: Thank you.

THE COURT: We will sever it.

THE DEFENDANT: Thank you.

THE COURT: We will grant that motion. We will kind of trail that to see what happens with the felony.

THE DEFENDANT: Also, your Honor, before any video is shown, could you please admonish the DA to not narrate the video, just let it play. Whoever the witness is on the video, if they are one of his witnesses, they not be led with the video with his narrating the video. Just let's it play. You know, it's -- the video is self-explanatory.

THE COURT: Sir, it's a little bit early to ask that. If you see something that is a problem, you can object to it, but it's a little bit early to make any kind of rulings on the evidence.

THE DEFENDANT: Okay.

THE COURT: State, it's my understanding there is no offer?

MR. FLINN: That's correct, your Honor.

THE COURT: Okay.

All right, sir, Mr. Edwards, did you have any witnesses on your behalf?

THE DEFENDANT: Yes, I want to use the detective. I think his name is Jeffrey Clark. I want him to be my witness, one of my witness -- I want him as one of my witnesses.

THE COURT: Okay. So you are going to cross-examine him?

THE DEFENDANT: Yeah.

MR. FLINN: Yeah, the State intends to call him, so...

THE COURT: Okay.

All right, sir, have a seat. We are going to get this started.

State, it's my understanding you have four witnesses?

MR. FLINN: That's correct, your Honor.

THE COURT: All right, if you are a witness in this case, please remain outside until your name is called.

State, please call your first witness.

MR. FLINN: You two can go outside.

The State calls Joanna Jimenez.

JOANNA JIMENEZ,

having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified and said as follows:

THE CLERK: Please have a seat.

State your first and last name and spell both for the record.

THE WITNESS: Joanna Jimenez, J-O-A-N-N-A, 98 -- sorry, J-I-M-E-N-E-Z.

THE COURT: All right, State.

MR. FLINN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. FLINN:

Q Ms. Jimenez, I want to direct your attention back to September 17th of this year, how were you employed at that time?

Who did you work -- where did you work?

A Oh, Bellagio.

Q What area of the Bellagio?

A Cafe Gelato.

THE COURT: I'm sorry, I couldn't hear that.

THE WITNESS: Cafe Gelato.

THE COURT: Cafe Gelato, okay.

Thank you.

Q (BY MR. FLINN) So on the 17th of September, were you working that day?

A Yes.

Q Around 1, 2 in the afternoon?

A Yes.

Q Those hours you were at work?

A Yes.

Q Now is there an area there at the Bellagio where, while you are at work, you, as an employee, can store your personal belongings?

A Yes.

Q Where is -- what is that?

A It's lockers. It's located in the back of the house.

Q So when you say back of the house, you mean an area that's not available to the general public, but behind the scenes?

A Exactly.

Q And there's a room that has lockers in it?

A Yes.

Q And you can go and store your things in a locker while you are at work?

A Yes.

Q So on that day, September 17th, this is at the Bellagio, here in Clark County, did you put anything in a locker while you were at work?

A Just, on my break time, I just opened it, got something, and my bag was still there.

Q No, but did you store anything when you came to work in the locker?

A Oh, yeah, my bag.

Q What type of bag, like a duffel bag?

A Lunch bag.

Q I'm sorry?

A Lunch bag.

Q And anything else?

A Well, inside it had like my personal stuff, like, yeah, makeup.

Q So you had a bag stored in the locker, you left it in the locker, and you went to work?

A Yes.

Q Did there come a time where you finished your shift and you went to go retrieve your bag from the locker?

A Yeah, my shift ended around 4:00 and

that's when I noticed my bag was missing.

Q So you went back to the locker and your back wasn't there?

A Yes.

Q When -- what did you do when you discovered your bag was missing?

A I notified my manager right away. She told me to go to the security office and make a report, so I did.

Q So you went to security and made a report?

A Yes.

Q Was your bag ever returned to you?

A Yes, it was.

Q That day or --

A No, they found it in like the arcade --

Q Okay.

A -- next to another department, so the next day.

Q And they did give it back to you?

A Yes, uh-huh.

Q Was anything of value missing from that bag?

A No.

Q Did you give anyone permission to go into your locker and take your bag?

A No.
Q Do you know anyone by the name of Harold Edwards?
A No.
Q And so did you give Harold Edwards permission to take your bag?
A No.
THE DEFENDANT: I object, your Honor.
MR. FLINN: Nothing further.
THE DEFENDANT: I object, your Honor.
THE COURT: What is the objection?
THE DEFENDANT: The objection is he is giving her the impression that I took her bag by saying, you know, did she give me permission. That's not -- that's not fair.
THE COURT: She has no idea who you are. She is not saying you had it. She didn't identify you.
THE DEFENDANT: I'm the only one sitting here.
THE COURT: No, no, no, but the objection will be overruled. The objection will be overruled.
MR. FLINN: Thank you, your Honor.
No further questions.
THE COURT: Do you have any questions of her?

THE DEFENDANT: Yes, I have a question for her.

THE COURT: Sure.

CROSS-EXAMINATION

BY THE DEFENDANT:

Q Good morning.

What is your name? Ms. Jimenez (sic)?

A Jimenez.

Q Good morning, Ms. Jimenez.

A Good morning.

Q I just want to ask you, did you see someone take your bag?

You had a bag missing, right?

A Yes.

Q Did you see anybody in the back take the bag?

Is anybody in this courtroom did you see that took your bag?

A No.

THE DEFENDANT: That's all I got for her, your Honor.

THE COURT: Okay.

Any redirect?

MR. FLINN: No, your Honor.

THE COURT: Okay, ma'am, thank you for testifying. You are free to stick around to find out what happens. You are free to take off.

THE WITNESS: Okay.

THE COURT: Okay, thank you.

THE WITNESS: Thank you.

THE COURT: Did you sign her subpoena?

MR. FLINN: Did I give you a subpoena?

No, I don't think I did.

Thank you, Judge.

(Off the record discussion not reported.)

MR. FLINN: State calls Arvin Viacrussi.

THE COURT: Okay.

(Off the record discussion not reported.)

ARVIN VIACRUSSI,

having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified and said as follows:

THE CLERK: Please have a seat.

THE WITNESS: Thank you.

THE CLERK: State your first and last name and spell both for the record.

THE WITNESS: My name is Arvin Viacrussi, A-R-V-I-N V-I-A-C-R-U-S-S-I.

THE COURT: All right, State.

MR. FLINN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. FLINN:

Q Sir, I want to direct your attention to September 17th of this year, how were you employed at that time?

A I was a security officer and I was posted at our Lost & Found.

Q A security officer where?

A At Bellagio.

Q Bellagio, here in Las Vegas?

A Uh-huh.

Q So you were posted where?

A I was posted at the Check Bank, which is where we keep lost and found.

Q So this is 2, 3 in the afternoon?

A Yes.

Q You are on duty posted at the Check Bank?

A Uh-huh.

Q You said that's where you keep Lost & Found?

A Yes.

Q Did there come a time, during your shift that afternoon, where someone brought to you an iPad?

A Yes, sir.

Q Who was it that brought that to you, if you remember?

A It was an EVS employee that turned in an iPad. It was found, he said, in between a slot machine.

Q So, basically, an item found by one of your employees working the slot area brought you this item?

A Yes, sir.

Q And did there come a time, shortly thereafter, where an individual came to try to claim that iPad?

A Yes.

Q Do you recognize if that individual is in the courtroom today?

A Yes, sir.

Q Could you identify where he or she is sitting and the clothing he is or she is wearing for the Court?

A He's sitting right over there.

MR. FLINN: Would the record reflect he

identified the defendant?

THE COURT: It will.

Q (BY MR. FLINN) So the defendant approached you at the Lost & Found?

A Uh-huh.

Q And what did he say?

A He said he would like to claim his iPad.

Q And what did you do?

A I told him, Please identify the iPad, and since it has a pass code, I asked him for the pass code. He couldn't tell me what it is.

Q So when you say pass code, like if you turn on the screen, you have to type in a pass code to use the device?

A Yes, sir.

Q So you asked him, What's the pass code?

A Uh-huh.

Q Or something to that effect?

A Yes, to verify that it is his iPad.

Q And he said he didn't know the pass code?

A He said he didn't know and he told me that it actually belongs to his friend.

Q So then he said it belonged to his friend?

A Uh-huh.

Q And then what did the defendant do after

that?

A He tried to claim it. I told him I can't give it to him. If it belongs to his friend, his friend has to come here and pick it up.

Q And so what happened next?

A He said he's going to find her and he left and he never came back.

Q He never came back to you?

A Uh-huh.

Q While you were on your shift?

A Yes.

MR. FLINN: Nothing further, your Honor.

THE COURT: All right, sir, do you have any questions of him?

THE DEFENDANT: Yes, yes, sir, I have questions.

THE COURT: Okay.

CROSS-EXAMINATION

BY THE DEFENDANT:

Q Good morning, sir.

A Good morning.

Q The day of this incident, you said a guy approached you and told you that the iPad -- that the iPad that was missing belonged to one of his friends, correct?

A Uh-huh.

THE REPORTER: Is that yes?

THE WITNESS: Yes. Sorry.

Q (BY THE DEFENDANT) You say -- you stated to the DA that you asked for the code to get into the computer --

A Yes.

Q -- correct?

And the defendant -- and the person that you say came and asked about the computer told you that he didn't know the code to the computer, correct?

A Yes.

Q And he would go get the person whose computer it actually was, correct?

A Yes.

THE DEFENDANT: I rest.

THE COURT: Okay.

Do you have any questions, any redirect?

MR. FLINN: Court's indulgence, please, just a moment.

REDIRECT EXAMINATION

BY MR. FLINN:

Q Sir, after the defendant left and said he was going to go get his friend, did anyone come back while

you were on your shift to claim the iPad?

A I was still at the same post when the lady came to the Check Bank to claim it. Same procedure, I asked her to describe the item and what the pass code is, she gave it to me, I opened it. She described what's the contents of the iPad. She even showed me a picture of her in the iPad.

Q Was the defendant with her?

A No.

MR. FLINN: Nothing further, your Honor.

THE COURT: Sir, do you have any questions about that before I let him go?

Do you have any other questions regarding what he just testified to?

THE DEFENDANT: No, sir, no, sir.

THE COURT: Okay.

All right, sir, thank you for testifying.

THE WITNESS: Your welcome, sir.

THE COURT: You are free to stick around to find out what happens. You are free to take off.

THE WITNESS: Okay.

THE COURT: Did you sign his subpoena? Does he have a subpoena?

MR. FLINN: Did I sign your subpoena?

(Off the record discussion not reported.)

THE COURT: All right, next witness.

MR. FLINN: Yes, your Honor.

Brief indulgence, just a moment.

Surveillance officer from the Bellagio.

For the record, your Honor, the State calls Jason Wherrity.

THE COURT: Okay.

JASON WHERRITY,

having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified and said as follows:

THE CLERK: Please have a seat.

State your first and last name and spell both for the record.

THE WITNESS: Jason Wherrity, J-A-S-O-N W-H-E-R-R-I-T-Y.

THE COURT: All right, State.

MR. FLINN: Thank you, your Honor.

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DIRECT EXAMINATION

BY MR. FLINN:

Q Sir, how are you employed?

A I work at the Bellagio in Investigations.

Q And were you employed in that capacity back on September 17th of this year?

A Yes.

Q And, in the course of those duties, do you investigate crimes that occur within the casino or allegedly occur within the casino at various places?

A Yes, I do.

Q Now in reference to that date, in particular, September the 17th, did you investigate an employee's report that her backpack was taken from her locker?

A Yes.

Q And that's a locker in the employees only locker room?

A Correct.

Q So did you investigate that?

A Yes, I did.

Q And did you also investigate an attempted theft of an iPad?

A Yes.

Q And that was from the Lost & Found --

A It was.
Q -- ultimately?
A Yes.
Q And in an effort to investigate those complaints, did you view surveillance video from the casino?
A Yes.
Q And the casino, the hotel casino property?
A Correct.
Q And were you able to compile surveillance video related to those two incidents?
A Yes, I was.
Q And are those videos of the areas involved both with the backpack where it was stored and the iPad at the Lost & Found?
A Yes.
Q Among other areas of the casino?
A Correct.
Q And were you able to identify, in reviewing the surveillance video, that there was a person -- a specific person involved with both incidents?
A Yes.
Q Was that the same person within your viewing?
A Yes.

Q Now did you provide that video, surveillance video, the part that you compiled related to these incidents to law enforcement and the District Attorney's Office?

A I compiled the video. My partner is the one that showed it to Metro and then our Legal Department sent the video over to your department.

Q Okay.

So shortly before this hearing today, you and I met, correct?

A Correct.

Q And I showed you some video on two CDs, right?

A Correct.

Q Or DVDs.

And we watched portions of the video together from each of those disks, correct?

A Correct.

Q And are those disks and the video on them the fair and accurate copies of the surveillance video that you compiled from the Bellagio in the course of investigating these crimes?

A Yes.

MR. FLINN: Your Honor, at this time, I'm going to move to admit State's Exhibits -- well, I will

wait just a moment.

THE COURT: Okay.

MR. FLINN: May I approach the witness?

THE COURT: Sure, absolutely.

And this is the video you showed to the defendant previously?

MR. FLINN: Yes. I'm going to confirm that with the witness.

Yes, these surveillance videos and the two disks we provided to the Public Defender's Office while he was still represented and that were represented earlier in court that he had watched with the Public Defender.

THE DEFENDANT: Well, your Honor, if it so please, your Honor, I would like to watch it also. I would like to see what they're showing.

MR. FLINN: As soon as I get it to come up, your Honor, I will show the witness and confirm with the witness that it's what it's represented to be, then I will walk over and show the defendant so that he knows that it's the same thing that we are looking at --

THE COURT: Okay.

MR. FLINN: -- and that he's seen it before.

THE COURT: Okay.

MR. FLINN: But, obviously, for courtroom

procedure, I don't know if it's possible we all can look at it.

THE COURT: Sir, as soon as it comes up, he will come over and show it to you and then he will ask him his questions. So you will get a chance to look at it then.

THE DEFENDANT: Okay, okay.

THE COURT: Okay.

Q (BY MR. FLINN) Now, sir, do you recognize this menu screen?

A Yes, I do.

Q Is that just basically the software interface for your surveillance video?

A Yes.

Q So from that, you can pick the clips that are loaded in that are shown on the disk and play those videos?

A Yes.

MR. FLINN: For the record, I'm showing the witness -- this is State's Proposed Exhibit 1, which the disk itself is marked Disk 1 of 2.

Q Does this disk and these videos, does this contain the surveillance video related to the theft of the backpack?

A No. This would be the iPad.

Q This is the iPad?
A Correct.
Q Okay.
THE DEFENDANT: Your Honor, if I may object. The charges that I'm -- I received a copy of doesn't have anything to do -- it doesn't say anything about an iPad. It's talking about Joanna Jimenez' bag.
THE COURT: I don't have any information about an iPad.
THE DEFENDANT: So I don't know what they are talking about.
THE COURT: The only thing I have, you are right, is about the bag for Joanna. Are you thinking about the other case?
MR. FLINN: No.
THE DEFENDANT: The other laptop.
MR. FLINN: No, it's not the other case. It occurs directly after the theft of the backpack and I'm offering it to show the defendant's intent for the burglary I have filed that his intent coming into the property was with the intent to commit larceny, stealing a backpack.
THE DEFENDANT: I object, your Honor.
MR. FLINN: That's what I'm going to be offering it for.
THE COURT: How is he suppose to defend

this? It's not in this --

MR. FLINN: It's in the police discovery. It's fully documented.

THE COURT: No, he's not charged with attempting to steal an iPad.

MR. FLINN: No, he is charged with burglary on this date and at this time.

THE COURT: Right.

MR. FLINN: The police report outlines both incidents, which have been provided in the discovery. I'm not showing it to show him attempting to steal the iPad. I'm offering it to show, when he came in, the element of the offense is that he entered with the intent to commit larceny.

I have two acts that does show his intent when he entered the premises, one of which being the backpack and the second of which being the iPad, which he is fully aware of because it's in all the discovery materials and he watched his video with his attorney related to the iPad.

So it should be no surprise to him that I'm talking about the iPad. I'm not bringing it up to try to charge him with a new crime here.

THE COURT: Do you have any case law that says you can bootstrap one to the other?

MR. FLINN: I don't know -- I apologize, I don't know what you are asking me about bootstrapping of?

THE COURT: Well, he's not charged with attempting to steal an iPad.

MR. FLINN: No, but these aren't separate incidents. These are one right after the other at the same time and same place.

THE COURT: But you are using the iPad to try to allege that there is a burglary here.

MR. FLINN: I'm trying to show -- the burglary doesn't allege a theft of a backpack. It alleges that he entered the Bellagio with the intent to commit a larceny therein.

I'm showing it through the use of the backpack, which is a bifurcated petty larceny case, and the iPad and his acts inside the casino to show that his intent, when he came into the casino, was to steal things and support the burglary charge.

I'm not trying to bootstrap a second offense, a second crime. There is no bootstrapping. I'm simply showing the intent to prove the burglary. We don't even have to show that a crime occurred, technically speaking, inside. We need to show that the person entered with the intent to commit the crime and that qualifies under the burglary statute.

THE COURT: The problem is even as I sit here looking at the Criminal Complaint here right now, it's a burglary with the intent to commit a larceny, then Count 2 is a petty larceny related to the bag that was taken from Joanna Jimenez.

So when I look at this, when I started this -- when I started the prelim and I'm looking at the document I have in front of me, I'm thinking the case revolves around the bag that was taken from Joanna Jimenez. That's the burglary coming up and then, all of a sudden, it's not, that it's something else.

THE DEFENDANT: That's true.

MR. FLINN: No, your Honor, the petty larceny has been severed. It's not part of what we're doing right now. It's evidence of the moment he enters the property and it's evidence to show what his purpose in coming to the property and entering the property was. It was to commit larceny and I'm showing evidence of him in the casino or in the casino hotel property performing acts that are consistent with someone who came in to commit larceny.

I'm not trying to prove the petty larceny or any other larceny. I'm required to prove that was his intent when he entered the casino and that was his intent, as demonstrated by his action, when he got into the casino

property and the fact that it's not charged in there, it is charged. It is charged.

The only count before your Honor right now, which is the burglary with the intent to commit a larceny, to prove that he entered with that intent, I'm showing two related acts, two things that occurred close in time to each other with the defendant inside the casino hotel property to show what his intent was when he entered.

THE COURT: But how come that wasn't charged as an attempt theft to show they were together to show this is why he entered it?

MR. FLINN: I don't have to charge anything, your Honor, other than what the State charged him with.

THE COURT: But when I look at the charge, the charge in the charging document, you have --

MR. FLINN: But the State can't find the owner of the iPad for the theft. We shouldn't be precluded from charging other crimes that don't require the owner of that iPad to appear in court.

THE DEFENDANT: Your Honor, if I can say something, your Honor?

The DA hasn't -- he hasn't even proven the theft of the laptop. How are you going to jump to something else? That was a Lost & Found property that was

taken. I went up to Lost & Found.

THE COURT: Whoa, whoa, whoa, don't talk about the facts like that because you are basically admitting you did that.

THE DEFENDANT: Right.

THE COURT: That's why we like to have attorneys --

THE DEFENDANT: Okay. Well --

THE COURT: -- because stuff like that doesn't come in.

THE DEFENDANT: I'm being honest in the whole situation. I'm not trying to hide nothing. I'm not trying to hide around the law. I'm being frankly honest, you know what I'm saying. I'm not trying to hide nothing.

MR. FLINN: Your Honor, the defendant is fully on notice --

THE DEFENDANT: He was making statements like he was there. You are making yourself a witness of the crime. You never witnessed anything. The only information you got was from somebody about a crime. You are saying I took something. You are making a bold statement that I took something.

THE COURT: He is not making a statement this is what happened. He is making a statement to show --

MR. FLINN: I'm arguing what I'm trying to

prove.

THE COURT: -- what he is trying to prove here.

THE DEFENDANT: He is saying a statement that makes yourself as a witness to something. Am I able to question you? You should be on the stand so I can question you.

THE COURT: You can't question him. This is what he is trying to prove.

I'm going to let you go ahead with this. I'm going to let you go ahead and ask those questions. This may be something that comes up in the District Court, but I will let you go ahead and ask the questions.

So you can ask the questions about the iPad then, okay?

MR. FLINN: All right. Thank you, your Honor.

THE COURT: All right.

Q (BY MR. FLINN) And so, sir, this video here, can you please pull up -- did you obtain a video of a suspect related to the backpack and the iPad entering the casino property?

A Yes.

Q Is that on this disk or the other disk?

A It's on this disk.

Q Could you please open that up and then we will wait just for a moment before playing it.

A (Witness complying.)

Q And without playing this, does this appear as a fair and accurate -- this is the video that you obtained from your surveillance system?

A Yes.

MR. FLINN: And, for the record, just before I begin playing this, your Honor, I'm going to show this general shot to the defendant so he can know that it's the same video that was provided to him and his attorney, when he had one, before the hearing.

THE DEFENDANT: It's not playing anything.

MR. FLINN: I'm going to play it for you up there so the Judge can see it.

THE DEFENDANT: Okay.

MR. FLINN: I'm letting you look at it before I start playing it. This is what it is and it's the video you have seen.

THE COURT: Okay.

THE DEFENDANT: Can I possibly see what the video is showing? He is showing me a still photograph. I don't know what video he has, but he's got --

THE COURT: How long is the video?

MR. FLINN: It's several clips, your

Honor, but I need the witness to keep coming up so he --

THE COURT: How much total time?

MR. FLINN: A couple minutes each, when you add the video up, but I don't think --

THE COURT: The problem is I can't have you physically come up here.

THE DEFENDANT: I was in another courtroom where I was allowed to see the video. They turned the video toward me and I forgot her name, the Judge.

THE COURT: We kind of have some concern of how it is so that everybody can see, including the defendant.

MR. FLINN: I'm mean I'm happy to -- I don't know how -- logistically, how everybody can do that.

THE DEFENDANT: I'm handcuffed, your Honor. If I have to stand right back at the steps, I can see the video. I'm not doing nothing. I just want to see what he's showing. You have got my word, I'm not going to do nothing. I'm just going to stand back up there to see the video.

THE COURT: Do you have any concerns yourself if he comes up here to take a look at it?

MR. FLINN: Me personally, no, but I'm not interfering with the marshal's decision of things and keeping the witnesses and others safe.

THE COURT: Do the marshals have any problem with him coming up and looking at the video to view it?

THE MARSHAL: I don't have a problem standing up here, your Honor.

THE COURT: All right.

All right, we will let you come up here.

THE DEFENDANT: Where do I stand? Right here?

THE COURT: You know, maybe put it over here. If you want to put it over here, then I can sit up here and watch, as he's playing it, and that way everybody can kind of see it.

MR. FLINN: Put it --

THE COURT: Put it here, then I will come over here and, okay, I can see it. I think everybody can see it.

Sir, can you see it?

THE DEFENDANT: Yes, sir. Thank you, your Honor.

THE COURT: Let's get going.

Q (BY MR. FLINN) As we were talking a moment ago, before we play that, we might have to move that window up higher because it's not fitting in the screen

very well.

A (Witness complying.)

(Off the record discussion not reported.)

Q (BY MR. FLINN) So you obtained surveillance video of an individual related to the iPad and to the backpack and then did you locate surveillance video of that same individual entering the casino property?

A Yes.

Q And is that this video clip, this part?

A Yes.

Q Okay, can you please publish that, play that to the Court and point out to the Court the person you were looking at, as they entered the property.

(Video playing at this time.)

THE WITNESS: Over here, that's what I'm looking at.

Q (BY MR. FLINN) That's him first coming onto the casino property?

A Correct. That's actually him walking right to the casino floor.

Q Okay.

Now, as far as this, this contains the footage related to the iPad, correct?

A Correct.

Q So what is the first clip that you have related to the iPad that you have pulled from your investigation?

A The first clip we had was him appearing in the camera range with the iPad sitting at a machine.

Q Can you please pull that clip, pull that clip up.

(Off the record discussion not reported.)

THE WITNESS: Okay.

Q (BY MR. FLINN) And if you can play that video for the Court and just point out to the Court what you were looking at when you said you saw a person with the iPad.

THE DEFENDANT: Could you tilt it a little bit, the screen? I cannot see it.

There you go. Thank you.

(Video playing at this time.)

MR. FLINN: Now I'm going to pause it for

just a moment.

Q We saw that there were a couple of women that walked across the screen. Did you, during the course of your investigation, learn who the women were?

A They were the owner of the iPad.

Q The iPad we were talking about, those were the ones who had the iPad originally?

A Correct.

(Video playing at this time.)

THE WITNESS: He sat down at a machine and he has the item in his hand. You will see when he opens it up, clearly it's an iPad.

THE DEFENDANT: Excuse me, sir --

THE MARSHAL: Let the witness speak.

THE WITNESS: He opens up the iPad by trying -- I don't know if he was trying to put in the pass code or what he was doing, but then he puts the iPad down right by the machine and walks away.

Q (BY MR. FLINN) Now did you then obtain video of what happened to the iPad next?

A Yes.

Q And what was that from your observation?

A That the employee that was in the camera

shot actually found the iPad and turned it into our Lost & Found Department.

Q Okay.

And do you have -- did you obtain a video of the Lost & Found Department with the same individual that placed the iPad there going and trying to claim it?

A Yes.

(Video playing at this time.)

Q (BY MR. FLINN) All right, I will hit play and then if you can tell the Court what you are looking at.

A The employee that turned in the iPad, she's bringing Mr. Edwards over to the Check Bank. That's where we keep all our Lost & Found and he's trying to claim the iPad.

Q And then there is another camera shot of a closer up of the Check Bank that shows that individual there trying to claim the iPad?

You know what, that's okay. That one is not necessary at this point.

Now I want to switch for a moment to ask you questions about the backpack investigation.

A Okay.

MR. FLINN: And, for the record, this is

State's Proposed Exhibit 2 and if I could move for the admission of that exhibit?

THE COURT: Okay.

Sir, you saw this previously with your attorney?

THE DEFENDANT: Yes, sir, I saw that video.

THE COURT: Okay.

MR. FLINN: Sorry, your Honor.

THE COURT: It's all right. This always happens when we have video. It never works right.

(Off the record discussion not reported.)

Q (BY MR. FLINN) Okay, now in your investigation of the theft of the backpack, did you obtain surveillance video that showed an individual come out of that locker room with the backpack?

A Yes.

Q And did you, in your surveillance video, go back in time to see where that person first came into the picture or had access to the area where the backpack was?

A Yes.

Q And where was that? What part of the

casino was that?

A He entered into the arcade and ended up going to the arcade office to the back house.

Q Do you have video of that?

A The arcade when he came in?

Q The area of the arcade and going to the room where the backpack is.

(Video playing at this time.)

THE WITNESS: He's actually leaving. That's the wrong one.

Q (BY MR. FLINN) That's the wrong one?

A He's actually leaving.

Q We will show that now.

Is he leaving?

A Leaving the arcade.

Q Okay.

(Video playing at this time.)

THE WITNESS: Okay, so this is the arcade.

Q (BY MR. FLINN) As an investigator, you are familiar with all the areas of the casino property, right?

A Yes.
Q Rooms and routes and things like that?
A Yes.
Q Okay.
So, again, this is the arcade?
A This is the arcade.
Q All right.
A And he's going toward the middle of the arcade.
THE DEFENDANT: Where is that? Where is somebody at? I don't see nobody.
THE WITNESS: Right there.
THE DEFENDANT: Oh.
THE WITNESS: And there is an office door right here that he goes into.
Q (BY MR. FLINN) Okay, and behind that door, what is it again?
A The arcade office and it goes into the back hallway, back of the house.
Q And so there's an arcade office that goes into the back of the house. Is that near the room where the employee lockers are?
A Correct.
Q So you walk through the office and then you are in the room where the lockers are?

A You walk through the office into the back hallway.

Q Okay.

A And there is other doors.

Q Do you have from that office, do you then have video of the individual leaving the office and entering the back hall?

A Yes.

Q Could you please open that up.

A (Witness complying.)

(Video playing at this time.)

Q (BY MR. FLINN) All right, so this video here, as I hit play, this is the back hallway that you are talking about that the office connects to?

A Correct.

So he comes out the office door.

Q That's the individual that comes through the arcade, goes out the office through this side, and out in the back hallway?

A Correct. This is all an employee area.

Q And so the individual walking down the hallway?

A Correct.

Q Now from looking at that, could you please tell the Court where the access to the employee locker room is?

A It's down here by these carts.

(Video playing at this time.)

(Off the record discussion not reported.)

MR. FLINN: I'm going to fast forward a little bit here because this is a little bit lengthy.

Okay, that individual walking in the hallway coming through the office door is now walking back up the hallway.

(Video playing at this time.)

THE WITNESS: He hangs around this hallway for quite a bit of time talking on the phone, on his cell phone.

Q (BY MR. FLINN) As other employees are going by, correct?

A Yes.

Q And now there's nobody in the hallway but him and where does that person go?

A He's going in the back where the employee lockers are.

(Video continuing to play.)

Q (BY MR. FLINN) And does that person re-emerge?

A Yes, he does.

He goes back, I think, the first time just to look at things to see what is back there.

THE COURT: You can't comment why he is going back in there.

Q (BY MR. FLINN) But does he go back in the door a second time?

A Yes, he does.

Q In a door to the area where the lockers are?

A Correct.

Q So, again, there are employees in the hallway that come by and now that person goes back in the employee locker area?

A Correct.

(Video continuing to play.)

MR. FLINN: He now comes out.

(Video continuing to play.)

Q (BY MR. FLINN) And there's a point where he goes back in again?

A Correct.

MR. FLINN: Stop it where we see him go back in.

THE COURT: Is this fast forward?

Okay, there we go.

THE WITNESS: Okay, go ahead and play from there.

(Video playing at this time.)

Q (BY MR. FLINN) Again, there are employees in the hallway.

And that individual again enters that room with the employee lockers?

A Correct.

Q This time he comes out --

MR. FLINN: I think I still have it going fast. Let me back up.

Let's start it over. Let's get going.

THE COURT: If you want to play it, you can play it again, but it looked like he walked out quickly with something his hands when he walked out.

MR. FLINN: Just as long as the Court saw it. I didn't want to go fast because it was playing too fast.

THE COURT: No, I was able to view that, okay.

Q (BY MR. FLINN) So then did you follow the surveillance video from there and does the individual come back out on the arcade side?

A Yes, he does.

Q At that point does he have the bag?

A No.

Q So he had the bag going into the office room that is between the hallway and the arcade, but no longer has it?

A Correct.

THE COURT: Okay.

MR. FLINN: That's it.

THE COURT: Okay.

Are we going to view anything else that he has to see?

MR. FLINN: No, your Honor.

THE COURT: Okay, sir, you can have a

seat.

MR. FLINN: Now I have handed what is admitted as State's Exhibit 1 and 2 back in their envelops to the court clerk.

THE COURT: Okay.

THE DEFENDANT: Your Honor, if I may?

I want to question him with the video. I want to question him with the video, if it please the Court.

THE COURT: Sure. You have to wait until he's done --

THE DEFENDANT: I know, I know.

THE COURT: -- then come back up.

THE DEFENDANT: I just wanted to make a note of that.

THE COURT: Okay.

MR. FLINN: Actually, your Honor, I don't have anything further for this witness.

THE COURT: Oh, okay.

Sir, do you want to start off questioning, start off questioning about the video or do you have other questions first?

THE DEFENDANT: You know, I know people got things to do, so I'm just going to ask him a question.

THE COURT: This is my job. I will sit

here all day for you on this.

THE DEFENDANT: I just wanted to show the video of when he's trying to indicate that I entered the place with my intent. I want to show that video of the lap -- what is it, iPad, the iPad. I wanted to show that video again to ask him some questions with showing that video.

MR. FLINN: I'm not sure which --

THE COURT: I think the first video we showed.

MR. FLINN: Right, but I'm not sure which part he is talking about.

THE DEFENDANT: I'm talking about when you see him sit down.

THE COURT: Are you talking about the first part of it where you allegedly walk in and sit down at the gaming machine?

THE DEFENDANT: At the machine, yeah.

THE COURT: Okay.

All right, everybody come back up here.

All right.

MR. FLINN: Sorry, Judge.

THE COURT: It's okay, it's okay.

MR. FLINN: I wouldn't have taken it all out.

THE COURT: It's okay.

(Off the record discussion not reported.)

MR. FLINN: All right, for the record, this is State's Exhibit 1 that I pulled up for the defendant and do you want me just to play this?

THE DEFENDANT: If you can, you can play it.

MR. FLINN: Okay.

THE DEFENDANT: Thank you.

(Video playing at this time.)

THE DEFENDANT: Could you stop it right here.

CROSS-EXAMINATION

BY THE DEFENDANT:

Q Now earlier, sir, you said this lady in the picture here was the owner of the laptop?

A Correct.

Q Okay.

It was my understanding it was two older ladies that was sitting at the --

MR. FLINN: Objection. He's testifying.
THE COURT: I thought it was two older ladies also.
THE DEFENDANT: Yeah.
THE COURT: I thought the testimony was because there were multiple people who worked through here when he said that, I thought he was talking about the two older ladies walking through the scene.
MR. FLINN: Yeah, just a moment ago in the picture.
THE COURT: So far as I see, there was a woman.
MR. FLINN: That's not who he is talking about. There is two people who walked by a moment ago.
THE DEFENDANT: Okay, I thought you were talking --
THE COURT: The problem is, there is a woman on the screen right here.
MR. FLINN: I apologize.
THE COURT: That's where --
MR. FLINN: That's where the confusion is here. For the sake of clarity here, I will back it up in just a moment.
There is one of them right there in this frame.

THE DEFENDANT: Yes.
MR. FLINN: Is that who you are speaking of?
THE COURT: That's these two women?
MR. FLINN: That's a gentleman. He has a flat hat on.
THE COURT: Okay.
MR. FLINN: This lady. I tried to show you there was another lady with her.
THE DEFENDANT: Okay, your Honor, it's been clarified.
Okay, you can continue to play it, sir.
MR. FLINN: Okay.
THE DEFENDANT: Thank you.

(Video playing at this time.)

THE DEFENDANT: Now stop right here.
Q This young lady, I believe she is a worker at the Bellagio -- this is the Bellagio?
A Yes.
Q This young lady right here, I believe she's got a rag in her hand right there. She works for the place, right?
A Yes.

Q Did you have a chance to question her?
A I didn't, but my partner did.
Q Did you receive any statements from the lady?
A Yes, I did.
Q What were those statements?
A I have no idea. I didn't read the statements.
MR. FLINN: Objection.
THE COURT: It would be hearsay, so the objection will be sustained.
MR. FLINN: Do you want me to keep playing this?
THE DEFENDANT: Yes, keep playing it.

(Video playing at this time.)

Q (BY THE DEFENDANT) Now you see Mr. Edwards sitting at the -- what are these, machines or slot machines?
A Yes.
Q Do you see him with anything -- when he came and sat there, do you see him with anything when he first came and sat there?
A Yes.

Q What was that in his hand?
A iPad.
Q Where is it located at, sir? I don't see it.
A It was in your left hand.
Q You see it? The iPad is sitting by me --
MR. FLINN: Objection. He is testifying.
THE COURT: Sir, you can't testify, okay.

(Video playing at this time.)

THE WITNESS: Correction.
THE DEFENDANT: I couldn't hear you, sir, correction? What did you say, correction?
THE WITNESS: Yes, I did, correction.
Q (BY THE DEFENDANT) Okay, that means you didn't see -- you swore under oath you did see something in my hands, right?
A My mistake.
MR. FLINN: No, no, no.
Q (BY THE DEFENDANT) That's when you were asked the question earlier.
Excuse me, sir --
MR. FLINN: I'm making an objection.
THE COURT: He is allowed to make an

objection.

THE DEFENDANT: But you didn't give the Judge a chance to speak or not. You just jumped right on in.

MR. FLINN: That's how an objection works.

THE DEFENDANT: No, it's not how the objection --

THE COURT: Sir, sir, he is allowed to object.

MR. FLINN: Objection, your Honor. That misstates the testimony because when he asked him the question earlier, we were watching a portion of the video where the defendant walked up to the slot machine, sat down, had the object in his hands, placed it below the slot machine. Now he is asking him to look at the portion where the defendant walked off and doesn't have the iPad in his hand and making it out as though that's the same thing they were talking about.

So what I just wanted to be clear was that misstates the testimony that we're talking about. We are looking at two different sections of the video here that he is asking about.

THE COURT: Okay, that will clarify it. I saw the exact same thing, so that will clarify that.

THE DEFENDANT: You know what, your Honor,

I'm through with him. Your Honor, I'm through with him.

THE COURT: Okay.

THE DEFENDANT: I just want to ask one more question.

Q When you come in the Bellagio, where is the management office located, the management of the place where somebody comes in looking for employment or where the management office is located?

A Which management office?

Q Any management office.

A Management offices are scattered out throughout the whole Bellagio.

Q Where are they located, sir? Where are they located?

A Specifically which offices?

Q Office where somebody is trying to obtain employment. Let's say trying to obtain employment.

A That's not on our property.

Q But there is other managers located in that place, right?

A What?

MR. FLINN: I'm going to object to relevance.

Q (BY THE DEFENDANT) Any management. Is there a management office located in the place?

A Sure. There is tons of management offices.

Q Okay, where? Where are they located at, sir?

A Which office? You need to be specific, sir.

THE COURT: Sir, apparently there are a number of management offices.

THE DEFENDANT: Let me rephrase the question.

Q Are there any management offices, through the employees only door, when you walk through the employees office?

A Yes.

Q Okay, that's what I'm asking.

THE COURT: Okay.

Q (BY THE DEFENDANT) So if a person was seeking employment and didn't know he wasn't supposed to go in back there to turn it in to ask for employment --

MR. FLINN: Objection. He's testifying here.

THE COURT: Sir, he stated that the employment offices aren't on the property. They are apparently at a different place.

THE WITNESS: Yes, sir. They are out on

Grier Road. That's where you have to apply for a job.

THE COURT: Where is that?

THE WITNESS: Grier Road.

THE COURT: I'm not sure where that is.

THE WITNESS: Over by the airport.

THE COURT: Oh, oh, okay.

THE DEFENDANT: Your Honor, if a person doesn't live in the city or town, he doesn't know.

MR. FLINN: Objection, argument.

THE COURT: Okay, it's argument.

THE DEFENDANT: I rest then.

THE COURT: Sir, do you have any other questions?

THE DEFENDANT: No, sir.

THE COURT: Okay, sir, thank you for testifying here today. You are free to stick around to find out what happens. You are free to take off.

Did you sign his subpoena?

MR. FLINN: Yeah, I did.

THE DEFENDANT: Thank you.

THE COURT: Okay.

All right, any other witnesses?

MR. FLINN: Yes, one, your Honor.

Detective Clark.

THE COURT: I'm sorry, I need to take a

recess.

(Off the record discussion not reported.)

(Off the record at 12:25 P.M. and back on the record at 12:27 P.M.)

THE COURT: Let's go back on the record. The Court took a short recess and we are back on the record.

Is this the last witness?

MR. FLINN: Yes, your Honor.

THE COURT: Let's get him sworn in.

DETECTIVE JEFF CLARK,

having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified and said as follows:

THE CLERK: Please have a seat.

State your first and last name and spell both for the record.

THE WITNESS: Detective Jeff, J-E-F-F, Clark, C-L-A-R-K.

THE COURT: State, go ahead.

MR. FLINN: Thank you, your Honor.

Just before we begin, I'm not sure it's entirely clear, for the record, I'd move to admit State's Proposed Exhibits 1 and 2.

THE COURT: You did.

MR. FLINN: Are those admitted?

THE COURT: Uh-huh.

I can't say uh-huh, so yes.

THE REPORTER: That's my fault. I didn't hear the magic words earlier.

DIRECT EXAMINATION

BY MR. FLINN:

Q Where are you employed?

A I work for the Las Vegas Metropolitan Police Department. I'm currently assigned, as a detective, at the Convention Center Area of Command Patrol Investigation Center.

Q Dating back to September 17th and thereafter of this year, were you assigned -- were you working in that capacity?

A Yes, sir, I was.

Q And did you have occasion to investigate several incidents that occurred on September 17th at the Bellagio, one of which involving a theft of a backpack and

the second involving the possible attempted theft of an iPad?

A Yes, sir.

Q And did you, during the course of that investigation, did you make contact with Bellagio security investigators?

A Yes, sir.

Q And did you obtain surveillance video from those investigations?

A Yes, sir, I did.

Q Did you watch the video that they provided to you showing you those two incidents, one involving the backpack on September 17th and the other one involving the iPad on September 17th?

A Yes, sir, I did.

Q And did you view the individual involved in both circumstances?

A Yes, sir, I did.

Q And did you recognize that individual?

A Yes, sir.

Q How so?

A I have two previous cases involving Mr. Edwards -- well, as I know -- who I know as Mr. Edwards, yes.

Q And do you recognize that person and

whether that person is present in the courtroom today?

A Yes.

Q Could you identify him for the Court, please?

A He's in the jail blues sitting at the other table, sir.

MR. FLINN: Will the record reflect he identified the defendant?

THE COURT: It will.

MR. FLINN: No further questions, your Honor.

THE COURT: Sir, do you have any questions?

THE DEFENDANT: Yeah, I have a question for him.

CROSS-EXAMINATION

BY THE DEFENDANT:

Q I would like to know where you know Mr. Edwards from?

Where was the first place you've ever seen Mr. Edwards at, sir?

You being so certain on these videos you are seeing Mr. Edwards, I want to know where the first place you knew Mr. Edwards, to identify him as on the

video, where you know him?

A You want to know the first place I knew you from, sir?

Q Where do you know Mr. Edwards from to be able to identify him on some videos that you have been saying and alleging crimes took place?

A As I said earlier, I work for the Las Vegas Metropolitan Police Department. I'm assigned, as a detective, to the Patrol Investigations Division.

One of my partners, Detective Burgundy (phonetic) and Detective Polson (phonetic) had previously come into contact with you. I had sent out fliers to other detectives, as well as to the hotels trying to identify Mr. Edwards on one previous case.

Detectives Burgundy and Polson positively identified Mr. Edwards, who also goes by 44 other names, so if it's his true name, I'm not sure to say definitely, but is the person as I know Mr. Edwards. That's why I identified him.

I have, on two previous videos, I watched at length to try to identify him. The MO in each of these events is the exact same.

Q I didn't ask you all this, sir.

A You asked me how I identified you, sir.

THE COURT: You did. You asked him how,

as a question, how he knows you.

THE DEFENDANT: I didn't ask him to go into all the conversations. I asked --

THE COURT: He is trying to explain it.

THE DEFENDANT: Okay, I'm going to leave that question alone, your Honor.

THE COURT: You asked him.

MR. FLINN: He gets to complete his answer, sir.

THE COURT: Sir, if you ask questions, he is allowed to answer.

THE DEFENDANT: Go ahead, go ahead.

THE COURT: If you ask the question, he is allowed to answer it.

THE DEFENDANT: That's a simple answer. That's a book. He's got a whole --

THE COURT: Sometimes you open the door, but once you open the door, you can't close it.

THE DEFENDANT: Your Honor, I didn't think, your Honor, sitting there would allow somebody going on like that.

THE COURT: He is allowed to put on the record how he knows you.

THE DEFENDANT: Okay.

THE COURT: So you are allowed to answer

it.

THE WITNESS: Yes, sir.

Like I said, there is two previous cases involving hotel thefts and burglaries in which the suspect, again, Mr. Edwards, enters employee only areas.

THE DEFENDANT: I object, your Honor. I object, your Honor.

THE COURT: We will let you object, but he's allowed to answer.

THE DEFENDANT: Okay.

THE WITNESS: The same MO, your Honor, where he goes back in the back employees only area.

THE DEFENDANT: I object, your Honor.

THE WITNESS: He goes in the back rooms.

THE COURT: We will allow your objection.

THE DEFENDANT: Locker rooms, things such as that to steal employee belongings while they are so employed.

THE COURT: Okay.

Did you have any other questions for him?

THE DEFENDANT: No, I don't got nothing for him, no.

THE COURT: Do you have any redirect?

MR. FLINN: No, your Honor.

THE COURT: Okay, detective, thank you for

testifying here.

THE DEFENDANT: Oh, yeah, one more question for him that I want to put on the record.

Q Did you ever see Mr. Edwards take anything?

A Yes, sir, I did.

Q When did you see Mr. Edwards --

A On the video, you entered --

Q Did you see personally, not on the video, did you ever see Mr. Edwards take something? Not something you narrate yourself Mr. Edwards doing that you make up in your mind.

MR. FLINN: Objection, argumentative.

THE COURT: It is argumentative.

Q (BY THE DEFENDANT) Did you personally see him take anything? Did you see him personally?

A Your Honor, I was not in the Bellagio.

THE DEFENDANT: I'm asking straight questions, a yes or no question.

THE WITNESS: You have a good day, your Honor.

THE COURT: He said no. He said no.

THE DEFENDANT: Okay.

THE COURT: Thank you.

Okay, does the State rest at this point?

MR. FLINN: Yes, your Honor.
THE COURT: Okay, the State has rested.
THE DEFENDANT: I want to testify. I want to make a statement. I want to testify.
THE COURT: Sir, you understand this is a prelim, not a trial.
THE DEFENDANT: I know. I want to get some things on the record. So I'd appreciate it if I can say --
THE COURT: You know if you testify today, they are going to have a chance to ask you questions.
THE DEFENDANT: Yeah, I want them to, I want them to. I want to tell you my story on the record.
THE COURT: It doesn't matter to me. This is a prelim. The standard is slight or marginal evidence.
THE DEFENDANT: Yes.
THE COURT: So I mean I'm not a jury.
THE DEFENDANT: Yeah.
THE COURT: I don't find you guilty, I don't find you innocent here today.
THE DEFENDANT: I still want to get what I'm going to say, what I'm going to say what I was doing on record.
THE COURT: Sir, you understand if you testify today, you can't complain on appeal, if you appeal

my decision, you can't complain on appeal that you testified today?

So if you think there were any errors in what I do, you have the right to appeal it to the District Court, but if you decide to testify and you make statements that you don't really want in, if you make the mistake of testifying here today, you can't complain on appeal that you chose to testify here today. You don't have to say anything here today.

THE DEFENDANT: I know what preponderance -- I know they have the burden of proving the case, your Honor. I just want to make for the record, you know, I want to make a statement for the record why some things occurred. I want it to be on the record so when I go upstairs, it is on the record.

THE COURT: Sir, if you are going to testify about intent, intent is not an issue for me. Intent is always an issue for a jury.

So if you are going to talk about the intent in walking into the Bellagio, anything you say, it's not for me, it's simply for a jury. I don't determine intent. It is simply there is some evidence that you committed the crimes alleged.

THE DEFENDANT: Okay.

THE COURT: So any intent why you were

there that day, it's not for me. So if you want to testify --

THE DEFENDANT: Yes, I do.

I'm just going to go ahead and get this over, your Honor, because I already see where it's going.

THE COURT: Okay.

THE DEFENDANT: Go ahead, go ahead.

THE COURT: Okay.

All right, sir, do you have any arguments you want to make?

THE DEFENDANT: Yes, sir.

I want to say there's no proof that I took anything, your Honor. I never walked in -- the video played, you never see me walk out with anything that belongs to nobody in the video.

Also, your Honor, because I'm representing myself, I'm going to talk in the third person.

Mr. Edwards entered the place looking for employment. He was told you have to turn in the application in the back area. I'm not from here. My sister passed away. Mr. Edwards was visiting his sister. His sister passed away. He come in looking for employment, goes in the back with the intent to look for a job.

He goes in the back and now, all of a sudden, somebody is saying -- alleging that something is

missing, you know, and you don't see Mr. Edwards ever with this property. He leaves the property. He leaves the property with the game room or wherever it is, the arcade with nothing in his hand.

Nobody, the lady didn't come in and tell you she witnessed it. She never seen nothing took, nothing. He told -- the detective said he never seen me, he didn't see nothing. The other guy right there told you -- right there, my man, the other guy right there said he never seen me take something.

So I don't know why I'm being held. No evidence was ever taken from me when I was arrested, nothing belonging to the lady. The bag was lost and one of the guys, according to the paperwork, one of the guys returned the lost property to her.

I didn't go in there with no intent to do anything but to play games and look for a job. So I don't know where this guy, he made some cases up because he might be mad about something. He made up a whole lot of cases, you know what I'm saying, so that's on him.

THE COURT: Okay.

THE DEFENDANT: With that, I rest.

THE COURT: All right.

State, any argument?

MR. FLINN: Just briefly, your Honor.

I think the State has met its burden of slight or marginal evidence. The defendant entered the casino property, he proceeded to go into obviously an employee only area, avoided contact by being on the phone in the hallway.

THE DEFENDANT: I object, your Honor. I object to him saying --

THE COURT: Sir, it's already admitted. Just like you have the right to have a chance to argue, he is having a chance to argue.

MR. FLINN: He entered the employees only area, appeared to be on his phone until such time as employees would go by, then he would go in, scout the employee locker room area. He eventually went in there when no employees were around, took the backpack, left that room with the backpack.

The fact he didn't leave the casino with property, without the backpack is of no matter. He clearly went through it. He just didn't find anything valuable.

THE DEFENDANT: I object, your Honor. I object to that too.

THE COURT: Sir, it's argument.

MR. FLINN: He took that.

A very short time later, he is then seen approaching the slot machine shortly after what appears to

be two elderly ladies that did not appear to be with the defendant or have any contact with them, he sits down where the iPad is, starts looking around very nervously, he starts to drift to the iPad. It just so happens an employee sees it there, picks it up, turns it in.

He follows them, tries to claim it is his. He obviously doesn't know the pass code to the iPad, so they won't give it to him. One of the elderly ladies comes back later and identifies her iPad. He obviously tried to remove that during his course of time there.

So the State, as to its count of burglary, the State has proven, by slight or marginal evidence, that the defendant's intent, when he entered the property, was to commit a larceny therein, as demonstrated by his course and conduct while he was on the property.

THE COURT: All right.

Mr. Edwards, please stand.

Please stand, sir.

Sir, this is not a trial. I don't determine guilt or innocence, only whether there is some evidence to support the charges against you.

The Court finds that that burden has been met by the State, as to Count 1, burglary. We will hold Count 2. We have bifurcated that.

So we will hold you to answer Count 1,

burglary. We will hold you to answer that count in the Eighth Judicial District Court, State of Nevada, County of Clark on the following date and time.

THE CLERK: November 13, 10 A.M., District Court Lower Level Arraignment.

THE COURT: What day is that?

THE CLERK: Friday.

THE COURT: That's Friday.

Sir, you are going to have certain rights that accrue because I bound you up. You are going to have the right to file an appeal, basically, what is known as a Writ. You have got to get a copy of the transcript.

THE DEFENDANT: I got one right here.

THE COURT: No, no, what happened here today.

THE DEFENDANT: Oh, okay.

THE COURT: You have to get a copy of the transcript. What I'm going to do is order an expedited transcript so he has it on Friday.

So, Patsy, if you can do an expedited copy of the transcript, do an Order because he is not going to be able to do the Order, then we will get a copy of that for him on Friday. So it will come with the transcript on Friday when they see you downstairs in the District Court, okay?

THE DEFENDANT: All right. Thank you, thank you.

THE COURT: All right.

(Off the record discussion not reported.)

THE COURT: For the petty larceny, do you want to go out about six months? Four months, six months?

MR. FLINN: Six months is fine.

THE COURT: Okay, we will go out on the petty larceny. We will go out about six months because you have multiple felony cases in the system. Those will probably get wrapped up first, okay.

THE CLERK: May 10, 7:30.

(Off the record discussion not reported.)

THE DEFENDANT: You said I'm going to receive a copy of the transcript down in District Court?

THE COURT: Yeah, we will try to get that down to you, okay.

Thank you.

(Off the record at 12:40 P.M.)

* * * * * *

ATTEST: FULL, TRUE, ACCURATE AND CERTIFIED TRANSCRIPT OF PROCEEDINGS.

/s/ Patsy K. Smith
PATSY K. SMITH, C.C.R. #190

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CLERK OF THE COURT

NOTC

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAROLD EDWARDS,
#7024721

Defendant.

CASE NO: C-15-310695-1

DEPT NO: VIII

NOTICE OF INTENT TO SEEK PUNISHMENT AS A HABITUAL CRIMINAL

TO: HAROLD EDWARDS, Defendant; and

TO: PRO PER, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that pursuant to NRS 207.010, the STATE OF NEVADA will seek punishment of Defendant HAROLD EDWARDS, as a habitual criminal in the event of a felony conviction in the above-entitled action.

That in the event of a felony conviction in the above-entitled action, the STATE OF NEVADA will ask the court to sentence Defendant HAROLD EDWARDS as a habitual criminal based upon the following felony convictions, to-wit:

1. That in 1984, the Defendant was convicted in the State of Illinois, for the crime of Robbery (felony).

2. That in 1988, the Defendant was convicted in the State of Illinois, for the crime of Theft (felony).

3. That in 1992, the Defendant was convicted in the State of Illinois, for the crime of Burglary (felony).

4. That in 1995, the Defendant was convicted in the State of Illinois, for the crime of Theft (felony).

5. That in 1996, the Defendant was convicted in the State of Illinois, for the crime of Bank Robbery (felony).

6. That in 2003, the Defendant was convicted in the State of Illinois, for the crime of Escape (felony).

7. That in 2006, the Defendant was convicted in the State of Illinois, for the crime of Forgery (felony).

8. That in 2008, the Defendant was convicted in the State of Illinois, for the crime of Possession of Controlled Substance (felony).

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

BY /s/ William Flinn, Jr.
WILLIAM FLINN, JR.
Deputy District Attorney
Nevada Bar #013119

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the Notice of Intent to Seek Punishment as a Habitual Criminal was made this 5th day of January, 2016, by facsimile transmission to:

HAROLD EDWARDS (pro per) #7024721
Fax # 702-384-3190

BY: /s/ Stephanie Johnson
Employee of the District Attorney's Office

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HAROLD EDWARDS
330 S. Casino Center Blvd.
Las Vegas, Nevada 89101
Defendant Pro Se

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff

vs.

HAROLD EDWARDS,
Defendant.

CASE NO. C15310695-1

DEPT NO. VIII

DATE OF HEARING: 2-22-16

TIME OF HEARING: 8:00AM

NOTICE OF MOTION AND MOTION TO DISMISS

COMES NOW the Defendant in Propria Persona, and respectfully moves this Honorable Court to Dismiss the Charge of Burglary as charged in the information against the Defendant HAROLD EDWARDS, for the following reasons.

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

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CLERK OF THE COURT

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CLERK OF THE COURT

NOTICE OF HEARING

YOU AND EACH OF YOU. WILL PLEASE TAKE NOTICE that the Under Signed will bring the foregoing Motion on for Setting before the above entitled Court. in Department VIII thereof. the 22 day of FEB 2016. at 8:00 O'clock a.m. or as Soon as Defendant in Propia Persona May be heard.

DATED this _____ day of _____. 2016.

HAROLD EDWARDS
Pro Se Defendant
7021721
BY Harold Edwards

STATEMENT OF FACTS

C15310695-1

This incident occurred on September 17. 2015 at the Bellagio Las Vegas. located at 3600 South Las Vegas Boulevard. Las Vegas. Clark County. Nevada. It was originally Charged as Burglary and Petit Larceny the Petit Larceny was Severed in Judge Eric Goodman's Courtroom during or on the Same day of the preliminary Hearing November 10th 2015. During Preliminary Hearing Joanna Jimenez testified that she came to work on the above date. at Cafe Gelato located inside of the Bellagio. She stated that she placed her lunch bag inside of a locker. where employee's Store their personal belongings PHT pg. 25 lines 13-19 and pg. 26 lines 11-21. After her shift ended around 4:00 p.m. she noticed her Lunch bag was missing PHT pg. 26 lines 22-25 and Pg. 27 lines 1-6. She notified her Manager right away. and was told to go to Security to make a report, and she did. Under Cross-Examination. while Still under Oath Joanna Jiminez was asked if she Saw anyone in the Courtroom that took her bag? She answered. NO. PHT pg. 29 lines 18-20
Joanna Jiminez also stated in the Arrest Report, done by the Las Vegas Metropolitan Police Department, on pg. 3 of 3 that She did not See the Suspect

enter her place of business nor did she see Defendant take her bag. See Metropolitan Police Department Arrest Report pg. 9 of 31. it Should be stated here that according to Las Vegas Metropolitan Police Department's incident File Full Report pg. 2 of 4 Ms. Jimenez stated this was her Second time her lunch bag went missing. it also should be noted that Security found her bag and returned it to her with nothing reported missing. incident File Full Report pg. 3of4 officer Ellis found her bag. nothing missing PHT pg. 27 lines 12-23.

Arvin Viacrussi gave testimony that this same Defendant tried to retriere an ipad from lost and found PHT pg. 33 lines 3-7 this incident is a totally different incident than what the Defendant was charged with, but the Defendant witnessed two elderly women, looking for what they described as an ipad they had misplaced, the Defendant noticed an ipad sitting by one of the slot machines inside the Casino, the Defendant sat the ipad down and went away for a Second to look for whoever left the ipad, when he returned it was gone, at this time Defendant noticed two elderly women and asked them did they lose an ipad, and to check their property, which they did, noticing that their ipad was in fact not in their property, the Defendant went for them to the lost and found window and tried to explain to this Arvin Viacrussi that Someone was missing their ipad and that he would take the ipad to the women, but he explained that the Defendant needed the pass Code in order for him to release the ipad, the Defendant stated that he would go and get the two women who lost the ipad, which the Defendant did in fact do. and left the Bellagio. PHT pg. 33 line 7 here Arvin Viacrussi stated the Defendant Said the ipad was his. but on Cross examination. Mr. Viacrussi agreed that the Defendant did not say the ipad was his, but in fact belonged to a friend PHT pg. 34 lines 23-25 He also agreed that the Defendant told him that he would go and get the friend whose ipad it

actually belonged to. PHT pg. 35 lines 9-15 This incident, where information about an ipad is attempted to be introduced in Court by the state to help them prove Defendant's intent, when he entered the Bellagio, is 1) Not part of what the Defendant is Charged with. (2) the incident is not a charged offense period. and lastly the Deputy District gives false information to the Honorable Judge Goodman when the Judge is Shown agreeing with the Defendant PHT pg. 43 lines 8-14 the Deputy District Attorney State's to the Honorable Judge "No. it's not the other Case." "it occurs directly "after" the theft of the backpack" and I'm offering it (meaning the ipad incident) to Show the Defendant's intent for the Burglary I have filed, that his intent Coming into the property was with the intent to Commit larceny, Stealing a backpack." Now when the Honorable Judge allowed him to Show the Surveillance Video, the Deputy District Attorney, (when the Defendant was Shown on the Video inside the Bellagio's Casino area) in his over enthusiasm to Create his theory Concerning the Defendant's intent. Stated "That's him first (referring to the Defendant) first Coming onto the Casino Property or floor." the Video that he is Showing was about or related to the ipad PHT pg. 53 lines 21-24 and pg. 54 lines 1-8 but as it was Shown Supra, he told the Honorable Judge the ipad incident occurred "directly" after the theft of the backpack PHT pg. 43 lines 18-21 but when the incident about the ipad is Shown on Video he state's "that's him first Coming onto the Casino floor." PHT pg. 53 lines 21-24 in U.S. V. Berger 295 U.S. 78, 88, 55 S. Ct 629, 633, 79 L. Ed. 1314 the Supreme Court of the UNITED STATES OF AMERICA Stated: in a Criminal prosecution it is not that it Shall win a Case, but that Justice Shall be done, while he may strike hard blows, he is not at liberty to strike foul ones. Rather a defendant is innocent or guilty he is Still entitled to a fair Chance in Court.

Jason Wherrity of Bellagio Investigations showed Video Surveillance he Compiled, of the Defendant in the back hallway of the Bellagio and one segment shows the Defendant with Something in his hands as he leaves from the back hallway of the Bellagio. but Video Clearly Shows what is in the Defendant's hands when he exits the Arcade, and that is the Same thing he had in the hallway area, a bag of Jellybeans, he bought while in one of the food Courts inside the Bellagio. it Should be noted here that there is much more Video of the Defendant inside the Bellagio, it is the Defendant's belief that the investigator is Showing only parts that were Singled out to display the Defendant as doing Something that favors the State's theory. The Bellagio is business Open to the Public. when a person enters the Bellagio to walk around window Shopping, take pictures, eat at the food Courts or to gamble, they are Considered a guass. or guest. State of Nevada V. Adams, 94 Nev. 503: 581 P.2d 868 (1978) Still photo's Show exactly what's in the hands of the Defendantas he exits the Arcade, not a lunch bag, but a bag of Jellybeans. Entering a hall area does not Constitute a Crime, even if it is labeled Employee's only, there is no Warning on any of these doors Stating that if Someone enters they will be prosecuted. Someone Could be Searching out Management for any Number of reasons, employment being one. The Defendant was not found in possession with anything belonging to Joanna Jiminez. her lost bag was found by Security PHTpg. 27 lines 15-23. NRS. 50.025 Lack of personal Knowledge, because no witness was in the back hall area with the Defendant they Cannot testify as to what exactly in the Defendant's hand. NRS. 50.025 1.(a)

POINTS AND AUTHORITIES

FEDERAL RULES OF EVIDENCE, Rule 602 is in accord with Nevada revised Statute 50.025 1.(a) where it states: A witness may not testify to a matter unless evidence is introduced that is sufficient to support a finding that the witness has "Personal Knowledge" of the matter. In the instant case none of the State's witnesses actually saw the Defendant with a Lunch bag, nor was the Defendant in possession of a Lunch bag when he exited the arcade, nor when he was arrested. The State's entire case is made up of Circumstantial evidence, mainly because the person in the Surveillance Video is in the Hall area of the Bellagio Hotel and Casino. By entering another area of the Bellagio Hotel and Casino which so happens to be an employee's area, is not Malum in se Unlike the offense of Burglary which is. According to Nevada revised Statute. 205.060 a "Hallway" is not described as part of the legislators definition of places entered when Considering Charges of Burglary, especially when the hallway is inside the Same building that is open to the public. Anyone of the thousands of tourist that Comes to one of the extremely large Hotel and Casino's Could easily walk through one of these Same doors, into these same Hallways for any number of innocent reasons, for example they could mistake these doors for exits, they Could be looking to speak with management, which has according to testimony, "Tons of offices" PHT pg. 74 lines 1-15 or Simply because these Hotel and Casino's are so Huge. Someone Could Come through these doors by mistake. Simply put going through these doors does not Constitute a Burglary. None of these doors state on them Do not Enter or you will be prosecuted. No. The Defendant is noticed by several employee's, none of whom or None of these employee's asked him

Could they help him or asked him to leave. the authority to enter a building open to the public extends only to those who enter with a purpose Consistent with the reason the building is open to the the public. A Criminal intent formulated after a lawful entry will not Satisfy the Nevada Revised Statute for Burglary 205.060. Video Surveillance will Show the Defendant entering the Bellagio Hotel and Casino as a member of the public and did make a purchase while inside which is Consistent with the reason the Bellagio is open. it is clearly erroneous for the prosecuting Attorney to assert or inject his personal opinion or draw inferences from incidences outside the Charged offense Unfavorable to the accused PHT pg. 43 lines 8-14 and pg. 53 lines 21-24 also pg. 54 lines 1-8 this Misconduct goes against the rules set out in the American Bar Association Model Code of Proffessional Responsibility

the Deputy District Attorney was asked by the Honorable Judge Goodman to produce Some Case law to Support him introducing uncharged acts or in the Honorable Judge's words "bootstrapping" an uncharged act to the Defendant's Charge of Burglary to help him try and prove the Defendant's intent when he entered the Bellagio. he failed to Cite any Case law in Support of his argument, So no foundation was Shown or established PHT pg. 44 lines 24-25 - pg 45 lines 1-4 In Sutton V. State, 114 Nev. 1327, 972 P.2d 334. 114 Nev. Adv. Rep. 139 (1998) it was reversible error allowing the State to introduce bottles of prescription and Non-Prescription pills found in the home of a Defendant Charged with trafficking in Marijuana and Methamphetamine due to the highly prejudicial nature of the pill bottles. just as it was with the ipad innocent incident in the instant Case, the Court was exposed to improper introduction of other alleged uncharged acts. This was also Contrary to the dictates of FEDERAL RULES OF EVIDENCE, 403 and 404 (b) which prohibits the use of evidence of other Crimes to Show a Criminal propensity.

Prosecutors too often forget that they are part of the machinery of the Court and that they occupy an official position, because it seems that they frequently exert their skill and ingenuity to see how far they can trespass upon the verge of error. and generally in doing so, they trespass upon the rights of the accused. It is the duty of the prosecutor to see that a Defendant has a fair day in Court, Nothing Should act to tempt him to appeal to prejudices, not even the Defendant's past Convictions. The desire for Success Should never induce him to endeavor to obtain probable Cause or a guilty Verdict by introducing uncharged acts to help Support his theory. Evidence, especially or particularly Video Surveillance Should be allowed to speak for itself, not be narrated by an over zealous prosecutor. who if allowed to narrate, would make a bologna Sandwich look guilty. It is proper for the prosecutor to out line his theory of a Case and to propose those facts he intends to prove, State V. Olivieri. 49 Nev. 75. 236 P. 1100. However, it is his duty to State Such facts fairly and to refrain from stating facts which he will not be permitted to prove. State V Olivieri Supra, Sefton V. State. 72 Nev. 106 295 P.2d 385; State V. Erwin. 101 Utah 365. 120 P.2d 285 in the instant Case the improper reference to uncharged act was immediately noticed by both the Defendant as well as the Honorable Judge Goodman. PHT pg. 43 lines 4-25. pg. 44 lines 1-25. 45 lines 1-25 and pg. 46 and 47, it Should be noted here that the prosecutor gives false information to the Honorable Judge when he States PHT pg. 43 line 18 where he is Clearly referring to the ipad incident, Stating this: that incident, in his words occurred directly "after" the theft of the backpack, but PHT pg. 53 when the Surveillance Video is played the prosecutor States "That's him (referring to the Suspect) walking right to the Casino floor and this is where the ipad incident occurs PHT pg 54 lines 7-8

lines 21-22, Clearly shows that unlike what the prosecutor said to the Honorable Judge. the ipad incident occurs after the Suspect is first Seen in the Bellagio Casino part of the establishment. PHT pg. 53 lines 23-24. where the witness states that's him actually walking right to the Casino floor.

CONCLUSION

It is Clear that there isn't Sufficient evidence to charge the Defendant with NRS. 205.060 Burglary and the Defendant acting Pro Se. ask this Honorable Court to Dismiss the Burglary Charge brought against him, there is more than enough legal argument in Support of the Defendant's innocence, So again we ask that this Court Dismiss the charge of Burglary.

DATED this 26th day of January 2016
I Harold Edwards. do Solemnly Swear, under the penalty of perjury. that the above Motion to Dismiss is accurate. Correct. and true to the best of my knowledge.
NRS. 171.102 and NRS. 208.165

Respectfully Submitted Harold Edwards

Pro Se
Defendant Harold Edwards

contained the following MAC products; lipstick, eyeliner, and mascara valued at approximately $70 where also missing. Ms. Jimenez stated her make-up bag was stored in her lunch bag. Ms. Jimenez stated she immediately notified her manager. Ms. Jimenez stated her manager said not to bring any more valuables to work because there was nothing more she could do about the lockers.

Ms. Jimenez stated she does have a lock on her locker but you can still open the locker when the lock is secured. Ms. Jimenez stated this was the 2nd time her lunch bag went missing [redacted]. Ms. Jimenez was offered to speak with her Human Resources Representative which she accepted.

Lost and Found was checked by Clifton Baker with negative results.

Video coverage is pending.

Human Resources Representative Jessica Harbaugh was on scene.

Vice President of Security Ray Brown, Director of Security Jason Rucker, Investigations Manager Bethany Young, Security Manager Charles Cessop, and Security Supervisor Ruslan Shumlyakovskiy were notified.

Executive brief: At 4:30pm, I Investigator Wherrity responded to the Security Office and met with Café Gelato Employee Joanna Jimenez for a lost missing report. Ms. Jimenez stated her lunch bag which also contained her make-up bag where missing from her locker. The total value is approximately $90. Ms. Jimenez was offered to speak with her Human Resources Representative which she accepted.

Reporting Party:

Supervisor:

simply shaking the lock and locking mechanism or by striking the locker. Jimenez did not see Edwards enter her place of business nor did she see Edwards take her bag. Jimenez stated that Security located her bag and returned it to her.

Summary:

Due to the fact that on 09/17/2015, Harold Edwards did enter the Bellagio Hotel and Casino with the intent to commit a larceny, Edwards entered employee only areas of both the Bellagio and Café Gelato, located within the Bellagio, with the intent to commit a larceny, Harold Edwards, ID# 7024721, was arrested for ***BURGLARY - NRS 205.060.2***.

Due to the fact that on 09/17/2015, at approximately 1357 hours, Harold Edwards, ID# 7024721, did enter the back hallway of Café Gelato, then emerged moments later carrying the back pack, valued at $25 containing approximately $70 worth of cosmetics he had stolen from the locker of Joanna Jimenez with the intent to deprive Jimenez permanently thereof, Harold Edwards, ID# 7024721 was arrested for ***PETIT LARCENY- NRS 205.240***.

Participants Involved:

Personnel:	Jimenez, Joanna	Property:	
Role:	Employee, Missing Items	Department:	
Personnel:	Harbaugh, Jessica	Property:	
Role:	HOB Human Resources Representative, Notified	Department:	
Personnel:	Rucker, Jason	Property:	
Role:	Security Director, Notified	Department:	
Personnel:	Young, Bethany Jane	Property:	
Role:	Security Investigations Manager, Notified	Department:	
Personnel:	Wherrity, Jay	Property:	
Role:	Security Investigator, Report Writer	Department:	
Personnel:	Cessop, Charles	Property:	
Role:	Security Manager, Notified	Department:	
Personnel:	Shumlyakovskiy, Ruslan	Property:	
Role:	Security Supervisor, Notified	Department:	
Personnel:	Brown, Raymond	Property:	
Role:	Security Vice President, Notified	Department:	

Supplemental Entries:

SP20150020924 Attached by jwherrity on Sep 17, 2015 20:29

Description: On Thursday September 17, 2015 at approximately 7:50pm I, Investigator Wherrity received a call from Security Officer Roi Ellis [redacted] regarding a lost bag. Officer Ellis stated he found a bag matching the description of Joanna Jimenez's missing lunch bag. Officer Ellis found the bag in the vending Arcade storage area. The bag was inventoried and logged into Lost And Found under # 726044 with notes not to release per Investigations. Investigations took possession and placed the bag in Investigations Office.

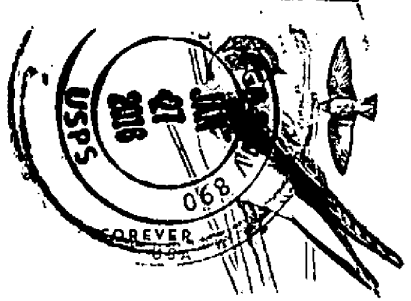
Bag Found

At approximately 8:25pm I, Investigator Wherrity made telephonic contact with Employee Joanna Jimenez. Ms. Jimenez was able to identify all contents of the bag and will be picking up the bag after her shift tomorrow.

Reporting Party:

Supervisor:

Harold Edwards
330 S. Casino Center Blvd.
Las Vegas, Nevada 89101
CCDC 9th Fl. Rm. 12



STEVEN D. GRIERSON, CLERK OF THE COURT
200 LEWIS AVENUE, 3rd FLOOR
LAS VEGAS, NEVADA 89155-1160

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HAROLD EDWARDS
330 S. Casino Center Blvd.
Las Vegas, Nevada 89101
Defendant, Pro Per

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff.
v.
HAROLD EDWARDS,
Defendant.

CASE NO. C15-310695-1
DEPT NO. VIII
DATE OF HEARING: 4/6/16
TIME OF HEARING: 8am

NOTICE OF MOTION AND MOTION TO COMPEL DISCOVERY

COMES NOW, the Defendant. HAROLD EDWARDS, Pro Per and hereby order the State to produce any and all exculpatory or inculpatory evidence in its actual or constructive possession.

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

DATED this ___ day of _____, 2016

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MAR 16 2016
CLERK OF THE COURT

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MAR 14 2016
CLERK OF THE COURT

DECLARATION

HAROLD EDWARDS makes the following declaration:

1. I AM A PRO PER DEFENDANT in the instant Matter, and I represent the following facts and circumstances OF this Case.

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

Executed this _____ day of _____ 2016

LEGAL ARGUMENT

The state must provide to the defense all exculpatory evidence in its actual or constructive possession prior to trial. Failure to do so results in a Violation of the due process clauses of the Fifth and Fourteenth Amendments of the United States Constitution. The rule applies regardless of how the state has Chosen to structure its overall discovery process. Brady V. Maryland 373 U.S. 83 83 S. Ct. 1194. 10 L. Ed. 2d 215 (1963): Kyles v. Whitley. 514 U.S. 419. 115 S. Ct. 1555. 131 L. Ed. 2d 490 (1995): Stricker V. Greene. 527 U.S. 263. 119 S. Ct. 1936. 144 L. Ed. 2d 286 (1999). Hereinafter this type of exculpatory evidence will be referred to as "Brady material." Brady material is that evidence which is 1) material. 2) relevant to guilt or Punishment. 3) favorable to the accused. 4) and within the actual or Constructive possession of anyone acting on behalf of the State. Brady, Supra.

1. Material

when the defense makes a specific request for Brady material and the state does not provide such material, the Nevada Supreme Court has held that there are grounds for reversal of a Conviction, "if there exists a a reasonable possibility that the claimed evidence would have affected the judgement of the trier of fact." Roberts V. State. 110 Nev. 1121. 881 P. 2d 1. 5 (1994) See also Jimenez V. State. 112 Nev. 610. 619. 918 P. 2d 687. 692 (1996). and State V. Bennett 119 Nev. 589. 81 P. 3d 1. 8 (2003).

Even if a specific request has not been made. reversal is also warranted "if there exists a reasonable probability that. had the evidence been disclosed, the result of the proceeding would have been different." Bagley. 473 U.S. at 682. 685: Pennsylvania V. Ritchie. 480 U.S. 39. 57 (1986). A 'reasonable probability' is a probability sufficient to undermine Confidence in the outcome. Bagley, 473 U.S. at 678. 685: Ritchie. 480 U.S. at 57." Roberts, Supra. 110 Nev. at 1129

Therefore, absent a specific request for Brady material, and anything that might have created a probability that the confidence of the verdict was undermined is considered material. Where a specific request is made, however, anything that creates a reasonable possibility that the evidence might have affected the fact-finder's judgement is material.

2. Relevancy to Guilt or Punishment

Brady material applies not only to evidence which might affect the defendant's guilt, but also includes evidence which could serve to mitigate a defendant's sentence if convicted. Jimenez V. State 112 Nev. 610, 918 P.2d 687 (1996). An example of this kind of evidence might be where the victim of a robbery who identified the defendant as one of two people who robbed him, also indicated that he tried to keep the co-defendant from injuring him. Although the identification would actually go to establishing the defendant's guilt, it would also be Brady material because it might serve to mitigate the defendant's sentenced because of his effort to aid the victim. Essentially, anything which could convince the Court to impose something less than a maximum sentence, or rebut alleged aggravating circumstances would be relevant to punishment.

3. Favorability to the Accused

The Nevada Supreme Court has spoken directly to what is considered 'favorable to the accused' and therefore proper Brady material. In Mazzan V. Warden, 116 Nev. 48, 67 993 P.2d 25, 37 (2000) the Court stated:

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

Futhermore, "discovery in a Criminal Case is not limited to investigative leads or reports that are admissible in evidence." Evidence "need not have been independantly admissible to have been material." (Citations omitted). Therefore, Brady material under this Standard, would include, but not be limited to, the following examples: forensic testing which was ordered, but not done, or which was Completed but did not inculpate the defendant: Criminal records or other evidence Concerning State's witnesses which might Show their their bias (e.g., Civil litigation), or otherwise impeach their Credibility; evidence that the alleged Victim has been the alleged Victim of an Unusual number of Crimes: investigative leads or Ordinarily appropriate investigative or investigation which which were not followed-up on or Completed by law enforcement: and, of Course, anything which is inconsistent with any prior or present Statements of a State's witness including the failure to previously make a statement which Could Show or is later made or testified to. Of Course, traditionally exculpatory evidence Such as that which Could Show that Someone else Committed the Charged Crime or that no Crime occurred, would also be included as Brady material.

4. Within the Actual or Constructive Possession of any State Actor.

Based on prior experience, it is anticipated that the prosecution may assert that it has an "Open file" policy and that the requested material is not available in its file. This argument is unavailing. In Strickler V. Green, Supra, 527 U.S. at 283, 119 S.Ct. 1949, the United States Supreme Court explicitly held that a prosecutor's open file policy does not in any way Substitute for or diminish the State's obligation to turn over Brady material. The Nevada Supreme Court is in accord. "It is a violation of due process for the prosecutor to withhold any

exculpatory evidence. and his motive for doing so is immaterial." Jimenez V. State 112 Nev. 610, 618, 918 P.2d 687, 692 (1996). Futhermore, "even if the detectives withheld their reports without the prosecutor's Knowledge, 'the State attorney is Charged with Constructive Knowledge and possession of evidence withheld by other State agents, such as law enforcement officers." Id., 112 Nev. at 620 (citation omitted). Defendant would Submit that other State agents such as probation and parole officers, welfare workers, jail personnel, and similar agents of the State are also included in those from whom the prosecution must Seek out Brady Material.

In Kyles V. Whitley, Supra, the United State Supreme Court made it Clear that the prosecutor has an affirmative obligation to obtain Brady material and provide it to the defense, even if the prosecutor is initially unaware of its existence. In So finding, the Supreme Court noted that the prosecution's affirmative duty to disclose evidence favorable to a defendant Can trace its origins to early 20th Century Strictures against misrepresentation and is of Course most prominently associated with this Court's decision in Brady V. Maryland..." Id. 514 U.S. at 432. The Kyles Court also made it Clear that this obligation exists even where the defense does not make a request for Such evidence. I.d.

The Kyles Court additionally made the following Observations when finding the State had breached its duty to Kyles and discussing the prosecutor's obligations:

This in turn means that the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the Case, including the police. But whether the prosecutor Succeeds or fails in meeting this Obligation (whether, that is, a failure

to disclose is in faith or bad faith, the prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable.

The State of Louisianna would prefer an even more lenient rule. It pleads that some of the favorable evidence in issue here was not disclosed even to the prosecutor until after trial, and it suggested below that it should not be held accountable under Baoley and Brady for evidence known only to police investigators and not to prosecutor's. TO accomodate the state in this manner would, however, amount to a serious change of course from the Brady line of cases. In the State's favor it may be said that no one doubts that police investigators sometimes fail to inform a prosecutor of all they know. But neither is there any serious doubt that "procedures and regulations can be established to carry [the prosecutor's] burden and to insure communication of all relevant information on each case to every lawyer who deals with it." Since then, the prosecutor has the means to discharge the government's Brady responsibility if he will, any argument for excusing a prosecutor from disclosing what he does not happen to know about boils down to a plea to substitute the police for the prosecutor, and even for the courts themselves, as the final arbiter's of the government's obligation to ensure fair trials.

Kyles, supra, 514 U.S. at 437. 438 (citations and footnotes omitted, emphasis added). There can be little question. therefore. that despite its "open file policy." the prosecution has an affirmative duty to seek out the previously discussed Brady material, regardless of whether such material is in the hands of the prosecutor or in the hands of some other entity acting on behalf of the State.

Simply put, prosecutors are obligated to provide Defendant with far more

than their "open file." Disclosure of discovery materials cannot be limited or restricted to materials in the possession of the District Attorney's Office. The duty of disclosure includes materials in the possession of all state agents connected with the prosecution, including police and other investigative agencies. Kyles V. Whitley, 115 S. Ct. 1555, 1568 (1995); Giglio V. United States, 465 U.S. 150, 154 (1963); United States V. Osorio, 929 F.2d 753, 760-62 (1st Cir. 1991); United States V. Butler, 567 F.2d 885, 889, 891 (9th Cir. 1978). This duty is imposed by ethical principles as well as constitutional ones. See AMERICAN BAR ASSOCIATION, Standards for Criminal Justice, Discovery and Procedure Before Trial, Standard 11-2.1(d), 11-2.2(c) 11-2.4 (2d ed. 1980); id., The Prosecution Function, Standard 2-3.11(c) Moreover, the state may not lawfully withhold inculpatory materials and information from Defendant simply because it does not intend to present the material or information during its case in chief. State V. Harrington, 9 Nev. 91, 94 (1873); people V. Carter, 312 P.2d 665, 675 (Cal. 1957); People V. Bunyard, 756 P.2d 795, 809 (Cal. 1988); NRS. 175.141.

II. DEFENDANT'S SPECIFIC REQUESTS FOR BRADY MATERIAL

Accordingly, Defendant hereby requests this Court enter an Order Compelling the State to exercise due diligence in searching for and disclosing to him any materials and/or information in the State's possession, including materials in the possession of the Las Vegas Metropolitan Police Department, and other state agencies or agents, concerning the following:

1. information concerning any expectation of any benefit of any kind to be recieved, or already received, by any witness presented by the State.[2]

2. That the State engage in due diligence in order to adequately Comply with NRS 50.095 and disclosure of felony Convictions within the last 10 years, including but not limited to any material and/or information in the State's possession which relates to specific instances of misconduct

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[1] The law is clear that it is the witness own anticipation of reward, not the intent of the prosecutor, which gives rise to the necessity of disclosure. Moore V. Kemp, 809 F.2d 702, 706, 729-30 (11th Cir.), Cert. denied, 481 U.S. 1054 (1987); Duggan V. State, 778 S.W. 2d 465, 468 (Tex. Crim. App. 1989).

[2] Duggan V. State, 778 S.W. 2d 465, 468 (Tex. Crim. App) (understandings merely implied, suggested, insinuated, or inferred of possible benefit to witness).

of any State witness from which it Could be inferred that the person is untruthful and which may be or may lead to admissible evidence.[3]

3. Any material and/or information in the State's possession from which it Could be inferred that any person whom the state Calls as a witness at trial has a reputation for untruthfulness or for shifting his own guilt upon others which would either be admissible or aid in the discovery of evidence which would be admissible.

4. Any Materials and/or information of any nature whatsoever, tangible or intangible, recorded or unrecorded, in the State's possession, Custody, or Control or the existence of which is either known or through the exercise of due diligence may become known to the state, which would tend to exculpate Defendant of the State's Charges, might mitigate the punishment should he be Convicted, or would be or may lead to information which would tend to impeach or affect the Credibility of a witness anticipated to be presented by the State.[4]

5. Any written minutes or records of testimony, summaries of the substance of any oral statements, or any materials and/or information whatsoever relating to any alleged accomplice who either testified or otherwise made statements or created information which would be exculpatory as to Defendant.

6. Any information concerning an arrest of any other individual for the charged crime[5] and any information suggesting a possible suspect other than defendant.[6]

7. Disclosure of any and all statements in the instant case case made by any state witness that the state anticipates calling, or by the Defendant, including any inconsistent statements of any named witnesses.

---

[3] United States V. Strifler, 851 F.2d 1197, 1201 (9th Cir. 1988), Cert. denied, 489 U.S. 1032 (1989) (information in government witness = Confidential probation file)

[4] Norris V. Slauton, 540 F.2d 1241, 1244 (4th Cir. 1976)(report of initial uncertainty of eyewitness identification); Jackson V. Wainwright, 390 F.2d 288, 291-93 (5th Cir 1968) (prior misidentification by witness;) United States V. Beasley, 576 F.2d 626 (5th Cir. 1978), Cert. denied, 440 U.S. 947 (1979) (previous statement of key prosecution witness where statement differed from trial testimony with credibility is issue); Carter V. Rafferty, 826 F.2d 1299, 1307-08 (3rd Cir. 1987), Cert denied, 484 U.S. 1011 (1988) (report of lie detector test given to prosecution witness); Suartz V. State 506 N.W.2d 792, 794-95 (Iowa App. 1993) (evidence of alleged Co-perpetrator's threatening and overbearing nature and impending psychiatric examination of him); People V. Garcia, 17 Cal. App. 4th 1169, 22 Cal.

App. 4th 1169, 22 Cal. Rptr. 2d 545, 551-52 (1993) (evidence showing state expert used faulty methodology and made errors in other cases); People V. Wright, 658 N.E. 2d 1009, 1012 (1995) (alleged Victim's status as police informer).

5 Banks V. Reynolds, 54 F. 3d 1508, 1518 n. 21 (10th Cir. 1995)

Bloodworth V. State, 512 A. 2d 1056 1059-60 (1986)

8. Any and all other materials required to be disclosed by the United States and Nevada Constitutions and the Nevada Revised Statutes.

9. Any and all 911 or 311 calls and CAD related to the Subject incident.

10. Any and all police reports generated related to the Subject incidents.

11. Any and all radio traffic with MPD dispatch and/or Car-to Car radio traffic and/or police Car Video Surveillance related to the Subject incident.

12. Any and all photographs taken related to this incident.

13. Any and all Surveillance reports from the Bellagio Hotel and Casino on September 17, 2015 Concerning the instant offense.

14. Any and all requests and/or results of physical or or biological evidence.

15. Color Copies of the Bolo of Mr. Edwards or Any other Suspect put out by LVMPD Concerning this Case.

16. Names and last known address of any and all percipient witnesses known to the State or to Law enforcement.

This includes the names of any juvenile witnesses in the instant Case 7

CONCLUSION

it is respectfully Submitted that in light of the foregoing authority this Motion Should be granted So as to afford Mr. Edwards an opportunity to recieve a fair trial and to Secure his Rights under the Fourth, Fifth, and Sixth Amendments to the Constitution of the UNITED STATES OF AMERICA as applied to States through the fourteenth Amendment and the Constitution of the of Nevada, Article 1, Sections 1, 8, and 20.

DATED this _____ day of _____, 2016.

By: /s/ HAROLD EDWARDS

HAROLD EDWARDS Defendant
PRO PER:

THE Current Notice of witnesses Contains the District Attorney's address for the named witnesses. Defendant anticipates the State will argue that this due to the nature of the charges alleged, however the defendant argues that by Law, at minimum Defendant is entitled to the last known addresses in order to adequately prepare for trial

55

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CLERK OF THE COURT

MC
DA
PP

HAROLD EDWARDS
330 S. Casino Center Blvd.
Las Vegas, Nevada 89101
Defendant: Pro Se

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff.

VS.

HAROLD EDWARDS,
Defendant.

CASE NO. C15-310695-1
DEPT NO. VIII
DATE OF HEARING: 4/6/16
TIME OF HEARING: 8am

NOTICE OF MOTION AND MOTION FOR THE APPOINTMENT OF COUNSEL

COMES NOW, defendant acting Pro Se: and respectfully moves this Court to grant defendants Motion for the appointment of Counsel.

1) Defendant asserts that this is a critical point in the above case and thus far he has been less than adequate as far as representing himself. he further asserts. that he is experiencing bias and/or deliberate indifference from all sides. Because of the reasons stated above, defendant wants to terminate his self representation and reassert his VI Amendment Constitutional right to the assistance of Counsel.

I am making a clear and Unequivocal request for Counsel.

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MAR 16 2016
CLERK OF THE COURT

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MAR 14 2016
CLERK OF THE COURT

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This Motion is based upon or pursuant to Beals V. State, 106 Nev. 729, 802 P. 2d.

DATED THIS 10th day of March, 2016

I HAROLD EDWARDS, do Solemnly Swear, Under penalty of perjury, that the above Motion is Accurate, Correct and true to the best of my Knowledge.

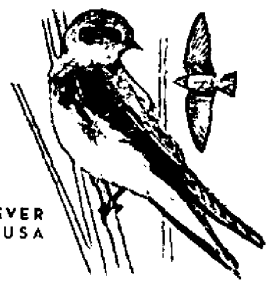
NRS 171.102 and 208.165

Respectfully Submitted Harold Edwards

Pro Se Defendant Harold Edwards

HAROLD EDWARDS #7024721
330 S. Casino Center Blvd
Las Vegas, NV. 89101
CCDC 9th FL. Rm 34

SENT FROM CCDC



Bank Swallow

LEGAL
MAIL

Steven D. Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV. 89155-1160

89101$6300 C075

THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT

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ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
BRIAN J. KOCHEVAR
Chief Deputy District Attorney
Nevada Bar #005691
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

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CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

HAROLD EDWARDS,
#7024721

Defendant.

CASE NO: C-15-310695-1

DEPT NO: VIII

ORDER DENYING DEFENDANT'S PRO PER MOTION TO DISMISS

DATE OF HEARING: 03/07/2016
TIME OF HEARING: 8:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 7th day of March, 2016, the Defendant being present, IN PROPER PERSON, in custody of the Clark County Detention Center, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through BRIAN J. KOCHEVAR, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

///

///

///

///

IT IS HEREBY ORDERED that the Defendant's Pro Per Motion to Dismiss, shall be, and it is DENIED.

DATED this 15 day of March, 2016.

DISTRICT JUDGE

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

BY Brian J. Kochevar
BRIAN J. KOCHEVAR
Chief Deputy District Attorney
Nevada Bar #005691

Certificate of Service

I, Stephanie Johnson, certify that on the 17th day of March, 2016, I mailed a copy of the above and foregoing to Harold Edwards #7024721, Clark County Detention Center (CCDC), 330 S. Casino Center Boulevard, Las Vegas, Nevada 89101, for his review.

BY: /s/ Stephanie Johnson
Employee of the District Attorney's Office

15F15118X/saj/L-1

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CLERK OF THE COURT

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
JASMIN D. SPELLS, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 11635
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
Lillyjd@clarkcountynv.gov
Attorneys for Defendant

HEARING REQUIRED
DATE: 8-17-16
TIME: 9:30am

DISTRICT COURT

CLARK COUNTY, NEVADA

Jhca/DC23

THE STATE OF NEVADA,

Plaintiff,

v.

HAROLD EDWARDS,

Defendant,

C-15-310695-1

CASE NO. C-15-310166-1

DEPT. NO. XXIII

DATE: August 17, 2016
TIME: 9:30 a.m.

NOTICE OF MOTION AND MOTION TO CONSOLIDATE

COMES NOW, the Defendant, HAROLD EDWARDS, by and through JASMIN D. SPELLS, Deputy Public Defender and hereby requests that this Honorable Court consolidate this case and case C-15-310695-1.

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

DATED this 11th day of August, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/ Jasmin Spells*
JASMIN D. SPELLS, #11635
Deputy Public Defender

DECLARATION

JASMIN D. SPELLS makes the following declaration:

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

2. I am more than 18 years of age and am competent to testify as to the matters stated herein. I am familiar with the procedural history of the case and the substantive allegations made by The State of Nevada. I also have personal knowledge of the facts stated herein or I have been informed of these facts and believe them to be true.

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

EXECUTED this 11th day of August, 2016.

/s/ Jasmin Spells
JASMIN D. SPELLS

STATEMENT OF RELEVANT FACTS

C310166- Venetian[1]

The Information on file shows that Defendant is charged with two counts of Burglary, four counts of Grand Larceny and six counts of Possession of Credit or Debit Card without Cardholder's Consent.[2] Part of the charges stem from what was originally case C310442, which was consolidated into the instant case.

The Venetian incident is alleged to have occurred on August 26, 2015 at the Rockhouse, located inside the Venetian hotel and casino.[3] At the preliminary hearing, the State presented four witnesses.[4] Two of those witnesses, were Custodian of Records. Id. The Custodian of Records for Sulek Managic testified that Mr. Edwards was seen on video in employee only areas inside the Rockhouse. PHT p. 8. He further testified that employees keep personal items in these employee only areas. Id. Venetian Custodian of Records testified that Mr. Edwards was on video going into public and restricted areas of the Venetian hotel and casino. PHT pp. 26-29.

Complaining witness Whitnee Tyson, testified that on August 26, 2015, she was a cocktail server at the Rockhouse. PHT p. 38. On that date, she placed her purse on a table in the employee back hallway, which was next to some lockers. PHT p. 39. My Tyson testified that she watched a video (in court) which showed a man, whom she identified in court as Harold Edwards, in the employee area where she left her purse. PHT pp. 39-41. Ms. Tyson further stated that when she returned to her purse, her wallet and all of the contents were missing. PHT p. 41.

Lastly, Detective J. Clark testified that he investigated this case. PHT p. 47. He further testified that the person on the Venetian video is in fact, the defendant, Harold Edwards. PHT pp. 47-48.

C310166-Wynn[5]

---

[1] Defense utilizes many of the State's facts as recited in their Motion to Consolidate or in the Alternative Motion in Limine for the Admission of Other Bad Acts.
[2] *See* Information on file.
[3] *See* Information on file.
[4] *See* generally [Preliminary Hearing Transcript "PHT" (October 29, 2015) (attached hereto as Exhibit A)].
[5] All of the facts cited in this section come from the Preliminary Hearing "PHT" held on October 19, 2015 in front of the Honorable Judge Saragosa, attached hereto as Exhibit B.

The Wynn incident is alleged to have occurred on September 19, 2015 at the Claude Baruk Salon, located inside the Wynn hotel and casino. The alleged victims worked inside the salon at the time of this incident.

Complaining witness Christina Simons testified that upon entering the storage room/laundry room of the salon, an employee only area, she saw Mr. Edwards talking on the phone. PHT pp. 49-50]. Ms. Simons further testified that the storage room is where everyone keeps their purses at. PHT p. 50. Ms. Simons further testified that her IPhone 6 and case were stolen and are valued at more than $650. PHT p. 54.

Complaining witness Viviana Massis stated that she went into the back laundry room with Ms. Simons. PHT p. 63. Ms. Massis checked her belongings and stated that she found she was missing her cell phone, a cardholder and a wallet. PHT p. 65. She further testified that she was missing items out of her wallet, to include gifts cards and an identification card. Id. Upon being notified by her co-workers, complaining witness Sarah Caughell also went to the storage area to find her wallet and contents and iPhone missing. PHT p. 74.

Security Control Center Manager for the Wynn, Neal Gekeler testified that he reviewed video surveillance from the date of the incident. PHT p. 22. Mr. Gekeler testified that on the video he saw the man (later identified in Court as Mr. Edwards) walking in both public areas and employee only access areas on September 19, 2015. *See generally* PHT pp. 25-35.

The State also called Detective J. Clark as a witness at preliminary hearing. PHT pp. 40-49. Detective Clark is the assigned Detective to this case. Id. He testified that he reviewed video surveillance from the Wynn and identified Mr. Edwards as the person in the video. PHT pp. 45-46. He further testified that he was investigating other cases of Mr. Edwards, stating that they have the same "M.O." PHT p. 46.

The instant case is currently set for trial on August 29, 2016, with a calendar call date of August 17, 2016. Noteworthy, Mr. Edwards previously waived his right to a speedy trial.

///

///

C310695[6]

In this case, the State has charged Mr. Edwards with one count of Burglary, alleged to have occurred on or about September 17, 2015 at the Bellagio.[7]

On September 23, 2015, Detective J. Clark[8] reviewed video surveillance provided by Bellagio Security Investigations. PHT p. 78. Detective Clark testified that the suspect in this video surveillance is the same suspect in two other burglaries, specifically LVMPD event numbers 150919-1961 and 150828-2668, the event numbers from the instant case. Declaration of Arrest, p. 1, (attached hereto as Exhibit D). Detective Clark testified that the video surveillance shows Mr. Edwards entering a back hallway of the Venetian and also the back door to Café Gelato; both areas having no public access. PHT pp. 60, 63. The State further alleges that Mr. Edwards took Ms. Joanna Jimenez's backpack from somewhere behind the Café Gelato. PHT p. 64. Ms. Jimenez informed officers that her backpack was in a locked locker in the back. PHT p. 26. This backpack was later recovered just inside the back door of an arcade. PHT p. 27.

ARGUMENTS

I. This Court Has Authority To Consolidate Mr. Edwards Cases.

Pursuant to Eight Judicial District Court Rule "EDCR" 2.50 and EDCR 3.10, this department is the proper department to hear this motion. The case first filed is the proper court to hear motions for consolidation and the proper court to try the consolidated case. *See* EDCR 2.50 and EDCR 3.10. This department has the lowest case number and thus should hear this motion and try the consolidated cases.

II. Prosecutors Are Encouraged To Seek Joinder To Save Taxpayer Money and Promote Judicial Economy.

Nev. Rev. Stat. § 174.155 provides:

> The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants if there is

[6] All facts cited in this section are from the Preliminary Hearing "PHT" held on November 10, 2015 in front of the Honorable Judge Goodman, and attached hereto as Exhibit C.
[7] *See Information on file.*
[8] The same Detective who testified at the other two preliminary hearings.

> more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.

In considering whether to allow consolidation, courts have looked to the conflicting policies of judicial economy and efficiency of judicial administration, controlling court calendars in avoidance of multiple trials, and any resulting prejudice to a defendant which may arise from consolidation. *See* United States v. Fancher, 195 F. Supp. 634 (d. Conn.) affirmed, 319 F.2d 604 (4th Cir. 1963).[9]

The Nevada Supreme Court has always recognized the need to promote judicial economy by ordering joinder of defendants or offenses. "The general rule favoring joinder has evolved for a specific reason-there is a substantial public interest in joint trials of persons charged together because of the judicial economy involved." In United States v. Brady, 579 F.2d 1121, 1128 (9th Cir.), *cert. denied*, 439 U.S. 1074, 99 S.Ct. 849, 59 L.Ed.2d 41 (1978), the court stated:

> we must be guided by our general rule that joint trials of persons charged with committing the same offense expedites the administration of justice, reduces the congestion of trial dockets, conserves judicial time, lessens the burdens upon citizens to sacrifice time and money to serve on juries and avoids the necessity of recalling witnesses who would otherwise be called upon to testify only once.

Jones v State, 111 Nev. 848, 899 P. 2d 544 (1995). The Nevada Supreme Court has also applied this rationale of judicial economy in ruling on the joinder of offenses. In joinder of offenses cases, judicial economy is normally weighed against prejudice to the defendant. *See* Brown v State, 114 Nev. 1118, 967 P.2d 1123 (1998), Tabish v State, 72 P.3d 584 (2003); Middleton v. State, 114 Nev. 1089, 968 P.2d 296 (1998); Tillema v State, 112 Nev. 266, 914 P.2d 605 (1996). In Tillema, the Nevada Supreme Court held that it was proper to join a vehicle burglary with another vehicle burglary and store burglary which happened 17 days later. Id. at 269. Given that the presumption is for joinder of cases when there is no prejudice, consolidation is proper in

[9] This is the same law the State relied upon in filing their Motion to Consolidate Or in the Alternative, Motion in Limine For the Admission of Other Bad Acts in case C-15-310442-1, filed on December 14, 2015, (attached hereto as Exhibit E).

this case.

Although it is not common for Defendants to request consolidation of cases, it is not unprecedented. In such cases, prosecutors are encouraged to use joinder provisions to save the taxpayers' money. Chaney v Oklahoma, 612 P.2d 269 (1980). In Chaney, the trial Court denied a defense motion to consolidate two death penalty cases. The Oklahoma Court of Appeals found that it was error to deny the consolidation. The Court reasoned:

> There are reasons, in addition to economic ones, why it would have been better to try these four cases together. Besides saving a great deal of expense for both the State and the defendant and reducing the District Court's caseload by three major cases, a single trial would have been less a burden on the witnesses, especially Mr. Ashmore, who had to relive the entire traumatic episode as well as identify his wife's clothing. The jury was told it was trying the defendant for one murder, but then it was given evidence that there were in fact two murders and two kidnappings.

Id. at 282. In Chaney, the trial judge was uncertain of his authority to consolidate over DA objection. The Court found that this misinterpretation of the statute amounted to an abuse of discretion. Id. at 283. Nevada law (Nev. Rev. Stat. § 174.155) also gives this Honorable Court the authority to consolidate Defendant's cases over DA objection. Nev. Rev. Stat. § 174.155 states "[t]he court may order two or more indictments or informations or both to be tried together if the offenses ... could have been joined in a single indictment or information." Additionally Nev. Rev. Stat. § 174.155 states that "[t]he procedure shall be the same as if the prosecution were under such single indictment or information." Furthermore, Nev. Rev. Stat. § 173.115 states:

> Two or more offense may be charged in the same indictment or information, in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both are:
>
> 1. Based on the same act or transaction; or
> 2. Based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

In the instant case, consolidation is warranted. All of the charges could have been filed in one single Indictment or Information here. Similar to Chaney, judicial economy and lack of prejudice to the State weigh in strong favor of consolidation in this case. It makes sense for only one jury to hear the facts of these cases since Eighth Judicial District Court caseloads are at an all-time high.

Moreover, the two cases overlap in both evidence and witnesses. Detective J. Clark testified at all three preliminary hearings and would be necessary for both trials in this case. Additionally, Detective Clark testified that all the cases have the same "M.O." *See supra* Statement of Relevant Facts. Thus, consolidation is warranted pursuant to Nev. Rev. Stat. § 17.115. Moreover, consistent with the State's argument, these cases happened within a month or less of each other.[10] Additionally, the fact pattern of each is consistent with the State's modus operandi argument, that Mr. Edwards targeted large hotel/casinos, entering them with the clear intent to seek out secured areas where employees kept their belongings. Id. The State goes on to argue as modus operandi the fact that Mr. Edwards demonstrated a common plan and/or scheme of roaming the secured access hallways for absolutely no reason other than finding personal belongings of employees and that upon finding personal belongings he would exit the building as soon as possible. Id. These are the same facts that the State will use to prove both cases, therefore consolidation is warranted.

III. The State Suffers No Prejudice From Consolidation.

A party is only entitled to have separate trials when he can show prejudice. NRS 174.165 (1) states:

> If it appears that a defendant or the State of Nevada is prejudiced by a joinder of offenses or defendants in an indictment or information, or by such joinder for trial together, the court may order an election

[10] *See* State's Motion to Consolidate or in the Alternative, Motion in Limine for the Admission of Other Bad Acts, filed December 14, 2015 in C-15-310442-1 p. 5.

or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.

Generally the defense is argues for separate trials based upon prejudice. Here, the defense is asking for consolidation because there is no prejudice. The defense has to do much more than claim it is a good strategy decision to get a severance. For severance, a party has to actual prejudice. The State must meet this standard; severance is not warranted simply because it is a good strategic decision. From the State's perspective, "prejudice in this context means detriment to one's legal rights or claims. Mere inconvenience or loss of strategic advantage caused by a jury trial does not constitute prejudice." State v Jones, 396 So.2d 1272 (1981).

The case at hand presents no prejudice to either party. When weighing all the factors: judicial economy, efficiency of judicial administration, avoidance of multiple trials, the rules allowing for consolidation, and prejudice, it is clear that the factors overwhelmingly support consolidation. Thus, Mr. Edwards humbly requests that this Court consolidate cases C310166 and C310695.

CONCLUSION

It is clear that there are numerous reasons to grant the Motion to Consolidate. Thus, based on the foregoing, Mr. Edwards humbly requests that this Court grant the instant motion.

DATED this 11th day of August, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/ Jasmin Spells*
JASMIN D. SPELLS, #11635
Deputy Public Defender

NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing MOTION on for hearing before the Court on the 17th day of August, 2016, at 9:30 a.m.

DATED this 11th day of August, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/ Jasmin Spells*
JASMIN D. SPELLS, #11635
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and forgoing MOTION was served via electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountyda.com on this 12th day of August, 2016

By: */s/ Erin Prisbrey*
An employee of the
Clark County Public Defender's Office

EXHIBIT A

CASE NO: C310442
DEPT NO: 14

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

THE STATE OF NEVADA,)
Plaintiff,)
vs.) CASE NO. 15F13848X
HAROLD EDWARDS,)
Defendant.)
_____)

REPORTER'S TRANSCRIPT
OF
PRELIMINARY HEARING

BEFORE THE HONORABLE CONRAD HAFEN
JUSTICE OF THE PEACE

Thursday, October 29, 2015
9:00 a.m.

APPEARANCES:

For the State: CHAD LEXIS, ESQ.
DEPUTY DISTRICT ATTORNEY

For the Defendant: JESSICA MURPHY, ESQ.
DEPUTY PUBLIC DEFENDER

Reported by: KRISTINE A. FLUKER, CCR NO. 403

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EXHIBITS

STATE'S EXHIBITS:	MARKED	OFFERED	ADMITTED
1 CD	23	5	6
2 Still Photo		15	15
3 Still Photo		15	15
4 Still Photo		15	15
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CLERK OF THE COURT

LAS VEGAS, CLARK COUNTY, NEVADA, THURSDAY, OCTOBER 29, 2015
9:00 A.M.

PROCEEDINGS

THE COURT: This is the time and place set for preliminary hearing in Case No. 15F13848X, State of Nevada vs. Harold Edwards.

He's present in custody. He's being represented by the Public Defender's office. The State is being represented by the Clark County District Attorney's office.

The parties have announced that they're ready to proceed. The record should reflect that the court reporter has been duly sworn.

Chad, how many witnesses do you have?

MR. LEXIS: Possibly four, Judge.

THE COURT: Four. Okay. Go ahead and call your first witness.

MS. MURPHY: Your Honor, before the State calls their witnesses, I'm going to ask to invoke the Exclusionary Rule, although I didn't see that there's anybody in here.

THE COURT: Okay. All witnesses in the courtroom on the Edwards case, go out in the hall and wait until you're called to testify. Do not talk to anybody about your testimony.

Who's your first witness, Chad?

MR. LEXIS: Judge, can I go get my -- in the back room they have the computer as well. Can I bring it up there?

THE COURT: Sure.

Whereupon,

SULEK MANAGIC,

having been first duly sworn to testify to the truth, the whole truth and nothing but the truth, was examined and testified as follows:

THE CLERK: Please be seated. State your name and spell your full name for the record.

THE WITNESS: Sulek Managic. First S-u-l-e-k, M-a-n-a-g-i-c.

THE CLERK: I'm sorry, can you spell that again? S-u-l --

THE COURT: A little bit slower.

THE WITNESS: S-u-l-e-k, M-a-n-a-g-i-c.

THE CLERK: Thank you.

THE COURT: Okay. Chad, go ahead.

DIRECT EXAMINATION

BY MR. LEXIS:

Q. Sir, where do you work?

A. I work for Fine Entertainment. I oversee five properties. I work security and surveillance. The Rock House is one.

5

Q. And you oversee the surveillance of the Rock House?
A. Yes, sir.
Q. And is that the one inside the Venetian?
A. Correct.
Q. Is that located in Las Vegas, Clark County?
A. Yes, sir.
Q. Were you made aware of an incident that took place on August 26th, 2015?
A. Yes, I am.
Q. Were you able to burn video of the incident in question?
A. Correct.
Q. Did you look at the video before today on a CD?
A. Yes, sir.
Q. In fact, is that CD inside the player right now?
A. Yes, it is.
Q. Has it ever left your possession since when you put it in yourself?
A. No.
MR. LEXIS: Judge, I'd move to admit State's Proposed Exhibit 1.
THE COURT: We have to have it marked.
MR. LEXIS: Judge, before -- can we do it after we pop it out? Otherwise it's going to load up

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again. Do you have --
THE COURT: All right. Do you have a copy of the CD?
MS. MURPHY: Yes, Your Honor. I wasn't able to get it to play, but I was provided a copy.
THE COURT: All right. Do you have any objection to it being admitted at this point?
MR. MURPHY: No. I'm assuming it's going to be played in open court?
MR. LEXIS: Yes.
THE COURT: Okay. So without objection, State's Proposed Exhibit is 1 hereby admitted.
Were you going to have him play it here on the stand?
MR. LEXIS: Yes. Can I just ask a few more questions?
THE COURT: Sure. Go ahead.
MR. LEXIS:
Q. Sir, this video, what time does it start?
A. 6:25, around 6:35 p.m.
MS. MURPHY: I'm sorry, did you say p.m.?
THE WITNESS: P.m.
MR. LEXIS: May I approach, Judge?
THE COURT: Yes.
Q. Sir, can you please angle it so that the Judge --

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THE COURT: Jessica, you want to come up and watch it?
MS. MURPHY: Yeah. And just for the record --
THE COURT: You can leave it there.
MS. MURPHY: -- the defendant hasn't seen the video. I was never was able to get the proper player on my computer to play it. So I don't know if there's a way that we could --
THE COURT: Have him come up.
MS. MURPHY: Well, I don't know how the Court wants to do it.
THE COURT: Come on up, and just everybody can kind of stand behind this witness while he plays it.
MS. MURPHY: Where do you want him?
THE WITNESS: There's three clips to it, five minutes each. He's going to come at the end of this clip. I'll speed it up for you.
MS. MURPHY: Judge, I would ask that the witness not narrate the video.
THE COURT: Yes.
(Whereupon, the video was played.)
MR. LEXIS:
Q. Was that the first clip?
A. That was the first clip.

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Q. Let me ask you a few questions about the first clip. Describe for me where exactly this is at.
A. This is back hallway of the Rock House Bar. The door you see right there is --
THE COURT: You have to talk louder because we have a court reporter.
THE WITNESS: The door that you see right here is the Venetian back hallway. This is our back hallway where the employees leave their bags. There's a locker right here. There's a bench next to the locker. Most of the stuff is there.
MR. LEXIS:
Q. Is that an employee restricted area only?
A. Yes, sir.
Q. Is the person that you see hover around and shuffle through some things, is that where the purses are of the employees?
A. Yes, sir.
Q. And is that employee only?
A. Yes, sir.
Q. And what do you see when you see that person shuffling around? What do they appearing to be doing?
A. They appear to be stuffing something in their pants.
Q. And then they exit out what particular area?

A. They exit out the same way they came in.
Q. Go to the next one, please.
MS. MURPHY: For the record, can we get a time on this second clip?
THE WITNESS: 7:32.
MR. LEXIS:
Q. What area does this show, sir?
A. The employee back hallway.
Q. The same restricted area?
A. The restricted area.
Q. And what is this showing us?
A. It should be right after he left. He's already gone.
Q. Say that again, sir.
A. He's already gone.
Q. And that was at the beginning?
A. That was at the beginning of the second clip.
Q. Okay. Play the next clip. What is this an area of?
A. The same area, the restricted employee back room. That's the employee messing with things.
THE CLERK: It's very hard to hear him.
THE WITNESS: She's looking for her things right now. That's the employee missing her items.
MR. LEXIS:

Q. That's the alleged victim in this case?
A. Yes, sir.
MS. MURPHY: And for the record, what's the time on this clip?
THE WITNESS: 6:35.
MR. LEXIS:
Q. So minutes after the suspect was seen on previous clips rummaging through that restricted access area where purses are kept, you then see the alleged victim go back to her purse?
A. Yes, sir.
THE COURT: Okay. Chad, so that I understand it, let's go back to the very first clip. I need to look at all three of these again.
THE WITNESS: Yes, sir.
MR. LEXIS:
Q. Sir, describe for us where the suspect is going to come from.
A. From the door. Right here behind this door. It's a Venetian employee back hallway.
Q. And inside what we're looking at is a restricted access employee only --
A. Yes, sir.
THE COURT: And this is the first clip, right?

THE WITNESS: Yes, sir.
MS. MURPHY: And what's the time on the first one?
THE WITNESS: 6:25. Each clip is five minutes.
MR. LEXIS:
Q. Please let us know when the suspect appears.
A. Yes, sir.
Q. That's him right there?
A. He enters the property at exactly 6:29. We're not yet there.
Q. He'll be coming up on the top?
A. Yes, sir.
Q. Please speak up loudly so we know you see him appear.
A. The suspect appears.
Q. Where is he?
A. He's entering the restricted employee area. He makes a right and goes into the kitchen.
Q. Point, please.
A. The kitchen right there. He comes out. He'll come out here to the corner. Then he stops right where the victim's purse is at.
Q. He appears to be shuffling around?
A. Yes, sir.

MR. MURPHY: Judge, I'm going to object to the testimony with regard to where the victim's purse is. I don't believe he placed it there, so the knowledge of where the purse is would have to come from her directly.
THE COURT: Well, the video speaks for itself. I'm watching it right now. Okay.
MR. LEXIS:
Q. And then is that him leaving?
A. Yes.
Q. Anything more on this frame or should we go to the second one?
THE COURT: Back it up. I have to see this one more time. I'm sorry.
THE WITNESS: No problem.
THE COURT: You don't have to go all the way back to the beginning. If you can, do it just moments before the alleged individual comes in. I need to watch this again.
THE WITNESS: This is already the second clip. I'm sorry.
THE COURT: We have to go to the first clip again? If it's easier, you can go to the very beginning, if that's easier for you.
THE WITNESS: I just set it up for moments

before he walked in.
THE COURT: Okay.
THE WITNESS: There.
THE COURT: You have to play that again now because it stopped.
THE CLERK: Is that the second clip?
THE COURT: The first one again because it --
THE WITNESS: Well, it stops.
THE COURT: I'm sorry. Go to the second one. Okay.
Did you want to see anything more, Jessica?
MS. MURPHY: No, I guess I'll just do cross.
THE COURT: Okay.
MR. LEXIS:
Q. Now, sir, at that same area where you see the suspect fidgeting around, is that the same area where you then see the victim appear looking for something herself?
A. Yes, sir.
Q. Were you able to look at some still photos that were taken from that particular video?
A. Yes, sir.
Q. And were those still photos matched up with what was on the video?

A. Yes, sir.
Q. Same suspect?
A. Same suspect.
MR. LEXIS: Judge, may I approach?
THE COURT: Yes. And these are what? State's Exhibits what?
MR. LEXIS: They're going to be 2 through 5, Judge.
THE COURT: Jessica, have you received copies of these?
MS. MURPHY: No, I haven't. I'll look at them quickly. Thank you.
MR. LEXIS:
Q. Sir, I'm showing you what is marked as State's Proposed Exhibits 1 through -- excuse me, 2 through 5. Are those true and accurate representations of still photos from the video that we've just seen?
A. Yes, sir, absolutely. This is zoomed in on the footage.
Q. You were able to zoom in on the footage?
A. Yeah.
Q. Do you see that person in court today?
A. Yes, sir.
Q. Could you please point to him and identify for me the color shirt he's wearing?

A. The defendant.
Q. What color shirt, sir?
A. A black shirt.
MR. LEXIS: Your Honor, let the record reflect that the witness has identified the defendant.
THE COURT: The record will so reflect.
MR. LEXIS: Judge, I move to admit State's 2 through 5.
THE COURT: Any objection, Jessica?
MR. MURPHY: No.
THE COURT: Without objection, State's Exhibits 2 through 5 are admitted.
MR. LEXIS:
Q. Sir, does the one Harold Edwards work at the Rock House?
A. No, sir.
Q. Were you also able to observe surveillance from the Venetian Hotel?
A. No, sir.
Q. This morning were you able to see video from another person from the Venetian?
A. Yes.
Q. And were you also shown stills from that video?
A. Yes, sir.
Q. Were you able to determine if that was the same

person from the Rock House video?
A. Yes, sir.
MR. MURPHY: Judge, at this point I haven't seen those photos either. I don't know if the State has them now? But I don't know that he can lay any foundation.
MR. LEXIS: Judge, I would ask that you reserve your ruling on this particular thing until I bring in the COR for the Venetian, who is the next witness.
THE COURT: Okay. So with that other witness you intend to lay the foundation?
MR. LEXIS: Yes, Judge. I'm just trying to save not calling him and then calling him back.
THE COURT: Okay. I'll give you some leeway.
MR. LEXIS: Judge, may I approach?
THE COURT: Yes.
MR. LEXIS:
Q. Sir, I'm showing you State's Proposed Exhibits 6 and 7. Are these stills from the video that you'd seen earlier today?
A. Yes, sir.
Q. And is that outside the Venetian?
A. That is. I recognize these doors, and I

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recognize the person in the photo.

Q. And it's the same person that we just saw a video of in the Rock House?

A. Correct.

MR. LEXIS: Judge, I'll move to admit these after the next witness testifies.

THE COURT: Very good.

MR. LEXIS: Nothing further, Your Honor.

THE COURT: Jessica, cross-examination?

CROSS-EXAMINATION

BY MS. MURPHY: Yes, please.

Q. So, sir, you've referred to this hallway that we've seen on the video as a secure employee only area; is that correct?

A. That is correct.

Q. And so in order to get in this area, would a person need to have certain employee identification to get in?

A. Absolutely.

Q. And this hallway area that we saw actually connects to another secured hallway; is that correct?

A. Right.

Q. So in order for a person to be in the area on the video, they would have to clear two points of employee access only areas; is that fair to say?

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A. Correct.

Q. Okay.

A. One is by the Grand Canal Shops or by the Venetian.

Q. I'm sorry, say that again.

A. The first point of access would be from Venetian, in their back hallways, which is pretty much supervised by Grand Canal security.

Q. Okay.

A. And then he would have to come into our hallway.

Q. Okay. Is there any kind of employee card that somebody would swipe to let themselves in?

A. No.

Q. No? So they would have to be let in by somebody who's manning the doors?

A. No, nobody is manning the doors anywhere in the Venetian properties. It's pretty much if you know where you're going, you can go there. All the employees -- it's pretty much for employees that work on the Venetian properties. Like Tao, Buddy V's, Rock House.

Q. Okay. And I don't know that we need to replay the video again, but if we do, we can. But do you recall from the video, throughout the three different clips that we watched, there was a person sitting kind of at the bottom of the screen. Do you recall that

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person?

A. Yes. He's our cook.

Q. Okay. So there was an employee sitting there for the 10 minutes of the -- I guess 15 minutes of the video; is that correct?

A. Yes.

Q. And also during the course of the videos that we watched there were multiple people coming and going in that area, correct?

A. Correct.

Q. Okay. And when you testified on direct that there was a particular area that the purse was, you actually have no personal knowledge of where the purse was set; is that correct?

A. No, I was --

Q. You were not there when Ms. Tyson placed her purse there, correct?

A. No, I was called in to review the video.

Q. Okay. And on the video itself when we are watching the video, the purse itself is not visible from the video, correct?

A. No, it's not.

Q. And the person that you've identified as the suspect, during the course of time that he's walking the hallway, he has a cell phone in one hand; is that

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correct?

A. That is correct.

Q. And it appears in the other hand he's holding --

A. A bag.

Q. -- a can of coda or some other item?

A. A bag.

Q. You believe that to be a bag?

A. Yes, I do. A brown paper bag.

Q. Okay. Did you observe anything else in his hand?

A. No.

Q. Okay. And of course you were not in this area at the time of this incident, correct?

A. Correct.

Q. Were you involved in showing the video footage to Ms. Tyson?

A. No.

Q. Okay. And the State marked and I believe admitted or attempted to admit as evidence some still photos of that back hallway. Do you recall seeing those?

A. Yes.

Q. And would you agree that of those still photos, there is not one that would show the suspect in the immediate area of where the purse is believed to be?

A. Define "immediate area."

Q. We don't have a still of the suspect taking the purse; would you agree with that?
A. **Yes.**
Q. Okay. And with your surveillance technology you're able to capture stills of any part of the actual video, correct?
A. **Correct.**
Q. And with that being said though, you were not able to catch or you did not provide to the State or to the police a still of the actual theft of the purse, correct?
A. **Well, we made the stills before we made a video because we were asking around Grand Canal Security if they know this gentleman, which they didn't know. Then we made a video too. Before it was surveillance, they burned the video and give it to us.**
Q. With that being said though, we don't have a still of the actual alleged theft, fair to say?
A. **Yes, fair to say.**
Q. Okay. Were you involved in any of the investigation or interviews of witnesses?
A. **No.**
MR. MURPHY: Okay. Court's indulgence.
No more questions, Your Honor.
THE COURT: Okay. Any redirect?

REDIRECT EXAMINATION
BY MR. LEXIS:
Q. The actual frames are outside the presence of the actual purses, correct?
A. **Yes.**
Q. You can't see directly into it because the camera just shows right outside?
A. **Yes.**
Q. But you clearly see him fumbling in the same position?
A. **Absolutely.**
MR. LEXIS: Nothing further, Judge.
THE COURT: Any recross?
MS. MURPHY: No.
THE COURT: Thanks for coming in. You're excused for the day.
Call your next witness.
MR. LEXIS: Chris Caton.
THE COURT: Can we get the CD before you leave?
MR. LEXIS: Judge, I'm going to pop the disk out and remove it.
THE COURT: And then hand it back to the clerk. Do you have like a sleeve for it?
MR. LEXIS: I'll look for one, Judge.

THE COURT: Okay. Chad, make sure you gave that CD back to Judie.
MR. LEXIS: Yes, Judge.
THE COURT: She will mark that as 1.
(Whereupon, State's Exhibit 1 was marked for identification.)
Whereupon,
CHRISTOPHER CATON,
having been first duly sworn to testify to the truth, the whole truth and nothing but the truth, was examined and testified as follows:
THE CLERK: Please be seated. State your name and spell your full name for the record.
THE WITNESS: Christopher Caton, C-a-t-o-n.
THE COURT: Go ahead, Chad.
DIRECT EXAMINATION
BY MR. LEXIS:
Q. Sir, go ahead and pop that in. You're loading it, the CD?
A. **Yes.**
MR. LEXIS: Judge, Defense Counsel is in agreement that we'll do the same thing as the last video.
THE COURT: Very good.
THE CLERK: And it will be 6.

MR. LEXIS:
Q. Sir, while you're doing that, where do you work?
A. **The Venetian Palazzo Hotel.**
Q. And is part of your job description over there to be custodian of records for the video?
A. **Yes.**
Q. Of the surveillance?
A. **Yes.**
Q. Did you review some surveillance footage of an incident that occurred on August 26th, 2015?
A. **Yes.**
Q. Did you review that footage prior to this day?
A. **Yes.**
Q. In fact, did you mark it on the CD of the exact CD you saw that footage on this morning?
A. **Yes.**
Q. Is that's what's inside the computer right now?
A. **Yes.**
MR. LEXIS: Judge, I would move to admit State's Exhibit --
THE CLERK: 6.
MR. LEXIS: 6.
THE COURT: Exhibit 6. Okay. Any objection?
MR. MURPHY: No.

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THE COURT: Without objection, State's Exhibit 6 is admitted.
MR. LEXIS: Actually it will be State's Exhibit 8.
THE COURT: 8?
MR. LEXIS: Yes.
THE COURT: Judie, they changed it to 8.
THE CLERK: But you haven't done 6 or 7.
THE COURT: He has those.
THE CLERK: Did I mark those? Oh, we haven't talked about them yet.
THE COURT: Okay. Exhibit 8 is admitted into evidence.
MR. LEXIS:

Q. Sir, where is the footage of? Is it the Venetian?

A. Yes, it is footage of the Palazzo shops and the Venetian shops and the back of house area.

Q. And the Rock House is inside that particular area?

A. Yes.

MR. LEXIS: Judge, may we approach to play the video?
THE COURT: Yes. Jessica and the defendant are coming up?

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MS. MURPHY: I believe so, yes.
MR. LEXIS:

Q. What are we looking at here, sir?

A. This is the subject entering the property from the bridge that connects the Palazzo and the Wynn.

Q. And what time is this?

A. This is at 6:04 p.m. and 50 seconds.

Q. P.m.?

A. Yes.

Q. What is this showing us? It's a new frame.

A. This is the entrance of the Palazzo. The north end of the Wynn is going to be on that side. He's going to enter from these doors here.

Q. Is this the same suspect from the previous frame?

A. Yes. From here he takes the escalator up to the shop level.

Q. This is a new frame. What is this?

A. This is from the other angle. This is the escalator going up to the shops. The doorway is back here.

Q. This is a new frame. What is this?

A. Yes, this is the top of the escalator. This is the entrance to the mall level from those doors. He's going to come up from this escalator. That's the end of the clip. I'll have to go to the next clip.

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Q. Okay.

A. This is 6:06 p.m.

Q. How many clips total are there, sir?

A. As far as?

Q. What you're going through right now, where you have to exit out and go in?

A. There will just be one more.

Q. Okay. And what is the time stamp on this one?

A. 6:06 p.m.

Q. What's this showing us?

A. This is showing the suspect walking through the Palazzo shops.

Q. Is that the same suspect as what was shown on the previous frames?

A. Yes.

Q. And what does this new frame show?

A. This is another angle of the Palazzo shops. He's down here.

Q. What's this new frame show?

A. This is another angle of the shops where he is up1 here.

Q. Where is the Rock House in regards to this?

A. The Rock House is a little bit further away. It's actually on the Venetian side.

Q. Is he walking to that area?

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A. He's walking around the shops, but ultimately, yes, toward that area. This is the entrance to the Venetian side of the shops. He's kind of on the bottom. He goes around the corner and he's going to come out from up here.

Q. Where is this at?

A. This is the square area called St. Mark's Square in the Venetian shops. This is another angle of the Venetian shops. He's going to come up here.

MS. MURPHY: For the record, is this still the square area?
THE WITNESS: He just exited the square. This is now entering another level that leads toward the food court area.
MS. MURPHY: Okay.
MR. LEXIS:

Q. Where is he headed?

A. Right now he's headed between several shops. He's now approaching the food court area of the mall.

This over here is a doorway that accesses the back of house, but we do not have coverage of that area.

Q. Does he approach that door?

A. He approached the door itself. You can't tell if he's --

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Q. Do you see him after he approached that area?
A. Yes, right here.
Q. After a bit time. And the only thing there is a restricted door?
A. Yes.
MS. MURPHY: For the record, what time is on the video?
THE WITNESS: This is 6:20 p.m.
Right now he's exiting the food court area, going out towards the bridge that connects the hotel lobby with the guest garage.
MR. LEXIS:
Q. So he went into the foot court area and didn't approach and try to get any food, correct?
A. Correct.
Q. He just approached a restricted access door and disappeared for a few seconds?
A. Yes.
MS. MURPHY: What time is on the video right now?
THE WITNESS: 6:21 p.m.
MS. MURPHY: At this time, 6:21, he's exited outside of the property or --
THE WITNESS: No, he's still inside property. This area right here is the newsstand area

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and this is the Coffee Bean shop back here. This connects the Venetian guest garage going this way and then the hotel tower is right around the corner here. And then further beyond that is back into the shops.
MS. MURPHY: Okay. On the frame that we're looking at, is the suspect in the frame at this time?
THE WITNESS: He's currently standing at the counter right here.
MS. MURPHY: And is that at the coffee thing?
THE WITNESS: Yes. Now he's walking out into the area. This is -- the shops right here where he's coming from is down near this hallway.
MS. MURPHY: And what time is on this video right now?
THE WITNESS: 6:24 p.m. Now he's walking through the shop level to go down this way. It leads down to the square area where Tao nightclub is, as well as the balcony overlooking the gondolas out in front of the property.
MS. MURPHY: And is the suspect still on the screen?
THE WITNESS: He's currently far. He's just -- if you'll allow me just to --
MS. MURPHY: Well, where are we looking

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right now, and what time is it?
THE WITNESS: This i 6:27 p.m. We just saw him go around the corner in the square area to the restricted doors that are in the corner.
MS. MURPHY: And this is 6:27 right now?
THE WITNESS: Yes.
MR. LEXIS:
Q. And this is another restricted area?
A. Yes.
Q. Is it labeled?
A. Yes, it's labeled on "Team Members Only."
Q. What does he appear to be doing?
A. Walking through. Looks like he may be speaking on the phone. This is the hallway just outside the Rock House break room, which is up here to the left.
MS. MURPHY: What time is on the video now?
THE WITNESS: 6:29 p.m.
MR. LEXIS:
Q. He just opened a door back in the restricted area; is that correct?
A. Yes.
Q. Okay. He looked in for a second and kept going?
A. Yes.
Q. What's he appear to be doing now?
A. He appears to have just entered the doorway to

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the break room.
MS. MURPHY: And what time is on there?
THE WITNESS: 6:30 p.m.
MR. LEXIS:
Q. Another restricted area?
A. Yes.
Q. Does this veer off into the Rock House?
A. I'm sorry?
Q. Does it veer off into the Rock House, this area?
A. Yes.
Q. What's the time on this?
A. 6:30 p.m.
Q. Okay. So now he's pretty much in the Rock House hallway area?
A. Yes.
Q. Restricted access?
A. Yes.
Q. So did he go from one restricted access area to another restricted access area?
A. Yes. He's exiting that area and accessing another door, which is the Buddy V's restaurant area. He's exiting that area.
Q. Does he act like he's on the phone again?
A. Yes.
MR. LEXIS: That's it.

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THE COURT: Okay.
MR. LEXIS:
Q. Can you pop out that disk for me, sir? Thanks. I'm showing you what's been marked as State's Proposed Exhibit 6 and 7. Are those still photographs from part of the video that we saw today?
A. They are still photographs of the exact area that he walked through.
Q. Okay. Do you see that person in court today?
A. Yes.
Q. Could you please point to him and identify for me what color shirt he's wearing?
A. A black shirt.
MR. LEXIS: Your Honor, let the record reflect the witness identified the defendant.
THE COURT: The record will so reflect.
MR. LEXIS: Can you give me that, please. Thank you.
Judge, I'd move to admit 6 and 7.
THE COURT: Jessica, he's moving to admit State's Proposed Exhibits 6 and 7.
MR. MURPHY: No objection.
THE COURT: Without objection, 6 and 7 are admitted. And 8 is already admitted.
MR. LEXIS:

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Q. Sir, is Mr. Howard Edwards an employee for the Venetian?
A. No.
Q. Has he ever been a guest at the Venetian?
A. No.
Q. And that's with a date of birth of 12/10/64, not an employee and no guest ever of Harold Edwards?
A. No.
Q. At any point in this surveillance video did you ever see him go into any shops or go eat or anything like that?
A. No.
Q. Just pretty much walking around --
A. The only direction I saw was him at the Coffee Bean, but it didn't look like he even purchased anything.
Q. And every time he went into a restricted area, pretty much did he then act like he was on his phone?
A. Yes.
MS. MURPHY: Your Honor, the suggestion that he's acting like he's on the phone, Your Honor, can see the video and can decide if he's on the phone --
MR. LEXIS: I'll rephrase the question.
THE COURT: Yeah, sustained. Go ahead and rephrase the question.

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MR. LEXIS:
Q. Did it appear as if he was on his phone only when he was in a restricted access area?
A. Yes.
Q. And every time he was in a restricted access area, I take it there was pretty much three or four different occasions where he opened up another door in a restricted access area?
A. Yes.
Q. And when we saw him for an extended period of time outside of the camera, when he was in that hallway was that leading toward the Rock House hallway?
A. Yes.
MR. LEXIS: Nothing further, Your Honor.
THE COURT: Cross-examination?
CROSS-EXAMINATION
BY MR. MURPHY: Yes, please.
Q. When the State asked you on direct with regard to whether you observed the suspect eat at any restaurant, do you remember that question?
A. Yes.
Q. And the answer was no, you didn't see that, correct?
A. Correct.
Q. Okay. Does every person that's ever come inside

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the Venetian or Palazzo sit down and have a meal at one of those restaurants?
A. Not everyone.
Q. Does every person that enters buy a drink at one of the bars or Coffee Bean?
A. Not everyone.
Q. Okay. Obviously people do enter for that purpose, correct?
A. Yes.
Q. But I suspect there will be a fair amount of people who enter to look around; is that fair to say?
A. Some do, yes.
Q. Okay. And I don't recall what clip it was, but the set of clips that showed what would be the Venetian's back of the house, do you recall viewing those clips together?
A. Yes.
Q. And you referred to those as secured employee areas; is that correct?
A. Yes.
Q. So in order to gain access to that, would a person need to show any kind of employee identification?
A. They would need to have the proper credentials with either Venetian security or mall security to be back in that area.

Q. Okay.
A. That is to say that if you were to -- anybody can access those doors, but the doors are clearly marked "Authorized Team Members Only."
Q. Okay. Were you involved in any of the investigation of this incident?
A. Yes.
Q. Okay. And was that involvement limited to or with regard to collecting the video that we just watched?
A. Collecting the video. We also investigated to see if he was a prior team member, if he was a prior guest, or if he was a known player.
Q. Okay. Were you involved in interviewing Ms. Tyson?
A. No.
Q. Were you involved in showing Ms. Tyson any of the video surveillance that we just watched?
A. She did see the video, yes.
Q. Were you with her when she watched the video?
A. Not on record.
MR. MURPHY: Okay. No more questions.
THE COURT: Any redirect?
MR. LEXIS: No, Judge. Nothing further.
THE COURT: Thanks for coming in. You're

excused for the day.
Before we call the next witness, let's do Marty's case.
(Whereupon, other matters were heard.)
THE COURT: Go ahead and call your next witness, Chad.
Whereupon,
WHITNEE TYSON,
having been first duly sworn to testify to the truth, the whole truth and nothing but the truth, was examined and testified as follows:
THE CLERK: Please be seated. State your name and spell your full name for the record.
THE WITNESS: Whitnee Tyson, W-h-i-t-n-e-e, T-y-s-o-n.
THE COURT: Chad, go ahead.
MR. LEXIS: Judge, the last witness lost his subpoena. Can I just go give him his copy?
THE COURT: Sure.
Okay. Go ahead.
DIRECT EXAMINATION
BY MR. LEXIS:
Q. Ma'am, on August 26th, 2015, where were you working?
A. The Rock House at the Venetian.

Q. Is that located in Las Vegas, Nevada, Clark County?
A. Yes.
Q. And what do you do you over there?
A. I'm a cocktail server.
Q. And where do you store your belongings when you show up to work?
A. In the employee back hallway.
Q. What time did you get there?
A. I clocked in about 6:00 p.m.
Q. And where did you put your purse?
A. In the back hallway there's like a table next to some lockers on the back wall. I set it on the table.
Q. And is this an employee access area?
A. Yes.
Q. Were you able to watch some video both from the Rock House and the Venetian earlier today from the two witnesses that just testified?
A. Yes.
Q. And did you see yourself go back to that area to check your belongings where your purse was?
A. Yes, in the video.
Q. And around what time was that?
A. About 6:45.
Q. And did you also see a suspect go up to the same

exact area minutes earlier to exactly where your purse was?
A. Yes.
Q. After you saw that video, were you also shown blown up still photographs?
A. Yes.
MR. LEXIS: Judge, may I approach the clerk?
THE COURT: Yes.
MR. LEXIS: May I approach, Judge?
THE COURT: Sure. Yes.
MR. LEXIS:
Q. Ma'am, I'm showing you what has been marked as State's 6 and 7, 2, 3, 4 and 5. Do you recognize these still photographs, ma'am?
A. Yes.
Q. Do they appear to be the same person?
A. Yes.
Q. Is this the person that you saw on the video exactly right next to your purse?
A. Yes.
Q. And where he is fumbling through some stuff, it appears, is that exactly where your purse was?
A. Yes.
Q. Do you see this person in court today?
A. Yes.

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Q. Can you please point to him and identify for me what color shirt he's wearing?
A. **Black.**
MR. LEXIS: Your Honor, let the record reflect that the witness has identified the defendant.
THE COURT: The record will so reflect.
MR. LEXIS:
Q. Now, when you went back to your purse, ma'am, what did you notice?
A. **That my wallet was gone.**
Q. What kind of wallet was it?
A. **A Michael Kors wallet.**
Q. And how much did you pay for this wallet?
A. **$300.**
Q. What all was inside the wallet?
A. **$400 cash, three credit cards, all my identification, my daughter's Social Security card.**
Q. Did you say credit cards?
A. **Three credit cards, yes.**
Q. And what kinds of credit cards were they?
A. **All three were Visas. They were in my name. One was my boyfriend's credit card.**
Q. Those three credit cards were missing as well?
A. **Yes.**
Q. The person that you identified as the defendant,

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the same person in those still photographs that was by your purse, have you ever seen this guy before?
A. **No.**
Q. Did you ever give him permission to go inside your purse?
A. **No.**
MR. LEXIS: Nothing further, Judge.
THE COURT: Cross-examination?
CROSS-EXAMINATION
BY MS. MURPHY:
Q. Ma'am, you just testified a moment ago that you'd never seen the defendant prior to right now; is that correct?
A. **Yes.**
Q. And how many times have you watched the video, if you know?
A. **I couldn't recollect. Numerous times.**
Q. Okay. And as we sit here today, you identified the defendant wearing a dark colored shirt; is that correct?
A. **Yes.**
Q. And he's also sitting at the table marked "defendant"; is that correct?
A. **Yes.**
Q. At any point in time were you ever told that you

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were coming to testify against the person who took your wallet?
A. **Like told I was testifying?**
Q. When they told you that you were testifying, were you informed in any way that the person who was going to be in court was the person who took your wallet?
A. **Allegedly, yeah.**
Q. Now, you recall giving a written statement, correct?
A. **Yes.**
Q. And you gave that written statement after you watched the video, correct?
A. **Yes.**
Q. And at the time you gave a written statement you believed that the person in the video was a person named Curtis Armistead; is that correct?
A. **Yes.**
Q. Okay. And you believed it was Curtis Armistead based on the appearance of the suspect in the video, correct?
A. **He was identified as someone named Curtis Armistead by an employee at Tao Nightclub. Believed to be.**
Q. Okay. But you wrote in your statement that he was identified as Curtis Armistead, an employee at Tao

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Nightclub; is that correct?
A. **Yes.**
Q. And Tao Nightclub, that's located at the Venetian, correct?
A. **Yes.**
Q. So that person would presumably have employee credentials, correct, to get to the back of the house areas?
A. **Yes.**
Q. Okay. After you advised security of who you believed might have been in the video, do you recall security ever approaching you with additional photos of Mr. Armistead?
A. **No, they had told me that they identified him as not the person, who's tall. He didn't add up to the description.**
MS. MURPHY: Judge, I'd move to strike that answer, admitted hearsay.
MR. LEXIS: Judge, she's the one that asked it, elicited it.
MS. MURPHY: No, I ask her if she was ever brought to do essentially what the police would call a show-up.
THE COURT: Yeah, she over-extended on her answer, so I'll sustain the objection and strike the

answer.
MS. MURPHY: Court's indulgence.
Q. You testified that you had three credit cards that were in your wallet; is that correct?
A. Yes.
Q. Were you ever contacted by the issuing banks with regards to if those cards had ever been used or not?
A. No.
Q. Did you cancel those cards?
A. Immediately.
MR. MURPHY: No more questions.
THE COURT: Okay. Any redirect?
REDIRECT EXAMINATION
BY MR. LEXIS:
Q. That person that initially was thought to be the defendant, did he match up as far as height?
A. No.
Q. Does this particular person that you identified in court today match up with the height as far as on the video?
A. Yes.
Q. Were you shown and had time to review the still photographs and the video multiple times before you made that statement?
A. Yes.

Q. And were you able to do that today?
A. Yes.
Q. And then you were able to identify the defendant?
A. Yes.
MR. LEXIS: Nothing further, Judge.
THE COURT: Any recross?
RECROSS-EXAMINATION
BY MS. MURPHY: Yes.
Q. How tall is Mr. Armistead?
A. I believe he's over six foot.
Q. Do you actually know that?
A. I was told that by a Tao manager that he's over six foot and there's no way --
Q. But you don't have personal knowledge as to his height, correct? Is that a no?
A. No.
Q. How tall is the defendant sitting here at the table?
A. I'm not sure. Probably six.
MR. MURPHY: Okay. No more questions.
THE COURT: Okay. Thanks for coming in. You're excused for the day.
Next witness?
MR. LEXIS: Detective --
THE CLERK: Is this the last one?

MR. LEXIS: Yes.
THE CLERK: Please be seated. State your name and spell your full name for the record.
THE WITNESS: Jeffrey Clark. Jeffrey is spelled J-e-f-f-r-e-y, Clark, C-l-a-r-k.
THE COURT: Chad, go ahead.
DIRECT EXAMINATION
BY MR. LEXIS:
Q. Where do you work, sir?
A. I'm currently assigned as a detective at the Convention Center Area Command, patrol and Investigations.
Q. Were you assigned to investigate an incident that occurred on August 26th, 2015, at the Venetian?
A. Yes, sir.
Q. In particular at the Rock House?
A. Yes, sir.
Q. Were you able to review surveillance footage of that particular incident?
A. Yes, sir.
Q. And were you able to immediately recognize that particular person?
A. Through investigation, yes, sir.
Q. And who did you recognize that person through investigation to be?

A. Harold Edwards, sir.
Q. Do you see that person in court today?
A. I do, sir.
Q. Could you please point to him and identify for me the color shirt he's wearing?
A. The blue jail uniform, sir.
MR. LEXIS: Your Honor, let the record reflect the witness has identified the defendant.
THE COURT: The record will so reflect.
MR. LEXIS:
Q. This occurred in Las Vegas, Clark County, sir?
A. Yes.
Q. I don't want you to go into any acts other than that particular day, sir. Did you eventually catch up to Mr. Edwards?
A. Yes, sir, I did.
Q. And was he shown still photographs of him inside the Rock House and the Venetian?
A. Yes, sir.
Q. And what was his response?
A. In better terms --
Q. I don't want to know better terms. What was his response?
A. He told me that wasn't shit until I show him doing shit, that I don't have shit.

Q. And with your prior contact with Mr. Edwards, were you able to recognize his demeanor, how he walks, what he looks like, et cetera?
A. Yes.
Q. And given that, are you able to positively identify him on the video as Harold Edwards?
A. Yes, sir.
MR. LEXIS: No further questions, Judge.
THE COURT: Okay. Cross-examination?
CROSS-EXAMINATION
BY MR. MURPHY: Yes.
Q. Detective, prior to viewing the video of the Rock House, how many times have you personally viewed Mr. Edwards?
A. Prior to that video, ma'am?
Q. Um-hum.
A. None.
Q. None?
A. Correct.
Q. So the first time you would have seen Mr. Edwards is when you were looking at a suspect in this surveillance video, correct?
A. Yes, ma'am.
Q. Okay. And then without having previously seen Mr. Edwards, you were able to view the video and

identify him as Mr. Edwards?
A. Through investigation, yes, ma'am. There was an investigative process after that.
Q. What day was he arrested?
A. Ma'am, I would have to look at the case numbers. There's three case numbers affiliated with that arrest. I believe it was the end of September.
Q. Does September 19th sound about right?
A. That was another case.
Q. So you don't know the arrest date?
A. Ma'am, if you let me look at the file, I'll tell you exactly the date.
MR. MURPHY: Court's indulgence. I'm sorry, I'm looking for the temporary custody record for this case.
Q. Based upon your recollection, you believe it was sometime in September; is that correct?
A. I believe so, ma'am. I would have to look at the TCR to tell you.
Q. I understand. I'm not able to actually locate the one that I believe is --
A. It would be in the top right-hand corner of the arrest report as well. Just by the event number I can tell you.
Q. That's true. Okay. So September 30th, possibly?

A. Yes, ma'am. If that says 150930, that's it.
Q. Okay. Thank you. So it was approximately a little over a month that had passed from the incident at the Rock House to his ultimate arrest and booking into CCDC; is that correct?
A. Yes, ma'am.
Q. Okay. And did you have Mr. Edwards do a written statement?
A. No, ma'am.
Q. So when you confronted him with the evidence of the video, did you actually show him the video?
A. I did not show him the video, ma'am. I showed him the still photos. When I was going through the booking process with Mr. Edwards, he asked me what he was being arrested for. I explained to him. He said I want to see photos. I showed him the photo, and that's when he made that statement.
MR. MURPHY: Court's indulgence.
Q. Do you recall where Mr. Edwards was when you took him into custody?
A. Ma'am, I didn't take him into custody. He was stopped at the Stratosphere Hotel.
Q. Okay. Were you there for that stop?
A. No, ma'am, he was transported to CCDC where I met the officers.

Q. Oh, okay. And with regard to this particular case with Ms. Tyson's wallet and the items that were in the wallet, did Mr. Edwards have any of those items on his person at the time of his arrest?
A. No, ma'am. Like you said, it was a month later.
Q. Okay. So he did not have any of her credit cards or debit cards, correct?
A. No, he did not, ma'am.
Q. He didn't have her Sheriff's card, correct?
A. No, ma'am.
Q. Or any of her health or TAM cards, correct?
A. No, ma'am.
MR. MURPHY: Okay. No more questions.
THE COURT: Any redirect?
MR. LEXIS: No, Judge.
THE COURT: Okay. Thanks for coming in. You're excused for the day.
THE WITNESS: Thank you.
MR. LEXIS: The State rests, Judge. One second, Judge. I'm going to add some charges, Judge. I'm amending the Complaint to add two counts of obtaining possession of a credit card or debit card without cardholder's consent, and that's for the two Visa cards belonging to the victim. I won't add the third since it was the boyfriend's.

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THE COURT: I'm sorry, what was the last thing you said?

MR. LEXIS: I'm not going to add the third since it wasn't hers. But I'm adding the two that belonged to her, the two Visa cards, belonging to Whitnee Tyson, two counts.

THE COURT: All right. Obtaining possession of a credit card without cardholder's consent. So I'll address those two at closing and allow the parties to make their argument in regard to those two additional counts.

So at this point the State rests. Jessica, anything from the Defense?

MR. MURPHY: No, Your Honor. I've advised Mr. Edwards of his right to testify. He's not going to do so, upon my advice. And we are not going to be calling any other witnesses.

THE COURT: Okay. Let's go to closing arguments. State goes first. Then Defense. State has rebuttal.

MR. LEXIS: Reserve for rebuttal, Judge.

THE COURT: Jessica, anything?

MS. MURPHY: You know, Judge, I don't -- the burglary count, it looks to me like it's pled as entering a room inside the Venetian. I mean, to commit

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a crime. I don't -- I don't believe that the State has met the burglary.

We saw a lot of video of Mr. Edwards walking around, and we heard from security, and I think we can probably all agree that not everybody who enters a casino property is going to sit down and have dinner or gamble. Sometimes people just walk around. I don't think they've proved any kind of entry with any kind of specific intent.

And I don't believe -- the room I think we're talking about is just a hallway in the property. I don't know that that carries with it a separate and distinct entrance. I think it's all part of the Venetian Casino. So I don't believe that they've established a burglary.

With regard to the grand larceny, there was a lot of discussion about some movement that was going on. And quite honestly, I've seen the video many times. I take it issue with the kind of frequent testimony that that security and other people have testified to. If Your Honor just looks at what we saw on the video it evidence, I don't believe that, one, they've established it's Mr. Edwards and, two, they've established there was any kind of taking of the wallet.

There were lots of people coming and going.

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We heard it's a secure area, but maybe it's not really a secured area. Mr. Edwards was not arrested with any property. And I understand it was about a 30 day difference, but we don't have any information about these credit cards, if they were used by him or anybody else. So I don't think that the State has met their burden with regards to Count 2.

And as far as the added count of the credit card, I don't believe that the State has laid out any of the information that we need. We don't know specifically whose name they're in. They don't know the issuing bank. I don't think they've established that these credit cards even existed in the first place. We didn't hear any testimony with regards to that, just I had these cards in my wallet and now my wallet is gone.

So I don't believe that there's enough probable cause for the proposed added count or for the Counts 1 and 2 as charged in the Complaint.

THE COURT: Okay. Chad?

MR. LEXIS: So you see the video of the defendant entering the Venetian, which the witness testified he's not a player there, never been a hotel guest, and had never been an employee there.

What's he go in there and do? Shockingly he goes in there and goes into no shops, goes into the eat

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area and doesn't eat anything, but happens to go in several restricted access doors. And when he does, just conveniently -- it was real cute of him going on his phone and acting like he was on his phone, walking through the restricted access hallways. And then all of a sudden when he gets out of there, no big deal and puts the phone away.

And what's he do? He goes in one restricted access room, then he goes into another one. And it just so happens that right where the victim's purse is is right where he's fumbling around a bunch stuff for several seconds, and then hightails it out of there.

So you can draw your own conclusions, Judge. She goes there minutes afterwards and what does she discover? $400 gone. Her $350 wallet that she describes is gone, as well as -- I forget exactly -- I think she said some Social Security cards. She said specifically as far as the credit cards, two of them were in her name and they're visas.

As you know, Judge, according to the statute, if you have two or more in your possession, you're presumed to have the intent to possess them with the intent to circulate, sell, transfer them and intent to defraud. So those counts are clearly made as well, Judge.

As far as the identification, yeah, the victim did not go in and personally run into this person, so she didn't make a positive identification at the time. But you have two surveillance people blowing up the video surveillance and positively identified him, as you heard from the detectives that from the contact he's had with him and his demeanor, the way he walks, the way his height is, et cetera, positively identifies him in court as the suspect.

I would ask you to bind it over on all four counts.

THE COURT: Okay. First of all, in regards to the identification, I've seen the video. I've seen the still photos. I am looking at the defendant today. It's the defendant in the video. There's no doubt in my mind that the defendant is the same person in the video.

In addition to that, we've had several witnesses. Three of them have identified -- four of them identified the defendant as being the person in the video.

In regard to the burglary charge, the elements of that charge are a person who by day or night enters any house, room, apartment, then goes on and it gives several examples, with the intent to commit grand or petit larceny, assault or battery or on any person or

any felony. So the fact that he's walking into the Venetian, and clearly I don't think the State has proven the intent that he had the intent -- to show that the defendant had the intent to commit burglary when walked into the Venetian, but there's a separate room. And I agree with the State. I think that that employee restricted area can be classified as a room. And he's walking into an area where, according to the witnesses, there's a sign that says access only for the employees.

And so he's walking in there. And clearly on the video he's going into an area where the victim testified that she put her purse on the table. And the video shows that he's really the only one there, that he's standing there for a certain period of time, and then he leaves.

And then circumstantially we have the victim telling the Court that when she came back to check on her purse, it was gone. And what was contained in the purse were two credit cards or actually three cards credit cards, is what I wrote down, as well as $400 in cash, and that the purse itself cost $300. It was a Michael Kors purse.

So based on the circumstantial evidence and, the video that I've seen, it appears to me from the Complaint on file herein and from the testimony

presented at this preliminary hearing that the crimes of burglary, grand larceny, and then Counts 3 and 4, obtaining possession of a credit card without cardholder's permission, have been committed, and that there is sufficient evidence to believe that the defendant, Harold Edwards, committed said crimes.

As a result, I order the defendant be bound over to the Eighth Judicial District Court to be arraigned on those charges.

THE CLERK: November 10th, 10:00 a.m., lower-level arraignment.

-oOo-

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

/S/Kristine Fluker

KRISTINE A. FLUKER, CCR NO. 403

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding bind over filed in District Court Case No. C310442 does not contain the Social Security Number of any person.

Dated this 28th day of November, 2015.

/S/Kristine Fluker

KRISTINE A. FLUKER, CCR NO. 403

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EXHIBIT B

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CLERK OF THE COURT

CASE NO. C310166

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

CLARK COUNTY, STATE OF NEVADA

STATE OF NEVADA, PLAINTIFF, VS. HAROLD EDWARDS, DEFENDANT.	CASE NO. 15F14754X

REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING

BEFORE THE HONORABLE MELISSA SARAGOSA, JUSTICE OF THE PEACE

MONDAY, OCTOBER 19, 2015

10:19 O'CLOCK A.M.

FOR THE STATE: CHAD N. LEXIS,
WILLIAM B. TURNER,
DEPUTY DISTRICT ATTORNEYS

FOR THE DEFENDANT: HARMONY T. LEXIS,
DEPUTY PUBLIC DEFENDER

* * * *

REPORTED BY: KIT MACDONALD, C.C.R.
CERTIFICATE NO. 65

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* * * *

LAS VEGAS, CLARK COUNTY, NEVADA, MONDAY, OCTOBER 19, 2015

10:19 O'CLOCK A.M.

* * * * *

THE COURT: HAROLD EDWARDS, 15F14754X.

MS. LETIZIA: THANK YOU, JUDGE. CAN WE APPROACH ON THIS MATTER?

THE COURT: YES.

(WHEREUPON COUNSEL APPROACHED THE BENCH.)

MS. LETIZIA: THANK YOU, JUDGE.

THE COURT: SO IT SOUNDS LIKE THIS ONE IS GOING TO GO FORWARD?

MS. LETIZIA: YES.

THE COURT: AND YOU SAID TWO WITNESSES, IS THAT WHAT I HEARD OR --

MR. LEXIS: THREE, JUDGE.

THE COURT: THREE?

MR. LEXIS: NO, FOUR.

THE COURT: FOUR WITNESSES. OKAY.

ALL RIGHT, WE'LL GET STARTED ON THAT IN JUST A MOMENT.

(WHEREUPON DISCUSSIONS WERE HELD ON OTHER CASES.)

MS. LETIZIA: SURE. JUDGE, JUST REAL FAST ON THE EDWARDS MATTER. I'M NOT SURE WHETHER THERE ARE ANY WITNESSES HERE ON EDWARDS RIGHT NOW.

MR. LEXIS: NO.

MS. LETIZIA: NO? OKAY. CAN WE RECALL THAT JUST FOR A

QUICK MINUTE ON EDWARDS BEFORE YOU BEGIN THIS OTHER TRIAL AND THEY TAKE EVERYBODY OUT?

THE COURT: YES.

OKAY. MR. DAHL, HAVE A SEAT FOR JUST A MOMENT.

THE COURT: HAROLD EDWARDS, 15F14754X.

MS. LETIZIA: THANK YOU, JUDGE. HE'S PRESENT IN CUSTODY.

MR. EDWARDS IS REQUESTING THAT WE PASS THIS CASE. I KNOW WE'VE LEFT THE CASE ON, WE FILED A SARGENT NOTICE. HE JUST EXPRESSED TO ME THAT HE'S ASKING FOR A CONTINUANCE SO THAT WE CAN HAVE A LINEUP DONE ON THIS CASE, AND I'M NOT SURE THAT THAT'S PROPER PROCEDURE, BUT HE WANTED ME TO ASK THE COURT THAT.

THE COURT: STATE?

MR. LEXIS: I ABSOLUTELY OBJECT TO THAT. I HAVE MY WITNESSES PRESENT, I'M READY TO GO.

THE COURT: I DON'T BELIEVE THAT THAT QUALIFIES AS GOOD CAUSE FOR A CONTINUANCE IN THIS CASE, THAT'S A PROCEDURE THAT CAN BE HANDLED AT A --

MS. LETIZIA: A LITTLE BIT LATER.

THE COURT: -- LATER POINT, AND OBVIOUSLY IT SOUNDS LIKE IDENTIFICATION MAY BE AN ISSUE IN THE MATTER, HE'S WAIVED HIS PRESENCE HERE TODAY AND WE CAN PROCEED WITHOUT HIM.

MS. LETIZIA: GREAT, THANK YOU.

THE COURT: SO -- SO THAT I CAN FREE UP THE OFFICER AND THEN CALL MR. DAHL'S CASE FIRST, AND THEN WE WILL PROCEED ON

MR. EDWARDS PRELIMINARY HEARING NEXT, AND THEN WE'LL MOVE TO MR. CHRISTMAS WHEN MR. PANDULLO RETURNS.

MS. LETIZIA: THANK YOU, JUDGE.

(WHEREUPON DISCUSSIONS WERE HELD ON OTHER CASES.)

MS. LETIZIA: AND, JUDGE, ALSO AS TO THE EDWARDS MATTER, WE'RE GOING TO HAVE TO DO A FARETTA CANVASS, HE'S WISHING TO REPRESENT HIMSELF NOW AND HE SAYS HE'S READY TO GO FORWARD WITH THE PRELIMINARY HEARING, BECAUSE HE UNDERSTANDS THAT THE WITNESSES ARE HERE AND THAT THE FARETTA WILL NOT GRANT HIM A CONTINUANCE, BUT JUST TO LET THE COURT KNOW THAT'S WHAT HIS DESIRE IS TODAY.

THE COURT: OKAY.

MS. LETIZIA: I'LL WAIT UNTIL THIS HEARING IS DONE.

THE COURT: WHY DON'T WE WAIT, BEGIN MR. DAHL'S TRIAL, BECAUSE HE MIGHT CHANGE HIS MIND AGAIN.

MS. LETIZIA: SURE.

(WHEREUPON A DISCUSSION WAS HELD ON ANOTHER CASE.)

THE COURT: HAROLD EDWARDS, 15F14754X.

WOULD YOU LIKE TO SPEAK TO HIM AGAIN AND DETERMINE --

MS. LETIZIA: NO, WE'VE SPOKEN AT LENGTH.

THE COURT: OKAY.

MS. LETIZIA: IT'S MY UNDERSTANDING THAT HE'D LIKE TO DO A FARETTA CANVASS TODAY.

MR. LEXIS: AND, JUDGE, BEFORE WE START --

MS. LETIZIA: I UNDERSTAND THAT THIS WHOLE --

MR. LEXIS: -- MAY I HAVE A FEW MINUTES TO TALK TO SOME OF THE WITNESSES, I HAVEN'T TALKED TO THEM.

MS. LETIZIA: I'M IN THE PROCESS OF REDACTING JUST DATES OF BIRTH AND SOCIAL SECURITY NUMBERS OFF OF THE DISCOVERY SO THAT I CAN PROVIDE TO MR. EDWARDS, SHOULD HE PASS THE FARETTA CANVASS.

THE COURT: OKAY. OKAY. SO CAN I MAKE A SUGGESTION, AND YOU TELL ME WHETHER THAT'S OKAY WITH YOU OR NOT, TO GIVE YOU AN OPPORTUNITY TO GO TALK TO YOUR WITNESSES, ARE YOU GOING TO TALK TO THE WITNESSES AS WELL, OR CAN YOU SIT IN HERE WHILE I DO THE FARETTA CANVASS --

MR. TURNER: I CAN SIT HERE, YOUR HONOR.

THE COURT: -- SO HE CAN GO TALK TO THE WITNESSES AND --

MR. TURNER: YES, YOUR HONOR, I CAN DO THAT.

THE COURT: ALL RIGHT. THANKS.

OKAY. SO MR. EDWARDS, THIS IS THE DATE AND TIME SET FOR YOUR PRELIMINARY HEARING.

THE DEFENDANT: YES, MA'AM.

THE COURT: ORIGINALLY I HAD FILED BY MISS SPELLS A NOTICE THAT YOU WERE GOING TO WAIVE YOUR PERSONAL APPEARANCE AT THIS PRELIMINARY HEARING AND YOU WANTED THE HEARING TO PROCEED IN YOUR ABSENCE.

THE DEFENDANT: YES.

THE COURT: BUT I UNDERSTAND THAT YOU'VE CHANGED YOUR MIND ABOUT THAT?

THE DEFENDANT: YES, MA'AM. AFTER --

THE COURT: SO YOU DO WANT TO BE PHYSICALLY PRESENT AT THE HEARING TODAY?

THE DEFENDANT: YES, MA'AM.

BEFORE WE MOVE FORWARD WITH --

THE COURT: ARE THERE ANY OTHER -- ARE YOU A WITNESS IN THIS POTENTIAL CASE?

CORRECTION OFFICER: NO, THIS IS MR. CHRISTMAS.

THE COURT: OH, YOU'RE WAITING FOR MR. PANDULLO TO COME BACK, OKAY. MR. CHRISTMAS, YOU'RE FINE, YOU CAN STAY RIGHT WHERE YOU ARE.

THE DEFENDANT: OKAY. BEFORE WE PROCEED ANY FURTHER WITH THE CASE, YOUR HONOR, I WOULD -- I WOULD LIKE TO EVEN -- I HAVEN'T HAD A CHANCE TO READ THE DISCOVERY OF -- OF ALLEGATIONS THAT ARE AGAINST ME, AND I WOULD LIKE TO -- THAT'S WHY I WAS ASKING TO PASS THE CASE, BECAUSE I ALREADY HAD IN MY MIND THAT I WAS GONNA REPRESENT MYSELF. I'M FAMILIAR WITH -- I'M NOT TOO FAMILIAR WITH VEGAS LAW, BECAUSE I'M NOT FROM LAS VEGAS, MA'AM, SO I'M -- I -- I HAD SOMEONE SPEAK TO ME THAT -- THAT IS FAMILIAR WITH LAS VEGAS LAW.

THE COURT: HOPEFULLY THAT WASN'T SOMEBODY IN THE JAIL.

THE DEFENDANT: NO, NO, NO, NO, NO, NO. IT'S A FRIEND OF MINE THAT STUDIED LAW HERE IN VEGAS, AND HE -- HE TOLD ME THAT HE DON'T SEE ANY SIGNIFICANCE IN ME -- OR -- OR HE DON'T SEE THE BENEFIT OF ME NOT BEING PRESENT AT MY OWN PRELIMINARY

HEARING, BECAUSE, YOU KNOW -- AND I -- I -- I --

THE COURT: DOES THIS FRIEND OF YOURS PRACTICE CRIMINAL LAW?

THE DEFENDANT: YES, MA'AM. HE KNOW -- HE --

THE COURT: WHAT'S HIS NAME?

THE DEFENDANT: BRAIN SMITH. BRIAN SMITH. HE WENT -- HE WENT TO UNLV.

THE COURT: BRANDON SMITH OR BRIAN SMITH?

THE WITNESS: BRIAN SMITH. BRIAN SMITH.

THE COURT: OKAY. JUST CHECKING.

WELL, I'M NOT FAMILIAR WITH MR. SMITH, BUT --

THE DEFENDANT: HE DOESN'T PRACTICE LAW RIGHT NOW.

THE COURT: BUT I CAN ASSURE YOU THAT IN THE CRIMINAL SETTING THERE ARE DEFINITELY SOME STRATEGICAL REASON WHY YOU MAY CHOOSE TO WAIVE YOUR PRESENCE AT A PRELIMINARY HEARING.

THE DEFENDANT: RIGHT.

THE COURT: THERE ARE REASONS THAT CAN BE DONE AND THERE'S PROBABLY GOOD REASONS FOR THAT IN SOME CASES. IN OTHER CASES THERE IS NO ADVANTAGE TO THAT, SO YOU HAVE TO EVALUATE YOUR PARTICULAR CASE --

THE DEFENDANT: YES.

THE COURT: -- WITH THE ADVICE OF A LAWYER WHO IS SKILLED IN REPRESENTING CRIMINAL DEFENDANTS IN THE STATE OF NEVADA TO MAKE A WISE AND INFORMED DECISION.

THE DEFENDANT: RIGHT.

THE COURT: SO, THERE ARE TWO DIFFERENT ISSUES HERE. THE FIRST -- WELL, THERE'S REALLY A COUPLE DIFFERENT ISSUES. THE FIRST IS, TODAY IS YOUR PRELIMINARY HEARING DATE.

THE DEFENDANT: YES, MA'AM.

THE COURT: AND YOUR INDECISION ON WHETHER YOU WANT TO BE PRESENT FOR YOUR HEARING OR NOT, AND YOUR INDECISION ON WHETHER YOU WANT TO BE REPRESENTED BY A SKILLED LAWYER WHO'S BEEN PRACTICING IN THE PUBLIC DEFENDER'S OFFICE FOR WELL OVER, I DON'T KNOW, MORE THAN FIVE YEARS FOR SURE, OR REPRESENT YOURSELF, WHO HAS, YOU KNOW, NOT GONE TO LAW SCHOOL, NOT PRACTICED LAW, NOT HANDLED CRIMINAL DEFENSE WORK, YOU GOT A COUPLE DIFFERENT DECISIONS TO MAKE. BUT THE INDECISION AND THE GOING BACK AND FORTH IS NOT GOING TO DELAY THE HEARING TODAY, SO YOU NEED TO PUT YOURSELF IN THE BEST POSITION POSSIBLE TO GO TO YOUR PRELIMINARY HEARING TODAY. WHETHER THAT'S ON YOUR OWN, WHETHER THAT'S WITH MISS LETIZIA'S ASSISTANCE, A SKILLED ATTORNEY, WHETHER THAT'S PRESENT OR NOT PRESENT, THOSE ARE ALL THE DECISIONS YOU NEED TO MAKE.

THE DEFENDANT: WELL, LIKE I SAID BEFORE, YOU KNOW, I --

THE COURT: SO --

THE DEFENDANT: OH --

THE COURT: -- LET'S START WITH THE ATTORNEY.

THE DEFENDANT: YES. I WILL REPRESENT MYSELF, MA'AM, BECAUSE I'M -- I'M FAMILIAR WITH -- WITH -- I KNOW -- I KNOW WHAT I DIDN'T DO, AND I KNOW THE QUESTIONS TO ASK THE

WITNESSES, I WANT TO MAKE SURE THEY'RE ASKED. I DON'T WANT SOMEBODY --

THE COURT: WELL WHY CAN'T YOU JUST TELL HER?

THE DEFENDANT: WELL, I'M -- I WASN'T SURE THAT WE CAN -- WE -- YOU KNOW, SOME PEOPLE LIKE TO TAKE OVER, TAKE CHARGE OF A CASE, I DIDN'T KNOW -- I DON'T KNOW THIS YOUNG LADY. I HAVEN'T SEEN ANY VIDEO TAPES, I HAVEN'T SEEN ANYTHING --

THE COURT: BUT YOU'RE CONFIDENT THAT YOU'RE FAR MORE SKILLED IN THE LAW --

THE DEFENDANT: WELL I KNOW --

THE COURT: -- AND THE RULES OF EVIDENCE THAN MISS LETIZIA?

THE DEFENDANT: MRS -- MRS -- JUDGE --

THE COURT: I'D SAY THAT'S NOT A WISE DECISION.

THE DEFENDANT: JUDGE, I'VE -- I'VE ALREADY REPRESENTED MYSELF IN A BURGLARY CASE IN ILLINOIS AND WON THE CASE IN A JURY TRIAL, SO I'M FAMILIAR WITH TRIALS AND --

THE COURT: OKAY. SO HOLD ON A SECOND, I HAVE A FEW QUESTIONS THAT I NEED TO GO THROUGH WITH YOU.

THE DEFENDANT: YES, MA'AM.

THE COURT: ALL RIGHT. SO MR. EDWARDS, UNDER THE FARETTA VERSUS CALIFORNIA CASE OF THE UNITED STATES SUPREME COURT THEY DETERMINED THAT A DEFENDANT MAY WAIVE HIS OR HER RIGHT TO COUNSEL IN A CRIMINAL PROCEEDING, SUCH AS THIS ONE, AFTER A QUESTIONING AND ANSWER PROCESS HAS BEEN COMPLETED WITH THE

JUDGE AND THE DEFENDANT, AND WHERE THE DEFENDANT IS INFORMED OF THE CONSEQUENCES OF THAT WAIVER AND INSURES THAT THE WAIVER IS KNOWINGLY AND VOLUNTARILY MADE. SO I'M GOING TO GO THROUGH WITH YOU, TO START, THE DANGERS OF SELF-REPRESENTATION.

YOU UNDERSTAND THAT THERE ARE DANGERS, DISADVANTAGES AND CONSEQUENCES OF YOUR DECISION TO REPRESENT YOURSELF?

THE DEFENDANT: DANGERS?

THE COURT: YES.

THE DEFENDANT: CAN YOU EXPLAIN TO ME THE DANGERS, I DON'T KNOW.

THE COURT: CRIMINAL CONVICTION WOULD BE A DANGER.

THE DEFENDANT: MY CRIMINAL CONVICTION --

THE COURT: THE FACT THAT YOU MAY BE CONVICTED OF THE OFFENSE. I MEAN, TODAY IS NOT A TRIAL, BUT AT -- IN THE LONG-RUN.

THE DEFENDANT: OH, OKAY, I'M --

THE COURT: SO THE DANGERS OF SELF-REPRESENTATION ARE THAT YOU DON'T KNOW WHAT YOU'RE DOING BECAUSE YOU'VE NEVER BEEN TO LAW SCHOOL.

THE DEFENDANT: YES, MA'AM.

THE COURT: THAT YOU DON'T KNOW THE RULES OF EVIDENCE.

THE DEFENDANT: YES.

THE COURT: THAT YOU MAY INADVERTENTLY ASK A QUESTION THAT REVEALS INFORMATION ABOUT YOUR CASE THAT YOU DON'T WANT THE DISTRICT ATTORNEY TO KNOW. THOSE ARE THE TYPES OF DANGERS

THAT I'M REFERRING TO.

THE DEFENDANT: I'M FAMILIAR WITH THEM. I'M -- I'M FAMILIAR WITH THEM.

THE COURT: OKAY. SO DO YOU UNDERSTAND THAT SELF-REPRESENTATION IS OFTEN UNWISE AND A DEFENDANT MAY CONDUCT A DEFENSE TO HIS OR HER OWN DETRIMENT?

THE DEFENDANT: YES, MA'AM.

THE COURT: DO YOU UNDERSTAND THAT PROCEEDING ON YOUR ON OWN IN A CRIMINAL PROCEEDING, THAT YOU ARE RESPONSIBLE FOR KNOWING AND COMPLYING WITH ALL OF THE SAME PROCEDURAL RULES AS AN ATTORNEY IS?

THE DEFENDANT: YES, MA'AM.

THE COURT: DO YOU UNDERSTAND THAT YOU CANNOT RECEIVE HELP FROM ME OR ANY OTHER JUDGE IN COMPLYING WITH THESE PROCEDURAL RULES?

THE DEFENDANT: YES, MA'AM.

THE COURT: DO YOU UNDERSTAND THAT BY PROCEEDING ON YOUR OWN THAT YOU WILL NOT BE ALLOWED TO COMPLAIN ON APPEAL ABOUT THE COMPETENCY OR EFFECTIVENESS OF YOUR OWN REPRESENTATION?

THE DEFENDANT: YES, MA'AM.

THE COURT: DO YOU UNDERSTAND THAT THE DISTRICT ATTORNEY'S OFFICE WILL BE REPRESENTING THE STATE IN THIS CASE, AND THEY HAVE TWO COUNSEL PRESENT THIS MORNING WHO HAVE A GREAT DEAL OF EXPERIENCE IN PROSECUTING CASES AND WILL HAVE THE ADVANTAGE OF SKILL, TRAINING AND ABILITY?

THE DEFENDANT: YES, MA'AM.

THE COURT: DO YOU UNDERSTAND THAT YOU ARE NOT ENTITLED TO ANY SPECIAL LIBRARY PRIVILEGES BECAUSE YOU'RE CHOOSING TO REPRESENT YOURSELF?

THE DEFENDANT: YES, MA'AM.

THE COURT: DO YOU UNDERSTAND THAT IF YOU ARE UNFAMILIAR WITH LEGAL PROCEDURES IT MAY ALLOW THE PROSECUTOR AN ADVANTAGE?

THE DEFENDANT: YES, MA'AM.

THE COURT: DO YOU UNDERSTAND THAT BY BEING UNFAMILIAR WITH LEGAL PROCEDURES YOU MAY NOT MAKE EFFECTIVE USE OF YOUR LEGAL RIGHTS AND YOU MAY MAKE TACTICAL DECISIONS THAT PRODUCE UNINTENDED CONSEQUENCES?

THE DEFENDANT: YES, MA'AM.

THE COURT: DO YOU UNDERSTAND THAT THE EFFECTIVENESS OF YOUR DEFENSE MAY BE DIMINISHED OR REDUCED BY YOUR DUAL ROLE AS BOTH THE ATTORNEY AND THE ACCUSED IN THE CASE?

THE DEFENDANT: SAY THAT AGAIN? COULD YOU REPEAT IT?

THE COURT: THAT YOUR ABILITY TO EFFECTIVELY PRESENT A DEFENSE MAY BE DIMINISHED OR NEGATIVELY EFFECTED BECAUSE YOU HAVE TO PLAY THE ROLE OF BOTH THE DEFENDANT OR ACCUSED IN THE CASE --

THE DEFENDANT: OH, YES, MA'AM. YES, MA'AM.

THE COURT: -- AS WELL AS YOUR REPRESENTATION?

THE DEFENDANT: YES, MA'AM, I UNDERSTAND.

THE COURT: HOW OLD ARE YOU?

THE DEFENDANT: FIFTY.

THE COURT: HOW FAR DID YOU GO IN SCHOOL?

THE DEFENDANT: TO TWO YEARS OF COLLEGE.

THE COURT: YOU'VE ALREADY BRIEFLY DESCRIBED PROCEEDING TO A JURY TRIAL IN A CASE IN ILLINOIS WHERE YOU SAID YOU PREVAILED. DO YOU HAVE ANY OTHER EXPERIENCE IN LEGAL PROCEEDINGS?

THE DEFENDANT: NO, MA'AM, OTHER THAN THAT.

THE COURT: ARE YOU TAKING ANY -- ANY MEDICATION WHILE YOU ARE HOUSED AT THE CLARK COUNTY DETENTION CENTER?

THE DEFENDANT: NO, MA'AM.

THE COURT: ARE YOU UNDER THE INFLUENCE OF ANY ALCOHOL OR ANY DRUGS?

THE DEFENDANT: NO, MA'AM. NO, MA'AM.

THE COURT: DO YOU HAVE ANY MENTAL HEALTH HISTORY THAT MAY EFFECT YOUR ABILITY TO REPRESENT YOURSELF IN THIS MATTER?

THE DEFENDANT: NO, MA'AM.

THE COURT: HAVE YOU BEEN THREATENED OR COERCED IN ANY WAY TO WAIVE YOUR RIGHT TO HAVE AN ATTORNEY REPRESENT YOU?

THE DEFENDANT: NO, MA'AM.

THE COURT: DO YOU HAVE AN UNDERSTANDING OF THE ELEMENTS OF EACH OF THE OFFENSES FOR WHICH YOU HAVE BEEN CHARGED?

THE DEFENDANT: YES, MA'AM.

THE COURT: WHAT ARE THE CHARGES AGAINST YOU?

THE DEFENDANT: CLASS B BURGLARY AND CLASS C GRAND THEFT -- GRAND LARCENY. I BELIEVE IN THIS CASE THERE ARE THREE DIFFERENT SEPARATE GRAND LARCENY CHARGES.

THE COURT: DO YOU UNDERSTAND THE POSSIBLE PENALTY FOR THOSE OFFENSES?

THE DEFENDANT: YES, MA'AM.

THE COURT: WHAT'S THE POSSIBLE RANGE OF PUNISHMENT FOR A BURGLARY?

THE DEFENDANT: IF I'M NOT MISTAKEN, FOUR TO TEN FOR THE BURGLARY AND --

THE COURT: AS A MAXIMUM.

THE DEFENDANT: AS A MAXIMUM. TWELVE -- TWELVE TO THIRTY, I THINK, IN FOR THE GRAND LARCENY.

THE COURT: WHAT -- WHAT LEVEL OF GRAND LARCENY IS IT, AND WHAT'S THE SENTENCING RANGE?

THE DEFENDANT: A C. C GRAND -- C -- C GRAND LARCENY.

MR. TURNER: HE'S CORRECT, ONE -- IT WOULD BE A C FELONY, ONE TO FIVE, YOUR HONOR.

THE COURT: ONE TO FIVE, THANK YOU.

OKAY. DO YOU UNDERSTAND THE DEFENSES THAT MAY BE AVAILABLE TO YOU FOR THESE OFFENSES?

THE DEFENDANT: YES.

THE COURT: DO YOU UNDERSTAND THAT MISS LETIZIA, WHO IS AN ATTORNEY WITH THE PUBLIC DEFENDER'S OFFICE, IS OFFERED TO YOU FREE OF CHARGE?

THE DEFENDANT: YES, MA'AM.

THE COURT: AND DO YOU UNDERSTAND THAT IF I GRANT YOUR REQUEST THEN YOU WILL NOT BE ABLE TO REQUEST ANY ASSISTANCE OF HER, I MEAN SHE'D GO ON ABOUT HER DAY --

THE DEFENDANT: YES.

THE COURT: -- AND SHE WOULD NOT BE AVAILABLE TO ASK ANY QUESTIONS OF?

THE DEFENDANT: RIGHT. EXACTLY. I'M FAMILIAR, I'M AWARE OF THAT.

THE COURT: YOU UNDERSTAND THAT IF YOU CHOOSE TO CONTINUE WITH MISS LETIZIA AS YOUR ATTORNEY, THEN SHE WILL BE HERE TO ASK THE QUESTIONS AND YOU WILL BE ABLE TO SIT AND COMMUNICATE WITH HER AND ASK HER TO ASK ANY QUESTIONS THAT YOU FEEL ARE RELEVANT TO YOUR CASE?

THE DEFENDANT: YES, I'M -- I'M -- I'M -- I'M AWARE THAT I CAN DO THAT.

THE COURT: OKAY. SO IN LIEU OF HAVING YOUR EXPERIENCE IN APPARENTLY SUCCESSFULLY HANDLING A JURY TRIAL IN ILLINOIS, AND HER LEGAL BACKGROUND AND EXPERIENCE IN HANDLING HUNDREDS OF CASES, THAT THE TWO OF YOU TOGETHER WOULD NOT BE A BETTER POSITION FOR YOU TO TAKE THAN YOU BY YOURSELF, AND YOU'VE DECIDED YOU WANT TO RELEASE THE PUBLIC DEFENDER'S OFFICE, WAIVE YOUR RIGHT TO AN ATTORNEY AND REPRESENT YOURSELF; IS THAT CORRECT?

THE DEFENDANT: YOUR HONOR, AFTER JUST WHAT YOU'VE JUST

SPOKEN IS, I'M GONNA -- I'M GONNA -- I'M GONNA GO AHEAD ON AND LET THE YOUNG LADY REPRESENT ME, BUT I WANT TO BE ABLE TO PARTICIPATE IN MY DEFENSE. I DON'T WANT --

THE COURT: OF COURSE.

THE DEFENDANT: YOU KNOW WHAT I'M SAYING, I DON'T WANT NOBODY, YOU KNOW, JUST SAYING ANYTHING, I WANT SOME QUESTIONS TO BE ASKED.

THE COURT: OKAY. MISS LETIZIA?

MS. LETIZIA: YES, JUDGE.

THE COURT: I'VE NEVER KNOWN IT TO BE YOUR PRACTICE NOT TO HAVE YOUR CLIENT PARTICIPATE IN THEIR DEFENSE.

MS. LETIZIA: OF COURSE NOT.

AND, JUDGE, I WOULD JUST NOTE FOR THE RECORD THAT MR. EDWARDS HAS BEEN DEALING WITH MISS SPELLS ALMOST EXCLUSIVELY UNTIL TODAY, SHE'S IN A JURY TRIAL THIS MORNING --

THE COURT: THAT'S FINE.

MS. LETIZIA: -- AND SO I STEPPED IN TO COVER FOR HER TODAY, SO CERTAINLY FOR TODAY'S PURPOSES MR. EDWARDS IS MORE THAN WELCOME TO ASSIST IN HIS DEFENSE, AND MISS SPELLS, I'M SURE, HAS THE SAME PRACTICE.

THE COURT: NOW I HAVE A QUESTION FOR YOU, JUST BASED UPON YOUR OFFICE'S VERTICAL PROSCE -- VERTICAL --

MS. LETIZIA: REPRESENTATION.

THE COURT: -- REPRESENTATION, THANK YOU.

IF YOU HANDLE THE PRELIMINARY HEARING TODAY AND IT GETS

BOUND OVER TO DISTRICT COURT, WOULD YOU KEEP THIS CASE THROUGH JURY TRIAL THEN OR WOULD IT GO BACK TO MISS SPELLS?

MS. LETITIA: IT WILL GO BACK TO MISS SPELLS, BUT MOST LIKELY I'LL BE SECOND CHAIR ON THE CASE.

THE COURT: OKAY.

MS. LETITIA: BUT --

THE COURT: OKAY. SO MR. EDWARDS, WITH ALL OF THAT, WHAT WOULD YOU LIKE TO DO THIS MORNING? YOU WANT TO HAVE MISS LETIZIA --

THE DEFENDANT: I'M GONNA --

THE COURT: -- HANDLE YOUR DEFENSE WITH YOUR ACTIVE PARTICIPATION?

THE DEFENDANT: YES, MA'AM. THAT'S -- THAT'S EXACTLY WHAT I WOULD LIKE.

THE COURT: OKAY.

THE DEFENDANT: I -- I JUST WANT TO MAKE SURE I'M PART OF MY DEFENSE.

THE COURT: OKAY.

THE DEFENDANT: SOME -- SOME ATTORNEYS, YOU KNOW, THEY WANT TO TAKE OVER AND DON'T WANT YOU TO SAY ANYTHING, SO I DON'T LIKE TO HAVE THEM TYPE OF PEOPLE ON MY TEAM, YOU KNOW --

THE COURT: OKAY.

THE DEFENDANT: -- I WANT, YOU KNOW --

THE COURT: I DON'T ANTICIPATE THAT BEING AN ISSUE.

MS. LETITIA: DO YOU STILL WANT --

THE COURT: NOW --

MS. LETIZIA: DO YOU WANT TO BE PRESENT FOR THE PRELIM?

THE COURT: THAT'S THE NEXT QUESTION.

THE DEFENDANT: YEAH. I'D BE -- YOU KNOW, I'M GONNA BE PRESENT FOR THE -- BECAUSE I WANT TO BE PARTICIPATING, IS WHAT I'M SAYING, YOU KNOW?

THE COURT: OKAY. I MEAN YOU UNDERSTAND -- I -- I AM ONLY GOING TO ASSUME, BECAUSE I DON'T KNOW ANYTHING ABOUT THE CASE YET AT THIS POINT, THAT MISS SPELLS MAY HAVE ADVISED YOU TO WAIVE YOUR APPEARANCE BECAUSE IDENTIFICATION MAY HAVE BEEN AN ISSUE. AND IF THAT'S THE CASE, THEN YOU UNDERSTAND YOU HAVE TO MAKE A CHOICE, YOU EITHER WANT TO BE HERE AND ACTIVELY PARTICIPATE OR YOU WANT TO ALLOW MISS LETIZIA TO HANDLE IT FOR YOU AND WAIVE YOUR APPEARANCE.

THE DEFENDANT: I'M GONNA -- I WANT -- I WANT TO BE HERE, YOUR HONOR. I WANT TO BE PRESENT.

THE COURT: OKAY.

MS. LETIZIA: SO WE'LL WITHDRAW OUR SARGENT NOTICE.

THE COURT: SO THE SARGENT NOTICE IS WITHDRAWN. THE REQUEST TO REPRESENT YOURSELF IS WITHDRAWN. MISS LETIZIA WILL CONTINUE WITH YOUR REPRESENTATION THIS MORNING, AND STATE WILL CALL THEIR FIRST WITNESS.

MS. LETIZIA: THANK YOU, JUDGE.

AND BEFORE WE BEGIN, WE JUST WANT TO INVOKE THE EXCLUSIONARY RULE. I KNOW THERE'S NOBODY IN COURT.

THE COURT: AND THIS IS JUST MR. CHRISTMAS, HE'S --

MS. LETIZIA: RIGHT.

THE COURT: -- WAITING FOR MR. PANDULLO TO RETURN ON HIS CASE, SO --

MS. LETIZIA: HAVE A SEAT.

THE COURT: -- THERE ARE NO WITNESSES IN THE COURTROOM AT THIS POINT.

MS. LETIZIA: THANK YOU, JUDGE.

THE COURT: SIR, COME ON UP TO THE WITNESS STAND FOR ME, PLEASE? REMAIN STANDING, RAISE YOUR RIGHT HAND TO BE SWORN IN.

NEAL GEKELER,

CALLED AS A WITNESS BY THE STATE, AND HAVING BEEN FIRST DULY SWORN TO TESTIFY TO THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIED AS FOLLOWS:

THE WITNESS: I DO.

THE CLERK: PLEASE BE SEATED.

STATE AND SPELL YOUR NAME FOR THE RECORD.

THE WITNESS: THANK YOU, MA'AM.

FIRST NAME NEAL, N-E-A-L. LAST NAME GEKELER, G-E-K-E-L-E-R.

DIRECT EXAMINATION

BY MR. LEXIS:

Q SIR, WHERE DO YOU WORK?

A WYNN LAS VEGAS.

Q WHERE AT, PARTICULARLY?

A I'M A SECURITY CONTROL CENTER MANAGER.

Q WHERE AT?

A WYNN LAS VEGAS, WYNN ENCORE RESORTS.

Q AND YOU'RE BASICALLY IN CHARGE OF THE SURVEILLANCE?

A CORRECT, SIR.

Q ON SEPTEMBER 19TH, 2015, DID SOMETHING HAPPEN AT THE WYNN WHICH CAUSED YOU TO BURN SURVEILLANCE FOOTAGE?

A ABSOLUTELY, SIR. THERE WAS AN INCIDENT THAT WAS REPORTED TO OUR SECURITY THAT AN INDIVIDUAL WAS SUSPECTED OF THEFT BACK AT THE HOUSE -- BACK OF THE HOUSE AREA.

THE COURT: I'M GONNA -- I'M HAVING A REALLY HARD TIME HEARING YOU, YOU HAVE A VERY QUITE VOICE, AND I DON'T KNOW IF YOU ARE AS WELL, BUT I CANNOT HEAR YOU. I MEAN YOU HAVE TO REALLY SPEAK UP FOR ME.

THE WITNESS: YES, MA'AM.

THE COURT: CAN YOU REPEAT THAT LAST ANSWER?

THE WITNESS: ABSOLUTELY. WE HAD A REPORT OF A THEFT THAT OCCURRED ON THE SPA LEVEL, WHICH IS LOCATED IN THE WYNN TOWER IN THE BACK OF THE HOUSE AREA IN THE CLAUDE SALON.

BY MR. LEXIS:

Q AND DID YOU BURN THE FOOTAGE?

A YES, SIR.

Q DID YOU LOOK AT THE -- DID YOU LOOK AT IT TODAY?

A YES, I DID, SIR.

Q IN FACT, DID YOU PUT YOUR INITIALS ON THE CD AFTER LOOKING AT IT?

A CORRECT, I DID.

MR. LEXIS: MAY I APPROACH, JUDGE?

THE COURT: YOU MAY.

BY MR. LEXIS:

Q SIR, I'M SHOWING YOU WHAT HAS BEEN MARKED AS STATE'S PROPOSED EXHIBIT 2, WHAT IS THAT?

A THIS IS A ACTUAL CLIP OF THE COVERAGE PERTAINING TO THIS INCIDENT.

Q OKAY. IS IT TRUE AND ACCURATE REPRESENTATION OF WHAT THAT COVERAGE WAS?

A YES, SIR.

Q AND HOW DO YOU KNOW THAT YOU VIEWED THAT FOOTAGE ON THAT PARTICULAR CD?

A ON THIS PARTICULAR CD I WAS THE ONE THAT ACTUALLY BURNED THE COVERAGE FROM THE INITIAL SURVEILLANCE ARCHIVES AND I PLACED IT ON THIS DISK.

Q AND DID YOU PUT YOUR INITIALS ON THE SAME DISK?

A YES, I DID.

MR. LEXIS: JUDGE, I MOVE TO ADMIT STATE'S PROPOSED EXHIBIT 2.

THE COURT: MISS LETIZIA, IS THERE ANY OBJECTION?

MS. LETIZIA: NO, NOT FOR PURPOSES OF PRELIMINARY

HEARING.

THE COURT: IT'S ADMITTED.

(WHEREUPON STATE'S EXHIBIT NO. 2 WAS ADMITTED INTO EVIDENCE.)

MS. LETIZIA: CAN WE TURN ON -- ARE WE CONNECTED OR NO?

MR. LEXIS: NO.

MR. TURNER: YOU HAVE TO GET UP.

MS. LETIZIA: JUDGE, MAY I APPROACH SO I CAN WATCH THE VIDEO?

THE COURT: YES.

MS. LETIZIA: I THOUGHT I WAS CONNECTED, I'M SORRY.

THE COURT: ARE YOU -- YOU'RE GOING TO PLAY THIS ON YOUR LAPTOP?

MR. LEXIS: YES, JUDGE.

MR. TURNER: DO YOU WANT THE COURT TO VIEW IT?

MR. LEXIS: YES. WHERE WOULD YOU LIKE ME TO PLACE IT?

THE COURT: AND I'M JUST TRYING TO THINK OF WHAT WOULD BE BEST --

MR. LEXIS: FURTHER OFF TO THE SIDE THERE?

THE COURT: -- PROBABLY HERE. MISS LETIZIA, WHY DON'T YOU COME AROUND THIS WAY.

MS. LETIZIA: OKAY. THANK YOU, JUDGE.

THE COURT: I'M GOING TO HAVE THE ATTORNEY COME STAND BEHIND YOU OVER YOUR SHOULDER SO SHE CAN SEE AS WELL.

THE WITNESS: YES, MA'AM.

MR. LEXIS: AND CAN YOU -- CAN YOU ALSO SEE IT --

THE COURT: CAN WE SET IT -- DO YOU -- YOU'VE ALREADY SEEN IT?

MR. LEXIS: YES, JUDGE.

THE COURT: DO YOU NEED TO SEE IT --

MR. LEXIS: NO.

THE COURT: -- AS YOU'RE QUESTIONING?

MR. LEXIS: NO.

THE COURT: ARE WE JUST GOING TO PUBLISH IT SILENTLY AND WATCH IT, OR ARE YOU GOING TO ASK HIM QUESTIONS WHILE IT'S --

MR. LEXIS: I'LL ASK HIM QUESTIONS AS IT'S GOING, JUDGE.

THE COURT: OKAY. OKAY. SO...

(WHEREUPON THE VIDEO, STATE'S EXHIBIT NO. 2, WAS PLAYED.)

BY MR. LEXIS:

Q NOW, SIR, AS WE GO FROM ROOM TO ROOM I'M GOING TO ASK THAT YOU STOP IT SO YOU CAN DESCRIBE TO ME WHICH ROOM YOU'RE IN, OKAY?

A YES, SIR. LET ME LAY THIS...

Q CAN YOU PAUSE IT RIGHT HERE? AND WHAT ROOM IS THAT, SIR?

A THAT'S THE ACTUAL SALON LOCATED AT THE CLUB.

Q AND THIS IS SEPTEMBER 19TH, 2015?

A CORRECT, SIR.

Q AND WHAT ARE WE LOOKING AT?

A RIGHT NOW YOU SEE THE MAIN RECEPTION AREA OF THE

SALON. ON THE RIGHT-HAND SIDE YOU'LL SEE THE DEFENDANT STEPPING OUT. AND THERE WOULD BE ANOTHER ANGLE THAT WILL SHOW IT MORE DEFINITIVELY IF YOU'LL WAIT A SECOND.

Q ARE YOU GOING TO PLAY THAT?

THE COURT: IS THE TIME DATE -- TIME STAMP ON THIS ACCURATE?

THE WITNESS: YES, MA'AM.

BY MR. LEXIS:

Q AND WHAT IS THAT?

A IT'S GOING TO BE YEAR 150919, SEPTEMBER 19TH AT 11:40 AND 46 SECONDS.

THE COURT: AND IS THIS A 24 HOUR CLOCK?

THE WITNESS: YES, MA'AM.

BY MR. LEXIS:

Q OKAY, CAN YOU PAUSE IT RIGHT THERE?

SO WE HAVE A CHANGE IN THE FRAME, CORRECT?

A THAT'S CORRECT.

Q AS FAR AS THE ROOM?

A YES, SIR.

Q WHAT IS THIS SHOWING?

A THIS IS THE MAIN SALON -- I'M SORRY, SPA LEVEL LOBBY AREA. WHAT YOU WILL SEE IS, THE SPA RECEPTION IS LOCATED AT THE BACK OF THE SCREEN, YOU'LL SEE THE INDIVIDUAL WALKING THROUGH THE ENTIRE PORTION OF THE AREA.

Q AND WHAT --

THE COURT: AND THIS --

MR. LEXIS: OH, I'M SORRY.

THE COURT: GO AHEAD, I'M SORRY, I WAS JUST GOING TO ASK ABOUT THE TIMES. SO THIS IS ACTUALLY EIGHT MINUTES PRIOR TO THE CLIP THAT WE JUST SAW?

THE WITNESS: YES, MA'AM.

THE COURT: OKAY.

BY MR. LEXIS:

Q DO WE HAVE A NEW FRAME NOW, NEW ROOM?

A NEW FRAME, NEW ROOM. THIS IS GOING TO BE THE MAIN ELEVATOR LOBBIES THAT LEAD FROM THE SPA LEVEL TO THE MAIN HOTEL TOWERS, AND -- AS WELL AS THE CASINO FLOOR AT THE WYNN.

Q WHAT IS THE DATE AND TIME ON THAT?

A THE DATE WILL BE SEPTEMBER 19TH, 2015 AT 11:41 A.M.

Q NOW, ARE -- IS THIS ROOM AND THE TWO PREVIOUS ONES ALL -- AND IS THIS PUBLIC ACCESS?

A CORRECT, SIR.

Q OKAY.

THE COURT: SO THIS IS ON THE SAME FLOOR OR A DIFFERENT FLOOR THAN THE VIEW WE SAW LAST -- THE LAST IMAGE?

THE WITNESS: THIS ONE WILL BE THE SAME FLOOR, YOUR HONOR.

THE COURT: SO WHICH DIRECTION WERE WE LOOKING AT BEFORE?

THE WITNESS: THAT -- WITH THE LAYOUT OF THE MEZZANINE -- OR I'M SORRY, THE SPA LEVEL, IT IS A CRESCENT SHAPE. ON THE

LAST FRAME IT WILL BE TO THE LEFT-HAND SIDE, APPROXIMATELY 50 FEET AROUND THE CORRIDOR OF THE SPA LEVEL.

THE COURT: OKAY.

BY MR. LEXIS:

Q CAN YOU DESCRIBE WHAT YOU SEE THE SUSPECT DOING?

A AT THIS TIME HE APPEARS TO BE COMING FROM THE DIRECTION OF THE SPA SALON AREA ENTERING THE GUEST ELEVATOR.

Q NOW IS THERE A NEW FRAME NOW?

A CORRECT. THIS ONE WILL BE HOW -- SORRY. THIS ONE IS THE POOL ELEVATOR, WHICH IS HOW WE DETERMINE HE GAINED ACCESS TO THE SPA LEVEL. THIS IS LOCATED AT THE -- NEAR THE CASINO ENTRANCE, MAIN CAGE. THE TIME IS 11:28 AND 57 SECONDS ON THE 19TH OF SEPTEMBER, 2015.

Q PUBLIC HAVE ACCESS TO THIS?

A CORRECT, SIR.

I WILL MAKE ONE ADDITIONAL COMMENT. WITH THE INFRARED LIGHTING THAT WE HAVE DURING THE HOURS OF OPERATIONS, IT STAYS SO THE COLORATION HAS BEEN A LITTLE DIFFERENT, IT WILL APPEAR A LITTLE BLACK AND WHITE.

Q AND CAN YOU DESCRIBE FIRST WHAT YOU SEE THE SUSPECT DOING?

A THE SUSPECT ENTERED ON THE CASINO LEVEL, AND HE IS INDICATED TO GO UP TO THE SPA LEVEL.

Q OKAY. IS THIS A NEW FRAME, SIR?

A YES, SIR.

Q WHAT IS THIS, AND WHAT'S THE DATE AND TIME?

A THIS WILL BE THE SPA LEVEL POOL ELEVATOR LOBBY, AND IT'S LOCATED A LITTLE FURTHER NORTH THAN THE RESORT ELEVATOR LOBBY THAT WE SAW IN THE PREVIOUS FRAMES. IT IS SEPTEMBER 19TH, 2015 AT 11:33 AND 31 SECONDS A.M.

THE COURT: SO IS THIS -- IS THIS -- THE ELEVATOR THAT WE JUST SAW IN THE LAST IMAGE, IS THIS WHERE THIS ELEVATOR WOULD COME UP TO AND LET OFF ON THE SPA LEVEL?

THE WITNESS: YES, YOUR HONOR.

THE COURT: OKAY.

THE WITNESS: AND THIS IS THE PREVIOUS ONE THAT WE SAW.

MR. LEXIS: OKAY.

Q IS THIS A NEW FRAME, SIR?

A YES, SIR.

Q AND WHAT'S THE DATE AND TIME?

A IT WILL BE SEPTEMBER 19TH, 2015 AT 11:40 AND 52 SECONDS.

Q HAVE WE ALREADY SAW -- SEEN THIS FRAME?

A CORRECT, SIR.

THE COURT: IS THAT A DIFF -- SO THE SET OF ELEVATORS THAT WAS THE POOL LOBBY ELEVATORS AND THE POOL ELEVATOR, IS THAT A DIFFERENT BAY OF ELEVATORS THAN YOU SAW THE PERSON GET INTO AT 11:41 ON THE OTHER FRAME?

THE WITNESS: CORRECT, YOUR HONOR.

THE COURT: OKAY. JUST DIFFERENT ELEVATOR BANK, OKAY.

THE WITNESS: YES, MA'AM.

BY MR. LEXIS:

Q AND HAVE WE ALREADY SEEN THIS FOOTAGE, SIR?

A NO, SIR, THIS IS GOING TO BE A NEW -- A NEW ANGLE. THIS IS ANOTHER PHOTO. IN THE FOREGROUND YOU'LL NOTICE THE SPA -- OR I'M SORRY -- THE SALON RECEPTIONIST DESK, IT'S SEPTEMBER 19TH, 2015 AT 11:40 AND 33 SECONDS A.M., AND YOU'LL NOTICE AT THE FAR -- ON THE BACKGROUND IS WHERE THE SUSPECT COMES OUT.

THIS WILL BE A NEW FRAME AS WELL.

Q WHAT'S THE DATE AND TIME?

A IT'S GOING TO BE SEPTEMBER 19 -- I'M SORRY, SEPTEMBER 19TH, 2015 AT 11:40 AND 31 SECONDS A.M.

Q AND WHAT'S THIS TIME SHOWING?

A THIS WILL BE THE -- IN THE PREVIOUS FRAME IT WAS THE BACK HALL. AT THIS FRAME YOU'LL SEE A BACK OF THE DOOR, ON THE BOTTOM RIGHT-HAND SIDE, THAT LEADS TO THE BACK OF HOUSE AREA WHERE THE SPA -- OR I'M SORRY, SALON BREAK ROOM AND EMPLOYEE AREAS ARE.

Q NOW, IS THAT OPEN TO THE PUBLIC?

A NO, SIR, THAT'S FOR EMPLOYEES ONLY.

Q OKAY.

THE COURT: SO WHAT'S BACK IN THAT AREA, THE BREAK ROOM?

THE WITNESS: AND EMPLOYEE RESTROOM, HALLWAY, YES, MA'AM.

THE COURT: AND WHAT -- WHAT'S THE ACCESS -- IS THIS THE

ONLY DOOR TO ACCESS THAT AREA BEHIND THE SALON?

THE WITNESS: THERE IS ONE MORE ACCESS POINT, IT'S EMERGENCY EXITS -- OR, I'M SORRY, EMERGENCY EXIT CORRIDOR THAT LEADS THROUGH THAT AREA. UNFORTUNATELY I DON'T HAVE THAT ON THE --

THE COURT: OKAY.

THE WITNESS: -- VIDEO SURVEILLANCE.

THE COURT: I'M JUST TRYING TO GET THE LAYOUT IN MY HEAD.

THE WITNESS: YES, MA'AM.

THE COURT: SORRY.

THE WITNESS: THIS WILL BE A NEW SLIDE, IT'S GOING TO BE SEPTEMBER 19TH, 2015 AT 11:42 AND 08 SECONDS A.M.

YOU'LL NOTICE ON THIS SLIDE -- I'M SORRY, NO SLIDE -- ON THIS CLIP THIS WILL BE THE RESORT ELEVATOR LOBBY FROM THE SPA LEVEL.

MR. LEXIS: OKAY. WHAT ARE WE SEEING THE (INAUDIBLE) --

THE REPORTER: I'M SORRY, MR. LEXIS, I COULDN'T HEAR YOU.

BY MR. LEXIS:

Q WHAT ARE WE SEEING THE SUSPECT DO, IF ANYTHING?

A AT THIS TIME YOU'LL SEE THE INDIVIDUAL ENTER THE ELEVATOR. HE'LL IMMEDIATELY ENTER SLIGHT -- I BELIEVE HE JUST PUSHED THE LOBBY, IT'S THE CASINO LEVEL, AND YOU'LL NOTICE THAT HE HAD SEVERAL ITEMS IN HIS HAND, RUMMAGED THROUGH HIS HAND, AND THEN HE EXITS ON THE CASINO LEVEL.

Q NOW, SIR, YOU SAID HE HAD SEVERAL ITEMS IN HIS HAND?

A YES, SIR.

Q IS THIS THE FIRST TIME YOU'VE SEEN THAT HE'S HAD SEVERAL ITEMS IN HIS HAND THROUGH THESE CLIPS?

A CORRECT, SIR.

Q AND THIS WOULD BE AFTER HE'S EXITING THE SPA AREA?

A CORRECT, SIR, IMMEDIATELY AFTER.

THIS IS GOING TO BE A PREVIOUS CLIP AND THIS IS GOING TO BE THE END OF ALL OF THE VIDEO SURVEILLANCE I HAVE, YOUR HONOR.

Q WHAT'S THE DATE AND TIME?

A IT'S GOING TO BE 09/2015 -- I'M SORRY. SEPTEMBER 5TH -- OR SEPTEMBER 19TH, 2015 AT 11:32 AND 12 SECONDS, THIS IS THE BEGINNING OF THE CLIP.

Q ARE YOU GOING TO DESCRIBE FOR US WHAT THE SUSPECT WAS DOING, IF ANYTHING?

A THE SUSPECT APPEARS TO BE LOITERING, WALKING AROUND THE AREA OF THE SPA LEVEL RECEPTION AREA. ON THE LEFT-HAND SIDE IS HOW YOU WOULD GAIN ACCESS TO THE SALON AT THE TOP OF THAT SIDE OF THE SCREEN.

MS. LETIZIA: JUST TO CLARIFY, WE'RE WATCHING THE SAME VIDEO OVER AGAIN?

THE WITNESS: THIS -- UNFORTUNATELY HOW THE SYSTEM PLAYS IT, IT DOESN'T DO IT IN CHRONOLOGICAL ORDER.

MS. LETIZIA: RIGHT. BUT WE'VE ALREADY SEEN THIS BEFORE, RIGHT?

THE WITNESS: YES.

BY MR. LEXIS:

Q HAVE WE SEEN JUST ABOUT EVERYTHING?

A YES, SIR.

THE COURT: ALL RIGHT.

MS. LETIZIA: THANK YOU.

BY MR. LEXIS:

Q NOW, SIR, IN ALL THOSE CLIPS DOES IT APPEAR TO BE THE SAME SUSPECT?

A IT DOES.

MR. LEXIS: MAY I APPROACH, JUDGE?

Q SIR, I'M SHOWING YOU WHAT HAS BEEN MARKED AS STATE'S PROPOSED EXHIBIT 1, WHAT IS THAT?

A THAT WOULD BE A STILL PHOTO THAT IS CAPTURED FROM OUR RESORT ELEVATOR LOBBY ON SEPTEMBER 09 -- I'M SORRY -- SEPTEMBER 19TH, 2015 AT 11:42.

Q IS IT, IN FACT, A STILL FROM A CLIP WE PREVIOUSLY WERE SHOWN?

A YES, SIR. IT'S A DIRECT PHOTO FROM THAT SAME CLIP.

MR. LEXIS: JUDGE, I'D MOVE TO ADMIT STATE'S PROPOSED 1.

THE COURT: ANY OBJECTION?

MS. LETIZIA: NO, YOUR HONOR.

THE COURT: IT'S ADMITTED.

(WHEREUPON STATE'S EXHIBIT NO. 1 WAS ADMITTED INTO EVIDENCE.)

BY MR. LEXIS:

Q DO YOU SEE THE PERSON ON THE STILL AND ON THE VIDEO WE'VE JUST SEEN IN COURT TODAY?

A YES, SIR.

Q WOULD YOU PLEASE POINT TO HIM, IDENTIFY FOR ME THE COLOR OF SHIRT HE'S WEARING?

A (NO AUDIBLE RESPONSE.)

Q WHAT COLOR OF SHIRT IS HE WEARING?

A IN THE -- RIGHT NOW IN THE COURTROOM?

Q YES.

A A BLACK SHIRT, SIR.

MR. LEXIS: JUDGE, LET THE RECORD REFLECT THE WITNESS IDENTIFIED THE DEFENDANT?

THE COURT: IT WILL.

MR. LEXIS: WHAT DID YOU SAY, JUDGE?

THE COURT: IT WILL.

MR. LEXIS: OKAY.

THE COURT: BUT I WOULD NOTE, TO CLARIFY THE RECORD, HE'S WEARING CCDC NAVY BLUE, WHICH IS DARK, NOT NECESSARILY BLACK, BUT CAN BE CONFUSED FOR BLACK.

THE WITNESS: THANK YOU, YOUR HONOR.

THE COURT: MAY I HAVE THE EXHIBIT, PLEASE?

MR. LEXIS: YES, JUDGE.

THE COURT: DO YOU HAVE ANY FURTHER QUESTIONS OF THIS WITNESS BEFORE I --

MR. LEXIS: NO, YOUR HONOR.

THE COURT: -- TURN IT OVER FOR CROSS?

MISS LETIZIA, DO YOU MIND, BEFORE WE BEGIN YOUR CROSS-EXAMINATION, IF I CALL MR. CHRISTENSEN'S --

MS. LETIZIA: SURE.

THE COURT: -- CASE VERY QUICKLY?

MS. LETIZIA: OF COURSE NOT.

THE COURT: OKAY.

(WHEREUPON A DISCUSSION WAS HELD ON ANOTHER CASE.)

THE COURT: ALL RIGHT, RETURNING TO HAROLD EDWARDS, 15F14754X, CROSS-EXAMINATION.

MS. LETIZIA: THANK YOU, JUDGE.

CROSS-EXAMINATION

BY MS. LETIZIA:

Q SIR, JUST A COUPLE OF QUICK QUESTIONS.

DO YOU HAVE ANY VIDEO, OBVIOUSLY NOT WITH YOU TODAY, BUT WERE ABLE TO OBSERVE ANY VIDEO OF THE INDIVIDUAL THAT YOU BELIEVE WAS DEPICTED IN THIS VIDEO, ENTERING THE WYNN CASINO?

A NO, WE DID NOT.

Q OKAY. AND SO YOU DON'T KNOW WHERE HIS POINT OF ENTRY WAS INTO THE CASINO OR WHAT -- WELL, FIRST LET ME ASK THAT, DO YOU KNOW WHERE HIS POINT OF ENTRY WAS INTO THE CASINO?

A NO, MA'AM.

Q OKAY. AND SO YOU DON'T KNOW WHAT ELSE HE WAS DOING IN THE WYNN CASINO PRIOR TO THE VIDEO WE WATCHED OF HIM IN THE SPA ELEVATORS, CORRECT?

A CORRECT, MA'AM.

Q OKAY. AND ON SEPTEMBER 19TH YOU NEVER CAME INTO DIRECT CONTACT WITH THAT INDIVIDUAL, DID YOU?

A THAT IS CORRECT, I NEVER MADE DIRECT CONTACT WITH THE INDIVIDUAL.

MS. LETIZIA: OKAY, THANK YOU. I'LL PASS THE WITNESS.

THE COURT: MR. EDWARDS, HAVE YOU HAD SUFFICIENT TIME TO TALK WITH MISS LETIZIA ABOUT ANY QUESTIONS THAT YOU WANTED TO ASK?

THE DEFENDANT: YES, MA'AM.

THE COURT: OKAY. ANY REDIRECT?

REDIRECT EXAMINATION

BY MR. LEXIS:

Q SIR, THERE'S NO SURVEILLANCE FOOTAGE OF THE PRIVATE AREAS IN QUESTION IN THIS AREA?

A CORRECT. THERE -- DUE TO THE NATURE OF THOSE AREAS VIDEO SURVEILLANCE IS NOT ENLISTED IN THOSE AREAS, SIR.

MR. LEXIS: OKAY. NO FURTHER QUESTIONS, JUDGE.

THE COURT: ALL RIGHT. THANK YOU FOR YOUR TESTIMONY, YOU'RE FREE TO STEP DOWN.

STATE, NEXT WITNESS?

MR. LEXIS: GIVE ME ONE SECOND TO FIND OUT WHICH ONE.

MR. TURNER: I DON'T KNOW IF WE'RE GOING TO PLAY THAT. IS THAT YOURS?

THE WITNESS: NO.

MR. LEXIS: ANTHONY SCINTA IS MY NEXT WITNESS.

THE COURT: ALL RIGHT.

THE MARSHAL: REMAIN STANDING AND FACE THE CLERK, PLEASE.

ANTHONY SCINTA,

CALLED AS A WITNESS BY THE STATE, AND HAVING BEEN FIRST DULY SWORN TO TESTIFY TO THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIED AS FOLLOWS:

THE WITNESS: I DO.

THE CLERK: PLEASE BE SEATED.

STATE AND SPELL YOUR NAME FOR THE RECORD.

THE WITNESS: MY NAME ANTHONY SCINTA, S-C-I-N-T-A.

THE COURT: STATE?

DIRECT EXAMINATION

BY MR. LEXIS:

Q WHERE DO YOU WORK, SIR?

A I WORK AT THE WYNN HOTEL.

Q AND WHAT IS YOUR TITLE?

A I'M A DIRECTOR OF CORPORATE INVESTIGATIONS.

Q OKAY. WERE YOU WORKING ON SEPTEMBER 19TH, 2015?

A YES, SIR.

Q WERE YOU DIRECTED TO ONE -- INVESTIGATE A THEFT?

A YES.

Q AND AS A RESULT OF YOUR INVESTIGATION DID THE WYNN ACTUALLY MAKE A FLIER?

A YES.

Q AND THAT PERSON IS ONE HAROLD EDWARDS?

A YES, SIR.

Q DOES IT ACTUALLY HAVE HIS FACE ON IT?

A YES.

Q DO YOU SEE THAT PERSON IN COURT TODAY?

A YES, SIR, HE'S SITTING RIGHT THERE AT -- WITH THE GLASSES AND THE DARK SHIRT.

MR. LEXIS: YOUR HONOR, LET THE RECORD REFLECT THE WITNESS IDENTIFIED THE DEFENDANT?

THE COURT: IT WILL.

BY MR. LEXIS:

Q SIR, IS MR. EDWARDS AN EMPLOYEE OF THE WYNN?

A NO, SIR.

Q OR WAS HE EVER A GUEST AT THE WYNN?

A NO.

MR. LEXIS: NOTHING FURTHER, JUDGE.

THE COURT: CROSS-EXAMINATION?

MS. LETIZIA: NO, YOUR HONOR.

THE COURT: OKAY. I -- DID YOU ASK HIM, AND I DIDN'T HEAR THE QUESTION, DID THE WYNN MAKE A FLIER?

MR. LEXIS: YES. AS A --

THE COURT: OKAY.

MR. LEXIS: -- RESULT OF THIS THEFT DID THEY MAKE A FLIER.

THE COURT: OKAY. WHAT DOES THAT -- WHAT DOES THAT MEAN? WHAT DID YOU DO? HOW DID YOU COME UP WITH THE FLIER?

THE WITNESS: WELL, WE HAD PHOTOS OF HIM FROM THE DAY OF THE INCIDENT AND WE HAD ANOTHER PHOTO, AND THAT -- IT'S MORE LIKE A, BE ON THE LOOKOUT IF THIS GUY SHOWS UP.

THE COURT: OKAY.

THE WITNESS: AND THAT'S BASICALLY WHAT IT IS. IT'S A BO -- WE CALL THEM A BOLO.

THE COURT: OKAY. OKAY.

ANY OTHER QUESTIONS BASED UPON MY QUESTION?

MS. LETIZIA: NO, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU FOR YOUR TESTIMONY --

MR. LEXIS: NO, YOUR HONOR.

THE COURT: -- YOU'RE FREE TO STEP DOWN, SIR.

THE WITNESS: THANK YOU.

THE COURT: STATE, YOU CAN THEN CALL YOUR NEXT WITNESS.

MR. LEXIS: DETECTIVE CLARK, JUDGE.

THE MARSHAL: DETECTIVE?

MR. LEXIS: CLARK.

THE MARSHAL: CLARK.

THE CLERK: DO WE STILL HAVE THE VIDEO?

MR. LEXIS: YES, IT'S IN THERE.

THE MARSHAL: REMAIN STANDING AND FACE THE CLERK FOR A MINUTE.

JEFFREY CLARK,

CALLED AS A WITNESS BY THE STATE, AND HAVING BEEN FIRST DULY SWORN TO TESTIFY TO THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, TESTIFIED AS FOLLOWS:

THE WITNESS: I DO.

THE CLERK: PLEASE BE SEATED.

STATE AND SPELL YOUR NAME FOR THE RECORD.

THE WITNESS: DETECTIVE JEFFREY CLARK. JEFFREY IS SPELLED PHONETICALLY, JOHN, EASY, FRANK, FRANK, ROBERT, EASY YEL --

THE REPORTER: DETECTIVE --

THE WITNESS: OH.

THE REPORTER: -- DON'T DO IT THAT WAY.

THE WITNESS: OKAY, I'M SORRY, MA'AM. J-E-F-F-R-E-Y. LAST NAME CLARK, C-L-A-R-K.

THE COURT: STATE?

DIRECT EXAMINATION

BY MR. LEXIS:

Q WHERE DO YOU WORK, SIR?

A LAS VEGAS METROPOLITAN POLICE DEPARTMENT, SIR.
Q HOW LONG HAVE YOU WORKED THERE?
A SEVEN YEARS.
Q WERE YOU WORKING ON SEPTEMBER 19TH, 2015?
A YES, I WAS.
Q WERE YOU DISPATCHED TO THE WYNN?
A I WENT AFTER, IT WAS FOLLOW-UP, WORKING IN THE CAPACITY AS A DETECTIVE. I WAS NOTIFIED PATROL -- BY PATROL OF THE EVENT.
Q SO YOU WERE EVENTUALLY DISPATCHED TO THE WYNN?
A YES.
Q AND IS THAT AT 3131 LAS VEGAS BOULEVARD?
A IT IS.
Q IN LAS VEGAS, CLARK COUNTY?
A YES.
Q WHEN YOU GOT THERE WERE YOU SHOWN SOME SURVEILLANCE VIDEO?
A YES, I WAS.
Q DID YOU IMMEDIATELY RECOGNIZE THAT PERSON?
A YES, I DID.
Q AND WHO DID YOU IMMEDIATELY RECOGNIZE THAT PERSON AS?
A HAROLD EDWARDS.
Q DO YOU SEE THAT PERSON IN COURT TODAY?
A I DO, SIR.

PLEADING CONTINUES IN NEXT VOLUME