

# IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown  
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SAMUEL CRAIG MCDONALD,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Case No: C-18-334954-1

Docket No: 83193

# RECORD ON APPEAL VOLUME 2

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**I N D E X**

**VOLUME:**            **PAGE NUMBER:**

1                      1 - 240

2                      241 - 411

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
2	12/04/2019	AMENDED INDICTMENT	332 - 333
2	04/20/2020	AMENDED JUDGMENT OF CONVICTION (PLEA OF GUILTY)	356 - 358
2	12/02/2019	AUDIOVISUAL TRANSMISSION EQUIPMENT APPEARANCE REQUEST	328 - 331
2	07/08/2021	CASE APPEAL STATEMENT	382 - 383
2	08/04/2021	CERTIFICATION OF COPY AND TRANSMITTAL OF RECORD	
1	11/18/2019	DEFENDANT'S NOTICE OF EXPERT WITNESSES, PURSUANT TO NRS 174.234(2)	181 - 182
2	11/27/2019	DEFENDANT'S NOTICE OF REBUTTAL EXPERT WITNESSES, PURSUANT TO NRS 174.234	310 - 321
2	12/02/2019	DEFENDANT'S NOTICE OF WITNESSES, PURSUANT TO NRS 174.234	326 - 327
2	08/04/2021	DISTRICT COURT MINUTES	393 - 411
2	08/04/2021	DOCUMENTARY EXHIBIT (UNFILED)	384 - 392
1	11/18/2019	EX PARTE MOTION AND ORDER FOR RELEASE OF CERTIFIED MEDICAL RECORDS AND ORDER TO FILE UNDER SEAL (SEALED)	183 - 184
2	12/04/2019	GUILTY PLEA AGREEMENT	334 - 342
1	09/19/2018	INDICTMENT	3 - 5
1	09/19/2018	INDICTMENT WARRANT WARRANT FOR ARREST	1 - 2
2	02/11/2020	JUDGMENT OF CONVICTION (PLEA OF GUILTY)	354 - 355
1	11/20/2019	MOTION TO COMPEL PRODUCTION OF DISCOVERY & BRADY MATERIAL	185 - 214
1	05/03/2019	MOTION TO CONTINUE TRIAL DATE	178 - 180
1	02/12/2019	MOTION TO CONTINUE TRIAL DATE [UNOPPOSED]	172 - 175

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	11/20/2019	MOTION TO DISMISS (CONTINUED)	229 - 240
2	11/20/2019	MOTION TO DISMISS (CONTINUATION)	241 - 255
1	11/27/2018	MOTION TO DISMISS DUE TO STATUTE OF LIMITATIONS	92 - 98
2	11/20/2019	MOTION TO DISMISS FOR FAILURE TO PRESERVE EVIDENCE, MOTION FOR SPECIAL JURY INSTRUCTION [SANBORN MOTION], OR MOTION IN LIMINE TO EXCLUDE SCAN EXAMINATION	256 - 263
1	11/20/2019	MOTION TO STRIKE PROPOSED EXPERTS MICHAEL ZBIEGIEN AND PEGGY MCCOY	215 - 228
2	07/06/2021	NOTICE OF APPEAL	379 - 381
1	12/03/2018	NOTICE OF WITHDRAWAL OF MOTION	106 - 107
2	05/17/2021	NRS 34.320 PETITION FOR WRIT OF PROHIBITION (PREEMPTORY) TO PROHIBIT THE NV DEPT OF CORRECTIONS [NDOC] DIRECTOR'S UNCONSTITUTIONAL "SEIZURES OF MONEY" FROM PETITIONER'S NDOC INMATE ACCOUNT TO "ENFORCE PAYMENT OF RESTITUTION" TO PETITIONER'S CRIME VICTIM(S) PER THE "CRIME VICTIM RESTITUTION TERMS" SET FORTH WITHIN PETITIONER'S 4-20-20 JUDGMENT OF CONVICTION [JOC] -- BECAUSE THE NDOC DIRECTOR HAS "NO JURISDICTION" TO DO SO-- WHEREAS SUCH "JURISDICTION" IS VESTED SOLELY WITH THE STATE DISTRICT COURT [SDC] VIA ISSUANCE OF A "WRIT OF EXECUTION" PER NRS 176.275(2)(A); JUDGMENT FOR PAYMENT OF RESTITUTION/NRCP RULE 69(A)(1): EXECUTION/NRS CHAPTER 21: ENFORCEMENT OF JUDGMENTS [PROHIBITION PETITION -2]	359 - 371
1	11/13/2018	OPPOSITION TO STATE'S MOTION TO ADMIT EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS	84 - 91
1	01/08/2019	OPPOSITION TO STATE'S RENEWED MOTION IN LIMINE	147 - 150
2	06/17/2021	ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF PROHIBITION	376 - 378

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	09/21/2018	ORDER FOR PRODUCTION OF INMATE SAMUEL MCDONALD, BAC #89628	6 - 7
1	11/09/2018	ORDER FOR WRIT OF HABEAS CORPUS	80 - 81
1	10/29/2018	PETITION FOR WRIT OF HABEAS CORPUS	26 - 33
2	01/15/2020	PRESENTENCE INVESTIGATION REPORT (UNFILED) CONFIDENTIAL	343 - 353
1	12/03/2018	RECEIPT OF COPY FOR DISCOVERY PROVIDED	104 - 105
1	02/27/2019	RECEIPT OF COPY FOR DISCOVERY PROVIDED	176 - 176
1	03/12/2019	RECEIPT OF COPY FOR DISCOVERY PROVIDED	177 - 177
1	11/01/2018	STATE'S NOTICE OF MOTION AND MOTION IN LIMINE TO ADMIT EVIDENCE OF OTHER CRIMES, WRONGS OR ACTS THAT CONSTITUTE SEPARATE SEXUAL OFFENSES	55 - 79
1	02/05/2019	STATE'S NOTICE OF WITNESSES AND/OR EXPERT WITNESSES [NRS 174.234]	151 - 171
2	11/27/2019	STATE'S OPPOSITION TO DEFENDANT S MOTION TO STRIKE STATE S NOTICE OF EXPERT WITNESS	322 - 325
2	11/27/2019	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS	264 - 291
1	11/29/2018	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS DUE TO STATUTE OF LIMITATIONS	99 - 103
2	11/27/2019	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO PRESERVE EVIDENCE, MOTION FOR SPECIAL JURY INSTRUCTION [SANBORN MOTION], OR MOTION IN LIMINE TO EXCLUDE SCAN EXAMINATION	299 - 309
2	05/24/2021	STATE'S OPPOSITION TO DEFENDANT'S NRS 34.320 PETITION FOR WRIT OF PROHIBITION	372 - 375
1	01/03/2019	STATE'S RENEWED NOTICE OF MOTION AND MOTION IN LIMINE TO ADMIT EVIDENCE OF SEPARATE SEXUAL	108 - 146

C-18-334954-1

State of Nevada

vs

Samuel McDonald

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
		OFFENSES FOR PROPENSITY PURPOSES	
2	11/27/2019	STATE'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL PRODUCTION OF DISCOVERY AND BRADY MATERIAL	292 - 298
1	11/01/2018	STATE'S RETURN TO WRIT OF HABEAS CORPUS	34 - 54
1	09/29/2018	TRANSCRIPT OF HEARING HELD ON SEPTEMBER 18, 2018	8 - 25
1	11/13/2018	WRIT OF HABEAS CORPUS	82 - 83

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 1

EVENT #: 011228-0052

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**SPECIFIC CRIME:** SEXUAL ASSAULT VICTIM UNDER 14

**DATE OCCURRED:**

**TIME OCCURRED:**

**LOCATION OF OCCURRENCE:**

**CITY OF LAS VEGAS**

**CLARK COUNTY**

---

**NAME OF PERSON GIVING STATEMENT:** SAMUEL MCDONALD

**DOB:**

**SOCIAL SECURITY #:**

**RACE:**

**SEX:**

**HEIGHT:**

**WEIGHT:**

**HAIR:**

**EYES:**

**HOME ADDRESS:**

**PHONE 1:**

**WORK ADDRESS:**

**PHONE 2:**

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The following is the transcription of a tape-recorded interview conducted by Detective S. TOOLEY, P# 6224, LVMPD Sexual Assault Section, on 01/18/2018 at 0920 hours.

Q. This is Detective Tooley, P# 6224 and Detective Detweiler P# 5460. Conducting one taped interview under event 011228-0052. The date is January 18<sup>th</sup>, 2018. Time is approximately 0920 hours. Place of interview is Southern Desert Correctional Facility. I'm speaking with Samuel McDonald, his date of birth is [REDACTED] Okay, Sam, um, again I'm Detective Tooley, my partner Detective Detweiler. We work a what's called Sexual Assault Cold Case. Okay, and uh, we served you a search warrant to obtain your DNA. Okay, this case is reference a

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 2

EVENT #: 011228-0052  
STATEMENT OF: SAMUEL MCDONALD

report that was filed a long time ago. Okay, back in 2001. December 28<sup>th</sup>, of 2001.

Okay, do you remember who you were, um, well \_\_\_\_\_ this –

A. 2001.

Q. Yeah. So, a person alleged that you a sexually assaulted him. Okay, so I'm gonna

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read you your rights. You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to consult with an attorney before que..., before questioning. You have the right to the presence of an attorney during questioning. If you cannot afford an attorney, one will be appointed before questioning. Do you understand these rights?

A. Yes.

Q. Okay. Um, do you remember where you were living back in 2001?

A. Uh, I came to Vegas in '99. 2001, I think the 8<sup>th</sup> Street Apartments.

Q. The 8 Street apartments?

A. Yeah on 8<sup>th</sup> and Carson.

Q. Okay. Do you remember um, who you were living with?

A. Uh, Laura Hicks.

Q. What's that?

A. A Laura Hicks.

Q. Laura Hicks, okay. Um –

A. 2001, yeah.

Q. 2001, okay. Did Laura Hicks have any family members that came and visited her,

**VOLUNTARY STATEMENT**

PAGE 3

EVENT #: 011228-0052

STATEMENT OF: SAMUEL MCDONALD

that you remember?

A. No.

Q. Around Christmas time.

A. No.

---

Q. And you're sure you were with Laura Hicks around Christmas time?

A. I was uh, yeah, cause I was working for a store called Tiffany's. Um, right next door to, well at that time it was Fitzgerald's Casino.

Q. Okay.

A. I was working up there at Fremont Experience. Uh, yeah, 2001. If I'm not mistaken.

Q. Okay. Do you know a person by the name of Betty Cotton?

A. Yeah.

Q. Yeah. Who's she?

A. Uh, Laura's mother.

Q. Laura's mother, okay. Well, and I, I know, I know 2001 is a long time to remember but Betty and her kids came to visit Laura, back in, back around Christmas time. Okay. And another person named Shawn Bryant, he would have been about 8, 9 years old, was with them. And that's uh, Laura's brother.

A. Okay, well – that, cause I was staying at the 8<sup>th</sup> Street apartments and the manager name was Kathy and Jim.

Q. Okay, good memory on that part.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**VOLUNTARY STATEMENT**

PAGE 4

EVENT #: 011228-0052

STATEMENT OF: SAMUEL MCDONALD

A. Yeah, because well, he was just something about them, they was, you know, um, yeah, that's where I was at.

Q. Okay. The 8<sup>th</sup> Street apartments, can you kind of describe what they, were they two story, one story?

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A. Three (unintelligible)

Q. They were three story? Okay. Did it have a pool?

A. No.

Q. No, did it have a gym?

A. No.

Q. No gym, no pool. Did it have gates or anything?

A. Um, it had like a in the, when you first come in, it had like a little gate. It's right there behind um, the Lee motel.

Q. Yeah, I know, I'm just trying to get what it looked like back then versus –

A. Oh.

Q. -- you know, cause things change.

A. Yeah, that's, it just had like a little, little small little, like a little gate on one end and just one of um, when I was (unintelligible) here on this end before you get to the, the motel.

Q. Okay. Um, how about, did it have a laundry room or did you have laundry inside the apartment?

A. We, uh, no it didn't have no laundry room a, we had (unintelligible) did. No, I don't

**VOLUNTARY STATEMENT**

PAGE 5

EVENT #: 011228-0052

STATEMENT OF: SAMUEL MCDONALD

remember no laundry room.

Q. Okay. How long did you and Laura live together?

A. (Sigh) That's a good question. Just be, (unintelligible) say eighteen, eighteen months, at the 8<sup>th</sup> Streets, then we went to um, went to Foothills –

---

Q. Um-hum.

A. -- on Tropicana and Jones. Um, we broke up. She end up at um, God what's the name of the place. It's off of Harmon. I, I can't think of the name of it but um, I stayed there well for a little while and then I end up moving out.

Q. Okay. Do you remember when that was?

A. Uh, no, not exactly. It was – um – (unintelligible) in 2000, it was about 2004. 2000, 2004, when I got this case. (unintelligible) um, 2006.

Q. Okay. Alright, well, as I said, um, her younger brother made an allegation that you sexually assaulted him. Okay. Um, he had an exam done, and male DNA was found in that exam. Later on, forensically, it was able to be matched to you. Okay. Can you tell me anything about that?

A. No, not right off.

Q. Do you remember that?

A. Nope.

Q. Okay. Can you think of any explanations as to why your DNA would have been found in his genitals?

A. On his genitals?

**VOLUNTARY STATEMENT**

PAGE 6

EVENT #: 011228-0052

STATEMENT OF: SAMUEL MCDONALD

Q. On his genitals and his anus.

A. (Laughing) uh, a no. I really can't give no explanation for that one.

Q. Okay, well that's the case. That's why we're here. Okay. So, one to get, they do confirmatory buccal swab. DNA thing, the lab does. Um, it's just their protocol.

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And then to see if you remembered anything or if you wanted to give your side of the story or anything like that.

A. Well, actually there's nothing for me to really give cause I don't remember.

Q. Okay.

A. I really don't. Um, you just blew me away with that one. Um – why all this, all this time? Why?

Q. These cases, there's a –

A. I'm in here twelve years (unintelligible) (both talking)

Q. I'll, and I'll explain what happened. Okay. All the sexual assault cases –

A. Um-hum.

Q. -- um, there's a nationwide initiative where departments are retesting, they got money to retest all their sexual assault kits. And as a result, we re-open all the kits. Okay, and this is one of the case where there was a DNA match, that popped up, that we were sent. So, the DNA from that sexual assault kit matched your DNA that was on file, cause you're, cause you're in custody, so your DNA was taken at some point. Um, so which has us reopen the case. Okay. That's the time that's why's the time frame so long.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 7

EVENT #: 011228-0052  
STATEMENT OF: SAMUEL MCDONALD

- A. I guess I'm staying here for a bit, I do not (unintelligible).
- Q. Okay, so you don't remember anything like that at all?
- A. No, I, I don't.
- Q. Okay. And you don't remember um, Laura's mom coming to visit with the kids,  
around Christmas time, in that time, in 2001?
- 
- A. No. And I don't think we only, the only person came to visit us at um – at the 8<sup>th</sup> Street apartments was her friend, (unintelligible). Her brother came at Foothills. He moved next door.
- Q. You know what, this actually occurred, it wasn't in the 8<sup>th</sup> Street apartments. It was at 1700 Alta.
- A. 1700 Alta, Alta. I don't remember them coming there.
- Q. Yeah, you lived with Laura Hicks, at that address. I don't know how long you lived there but –
- A. Uh, hum cause I remember um, I'm sorry, I don't remember.
- Q. So you just remember H Street apartments and then um, Foothills?
- A. Foothills. And then when Laura moved on Harmon.
- Q. So you don't remember the Alta address at all?
- A. 1700 –
- Q. And if you don't remember, that's okay. This, this parts something that is verifiable too. I mean the address and everything. I'm not saying that you're being you know, untruthful with me or anything (unintelligible).

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 8

EVENT #: 011228-0052  
STATEMENT OF: SAMUEL MCDONALD

A. No, no, I'm just, it's like a, right, I mean right now – (sigh) I, or actually I just, right now I'm just drawing blanks on everything. I'm still trying to wrap my head around what you just told me.

Q. Okay. Well you do understand that there's, the only way that DNA would have been taken from the victim's anus and, and his penis would be if something happened. You understand that part, right?

A. Yeah.

Q. And since it's your DNA – I just don't know if, you know, his account is the same as your account, which you don't recall at all you're saying.

A. No I'm, I'm trying to at 1700 –

Q. Well don't get hung up on the address but –

A. I'm, I'm just – right now I'm just trying just gather everything. I been, I been struggle so hard in this place trying to do everything right and, and now all of sudden this.

Q. Okay, let me ask you this – are you denying you had any type of sexual contact with Shawn?

A. Rightly yeah, cause I don't, I'm trying to figure out who....Shawn.

Q. And fortunately I don't have a picture of him when he was that age? I just have a picture of what he looks like now. So I doubt that would help. But I can show you. This is what he looks like now.

A. Nah, couldn't tell you, I (unintelligible).

Q. Okay. Okay. Detweiler?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

**VOLUNTARY STATEMENT**

PAGE 9

EVENT #: 011228-0052

STATEMENT OF: SAMUEL MCDONALD

Q1. Well, this is the dilemma we have – DNA doesn't lie. That's unfortunate because as I'm sitting here today, and I touch this table and I walk outta here. If somebody comes up and swabs it, my DNA's gonna be on it. Just like semen, when it goes inside a va...vagina and which was this one here, that we just talked to. Um, DNA doesn't lie. And just like this one, when you got arrested for whatever felony you were arrested before because I don't care about your past. Okay. Um, your DNA is inside of him. In his anus, bare anus. A sexual assault kit was done, and like she was telling you, years later, a DNA hit comes back. And then she gets the case, we get the case and we're here talking to you. We've already talked to him and unfortunately he had to relive this whole story again. And mistakes happen. They do. And that was in 2000 and 1, when that mistake happened. Um, you were away or he was away then, he moved, and it's very normal because unfortunately, I, I, I did those cases for a very long time, in my past. And um, it's very normal for a child to wait years later, until the disclose what happens to them. It is. Um, but there's no denying that your DNA was inside of him. And it got there, I don't know if you were on drugs. I don't know if you were drinking. I don't know what happened that led up to it. But your DNA is inside of him. There's no arguing. I'm not gonna sit here, I'm not gonna yell at you. People make mistakes. But they gotta own up to this and mistakes. Unfortunately, he's paying those mistakes too. He's had to relive that for a very long time and you know, again when reached out to him, and why did that happen.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 10

EVENT #: 011228-0052  
STATEMENT OF: SAMUEL MCDONALD

Q. He needs to know that it wasn't his fault.

Q1. Yeah, he does.

Q. As a child, they always think, you know, children think when something happens it's their fault.

---

A. And I mean, I understand all that. And like you know, back then, even farther back, I made a lot of mistakes in my life.

Q1. Yeah.

A. And I'm paying for these mistakes.

Q1. Yes you are.

A. I don't remember that. I paid for um, I can't say I paid for um cause I have some, but I hadn't paid for it yet. I've made several mistakes. And I'm sitting in this place behind mistakes. Some of um I did, some I didn't. However, I believe I'm paying for all of it.

Q1. Yeah.

A. And – I really don't. I don't understand because even one time I had, I went to jail before, for being honest. With the person I was with.

Q1. Um-hum.

A. I got accused. Okay, I didn't do it so, I didn't do it but that don't mean I'm not paying for something else I did do and got away with it. I believe that. I don't remember this.

Q1. He does. And, and that test don't lie.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 11

EVENT #: 011228-0052  
STATEMENT OF: SAMUEL MCDONALD

A. Yeah. And I'm, I'm not, look, I'm not – here's the thing. Again, I've made mistakes.  
And right now, I just, I just don't remember. I mean –

Q1. So it could a happened?

A. It could happen.

---

Q1. Um-hum. Okay.

A. I mean, you know, like I said, I'm paying for a, a class in here that their supposed to have. They don't have, so I took my own money, took to pay for a class that I'm taking right now. Because I still believe that, okay, I know I did wrong. In this case. I gotta fix that, some kind of way.

Q1. Um-hum.

A. I've been reaching out to a, uh safer society. I done pay for my courses.

Q1. For what?

A. And I'm taking (unintelligible), sexual assault.

Q1. Okay.

A. Sexual, sex offenders.

Q1. Okay.

A. I'm, I'm, I pay for my own class cause they supposed to have it here but they can't get the class going here because guys are too worried about what their friends are gonna say, so there's not enough people to take the class. I wanna take this class. I'm, I'm trying to make amends on everything I've done wrong.

Q1. Um-hum.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 12

EVENT #: 011228-0052  
STATEMENT OF: SAMUEL MCDONALD

A. Okay, something I don't remember. I just don't. Did I, am I saying that I didn't do it. I can't say I didn't do it, I don't – I did a lot of wrong things. I've done a lot of wrong things. And how my DNA got in this boy, I don't know.

Q1. Can, can I ask you a question.

---

A. Yes.

Q1. Um, back in the day, I know you're trying to take all these classes now. Trying to get better. Back in the day, do you think you had a problem with, with, with sex and, and, and children and stuff like that? Do you think that was a problem then?

A. Back then I, as now, as I'm feeling, yes, I had a problem.

Q1 Okay.

A. You know, back, but see back then I didn't there was a problem. I didn't think –

Q1. Right.

A. But now, um, my way of thinking now, it was a problem back then, yeah. It was a problem and –

Q1. And you're paying for your classes now?

A. I'm paying for my class, I'm paying for my mistakes. I'm paying for everything.

Q1. Okay.

A. And truthfully, shit hurts. Excuse my language.

Q. It's okay.

Q1. No, that's fine.

A. Well –

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 13

EVENT #: 011228-0052  
STATEMENT OF: SAMUEL MCDONALD

Q1. We've heard a lot worse.

A. Yeah, but I mean, it's like – I was at a point it's like, what do I do. I just went to the board, they just denied me for another five years. That'll be seventeen years that I've been given the ring around going back to the board. I'm 58, I'll be 59 next month. I can't do this.

Q1. Right.

A. This is too much for me. I have to reintroduce myself to my kids and my grandkids. It's too much. Now this pop up. I mean, come on, how much can I take.

Q1. And you're paying for your mistakes now. You've already done seventeen years.

A. I'm paying for my mistakes right now.

Q1. Well, at least I know you're honest.

A. You know, I'm – I just don't –

Q1. How, how do you, how do you, how – would you like to say anything to him, at any time?

A. Yeah, cause if, I mean if I did anything to him, I'm (unintelligible) (both talking)

Q1. Well, it's, it's not really, it's not a matter if, it's –

A. I'm (unintelligible) sorry.

Q1. Yeah, you did.

A. You know, but the point is um, could I remember what I was doing, no. I don't. Honestly, I'm sitting here telling ya, I really don't.

Q1. Um-hum.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 14

EVENT #: 011228-0052  
STATEMENT OF: SAMUEL MCDONALD

A You know um --

Q. You know --

A. I don't know. I just --

Q. When you, when you start reflecting on this --

---

A. I just don't know.

Q. -- because you will. Okay, and you said that you're, you're paying for your mistakes. That you're, if you did do something, you are sorry. Okay. This is all about him. It's all about making sure that he can get through life without thinking he was wrong or he did something wrong. So, you start remembering something -- write him a letter. Write him an apology letter. I think you can --

A. I (unintelligible) it's only, it's only obvious if you, like you saying, both of you -- DNA, okay. I, like I said, I don't remember this. However, if, if it was and I, had whatever I did. No, it's not his fault and yes, I'm sorry. Am I, you know, am I uh remorseful, yeah. For everybody. Every, each and every person I, I've hurt in my life. Yes. I'm very remorseful and I'm very sorry. I don't remember that. I really don't but I'm, I'm doing everything else (unintelligible) and I'm getting blamed for everything else. I'm, I just don't know.

Q. Okay.

A. I just don't -- really don't know.

Q. Alright. Well, thank you for your time today. We're gonna end the interview. Same people present.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**VOLUNTARY STATEMENT**  
PAGE 15

EVENT #: 011228-0052  
STATEMENT OF: SAMUEL MCDONALD

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**THIS VOLUNTARY STATEMENT WAS COMPLETED AT SOUTHERN DESERT  
CORRECTIONAL CENTER ON THE 18<sup>TH</sup> DAY OF JANUARY, 2018 AT XXXX HOURS.**

Reviewed and corrected by s6224t on April 17, 2018 at 1528 hours.

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ST:WD:st  
ST002



1 DARIN F. IMLAY, PUBLIC DEFENDER  
NEVADA BAR NO. 5674  
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6 *Attorneys for Defendant*

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

9 THE STATE OF NEVADA, )  
10 Plaintiff, )  
11 v. )  
12 SAMUEL MCDONALD, )  
13 Defendant, )  
14 \_\_\_\_\_ )

CASE NO. C-18-334954-1  
DEPT. NO. X  
DATE: December 2, 2019  
TIME: 8:30 a.m.

15 **MOTION TO DISMISS FOR FAILURE TO PRESERVE EVIDENCE, MOTION FOR**  
16 **SPECIAL JURY INSTRUCTION [SANBORN MOTION], OR MOTION IN LIMINE TO**  
17 **EXCLUDE SCAN EXAMINATION**

18 COMES NOW, the Defendant, SAMUEL MCDONALD, by and through TEGAN C.  
19 MACHNICH, Chief Deputy Public Defender and hereby request an order dismissing the charges  
20 against him in the above-captioned case based on the State's failure to preserve evidence, for a  
21 special instruction to the jury regarding such evidence or, in the alternative, motion in limine to  
exclude any testimony concerning the SCAN examination.

22 This Motion is based upon the accompanying Declaration of Counsel and the pleadings  
23 and papers on file herein and any oral argument allowed at the time of hearing on this matter.

24 DATED this 20th day of November, 2019.

25 DARIN F. IMLAY  
CLARK COUNTY PUBLIC DEFENDER

26  
27 By: /s/Tegan C. Machnich  
TEGAN C. MACHNICH, #11642  
Chief Deputy Public Defender  
28



1 **POINTS AND AUTHORITIES**

2 **I.**  
3 **FACTS**

4 Defendant Samuel McDonald is awaiting trial on two counts of Sexual Assault with a  
5 Minor under the Age of Fourteen. The State has alleged that Mr. McDonald forced his  
6 girlfriend's son, a nine-year old named S.B., to perform fellatio on him and engage in anal  
7 intercourse on or about December 27, 2001. S.B. disclosed the alleged sexual abuse in the  
8 evening hours of December 27, 2001, at which time his mother brought him to Sunrise Hospital  
9 for an exam. Police were contacted by Sunrise Hospital in the early morning hours of December  
10 28, 2001.

11 Detective Richter of the Las Vegas Metropolitan Police Department informally (no  
12 formal interviews have been produced to date) interviewed Ms. Cotton and S.B. at Sunrise  
13 Hospital on December 28, 2001. Doctors also completed a sexual assault examination (SCAN,  
14 including colposcopy) that, according to Detective Richter's report, came back "positive". To  
15 date, no legible version of the SCAN/video evidence has been produced to the Defense. This  
16 case has been pending since September 2018.

17 **II.**  
18 **ARGUMENT**

19 Pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), when the State withholds  
20 exculpatory evidence from a defendant, due process is violated regardless of the motive of the  
21 prosecutor. *See State v. Havas*, 95 Nev. 706, 708; 601 P.2d 1197 (1979) (applying *Brady*  
22 Nevada context). Similarly, injustice arises from the State's failure to gather evidence. *State v.*  
23 *Ware*, 118 N.M. 319, 881 P.2d 679 (N.M. 1994). In a criminal investigation, police officers  
24 generally have no duty to collect all potential evidence." *Randolph v. State*, 117 Nev. 970, 987,  
25 36 P.3d 424, 435 (2001) (internal citations omitted). However, in certain cases "a failure to  
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1 gather evidence may warrant sanctions against the State.” *See id.* (citing *Daniels v. State*, 114  
2 Nev. 262, 268, 956 P.2d 111, 115 (1998).

3 The Nevada Supreme Court has adopted a two-part test to determine when dismissal of  
4 charges is warranted due to the State's failure to gather or preserve evidence. *Id.* at 267-68, 956  
5 P.2d at 115. First, the defense must “show that the evidence was material, i.e., that there is a  
6 reasonable probability that the result of the proceedings would have been different if the  
7 evidence had been available.” Second, “if the evidence was material, the court must determine  
8 whether the failure to gather it resulted from negligence, gross negligence, or bad faith.” *See id.*;  
9 *see also Randolph*, 117 Nev. at 987, 36 P.3d at 435. In the case of mere negligence, no  
10 sanctions are imposed, but the defense may question the State's witnesses about their  
11 investigative deficiencies. *See id.* If the Court determines that the State acted with gross  
12 negligence, the defense is entitled to a presumption that the evidence would have been  
13 unfavorable to the State.<sup>1</sup> Finally, in the case of bad faith, dismissal of the charges may be  
14 warranted. *Randolph*, 117 Nev. at 987, 36 P.3d at 435 (citing *Daniels*, 114 Nev. at 267, 956 P.2d  
15 at 115).

16 In the alternative, if the Court finds only gross negligence on behalf of the State, this  
17 Court should specially instruct the jury as the presumption that the evidence would have been  
18 unfavorable to the State. While gross negligence is substantially and appreciably higher in  
19 magnitude than ordinary negligence, it falls short of rising to the level of recklessness or willful  
20 harm. *See Hart v. Kline*, 61 Nev. 96, 116 P.2d 672 (1941). Mr. McDonald contends that the  
21 State acted with, at the very least, gross negligence. Specifically, in *Sanborn v. State*, 107 Nev.  
22 399; 812 P.2d 1279 (1991), the Nevada Supreme Court relied upon Sparks to reverse a First  
23

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24 <sup>1</sup> This presumption should be conveyed through a jury instruction. For example, in *Sanborn v. State*, 107 Nev. 399;  
25 812 P.2d 1279 (1991), the Nevada Supreme Court reversed a First Degree Murder conviction based on the prejudice  
26 suffered by the defendant as a result of the State's failure to properly collect and preserve evidence. The Court ruled  
27 that both reversal and dismissal were not necessarily warranted, but ruled that if the State was to prosecute the  
28 defendant again, “. . . the trial court shall instruct the jury that because the State failed to test the firearm that was  
used to inflict wounds on Sanborn for blood and fingerprints, the weapon is irrebuttably presumed to have been held  
and fired by the victim. . . .” *Sanborn*, 812 P.2d at 1286.

1 Degree Murder conviction based on the prejudice suffered by the defendant as a result of the  
2 State's failure to properly collect and preserve certain evidence. The Court ruled that both  
3 reversal and dismissal were not necessarily warranted, but ruled that if the State was to prosecute  
4 Sanborn again, ". . . the trial court shall instruct the jury that because the State failed to test the  
5 firearm that was used to inflict wounds on Sanborn for blood and fingerprints, the weapon is  
6 irrebuttably presumed to have been held and fired by the victim. . . ." *Sanborn*, 812 P.2d at  
7 1286.  
8

9 The materiality is clear. The State will seek to introduce evidence of "findings" on the  
10 SCAN examination – namely that it was "positive" for signs of sexual assault and that DNA was  
11 collected therefrom. It is also extremely likely that, given the lack of witness interviews at the  
12 time, that the alleged statements that appear to be documented therein may be introduced for  
13 various purposes. The State could get these alleged disclosures in by their witnesses recounting  
14 what was said.  
15

16 However, Defendant McDonald is in an impossible situation. He has no way to hire an  
17 expert to rebut the testimony concerning findings in a SCAN exam that isn't legible (and where  
18 no photographic / video evidence was preserved. He has no way to rebut or cross exam witnesses  
19 concerning the disclosure supposedly contained therein if he cannot read the narrative.  
20

21 The State acted in bad faith when they failed to preserve this evidence solely within their  
22 possession, and this case must be dismissed for that reason.

23 At the very least, the State acted with gross negligence. A "positive" SCAN exam in a  
24 child sex case is the most important piece of evidence. By not preserving it in a legible format, it  
25 is impossible for the Defendant to rebut any mention of tearing, blood or other such findings  
26 around a child's anus. Further, it is unclear where the DNA was *exactly* collected from. This  
27 becomes extremely important where the State is alleging penetration.  
28

1 At the very least, the Defendant must be allowed to present an instruction to the jury  
2 stating that, had this evidence existed, it is presumed to have been favorable to the Defendant.

3 **In the alternative**, Defendant McDonald moves *in limine* to exclude all evidence  
4 (including testimony surrounding) the SCAN examination conducted in this case. Relevant  
5 evidence is “evidence having any tendency to make the existence of any fact that is of  
6 consequence to the determination of the action more or less probable than it would be without  
7 the evidence.” NRS 48.015. “Evidence which is not relevant is not admissible.” NRS  
8 48.025(2). Additionally, “[a]lthough relevant, evidence is not admissible if its probative value is  
9 substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of  
10 misleading the jury.” NRS 48.035(1).

11 Testimony concerning the SCAN, including statements and findings contained therein, is  
12 clearly relevant. However, given the State’s mishandling of such important evidence in a case  
13 where the Defendant is facing life in prison, any testimony surrounding the contents of the  
14 illegible records and absent colposcopy must be excluded as it is far more prejudicial than  
15 probative. If the State is allowed to present evidence containing references to anal tears and  
16 bleeding in a child sex case without giving the Defense the opportunity to rebut such evidence  
17 through expert testimony, the result would be a certain conviction that unduly and irrevocably  
18 prejudices Mr. McDonald.

19 Thus, Mr. McDonand requests that, if this Honorable Court is not inclined to dismiss the  
20 case for the State’s bad faith handling of the evidence, that it consider preventing the State from  
21 introducing any reference to the SCAN whatsoever.

### 22 **III. CONCLUSION**

23 Based on the foregoing, Mr. McDonald is entitled to either dismissal or a favorable jury  
24 instruction. In the alternative Mr. McDonald requests that the State be prevented from  
25 mentioning, referencing or otherwise using the illegible SCAN exam against him.  
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1 A copy of the illegible SCAN currently in Defense possession will be delivered to  
2 chambers. If the State is able to obtain a legible copy of the SCAN Report Form, including the  
3 video colposcopy, this motion becomes moot. However, the Defense will require a continuance  
4 in order to properly review the materials and hire an expert witness. The purpose of this motion  
5 is not to request a continuance, but, instead, to seek the remedies sought above.  
6

7 DATED this 20th day of November, 2019.

8 DARIN F. IMLAY  
9 CLARK COUNTY PUBLIC DEFENDER

10  
11 By: /s/Tegan C. Machnich  
12 TEGAN C. MACHNICH, #11642  
13 Chief Deputy Public Defender  
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1 **NOTICE OF MOTION**

2 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

3 YOU WILL PLEASE TAKE NOTICE that the Public Defender’s Office will bring the  
4 above and foregoing Motion to Dismiss for Failure to Preserve Evidence, Motion for Special  
5 Jury Instruction [Sanborn Motion], or Motion in Limine to Exclude Scan Examination on for  
6 hearing before the Court on the 2nd day of December, 2019, at 8:30 a.m. in District Court  
7 Department 10.

8 DATED this 20th day of November, 2019.

9 DARIN F. IMLAY  
10 CLARK COUNTY PUBLIC DEFENDER

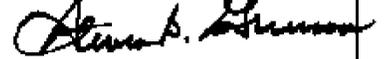
11  
12 By: /s/Tegan C. Machnich  
13 TEGAN C. MACHNICH, #11642  
14 Chief Deputy Public Defender

15 **CERTIFICATE OF ELECTRONIC SERVICE**

16 I hereby certify that service of the above and forgoing Motion to Dismiss for Failure to  
17 Preserve Evidence, Motion for Special Jury Instruction [Sanborn Motion], or Motion in Limine  
18 to Exclude Scan Examination was served via electronic e-filing to the Clark County District  
19 Attorney’s Office on this 20<sup>th</sup> day of November, 2019.

20  
21 District Attorney’s Office  
22 E-Mail Address:  
23 Jennifer.Georges@clarkcountyda.com

24 By: /s/ Annie McMahan  
25 An employee of the  
26 Clark County Public Defender’s Office



1 **OPPS**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 GENEVIEVE CRAGGS  
6 Deputy District Attorney  
7 Nevada Bar #013469  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

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

10 THE STATE OF NEVADA,  
11  
12 Plaintiff,

12 -vs-

13 **SAMUEL MCDONALD,**  
14 **#1753770**  
15 Defendant.

CASE NO: **C-18-334954-1**

DEPT NO: **X**

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

18 DATE OF HEARING: **DECEMBER 2, 2019**

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

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

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On September 19, 2018, the State filed an Indictment charging SAMUEL  
4 MCDONALD (hereinafter “Defendant”) with two counts of SEXUAL ASSAULT WITH A  
5 MINOR UNDER FOURTEEN YEARS OF AGE (Category A Felony - NRS 200.364,  
6 200.366 - NOC 50105). On November 14, 2018, this Court denied both the Defendant’s  
7 Petition for Writ of Habeas Corpus as well as the State’s Motion in Limine. Based on a new  
8 decision from the Nevada Supreme Court, the State renewed the Motion in Limine. On  
9 January 18, 2018, this Court issued a decision granting the State’s Motion in Limine.

10 On February 25, 2019, Defendant filed a Motion to Continue based on expert issues.  
11 This was unopposed by the State and the trial date was vacated. On May 22, 2019, Defendant  
12 requested a continuance. The State did not oppose this request.

13 On November 20, 2019, Defendant filed the instant Motion to Dismiss.

14 **STATEMENT OF THE FACTS**

15 On December 28, 2001, S.B. was nine years old and staying with Defendant at a  
16 location near University Medical Center. Defendant was dating S.B.’s older sister. Due to  
17 some issues with his mother, his older sister had agreed to have S.B. and his mother stay with  
18 her. On that date, Defendant orally and anally penetrated S.B. with his penis. The rape lasted  
19 about 15 to 20 minutes, and S.B. told his mother about it when she got home. S.B.’s mother  
20 took him to UMC where a nurse completed a Sexual Assault Kit (“SAK”) including intimate  
21 swabs. S.B.’s SCAN examination indicated that he had “multiple superficial lacerations just  
22 deep enough to ooze a small amount of blood extending radially from the rectum. This is  
23 consistent with rectal penetration.” S.B. believed that his mother was following up with his  
24 case and the family eventually moved to New York.

25 In March of 2017, as a result of funding received pursuant to the Sexual Assault Kit  
26 Initiative (“SAKI”) grant to test all untested rape kits, S.B.’s SAK (which had gone untested)  
27 was tested by Bode Cellmark Forensics. An unknown male DNA profile was developed from  
28 the sperm fraction of S.B.’s rectal swabs and uploaded into the Combined DNA Index System

1 (“CODIS”).

2 On August 14, 2017, LVMPD received a CODIS hit returning to Defendant. On January  
3 18, 2018, LVMPD detectives executed a search warrant and obtained a buccal swab from  
4 Defendant. The buccal swab obtained was compared to the unknown DNA profile developed  
5 by Bode Cellmark Forensics. LVMPD’s forensic lab determined that the DNA profile from  
6 Defendant’s buccal matched the DNA profile from S.B.’s SAK rectal swabs. The possibility of  
7 randomly selecting an unrelated individual from the general population having a DNA profile  
8 that is consistent with the deduced DNA profile obtained is approximately 1 in 16.4 trillion.

9 **ARGUMENT**

10 Defendant has the burden to prove that the delay in bringing an indictment “was a  
11 deliberate device to gain an advantage over him and that it caused him actual prejudice in  
12 presenting his defense.” Santiago v. Nevada, No. 69091, 2016 WL 7735230, at \*4 (Nev. App.  
13 Dec. 30, 2016) (citing Wyman v. State, 125 Nev. 592, 600-01, 217 P.3d 572, 578 (2009); see  
14 also United States v. Gouveia, 467 U.S. 180, 192 (1984)). In Wyman v. State, the Nevada  
15 Supreme Court concluded that the district court did not abuse its discretion by refusing to  
16 dismiss a complaint due to alleged pre-indictment delay. 125 Nev. 592, 575 (2009). The Court  
17 found that the defendant had not shown that she was 1) prejudiced by the delay and 2) that the  
18 State intentionally delayed filing the complaint to gain a tactical advantage over Wyman. Id.  
19 The Nevada Supreme Court affirmed this two-pronged test in Peck v. State, stating that “we  
20 conclude [Peck] failed to show with adequate specificity any prejudice from the delay or that  
21 the State intentionally delayed filing a complaint to gain a tactical advantage. 126 Nev. 746  
22 (2010). Additionally, the Court noted that, “[g]enerally, any delay between the commission of  
23 an offense and an indictment is limited by statutes of limitations. Id. at 601 n. 3 (citing United  
24 States v. Lovasco, 431 U.S. 783, 789, 97 S.Ct. 2044, 52 L.Ed.2d 752 (1977); Jones v. State,  
25 96 Nev. 240, 241, 607 P.2d 116, 117 (1980)).<sup>1</sup>

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28 <sup>1</sup> Defendant filed a Motion to Dismiss Due to Statute of Limitations. The Motion was later withdrawn after an opposition was filed by the State clarifying the Statute of Limitations had not expired.

1 In Wyman, on August 10, 1974, defendant Wyman brought her 3-year-old adopted son,  
2 J.W., to the hospital. Id. at 596. At the hospital, the examination revealed J.W. had multiple  
3 bruises throughout his body, as well as a concussion and scratch marks. Id. A catheter was  
4 inserted into his neck to rehydrate him. Id. J.W. ceased breathing and was pronounced dead.  
5 Id. The coroner determined his death to be accidental despite the doctor’s concerns, and no  
6 one was prosecuted. Id.

7 Thirty years later, defendant’s adult daughter called the police and told them that  
8 defendant had murdered J.W. Id. The adult daughter revealed she had a mental breakdown and  
9 had made several suicide attempts since 1974. Id. at 597. Thirty-two years later a complaint  
10 was filed by the State. Id.

11 Defendant Wyman filed a motion to dismiss due to the pre-indictment delay. Id. She  
12 argued that there was no new forensic evidence in the case, and no justifiable reason for the  
13 delay. Id. The motion was denied in district court. Id. The court noted that witnesses may  
14 have died or moved away after 32 years but determined that the defense must demonstrate that  
15 the State lost evidence or intentionally delayed the prosecution in order to gain a tactical  
16 advantage. Id.

17 **A. Defendant has Not Shown Actual Prejudice**

18 Wyman argued that she suffered prejudice because “witnesses are difficult to locate,  
19 and important neighbors, family members, and the coroner in 1974 are now deceased.” Id.  
20 Additionally, Wyman argued that these witnesses “may have been” able to testify as to  
21 whether they saw or heard abuse that occurred. Id. The Nevada Supreme Court found that  
22 Wyman failed to “make a particularized showing of actual, nonspeculative prejudice resulting  
23 from the delay.” Id. Specifically the court stated:

24 As the Ninth Circuit has succinctly stated, “[W]hen a defendant  
25 fails to make a specific showing as to what a [lost or] deceased  
26 witness would have said, any argument of prejudice is pure  
27 conjecture.” *U.S. v. Corona-Verbera*, 509 F.3d 1105, 1113 (9th  
28 Cir.2007). “[A]llegations of prejudice ‘must be supported by non-  
speculative proof.’” *Id.* (quoting *U.S. v. Doe*, 149 F.3d 945, 949  
(9th Cir.1998)). Because Wyman failed to specifically  
demonstrate how the unavailability of the lost or deceased  
witnesses prejudiced her defense, **or how testimony from such  
witnesses would have benefited her defense**, we conclude that the

1 district court did not abuse its discretion by denying Wyman's  
2 motion to dismiss the complaint. *See id.*; *see also State v. Delisle*,  
3 162 Vt. 293, 648 A.2d 632, 644 (1994) (where that court rejected  
4 the defendant's claim of prejudice as a result of the nearly 14-year  
pre-indictment delay because, while one witness had died, the  
defendant failed to demonstrate what the deceased witness would  
have testified had he been alive).

Id. at 492.

5 Defendant in the instant case is unable to show “actual, non-speculative prejudice” due  
6 to the delay. The Defendant attempts to make the same argument Wyman did that was rejected  
7 by the Nevada Supreme Court, stating that contact information has not been provided for lay  
8 witnesses in this case (though the State is unaware of what witnesses are being referenced).  
9 Additionally, Defendant does not explain what this has to do with the delay, or how the  
10 testimony of these unnamed witnesses would benefit their defense. This is a case where  
11 Defendant’s DNA was found inside the rectum of a 9-year-old boy. It is difficult for the State  
12 to imagine what lay witness would possibly exculpate Defendant under these circumstances  
13 such that dismissal due to pre-indictment delay is appropriate.

14 Defendant also argues that video footage from the apartment complex in question has  
15 long-since been destroyed, along with any attendant witnesses, such as neighbors, that could  
16 not possibly be located. Like Wyman, who similarly argued that the delay prejudiced her case  
17 because they could have *potentially* found neighbors or evidence to help their defense, this is  
18 **not actual prejudice**. Again, this is a case where Defendant’s DNA was found inside the  
19 rectum of a 9-year-old boy. It is difficult for the State to imagine what video footage could  
20 possibly exculpate Defendant under these circumstances such that dismissal due to pre-  
21 indictment delay is appropriate.

22 The only copy of the SCAN report that the State has in its possession was provided to  
23 Defendant on November 29, 2018. The medical records provided were from the archived  
24 records recovered from Las Vegas Metropolitan Police Department (LVMPD). Due to some  
25 of the handwritten notes placed sporadically throughout the records being difficult to read, the  
26 State has requested the records and photographs directly from Sunrise Hospital and Medical  
27 Center. These have not been provided by Sunrise Hospital and Medical Center at this time.  
28 It is clear from the records and the police reports that the victim did have trauma to his anus.

1 In the records the doctor has clearly checked that there are anal findings and definite evidence  
2 of sexual assault. Defendant has not shown how he believes that because some of the notes  
3 are difficult to read, or because he does not have photographs of the anal tearing, that he has  
4 been prejudiced in defending his case. Again, the evidence of any injuries suffered by the  
5 victim in this case are secondary to the evidence that Defendant's DNA was located inside of  
6 the victim's rectum.

7 Additionally, Defendant makes a vague argument that potential witness's memories  
8 may have faded since 2001. Defendant contests that no statements were taken from "attendant"  
9 witnesses. This is again, not a showing of **actual prejudice**. Defendant's frustration at the  
10 statute of limitations not being expired is not a reason to dismiss the case. Vague statements  
11 about potential witness's memory loss and frustrations at lack of statements are points to be  
12 addressed by Defendant on cross-examination, not a reason to dismiss the case. Again, the  
13 State cannot fathom how the **potential** of witness memory loss would change anything  
14 regarding the evidence in this case consisting of Defendant's DNA inside the victim's rectum.

15 Defendant's third argument is that it is essentially unfair to file the case now because  
16 Defendant lost the opportunity to negotiate the case back in 2005, when he was charged with  
17 similar conduct and sent to prison for 30 years. The State is perplexed by Defendant's claim  
18 that he is prejudiced by the missed potential of negotiating this case with the child rapes he  
19 committed a few years after this case. The State would hope that, had this case been filed  
20 immediately, Defendant would have been incarcerated and unable to rape the additional  
21 children. Defendant cannot show what the outcome possibly would have been had this case  
22 been filed at the time, but only speculate as to a potential negotiation. This is not a  
23 particularized showing of actual prejudice.

24 **B. The Prosecution did Not Intentionally Delay Bringing Charges**

25 Defendant argues that the State acted negligently and recklessly in processing charges  
26 against him. First, Defendant is arguing an incorrect standard under the current state of law.  
27 In Wyman v. State, the Court found that Defendant must show, "that the State used the delay  
28 to gain a tactical advantage or delay the indictment in bad faith." Wyman v. State, 125 Nev.

1 592, 601 (2009). Specifically, the Court found that:

2 In particular, we conclude that Wyman failed to demonstrate that  
3 the delay “ ‘offend[ed] ... fundamental conceptions of justice.’ ”  
4 *Corona-Verbera*, 509 F.3d at 1112 (internal quotations omitted)  
5 (quoting *U.S. v. Sherlock*, 962 F.2d 1349, 1353 (9th Cir.1989)).  
6 The record is devoid of any indication that the State's delay was  
7 an intentional device that the State utilized “ ‘to gain tactical  
8 advantage’ ” over \*602 Wyman. See *United States v. Lovasco*, 431  
9 U.S. 783, 795, 97 S.Ct. 2044, 52 L.Ed.2d 752 (1977) (quoting  
10 *United States v. Marion*, 404 U.S. 307, 324, 92 S.Ct. 455, 30  
11 L.Ed.2d 468 (1971)); see also *Jones v. State*, 96 Nev. 240, 242,  
12 607 P.2d 116, 117 (1980). As the district court noted, it is likely  
13 that the State suffered from the delay as well. For these reasons,  
14 we conclude that Wyman's pre-indictment delay challenge lacks  
15 merit.

16 Id. at 601-02.

17 There is absolutely no showing that the State used the delay as an intentional device or  
18 that there was any tactical advantage gained. In fact, if anything, the State was prejudiced due  
19 to the delay as well. The State has the same copy of the SCAN exam that was provided to the  
20 defense through the archived records, and must deal with the same witness issues, including  
21 witnesses who may have retired or moved on. The delay in the case does not serve as a tactical  
22 advantage to the State.

23 Based on the notes from the archived files that were provided to the defense on  
24 November 29, 2018, LVMPD lost contact with the victim's mother and S.B. and thus was  
25 unable to proceed with the case. It appears that on January 16, 2002, LVMPD had contact  
26 with S.B.'s mother and she agreed they would do an interview. On February 6, 2002, it was  
27 noted that the detective who had been assigned to do the interview had difficulty getting ahold  
28 of the mother of S.B. A voicemail message was left with S.B.'s mother that they must show  
up for an interview on February 11, 2002. On February 11, 2002, the family did not show up.  
LVMPD suspended the case due to lack of victim cooperation. It is clear through the Grand  
Jury transcript, that S.B. thought his mother had taken care of the case, and that Defendant had  
been held responsible:

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Q. After you went to UMC and got the sexual assault kit, what do you remember about this case?

A. I just remember after they said that he was going to be incarcerated a couple years. After I left Nevada I ended up going to New York so I don't get – so me and my sister didn't get taken to foster care. And from what my family had told me, they said that he did it to another little girl and got 30 years. And I just thought my case went cold and I didn't know nothing about it because they wouldn't – that was the only thing they had me is they let – stay off of is just he went to jail so –

Q. Not that it's your job or anything, but did you do anything to follow up as far as call the police or anything like that?

A. For him to go to jail because of the little girl of my situation?

Q. No, your situation.

A. My mother did it, I didn't. You know, I mean, I'm a kid, I don't – I don't know if that was the right thing but he knew but I didn't.

Grand Jury Transcript, Sept. 18, 2018, pp. 10-11. (attached as Exhibit 1).

The State did not purposefully delay this indictment or gain any sort of tactical advantage. Furthermore, the victim, who was only 9 years old at the time, was not capable of ensuring he stayed in contact with the police. The case was reopened when, as an adult, S.B. was able to take control of the situation and able to participate in the investigation and prosecution of Defendant. Due to the DNA findings and renewed contact with the victim, the State reopened the case. The State did not act in bad faith, which is supported by the record and discovery which has been provided to Defendant.

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**CONCLUSION**

Defendant has not been able to meet either prong of the well-established two-prong test set forth by the Nevada Supreme Court. Defendant has not shown either (1) that he suffered actual, nonspeculative prejudice from the delay; or (2) that the prosecution intentionally delayed bringing the charges in order to gain a tactical advantage over the accused, or that the prosecution delayed in bad faith. The State requests Defendant’s Motion to Dismiss be denied.

DATED this 27th day of November, 2019.

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

BY /s/ GENEVIEVE CRAGGS  
GENEVIEVE CRAGGS  
Deputy District Attorney  
Nevada Bar #013469

**CERTIFICATE OF SERVICE**

I hereby certify that service of the above and foregoing was made this 27th day of NOVEMBER, 2019, to:

TEGAN MACHNICH, DPD  
mcmahae@ClarkCountyNV.gov

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

hjc/SVU

**EXHIBIT "1"**

Electronically Filed  
9/29/2018 11:20 AM  
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CLERK OF THE COURT



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EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID  
DISTRICT COURT

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	GJ Case No. 18AGJ050X
	)	DC Case No. C334954
SAMUEL MCDONALD, Samuel Craig	)	
McDonald,	)	
	)	
Defendant.	)	
_____	)	

**Taken at Las Vegas, Nevada**  
**Tuesday, September 18, 2018**  
**9:54 a.m.**

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

**Reported by: Donna J. McCord, C.C.R. No. 337**

1 GRAND JURORS PRESENT ON SEPTEMBER 18, 2018:

2

3 RUSSELL WALKER, Foreperson,

4 CAROLYN JORDAN, Deputy Foreperson

5 RACHEL TABRON, Secretary

6 MICHELE CRINE, Assistant Secretary

7 JOHN ASSELIN

8 KATHY COX

9 THERESA GAISSER

10 DAWN HERSHEY

11 MICHAEL HOLLINGSWORTH

12 ADRIANA IONESCU

13 CHRISTOPHER KERCEL

14 SHARON KLINCK

15 JAMES MCGREGOR

16 MARYLEE WHALEN

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22 Also present at the request of the Grand Jury:

23 Jacob Villani

24 Chief Deputy District Attorney

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INDEX OF WITNESSES

EXAMINED

SHAWN BRYANT

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INDEX OF EXHIBITS

GRAND JURY EXHIBITS

IDENTIFIED

EXHIBIT 1 - PROPOSED INDICTMENT	5
EXHIBIT 2 - INSTRUCTIONS	6
EXHIBIT 3 - PHOTOGRAPH	7

1 LAS VEGAS, NEVADA, SEPTEMBER 18, 2018

2 \* \* \* \* \*

3  
4 DONNA J. McCORD,

5 having been first duly sworn to faithfully  
6 and accurately transcribe the following  
7 proceedings to the best of her ability.  
8

9 THE FOREPERSON: Let the record reflect  
10 that I have canvassed the waiting area and no one has  
11 appeared in response to Notice of Intent to Seek  
12 Indictment.

13 MR. VILLANI: Good morning, ladies and  
14 gentlemen of the Grand Jury. My name is Jake Villani.  
15 I will be presenting Grand Jury case number 18AGJ050X,  
16 State of Nevada versus Samuel McDonald. The record will  
17 reflect that I've marked a copy of the proposed  
18 Indictment as Exhibit Number 1 and that all members of  
19 the Grand Jury have a copy of it.

20 The defendant in this case is charged with  
21 the crime of sexual assault with a minor under 14 years  
22 of age committed at and within the County of Clark,  
23 State of Nevada, on or about the 28th day of December,  
24 2001.

25 I'm required by law to advise you of the

1 elements of this charge. I've provided written  
2 instructions to each of the Grand Jurors as the statute  
3 was in 2001 and marked a copy of the instructions as  
4 proposed Exhibit Number 2.

5 My first witness is Shawn Bryant.

6 THE FOREPERSON: Please raise your right  
7 hand.

8 You do solemnly swear that the testimony  
9 that you're about to give upon the investigation now  
10 pending before this Grand Jury shall be the truth, the  
11 whole truth, and nothing but the truth, so help you God?

12 THE WITNESS: Yes.

13 THE FOREPERSON: You may be seated.

14 You are advised that you are here today to  
15 give testimony in the investigation pertaining to the  
16 offense of sexual assault with a minor under 14 years of  
17 age involving Samuel McDonald.

18 Do you understand this advisement?

19 THE WITNESS: Yes.

20 THE FOREPERSON: Please state your first  
21 and last name and spell them for the record.

22 THE WITNESS: Shawn Bryant, S-H-A-W-N  
23 B-R-Y-A-N-T.

24 MR. VILLANI: May I proceed,  
25 Mr. Foreperson?

1 THE FOREPERSON: You may.

2

3 **SHAWN BRYANT,**

4 having been first duly sworn by the Foreperson of the  
5 Grand Jury to testify to the truth, the whole truth  
6 and nothing but the truth, testified as follows:

7

8 **EXAMINATION**

9 BY MR. VILLANI:

10 Q Shawn, what's your date of birth?

11 A 9-3-92.

12 Q Do you know a man by the name of Samuel  
13 McDonald?

14 A Yes.

15 Q How do you know him?

16 A He was dating my sister in 2001.

17 Q Showing you what's been marked as Grand  
18 Jury Exhibit Number 3, do you recognize the person  
19 depicted in that photograph?

20 A Yes.

21 Q Who is that?

22 A Sam McDonald.

23 Q Okay. Now, you gave an interview with  
24 police regarding this case, correct?

25 A Yes.

1 Q Do you recall referring to Mr. McDonald as  
2 Mr. Cook during that interview?

3 A Yes.

4 Q Why was that?

5 A Because I didn't know his last name.

6 Q Okay. But the person depicted in that  
7 photograph is the person we're talking about as Samuel  
8 McDonald, your sister's boyfriend, correct?

9 A Yes.

10 Q Okay. On or about December 28th of 2001,  
11 how old were you?

12 A About nine.

13 Q Were you staying with Samuel McDonald at  
14 that time?

15 A Yes.

16 Q Where were you staying?

17 A It was located in Las Vegas, Nevada, on I  
18 want to say next to UMC.

19 Q Okay. So near UMC here in Clark County?

20 A Yes.

21 Q Why were you staying with him at that time?

22 A Because in California my mom had like a  
23 foster case going, and instead of us getting taken my  
24 sister opened her doors for us to come to her house.

25 Q On or about December 28th of 2001, did

1 Samuel McDonald have inappropriate contact with you?

2 A Yes.

3 Q What are you able to tell us about what  
4 happened that day?

5 A I was about nine and he did like  
6 penetration, oral sex and stuff like that. I can't —  
7 well, it's hard to talk about, I'm sorry.

8 Q That's fine. So you said he did  
9 penetration, oral sex, stuff like that. On that date  
10 were you alone with him?

11 A Yes.

12 Q Okay. Where did this occur?

13 A Inside the house.

14 Q Now, you said he did oral sex. Do you mean  
15 that he put your penis inside his mouth?

16 A He put his penis inside my mouth.

17 Q He put his penis inside your mouth?

18 A Yes.

19 Q Okay. Now, you said he did penetration.  
20 Where did he penetrate you?

21 A Anal.

22 Q Do you know if he ejaculated or not?

23 A Yes.

24 Q And how do you know that?

25 A Well, back then it looked like spit but now

1 that I'm older I understand. I have two kids so --

2 Q So now as an adult you're aware of what  
3 occurred?

4 A Yes.

5 Q About how long did this take, do you  
6 remember?

7 A Anywhere from like 15 to 20 minutes.

8 Q Okay. How did this get reported to the  
9 police?

10 A My mother came back and I explained to her  
11 what was going on and she went straight to UMC.

12 Q Do you recall going to UMC?

13 A Yes.

14 Q Do you recall having a sexual assault kit  
15 taken?

16 A Yes.

17 Q Did they take swabs of you?

18 A Yes.

19 Q After you went to UMC and got the sexual  
20 assault kit, what do you remember about this case?

21 A I just remember after they said that he was  
22 going to be incarcerated a couple years. After I left  
23 Nevada I ended up going to New York so I don't get -- so  
24 me and my sister didn't get taken to foster care. And  
25 from what my family had told me, they said that he did

1 it to another little girl and got 30 years. And I just  
2 thought my case went cold and I didn't know nothing  
3 about it because they wouldn't — that was the only  
4 thing they had me is they let — stay off of is just he  
5 went to jail so —

6 Q Not that it's your job or anything, but did  
7 you do anything to follow up as far as call the police  
8 or anything like that?

9 A For him to go to jail because of the little  
10 girl or my situation?

11 Q No, your situation.

12 A My mother did it, I didn't. You know, I  
13 mean, I'm a kid, I don't — I don't know if that was the  
14 right thing but he knew but I didn't.

15 MR. VILLANI: And ladies and gentlemen, I'm  
16 going to instruct you to ignore the allegation that he  
17 did this to another girl and that he went to prison for  
18 that. That has nothing to do with this particular case.

19 THE WITNESS: Yeah.

20 MR. VILLANI: I'm just offering it for why  
21 he felt the case had been handled appropriately.

22 BY MR. VILLANI:

23 Q When's the next time you were contacted  
24 regarding your case?

25 A November of 2017.

1 Q Okay. All right.

2 That concludes my questioning of this  
3 witness. Are there any questions from the Grand Jurors?  
4 Seeing no hands.

5 THE FOREPERSON: By law these proceedings  
6 are secret and you are prohibited from disclosing to  
7 anyone anything that transpired before us including any  
8 evidence presented to the Grand Jury, any event  
9 occurring or a statement made in the presence of the  
10 Grand Jury or any information obtained by the Grand  
11 Jury.

12 Failure to comply with this admonition is a  
13 gross misdemeanor punishable up to 364 days in the Clark  
14 County Detention Center and a \$2,000 fine. In addition  
15 you may be held in contempt of court punishable by an  
16 additional \$500 fine and 25 days in the Clark County  
17 Detention Center.

18 Do you understand this admonition?

19 THE WITNESS: Yes.

20 THE FOREPERSON: Thank you. You're  
21 excused.

22 MR. VILLANI: That concludes my  
23 presentation of evidence. Do any of the Grand Jurors  
24 have any questions regarding the elements of the offense  
25 charged? Seeing no hands this matter is submitted for

1 your deliberation.

2 (At this time, all persons, except the  
3 members of the Grand Jury, exited the room at 10:02 and  
4 returned at 10:03.)

5 THE FOREPERSON: Mr. District Attorney, by  
6 a vote of 12 or more Grand Jurors a true bill has been  
7 returned against defendant Samuel McDonald charging the  
8 crimes of two counts of sexual assault with a minor  
9 under 14 years of age in Grand Jury case number  
10 18AGJ050X.

11 We instruct you to prepare an Indictment in  
12 conformance with the proposed Indictment previously  
13 submitted to us.

14 MR. VILLANI: Thank you.

15 (Proceedings concluded.)

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**REPORTER'S CERTIFICATE**

**STATE OF NEVADA**        )  
                                  :    ss  
**COUNTY OF CLARK**        )

I, Donna J. McCord, C.C.R. 337, do hereby certify that I took down in Shorthand (Stenotype) all of the proceedings had in the before-entitled matter at the time and place indicated and thereafter said shorthand notes were transcribed at and under my direction and supervision and that the foregoing transcript constitutes a full, true, and accurate record of the proceedings had.

Dated at Las Vegas, Nevada,  
September 29, 2018.

                                  /S/DONNA J. MCCORD  
Donna J. McCord, CCR 337

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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding  
TRANSCRIPT filed in GRAND JURY CASE NUMBER 18AGJ050X:

Does not contain the social security number of any  
person,

-OR-

Contains the social security number of a person as  
required by:

A. A specific state or federal law, to-wit:  
NRS 656.250.

-OR-

B. For the administration of a public program  
or for an application for a federal or  
state grant.

/S/DONNA J. MCCORD  
Signature

September 29, 2018  
Date

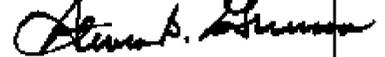
Donna J. McCord  
Print Name

Official Court Reporter  
Title

<b>BY MR. VILLANI:</b> [2] 7/8 11/21	<b>accurately</b> [1] 5/6	<b>canvassed</b> [1] 5/10	9/12 9/14 9/19 9/20	<b>girl</b> [3] 11/1 11/10
<b>MR. VILLANI:</b> [6] 5/12 6/23 11/14 11/19 12/21 13/13	<b>addition</b> [1] 12/14	<b>care</b> [1] 10/24	10/5 10/8 10/17 10/25	11/17
<b>THE FOREPERSON:</b> [8] 5/7 6/5 6/12 6/19 6/25 12/4 12/19 13/4	<b>additional</b> [1] 12/16	<b>CAROLYN</b> [1] 2/4	11/6 11/12 11/17	<b>give</b> [2] 6/9 6/15
<b>THE WITNESS:</b> [5] 6/11 6/18 6/21 11/18 12/18	<b>administration</b> [1] 15/15	<b>case</b> [13] 1/9 1/9 5/15 5/20 7/24 8/23 10/20	<b>didn't</b> [5] 8/5 10/24 11/2 11/12 11/14	<b>GJ</b> [1] 1/9
<b>\$</b>	<b>admonition</b> [2] 12/12 12/18	11/2 11/18 11/21 11/24 13/9 15/5	<b>direction</b> [1] 14/10	<b>go</b> [1] 11/9
<b>\$2,000</b> [1] 12/14	<b>ADRIANA</b> [1] 2/12	<b>CCR</b> [1] 14/18	<b>disclosing</b> [1] 12/6	<b>God</b> [1] 6/11
<b>\$500</b> [1] 12/16	<b>adult</b> [1] 10/2	<b>Center</b> [2] 12/14 12/17	<b>DISTRICT</b> [4] 1/1 1/5 2/23 13/5	<b>going</b> [6] 8/23 10/11 10/12 10/22 10/23 11/16
-	<b>advise</b> [1] 5/25	<b>CERTIFICATE</b> [1] 14/1	<b>do</b> [18]	<b>Good</b> [1] 5/13
--oo0oo [1] 13/16	<b>advised</b> [1] 6/14	<b>certify</b> [1] 14/7	<b>does</b> [2] 15/4 15/8	<b>got</b> [2] 10/19 11/1
-OR [2] 15/10 15/14	<b>advisement</b> [1] 6/18	<b>charge</b> [1] 6/1	<b>don't</b> [3] 10/23 11/13 11/13	<b>GRAND</b> [20]
/	<b>affirm</b> [1] 15/4	<b>charged</b> [2] 5/20 12/25	<b>Donna</b> [7] 1/25 5/4 14/6 14/17 14/18 15/18 15/20	<b>grant</b> [1] 15/16
/S/DONNA [2] 14/17 15/18	<b>AFFIRMATION</b> [1] 15/1	<b>charging</b> [1] 13/7	<b>doors</b> [1] 8/24	<b>gross</b> [1] 12/13
<b>1</b>	<b>AFORESAID</b> [1] 1/4	<b>Chief</b> [1] 2/23	<b>down</b> [1] 14/7	<b>H</b>
<b>10:02</b> [1] 13/3	<b>after</b> [3] 10/19 10/21 10/22	<b>CHRISTOPHER</b> [1] 2/13	<b>duly</b> [2] 5/5 7/4	<b>had</b> [6] 8/22 10/25 11/4 11/21 14/8 14/13
<b>10:03</b> [1] 13/4	<b>against</b> [1] 13/7	<b>CLARK</b> [6] 1/2 5/22 8/19 12/13 12/16 14/4	<b>during</b> [1] 8/2	<b>hand</b> [1] 6/7
<b>12</b> [1] 13/6	<b>age</b> [3] 5/22 6/17 13/9	<b>cold</b> [1] 11/2	<b>E</b>	<b>handled</b> [1] 11/21
<b>14</b> [3] 5/21 6/16 13/9	<b>all</b> [4] 5/18 12/1 13/2 14/7	<b>come</b> [1] 8/24	<b>each</b> [1] 6/2	<b>hands</b> [2] 12/4 12/25
<b>15</b> [1] 10/7	<b>allegation</b> [1] 11/16	<b>committed</b> [1] 5/22	<b>EIGHTH</b> [1] 1/1	<b>happened</b> [1] 9/4
<b>18</b> [3] 1/15 2/1 5/1	<b>alone</b> [1] 9/10	<b>comply</b> [1] 12/12	<b>ejaculated</b> [1] 9/22	<b>hard</b> [1] 9/7
<b>18AGJ050X</b> [4] 1/9 5/15 13/10 15/5	<b>Also</b> [1] 2/22	<b>concluded</b> [1] 13/15	<b>elements</b> [2] 6/1 12/24	<b>has</b> [3] 5/10 11/18 13/6
<b>2</b>	<b>Anal</b> [1] 9/21	<b>concludes</b> [2] 12/2 12/22	<b>ended</b> [1] 10/23	<b>have</b> [5] 5/10 5/19 9/1 10/1 12/24
<b>20</b> [1] 10/7	<b>another</b> [2] 11/1 11/17	<b>conformance</b> [1] 13/12	<b>entitled</b> [1] 14/8	<b>having</b> [3] 5/5 7/4 10/14
<b>2001</b> [5] 5/24 6/3 7/16 8/10 8/25	<b>any</b> [7] 12/3 12/7 12/8 12/10 12/23 12/24 15/8	<b>constitutes</b> [1] 14/12	<b>event</b> [1] 12/8	<b>he</b> [17]
<b>2017</b> [1] 11/25	<b>anyone</b> [1] 12/7	<b>contact</b> [1] 9/1	<b>evidence</b> [2] 12/8 12/23	<b>held</b> [1] 12/15
<b>2018</b> [5] 1/15 2/1 5/1 14/15 15/18	<b>anything</b> [4] 11/6 11/7 11/8 12/7	<b>contacted</b> [1] 11/23	<b>EXAMINATION</b> [1] 7/8	<b>help</b> [1] 6/11
<b>239B.030</b> [1] 15/2	<b>Anywhere</b> [1] 10/7	<b>contain</b> [1] 15/8	<b>EXAMINED</b> [1] 3/2	<b>her</b> [4] 5/7 8/24 8/24 10/10
<b>25</b> [1] 12/16	<b>appeared</b> [1] 5/11	<b>Contains</b> [1] 15/11	<b>except</b> [1] 13/2	<b>here</b> [2] 6/14 8/19
<b>28th</b> [3] 5/23 8/10 8/25	<b>application</b> [1] 15/15	<b>contempt</b> [1] 12/15	<b>excused</b> [1] 12/21	<b>hereby</b> [2] 14/6 15/4
<b>29</b> [2] 14/15 15/18	<b>appropriately</b> [1] 11/21	<b>Cook</b> [1] 8/2	<b>EXHIBIT</b> [6] 4/4 4/5 4/6 5/18 6/4 7/18	<b>HERSHEY</b> [1] 2/10
<b>3</b>	<b>are</b> [6] 6/14 6/14 9/3 12/3 12/6 12/6	<b>copy</b> [3] 5/17 5/19 6/3	<b>EXHIBITS</b> [2] 4/1 4/3	<b>him</b> [4] 7/15 8/21 9/10 11/9
<b>30</b> [1] 11/1	<b>area</b> [1] 5/10	<b>correct</b> [2] 7/24 8/8	<b>exited</b> [1] 13/3	<b>his</b> [4] 8/5 9/15 9/16 9/17
<b>337</b> [3] 1/25 14/6 14/18	<b>assault</b> [5] 5/21 6/16 10/14 10/20 13/8	<b>counts</b> [1] 13/8	<b>explained</b> [1] 10/10	<b>HOLLINGSWORTH</b> [1] 2/11
<b>364</b> [1] 12/13	<b>ASSELIN</b> [1] 2/7	<b>COUNTY</b> [6] 1/2 5/22 8/19 12/14 12/16 14/4	<b>F</b>	<b>house</b> [2] 8/24 9/13
<b>6</b>	<b>Assistant</b> [1] 2/6	<b>couple</b> [1] 10/22	<b>Failure</b> [1] 12/12	<b>how</b> [5] 7/15 8/11 9/24 10/5 10/8
<b>9</b>	<b>Attorney</b> [2] 2/23 13/5	<b>court</b> [4] 1/1 1/5 12/15 15/22	<b>faithfully</b> [1] 5/5	<b>I</b>
<b>9-3-92</b> [1] 7/11	<b>aware</b> [1] 10/2	<b>COX</b> [1] 2/8	<b>family</b> [1] 10/25	<b>I'm</b> [6] 5/25 9/7 10/1 11/13 11/15 11/20
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<b>9:54</b> [1] 1/16	<b>B-R-Y-A-N-T</b> [1] 6/23	<b>crime</b> [1] 5/21	<b>federal</b> [2] 15/13 15/15	<b>IDENTIFIED</b> [1] 4/3
<b>A</b>	<b>back</b> [2] 9/25 10/10	<b>crimes</b> [1] 13/8	<b>felt</b> [1] 11/21	<b>ignore</b> [1] 11/16
<b>a.m</b> [1] 1/16	<b>been</b> [5] 5/5 7/4 7/17 11/21 13/6	<b>CRINE</b> [1] 2/6	<b>filed</b> [1] 15/5	<b>IMPANELED</b> [1] 1/4
<b>ability</b> [1] 5/7	<b>before</b> [4] 1/4 6/10 12/7 14/8	<b>D</b>	<b>fine</b> [3] 9/8 12/14 12/16	<b>inappropriate</b> [1] 9/1
<b>able</b> [1] 9/3	<b>before-entitled</b> [1] 14/8	<b>date</b> [3] 7/10 9/9 15/18	<b>first</b> [4] 5/5 6/5 6/20 7/4	<b>incarcerated</b> [1] 10/22
<b>about</b> [12] 5/23 6/9 8/7 8/10 8/12 8/25 9/3 9/5 9/7 10/5 10/20 11/3	<b>best</b> [1] 5/7	<b>Dated</b> [1] 14/14	<b>follow</b> [1] 11/7	<b>including</b> [1] 12/7
<b>accurate</b> [1] 14/12	<b>bill</b> [1] 13/6	<b>dating</b> [1] 7/16	<b>following</b> [1] 5/6	<b>INDEED</b> [2] 3/1 4/1
	<b>birth</b> [1] 7/10	<b>DAWN</b> [1] 2/10	<b>follows</b> [1] 7/6	<b>indicated</b> [1] 14/9
	<b>boyfriend</b> [1] 8/8	<b>day</b> [2] 5/23 9/4	<b>foregoing</b> [1] 14/11	<b>INDICTMENT</b> [5] 4/4 5/12 5/18 13/11 13/12
	<b>BRYANT</b> [4] 3/3 6/5 6/22 7/3	<b>days</b> [2] 12/13 12/16	<b>Foreperson</b> [4] 2/3 2/4 6/25 7/4	<b>information</b> [1] 12/10
	<b>C</b>	<b>DC</b> [1] 1/9	<b>foster</b> [2] 8/23 10/24	<b>inside</b> [4] 9/13 9/15 9/16 9/17
	<b>C.C.R</b> [2] 1/25 14/6	<b>December</b> [3] 5/23 8/10 8/25	<b>full</b> [1] 14/12	<b>instead</b> [1] 8/23
	<b>C334954</b> [1] 1/9	<b>December 28th</b> [1] 8/10	<b>G</b>	<b>instruct</b> [2] 11/16 13/11
	<b>California</b> [1] 8/22	<b>defendant</b> [3] 1/11 5/20 13/7	<b>GAISSER</b> [1] 2/9	<b>instructions</b> [3] 4/5 6/2 6/3
	<b>call</b> [1] 11/7	<b>deliberation</b> [1] 13/1	<b>gave</b> [1] 7/23	
	<b>came</b> [1] 10/10	<b>depicted</b> [2] 7/19 8/6	<b>gentlemen</b> [2] 5/14 11/15	
	<b>can't</b> [1] 9/6	<b>Deputy</b> [2] 2/4 2/23	<b>get</b> [3] 10/8 10/23 10/24	
		<b>Detention</b> [2] 12/14 12/17	<b>getting</b> [1] 8/23	
		<b>did</b> [14] 8/25 9/5 9/8		

<p><b>I</b></p> <p><b>Intent</b> [1] 5/11  <b>interview</b> [2] 7/23 8/2  <b>investigation</b> [2] 6/9 6/15  <b>involving</b> [1] 6/17  <b>IONESCU</b> [1] 2/12  <b>is</b> [9] 5/14 5/20 6/5 7/21 8/7 11/4 11/4 12/12 12/25  <b>it</b> [7] 5/19 8/17 9/25 11/1 11/3 11/12 11/20  <b>it's</b> [2] 9/7 11/6</p>	<p>14/6 14/17 14/18 15/18 15/20  <b>MCDONALD</b> [11] 1/10 1/10 5/16 6/17 7/13 7/22 8/1 8/8 8/13 9/1 13/7  <b>MCGREGOR</b> [1] 2/15  <b>me</b> [3] 10/24 10/25 11/4  <b>mean</b> [2] 9/14 11/13  <b>members</b> [2] 5/18 13/3  <b>MICHAEL</b> [1] 2/11  <b>MICHELE</b> [1] 2/6  <b>minor</b> [3] 5/21 6/16 13/8</p>	<p><b>offense</b> [2] 6/16 12/24  <b>offering</b> [1] 11/20  <b>Official</b> [1] 15/22  <b>Okay</b> [8] 7/23 8/6 8/10 8/19 9/12 9/19 10/8 12/1  <b>old</b> [1] 8/11  <b>older</b> [1] 10/1  <b>one</b> [1] 5/10  <b>only</b> [1] 11/3  <b>oo0oo</b> [1] 13/16  <b>opened</b> [1] 8/24  <b>oral</b> [3] 9/6 9/9 9/14</p>	<p><b>recognize</b> [1] 7/18  <b>record</b> [4] 5/9 5/16 6/21 14/12  <b>referring</b> [1] 8/1  <b>reflect</b> [2] 5/9 5/17  <b>regarding</b> [3] 7/24 11/24 12/24  <b>remember</b> [3] 10/6 10/20 10/21  <b>reported</b> [2] 1/25 10/8  <b>Reporter</b> [1] 15/22  <b>REPORTER'S</b> [2] 1/20 14/1  <b>request</b> [1] 2/22  <b>required</b> [2] 5/25 15/12  <b>response</b> [1] 5/11  <b>returned</b> [2] 13/4 13/7  <b>right</b> [3] 6/6 11/14 12/1  <b>room</b> [1] 13/3  <b>RUSSELL</b> [1] 2/3</p>	<p><b>staying</b> [2] 8/13 8/16  <b>Stenotype</b> [1] 14/7  <b>straight</b> [1] 10/11  <b>stuff</b> [2] 9/6 9/9  <b>submitted</b> [2] 12/25 13/13  <b>supervision</b> [1] 14/11  <b>swabs</b> [1] 10/17  <b>swear</b> [1] 6/8  <b>sworn</b> [2] 5/5 7/4</p>
<p><b>J</b></p> <p><b>Jacob</b> [1] 2/23  <b>jail</b> [2] 11/5 11/9  <b>Jake</b> [1] 5/14  <b>JAMES</b> [1] 2/15  <b>job</b> [1] 11/6  <b>JOHN</b> [1] 2/7  <b>JORDAN</b> [1] 2/4  <b>JUDICIAL</b> [1] 1/1  <b>JURORS</b> [5] 2/1 6/2 12/3 12/23 13/6  <b>JURY</b> [15] 1/4 2/22 4/3 5/14 5/15 5/19 6/10 7/5 7/18 12/8 12/10 12/11 13/3 13/9 15/5  <b>just</b> [4] 10/21 11/1 11/4 11/20</p>	<p><b>minutes</b> [1] 10/7  <b>misdemeanor</b> [1] 12/13  <b>mom</b> [1] 8/22  <b>more</b> [1] 13/6  <b>morning</b> [1] 5/13  <b>mother</b> [2] 10/10 11/12  <b>mouth</b> [3] 9/15 9/16 9/17  <b>Mr.</b> [4] 6/25 8/1 8/2 13/5  <b>Mr. Cook</b> [1] 8/2  <b>Mr. District</b> [1] 13/5  <b>Mr. Foreperson</b> [1] 6/25  <b>Mr. McDonald</b> [1] 8/1  <b>my</b> [15] 5/14 6/5 7/16 8/22 8/23 9/16 10/10 10/24 10/25 11/2 11/10 11/12 12/2 12/22 14/10</p>	<p><b>P</b></p> <p><b>particular</b> [1] 11/18  <b>pending</b> [1] 6/10  <b>penetrate</b> [1] 9/20  <b>penetration</b> [3] 9/6 9/9 9/19  <b>penis</b> [3] 9/15 9/16 9/17  <b>person</b> [5] 7/18 8/6 8/7 15/9 15/11  <b>persons</b> [1] 13/2  <b>pertaining</b> [1] 6/15  <b>photograph</b> [3] 4/6 7/19 8/7  <b>place</b> [1] 14/9  <b>Plaintiff</b> [1] 1/8  <b>Please</b> [2] 6/6 6/20  <b>police</b> [3] 7/24 10/9 11/7  <b>preceding</b> [1] 15/4  <b>prepare</b> [1] 13/11  <b>presence</b> [1] 12/9  <b>present</b> [2] 2/1 2/22  <b>presentation</b> [1] 12/23  <b>presented</b> [1] 12/8  <b>presenting</b> [1] 5/15  <b>previously</b> [1] 13/12  <b>Print</b> [1] 15/20  <b>prison</b> [1] 11/17  <b>proceed</b> [1] 6/24  <b>proceedings</b> [6] 1/20 5/7 12/5 13/15 14/8 14/13  <b>program</b> [1] 15/15  <b>prohibited</b> [1] 12/6  <b>proposed</b> [4] 4/4 5/17 6/4 13/12  <b>provided</b> [1] 6/1  <b>public</b> [1] 15/15  <b>punishable</b> [2] 12/13 12/15  <b>Pursuant</b> [1] 15/2  <b>put</b> [3] 9/15 9/16 9/17</p>	<p><b>S</b></p> <p><b>S-H-A-W-N</b> [1] 6/22  <b>Sam</b> [1] 7/22  <b>SAMUEL</b> [9] 1/10 1/10 5/16 6/17 7/12 8/7 8/13 9/1 13/7  <b>saying</b> [1] 8/21  <b>seated</b> [1] 6/13  <b>secret</b> [1] 12/6  <b>Secretary</b> [2] 2/5 2/6  <b>security</b> [2] 15/8 15/11  <b>Seeing</b> [2] 12/4 12/25  <b>Seek</b> [1] 5/11  <b>September</b> [5] 1/15 2/1 5/1 14/15 15/18  <b>sex</b> [3] 9/6 9/9 9/14  <b>sexual</b> [5] 5/21 6/16 10/14 10/19 13/8  <b>shall</b> [1] 6/10  <b>SHARON</b> [1] 2/14  <b>SHAWN</b> [5] 3/3 6/5 6/22 7/3 7/10  <b>she</b> [1] 10/11  <b>shorthand</b> [2] 14/7 14/9  <b>Showing</b> [1] 7/17  <b>Signature</b> [1] 15/18  <b>sister</b> [3] 7/16 8/24 10/24  <b>sister's</b> [1] 8/8  <b>situation</b> [2] 11/10 11/11  <b>so</b> [8] 6/11 8/19 9/8 10/1 10/2 10/23 10/23 11/5  <b>social</b> [2] 15/8 15/11  <b>solemnly</b> [1] 6/8  <b>sorry</b> [1] 9/7  <b>specific</b> [1] 15/13  <b>spell</b> [1] 6/21  <b>spit</b> [1] 9/25  <b>ss</b> [1] 14/3  <b>state</b> [7] 1/7 5/16 5/23 6/20 14/3 15/13 15/16  <b>statement</b> [1] 12/9  <b>statute</b> [1] 6/2  <b>stay</b> [1] 11/4</p>	<p><b>T</b></p> <p><b>TABRON</b> [1] 2/5  <b>take</b> [2] 10/5 10/17  <b>taken</b> [4] 1/14 8/23 10/15 10/24  <b>talk</b> [1] 9/7  <b>talking</b> [1] 8/7  <b>tell</b> [1] 9/3  <b>testified</b> [1] 7/6  <b>testify</b> [1] 7/5  <b>testimony</b> [2] 6/8 6/15  <b>Thank</b> [2] 12/20 13/14  <b>That's</b> [1] 9/8  <b>them</b> [1] 6/21  <b>then</b> [1] 9/25  <b>there</b> [1] 12/3  <b>thereafter</b> [1] 14/9  <b>THERESA</b> [1] 2/9  <b>these</b> [1] 12/5  <b>thing</b> [2] 11/4 11/14  <b>thought</b> [1] 11/2  <b>time</b> [5] 8/14 8/21 11/23 13/2 14/9  <b>Title</b> [1] 15/22  <b>to-wit</b> [1] 15/13  <b>today</b> [1] 6/14  <b>told</b> [1] 10/25  <b>took</b> [1] 14/7  <b>transcribe</b> [1] 5/6  <b>transcribed</b> [1] 14/10  <b>transcript</b> [3] 1/20 14/11 15/5  <b>transpired</b> [1] 12/7  <b>true</b> [2] 13/6 14/12  <b>truth</b> [6] 6/10 6/11 6/11 7/5 7/5 7/6  <b>Tuesday</b> [1] 1/15  <b>two</b> [2] 10/1 13/8</p>
<p><b>K</b></p> <p><b>KATHY</b> [1] 2/8  <b>KERCEL</b> [1] 2/13  <b>kid</b> [1] 11/13  <b>kids</b> [1] 10/1  <b>kit</b> [2] 10/14 10/20  <b>KLINCK</b> [1] 2/14  <b>knew</b> [1] 11/14  <b>know</b> [8] 7/12 7/15 8/5 9/22 9/24 11/2 11/12 11/13</p>	<p><b>N</b></p> <p><b>name</b> [5] 5/14 6/21 7/12 8/5 15/20  <b>near</b> [1] 8/19  <b>NEVADA</b> [10] 1/2 1/7 1/14 5/1 5/16 5/23 8/17 10/23 14/3 14/14  <b>New</b> [1] 10/23  <b>next</b> [2] 8/18 11/23  <b>nine</b> [2] 8/12 9/5  <b>no</b> [7] 1/9 1/9 1/25 5/10 11/11 12/4 12/25  <b>not</b> [3] 9/22 11/6 15/8  <b>notes</b> [1] 14/10  <b>nothing</b> [4] 6/11 7/6 11/2 11/18  <b>Notice</b> [1] 5/11  <b>November</b> [1] 11/25  <b>now</b> [6] 6/9 7/23 9/14 9/19 9/25 10/2  <b>NRS</b> [2] 15/2 15/13  <b>number</b> [8] 5/15 5/18 6/4 7/18 13/9 15/5 15/8 15/11  <b>Number 3</b> [1] 7/18</p>	<p><b>Q</b></p> <p><b>questioning</b> [1] 12/2  <b>questions</b> [2] 12/3 12/24</p>	<p><b>R</b></p> <p><b>RACHEL</b> [1] 2/5  <b>raise</b> [1] 6/6  <b>recall</b> [3] 8/1 10/12 10/14</p>	<p><b>U</b></p> <p><b>UMC</b> [5] 8/18 8/19 10/11 10/12 10/19  <b>under</b> [4] 5/21 6/16 13/9 14/10  <b>undersigned</b> [1] 15/4  <b>understand</b> [3] 6/18 10/1 12/18  <b>up</b> [3] 10/23 11/7 12/13  <b>upon</b> [1] 6/9  <b>us</b> [5] 8/23 8/24 9/3 12/7 13/13</p>
<p><b>L</b></p> <p><b>ladies</b> [2] 5/13 11/15  <b>Las</b> [4] 1/14 5/1 8/17 14/14  <b>last</b> [2] 6/21 8/5  <b>law</b> [3] 5/25 12/5 15/13  <b>left</b> [1] 10/22  <b>like</b> [7] 8/22 9/5 9/6 9/9 9/25 10/7 11/8  <b>little</b> [2] 11/1 11/9  <b>located</b> [1] 8/17  <b>long</b> [1] 10/5  <b>looked</b> [1] 9/25</p>	<p><b>O</b></p> <p><b>obtained</b> [1] 12/10  <b>occur</b> [1] 9/12  <b>occurred</b> [1] 10/3  <b>occurring</b> [1] 12/9  <b>off</b> [1] 11/4</p>	<p><b>M</b></p> <p><b>made</b> [1] 12/9  <b>man</b> [1] 7/12  <b>marked</b> [3] 5/17 6/3 7/17  <b>MARYLEE</b> [1] 2/16  <b>matter</b> [2] 12/25 14/8  <b>may</b> [4] 6/13 6/24 7/1 12/15  <b>McCord</b> [7] 1/25 5/4</p>	<p><b>V</b></p> <p><b>Vegas</b> [4] 1/14 5/1 8/17 14/14  <b>versus</b> [1] 5/16  <b>Villani</b> [2] 2/23 5/14</p>	<p><b>V</b></p> <p><b>Vegas</b> [4] 1/14 5/1 8/17 14/14  <b>versus</b> [1] 5/16  <b>Villani</b> [2] 2/23 5/14</p>

<p><b>V</b></p> <p><b>vote [1]</b> 13/6</p> <hr/> <p><b>W</b></p> <p><b>waiting [1]</b> 5/10  <b>WALKER [1]</b> 2/3  <b>want [1]</b> 8/18  <b>we're [1]</b> 8/7  <b>well [2]</b> 9/7 9/25  <b>went [5]</b> 10/11 10/19  11/2 11/5 11/17  <b>were [7]</b> 8/11 8/13 8/16  8/21 9/10 11/23 14/10  <b>WHALEN [1]</b> 2/16  <b>what's [2]</b> 7/10 7/17  <b>When's [1]</b> 11/23  <b>Where [3]</b> 8/16 9/12  9/20  <b>Who [1]</b> 7/21  <b>whole [2]</b> 6/11 7/5  <b>why [3]</b> 8/4 8/21 11/20  <b>will [2]</b> 5/15 5/16  <b>wit [1]</b> 15/13  <b>within [1]</b> 5/22  <b>witness [2]</b> 6/5 12/3  <b>WITNESSES [1]</b> 3/1  <b>written [1]</b> 6/1</p> <hr/> <p><b>Y</b></p> <p><b>Yeah [1]</b> 11/19  <b>years [5]</b> 5/21 6/16  10/22 11/1 13/9  <b>Yes [18]</b>  <b>York [1]</b> 10/23  <b>you [44]</b>  <b>you're [3]</b> 6/9 10/2  12/20  <b>your [10]</b> 6/6 6/20 7/10  8/8 9/15 9/17 11/6  11/11 11/24 13/1</p>				
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1 **OPPS**  
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8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA,  
11 Plaintiff,

12 -vs-

13 **SAMUEL MCDONALD,**  
14 **#1753770**

15 Defendant.

CASE NO: **C-18-334954-1**

DEPT NO: **X**

16 **STATE'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL**

17 **PRODUCTION OF DISCOVERY AND BRADY MATERIAL**

18 DATE OF HEARING: **DECEMBER 2, 2019**  
19 TIME OF HEARING: **8:30 AM**

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
21 District Attorney, through GENEVIEVE CRAGGS, Deputy District Attorney, and hereby  
22 submits the attached Points and Authorities in this State's Response to Defendant's Motion to  
23 Compel Production of Discovery and Brady Material.

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

27 //

28 //

1 **POINTS AND AUTHORITIES**

2 **ARGUMENT**

3 **I. LAW GOVERNING DISCOVERY**

4 Defendant has made a number of discovery requests which are purportedly based upon  
5 case law within and without the State of Nevada. Some of these items have already been  
6 provided to defense or are not disputed by the State. However, the majority of the requests  
7 are not supported by the applicable statutes and case law and far exceed the scope of the State's  
8 discovery requirements.

9 The State intends to comply with all of the requests that are within the ambit of  
10 Nevada's discovery statutes and the constitutional requirements imposed by Brady v.  
11 Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963), and its progeny. The State objects to all requests  
12 that fall outside of those legal requirements. Accordingly, this Court should deny Defendant's  
13 Motion to the extent that Defendant's requests exceed that which is required of the State under  
14 Nevada's discovery statutes and Brady and its progeny.

15 **A. Discovery Required By Statute**

16 The State has no objection to compliance with the provisions and requirements outlined  
17 in the criminal discovery statutes. See NRS 174.233, et seq.

18 **B. Disclosure Required By Brady V. Maryland**

19 The State recognizes, and readily accepts, its continuing disclosure obligations as  
20 defined in Brady, 373 U.S. 83, 83 S. Ct. 1194, and its interpretive progeny. Pursuant to Brady,  
21 the State is required to disclose evidence that is favorable to the defense if it is material either  
22 to guilt or punishment. Lay v. State, 116 Nev. 1185, 1194, 14 P.3d 1256, 1262 (2000). The  
23 State's failure to do so violates the Defendant's due process rights, regardless of the State's  
24 motive. Id., 14 P.3d at 1262. Following a specific discovery request, evidence is deemed  
25 material if there is a reasonable possibility that the evidence would have affected the outcome,  
26 i.e., that the evidence undermines the confidence of the outcome in the proceeding. Id., 14  
27 P.3d at 1262.

28 //

1           “The character of a piece of evidence as favorable will often turn on the context of the  
2 existing or potential evidentiary record.” Id., 14 P.3d at 1262. Importantly, *it is the*  
3 *prosecutor’s responsibility to determine whether evidence is material and should be disclosed.*  
4 Id., 14 P.3d at 1262 (citing Kyles v. Whitley, 514 U.S. 419, 439–440, 115 S. Ct. 1555 (1995)).  
5 As such, a prosecutor who is “anxious about tacking too close to the wind will disclose a  
6 favorable piece of evidence.” Lay, 116 Nev. at 1194, 14 P.3d at 1262. And, “[t]his is as it  
7 should be [because] [s]uch disclosure will serve to justify trust in the prosecutor as ‘the  
8 representative . . . of a sovereignty . . . whose interest . . . in a criminal prosecution is not that  
9 it shall win a case, but that justice shall be done.’” Id., 14 P.3d at 1262 (quoting Berger v.  
10 United States, 295 U.S. 78, 88, 55 S. Ct. 629 (1935)). Understandably, however, Brady does  
11 not impose upon the State an obligation “to disclose evidence which is available to the  
12 defendant from other sources, including diligent investigation by the defense.” Steese v. State,  
13 114 Nev. 479, 495, 960 P.2d 321, 331 (1998).

14           The State acknowledges that its Brady obligations not only apply to materials in its  
15 possession, but also to materials in the hands of its agents. Nevertheless, rather than being  
16 accountable for all evidence in the hands of all State agencies as Defendant seemingly claims,  
17 the State is only accountable for evidence in the hands of State agencies who are actually acting  
18 on its behalf in the investigation and prosecution of the case. See Kyles, 514 U.S. at 437, 115  
19 S. Ct. at 1567 (stating “the individual prosecutor has a duty to learn of any favorable evidence  
20 known to the others *acting on the government’s behalf in the case, including the police*”  
21 (emphasis added)); see also Carriger v. Stewart, 132 F.3d 463, 479 (9<sup>th</sup> Cir. 1997) (noting “the  
22 prosecution has a duty to learn of any exculpatory evidence known to others acting on the  
23 government’s behalf”). Moreover, “[w]hile the prosecution must disclose any information  
24 within the possession or control of law enforcement personnel, it has no duty to volunteer  
25 information that it does not possess or of which it is unaware.” United States v. Hsieh Hui  
26 Mei Chen, 754 F.2d 817, 824 (9<sup>th</sup> Cir. 1985) (internal citations omitted). Further, the State has  
27 no “duty to compile information or pursue an investigative lead simply because it could  
28 conceivably develop evidence helpful to the defense. . . .” Evans v. State, 117 Nev. 609, 627,

1 28 P.3d 498, 511 (2001).

2 While the State readily acknowledges its discovery obligations under Brady and  
3 applicable Nevada discovery statutes, the State's discovery obligations under Brady and  
4 Nevada law are not without limit, however. "There is no general constitutional right to  
5 discovery in a criminal case, and Brady did not create; . . . 'the Due Process Clause has little  
6 to say regarding the amount of discovery which the parties must be afforded. . . .'"  
7 Weatherford v. Bursey, 429 U.S. 545, 559, 97 S. Ct. 837, at 845-846 (1977) (quoting Wardius  
8 v. Oregon, 412, U.S. 470, 474 (1973)). Logically, then, courts are limited in their authority to  
9 order the disclosure of evidence beyond what is statutorily mandated. See Franklin v. District  
10 Court, 85 Nev. 401, 402-403, 455 P.2d 919, 920-921(1969) (stating "[t]he new criminal code  
11 does deal with criminal discovery and those provisions represent the legislative intent with  
12 respect to the scope of allowable pre-trial discovery and are not lightly to be disregarded"  
13 (internal citation omitted)).

14 The Nevada Supreme Court, in Riddle v. State, 96 Nev. 589, 590, 613 P.2d 1031, 1032  
15 (1980), reaffirmed the strictures of the provisions of our discovery statutes:

16 The trial court is vested with the authority to order the discovery and inspection  
17 of materials in the possession of the State. The exercise of the court's discretion  
18 however is **predicated on a showing that the evidence sought is material to  
19 the presentation of the defense and the existence of the evidence is known  
20 or, by the exercise of due diligence may become known to the District  
21 Attorney.**

22 (Emphasis added). Further, in addressing the State's constitutional obligations that may fall  
23 outside the discovery statutes, the Court explained as follows:

24 Brady and its progeny require a prosecutor to disclose evidence favorable to the  
25 defense when that evidence is material either to guilt or to punishment. . . . In  
26 other words, evidence is material if there is a reasonable probability that the  
27 result would have been different if the evidence had been disclosed. . . . In  
28 determining its materiality, the undisclosed evidence must be considered  
collectively, not item by item. [T]he character of a piece of evidence as  
favorable will often turn on the context of the existing or potential evidentiary  
record. . . . In sum, there are three components to a Brady violation: the evidence  
at issue is favorable to the accused; the evidence was withheld by the state, either  
intentionally or inadvertently; and prejudice ensued, i.e., the evidence was  
material.

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1 Mazzan v. Warden, 116 Nev. 48, 66-67, 993 P.2d 25, 36-37 (2000) (citing Jimenez v. State,  
2 112 Nev. 610, 618-19, 918 P.2d 687, 692 (1996); Kyles, 514 U.S. at 436, 115 S.Ct. 1555;  
3 Strickler v. Greene, 527 U.S. 263, 119 S.Ct. 1936, 1948, (1999), *Id.* at 66, 36 (emphasis added)  
4 (internal quotation marks omitted).

5 Under Brady and its progeny, the defense cannot require that the prosecution conduct  
6 further investigation to uncover purported exculpatory evidence that it does not possess. The  
7 defendant is not entitled to all evidence known or believed to exist which is or may be  
8 favorable to the accused, or which pertains to the credibility of the prosecution's case.  
9 Specifically, in United States v. Gardner, 611 F.2d 770, 774-775 (9th Cir. 1980), the Ninth  
10 Circuit aptly explained that

11 . . . the prosecution does not have a constitutional duty to disclose every bit of  
12 information that might affect the jury's decision; it need only disclose  
13 information favorable to the defense that meets the appropriate standard of  
14 materiality.

15 See also United States v. Sukumolachan, 610 F.2d 685, 687 (9th Cir. 1980) (stating  
16 Brady does not require prosecution to create exculpatory material). Notably, under federal  
17 law, Brady does not create any pretrial discovery privileges not contained in the Federal Rules  
18 of Criminal Procedure (which served as the model for Nevada law). See United States v.  
19 Flores, 540 F.2d 432, 438 (9th Cir. 1980).

20 Brady and its progeny, moreover, do not support requests made for handwritten notes.  
21 Such requests are typically general and overbroad and are blanket requests for any and all  
22 notes ever taken by any person who had anything to do with the case. Further, even when a  
23 specific request is made, notes do not need to be provided when they are not exculpatory.  
24 Homick v. State, 112 Nev. 304, 315, 913 P.2d 1280, 1288 (1996). Even if specific, the State  
25 is only obligated to supply any exculpatory information contained within any notes that has  
26 not been previously provided to defense through the generation of other reports. See *id.*, 913  
27 P.2d at 1288.

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1 Based upon the foregoing, this Court is respectfully requested to continue to adhere to  
2 the clear legislative scheme on criminal discovery embodied in Nevada's statutes, the  
3 interpretation thereof by the Supreme Court of this State, and the opinions of the United States  
4 Supreme Court in this area.

5 **C. State's Request For Discovery.**

6 Pursuant to NRS 174.245 –

7 1. Except as otherwise provided in NRS 174.233 to 174.295, inclusive, at the  
8 request of the prosecuting attorney, the defendant shall permit the  
prosecuting attorney to inspect and to copy or photograph any:

9 (a) Written or recorded statements made by a witness the defendant  
10 intends to call during the case in chief of the defendant, or copies  
thereof, within the possession, custody or control of the defendant, the  
11 existence of which is known, or by the exercise of due diligence may  
become known, to the defendant;

12 (b) Results or reports of physical or mental examinations, scientific  
13 tests or scientific experiments that the defendant intends to introduce  
in evidence during the case in chief of the defendant, or copies thereof,  
14 within the possession, custody or control of the defendant, the  
existence of which is known, or by the exercise of due diligence may  
15 become known, to the defendant; and

16 (c) Books, papers, documents or tangible objects that the defendant  
17 intends to introduce in evidence during the case in chief of the  
defendant, or copies thereof, within the possession, custody or control  
18 of the defendant, the existence of which is known, or by the exercise  
of due diligence may become known, to the defendant.

19 2. The prosecuting attorney is not entitled, pursuant to the provisions of this  
section, to the discovery or inspection of:

20 (a) An internal report, document or memorandum that is prepared by  
21 or on behalf of the defendant or the defendant's attorney in connection  
with the investigation or defense of the case.

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

25 As such, the State hereby requests any discovery from Defendant subject to  
26 disclosure under NRS 174.245.

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**CONCLUSION**

It is clear from a reading of the above-discussed authorities that neither the Federal Constitution, nor the statutes of Nevada as interpreted, require or even allow the over broad discovery requested by Defendant. To the extent that Defendant's requests comply with the mandates of the Constitution and applicable statutes, and to the extent that the State has access to such materials, the State has complied, and will continue to comply, with such requests. Therefore, Defendant's Motion should be denied, and to the extent this Court issues a discovery order, such an order should only direct the State to comply with Nevada's discovery statutes as well as Brady and its progeny.

DATED this 27th day of November, 2019.

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

BY /s/ GENEVIEVE CRAGGS  
GENEVIEVE CRAGGS  
Deputy District Attorney  
Nevada Bar #013469

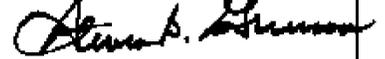
**CERTIFICATE OF SERVICE**

I hereby certify that service of the above and foregoing was made this 27th day of NOVEMBER, 2019, to:

TEGAN MACHNICH, DPD  
mcmahaac@ClarkCountyNV.gov

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

hjc/SVU



1 **OPPS**  
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12  
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15

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

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,

12 -vs-

13 SAMUEL MCDONALD,  
14 #1753770

15 Defendant.

CASE NO: C-18-334954-1

DEPT NO: X

16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS FOR**  
17 **FAILURE TO PRESERVE EVIDENCE, MOTION FOR SPECIAL JURY**  
18 **INSTRUCTION [SANBORN MOTION], OR MOTION IN LIMINE TO**  
19 **EXCLUDE SCAN EXAMINATION**

20 DATE OF HEARING: **DECEMBER 2, 2019**  
21 TIME OF HEARING: **8:30 AM**

22 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
23 District Attorney, through GENEVIEVE CRAGGS, Deputy District Attorney, and hereby  
24 submits the attached Points and Authorities in this State's Opposition to Defendant's Motion  
25 to Dismiss for Failure to Preserve Evidence, Motion for Special Jury Instruction [Sanborn  
26 Motion], or Motion in Limine to Exclude Scan Examination.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 On December 28, 2001, S.B. was nine years old and staying with Defendant at a  
4 location near University Medical Center. Defendant was dating S.B.'s older sister. Due to  
5 some issues with his mother, his older sister had agreed to have S.B. and his mother stay with  
6 her. On that date, Defendant orally and anally penetrated S.B. with his penis. The rape lasted  
7 about 15 to 20 minutes, and S.B. told his mother about it when she got home. S.B.'s mother  
8 took him to UMC where a nurse completed a Sexual Assault Kit ("SAK") including intimate  
9 swabs. S.B.'s SCAN examination indicated that he had "multiple superficial lacerations just  
10 deep enough to ooze a small amount of blood extending radially from the rectum. This is  
11 consistent with rectal penetration." S.B. believed that his mother was following up with his  
12 case and the family eventually moved to New York.

13 In March of 2017, as a result of funding received pursuant to the Sexual Assault Kit  
14 Initiative ("SAKI") grant to test all untested rape kits, S.B.'s SAK (which had gone untested)  
15 was tested by Bode Cellmark Forensics. An unknown male DNA profile was developed from  
16 the sperm fraction of S.B.'s rectal swabs and uploaded into the Combined DNA Index System  
17 ("CODIS").

18 On August 14, 2017, LVMPD received a CODIS hit returning to Defendant. On January  
19 18, 2018, LVMPD detectives executed a search warrant and obtained a buccal swab from  
20 Defendant. The buccal swab obtained was compared to the unknown DNA profile developed  
21 by Bode Cellmark Forensics. LVMPD's forensic lab determined that the DNA profile from  
22 Defendant's buccal matched the DNA profile from S.B.'s SAK rectal swabs. The possibility of  
23 randomly selecting an unrelated individual from the general population having a DNA profile  
24 that is consistent with the deduced DNA profile obtained is approximately 1 in 16.4 trillion.

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1 ARGUMENT

2 **I. DEFENDANT DOES NOT MEET HIS BURDEN TO SHOW THAT A**  
3 **DISMISSAL IS WARRANTED**

4 Defendant's request to dismiss this case is largely based upon an alleged failure to  
5 "preserve evidence." However, throughout his motion Defendant fails to distinguish between  
6 collection and preservation of evidence. *See Daniels v. State*, 956 P.2d 111, 114-115 (1998).

7 In order to establish a due process violation resulting from the State's *loss or*  
8 *destruction of evidence*, a defendant must demonstrate either (1) that the state lost the evidence  
9 in bad faith; or (2) that the loss of evidence unduly prejudiced the defendant's case **and** the  
10 evidence possessed an exculpatory value that was apparent before the evidence was destroyed.  
11 *Sheriff, Clark County v. Warner*, 112 Nev. 1234, 1239-1240 (1996); *citing State v. Hall*, 105  
12 Nev. 7, 9 (1989). Under these circumstances, it is Defendant's burden to show "that it could  
13 be reasonably anticipated that the evidence sought would be exculpatory and material to the  
14 defense." *Sparks v. State*, 104 Nev. 316 (1988), *citing Boggs v. State*, 95 Nev. 911 (1979).

15 Regarding *gathering potential evidence* in a case, law enforcement has no duty to  
16 collect all potential evidence in an investigation. *Randolph v. State*, 117 Nev. 970, 987 (2001);  
17 *Jackson v. State*, 128 Nev. 598 (2012). Failure to gather evidence may result in sanctions, but  
18 only under very limited circumstances. *Id.* First, it is a defendant's burden to show that the  
19 potential evidence at issue was material, meaning that that there is a reasonable probability  
20 that the result of the proceedings would be different if the evidence was available. *Randolph*  
21 *citing Daniels v. State*, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998). Only if a defendant can  
22 meet that burden does the court need to determine whether such failure resulted from mere  
23 negligence, gross negligence or bad faith. *Id.* If it is a case of mere negligence, no sanctions  
24 are imposed. If gross negligence is shown, the defense is entitled to a presumption that the  
25 evidence would have been unfavorable to the State. Finally, if bad faith is shown dismissal  
26 may be warranted depending on the case. *Id.*

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1 In Randolph, the defendant robbed and murdered a bartender in Las Vegas. A witness  
2 testified that early in the morning on May 5, 1998, Randolph and Garner returned to a trailer  
3 where the two had been earlier in the evening smoking crack cocaine. 117 Nev. at 986. The  
4 trailer was a location where people regularly came to use cocaine. Id. Upon his return, Garner  
5 changed out of a brown shirt and brown pants and put on a green shirt and green pants. Id.  
6 After Garner's arrest, the green shirt and pants were impounded at the city jail and later tested  
7 for the presence of blood. Id. The test was negative. Id. Garner's shoes were not impounded or  
8 tested. Id. Although investigators were aware that Garner had changed out of brown clothes  
9 after the crimes, they never searched for the clothes. Id. The trunk of Garner's car contained a  
10 pile of clothing, but investigators did not look through the clothing to see if it included the  
11 brown shirt and pants. Id.

12 On appeal, Randolph argued that it was error for the court to reject his proposed jury  
13 instruction that stated because the State failed to seize and test brown clothing worn by Garner  
14 on the night of the crimes "for the existence of blood evidence, the clothing is irrefutably  
15 presumed to have contained blood evidence." Id. at 986. Randolph asserted that the State failed  
16 to gather potentially exculpatory evidence because a finding of blood on Garner's clothing or  
17 shoes would have supported Randolph's defense that Garner was the shooter. Id. at 987.  
18 Randolph argued that he therefore had a right to the proposed jury instruction. Id. The Court  
19 stated that if the evidence was material and the police acted out of gross negligence or bad  
20 faith in not preserving it, Randolph would have had a right to an instruction that the ungathered  
21 evidence was presumed to be unfavorable to the State. Id. However, the Court concluded that  
22 Randolph did not show that the ungathered evidence was material. Id.

23 The Court found that if testing of Garner's clothing or shoes had revealed the victim's  
24 blood, it was possible that Randolph might not have received a death sentence. Id. However,  
25 Randolph did not demonstrate a reasonable probability that such testing would have revealed  
26 any blood. Id. The Court found that Randolph offered no evidence to corroborate his allegation  
27 that Garner was the shooter, and the possibility that testing Garner's clothing and shoes would  
28 have been favorable to his case was mere speculation. Id. The Court went on to opine that even

1 assuming, *arguendo*, the evidence was material, the failure to collect it was “at worst”  
2 negligent. *Id.* at 988. First, Randolph did not show that police could have collected the brown  
3 shirt and pants, he simply assumed that a search of the trailer or the clothing in the trunk of  
4 Garner's car would have uncovered them. *Id.* Second, Randolph did not show that the potential  
5 evidentiary significance of Garner's shoes, which were available to police, was so obvious that  
6 it was gross negligence not to impound and test them. *Id.* Thus, the Court held that even  
7 assuming the evidence was material and police were negligent in not gathering it, Randolph's  
8 remedy was to examine witnesses regarding the deficiency of the investigation, and the record  
9 showed that he did so. *Id.*

10 Likewise, in *Jackson v. State*, 128 Nev. 598 (2012), the defense brought a similar  
11 motion claiming that the State failed to preserve all video footage that defense believed  
12 relevant to the proceedings. Defendant Jackson went to a tavern intending to rob the bar. *Id.*  
13 at 602. Jackson coerced employee Duffy into helping him try to disable the security cameras.  
14 *Id.* During the robbery, Jackson forced Duffy into the restroom and shot Duffy. *Id.* The two  
15 men struggled, Jackson fled, and Duffy called police. *Id.* The bar’s surveillance manager was  
16 contacted by police and offered to provide a complete video for the evening. *Id.* The police  
17 declined and asked him to prepare a composite video including only frames that showed  
18 Jackson or Duffy, which resulted in omission of 12 to 15 hours of recordings from the  
19 surveillance cameras. *Id.*

20 On appeal, Jackson claimed that the video surveillance was erroneously admitted. *Id.*  
21 at 613. The Supreme Court disagreed and found that the exculpatory value of the omitted video  
22 was minimal. *Id.* Jackson suggested that Duffy was complicit in the robbery and that the  
23 omitted footage might somehow prove that. *Id.* The Court found that argument lacked merit  
24 because the State provided all video footage that featured Duffy and Jackson, including  
25 footage of their interaction before and during the robbery. *Id.* The surveillance manager also  
26 testified that the omitted video did not contain any relevant footage. *Id.* Given that the omitted  
27 footage had no apparent exculpatory value, the Court held that the evidence did not affect the  
28 result of the trial, especially in light of the substantial evidence presented by the State. *Id.* at

1 614. The Court also found that Jackson did not establish bad faith, and nothing in the record  
2 on appeal indicated bad faith. Id. According to the Court, the decision to compile only parts  
3 of the surveillance recordings appeared to be the product of concern for efficiency, not bad  
4 faith. Id. Thus, the Court held that the State's failure to gather the full video surveillance  
5 footage did not result in injustice and the district court did not err by denying Jackson's motion  
6 to strike the video evidence or grant a mistrial. Id.

7 Here, Defendant cites the following “unpreserved” evidence that he believes would be  
8 material to his case: (1) a legible version of the SCAN exam; and (2) any accompanying  
9 photographic or video evidence.<sup>1</sup>

#### 10 1. SCAN Exam

11 Defendant claims that the State has failed to preserve the SCAN exam and thus acted  
12 with gross negligence. The appropriate test to be applied is whether either (1) the state lost the  
13 evidence in bad faith; or (2) that the loss of evidence unduly prejudiced the defendant’s case  
14 **and** the evidence possessed an exculpatory value that was apparent before the evidence was  
15 destroyed. Sheriff, Clark County v. Warner, 112 Nev. 1234, 1239-1240 (1996); *citing State v.*  
16 Hall, 105 Nev. 7, 9 (1989). Defendant does not put forth a coherent argument addressing  
17 either of these two prongs. Rather, Defendant’s argument is essentially that the evidence was  
18 “solely” in the State’s possession, and therefore this was bad faith on the part of the State.

19 The State did not fail to preserve the SCAN exam. In the State’s possession is a copy  
20 of the SCAN exam that was turned over to the defense on November 29, 2018. S.B.’s SCAN  
21 exam was kept in the Las Vegas Metropolitan Police Department’s archives. When the case  
22 was reopened due to new evidence and the cooperation of S.B., detectives requested the  
23 archived records. The records are kept in a separate location, as either hard copies or on  
24 microfiche. When these records were requested by detectives, the copies of the records were  
25 scanned into a database. The copy that defense has is the same copy that LVMPD and the State  
26 has in its possession. This is the condition in which the hospital turned over the records to the  
27 police when they were requested in 2001. The State has now gone directly to the hospital to

28 <sup>1</sup> The SCAN exam and any photos or other evidence accompanying the exam have been subpoenaed from Sunrise  
Hospital directly but have yet to be received.

1 see if there are any other copies of the records available at Defendant's request.

2 The State did in fact preserve the evidence they received from Sunrise Hospital and did  
3 so for over seventeen (17) years. Simply because some portions of the records provided by the  
4 hospital are hard to read, this does not constitute bad faith on the part of the State. The State  
5 is not able to dictate to Sunrise Hospital the legibility or types of copies that are turned over  
6 by the hospital when subpoenaed. The State preserved everything for seventeen (17) years  
7 that they were provided and turned it over in a timely manner. This is far from bad faith.

8 Additionally, Defendant has not met its burden to show that the "loss of evidence"  
9 unduly prejudiced his case and can certainly not show that there is exculpatory value. On the  
10 contrary, the SCAN exam is extremely clear about the results. The doctor notes anorectal  
11 findings and definite evidence of sexual abuse. Additionally, the SCAN states, "an  
12 examination of the rectum revealed multiple superficial lacerations just deep enough to ooze  
13 a small amount of blood extending radially from the rectum. This is consistent with rectum  
14 penetration."

15 Defendant cannot show that if some of the notes within the SCAN were clearer, that  
16 the information would be at all exculpatory and material to the defense. Defendant must show  
17 there "is a reasonable probability that the result of the proceedings would be different if the  
18 evidence was available." Randolph citing Daniels v. State, 114 Nev. 261, 267, 956 P.2d 111,  
19 115 (1998). The SCAN exam shows that the nine-year-old child had been penetrated rectally.  
20 Defendant has not presented what an expert could possibly say to discount this fact. DNA  
21 from Defendant was found inside of the nine-year old's rectum. The possibility of randomly  
22 selecting an unrelated individual from the general population having a DNA profile that is  
23 consistent with the deduced DNA profile obtained is approximately 1 in 16.4 trillion. It is  
24 difficult for the State to imagine what these notes could show that would possibly exculpate  
25 Defendant under these circumstances such that dismissal is appropriate.

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1           **2. Possible Photographs and Video**

2           While it appears that neither photographs nor a video ever existed to be collected by  
3 law enforcement, Defendant has not met his burden in that regard either. It is a defendant’s  
4 burden to show that the potential evidence at issue was material, meaning that that there is a  
5 reasonable probability that the result of the proceedings would be different if the evidence was  
6 available. Randolph citing Daniels v. State, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998).  
7 Defendant has not made any arguments to this point, but simply stated he would like to hire  
8 an expert to rebut the findings.

9           It appears that there were no photographs taken according to the SCAN exam. The  
10 doctor notes that “a genital examination was performed using video colposcopy which showed  
11 a normal male...” This appears to be a procedure used to examine the genitals as opposed to  
12 a video that was recorded and preserved by the hospital. However, there is no evidence that if  
13 photographs or video had been taken, they would have been at all material or exculpate  
14 Defendant. Defendant has failed to show the materiality or even what potential evidence these  
15 photographs, or video, would have shown that is not clear from the SCAN exam and cannot  
16 meet the first Daniels prong. Regardless, it is unknown whether photographs or a video were  
17 taken, and failure to collect evidence that did not exist is certainly not negligence.

18           To the contrary, based on the diagram within the SCAN exam and the notations by the  
19 attending physician, any photographs would only have been helpful to the State’s case, as there  
20 was clearly rectal tearing. It is difficult for the State to imagine what these photographs and  
21 video could show that would possibly exculpate Defendant under these circumstances such  
22 that dismissal is appropriate. Therefore, Defendant’s claim that the case should be dismissed  
23 because photographs/video was not obtained lacks merit.

24           **II. DEFENDANT IS NOT ENTITLED TO A SANBORN INSTRUCTION**

25           Defendant is not entitled to a Sanborn jury instruction. “To establish that a due process  
26 violation occurred from the loss or destruction of evidence, a defendant must show either that  
27 the state acted in bad faith or that the loss unduly prejudiced the defendant's case and that the  
28 evidence possessed an exculpatory value that was apparent before the evidence was destroyed.

1 Sheriff v. Warner, 112 Nev. 1234, 1239–40, 926 P.2d 775, 778 (1996). “To show undue  
2 prejudice, the defendant must demonstrate that it could be reasonably anticipated that the  
3 evidence sought would be exculpatory and material to the defense.” Id. at 1240, 926 P.2d 775,  
4 926 P.3d at 778.

5 In Rodrigues v. State, the Nevada Supreme Court found that the district court did not  
6 abuse its discretion by refusing to give a Sanborn instruction. 127 Nev. 1171 (2011).

7 Rodrigues argued that the State acted in bad faith by failing to preserve the audio recording of  
8 a key witness’ voluntary statement to the police. Id. The court found that there was no evidence  
9 that the State acted in bad faith, as the evidence showed the audio recording had been  
10 accidentally erased after having been transcribed. Id. Furthermore, Rodrigues could not show  
11 prejudice based on the deletion of the recording.

12 In the instant case, Defendant cannot show that the State acted in bad faith. (See supra),  
13 Defendant cannot even show that photographs or a video ever existed, let alone that they were  
14 not collected or preserved by the State. The State has the same copy provided by Sunrise  
15 Hospital that the defense does. The potential issue with some of the notes has nothing to do  
16 with the State in the slightest, but rather in the way the records were transmitted from the  
17 hospital. As argued supra, there has been no showing of prejudice or any possible exculpatory  
18 value regarding this information.

19 **III. THE STATE SHOULD BE ALLOWED TO DISCUSS THE FINDINGS**  
20 **WITHIN THE SCAN EXAM**

21 Defendant provides no authority for his request to exclude the findings contained within  
22 the SCAN exam. Instead he simply argues that the State’s alleged “mishandling” of the  
23 evidence must be excluded as they are more prejudicial than probative. Defendant again states  
24 that because they are unable to rebut the clear evidence of anal tearing and bleeding, this is  
25 prejudicial and thus should be excluded. Defendant has not presented any evidence of what  
26 specific areas of the SCAN exam they feel may have evidence that they could use to rebut  
27 these findings, or even a possibility of what could be contained therein that would allow  
28 Defendant to rebut these findings. The exam itself is complete, with a few notes from either

1 S.B. or his mother that appear faded, as well as a few notes made by the attending medical  
2 personnel. However, as argued above, Defendant has presented no evidence that this is  
3 prejudicial to his case. However, in a case where Defendant is charged with anally penetrating  
4 a 9-year-old, anal tearing certainly is probative.

5 **CONCLUSION**

6 None of Defendant's claims address the most powerful evidence the State has in this  
7 case: Defendant's DNA inside of S.B.'s rectum. Regardless of whether any of the evidence  
8 Defendant cites as error existed, this fact does not change. Everything else argued as error by  
9 Defendant does not change the fact that his DNA was in S.B.'s rectum, he told his mother that  
10 day that his sister's boyfriend had anally penetrated him and that he had injuries consistent  
11 with being raped that were documented. Defendant has failed to show that any potential issues  
12 with the notes, photographs that may never have existed, or video that may never had existed,  
13 constitutes material evidence, and this is his burden under the law. Defendant's claim that this  
14 case should be dismissed due to an alleged failure to preserve evidence lacks merit, as  
15 Defendant has failed to meet his burden of showing that the evidence was material. Therefore,  
16 the State respectfully requests that this Court deny Defendant's motion.

17 DATED this 27th day of November, 2019.

18 Respectfully submitted,  
19 STEVEN B. WOLFSON  
20 Clark County District Attorney  
21 Nevada Bar #001565

22 BY /s/ GENEVIEVE CRAGGS  
23 GENEVIEVE CRAGGS  
24 Deputy District Attorney  
25 Nevada Bar #013469  
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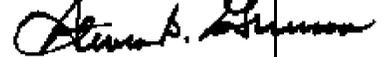
**CERTIFICATE OF SERVICE**

I hereby certify that service of the above and foregoing was made this 27th day of  
NOVEMBER, 2019, to:

TEGAN MACHNICH, DPD  
mcmahaae@ClarkCountyNV.gov

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

hjc/SVU



1 NOTC  
2 DARIN F. IMLAY, PUBLIC DEFENDER  
3 NEVADA BAR NO. 5674  
4 TEGAN C. MACHNICH, DEPUTY PUBLIC DEFENDER  
5 NEVADA BAR NO. 11642  
6 **PUBLIC DEFENDERS OFFICE**  
7 309 South Third Street, Suite 226  
8 Las Vegas, Nevada 89155  
9 Telephone: (702) 455-4685  
10 Facsimile: (702) 455-5112  
11 Tegan.Machnich@clarkcountynv.gov  
12 *Attorneys for Defendant*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

9 THE STATE OF NEVADA, )  
10 )  
11 Plaintiff, ) CASE NO. C-18-334954-1  
12 v. ) DEPT. NO. X  
13 SAMUEL MCDONALD, )  
14 Defendant, )

**DEFENDANT'S NOTICE OF RUBUTTAL EXPERT WITNESSES, PURSUANT TO  
NRS 174.234**

15 TO: CLARK COUNTY DISTRICT ATTORNEY:

16 You, and each of you, will please take notice that the Defendant, SAMUEL  
17 MCDONALD, intends to call the following rebuttal expert witness(es) in his case in chief:

18 TARA GODOY (or designee) – If the State's SANE/SCAN experts are not  
19 stricken, and the material is not precluded because of its illegible nature, then Mr. McDonald  
20 may call a testifying nurse practitioner or other forensic SANE/SCAN expert to testify as to the  
21 results of the exam done in this case and the limitations of SANE/SCAN examinations in  
22 general. Without discovery to provide (namely, a legible SANE/SCAN exam and  
23 photographic/videographic evidence, a definite statement of the content of our rebuttal expert's  
24 testimony is unknown. This is by no fault of Defendant.

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This notice is filed out of an abundance of caution.

CV is attached hereto for the anticipated expert, but can not be confirmed unless discovery is received.

DATED this 27th of November, 2019.

DARIN F. IMLAY  
CLARK COUNTY PUBLIC DEFENDER

By: /s/Tegan C. Machnich  
TEGAN C. MACHNICH, #11642  
Chief Deputy Public Defender

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that service of the above and forgoing Defendant's Notice of Rebuttal Expert Witnesses was served via electronic e-filing to the Clark County District Attorney's Office on this 27<sup>th</sup> day of November, 2019.

District Attorney's Office  
E-Mail Address:  
Jennifer.Georges@clarkcountyda.com

By: /s/ Annie McMahan  
An employee of the  
Clark County Public Defender's Office

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## Tara M. Godoy, BSN RN CFN LNC

### Godoy Medical Forensics, Inc.

[www.GodoyMedical.net](http://www.GodoyMedical.net)

[www.Strangulationexpert.com](http://www.Strangulationexpert.com)

(925) 425-7182

[Tara@GodoyMedical.net](mailto:Tara@GodoyMedical.net)

#### EDUCATION

University of Southern California – BS in Nursing, 2001

University of California, Riverside – Certification in Forensic Nursing, 2012

#### SPECIALTY LICENSES/CERTIFICATIONS/QUALIFICATIONS

- Registered Nurse, CA #586659 (Current)
- Legal Nurse Consultant
- Certification in Forensic Nursing
- Qualified to testify as an expert witness in California, Colorado, Nevada & Texas

#### TESTIFYING EXPERTISE (FOCUSED)

- Strangulation
- Blunt Force Trauma
- Physical Child Abuse

#### PROFESSIONAL EXPERIENCE

**Godoy Medical Forensics, Inc.** – Livermore, CA

2009 – present

President/CEO/Chief Forensic and Legal Nurse Consultant

- Provide expert consultation in legal cases involving medical care; including medical record review, analysis, research, and merit determination.
- Supervision and oversight of registered nurses reviewing cases and providing expert testimony.
- Expert testimony in areas of blunt force trauma, toxicology, nursing standards of care, and other general medical areas.

#### Experience in:

- Criminal Law – State and Federal, Prosecution & Defense
- Civil – Medical Malpractice, Personal Injury, Family Law

**Advanced Death Investigator Training** – Santa Ana, CA

2013 – 2017

Course Instructor

- Organized and hosted by Orange County Sheriff's Department
- Peace Officers Standard and Training (POST) certified course
- Instruction in Medical Record Review for Death Investigators, including lecture and interactive class time.
- Instruction in Basic Anatomy for Death Investigators, including lecture and interactive class time

## Tara M. Godoy, BSN RN CFN LNC

### PROFESSIONAL EXPERIENCE (continued)

- American Nursing Services – Santa Rosa, CA** 2009 – 2009  
Registry Nurse – Emergency Services
- Support local hospitals in their Emergency Departments
  - Perform autonomous duties as an Emergency Room RN
- Sonoma Orthopedic Products (Start-up) – Santa Rosa, CA** 2008 – 2009  
Clinical Nurse Consultant/Device Sales
- Clinical training of orthopedic surgeons and field sales representatives.
  - Oversight of surgeon in operating room to ensure correct procedure implementation
  - Event planning and implementation of sales and bioskills events
- Kinetic Concepts Inc. (KCI) – North San Francisco Bay Area** 2007 – 2008  
Clinical Nurse Consultant/Device Sales
- Sales and education of extended care staff
  - Event planning and implementation of full day educational seminar
- Queen of the Valley Medical Center – Napa, CA** 2007 – 2007  
Staff RN – Emergency Department
- Independent and autonomous care of critically ill and injured
  - Patients included trauma patients, geriatrics and pediatrics.
- Stanford University Medical Center – Palo Alto, CA** 2002 – 2005  
Charge Nurse / Staff RN IV – Emergency Department
- Charge nursing duties including management of departmental flow, nursing assignments, per diem staffing issues, and patient complaints.
  - Trauma nursing duties including care and stabilization of the critically injured trauma patients.
  - Float nursing duties including ability to assist on any patient in any area of the department. Ability to quickly assess and care for patients while covering nurse breaks.
  - Headed the department-wide training, implementation and ongoing updates on the Logicare Computer System.
- American Medical Response – Santa Clara/San Mateo Counties** 2003 – 2004  
Employment as a Critical Care Transport Nurse
- Independent care of the critically ill under standard orders of a physician.
  - Care included geriatric, pediatric, OB/GYN and psychiatric patients
  - Care involved ventilators, multiple infusions, cardiac and fetal monitoring.
- Regional Medical Center of San Jose – San Jose, CA** 2001 – 2002  
Staff RN – Emergency Department
- Independent and autonomous care of critically ill and injured
  - Patients included trauma patients, geriatrics and pediatrics.

## Tara M. Godoy, BSN RN CFN LNC

### PROFESSIONAL EXPERIENCE (continued)

**California Medical Transport – Mountain View, CA**  
Emergency Medical Technician (EMT)

1998 – 1999

- Non-emergent and urgent interfacility transport of patients

### FORENSIC CONTINUING EDUCATION COURSES

**AAFS 70<sup>th</sup> Annual Scientific Meeting, Baltimore, MD - 2019**

**AAFS 69<sup>th</sup> Annual Scientific Meeting, Seattle, WA - 2018**

**AAFS 68<sup>th</sup> Annual Scientific Meeting, New Orleans, LA - 2017**

**AAFS 68<sup>th</sup> Annual Scientific Meeting, Las Vegas, Nevada - 2016**

The American Academy of Forensic Sciences is an international organization that is divided into eleven forensic areas of specialty. As a professional society dedicated to the application of science to the law, the AAFS is committed to the promotion of education and the elevation of accuracy, precision, and specificity in the forensic sciences. Conference attendees are welcomed to attend presentations given by any of the eleven sections. Attended topics under the pathology/biology, anthropology, criminalistics, general and jurisprudence sections.

**Clinical Forensic Evaluation of Gunshot Wounds – 2014/2015**

The program is for law enforcement officers, forensic nurses, emergency medicine and trauma physicians and prosecutors who wish to:

- Understand the importance of recognizing and preserving evidence on ER patients.
- Learn to determine entrance and exit wounds and their range of fire.
- Understand wound ballistics and wounding patterns.
- Get a broad base of forensic knowledge.
- Understand forensic nursing, the science that deals with the relation and application of medical facts to legal issues in living victims.
- Learn the latest techniques for investigating officer-involved shootings.

**Advanced Strangulation Course – 2014**

This 4-day in-depth training was provided to multidisciplinary professionals. It included the history and research of Domestic Violence and Sexual Assault Strangulation Crimes and the key aspects of the medical, law enforcement, and prosecution's response to strangulation cases. The course also included effective training techniques; how to use experts in court including tips for testifying, qualifying experts, and helpful tools and resources for both attorneys trying strangulation cases and the experts involved in such cases. Overall, the training prepares the attendee as an expert witness in criminal and civil strangulation assault cases and enables the participant to more successfully handle these cases in their practice as an investigator, attorney, advocate, mental health provider, or medical professional.

**Advanced Death Investigator Training Course – 2013**

Attended the 2<sup>nd</sup> week of the Death Investigator Training Course hosted by the Orange County Sheriff's department in Santa Ana, CA. The course is POST certified and offered lecture on Crime labs, Blood spatter, Toolmarks, Firearms, Anthropological Recovery, Forensic Anthropology, Bone labs, Fire Death Investigation, Arson Investigation, Sharp Force Injuries, Asphyxial deaths, Anatomy, Terrorism, PTSD, Stress Management, Forensic Dentistry, Psychological Autopsy and Profiling, Toxicology and Courtroom Testimony.

## **Tara M. Godoy, BSN RN CFN LNC**

### FORENSIC CONTINUING EDUCATION COURSES (continued)

**The 27th Annual San Diego International Conference on Child and Family Maltreatment - 2013**  
**The 25th Annual San Diego International Conference on Child and Family Maltreatment - 2011**  
Attended lectures focused on the pathology and current medical literature of child abuse, including fractures, bruises, filicide, toxicology and effects of drug exposure, abusive head trauma (shaken baby syndrome), neglect, torture, abdominal trauma, SIDS, pathology and updated literature and evidenced based medicine.

#### **Medicolegal Death Investigator Training Course – 2012**

The purpose of the course is to train individuals to fill a critical role in medicolegal offices. With the training program offered at Saint Louis University, medicolegal death investigators learn to develop the essential facts regarding the death scene, medical history and other information that assists the Medical Examiner/Coroner in the determination of a person's cause and manner of death. Course content included Asphyxial Deaths, SIDS, Blunt Trauma Fatalities, Child Death Investigation, Fatal Head Trauma, Forensic Toxicology, Forensic Odontology, Gun Shot Wound Fatalities, Cutting and Stabbing Fatalities and Estimation of Time of Death.

### FORENSIC NURSE CERTIFICATION COURSES (20 units completed)

#### **Introduction to Forensic Nursing (3.0 units)**

Basic principles and techniques of forensic sciences. Topics include the roles and responsibility of collection and preservation of evidence at crime scenes and in the emergency department. The steps involved in the medico-legal investigation of injury and death, beginning at the crime scene and extending through judicial proceedings, are detailed using an extensive collection of slides and case presentations.

#### **Forensic Approaches to Blunt Force and Firearm Injuries (2.0 units)**

This course examines injuries incurred from vehicular trauma, stabbings and firearms and other assaults. Emphasis is on recognition and preservation of vital forensic evidence from the victim and within the hospital or emergency department. The principles of injury mechanics and ballistics are illustrated with laboratory findings and case studies of victims. Common omissions and errors in injury assessment and death investigation are discussed.

#### **Crime Scene Preservation and Death Investigation in Health Care Settings (1.0 unit)**

Essential factors of crime scene preservation and application of forensic principles, especially the techniques used by forensic scientists to recognize and manage evidence within healthcare settings. Among main topics are: Personnel duties at the crime scene; Evidence management; Evidence categories; Roles and responsibilities of a clinical forensic nurse; An introduction to psychological profiling; Personality assessment of perpetrators; Illustrated case studies focusing on important medico-legal aspects.

#### **Occupational Considerations in Forensic Nursing (2.0 units)**

Occupational injuries and work-related deaths are examined in terms of their medicolegal aspects. Topics include: Arson; Burns; Smoke inhalation; Exposure to toxic fumes and chemicals, transportation catastrophes, and other industrial accidents that have forensic implications; Forensic assessment processes required of the forensic nurse in mass casualty management; Dealing with workplace terrorism and hostage scenarios; Post-crisis interviewing of survivors and responders.

## **Tara M. Godoy, BSN RN CFN LNC**

### **FORENSIC NURSE CERTIFICATION COURSES (continued)**

#### **Courtroom Testimony by the Health Care Specialist (1.0 unit)**

The role of the forensic nurse specialist in judicial proceedings is presented along with preparations required for the presentation of testimony. Videotaped courtroom scenarios offer participants an opportunity to hear the testimony of expert witnesses and to critique their effectiveness in influencing the outcomes of judicial proceedings.

#### **Forensic Photography in the Health Care Setting (1.0 unit)**

Basic forensic photography theory and practice. Emphasis is placed upon: The key components of high-quality; Valuable images that can withstand legal scrutiny; Assist investigators with documentation; Interpret findings at a scene or on a body

#### **Forensic Approaches to Domestic Violence (1.0 unit)**

Family violence is explored from several vantage points. Evidentiary sources and documentation are studied as they relate to the identification of domestic violence cases, reporting strategies and referral processes. Also discussed are victimology theory, social and cultural values, and research findings that serve as a basis for establishing appropriate preventive and interventional programs within communities.

#### **Forensic Approaches to Human Abuse Injuries (2.0 units)**

The most recent findings on crimes against individuals, such as sexual assault and child abuse, and includes factors that may contribute to violent acts. Evidence collection, preservation and vital documentation, and crime prevention strategies are discussed. Other topics include: Distinguishing accidental trauma from intentional injury; Munchausen's Syndrome by Proxy; Sudden Infant Death Syndrome (SIDS); Legal aspects of reporting and pursuing suspected or confirmed cases of human abuse

#### **Forensic Approaches to Mental Health Assessment (1.0 unit)**

Basic tenets of assessment and intervention with victims and perpetrators are explored. Topics include: Understanding the etiologic and motivational issues and analysis of response patterns to victimization and perpetration; Crime analysis and motivational intent of the aggressor within the context of the commission of the offense is assessed; Myths supporting a victim-blaming belief pattern are explored as part of the overall social response to crime

#### **Introduction to Forensic Pathology for Health Care Specialists (2.0 units)**

The evolution of the present-day forensic pathologist and the role(s) he/she plays in implementing the law. Discussions include: The physical changes occurring to the body upon and after death and how these changes impact determination of the cause; Manner and mechanism of death; Law enforcement investigation; Autopsy and after-death body care are explored.

#### **Sexual Assault Examiner Training (4.0 units)**

This comprehensive online course prepares qualified health care professionals to perform supervised forensic evaluations of adult and adolescent, male and female sexual assault victims. Upon the completion of this course, you will be able to: Describe the evolution of the sexual assault examiner in the United States; Define rape and sexual assault according to your jurisdiction; Establish nursing priorities of care for any sexual assault patient presenting to the SANE; Understand how the judicial system works once a case has been destined to go to trial; Learn the process of the forensic sexual assault examination and how to collect and preserve evidence; Compare and contrast elements of the Sexual Assault Examination as it varies from jurisdiction to jurisdiction (or state to state); Collaborate with other multidisciplinary personnel in the management of the sexual assault patient

## Tara M. Godoy, BSN RN CFN LNC

### PUBLIC SPEAKING EXPERIENCE

#### **Notable Organizations that Tara has presented for:**

*NAPD – multiple conferences, multiple locations (2015-2019)*  
*Federal Defender Capital Habeas Unit Conference – Mobile, AL (2019)*  
*DUI Defense Lawyers Association – Denver, CO (2016)*  
*NACDL's Making Sense of Science Annual Conference, Las Vegas, NV (2014 & 2016)*  
*National Council of Juvenile and Family Court Judges – Reno, NV (2014)*  
*American Professional Association on the Abuse of Children (2014)*  
*CA Association of Public Defender's Monterey DUI Defense Institute – Monterey, CA (2014)*  
*CA DUI Lawyers Association – Irvine, CA (2014)*  
*International Association of Forensic Nurses (2013)*  
*American Association of Legal Nurse Consultants – Baltimore Chapter (2013)*  
*Chico State Nursing Program – Chico, CA (2013)*  
*Plus, dozens of public defender's offices, bar associations, and other national organizations*

### PRESENTATIONS/WORKSHOPS CURRENTLY OFFERED

#### **“Strangulation: Evaluating Strangulation Evidence from a Medical Perspective”**

Strangulation/suffocation in domestic violence is gaining momentum in the criminal courts as family violence groups advocate for stronger sentencing and more felony charges. Educating attorneys and judges is critical to ensure judgments are made based on facts and medical science. This presentation discusses the statistics of these assaults and what may be present in the discovery. Using case studies, medical charts and photographs, the audience will learn pertinent vocabulary and anatomy with a common goal of realizing the main issues that will drive a case to a fair resolution. Attendees will leave with a knowledge of what may constitute Great or Significant Bodily Injury, the common injuries seen and what to expect from experts.

#### **“Medical Record Review: Finding the Information You Need Without Googling Every Medical Term” Also presented as “Reading Medical Records: A Primer for Attorneys” (Case Study: Attempted Murder)**

A presentation designed to teach attorneys the ins and outs of medical records, including information on types of documents, where to find important details regarding the hospitalization, and a review of common issues in medicine that are pertinent to the legal field. The records included in the presentation follow an attempted murder case and highlight not only what is in the records but also what might be missing. The purpose of the presentation is to assist attorneys in focusing their review of medical records and to highlight the records that contain the information that both civil and criminal attorneys are commonly seeking.

#### **“Head Trauma, Consent and Intoxication - What to look for in EVERY case.”**

This presentation covers the different types of Traumatic Brain Injuries (TBI) that result from trauma to the brain in order to build a foundation of how trauma affects the brain; and then dives into the application in criminal cases. Discussion includes aggressive behavior, alcohol intoxication and consent capacity after TBI. Criminal attorneys and investigators for both the prosecution and defense would benefit from understanding the affect that head trauma has on defendants and/or victims in criminal cases.

## Tara M. Godoy, BSN RN CFN LNC

### **“Blunt Force Trauma: What the Skin Can Tell Us”– Part I (Superficial Injuries)**

A presentation designed to teach attorneys and investigators about various external injuries that result from Blunt Force Trauma. Bruises/Contusions, Abrasions, Lacerations and Avulsions are all discussed with definitions, examples and information on each wound. Dating of bruises is included; as well as information on multiple injuries. The purpose of the presentation is to assist attorneys and investigators in understanding the causative factors behind injuries from Blunt Force Trauma and provide them with in-depth knowledge regarding the potential indications of such injuries.

### PRESENTATIONS/WORKSHOPS PREVIOUSLY OFFERED

#### **Medical Record Review Workshop, 4 hours MCLE – Feb, 2015**

This workshop starts with a 1 hour presentation on medical record review and then moves into small groups. The groups review discovery in cases and discuss findings, ask questions and learn how to find medical facts within the charts.

#### **“Reading Medical Records: A Primer for Attorneys” (Case Study: Abusive Head Trauma)**

A presentation designed to teach attorneys the ins and outs of medical records, including information on types of documents, where to find important details regarding the hospitalization, and a review of common issues in medicine that are pertinent to the legal field. The records included in the presentation follow an abusive head trauma case and highlight not only what is in the records but also what is missing. The purpose of the presentation is to assist attorneys in focusing their review of medical records and to highlight the records that contain the information that both civil and criminal attorneys are commonly seeking.

#### **“Blunt Force Trauma: What Goes on in the Inside”– Part II (Internal Injuries)**

A presentation designed to teach attorneys and investigators about various internal injuries that result from Blunt Force Trauma. A head to toe review of various injuries with graphic illustrations and case examples provides an in-depth understanding of how these injuries occur, the mechanism behind them, and the potential complications/prognosis.

#### **“Bruises & Decubitus: Oh, The Stories They Tell”**

This presentation contains the Blunt Force Trauma Part I Presentation and then goes into greater detail about pressure ulcers. It is designed to teach attorneys and investigators about various injuries that result from Blunt Force Trauma. Bruises/Contusions, Abrasions, Lacerations and Avulsions are all discussed with definitions, examples and information on each wound. Dating of bruises is included as well as information on multiple injuries. Pressure ulcer prevention, assessment and staging are also discussed.

#### **“Abusive Head Trauma: Crossing the Boundary from Medicine to Law/Current Controversies and Opposing Theories”**

A presentation designed to review the current controversies in medicine that surround Shaken Baby Cases, known medically as Abusive Head Trauma (AHT). These are complex cases that involve extensive medical records and require that the attorney comprehend the basic pathophysiology of intracranial hemorrhaging and retinal hemorrhages. Knowledge of the current literature involving the biomechanics and the conditions considered to mimic the injuries seen in AHT is also a necessity. After attending this presentation, participants will have a better understanding of the injuries that are suspicious for AHT, the medical conditions that mimic them, and a broader knowledge base of the scientific literature relevant to these cases.

## Tara M. Godoy, BSN RN CFN LNC

### **“Child Abuse and Neglect”**

A presentation designed at the request of the National Council of Juvenile and Family Court Judges to educate on the various aspects of child abuse and neglect. Topics covered included bruising and other soft tissue injuries; internal injuries; medical abuse; sexual abuse; and abusive head trauma.

### **“Legal Nurse Consulting in Criminal Law” - Webinar only**

A presentation designed for nurses interested in expanding their scope to include legal nurse consulting services to criminal attorneys. Differences between criminal and civil cases are discussed and how nurses might support criminal attorneys using their civil experience. Case examples are supplied for better understanding of the role of the nurse.

### **“Medically Acceptable Blood Draws: Not as Simple as it Looks”**

A presentation designed to teach attorneys and investigators about blood draw standards and practices that ensure the safety of the patient and the technician: Includes a review of equipment, technique, contraindications, and complications. Optional live demonstration of a blood draw during the presentation.

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### PUBLICATIONS

Godoy, T. M. (2011, Winter). Child Maltreatment: A Review of Abuse, Neglect and Mimics. (J. S. Benjamin, Ed.) *Florida Defender*, 23(3), pp. 14-17.

Godoy, T. M. (2011, July/August). Reading Medical Records: A Primer for Attorneys. (J. R. Potter, Ed.) *The Oregon Defense Attorney*, 32(4), pp. 12-13.

Godoy, T. M. (2011, Summer). Reading Medical Records: A Primer for Attorneys. (D. Byrd, & K. L. Bradley, Eds.) *Florida Defender*, 23(2), pp. 38-40.

Godoy, T. M. (2012, Spring). Medical Records and Domestic Violence. (J. S. Benjamin, & K. L. Bradley, Eds.) *Florida Defender*, 24(1), pp. 14, 18.

GodoyMedical.net Blog & Newsletter – primary contributor/editor, monthly posts 2011-2019

### SMALL GROUP FACILITATION

CA Association of Public Defender’s Monterey DUI Defense Institute – Monterey, CA – June, 2012

CA Association of Public Defender’s Monterey DUI Defense Institute – Monterey, CA – June, 2013

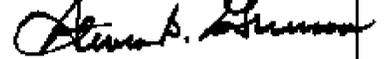
### CLINICAL CERTIFICATIONS PREVIOUSLY HELD

- Trauma Nurse Core Curriculum (TNCC)
- Advanced Cardiac Life Support (ACLS)
- Pediatric Advanced Life Support (PALS)
- Basic Life Support (BLS)

## **Tara M. Godoy, BSN RN CFN LNC**

### AFFILIATIONS/AWARDS

- USC Chair's Circle – Fall 2000
- Sigma Theta Tau – International Nursing Honor Society (since 2001)
- International Association of Forensic Nurses (since 2012)
  - IAFN Abstract Reviewer - 2016
- Member – American College of Forensic Examiners Institute (since 2014)
- Affiliate Member – Faculty of Forensic and Legal Medicine (2015-2019)
- General Member – AAFS (Since 2016)
- Member – NACDL, CACJ (since 2016)
- Member – CDAA (since 2017)
- Charter Member – Academy of Forensic Nursing (since 2018)



1 **OPPS**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 GENEVIEVE CRAGGS  
6 Deputy District Attorney  
7 Nevada Bar #013469  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

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

10 THE STATE OF NEVADA,  
11  
12 Plaintiff,

13 -vs-

14 **SAMUEL MCDONALD,**  
15 **#1753770**

16 Defendant.

CASE NO: **C-18-334954-1**

DEPT NO: **X**

17 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO**  
18 **STRIKE STATE'S NOTICE OF EXPERT WITNESS**

19 DATE OF HEARING: **DECEMBER 2, 2018**  
20 TIME OF HEARING: **9:30 AM**

21 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
22 District Attorney, through GENEVIEVE CRAGGS, Chief Deputy District Attorney, and  
23 hereby submits the attached Points and Authorities in this State's Opposition to Defendant's  
24 Motion to Strike State's Notice of Expert Witness.

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

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1 **POINTS AND AUTHORITIES**

2 **ARGUMENT**

3 Defendant’s argument appears to be twofold: 1) the Dr. Zbiegen is not qualified as an  
4 expert; and 2) that the State’s Expert Witness Notice did not meet the qualification under NRS  
5 174.234(2). Both claims lack merit.

6 NRS 50.275, governing “Testimony by experts,” permits expert witness  
7 testimony in the following circumstances:

8 If scientific, technical or other specialized knowledge will assist the  
9 trier of fact to understand the evidence or to determine a fact in issue,  
10 a witness qualified as an expert by special knowledge, skill,  
experience, training or education may testify to matters within the  
scope of such knowledge.

11 Qualification of a witness to testify as an expert pursuant to NRS 50.275 is a discretionary  
12 determination by the trial court. Walton v. Eighth Judicial Dist. Court ex rel. County of Clark,  
13 94 Nev. 690 (1978); Cheyenne Constr., Inc. v. Hozz, 102 Nev. 308 (1986). In exercising its  
14 discretion, a court should take account of the prospective witness’s: (1) formal schooling and  
15 academic degrees; (2) licensure; (3) employment experience; and (4) practical experience and  
16 specialized training. Hallmark v. Eldridge, 189 P.3d 646, 650-651 (2008). Those potentially  
17 qualifying factors, however, “are not exhaustive, may be accorded varying weights, and may  
18 not be equally applicable in every case.” Id. at 651. While Nevada courts do not incorporate  
19 the approach to expert witness qualification expounded in Daubert v. Merrell Dow  
20 Pharmaceuticals, 509 U.S. (1993), they do utilize Daubert and its subsequent interpretive  
21 jurisprudence as persuasive authority. See Hallmark, 189 P.3d at 650 (2008).

22 NRS 174.234(2) states in relevant part:

23 2. If the defendant will be tried for one or more offenses that are punishable as a gross  
24 misdemeanor or felony and a witness that a party intends to call during the case in chief of the  
25 State or during the case in chief of the defendant is expected to offer testimony as an expert  
26 witness, the party who intends to call that witness shall file and serve upon the opposing party,  
27 not less than 21 days before trial or at such other time as the court directs, a written notice  
28 containing:

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- (a) A brief statement regarding the subject matter on which the expert witness is expected to testify and the substance of the testimony;
- (b) A copy of the curriculum vitae of the expert witness; and
- (c) A copy of all reports made by or at the direction of the expert witness.

Nev. Rev. Stat. Ann. § 174.234 (West).

Dr. Zbiegien’s curriculum vitae (CV) makes clear that he has a vast amount of experience in the medical field. Specifically, according to the CV, was the medical director of the SCAN Team at Sunrise Children’s Hospital for many years, as well as an attending physician in the emergency room. Simply because defense counsel couldn’t find this on google, does not mean that he is not qualified as an expert to testify regarding a SCAN exam he himself performed. The State believes that his CV speaks volumes regarding his experience and is surprised that based on the information provided Defendant is making this argument. After the filing of this Motion, the State inquired as to Dr. Zbiegien’s current employment. He currently works at St. Rose Siena Pediatrics Emergency Room. An updated CV has been requested but not yet received.

The State filed a Notice of Witness which included Dr. Zbiegien’s CV on February 5, 2019. A brief statement regarding the subject matter on which he would testify, and the substance of his testimony was provided. The expert notice states, “[Dr. Zbiegien] is a medical doctor and will testify regarding the medical examination and/or SCAN examination conducted on the victim in this case.” The notice explains that he will testify as a medical doctor based on the examination he performed in this case. His CV was attached, and a copy of the SCAN exam was provided to defense counsel prior to the filing of this Notice of Witness. The state complied with NRS 174.234(2).

The State does not plan to call Peggy McCoy.

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**CONCLUSION**

Based upon the foregoing, the State requests that Defendant’s Motion to Strike State’s Expert Witness be DENIED.

DATED this 27th day of November, 2019.

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

BY /s/ GENEVIEVE CRAGGS  
GENEVIEVE CRAGGS  
Deputy District Attorney  
Nevada Bar #013469

**CERTIFICATE OF SERVICE**

I hereby certify that service of the above and foregoing was made this 27th day of NOVEMBER, 2019, to:

TEGAN MACHNICH, DPD  
mcmahae@ClarkCountyNV.gov

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

hjc/SVU



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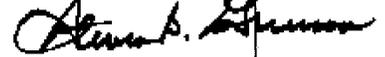
**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that service of the above and forgoing Notice of Witnesses was served via electronic e-filing to the Clark County District Attorney’s Office on this 2<sup>nd</sup> day of December, 2019.

District Attorney’s Office  
E-Mail Address:  
Jennifer.Georges@clarkcountyda.com

By: /s/ Annie McMahan  
An employee of the  
Clark County Public Defender’s Office

Case Name: Samuel McDonald  
Case No.: C-18-334954-1  
Dept. No.: District Court, Department X



1 DARIN F. IMLAY, PUBLIC DEFENDER  
2 NEVADA BAR NO. 5674  
3 TEGAN C. MACHNICH  
4 NEVADA BAR NO. 11642  
5 **PUBLIC DEFENDERS OFFICE**  
6 309 South Third Street, Suite 226  
7 Las Vegas, Nevada 89155  
8 Telephone: (702) 455-4685  
9 Facsimile: (702) 455-5112  
10 Tegan.Machnich@clarkcountynv.gov  
11 *Attorneys for Defendant*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

9 THE STATE OF NEVADA,  
10 Plaintiff,  
11 v.  
12 SAMUEL MCDONALD,  
13 Defendant,

CASE NO. C-18-334954-1  
DEPT. NO. X

**AUDIOVISUAL TRANSMISSION EQUIPMENT APPEARANCE REQUEST**

15 Pursuant to Rule 4 of the Nevada Supreme Court's RULES GOVERNING  
16 APPEARANCE BY AUDIOVISUAL TRANSMISSION EQUIPMENT, Defendant Samuel  
17 McDonald, by and through his attorney, Tegan Machnich, requests that Dr. Norah Rudin be  
18 permitted to testify by remote court appearance via video conference for the trial scheduled to  
19 begin on:

20 Date: December 9, 2019  
21 Time: 10:30 a.m.  
22 Courtroom No.: 14B

23 Dr. Norah Rudin, by executing the Audiovisual Transmission  
24 Equipment Appearance Consent, agrees to be bound by the oath given by the Court Clerk,  
25 Eighth Judicial District Court and to be subject to the jurisdiction of this Court for purposes  
26 related to this testimony.  
27  
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1 Defendant McDonald, through his attorneys, agrees to provide all exhibits to Dr. Rudin in  
2 advance in the same form as have been or will be submitted to the Court Clerk, if any apply to  
3 her testimony, or any are requested by the State.

4 Any objection to this request must be made in writing within two (2) judicial days of  
5 service of this request.

6  
7 Defendant McDonald agrees that by submitting this request, the party and witness (or  
8 their respective representatives) will test and verify the functionality of video conference  
9 connectivity with the Court's IT department at least two (2) judicial days before the scheduled  
10 appearance. Contact information for the test is:

11 Witness: Dr. Norah Rudin

12 Email Address: [norah@forensidna.com](mailto:norah@forensidna.com)

13 Phone Number: (650) 605-3411

14 Name of Counsel: Tegan Machnich, Clark County Public Defender's Office

15 Email Address(s): [Tegan.machnich@clarkcountynv.gov](mailto:Tegan.machnich@clarkcountynv.gov)

16 Phone Number: 455-3601

17  
18 Defendant McDonald, through his counsel, certifies that the video connection will be  
19 successfully tested at <http://bluejeans.com/111>. prior to scheduled testimony.

20  
21 Dated this 2nd day of December, 2019.

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25 \_\_\_\_\_  
(Counsel/Party)

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DARIN F. IMLAY, PUBLIC DEFENDER  
NEVADA BAR NO. 5674  
TEGAN C. MACHNICH  
NEVADA BAR NO. 11642  
**PUBLIC DEFENDERS OFFICE**  
309 South Third Street, Suite 226  
Las Vegas, Nevada 89155  
Telephone: (702) 455-4685  
Facsimile: (702) 455-5112  
Tegan.Machnich@clarkcountynv.gov  
*Attorneys for Defendant*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
  
Plaintiff,  
  
SAMUEL MCDONALD,  
  
Defendant,

CASE NO. C-18-334954-1  
DEPT. NO. X

**AUDIOVISUAL TRANSMISSION EQUIPMENT APPEARANCE CONSENT**

By making this request for Audiovisual Transmission Equipment Appearance, the undersigned agrees to be bound by the oath given by the Court Clerk over the video conference connection and to be subject to the jurisdiction of this Court for purposes related to this testimony.

Signature:   
Print Name: Norah Rudin  
Date: 11/20/19  
Email Address: norah@forensicdna.com  
Phone Number: 650-605-3411

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

Executed on 30 day of November, 2019

[Signature]  
.....  
(signature)

County of \_\_\_\_\_ )  
State of \_\_\_\_\_ ) ss

SUBSCRIBED AND SWORN TO BEFORE  
ME THIS \_\_\_\_\_ day of \_\_\_\_\_, 2019.

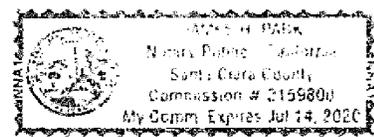
\_\_\_\_\_  
Notary Public in and for said County and State  
My Commission Expires: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Santa Clara

Subscriber: and sworn to (or affirmed) before me on this  
30<sup>th</sup> day of November, 2019,  
by Norah Kudia  
proved to me on the basis of satisfactory evidence to be  
the person (or persons) who appeared before me.

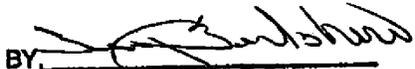
Signature \_\_\_\_\_  
[Signature]



**ORIGINAL**

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

**DEC 04 2019**

BY:   
**TERI BERKSHIRE, DEPUTY**

1 **AIND**  
2 **STEVEN B. WOLFSON**  
3 **Clark County District Attorney**  
4 **Nevada Bar #001565**  
5 **GENEVIEVE CRAGGS**  
6 **Deputy District Attorney**  
7 **Nevada Bar #013469**  
8 **200 Lewis Avenue**  
9 **Las Vegas, Nevada 89155-2212**  
10 **(702) 671-2500**  
11 **Attorney for Plaintiff**

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

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

**CASE NO: C-18-334954-1**

12 **-vs-**

**DEPT NO: X**

13 **SAMUEL CRAIG MCDONALD,**  
14 **#1753770**

**AMENDED  
INDICTMENT**

15 **Defendant.**

16 **STATE OF NEVADA }  
17 **COUNTY OF CLARK } ss.****

18 As Defendant above named, **SAMUEL CRAIG MCDONALD** is accused by the Clark  
19 County Grand Jury of the crime of **COUNTS 1 & 2 - SEXUAL ASSAULT (Category A**  
20 **Felony - NRS 200.364, 200.366 - NOC 50095)** committed at and within the County of Clark,  
21 State of Nevada, on or about the 28th day of December, 2001, as follows:

22 **COUNT 1**

23 Defendant did then and there, willfully, unlawfully and feloniously sexually assault and  
24 subject S.B. to sexual penetration, to wit: fellatio, by placing his penis on and/or into the  
25 mouth of S.B., against the will of S.B., or under conditions in which Defendant knew, or should  
26 have known, that S.B. was mentally or physically incapable of resisting or understanding the  
27 nature of Defendant's conduct.

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COUNT 2

Defendant did then and there, willfully, unlawfully and feloniously sexually assault and subject S.B. to sexual penetration, to wit: anal intercourse, by inserting his penis into the anal opening of S.B., against the will of S.B., or under conditions in which Defendant knew, or should have known, that S.B. was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

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

BY   
\_\_\_\_\_  
GENEVIEVE CRAGGS  
Deputy District Attorney  
Nevada Bar #013469

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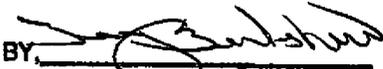
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GPA  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
GENEVIEVE CRAGGS  
Deputy District Attorney  
Nevada Bar #013469  
200 Lewis Avenue  
Las Vegas, NV 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

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

DEC 04 2019

BY   
TERI BERKSHIRE, DEPUTY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
Plaintiff,

-vs-

SAMUEL CRAIG MCDONALD,  
#1753770  
Defendant.

CASE NO: C-18-334954-1  
DEPT NO: X

**GUILTY PLEA AGREEMENT**

I hereby agree to plead guilty to: COUNTS 1 & 2 - SEXUAL ASSAULT (Category A Felony - NRS 200.364, 200.366 - NOC 50095) as more fully alleged in the charging document attached hereto as Exhibit "1".

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

Both parties stipulate to my serving consecutive terms between both Counts. The State retains the right to argue for consecutive sentencing with the instant case and Case No. 05C217360.

I agree to the forfeiture of any and all electronic storage devices, computers, and/or related equipment and/or weapons or any interest in any electronic storage devices, computers and/or related equipment and/or weapons seized and/or impounded in connection with the instant case and/or any other case negotiated in whole or in part in conjunction with this plea agreement.

C-18-334954-1  
GPA  
Guilty Plea Agreement  
4879933



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1 I understand and agree that, if I fail to interview with the Department of Parole and  
2 Probation (P&P), fail to appear at any subsequent hearings in this case, or an independent  
3 magistrate, by affidavit review, confirms probable cause against me for new criminal charges  
4 including reckless driving or DUI, but excluding minor traffic violations, the State will have  
5 the unqualified right to argue for any legal sentence and term of confinement allowable for the  
6 crime(s) to which I am pleading guilty, including the use of any prior convictions I may have  
7 to increase my sentence as an habitual criminal to five (5) to twenty (20) years, Life without  
8 the possibility of parole, Life with the possibility of parole after ten (10) years, or a definite  
9 twenty-five (25) year term with the possibility of parole after ten (10) years.

10 Otherwise I am entitled to receive the benefits of these negotiations as stated in this  
11 plea agreement.

#### 12 CONSEQUENCES OF THE PLEA

13 I understand that by pleading guilty I admit the facts which support all the elements of  
14 the offense(s) to which I now plead as set forth in Exhibit "1".

15 I understand that as a consequence of my plea of guilty, the Court must sentence me to  
16 a term of LIFE with the possibility of parole with parole eligibility beginning at ten (10) years  
17 for each Count. I understand that the law requires me to pay an Administrative Assessment  
18 Fee.

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

23 I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home,  
24 Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or  
25 Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation  
26 and may receive a higher sentencing range.

27 I understand that I am not eligible for probation for the offense to which I am pleading  
28 guilty.

1 I understand that, before I am eligible for parole a panel consisting of the Administrator  
2 of the Mental Health and Developmental Services of the Department of Human Resources or  
3 his designee; the Director of the Department of Corrections or his designee; and a psychologist  
4 licensed to practice in this state or a psychiatrist licensed to practice medicine in this state  
5 certifies that I was under observation while confined in an institution of the department of  
6 corrections and that I do not represent a high risk to reoffend based upon a currently accepted  
7 standard of assessment.

8 I understand that, pursuant to NRS 176.0931, the Court must include as part of my  
9 sentence, in addition to any other penalties provided by law, a special sentence of lifetime  
10 supervision commencing after any period of probation or any term of imprisonment and period  
11 of release upon parole.

12 I understand that the Court will include as part of my sentence, in addition to any other  
13 penalties provided by law, pursuant to NRS 179D.441 to 179D.550, inclusive, I must register  
14 as a sex offender within forty-eight (48) hours of release from custody onto probation or parole.

15 I understand that I must submit to blood and/or saliva tests under the direction of P&P  
16 to determine genetic markers and/or secretor status.

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

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

22 I have not been promised or guaranteed any particular sentence by anyone. I know that  
23 my sentence is to be determined by the Court within the limits prescribed by statute.

24 I understand that if my attorney or the State of Nevada or both recommend any specific  
25 punishment to the Court, the Court is not obligated to accept the recommendation.

26 I understand that if the State of Nevada has agreed to recommend or stipulate a  
27 particular sentence or has agreed not to present argument regarding the sentence, or agreed not  
28 to oppose a particular sentence, such agreement is contingent upon my appearance in court on

1 the initial sentencing date (and any subsequent dates if the sentencing is continued). I  
2 understand that if I fail to appear for the scheduled sentencing date or I commit a new criminal  
3 offense prior to sentencing the State of Nevada would regain the full right to argue for any  
4 lawful sentence.

5 I understand if the offense(s) to which I am pleading guilty to was committed while I  
6 was incarcerated on another charge or while I was on probation or parole that I am not eligible  
7 for credit for time served toward the instant offense(s).

8 I understand that if I am not a United States citizen, any criminal conviction will likely  
9 result in serious negative immigration consequences including but not limited to:

- 10 1. The removal from the United States through deportation;
- 11 2. An inability to reenter the United States;
- 12 3. The inability to gain United States citizenship or legal residency;
- 13 4. An inability to renew and/or retain any legal residency status; and/or
- 14 5. An indeterminate term of confinement, with the United States Federal  
15 Government based on my conviction and immigration status.

16 Regardless of what I have been told by any attorney, no one can promise me that this  
17 conviction will not result in negative immigration consequences and/or impact my ability to  
18 become a United States citizen and/or a legal resident.

19 I understand that P&P will prepare a report for the sentencing judge prior to sentencing.  
20 This report will include matters relevant to the issue of sentencing, including my criminal  
21 history. This report may contain hearsay information regarding my background and criminal  
22 history. My attorney and I will each have the opportunity to comment on the information  
23 contained in the report at the time of sentencing. Unless the District Attorney has specifically  
24 agreed otherwise, then the District Attorney may also comment on this report.

#### 25 WAIVER OF RIGHTS

26 By entering my plea of guilty, I understand that I am waiving and forever giving up the  
27 following rights and privileges:

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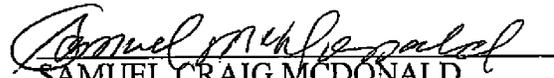


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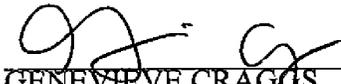
I am not now under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

DATED this 4<sup>th</sup> day of December, 2019.

  
SAMUEL CRAIG MCDONALD  
Defendant

AGREED TO BY:

  
\_\_\_\_\_  
GENEVIEVE CRAGGS  
Deputy District Attorney  
Nevada Bar #013469

1 CERTIFICATE OF COUNSEL:

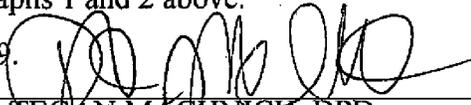
2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of  
3 the court hereby certify that:

- 4 1. I have fully explained to the Defendant the allegations contained in the  
5 charge(s) to which guilty pleas are being entered.  
6 2. I have advised the Defendant of the penalties for each charge and the  
7 restitution that the Defendant may be ordered to pay.  
8 3. I have inquired of Defendant facts concerning Defendant's immigration  
9 status and explained to Defendant that if Defendant is not a United States  
10 citizen any criminal conviction will most likely result in serious negative  
11 immigration consequences including but not limited to:  
12 a. The removal from the United States through deportation;  
13 b. An inability to reenter the United States;  
14 c. The inability to gain United States citizenship or legal residency;  
15 d. An inability to renew and/or retain any legal residency status;  
16 and/or  
17 e. An indeterminate term of confinement, by with United States  
18 Federal Government based on the conviction and immigration  
19 status.

20 Moreover, I have explained that regardless of what Defendant may have  
21 been told by any attorney, no one can promise Defendant that this  
22 conviction will not result in negative immigration consequences and/or  
23 impact Defendant's ability to become a United States citizen and/or legal  
24 resident.

- 25 4. All pleas of guilty offered by the Defendant pursuant to this agreement  
26 are consistent with the facts known to me and are made with my advice  
27 to the Defendant.  
28 5. To the best of my knowledge and belief, the Defendant:  
a. Is competent and understands the charges and the consequences of  
pleading guilty as provided in this agreement,  
b. Executed this agreement and will enter all guilty pleas pursuant  
hereto voluntarily, and  
c. Was not under the influence of intoxicating liquor, a controlled  
substance or other drug at the time I consulted with the Defendant  
as certified in paragraphs 1 and 2 above.

Dated: This 4th day of December, 2019.

  
TEGAN MACHNICH, DPD

hjc/SVU

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**AIND**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
GENEVIEVE CRAGGS  
Deputy District Attorney  
Nevada Bar #013469  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
Plaintiff,

CASE NO: C-18-334954-1  
DEPT NO: X

-vs-

SAMUEL CRAIG MCDONALD,  
#1753770  
Defendant.

**AMENDED**  
**INDICTMENT**

STATE OF NEVADA }  
COUNTY OF CLARK } ss.

As Defendant above named, **SAMUEL CRAIG MCDONALD** is accused by the Clark County Grand Jury of the crime of **COUNTS 1 & 2 - SEXUAL ASSAULT (Category A Felony - NRS 200.364, 200.366 - NOC 50095)** committed at and within the County of Clark, State of Nevada, on or about the 28th day of December, 2001, as follows:

COUNT 1

Defendant did then and there, willfully, unlawfully and feloniously sexually assault and subject S.B. to sexual penetration, to wit: fellatio, by placing his penis on and/or into the mouth of S.B., against the will of S.B., or under conditions in which Defendant knew, or should have known, that S.B. was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

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**EXHIBIT "1"**

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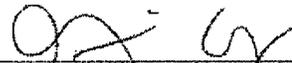
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COUNT 2

Defendant did then and there, willfully, unlawfully and feloniously sexually assault and subject S.B. to sexual penetration, to wit: anal intercourse, by inserting his penis into the anal opening of S.B., against the will of S.B., or under conditions in which Defendant knew, or should have known, that S.B. was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

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

BY

  
GENEVIEVE CRAGGS  
Deputy District Attorney  
Nevada Bar #013469

18AGJ050X/18F07303X/hjc/SVU  
LVMPD EV#0112280052  
(TK03)

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WILL FOLLOW VIA  
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*Steven D. Grierson*

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DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

SAMUEL CRAIG MCDONALD  
#1753770

Defendant.

CASE NO. C-18-334954-1

DEPT. NO. X

JUDGMENT OF CONVICTION  
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of COUNTS 1 & 2 – SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366; thereafter, on the 5<sup>th</sup> day of February, 2020, the Defendant was present in court for sentencing with counsel TEGAN MACHNICH, Deputy Public Defender, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the \$25.00 Administrative Assessment Fee, \$250.00 Indigent Defense Civil Assessment Fee, \$947.89 Restitution payable to Clark County Social Services, and \$150.00 DNA Analysis Fee including testing to determine genetic markers (waived if previously collected) plus \$3.00 DNA Collection Fee, the Defendant is sentenced to the Nevada Department of Corrections (NDC) as follows: **COUNT 1 – LIFE** with a

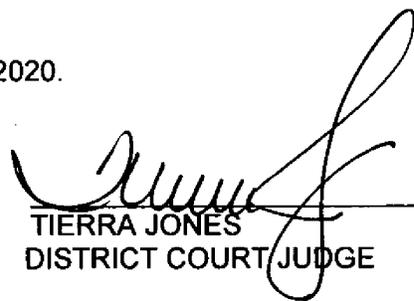
<input type="checkbox"/> Nolle Prosequi (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal
<input checked="" type="checkbox"/> Guilty Plea with Sent (before trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction
<input type="checkbox"/> Other Manner of Disposition	

1 MINIMUM Parole Eligibility of TEN (10) YEARS; and **COUNT 2** – LIFE with a  
2 MINIMUM Parole Eligibility of TEN (10) YEARS, CONSECUTIVE to COUNT 1; Case  
3 is CONSECUTIVE to C217360; with ZERO (0) DAYS credit for time served. The  
4 AGGREGATE TOTAL sentence is LIFE with a MINIMUM Parole Eligibility of TWENTY  
5 (20) YEARS.  
6

7 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION  
8 is imposed to commence upon release from any term of imprisonment, probation or  
9 parole. In addition, before the Defendant is eligible for parole, a panel consisting of  
10 the Administrator of the Mental Health and Development Services of the Department  
11 of Human Resources or his designee; the Director of the Department of Corrections or  
12 his designee; and a psychologist licensed to practice in this state; or a psychiatrist  
13 licensed to practice medicine in Nevada must certify that the Defendant does not  
14 represent a high risk to re-offend based on current accepted standards of assessment.  
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16

17 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender  
18 in accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any  
19 release from custody.  
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21 DATED this 1 day of February, 2020.

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24 TIERRA JONES  
25 DISTRICT COURT JUDGE   
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AJOCP

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

SAMUEL CRAIG MCDONALD  
#1753770

Defendant.

CASE NO. C-18-334954-1

DEPT. NO. X

AMENDED JUDGMENT OF CONVICTION  
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of COUNTS 1 & 2 – SEXUAL ASSAULT (Category A Felony) in violation of NRS 200.364, 200.366; thereafter, on the 5<sup>th</sup> day of February, 2020, the Defendant was present in court for sentencing with counsel TEGAN MACHNICH, Deputy Public Defender, and good cause appearing,

THE DEFENDANT WAS ADJUDGED guilty of said offenses and, in addition to the \$25.00 Administrative Assessment Fee, \$250.00 Indigent Defense Civil Assessment Fee, \$947.89 Restitution payable to Clark County Social Services, and \$150.00 DNA Analysis Fee including testing to determine genetic markers (waived if previously collected) plus \$3.00 DNA Collection Fee, the Defendant was sentenced to the Nevada Department of Corrections (NDC) as follows: **COUNT 1** – LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS; and **COUNT 2** – LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS, CONSECUTIVE to COUNT 1; Case is CONSECUTIVE to C217360; with ZERO (0) DAYS credit for time

1 served. The AGGREGATE TOTAL sentence is LIFE with a MINIMUM Parole Eligibility of  
2 TWENTY (20) YEARS.

3 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION is  
4 imposed to commence upon release from any term of imprisonment, probation or parole. In  
5 addition, before the Defendant is eligible for parole, a panel consisting of the Administrator of  
6 the Mental Health and Development Services of the Department of Human Resources or his  
7 designee; the Director of the Department of Corrections or his designee; and a psychologist  
8 licensed to practice in this state; or a psychiatrist licensed to practice medicine in Nevada  
9 must certify that the Defendant does not represent a high risk to re-offend based on current  
10 accepted standards of assessment.  
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12 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender in  
13 accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any release from  
14 custody.  
15

16 THEREAFTER, on the 16<sup>th</sup> day of April, 2020, pursuant to an inquiry from the  
17 Nevada Department of Corrections; COURT ORDERED the following correction: The  
18 AGGREGATE TOTAL sentence of LIFE with a MINIMUM Parole Eligibility of TWENTY (20)  
19 YEARS is REMOVED from this sentence.

20 DATED this 20<sup>th</sup> day of April, 2020.

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24 TIERRA JONES  
25 DISTRICT COURT JUDGE  
26 05A 7EC 3B7C 0640  
27 Jones, Tierra  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

State of Nevada	CASE NO: C-18-334954-1
vs	DEPT. NO. Department 10
Samuel McDonald	

**AUTOMATED CERTIFICATE OF SERVICE**

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Judgment of Conviction was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Envelope ID: 5953936  
Service Date: 4/20/2020

Dept 10 Law Clerk	Dept10LC@clarkcountycourts.us
howard conrad	howard.conrad@clarkcountyda.com
linda mason	linda.mason@clarkcountyda.com
Ann McMahan	mcmahaae@clarkcountynv.gov
Jennifer Georges	jennifer.georges@clarkcountyda.com
Tegan Machnich	tegan.machnich@clarkcountynv.gov

Prohibition Petition - 2  
SAMUEL McDONALD #89628  
Southern Desert Correctional Center  
SDCC / POB 2018  
Indian Springs NV 89070-0208

FILED  
MAY 17 2021

*John J. ...*  
CLERK OF COURT

PETITIONER PRO-SE

8th JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

SAMUEL McDONALD,  
Petitioner,

CASE # 1334954

DEPT # X (10)

HEARING REQUESTED: June 7, 2021  
8:30 AM

TIME OF HEARING : \_\_\_\_\_

NRS 34.320 Petition For writ of Prohibition (PREEMPTORY) To Prohibit The NV Dept of Corrections [NDOC] Director's UNCONSTITUTIONAL "Seizures of Money" From Petitioner's NDOC Inmate Account To "Enforce Payment OF Restitution" To Petitioner's Crime Victim(s) Per The "Crime Victim Restitution Terms" Set Forth Within Petitioner's 4-20-20 Judgment of Conviction [JOC] == Because The NDOC Director Has "No Jurisdiction" To Do So == whereas Such "Jurisdiction" Is Vested SOLELY With The State District Court [SDC] Via Issuance Of A "Writ of Execution" Per NRS 176.275 (2)(a) : Judgment for Payment OF Restitution / NRCP Rule 69(a)(1) : Execution / NRS Chapter 21 : Enforcement OF Judgments

[Prohibition Petition-2]

-VS-

DIRECTOR NEVADA DEPT OF CORRECTIONS, et. al.,  
Respondents.

COMES NOW, NDOC Inmate Petitioner Pro-Se Samuel McDonald #89628 [Petitioner] submitting the instant "Prohibition-2" == which is made & based upon NRS 34.320 / NRS 176.275 (2)(a) / NRCP Rule 69(a)(1) / NRS Chapter 21 : Enforcement of Judgments / NRS 176-033 / NRS 176.105 with all papers (affidavits etc attached hereto

RECEIVED

APR - 7 2021

\* PG 1 of 11 \*

CLERK OF THE COURT

1]

CLAIM 1 :

The NDOC Director Has No Statutory / Constitutional JURISDICTION To "Seize Money" From Petitioner's NDOC Inmate Account To "Enforce Payment of Restitution" To Petitioner's Crime Victim(s) Per The "Crime Victim Restitution Terms" Set Forth Within Petitioner's 4-20-20 JOC == whereas Such "Jurisdiction" Is Vested Solely With The State District Court [SDC] Via Issuance Of A "Writ of Execution" Per NRS 176.275 (2)(a): Judgment For Payment of Restitution / NRCP Rule 69 (a)(1): Execution / NRS Chapter 21: Enforcement of Judgments (Violation of The U.S. Const. 4th / 5th / 8th Amendments; Illegal Search & Seizure / Due Process & Equal Protection / Prohibition Against Cruel & Unusual Punishment)

[ Prohibition Petition-2 ]

2] STATEMENT OF FACTS / POINTS & AUTHORITIES : Petitioner adopts herein by this reference, the statements within Petitioner's "Affidavit In Support of Prohibition Petition" on PG 7-9 [infra] as being part of the "Statement of Facts / Points and Authorities" for the instant "CLAIM 1", and;

3] On/about 9-1-20, the NDOC Director began his UNCONSTITUTIONAL "Seizures of Money" from Petitioner's Inmate Account to "Enforce Payment of Restitution" to Petitioner's Crime Victim(s) per the "Crime Victim Restitution Terms" set forth within Petitioner's 4-20-20 JOC ( 2 PGS) on PG 10-11 [infra]. Accordingly, the NDOC Director has NO JURISDICTION to do so == whereas NRS 176.275 (2)(a) / NRCP Rule 69 (a) (1) / NRS Chapter 21 [supra] clearly established such JURISDICTION is "Vested Solely" with the SDC via issuance of a "Writ of Execution". That said, NRS 176.275 (2)(a) [below] states that a "judgment which requires a defendant to pay RESTITUTION" is "ENFORCED as any other judgment for MONEY rendered in a CIVIL ACTION":

**NRS 176.275**

Judgment for fine, administrative assessment, payment of restitution or repayment of expenses is lien; additional provisions concerning judgment for payment of restitution.

2. A judgment which requires a defendant to pay restitution:

(a) May be recorded, docketed and enforced as any other judgment for money rendered in a civil action.

**HISTORY:**

1967, p. 1437; 1975, p. 217; 1977, p. 337; 1983, p. 909; 1993, ch. 93, § 1, p. 149; 2015, ch. 444, § 1, p. 2573.

**Editor's Notes**

Acts 2015, ch. 444, § 6 provides: "The amendatory provisions of this act apply to any judgment which requires a defendant to pay restitution which is rendered before, on or after October 1, 2015."

4] Next, NV Rules of Civil Procedure [NRCPP] Rule 69 (a) (1): Execution [below] clearly established, that in a "Civil Action", a MONEY JUDGMENT to pay RESTITUTION IS "Enforced" by COURT ISSUANCE of a "Writ of Execution" :

**NRCPP Rule 69. Execution (a) In General.**

(1) Money Judgment; Applicable Procedure. - A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution - and in proceedings supplementary to and in aid of judgment or execution - must accord with these rules and state law.

5] Further, NRS 21.020: writ of Execution; Issuance; Contents [below] clearly established that the SDJ is vested with SOLE JURISDICTION to ISSUE a "Writ of Execution" to ENFORCE PAYMENT OF RESTITUTION to Petitioner's "JOC Crime Victim(s)" in question :

**NRS 21.020. Writ of execution: Issuance; contents.**

The writ of execution must be issued in the name of the State of Nevada, sealed with the seal of the court, and subscribed by the clerk, and must be directed to the sheriff, and must intelligibly refer to the judgment, stating the court, the county where the judgment roll is filed, the names of the parties, the judgment, and if it is for money, the amount thereof, and the amount actually due thereon

6] That said, NRS 21.050: Enforcement of Judgments Requiring Payment of Money [below] further established that a "judgment requiring payment of money" (as restitution) to Petitioner's "JOC Crime Victims" at issue SHALL BE ENFORCED by COURT ISSUANCE of a "Writ of Execution" :

**NRS 21.050**

**Enforcement of judgments requiring payment of money or delivery of property; performance of other act.**

Where a judgment requires the payment of money or the delivery of real or personal property, the same shall be enforced in those respects by execution.

7] Additionally, NRS 21.075: Notice of writ of Execution; Service Required [below] clearly established that ONLY the "Sheriff" can EXECUTE upon Petitioner a "Writ of Execution" to ENFORCE PAYMENT OF RESTITUTION to Petitioner's "JOC crime victims" [supra] AFTER the "Sheriff" serves Petitioner NOTICE of such "Writ of Execution" along with a COPY of the "Writ" itself :

**NRS 21.075. Notice of writ of execution: Service required; form; contents.**

1. Execution on the writ of execution by levying on the property of the judgment debtor may occur only if the sheriff serves the judgment debtor with a notice of the writ of execution pursuant to NRS 21.076 and a copy of the writ.

8] With all the above facts & law re RESTITUTION in mind, the NV Supreme Court [NSC] Witter Decision (2019) [below] clearly established the following:

8.1) Per NRS 176.275 (2)(a): Judgment For Payment of Restitution, a JOC that requires a Criminal Defendant to pay RESTITUTION to his/her **|| JOC Crime Victim(s) || IS ENFORCED** as any other JUDGMENT rendered in a CIVIL ACTION ...

**|| In particular, the amount of RESTITUTION is not an inconsequential matter when a JUDGMENT imposing RESTITUTION constitutes a LIEN in like manner as a Judgment For Money rendered in a Civil Action NRS 176.275 (1), which may be ENFORCED as any other JUDGMENT rendered in a Civil Action NRS 176.275 (2)(a) ||**

\* Witter v. State, 452 P.3d 406, 409 (Nev. 11-14-19)

9] Consequently, Witter [supra] further established the following re Petitioner's instant NRS 34.320 Petition for writ of Prohibition [Prohibition Petition - 2]:

9.1) The NDOC Director Has No Statutory/Constitutional JURISDICTION to ISSUE a **|| Writ of Execution ||** to **|| Seize Money ||** from Petitioner's NDOC Inmate Account to **|| Enforce Payment of Restitution ||** to Petitioner's **|| JOC Crime Victim(s) ||**. Specifically, because such JURISDICTION is **|| Vested Solely ||** with the COURT to do so under NRS 176.275(2)(a) / NRCP Rule 69 (a) (1) / NRS 21-020 / NRS 21-050 / NRS 21-075 and Witter v. State [all supra]

10] Accordingly, this Honorable Court **|| Must Prohibit ||** the NDOC Director from his UNCONSTITUTIONAL **|| Seizures of Money ||** from Petitioner's NDOC Inmate Account to **|| Enforce Payment of Restitution ||** to Petitioner's **|| JOC Crime Victims ||**. Specifically, because the NDOC Director Had No Jurisdiction to do so as fully set forth & argued above.

11] That said, Petitioner has no plain / speedy / adequate REMEDY in the ordinary course of law to PROHIBIT the NDOC Director from his UNCONSTITUTIONAL **|| Seizures of Money ||** from Petitioner's NDOC Inmate

\* PG 4 of 11 \*

11] Account to "Enforce Payment of Restitution" to Petitioners "JOC Crime Victims" - - That was done Without Jurisdiction. Subsequently, the ONLY REMEDY available to Petitioner is his instant NRS 34.320 "Prohibition Petition-2", which is DEFINED below :

**NRS 34.320. Writ of prohibition defined.**

The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

" Writ of MANDAMUS and Writ of PROHIBITION are counterparts in that MANDAMUS compels Government Body or OFFICIAL to perform legally mandated act, whereas PROHIBITION compels Government Body or OFFICIAL to cease performing acts Beyond Legal Authority "

\* Ashokan v. State, 856 P.2d 244 (Nev. 1993)

12] Further, NRS 34.330 : Writ may Be Issued By Appellate or District Court when No Plain, Speedy and Adequate Remedy In Law [below]; JUSTIFIES this Honorable Court to "Grant" Petitioner's instant NRS 34.320 "Prohibition Petition-2" - - wherefore Petitioner is WITHOUT a plain/speedy/adequate REMEDY in the ordinary course of law to "Prohibit" the abovementioned UNCONSTITUTIONAL Acts of the NDOC Director as set forth & argued Supra :

**NRS 34.330**

Writ may be issued by appellate or district court when no plain, speedy and adequate remedy in law.

The writ may be issued only by the Supreme Court, the Court of Appeals or a district court to an inferior tribunal, or to a corporation, board or person, in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It is issued upon affidavit, on the application of the person beneficially interested.

13]

**REQUEST FOR RELIEF : \* See Next PG ...**

\* I swear under penalty of perjury (NRS 208.165) that I wrote this "Prohibition Petition-2" for Inmate Samuel McDonald #89628 Because he is Illiterate In Law. Inmate George Lister #57587

George Lister

\* PG 5 of 11 \*

13]

REQUEST FOR RELIEF :

Based on all the foregoing facts / law / evidence etc., Petitioner is entitled to the following RELIEF...

- 13.1) GRANT Petitioner's instant "Prohibition Petition-2"
- 13.2) Per NRS 34.320 / NRS 34.330 [supra] ISSUE & SERVE upon the NDOC Director a "Writ of Prohibition" COMMANDING him/her to CEASE & DESIST "Seizing Money" from Petitioner's NDOC Inmate Account to "Enforce Payment of Restitution" to Petitioner's "JOC Crime Victim(s)" at issue
- 13.3) ENTER an ORDER "Commanding" the NDOC Director to Return Immediately (within 10 days) "All Monies" SEIZED from Petitioner's NDOC Inmate Account that was ALLEGEDLY PAID to Petitioner's "JOC Crime Victim(s)" in question (total amount to be determined)
- 13.4) APPOINT COUNSEL to represent Petitioner on Petitioner's instant "Prohibition Petition-2" from hereon
- 13.5) GRANT Petitioner all other RELIEF as JUSTICE requires

14]

CERTIFICATE OF SERVICE :

I certify under penalty of perjury (NRS 208.165) that on the date below I served a copy of this "Prohibition Petition-2" upon each of the parties listed below. That, by placing such in the prison mailbox (labeled as legal / confidential mail) with 1st Class U.S. Postage Prepaid affixed thereto :

- 14.1) Clark County Court Clerk / POB 551160 / LV NV 89155-1160
- 14.2) NV AG / 100 N. Carson St #100 / Carson City NV 89701-4717
- 14.3) NDOC Director / POB 7011 / Carson City NV 89702-7011

DATED this 4th day of APRIL, 2021

\* Per NRS 239B.030, I certify this "Prohibition-2" does not contain the social security number of any person

BY: Samuel McDonald  
Samuel McDonald #89628  
SDCC / POB 208  
Indian Springs NV 89470-0208  
PETITIONER PRO-SC

\* PG 6 of 11 \*

8th JUDICIAL DISTRICT COURT / CLARK COUNTY, NEVADA

SAMUEL McDONALD,  
 Petitioner,  
 -vs-  
 DIRECTOR NEVADA DEPT  
 OF CORRECTIONS, et al.,  
 Respondents.

CASE # C334954

Petitioner's Affidavit In Support  
 OF Prohibition Petition-2

STATE OF NEVADA )  
 ) SS:  
 COUNTY OF CLARK )

I, Inmate SAMUEL McDONALD # 89628, being first duly sworn, fully  
 deposes & says:

1) I am the AFFIANT / PETITIONER in the above-titled "Petition  
 For writ of Prohibition-2" [Prohibition-2] action.

2) Affiant is an adult (over age 18) NV Dept of Corrections [NDOC]  
 Inmate who is fully competent to testify re Affiant's personal  
 knowledge of the matters contained within this affidavit.

3) On 4-20-20, Affiant's Trial Judge filed/entered a Judg-  
 ment of Conviction [JOC] that sentenced Affiant to prison == AND ==  
 To pay \$ 947.89 TOTAL RESTITUTION to Affiant's Crime Victims(s)  
 listed below per the "Crime Victim Restitution Terms" set forth within  
 Affiant's 4-20-20 JOC in question:

**CRIME VICTIMS OWED RESTITUTION IDENTIFIED WITHIN 4-20-20 JOC**

NAME OF CRIME VICTIM OWED RESTITUTION	RESTITUTION OWED	SEE 4-20-20 JOC
1) Clark County Social Services	\$947.89	PG 10 / Ln 22
2) * NIA	* NIA	* NIA
3) * NIA	* NIA	* NIA
4) * NIA	* NIA	* NIA
5) * NIA	* NIA	* NIA

4) Consequently, on the date(s) below, the NDOC Director **ILLEGALLY**  
 "seized money" from Affiant's NDOC Inmate Account "ALLEGEDLY" to pay  
 RESTITUTION to Affiant's above-listed "JOC Crime Victims" at issue  
 (which never happened) \* continued on next page

\* PG 7 of 11 \*

4) \* continued from previous page

**NDOC MONEY SEIZURES TO PAY CRIME VICTIM RESTITUTION PER 4-20-20 JOC**

DATE / AMT OF MONEY SEIZED	NAME OF PERSON / ENTITY MONEY WAS PAID TO	TOTAL RESTITUTION OWED TO THIS PERSON / ENTITY PER 4-20-20 JOC
1) DATE / AMT ?	NJ Parole & Probation [P & P]	P & P not a Crime Victim owed RESTITUTION
2)		
3)		
4)		
5)		
6)		
7)		

5) That said, the NDOC Director's above-listed "Seizures of Money" from Affiant's NDoc Inmate Account to pay RESTITUTION to NJ Parole & Probation [P & P] per the "Crime Victim Restitution Terms" set forth within Affiant's 4-20-20 JOC [supra] is UNCONSTITUTIONAL for these reasons:

5.1) The NDOC Director has No Statutory / Constitutional JURISDICTION to do so == For the arguments set forth within Affiant's instant "Prohibition Petition-2" on PG 1-6 [supra], and;

5.2) P & P "Is Not Identified" within Affiant's 4-20-20 JOC in question as a "Crime Victim" who is owed RESTITUTION from Your Affiant == And therefore "Is Not Owed Restitution" from Affiant.

6) Subsequently, Affiant has APPEALED to the NDOC Director to "cease and Desist" his/her UNCONSTITUTIONAL "Restitution Money Seizures" from Affiant's NDoc Account [supra] == TO NO AVAIL as of the date of this affidavit.

7) Consequently, Affiant will suffer "Irreparable Harm" if this Court does not PROHIBIT such UNCONSTITUTIONAL "Money Seizures" from Your Affiant by the NDOC Director in future.

8) Accordingly, Affiant has No Plain / Speedy / Adequate REMEDY in the ordinary course of law to PROHIBIT such UNCONSTITUTIONAL "Money Seizures" from Your Affiant by the NDOC Director in future ==

8] EXCEPT for Affiant's instant "Prohibition Petition-2". with that in mind, Affiant RESPECTFULLY requests this Honorable Court to GRANT Your Affiant the RELIEF requested within the instant "Prohibition Petition-2" on PG 6 / Para 13 [supra]

FURTHER, YOUR AFFIANT SAYETH NAUGHT.

WHEREFORE Affiant avers & swears under penalty of perjury (NRS 208.165) that the statements within this affidavit are true & correct based upon Affiant's personal knowledge.

DATED this 4th day of APRIL, 2021

BY: Samuel McDonald  
Samuel McDonald # 89628  
SDCC / POB 208  
Indian Springs NV 89070-0208  
AFFIANT / PETITIONER PRO-SE

\* PG 9 of 11 \*

*Heather L. Smith*  
CLERK OF THE COURT

1 AJOCP

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5 THE STATE OF NEVADA,

6 Plaintiff,

CASE NO. C-18-334954-1

7 -vs-

DEPT. NO. X

8 SAMUEL CRAIG MCDONALD  
9 #1753770

10 Defendant.

11 AMENDED JUDGMENT OF CONVICTION  
12 (PLEA OF GUILTY)

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18 and good cause appearing,

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22 \$947.89 Restitution payable to Clark County Social Services, and \$150.00 DNA Analysis Fee  
23 including testing to determine genetic markers (waived if previously collected) plus \$3.00 DNA  
24 Collection Fee, the Defendant was sentenced to the Nevada Department of Corrections  
25 (NDC) as follows: **COUNT 1** – LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS;  
26 and **COUNT 2** – LIFE with a MINIMUM Parole Eligibility of TEN (10) YEARS, CONSECUTIVE  
27 to COUNT 1; Case is CONSECUTIVE to C217360; with ZERO (0) DAYS credit for time  
28

\* PG 10 of 11 \*

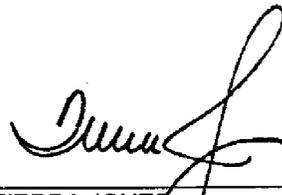
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3 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION is  
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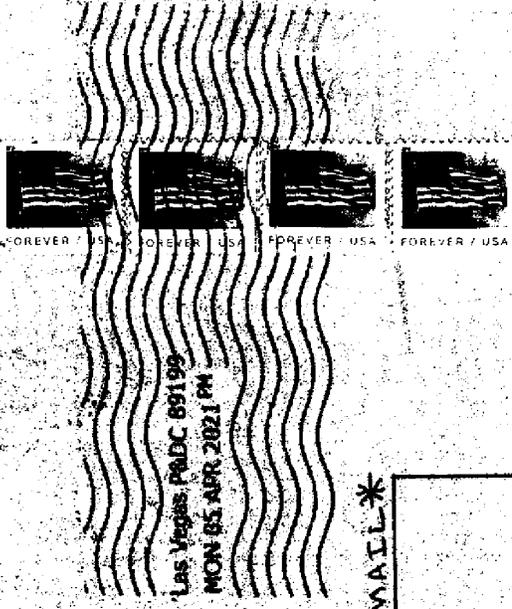
16 THEREAFTER, on the 16<sup>th</sup> day of April, 2020, pursuant to an inquiry from the  
17 Nevada Department of Corrections; COURT ORDERED the following correction: The  
18 AGGREGATE TOTAL sentence of LIFE with a MINIMUM Parole Eligibility of TWENTY (20)  
19 YEARS is REMOVED from this sentence.

20 DATED this 20th day of April, 2020.



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23 TIERRA JONES  
24 DISTRICT COURT JUDGE  
25 05A 7EC 3B7C 0640  
26 Jones, Tierra  
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\*LIFT TAPE to open!



Las Vegas, NV 89199  
MON 05 APR 2021 PM

\*LEGAL / CONFIDENTIAL MAIL\*

<p><u>FROM:</u> George Wente #57587 SDCC / POB 2.08 TS NV 89070-0208</p>	<p><u>TO:</u> Clark County Court Clerk CRIMINAL DESK POB 551160 LV NV 89155-1160</p>
--	--

\* Mailed: 4-4-21 (60)  
# Probation. Petitions  
1) Case # L169550  
2) Case # C270333  
3) Case # C334954

RECEIVED  
APR - 7 2021  
CLERK OF THE COURT

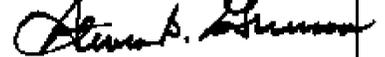


N1-3



RETURN SERVICE REQUESTED





1 **OPPS**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 TALEEN PANDUKHT  
6 Chief Deputy District Attorney  
7 Nevada Bar #005734  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

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

10 THE STATE OF NEVADA,  
11  
12 Plaintiff,

13 -vs-

14 **SAMUEL CRAIG MCDONALD,**  
15 **#1753770**

16 Defendant.

CASE NO: **C-18-334954-1**

DEPT NO: **X**

17 **STATE'S OPPOSITION TO DEFENDANT'S NRS 34.320**

18 **PETITION FOR WRIT OF PROHIBITION**

19 DATE OF HEARING: **JUNE 7, 2021**

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

21 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
22 District Attorney, through TALEEN PANDUKHT, Chief Deputy District Attorney, and  
23 hereby submits the attached Points and Authorities in this State's Opposition to Defendant's  
24 NRS 34.320 Petition for Writ of Prohibition.

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

28 //

//

1 **POINTS AND AUTHORITIES**

2 **ARGUMENT**

3 Defendant requests this Court issue a writ of prohibition commanding the Nevada  
4 Department of Corrections to cease and desist removing funds from his inmate account to pay  
5 restitution. Not only is a writ of prohibition the incorrect remedy for such a request, but this  
6 Court lacks jurisdiction to consider this claim, which has no relation to the sentence or  
7 conviction in this case.

8 A writ of prohibition in a criminal case is the wrong remedy to obtain relief from a  
9 condition of confinement. A writ of prohibition may be used by a court to order a judicial body  
10 to refrain from doing an act in excess of its jurisdiction. NRS 34.320. “The writ [of prohibition]  
11 may be issued only by the Supreme Court, the Court of Appeals or a district court to an inferior  
12 tribunal, or to a corporation, board or person, in all cases where there is not a plain, speedy  
13 and adequate remedy in the ordinary course of law.” NRS 34.330. The Nevada Department of  
14 Corrections is not a judicial body. The Nevada Department of Corrections is an agency within  
15 the executive branch of Nevada’s state government. Accordingly, a writ of prohibition may  
16 not be used to order it to refrain from engaging in certain activities.

17 Furthermore, a writ of prohibition may only issue “where there is not a plain, speedy  
18 and adequate remedy in the ordinary course of law.” NRS 34.330. See also  
19 Sonia F. v. Eighth Jud. Dist. Ct., 125 Nev. 495, 498, 215 P.3d 705, 707 (2009). That is not the  
20 case here. If Defendant wishes to challenge the seizure of funds in his inmate account by the  
21 Nevada Department of Corrections, he may do so through any of a number of remedies that  
22 are potentially at his disposal. He may avail himself of administrative remedies, or file a civil  
23 lawsuit alleging trespass to property or conversion. He may also be able to file a civil rights  
24 complaint pursuant to 42 U.S.C. § 1983, if he believes he can demonstrate that the Nevada  
25 Department of Corrections’ actions have “deprive[d] him of a right, privilege, or immunity  
26 protected by the Constitution or laws of the United States.” Butler ex rel. Biller v. Bayer, 123  
27 Nev. 450, 458, 168 P.3d 1055, 1061 (2007).

28 //

1 Most importantly, this Court does not have the authority to issue orders related to  
2 conditions of confinement that are unrelated to a defendant's sentence. A court is limited in  
3 the actions it may take in a criminal case in which the defendant is currently serving a sentence.  
4 A motion to modify a sentence or to correct an illegal sentence may be considered by a  
5 sentencing court, but may only be granted in a narrow range of circumstances. See Edwards  
6 v. State, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996). A court may consider a post-conviction  
7 habeas relief, but habeas claims are limited to challenges as to the conviction or sentence, not  
8 conditions of confinement. See NRS 34.724(1); Bowen v. Warden of Nevada State Prison,  
9 100 Nev. 489, 490, 686 P.2d 250, 250 (1984) ("a petition for writ of habeas corpus may  
10 challenge the validity of current confinement, but not the conditions thereof."). There is  
11 nothing in Nevada case law or statute which grants a court with jurisdiction over a criminal  
12 matter authority to issue orders related solely to the defendant's confinement conditions and  
13 not to that defendant's conviction or sentence.

14 Furthermore, a challenge to the conditions of confinement, whatever legal form it takes,  
15 must be responded to by the Attorney General, as the legal representative of the Nevada  
16 Department of Corrections. See NRS 228.110. Such claims do not concern the validity of the  
17 sentence or conviction itself, and thus must be dealt with separately from the criminal case.

18 **CONCLUSION**

19 For the foregoing reasons, the State respectfully requests that Defendant's NRS 34.320  
20 Petition for Writ of Prohibition be denied.

21 DATED this 24<sup>th</sup> day of May, 2021.

22 Respectfully submitted,  
23 STEVEN B. WOLFSON  
24 Clark County District Attorney  
25 Nevada Bar #001565

26 BY /s/ Taleen Pandukht  
27 TALEEN PANDUKHT  
28 Chief Deputy District Attorney  
Nevada Bar #005734

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**CERTIFICATE OF SERVICE**

I hereby certify that service of the above and foregoing was made this 24<sup>th</sup> day of MAY 2021, to:

SAMUEL MCDONALD, BAC#89628  
S.D.C.C.  
PO BOX #208  
INDIAN SPRINGS, NV 89070

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

hjc/SVU

*Alvin J. Smith*  
CLERK OF THE COURT

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**ORDER**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
KRISTINA RHOADES  
Chief Deputy District Attorney  
Nevada Bar #012480  
200 Lewis Avenue  
Las Vegas, NV 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

SAMUEL CRAIG MCDONALD,  
#1753770  
Defendant.

CASE NO: C-18-334954-1  
DEPT NO: X

**ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF PROHIBITION**

DATE OF HEARING: June 7, 2021  
TIME OF HEARING: 8:30 A.M.

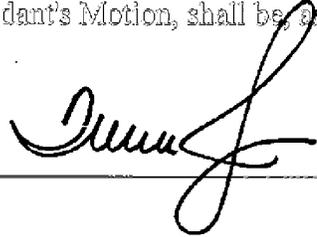
THIS MATTER having come on for hearing before the above entitled Court on the 7th day of June, 2021, the Defendant not being present, PROPER PERSON, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through KRISTINA RHOADES, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

///  
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///  
///

Dated this 17th day of June, 2021

IT IS HEREBY ORDERED that the Defendant's Motion, shall be, and it is DENIED.

DATED this \_\_\_\_\_ day of June, 2021.



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

EEB CA6 AAE8 03AC  
Tierra Jones  
District Court Judge

BY

  
KRISTINA RHOADES  
Chief Deputy District Attorney  
Nevada Bar #012480

CERTIFICATE OF SERVICE

I certify that on the 17<sup>th</sup> day of June, 2021, I mailed a copy of the foregoing Order  
to: SAMUEL CRAIG MCDONALD, BAC#89628  
P.O. BOX 208 (SDCC)  
INDIAN SPRINGS, NEV 89070-0208

BY



Secretary for the District Attorney's Office

18F07303X/mlb/SVU :

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**CSERV**

DISTRICT COURT  
CLARK COUNTY, NEVADA

State of Nevada	CASE NO: C-18-334954-1
vs	DEPT. NO. Department 10
Samuel McDonald	

**AUTOMATED CERTIFICATE OF SERVICE**

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 6/17/2021

Dept 10 Law Clerk	Dept10LC@clarkcountycourts.us
howard conrad	howard.conrad@clarkcountyda.com
linda mason	linda.mason@clarkcountyda.com
Ann McMahan	mcmahaac@clarkcountynv.gov
Jennifer Georges	jennifer.georges@clarkcountyda.com
Tegan Machnich	tegan.machnich@clarkcountynv.gov

CLERK: "Please" return me a filed stamped copy of this "NOTICE OF APPEAL" ☺

Electronically Filed  
7/6/2021 2:19 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

1 Samuel McDonald #89628  
2 Petitioner, In Propria Personam  
3 Post Office Box 208, S.D.C.C.  
4 Indian Springs, Nevada ~~89018~~ 89070-0208

5 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF CLARK

9 SAMUEL McDONALD,  
10 Petitioner ~~Plaintiff~~,  
11 vs.  
12 DIRECTOR NEVADA DEPT  
13 OF CORRECTIONS, et al.,  
14 Respondents ~~Defendant~~.

Case No. 6334954

Dept. No. \_\_\_\_\_

Docket \_\_\_\_\_

15  
16 **NOTICE OF APPEAL**

17 NOTICE IS HEREBY GIVEN, That the Petitioner/~~Defendant~~,  
18 SAMUEL McDONALD #89628, in and through his proper person, hereby  
19 appeals to the Supreme Court of Nevada from the ~~ORDER denying and/or~~  
20 ~~dismissing the~~ ORAL ORDER dismissing Petitioner's  
21 "NRS 34.320 Petition for writ of Prohibition" on/about

22 \_\_\_\_\_  
23 ruled on the 7th day of JUNE, 2021.

24 Dated this 30th day of JUNE, 2021.

\* Per NRS 239B.030, I  
certify this NOTICE OF  
APPEAL does not contain  
the social security number  
of any person.

Respectfully Submitted,  
BY: Samuel McDonald  
Samuel McDonald #89628  
PETITIONER PRO-SE

JUL - 6 2021

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**CERTIFICATE OF SERVICE BY MAILING**

I, SAMUEL McDONALD # 89628, hereby certify, pursuant to NRCP 5(b), that on this 30th day of JUNE, 2021, I mailed a true and correct copy of the foregoing, "

NOTICE OF APPEAL"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Clark County Court Clerk  
POB 551160  
LV NV 89155-1160

NV Attorney General  
100 N. Carson St # 100  
Carson City NV 89701-4717

CC:FILE

DATED: this 30th day of JUNE, 2021.

BY: Samuel McDonald

SAMUEL McDONALD # 89628  
Petitioner /In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018 89070-0208  
IN FORMA PAUPERIS:



\* Mailed: 6-30-21 (we)

\* Petition For writ of Prohibition

\* Notices of Appeal (8 Cases below)

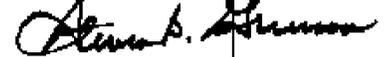
- 1) Case # C332985
- 2) Case # C156246
- 3) Case # C161246
- 4) Case # C169550
- 5) Case # C189650
- 6) Case # C262523
- 7) Case # C270333
- 8) Case # C334954

\* LEGAL MAIL / ~~CONFIDENTIAL~~ \*

Las Vegas P&DC 89199  
THU 01 JUL 2021 PM



<p>George Luster # 57587 SDC / POB 208 IS NV 89070-0208</p> <p><u>FROM:</u></p>	<p>Clark County Court Clerk NOTICES OF APPEAL CRIMINAL DESK POB 551160 LV NV 89155-1160</p> <p><u>TO:</u></p>
---	---



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**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF CLARK**

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10 STATE OF NEVADA,

11 Plaintiff(s),

12 vs.

13 SAMUEL CRAIG MCDONALD,

14 Defendant(s),

Case No: C-18-334954-1

Dept No: X

15

16

17

**CASE APPEAL STATEMENT**

18

1. Appellant(s): Samuel McDonald

19

2. Judge: Tierra Jones

20

3. Appellant(s): Samuel McDonald

21

Counsel:

22

Samuel McDonald #89628

23

P.O. Box 208

24

Indian Springs, NV 89070

25

4. Respondent: The State of Nevada

26

Counsel:

27

Steven B. Wolfson, District Attorney

28

200 Lewis Ave.

Las Vegas, NV 89101

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(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: N/A  
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes  
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: Yes

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: September 19, 2018

10. Brief Description of the Nature of the Action: Criminal

Type of Judgment or Order Being Appealed: Misc. Order

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

Dated This 8 day of July 2021.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann  
Heather Ungermann, Deputy Clerk  
200 Lewis Ave  
PO Box 551601  
Las Vegas, Nevada 89155-1601  
(702) 671-0512

cc: Samuel McDonald

# DOCUMENTARY EXHIBITS

Grand Jury Case # 18AGJ050X  
Exhibit # 1  
Date 9.18.18

1 **IND**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JACOB VILLANI  
6 Chief Deputy District Attorney  
7 Nevada Bar #11732  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,  
11 -vs-  
12 SAMUEL MCDONALD, aka,  
13 Samuel Craig Mcdonald, #1753770  
14 Defendant.

CASE NO:  
DEPT NO:

INDICTMENT

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

17 The Defendant above named, SAMUEL MCDONALD, aka, Samuel Craig Mcdonald,  
18 accused by the Clark County Grand Jury of the crime(s) of SEXUAL ASSAULT WITH A  
19 MINOR UNDER FOURTEEN YEARS OF AGE (Category A Felony - NRS 200.364,  
20 200.366 - NOC 50105), committed at and within the County of Clark, State of Nevada, on or  
21 about the 28th day of December, 2001, as follows:

22 COUNT 1

23 did then and there willfully, unlawfully, and feloniously sexually assault and subject  
24 S.B., a child under fourteen years of age, to sexual penetration, to wit: fellatio: by placing his  
25 penis on or in the mouth of S.B., against his or her will, or under conditions in which Defendant  
26 knew, or should have known, that S.B. was mentally or physically incapable of resisting or  
27 understanding the nature of Defendant's conduct.

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COUNT 2

did then and there willfully, unlawfully, and feloniously sexually assault and subject S.B., a child under fourteen years of age, to sexual penetration, to wit: anal intercourse: by placing his penis into the anal opening of the said S.B., against his or her will, or under conditions in which Defendant knew, or should have known, that S.B. was mentally or physically incapable of resisting or understanding the nature of Defendant's conduct.

DATED this \_\_\_\_ day of September, 2018.

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

BY

\_\_\_\_\_  
JACOB VILLANI  
Chief Deputy District Attorney  
Nevada Bar #11732

ENDORSEMENT: A True Bill

\_\_\_\_\_  
Foreperson, Clark County Grand Jury

1 Names of Witnesses and testifying before the Grand Jury:

2

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

4 CUSTODIAN OF RECORDS - CCDC

5 CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

6 CUSTODIAN OF RECORDS - LVMPD RECORDS

7 S.B. – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

8 TOOLEY, SHANNON – LVMPD #6224

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27 18AGJ050X/18F07303X/cl-GJ  
LVMPD EV# 0112280052

28 (TK3)

Grand Jury Case # 18AGJ050X  
Exhibit # 2  
Date 9-18-18

1 INST

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GRAND JURY  
CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

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Plaintiff,

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-vs-

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SAMUEL MCDONALD, aka,  
Samuel Craig Mcdonald, #1753770

12

Defendant.

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14

GRAND JURY INSTRUCTIONS

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1 **SEXUAL ASSAULT (2001)**

2 **NRS 200.366 Sexual assault: Definition; penalties; exclusions.**

3 1. A person who subjects another person to sexual penetration, or who forces another person to make a sexual  
4 penetration on himself or another, or on a beast, against the will of the victim or under conditions in which the  
5 perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding  
6 the nature of his conduct, is guilty of sexual assault.

7 2. Except as otherwise provided in subsection 3, a person who commits a sexual assault is guilty of a category  
8 A felony and shall be punished:

9 (a) If substantial bodily harm to the victim results from the actions of the defendant committed in connection  
10 with or as a part of the sexual assault, by imprisonment in the state prison:

11 (1) For life without the possibility of parole;

12 (2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 15  
13 years has been served; or

14 (3) For a definite term of 40 years, with eligibility for parole beginning when a minimum of 15 years  
15 has been served.

16 (b) If no substantial bodily harm to the victim results by imprisonment in the state prison:

17 (1) For life, with the possibility of parole, with eligibility for parole beginning when a minimum of 10  
18 years has been served; or

19 (2) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years  
20 has been served.

21 3. A person who commits a sexual assault against a child under the age of 16 years is guilty of a category A  
22 felony and shall be punished:

23 (a) If the crime results in substantial bodily harm to the child, by imprisonment in the state prison for life without  
24 the possibility of parole.

25 (b) Except as otherwise provided in paragraph (c), if the crime does not result in substantial bodily harm to the  
26 child, by imprisonment in the state prison:

27 (1) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 20  
28 years has been served; or

(2) For a definite term of 20 years, with eligibility for parole beginning when a minimum of 5 years  
has been served.

(c) If the crime is committed against a child under the age of 14 years and does not result in substantial bodily  
harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for  
parole beginning when a minimum of 20 years has been served.

1     **STATUTE OF LIMITATIONS**

2     **NRS 171.083 No limitation for sexual assault if written report filed with law enforcement officer during period**  
3     **of limitation; effect of disability on period of limitation.**

4     1. If, at any time during the period of limitation prescribed in NRS 171.085 and 171.095, a victim of a sexual assault,  
5     a person authorized to act on behalf of a victim of a sexual assault, or a victim of sex trafficking or a person authorized to  
6     act on behalf of a victim of sex trafficking, files with a law enforcement officer a written report concerning the sexual  
7     assault or sex trafficking, the period of limitation prescribed in NRS 171.085 and 171.095 is removed and there is no  
8     limitation of the time within which a prosecution for the sexual assault or sex trafficking must be commenced.

9     2. If a written report is filed with a law enforcement officer pursuant to subsection 1, the law enforcement officer  
10    shall provide a copy of the written report to the victim or the person authorized to act on behalf of the victim.

11   3. If a victim of a sexual assault or sex trafficking is under a disability during any part of the period of limitation  
12   prescribed in NRS 171.085 and 171.095 and a written report concerning the sexual assault or sex trafficking is not  
13   otherwise filed pursuant to subsection 1, the period during which the victim is under the disability must be excluded from  
14   any calculation of the period of limitation prescribed in NRS 171.085 and 171.095.

15   4. For the purposes of this section, a victim of a sexual assault or sex trafficking is under a disability if the victim is  
16   insane, intellectually disabled, mentally incompetent or in a medically comatose or vegetative state.

17   5. As used in this section, "law enforcement officer" means:

- 18   (a) A prosecuting attorney;
  - 19   (b) A sheriff of a county or the sheriff's deputy;
  - 20   (c) An officer of a metropolitan police department or a police department of an incorporated city; or
  - 21   (d) Any other person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150  
22   to 289.360, inclusive.
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**C-18-334954-1**

CLERK'S NOTE: This Minute Order was corrected to reflect the correct Justice Court case number to be dismissed.//ke 10/11/18



**C-18-334954-1**

12/17/18 10:30 A.M. JURY TRIAL



**C-18-334954-1**

03/04/19 10:30 A.M. JURY TRIAL













As to Defendant's Motion to Strike Proposed Experts Michael Zbiegien and Peggy McCoy, Motion MOOT as to Peggy McCoy, and Limited to as to Michael Zbiegien, in that he can testify as to what is in his report and his findings.

As to Defendant's Motion to Compel Production of Discovery & Brady Material, State to comply with their Statutory obligations.

As to Defense request to Voir dire Dr. Norah Rudin outside the presence of the Jury, GRANTED. Court directed Ms. Machnich, to file the Audiovisual Transmission equipment Appearance Request, today, with the notarized attachment. State has no opposition to the request or taking Dr. Norah Rudin, out of order.

Matter trailed. Later matter recalled. Ms. Machnich advised the case may be resolved and requested to pass the calendar call. COURT ORDERED, calendar call CONTINUED to the date given.

CUSTODY

02/04/19 8:30 A.M. CONTINUED CALENDAR CALL...NEGOTIATIONS



**C-18-334954-1**

CUSTODY (COC-NDC)

02/05/20 8:30 A.M. SENTENCING



COURT FURTHER ORDERED, Register as a sex offender in accordance with NRS 179D.460 within 48 hours of release from custody. COURT ORDERED, a special SENTENCE OF LIFETIME SUPERVISION is imposed to commence upon release from any term of probation, parole or imprisonment. Ms. Machnich requested to aggregate the two cases. Court noted it cannot aggregate a case that the Court didn't sentence defendant on. Mr. Villani agreed.

NDC



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**June 07, 2021**

C-18-334954-1      State of Nevada  
   vs  
   Samuel McDonald

**June 07, 2021                      8:30 AM                      Petition**

**HEARD BY:** Bonaventure, Joseph T.                      **COURTROOM:** RJC Courtroom 14B

**COURT CLERK:** Carolyn Jackson

**RECORDER:** Angelica Michaux

**REPORTER:**

**PARTIES**

**PRESENT:**      Rhoades, Kristina A.                      Attorney  
   State of Nevada                      Plaintiff

**JOURNAL ENTRIES**

- Defendant not present; in the custody of the Nevada Department of Corrections.

Court noted this matter is on for hearing of a Petition; the Stated filed its opposition.

COURT stated it FINDS the Petition for Writ of Prohibition is the incorrect remedy for such a request and this Court lacks jurisdiction to consider the claim, which has no relation to the sentence or conviction in this case. Further, the Court stated if the Defendant wishes to challenge the seizure of funds in his inmate account by the Nevada Department of Corrections (NDC), he may do so through other remedies. COURT ORDERED, Petition DENIED. State to prepare and submit the Order.

CUSTODY (COC-NDC)

CLERK'S NOTE: The above minute order has been distributed to: Samuel Craig McDonald, #89628, Southern Desert Correctional Center, P.O. Box 208, Indian Springs, NV 89070-0208. //cj 06/11/21

PRINT DATE: 08/04/2021

Page 19 of 19

Minutes Date: September 19, 2018

# Certification of Copy and Transmittal of Record

State of Nevada }  
County of Clark } SS:

Pursuant to the Supreme Court order dated July 28, 2021, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises two volumes with pages numbered 1 through 411.

STATE OF NEVADA,

Plaintiff(s),

vs.

SAMUEL CRAIG MCDONALD,

Defendant(s),

Case No: C-18-334954-1

Dept. No: X

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 4 day of August 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

