

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Petitioner,
vs,

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK,
AND THE HONORABLE MONICA
TRUJILLO, DISTRICT JUDGE
Respondent,
and
BRANDON ALEXANDER MCGUIRE,
Real Party in Interest.

Electronically Filed
Jul 26 2021 04:06 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO:

D.C. NO: C-16-319756-1

PETITIONER'S APPENDIX TO EMERGENCY PETITION

STEVEN B. WOLFSON
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Counsel for Petitioner

Counsel for Real Party in Interest

INDEX

<u>Document</u>	<u>Page No.</u>
Amended State's Opposition to Defendenat's Motion, filed 4/6/20	13-19
Defendant's Reply to State's Opposition to Motion to Strike, filed 7/22/21	41-46
Exhibits to Defendant's Motion to Strike, filed 7/22/21	47-72
Indictment, filed 12/1/16.....	1-3
Motion to Compel with NRS 174.234, Or in the Alternative, To Strike Witness, filed 3/26/20	4-8
Motion to Strike Witness for Failure to Comply with NRS 174.234 and Motion to Dismiss, filed 7/21/21	20-24
State's Opposition to Defendant's Motion, filed 4/6/20.....	9-12
State's Oppsotion to Defendant's Motion to Strike, filed 7/21/21	25-40

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on July 26, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

KATHLEEN HAMERS
Deputy Public Defender

ALEXANDER CHEN
Chief Deputy District Attorney

I further certify that I served a copy of this document by electronic emailing a true and correct copy thereof to:

JUDGE MONICA TRUJILLO
Email: ElliottT@clarkcountycourts.us

BY /s/ E. Davis
Employee, District Attorney's Office

AC//ed

ORIGINAL

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

DEC - 1 2016

BY: 
ALAN PAUL CASTLE, SR. DEPUTY

1 IND
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JACOB VILLANI
6 Chief Deputy District Attorney
7 Nevada Bar #011732
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

C-16-319756-1
IND
Indictment
4803028



9 THE STATE OF NEVADA,

10 Plaintiff,

CASE NO: C-16-319756-1

11 -vs-

DEPT NO: XIX

12 BRANDON ALEXANDER MCGUIRE,
13 #1265445

14 Defendant.

INDICTMENT

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

17 The Defendant above named, BRANDON ALEXANDER MCGUIRE, accused by the
18 Clark County Grand Jury of the crime(s) of SEXUAL ASSAULT WITH USE OF A DEADLY
19 WEAPON (Category A Felony - NRS 200.364, 200.366, 193.165 - NOC 50097), committed
20 at and within the County of Clark, State of Nevada, on or about the 11th day of March, 2004,
21 as follows:

22 COUNT 1

23 did then and there willfully, unlawfully, and feloniously sexually assault and subject
24 JANE DOE 16-017, to sexual penetration, to-wit: digital penetration by inserting his finger(s)
25 into the anus and/or vaginal opening of the said JANE DOE 16-017, against her will, or under
26 conditions in which Defendant knew, or should have known, that JANE DOE 16-017 was
27 mentally or physically incapable of resisting or understanding the nature of Defendant's
28 conduct, with use of a deadly weapon, to-wit: a knife.


1 COUNT 2

2 did then and there willfully, unlawfully, and feloniously sexually assault and subject
3 JANE DOE 16-017, to sexual penetration, to-wit: fellatio by placing his penis on or in the
4 mouth of the said JANE DOE 16-017, against her will, or under conditions in which Defendant
5 knew, or should have known, that JANE DOE 16-017 was mentally or physically incapable
6 of resisting or understanding the nature of Defendant's conduct, with use of a deadly weapon,
7 to-wit: a knife.

8 DATED this 30th day of November, 2016.

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

11
12 BY


13 JACOB VILLANI
14 Chief Deputy District Attorney
Nevada Bar #011732

15
16
17 ENDORSEMENT: A True Bill

18 
19 Foreperson, Clark County Grand Jury
20
21
22
23
24
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Names of Witnesses and testifying before the Grand Jury:

HICKS, EVELYN, c/o CCDA, 200 Lewis Avenue, LV, NV 89101

LOWRY-KAETT, ELAINE, c/o CCDA, 200 Lewis Avenue, LV, NV 89101

SCOTT, DEBRA, SIGN LANGUAGE INTERPRETER

Additional Witnesses known to the District Attorney at time of filing the Indictment:

BASS, CAROLINE, SIGN LANGUAGE INTERPRETER

CODY, LORA, LVMPD# 7294

CUSTODIAN OF RECORDS, CCDC

CUSTODIAN OF RECORDS, LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS, LVMPD RECORDS

DOE, JANE, c/o CCDA, 200 Lewis Avenue, LV, NV 89101

KING, CRAIG, LVMPD# 9971

STARK, JOSHUA, LMVPD# 13515

WILDS, MELISSA, LVMPD# 4957

16BGJ023X/16F17095X/ed-GJ
LVMPD EV# 1610120665
(TK5)



MOT
DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR NO. 5674
KATHLEEN M. HAMERS, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 9049
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
HamersKM@clarkcountynv.gov
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,	)	CASE NO. C-16-319756-1
)	
v.	)	DEPT. NO. XIX
)	
BRANDON ALEXANDER MCGUIRE,)	
	)	DATE: April 15, 2020
Defendant,	)	TIME: 8:30 a.m.
)	

MOTION TO COMPEL COMPLIANCE WITH N.R.S. 174.234 OR, IN THE
ALTERNATIVE, TO STRIKE WITNESSES

COMES NOW, the Defendant, BRANDON ALEXANDER MCGUIRE, by and through KATHLEEN M. HAMERS, Deputy Public Defender and hereby requests that this Court compel the State of Nevada to comply with N.R.S. 174.234. or, in the alternative, strike State's witnesses.

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 26th day of March, 2020.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/Kathleen M. Hamers
KATHLEEN M. HAMERS, #9049
Deputy Public Defender

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

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

/s/Kathleen M. Hamers
KATHLEEN M. HAMERS

1 **FACTUAL ALLEGATIONS**

2 Brandon McGuire is charged with sexual assault for allegedly engaging in non-
3 consensual fellatio and digital penetration with the alleged victim in 2004. The alleged victim
4 was asked to identify McGuire in a photographic lineup in 2016.

5 At the Grand Jury presentation, the State presented the alleged victim's allegations and
6 her identification of Mr. McGuire via photograph. According to the Arrest Report in this case,
7 there was a DNA match found between the alleged victim's sexual assault kit and Mr. McGuire.
8 That match was found in 2016. The instant case is set for trial on April 20, 2020.

9
10 **ARGUMENT**

11
12 N.R.S. 174.234 (a)(2) requires that in a felony case, the State provide written notice
13 containing the names and last known addresses of all witnesses the State intends to call at trial.
14 That Statute contains a provision for withholding contact information for a witness. It states
15 "[u]pon a motion by either party or the witness, the court shall prohibit disclosure to the other
16 party of the address of the witness if the court determines that disclosure of the address would
17 create a substantial threat to the witness." N.R.S. 174.234(5). However, if disclosure is
18 prohibited, "the court shall, upon the request of a party, provide the party . . . with an opportunity
19 to interview the witness in an environment that provides for protection of the witness.

20 In this case, the State has not disclosed address information for two witnesses. "E.H."
21 and "Gina Garcia." The State has not sought a ruling from the Court allowing the State to keep
22 this information from the Defense. The Defense requests that the Court order the State comply
23 with N.R.S. 174.234, or, in the alternative, that those witnesses be prohibited from testifying at
24 trial.

1 **CONCLUSION**

2 For the foregoing reasons, the Defense request that this Court grant the instant motion
3 and order the State comply with N.R.S. 174.234, or, in the alternative, that those witnesses be
4 prohibited from testifying at trial.

5
6
7 DATED this 26th day of March, 2020.

8 DARIN F. IMLAY
9 CLARK COUNTY PUBLIC DEFENDER

10 By: /s/Kathleen M. Hamers
11 KATHLEEN M. HAMERS, #9049
12 Deputy Public Defender
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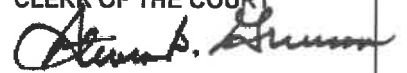
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YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing MOTION on for hearing before the Court on the 15th day of April, 2020, at 8:30 a.m.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

CERTIFICATE OF ELECTRONIC SERVICE

By: /s/ Sara Ruano
An employee of the
Clark County Public Defender's Office



1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 GENEVIEVE CRAGGS
6 Deputy District Attorney
7 Nevada Bar #013244
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -VS-

13 **BRANDON ALEXANDER MCGUIRE,**
14 **#1265445**

15 Defendant.

CASE NO: C-16-319756-1

DEPT NO: XIX

16
17 **STATE'S OPPOSITION TO DEFENDANT'S MOTION**

18 **TO COMPEL COMPLIANCE WITH NRS 174.234**

19 DATE OF HEARING: **APRIL 20, 2020**

TIME OF HEARING: **8:30 AM**

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
21 District Attorney, through GENEVIEVE CRAGGS, Deputy District Attorney, and hereby
22 submits the attached Points and Authorities in this State's Opposition to Defendant's Motion
23 To Compel Compliance With NRS 174.234.

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

27 //

28 //

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On December 1, 2016, Brandon McGuire (hereinafter "Defendant"), was charged by
4 way of Indictment with two counts of SEXUAL ASSAULT WITH USE OF A DEADLY
5 WEAPON (Category A Felony - NRS 200.364, 200.366, 193.165 - NOC 50097). On January
6 9, 2017, Defendant pleaded not guilty. Defendant's jury trial is currently set for April 20, 2020.
7 Defendant filed the instant motion on March 26, 2020.

8 **STATEMENT OF THE FACTS**

9 On March 11, 2004, E.H. reported to Las Vegas Metropolitan Police Department
10 (hereinafter "LVMPD") that was kidnapped and sexually assaulted near State Route 57 and
11 U.S. 95.¹ E.H. was walking in the area of Lake Mead and Rock springs when a white male
12 adult driving a black Nissan Maxima pulled up and offered to give her a ride. She accepted
13 and got into the vehicle. The man identified himself as "John" and offered to purchase food
14 for her. He drove to a Wendy's located at 6732 W. Cheyenne Avenue.

15 After purchasing food, he drove north on U.S. 95 towards Mount Charleston for
16 approximately an hour. When they neared Mount Charleston, the man produced a large knife
17 and held it to her face. He tipped off her clothes and inserted his fingers into her rectum.
18 While holding the knife, he then forced his penis into her mouth. He ejaculated in her mouth
19 and on her face.

20 Once he was finished, he held E.H. down in the seat and drove for approximately an
21 hour. When they returned to the area of Lake Mead and Rock Springs, he ordered her to exit
22 the vehicle. E.H. ran until she was able to flag down a vehicle was called 911. E.H. was
23 transported to University Medical Center where she underwent a sexual assault examination.

24 In 2012, a CODIS hit matching the DNA in E.H.'s sexual assault kit and an unsolved
25 homicide from 1998. On October 10, 2016, the profile hit on Brandon McGuire (hereinafter
26 "Defendant"). On October 11, 2016, a photo line-up was conducted with E.H. She
27 immediately identified Defendant as the male who had kidnapped and sexually assaulted her.

28

¹ State of Facts taken from LVMPD Declaration of Arrest attached as Exhibit 1.

1 In December 2019, LVMPD Forensic Laboratory completed the comparison of the
2 DAN profile generated from the sperm fraction in E.H.'s sexual assault kit to the Defendant's
3 DNA. The probability of randomly selecting an unrelated individual from the general
4 population having a DNA profile that is consistent with the major DNA profile obtained from
5 E.H.'s sexual assault kit is approximately 1 in 71.1 quintillion.

6 **ARGUMENT**

7 **I. This Court should DENY Defendant's Motion because the State has not**
8 **violated NRS 174.234, and intends to comply with the statute within 5 days of**
9 **trial**

10 NRS 174.234(1)(a)(2) requires that the State file a written notice regarding its (1)
11 witnesses names and (2) their last known addresses *not less than 5 judicial days before trial*.
12 (Emphasis added). Here, on March 13, 2020, the State filed its Notice of Witnesses, wherein
13 the addresses of E.H. and Gina Garcia are "c/o CCDA-SVU/VWAC" and "UNK." The State
14 intends to comply with the above statute and will provide notice to the Defendant not less than
15 5 days before trial, at the latest, April 13, 2020. However, anticipating that there could be
16 additional delays in all Clark County trials, the date of disclosure could foreseeably be a later
17 date.

18 Therefore, at this time, the Court should DENY Defendant's Motion because the State
19 has not violated NRS 174.234, and is fully aware of its obligations under this statute.

20 DATED this 6th day of April, 2020.

21 Respectfully submitted,

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

25 BY /s/ GENEVIEVE CRAGGS
26 GENEVIEVE CRAGGS
27 Deputy District Attorney
28 Nevada Bar #013469

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that service of the above and foregoing was made through electronic
3 efile and serve this 6th day of APRIL, 2020, to:

4 KATHLEEN HAMERS, DPD
5 hamerskm@ClarkCountyNV.gov

6
7 BY /s/ HOWARD CONRAD
8 Secretary for the District Attorney's Office
9 Special Victims Unit
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28 hjc/SVU



1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 GENEVIEVE CRAGGS
6 Deputy District Attorney
7 Nevada Bar #013244
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 **BRANDON ALEXANDER MCGUIRE,**
14 **#1265445**

15 Defendant.

CASE NO: C-16-319756-1

DEPT NO: XIX

16
17 **AMENDED STATE'S OPPOSITION TO DEFENDANT'S MOTION**
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19 DATE OF HEARING: **APRIL 20, 2020**
20 TIME OF HEARING: **8:30 AM**

21 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
22 District Attorney, through GENEVIEVE CRAGGS, Deputy District Attorney, and hereby
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11 U.S. 95.¹ E.H. was walking in the area of Lake Mead and Rock springs when a white male
12 adult driving a black Nissan Maxima pulled up and offered to give her a ride. She accepted
13 and got into the vehicle. The man identified himself as "John" and offered to purchase food
14 for her. He drove to a Wendy's located at 6732 W. Cheyenne Avenue.

15 After purchasing food, he drove north on U.S. 95 towards Mount Charleston for
16 approximately an hour. When they neared Mount Charleston, the man produced a large knife
17 and held it to her face. He tipped off her clothes and inserted his fingers into her rectum.
18 While holding the knife, he then forced his penis into her mouth. He ejaculated in her mouth
19 and on her face.

20 Once he was finished, he held E.H. down in the seat and drove for approximately an
21 hour. When they returned to the area of Lake Mead and Rock Springs, he ordered her to exit
22 the vehicle. E.H. ran until she was able to flag down a vehicle was called 911. E.H. was
23 transported to University Medical Center where she underwent a sexual assault examination.

24 In 2012, a CODIS hit matching the DNA in E.H.'s sexual assault kit and an unsolved
25 homicide from 1998. On October 10, 2016, the profile hit on Brandon McGuire (hereinafter
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2 DAN profile generated from the sperm fraction in E.H.'s sexual assault kit to the Defendant's
3 DNA. The probability of randomly selecting an unrelated individual from the general
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5 E.H.'s sexual assault kit is approximately 1 in 71.1 quintillion.

6 **ARGUMENT**

7 **I. This Court should DENY Defendant's Motion because the State has not**
8 **violated NRS 174.234, and intends to comply with the statute within 5 days of**
9 **trial**

10 NRS 174.234(1)(a)(2) requires that the State file a written notice regarding its (1)
11 witnesses names and (2) their last known addresses *not less than 5 judicial days before trial*.
12 (Emphasis added). Here, on March 13, 2020, the State filed its Notice of Witnesses, wherein
13 the addresses of E.H. and Gina Garcia are "c/o CCDA-SVU/VWAC" and "UNK." The State
14 intends to comply with the above statute and will provide notice to the Defendant not less than
15 5 days before trial, at the latest, April 13, 2020. However, anticipating that there could be
16 additional delays in all Clark County trials, the date of disclosure could foreseeably be a later
17 date.

18 Therefore, at this time, the Court should DENY Defendant's Motion because the State
19 has not violated NRS 174.234, and is fully aware of its obligations under this statute.

20 DATED this 6th day of April, 2020.

21 Respectfully submitted,

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

25 BY /s/ GENEVIEVE CRAGGS
26 GENEVIEVE CRAGGS
27 Deputy District Attorney
28 Nevada Bar #013469

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CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made through electronic
efile and serve this 6th day of APRIL, 2020, to:

KATHLEEN HAMERS, DPD
hamerskm@ClarkCountyNV.gov

BY /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

EXHIBIT "1"

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF ARREST

Event #: 161012-0665
I.D. #: 040341-1265
1265445

True Name: BRANDON ALEXANDER MCGUIRE Date of Arrest: 10/12/16 Dat Time of Arrest: 07:00

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 15 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 Kidnap 1st degree N.R.S 200.310, Sexual Assault with a Deadly weapon N.R.S 200.366 at the location of State Route 57 Clark County, and that the offense(s) occurred at approximately 1000 hours on the 11th day of March, 2004, in the:

☒ County of Clark

☐ City of Las Vegas

DETAILS FOR PROBABLE CAUSE:

On 3/11/2004, Jane Doe 16-017 reported to the Las Vegas Metropolitan Police Department that she was kidnapped and sexually assaulted near State Route 57 and U.S. 95. Jane Doe 16-017 was transported to the University Medical Center where a sexual assault examination was conducted. Per the Sexual Assault Nurse Examiner (SANE), Jane Doe 16-017 sexual assault exam revealed evidence consistent with a sexual assault.

Detective M. Wilds P# 4957 responded to UMC and conducted an interview with Jane Doe 16-017. Jane Doe 16-017's is deaf and required the assistance of Sign Language interpreter, Caroline Bass. The following is a synopsis of that interview and is not verbatim. (See Transcripts for further.) Jane Doe 16-017 relayed that she was walking in the area of Lake Mead and Rock Springs when a white male adult driving a black Nissan Maxima pulled up and offered Jane Doe 16-017 a ride. Jane Doe 16-017 described the male as tall and slender with numerous acne scars on his face. Jane Doe 16-017 accepted and got into the Nissan Maxima. The white male adult identified himself as, "John" and offered to purchase food for Hicks. "John" drove to the Wendy's restaurant located at 6732 W. Cheyenne Ave, Las Vegas, Nevada. After purchasing food in the drive thru, "John" drove the vehicle north on U.S 95 towards Mount Charleston for approximately an hour. Jane Doe 16-017 described, once they were near Mount Charleston, "John" produced a large knife and held it to her face. "John" ripped off her clothes and inserted his fingers into her rectum. (Sexual Assault With A Deadly Weapon N.R.S 200.366 - count 1.) Jane Doe 16-017 explained, "John" exposed his penis and while holding the knife in one hand, forced

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.**

DETECTIVE LORA CODY

Print Declarant's Name

Declarant's Signature

P#

CONTINUATION REPORT

161012-0665

Event #: 048944-1253ID#: 1265445

his penis into her mouth. (Sexual Assault With A Deadly Weapon - count 2.) "John" then ejaculated into Jane Doe 16-017 mouth and on her face.

Once the assault was over, "John" began driving. Jane Doe 16-017 explained, "John" held her down in the seat, but she could feel the vehicle turning around. After approximately an hour, "John" returned to the area of Lake Mead and Rock Springs where he ordered Jane Doe 16-017 to exit the vehicle. Jane Doe 16-017 exited the vehicle, ran from the car and flagged down a female, who in turn, called 911.

Detective M. Wilds obtained video surveillance from the Wendy's restaurant at 6732 W. Cheyenne. The video shows a white male adult in a black Nissan Maxima. Jane Doe 16-017 can be seen in the passenger seat.

On 12/16/2055, Jane Doe 16-017 sexual assault kit was submitted to the LVMPD forensic laboratory for evidence. On 5/1/2012, a Combined DNA Index System matched the male DNA found in Jane Doe 16-017's sexual assault kit to that of an unsolved homicide under LVMPD event number 980506-1577. The homicide victim was identified as Annie Miller, D.O.B: 08/15/1962. The Clark County coroner ruled Miller's death as a homicide and the cause of death as blunt force trauma and manual strangulation. Also, the coroner determined that Miller had been sexually assaulted prior to her death.

On 10/10/2016, the LVMPD forensic laboratory was notified that both Jane Doe 16-017 and Annie Miller's sexual assault kit (s) was a Combined DNA Index System (CODIS) hit on a felony offender in Las Vegas, Nevada identified as, BRANDON ALEXANDER MCGUIRE D.O.B 4/21/1974 ID# 1265445.

On 10/11/16, Jane Doe 16-017 was contacted and a sequential photo line-up was conducted by Detective J. Stark P#13515. The sequential photo line-up contained a picture of McGuire and five other similarly situated individuals. Jane Doe 16-017 immediately identified McGuire as the white male who kidnapped and sexually assaulted her at knifepoint.

**Declarant must sign all page(s)
with an original signature.**

DETECTIVE LORA CODY*Print Declarant's Name**Declarant's Signature**P#*



MOT
DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR NO. 5674
KATHLEEN M. HAMERS, DEPUTY PUBLIC DEFENDER
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Telephone: (702) 455-4685
Facsimile: (702) 455-5112
HamersKM@clarkcountynv.gov
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,	)	CASE NO. C-16-319756-1
)	
v.	)	DEPT. NO. III
)	
BRANDON ALEXANDER MCGUIRE,)	
	)	DATE: July 27, 2021
Defendant,	)	TIME: 11:00 a.m.
)	

**MOTION TO STRIKE WITNESSES FOR FAILURE TO COMPLY
WITH N.R.S. 174.234 AND MOTION TO DISMISS**

COMES NOW, the Defendant, BRANDON ALEXANDER MCGUIRE, by and through KATHLEEN M. HAMERS, Deputy Public Defender and hereby requests that this Court GRANT the instant motion, strike the witnesses not properly noticed pursuant to N.R.S. 174.234, and DISMISS the instant case.

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 21st day of July, 2021.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/Kathleen M. Hamers
KATHLEEN M. HAMERS, #9049
Deputy Public Defender

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LAW AND ARGUMENT

Mr. McGuire is for trial to commence on Tuesday, July 27, at 11:00 a.m. The State has announced that it is ready to proceed to trial. However, the State has provided that the whereabouts of two of its witnesses are unknown. One of those witnesses is the alleged victim in this case. Because the State did not properly notice these witnesses, they should be stricken. Further, because the State cannot prove the case without its named victim, the case should be dismissed.

In this case, the State had originally filed a witness notice that did not provide address information for two witnesses, the alleged victim and another individual by the name of Gina Garcia. On March 26, 2020, the Defense filed a motion asking the Court to compel the State to comply with N.R.S. 174.234, or, in the alternative, to strike those witnesses. Exhibit A, Motion to Compel Compliance with N.R.S. 174.234, or, in the Alternative, to Strike Witnesses.

N.R.S. 174.234 (a)(2) requires that in a felony case, the State provide written notice containing the names and last known addresses of all witnesses the State intends to call at trial. That Statute contains a provision for withholding contact information for a witness. It states “[u]pon a motion by either party or the witness, the court shall prohibit disclosure to the other party of the address of the witness if the court determines that disclosure of the address would create a substantial threat to the witness.” N.R.S. 174.234(5). However, if disclosure is prohibited, “the court shall, upon the request of a party, provide the party . . . with an opportunity to interview the witness in an environment that provides for protection of the witness.” Id. There has been no request to withhold contact information in this case.

The State opposed Defense motion to comply with the statute. “[T]he State intends to comply with the above statute and will provide notice to the Defendant not less than 5 days before trial, at the latest.” Exhibit B, State’s Opposition at 3. The State asked the Court to deny the motion and provided that it “is fully aware of its obligations” under N.R.S. 174.234. 5 days before trial, would have been yesterday, July 20, 2021.

1 The Court ordered the State to comply with the statute but warned that if the State waited
2 until 5 days before trial, that could cause a delay. Exhibit C, Transcript of April 13, 2020
3 Calendar Call at 2-4.

4 Two weeks ago, on July 2, 2021, the State filed an updated witness list. Exhibit D,
5 State's Second Supplemental Notice of Witnesses and/or Expert Witnesses. The State provided
6 that the whereabouts of Gina Garcia, and, more importantly the named victim Evelyn Hicks,
7 were unknown. The State has failed to comply with N.R.S. 174.234 and as such those witnesses
8 should be stricken and prohibited from testifying at trial. Because of the State's position on
9 Defendant's previous motion to comply and the Court's ruling on the motion at that time.

10 Furthermore, because the State did not properly notice the named victim in this case, and,
11 because her whereabouts are unknown, and, because the State cannot prove the case without her,
12 the case should be dismissed.

13
14
15 DATED this 21st day of July, 2021.

16 DARIN F. IMLAY
17 CLARK COUNTY PUBLIC DEFENDER

18
19 By: /s/Kathleen M. Hamers
20 KATHLEEN M. HAMERS, #9049
21 Deputy Public Defender
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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 27th day of July, 2021, at 11:00 a.m., in District Court Department III.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

CERTIFICATE OF ELECTRONIC SERVICE

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
Motions@clarkcountynyda.com
 LINDSEY MOORS, Chief Deputy District Attorney
 E-mail: Lindsey.Moors@clarkcountynyda.com
 Attorney for Plaintiff, State of Nevada

5



1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 NIMA AFSHAR
6 Deputy District Attorney
7 Nevada Bar #14157
8 LINDSEY MOORS
9 Chief Deputy District Attorney
10 Nevada Bar #12232
11 200 Lewis Avenue
12 Las Vegas, Nevada 89155-2212
13 (702) 671-2500
14 Attorney for Plaintiff

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 THE STATE OF NEVADA,
12 Plaintiff,

13 -vs-

14 **BRANDON ALEXANDER MCGUIRE,**
15 **#1265445**
16 Defendant.

CASE NO: **C-16-319756-1**

DEPT NO: **III**

17 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO STRIKE WITNESSES**
18 **FOR FAILURE TO COMPLY WITH NRS 174.234 AND MOTION TO DISMISS**
19

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
21 District Attorney, through NIMA AFSHAR and LINDSEY MOORS, Deputies District
22 Attorney, and hereby submits the attached Points and Authorities in this State's Opposition to
23 Defendant's Motion To Strike Witnesses For Failure To Comply With NRS 174.234 And
24 Motion To Dismiss.

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

28 //

1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 On December 1, 2016, Brandon McGuire (hereinafter "Defendant"), was charged by
4 way of Indictment with two counts of SEXUAL ASSAULT WITH USE OF A DEADLY
5 WEAPON (Category A Felony - NRS 200.364, 200.366, 193.165 - NOC 50097). On January
6 9, 2017, Defendant pleaded not guilty.

7 Defendant's jury trial is currently set for July 26, 2021. At calendar call on July 19,
8 2021, both sides announced ready. Again, at the central calendar call on July 21, 2021, both
9 sides announced ready. Defendant filed the instant Motion to Strike Witnesses for Failure to
10 Comply with NRS 174.234 and Motion to Dismiss ("Motion") after the central calendar call
11 on July 21, 2021.¹ The State responds herein.

12 ARGUMENT

13 In this case, Defendant challenges the notice of two witnesses, Evelyn Hicks, the named
14 victim, and Gina Garcia, a custodian of records for Wendy's, and requests that the case be
15 dismissed because an address was not provided for these witnesses.

16 NRS 174.234 sets for the obligations of the parties in a criminal proceeding regarding
17 the notice of witnesses:

18 1. Except as otherwise provided in this section, not less than 5
19 judicial days before trial or at such other time as the court
directs:

20 (a) If the defendant will be tried for one or more
21 offenses that are punishable as a gross
misdemeanor or felony:

22 (1) The defendant shall file and serve upon the
23 prosecuting attorney a written notice containing the
24 names and last known addresses of all witnesses the
defendant intends to call during the case in chief of
the defendant; and

25
26 ¹ All parties were present at calendar call on Monday, July 19, 2021, and at the central calendar call on Wednesday, July
27 21, 2021. Defendant announced ready for trial on both occasions, and at no point did Defendant mention that he would
28 be undertaking additional litigation related to the Notice of Witnesses that would potentially necessitate a continuance.
(The instant Motion was emailed to the State immediately after the central calendar call.) As indicated above, the State
does not have an address for the victim but, although not required by statute, would have been willing to provide any
information it did have or, in the alternative, to arrange a meeting with the victim, if Defendant had raised the issue at
either of the two calendar calls this week.

1 (2) The prosecuting attorney shall file and serve
2 upon the defendant a written notice containing the
3 names and last known addresses of all witnesses the
prosecuting attorney intends to call during the case
in chief of the State.

4 “Although the law favors allowing even late-disclosed witnesses to testify in criminal
5 cases, courts should exclude an undisclosed witness if the State's failure to notice that witness
6 or the content of the witness's testimony constitutes bad faith[.]” Turner v. State, 136 Nev.
7 Adv. Op. 62, 473 P.3d 438, 446–47 (2020) (internal citations omitted). However, where there
8 is no showing of bad faith, dismissal is not a proper remedy. See State v. Tapia, 108 Nev. 494,
9 497, 835 P.2d 22, 24 (1992) (holding that, “where the State's non-compliance with a discovery
10 order is inadvertent and the court takes appropriate action to protect the defendant against
11 prejudice,” dismissal is not justified); Lopez v. State, 105 Nev. 68, 77–79, 769 P.2d 1276
12 (1989) (holding that a mistrial was not warranted where there was no showing of bad faith or
13 the intentional withholding of evidence); Langford v. State, 95 Nev. 631, 635–36, 600 P.2d
14 231, 234–35 (1979) (absent showing of bad faith by State or unalleviated prejudice to the
15 defendant, trial court properly denied motion for mistrial); Maginnis v. State, 93 Nev. 173,
16 176, 561 P.2d 922, 923 (1977) (holding that there was no error where State’s non-compliance
17 with a discovery statute was inadvertent rather than willful or deliberate).

18 **Victim E.H.**

19 In this case, the claim is not that the victim herself was not noticed,² but rather that the
20 State failed to provide an address to complete the Notice.

21 The State cannot provide information it does not have. As detailed in the attached
22 Affidavit, see Exhibit 1, the State does not have a residential address for the named victim.
23 Instead, the State has contacted the victim through phone or by tracking down friends and
24 relatives and asking them to have the victim contact the State. In fact, although the State
25 anticipated being ready for trial, the named victim was not served with a subpoena until July
26 20, 2021, just one day before the writing of this Opposition. Even after meeting with her, the
27 State still does not have a residential address for the victim. While the State is not required to

28 ² The State notes that Defendant has received copies of prior transcripts, the victim’s statements, and the reports in this case, and is therefore aware of the contents of E.H.’s testimony.

1 do so, the State will arrange for Defendant to conduct a pretrial with the named victim at the
2 Clark County Office of the District Attorney.

3 **COR Gina Garcia**

4 The State does have an address for Gina Garcia and the address should have been
5 included on the Notice of Witnesses. However, any omission was inadvertent and not an act
6 of bad faith. The State made no attempt to hide who Gina Garcia was or where to find her.
7 Gina Garcia is the custodian of records for Wendy's. On July 8, 2019, the State provided a
8 report discussing Ms. Garcia's role and attempts to locate surveillance video that had been
9 retrieved from Wendy's. See Exhibit 2. (The surveillance video was later located.) The
10 Officer's Report referenced in the transcript clearly indicates that Gina Garcia was the District
11 Manager for Wendy's and previously managed the Wendy's location on Cheyenne. See
12 Exhibit 3. The report also provided a contact number for Wendy's corporate offices, which
13 the detective used to find Ms. Garcia.

14 The State's failure to provide addresses for noticed witnesses did not constitute bad
15 faith. In the case of E.H., the State did not (and does not) have the information Defendant
16 seeks, but would have provided it if it had it. Nonetheless, the State is willing to arrange a
17 pretrial with E.H. so that Defendant's concerns can be satisfied. In the case of Gina Garcia,
18 the failure to provide an address for her on the Notice of Witnesses was inadvertent. However,
19 the discovery provided to Defendant makes it clear that she is the Custodian of Records for
20 Wendy's. The Wendy's at issue is identified in the discovery that Defendant received.

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CONCLUSION

Based on the foregoing, the State respectfully requests that Defendant's Motion be DENIED.

DATED this day of July, 2021.

Respectfully submitted,

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

BY /s/ Linsdev Moors
LINDSEY MOORS
Chief Deputy District Attorney
Nevada Bar #012232

BY /s/ Nima Afshar
NIMA AFSHAR
Deputy District Attorney
Nevada Bar #014157

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 21st day of JULY 2021, to:

KATHLEEN HAMERS, DPD
hamerskm@clarkcountynv.gov

BY /s/ Howard Conrad
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

EXHIBIT "1"

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9. On 7/19, though our text conversation, I learned the victim would need transportation to/from our office to meet with us. She provided me an incomplete address that did not have an apt# attached.

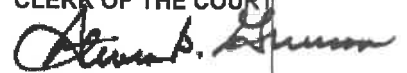
10. To date, I do not have a complete address for the victim.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on 07/21/2021
(Date)

/s/ Jocelyn Scroggins
JOCELYN SCROGGINS
Investigator II
CCDA-SVU

EXHIBIT "2"



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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,) CASE NO.: C-16-319756-1
9 Plaintiff,) DEPT. XIX
10 vs.)
11 BRANDON ALEXANDER)
12 MCGUIRE,)
13 Defendant.)

14 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE
15 MONDAY, JULY 8, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING RE:**
17 **STATUS CHECK: TRIAL SETTING**

18 APPEARANCES:

19 For the Plaintiff: MICHELLE L. SUDANO, ESQ.
20 Deputy District Attorney

21 For the Defendant: KATHLEEN M. HAMERS, ESQ.
22 Deputy Public Defender

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25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

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Las Vegas, Nevada; Monday, July 8, 2019

[Hearing commenced at 9:00 a.m.]

THE COURT: State of Nevada versus Brandon Alexander McGuire. This is C319756.

MS. HAMERS: Good morning, Your Honor.

THE COURT: Good morning. This is on for -- are we going to set a trial on this matter or what are we doing?

MS. HAMERS: Well -- so a couple things I have been told by the State, I'm told they're still working on getting the SANE report to us. I'd be more comfortable setting a trial date once I have that. It's been a long time that --

THE COURT: Okay.

MS. HAMERS: -- we've been waiting for it. And --

THE COURT: Well that's a concern I have is that if we go ahead and set it now and the State is not diligent in getting the information that you need, then I doubt that the Court would be granting any relief for them --

MS. HAMERS: I understand.

THE COURT: -- in light of the time frame that we were dealing with. I understand the concern the State has too, I do. But so -- whatever you want to do Ms. Hamers. I'm putting it in your court this time.

MS. HAMERS: Then I'm going to ask this time that we go ahead and continue it out until the end of August for another status --

1 THE COURT: Okay. All right.

2 MS. HAMERS: -- check.

3 THE COURT: What if nothing happens by then?

4 MS. HAMERS: Well, the reason that I'm picking that date is
5 because he still has an outstanding offer in his other case that --

6 THE COURT: Okay.

7 MS. HAMERS: -- that concludes this case. So I feel like
8 before we do anything here --

9 THE COURT: All right.

10 MS. HAMERS: -- we could see what happens.

11 THE COURT: Are you okay with that, Mr. McGuire?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: State?

14 MS. SUDANO: Yes, Your Honor.

15 THE COURT: All right.

16 MS. SUDANO: And good morning, Michelle Sudano for the
17 State. We have requested --

18 THE COURT: I know.

19 MS. SUDANO: -- the SANE report. It's my understanding it's
20 in storage. The nurse has to go and track it down. She hasn't been
21 able to do that yet. And then there was some updated information
22 provided on the surveillance video. It doesn't appear that we're going to
23 be able to recover the surveillance video and I've provided an Officers
24 Report to Counsel this morning.

25 MS. HAMERS: That's right.

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THE COURT: Okay. One month.

MS. HAMERS: Could we possibly -- I'm sorry, go ahead.

THE COURT CLERK: I'm looking at August 26th --

MS. HAMERS: That's what I was going to ask for. Thank
you.

THE COURT: Okay.

THE COURT CLERK: -- at 8:30.

THE COURT: All right.

MS. HAMERS: Thank you.

THE COURT: Ms. Hamers, is that all you have?

MR. HAMERS: That is. Thanks a lot.

THE COURT: All right.

[Hearing concluded at 9:01 a.m.]

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



Brittany Amoroso
Court Recorder/Transcriber

EXHIBIT "3"

OFFICER'S REPORT

["Click to Edit Event# on ALL Pages"](#)Event #: **040311-1253**["Click to Edit Date/Time of Report"](#)**"PRINT"**

Cold Case Follow Up for Surveillance Video

SUBJECT

DIVISION
REPORTING: Homicide & Sex Crimes DetailDIVISION OF
OCCURRENCE: X-5DATE & TIME
OCCURRED: 03-11-2018/ 1000 HoursLOCATION OF
OCCURRENCE: Sr/57 Unk Miles W Us/95, Las Vegas, NVNARRATIVE:

I, Detective L. Salavessa-Cho P# 7073, conducted follow up to a Cold Case Sexual Assault (Event # 040311-1253) pertaining to a copy of the video surveillance footage from Wendy's restaurant located at 6732 West Cheyenne Avenue, Las Vegas, Nevada. A Detective M. Wilds P# 4957, was assigned to the initial investigation in 2004. Det. Wilds is currently retired from LVMPD. A review of the case file was completed. All electronic databases for documentation of an evidentiary copy of the Wendy's video by Det. Wilds were checked and were negative for a copy of the video. Located in the case file was a copy of a handwritten note regarding the retention of the Wendy's surveillance video signed by a "Bob Barley" or "Bailey" and a phone number. In the note he wrote there would be a copy of the video retained at his "office".

Contact was made with Det. Wilds. Det. Wilds recalled the incident, but couldn't offer further information regarding a copy of the video from Wendy's. Contact was made with Wendy's corporate office (614-764-3100). Several corporate personal were contacted who had referred me to a Boyd Johannes. Johannes informed me some of the Las Vegas locations were sold to another corporation and the whereabouts of any of the records were unknown to him. Johannes referred me to Mike Kareem who was part of their legal department. Contact was made with Kareem who advised the District Manager was currently a Gina Garcia who had previously dealt with managing the Wendy's location on Cheyenne Avenue around 2004.

Contact was made with Garcia who advised there were some records retained from the Cheyenne location from 2004 and were kept in storage. Garcia stated she would physically check the location of these records and see if she can locate a copy of the surveillance video.

Date and Time of Report: 08-15-2018/ 0700 HoursOfficer: L. Salavessa-ChoP#: 7073Approved By: Sgt. Comisky

Officer: _____

P#: _____

SIGNATURE: _____

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 040311-1253

Garcia was asked about "Bob Barley" or a "Bob Bailey". Garcia was familiar with the employee and confirmed his name was "Robert Bailey" and he was in their Human Resources department in 2004. Garcia was asked if there was any information regarding Bailey which would assist in locating him. Garcia offered an approximate age, 60 to 70 years old currently, and he was described as a white male. Garcia stated further information could be obtained from Kareem. Kareem was contacted and stated the best person to contact would be Garcia.

On 08-29-2018, Garcia advised the mentioned storage area was checked and was negative. Garcia recalled another location where the video may be and the area checked negative as well. The Clark County District Attorney's office was advised of the results of the follow up and provided a signed copy of this Officers Report.



ROPP

DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR NO. 5674
KATHLEEN M. HAMERS, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 9049
PUBLIC DEFENDERS OFFICE
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Facsimile: (702) 455-5112
HamersKM@clarkcountynv.gov
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

BRANDON ALEXANDER MCGUIRE,

Defendant,

CASE NO. C-16-319756-1

DEPT. NO. III

DATE: July 26, 2021

TIME: 8:30 a.m.

**DEFENDANT'S REPLY TO STATE'S OPPOSITION TO
MOTION TO STRIKE WITNESSES AND DISMISS CASE**

COMES NOW, the Defendant, BRANDON ALEXANDER MCGUIRE, by and
through KATHLEEN M. HAMERS, Deputy Public Defender and hereby submits the following
reply.

DATED this 22nd day of July, 2021.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/Kathleen M. Hamers
KATHLEEN M. HAMERS, #9049
Deputy Public Defender

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

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

/s/Kathleen M. Hamers
KATHLEEN M. HAMERS

LAW AND ARGUMENT

1. The prosecutor arranging a meeting does not satisfy the witness notice statute.

Had the State wanted to withhold the contact information for the alleged victim, it would need to request to do so by motion and it is the Court, not the State, that would arrange for a meeting upon request. NRS 174.234 (5) provides:

Upon a motion by either party or the witness, the court shall prohibit disclosure to the other party of the address of the witness if the court determines that disclosure of the address would create a substantial threat to the witness of bodily harm, intimidation, coercion or harassment. If the court prohibits disclosure of an address pursuant to this subsection, the court shall, upon the request of a party, provide the party or the party's attorney or agent with an opportunity to interview the witness in an environment that provides for protection of the witness.

This is something the State needs to move for from the Court. It cannot take it upon itself to not disclose address information and instead offer to arrange for a meeting. The State has not moved for this exception to the disclosure required by NRS 174.234. There is no provision in the Statute to withhold the information sua sponte and then offer a meeting.

Additionally, when the Defense requested, and the Court ordered, that the State comply with the Statute, the State asserted that it would do so. A meeting in lieu of notice is not the issue nor the remedy in this case.

2. The State has acted in bad faith.

The State initially noticed the alleged victim in this case without complying with NRS 174.234. The State noticed the witness "c/o CCDA." The Defense filed a motion asking the Court to order compliance or strike the witness. The State asserted that it would provide the information within 5 days of trial. It didn't do so. Additionally, now this week, it announced ready on a case where it did not have service and/or contact information for the alleged victim, without sharing that with the Court or the Defense. The State's failure to comply with the statute was not inadvertent. It was intentional and in bad faith.

1 3. The cases cited by the State do not support allowing the not properly noticed witnesses to
2 testify here.

3
4 The State cites to Turner v. State, 473 P.3d 438 (2020) in support of allowing its witnesses to
5 testify. In Turner, the Court found that the District Court abused its discretion in allowing a
6 firearms expert to testify to an area of expertise not disclosed on the State's notice and not
7 disclosed on the expert's CV. The statement, "[t]he law favors allowing even late disclosed
8 witnesses to testify in criminal cases" in Turner, actually comes Samson v. State, 121 Nev. 820
9 (2005). There, the Court said:

10 When addressing discovery violations, the district court must be cognizant that
11 defendants have the constitutional right to discredit their accuser, and this right
12 can be but limitedly circumscribed. **Therefore, to protect this constitutional**
13 **right, there is a strong presumption to allow the testimony of even late-**
14 **disclosed witnesses.** Samson at 827 (emphasis added, internal quotations
omitted).

15 Samson is addressing protecting the right to confrontation, it is not applicable to the State's
16 argument that it should be allowed to call its witnesses. The District Court's decision not to
allow the improperly noticed testimony was also upheld in that case.

17 The State cites to Tapia to say, "where the State's non-compliance with a discovery order
18 is inadvertent and the court takes appropriate action to protect the defendant against prejudice,
19 there is no error justifying dismissal of the case." State v. Tapia, 108 Nev. 494, 497 (1992). In
20 Tapia, the State failed to disclose a document and the Supreme Court held that dismissal was an
21 extreme and unwarranted remedy. Here, the remedy sought for the State's failure to comply
22 with the notice statute is that the Court exclude the witness that is not properly noticed. The
23 dismissal is simply the practical consequence because it is the alleged victim that was not
24 properly noticed. It is not comparable to Tapia where the State failed to disclose a document and
25 the case was dismissed for the discovery violation.

26 Likewise, Lopez v. State, 105 Nev. 68 (1989) (psychiatric reports); Langford v. State, 95
27 Nev. 631 (1979) (mug shot books); and State v. Maginnis, 93 Nev. 173 (1977), all concerned a
28

1 failure to provide discovery, and analyzed whether dismissal was warranted because of the
2 discovery violation. A more comparable scenario would be whether those Courts should *exclude*
3 the late disclosed discovery, as the Defense is asking this Court to *exclude* the not properly
4 noticed witnesses. As noted in Maginnis, exclusion is a proper remedy and in fact authorized by
5 statute for a discovery violation pursuant to NRS 174.295. Maginnis at 176 note 3. Again, the
6 dismissal here is the inevitable result of the witness exclusion, it is not being requested as a
7 remedy for failing to properly notice the witnesses. The remedy sought here is for the Court to
8 properly exclude the witnesses.

10 CONCLUSION

11 Based on the State's previous position that it would comply with the statutory notice
12 requirements at least five days prior to trial, and the Court's order that they do so, the Defense
13 did not have grounds to move to strike the witnesses until that 5 day deadline had passed.

14 The Defense is not responsible for asking the State to comply with its statutory
15 obligations which must be met in order to call witnesses at trial. Nevertheless, the Defense
16 "raised the issue" as the State claims the Defense should have done at calendar call when filing a
17 motion to comply with the statute in April of last year. The Defense has no obligation to ask the
18 State to follow the law as it pertains to noticing its witnesses, and certainly isn't required to do so
19 several times.

20 The State's failure to comply with the law is not cured by a continuance or arranging a
21 meeting with the witness. The State has not complied with the statutory requirements it must
22 satisfy to call a witness at trial. The State should be prohibited from calling these witnesses.

23
24 DATED this 22nd day of July, 2021.

25 DARIN F. IMLAY
26 CLARK COUNTY PUBLIC DEFENDER

27 By: /s/Kathleen M. Hamers
28 KATHLEEN M. HAMERS, #9049
Deputy Public Defender

1 **CERTIFICATE OF ELECTRONIC SERVICE**

2 I hereby certify that service of DEFENDANT’S REPLY TO STATE’S OPPOSITION
3 TO MOTION TO STRIKE WITNESSES AND MOTION TO DISMISS CASE, was made this
4 22nd day of July, 2021, by Electronic Filing service to:

5 CLARK COUNTY DISTRICT ATTORNEY’S OFFICE
6 Motions@clarkcountyda.com

7 LINDSEY MOORS, Chief Deputy District Attorney
8 E-Mail: Lindsey.Moors@clarkcountyda.com

9 By: /s/ Sara Ruano
10 Sara Ruano
11 Secretary for the Public Defender’s Office



1 **EXHS**
2 DARIN F. IMLAY,
3 CLARK COUNTY PUBLIC DEFENDER
4 NEVADA BAR NO. 5674
5 KATHLEEN HAMERS, DEPUTY PUBLIC DEFENDER
6 NEVADA BAR NO. 9049
7 **PUBLIC DEFENDER'S OFFICE**
8 309 South Third Street, Suite 226
9 Las Vegas, Nevada 89155
10 Telephone: (702) 455-4685
11 Facsimile: (702) 471-1527
12 E-Mail: HamersKM@clarkcountynv.gov
13 Attorneys for Defendant

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

10 THE STATE OF NEVADA,)	
)	
11 Plaintiff,	)	CASE NO. C-16-319756-1
)	
12 v.	)	DEPT. NO. III
)	
13 BRANDON ALEXANDER MCGUIRE,	)	DATE OF HEARING: July 27, 2021
	)	TIME: 11:00 a.m.
14 Defendant.)	
15)	

16 **EXHIBITS TO DEFENDANT'S MOTION TO STRIKE WITNESSES FOR FAILURE**
17 **TO COMPLY WITH N.R.S. 174.234 AND MOTION TO DISMISS**

18
19
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21
22 DATED this 22nd day of July, 2021.

23 DARIN F. IMLAY
24 CLARK COUNTY PUBLIC DEFENDER

25
26 By: /s/ Kathleen M. Hamers
27 KATHLEEN M. HAMERS, #9049
28 Deputy Public Defender

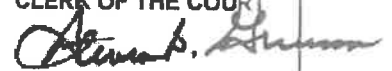
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CLARK COUNTY DISTRICT ATTORNEY'S OFFICE
Motions@clarkcountyda.com

LINDSEY MOORS, Chief Deputy District Attorney
 E-Mail: Lindsey.Moors@clarkcountyda.com

By: /s/ Sara Ruano
Sara Ruano
Secretary for the Public Defender's Office

Exhibit A



MOT
DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR NO. 5674
KATHLEEN M. HAMERS, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 9049
PUBLIC DEFENDERS OFFICE
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Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
HamersKM@clarkcountynv.gov
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,	)	CASE NO. C-16-319756-1
)	
v.	)	DEPT. NO. XIX
)	
BRANDON ALEXANDER MCGUIRE,)	
	)	DATE: April 15, 2020
Defendant,	)	TIME: 8:30 a.m.

**MOTION TO COMPEL COMPLIANCE WITH N.R.S. 174.234 OR, IN THE
ALTERNATIVE, TO STRIKE WITNESSES**

COMES NOW, the Defendant, BRANDON ALEXANDER MCGUIRE, by and through KATHLEEN M. HAMERS, Deputy Public Defender and hereby requests that this Court compel the State of Nevada to comply with N.R.S. 174.234. or, in the alternative, strike State's witnesses.

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 26th day of March, 2020.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/Kathleen M. Hamers
KATHLEEN M. HAMERS, #9049
Deputy Public Defender

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

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

/s/Kathleen M. Hamers
KATHLEEN M. HAMERS

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FACTUAL ALLEGATIONS

Brandon McGuire is charged with sexual assault for allegedly engaging in non-consensual fellatio and digital penetration with the alleged victim in 2004. The alleged victim was asked to identify McGuire in a photographic lineup in 2016.

At the Grand Jury presentation, the State presented the alleged victim's allegations and her identification of Mr. McGuire via photograph. According to the Arrest Report in this case, there was a DNA match found between the alleged victim's sexual assault kit and Mr. McGuire. That match was found in 2016. The instant case is set for trial on April 20, 2020.

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ARGUMENT

N.R.S. 174.234 (a)(2) requires that in a felony case, the State provide written notice containing the names and last known addresses of all witnesses the State intends to call at trial. That Statute contains a provision for withholding contact information for a witness. It states "[u]pon a motion by either party or the witness, the court shall prohibit disclosure to the other party of the address of the witness if the court determines that disclosure of the address would create a substantial threat to the witness." N.R.S. 174.234(5). However, if disclosure is prohibited, "the court shall, upon the request of a party, provide the party . . . with an opportunity to interview the witness in an environment that provides for protection of the witness.

In this case, the State has not disclosed address information for two witnesses. "E.H." and "Gina Garcia." The State has not sought a ruling from the Court allowing the State to keep this information from the Defense. The Defense requests that the Court order the State comply with N.R.S. 174.234, or, in the alternative, that those witnesses be prohibited from testifying at trial.

1 **CONCLUSION**

2 For the foregoing reasons, the Defense request that this Court grant the instant motion
3 and order the State comply with N.R.S. 174.234, or, in the alternative, that those witnesses be
4 prohibited from testifying at trial.
5

6
7 DATED this 26th day of March, 2020.

8 DARIN F. IMLAY
9 CLARK COUNTY PUBLIC DEFENDER

10
11 By: /s/Kathleen M. Hamers
12 KATHLEEN M. HAMERS, #9049
13 Deputy Public Defender
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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 15th day of April, 2020, at 8:30 a.m.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

CERTIFICATE OF ELECTRONIC SERVICE

By: /s/ Sara Ruano
An employee of the
Clark County Public Defender's Office

Exhibit B



1 **OPPS**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **GENEVIEVE CRAGGS**
6 **Deputy District Attorney**
7 **Nevada Bar #013244**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

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

10 **THE STATE OF NEVADA,**
11 **Plaintiff,**

12 **-vs-**

13 **BRANDON ALEXANDER MCGUIRE,**
14 **#1265445**

15 **Defendant.**

CASE NO: C-16-319756-1

DEPT NO: XIX

16
17 **STATE'S OPPOSITION TO DEFENDANT'S MOTION**
18 **TO COMPEL COMPLIANCE WITH NRS 174.234**

19 **DATE OF HEARING: APRIL 20, 2020**
20 **TIME OF HEARING: 8:30 AM**

21 **COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County**
22 **District Attorney, through GENEVIEVE CRAGGS, Deputy District Attorney, and hereby**
23 **submits the attached Points and Authorities in this State's Opposition to Defendant's Motion**
24 **To Compel Compliance With NRS 174.234.**

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

28 **//**

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On December 1, 2016, Brandon McGuire (hereinafter "Defendant"), was charged by
4 way of Indictment with two counts of SEXUAL ASSAULT WITH USE OF A DEADLY
5 WEAPON (Category A Felony - NRS 200.364, 200.366, 193.165 - NOC 50097). On January
6 9, 2017, Defendant pleaded not guilty. Defendant's jury trial is currently set for April 20, 2020.
7 Defendant filed the instant motion on March 26, 2020.

8 **STATEMENT OF THE FACTS**

9 On March 11, 2004, E.H. reported to Las Vegas Metropolitan Police Department
10 (hereinafter "LVMPD") that was kidnapped and sexually assaulted near State Route 57 and
11 U.S. 95.¹ E.H. was walking in the area of Lake Mead and Rock springs when a white male
12 adult driving a black Nissan Maxima pulled up and offered to give he a ride. She accepted
13 and got into the vehicle. The man identified himself as "John" and offered to purchase food
14 for her. He drove to a Wendy's located at 6732 W. Cheyenne Avenue.

15 After purchasing food, he drove north on U.S. 95 towards Mount Charleston for
16 approximately an hour. When they neared Mount Charleston, the man produced a large knife
17 and held it to her face. He tipped off her clothes and inserted his fingers into her rectum.
18 While holding the knife, he then forced his penis into her mouth. He ejaculated in her mouth
19 and on her face.

20 Once he was finished, he held E.H. down in the seat and drove for approximately an
21 hour. When they returned to the area of Lake Mead and Rock Springs, he ordered her to exit
22 the vehicle. E.H. ran until she was able to flag down a vehicle was called 911. E.H. was
23 transported to University Medical Center where she underwent a sexual assault examination.

24 In 2012, a CODIS hit matching the DNA in E.H.'s sexual assault kit and an unsolved
25 homicide from 1998. On October 10, 2016, the profile hit on Brandon McGuire (hereinafter
26 "Defendant"). On October 11, 2016, a photo line-up was conducted with E.H. She
27 immediately identified Defendant as the male who had kidnapped and sexually assaulted her.

28

¹ State of Facts taken from LVMPD Declaration of Arrest attached as Exhibit 1.

1 In December 2019, LVMPD Forensic Laboratory completed the comparison of the
2 DAN profile generated from the sperm fraction in E.H.'s sexual assault kit to the Defendant's
3 DNA. The probability of randomly selecting an unrelated individual from the general
4 population having a DNA profile that is consistent with the major DNA profile obtained from
5 E.H.'s sexual assault kit is approximately 1 in 71.1 quintillion.

6 **ARGUMENT**

7 **I. This Court should DENY Defendant's Motion because the State has not**
8 **violated NRS 174.234, and intends to comply with the statute within 5 days of**
9 **trial**

10 NRS 174.234(1)(a)(2) requires that the State file a written notice regarding its (1)
11 witnesses names and (2) their last known addresses *not less than 5 judicial days before trial*.
12 (Emphasis added). Here, on March 13, 2020, the State filed its Notice of Witnesses, wherein
13 the addresses of E.H. and Gina Garcia are "c/o CCDA-SVU/VWAC" and "UNK." The State
14 intends to comply with the above statute and will provide notice to the Defendant not less than
15 5 days before trial, at the latest, April 13, 2020. However, anticipating that there could be
16 additional delays in all Clark County trials, the date of disclosure could foreseeably be a later
17 date.

18 Therefore, at this time, the Court should DENY Defendant's Motion because the State
19 has not violated NRS 174.234, and is fully aware of its obligations under this statute.

20 DATED this 6th day of April, 2020.

21 Respectfully submitted,

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

24
25 BY /s/ GENEVIEVE CRAGGS
26 GENEVIEVE CRAGGS
27 Deputy District Attorney
28 Nevada Bar #013469

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CERTIFICATE OF SERVICE

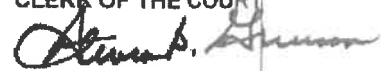
I hereby certify that service of the above and foregoing was made through electronic efile and serve this 6th day of APRIL, 2020, to:

KATHLEEN HAMERS, DPD
hamerskm@ClarkCountyNV.gov

BY /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU

Exhibit C



1 RTRAN

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DISTRICT COURT
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

CASE NO.: C-16-319756-1

9

Plaintiff,

DEPT. XIX

10

vs.

11

BRANDON ALEXANDER
MCGUIRE,

12

Defendant.

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14

BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE

15

MONDAY, APRIL 13, 2020

16

**RECORDER'S TRANSCRIPT OF HEARING RE:
CALENDAR CALL**

17

18

APPEARANCES:

19

For the Plaintiff:

PARKER P. BROOKS, ESQ.
Deputy District Attorney

20

21

For the Defendant:

KATHLEEN M. HAMERS, ESQ.
SHANA S. BROUWERS, ESQ.
Deputy Public Defenders

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RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

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Las Vegas, Nevada; Monday, April 13, 2020

[Hearing commenced at 10:34 a.m.]

THE COURT: State of Nevada versus Brandon McGuire.
This is C319756.

MS. HAMERS: Good morning, Your Honor. Kathleen
Hamers with --

THE COURT: Okay.

MS. HAMERS: -- Shana Brouwers on his behalf.

THE COURT: All right. This is on for calendar call. I also
have --- it's scheduled for hearing on April 20th. Do the parties -- is the
State ready to address these motions?

MR BROOKS: No. It's Ms. Craggs' case.

THE COURT: Okay. All right.

MR. BROOKS: I was just here to get new dates.

THE COURT: Well, the one that I do want to address though
is you filed a motion to compel compliance with NRS 174.234 or to strike
it.

MS. HAMERS: Mm-hmm.

THE COURT: And is there anything particularly special about
-- I mean, I know who the witnesses are based on your motion, but is
there anything particularly special that I -- that I need to order something
beyond the statute? Because it -- their -- I mean, their response is is
that they have five days prior and that's basically what they're saying, so
--

1 MS. HAMERS: I -- no. There's nothing that -- special --

2 THE COURT: Okay.

3 MS. HAMERS: -- besides compliance with the statute. And I,
4 you know, we file them ahead of time because --

5 THE COURT: Okay.

6 MS. HAMERS: -- if I wait till five days, that's --

7 THE COURT: Okay.

8 MS. HAMERS: -- not helpful to us, but --

9 THE COURT: Well that's why I'm saying, that I -- no, no, I
10 understand that --

11 MS. HAMERS: Yeah.

12 THE COURT: -- but that's --

13 MS. HAMERS: So be it.

14 THE COURT: You know, that -- it -- statutorily, I mean, if you
15 had something saying, hey, we're concerned about this one or --

16 MS. HAMERS: I just --

17 THE COURT: -- this one witness, I don't think we can find. I
18 need more extra time or -- I will tell the State though --

19 MS. HAMERS: I think that's where I'll be at five days.

20 THE COURT: Okay. I'll tell the State this, that if that
21 happens, I mean -- I'm telling the State to comply -- I'm dealing with that
22 motion now. I am going to require the State to comply with that;
23 however the State needs to recognize that there may be -- it may cause
24 a delay in this in light of the -- the defense may say, hey, we just got this
25 notice and we weren't able to find anybody in the time frame that we had

1 -- that type of thing.

2 MR. BROOKS: Judge, I don't know that NRS statute on the
3 top of my head.

4 THE COURT: It's -- there's a five day --

5 MS. HAMERS: Is a witness notice.

6 THE COURT: -- requirement --

7 MR. BROOKS: Oh, it's just a notice. Okay.

8 THE COURT: -- on witnesses -- notice.

9 MS. HAMERS: A witness notice.

10 THE COURT: It's just a notice. So, yeah. I can't believe you
11 wouldn't know that.

12 MR. BROOKS: My fault.

13 THE COURT: Okay. So, okay, so that's where I'm at with
14 that one.

15 MS. HAMERS: Okay.

16 THE COURT: I'm going to require the State to comply with it,
17 but caveat here is that I can anticipate that there may be some issues
18 and I'll deal with them if it comes up, all right Ms. Hamers?

19 MS. HAMERS: Thank you.

20 THE COURT: That's all I can tell you.

21 So, are you -- are we ready to go on this?

22 MS. HAMERS: Yeah, we -- I mean, if -- in theory, if we had
23 juries, we would be --

24 THE COURT: Yeah, I know.

25 MS. HAMERS: -- ready to go on them.

1 THE COURT: Well we're not -- the problem is is that we're
2 not.

3 MS. HAMERS: I know. And I spoke to Mr. McGuire and he
4 understands the circumstance that we're in. We're asking to --

5 THE COURT: Yeah.

6 MS. HAMERS: -- reset it for now what is the --

7 THE COURT: If you wanted to do a bench trial, I could --

8 MS. HAMERS: We don't want --

9 THE COURT: -- accommodate you there.

10 MS. HAMERS: -- a bench trial.

11 THE COURT: Oh, okay.

12 MS. HAMERS: I appreciate it though.

13 THE COURT: Okay.

14 MS. HAMERS: And I did -- I spoke to Mr. McGuire about that
15 as well.

16 THE COURT: Okay, all right. Okay. So, all right, so I'm
17 going to vacate the trial that's scheduled for the 20th and reschedule it
18 then.

19 THE COURT CLERK: All right. I'm -- the pretrial conference
20 is going to be June 3rd at 8:30, calendar call is June 24th at 8:30 and the
21 trial day will be July 6th at 10:00 a.m.

22 THE COURT: Okay.

23 MS. HAMERS: And then the other two motions in limine, do
24 you want to just put them on the next calendar call? They're really just --

25 THE COURT: We can.

1 MS. HAMERS: -- they are motions in limine.

2 THE COURT: We can, yes. Just put them on the calendar
3 call.

4 THE COURT CLERK: Calendar call or the pretrial?

5 THE COURT: We can do it at the pretrial, Ms. Hamers.

6 MS. HAMERS: Yeah, that's fine.

7 THE COURT: So -- okay?

8 MR. BROOKS: And Judge, just so there's, you know,
9 because it's not my case and my notes are --

10 THE COURT: Mm-hmm.

11 MS. HAMERS: I'll let her know which --

12 MR. BROOKS: -- will be clear.

13 MS. HAMERS: -- ones those are.

14 MR. BROOKS: Given that the trial date is vacated and
15 moved, NRS 174.234 would only apply for five days before that new trial
16 --

17 THE COURT: Trial. Mm-hmm.

18 MR. BROOKS: -- not -- there's no like --

19 THE COURT: Right.

20 MR. BROOKS: Okay.

21 THE COURT: It's -- the statute reads trial, so -- unless there's
22 other reasons, and that's why I was asking Ms. Hamers to give --

23 MS. HAMERS: I understand.

24 THE COURT: -- me some alternative reason, so -- if
25 something happens, let us know and --

1 MS. HAMERS: I will.

2 THE COURT: -- you know, okay, all right. So here's the
3 dates.

4 THE COURT CLERK: It'll be June 3rd for the pretrial, June
5 24th for calendar call, and --

6 THE COURT: Okay.

7 THE COURT CLERK: -- July 6th for [indiscernible].

8 THE COURT: So, I'll hear the motions on June 3rd.

9 MS. HAMERS: Okay.

10 THE COURT: Okay. All right.

11 MS. HAMERS: Thank you.

12 THE COURT: Thank you. All right. Okay, thanks Ms.
13 Hamers.

14 All right. Thank you Mr. McGuire. Okay.

15 [Hearing concluded at 10:38 a.m.]

16 *****

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed
22 the audio/video proceedings in the above-entitled case to the best of my
23 ability.

23

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Brittany Amoroso
Court Recorder/Transcriber

Exhibit D



SLOW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
LINDSEY MOORS
Chief Deputy District Attorney
Nevada Bar #012232
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-

BRANDON ALEXANDER MCGUIRE,
#1265445

Defendant.

CASE NO: C-16-319756-1

DEPT NO: III

STATE'S SECOND SUPPLEMENTAL NOTICE OF WITNESSES
AND/OR EXPERT WITNESSES
[NRS 174.234]

TO: BRANDON ALEXANDER MCGUIRE, Defendant; and

TO: KATHLEEN HAMERS, Deputy Public Defender, Counsel of Record:

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

***indicates additional witness(es) and/or modification(s)**

BASS, CAROLINE; CLARK COUNTY COURTS INTERPRETERS' OFFICE

CHO; LVMPD#07073

CODY; LVMPD#07294

COR or Designee; CCDC

COR or Designee; LVMPD COMMUNICATIONS

COR or Designee; LVMPD RECORDS

***COURT INTERPRETER or Designee; 200 Lewis Ave., LV, NV**

\\CLARKCOUNTYDA.NET\CRM\CASE2\201650605\201650605C-SLOW-(SECONDSUPPLEMENTAL)-001.DOCX

1 CULVER; LVMPD#05785

2 E.H.; c/o CCDA-SVU/VWAC

3 EBBERT, LINDA; S.A.N.E.; Will testify as an expert as to the nature, process and
4 limitations of sexual assault examinations, and/or as to the sexual assault examination(s)
5 conducted in the instant case.

6 GARCIA, GINA; UNK

7 *HICKS, EVELYN; UNKNOWN

8 KING, CRAIG; LVMPD#09971; Will testify as an expert as to the collection, analysis,
9 identification and related processes of DNA evidence, and/or as to DNA evidence acquired in
10 the instant case.

11 KNEPP, ELAINE; CCDA INVESTIGATIONS

12 *LAU, T.; LVMPD P#2932

13 MCGILL, JODI; CCDA INVESTIGATIONS

14 *MOSES, MARC. LVMPD P#13637 – He is a Forensic Multimedia Analyst for the
15 Las Vegas Metropolitan Police Department. He is an expert in the area of science and
16 technology to retrieve video and/or audio recorded evidence from crime scenes from analog
17 and digital closed circuit television (CCTV) surveillance systems, the processes and
18 procedures performed to retrieve video and/or audio recorded evidence from crime scenes
19 from analog and digital closed circuit television (CCTV) surveillance systems, the
20 examinations done on any and all evidence in this case, the results of such testing and reports
21 prepared in this regard.

22 O'KELLEY; LVMPD#04209

23 PRICE, DEL; MYRIAD GENETIC LABS; Will testify as an expert as to the collection,
24 analysis, identification and related processes of DNA evidence, and/or as to DNA evidence
25 acquired in the instant case.

26 *SALAVESSA, L.; LVMPD P#7073

27 SCOTT, DEBRA; CLARK COUNTY COURTS INTERPRETERS' OFFICE

28 SCROGGINS, JOCELYN; CCDA INVESTIGATIONS

1 STARK; LVMPD#13515

2 VIDE, BEATA; LVMPD#14279; Will testify as an expert as to the collection, analysis,
3 identification and related processes of DNA evidence, and/or as to DNA evidence acquired in
4 the instant case.

5 WELCH, DAVID; LVMPD#14189; Will testify as an expert as to the collection,
6 analysis, identification and related processes of DNA evidence, and/or as to DNA evidence
7 acquired in the instant case.

8 WILDS; LVMPD#04957

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

12 A copy of each expert witness's curriculum vitae, if available, is attached hereto.

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

16 BY

17 LINDSEY MOORS
18 Chief Deputy District Attorney
19 Nevada Bar #012232

20 **CERTIFICATE OF SERVICE**

21 I hereby certify that service of the above and foregoing was made through electronic
22 efile and serve this 2nd day of July, 2021, to:

23 KATHLEEN HAMERS, Deputy PD
24 Email: hamerskm@ClarkCountyNV.gov

25 BY

26 
27 Secretary for the District Attorney's Office
28 Special Victims Unit

16F17095X/mlb/SVU

Curriculum Vitae

**Las Vegas Criminalistics Bureau
Statement of Qualifications**

Name: Marc Moses

P# 13637

Date: 05-15-13

CURRENT CLASSIFICATION		
	<i>Classification</i>	<i>Minimum Qualifications</i>
	Forensic Multimedia Analyst I	AA Degree in Videography, Forensic Science, Criminal Justice or a related field or equivalent experience.
X	Forensic Multimedia Analyst II	Two years experience as a Forensic Multimedia Analyst I.
	Senior Forensic Multimedia Analyst	Two (2) years experience as a Forensic Multimedia Analyst II.
	Forensic Multimedia Analyst Supervisor	Four (4) years experience as and completion of probation as a Senior Forensic Multimedia Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Videography, Forensic Science, Criminal Justice or a related field or related field.
FORMAL EDUCATION		
<i>Institution</i>	<i>Major</i>	<i>Degree/Date</i>
College of Southern Nevada	Building Trades	NO / 1991 / 3 Classes
TESTIMONY		
<i>Yes</i>	<i>No</i>	
X		District Court
EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Title</i>	<i>Date</i>
LVMPD	Forensic Multimedia Analyst II	10-13-10 to Present
LVMPD	Forensic Multimedia Analyst I	10-13-08 to 10-13-10
Boyd Gaming / Coast Casinos	Surveillance Supervisor	1999-2008
Vacation Village Hotel and Casino	Surveillance Agent	1998-1999