

IN THE SUPREME COURT OF THE STATE OF NEVADA

RYAN WILLIAMS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Appeal from a Judgment of Conviction in Case Number CR20-0630B
The Second Judicial District Court of the State of Nevada
The Honorable Kathleen M. Drakulich, District Judge

JOINT APPENDIX VOLUME ONE

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Washoe County Public Defender

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SPD 20-001640

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9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No.: CR20-0630

15 v.

Dept. No.: D01

16 RYAN WILLIAMS (B)
17 and
18 ADRIANNA MARIE NORMAN (A),

19 Defendants.

20 INFORMATION

21 CHRISTOPHER J. HICKS, District Attorney within and for the
22 County of Washoe, State of Nevada, in the name and by the authority
23 of the State of Nevada, informs the above entitled Court that, the
24 defendants above-named, ADRIANNA MARIE NORMAN and RYAN WILLIAMS, have
25 committed the crime(s) of:

26 COUNT I. ROBBERY WITH THE USE OF A DEADLY WEAPON, a
violation of NRS 200.380, NRS 193.165, and NRS 195.020, a category B
felony, (50138) in the manner following:

That the said defendants, RYAN WILLIAMS and ADRIANNA MARIE
NORMAN, on or about February 22, 2020, within the County of Washoe,

1 State of Nevada, did willfully and unlawfully take personal property,
2 to wit: a gaming cash-out voucher and/or a wallet, from the person
3 and/or in the presence of STEVEN SIMS, at Bob & Lucy's located at
4 1515 Oddie Boulevard, Sparks, Washoe County, Nevada, against his
5 will, and by means of force or violence or fear of immediate or
6 future injury to his person, and with the use of a deadly weapon,
7 which was a silver-colored handgun, which the said defendants
8 displayed and/or brandished to STEVEN SIMS during the offense; or

9 The said defendants RYAN WILLIAMS and ADRIANNA MARIE NORMAN
10 did willfully and unlawfully aid and abet each other and act as
11 conspirators with each other in committing the aforementioned acts, in
12 that the defendants did directly or indirectly counsel, encourage,
13 induce, and conspire and agree with each other to rob, coerce, and/or
14 kidnap STEVEN SIMS, and in furtherance thereof, the defendants,
15 encouraging each other by their presence and concerted action,
16 approached SIMS where he was gambling inside Bob & Lucy's and ADRIANNA
17 MARIE NORMAN did display her handgun to SIMS in order to facilitate
18 the robbery while confronting SIMS about money or value allegedly
19 owed to NORMAN by SIMS, and defendant WILLIAMS menaced SIMS and the
20 the defendants ordered SIMS to leave with them, and thereafter
21 defendant WILLIAMS cashed out the gaming machine SIMS was playing and
22 took SIMS' cash-out ticket reflecting the value of SIMS' money on the
23 machine.

24 ///

25 ///

26 ///

1 COUNT II. ATTEMPTED ROBBERY WITH THE USE OF A DEADLY
2 WEAPON, a violation of NRS 193.330, being an attempt to violate NRS
3 200.380, NRS 193.165, and NRS 195.020, a category B felony, (50145)
4 in the manner following:

5 That the said defendants, RYAN WILLIAMS and ADRIANNA MARIE
6 NORMAN, on or about February 22, 2020, within the County of Washoe,
7 State of Nevada, did willfully and unlawfully attempt to take
8 personal property, to wit: money, from the person and/or in the
9 presence of STEVEN SIMS, at Bob & Lucy's located at 1515 Oddie
10 Boulevard, Sparks, Washoe County, Nevada, against his will, and by
11 means of force or violence or fear of immediate or future injury to
12 his person, and with the use of a deadly weapon, which was a silver-
13 colored handgun that defendant NORMAN displayed and/or brandished to
14 STEVEN SIMS; or

15 The said defendants RYAN WILLIAMS and ADRIANNA MARIE NORMAN
16 did willfully and unlawfully aid and abet each other and act as
17 conspirators with each other in committing the aforementioned acts, in
18 that the defendants did directly or indirectly counsel, encourage,
19 induce, and conspire and agree with each other to rob, coerce, and/or
20 kidnap STEVEN SIMS, and in furtherance thereof, the defendants,
21 encouraging each other by their presence and concerted action,
22 approached SIMS where he was gambling inside Bob & Lucy's and ADRIANNA
23 MARIE NORMAN did display her handgun to SIMS while confronting SIMS
24 about property allegedly taken by SIMS in the past, and then the
25 defendants intimidated and ordered SIMS to leave with them, and while
26 on the way to the door of the casino, SIMS did offer to obtain money

1 and provide it to the defendants in order to try to avoid leaving
2 with them, which the defendants accepted as a condition of allowing
3 SIMS to remain in the casino.

4 COUNT III. BURGLARY WITH POSSESSION OF A FIREARM OR DEADLY
5 WEAPON, a violation of NRS 205.060.1-.2 and NRS 205.060.4, a category B
6 felony, (50426) in the manner following:

7 That the said defendants, RYAN WILLIAMS and ADRIANNA MARIE
8 NORMAN, on or about February 22, 2020, within the County of Washoe,
9 State of Nevada, acting in concert as conspirators and aiders and
10 abettors as alleged in Count I (which is incorporated by reference
11 herein), did willfully enter a certain business, which was Bob &
12 Lucy's located at 1515 Oddie Boulevard, Sparks, Washoe County,
13 Nevada, with the intent then and there to commit robbery, larceny,
14 assault, battery, kidnapping, and/or felony coercion therein, and the
15 defendants did each have in their possession, or did each gain
16 possession of, a firearm or deadly weapon at any time during the
17 commission of the crime or at any time before leaving the structure,
18 in that defendant NORMAN was armed with a silver-colored handgun.

19 COUNT IV. MURDER WITH USE OF A DEADLY WEAPON, a violation of
20 NRS 200.010, 200.030, and NRS 195.020, a category A felony, (50001) in
21 the manner following:

22 That the said defendants, RYAN WILLIAMS and ADRIANNA MARIE
23 NORMAN, on or about February 22, 2020, within the County of Washoe,
24 State of Nevada, did willfully, unlawfully, and with malice
25 aforethought, deliberation, and premeditation, kill and murder JACOB
26 EDWARDS, a human being, by means of defendant WILLIAMS driving a

1 Chevrolet Silverado truck, which under the circumstances in which it
2 was used was readily capable of causing substantial bodily harm or
3 death and thus constituted a deadly weapon, head-on into the vehicle
4 driven by JACOB EDWARDS while defendant WILLIAMS was fleeing from the
5 police and driving the wrong way against traffic at a high rate of
6 speed on Interstate 80 in Sparks in Washoe County, Nevada, thereby
7 inflicting mortal injuries upon JACOB EDWARDS from which he died on
8 or about February 22, 2020; or

9 The defendants did willfully and unlawfully kill JACOB
10 EDWARDS in the perpetration or attempted perpetration of a burglary,
11 robbery, and/or kidnapping, in that defendants RYAN WILLIAMS and
12 ADRIANNA MARIE NORMAN, acting in concert as conspirators and aiders
13 and abettors as alleged in Counts I, II and III (which are
14 incorporated by reference herein), entered Bob & Lucy's located at
15 1515 Oddie Boulevard in Sparks, in order to commit assault and/or
16 battery upon STEVEN SIMS, to commit larceny from and robbery upon
17 SIMS, to kidnap Simms, and/or to commit felony coercion upon SIMS,
18 and the defendants thereafter approached SIMS and displayed a silver-
19 colored handgun to SIMS in an attempt to rob him and force him to
20 leave the establishment against his will under threat of physical
21 force, did steal from him and rob him by taking his cash-out ticket,
22 did detain and threaten him to leave the establishment with the
23 defendants, which threat SIMS began complying with, and when the
24 police responded to the area of Bob & Lucy's while defendant NORMAN
25 was still inside the business conducting SIMS and defendant WILLIAMS
26 was waiting outside for them in a white Chevrolet Silverado truck,

1 defendant RYAN WILLIAMS did flee from the police in the truck, and
2 while being pursued by the police and in an effort to avoid or
3 prevent being apprehended and lawfully arrested by a peace officer
4 for the aforementioned crimes attempted and committed by NORMAN and
5 WILLIAMS at Bob and Lucy's, defendant Williams did drive the wrong
6 way on Interstate 80 and did kill JACOB EDWARDS by crashing his truck
7 head-on into the vehicle being driven by EDWARDS, thereby using his
8 truck as a deadly weapon and inflicting mortal injuries upon EDWARDS
9 from which he died on or about February 22, 2020.

10 COUNT V. CAUSING THE DEATH OF ANOTHER BY DRIVING A VEHICLE
11 WHILE UNDER THE INFLUENCE OF METHAMPHETAMINE, a violation of NRS
12 484C.110 and 484C.430, a category B felony, (53908) in the manner
13 following:

14 That the said defendant, RYAN WILLIAMS, on or about
15 February 22, 2020, within the County of Washoe, State of Nevada, did
16 unlawfully drive or be in actual physical control of a vehicle on a
17 highway or on premises to which the public has access while under the
18 influence of a controlled substance and/or with an amount of
19 methamphetamine in his blood that was equal to or greater than 100
20 nanograms per milliliter, and while driving or in actual physical
21 control of the vehicle, the defendant did any act, or neglected any
22 duty imposed by law, that proximately caused the death of or
23 substantial bodily harm to another person;

24 In that the defendant, while under the influence of
25 methamphetamine and/or with an amount of methamphetamine in his blood
26 that was in excess of 500 nanograms per milliliter, did drive a white

1 Chevrolet truck on Interstate 80 near Victorian Avenue and McCarran
2 Boulevard in Washoe County, Nevada, entering Interstate 80 driving
3 eastbound against oncoming traffic in the westbound travel lanes in
4 order to escape the police, and, failing to exercise due care,
5 continued to drive at a high rate of speed against oncoming freeway
6 traffic, and thereby did crash his truck head-on into the vehicle
7 being driven in the correct direction by JACOB EDWARDS, which
8 proximately caused EDWARDS' death.

9 COUNT VI. ELUDING OR FLIGHT FROM A POLICE OFFICER RESULTING
10 IN DEATH, a violation of NRS 484B.550, a category B felony, (55674) in
11 the manner following:

12 That the said defendant, RYAN WILLIAMS, on or about
13 February 22, 2020, within the County of Washoe, State of Nevada,
14 while driving a motor vehicle on a highway or premises to which the
15 public has access, did willfully fail or refuse to bring the vehicle
16 to a stop, or did otherwise flee or attempt to elude a peace officer
17 in a readily identifiable vehicle, when given a signal, by flashing
18 red lamp and siren, to bring the vehicle to a stop, and while doing
19 so did operate the vehicle in a manner which endangered or was likely
20 to endanger any other person or the property of any other person and
21 proximately caused death or bodily harm to another person;

22 In that the defendant did flee from the police beginning
23 Bob & Lucy's located at 1515 Oddie Boulevard in Sparks, driving a
24 white Chevrolet truck, and while being pursued by multiple police
25 officers in marked police vehicles, including Sparks Police Officers
26 Nicholas Chambers, Angel Guillen, Jason Stone, Jay Egami, Brian

1 Sullivan, and Daniel Snow, each of whom were signaling the defendant
2 to stop by flashing red lamp and siren, the defendant did fail and
3 refuse to stop his truck, and did flee and attempt to elude the
4 officers while driving at high rates of speed (including driving in
5 excess of 60 miles per hour in a posted 25 miles-per-hour zone and in
6 a posted 30 miles-per-hour zone, and in excess of 70 miles per hour
7 in a posted 45 miles-per-hour zone) and disregarding traffic signals
8 (including running a red lights at Rock Boulevard and Victorian
9 Avenue, at Rock Boulevard and I-80, and at Glendale Avenue and
10 McCarran Boulevard; and running a stop signs at 15th Street and
11 Pittman Avenue) through areas of Sparks including Rock Boulevard,
12 Victorian Avenue, Hymer Avenue, South 15th Street, Glendale Avenue,
13 McCarran Boulevard, Kleppe Lane, East Lincoln Way, and Stanford
14 Street, and while still being pursued by police, the defendant
15 continued his flight by entering Interstate 80 and driving eastbound
16 in the westbound travel lanes at high rates of speed against oncoming
17 traffic, and thereby did crash his truck head-on into the vehicle
18 being driven in the correct direction by JACOB EDWARDS, which
19 proximately caused EDWARDS' death.

20 COUNT VII. RECKLESS DRIVING, a violation of 484B.653(1)(a)
21 and 484B.653(9), a category B felony, (53896) in the manner following:

22 That the said defendant, RYAN WILLIAMS, on or about
23 February 22, 2020, within the County of Washoe, State of Nevada, did
24 unlawfully do any act or neglect any duty imposed by law while
25 driving a vehicle on a highway or on premises to which the public has
26 access in willful or wanton disregard of the safety of persons or

1 property, and such act or neglect of duty did proximately cause the
2 death or substantial bodily harm to another person,

3 In that the defendant did drive a white Chevrolet truck on
4 Interstate 80 near Victorian Avenue and McCarran Boulevard in Washoe
5 County, Nevada, entering Interstate 80 driving eastbound against
6 oncoming traffic in the westbound travel lanes, and, failing to
7 exercise due care and failing to drive at a rate of speed reasonable
8 for the traffic and highway conditions and so as to avoid endangering
9 the life, limb, or property of any person, continued to drive at a
10 high rate of speed against oncoming freeway traffic, and thereby did
11 crash his truck head-on into the vehicle being driven in the correct
12 direction by JACOB EDWARDS, which proximately caused EDWARDS' death.

13
14 All of which is contrary to the form of the Statute in such
15 case made and provided, and against the peace and dignity of the
16 State of Nevada.

17 CHRISTOPHER J. HICKS
18 District Attorney
19 Washoe County, Nevada

20 By: /s/ Luke Prengaman
21 LUKE J. PRENGAMAN
22 6094
23 CHIEF DEPUTY District Attorney
24
25
26

1 The following are the names of such witnesses as are known
2 to me at the time of the filing of the within Information:

3 LINDA BROWN
4 NATHAN COATS
5 KEVIN L. DACH
6 ADAM HARRIS
7 KIMBERLY HODGE
8 DANNY R. JAMES
9 PATRICK MCNEELY
10 BRYAN ORR
11 JOHN PATTON
12 MONICA SIEWERTSEN
13 DANIEL SNOW
14 RACHELLE (SPEAR) WOODARD
15 JOSE ZENDEJAS
16 STEVEN M SIMS
17 RACHEL ARULANANTHAM
18 EDIK DOMINGUEZ
19 NICHOLAS CHAMBERS
20 ANGEL GUILLEN
21 BRITT BROWN
22 JASON STONE
23 JAY EGAMI
24 BRIAN SULLIVAN
25 ROBERT CANTERBURY
26 MATTHEW GALLAGHER
RANDALL RAY WILLIAMS
CHRISTOPHER BROCE
CHRISTOPHER BALLESTEROS
JOHN "JJ" STALLINGS
MAUREEN DYETTE
PETER LOESCHNER
ALEC ALLEN
DANIEL ROBERT MORIARTY
BLAKE MILLER
MONICA TEVES
MARC PETERSON
MAX DAVIS
CUSTODIAN OF RECORDS - REMSA
RENOWN HEALTH
SPARKS FIRE DEPARTMENT
WASHOE COUNTY VITAL STATISTICS
RENOWN HEALTH
JAMES DAVIS
GINA GOMEZ

1 SAYER DION-SMYCZEK
2 AIMEE CHESEBROUGH
3 KEITH KILLIAN
4 JACOB EDWARDS
5 DAVID COLE
6 CLIFF WEBSTER
7 MELISSA PAREDES
8 DIANNE WILLIAMS
9 MARK EDWARDS
10 AARON MARTINI
11 GREGORY WOOLSEY
12 ROBERT MEAD
13 MICHELLE RAMIREZ
14 MIKE SLATTERY
15 JAMES RHOADES
16 MATT CALDWELL
17 MATT ALDER
18 JARROD STEWART
19 DR. HENRY A MCNETT
20 BAYLEE BELZ

21
22 AFFIRMATION PURSUANT TO NRS 239B.030

23 The party executing this document hereby affirms that this
24 document submitted for recording does not contain the social security
25 number of any person or persons pursuant to NRS 239B.030.

26 CHRISTOPHER J. HICKS
District Attorney
Washoe County, Nevada

By: /s/ Luke Prengaman
LUKE J. PRENGAMAN
6094
CHIEF DEPUTY District Attorney

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11 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
12
13 IN AND FOR THE COUNTY OF WASHOE

14 THE STATE OF NEVADA,
15
16 Plaintiff,

17 vs.

CASE NO. CR20-0630B

18 RYAN WILLIAMS,
19
20 Defendant.

DEPT. NO. 1

21
22 **MOTION IN LIMINE RE: OTHER ACT EVIDENCE**

23 The Defendant, Ryan Williams, by and through counsel, Washoe County
24 Public Defender John L. Arrascada and Chief Deputy Public Defenders Evelyn
25 Grosenick and Katheryn Hickman, hereby moves this Court for an Order precluding
26 any use or reference at trial to alleged other bad acts unless the Court first rules
them admissible pursuant to Nevada authority. This motion is made and based upon
the United States and Nevada Constitutions, Nevada statutory and case law, the
attached Points and Authorities, and any argument or evidence received at a
hearing on this motion.

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1 (3) the probative value of the evidence is not substantially outweighed by the danger
2 of unfair prejudice.” *Bigpond v. State*, 128 Nev. 108, 116-17 (2012).

3 The State may try to introduce evidence of other acts allegedly committed by
4 Mr. Williams. If the State intends to introduce evidence of other crimes, wrongs, or
5 acts, it must request a hearing outside the presence of the jury so that the Court can
6 rule on the admissibility of such evidence.

7 Accordingly, Mr. Williams requests that the Court issue a ruling in limine
8 requiring the State to seek a hearing outside the presence of the jury (and preferably
9 before trial commences) so that the Court has an opportunity to rule on the
10 admissibility of such evidence.

11 **AFFIRMATION PURSUANT TO NRS 239B.030**

12 The undersigned does hereby affirm that the preceding document does not
13 contain the social security number of any person.

14 DATED this 9th day of November, 2020.

15 JOHN L. ARRASCADA
16 Washoe County Public Defender

17 /s/ EVELYN GROSENICK
18 EVELYN GROSENICK
19 Chief Deputy Public Defender

20 /s/ KATHERYN HICKMAN
21 KATHERYN HICKMAN
22 Chief Deputy Public Defender
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Deputy District Attorney
Via ECF System

DATED this 9th day of November, 2020.

/s/ LINDA GRAY
LINDA GRAY

1 CODE 2245
2 Christopher J. Hicks
3 #7747
4 P.O. Box 11130
5 Reno, NV 89520
6 (775) 328-3200
7 Attorney for State of Nevada

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE.

12 * * *

13 THE STATE OF NEVADA,
14 Plaintiff,

Case No.: CR20-0630B

15 v.

Dept. No.: 1

16 RYAN WILLIAMS (B)
17 AND
18 ADRIANNA MARIE NORMAN (A),
19 Defendants.
20

21 REQUEST FOR HEARING RE: ADMISSION OF OTHER ACTS EVIDENCE
22 REGARDING DEFENDANT WILLIAMS' PRIOR HANDGUN POSSESSION

23 Comes now the State of Nevada, by and through Luke J. Prengaman, Chief Deputy
24 District Attorney, and hereby requests a hearing outside the jury's presence regarding the
25 admission of evidence of Defendant Williams' prior handgun possession. This Motion is
26 based upon the attached Memorandum of Points and Authorities.

27 DATED this 19th day of November, 2020.

28 Christopher J. Hicks
Washoe County District Attorney

By /s/ LUKE PRENGAMAN
Luke Prengaman
6094
Chief Deputy District Attorney

POINTS AND AUTHORITIES

I. RELEVANT LAW REGARDING OTHER ACTS EVIDENCE

A. Evidence of a defendant's other crimes, wrongs or acts is admissible if relevant to prove any matter other than his propensity to act in conformity therewith.

In general, "[e]vidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith."¹ Evidence of a person's other crimes, wrongs or acts is admissible, however, if relevant to prove a matter other than the person's propensity to act "in conformity therewith."² Accordingly, such evidence may be admissible for purposes such as, among other things, proof of motive, opportunity, intent, preparation or plan, knowledge, identity, or absence of mistake or accident."³ Prior to admission of such evidence, the trial court must conduct a hearing on the record and determine that "(1) the prior bad act is relevant to the crime charged and for a purpose other than proving the defendant's propensity, (2) the act is proven by clear and convincing evidence, and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice."⁴

II. NON-PROPENSITY THEORY OF ADMISSIBILITY FOR EVIDENCE REGARDING WILLIAMS' PRIOR GUN POSSESSION

At the Preliminary Examination, Steven Sims testified that, prior to seeing Williams at Bob and Lucy's on February 22, he had met Williams on one occasion, about a month earlier.⁵ Norman was also present, and they spent much of the day together with Williams. During the encounter, while Sims was in a car with Williams, Williams removed a handgun from his person and placed it in Sims' view on the console. Sims thus became

¹ NRS 48.045(2).

² Id. See also Bigpond v. State, 128 Nev. Adv. Op. 10, 270 P.3d 1244, 1249 (2012) ("evidence of 'other crimes, wrongs or acts' may be admitted for any relevant nonpropensity purpose").

³ NRS 48.045(2).

⁴ Bigpond, 128 Nev. Adv. Op. 10, 270 P.3d at 1250 ("evidence of 'other crimes, wrongs or acts' may be admitted for any relevant nonpropensity purpose"). "[V]irtually all evidence submitted by the prosecution is prejudicial to the defendant; the relevant inquiry is whether any unfair prejudice from the evidence substantially outweighs its probative value." United States v. Hattaway, 740 F.2d 1419, 1425 (1984).

1 aware that Williams was armed, and that Williams had the gun on his person throughout
2 the day.⁶ Sims described the way Williams carried himself in regard to his possession of
3 the handgun as, “I’m the gangster guy with a gun.”⁷ When Williams approached Sims
4 inside Bob and Lucy’s and told Sims, “You know how I roll,” Sims understood this
5 reference to the one prior occasion where Sims had encountered Williams, during which
6 Williams demonstrated that he was armed and carried a firearm on his person.

7 Evidence of Williams’ obvious display of a handgun in Sims’ presence and Sims’
8 observation that Williams carried the gun upon his person throughout the day is relevant
9 for the non-propensity purpose of explaining Williams’ statement to Sims that “You know
10 how I roll.” This was a reference to Williams’ being armed, as the only occasion from
11 which Sims could know how Williams ‘rolled’ was the one day they spent together, during
12 which Williams carried a handgun on his person throughout the day and made an obvious
13 display of the fact in Sims’ presence. This reference by Williams is probative of Williams’
14 intent in entering Bob and Lucy’s and approaching Sims, and is relevant to the “by means
15 of force or violence or fear of immediate or future injury” element of Robbery and
16 Attempted Robbery.

17 **III. POTENTIAL REBUTTAL EVIDENCE REGARDING DEFENDANT WILLIAMS’** 18 **PRIOR POSSESSION OF HANDGUN**

19 At the Preliminary Examination, Williams’ counsel played the portion of the Bob and
20 Lucy’s surveillance video depicting Williams approaching Sims inside the casino while
21 questioning Sims about whether Williams could be seen on the video displaying a gun.
22 Sims testified, as he was shown the video footage, that he did not see Williams display a
23 gun.⁸ Sims stated that when Williams approached him, Williams motioned toward his
24 waist or belly area, which made Sims believe that Williams was armed with a gun.⁹ Sims
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27 ⁵ See PET 2, at pp.280-282.

28 ⁶ See PET 3, at pp.521-529; 541-557.

29 ⁷ Id. at p.542.

⁸ See PET 2, at pp.351-352.

⁹ See PET 2, at pp.353-354.

1 testified that Williams motioned to his belly area when he said, "You know how I roll."¹⁰
2 Williams' counsel questioned Sims about his statement to a police officer at Bob and
3 Lucy's shortly after Norman was taken into custody, wherein Sims stated that Williams
4 had "kinda lifted up his shirt like that and showed me the top of a gun," which Sims said
5 had a black handle.¹¹ Sims acknowledged that Williams had not lifted his shirt to display
6 a gun, an attempted to explain the inconsistency:

7 Q So when you said that to Officer Allen, that was not true. Correct?

8 A It must've been true at that time. If I said that -- if I said that, I either seen it -- I
9 seen both guns or the other gun.

10 Q I don't want you to talk to me about a different gun.

11 A Well, I'm just trying to get you inside my psyche, so you understand. It wasn't like I
12 was trying to lie to the gentleman. I'm just telling you what I remember. What I
13 remembered was a black 40 Glock, I believe it was.

14 Q Only talk to me in response to the question I ask you. Okay? On February 22nd,
15 2020, Mr. Williams, who's sitting right there, never lifted up his shirt and showed
16 you a black Glock.

17 A To be fair, it's very vague if I actually seen the handle or if I did not. I can't say
18 either way, yes, I seen it, no, I didn't. 'Cause going through the questioning with you
19 and trying to be honest and fair, I'm kinda like in between now.

20 Q If you saw it or you didn't see it.

21 A That day, yes.

22 Q So you testified to me that he just touched his belly, maybe inside his shirt, maybe
23 outside his shirt. Right?

24 A Yeah.

25 Q And then I asked you what you told Officer Allen. Right?

26 A Right.

27 Q And you're telling me you didn't mean to lie to him, but you don't know if that was
28 true. Right? A Well, the thing is, I seen it before, and so --

29 Q I don't want you to tell me if you saw it before.

A Ma'am, I can only tell you how I perceive things. So I've seen it before. So being
afraid and he padded there I didn't know what the gun looked like. So what I mean
by I'm kind of in between is, I don't know if I'm going off the recollection of me seeing
it back in December when I first met him and he had it or if it was when the incident
happened. You know what I mean?¹²

As Williams' counsel continued to press Sims to reconcile what he saw on the video
footage with his prior statement, Sims tried to explain that his prior experience with
Williams was a factor in his belief that Williams was motioning that he had a gun:

Q But as you sit here today, you don't remember if that actually happened. Correct?

¹⁰ Id. at pp.375; 382.

¹¹ Id. at pp.354-355.

¹² PET 2, at pp.355-357.

1 A I know -- I know what actually happened. What I'm showing the officer did not
2 happen. He motioned towards his waist. I did like this, and like I said, as far as my
3 psyche -- my psyche, not his -- I knew that he had the gun. So -- I mean, I've seen it
before.

4 Q I'm going to ask you to stop telling me what you've seen before, and I'm going to
ask the Court to disregard that.

5 THE COURT: The Court will disregard it.

6 BY MS. HICKMAN:

7 Q I want to know -- you said you know what happened. Right?

8 A Between right now and what actually happened at the machine. Seeing it right
now is what I'm saying.

9 Q Okay. What happened?

10 A Right now, it's my adrenalin and I'm saying that he lifted it when he didn't. He
more or less just kind of -- like when I stood up and gave an example, kind of
nudged at it.

11 Q He just patted his stomach.

12 A Yes, ma'am.

13 Q So he didn't show you anything.

14 A No, ma'am.

15 Q So you did not see a firearm.

16 A No, ma'am.

17 Q You did not see a knife.

18 A No, ma'am.

19 Q So you assumed there was one there. Correct?

20 A From my experience, it was enough that -- there was something there, but I didn't
see what it was.¹³

21 Williams' counsel pursued a similar line of questioning regarding a similar statement
22 Sims made during his interview at the Sparks Police Department with Detective Adam
23 Harris.¹⁴

24 Evidence of Sims knowledge of Williams being armed on the prior occasion when they
25 met, in conjunction with Williams' reference to his being armed via the statement, "You
26 know how I roll," is relevant to explain Sims' belief that Williams was armed with the
27 same gun Sims had seen on the prior occasion when they were together. The State does
28 not intend to introduce this evidence in the State's presentation of evidence in its case-in-
chief. However, if counsel for either defendant examines Sims regarding his prior
statements to the police about Williams being armed, as they did at the Preliminary

29 ¹³ PET 2, at pp.360-362.

¹⁴ Id. at pp.385-386.

1 Examination, the State will seek a hearing outside the jury's presence and seek admission
2 of evidence of Williams' possession of the gun during the prior encounter for the additional
3 purpose of explaining Sims' statements to the police regarding Williams' possession of a
4 handgun.

5 III. CONCLUSION

6 The State seeks a hearing outside the jury's presence to address the admissibility of
7 evidence of Williams' possession and display of a handgun on the prior occasion when he,
8 Sims, and Norman spent the day together. This evidence is relevant for the non-
9 propensity purpose of explaining the context of Williams' statement to Sims that "You
10 know how I roll," which in turn is also probative of Williams' intent in entering Bob and
11 Lucy's and approaching Sims, and relevant to the "by means of force or violence or fear of
12 immediate or future injury" element of Robbery and Attempted Robbery.

13 AFFIRMATION PURSUANT TO NRS 239B.030

14 The undersigned does hereby affirm that the preceding document does not contain the
15 social security number of any person.

16 DATED this 19th day of November, 2020.

17 Christopher J. Hicks
18 Washoe County District Attorney

19 By /s/ LUKE PRENGAMAN

20 Luke Prengaman

21 6094

22 Chief Deputy District Attorney
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MARC PICKER, ESQ.

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9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE.

12 * * *

13 THE STATE OF NEVADA,
14 Plaintiff,

Case No.: CR20-0630B

15 v.

Dept. No.: 1

16 RYAN WILLIAMS (B)
17 AND
18 ADRIANNA MARIE NORMAN (A),

19 Defendants.
20

21 OPPOSITION TO DEFENDANT'S "MOTION IN LIMINE RE: OTHER ACT EVIDENCE"

22 Comes now the State of Nevada, by and through Luke J. Prengaman, Chief Deputy
23 District Attorney, and hereby opposes the defendant's "Motion in Limine re: Other Act
24 Evidence." This Opposition is based upon the attached Memorandum of Points and
25 Authorities.
26

27 DATED this 21st day of November, 2020.

28 Christopher J. Hicks
Washoe County District Attorney

By /s/ LUKE PRENGAMAN
Luke Prengaman
6094
Chief Deputy District Attorney

POINTS AND AUTHORITIES

I. THE DEFENDANT'S MOTION

The Defendant's Motion is not directed at any particular issue in the case; it fails to reference any specific evidence. The Motion is a general "order the State to follow the law" type of motion. It therefore serves no functional purpose and should be denied. However, if the Court is inclined to enter an order to follow the law, the order should be directed at all parties, and bind the defense to exactly the same extent as the State, since the law regarding the admissibility of other-acts evidence applies alike to the defense and the State.

II. ARGUMENT

A. The rules regarding character evidence and other crimes, wrongs or acts applies to the Defendant as well as the State, and to the examinations of all witnesses who testify in the case.

Evidence of other crimes, wrongs, or acts is generally inadmissible to prove the bad character of any person or any person's propensity to act in conformity with a character trait.¹ This prohibition on the use of character evidence applies to both parties – the defense as well as the State.²

Although other-act evidence may be admissible if relevant to prove a fact unrelated to character or propensity, questions on the subject must not be pursued without the prior approval of the trial judge. "Prior to admitting evidence of a prior bad act pursuant to NRS 48.045(2), the district court is required to conduct a hearing on the record outside the presence of the jury and determine that: (1) the incident is relevant to the crime charged;

¹ See NRS 48.045(2) ("Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident"); Mortensen v. State, 115 Nev. 273, 281, 986 P.2d 1105, 1110 (1999).

² See Mortensen, 115 Nev. at 279-281, 986 P.2d at 1109-1110 (Rejecting the defendant's argument that the prohibition on use of prior bad acts applies only to the accused and holding that district court did not err in denying defendant's attempted introduction of prior bad acts of the State's chief witness; the general prohibition on the admission of evidence of other crimes, wrongs or acts under NRS 48.045(2) applies to the prior acts of all witnesses, not just to those of the accused).

1 (2) the act is proven by clear and convincing evidence; and (3) the probative value of the
2 evidence is not substantially outweighed by the danger of unfair prejudice.”³ This
3 standard applies to a criminal defendant seeking to introduce other-act evidence of a
4 witness just as it applies to the State.⁴ As the Nevada Supreme Court has specifically
5 recognized, this means that a criminal defendant who fails to make the requisite showing
6 must be precluded from trying to use the evidence at trial.⁵ The Nevada Supreme Court
7 has also held that enforcing 48.045 against a criminal defendant does not offend the Six
8 Amendment right to confrontation or due process.⁶ Any defense claim of entitlement to a
9 more lenient or ‘double-standard’ application of 48.045 would therefore lack merit.⁷

10 Accordingly, should either party to a criminal case wish to elicit trial testimony as to
11 other crimes, wrongs, or acts of any witness, the party must seek and receive judicial
12 approval before any reference to such material is made in the jury’s presence.

13 **B. The Defendant’s Motion should be denied because it fails to address any issue or**
14 **evidence in the case.**

15 The Defendant’s Motion is a general “order the State to follow the law” type of motion.
16 It is not directed at any particular issue in the case, and it fails to reference any specific
17 evidence. The relief sought from the Court is a general order that the State should
18 generally comply with NRS 48.045. Because it addresses no specific issue or evidence in
19 the case, the Motion serves no functional purpose and should be denied.

20 However, should the Court be inclined to enter a general order for compliance with
21 48.045, such an order should be directed at all parties, and bind the defense to exactly the
22 same extent as the State. This is warranted since NRS 48.045 and Nevada’s case law

23 ³ McNelson v. State, 115 Nev. 396, 405-406, 990 P.2d 1263, 1269- 1270 (1999).

24 ⁴ See Leonard v. State, 114 Nev. 1196, 1206-1207, 969 P.2d 288, 294- 295 (1998) (District
25 Court did not err in excluding, after Petrocelli hearing, prior bad act evidence offered by defense
26 against prosecution witness where defense “failed to show that this evidence was relevant for a
27 proper purpose or that its probative value was not substantially outweighed by its unfair
prejudicial effect”).

28 ⁵ Id.

29 ⁶ See Mortensen, 115 Nev. at 281 n.6, 986 P.2d at 1110 n.6.

⁷ Id.

1 regarding the use and admission of other-acts evidence apply to all witnesses in the case,
2 and hence apply alike to the defense as well as the State.

3 AFFIRMATION PURSUANT TO NRS 239B.030

4 The undersigned does hereby affirm that the preceding document does not contain the
5 social security number of any person.

6 DATED this 21st day of November, 2020.

7 Christopher J. Hicks
8 Washoe County District Attorney

9 By /s/ LUKE PRENGAMAN

10 Luke Prengaman

11 6094

12 Chief Deputy District Attorney
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KATHRYN HICKMAN, ESQ.
EVELYN GROSENICK, ESQ.

/s/ LUKE PRENGAMAN
LUKE PRENGAMAN

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10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11 IN AND FOR THE COUNTY OF WASHOE
12

13 THE STATE OF NEVADA,
14 Plaintiff,

15 vs.

CASE NO. CR20-0630B

16 RYAN WILLIAMS,

DEPT. NO. 1

17 Defendant.
18

19 REPLY IN SUPPORT OF MOTION IN LIMINE RE: OTHER ACT
20 EVIDENCE
21

22 The Defendant, Ryan Williams, by and through counsel, Washoe County
23 Public Defender John L. Arrascada and Chief Deputy Public Defenders Evelyn
24 Grosenick and Katheryn Hickman, hereby files this *Reply in Support of Defendant's*
25 *Motion in Limine Re: Other Act Evidence*, filed on November 9, 2020. The State filed
26 an *Opposition* on November 21, 2020.

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/s/ KATE HICKMAN
KATE HICKMAN
Chief Deputy Public Defender

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Deputy District Attorney
Via ECF System

DATED this 30th day of November, 2020.

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IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

Case No.: CR20-0630B

vs.

Dept. No.: 1

RYAN WILLIAMS,

Defendant.

ORDER GRANTING MOTION IN LIMINE RE: OTHER ACT EVIDENCE

Currently before the Court is Defendant Ryan Williams' ("Mr. Williams") *Motion in Limine re: Other Act Evidence* ("Motion") filed November 9, 2020. The State filed its *Opposition to Defendant's "Motion in Limine re: Other Act Evidence"* ("Opposition") on November 21, 2020. Mr. Williams' filed his *Reply in Support of Motion in Limine re: Other Act Evidence* ("Reply") on November 30, 2020, and submitted the matter for this Court's consideration on the same day.

I. Relevant Legal Authority

Pursuant to Nevada law, evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." NRS 48.015. Relevant evidence is admissible, unless otherwise excluded by the Constitution or Nevada law. NRS 48.025(1); *see also* NRS 48.025(1) ("Evidence which is not relevant is not admissible.").

///

1 NRS 48.045(2) details that “[e]vidence of other crimes, wrongs or acts is not admissible to
2 prove the character of a person in order to show that the person acted in conformity therewith.”
3 However, such evidence may “be admissible for other purposes, such as proof of motive, opportunity,
4 intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” NRS 48.045(2).
5 While “evidence of other crimes, wrongs, or acts may be admitted for any relevant nonpropensity
6 purpose,” a “presumption of inadmissibility attaches to all prior bad act evidence.” *Bigpond v. State*,
7 128 Nev. 108, 116, 270 P.3d 1244, 1248 (2012). Regarding the presumption of inadmissibility, the
8 Nevada Supreme Court requires the proponent of the evidence to

9 request a hearing and establish that: (1) the prior bad act is relevant to the crime
10 charged and for a purpose other than proving the defendant's propensity, (2) the
11 act is proven by clear and convincing evidence, and (3) the probative value of
the evidence is not substantially outweighed by the danger of unfair prejudice.

12 *Id.* at 117, 270 P.3d at 1250.

13 II. Analysis

14 In the Motion, Mr. Williams argues that if the State seeks to introduce evidence of his other
15 crimes, wrongs, or acts, the State must first request a hearing outside the presence of the jury for this
16 Court to rule on the admissibility of such evidence. Mot. at 3:3-6. Mr. Williams then requests that
17 this Court issue a ruling requiring the State to seek a hearing outside the presence of the jury,
18 preferably before trial commences, so that this Court can rule on the evidence’s admissibility.

19 The State responds that Nevada law requires either party to a criminal case that seeks to elicit
20 trial testimony as to other crimes, wrongs, or acts of any witness to seek and receive judicial approval
21 prior to any reference of such material before the jury. Opp’n at 2:11-3:12 (citing *Mortensen v. State*,
22 115 Nev. 273, 279-80, 986 P.2d 1105, 1109-10 (1999) (rejecting the argument that NRS 48.045(2)
23 only applies to an accused and not to a witness based on the plain language of the statute)).
24 Furthermore, the State contends that the Motion should be denied because it does not address a
25 specific issue or evidence; however, the State continues that if this Court elects to enter an order
26 regarding compliance with NRS 48.045(2), then the order should apply to all witnesses of both parties
27 in this case—not just to Mr. Williams. *Id.* at 3:13-4:2.

28 ///

1 Mr. Williams responds that the Motion seeks to preserve the issue and prompt the State to
2 seek a hearing prior to introducing other act evidence at trial—as the State did in its *Request for*
3 *Hearing Re: Admission of Other Acts Evidence Regarding the Defendants* (“Request”), filed
4 November 18, 2020. Reply at 2:5-13. And that Mr. Williams renews its request for notice and a
5 hearing on the admissibility of any other act evidence that the State intends to introduce at trial outside
6 the scope of the State’s Request. *Id.* at 2:14-17.

7 Having reviewed the pleadings on file, and in consideration of the operative law, this Court
8 finds good cause to grant the Motion. While this Court recognizes the preemptive nature of the
9 Motion, this Court finds good cause to advise both parties as to their obligations under Nevada law—
10 as this Court agrees with the State that Mr. Williams is likewise bound by these provisions to the
11 extent he seeks to introduce evidence relating to other crimes, wrongs, or acts of any witness.

12 Based upon the foregoing and good cause appearing,

13 IT IS HEREBY ORDERED that Defendant Ryan Williams’ *Motion in Limine re: Other Act*
14 *Evidence* is GRANTED.

15 IT IS HEREBY FURTHER ORDERED that both parties must seek the approval of this Court
16 prior to introducing evidence of other crimes, wrongs, or acts of any witness before the jury consistent
17 with Nevada law, including NRS 48.045(2) and *Bigpond v. State*, 128 Nev. 108, 116, 270 P.3d 1244,
18 1248 (2012).

19 IT IS SO ORDERED.

20 DATED this 3rd day of December, 2020.

21 
22 KATHLEEN M. DRAKULICH
23 DISTRICT JUDGE
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1 CERTIFICATE OF SERVICE

2 CASE NO. CR20-0630B

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 3rd day of December, 2020, I
5 electronically filed the **ORDER GRANTING MOTION IN LIMINE RE: OTHER ACT**
6 **EVIDENCE** with the Clerk of the Court by using the ECF system.

7 I further certify that I transmitted a true and correct copy of the foregoing document by the
8 method(s) noted below:

9 **Electronically filed with the Clerk of the Court by using the ECF system which will send a notice**
10 **of electronic filing to the following:**

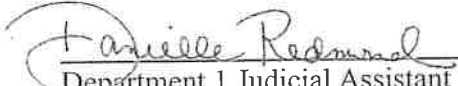
11 KATHERYN HICKMAN, ESQ. for RYAN WILLIAMS

12 LUKE PRENGAMAN, ESQ. for STATE OF NEVADA

13 EVELYN GROSENICK, ESQ. for RYAN WILLIAMS

14 DIV. OF PAROLE & PROBATION
15

16 **Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage**
17 **and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**
18 **[NONE]**

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21 Department 1 Judicial Assistant
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1 CODE 2650
2 EVELYN GROSENICK SBN 12217
3 KATHERYN HICKMAN SBN 11460
4 WASHOE COUNTY PUBLIC DEFENDER
5 350 S. CENTER STREET, 5TH FLOOR
6 RENO, NV 89501
7 (775) 337-4800
8 Attorney for Defendant

9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11 IN AND FOR THE COUNTY OF WASHOE

12 THE STATE OF NEVADA,
13 Plaintiff,

14 vs. CASE NO. CR20-0630B

15 RYAN WILLIAMS,
16 Defendant.
17

18 OPPOSITION TO STATE'S REQUEST FOR HEARING RE: ADMISSION
19 OF OTHER ACTS EVIDENCE REGARDING DEFENDANT WILLIAMS'
20 PRIOR HANDGUN POSSESSION

21 The Defendant, Ryan Williams, by and through counsel, Washoe County
22 Public Defender John L. Arrascada and Chief Deputy Public Defenders Evelyn
23 Grosenick and Katheryn Hickman, hereby opposes the State's *Request for Hearing*
24 *Re: Admission of Other Acts Evidence Regarding Defendant Williams' Prior*
25 *Handgun Possession* filed on November 18, 2020.

26 This *Opposition* is made and based upon the attached Points and Authorities,
Nevada statute and case law, federal constitutional authority, and any argument
the Court entertains on the State's *Request*.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. This Evidence Is Presumptively Inadmissible

3 Only relevant evidence is admissible. NRS 48.025. Evidence is relevant if it
4 “tend[s] logically and by inference to establish a fact material to the state.” *Berner*
5 *v. State*, 104 Nev. 695, 697 (1988) (internal quotation marks and citation omitted),
6 *holding modified on other grounds by Tinch v. State*, 113 Nev. 1170 (1997); NRS
7 48.015.

8 Even relevant evidence is “not admissible if its probative value is
9 substantially outweighed by the danger of unfair prejudice, of confusion of the issues
10 or of misleading the jury.” NRS 48.035(1). Evidence of other crimes, wrongs, or acts
11 is “heavily disfavored” and presumptively inadmissible. *See Rosky v. State*, 121 Nev.
12 184, 195 (2005) (“A presumption of inadmissibility attaches to all prior bad act
13 evidence.”). Evidence of prior bad acts is disfavored, because it “forces the accused
14 to defend himself against vague and unsubstantiated charges and may result in a
15 conviction because the jury believes the defendant to be a bad person.” *Id.* (internal
16 quotation marks and citation omitted). Because propensity evidence is inherently
17 prejudicial, its improper admission is rarely harmless. *Id.* at 198.

18 *The analysis begins with a presumption of inadmissibility. Rosky*, 121
19 Nev. at 195 (“A presumption of inadmissibility attaches to all prior bad act
20 evidence.”). In order to overcome this presumption, the State must demonstrate that
21 all three of the following criteria are met: “(1) the prior bad act is relevant to the
22 crime charged and for a purpose other than proving the defendant’s propensity, (2)
23 the act is proven by clear and convincing evidence, and (3) the probative value of the
24 evidence is not substantially outweighed by the danger of unfair prejudice.” *Bigpond*
25 *v. State*, 128 Nev. 108, 116-17 (2012).

26 ///

1 II. There Is No Non-Propensity Purpose for Seeking To Admit Evidence

2 That Mr. Williams Previously Possessed a Firearm.

3 The State seeks admission of testimony that Steven Sims observed Mr.
4 Williams to have a gun in his possession “about a month earlier.” State’s Request at
5 2:19-20.

6 First, the alleged events in this case took place on February 22, 2020. Steven
7 Sims testified at the Preliminary Hearing that he saw Mr. Williams with a gun in
8 his possession in December 2019, “before Christmas.” Prelim. Hr’g Trans., Day 2, at
9 280:24-281:6. Therefore, the evidence would be that Steven Sims saw Mr. Williams
10 with a firearm two months prior to the offense date in this case, not one month prior
11 as the State represents. *See* State’s Request at 2:19-20. Mr. Sims never testified that
12 Mr. Williams handled the gun in a menacing way or pointed it at Mr. Sims.

13 The State argues that this evidence is “relevant to the ‘by means of force or
14 violence or fear of immediate or future injury’ element of Robbery and Attempted
15 Robbery.” State’s Request at 3:14-16. To the contrary, this evidence is not relevant
16 to robbery or attempted robbery. NRS 200.380 defines robbery as “the unlawful
17 taking of personal property from the person of another, or in the person’s presence,
18 against his or her will, by means of force or violence or fear of injury, immediate or
19 future, to his or her person A taking is by means of force or fear if force or fear
20 is used to: (a) Obtain or retain possession of the property; (b) Prevent or overcome
21 resistance to the taking; or (c) Facilitate escape.”

22 The Nevada Supreme Court has specifically held that “(t)he courageousness
23 or timidity of the victim is *irrelevant*; it is the acts of the accused which constitute
24 an intimidation.” *Mangerich v. State*, 93 Nev. 683, 685 (1977) (alteration in the
25 original, emphasis added) (quoting *United States v. Alsop*, 479 F.2d 65, 67 (9th Cir.
26 1973)). “The standard is objective.” *Id.* “If the fact be attended with circumstances

1 of terror, such threatening word or gesture as in common experience is likely to
2 create an apprehension of danger and induce a man to part with his property for the
3 safety of his person, it is robbery.” *Id.* (quoting *Hayden v. State*, 91 Nev. 474, 476
4 (1975)). Furthermore, “[t]he element that distinguishes larceny from robbery is the
5 use of force.” *Martinez v. State*, 114 Nev. 746, 748 (1998). “When force is used to
6 accomplish the taking, the crime is clearly robbery.” *Id.* However, where no force or
7 actions exciting fear are used in connection with the taking or escape, it can be a
8 larceny at most. *See id.* (reversing a conviction for robbery because the evidence
9 showed that the defendant only used force to escape after abandoning the property).

10 Therefore, it is the actions of Mr. Williams in connection with the alleged
11 taking that are relevant to whether a robbery occurred. Mr. Sims’s subjective fear
12 from allegedly seeing Mr. Williams in possession of a firearm one time, two months
13 prior, is not relevant to whether Mr. Williams’s actions on February 22, 2020
14 constituted a robbery.

15 The State also argues that this evidence is admissible because it is necessary
16 to give context to Mr. Williams’s alleged statement on February 22, 2020, “You know
17 how I roll.” State’s Request at 3:7-10. The State argues that it is probative of Mr.
18 Williams’s intent when he entered Bob & Lucy’s. *Id.* at 3:13-14. However, Mr.
19 Williams made no specific reference to carrying a weapon on either February 22,
20 2020 or on a prior conversation during his alleged conversation with Steven Sims.
21 The problem for the State is that Steven Sims lied to the police when he told them
22 that Mr. Williams pulled up his shirt and showed Steven Sims a firearm in his
23 waistband on February 22, 2020. *See Prelim. Hr’g Trans.*, Day 2, at 360:5-362:11.
24 However, Steven Sims testified at the Preliminary Hearing that he told police that
25 he saw a gun on Mr. Williams’s person that morning because he was high on
26 methamphetamine. *Id.*

1 There is no non-propensity purpose for admitting this evidence. Therefore,
2 Steven Sims's allegation that he saw Mr. Williams in possession of a firearm on one
3 occasion, two months prior, is not relevant or admissible for a non-propensity
4 purpose.

5 **III. The State Must Prove This Evidence By Clear and Convincing Evidence**

6 **At an Evidentiary Hearing**

7 For the second prong of the other-act analysis, the State must prove the
8 occurrence of the prior act by clear and convincing evidence. *Bigpond*, 128 Nev. at
9 116-17. "To be clear and convincing, evidence need not possess such a degree of force
10 as to be irresistible, but there must be evidence of tangible facts from which a
11 legitimate inference . . . may be drawn." *Matter of Discipline of Colin*, 135 Nev. 325,
12 329-30 (2019). The only evidence the Court will have to determine whether the
13 State has proven by clear and convincing evidence that Steven Sims observed Mr.
14 Williams to be in possession of a firearm two months prior is Steven Sims's own
15 testimony, the credibility of which is in doubt given the other lies he has told. *See*
16 Section V, *infra*.

17 **IV. Any Probative Value Is Substantially Outweighed By the Risk of Unfair**

18 **Prejudice.**

19 The State also must show that the probative value of evidence that Mr.
20 Williams possessed a gun one time, two months prior to the offense date, is not
21 substantially outweighed by the danger of unfair prejudice. *Bigpond*, 128 Nev. at
22 117. "[E]vents remote in time from the charged incident have less relevance."
23 *Phillips v. State*, 121 Nev. 591, 601 (2005) (citation omitted). The fact that the State
24 does not intend to use this evidence in its case-in-chief is further evidence that it
25 lacks probative value. *See* State's Request at 6:24-26 ("The State does not intend to
26 introduce this evidence in the State's presentation of evidence in its case-in-chief").

1 The risk of unfair prejudice from evidence that Mr. Williams possessed a gun
2 on a prior occasion is extremely high. “There is a high likelihood that such evidence
3 will be considered as demonstrating the defendant’s propensity to possess guns in
4 general as opposed to demonstrating that he committed the specific charged
5 offense,” *United States v. Midyett*, 603 F. Supp. 2d 450, 459 (E.D.N.Y. 2009), or that
6 he will be portrayed as a “violent individual, *Phillips v. State*, 121 Nev. 591, 602
7 (2005). The Nevada Supreme Court has emphasized “that evidence of prior bad acts
8 may unduly influence the jury and result in a conviction based on the accused’s
9 propensity to commit a crime rather than on the State’s ability to prove all the
10 elements of the crime.”

11 In *Walker v. State*, the Defendant was charged with murder for shooting her
12 husband. 116 Nev. 442, 443 (2000). The District Court allowed the State to present
13 evidence that she had threatened to kill him and had pointed a gun at him on two
14 prior occasions, six and ten years prior to the murder. *Id.* The Nevada Supreme
15 Court found that the District Court erred in allowing this evidence to be presented
16 to the jury, because any probative value was substantially outweighed by the danger
17 of unfair prejudice. *Id.* at 447. The Nevada Supreme Court “reinterate[d] that
18 evidence of prior bad acts may unduly influence the jury and result in a conviction
19 based on the accused’s propensity to commit a crime rather than on the State’s
20 ability to prove all the elements of the crime.” *Id.* “The acts here, [the defendant’s]
21 twice pointing a gun at [the victim] during an argument, clearly cast [the defendant]
22 in a negative light, prejudicially suggesting that she has a dangerous and criminal
23 character.” *Id.*

24 While two months is less remote than six and ten years, the danger of unfair
25 prejudice to Mr. Williams is the same, and very high. The danger of prejudice here
26 is great, because there is little-to-no evidence of concerted action or a conspiracy

1 between Mr. Williams and Ms. Norman. *Cf. Robins v. State*, 106 Nev. 611, 618 (1990)
2 (“This court has held in similar cases that where there is overwhelming evidence of
3 guilt, such an error is harmless.”).

4 **V. This Evidence Is Not Admissible As Rebuttal Evidence.**

5 Steven Sims *lied* to the police when he told them multiple times that Mr.
6 Williams lifted up his shirt and showed Mr. Sims a gun tucked into his waistband.
7 He also told this lie under oath at the Preliminary Hearing. See Prelim. Hr’g Trans.,
8 Day 2, at 352:10-19. This is a very specific lie that was proven to be false by video
9 evidence of the encounter. Defense counsel is entitled to cross-examine Steven Sims
10 on the lies he told police, because it bears on Steven Sims’s credibility and the truth
11 of his other statements. The Defense’s right to cross-examine Steven Sims on a
12 specific lie that he told—and repeated while testifying under oath—does not open
13 the door to the State bringing in irrelevant and remote other act evidence against
14 Mr. Williams.

15 **VI. CONCLUSION**

16 Evidence that Mr. Williams had possession of a gun one time, two months
17 prior, is presumptively inadmissible. There is no non-propensity purpose for
18 introduction of this evidence. This evidence is not relevant to Steven Sims’s state of
19 mind, because the standard is an objective one. Further, the State cannot prove this
20 evidence by clear and convincing evidence. Even if the Court finds this evidence has
21 a non-propensity purpose and has been proven by clear and convincing evidence, the
22 third prong of the other-act analysis precludes its admission.

23 The risk of unfair prejudice in this situation substantially outweighs any
24 probative value. Allowing this evidence to be presented to the jury would allow the
25 jury to convict Mr. Williams of robbery with a deadly weapon and attempted robbery
26 with a deadly weapon, based not on Mr. Williams taking property with the use of a

1 deadly weapon, but based only on possession of a firearm on one occasion two
2 months prior, or because they think he is a violent person. Therefore, the risk of
3 unfair prejudice in this scenario is extreme. Lastly, the fact that the State intends
4 to use this evidence as rebuttal evidence does not remedy the deficiencies in the
5 *Bigpond* analysis.

6 Accordingly, the Defense requests that this evidence be excluded.

7 **AFFIRMATION PURSUANT TO NRS 239B.030**

8 The undersigned does hereby affirm that the preceding document does not
9 contain the social security number of any person.

10 DATED this 1st day of December, 2020.

11 JOHN L. ARRASCADA
12 Washoe County Public Defender

13 /s/ EVELYN GROSENICK
14 EVELYN GROSENICK
15 Chief Deputy Public Defender

16 /s/ KATHERYN HICKMAN
17 KATHERYN HICKMAN
18 Chief Deputy Public Defender
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Deputy District Attorney
Via ECF System

DATED this 1st day of December, 2020.

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1 Code #4185
SUNSHINE LITIGATION SERVICES
2 151 County Estates Circle
Reno, Nevada 89511
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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE
7 HONORABLE KATHLEEN DRAKULICH, DISTRICT JUDGE

8 -o0o-

9 THE STATE OF NEVADA, Case No. CR20-0630A
10 Plaintiff, CR20-0630B
11 vs. Dept No. 1
12 ADRIANNA MARIE NORMAN and
13 RYAN WILLIAMS,
Defendants.

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18 TRANSCRIPT OF PROCEEDINGS

19 PRETRIAL MOTIONS

20 JANUARY 25, 2021

21 RENO, NEVADA

22

23

24 REPORTED BY: CORRIE L. WOLDEN, NV CSR #194, RPR, CP
25 JOB NO. 714943

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A P P E A R A N C E S

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1 RENO, NEVADA, MONDAY, JANUARY 25, 2021, 9:05 A.M.

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4 THE COURT: Let the record reflect this hearing is
5 taking place on January 25th, 2021, at 9:05 a.m. It is
6 being held remotely because of the closure of the courthouse
7 at 75 Court Street in Reno, Washoe County, Nevada, due to
8 the national and local emergency caused by COVID-19.

9 All of the parties are appearing by simultaneous
10 audiovisual transmission. I am physically located in Reno,
11 Washoe County, Nevada, which is the site of today's court
12 session.

13 Other court personnel are now going to identify
14 themselves for the record and indicate what county and state
15 they are appearing from. Let's begin with Department 1's
16 Court Clerk, Mr. Adrian.

17 THE CLERK: Tom Adrian, Washoe County, Nevada.

18 THE COURT: Thanks, Mr. Adrian. The Court
19 Reporter.

20 THE COURT REPORTER: Corrie Wolden, Washoe County,
21 Nevada.

22 THE COURT: Thank you. Departments 1's Law Clerk.

23 THE LAW CLERK: Michaela Davies, Washoe County,
24 Nevada.

25 THE COURT: Thank you so much. The record should

1 also reflect that Ms. Norman and Mr. Williams appear by
2 audiovisual transmission from 911 Parr Boulevard.

3 Ms. Norman, can you see and hear me clearly?

4 DEFENDANT NORMAN: Yes, ma'am.

5 THE COURT: Okay. I can see and hear you clearly
6 as well.

7 Mr. Williams, same question for you, can you see
8 and hear me clearly?

9 DEFENDANT WILLIAMS: Yes, ma'am.

10 THE COURT: Thank you so much. The record should
11 further reflect this session of the court is open for the
12 viewing and listening to the proceedings through the
13 video/audio link found at the washoecourts.com website. If
14 anyone participating here today cannot see or hear the other
15 people participating in this hearing, please notify
16 Mr. Adrian or me.

17 Counsel, I'm now going to turn to each of you. As
18 I do, I would like you to identify yourself for the record,
19 indicate on whose behalf you are appearing today, indicate
20 what county and state you are appearing from, and then
21 advise this Court have you received the notice of
22 audiovisual hearing that was issued by this Court pursuant
23 to Nevada Supreme Court Rules Part IX pertaining to criminal
24 proceedings and pursuant to the notices issued by the Second
25 Judicial District Court in 2020 and 2021 pertaining to

1 COVID-19 and indicate if you have any objection to going
2 forward in this manner this morning.

3 Mr. Prengaman, I will begin with you.

4 MR. PRENGAMAN: Good morning, Your Honor.
5 Luke Prengaman representing the state. I am presently
6 located in Reno, Washoe County, Nevada. I have received the
7 notice referenced by the Court. I have no objection to
8 proceeding.

9 THE COURT: Thank you so much. Mr. Picker.

10 MR. PICKER: Good morning, Your Honor.
11 Marc Picker of the Alternate Public Defender's Office. I'm
12 appearing from Reno, Washoe County, Nevada, and I have
13 received all pertinent notices and orders and have no
14 objection to proceeding in this manner.

15 THE COURT: Mr. Picker, you are here on behalf of
16 Ms. Norman?

17 MR. PICKER: That is correct, Your Honor.

18 THE COURT: Ms. Rosenthal?

19 MS. ROSENTHAL: Good morning, Your Honor.
20 Melissa Rosenthal also from the Public Defender's Office on
21 behalf of Ms. Norman. I am located in Reno, Washoe County,
22 Nevada. I have also received the notices and have no
23 objection.

24 THE COURT: Thank you so much. Ms. Hickman.

25 MS. HICKMAN: Good morning, Your Honor.

1 Kate Hickman on behalf of Mr. Williams. I am present in
2 Washoe County this morning. I do have notice of all of the
3 relevant orders that the Court referenced and I have no
4 objection to proceeding this way this morning.

5 THE COURT: Thank you so much. Ms. Grosenick.

6 MS. GROSENICK: Thank you, Your Honor.
7 Evie Grosenick with the Washoe County Public Defender's
8 Office, also on behalf of Mr. Williams. I am appearing from
9 Washoe County, Nevada. I have received all relevant notices
10 and orders and have no objection to proceeding in this
11 manner.

12 THE COURT: Thank you so much. Counsel, today is
13 the day set for hearings on a number of motions that have
14 been filed by the parties. This hearing was set pursuant to
15 this Court's order of December 9th, 2020.

16 Now, in that order I indicated that the following
17 motions were ripe for hearing and indicated what issues set
18 forth in those motions would be heard today. They include
19 the State's Motion in Limine regarding Reference to
20 Character and Other Act Evidence of Steven Sims that was
21 filed by the state; Mr. Williams' Motion in Limine to Admit
22 Other Act Evidence of State's Witness, Steven Sims; the
23 State's Request for Hearing regarding Admission of Other Act
24 Evidence Regarding the Defendants; Mr. Williams' Additional
25 Motion in Limine to Admit Other Act Evidence of the State's

1 Witness, Steven Sims; and the State's Request for Hearing
2 regarding the Admission of Other Acts Evidence Regarding
3 Defendant Williams' Prior Handgun Possession.

4 Counsel, these are interrelated. Ordinarily, I
5 would do this in a very linear fashion so the transcript
6 read motion-to-motion for purposes of this Court developing
7 its orders as to the motions, but recognizing the manner in
8 which these are intertwined, especially since the first four
9 motions that I discussed relate to Mr. Sims, I want to move
10 forward alternatively today in the most efficient way
11 possible.

12 So, Mr. Prengaman, I'm going to start with you.
13 Have you had an opportunity to talk to counsel about how
14 this might go this morning in terms of presentation of
15 witnesses or evidence that would pertain to the motions? If
16 not, suggestions for the Court.

17 MR. PRENGAMAN: Thank you, Your Honor. We haven't
18 spoke specifically about how we might proceed this morning.

19 THE COURT: Mr. Prengaman, can I ask you to turn
20 up your mic just a little bit? It is soft. Thank you.

21 MR. PRENGAMAN: Is this okay, Your Honor?

22 THE COURT: Better. Thank you.

23 MR. PRENGAMAN: Your Honor, we haven't, I haven't
24 spoken to counsel about how we might proceed. I am at the,
25 I guess, at the pleasure of the Court in that regard.

1 In my view, there is a significant amount of
2 interrelationship, as the Court notes. I do think, although
3 I'm prepared to present testimony if necessary, at least in
4 my opinion the matters are developed well enough in the
5 preliminary hearing transcript that we could proceed on
6 argument based on that or any manner that the Court wishes.

7 THE COURT: Well, Mr. Prengaman, if that's the
8 case, what I would suggest then is, as I have just
9 indicated, of the five motions that were set for hearing
10 today, three of them belong to the state.

11 That is the State's Motion in Limine regarding
12 Reference to Character and Other Act Evidence of Steven
13 Sims, the State's Request for Hearing regarding Admission of
14 Other Act Evidence Regarding the Defendants, and the State's
15 Request for Hearing on the Admission of Other Acts Evidence
16 Regarding Defendant Williams' Prior Handgun Possession.

17 If no conversations have occurred among the
18 parties, Mr. Prengaman, what I'm going to do then is just
19 ask you in any manner that the state sees fit, whether it is
20 a presentation of evidence, and I note that you filed
21 several exhibits last week in both dockets, seven to be
22 exact, I presume related to the hearings today.

23 I'm going to ask you in the order that I just
24 referenced the motions to provide me your arguments and/or
25 evidence that the state is offering the Court that

1 supplements the briefings in this case.

2 MR. PRENGAMAN: Your Honor, I know with regard to
3 the, I believe the first motion that the Court referenced,
4 the Court had indicated in its order that we would be
5 addressing only, it was limited to the particular issue we
6 would be addressing, which was Steven Sims, concerning him
7 being a former UFC fighter and a man having died in a fight
8 with him. Is that correct, Your Honor?

9 THE COURT: That is the first motion, yes.

10 MR. PRENGAMAN: Okay. Now, again, Your Honor, I'm
11 in a position to present evidence and I don't want to, I
12 don't want to waive my ability to do that if the defense
13 disagrees with me. I just think that the preliminary
14 hearing transcript does develop the testimony on these, all
15 of these issues.

16 And, again, I'm prepared to go forward. I don't
17 want to waive my, if anyone believes they want me to present
18 the live testimony, I can do that. So I don't want to waive
19 that, but I would be happy if everyone is in agreement in
20 the interest of time just to go forward with the argument as
21 the Court indicated.

22 THE COURT: I want to make sure everyone
23 understands. We have reserved an entire day for this. Very
24 important case. Very important motions. This is a very
25 involved set of facts.

1 I don't want to do anything in the interest of
2 time today if it means not presenting something you need to
3 present. I want to hear everything.

4 All right. So if you intended to present a
5 witness, the witness will be sworn. If you intended to
6 present exhibits, I will review them and we will walk
7 through the exhibits with regards to their admissibility and
8 their relevance for purposes of this hearing. And if you
9 intended to present argument, I'm going to hear that
10 argument today.

11 My goal in saying efficient in starting with the
12 efficiency of the proceedings is making sure that we don't
13 call a witness during the course of an argument related to
14 one motion, only to recall them related to another motion.

15 So if witnesses are going to be called, I would
16 ask that when they are, the extent to which you intend to
17 examine them related to any of the motions that are set
18 today, that testimony is elicited at that time.

19 Okay. Mr. Prengaman.

20 MR. PRENGAMAN: Then, Your Honor, beginning with
21 the motion, the issue regarding Sims' former experience with
22 UFC training, as the state has indicated in its pleadings, I
23 believe that that is irrelevant to this case, in the state's
24 case-in-chief. It is pure character evidence.

25 It is, it has no relevance to the facts of the

1 case with the exception that I could envision potentially
2 that if Ms. Norman were to testify that there could
3 potentially, based on her testimony of what she might say, I
4 could imagine a scenario where that testimony could become
5 potentially relevant.

6 However, in the state's case-in-chief absent her
7 testimony, it is pure character evidence. Again, it goes to
8 the prior acts and character of Steven Sims, particularly a
9 man having died in a fight with him.

10 The only relevance, again, potentially it could
11 have with Ms. Norman goes to her knowledge and state of
12 mind, and so the state's request is that the Court will
13 order that in the state's case-in-chief, absent obviously
14 the state opening the door in some fashion, but absent that
15 that none of the defendants are able to reference that
16 material.

17 Again, the state's position is that should the
18 opportunity of relevance present itself, that would only be
19 in the case of Ms. Norman, at which point we could deal with
20 the admissibility and relevance of it, but my request is
21 that you order that no party reference it in the jury's
22 presence until we reach a point where it might, the door
23 might be open to that relevance.

24 THE COURT: Okay. Next, Mr. Prengaman, Admission
25 of Other Act Evidence of the Defendants.

1 MR. PRENGAMAN: With regard to that motion,
2 Your Honor, so there is substantial overlap here with the
3 defense motion. It appears to me that the parties are of
4 like minds to the extent that it appears that all parties
5 believe that the prior accusation that Steve Sims stole
6 items from Ms. Norman's children is relevant to the case.
7 That is sort of the heart of the defense motion regarding
8 those issues. And --

9 THE COURT: Mr. Prengaman, I'm sorry, I didn't
10 hear you. Did you say the parties agree that the theft of
11 the presents is relevant?

12 MR. PRENGAMAN: Your Honor, I said based on the
13 pleadings it appears that the parties are of like mind on
14 that matter. The defense is seeking, particularly
15 Mr. Williams, I believe joined by Ms. Norman, seeking
16 admission of evidence of that accusation as to the theft of
17 items from Ms. Norman's children.

18 THE COURT: So the state has no objection to
19 counsel for the defendants eliciting from a witness
20 information about whether or not Mr. Sims stole gifts from
21 Ms. Norman's children?

22 MR. PRENGAMAN: Yes. Well, to the extent of
23 questioning Mr. Sims regarding the accusation that was made
24 that he had stolen items from Ms. Norman's children, that is
25 correct.

1 Do you wish me to continue, Your Honor?

2 THE COURT: I do.

3 MR. PRENGAMAN: Okay. And then part and parcel of
4 that, Your Honor, are the text messages that Mr. Sims
5 testified that he received from Ms. Norman shortly after he
6 left her residence back in January of 2020. Now, on that
7 matter I have marked exhibits and they are --

8 THE COURT: Let's make a record of this, counsel,
9 if I might. On January 20th of 2021, the state filed a
10 document entitled State's Exhibits for January 25th, 2021,
11 Motion Hearing and attached to that is an index of Exhibits
12 1 through 7.

13 And let me begin with Mr. Picker and
14 Ms. Rosenthal. Have you had an opportunity to review the
15 seven exhibits attached to the state's notice?

16 MR. PICKER: We have, Your Honor.

17 THE COURT: Mr. Picker, any objection to any of
18 these? I just want to, if we can clear the bases to begin
19 with, I would like to do that. I'm not going to prevent you
20 from objecting to any of them. I just want to know do you
21 have an objection?

22 MR. PICKER: For the purposes of this hearing, we
23 have no objection.

24 THE COURT: Thank you so much.

25 Ms. Hickman and Ms. Grosenick, any objection to

1 the seven exhibits that the state filed?

2 MS. HICKMAN: For the purposes of today's hearing,
3 no.

4 THE COURT: Okay. All right. Mr. Prengaman, go
5 ahead. Let's talk about those exhibits with regard to the
6 Norman texts.

7 MR. PRENGAMAN: Thank you, Your Honor. So,
8 Your Honor, Exhibits 3 and 4 are reports from Sparks Police
9 Detective Adam Harris and they outline his examination of
10 cell phones in this case, including the cell phone of
11 Mr. Sims and the cell phone of Ms. Norman.

12 Exhibit 5 is part of that extraction which shows
13 what I will refer to as the relevant text messages from
14 Ms. Norman's cell phone to Mr. Sims' cell phone that contain
15 the messages that he referenced in his testimony at the
16 preliminary hearing, which his testimony is represented in
17 Exhibits 1 and 2.

18 He talked about receiving the threats and
19 reference being made to the stolen items and they are
20 represented in those text messages.

21 Then Exhibit 7 is part of or represents a
22 particular part of the extraction from Ms. Norman's cell
23 phone conducted by Detective Harris and that represents, as
24 his report indicates, that he found a Facebook message from
25 Ms. Norman's phone to Mr. Sims that contained an additional

1 message, as you can see in Exhibit 7, I would say consistent
2 with the messages of the prior day.

3 So this message was from January 16. The prior
4 messages all were issued on January 15, which as Mr. Sims
5 testified was soon after he had left Ms. Norman's residence
6 where he had been residing with her and her children. And
7 in that message it says, "It's almost ur time." Again,
8 consistent with those messages.

9 So it is the state's position that in addition to
10 reference being made to the accusation surrounding the theft
11 of those items, these text messages are relevant. They are
12 statements by Ms. Norman to Mr. Sims about the very subject
13 matter that she confronted him about on the day on
14 February 22nd inside Bob & Lucy's Casino. These are threats
15 and reference actually to those accusations, those
16 accusations and threats regarding those accusations.

17 So the state's position is that just as the
18 subject matter of the accusations are relevant, these
19 threats are relevant because they go to Ms. Norman's intent
20 and motive. They are her statements issued to Mr. Sims.

21 As he testified, they follow directly his leaving
22 where she was there with her kids. She references her kids
23 in one of the messages, him having taken from her kids.

24 And that is the very subject matter about which
25 she confronted him, and ultimately as the events unfold

1 their interaction got to the conclusion of him offering
2 money just to make good, in my words, that accusation, make
3 good on that accusation to get himself out of the situation.

4 So those are relevant and admissible. They are
5 statements of the defendant. I submit they are part of the
6 res gestae of the case. They also are relevant to Mr. Sims'
7 state of mind.

8 As he testified, when he was initially confronted
9 by Ms. Norman, she made immediate reference to that subject
10 matter, words to the effect of, "You didn't think I would
11 find you, did you?" Again, bringing up, referencing those
12 prior messages and threats and then that was the subject
13 matter that she confronted him about.

14 So those threats go to Mr. Sims' state of mind,
15 including going to the element of fear and force for the
16 robbery, attempted robbery, their relevance as well as they
17 demonstrate are relevant to Ms. Norman's intent in entering
18 the casino.

19 I submit they are also relevant to Mr. Williams'
20 state of mind. I submit, as I outlined in my pleadings,
21 that the evidence demonstrates that Mr. Williams and
22 Ms. Norman were working together, that they were on the same
23 page, if you will, in terms of their conduct and why they
24 were there in confronting Mr. Williams.

25 And so they are relevant as well, as they reflect

1 not only Ms. Norman's motive in confronting Mr. Sims, but
2 because Mr. Williams was working with her, it is also
3 relevant to his state of mind as a conspirator and aider and
4 abettor.

5 THE COURT: Okay. All right. Mr. Prengaman,
6 anything else with regard to that motion?

7 MR. PRENGAMAN: If I may have one moment,
8 Your Honor.

9 THE COURT: Take your time.

10 MR. PRENGAMAN: No, Your Honor.

11 THE COURT: Okay. Let me look at my list here and
12 see if I have questions for you on either one of those and
13 then we will move to the Defendant Williams' conduct.

14 Okay. Mr. Prengaman, now with regard to Defendant
15 Williams' possession of a handgun prior to the date of the
16 offense.

17 MR. PICKER: Your Honor, can I suggest it might be
18 easier if you --

19 THE COURT: Yeah.

20 MR. PICKER: -- get the defense side of that
21 argument?

22 THE COURT: I like it, Mr. Picker.

23 MR. PICKER: And then we will go to the other
24 motions. I think that --

25 THE COURT: I like it. Okay. So this will be the

1 opportunity for the defense to respond to the two motions
2 that the state has just presented oral argument on.

3 Mr. Picker, let's start with you.

4 MR. PICKER: Thank you, Your Honor. The state has
5 argued that Mr. Sims' background is -- well, let me start at
6 the last part and go backwards, I'm sorry.

7 Among the texts that the state is seeking to admit
8 on Exhibit 5, specifically the one that is date stamped
9 January 15th, 2020, at 5:13:09 PM, that one specifically
10 says, "I don't care who u killed, jus know ur day is
11 commin."

12 All right. If you include all of Exhibit 5, that
13 belies the state's argument as to Mr. Sims' background,
14 because the state in and of itself is seeking to present
15 that text, which we would argue that if the texts come in,
16 that one must come in, because it is part of the whole
17 conversation.

18 If that text comes in and Your Honor decides that
19 those texts are admissible, which at this point I would
20 argue to Your Honor that we would admit that there is a
21 res gestae, a valid res gestae argument to be made there
22 that they are part of the entire story. But if that is the
23 case, then that text in and of itself is part of the story.

24 If that is part of the story, then the jury is
25 left with unknown, an unknown piece of information, an

1 untied-off threat, if you will, because at that point "I
2 don't care who you killed" becomes of extreme importance.

3 The explanation Mr. Sims gave repeatedly at the
4 preliminary hearing, but also gave in many varied different
5 ways, was that he had previously told Ms. Norman when he
6 lived with her, number one, he was a UFC fighter. Number
7 two, his hands were lethal. Number three, his feet were
8 lethal, and, number four, that he had killed a man.

9 Now, who that man is changed during the course of
10 his preliminary hearing testimony. It started off with
11 being his stepfather, then it was his ex wife's father, then
12 it was -- I'm not even sure at that point what the third
13 story was.

14 But that becomes very important, because during
15 the course of the interrogation of Ms. Norman after she is
16 arrested -- well, let me step back.

17 When Ms. Norman is confronted by the police
18 outside of Bob & Lucy's, Mr. Sims on video is recorded
19 saying, "That's her, she has three guns," implying how
20 dangerous Ms. Norman is.

21 Ms. Norman is arrested. She is interrogated at
22 the Police Department. She is interviewed by Detective
23 McNeeley who asks her about having a gun, because when she
24 is arrested she has no guns on her, no firearms whatsoever.

25 During the course of that conversation, she says,

1 well, I knew Sims, basically, and I'm paraphrasing, I knew
2 Sims was in there, because I had been told. I went in
3 there, but I took a gun for my protection, because I don't
4 know who else is in there and I don't know what else is
5 going on. I'm taking a gun in for my protection.

6 And that is specifically on page 37 of the
7 transcript of her interview. "I have to protect myself" is
8 the phrase, "And I like, I really wouldn't have been able to
9 protect a thing basically without the gun."

10 So it is clear from Mr. Sims' testimony that he
11 told Ms. Norman about his background as a fighter, told her
12 his hands and feet were both lethal and that he had killed a
13 man.

14 That goes to a central issue in this case, because
15 as the, as both are presented in Mr. Williams' moving papers
16 and in our joinder in our moving and our responses, there is
17 going to be a question of Ms. Norman's intent because of the
18 nature of the crimes that are alleged, burglary and robbery.

19 There are specific intents in there. The state it
20 appears will be offering inferred, at least in part,
21 inferred intent as to what Ms. Norman believed at that time.
22 Her understanding of what Mr. Sims' background was is
23 extremely important and relevant. It is not to show
24 propensity. It is to show his mindset, her mindset when she
25 entered the bar.

1 Also, these explanations all happened, from
2 Mr. Sims to Ms. Norman, all came well prior to any threats
3 being made. They weren't part of any back and forth between
4 Ms. Norman and Mr. Sims and him threatening her or her
5 threatening him, which is alleged.

6 It is basically that Mr. Sims explained it to her
7 as this is the kind of person I am. This is who I am. This
8 is my background. Whether he meant that to scare her, to
9 warn her, who knows why, but that makes it all
10 non-propensity. It makes it all very relevant to
11 Ms. Norman's mindset when she enters, which is of importance
12 because we have to talk about intent and Mr. Sims' intent
13 when he was there.

14 If you remember, and I don't know if you have read
15 the entire preliminary transcript, but a lot of time was
16 spent on the video at Bob & Lucy's when Mr. Sims got up,
17 while he was sitting across from Ms. Norman, stood up and
18 leaned over toward her.

19 Now, he says this was a nonaggressive move. The
20 jury will have to make that decision as to whether it's
21 aggressive or not, but at that point I would argue to you
22 that any commonsense person would recognize that as some
23 kind of threat or intimidation which reflect on that prior
24 background of Mr. Sims, that he had that ability.

25 There is also the comments that he made or his

1 testimony which we outlined in the Petition or the Points
2 and Authorities for the Petition for Writ which was filed on
3 July 23rd of last year on pages 5 and 6 where we note all of
4 the comments that Mr. Sims made, including the fact that he
5 did not take her Facebook messages seriously. He did not
6 consider her a threat.

7 He did not, he was not -- he knew she didn't, he
8 knew she did not want to shoot him. He knew she did not
9 want to harm him and that she never pointed a weapon at him,
10 which is verified by the video itself.

11 Including, I'm sorry, when he leaned over during
12 the video, Mr. Sims in answer to the state's questioning on
13 direct said, "Yeah, that's when I was going to sock her in
14 the face." Again, showing his mindset at the time and again
15 reflecting on that background of he can protect himself
16 because his hands and feet are lethal, he has got martial
17 arts and UFC training, and he has previously killed a man.

18 So all of those become, not for that he is an evil
19 person or as the state said to dirty him up, that's not the
20 intent at all. The intent entirely is to show the mindsets
21 of the participants in this event so that the jury can
22 accurately determine what happened that day.

23 Your Honor, with that, that's all I have at this
24 time.

25 THE COURT: Okay. Ms. Hickman, Ms. Grosenick.

1 Thank you, Mr. Picker.

2 MS. GROSENICK: And, Your Honor, if I could just
3 clarify, so Mr. Picker I believe addressed the motion
4 regarding other acts evidence regarding the text messages.

5 THE COURT: Uh-huh.

6 MS. GROSENICK: And so I believe that's mine to
7 address, and then will we go back to the other motion?

8 THE COURT: Mr. Prengaman offered his arguments as
9 to both the State's Motion in Limine with Reference to
10 Character and Other Act Evidence of Steven Sims, which this
11 Court limited to character, limited it to concerning being a
12 UFC fighter and a man having died in a fight.

13 The other motion that the state argued is Request
14 for Hearing Regarding Admission of Other Act Evidence
15 Regarding the Defendants, which is principally the e-mails,
16 or the text messages.

17 Mr. Picker, your argument in my mind addressed
18 both of those. Did you want to offer a separate argument
19 related to -- I mean, am I wrong about that? Did you just
20 address both of those with regards to Mr. Prengaman's
21 opening statements?

22 MR. PICKER: I did, Your Honor, because I believe
23 Mr. Prengaman was offering argument as to both of those.
24 That was my understanding.

25 THE COURT: Yeah. So, Ms. Grosenick, I'm not

1 going to go back with regard to that, but, yeah, I would
2 like, yes, I would like you to address both of those at this
3 time.

4 MS. GROSENICK: Okay. And the way that
5 Ms. Hickman and I split these up, I believe she has one and
6 I have the other.

7 THE COURT: Fabulous.

8 MS. GROSENICK: Okay. So I will just go first
9 since I'm already talking.

10 MS. HICKMAN: Before we start, we have Mr. Sims
11 logged in because we had subpoenaed him. I think he can log
12 out. I don't believe we are going to call him as a witness.

13 THE COURT: Before he logs out, Ms. Hickman,
14 Mr. Picker, any intent on calling Mr. Sims for purposes of
15 this hearing?

16 MR. PICKER: No, Your Honor.

17 THE COURT: Mr. Prengaman?

18 MR. PRENGAMAN: Your Honor, he is under subpoena
19 for the state as well. I don't anticipate that and I would,
20 I would like to let him go, but I would ask that he just
21 remain for the time being.

22 THE COURT: Okay. We will leave it there.

23 MS. HICKMAN: I think -- we have contact with him.
24 I just don't know that he needs to hear all of this
25 argument. I think that it could color his testimony. I

1 think it gives him a lot more information.

2 THE COURT: Let's do this then, Ms. Hickman, and
3 to address all parties, let's do this. Let's let him go.
4 Who has contact information for Mr. Sims and can let him
5 know now -- I'm assuming he is listening -- that there is a
6 chance he will be contacted later today for purposes of
7 these hearings and will need to join? Who has got his
8 contact information?

9 MS. HICKMAN: We do.

10 THE COURT: Okay. Ms. Hickman, if someone in your
11 office can let him know that. Make sure that contact
12 information is accurate. I don't want to have to reserve
13 another day to hear his testimony.

14 So we can let him go. I agree with Ms. Hickman
15 about hearing all of these arguments, so we can let him go,
16 but he needs to be ready to join when we need him.

17 Okay. Ms. Grosenick, which one of the arguments
18 do you have?

19 MS. GROSENICK: The second motion, the other acts
20 of defendants.

21 THE COURT: Okay.

22 MS. GROSENICK: In this motion, the state seeks to
23 introduce evidence that Ms. Norman, while I agree with the
24 state that we are seeking or stipulating to the admission of
25 that testimony as well, that there was an accusation made by

1 Ms. Norman to Mr. Sims that he took her children's Christmas
2 presents, I think an Xbox and some tablets. As to that
3 portion of the motion, I agree with Mr. Prengaman that we
4 are all agreeing that that's relevant and admissible.

5 THE COURT: Ms. Grosenick, let me stop you there.

6 Mr. Picker, on behalf of Ms. Norman, you agree to
7 that as well?

8 MR. PICKER: Yes, Your Honor.

9 THE COURT: Okay. Go ahead, Ms. Grosenick.

10 MS. GROSENICK: As to the second portion of that
11 motion, the text messages from or Facebook messages from
12 Ms. Norman to Mr. Sims that occurred in January of 2020,
13 those are not admissible against Mr. Williams.

14 The state argues that they are admissible under
15 NRS 51.035 as a statement of a co-conspirator; however, the
16 law is very well settled that in order for that text message
17 or that statement by Ms. Norman to be admissible as a
18 co-conspirator statement, Mr. Williams and Ms., sorry,
19 Mr. Williams and Ms. Norman would have to have been in a
20 conspiracy in January of 2020 at the time that statement was
21 made.

22 THE COURT: Ms. Grosenick, I have a question for
23 you. What about the allegation that they were referenced
24 again, you know, they were referenced again the day of the
25 alleged robbery?

1 MS. GROSENICK: I would argue --

2 THE COURT: Go ahead.

3 MS. GROSENICK: Sorry, Your Honor. Did you
4 have --

5 THE COURT: No, I was just going to set it up. I
6 know that the text messages happened between and I know that
7 that is allegedly in advance, the timeline seems to make
8 that clear, in advance of the alleged robbery, but at the
9 time of the robbery there is an allegation in the pleadings
10 that the parties, that the defendant's conversation in the
11 presence of Mr. Sims indicated that Mr. Williams was aware
12 of those text messages that were exchanged.

13 And the allegation or the assumption or the
14 inference that the Court is being asked to accept is that he
15 knew of them and that they were his, you know, his
16 motivation for participating with Ms. Norman, and so I would
17 like you to address that as well.

18 MS. GROSENICK: Certainly. So I will address that
19 with two points. The first is there is no evidence that
20 Mr. Williams knew of that text message. There is no
21 evidence of that and there is no evidence that there was any
22 kind of conspiracy in place on January 15th or January 16th
23 when those messages were sent.

24 The second part is that there is also not even
25 slight evidence of a conspiracy at the time that

1 Mr. Williams entered the bar on February 22nd of 2020.
2 There are a lot of inferential gaps in the state's motion
3 between actions that happened, and I think the state is
4 arguing those inferences, but I think that they are also
5 quite a significant leap.

6 For instance, the state argued that the fact that
7 Mr. Williams walked into Bob & Lucy's, went to the bar area,
8 appeared to briefly enter the bathroom and then walked into
9 the casino gaming area after facing the direction where Sims
10 was gambling, Williams turned and quickly left the casino
11 going back to the white truck.

12 It does appear Williams' purpose for entering was
13 to view the area where Sims was seated. An equally likely
14 purpose is that he was using the restroom.

15 Further, some of the other speculation are the
16 allegations that Mr. Norman, sorry, Mr. Williams and
17 Ms. Norman were somehow on the same page about their goals
18 when Mr. Williams entered the casino.

19 So he enters the casino, walks over to where
20 Ms. Norman and Mr. Sims are seated, and the state argues
21 from this that they already knew what was going on and they
22 already had some kind of agreement without any actual
23 evidence of an agreement.

24 Everything that Mr. Williams allegedly said that
25 day could also be attributed to him talking to Ms. Norman or

1 asking to take things outside. There is no evidence that he
2 and Ms. Norman were in any way coordinating any kind of
3 scheme or plan or that there was an actual agreement for any
4 illicit purpose, which is what is necessary for a
5 conspiracy.

6 And so you can't hold Ms. Norman's statement from
7 January 15th against Mr. Williams as a co-conspirator
8 statement if he had no knowledge of that prior statement
9 from Ms. Norman, and there is no evidence that he was
10 engaged in any kind of conspiracy with her either at the
11 time that that statement was made in January or subsequently
12 that morning on February 22nd, the offense date in this
13 case.

14 I also want to address the Mangerich case, and I
15 will also address this in more detail, sorry, in greater
16 detail later when we get into the motion regarding the
17 handgun, but Mr. Prengaman argues that Mr. Sims' intent is
18 relevant.

19 I think this is a very fine point that we need to
20 be clear on. Mr. Sims can testify how he felt. He can
21 testify that he felt fear, and I think that the Mangerich
22 case supports that.

23 That being said, robbery, the fear needed for a
24 robbery is an objective reasonable person standard, and so
25 while Mr. Sims can testify that he felt afraid, that doesn't

1 mean that he gets to kind of backdoor in some other act
2 evidence that's not relevant and that's highly and unfairly
3 prejudicial to Mr. Williams.

4 And so the text messages or the Facebook messages
5 that Ms. Norman sent to Mr. Sims are between Ms. Norman and
6 Mr. Sims and that's really all that the evidence shows.
7 There isn't even slight evidence of a conspiracy here that
8 can be used to hold Mr. Williams accountable for
9 Ms. Norman's messages, and that's why we are seeking an
10 order that does not admit them against Mr. Williams absent
11 evidence, actual evidence of a conspiracy.

12 THE COURT: Ms. Grosenick, does that conclude your
13 arguments with regard to the two motions?

14 MS. GROSENICK: Yes. That's really just regarding
15 the text messages regarding the other acts of defendants. I
16 believe Ms. Hickman will be addressing the other motion that
17 we've heard argument on.

18 THE COURT: Ms. Hickman.

19 MS. HICKMAN: Thank you, Your Honor. I wanted to
20 start, so I'm going to address the State's Motion regarding
21 Reference to Character and Other Act Evidence of Steve Sims,
22 and it seems like today what we are focused mostly on is the
23 testimony that he gave at the preliminary hearing that he
24 was a trained UFC fighter and that he has killed somebody in
25 the past.

1 And what I want to do is I actually want to talk
2 or I want to direct the Court to the transcript, because I
3 think that that's an easy place to start and it makes the
4 most sense for the Court to actually see how the testimony
5 was developed and what Mr. Sims said.

6 And when the Court views this, I think the Court
7 should view this testimony in light of what Mr. Picker just
8 argued, that Ms. Norman said she took a gun in there
9 essentially to protect herself. She said that to two
10 separate officers.

11 And so the jury will have to decide did Ms. Norman
12 take the gun into Bob & Lucy's with the intent of robbing
13 Steve Sims, with the intent of taking something from
14 Steve Sims, or did she take the gun into Bob & Lucy's with
15 the intent to protect herself against a man who has told her
16 that he has killed somebody, that he is a trained UFC
17 fighter, his hands and his feet are lethal, and that he
18 testified that when he stood up over her in the bar, his
19 intent was to sock her in the face.

20 And so that is an issue for the jury to decide,
21 and there is evidence from Ms. Norman that that's why she
22 had the gun, but when we are looking at the preliminary
23 hearing transcript, I want to direct the Court to the
24 state's exhibit, let me see which one it is. So it's from
25 Tuesday, May 19th, so it's Exhibit 1 that the state filed,

1 and then it's page 294 of that transcript.

2 THE COURT: Okay. I'm there.

3 MS. HICKMAN: Okay. Actually, I apologize, I want
4 you to go back to page 293, which is the page in front of
5 it.

6 THE COURT: Okay.

7 MS. HICKMAN: Okay. So if you start at line 8,
8 this is during cross examination, line 8 on page 293, and
9 Mr. Sims is asked, "So it's fair to say that you and her,"
10 and her is Ms. Norman, "confided in each other, you told
11 each other things." And he said, "Yeah, that was my girl."
12 "And then she sent you the text messages after you left."

13 So at this point we are talking about these text
14 messages that are the subject of State's Exhibits 5, 6, and
15 maybe not 7, but definitely 5 and 6.

16 And if you go down to page 19, or sorry not page
17 19, line 19, Mr. Sims says, "I remember the last one and it
18 was like, 'Your day is coming, your time is coming.'" And
19 so that's a reference to that Facebook message that you see
20 in State's Exhibit 7, I believe, where she said "It's almost
21 ur time."

22 And then if you go to page 294 he is asked, "And
23 that has a big impact on how you view the interaction at Bob
24 & Lucy's. Right?" And so if we are still talking about
25 those text messages as Mr. Picker argued, there is the text

1 message that says, "I don't care who u killed, jus know ur
2 day is commin."

3 So I asked him, "Did you ever tell Ms. Norman that
4 you've killed somebody?" So this isn't just --

5 THE COURT: I didn't hear that. Say that
6 statement again, did you ever --

7 MS. HICKMAN: No worries. Okay. So if you look
8 at page 294 of that transcript and you look at line 4,
9 Mr. Sims is directly asked, "Did you ever tell Ms. Norman
10 that you've killed somebody?"

11 And the reason this is really relevant, Judge, is
12 that we are not just asking him generally have you ever
13 killed somebody, but we are asking him what does Ms. Norman
14 know about you, did you ever tell Ms. Norman, and he says,
15 "That I killed someone, no." And then he changes it at line
16 8, "Oh, excuse me, yes, I have."

17 So and then he goes into being a UFC fighter, and
18 then if you look at page 294 of the transcript, line 19 and
19 20, he says --

20 THE COURT: Page 294?

21 MS. HICKMAN: Yeah. Sorry, this keeps freezing.
22 So if I freeze, just let me know if you don't hear me.

23 THE COURT: Okay.

24 MS. HICKMAN: So it's page 294, lines 19 and 20.
25 "I've told the story, everybody knows me. My hands are

1 lethal. I have not bragged about beating up and killing
2 people, no. I have talked about fighting."

3 And then if you go to page 295 of the transcript
4 and you start at line 2 he is asked, "So you're a trained
5 UFC fighter?" Sorry, I just want to check in. Is everyone
6 still with me? Because my screen just went black.

7 THE COURT: Yes, we can still hear you,
8 Ms. Hickman.

9 MS. HICKMAN: Okay. Thank you.

10 So he is asked at line 2, page 295, "You're a
11 trained UFC fighter?" He says, "Yeah, that's what I said."
12 And then he is asked, "It's fair to say, then, that if
13 you're in a fight, you know what you're doing. Right?" And
14 he says, "Yes."

15 And so then, again, the UFC fighter becomes
16 relevant because he is asked at lines 7 through 12, "So when
17 you testified on direct that you were going to sock
18 Ms. Norman in the face when you were standing up over her,"
19 that is a reference to in Bob & Lucy's on the day of this
20 incident. On video we see Mr. Sims stand up and lean over
21 Ms. Norman.

22 "You don't mean you're just going to hit her like
23 I would hit you maybe, you mean as a trained UFC fighter,
24 you were going to hit her in the face."

25 That is relevant to, again, her fear that she

1 needs to be protected when she is dealing with Steve Sims.
2 She has referenced it in her text messages. "I don't care
3 who you killed." Mr. Sims has said, yes, I told her that I
4 killed someone, she knows I'm a UFC fighter, and then he
5 says at one point I was going to sock her in the face.

6 So those facts that the state wants to exclude are
7 extremely relevant to the thought process of Ms. Norman, the
8 thought process of Mr. Williams if we are trying to show a
9 conspiracy or aiding and abetting, is what did they know
10 when she goes in there and what is their intent about the
11 gun.

12 And their intent from this line of questioning,
13 from the text messages, and from Ms. Norman's statements is
14 that she is going in there to protect herself against this
15 man that she knows can be dangerous and that is relevant
16 information that the jury should be able to hear.

17 THE COURT: Okay. Ms. Hickman, thank you.

18 Okay. Let's do this now. Oh, Mr. Prengaman, your
19 rebuttal, sir.

20 MR. PRENGAMAN: Thank you, Your Honor.

21 So with regard to Mr. Picker's opposition,
22 Your Honor, with the texts, so going to Exhibit Number 5 and
23 the text message that he references is what is listed as
24 number 1 on Exhibit 5, so it is the text message, "I don't
25 care who you killed, jus know ur day is commin."

1 And so now the subject matter of the prior
2 knowledge is that issue obviously in the motions in this
3 case, and if the Court rules that it's not admissible in the
4 state's case-in-chief, the state will redact that text
5 message, so I'm not proposing that the state is going to
6 open the door by admitting that text message unless the
7 Court rules contrary based on the arguments and so I just
8 want that clear.

9 THE COURT: Mr. Prengaman.

10 MR. PRENGAMAN: Sorry, Your Honor.

11 THE COURT: Let me ask you something. In
12 Exhibit 6, as Mr. Picker pointed out, there are 69 different
13 text messages, okay, apparently from Ms. Norman's telephone.
14 Was it, if you could -- now my computer froze -- if you
15 could walk me through those, I know there is certain text
16 messages that are set forth in the pleading, walk me through
17 those text messages that the state is seeking to introduce.

18 MR. PRENGAMAN: Your Honor, if you look, so
19 Exhibit 5 should have, should only list a total of nine text
20 messages.

21 THE COURT: Give me just a minute, Mr. Prengaman,
22 my apologies. Okay. All right. Mr. Prengaman, I have got
23 it.

24 MR. PRENGAMAN: So, Your Honor, so Exhibit 6
25 contains all of the --

1 THE COURT: Exhibit 6 or Exhibit 5?

2 MR. PRENGAMAN: So when you, when the Court
3 referenced that I think you said 50 something or 60, that is
4 Exhibit 6 and that has all of the text messages that were
5 extracted between Ms. Norman's phone and Mr. Sims' phone.

6 THE COURT: But it's the 1 through 9 in Exhibit 5
7 that the state is offering?

8 MR. PRENGAMAN: Correct, Your Honor. So Exhibit 5
9 represents the texts that the state would seek the admission
10 of. Now, I included 8 and 9 more for context. It is
11 really -- or, I'm sorry, 7, 8, and 9. It is really 1
12 through 6.

13 And I think they are all admissible, but 1 through
14 6 are the ones that I, what I characterize in my pleadings
15 as the references to the theft and the threats, it is those
16 text messages that I am referring to.

17 THE COURT: Okay. So before I, but so --
18 Mr. Picker, a question for you with regard to those. Any
19 objection to the, I mean, let's just clarify this, because I
20 know you took issue with number 1, and I know we are talking
21 about pretrial hearings, but I'm trying to figure out what
22 the parties intend to do at trial as well.

23 Mr. Picker, does the defense note any objections
24 to the admissibility of all of the text messages in
25 Exhibit 5 versus 1 through 6?

1 MR. PICKER: Well, at this point I can't predict
2 how it's going to come in at trial, Your Honor, so I can't
3 tell you there is not going to be an objection. At this
4 point, one question may be the attenuation of time between
5 the time of these text messages and the so-called
6 confrontation at Bob & Lucy's.

7 And whether, you know, since Mr. Sims said that he
8 basically dismissed them, he didn't take them seriously,
9 whether he had any, you know, whether his testimony at the
10 prelim was questionable based on the fact that he said, oh,
11 yeah, as soon as she walked in I remembered those text
12 messages. You know, given his prior demeanor, that may not
13 be true and I think that may be a question that does raise
14 an objection.

15 As I said, for the purposes of today's hearing, I
16 have got no objection, but I would say in response to
17 Mr. Prengaman offering to sanitize these e-mails, that I
18 would totally object to that. I think if we are going to
19 put them in, there is nine text messages that are a series.
20 If one is going to come in, nine better come in.

21 That's our position, is that you can't just pick
22 and choose out-of-context statements. You have to have them
23 all in there, and that seems to be what the state is
24 offering and we would vociferously object to that.

25 THE COURT: Okay. Ms. Grosenick, question for

1 you. With regard to the text messages, it appears from what
2 I hear, your objection on behalf of Mr. Williams is just
3 that this Court give a limiting instruction based on the
4 arguments that you have made that no conspiracy exists;
5 therefore, the text messages cannot be attributed to
6 Mr. Williams?

7 MS. GROSENICK: That's correct.

8 THE COURT: Okay. All right. Thank you so much.

9 Mr. Prengaman, back to you, your rebuttal. I just
10 wanted to make sure I clarified for the record where
11 everyone stood on those 9.

12 MR. PRENGAMAN: So, Your Honor, so going back to
13 number one, so that first text that Mr. Picker argued about,
14 so since he just referenced that they should come in and
15 that there can be no redaction, so the issue there would be
16 the rule of completeness and whether removing part of it
17 changes the context or the remainder is misleading by virtue
18 of part of it being redacted.

19 I would submit that is not the case here. That
20 message is, "I don't care who you killed, jus know ur day is
21 commin." So, in other words, I don't care how dangerous you
22 might be, I'm coming to get you is what that is saying.

23 So if you delete, "I don't care who you killed and
24 jus know ur day is commin," I'm coming to get you, in other
25 words, it doesn't change the context at all. It's not

1 misleading. In fact, it makes it less emphatic than it is,
2 not more.

3 So I would submit that can be redacted without
4 changing the meaning in a misleading way. That's the
5 question, does the balance need to be included in order for
6 the statement to be accurate in terms of context.

7 So that would be my argument in regard to what
8 Mr. Picker just said in terms of the state can't redact it,
9 that they all come in. That if one comes in, they all come
10 in. That's not necessarily true unless the meaning would be
11 misleading.

12 Now, with regard to his argument, the focus of his
13 argument is that it's relevant to Ms. Norman's mindset.
14 Now, I quote in my reply, I respond to those arguments that
15 he just made, but when you look at Mr. Sims' testimony,
16 first of all, he said initially when she sent those
17 messages, he ignored them. He did not respond.

18 That's consistent with what Detective Harris
19 found, that there had been no response to those text
20 messages from Mr. Sims' phone. He indicated that he did not
21 initially take them that seriously, because he had no
22 further contact with her until she showed up at Bob & Lucy's
23 with the gun and then he took it very seriously. That is
24 the content.

25 The other part that it goes to her state of mind,

1 and, again, she did not say, as I quote from her interview
2 in my reply, she did not, she did not claim in her interview
3 that she was afraid of Sims. She didn't say I went in there
4 with the gun because I was afraid of Sims. She didn't
5 mention anything that we are talking about here that he had
6 been a UFC fighter.

7 She made a number of statements about sort of
8 going towards the general people in there. She said it was
9 Mr. Williams who wanted her to take the gun and pressed it
10 on her, so she did not say in her interview I was afraid of
11 Steve Sims, that's why I took the gun.

12 However, her interview does not come in. The
13 defense cannot get her interview in. It's hearsay. The
14 state can admit some or all of her interview, but the
15 defense cannot admit it.

16 So when the defense argues, well, she said
17 something in her interview, that is irrelevant to our trial,
18 because it doesn't establish her state of mind. That's why
19 I say if she were to take the stand and testify this is why
20 I did what I did, that may be different. That may make her
21 state of mind relevant on certain points. But if she does
22 not take the stand or until she does, the defense can't get
23 that in.

24 Again, they are not going to be able to admit any
25 part of her interview, although her interview doesn't say to

1 begin with that she was afraid of Mr. Sims, but even if it
2 did they couldn't admit that or say because she said that in
3 her interview that's a basis for admitting stuff that she
4 might have known. It's only going to be relevant if she
5 says this was my state of mind and this is what I knew.

6 So the fact -- anything that she said in her
7 interview, again, is not relevant unless she testifies to it
8 or takes the stand. That's why my request is that the state
9 rule this subject off limits until she may, if she does
10 testify, it may become relevant then, but if she doesn't
11 it's not.

12 Again, this is like her fear. It's her fear. She
13 has to be able to say I was afraid, this is why I did what I
14 did in order for that to potentially be relevant.

15 When the argument is made by Mr. Picker about the
16 portion of the video where Mr. Sims stands up, and as
17 Mr. Picker characterized it leans over Ms. Norman, Mr. Sims
18 did not say that he told her that he was going to hit her or
19 anything like that. He said in his mind, his thought
20 process was he may have to defend himself because she has a
21 gun and he did consider hitting her, but he didn't.

22 And so when the argument is made that it's
23 relevant because he was a UFC fighter and he was considering
24 hitting Ms. Norman, that's, again, an unexpressed intention.
25 So Ms. Norman didn't know what was going through his head,

1 and so that does not make his character relevant.

2 And even if he was, even when he testified at that
3 point I was considering hitting her, him being a UFC fighter
4 is irrelevant. That's his background, his character. That
5 has got nothing to do with Ms. Norman's state of mind. His
6 actions may, but his unexpressed intent does not. And,
7 again, she would need to testify to say what she might have
8 been thinking.

9 But that's pure character when they say he stands
10 there as a former UFC fighter who has killed someone, that's
11 precisely the forbidden character inference, that he may
12 have been contemplating acting consistent with his character
13 or his past action, his other actions. So that's pure
14 character at that point.

15 Again, Ms. Norman's knowledge as to her thought
16 process or her intent might be relevant if she testifies,
17 but if she doesn't, the fact that he considered hitting her
18 in his own defense because she was armed and he was in fear
19 does not make his background relevant or change its nature
20 of pure character evidence.

21 Your Honor, with regard to Ms. Grosenick's
22 argument on behalf of Mr. Williams about the prior bad act
23 motion, her first argument or much in a thread throughout
24 her argument was the existence of a conspiracy.

25 Now, the state does not have to prove, does not

1 have to show much evidence at all of the conspiracy, and as
2 our case law, as our rules of evidence tell us a counter
3 argument or competing inference does not defeat relevance or
4 admissibility.

5 So, in other words, if there is evidence and one
6 inference from that evidence is that there is a conspiracy,
7 the fact that the defense can say, well, we have another
8 inference that there is not does not defeat it. It's a
9 threshold question.

10 So if there is an inference supporting a
11 conspiracy, it's relevant and the arguments made by the
12 defense go to the weight, but not the admissibility. So the
13 state must show that minimal evidence inferring the
14 existence of a conspiracy.

15 We don't have to defeat the counter argument that,
16 well -- and she, basically, her terminology was equally
17 likely. So if they have an inference that's equally likely
18 as the state's, that means the evidence is admissible and
19 should come in. That means we established the minimum of an
20 inference, so equally likely that means it should come in
21 and then they can argue the weight.

22 The other terminology used, it could also be
23 attributed. Again, that's an acknowledgment that, yes, one
24 inference is they might have been working together, but we
25 have another inference, it could also have been this.

1 That's, again, I would say a passive acknowledgment that
2 because there is an inference that they were working
3 together.

4 That's what the state needs to show. That's all
5 the state needs to show and, again, the rest goes to weight
6 of that evidence and the strength of the inference, but
7 counter inferences, other inferences do not defeat
8 admissibility.

9 And there is in this case the sufficient minimal
10 evidence of a conspiracy. As I indicated in my pleadings, I
11 outlined in my pleadings and it is outlined in the state's
12 opposition to the defense, but in this case in a nutshell,
13 the defendants all showed up together. There were three
14 people in that truck, two men, Mr. Williams is one, the
15 other man, and then Ms. Norman.

16 The other man gets out, goes to the casino,
17 circles around where Mr. Sims is located, and as he is
18 leaving, Mr. Williams is entering and this man makes a
19 motion over his shoulder you can see on the video pointing
20 back to the casino area.

21 There is an exchange, and then Mr. Williams goes
22 in and then appears to go to the bathroom and then goes to
23 that casino area and looks where Mr. Sims is sitting. He
24 goes back to the truck and then Ms. Norman comes in and
25 confronts Mr. Sims.

1 She is armed. We can see the gun on the video.
2 She has it. She brandishes it at one point in front of
3 Mr. Sims. They converse. The other man comes in and
4 circles around again. It is clear that his interest is in
5 where Ms. Norman is with Mr. Sims. He goes back out to the
6 truck.

7 Then Mr. Williams comes in and he goes right to
8 where Ms. Norman and Mr. Sims are. You can see on the video
9 and Mr. Sims testified that he didn't come up and talk to
10 Ms. Norman. There was no exchange between the two of them.
11 He immediately confronted Mr. Sims and he was like, "Let's
12 go. You know how I roll. It's time. We are going to take
13 a ride," were his statements to Mr. Sims.

14 Now, that shows, one inference from that is that
15 there need to be no discussion. He knew that Mr. Sims was
16 the target of this confrontation. He did not need to
17 discuss what was going on and what is happening.

18 He immediately knew that he was going to confront
19 him and try to get him out of the casino. And that lack of
20 need -- So, first of all, that focus on Sims, that entering
21 the casino, that lack of need to converse, that they knew
22 they were together of like mind on what was happening, what
23 the purpose of confronting Mr. Sims was about. Because,
24 again, he wasn't in the dark. He knew exactly what was
25 going on and furthered it.

1 Additionally, Your Honor, so they then head
2 towards the door after Mr. Williams has cashed out Mr. Sims'
3 ticket, his player ticket, and taken the ticket. As they
4 head out the door, and Mr. Sims testified that he was
5 talking about, well, can I get you the money and ultimately
6 Williams agrees. And, again, there need be no discussion
7 about the underlying circumstances.

8 Mr. Sims was throwing out how much, how much do
9 you need? And Mr. Williams was, according to Mr. Sims'
10 testimony, was one of the first to say, yeah, we can do
11 that, so get the money, hurry up.

12 But significantly then while Mr. Sims approaches
13 where he is going to use the phone or in the bar area,
14 Mr. Williams can be seen on the video in the breezeway
15 motioning vigorously for Ms. Norman to step towards him into
16 the breezeway, and then he then reaches in under her coat
17 and takes the gun and then conceals it on his person.

18 So he knew, again, that shows he knew she was
19 armed. He was getting the gun out of the, out of the place
20 back to the car. That, again, is further evidence that they
21 were on the same page working in concert.

22 So there is, Your Honor, sufficient minimal
23 evidence of a conspiracy. Now, again, the defense can argue
24 there might be other inferences for that, but it does not
25 defeat admissibility.

1 Now, how that impacts the statements. So the
2 threats to Mr. Sims, I submit there are multiple, as I
3 outline in my pleading, multiple bases of admissibility.
4 One is the effect upon the listener.

5 Now, it is argued, Ms. Grosenick argued, and I
6 don't necessarily disagree with her characterization of the
7 case law, Mr. Sims can testify as a victim if he felt fear.
8 The standard is objective, what a reasonable person in the
9 circumstances would have felt.

10 And so that also cuts against Mr. Picker and the
11 defense's arguments that we need this evidence of the UFC
12 fighter in to assess how he was behaving, because that does
13 not, the fact that he was a UFC fighter and a UFC fighter
14 might not have been afraid.

15 Number one, Mr. Sims never said that, so it's not
16 something to impeach him. Number two, that's not the
17 standard. So if Mr. Sims says he felt fear, and that was
18 certainly his testimony, he was confronted by first one
19 armed individual and then additionally by Mr. Williams.

20 But the standard is objective, but that threat is
21 part of the circumstances and it goes to his, not just his
22 fear, but what a reasonable person would have felt in those
23 circumstances.

24 This is a situation where he received threats and
25 then when Ms. -- He received threats not all that long, but

1 some period of time before, a little over a month before.
2 But when Ms. Norman confronted him, she immediately renewed
3 those threats. She referenced them. "You didn't think I
4 would find you, did you," words to that effect, and then
5 went to the very subject matter of those threats, which was
6 the theft, the alleged theft of the items from her kids.

7 And so she essentially renewed or incorporated,
8 referenced those threats and that is the same as if she told
9 him I was going to find you and get you that day. And so
10 that is relevant for its effect on Mr. Sims and that is not
11 a hearsay issue.

12 These are non testimony statements. These were
13 not made to the police. So the only threshold to their
14 admissibility other than relevance is hearsay, and this is a
15 non hearsay use.

16 The effect on Mr. Sims as one of the circumstances
17 that he experienced, one of the threats issued by one of his
18 assailants, is a non hearsay use. Again, it doesn't matter
19 if she intended or she truly was going to harm him, but the
20 fact of uttering them to him under the circumstances is
21 relevant.

22 Now, additionally they are admissible against
23 Ms. Norman. They are her statements. They are Defendant
24 statements of the party.

25 But in terms of the conspiracy, if she walked into

1 that casino, and I'm not arguing that Mr., I'm not arguing
2 the state has evidence that Mr. Williams knew about those
3 particular -- In other words, I'm not claiming that the
4 state has evidence that Mr. Williams viewed those text
5 messages previously. I don't have that evidence.

6 My argument is that Mr. Williams from the evidence
7 we have and what we could show knew of the subject matter of
8 the confrontation. He knew the beef and he was part of
9 Ms. Norman's attempt to get to square or get back or make
10 good against Mr. Sims for what he had done, her perceived,
11 her perception of what he had done.

12 If she had walked into that casino with
13 Mr. Williams still in the car and said I'm going to get you
14 for what you did to my kids, your day is here, even though
15 Mr. Williams was not present, did not hear those statements,
16 they would be admissible as conspirator statements as long
17 as the state had shown threshold evidence of the conspiracy.

18 And the law says the conspirator doesn't even have
19 to know of the statements made. If they are, if they are
20 part of a conspiracy to achieve a certain purpose,
21 statements made by other conspirators toward that purpose
22 are admissible against. It is just they are admissible
23 against. It is the same as if Mr. Williams had said them by
24 virtue of the conspiracy.

25 And so, Your Honor, because if she had said them,

1 whether he heard them or not, they would be admissible
2 against. It is the same when she references them and
3 incorporates them into her threats against Mr. Sims that
4 day. "You didn't think I would find you, did you?" As he
5 indicated, that's a reference to her prior statements, "Your
6 day is coming," and the other threats that the Court can see
7 in those text messages.

8 So, Your Honor, there are multiple exceptions for
9 those statements to come in, but I submit they are
10 admissible as conspirator statements. They are absolutely
11 admissible against Ms. Norman as her statements.

12 They are admissible against Mr. Williams by virtue
13 of they are statements of a conspirator. They are also
14 admissible generally for their effect on the listener or a
15 reasonable person in Mr. Sims' situation. Again, if she
16 walked in and said those threats, that would be part and
17 parcel of the circumstances that would have faced a
18 reasonable person.

19 With regard to Ms. Hickman's arguments, so they
20 are with regard to the state's motion for prior bad acts and
21 the limited issue that we are here for today, the UFC
22 experience and the fact that Mr. Sims had previously killed
23 someone. Again, her argument, the crux of her argument is
24 that it's admissible because it is necessary to assess
25 Ms. Norman's state of mind, her fear, her rationale for

1 taking the gun into the casino.

2 And the circumstances that she confronted
3 Mr. Sims, not the other way around, that's clear from the
4 video. She went in with the gun and confronted him. But,
5 again, in the state's case-in-chief, that is not relevant.
6 If she got on the stand and testified in the defense
7 case-in-chief, she may make that relevant if she says I was
8 scared of Steve Sims or I had a reason for taking in the
9 gun. It was not to steal or commit a crime.

10 But she must testify in order to get that in,
11 because it's not otherwise relevant. The argument that
12 it's, the same similar arguments to what Mr. Picker said, if
13 she brought a gun to protect herself, and the testimony,
14 again, I quoted in my pleading the passage that Ms. Hickman
15 showed the Court. I think I quoted it in its entirety.

16 I also include the other portions in my replies
17 where reference is made, but also the absence of any
18 reference by Ms. Norman to being afraid or needing to take
19 the gun in because she was afraid of Mr. Sims.

20 And so the argument that her fear might have been
21 relevant when Mr. Sims stood over her, that's sort of a
22 secondary argument to her fear or need to take the gun in or
23 her state of mind and rationale for taking the gun in.

24 Ms. Hickman made an additional argument that when
25 Mr. Sims, when Mr. Sims stood up, then it would be relevant

1 to her fear at that point. That's midstream. She has
2 already gone in with the gun. That happened well after she
3 entered the casino with the gun.

4 But, again, her fear, that's an assumption. If
5 she testified in some way about that, that might make it
6 relevant, but in the state's case-in-chief it is not yet
7 relevant to show her state of mind, because there is nothing
8 that would indicate that that background knowledge entered
9 into her mind absent her testimony. That concludes my
10 rebuttal argument, Your Honor.

11 THE COURT: Thank you, Mr. Prengaman.

12 MR. PICKER: Your Honor, if I could address one
13 new area that Mr. Prengaman addressed.

14 THE COURT: You can. I will give him an
15 opportunity to rebut as well since the motion is his.

16 Mr. Picker.

17 MR. PICKER: Certainly. Mr. Prengaman repeatedly
18 said that Mr. Sims' state of mind is what's important there,
19 because she came in, or Ms. Norman came into Bob & Lucy's
20 with the gun. And that's the first time he argued that, so
21 I would like to point out a couple of things.

22 On page 232 of the preliminary hearing transcript,
23 Mr. Sims testified that he stood up and that's when he was
24 about to sock Ms. Norman. And he then in reviewing the
25 video of the event at page 235 admitted that he had never,

1 he had not seen the gun. Ms. Norman had not pulled the gun
2 supposedly until after he stood over her yelling at her.
3 And he specifically at page 336 and 337 admitted to standing
4 over her yelling at her.

5 And then at that point, at some point afterwards,
6 30 seconds to a minute afterwards, Ms. Norman pulls out this
7 firearm and shows it to him. Does not point it at him,
8 which he specifically admits on page 345.

9 Rather she shows it to him and says, "Yeah, it's
10 real," because she sees him looking at it. That was his
11 testimony, is that she sees him looking at it for the first
12 time. She says, "Yeah, it's real," and at that point
13 Mr. Sims says, "Yeah, I've got one, too."

14 Now, the specific statement that we are talking
15 about that Mr. Prengaman was addressing was that I know you
16 killed somebody. That becomes relevant with all of that
17 testimony that he stood over her and yelled at her, that he
18 was in a place in the testimony that he -- he was in a place
19 that he frequented and was familiar with, and so she is
20 entering, for lack of a better word, enemy territory. So
21 she goes in. Her mindset does become important as to why
22 she took that weapon in.

23 So given all of that, Your Honor, that's how I
24 would address that comment, the issue of why she did take
25 the gun in and it goes directly to that. Thank you. That's

1 my only response to the rebuttal.

2 THE COURT: Mr. Prengaman.

3 MR. PRENGAMAN: Thank you, Your Honor. Well,
4 Your Honor, his testimony was, and there was, there was
5 additional questioning, and so his testimony was she did not
6 take the gun out, so he stood up over her before she
7 actually took the gun out and displayed it.

8 But he testified that he saw the gun, could see
9 the gun under her jacket before then, so he knew she was
10 armed. So the context, complete context of his testimony is
11 he could see the gun under her jacket before she took it
12 out, and then so he, the totality of the testimony is he
13 knew that she had a gun because he had seen it, although she
14 did not take it out until after the point where he had stood
15 up.

16 THE COURT: Okay.

17 MR. PRENGAMAN: I don't think that changes
18 anything with regard to the admissibility of the evidence
19 unless she testifies. Thank you.

20 THE COURT: All right. Counsel, we have been
21 going for about an hour and a half. Let's take about a ten
22 minute break. When we come back, I'm going to finish with
23 the state's motions.

24 We will go right into -- well, let me ask this.
25 Well, let's do this. We will go into the state's other

1 motion, which is the possession of a handgun by Mr. Williams
2 on a previous occasion.

3 And during the break, I'm going to take a look at
4 my notes and find out how much we crossed into the territory
5 of other motions that were filed and then deal with our
6 arguments that remain on both of those, mainly Mr. Williams'
7 Motion in Limine to Admit Other Act Evidence of State's
8 Witness Steve Sims that was filed November 9th, whether or
9 not any arguments remain, and Mr. Williams' additional
10 Motion in Limine.

11 Mr. Picker -- I'm sorry, Ms. Hickman and
12 Ms. Grosenick, take a look at those motions and when we come
13 back I'm going to give you an opportunity to start or to
14 argue any issues that remain as to both of those, but we
15 will begin with the state's motion regarding Williams and
16 the handgun. Okay. We will be in recess. It's 10:34.
17 Let's take a recess until 10:50.

18

19 (Whereupon a break was taken from 10:34 a.m. to 10:59 a.m.)

20

21 THE COURT: Ms. Hickman and Ms. Grosenick, were
22 you able to speak with your client Mr. Williams during the
23 break?

24 MS. HICKMAN: Thank you, Your Honor, for checking.
25 Yes, we were. Thank you so much.

1 THE COURT: Okay. Mr. Picker, Ms. Rosenthal, did
2 you have an opportunity to speak to Ms. Norman or was there
3 a need to?

4 MR. PICKER: There wasn't a need to at this point,
5 Your Honor. We are good.

6 THE COURT: Okay. Counsel, a couple of
7 questions/requests. It's important for the Court in light
8 of the argument that has been made today to have a copy of
9 the video.

10 What I want counsel to do is put your heads
11 together and one of two things, come up with a version of
12 the video that you will file into the record jointly for the
13 Court's review. I'm assuming that can be done.

14 If it can't for some reason, if the parties want
15 to submit their own versions of the video, that's welcome,
16 too, but I sure would like a -- and I would not hold you to
17 that version of the video for trial, but certainly for
18 purposes of addressing the things that have been argued in
19 the record today. As an example, proving conspiracy. So
20 that first, please.

21 Mr. Picker, next with you, we have got a Facebook
22 message and a number of text messages that we talk about
23 here. Is it the defense's intent to challenge the validity
24 of those text messages, in other words, the source of them
25 as Ms. Norman's phone, the manner in which they were

1 extracted by law enforcement as a threshold issue?

2 MR. PICKER: No, Your Honor.

3 THE COURT: No. Okay. Even at trial, Mr. Picker?

4 MR. PICKER: It's going to depend on how they come
5 in at trial, Your Honor.

6 THE COURT: Okay. Ms. Hickman, same question for
7 you?

8 MS. HICKMAN: I imagine we would have the same
9 answer as Mr. Picker.

10 THE COURT: Okay. So we will wait to see the
11 foundation that the state lays, et cetera, correct?

12 MS. HICKMAN: Correct.

13 THE COURT: Okay. Mr. Prengaman, you made a
14 statement in one of your arguments you are not claiming
15 that Defendant Williams viewed the text messages or that he
16 ever saw them, but you are arguing based on the conspiracy
17 that he at least knew of the subject matter.

18 Are you acknowledging or conceding that the text
19 messages cannot be admitted against Mr. Williams or are you
20 using the conspiracy theory to grab those text messages and
21 include them as admissible against Mr. Williams as well?

22 MR. PRENGAMAN: The latter, Your Honor.

23 THE COURT: Okay.

24 MR. PRENGAMAN: I am not conceding, because I
25 believe they are admissible, so I believe they are

1 admissible as co-conspirator statements because they were
2 referenced and incorporated by Ms. Norman who I would argue
3 is a conspirator.

4 I would submit that they are also independently
5 admissible. Again, there is no confrontation clause issued
6 here with regard to those, and I would submit they are also
7 generally admissible for non-hearsay purposes of their
8 effect on the listener, which would make them admissible
9 equally against both defendants.

10 THE COURT: And the effect on the listener being
11 the conspiracy theory that Ms. Norman communicated their
12 content or a version of their content to Mr. Williams?

13 MR. PRENGAMAN: I would say generally, yes. I
14 don't think the conspiracy is as present there. It's the
15 fact that she referenced them when she confronted Mr. Sims,
16 which I would argue as if she made them again anew on the
17 22nd, on February 22nd, which would just like any thread in
18 the course of a robbery or attempted robbery be relevant for
19 its effect.

20 Again, without regard to the truth of the
21 speaker's intent, it would be admissible for its effect on
22 the listener and that would be, without regard to the
23 conspiracy, it would be admissible against all defendants.

24 THE COURT: Okay. Mr. Prengaman, this is a side
25 issue. It was addressed in the motion. Has Mr. Sims

1 suffered a judgment of conviction for the controlled
2 substance case?

3 MR. PRENGAMAN: He has not yet, Your Honor. His
4 sentencing has been continued to, forgive me, I don't have
5 the date in front of me, but it's next month, mid next
6 month, so he is scheduled to be sentenced prior to our trial
7 date.

8 THE COURT: Okay. There is an issue in the
9 pleading, what I gather from the pleading the way that they
10 are phrased, is the state acknowledges that if that
11 conviction occurs prior to his testimony that that would be
12 admissible against him. Do I understand that correctly?

13 MR. PRENGAMAN: Yes, Your Honor.

14 THE COURT: Okay. There is some information in the
15 pleadings about whether or not there were negotiations
16 related to the underlying offense and Mr. Sims' testimony in
17 this case. Is the state objecting to the defendants'
18 counsel questioning Mr. Sims about that on the record?

19 MR. PRENGAMAN: I am, Your Honor, because I don't
20 believe there is a good faith basis to do so, especially
21 given the questions that occurred at the preliminary
22 hearing.

23 And let me clarify, Your Honor. I don't -- I
24 object to them questioning as to the existence of a deal or
25 any deal, because there has been none and they don't have a

1 good faith basis for that. I think there is no question
2 they can ask him about his, you know, like his hope, was he
3 hoping to get a better deal. I think that's probably fair
4 game.

5 But questioning him about did you have a deal with
6 the state, did the state give you a deal, I think that
7 without a good faith basis it sort of implies that there was
8 something.

9 THE COURT: Okay. Mr. Picker, anything to add in
10 light of Mr. Prengaman's statements?

11 MR. PICKER: Your Honor, I think it's always fair
12 game to be able to ask somebody if there was a deal. He can
13 certainly say no and it inures to the benefit of the state.
14 I think that's fair game.

15 Whether he received any kind of benefit
16 whatsoever, we are allowed to ask that. If he received
17 housing, if he received money, we are allowed to explore
18 that. If he is a witness who ended up with a lesser charge
19 than what he was initially arrested for, I think that is
20 entirely fair game and that's entirely relevant.

21 THE COURT: Okay. Ms. Hickman, anything to add?

22 MS. HICKMAN: Thank you, Your Honor. I do agree
23 with Mr. Picker that we do get to probe his biases and his
24 motive for testifying in a certain way. At this point, none
25 of us know how Mr. Sims will be sentenced. He is currently

1 out on an OR. He has been noncompliant with Court Services
2 a number of times.

3 If he is on probation, I do believe we get to
4 question him about his probationary status, that he is on
5 probation, that he does have vulnerable status. That is
6 relevant cross examination, and I would intend to get into
7 that with him if he is granted probation. If he is put in
8 prison, that is a different situation and I think we can
9 broach that when we get to trial to see what his status is.

10 THE COURT: Okay. Mr. Prengaman, anything to add
11 in light of the statements of counsel?

12 MR. PRENGAMAN: Only, Your Honor, that
13 particularly with what Mr. Picker said, there has got to be
14 a good faith basis. If there is no good faith basis to
15 believe there was a deal, you can't ask about it. There has
16 got to be a good faith basis for all of the questions put to
17 the witness.

18 THE COURT: All right. Thank you.

19 MR. PICKER: Your Honor, I'm sorry, I did leave
20 one thing out. We did have discussions with Mr. Sims'
21 attorney, Mr. Edwards, and we had access to e-mails that
22 were provided where Mr. Edwards did ask and inquire to the
23 state whether he would get, whether he could have benefit
24 based on his participation in this case, so with that added
25 I will submit it.

1 THE COURT: Okay. Mr. Picker, thank you.

2 All right. Counsel, turning to Mr. Prengaman now,
3 I have a motion from the state regarding the Admission of
4 Other Acts Evidence Regarding Defendant Williams' Prior
5 Handgun Possession. Mr. Prengaman.

6 MR. PRENGAMAN: And, Your Honor, if I might just
7 go back to the Court's request about the video, if I may.

8 THE COURT: Yes, of course.

9 MR. PRENGAMAN: Your Honor, there were two
10 versions of the video admitted at the preliminary hearing,
11 and I thought that those were transferred as part of the
12 record to the District Court, and that might be the most, I
13 just wanted to inquire if that is the case or if the Court
14 knows that to be the case.

15 THE COURT: Let's do this, Mr. Prengaman. We will
16 do this by e-mail. I'm going to have Mr. Adrian look into
17 the preliminary hearing exhibits and find out. I know we
18 have got a very reliable contact in evidence. I can have
19 Mr. Adrian find out if we can get those videos to the Court
20 through the preliminary hearing process, and we may know
21 that before we conclude today.

22 If we can't for some reason, I will have
23 Mr. Adrian e-mail counsel and let you know. If we can, I
24 will review both of the ones admitted at the preliminary
25 hearing for purposes of making an order in this case.

1 I assume the state has no objection to that?

2 MR. PRENGAMAN: No, not at all, Your Honor.

3 THE COURT: Mr. Picker, on behalf of your client,
4 any objection if I can get both of the videos submitted at
5 the preliminary hearing and this Court reviewing them for
6 purposes of ruling on these motions?

7 MR. PICKER: No objection, Your Honor.

8 THE COURT: Ms. Hickman?

9 MS. GROSENICK: Your Honor, if I can just jump in.

10 THE COURT: Oh, Ms. Grosenick, of course.

11 MS. GROSENICK: I would just add that I may
12 reference a third video. There were actually multiple
13 videos, I believe, introduced at the preliminary hearing and
14 I believe I will be referencing at least a third one of them
15 in our argument regarding the prior handgun possession, but
16 we have no objection to the Court obtaining them that way.

17 THE COURT: Okay. Thank you so much.

18 All right. Let's go to the state's handgun
19 motion.

20 MR. PRENGAMAN: Thank you, Your Honor.

21 THE COURT: Mr. Prengaman.

22 MR. PRENGAMAN: Thank you. Well, Your Honor,
23 Mr. Sims testified at the preliminary hearing that he had
24 only had one encounter with Mr. Williams. So he knew
25 Ms. Norman, had been living with her, but he testified that

1 he had only had, prior to the February 22nd at Bob & Lucy's,
2 prior to that he only had one encounter with Mr. Williams
3 and that was a prior date when he had essentially spent much
4 of the day in the company of Ms. Norman and Mr. Williams.

5 And that on that occasion, Mr. Williams had a gun
6 that he had on him and that at a couple different points or
7 at one particular point in the car Mr. Williams had removed
8 the gun and placed it where it could be seen.

9 And so he knew that Mr. Williams had been armed
10 and had carried the gun with him throughout the day that
11 Mr. Sims was present with he and Ms. Norman.

12 So when, on the date of February 22nd when
13 Mr. Williams entered the casino and confronted Mr. Sims, one
14 of the things that he told Mr. Sims very shortly after his
15 arrival was, "Let's go, we are going for a ride. You know
16 how I roll."

17 Now, just like any threat, a threat doesn't have
18 to be expressed. In order to be a threat, you don't have to
19 say do this or I'm going to hurt you. There is a number of
20 ways to convey a threat or imply use of force, such as
21 don't, don't do anything stupid and there is a number of
22 ways.

23 When Mr. Williams told Mr. Sims, "You know how I
24 roll," Mr. Sims understood that to be a reference to the
25 only prior occasion that he knew, which was that

1 Mr. Williams was armed or had a handgun that he carried on
2 his person.

3 And so similar actually to the defense argument
4 about Ms. Norman's state of mind, here you have an
5 individual who is actually testifying about his state of
6 mind specifically with regard to a statement issued to him
7 by one of the defendants with the other present, "You know
8 how I roll."

9 So, Your Honor, that is relevant to what that
10 meant, that reference, which was, again, issued to Mr. Sims
11 by Mr. Williams, what that reference by Mr. Williams was in
12 reference to. So the reference being to that prior occasion
13 when he was armed, that's a threat or implied threat, a use
14 of force or threat of force.

15 And so, Your Honor, I submit that that is
16 relevant, that prior knowledge by Mr. Sims about
17 Mr. Williams having been armed. And Mr. Williams didn't,
18 the testimony from Mr. Sims was not that Mr. Williams did
19 anything illegal. It was not testimony that he did anything
20 bad or threatened anyone. Simply that he was armed and had
21 displayed the gun and that Mr. Sims was aware that he had
22 carried it with him on his person throughout the day.

23 And so that is relevant and admissible for the
24 noncharacter purpose of explaining the statement issued by
25 Mr. Williams to Mr. Sims, and that is something the state

1 would seek in its case-in-chief.

2 THE COURT: Mr. Prengaman, thank you.

3 Mr. Picker and Ms. Rosenthal.

4 MR. PRENGAMAN: And --

5 THE COURT: Oh, Mr. Prengaman, I'm sorry.

6 MR. PRENGAMAN: And so, Your Honor, additionally
7 there is another use of that, of that material and I would
8 not seek it in my case-in-chief; however, as I outlined in
9 my pleading, Mr. Sims testified, when he testified so he
10 told the police when he spoke to them that he had seen a gun
11 on Mr. Williams.

12 When he testified at the preliminary hearing, he
13 did not describe having seen a gun. He was questioned,
14 cross-examined by the defense about whether he had seen a
15 gun, and he said that he had not actually seen a gun.

16 But as he was entitled to do to explain the
17 inconsistency, he described that that prior occasion of him
18 knowing Mr. Williams to be armed with a particular color and
19 type of gun he described was the basis for that.

20 He explained he wasn't trying to lie, but he
21 believed based on the prior encounter that Mr. Williams was
22 armed, and that he assumed that he was, and that
23 Mr. Williams didn't actually display a gun, but made a
24 motion that he, an indication on his body that Mr. Sims
25 again believed was a reference to him being armed sort of

1 contemporaneous with that "You know how it is" statement.

2 So, again, the state would not seek to address
3 that, but if he were cross-examined about the inconsistent
4 statements, I would submit that it's relevant to Mr. Sims'
5 explanation for the inconsistency, which he is entitled to
6 give, that that was part of why he believed and told the
7 police that Mr. Williams was armed.

8 THE COURT: Okay. Mr. Picker and Ms. Rosenthal.

9 MR. PICKER: Your Honor, I'm going to defer to
10 Ms. Hickman and Ms. Grosenick since this motion is directly
11 aimed at their client. I don't believe the motion was
12 actually filed in our part of the case.

13 THE COURT: Okay. Ms. Hickman and Ms. Grosenick.

14 MS. GROSENICK: Thank you, Your Honor. The other
15 argument that I would like to address at some point is that
16 I believe that the state's argument that the text messages
17 are relevant to the effect on the listener is coming up for
18 the first time today and so we would like an opportunity to
19 address that at some point.

20 THE COURT: All right. Ms. Grosenick, let's
21 finish the arguments on this motion and we will go back to
22 that.

23 MS. GROSENICK: Very well. Thank you.

24 So as Your Honor is already aware, the legal
25 framework for this evidentiary issue of whether the state

1 can introduce evidence that Mr. Williams had a handgun in
2 his possession on a prior occasion, which Mr. Sims was aware
3 of, it's a three-prong inquiry.

4 So first it must be relevant for a non-propensity
5 purpose, the state must also prove that it occurred by clear
6 and convincing evidence, and the probative value must not be
7 substantially outweighed by the danger of unfair prejudice.

8 The first and third prongs are intertwined,
9 because the less relevant something is the less probative
10 value it has and the more likely it is that it will be
11 substantially outweighed by unfair prejudice, especially in
12 a situation like this where the nature of the prior bad act
13 is possession of a gun.

14 I also just want to remind the Court that we do
15 begin with a presumption of inadmissibility and that's from
16 Rosky versus State, 121 Nevada 184, page cite 195, and
17 that's from 2005.

18 So it's presumptively inadmissible to put in front
19 of a jury that Mr. Sims observed Mr. Williams in possession
20 of a gun on a prior date and it is the state's burden to
21 overcome that presumption.

22 Now, the state argues that there are two possible
23 grounds for introducing this testimony. First, it wants to
24 introduce evidence, or this evidence to give context to
25 Mr. Williams' statement "You know how I roll" as relevance

1 to Counts I and II, robbery and attempted robbery, and
2 specifically Mr. Williams' intent.

3 Second, the state argues that the evidence is
4 relevant as rebuttal evidence if the defense cross-examines
5 Mr. Sims about his statement to police that he saw
6 Mr. Williams in possession of a gun on February 22nd, which
7 turned out to be incorrect.

8 This evidence is not legally relevant on either of
9 these grounds, and even if the Court were to find minimal
10 relevance any probative value would be substantially
11 outweighed by the danger of unfair prejudice.

12 So here is the problem. Mr. Sims told things to
13 the police about what happened on February 22nd that ended
14 up being directly contradicted by a video of the incident
15 and subsequent investigation.

16 On February 22nd of 2020, Mr. Sims told at least
17 two different officers that during their encounter at Bob &
18 Lucy's, Mr. Williams lifted up his shirt and showed Mr. Sims
19 the handle of a black firearm that was tucked into
20 Mr. Williams' waistband. This is in preliminary hearing
21 Exhibit Number 13, and I believe the time stamp is
22 12 minutes and 9 seconds.

23 In addition, the video footage from inside Bob &
24 Lucy's shows that this never happened and that's in
25 preliminary hearing Exhibit Number 2.

1 So when confronted with video evidence at the
2 preliminary hearing in this case, video evidence that showed
3 that Mr. Williams never did any such thing, Mr. Sims had no
4 choice but to admit that he never saw Mr. Williams in
5 possession of a gun on February 22nd of 2020.

6 Now, I would like to direct the Court to some
7 pinpoint cites within the preliminary hearing transcripts,
8 and I will leave it to Your Honor's discretion whether you
9 would like to follow along or whether you would prefer for
10 me to provide the page and line stamps only.

11 THE COURT: I will follow along.

12 MS. GROSENICK: So the first one is in the day
13 number two transcript, page 355, lines 18 to 19. This is
14 the question of Ms., the questioning of Mr. Sims as provided
15 in the exhibits from the state.

16 THE COURT: And the page number again?

17 MS. GROSENICK: I'm sorry, yes, Your Honor, page
18 355, lines 18 and 19.

19 THE COURT: Great. Thank you. Go ahead.

20 MS. GROSENICK: And this is questioning by defense
21 counsel. "My question is, he never showed you a firearm."
22 Answer, "I understand. No, he did not."

23 And the Court is welcome as well to read the pages
24 around there to provide additional context, but there are
25 several places where Mr. Sims admitted he never saw a

1 handgun. He never saw Mr. Williams in possession of a
2 handgun on February 22nd.

3 Page 357, lines 17 to 23.

4 THE COURT: Okay.

5 MS. GROSENICK: "Question: So let me ask you
6 this: As you sit here today, can you testify under oath
7 that you're telling the truth, that you saw him pull up his
8 shirt on February 22nd and showed you a black Glock?"

9 "Answer: You're asking me if I seen him pull up
10 his shirt and showed a black Glock on February 22nd? I
11 cannot definitively say I did, no, I can't."

12 Page 361, line 1 through page 362 line 2, and this
13 is Sims continuing from 360, line 24. He says, "I know -- I
14 know what actually happened. What I'm showing the officer
15 did not happen. He motioned towards his waist. I did like
16 this, and like I said, as far as my psyche -- my psyche, not
17 his -- I knew that he had the gun. So -- I mean, I've seen
18 it before."

19 "Question: I'm going to ask you to stop telling
20 me what you've seen before and I'm going to ask the Court to
21 disregard that."

22 "The Court: The Court will disregard it."

23 "Question: I want to know -- you said you know
24 what happened. Right?"

25 "Answer: Between right now and what actually

1 happened at the machine. Seeing it right now is what I'm
2 saying."

3 "Question: Okay. What happened?"

4 "Answer: Right now, it's my adrenalin and I'm
5 saying that he lifted it when he didn't. He more or less
6 just kind of -- like when I stood up and gave an example,
7 kind of nudged at it."

8 "Question: He just patted his stomach."

9 "Answer: Yes, ma'am."

10 "Question: So he didn't show you anything?"

11 "Answer: No, ma'am."

12 "Question: So you did not see a firearm?"

13 "Answer: No, ma'am."

14 "Question: You did not see a knife?"

15 "Answer: No, ma'am."

16 And then the last one is page 385, and there may
17 be more, but this is to give examples, page 385 lines 12
18 through 18. "Question: And you said to Detective Harris,
19 'I saw the handle of it when he lifted his shirt up a little
20 bit?'"

21 "Answer: Correct."

22 "Question: But that wasn't true. Right?"

23 "Answer: The video clearly shows that wasn't
24 true, yes."

25 So then Mr. Sims starts to explain that the reason

1 he told police something that was not true is that it was
2 his perception that day based on the one day that he
3 allegedly spent with Mr. Williams in December of 2019 where
4 he allegedly saw Mr. Williams in possession of a gun.

5 But what Mr. Sims' perception actually was, was an
6 incorrect assumption that Mr. Williams was in possession of
7 a firearm on February 22nd. The other factors that played
8 significant roles in his perception were this.

9 Mr. Sims was under the influence of
10 methamphetamine, both on that day in December of 2019 and on
11 February 22nd of 2020. Two, Mr. Sims had not slept for
12 21 hours when he had contact with Ms. Norman and
13 Mr. Williams on February 22nd and for even longer by the
14 time he talked to the police. And, three, his upbringing
15 and experience in Englewood, California, and I will go
16 through these details in more detail in a moment.

17 But what the state is trying to do here is try to
18 support and justify Mr. Sims' incorrect and unfounded
19 assumption that Mr. Williams was carrying a gun when, in
20 fact, he was not. And how is any of that relevant to
21 Mr. Williams' intent in entering the building? It's not.

22 Now, turning specifically to the legal grounds for
23 relevance or admissibility, the Nevada Supreme Court has
24 explicitly held that the courageousness or timidity of the
25 victim is irrelevant. It is the acts of the accused which

1 constitutes an intimidation.

2 In fact, this is what differentiates robbery from
3 larceny, the use of force. It is the acts of the accused.
4 "If the fact be attended with circumstances of terror, such
5 threatening word or gesture as in common experience is
6 likely to create an apprehension of danger and induce a man
7 to part with his property for the safety of his person, it
8 is robbery." And that is Mangerich versus State, 93 Nevada
9 683, pinpoint cite 685 from 1977.

10 There is no room in this standard for Mr. Sims'
11 paranoid delusions. It is a reasonable person standard. So
12 Mr. Sims testified extensively about his upbringing in
13 Englewood, California, and how those experiences caused him
14 to interpret things in a certain way. But that doesn't mean
15 that Mr. Williams intended them in that way when they were
16 stated or his actions.

17 Mr. Sims specifically stated that Williams was
18 communicating "Don't mess with me" when he pulled his gun
19 out in December, but that's his interpretation based on his
20 background. And I direct the Court to the preliminary
21 hearing transcript page 552, line 24, through 553, line 7,
22 as well as page 580, lines 15 through 23.

23 Sims also testified at the preliminary hearing
24 that he believed Mr. Williams was a gangster through
25 "innuendoes and incentives", but couldn't state anything

1 specific that Williams said other than that he had to clean
2 up a mess before following them to Winnemucca. And this
3 occurs in the preliminary hearing transcript on page 567,
4 lines 4 through 11.

5 So Mr. Sims was not shy about the fact that he was
6 under the influence of methamphetamine on that day in
7 December of 2019 and on February 22nd of 2020. I direct the
8 Court to line 5 or, sorry, page 572, lines 14 to 15 of the
9 preliminary hearing transcript. He states, "Watching the
10 video two months later, I'm calm, I'm relaxed, no drugs in
11 my system."

12 And in the preliminary hearing transcript page
13 573, lines 11 through 15, Sims admits to being under the
14 influence of methamphetamine on that day in December
15 of 2019.

16 Sims also, Mr. Sims also admitted that when the
17 events of February 22nd occurred, he had been up since
18 9:00 a.m. the day previously, which was approximately
19 21 hours. So the events in this case started I believe
20 around 6:00, 6:30 in the morning. He had not slept that
21 night and had last woken up the day before around 9:00 a.m.

22 And Sims also repeatedly admitted that
23 methamphetamine use affects his judgment and perception and
24 memory, and I will direct the Court to the following
25 pinpoint cites for that: Page 573, lines 1 through 15, page

1 575, lines 20 to 24, page 576, lines 24 through page 577,
2 line 7, and on page 577 lines 14 to 17. He admits that he
3 was incorrect about a number of his memories.

4 The reasonable person standard does not take into
5 account individual characteristics like being under the
6 influence of methamphetamine or being awake for 21 straight
7 hours or growing up on the streets of Englewood, and that's
8 where a lot of Mr. Sims' spin on Mr. Williams' actions comes
9 from, and so for that reason his interpretations or
10 assignments of meaning are irrelevant.

11 Now, as we discussed earlier, Mr. Sims can say I
12 felt afraid, I was scared, to me this is what it meant, but
13 it doesn't mean that the state gets to backdoor in prior bad
14 acts about our client in order to give that context.

15 So taking out Mr. Sims' assumptions or his spin on
16 things, what are we left with? Mr. Sims testified that he
17 spent one day with Mr. Williams in December of 2019. That
18 day in December of 2019 was prior to Christmas, which puts
19 that day over two months prior to the alleged events in this
20 case. That day was the first time that he had met or had
21 any interaction with Mr. Williams until February 22nd.

22 On that day in December 2019, Mr. Williams never
23 threatened Mr. Sims with a gun or used it in any menacing
24 way. In fact, when Mr. Sims first saw the gun, he asked
25 Mr. Williams about it, like what kind was it? Could you get

1 me one? Where did you get it? Mr. Sims later confirmed
2 that this was a friendly conversation about the gun and the
3 only conversation about the gun.

4 Mr. Sims could not tell you where Mr. Sims or,
5 sorry, where Mr. Williams had the gun throughout that day in
6 December. He could not tell you where Mr. Williams kept the
7 gun on his body or where he pulled it from to put it in the
8 glove box, and he could not tell you whether Mr. Williams
9 took that gun inside the casino with him on that day in
10 December of 2019.

11 So what we have is a single prior day that
12 Mr. Sims allegedly observed Mr. Williams in possession of a
13 firearm two months prior to the offense date in this case.
14 Mr. Sims never saw Mr. Williams in possession of a gun
15 before or since that one day.

16 And on that one day in December of 2019,
17 Mr. Williams never threatened Mr. Sims with the gun and
18 Mr. Sims can't even say where Mr. Williams kept the gun
19 throughout the day or whether he took it into any
20 establishments with him.

21 So given the remoteness in time and nonthreatening
22 nature of that experience under the totality of the
23 circumstances, testimony that Mr. Sims saw Mr. Williams in
24 possession of a gun on one day two months prior to the
25 events in this case is not legally relevant to robbery or

1 attempted robbery as far as either Mr. Sims' intent or
2 Mr. Williams' intent.

3 As for the use of prior bad act evidence as
4 rebuttal, I'm a little unclear on this, and so maybe
5 Mr. Prengaman can clarify, but the way that I interpret what
6 the state would like to do is that he would like to have
7 Mr. Sims testify that he saw a gun on Mr. Williams' person
8 on the day of February 22nd of 2020 and leave it so that the
9 state cannot question him about the accuracy of that
10 statement without having the prior alleged seeing a gun on
11 Mr. Williams come in, and so I think that that would be a
12 really misleading picture to put in front of the jury.

13 The defense's ability to impeach Mr. Sims on that
14 statement that he made on February 22nd that he saw an
15 actual gun in Mr. Williams' possession, which turned out not
16 to be the case, that does not open the door for the state to
17 bring in other act evidence against our client and somehow
18 justify what Mr. Sims thought he saw.

19 This trial is about what Mr. Williams and to some
20 extent Ms. Norman did or did not do on February 22nd of
21 2020. It is not about why Mr. Sims was afraid. He can
22 testify that he was afraid, but it doesn't open the door to
23 bring in other act evidence about Mr. Williams.

24 And this brings me to the last prong. In this
25 situation, even if you find that the prior act is relevant,

1 the probative value of that evidence is substantially
2 outweighed by the risk of unfair prejudice according to case
3 law.

4 The concern is that the jury will interpret that
5 evidence as demonstrating that Mr. Williams has a propensity
6 to possess a gun in general as opposed to demonstrating that
7 he committed the specific crime or crimes alleged here.

8 That is echoed in Federal case law in the United
9 States versus Midyett, which is referenced -- I'm sorry, for
10 the court reporter that's M-I-D-Y-E-T-T, 603 F.Supp.2d 450,
11 pinpoint cite 459, Eastern District of New York, 2009.

12 The other danger is that Mr. Williams will be
13 portrayed as a violent individual, which is absolutely
14 character evidence and is not admissible, Phillips versus
15 State, 121 Nevada 591, pinpoint cite 602, 2005.

16 And prior possession of a firearm has been widely
17 recognized as a dangerous prior bad act to admit given the
18 nature of its evidence and the concern that the jury will
19 convict for other than what actually occurred during the
20 events in question.

21 In Walker versus State, 116 Nevada 442nd, sorry,
22 442, pinpoint 443, 2000, the prior acts were much more
23 relevant to guilt and the Supreme Court there still found
24 the probative value is substantially outweighed by unfair
25 prejudice.

1 In that case, the defendant was accused of
2 shooting and murdering her husband. The District Court
3 allowed evidence that the defendant had threatened to kill
4 him and had pointed a gun at him on two prior occasions
5 six and ten years prior.

6 But the Supreme Court found that the probative
7 value was substantially outweighed by the danger of unfair
8 prejudice, that the jury would see her as a violent
9 threatening individual, and those facts are much more
10 relevant than the ones in our case.

11 So the evidence that the state seeks to admit here
12 is presumptively inadmissible and the state has not met that
13 burden to overcome that presumption. I'm asking the Court
14 to issue an order precluding the state from introducing this
15 evidence either in its case-in-chief or on rebuttal.

16 THE COURT: Ms. Grosenick, thank you so much.

17 Mr. Prengaman. You are on mute.

18 MR. PRENGAMAN: Your Honor, at the outset,
19 Ms. Grosenick made a statement about the state arguing for
20 the first time effect on the listener with regard to the
21 prior argument, which is incorrect. On page 11 of the
22 state's motion, the state specifically made the argument
23 about effect on the listener, so that was addressed in my
24 motion and my argument, and so I just wanted to let the
25 Court know that.

1 With regard to the defense argument, so the case
2 that Ms. Grosenick last mentioned, I believe the reason, the
3 primary reason the Supreme Court held the evidence
4 inadmissible was because it was remote in time from the
5 crime, and remoteness is not an issue here, but there are
6 two issues that I submit the defense conflates.

7 Issue number one is the circumstances of the
8 encounter, the robbery, attempted robbery, burglary alleged
9 by the state. When the Defendant Williams said, "You know
10 how I roll," that is a circumstance of the offense. That's
11 a statement made by people who have some prior history and
12 it's a reference to that history.

13 Again, similar to the same argument both defense
14 attorneys are making about Ms. Norman's knowledge about
15 Mr. Sims being a UFC fighter. Their argument is these are
16 people who know each other and when they testify about their
17 state of mind and understanding that that should be
18 relevant. Well, again, here this is exactly the same
19 paradigm as what the defense argued in that context.

20 Steven Sims, who has some prior knowledge of
21 Mr. Williams, and Mr. Williams is making a specific
22 reference to Mr. Sims during the alleged offenses, "You know
23 how I roll," and it is relevant what that means to the
24 person that had the prior experience that this defendant is
25 issuing that to.

1 It's not that different from somebody putting
2 their finger -- and so the actual him being armed is not an
3 issue here. That is, it does not require that he actually
4 have been armed as the defense argues for this to be
5 relevant.

6 It's really no different than a person who puts
7 their finger in their front pocket of their jacket and says,
8 "Give me all your money." They may not actually be armed,
9 but that's no less a threat of force or use of force or
10 intimidation.

11 So that statement, "You know, you know how I roll"
12 based on that one prior occasion is a relevant circumstance
13 for the commission of the offense and it's a reference to
14 something that, again, you know and he knows that
15 Mr. Williams is armed, and so that is relevant.

16 And the argument is, that Ms. Grosenick outlined,
17 as I said, Mr. Sims doesn't claim he did anything bad with
18 the gun, but knowing that he is armed and that reference
19 being made in this moment, "You know how I roll," that is
20 relevant to show that's a use of force regardless of whether
21 he is actually armed or not. And it is not that
22 prejudicial, because I submit the facts of the case show
23 that there was one gun. There was no second gun recovered.

24 And it will be clear that what that was, it was a
25 reference for use of force and intimidation to further

1 Mr. Williams' design, but, again, it does not hinge, the
2 relevance of that does not hinge on whether he was actually
3 armed, just as it would not hinge on the person with the
4 finger in the jacket pocket pretending that it's a gun to
5 someone that they are attempting to rob.

6 The second issue is the cross examination and
7 confrontation with Sims' statements to the police. Now,
8 Mr. Sims did not come in at the prelim and say I saw a gun.
9 He did not say that. So they were not impeaching any
10 inconsistent statement that he made at the prelim about
11 Mr. Williams being armed.

12 He did not testify that he recalled him being
13 armed. He did not say that he saw a gun, but they brought
14 up his prior statements to the police about having seen a
15 gun.

16 So they injected that issue, and that issue does
17 go -- I mean, when Ms. Grosenick says that his assignments
18 of meaning are irrelevant, that's inaccurate. When they are
19 questioning him about his prior statements, he is entitled
20 to explain why he made those statements.

21 And so when they -- And, again, this is not, this
22 is not a pure impeachment with a prior inconsistent
23 statement. In other words, Mr. Sims did not come in and say
24 I saw Mr. Williams with a gun and then they said, well, did
25 you tell the police you didn't see a gun? That's not what

1 happened.

2 This is Mr. Sims saying, testifying that -- not
3 testifying that he ever saw a gun on Mr. Williams or
4 Mr. Williams display a gun, and then the defense bringing
5 that up to impeach his credibility anyway.

6 And so they inject that issue of what he told the
7 police, and he is entitled to explain why he told the police
8 what he did. And his explanation was that, and then he
9 incorporated many of the things that Ms. Grosenick says,
10 that he was under stress, but what he essentially was
11 conveying, and if you read the context of those cites that
12 she gave, they are pinpoint and they leave out the context.

13 What he was repeatedly trying to convey in
14 response to those questions was, and his repeated references
15 to his psyche is he is trying to explain why he did that,
16 and he explained being under the stress and that he knew
17 that Mr. Williams was armed, that he knew he was armed and
18 that's why he told the police that he had seen a gun,
19 because he knew he had a gun.

20 So with regard to that aspect, the impeachment, I
21 anticipate Mr. Sims will testify similarly at the trial as
22 he did at the prelim. I don't anticipate he is going to
23 come in and say I saw Mr. Williams display a gun.

24 And if he says that, they can impeach him with
25 that prior inconsistent statement. But if he testifies

1 similarly, if they inject that issue of what he told the
2 police to impeach his credibility, they are opening the door
3 to his explanation for why that is.

4 And they can't on the one hand bring in -- they
5 want to bring in the maximum impeaching value and yet leave
6 out the explanation of the context. And if they open the
7 door, that's his explanation and the statute says he is
8 entitled to an opportunity to explain or deny the statement.

9 So he has an explanation for it. It's his psyche
10 and his explanation for his state of mind at the time he
11 said that, and if they bring it up, they are opening the
12 door to that.

13 And so when the argument is made that he wasn't
14 actually armed when we are talking about the explanation for
15 the inconsistency of what he told the police, that doesn't
16 matter. It doesn't matter that he wasn't actually armed.

17 And when they cast sort of the aspersion of his
18 paranoid delusions, the accuracy doesn't matter. What they
19 are questioning in that issue is them bringing up prior
20 statements to the police, and not facts but prior statements
21 to the police, and those statements entail the why he made
22 them and the explanation of those statements.

23 And so, again, that's where they conflate the
24 relevance. It's not, again, the accuracy. It is why he
25 said those, and so if they want to bring that up, he is

1 entitled to explain why he said that so that the jury can
2 weigh and determine the impact, if any, of those statements
3 to the police on his trial credibility.

4 So the defense, I submit the defense holds the
5 keys to that, so to speak. They don't want him to talk
6 about that, and they, again, this is not something that is
7 necessary, this is not something that directly went to
8 impeach his -- it wasn't a direct inconsistent statement.
9 It was general credibility impeachment. So if they want to
10 go to that, again, I submit they hold sort of the keys to
11 unlock that and whether it becomes an issue in the case.

12 But, again, him being high, that does not
13 necessarily cut against it. That's part of the
14 circumstances. Again, that doesn't go to the accuracy of
15 the statement.

16 When you are talking about the context of why he
17 made that statement, that could be a factor. I mean, he
18 could say, yeah, I had used methamphetamine that day. Maybe
19 I was off.

20 But, also, you know, one of the reasons he gave
21 over and over again is that he knew that Mr. Williams had
22 been armed before, he believed he had a gun, and that's why,
23 that's why he explained to the police that he had seen it.

24 THE COURT: So, Mr. Prengaman, let's hypothecate
25 here or hypothesize. Mr. Sims takes the stand. The state

1 says did you see Defendant Williams with a gun at the bar at
2 the casino that day, and he says I did not.

3 And then the defense asks him didn't you go right
4 after the incident and tell the police that he showed you a
5 weapon and so that's inconsistent with what you are
6 testifying to now.

7 It's the state's position you then get to say were
8 you asked about this at the preliminary hearing and what did
9 you tell the defense counsel was your rationale for making
10 the statement to the police that Defendant Williams had a
11 gun? Is that how it would go down?

12 MR. PRENGAMAN: Not necessarily, Your Honor. I
13 would submit that it would -- so if they asked, well, didn't
14 you tell the police that you had seen a gun, and then he
15 would be entitled to say why he said that, so --

16 THE COURT: Right. And if he doesn't offer, if he
17 doesn't offer that to the defense, though, and they don't
18 ask that question, it's the state's position that you are
19 then entitled to ask him why?

20 MR. PRENGAMAN: Yes, Your Honor. Why did you tell
21 the police that? What were the circumstances of you making
22 that statement that they just questioned you about?

23 And, then, yes, then he can say, I think he can
24 say, yes, I was under stress, it was immediately after this
25 happened, and he can say and I knew that he was armed and so

1 I assumed that he was and I confused that.

2 THE COURT: Okay. Thanks, Mr. Prengaman. I just
3 wanted to make sure I understood how it would play out. Go
4 ahead.

5 MR. PRENGAMAN: And then so, Your Honor, then the
6 final argument about the prejudice, in terms of those
7 assumptions, again, on the -- and I think I just want to be
8 sure I covered that. I think I did, but when you are
9 talking about the issue of "You know how I roll," I submit
10 that there is minimal prejudice there. Because, again, it's
11 not a criminal circumstance that we are talking about. It's
12 merely possession of a gun being referenced.

13 When you are talking about the explanation that I
14 assumed that he had a gun, again, he is acknowledging no
15 gun. He said that, I did not see a gun, so there is minimal
16 prejudice there because the implication is not, oh, the jury
17 is going to assume he had a gun.

18 The context is Mr. Sims is saying I did not see a
19 gun, and the defense is saying, well, you told the police
20 you saw one, but there wasn't one, and his acknowledgment,
21 yes, that's the case. There is very little prejudice there
22 in terms of a danger of misuse or the jury inferring that he
23 was armed under the circumstances of this particular case.

24 And so I, again, on the impeachment side certainly
25 the defense, again, they can open the door to that and that

1 is something that factors into the prejudice analysis. It's
2 up to them.

3 I mean, again, he is going to come in, if he comes
4 in as I anticipate and says I didn't see a gun, then the
5 defense is entirely opening the door to this. And, again,
6 it would be unfair to prevent him from giving his full
7 explanation, or them trying to make him look like he is not
8 telling the truth, and him having some explanation that the
9 jury can fully weigh to reach their own decision.

10 THE COURT: Okay. If I can have just a moment,
11 counsel.

12 Ms. Grosenick, a question for you. What
13 importance, if any, is there with regard to the statement
14 "You know how I roll" that Mr. Sims and Defendant Williams
15 had only met on one prior occasion and that occasion is the
16 occasion where Mr. Williams was in possession of a handgun?

17 MS. GROSENICK: Well, first I would question
18 whether that was, whether it was established that that was
19 directed at Mr. Sims, so that's where I would start, but I
20 don't think it's particularly relevant.

21 THE COURT: The fact that the two men only met one
22 time before the encounter at Bob & Lucy's, is there any
23 importance to that?

24 MS. GROSENICK: I understand what Your Honor is
25 saying --

1 THE COURT: Let me, let me frame it in the way I
2 hear what Mr. Prengaman is saying is, look, they meet at
3 Bob & Lucy's. Defendant Williams looks at him and says,
4 "Let's go, you know, get in the car, you know how I roll."
5 Well, they had only met one time before that.

6 What I hear Mr. Prengaman saying is there is no
7 other inference except that whatever Mr. Williams was
8 directing Mr. Sims to do and whatever he was saying to him
9 referred to that previous meeting, because there was only
10 one, and, therefore, it must have referred to Mr. Williams
11 owning a firearm.

12 MS. GROSENICK: Court's indulgence, please. Let
13 me find that in the transcript.

14 THE COURT: I believe the heart of the question,
15 Ms. Grosenick, is the fact that they only met one time
16 before, is that significant?

17 MS. GROSENICK: So, okay, let me start with the
18 first part, if that's okay, Your Honor.

19 THE COURT: Of course.

20 MS. GROSENICK: Because I think that when you read
21 the transcript, if you haven't already, you are going to see
22 more context to that statement than we have talked about.

23 On page 474 of the preliminary hearing transcript,
24 Mr. Sims clarifies that his assumption -- sorry, that's the,
25 "Your time is coming." Let me find it.

1 It's, sorry, it's 521 that provides some context
2 to that statement. Mr. Sims testified that a lot of what he
3 infers from Mr. Williams' actions comes from his own, from
4 Mr. Sims' own background in Englewood, California.

5 THE COURT: Right.

6 MS. GROSENICK: And here on page 521 he talks
7 about how Ms. Norman, when Ms. Norman sent those text
8 messages in January, for some reason Mr. Sims had already
9 put Mr. Sims in the picture, I'm sorry, Mr. Williams in the
10 picture and that, again, that's an assumption. There is no
11 evidence of that. So, again, it's an assumption on
12 Mr. Sims' part that's not based on fact. It's just frankly
13 an assumption.

14 And so, you know, I think it's fair to look at
15 this in context and say, "You know how I roll," Mr. Sims
16 admits in the preliminary hearing that he, that that
17 statement can have many meanings and he takes it as meaning
18 a reference back to that day.

19 When you read the transcript, you are going to
20 find that the interaction between Mr. Williams and
21 Ms. Norman and Mr. Sims was really quite brief. The
22 allegation is that he walks in, walks directly --
23 Mr. Williams walks into the bar, walks directly over to
24 where the two are seated, has a minute or less interaction
25 and the words, the only thing that Mr. Sims can really

1 remember coming out of Mr. Williams' mouth is, "You know
2 what time it is. Let's go. You know how I roll," and
3 walking away.

4 And so that's it. There is not a lot there. It's
5 a very brief interaction in the context of everything. I
6 think that the state is trying to make it look like more
7 than it is, and they do have a right to try to prove their
8 case, but at what expense.

9 And it can't be at the expense of a trial where
10 Mr. Williams could be convicted for the jury perceiving him
11 as somebody who carries guns all the time, right, and so
12 that's where we are coming from.

13 As far as the significance of, you know, only
14 meeting on one prior occasion, yeah, I mean, that would be
15 Mr. Sims' frame of reference certainly, but I think in the
16 scheme of the whole interaction and how it's played out in
17 Bob & Lucy's and what happened in there and the entire
18 transcript, the state is attempting to give a significance
19 to it that did not exist.

20 THE COURT: Okay. Thanks, Ms. Grosenick.

21 Okay. Counsel, thank you very much for all of
22 that. Let's go now to the motions that remain, which are
23 Mr. Williams' Motion in Limine to Admit Other Act Evidence
24 of Witness Sims and the Additional Motion in Limine
25 Regarding Other Act Evidence of the State's Witness.

1 Ms. Grosenick, Ms. Hickman, is there anything to
2 add as a result of the arguments that the Court has already
3 heard on the state's motion?

4 MS. HICKMAN: Your Honor, can I just have one
5 brief moment?

6 THE COURT: Yes. Do you want some time off the
7 record and you can call your co-counsel if you need to?

8 MS. HICKMAN: Thank you, Your Honor. I don't
9 think we have anything additional to add other than what has
10 been presented.

11 THE COURT: Okay. All right. Counsel, that
12 concludes all of the motions that the Court listed in its
13 order set for purposes of hearing today. We will get to
14 work on these and get you a decision just as quickly as we
15 possibly can.

16 There are other motions that have been filed in
17 the case since the Court set the hearing on these, so I will
18 be reviewing those as well, and to the extent hearings are
19 requested or required, we are going to set those.

20 Okay. Mr. Prengaman, is there anything else to
21 come before the Court regarding this motion hearing?

22 MR. PRENGAMAN: Not regarding the motion hearing,
23 Your Honor.

24 THE COURT: Okay. Mr. Picker?

25 MR. PICKER: Not regarding the motion hearing.

1 Thank you.

2 THE COURT: Ms. Hickman?

3 MS. HICKMAN: Your Honor, I do have one issue that
4 I would like to address with the Court. Obviously, this is
5 a co-defendant trial. There is two co-defendants and two
6 defense counsel for each one of them.

7 I wanted to address what that looks like in terms
8 of the COVID courtroom. In the past in co-defendant trials,
9 it has presented a challenge for the Court, but we aren't
10 set up at this point to do this type of a case with the
11 COVID restrictions in the courtroom, and I want to address
12 it sooner rather than later.

13 Because as the Court knows, and I'm sure
14 Mr. Prengaman and Mr. Picker would agree, between now and
15 when the trial starts, there is significant preparation
16 devoted to that trial. And if the Court is working to make
17 it so that a co-defendant trial could go in March, I think
18 that that information would be very appreciated by counsel
19 so we know.

20 And if the Court is in a position where it doesn't
21 appear as though that courtroom would be ready for a
22 co-defendant trial in March, I think that that also would be
23 very appreciated so that the time and effort doesn't keep
24 getting replicated for every trial setting, when even if
25 trials do go in March we aren't in a position to be able to

1 try it in that courtroom.

2 THE COURT: Ms. Hickman, this is what I will do.
3 I am right now missing a meeting with my colleagues. My
4 review of AO 2020-05(E) puts this trial, I believe it's
5 2020-02(E) trial flight 6, I think it puts this trial as
6 number 25, or it's trial flight 6, order (F), which doesn't
7 mean it's not going to go in March.

8 I mean, I had a trial already in COVID times that
9 was set in November. We moved it back to October because
10 all of the other cases went off. But I will report to the
11 parties an update of what I know about that courtroom and
12 whether or not it will be ready for a two-counsel
13 co-defendant trial by March.

14 But as soon as I know something, Ms. Hickman, it's
15 a legitimate, it's a good issue to raise and it's important,
16 and so I should have more information for you on that
17 shortly and we will communicate that to the parties, okay?

18 MS. HICKMAN: Thank you very much.

19 THE COURT: You are so welcome.

20 Mr. Picker, anything else? Now, you all said not
21 related to the motion hearing, which leads me to believe
22 there are other issues. Mr. Picker.

23 MR. PICKER: In fact, Your Honor, Ms. Hickman
24 brought up the issue that I had in mind. At the moment, on
25 trial flight 7 it looks like we are number 15 out of 28

1 cases, and I note that in the 14 cases above there is quite
2 a few of those that are, in my mind, are definite to go, so
3 I had the same concerns.

4 THE COURT: Okay. And the thing is, counsel,
5 truly it doesn't matter that you are 15. You still need to
6 know, because you know how the trial flights go. We start
7 trying cases in that trial flight, and if they keep going,
8 they keep going.

9 Just because there are four weeks reserved in the
10 March trial flight doesn't mean the fifth trial if it falls
11 on the Monday of the fifth week or any other day isn't going
12 to go. The way I understand the trial flights is we exhaust
13 that trial flight if they are going to trial, and so at some
14 point this case is going to head to trial and it could be
15 sooner than later, so I will get you that information about
16 the COVID courtroom.

17 Mr. Prengaman, any other issues?

18 MR. PRENGAMAN: No, Your Honor. My concerns are
19 not quite the same as the defense, but in light of what the
20 Court has said I will just wait to hear from the Court.
21 Thank you.

22 THE COURT: Okay. Counsel, thank you so much.

23 Mr. Adrian, any information for the Court, I know
24 we gave you very little time, about the availability of the
25 preliminary hearing exhibits?

1 THE CLERK: Yes, Your Honor. In speaking with the
2 evidence technician, those should be uploaded to a One Drive
3 file which we can share and view.

4 THE COURT: Fabulous. Okay. Counsel, no need to
5 file, with regard to my previous request during the course
6 of this hearing, no need to file a copy of the preliminary
7 hearing videos. I will review both of the ones that were
8 admitted at the preliminary hearing for purposes of ruling
9 on these motions.

10 Okay, everyone, I want to thank you so much.
11 Thank you for coming prepared and thank you for your
12 comprehensive pleadings in this case. And, as I stated, we
13 will get you orders just as quick as we can and we stand
14 adjourned. Thank you.

15 (Whereupon the proceedings concluded at 12:02 p.m.)

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STATE OF NEVADA)
) ss.
WASHOE COUNTY)

I, CORRIE L. WOLDEN, an Official Reporter of the
Second Judicial District Court of the State of Nevada, in
and for Washoe County, DO HEREBY CERTIFY;

That I am not a relative, employee or independent
contractor of counsel to any of the parties; or a relative,
employee or independent contractor of the parties involved
in the proceeding, or a person financially interested in the
proceeding;

That I was present in Department No. 1 of the
above-entitled Court on January 25, 2021, and took verbatim
stenotype notes of the proceedings had upon the matter
captioned within, and thereafter transcribed them into
typewriting as herein appears;

That the foregoing transcript, consisting of pages 1
through 99, is a full, true and correct transcription of my
stenotype notes of said proceedings.

DATED: At Reno, Nevada, this 4th day of February,
2021.

/s/Corrie L. Wolden

CORRIE L. WOLDEN
CSR #194, RPR, CP

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IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE

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THE STATE OF NEVADA,

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Plaintiff,

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vs.

Case No.: CR20-0630A

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Dept. No.: 1

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ADRIANNA MARIE NORMAN,

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Defendant.

15

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THE STATE OF NEVADA,

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Plaintiff,

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vs.

Case No.: CR20-0630B

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Dept. No.: 1

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RYAN WILLIAMS,

21

Defendant.

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**ORDER GRANTING THE STATE'S MOTION CONCERNING THE ADMISSION OF
DEFENDANT WILLIAMS' PRIOR HANDGUN POSSESSION**

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24

Currently before the Court is the State's *Request for Hearing re: Admission of Other Acts Evidence Regarding Defendant Williams' Prior Handgun Possession* ("Request") filed November 19, 2020, in both CR20-0630A and CR20-0630B. Defendant Ryan Williams ("Mr. Williams" or "Defendant") filed an *Opposition to the State's Request for Hearing re: Admission of Other Acts Evidence Regarding Defendant Williams' Prior Handgun Possession* ("Opposition") on December

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1 1, 2020. The Request was submitted to the Court for consideration on December 2, 2020, in both
2 CR20-0630A and CR20-0630B. The Request seeks a hearing outside the presence of the jury
3 regarding the admission of Mr. Williams' prior handgun possession. On December 9, 2020, this
4 Court issued its *Order to Set*, which set a hearing on the matter, and the Court heard arguments
5 concerning the same on January 25, 2021. *See* Tr. of Proceedings Pretrial Mot., Jan. 25, 2021 ("Hr'g
6 Tr.").

7 **I. Relevant Background**

8 **a. The Information**

9 The *Information* in this matter sets forth seven counts: (I) Robbery with the Use of a Deadly
10 Weapon, a violation of NRS 200.380, NRS 193.165, and NRS 195.020, a category B felony; (II)
11 Attempted Robbery with the Use of a Deadly Weapon, a violation of NRS 193.330, being an attempt
12 to violate NRS 200.380, NRS 193.165, and NRS 195.020, a category B felony; (III) Burglary with
13 Possession of a Firearm or Deadly Weapon, a violation of NRS 205.060.1-.2 and NRS 205.060.4, a
14 category B felony; (IV) Murder with the Use of a Deadly Weapon, a violation of NRS 200.010, NRS
15 200.030, and NRS 195.020, a category A felony; (V) Causing the Death of Another by Driving a
16 Vehicle While Under the Influence of Methamphetamine, a violation of NRS 484C.110 and NRS
17 484C.430, a category B felony; (VI) Eluding or Flight from a Police Officer Resulting in Death, a
18 violation of NRS 484B.550, a category B felony; and (VII) Reckless Driving, a violation of NRS
19 484B.653(1)(a) and NRS 484B.653(9), a category B felony. Both Mr. Williams and Adrianna
20 Norman ("Ms. Norman") (collectively, "Defendants") are charged with Counts I-IV, while Counts
21 V-VII apply exclusively to Mr. Williams.

22 **b. Evidence the State Seeks to Admit**

23 At the Preliminary Examination, Mr. Williams played the portion of the Bob & Lucy's
24 surveillance video depicting Mr. Williams approaching Mr. Sims inside the casino while questioning
25 Mr. Sims about whether Mr. Williams could be seen on the video displaying a gun. *See* Preliminary
26 Examination Tr. VI. 2 at 352:10-354:4. Mr. Sims also testified that prior to seeing Mr. Williams at
27 Bob & Lucy's on the day of the incident, February 22, 2020, he had only met Mr. Williams on one
28 prior occasion—sometime in December 2019. *Id.* at 280:1-281:5. Mr. Sims testified that he spent

1 the day with Mr. Williams and Ms. Norman. *Id.* at 281:15-282:6. During that day, Mr. Sims observed
2 that Mr. Williams had a firearm on him throughout the day. Preliminary Examination Tr., VI. 3, at
3 545:10-547:13. Mr. Sims also testified that Mr. Williams carried himself as “the gangster guy with
4 a gun.” *Id.* at 541:22-542:4. When Mr. Williams approached Mr. Sims inside Bob and Lucy’s and
5 told Mr. Sims, “You know how I roll” and motioned towards his belt, Mr. Sims understood this
6 comment to refer to the prior occasion where Mr. Sims observed that Mr. Williams carried a firearm
7 on his person. Preliminary Examination Tr., VI. 2, at 260:13-21, 352:10-354:1. However, Mr. Sims
8 testified at the preliminary hearing that he did not actually see the firearm on Mr. Sims, but just
9 assumed one was there based on this prior experience. *Id.* at 353:21-354:4.

10 Mr. Williams’ counsel questioned Mr. Sims about this in detail, as Mr. Sims told Officer Allen
11 that Mr. Williams “lifted up his shirt like that and showed me the top of a gun. It was a different gun,
12 it was black, the handle seemed like it was black.” *Id.* at 355:5-8. Mr. Sims attempted to explain the
13 inconsistency at the preliminary hearing by referring to his prior encounter with Mr. Williams, as
14 detailed above. *Id.* at 354:9-357:15; *see also id.* at 362:1-9 (Mr. Sims explaining that when Mr.
15 Williams “patted his stomach” Mr. Williams assumed a firearm was in his waistband because “[f]rom
16 my experience, it was enough – there was something there, but I didn’t see what it was”).

17 At the hearing, the State clarified that it seeks to introduce evidence of Mr. Williams’ prior
18 handgun possession both in its case-in-chief, as well as rebuttal evidence should Mr. Williams examine
19 Mr. Sims regarding his prior statement to the police about *seeing* the gun on Mr. Williams at the time
20 of the incident. Hr’g Tr. at 66:23-67:11. Based on the Opposition and the arguments made at the
21 hearing, Mr. Williams does intend to cross-examine Mr. Sims on his statements to police, maintaining
22 that he is entitled to do so because Mr. Sims’ lie to police bears on his credibility and the truth of his
23 other statements. Opp’n at 7:9-11.

24 **II. Relevant Legal Authority**

25 Pursuant to Nevada law, evidence is relevant if it has “any tendency to make the existence of
26 any fact that is of consequence to the determination of the action more or less probable than it would
27 be without the evidence.” NRS 48.015. Relevant evidence is admissible, unless otherwise excluded
28

1 by the Constitution or Nevada law. NRS 48.025(1); *see also* NRS 48.025(1) (“Evidence which is not
2 relevant is not admissible.”).

3 NRS 48.045(2) details that “[e]vidence of other crimes, wrongs or acts is not admissible to
4 prove the character of a person in order to show that the person acted in conformity therewith.”
5 However, such evidence may “be admissible for other purposes, such as proof of motive, opportunity,
6 intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” NRS 48.045(2).
7 While “evidence of other crimes, wrongs, or acts may be admitted for any relevant nonpropensity
8 purpose,” a “presumption of inadmissibility attaches to all prior bad act evidence.” *Bigpond v. State*,
9 128 Nev. 108, 116, 270 P.3d 1244, 1248 (2012). Regarding the presumption of inadmissibility, the
10 Nevada Supreme Court requires the proponent of the evidence to

11 request a hearing and establish that: (1) the prior bad act is relevant to the crime
12 charged and for a purpose other than proving the defendant's propensity, (2) the
13 act is proven by clear and convincing evidence, and (3) the probative value of
the evidence is not substantially outweighed by the danger of unfair prejudice.

14 *Id.* at 117, 270 P.3d at 1250.

15 **III. Analysis**

16 The State contends that evidence of Mr. Williams’ obvious display of a handgun in Mr. Sims’
17 presence and Mr. Sims’ observation that Mr. Williams carried the gun upon his person throughout
18 the day is relevant for the non-propensity purpose of explaining Mr. Williams’ statement, “You know
19 how I role.” Mot. at 3:7-10. The State continues that such evidence is also probative of Mr. Williams’
20 intent in entering Bob & Lucy’s and approaching Mr. Sims, and that it is relevant to the “by means
21 of force or violence or fear or immediate or future injury” element of the Robbery and Attempted
22 Robbery Counts. *Id.* at 3:13-16. The State argues that the evidence of the prior encounter is also
23 relevant for the additional purpose of explaining Mr. Sims’ statement to the police regarding Mr.
24 Williams’ possession of a handgun. *Id.* at 6:1-4.

25 Mr. Williams opposes the Request, maintaining that the State cannot satisfy the *Bigpond*
26 analysis. *See Opp’n.* First, Mr. Williams argues that no non-propensity purpose exists for seeking to
27 admit evidence that Mr. Williams previously possessed a firearm. *Id.* at 3:1-5:4. Specifically, Mr.
28 Williams argues that the evidence is not relevant to the Robbery or Attempted Robbery Counts

1 because the law applies an objective standard to determine whether the circumstances of the incident
2 would “in common experience . . . create an apprehension of danger and induce a man to part with
3 his property for the safety of his person”; therefore, Mr. Williams maintains that Mr. Sims’ subjective
4 fear from allegedly seeing Mr. Williams in possession of a firearm one time, two months prior, is not
5 relevant to whether Mr. Williams’ actions on February 22, 2020, constituted a robbery. *Id.* at 3:13-
6 4:9 (quoting *Mangerich v. State*, 93 Nev. 683, 685, 572 P.2d 542, 543 (1977)); *see also* NRS 200.380
7 (defining “robbery” as “the unlawful taking of personal property from the person of another, or in the
8 person’s presence, against his or her will, by means of force or violence or fear of injury, immediate
9 or future, to his or her person”). Mr. Williams also argues that he made no specific reference to
10 carrying a weapon on either February 22, 2020, or in a prior conversation, and that Mr. Sims lied to
11 the police when he told them that Mr. Williams pulled up his shirt and showed Mr. Sims a firearm in
12 his waistband on the date of the incident. *Id.* at 4:15-23.

13 Next, Mr. Williams contends that the State must prove this evidence by clear and convincing
14 evidence at the evidentiary hearing. *Id.* at 5:7-8. Mr. Williams continues that the only evidence that
15 the Court will have to determine whether the State has proven by clear and convincing evidence that
16 Mr. Sims observed Mr. Williams to be in possession of a firearm two months prior is Mr. Sims’ own
17 testimony—the credibility of which is in doubt given his prior lies. *Id.* at 5:12-16.

18 Regarding the third prong of the *Bigpond* analysis, Mr. Williams contends that any probative
19 value is substantially outweighed by the risk of unfair prejudice. *Id.* at 5:17-7:3. Mr. Williams argues
20 that the risk of unfair prejudice from evidence that Mr. Williams possessed a gun on a prior occasion
21 is extremely high. *Id.* at 6:1-23 (citing *Walker v. State*, 116 Nev. 442, 445, 997 P.2d 803, 806 (2000)
22 (holding that the district court erred by admitting evidence of prior acts that was not relevant to the
23 defendant’s intent at the time of the murder and was more prejudicial than probative)). Finally, Mr.
24 Williams argues that the evidence is not admissible as rebuttal evidence, maintaining that Mr.
25 Williams’ right to cross-examine Mr. Sims on a specific lie that he told does not open the door to the
26 State to bring in irrelevant and remote other act evidence against Mr. Williams. *Id.* at 7:5-14.

27 At the hearing, the State argued for the admission, in the State’s case-in-chief, of Mr. Sims’
28 testimony concerning Mr. Williams’ prior handgun possession, maintaining that such testimony is

1 relevant for the noncharacter purpose of explaining Mr. Williams' statement, "You know how I roll"
2 made to Mr. Sims during the alleged robbery. Hr'g Tr. at 64:22-67:1. The State likewise argued that
3 such evidence is admissible to explain Mr. Sims' prior inconsistent statement to police and why Mr.
4 Sims believed that Mr. Williams had a gun on his person. *Id.* at 67:6-68:12.

5 Mr. Williams argued against admission, maintaining that the State only seeks to admit
6 evidence of Mr. Williams' prior gun possession to support and justify Mr. Sims' incorrect and
7 unfounded assumption that Mr. Williams was carrying a gun when, in fact, he was not, and that such
8 evidence is not relevant to Mr. Williams' intent in entering the building. *Id.* at 74:17-21. Mr.
9 Williams continued that Mr. Sims' "paranoid delusions" are irrelevant to elements of the crimes
10 charged; meaning, Mr. Sims' childhood experiences cannot inappropriately color Mr. Williams words
11 or actions, nor can Mr. Sims' admitted use of methamphetamine. *Id.* at 74:22-77:10 (citing
12 *Mangerich*, 93 Nev. at 685, 572 P.2d at 543 (holding that whether an act constitutes robbery is
13 reviewed under an objective standard, such that "the courageousness or timidity of the victim is
14 irrelevant"; instead "it is the acts of the accused which constitute an intimidation" (internal quotation
15 marks omitted))). Regarding the use of such evidence as rebuttal evidence, Mr. Williams claims that
16 his ability to impeach Mr. Sims' statement that he made on February 22, 2020, that he saw an actual
17 gun in Mr. Williams' possession, which turned out to be false, does not open the door for the State to
18 bring in other act evidence against Mr. Williams to justify what he saw. *Id.* at 79:13-18. Finally, Mr.
19 Williams contends that even if this Court finds that the prior act is relevant, the probative value of
20 that evidence is substantially outweighed by the risk of unfair prejudice—namely, that Mr. Williams
21 will be portrayed as a violent individual. *Id.* at 79:24-81:15.

22 The State replied that Mr. Williams' statement, "You know how I roll," is a circumstance of
23 the charged offenses—and that Mr. Williams' interpretation and understanding of that statement is
24 relevant to the alleged offenses. *Id.* at 82:7-25. The State likewise argued that Mr. Williams'
25 statement is relevant to show a use of force *regardless* of whether Mr. Williams was actually armed,
26 and in fact, the evidence will show that only one gun was recovered. *Id.* at 83:1-84:5. Next, the State
27 maintains that Mr. Williams injected the issue of Mr. Sims' prior statements to police, as Mr. Williams
28 did not testify that he saw Mr. Williams with a gun on his person; therefore, the State maintains that

1 Mr. Sims is entitled to explain why he made those statements to police. *Id.* at 84:6-86:12. In other
2 words, the State argues that Mr. Williams appears to conflate the accuracy of Mr. Sims' prior
3 statements to police, *i.e.*, that Mr. Williams was armed in Bob & Lucy's, with the relevancy of Mr.
4 Williams' statement, "You know how I roll." *Id.* at 86:17-87:3. Finally, the State maintained that
5 the introduction of Mr. Williams' prior handgun possession is only minimally prejudicial because
6 such possession does not involve a criminal circumstance—it is just possession. *Id.* at 89:5-12.

7 Notably, this Court likewise asked Mr. Williams to address whether the fact that Mr. Sims
8 and Mr. Williams had only met one time prior has any significance. *Id.* at 91:14-16. In response,
9 Mr. Williams emphasized that the State has a right to prove its case, but that it cannot be at a trial
10 where Mr. Williams could be convicted because he is perceived to the jury as somebody who always
11 carries a gun on his person. *Id.* at 93:4-19.

12 In consideration of the foregoing arguments and the operative legal authority, this Court finds
13 that Mr. Sims' testimony concerning Mr. Williams' prior handgun possession is admissible in the
14 State's case-in-chief, as well as for the purpose of explaining Mr. Sims' prior inconsistent statement.
15 While this Court acknowledges that such evidence begins with a presumption of inadmissibility, this
16 Court further concludes that the State has overcome that burden pursuant to the *Bigpond* analysis.

17 First, the State established that Mr. Williams' prior handgun possession "is relevant to the
18 crimes charged and for a purpose other than proving propensity." *Bigpond*, 128 Nev. at 117, 270
19 P.3d at 1250. Specifically, Mr. Williams' prior handgun possession is relevant to the "by means of
20 force or violence or fear of injury, immediate or future" element of the Robbery and Attempted
21 Robbery Counts because it provides context to Mr. Williams' statement, "You know how I roll." *See*
22 NRS 200.380. Furthermore, this Court is persuaded that the statement referred to Mr. Williams' prior
23 handgun possession based on the fact that Mr. Williams and Mr. Sims only met on one prior occasion;
24 therefore, the inference of relevance is stronger than if Mr. Williams and Mr. Sims had a multitude
25 of varying interactions. In addition, this Court must address Mr. Williams' characterization of the
26 holding in *Mangerich*—which is incorrect. There, the Nevada Supreme Court explained that the force
27 or violence or fear of injury element of robbery is objective. *See Mangerich*, 93 Nev. at 685, 572
28 P.2d at 543 ("If the fact be attended with circumstances of terror, such threatening word or gesture as

1 in common experience is likely to create an apprehension of danger and induce a man to part with his
2 property for the safety of his person, it is robbery.” (internal quotation marks omitted)). In other
3 words, the ultimate standard by which the circumstances surrounding a robbery is measured to
4 determine if the occurrence of a robbery is objective; however, it does not follow that those
5 circumstances are irrelevant. Therefore, the question for the jury will be whether a reasonable person
6 who knew that Mr. Williams carried a gun on his person based on a prior interaction with him would
7 be fearful enough to part with his property based on Mr. Williams’ statement, “You know how I roll.”
8 To this end, this Court agrees that whether or not Mr. Williams had a gun on his person at the time of
9 the alleged robbery does not affect the relevancy of Mr. Williams’ statement and its context.

10 Furthermore, this Court agrees with the State that Mr. Williams’ prior handgun possession is
11 relevant for the additional purpose of explaining Mr. Sims’ prior statement to police should Mr.
12 Williams seek to introduce the same. In fact, to the extent Mr. Williams intends to offer extrinsic
13 evidence of the prior contradictory statement, as he did at the preliminary hearing in exploring Mr.
14 Sims’ statements to police, NRS 50.135(2)(b) requires that Mr. Sims be “afforded an opportunity to
15 explain or deny the statement” and that the State “is afforded an opportunity to interrogate” Mr. Sims
16 about the same.¹ See also NRS 50.135(2)(a) (permitting the admission of extrinsic evidence of a
17 prior contradictory statement by a witness if the requirements of NRS 51.035(3) are satisfied, which
18 governs party admissions).

19 Next, the State established that the act occurred “by clear and convincing evidence.” *Bigpond*,
20 128 Nev. at 117, 270 P.3d at 1250. Specifically, Mr. Sims’ testimony at the preliminary hearing
21 established by clear and convincing evidence that he observed Mr. Williams with a gun in his
22 possession throughout the day in December 2019. Notably, aside from challenging the
23 trustworthiness of Mr. Sims’ statements, Defendants did not offer any evidence that this prior act did
24 not occur.

25 Finally, the State further established that “the probative value of the evidence is not
26 substantially outweighed by the danger of unfair prejudice.” *Bigpond*, 128 Nev. at 117, 270 P.3d at

27
28 ¹ Relatedly, to the extent Mr. Williams challenges Mr. Sims’ perception of his words and actions based on Mr. Sims’
childhood experiences and methamphetamine use—such arguments go to Mr. Sims’ credibility, not to the relevancy of
the evidence.

1 1250. Here, the probative value of Mr. Williams' prior handgun possession is extremely high—as it
2 directly explains a statement made by Mr. Williams during the alleged robbery that goes to an element
3 of that offense. That said, Mr. Williams' prior handgun possession is also prejudicial, as it could be
4 considered for the improper inference that he is violent, or that he always carries a gun on his person.
5 Furthermore, such an inference could be even more damning here, as only one gun was recovered,
6 such that the evidence tends to show that Mr. Williams did not carry a gun into Bob & Lucy's
7 (although the surveillance video does reveal that Ms. Norman handed a gun to Mr. Williams in the
8 entryway of Bob & Lucy's before Mr. Williams returned to the truck). However, this Court agrees
9 with the State that Mr. Williams' prior handgun possession is not tied to a criminal event or act;
10 instead, Mr. Sims' testimony only reveals that Mr. Williams carried a gun on his person on one prior
11 occasion. Thus, on balance, this Court does not find that the danger of unfair prejudice *substantially*
12 outweighs the evidence's probative value.

13 In addition, this Court also finds that facts of *Walker v. State*, 116 Nev. 442, 997 P.2d 803
14 (2000), are distinguishable from the facts of this case. There, Defendant Cheryl Walker ("Cheryl")
15 was convicted of killing her husband Anthony Walker ("Anthony"). *Walker*, 116 Nev. at 443, 997
16 P.2d at 804. On appeal, Cheryl argued that the district court erred in admitting testimony from the
17 State's witness, Anthony Walker, Jr. ("Anthony, Jr."), Anthony's son, that Cheryl had twice
18 threatened Anthony in the past with a firearm:

19 The first incident was approximately ten years before Anthony's death and
20 occurred at a picnic that Anthony Jr. was attending with Cheryl and Anthony.
21 Cheryl had slapped Anthony Jr. for not eating all of his food, which in turn
22 angered Anthony. In response, Cheryl retrieved a pistol from their truck, pointed
23 it directly at Anthony from about two feet away, and said, to the best of Anthony
24 Jr.'s recollection, that she would kill Anthony. The second incident occurred six
25 years earlier and involved a disagreement between Cheryl and Anthony about
Anthony's disciplining of Cheryl's youngest son. Cheryl became angry and
pointed a rifle at Anthony, who was sitting on a couch, and said not to come
closer or she would shoot and that she wanted money to give to her kids.

26 *Walker*, 116 Nev. at 444, 997 P.2d at 805. The Nevada Supreme Court agreed with Cheryl, reversed
27 the judgment of conviction, and remanded the case for a new trial after concluding that these prior
28 acts only had minimal relevance to Cheryl's intent at the time of the murder as they occurred six and

1 ten years prior to Anthony's death, and that the danger of prejudice substantially outweighed this
2 evidence's probative value because the acts here, "Cheryl's twice pointing a gun at Anthony during
3 an argument, clearly cast Cheryl in a negative light, prejudicially suggesting that she has a dangerous
4 and criminal character." *Id.* at 447, 997 P.2d at 807.

5 Here, on the other hand, the prior act of Mr. Williams' handgun possession occurred only two
6 months prior to the alleged offense, and the prior act is being offered to explain and give context to a
7 statement made at the time of the alleged offense, "You know how I roll," which goes directly toward
8 an element of said offense. Therefore, Defendants' reliance on *Walker* is misplaced.²

9 Based upon the foregoing and good cause appearing,

10 IT IS HEREBY ORDERED that the State's *Request for Hearing re: Admission of Other Acts*
11 *Evidence Regarding Defendant Williams' Prior Handgun Possession* is GRANTED consistent with
12 this Order.

13 IT IS SO ORDERED.

14 DATED this 18th day of February, 2021.

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KATHLEEN M. DRAKULICH
DISTRICT JUDGE

21 ² Mr. Williams also cited to *United States v. Midyett*, 603 F. Supp. 2d 450 (E.D.N.Y. 2009) to support his argument that
22 his prior act must be excluded because it is unfairly prejudicial. However, in that case, the government sought to introduce
23 evidence of the defendant's *subsequent* gun possession to show that the defendant had the opportunity to possess a gun at
24 the time of the offense—which occurred five months prior. *Midyett*, 603 F. Supp. 2d at 458. The *Midyett* court found
25 that evidence of the defendant's subsequent gun possession was inadmissible other act evidence absent any evidence that
the gun possessed at the time of the incident was the same gun subsequently possessed by the defendant during the "other
act." *Id.* at 459. Accordingly, *Midyett* does not offer any support for Mr. Williams' position based on the facts of this
case—as the State is not offering Mr. Williams' prior gun possession to show that he actually possessed a gun during the
offense charged.

26 Mr. Williams' reliance on *Phillips v. State*, 121 Nev. 591, 119 P.3d 711 (2005) is likewise inappropriate, as the facts of
27 this case are easily distinguishable. There, the Nevada Supreme Court determined the district court erred by admitting
28 evidence surrounding his prior convictions because the events underlying those convictions took place between nine and
seventeen years before the crimes charged in the instant case, and because the law enforcement testimony relating to the
weapons seized from the defendant portrayed him as a violent individual. *Phillips*, 121 Nev. at 600-02, 119 P.3d at 717-
19. In other words, the danger of unfair prejudice substantially outweighed the evidence's probative value.

CERTIFICATE OF SERVICE

CASE NO. CR20-0630A/CR20-0630B

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 18th day of February, 2021, I electronically filed the **ORDER GRANTING THE STATE'S MOTION CONCERNING THE ADMISSION OF DEFENDANT WILLIAMS' PRIOR HANDGUN POSSESSION** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

MARC PICKER, ESQ. for ADRIANNA MARIE NORMAN

MELISSA ROSENTHAL, ESQ. for ADRIANNA MARIE NORMAN

LUKE PRENGAMAN, ESQ. for STATE OF NEVADA

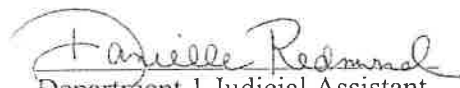
DIV. OF PAROLE & PROBATION

EVELYN GROSENICK, ESQ. for RYAN WILLIAMS

KATHERYN HICKMAN, ESQ. for RYAN WILLIAMS

Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada:

[NONE]


Danielle Redmond
Department 1 Judicial Assistant

ORIGINAL

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR20-0630

v.

Dept. No. 1

RYAN WILLIAMS (B)

and

ADRIANNA MARIE NORMAN (A),

Defendant.

LADIES AND GENTLEMEN OF THE JURY:

It is my duty as judge to instruct you in the law that applies to this case, and it is your duty as jurors to follow the law as I shall state it to you, regardless of what you may think the law is or ought to be. On the other hand, it is your exclusive province to determine the facts in the case, and to consider and weigh the evidence for that purpose. The authority thus vested in you is not an arbitrary power, but must be exercised with sincere judgment, sound discretion, and in accordance with the rules of law stated to you.

Instruction No. 1

1 If in these instructions, any rule, direction or idea is stated in varying ways, no emphasis thereon
2 is intended by me and none must be inferred by you. For that reason, you are not to single out any
3 certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all
4 the instructions as a whole and to regard each in the light of all the others.
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Instruction No. 2

1 If, during this trial, I have said or done anything which has suggested to you that I am inclined to
2 favor the position of either party, you will not be influenced by any such suggestion.

3 I have not expressed, nor intended to express, nor have I intended to intimate, any opinion as to
4 which witnesses are or are not worthy of belief, what facts are or are not established, or what inference
5 should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion
6 relating to any of these matters, I instruct you to disregard it.

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26 Instruction No. 3

1 An Information is a formal method of accusing a Defendant of a crime. It is not evidence of any
2 kind against the accused, and does not create any presumption or permit any inference of guilt.
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Instruction No. 5

1 Every person charged with the commission of a crime shall be presumed innocent unless the
2 contrary is proved by competent evidence, and the burden rests upon the prosecution to establish every
3 element of the crime with which the Defendant is charged beyond a reasonable doubt.

4 If the prosecution fails to do so, the Defendant is entitled to be acquitted.
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Instruction No. 6

1 To the jury alone belongs the duty of weighing the evidence and determining the credibility of
2 the witnesses. The degree of credit due a witness should be determined by his or her character, conduct,
3 manner upon the stand, fears, bias, impartiality, reasonableness or unreasonableness of the statements he
4 or she makes, and the strength or weakness of his or her recollections, viewed in the light of all the other
5 facts in evidence.

6 If the jury believes that any witness has willfully sworn falsely about a material fact in the case,
7 the jury may disregard the whole of the evidence of any such witness or any portion that is not proved
8 by other evidence.

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26 Instruction No. 7

1 Although you are to consider only the evidence in the case in reaching a verdict, you must bring
2 to the consideration of the evidence your everyday common sense and judgment as reasonable men and
3 women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may
4 draw reasonable inferences which you feel are justified by the evidence, keeping in mind that such
5 inferences should not be based on speculation or guess.

6 A verdict may never be influenced by sympathy, passion, prejudice, or public opinion. Your
7 decision should be the product of sincere judgment and sound discretion in accordance with these rules
8 of law.

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26 Instruction No. 8

1 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as
2 testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence
3 is indirect evidence, that is, proof of one or more facts from which one can find another fact.

4 You are to consider both direct and circumstantial evidence. Either can be used to prove any fact.
5 The law makes no distinction between the weight to be given to either direct or circumstantial evidence.
6 It is for you to decide how much weight to give any evidence.

7 It is for you to decide whether a fact has been proved by circumstantial evidence. In making that
8 decision, you must consider all the evidence in the light of reason, common sense and experience.

9 You should not be concerned with the type of evidence but rather the relative convincing force of
10 the evidence.

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26 Instruction No. 9

1 The Defendants in this matter, Ryan Williams and Adrianna Marie Norman, are being tried upon
2 an Information charging the said Defendants with:

3 COUNT I. Robbery with the Use of a Deadly Weapon, a violation of NRS 200.380, NRS
4 193.165, and NRS 195.020, a felony, in the manner following:

5 That the said Defendants, Ryan Williams and Adrianna Marie Norman, on or about February 22,
6 2020, within the County of Washoe, State of Nevada, did willfully and unlawfully take personal
7 property, to wit: a gaming cash-out voucher and/or a wallet, from the person and/or in the presence of
8 Steven Sims, at Bob & Lucy's located at 1515 Oddie Boulevard, Sparks, Washoe County, Nevada,
9 against his will, and by means of force or violence or fear of immediate or future injury to his person,
10 and with the use of a deadly weapon, which was a silver-colored handgun, which the said Defendants
11 displayed and/or brandished to Steven Sims during the offense; or

12 The said Defendants Ryan Williams and Adrianna Marie Norman did willfully and unlawfully
13 aid and abet each other and act as conspirators with each other in committing the aforementioned acts, in
14 that the Defendants did directly or indirectly counsel, encourage, induce, and conspire and agree with
15 each other to rob, coerce, and/or kidnap Steven Sims, and in furtherance thereof, the Defendants,
16 encouraging each other by their presence and concerted action, approached Sims where he was gambling
17 inside Bob & Lucy's and Adrianna Marie Norman did display her handgun to SIMS in order to facilitate
18 the robbery while confronting Sims about money or value allegedly owed to Norman by Sims, and
19 Defendant Williams menaced Sims and the Defendants ordered Sims to leave with them, and thereafter
20 Defendant Williams cashed out the gaming machine Sims was playing and took Sims' cash-out ticket
21 reflecting the value of Sims' money on the machine.

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1 COUNT II. Attempted Robbery with the Use of a Deadly Weapon, a violation of NRS 193.330,
2 being an attempt to violate NRS 200.380, NRS 193.165, and NRS 195.020, a felony, in the manner
3 following:

4 That the said Defendants, Ryan Williams and Adrianna Marie Norman, on or about February 22,
5 2020, within the County of Washoe, State of Nevada, did willfully and unlawfully attempt to take
6 personal property, to wit: money, from the person and/or in the presence of Steven Sims, at Bob &
7 Lucy's located at 1515 Oddie Boulevard, Sparks, Washoe County, Nevada, against his will, and by
8 means of force or violence or fear of immediate or future injury to his person, and with the use of a
9 deadly weapon, which was a silver-colored handgun that Defendant Norman displayed and/or
10 brandished to Steven Sims; or

11 The said Defendants Ryan Williams and Adrianna Marie Norman did willfully and unlawfully
12 aid and abet each other and act as conspirators with each other in committing the aforementioned acts, in
13 that the Defendants did directly or indirectly counsel, encourage, induce, and conspire and agree with
14 each other to rob, coerce, and/or kidnap Steven Sims, and in furtherance thereof, the Defendants,
15 encouraging each other by their presence and concerted action, approached Sims where he was gambling
16 inside Bob & Lucy's and Adrianna Marie Norman did display her handgun to Sims while confronting
17 Sims about property allegedly taken by Sims in the past, and then the Defendants intimidated and
18 ordered Sims to leave with them, and while on the way to the door of the casino, Sims did offer to obtain
19 money and provide it to the Defendants in order to try to avoid leaving with them, which the Defendants
20 accepted as a condition of allowing Sims to remain in the casino.

21 COUNT III. Burglary with Possession of a Firearm or Deadly Weapon, a violation of NRS
22 205.060.1-.2 and NRS 205.060.4, a felony, in the manner following:

23 That the said Defendants, Ryan Williams and Adrianna Marie Norman, on or about February 22,
24 2020, within the County of Washoe, State of Nevada, acting in concert as conspirators and aiders and
25 abettors as alleged in Count I (which is incorporated by reference herein), did willfully enter a certain
26 business, which was Bob & Lucy's located at 1515 Oddie Boulevard, Sparks, Washoe County, Nevada,
with the intent then and there to commit robbery, larceny, assault, battery, kidnapping, and/or felony

1 coercion therein, and the Defendants did each have in their possession, or did each gain possession of, a
2 firearm or deadly weapon at any time during the commission of the crime or at any time before leaving
3 the structure, in that Defendant Norman was armed with a silver-colored handgun.

4 COUNT IV. Murder with the Use of a Deadly Weapon, a violation of NRS 200.010, 200.030, and
5 NRS 195.020, a felony, in the manner following:

6 That the said Defendants, Ryan Williams and Adrianna Marie Norman, on or about February 22,
7 2020, within the County of Washoe, State of Nevada, did willfully, unlawfully, and with malice
8 aforethought, deliberation, and premeditation, kill and murder Jacob Edwards, a human being, by means
9 of Defendant Williams driving a Chevrolet Silverado truck, which under the circumstances in which it
10 was used was readily capable of causing substantial bodily harm or death and thus constituted a deadly
11 weapon, head-on into the vehicle driven by Jacob Edwards while Defendant Williams was fleeing from
12 the police and driving the wrong way against traffic at a high rate of speed on Interstate 80 in Sparks in
13 Washoe County, Nevada, thereby inflicting mortal injuries upon Jacob Edwards from which he died on
14 or about February 22, 2020; or

15 The Defendants did willfully and unlawfully kill Jacob Edwards in the perpetration or attempted
16 perpetration of a burglary, robbery, and/or kidnapping, in that Defendants Ryan Williams and Adrianna
17 Marie Norman, acting in concert as conspirators and aiders and abettors as alleged in Counts I, II and III
18 (which are incorporated by reference herein), entered Bob & Lucy's located at 1515 Oddie Boulevard in
19 Sparks, in order to commit assault and/or battery upon Steven Sims, to commit larceny from and robbery
20 upon Sims, to kidnap Sims, and/or to commit felony coercion upon Sims, and the Defendants thereafter
21 approached Sims and displayed a silver-colored handgun to Sims in an attempt to rob him and force him
22 to leave the establishment against his will under threat of physical force, did steal from him and rob him
23 by taking his cash-out ticket, did detain and threaten him to leave the establishment with the Defendants,
24 which threat Sims began complying with, and when the police responded to the area of Bob & Lucy's
25 while Defendant Norman was still inside the business conducting Sims and Defendant Williams was
26 waiting outside for them in a white Chevrolet Silverado truck, Defendant Ryan Williams did flee from
the police in the truck, and while being pursued by the police and in an effort to avoid or prevent being

1 apprehended and lawfully arrested by a peace officer for the aforementioned crimes attempted and
2 committed by Norman and Williams at Bob and Lucy's, Defendant Williams did drive the wrong way
3 on Interstate 80 and did kill Jacob Edwards by crashing his truck head-on into the vehicle being driven
4 by Edwards, thereby using his truck as a deadly weapon and inflicting mortal injuries upon Edwards
5 from which he died on or about February 22, 2020.

6 COUNT V. Causing the Death of Another by Driving a Vehicle While Under the Influence of
7 Methamphetamine, a violation of NRS 484C.110 and 484C.430, a felony, in the manner following:

8 That the said Defendant, Ryan Williams, on or about February 22, 2020, within the County of
9 Washoe, State of Nevada, did unlawfully drive or be in actual physical control of a vehicle on a highway
10 or on premises to which the public has access while under the influence of a controlled substance and/or
11 with an amount of methamphetamine in his blood that was equal to or greater than 100 nanograms per
12 milliliter, and while driving or in actual physical control of the vehicle, the Defendant did any act, or
13 neglected any duty imposed by law, that proximately caused the death of or substantial bodily harm to
14 another person;

15 In that the Defendant, while under the influence of methamphetamine and/or with an amount of
16 methamphetamine in his blood that was in excess of 500 nanograms per milliliter, did drive a white
17 Chevrolet truck on Interstate 80 near Victorian Avenue and McCarran Boulevard in Washoe County,
18 Nevada, entering Interstate 80 driving eastbound against oncoming traffic in the westbound travel lanes
19 in order to escape the police, and, failing to exercise due care, continued to drive at a high rate of speed
20 against oncoming freeway traffic, and thereby did crash his truck head-on into the vehicle being driven
21 in the correct direction by Jacob Edwards, which proximately caused Edwards' death.

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1 COUNT VI. Eluding or Flight from a Police Officer Resulting in Death, a violation of NRS
2 484B.550, a felony, in the manner following:

3 That the said Defendant, Ryan Williams, on or about February 22, 2020, within the County of
4 Washoe, State of Nevada, while driving a motor vehicle on a highway or premises to which the public
5 has access, did willfully fail or refuse to bring the vehicle to a stop, or did otherwise flee or attempt to
6 elude a peace officer in a readily identifiable vehicle, when given a signal, by flashing red lamp and
7 siren, to bring the vehicle to a stop, and while doing so did operate the vehicle in a manner which
8 endangered or was likely to endanger any other person or the property of any other person and
9 proximately caused death or bodily harm to another person;

10 In that the Defendant did flee from the police beginning Bob & Lucy's located at 1515 Oddie
11 Boulevard in Sparks, driving a white Chevrolet truck, and while being pursued by multiple police
12 officers in marked police vehicles, including Sparks Police Officers Nicholas Chambers, Angel Guillen,
13 Jason Stone, Jay Egami, Brian Sullivan, and Daniel Snow, each of whom were signaling the Defendant
14 to stop by flashing red lamp and siren, the Defendant did fail and refuse to stop his truck, and did flee
15 and attempt to elude the officers while driving at high rates of speed (including driving in excess of 60
16 miles per hour in a posted 25 miles-per-hour zone and in a posted 30 miles-per-hour zone, and in excess
17 of 70 miles per hour in a posted 45 miles-per-hour zone) and disregarding traffic signals (including
18 running a red lights at Rock Boulevard and Victorian Avenue, at Rock Boulevard and I-80, and at
19 Glendale Avenue and McCarran Boulevard; and running a stop signs at 15th Street and Pittman Avenue)
20 through areas of Sparks including Rock Boulevard, Victorian Avenue, Hymer Avenue, South 15th
21 Street, Glendale Avenue, McCarran Boulevard, Kleppe Lane, East Lincoln Way, and Stanford Street,
22 and while still being pursued by police, the Defendant continued his flight by entering Interstate 80 and
23 driving eastbound in the westbound travel lanes at high rates of speed against oncoming traffic, and
24 thereby did crash his truck head-on into the vehicle being driven in the correct direction by Jacob
25 Edwards, which proximately caused Edwards' death.

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1 COUNT VII. Reckless Driving, a violation of 484B.653(1)(a) and 484B.653(9), a felony, in the
2 manner following:

3 That the said Defendant, Ryan Williams, on or about February 22, 2020, within the County of
4 Washoe, State of Nevada, did unlawfully do any act or neglect any duty imposed by law while driving a
5 vehicle on a highway or on premises to which the public has access in willful or wanton disregard of the
6 safety of persons or property, and such act or neglect of duty did proximately cause the death or
7 substantial bodily harm to another person,

8 In that the Defendant did drive a white Chevrolet truck on Interstate 80 near Victorian Avenue
9 and McCarran Boulevard in Washoe County, Nevada, entering Interstate 80 driving eastbound against
10 oncoming traffic in the westbound travel lanes, and, failing to exercise due care and failing to drive at a
11 rate of speed reasonable for the traffic and highway conditions and so as to avoid endangering the life,
12 limb, or property of any person, continued to drive at a high rate of speed against oncoming freeway
13 traffic, and thereby did crash his truck head-on into the vehicle being driven in the correct direction by
14 Jacob Edwards, which proximately caused Edwards' death.

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16 To the charges stated in the Information, the said Defendants Ryan Williams and Adrianna Marie
17 Norman pled "NOT GUILTY."

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26 Instruction No. 4

1 Intent may be proved by circumstantial evidence. It rarely can be established by any other
2 means. The prosecution is not required to present direct evidence of a Defendant's state of mind as it
3 existed during the commission of a crime.

4 While witnesses may see and hear and thus be able to give direct evidence of what a Defendant
5 does or fails to do, there can be no eyewitness account of a state of mind with which the acts were done
6 or omitted, but what a Defendant does or fails to do may indicate intent or lack of intent to commit the
7 offense charged. You may infer the existence of a particular state of mind from the circumstances
8 disclosed by the evidence.

9 In determining the issue as to intent, you are entitled to consider any statements made and acts
10 done or omitted by the Defendant, and all facts and circumstances in evidence which may aid in the
11 determination of state of mind.
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26 Instruction No. 10

1 Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of
2 different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons
3 witnessing an incident or transaction may see or hear it differently; an innocent misrecollection, like failure
4 to recollect, is not an uncommon experience. In weighing the effect of a discrepancy, consider whether it
5 pertains to a matter of importance, or an unimportant detail, and whether the discrepancy results from
6 innocent error or willful falsehood.

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26 Instruction No. 11

1 You have heard evidence that Steven Sims, a witness, has a prior felony conviction. You may
2 consider this evidence in deciding whether or not to believe this witness and how much weight to give to
3 the testimony of this witness.
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Instruction No. 12

1 Neither side is required to call as witnesses all persons who may have been present at any of the
2 events disclosed by the evidence or who may appear to have some knowledge of these events, or to
3 produce all objects or documents mentioned or suggested by the evidence.
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Instruction No. 13

1 The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and
2 stipulations.

3 Certain things are not evidence. Arguments and statements by lawyers are not evidence. The
4 lawyers are not witnesses. What they say in their opening statements, closing arguments, and at other
5 times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember
6 them from the evidence differ from the way the lawyers have stated them, your memory of them
7 controls.

8 Questions and objections by lawyers are not evidence. Lawyers have a duty to their clients to
9 object when they believe a question is improper under the rules of evidence. You should not be
10 influenced by the objection or by my ruling on it. When the Court has sustained an objection to a
11 question you are to disregard the question and may draw no inference from the wording of it or
12 speculate as to what the witness would have said if permitted to answer. A question is not evidence and
13 may be considered only as it supplies meaning to the answer.

14 Anything that I have excluded from evidence or ordered stricken and instructed you to disregard
15 is not evidence. You must not consider such items.

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26 Instruction No. 14

1 You should not decide any issue merely by counting the number of witnesses who have testified
2 on the opposing sides. The final test in weighing conflicting testimony is the relative convincing force
3 of the evidence and not the relative number of witnesses who have testified on different sides of an
4 issue.

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26 Instruction No. 15

1 A Defendant in a criminal trial has a constitutional right not to be compelled to testify. You
2 must not draw any inference from the fact that a Defendant does not testify, and you must neither
3 discuss this matter nor permit it to enter into your deliberations in any way.
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Instruction No. 16

1 A witness who has special knowledge, skill, experience, training or education in a particular
2 science, profession or occupation may testify as an expert witness. An expert witness may give an
3 opinion as to any matter in which the witness is skilled.

4 You should consider such expert opinion and weigh the reasons, if any, given for it. You are not
5 bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be
6 great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

7 The opinions of experts are to be considered by you in connection with all other evidence in the
8 case. The same rules apply to expert witnesses that apply to other witnesses in determining the weight
9 or value of such testimony.

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26 Instruction No. 17

1 Each charge, and any evidence pertaining to it, should be considered separately. Also, the case
2 of each Defendant should be considered separately and individually. The fact that you may find one or
3 both of the Defendants guilty or not guilty of any of the crimes charged should not control your verdict
4 as to any other crime or any other Defendant.
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Instruction No. 18

1 In every crime there must exist a union or joint operation of act and intent, and the burden is
2 upon the prosecution to prove both act and intent beyond a reasonable doubt.
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Instruction No. 19

1 A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as
2 would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the
3 entire comparison and consideration of all the evidence, are in such a condition that they can say they
4 feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be
5 reasonable, must be actual, not mere possibility or speculation.
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Instruction No. 20

1 The elements of the crime of Murder are:

- 2 1. The Defendant did willfully and unlawfully;
3 2. kill a human being;
4 3. with malice aforethought, either express or implied.
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26 Instruction No. 21

1 Express malice is that deliberate intention to unlawfully take away the life of a fellow creature,
2 which is manifested by external circumstances capable of proof.

3 Malice may be implied when no considerable provocation appears or when all the circumstances
4 of the killing show an abandoned and malignant heart.
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26 Instruction No.

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1 Murder is divided into two degrees.

2 Murder of the First Degree is murder which is (1) willful, deliberate and premeditated, or (2)
3 committed to avoid or prevent the lawful arrest of any person by a peace officer, or (3) committed in the
4 perpetration or attempted perpetration of the felony crimes of Burglary, Robbery, or Kidnapping.

5 Murder of the Second Degree is all other kinds of murder.
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26 Instruction No. 23

1 Count IV of the Information alleges three alternative theories of Murder of the First Degree, as
2 allowed by law.

3 The first paragraph of Count IV alleges willful, deliberate and premeditated murder.

4 The second paragraph of Count IV alleges the Defendants committed the murder during the
5 perpetration or attempted perpetration of the felony crimes of a Burglary, Robbery, and/or Kidnapping,
6 pursuant to the felony murder rule. The second paragraph of Count IV also alleges that the murder was
7 committed by Defendant Ryan Williams to avoid or prevent his lawful arrest by a peace officer.
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Instruction No. 24

1 Murder of the First Degree includes murder which is perpetrated by means of any kind of willful,
2 deliberate, and premeditated killing. All three elements--willfulness, deliberation, and premeditation--
3 must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

4 Willfulness is the intent to kill. There need be no appreciable space of time between formation
5 of the intent to kill and the act of killing.

6 Deliberation is the process of determining upon a course of action to kill as a result of thought,
7 including weighing the reasons for and against the action and considering the consequences of the
8 action.

9 A deliberate determination may be arrived at in a short period of time. But in all cases the
10 determination must not be formed in passion, or if formed in passion, it must be carried out after there
11 has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash
12 impulse is not deliberate, even though it includes the intent to kill.

13 Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the
14 killing.

15 Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as
16 successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the
17 killing has been preceded by and has been the result of premeditation, no matter how rapidly the act
18 follows the premeditation, it is premeditated.

19 The law does not undertake to measure in units of time the length of the period during which the
20 thought must be pondered before it can ripen into an intent to kill which is truly deliberate and
21 premeditated. The time will vary with different individuals and under varying circumstances.

22 The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated
23 judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash
24 impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an
25 unlawful killing as murder of the first degree.

26 Instruction No. 25

1 Whenever death occurs during the perpetration or attempted perpetration of certain felonies, the
2 killing constitutes Murder of the First Degree. The offenses of Burglary, Robbery, and Kidnapping are
3 such felonies, and therefore a killing which is committed in the perpetration or attempted perpetration of
4 a Burglary, Robbery, or Kidnapping is First Degree Murder. This is the felony murder rule.

5 In regard to the felony murder alternative, the State is not required to prove that the killing was
6 committed with malice, premeditation, or deliberation. An unlawful killing of a human being, whether
7 intentional, unintentional, or accidental, which is committed in the perpetration or attempted perpetration
8 of Burglary, Robbery, or Kidnapping is First Degree Murder.

9 Therefore, the elements of Felony Murder of the First Degree, as alleged in this case are:

10 1) The Defendants did willfully and unlawfully;

11 2) Perpetrate or attempt to perpetrate the crimes of Burglary, Robbery, and/or Kidnapping;

12 and

13 3) The killing of Jacob Edwards occurred during the perpetration or attempted perpetration
14 of the Burglary, Robbery, and/or Kidnapping.

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26 Instruction No. 24

1 As applied to Felony Murder, the term "perpetration" includes not only the acts that constitute the
2 elements of Robbery, Burglary, and/or Kidnapping, but also encompasses acts beyond the statutory
3 elements of that felony to include all acts following and connected to the attempted or completed crime
4 that form in reality a part of the same occurrence.

5 Thus, the "perpetration" of a Robbery, Burglary, and/or Kidnapping does not end the moment all
6 of the statutory elements of the felony are complete. Instead, the duration of the felony-murder liability
7 can extend beyond the termination of the felony itself if the killing and the felony are linked to or part of
8 the series of incidents so as to be part of one continuous transaction.

9 Therefore, when a killing takes place in the course of an unbroken chain of events flowing from
10 the initial attempted or completed Robbery, Burglary, and/or Kidnapping, it has been committed in the
11 perpetration of the Robbery, Burglary, and/or Kidnapping. "Perpetration" may include the flight of the
12 perpetrator from the scene of the offense.

1 In order to prove either Defendant guilty of Felony Murder based on the perpetration or attempted
2 perpetration of Robbery, Attempted Robbery, Burglary, Attempted Burglary, Kidnapping, or Attempted
3 Kidnapping, the State must prove each element of one of the underlying felonies beyond a reasonable
4 doubt.

5 If you find that the State did not prove beyond a reasonable doubt every element of at least one of
6 these underlying felonies, then you cannot find the Defendants guilty of Felony Murder based on any of
7 these predicate felonies.
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Instruction No. 20

1 Murder committed to avoid or prevent the lawful arrest of any person by a peace officer is murder
2 of the first degree.

3 An arrest need not be imminent nor must the victim be involved in effecting the arrest.

4 Where a killing is accomplished to avoid or prevent the lawful arrest of any person by a peace
5 officer, the State is not required to prove intent to kill, premeditation, or deliberation. The killing
6 constitutes murder of the first degree so long as it was committed with malice, either express or implied.

7 You cannot find either Defendant guilty of murder under a theory of murder to prevent lawful
8 arrest, unless you find that the murder was committed to avoid or prevent lawful arrest.

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26 Instruction No. 29

1 Where the jury finds beyond a reasonable doubt that a killing occurred in the perpetration or
2 attempted perpetration of a Robbery, Burglary, and/or Kidnapping, each Defendant who is liable for the
3 perpetrated or attempted Robbery, Burglary, and/or Kidnapping because he or she:

4 (1) Directly committed the acts constituting the offense, or

5 (2) Aided and abetted another person or persons in committing the offense, or

6 (3) Participated with another person or persons in a conspiracy to commit the acts constituting the
7 offense, and thereafter one or more members of the conspiracy committed the acts constituting the offense,
8 is also liable for Murder of the First Degree under the felony murder rule.

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10 The requirements of conspiracy liability and aiding and abetting liability, and the elements of
11 Robbery, Attempted Robbery, Burglary, and Kidnapping are set forth elsewhere in these instructions.

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26 Instruction No. 30

1 Murder of the Second Degree does not require a specific intent to kill, and encompasses all kinds
2 of murder other than First Degree Murder.
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Instruction No. 31

1 Malice aforethought, as used in the definition of murder, means the intentional doing of a
2 wrongful act without legal cause or excuse, or what the law considers adequate provocation. Malice
3 does not necessarily import ill will toward the victim, but signifies general malignant recklessness of
4 others' lives and safety or disregard of social duty. The condition of mind described as malice
5 aforethought may arise, not alone from anger, hatred, revenge or from particular ill will, spite or grudge
6 toward the person killed, but may also result from any unjustifiable or unlawful motive or purpose to
7 injure another, which proceeds from a heart fatally bent on mischief, or with reckless disregard of
8 consequences and social duty.

9 Malice may be inferred from an act done in willful disregard of the rights of another, or an act
10 wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard
11 of social duty.

12 "Aforethought" does not imply deliberation or the lapse of considerable time. It only means the
13 required mental state must precede rather than follow the act.
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26 Instruction No. 32

1 Manslaughter is the unlawful killing of a human being without malice express or implied, and
2 without a mixture of deliberation.

3 Manslaughter may be voluntary, upon a sudden heat of passion, caused by a provocation
4 apparently sufficient to make the passion irresistible; or, involuntary, in the commission of the unlawful
5 act, or a lawful act without due caution or circumspection.
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Instruction No. 33

1 In cases of Voluntary Manslaughter, there must be a serious and highly provoking injury
2 inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an
3 attempt by the person killed to commit a serious personal injury on the person killing. Neither slight
4 provocation nor an assault of a trivial nature will reduce a homicide from Murder to Manslaughter.

5 The killing must be the result of that sudden, violent impulse of passion supposed to be
6 irresistible, for, if there should appear to have been an interval between the assault or provocation given
7 for the killing, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed
8 to deliberate revenge and punished as murder.

9 The heat of passion which will reduce a homicide to Manslaughter must be such a passion as
10 naturally would be aroused in the mind of an ordinarily reasonable person in the same circumstances. A
11 Defendant is not permitted to set up his or her own standard of conduct and to justify or excuse himself
12 or herself because his or her passions were aroused unless the circumstances in which he or she was
13 placed and the facts that confronted him or her were such as also would have aroused the passion of an
14 ordinarily reasonable person, if likewise situated. The basic inquiry is whether or not, at the time of the
15 killing, the reason of the Defendant was obscured or disturbed by passion to such an extent as would
16 cause the ordinarily reasonable person of average disposition to act rashly and without deliberation and
17 reflection, and from such passion rather than from judgment.

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26 Instruction No. 31

1 Involuntary Manslaughter is the killing of a human being, without any intent to do so and
2 without malice, in the commission of an unlawful act, or in the commission of a lawful act which
3 probably might produce such a consequence in an unlawful manner.

4 However, where the involuntary killing occurs in the commission of an unlawful act, which, in
5 its consequences, naturally tends to destroy the life of a human being, or is committed in the prosecution
6 of a felonious intent, the offense is murder.

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26 Instruction No. 35

1 Reduction in the degree of the crime of murder is not available to the jury upon the basis of
2 mitigating circumstances, but only upon the basis of lack of proof of the elements of the crime as fixed by
3 law.
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Instruction No. 34

1 Count IV of the Information in this case charges Open Murder which includes the offense of
2 Murder of the First Degree, Murder of the Second Degree, Voluntary Manslaughter and Involuntary
3 Manslaughter. Each Defendant may only be convicted of one of these offenses. Therefore, as to each
4 Defendant:

5 You should first examine the evidence as it applies to Murder of the First degree. If you
6 unanimously agree that the Defendant is guilty of Murder of the First Degree, you should sign the
7 appropriate Verdict form and request the bailiff to return you to court.

8 If you cannot agree that the Defendant is guilty of Murder of the First Degree, you should then
9 examine the evidence as it applies to Murder of the Second Degree. If you unanimously agree that the
10 Defendant is guilty of Murder of the Second Degree, you should sign the appropriate Verdict form and
11 ask the bailiff to return you to court.

12 If you cannot unanimously agree that the Defendant is guilty of Murder of the Second Degree,
13 then you should examine the evidence as it applies to Voluntary Manslaughter. If you unanimously
14 agree that the Defendant is guilty of the crime of Voluntary Manslaughter, you should sign the
15 appropriate Verdict form and request the bailiff to return you to court.

16 If you cannot unanimously agree that the Defendant is guilty of Voluntary Manslaughter, then
17 you should examine the evidence as it applies to Involuntary Manslaughter. If you unanimously agree
18 that the Defendant is guilty of the crime of Involuntary Manslaughter, you should sign the appropriate
19 Verdict form and request the bailiff to return you to court.

20 The Defendant, of course, can be found Not Guilty of all the offenses enumerated.

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26 Instruction No. 317

1 The crime of Robbery consists of the following elements:

- 2 1) Either Defendant did willfully and unlawfully;
- 3 2) Take personal property;
- 4 3) From the person of another, or in his presence;
- 5 4) Against his will;
- 6 5) By means of force or violence or fear of immediate or future injury to his person or
- 7 property.

8
9 A taking is by means of force or fear if force or fear is used to:

- 10 1) Obtain or retain possession of the property;
- 11 2) Prevent or overcome resistance to the taking; or
- 12 3) Facilitate escape.

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14 The degree of force used is immaterial if it used to compel acquiescence to the taking of or escaping
15 with the property.

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17 Property is in a person's presence when it is so within his or her reach, inspection, observation, or
18 control, that he or she could, if not overcome by violence or prevented by fear, retain possession of the
19 property.

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21 The State is not required to prove the value of property taken in a Robbery. However, the State
22 must prove that some property was indeed taken.

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24 It is not necessary that the force or violence involved in a robbery be committed with the specific
25 intent to steal property. Therefore, although acts of force and intimidation may precede the actual taking
26 of property and may be intended for another purpose, it is enough to support the charge of robbery when
a person thereafter takes property by taking advantage of the terrifying situation he or she created.

1 The determination of whether the taking was by "fear of injury, immediate or future," is an
2 objective one. The subjective courageousness or timidity of the particular victim is irrelevant. You can
3 consider the testimony of any victim or victims, but the ultimate standard must focus on the viewpoint of
4 a reasonable person. Therefore, fear of immediate or future injury is sufficient to support a conviction of
5 Robbery if either Defendant's words, actions, or words and actions under the circumstances would create
6 an apprehension of danger and induce a reasonable person placed in a similar situation to part with his
7 property for the safety of his person or property.
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Instruction No. 38

1 An "attempt" is an act done with the intent to commit a crime, and tending, but failing to
2 accomplish it. The elements of Attempted Robbery are the following:

- 3 1) The Defendant intended to commit Robbery;
- 4 2) The Defendant performed some act toward the commission of the robbery; and
- 5 3) The Defendant failed to consummate commission of the robbery.

6
7 The elements of the crime of Robbery are defined elsewhere in these instructions.

8 Mere preparation to commit a crime, such as by devising or arranging the means necessary for
9 the commission of the offense, is insufficient to constitute an attempt. The act done must be a direct
10 step or movement toward the present commission of the crime, although it need not amount to the
11 commission of an actual element of the crime. When the intent to commit the crime is clearly shown,
12 there need only be slight acts in furtherance of the crime to constitute an attempt.

13 Even though the actual commission of a crime is impossible because of circumstances unknown
14 to the Defendant, he or she is guilty of an attempt to commit the crime if he or she has the specific intent
15 to commit the offense, and under the circumstances as he or she reasonably sees them, he or she does
16 any act that would be a direct step or movement toward consummating the offense he or she intends to
17 commit.

18 A person who attempts to commit a crime is liable even if, after taking a direct step towards
19 committing the intended crime, he or she abandoned further efforts to complete the crime, and even if
20 the failure to complete the crime was due to an intervention or interruption by someone or something
21 beyond his or her control. On the other hand, if a person freely and voluntarily abandons his or her
22 plans before taking a direct step toward committing the offense, then that person is not guilty of
23 attempting the crime.

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26 Instruction No. 39

1 The crime of Burglary consists of the following elements:

- 2 1. The Defendant enters any shop, warehouse, store, house or other building;
- 3 2. With the intent to commit larceny, assault or battery on any person, kidnapping, or any
- 4 felony.

5

6 Entry by breaking or other force is not an element of the offense of burglary. Burglary occurs and

7 is complete when any shop, warehouse, store, house or other building is entered with the intent to commit

8 larceny, assault or battery on any person, kidnapping, felony coercion, or any felony, even if entry is made

9 with the consent of the owner, and even if the larceny, assault or battery on any person, kidnapping, felony

10 coercion, or other felony is not committed thereafter.

11

12 Criminal intent formulated after a lawful entry is not a burglary. A burglary is not committed, and

13 you are required to find a Defendant not guilty, if the intent to commit a larceny, assault or battery on any

14 person, kidnapping, felony coercion, or any felony, is formulated after entry is made.

15

16 “Entry” of a building includes the entrance of the intruder, or the insertion of any part of his or her

17 body or of any instrument or weapon held in the intruder’s hand and used or intended to be used to threaten

18 or intimidate a person, or to detach or remove property.

19

20 “Building” includes every house, shed, boat, watercraft, railway car, tent or booth, whether

21 completed or not, suitable for affording shelter for any human being, or as a place where any property is

22 or will be kept for use, sale or deposit.

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1 “Assault” means:

- 2 1. Intentionally placing another person in reasonable apprehension of immediate bodily harm;
- 3 or
- 4 2. Attempting to use physical force against another person.

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6 “Battery” consists of any willful and unlawful use of force or violence upon the person of another.

7 The words “force or violence” include any intentional, unlawful, and unwanted application of physical

8 force against the person of another, however slight, even though it causes no pain or bodily harm or leaves

9 no mark.

10

11 “Larceny” consists of unlawful stealing, taking and carrying away the personal goods or property

12 of another, with the intent to permanently deprive the owner of the goods or property.

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14 “Kidnapping” and “Felony Coercion” are defined elsewhere in these instructions.

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26 Instruction No. 40

1 Neither Defendant is charged with Kidnapping as a separate crime. However, the State alleges
2 that the Defendants committed or attempted to commit Kidnapping as a predicate felony for Felony
3 Murder in Count IV.
4

5 Kidnapping occurs when:

6 (1) The Defendant willfully;

7 (2) Either:

8 (a) Seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away
9 a person by any means whatsoever with the intent to hold or detain the person; or

10 (b) Holds or detains the person;

11 (3) For the purpose of committing extortion or robbery upon or from the person, or for the
12 purpose of killing the person or inflicting substantial bodily harm upon the person, or to
13 exact from relatives, friends, or any other person any money or valuable thing for the return
14 or disposition of the kidnapped person.
15

16 Kidnapping also occurs when:

17 (1) The Defendant willfully and without authority of law;

18 (2) Seizes, inveigles, takes, carries away or kidnaps another person;

19 (3) Specifically:

20 (a) With the intent to keep the person secretly imprisoned within the State; or

21 (b) For the purpose of conveying the person out of the State without authority of law; or

22 (c) For the purpose of holding the person to service; or

23 (d) With the intent to detain the person against his or her will.
24

25 The crime of kidnapping does not require force or restraint.
26

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1 The term “inveigle” means to lead astray by trickery or deceitful persuasion.

2
3 The term “entice” means to lure or induce, or to wrongfully solicit a person to do something.

4
5 The law does not require the person being kidnapped to be carried away for any minimum distance.
6 It is the fact of movement of a victim, not the distance, that constitutes the offense.

7
8 Consent of the person kidnapped is not a defense unless the person was above the age of 18 years
9 and the person’s consent was not extorted by threats, duress or fraud.

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26 Instruction No. 41

1 Felony Coercion occurs when a Defendant, with the intent to compel another to do or abstain from
2 doing an act which the other person has a right to do or abstain from doing:

- 3 1) Uses violent physical force or inflicts injury upon the other person; or
4 2) Threatens immediate use of violent physical force upon or injury to the other person, or
5 3) Attempts to intimidate the person by using physical force or the immediate threat of physical
6 force.

7
8 An "immediate threat" of physical force or injury may exist even where the Defendant is not
9 presently able to carry out the threat. The standard for the immediacy of the threat is an objective one. In
10 determining whether a Defendant has made an "immediate threat" of physical force or injury, you must
11 decide the immediacy of the threat based on how a reasonable person under the circumstances facing the
12 same threat would perceive that threat.

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26 Instruction No. 42

1 A person therefore aids and abets the commission of Robbery or Attempted Robbery, if he or she:

- 2 1. a. Knowingly does any act to assist another in committing, or
3 b. Directly or indirectly counsels, encourages, hires, commands, induces, or otherwise
4 procures another to commit;
5 2. The acts which constitute the elements of the Robbery or Attempted Robbery;
6 3. Before or during the crime;
7 4. With the intent that the Robbery be accomplished.
8

9 A person may also aid and abet in the commission of Robbery if he or she:

- 10 1. a. Knowingly does any act to assist another in committing, or
11 b. Directly or indirectly counsels, encourages, hires, commands, induces, or otherwise
12 procures another to commit;
13 2. An act or undertaking; and
14 3. The Robbery was a reasonably foreseeable consequence of that act or undertaking.
15

16 A person therefore aids and abets the commission of Burglary, if he or she:

- 17 1. a. Knowingly does any act to assist another in committing, or
18 b. Directly or indirectly counsels, encourages, hires, commands, induces, or otherwise
19 procures another to commit;
20 2. The acts which constitute the elements of the Burglary;
21 3. Before or during the crime;
22 4. With the intent that the Burglary be accomplished.
23
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26 Instruction No. 43

1 A person is liable for the commission of an offense if he or she directly commits the acts
2 constituting the offense; if he or she knowingly aids and abets another person in committing the acts
3 constituting the offense, whether he or she is present or absent when the offense is committed; or if he or
4 she directly or indirectly counsels, encourages, hires, commands, induces, or otherwise procures another
5 to commit the acts constituting the offense.

6 In order to hold a Defendant liable for aiding and abetting another person or persons in committing
7 an offense, the State must prove, beyond a reasonable doubt, that each element of the offense was
8 committed, and that the Defendant did some act to counsel, encourage, induce or knowingly assist in the
9 commission of the offense.

10 Mere presence at the scene of the crime and knowledge that a crime is being committed are not
11 sufficient to establish that the Defendant aided and abetted the crime, unless you find beyond a reasonable
12 doubt that the Defendant is a participant and not merely a knowing spectator.

13 Regarding Attempted Robbery (alleged in Count II), and Burglary (alleged in Count III), the State
14 must also prove that the Defendant(s) encouraged or assisted the crimes with the intent required for
15 Attempted Robbery and Burglary.

16 As to Robbery (alleged in Count I), the State must prove either (1) that the Defendant(s) counseled,
17 encouraged, induced or knowingly assisted the crime intending that Robbery be committed, or (2) that the
18 Defendant(s) knowingly encouraged or assisted an act or undertaking and the Robbery was a reasonably
19 foreseeable consequence of that act or undertaking.

20 The state is not required, however, to prove precisely which participant(s) actually committed the
21 crime and which participant(s) aided and abetted. However, the State must establish that each element of
22 the underlying crime was committed.

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1 A Defendant is liable as a conspirator for the commission of the specific-intent crime of Burglary
2 if he or she:

- 3 1. Enters into an express or implied agreement;
- 4 2. With another person or persons;
- 5 3. To commit the unlawful acts which constitute a Burglary;
- 6 4. With the intent that the Burglary be accomplished; and
- 7 5. Any member or members of the conspiracy commit the acts that constitute a Burglary.

8
9 A Defendant is liable as a conspirator for the general-intent crime of Robbery if he or she:

- 10 1. Enters into an express or implied agreement for an unlawful purpose;
- 11 2. With another person or persons;
- 12 3. The crime of Robbery is a reasonably foreseeable consequence of the conspiracy's
13 purpose; and
- 14 4. Any member or members of the conspiracy commit the acts that constitute Robbery.

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26 Instruction No. 44

1 A conspiracy is an agreement between two or more persons for an unlawful purpose.

2 A person who knowingly does any act to further the object of a conspiracy, or otherwise
3 participates therein, is criminally liable as a conspirator. The act or declaration of one conspirator pursuant
4 to or in furtherance of the common design of the conspiracy is therefore the act or declaration of all the
5 conspirators. If one member of a conspiracy commits a specific-intent crime in furtherance of the
6 conspiracy, each member who knowingly participated in the conspiracy with the intent that the crime be
7 committed has also, under the law, committed the crime, even if he or she was not present at the time the
8 crime was committed.

9 Additionally, if one member of a conspiracy commits a general-intent crime in furtherance of the
10 conspiracy, each member who knowingly participated in the conspiracy is also liable for the crime, even
11 if he or she did not intend for the crime to be committed and even if he or she was not present at the time
12 the crime was committed, so long as the crime was a reasonably foreseeable consequence of the object of
13 the conspiracy.

14
15 A Defendant is therefore liable as a conspirator for the commission of the specific-intent crime of
16 Attempted Robbery if he or she:

- 17 1. Enters into an express or implied agreement;
- 18 2. With another person or persons;
- 19 3. To commit the unlawful acts which constitute Attempted Robbery;
- 20 4. With the intent that the Robbery be accomplished; and
- 21 5. Any member or members of the conspiracy commit the acts that constitute the Attempted
22 Robbery.

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1 The existence of a conspiracy need not be demonstrated by direct proof, and may be established by
2 inference from the parties' conduct. A conspiracy or agreement to violate the law, like any other kind of
3 agreement or understanding, need not be formal, written, or even expressed directly in every detail.
4 Evidence of a coordinated series of acts furthering the underlying offense is sufficient to infer the existence
5 of an agreement. However, absent an agreement to cooperate in achieving the purpose of a conspiracy, mere
6 knowledge of, acquiescence in, or approval of that purpose does not make one a party to conspiracy.

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26 Instruction No. 45

1 The State has alleged alternative theories of Robbery, Attempted Robbery, and Burglary in Counts
2 I, II, and III, respectively, as allowed by law. Specifically, the State has alleged that the Defendants
3 committed Robbery, Attempted Robbery, and Burglary by:

- 4 1. Directly committing the offenses; or
- 5 2. Aiding and abetting commission of the offenses; or
- 6 3. Conspiring to commit the offenses.

7 As explained in previous instructions, the State has also alleged alternative theories of First Degree
8 Murder in Count IV.

9 While a guilty verdict must be unanimous, it is not necessary that you unanimously agree upon the
10 means or specific theory by which the offense was committed. Thus, in order to reach a verdict as to
11 Robbery, Attempted Robbery, Burglary, and First Degree Murder for each Defendant, you must
12 unanimously agree that each Defendant is guilty of the particular offense based upon one or more of the
13 alternative theories alleged by the State, but you do not have to unanimously agree upon a single means
14 or theory by which the particular offense was committed.

15 The elements of the offenses and the alternative theories of Felony Murder, aiding and abetting,
16 and conspiracy are set forth elsewhere in these instructions.

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26 Instruction No. 46

1 If you find that either or both Defendants committed the offenses of Robbery, Attempted
2 Robbery, Burglary, and/or Murder, then you must further determine whether a deadly weapon was used
3 in the commission of the offenses. You should indicate your finding by checking the appropriate box on
4 the verdict forms.

5 The burden is on the State to prove beyond a reasonable doubt that a deadly weapon was used in
6 the commission of the offenses. However, the State is not required to prove that the specific deadly
7 weapon at issue was recovered, nor is the State required to produce the subject deadly weapon at trial.

8 A deadly weapon is defined as follows:

- 9 1. Any instrument which, if used in the ordinary manner contemplated by its design and
10 construction, will or is likely to cause substantial bodily harm or death;
11 2. Any weapon, device, instrument, material or substance which, under the circumstances in
12 which it is used, attempted to be used or threatened to be used, is readily capable of causing
13 substantial bodily harm or death; or
14 3. A firearm, meaning any device designed to be used as a weapon from which a projectile
15 may be expelled through the barrel by the force of any explosion or other form of
16 combustion.

17
18 A person "uses" a deadly weapon in the commission of an offense when he or she puts the
19 weapon into action or service in aiding the commission of the offense. "Use" of a deadly weapon does
20 not require conduct which actually produces harm; conduct which produces a fear of harm or force by
21 means or display of the deadly weapon in aiding the commission of the crime is sufficient.

22 It is no defense to a charge that a crime was committed with the use of a firearm or pneumatic
23 gun that the firearm or pneumatic gun was not loaded or was inoperable during the commission of the
24 offense.

25
26 Instruction No. 47

1 When a Defendant aids and abets, or participates as a conspirator with a principal in committing
2 an offense, and the principal is armed with and uses a deadly weapon in the commission of the offense,
3 the Defendant is deemed to have also used the deadly weapon in the commission of the crime if he or
4 she had knowledge of the principal's use of the deadly weapon.

5 If the Defendant is unaware of the other offender's use of the deadly weapon during the
6 commission of the crime, the Defendant has not "used" the weapon.

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26 Instruction No. 48

1 The crime of Causing the Death of Another by Driving a Vehicle While Under the Influence of
2 Methamphetamine consists of the following elements:

- 3 1. The Defendant willfully drives a vehicle;
- 4 2. On a highway or on premises to which the public has access;
- 5 3. a. While under the influence of a controlled substance; or
6 b. With an amount of methamphetamine in his blood is equal to or greater than 100 nanograms
7 of methamphetamine per milliliter of blood;
- 8 4. Does any act or neglects any duty imposed by law while driving or in actual physical control
9 of the vehicle; and
- 10 5. The act or neglect of duty proximately causes the death of another person.

11
12 The requirement of willfulness applies to the Defendant's driving or control of the vehicle. In other
13 words, the State must prove that the Defendant willfully drove or was in actual physical control of a
14 vehicle. The State is not required, however, to prove that the Defendant willfully became intoxicated or
15 had knowledge that he or she was intoxicated.

16
17 It is not a defense to the charge of Causing the Death of Another by Driving a Vehicle While Under
18 the Influence of Methamphetamine that the Defendant lacked knowledge or his or her intoxication, or that
19 the Defendant had a mistaken belief about the level of methamphetamine in his blood.

20
21 "Under the influence" means impaired to a degree that renders a person incapable of safely driving
22 or exercising actual physical control of a vehicle.

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26 Instruction No. 49

1 The crime of Eluding or Flight from a Police Officer Causing Death consists of the following
2 elements:

- 3 1. The Defendant drives a motor vehicle on a highway or on premises to which the public has
4 access;
- 5 2.a. Willfully fails or refuses to bring the vehicle to a stop; or
6 b. Flees or attempts to elude;
- 7 3. A peace officer in a readily identifiable vehicle of any police department or regulatory agency;
- 8 4. When given a signal to bring the vehicle to a stop by flashing red lamp and siren; and
- 9 5. While doing so is the proximate cause of the death of any other person.

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26 Instruction No. 50

1 The crime of Reckless Driving consists of the following elements:

- 2 1. The Defendant drives or is in actual physical control of any vehicle;
- 3 2. On a highway or on premises to which the public has access;
- 4 3. In willful or wanton disregard of the safety of persons or property;
- 5 4. Does any act or neglects any duty imposed by law; and
- 6 5. The act or neglect of duty proximately causes the death of another person.

7
8 To act wantonly is to unreasonably or maliciously risk harm while being utterly indifferent to the
9 consequences.

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26 Instruction No. 51

1 “Proximate Cause” is that cause which is natural and a continuous sequence, unbroken by any
2 other intervening causes, that produces the injury and without which the injury would not have occurred.

3 A proximate cause of an injury can be said to be that which necessarily sets in operation the factors
4 that accomplish the injury.

5 The contributory negligence of another does not exonerate the Defendant unless the other's
6 negligence was the sole cause of injury.

7 Negligence is the failure to exercise that degree of care in a given situation which a reasonable
8 person under similar circumstances would exercise.

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26 Instruction No. 52

1 The driver of a vehicle has a duty to:

- 2 1. Refrain from driving or operating a vehicle at a rate of speed greater than is reasonable or
3 proper, having due regard for the traffic, surface and width of the highway, the weather and
4 other highway conditions;
- 5 2. Refrain from driving or operating a vehicle at such a rate of speed as to endanger the life,
6 limb or property of any person;
- 7 3. Refrain from driving or operating a vehicle at a rate of speed greater than that posted by a
8 public authority for the particular portion of highway being traversed, and in any event to
9 refrain from driving faster than 80 miles per hour;
- 10 4. Use due care to decrease his or her speed, even if the speed of the vehicle to begin with is
11 lower than the prescribed limits, when approaching and crossing an intersection, or when
12 special hazards exist or may exist with respect to pedestrians or other traffic, or by reason of
13 weather or other highway conditions, as may be necessary to avoid colliding with any
14 person, vehicle or other conveyance;
- 15 5. Exercise due care to decrease his or her speed, even if the speed of the vehicle to begin with
16 is lower than the prescribed limits, as may be necessary to avoid colliding with any person,
17 vehicle or other conveyance entering a highway;
- 18 6. Drive only in the direction designated by any traffic sign, signal, marking, or device in
19 marked lanes for traffic upon any highway;
- 20 7. Drive only in the designated direction upon any highway designated and signposted for one-
21 way traffic;
- 22 8. Drive only upon the right-hand roadway of a divided highway; and
- 23 9. Obey the instructions of any official traffic sign, signal, marking, or device upon any
24 highway.

25
26 Instruction No. 53

1 “Vehicle” means every device in, upon or by which any person or property is or may be
2 transported or drawn upon a highway.

3
4 “Motor vehicle” means every vehicle which is self-propelled but not operated upon rails. The
5 term does not include an electric bicycle or an electric scooter.

6
7 “Highway” means the entire width between the boundary lines of every way dedicated to a
8 public authority when any part of the way is open to the use of the public for purposes of vehicular
9 traffic, whether or not the public authority is maintaining the way.

10
11 “Public authority” means the Department of Transportation or the local authority having
12 jurisdiction to enact laws or ordinances or adopt regulations relating to traffic over a highway.

13
14 “Divided highway” means a highway divided into two or more roadways by means of a physical
15 barrier or dividing section, constructed so as to impede the conflict of vehicular traffic traveling in
16 opposite directions.

17
18 “Premises to which the public has access” means property in private or public ownership onto
19 which members of the public regularly enter, are reasonably likely to enter, or are invited or permitted to
20 enter as invitees or licensees, whether or not access to the property by some members of the public is
21 restricted or controlled by a person or a device. The term includes, but is not limited to:

22 (a) A parking deck, parking garage or other parking structure.

23 (b) A paved or unpaved parking lot or other paved or unpaved area where vehicles are parked or
24 are reasonably likely to be parked.

25 (c) A way that provides access to or is appurtenant to:

26 (1) A place of business;

 (2) A governmental building;

1 (3) An apartment building;

2 (4) A mobile home park;

3 (d) A residential area or residential community which is gated or enclosed or the access to which
4 is restricted or controlled by a person or a device; or

5 (e) Any other similar area, community, building or structure.

6 The term does not include the driveway of an individual dwelling.

7
8 "Private way" or "driveway" means every way or place in private ownership and used for
9 vehicular travel by the owner and those having express or implied permission from the owner, but not by
10 other persons.

11
12 "Peace officer" includes sheriffs of counties and of metropolitan police departments, their
13 deputies and correctional officers, and marshals, police officers and correctional officers of cities and
14 towns.

15
16 "Official traffic sign, signal, marking or device" means a sign, signal, marking or device placed
17 or erected by a public authority for the purpose of regulating, warning or guiding traffic.

18
19 "Driver" means every person who drives or is in actual physical control of a vehicle.

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26 Instruction No. 54

1 Where a person has committed an unlawful act, and where that person, at the time the act was
2 committed, had the intent necessary to make the crime complete, the fact that he or she might at some
3 later time have repented and not had the unlawful intent, is no defense.
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Instruction No. 55

1 You are here to determine the guilt or innocence of each Defendant from the evidence in the case.
2 You are not called upon to return a verdict as to the guilt or innocence of any other person. So, if the
3 evidence in the case convinces you beyond a reasonable doubt of the guilt of either Defendant you should
4 so find, even though you may believe one or more persons are also guilty.

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26 Instruction No. 56

1 You heard evidence of the alleged prior possession of a handgun by Defendant Ryan Williams on
2 a date other than February 22, 2020. This evidence is not to be considered for purposes of proving
3 character or action in conformity therewith on February 22, 2020. However, such evidence may be
4 considered in determining intent or providing content to statements allegedly made by Defendant Ryan
5 Williams on February 22, 2020, and in determining the elements of robbery and attempted robbery that
6 the offenses be committed by means of force or violence or fear of injury, immediate or future.

7 You may consider this evidence only against Defendant Ryan Williams, and not against Defendant
8 Adrianna Norman.

9 As with all evidence, it is up to you, the jury, to decide whether to believe all, none, or part of the
10 testimony and the weight to give to it.
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26 Instruction No. 57

1 During the trial the court has instructed you that certain statements attributed to a particular
2 Defendant pertain only to such Defendant. You must strictly follow this instruction. During your
3 deliberations you may not consider or discuss any such statement in your consideration of the evidence
4 as to any other Defendant.
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Instruction No. 58

1 You heard testimony relating to text messages Defendant Adrianna Norman sent to Steven Sims
2 prior to the events that occurred in this case on February 22, 2020. These text messages may not be
3 considered against Defendant Ryan Williams.
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Instruction No. 59

1 You heard recordings of telephone calls made by Defendant Ryan Williams. You may consider
2 that evidence only against him, and not against Defendant Adrianna Norman.
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Instruction No. 60

1 It is not improper for the attorneys to have interviewed witnesses prior to trial in this case.
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Instruction No. 61

1 On arriving at a verdict in this case, you shall not discuss or consider the subject of penalty or
2 punishment, and it must not in any way affect your decision as to the guilt or innocence of the
3 Defendant.
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Instruction No. 62

1 It is your duty as jurors to consult with one another and to deliberate, with a view of reaching an
2 agreement, if you can do so without violence to your individual judgment. You each must decide the
3 case for yourself, but should do so only after a consideration of the case with your fellow jurors; and you
4 should not hesitate to change an opinion when convinced that it is erroneous. However, you should not
5 be influenced to vote in any way on any question submitted to you by fact that a majority of the jurors,
6 or any of them, favor such a decision. In other words, you should not surrender your honest convictions
7 concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because
8 of the opinion of the other jurors.

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26 Instruction No. 63

1 CODE 4245

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR20-0630B

11 v.

Dept. No. 1

12 RYAN WILLIAMS,

13 Defendant.
14 _____

15 VERDICT

16
17 We, the jury in the above-entitled matter, find the defendant, RYAN WILLIAMS,
18 GUILTY of Count I. ROBBERY.

19 DATED this 27 day of April, 2021

20 *Craig D. Chasin*
21 FOREPERSON

22
23 Was a deadly weapon used in the commission of the offense?

24 Yes _____
25 (check one)

NO *i*

1 CODE 4245

2 ORIGINAL

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR20-0630B

11 v.

Dept. No. 1

12 RYAN WILLIAMS,

13 Defendant.
14 _____

15 VERDICT

16
17 We, the jury in the above-entitled matter, find the defendant, RYAN WILLIAMS,
18 NOT GUILTY of Count II. ATTEMPTED ROBBERY.

19 DATED this 28 day of April, 2021.

20 *W. D. Churn*
21 FOREPERSON
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1 CODE 4245

2 ORIGINAL

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR20-0630B

11 v.

Dept. No. 1

12 RYAN WILLIAMS,

13 Defendant.
14 _____/

15 VERDICT

16
17 We, the jury in the above-entitled matter, find the defendant, RYAN WILLIAMS,
18 GUILTY of Count III. BURGLARY.

19 DATED this 27 day of April, 2021

20 *David D. Chinn*
21 FOREPERSON

22
23 Did the defendant possess or gain possession of a firearm or deadly weapon at any time
24 during the commission of the crime or before leaving the structure?

25 Yes ✓
26 (check one)

NO _____

1 CODE 4245

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR20-0630B

11 v.

Dept. No. 1

12 RYAN WILLIAMS,

13 Defendant.
14 _____/

15
16 VERDICT

17 We, the jury in the above-entitled matter, find the defendant, RYAN WILLIAMS,
18 GUILTY of Count V. CAUSING THE DEATH OF ANOTHER BY DRIVING A VEHICLE WHILE
19 UNDER THE INFLUENCE OF METHAMPHETAMINE.

20 DATED this 28 day of April, 2021.

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23 FOREPERSON
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1 CODE 4245

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR20-0630B

11 v.

Dept. No. 1

12 RYAN WILLIAMS,

13 Defendant.
14 _____ /

15
16 VERDICT

17 We, the jury in the above-entitled matter, find the defendant, RYAN WILLIAMS,
18 GUILTY of Count VI. ELUDING OR FLIGHT FROM A POLICE OFFICER RESULTING IN
19 DEATH.

20 DATED this 28 day of April, 2021

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR20-0630B

11 v.

Dept. No. 1

12 RYAN WILLIAMS,

13 Defendant.
14

15
16 VERDICT

17 We, the jury in the above-entitled matter, find the defendant, RYAN WILLIAMS,
18 GUILTY of Count VII. RECKLESS DRIVING.

19 DATED this 28 day of April, 2021

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
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9 STATE OF NEVADA,

10 Plaintiff,

11 vs.

Case No. CR20-0630B

12 RYAN WILLIAMS,

Dept. No. 1

13 Defendant.
14

15 JUDGMENT OF CONVICTION

16 The Defendant having been found Guilty by a Jury on Count I, III, V and VI, and no
17 sufficient cause being shown by Defendant as to why judgment should not be pronounced
18 against Ryan Williams, the Court rendered judgment as follows:

19 1. That Ryan Williams is guilty of the crime of Robbery With the Use of a
20 Deadly Weapon, a violation of NRS 200.380, NRS 193.165 and NRS 195.020, a category
21 B felony, as charged in Count I of the Information.

22 2. That Ryan Williams be punished by imprisonment in the Nevada
23 Department of Corrections for a minimum term of 60 months to a maximum term of
24 180 months, with credit for time served in the amount of 514 days.

25 3. That Ryan Williams is guilty of the crime of Burglary With Possession of a
26 Firearm or Deadly Weapon, a violation of NRS 205.060.1-.2 and NRS 205.060.4, a
27 category B felony, as charged in Count III of the Information.
28

1 4. That Ryan Williams be punished by imprisonment in the Nevada
2 Department of Corrections for a minimum term of 60 months to a maximum term of
3 180 months, to be served concurrent with the sentence imposed in Count I.

4 5. That Ryan Williams is guilty of the crime of Causing the Death of Another by
5 Driving a Vehicle While Under the Influence of Methamphetamine, a violation of NRS
6 484C.110 and NRS 484C.430 a category B felony, as charged in Count V of the
7 Information.

8 6. That Ryan Williams be punished by imprisonment in the Nevada
9 Department of Corrections for a minimum term of 48 months to a maximum term of
10 180 months, to be served consecutive to the sentence imposed in Count III, and by
11 payment of a fine in the amount of \$2,000.00.

12 7. That Ryan Williams is guilty of the crime of Eluding or Flight From a Police
13 Officer Resulting in Death, a violation of NRS 484B.550, a category B felony, as charged in
14 Count VI of the Information.

15 8. That Ryan Williams be punished by imprisonment in the Nevada
16 Department of Corrections for a minimum term of 96 months to a maximum term of
17 240 months, to be served consecutive to the sentence imposed in Count V.

18 10. That Ryan Williams is guilty of the crime of Reckless Driving, a violation of
19 NRS 484B.653(1)(a) and 484B.653(9), a category B felony as charged in Count VII of the
20 Information. This Count does not impose sentence for this crime as Reckless Driving is a
21 lesser included offense of Eluding or Flight From a Police Officer Resulting in Death.
22 *Kelley v. State*, 132 Nev. 348, 350 (2016).

23 11. It is further ordered that the aggregate sentence imposed is a minimum
24 of 17 months with a maximum of 50 months.

25 11. It is further ordered that Ryan Williams shall pay an administrative
26 assessment fee of \$25.00 and the \$3.00 administrative assessment for obtaining a
27 biological specimen and conducting a genetic marker analysis and reimburse the County
28 of Washoe the sum of \$1,000.00 for legal representation to the Clerk of the Second

1 Judicial District Court. In addition, the Defendant is ordered to pay restitution in the
2 amount of \$10,000.00, to Victim VC2279343 and \$5,000.00, to Victim VC2108500. All
3 monetary payments, money and property collected from the Defendant shall be first
4 applied to pay the amount ordered as restitution to the Victims.

5 11. Ryan Williams is hereby advised that:

6 **Any fine, fee administrative assessment or restitution**
7 **imposed today (as reflected in this Judgment) constitutes a**
8 **lien, as defined in Nevada Revised Statute NRS 176.275.**
9 **Should the Defendant not pay these fines, fees, or**
10 **assessments, collection efforts may be undertaken against**
11 **you.**

12 Dated this 26th day of July 2021.

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14 KATHLEEN M. DRAKULICH
15 DISTRICT JUDGE
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 STATE OF NEVADA,

10 Plaintiff,

11 vs.

Case No. CR20-0630B

12 RYAN WILLIAMS,

Dept. No. 1

13 Defendant.
14 _____ /

15 JUDGMENT OF ACQUITTAL AND NOTICE PURSUANT TO SECTION 179.255 OF THE
16 NEVADA REVISED STATUTES

17 No sufficient cause being shown by the State of Nevada as to why judgment should
18 not be pronounced for the Defendant and against the State and based upon the Not Guilty
19 Verdict of the Jury, the Court rendered judgment as follows:

20 1. That Ryan Williams is adjudged Not Guilty of Count II – Attempted Robbery
21 With the Use of a Deadly Weapon, a violation of NRS 193.330, being an attempt to Violate
22 NRS 200.380, NRS 193.165 and NRS 195.020, a category B felony, as charged in the
23 Information.

24 2. Further, the Defendant is hereby given written notice of the provisions of
25 NRS 179.255, which reads as follows:

26 a. If a person has been arrested for alleged criminal conduct and
27 the charges are dismissed or such person is acquitted of the
28 charges, the person may petition:

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- i. The Court in which the charges were dismissed, at any time after the date the charges were dismissed; or
- ii. The Court in which the acquittal was entered, at any time after the date of the acquittal, for the sealing of all records relating to the arrest and the proceedings leading to the dismissal or acquittal.
- b. A petition filed pursuant to this section must:
 - i. Be accompanied by a current, verified record of the criminal history of the Petitioner received from the local law enforcement agency of the city or county in which the petitioner appeared in Court;
 - ii. Include a list of any other public or private agency, company, official or other custodian of records that is reasonably known to the Petitioner to have possession of records of the arrest and of the proceeding leading to the dismissal or acquittal and to whom the Order to Seal Records, if issued, will be directed; and
 - iii. Include information that, to the best knowledge and belief of the petitioner, accurately and completely identifies the records to be sealed.
- c. Upon receiving a petition pursuant to this section, the Court shall notify the law enforcement agency that arrested the petitioner for the crime, and:
 - i. If the charges were dismissed or the acquittal was entered in a District Court or Justices' Court, the prosecuting attorney for the county; or
 - ii. If the charges were dismissed or the acquittal was entered in a Municipal Court, the prosecuting attorney for the city. The prosecuting attorney and any person having relevant evidence may testify and present evidence at the hearing on the petition.
- d. If, after the hearing, the Court finds that there has been an acquittal or that the charges were dismissed and there is no evidence that further action will be brought against the person, the Court may order sealed all records of the arrest and of the proceedings leading to the acquittal or dismissal which are in the custody of the Court, of another Court in the State of

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Nevada or of a public or private company, agency or official in
the State of Nevada.

Dated this 21st day of July, 2021.


KATHLEEN M. DRAKULICH
DISTRICT JUDGE

1 CODE NO. 2515
2 WASHOE COUNTY PUBLIC DEFENDER
3 JOHN REESE PETTY, State Bar Number 10
4 350 South Center Street, 5th Floor
5 Reno, Nevada 89501
6 (775) 337-4827
7 jpetty@washoecounty.us
8 Attorney for Defendant

9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11
12 IN AND FOR THE COUNTY OF WASHOE

13 THE STATE OF NEVADA,

14 Plaintiff,

15 vs.

Case No. CR20-0630B

16 RYAN WILLIAMS,

Dept. No. 1

17 Defendant.
18 _____/

19 NOTICE OF APPEAL

20 Defendant, Ryan Williams, hereby appeals to the Supreme Court of Nevada
21 from the judgment of conviction in this action on July 26, 2021.

22 The undersigned hereby affirms, pursuant to NRS 239B.030, that this
23 document does not contain the social security number of any person.

24 DATED this 23rd day of August 2021.

25 JOHN L. ARRASCADA
WASHOE COUNTY PUBLIC DEFENDER

By: /s/ John Reese Petty
JOHN REESE PETTY, Chief Deputy

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RYAN WILLIAMS (#96845)
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, Nevada 89702

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DATED this 23rd day of August 2021.

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **STATE OF NEVADA,**

10 **Plaintiff,**

11 **vs.**

Case No. CR20-0630B

12 **RYAN WILLIAMS,**

Dept. No. 1

13 **Defendant.**
14 _____/

15 **AMENDED JUDGMENT OF CONVICTION**

16 The Defendant having been found Guilty by a Jury on Count I, III, V and VI, and no
17 sufficient cause being shown by Defendant as to why judgment should not be pronounced
18 against Ryan Williams, the Court rendered judgment as follows:

19 1. That Ryan Williams is guilty of the crime of Robbery With the Use of a
20 Deadly Weapon, a violation of NRS 200.380, NRS 193.165 and NRS 195.020, a category
21 B felony, as charged in Count I of the Information.

22 2. That Ryan Williams be punished by imprisonment in the Nevada
23 Department of Corrections for a minimum term of 60 months to a maximum term of
24 180 months, with credit for time served in the amount of 514 days.

25 3. That Ryan Williams is guilty of the crime of Burglary With Possession of a
26 Firearm or Deadly Weapon, a violation of NRS 205.060.1-.2 and NRS 205.060.4, a
27 category B felony, as charged in Count III of the Information.
28

1 4. **That Ryan Williams be punished by imprisonment in the Nevada**
2 **Department of Corrections for a minimum term of 60 months to a maximum term of**
3 **180 months, to be served concurrent with the sentence imposed in Count I.**

4 5. That Ryan Williams is guilty of the crime of Causing the Death of Another by
5 Driving a Vehicle While Under the Influence of Methamphetamine, a violation of NRS
6 484C.110 and NRS 484C.430 a category B felony, as charged in Count V of the
7 Information.

8 6. **That Ryan Williams be punished by imprisonment in the Nevada**
9 **Department of Corrections for a minimum term of 48 months to a maximum term of**
10 **180 months, to be served consecutive to the sentence imposed in Count III, and by**
11 **payment of a fine in the amount of \$2,000.00.**

12 7. That Ryan Williams is guilty of the crime of Eluding or Flight From a Police
13 Officer Resulting in Death, a violation of NRS 484B.550, a category B felony, as charged in
14 Count VI of the Information.

15 8. **That Ryan Williams be punished by imprisonment in the Nevada**
16 **Department of Corrections for a minimum term of 96 months to a maximum term of**
17 **240 months, to be served consecutive to the sentence imposed in Count V.**

18 10. That Ryan Williams is guilty of the crime of Reckless Driving, a violation of
19 NRS 484B.653(1)(a) and 484B.653(9), a category B felony as charged in Count VII of the
20 Information. This Count does not impose sentence for this crime as Reckless Driving is a
21 lesser included offense of Eluding or Flight From a Police Officer Resulting in Death.
22 *Kelley v. State*, 132 Nev. 348, 350 (2016).

23 11. **It is further ordered that the aggregate sentence imposed is a minimum**
24 **of 17 years with a maximum of 50 years.**

25 11. It is further ordered that Ryan Williams shall pay an administrative
26 assessment fee of \$25.00 and the \$3.00 administrative assessment for obtaining a
27 biological specimen and conducting a genetic marker analysis and reimburse the County
28 of Washoe the sum of \$1,000.00 for legal representation to the Clerk of the Second

1 Judicial District Court. In addition, the Defendant is ordered to pay restitution in the
2 amount of \$10,000.00, to Victim VC2279343 and \$5,000.00, to Victim VC2108500. All
3 monetary payments, money and property collected from the Defendant shall be first
4 applied to pay the amount ordered as restitution to the Victims.

5 11. Ryan Williams is hereby advised that:

6 **Any fine, fee administrative assessment or restitution**
7 **imposed today (as reflected in this Judgment) constitutes a**
8 **lien, as defined in Nevada Revised Statute NRS 176.275.**
9 **Should the Defendant not pay these fines, fees, or**
10 **assessments, collection efforts may be undertaken against**
11 **you.**

12 Dated this 21st day of September 2021.
13 NUNC PRO TUNC to the 26th day of July 2021.

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15 KATHLEEN M. DRAKULICH
16 DISTRICT JUDGE
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 11th day of January 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Jennifer P. Noble, Chief Appellate Deputy,
Washoe County District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Ryan Williams (#96845)
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, Nevada 89702

John Reese Petty
Washoe County Public Defender's Office