

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Feb 28 2022 02:56 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IAN CHRISTOPHER HELD,)	
)	
Appellant,)	Case No. 83549
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
_____)	

Appeal from Jury Verdict and Conviction
Second Judicial District Court of the State of Nevada
The Honorable David Hardy

APPELLANT'S JOINT APPENDIX – VOLUME I

MARC PICKER
Washoe County Alternate Public Defender

CHRISTOPHER HICKS
Washoe County District Attorney

MELISSA ROSENTHAL
Deputy Alternate Public Defender

JENNIFER NOBLE
Deputy District Attorney

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ATTORNEYS FOR APPELLANT

ATTORNEYS FOR RESPONDENT

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10
11 IN AND FOR THE COUNTY OF WASHOE

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No.: CR20-3104

15 v.

Dept. No.: D15

16 IAN CHRISTOPHER HELD,

17 Defendant.

18 INFORMATION

19 CHRISTOPHER J. HICKS, District Attorney within and for the
20 County of Washoe, State of Nevada, in the name and by the authority
21 of the State of Nevada, informs the above entitled Court that, the
22 defendant above-named, IAN CHRISTOPHER HELD, has committed the
23 crime(s) of:

24 COUNT I. RESIDENTIAL BURGLARY, SECOND OR SUBSEQUENT
25 OFFENSE, a violation of NRS 205.060.1a, a category B Felony, (61936)
26 in the manner following:

That the said defendant, IAN CHRISTOPHER HELD, on or about
September 21, 2020, did willfully and unlawfully, by day or night,
enter or remain, in a dwelling, located at 1440 Whisper Rock Way,

0001

1 Reno, Washoe County, Nevada, with the intent then and there to commit
2 grand or petit larceny and/or a felony therein after having
3 previously been convicted of residential burglary or another crime
4 involving the unlawful entry or invasion of a dwelling.

5 COUNT II. ATTEMPT RESIDENTIAL BURGLARY, SECOND OR
6 SUBSEQUENT OFFENSE, a violation of NRS 205.060.1a, 205.060.2d,
7 193.330.1a2, a category C Felony, (61937) in the manner following:

8 That the said defendant, IAN CHRISTOPHER HELD, on or about
9 September 24, 2020, did willfully and unlawfully, by day or night,
10 attempt to enter or remain, in a dwelling, located at or near 920 S.
11 University Park Loop, Reno, Washoe County, Nevada, with the intent
12 then and there to commit grand or petit larceny and/or a felony
13 therein after having previously been convicted of residential
14 burglary or another crime involving the unlawful entry or invasion of
15 a dwelling.

16 COUNT III. BEING A FELON IN POSSESSION OF A FIREARM, a
17 violation of NRS 202.360, a category B felony, (51460) in the manner
18 following:

19 That the said defendant, IAN CHRISTOPHER HELD, on or about
20 September 28, 2020, within the County of Washoe, State of Nevada, did
21 willfully, unlawfully, and knowingly, having been previously
22 convicted in Washoe County, Nevada, of the crime of burglary, a

23 ///

24 ///


25 ///

26 ///

1 felony under the laws of the State of Nevada, have in his possession
2 or under his dominion and control a shotgun, and/or a long rifle,
3 and/or a bolt action rifle, and/or a handgun.
4

5 All of which is contrary to the form of the Statute in such
6 case made and provided, and against the peace and dignity of the
7 State of Nevada.
8

9 CHRISTOPHER J. HICKS
10 District Attorney
Washoe County, Nevada

11 By: 
12 ROBERT W. DELONG
13 10022
14 DEPUTY District Attorney
15
16
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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 TRAVIS BAILEY
4 THOMAS HAKIN
5 BENJAMIN D. RUSSELL
6 LANCE TINDELL
7 JASON WELCH
8 KENNETH FYE
9 SCOTT MICHAEL ECKARD
10 JASON RICHARD ROCCO
11 LAURA LEE WRIGHT
12 TY "JOE" TRAIL
13 JEREMY CATALANO
14 KYLE BONTA
15 TAYLOR BAKIOS
16 HEATHER GOLDEN
17 CHRIS GARDELLA
18 ALLEN MCCULLOCH
19 ROBERT WRIGHT MERRILL
20 DOROTHY MERRILL
21 GARY LITZSINGER
22 CARLEE LINDAHL
23 LAWRENCE ODAYE
24 DANN FORD
25 DEE SHAPIRO
26 GERMAN RODRIGUEZ

16 AFFIRMATION PURSUANT TO NRS 239B.030

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

20 CHRISTOPHER J. HICKS
21 District Attorney
22 Washoe County, Nevada

23 By: 
24 ROBERT W. DELONG
25 10022
26 DEPUTY District Attorney

PCN: RPD0063507C; RPD0063508C; RPD0063509C; RPD0059785C; RPD0059790C-
HELD

0004

1 **CODE 1850**

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4
5
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,**

Case No. CR20-3104

11 **vs.**

Dept. No. 15

12 **IAN CHRISTOPHER HELD,**

13 **Defendant.**
14 /

15 **JUDGMENT**

16 The Defendant, having been found guilty by a jury, and no sufficient cause
17 being shown as to why judgment should not be pronounced against him, the Court
18 rendered judgment as follows:

19 That Ian Christopher Held is guilty of the crime of Residential Burglary,
20 Second or Subsequent Offense, a violation of NRS 205.060 (1)(a), a category B felony, as
21 charged in Count I of the Information, and that he be punished by imprisonment in the
22 Nevada Department of Corrections for the maximum term of one hundred twenty (120)
23 months with the minimum parole eligibility of forty-eight (48) months, with credit for
24 three hundred forty (340) days time served.

25 That Ian Christopher Held is guilty of the crime of Attempt Residential
26 Burglary, Second or Subsequent Offense, a violation of NRS 205.060 (1)(a), NRS 205.060
27 (2)(d), and NRS 193.330 (1)(a)(2), a category C felony, as charged in Count II of the
28 Information, and that he be punished by imprisonment in the Nevada Department of

1 Corrections for the maximum term of sixty (60) months with the minimum parole
2 eligibility of twenty-four (24) months, to be served consecutively to the sentence imposed
3 for Count I, with credit for zero (0) days time served.

4 That Ian Christopher Held is guilty of the crime of Being a Felon in
5 Possession of a Firearm, a violation of NRS 202.360, a category B felony, as charged in
6 Count III of the Information, and that he be punished by imprisonment in the Nevada
7 Department of Corrections for the maximum term of thirty (30) months with the minimum
8 parole eligibility of twelve (12) months, to be served consecutively to the sentence imposed
9 for Counts I and II, with credit for zero (0) days time served.

10 The Court, having found that the sentences imposed for Count II and III be
11 served consecutively to the sentence imposed for Count I, finds that the maximum
12 aggregate term of imprisonment is two hundred ten (210) months in the Nevada
13 Department of Corrections, and the minimum aggregate term of imprisonment is eighty-
14 four (84) months in the Nevada Department of Corrections.

15 It is further ordered that the Defendant shall pay the statutory Twenty-Five
16 Dollar (\$25.00) administrative assessment fee; that he shall pay the Three Dollar (\$3.00)
17 administrative assessment fee for obtaining a biological specimen and conducting a
18 genetic marker analysis; and that he shall reimburse Washoe County in the amount of Five
19 Hundred Dollars (\$500.00) for legal services rendered.

20 It is further ordered that the fees shall be subject to removal from the
21 Defendant's books at the Washoe County Jail and/or the Nevada Department of
22 Corrections. Any fine, fee, administrative assessment, or restitution ordered today (as
23 reflected in this Judgment) constitutes a lien, as defined in NRS 176.275. Should the
24 Defendant not pay these fines, fees, assessments, or restitution, collection efforts may be
25 undertaken against him.

26 Dated this 3rd day of September, 2021.

27 
28 DISTRICT JUDGE

1 CODE: 2515
2 MARC PICKER, BAR #3566
3 ALTERNATE PUBLIC DEFENDER
4 MELISSA ROSENTHAL
5 350 S. CENTER ST., 6TH FLOOR
6 mpicker@washoecounty.us
7 mrosenthal@washoecounty.us
8 RENO, NV 89501-2103
9 (775) 328-3955
10 ATTORNEY FOR DEFENDANT

11
12 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
13
14 IN AND FOR THE COUNTY OF WASHOE
15

16 THE STATE OF NEVADA,

17 Plaintiff,

Case No. CR20-3104

18 v.

Dept No. 15

19 IAN CHRISTOPHER HELD,

20 Defendant.
21 _____/

22 **NOTICE OF APPEAL**

23 NOTICE IS HEREBY GIVEN that Defendant, IAN CHRISTOPHER HELD, hereby
24 appeals to the Supreme Court of Nevada from the Notice of Entry of Order entered in this case
25 on September 3, 2021.

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

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

DATED this 23rd day of September, 2021.

MARC PICKER
Washoe County Alternate Public Defender

By: /s/ Melissa Rosenthal
MELISSA ROSENTHAL
Deputy Alternate Public Defender

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Alternate Public Defender's Office and that on this date I served a copy of the **NOTICE OF APPEAL** to the following:

IAN HELD, #96555
C/O NNCC
PO BOX 7000
CARSON CITY, NV 89701
Via U.S. Mail

CHRISTOPHER HICKS
WASHOE COUNTY DISTRICT ATTORNEY
Attn: Appellate Department
Via Electronic Filing

DATED this 23rd day of September, 2021.

/s/ Randi Jensen
RANDI JENSEN

1 2265
2 Christopher J. Hicks
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4 One South Sierra Street
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8 Attorney for Plaintiff

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: CR20-3104

15 v.

Dept: D15

16 IAN CHRISTOPHER HELD,
17 also known as
18 IAN HELD,

19 Defendant
20 _____/

21 **MOTION TO BIFURCATE COUNT THREE OF THE INFORMATION**

22 The State of Nevada, by and through CHRISTOPHER J. HICKS,
23 District Attorney of Washoe County, and Robert W. DeLong, Deputy
24 District Attorney, hereby moves to bifurcate count three of the
25 information filed herein. This motion is based on the following
26 Memorandum of Points and Authorities, all of the pleadings and papers
on file herein, and any further evidence that may be presented at a
hearing on this matter if deemed necessary by the Court.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2

3 **I. INTRODUCTION**

4 This case is the result of an investigation by the Reno Police
5 Department and other agencies into a string of residential burglaries
6 that occurred in late September of 2020. As a result of the
7 investigation, the Defendant Ian Held is being charged with one count
8 of residential burglary 2nd, and a second count of attempted residential
9 burglary 2nd. During the investigation, Detective Kenneth Fye, of the
10 Sparks Police Department, applied for and obtained a telephonic search
11 warrant from the Honorable Judge Ryan Katherine Sullivan to search the
12 Defendant's trailer for stolen property. During the search of the
13 trailer several firearms were located by officers. This resulted in the
14 Defendant's third charge, ex-felon in possession of a firearm. The State
15 now moves to bifurcate this charge, and to have it heard by the jury
16 after a verdict is returned concerning the burglary charges, to prevent
17 unfair prejudice to Held.

18 **II. PROCEDURAL HISTORY**

19 On February 24, 2021, the State filed its Third Amended
20 Complaint against the Defendant in this matter, charging the Defendant
21 with Count I Residential Burglary, Second or Subsequent Offense; Count
22 II Residential Burglary, Second or Subsequent Offense; Count III Attempt
23 Residential Burglary, Second or Subsequent Offense; and Count IV Being
24 a Felon In Possession of a Firearm. A preliminary hearing was held on
25 March 3, 2021, which concluded on March 8, 2021. As a result of the
26 hearing, the Court determined that probable cause existed to bind over

0010

1 the Defendant to District Court on Counts I, III, and IV. An information
2 was then filed by the State in this matter on March 18, 2021, charging
3 the Defendant with one count of residential burglary, one count of
4 attempted residential burglary, and one count of being an ex-felon in
5 possession of a firearm. A trial is scheduled for this matter beginning
6 June 29, 2021.

7 The State now moves to bifurcate the ex-felon in possession
8 of a firearm charge (Information Count III), to permit the jury to
9 consider the evidence related to the possession of a firearm charge
10 only after a verdict is returned on Counts I and II.

11 **III. DISCUSSION**

12 To avoid undue prejudice, the district court can properly
13 bifurcate a charge involving an element of a prior conviction. A
14 bedrock principle of American jurisprudence is that all defendants be
15 afforded a fair trial. To that end, it is appropriate to be
16 cognizant of issues which might unfairly prejudice the accused. In
17 addition to facing a burglary second charge and an attempted burglary
18 second charge, Held stands accused of possessing a firearm after
19 having been previously convicted of a felony. Bifurcation of count
20 III in its entirety is appropriate to ensure that his trial is fair
21 while also considering concerns of judicial economy.

22 The Nevada Supreme Court has previously considered
23 bifurcation of charges to prevent undue prejudice. See e.g. Brown v.
24 State, 114 Nev. 1118, 967 P.2d 1126 (1998); Morales v. State, 122
25 Nev. 966, 143 P.3d 463 (2006). The Court has held that when the
26 State seeks convictions on multiple counts, "the prejudice to the

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1 defendant of introducing evidence of prior convictions in order to
2 establish that the defendant is an ex-felon requires severance of the
3 counts." Gonzalez v. State, 131 Nev. Adv. Op. 99, 366 P.3d 680, 687
4 (2015) (emphasis added), citing Brown, *supra*. In Morales, the Court
5 held that "bifurcation prevents the State from discussing or
6 producing proof of prior felony convictions until after the jury has
7 deliberated on the charges that are unrelated to the defendant's
8 status as an ex-felon." 122 Nev. at 970, 143 P.3d at 465-66
9 (emphasis added). Therefore, the appropriate method of bifurcation
10 to avoid prejudice would be to bifurcate the entire ex-felon in
11 possession of a firearm charge (Count III) from the burglary charges
12 (Counts I and II) rather than allow for all three counts to be heard
13 by a jury at once.

14 In Morales v. State, 122 Nev. 966 (2006), the Nevada
15 Supreme Court considered the propriety of a lower court's decision to
16 bifurcate - as opposed to sever - a similar charge. On this issue,
17 the Court found no error in bifurcating the charge, offering the
18 following:

19 In Brown¹, we adopted a procedure calculated to
20 prevent prejudicial jury exposure to a defendant's
21 prior felony record in cases where the State joins
22 an ex-felon firearm possession charge with other
23 charges. This procedure requires that district
24 courts prospectively sever such matters by means of
25 separate trials.

26 We conclude that the district court's bifurcation
procedure accomplishes the policy reflected in the

¹ In Brown, the Court elected to sever such a count, thereby necessitating the occurrence of two (2) distinct trials based on the same operative series of facts. The State would be opposed to severing the charge based on concerns of judicial economy.

1 prospective severance mandate declared in Brown.
2 As with full severance, bifurcation prevents the
3 State from discussing or producing proof of prior
4 felony convictions until after the jury has
5 deliberated on the charges that are unrelated to
the defendant's status as an ex-felon. Bifurcation
also promotes judicial economy by allowing for
adjudication of all charges in a single trial.

6 Morales v. State, 122 Nev. 966, 969-70, 143 P.3d 463, 465-66 (2006)

7 The State submits that it is not appropriate for the jury
8 to hear evidence concerning Held's possession of a firearm, and prior
9 felony conviction, until a jury verdict is rendered on his burglary
10 charges. This procedure would spare the jury from any unrelated
11 information concerning the possession of a firearm, and the fact that
12 Held incurred a prior felony conviction, until their deliberations
13 were complete and a verdict rendered on Counts I and II. Once a
14 verdict is rendered, they could be provided additional instruction
15 related to the existence of the third count, as well as any
16 additional evidence deemed necessary by both sides, before receiving
17 additional instructions and verdict forms for the final count, and
18 any argument by the parties, prior to their deliberations as to the
19 last charge.

20 **IV. CONCLUSION**

21 Based upon the foregoing, the State respectfully submits that
22 to prevent improper prejudice, the trial in this matter should be
23 bifurcated, and evidence should be admitted and considered regarding
24 Count III only after a verdict has been returned on Counts I and II in
25 the Information.

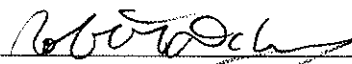
26 ///

AFFIRMATION PURSUANT TO NRS 239B.030

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

Dated this 17th day of June, 2021

CHRISTOPHER J. HICKS
District Attorney
Washoe County, Nevada

By 
ROBERT W. DELONG
10022
DEPUTY DISTRICT ATTORNEY

1 CERTIFICATE OF SERVICE BY E-FILING

2 Pursuant to NRCP 5(b), I certify that I am an employee of
3 the Washoe County District Attorney's Office and that, on this date,
4 I electronically filed the foregoing with the Clerk of the Court. A
5 notice will be sent electronically to the following:

6
7 ALTERNATE PUBLIC DEFENDER
8 MELISSA ROSENTHAL ESQ

9 Dated this 17th day of June, 2021

10
11 /s/RACHEL STEINMAN
12 RACHEL STEINMAN
13
14
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23
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26

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MARC PICKER, BAR #3566
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775-328-3955
ATTORNEY FOR DEFENDANT

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. CR20-3104

vs.

Dept. No. 15

IAN CHRISTOPHER HELD,
Defendant.

MOTION TO SUPPRESS

COMES NOW, Defendant, IAN CHRISTOPHER HELD, by and through his attorney,
Marc Picker, Alternate Public Defender, and Melissa Rosenthal, Deputy Alternate Public
Defender, and moves the Court for an order suppressing certain evidence obtained by law
enforcement but then returned to the alleged victim in this matter.

This Motion is made and based upon the following Points and Authorities.

DATED this 16th day of June, 2021.

MARC PICKER
Washoe County Alternate Public Defender.

By: /s/ Melissa Rosenthal
Melissa Rosenthal
Deputy Alternat Public Defender

1 **POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO SUPPRESS**

2 The Defendant in this matter is charged with Count I: Residential Burglary, Second or
3 Subsequent Offense; Count II: Attempt Residential Burglary, Second or Subsequent Offense; and
4 Count III: Being a Felon in Possession of a Firearm. Trial in this matter is set to commence on
5 June 29, 2021.

6 In anticipation of trial the undersigned reached out to the assigned deputy district attorney
7 to arrange for an evidence viewing.

8 The assigned deputy responded that the evidence viewing could be arranged but that some
9 of the items of evidence, specifically, a drill and some coins, were already returned to the alleged
10 victim in this matter making the viewing of such evidence impossible for the defense.

11 Due process requires the State to preserve material evidence. *State v. Hall*, 105 Nev. 7, 9,
12 768 P.2d 349, 350 (1989). The evidence in this matter that was returned to the owners is clearly
13 material in that it forms the basis for some of the State's charges against Mr. Held. The items are
14 also unique, which is why it would be important to not return them to the owners and allow the
15 defense to both view the items and be able to cross examine as to the identification of these items.
16 By returning the items of evidence to the owners the State has effectively negated any possibility
17 to cross examine the alleged owners of the property as to how they identify these items and how
18 they know each item was the one allegedly taken from them. This action by law enforcement has
19 amounted to a denial of due process that should lead to not only the suppression of these items of
20 evidence but also dismissal of the counts related to these items.

21 “In order to establish a due process violation resulting from the state's loss or destruction
22 of evidence, a defendant must demonstrate either (1) that the state lost or destroyed the evidence
23 in bad faith, or (2) that the loss unduly prejudiced the defendant's case and the evidence possessed
24 an exculpatory value that was apparent before the evidence was destroyed.” See *California v.*
25 *Trombetta*, 467 U.S. 479, 104 S.Ct. 2528, 81 L.Ed.2d 413 (1984); *City of Las Vegas v.*
26 *O'Donnell*, 100 Nev. 491, 686 P.2d 228 (1984); *Boggs v. State*, 95 Nev. 911, 604 P.2d 107
(1979); see also *Arizona v. Youngblood*, 488 U.S. 51, 109 S.Ct. 333, 337, 102 L.Ed.2d 281 (1988)

1 ("unless a criminal defendant can show bad faith on the part of the police, failure to preserve
2 potentially useful evidence does not constitute a denial of due process of law"). *State v. Hall*, 105
3 Nev. 7, 9, 768 P.2d 349, 350 (1989)

4 It is respectfully submitted that law enforcement acted in bad faith in returning these items
5 to the alleged owners; in fact, this is consistent with the bad faith actions relating to the *Franks*
6 Motion on file herein, where law enforcement was far from candid with the Court in seeking the
7 issuance of a search warrant. There is no urgency or reason why these items of evidence needed
8 to be returned to the alleged victim ahead of trial in this matter. Often evidence is kept for years
9 while one is awaiting trial. In this matter, Mr. Held invoked his right to a speedy trial and yet, the
10 evidence has not been preserved to allow the defense to be able to properly confront or examine
11 the evidence against the defendant. There is simply no excuse or justification for returning
12 property that is the subject of the instant litigation other than to unfairly prejudice Mr. Held.

13 Accordingly, it is respectfully requested the Court grant relief consistent with this motion
14 and due process.

15 .
16 **AFFIRMATION Pursuant to NRS 239B.030**

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

19 DATED this 16th day of June, 2021.

20
21 MARC PICKER
Washoe County Alternate Public Defender.

22 By: /s/ Melissa Rosenthal
23 Melissa Rosenthal
24 Deputy Alternate Public Defender
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Washoe County Alternate Public Defender's Office, over the age of 21 years and not a party to nor interested in the within action. I certify that on this date, I have deposited for mailing in the U.S. Mail, with postage fully prepaid, or by interoffice mail, or by court-run delivery, or facsimile where indicated, or by electronic filing a true and correct copy of the foregoing document to the following:

Washoe County District Attorney's Office
Via E-filing

DATED this 16th day of June, 2021.

/s/ Randi Jensen
Randi Jensen

1 2645
2 Christopher J. Hicks
3 #7747
4 One South Sierra Street
5 Reno, NV 89501
6 rdelong@da.washoecounty.us
7 (775) 328-3200
8 Attorney for Plaintiff

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: CR20-3104

15 v.

Dept: D15

16 IAN CHRISTOPHER HELD,
17 also known as
18 IAN HELD,

19 Defendant

20 OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

21 The State, by and through CHRISTOPHER J. HICKS, Washoe County
22 District Attorney, and Robert W. DeLong, Deputy District Attorney,
23 hereby opposes the Defendant's MOTION TO SUPPRESS ("the Motion"), filed
24 by the Defendant Ian Christopher Held on June 16, 2021. This Opposition
25 is based on the following memorandum of points and authorities, together
26 with all other pleadings, papers, and exhibits on file herein, and any
evidence that may be considered by the Court during a hearing on the
Motion.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 The Defendant in this matter, Ian Held, is charged with
4 committing a residential burglary, attempted residential burglary, and
5 being an ex-felon in possession of a firearm. In connection with their
6 investigation, Detectives sought and obtained a valid warrant to search
7 the Defendant's trailer on September 28, 2020. During the search,
8 officers located, among other items, a Ryobi saw/drill combo set and US
9 coins. These items were reported as stolen by one of the victims in the
10 case, Allen McCulloch. When officers executed the search warrant, they
11 photographed the items they found inside the trailer that they believed
12 were stolen and they booked the items into evidence. Detective Kenneth
13 Fye's report, which was disclosed to counsel for the Defendant months
14 ago, states, in pertinent part, that "[t]he home owner MCCULLOCH was
15 out of town and had to update the report several days later to advise
16 what was stolen. He reported several items to include bottled wine, US
17 coins in a black container, DVD's, and a Ryobi drill/saw combo set in
18 a gray case." The report goes on to say that "[t]he Ryobi saw and drill
19 were released to Allen McCulloch."

20 Held now argues that the power tools and the coins should be
21 suppressed, and asserts that the "counts related to these items" should
22 be dismissed. (Motion p. 2:18-20.) However, Held does not describe what
23 counts he believes are "related to these items." Regardless, the State
24 contends that the motion should be denied because the defendant's
25 ability to cross examine any stolen items that were returned to victims
26 was preserved when photographs were taken of the items.

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1 The State did conduct further inquiry regarding the power
2 tools and the coins after reviewing Held's Motion. After speaking with
3 Allen McCulloch, the State now understands that the coins that were
4 found and photographed by officers were not owned by Mr. McCulloch, and
5 Mr. McCulloch never took possession of the coins. However, he did
6 identify and receive the power tools from officers.

7 The State takes the position that the motion should be denied,
8 and that suppression is not appropriate in this case because the
9 evidence was properly documented with photographs, and there is no
10 evidence that the Detectives were acting in bad faith when they returned
11 the stolen property to the rightful owner.

12 **II. PROCEDURAL HISTORY**

13 On February 24, 2021, the State filed its Third Amended
14 Complaint against the Defendant in this matter, charging the Defendant
15 with Count I Residential Burglary, Second or Subsequent Offense; Count
16 II Residential Burglary, Second or Subsequent Offense; Count III Attempt
17 Residential Burglary, Second or Subsequent Offense; and Count IV Being
18 a Felon in Possession of a Firearm. A preliminary hearing was held on
19 March 3, 2021, which concluded on March 8, 2021. As a result of the
20 hearing, the Court determined that probable cause existed to bind over
21 the Defendant to District Court on Counts I, III, and IV. An information
22 was then filed by the State in this matter on March 18, 2021, charging
23 the Defendant with one count of residential burglary, one count of
24 attempted residential burglary, and one count of being an ex-felon in
25 possession of a firearm. Trial is now scheduled in this matter to begin
26 June 29, 2021.

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1 **III. DISCUSSION**

2 It is well established that law enforcement has a duty to
3 preserve evidence "that might be expected to play a significant role in
4 the suspect's defense." California v. Trombetta 467 U.S. 479, 488, 104
5 S.Ct. 2528 (1984). "In order to establish a due process violation
6 resulting from the state's loss or destruction of evidence, a defendant
7 must demonstrate either (1) that the state lost or destroyed the
8 evidence in bad faith, or (2) that the loss unduly prejudiced the
9 defendant's case and the evidence possessed an exculpatory value that
10 was apparent before the evidence was destroyed." State v. Hall, 105
11 Nev. 7, 9, 768 P.2d 349, 350 (1989).

12 As an initial matter, it cannot properly be said that officers
13 lost or destroyed any property in this case. The items complained about
14 by the Defendant, power tools and coins, were not lost or destroyed. On
15 the contrary, they were photographed in the condition they were in when
16 discovered by law enforcement, and they were purposefully returned to
17 the victims. The officers were justified in taking this action because
18 it was not apparent that the stolen property possessed any exculpatory
19 value and alternative means existed to utilize the evidentiary value of
20 the items at trial. Any evidentiary value the items possessed was
21 retained by the photographs that were taken prior to the return of the
22 stolen items. Importantly, Defendant Held never explains in his motion
23 why the photographs are not sufficient to use during the examination of
24 a witness at trial.

25 In this case, the evidence at issue, stolen property consisting
26 of power tools, was photographed and returned to the victim. Such

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1 actions do not constitute bad faith because the Defendant can still
2 utilize the photographs that were taken of the evidence. In addition,
3 the defendant has not even alleged how the return of some stolen
4 property in the case has "unduly prejudiced" his defense, or that there
5 was any "exculpatory value" in the evidence.

6 **A. Held has not demonstrated bad faith on behalf of the State.**

7 The State's loss or destruction of evidence constitutes a due
8 process violation only if the defendant shows either that the State
9 acted in bad faith or that the defendant suffered undue prejudice and
10 the exculpatory value of the evidence was apparent before it was lost
11 or destroyed. Buchanan v. State, 119 Nev. 201, 220 (Nev. 2003). The
12 Defendant's Motion fails to sufficiently establish bad faith on the
13 part of the State. The fact that officers photographed the items that
14 were returned demonstrates that they were indeed not acting in bad
15 faith. The photographs create a record of the existence of the items
16 and permit witnesses to be cross examined concerning the photos at a
17 later date.

18 **B. Held has failed to show that the loss of the evidence unduly**
19 **prejudiced the defendant's case and that the same evidence**
20 **possessed an exculpatory value apparent prior to its**
21 **destruction.**

22 The State's loss or destruction of evidence constitutes a due
23 process violation only if the defendant shows either that the State
24 acted in bad faith or that the defendant suffered undue prejudice and
25 the exculpatory value of the evidence was apparent before it was lost
26 or destroyed. Where there is no bad faith, the defendant has the burden
of showing prejudice. The defendant must show that "it could be
reasonably anticipated that the evidence sought would be exculpatory0024

1 and material to [the] defense." It is not sufficient to show "merely a
2 hoped-for conclusion" or "that examination of the evidence would be
3 helpful in preparing [a] defense." Buchanan v. State, 119 Nev. 201,
4 220 (Nev. 2003).

5 The Plaintiff has established above why it is factually
6 impossible for the Defendant to successfully show any bad faith on the
7 part of law enforcement. The officers in this case properly preserved
8 the evidentiary value of the stolen items by photographing them before
9 returning them to the victims. Moreover, the Defendant's own Motion
10 fails to sufficiently allege that the investigation undertaken in this
11 matter was indicative of any bad faith whatsoever. Given this, the
12 burden now shifts to the Defendant to establish prejudice and that the
13 evidence at issue is reasonably anticipated to be exculpatory and
14 material.

15 Officers could not have reasonably anticipated that the
16 evidence that was returned in this matter, a power drill and a saw,
17 would be exculpatory to the defense. These items were identified by the
18 victim before they were returned and there was no indication that they
19 were exculpatory in nature. There is nothing within the Motion even
20 explaining why these items were believed to have exculpatory value.
21 Held's motion appears to hope that some exculpatory value may be
22 determined during a cross examination of the witnesses in this case. If
23 there was anything more than a mere hope that the items may possess
24 exculpatory value, it should have been detailed within the motion. This
25 omission is fatal to the motion because it shows that the defendant
26 cannot demonstrate that the items were indeed material to his defense,

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1 or that he was in any way prejudiced by their return to the victims in
2 the case.

3 **IV. CONCLUSION**

4 Based upon the foregoing, the State respectfully submits that
5 the Defendant in this matter has not demonstrated that the officers
6 acted in bad faith when they returned stolen property to its rightful
7 owner, or that he was in any way prejudiced by the return of the items.
8 It is also not reasonable to believe that officers should have
9 anticipated that the evidence sought, a power drill and a saw, would be
10 exculpatory in nature and would support a defense in this matter. Simply
11 put, the drill and that saw that was returned were not material items
12 to the defense. Moreover, any prejudice to Held's case caused by the
13 return of the items is mitigated by the photographs of the items taken
14 before they were returned. Finally, the State submits that this motion
15 is untimely because the Defendant has known that the drill and saw were
16 returned when Detective Fye's report was disclosed in this case.
17 Accordingly, the State submits that the Defendant's Motion should be
18 denied.

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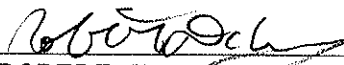
26 / / /

1 AFFIRMATION PURSUANT TO NRS 239B.030

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

5 Dated this 22nd day of June, 2021

6 CHRISTOPHER J. HICKS
7 District Attorney
8 Washoe County, Nevada

9
10 By 
11 ROBERT W. DELONG
12 10022
13 DEPUTY DISTRICT ATTORNEY
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1 CERTIFICATE OF SERVICE BY E-FILING

2 Pursuant to NRCP 5(b), I certify that I am an employee of
3 the Washoe County District Attorney's Office and that, on this date,
4 I electronically filed the foregoing with the Clerk of the Court. A
5 notice will be sent electronically to the following:

6
7 ALTERNATE PUBLIC DEFENDER
8 MELISSA ROSENTHAL ESQ

9 Dated this 22nd day of June, 2021

10
11 /s/RACHEL STEINMAN
12 RACHEL STEINMAN

1 CODE 2480
2 MARC PICKER, BAR #3566
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11 ATTORNEY FOR DEFENDANT

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

15 THE STATE OF NEVADA,
16 Plaintiff,

Case No. CR20-3104

17 vs.

Dept. No. 15

18 IAN CHRISTOPHER HELD,
19 Defendant.

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21
22 **DEFENDANT'S MOTION TO SUPPRESS FRUITS OF SEARCH WARRANT**
23 **PURSUANT TO *FRANKS v. DELAWARE***

24 Defendant IAN CHRISTOPHER HELD ("Held"), by and through his counsel of record,
25 MELISSA A. ROSENTHAL, Deputy Alternate Public Defender, moves this Honorable Court to
26 grant his Motion to Suppress Fruits of Search Warrant Pursuant to *Franks v. Delaware*. This
27 Motion is made and based upon all the papers and pleadings on file herein, the memorandum of
28 points and authorities attached hereto, the attached Declaration of Counsel, and any oral argument
this Honorable Court may allow.

DATED this 12th day of May, 2021.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The investigation in this case targeted Held, the resident of a trailer. Reno Police officers submitted a telephonic search warrant application to a Justice of the Peace alleging that Held and another individual by the name of Annabelle Bush ("Bush"), admitted to burglarizing numerous homes and stealing a vehicle. The warrant application sets forth the State's theory that there is probable cause to believe that power tools, wine, DVDs, and some other personal belongings are located in a certain trailer registered to Held. (*Application for Telephonic Search Warrant pg. 5, a true and correct copy is attached hereto as Exhibit "A".*) Additionally, the State further asserts belongings not related to the above are also believed to be present in the trailer, these include RC drones, a computer, and some clothing items. This Motion arises from the fact that the police applied for a warrant to search the trailer based on confessions that were not given. Further, the police failed to tell the Court they had already illegally entered and searched the home after Held denied consent.

To justify the search of the home, the application tells the following story: on September 21, 2020, a residential burglary occurred at 1440 Whisper Rock Way. *Ex. A at 5.* Stolen from this house were power tools, wine, DVDs, and some other personal belongings. *Id.* A neighbor observed a U-haul truck in the driveway and was able to get a license plate. *Id.* The responding patrol officer spoke to U-haul and found the truck was rented to an individual by the name of Ian Held. *Id.* The address associated with the rental agreement led officers to Held's residence at 1455 West Fourth Street where the officer observed the U-haul truck parked in front of Held's assigned trailer spot. *Id.* This patrol officer notified the repeat offender program about Held and the residential burglary. *Id.* Road detectives began watching Held. *Id.* The detectives followed Held in a Red Jeep Cherokee to the area of South University Park Loop where they saw the Jeep leave

1 at a high rate of speed. *Id.* Detectives did not notice anything in the area but received a call later of
2 a homeowner reporting an attempted burglary. *Ex. A at 6.* The Jeep belonged to a Jason Rocco,
3 Held's neighbor at the trailer park. *Id.* Rocco was in custody and told police Held did not have
4 permission to drive the Jeep. *Id.* Police determined Held had stolen the Jeep and that he committed
5 a residential burglary to get the keys to the Jeep. *Id.* Held and Bush were taken by police and
6 interviewed. *Id.* Held was ultimately arrested. *Id.* Both parties were cooperative and admitted to
7 all of the burglaries and to stealing the Jeep. *Id. At 6-7.*

9 On this basis, the Justice of the Peace granted the application and issued a warrant to search
10 the home. In executing the warrant, the police seized some of the property previously mentioned
11 to include a Ryobi drill, as well as, several guns.

12 The fruits of the search of Held's trailer must be suppressed because the warrant
13 application contains a significant misstatement that was either intentionally or recklessly made.
14 From the outset, the police misled the Justice of the Peace about the initial warrantless search, in
15 which, the police actually learned of alleged stolen property in the trailer. The police did this in
16 order to avoid the Justice of the Peace denying the application on the ground that the police had
17 violated the Fourth Amendment. Moreover, the application makes a flat-out false statement in
18 regards to the statements of both Held and Bush. (*Exhibit B. Recordings of all interviews can be*
19 *provided during oral argument or directly to the Department*). Specifically, the application states
20 that "[t]hey admitted to doing all the burglaries that I just mentioned, and stealing the vehicle." *Ex.*
21 *A at 7.* However, that is not the content of the call. *Ex. B.* In fact, neither party admitted to
22 burglarizing a house nor stealing a vehicle. *Id.* Additionally, the U-haul truck rented by Held was
23 never parked in the driveway at the Whisper Rock residence, but rather, was parked on a public
24 street adjacent to the property. Another misstatement of fact. Given these significant
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1 misstatements that were either intentionally or recklessly made, the fruits of the search warrant
2 must be suppressed.

3 **II.**
4 **STATEMENT OF FACTS**

5 This Motion seeks to suppress all the fruits of the warrant based on the reckless or
6 intentional misstatements made by police in the search warrant application in an attempt to avoid
7 the justice of the peace denying their application.

8 Police were notified of an alleged burglary at 1440 Whisper Rock Way when the owner
9 returned after being absent for two-weeks. *See Preliminary Hearing Transcript, Day 1 "PHTD1"*
10 *at 73.* During this two-week period the gardener was the only person to access the premise.
11 *PHTD1 at 75.* The gardener came by every Monday. *Id.* The homeowner returned on a later date
12 to find his back slider smashed and items missing from the residence. Police responded to the
13 residence to take statements. While there, police learned that a neighbor, a Chris Gardella, had
14 previously seen what he deemed a "suspicious vehicle" parked on the public road adjacent to the
15 burglarized property. The U-haul truck was never parked in the driveway as stated by Fye in the
16 search warrant application. Gardella provided police with the photograph. This photograph was
17 taken on September 20, 2020. The U-haul was on the street, not in the driveway. The homeowner
18 returned received a call from his gardener on September 21, 2020 stating the window was broken.
19 *PHTD1 at 72.* The U-haul truck depicted in the photograph is a generic pick-up style truck with U-
20 haul insignia. There is nothing suspicious about the vehicle. Gardella did not see anyone in the
21 vehicle. Gardella did not see anyone at the burglarized property. Gardella did not learn of the
22 burglary until a later date. Gardella contacted police on September 21, 2020 when he trespassed
23 onto the property and notice the broken glass door. Gardella reported the burglary, not the
24 residence owner. The police learned the U-haul had been legally rented by Held. *PHTD1 at 52.*
25 Police then used the information from U-haul to find Held's residence at 1455 West Fourth Street.
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1 PHTDI at 48-49. This location is a trailer park where Held leased spot 81. Police learned the
2 trailer was registered to Held's mother and Held was the only person listed on the lease of the spot
3 at the trailer park. Police began to follow Held. Police followed Held in a different vehicle than
4 the U-haul to the area of University Loop. Police followed this vehicle as it drove away from that
5 location. Police continued surveillance of Held and ultimately arrested him and Bush as they were
6 exiting Held's trailer.

7
8 Held and Bush were taken to the Reno Police Department where both were interviewed by
9 ROP officers. Officer Tindell interviewed Held. *Exhibit B.* Detective Fye interviewed Bush.
10 *Exhibit B.* During the interview of Bush she was asked if she lived with Held, she denied she lived
11 there. Held also denied Bush as living with him in the trailer. The police had no information to
12 believe that Bush was a resident of the trailer. Held denied consent to search the trailer. Bush
13 denied participation in any of Held's activities and provided police with assumptions only related
14 to the "stolen vehicle" which is not a crime charged in this case. Bush was then taken back to the
15 trailer park by police. She was not arrested. Reno Police permitted Bush to enter the trailer. This
16 was after Held denied consent to search the trailer. Bush brought out a RC drone she said
17 belonged to neighbor, Jason Rocco. At this time, police had "secured" the trailer and had officers
18 staged at the entrance to ensure its state. Bush was acting as an agent for the police as she brought
19 out items from the trailer she classified as stolen. Police then asked Bush if there were guns in the
20 back closet, Bush returned into the trailer. She came back to the door and told the police that there
21 were in fact guns in the trailer. The police then asked Bush to exit the trailer. Police then applied
22 for the search warrant. Police did not mention any of this in their warrant application. Police
23 instead made the blanket statement "[t]hey admitted to doing all the burglaries that I just
24 mentioned, and stealing the vehicle." This statement was a false misrepresentation.

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II.
LEGAL ARGUMENT

A. THE POLICE MADE INTENTIONAL OR RECKLESSLY FALSE STATEMENTS IN THEIR WARRANT APPLICATION, AND BUT FOR THE DISHONESTY THE WARRANT APPLICATION WOULD NOT HAVE BEEN GRANTED; THUS, THE FRUITS OF THE DISHONEST WARRANT APPLICATION MUST BE SUPPRESSED UNDER *FRANKS V. DELAWARE* AS FRUIT OF THE POISONOUS TREE.

In *Franks v. Delaware*, the Supreme Court recognized that the Fourth Amendment's warrant requirement "would be reduced to a nullity if a police officer was able to use deliberately falsified allegations to demonstrate probable cause, and having misled the magistrate, then was able to remain confident that the ploy was worthwhile." 438 U.S. 154, 168 (1978). The relationship between police agents and the magistrate judge who reviews a warrant application is built on trust and faith. The stakes for personal privacy are immense, because the warrant allows the government to intrude into our most intimate spaces. Yet, not only is the application submitted *ex parte*—with no opportunity for the target to rebut its claims—but the magistrate generally must make a judgment on the basis of the agent's representations, not the underlying evidence. *Id.* at 169-70. Further, because searches often uncover no evidence, and criminal cases generally result in plea agreements when they do, only a small proportion of applications are subject to a later adversarial motion to suppress. *See Id.*

Accordingly, the Supreme Court held in *Franks* that when a defendant makes a "substantial showing" that a warrant application contains either "deliberate falsehood[s]" or statements that evidence "reckless disregard for the truth," which are material to the finding of probable cause, the court will hold a hearing testing the veracity of the affidavit. *See Id.* at 171-72. "Whether the alleged judicial deception was brought about by material false statements or material omissions is of no consequence" because the point of the rule is to prevent the police from misleading the magistrate by any means. *Liston v. Cnty. of Riverside*, 120 F.3d 965, 973 (9th Cir. 1997). Moreover, the government's responsibility is not limited to the particular officer who happens to

1 submit the application: “A deliberate or reckless omission by a government official who is not the
2 affiant” can be the basis for suppression because “[t]he Fourth Amendment places restrictions and
3 qualifications on the actions of the government generally, not merely on affiants.” *U.S. v. DeLeon*,
4 979 F.2d 761, 764 (9th Cir. 1992).

5 In order to prevail under *Franks*, the defendant must “1) make a ‘substantial showing’ of
6 deliberate falsehood or reckless disregard for the truth and 2) establish that, but for the dishonesty,
7 the challenged action would not have occurred.” *Liston*, 120 F.3d at 973. “Clear proof of
8 deliberat[ion] or reckless[ness] is not required.” *U.S. v. Stanert*, 762 F.2d 775, 781 (9th Cir. 1985),
9 amended by 769 F.2d 1410 (9th Cir. 1985). A simple showing of specific allegations of falsehood,
10 accompanied by an offer of proof is enough. *See Franks*, 438 U.S. at 171.

12 A warrant application is likely to be intentionally or recklessly false if it omits “important
13 factual information that was within the officers’ knowledge” at the time the affidavit was prepared.
14 *Chism v. Washington State*, 661 F.3d 380, 388 (9th Cir. 2011). Mistakes in a warrant application
15 that favor the government by “bolster[ing] the case for probable cause” by their nature “suggest
16 that the mistakes were not the product of mere negligence.” *Id.* So too, when the agent conducts
17 an investigation in an objectively unreasonable manner—for example, by failing to investigate
18 sources of information that are known to him. *Butler v. Elle*, 281 F.3d 380, 388 (9th Cir. 2011).

21 The ultimate inquiry is whether a hypothetical affidavit setting forth the whole truth would
22 provide “probable cause” for a warrant. Probable cause exists if there is a “fair probability that
23 contraband or evidence of a crime” will be found. *Illinois v. Gates*, 462 U.S. 213, 238 (1983).
24 But, “mere suspicion does not rise to the level of probable cause.” *U.S. v. Vasey*, 834 F.2d 782,
25 788 (9th Cir. 1987). Instead, the truthful affidavit would have to set forth concrete evidence: “(1)
26 that a crime was committed; (2) that it was [the suspect] who committed the crime; and (3) that
27 evidence of the crime would be found in the place to be searched.” *Chism*, 661 F.3d at 389.

1 If the question is close, the Motion to suppress must be granted. “[W]hen a court
2 reassesses a search warrant affidavit with the false allegations excised, a doubtful or marginal case
3 should be resolved in the defendant’s favor.” Wayne R. Lafave, 2 SEARCH & SEIZURE § 4.4(c)
4 (5th ed. 2013). Accordingly, the presumption of the warrant’s validity does not apply: “in such
5 circumstances the probable cause determination should be made as it would upon a motion to
6 suppress evidence obtained without a warrant.” *Id.*

7
8 The Ninth Circuit’s decision in *Chism* is instructive of these points. There, the police had
9 evidence that an individual’s credit card had been used to pay fees to host websites featuring child
10 pornography. 661 F.3d at 384. The police prepared a search warrant affidavit that overstated their
11 evidence of illegal activity and omitted exculpatory information. *See Id.* at 387. Consequently,
12 the Ninth Circuit held that without the omitted evidence, there was insufficient evidence to believe
13 that the suspect—as opposed to someone else using his credit card—was paying to host the sites.
14 *See Id.* at 390. The court did acknowledge that a chain of inferences could support the conclusion
15 that the card’s use corresponded to illegal activity, notwithstanding the exculpatory information.
16 But “with each succeeding inference, the last reached is less and less likely to be true,” and a
17 “convoluted string of inferences” does not amount to probable cause.” *Id.* at 391.
18

19 In this case, the evidence shows that not only is a hearing under *Franks* warranted, but the
20 Motion to Suppress based on it will be granted.
21

22 **1. The Warrant Application Falsely Describes The Statements of Held and Bush**
23 **During Police Interrogation.**

24 In this case, Officer Fye declares Held and Bush “admitted to doing all the burglaries that I
25 just mentioned, and stealing the vehicle.” This is false. This is the only evidence suggesting Held
26 entered the property at 1440 Whisper Rock Drive. Without that evidence, the Justice of the Peace
27 would not have issued a search warrant. Additionally, it was only after the warrantless intrusion
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1 by Bush, acting as an agent for police, that Reno Police froze the residence, called for detectives,
2 and then a warrant was requested.

3 The Application states that the Uhaul was parked in the driveway of the residence at 1440
4 Whisper Rock Way. (Ex. A.) However, this is a misrepresentation. The Uhaul was parked on a
5 public street, never in the driveway. The neighbor, Chris Gardella only took a picture of the Uhaul
6 because he deemed it to be suspicious based on its appearance and not its location or activity
7 occurring. More significantly, Detective Fye sworn, under oath, that both Held and Bush admitted
8 to ALL of the burglaries and to stealing the Jeep. Thus, this statement in the application is either
9 an intentional or recklessly false statement.
10

11 Moreover, prior to entering the home without a warrant, there was no truthful showing that
12 (1) the residents were committing a crime, (2) that it was Held that committed the crime, and (3)
13 that the evidence of the crime would be found in the place to be searched. *See Chism*, 661 F.3d at
14 389. In fact, the contrary was shown, there was no stolen property in the Uhaul which was parked
15 in front of the home. Thus, there was absolutely no probable cause for a warrant application
16 absent Officer Fye's statement that Held and Bush admitted to committing the crimes, which does
17 not satisfy the Fourth Amendment's mandate under *Franks*.
18

19 It is important to focus on these serious misrepresentations in the warrant application that
20 had the purpose and effect of hiding the likely lack of probable cause from the Justice of the Peace,
21 and thereby preventing the justice from determining that the police had been given admissions.
22 Specifically, the warrant application seeks to create the false impression that Held and Bush,
23 admitted to committing crime, evidence of which could be found in the traier, which is seriously
24 misleading. Had the Justice of the Peace known the actual facts, the application for the warrant to
25 search the home would have been denied because the warrant application lacked probable cause.
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1 Accordingly, because the warrant application contains serious misrepresentations and
2 omissions about the warrantless intrusion, which was the only source of evidence suggesting that
3 illegal activity was occurring at the home, the fruits of the search warrant must be suppressed.
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6 **IV.**
 CONCLUSION

7 The warrant application intentionally misrepresents the statements of Held and Bush during
8 police interrogation. If the police had told the truth, the application for a warrant to search the
9 home would have been denied because it would have been clear there was no evidence Held
10 entered into the homes. The only evidence presented was that a legally rent U-haul was parked on
11 a public street adjacent to a home which was burglarized at some point during the homeowners
12 absence from the property, not sufficient probable cause for the warrant.
13

14 Furthermore, the application intentionally or recklessly misrepresents the statements of
15 Held and Bush. Accordingly, the evidence seized in the search of Held's trailer pursuant to the
16 search warrant must be suppressed.
17

18 **AFFIRMATION Pursuant to NRS 239B.030**

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

21 DATED this 12th day of May, 2021.
22

23 Respectfully Submitted,

24 MARC PICKER
25 ALTERNATE PUBLIC DEFENDER

26 By: /s/ Melissa A. Rosenthal
27 MELISSA A. ROSENTHAL
28 Deputy Alternate Public Defender

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of Washoe County
3 Alternate Public Defender's Office, over the age of 21 years and not a party to nor interested in the
4 within action. I certify that on this date, I have deposited for mailing in the U.S. Mail, with
5 postage fully prepaid, or by interoffice mail, or by court-run delivery, or facsimile where indicated,
6 or by electronic filing a true and correct copy of the foregoing document to the following:
7

8 Washoe County District Attorney's Office
9 **Via Electronic Filing**

10 DATED the 12th day of May, 2021.

11 /s/Randi Jensen
12 Randi Jensen
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Alternate Public Defender's Office and that on this date I served a copy of the Appellant's Joint Appendix – Volume I to the following:

IAN CHRISTOPHER HELD, 96555
c/o NNCC
PO BOX 7000
CARSON CITY, NV 89702
Via U.S. Mail

CHRIS HICKS
WASHOE COUNTY DISTRICT ATTORNEY
Attn: Appellate Department
Via Electronic Mail

DATED this 28th day of February, 2022.

/s/Randi Jensen
Randi Jensen