

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASEY ALAN JOHNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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May 02 2022 12:52 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 83064

RESPONDENT'S APPENDIX VOLUME 1

On Direct Appeal from Judgment of Conviction After Jury Verdict
in Case Number 20-10DC-0552 from the
Tenth Judicial District Court, Churchill County, State of Nevada,
by the Honorable Thomas L. Stockard, District Judge

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Case No. 20-10DC-0552

Dept. No. 1

The undersigned hereby affirms that
this document does not contain the
social security number of any person.

BY **Shellee Hooten**
DEPUTY

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IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CHURCHILL

THE STATE OF NEVADA,

Plaintiff,

vs.

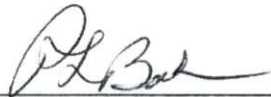
CASEY ALAN JOHNS,

Defendant.

**MOTION IN LIMINE
TO ADMIT DEFENDANT'S
PRIOR BAD ACTS**

COMES NOW, the State of Nevada, by and through Priscilla Baker, Deputy District Attorney of Churchill County, Nevada, and hereby moves this Court for an Order to admit Defendant's Prior Bad Acts. This Motion is based upon all pleadings and papers herein on file and the attached Memorandum of Points and Authorities.

DATED: This 30th day of July, 2020.


Priscilla Baker
Deputy District Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

I. BRIEF STATEMENT OF THE FACTS

On April 16, 2020, Michael Malone arrived at the Budget Inn Hotel, room 135, to help a friend, Deanna Douglas. (Preliminary Hearing Transcript, hereinafter "PHT" 6:19-53). He was helping her pack some of her things to put in storage and to take her to Winnemucca for the weekend, getting her out of the hotel room for a while as she had been staying there for a few months. (PHT 6:19-53, 36:11-12). While placing Douglas' items in his vehicle, which was parked right outside the hotel and room 135, Malone first noticed a male walking from the field towards the hotel room. (PHT 54:20-24, 55:1-24, 56:1-18). The male was later identified as Casey Alan Johns, the Defendant. Because Malone did not know Johns, Malone put one hand up to block the doorway and said to Johns "not here dude" to prevent Johns from entering the hotel room. (PHT 57:11-15, 61:1-4, 149:1-20). Johns then kept walking by the room. Malone went back inside room 135. Malone then heard door pounding, and a few minutes later, Malone saw Johns coming back towards their room. (PHT 58:1-24). Malone went to close the door but was too late. Johns had placed his foot inside the room. (PHT 58:12-24). Malone tried to keep Johns from coming further into the room by putting his hands up with open palms and saying "dude, dude" and blocking Johns from further entering the room. Malone also put his body between Johns and Douglas to protect Douglas. (PHT 59:14-23, 74:19-24, 75:13-23). At this point, Johns sliced Malone's right hand with a pocketknife. (PHT 61:11). Douglas wrapped Malone's hand with a towel and called 911. (PHT 62:18-24).

Fallon Police Officers were dispatched to the Budget Inn on the report of a stabbing. Officer Grimes arrived at the Budget Inn and located a Johns outside of room 135. Officer Grimes immediately identified Casey Alan Johns. (PHT 149:1-20). Johns appeared to have blood on his hands. (PHT 84:18-22). Johns was directed to sit down on a log located next to the parking lot, which he complied. (PHT 86:14-18).

Blood droplets along the sidewalk portion of the hotel and a large pooling of blood in the doorway to room 135. (PHT 85: 17-24). Due to the blood, Officer Grimes entered room 135 and found Malone and Douglas. (PHT 150:18-24, 151:1-5). Malone was sitting on the edge of the

1 bed with a towel wrapped around his right hand, soaked in blood. (PHT 150:9-17). Malone's
2 hand was sliced approximately ten centimeters long and down to the bone, cutting an artery and
3 causing nerve damage (PHT 65:18-24, 66:1-23).

4 Officer Grimes arrested Johns. (PHT 153:19). Before taking Johns to the patrol vehicle,
5 Officer Grimes placed a mask on Johns' mouth and nose due to Covid-19 procedures. (PHT
6 154:1-8). Officer Grimes also placed a spit hood over Johns' head, based on prior incidents or
7 contact with Johns. (PHT 154:7-20, 168:11-24). Officers then attempted to stand Johns up to
8 escort him to the patrol vehicle when Johns started kicking his feet and twisting his body to
9 resist being escorted to the patrol vehicle. (PHT 156:5-10). During this altercation, Johns
10 kicked Officer Grimes in the left shin, leaving a shoe imprint on the officer's pants. (PHT
11 157:12-17).

12 **II. BRIEF STATEMENT OF THE FACTS OF THE PRIOR BAD ACTS**

13 **A. Prior Incident that Occurred on May 8, 2015**

14 On May 8, 2015, Churchill County Sheriff Deputies were dispatched to the area of 5675
15 Reservoir Road. Deputy Daniel Michel made contact with Casey Alan Johns, who had fallen
16 down the levy into some rocks. Based on the circumstances, Deputy Michel took Johns into
17 protective custody. While Johns was being placed into a patrol vehicle, Johns became combative
18 and spit on Deputy Alonza Lofthouse. While Johns was being transported, Johns attempted to
19 kick out the rear passenger side window. Johns entered a guilty plea to Resisting and
20 Obstructing under NRS 199.280 in the New River Justice Court Case No. 15-CR-00272.

21 **B. Prior Incident that Occurred on August 7, 2016**

22 On August 7, 2016, Churchill County Sheriff Deputies were dispatched to the area of
23 4700 block of Tarzyn Road. Investigator Rudy Maynez, Jr. (then a deputy) made contact with
24 Casey Alan Johns, who had bleeding abrasions on his shoulders, arms, and hands. When the
25 paramedics arrived, Johns refused treatment. Investigator Maynez asked Johns to sit down for
26 John's safety. Johns responded by using force upon Investigator Maynez by hitting Investigator
27 Maynez' his right arm. Johns was arrested on the charge of Battery on an Officer. Other
28 Deputies attempted to restrain Johns; Johns resisted and continued to make threats. Johns was

1 taken to Banner Churchill County Hospital Emergency Room to be cleared for incarceration.
2 There, Johns spit at an emergency room ("ER") nurse, which landed on the nurse and
3 Investigator Maynez. When the Deputies were able to get Johns in a hospital bed, he kicked his
4 right foot, striking another ER nurse in the jaw and neck area and causing the nurse to fall
5 backwards. Johns entered a guilty plea to Battery By A Prisoner In Lawful Custody Or
6 Confinement in violation of NRS 200.481(2)(F) in the Tenth Judicial District Court Case No. 16-
7 10DC-1158.

8 **III. ARGUMENT**

9 The State requests that the Defendants prior bad acts be admitted at trial based on two (2)
10 separate theories. First, the prior bad acts that occurred on May 8, 2015 and August 7, 2016
11 should be admitted for the purpose of providing the complete story pursuant to NRS 48.035(3)
12 because Johns spit on those prior incidents, leading officers to place a spit hood on Johns in this
13 case. Second, the prior bad acts that occurred on August 7, 2016 should be admitted for the
14 purpose of intent, knowledge, or absence of mistake or accident pursuant to NRS 48.045(2)
15 because Johns, while in custody, kicked his feet, resulting in a conviction of a Battery By A
16 Prisoner In Lawful Custody Or Confinement in violation of NRS 200.481(2)(F).

17 **A. The Prior Bad Acts That Occurred on May 8, 2015 and August 7, 2016 Should Be** 18 **Admitted for the Purpose of Res Gestae Pursuant to NRS 48.035(3) Because Johns** 19 **Spit on those Prior Incidents, Leading Officers to Place a Spit Hood on Johns in** 20 **This Case.**

21 NRS 48.035(3) outlines the "complete story of the crime" doctrine, which provides that

22 [e]vidence of another act or crime which is so closely related to an
23 act in controversy or a crime charged that an ordinary witness
24 cannot describe the act in controversy or the crime charged without
referring to the other act or crime shall not be excluded, but at the
request of an interested party, a cautionary instruction shall be
given explaining the reason for its admission.

25 "[T]he State is entitled to present a full and accurate account of the circumstances surrounding
26 the commission of a crime, and such evidence is admissible even if it implicates the accused in
27 the commission of other crimes for which he has not been charged." *Brackeen v. State*, 104 Nev.
28 547, 553, 763 P.2d 59, 63 (1988). However, there are limitations. The prior bad act or crime

1 “must be so interconnected to the act in question that a witness cannot describe the act in
2 controversy without referring to the other crime.” *Bletcher v. State*, 111 Nev. 1477, 1480, 907
3 P.2d 978, 980 (1995).

4 The Nevada Supreme Court noted in *State v. Shade* that in a reading, as a whole, NRS
5 48.035, “it is clear that where the *res gestae* doctrine is applicable, the determinative analysis is
6 not a weighing of the prejudicial effect of evidence of other bad acts against the probative value
7 of that evidence.” 111 Nev. 887, 894, 900 P.2d 327, 331 (1995) (emphasis in original). If the
8 *res gestae* doctrine applies, “the controlling question is whether witnesses can describe the crime
9 charged without referring to related uncharged acts.” *Id.* Regardless of danger of prejudice
10 versus probative value, where a court determines that a witness cannot describe the charged act
11 without referring to the uncharged act, it may not exclude the evidence. *Id.* at 894–95. When
12 such uncharged conduct is admitted under *res gestae*, the court must issue a limiting instruction,
13 and explain the reason for its admission. NRS 48.035(3).

14 Here, the Defendant is charged, among other charges, with Battery By A Prisoner In
15 Lawful Custody Or Confinement in violation of NRS 200.481(2)(F). When Johns was taken into
16 custody in this case, officers placed a mask on Johns’ mouth and nose, due to Covid-19
17 procedures and placed a spit hood over Johns’ head due to knowledge of prior encounters. Johns
18 had a history of spitting at officers and/or hospital staff in the past, specifically, the prior
19 incidents that occurred on May 8, 2015 and August 7, 2016. On May 8, 2015, Johns was taken
20 into protective custody and spat on Deputy Alonza Lofthouse. Then on August 7, 2016, Johns
21 was arrested for Battery on an Officer and was taken to Banner, where he spat at officer(s) and/or
22 protected person, i.e. ER Nurse. The spit landed on the nurse and Investigator Maynez. These
23 prior incidents explain the actions leading up to the officers, in this case, placing a spit hood on
24 Johns. Johns had been cooperative before placing the spit hood and there was no indication
25 Johns required a spit hood; however, due to Johns’ history, the officers made the decision to
26 place a spit hood on Johns. Without this information, the jury cannot consider the complete
27 story. Additionally, the Defense may argue the reason that Johns resisted, leading to the Battery
28 By A Prisoner In Lawful Custody Or Confinement charge was due to the spit hood being placed

1 on Johns. Omission of these acts will leave a gaping whole, leaving the jury to wonder why the
2 officers decided to place a spit hood over Johns' head when there was no indication a spit hood
3 was required.

4 If the Court grants the State's Motion to admit the prior bad acts under the theory of
5 telling the complete story or Res Gestae, the Court must issue a limiting instruction regarding the
6 purpose for which the evidence is being admitted prior to its admission and again at the end of
7 trial. NRS 48.035(3).

8 **B. The Prior Bad Acts That Occurred on August 7, 2016 Should Be Admitted For the**
9 **Purpose of Intent, Knowledge, or Absence of Mistake or Accident Pursuant to NRS**
10 **48.045(2) Because Johns, While in Custody, Kicked his Feet, Resulting in a**
11 **Conviction of a Battery By A Prisoner In Lawful Custody Or Confinement.**

12 Nevada law is clear that "[e]vidence of other crimes, wrongs or acts is not admissible to
13 prove the character of a person in order to show that the person acted in conformity therewith."
14 NRS 48.045(2). Evidence of other crimes, may "be admissible for other purposes, such as proof
15 of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or
16 accident." *Id.* The Nevada Supreme Court, *Bigpond v. State*, held that the State must rest a
17 hearing, outside the presence of the jury and prove the following:

- 18 (1) the prior bad act is relevant to the crime charged and for a purpose other than proving
19 the defendant's propensity,
- 20 (2) the act is proven by clear and convincing evidence, and
- 21 (3) the probative value of the evidence is not substantially outweighed by the danger of
22 unfair prejudice.

23 128 Nev. 108, 117, 270 P.3d 1244, 1250 (2012). The Nevada Supreme Court "defer[s] to the
24 district court's discretion in admitting or excluding evidence of prior bad acts" and "will not
25 reverse such determination absent manifest error." *Fields v. State*, 125 Nev. 785, 802, 220 P.3d
26 709, 721 (2009).

27 To be admissible, the prior bad act must be relevant to the crime charged, which should
28 be determined outside the presence of the jury. *Tinch*, 113 Nev. at 1176. Evidence is relevant if
it has "any tendency to make the existence of any fact that is of consequence to the determination
of the action more or less probable than it would be without the evidence." NRS 48.015.

1 Although the State is unaware of the arguments to be raised by the Defense, it files this
2 motion in anticipation of arguments against the charge of Battery By A Prisoner In Lawful
3 Custody Or Confinement in violation of NRS 200.481(2)(F).

4 The State will be prepared to prove these elements at the scheduled Evidentiary Hearing
5 on September 8, 2020, unless the Court directs otherwise. First, the prior bad act is relevant to the
6 crime charged and is not for a purpose of proving propensity. Although the crime charged in this
7 case and the incident on August 7, 2016 are both Battery By A Prisoner In Lawful Custody Or
8 Confinement in violation of NRS 200.481(2)(F), the purpose of admitting the prior bad act is not
9 to show propensity. The August 7, 2016 incident is relevant because, in that case, Johns kicked
10 his feet/leg, which resulted in hitting an ER nurse, which caused the nurse to fall backwards.
11 Johns was then charged and convicted of Battery By A Prisoner In Lawful Custody Or
12 Confinement. This shows that Johns knew that his actions of kicking while in custody may lead
13 to someone being hit. Battery is a general intent crime where the State must prove "willful and
14 unlawful use of force or violence upon the person of another." NRS 200.481. In this case, Johns
15 kicked his leg while officers were arresting him and/or attempting to take him into a patrol
16 vehicle. Knowledge of the possibility of the causation of making contact with his foot/leg with
17 another individual is necessary to show intent. In other words, by demonstrating that the
18 Defendant had a motive, with the knowledge that kicking may result in a hitting another person,
19 the Defendant's intent can be circumstantially implied.

20 Further, the August 7, 2016 incident also negates any argument of absence of mistake or
21 accident. If the Defense tries to argue mistake or accident that Johns kicked Officer Grimes
22 while the officers attempted to place Johns in the patrol car, the August 7, 2016 incident is
23 relevant to show lack of mistake or accident, as permitted under NRS 48.045(2). Because of the
24 prior incident on August 7, 2016 where Johns was in custody at Banner, he kicked his foot/leg,
25 which resulted in hitting a nurse, causing the nurse to fall backwards. Johns was charged and
26 convicted of Battery By A Prisoner In Lawful Custody Or Confinement for this act. Because
27 Johns had this prior conviction, Johns knows of the possibility of the causation of making contact
28 with his foot/leg with another individual; thus, showing lack of mistake or accident.

1 Second, the State will be able to prove the prior bad act by clear and convincing evidence
2 through testimony of witnesses and the prior conviction for Battery By A Prisoner In Lawful
3 Custody Or Confinement in violation of NRS 200.481(2)(F) in the Tenth Judicial District Court
4 Case No. 16-10DC-1158.

5 Finally, the State will prove that the probative value of the evidence is not substantially
6 outweighed by the danger of unfair prejudice. “All evidence offered by the prosecutor is
7 prejudicial to the defendant; there would be no point in offering it if it were not.” *Holmes v.*
8 *State*, 129 Nev. 567, 575, 306 P.3d 415, 420 (2013) (quoting *U. S. v. Foster*, 939 F.2d 445, 456
9 (7th Cir.1991)). The question is whether the evidence’s probative value was substantially
10 outweighed by the danger of unfair prejudice. *Id.*; NRS 48.035; see *Schlotfeldt v. Charter Hosp.*
11 *of Las Vegas*, 112 Nev. 42, 46, 910 P.2d 271, 273 (1996) (holding that the “substantially
12 outweigh” requirement “implies a favoritism toward admissibility”). Evidence is “unfairly”
13 prejudicial if it encourages the jury to convict the defendant on an improper basis. *Id.*

14 All evidence against a defendant will on some level prejudice the defense; therefore, NRS
15 48.035(1) focuses on “unfair” prejudice. *State v. Dist. Ct. (Armstrong)*, 127 Nev. 927, 933, 267
16 P.3d 777, 781 (2011). The United States Supreme Court stated that

17 [t]he term “unfair prejudice” as to a criminal defendant, speaks to
18 the capacity of some concededly relevant evidence to lure the
19 factfinder into declaring guilty on a ground different from proof
20 specific to the offense charged Such improper grounds
21 certainly include . . .generalizing a defendant’s earlier bad act into
bad character and taking that as raising the odds that he did the
later bad act now charged. . . .

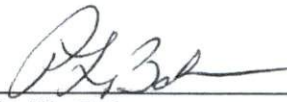
22 *Old Chief v. U. S.*, 519 U.S. 172, 180 (1997). The Nevada Supreme Court “has defined “unfair
23 prejudice” under NRS 48.035 as an appeal to the ‘emotional and sympathetic tendencies of a
24 jury, rather than the jury’s intellectual ability to evaluate evidence.” *State v. Eighth Judicial*
25 *Dist. Court*, 267 P.3d 777, 781 (2011) (quoting *Krause Inc. v. Little*, 117 Nev. 929 (1996).
26 While any evidence contrary to a party’s position is prejudicial to that party’s case, here the
27 Court must determine whether the probative value of the prior acts and prior conviction are
28 substantially outweighed by the danger of unfair prejudice. In *Fields v. State*, the Nevada

1 Supreme Court instructed district courts in assessing unfair prejudice, the court should review
2 "the use to which the evidence was actually put—whether, having been admitted for a
3 permissible limited purpose, the evidence was presented or argued at trial for its forbidden
4 tendency to prove propensity." 125 Nev. 785, 790, 220 P.3d 709, 713 (2009).

5 The probative value of the August 7, 2016 incident does not substantially outweigh the
6 danger of unfair prejudice. There, officers arrived on scene to assist Johns, not investigate a
7 crime. This purpose of admitting this prior bad act is to show intent, knowledge, or absence of
8 mistake or accident. The prior act simply lends purpose and knowledge to the intent or lack of
9 mistake or accident on behalf of the Defendant. If the Court admits the prior bad acts, the Court
10 must issue a limiting instruction regarding the purpose for which the evidence is being admitted
11 prior to its admission and again at the end of trial.

12 Therefore, the State respectfully requests this Court issue an order to allow the admission
13 of prior bad acts on two (2) separate theories. First, the prior bad acts that occurred on May 8,
14 2015 and August 7, 2016 provide a complete story, pursuant to NRS 48.035(3), explaining the
15 decision of the officers to place a spit hood on Johns because of his prior contacts with law
16 enforcement. Second, the prior bad acts that occurred on August 7, 2016 show intent,
17 knowledge and/or show lack of mistake or accident, pursuant to NRS 48.045(2), because Johns
18 has knowledge that the act of kicking, while being in lawful custody and being detained by
19 officers, may result kicking another person, causing a battery.

20 DATED: This 30th day of July, 2020.

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23 Priscilla Baker
24 Deputy District Attorney
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Churchill County District Attorney
165 North Ada Street
Fallon, Nevada 89406
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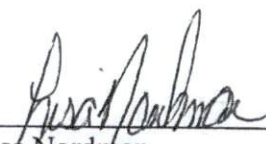
CERTIFICATE OF SERVICE

On the 30 day of July, 2020, I was an employee of the Churchill County District Attorney's Office and that the foregoing **Motion In Limine To Admit Defendant's Prior Bad Acts**, was served to the following address(s):

David K. Neidert Esq.
Attorney at Law
643 South Maine Street
Fallon, NV 89406

By:

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☐ Return Receipt Requested
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Lisa Nordman
Legal Secretary

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1 Case No. 20-10DC-0552
2 Dept. No. 1

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5 **IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
6
7 **IN AND FOR THE COUNTY OF CHURCHILL**

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 CASEY ALAN JOHNS,

13 Respondent.
14 _____/

**OPPOSITION TO MOTION IN
LIMINE REGARDING PRIOR
BAD ACTS**

15
16 The Defendant, CASEY ALAN JOHNS, by and through counsel, DAVID K. NEIDERT,
17 respectfully opposes the *Motion in Limine Regarding Prior Bad Acts*. This Opposition is based
18 on the following Points and Authorities, as well as all documents and pleadings on file in this
19 case.

20
21 The State has cited the correct case for use of other bad act evidence at trial. *Bigpond v.*
22 *State*, 270 P.3d 1244 (Nev. 2012). *Bigpond* held that evidence of other crimes, wrongs, or acts
23 could be admitted for limited purposes. *Id.* at 1245. However, *Bigpond* emphasized that “[i]t
24 the general rule that the prosecution may not introduce evidence of other criminal acts of the
25 accused unless the evidence is substantially relevant for some other purpose than to show a
26 probability that the accused committed the charged crime because of a trait of character. *Id.* at
27 1249. However, a presumption of inadmissibility attaches to bad-act evidence. *Id.*
28

1 In this case, the State seeks to admit evidence of two prior incidents: one from 2015 and
2 another from 2016. In the 2015 incident, Mr. Johns attempted to kick a window in a patrol car
3 after being arrested and spit at an officer. In the 2016 incident, Mr. Johns struck an officer with
4 his hand and kicked a nurse in the hospital.
5

6 The State provides two theories for why these incidents are relevant. First, is for the
7 “complete story” of THIS incident. It does not explain how those two prior incidents tell the
8 complete story of an incident that occurred this year. Evidently, the State seems to believe that
9 they have the right to inflame the jury by presenting evidence as to why a “spit hood” was
10 necessary when Mr. Johns was taken into custody. This evidence is substantially more
11 prejudicial than probative. If allowed at all, a simple explanation, rather than extrinsic evidence
12 will explain the need for the hood – perhaps something as benign as “based on past issues with
13 Mr. Johns, we believed it was necessary.”
14
15

16 The second theory the State believes these are admissible pursuant to NRS 48.045(2).
17 While the State disclaims that this evidence of propensity, the reality is that the evidence at issue
18 is just that. They argue the absurd rationalization that this necessary to show that Johns knew
19 that if he kicked his feet, he might strike someone – which is absurd, since every sentient human
20 being over the age of 3 knows that if they kick their feet in the direction of someone else, they
21 might just kick them. If this is not “propensity evidence” then the term has absolutely no
22 meaning whatsoever – and could be grafted into ANY prosecution for ANY crime in which
23 someone has a past conviction. The law doesn’t allow that. Period. The State wants this evidence
24 to say, “Casey Johns is violent. He’s always attacking people” – something the evidence code
25 does not allow.
26
27
28

1 While Mr. Johns does not object to an evidentiary hearing, he strenuously objects to this
2 inflammatory evidence being presented to the jury for any purpose.

3 Respectfully submitted this 18th day of August, 2020.
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7 DAVID K. NEIDERT
8 Attorney at Law
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1 Case No. 20-10DC-0552

2 Dept. No. 1

3 The undersigned hereby affirms that
4 this document does not contain the
5 social security number of any person.

Shelley Hooten - DEPUTY

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6 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF CHURCHILL

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 CASEY ALAN JOHNS,

13 Defendant.

**ORDER DENYING
STATE'S MOTION IN LIMINE
TO ADMIT DEFENDANT'S
PRIOR BAD ACTS**

15 THIS MATTER came before the Court for Hearing on September 8, 2020, on the State's
16 Motion in Limine to Admit Defendant's Prior Bad Acts. The State was present and represented
17 by Deputy District Attorney Priscilla L. Baker, Esq., and the Defendant was present and
18 represented by his counsel David Neidert, Esq.

19 The State sought to admit prior acts of the Defendant spitting at persons on May 8, 2015,
20 and on August 7, 2016. The State sought to admit these prior acts for the purpose of res gestae,
21 pursuant to NRS 48.035(3), to explain the officers' actions of placing a spit hood on the
22 Defendant.

23 The State further sought to admit prior act of the Defendant kicking a person while in
24 lawful custody on August 7, 2016. The State sought to admit this act for the purpose of
25 showing intent, knowledge, or absence of mistake or accident, pursuant to NRS 48.045(2).

26 The Court having considered the representations made during this hearing, and having
27 reviewed the pleadings and papers on file herein, THE COURT FINDS AS FOLLOWS:

28 ///

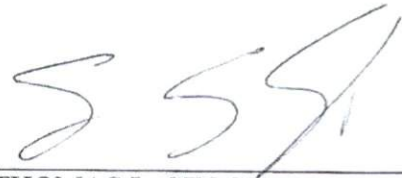
- (1) Based on the testimony provided by Deputy Alonza Lofthouse, there is clear and convincing evidence that the Defendant spit on Deputy Lofthouse on May 8, 2015.
- (2) Based on the testimony provided by Investigator Rudy Maynez, II, there is clear and convincing evidence that the Defendant spit on Investigator Maynez, II and a nurse at Banner on August 7, 2016.
- (3) At this time, it is unknown whether the placing of the spit hood on the Defendant by the officers in this case will be raised at trial.
- (4) Based on the conviction for Battery By A Prisoner In Lawful Custody Or Confinement in violation of NRS 200.481(2)(F) in the Tenth Judicial District Court Case No. 16-10DC-1158, there is clear and convincing evidence that the Defendant, while in lawful custody, kicked his right foot, striking another ER nurse in the jaw and neck area and causing the nurse to fall backwards on August 7, 2016.
- (5) At this time, the Defense has not indicated an argument will be made at trial that the act of the Defendant kicking while in lawful custody was a mistake or accident.

THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED:

- (1) That the State's Motion in Limine to Admit Prior Bad Acts is DENIED.
- (2) That if the placing of the spit hood on the Defendant by the officers in this case is raised at trial, the State may renew its Motion.
- (3) That if the Defense argues that the act of the Defendant kicking while in lawful custody was a mistake or accident, the State may renew its Motion.

IT IS SO ORDERED:

DATED: This 15 day of September, 2020.


THOMAS L. STOCKARD
DISTRICT JUDGE