

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

TULY LEPOLO
Petitioner,
vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
COUNTY OF CLARK, THE
HONORABLE MICHAEL P. VILLANI
DISTRICT COURT JUDGE – Dept. XIX,
Respondent,

and

THE HONORABLE DAVID BARKER,
SENIOR DISTRICT COURT JUDGE –
SITTING FOR Dept. XIX,
Respondent

and

THE STATE OF NEVADA,
Real Party in Interest,

No. Electronically Filed
Jul 29 2021 09:02 a.m.
(DC. No. C-*****) Elizabeth A. Brown
Clerk of Supreme Court

APPENDIX IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

ATTORNEYS FOR PETITIONER
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Nevada Bar #010772
JoNELL THOMAS
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STEVEN B. WOLFSON
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Regional Justice Center
200 Lewis Ave.
Las Vegas, Nevada 89155
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on July 27, 2021, a copy of the foregoing Appendix to Petition for Writ of Mandamus was filed with the Nevada Supreme Court. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

Clark County District Attorney's Office
Regional Justice Center
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155

I further certify that on 7/27/2021, a copy of the foregoing Appendix was mailed to the following:

The Honorable Michael P. Villani
Eighth Judicial District Court, Department XIX
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101

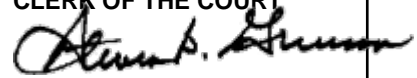
The Honorable David Barker
Eighth Judicial District Court, Senior Judge
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101

RESPECTFULLY SUBMITTED BY:

/s/ W. JEREMY STORMS

W. 

W. JEREMY STORMS
Chief Deputy Special Public Defender
Attorney for Lepolo



INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #6955
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
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Attorney for Plaintiff

I.A. 1/21/20
9:00 AM
W. STORMS, SPD

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

TULY LEPOLO,
#8471381

Defendant.

CASE NO: C-20-345911-1

DEPT NO: III

INFORMATION

STATE OF NEVADA)
COUNTY OF CLARK) ss.

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

That TULY LEPOLO, the Defendant(s) above named, having committed the crimes of MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001) and ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 50201), on or about the 3rd day of April, 2016, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON

did willfully, unlawfully, feloniously and with malice aforethought, kill RAQUEL STAPINSKI, a human being, with use of a deadly weapon, to wit: firearm, by shooting at and into the body of the said RAQUEL STAPINSKI, the said killing having been (1) willful and

premeditated, and/or (2) pursuant to a challenge to fight whereby RAQUEL STAPINSKI was shot and killed in the cross-fire.

COUNT 2 - ASSAULT WITH A DEADLY WEAPON

did willfully, unlawfully, feloniously and intentionally place another person in reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use physical force against another person, to wit: FLORA MARIE TAYLOR, with use of a deadly weapon, to wit: a firearm, by pointing said firearm at FLORA MARIE TAYLOR.

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

BY /s/MARC DIGIACOMO
MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #6955

Names of witnesses known to the District Attorney's Office at the time of filing this Information are as follows:

<u>NAME</u>	<u>ADDRESS</u>
ARMSTRONG JR., DWAYNE	6501 W. CHARLESTON BLVD., LVN
CUSTODIAN OF RECORDS	LVMPD DISPATCH RECORDS
CUSTODIAN OF RECORDS	CCDC
CUSTODIAN OF RECORDS	LVMPD RECORDS
FABERT, CRAIG	CCDA INVESTIGATOR
FORMAN, DANA	6501 W. CHARLESTON BLVD., LVN
FRANCO, COURTNEY	6501 W. CHARLESTON BLVD., LVN
HONAKER, JAMIE	CCDA INVESTIGATOR
LEON, RUTH	CCDA INVESTIGATOR
OLSON, DR. ALANE	CCME, 1704 PINTO LANE, LVN

1 SANBORN, T.

LVMPD P#5450

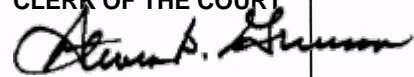
2 TAYLOR, FLORA

3070 S. NELLIS BLVD., LVN

3 WIFE OF HENRY TAYLOR

c/o JAMES GALLO, ESQ.

27 19F159993A/dd/MVU
28 LVMPD EV#160403003524
(TK11)



1 **MOT**

2 JoNELL THOMAS
3 SPECIAL PUBLIC DEFENDER
4 Nevada Bar #4771

5 W. JEREMY STORMS
6 Chief Deputy Special Public Defender
7 Nevada Bar #10772
8 330 So. Third Street, Suite #800
9 Las Vegas, Nevada 89155
10 (702) 455-6265
11 FAX: (702) 455-6273
12 EMAIL: jeremy.storms@clarkcountynv.gov
13 Attorneys for Tutaumua Lepolo

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff

CASE NO. C-20-345911-1
DEPT. NO. 17

12 vs.

13 TUTAUMUA LEPOLO, ID: 8471381
14 /AKA/TULY LEPOLO
15 Defendant.

16 **MOTION FOR DEFENDANT LEPOLO'S RELEASE ON HOUSE ARREST OR,**
17 **IN THE ALTERNATIVE, MOTION TO SET REASONABLE BAIL PENDING TRIAL**

18 DATE 1/30/2020
19 TIME 8:30 a.m.

20 COMES NOW, Defendant, TUTAUMUA LEPOLO, by and through his attorneys,
21 JoNell Thomas, Special Public Defender, and W. Jeremy Storms, Chief Deputy Special Public
22 Defender, and hereby requests a reasonable bail be set in this matter, or in the alternative, a
23 reasonable bail set with the condition Defendant participate in house arrest.

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DEPARTMENT XVII
NOTICE OF HEARING
DATE 1/30/20 TIME 8:30
APPROVED BY DB

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NOTICE OF MOTION

TO: STATE OF NEVADA, Plaintiff; and
TO: STEVEN WOLFSON, District Attorney, Attorney for Plaintiff

YOU WILL PLEASE TAKE NOTICE that the undersigned will bring on the above and foregoing **MOTION** on for hearing on January 30, 2020, at the hour of 8:30 a.m., or as soon thereafter as counsel may be heard.

POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

On October 28, 2019, Mr. Tutaumua Lepolo was charged by way of criminal complaint with Open Murder with Use of a Deadly Weapon under the name “Tuly Lepolo.” Tutaumua was arrested on a “no bail” arrest warrant and since his detention, he has been held without bail. On January 6, 2020, Tutaumua unconditionally waived his preliminary hearing and was bound over to District Court after an Amended Criminal Complaint was filed alleging a count of Assault with a Deadly Weapon in addition to the charged murder. On January 21, 2020 Tutaumua plead not guilty. The case was assigned to Department XVII for Mr. Lepolo to waive or invoke his right to a speedy trial and have his trial set.

II. STATEMENT OF FACTS

On April 3, 2016, a shooting was reported at 6501 W. Charleston Boulevard, the location of an apartment complex. Patrol officers arrived and found a deceased black female adult, later identified as Raquel Stapinski, dead on the ground between buildings 25 and 26. The investigation into Ms. Stapinski’s death revealed there were two families gathered that night. One family, the African American family, was being hosted by a Dana Foreman in building 25 for the purpose of celebrating her birthday. The other family, the Samoan family,

1 was being hosted by Elaine Lepolo in building 26, with the family gathering to say goodbye to
2 members of the family visiting from California who were about to head home.

3 The police investigation developed the following information.

4 Dana Foreman's son, Dwayne Armstrong wanted to fight Tut, Mr. Lepolo's son. Dana
5 Foreman told investigators that Dwayne wanted to fight because "[t]he mother and the son
6 jumped me." During the fight initiated by Dwayne Armstrong, his uncle, T-Loc, a.k.a, Henry
7 Taylor, discharged a firearm. The two groups dispersed. At some time after this first shot,
8 more shots were fired. The decedent, Stapinski, was in the cross-fire and was shot by .40
9 caliber bullets. No one would suggest that Ms. Stapinski, herself, had shot at the Samoan party
10 but the evidence shows she was armed with a hammer, apparently prepared to engage in
11 physical conflict. The State's forensic analysis of the scene concluded that the .40 caliber
12 bullets came from the direction of the Samoan family. Multiple shell casings, live bullets and a
13 disassembled extended magazine for a 9 mm handgun were found on the doorstep of the Dana
14 Foreman residence. A .357 magnum was hidden in a charcoal bag in the backyard.

15
16 Neither family involved in the conflict gave information to the police that allowed them
17 to identify who shot guns that day. One witness gave an account suggesting that a member of
18 the Samoan family shot at members of the African American family after a pause in the conflict
19 between the parties. A witness reported a person getting a gun from an SUV found on scene
20 with California plates. The State associates Tutaumua with that SUV. DNA found on the SUV
21 in question as well the DNA of a trail of blood leaving the area of the incident allegedly
22 matched "Tuly Lepolo," a name associated by the State with Mr. Lepolo.

23
24 After the State charged Henry "T-Loc" Taylor for the shooting that occurred, his sister,
25 Dana Foreman, the person this conflict centered around, identified Tutaumua as the person from
26
27
28

1 the Samoan family who shot that day. Additionally, it is the defense's understanding that
2 Henry Taylor's wife has also changed her story and identified Tutaumua as the shooter. Henry
3 Taylor himself did not identify Tutaumua as the shooter.

4 **III. ARGUMENT**

5
6 The United States constitution and the Constitution of the State of Nevada prohibit
7 excessive bail. Article 1, § 6 of the Nevada Constitution dictates:

8 "Excessive bail shall not be required, nor excess imposed, nor shall cruel
9 or unusual punishment be inflicted, nor shall witnesses be unreasonably
10 detained."

11 The Eighth Amendment to the Constitution of the United States also mandates that:

12 "Excessive bail shall not be required, nor excessive fines imposed nor
13 cruel and unusual punishments inflicted."

14 As is discussed below, those charged with murder may be held without bail. In the
15 circumstances of this case, however, bail must be set.

16 **A. FEDERAL AND STATE CONSTITUTIONAL PROVISIONS PROHIBIT** 17 **EXCESSIVE BAIL SETTING**

18 Of course, First Degree Murder is the one charge the Nevada Constitution does allow
19 for detention without bail: "[a]ll persons shall be bailable by sufficient sureties; unless for
20 Capital Offenses or murders punishable by life imprisonment without possibility of parole when
21 the proof is evident or the presumption is great." Nev. Const. Art. 1, § 7; See also NRS
22 178.484. Accordingly, when charged with First Degree Murder, the accused is entitled to bail
23 unless the "proof is evident or the presumption great."

24
25 All persons are bailable, subject to the provisions discussed above, as a matter of right
26 as guaranteed by both the Nevada and United States Constitutions. Punishment should not
27 proceed conviction but follow it. In the case of Application of Carl D. Wheeler for a Writ of
28

1 Habeas Corpus, 81 Nev. 495, 406 P.2d 713 (1965), the defendant sought release on bail
2 pending his trial for murder. The Court held:

3 The central thought is that punishment should follow conviction,
4 not proceed it...Our view of the constitutional emphasis is contrary
5 to certain expressions contained in earlier opinions of this court.
6 For example, in Ex parte Malley, 50 Nev. 248, 256 P.512, 53
7 A.L.R. 395, where the charge was embezzlement, the court said,
8 "In a proceeding of this character the petitioner is presumed to be
9 guilty of the offenses charged in the indictments." We now reject
that statement as wholly incompatible with the presumption that an
accused is innocent of the offense charged until proven guilty and
convicted.

10 Application of Wheeler, 406 P.2d 713 at 715-16.

11 In the instant case, the State's evidence is the identification of Mr. Lepolo as a person
12 involved in this shooting was made by two people very close to Henry Taylor after he was
13 charged with his involvement in the offense. At this point in time, the State has not made the
14 defense aware of any other evidence saying Mr. Lepolo fired a weapon, although some of the
15 State's other evidence points to him being on scene. The defense would submit that such
16 evidence does not rise to the level of evident proof of Mr. Lepolo's involvement or create a
17 great presumption that he is guilty of the crimes charged.
18

19 **B. THIS COURT SHOULD RELEASE TUTAUMUA ON HOUSE ARREST,**
20 **IF IT REQUIRES MORE THAN A SETTING OF BAIL.**

21 Bail amounts must be reasonable and not more than the Defendant can be expected to
22 provide. The Nevada Supreme Court addressed this issue in the case of Ex parte Malley, 50
23 Nev. 248, 256 P.512 (1927), wherein the Court stated:

24 In support of the contentions made by petitioner, reliance is had
25 upon Ex parte Jagles and Varnes, 44 Nev. 370, 195 P.808. There is
26 little in the matter mentioned to aid us in the one before us. It is
27 true that we said in that matter that it was the purpose of the
28 constitutional provision mentioned therein to prevent the fixing of a
bail bond in so great a sum as to preclude its being given, and that it

1 was the idea of the framers of the Constitution that punishment
2 should follow conviction, and not both precede and follow it, or be
3 inflicted in spite of possible acquittal. (256 P.512 at 514).

4 The purpose of bail is not to punish the Defendant for charges for which he has not been
5 convicted. The purpose of bail is to assure the Defendant's return to Court. In Ex parte Jagles
6 and Varnes, 44 Nev. 370, 195 P.808 (1921), the Nevada Supreme Court stated:

7 "The Constitution provides (Article 1, § 6) that excessive bail shall
8 not be required. In reaching a conclusion as to what is reasonable
9 bail, a court should consider that the object of bail is simply to
10 assure the presence of the accused for trial..." 195 P. 808 at 808.

11 NRS 178.498 delineates the factors to be considered when setting bail:

12 If the defendant is admitted to bail, the bail must be set at an
13 amount which in judgment of the magistrate will reasonably ensure
14 the appearance of the defendant and the safety of other persons and
15 the community, having regard to:

- 16 1. The nature and circumstances of the offense charged;
- 17 2. The financial ability of the defendant to give bail;
- 18 3. The character of the defendant; and
- 19 4. The factors listed in NRS 178.4853.

20 The factors listed in NRS 178.4853, which are also the factors to consider when releasing a
21 defendant without bail, are:

- 22 1. The length of his residence in the community;
- 23 2. The status and history of his employment;
- 24 3. His relationships with his spouse and children, parents or other
25 members of his family and with his close friends;
- 26 4. His reputation, character and mental condition;
- 27 5. His prior criminal records, including any record of his appearing
28 or failing to appear after release on bail or without bail;
6. The identity of responsible members of the community who would
vouch for the defendant's reliability.
7. The nature of the offense with which he is charged, the apparent
probability of conviction and the likely sentence, insofar as these
factors relate to the risk of his not appearing;
8. The nature and seriousness of the danger to any person or the
community that would be posed by the person's release;

- 1 9. The likelihood of more criminal activity by the person after he is
2 released; and
3 10. Any other factors concerning his ties to the community or hearing on the risk
 that he may willfully fail to appear.

4 Based upon the factors listed above, this Court should release Mr. Lepolo with a setting of bail,
5 or if the court needs more, bail with house arrest. Tutaumua Lepolo is not a resident of this
6 community, but has resided in Southern California since the early 1980s. His son and daughter
7 live in Las Vegas and he would reside with them during the pendency of the case at 2850 E.
8 Bonanza, Apt 2145. Mr. Lepolo has a burglary conviction from 1992 on his record and three
9 drug related convictions he received in 2004 after trial. It should be noted that Mr. Lepolo was
10 on bail for the 2004 conviction from 1999 to 2004 without incident. His record shows no
11 failures to appear. His initial pretrial assessment in Justice Court found him a moderate risk for
12 release.
13

14
15 Mr. Lepolo is the patriarch of his extended family since the death of his mother and
16 grandmother. He has a longstanding history of working, with a letter of recommendation from
17 his employer in San Bernadino, CA. (See Exhibit A). His extended family is struggling without
18 him out earning money. He respectfully requests a reasonable bail setting so that he can
19 continue to work and support his family.
20

21 CONCLUSION


22 Mr. Lepolo is entitled to a reasonable bail. Excessive bail is prohibited by the
23 Constitution of both Nevada and the United States. The main purpose of bail is to ensure the
24 defendant will return to face the accusations levied against her. Based on the foregoing, Mr.
25 Lepolo requests that an Order be entered by this Court releasing him with bail, or with bail and
26

1 house arrest if the court sees fit. Such an order will provided sufficient assurances that
2 Tutaumua will return to Court.

3 DATED this 27th day of January, 2020.

4 SUBMITTED BY

5 /s/ W. JEREMY STORMS

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7 W. JEREMY STORMS
8 Attorney for Lepolo
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CERTIFICATE OF SERVICE

I hereby certify that service of the above Motion For Defendant Lepolo's Release On
House Arrest Or, In The Alternative, Motion To Set Reasonable Bail Pending Trial, was made
on January 27, 2020, by Electronic Filing to:

DISTRICT ATTORNEY'S OFFICE
email: motions@clarkcountyda.com

/s/ Elizabeth (Lisa) Araiza

Legal Secretary
Special Public Defender

EXHIBIT A



September 13, 2019

To whom it may concern,

I am writing this letter on behalf of Tutuamua "Tut" Lepolo. Tut has been an employee at Prontoroni's Pronto Pizza for over 10 years and has performed tremendously. In fact, he is a fixture at our store and has been missed greatly during this unfortunate situation.

With exemplary reviews from all of his superiors and a long track record of success we are proud to say that Tut is an invaluable asset to our Company and we look forward to and expect him to continue to be with our organization for a long time to come.

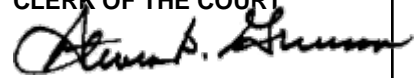
If you should need any further information, please feel free to contact me directly at Mihaela@Prontoroni.com.

Respectfully,

A handwritten signature in black ink, appearing to read "Mihaela".

Mihaela Crossman

President/CEO - Prontoroni's Pronto Pizza



OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006955
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-

TULY LEPOLO,
#8471381

Defendant.

CASE NO: C-20-345911-1

DEPT NO: XVII

**STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR DEFENDANT
LEPOLO'S RELEASE ON HOUSE ARREST OR, IN THE ALTERNATIVE,
MOTION TO SET REASONABLE BAIL PENDING TRIAL**

DATE OF HEARING: 01/30/2020
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MARC DIGIACOMO, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion For Defendant Lepolo's Release On House Arrest Or, In The Alternative, Motion To Set Reasonable Bail Pending Trial.

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

///

///

1 **STATEMENT OF FACTS**

2 **OVERVIEW**

3 On April 3, 2016, the families of Defendant Tuly Lepolo and Henry Taylor were having
4 a party at an apartment 6501 West Charleston, Las Vegas, Nevada. During the party, two
5 members of Defendant's family, who are of Samoan decent, and members of Taylor's family,
6 who are of African American decent, began to fight. As one party got the upper hand in the
7 fight, the other family began to get involved. To disperse the crowd and end the fight, Taylor
8 grabbed a firearm and fired a warning shot in the air, and everyone scattered. As the people
9 scattered, Defendant, who has at least 4 prior felony convictions, went to a vehicle associated
10 with his family, grabbed a semi-automatic firearm, approached Taylor's apartment and fired
11 numerous rounds at the people standing in the front of the apartment, striking and killing
12 Raquel Stapinski. Ms Stapinski was a guest of the party, but not a member of either family
13 involved in the fight. As Defendant ran away through the apartment, he pointed the gun at
14 Flora Marie Taylor who was returning through the complex and threatened her.

15 **SPECIFICS FROM ARREST WARRANT**

16 On 04-03-16 at approximately 2057 hours, LVMPD patrol officers responded to the
17 call of a shooting at 6501 West Charleston Boulevard in Las Vegas. Patrol officers arrived on
18 the crime scene and located a black female adult lying on the ground between buildings 25
19 and 26. The female was ultimately identified as Raquel Stapinski. Stapinski appeared to have
20 suffered multiple gunshot wounds to the right side of her body. Medical personnel arrived and
21 pronounced Stapinski deceased at the crime scene. Homicide detectives were contacted and
22 responded to the crime scene to conduct the follow-up investigation.

23 The follow-up investigation revealed there had been two parties within the apartment
24 complex that night. Dana Foreman hosted one party in building 25, at apartment 215, and
25 Elaine Lepolo hosted another party in building 26, at apartment 231. Numerous people
26 attended each party.

27 ///

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1 During the parties, Dana Foreman's son, Dwayne "Wayne Wayne" Armstrong, wanted
2 to fight a subject from Lepolo's party. Several people associated with the two parties began to
3 argue and fight with one another in the parking lot north of the two apartment buildings.

4 The matriarchs from each respective party, Dana Foreman and Elaine Lepolo, became
5 involved in the fight. During the fight, Dana Foreman's brother Henry "T-Loc" Taylor fired a
6 single shot from a 9mm semi-automatic handgun in the parking lot. The fight broke up and
7 people made their way back to their respective apartments.

8 Witness Courtney Franco was interviewed and related the following: Courtney was in
9 her upstairs apartment, which looked down over the complex parking lot. Throughout the day
10 people gathered in the parking lot from two parties in the complex. A fight ultimately broke
11 out in the parking lot between two male subjects. She looked out her sliding glass door, but
12 could not see the subjects very well, but believed the males fighting were black. Courtney
13 turned to go back to her living room, when she heard a single gunshot. She looked back outside
14 and saw people had started to disperse. She grabbed her cellular telephone and called 9-1-1.
15 She was on the phone with 9-1-1 and watched a male go into a white Chevrolet Suburban with
16 California license plates and retrieve a black handgun. The male walked toward the area of
17 apartment 231 and fired approximately nine (9) times at the people standing in the hallway in
18 front of 231. After the shooting, the suspect fled on foot (east) between the buildings toward
19 Torrey Pines. Courtney described the shooting suspect as approximately 30 years old, possibly
20 African American, approximately 6'0" tall, 200 pounds, last seen wearing a white t-shirt and
21 basketball shorts.

22 Homicide Detective Sanborn identified the white Chevrolet Suburban as having
23 California license plate 5FPB429. The vehicle was parked under covered parking north of the
24 shooting scene. A California Department of Motor Vehicles records check revealed the
25 Suburban was registered to Elise Faamasino at 1068 West 2nd Street in San Bernardino,
26 California. The Suburban was photographed and sealed at the crime scene in preparation to be
27 towed to the crime lab for further forensic processing.

28 ///

Witness Stanley Lepolo Jr. was interviewed and related the following: Stanley arrived in Las Vegas on Friday (April 1st) to celebrate a family member's birthday. He stayed at 6501 West Charleston Boulevard, apartment 215, which belonged to his aunt, Elaine Lepolo. On Sunday night (April 3rd) Stanley wanted to go out with his sister, Kaloni Lepolo; however, while waiting for her to arrive, he fell asleep. Stanley later awoke to the sound of an argument outside of the apartment. Stanley exited the apartment and saw several family members standing near the carport area. The family members were arguing with other subjects who were known to his family. Approximately 20 people were involved in the argument. Stanley walked up to the crowd of people, and an unknown black male produced a handgun. Stanley then heard four gunshots, ducked down, and ran to apartment 215 with several other family members. The male with the gun was black, in his late 20-30s, with short hair a muscular build and appeared to be intoxicated. The male was wearing all black clothing and he was armed with a handgun. Stanley insisted his cousin's baby's daddy "Antoine" could identify the shooter.

Witness Gordon Lepolo was interviewed and related the following: Gordon came to Las Vegas to visit family. He stayed at 6501 West Charleston Boulevard, apartment 215, which belonged to his aunt, Elaine Lepolo. On Sunday night (April 3rd) Gordon was preparing to go out with other family members. He and several other family members exited the apartment. Several of his family members began to argue with other people, who apparently knew his family. A black male he knew as Wayne Wayne wanted to fight his cousin. Wayne Wayne's mom (Dana Foreman) jumped into the fight, which caused his Aunt Elaine to get involved.

Suddenly an individual by the moniker of “T-Loc” produced a handgun and fired. Gordon has known T-Loc for a long time, but did not know his real name. T-Loc lived in the other apartment involved in the incident. Gordon said “Antoine” would know T-Loc’s real name. T-Loc was described as a black male, 20-30 years of age, stocky build, with tattoos. T-Loc was wearing a white tee-shirt, black shorts, and a black hat with a “W” on the front. T-Loc was armed with a chrome handgun.

1 Witness Maleka Sagale related the following: She was inside her apartment (215) and
2 heard a commotion coming from the parking lot. She went outside to see what was going on
3 and saw a boy being jumped. She was unable to describe the boy who was being jumped, but
4 she believed he was being jumped by approximately five black males. There were
5 approximately 15-20 people out in the parking lot, when 5-6 gunshots went off. She ran back
6 to her apartment and called the police. She denied anyone from her apartment was involved in
7 the fight outside. She recently moved to the complex and did not recognize any of the subjects
8 involved in the fight. She also did not see who was shooting.

9 During the follow-up investigation, Homicide Detective Sanborn identified Maleka
10 Sagale as Elaine Lepolo (NV OLN 2105233002). Several witnesses mentioned an “Elaine” as
11 someone who would know the identity of the shooting suspect. Elaine Lepolo had falsely
12 identified herself to investigators with an alias of Maleka Sagale. Lepolo denied she or any of
13 her family was involved in the fight or shooting. The follow-up investigation revealed the
14 suspect in the shooting was related to Elaine Lepolo and she appeared to investigators to be
15 protecting the suspect and not assisting investigators with the investigation.

16 Witness Dana Foreman related the following: Dana lived in apartment 231 and was
17 having a birthday get together and BBQ. She went outside because of a commotion and saw
18 several people in the parking lot fighting. She was on the walkway and heard gunshots. She
19 turned to run and thought her friend Raquel was right behind her. She did not know how
20 Raquel got shot. She did not see who was shooting but thought there was more than one person
21 shooting. She was drunk and heard someone yell out to pick up the bullets, so she started to
22 pick up bullets from outside her front door, when police officers arrived and detained her. She
23 did not see anyone shooting from her front door area.

24 It was apparent from the evidence at the crime scene, the second person shooting
25 (Henry Taylor) at the crime scene retrieved the 9mm handgun from Dana Foreman’s
26 apartment, from a backpack in her son Dwayne Armstrong’s bedroom. Witnesses identified
27 Dwayne “Wayne Wayne” Armstrong as being involved in the original fight; however, he fled
28 before police arrived.

1 It was apparent to investigators Dana Foreman knew the identity of the persons
2 involved in the shooting; however, she did not want to assist investigators and she appeared
3 to be protecting the person(s) involved in the shooting.

4 Witness Flora Taylor related the following: Flora came to apartment 231 to visit with
5 family. She was doing hair inside the apartment when she decided to have her sister-in-law
6 take over. Flora left the apartment and spoke on her cellular telephone as she walked to the
7 east end of the complex. She heard several gunshots and ran back to the apartment. Flora did
8 not see the shooting, but the person she believed was the shooter ran past her on the sidewalk
9 just south of building 25. Flora described the shooter as have a mixed race, possibly black and
10 Hispanic male, approximately 5'8", and a medium build. He was wearing a white tee shirt and
11 black or blue colored shorts. Flora could not name the shooter but said she had seen him before.
12 Flora later learned her friend, Raquel, was killed during the shooting. Flora said she did not
13 know the identity of the shooter.

14 Prior to the interview, Flora was approached by Stanley and Gordon Lepolo who both
15 gave her a hug. She knew the men as "Bill" (Stanley) and "Wally" (Gordon), and knew they
16 were from California. Apparently, they were known to her sister's family in apartment 231.
17 Flora knew the people living in apartment 215, specifically "Miss Elaine" could identify the
18 shooter.

19 Witness Tavon Lowe related the following: Tavon lived in apartment 233, which was
20 just north of apartment 231. He was in the kitchen between 2030-2100 hours, when he heard
21 a single gunshot, followed by a lot of footsteps running by his front door. Tavon heard a little
22 girl's voice tell her mom someone had been shot. Tavon went to his bedroom window and
23 looked outside and saw a male walk up from the parking lot area. The male got to the sidewalk
24 and started running up to the group, and yelled, "What's up now, you bitch ass nigger?" and
25 fired 5-6 shots toward the group. Tavon ducked down as several bullets went into his
26 apartment. Tavon described the shooting suspect as an approximately 35 to 40 years old
27 Samoan or Hawaiian male. The male was approximately 6' tall, with shoulder length black
28 hair, tattoos on both arms, and a stocky build. The male was wearing a white short sleeved

1 shirt with a blue Washington Nationals logo on it, blue shoes, blue L.A. baseball hat, and
2 possibly jeans.

3 After several hours at the crime scene, a tow truck arrived to tow the white Chevrolet
4 Suburban (CA 5FPB429) to the LVMPD Crime Lab for further forensic processing. The
5 arrival of the tow truck caused the registered owner Elise Faamasino to exit apartment 215 and
6 make contact with investigators.

7 Witness Elise Faamasino related the following: Faamasino came to Las Vegas with her
8 six children for a birthday party. She drove to Las Vegas with only her children in her white
9 Chevrolet Suburban (CA 5FPB429) and arrived at her in-law's apartment on Friday April 1,
10 2016. She had been staying at her in-law's apartment (Building 25, Apartment 215) since
11 Friday. On the night of the shooting she was inside the apartment and did not see anything.
12 She denied anyone would have retrieved a gun from her vehicle and said the keys were with
13 her the entire night. Faamasino did not assist investigators and continued to deny anyone could
14 have retrieved a gun from her vehicle.

15 Crime scene analysts and homicide detectives examined the crime scene for evidence.
16 Investigators recovered one (1) 9mm cartridge case from the parking lot area where the
17 original fight took place. Five (5) .40 S&W cartridge cases were recovered on the ground east
18 of the alcove for apartment 231. Four (4) additional 9mm cartridge cases were recovered on
19 the ground in the alcove for apartment 231.

20 Crime scene analysts and homicide detectives examined the apparent bullet path
21 trajectories and determined the African American suspect was firing a 9mm handgun in an
22 easterly direction from the entryway alcove of apartment 231, while the Samoan suspect was
23 firing a .40 caliber handgun in a westerly direction toward the entryway alcove of apartment
24 231. The victim, Raquel Stapinski, was caught in the crossfire and was struck several times
25 by the Samoan suspect.

26 Investigators observed several areas of apparent blood along the south side of building
27 25, where the Samoan suspect fled on foot. The areas of blood continued east along the
28 building, then north to the parking lot, where no additional areas of blood could be located.

1 Crime scene analysts recovered four (4) swabs of the apparent blood on the south side of
2 building 25.

3 It appeared to investigators the shooting suspect from the Samoan party made his way
4 east along the building, stopping twice in two different apartment alcoves, before making his
5 way to the parking lot and fleeing the scene. It was unknown if the suspect was injured during
6 the initial fight in the parking lot or wounded during the subsequent shooting.

7 During the processing of the crime scene, investigators obtained a search warrant for
8 apartment 231. A bedroom was located in the southeast corner of the residence. State of
9 Nevada Welfare Department paperwork and a Social Security Card both in the name of
10 Dwayne Armstrong Jr. were located in the top drawer of a dresser. A black backpack was
11 located on the floor, west of the bed. Three (3) cartridges were on the floor, north of the
12 backpack. A "Winchester 9MM" ammunition box, containing "WIN 9MM LUGER"
13 cartridges and loose ammunition were within the backpack. A pair of black pants was on the
14 floor, north of the backpack. A wallet was attached to the pants with a chain and contained a
15 Southern Nevada Health District ID card in the name of Dwayne S. Armstrong Jr.

16 Dwayne "Wayne Wayne" Armstrong, the male known as T-Loc, and the unknown
17 Samoan male shooting suspect all fled the crime scene prior to the arrival of police officers.

18 On 04-05-16, a complete autopsy was performed on the body of Raquel Stapinski at
19 The Clark County Office of the Coroner/Medical Examiner. Doctor Olsen determined
20 Stapinski died as the result of a gunshot wound of the right arm and axilla. The manner of
21 Stapinski's death was ruled a homicide. During the autopsy a bullet was recovered from the
22 left side of Stapinski's chest. The bullet was impounded as evidence by Crime Scene Analyst
23 Lynch.

24 On 4-05-16, Homicide Detectives Sanborn and Ivie responded to the LVMPD Crime
25 Lab to serve the search warrant on Elise Faamasino's white 2004 Chevrolet Suburban (CA
26 5FPB429). Crime Scene Analysts Fletcher, Grover, and Andrews assisted with the warrant
27 service and conducted the forensic processing. The vehicle was parked in the Crime Lab
28 garage and the seals were intact.

1 Crime Scene Analyst Grover conducted the latent print processing on the Suburban and
2 developed numerous latent prints on the exterior of the vehicle as well on various items inside
3 the vehicle.

4 Crime Scene Analyst Grover also recovered and impounded swabs of possible DNA
5 evidence recovered from the Monster Energy drink can, steering wheel, and shift lever. A
6 search of the vehicle was conducted for firearms related evidence with negative results.

7 On 05-09-16, Forensic Scientist Angel Moses completed the requested forensic
8 firearms examinations. The evidence bullets were microscopically examined in conjunction
9 with one another. Based on the comparative examinations, Scientist Moses determined two
10 (2) bullets (Items 8 & 36), one recovered from Victim Stapinski's body at autopsy, the other
11 recovered from inside apartment 233, were fired from a single .40 caliber firearm.

12 The evidence cartridge cases were microscopically examined in conjunction with one
13 another. Based on the comparative examinations, Scientist Moses determined there were a
14 minimum of two firearms represented by the cartridge cases. The five (5) 9mm Luger cartridge
15 cases had all been fired by a single firearm. The remaining five (5) .40 S&W cartridge cases
16 all bore the same overall characteristics to one another; however, there were insufficient
17 microscopic details for a conclusive identification.

18 Dwayne Armstrong was subsequently contacted and related the following: Dwayne
19 was asleep inside his bedroom when he heard gunshots outside. He checked on his little
20 brother, as people started to come inside his apartment. He fled over the back balcony before
21 police arrived because he had a probation warrant. Dwayne denied he was ever outside during
22 the fight or shooting. He also did not hear anyone come inside his room and get a gun out of
23 a backpack. Armstrong also denied knowing anyone with the nickname of T-Loc. He did know
24 who from his apartment was shooting or see who from the other apartment was shooting. It
25 was apparent to investigators, Dwayne "Wayne Wayne" Armstrong was being untruthful and
26 he did not want to assist the investigation.

27 Homicide Detective Sanborn was ultimately able to identify T-Loc as Henry Taylor.
28 Henry Taylor was subsequently contacted and related the following: He was Dana Foreman's

1 brother, Dwayne Armstrong's uncle, witness Flora Taylor's brother, and Antoine Hall's
2 brother. Taylor denied being present at Foreman's birthday party on the night of April 3, 2016,
3 despite having several people identify him by moniker and describe him. Taylor recalled being
4 told about the party and fight incident by family members, but insisted he was not present.
5 Henry's brother Antoine has a baby with a female member of the Samoan family, Cecilia
6 Jackie Lepolo. It was apparent to investigators, Henry "T-Loc" Taylor was being untruthful
7 and he did not want to assist the investigation.

8 On 09-14-16, Forensic Scientist Heather Gouldthorpe, completed the AFIS (Automated
9 Fingerprint Identification System) search of the selected latent fingerprints recovered during
10 the processing of the Chevrolet Suburban. One suitable print (Q54 B) from the exterior right
11 front door was searched and identified to the right ring finger of Tuly Lepolo (FBI#
12 95252HA9). One suitable print (Q27) from the Monster Energy drink can was identified to
13 the right thumb of Tuly Lepolo (FBI# 95252HA9). One suitable print (Q68) from the left side
14 of the hood was identified to the left palm of Tuly Lepolo. One suitable print (Q69) from the
15 left side of the hood was identified to the right palm of Tuly Lepolo.

16 Homicide Detective Sanborn conducted a police records check on Tuly Lepolo, which
17 revealed Tuly was a Samoan male with long black hair and tattoos on both arms, who was also
18 known as Tautamua Lepolo. He was listed between 5'9" – 5'11" inches tall and weighed
19 between 180-260 pounds. The address listed on Tuly Lepolo's California driver's license was
20 1068 Wilson Street in San Bernardino. California Department of Corrections records revealed
21 Tuly Lepolo was affiliated with the Hoodlum Crip Boys gang and had the nickname of
22 Trigger.

23 The AFIS fingerprint information and the physical descriptors of Tuly "Tutamua"
24 Lepolo, were consistent with the witness information investigators received regarding the
25 suspects actions and physical description.

26 On 11-03-16, Forensic Scientist Allison Rubino completed the requested Biology/DNA
27 Forensic work. The DNA profile obtained from the swab from the mouth of the Monster
28 Energy can from the center console drink holder of the Chevrolet Suburban was consistent

1 with a distinguishable mixture of at least two individuals, with at least one being a male. The
2 major DNA profile was consistent with a single unknown male individual Unknown Male #1.
3 The DNA profile obtained from the swab from the steering wheel and shift lever of the 2004
4 Suburban was consistent with a distinguishable mixture of at least three individuals, with at
5 least one being a male. The major DNA profile was consistent with Unknown Male #1. The
6 full DNA profiles obtained from the apparent suspect blood samples AB1, AB2, AB3, and
7 AB4, were consistent with Unknown Male #1.

8 On 11-22-16, Homicide Detective Sanborn received a CODIS Hit Notification Report
9 from the LVMPD Forensic Lab regarding evidence from event number 160403-3524. During
10 a search of the National DNA Index System (CODIS) database a match occurred between the
11 DNA profile of Unknown Male #1 obtained from blood sample AB1 to a California Offender.
12 The California DOJ DNA Data Bank Laboratory provided their offender information as: Tuly
13 Lepolo with FBI number 95252HA9.

14 Homicide Detective Sanborn reached out to San Bernardino County Sheriff's
15 Department (SBCSD) Homicide Detective Jonathan Cahow for assistance with obtaining a
16 search warrant in the State of California for a sample of Tuly Lepolo's DNA. The DNA sample
17 was necessary to complete the forensic comparison to the CODIS Hit Notification Report from
18 the LVMPD Forensic Lab regarding evidence from event number 160403-3524.

19 SBCSD Gang Task Force Detectives located Tuly Lepolo living at 3139 California
20 Street in San Bernardino California. Also located at the residence on California Street was
21 Elise Faamasino's white Chevrolet Suburban (CA 5FPB429). SBCSD Detectives conducted
22 physical surveillance and noted Tuly Lepolo still had complete access to the white Chevrolet
23 Suburban.

24 On 04-19-17, SBCSD Gang Task Force Detectives established physical surveillance
25 on the residence at 3139 California Street in San Bernardino. At approximately 1415 hours,
26 detectives observed Tuly Lepolo drive away from the residence in Faamasino's white
27 Chevrolet Suburban. A vehicle stop was conducted and Lepolo was detained. Lepolo was
28 transported to the SBCSD Headquarters building for the service of the search warrant.

1 SBCSD Homicide Detective Cahow provided Lepolo with a copy of the search warrant
2 prior to recovering a sample of Lepolo's DNA, via the application of a Buccal Swab Kit. The
3 Buccal Swab kit was subsequently turned over to Homicide Detective Sanborn, who
4 impounded it as evidence.

5 Homicide Detectives Sanborn and Mauch attempted to interview Tuly Tutaumua
6 Lepolo; however, Lepolo did not wish to provide a statement regarding the case. Lepolo stated
7 he was not in Las Vegas at the time of the murder.

8 On 09-11-17, Forensic Scientist Allison Rubino completed the requested Biology/DNA
9 Forensic work regarding the comparison of Tuly Lepolo's known DNA to the evidence. The
10 DNA profile obtained from the swab from the mouth of the Monster Energy can from the
11 center console drink holder was consistent with a distinguishable mixture of at least two
12 individuals, with at least one being a male. The major DNA profile was consistent with Tuly
13 Lepolo. The DNA profile obtained from the swab from the steering wheel and shift lever of
14 the 2004 Suburban was consistent with a distinguishable mixture of at least three individuals,
15 with at least one being a male. The major DNA profile was consistent with Tuly Lepolo. The
16 full DNA profiles obtained from the blood samples AB1, AB2, AB3, and AB4, were consistent
17 with Tuly Lepolo.

18 The complex relationships between the party attendees (witnesses) and the shooters
19 resulted in the lack of cooperation during the follow-up investigation. Investigators believed
20 witnesses from both sides knew the identity of both of the respective shooters. Investigators
21 also noted that victim Raquel Stapinski was not a blood relative to either side of the suspected
22 shooters, which furthered the lack of the cooperation.

23 Subsequent to the issuance of arrest warrants for Defendant and Henry Taylor, the
24 family of Mr. Taylor who were present have become cooperative. It is believed that at least
25 three people will identify Defendant as the Samoan shooter who killed Raquel.

26 **POINTS AND AUTHORITIES**

27 Despite Defendant's claim to bail as a matter of right, in Nevada, a person charged with
28 Murder is not entitled to bail. In fact, the statute on point, denies bail to an individual charged

1 with murder where the proof is evident or the presumption is great. NRS 178.484 states, in
2 relevant part:

3 4. A person arrested for murder of the first degree **may be** admitted
4 to bail **unless** the proof is evident or the presumption great by any competent
5 court or magistrate authorized by law to do so in the exercise of discretion,
6 giving due weight to the evidence and to the nature and circumstances of the
offense.

7 (emphasis added). While the proof necessary for the quantum of proof which is needed has
8 not been specifically defined, it is at least higher than probable cause. See Hanley v. State, 85
9 Nev. 154, 451 P.2d 852 (1969). However, the dying declaration of the victim has been deemed
10 to be sufficient under the statute. See In re Wheeler, 81 Nev. 495, 406 P.2d 713 (1965).
11 Moreover, the Court is granted broad discretion in determining the amount of proof necessary
12 to the determination. Id.

13 The undersigned is aware that some defense attorneys are under the impression that
14 live witnesses are needed for the determination of a no bail status. The State is unaware of
15 any law which supports that conclusion. As far back as 1917, the Nevada Supreme Court held
16 that an affidavit was sufficient for purposes of denying bail. See Ex parte Nagel, 41 Nev. 86,
17 88-89 (1917) ("The true rule upon the subject of bail or discharge after indictment for murder
18 undoubtedly is for the judge to refuse to bail or discharge upon any affidavit or proof that is
19 susceptible of being controverted on the other side."). This is conformance with the practice
20 of courts in other contexts as well. The confrontation clause is a trial right, not a right at every
21 proceeding. See Sheriff v. Witzenburg, 122 Nev. 1056, 145 P.3d 1002 (2006). Hearsay is
22 admissible at a sentencing hearing. See Summers v. State, 122 Nev. 1326, 148 P.3d 778
23 (2006). Likewise, at evidentiary hearings, the evidentiary rules are relaxed. See Univ. of Tex.
24 V. Camenisch, 451 U.S. 390, 395 (1981). The Justice Court was in possession of a lengthy
25 affidavit in support of the evidence which indicates Defendant's guilt. Moreover, Defendant
26 chose not to test these charges at a preliminary hearing and waived it without negotiation.

27 In the instant case, the proof is evident and the presumption is great. The killing
28 occurred during a challenge to fight, and thus, a *per se* First Degree Murder. Defendant's

1 fingerprints and DNA are at the scene. At least three people identify him as the shooter.
2 Moreover, Defendant is a clear and present danger to the community. Defendant's NCIC is
3 so complex and riddled with so many arrests, that a truly accurate account of his convictions
4 is not currently possible, however, an effort is being made to clear up that confusion. What is
5 known is that Defendant went the California Youth Authority as a juvenile and was paroled.
6 Prior to the discharge of his parole, he was arrested for a number of strong arm robberies and
7 burglaries. From that case, he acquired his first felony conviction in 1992 for Burglary in
8 California. It appears he received probation. He was arrested numerous times thereafter and
9 he was charged with violating his parole, suggesting his original probation had previously
10 been revoked, however, that does not appear in the record. His arrests include crimes like
11 Lynching and Corporal Injury to Spouse. His final violation of parole occurred in 2000 when
12 he was committed to prison to serve out his term. Upon his release in 2001, his arrests began
13 again for drug and gun offenses. In 2004, he acquired three (3) more felony convictions for
14 drug related offenses. It appears his prison sentences of 148 months were stayed. Beginning
15 in 2002, his arrests began again with charges associated with battery, drugs and DUI. In 2004,
16 he was arrested on more felony drug charges but they were dismissed as his suspended
17 sentences were imposed and he was ordered to serve 112 months in prison, slightly under 10
18 years. As this event occurred in 2016, it appears he remained trouble free for slightly more
19 than 2 years. Finally, Defendant's only tie to our community was as a guest for few hours and
20 left an innocent victim dead from his criminal behavior.

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DATED this 29th day of January, 2020.

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

CERTIFICATE OF ELECTRONIC SERVICE

Jeremy.storms@clarkcountynv.gov

19F15993A/MD/saj/MVU



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6
7 THE STATE OF NEVADA,
8 Plaintiff,
9 vs.
10 TULY LEPOLO,
11 Defendant.

CASE: C-20-345911-1
DEPT. XVII

12
13 BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
14 WEDNESDAY, MARCH 4, 2020

15 **RECORDER'S TRANSCRIPT OF HEARING:**
16 **MOTION FOR DEFENDANT LEPOLO'S RELEASE ON HOUSE**
17 **ARREST OR, IN THE ALTERNATIVE, DEFENDANT'S MOTION TO**
18 **SET REASONABLE BAIL PENDING TRIAL**
19 **STATUS CHECK: TRIAL READINESS**

20 APPEARANCES:

21 For the State: MARC DiGIACOMO, ESQ.
Chief Deputy District Attorney

22 For the Defendant: JEREMY STORMS, ESQ.
23 Special Public Defender

24
25 RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, March 4, 2020

2 [Hearing begins at 9:59 a.m.]

3 THE COURT: Tuly Lepolo. This is Defendant's motion for
4 release on house arrest or bail reduction.

5 Go ahead, Counsel, Mr. Storms.

6 MR. STORMS: Yes, Your Honor.

7 If you'll recall, this is a case where we'd asked to have the
8 pretrial services do an evaluation and that finally came through last
9 week. And the reason why that's important is because if you look at the
10 pretrial assessment, they have him marked as a moderate risk to
11 reoffend and that's based upon the nature of this allegation, otherwise
12 he would be a low risk to reoffend. That's important also because if
13 you've read the State's response to my motion, they bring up a number
14 of old charges and say that its confusing what the records say about
15 those. One of them they mention is a gun charge according to them. But
16 when I pull those records from Riverside County, there's no gun charge.
17 There was a switchblade charge. It was a part of a drug case that he
18 was ultimately acquitted of that charge on it. So, I'm concerned about
19 the Court looking at what the State represented in their motion about his
20 prior criminal record and holding that against him.

21 If the Court's willing to accept pretrial services representations
22 that he doesn't have any of these convictions during this time period, I
23 think we can go forward. But if the Court's concerned about the State's
24 representations about his record, I'd like to clarify that with them if that's
25 something that would help the Court because the records that I pulled

1 from Riverside County Court don't comport with what their
2 representations are and it's just -- records can be very -- they could be
3 entered into the database their looking at in a way that's hard to kind of
4 back them up or figure out if they're true or not or that they might be
5 charges a person would actually -- you know someone was convicted of
6 or what they were ultimately -- their arrest versus what their charged in
7 court can change too, so --

8 THE COURT: Okay, I do have the pretrial risk assessment,
9 and under Section 4, [indiscernible] you know prior felony convictions it
10 says zero. And you're right, in the State's -- in their opposition it says he
11 has four prior felony --

12 MR. STORMS: He does --

13 THE COURT: -- convictions.

14 MR. STORMS: -- have -- from -- he does have two --

15 MR. DiGIACOMO: Go to page 2, Judge.

16 MR. STORMS: He has two prior cases where he has a felony
17 conviction. One was a robbery in the '90's and then he has three other
18 felony convictions from a case that went to trial. They were drug
19 offenses. So, its not that there are four separate cases that he was
20 convicted on.

21 THE COURT: Okay. Mr. DiGiacomo.

22 MR. DiGIACOMO: Yeah, thank you, Judge.

23 I mean even if you -- even if we can't figure out why it is he
24 was charged with lynching, or why it is --

25 MR. STORMS: Okay, and I can get into that. That lynching --

1 there's a misdemeanor in California that says if one intervenes with the
2 lawful arrest of someone by the police, then they can be charged with
3 lynching. That law was changed in 2015 because of a black lives matter
4 protester was encouraging someone to resist arrest and was charged
5 with lynching for that. And then Brown changed that because obviously
6 the word lynching has these connotations of the racial terrorism in the
7 South, you know, during Jim Crow. It has nothing to do with that,
8 although its very salacious. The word carries a lot of weight that that
9 actual allegation doesn't, which is another thing that I was looking to
10 arrest and it was arrest that he's referring to, so that's a very, you know,
11 salacious word for an arrest for something as essentially trying to
12 intervene whenever probably a family member's getting arrested and
13 being charged with something like resisting arrest.

14 THE COURT: All right, thank you.

15 MR. DiGIACOMO: I mean that's what I'm saying, Judge. All
16 due respect, this is a bail motion. We talk about arrests. We don't
17 necessarily talk solely about convictions. And so, what I was saying to
18 you is even if you want to ignore the fact that he has things – and I've
19 never heard of it before and I've never seen in my 20 years anybody
20 ever charged with the crime of lynching. I have no idea what it is. He – I
21 haven't gotten the record yet. I'm glad that he's got some records and
22 maybe we can figure out about all the criminal history that this guy has.
23 But even if you look at page 2, he's a four-time convicted felon. He has
24 four misdemeanor convictions which include battery/domestic violence
25 and he grew up in the California Youth Authority. You know from doing

1 this as long as you did, if you go to the California Youth Authority you
2 went to gladiator school as a kid. And in this particular case, you have
3 an innocent victim who is shot because of a family dispute so that tells
4 you something about what you should consider about his family
5 connections here, a family dispute. And his position for a long time was,
6 I wasn't even in Vegas, until his DNA shows up there. This is a guy who
7 took a gun, shot into a crowded apartment full of innocent people, wound
8 up killing an innocent person at the front doorstep, and then as he was
9 fleeing, putting the gun in the face of another woman. The bail here
10 seems well – more than reasonable considering the nature of the
11 charges, the strength of the evidence, and his prior criminal history.

12 MR. STORMS: Judge, --

13 THE COURT: And what is the present bail again?

14 MR. STORMS: It's not – it hasn't been set yet.

15 THE COURT: Oh.

16 MR. DiGIACOMO: Well, it was – they – he was held no bail on
17 the previous argument concerning the nature –

18 THE COURT: Okay.

19 MR. DiGIACOMO: -- of the cases and the --

20 MR. STORMS: There's been no argument by the Defense on
21 this case. He was – he might have had a no bail set at his
22 72-hour hearing, but this issue has never been addressed. I wanted to
23 get more information before talking to a court about it.

24 You know, when it comes to their – to the state of their
25 evidence, they have 3 witnesses: the woman who instigated whatever

1 conflict happened that day, her brother who shot Mr. Lepolo according to
2 the State's case, and his wife who say that he's the one instigating these
3 problems. Whereas, you know this is something that, you know, maybe
4 witnesses that aren't related to the other person charged might have a
5 different idea about, that there are aspects of this that are defense of
6 others. There's a lot more going on here than just – potentially, right? I
7 mean it's still early in the case on the Defense side of the investigation.
8 Then the State's representations here. Their witnesses are biased at
9 best and this is a circumstance where their witnesses were trying to
10 engage his son in some sort of conflict, in a fight, and attack him. So,
11 you know, this is not just a case of murder that's very plain and has just
12 a, you know, an unprovoked – I mean, granted the woman who was shot
13 was not a [indiscernible] of this conflict. But if there's more to this, then I
14 think doesn't it make this a case where the evidence – the presumption
15 is great and he should get some sort of bail setting.

16 MR. DiGIACOMO: Well, all due respect, it's a challenge to
17 fight case; right? Everyone can agree both these families agreed to
18 engage in this fight. And the law says you use a weapon during that
19 challenge to fight, you're guilty of first-degree murder. I would note that
20 Mr. Henry was also charged for first-degree murder.

21 But as he talks about witnesses, they all have biases, except
22 for the lady that calls 9-1-1 and says Mr. Henry comes out – she doesn't
23 identify him, she doesn't identify any of these people – fires a round and
24 then everybody flees and goes back. And then she sees an individual go
25 to the white car, his white car, get a gun, walk up to that apartment and

1 shoot into that apartment. She has no reason to lie and she has no
2 reason to biased. So, basically, an innocent woman lost her life because
3 him and his family and this other family decided to get into this giant
4 brawl in the middle of an apartment complex and he decided to shoot at
5 a bunch of people. That is first-degree murder.

6 THE COURT: You know, based upon the facts of this case,
7 and also that the potential harm to numerous people, I'm going to deny
8 the motion on this particular matter.

9 I see we have a trial date September 21st. Are we on track for
10 that date?

11 MR. DiGIACOMO: I believe so.

12 THE COURT: Is there any outstanding discovery?

13 MR. DiGIACOMO: I don't think so because what ultimately
14 happened is that the DNA hit that found him, so all that discovery had
15 happened beforehand, so I think its all generated. I –
16 Mr. Storm's going to have to come over and look at the file at some point
17 and we're going to have to do an evidence view of it, but I don't think
18 there's anything outstanding.

19 THE COURT: Mr. Storm, will you be –

20 MR. STORMS: Not that I'm aware of.

21 THE COURT: -- obtaining your own DNA expert?

22 MR. STORMS: Yes, we are.

23 THE COURT: Okay. Is that already in the works? I just want to
24 make sure that they have their availability for the trial date. I know it's
25 somewhat early, but.

1 MR. STORMS: I do not have an expert secured on that front.
2 I was going to retest what they've done and I was going to talk to the
3 State about that and get that all worked out, but –

4 THE COURT: Okay.

5 MR. STORMS: -- I'll make sure to get someone who is
6 available on that court date.

7 THE COURT: All right. Thank –

8 THE DEFENDANT: [Indiscernible] -- can I address the Court
9 right quick before --

10 THE COURT: Well, you should do it through your attorney, sir,
11 because you don't want to say something –

12 THE DEFENDANT:] Well, --

13 THE COURT: -- that could be used –

14 THE DEFENDANT: -- you know, there's a –

15 THE COURT: -- against you. Hang on. Hang on. Let the – let
16 me have your attorney speak to you, sir. I don't want you to blurt
17 something out.

18 [Brief pause in proceedings]

19 MR. STORMS: So, he wants to bring up the point that I was
20 looking for in the State's motion that the woman who says I see
21 someone going to the car, the State associates with Mr. Lepolo, was
22 identified as African American so there's some identity issues there with
23 the person this person's seeing grabbing a gun.

24 THE COURT: But his DNA allegedly was found on it, correct,
25 or finger –

1 MR. DiGIACOMO: His DNA was found at the scene and if a
2 witness were to look at Mr. Lepolo and say African American, I don't
3 know why she – he would say that she has some credibility issues there.

4 THE COURT: Well, that's for argument at jury trial. All right,
5 we'll come back in 60 days.

6 THE DEFENDANT: About the DNA?

7 THE COURT: Well, sir, don't – please don't argue your case.
8 That's for your attorney.

9 THE DEFENDANT: Yeah, but this is a motion. I mean my
10 attorney bringing up issues that need to be brought up. I mean its
11 rebuttal against the State is you know – but the evidence, stuff like that
12 and my attorney, I don't think he really went through the evidence and
13 didn't really say anything –

14 THE COURT: Well, sir, just so—

15 THE DEFENDANT: -- [indiscernible] –

16 THE COURT: -- you know, before all court appearances I read
17 all of the pleadings in the case and so I've read all the paperwork that's
18 been submitted.

19 THE DEFENDANT: Also, the discoverys [sic] and the DNA?

20 THE COURT: I don't have all that, sir. Sir, I've made my ruling
21 on this matter, okay, and we'll come back on a status check date.

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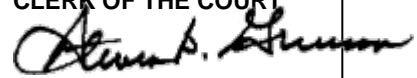
THE COURT CLERK: May 13th, 9:00 o'clock a.m.

[Hearing concludes at 10:09 a.m.]

* * * * *

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


CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII



MOT

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff

CASE NO. C-20-345911-1
DEPT. NO. 17

vs.

TUTAUMUA LEPOLO, ID: 8471381
/AKA/TULY LEPOLO

Defendant.

**SECOND MOTION FOR DEFENDANT LEPOLO'S RELEASE ON HOUSE
ARREST OR, IN THE ALTERNATIVE, MOTION TO SET REASONABLE
BAIL PENDING TRIAL DUE TO CHANGED CIRCUMSTANCES**

COMES NOW, Defendant, TUTAUMUA LEPOLO, by and through his
attorneys, JoNell Thomas, Special Public Defender, W. Jeremy Storms, Chief
Deputy Special Public Defender, and Alzora B. Jackson, Chief Deputy Special
Public Defender and hereby requests a reasonable bail be set in this matter, or in
the alternative, a reasonable bail set with the condition Defendant participate in
house arrest.

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TO: STEVEN WOLFSON, District Attorney, Attorney for Plaintiff

POINTS AND AUTHORITIES

On October 28, 2019, Mr. Tutaumua Lepolo was charged by way of criminal complaint with Open Murder with Use of a Deadly Weapon under the name “Tuly Lepolo.” Tutaumua was arrested on a “no bail” arrest warrant and since his detention, he has been held without bail. On January 6, 2020, Tutaumua unconditionally waived his preliminary hearing and was bound over to District Court after an Amended Criminal Complaint was filed alleging a count of Assault with a Deadly Weapon in addition to the charged murder. On January 21, 2020 Tutaumua plead not guilty. The case was assigned to Department XVII for Mr. Lepolo to waive or invoke his right to a speedy trial and have his trial set. In March, 2020, the COVID-19 Pandemic changed the way business is conducted in the Eighth Judicial District. Mr. Lepolo’s trial was set for April 19, 2021. At the last status check, the Court sua sponte vacated the trial date and set the matter over to April 18, 2022, a full year out from the previous date.

1 **II. STATEMENT OF FACTS**

2 On April 3, 2016, a shooting was reported at 6501 W. Charleston Boulevard,
3 the location of an apartment complex. Patrol officers arrived and found a deceased
4 black female adult, later identified as Raquel Stapinski, dead on the ground
5 between buildings 25 and 26. The investigation into Ms. Stapinski's death
6 revealed there were two families gathered that night. One family, the African
7 American family, was being hosted by a Dana Foreman in building 25 for the
8 purpose of celebrating her birthday. The other family, the Samoan family, was
9 being hosted by Elaine Lepolo in building 26, with the family gathering to say
10 goodbye to members of the family visiting from California who were about to head
11 home.
12

13 The police investigation developed the following information.
14

15 Dana Foreman's son, Dwayne Armstrong wanted to fight Tut, Mr. Lepolo's
16 son. Dana Foreman told investigators that Dwayne wanted to fight because "[t]he
17 mother and the son jumped me." During the fight initiated by Dwayne Armstrong,
18 his uncle, T-Loc, a.k.a, Henry Taylor, discharged a firearm. The two groups
19 dispersed. At some time after this first shot, more shots were fired. The decedent,
20 Stapinski, was in the cross-fire and was shot by .40 caliber bullets. No one would
21 suggest that Ms. Stapinski, herself, had shot at the Samoan party but the evidence
22 shows she was armed with a hammer, apparently prepared to engage in physical
23 conflict. The State's forensic analysis of the scene concluded that the .40 caliber
24 bullets came from the direction of the Samoan family. Multiple shell casings, live
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1 bullets and a disassembled extended magazine for a 9 mm handgun were found on
2 the doorstep of the Dana Foreman residence. A .357 magnum was hidden in a
3 charcoal bag in the backyard.
4

5 Neither family involved in the conflict gave information to the police that
6 allowed them to identify who shot guns that day. One witness gave an account
7 suggesting that a member of the Samoan family shot at members of the African
8 American family after a pause in the conflict between the parties. A witness
9 reported a person getting a gun from an SUV found on scene with California
10 plates. The State associates Tutaumua with that SUV. DNA found on the SUV in
11 question as well the DNA of a trail of blood leaving the area of the incident
12 allegedly matched "Tuly Lepolo," a name associated by the State with Mr. Lepolo.
13
14

15 After the State charged Henry "T-Loc" Taylor for the shooting that occurred,
16 his sister, Dana Foreman, the person this conflict centered around, identified
17 Tutaumua as the person from the Samoan family who shot that day. Additionally,
18 it is the defense's understanding that Henry Taylor's wife has also changed her
19 story and identified Tutaumua as the shooter. Henry Taylor himself did not
20 identify Tutaumua as the shooter.
21

22 **III. ARGUMENT**

23 The United States constitution and the Constitution of the State of Nevada
24 prohibit excessive bail. Article 1, § 6 of the Nevada Constitution dictates:
25

26 "Excessive bail shall not be required, nor excess imposed, nor
27 shall cruel or unusual punishment be inflicted, nor shall
28 witnesses be unreasonably detained."

1 The Eighth Amendment to the Constitution of the United States also mandates
2 that:

3 “Excessive bail shall not be required, nor excessive fines
4 imposed nor cruel and unusual punishments inflicted.”

5 As is discussed below, those charged with murder may be held without bail.

6 In the circumstances of this case, however, bail must be set.

7 **A. FEDERAL AND STATE CONSTITUTIONAL PROVISIONS**
8 **PROHIBIT EXCESSIVE BAIL SETTING**

9 Of course, First Degree Murder is the one charge the Nevada Constitution
10 does allow for detention without bail: “[a]ll persons shall be bailable by sufficient
11 sureties; unless for Capital Offenses or murders punishable by life imprisonment
12 without possibility of parole when the proof is evident or the presumption is great.”
13 Nev. Const. Art. 1, § 7; See also NRS 178.484. Accordingly, when charged with
14 First Degree Murder, the accused is entitled to bail unless the “proof is evident or
15 the presumption great.”
16
17

18 All persons are bailable, subject to the provisions discussed above, as a
19 matter of right as guaranteed by both the Nevada and United States
20 Constitutions. Punishment should not proceed conviction but follow it. In the case
21 of Application of Carl D. Wheeler for a Writ of Habeas Corpus, 81 Nev. 495, 406
22 P.2d 713 (1965), the defendant sought release on bail pending his trial for murder.
23
24 The Court held:

25 The central thought is that punishment should follow
26 conviction, not proceed it...Our view of the constitutional
27 emphasis is contrary to certain expressions contained in
28 earlier opinions of this court. For example, in Ex parte
Malley, 50 Nev. 248, 256 P.512, 53 A.L.R. 395, where the

1 charge was embezzlement, the court said, "In a proceeding
2 of this character the petitioner is presumed to be guilty of
3 the offenses charged in the indictments." We now reject
4 that statement as wholly incompatible with the
5 presumption that an accused is innocent of the offense
6 charged until proven guilty and convicted.

7 Application of Wheeler, 406 P.2d 713 at 715-16.

8 In the instant case, the State's evidence is the identification of Mr. Lepolo as
9 a person involved in this shooting was made by two people very close to Henry
10 Taylor after he was charged with his involvement in the offense. At this point in
11 time, the State has not made the defense aware of any other evidence saying Mr.
12 Lepolo fired a weapon, although some of the State's other evidence points to him
13 being on scene. The defense would submit that such evidence does not rise to the
14 level of evident proof of Mr. Lepolo's involvement or create a great presumption
15 that he is guilty of the crimes charged.

16
17 **B. THIS COURT SHOULD RELEASE TUTAUMUA ON HOUSE**
18 **ARREST, IF IT REQUIRES MORE THAN A SETTING OF BAIL.**

19 Bail amounts must be reasonable and not more than the Defendant can be
20 expected to provide. The Nevada Supreme Court addressed this issue in the case
21 of Ex parte Malley, 50 Nev. 248, 256 P.512 (1927), wherein the Court stated:

22 In support of the contentions made by petitioner, reliance
23 is had upon Ex parte Jagles and Varnes, 44 Nev. 370, 195
24 P.808. There is little in the matter mentioned to aid us in
25 the one before us. It is true that we said in that matter
26 that it was the purpose of the constitutional provision
27 mentioned therein to prevent the fixing of a bail bond in so
28 great a sum as to preclude its being given, and that it was
the idea of the framers of the Constitution that
punishment should follow conviction, and not both precede

1 and follow it, or be inflicted in spite of possible acquittal.
2 (256 P.512 at 514).

3 The purpose of bail is not to punish the Defendant for charges for which he has not
4 been convicted. The purpose of bail is to assure the Defendant's return to Court.
5 In Ex parte Jagles and Varnes, 44 Nev. 370, 195 P.808 (1921), the Nevada
6 Supreme Court stated:
7

8 "The Constitution provides (Article 1, § 6) that excessive
9 bail shall not be required. In reaching a conclusion as to
10 what is reasonable bail, a court should consider that the
11 object of bail is simply to assure the presence of the
12 accused for trial..." 195 P. 808 at 808.

13 NRS 178.498 delineates the factors to be considered when setting bail:

14 If the defendant is admitted to bail, the bail must be set at
15 an amount which in judgment of the magistrate will
16 reasonably ensure the appearance of the defendant and
17 the safety of other persons and the community, having
18 regard to:

- 19 1. The nature and circumstances of the offense charged;
- 20 2. The financial ability of the defendant to give bail;
- 21 3. The character of the defendant; and
- 22 4. The factors listed in NRS 178.4853.

23 The factors listed in NRS 178.4853, which are also the factors to consider when
24 releasing a defendant without bail, are:

- 25 1. The length of his residence in the community;
- 26 2. The status and history of his employment;
- 27 3. His relationships with his spouse and children, parents or
28 other members of his family and with his close friends;
4. His reputation, character and mental condition;
5. His prior criminal records, including any record of his
appearing or failing to appear after release on bail or
without bail;
6. The identity of responsible members of the community
who would vouch for the defendant's reliability.

- 1 7. The nature of the offense with which he is charged, the
- 2 apparent probability of conviction and the likely sentence,
- 3 insofar as these factors relate to the risk of his not
- appearing;
- 4 8. The nature and seriousness of the danger to any person
- 5 or the community that would be posed by the person's
- release;
- 6 9. The likelihood of more criminal activity by the person
- after he is released; and
- 7 10. Any other factors concerning his ties to the community or hearing on
- the risk that he may willfully fail to appear.

8
9 Based upon the factors listed above, this Court should release Mr. Lepolo with a
10 setting of bail, or if the court needs more, bail with house arrest. Tutaumua Lepolo
11 is not a resident of this community, but has resided in Southern California since
12 the early 1980s. His son and daughter live in Las Vegas and he would reside with
13 them during the pendency of the case at 2850 E. Bonanza, Apt 2145. Mr. Lepolo
14 has a burglary conviction from 1992 on his record and three drug related
15 convictions he received in 2004 after trial. It should be noted that Mr. Lepolo was
16 on bail for the 2004 conviction from 1999 to 2004 without incident. His record
17 shows no failures to appear. His initial pretrial assessment in Justice Court found
18 him a moderate risk for release.
19
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21 Mr. Lepolo is the patriarch of his extended family since the death of his
22 mother and grandmother. He has a longstanding history of working, with a letter
23 of recommendation from his employer in San Bernadino, CA. (See Exhibit A). His
24 extended family is struggling without him out earning money. He respectfully
25 requests a reasonable bail setting so that he can continue to work and support his
26 family.
27
28

1 C. **PRESUMPTION OF INNOCENCE**

2 Mr. Lepolo “is entitled to the presumption of innocence and the indicia of
3 innocence.” Young v. State, 126 Nev. 771, *2 (2010) (unpublished disposition)
4 (citing Haywood v. State, 107 Nev. 285, 288 (1991)). “The principle that there is a
5 presumption of innocence in favor of the accused is the black letter law, axiomatic
6 and elementary; its enforcement lies at the foundation of the administration of our
7 criminal law.” Coffin v. United States, 156 U.S. 432, 453, (1895). Mr. Lepolo’s
8 innocence is neither a formality, nor a legal fiction: He is innocent unless the
9 State can prove his guilt beyond a reasonable doubt at trial. Watters v. State, 129
10 Nev. 886, 889 (2013) (quoting Estelle v. Williams, 425 U.S. 501, 503 (1976) (“The
11 presumption of innocence, although not articulated in the Constitution, is a basic
12 component of a fair trial under our system of criminal justice.”)).
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16 “[O]fficial suspicion, indictment, continued custody, or other circumstances
17 not adduced as proof at trial” must not eviscerate the presumption of innocence.”
18 *Id.* (quoting Taylor v. Kentucky, 436 U.S. 478, 485 (1978)); accord Holbrook v.
19 Flynn, 475 U.S. 560, 567 (1986). Because a “finding of probable cause may be
20 based on slight, even marginal evidence” and “does not involve a determination of
21 the guilt or innocence of an accused,” the State has not, and cannot at this
22 juncture of the proceedings adduced proof disintegrating the presumption of
23 innocence. Sheriff v. Hodes, 96 Nev. 184, 185 (1980) (citing Sheriff v. Badillo, 95
24 Nev. 593 (1979); Perkins v. Sheriff, 92 Nev. 180 (1976); see also Kinsey v. Sheriff,
25 87 Nev. 361 (1971)).
26
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1 As such, the presumption of innocence must contextualize this Honorable
2 Court's adjudication of the instant Motion. In the recent case of Valdez-Jimenez
3 v. State, 136 Nev. Ad. Op. 20, 460 P.3d 976 (2020) the Court held that procedural
4 safeguards are necessary to ensure that pretrial inmates are not detained in
5 custody simply because they cannot afford to post bail.

7 Valdez-Jiminez, supra, requires a prompt individualized determination of
8 pretrial custody status. An adversarial hearing is also required. Bail should only
9 be required "if the state proves by clear and convincing evidence that bail is
10 necessary to ensure the defendant's presence in court and the safety of the
11 community. If bail is necessary, the judge must consider the defendant's financial
12 resources as well as the other factors set forth in NRS 178.498 in setting the
13 amount of bail. If bail is required, the judge must state his reasons for the bail
14 amount on the record.

17 An unpublished decision Kelly v. Eighth Judicial District, 473 P.3d 1044
18 (Nev. October 15, 2020) seem to state that Valdez-Jimenez standards would not
19 apply in first degree murder cases if there is "proof evident and presumption
20 great" that the defendant committed the crime. Subsequent litigation proved this
21 premise to be false.

23 Subsequent to the Kelly case, the Nevada Supreme Court in another
24 unpublished opinion, Sewall v. Eighth Judicial District Court, No. 81309
25 December 4, 2020, made it clear that Valdez-Jimenez standards would most
26 certainly apply if the State could not meet its heavy burden of showing proof
27
28

1 evident – presumption great. The Sewall opinion was later published at 137 Nev.
2 Adv. Rep. 9 (2021).

3 The Sewall case held that courts are required to grant bail, even in murder
4 cases. The State has the burden to show that the proof is evident and the
5 presumption is great that the defendant committed the charge. District Courts
6 may not rely on conjecture and inferences in denying bail. Id. at pg. 6-7. This case
7 is such a case where the requisite showing cannot be met.
8

9 CONCLUSION

10 Mr. Lepolo is entitled to a reasonable bail. Excessive bail is prohibited by
11 the Constitution of both Nevada and the United States. The main purpose of bail
12 is to ensure the defendant will return to face the accusations levied against him.
13 Based on the foregoing, Mr. Lepolo requests that an Order be entered by this Court
14 releasing him with bail, or with bail and house arrest if the court sees fit. Such an
15 order will provide sufficient assurances that Tutaumua will return to Court.
16

17 DATED this 1st day of April, 2021.
18

19 SUBMITTED BY

20 /s/ ALZORA B. JACKSON

21
22 ALZORA B. JACKSON
23 W. JEREMY STORMS
24 Attorneys for Lepolo
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DECLARATION OF ATTORNEY

ALZORA B. JACKSON makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada;
I am one of the Chief Deputy Special Public Defenders assigned to represent Mr. Lepolo in the instant matter, and in the course of said representation I have learned the following:

2. Through my representation of Mr. Lepolo, I have been in contact with his family, including his two adult children here in Las Vegas.

3. That Mr. Lepolo has a place to stay here in Las Vegas at 2850 E. Bonanza, Apt 2145, if he is required to stay in state as a condition of his release.

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

EXECUTED this 1st day of April, 2021.

/s/ ALZORA B. JACKSON

ALZORA B. JACKSON

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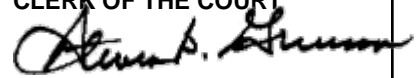
CERTIFICATE OF SERVICE

I hereby certify that service of the above Second Motion For Defendant Lepolo’s Release On House Arrest Or, In The Alternative, Motion To Set Reasonable Bail Pending Trial Due To Changed Circumstances, was made on April 1, 2021, by Electronic Filing to:

DISTRICT ATTORNEY’S OFFICE
email: motions@clarkcountyda.com

/s/ Elizabeth (Lisa) Araiza

Legal Secretary
Special Public Defender



OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MARC DIGIACOMO
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200 Lewis Avenue
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(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

TULY LEPOLO,
#8471381

Defendant.

CASE NO: C-20-345911-1

DEPT NO: XVII

**STATE'S OPPOSITION TO DEFENDANT'S SECOND MOTION FOR
DEFENDANT LEPOLO'S RELEASE ON HOUSE ARREST OR, IN THE
ALTERNATIVE, MOTION TO SET BAIL PENDING TRIAL**

DATE OF HEARING: 04/13/2021
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MARC DIGIACOMO and JOHN GIORDANI, Chief Deputy District Attorneys, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion For Defendant Lepolo's Release On House Arrest Or, In The Alternative, Motion To Set Reasonable Bail Pending Trial.

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

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1 **STATEMENT OF FACTS**

2 **OVERVIEW**

3 On April 3, 2016, the families of Defendant Tuly Lepolo and Henry Taylor were having
4 a party at an apartment 6501 West Charleston, Las Vegas, Nevada. During the party, two
5 members of Defendant's family, who are of Samoan decent, and members of Taylor's family,
6 who are of African American decent, began to fight. As one party got the upper hand in the
7 fight, the other family began to get involved. To disperse the crowd and end the fight, Taylor
8 grabbed a firearm and fired a warning shot in the air, and everyone scattered. As the people
9 scattered, Defendant, who has at least 4 prior felony convictions, went to a vehicle associated
10 with his family, grabbed a semi-automatic firearm, approached Taylor's apartment and fired
11 numerous rounds at the people standing in the front of the apartment, striking and killing
12 Raquel Stapinski. Ms Stapinski was a guest of the party, but not a member of either family
13 involved in the fight. As Defendant ran away through the apartment, he pointed the gun at
14 Flora Marie Taylor who was returning through the complex and threatened her.

15 **SPECIFICS FROM ARREST WARRANT**

16 On 04-03-16 at approximately 2057 hours, LVMPD patrol officers responded to the
17 call of a shooting at 6501 West Charleston Boulevard in Las Vegas. Patrol officers arrived on
18 the crime scene and located a black female adult lying on the ground between buildings 25
19 and 26. The female was ultimately identified as Raquel Stapinski. Stapinski appeared to have
20 suffered multiple gunshot wounds to the right side of her body. Medical personnel arrived and
21 pronounced Stapinski deceased at the crime scene. Homicide detectives were contacted and
22 responded to the crime scene to conduct the follow-up investigation.

23 The follow-up investigation revealed there had been two parties within the apartment
24 complex that night. Dana Foreman hosted one party in building 25, at apartment 215, and
25 Elaine Lepolo hosted another party in building 26, at apartment 231. Numerous people
26 attended each party.

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1 During the parties, Dana Foreman's son, Dwayne "Wayne Wayne" Armstrong, wanted
2 to fight a subject from Lepolo's party. Several people associated with the two parties began to
3 argue and fight with one another in the parking lot north of the two apartment buildings.

4 The matriarchs from each respective party, Dana Foreman and Elaine Lepolo, became
5 involved in the fight. During the fight, Dana Foreman's brother Henry "T-Loc" Taylor fired a
6 single shot from a 9mm semi-automatic handgun in the parking lot. The fight broke up and
7 people made their way back to their respective apartments.

8 Witness Courtney Franco was interviewed and related the following: Courtney was in
9 her upstairs apartment, which looked down over the complex parking lot. Throughout the day
10 people gathered in the parking lot from two parties in the complex. A fight ultimately broke
11 out in the parking lot between two male subjects. She looked out her sliding glass door, but
12 could not see the subjects very well, but believed the males fighting were black. Courtney
13 turned to go back to her living room, when she heard a single gunshot. She looked back outside
14 and saw people had started to disperse. She grabbed her cellular telephone and called 9-1-1.
15 She was on the phone with 9-1-1 and watched a male go into a white Chevrolet Suburban with
16 California license plates and retrieve a black handgun. The male walked toward the area of
17 apartment 231 and fired approximately nine (9) times at the people standing in the hallway in
18 front of 231. After the shooting, the suspect fled on foot (east) between the buildings toward
19 Torrey Pines. Courtney described the shooting suspect as approximately 30 years old, possibly
20 African American, approximately 6'0" tall, 200 pounds, last seen wearing a white t-shirt and
21 basketball shorts.

22 Homicide Detective Sanborn identified the white Chevrolet Suburban as having
23 California license plate 5FPB429. The vehicle was parked under covered parking north of the
24 shooting scene. A California Department of Motor Vehicles records check revealed the
25 Suburban was registered to Elise Faamasino at 1068 West 2nd Street in San Bernardino,
26 California. The Suburban was photographed and sealed at the crime scene in preparation to be
27 towed to the crime lab for further forensic processing.

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1 Witness Stanley Lepolo Jr. was interviewed and related the following: Stanley arrived
2 in Las Vegas on Friday (April 1st) to celebrate a family member's birthday. He stayed at 6501
3 West Charleston Boulevard, apartment 215, which belonged to his aunt, Elaine Lepolo. On
4 Sunday night (April 3rd) Stanley wanted to go out with his sister, Kaloni Lepolo; however,
5 while waiting for her to arrive, he fell asleep. Stanley later awoke to the sound of an argument
6 outside of the apartment. Stanley exited the apartment and saw several family members
7 standing near the carport area. The family members were arguing with other subjects who
8 were known to his family. Approximately 20 people were involved in the argument. Stanley
9 walked up to the crowd of people, and an unknown black male produced a handgun. Stanley
10 then heard four gunshots, ducked down, and ran to apartment 215 with several other family
11 members. The male with the gun was black, in his late 20-30s, with short hair a muscular build
12 and appeared to be intoxicated. The male was wearing all black clothing and he was armed
13 with a handgun. Stanley insisted his cousin's baby's daddy "Antoine" could identify the
14 shooter.

15 Witness Gordon Lepolo was interviewed and related the following: Gordon came to
16 Las Vegas to visit family. He stayed at 6501 West Charleston Boulevard, apartment 215,
17 which belonged to his aunt, Elaine Lepolo. On Sunday night (April 3rd) Gordon was preparing
18 to go out with other family members. He and several other family members exited the
19 apartment. Several of his family members began to argue with other people, who apparently
20 knew his family. A black male he knew as Wayne Wayne wanted to fight his cousin. Wayne
21 Wayne's mom (Dana Foreman) jumped into the fight, which caused his Aunt Elaine to get
22 involved.

23 Suddenly an individual by the moniker of "T-Loc" produced a handgun and fired.
24 Gordon has known T-Loc for a long time, but did not know his real name. T-Loc lived in the
25 other apartment involved in the incident. Gordon said "Antoine" would know T-Loc's real
26 name. T-Loc was described as a black male, 20-30 years of age, stocky build, with tattoos. T-
27 Loc was wearing a white tee-shirt, black shorts, and a black hat with a "W" on the front. T-
28 Loc was armed with a chrome handgun.

1 Witness Maleka Sagale related the following: She was inside her apartment (215) and
2 heard a commotion coming from the parking lot. She went outside to see what was going on
3 and saw a boy being jumped. She was unable to describe the boy who was being jumped, but
4 she believed he was being jumped by approximately five black males. There were
5 approximately 15-20 people out in the parking lot, when 5-6 gunshots went off. She ran back
6 to her apartment and called the police. She denied anyone from her apartment was involved in
7 the fight outside. She recently moved to the complex and did not recognize any of the subjects
8 involved in the fight. She also did not see who was shooting.

9 During the follow-up investigation, Homicide Detective Sanborn identified Maleka
10 Sagale as Elaine Lepolo (NV OLN 2105233002). Several witnesses mentioned an "Elaine" as
11 someone who would know the identity of the shooting suspect. Elaine Lepolo had falsely
12 identified herself to investigators with an alias of Maleka Sagale. Lepolo denied she or any of
13 her family was involved in the fight or shooting. The follow-up investigation revealed the
14 suspect in the shooting was related to Elaine Lepolo and she appeared to investigators to be
15 protecting the suspect and not assisting investigators with the investigation.

16 Witness Dana Foreman related the following: Dana lived in apartment 231 and was
17 having a birthday get together and BBQ. She went outside because of a commotion and saw
18 several people in the parking lot fighting. She was on the walkway and heard gunshots. She
19 turned to run and thought her friend Raquel was right behind her. She did not know how
20 Raquel got shot. She did not see who was shooting but thought there was more than one person
21 shooting. She was drunk and heard someone yell out to pick up the bullets, so she started to
22 pick up bullets from outside her front door, when police officers arrived and detained her. She
23 did not see anyone shooting from her front door area.

24 It was apparent from the evidence at the crime scene, the second person shooting
25 (Henry Taylor) at the crime scene retrieved the 9mm handgun from Dana Foreman's
26 apartment, from a backpack in her son Dwayne Armstrong's bedroom. Witnesses identified
27 Dwayne "Wayne Wayne" Armstrong as being involved in the original fight; however, he fled
28 before police arrived.

1 It was apparent to investigators Dana Foreman knew the identity of the persons
2 involved in the shooting; however, she did not want to assist investigators and she appeared
3 to be protecting the person(s) involved in the shooting.

4 Witness Flora Taylor related the following: Flora came to apartment 231 to visit with
5 family. She was doing hair inside the apartment when she decided to have her sister-in-law
6 take over. Flora left the apartment and spoke on her cellular telephone as she walked to the
7 east end of the complex. She heard several gunshots and ran back to the apartment. Flora did
8 not see the shooting, but the person she believed was the shooter ran past her on the sidewalk
9 just south of building 25. Flora described the shooter as have a mixed race, possibly black and
10 Hispanic male, approximately 5'8", and a medium build. He was wearing a white tee shirt and
11 black or blue colored shorts. Flora could not name the shooter but said she had seen him before.
12 Flora later learned her friend, Raquel, was killed during the shooting. Flora said she did not
13 know the identity of the shooter.

14 Prior to the interview, Flora was approached by Stanley and Gordon Lepolo who both
15 gave her a hug. She knew the men as "Bill" (Stanley) and "Wally" (Gordon), and knew they
16 were from California. Apparently, they were known to her sister's family in apartment 231.
17 Flora knew the people living in apartment 215, specifically "Miss Elaine" could identify the
18 shooter.

19 Witness Tavon Lowe related the following: Tavon lived in apartment 233, which was
20 just north of apartment 231. He was in the kitchen between 2030-2100 hours, when he heard
21 a single gunshot, followed by a lot of footsteps running by his front door. Tavon heard a little
22 girl's voice tell her mom someone had been shot. Tavon went to his bedroom window and
23 looked outside and saw a male walk up from the parking lot area. The male got to the sidewalk
24 and started running up to the group, and yelled, "What's up now, you bitch ass nigger?" and
25 fired 5-6 shots toward the group. Tavon ducked down as several bullets went into his
26 apartment. Tavon described the shooting suspect as an approximately 35 to 40 years old
27 Samoan or Hawaiian male. The male was approximately 6' tall, with shoulder length black
28 hair, tattoos on both arms, and a stocky build. The male was wearing a white short sleeved

1 shirt with a blue Washington Nationals logo on it, blue shoes, blue L.A. baseball hat, and
2 possibly jeans.

3 After several hours at the crime scene, a tow truck arrived to tow the white Chevrolet
4 Suburban (CA 5FPB429) to the LVMPD Crime Lab for further forensic processing. The
5 arrival of the tow truck caused the registered owner Elise Faamasino to exit apartment 215 and
6 make contact with investigators.

7 Witness Elise Faamasino related the following: Faamasino came to Las Vegas with her
8 six children for a birthday party. She drove to Las Vegas with only her children in her white
9 Chevrolet Suburban (CA 5FPB429) and arrived at her in-law's apartment on Friday April 1,
10 2016. She had been staying at her in-law's apartment (Building 25, Apartment 215) since
11 Friday. On the night of the shooting she was inside the apartment and did not see anything.
12 She denied anyone would have retrieved a gun from her vehicle and said the keys were with
13 her the entire night. Faamasino did not assist investigators and continued to deny anyone could
14 have retrieved a gun from her vehicle.

15 Crime scene analysts and homicide detectives examined the crime scene for evidence.
16 Investigators recovered one (1) 9mm cartridge case from the parking lot area where the
17 original fight took place. Five (5) .40 S&W cartridge cases were recovered on the ground east
18 of the alcove for apartment 231. Four (4) additional 9mm cartridge cases were recovered on
19 the ground in the alcove for apartment 231.

20 Crime scene analysts and homicide detectives examined the apparent bullet path
21 trajectories and determined the African American suspect was firing a 9mm handgun in an
22 easterly direction from the entryway alcove of apartment 231, while the Samoan suspect was
23 firing a .40 caliber handgun in a westerly direction toward the entryway alcove of apartment
24 231. The victim, Raquel Stapinski, was caught in the crossfire and was struck several times
25 by the Samoan suspect.

26 Investigators observed several areas of apparent blood along the south side of building
27 25, where the Samoan suspect fled on foot. The areas of blood continued east along the
28 building, then north to the parking lot, where no additional areas of blood could be located.

1 Crime scene analysts recovered four (4) swabs of the apparent blood on the south side of
2 building 25.

3 It appeared to investigators the shooting suspect from the Samoan party made his way
4 east along the building, stopping twice in two different apartment alcoves, before making his
5 way to the parking lot and fleeing the scene. It was unknown if the suspect was injured during
6 the initial fight in the parking lot or wounded during the subsequent shooting.

7 During the processing of the crime scene, investigators obtained a search warrant for
8 apartment 231. A bedroom was located in the southeast corner of the residence. State of
9 Nevada Welfare Department paperwork and a Social Security Card both in the name of
10 Dwayne Armstrong Jr. were located in the top drawer of a dresser. A black backpack was
11 located on the floor, west of the bed. Three (3) cartridges were on the floor, north of the
12 backpack. A "Winchester 9MM" ammunition box, containing "WIN 9MM LUGER"
13 cartridges and loose ammunition were within the backpack. A pair of black pants was on the
14 floor, north of the backpack. A wallet was attached to the pants with a chain and contained a
15 Southern Nevada Health District ID card in the name of Dwayne S. Armstrong Jr.

16 Dwayne "Wayne Wayne" Armstrong, the male known as T-Loc, and the unknown
17 Samoan male shooting suspect all fled the crime scene prior to the arrival of police officers.

18 On 04-05-16, a complete autopsy was performed on the body of Raquel Stapinski at
19 The Clark County Office of the Coroner/Medical Examiner. Doctor Olsen determined
20 Stapinski died as the result of a gunshot wound of the right arm and axilla. The manner of
21 Stapinski's death was ruled a homicide. During the autopsy a bullet was recovered from the
22 left side of Stapinski's chest. The bullet was impounded as evidence by Crime Scene Analyst
23 Lynch.

24 On 4-05-16, Homicide Detectives Sanborn and Ivie responded to the LVMPD Crime
25 Lab to serve the search warrant on Elise Faamasino's white 2004 Chevrolet Suburban (CA
26 5FPB429). Crime Scene Analysts Fletcher, Grover, and Andrews assisted with the warrant
27 service and conducted the forensic processing. The vehicle was parked in the Crime Lab
28 garage and the seals were intact.

1 Crime Scene Analyst Grover conducted the latent print processing on the Suburban and
2 developed numerous latent prints on the exterior of the vehicle as well on various items inside
3 the vehicle.

4 Crime Scene Analyst Grover also recovered and impounded swabs of possible DNA
5 evidence recovered from the Monster Energy drink can, steering wheel, and shift lever. A
6 search of the vehicle was conducted for firearms related evidence with negative results.

7 On 05-09-16, Forensic Scientist Angel Moses completed the requested forensic
8 firearms examinations. The evidence bullets were microscopically examined in conjunction
9 with one another. Based on the comparative examinations, Scientist Moses determined two
10 (2) bullets (Items 8 & 36), one recovered from Victim Stapinski's body at autopsy, the other
11 recovered from inside apartment 233, were fired from a single .40 caliber firearm.

12 The evidence cartridge cases were microscopically examined in conjunction with one
13 another. Based on the comparative examinations, Scientist Moses determined there were a
14 minimum of two firearms represented by the cartridge cases. The five (5) 9mm Luger cartridge
15 cases had all been fired by a single firearm. The remaining five (5) .40 S&W cartridge cases
16 all bore the same overall characteristics to one another; however, there were insufficient
17 microscopic details for a conclusive identification.

18 Dwayne Armstrong was subsequently contacted and related the following: Dwayne
19 was asleep inside his bedroom when he heard gunshots outside. He checked on his little
20 brother, as people started to come inside his apartment. He fled over the back balcony before
21 police arrived because he had a probation warrant. Dwayne denied he was ever outside during
22 the fight or shooting. He also did not hear anyone come inside his room and get a gun out of
23 a backpack. Armstrong also denied knowing anyone with the nickname of T-Loc. He did know
24 who from his apartment was shooting or see who from the other apartment was shooting. It
25 was apparent to investigators, Dwayne "Wayne Wayne" Armstrong was being untruthful and
26 he did not want to assist the investigation.

27 Homicide Detective Sanborn was ultimately able to identify T-Loc as Henry Taylor.
28 Henry Taylor was subsequently contacted and related the following: He was Dana Foreman's

1 brother, Dwayne Armstrong's uncle, witness Flora Taylor's brother, and Antoine Hall's
2 brother. Taylor denied being present at Foreman's birthday party on the night of April 3, 2016,
3 despite having several people identify him by moniker and describe him. Taylor recalled being
4 told about the party and fight incident by family members, but insisted he was not present.
5 Henry's brother Antoine has a baby with a female member of the Samoan family, Cecilia
6 Jackie Lepolo. It was apparent to investigators, Henry "T-Loc" Taylor was being untruthful
7 and he did not want to assist the investigation.

8 On 09-14-16, Forensic Scientist Heather Gouldthorpe, completed the AFIS (Automated
9 Fingerprint Identification System) search of the selected latent fingerprints recovered during
10 the processing of the Chevrolet Suburban. One suitable print (Q54 B) from the exterior right
11 front door was searched and identified to the right ring finger of Tuly Lepolo (FBI#
12 95252HA9). One suitable print (Q27) from the Monster Energy drink can was identified to
13 the right thumb of Tuly Lepolo (FBI# 95252HA9). One suitable print (Q68) from the left side
14 of the hood was identified to the left palm of Tuly Lepolo. One suitable print (Q69) from the
15 left side of the hood was identified to the right palm of Tuly Lepolo.

16 Homicide Detective Sanborn conducted a police records check on Tuly Lepolo, which
17 revealed Tuly was a Samoan male with long black hair and tattoos on both arms, who was also
18 known as Tautamua Lepolo. He was listed between 5'9" – 5'11" inches tall and weighed
19 between 180-260 pounds. The address listed on Tuly Lepolo's California driver's license was
20 1068 Wilson Street in San Bernardino. California Department of Corrections records revealed
21 Tuly Lepolo was affiliated with the Hoodlum Crip Boys gang and had the nickname of
22 Trigger.

23 The AFIS fingerprint information and the physical descriptors of Tuly "Tutamua"
24 Lepolo, were consistent with the witness information investigators received regarding the
25 suspects actions and physical description.

26 On 11-03-16, Forensic Scientist Allison Rubino completed the requested Biology/DNA
27 Forensic work. The DNA profile obtained from the swab from the mouth of the Monster
28 Energy can from the center console drink holder of the Chevrolet Suburban was consistent

1 with a distinguishable mixture of at least two individuals, with at least one being a male. The
2 major DNA profile was consistent with a single unknown male individual Unknown Male #1.
3 The DNA profile obtained from the swab from the steering wheel and shift lever of the 2004
4 Suburban was consistent with a distinguishable mixture of at least three individuals, with at
5 least on being a male. The major DNA profile was consistent with Unknown Male #1. The
6 full DNA profiles obtained from the apparent suspect blood samples AB1, AB2, AB3, and
7 AB4, were consistent with Unknown Male #1.

8 On 11-22-16, Homicide Detective Sanborn received a CODIS Hit Notification Report
9 from the LVMPD Forensic Lab regarding evidence from event number 160403-3524. During
10 a search of the National DNA Index System (CODIS) database a match occurred between the
11 DNA profile of Unknown Male #1 obtained from blood sample AB1 to a California Offender.
12 The California DOJ DNA Data Bank Laboratory provided their offender information as: Tuly
13 Lepolo with FBI number 95252HA9.

14 Homicide Detective Sanborn reached out to San Bernardino County Sheriff's
15 Department (SBCSD) Homicide Detective Jonathan Cahow for assistance with obtaining a
16 search warrant in the State of California for a sample of Tuly Lepolo's DNA. The DNA sample
17 was necessary to complete the forensic comparison to the CODIS Hit Notification Report from
18 the LVMPD Forensic Lab regarding evidence from event number 160403-3524.

19 SBCSD Gang Task Force Detectives located Tuly Lepolo living at 3139 California
20 Street in San Bernardino California. Also located at the residence on California Street was
21 Elise Faamasino's white Chevrolet Suburban (CA 5FPB429). SBCSD Detectives conducted
22 physical surveillance and noted Tuly Lepolo still had complete access to the white Chevrolet
23 Suburban.

24 On 04-19-17, SBCSD Gang Task Force Detectives established physical surveillance
25 on the residence at 3139 California Street in San Bernardino. At approximately 1415 hours,
26 detectives observed Tuly Lepolo drive away from the residence in Faamasino's white
27 Chevrolet Suburban. A vehicle stop was conducted and Lepolo was detained. Lepolo was
28 transported to the SBCSD Headquarters building for the service of the search warrant.

1 SBCSD Homicide Detective Cahow provided Lepolo with a copy of the search warrant
2 prior to recovering a sample of Lepolo's DNA, via the application of a Buccal Swab Kit. The
3 Buccal Swab kit was subsequently turned over to Homicide Detective Sanborn, who
4 impounded it as evidence.

5 Homicide Detectives Sanborn and Mauch attempted to interview Tuly Tutaumua
6 Lepolo; however, Lepolo did not wish to provide a statement regarding the case. Lepolo stated
7 he was not in Las Vegas at the time of the murder.

8 On 09-11-17, Forensic Scientist Allison Rubino completed the requested Biology/DNA
9 Forensic work regarding the comparison of Tuly Lepolo's known DNA to the evidence. The
10 DNA profile obtained from the swab from the mouth of the Monster Energy can from the
11 center console drink holder was consistent with a distinguishable mixture of at least two
12 individuals, with at least one being a male. The major DNA profile was consistent with Tuly
13 Lepolo. The DNA profile obtained from the swab from the steering wheel and shift lever of
14 the 2004 Suburban was consistent with a distinguishable mixture of at least three individuals,
15 with at least one being a male. The major DNA profile was consistent with Tuly Lepolo. The
16 full DNA profiles obtained from the blood samples AB1, AB2, AB3, and AB4, were consistent
17 with Tuly Lepolo.

18 The complex relationships between the party attendees (witnesses) and the shooters
19 resulted in the lack of cooperation during the follow-up investigation. Investigators believed
20 witnesses from both sides knew the identity of both of the respective shooters. Investigators
21 also noted that victim Raquel Stapinski was not a blood relative to either side of the suspected
22 shooters, which furthered the lack of the cooperation.

23 Subsequent to the issuance of arrest warrants for Defendant and Henry Taylor, the
24 family of Mr. Taylor who were present have become cooperative. It is believed that at least
25 three people will identify Defendant as the Samoan shooter who killed Raquel.

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POINTS AND AUTHORITIES

Despite Defendant's claim to bail as a matter of right, in Nevada, a person charged with Murder is not entitled to bail. In fact, the statute on point, denies bail to an individual charged with murder where the proof is evident or the presumption is great. NRS 178.484 states, in relevant part:

4. A person arrested for murder of the first degree may be admitted to bail unless the proof is evident or the presumption great by any competent court or magistrate authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense.

(emphasis added). While the proof necessary for the quantum of proof which is needed has not been specifically defined, it is at least higher than probable cause, Hanley v. State, 85 Nev. 154, 451 P.2d 852 (1969), but less than what is required to prove guilt at trial. In re Wheeler, 81 Nev. 495, 406 P.2d 713 (1965). For example, the dying declaration of the victim has been deemed to be sufficient under the statute. *Id.* Moreover, the Court is granted broad discretion in determining the amount of proof necessary to the determination. *Id.* And of course, the Court must not rely solely upon conjecture, but rather admissible evidence establishing the elements of the offense. Howard v. Sheriff, 83 Nev. 48, 50, 422 P.2d 538, 539 (1967).

The undersigned is aware that some defense attorneys are under the impression that live witnesses are needed for the determination of a no bail status. The State is unaware of any law which supports that conclusion. As far back as 1917, the Nevada Supreme Court held that an affidavit was sufficient for purposes of denying bail. *See Ex parte Nagel*, 41 Nev. 86, 88-89 (1917) ("The true rule upon the subject of bail or discharge after indictment for murder undoubtedly is for the judge to refuse to bail or discharge upon any affidavit or proof that is susceptible of being controverted on the other side."). This is conformance with the practice of courts in other contexts as well. The confrontation clause is a trial right, not a right at every proceeding. *See Sheriff v. Witzenburg*, 122 Nev. 1056, 145 P.3d 1002 (2006). Hearsay is admissible at a sentencing hearing. *See Summers v. State*, 122 Nev. 1326, 148 P.3d 778 (2006). Likewise, at evidentiary hearings, the evidentiary rules are relaxed. *See Univ. of Tex.*

1 V. Camenisch, 451 U.S. 390, 395 (1981). The Justice Court was in possession of a lengthy
2 affidavit in support of the evidence which indicates Defendant's guilt. Moreover, Defendant
3 chose not to test these charges at a preliminary hearing and waived it without negotiation. **On**
4 **top of that, this Court has already found the proof is evident and presumption great**
5 **when it denied Defendant's first Motion for Bail on March 4, 2020.**

6 To the extent Defendant's Motion claims a "change in circumstances" as its reason for
7 this duplicative Motion, the State is unsure what Defendant is referring to. Defendant seems
8 to infer that Sewall v. Eighth Judicial District Court, 137 Nev. Adv. Rep. 9 (2021) somehow
9 changed the existing law as it relates to first degree murder and bail. It did not. *See Id.* In fact,
10 Sewall reiterated the holding in Kelly v. Eighth Judicial District Court, 473 P.3d 1044 (2020).
11 Namely, that Defendants accused of first degree murder are not entitled to bail when the proof
12 is evident and presumption is great.

13 In the instant case, the proof is evident and the presumption is great the Defendant
14 committed murder of the first degree. The killing occurred during a challenge to fight, and
15 thus, is a *per se* First Degree Murder With Use of a Deadly Weapon. *See* NRS 200.450. There
16 is no doubt that Defendant committed the offense - his fingerprints and DNA are at the scene
17 and at least three people identify him as the shooter. It is evident that Defendant committed
18 the offense of first degree murder and he is therefore properly held without bail.

19 Moreover, Defendant is a clear and present danger to the community. Defendant's
20 NCIC is so complex and riddled with so many arrests, that a truly accurate account of his
21 convictions is difficult. What is known is that Defendant's criminal history started in 1987
22 when he went into the California Youth Authority as a juvenile. In 1988, he attempted to
23 escape that facility. In 1990, he was paroled. In 1992, he was arrested for three (3) strong arm
24 robberies and burglaries. From that case, he acquired his first felony conviction in 1992 for
25 Burglary in California in case CR42265. It appears he received 36 months of probation, but
26 subsequently in 1997 was sentenced to two (2) years in prison on that case, suggesting he
27 violated his probation/parole. He was arrested numerous times thereafter and he was charged
28 with violating his parole on multiple occasions. His arrests include crimes like Lynching and

Corporal Injury to Spouse. He was first prohibited from possessing firearms in 1999 when he was convicted of Battery Domestic Violence in case RIF086244. His final violation of parole occurred in 2000 when he was committed to prison to serve out his term after he was convicted of Resisting a Police Officer in the Lynching case RIM403291. Upon his release in 2001, his arrests began again for drug and gun offenses. In 2004, he acquired three (3) more felony convictions for drug sales in case RIF101245. He was also arrested for Possession of Firearm and/or Switchblade Knife in that case. The record indicates an enhancement to the offenses because they were committed while he was out on bail or his own recognizance on a separate case, however it appears his prison sentences of 148 months were stayed. Beginning in 2002, his arrests began again with charges associated with battery, drugs and DUI. In 2004, he was arrested on more felony drug sales charges, but they were dismissed as his suspended sentences were imposed and he was ordered to serve 112 months in prison, slightly under 10 years. As this event occurred in 2016, it appears he remained trouble free for slightly more than 2 years after his release from prison, until he murdered the victim in the instant case. Finally, Defendant's only tie to our community was as a guest for a few hours and left an innocent victim dead from his criminal behavior.

CONCLUSION

Based upon the foregoing, Defendant's motion should be denied.

DATED this 6th day of April, 2021.

Respectfully submitted,

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

BY /s/ John Giordani
JOHN GIORDANI
Chief Deputy District Attorney
Nevada Bar #006955

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and foregoing, was made this 6th day of April 2021, by email to:

W. Jeremy Storms, Chief Deputy Special PD
Jeremy.storms@clarkcountynv.gov

Alzora B. Jackson, Chief Deputy Special PD
Alzora.jackson@clarkcountynv.gov

BY: /s/ Stephanie Johnson
Employee of the District Attorney's Office

19F15993A/MD/saj/MVU



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6
7 THE STATE OF NEVADA,
8 Plaintiff,

9 vs.

10 TULY LEPOLO,
11 Defendant.

CASE: C-20-345911-1

DEPT. XVII

12
13 BEFORE THE HONORABLE DAVID BARKER, SENIOR DISTRICT COURT
14 JUDGE

15 FRIDAY, APRIL 16, 2021

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **SECOND MOTION FOR DEFENDANT LEPOLO'S RELEASE ON**
18 **HOUSE ARREST, OR IN THE ALTERNATIVE, MOTION TO SET**
19 **REASONABLE BAIL PENDING TRIAL DUE TO CHANGED**
20 **CIRCUMSTANCES**

21 APPEARANCES:

22 For the State:

JOHN GIORDANI, ESQ.
Chief Deputy District Attorney

23 For the Defendant:

ALZORA JACKSON, ESQ.
JEREMY STORMS, ESQ.
Chief Dep Spec Public Defenders

24
25 Recorded by: ANGELICA MICHAUX, COURT RECORDER

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Las Vegas, Nevada, Friday, April 16, 2021

[Hearing begins at 9:57 a.m.]

THE COURT: 345911, State of Nevada versus Tuly, is it Leopolo? Leopolo?

THE DEFENDANT: Yes, sir.

THE COURT: I have a Defendant present in custody remote. Do I have an attorney representing this Defendant online?

MS. JACKSON: Yes, Your Honor, Alzora Jackson and Jeremy Storms for Mr. Lepolo.

THE COURT: Thank you, Ms. Jackson and Mr. Storm. Do I have a District Attorney on this case?

MR. GIORDANI: Yes, Your Honor, John Giordani on behalf of the State.

THE COURT: Thank you, Mr. Giordani.

Time set second motion of Defendant Lepolo's release on house arrests, or in the alternative, motion to set reasonable bail pending trial due to changed circumstances. This is Defense motion. Ms. Jackson, Mr. Storm, anything additional to add?

MS. JACKSON: Well, Your Honor, I did set forth – I realize that Judge Villani ruled on the first motion, which was, by the way – it was before Valdez-Jimenez which is cited in my brief, 136 Nev. Advanced Opinion 20. That's a 2020 case. It was before Kelly versus Eighth Judicial District, a 2020 case. And it was before the Sewall versus Eighth Judicial District Court case, which is 2021. It was before we had the new district court rules. It was before we had the new criminal – rules

1 of criminal procedure approved. So, I am somewhat taken aback, if you
2 will, by the State's position in their opposition that nothing had changed.

3 Your Honor, everything has changed. And in particular, in
4 addition to the things that I just mentioned, we were in court the last
5 time, and the date escapes me, but we had talked with our client the day
6 before. We knew that the trial date was set for this April. And certainly
7 we are aware of the situation with the pandemic, as everyone is, but we
8 were not prepared for Judge Villani, who is usually very much let's move
9 forward to [indiscernible] – *sua sponte* vacated our trial date and put it
10 over to next year. And I certainly am not at all criticizing the Court, but
11 part of what we were hoping was that if we kept that trial date and kept
12 all of our feet to the fire, if you will, it would help facilitate some type of
13 resolution. I would note for the record that Mr. Giordani and
14 Mr. DiGiacomo have made an offer. We have made a counteroffer. It's
15 not a case where we're eons apart.

16 But, Your Honor, the bottom line is that there has been a
17 significant, most significant I have ever seen in this amount of time of
18 practicing law, of a change of the law, a change of the procedures, and a
19 change of circumstances. Your Honor, -- and the Court has seen the
20 facts of the case. We're talking about a case that happened in 2016,
21 which is quite frankly a family dispute that got out of hand. Mr. Lepolo
22 was arrested years later. I think three years later, if memory serves. You
23 know, Your Honor, I think that the direction of the new law that we all are
24 familiar with – the State keeps saying in their opposition when we filed
25 these motions, well, the Defense is under the misapprehension that

1 these rules apply to murder cases. Well, Your Honor, that's what the law
2 says. That's what the law says, and I just would urge the Court to
3 reconsider the circumstances.

4 Your Honor, we've all suffered throughout this pandemic. And
5 I think Mr. Kane – I appreciate him saying on the record finally that our
6 relationships with our clients have suffered greatly because of Covid -19.
7 It's just been very difficult. And you know, Your Honor, I get it. I get it that
8 our clients are charged with very serious offenses, but they're also
9 cloaked with the presumption of innocence. And I've been working
10 throughout this whole pandemic, as has the Court and other lawyers
11 online, but the persons who have really suffered and received the brunt
12 of the pandemic have been defendants like Mr. Lepolo. They have been
13 patient. They have been isolated, going months without seeing loved
14 ones.

15 And, Your Honor, when you look at his record, which I
16 recognize he has a record and we don't deny that and the State has set
17 forth part of it although I think they characterize it very unfairly because
18 Mr. Lepolo had a drug problem and his record reflects that, but the fact
19 that he – the people who were involved in this, the person who fired the
20 first shot has been out on house arrest this entire time -- that the other
21 family initiated this incident.

22 And, Your Honor, I think with this Court's vast experience in
23 the courtroom and on the bench, the facts of this case, Your Honor, are
24 so peculiar, if you will, to this situation. Obviously, it had resolved before
25 Mr. Lepolo was arrested because you had a three-year time period

1 where nothing happened. I think that alone demonstrates just the most
2 force – very forcefully that he is not a danger to the community and that
3 there is no danger whatsoever of there being any type of problems or
4 trouble.

5 Your Honor, I just would implore the Court to just take a good
6 second look at this in light of all of the new rules, the new cases and
7 such, and the fact that the Judge last status check just – he blew us all
8 away. He just *sua sponte* put it to next year.

9 This client, Your Honor, he has small children. He's lost three
10 or four family members to Covid. He, himself – you could look at him, he
11 suffers from high blood pressure and many other illnesses. Its just a
12 situation, Your Honor, that we think screams for consideration and we
13 believe he would be a good candidate for some type of house release.

14 THE COURT: All right. State's position.

15 MR. GIORDANI: Thank you, Your Honor.

16 Notwithstanding Valdez-Jimenez and the new cases and
17 statutes and rules cited, 178.484 still governs cases of murder in the first
18 degree when it comes to bail. As we set forth in our written opposition,
19 this is a clear *de facto* first-degree murder under a challenge to fight
20 theory.

21 And I would submit to the Court that the facts aren't peculiar.
22 It's an age-old story of the Defendant bringing a gun to a fistfight. He
23 shot an innocent bystander during the course of that and that is exactly
24 what the challenge to fight statute is meant to prevent in my personal
25 opinion. With that said, the Defendant is not entitled to bail and I would

1 submit the proof is evident and presumption great at this point in time.

2 In addition to that, even if the Court, you know, ignored
3 178.484, and I know the Court will not, but he is a danger to the
4 community and a risk of flight. He has multiple ties to California and
5 almost no ties to Las Vegas from my understanding. He was here
6 temporarily when the fight and subsequent murder occurred. His criminal
7 history was not misstated in any way. And I can tell the Court I took the
8 case numbers, the dates, and the charges directly from his NCIC so its
9 already set forth in my written opposition. I won't go back through it, but
10 he does have a significant criminal history and it doesn't just have to do
11 with drug addiction. The drug convictions I am seeing are for sales of
12 drugs. There's violence, there's firearms involved, and there's domestic
13 violence as well.

14 I would submit that nothing substantive has changed with
15 regard to the Nevada Constitution and 178.484 at this point in time. I
16 would ask the Court to deny Mr. Lepolo bail.

17 THE COURT: Ms. Jackson, this is your motion. Anything
18 additional – anything in response to the DA?

19 MS. JACKSON: Yes, Your Honor, just very briefly. Your
20 Honor, certainly the standard and the constitution of Nevada says that
21 proof evident presumption great. We don't deny that that is certainly as
22 much the law as the fact that Mr. Lepolo is entitled to a presumption of
23 innocence, Your Honor. But I have rarely, if ever in almost 40 years of
24 practicing law, seen a case where a challenge to fight is, as the State
25 characterized it, open and shut. Unless you have two gangs and they

1 decide we're going to go, we're going to rumble on Fourth and Jackson
2 at 9:00 o'clock, -- this is not a case -- we actually just got discovery this
3 week where we're taking a look at the phone calls and such. We don't
4 know, and the State can't know -- or maybe if they have, they haven't
5 shared that information with us, but I would submit to the Court that you
6 can't know based upon what their recitation of the facts. These parties
7 did not agree to fight. My client is at his family's gathering, doing just
8 normal family things and there's a fight that's instigated by this other
9 group. So, I would dare say, Your Honor, it is not a clear-cut case where
10 the proof is evident and the presumption great unless it's a gang
11 situation and challenges to fight murder cases. It never is. I've done a
12 few and they're very, very, very, difficult. It is not a clear-cut case, Your
13 Honor.

14 And for the record, as we stated in this motion and our last
15 motion, yeah, he lives in California, but he has a son who lives here. We
16 verified that. We submitted that in the first motion back in December
17 before the law changed. We submitted that again. He's prepared to stay
18 here in Nevada if that is what the Court requires.

19 Your Honor, it's a case that I think cries out for some type of
20 consideration. And you can look at Mr. Lepolo and see that he's not a
21 young man, Your Honor. It's just a case where the law and the facts, I
22 think, militate in favor of a house arrest.

23 THE COURT: All right. Appreciate the argument from both
24 sides.

25 The Court, having listened to arguments of counsel and

reviewed the written motions, concludes no combination of monetary condition would be sufficient to reasonably ensure the Defendant's appearance and safety to the community. I believe a no bail warrant is appropriate, in part based upon the minimum contacts the Defendant has with this community and the significant, and as stated, complex criminal history of the Defendant I believe, that offers great concern of his – for the safety of the community. Based upon those concerns, the motion is denied.

You're in trial stack – you're right Ms. Jackson. it looks like Judge Villani has set it now for April 2022 with a status check trial readiness – he's already set a date in May and you've got pending motions for April 30th. So, you're back in front of Judge Villani here on the 30th. Other than the motion that was presently set, is there anything else this Court could assist parties with?

MS. JACKSON: No, Your Honor. Thank you.

THE COURT: All right. Thank you very much.

[Hearing concludes at 10:09 a.m.]

* * * * *

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

Cynthia Georgilas
CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****January 21, 2020**

C-20-345911-1 State of Nevada
 vs
 Tuly Lepolo

January 21, 2020 8:30 AM Initial Arraignment

HEARD BY: Herndon, Douglas W.

COURTROOM: RJC Courtroom 16C

COURT CLERK: Kory Schlitz

RECORDER: Jill Jacoby

PARTIES

PRESENT:	Lepolo, Tuly	Defendant
	Morales, Caroline	Attorney for State
	State of Nevada	Plaintiff
	Storms, William J.	Attorney for Defendant

JOURNAL ENTRIES

- Mr. Storms stated the Defendant's name is a nickname and he will try to correct the record, and requested the matter be passed one week for him to speak with the Defendant regarding waiving or invoking his speedy trial right, adding he will be filing a Bail Motion as well. COURT STATED the Defendant could be arraigned and reassigned out to a Murder department. DEFENDANT LEPOLO ARRAIGNED and PLED NOT GUILTY. COURT ORDERED, matter set for status check. Upon Court's inquiry, Mr. Storms indicated the matter is not going before the Death Review Committee, and the Defendant waived up. Pursuant to Administrative Order 17-05 this COURT ORDERS the case REASSIGNED to Department 17; COURT FURTHER ORDERED, a Pre-Trial Risk Assessment to be completed and DIRECTED Mr. Storms to file a bail Motion. Upon Court's inquiry, Mr. Storms stated no objection to the State responding orally to a Bail Motion.

CUSTODY

1/30/2020 8:30 A.M. ARRAIGNMENT CONTINUED... STATUS CHECK: TRIAL SETTING (DEPT 17)

PRINT DATE: 01/21/2020

Page 1 of 1

Minutes Date: January 21, 2020

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 30, 2020

C-20-345911-1 State of Nevada
vs
Tuly Lepolo

January 30, 2020 8:30 AM All Pending Motions

HEARD BY: Villani, Michael

COURTROOM: RJC Courtroom 11A

COURT CLERK: April Watkins

RECORDER: Cynthia Georgilas

PARTIES

PRESENT:	Di Giacomo, Marc P.	Attorney
	Lepolo, Tuly	Defendant
	State of Nevada	Plaintiff
	Storms, William J.	Attorney

JOURNAL ENTRIES

- MOTION FOR DEFT. LEPOLO'S RELEASE ON HOUSE ARREST OR, IN THE ALTERNATIVE, DEFT'S MOTION TO SET REASONABLE BAIL...STATUS CHECK: TRIAL SETTING...ARRAIGNMENT CONTINUED

Mr. Storms advised when Deft. initially appeared in District Court, Department 3, counsel indicated he would be filing a bail motion. Judge Herndon ordered Deft. to be interviewed by Pre Trial Services and Deft. has not been interviewed. Mr. Di Giacomo stated this needs to be re-ordered. COURT ORDERED, Deft. to be interviewed by Pre Trial Services and Deft's motion CONTINUED. Mr. Di Giacomo further stated Deft. previously entered not guilty plea and 60 days was WAIVED. Upon Court's inquiry, Mr. Storms advised this happened in 2016, there are a number of lay witnesses and it is hard to say how much time is needed to prepare for trial. Mr. Di Giacomo stated counsel can do file review. FURTHER ORDERED, matter SET for trial.

CUSTODY

PRINT DATE: 02/03/2020

Page 1 of 2

Minutes Date: January 30, 2020

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C-20-345911-1

CONTINUED TO: 2/19/2020 8:30 AM

2/19/2020 9:00 AM STATUS CHECK: TRIAL READINESS

9/8/2020 8:30 AM CALENDAR CALL

9/21/2020 9:00 AM JURY TRIAL

Felony/Gross Misdemeanor

COURT MINUTES

March 04, 2020

C-20-345911-1 State of Nevada
 vs
 Tuly Lepolo

March 04, 2020 09:00 AM All Pending Motions

HEARD BY: Villani, Michael COURTROOM: RJC Courtroom 11A

COURT CLERK: Reid, Shannon

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Marc P. Di Giacomo Attorney for Plaintiff

State of Nevada Plaintiff

Tuly Lepolo Defendant

William J. Storms Attorney for Defendant

JOURNAL ENTRIES

MOTION FOR DEFENDANT LEPOLO'S RELEASE ON HOUSE ARREST OR, IN THE
ALTERNATIVE, DEFENDANT'S MOTION TO SET REASONABLE BAIL PENDING
TRIAL...STATUS CHECK: TRIAL READINESS

Mr. Storms advised he had received the Pre Trial Risk Assessment. Arguments by Mr. Storms and Mr. Di Giacomo regarding the merits and opposition of the Motion. Court stated its findings and ORDERED, Motion DENIED. Upon Court's inquiry, Mr. Di Giacomo advised they were on track for trial and there was no outstanding discovery; Mr. Storms stated he would be securing a DNA expert soon. Statement from the Defendant.

CUSTODY

CONTINUED TO: 05/13/2020 9:00 AM

Felony/Gross Misdemeanor

COURT MINUTES

April 16, 2021

C-20-345911-1 State of Nevada
 vs
 Tuly Lepolo

April 16, 2021 08:30 AM Second Motion for Defendant Lepolo S Release On House Arrest
Or, In The Alternative, Motion To Set Reasonable Bail Pending
Trial Due To Changed Circumstances

HEARD BY: Barker, David COURTROOM: RJC Courtroom 11A

COURT CLERK: Hansen-McDowell, Kathryn

RECORDER: Michaux, Angelica

REPORTER:

PARTIES PRESENT:

Alzora Betrice Jackson	Attorney for Defendant
John Giordani	Attorney for Plaintiff
State of Nevada	Plaintiff
Tuly Lepolo	Defendant
William J. Storms	Attorney for Defendant

JOURNAL ENTRIES

Court noted this was the Defendant's second motion for release on house arrest or in the alternative, motion to set reasonable bail. Arguments by Ms. Jackson and Mr. Giordani on the merits and opposition of the Motion. COURT stated its FINDINGS and ORDERED, Motion DENIED.

CUSTODY