

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3 Electronically Filed
4 Oct 21 2021 08:59 p.m.
5 Elizabeth A. Brown
Clerk of Supreme Court

6 CRYSTAL YVONNE AUSTIN

CASE NO.: 83345

7 Appellant,

8 vs.

9 THE STATE OF NEVADA,

10 Respondent,

11 ON APPEAL FROM THE FIFTH JUDICIAL DISTRICT COURT IN AND

12 FOR THE COUNTY OF NYE, THE HONORABLE ROBET LANE,

13 PRESIDING

14 APPELLANT'S APPENDIX ON APPEAL

15 VOLUME I

16
17 David H. Neely III, Esq.
18 NV Bar No. 3891
19 3520 E. Tropicana Ave., Suite D-1
20 Las Vegas, Nevada 89121
Attorney for Appellant

Aaron Ford, Esq.
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
Attorneys for Respondent

21 Chris Arabia, Esq.
22 Nye County District Attorney
23 P.O. Box 39
24 Pahrump, Nevada 89041
25

1 Appellant, **CRYSTAL YVONNE AUSTIN**, by and through his attorney of
2 record, David H. Neely III, Esq., hereby files the following as his Appendix on
3 Appeal Volume One, containing the documents deemed pertinent to the issues on
4 appeal.
5

6 Appellant reserves the right to file supplemental appendixes as required in
7 Opening, Answering or Reply Briefs.

8 I hereby certify that I have read this Appendix on Appeal Volume One and
9 to the best of my knowledge, information, and belief, it is not frivolous or
10 interposed for any improper purpose such as to harass or to cause unnecessary
11 delay or needless increase in the cost of litigation. I further certify that this
12 Appendix complies with all applicable Nevada Rules of Appellate Procedure, in
13 particular NRAP 28(e), which requires every assertion in the Brief regarding
14 matters in the record be supported by a reference to the page and volume number
15 of this appendix where the matter is relied on is to be found. I understand that I
16 may be subject to sanctions in the event that the accompanying Brief is not in
17 conformity with the requirements of the Nevada Rules of Appellate Procedure.
18
19

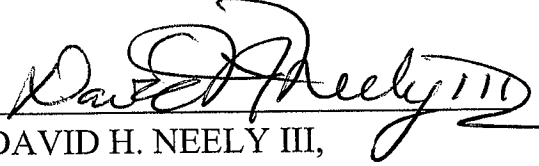
20 VERIFICATION

21 1. I hereby certify that this Appellant's Appendix on Appeal Volume
22 One complies with the formatting requirements of NRAP 32(a)(6) because:
23
24
25

1 This Appellant's Appendix on Appeal Volume One has been prepared in a
2 proportionally spaced typeface using Microsoft Word 2010 in Times New Roman
3 14.

4 2. I further certify that the Appendix on Appeal Volume One complies
5 with the page limitation of NRAP 32(a)(7).
6

7 **DATED** this 21 day of October, 2021.

8 
9 DAVID H. NEELY III,
10 NV Bar No. 003891
11 3520 East Tropicana Ave., Ste. D-1
12 Las Vegas, NV 89121
13 Attorney for Appellant
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INDEX TO APPENDIX ON APPEAL VOLUME ONE

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7	01/14/2020	Judgment of Conviction	0233
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9			
10	05/24/2019	Motion to Exclude Blood Test Results	0123
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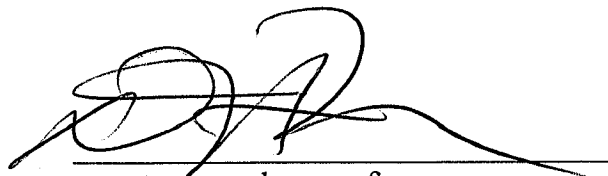
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1 **CERTIFICATE OF MAILING**

2 **I HEREBY CERTIFY** that I am an agent or employee of the above
3 referenced Nevada licensed attorney, and that on the 21 day of October, 2021, I
4 served the above and foregoing **APPELLANT'S INDEX TO APPENDIX ON**
5 **APPEAL VOLUME ONE** by depositing a copy in the United States mails,
6 postage prepaid, addressed to counsel for plaintiff at his last known address, as
7 indicated below:
8

9
10 Chris Arabia, Esq.
11 District Attorney
12 100 North Carson Street
13 Carson City, Nevada 89701-4717

14 Aaron Ford, Esq.
15 Nevada Attorney General
16 100 North Carson Street
17 Carson City, Nevada 89701-4717
18 Attorneys for Respondent
19
20
21

22 
23 agent or employee of
24 David H. Neely, III, ESQ.
25

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

BY A. Malone

Case No. 16CR02581

Department A

LEA Case No(s). 16NY-1771

ARR: _____

IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP

COUNTY OF NYE, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

CRIMINAL COMPLAINT

CRYSTAL YVONNE AUSTIN,

Defendant. _____ /

The undersigned, ANGELA A. BELLO, District Attorney, County of Nye, State of Nevada, by and through her deputy, Patrick A. Ferguson, complains and charges the above named defendant, CRYSTAL YVONNE AUSTIN, with having committed the following offense within said County of Nye, State of Nevada:

DRIVING UNDER THE INFLUENCE OF ALCOHOL, WITH PRIOR FELONY DUI CONVICTION, in violation of **NRS 484C.110,**

484C.410(1)(a),(e), A CATEGORY 'B' FELONY, committed in the following manner, to wit: That **ON OR ABOUT JUNE 1, 2016**, in Pahrump Township, Nye County, Nevada, said defendant did willfully and unlawfully drive or was in actual physical control of a vehicle, a **maroon 2005 Volvo S60 2.5T** bearing **Nevada** license plate(s) **49C738**, on a highway or on premises to which the public had access, in the area of southbound Pahrump Valley Boulevard, north of Gamebird Road, while under the influence of an intoxicating liquor, or with a concentration of alcohol of 0.08 or more in her blood, or was found by measurement within 2 hours after driving or being in actual physical control of a vehicle to have a concentration of alcohol of 0.08 or more in her blood, approximately **0.328** grams of alcohol per 100 milliliters of blood, said Defendant having previously been convicted of:

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

- 1 1.) Driving Under the Influence of Alcohol, 3rd Offense, in violation of
- 2 NRS 484.379, a category B felony, in Fifth Judicial District Court
- 3 case number **CR5068**; and/or
- 4 2.) Driving Under the Influence of Alcohol, Second Offense, in
- 5 violation of NRS 484C.110, a misdemeanor, which was reduced
- 6 from a felony pursuant to NRS 484C.340, in Fifth Judicial District
- 7 Court case number **CR6341A**;

8 All of which is contrary to the form, force and effect of the statutes in such

9 cases made and provided, and against the peace and dignity of the State of

10 Nevada. Said complainant makes this declaration under penalty of perjury and

11 requests that a summons be issued for CRYSTAL YVONNE AUSTIN.

12 **DATED** this 29th day of September, 2016.

13 **ANGELA A. BELLO**

14 **NYE COUNTY DISTRICT ATTORNEY**

15 By 

16 **PATRICK A. FERGUSON**

17 Deputy District Attorney

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CASE NO. CR8978

DEPT. NO. A

BY C. Fier

2017 AUG 16 PM 1:59

RECEIVED & FILED

IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP
COUNTY OF NYE, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CRYSTAL YVONNE AUSTIN,

Defendant.

Case No. 16CR02581

FILED
FIFTH JUDICIAL DISTRICT

AUG 17 2017

Nye County Clerk
Deputy

REPORTER'S TRANSCRIPT
OF
UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

BEFORE THE HONORABLE GUS SULLIVAN
JUSTICE OF THE PEACE

Wednesday, August 2, 2017, 9:00 A.M.

APPEARANCES:

For the State: PATRICK A. FERGUSON, ESQ.
Deputy District Attorney

For the Defendant: DAVID RICKERT, ESQ.
Deputy Public Defender

Reported by: RENEE SILVAGGIO, C.C.R. NO. 122

1 Pahrump, Nye County, Nevada

2 Wednesday, August 2, 2017, 9:00 A.M.

3 P R O C E E D I N G S

4 * * * * *

5 THE COURT: Case number 16CR02581, Crystal
6 Austin.

7 MR. RICKERT: Ms. Austin will unconditionally
8 waive her Preliminary Hearing in this matter.

9 In District Court, she will plead guilty to one
10 count of driving under the influence, with a prior felony of
11 driving under the influence. That is a non-probational,
12 category B felony, two to 15 years, possible penalty, and a two
13 to \$5,000 fine.

14 The State agrees at the time of sentencing to
15 recommend the minimums.

16 And regarding as far as sentence, that 16TR05201
17 would be dismissed pursuant to negotiations. I believe that's
18 all that --

19 MR. FERGUSON: Correct.

20 THE COURT: Miss Austin, do you understand the
21 negotiation?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Any questions about them?

24 THE DEFENDANT: No.

25 THE COURT: Do you agree with that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you signed this Unconditional
3 Waiver, waiving to plead voluntarily?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And you agree it will go up to
6 District Court and is not coming back to Justice Court?

7 THE DEFENDANT: That's right.

8 THE COURT: I'll accept the Unconditional
9 Waiver.

10 May I have a District Court date and an
11 arraignment date and a case number?

12 THE CLERK: Arraignment date, December 11th,
13 2017, at 9:00 A.M., in Department 2, under District Court case
14 number CR8978.

15 THE COURT: And then on the other case,
16 16TR05201, let's go ahead and set a status for after that day.

17 MR. FERGUSON: Please.

18 THE CLERK: December 13th, at 9:00 A.M.

19 THE COURT: Thank you.

20 MR. RICKERT: December 13th, at 9:00 A.M.

21 And, Your Honor, just a housekeeping matter in
22 16CR0258, the Preliminary Hearing date of October 4th be
23 vacated?

24 THE COURT: Yes. It will be vacated.

25 MR. RICKERT: Okay.

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THE COURT: Thank you.

MR. RICKERT: Thank you, Your Honor.

THE COURT: Okay. And so on the other case too,
there is a status check on that date and it will be vacated
too.

MR. FERGUSON: Thank you.

MR. RICKERT: Thank you.

(Proceedings concluded.)

* * * * *

ATTEST: Full, true and accurate transcript of proceedings.

/S/Renee Silvaggio
RENEE SILVAGGIO, C.C.R. 122

PJC Case No. 16CR02581
PJC Dept. A
DC Case No. CR8978

BY C. Dunder

2017 AUG -7 AM 11:51

IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP

COUNTY OF NYE, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

BINDOVER ORDER

CRYSTAL YVONNE AUSTIN,

Defendant(s) /

FILED
FIFTH JUDICIAL DISTRICT COURT
AUG 07 2017
NYE COUNTY DEPUTY CLERK
DEPUTY

IT APPEARS to the court that a public offense, namely, **COUNT I: DUI ALCOHOL WITH PRIOR FELONY CONVICTION, in violation of NRS 484C.110.1D**, has been committed and it further appearing to the court the Defendant above-named, **CRYSTAL YVONNE AUSTIN**, has unconditionally waived Preliminary Hearing in this matter.

IT IS THEREFORE ORDERED that Defendant **CRYSTAL YVONNE AUSTIN**, be, and is hereby, bound over to the Fifth Judicial District Court of the STATE OF NEVADA, in and for the County of Nye, and there held to answer to said charge.

IT IS FURTHER ORDERED that Defendant **CRYSTAL YVONNE AUSTIN** appear in the District Courtroom of the Nye County Government Complex, 1520 E. Basin Road, Pahrump, Nevada, for arraignment in the Fifth Judicial District Court, on Monday, December 11, 2017 at the hour of 9:00 a.m.

IT IS FURTHER ORDERED that the Defendant be admitted to bail in the sum of N/A cash or surety.

DONE IN OPEN COURT this 2nd day of August 2017.

Gus Sullivan
Justice of the Peace

PAHRUMP JUSTICE COURT
1520 East Basin Avenue
Pahrump, NV 89060

Case No: 16CR02581

Dept.: A

BY C. Dunbar

2017 AUG -7 AM 11:51

IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP
COUNTY OF NYE, STATE OF NEVADA

* * * * *

THE STATE OF NEVADA

Plaintiff,

vs.

CONDITIONAL UNCONDITIONAL WAIVER OF
PRELIMINARY HEARING

Crystal Austin

Defendant.

The undersigned Crystal Austin

Defendant

herein, does by these presents hereby waive preliminary examination in the above-entitled matter.

This Waiver does not constitute an admission or plea of guilty to the charge(s) set forth in the Criminal complaint on file herein.

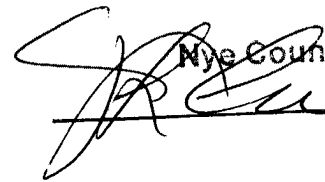
DATED this 2nd day of August, 20 17.

[Signature]
Defendant

[Signature]
Attorney

110811

AUG 15 2017


Nye County Clerk
Deputy

Case No. CR8978

Dept. No. 2

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

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

INFORMATION

CRYSTAL YVONNE AUSTIN,

Defendant. /

ANGELA A. BELLO, District Attorney within and for the County of Nye, State of

Nevada, informs the Court that **CRYSTAL YVONNE AUSTIN**, before the filing of this
Information, did then and there, in Nye County, Nevada, commit the following offense,
to wit:

**DRIVING UNDER THE INFLUENCE OF ALCOHOL, WITH PRIOR
FELONY DUI CONVICTION**, in violation of **NRS 484C.110,
484C.410(1)(a),(e), A CATEGORY 'B' FELONY**, committed in the
following manner, to wit: That **ON OR ABOUT JUNE 1, 2016**, in
Pahrump Township, Nye County, Nevada, said defendant did willfully
and unlawfully drive or was in actual physical control of a vehicle, a
maroon 2005 Volvo S60 2.5T bearing **Nevada** license plate(s) **49C738**,
on a highway or on premises to which the public had access, in the area
of southbound Pahrump Valley Boulevard, north of Gamebird Road,
while under the influence of an intoxicating liquor, or with a concentration
of alcohol of 0.08 or more in her blood, or was found by measurement
within 2 hours after driving or being in actual physical control of a vehicle
to have a concentration of alcohol of 0.08 or more in her blood,
approximately **0.328** grams of alcohol per 100 milliliters of blood, said
Defendant having previously been convicted of:

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

1.) Driving Under the Influence of Alcohol, 3rd Offense, in violation of NRS 484.379, a category B felony, in Fifth Judicial District Court case number **CR5068**; and/or
2.) Driving Under the Influence of Alcohol, Second Offense, in violation of NRS 484C.110, a misdemeanor, which was reduced from a felony pursuant to NRS 484C.340, in Fifth Judicial District Court case number **CR6341A**;

All of which is contrary to the form, force, and effect of the statutes in such cases made and provided, and against the peace and dignity of the State of Nevada.

Witnesses and their addresses known to the District Attorney of Nye County, State of Nevada, at the time of the filing of this Information:

ACTING FIRST SERGEANT JAMES
MCRAE
NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA

MAX SANTOS
DESERT VIEW HOSPITAL
360 S. LOLA LANE
PAHRUMP, NEVADA

DEPUTY JOE MARSHALL
NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA

ROBERT MASSEY
131 E. CALVADA
PAHRUMP, NEVADA

DETECTIVE ALEX J. COX
NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA

MARLISSA COLLINS
LVMPD FORENSICS LAB
LAS VEGAS, NEVADA


DEPUTY BRITTON MICHAEL
HOFFMANN
NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA

ALICE D. COX
PO BOX 1401
MCGILL, NEVADA

MARY K. KLINE
4801 ELIZABETH
PAHRUMP, NEVADA

DATED this 3rd day of August, 2017.

ANGELA A. BELLO
NYE COUNTY DISTRICT ATTORNEY

By 
PATRICK A. FERGUSON
Deputy District Attorney

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

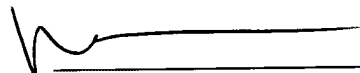
CERTIFICATE OF SERVICE

I, Nichole McPherson, Executive Legal Secretary, Office of the Nye County District Attorney, P.O. Box 39, Pahrump, Nevada 89041, do hereby certify that I have served the following:

**INFORMATION in
5TH JDC Case No(s). CR8978
STATE v. CRYSTAL YVONNE AUSTIN**

upon said Defendant(s) herein by delivering a true and correct copy thereof on 8-16-17 to the following:

DAVID RICKERT
AT THE NYE COUNTY DISTRICT ATTORNEY'S OFFICE
IN PAHRUMP, NEVADA 89060


Nichole McPherson

FILED

FIFTH JUDICIAL DISTRICT

No. CR-8978

Dept. No. 2

JAN 04 2018

Nye County Clerk
Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE

-oOo-

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

vs.

CRYSTAL YVONNE AUSTIN,

Defendant.

TRANSCRIPT OF PROCEEDINGS
ARRAIGNMENT - (CONT'D)DECEMBER 11, 2017
11:00 A.M.
PAHRUMP, NEVADA

APPEARANCES:

For the State:

MICHAEL VIETA-KABELL, ESQ.
DEPUTY DISTRICT ATTORNEY
Nye County Courthouse
Pahrump, Nevada 89060

For the Defendant:

DAVID RICKERT, ESQ.
DEPUTY PUBLIC DEFENDER
2280 East Calvada Boulevard, #204
Pahrump, Nevada 89048State Parole and
Probation Officer:

LISA THELANER

The Defendant:

CRYSTAL YVONNE AUSTIN

Reported by: CECILIA D. THOMAS, RPR, CCR No. 712

1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, DECEMBER 11, 2017

2 11:00 A.M.

3 -oOo-

4 P R O C E E D I N G S

5
6 THE COURT: Crystal Austin, 8978.

7 MR. RICKERT: Your Honor, Ms. Austin is my
8 client. She is present out of custody.

9 And, Your Honor, today I'm going to be
10 asking to continue this briefly. This was set for a
11 District Court initial arraignment whereby she may be
12 answering to a Guilty Plea Agreement with the State.

13 There is -- in one discussion I've had with
14 Ms. Austin, there was additional fact I would like to
15 run down regarding her prior regard and just make sure
16 of. But I would just ask for a short continuance. I
17 spoke to Mr. Ferguson. The State's not opposing.

18 THE COURT: The next law and motion?

19 MR. RICKERT: That's fine, Your Honor.

20 THE CLERK: January 8th.

21 THE COURT: January 8th at 0900.

22 MR. RICKERT: January 8th, 9:00 a.m. Thank
23 you, Your Honor.

24 THE COURT: Thank you, sir.

25 -oOo-

1 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
2 PROCEEDINGS.
3
4

Cecilia D. Thomas

Cecilia D. Thomas
RPR, CCR No. 712

FILED

FIFTH JUDICIAL DISTRICT

1 No. CR-8978

2 Dept. No. 2

JAN 24 2018

Nye County Clerk
Deputy

5 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF NYE

7 THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE

8 -oOo-

ORIGINAL

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 vs.)

13 CRYSTAL YVONNE AUSTIN,)

14 Defendant.)

TRANSCRIPT OF PROCEEDINGS
ARRAIGNMENT - (CONT'D)/

JANUARY 8, 2018

10:55 A.M.

PAHRUMP, NEVADA

15

16 APPEARANCES:

17 For the State:

DANIEL YOUNG, ESQ.
DEPUTY DISTRICT ATTORNEY
Nye County Courthouse
Pahrump, Nevada 89060

19

20 For the Defendant:

DAVID RICKERT, ESQ.
DEPUTY PUBLIC DEFENDER
2280 East Calvada Boulevard, #204
Pahrump, Nevada 89048

21

22 State Parole and
Probation Officer:

LISA THELANER

23

24 The Defendant:

CRYSTAL YVONNE AUSTIN

25 Reported by: CECILIA D. THOMAS, RPR, CCR No. 712

1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, JANUARY 8, 2018

2 10:55 A.M.

3 -oOo-

4 P R O C E E D I N G S

5
6 THE COURT: Crystal Austin, 8978.

7 MR. RICKERT: That is my client, Your Honor.
8 She is present out of custody.

9 THE COURT: Okay. If she's not here, we'll
10 do a warrant. Oh, okay. She's here.

11 MR. RICKERT: She's here. She's always
12 here.

13 THE COURT: All right. It shows a DUI on
14 the Information. Did you reach a negotiation?

15 MR. RICKERT: Yes, Your Honor. With the
16 Court's permission, I believe this matter is
17 negotiated.

18 THE COURT: Yes, sir. Did we get a GPA on
19 it?

20 MR. RICKERT: Your Honor, it was filed this
21 morning.

22 THE COURT: Thank you, sir. I have it.

23 MR. RICKERT: Your Honor, my client,
24 Ms. Austin, has agreed to plead guilty to Driving
25 Under the Influence of Alcohol With a Prior Felony DUI

1 conviction, a category B felony. The State has agreed
2 to recommend the statutory minimum sentence. The
3 State has agreed to dismiss Pahrump Justice Court Case
4 No. 16-TR-05201 as part of these negotiations.

5 Ms. Austin will admit that she was
6 previously convicted of the following offenses and
7 waive further proof: DUI, Third Offense, in Fifth
8 Judicial District Court Case No. CR-5068; as well as
9 Driving Under the Influence of Alcohol, Second
10 Offense, a misdemeanor, Fifth Judicial District Court
11 Case No. CR-6341A. And I believe that is the totality
12 of the negotiations.

13 THE COURT: Any to add?

14 MR. YOUNG: No, Judge.

15 THE COURT: Crystal?

16 THE DEFENDANT: Yes.

17 THE COURT: I'm hot. Are you hot in that
18 coat?

19 THE DEFENDANT: No.

20 THE COURT: How can ladies do that? You
21 guys are always cold and you bundle up; meanwhile, I'm
22 burning up. You don't think it has anything to do
23 with me being a little overweight; do you?

24 THE DEFENDANT: No.

25 THE COURT: That's a good answer for a judge.

1 Your name is Crystal Yvonne Austin?

2 THE DEFENDANT: Yes.

3 THE COURT: How old are you, Ms. Austin?

4 THE DEFENDANT: I'm 55.

5 THE COURT: How far did you get through
6 school?

7 THE DEFENDANT: Three years of college.

8 THE COURT: Do you read and write English
9 fine?

10 THE DEFENDANT: Yes.

11 THE COURT: Have you ever been treated for
12 a mental disorder?

13 THE DEFENDANT: Yes.

14 THE COURT: We need to make sure that
15 you're lucid today. I don't know what your history
16 is. You can either tell me publicly, or you can tell
17 your attorney privately, and also if you're taking any
18 prescriptions or treatment so we can make sure you're
19 lucid today.

20 MR. RICKERT: Court's indulgence.

21 (Counsel and client confer.)

22 MR. RICKERT: Your Honor, she tells me
23 she's not taking anything, any prescriptions related
24 to mental issues. She is taking medicine for COPD and
25 some other physical ailments.

1 THE COURT: It's possible that she's
2 bipolar, schizophrenic, paranoid, OC, whatever; and
3 you need to talk with her and make sure that she tells
4 you whatever she is that she is lucid today.

5 MR. RICKERT: Your Honor, she tells me that
6 she is not taking any medication; although, she has
7 been diagnosed previously with some -- what was it you
8 said? -- bipolar -- no, bipolar, Your Honor. I can
9 say in the time that I have met with her, including
10 today, which is multiple instances, I have never had
11 any doubt that she was competent and lucid to proceed,
12 has answered my questions and I've answered hers.

13 THE COURT: Very good. You laughed at my
14 joke, and that kind of tells me you're lucid;
15 although, bipolar you could say, "That was a real
16 funny joke," and then you could say, "What was a real
17 funny joke? I told him" -- to yourself. But I need
18 to find out what you think. What do you think,
19 Crystal, are you lucid today?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. Now you said you
22 were diagnosed in the past with bipolar and you got it
23 under control and you're squared away, but right now
24 you're not doing prescriptions. Do you have any
25 concerns? Because we can bring you back in the future

1 after you take your meds and stuff.

2 THE DEFENDANT: Well, I hadn't had
3 insurance, and now I have insurance again. I've only
4 had it since the 26th of last month; so I'm just
5 taking care of the skin cancer problems. And I
6 haven't had a chance to make an appointment with
7 another doctor yet.

8 MR. RICKERT: Court's indulgence.

9 THE COURT: But you don't have a concern;
10 you feel like you're fine and understand.

11 What about the young lady behind you who
12 stood up; does she want to say anything?

13 VOICE IN THE AUDIENCE: Well, I want to
14 listen.

15 (Baby crying in the background.)

16 MR. RICKERT: This is my client's friend.
17 She's having a hard time hearing. Court's indulgence.

18 THE COURT: Is this better? Can you hear
19 better now?

20 VOICE IN THE AUDIENCE: Yes, sir. Thank
21 you.

22 THE COURT: You're welcome.

23 MR. RICKERT: Your Honor, in speaking to
24 the State -- Your Honor, in speaking to my client as
25 well as the State, I apologize, I would actually

1 request if we could put this on the next calendar for
2 this.

3 THE COURT: That would be fine.

4 MR. RICKERT: I just want to make sure.

5 THE COURT: We want to err on the safe side
6 and make sure everything is fine. What normally
7 happens -- you're probably wondering what's going on.
8 There's been those rare cases in the past. There's a
9 famous one out of San Francisco where a guy said he
10 ate a bunch of Twinkies; so he wasn't in his right
11 mind. And we had a famous one here in Pahrump that
12 was adjudicated in Vegas where a man entered his plea
13 and then later said, "I wasn't getting enough oxygen
14 that day, and I didn't understand what was going on."

15 And so we always like to err on the safe
16 side and make sure that everybody is lucid so that you
17 don't come back in three or four months and say, "I
18 didn't know what I was doing that day." And so Dave
19 is going to work with you on that to make sure that
20 your doctor or somebody says she's fine. She can go
21 forward with the arraignment or get your meds or
22 whatever you need.

23 THE DEFENDANT: Okay. Thank you.

24 THE COURT: So we'll meet back here on
25 January 29th at 0900, and we'll do the arraignment at

1 that time.

2 THE DEFENDANT: Okay. Thank you.

3 THE COURT: Good luck.

4 THE DEFENDANT: Thank you.

5 -oOo-

6
7 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
8 PROCEEDINGS.

9

10

11

Cecilia D. Thomas

12

Cecilia D. Thomas
RPR, CCR No. 712

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JAN 09 2018

Nye County Clerk

Deputy

Case No. CR8978

Dept. No. 2

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

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

GUILTY PLEA AGREEMENT

CRYSTAL YVONNE AUSTIN,

Defendant. /

ORIGINAL

COME NOW THE STATE OF NEVADA ("State"), by and through **ANGELA A. BELLO**, Nye County District Attorney, by **PATRICK A. FERGUSON**, Deputy District Attorney, and **CRYSTAL YVONNE AUSTIN** ("Defendant"), and file this Guilty Plea Agreement in the above-entitled case.

I, **CRYSTAL YVONNE AUSTIN**, hereby agree to plead guilty to **DRIVING UNDER THE INFLUENCE OF ALCOHOL, WITH PRIOR FELONY DUI CONVICTION**, a category B felony, in violation of NRS 484C.110, 484C.410(1)(a),(e), as more fully alleged in the charging document attached hereto as Exhibit 1. My decision to plead guilty is based upon the plea agreement in this case, which is as follows:

///

///

INI

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

1 1. I, **CRYSTAL YVONNE AUSTIN**, will enter a plea of GUILTY to **DRIVING**
2 **UNDER THE INFLUENCE OF ALCOHOL, WITH PRIOR FELONY DUI**
3 **CONVICTION**, a category B felony, in violation of NRS 484C.110, 484C.410(1)(a),(e),
4 as set forth above;

5 2. The State has agreed to recommend the statutory minimum sentence;

6 3. The State has agreed to dismiss Pahrump Justice Court case number
7 **16TR05201** (6/1/16 Attempted Leaving the Scene of Accident Involving Damage to
8 Vehicle or Property, Battery);

9 4. I admit that I was previously convicted of the following offense(s) and
10 waive further proof thereof:

11 (1) Driving Under the Influence of Alcohol, 3rd Offense, in violation of
12 NRS 484.379, a category B felony, in Fifth Judicial District Court case number
13 **CR5068**; and/or

14 (2) Driving Under the Influence of Alcohol, Second Offense, in
15 violation of NRS 484C.110, a misdemeanor, which was reduced from a felony
16 pursuant to NRS 484C.340, in Fifth Judicial District Court case number
17 **CR6341A**;¹

18 5. I, **CRYSTAL YVONNE AUSTIN**, further understand and agree that the
19 State's agreement to recommend or stipulate to a particular sentence, to not present
20 argument regarding the sentence, to not oppose a particular sentence or to not seek
21 my punishment as a habitual criminal is contingent upon my conduct between now and
22 sentencing: If I fail to interview with the Division of Parole and Probation, fail to appear

23 _____
24 ¹ See *Krauss v. State*, 116 Nev. 307, 310-11, 998 P.2d 163, 165 (2000) (a defendant
may stipulate to or waive proof of prior convictions at sentencing); accord *Hodges v.*
State, 119 Nev. 479, 78 P.3d 67 (2003).

 INI

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

1 at any subsequent hearings in this case, or commit a new criminal offense prior to
2 sentencing,² the State will regain the right to argue for any lawful sentence and term of
3 confinement allowable for the crime(s) to which I am pleading, including the use of any
4 prior convictions I may have to increase my sentence as a habitual criminal to 5 to 20
5 years, life without the possibility of parole, life with the possibility of parole after 10
6 years, or a definite 25 year term with the possibility of parole after 10 years.

7 CONSEQUENCES OF THE PLEA

8 I understand that by pleading GUILTY I admit the facts that support all the
9 elements of the offense(s) to which I now plead as set forth in Exhibit 1.

10 I understand that as a consequence of my plea of GUILTY to **DRIVING UNDER**
11 **THE INFLUENCE OF ALCOHOL, WITH PRIOR FELONY DUI CONVICTION**, a
12 category B felony, I will be imprisoned for a period of not less than TWO (2) YEARS
13 and not more than FIFTEEN (15) YEARS and fined not less than TWO THOUSAND
14 DOLLARS (\$2,000.00) nor more than FIVE THOUSAND DOLLARS (\$5,000.00). I
15 understand that the law requires me to pay an administrative assessment fee of \$25, a
16 DNA administrative assessment fee of \$3, and a chemical analysis fee of \$60. I also
17 understand that the law requires me to provide a biological specimen, if not previously
18 submitted for conviction of a prior offense, to be used for an analysis to determine
19 genetic markers, and to pay the associated fee of \$150.

20 ///

21 _____
22 ² The commission of a new offense will be established if: (1) a magistrate reviews a
23 declaration of arrest and finds probable cause to believe that I have committed a new
24 criminal offense, including reckless driving or DUI, but excluding minor traffic
violations; (2) a magistrate or grand jury finds probable cause to believe that I have
committed such an offense and holds me to answer therefor; (3) I am found guilty,
either by plea or trial, of such an offense; or (4) this Court finds that I have committed
such an offense.

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

1 I understand that I will be ordered to attend in person, at my own expense, a
2 live meeting of a panel of persons who have been injured or had members of their
3 families or close friends injured or killed by a person who was driving or in actual
4 physical control of a vehicle while under the influence of intoxicating liquor or a
5 controlled substance.

6 I understand that, before my sentencing, I must be evaluated by a certified or
7 licensed alcohol and drug abuse counselor, psychologist or physician to determine
8 whether I am an abuser of alcohol or other drugs and whether I can be treated
9 successfully for such condition, and that the results of said evaluation will be
10 forwarded to the Nevada Department of Corrections.

11 I understand that the Department of Motor Vehicles will revoke my driver's
12 license and I will not be eligible for a license, permit or privilege to drive for a period of
13 three (3) years commencing after my release from actual imprisonment.

14 I understand that I will be ordered to install in any motor vehicle I own or
15 operate, at my own expense, a breath ignition interlock device, for a period of not less
16 than twelve (12) months nor more than thirty-six (36) months, as a condition of
17 obtaining a restricted license or getting my driving privilege reinstated.

18 I understand that the State will use this conviction to enhance the penalty for
19 any subsequent Driving Under the Influence offense(s). For any subsequent offense, I
20 would be punished for a non-probationable category B felony by imprisonment for not
21 less than two (2) years nor more than fifteen (15) years in state prison, a fine of not
22 less than \$2,000 nor more than \$5,000, and my driver's license would be revoked for
23 three (3) years.

24 ///

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

1 I understand that, if appropriate, I will be ordered to make restitution to the
2 victim(s) of the offense(s) to which I am pleading guilty and to the victim(s) of any
3 related offense(s) being dismissed or not prosecuted pursuant to this agreement. I will
4 also be ordered to reimburse the State of Nevada for expenses related to my
5 extradition, if any.

6 I understand that I am NOT eligible for probation for the offense to which I am
7 pleading guilty.

8 I understand that if more than one sentence of imprisonment is imposed and I
9 am eligible to serve the sentences concurrently, the sentencing judge has the
10 discretion to order the sentences served concurrently or consecutively.

11 I understand that information regarding charges not filed, dismissed charges or
12 charges to be dismissed pursuant to this agreement may be considered by the judge
13 at sentencing.

14 I have not been promised or guaranteed any particular sentence by anyone. I
15 know that my sentence will be determined by the Court within the limits prescribed by
16 statute. I understand that if my attorney or the State of Nevada or both recommend
17 any specific punishment to the court, the court is not obligated to accept the
18 recommendation.

19 I understand that if I am not a United States citizen, I will likely suffer serious
20 negative immigration consequences including but not limited to: my removal from the
21 United States through deportation; my inability to reenter the United States; my
22 inability to gain United States citizenship or legal residency; my inability to renew
23 and/or retain any legal residency status; and/or an indeterminate term of confinement
24 by the United States federal government based upon this conviction and my

1 immigration status. I also understand, regardless of what I have been told by any
2 attorney, that no one can promise me that this conviction will not result in these
3 negative consequences.

4 I understand that the Division of Parole and Probation of the Department of
5 Public Safety may prepare a written report for the sentencing judge before sentencing.
6 This report will include matters relevant to the issue of sentencing, including my
7 criminal history. I understand that this report may contain hearsay information
8 regarding my background and criminal history. My attorney and I will each have the
9 opportunity to comment on the information contained in the report, if any, at the time of
10 sentencing.

11 WAIVER OF RIGHTS

12 By entering my plea of guilty, I understand that I have waived the following
13 rights and privileges:

14 1. The constitutional privilege against self-incrimination, including the right
15 to refuse to testify at trial, in which event the State would not be allowed to comment to
16 the jury about my refusal to testify;

17 2. The constitutional right to a speedy and public trial by an impartial jury,
18 free of excessive pretrial publicity prejudicial to the defense, at which trial I would be
19 entitled to the assistance of an attorney, either appointed or retained. At trial, the
20 State would bear the burden of proving beyond a reasonable doubt each element of
21 each offense charged;

22 3. The constitutional right to confront and cross-examine any witnesses
23 who would testify against me;

24 4. The constitutional right to subpoena witnesses to testify on my behalf;

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

1 5. The constitutional right to testify in my own defense;

2 6. The right to appeal the conviction, with the assistance of an attorney,
3 either appointed or retained, unless the appeal is based upon reasonable
4 constitutional, jurisdictional or other grounds that challenge the legality of the
5 proceedings and except as otherwise provided by subsection 3 of NRS 174.035.

6 VOLUNTARINESS OF PLEA

7 I have discussed the elements of all the original charges against me with my
8 attorney and I understand the nature of these charges.

9 I understand that the State would have to prove each element of each charge
10 against me at trial.

11 I have discussed with my attorney any possible defenses and circumstances
12 that might be in my favor.

13 All of the foregoing elements, consequences, rights and waiver of rights have
14 been thoroughly explained to me by my attorney.

15 I believe that pleading guilty and accepting this plea bargain is in my best
16 interest and that a trial would be contrary to my best interest.

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

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

23 ///

24 ///

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

1 My attorney has answered to my satisfaction all of my questions regarding this
2 Guilty Plea Agreement and its consequences, and I am satisfied with the services
3 provided by my attorney.

4 Dated this 8th day of January 2018 ~~December, 2017~~

5 

6 **CRYSTAL YVONNE AUSTIN**
7 Defendant

8
9 Agreed to on this 3rd day of August, 2017.

10 

11 **PATRICK A. FERGUSON**
12 Deputy District Attorney

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

CERTIFICATE OF COUNSEL

I, the undersigned, as the attorney for the defendant named herein and as an officer of the court hereby certify that:

1. I have fully explained to the defendant the allegations contained in the charge(s) to which the guilty plea(s) is/are being entered;

2. I have advised the defendant of the penalties for each charge and the restitution that the defendant may be ordered to pay;

3. I have asked the defendant about his or her citizenship and immigration status and advised him or her that s/he will likely suffer serious negative immigration consequences, as set forth in the Guilty Plea Agreement;

4. All pleas of guilty offered by the defendant pursuant to this agreement are consistent with all the facts known to me and are made with my advice to the defendant and are in the best interest of the defendant.

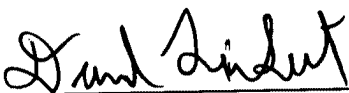
5. To the best of my knowledge and belief, the defendant:

(a) Is competent and understands the charge(s) and the consequences of pleading guilty as provided in this agreement;

(b) Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily; and

(c) Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time of the execution of this agreement.

DATED this 8th ^{January 2018} day of ~~December~~, 2017.



DAVID J. RICKERT, ESQ.

Nevada Bar No. 9662

Attorney for Defendant **CRYSTAL YVONNE AUSTIN**

EXHIBIT 1

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

Case No. CR8978

Dept. No. 2

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

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

INFORMATION

CRYSTAL YVONNE AUSTIN,

Defendant. /

ANGELA A. BELLO, District Attorney within and for the County of Nye, State of Nevada, informs the Court that **CRYSTAL YVONNE AUSTIN**, before the filing of this Information, did then and there, in Nye County, Nevada, commit the following offense, to wit:

DRIVING UNDER THE INFLUENCE OF ALCOHOL, WITH PRIOR FELONY DUI CONVICTION, in violation of **NRS 484C.110, 484C.410(1)(a),(e), A CATEGORY 'B' FELONY**, committed in the following manner, to wit: That **ON OR ABOUT JUNE 1, 2016**, in Pahrump Township, Nye County, Nevada, said defendant did willfully and unlawfully drive or was in actual physical control of a vehicle, a **maroon 2005 Volvo S60 2.5T** bearing **Nevada** license plate(s) **49C738**, on a highway or on premises to which the public had access, in the area of southbound Pahrump Valley Boulevard, north of Gamebird Road, while under the influence of an intoxicating liquor, or with a concentration of alcohol of 0.08 or more in her blood, or was found by measurement within 2 hours after driving or being in actual physical control of a vehicle to have a concentration of alcohol of 0.08 or more in her blood, approximately **0.328** grams of alcohol per 100 milliliters of blood, said Defendant having previously been convicted of:

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

- 1 1.) Driving Under the Influence of Alcohol, 3rd Offense, in violation of
2 NRS 484.379, a category B felony, in Fifth Judicial District Court case
3 number **CR5068**; and/or
- 4 2.) Driving Under the Influence of Alcohol, Second Offense, in violation
5 of NRS 484C.110, a misdemeanor, which was reduced from a felony
6 pursuant to NRS 484C.340, in Fifth Judicial District Court case
7 number **CR6341A**;

8 All of which is contrary to the form, force, and effect of the statutes in such
9 cases made and provided, and against the peace and dignity of the State of Nevada.

10 Witnesses and their addresses known to the District Attorney of Nye County,
11 State of Nevada, at the time of the filing of this Information:

12 ACTING FIRST SERGEANT JAMES
13 MCRAE
14 NYE COUNTY SHERIFF'S OFFICE
15 PAHRUMP, NEVADA

MAX SANTOS
DESERT VIEW HOSPITAL
360 S. LOLA LANE
PAHRUMP, NEVADA

16 DEPUTY JOE MARSHALL
17 NYE COUNTY SHERIFF'S OFFICE
18 PAHRUMP, NEVADA

ROBERT MASSEY
131 E. CALVADA
PAHRUMP, NEVADA

19 DETECTIVE ALEX J. COX
20 NYE COUNTY SHERIFF'S OFFICE
21 PAHRUMP, NEVADA

MARLISSA COLLINS
LVMPD FORENSICS LAB
LAS VEGAS, NEVADA


22 DEPUTY BRITTON MICHAEL
23 HOFFMANN
24 NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA

ALICE D. COX
PO BOX 1401
MCGILL, NEVADA

MARY K. KLINE
4801 ELIZABETH
PAHRUMP, NEVADA

DATED this 3rd day of August, 2017.

ANGELA A. BELLO
NYE COUNTY DISTRICT ATTORNEY

By 
PATRICK A. FERGUSON
Deputy District Attorney

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

CERTIFICATE OF SERVICE

I, Nichole McPherson, Executive Legal Secretary, Office of the Nye County District Attorney, P.O. Box 39, Pahrump, Nevada 89041, do hereby certify that I have served the following:

**INFORMATION in
5TH JDC Case No(s). CR8978
STATE v. CRYSTAL YVONNE AUSTIN**

upon said Defendant(s) herein by delivering a true and correct copy thereof on 8-16-17 to the following:

DAVID RICKERT
AT THE NYE COUNTY DISTRICT ATTORNEY'S OFFICE
IN PAHRUMP, NEVADA 89060


Nichole McPherson

No. CR-8978

Dept. No. 2

FILED
FIFTH JUDICIAL DISTRICT COURT

FEB 06 2018

NYE COUNTY DEPUTY CLERK
DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE

-oOo-

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

vs.

CRYSTAL YVONNE AUSTIN,

Defendant.

)
)
) TRANSCRIPT OF PROCEEDINGS
) ARRAIGNMENT - (CONT'D)/
) COMPETENCY EVAL. NEEDED
)JANUARY 29, 2018
10:40 A.M.
PAHRUMP, NEVADA

APPEARANCES:

For the State:

PATRICK FERGUSON, ESQ.
DEPUTY DISTRICT ATTORNEY
Nye County Courthouse
Pahrump, Nevada 89060

For the Defendant:

DAVID RICKERT, ESQ.
DEPUTY PUBLIC DEFENDER
2280 East Calvada Boulevard, #204
Pahrump, Nevada 89048State Parole and
Probation Officer:

LISA THELANER

The Defendant:

CRYSTAL YVONNE AUSTIN

Reported by: CECILIA D. THOMAS, RPR, CCR No. 712

1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, JANUARY 29, 2018

2 10:40 A.M.

3 -oOo-

4 P R O C E E D I N G S

5
6 THE COURT: Crystal Austin, 8978.

7 MR. RICKERT: Your Honor, that's my client.
8 She's present out of custody.

9 Your Honor, this was a continued
10 arraignment where we were just going to enter a Plea
11 Agreement for Driving Under the Influence of Alcohol.
12 There was some issues that came up as to her mental
13 health and history at the plea canvass back on
14 January 8th.

15 I have met with Ms. Austin, and in speaking
16 to her more about her mental history and I will say
17 beliefs, I believe she needs a competency evaluation
18 at this time. And after speaking to her (inaudible).

19 MR. FERGUSON: I'll submit it.

20 THE COURT: All right. We'll get you a
21 competency evaluation.

22 MR. RICKERT: Your Honor, my question is,
23 is she is out of custody. My issue is -- I wasn't
24 sure; I have not seen it done before -- but can she be
25 evaluated at Rawson-Neal out of custody, or does it

1 need to be individual doctors. I've done individual
2 doctors before with another of my client's prior,
3 Your Honor.

4 THE COURT: I don't think she has to be in
5 custody to be evaluated by those doctors.

6 MR. RICKERT: Okay. I will submit two
7 orders then. I had to draft them, because I wasn't
8 sure which way we were going.

9 THE COURT: The only dilemma might be when
10 they're here, they're easy to meet with. If she's out
11 and about, she has to meet with them, and that
12 sometimes becomes a problem.

13 MR. RICKERT: Understood, Your Honor.
14 Ms. Austin has always met with me. She's always come
15 to court. I don't foresee an issue.

16 THE COURT: Good luck to you, Ms. Austin.
17 We're going to have you talk to a couple of doctors,
18 and they're going to come back to us and say, "Yeah,
19 you're fine," or "No, you need some meds, some help,
20 some therapy." Good luck to you.

21 MR. RICKERT: And, Your Honor, do you want
22 a status check?

23 THE COURT: A month?

24 MR. RICKERT: Your Honor, I think probably
25 45 days to be on the safe side. I've had some reports

1 come back --

2 THE CLERK: March 5th.

3 THE COURT: March 5th.

4 MR. RICKERT: March 5th. Thank you,
5 Your Honor. And I will get those two orders over to
6 chambers.

7 THE COURT: The older I get, the faster
8 time flies. All you young people in this courtroom
9 don't realize that.

10 MR. FERGUSON: March 5th might be a little
11 bit soon. That's just over 30 days. And, generally,
12 ever after they've done the interview, they need a
13 week or two to put the report together.

14 THE COURT: Okay. Next one after that.

15 THE CLERK: 19th.

16 THE COURT: 19th.

17 MR. FERGUSON: Yeah. I think that will be
18 better.

19 MR. RICKERT: That's fine.

20 THE COURT: March 19th at 0900. We'll see
21 you then.

22 -oOo-

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1 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
2 PROCEEDINGS.
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Cecilia D. Thomas

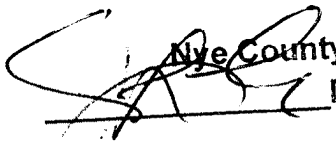
Cecilia D. Thomas
RPR, CCR No. 712

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MAR 15 2018

CASE NO: CR8978

The undersigned hereby affirms this document
does not contain a social security number.


Nye County Clerk
Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

CRYSTAL YVONNE AUSTIN,

Defendant.

**ORDER FOR
COMPETENCY EVALUATIONS**

This matter having come on for Hearing before the Court on January 29, 2018, and for good cause appearing, it is found that there may be a possibility that the defendant is not of sufficient mentality to be able to understand the nature of the criminal charges, and because of that insufficiency, may not be able to aid and assist defense counsel [see NRS 178.400(2)].

The Court, after considering the pleadings and the stipulation of the parties, has concluded that any doubt concerning the defendant's competency, as set forth by NRS 178.400, must be resolved before trial. [See Melchor-Gloria v. State, 99 Nev. 174 (1983)].

THEREFORE, IT IS HEREBY ORDERED, consistent with NRS 178.415, that two psychiatrists, two psychologists, or one psychiatrist and one psychologist, be appointed to evaluate the competency of defendant, specifically to determine if the defendant is currently of sufficient mentality to be able to understand the nature of the criminal charges against her, if the defendant is able to aid and assist her counsel in her defense and if the defendant was of sufficient mentality **at the time of the alleged offense(s)** to understand the nature of the alleged criminal conduct.

IT IS HEREBY ORDERED as follows:

1. That the above-named defendant be evaluated by Psychiatrist, Dr. Daniel Sussman, MD, 4205 Mont Blanc Way, Las Vegas, Nevada, 89124 and Clinical Psychologist,

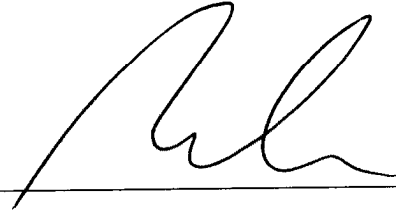
1 Dr. Gregory Harder, Psy.D., 9510 W. Sahara Ave., Suite 110, Las Vegas, Nevada,
2 89117.

- 3 2. That the quoted cost for the evaluations will not each exceed SIX HUNDRED
4 DOLLARS (\$600).
- 5 3. That the cost of said evaluations be paid by Nye County upon presentation of a request
6 for payment by said Dr. Daniel Sussman, MD, and Dr. Gregory Harder, Psy.D.
- 7 4. That Dr. Daniel Sussman, MD, and Dr. Gregory Harder, Psy.D, will each directly
8 contact the Defendant, to schedule appointments for the competency evaluations.
- 9 5. That the District Attorney's Office may deliver to defense counsel any documents
10 which it believes pertinent to the defendant's mental status for the purpose of having
11 those documents forwarded to Dr. Daniel Sussman, MD, and Dr. Gregory Harder,
12 Psy.D, in order to assist them with their examinations of the defendant.
- 13 6. That defense counsel attach to a copy of this Order, the following: (1) a copy of the
14 original criminal complaint filed in this matter, together with all crime reports attached
15 thereto; (2) any written reports concerning the defendant's mental status; (3) any other
16 documents that defense counsel feels relevant to the defendant's mental status; and (4)
17 those documents, if any, delivered to defense counsel by the District Attorney's
18 Office. The defense shall provide the foregoing materials to Dr. Daniel Sussman, MD,
19 and Dr. Gregory Harder, Psy.D, prior to the evaluations of the defendant.
- 20 7. That Dr. Daniel Sussman, MD, and Dr. Gregory Harder, Psy.D, complete their reports
21 within thirty (30) days following the evaluation of the above-named defendant. If
22 additional time is required by Dr. Daniel Sussman, MD, or Dr. Gregory Harder, Psy.D,
23 in order to complete their evaluation, it is ordered that this Court be contacted and that
24 an extension of this Order be requested. Said evaluation shall be reduced to writing
25 and delivered to this Court for distribution to counsel.
- 26 8. That the District Attorney may have an independent psychiatric evaluation of the
27 defendant conducted by a psychiatrist selected by the District Attorney. Said
28 evaluation shall be reduced to writing and delivered to the District Attorney's Office

1 who shall immediately deliver the original written report to this Court and a copy of
2 said document to defense counsel.

- 3 9. That a copy of this Order shall be serve a copy upon the District Attorney's Office and
4 defense counsel.

5 DATED this 15th day of March, 2018.



6
7
8 DISTRICT COURT JUDGE

FILED
FIFTH JUDICIAL DISTRICT

CASE NO: CR8978

MAR 15 2018


Nye County Clerk
Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
CRYSTAL YVONNE AUSTIN,)
)
Defendant.)

ORDER ON STIPULATION
FOR CONTINUANCE

Based upon the Stipulation of the parties and good cause appearing therefor;

IT IS HEREBY ORDERED that the STATUS CHECK previously set for March 19, 2018, be continued out at least thirty days to the 14th day of May, 2018 at 9:00 a.m. or as soon thereafter as counsel may be heard.

DATED this 15th day of March, 2018.


DISTRICT COURT JUDGE

MAR 15 2018

CASE NO: CR8978


Nye County Clerk
Deputy

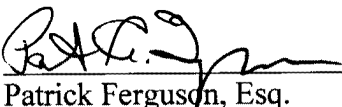
IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

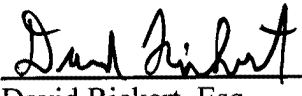
THE STATE OF NEVADA,)
)
Plaintiff,)
vs.)
CRYSTAL YVONNE AUSTIN,)
)
Defendant.)

STIPULATION
FOR CONTINUANCE

IT IS HEREBY STIPULATED AND AGREED by and between the parties through their respective counsel that the STATUS CHECK previously scheduled for March 19, 2018, be continued at least thirty days. Additional time is necessary for the Defendant to complete two competency evaluations; this continuance is made at her counsel's request in order for her to do so.

DATED this 15th day of March, 2018.


Patrick Ferguson, Esq.
Deputy District Attorney
Attorney for Plaintiff


David Rickert, Esq.
Nye County Public Defender
Attorney for Defendant

FILED
FIFTH JUDICIAL DISTRICT

No. CR-8978

Dept. No. 2

MAY 24 2018

**Nye County Clerk
Deputy**

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE

-oOo-

ORIGINAL

10	THE STATE OF NEVADA,)	
)	
11	Plaintiff,)	TRANSCRIPT OF PROCEEDINGS
)	STATUS CHECK RE: COMPETENCY
12	vs.)	EVALUATION
)	
13	CRYSTAL YVONNE AUSTIN,)	MAY 14, 2018
)	10:05 A.M.
14	Defendant.)	PAHRUMP, NEVADA
)	

APPEARANCES:

17	For the State:	PATRICK FERGUSON, ESQ. DEPUTY DISTRICT ATTORNEY Nye County Courthouse Pahrump, Nevada 89060
18		
19	For the Defendant:	DAVID RICKERT, ESQ. DEPUTY PUBLIC DEFENDER 2280 East Calvada Boulevard, #204 Pahrump, Nevada 89048
20		
21		
22	State Parole and Probation Officer:	LISA THELANER
23		
24	The Defendant:	CRYSTAL YVONNE AUSTIN
25	Reported by: CECILIA D. THOMAS, RPR, CCR No. 712	

1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, MAY 14, 2018

2 10:05 A.M.

3 -oOo-

4 P R O C E E D I N G S

5
6 THE COURT: Crystal Austin, 8978.

7 MR. RICKERT: Good morning, Your Honor.

8 It's my client. She's present out of custody.

9 Your Honor, this was a status check on competency

10 evaluations. Those reports are back. I provided them

11 to the State and the Court.

12 Your Honor, one of them, Dr. Harder
13 indicates that Ms. Austin is competent. However,
14 Dr. Sussman said my client is incompetent. I think
15 the appropriate thing to do would be to get a third
16 evaluation of her; so I would ask to set a status
17 check in order for her to get that final evaluation.

18 THE COURT: One month?

19 MR. RICKERT: Court's indulgence.

20 Your Honor, I would say 45 days, to be on
21 the safe side.

22 THE COURT: Anything to add, Mr. Ferguson?

23 MR. FERGUSON: No, thank you, Your Honor.

24 THE COURT: About a month-and-a-half, two
25 months.

1 THE CLERK: We can do June 18.

2 THE COURT: June 18th, 0900.

3 MR. RICKERT: Can we have a little longer
4 than that?

5 THE CLERK: We have July 16th.

6 THE COURT: July 16th at 0900.

7 MR. RICKERT: Thank you, Your Honor.

8 July 16th. And I will get the Order prepared and
9 bring that over.

10 THE COURT: Thank you, sir.

11 -oOo-

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13 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
14 PROCEEDINGS.

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Cecilia D. Thomas

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Cecilia D. Thomas
RPR, CCR No. 712

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Case No. CR8978

Dept. 2

JUL 16 2018

Nye County Clerk
Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF NEVADA
IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

CRYSTAL YVONNE AUSTIN,

Defendant.

**ORDER FOR
COMPETENCY EVALUATION**

This matter having come on for Hearing before the Court on May 14, 2018, and for good cause appearing, it is found that there may be a possibility that the defendant is not of sufficient mentality to be able to understand the nature of the criminal charges, and because of that insufficiency, may not be able to aid and assist defense counsel [see NRS 178.400(2)].

The Court, has concluded that any doubt concerning the defendant's competency, as set forth by NRS 178.400, must be resolved before trial. [See Melchor-Gloria v. State, 99 Nev. 174 (1983)].

THEREFORE, IT IS HEREBY ORDERED, consistent with NRS 178.415, that two psychiatrists, two psychologists, or one psychiatrist and one psychologist, be appointed to evaluate the competency of defendant, specifically to determine if the defendant is currently of sufficient mentality to be able to understand the nature of the criminal charges against him, if the defendant is able to aid and assist his counsel in his defense and if the defendant was of sufficient mentality **at the time of the alleged offense(s)** to understand the nature of the alleged criminal conduct.

1
2 IT IS FURTHER ORDERED as follows:

- 3 1. That the above-named defendant be evaluated by Dr. Lawrence Kapel, PhD., 1090
4 Wigwam Parkway, Henderson, NV 89074.
- 5 2. That the quoted cost for the evaluation will not exceed ELEVEN HUNDRED
6 DOLLARS (\$1100.00)
- 7 3. That the cost of said evaluation be paid by Nye County upon presentation of a
8 request for payment by Dr. Lawrence Kapel, PhD.
- 9 4. That Dr. Lawrence Kapel, PhD. will directly contact the Defendant, to schedule an
10 appointment for the competency evaluation.
- 11 5. That the District Attorney's Office may deliver to defense counsel any documents
12 which it believes pertinent to the defendant's mental status for the purpose of having
13 those documents forwarded to Dr. Lawrence Kapel, PhD. in order to assist them
14 with their examination of the defendant.
- 15 6. That defense counsel attach to a copy of this Order, the following: (1) a copy of the
16 original criminal complaint filed in this matter, together with all crime reports
17 attached thereto; (2) any written reports concerning the defendant's mental status;
18 (3) any other documents that defense counsel feels relevant to the defendant's mental
19 status; and (4) those documents, if any, delivered to defense counsel by the District
20 Attorney's Office. The defense shall provide the foregoing materials to Dr.
21 Lawrence Kapel, PhD. prior to the evaluation of the defendant
- 22 7. That Dr. Lawrence Kapel, PhD. complete his report within thirty (30) days
23 following evaluation of the above-named defendant. If additional time is required by
24 Dr. Lawrence Kapel, PhD. in order to complete his evaluation, it is ordered that this
25 Court be contacted and that an extension of this Order be requested. Said evaluation
26 shall be reduced to writing and delivered to this Court for distribution to counsel.
- 27 8. That the District Attorney may have an independent psychiatric evaluation of the
28 defendant conducted by a psychiatrist selected by the District Attorney. Said

1 evaluation shall be reduced to writing and delivered to the District Attorney's Office
2 who shall immediately deliver the original written report to this Court and a copy of
3 said document to defense counsel.

- 4 9. That a copy of this Order shall be served upon the District Attorney's Office and
5 defense counsel.

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7 DATED this 16th day of July, 2018.

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12 DISTRICT COURT JUDGE
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FILED
FIFTH JUDICIAL DISTRICT

JUN 18 2018

Nye County Clerk

Deputy

1 CASE NO: CR8978

2 The undersigned hereby affirms this document
3 does not contain a social security number.

4 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
5 IN AND FOR THE COUNTY OF NYE

6 THE STATE OF NEVADA,)

7 Plaintiff,)

8 vs.)

9 CRYSTAL YVONNE AUSTIN,)

10 Defendant.)
11)

**ORDER FOR THIRD
COMPETENCY EVALUATION**

12 This matter having come on for Hearing before the Court on May 14, 2018, and for
13 good cause appearing, it is found that there may be a possibility that the defendant is not of
14 sufficient mentality to be able to understand the nature of the criminal charges, and because of
15 that insufficiency, may not be able to aid and assist defense counsel [see NRS 178.400(2)].

16 The Court, after considering the pleadings and the stipulation of the parties, has
17 concluded that any doubt concerning the defendant's competency, as set forth by NRS 178.400,
18 must be resolved before trial. [See Melchor-Gloria v. State, 99 Nev. 174 (1983)].

19 THEREFORE, IT IS HEREBY ORDERED, consistent with NRS 178.415, that a
20 psychiatrist or a psychologist be appointed to evaluate the competency of defendant,
21 specifically to determine if the defendant is currently of sufficient mentality to be able to
22 understand the nature of the criminal charges against her, if the defendant is able to aid and
23 assist her counsel in her defense and if the defendant was of sufficient mentality **at the time of**
24 **the alleged offense(s)** to understand the nature of the alleged criminal conduct.

25 IT IS HEREBY ORDERED as follows:

- 26 1. That the above-named defendant be evaluated by John Paglini, PhD, 9163 W.
27 Flamingo Road, Suite 120, Las Vegas, Nevada 89147.
28

- 1 2. That the quoted cost for the evaluation will not exceed ELEVEN HUNDRED
2 DOLLARS (\$1100).
- 3 3. That the cost of said evaluation be paid by Nye County upon presentation of a request
4 for payment by said John Paglini, PhD.
- 5 4. That John Paglini, PhD will directly contact the Defendant, to schedule an
6 appointment for the competency evaluation.
- 7 5. That the District Attorney's Office may deliver to defense counsel any documents
8 which it believes pertinent to the defendant's mental status for the purpose of having
9 those documents forwarded to John Paglini, PhD, in order to assist him with his
10 examination of the defendant.
- 11 6. That defense counsel attach to a copy of this Order, the following: (1) a copy of the
12 original criminal complaint filed in this matter, together with all crime reports attached
13 thereto; (2) any written reports concerning the defendant's mental status; (3) any other
14 documents that defense counsel feels relevant to the defendant's mental status; and (4)
15 those documents, if any, delivered to defense counsel by the District Attorney's
16 Office. The defense shall provide the foregoing materials to John Paglini, PhD prior
17 to the evaluation of the defendant.
- 18 7. That John Paglini, PhD complete his report within thirty (30) days following the
19 evaluation of the above-named defendant. If additional time is required by John
20 Paglini, PhD in order to complete his evaluation, it is ordered that this Court be
21 contacted and that an extension of this Order be requested. Said evaluation shall be
22 reduced to writing and delivered to this Court for distribution to counsel.
- 23 8. That the District Attorney may have an independent psychiatric evaluation of the
24 defendant conducted by a psychiatrist selected by the District Attorney. Said
25 evaluation shall be reduced to writing and delivered to the District Attorney's Office
26 who shall immediately deliver the original written report to this Court and a copy of
27 said document to defense counsel.
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9. That a copy of this Order shall be serve a copy upon the District Attorney's Office and defense counsel.

DATED this 15th day of June, 2018.



DISTRICT COURT JUDGE

FILED
FIFTH JUDICIAL DISTRICT

No. CR-8978

Dept. No. 2

AUG 01 2018


Nye County Clerk
Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE

-oOo-

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

vs.

CRYSTAL YVONNE AUSTIN,

Defendant.

TRANSCRIPT OF PROCEEDINGS
STATUS CHECK - (CONT'D)

JULY 16, 2018

9:45 A.M.

PAHRUMP, NEVADA

APPEARANCES:

For the State:

DANIEL YOUNG, ESQ.
DEPUTY DISTRICT ATTORNEY
Nye County Courthouse
Pahrump, Nevada 89060

For the Defendant:

DANIEL MARTINEZ, ESQ.
DEPUTY PUBLIC DEFENDER
552 East Charleston Boulevard
Las Vegas, Nevada 89104

State Parole and
Probation Officer:

LISA THELANER

The Defendant:

CRYSTAL YVONNE AUSTIN

Reported by: CECILIA D. THOMAS, RPR, CCR No. 712

1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, JULY 16, 2018

2 9:45 A.M.

3 -oOo-

4 P R O C E E D I N G S

5
6 THE COURT: Now it's time for Mr. Rickert's
7 cases, which I believe is Mr. Martinez. Great.

8 MR. MARTINEZ: Good morning again,
9 Your Honor.

10 THE COURT: Do we have any particular order
11 you want them in, Mr. Martinez?

12 MR. MARTINEZ: No, Your Honor.

13 THE COURT: All right. We'll start with
14 the first one on the calendar, Crystal Austin, 8978.

15 MR. MARTINEZ: Your Honor, Ms. Austin is
16 present and out of custody.

17 THE COURT: Time and place set for a status
18 check. Do you know what we're meeting for on this?

19 MR. MARTINEZ: Yes, Your Honor. Ms. Austin
20 was ordered to have competency evaluations done. She
21 has had two done by two different doctors. One came
22 back competent; one came back not competent. So, in
23 essence, we need a tie breaker. That's what it was
24 passed for last time.

25 Mr. Rickert did contact Mr. Paglini. He

1 had an Order signed for Mr. Paglini to do the third
2 evaluation. After a few weeks after the Order was
3 signed, Mr. Paglini got in contact with Mr. Rickert
4 and said he was booked up the entire month of July.
5 So we need to find another doctor to do the third
6 evaluation.

7 I have found another doctor, doctor to do
8 that, Dr. Kapel, in Las Vegas; and I do have an Order
9 for Your Honor to sign. (Inaudible) and we can pass
10 this matter one more time for about 45 days and have
11 that third evaluation done.

12 THE CLERK: So August 27th.

13 THE COURT: August 27th --

14 MR. MARTINEZ: That would be great,
15 Your Honor.

16 THE COURT: -- 0900.

17 Crystal, we're going to get you in touch
18 with that doctor and get the eval done. You need to
19 show up here August 27th at 0900. And hopefully the
20 eval will be done by then. And if not, when you show
21 up on the 27th, we'll give you some more time.

22 MR. YOUNG: Judge, the defendant has also
23 picked up a new case which is currently filed at the
24 Justice Court, 18-CR-02882, for Malicious Prosecution,
25 with her arraignment date scheduled in the

1 Justice Court on the 25th of this month. So I do have
2 some concerns that she's going to be out of custody
3 picking up new offenses. She has a previous Failure
4 to Appear in the other case. I wanted to bring that
5 to the Court's attention to do whatever is
6 appropriate.

7 THE COURT: Well, you have to ask for
8 something, Dan?

9 MR. YOUNG: Well, I think she should be
10 remanded with bail set, Judge.

11 THE COURT: Thank you, sir.

12 MR. MARTINEZ: And, Your Honor, I would ask
13 you to allow her to remain out of custody. She has
14 appeared in front of Your Honor today. When she did
15 have that Failure to Appear, she did admit the
16 mistake. She was not reminded of the court date.
17 Mr. Rickert made it a habit to call her and remind her
18 of the court date, and that did not happen so she
19 forgot about the court date, found out there was a
20 Failure to Appear, and immediately got in contact and
21 the matter has remained on calendar.

22 She has mentioned to me multiple times that
23 she knows she has that next upcoming court date in
24 Justice Court, and I told her to make sure that she
25 appears there and we will address it at that time.

1 Again, she has remained out of custody on
2 this matter, made all of her court appearances, has
3 gotten in contact with the doctors to do the previous
4 evaluations; so I don't think we should have any
5 worries about her appearing for any future court
6 dates.

7 THE COURT: We'll keep her out for today
8 without prejudice so if the State a couple of weeks
9 from now wants to renew it because she's entered a
10 plea on the Malicious or she failed to appear for
11 something else, he could renew the motion if he wants
12 to.

13 MR. MARTINEZ: Thank you, Your Honor.

14 THE COURT: Thank you, sir.

15 MR. YOUNG: Judge, can I get the -- I
16 apologize. Can I have the clerk read me the
17 Crystal Austin court date?

18 THE COURT: Sure.

19 THE CLERK: You have August 27th.

20 MR. YOUNG: August 27th.

21 Thank you, Judge.

22 -oOo-

23 / / /

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1 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
2 PROCEEDINGS.
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Cecilia D. Thomas

Cecilia D. Thomas
RPR, CCR No. 712

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No. CR-8978

Dept. No. 2

2018 DEC 19 AM 11:29

NYE

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE

-oOo-

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

vs.

CRYSTAL YVONNE AUSTIN,

Defendant.

TRANSCRIPT OF PROCEEDINGS
STATUS CHECK - TRIAL DATES SET

AUGUST 27, 2018
9:20 A.M.
PAHRUMP, NEVADA

APPEARANCES:

For the State:

DANIEL YOUNG, ESQ.
DEPUTY DISTRICT ATTORNEY
Nye County Courthouse
Pahrump, Nevada 89060

For the Defendant:

DANIEL MARTINEZ, ESQ.
DEPUTY PUBLIC DEFENDER
552 East Charleston Boulevard
Las Vegas, Nevada 89104

State Parole and
Probation Officer:

LISA THELANER

The Defendant:

CRYSTAL YVONNE AUSTIN

Reported by: CECILIA D. THOMAS, RPR, CCR No. 712

1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, AUGUST 27, 2018

2 9:20 A.M.

3 -oOo-

4 P R O C E E D I N G S

5
6 THE COURT: And I show Austin,
7 Crystal Austin, 8978. Time and pace set for a status
8 check.

9 We'll ask the Defense to brief the record
10 for us.

11 MR. MARTINEZ: Your Honor, Ms. Austin is
12 present and out of custody. We are here today for a
13 status check on her competency. We have now had three
14 competency evaluations; well, reason one, it being the
15 tie breaker where it did come back that she is
16 competent to proceed.

17 THE COURT: Congratulations. Is she going
18 to be remanded?

19 MR. MARTINEZ: No, Your Honor.

20 THE COURT: Oh, she unconditionally waived
21 up.

22 MR. MARTINEZ: She did unconditionally
23 waive up, Your Honor. She unconditionally waived up
24 on negotiations, and it was in the Court's --
25 Your Honor's canvass that we believed that there was

1 some competency issues.

2 THE COURT: All right. So now we need to
3 set for a trial date?

4 MR. MARTINEZ: That's what I requested,
5 Your Honor.

6 THE COURT: How many days?

7 MR. MARTINEZ: Your Honor, I can't -- I
8 believe it's going to be three or four days,
9 Your Honor.

10 THE COURT: What days do we have? You want
11 November and January and February?

12 MR. MARTINEZ: Can we do January,
13 Your Honor?

14 MR. YOUNG: That's fine, Judge.

15 THE COURT: All right. January 2nd through
16 the 4th.

17 Now, we're going to have the trial on
18 January 2nd, and you're coming in front of me for
19 drinking. So what do you do on January 1st?

20 THE DEFENDANT: Nothing.

21 THE COURT: No drinking. We'll start at
22 0830 in the morning on January 2nd, and we'll have a
23 calendar call on December 3rd at 0830.

24 MR. MARTINEZ: Thank you, Your Honor.

25 THE COURT: Crystal. When am I going to

1 see you again?

2 THE DEFENDANT: December 3rd.

3 THE COURT: All right. We'll see you then.

4 -oOo-

5

6 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
7 PROCEEDINGS.

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Cecilia D. Thomas

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Cecilia D. Thomas
RPR, CCR No. 712

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AUG 31 2018

NYE COUNTY DEPUTY CLERK
DEPUTY

Case No. CR 8978

Dept. 2P

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

-v-

ORDER SETTING JURY TRIAL

CRYSTAL YVONNE AUSTIN,


Defendant,

IT IS SO ORDERED that the above-captioned case is hereby set for trial before a jury in **Pahrump, Nevada**, commencing at **9:00 o'clock a.m.** on **Wednesday the 2nd of January 2019**. Pre-trial motions will be heard at 8:30 a.m. Any lengthy pre-trial motions should be scheduled with the Court. Three days have been set aside for the trial. The services of the District Court Reporter are required.

IT IS FURTHER ORDERED that a calendar call is set for the **3rd day of December 2018**, at the hour of **9:00 a.m.** Counsel and the defendant must appear for the calendar call.

IT IS FURTHER ORDERED that the jury draw is set on the **3rd day of December 2018**, whereas the Nye County Jury Commissioner will draw a regular panel of 80 jurors at **2:30 p.m.** in the presence of all those who wish to attend.

DATED this 31st day of August 2018.


DISTRICT JUDGE





CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 31st day of August 2018, she
mailed (or hand delivered) copies of the foregoing ORDER to the following:

NYE COUNTY DISTRICT ATTORNEY'S OFFICE
PAHRUMP, NV
(HAND DELIVERED)

DANIEL E. MARTINEZ, ESQ.
552 E. CHARLESTON BLVD.
LAS VEGAS, NV 89104

Nancy A. Cratty for:
Louise Mulvey, Secretary to
DISTRICT JUDGE

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7085

1 Case No. CR8978

2 Dept. No. 2

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

FILED
FIFTH JUDICIAL DISTRICT COURT

SEP 19 2018

NYE COUNTY DEPUTY CLERK
DEPUTY

7 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF NYE

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 CRYSTAL YVONNE AUSTIN,

13 Defendant. /

NOTICE OF WITNESSES

14 **COMES NOW**, the Plaintiff, STATE OF NEVADA, by ANGELA A. BELLO, Nye
15 County District Attorney, through PATRICK A. FERGUSON, Deputy District Attorney,
16 pursuant to NRS 174.234 and submits the following witnesses will be called in the
17 State's case in chief:

18 LIEUTENANT JAMES MCRAE
19 NYE COUNTY SHERIFF'S OFFICE
20 PAHRUMP, NEVADA

21 DEPUTY JOE MARSHALL
22 NYE COUNTY SHERIFF'S OFFICE
23 PAHRUMP, NEVADA

24 DETECTIVE ALEX J. COX
NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA

DEPUTY BRITTON MICHAEL
HOFFMANN
NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA

MAX SANTOS
DESERT VIEW HOSPITAL
360 SOUTH LOLA LANE
PAHRUMP, NEVADA

ROBERT MASSEY
131 E. CALVADA
PAHRUMP, NEVADA

MARLISSA COLLINS
LVMPD FORENSICS LAB
LAS VEGAS, NEVADA

ALICE D. COX
3745 W. BARI WAY
SOUTH JORDAN, UTAH

1 MARY K. KLINE
2 4801 ELIZABETH
PAHRUMP, NEVADA

3 **DATED** this 19th day of September, 2018.

4 **ANGELA A. BELLO**
5 **NYE COUNTY DISTRICT ATTORNEY**

6 By 

7 **PATRICK A. FERGUSON**
8 Deputy District Attorney
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NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7085

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7085


CERTIFICATE OF SERVICE

I, Juanita Torres, Executive Legal Secretary, Office of the Nye County District Attorney, PO Box 39, Pahrump, Nevada 89041, do hereby certify that I have delivered the following:

**NOTICE OF WITNESSES
in 5JDC Case No. CR8978,
STATE v. CRYSTAL YVONNE AUSTIN,**

upon said Defendant herein by mailing a true and correct copy thereof, on 9.19.2018 to the following:

DANIEL E MARTINEZ ESQ.
AT THE NYE COUNTY DISTRICT ATTORNEY'S OFFICE,
IN PAHRUMP, NEVADA.



Juanita Torres

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7085

Case No. CR8978

Department 2

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

FILED
FIFTH JUDICIAL DISTRICT COURT

SEP 19 2018

NYE COUNTY DEPUTY CLERK
DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

REQUEST FOR DISCLOSURE

v.

CRYSTAL YVONNE AUSTIN,

Defendant. /

COMES NOW, the Plaintiff, STATE OF NEVADA, by ANGELA A. BELLO, Nye County District Attorney, through PATRICK A. FERGUSON, Deputy District Attorney, and pursuant to NRS 174.245 requests Defendant's disclosure of any and all evidence relating to her defense.

DATED this 19th day of September, 2018.

ANGELA A. BELLO
NYE COUNTY DISTRICT ATTORNEY

By


PATRICK A. FERGUSON
Deputy District Attorney

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7085

CERTIFICATE OF SERVICE

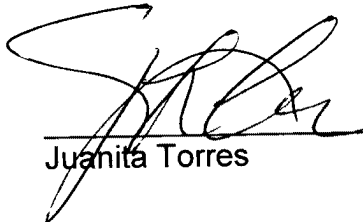
I, Juanita Torres, Executive Legal Secretary, Office of the Nye County District Attorney, PO Box 39, Pahrump, Nevada 89041, do hereby certify that I have served the following:

**REQUEST FOR DISCLOSURE
in 5JDC Case No. CR8978,
STATE v. CRYSTAL YVONNE AUSTIN,**

upon said Defendant herein by mailing a true and correct copy thereof, on

9.19.2018 to the following:

DANIEL E MARTINEZ ESQ
552 E. Charleston Blvd.
Las Vegas, NV 89104.



Juanita Torres

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

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Case No. CR8978

Dept. No. 2

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

FILED
FIFTH JUDICIAL DISTRICT COURT
SEP 19 2018
NYE COUNTY DEPUTY CLERK
DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

**REQUEST TO ADMIT
DECLARATION(S) AT TRIAL**

CRYSTAL YVONNE AUSTIN,

Defendant. /

COMES NOW, Plaintiff THE STATE OF NEVADA, by and through its attorney,
ANGELA A. BELLO, NYE COUNTY DISTRICT ATTORNEY, and requests, pursuant
to NRS 50.315-50.325, that the declaration(s) of the following person(s), copies
attached hereto, be admitted into evidence at the trial in the above-captioned case:

MARLISSA COLLINS, Forensic Scientist II
LVMPD Forensic Lab
5605 W. Badura Ave.
Las Vegas, Nevada 89118-4705

MAX SANTOS, Phlebotomist
Desert View Hospital
360 South Lola Lane
Pahrump, Nevada 89048


///
///
///
///
///

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

1 If the Defendant is found guilty at trial and a forensic scientist was present to
2 testify pursuant to Defendant's demand, or if the Defendant enters a plea of guilty or
3 nolo contendere before trial and a forensic scientist was present or enroute to court,
4 the State will demand that the Defendant pay the fees and expenses of said witness
5 pursuant to NRS 484C.160(5)(b).

6 **DATED** this 19th day of September, 2018.

7 **ANGELA A. BELLO**
8 **NYE COUNTY DISTRICT ATTORNEY**

9
10 By 
11 **PATRICK A. FERGUSON**
12 Deputy District Attorney
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NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

CERTIFICATE OF SERVICE BY MAIL

I, Juanita Torres, Executive Legal Secretary, Office of the Nye County District Attorney, P. O. Box 39, Pahrump, Nevada 89041, do hereby certify that I have served the following:

**Request to Admit Declaration(s) at Trial in
Case No. CR8978
STATE v. CRYSTAL YVONNE AUSTIN**

upon said Defendant herein by mailing a true and correct copy thereof, postage prepaid, VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED, on

9.19.2018, to the following:

DANIEL E MARTINEZ ESQ.
552 E. Charleston Blvd.
Las Vegas, NV 89104

Certified Mail # 7009 0080 0001 6099 1237



Juanita Torres

<p align="center">Las Vegas Metropolitan Police Department Forensic Laboratory</p> <p align="center">Report of Examination</p> <p align="center">Blood Alcohol Testing</p>	<p>Distribution Date: July 23, 2016 Agency: Nye County SO Location: NCSO - Pahrump Primary Case #: 16NY1771 Incident: DUI-Felony Requester: Alex Cox Lab Case #: 16-05930.1</p>
<p>Subject(s): CRYSTAL AUSTIN (Suspect)</p>	

I, Marliisa Collins, do hereby declare:

That I am a Forensic Scientist employed by the Las Vegas Metropolitan Police Department;

That I am a "chemist", as defined in Nevada Revised Statute 50.320, and my duties include the analysis of the blood of a person to determine the presence or quantification of alcohol;

That on February 23, 2016, I first qualified in the Justice Court of Clark County, Nevada, as an expert witness, to testify regarding the presence and amount of alcohol in a biological fluid.

That I received sealed evidence in the above case from a secure refrigerator in the LVMPD Forensic Laboratory, containing a sample of whole blood;

That I completed an analysis on the sample from BLOOD ALCOHOL KIT AUSTIN, CRYSTAL and determined that the blood contained a concentration of ethanol of 0.328g/100ml +/- 0.011g/100ml of blood.

NOTE: Limit of detection is 0.010 g ethanol/100 ml of blood.

NOTE: A coverage probability of 99.73% was utilized in the calculation of uncertainty (+/-) for the measurement(s) reported above.

That I sealed the evidence and placed it in a secure refrigerator in the LVMPD Forensic Laboratory;

That the evidence was in my custody from the time I first obtained it until I resealed the sample, at which time it was in substantially the same condition as when I first obtained it.

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

Marliisa Collins 14973

Marliisa Collins, #14973
Forensic Scientist

---This report does not constitute the entire case file. The case file may be comprised of worksheets, images, analytical data and other documents.---

- END OF REPORT -

NYE COUNTY SHERIFF'S OFFICE
DECLARATION FOR THE WITHDRAWAL OF WHOLE BLOOD SAMPLE

STATE OF NEVADA)

CASE# 16NY 1771

COUNTY OF NYE)

Max Santos

says:

THAT I AM A

☐ Registered Nurse

☐ Nurse Practitioner

☐ Licensed Practical Nurse

☐ Medical Doctor

☒ Laboratory Technician/Assistant

☒ Other (specify)

☐ Emergency Medical Technician

Phlebotomist

☐ Physician Assistant

employed by SELF

That a regular part of my duties is the withdrawing of blood samples from persons I am authorized to

do so by NEVADA STATE DEPARTMENT OF HEALTH

(THE APPROPRIATE LICENSING OR CERTIFYING AGENCY)

That on June 1st, 20 16 at 1405 AM (PM) I withdrew a sample of blood in a

medically accepted manner from a person known to me as: Austin, Crystal

and

That I withdrew the sample using no alcohol solutions or alcohol-based swabs; and;

That I kept the sample in my sole custody or control and it remained in substantially the same condition as

when I first obtained it until on June 1st, 20 16 at 14:05 AM (PM)

I delivered the sample to Trooper/Deputy/Officer Cox ID#: 11859 of the

NEVADA HIGHWAY PATROL/NYE COUNTY SHERIFF'S OFFICE/ OTHER _____

I, Max Santos, DO HEREBY DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS
TRUE AND CORRECT.

[Signature] 6/1/16
Witness' Signature Date

[Signature]
Declarant's Signature

Lab. Asst. Phleb

Title

Date

32

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

Case No. CR8978

Dept. No. 2

FILED
FIFTH JUDICIAL DISTRICT COURT

SEP 19 2018

NYE COUNTY DEPUTY CLERK
DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

STATE'S NOTICE OF
EXPERT WITNESS(ES)

[NRS 174.234(2)]

CRYSTAL YVONNE AUSTIN,

Defendant.

TO: DANIEL E. MARTINEZ, ESQ., Attorney for Defendant:

YOU WILL PLEASE TAKE NOTICE that, during its case in chief at trial, **THE STATE OF NEVADA** expects the following witness(es) to offer expert testimony:

Witness

Subject Matter and Substance of Testimony

1. Marliisa Collins

Will testify regarding the forensic testing procedures employed to determine the presence and concentration of alcohol in the blood of a person, that the defendant's blood sample contained a concentration of alcohol of approximately 0.328 grams of alcohol per 100 milliliters of blood, and/or regarding the retrograde extrapolation of a person's blood alcohol concentration;

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///


NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

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A copy of the curriculum vitae and reports, if any, of each of the foregoing expert witnesses is attached hereto and incorporated herein by reference.

DATED this 19th day of September, 2018.

ANGELA A. BELLO
NYE COUNTY DISTRICT ATTORNEY

By 
PATRICK A. FERGUSON
Deputy District Attorney

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

CERTIFICATE OF SERVICE BY MAIL

I, Juanita Torres, Executive Legal Secretary, Office of the Nye County District Attorney, P.O. Box 39, Pahrump, Nevada 89041, do hereby certify that I have served the following:

**STATE'S NOTICE OF EXPERT WITNESSE(S) in
5JDC CASE NO. CR8978,
STATE v. CRYSTAL YVONNE AUSTIN,**

upon said Defendant herein by mailing a true and correct copy thereof, postage prepaid, on 9.19.2018 to the following:

Daniel E Martinez Esq.
552 E. Charleston Blvd.
Las Vegas, NV 89104



JUANITA TORRES

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY
CURRICULUM VITAE**

Date: 8-30-2018

Name: Marlissa Collins P#: 14973 Classification: Forensic Scientist II

Current Discipline of Assignment: Toxicology

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Toxicology/Blood Alcohol	x
Toolmarks		Toxicology/Breath Alcohol	x
Trace Evidence		Toxicology/Drugs	
Arson Analysis		Firearms	
Latent Prints		Crime Scene Investigations	
Serology		Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	
Quality Assurance		Technical Support / DNA	

EDUCATION			
Institution	Dates Attended	Major	Degree Completed
Syracuse University	2009-2011	Forensic Science	M.S.F.S.
Syracuse University	2005-2009	Biology	B.S.

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
CMI, Inc. Intoxilyzer User's Group	Breckenridge, CO	August 17-21 2014
Guth Laboratories 2100 Simulator Overview, Calibration, & Adjustment	Breckenridge, CO	August 18, 2014
Guth Laboratories 12v500 Simulator Overview, Calibration, & Adjustment	Breckenridge, CO	August 19, 2014
CMI, Inc. Intoxilyzer 8000: Theory, Maintenance and Calibration	Las Vegas, NV	September 9-10, 2014

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
The Robert F. Borkenstein Course on Alcohol and Highway Safety: Testing, Research, and Litigation	Bloomington, IN	December 7-12, 2014
Basic Instructor Development	Las Vegas, NV	February 23-26, 2015
Retrograde Extrapolation	Las Vegas, NV	June 24, 2015
CMI, Inc. Intoxilyzer User's Group	New Orleans, LA	August 16-20, 2015
International Association of Chemical Testing (IACT) Conference	Orlando, FL	April 4-6, 2016
CMI, Inc. Intoxilyzer User's Group	Las Vegas, NV	August 29-September 1, 2016
CMI, Inc. Intoxilyzer User's Group	Kansas City, MO	August 27-31, 2017
International Association of Chemical Testing (IACT) Conference	Indianapolis, IN	April 30-May 3, 2018

COURTROOM EXPERIENCE		
<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>
City of Las Vegas Municipal Court	Breath Alcohol	2
City of Las Vegas Municipal Court	Blood Alcohol	2
DMV Hearings Office- Telephonic	Blood Alcohol	11
Las Vegas Justice Court	Breath Alcohol	4
Las Vegas Justice Court	Blood Alcohol	3
City of Henderson Municipal Court	Breath Alcohol	3
North Las Vegas Justice Court	Breath Alcohol	1

EMPLOYMENT HISTORY		
Employer	Job Title	Date
Las Vegas Metropolitan Police Department	Forensic Scientist	June 2014-
Citrus Research Board	Laboratory Aid	Nov. 2013 -May 2014
Onondaga County Crime Laboratory	Trace Evidence Intern	Sept. 2010-May 2011
Orange County Crime Laboratory	DNA Intern	June 2010-Aug. 2010

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)
International Association of Chemical Testing	2016-

PUBLICATIONS / PRESENTATIONS:
Jennifer O. Rattanaprasit, Michael P. Stypa, Marlissa Collins, Denise K. Heineman, Darby A. Lanz, Christine Maloney, Nastasha Ortiz, Dana C. Russell, Theresa A. Suffecool, Nicole L. Van Aken, Stacy A. Wilkinson. <i>Performing Retrograde Extrapolation of Blood Alcohol in Driving Under the Influence (DUI) Trials</i> . Poster Presentation at the 70 th Annual Meeting of the American Academy of Forensic Sciences. Washington State Convention Center. Seattle, WA. February 21 st , 2018.

OTHER QUALIFICATIONS:
Qualified as a Forensic Analyst of Alcohol, FS015 with the Nevada Department of Public Safety on December 6, 2014. Approved by LVMPD's Advanced Training Office and Nevada POST to teach the Intoxilyzer 8000 Certification and Re-Certification courses. Qualified Expert Witness in Justice Court of Clark County, Nevada, in breath and blood alcohol- February 23, 2016

Las Vegas Metropolitan Police Department Forensic Laboratory Report of Examination Blood Alcohol Testing		Distribution Date: July 23, 2016 Agency: Nye County SO Location: NCSO - Pahrump Primary Case #: 16NY1771 Incident: DUI-Felony Requester: Alex Cox Lab Case #: 16-05930.1
Subject(s):	CRYSTAL AUSTIN (Suspect)	

I, Marissa Collins, do hereby declare:

That I am a Forensic Scientist employed by the Las Vegas Metropolitan Police Department;

That I am a "chemist", as defined in Nevada Revised Statute 50.320, and my duties include the analysis of the blood of a person to determine the presence or quantification of alcohol;

That on February 23, 2016, I first qualified in the Justice Court of Clark County, Nevada, as an expert witness, to testify regarding the presence and amount of alcohol in a biological fluid.

That I received sealed evidence in the above case from a secure refrigerator in the LVMPD Forensic Laboratory, containing a sample of whole blood;

That I completed an analysis on the sample from BLOOD ALCOHOL KIT AUSTIN, CRYSTAL and determined that the blood contained a concentration of ethanol of 0.328g/100ml +/- 0.011g/100ml of blood.

NOTE: Limit of detection is 0.010 g ethanol/100 ml of blood.

NOTE: A coverage probability of 99.73% was utilized in the calculation of uncertainty (+/-) for the measurement(s) reported above.

That I sealed the evidence and placed it in a secure refrigerator in the LVMPD Forensic Laboratory;

That the evidence was in my custody from the time I first obtained it until I resealed the sample, at which time it was in substantially the same condition as when I first obtained it.

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

Marissa Collins 14973

Marissa Collins, #14973
Forensic Scientist

---This report does not constitute the entire case file. The case file may be comprised of worksheets, images, analytical data and other documents.---

- END OF REPORT -

1 No. CR-8978

2 Dept. No. 2

2019 MAY 20 A 11:50

NYE COUNTY

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5 IN THE FIFTH JUDICIAL DISTRICT COURT ~~OF THE STATE OF NEVADA~~

6 IN AND FOR THE COUNTY OF NYE

7 THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE

8 -oOo-

ORIGINAL

9
10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 vs.)

13 CRYSTAL YVONNE AUSTIN,)

14 Defendant.)

TRANSCRIPT OF PROCEEDINGS
CALENDAR CALL - D2P- 3 DAYS -
01/02-04/19

DECEMBER 3, 2018

9:45 A.M.

PAHRUMP, NEVADA

15
16 APPEARANCES:

17 For the State:

PATRICK FERGUSON, ESQ.
DEPUTY DISTRICT ATTORNEY
Nye County Courthouse
Pahrump, Nevada 89060

18
19 For the Defendant:

DANIEL MARTINEZ, ESQ.
DEPUTY PUBLIC DEFENDER
552 East Charleston Boulevard
Las Vegas, Nevada 89104

20
21
22 State Parole and
Probation Officer:

LISA THELANER

23 The Defendant:

CRYSTAL YVONNE AUSTIN

24
25 Reported by: CECILIA D. THOMAS, RPR, CCR No. 712

1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, DECEMBER 3, 2018

2 9:45 A.M.

3 -oOo-

4 P R O C E E D I N G S

5
6 THE COURT: Let's go to page 3,
7 Mr. Martinez. If he doesn't have any particular
8 requests out of order, we will do Crystal Austin
9 first, Case No. 8978. Time and place set for calendar
10 call.

11 Mr. Martinez, did you reach a negotiation,
12 or do you want to declare ready or what?

13 MR. MARTINEZ: I'm going to choose Door C,
14 Your Honor. I had spoke with the State yesterday, and
15 in their preparation for the case, they have become
16 privy to some new information that is extremely
17 pertinent to the case that would cause me not to be
18 ready to begin trial at the beginning of January.

19 So what I'm going to request today,
20 Your Honor, is if we can set this matter for a status
21 check at the beginning of January either on
22 negotiations or on the resetting of the trial date.

23 MR. FERGUSON: Yes, Your Honor.

24 THE COURT: All right. We have a criminal
25 calendar date for January 14th at nine o'clock; we can

1 set it for a status check. Would you like me to set
2 you a new trial date off in the future just in case?

3 MR. MARTINEZ: No, Your Honor. We can wait
4 until January 14th.

5 THE COURT: Is that also true for you,
6 Counsel?

7 MR. FERGUSON: Yes, I'd agree.

8 THE COURT: All right. We'll scratch the
9 current trial date and set the new status check for
10 January 14th, nine o'clock. Anything else?

11 MR. MARTINEZ: No, Your Honor.

12 THE COURT: Okay. We'll see you
13 January 14th.

14 -oOo-

15

16 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
17 PROCEEDINGS.

18

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20

Cecilia D. Thomas

21

Cecilia D. Thomas
RPR, CCR No. 712

22

23

24

25

No. CR-8978

Dept. No. 2

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE

-oOo-

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

vs.

CRYSTAL YVONNE AUSTIN,

Defendant.

)
)
) TRANSCRIPT OF PROCEEDINGS
) STATUS CHECK (NEGOTIATIONS/
) SET TRIAL DATES) - (CONT'D)
)
) JANUARY 14, 2019
) 10:35 A.M.
) PAHRUMP, NEVADA
)

APPEARANCES:

For the State:

DANIEL YOUNG, ESQ.
DEPUTY DISTRICT ATTORNEY
Nye County Courthouse
Pahrump, Nevada 89060

For the Defendant:

DANIEL MARTINEZ, ESQ.
DEPUTY PUBLIC DEFENDER
552 East Charleston Boulevard
Las Vegas, Nevada 89104

State Parole and
Probation Officer:

LISA THELANER

The Defendant:

CRYSTAL YVONNE AUSTIN

Reported by: CECILIA D. THOMAS, RPR, CCR No. 712

1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, JANUARY 14, 2019

2 10:35 A.M.

3 -oOo-

4 P R O C E E D I N G S

5
6 THE COURT: Crystal Austin, 8978. Time and
7 place set for a status check.

8 MR. MARTINEZ: Your Honor, Ms. Austin is
9 present and out of custody. As Your Honor will
10 recall, last we were here, this matter was set for
11 trial. We did vacate that trial date because the
12 State was aware of some new information that was
13 certainly going to be pertinent to the trial, as well
14 as possible negotiations.

15 Through additional discovery, they were
16 going to be getting that over to me; however, I have
17 not received anything from them yet. I have been in
18 contact with Mr. Ferguson about that. So my request
19 today is just if we could set that for another status
20 check today, continue this status check for about 30
21 days.

22 MR. YOUNG: That's fine, judge.

23 THE CLERK: Thirty days out, February 11th.
24 That's the only date in February.

25 THE COURT: February 11th at 0900.

MR. MARTINEZ: Thank you, Judge.

THE COURT: Thank you, sir.

-oOo-

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
PROCEEDINGS.

Cecilia D. Thomas

Cecilia D. Thomas
RPR, CCR No. 712

1 No. CR-8978

2 Dept. No. 2

FILED
FIFTH JUDICIAL DISTRICT

MAR 05 2020

Nye County Clerk
Deputy

5 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF NYE

7 THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE

8 -oOo-

ORIGINAL

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 vs.)

13 CRYSTAL YVONNE AUSTIN,)

14 Defendant.)

TRANSCRIPT OF PROCEEDINGS
STATUS CHECK

FEBRUARY 11, 2019

9:10 A.M.

PAHRUMP, NEVADA

16 APPEARANCES:

17 For the State:

DANIEL YOUNG, ESQ.
DEPUTY DISTRICT ATTORNEY
Nye County Courthouse
Pahrump, Nevada 89060

19 For the Defendant:

DANIEL MARTINEZ, ESQ.
DEPUTY PUBLIC DEFENDER
552 East Charleston Boulevard
Las Vegas, Nevada 89104

22 State Parole and
Probation Officer:

LISA THELANER

24 The Defendant:

CRYSTAL YVONNE AUSTIN

25 Reported by: CECILIA D. THOMAS, RPR, CCR No. 712

1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, FEBRUARY 11, 2019

2 9:10 A.M.

3 -oOo-

4 P R O C E E D I N G S

5
6 THE COURT: Crystal Austin, 8978. Time and
7 place set for a status check.

8 Would you like to brief the record,
9 Mr. Martinez?

10 MR. MARTINEZ: Thank you, Your Honor.

11 Your Honor, this matter was previously set
12 for trial. We had vacated the trial dates and asked
13 for a couple of status checks on negotiations or the
14 resetting of the trial, and that is where we are
15 today.

16 At this time, Your Honor, we are going to
17 ask just to reset the trial date on this matter.

18 MR. YOUNG: That's correct, Judge.

19 THE COURT: Do you guys know how many days
20 this will take?

21 MR. MARTINEZ: I believe we previously had
22 carved out three days for it, Your Honor.

23 THE COURT: Very good, sir.

24 MR. YOUNG: Seems reasonable, Judge.

25 THE COURT: No qualifications on how soon

1 or anything of that nature? Just set it whenever I
2 have an open date?

3 MR. MARTINEZ: Yes, Your Honor.

4 THE COURT: All right. July 9th through
5 the 12th. Calendar call, June 3rd.

6 MR. MARTINEZ: And I apologize, Your Honor.
7 I know that I am out of the jurisdiction just a week
8 prior to that. So I don't know if the Court were able
9 to move it just a week or two after that.

10 THE COURT: You mean prior to the trial?

11 MR. MARTINEZ: Yes.

12 THE COURT: July 30th through August 2nd.

13 MR. MARTINEZ: Perfect.

14 THE COURT: July 30th through August 2nd.
15 Calendar call, June 17th.

16 MR. MARTINEZ: Thank you, Your Honor.

17 THE COURT: Nine o'clock in the morning.

18 -oOo-

19

20 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
21 PROCEEDINGS.

22

23

24

25

Cecilia D. Thomas

Cecilia D. Thomas
RPR, CCR No. 712



Case No. CR 8978

Dept. 2P

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

Binnett
2019 FEB 14 P 2:17
NYE COUNTY CLERK
BY
DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-v-

ORDER SETTING JURY TRIAL

CRYSTAL YVONNE AUSTIN,

Defendant,

IT IS SO ORDERED that the above-captioned case is hereby set for trial before a jury in **Pahrump, Nevada**, commencing at **9:00 o'clock a.m.** on **Tuesday the 30th of July 2019**. Pre-trial motions will be heard at 8:30 a.m. Any lengthy pre-trial motions should be scheduled with the Court. Four days have been set aside for the trial. The services of the District Court Reporter are required.

IT IS FURTHER ORDERED that a calendar call is set for the **17th day of June 2019**, at the hour of **9:00 a.m.** Counsel and the defendant must appear for the calendar call.

IT IS FURTHER ORDERED that the jury draw is set on the **17th day of June 2019**, whereas the Nye County Jury Commissioner will draw a regular panel of 80 jurors at **2:30 p.m.** in the presence of all those who wish to attend.

DATED this 14th day of February 2019.

[Signature]
DISTRICT JUDGE

CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 14th day of February 2019, she
mailed (or hand delivered) copies of the foregoing ORDER to the following:

NYE COUNTY DISTRICT ATTORNEY'S OFFICE
PAHRUMP, NV 89060
(HAND DELIVERED)

DANIEL E. MARTINEZ, ESQ.
552 E. CHARLESTON BLVD.
LAS VEGAS, NV 89104
(HAND DELIVERED)



Louise Mulvey, Secretary to
DISTRICT JUDGE

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



MAY 24 2019

Nye County Clerk

 Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

CRYSTAL YVONNE AUSTIN,

Defendant.

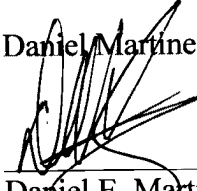
**MOTION TO COMPEL PRODUCTION
OF DISCOVERY AND BRADY
MATERIAL**

COMES NOW, the Defendant, Crystal Yvonne Austin, by and her through her Public Defender, Daniel E. Martinez, Esq., of Daniel Martinez Law, LLC, and hereby requests this Honorable Court to order the State of Nevada to produce the discovery and Brady material discussed herein at least 30 days before trial pursuant to NRS 174.235; NRS 174.285; Kyles v. Whitley, 514 U.S. 419 (1995); Brady v. Maryland, 373 U.S. 83 (1963) (and their progeny).

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel and Memorandum of Points and Authorities, and oral argument at the time set for hearing this Motion.

DATED this 24th day of May, 2019.

Daniel Martinez Law, LLC


Daniel E. Martinez, Esq.
Nevada Bar No.: 12035

NOTICE OF MOTION

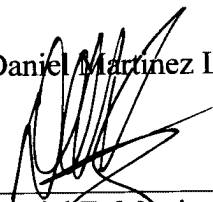
TO: Nye County, Plaintiff; and

TO: District Attorney, its Attorneys;

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Compel Production of Discovery and Brady Material on Calendar for hearing in Department 2 of the above-entitled Court on the 17 day of June, 2019, at 9:00 a.m. or as soon thereafter as counsel may be heard.

DATED this 24th day of May, 2019.

Daniel Martinez Law, LLC



Daniel E. Martinez, Esq.
Nevada Bar No.: 12035

DANIEL MARTINEZ LAW

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

On June 1, 2016, a red Volvo was reported to be driving at a high rate of speed, driving off the roadway, and almost striking other vehicles. The vehicle was then involved in a collision with a blue minivan on Pahrump Valley Blvd., just north of Gamebird Road. Alice Cox observed the collision, and stopped the Volvo from driving away by taking the keys out of the ignition. This caused a physical altercation between Cox and the driver. Multiple members of the Nye County Sheriff's Office responded to the scene at approximately 12:03pm. The driver of the Volvo was identified by her Nevada driver's license as Crystal Austin.

Upon his arrival, Sgt. McRae observed Austin and Cox in a physical altercation. Sgt. McRae broke up the altercation and removed Austin from the vehicle. He smelled a strong odor of alcohol emitting from Austin's breath when she spoke, making him believe that Austin was under the influence of alcohol. Pahrump Valley Fire and Rescue arrived on scene to treat Austin for a head injury. During the treatment, Detective Cox observed that Austin was unable to keep her balance, her eyes were glossy, she had slurred speech. Austin was unable to answer any medical questions. Austin was transported to Desert View Hospital, without first performing field sobriety tests.

After interviewing witnesses, Detective Cox obtained a telephonic search warrant from Justice of the Peace Kent Jaspersen to obtain blood samples from Austin. At approximately 1:50pm, Max Santos, a licensed phlebotomist, responded to Desert View Hospital. At 2:05pm, he obtained two whole blood samples from Austin. Austin was later released from Desert View Hospital, and transported to the Nye County Detention Center. Marliissa Collins, a forensic scientist with the Las Vegas Metropolitan Police Department, later determined Austin's blood alcohol content from the samples to be 0.328.

A complaint was filed against August on November, 7, 2016, charging her with one count of Driving Under the Influence of Alcohol, with Prior DUI Conviction, a felony. Austin waived

her preliminary hearing to enter a Guilty Plea Agreement, but during the cavass, the Court became aware of Austin's mental health issues, and ordered her to undergo competency evaluations. After being deemed competent, and having new counsel, Austin no longer wished to enter the Guilty Plea Agreement, and this matter is now set for trial.

ARGUMENT

Prior to trial, prosecutors are required to disclose both inculpatory and exculpatory information within their actual or constructive possession.

I. Prosecutors must Disclose Inculpatory Evidence

NRS 174.235 requires prosecutors to disclose evidence "within the possession, custody or control of the state, the existence of which is known, or by the exercise of due diligence may become known," including:

- The defendant's written or recorded statements or confessions,
- Any witness's written or recorded statements the prosecuting attorney intends to call during the witness during the State's case in chief,
- Results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection with the particular case,¹ and
- Books, papers, documents, tangible objects, or copies thereof, which the prosecuting attorney intends to introduce during the State's case in chief.

NRS 174.235(1)(a)-(c).

A. Prosecutors must disclose all inculpatory evidence, regardless of whether the material is intended for use in the government's case in chief

Prosecutors may not lawfully withhold inculpatory information from the defense simply because they do not intend to present the information in the government's case-in-chief. State v. Harrington, 9

¹ This includes medical data, imaging, films, reports and slides, histological, colposcopic, or otherwise. The right to counsel guaranteed by the Sixth Amendment obligates defense counsel to conduct "an adequate pre-trial investigation into . . . medical evidence." Gersten v. Senkowski, 426 F.3d 588, 605 (2d Cir. 2005). This duty includes obtaining and reviewing pertinent medical imaging even if the testing reveals no significant findings. Id. at 605, 607-10 (discussing the exculpatory nature of "normal" medical examinations in cases in which a complainant alleges physical harm). Thus, the discovery obligations set forth in NRS 174.235(2) require prosecutors to disclose physical imaging and testing.

Nev. 91, 94 (1873); People v. Carter, 312 P.2d 665, 675 (Cal.1957); People v. Bunyard, 756 P.2d 795, 809 (Cal. 1988). Any holding to the contrary would allow prosecutors to engage in unfair surprise by withholding inculpatory material from the government's case-in-chief, only to surprise the defense by using it in rebuttal. Thus, prosecutors must disclose all inculpatory evidence of which they are actually or constructively aware, including material not necessarily intended for introduction in the prosecution's case-in-chief.

B. Fundamental fairness requires that NRS 174.235 be interpreted to encompass all statements made by a defendant, regardless of whether they are reduced to writing or recorded

While NRS 174.235 obligates prosecutors to disclose a defendant's written or recorded statements, fundamental fairness requires disclosure of unrecorded statements and statements for which a defendant can be held vicariously liable.² Courts have recognized the fundamental fairness involved in "granting the accused equal access to his own words, no matter how the government came by them." U.S. v. Caldwell, 543 F.2d 1333, 1353 (D.D.C. 1974). This includes allowing an accused access to his unrecorded words, including adoptive or vicarious admissions. Since these admissions are admissible at trial whether recorded or not, NRS 174.235 must be construed to require pretrial disclosure of any unrecorded statements or admissions, including those for which the defendant can be held vicariously liable.

II. Prosecutors Must Disclose Exculpatory Evidence as Required by the U.S. and Nevada Constitutions

The United States and Nevada Constitutions require prosecutors to disclose all exculpatory information of which they are actually or constructively aware. U.S. Const. Amend. V, VI, XIV; Nev. Const. Art. 1, Sect. 8; Brady v. Maryland, 373 U.S. 83 (1963); Kyles v. Whitley, 514 U.S. 419, (1995). A prosecutor's failure to disclose exculpatory evidence violates the Due Process Clause. Jimenez v. State, 112 Nev. 610, 618 (1996). A due process violation occurs when exculpatory evidence is withheld, regardless of the prosecution's motive. Jimenez, 112 Nev. 610.

² NRS 51.035(3)(a)-(e) provides that a defendant can be held vicariously liable for statements made by third parties. See also Fields v. State, 129 Nev. 785 (2009) (finding evidence of defendant's silence following wife's complaint that she was in jail because of his conduct admissible as an adoptive admission).

A. Brady Places Broad Disclosure Obligations on Prosecutors, Questions About Which Must Be Resolved In Favor Of Disclosure

Exculpatory evidence is information favorable to the defendant that is material to the issue of guilt or punishment. U.S. v. Bagley, 473 U.S. 667, 675 (1985). Evidence is material and favorable to the accused if its non-disclosure undermines confidence in the outcome of the trial. Kyles, 514 U.S. at 434-35. This evidence must be disclosed even in the absence of a Brady request.³ Bagley, 473 U.S. at 680-82.

Ultimately, prosecutors are tasked with a “broad duty of disclosure.” Strickler, 527 U.S. at 281; cf. U.S. v. Agurs, 427 U.S. 97, 108 (1976) (holding that “the prudent prosecutor will resolve doubtful questions in favor of disclosure”). As the Nevada Supreme Court has explained:

Due process does not require simply the disclosure of “exculpatory” evidence. Evidence also must be disclosed if it provides grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation, to impeach the credibility of the state’s witnesses, or to bolster the defense case against prosecutorial attacks. Furthermore, “discovery in a criminal case is not limited to investigative leads or reports that are admissible in evidence.” Evidence “need not have been independently admissible to have been material.”

Mazzan v. Warden, 116 Nev. 48, 67 (2000) (internal citations omitted). Thus, any question as to whether certain material, information, or evidence falls within the purview of Brady should be resolved in favor of disclosure. Agurs, 427 U.S. at 108; see also Kyles, 514 U.S. at 439 (“a prosecutor anxious about tacking too close to the wind will disclose a favorable piece of evidence.”).

B. Favorable Evidence Includes Impeachment Information

The Due Process Clause of the Fifth and Fourteenth Amendments requires prosecutors to disclose “any information about its witnesses that could cast doubt on their credibility.” U.S. v. Jennings, 960 F.2d 1488, 1490 (9th Cir. 1992). A witness can be attacked by “revealing possible biases, prejudices, or ulterior motives of the witnesses as they may relate directly to issues or personalities in the case at hand. The partiality of a witness is . . . always relevant [to] discrediting the witness and affecting the weight of his testimony.” Davis, 415 U.S. at 316; see also Lobato v. State, 120 Nev. 512

³ However, a specific Brady request changes the standard of review on appeal. When a defendant makes a specific request, a reversal is warranted when “there exists a reasonable *possibility* that the claimed evidence would have affected the judgment of the trier of fact.” Jimenez, 112 Nev. 619; State v. Bennett, 119 Nev. 589 (2003). However, absent a specific request, reversal is warranted, “if there exists a reasonable *probability* that, had the evidence been disclosed, the result of the proceeding would have been different.” Bagley, 473 U.S. at 667, 682, 685; Pennsylvania v. Ritchie, 480 U.S. 39, 57 (1986). A reasonable probability is a probability sufficient to undermine confidence in the outcome. Bagley, 473 U.S. at 678, 685; Ritchie, 480 U.S. at 57.

(2004) (discussing the nine basic modes of impeachment). Accordingly, favorable evidence includes impeachment information pertaining to all government witnesses. Giglio v. U.S., 405 U.S. 150, 154 (1972); Youngblood v. West Virginia, 547 U.S. 867 (2006); U.S. v. Bagley, 473 U.S. at 676 (requiring disclosure of all impeachment evidence).

1. Impeachment information includes cooperation agreements and benefits

Impeachment information includes all cooperation agreements between a government witness and prosecutors. Giglio v. U.S., 405 U.S. 150, 154 (1972) (requiring disclosure of cooperation agreement between government witness and prosecutors). It also includes benefits provided to a government witness, regardless of whether an explicit deal is outlined. Browning v. State, 120 Nev. 347, 369 (2004). It is the witness's own anticipation of reward, not the intent of the prosecutor, which gives rise to the required disclosure. Moore v. Kemp, 809 F.2d 702, 726, 729-30 (11th Cir. 1987); Duggan v. State, 778 S.W.2d 465, 468 (Tex. Crim. App. 1989) (noting that agreements need not be express or formal arrangements, and recognizing favorable treatment that is merely implied, suggested, insinuated, or inferred to be of possible benefit to a witness constitutes proper material for impeachment).

Notably, benefits are not limited to agreements made in relation to the case in which they are sought. Jimenez, 112 Nev. at 622-23. Benefits include evidence that a witness acted as a paid informant on one or more occasions. State v. Bennett, 119 Nev. 589, 603 (2003). Additionally, benefits include travel and lodging compensation, immigration assistance of any kind, whether actual or anticipatory, as well as counseling, treatment, or other assistance provided to any witness. These benefits are relevant to issues regarding possible bias, credibility, and motive to lie, all of which constitute impeachment evidence. Davis v. Alaska, 415 U.S. 308 (1974).

2. A witness's criminal history constitutes impeachment information

Impeachment information includes evidence relating to a witness's criminal history. Briggs v. Raines, 652 F.2d 862, 865-66 (9th Cir. 1981). Under Brady, prosecutors must produce criminal histories useful to demonstrating a witness's history of, or propensity for, a relevant character trait. Id. Prosecutors must also produce criminal histories disclosing a witness's bias, prejudice or motive to lie. Davis, 415 U.S. at 354.

1 A witness's entire criminal record should be disclosed, even if it is more than ten years old.
2 Moore, 809 F.2d 702. Prosecutors are often under the mistaken impression that they must disclose only
3 felony convictions within the last ten years that can be utilized for impeachment under NRS 50.095.
4 However, in Davis, the U.S. Supreme Court found that a witness can be attacked by "revealing possible
5 biases, prejudices, or ulterior motives The partiality of a witness is . . . always relevant [to]
6 discrediting the witness and affecting the weight of his testimony." 415 U.S. at 354 (internal quotations
7 omitted). The Davis Court found that the policy interest in protecting offender records must yield to the
8 defendant's right to cross-examine as to bias. Id. at 356; see also Lobato v. State, 120 Nev. 512 (2004),
9 discussing the "nine basic modes of impeachment." Therefore, even juvenile records, misdemeanors,
10 and older criminal records may yield information relevant to many forms of impeachment other than
11 that outlined in NRS 50.095.

12 Prosecutors must also produce criminal history information maintained by law enforcement
13 agencies other than the Nye County Sheriff's Office, such as the federal government's National Crime
14 Information Center ("NCIC") database.⁴ "[K]nowledge [of the NCIC database] may be imputed to the
15 prosecutor, or a duty to search may be imposed, in cases where a search for readily available background
16 information is routinely performed, such as routine criminal background checks of witnesses." Odle v.
17 Calderon, 65 F. Supp. 2d 1065, 1072 (N.D. Cal. 1999), rev'd on other grounds by Odle v. Woodford,
18 238 F.3d 1084 (9th Cir. 2001). A prosecutor's lack of knowledge regarding a witness's criminal history
19 does not relieve the prosecutorial obligation to obtain and produce that information. Martinez v.
20 Wainwright, 621 F.2d 184, 187-89 (5th Cir. 1980) (defendant entitled to criminal records of state-
21 government witnesses, including data obtainable from the FBI; prosecutor's lack of awareness of alleged
22 victim's criminal history did not excuse duty to obtain and produce rap sheet).

23
24
25 ⁴ Federal law permits disclosure of NCIC information under circumstances such as those here.
26 28 C.F.R. Chapter 1 addresses the U.S. Dept. of Justice and Criminal Justice Information Systems. 28
27 C.F.R. Sec. 20.33 sets forth the instances in which NCIC information may be disclosed. It provides for
28 NCIC disclosure "(1) To criminal justice agencies for criminal justice purposes" 28 C.F.R. Sec.
20.3(g) defines criminal justice agencies as *inter alia* courts. Additionally, 28 C.F.R. Sec. 20.3 defines
the "[a]dministration of criminal justice" to include the "performance of any of the following activities
. . . adjudication" Therefore, the C.F.R. authorizes prosecutors to access and disclose NCIC data
pursuant to Court order as part of a criminal case adjudication.

Requiring prosecutors to run background checks on their witnesses is not a novel proposition. See U.S. v. Perdomo, 929 F.2d 967 (3d Cir. 1991) (adopting 5th Circuit's rationale in requiring government to obtain complete criminal history on prosecution witnesses). It is the prosecutor's "obligation to make a thorough inquiry of all enforcement agencies that had a potential connection with the witnesses" U.S. v. Thornton, 1 F.3d 149 (3d Cir. 1993). If the witness has no criminal history, the prosecutor is not required to produce the NCIC printout, as it need not disclose a lack of criminal history. U.S. v. Blood, 435 F.3d 612, 627 (6th Cir. 2006). Thus, prosecutors must run a thorough background check on every witness they intend to call, and produce all criminal history information to the defense.

3. Impeachment information includes evidence contradicting a government witness's statement

Impeachment evidence encompasses prior inconsistent statements and other evidence that contradicts government witnesses. Accordingly, prosecutors must disclose prior inconsistent statements by prosecution witnesses. Lay v. State, 116 Nev. 1185, 1199 (2000). Prosecutors must also disclose other evidence contradicting the testimony of government witnesses. Rudin v. State, 120 Nev. 121, 139 (2004).

4. Confidential records must be disclosed if they contain impeachment information

Impeachment evidence can derive from privileged or confidential material. When this occurs, the privileged or confidential nature of the material at issue must yield to a defendant's constitutionally secured right to confront and cross-examine those who testify against him. Davis, 415 U.S. at 356 (finding the State's interest in maintaining confidentiality of juvenile records must yield to defendant's right to cross-examine as to bias); see also U.S. v. Nixon, 418 U.S. 683, 713 (1974) (generalized assertion of privilege must yield to demonstrated, specific need for evidence in a pending criminal case). Thus, prosecutors must obtain and disclose privileged and confidential records when the records contain information bearing on witness credibility.⁵

This includes mental health records. U.S. v. Lindstrom, 698 F.2d 1154, 1166-67 (11th Cir. 1983); U.S. v. Robinson, 583 F.3d 1265, 1271-74 (10th Cir. 2009); Wyman v. State, 125 Nev. 592, 607-

⁵ At a minimum, otherwise confidential or privileged material must be submitted to the Court for an *in camera* review to determine materiality. Pennsylvania v. Ritchie, 480 U.S. 39, 60 (1987).

08 (2009). It also includes Child Protective Services (or the functional equivalent) and school records. See Pennsylvania v. Ritchie, 480 U.S. 39, 60 (1987) (defendant entitled to *in camera* review of Child and Youth Services records⁶); and State v. Cardall, 982 P.3d 79, 86 (Utah 1999) (defendant entitled to complainant's school psychological records indicating she had propensity to lie and had fabricated prior rape allegations). It further includes adult and juvenile parole, probation, jail, and prison records. U.S. v. Strifler, 851 F.2d 1197, 1201 (9th Cir. 1988); Carriger v. Stewart, 132 F.3d 463, 479-82 (9th Cir. 1997) (requiring production of Department of Corrections file on principle government witness); Davis, 415 U.S. at 356; see also Bennett, 119 Nev. at 603 (2003) (failure to disclose co-conspirator's juvenile records in penalty hearing amounted to Brady violation). Thus, prosecutors cannot refuse disclosure of impeachment information on the basis that the information is privileged or confidential.

5. Impeachment Information Includes Prior Allegations of Sexual Misconduct and Prior Sexual Knowledge

Under Nevada law, prior false allegations of sexual misconduct amount to an exception to rape shield laws. Miller v. State 105 Nev. 497 (1989). Accordingly, Nevada law authorizes disclosure of prior false allegations, including those made by juvenile complainants. NRS 432B.290(3) specifically authorizes child welfare agencies to disclose "the identity of a person who makes a report or otherwise initiates an investigation . . . if a court, after reviewing the record *in camera* and determining that there is reason to believe that the person knowingly made a false report, orders the disclosure." Similarly, the Ninth Circuit recognizes it is error to exclude evidence of minor's prior false sexual assault allegations as this evidence "might reasonably have influenced the jury's assessment of [the complainant's] reliability or credibility . . ." Fowler v. Sacramento Co. Sheriff's Dept., 421 F.3d 1027, 1032-33; 1040 (9th Cir. 2005).

Impeachment evidence in sexual misconduct cases further includes evidence of a complainant's prior sexual conduct to show sexual knowledge. Summitt v. State, 101 Nev. 159 (1985); see also Holley v. Yarborough, 568 F.3d 1091, 1099-1100 (9th Cir. 2009) (finding it was error to exclude evidence that

⁶ The Ritchie Court held that the State cannot claim privilege to refuse disclosure of CPS records, unless there is a statutory scheme that forbids any use, including disclosure to a prosecutor, of such records. Ritchie, 480 U.S. at 57-58. NRS 432B.290 allows for disclosure of such records to the prosecutor and to the court for *in camera* review.

complainant made comments to friends regarding a prior sexual encounter and claimed other boys expressed a desire to engage in sexual acts with her, as this evidence revealed complainant's active sexual imagination, and may have altered jury's perception of the complainant's credibility and reliability of her claims). Thus, prosecutors must disclose evidence of a complainant's prior accusations of sexual misconduct as well as evidence of a complainant's prior sexual conduct in cases where such evidence bears on the charged crimes.

6. Law enforcement personnel files may contain impeachment information

Under U.S. v. Henthorn, 931 F.2d 29, 31 (9th Cir. 1991), prosecutors must examine law enforcement personnel files upon defense request. See also U.S. v. Cadet, 727 F.2d 1453 (9th Cir. 1984). A defendant is not required to make an initial showing of materiality before prosecutors must examine the files—the examination obligation arises solely from the defendant's request. Henthorn, 931 F.2d at 31. "Absent such an examination, [the State] cannot ordinarily determine whether it is obligated to turn over the files." Id. Once examined, prosecutors must "disclose information favorable to the defense that meets the appropriate standard of materiality If the prosecution is uncertain about the materiality of the information within its possession, it may submit the information to the trial court for an in camera inspection and evaluation" Henthorn, 931 F.2d at 30-31 (quoting Cadet, 727 F.2d at 1467-68). Thus, if requested to do so by the defense, the prosecution must canvass relevant law enforcement personnel files for information material to the case.

C. **Favorable Evidence Includes Witnesses with Exculpatory Information**

Prosecutors must disclose the identity of witnesses possessing exculpatory information, as no legitimate interest is served by precluding the defense from calling such witnesses for trial. U.S. v. Eley, 335 F.Supp. 353 (N.D. Ga. 1972); U.S. v. Houston, 339 F.Supp. 762 (N.D. GA 1972).

D. Favorable Evidence Includes Evidence of Third-Party Guilt

The U.S. Constitution guarantees a criminal defendant the right to present evidence of third-party guilt. See Holmes v. South Carolina, 547 U.S. 319 (2006) (holding that refusal to allow defendant to present evidence of third-party guilt deprives him of a meaningful right to present a complete defense under the Sixth and Fourteenth Amendments to the U.S. Constitution). Under Brady, prosecutors must disclose all evidence suggesting another perpetrator committed the charged crimes. Lay, 116 Nev. at 1195-96. This includes evidence that another individual was arrested in connection with the charged crime. Banks v. Reynolds, 54 F.3d 1508, 1518 n.21 (10th Cir. 1995). It also includes evidence of investigative leads pointing to other suspects. Jimenez, 112 Nev. at 622-23 (withholding evidence of investigative leads to other suspects, regardless of admissibility, constitutes Brady violation).

Additionally, prosecutors must provide the actual documents, evidence, and reports pertaining to evidence of third-party guilt; it is not enough for prosecutors to provide the defense with a summary of the information relating to other suspects. Mazzan, 116 Nev. at 69 (summary of prosecutor's perspective on written reports relating to potential suspects were constitutionally inadequate; actual reports should have been disclosed pursuant to Brady); Bloodworth v. State, 512 A.2d 1056, 1059-60 (Md. 1986). Thus, prosecutors must disclose any information or evidence indicating someone other than the instant defendant committed the charged crimes.

E. Favorable Evidence Includes All Evidence that May Mitigate a Defendant's Sentence

Favorable evidence also includes evidence which could serve to mitigate a defendant's sentence upon conviction. Jimenez, 112 Nev. 610. Accordingly, prosecutors must disclose any evidence tending to mitigate punishment in the instant matter.

III. The Disclosure Obligations Conferred by NRS 174.235 and Brady Include Rough Notes

Raw notes made by any law enforcement officer or other prosecution agent in connection with the investigation of instant matter must be disclosed to the defense. See, e.g., State v. Banks, 2014 WL

7004489 (Nev. S.Ct. Dec. 10, 2014) (unpublished) (court did not take issue with lower court's order requiring preservation and disclosure of police officer's rough notes); see also U.S. v. Clark, 385 F.3d 609, 619 (6th Cir. 2004) (finding rough notes discoverable under F.R.C.P. 16); U.S. v. Molina-Guevara, 96 F.3d 698, 705 (3d Cir. 1996) (remanding on other grounds but noting that, on remand, production of rough notes required under F.R.C.P. 16); U.S. v. Harris, 543 F.2d 1247 (9th Cir. 1976) (noting as important, and requiring preservation of, law enforcement rough notes). Notably, this does not include information amounting to work product.

In Hickman v. Taylor, 329 U.S. 495, 508-11 (1947), the U.S. Supreme Court recognized the privileged nature of discussions relating to the preparation of a case for trial.⁷ The work product doctrine announced in Hickman shelters not only material generated by an attorney in preparation for trial, but by his agent, as well:

At its core, the work product doctrine shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client's case. But the doctrine is an intensely practical one, grounded in the realities of litigation in our adversary system. One of those realities is that attorneys often must rely on the assistance of investigators and other agents in preparation for trial. It is therefore necessary that the doctrine protect material prepared by agents for the attorney as well as those prepared by the attorney himself. Moreover, the concerns reflected in the work-product doctrine do not disappear once trial has begun . . .

U.S. v. Nobles, 422 U.S. 225, 238-39 (1975). Codifying this, NRS 174.235(2) exempts from discovery:

- a) An internal report, document or memorandum that is prepared by or on behalf of the prosecuting attorney in connection with the investigation or prosecution of the case.

⁷ "In performing his various duties, however, it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel... Proper preparation of a client's case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference... This work is reflected, of course, in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways - aptly... termed... as the 'work product of the lawyer.' Were such materials open to opposing counsel on mere demand, much of what is now put down in writing would remain unwritten. An attorney's thoughts, heretofore inviolate, would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial. The effect on the legal profession would be demoralizing. And the interests of clients and the cause of justice would be poorly served." Id.

- b) A statement, report, book, paper, document, tangible object or any other type of item or information that is privileged or protected from disclosure or inspection pursuant to the constitution or laws of this state or the Constitution of the United States.

Accordingly, only raw notes generated by, or on behalf of, the prosecutor are exempted from disclosure under the work product doctrine. Any other raw notes compiled during the investigation of this matter must be turned over pursuant to the disclosure obligations imposed by NRS 174.235 and Brady.

IV. The Disclosure Obligations Set Forth Above Extend to All Material in the Prosecutors Actual or Constructive Possession

Prosecutors must turn over all material related to the case in the possession, control and custody of any government agent or agency. See U.S. v. Blanco, 392 F.3d 382, 388 (9th Cir. 2004). Prosecutors are responsible for disclosing evidence in their possession as well as evidence held or maintained by other government agents, as “it is appropriate to charge the State with constructive knowledge” of evidence held by any investigating agency. Bennett, 119 Nev. at 603.

This constructive possession rule applies to evidence that is *withheld* by other agencies. Bennett, 119 Nev. at 603. Even if investigating officers withhold reports without the prosecutor’s knowledge, “the state attorney is *charged with constructive knowledge and possession of evidence withheld by other state agents*, such as law enforcement officers.” Id. (internal quotations and citation omitted) (emphasis added). “Exculpatory evidence cannot be kept out of the hands of the defense just because the prosecutor does not have it, where an investigative agency does.” U.S. v. Zuno-Arce, 44 F.3d 1420, 1427 (9th Cir. 1995). “It is a violation of due process for the prosecutor to withhold exculpatory evidence, and his motive for doing so is immaterial.” Jimenez, 112 Nev. at 618.

In fact, a prosecutor has an *affirmative obligation* to obtain Brady material and provide it to the defense, *even if the prosecutor is initially unaware of its existence*. “The prosecution’s affirmative duty to disclose evidence favorable to a defendant can trace its origins to early 20th century strictures against misrepresentation and is of course most prominently associated with this Court’s decision in Brady . . .” Kyles, 514 U.S. at 432. This obligation exists even where the defense does not make a request for such evidence. Id. As the U.S. Supreme Court explained:

1 This in turn means that the individual prosecutor *has a duty to learn* of any favorable evidence
2 known to the others acting on the government's behalf in the case, including the police. But
3 whether the prosecutor succeeds or fails in meeting this obligation (whether, that is, a failure to
4 disclose is in good faith or bad faith), the prosecution's responsibility for failing to disclose
5 known, favorable evidence rising to a material level of importance is inescapable. . . . Since
6 then, the prosecutor has the means to discharge the government's Brady responsibility if he will,
7 any argument for excusing a prosecutor from disclosing what he does not happen to know about
8 boils down to a plea to substitute the police for the prosecutor, and even for the courts
9 themselves, as the final arbiters of the government's obligation to ensure fair trials.

10 Kyles, 514 U.S. at 437-38 (emphasis added) (citations and footnotes omitted); see also Carriger, 132
11 F.3d at 479-82 (holding that "the prosecution has a duty to learn of any exculpatory evidence known to
12 others acting on the government's behalf. *Because the prosecution is in a unique position to obtain*
13 *information known to other agents of the government, it may not be excused from disclosing what it does*
14 *not know but could have learned.*" (citations omitted) (emphasis added). Thus, the disclosure
15 obligations outlined above extend not only to material directly in the possession of prosecutors, but
16 material prosecutors constructively possess, as well.

17 **V. An "Open File" Policy Does Not Obviate the Disclosure Obligations Outlined Above**

18 Historically, a prosecutor's office may employ an open file policy in which prosecutors allow
19 defense counsel to review the discovery contained in the government's trial file. While the Nye County
20 District Attorney's Office currently may not be adhering to this practice, it is worth noting that an open
21 file policy does not vitiate above-referenced disclosure obligations. Strickler, 527 U.S. at 283 (holding
22 that a prosecutor's open file policy does not in any way substitute for or diminish the State's obligation
23 to turn over Brady material). "If a prosecutor asserts that he complies with Brady through an open file
24 policy, defense counsel may reasonably rely on that file to contain all materials the State is
25 constitutionally obligated to disclose under Brady." Strickler, 527 U.S. at 283, n.23.; see also Amando
26 v. Gonzalez, 758 F.3d 1119, 1136 (9th Cir. 2014); McKee v. State, 112 Nev. 642, 644 (1996) (reversing
27 a judgment of conviction based on prosecutorial misconduct where the prosecutor did not make available
28 all relevant inculpatory and exculpatory evidence consistent with the county district attorney's open file
policy); see also Furbay v. State, 116 Nev. 481 (2000) (discussing prosecution's duty to provide all
evidence in its possession where it has promised to do so). Accordingly, if the defense relies on the
government's assurance of an open file policy, the defense is not required to hunt down information
otherwise obtained and maintained pursuant to that policy.

1 **VI. Adjudication of the Instant Motion is Necessary for Preservation of Issues Relating to**
 2 **Discovery Disclosures**

3 NRS 174.235 requires disclosure of (1) written and recorded statements of a defendant or any
 4 witness the prosecutor intends to call in his case-in-chief; (2) results and reports of any examinations or
 5 tests conducted in connection with the case at bar; and (3) any document or tangible object the prosecutor
 6 intends to introduce in his case in chief—upon the request of the defense. Additionally, constitutional
 7 jurisprudence requires disclosure of any evidence tending to exculpate the accused. The instant Motion
 8 is brought, *inter alia*, to ensure the availability of appropriate sanctions should later discovery issues
 9 arise. This requires a Court Order compelling the production of the information and material sought
 10 herein. Donovan v. State, 94 Nev. 671 (Nev. 1978).

11 **A. Nevada Law Provides for Judicial Oversight of the State’s Discovery Obligations**

12 The Nevada Supreme Court has held that a discovery motion and corresponding order is a
 13 prerequisite to obtaining relief under NRS 174.295⁸ for later discovery violations:

14 Although NRS 174.295 provides relief for a prosecutor’s failure to notify defense counsel
 15 of all discoverable material, that statute is only operative in situations where a previous
 16 defense motion has been made and a court order issued. That provision is not applicable
 17 to any informal arrangements that are made, as here between counsel without benefit of
 court sanction.

18 Donovan, 94 Nev. 671 (internal citations omitted).

19 This comports with other portions of NRS 174, which, by implication, suggests criminal
 20 discovery is a matter that must be pursued by way of motion rather than a simple written or oral request.
 21 For example, NRS 174.285 states that “a request made pursuant to NRS 174.235 or 174.245 may be
 22 made only within 30 days after arraignment or at such reasonable time *as the court may permit*. A party
 23 shall comply with a request made pursuant to NRS 174.235 or 174.245 not less than 30 days before trial
 24 or at such reasonable later time *as the court may permit*.” (Emphasis added). The judicial permission
 25 required for late discovery requests and late compliance contemplates judicial oversight of discovery
 26 matters.

27
 28 ⁸ NRS 174.295 sets forth sanctions for discovery violations, such as inspection of material not properly disclosed, trial continuance, or exclusion of the undisclosed material.

Similarly, NRS 174.125 contemplates discovery requests via written motion. NRS 174.125 requires that, any motion “which by [its] nature, if granted, delay[s] or postpone[s] the time of trial must be made before trial, unless an opportunity to make such a motion before trial did not exist or the moving party was not aware of the grounds for the motion before trial.” A discovery request, depending on the timing and nature of the request, may necessarily cause a trial delay. Accordingly, under NRS 174.125, discovery requests should be made via motion prior to trial. Id.

Thus, the statutorily-based discovery requests set forth herein are properly brought before this Honorable Court and must be adjudicated. Refusal to adjudicate the instant Motion obviates Ms. Austin’s statutorily created liberty interest in (1) ensuring access to the discoverable material covered by NRS 174 and (2) ensuring application of the enforcement and sanction provisions outlined in NRS 174. Such an arbitrary deprivation of a state-created liberty interest violates the Due Process Clause. See Hicks v. Oklahoma, 447 U.S. 343, 346 (1980) (arbitrary deprivation of state-created liberty interest amounts to Due Process violation).

B. Brady Material and Relevant Authority

Brady and related authority also contemplate pre-trial regulation and adjudication of prosecutorial disclosures. Brady is not a discovery rule but a rule of fairness and minimum prosecutorial obligation. Curry v. U.S., 658 A.2d 193, 197 (D.C. 1995) (internal quotations and citations omitted). It does not require the production of specific documents. It requires the production of information. This prosecutorial obligation is non delegable—it is not contingent on, nor is the defense required to make, specific Brady requests. See Strickler, 527 U.S. at 281-82 (setting forth the elements of a Brady claim and clarifying that there is no requirement that defense make request).⁹

However, to prevail on a Brady claim, should one arise, a defendant must establish that (1) the prosecution was in actual or constructive possession of favorable information; (2) the prosecution failed to disclose this information to the defense in a timely fashion or at all; and (3) the withheld information

⁹ Any argument by prosecutors that “the defense is able to independently seek out any discovery which they desire . . . it is not the State’s responsibility to perform investigations or inquiries on behalf of the defense,”—common responses to defense discovery motions—is patently wrong. Strickler, 527 U.S. at 281-82 (rejecting the argument that defense counsel should have uncovered Brady information); Banks v. Dretke, 540 U.S. 668, 695-98 (2004) (“A rule thus declaring ‘prosecutor may hide, defendant must seek’ is not tenable in a system constitutionally bound to accord defendants due process.”).

1 was material to the outcome of the trial. Strickler, 527 U.S. at 281-82. The standard for determining
2 materiality depends upon whether defense counsel requested the information at issue and, if a request
3 was made, whether the request was specific or general in nature. “If a defendant makes no request or
4 only a general request for information, the evidence is material when a reasonable *probability* exists that
5 the result would have been different had it been disclosed.” Bennett, 119 Nev. at 600 (emphasis added).
6 Yet, “if the defense request is specific, the evidence is material upon the lesser showing that a reasonable
7 *possibility* exists of a different result had there been disclosure.” Id. (emphasis added) Accordingly, the
8 fact and nature of a Brady request is critical to later adjudication of alleged Brady violations.

9 Defense counsel enjoys to the right to pursue Brady requests—and thereby construct the record
10 on them—in the manner counsel sees fit. The best way to ensure that the record adequately reflects the
11 nature and scope of a Brady request is via pre-trial discovery motion—a motion, as set forth above,
12 specifically provided for by Nevada law.¹⁰ See Myles v. State, 127 Nev. 1161 (2011) (unpublished) (no
13 discovery violation where undisclosed photo not requested as part of discovery motion).

14 A cursory review of federal discovery jurisprudence reveals the broad authority with which trial
15 courts are vested to regulate pretrial Brady disclosures and thereby ensure that this constitutional rule—
16 which exists to prevent a miscarriage of justice—works as it should. Bagley, 473 U.S. at 675; U.S. v.
17 Odom, 930 A.2d 157, 158 (D.C. 2007); see also U.S. v. W.R. Grace, 526 F.3d 499, 509 (9th Cir. 2008)
18 (affirming trial court’s order requiring government to disclose its finalized witness list a year prior to
19 trial as an exercise of the court’s inherent authority to manage its docket”); U.S. v. Coppa, 267 F.3d 132,
20 146 (2d Cir. 2001) (acknowledging trial court’s discretion to order pretrial disclosures as a matter of
21 sound case management); U.S. v. Rigas, 779 F. Supp. 408, 414 (M.D. Pa. 2011 (recognizing authority
22 of trial court to order pretrial disclosure of Brady material to ensure effective administration of criminal
23 justice system); U.S. v. Cerna, 633 F. Supp. 2d 1053, 1057 (N.D. Cal. 2009) (exercising power to issue
24 Brady order); U.S. v. Thomas, 2006 WL 3095956 (D.N.J. 2006) (issuing pretrial order regulating, *inter*
25 *alia*, Brady disclosures).

26 Indeed, trial courts must, as a constitutional matter, exercise this oversight power. Boyd v. U.S.,
27 908 A.2d 39, 61 (D.C. 2006) (“courts have the obligation to assure that [prosecutorial discretion] is

28 ¹⁰ This is especially true given the absence of compelling Nevada or other authority recognizing
an informal Brady request as sufficient to preserve the record on this critical issue.

exercised in a manner consistent with the right of the accused to a fair trial”); see also Smith v. U.S., 665 A.2d 962 (D.C. 2008) (abuse of discretion for court to refuse to review a transcript *in camera* where prosecution concede there were “minor inconsistencies in the testimony as to how the shooting happened”). As such, judicial oversight of Brady disclosures is commonplace in federal criminal prosecutions. See, e.g., U.S. v. Johnson, 2010 WL 322143 (W.D. Pa. 2010) (trial court ordering government to disclose all Brady material, including impeachment material no later than ten days prior to trial); U.S. v. Lekhtman 2009 WL 5095379 at 1 (E.D.N.Y. 2009) (ordering disclosure of Brady material as it is discovered and Giglio material two weeks before commencement of trial); U.S. v. Rodriguez, 2009 WL 2569116 at 12 S.D.N.Y. 2009) (ordering government to turn over Brady material as it is discovered and Giglio material twenty-one days before trial); U.S. v. Libby, 432 F. Supp. 2d 81, 86-87 (D.D.C. 2006) (ordering immediate production of all Brady material); U.S. v. Thomas, 2006 CR 553, 2006 WL 3095956 (D.N.J. 2006) (unpublished) (ordering disclosure of “[a]ny material evidence favorable to the defense related to issues of guilt, lack of guilt, or punishment . . . within the purview of Brady and its progeny” within ten days of order). Thus, the constitutionally-based Brady requests set forth herein are properly brought before this Honorable Court and must be adjudicated to preserve Ms. Austin’s rights.

VII. The Court Must Adjudicate the Instant Motion Regardless of Whether a Discovery Dispute Exists

A dispute over the discoverability of certain material is not a prerequisite to compelling production of discovery and exculpatory information. This is because such disputes rarely occur. With the exception of records that are otherwise privileged (such as CPS or medical records), prosecutors typically do not inform defense counsel of material they intend to withhold from the defense. They simply keep the information hidden. The withheld information is later discovered by the defense either through subsequent defense investigation, fortuitous circumstances, or during the post-conviction discovery process.

Recognizing this, the U.S. Supreme Court has not required defense counsel to divine (and bring to the Court's attention) particular information within the government's file that is being shielded from defense view:

We rejected a similar argument in Strickler. There, the State contended that examination of a witness's trial testimony, alongside a letter the witness published in a local newspaper, should have alerted the petitioner to the existence of undisclosed interviews of the witness by the police. We found this contention insubstantial. In light of the State's open file policy, we noted, 'it is especially unlikely that counsel would have suspected that additional impeaching evidence was being withheld. Our decisions lend no support to the notion that defendants must scavenge for hints of undisclosed Brady material when the prosecution represents that all such material has been disclosed. As we observed in Strickler, defense counsel has no 'procedural obligation to assert constitutional error on the basis of mere suspicion that some prosecutorial misstep may have occurred.

Banks, 540 U.S. at 695-96 (internal citations omitted). Thus, a dispute need not exist over the discoverability of a particular piece of information in order for this Court to entertain motions such as that brought here and enforce the government's discovery obligations. Accordingly, Ms. Austin respectfully requests that this Honorable Court adjudicate his Motion to Compel Production of Discovery.

VIII. Prosecutors Must Oppose or Concede Each Discovery Request; and the Court Must Adjudicate Each Request

Prosecutors often respond to discovery requests some combination of the following: (1) the government is aware of its discovery obligation and will act accordingly; (2) the government has complied with the requests or will facilitate review of discovery as needed; or (3) the request is objectionable as overbroad, immaterial, or not authorized by law. Only the last of these is responsive to a particular request; the first two are not. Each request needs to be opposed or conceded. Saying "we have complied" or "we are aware of our discovery obligations" or "we will facilitate a review of detective notebooks" is nothing more than attempt to subvert a ruling enforcing the discovery provisions mandated by state and federal law. It is a way to goad the court into believing the issue is moot. Discovery is a continuing obligation. A criminal defendant is entitled to an order enforcing the discovery provisions outlined by state and federal law, regardless of whether the prosecutor has already provided certain requested material, is aware of pertinent discovery rules, and is willing to facilitate further

discovery review. The prosecutor needs to oppose or concede each request. The Court needs to rule on each request, accordingly.¹¹

IX. Defendant's Specific Discovery Requests

Based upon the foregoing, Ms. Austin requests that this Honorable Court enter an order directing prosecutors to provide the following related to this case:¹²

General Discovery

1. Defendant's Statements and Any Potential Co-Defendants' Statements

All statements made by the defendant and any co-defendants, regardless of whether the statements were written or recorded, including but not limited to:

- Comments made at the time of arrest or during transport to the detention center,
- All conversations, telephonic or otherwise, intercepted by any law enforcement agencies, including federal authorities, and
- The substance of any statements, conversations, or correspondence overheard or intercepted by any jail personnel or other inmates which have not been recorded or memorialized.

2. Potential Witnesses' Statements

All written or recorded statements of witnesses and potential witnesses, including but not limited to:

- Audio and video recording in any form collected by investigating officers or any other law enforcement agent as part of the investigation of this matter as well as any related matters,
- Notes of interviews, such as notes of patrol officers, or notes of phone calls made to potential witnesses, or attempts to contact such witnesses.

3. Records Related to Investigation

All records of the Nye County Sheriff's Office and any other law enforcement agencies involved in the investigation of this or any related matter, including, but not limited to:

- Copies of handwritten or other notes,
- Investigative leads that were not followed up on,
- Any other matter bearing the credibility of any State witness,
- Information pertaining to this case or any witnesses in this case, no matter what the form or title of the report, including:

¹¹ Combination responses, which contain conciliatory language in conjunction with some form of opposition, must be treated as an opposition to a particular request, thereby warranting adjudication by this Honorable Court.

¹² Significantly, this request is not in any way intended to be a substitute for the generalized duties described above.

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- "Case Monitoring Forms,"
- Use of Force reports,
- 911 recordings,
- Dispatch logs, and
- Information regarding leads or tips provided to law enforcement or a crime tip organization, such as Crime Stoppers, including any reward or benefit received for such tip.
- All notes and officer reports authored by any members of the Nye County Sheriff's Office that assisted with this case, including, but not limited to, **Detective Alex Cox, Sgt. James McRae, Deputy Joe Marshall, Deputy Britton Hoffman, Deputy K. Ferrel, Deputy T. Buffi, and Deputy G. Curtain**

4. Crime Scene Analysis, Evidence Collection, and Forensic Testing

All requests, results, reports, and bench notes pertaining to all crime scene analysis, evidence collection and forensic testing performed in this case,¹³ including, but not limited to:

- Photographic, video, and audio recordings of evidence collection and testing,
- Fingerprint Evidence: All latent prints recovered in the instant matter, regardless of their value for identification, as well as exemplars compiled in connection with the investigation of this matter, including:
 - photographs, reports, and recordings related to collecting and testing of fingerprints,
 - Results of fingerprint collection and comparison, and
 - Automated Fingerprint Identification System (AFIS) searches and results,
- DNA Evidence: DNA testing, raw data and Combined DNA Index System (CODIS) searches and results,
- Scientific Evidence: toxicological, chemical, biochemical, laboratory, and other laboratory or forensic analyses, including trace evidence analyses, crime scene reconstruction or blood spatter analysis, and
- Forensic Analysis: reports and notes related to any forensic analysis and requests for forensic analysis, regardless of the outcome of such request.
- This request encompasses, but it not limited to, any work done by the following individuals: **Marlissa Collins**

5. Medical Records

All records, including photos, reports, imaging studies, test results, and notes pertaining to:

- Any alleged victim generated pursuant to treatment provided in connection with the instant matter; including, without limitation, all emergency medical, fire department, hospital, or other medical care provider records, including all relevant prior medical records,

¹³ This is required under NRS 171.1965(1)(b) and NRS 174.235(1)(b).

- All pathological, neuropathological, toxicological, or other medical evaluations of including all relevant prior medical records and
- The name and badge number of any paramedics who responded to the scene, and all documentation, notes, reports, charts, conclusions, or other diagnostic, prognostic, or treatment information pertaining to any person evaluated, assessed, treated, or cleared by a paramedic at the scene, or transported to a hospital from the scene, to specifically include the Defendant, Crystal Ivonne Austin.

6. Preservation of and Access to Raw Evidence

Access to and preservation of all material collected in the investigation of this case to include but not limited to:

- forensic material, raw data, biological samples and toxicological samples; and
- video surveillance, photographic negatives, and digital negatives.

7. Electronic Communications and Associated Warrants

All intercepted communications, whether electronic oral or otherwise, as well as communications sent to and from a handset, telephone, or computer obtained by any law enforcement agency, including federal authorities via subpoena, interception, or other means, pertaining to the instant matter or any related matter, including but not limited to:

- Audio, Push to Talk, Data, and Packet Data
- Electronic messaging such as: Global System for Mobile Communications (GMS), Short Message Service (SMS), Multimedia Messaging Service (MMS), and Internet Relay Chat,
- File Transfer Protocol (FTP), Internet Protocol (IP), Voice Over Internet Protocol (VOIP), Transmission Control Protocol (TCP), and
- Electronic mail or other internet-based communications.
- **Audio recording and/or transcript of the probable cause statement for the telephonic search warrant obtained in this case.**

8. Law Enforcement Video or Audio Recordings

All video and audio recordings obtained by the Nye County Sheriff's Office recording device, including but not limited to:

- Dashboard cameras,
- Body-mounted officer cameras,
- **Audio recording and/or transcript of the probable cause statement for the telephonic search warrant obtained in this case.**

9. Monitoring, Tracking, and Associated Warrants

All data, recordings, reports, and documentation of the following: voice monitoring devices, geographic tracking devices, pen registers, trap and trace devices installed pursuant to interception, warrant, or other means, obtained by law enforcement pertaining to the instant matter or any related matter.

10. 911 and 311 Calls

Any and all 911 and 311 recordings to include, but not limited to:

- Car-to-car audio communications,
- Car-to-dispatch radio communications, and
- Unit Log incident print out related to the event.

11. Chain of Custody

All relevant chain of custody reports, including reports showing the destruction of any evidence in the case.¹⁴

12. Witness Contact Information

All updated witness contact information, including last known addresses and phone numbers. This includes the names and contact information for witnesses who may have information tending to exculpate Ms. Austin.

13. Information Obtained from Confidential Informants

All information obtained from confidential informants for any aspect of the investigation of this case. This includes, but is not limited to, informants who purportedly obtained information about this case while incarcerated, whether the information came from Ms. Austin, a co-defendant, unindicted co-conspirator, or another source, regardless of whether prosecutors intend to use the informant-related information at the upcoming trial of this matter.

General Impeachment

14. Witness Benefits

¹⁴ Destruction of evidence can result in dismissal of the case or a jury instruction stating such evidence is presumed favorable to the accused. Crockett v. State, 95 Nev. 859, 865 (1979); Sparks v. State, 104 Nev. 316, 319 (1988); Sanborn v. State, 107 Nev. 399, 409 (1991).

1 Disclosure of all express or implied compensation, promises of favorable treatment or
2 leniency, or any other benefit that any of the State's witnesses received in exchange for their
3 cooperation with this or any related prosecution. This includes, but is not limited to:

- 4 • Records and notes from the District Attorney's Victim Witness Office, including records
5 of any expectation of any benefit or assistance to be received, or already received by any
6 witness in this case,
- 7 • Monetary benefits received as well as any express or implied promises made to any
8 witness to provide counseling, treatment, or immigration assistance as a result of the
9 witness's participation in this case,
- 10 • Names of all agencies, workers or other referrals that were given to any witness or his
11 family member, relative, or guardian in connection with this case or any related matter,
12 and
- 13 • Estimate of future benefits to be received by any witness during or after the trial,
14 including travel expenses.

15. Prior Witness Statements

12 Disclosure of any and all statements, tangible or intangible, recorded or unrecorded, made
13 by any witness that are in any manner inconsistent with the written or recorded statements
14 previously provided to the defense. This includes oral statements made to an employee or
15 representative of the CCDA or any other government employee, local or federal, during pre-
16 trial conferences or other investigative meetings.

16. Law Enforcement Impeachment Information—Henthorn Request

18 Ms. Austin hereby requests the prosecutor review the personnel files of each officer involved
19 in this case. After review, the prosecutor must disclose all impeachment information located
20 in the personnel files of any police witness called to testify at trial or any pretrial hearing in
21 this matter, including, but not limited to, any Statement of Complaint regarding the witness
22 or this investigation, any Employee Notice of Internal Investigation, any Internal Affairs
23 Investigative Report of Complaint, any witness statement, any Bureau Investigation
24 Supervisory Intervention, and any other document maintained or generated by the Office of
25 Internal Affairs, Critical Incident Review Panel, or other investigative agency.

17. Criminal History Information

27 Criminal history information on any actual or potential witness, showing specific instances
28 of misconduct, instances from which untruthfulness may be inferred or instances which could

lead to the discovery of admissible evidence. The defense further requests that the NCIC information be provided to defense counsel as soon as possible and that prosecutors identify those individuals for whom no NCIC information is found. While the defense is not insisting that prosecutors run NCICs on expert or law enforcement witnesses, the defense requests that the State be ordered to comply with its Brady obligations with respect to these witnesses. The instant criminal history request includes, but is not limited to:

- Juvenile records,
- Misdemeanors,
- Out-of-state arrests and convictions,
- Outstanding arrest warrants or bench warrants,
- Cases which were dismissed or not pursued by the prosecuting agency, and
- Any other information that would go to the issues of credibility or bias, or lead to the discovery of information bearing on credibility or bias, regardless of whether the information is directly admissible by the rules of evidence.

Catch-all request

18. Contacting Other Agencies

Finally, the defendant requests that this Court order the prosecution to contact other agencies or agents acting on behalf of or working with the prosecution, or in any other way a part of the prosecution team, and initiated to ascertain whether any of those agencies or agents possess or know of any material information that would tend to exculpate Mr. Mullen, impeach a prosecution witness, or mitigate Ms. Austin's possible punishment.

IX. Request for Timely Disclosure

NRS 174.285(1) requires that any discovery request pursuant to NRS 174.235 be made "within 30 days after arraignment or at such reasonable later time as the court may permit." NRS 174.285(2) mandates that "A party shall comply with a request made pursuant to NRS 174.235 . . . not less than 30 days before trial or at such reasonable later time as the court may permit." Accordingly, Ms. Austin requests that this Honorable Court enter an order directing prosecutors to provide the discovery sought herein within a reasonable time in advance of trial so as to enable counsel to effectively prepare. Further, Ms. Austin requests that this Honorable Court order that prosecutors be precluded from admitting at trial

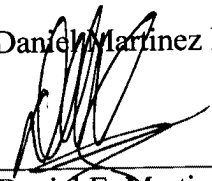
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any discovery or evidence not timely produced. See NRS 174.295 (“If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with the provisions of NRS 174.235 to 174.295, inclusive, the court may order the party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or *prohibit the party from introducing in evidence the material not disclosed*, or it may enter such other order as it deems just under the circumstances.”) (emphasis added).

CONCLUSION

Based on the foregoing, Ms. Austin, respectfully requests that this Honorable Court grant the instant motion, and order the timely disclosure of the material sought herein. NRS 174.235; Brady v. Maryland, 373 U.S. 83 (1963); U.S.C.A. V, VI, XIV; and Nev. Const. Art. 1 § 8.

DATED this 24th day of May, 2019.

Daniel Martinez Law, LLC

Daniel E. Martinez, Esq.
Nevada Bar No.: 12035

CERTIFICATE OF SERVICE

I, Daniel E. Martinez, Esq., Nye County Public Defender and counsel for the Defendant,
CRYSTAL YVONNE AUSTIN, do hereby certify that I have served the following:
Defendant's Motion to Compel Production of Discovery and Brady Material. in
Case No. CR8978
State v. Crystal Yvonne Austin

upon said Plaintiff by delivering a true and correct copy thereof on May 24, 2019, to the following:

NYE COUNTY DISTRICT ATTORNEY'S OFFICE



Daniel E. Martinez, Esq.

DANIEL MARTINEZ LAW

Case No.: CR8978

Dept. No.: 2

FILED
FIFTH JUDICIAL DISTRICT

MAY 24 2019

Nye County Clerk

 Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

CRYSTAL YVONNE AUSTIN,

Defendant.

MOTION TO EXCLUDE BLOOD TEST
RESULTS

COMES NOW, Defendant, CRYSTAL YVONNE AUSTIN, by and through her public defender DANIEL E. MARTINEZ, ESQ., ESQ., of DANIEL MARTINEZ LAW, and requests that the blood tests obtained in this case be excluded from Trial.

This Motion is made and based upon the papers and pleadings on file herein, the Points and Authorities which follow and any arguments of counsel entertained by the Court at the hearing of said Motion.

DANIEL MARTINEZ LAW

By: 
DANIEL E. MARTINEZ, ESQ.
Nevada Bar No.: 12035

NOTICE OF MOTION

TO: Nye County, Plaintiff; and

TO: District Attorney, its Attorneys;

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Exclude Blood Test Results on Calendar on for hearing in Department 2 of the above-entitled Court on the 17 day of June, 2019, at 9:00 a.m. or as soon thereafter as counsel may be heard.

DATED this 24th day of May, 2019.

DANIEL MARTINEZ LAW

By: 
DANIEL E. MARTINEZ, ESQ.
Nevada Bar No.: 12035

MEMORANDUM OF POINTS AND AUTHORITIES**STATEMENT OF FACTS**

On June 1, 2016, a red Volvo was reported to be driving at a high rate of speed, driving off the roadway, and almost striking other vehicles. The vehicle was then involved in a collision with a blue minivan on Pahrump Valley Blvd., just north of Gamebird Road. Alice Cox observed the collision, and stopped the Volvo from driving away by taking the keys out of the ignition. This caused a physical altercation between Cox and the driver. Multiple members of the Nye County Sheriff's Office responded to the scene at approximately 12:03pm. The driver of the Volvo was identified by her Nevada driver's license as Crystal Austin.

Upon his arrival, Sgt. McRae observed Austin and Cox in a physical altercation. Sgt. McRae broke up the altercation and removed Austin from the vehicle. He smelled a strong odor of alcohol emitting from Austin's breath when she spoke, making him believe that Austin was under the influence of alcohol. Pahrump Valley Fire and Rescue arrived on scene to treat Austin for a head injury. During the treatment, Detective Cox observed that Austin was unable to keep her balance, her eyes were glossy, she had slurred speech. Austin was unable to answer any medical questions. Austin was transported to Desert View Hospital, without first performing field sobriety tests. (Please see "Duty Report", attached hereto as Exhibit A."

After interviewing witnesses, Detective Cox obtained a telephonic search warrant from Justice of the Peace Kent Jaspersen to obtain blood samples from Austin. At approximately 1:50pm, Max Santos, a licensed phlebotomist, responded to Desert View Hospital. At 2:05pm, he obtained two whole blood samples from Austin. (Please see "Declaration for the Withdrawal of Whole Blood Sample", attached hereto as Exhibit B.) Austin was later released from Desert View Hospital, and transported to the Nye County Detention Center. Marliisa Collins, a forensic scientist with the Las

1 Vegas Metropolitan Police Department, later determined Austin's blood alcohol content from the
2 samples to be 0.328. (Please see "Report of Examination", attached hereto as Exhibit C.)

3 A complaint was filed against August on November, 7, 2016, charging her with one count of
4 Driving Under the Influence of Alcohol, with Prior DUI Conviction, a felony. Austin waived her
5 preliminary hearing to enter a Guilty Plea Agreement, but during the cavass, the Court became aware
6 of Austin's mental health issues, and ordered her to undergo competency evaluations. After being
7 deemed competent, and having new counsel, Austin no longer wished to enter the Guilty Plea
8 Agreement, and this matter is now set for trial.

10 ARGUMENT

11 As stated above, the collision giving rise to the present matter occurred on June 1, 2016, just
12 prior to 12:03pm, and according to Exhibit B, certified phlebotomist, Max Santos, withdrew two whole
13 blood samples from the Defendant at 2:05pm. Thus, the blood samples were not taken within the two
14 hour timeframe as required under NRS 484C.110, which states:

16 It is unlawful for any person who:

17 ...

18 (c) Is found by measurement within 2 hours after driving or being in actual physical
19 control of a vehicle to have a concentration of alcohol of 0.08 or more in his blood or
20 breath,
(emphasis added)

21 The admission or exclusion of evidence rests within the District Court's sound discretion.
22 *Thomas v. State*, 148 P.3d 727, 734 (Nev. 2006). Under NRS 48.035(1), relevant evidence is
23 inadmissible "if its probative value is substantially outweighed by the danger of unfair prejudice."
24 Because all evidence against a defendant will on some level "prejudice" (i.e. harm) the defense, NRS
25 48.035(1) focuses on "unfair" prejudice. This Court has defined "unfair prejudice" under NRS 48.035
26 as an appeal to "the emotional and sympathetic tendencies of a jury, rather than the jury's intellectual
27 ability to evaluate evidence." *Krause Inc. v. Little*, 34 P.3d 566, 570 (Nev. 2001).

1 The prosecution intends to admit into evidence the Defendant's blood sample results. While the
2 State has provided proper notice of their expert witness, Marlissa Collins, they have not provided a
3 report that Ms. Collins has conducted a retrograde extrapolation analysis. Retrograde extrapolation is a
4 "mathematical calculation used to estimate a person's blood alcohol level at a particular point in time
5 by working backward from the time the blood [sample] was taken." *Com v. Senior*, 433 Mass. 453,
6 744 N.E.2d 614, 619 (2001).

8 Those rates can vary based on a number of factors including: (1) gender, (2) weight, (3) age, (4)
9 height, (5) mental state, (6) the type and amount of food in the stomach, (7) type and amount of alcohol
10 consumed, (8) when the last alcoholic drink was consumed, (9) drinking pattern at the relevant time,
11 (10) elapsed time between the first and last drink consumed, (11) time elapsed between the last drink
12 consumed and the blood draw, (12) the number of samples taken, (13) the length of time between the
13 offenses and the blood draws, (14) the average alcohol absorption rate, and (15) the average
14 elimination rate. *State v. Dist. Ct. (Armstrong)*, 267 P.3d 777, 783 (Nev. 2011).

16 In *Armstrong*, the defendant was in a collision and had his blood drawn more than two hours
17 afterwards. *Id.* at 779. The court ruled there were "many unknown variables" in the retrograde
18 extrapolation calculation. *Id.* at 781. The unknown variables were Armstrong's age or height, the type
19 and amount of food in his stomach, if any, his regular drinking pattern, or his emotional state at the
20 time of the collision. *Id.* at 779. The Nevada Supreme Court ruled that the blood test results, although
21 relevant, were inadmissible because the probative value was substantially outweighed by the danger of
22 unfair prejudice. *Armstrong*, 267 P.3d at 783.

24 This case is analogous to *Armstrong*. The Defendant's blood was also not drawn within two
25 hours after the collision and there are many unknown factors in this case, just as there were in
26 *Armstrong*. It is unknown when the Defendant began drinking, what her regular drinking pattern was,
27 when the last time she ate, or what she ate, among many other factors. All of these unknown variables
28 make it impossible to properly extrapolate the blood samples to determine what the Defendant's blood

1 alcohol content was at the time she was allegedly driving the vehicle. Thus, the probative value of the
2 retrograde extrapolation is substantially outweighed by the danger of unfair prejudice.

3 **CONCLUSION**

4 As the Honorable Court can plainly see, NRS 484C.110 specifically states that the blood-
5 alcohol level must be found within two hours after driving. Using the Duty Report and the Declaration
6 for the Withdrawal of Whole Blood Sample, the blood sample came outside of the two-hour timeframe
7 required by NRS 484C.110. The probative value of the blood test results is substantially outweighed
8 by the danger of unfair prejudice. Due to these facts, the Defense requests that the Report of
9 Examination containing the blood test results be excluded at the time of trial.
10

11
12 Dated this 24th day of May, 2019.


13 DANIEL MARTINEZ LAW

14
15 By: 
16 **DANIEL E. MARTINEZ, ESQ.**
Nevada Bar No. 12035

1
2 **CERTIFICATE OF SERVICE**

3 I, Daniel E. Martinez, Esq., Nye County Public Defender and counsel for the Defendant,
4 CRYSTAL YVONNE AUSTIN, do hereby certify that I have served the following:
5 **Defendant's Motion to Exclude Blood Tests Results in**
6 **Case No. CR8978**
7 **State v. Crystal Yvonne Austin**

8 upon said Plaintiff by delivering a true and correct copy thereof on May 24, 2019, to the following:
9 **NYE COUNTY DISTRICT ATTORNEY'S OFFICE**

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11 
12 _____
13 Daniel E. Martinez, Esq.
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EXHIBIT A



Nye County Sheriffs Office

Deputy Report For Case 16NY-1771

Nature: DUI-TA NY
Location: Nye Pahrump South

Address: PAHRUMP VALLEY/CALVADA
PAHRUMP NV

Received By: Johnson L
How Received: 911 Line
Agency: NYSO
Responding Officers: Cox A J - Ferrel K D - Hoffmann B M - McRae J C - Buffi T D - Curtin G F
Responsible Officers: Cox A J
Disposition: Cleared Adult Arrest 06/08/16
When Reported: 12:03:31 06/01/16
Occurred Between: 12:02:30 06/01/16 and 12:03:31 06/01/16
Supervisor Appv:

Related Circumstances/Offenses

53904 DUI, ABOVE LEGAL LIMIT, (3+)
50212 BATTERY

SUSPECTS:

Name: AUSTIN, CRYSTAL Y. Name Number: 1142958
Race: W Sex: F DOB: 08/01/62 Height: 5'05" Weight: 125 Hair: BLN Eyes: HAZ
SSN: XXXX-4038 DL: XXXX-1378 ST: NV
Add: 81 E FALCON ST, PAHRUMP, NV 89048
Pri Phone: (NA) - Sec Phone:

VICTIMS:

Name: COX, ALICE D.

Name Number: 734691

Race: W

Sex: F

DOB:

Height: 6'00"

Weight: 128

Hair: BRO

Eyes: BRO

SSN:

DL:

ST: NV

Add:

Pri Phone:

Sec Phone:

Name: KLINE, MARY K.

Name Number: 1158303

Race: W

Sex: F

DOB:

Height: 5'06"

Weight: 180

Hair: BRO

Eyes: HAZ

SSN: --

DL:

ST: NV

Add:

Pri Phone:

Sec Phone: () -

WITNESSES:

Name: MASSEY, ROBERT A.

Name Number: 730852

Race: W

Sex: M

DOB:

Height: 6'00"

Weight: 250

Hair: BRO

Eyes: HAZ

SSN: --

DL:

ST: CA

Add:

Pri Phone:

Sec Phone:

PROPERTY INFORMATION:

Item Type: Blood Sample

Property54225

Number:

Item/Brand: crystal austin

Model:

Serial Number:

Color: /

Characteristics:

Quantity: 1

Meas:

Total Value: 0

Owner ID

Number:

Comments:

VEHICLE INFORMATION:

Owner ID Number:	Vehicle Number:	License Plate:
VIN:	State: NV	Expires: 03/02/17
Year: 2005	/Make: VOLV	Model: S60 2.5T
Value: 0	Type: 4D	Color: MAR/
Comments:	Doors: 0	Status:

NARRATIVE:**NARRATIVE:**

On 6/1/16 at approximately 1203 hours I responded to the area of Gamebird and Pahrump valley reference officer back up to SGT McRae. Prior to my arrival dispatch informed me that a burgundy vehicle was driving at a high rate of speed, driving off the roadway and almost striking other vehicles in the area of Pahrump Valley and Calvada. Upon my arrival SGT McRae informed me that he had observed the driver of the burgundy car had been involved in a motor vehicle accident with a blue mini van on Pahrump Valley approximately 100 yards north of Gamebird. The red burgundy car was identified as a red Volvo bearing Nevada license plate 49C738 and the driver and sole occupant of the vehicle was identified through Nevada driver's license as Crystal Austin. SGT McRae stated upon his arrival he observed that Austin and the reporting party were involved in a physical altercation. SGT McRae broke up the physical altercation and removed Austin from the vehicle. It should be noted Austin was attempting to flee the scene as SGT McRae was removing her from the vehicle. SGT McRae informed me he believed Austin was under the influence of alcohol and that she had a strong odor of alcohol omitting from her breath when she spoke.

Pahrump Valley Fire and Rescue responded to the scene to treat Austin for an alleged head injury. I observed that Austin was unable to keep her balance, her eyes were glossy, she had slurred speech and I could smell a strong odor of an alcoholic beverage omitting from her mouth when she spoke. Austin was unable to answer any of Pahrump Valley Fire and Rescue's medical questions. Pahrump Valley Fire and Rescue believed that Austin possibly suffered a head injury and transported her to Desert View Hospital. Due to Austin's alleged head injury and combative nature, standard field sobriety tests were not preformed on scene. Prior to transport I placed Austin under arrest.

Upon further investigation Deputy Hoffman concluded that Austin was the at fault driver in the motor vehicle accident. Please see Deputy Hoffman's accident report for further information. Deputy Hoffman obtained voluntary statements from the victim of the accident identified as Mary Kline, the reporting party, identified as Alice Cox and a witness identified as Robert Massey. Please see these voluntary statements for further information.

I conducted a records check on Austin which revealed that she had a conviction for DUI 2nd in 2012.

I interviewed Cox. Cox stated that she witnessed the motor vehicle accident. She stated she observed Austin leave her travel lane and crash into Kline's blue minivan. Cox stated after the accident Austin attempted to drive away but she stopped her by taking the key out of the vehicle. She stated when she did this Austin struck her with a closed fist on her right shoulder and then struck her in the face. Cox stated she did not strike Austin back because she was on the phone with 911 dispatch.

I obtained a warrant from Justice of the Peace Kent Jaspersen to obtain blood samples from Austin conducted in a medically acceptable manner for evidentiary testing.

Upon arrival at Desert View Hospital Deputy Marshall informed me that Austin was combative and attempted to kick him several times. At approximately 1350 hours a licensed phlebotomist responded to Desert View Hospital and obtained two whole blood samples from Austin at 1405 hours. Austin was later released from Desert

View Hospital and transported to the Nye County Detention Center by Deputy Marshall accordingly without further incident.

The two whole blood samples were booked into evidence at the Nye County Sheriff's Station and later sent to Las Vegas Metropolitan Police Departments Lab for further testing. Digital photographs were downloaded into Spillman.

Involvements

Date	Type	Description	Relationship
06/01/16	Cad Call	12:56:37 06/01/16 DISTURBANCE NY	RELATED/ARRESTED CAD
06/01/16	Misc	ROUTING REQUEST NYE COUNTY SHERIFF'S OFFICE DA'S OFFICE:X	DA
06/01/16	Name	MASSEY, ROBERT A	Witness
06/01/16	Name	COX, ALICE DENISE	Victim
06/01/16	Name	AUSTIN, CRYSTAL YVONNE	Suspect
06/01/16	Name	KLINE, MARY K	Victim
06/08/16	Evidence		Evidence Incident
06/01/16	Accident	16NY-1771	Related Incident
06/01/16	Property	Blood Sample crystal austin 0	Property
06/02/16	Vehicle	MAR 2005 VOLV S60 2.5T NV	Vehicle
06/01/16	Cad Call	12:03:31 06/01/16 DUI-TA NY	Initiating Call
06/01/16	Citation	Moving Violation	Citation

ORIGINAL

Case No. CR8978

Department: 2

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

2019 JUN 11 PM 2:42
JUDICIAL DISTRICT COURT
BY Bennett
CLERK

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

OPPOSITION TO MOTION
EXCLUDE BLOOD RESULTS

v.

CRYSTAL YVONNE AUSTIN,

Defendant. /

TO: Crystal Yvonne Austin, Defendant

AND TO: Daniel E Martinez Esq.
Attorney for Defendant,

THE STATE HEREBY FILES THEIR OPPOSITION to Defendant's Motion to
Exclude Blood Results that is scheduled for hearing before the above-entitled Court
in the courtroom of the Nye County Courthouse, Pahrump, Nevada, ON JUNE 17,
2019, AT 9:00 A.M., or as soon thereafter as counsel may be heard.

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1 This motion is based on all the papers and pleadings herein, the attached
2 Points and Authorities and any arguments adduced by counsel at the hearing of this
3 matter.

4 DATED this 11th day of June, 2019.

5 CHRIS ARABIA
6 NYE COUNTY DISTRICT ATTORNEY

7 By 
8 DON P. CHAIREZ
Deputy District Attorney

9 **POINTS AND AUTHORITIES**

10
11 **STATEMENT OF FACTS**

12
13 The defendant, Crystal Austin, seeks to exclude the blood results in this case
14 claiming that the blood was drawn two minutes beyond the two hour time limit provided
15 by statute. There is no issue as to whether Crystal Austin was driving a red Volvo at a
16 high rate of speed. There is no issue as to whether she had a collision with another
17 car near the intersection of Pahrump Valley Boulevard and Gamebird Road. There is
18 no issue that once the proper procedures were followed to arrest defendant and to
19 obtain a search warrant to forcibly draw her blood, the blood results returned with a
20 blood alcohol content to be 0.328 per cent.

21 But according to the transcribed dispatch record, Defendant Austin incorrectly
22 concludes that she was no longer driving or in actual physical control of the vehicle
23 after 12:03 p.m. In the discovery that was provided to the defendant, the dispatcher
24 receives a call of a drunk driver on Pahrump Valley Boulevard at 12:03 p.m. Even the

1 police officer submitting the declaration of arrest ***assumes that the driving***
2 ***concluded at 12:03 p.m.*** The actual transcript shows the exact timeline to the minute
3 and also to the second. There are two dispatchers receiving the incoming calls to the
4 911 hotline; Dispatcher L. Johnson and Dispatcher A.J. Castillo. It begins as follows:

5 **COMMENTS:**

6 "burgundy colored car keeps running
12:04:00 06/01/2016 - Johnson L
7 About 70 mph

8 12:04:06 06/01/2016 - Johnson L
9 keeps going into other lanes

10 12:04:16 06/01/2016 - Johnson L
going into the dirt

11 12:04:22 06/01/2016 - Johnson L
12 says he is going to kill someone

13 12:04:29 06/01/2016 - Johnson L
maroon volvo

14 12:04:31 06/01/2016 - Johnson L
15 nv plate

16 12:04:37 06/01/2016 - Johnson L
49c738

17 12:04:58 06/01/2016- Johnson L
18 sb pahrump valley passing jaybird

19 12:05:06 06/01/2016 - Johnson L
20 passing calvary

21 12:05:27 06/01/2016 - Johnson L
in opposing lanes

22 12:05:53 06/01/2016 - Johnson L
23 almost to gamebird

24 ///

1 12:06:16 06/01/2016 - Castillo A J
another caller (sic)
2 **12:06:16 06/01/2016 - Castillo A J**
says that the vehicle just got in an accident with a mini van
3
4 **12:06:31 06/01/2016 - Castillo A J**
at gamebird and pahrump valley
5
6 12:06:42 06/01/2016 - Johnson L
it a van full of kids
7
8 12:06:43 06/01/2016 Castillo A J
he did stop
9
10 **12:06:46 06/01/2016 - Castillo A J**
someone is trying to get the keys
11
12 **12:06:48 06/01/2016 - Johnson L**
rp is taking his keys
13
14 12:06:57 06/01/2016 - Johnson L
says she is drunk off her ass
15
16 12:07:01 06/01/2016 - Johnson L
they are yelling
17
18 12:07:03 06/01/2016 - Castillo A J
paged
19
20 12:07:12 06/01/2016 - Johnson L
screaming at each other
21
22 12:07:26 06/01/2016 - Castillo A J
2nd rp robert massey 775-419-9731
23
24 12:07:26 06/01/2016 - Johnson L
veh is disabled now
12:07:29 06/01/2016 - Rucker S S - From McRae J C
2 VEH ACCIDT POSS 1 INJURED
12:07:46 06/01/2016 - Rucker S S - From: McRae J C
NEED ANOTHER UNIT TO EXPEDITE
12:08:07 06/01/2016 -- Johnson L
disconnected, rp said to hurry, she is trying to get the key

1 12:08:11 06/01/2016 - Rucker S S - From: McRae J C
2 ONE DETAINED

3 12:08:22 06/01/2016 - Rucker S S - From: McRae J C
4 DRIVER OF BURG VEH ATTEMPTED TO FLEE AGAIN AFTER
5 STRIKING THE OTHER CAR

6 12:08:26 06/01/2016 - Castillo A J
7 2nd rp is in a red honda passport told to stay in his vehicle they
8 may need a statement from him

9 12:09:33 06/01/2016 - Rucker S S - From: McRae J C
10 FEMALE HAS BEEN PLACED IN DETAINMENT IN BACK OF
11 MY CAR UNTIL ANOTHER UNIT GET HERE

12 12:10:14 06/01/2016 - Rucker S S - From McRae J C
13 AT LEAST 1 FEMALE NON CONTACT VEH WITH PREV
14 BRAIN INJ THAT NEEDS TO BE CHECKED

15 12:10:24 06/01/2016 - Rucker S S - From: McRae J C
16 2ND PATIENT WILL BE THE DRIVER OF THE OTHER VEH

17 (SEE EXHIBIT A, PAGES 103 TO 105 OF DISCOVERY)

18 ARGUMENT

19 In *Barnier v. State*, 119 Nev. 129 (Nev. 2003), the Nevada Supreme Court
20 interpreted the previous version of Nev. Rev. Stat. 484C.110 as to what constituted
21 being in "actual physical control of vehicle." Defendant properly cites the statute which
22 states: "It is unlawful for any person who:

23 (c) Is found by measurement ***within 2 hours*** after driving or being in actual
24 physical control of a vehicle to have a concentration of alcohol of 0.08 or more in his
blood or breath..."

The Nevada Supreme Court held that the factors to consider as to whether a
driver accused of drunk driving was in actual physical control were the following:

///

- 1 “(1) Where and in what position the person is found in the vehicle;
- 2 (2) Whether the vehicle's engine is running or not;
- 3 (3) Whether the occupant is awake or asleep;
- 4 (4) Whether, if the person is apprehended at night, the vehicle's
- 5 lights are on;
- 6 (5) The location of the vehicle's keys;
- 7 (6) Whether the person was trying to move the vehicle or moved
- 8 the vehicle;
- 9 (7) Whether the property on which the vehicle is located is public or
- 10 private; and
- 11 (8) Whether the person must, of necessity, have driven to the
- 12 location where apprehended.” *Barnier v. State*, 119 Nev. 129,
- 13 (2003).

14 In the present case, the 911 dispatcher's timeline shows that after 12:05, the
15 defendant was still driving the red Volvo. The dispatcher's timeline shows that she
16 was actually driving until she collided with another car at Pahrump Valley and
17 Gamebird which took place exactly at 12:06:31 p.m. At 12:06:48, the private citizens
18 grabbed the keys from the defendant.

19 Even though the police officer and defendant use the time of 12:03 p.m. as to
20 when the defendant stopped driving, that is not correct. Had this been correct, then
21 the blood draw that took place at 2:05 p.m. would have been two minutes beyond the
22 statutory presumption. Since the defendant did not crash her car until 12:06 p.m. and
23 fought with the private citizens over control of her car keys after the accident, the
24 defendant was still driving and still in actual physical control of her red Volvo within the

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

1 two-hour window. Based upon the foregoing, the defendant's motion to exclude the
2 blood results should not be granted and the jury should be allowed to know that she
3 was driving with a blood alcohol content of 0.328.

4 DATED this 11th day of June, 2019.

6 CHRIS ARABIA
7 NYE COUNTY DISTRICT ATTORNEY

8 By


DON P. CHAIREZ
District Attorney

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

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EXHIBIT A
PAGES 103 TO 105 OF DISCOVERY

06/15/17
11:13

Nye County Sheriffs Office
CALL DETAIL REPORT

573
Page: 1

Call Number: 16NY27606

Nature: DUI-TA NY
Reported: 12:03:31 06/01/16
Rcvd By: Johnson L How Rcvd: 9
Occ Btwn: 12:02:30 06/01/16 and 12:03:31 06/01/16
Type: lf
Priority: 1

Address: PAHRUMP VALLEY/CALVADA
City: PAHRUMP

Alarm:

Lic Info:

Clearance: C

COMPLAINANT/CONTACT

Complainant: , Name#:
Race: Sex: DOB: **/**/**
Address: ,
Home Phone: Work Phone:

Contact: VERIZON WRLS 800-451-5242
Address: X:-115.989082 Y:36.19988700 U:090
Phone: (775)293-3637

RADIO LOG

Dispatcher	Time/Date	Unit	Code	Zone	Agnc	Description
Rucker S S	12:05:32 06/01/16	NYSS5	ENRT	NYPS	NYSO	Enroute to a Call call=8791
Rucker S S	12:06:01 06/01/16	NYSS5	VHIN	NYSO	NYSO	pl=49C738 st=NV lptyp=PC
Rucker S S	12:06:02 06/01/16	NYSS5	VHRE	NYSO	NYSO	pl=49C738 st=NV lptyp=PC
Castillo A	12:07:36 06/01/16	NYMD3	ENRT	NYPV	PVFR	Enroute to a Call call=879f
Rucker S S	12:07:50 06/01/16	NYSS5	ARRV	NYPS	NYSO	Arrived on Scene call=8791
Rucker S S	12:08:01 06/01/16	NYSC2	ENRT	NYPS	NYSO	Enroute to a Call call=8791
Castillo A	12:08:56 06/01/16	NYEN1	ENRT	NYPV	PVFR	c=879f
Rucker S S	12:10:37 06/01/16	NYDOS2	ENRT	NYPS	NYSO	Enroute to a Call call=8791
Rucker S S	12:12:11 06/01/16	NYSC2	VHIN	NYSO	NYSO	pl=746TED st=NV lptyp=PC
Rucker S S	12:12:12 06/01/16	NYSC2	VHRE	NYSO	NYSO	pl=746TED st=NV lptyp=PC
Rucker S S	12:12:48 06/01/16	NYTM2	ARRV	NYPS	NYSO	c=8791
Rucker S S	12:13:26 06/01/16	NYDOS2	ARRV	NYPS	NYSO	Arrived on Scene call=8791
Castillo A	12:13:32 06/01/16	NYEN1	ARRV	NYPV	PVFR	call=879f
Castillo A	12:13:47 06/01/16	NYEN1	LOCT	NYPV	PVFR	Unit Location: pahrump /gamebird
Rucker S S	12:15:36 06/01/16	NYDOS2	VHIN	NYPS	NYSO	pl=906YWG st=NV lptyp=PC
Rucker S S	12:15:37 06/01/16	NYDOS2	VHRE	NYPS	NYSO	pl=906YWG st=NV lptyp=PC
Rucker S S	12:16:23 06/01/16	NYSS5	INCT	NYPS	NYSO	Incident Controlled call=8791
Rucker S S	12:16:23 06/01/16	NYTM2	INCT	NYPS	NYSO	Incident Controlled call=8791
Rucker S S	12:16:24 06/01/16	NYDOS2	INCT	NYPS	NYSO	Incident Controlled call=8791
Castillo A	12:17:11 06/01/16	NYMD3	ARRV	NYPV	PVFR	call=879f

06/15/17
11:13

Nye County Sheriffs Office
CALL DETAIL REPORT

573
Page: 2

Rucker S S	12:17:13	06/01/16	NYSC2	ARRV	NYPS	NYSO	Arrived on Scene call=8791
Rucker S S	12:26:56	06/01/16	NYSC2	NMIN	NYSO	NYSO	name=AUSTIN, CRSTAL dob=08/01/1962 dl=2900311378 state=NV
Rucker S S	12:26:57	06/01/16	NYSC2	DLIN	NYSO	NYSO	name=AUSTIN, CRSTAL dob=08/01/1962 dl=2900311378 state=NV
Rucker S S	12:30:19	06/01/16	NYS12	ENRT	NYPS	NYSO	incid#=16NY-1771 Enroute to a Call call=8791
Castillo A	12:30:43	06/01/16	NYMD3	ENRT	NYPV	PVFR	call=879f
Rucker S S	12:33:20	06/01/16	NYS12	ARRV	NYPS	NYSO	incid#=16NY-1771 Arrived on Scene call=8791
Castillo A	12:34:30	06/01/16	NYEN1	CMPL	NYPV	PVFR	
Rucker S S	12:37:59	06/01/16	NYS12	CMPL	NYPS	NYSO	incid#=16NY-1771 Reassigned to call 9571, completed call 8791
Rucker S S	12:40:02	06/01/16	NYDOS2	INCT	NYPS	NYSO	incid#=16NY-1771 Incident Controlled call=8791
Rucker S S	12:40:02	06/01/16	NYSC2	INCT	NYPS	NYSO	incid#=16NY-1771 Incident Controlled call=8791
Rucker S S	12:40:02	06/01/16	NYSS5	INCT	NYPS	NYSO	incid#=16NY-1771 Incident Controlled call=8791
Rucker S S	12:40:03	06/01/16	NYTM2	INCT	NYPS	NYSO	incid#=16NY-1771 Incident Controlled call=8791
Castillo A	12:42:42	06/01/16	NYMD3	CMPL	NYPV	PVFR	
Rucker S S	12:46:01	06/01/16	NYSC2	LOCT	NYPS	NYSO	Unit Location: GAMEBIRD/PAHRUMP VLLY
Rucker S S	12:46:01	06/01/16	NYSS5	LOCT	NYPS	NYSO	Unit Location: GAMEBIRD/PAHRUMP VLLY
Rucker S S	12:46:01	06/01/16	NYTM2	LOCT	NYPS	NYSO	Unit Location: GAMEBIRD/PAHRUMP VLLY
Rucker S S	12:50:07	06/01/16	NYSC2	SC	NYPS	NYSO	incid#=16NY-1771 Status Check call=8791
Rucker S S	12:50:08	06/01/16	NYDOS2	SC	NYPS	NYSO	incid#=16NY-1771 Status Check call=8791
Rucker S S	12:50:08	06/01/16	NYSS5	SC	NYPS	NYSO	incid#=16NY-1771 Status Check call=8791
Rucker S S	12:50:09	06/01/16	NYTM2	SC	NYPS	NYSO	incid#=16NY-1771 Status Check call=8791
Rucker S S	12:54:31	06/01/16	NYSC2	SC	NYPS	NYSO	incid#=16NY-1771 Status Check call=8791
Rucker S S	12:54:32	06/01/16	NYDOS2	SC	NYPS	NYSO	incid#=16NY-1771 Status Check call=8791
Rucker S S	12:54:32	06/01/16	NYSS5	SC	NYPS	NYSO	incid#=16NY-1771 Status Check call=8791
Rucker S S	12:54:32	06/01/16	NYTM2	SC	NYPS	NYSO	incid#=16NY-1771 Status Check call=8791
Rucker S S	12:59:52	06/01/16	NYSC2	CMPL	NYPS	NYSO	incid#=16NY-1771 Reassigned to call 10021, completed call 8791
Rucker S S	12:59:52	06/01/16	NYSS5	CMPL	NYPS	NYSO	incid#=16NY-1771 Reassigned to call 10021, completed call 8791
Rucker S S	13:03:07	06/01/16	NYDOS2	SC	NYPS	NYSO	incid#=16NY-1771 Status Check call=8791
Rucker S S	13:03:07	06/01/16	NYTM2	SC	NYPS	NYSO	incid#=16NY-1771 Status Check call=8791

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06/15/17
11:13

Nye County Sheriffs Office
CALL DETAIL REPORT

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Rucker S S 13:06:50 06/01/16 NYTM1 INCT NYPS NYSO c=8791
Rucker S S 13:06:56 06/01/16 NYTM1 ENRT NYPS NYSO incid#=16NY-1771 Enroute to
a Call call=8791
Rucker S S 13:06:59 06/01/16 NYTM1 LOCT NYPS NYSO Unit Location: 490
Rucker S S 13:28:59 06/01/16 NYTM2 INCT NYPS NYSO incid#=16NY-1771 Incident
Controlled call=8791
Rucker S S 13:29:00 06/01/16 NYDOS2 INCT NYPS NYSO incid#=16NY-1771 Incident
Controlled call=8791
Rucker S S 13:40:55 06/01/16 NYDOS2 CMPL NYPS NYSO
Rucker S S 14:05:28 06/01/16 NYTM2 INCT NYPS NYSO incid#=16NY-1771 Incident
Controlled call=8791
Rucker S S 14:14:11 06/01/16 NYTM2 CMPL NYPS NYSO incid#=16NY-1771 Completed
Call clr:C call=8791
Rucker S S 14:14:12 06/01/16 NYTM1 CMPL NYPS NYSO incid#=16NY-1771 Completed
Call call=8791

COMMENTS

burgundy colored car keeps running off the road
12:04:00 06/01/2016 - Johnson L
about 70 mph
12:04:06 06/01/2016 - Johnson L
keeps going into other lanes
12:04:16 06/01/2016 - Johnson L
going into the dirt
12:04:22 06/01/2016 - Johnson L
says he is going to kill someone
12:04:29 06/01/2016 - Johnson L
maroon volvo
12:04:31 06/01/2016 - Johnson L
nv plate
12:04:37 06/01/2016 - Johnson L
49c738
12:04:58 06/01/2016 - Johnson L
sb pahrump valley passing jaybird
12:05:06 06/01/2016 - Johnson L
passing calvary
12:05:27 06/01/2016 - Johnson L
in oppossing lanes
12:05:53 06/01/2016 - Johnson L
almost to gamebird
12:06:16 06/01/2016 - Castillo A J
another calelr
12:06:26 06/01/2016 - Castillo A J
says that the vehicle just got in an accident with a mini van
12:06:31 06/01/2016 - Castillo A J
at gamebird and pahrump valley
12:06:42 06/01/2016 - Johnson L
hit a van full of kids
12:06:43 06/01/2016 - Castillo A J
he did stop
12:06:46 06/01/2016 - Castillo A J
someone is trying to get the keys
12:06:48 06/01/2016 - Johnson L
rp is taking his keys
12:06:57 06/01/2016 - Johnson L
says she is drunk off her ass

06/15/17
11:13

Nye County Sheriffs Office
CALL DETAIL REPORT

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12:07:01 06/01/2016 - Johnson L
they are yelling
12:07:03 06/01/2016 - Castillo A J
paged
12:07:12 06/01/2016 - Johnson L
screaming at each other
12:07:26 06/01/2016 - Castillo A J
2nd rp robert massey 775-419-9731
12:07:26 06/01/2016 - Johnson L
veh is disabled now
12:07:29 06/01/2016 - Rucker S S - From: McRae J C
2 VEH ACCIDT POSS 1 INJURED
12:07:46 06/01/2016 - Rucker S S - From: McRae J C
NEED ANOTHER UNIT TO EXPEDITE
12:08:07 06/01/2016 - Johnson L
disconnected, rp said to hurry, she is trying to get the keys
12:08:11 06/01/2016 - Rucker S S - From: McRae J C
ONE DETAINED
12:08:22 06/01/2016 - Rucker S S - From: McRae J C
DRIVER OF BURG VEH ATTEMPTED TO FLEE AGAIN AFTER STRIKING THE OTHER CAR
12:08:26 06/01/2016 - Castillo A J
2nd rp is in a red honda passport told to stay in his vehicle they may need a
statement from him
12:09:33 06/01/2016 - Rucker S S - From: McRae J C
FEMALE HAS BEEN PLACED IN DETAINMENT IN BACK OF MY CAR UNTIL ANOTHER UNIT GETS
HERE
12:10:14 06/01/2016 - Rucker S S - From: McRae J C
AT LEAST 1 FEMALE NON CONTACT VEH WITH PREV BRAIN INJ THAT NEEDS TO BE CHECKED
12:10:24 06/01/2016 - Rucker S S - From: McRae J C
2ND PATIENT WILL BE THE DRIVER OF THE OTHER VEH
12:13:07 06/01/2016 - Rucker S S - From: Cox A J
746TED NOT YIELDING FOR EMERG TRAFFIC
12:23:59 06/01/2016 - Rucker S S - From: Pahrump Val FR
MED3 PREPARING 1 FOR TRANSPORT, ALL OTHERS REFUSING
12:28:02 06/01/2016 - Rucker S S - From: Cox A J
DRIVER OF V1: AUSTIN, CRYSTAL//SHE WILL BE TX'D BY MEDICS TO BE EVALUATED FOR
HEAD INJURY
12:28:17 06/01/2016 - Rucker S S - From: Cox A J
NEED CASE FOR DUI
12:45:03 06/01/2016 - Rucker S S - From: Ferrel K D
REQ TOW 1 VEHICLE
12:45:28 06/01/2016 - Rucker S S
CALLING 2 STAR
12:46:09 06/01/2016 - Rucker S S - From: Ferrel K D
ITS FOR THE VOLVO
13:02:09 06/01/2016 - Rucker S S - From: Ferrel K D
ETA ON TOW
13:02:23 06/01/2016 - Rucker S S
CALLING 2 STAR
13:02:35 06/01/2016 - Rucker S S
20-25 MIN COMING FROM WAY NORTH
13:07:06 06/01/2016 - Rucker S S - From: Curtin G F
ENRT STATION FOR EQUIP
13:08:08 06/01/2016 - Rucker S S - From: Ferrel K D
TOW ON SCENE
13:28:44 06/01/2016 - Rucker S S - From: Ferrel K D
cd4

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11:13

Nye County Sheriffs Office
CALL DETAIL REPORT

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14:05:21 06/01/2016 - Rucker S S - From: Hoffmann B M
cd4

14:06:01 06/01/2016 - Rucker S S - From: Hoffmann B M
v2 is going to be off the road, tow is enrt per v2s insurance company

UNIT HISTORY

Unit	Time/Date	Code
NYDOS2	12:10:37 06/01/16	ENRT
NYDOS2	12:13:26 06/01/16	ARRV
NYDOS2	12:15:36 06/01/16	VHIN
NYDOS2	12:15:37 06/01/16	VHRE
NYDOS2	12:16:24 06/01/16	INCT
NYDOS2	12:40:02 06/01/16	INCT
NYDOS2	12:50:08 06/01/16	SC
NYDOS2	12:54:32 06/01/16	SC
NYDOS2	13:03:07 06/01/16	SC
NYDOS2	13:29:00 06/01/16	INCT
NYDOS2	13:40:55 06/01/16	CMPL
NYEN1	12:08:56 06/01/16	ENRT
NYEN1	12:13:32 06/01/16	ARRV
NYEN1	12:13:47 06/01/16	LOCT
NYEN1	12:34:30 06/01/16	CMPL
NYMD3	12:07:36 06/01/16	ENRT
NYMD3	12:17:11 06/01/16	ARRV
NYMD3	12:30:43 06/01/16	ENRT
NYMD3	12:42:42 06/01/16	CMPL
NYS12	12:30:19 06/01/16	ENRT
NYS12	12:33:20 06/01/16	ARRV
NYS12	12:37:59 06/01/16	CMPL
NYSC2	12:08:01 06/01/16	ENRT
NYSC2	12:12:11 06/01/16	VHIN
NYSC2	12:12:12 06/01/16	VHRE
NYSC2	12:17:13 06/01/16	ARRV
NYSC2	12:26:56 06/01/16	NMIN
NYSC2	12:26:57 06/01/16	DLIN
NYSC2	12:40:02 06/01/16	INCT
NYSC2	12:46:01 06/01/16	LOCT
NYSC2	12:50:07 06/01/16	SC
NYSC2	12:54:31 06/01/16	SC
NYSC2	12:59:52 06/01/16	CMPL
NYSS5	12:05:32 06/01/16	ENRT
NYSS5	12:06:01 06/01/16	VHIN
NYSS5	12:06:02 06/01/16	VHRE
NYSS5	12:07:50 06/01/16	ARRV
NYSS5	12:16:23 06/01/16	INCT
NYSS5	12:40:02 06/01/16	INCT
NYSS5	12:46:01 06/01/16	LOCT
NYSS5	12:50:08 06/01/16	SC
NYSS5	12:54:32 06/01/16	SC
NYSS5	12:59:52 06/01/16	CMPL
NYTM1	13:06:50 06/01/16	INCT
NYTM1	13:06:56 06/01/16	ENRT
NYTM1	13:06:59 06/01/16	LOCT
NYTM1	14:14:12 06/01/16	CMPL

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06/15/17
11:13

Nye County Sheriffs Office
CALL DETAIL REPORT

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NYTM2	12:12:48	06/01/16	ARRV
NYTM2	12:16:23	06/01/16	INCT
NYTM2	12:40:03	06/01/16	INCT
NYTM2	12:46:01	06/01/16	LOCT
NYTM2	12:50:09	06/01/16	SC
NYTM2	12:54:32	06/01/16	SC
NYTM2	13:03:07	06/01/16	SC
NYTM2	13:28:59	06/01/16	INCT
NYTM2	14:05:28	06/01/16	INCT
NYTM2	14:14:11	06/01/16	CMPL

RESPONDING OFFICERS

Unit Officer

NYDOS2 Ferrel K D
NYMD3 Pahrum Val FR
NYS12 Buffi T D
NYSC2 Cox A J
NYSS5 McRae J C
NYTM1 Curtin G F
NYTM2 Hoffmann B M

INVOLVEMENTS

Type	Record#	Date	Description	Relationship
DS	17NY00592	06/15/17	17NY00592 INV ARMS OR BARAJA	Disseminated
LW	16NY-1771	06/01/16	DUI-TA NY 16NY-1771 PAHRUMP	Initiating Call

105

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

CERTIFICATE OF SERVICE BY MAIL

I, Don P. Chairez, Deputy District Attorney, Office of the Nye County District Attorney, P.O. Box 39, Pahrump, Nevada 89041, do hereby certify that I have served the following:

Opposition to Motion to Exclude Blood Results in

Case No(s). CR8978,

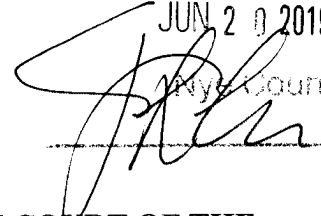
STATE v. CRYSTAL YVONNE AUSTIN,

upon said Defendant(s) herein by personal service by giving true and correct copy thereof at the Nye County Courthouse to the following:

DANIEL E MARTINEZ ESQ.


Don P. Chairez

JUN 20 2019


Nye County Clerk
Deputy

Case No. CR 8978
Dept. 2

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

CRYSTAL VYONNE AUSTIN,

Defendant.

COURT ORDER

On May 24, 2019, Defendant filed a Motion to Exclude Blood Test Results.

Opposition was filed by the State on June 11, 2019. A hearing on the matter was held on June 17, 2019. At the hearing the parties stipulated that the blood draw occurred at 2:05 p.m.

NRS 494C.110 provides that "it is unlawful for any person who:

(c) Is found by measurement within 2 hours after driving or being in actual physical control of a vehicle to have a concentration of alcohol of 0.10 or more in his or her blood or breath, to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access.

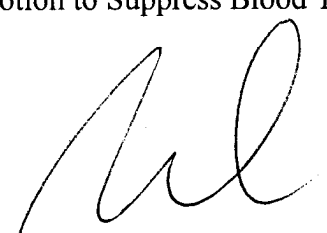
Upon review of the file and pleadings, and after hearing argument on June 17, 2019, the Court concurs with the argument set forth in the State's brief, that the dispatcher logs are more accurate as to the timing of the accident, and that the defendant was still driving and/or had physical control of her vehicle at 12:06 p.m. As such, this is



1
2 within the two hour statutory timeline of NRS 494C.110. Therefore, good cause
3 appearing

4 **IT IS HEREBY ORDERED** that Defendant's Motion to Suppress Blood Test
5 Results filed on May 24, 2019, is DENIED.

6 DATED this 20th day of June, 2019.

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District Court Judge






CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 20th day of June, 2019, he mailed
copies of the foregoing Court Order to the following:

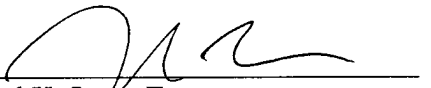
DANIEL MARTINEZ, ESQ.
(Hand Delivered)

NYE COUNTY DISTRICT ATTORNEY
1520 E. BASIN AVE.
PAHRUMP, NV 89060
(Hand Delivered)


Jared K. Lam, Esq.
Law Clerk to Judge Robert W. Lane

AFFIRMATION

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


Jared K. Lam, Esq.
Law Clerk to Judge Robert W. Lane

No. CR-8978

Dept. No. 2

OCT 24 2019

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE

-oOo-

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

vs.

CRYSTAL YVONNE AUSTIN,

Defendant.

TRANSCRIPT OF PROCEEDINGS
CALENDAR CALL (D2P-4 DAYS-
7/30/19 - 8/2/19)

JUNE 24, 2019
9:10 A.M.
PAHRUMP, NEVADA

APPEARANCES:

For the State:

DANIEL YOUNG, ESQ.
DEPUTY DISTRICT ATTORNEY
Nye County Courthouse
Pahrump, Nevada 89060

For the Defendant:

DANIEL MARTINEZ, ESQ.
DEPUTY PUBLIC DEFENDER
552 East Charleston Boulevard
Las Vegas, Nevada 89104

The Defendant:

CRYSTAL YVONNE AUSTIN

Reported by: CECILIA D. THOMAS, RPR, CCR No. 712

1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, JUNE 24, 2019

2 9:10 A.M.

3 -oOo-

4 P R O C E E D I N G S

5
6 THE COURT: State versus Austin, 8978.

7 Louise said that you guys wanted to do the
8 motions and the calendar call. I thought I issued
9 rulings on that motion the other day. Did I?

10 MR. MARTINEZ: You did, Your Honor. I got
11 the ruling on the motion.

12 THE COURT: All right. Very good.

13 CRYSTAL YVONNE AUSTIN: With that,
14 Your Honor, I don't want to speak for the State, but I
15 know there was a possible issue with their witnesses.
16 They have resolved that issue with their witnesses; so
17 I believe the State is announcing ready, as am I at
18 this time.

19 MR. YOUNG: The State will be announcing
20 ready, Judge.

21 THE COURT: What are those trial dates.

22 MR. YOUNG: It's July 30th is the start
23 date, 30th through August 2nd.

24 THE COURT: All right. We're going to draw
25 the jury at nine o'clock on Tuesday, July 30th; and if

1 you have any pretrial motions in limine, we'll do them
2 at 8:30 in the morning without the jury --

3 MR. MARTINEZ: Great. Perfect.

4 THE COURT: -- so that she knows to be here
5 at 8:30.

6 MR. MARTINEZ: Of course, Your Honor.

7 THE COURT: Anything else?

8 MR. MARTINEZ: No, Your Honor.

9 MR. YOUNG: No, Your Honor.

10 THE COURT: All right. We'll see you
11 July 30th.

12 MR. MARTINEZ: Thank you, Judge.

13 THE COURT: Thank you.

14 -oOo-

15

16 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
17 PROCEEDINGS.

18

19

20

Cecilia D. Thomas

21

Cecilia D. Thomas
RPR, CCR No. 712

22

23

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Case No. CR 8978

Dept. No. 2P

2019 JUN 25 12 13
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE
BY *[Signature]*
DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-v-

VENIRE

CRYSTAL YVONNE AUSTIN,

Defendant.

I hereby certify that I, the undersigned Assistant Jury Commissioner of the Fifth Judicial District of Nevada, of the County of Nye, acting in pursuance of an Order of the Court, did select in the manner provided by NRS 6.045, as amended, from the qualified electors of the county not exempt by law from jury duty, whether registered as voters or not, the name of persons who appear on the annexed Exhibit "A" to constitute a regular panel of trial jurors for the above entitled Court commencing on Tuesday, the 30th day of July 2019. The jurors were selected by computer pursuant to established procedures to assure random selection from computerized list (Attached Exhibit "A") to serve as trial jurors in the above entitled Court, at the **IAN DEUTCH GOVERNMENT COMPLEX IN PAHRUMP, NEVADA**, to appear at **8:45 a.m.** on the date set forth above, and to make return of the venire to the Jury Commissioner in a timely manner.

DATED this 25th day of June 2019.

Nancy L. Cratty

Nancy L. Cratty
Nye County Assistant Jury Commissioner
Fifth Judicial District Court





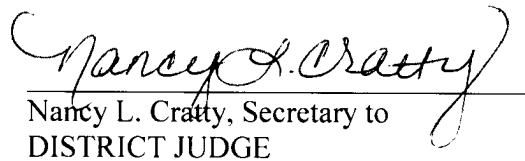
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CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 25th day of June 2019, she mailed (or hand/fleet delivered) copies of the foregoing **VENIRE** to the following:

NYE COUNTY DISTRICT ATTORNEY
1520 E. BASIN AVE., SUITE 107
PAHRUMP, NV 89060
(HAND DELIVERED)

DANIEL E. MARTINEZ, ESQ.
552 E. CHARLESTON BLVD.
LAS VEGAS, NV 89104
(HAND DELIVERED)


Nancy L. Cratty, Secretary to
DISTRICT JUDGE

Alphabetic Sub-Panel List

Appearance Date JULY 30, 2019 at 08:45 AM

Telephone Number
















Summons Address

Sub-Panel Number JUL3019D2












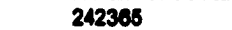



PETIT JURY

JUROR NUMBER	NAME	DATE OF BIRTH		
232238	ACKER, MARY J	09/20/1960	JUL3019D2 - 36	(1)
172888	AGUILAR, VERONICA		JUL3019D2 - 17	(2)
235942	BAIRD, KELLY B		JUL3019D2 - 93	(3)
110293	BELLEMORE, DARWIN D	05/16/1956	JUL3019D2 - 47	(4)
106100	BINKLEY, SUSAN MAE	08/11/1964	JUL3019D2 - 69	(5)
228288	BLITCH, CAROLYN		JUL3019D2 - 90	(6)
206381	CARTER, JEFFREY M		JUL3019D2 - 54	(7)
241213	CASE, RANDI RAE	04/30/1952	JUL3019D2 - 86	(8)
216284	CENICEROS, SONIA		JUL3019D2 - 4	(9)
237824	CHRISTENSEN-SMITH, VICKI R.		JUL3019D2 - 63	(10)
106169	CLAYTON, CARLA M	05/02/1952	JUL3019D2 - 52	(11)
127360	DAWSON, DAVID EUGENE	03/01/1945	JUL3019D2 - 43	(12)
166157	DECROFF, MICHAEL		JUL3019D2 - 35	(13)
















Alphabetic Sub-Panel List

JUROR NUMBER	NAME	DATE OF BIRTH		
 146904	DONAHUE, PAMELA SUE	08/24/1949	JUL3019D2 - 44	(14)
 202071	ERRETT, GARY EUGENE	07/21/1956	JUL3019D2 - 70	(15)
 205486	FISH, CATHERINE M	01/14/1953	JUL3019D2 - 83	(16)
 121886	FLITCRAFT, ALYSHA DAWN	08/08/1989	JUL3019D2 - 28	(17)
 141792	FRASER, ELIZABETH JANE	10/12/1954	JUL3019D2 - 97	(18)
 237446	FREED, CASSANDRA J	09/19/1980	JUL3019D2 - 16	(19)
 107315	FRIED, LARRY CARL	06/03/1951	JUL3019D2 - 59	(20)
 243498	GAINES, DANIEL RAY	07/19/1948	JUL3019D2 - 79	(21)
 202510	GARRETT, DAWN M		JUL3019D2 - 76	(22)
 211918	GIBSON, BARBARA J		JUL3019D2 - 45	(23)
 168933	GRIFFITH, NELLIE G		JUL3019D2 - 53	(24)
 235987	GUEVARA, ROLAND	01/14/1949	JUL3019D2 - 2	(25)
 241782	HALL-OEFINGER-MILLER, MA, SUSAN	01/13/1981	JUL3019D2 - 57	(26)
 231252	HAYES, PHILLIP C		JUL3019D2 - 55	(27)
 244394	HERRING, ELIZABETH JANE	09/07/1954	JUL3019D2 - 26	(28)
















Alphabetic Sub-Panel List

JUROR NUMBER	NAME	DATE OF BIRTH		
 242998	HOBSON, PAUL EUGENE	01/15/1949	JUL3019D2 - 96	(29)
 128460	HOLIDAY, BECKY WYOMA	01/02/1950	JUL3019D2 - 9	(30)
 240226	ISAACSON, GALE C	07/05/1948	JUL3019D2 - 74	(31)
 242742	JACOBS, TERESA DARLENE	01/18/1960	JUL3019D2 - 12	(32)
 219846	JENKINS, CHARLES DON	06/10/1962	JUL3019D2 - 29	(33)
 317305	JEWELL, MARSHALL	04/10/1993	JUL3019D2 - 10	(34)
 120696	KELMIS, RAYMOND		JUL3019D2 - 33	(35)
 203624	KING, MARY JANE		JUL3019D2 - 37	(36)
 240201	• KIYOTA, BRIAN HISAO	08/23/1955	JUL3019D2 - 3	(37)
 241428	KIZER, SR, RODGER DALE	08/17/1962	JUL3019D2 - 81	(38)
 225099	• KLEM, TERESA		JUL3019D2 - 85	(39)
 242365	KOWALSKI, DONNA MARIE	11/03/1968	JUL3019D2 - 49	(40)
 110366	• KRENCICKI, BARBARA ANN	02/18/1958	JUL3019D2 - 14	(41)
 104960	KUHNERT, STEVE H	12/13/1961	JUL3019D2 - 95	(42)
 210482	LEWIS, TERRY L		JUL3019D2 - 22	(43)
















Alphabetic Sub-Panel List

JUROR NUMBER	NAME	DATE OF BIRTH		
 141080	* LILLY, DWIGHT S.	03/05/1948	JUL3019D2 - 78	(44)
 155840	LOTTON, WAYNE		JUL3019D2 - 50	(45)
 243165	MACON, JOSEPH T	06/23/1947	JUL3019D2 - 40	(46)
 240062	MARTIN-KING, SHIRLEY A	12/24/1955	JUL3019D2 - 46	(47)
 108680	* MATTHEWS, ROXANNE L	04/18/1954	JUL3019D2 - 65	(48)
 214613	MCCLARY, VICKIE L		JUL3019D2 - 7	(49)
 202788	MCKINNEY, ALAN M		JUL3019D2 - 24	(50)
 202287	MENDENHALL, WILLIAM R.	05/13/1958	JUL3019D2 - 30	(51)
 234357	MERRILL, BRUCE RANDOLPH	09/16/1954	JUL3019D2 - 87	(52)
 241002	MIKESELL, PHIL GLENN	01/19/1951	JUL3019D2 - 77	(53)
 231692	MILLER, TERESA MARIE	06/02/1964	JUL3019D2 - 72	(54)
 204004	* MILLS, RUSSELL C	10/12/1965	JUL3019D2 - 34	(55)
 219311	* MOORE, ROSA A	09/08/1950	JUL3019D2 - 31	(56)
 242279	MOSIER, JERRY ERNEST	11/20/1946	JUL3019D2 - 41	(57)
 210266	MURDOCK, JAMES E		JUL3019D2 - 42	(58)













Alphabetic Sub-Panel List

JUROR NUMBER	NAME	DATE OF BIRTH		
 244787	NAGY, JOZSEF JOHN	09/17/1957	JUL3019D2 - 56	(59)
 234619	NASSER, MONICA C	05/24/1956	JUL3019D2 - 13	(60)
 314399	NELSON-TOLAND, MARIE	02/23/1962	JUL3019D2 - 51	(61)
 138762	ODNEAL, WAYNE MORRIS	03/05/1948	JUL3019D2 - 84	(62)
 209998	ONIGKEIT, GORDON A		JUL3019D2 - 66	(63)
 144676	OSCAR, VIANNAH DEE	10/25/1958	JUL3019D2 - 60	(64)
 240833	OSTROM, KARIN ERIKA	02/06/1967	JUL3019D2 - 20	(65)
 241297	PACKARD, JAMES CULLEN	09/15/1952	JUL3019D2 - 67	(66)
 242800	PERLMAN, DAVID JOHN	05/22/1950	JUL3019D2 - 8	(67)
 204632	PERRY, SABRINA	01/27/1967	JUL3019D2 - 19	(68)
 234712	RIDGWAY, DONALD		JUL3019D2 - 38	(69)
 203386	ROSS, RONALD ALLEN	03/19/1960	JUL3019D2 - 88	(70)
 242409	SALMON, JOHN EDWARD	01/09/1955	JUL3019D2 - 89	(71)
 236572	SAYER-REHOR, DEBORAH LYNN	10/18/1954	JUL3019D2 - 48	(72)
 210662	SCHMIDT, CAROL JANE		JUL3019D2 - 1	(73)

Alphabetic Sub-Panel List

JUROR NUMBER	NAME	DATE OF BIRTH		
 111578	SCOLARO, BARBARA ANN	02/20/1950	JUL3019D2 - 61	(74)
 310684	SEARLES, VICTORIA	07/16/1991	JUL3019D2 - 62	(75)
 239322	SEIBERT, MARIA ROSA	03/05/1951	JUL3019D2 - 82	(76)
 242947	SEYMOUR, DYLAN MICHAEL	10/17/1995	JUL3019D2 - 80	(77)
 235671	SHEEHAN, WILLIAM		JUL3019D2 - 18	(78)
 235714	SHEPARD, ROMANA S	11/21/1955	JUL3019D2 - 15	(79)
 171203	SLADE, JAMES W		JUL3019D2 - 32	(80)
 236750	SPEAR, JACQUELINE G.	09/19/1947	JUL3019D2 - 91	(81)
 300398	STEGEMAN, JEFFREY	08/04/1976	JUL3019D2 - 75	(82)
 305050	STREET, WILLIAM	06/11/1954	JUL3019D2 - 92	(83)
 233961	TARKINGTON, LANA L		JUL3019D2 - 68	(84)
 241300	TURNER, JOHN LANGFORD	09/08/1949	JUL3019D2 - 21	(85)
 245585	TWILLIGEAR, DOUGLAS EDWARD	03/15/1952	JUL3019D2 - 99	(86)
 239653	TYLER, TIMOTHY THOMAS	08/21/1956	JUL3019D2 - 25	(87)
 240903	VASQUEZ, RICHARD	10/13/1951	JUL3019D2 - 94	(88)

Alphabetic Sub-Panel List

JUROR NUMBER	NAME	DATE OF BIRTH		
 174811	VELTRI, KATHLEEN		JUL3019D2 - 23	(89)
 174493	VILLALOBOS, BRENDA		JUL3019D2 - 100	(90)
 135326	WADE, RALPH	01/15/1949	JUL3019D2 - 5	(91)
 234877	WAFFLE, TONI L	05/19/1948	JUL3019D2 - 39	(92)
 211861	WATERS, TAMMY		JUL3019D2 - 27	(93)
 129258	WERNER, CLARA CHRISTINA	08/12/1961	JUL3019D2 - 73	(94)
 211080	WICHAEL, ANNE MARIE DARA	01/28/1965	JUL3019D2 - 11	(95)
 201699	WILLIAMS, OLIVE ILENE	09/24/1952	JUL3019D2 - 58	(96)
 235356	WILSON, BRYAN JAMES	08/02/1986	JUL3019D2 - 6	(97)
 216219	WOODALL, CYNTHIA		JUL3019D2 - 64	(98)
 226967	YOUNG, DESIREE L		JUL3019D2 - 71	(99)
 244511	* ZIMMERMAN, ROBERT JOSEPH	09/09/1955	JUL3019D2 - 98	(100)
Total #'s: 0				

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

Case No. CR8978

Department 2

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

FILED
FIFTH JUDICIAL DISTRICT

JUL 15 2019

Nye County Clerk

 Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

GUILTY PLEA AGREEMENT

CRYSTAL YVONNE AUSTIN,

Defendant. /

COMES NOW THE STATE OF NEVADA ("Plaintiff"), by CHRIS ARABIA, Nye County District Attorney, through his deputy, Daniel T. Young, and **CRYSTAL YVONNE AUSTIN** ("Defendant"), and file this Guilty Plea Agreement in the above-entitled case.

I, **CRYSTAL YVONNE AUSTIN**, hereby agree to plead **GUILTY** to **DRIVING UNDER THE INFLUENCE OF ALCOHOL, WITH PRIOR FELONY DUI CONVICTION, a category 'B' felony**, in violation of NRS 484C.110, 484C.410(1)(a),(e), as more fully alleged in the charging document attached as Exhibit

1. My decision to plead guilty is based upon the plea agreement in this case, which is as follows:

///

1. The Defendant will enter a plea of **GUILTY** to **DRIVING UNDER THE INFLUENCE OF ALCOHOL, WITH PRIOR FELONY DUI CONVICTION, a category 'B' felony**, in violation of NRS 484C.110, 484C.410(1)(a),(e).
2. The Defendant expressly stipulates to the existence of a constitutionally valid prior conviction for Driving Under the Influence, Third Offense, a violation of NRS 484C.110, a category 'B' felony, in the 5th Judicial District Court, Nye County, State of Nevada, case number CR6341A, for sentencing enhancement purposes, under the authority of Krauss v. State, 116 Nev. 307 (2000).
3. At time of sentencing, both parties agree to jointly recommend that the Defendant be sentenced to 24 to 60 months in the Nevada Department of Corrections and pay a fine in the amount of \$2,000.00.
4. Pursuant to these negotiations, the State agrees to dismiss Pahrump Justice Court case 16TR05201, 18CR02882 and 18TR01383, against this Defendant.
5. The Defendant understands and agrees that the State's agreement to recommend or stipulate to a particular sentence, to not present argument regarding the sentence, to not oppose a particular sentence or to not seek punishment as a habitual criminal is contingent upon the Defendant's conduct between now and sentencing: If the Defendant fails to interview with the Division of Parole and Probation, fails to appear at any subsequent hearings in this case, or a magistrate reviews a declaration of arrest and finds probable cause to believe that the Defendant has committed a new criminal offense, including reckless

1 driving or DUI, but excluding minor traffic violations, the State will regain
2 the right to argue for any lawful sentence and term of confinement
3 allowable for the crime(s) to which the Defendant is now pleading,
4 including the use of any prior convictions the Defendant may have to
5 increase her sentence as a habitual criminal to 5 to 20 years, life without
6 the possibility of parole, life with the possibility of parole after 10 years, or
7 a definite 25 year term with the possibility of parole after 10 years.

8 **CONSEQUENCES OF THE PLEA**

9 I understand that by pleading guilty I admit the facts that support all the
10 elements of the offense(s) to which I now plead as set forth in Exhibit 1.

11 I understand that as a consequence of my plea of guilty I shall be imprisoned
12 for a period of not less than two (2) years but not more than fifteen (15) years AND
13 shall be fined in an amount of not less than Two Thousand Dollars (\$2,000.00) but not
14 more than Five Thousand Dollars (\$5, 000.00), pursuant to NRS 484C.410(1). I also
15 understand that the law requires me to pay an administrative assessment fee.

16 I understand that, if appropriate, I will be ordered to make restitution to the
17 victim of the offense(s) to which I am pleading guilty and to the victim of any related
18 offense(s) being dismissed or not prosecuted pursuant to this agreement. I will also
19 be ordered to reimburse the State of Nevada for expenses related to my extradition, if
20 any.

21 I understand that I am NOT eligible for probation for the offense(s) to which I
22 am pleading guilty.

23 ///

24 ///

1 I understand that if more than one sentence of imprisonment is imposed and I
2 am eligible to serve the sentences concurrently, the sentencing judge has the
3 discretion to order the sentences served concurrently or consecutively.

4 I understand that information regarding charges not filed, dismissed charges or
5 charges to be dismissed pursuant to this agreement may be considered by the judge
6 at sentencing.

7 I have not been promised or guaranteed any particular sentence by anyone. I
8 know that my sentence will be determined by the Court within the limits prescribed by
9 statute. I understand that if my attorney or the State of Nevada or both recommend
10 any specific punishment to the court, the court is not obligated to accept the
11 recommendation.

12 I understand that if I am not a United States citizen, any criminal conviction will
13 likely result in serious negative immigration consequences including but not limited to:
14 my removal from the United States through deportation; an inability to reenter the
15 United States; the inability to gain United States citizenship or legal residency; an
16 inability to renew and/or retain any leant residency status; and/or an indeterminate
17 term of confinement, with the United States Federal Government based on my
18 conviction and immigration status. I also understand, regardless of what I have been
19 told by any attorney, no one can promise me that this conviction will not result in
20 negative immigration consequences and/or impact my ability to become a United
21 States citizen and/or a legal resident.

22 I understand that the Division of Parole and Probation of the Department of
23 Public Safety may prepare a written report for the sentencing judge before sentencing.
24 This report will include matters relevant to the issue of sentencing, including my

1 criminal history. I understand that this report may contain hearsay information
2 regarding my background and criminal history. My attorney and I will each have the
3 opportunity to comment on the information contained in the report, if any, at the time of
4 sentencing.

5 **WAIVER OF RIGHTS**

6 By entering my plea of guilty, I understand that I have waived the following
7 rights and privileges:

- 8 1. The constitutional privilege against self-incrimination, including the right
9 to refuse to testify at trial, in which event the State would not be allowed
10 to comment to the jury about my refusal to testify.
- 11 2. The constitutional right to a speedy and public trial by an impartial jury,
12 free of excessive pretrial publicity prejudicial to the defense, at which trial
13 I would be entitled to the assistance of an attorney, either appointed or
14 retained. At trial, the State would bear the burden of proving beyond a
15 reasonable doubt each element of each offense charged.
- 16 3. The constitutional right to confront and cross-examine any witnesses
17 who would testify against me.
- 18 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 19 5. The constitutional right to testify in my own defense.
- 20 6. The right to appeal the conviction, with the assistance of an attorney,
21 either appointed or retained, unless the appeal is based upon reasonable
22 constitutional, jurisdictional or other grounds that challenge the legality of
23 the proceedings and except as otherwise provided by subsection 3 of
24 NRS 174.035.

VOLUNTARINESS OF PLEA

I have discussed the elements of all the original charges against me with my attorney and I understand the nature of these charges.

I understand that the State would have to prove each element of each charge against me at trial.

I have discussed with my attorney any possible defenses and circumstances that might be in my favor.

All of the foregoing elements, consequences, rights and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading guilty and accepting this plea bargain is in my best interests and that a trial would be contrary to my best interests.

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

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

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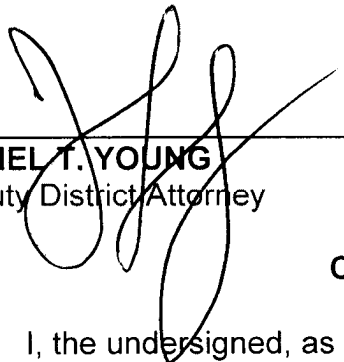
///

My attorney has answered to my satisfaction all of my questions regarding this Guilty Plea Agreement and its consequences, and I am satisfied with the services provided by my attorney.

Dated this 15th day of JULY, 2019.


CRYSTAL YVONNE AUSTIN
Defendant

Agreed to on this 12th day of July, 2019.


DANIEL T. YOUNG
Deputy District Attorney

CERTIFICATE OF COUNSEL

I, the undersigned, as the attorney for the defendant named herein and as an officer of the court hereby certify that:

1. I have fully explained to the defendant the allegations contained in the charge(s) to which the guilty plea(s) is/are being entered.
2. I have advised the defendant of the penalties for each charge and the restitution that the defendant may be ordered to pay.
3. I have inquired of Defendant facts concerning Defendant's immigration status and explained to Defendant that if Defendant is not a United States citizen any criminal conviction will most likely result in serious negative immigration consequences including but not limited to: removal from the United States through deportation; an inability to reenter the United States; the inability to gain United States citizenship or legal

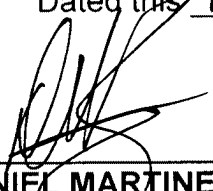
residency; an inability to renew and/or retain any leant residency status;
and/or an indeterminate term of confinement, with the United States
Federal Government based on my conviction and immigration status.
Moreover, I have explained that regardless of what Defendant may have
been told by any attorney, no one can promise Defendant that this
conviction will not result in negative immigration consequences and/or
impact Defendant's ability to become a United States citizen and/or legal
resident.

4. All pleas of guilty offered by the defendant pursuant to this agreement
are consistent with all the facts known to me and are made with my
advice to the defendant and are in the best interest of the defendant.

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

- (a) Is competent and understands the charge(s) and the
consequences of pleading guilty as provided in this agreement;
- (b) Executed this agreement and will enter all guilty pleas pursuant
hereto voluntarily; and
- (c) Was not under the influence of intoxicating liquor, a controlled
substance or other drug at the time of the execution of this
agreement.

Dated this 15th day of July, 2019.



DANIEL MARTINEZ, ESQ.
Nevada Bar No. 17065

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

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EXHIBIT 1

INI gea

FILED
FIFTH JUDICIAL DISTRICT

AUG 15 2017

Nye County Clerk
Juanita Torres Deputy

1 Case No. CR8978

2 Dept. No. 2

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

7 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF NYE

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

INFORMATION

12 CRYSTAL YVONNE AUSTIN,

13 Defendant.

14 **ANGELA A. BELLO**, District Attorney within and for the County of Nye, State of

15 Nevada, informs the Court that **CRYSTAL YVONNE AUSTIN**, before the filing of this

16 Information, did then and there, in Nye County, Nevada, commit the following offense,

17 to wit:

18 **DRIVING UNDER THE INFLUENCE OF ALCOHOL, WITH PRIOR**
19 **FELONY DUI CONVICTION**, in violation of **NRS 484C.110,**

20 **484C.410(1)(a),(e), A CATEGORY 'B' FELONY**, committed in the
21 following manner, to wit: That **ON OR ABOUT JUNE 1, 2016**, in
22 Pahrump Township, Nye County, Nevada, said defendant did willfully
23 and unlawfully drive or was in actual physical control of a vehicle, a
24 **maroon 2005 Volvo S60 2.5T** bearing Nevada license plate(s) **49C738**,
on a highway or on premises to which the public had access, in the area
of southbound Pahrump Valley Boulevard, north of Gamebird Road,
while under the influence of an intoxicating liquor, or with a concentration
of alcohol of 0.08 or more in her blood, or was found by measurement
within 2 hours after driving or being in actual physical control of a vehicle
to have a concentration of alcohol of 0.08 or more in her blood,
approximately **0.328** grams of alcohol per 100 milliliters of blood, said
Defendant having previously been convicted of:

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

1.) Driving Under the Influence of Alcohol, 3rd Offense, in violation of NRS 484.379, a category B felony, in Fifth Judicial District Court case number **CR5068**; and/or
2.) Driving Under the Influence of Alcohol, Second Offense, in violation of NRS 484C.110, a misdemeanor, which was reduced from a felony pursuant to NRS 484C.340, in Fifth Judicial District Court case number **CR6341A**;

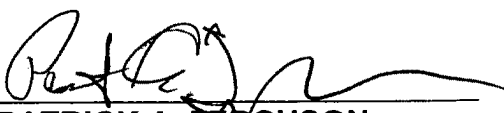
All of which is contrary to the form, force, and effect of the statutes in such cases made and provided, and against the peace and dignity of the State of Nevada.

Witnesses and their addresses known to the District Attorney of Nye County, State of Nevada, at the time of the filing of this Information:

ACTING FIRST SERGEANT JAMES MCRAE NYE COUNTY SHERIFF'S OFFICE PAHRUMP, NEVADA	MAX SANTOS DESERT VIEW HOSPITAL 360 S. LOLA LANE PAHRUMP, NEVADA
DEPUTY JOE MARSHALL NYE COUNTY SHERIFF'S OFFICE PAHRUMP, NEVADA	ROBERT MASSEY 131 E. CALVADA PAHRUMP, NEVADA
DETECTIVE ALEX J. COX NYE COUNTY SHERIFF'S OFFICE PAHRUMP, NEVADA	MARLISSA COLLINS LVMPD FORENSICS LAB LAS VEGAS, NEVADA
DEPUTY BRITTON MICHAEL HOFFMANN NYE COUNTY SHERIFF'S OFFICE PAHRUMP, NEVADA	ALICE D. COX PO BOX 1401 MCGILL, NEVADA
	MARY K. KLINE 4801 ELIZABETH PAHRUMP, NEVADA

DATED this 3rd day of August, 2017.

ANGELA A. BELLO
NYE COUNTY DISTRICT ATTORNEY

By 
PATRICK A. FERGUSON
Deputy District Attorney

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

CERTIFICATE OF SERVICE

I, Nichole McPherson, Executive Legal Secretary, Office of the Nye County District Attorney, P.O. Box 39, Pahrump, Nevada 89041, do hereby certify that I have served the following:

**INFORMATION in
5TH JDC Case No(s). CR8978
STATE v. CRYSTAL YVONNE AUSTIN**

upon said Defendant(s) herein by delivering a true and correct copy thereof on

8-16-17 to the following:

DAVID RICKERT
AT THE NYE COUNTY DISTRICT ATTORNEY'S OFFICE
IN PAHRUMP, NEVADA 89060


Nichole McPherson

FILED

FIFTH JUDICIAL DISTRICT

1 No. CR-8978

2 Dept. No. 2

OCT 18 2019

Nye County Clerk
Deputy3
4
5 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF NYE

7 THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE

8 -oOo-

ORIGINAL9
10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 vs.)

13 CRYSTAL YVONNE AUSTIN,)

14 Defendant.)

TRANSCRIPT OF PROCEEDINGS
ARRAIGNMENT/CHANGE OF PLEA

JULY 15, 2019

9:30 A.M.

PAHRUMP, NEVADA

15
16 APPEARANCES:

17 For the State:

MICHAEL VIETA-KABELL, ESQ.
DEPUTY DISTRICT ATTORNEY
Nye County Courthouse
Pahrump, Nevada 89060

19 For the Defendant:

DANIEL MARTINEZ, ESQ.
DEPUTY PUBLIC DEFENDER
552 East Charleston Boulevard
Las Vegas, Nevada 8910422 State Parole and
Probation Officer:

LISA THELANER

23 The Defendant:

CRYSTAL YVONNE AUSTIN

24
25 Reported by: CECILIA D. THOMAS, RPR, CCR No. 712

1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, JULY 15, 2019

2 9:30 A.M.

3 -oOo-

4 P R O C E E D I N G S

5
6 THE COURT: Crystal Austin, 8978.

7 I've been handed a Guilty Plea Memorandum.

8 We'll ask Mr. Martinez to brief the record.

9 MR. MARTINEZ: Thank you, Your Honor.

10 Your Honor, this matter, is set to begin
11 trial on July 30th, but we asked to place it on
12 calendar because it is resolved. This morning,
13 Ms. Austin is going to plea guilty to one count of
14 Driving Under the Influence of Alcohol a Prior Felony
15 DUI Conviction, a category B felony.

16 At the time of sentencing, both parties are
17 going to recommend the minimum penalties by law for
18 this offense which is a sentence of 24 to 60 months in
19 the Nevada Department of Corrections and a fine of
20 \$2,000. Pursuant to these negotiations, the State
21 agrees to dismiss Pahrump Justice Court -- the three
22 Pahrump Justice Court cases listed in the
23 Guilty Plea Agreement.

24 THE COURT: Anything to add, Michael?

25 MR. VIETA-KABELL: Nothing to add, Judge.

1 THE COURT: Okay. Are you going to prove
2 up the priors at sentencing?

3 MR. VIETA-KABELL: In Item 2 of the
4 Guilty Plea Agreement, the defendant is expressly
5 stipulating to the existence of constitutionally valid
6 prior conviction for Driving Under the Influence,
7 Third Offense, under District Court Case No. CR6341A,
8 a category B felony.

9 THE COURT: Your name is
10 Crystal Yvonne Austin?

11 THE DEFENDANT: Yes.

12 THE COURT: How old are you?

13 THE DEFENDANT: Fifty-seven.

14 THE COURT: How far did you get through
15 school?

16 THE DEFENDANT: Fifteen, 15 years.

17 THE COURT: Do you read and write English
18 fine?

19 THE DEFENDANT: Yes.

20 THE COURT: Have you ever been treated for
21 a mental disorder?

22 THE DEFENDANT: Yes.

23 THE COURT: I need to know if you're lucid
24 today. Sometimes people come into court, and they'll
25 plead guilty and then three months later they'll say,

1 "Hey, I was paranoid schizophrenic. I didn't know
2 what I was doing that day." So I need you to tell
3 Mr. Martinez about the treatment you received, what
4 the problem is, and then I need both of you to assure
5 me that you're lucid today.

6 THE DEFENDANT: I am.

7 MR. MARTINEZ: And, Your Honor, we have had
8 quite extensive discussions on this. At one point
9 previously in this case, Ms. Austin was sent to have
10 competency evaluations done. I have spoken with her
11 this morning, had a lot of contact with her about the
12 case and about the negotiations in this case. I don't
13 have any concerns about her ability to perceive.

14 THE COURT: Thank you.

15 And you concur about that, Crystal?

16 THE DEFENDANT: Yes.

17 THE COURT: That you're fine and lucid
18 today?

19 THE DEFENDANT: Yes.

20 THE COURT: Are you under the influence of
21 any prescriptions?

22 THE DEFENDANT: Just COPD medication and
23 hormone treatment.

24 THE COURT: Any illegal drugs or alcohol?

25 THE DEFENDANT: No.

1 THE COURT: Did you read through the
2 Guilty Plea Agreement with your attorney?

3 THE DEFENDANT: Yes.

4 THE COURT: He answered your questions page
5 by page?

6 THE DEFENDANT: Yes.

7 THE COURT: It indicates you're going to be
8 pleading guilty to a DUI With a Prior Felony DUI, a
9 category B felony, for which you can receive two to 15
10 years and a fine of two to 5,000.

11 Is it probationable?

12 MR. MARTINEZ: No, Your Honor.

13 MR. VIETA-KABELL: No, Your Honor.

14 THE COURT: All right. So you're looking
15 at, at least two years. I'm going to get a PSI, a
16 Presentence Investigation Report, from the Division.
17 And it's going to tell me your criminal history, your
18 life history, the facts of this case, and so forth.
19 And I'm going to read through it. I may go along with
20 the attorneys when they recommend minimums and say,
21 "Okay, minimums are fine, two to five years with
22 credit for time served."

23 And I would guess, based on my knowledge of
24 the system, you'd probably be in about a year. And
25 during that year, they'd probably put you in a minimum

1 place and try and get you some treatment.

2 Alternatively, I may look at all of the
3 facts and all the information and say, "No, I'm going
4 to give her six to 15 years in prison," if I think
5 it's the right thing, because I can do whatever I
6 think is the right thing; do you understand?

7 Did anybody make any threats or promises
8 besides the negotiation to get you to plead today?

9 THE DEFENDANT: No.

10 THE COURT: To the charge of Driving Under
11 the Influence With Prior Felony DUI, category B
12 felony, what is your plea?

13 THE DEFENDANT: Guilty.

14 THE COURT: By pleading guilty, you're
15 waiving your right to a trial. Mr. Martinez would
16 represent you at the trial and help you prepare your
17 defense. He would subpoena witnesses to come in and
18 testify on your behalf, and he would cross-examine all
19 of the State's witnesses to make sure they meet their
20 legal burden of proving each and every item of the
21 underlying offense beyond a reasonable doubt.

22 It would be a fast and speedy and public
23 trial in front of a jury of your peers, and you can
24 testify at the trial if you want to. If you don't
25 want to testify, you have a constitutional right to

1 remain silent. Your silence couldn't be used against
2 you by the State during the course of the proceedings.

3 Do you understand the trial rights you're
4 waiving?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: By pleading guilty, you're
7 waiving your appellate rights. After today, you can
8 only appeal for four reasons: That I sentenced you
9 illegally, that the State didn't follow through with
10 their end of the plea agreement, that your plea wasn't
11 entered voluntarily, or that the law itself is illegal
12 or unconstitutional.

13 Other than those four reasons, you can't
14 appeal after today; do you understand?

15 THE DEFENDANT: Yes.

16 THE COURT: Understanding your appellate
17 rights and trial rights, do you still want to plead
18 guilty?

19 THE DEFENDANT: Yes.

20 THE COURT: Are you pleading guilty because
21 in fact on or about June 1st, 2016, here in Pahrump,
22 Nye County, you were driving a Volvo over on
23 Pahrump Valley Boulevard north of Gamebird while you
24 were under the influence of intoxicating liquor of .08
25 or more. And it shows from the test that you were a

1 .328. Having previously been convicted of a felony
2 DUI in the Fifth Judicial District Court, Case 5068,
3 and of a DUI Second Offense in District Court Case
4 CR6341; is that why you're pleading guilty? I just
5 read the Information to you.

6 THE DEFENDANT: Yes.

7 THE COURT: All right. We'll accept your
8 guilty plea, and we'll set it for sentencing on
9 September 30th.

10 MS. THELANER: Will Defense waive the
11 14-day rule?

12 MR. MARTINEZ: We will.

13 THE COURT: 0900. We'll see you on
14 September 30th.

15 MR. MARTINEZ: Thank you, Your Honor.

16 THE COURT: If you have any questions about
17 what's going on, just get in touch with your attorney;
18 he'll answer them.

19 COURT CLERK: The jury trial is vacated?

20 THE COURT: Jury trial is vacated.

21 MR. MARTINEZ: Thank you, Your Honor.

22 THE COURT: Thank you.

23 What were the dates on that jury trial?

24 COURT STAFF: July 30th through August 2nd.

25 -oOo-

1 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
2 PROCEEDINGS.
3
4

5 *Cecilia D. Thomas*

6 Cecilia D. Thomas
7 RPR, CCR No. 712
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SEP 16 2019

Nye County Clerk
Deputy

Case No.: CR8978

Dept. No.: 2

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

STIPULATION TO CONTINUE

CRYSTAL YVONNE AUSTIN,

Defendant.

At the request of the Defendant, IT IS HEREBY STIPULATED AND AGREED by and between the Defendant, CRYSTAL YVONNE AUSTIN, by and through her attorney, Daniel E. Martinez, Esq., and Plaintiff, the State of Nevada, by and through its attorney, CHRIS ARABIA, Nye County District Attorney, that the Sentencing Hearing in the above entitled matter, currently set on September 30, 2019, at 9:00am be continued to a date and time convenient to court and counsel due to Defendant needing to get her elderly mother medically and financially situated before her incarceration.

DATED this 16th day of September, 2019.

Daniel Martinez Law, LLC

Daniel E. Martinez, Esq.
Attorney for Defendant

Chris Arabia, Nye County District Attorney

By
Deputy District Attorney

FILED
FIFTH JUDICIAL DISTRICT

Case No.: CR8978

Dept. No.: 2

SEP 18 2019

Nye County Clerk
Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

CRYSTAL YVONNE AUSTIN,

Defendant.

ORDER TO CONTINUE

Upon stipulation of the parties herein, and good cause appearing therefor,

IT IS HEREBY ORDERED that the Sentencing Hearing in the above-entitled matter be, and the same is hereby, continued from September 30, 2019, at 9:00am to October 28, 2019 at 9:00am.


DISTRICT COURT JUDGE

1 No. CR-8978

2 Dept. No. 2

3

4

5 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6

IN AND FOR THE COUNTY OF NYE

7

THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE

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-oOo-

ORIGINAL

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10 THE STATE OF NEVADA,

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)

11 Plaintiff,

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TRANSCRIPT OF PROCEEDINGS
SENTENCING - (CONT'D)

12

vs.

)

)

13 CRYSTAL YVONNE AUSTIN,

)

)

OCTOBER 28, 2019

9:50 A.M.

14

Defendant.

)

)

PAHRUMP, NEVADA

15

16 APPEARANCES:

17 For the State:

KIRK D. VITTO, ESQ.
CHIEF DEPUTY DISTRICT ATTORNEY
Nye County Courthouse
Pahrump, Nevada 89060

18

19

For the Defendant:

DANIEL MARTINEZ, ESQ.
DEPUTY PUBLIC DEFENDER
552 East Charleston Boulevard
Las Vegas, Nevada 89104

20

21

22 State Parole and
Probation Officer:

JOHN WINTERS

23

24 The Defendant:

CRYSTAL YVONNE AUSTIN

25

Reported by: CECILIA D. THOMAS, RPR, CCR No. 712

1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, OCTOBER 28, 2019

2 9:50 A.M.

3 -oOo-

4 P R O C E E D I N G S

5
6 THE COURT: Crystal Austin, Case No. 8978.
7 Time and place set for sentencing.

8 MR. MARTINEZ: Your Honor, this is also one
9 of the PSI cases that no PSI was prepared for; so we
10 do need to continue it. I know that the Court has
11 been given the November 15th date for the next date.

12 THE COURT: November 18th.

13 MR. MARTINEZ: Oh, I'm sorry,
14 November 18th. I was going to request if we could do
15 one of the dates in December for Ms. Austin. Her
16 mother has been very sick so she has been taking care
17 of her mother, which is one of the reasons why we even
18 continued it from the first sentencing date to today's
19 date.

20 THE COURT: December 2nd --

21 MR. MARTINEZ: Great.

22 THE COURT: -- 0900.

23 MR. MARTINEZ: Thank you, Your Honor.

24 THE COURT: We'll see you December 2nd.

25 MR. VITTO: Your Honor, there is a victim

1 present in the courtroom. Can I inquire whether it
2 would be an undue hardship for her on that date so
3 that perhaps we could accommodate her this morning.

4 THE COURT: Yes. We should ask her do you
5 want to come back December 2nd and testify that day,
6 or do you want to get it done today.

7 THE VICTIM: I would rather get it over
8 with, Your Honor. I live 332 miles from here, and I
9 have traveled back and forth seven times at my own
10 expense.

11 THE COURT: Let's get it done then. Come
12 on up.

13 MR. VITTO: I'm sorry. Step right up to
14 the witness chair, ma'am. I know, I apologize.

15 THE BAILIFF: Please raise your right hand
16 and face the clerk.

17 Whereupon,

18 ALICE D. COX,
19 called as a witness on behalf of the State, was sworn
20 and testified as follows:

21 THE VICTIM: Yes, ma'am.

22 THE COURT: Thank you. Have a seat. The
23 attorneys are going to take turns asking you
24 questions.

25 THE VICTIM: Thank you, Your Honor.

1 THE COURT: You're welcome.

2 DIRECT EXAMINATION

3 BY MR. VITTO:

4 Q. Ma'am, please state your name for the
5 record, spelling your last name?

6 A. My first name is Alice, my middle initial
7 "D", my last name Cox, C-o-x.

8 Q. And what is your occupation?

9 A. I have my own business. I'm a
10 cosmetologist in McGill, Nevada.

11 Q. And I'm sorry, so you live in McGill?

12 A. Yes, sir.

13 Q. And you've had to travel back and forth
14 seven times?

15 A. Yes, sir.

16 Q. Including court dates and sentencing --

17 A. The last two times was strictly to do this
18 statement. But before that, each time I was
19 subpoenaed, and each time I arrived here, it has been
20 delayed, etcetera, going on now for 41 months.

21 Q. I understand. A little over three years.

22 A. No, sir. Almost four.

23 Q. Now, this is your opportunity to address
24 the Court.

25 A. Yes, sir.

1 Q. And express to the Court how this incident
2 has impacted your life and how you would have the
3 defendant be sentenced by the Court.

4 A. Thank you, sir. May I read from the
5 statement?

6 Q. Absolutely.

7 A. "Your Honor and Ms. Austin, on June 1st,
8 2016, your decision to drink and drive changed lives.
9 I am here today to speak for myself and my mother
10 Eileen Sharon who I lost in 2018.

11 "Your blatant disregard for lives,
12 including your own, was shown when you chose to
13 operate your vehicle after consuming alcohol. And
14 this was not your first, second, or even more times
15 that you've been caught.

16 "You came at me head-on while I was driving
17 on Pahrump Valley Boulevard towards Calvada. I went
18 off into loose gravel to avoid hitting you injuring my
19 mother and my service dog when the seat belt locked
20 due to the abrupt stop. I called 911 as you spun out
21 changing your direction and past me as you are now
22 heading towards Calvada. My car undercarriage was
23 damaged, but still driveable. I was several cars
24 behind you at the intersection of Calvada on
25 Pahrump Valley as I witnessed you run the stop sign

1 almost hitting the person with the right-of-way.

2 "I had the 911 operator on my car audio,
3 attempting to get your vehicle tag for them. I
4 remained a distance behind you reporting to them each
5 time you lost control, spun out, ran stop signs, and
6 went head-on at other vehicles running them off the
7 road. Then at Gamebird, you crossed over once again,
8 hitting a van head-on.

9 "I got out of my car with 911 on my headset
10 wanting to see if the van driver or you were seriously
11 injured. When I approached your car, you were
12 attempting to start your car to leave the scene of the
13 accident. We struggled over your keys, and you
14 punched me in the face. When the deputies arrived,
15 they called you by your name. I was told by the
16 deputy you were a frequent flyer, and those are his
17 words not mine.

18 "I was informed by the deputy that you only
19 had SR-22 insurance and only minimum coverage. This
20 meant you had previously been convicted of driving
21 drunk. The person you hit head-on would receive first
22 claim; so I paid all costs incurred to me and my
23 mother. That's hospitals, x-rays, doctors, car
24 repair, and the vet bill for my dog who was injured.
25 I had full coverage on my vehicle but did not want my

1 rates to increase due to your recklessness.

2 "It has now been 40 months, just three days
3 shy of 41 since this occurred. I have had to travel
4 here over and over under Court order, yet each time it
5 is postponed, extended, etcetera. It's 320 plus miles
6 one way for me to come here. I pay for my gas, my
7 food, and my lodging each time. I only continue to do
8 this, as I promised my mother I would speak on her
9 behalf.

10 "Drunk driving is a repetitive issue for
11 you. You are so blessed that you did not kill us or
12 anyone else that day, but you made costly impacts on
13 several lives. The financial stings a little; I can
14 handle that, but my mother's already frail condition
15 was worsened by your reckless act.

16 "You have had almost four years of freedom.
17 Through the third DUI statutes of Nevada say one to
18 six years with a \$5,000 fine. Nevada prison gives you
19 two days credit for every day you actually serve; so
20 I'm asking the Court to please give you the maximum
21 sentence and fines allowed and that you never be
22 allowed to operate a vehicle again. You have
23 repeatedly chosen to be a drunk driver so your
24 decision should result in the maximum consequences."

25 Thank you, Your Honor.

1 THE COURT: Do you have any questions,
2 Mr. Vitto?

3 MR. VITTO: I do.

4 Q. (By Mr. Vitto) Ma'am, do you have a
5 restitution figure and an amount that you have paid
6 out-of-pocket as a result of this incident?

7 A. I have receipts and things at home. I did
8 not bring them with me today. I have yet to be
9 reimbursed. That does not matter to me. The fact
10 that she go to prison for at least the amount of time
11 she's been allowed to be free since this occurred,
12 injuring my mother which worsened her health, which
13 resulted in a blood clot to the brain, which resulted
14 in her death.

15 Q. Have you been contacted by the Department
16 of Parole and Probation in regard to restitution?

17 A. No, sir, never.

18 MR. VITTO: That's something we would do,
19 John?

20 SERGEANT WINTERS: (Nods.)

21 MR. VITTO: Okay. You'll be contacted by
22 the Department, and you'll be able to provide them
23 that figure of your out-of-pocket loss; okay?

24 THE COURT: Including your trips.

25 THE VICTIM: I promised my mother we would

1 come here. We showed up several times on subpoena
2 before she died. I brought her in a wheelchair here.
3 And each time it has been postponed, like again today.

4 THE COURT: Any other questions, Mr. Vitto?

5 MR. VITTO: No.

6 THE COURT: Mr. Martinez?

7 MR. MARTINEZ: No, Your Honor.

8 THE COURT: All right. Thank you for
9 coming in and testifying. You won't need to come in
10 again. If you supply the restitution figures to
11 Mr. Vitto, he will get a Court order for it to be
12 paid.

13 THE VICTIM: When will it be where she
14 actually gets sentenced, Your Honor?

15 THE COURT: December 2nd at 0900.

16 THE VICTIM: I'll come back because I'm one
17 of eight children. I'm the closest one to come to
18 make sure just my mom gets some justice.

19 THE COURT: Thank you very much.

20 THE VICTIM: Thank you, sir. Have a good
21 day.

22 THE COURT: You too.

23 We'll see you December 2nd at 0900.

24 MR. MARTINEZ: Thank you, Your Honor.

25 -oOo-

1 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
2 PROCEEDINGS.
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Cecilia D. Thomas

Cecilia D. Thomas
RPR, CCR No. 712

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FILMS

FIFTIETH JUDICIAL DISTRICT

No. CR-8978

لَا إِلٰهَ إِلَّا هُوَ

Dept. No. 2

Nye County Clerk

Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE

-000-

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

VS.

CRYSTAL YVONNE AUSTIN,

Defendant.

TRANSCRIPT OF PROCEEDINGS
SENTENCING HEARING CONT'D

DECEMBER 2, 2019
9:50 A.M.
PAHRUMP, NEVADA

APPEARANCES:

For the State:

KIRK D. VITTO, ESQ.
CHIEF DEPUTY DISTRICT ATTORNEY
Nye County Courthouse
Pahrump, Nevada 89060

For the Defendant:

DANIEL MARTINEZ, ESQ.
DEPUTY PUBLIC DEFENDER
552 East Charleston Boulevard
Las Vegas, Nevada 89104

State Parole and
Probation Officer:

JOHN WINTERS

The Defendant:

CRYSTAL YVONNE AUSTIN

Reported by: CECILIA D. THOMAS, RPR, CCR No. 712

1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, DECEMBER 2, 2019

2 9:50 A.M.

3 -oOo-

4 P R O C E E D I N G S

5
6 THE COURT: Crystal Austin, 8978.

7 COURT STAFF: We still do not have a PSI on
8 that case.

9 MR. MARTINEZ: Correct.

10 THE COURT: Is Crystal here?

11 MR. MARTINEZ: She stepped out.

12 THE COURT: Okay. We'll go ahead and trail
13 that until she comes back.

14 MR. MARTINEZ: Okay. Thank you.

15 (LATER IN THE PROCEEDINGS, 10:05 A.M.)

16 THE COURT: 8978, Crystal Austin.

17 What page is that one on?

18 THE CLERK: Bottom of page 4.

19 THE COURT: Bottom of page 4?

20 THE CLERK: Yeah. This is one that wasn't
21 showing up on our initial preliminary calendar.

22 THE COURT: Crystal is here today for
23 sentencing.

24 COURT STAFF: Your Honor, we do not have a
25 PSI. I contacted Parole and Probation, Lisa, who

1 normally does our PSIs. She was asked by Ms. Austin
2 not to do hers because they had previous history with
3 another Department. Paula Halicki was assigned to it.
4 She left. Then it was given to Las Vegas. And nobody
5 knows the status of why we have no PSI yet.

6 THE COURT: Counsel, would you like to
7 respond?

8 MR. MARTINEZ: We have to sentence her, but
9 we can't do it without a PSI. Can we take it out
10 about 30 days, Your Honor, just to go into the new
11 year so we only have to continue it one more time?

12 MR. VITTO: May I have the Court's
13 indulgence?

14 THE COURT: Anybody in the gallery want to
15 work for P and P and do the PSIs? I wish it was that
16 easy, huh?

17 MR. VITTO: Thank you, Your Honor.

18 THE COURT: What did we decide?

19 MR. VITTO: We need a new court date.

20 THE COURT: January 13th --

21 MR. MARTINEZ: That will work, Judge.

22 THE COURT: -- nine o'clock in the morning.

23 THE DEFENDANT: Thank you.

24 THE COURT: This is Nevada where we gamble.
25 Do you want to gamble? I could remand you into

1 custody until the 13th, and if they don't have a PSI,
2 let you go. I'm kidding. We'll see you January 13th.

3 MR. MARTINEZ: Thank you, Judge.

4 -oOo-

5

6 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
7 PROCEEDINGS.

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Cecilia D. Thomas

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Cecilia D. Thomas

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RPR, CCR No. 712

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Case No.: CR8978

Dept. No.: 2

FIFTH JUDICIAL DISTRICT

JAN 13 2020

Nye County Clerk
Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

CRYSTAL YVONNE AUSTIN,

Defendant.

MOTION TO RECONSIDER
SENTENCE

COMES NOW, the Defendant, Crystal Yvonne Austin, by and her through her Public Defender, Daniel E. Martinez, Esq., hereby moves this Court to reconsider the sentence in the above-entitled case.

This Motion is made and based upon the papers and pleadings on file herein, and any arguments of counsel entertained by the Court at the hearing of said Motion.

DATED this 13th day of January, 2020.

Daniel Martinez Law, LLC

Daniel E. Martinez, Esq.
Nevada Bar No.: 12035

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3 **NOTICE OF MOTION**

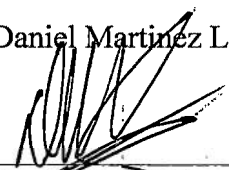
4 TO: Nye County, Plaintiff, and

5 TO: District Attorney, its Attorneys;

6 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Reconsider
7 Sentence on Calendar for hearing in Department 2 of the above-entitled Court on the 24 day of
8 Feb., 2020, at 9:00 a.m. or as soon thereafter as counsel may be heard.

9
10 DATED this 13th day of January, 2020.

11 Daniel Martinez Law, LLC

12
13 
14 Daniel E. Martinez, Esq.
15 Nevada Bar No.: 12035

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1 **POINTS AND AUTHORITIES**

2 **BACKGROUND**

3 This case stems from a motor vehicle collision that occurred on June 1, 2016, in Pahrump, Nye
4 County, Nevada. Crystal Austin was arrested, and subsequently charged with Driving Under the
5 Influence of Alcohol, with Prior Felony DUI Conviction. On July 15, 2019, Ms. Austin entered a
6 Guilty Plea Agreement with the Court, where both parties agreed to recommend a sentence of 24 to 60
7 months in the Nevada Department of Corrections. The Presentence Investigation Report recommended
8 a sentence of 32 to 84 months in the Nevada Department of Corrections.
9

10 At the time of Sentencing, Alice Cox gave a victim impact statement, in which alluded to the
11 collision being the proximate cause of injury, and ultimately death, of her mother, Eileen Sharron.
12 Argument was made by the Defense that some of Ms. Cox's statements should not be considered, as
13 there was no factual basis to corroborate them. Ultimately, both parties stood by their
14 recommendations of 24 to 60 months in the Nevada Department of Corrections. The Court sentenced
15 Ms. Austin to 48 to 120 months in the Nevada Department of Corrections.
16

17 **ARGUMENT**

18 This matter has been ongoing for more than three and half years. It was set for a jury trial
19 multiple times, and even that occurred only after Ms. Austin was evaluated for competency. Both the
20 defense and the State have reviewed the facts of the case, the results of the collision, and the
21 background of Ms. Austin prior to entering into the plea negotiations. One of the continuances of the
22 jury trial was because the State was performing additional investigation, in the case that substantial
23 bodily harm or death had occurred. Ultimately, the State found no evidence to corroborate Ms. Cox's
24 claims, or to substantiate higher charges, and they declined to amend the information or refile on
25 additional charges.
26
27
28

1 The recommended sentence by the parties of 24 to 60 months in the Nevada Department of
2 corrections is more than appropriate in this case. While there was a traffic accident, there were no
3 injuries. Ms. Austin has been open and honest about her struggles with addiction, and her mental
4 health issues. Since her arrest for this case, she has been randomly testing with the Fifth Judicial
5 District Court, and has never had a single positive test in more than three and a half years. While she
6 does have criminal history, it consists almost entirely of offense for Driving Under the Influence, none
7 of which have caused substantial bodily harm or death.
8

9 The defense also provided the Court with numerous character letters, showing that Ms. Austin
10 has been a contributing member of the community. She had been taking care of both of her elderly
11 parents, one of whom has Alzheimer's. She also does work on a friend's ranch, caring for animals.
12 Furthermore, she has maintained her sobriety while she has been out of custody during the pendency of
13 this case.
14

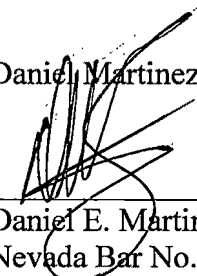
15 The recommended sentence of the parties is more than appropriate in this case, and the
16 Defendant now moved the court to consider her sentence, and sentence her to 24-60 months in the
17 Nevada Department of Corrections, or, in the alternative, for clarity as to why the Court deviated from
18 not just the parties recommended sentence, but also the recommended sentence of the Department of
19 Parole and Probation.
20

21 CONCLUSION

22 Based on the foregoing, it is respectfully requested that Defendant's sentence be reconsidered.

23 DATED this 13th day of January, 2020.
24

25 Daniel Martinez Law, LLC

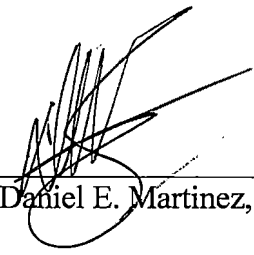
26 
27 Daniel E. Martinez, Esq.
28 Nevada Bar No.: 12035

CERTIFICATE OF SERVICE

I, Daniel E. Martinez, Esq., Nye County Public Defender and counsel for the Defendant,
Crystal Yvonne Austin, do hereby certify that I have served the following:
Defendant's Motion to Reconsider Sentence in
Case No. CR8978
State of Nevada v. Crystal Yvonne Austin

upon said Plaintiff by delivering a true and correct copy thereof on January 13, 2020, to the following:

NYE COUNTY DISTRICT ATTORNEY'S OFFICE



Daniel E. Martinez, Esq.

1 No. CR-8978

2 Dept. No. 2

3

4

BY _____

5 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6

IN AND FOR THE COUNTY OF NYE

7

THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE

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ORIGINAL

10 THE STATE OF NEVADA,)

11) Plaintiff,)

12) vs.)

13) CRYSTAL YVONNE AUSTIN,)

14) Defendant.)

15) _____)

TRANSCRIPT OF PROCEEDINGS
SENTENCING HEARING

JANUARY 13, 2020

9:55 A.M.

PAHRUMP, NEVADA

16 APPEARANCES:

17 For the State:

KIRK D. VITTO, ESQ.
CHIEF DEPUTY DISTRICT ATTORNEY
Nye County Courthouse
Pahrump, Nevada 89060

19 For the Defendant:

DANIEL MARTINEZ, ESQ.
DEPUTY PUBLIC DEFENDER
552 East Charleston Boulevard
Las Vegas, Nevada 89104

22 State Parole and
Probation Officer:

BRYAN GENTRY

24 The Defendant:

CRYSTAL YVONNE AUSTIN

25 Reported by: CECILIA D. THOMAS, RPR, CCR No. 712

1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, JANUARY 13, 2020

2 9:55 A.M.

3 -oOo-

4 P R O C E E D I N G S

5
6 THE COURT: Mr. Martinez' cases.

7 MR. MARTINEZ: Good morning, Judge.

8 THE COURT: His first one on calendar is
9 Crystal Austin, 8978.

10 We have a PSI dated December 18th in which
11 the Division recommends 12 -- or I'm sorry, 32 to 84
12 months mandatory prison, two grand fine, other fines
13 and fees. It shows two days credit for time served.

14 We're going to hear from Mr. Martinez, then
15 from Ms. Austin, and then from Mr. Vitto, and I will
16 make up my mind what to do at that point.

17 MR. MARTINEZ: Thank you, Your Honor.

18 Your Honor, we certainly understand that
19 this case is a mandatory prison sentence, which is how
20 we have the matter negotiated.

21 THE COURT: Yes, sir.

22 MR. MARTINEZ: Both parties, pursuant to
23 our plea negotiation, are recommending a sentence of
24 24 to 60 months in the Nevada Department of
25 Corrections. I'm asking the Court to follow that

1 today.

2 As I look through the PSI, Your Honor,
3 it's -- this is clearly a case of substance abuse
4 which has been an issue for Ms. Austin. Her criminal
5 history is DUI, DUI, DUI. And if I were coming up
6 here and arguing to Your Honor and saying, "No. You
7 should be placing Ms. Austin to a term of probation so
8 she can address these things," I'm sure you would look
9 at me with a raised eyebrow as I know you have before
10 when someone has had a PSI similar to this with those
11 DUIs. So I'm not asking the Court to do this.

12 This is something that we have talked
13 about, and she knows that she's going to be
14 incarcerated. I do believe that the 24- to 60-month
15 sentence we are recommending is more than reasonable,
16 given the circumstances. Given her criminal history
17 that there's nothing outside of the DUI's there, she
18 has battled addiction. You know, there's the old
19 saying that no one ever gets cured from an addiction.
20 Once you are an addict, you are always an addict; and
21 all you can do is work at it and make sure that it's
22 not going to affect anyone in the future. And
23 Ms. Austin certainly has done that.

24 This offense occurred way back in the
25 spring of 2016. When she was initially arrested on

1 this, she was released from custody with the condition
2 that she randomly test with the Drug Court. She has
3 been doing that now for three-and-a-half years. Not
4 once has she had an issue there. She has showed up to
5 every test. She has been able to pay for every single
6 test. She has been clean every single time that the
7 Drug Court has called her to come in and test.

8 And that speaks volumes to me, Your Honor,
9 because unfortunately I do have a lot of clients that
10 they get released from custody down at the
11 Justice Court, they're ordered to drug test with the
12 Drug Court. Less than a week later, they're back in
13 custody because they test dirty. Ms. Austin has not
14 done that.

15 THE COURT: They were looking for alcohol
16 too; correct?

17 MR. MARTINEZ: Of course, Your Honor. They
18 always are.

19 Your Honor, I know that, and I did provide
20 the character letters to the Court, and I assume that
21 the Court has had the opportunity to read through
22 those to show that she does have support here where
23 when she eventually is paroled, she will be able to be
24 successful on that.

25 Lastly, Your Honor, I do want to address

1 something. The alleged victim, the driver of the
2 other vehicle, did make statements a couple of
3 hearings ago, and I did want to address that. She
4 made allegations that this accident was the cause of
5 injury to her and her mother, and in fact of the cause
6 of a quicker death to her mother. And quite frankly,
7 to be blunt, I'm asking the Court not to consider any
8 of that, because there's no evidence to support it.

9 This is something that the State at one
10 point we had continued the trial because the State was
11 doing an investigation into that, and they could come
12 up with nothing, not a single medical record to
13 document that, nothing connecting it. When we look at
14 the accident report in this case, there's not even a
15 passenger listed on the vehicle. We look at the
16 offense synopsis from the deputy's report. Again, no
17 passenger listed in the vehicle from that report.

18 There was a claim made while with the
19 insurance company witness Austin; the claim never got
20 followed through for any sort of injury or any sort of
21 financials, any sort of settlement from the insurance
22 company, and they eventually closed the case.

23 The Department of Parole and Probation
24 always reaches out to the victim. No victim
25 information available on this case, Your Honor,

1 presumably, because the alleged victim in this case
2 did not respond.

3 So based on all that, if there was a
4 proximate cause for substantial injury or death, we
5 would be looking at a different charge. I'm sure
6 Mr. Austin would not be out of custody appearing for
7 her sentencing right now.

8 So based on the totality of the factors,
9 Your Honor, the Court needs to consider what the facts
10 are in this case. And quite simply put, what the
11 victim testified to are not facts in this case. This
12 is a DUI. This is fourth DUI. Obviously, Ms. Austin
13 has a history of DUIs; but again, the sentence that we
14 are requesting is more than reasonable given the
15 circumstances, and I'm asking the Court to follow that
16 and sentence her to 24 to 60 months in the Nevada
17 Department of Corrections.

18 THE COURT: Anything you would like to say,
19 Ms. Austin?

20 THE DEFENDANT: I would like to read a
21 letter. Can I?

22 THE COURT: Sure.

23 THE DEFENDANT: "I, Crystal Austin, deeply
24 regret leaving my home on June 1st, 2016. Not knowing
25 how I felt, upon realizing I wasn't feeling right, I

1 attempted to turn around and go -- try to go home. I
2 was trying to visit my sick mother in which I hit
3 Mary Klein's (phonetic) minivan, and I caused damage
4 to Ms. Klein's car. I do deeply regret unnecessary
5 harm to Mr. Klein and her vehicle, to which I totaled
6 my car. I regret drinking after work, and I fully
7 accept my responsibilities for hitting Mary Klein's
8 care. And I admit I was incapable of driving at that
9 time. And I've had no problems since 2009, but I have
10 been doing well since then.

11 "And I do thank the Court, Your Honor,
12 Judge Lane; Mr. Martinez for allowing me to take care
13 of my 77-year-old, 86-pound mom who has Alzheimer's,
14 and she did have a mini stroke. And she's forgetting
15 my name. I have been trying to get her back to
16 normal. And I've been also taking care of my
17 77-year-old stepdad who has congestive heart failure
18 and needed cataract surgery. And I just hope I get to
19 see them before their end.

20 "I take care of many animals. I help
21 foster children, bullied kids ride horses; and take
22 care of neighbor's sick animals; and feed dogs,
23 chickens, goats; and just try to help clean and
24 everything.

25 And I have been doing randoms, and it

1 hasn't been a problem for me. It wasn't hard for me
2 to do.

3 "And I do take responsibility for my
4 actions, and I ask for forgiveness. I am ready to
5 face my consequences of my bad decision on June 1st,
6 2016. And I ask for the opportunity to prove my
7 remorse and to change my behavior. I will never be
8 doing this again. I will never be back here again. I
9 don't want to do this. I have more to serve in my
10 life, and I know from the things I've been doing the
11 past three-and-a-half years for neighbors and friends
12 and kids that need help getting picked on in school
13 with animals and stuff."

14 THE COURT: Thank you. Anything else?

15 THE DEFENDANT: No.

16 THE COURT: All right. Mr. Vitto.

17 MR. VITTO: Your Honor, the Prosecution
18 wholeheartedly stands by the recommendation bargained
19 for. It is well-deserved under the circumstances.
20 There's a DUI in '03, a DUI in '04, a DUI in '05, a
21 DUI in '06 -- excuse me, a DUI in '08, another DUI in
22 '08, a DUI in 2016. And then if you look at the
23 conviction date offense dates, there's an '06 and a
24 2012. I don't know if those are a supplement to the
25 conviction set forth previously, or if those are in

1 conjunction with. But I do note that at one point, a
2 12- to 30-month prison sentence was not enough.
3 Hopefully, the 24- to 60-month prison sentence that is
4 jointly recommended to the Court will be.

5 She's been given plenty of opportunity --
6 the Serious Offender Program, the Felony DUI
7 Program -- and nothing has worked. We're hoping that
8 a 24- to 60-month sentence will do the trick so that,
9 in fact, as the defendant has stated, she won't be
10 back once that term of imprisonment is or has been
11 satisfied.

12 That being said, I have nothing more to
13 add. I would also ask for the \$2,000 fine. I don't
14 know if the Court wanted to hear from the victim in
15 rebuttal to any statements made by counsel.

16 THE COURT: Has the victim testified
17 previously?

18 MR. VITTO: She has testified previously,
19 Your Honor. It was compelling. She has been here at
20 every court date at her own expense, and there's been
21 numerous -- I don't know, she may have travelled here
22 half a dozen times. She's travelled here again, as
23 she said she would. If the Court has no recollection
24 of her previous testimony, if you wanted her to have
25 the opportunity to refresh the Court's recollection,

1 she's here today.

2 THE COURT: Did we already prove up the
3 priors?

4 MR. VITTO: Everything to do with the
5 priors has been conceded by the Defense. We're here
6 as a felony because of a prior felony conviction.

7 MR. MARTINEZ: We have stipulated to the
8 priors.

9 And, Your Honor, I did want to address one
10 thing that Mr. Vitto brought up when reviewing
11 Ms. Austin's criminal history. As he did state, she
12 did do the Serious Offenders Program and was
13 successful in completing that. That was a three-year
14 program; so I suspect it happened from an arrest. She
15 went through the program, and then three years later
16 when it got reduced down to a lesser charge to the
17 DUI Second, that conviction would have entered on her
18 record. So I think that's where a little bit of
19 discrepancy comes in as to what her most recent arrest
20 prior to this one is.

21 THE COURT: Do you know what date the
22 transcript is from the victim's prior testimony?

23 MR. VITTO: I can find it, Judge. Give me
24 just -- let's see. Victim impact testimony provided
25 today, October 28th.

1 THE COURT: Thank you.

2 What was your response to this victim
3 impact statement a moment ago, Mr. Martinez?

4 MR. MARTINEZ: Your Honor, there are quite
5 a few allegations in her victim impact statement that
6 there was serious injury caused by this accident and
7 that was even the proximate cause of her mother's
8 death. But we have absolutely no evidence to support
9 that. In the discovery that I have received, in the
10 accident reports, in the deputy's statement, there is
11 not even mention of a passenger in the vehicle.

12 So obviously, the Court can take how this
13 affected the victim's life into consideration, but
14 there are certain things that I'm asking the Court not
15 to consider because there's just no factual basis for
16 them. Had there been a factual basis for them, I am
17 certain that the State would have charged this as a
18 DUI Resulting in Substantial Bodily Harm and/or Death,
19 and we'd be looking at a different sentencing criteria
20 right now.

21 THE COURT: This is the second or third one
22 today where the offense synopsis and the transcript of
23 the victim and the facts and so forth differ so much
24 from what the Defense says happen. And I lean over to
25 the State and say, "So did he slap his butt or throw a

1 pipe at him? And did she go head-on and cause an
2 accident with this lady and hurt people, or did she
3 just have a DUI?" This is happening a lot today. I
4 don't know why.

5 MR. VITTO: And that's why I -- she's here
6 in the courtroom today. If the Court had questions, I
7 can lean over and ask her a couple of questions as
8 you're reviewing that.

9 THE COURT: Well, I was just hoping -- what
10 it really boils down to, Kirk, is Mr. Chairez says,
11 "Oh, yeah. He just threw a pot pipe. There was no
12 slapping of the buttocks." I'm assuming he's going to
13 come in and say that, I guess. And then I don't know
14 if this was your case or not, but I would assume that
15 the DA said, "No. I agree with Mr. Martinez. These
16 were the facts. It was just a DUI. There was no
17 injuries or accident."

18 MR. MARTINEZ: And, Your Honor, the
19 procedural history of this case, it was previously
20 Mr. Young's and Mr. Ferguson's before that. We had
21 continued the trial at one point. Mr. Ferguson was
22 doing an investigation to see if there had in fact
23 been substantial bodily harm or death. His plan was
24 to attempt to amend the Information or dismiss and
25 refile so we could charge it as a DUI Resulting in

1 Substantial Bodily Harm or Death, and he came up with
2 nothing -- no medical records, nothing to substantiate
3 those claims at all. So that's part of my argument as
4 to why the Court should not consider those parts of
5 the statement when sentencing Ms. Austin.

6 THE COURT: It's very unusual that the
7 victims show up at all of the hearings and say there
8 was an accident that caused my mom and me injuries and
9 the dog; and then to have the Defense say there was
10 nobody at the scene, we don't have any reports of
11 injuries, nothing happened. Unusual.

12 MR. MARTINEZ: It is, Your Honor. It's
13 unique.

14 THE COURT: Call your witness.

15 THE BAILIFF: Raise your right hand, face
16 the clerk, and be sworn in, please.
17 Whereupon,

18 ALICE DENISE COX,
19 called as a witness on behalf of the State, was sworn
20 and testified as follows:

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Thank you. Have a seat.

23 THE DEFENDANT: Thank you, sir.

24 THE COURT: I think you have a pretty good
25 idea what's going on right now.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. If she caused an
3 accident and mom died, the dog was hurt and you were
4 hurt and she was driving nuts, I'm going to give her a
5 big sentence. If it was just another DUI, we're going
6 to give her probably a couple of years, and I don't
7 know. And so the attorneys are going to take turns
8 asking you questions, and we'll turn it over to
9 Mr. Vitto.

10 MR. VITTO: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. VITTO:

13 Q. Please state your name for the record,
14 spelling your last name.

15 A. Alice Denise Cox, C-o-x.

16 Q. Now, you had an opportunity to address the
17 Court at length, and you've been here for each
18 hearing. How many times have you been here?

19 A. I've lost count, sir.

20 Q. Half a dozen?

21 A. More than that. I came a couple of times
22 on a subpoena. And when I was arriving in Pahrump,
23 because I have to drive such a distance, one time I
24 had to leave school to come here on subpoena, and just
25 as I was arriving in Nye County, each time they called

1 me to tell me it had been postponed.

2 Q. So obviously, there was a time when there
3 was a vehicle accident. How many vehicles were
4 involved in that accident?

5 A. She ran me off the road into the ditch
6 first. Then I'd say between 12 and 20 other cars of
7 the road until she had collided head-on into a van at
8 the corner of, I think it was Gamebird and
9 Pahrump Valley Boulevard?

10 Q. Okay. So there was no collision between
11 the vehicle you were operating and the defendant's
12 vehicle?

13 A. No, sir. I went into the ditch to avoid
14 being hit head-on.

15 Q. Okay. And was anybody in the vehicle with
16 you?

17 A. My mother was in the passenger seat, and my
18 service dog was in the backseat.

19 Q. And as a result of being run off the road,
20 what were the injuries to your mother?

21 A. My mother injured her back. I was in --
22 that day I was due to take her -- I was in town to
23 take her to an appointment with the kidney doctor. My
24 mother only had one kidney, and her health was going
25 down hill. And we were almost to the doctor's office

1 when this occurred.

2 I immediately called the 911 operator
3 through the phone system in my car. So you can hear
4 my mother talking, myself talking. But my mom's
5 kidney developed a blood clot, which I can't prove the
6 accident did it, no; but her health went down hill
7 from that point, and the blood clot went to her brain
8 leading to a stroke which led to her death.

9 Q. All right. So -- and I don't mean to
10 minimize or downplay anything. I'm just trying to
11 understand, because obviously, I came into -- I
12 haven't done an investigation of the facts.

13 A. Yes, sir.

14 Q. So -- and I'm going to use a word here that
15 I don't mean to be offensive at all; I'm just trying
16 to get to the bottom of it for the Court's
17 edification. Would it be a stretch to say that what
18 happened resulted in the death of your mother?

19 A. I never blamed her for my mother's death.
20 I'm just stating that my mother's health was already
21 frail. The locking of the seatbelt caused more damage
22 to her kidney.

23 Q. Okay. And I think -- at the beginning, I
24 think you said something to the effect that your
25 mother injured her back as a result of the accident?

1 A. Yes, sir. She had previously broken her
2 back three times. I drove my mother to a hospital.
3 The only person they put in an ambulance was
4 Ms. Austin.

5 Q. Okay. So prior to what happened that
6 day -- I can't call it an accident; you were forced
7 off the road?

8 A. Yes, sir.

9 Q. So prior to that happening, your mother had
10 broken her back three times?

11 A. Yes, sir. She had a very frail spine.

12 Q. Okay. So are you saying that she broke her
13 back again?

14 A. They told her that she had a fracture in
15 her spine at the hospital here in Pahrump. I turned
16 around two days later, and I took her as soon as I
17 could to her spinal specialist. And he told her that
18 he couldn't tell if it was from the previously injury,
19 if it had -- he said it looked like the fracture had
20 been extended because her back was still healing from
21 the last break in her back.

22 Q. Now, when you pulled off the road -- how
23 fast were you going prior to being forced off the
24 road?

25 A. I was doing about 30 miles an hour. And my

1 car was a sports-style car, which that low to the
2 ground. And when I swerved off, I went into loose
3 gravel causing my car to dip. And of course, I
4 slammed on my brakes not wanting to hit the trees in
5 front of me.

6 Q. Okay. So you had to -- you came to an
7 abrupt, bumpy end?

8 A. Stop, yes, sir.

9 Q. Without hitting anything in particular?

10 A. Yes, sir.

11 MR. VITTO: Counsel?

12 THE COURT: Let me ask a question real
13 quick. On page 6 --

14 MR. VITTO: Of?

15 THE COURT: -- of the November 4th
16 transcript, it says, "I remained a distance behind you
17 reporting to the cops each time you lost control, spun
18 out, ran stop signs, and went head-on with other
19 vehicles running them off the road.

20 "At Gamebird, you crossed over once again
21 hitting a van head-on. I got out of my car with 911
22 on my headset wanting see if the van driver or you
23 were seriously injured. When I approached your car,
24 you were attempting to start the car and leave the
25 scene of the accident. We struggled over your keys,

1 and you punched me in the face. When the deputies
2 arrived, they called you by name and that you were a
3 frequent flier." Is that all accurate?

4 THE WITNESS: Yes, sir. It's all on the
5 911 recording. My headset did not shut off. It went
6 straight from my car to my bluetooth.

7 THE COURT: Mr. Martinez?

8 CROSS-EXAMINATION

9 BY MR. MARTINEZ:

10 Q. Ms. Cox, prior to the past couple of times
11 that you've testified in court, have you had contact
12 with the District Attorney's Office?

13 A. They've kept in contact with me since 2016.

14 Q. So you haven't provided any sort of medical
15 documentation to the District Attorney's Office?

16 A. When my mother was alive, my mother gave
17 documentation to them from her medical records, yes,
18 sir.

19 Q. Were you with your mother when she gave
20 that documentation to the State?

21 A. No, sir. I was up in Utah in school.

22 Q. Okay. Ms. Cox, do you recall making a
23 written statement when this accident occurred?

24 A. Yes, sir, I did. I made a statement at the
25 hospital where my mother was being examined.

1 Q. And when you were making that written
2 statement, were you told to make sure that you include
3 all of the important facts in there?

4 A. They had my mother fill out a statement and
5 me one as well. And they asked me for a copy of the
6 camera video from my car.

7 Q. Did you provide that to the State?

8 A. The deputy asked me to download it, and we
9 did.

10 Q. I'm sorry, what is your mother's name?

11 A. Eileen Sharron, S-h-a-r-r-o-n.

12 MR. MARTINEZ: Judge, may I approach the
13 witness?

14 THE COURT: Yes, sir.

15 Q. (By Mr. Martinez) Ms. Cox, I'm going to --
16 I have a copy. I guess I should show the State first.

17 THE COURT: I was wondering.

18 Q. (By Mr. Martinez) Ms. Cox, this is -- I
19 believe this is the statement that you wrote on the
20 day of the accident; correct?

21 A. Yes, sir. It's my handwriting.

22 Q. Okay. Can you read through that in your
23 head for me and, just look up at me when you're done
24 reading?

25 MR. VITTO: Is that Bates stamped?

1 MR. MARTINEZ: Yes, it is. Twenty-four,
2 25.

3 MR. VITTO: Thank you, sir.

4 THE WITNESS: Yes, sir.

5 Q. (By Mr. Martinez) Did you write anywhere
6 in there that your mother was in the car with you?

7 A. No, sir. They had her fill out her own
8 statement.

9 MR. MARTINEZ: Thank you. Nothing further.

10 THE COURT: Mr. Vitto.

11 MR. VITTO: I have nothing further,
12 Your Honor.

13 THE COURT: Thank you for testifying. You
14 can step down.

15 MR. VITTO: Your Honor, for the Court's
16 edification, Counsel showed the witness pages 24 and
17 25 of the discovery provided to him, pages 71 and 72
18 of the discovery provided to him -- well, 71, 72, 73,
19 and 74 are statement from the person identified as the
20 mother of Alice Cox who just testified. And she
21 begins her statement with, "I was a passenger in my
22 daughter's car," and then she details what happened
23 that day.

24 I don't think it's -- I don't think it's
25 appropriate to want to stand on the position that

1 nobody else was in the vehicle.

2 THE COURT: Anything else?

3 MR. MARTINEZ: Judge, I'm more so standing
4 on the position that this did not result -- did not
5 proximately result in any injury or death.
6 Approximately result in any injury or death. And that
7 again, I stand by our recommendations in this case.

8 THE COURT: I would have hoped the State
9 would have more seriously pursued it if it had.

10 MR. MARTINEZ: Oh, of course, Your Honor.
11 Thank you.

12 THE COURT: Thank you, sir.

13 All right 48 to 120; credit for time served
14 two days; all the standard fines and fees as set
15 forth; \$2,000.

16 -oOo-

17
18 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
19 PROCEEDINGS.
20

21 *Cecilia D. Thomas*

22 Cecilia D. Thomas
23 RPR, CCR No. 712
24
25

Case No. CR 8978

Dept. No. 2P

JAN 14 2020

County Clerk
Deputy

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

-v-

JUDGMENT OF CONVICTION

CRYSTAL YVONNE AUSTIN,

Defendant.

On the 15th day of July 2019, the above-named defendant appeared before the Court, with her counsel, DANIEL MARTINEZ, ESQ., and entered a plea of guilty to the crime of DRIVING UNDER THE INFLUENCE OF ALCOHOL, WITH PRIOR FELONY DRIVING UNDER THE INFLUENCE CONVICTION, a violation of NRS 484C.110, 484C.410(1)(a)(e), a category 'B' felony. The state was represented by MICHAEL VIETA-KABELL, ESQ., Deputy District Attorney.

On the 13th day of January 2020, the Defendant appeared personally, with her counsel, DANIEL MARTINEZ, ESQ., for entry of judgment. The State was represented by KIRK VITTO, ESQ., Chief Deputy District Attorney. No sufficient legal cause was shown by the Defendant as to why judgment should not be pronounced against her. The Court adjudged the Defendant guilty of the crime of DRIVING UNDER THE INFLUENCE OF ALCOHOL, WITH PRIOR FELONY DRIVING UNDER THE INFLUENCE





1 CONVICTION, a violation of NRS 484C.110, 484C.410(1)(a)(e), a category 'B' felony.

2 The Court then sentenced the defendant to imprisonment in the Nevada Department
3 of Corrections for a maximum term of one hundred twenty (120) months and a minimum
4 parole eligibility of forty-eight (48) months.

5 That the Defendant shall pay to the Clerk of this Court the sum of \$25.00 as an
6 Administrative Assessment fee.

7 That the Defendant shall pay to the Clerk of this Court the sum of \$3.00 as a DNA
8 Administrative Assessment fee.

9 That the Defendant shall pay to the Clerk of this Court a sum of \$150.00 as a DNA
10 fee.

11 That the Defendant shall pay to Nye County the sum of \$400.00 for preparation of
12 pre-sentence investigation report.

13 That the Defendant shall pay to the Clerk of this Court a sum of \$500.00 in
14 attorney fees.

15 That the Defendant shall pay to the Clerk of this Court a sum of \$2,000.00 as a fine.

16 That all fines/fees are due by 03/13/20.

17 That the Defendant shall be given credit for two (2) days credit for pre-sentence
18 time served.

19
20 ///

21 ///

22 ///

23 ///

24 ///

1 **IT IS FURTHER ORDERED** that any bond in this matter be exonerated,
2 **unless previously ordered by this court for forfeiture or any other purpose.**

3 Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not
4 contain the social security number of any person.

5 DATED this 14th day of January 2020.

6
7 Robert W. Lane
8 DISTRICT JUDGE
9

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



CERTIFICATION OF SERVICE

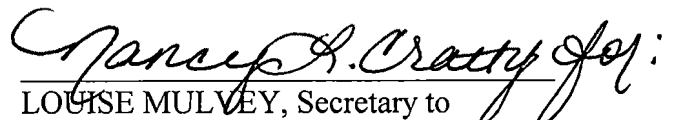
The undersigned hereby certifies that on the 14th day of January 2020, she mailed (or hand/fleet delivered) copies of the foregoing **JUDGMENT OF CONVICTION** to the following:

NYE COUNTY DISTRICT ATTORNEY
1520 E. BASIN AVE., SUITE 107
PAHRUMP, NV 89060
(HAND DELIVERED)

DANIEL E. MARTINEZ, ESQ.
552 E. CHARLESTON BLVD.
LAS VEGAS, NV 89104
(HAND DELIVERED)

NYE COUNTY SHERIFF
PAHRUMP, NV 89060
(FLEET DELIVERED)

NEVADA DIVISION OF PAROLE AND PROBATION
PAHRUMP, NV 89048
(HAND DELIVERED)


LOUISE MULVEY, Secretary to
DISTRICT JUDGE

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



Case No. CR8978

Department 2

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

FILED
FIFTH JUDICIAL DISTRICT

JAN 23 2020


Nye County Clerk
Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

**OPPOSITION TO MOTION TO
RECONSIDER SENTENCE**

CRYSTAL YVONNE AUSTIN,

Defendant. /

COMES NOW, CHRIS ARABIA, District Attorney within and for the County of Nye, State of Nevada, and informs the Court of their Opposition to the Motion to Modify the Sentence. Defendant does not allege that there is clerical mistake in the original sentence. Defendant does not allege that the sentence was illegal.

Nev. Rev. Stat. 176.555 states: The Court may correct an illegal sentence at any time.

Nev. Rev. Stat. 565 states: Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

///

///

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

1 The Defendant correctly points out that the plea agreement in this case called
2 for the State to recommend a sentence of 24 to 60 months in the Nevada Department
3 of Prisons. The State upheld their agreement to recommend 24 to 60 months.
4 Although the Court exceeded the recommended sentence, The Court had every right
5 to do so. Defendant has not alleged that there was a clerical mistake in the Court's
6 Order, nor has the Defendant alleged that the sentence of 48 to 120 months was
7 illegal. Although the Defendant may believe the sentence was too harsh, that is not a
8 sufficient reason to modify the sentence.

9 Wherefore, the States asks this Court to Deny the Motion to modify the
10 Sentence.

11 DATED this 23rd day of January, 2020.

12 CHRIS ARABIA
13 NYE COUNTY DISTRICT ATTORNEY

14 By 
15 DON P. CHAIREZ
16 Deputy District Attorney
17
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19
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21
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23
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NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

CERTIFICATE OF SERVICE

I, Kayla Campuzano, Executive Legal Secretary, Office of the Nye County District Attorney, P. O. Box 39, Pahrump, Nevada 89041, do hereby certify that I have served the following:

**OPPOSITION TO MOTION TO RECONSIDER SENTENCE
In 5TH JDC Case No(s). CR8978
STATE v. CRYSTAL YVONNE AUSTIN**

upon said Defendant(s) herein by emailing a true and correct copy thereof, on

11/23/20 to the following:

Daniel E Martinez Esq.
daniel@danielmartinezlaw.com



Kayla Campuzano

FILED

FIFTH JUDICIAL DISTRICT

MAR - 3 2020

DB Nye County Clerk

Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE

-oOo-

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

vs.

CRYSTAL YVONNE AUSTIN,

Defendant.

TRANSCRIPT OF PROCEEDINGS
MOTION TO RECONSIDER SENTENCE

FEBRUARY 24, 2020

9:50 A.M.

PAHRUMP, NEVADA

APPEARANCES:

For the State:

KIRK D. VITTO, ESQ.
CHIEF DEPUTY DISTRICT ATTORNEY
Nye County Courthouse
Pahrump, Nevada 89060

For the Defendant:

DANIEL MARTINEZ, ESQ.
DEPUTY PUBLIC DEFENDER
552 East Charleston Boulevard
Las Vegas, Nevada 89104

State Parole and
Probation Officer:

BRYAN GENTRY

The Defendant:

(PRESENCE WAIVED)

Reported by: CECILIA D. THOMAS, RPR, CCR No. 712

1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, FEBRUARY 24, 2020

2 9:50 A.M.

3 -oOo-

4 P R O C E E D I N G S

5
6 THE COURT: Crystal Austin, 8978. Motion
7 to Reconsider Sentencing.

8 She's not in custody?

9 MR. MARTINEZ: She's not, Your Honor.
10 She's already been transported to the
11 Nevada Department of Corrections; so I don't think an
12 Order to Produce could be done to bring her here
13 today.

14 THE COURT: All right. You don't want to
15 waive her appearance and argue it now; you would
16 rather do --

17 MR. MARTINEZ: I will waive her appearance,
18 Your Honor. That's fine. And, Your Honor, I'm not
19 going to regurgitate what I did say in my motion,
20 which is a lot of the same arguments that I did say at
21 the time of sentencing.

22 I know the Court deviated from what both
23 parties recommended, as well as what was recommended
24 in the Presentence Investigation Report. I did want
25 to file the Motion to ask the Court to reconsider

1 that, simply because I believe that what both parties
2 recommended, the sentence of 24 to 60 months in the
3 Nevada Department of Corrections, was fair given the
4 circumstances of this case; given the facts of this
5 case; given her criminal history, her mental health
6 history; and everything else going on, and ask
7 Your Honor to issue an Amended Judgment of Conviction
8 sentencing her to that.

9 If the Court's not willing to do that, just
10 a little bit more clarification as to why the Court
11 did deviate from that sentence and sentence her to the
12 four to ten years in the Nevada Department of
13 Corrections as it did.

14 THE COURT: Thank you, sir.

15 Mr. Vitto.

16 MR. VITTO: Your Honor, the Court had every
17 right to sentence the defendant the way this Court
18 did. The defendant knew that, was aware of that,
19 irrespective of any recommendation made by either side
20 to this dispute. There's no allegation that there's a
21 clerical error. There's no allegation that the
22 sentence was illegal.

23 Clearly, based upon the criminal history
24 extant within the PSI, there was every reason for the
25 Court to deviate upward from the recommendations based

1 upon the great weight of her Driving Under the
2 Influence criminal history.

3 MR. MARTINEZ: And, Judge, just to make a
4 record clear, I'm sure the State wasn't accusing me of
5 any of that. But I certainly understand the Court has
6 a right to deviate from those sentences, and I'm not
7 saying that the Court doesn't. We also have a right
8 to file a Motion to Reconsider and ask the Court to
9 reconsider, and that's all we did.

10 THE COURT: Thank you, sir. We'll put the
11 answer out soon.

12 MR. MARTINEZ: Great. Thank you, Judge.

13 -oOo-

14
15 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
16 PROCEEDINGS.

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24

25

Cecilia D. Thomas

Cecilia D. Thomas
RPR, CCR No. 712

FILED
FIFTH JUDICIAL DISTRICT

FEB 26 2020

Nye County Clerk
Deputy

1 Case No. CR 8978

2 Dept. No. 2P

3
4
5 **IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
6 **IN AND FOR THE COUNTY OF NYE**
7

8 **THE STATE OF NEVADA,**

9 **Plaintiff,**

10 **-v-**

ORDER

11
12 **CRYSTAL YVONNE AUSTIN,**

13 **Defendant.**
14 _____/

15
16 On January 13, 2020, Defendant filed a Motion to Reconsider Sentence. On January
17 23, 2020, the State filed an Opposition to Motion to Reconsider Sentence. A hearing was held
18 on February 24, 2020.

19 The Court, having reviewed Defendant's Motion to Reconsider Sentence and
20 Presentence Investigation Report dated December 18, 2019, specifically the Criminal Record
21 listed on pages 4-6; the Offense Synopsis listed on page 6; the Plea Negotiations and
22 Recommendations listed on page 7; the attached Parole and Probation worksheet; and the
23 Transcript of Proceedings Sentencing Hearing on January 13, 2020, the Court finds based on
24 the above, that the sentence was appropriate. With good cause appearing,
25

26 **IT IS SO ORDERED** that the Motion to Reconsider Sentence is **DENIED**.

27 **///**
28

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



Pursuant to NRS 239B.030, the undersigned affirms this document does not contain the social security number of any person.

DATED this 26th day of February 2020.


DISTRICT JUDGE

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES





CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 26th day of February 2020 she mailed
(hand/fleet) delivered copies of the foregoing ORDER to the following:

NYE COUNTY DISTRICT ATTORNEY
1520 E. BASIN AVE. SUITE 107
PAHRUMP, NV 89060
(HAND DELIVERED)

DANIEL MARTINEZ, ESQ.
552 E. CHARLESTON BLVD.
LAS VEGAS, NV 89104
(HAND DELIVERED)


Nancy L. Cratty, Secretary to
DISTRICT JUDGE

JUN 08 2020

Nye County Clerk
Deputy

CERTIFICATE OF MAILING

STATE OF NEVADA
COUNTY OF CLARK NYE

I am the ☐ Plaintiff/Petitioner ☒ Defendant/Respondent

CRYSTAL AUSTIN for Case No: CR 89770

On this 26 day of MAY, 2020, I mailed a copy of the

Following document(s):

1. REQUEST FOR RECORDS
2. REQUEST FOR SUBMISSION OF MOTION
3. IFP & FINANCIAL CERTIFICATE
4. MOTION TO WITHDRAW COUNSEL
5. _____

By United States First Class Mail, to the following addresses:

1. NYE COUNTY CLERK'S OFFICE
2. _____
- 1520 E. BASIN AVE #105
- PANORAMA NV 89060
3. _____
4. _____

Dated this 26 day of MAY, 2020.

Respectfully submitted,

[Signature]
Signature

CRYSTAL Y. AUSTIN
Printed Name

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DECLARATION UNDER PENALTY OF PERJURY

I, the undersigned, understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury.

I declare, under the penalty of perjury under the laws of the United States of America, that the above and/or foregoing information is accurate, correct and true to the best of my knowledge, executed within the terms of ¹NRS 171.102 and ²NRS 208.165. See ³28 U.S.C. 1746 and 18 U.S.C. 1621.

Dated this 26 day of MAY, 2020

[Signature]
Signature

93718
Nevada Department of Corrections ID #

¹ NRS 171.102
² NRS 208.165
³ 28 U.S.C.
§1746. Unsworn declarations under penalty of perjury
18 U.S.C.
§ 1621. Perjury generally