

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Mar 14 2022 10:38 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

ERIN DESHAUN WARE,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: C-15-310099-1

Docket No: 84262

RECORD ON APPEAL VOLUME 1

ATTORNEY FOR APPELLANT
ERIN WARE # 1017483,
PROPER PERSON
P.O. BOX 7000
CARSON CITY, NV 89702

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

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**THIS SEALED
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WILL FOLLOW VIA
U.S. MAIL**


CLERK OF THE COURT

INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
LIZ MERCER
Chief Deputy District Attorney
Nevada Bar #010681
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

I.A. 10/19/15
10:00 A.M.
GREGORY

THE STATE OF NEVADA,

Plaintiff,

-vs-

ERIN DESHAUN WARE,
#2652033

Defendant.

CASE NO: C-15-310099-1

DEPT NO: IX

INFORMATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

That ERIN DESHAUN WARE, the Defendant(s) above named, having committed the crimes of **BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony - NRS 205.060 - NOC 50426); BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony - NRS 200.400.2 - NOC 50151); ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138); BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.481 - NOC 50226); ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 50201); ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031); DISCHARGE OF FIREARM FROM OR**

1 **WITHIN A STRUCTURE OR VEHICLE (Category B Felony - NRS 202.287 - NOC**
2 **51445) and OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED**
3 **PERSON (Category B Felony - NRS 202.360 - NOC 51460),** on or about the 10th day of
4 June, 2015, within the County of Clark, State of Nevada, contrary to the form, force and effect
5 of statutes in such cases made and provided, and against the peace and dignity of the State of
6 Nevada,

7 COUNT 1 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

8 did willfully, unlawfully, and feloniously enter, with intent to commit robbery, that
9 certain business occupied by SUBWAY, located at 8790 South Maryland Parkway, Las Vegas,
10 Clark County, Nevada, while possessing and/or gaining possession of, handgun, a deadly
11 weapon, during the commission of the crime and/or before leaving the structure.

12 COUNT 2 - ROBBERY WITH USE OF A DEADLY WEAPON

13 did willfully, unlawfully, and feloniously take personal property, to-wit: U.S. Currency
14 and/or a handgun, from the person of RUTH GARN, or in her presence, by means of force or
15 violence, or fear of injury to, and without the consent and against the will of RUTH GARN,
16 with use of a deadly weapon, to-wit: a handgun.

17 COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON

18 did willfully, unlawfully, and feloniously take personal property, to-wit: U.S. Currency
19 and/or a handgun, from the person of JAIME NOURIE, or in his presence, by means of force
20 or violence, or fear of injury to, and without the consent and against the will of JAIME
21 NOURIE, with use of a deadly weapon, to-wit: a handgun.

22 COUNT 4 - BATTERY WITH INTENT TO COMMIT A CRIME

23 did then and there willfully, unlawfully, and feloniously use force or violence upon the
24 person of another, to-wit: RUTH GARN, with intent to commit robbery by punching the said
25 RUTH GARN.

26 //

27 //

28 //

1 COUNT 5 – BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN
2 SUBSTANTIAL BODILY HARM

3 did willfully, unlawfully, and feloniously use force or violence upon the person of
4 another, to-wit: RUTH GARN, with use of a deadly weapon, to-wit: a handgun, by shooting
5 the said RUTH GARN several times, resulting in substantial bodily harm to RUTH GARN.

6 COUNT 6 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

7 did willfully, unlawfully, feloniously and with malice aforethought attempt to kill
8 RUTH GARN, a human being, with use of a deadly weapon, to-wit: a handgun, by shooting
9 at and into the body of the said RUTH GARN.

10 COUNT 7 – ASSAULT WITH USE OF A DEADLY WEAPON

11 did willfully, unlawfully, feloniously and intentionally place another person in
12 reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully
13 attempt to use physical force against another person, to-wit: JAMIE NOURIE, with use of a
14 deadly weapon, to-wit: a handgun, by pointing a firearm at the said JAMIE NOURIE and/or
15 otherwise threatening her with said firearm

16 COUNT 8 - DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR
17 VEHICLE

18 did willfully, unlawfully, maliciously, and feloniously, while in, on or under a
19 structure, located at 8790 S. Maryland Parkway, Clark County, Nevada, discharge a firearm
20 within or from the structure, while being within an area designated by a City or County
21 Ordinance as a populated area for the purpose of prohibiting the discharge of weapons.

22 COUNT 9 - DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR
23 VEHICLE

24 did willfully, unlawfully, maliciously, and feloniously, while in, on or under a
25 structure, located at 8790 S. Maryland Parkway, Clark County, Nevada, discharge a firearm
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27 Ordinance as a populated area for the purpose of prohibiting the discharge of weapons.

28 //

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1 COUNT 10 – DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR
2 VEHICLE

3 did willfully, unlawfully, maliciously, and feloniously, while in, on or under a structure,
4 located at 8790 S. Maryland Parkway, Clark County, Nevada, discharge a firearm within or
5 from the structure, while being within an area designated by a City or County Ordinance as a
6 populated area for the purpose of prohibiting the discharge of weapons.

7 COUNT 11 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

8 did willfully, unlawfully, and feloniously own, or have in his possession and/or under
9 his custody or control, a firearm, to-wit: a .357 Ruger belonging to Ruth Garn and/or the
10 firearm that he carried into the business with him to commit the crime, the defendant being a
11 convicted felon, having in 2008, been convicted of Robbery and Stop Required on Signal of
12 Police Officer, in Case No. C240973, in the Eighth Judicial District Court, Clark County, a
13 felony under the laws of the State of Nevada and/or, having in 2011, been convicted of Attempt
14 Burglary, in Case No. C274352-1, in the Eighth Judicial District Court, Clark County, a felony
15 under the laws of the State of Nevada.

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

19 BY /s//LIZ MERCER
20 LIZ MERCER
21 Chief Deputy District Attorney
22 Nevada Bar #010681
23
24
25
26
27
28

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

NAME

ADDRESS

CUSTODIAN OF RECORDS – CLARK COUNTY DETENTION CENTER

CUSTODIAN OF RECORDS – LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS – LVMPD RECORDS

FLETCHER, SHAWN – LVMPD P#5221

GARN, RUTH – 4126 OXNARD CIR., LVN 89121

HOLSTEIN, DANIEL – LVMPD P#3861

HONAKER, JAMIE – DISTRICT ATTORNEY INVESTIGATOR

NELSON, JASON – LVMPD P#6825

NOURIE, JAIME – 10347 MAURICE RIVER CT., LVN 89183

PEREZ, RAFAEL – 9850 BERMUDA RD., #248, LVN 89123

RAFALOVICH, MARCO – DISTRICT ATTORNEY INVESTIGATOR

SPIOTTO, LANCE – LVMPD P#4774

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(TK2)


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Nevada Bar #001565
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Nevada Bar #010681
200 Lewis Avenue
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(702) 671-2500
Attorney for Plaintiff

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GREGORY

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**A M E N D E D
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1 COUNT 5 – BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN
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(TK2)


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AINF
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Clark County District Attorney
Nevada Bar #001565
LIZ MERCER
Chief Deputy District Attorney
Nevada Bar #010681
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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Plaintiff,

-vs-

ERIN DESHAUN WARE,
#2652033

Defendant.

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**SECOND AMENDED
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1 **MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010,**
2 **200.030, 193.330, 193.165 - NOC 50031); DISCHARGE OF FIREARM FROM OR**
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16 from the person of RUTH GARN, or in her presence, by means of force or violence, or fear of
17 injury to, and without the consent and against the will of RUTH GARN, with use of a deadly
18 weapon, to-wit: a handgun.

19 COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON

20 did willfully, unlawfully, and feloniously take personal property, to-wit: a handgun,
21 from the person of JAIME NOURIE, or in his presence, by means of force or violence, or fear
22 of injury to, and without the consent and against the will of JAIME NOURIE, with use of a
23 deadly weapon, to-wit: a handgun.

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25 did then and there willfully, unlawfully, and feloniously use force or violence upon the
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27 pushing and/or striking the said RUTH GARN.

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1 COUNT 5 – BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN
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13 attempt to use physical force against another person, to-wit: JAMIE NOURIE, with use of a
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17 VEHICLE

18 did willfully, unlawfully, maliciously, and feloniously, while in, on or under a
19 structure, located at 8790 S. Maryland Parkway, Clark County, Nevada, discharge a firearm
20 within or from the structure, while being within an area designated by a City or County
21 Ordinance as a populated area for the purpose of prohibiting the discharge of weapons.

22 COUNT 9 - DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR
23 VEHICLE

24 did willfully, unlawfully, maliciously, and feloniously, while in, on or under a
25 structure, located at 8790 S. Maryland Parkway, Clark County, Nevada, discharge a firearm
26 within or from the structure, while being within an area designated by a City or County
27 Ordinance as a populated area for the purpose of prohibiting the discharge of weapons.

28 //

//

1 COUNT 10 – DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE OR
2 VEHICLE

3 did willfully, unlawfully, maliciously, and feloniously, while in, on or under a structure,
4 located at 8790 S. Maryland Parkway, Clark County, Nevada, discharge a firearm within or
5 from the structure, while being within an area designated by a City or County Ordinance as a
6 populated area for the purpose of prohibiting the discharge of weapons.

7 COUNT 11 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

8 did willfully, unlawfully, and feloniously own, or have in his possession and/or under
9 his custody or control, a firearm, to-wit: a .357 Ruger belonging to Ruth Garn and/or the
10 firearm that he carried into the business with him to commit the crime, the defendant being a
11 convicted felon, having in 2008, been convicted of Robbery and Stop Required on Signal of
12 Police Officer, in Case No. C240973, in the Eighth Judicial District Court, Clark County, a
13 felony under the laws of the State of Nevada and/or, having in 2011, been convicted of Attempt
14 Burglary, in Case No. C274352-1, in the Eighth Judicial District Court, Clark County, a felony
15 under the laws of the State of Nevada.

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

18 BY /s//LIZ MERCER
19 LIZ MERCER
20 Chief Deputy District Attorney
Nevada Bar #010681

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

NAME

ADDRESS

CUSTODIAN OF RECORDS – CLARK COUNTY DETENTION CENTER

CUSTODIAN OF RECORDS – LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS – LVMPD RECORDS

FLETCHER, SHAWN – LVMPD P#5221

GARN, RUTH – 4126 OXNARD CIR., LVN 89121

HOLSTEIN, DANIEL – LVMPD P#3861

HONAKER, JAMIE – DISTRICT ATTORNEY INVESTIGATOR

NELSON, JASON – LVMPD P#6825

NOURIE, JAIME – 10347 MAURICE RIVER CT., LVN 89183

PEREZ, RAFAEL – 9850 BERMUDA RD., #248, LVN 89123

RAFALOVICH, MARCO – DISTRICT ATTORNEY INVESTIGATOR

SPIOTTO, LANCE – LVMPD P#4774

15F10849X/mmw/GCU
LVMPD EV#1506102629
(TK2)


CLERK OF THE COURT

NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
LIZ MERCER
Chief Deputy District Attorney
Nevada Bar #010681
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

ERIN DESHAUN WARE,
#2652033
Defendant.

CASE NO: C-15-310099-1

DEPT NO: IX

NOTICE OF WITNESSES AND/OR EXPERT WITNESSES
[NRS 174.234]

TO: ERIN DESHAUN WARE, Defendant; and
TO: JENNIFER M. WALDO, ESQ., Counsel of Record:
YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call the following witnesses and/or expert witnesses in its case in chief.

These witnesses are in addition to those witnesses endorsed on the Information or
Indictment and any other witness for which a separate Notice of Witnesses and/or Expert
Witnesses has been filed.

The substance of each expert witness' testimony and copy of all reports made by or at
the direction of the expert witness has been provided in discovery.

A copy of each expert witness' curriculum vitae, if available, is attached hereto.

//

//

	<u>NAME</u>	<u>ADDRESS</u>
1		
2	ADAMS, DR. KIMBERLY – 9640 W. TROPICANA, #116, LVN 89147	
3	AMUNDSON, MARK – HPD P#1250	
4	AOYAMA, KATHRYN – LVMPD P#8025 (or designee): LATENT PRINT EXAMINER -	
5	Expert in the science and techniques of fingerprint comparison, and comparisons done in this	
6	case and any reports prepared therefrom.	
7	ARMSTONG, DR. BRACKEN – UMC, 1800 W. CHARLESTON, LVN 89102	
8	ARMSTRONG, JAMES - CCFD: He is expected to offer testimony as an expert in the field	
9	of emergency care and treatment of trauma victims, victim assessment, as well as his direct	
10	involvement with the treatment of Ruth Garn.”	
11	BARRETT, T. – LVMPD P#4972	
12	BETHARD, J. – LVMPD P#13928	
13	BROWN, TARA – FBI, 2501 INVESTIGATION PKWY, QUANTICO, VA 22135	
14	BURNS, J. – LVMPD P#9805	
15	BURNS, MIKE - CCFD: He is expected to offer testimony as an expert in the field of	
16	emergency care and treatment of trauma victims, victim assessment, as well as his direct	
17	involvement with the treatment of Ruth Garn.”	
18	BUTLER, W. – LVMPD P#10054	
19	CAMPBELL, J. – LVMPD P#13150	
20	COATES, DR. JAY – UMC, 1800 W. CHARLESTON, LVN 89102	
21	CORNELL, BROOKE – LVMPD P#13576	
22	CRAANEN, PETER – FBI, RENO, NV: Expert in the area of forensic analysis of cell phone	
23	contents and recovery of the same, and that they are expected to offer testimony regarding the	
24	analysis of the cell phones impounded in this case belonging to Defendant and Trudy Presutti.	
25	CUNNINGHAM, J. – LVMPD P#5466	
26	CUSTODIAN OF RECORDS – CLARK COUNTY DETENTION CENTER	
27	CUSTODIAN OF RECORDS – CLARK COUNTY FIRE DEPARTMENT	
28	CUSTODIAN OF RECORDS – LVMPD COMMUNICATIONS	

1 CUSTODIAN OF RECORDS – LVMPD RECORDS

2 FLETCHER, SHAWN – LVMPD P#5221

3 FLETCHER, TIMOTHY – LVMPD P#6383

4 FORD, S. – LVMPD P#9063

5 GARN, RUTH – 4126 OXNARD CIR., LVN 89121

6 GIANNONE, JOSEPH – LVMPD P#6225

7 HALASI, R. – LVMPD P#8783

8 HALL, EMMETT – ADDRESS UNKNOWN

9 HAMMOND, Z. – LVMPD P#13917

10 HENNESY, D. – LVMPD P#6736

11 HOLSTEIN, DANIEL – LVMPD P#3861

12 HONAKER, JAMIE – DISTRICT ATTORNEY INVESTIGATOR

13 HUGHES, H. – LVMPD P#6750

14 HUNTSMAN, SHAUN - CCFD: He is expected to offer testimony as an expert in the field of
15 emergency care and treatment of trauma victims, victim assessment, as well as his direct
16 involvement with the treatment of Ruth Garn.”

17 JOBRI, J. – LVMPD P#7299

18 JOHNSON, GAYLE – LVMPD P#10208 (or designee): LATENT PRINT EXAMINER -
19 Expert in the science and techniques of fingerprint comparison, and comparisons done in this
20 case and any reports prepared therefrom.

21 KHIABANI, DR. KAYVAN – 1707 W. CHARLESTON, STE. 190, LVN 89102

22 LARSON, DR. DOUGLAS – UMC, 1800 W. CHARLESTON, LVN 89102

23 LAYTHORPE, M. – LVMPD P#5448

24 LEIJA, ARMANDO – LVMPD P#2020

25 LOPEZ, C. – LVMPD P#6958

26 LORSON, KARL – LVMPD P#5746

27 LUKOWSKI, W. – LVMPD P#4659

28 MALKOLOSKI, B. – LVMPD P#13802

1 MARCO, RON – CCFD: He is expected to offer testimony as an expert in the field of
2 emergency care and treatment of trauma victims, victim assessment, as well as his direct
3 involvement with the treatment of Ruth Garn.”

4 MATCHKO, W. – LVMPD P#8525

5 MCPEAK, CHRISTOPHER – FBI, 787 W.LAKE MEAD, LVN 89106: Expert in the area of
6 forensic analysis of cell phone contents and recovery of the same, and that they are expected
7 to offer testimony regarding the analysis of the cell phones impounded in this case belonging
8 to Defendant and Trudy Presutti.

9 MENEZES, DR. JOHN – 1707 W. CHARLESTON, #190, LVN 89102

10 MITCHELL, S. – LVMPD P#13765

11 MOXLEY, DR. JEFFREY – 3663 E. SUNSET, #403, LVN 89120

12 MUNOZ, I. – LVMPD P#9063

13 MURPHY, DANEEN – LVMPD P#5691

14 NELSON, JASON – LVMPD P#6825

15 NELSON, JASON – LVMPD P#6825

16 NG, DR. MATTHEW – 3150 N. TENAYA WAY., #140, NLV 89128

17 NOURIE, JAIME – 10347 MAURICE RIVER CT., LVN 89183

18 PEREZ, RAFAEL – 9850 BERMUDA RD., #248, LVN 89123

19 PERIMUTTER, JASON - CCFD: He is expected to offer testimony as an expert in the field
20 of emergency care and treatment of trauma victims, victim assessment, as well as his direct
21 involvement with the treatment of Ruth Garn.”

22 PORTER, MARIA – LVMPD P#8053

23 PRESUTTI, TRUDY – 3010 HACIENDA DR., RENO, NV 89503

24 RAFALOVICH, MARCO – DISTRICT ATTORNEY INVESTIGATOR

25 ROE, M. – LVMPD P#6833

26 ROSSI, A. – LVMPD P#6758

27 SANDOVAL, S. – LVMPD P#8742

28 SAXON, S. – LVMPD P#7849

1 SEDMINIK, G. – LVMPD P#5634

2 SEED, MICHAEL – LVMPD P#6724

3 SMINK, JEFFREY – LVMPD P#6556

4 SMITH, SEAN – LVMPD P#6038

5 SNYDER, DR. BRUCE – 2779 W. HORIZON RIDGE PKWY., #22, HEND, NV 89052

6 SPIOTTO, LANCE – LVMPD P#4774

7 THOMAS, DR. CASEY – UMC, 1800 W. CHARLESTON, LVN 89102

8 TWEITO, DR. TIMOTHY – 6980 SMOKE RANCH RD., #110, LVN 89128

9 WILLIAMS, WESTIN – LVMPD P#9707

10 YANNIS, C. – LVMPD P#6024

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

13
14 BY /s//LIZ MERCER
15 LIZ MERCER
16 Chief Deputy District Attorney
Nevada Bar #010681

17 **CERTIFICATE OF ELECTRONIC FILING**

18 I hereby certify that service of State's Notice, was made this 6th day of November,
19 2015, by Electronic Filing to:

20 JENNIFER M. WALDO, ESQ.
21 E-mail Address: jmw@gregoryandwaldo.com

22 Shellie Warner
23 Secretary for the District Attorney's Office

24
25
26
27
28 mmw/GCU

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT
FORENSIC LABORATORY
STATEMENT OF QUALIFICATIONS**

Date: 06/25/10

Name: Kathryn Aoyama

P#: 8025

Classification: Forensic Scientist I

Current Discipline of Assignment: Latent Prints

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Blood Alcohol	
Toolmarks		Breath Alcohol	
Trace Evidence		Arson Analysis	
Toxicology		Firearms	
Latent Prints	X	Crime Scene Investigations	
Serology		Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	
Quality Assurance		Technical Support /	
EDUCATION			
Institution	Dates Attended	Major	Degree Completed
University of California, San Diego	9/84 to 6/89	Biology	B.A.
University of Nevada, Las Vegas	8/83 to 5/84	Biology	None
ADDITIONAL TRAINING / SEMINARS			
Course / Seminar	Location	Dates	
ASCLD /LAB International Preparation Course	Henderson, NV	12/01-12/03/09	
Nevada State IAI Tristate Conference – IND/Zn Workshop	Las Vegas, NV	10/07/09	
Latent Print Certification Preparation	Las Vegas, NV	06/08-06/10/09	
Analysis of Distortion in Latent Prints	Las Vegas, NV	02/09-02/10/09	
GWS-L Latent User Methods and Operations	Las Vegas, NV	09/17-09/18/08	
RUVIS Training	Las Vegas, NV	8/6/2008	
Application of Statistics to Ridgeology And ACE-V Methodology	Las Vegas, NV	3/31-4/04/08	
Witnessing 101 - Clark County DA's Office	Las Vegas, NV	5/9/08	

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
Application of Statistics to Ridgeology and the ACE-V Methodology	Las Vegas, NV	3/31 to 4/4/08
Forensic Photography	Las Vegas, NV	2/11-2/13/08
24-Hour Application Study in Forensic Photography	Las Vegas, NV	02/14/08
Forensic Digital Imaging	Las Vegas, NV	1/7/08 - 1/10/08
2007 2 nd Tri-Division IAI Educational Conference	Salt Lake City, UT	11/6/07 - 11/9/07
IAI 92 nd International Educational Conference	San Diego, CA	7/23/07 - 7/27/07
Driver=s Training	Las Vegas, NV	7/3/07
2006 1 st Tri-Division IAI Educational Conference	Henderson, NV	8/21/06 - 8/24/06
Forensic Photography II	Las Vegas, NV	1/06 - 5/06
Testifying in Court	Las Vegas, NV	11/30/05
Problem Solving, Independent Decision Making	Las Vegas, NV	8/10/05
Effective Interpersonal Communication	Las Vegas, NV	6/23/05
Searching Public Records Part I and II	Las Vegas, NV	3/2/05 - 3/3/05
Criminal Law for Civilians	Las Vegas, NV	11/4/04
Forensic Photography I	Las Vegas, NV	8/04 - 12/04
Forensic Science 101 and 201, American Institute of Applied Science	NC	8/03 - 5/04
COURTROOM EXPERIENCE		
Court	Discipline	Number of Times
Las Vegas, NV District Court 7	Latent Prints	2
Las Vegas, NV District Court 6	Latent Prints	1
EMPLOYMENT HISTORY		
Employer	Job Title	Date
Las Vegas Metropolitan Police Department	Forensic Scientist I - Latent Prints	4/08 to present

EMPLOYMENT HISTORY		
Employer	Job Title	Date
Las Vegas Metropolitan Police Department	Forensic Scientist Trainee - Latent Prints	3/07 to 4/08

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)
International Association for Identification (IAI)	7-10-07 to present

PUBLICATIONS / PRESENTATIONS:
Presentations:
05/04/10 Poster Presentation: Latent Prints from Firearms Evidence (Statistics 2008-2009), Association of Firearms & Tool Mark Examiners Training Seminar, Henderson, NV
06/11/08 "Historical and Scientific Development of Latent Print Methodologies", LVMPD, Las Vegas, NV
1/16/08 "Introduction to Latent Print Collection", LVMPD Laughlin Substation, NV
11/7/07 "Back to Basics - The Biological Basis for Latent Print Examination", 2 nd Tri-Division IAI Educational Conference, Salt Lake City, UT
08/21/07 "Disguising and Disrupting Fingerprints", LVMPD, Las Vegas, NV
08/07/07 "Distortion in Latent Prints", LVMPD, Las Vegas, NV
06/14/07 "Ridge Flows and Crease Patterns of the Hands and Feet", LVMPD, Las Vegas, NV
OTHER QUALIFICATIONS:
None

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

Date: 08/22/2013Name: Gayle Johnson P#: 10208 Classification: Forensic Scientist ICurrent Discipline of Assignment: Latent Prints

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

EDUCATION			
<i>Institution</i>	<i>Dates Attended</i>	<i>Major</i>	<i>Degree Completed</i>
Lewis Clark State College	1982-1986	Natural Science/Chemistry	BS
University of Phoenix	2005-2007	Business Management/ Accounting	BS

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Photoshop for the Latent Print Examiner	Central Point, Oregon	03/19 - 03/22/13
7 th Annual Tri-Division Educational Conference	Las Vegas, NV	11/6 – 11/8/12
Analysis of Distortion in Latent Prints	Las Vegas, NV	02/20 - 02/22/12
25 th Anniversary AFIS Internet User Conference	Henderson, NV	8/29 – 8/31/11
2011 NSDAI Quarterly Training	North Las Vegas, NV	7/13/11

ADDITIONAL TRAINING / SEMINARS		
<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
COURTROOM EXPERIENCE		
<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>
EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
LVMPD Forensic Laboratory	Forensic Scientist I	7/2012 - present
LVMPD Forensic Laboratory	Forensic Scientist Trainee	7/2011 – 7/2012
LVMPD DSD	Accounting Technician	09/2007 – 7/2011
PROFESSIONAL AFFILIATIONS		
<i>Organization</i>		<i>Date(s)</i>
PUBLICATIONS / PRESENTATIONS:		
8/30/11 "Biology of Friction Ridge Skin for Tenprint Examiners", 25 th Anniversary AFIS Internet Conference, Henderson, NV		
OTHER QUALIFICATIONS:		


CLERK OF THE COURT

NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
LIZ MERCER
Chief Deputy District Attorney
Nevada Bar #010681
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

ERIN DESHAUN WARE,
#2652033
Defendant.

CASE NO: C-15-310099-1

DEPT NO: IX

**SUPPLEMENTAL NOTICE OF WITNESSES AND/OR EXPERT WITNESSES
[NRS 174.234]**

TO: ERIN DESHAUN WARE, Defendant; and

TO: JENNIFER M. WALDO, ESQ., Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF
NEVADA intends to call the following witnesses and/or expert witnesses in its case in chief.

These witnesses are in addition to those witnesses endorsed on the Information or
Indictment and any other witness for which a separate Notice of Witnesses and/or Expert
Witnesses has been filed.

The substance of each expert witness' testimony and copy of all reports made by or at
the direction of the expert witness has been provided in discovery.

A copy of each expert witness' curriculum vitae, if available, is attached hereto.

//

//

<u>NAME</u>	<u>ADDRESS</u>
ADAMS, DR. KIMBERLY – 9640 W. TROPICANA, #116, LVN 89147:	He/She is a physician and will testify to the treatment of Ruth Garn for injuries sustained on June 10, 2015.
AMUNDSON, MARK – HPD P#1250	
AOYAMA, KATHRYN – LVMPD P#8025 (or designee): LATENT PRINT EXAMINER -	Expert in the science and techniques of fingerprint comparison, and comparisons done in this case and any reports prepared therefrom.
ARMSTONG, DR. BRACKEN – UMC, 1800 W. CHARLESTON, LVN 89102:	He/She is a physician and will testify to the treatment of Ruth Garn for injuries sustained on June 10, 2015.
ARMSTRONG, JAMES - CCFD:	He is expected to offer testimony as an expert in the field of emergency care and treatment of trauma victims, victim assessment, as well as his direct involvement with the treatment of Ruth Garn.”
BARRETT, T. – LVMPD P#4972	
BETHARD, J. – LVMPD P#13928	
BROWN, TARA – FBI, 2501 INVESTIGATION PKWY, QUANTICO, VA 22135:	Expert in the field of DNA extractions, comparisons, analysis, and the identification of bodily fluids and is expected to testify thereto.
BURNS, J. – LVMPD P#9805	
BURNS, MIKE - CCFD:	He is expected to offer testimony as an expert in the field of emergency care and treatment of trauma victims, victim assessment, as well as his direct involvement with the treatment of Ruth Garn.”
BUTLER, W. – LVMPD P#10054	
CAMPBELL, J. – LVMPD P#13150	
COATES, DR. JAY – UMC, 1800 W. CHARLESTON, LVN 89102:	He/She is a physician and will testify to the treatment of Ruth Garn for injuries sustained on June 10, 2015.
CORNELL, BROOKE – LVMPD P#13576	
//	
//	

1 CRAANEN, PETER – FBI, RENO, NV: Expert in the area of forensic analysis of cell phone
2 contents and recovery of the same, and that they are expected to offer testimony regarding the
3 analysis of the cell phones impounded in this case belonging to Defendant and Trudy Presutti.

4 CUNNINGHAM, J. – LVMPD P#5466

5 CUSTODIAN OF RECORDS – CLARK COUNTY DETENTION CENTER

6 CUSTODIAN OF RECORDS – CLARK COUNTY FIRE DEPARTMENT

7 CUSTODIAN OF RECORDS – LVMPD COMMUNICATIONS

8 CUSTODIAN OF RECORDS – LVMPD RECORDS

9 FLETCHER, SHAWN – LVMPD P#5221

10 FLETCHER, TIMOTHY – LVMPD P#6383

11 FORD, S. – LVMPD P#9063

12 GARN, RUTH – 4126 OXNARD CIR., LVN 89121

13 GIANNONE, JOSEPH – LVMPD P#6225

14 HALASI, R. – LVMPD P#8783

15 HALL, EMMETT – ADDRESS UNKNOWN

16 HAMMOND, Z. – LVMPD P#13917

17 HENNESY, D. – LVMPD P#6736

18 HOLSTEIN, DANIEL – LVMPD P#3861

19 HONAKER, JAMIE – DISTRICT ATTORNEY INVESTIGATOR

20 HUGHES, H. – LVMPD P#6750

21 HUNTSMAN, SHAUN - CCFD: He is expected to offer testimony as an expert in the field of
22 emergency care and treatment of trauma victims, victim assessment, as well as his direct
23 involvement with the treatment of Ruth Garn.”

24 JOBRIO, J. – LVMPD P#7299

25 JOHNSON, GAYLE – LVMPD P#10208 (or designee): LATENT PRINT EXAMINER -
26 Expert in the science and techniques of fingerprint comparison, and comparisons done in this
27 case and any reports prepared therefrom.

28 //

1 KHIABANI, DR. KAYVAN – 1707 W. CHARLESTON, STE. 190, LVN 89102: He/She is
2 a physician and will testify to the treatment of Ruth Garn for injuries sustained on June 10,
3 2015.

4 LARSON, DR. DOUGLAS – UMC, 1800 W. CHARLESTON, LVN 89102: He/She is a
5 physician and will testify to the treatment of Ruth Garn for injuries sustained on June 10, 2015.

6 LAYTHORPE, M. – LVMPD P#5448

7 LEIJA, ARMANDO – LVMPD P#2020

8 LOPEZ, C. – LVMPD P#6958

9 LORSON, KARL – LVMPD P#5746

10 LUKOWSKI, W. – LVMPD P#4659

11 MALKOLOSKI, B. – LVMPD P#13802

12 MARCO, RON – CCFD: He is expected to offer testimony as an expert in the field of
13 emergency care and treatment of trauma victims, victim assessment, as well as his direct
14 involvement with the treatment of Ruth Garn.”

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17 forensic analysis of cell phone contents and recovery of the same, and that they are expected
18 to offer testimony regarding the analysis of the cell phones impounded in this case belonging
19 to Defendant and Trudy Presutti.

20 MENEZES, DR. JOHN – 1707 W. CHARLESTON, #190, LVN 89102: He/She is a physician
21 and will testify to the treatment of Ruth Garn for injuries sustained on June 10, 2015.

22 MITCHELL, S. – LVMPD P#13765

23 MOXLEY, DR. JEFFREY – 3663 E. SUNSET, #403, LVN 89120: He/She is a physician and
24 will testify to the treatment of Ruth Garn for injuries sustained on June 10, 2015.

25 MUNOZ, I. – LVMPD P#9063

26 MURPHY, DANEEN – LVMPD P#5691

27 NELSON, JASON – LVMPD P#6825

28 //

1 NG, DR. MATTHEW – 3150 N. TENAYA WAY., #140, NLV 89128: He/She is a physician
2 and will testify to the treatment of Ruth Garn for injuries sustained on June 10, 2015.

3 NOURIE, JAIME – 10347 MAURICE RIVER CT., LVN 89183

4 PEREZ, RAFAEL – 9850 BERMUDA RD., #248, LVN 89123

5 PERIMUTTER, JASON - CCFD: He is expected to offer testimony as an expert in the field
6 of emergency care and treatment of trauma victims, victim assessment, as well as his direct
7 involvement with the treatment of Ruth Garn.”

8 PORTER, MARIA – LVMPD P#8053

9 PRESUTTI, TRUDY – 3010 HACIENDA DR., RENO, NV 89503

10 RAFALOVICH, MARCO – DISTRICT ATTORNEY INVESTIGATOR

11 ROE, M. – LVMPD P#6833

12 ROSSI, A. – LVMPD P#6758

13 SANDOVAL, S. – LVMPD P#8742

14 SAXON, S. – LVMPD P#7849

15 SEDMINIK, G. – LVMPD P#5634

16 SEED, MICHAEL – LVMPD P#6724

17 SMINK, JEFFREY – LVMPD P#6556

18 SMITH, SEAN – LVMPD P#6038

19 SNYDER, DR. BRUCE – 2779 W. HORIZON RIDGE PKWY., #22, HEND, NV 89052:
20 He/She is a physician and will testify to the treatment of Ruth Garn for injuries sustained on
21 June 10, 2015.

22 SPIOTTO, LANCE – LVMPD P#4774

23 THOMAS, DR. CASEY – UMC, 1800 W. CHARLESTON, LVN 89102: He/She is a
24 physician and will testify to the treatment of Ruth Garn for injuries sustained on June 10, 2015.

25 TWEITO, DR. TIMOTHY – 6980 SMOKE RANCH RD., #110, LVN 89128: He/She is a
26 physician and will testify to the treatment of Ruth Garn for injuries sustained on June 10, 2015.

27 //

28 //

1 WILLIAMS, WESTIN – LVMPD P#9707

2 YANNIS, C. – LVMPD P#6024

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

6 BY /s//LIZ MERCER
7 LIZ MERCER
8 Chief Deputy District Attorney
9 Nevada Bar #010681

10 **CERTIFICATE OF ELECTRONIC FILING**

11 I hereby certify that service of State's Notice, was made this 12th day of November,
12 2015, by Electronic Filing to:

13 JENNIFER M. WALDO, ESQ.
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1 CASE NO.: C-15-310099-1

2 DEPT NO.: 2

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4 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

5 COUNTY OF CLARK, STATE OF NEVADA

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7 STATE OF NEVADA,)

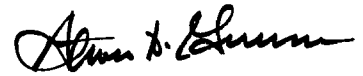
8 Plaintiff,)

9 vs.)

10 ERIN WARE,)

11 Defendant.)

12 _____)



CLERK OF THE COURT

Case No. 15F10849X

13

14 REPORTER'S TRANSCRIPT OF

15 PRELIMINARY HEARING

16 BEFORE THE HONORABLE JOSEPH S. SCISCENTO
17 JUSTICE OF THE PEACE

18 THURSDAY, OCTOBER 15, 2015

19

APPEARANCES

20

21 For the State: ELIZABETH MERCER, ESQ.
Chief Deputy District Attorney
22 KRISTINA RHOADES, ESQ.
Deputy District Attorney

23 For the Defendant: AMANDA GREGORY, ESQ.

24

25 Reported By: Jennifer O'Neill, CCR No. 763

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1 LAS VEGAS, NEVADA; OCTOBER 15, 2015; 9:00 A.M.

2 -oOo-

3

4 THE COURT: Erin Deshaun Ware, 15F10849X.

5 MS. GREGORY: Your Honor, that's a
6 preliminary hearing that's going to be going forward
7 later this morning.

8 THE COURT: We just wanted him here early.

9 MS. GREGORY: The State asked for him to be
10 brought over early because of a witness issue.

11 THE COURT: We're going to start the prelim
12 on this one early. Go ahead and have a seat, sir.
13 We'll get back to you in a few minutes.

14 (Whereupon, other matters were heard.)

15 THE COURT: Erin Deshaun Ware, 15F10849X.
16 Mr. Ware is present in custody. This is the time set
17 for the preliminary hearing.

18 How many witnesses do we got on this?

19 MS. MERCER: Your Honor, we have three
20 witnesses.

21 THE COURT: Three?

22 MS. MERCER: Yes.

23 (Whereupon, other matters were heard.)

24 THE COURT: Erin Deshaun Ware, 15F10849X.
25 This is the time set for the preliminary hearing.

1 Anybody who's a witness or potential witness on the
2 Ware matter, please wait outside and do not discuss
3 your testimony with any other witnesses, except for the
4 first witness we're going to call, who is going to be?

5 MS. MERCER: It's going to be Ruth Garn.
6 Your Honor, I apologize. I forgot that I had the
7 second amended criminal complaint prepared.
8 Miss Rhoades is making copies of it right now. It just
9 adds a charge of prohibited person in possession of a
10 firearm, and it was previously e-mailed to defense
11 counsel.

12 MS. GREGORY: I have that.

13 THE COURT: Didn't we already file an
14 amended?

15 MS. MERCER: I filed an amended, but I don't
16 believe that it -- oh, did you already file it?

17 THE COURT: I thought I had seen that
18 already.

19 MS. MERCER: We filed a previous amended
20 criminal complaint adding a couple charges, but ...

21 THE COURT: All right. Are there any
22 witnesses in here or potential witnesses from the State
23 or Defense?

24 MS. MERCER: I just had the other lay witness
25 step outside, Your Honor.

1 THE COURT: All right.

2 (Whereupon, other matters were heard.)

3 THE COURT: State of Nevada versus Erin
4 Deshaun Ware, 15F10849X. This is the time set for the
5 preliminary hearing.

6 State, are you ready to proceed on this
7 matter?

8 MS. MERCER: Yes, Your Honor.

9 THE COURT: Defense, are you ready to proceed
10 on this matter?

11 MS. GREGORY: Yes, Your Honor.

12 THE COURT: Ma'am, please raise your right
13 hand. Face the clerk and be sworn.

14 Whereupon,

15 RUTH GARN,
16 was called as a witness, and having been first duly
17 sworn, was examined and testified as follows:

18 THE CLERK: Please be seated. Say and spell
19 your first and last name.

20 THE WITNESS: Ruth Garn.

21 THE COURT: Can you spell it, please.

22 THE WITNESS: First name Ruth, R-U-T-H. Last
23 name Garn, G-A-R-N.

24 THE COURT: Okay. Ma'am, what I need you to
25 do is go ahead and move forward a little closer to the

1 microphone. It will pick up your voice. You have a
2 high enough voice, a strong enough voice. Okay. And
3 then you can just direct your questions to them -- or
4 your answers to the attorneys. Okay?

5 THE WITNESS: Okay.

6 THE COURT: You don't need to look at the
7 clerk anymore.

8 Are you okay?

9 THE WITNESS: Yes.

10 THE COURT: Do you need some water or
11 something? Do you have some there?

12 THE WITNESS: I have some.

13 THE COURT: And you're comfortable?

14 THE WITNESS: Uh-huh.

15 THE COURT: State, you may proceed.

16 MS. MERCER: Thank you, Your Honor.

17

18 DIRECT EXAMINATION

19 BY MS. MERCER:

20 Q. Ma'am, I want to direct your attention to
21 June 10th of 2015.

22 On that date were you the owner of a Subway
23 which is located at 8790 South Maryland Parkway, here
24 in Las Vegas, Clark County, Nevada?

25 A. Yes.

1 Q. Are you still the owner of that property?

2 A. Yes.

3 Q. Or the business. How long had you owned the
4 business on that date?

5 A. I purchased the business, that particular
6 one, on June 28th of 2014.

7 Q. In addition to owning the business, did you
8 also work there back on June 10th of 2015?

9 A. Yes.

10 Q. What hours did you typically work at the
11 store?

12 A. I typically worked 50 to 60 hours a week in
13 the store. Sometimes 6:00 a.m. to 10:00 p.m. Most of
14 the time, it was 6:30 a.m. to 5:30 p.m.

15 Q. On June 10th of 2015, what time did you
16 arrive at work?

17 A. 6:30 a.m.

18 Q. Were you working with any other employees on
19 that date?

20 A. Yes.

21 Q. What were their names?

22 A. Jaimie Nourie.

23 Q. Directing your attention to around 2:30 in
24 the afternoon, did something unusual happen at that
25 time?

1 A. Yes.

2 Q. Can you describe for me where you were when
3 that happened?

4 A. I was in the service area, which is behind
5 the sandwich unit, making sandwiches for customers.

6 Q. What first caught your attention?

7 A. A man came in the store asking for a cup of
8 water.

9 Q. Did he come into the store at that point or
10 had he come into the store prior to asking for a cup of
11 water?

12 A. That is the first time I had seen him was
13 when he came up to the register and asked for a cup of
14 water.

15 Q. And when he asked for a cup of water, what
16 was your response to him?

17 A. I told him that it was going to be a quarter
18 for the courtesy cup.

19 Q. What kind of a courtesy cup do you provide
20 customers who ask for water?

21 A. It's a 12-ounce, plastic, semi-see-through
22 disposable cup.

23 Q. Did he, in fact, give you a quarter in
24 exchange for a water cup?

25 A. He did not give me the quarter, no. I was

1 waiting on another customer. He went and got a quarter
2 from a customer that was sitting in the store eating,
3 and he proceeded to give the quarter to Jaimie, because
4 she was at the register.

5 Q. Once he had the cup for the water, did he go
6 and get water from the soda machine?

7 A. Yes, ma'am.

8 Q. After he had his water from the soda machine,
9 did he continue to remain in the store?

10 A. Yes.

11 Q. What was he doing in the store?

12 A. He was walking around in the store. He went
13 into the restroom. He left the store and then he came
14 back into the store.

15 Q. After he left the store and came back into
16 the store, did he make any statements to you or Jaimie?

17 A. Yes. He asked if he could stay in the store
18 for a while because it was hot and he was waiting for
19 someone.

20 Q. Did he remain in the store at that point?

21 A. Yes.

22 Q. You gave him permission to stay?

23 A. I told him he could stay, but not too long.

24 Q. At that point what happened next?

25 A. He was standing by the soda machine with the

1 glass of water in his hand. Jaimie and I turned our
2 back to him and went into the back room, because we
3 didn't have any more customers. We had -- Jaimie got
4 to where we were going to go first and she turned
5 around. I'm still walking into the back room. She
6 turns around and she says, Oh, my God. I turn around
7 and face where we just come from, and there's a man
8 standing there with a gun at my head.

9 Q. Was it the same man that obtained the cup?

10 A. Yes.

11 Q. The water for the cup --

12 A. Yes.

13 Q. -- or the cup for the water, and the same man
14 that you had given permission to wait for his ride
15 inside of your business?

16 A. Yes, it was.

17 Q. Can you describe that man for me?

18 A. He was approximately 5-foot-4, about
19 140 pounds. He looked to be mid-20s. He was a black
20 man, with a baseball cap.

21 Q. Do you see that individual in the courtroom
22 today?

23 A. I can't identify him because my vision is
24 still not to the point where I could do that.

25 Q. Prior to June 10th of 2015, how was your

1 vision?

2 A. It was good.

3 Q. When you turned around and saw the man with
4 the gun, what happened at that point?

5 A. He said, Give me all the fucking money. I
6 put my hands up in the air. And I said, Please. You
7 don't have to do this. Please turn around and go back.
8 And I said, We don't have any money back here. It's
9 all up in the safe and in the register. He pushes me
10 into the desk and says, I guess we're just going to
11 have to get it out of your fucking purses.

12 He pushes me into my desk, goes behind me,
13 grabs Jaimie and puts the gun to her neck and said he
14 was going to kill her.

15 Q. Was your purse in that vicinity?

16 A. My purse was sitting on the desk.

17 Q. So after he grabbed Jaimie, what did you do?

18 A. He grabbed Jaimie and said he was going to
19 kill her. All I could think was that he was going to
20 kill her. So I have a gun -- I have a concealed
21 weapons permit -- and it was in my purse.

22 Q. What kind of gun did you own on that date?

23 A. It's a revolver. A .357 Security Six.

24 Q. And you indicated that you had a carrying
25 concealed weapons permit for that firearm?

1 A. Yes, ma'am.

2 Q. And that firearm was in your purse?

3 A. Yes, ma'am.

4 Q. Did you end up removing the firearm from your
5 purse?

6 A. I did.

7 Q. Why did you remove the firearm from your
8 purse?

9 A. Because I felt he -- and he said and I truly
10 felt he was going to kill Jaimie.

11 Q. When you removed the firearm from your purse,
12 what did you do at that point?

13 A. I turned sideways and faced him and he was
14 standing approximately 3 feet from me. And I pointed
15 the gun at him and I told him to drop his gun.

16 Q. What happened at that point?

17 A. And he turned around and he fired his gun at
18 me and shot me in the face.

19 Q. Where did he shoot you on the face?

20 A. The bullet entered my face above my left eye.

21 Q. Above or below your left eye?

22 A. I'm sorry. Below my left eye. It traveled
23 under my nose, under my cheekbone, and it exited the
24 side of my face, on the right-hand side above my ear.

25 Q. And for the record, you were just now

1 pointing to your left cheek, just below your eyeball?

2 A. Yes. It went in here through my face and out
3 the side of my head, on this side.

4 Q. When you were struck in the face, did you
5 fall to the ground?

6 A. I did.

7 Q. While you were on the ground, what happened
8 at that point?

9 A. I fell on the ground on my -- on my right
10 side. I was laying on the ground. He proceeded to
11 step over me and he -- I never lost consciousness until
12 I heard him -- I couldn't hear really good, but I heard
13 him talking. And I looked over my left shoulder, and I
14 saw him stepping over me with a gun still at Jaimie's
15 neck, and so I tried to get up. He turns around and he
16 shoots me again.

17 Q. Was your gun still close to you when you fell
18 to the ground?

19 A. I don't remember.

20 Q. You said that he stepped over you?

21 A. Yes.

22 Q. How close to the cash register did he get
23 before he turned around and came back towards you?

24 A. He didn't. From what I -- it was -- I don't
25 think he did, because Jaimie was still in front of him.

1 And he still had the gun at Jaimie's neck, and they're
2 both stepping over me because I'm laying on the floor.
3 And he turns right then, and Jaimie is still walking,
4 and he turns around and shoots me again on the floor.

5 Q. When he shot you again, were you able to tell
6 where you were struck?

7 A. Yes.

8 Q. Where were you struck?

9 A. I had my arm on my stomach like this, laying
10 on my side, and he shot me the second time through my
11 arm. It went out this one and it went into my stomach.

12 Q. And for the record, do you still have scars
13 where the bullet entered and exited your arm?

14 A. Yes.

15 Q. And could you just show those to the judge
16 for me, please.

17 A. It went in here and it went out there and in
18 my stomach here (witness indicating).

19 THE COURT: Do you want to, for the record,
20 explain what she showed the Court?

21 BY MS. MERCER:

22 Q. And that's your left arm, correct?

23 A. This is my left arm, correct.

24 Q. And it entered the exterior of your left
25 forearm and then --

1 A. Yes.

2 Q. -- exited the interior?

3 A. Yes.

4 Q. Were you struck by any additional bullets
5 fired by him?

6 A. Yes. After he shot me the second time, I
7 looked up at him and I said, Quit fucking shooting me.
8 He raised the gun up to my head. I put my arm up this
9 way to shield it, and he shot me the third time in my
10 chest.

11 Q. And where did that bullet end up traveling
12 to?

13 A. It entered my chest through my left breast.
14 It went out my left breast, went in the inside of my
15 right breast and back out the right side of my right
16 breast.

17 Q. Did you sustain any injuries to your clavicle
18 area?

19 A. No. It went straight through.

20 Q. Were you struck by any additional bullets
21 that damaged your clavicle area?

22 A. No.

23 MS. MERCER: Permission to approach the
24 witness, Your Honor.

25 THE COURT: You may.

1 BY MS. MERCER:

2 Q. Miss Garn, I'm handing you what's been marked
3 for identification purposes as State's Proposed
4 Exhibits 5 through 10. Can you please take a look at
5 those for me. I know it's going to be hard, but can
6 you look at those briefly and hand them back to me and
7 tell me whether you recognize them.

8 A. This is me.

9 Q. Okay. These are all photos of you?

10 A. For sure I know those are. Those other ones
11 look like the wounds that I saw when I was in the
12 hospital.

13 Q. And do they fairly and accurately depict the
14 injuries you sustained on June 10th of 2015?

15 A. Yes.

16 MS. MERCER: Your Honor, I would move for the
17 admission of State's Exhibits 5 through 10.

18 THE COURT: Any objection to Exhibits
19 5 through 10 coming in at this time?

20 MS. GREGORY: No.

21 THE COURT: Exhibits 5 through 10 shall be
22 admitted.

23 **(Whereupon, State's Exhibits 5 through**
24 **10 were admitted.)**

25

1 BY MS. MERCER:

2 Q. And, Miss Garn, Exhibits 5 and 6 show the

3 injury -- the bullet injury that you sustained just

4 below your left eye, correct?

5 A. Yes.

6 Q. Showing you State's Exhibit 7, where did you

7 sustain these injuries?

8 A. That is between my right and my left breasts.

9 Q. Okay. So the bullet entered, bounced off

10 your --

11 A. Yes. I was laying this way and it went

12 through and through and out.

13 Q. Okay. So it bounced off the bone and it came

14 right out, correct?

15 A. Yes.

16 Q. And then State's Exhibits 8, 9, and 10 show

17 the other bullet wounds that you've previously

18 testified to, correct?

19 A. Yes. This looks like my right breast.

20 Q. State's Exhibit 8 is your right breast?

21 A. Yes.

22 Q. Where is State's Exhibit 9?

23 A. This is my stomach.

24 Q. State's Exhibit 10 is your stomach?

25 A. Yes.

1 Q. What about State's Exhibit 9?

2 A. That's my right -- one is the right and one
3 is the left.

4 Q. And I don't remember if I already said it,
5 but State's Exhibit 7 shows the injury that you
6 sustained right here?

7 A. Yes.

8 MS. MERCER: I forgot one, Your Honor. May I
9 approach her?

10 THE COURT: Sure.

11 BY MS. MERCER:

12 Q. Showing you State's Exhibit 11, do you
13 recognize this as well?

14 A. Yes.

15 Q. And does it fairly and accurately depict your
16 arm on June 10th of 2015?

17 A. Yes.

18 Q. And is this where the bullet wound to your
19 arm is bandaged?

20 A. Yes.

21 Q. You said that you owned a revolver?

22 A. Yes.

23 Q. And that you had a carry concealed weapons
24 permit?

25 A. Yes.

1 MS. MERCER: Permission to approach again.

2 THE COURT: You may.

3 BY MS. MERCER:

4 Q. I'm showing you State's Exhibit 13 and 14.

5 Do you recognize this item?

6 A. Yes.

7 Q. How do you recognize it?

8 A. This is my revolver and this is the --

9 Q. And that's depicting the blurred serial
10 number?

11 A. I'm taking your word for it that that's my
12 serial number.

13 Q. No. But is this the serial number that's
14 blurry?

15 A. Yes. Yes. And, yes, it had a wood grip
16 handle. It was a 4-inch -- and yes.

17 Q. And does it fairly and accurately depict your
18 revolver as it appeared on June 10th of 2015?

19 A. Yes.

20 MS. MERCER: Move for the admission of
21 State's Exhibits 13 and 14, Your Honor.

22 THE COURT: Any objection to Exhibits 13 and
23 14 coming in at this time?

24 MS. GREGORY: No.

25 THE COURT: They shall be admitted.

1 **(Whereupon, State's Exhibits 13 and 14**
2 **were admitted.)**

3 BY MS. MERCER:

4 Q. Ma'am, after the suspect returned to you and
5 fired several other rounds at you, what happened at
6 that point?

7 A. I laid on the floor for a minute and then
8 tried to get up. I couldn't get up and I fell. All
9 the blood on the floor, and I kept slipping trying to
10 get up. And I set myself up on the leg of my desk and
11 I started yelling at Jaimie to call 911. I didn't know
12 where she was. She said she was doing that already.
13 She yelled it. And when she yelled at me back, I
14 recognized that her voice was up near the cash register
15 area.

16 And a few seconds after that, another one of
17 my employees came into the back room, and I recognized
18 him and told him he needed to help me get some towels
19 and put over the areas that were bleeding. And so him
20 and Jaimie got some towels from the work area and put
21 them on my chest and on my face and on my arm to try to
22 stop some of the bleeding.

23 Q. Shortly after that did medical arrive and
24 transport you?

25 A. Yes.

1 Q. Which hospital were you taken to?
2 A. UMC.
3 Q. How long were you in the hospital?
4 A. Four days.
5 Q. While you were laying on the ground after
6 being struck by the second round of bullets, were you
7 able to see anything that transpired at the cash
8 register?
9 A. No.
10 Q. What happened to your gun?
11 A. I was told what happened to it. I don't
12 know.
13 Q. After the suspect left the business, was your
14 firearm still there?
15 A. No.
16 Q. Did you give him permission to take your
17 firearm?
18 A. No.
19 Q. What kind of medical treatment did you
20 receive while you were in the hospital for four days?
21 A. They kept me sedated for two days. They kept
22 me intubated. After two days they allowed me to regain
23 consciousness. They were asking me if I could see and
24 if I could talk. And I stayed in the ICU for another
25 day, and then they put me in a private room. And then

1 on Sunday they released me.

2 I was treated for -- I couldn't move my left
3 arm. I couldn't stand. I couldn't go to the bathroom.
4 I couldn't see very good. I could see a little bit out
5 of my left eye, but my right eye was completely swollen
6 shut. They said that I had bleeding on my brain. And
7 they said they weren't sure if I had permanent eye
8 damage or if I could get my vision back. They didn't
9 know what kind of neurological damage I was going to
10 have.

11 MS. GREGORY: Your Honor, at this point I'm
12 going to object to hearsay and foundation with any of
13 the -- what the doctors told her as far as her
14 condition.

15 MS. MERCER: And, Your Honor, it's the
16 State's position that that falls under the catch-all
17 exception to the hearsay rule. There's no reason that
18 a doctor would lie to her with regards to the injuries
19 and treatment she sustained while in the hospital.

20 THE COURT: I think she mentioned some of the
21 injuries that she had without going into diagnoses, and
22 I think basically that's what she's determining.
23 There's not a specific diagnosis that only a doctor
24 would know. As long as we just keep to the injuries
25 themselves and not to any diagnoses. All right. So

1 the injuries, as long as we haven't talked about that,
2 what the doctor told her about the injuries and that.

3 BY MS. MERCER:

4 Q. What other treatments did you receive while
5 you were in the hospital? Did you undergo surgery?

6 A. I did.

7 Q. What did they have to operate on?

8 A. They had to go into my stomach and remove the
9 bullet that had lodged in my stomach. That was the --
10 I think that's the only -- by definition of surgery, I
11 think that's the only invasive. Everything else they
12 just stitched up from the outside.

13 Q. So you had to -- you received several
14 stitches?

15 A. I had stitches in my inner forearm on my left
16 side. I had stitches on my outside of my left arm. I
17 had stitches on my left breast, inside and outside. On
18 my right breast, outside and inside. I had stitches
19 under my left eye and I had stitches on the right side
20 of my head.

21 Q. Do you still have scars from all of those?

22 A. Yes.

23 Q. From all of the bullet wounds and the
24 stitches?

25 A. Yes.

1 Q. Were you prescribed any pain medication while
2 in the hospital?

3 A. Yes.

4 Q. What kind of pain medication were you given
5 while you were staying in the hospital?

6 A. Morphine.

7 Q. Were you given a prescription for additional
8 pain medications when you were finally released from
9 the hospital after four days?

10 A. Yes.

11 Q. What kind of prescriptions did they give you?

12 A. Hydrocodone was the pain medication.

13 Q. How many days worth of hydrocodone did they
14 give you?

15 A. Eight days.

16 Q. Have you had to follow up with any other
17 doctors after you were released from the hospital?

18 A. Yes.

19 Q. What types of doctors have you seen?

20 A. They had me go and see my -- a neurologist,
21 the one that saw me in the hospital. I went and seen
22 an oral surgeon for my jaw. I've seen an ocular
23 surgeon to replace the orbital floors in both of my
24 eyes that were destroyed from the blast that went
25 through my face.

1 Q. Did you actually undergo those surgeries?

2 A. I did that one. That's the only surgery I've

3 undergone.

4 Q. Have you sustained any damage to any of your

5 other senses as a result of the bullet wounds you

6 sustained on June 10th of 2015?

7 A. Yes.

8 Q. Can you explain those for us. Describe that

9 for us.

10 A. My eyes, I -- double vision, blurred vision,

11 and I can't focus. I have -- my eyes go back and forth

12 this way, which inhibits me from being able to focus on

13 stuff. And if I look up, it's doubled. If I look

14 sideways, it's doubled. I have permanent damage in my

15 left -- my right pupil. It's hyperdilated and it's

16 extremely sensitive to light.

17 I can't smell. I can't taste. My left

18 eardrum was perforated from the blast and I have inner

19 ear damage and nerve deafness.

20 Q. So your hearing is impaired in your left ear?

21 A. Yes. And the whole side of my -- the whole

22 right side of my face is still numb from the damage

23 from the nerves, so I can't feel anything on the right

24 side of my face.

25 Q. As you sit there on the witness stand today,

1 do you have a brace on your left arm?

2 A. I do.

3 Q. And what is the purpose of that brace?

4 A. That's because the bullet that went through
5 my arm severed the tendon to my thumb and damaged the
6 tendon to my small pinky finger, and these three
7 fingers are still numb.

8 Q. And for the record, you're pointing to the
9 pointer finger, your middle finger, and your ring
10 finger --

11 A. Yes.

12 Q. -- on your left hand?

13 A. Yes.

14 Q. They're still numb?

15 A. They're still numb. The doctor said that if
16 the -- if the nerves were going to repair themselves,
17 it would take anywhere from three to six months. So
18 far the nerves have not repaired themselves, so I don't
19 have feeling in these fingers. This thumb is
20 completely useless. I can't use it at all.

21 Q. You can't move it?

22 A. If I take off my brace, it falls into my palm
23 and I cannot pull it out, like this (witness
24 indicating).

25 Q. So you have no control over --

1 A. No.

2 Q. -- your left thumb?

3 A. Because the tendon to that was severed.

4 Q. And did you have to see a specialist
5 regarding that injury?

6 A. I'm seeing a hand specialist on it. I am
7 currently trying to get surgery on that for a potential
8 to repair it, but that hasn't happened yet.

9 Q. Did you sustain any damage to your tear
10 ducts?

11 A. Yes. My left tear duct was destroyed when
12 the bullet went through, and my left eye constantly
13 tears because the recumulative [sic] tear duct is then
14 destroyed and there's no place to go for the fluid in
15 my eye, so it just drains.

16 Q. When you took the witness stand today, you
17 needed the assistance of a walker --

18 A. Yes.

19 Q. -- to get up to the witness stand?

20 A. Yes.

21 Q. Did you have to use a walker prior to
22 June 10th of 2015?

23 A. No.

24 Q. Why do you have to use a walker now?

25 A. Because of my eyes being -- not being able to

1 focus and the inner ear damage and the neurological
2 problems that I'm having inside my head, I cannot walk
3 without assistance, because my balance -- I have no
4 balance.

5 Q. Have you been able to return to work?

6 A. No.

7 Q. Are you able to drive?

8 A. No.

9 Q. Prior to June 10th of 2015, had you ever seen
10 the individual that shot you before?

11 A. No.

12 Q. In total, how many bullets struck you?

13 A. Three.

14 MS. MERCER: I don't believe I have any
15 additional questions, Your Honor. I'll pass the
16 witness.

17 THE COURT: All right. Cross-examination.

18

19 CROSS-EXAMINATION

20 BY MS. GREGORY:

21 Q. Miss Garn, you said that the suspect that
22 came into the Subway that day on June 10th, that he
23 initially came in and asked for a cup of water,
24 correct?

25 A. Yes.

1 Q. And then he drank the water from the cup,
2 correct?

3 A. Yes.

4 Q. You didn't see where he put the cup after he
5 was finished with it; is that true?

6 A. The last I saw of him and the cup, he was
7 standing at the soda machine with it still in his hand.

8 Q. So you did not see where the cup ended up,
9 then?

10 A. No.

11 Q. Now, once you were behind the register with
12 Jaimie and you said that this person who had asked for
13 the cup came back behind into that area, correct?

14 A. Yes.

15 Q. And at some point you ended up pulling your
16 gun out and pointing it at him, correct?

17 A. Yes.

18 Q. At that point, when you pulled your gun out
19 and pointed it at him, he did not have his gun pointed
20 at you; is that correct?

21 A. He had it pointed at Jaimie.

22 Q. Now, once you pulled the gun, it happened
23 pretty quickly that you were shot quickly after that,
24 correct?

25 A. Yes.

1 Q. And then you fell down to the ground,
2 correct?

3 A. After I was shot, yes.

4 Q. And you had -- at that point you had had
5 issues seeing what was happening, correct?

6 A. When I first hit the ground?

7 Q. After you initially got shot in your face
8 area, you had trouble seeing what was occurring after
9 that happened; is that true?

10 A. From laying down or from what was happening
11 behind me?

12 Q. Let's say both. Either. You tell me first,
13 from when you were laying down.

14 A. When I was laying down, all I could see was
15 the floor and the table I was laying down at. So that
16 was my line of vision, so I could see that. And then
17 when I looked over my shoulder, I had no problem seeing
18 over my shoulder with my left eye.

19 Q. Okay. But this was all happening pretty
20 quickly; is that accurate to say?

21 A. Yes.

22 Q. Now, when you went on the ground, you said
23 that you didn't know where your gun went at that point;
24 is that true? It was no longer in your hand, correct?

25 A. Correct.

1 Q. And you never saw where your gun went after
2 the fact, correct?

3 A. I felt it on the floor. Right after I fell
4 down, I reached out my hand and I felt it on the floor,
5 about where my right hand was. And then I don't know
6 what happened to it after that.

7 Q. Do you remember being interviewed with -- did
8 a detective interview you five days after this
9 happened, I believe, on June 15th?

10 A. It was a Wednesday. I can't tell you exactly
11 what day it was.

12 Q. But you do remember giving a statement to the
13 police that was recorded; is that true?

14 A. Yes.

15 Q. Now, at the time when you were struggling
16 with the suspect at the Subway restaurant --

17 A. I never struggled with him.

18 Q. When you had the incident at the Subway, did
19 you remember actually shooting your gun?

20 A. I thought I had, because all of the
21 self-defense classes that I've taken says you don't --
22 if you pull your gun, you need to be prepared to shoot.
23 Because he had the gun at Jaimie's head, I didn't shoot
24 it. I think to myself, I didn't shoot it.

25 Q. So you don't believe you shot your gun?

1 A. At the time I did. I no longer believe that
2 I did.

3 Q. When you were interviewed by detectives a few
4 days after this happened, at that time did you believe
5 that you had shot your gun?

6 A. I did.

7 Q. And did you believe that you had actually
8 shot the suspect?

9 A. No. I don't believe I hit him.

10 Q. Did you tell detectives that you thought you
11 had shot the suspect?

12 A. I think I told him I hoped I had hit him. I
13 don't remember exactly what I said.

14 Q. Now, the suspect came in and initially asked
15 for money from the store, correct?

16 A. No. He asked for a water cup.

17 Q. I mean, once the gun was out and once it
18 turned into -- apparent that there was a problem.

19 A. When he came into the back room and I turned
20 around and he had the gun to my head, he asked for
21 money.

22 Q. And as far as you're aware, was any money
23 actually taken from the Subway?

24 A. There's -- that I'm aware of, yes, there was.
25 And I don't know who took it and how it got lost, but

1 there was money missing in a Wells Fargo change bag
2 that didn't come up.

3 Q. But you never -- as far as you knew, the
4 suspect had not gotten into the cash register; is that
5 correct?

6 A. Before he shot me, he had not gotten in the
7 cash register and I can't tell you what happened after
8 that.

9 Q. And as far as you knew, he had not gotten
10 into the safe; is that correct?

11 A. Before he shot me, correct.

12 MS. GREGORY: No further questions.

13 THE COURT: All right. Any follow-ups based
14 on that?

15 MS. MERCER: Yes.

16

17 REDIRECT EXAMINATION

18 BY MS. MERCER:

19 Q. Ma'am, what you actually told the detectives
20 during that interview was, I'm not 100 percent sure if
21 I fired at him, correct? Do you recall?

22 A. I don't.

23 Q. Would it refresh your recollection if I
24 showed you a copy of the taped statement?

25 A. Yes.

1 MS. MERCER: Your Honor, may I approach?

2 THE COURT: You may approach.

3 MS. MERCER: It's page 4.

4 BY MS. MERCER:

5 Q. If you could just read that quietly to

6 yourself, starting right there, and tell me when you're

7 done, please.

8 A. Starting where?

9 Q. Here.

10 A. Yes.

11 Q. Did that refresh your recollection as to what

12 you told the detectives with regards to whether or not

13 you fired at him?

14 A. Yes.

15 Q. And did you tell them that you fired at him

16 or that you weren't 100 percent sure?

17 A. I'm sorry?

18 Q. Did you tell them that you fired at the

19 suspect or that you weren't 100 percent sure if you

20 had?

21 A. I told him I wasn't 100 percent sure.

22 Q. I forgot to ask you earlier, but could you

23 please describe the suspect's firearm?

24 A. It was a short-barreled revolver.

25 Q. It was also a revolver?

1 A. Yes.

2 Q. Were you able to see what color the grip was?

3 A. The grip I couldn't see, because his hands
4 were covering it, so all I saw was black.

5 Q. Approximately what length do you believe the
6 barrel was?

7 A. I believe it was a 2-inch barrel.

8 MS. MERCER: No further questions, Your
9 Honor.

10 THE COURT: Any follow-ups based on that?

11 MS. GREGORY: Yes, Your Honor.

12

13 RECROSS-EXAMINATION

14 BY MS. GREGORY:

15 Q. Miss Garn, do you remember you did say that
16 to the detectives about whether or not you shot him
17 early on, when you were talking to the detective.

18 Do you remember a little while later saying,
19 I am almost 100 percent sure that I shot him and I'm
20 pretty sure I hit him?

21 A. I don't recall.

22 MS. GREGORY: Can I approach the witness,
23 Your Honor?

24 BY MS. GREGORY:

25 Q. If I show you your statement, would that

1 refresh your recollection?

2 THE COURT: All right. Hold on one second.

3 What do we got going on here?

4 MS. GREGORY: I'm approaching her to show her

5 page 7.

6 THE COURT: How many more questions?

7 MS. GREGORY: This is the last one, Your

8 Honor.

9 THE COURT: All right. Go ahead. I'm not

10 trying to rush. I'm just saying we need a quick break.

11 THE WITNESS: I don't remember saying that.

12 BY MS. GREGORY:

13 Q. So seeing your statement does not refresh

14 your recollection as to whether or not you said that?

15 A. Not 100 percent, no.

16 MS. GREGORY: No further questions.

17 THE COURT: All right. Is this witness free

18 to go?

19 MS. MERCER: Yes, Your Honor.

20 THE COURT: Ma'am, you're free to leave.

21 Please do not discuss your testimony with any other

22 witnesses.

23 Five minutes. Court will be in recess five

24 minutes.

25 MS. MERCER: Your Honor, I apologize, but

1 Miss Rhoades noticed an error on the second amended
2 criminal complaint. It deleted several counts that
3 were filed in the amended criminal complaint, for some
4 reason.

5 THE COURT: Yes.

6 MS. MERCER: The State would ask to strike
7 that second amended criminal complaint but put the
8 Court and defense counsel on notice that it intends to
9 add the ex-felon in possession of a firearm, following
10 the conclusion of the preliminary hearing, via oral
11 amendment.

12 THE COURT: Okay.

13 (Whereupon, other matters were heard.)

14 THE COURT: State of Nevada versus Erin
15 Deshaun Ware, Case No. 15F10849X. This is the
16 continuation of the preliminary hearing.

17 State, your next witness will be?

18 MS. RHOADES: Jaimie Nourie.

19 THE COURT: Jaimie Nourie.

20 Miss Nourie, if you can come take the stand.
21 Once on the stand, raise your right hand. Face the
22 clerk, to be sworn.

23 ///

24 ///

25 ///

1 Whereupon,

2 JAIMIE NOURIE,

3 was called as a witness, and having been first duly

4 sworn, was examined and testified as follows:

5 THE CLERK: Please be seated. Say and spell
6 your first and last name.

7 THE WITNESS: Jaimie, J-A-I-M-I-E; Nourie,
8 N-O-U-R-I-E.

9 THE COURT: All right. That's a microphone
10 in front of you. If you can just move up a little
11 closer to it. You don't need to speak into it, but
12 keep your voice high enough.

13 THE WITNESS: Okay.

14 THE COURT: Thank you very much.

15 State, you may proceed.

16 MS. RHOADES: Thank you, Your Honor.

17

18 DIRECT EXAMINATION

19 BY MS. RHOADES:

20 Q. I'm going to direct your attention to
21 June 10, 2015.

22 Were you working at the Subway at 8790 South
23 Maryland Parkway?

24 A. Yes.

25 Q. On June 10th, how long had you been working

1 at that store?

2 A. I've been -- it would be almost a year then.

3 I mean, almost three years then. Sorry.

4 Q. And did you know the owner of that store?

5 A. Yes.

6 Q. Who is that?

7 A. Ruth Garn.

8 Q. Was Ruth the owner for the entire three years

9 that you had been working there?

10 A. No.

11 Q. When did she become the owner?

12 A. The year prior. So she was there about one

13 year. I was there two years prior to her being there.

14 Q. You and Ruth had worked together for about a

15 year on June 10th?

16 A. Yes.

17 Q. What time did you go to work on that day?

18 A. 9:30 a.m.

19 Q. And what was your shift until?

20 A. 3:00 p.m.

21 Q. Was anyone else working on that day?

22 A. No. Just Ruth. Me and Ruth.

23 Q. You and Ruth were working?

24 A. Yes.

25 Q. Around 2:30, 2:40 in the afternoon, did

1 something happen that caught your attention?

2 A. He walked in and I greeted him, because I was
3 out in the lobby sweeping and he didn't respond to me.

4 Q. And when you say "he," you kind of made a
5 head motion.

6 Do you recognize someone in court today as
7 someone that you saw on June 10th in that Subway?

8 A. Yes. The defendant.

9 Q. Can you point to him and tell me something
10 that he's wearing today?

11 A. Well, he wasn't wearing glass then, but, yes,
12 him (witness indicating).

13 Q. He's wearing glasses today?

14 A. Yes.

15 MS. RHOADES: May the record reflect
16 identification of the defendant?

17 THE COURT: It shall.

18 MS. RHOADES: Thank you, Your Honor.

19 BY MS. RHOADES:

20 Q. When you first saw the defendant, you said he
21 came into the store and you greeted him and he didn't
22 say anything; is that right?

23 A. Yes.

24 Q. And then what happened with -- what was the
25 interaction with him after that?

1 A. He had asked for a water glass. Ruth -- he
2 asked Ruth for a water glass, since I was out in the
3 lobby. She then told him it was 25 cents for the water
4 glass. He checked his pockets, didn't have it. He
5 asked some customers that were sitting down in the
6 lobby if they had a quarter that he could borrow. They
7 told him yes. They gave him the quarter. And then I
8 walked around to ring someone up, and that's when he
9 walked up to me, gave me the quarter, and I gave him
10 the water glass.

11 Q. After you gave him the water glass, what did
12 you see him do?

13 A. He got water and walked out the -- he drank
14 it for a minute and then walked out the door.

15 Q. Did he at some point come back into the
16 store?

17 A. Yes. Between five to ten minutes after that,
18 I had just mopped the floor. He came out -- I mean, he
19 came in, and then he asked if he could use the
20 restroom. And he went to the restroom. He set his
21 glass on the table. And then I walked to the back.

22 Q. And that glass, was that that same water
23 glass that you had given him the first time he came in?

24 A. Yes.

25 Q. Was he by himself on both times he came into

1 the store?

2 A. Yes.

3 Q. Do you remember what he was wearing on that
4 day?

5 A. I believe he was wearing black shorts. No.
6 It was either black or camouflage shorts, black shoes,
7 and a shirt with a California symbol on it.

8 Q. What color was the shirt?

9 A. It was black with white and red, a California
10 symbol.

11 Q. Was he wearing anything on his head?

12 A. Yes. He had a hat with a W on it.

13 Q. What color was the hat?

14 A. Black.

15 Q. That second time when he came in -- and you
16 said that he could use the bathroom; is that correct?

17 A. Yes.

18 Q. What did you see him do?

19 A. I saw him put the cup on the table, and then
20 he walked to the restroom. Me and Ruth were in the
21 back. Oh, no. Then he asked if -- when he came out,
22 he asked if he could stay in there for a minute because
23 it was hot outside and he was waiting for a ride.

24 Q. And what did you tell him?

25 A. We said yes. And he was over near the

1 drinking fountain, drinking water, and I walked to the
2 back. Me and Ruth walked to the back, and we were -- I
3 was putting dishes away.

4 Q. Is the fountain near the --

5 A. The front door.

6 Q. -- entry door?

7 A. Yes.

8 Q. Is there also a trash can near that fountain?

9 A. Yes.

10 Q. Were there other customers that were coming
11 in and out of the store while this was happening?

12 A. During the bathroom, no, there was no longer
13 any customers in there.

14 Q. Prior to that, when he was coming in for the
15 water, I guess there was the customer that was sitting
16 at the table that gave him the quarter?

17 A. Yes.

18 Q. Were there other customers?

19 A. Yes. There was a lady and her son in there
20 at the same time.

21 Q. Okay.

22 A. And then the girl with her boyfriend sitting
23 at the table. But when he walked out the first time,
24 right after that, they left.

25 Q. So when the defendant walked out that first

1 time, some other people went out the store?

2 A. Uh-huh. When he came in the second time for
3 the restroom, there was no one in there anymore.

4 Q. When he asked you if he could stay inside the
5 store, you said he walked over to the drinking
6 fountain.

7 Did he stand there for some time?

8 A. Yes.

9 Q. Did you see him exit the door at any time?

10 A. Between that time?

11 Q. Between that time and when you saw his face
12 again?

13 A. No.

14 Q. Is there a bell at the door and you can hear
15 when people come in and out?

16 A. Yes.

17 Q. So were you and Ruth both in the back of the
18 store?

19 A. Yes. I was putting dishes away near the back
20 sink and she was near the prep table, and we also have
21 a desk right there. She had some paperwork. I think
22 she was doing the schedule or something.

23 Q. What happened while you two were in the back
24 of the store?

25 A. She went into the fridge. And next thing I

1 know, she's coming out of the fridge and he's in my
2 face with a gun.

3 Q. When you say "he," you're talking about the
4 defendant?

5 A. Yes.

6 Q. Did he say anything to you when he had the
7 gun to your face?

8 A. He told me to lay down on the ground and put
9 my face down.

10 Q. Did you hear him say anything to Ruth?

11 A. The only thing I heard was something about
12 money out of your purse. I didn't really hear much.
13 It happened really fast.

14 Q. And then what do you remember happening after
15 that?

16 A. I heard a gunshot. I lifted my head to see
17 what was happening and I saw them struggling over
18 something near the prep table. And then he yelled at
19 me to put my head down again, so I did. And then I
20 heard another shot, and that's when he told me to get
21 up and go open the safe in the front.

22 Q. So you complied with his command to lay down
23 on the floor?

24 A. Yes.

25 Q. And then you heard two shots. And then when

1 he told you to get up, did you get up and follow him to
2 the register area?

3 A. I got up and I walked past Ruth on the floor,
4 and I walked past him. And on my way towards the front
5 to the safe, I heard two more shots.

6 Q. Could you tell if those shots were coming
7 from the defendant's gun or could you tell if Ruth was
8 firing?

9 A. I couldn't tell. And I didn't even turn
10 around.

11 Q. When you say you had to walk past Ruth, did
12 you actually have to step over her?

13 A. I walked around her.

14 Q. Was there blood on the floor at that time?

15 A. Yes.

16 Q. What were you thinking while this was all
17 going on?

18 A. Just about my kids. I was scared that she
19 was going to die.

20 Q. Were you also scared for yourself?

21 A. My thoughts were if he already shot her, what
22 was stopping him from shooting me?

23 Q. There's some tissue up there.

24 After you heard those two additional shots,
25 were you kind of closer to the register?

1 A. Yes.

2 Q. What happened while you were there?

3 A. I kneeled down to try to unlock the safe, and

4 he walked up behind me and put the gun to my neck. And

5 I just remember trying to put in the number to the

6 safe, and I think I put it in wrong because I was

7 shaking so much that it locked and it won't let you in

8 anymore, and I told him that. I said, I'm sorry. I

9 can't open it.

10 And then he went out to go look at the front

11 door to see if anyone was coming. And he told me to

12 open the cash register to give him what was in there,

13 so I did. I took the whole drawer out and tried to

14 hand it to him over the swinging door, and he looked at

15 it and left.

16 Q. When he had the gun to the back of your neck,

17 was he saying anything to you?

18 A. Just hurry up.

19 Q. And did he run out of the store after that?

20 A. Yes.

21 Q. What did you do after he ran out of the

22 store?

23 A. I grabbed the phone and dialed 911 and went

24 and locked the front door.

25 Q. Going back to the water cup that you gave him

1 that first time he came in, when he came and used the
2 bathroom, did he still have that same water cup in his
3 hand?

4 A. Yes.

5 Q. What did you see him do with that water cup
6 when he came in to use the bathroom?

7 A. I saw him put it on the table and then go to
8 the restroom. And then I saw him -- when he came out,
9 I just saw him drinking it. I didn't see where he had
10 put it, but no one else that day had asked for a water
11 cup.

12 Q. Did you see him near the drinking fountain,
13 drinking out of the water cup?

14 A. Yes.

15 Q. Did you ever see him throw it away?

16 A. No.

17 Q. Did you see him -- well, were you aware that
18 Ruth had a gun in her purse that day?

19 A. No.

20 Q. Did you at some point become aware that she
21 had a gun?

22 A. Yes. Because when I walked past her when he
23 told me to go open the safe, I saw the gun laying on
24 the floor.

25 Q. Did you see anything happen to that gun after

1 you saw it laying on the floor?

2 A. No. When I walked up to the safe, I -- after
3 that, I didn't look back. And then once he left, I
4 walked back to Ruth and the gun was no longer there.

5 Q. Did you do anything with the gun or grab the
6 gun?

7 A. No.

8 Q. And no one else came inside the store while
9 this was happening?

10 A. No. I had walked back on the phone to 911
11 before anyone else was in the store.

12 Q. Jaimie, did you have an opportunity to view
13 some video surveillance in this case?

14 A. Yes.

15 Q. And was it the video surveillance of the
16 Subway that you were working at on June 10th?

17 A. Yes.

18 MS. RHOADES: Your Honor, just for
19 identification, I'm going to show her a portion of the
20 video from State's Exhibit 1 before I ask to admit it.

21 THE COURT: All right.

22 BY MS. RHOADES:

23 Q. I'm just showing you a portion of one of the
24 angles.

25 Does this appear to be the Subway store that

1 you were working at on June 10th?

2 A. Yes.

3 Q. And do you see you and Ruth behind the
4 counter making sandwiches?

5 A. Yes.

6 Q. Is this -- I mean, that's from that day.
7 Does it fairly and accurately depict what things --
8 what was going on and the store as it looked on that
9 day, June 10, 2015?

10 A. Yes.

11 MS. RHOADES: Your Honor, at this point I --
12 BY MS. RHOADES:

13 Q. And have you had the opportunity to view
14 various angles that were contained on this same disk of
15 the video surveillance from Subway?

16 A. Yes.

17 MS. RHOADES: At this point I'd move for the
18 admission of State's Exhibit 1, Your Honor.

19 THE COURT: Any objection to Exhibit 1 coming
20 in at this time?

21 MS. GREGORY: No.

22 THE COURT: Exhibit 1 shall be admitted.

23 **(Whereupon, State's Exhibit 1 was**
24 **admitted.)**

25 MS. RHOADES: And permission to go through

1 the surveillance video with her.

2 THE COURT: You may.

3 MS. RHOADES: Thank you.

4 BY MS. RHOADES:

5 Q. Now, what angle are we looking at in this

6 video, Jaimie?

7 A. It's above the register.

8 Q. And you can see -- is the back room where the

9 prep area is and the refrigerator and all that, is that

10 in the kind of back angle of the video?

11 A. Yes.

12 Q. Can you try to touch the screen and see if

13 you can make a mark on that.

14 MS. MERCER: And is that where the back prep

15 area is?

16 THE WITNESS: Yes.

17 BY MS. RHOADES:

18 Q. Who is in the back prep area right now?

19 A. Ruth.

20 Q. Where are you at, at this point? Do you

21 remember?

22 A. I believe I'm sweeping out in the lobby.

23 Q. I'm going to pause it right there.

24 While you're sweeping in the lobby, is that

25 the first time that the defendant walked into the

1 Subway?

2 A. Yes.

3 Q. Do you see him in the video surveillance?

4 A. Yes.

5 Q. Can you circle him?

6 A. Oops. No. (Witness complies.)

7 Q. That's perfect. And when he first came in,

8 is this before he asked anybody for a water cup?

9 A. Yes.

10 MS. RHOADES: Court's indulgence. For the

11 record, I'm going about 24 minutes into the first

12 camera angle.

13 BY MS. RHOADES:

14 Q. Do you remember if this was after the

15 defendant had already walked in that first time --

16 A. Yes.

17 Q. -- what we're watching right now?

18 What was going on? Where was he at and where

19 were you at, in what we're watching right now at 2523?

20 A. I was in the lobby, right next to him,

21 sweeping in the corner. And that's when he asked her

22 if she had a quarter.

23 Q. And when you say "her," are you referring to

24 the --

25 A. The customer.

1 Q. -- female that's standing up and going into
2 her purse?

3 A. Yes.

4 Q. So the lobby is to the right of this video
5 angle; is that fair to say?

6 A. Yes.

7 Q. And did she just give him a quarter?

8 A. Yes.

9 Q. After he got the quarter, what did he do?

10 A. He stood there for a minute, like waiting for
11 someone to be at the register. So right after this
12 man, I believe someone else walked in and I came around
13 the corner to ring him up.

14 Q. And is that you that we just saw come into
15 the camera angle?

16 A. Yes.

17 Q. And do you have a broom and kind of a sweeper
18 in your hand?

19 A. Yes.

20 Q. And is the register in this camera angle?

21 A. No. It's right underneath.

22 Q. Do you see the defendant coming over kind of
23 where the register is and give you the quarter?

24 A. Yes.

25 Q. And is that when you gave him the water cup?

1 A. Yes.

2 Q. What does the water cup look like?

3 A. It's transparent.

4 Q. Is it small, or?

5 A. It's just a 12-ounce, clear water cup,
6 plastic.

7 Q. All right. Now I'm going to fast-forward to
8 about 3758.

9 Do you see the defendant -- did you see the
10 defendant again walk by?

11 A. Yes.

12 Q. At what point was that?

13 A. That's when he had asked if he could use the
14 restroom and sat his -- he put his cup on one of the
15 tables and walked back to the restroom.

16 Q. When he was in the restroom, could you hear
17 anything going on back there?

18 A. I did hear a noise, but I didn't really think
19 anything of it, because I drop stuff out of my pants
20 all the time in the bathroom.

21 Q. And this is the second time that he entered
22 the Subway; is that right?

23 A. Yes.

24 Q. I'm going to fast-forward to about 46.
25 Are you and Ruth in the back prep area at

1 this time?

2 A. Yes.

3 Q. Is this when the defendant was hanging out in
4 the store because it was hot, he told you?

5 A. Yes. He was in front of the soda fountain at
6 that time.

7 Q. And the front door is kind of to the right,
8 where the lobby area is, of this camera angle; is that
9 right?

10 A. Yes.

11 Q. I'm going to pause it. So what did we see in
12 the video up until that point?

13 A. That's when he told me to lay on the ground,
14 and I did. And then that's -- that's -- I didn't see
15 anything, because I had my visor on, so. That's when I
16 heard a gunshot.

17 Q. And when he first came up, he was
18 face-to-face with Ruth; is that fair to say?

19 A. Yes.

20 Q. And now there's what appears to be a struggle
21 going on.

22 Who is that struggle between?

23 A. Ruth and the defendant.

24 Q. And are you behind them?

25 A. Yes.

1 Q. On the floor?

2 A. With my face down.

3 Q. Did Ruth at some point fall to the ground?

4 A. Yes.

5 Q. I mean, she's on the ground in this still; is

6 that right?

7 A. Uh-huh.

8 THE COURT: Is that a "yes"?

9 THE WITNESS: Yes.

10 MS. RHOADES: Thank you, Your Honor.

11 BY MS. RHOADES:

12 Q. Is there a gun next to where Ruth is laying?

13 A. Yes.

14 Q. And is there also a gun in the defendant's

15 hand?

16 A. Yes.

17 Q. What did we just see in the video with regard

18 to the gun that was laying by Ruth?

19 A. He picked up the gun.

20 Q. And what did he do after he picked up the

21 gun?

22 A. He shot two more times.

23 Q. And for the record, I'm going to pause it.

24 Is that where he picked up the gun?

25 A. Yes. Right before then.

1 Q. And that's at 4703.
2 Did he shoot two more times prior to picking
3 up the gun?
4 A. I don't know if it was before he picked up
5 the gun or after he picked up the gun, because I was
6 faced the other way.
7 Q. And at this point, is he right behind you
8 with the gun to your neck?
9 A. Yes.
10 Q. Around where Ruth is, can you see liquid --
11 what appears to be red liquid on the floor?
12 A. Yes. It's blood.
13 Q. Going to a different camera angle, what
14 camera angle is this?
15 A. Also above the register.
16 Q. And you can't see the back area and you can't
17 see that kind of prep line where you make the
18 sandwiches in this angle; is that right?
19 A. Yes.
20 Q. Going to 24 minutes and pausing at 2412. Do
21 you see the defendant in this still?
22 A. Yes. This is when I greeted him the first
23 time he came in.
24 Q. Can you show us where you were at? Can you
25 see that in this angle?

1 A. Right there (witness indicating).

2 Q. Okay. And for the record, it's to the left,
3 looking at the screen. I'm going to fast-forward to
4 37.

5 MS. MERCER: How do you clear on these
6 screens?

7 MS. RHOADES: There.

8 THE COURT: Sorry. That's me hitting the
9 red. I'm trying to clear it. I thought if you touched
10 the left, it clears.

11 MS. MERCER: I think it's the right.

12 THE COURT: The right?

13 MS. RHOADES: The right.

14 BY MS. RHOADES:

15 Q. Now we're at 3751. Do you see the defendant
16 come into the Subway?

17 A. Yes.

18 Q. Is this the second time?

19 A. Yes. This is when he asked to use the
20 restroom.

21 Q. Did you, in fact, see the small, clear cup
22 that he had in his hand that you gave him before?

23 A. Yes.

24 Q. What did you see him do with that cup?

25 A. He set it down on one of the tables, right

1 over here.

2 Q. And then after he sets it down on that table,
3 does he go to the restroom?

4 A. Yes.

5 Q. Now I'm going to fast-forward. I'm at 4230.
6 Do you see what the defendant is doing now?

7 A. Yes. He said thank you for letting him use
8 the restroom and asked if it was okay for him to stand
9 in the lobby, because it was hot outside and he was
10 waiting for a ride.

11 Q. Did he go back to that table and pick up that
12 cup again?

13 A. Yes.

14 Q. And is he drinking out of the cup?

15 A. Yes.

16 Q. Can you circle where the drinking fountain
17 is?

18 A. Here (witness indicating).

19 Q. And is he now going over to where the
20 drinking fountain is?

21 A. Yes.

22 Q. The trash can that's by the drinking
23 fountain, is it to the left or the right?

24 A. It is right here near the window, in the top
25 left corner.

1 Q. So closest to the window?

2 A. Uh-huh. Yes. I'm sorry.

3 Q. Thank you. I'm sorry.

4 And while he's standing right there, does he

5 ever go out of the store or leave that area until he

6 comes and charges at you two?

7 A. No.

8 Q. Now we're at 4559. And what did you just see

9 the defendant do there in that video?

10 A. Take the gun out of his pocket and walk

11 through the door.

12 Q. And that's the door to get into the back

13 area?

14 A. Yes.

15 Q. Now, for the record, this is the fourth

16 angle. And is this the back area?

17 A. Yes.

18 Q. Okay. I'm going to fast-forward to 46.

19 We're at 4555 right now.

20 What's going on right now?

21 A. This is when he runs back and I -- the fridge

22 closes and I see that he's right there where the office

23 is.

24 Q. And what do you see him doing with the gun

25 right now?

1 A. He has it in Ruth's face.

2 Q. And about how far away is he from her?

3 A. Maybe a foot.

4 Q. Does it appear to be close to his arm's

5 length that he's reaching out with the gun and he's

6 fairly close to Ruth's face?

7 A. Yes.

8 Q. How is it that -- is Ruth on the ground right

9 now?

10 A. Yes.

11 Q. And how is it that she got to the ground?

12 A. I heard a shot. And then next thing I know,

13 they were fighting. And then that's all I remember,

14 because he yelled at me to put my face back down.

15 Q. Did you see in that -- what we just watched

16 in the video -- whether the defendant pushed her?

17 A. Yes.

18 Q. And that was a bad question. I'm sorry.

19 So you saw that, and did he push her?

20 A. Yes.

21 Q. And did we just see kind of flashes from the

22 gun going off? Is that a "yes"?

23 A. Yes. Sorry.

24 Q. Was that the defendant's gun, the one that he

25 had in his hand?

1 A. Yes.

2 Q. And we're at 4654. Did you see him still

3 with that -- with his gun that he had in his right

4 hand?

5 A. Yes.

6 Q. Did you just see another flash coming from

7 what appeared to be the gun that was in his right hand?

8 A. Yes.

9 Q. About how long did it take the police to

10 arrive?

11 A. Between two to five minutes.

12 Q. Did medical arrive as well?

13 A. Yes.

14 Q. And did they transport Ruth out of the

15 Subway?

16 A. Yeah. Yes.

17 Q. Do you remember meeting with a detective on

18 July 22nd, 2015?

19 A. Yes.

20 Q. And did you look at some pictures when you

21 met with that detective?

22 A. Yes.

23 MS. RHOADES: Your Honor, may I approach the

24 witness?

25 THE COURT: You may.

1 BY MS. RHOADES:

2 Q. I'm going to show you page 1 of State's

3 Proposed Exhibit No. 4.

4 Do you recognize this document?

5 A. Yes.

6 Q. How do you recognize it?

7 A. Because I signed it.

8 Q. And did you date it as well?

9 A. Yes.

10 Q. Did you actually sign it in two places and

11 date it in two places?

12 A. Yes.

13 Q. And then showing you page 2 of State's

14 Proposed Exhibit 4, do you recognize what's on here?

15 A. Yes.

16 Q. And what's that?

17 A. I ID'd him as the person who robbed us.

18 Q. Was this a copy of the six photos that you

19 looked at on July 22nd?

20 A. Yes.

21 Q. And does that fairly and accurately depict --

22 that first page fairly and accurately depict what you

23 looked at and what you signed on July 22nd?

24 A. Yes.

25

1 MS. RHOADES: Your Honor, I would move for
2 the admission of State's Exhibit 4 at this time, just
3 with the caveat that there's a third page that we're
4 going to get in through the detective. It's the key.

5 THE COURT: That's her signature on the
6 fourth page, you said?

7 MS. RHOADES: On the second page.

8 THE COURT: On the second page. But there's
9 a fourth page, you said.

10 MS. RHOADES: The third page is the key.
11 That was not shown to the witness, but it's all
12 attached as one exhibit. So I guess for identification
13 purposes, I'd just move to admit it at this time.

14 THE COURT: As to 1 and 2, and then the
15 officer will talk about Exhibit 3 -- or page 3 of the
16 exhibit.

17 MS. RHOADES: Yes.

18 THE COURT: As to pages 1 and 2 of Exhibit 4,
19 any objection to allowing that to come in at this time?

20 MS. GREGORY: No objection as to pages 1 and
21 2 only.

22 THE COURT: Obviously, we need foundation as
23 to page 3 of the exhibit. If we cannot lay the
24 foundation, we'll just remove that.

25 MS. RHOADES: Of course.

1 THE COURT: All right.

2 BY MS. RHOADES:

3 Q. Looking at these typed instructions, do you
4 recall reading these instructions or having them read
5 to you?

6 A. I read them.

7 Q. And did they generally tell you, you don't
8 have to pick out anybody. Just because there's these
9 pictures, doesn't mean that anybody is guilty. Is that
10 what they generally said?

11 A. Yes.

12 Q. And did you sign and date, having indicated
13 that you read those?

14 A. Yes.

15 Q. Going to page 2, were you able to identify
16 the person that came into the Subway on June 10th?

17 A. Yes.

18 Q. Did you circle that person and put your
19 initials under that photograph?

20 A. Yes.

21 Q. Which position did you identify? Which
22 picture in which position?

23 A. Number 5.

24 Q. And then after that, did you make a written
25 statement on that first page?

1 A. Yes.

2 Q. Can you read into the record what you said?

3 A. "I recognize No. 5 as the robber."

4 Q. Did you also meet with the detective prior to
5 July 22nd?

6 A. Yes.

7 Q. And did you give a recorded statement? Do
8 you remember giving a statement with him?

9 A. Yes.

10 Q. Do you also remember describing what you
11 called "the robber" to a sketch artist?

12 A. Yes.

13 Q. And they did a sketch, based on your
14 description; is that right?

15 A. Yes.

16 Q. And was that on June 14, 2015, about four
17 days after the incident?

18 A. Yes.

19 MS. RHOADES: The State will pass the
20 witness, Your Honor.

21 THE COURT: All right. Cross-examination.

22

23 CROSS-EXAMINATION

24 BY MS. GREGORY:

25 Q. Miss Nourie, so as you've testified today,

1 when the suspect originally came in and got a water
2 cup, you didn't ultimately see where that water cup
3 ended up, correct?

4 A. No.

5 Q. Now, when the suspect came back into the
6 register area where you and Ruth were working that day,
7 when he initially came and he had a gun pointed at you,
8 at any point did he tell you that he was going to kill
9 you?

10 A. No.

11 Q. So you never heard him say those words of,
12 "I'm going to kill"?

13 A. No.

14 Q. Okay. Now, you were shown a photo lineup
15 that you did and signed on July 22nd, correct?

16 A. Yes.

17 Q. And you were able to identify the defendant
18 as the suspect --

19 A. Yes.

20 Q. -- in the crime, correct?

21 Now, prior to seeing that lineup, you were
22 shown that lineup over a month after this occurred,
23 correct?

24 A. Yes.

25 Q. Prior to seeing that lineup, were you shown

1 any photographs of the defendant?

2 A. No.

3 Q. Were you shown a sketch of who the police
4 officers thought was the suspect?

5 A. I was the one who did the sketch. So, yes.

6 Q. And you were shown what they came out with,
7 correct?

8 A. Yes.

9 Q. Now, when he came over to the safe with you,
10 you testified that you weren't able to get the safe
11 open, so nothing was taken out of the safe, correct?

12 A. Yes.

13 Q. And when he went over to the register with
14 you and you opened the register, he just looked at the
15 money and left, correct?

16 A. Yes.

17 Q. So as far as you know, no money was taken
18 from the Subway, correct?

19 A. Correct.

20 Q. And did you actually see the suspect exit the
21 Subway with Miss Garn's firearm?

22 A. No.

23 MS. GREGORY: No further questions.

24 THE COURT: All right.

25 MS. RHOADES: Just briefly, Your Honor.

1 REDIRECT EXAMINATION

2 BY MS. RHOADES:

3 Q. With regard to the trash can, how often is
4 that trash can by the front of the store emptied?

5 A. Once a day.

6 Q. Do you remember when it was emptied that day?
7 Would it have been after --

8 A. It would have been the night before.

9 Q. So the trash can was emptied the night
10 before?

11 A. Yes.

12 Q. Were you working the entire time from when
13 the store opened until this incident happened?

14 A. No. I came in at 9:30 a.m. So the store is
15 open at 7:00.

16 Q. When you were working, do you remember giving
17 any other customer a water cup that day?

18 A. No.

19 MS. RHOADES: Nothing further, Your Honor.

20 THE COURT: Any follow-ups?

21 MS. GREGORY: No.

22 THE COURT: Is this witness free to go?

23 MS. RHOADES: Yes.

24 THE COURT: Ma'am, you're free to leave.

25 Please do not discuss your testimony with any other

1 witnesses.

2 State.

3 MS. MERCER: The State's next witness is
4 Detective Lance Spiotto.

5 THE COURT: Detective, come take the stand.
6 Upon the stand, raise your right hand, to be sworn.
7 Whereupon,

8 LANCE SPIOTTO,
9 was called as a witness, and having been first duly
10 sworn, was examined and testified as follows:

11 THE CLERK: Please be seated. Say and spell
12 your first and last name.

13 THE WITNESS: My name is Lance, L-A-N-C-E;
14 Spiotto, S-P-I-O-T-T-O.

15 THE COURT: State, you may proceed.

16 MS. RHOADES: Thank you, Your Honor.

17

18 DIRECT EXAMINATION

19 BY MS. RHOADES:

20 Q. Sir, I'm going to direct your attention to
21 June 10, 2015. On that day, did you go to a Subway
22 located at 8790 South Maryland Parkway?

23 A. Yes.

24 Q. Why is it that you went to that Subway on
25 that day?

1 A. I was the on-duty robbery detective that day,
2 and I was told that there was a shooting and a robbery
3 at that location.

4 Q. Were you assigned to be the case agent of
5 that robbery?

6 A. Yes.

7 Q. And as the case agent, are you aware of
8 everything that goes on with the case, what evidence is
9 collected, things of that nature?

10 A. Yes.

11 Q. And you actually went to the scene on
12 June 10th; is that right?

13 A. Yes.

14 Q. When you were at the scene, did you have the
15 opportunity to review video surveillance from the
16 incident?

17 A. I did.

18 Q. And did you recover that surveillance and
19 impound it?

20 A. Yes.

21 Q. Was there a suspect that was developed
22 through your investigation?

23 A. Yes.

24 Q. Who was that?

25 A. Erin Ware.

1 Q. And do you see Erin Ware in the courtroom
2 today?

3 A. Yes, I do. He just took off his glasses.
4 He's got an unshaven beard and wearing a dark-colored
5 shirt, sitting down.

6 MS. RHOADES: May the record reflect
7 identification of the defendant?

8 THE COURT: It shall.

9 MS. RHOADES: Thank you.

10 BY MS. RHOADES:

11 Q. Based on identifying him as a suspect, did
12 you put together a photo lineup?

13 A. Yes.

14 Q. And did you meet with Jaimie Nourie on
15 July 22nd and show her that photo lineup?

16 A. Yes.

17 MS. RHOADES: May I approach the witness,
18 Your Honor?

19 THE COURT: You may.

20 BY MS. RHOADES:

21 Q. I'm showing you page 3 of what's been marked
22 as State's Exhibit No. 4.

23 Do you recognize that?

24 A. Yes.

25 Q. What is it?

1 A. That's the photo lineup I put together to
2 show Jaimie.

3 Q. And is what we're looking at in page 3, is
4 that shown to the witness?

5 A. Yes. Well --

6 Q. Is the one with the names shown to the
7 witness?

8 A. No. That's what I was going to say. This
9 one with the names was not shown to her at all.

10 Q. Is this known as the key? Do you guys call
11 it a key?

12 A. Our internal copy.

13 Q. Okay. Looking at page 2, is this the one
14 that you showed to Jaimie?

15 A. Yes, it is.

16 Q. And it doesn't have the names or the ID
17 numbers of any of the people photographed?

18 A. Correct.

19 Q. Going to page 3, does this fairly and
20 accurately depict the photo lineup that you created and
21 showed to Jaimie on July 22nd?

22 A. Yes, it does.

23 MS. RHOADES: Your Honor, I'd move for the
24 admission of page 3 of State's Proposed 4.

25 THE COURT: Any objection to page 3 of

1 Exhibit 4 coming in?

2 MS. GREGORY: No.

3 THE COURT: All right. It shall be admitted
4 in its entirety.

5 **(Whereupon, State's Exhibit 4 was**
6 **admitted.)**

7 MS. RHOADES: Thank you.

8 BY MS. RHOADES:

9 Q. Looking at page 2, which position did she
10 identify?

11 A. The number 5 position.

12 Q. Going to the internal copy that you created,
13 whose picture is in number 5?

14 A. Erin Ware.

15 Q. On August 10th was Erin Ware arrested in
16 Reno?

17 A. Yes.

18 Q. Did you participate in that arrest?

19 A. Yes. I was present.

20 Q. And how did you know that he was in Reno?

21 A. I was working with a member of our task team,
22 and we had information on where he was located, and
23 that was developed. And we decided to go up there and
24 get him and bring him back.

25 Q. And were you aware that there was a cell

1 phone found on the defendant's person when he was
2 arrested on August 10th?

3 A. Yes. I took possession of that cell phone.

4 Q. And what did you do when you took possession
5 of that cell phone?

6 A. A couple hours later I handed it over to FBI
7 agent Chris McPeak, and he conducted a search warrant
8 on the internal workings of it and the information
9 inside that cell phone.

10 Q. And did you review the results of the search
11 warrant that was executed on that cell phone?

12 A. I did.

13 MS. RHOADES: Your Honor, may I approach the
14 witness?

15 THE COURT: You may.

16 BY MS. RHOADES:

17 Q. And when you reviewed the contents of that
18 search warrant, did you actually, you know, take
19 possession of the contents, put it in your file and
20 file it as the case agent on the case?

21 A. Yes.

22 Q. I'm going to show you what's been marked as
23 State's Proposed Exhibit 3, all pages. If you could
24 just look at those and then look up at me when you're
25 done.

1 A. Yes. I recall this.

2 Q. And do you recognize them?

3 A. Yes. That's the information that was

4 downloaded from Erin Ware's cell phone.

5 Q. And does this fairly and accurately depict

6 the results of the search warrant as you reviewed

7 them -- well, when did you get the results?

8 A. It was probably approximately three weeks

9 after we picked him up, two or three weeks later.

10 Q. And does this fairly and accurately depict

11 the results of the search warrant, or some of the

12 results of the search warrant, from that cell phone,

13 that was found on his person that you actually took

14 from his person?

15 A. Yes.

16 MS. RHOADES: Your Honor, I'd move for the

17 admission of State's Proposed Exhibit 12.

18 THE COURT: Any objection to Exhibit 12

19 coming in at this time?

20 MS. GREGORY: Yes, Your Honor. These are

21 photographs of -- it looks like photographs of things

22 that were on the cell phone, screen shots on the cell

23 phone, and I'm not sure Detective Spiotto actually saw

24 any of that himself. Somebody else went and took these

25 and then gave it to him, so I don't know how he would

1 know that that accurately depicts what was on the cell
2 phone.

3 THE COURT: State, is there foundation as to
4 how these are off of that cell phone? Was he aware
5 that --

6 MS. RHOADES: I can provide more foundation.
7 He was aware of the search warrant.

8 THE COURT: No. I understand that. But did
9 he view it? Did he see this? Was he there while it
10 was being photographed?

11 MS. RHOADES: I don't believe so.

12 THE COURT: Or did he compare --

13 MS. RHOADES: I believe he got the results of
14 the search warrant.

15 THE COURT: My concern is this: I mean, he
16 didn't confirm that they came off of the cell phone
17 itself. He's not the one who took the photograph, nor
18 did he look at it and say that this matches what I saw
19 in the cell phone. So I don't see the foundation
20 there, unless you can lay a foundation as to how he can
21 say that came from the cell phone, other than being
22 told by another person.

23 BY MS. RHOADES:

24 Q. Did you look at the cell phone yourself?

25 A. Not through the Cellebrite which is a device

1 we use to capture those pictures. But, yes, I did look
2 at the cell phone. And like I said, I handed it over
3 to Chris McPeak. He has a device called a Cellebrite,
4 and that takes photographs. And it's a standard
5 procedure, where he'd give me those photographs to use
6 for my case.

7 Q. Were you there while he was using Cellebrite?

8 A. No. It was back at his FBI office. I didn't
9 go there for that.

10 Q. After he used that, did he immediately turn
11 over the photos that he recovered from the search
12 warrant that was executed using the Cellebrite?

13 A. Yes.

14 Q. And the pictures that we just looked at, were
15 those consistent with what you were provided by Agent
16 McPeak?

17 A. Yes.

18 MS. RHOADES: Your Honor, I --

19 THE COURT: Miss Gregory.

20 MS. GREGORY: Same objection as to
21 foundation, Your Honor. Again, she's going to admit
22 these as this is what was on his cell phone, and we
23 don't have foundation as to that.

24 MS. MERCER: Can I lay further foundation?

25 THE COURT: I'll allow it for that, yes. Go

1 ahead.

2 MS. MERCER: Detective, the Cellebrite
3 program actually documents the serial number and other
4 unique identifying features of the cell phone that's
5 being examined, correct?

6 THE WITNESS: Yes.

7 MS. MERCER: And did that match the
8 information that you obtained when you took possession
9 of his actual cell phone in Reno on August 10th or
10 15th, whatever date it was that you arrested him?

11 THE WITNESS: Yes.

12 MS. MERCER: Okay. So the report verifies
13 that the phone that you took -- that comes from the
14 phone that you took personal possession of on
15 August 10th of 2015?

16 THE WITNESS: Yes.

17 MS. GREGORY: Your Honor, now he can
18 identify --

19 THE COURT: Approach for a second.

20 **(Whereupon, a brief discussion was**
21 **held at the bench.)**

22 THE COURT: All right. As to the information
23 on the photo at this time, I'll sustain the objection.
24 Exhibit 12 will not be admitted as a Court document --
25 I'm sorry -- as exhibits. It will be admitted,

1 though -- it's been marked, correct?

2 MS. RHOADES: It has, Your Honor.

3 THE COURT: It will be brought in as a Court
4 document. All right. So the Court will not rely upon
5 it in making a determination of probable cause on this
6 matter, but it's going to be part of the Court record
7 because it was marked and offered at this time. All
8 right.

9 MS. RHOADES: Thank you, Your Honor.

10 BY MS. RHOADES:

11 Q. Just to be clear, Detective, did you ever
12 open the phone and look at it yourself?

13 A. No.

14 Q. Okay. Did you conduct follow-up
15 investigation with regard to some of the photos that
16 were -- that you saw from that search warrant of the
17 cell phone?

18 A. I compared those photos with photos I've
19 taken myself, yes.

20 Q. I'm sorry. What was that?

21 A. I compared the photos that I received in the
22 report to a gun that I located later on.

23 Q. The firearm -- well, did you become aware
24 that there was a firearm that was taken from the
25 Subway?

1 A. Yes. On the day of the incident, we realized
2 that a .357 Security Six was taken, Ruger, and we put
3 that in the report and the serial number of that gun.

4 Q. And was it your understanding that that
5 belonged to Ruth Garn?

6 A. Yes. She had a blue card. We located a blue
7 card that day and it had her name on it.

8 Q. Did you do some initial investigation with
9 regard to that firearm, the serial number belonging to
10 that firearm?

11 A. The gun was -- the gun's serial number was
12 entered into our wanted system as a stolen firearm.

13 Q. Did you receive information that that gun had
14 been pawned?

15 A. On approximately August 27th there was a pawn
16 hit. A couple days later I was given the information
17 that that gun was located in a pawn store on Boulder
18 Highway.

19 Q. And on September 2nd did you actually go to
20 that pawn store and pick up that firearm?

21 A. Yes, I did.

22 MS. RHOADES: May I approach the witness,
23 Your Honor?

24 THE COURT: You may.

25

1 BY MS. RHOADES:

2 Q. Showing you State's Proposed 13 and 14, do
3 you recognize what's depicted in those pictures?

4 A. Yes, I do.

5 Q. What is that?

6 A. Those are photographs I took of a stolen
7 firearm which belongs to Ruth Garner -- or Ruth Garn,
8 I'm sorry, that I picked up from the EZ Pawn shop on
9 Boulder Highway, September 2nd.

10 Q. And that serial number matched the serial
11 number that was provided by Ruth Garn?

12 A. It did.

13 Q. When you -- well, what information did you
14 learn about it having been pawned, such as who pawned
15 it?

16 A. A man by the name Emmett Hall pawned it.

17 Q. Did you meet with Emmett Hall and have him
18 fill out a voluntary statement?

19 A. I did. The following day after I picked up
20 the gun, I met with him at his home and explained the
21 situation and asked if he would fill out a voluntary
22 statement as to how he came into contact with that gun.

23 Q. Can you tell us what Mr. Hall looks like?

24 A. Mr. Hall is, I think, about a 55-year-old
25 adult male, large in size, probably five-eleven,

1 250 pounds.

2 Q. When you recovered that firearm, did you do
3 any additional investigation in comparing it with the
4 photos from the search warrant from the cell phone?

5 MS. GREGORY: Objection. Foundation. We've
6 already determined that he's never seen the photographs
7 from the cell phone.

8 THE COURT: No. No. No. Her statement now
9 is he took a photograph of the firearm. There's
10 photographs of another firearm which were developed
11 somewhere else and whether they compared those to it.
12 And that's all she's asking at this point. I'll allow
13 the question to be answered.

14 THE WITNESS: Yes. I did look at the
15 photographs I took and compared them to some other
16 photographs I saw, and they seemed to match.

17 BY MS. RHOADES:

18 Q. And are those the photos from the execution
19 of the search warrant of the defendant's cell phone?

20 A. Yes.

21 MS. GREGORY: Objection. Foundation.

22 THE COURT: Well, what she's saying is this
23 is what he received from the search warrant. He's
24 comparing those and they appear to be the same. Now,
25 whether the photograph that was executed from the

1 search warrant comes from the defendant's cell phone is
2 another issue. Okay. But I'll allow that question to
3 stand and the answer to stand.

4 MS. RHOADES: Thank you, Your Honor. The
5 State will pass the witness, Your Honor.

6 THE COURT: All right. Cross-examination.

7

8 CROSS-EXAMINATION

9 BY MS. GREGORY:

10 Q. Detective, when you started investigating
11 this case, did you interview both of the alleged
12 victims on the case, Ruth Garn and Jaimie Nourie?

13 A. No, I did not. Just Miss Nourie.

14 Q. So you did not conduct any interview of Ruth
15 Garn at any point?

16 A. At some point later, yes. The day of the
17 incident, there was no way I could interview her.

18 Q. But you did eventually interview her,
19 correct?

20 A. Yes.

21 Q. How long after the incident was that
22 interview?

23 A. I would have to check my notes to be sure,
24 but approximately three or four weeks later. It took a
25 while.

1 Q. Three or four weeks later?

2 A. Yeah. It was a while later.

3 Q. During your interview with Miss Garn, did you
4 ever show her a photo lineup?

5 A. At a later date. I think it was -- I think I
6 got the interview in before, and then another date I
7 did the photo lineup.

8 Q. So you did do a photo lineup with Miss Garn?

9 A. Yes.

10 Q. Was she able to identify Mr. Ware in a photo
11 lineup as being the suspect --

12 A. No.

13 Q. -- in the Subway? She was not.

14 Are you aware of a media release on this with
15 a sketch that was used --

16 A. Yes.

17 Q. -- regarding the suspect?

18 And whose information did you use to develop
19 that sketch?

20 A. Miss Nourie.

21 Q. Miss Nourie?

22 A. Yes.

23 Q. Now, at the time that -- do you remember
24 approximately what time frame you were having her make
25 that sketch after this incident had happened?

1 A. The media release was released on June 15.
2 The incident happened on June 10th. So it was probably
3 around the 13th.

4 Q. Now, at what point in your investigation did
5 you begin to believe that it was Mr. Ware who was the
6 suspect in the Subway?

7 A. When I was given that information from
8 another subject.

9 Q. And, I mean, do you remember what date that
10 you began to believe it was Mr. Ware?

11 A. I believe it was July 15th.

12 Q. July 15th that you began to believe that
13 Mr. Ware was involved?

14 A. Yes.

15 Q. And when did you say that your sketch had
16 been created?

17 A. It was released on June 15th.

18 Q. June 15th. Okay.

19 As far as you're aware, there was no money
20 taken from the register or the safe at the Subway; is
21 that correct?

22 A. I was told a bank bag was taken with about
23 \$400 into it.

24 Q. And who were you told that by?

25 A. That was -- I believe Miss Nourie told me

1 that. I'm not -- I know at that time we knew that we
2 could come up with the information that the gun was
3 stolen and that the bank bag was stolen. At first we
4 didn't think anything was stolen, but then as we went
5 through it, we realized that the money was missing.
6 And I think I asked Miss Nourie about that, as far as
7 wasn't there supposed to be some money here.

8 MS. GREGORY: I have no further questions,
9 Your Honor.

10 MS. RHOADES: Just briefly, Your Honor.

11

12 REDIRECT EXAMINATION

13 BY MS. RHOADES:

14 Q. After Mr. Ware was arrested on August 10th,
15 did you interview him?

16 A. Yes.

17 Q. About how long did the interview last?

18 A. Over an hour.

19 Q. And were you with him the entire time?

20 A. Mostly. I think I stepped out once or twice
21 to get something like a drink, and I had to get some
22 more buccal swabs.

23 Q. In comparing Mr. Ware's mechanisms and body
24 movements to the video surveillance that you observed
25 from the Subway, how did those compare?

1 A. It seemed like I had the same person. From
2 what I could see in the video and from what I could see
3 in person, it seemed to me to be a match.

4 Q. Okay. With regard to 8790 South Maryland, is
5 that a place designated by city or county ordinance to
6 be populated for the purpose of discharging firearms?

7 A. No.

8 Q. It's not a designated area that is populated
9 for the purpose of discharging firearms?

10 A. It's -- I'm not sure I got the question
11 right. You can't just go fire off a gun at that
12 location.

13 Q. Okay. And that's because there's city or
14 county ordinances that say that you can't go and fire
15 off a gun at that location?

16 A. Correct.

17 MS. RHOADES: Nothing further, Your Honor.

18 THE COURT: Any follow-ups based on those
19 questions?

20 MS. GREGORY: Court's indulgence. Nothing
21 further.

22 THE COURT: All right. Is this witness free
23 to go?

24 MS. MERCER: Yes.

25 THE COURT: Detective, you're free to leave.

1 Please do not discuss your testimony with any other
2 witnesses.

3 MS. MERCER: Your Honor, the State needs to
4 recall Ruth Garn.

5 THE COURT: Okay. Is she here still?

6 MS. MERCER: Yes. She's in the hallway.

7 THE COURT: Ruth Garn. All right. Recalling
8 Miss Ruth Garn.

9 MS. MERCER: Ma'am, it should be rather
10 quick. Would you prefer to stand or do you want to
11 walk up there and sit down?

12 THE WITNESS: Can I stand?

13 THE COURT: If it makes you more comfortable,
14 I'll have you stand.

15 Ma'am, you understand you're still under oath
16 on this matter?

17 THE WITNESS: Yes.

18 THE COURT: All right. We can hear you well
19 enough.

20 State, you may proceed.

21 FURTHER REDIRECT EXAMINATION

22 BY MS. MERCER:

23 Q. Miss Garn, did you have a Wells Fargo money
24 bag in your briefcase prior to the robbery on June 10th
25 of 2015?

1 A. Yes.

2 Q. And how much money was in that money bag?

3 A. It was either 500 or \$600.

4 Q. Was that money bag missing after the robbery

5 on June 10th of 2015?

6 A. According to my son, who tried to retrieve it

7 at a later date, he could not find it.

8 MS. GREGORY: Objection. Hearsay, Your

9 Honor.

10 THE COURT: As to what her son said. But if

11 she doesn't have it --

12 THE WITNESS: Well, I never got it back.

13 THE COURT: Hold on one second. Go ahead.

14 BY MS. MERCER:

15 Q. Did you ever see it again?

16 A. No.

17 Q. Were you ever able to deposit it?

18 A. No.

19 Q. So it was missing?

20 A. Yes.

21 Q. And you're the owner of the business, so

22 you're responsible for the financial aspects of the

23 business?

24 A. Yes.

25 Q. Where was the briefcase located? Was it in

1 that back area where your purse was?

2 A. My purse was sitting in front of my
3 briefcase. My briefcase was behind it, on the desk.

4 Q. And you never had your firearm returned to
5 you after June 10th, 2015, either, correct?

6 A. No.

7 MS. MERCER: No further questions.

8 THE COURT: Any follow-ups based on that?

9 MS. GREGORY: No.

10 THE COURT: Is she free to go? Can we
11 release her at this time, State?

12 MS. RHOADES: Yes, Your Honor.

13 THE COURT: Ma'am, you're free to leave.

14 Please do not discuss your testimony with any other
15 witnesses.

16 State.

17 MS. MERCER: And, Your Honor, at this point
18 the State would move to admit State's Exhibits 2 and 3,
19 which are judgments of conviction -- judgments of
20 convictions referencing defendant Erin Ware.

21 State's Exhibit 2 specifically is a judgment
22 of conviction in which he was convicted of attempted
23 burglary in Case No. C-274352 in 2013, in the Eighth
24 Judicial District Court of Clark County.

25 State's Exhibit 3 exhibits that he was

1 convicted of robbery and stop required on signal of
2 police officer in Case No. C-240973 in 2008, also in
3 the Eighth Judicial District Court, Clark County,
4 Nevada.

5 THE COURT: That's Exhibits 1 and 2?

6 MS. MERCER: 2 and 3.

7 And in addition, Your Honor, the State would
8 propose to add the prohibited person in possession of a
9 firearm count, which would be Count 11, from the second
10 amended into the amended, now that the second has been
11 stricken.

12 And the State would propose to amend Counts 2
13 and 3 to reflect where it says take personal property,
14 to wit, to reflect U.S. currency and/or a firearm, as
15 to each count.

16 THE COURT: Counts 2 and 3, so handgun and/or
17 currency?

18 MS. MERCER: Yes, Your Honor. And I believe
19 that's it.

20 THE COURT: On Count 3, the handgun, we're
21 keeping that for Jaimie Nourie?

22 MS. MERCER: No. It doesn't need to go
23 there. I apologize, Your Honor. Just Count 2.

24 THE COURT: But I'm saying Count 3, though,
25 you're amending.

1 MS. MERCER: No.

2 THE COURT: No. No. No. I'm sorry. I
3 misunderstood. All right.

4 First and foremost, as to Exhibits 2 and 3 --
5 that being one is a judgment of conviction. That being
6 Exhibit 3 and order of revocation of probation and
7 judgment of conviction, Exhibit 2, being out of Clark
8 County, Nevada; Defense, your position?

9 MS. GREGORY: My objection to those, I have
10 not been provided those and I haven't seen those.

11 MS. MERCER: Yes. You were e-mailed them by
12 Miss Rhoades about a month and a half ago prior to the
13 first preliminary hearing setting.

14 MS. GREGORY: Okay.

15 MS. MERCER: I can find the e-mail on my
16 phone.

17 MS. GREGORY: Your Honor, if Miss Mercer says
18 that it was emailed to me, I can trust what she is
19 saying. I did not believe that I got those.

20 THE COURT: Have you had a chance to review
21 them right now? You have a copy of it, I'm assuming,
22 right?

23 MS. GREGORY: They said they e-mailed them to
24 me. That's sufficient, Your Honor. There was a lot of
25 stuff e-mailed on this case.

1 THE COURT: All right. This being a Clark
2 County case, a district court out of Clark County, I'm
3 going to allow Exhibits 2 and 3 to be admitted at this
4 time.

5 **(Whereupon, State's Exhibits 2 and 3**
6 **were admitted.)**

7 THE COURT: Exhibit 11, was that offered?

8 MS. MERCER: I don't remember which one that
9 is.

10 MS. RHOADES: It was offered, Your Honor. I
11 believe those were the photos from the phone.

12 THE COURT: That was Exhibit 12.

13 MS. MERCER: That was 12. I don't know what
14 11 is. Yes, it was offered, Your Honor.

15 THE COURT: I have 5 through 10, photos of
16 the injuries.

17 MS. MERCER: And then that was the one I
18 forgot, so I reapproached and laid the foundation and
19 moved to admit it.

20 THE COURT: Okay. All right. All right.

21 **(Whereupon, State's Exhibit 11 was**
22 **admitted.)**

23 THE COURT: State has rested?

24 MS. MERCER: Yes, Your Honor.

25 THE COURT: Defense.

1 MS. GREGORY: We have no witnesses, Your
2 Honor.

3 THE COURT: And Mr. Ware, is he going to be
4 testifying today?

5 MS. GREGORY: No, he's not. I discussed with
6 him his right and he says no.

7 THE COURT: Mr. Ware, can you please rise.
8 Sir, do you understand you have a
9 constitutional right to testify and a constitutional
10 right not to testify at this proceeding?
11 Sir, do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And nobody can comment on the
14 fact of whether you decide to testify or not to
15 testify.

16 Do you understand, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, this is your sole decision
19 to make. So even though Counsel may tell you to
20 testify or tell you not to testify, you have the final
21 decision.

22 Do you understand that, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And understanding this being your
25 sole decision and after discussing this matter with

1 your attorney, is it your decision here today not to
2 testify at this proceeding?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Thank you very much, sir. You
5 may have a seat.

6 Defense has rested?

7 MS. GREGORY: Yes.

8 THE COURT: State, save and rebut?

9 MS. MERCER: Yes, Your Honor.

10 THE COURT: We've got Count 11 with the
11 amended, that being ex-felon or prohibited person in
12 possession of a firearm, ex-felon with the judgments of
13 convictions, and the amendments on 2 and 3.

14 All right. Yes.

15 MS. GREGORY: Your Honor, with regard to
16 Count 2 and 3, the robbery charges, where they're now
17 alleging what was taken was the gun and the
18 U.S. currency, I'm going to argue that both of those
19 counts should be dismissed at this point.

20 Both of the victims testified that they did
21 not -- they don't know what happened with the gun.
22 They didn't see what happened with the gun. They just
23 knew that the gun was -- they don't know where it went.
24 So I don't think that the State has proved sufficiently
25 that the robbery occurred with regard to the gun.

1 And with regard to the now added currency,
2 Miss Garn testified that she had a money bag in her
3 briefcase, and then she doesn't know where it went. It
4 wasn't there. We don't even -- if the briefcase was
5 where she was saying it was, we would have seen him
6 going through her briefcase on the video. We didn't
7 see that.

8 There's no evidence that he took a money bag.
9 There's no evidence that he took the gun. So I would
10 argue that Counts 2 and 3 should be dismissed at this
11 point, without sufficient evidence.

12 With regard to Count 4, battery intent to
13 commit a crime, they're alleging that he punched Ruth
14 Garn. There was no testimony or evidence that she was
15 actually punched. I would argue that that count should
16 also be dismissed today.

17 And with that, Your Honor, I'll submit.

18 THE COURT: All right. State.

19 MS. MERCER: Your Honor, as to Counts 2 and
20 3, Miss Garn testified that the money bag was in her
21 briefcase prior to the robbery. It was no longer there
22 after the robbery. She never recovered it.

23 Furthermore, as to the firearm, the
24 surveillance very clearly showed the defendant pick up
25 her firearm, and he never returned it or left the

1 firearm in the business. Then it's recovered several
2 months later after it's pawned in a pawn shop. The
3 description of the person who pawned it is not the
4 description of the defendant, as he sits here today.
5 And the defendant -- or the detective testified that
6 the photos that he took of that firearm, when compared
7 to photos taken from the defendant's cell phone, were
8 consistent with one another. Clearly, the defendant
9 departed the business with the firearm. It's never
10 been returned to her and it was recovered --

11 MS. GREGORY: Your Honor, I'm going to
12 object. She's arguing stuff that was not admitted into
13 evidence.

14 THE COURT: I'll sustain the objection as
15 to -- the photographs he receives, but we cannot --
16 there was no verification that they came from his cell
17 phone. So the one photograph that he has that he took
18 personally looked similar to the photograph that he
19 received back on the subpoena on a search warrant. But
20 there was nobody to testify that that photograph came
21 out of the cell phone. So I sustained the objection
22 and kept out Exhibit 12.

23 MS. MERCER: You kept out Exhibit 12, but the
24 detective still testified that he compared the photo --

25 THE COURT: He compared the photos.

1 MS. MERCER: -- from the report to the photos
2 that he took and that they were consistent.

3 THE COURT: Yes. And I'm okay with that, but
4 saying that that came out of the cell phone is still a
5 leap that I'm not willing to make at this point.

6 MS. MERCER: Well, I would argue that it's a
7 logical inference. But besides, it's sufficient
8 evidence to prove that he departed the business with
9 the firearm that belonged to Ruth Garn, as well as the
10 money bag.

11 With regard to the battery with intent,
12 Jaimie Nourie testified and the surveillance showed
13 that the defendant punched or pushed -- I'm fine if the
14 Court wants to amend it to a pushing, but either way --

15 THE COURT: Let me stop you there, because as
16 the Court was reading that, I was looking for the
17 punching, but I did notice that there was some in
18 Exhibit 1 some, if you will, pushing or punching or
19 some kind of striking. Even without it, I think that
20 the battery being the shot of the firearm, whether it
21 merges or not, I agree. I'm going to allow the State
22 to amend by using pushing, punching, or striking, to
23 include all of that, because it did appear that
24 occurred on the video. So I'll agree on Exhibit 4 to
25 allow that to occur.

1 MS. MERCER: And I believe those were the
2 only objections that Miss Gregory raised.

3 THE COURT: All right. The Court having
4 heard the testimony of this matter, having reviewed the
5 evidence in this case, this being a preliminary
6 hearing, the Court does find the State has met its
7 burden as to the -- if you will, the second amended
8 complaint. There was some questions about the money.
9 There was money that was taken. The money was offered
10 to him in the till, if you will. Whether he took it or
11 not, the robbery was committed. The video shows that
12 the handgun was there. It shows that he goes back --
13 the robber does go back, pick up a gun, pick up a
14 weapon, it appears to be. I think there's sufficient
15 evidence to show this.

16 I'm going to hold Mr. Ware to answer these
17 charges up in the Eighth Judicial District Court on the
18 next return court date.

19 That date being:

20 THE CLERK: October 19th, 10:00 a.m.,
21 district court arraignment.

22 THE COURT: Before we proceed, Count 11 has
23 been added. We need to set bail on that matter.
24 Current bail is \$400,000 on this matter. Given the
25 priors and what I've seen, I'm going to set additional

1 bail. \$100,000 on Count 11. Total bail at 500,000 on
2 this matter. Set this for arraignment.

3 That date, again, will be:

4 THE CLERK: October 19th, 10:00 a.m.,
5 district court arraignment.

6 MS. MERCER: And, Your Honor, if I could just
7 clarify. I believe when you held him to answer, you
8 held him to answer with regards to the charges in the
9 second amended. We actually proceeded on the original
10 amended criminal complaint and added by interlineation.

11 THE COURT: Okay. When I say second amended,
12 what I meant was because we had added some things. So
13 if we want to call it -- I mean, I normally say second
14 amended, because we're allowing them to be amended
15 after the fact, but I meant it to be the interlineation
16 or the changes.

17 MS. MERCER: Thank you very much, Your Honor.

18 THE COURT: All right.

19 (The proceedings concluded.)

20

21 * * * * *

22 ATTEST: Full, true, and accurate
23 transcript of proceedings.

24 /S/ Jennifer O'Neill
25 JENNIFER O'NEILL, CCR No. 763

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T	unless [1] 78/20 unlock [1] 48/3 unshaven [1] 73/4 until [5] 14/11 40/19 56/12 61/5 70/13 unusual [1] 8/24 up [58] 7/1 9/13 12/6 12/9 13/4 14/15 16/7 16/8 16/8 16/11 21/8 21/8 21/10 21/10 21/14 24/12 25/16 26/13 28/19 30/8 30/15 34/2 39/10 42/8 42/9 46/21 47/1 47/1 47/3 47/23 48/4 48/18 50/2 54/1 54/13 56/12 56/17 57/19 57/20 57/24 58/3 58/4 58/5 60/11 68/3 75/23 76/24 77/9 81/14 82/20 83/8 83/19 88/2 90/11 98/24 101/13 101/13 101/17 upon [2] 71/6 81/4 ups [5] 34/13 36/10 70/20 89/18 92/8 us [5] 26/8 26/9 58/24 64/17 83/23 use [12] 27/20 28/21 28/24 42/19 43/16 49/6 55/13 59/19 60/7 79/1 79/5 86/18 used [3] 49/1 79/10 86/15 useless [1] 27/20 using [3] 79/7 79/12 100/22	84/4 84/19 84/23 85/1 99/19 was [277] wasn't [4] 35/21 41/11 88/7 98/4 watched [1] 62/15 watching [2] 53/17 53/19 water [37] 7/10 9/8 9/11 9/14 9/15 9/20 9/24 10/5 10/6 10/8 11/1 11/11 11/13 29/23 30/1 33/16 42/1 42/2 42/3 42/10 42/11 42/13 42/22 44/1 44/15 48/25 49/2 49/5 49/10 49/13 53/8 54/25 55/2 55/5 68/1 68/2 70/17 way [7] 16/9 18/11 26/12 47/4 58/6 85/17 100/14 we [51] 4/8 4/18 4/19 5/13 5/19 11/2 11/3 11/4 11/7 12/8 23/24 24/1 37/3 37/10 43/25 44/2 45/20 52/5 54/14 56/11 57/17 62/15 62/21 65/22 65/23 75/22 75/23 77/9 79/1 79/14 79/22 82/1 82/2 82/6 88/1 88/1 88/3 88/4 88/5 90/18 92/10 96/1 98/4 98/5 98/6 99/15 101/22 101/23 102/9 102/12 102/13 we'll [2] 4/13 65/24 we're [13] 4/11 5/4 12/10 53/17 53/19 59/15 61/8 61/19 63/2 65/3 74/3 93/20 102/14 We've [2] 84/5 97/10 weapon [1] 101/14 weapons [3] 12/21 12/25 19/23 wearing [7] 41/10 41/11 41/13 43/3 43/5 43/11 73/4 Wednesday [1] 32/10 week [1] 8/12 weeks [4] 77/8 77/9 85/24 86/1 well [14] 19/13 41/11 49/17 63/12 64/8 74/5 77/7 81/23 83/13 84/22 90/18 91/12 100/6 100/9 Wells [2] 34/1 90/23 went [31] 10/1 10/12 11/2 14/2 15/11 15/11 15/17 15/17 16/14 16/14 16/19 18/11 25/21 25/24 27/4 28/12 31/22 31/23 32/1 42/20 45/1 45/25 48/10 48/23 69/13 71/24 72/11 77/24 88/4 97/23 98/3 were [96] 4/14 4/23 6/2 7/22 8/18 8/21 9/2 11/4 13/25 14/4 14/7 15/5 15/6 15/8 16/4 16/20 17/24 21/2 21/19 22/1 22/3 22/5 22/6 22/20 22/23 24/5 25/1 25/4 25/5 25/7 25/8 25/17 25/24 27/16 30/11 30/23 31/13 32/15 33/3 36/2 36/4 36/17 38/3 38/13 39/22 40/23 42/5 43/20 44/2 44/10 44/10 44/18 45/17 45/23 47/6 47/16 47/20 47/21 47/25 48/2 49/17 50/16 51/1 51/14 53/19 58/24 62/13 66/15 68/6 68/14 68/17 68/21 68/25 69/3 69/6 70/12 70/16 72/4 72/14 75/25 77/22 79/7 79/14 79/15 81/16 84/10 86/24 87/24 88/19 91/17 94/11 95/6 95/11 99/7 100/2 101/1 were behind [1] 30/11 weren't [4] 23/7 35/16 35/19 69/10 what [118] what's [7] 17/2 61/20 64/14 64/16 73/21 76/22 83/3 whatever [1] 80/10 when [87] 9/2 9/13 9/15 12/3 13/11 14/4 14/17 15/5 17/11 21/13 25/8 28/11 28/16 30/18 31/6 31/13 31/14 31/17 31/22 32/15 32/18 33/3 33/19
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<p>W</p> <p>when... [64] 35/6 36/17 40/11 41/4 41/20 42/8 43/15 43/21 44/14 44/23 44/25 45/2 45/4 45/11 45/15 46/3 46/6 46/20 46/25 47/11 48/16 49/1 49/6 49/8 49/22 49/22 50/2 53/7 53/21 53/23 54/25 55/13 55/16 56/3 56/13 56/15 56/17 58/22 59/19 61/21 63/20 68/1 68/5 68/7 69/9 69/13 70/6 70/12 70/16 72/14 76/1 76/4 76/17 76/24 77/7 80/8 83/13 84/2 85/10 87/7 87/15 99/6 102/7 102/11</p> <p>where [46] 9/2 11/4 11/7 11/24 13/19 15/6 15/8 15/13 16/11 18/6 18/22 19/18 21/12 30/4 30/8 31/23 32/1 32/5 35/8 49/9 52/8 52/14 52/20 53/18 53/18 54/23 56/8 57/12 57/24 58/10 58/17 58/24 60/16 60/19 61/22 68/2 68/6 75/22 79/5 91/25 92/1 93/13 97/16 97/23 98/3 98/5</p> <p>Whereupon [14] 4/14 4/23 6/2 6/14 17/23 21/1 38/13 39/1 51/23 71/7 75/5 80/20 95/5 95/21</p> <p>whether [10] 17/7 35/12 36/16 37/14 62/16 84/11 84/25 96/14 100/20 101/10</p> <p>which [15] 7/23 9/4 22/1 26/12 66/21 66/21 66/22 75/9 78/25 83/7 84/10 92/19 92/22 93/9 95/8</p> <p>while [20] 10/18 14/7 22/5 22/20 23/19 24/4 25/1 25/5 36/18 44/11 45/23 47/16 48/2 50/8 52/24 61/4 78/9 79/7 85/25 86/2</p> <p>white [1] 43/9</p> <p>who [17] 5/4 9/20 30/12 33/25 40/6 52/18 56/22 64/17 69/3 69/5 72/24 78/17 83/14 87/5 87/24 91/6 99/3</p> <p>who's [1] 5/1</p> <p>whole [3] 26/21 26/21 48/13</p> <p>whose [2] 75/13 86/18</p> <p>Why [3] 13/7 28/24 71/24</p> <p>will [14] 7/1 37/23 38/17 65/15 67/19 80/24 80/25 81/3 81/4 85/5 100/18 101/7 101/10 102/3</p> <p>willing [1] 100/5</p> <p>window [2] 60/24 61/1</p> <p>wit [1] 93/14</p> <p>within [1] 103/8</p> <p>without [4] 23/21 29/3 98/11 100/19</p> <p>witness [34] 4/10 5/1 5/1 5/4 5/24 6/16 15/18 16/24 26/25 27/23 28/16 28/19 29/16 36/22 37/17 38/17 39/3 41/12 53/6 59/1 60/18 63/24 65/11 67/20 70/22 71/3 71/9 73/17 74/4 74/7 76/14 82/22 85/5 89/22</p> <p>witnesses [10] 4/18 4/20 5/3 5/22 5/22 37/22 71/1 90/2 92/15 96/1</p> <p>won't [1] 48/7</p> <p>wood [1] 20/15</p> <p>word [1] 20/11</p> <p>words [1] 68/11</p> <p>work [6] 8/8 8/10 8/16 21/20 29/5 40/17</p> <p>worked [2] 8/12 40/14</p> <p>working [12] 8/18 39/22 39/25 40/9 40/21 40/23 50/16 51/1 68/6 70/12 70/16 75/21</p> <p>workings [1] 76/8</p> <p>worth [1] 25/13</p> <p>would [23] 17/16 23/18 23/24 27/17</p>	<p>34/23 36/25 38/6 40/2 65/1 70/7 70/8 77/25 83/21 85/23 90/10 92/18 93/7 93/9 93/12 98/5 98/9 98/15 100/6</p> <p>wound [1] 19/18</p> <p>wounds [4] 17/11 18/17 24/23 26/5</p> <p>written [1] 66/24</p> <p>wrong [1] 48/6</p> <p>Y</p> <p>Yeah [2] 63/16 86/2</p> <p>year [5] 40/2 40/12 40/13 40/15 83/24</p> <p>years [3] 40/3 40/8 40/13</p> <p>yelled [4] 21/13 21/13 46/18 62/14</p> <p>yelling [1] 21/11</p> <p>yes [251]</p> <p>yet [1] 28/8</p> <p>you [499]</p> <p>you're [16] 7/13 27/8 33/22 35/6 37/20 46/3 52/24 70/24 76/24 87/19 89/25 90/15 91/21 91/22 92/13 93/25</p> <p>you've [2] 18/17 67/25</p> <p>your [167]</p> <p>yourself [4] 35/6 47/20 78/24 81/12</p>	
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CLERK OF THE COURT

MOT

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ELIZABETH MERCER
Chief Deputy District Attorney
Nevada Bar #10681
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ERIN WARE,
#2652033

Defendant.

CASE NO: C-15-310099-1

DEPT NO: IX

**NOTICE OF MOTION AND MOTION TO CONSOLIDATE, OR IN THE
ALTERNATIVE, MOTION TO ADMIT EVIDENCE OF OTHER ACTS PURSUANT
TO NRS 48.045(2)**

DATE OF HEARING: 02/11/16

TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through ELIZABETH MERCER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Support of its Motion to Consolidate, or in the Alternative, Motion to Admit Evidence of Other Acts Pursuant to NRS 48.045(2).

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

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1 **NOTICE OF HEARING**

2 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned
3 will bring the foregoing motion on for setting before the above entitled Court, in Department
4 9 thereof, on Thursday, the 11th day of February, 2016, at the hour of 9:00 A.M., or as soon
5 thereafter as counsel may be heard.

6 DATED this 1st day of February, 2016.

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

9
10 BY /s//LIZ MERCER
11 LIZ MERCER
Chief Deputy District Attorney
Nevada Bar #010681

12
13 **POINTS AND AUTHORITIES**

14 **STATEMENTS OF THE CASES**

15 A warrant was issued for the arrest of Defendant Erin Ware (hereinafter "Defendant")
16 on or about July 23, 2015. Defendant was arrested on August 11, 2015. He was arraigned in
17 Justice Court on August 18, 2015; and, at that time a preliminary hearing was scheduled for
18 September 1, 2015. The Public Defender's office filed a motion to withdraw due to conflict
19 which was heard on August 24, 2015. That motion was granted and the preliminary hearing
20 was reset to September 9, 2015.

21 At the time set for the preliminary hearing on September 9, 2015, defense counsel
22 requested to continue and the State did not oppose that request. The preliminary hearing was
23 rescheduled to October 15, 2015. On October 15, 2015, the preliminary hearing was held
24 during which witnesses Ruth Garn, Jamie Nourie, and Detective Lance Spiotto testified.
25 Following the hearing, Defendant was bound over to the District Court on all charges. During
26 that hearing, witness Jamie Nourie was the only witness who was able to identify Defendant
27 as the perpetrator of the crimes charged.

28 //

1 He was arraigned in District Court on November 16, 2015. At that time, he invoked his right
2 to a trial within sixty (60) days and his jury trial was scheduled for January 4, 2016. At the
3 calendar call on December 17, 2015, defense counsel requested a brief continuance. The
4 matter was reset to March 28, 2016.

5 Four (4) days after the December 17th calendar call, Defendant was rebooked on one
6 count of Solicitation to Commit Murder. On December 23, 2015, he was charged via Criminal
7 Complaint with soliciting the murder of Jamie Nourie, the only witness who is able to identify
8 him in Case No. C310099. That case was assigned Case No. 15F18958X. The following day
9 he was arraigned and the preliminary hearing was scheduled for January 7, 2016. Prior to the
10 preliminary hearing, the State sought and obtained an Indictment. The Indictment was filed
11 in District Court Case No. C311782 on January 6, 2016. Defendant was arraigned in District
12 Court on January 13, 2016 at which time he entered a plea of not guilty and waived his right
13 to a trial within 60 days. His Jury Trial was scheduled for July 25, 2016.

14 By this Motion, the State respectfully requests the consolidation of that case (C311782)
15 into this case (C310099).

16 **STATEMENT OF FACTS**

17 **Case No. C-15-310099-1**

18 On June 10, 2015, at approximately 2:30 p.m., Ruth Garn and Jamie Nourie were
19 working at the Subway located at 8790 S. Maryland Parkway, Las Vegas, Nevada.
20 Preliminary Hearing Transcripts, 7-8, 39.¹ While working, the defendant entered the store and
21 loitered around for a bit. PH, 39-41. Eventually, he asked for a cup for water. PH, 9, 42.
22 Jamie charged him 25 cents for the cup. PH, 9, 42. Defendant filled up the water cup, drank
23 the water for a minute then walked outside. PH, 42. Five (5) to ten (10) minutes later, he
24 walked back inside and asked if he could use the restroom. PH, 10, 42. He set his water cup
25 on the table, went to the restroom and walked back out. PH, 42. When Defendant came out
26 of the restroom, he asked if he could wait for his ride inside the restaurant for a bit. Ruth and
27

28 ¹ Hereinafter abbreviated, "PH."

1 Jamie allowed him to wait inside. PH, 10, 43. Defendant waited near the drink fountain and
2 continued to drink water. PH, 44, 49, 60. Defendant was the only customer that day that asked
3 for a water cup. PH, 49.

4 Jamie and Ruth walked to the back where they began to put dishes away and do prep
5 work. PH, 44-45. There were no other customers in the store at that point. PH, 44-45. While
6 in the back, Ruth walked into the fridge. PH, 45. As Ruth began to walk back out of the
7 fridge, Defendant approached Jamie and stuck a gun in her face. PH, 45-46. Jamie said, "Oh
8 my God" at which point Ruth turned around and saw Defendant holding a gun to Ruth's head.
9 PH, 11. Defendant told Ruth, "Give me all the fucking money." PH, 12. Ruth put her hands
10 in the air and told him that he didn't have to do that, and that they didn't have any money in
11 the back. PH, 12. Defendant pushed her into the desk and told her, "I guess we're just going
12 to have to get it out of your fucking purses." PH, 12. After he pushed Ruth into the desk,
13 Defendant went behind Ruth and grabbed Jamie and put the gun to her neck and said he was
14 going to kill her. PH, 12. At that point, Ruth went into her purse and removed her .357 Ruger
15 Security Six revolver, for which she possessed a concealed carry permit. PH, 12. Ruth
16 removed the gun because she was in fear for Jamie's safety. Ruth turned toward Defendant,
17 pointed the gun at him and told him to drop his weapon. PH, 13.

18 Defendant fired his weapon at Ruth and shot her in the face. PH, 13. The bullet entered
19 just below her left eye, traveled under her nose, under her cheekbone and exited the right side
20 of her face just above her ear. PH, 13. Ruth fell to the ground onto her right side. PH, 14.
21 Defendant stepped over her and with Jamie and had his gun to Jamie's neck. PH, 14. Ruth
22 tried to get up, at which time Defendant shot her again. PH, 14. That bullet went through her
23 arm and into her stomach. PH, 15. Ruth told Defendant to quit shooting her and put her arm
24 up to block the bullets. PH, 16. He shot her a third time and the bullet entered her chest and
25 bounced off of her sternum and exited right back out. PH, 18.

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1 While Defendant was initially focused on Ruth, he ordered Jamie to lay down on the
2 ground and put her face down. PH, 46. Jamie heard Defendant say something to Ruth about
3 getting money out of her purse. PH, 46. After that, Jamie heard a gunshot. PH, 46. She lifted
4 her head to see what was happening and saw Defendant and Ruth struggling over something
5 near the prep table. PH, 46. Defendant ordered her to put her head back down, and then Jamie
6 heard another shot. PH, 46. At that point, Defendant ordered Jamie to get up and go open the
7 safe in the front. PH, 46. Jamie got up and walked past Ruth, who was laying on the flooring
8 bleeding. PH, 47. As she walked past Ruth, she noticed that Ruth had her gun on the floor
9 next to her. PH, 49, 57. Defendant still had his gun in his hand. PH, 57. Per the surveillance
10 video of the incident, Defendant picked Ruth's gun up off of the floor and shot her two more
11 times. PH, 57. As Jamie walked to the front, she heard two more gunshots. PH, 47. Jamie
12 was afraid that Ruth was going to die, and that Defendant was going to shoot her as well. PH,
13 47.

14 Once Jamie got near the register, she knelt to try and unlock the safe. At that point,
15 Defendant walked up behind her and put the gun to her neck. PH, 48. Jamie tried to enter the
16 combination to the safe but was shaking so badly that she couldn't get it to open. PH, 48.
17 Jamie told Defendant she could not get it open at which point he ordered her to open the
18 register. PH, 48. Jamie removed the whole drawer from the register and tried to hand it to
19 Defendant, but he just looked at it and ran out. PH, 48. Jamie went back to Ruth and dialed
20 911. PH, 49. Ruth's gun was no longer present. PH, 50.

21 Ruth was transported to the hospital where she remained for four (4) days. PH, 22. For
22 the first two days she was sedated. PH, 22. She suffered a brain bleed and a myriad of other
23 injuries. PH, 23. While hospitalized she had to undergo surgery to remove the bullet from her
24 stomach. PH, 24. After being released from the hospital, she had to have both orbital floors
25 replaced because they were blown out by the bullet to her face. PH, 26. She had double vision,
26 blurred vision, and can't focus her eyes. PH, 26. She has permanent damage to her right pupil
27 and her left tear duct was ruined. PH, 26, 28. In addition, she can't smell or taste, her left
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1 eardrum was perforated from the blast and she sustained inner ear damage and deafness. PH,
2 26. Additionally, several tendons in her arm were damaged. PH, 27. As a result she can't
3 use her thumb and her pointer finger, middle finger and pinky on her left hand are numb. PH,
4 27. In addition, she has to use a walker to move around because of issues with her balance
5 caused by damage from the bullets. PH, 28. Ruth was unable to identify Defendant because
6 of damage to her eyesight. PH, 22-23.

7 Jamie met with a sketch artist on June 14, 2015 and assisted them in doing a sketch of
8 Defendant. PH, 67. Then, on July 22, 2015, Jamie viewed a six pack photographic line-up
9 and positively identified Defendant as the individual who robbed them, and shot Ruth multiple
10 times. PH, 63-64.

11 The plastic cup used by Defendant for drinking water on the day of the robbery was
12 swabbed for DNA. Subsequent testing revealed that Defendant's DNA was on that cup. In a
13 post-Miranda interview following Defendant's arrest, he denied ever being inside of that
14 Subway.

15 **C-16-311782-1²**

16 On November 30, 2015, Det. Lance Spiotto received a voicemail message that an
17 inmate at the Clark County Detention Center had information that Defendant Erin Ware was
18 attempting to solicit the murder of Jamie Nourie. After receiving the message, Detective
19 Spiotto went to the Detention Center and interviewed the inmate that same day. The following
20 day, Det. Spiotto and Det. Moreno met with the inmate again. During that interview, the
21 inmate informed the detectives that Ware provided him with a great number of details
22 concerning the incident on June 10, 2015 at Subway. The inmate provided those details to the
23 detectives, including the fact that Jamie Nourie was the only witness who could identify
24 Defendant at the preliminary hearing. Defendant told the inmate that he could have his "Pops"
25 or his "broad" pay the person who was willing to kill Jamie. The inmate was able to give the
26

27
28 ² See, Arrest Report, attached hereto as "Exhibit 1" and Transcript of Visit 1, Transcript of Visit 2, and letter attached
hereto as, Exhibits 2, 3, and 4, respectively.

1 detectives Jamie's home address which Defendant provided to him. The inmate expressed to
2 detectives that he felt he needed to let them know because he was concerned due to the violence
3 used in the robbery, and because he believed Defendant was capable of hiring someone to
4 murder Jamie. The inmate advised detectives that he told Defendant to expect a visit from a
5 family member of his named "Check" who would assist Defendant.

6 On December 7, 2015, when Det. Moreno went to visit with the inmate about
7 potentially wearing a wire, the inmate showed Det. Moreno a letter that Defendant provided
8 to the inmate in which he stated, "I heard you a clean up [sic] man and I need some garbage to
9 be taking out. Handle it and I got 5 stacks for you." The inmate advised detectives that he
10 needed to return with the letter so that Defendant could finish it. At that point, Det. Moreno
11 photographed the letter and gave it to the inmate.

12 The next day, the inmate wore a wire. While the inmate was wearing the wire,
13 Defendant read the letter to the inmate. In addition, they discussed the solicitation in more
14 detail.

15 Then, on December 9, 2015, an undercover detective conducted a videotaped visit with
16 Defendant. Erin Ware believed that the UC was the inmate's family member who went by the
17 name "Check." During that visit, Defendant confirmed that he wanted Jamie Nourie gone "not
18 for a minute" but "forever." He also held up a letter for the UC which contained Nourie's
19 name, address and description and confirmed that he would pay the UC five (5) stacks (\$5,000)
20 for taking care of it. In addition, he held up the Information from Case No. C-15-310099-1
21 and showed the UC the charges that he was facing, along with the list of witnesses attached to
22 the Information. Defendant advised the UC that he needed it done by the 17th of December
23 because that was the day that he was supposed to go to Court and see if everyone is ready for
24 trial. That list contained the name and address of Jamie Nourie. At the conclusion of the visit,
25 it was agreed that the UC would visit Defendant in a few days to follow-up.

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1 On December 10, 2015, Det. Moreno was contacted by Alex Gonzalez at the Detention
2 Center who advised that the inmate gave two letters to him from Defendant to forward to Det.
3 Moreno. One of those letters was the letter that Defendant held up during the videotaped visit
4 and described Jamie Nourie, the amount to be paid for her murder, and her work and home
5 addresses. Defendant believed that the inmate was going to mail the letters to his girlfriend to
6 give to "Check"/the UC.

7 The UC met with Defendant again on December 14, 2015. Again, it was a videotaped
8 visit over the video visitation system at the jail. During the second meeting, Defendant
9 reiterated his desire to have Nourie murdered. Additionally, the UC advised Defendant that
10 he'd done his "homework" on Jamie, and held up two photographs of her so that Defendant
11 could confirm whether that was the correct individual. Defendant confirmed that was the
12 Jamie Nourie he was talking about.

13 After detectives completed their investigation with regard to whether there really was
14 anybody trying to assist Ware in paying for the murder of Jamie Nourie, Defendant was
15 rebooked.

16 ARGUMENT

17 I. 18 THE PRESENT CASE AND CASE NUMBER C-16-311782-1 SHOULD BE 19 CONSOLIDATED FOR JURY TRIAL

20 NRS 174.155 addresses consolidation of charging documents. It states in pertinent part:
21 The court may order two or more indictments or information or both to be tried together
22 if the offenses,...could have been joined in a single indictment or information. The
23 procedure shall be the same as if the prosecution were under such single indictment or
24 information.

25 Additionally, Section 173.115 of the Nevada Revised Statutes provides:

26 Two or more offenses may be charged in the same indictment or information in a
27 separate count for each offense if the offenses charged, whether felonies or
28 misdemeanors or both, are: (1) Based on the same act or transaction; or (2) Based on
two or more acts or transactions connected together or constituting parts of a common
scheme or plan.

1 In considering whether to allow consolidation, courts examine the conflicting policies
2 of economy and efficiency in judicial administration (looking to control courts' calendars in
3 avoidance of multiple trials), and any resulting prejudice to the defendant which might arise
4 from being prosecuted at trial by presentation of evidence of other crimes flowing from a
5 common plan or scheme. United States v. Fletcher, 195 F. Supp. 634 (D. Conn. 1960), aff'd,
6 319 F.2d 604 (4th Cir. 1963).³

7 Joinder of two or more Indictments or Informations is within discretion of trial court
8 and its action will not be reversed absent abuse of discretion. Lovell v. State, 92 Nev. 128
9 (1976).

10 Eighth Judicial District Court Rule 3.10, and NRS 174.155, promote judicial economy.
11 EDCR 3.10 provides:

12 (a) When an indictment or information is filed against a defendant who has other
13 criminal cases pending in the court, the new case may be assigned directly to the
14 department wherein a case against that defendant is already pending.

15 (b) Unless objected to by one of the judges concerned, criminal cases, writs or motion
16 may be consolidated or reassigned to any department for trial, settlement or other
resolution.

17 Applying these principles to the cases in question, the interests of justice would best be
18 served by consolidation. In the present cases, the Court is faced with offenses based upon the
19 same act or transaction. NRS 173.115. These offenses could have been charged within a
20 single charging document pursuant to NRS 173.115 and are precisely the type of situation
21 referenced by the body of the statute. As such, they can, and should be tried together.

22 Judicial economy is an additional factor leading toward consolidation. In Robins v.
23 State, 106 Nev. 611, (1990), our Supreme Court was faced with the joinder of a child abuse
24 charge and a murder charge. It was held that, "if . . . evidence of one charge would be
25 cross-admissible in evidence at a separate trial on another charge, then both charges may be
26

27 ³ Since Nevada's consolidation statute, section 174.155 of the Nevada Revised Statutes, is the same as the federal
28 consolidation rule, Federal Rule of Criminal Procedure 8(B), Fletcher, which discuss the federal statute, are also
persuasive with regard to our state statute

1 tried together and need not be severed." Id. at 619, (citing Mitchell v. State, 105 Nev. 735,
2 738, 782 P.2d 1340, 1342).

3 Additionally, as discussed below, the State's position is that the evidence in both cases
4 would be cross admissible under NRS 48.045. Cross admissibility is a basis for joinder under
5 NRS 173.115(2) because they are "connected together." Weber v. State, 121 Nev. 554, 573
6 (2005). Likewise in Middleton v. State, 114 Nev. 1089, 1108 (1998) the Nevada Supreme
7 Court held that "If evidence of one charge would be cross-admissible in evidence at a separate
8 trial on another charge, then both charges may be tried together and need not be severed." If
9 this other acts evidence is admissible in the instant trial, then to require separate trials serves
10 no purpose and merely promotes the waste of resources.

11 With each trial lasting several days, judicial resources would be better served by trying
12 the cases together. Because the evidence is cross admissible, any argument that the Defendant
13 will be prejudiced by consolidation is moot, because the risk of prejudice is the same whether
14 the evidence is admissible through consolidation or as other acts under NRS 48.045.

15 **A.**
16 **THE EVIDENCE IS CROSS ADMISSIBLE AS EVIDENCE OF OTHER ACTS**
17 **PURSUANT TO NRS 48.045(2) SO CONSOLIDATION IS WARRANTED.**

18 In Case No. C-15-310099-1, evidence concerning the counts charged in Case No. C-
19 16-311782-1 would be admissible at the trial in the instant case as evidence of consciousness
20 of guilt pursuant to Evans. Similarly, evidence concerning the charges in Case No. C-15-
21 310099-1 would be admissible at the trial in C-16-311782-1 as evidence of motive.

22 With regard to the admissibility of the evidence concerning the charges in C-16-
23 311782-1, the Nevada Supreme Court has explicitly exempted such evidence from the
24 requirements of NRS 48.045 when there is "substantial credible evidence that the defendant
25 was the source of the intimidation." Lay v. State, 110, Nev. 1189 (1994); Evans v. State, 117
26 Nev. 609, 608 (2001). More specifically, in Evans v. State, 117 Nev. 609, 628 (2001), reversed
27 in part on other grounds, the Court stated, "[W]e consider NRS 48.045(2) to be inapposite.
28 Evidence that after a crime a defendant threatened a witness with violence is directly relevant
to the question of guilt. Therefore, evidence of such a threat is neither irrelevant character

evidence nor evidence of collateral acts requiring a hearing before its admission.” In light of Evans, the State submits that the evidence of Defendant’s solicitation to commit the murder of Jamie Nourie is admissible as evidence of his guilt in the instant case.

Moreover, evidence of the charges in this case would be admissible at the trial in C-16-311782-1 as evidence of Defendant’s motive to have Jamie Nourie murdered. Had Jamie Nourie not positively identified Defendant as the perpetrator of the crimes in this case, he would have had no reason to solicit her murder. NRS 48.045(2) provides that, “[e]vidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” When determining whether such evidence is admitted, the district court must strike a proper balance between the probative value of the evidence and its prejudicial dangers. Bradley v. State, 109 Nev. 1090, 1093, 864 P.2d 1272, 1274 (1993) (citing Elsbury v. State, 90 Nev. 50, 53, 518 P.2d 599, 601 (1974)).

In Fields v. State, 125 Nev. 785, 220 P.3d 709 (2009), the Nevada Supreme Court affirmed the District Court Judge’s determination to admit evidence that the Defendant owed debts to the victim and that he had previously engaged in a conversation about killing a man to whom he owed money. The Nevada Supreme Court agreed with the District Court’s decision that such evidence was admissible as proof of motive, to disprove his contention that he was just an innocent bystander to his wife’s scheme, and to prove identity.

Likewise in Ledbetter v. State, 122 Nev. 252, 262-263, 129 P.3d 671, 678-679 (2006), the Supreme Court held that it was proper for the District Court to admit evidence of other bad acts to establish the Defendant’s motive to repeatedly subject his stepdaughter to sexual assaults. The bad act evidence in that case consisted of evidence that Defendant sexually assaulted other young female members of his own family. In reaching its decision, the Court noted that the evidence was relevant to motive, proven by clear and convincing evidence (due to four (4) different witness’ testimony) and highly probative as it showed Defendant’s sexual attraction to, and an obsession with, young female members of his family.

1 Also, in Hogan v. State, 130 Nev. 21 (1987), wherein the Nevada Supreme Court upheld
2 the trial court's determination to admit evidence of a prior domestic violence incident
3 committed by Defendant against the victim in the days preceding her murder. In Hogan, the
4 trial court admitted evidence that several days prior to the murder, Defendant dropped the
5 victim to the ground from shoulder height. In affirming the District Court's ruling, the Nevada
6 Supreme Court recognized that such evidence was "other acts" evidence pursuant to NRS
7 48.045(2) which was properly admitted to establish "ill-will as a motive to the crime." Hogan
8 v. State, 130 Nev. 21, 23 (1987).

9 And, in Weber, supra, 121 Nev. at 573-574, the Court held that Weber's desire to
10 continue and conceal the sexual abuse and/or punish the persons he believed to be thwarting
11 it provided the motive for the murder of M.'s brother and mother as well as the subsequent
12 attempted murder of her other brother and his guardian. Thus, the Court determined that such
13 evidence would have been admissible as evidence of motive to commit the murders. The Court
14 likewise determined that evidence of the murders and attempted murders was probative of
15 Weber's sexual abuse of M. and tended to prove his consciousness of guilt regarding the abuse,
16 as well as a lack of consent by M. Id. And, the Court found that evidence of the attempted
17 murders was relevant and probative as to the issue of Weber's identity as the murderer of C's
18 mother and brother. Id. In light of this cross-admissibility pursuant to NRS 48.045(2), the
19 Court found that the events were connected together and properly joined.

20 Given the above-referenced legal authority, the State respectfully submits that the
21 evidence is cross-admissible such that the two cases are connected together. Thus, two
22 separate cases against Defendant Erin ware should be consolidated.

23 //

24 //

25 //

26 //

27 //

28 //

1 **CONCLUSION**

2 For the foregoing reasons, the State respectfully requests this Court GRANT the State's
3 Motion to Consolidate. Alternatively, the State asks that this Court admit the evidence
4 pursuant to Evans and NRS 48.045(2).

5 DATED this 1st day of February, 2016.

6 Respectfully submitted,

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

10 BY /s//LIZ MERCER

11 LIZ MERCER
12 Chief Deputy District Attorney
13 Nevada Bar #010681

14 **CERTIFICATE OF ELECTRONIC FILING**

15 I hereby certify that service of State's Notice, was made this 1st day of February, 2016,
16 by Electronic Filing to:

17 JENNIFER M. WALDO, ESQ.
18 E-mail Address: jmw@gregoryandwaldo.com

19 AMANDA GREGORY, ESQ.
20 E-mail Address: asg@gregoryandwaldo.com

21 Shellie Warner
22 Secretary for the District Attorney's Office

23
24
25
26
27
28 mmw/GCU

Exhibit “1”

ARREST REPORT☒ City☐ County☒ Adult☐ JuvenileSector/Beat A2

ID/EVENT# 2652033	ARRESTEE'S NAME (Last) (First) (Middle) WARE ERIN DESHAUN			S.S.#
ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code) 3010 HACIENDA RENO, NEVADA 89502				
CHARGES SOLICITATION TO COMMIT MURDER				
OCCURRED 11/30/15	DATE 11/30/15	DAY OF WEEK Monday	TIME 1800	LOCATION OF ARREST (Number, Street, City, State, Zip Code) 330 S. Casino Center Las Vegas, Nevada 89101
RACE Blk	SEX M	D.O.B. 02/16/90	HT. 5'6	WT. 160
HAIR Blk	EYES Brn	PLACE OF BIRTH Duarte, California		

ARRESTING OFFICER #1: R. MORENO	P#: 4922	ARRESTING OFFICER #2:	P#:
CONNECTING REPORTS (Type or Event Number) TCR, DOA, Prop Rpt., Voluntary Statement, 15120610-2629 ; 151209-3323			

APPROVED BY (PRINTED NAME): Sgt. J. Herring P#5241**CIRCUMSTANCES OF ARREST:**

On November 30th, 2015 I Detective R. Moreno P#4922 was contacted by LVMPD Detective L. Spiotto P# 4774 in the Robbery Section. Detective Spiotto stated that he received information from an inmate that will be referred to as confidential informant (herein referred to as CI). The CI stated that another fellow inmate contacted him in reference to a Solicitation to Commit Murder of a witness in a criminal case. The CI stated that he had contact with this fellow inmate at the Clark County Detention Center where the two are currently being housed. The CI stated that the inmate who made these serious allegations of Soliciting to Commit Murder was identified as Erin Ware ID#2652033.

During my investigation it was brought to my attention that earlier on November 30th, 2015 the CI was talking with a relative by the use of the inmate phone system at the Clark County Detention Center. The phone system inside the jail is called the ICS phone systems. The CI had his wife place a three way call for him. The CI provided the phone number of _____ for his relative to call; this number is registered to LVMPD Homicide section. The CI left a message for Detective Lance Spiotto to contact him in reference to a Murder for Hire case where a male inmate wanting to have a witness to a Robbery investigation murdered. Detective Spiotto is the case agent on that particular Robbery (150610-2629). The phone call in which the CI made to the LVMPD Homicide section to contact with Detective Spiotto was recorded by use of the ICS phone system.

After receiving the message Detective Spiotto then went to the Clark County Detention Center and made contact with the CI. The CI provided a taped statement to Detective Spiotto on the information that he received from an inmate that was identified as Erin Ware. Ware is currently in custody for several felonies to include, Attempt Murder. These crimes are all related to a Robbery with a Deadly Weapon at a Subway restaurant located at 8790 S. Maryland Parkway, this Robbery is documented under LVMPD event 150610-2629. Detective Spiotto is in fact the case agent on that Robbery.

The conversation between Detective Spiotto and the CI took place on November 30th, 2015 at approximately 1555 hours. This conversation was recorded and later transcribed under the original Robbery event number 150610-2629.

CONTINUATION REPORT

ID/EVENT #: 2652033

On December 1st, 2015 Detective Spiotto and I went to CCDC and made contact with the CI. Detective Spiotto introduced me to the CI. The three of us spoke about the same information that the CI had revealed to Detective Spiotto the day previous. The following is a synopsis of that conversation:

The CI stated that fellow inmate Erin Ware has been telling him very intimate details of a robbery that occurred at a Subway restaurant. The CI stated that Ware told him that, after the robbery started, the employee (clerk) reached into her purse to grab a gun, so he then shot her multiple times. The CI stated that Ware told him that there was another witness to the robbery and was the only living witness that could identify him on the current charges he is in custody for. Ware told the CI that he wants somebody to kill the witness "Jamie" because she was the only one at the preliminary hearing that identified him.

Ware stated that he could have "Pop's" (Ware's father) or his "broad" to pay the person who could do this for him. Ware stated that his fiancée has a good job up in Reno and that she could pay them. The CI stated that Ware gave the witnesses name of Jaime and her address on Maurice River. The CI stated that they could go back into the Subway on Maryland Parkway, rob the store and kill her during the robbery. Ware also stated or they could rob her at her house then kill her there. The CI stated that Ware said it would look better if it was done at the store, that way it would be less likely to connect it back to Ware.

The CI stated that after hearing the intimate details of how violently Ware shot one of the store employees and then how Ware bragged about shooting her again multiple times, he knew that he had to report this to officers. The CI stated that he came forward with this information because he believes that Ware is definitely capable of hiring somebody to kill Jamie.

I informed the CI that I would be the primary detective conducting this investigation. I informed him if any new information arose to please notify a correction officer and that they would contact me. During our meeting with the CI, he brought up to me that he would wear a wire to capture Ware telling him about wanting "Jamie" killed.

The CI stated that he was freely and voluntarily doing this on his own admissions. The CI stated that he is a willing witness to this very serious allegation of Solicitation to Commit Murder. The CI stated that he knows he will have to testify at some point to the eye witness testimony he is providing to us.

The CI brought up to me that Ware is expecting a visit from the CI's family who could possibly carry out this Murder for Hire. The CI stated that he has told Ware that his sister or his nephew who goes by the moniker of "Check" would be coming to visit him soon.

On December 7th, 2015 Detective Cook P#5730 and I met up with the CI to discuss wearing a recording device at which time the CI freely and voluntarily agreed to wear a device. As we were departing from the CI, he pulled out a folded up piece of lined paper. The letter appeared to be a hand written note that read as follows;

"Check what's the deal bruh. Im gonna be real brief. Im up in the county jail for Attempt Murder and Robbery. Some shit that I wouldn't even be here for if a nigga wouldn't of put my name in it. I heard you a cleanup man and I need some garbage to be taking out. Handle it and I got 5 stacks for you."

The CI stated that he needed to return with the letter so that Ware could finish it before they send it in the mail. I then took a picture of this letter with my department cell phone and returned the letter back to the CI.

On December 8th, 2015 at approximately 0930 hours Detective C. Hall P#6060 accompanied me at CCDC. We then briefly spoke with the CI together about wearing a recording device on his person to record any conversation that he may have with fellow inmate Erin Ware about any information on him wanting to Solicit to Commit Murder on the witness, Jamie. The CI freely and voluntarily agreed to wear a recording device on his person to assist the investigation. We then placed a recording device on the CI. At approximately 1000 hours, Officer M. Zucker P#5741 then escorted the CI was back to his POD where he was currently housed.

CONTINUATION REPORT

ID/EVENT #: 2652033

From the time the device was placed on the CI you were able to hear casual conversation coming from the device. The CI and Ware were strategically placed together to clean the rec yard. This provided the two of them to be alone while they cleaned up the rec area together. The recording is approximately one hour and 55 minutes; at approximately 43 minutes into the recording is when you can begin to hear a primarily two way conversation between the CI and Ware. There are quiet spots as well as some background noise at times. Their conversation lasted approximately 54 minutes off and on until about one hour and thirty-seven minutes of the recording.

The CI and Ware were heard talking about various unrelated conversations while briefly talking about the Solicitation to Commit Murder. At one point the CI appeared to go get a letter that Ware had been working on to mail out. Ware read the letter out loud:

"What's the deal bruh. Im gonna be real brief. Im up in the county jail for Attempt Murder and Robbery. Some shit that I wouldn't even be here for if a nigga wouldn't of put my name in it. I heard you a cleanup man and I need some garbage to be taking out. Handle it and I got 5 stacks for you."

The two spoke about various topics to include information on the Solicitation to Commit Murder that Ware has been planning.

On December 9th at approximately 1740 hours Detective C. Hall P#6060, the undercover employee UCE43, and I Detective R. Moreno P#4922 all made contact with Corrections Officer J. Seely P# at the Clark County Detention Center located at 330 Casino Center. We had already scheduled a pre-planned jail visit with undercover employee UCE043, (herein referred to as UC) and the suspect Erin Ware ID#2652033. The preplanned visit was for December 9th, 2015 at 1830 hours until 1925 hours, in visitation booth #61. This scheduled appointment was made with the cooperation of Officer G. Munoz P#7137.

At approximately 1830 hours, Officer J. Seely escorted our UC to visitation booth #61. This jail visitation was recorded by audio and video recording through the use of the Clark County Detention Center in house camera system. The visit was recorded both audio and video for evidentiary purposes. Once the UC sat down in booth # 61 and the video recorder was already recording. The undercover officer (UCE043) was alone for approximately 12 minutes until inmate Erin Ware ID#2652033, shows up and sits down. Ware then greeted the undercover detective.

The two then began to converse with each other, Ware used slightly coded words or sentences to communicate with the undercover detective. This jail visit was transcribed but the following is a synopsis of their conversation;

Ware greets the UC by saying "What's crackin bro"? "You my boy folk"? (Ware appeared to be referring to the CI). The UC responds by saying his own preplanned aka "Yeah uh check man, your fam sent me.

Ware: "Oh, oh okay yeah okay uh, yeah man uh it's really real man. I wanted uh to meet up with you man so uh, kind of got some business you know, handle some business, we can handle some business together. I'm posed to be havin' uh somethin' out there flyin' to you in about next couple of days you should be receivin' it like probably Friday. You feel me"? (This is referring to a letter being mailed out).

UC: "Uh yeah, yeah fam told me you got some work man so you know that's why I'm here".

Ware: "Yeah uh, yeah man uh I got uh, I got like five stacks". (Referring to \$5,000)

UC: "It's always spacy. I, I understand where we at man but's it's all good you know. If we need, we need some work done I gotta know what I need to do though. You know"?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/EVENT #: 2652033

Ware: "Right. Well uh, somebody be get, somebody, someone will be getting wick you. You'll understand, you'll know. You'll know for sure uh."

At this point of the visit Ware places a handwritten letter up so that the UC is able to read the letter through the video monitor. The UC then took a few photographs of the letter with the use of his department cell phone that he had on his person. The letter had the first and last name of the intended victim "Jamie Nourie". It also had her home address and place of work at the subway 8790 S. Maryland Parkway.

UC: "Alright, alright so uh what we talkin' about though I mean you just want that, you just want that shit gone for a minute? Or, uh you know".

Ware: "Yeah".

UC: "Uh you know can't talk or what? What's up"?

Ware: "Uh yeah pretty much but uh, not for a minute shit forever".

UC: "Forever? Uh we talkin' that real shit then huh"?

Ware: "Yeah, yeah, yeah, yeah, yeah".

UC: "So we, we gotta make sure, we gotta make sure our shit straight you know, cause this some shit we can't come back from".

Ware: "Yeah absolutely".

UC: "So you know I'm a have to, I'm a have to get some information from you, you know we gotta talk that payment".

Ware: "Mm-hmm".

UC: "You know"?

Ware: "Mm-hmm, mm-hmm, yeah".

UC: "You know..."

Ware: "That, that's and that's one thing like I told you know, yo, yeah, yeah your folks know me man, your folks no me".

On December 10th I was contacted by Officer Gonzalez P#6188 at the Clark County Detention Center who stated that he received a couple letters in person from the CI. I then went to CCDC and made contact with Correction Officer Gonzalez and Correction Officer Munoz P#7137. Officer Gonzalez stated that the CI thought he was being removed from his current housing area in the medical POD to general population. Therefore the CI met with Officer Gonzalez handed him the two letters and asked to give them to me. Officer Gonzalez accepted the two letters and notified me as soon as possible. The letters were handwritten in pencil, one was in standard print and the other letter was written in cursive writing. The following are the content of both letters;

"Jaime"

"Check whats the deal bruh? Im gonna be real brief Im in county jail for attempted murder & robbery for some shit that I didn't do and wouldn't even be here is a nigga wouldn't have put my name in it. I heard that you're a clean up man and I need the garbage to be taken out. Handle it and I got 5 stacks for you. The garbage about 5'5, blondish brown hair with glasses, thin build, address is "

CONTINUATION REPORT

ID/EVENT #: 2652033

LV, NV 89183. I don't care how you do it, just clean up before the 17th of December & the \$ is yours".

8790 S. Maryland Parkway is where the subway is. I know for sure that on Wednesday from 9am-3pm the trash is there. It don't matter where and how it happen. I just need it to happen. My life is on the line bruh. Don't worry about the cash I got you. When I get out Imma bless you with a little more if everything goes as planned. I appreciate it bruh much love.

On December 14th, 2015 at approximately 1740 hours Detective C. Hall P#6060, the UC, and I Detective R. Moreno P#4922 all made contact with Corrections Officer M. Zucker P#5761 at the Clark County Detention Center located at 330 Casino Center. We had already scheduled a pre-planned jail visit with our UC and the suspect Erin Ware ID#2652033. The preplanned visit was for December 14th, 2015 at 1830 hours until 1925 hours, in visitation booth #57. This scheduled appointment was made with the cooperation of Correction Officer G. Munoz P#7137.

This second jail visit was set up in order to verify the information we received from Ware during our initial visit with him and to confirm that Ware still wanted the witness killed.

At approximately 1830 hours, Correction Officer Zucker escorted our undercover officer (UCE043) to visitation booth #57. This jail visitation was recorded by audio and video recording through the use of the Clark County Detention Center in house camera system for evidentiary purposes. Once the UC sat down in booth #57 the video recorder was already recording. The UC was alone for a short period until inmate Erin Ware ID#2652033 approached the visitation booth #57.

The two then began to talk with each other, Ware used slightly coded words or sentences to communicate with the UC. This jail visit recording will be transcribed at a later time; the following is a synopsis of their conversation;

Ware and the UC greeted each other and began to have similar conversation as in the initial interview. The UC asked if Ware still wanted the trash taken out at which time Ware acknowledged yes. Ware and the UC agreed to have at least half of the money up front prior to the murder to take place.

Ware provided a phone number to the UC of _____ and stated that he went by "Bird". Ware stated that the UC could call "Bird" at this number before December 17th, 2015 and to make contact with him about being paid.

The UC had a photograph of the victim Jamie Nourie that he had brought to the visit with Ware. The UC put the picture up to the video monitor and asked Ware if this was the trash that he wanted taken out? Ware acknowledged the UC both verbally and physically by nodding his head. Shortly thereafter the two ended their conversation.

Due to the above facts and circumstances there is probable cause to believe that Erin Deshaun Ware did willfully and unlawfully commit the criminal offense of Solicitation to Commit Murder NRS 199.500.2 Ware arranged to commit murder against a witness Jamie Nourie in his pending criminal case. The Solicitation was committed by Ware, when he told undercover detectives he wants to murder the only remaining witness in his current case. Ware would pay detectives to have the witness Jamie Nourie killed to prevent her from testifying in his current case. Ware devised a plan to have Nourie killed at her place of work located at 8790 S. Maryland Pkwy (Subway Restaurant). Ware devised a plan as a rouse to have the Subway store robbed and in the process Nourie was to be killed. Ware stated this rouse would then look as if Nourie was killed during a robbery and would not bring any attention to him. Ware also stated to undercover detectives that if his plan failed, Nourie was to be murdered at her place of residence. Ware had obtained Nourie's address and

CONTINUATION REPORTID/EVENT #: 2652033

information from discovery and was planning the attack. Ware told undercover detectives that his family would pay half of the money up front and the remaining portion when the job was finished. These actions taken by Ware to devise a plan to eliminate Nourie by means of murder for hire constitute the criminal offense of Solicitation to Commit Murder in violation of NRS 199.500.2.

Exhibit “2”

INTERVIEW WITH ERIN WARE
151209-3323

Location: CCDC
Present: ERIN WARE, UC OFFICER

EW: ERIN WARE
UC: UNDER COVER OFFICER

EW: What's cracking bro?

UC: What up bro?

EW: Shit man chillin', chillin' man uh, you uh, you my boy folks?

UC: Yeah uh check man, your fam sent me.

EW: Oh, oh okay yeah okay uh, yeah man uh it's really real man. I wanted uh to meet up with you man so uh, kind of got some business you know, handle some business, we can handle some business together. I'm posed to be havin' uh somethin' out there flyin' to you in about next couple of days you should be receivin' it like probably Friday. You feel me?

UC: Yeah.

EW: I don't know how these phones, you know I don't know how these phone is but uh we went on and got it to you, you know got it to you that way so some shit be comin' to you man. Alright, really yeah—fuck—yeah, yeah—you wanna, you wanna holler at him?

UC: Is that my folks?

EW: Yeah, yeah, yeah...

UC: Yeah, yeah, yeah.

EW: Hell yeah. Yeah I'm tryin' to get him to slide up over here.

UC: Alright. Be homie.

EW: But yeah bro—yeah, yeah, on everything. Uh...

UC: Yeah.

EW: Yeah man my name uh, my name drac to homie.

UC: Okay.

EW: My name drac but uh...

INTERVIEW WITH ERIN WARE
151209-3323

UC: Right.

EW: Yeah I hadn't heard a lot a, I didn't heard a lot bout you homie, a lot about you man and uh...

UC: Uh yeah, yeah fam told me you got some work man so you know that's why I'm here.

EW: Yeah uh, yeah man uh I got uh, I got like five stacks.

UC: Damn, they like that?

EW: Yeah my nigga.

UC: Okay uh yeah you know.

EW: Yeah my nigga.

UC: I mean what, what, what we talkin' about?

EW: Yeah. Shit uh you know uh, uh...

UC: It's all good bro...

EW: (Inaudible)

UC: It's always spacy. I, I understand where we at man but's it's all good you know. If we need, we need some work done I gotta know what I need to do though. You know?

EW: Right. Well uh, somebody be get, somebody, someone will be getting wick you. You'll understand, you'll know. You'll know for sure uh.

UC: I, I, I'm go—I expect it—how should I expect it bro?

EW: Okay uh...

UC: Yeah I can't even see that shit bro you have to pull it back.

EW: Ugh.

UC: Yeah, yeah pull it back a little bit. It's uh...yeah a little bit close.

EW: Nice?

UC: Yeah a little, yeah over to the, to the left, there you go. Uh shit, it's all blocked up. Hold uh, hold up, hold, hold up, just a little bit to the left. To uh, to your right, there you go. Uh, now back just a little bit. Hold on, okay let me try see if I could get it. Let's see, over to your, your

INTERVIEW WITH ERIN WARE
151209-3323

right a little bit. Right there, hold it right there bro. That's it, hold on, you got hold it, yeah you gotta—I know it's hard but you got to hold that shit still a little bit. I can't barely see. I say okay keep move it up just a little bit. There you go, alright, alright. Alright just, just a little bit more. Just about yeah, just slowly. Alright, alright so uh what we talkin' about though I mean you just want that, you just want that shit gone for a minute? Or, uh you know.

EW: Yeah.

UC: Uh you know can't talk or what? What's up?

EW: Uh yeah pretty much but uh, not for a minute shit forever.

UC: Forever? Uh we talkin' that real shit then huh?

EW: Yeah, yeah, yeah, yeah, yeah.

UC: So we, we gotta make sure, we gotta make sure our shit straight you know, cause this some shit we can't come back from.

EW: Yeah absolutely.

UC: You know?

EW: Absolutely, yeah absolutely, absolutely.

UC: So you know I'm a have to, I'm a have to get some information from you, you know we gotta talk that payment.

EW: Mm-hmm.

UC: You know?

EW: Mm-hmm, mm-hmm, yeah.

UC: You know...

EW: That, that's and that's one thing like I told you know, yo, yeah, yeah your folks know me man, your folks no me.

UC: Right, uh believe me...

EW: That's one thing.

UC: ...if, let me, let me say this right here bro and it's all respect uh, if my folks didn't know you I wouldn't be here you know what I'm sayin'?

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EW: Abs—and, and he—and, and that's the same shit he said to me.

UC: Yeah.

EW: That's the same shit he said to me.

UC: Uh (inaudible).

EW: So that deal, that right there that's something' you ain't got to worry about man. Uh, you, you'll get that for sure, for sho'.

UC: You know the, the way, you know the way I do shit I gotta, you know I—we gotta make sure the shit clean. So I'm gonna need to kinda a day or two to, to you know kinda figure out what's goin' on and you know maybe get a pattern on, on this trash and shit like that. See you know, see what it's about. So I'm gonna need location and you know, you know the—you know how you wa—you know the best place to, to pick it up you know?

EW: Yeah for sho'. Yeap, well uh like I said uh, we uh, I think he gonna be tryin' to hit you up later on, but somethin', somethin' got blasted out to you so.

UC: Yeah, how should I expect it?

EW: You should be...

UC: How should I expect though? You know?

EW: Uh, uh at a just at it—at the, at his spot. At a, at his spot.

UC: R—right.

EW: Yeah wit wife, wit uh wit wifey.

UC: Okay, alright I got you.

EW: Yeah.

UC: Yeah I got you, I gotch you, I gotch you. What's uh...

EW: Yeah, yeah, yeah.

UC: Uh yeah well you what, what we lookin' about though? I mean, how you, you know how you want this shit done though you know what I mean? Or where?

EW: I could—I could care less, but I can care less how anything you know.

UC: As long as...

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EW: Or anything just to...

UC: As long it's...

EW: Yeah as long it's...

UC: As long it's, as long it's done do?

EW: Yeah as long it's a done deal folks.

UC: Yeah.

EW: It don't even matter to me.

UC: Did uh, does it...

EW: Don't even want to tell me.

UC: Is—do we know she here? Or it's here? You know?

EW: Yeah, yeah, yeah.

UC: How do, you know, how, how to find her though? You know what I mean?

EW: Yeah, yeah.

UC: You know I can't...

EW: Yeah, yeah for sho'. I think he over there tryin' to holler to see if he can uh, if he can get over here to you.

UC: Alright. Uh, what's that in that uh, that's the, the uh, that's, that's, that's the house bro?

EW: Mm-uh.

UC: Alright. She uh, is there, is there a work spot?

EW: Yeah uh man they uh, they got for the nigga, they talk about the crime pose to happen at uh 87m 8790 Me uh, South Maryland Parkway. You know where that's at?

UC: Ah I could, I could figure that shit out man it ain't gonna be hard you know?

EW: Yeah I don't even know where the fuck that's at.

UC: Alright.

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EW: But uh, yeah it was uh, happen at a Subway the...

UC: That's crazy. Hey, let me see, I need to get that uh...

EW: Yeah.

UC: I need to get that first number though, if you could hold that back, I need to get that first number cause that's gonna be one, that's gonna be the one spot. (Inaudible) Can, can you move to, to your right. Yeah, yeah right there, hold up, hold right there, right there. That's shit hard to read, you repeat it, you—what is it? Can you, just uh, uh, uh what it say? Just give me that number one.

EW: Uh, damn. Uh, look, look Brodie.

UC: What up bro?

EW: Just uh, just, just, just wait for it, just wa—it uh, it uh, it uh it uh be coming to you. Cause they, they got mother fuckers call and all and some other shit.

UC: Nah I, I hear you bro. Hey, but uh you know the, the biggest thing like I said uh you know with makin' sure we get this shit right cause it's some shit we can't come back from, but you know all my shit on my end uh that payment what we talkin', you know we talkin' numbers but uh, you know I'm a need at least half up front bro.

EW: Alright, alright that'll work.

UC: You know.

EW: That'll work.

UC: Yeah.

EW: That'll work.

UC: How we gonna work that out?

EW: Uh shit, I have, I have somebody uh you can meet up with somebody and, and, and pick it up shit.

UC: Yeah.

EW: It a, like I sa—like I said all, all information it'll be right to you, it'll be comin' to you. But uh, we had already discussed that, that's what you feel me?

UC: Yeah.

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- EW: And that how we just goin' to try to work it. But man though, I got you like you know we can do it like that and then at the end of the day you're gonna be blessed with everything else. Yeah...
- UC: You got uh, you got somebody? I mean, I mean wh—what we talk—what's your time frame bro? I mean what you tryin', when you tryin' to get this shit done man?
- EW: Shhhhhh...shit I got like two weeks man. I got like two weeks.
- UC: Yes.
- EW: So, if you gonna do some you know, I don't know how long it'll take you to do homework or whatever, but...
- UC: Yeah.
- EW: You know, then we could uh...
- UC: It's gonna—like I, like I told you...
- EW: (Inaudible)
- UC: It's gonna, It's gonna give me—it's gonna take me a day or two and that's why I need to get as much as I can now cause this shit gotta go smooth.
- EW: Yeah, yeah, yeah, well that uh, like I said that info should be there like around Friday.
- UC: Yeah.
- EW: And uh, I don't know uh you can, you know if you holler at uh folks relay the message to him you know whenever you ready, I can bless you with a holler at my folks, you can meet up with my folks and you feel me?
- UC: Well shit uh I'm...
- EW: Bein' blessed.
- UC: I'm ready when you are bro, but uh you know I'm, I just want to get as much as possible. I couldn't see all that uh, I couldn't see that spot. I got the, the numbers the, the, uh 10347, but I couldn't see the rest.
- EW: Yeah, yeah, well yeah I got you. Don't even worry about it. I got you.
- UC: Right, right.

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- EW: (Inaudible) Give like uh, like two days, like I said and then I already went through the airway so in like two days you should be receivin' it.
- UC: So it's comin' through?
- EW: Yeah, yeah, yeah, yeah, yeah hell yeah. Then like said when uh give it like about you know you see it in about week you can pick out half of my, my folks in Cali you feel me?
- UC: Okay right, right.
- EW: So I'll, I'll have 'em you know shag up here and meet up with you and then it'll be the same the ne—we do it both the same way. You feel me? They'll meet up with you both times.
- UC: That's all good, that's all good. So I'm uh, what I'm gonna do is uh wait for Friday to come around, get what I need and like I told you I'm gonna need a day or two to do some homework and then uh I'm gonna come back through. I'm gonna set it up, come back through and uh we'll top it up again.
- EW: Yeah (inaudible).
- UC: What, what you need from me bro?
- EW: Hello?
- UC: Yeah, what you need from then?
- EW: Shit uh...
- UC: Until then, until then what you need from me bro?
- EW: Nah nuttin', no nuttin', I don't need nuttin', your folks here. Uh you know I—me and your folks will keep you know choppin' game here, let me know what's happenin'. So, I really don't need nuttin' else my nigga. I got, I got what I need. You, you, you showin' up was enough. You feel me?
- UC: That's it baby. Hey, on that uh, on that, on that second spot I'm, I'm a little hungry right now. I might stop in and get me a, uh get me a sandwich and shit. Well who should I ask for?
- EW: Uh, shit uh, who make the best sandwiches, Jamie.
- UC: Was it Jane, okay got you, got you, got you, got you. That's it, that's uh, that's the one?
- EW: Yeah.
- UC: Yeah, alright. I'm a, I'm a go holler (inaudible), I'm go holler to Jamie to see if uh she'll let me do some work.

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EW: Yeah, sandwiches is fire. But yeah man, so that's hey look I appreciate you bro.

UC: Alright now.

EW: I, I appreciate you bro real talk.

UC: Yeah, we're gonna get it done and like I said uh, uh after uh everything come through on the next couple days and shit, I'll set it up, I'll be back through and uh we'll chop it up make sure we get this done.

EW: Absolutely.

UC: Cool?

EW: Absolutely. Yeah, yeah.

UC: Alright.

EW: Let me see if I could get you to holler at your folks.

UC: Alright bro.

EW: Hold up. (Background noise) Check this shit out man. I'm yeah folks said um he gonna hit you later on too. They trippin' uh tryin' to let him slide over here.

UC: I hear you. What you got for me?

EW: Check this. See if you could see this.

UC: They pull you, you gotta pull it back a little, okay hold on, hold on. Uh, the numbers damn they got you on all that? Hey pull it back just a little bit. Uh, over to—yeah right there, right there baby. I got you. Um, hold uh, a little bit more, a little bit more. Hold it up just a little bit more bro. Got it, got it yeah, I'm gonna go, I'm a, I'm a go get me a sandwich.

EW: Look that ain't it, look, check.

UC: They still goin' and shit huh?

EW: Yeah man.

UC: Hold it, hold it, hold it right there bro. Alright now.

EW: They uh.

UC: Pull it back just a little bit. Right there. Alright.

INTERVIEW WITH ERIN WARE
151209-3323

EW: Yeah they wasn't playin' bro. They wasn't playin' with me man.

UC: Nah.

EW: But uh...

UC: So uh, we uh, when you go back to see 'em?

EW: Uh, the 17th.

UC: I see uh that's uh, that's due date?

EW: Nah, due date uh well that's, that's just to figure out if they gonna make sure every—I go to trial January 4th, but on the 17th of this month I go just to decide if they wanna, if they ready to go ahead and go to trial on the 4th.

UC: But I'm sayin', I'm sayin uh you want that trash done by uh by the seven...

EW: Yeah, yeah.

UC: I got you yeah, yeah, just so we—like I said man just got to make sure we're on the same page cause ain't no coming back.

EW: Right I understand...

UC: You know.

EW: ...completely bro.

UC: Right.

EW: I understand completely.

UC: You know.

EW: I understand completely.

UC: You know you mother fuckers don't play so, you know, but yeah it's all good man.

EW: Yeah.

UC: Uh, let me uh, uh, uh wait to hear from uh, my family and shit get in the next couple days and uh, uh once I get that uh, I'll set it up and know I'm comin' back and uh we'll knock out what we need to knock out and get the uh, uh get you takin' care of and shit.

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151209-3323

EW: Alright for sho' bro. For sho' bro. Alright, I be, I be, I plan on gettin' wit you in a couple days then.

UC: Alright now.

EW: Alright folks.

UC: Stay up bro.

EW: Yep you too.

End of taped conversation

Transcribed by Sharon De La Fuente, P# 7259

December 14, 2015 1558 hours

Exhibit “3”

INTERVIEW WITH ERIN WARE
151209-3323

Location: CCDC
Present: ERIN WARE, UC OFFICER

EW: ERIN WARE
UC: UNDER COVER OFFICER

?: (Background noise)

EW: What's the deal? Hello? Hello?

UC: Yeah what up bro?

EW: What's the deal folks?

UC: What's happening? What's happening?

EW: Shit man, shit man, another day. What's the word?

UC: Shit, it's good. You holdin' it down?

EW: Yeah, hell yeah.

UC: You still uh, where you at I can't see you bro? (Sigh) I gotch you, I gotch you. It's you know I make sure I, I just need to know who I'm talkin' to you know what I'm saying?

EW: (Laughs) Yeah I feel you I mean.

UC: You know what I'm sayin'? Like I said, like I said earlier you make sure we're on the same page and shit it's all good.

EW: Mm-hmm.

UC: It's uh, it's still trash day?

EW: Yes sir.

UC: Yes sir.

EW: Yes sir.

UC: Uh you know I did uh, I did that homework and shit. I got a A on that motherfucker.

EW: Okay for sho, for sho.

INTERVIEW WITH ERIN WARE
151209-3323

UC: I got a A on that motherfucker and shit. So uh, you know, uh like we talked about before you know just the, the business end of it and shit um and five stacks uh, uh could we do somethin' before? I need, you know could you do half before?

EW: Uh, ye—yeah all I gotta do is make a phone call man and uh it'll be goochie. Like I said none of my folks, none of my folks is, is, is out here though. You know what I'm sayin'? They all out the way, but I'm a have some people out here on Wednesday. I go to court Thursday. I'm a have some people out here Wednesday. All I need to do is make a call.

UC: Alright.

EW: Do uh, your folks...

UC: Which...

EW: ...got a contact with you right?

UC: Yeah, yeah, yeah I got that, I got that.

EW: Okay, okay.

UC: Uh it, it didn't come through till uh, to yeah it's (inaudible) Saturday, I think it was Saturday and shit, but that's all good, it's all good now. I understand.

EW: Okay, okay.

UC: You know.

EW: Yeah, yeah.

UC: I understand this shit. So, but you know I don't want to keep comin' in and out of here and shit. So, uh your people about that Wednesday uh, you got a contact number or somethin' like that I could reach out to 'em? Or you know we could, we could meet up?

EW: Uh, yeah I got a contact number for sho. (Background noise)

UC: You know what I'm saying? To—you know the, the more I pop in here and shit you know what I mean?

EW: Yeah I'm already, I'm already wit chu, I'm wit chu.

UC: Uh, who should I reach out to?

EW: Just uh the, the, the, the number uh

UC: I write on my hand.

INTERVIEW WITH ERIN WARE
151209-3323

EW:

UC:

EW:

UC: Who I'm reachin' out to?

EW: That's Bird.

UC: Bird.

EW: Yeah.

UC: He know what's up?

EW: Mm-hmm.

UC: Yeah?

EW: Yes sir, yes sir.

UC: So uh, you know I mean should I reach out on—what should I wait till Wednesday when they get through, we they get in town? Or what? What's up?

EW: Yeah when they get in town Wednesday shit you can hit 'em like on Wednesday morning.

UC: Alright. Hey uh he'll be able...

EW: Yeah.

UC: He'll be able to have that half?

EW: Yeah, yeah, yeah.

UC: Okay, and then uh, uh yeah after the shit done uh we get the other half and shit.

EW: Yes sir.

UC: Wat chu want? Wat chu want uh, you—how you want me to uh to, to show you that's shits a done deal?

EW: Uh...

UC: You know what I'm saying?

INTERVIEW WITH ERIN WARE

151209-3323

- EW: Should a uh, uh shit you uh, that I haven't even figured that part out yet.
- UC: Yeah, I mean the shits gonna get done. I'm just you know, I'm just tryin' re—you know it's like I said it's all respect and shit so you know?
- EW: I, I, I trust, I trust your word bro.
- UC: Yeah.
- EW: I, I trust your word man. Like I said yo, yo, yo, your folks is real good people wit me man and I, I can't, I can't do nuttin' but respect what he say about you know, you're here so it, it'll be all good wit me bro.
- UC: Right, right, right, right. So uh, yeah Wednesday that's when you say uh you go to court on uh Thursday?
- EW: Yeah.
- UC: And uh you know what, you know what about what time they gonna be through on uh the your, your family gonna be in on Wednesday and shit cause I need to meet 'em as early as possible you know get this—don't want to miss trash day you know what I'm sayin'?
- EW: Uh shit uh no later than like ten o'clock.
- UC: Yeah.
- EW: You think the uh your boy uh, you think Bird be cool if I reach out to him be—you know like the day before and shit to submit you know set everything up and shit?
- UC: Yeah, yeah.
- EW: Okay.
- UC: Yeah hit him. Yeah man...
- EW: You know.
- UC: ...though hit it.
- EW: Aight.
- UC: Yeah man dog hit it.
- EW: Alright. Hey I just want to make sure, I wanna make sure he know what's up and shit so he don't think you know ain't no bullshit goin' on, we have no problems and shit and get held up on you know what we with what we what we really tryin' to do.

INTERVIEW WITH ERIN WARE
151209-3323

EW: No we already, it's already established my nigga.

UC: Alright.

EW: Yeah it's already establish.

UC: Alright, I like it uh bro, I like it and shit. I just you know, we talkin' about some shit that we can't come back from and shit so.

EW: Yeah.

UC: You know?

EW: Yeah, yeah.

UC: Can't come back from so we can't yeah ain't no mistakes and shit, no mistakes.

EW: Absolutely.

UC: Hey uh, on that trash though and shit you know uh, uh you want that shit just you know uh, you know you want me to get rid of that shit slowly or you want me to just go and smash that shit?

EW: Just, just go on in waste man (inaudible) and get it off the way man.

UC: Out the way alright.

EW: That shit man sittin' out too long.

UC: Alright.

EW: Yeah.

UC: So get that shit. Yeah I just, like I said bro fuck it just, just get that shit body huh?

EW: Yeah.

UC: Alright, alright, alright. Well, real quick though like I said I did uh, I did that homework, I did that homework and shit and uh, uh just let me show you is this the trash you was talkin' about?

EW: Yeah.

UC: You see that shit?

EW: Yeah, yeah, yeah.

UC: Alright, alright like I said uh I got A on that motherfucker so you know just want to make sho.

INTERVIEW WITH ERIN WARE
151209-3323

EW: Yes sir.

UC: Make sho and shit.

EW: Yes sir, yes sir.

UC: What else can I do for you bro?

EW: Shit man that's, that's, that shit, that's, that's A plus my nigger.

UC: 'Kay.

EW: That, that's a go, that's a go for sho. Make sure it's bang, hit that line and it, it'll, it'll be all good man. Thank you. You just hit that line it'll be all good.

UC: That's, that's a done deal and shit and that's gonna be a done deal and shit. So huh, what time, what time uh on the 17th you go? You know?

EW: Like 8:30 in the mornin'.

UC: Oh yeah that shit a be, that shit a be handled, that tra—yeah should be handle.

EW: Yeah 8:30 in the mornin' I'm there. For sho.

UC: Uh, how my, how my big unc doin' bro?

EW: Uh man folks is, folks is, folks is straight man. I be tryin' to gettin' 'em to slide over here man, but the onetime be they be, they be real tryin' to zero in on the motherfucker man.

UC: Yeah I understand. Low key baby, low key.

EW: Yeah absolutely, exactly, yes sir. Hey man uh, when I touchdown right, I'm gonna some we, we gonna have we, we, we gonna have to uh, uh, uh stay in contact man. I got some other shit man uh that we could fadangle.

UC: As, as, as long as we both comin' up I'm good wit it you know what I'm sayin'?

EW: Absolutely.

UC: You know it, it ain't, it ain't nuttin' but business for me so.

EW: Absolutely.

UC: You know. I just gotta you know if the motherfucker's I'm dealin' with and shit I just gotta make sure they, they good and like we said day one my family like my family and shit I would, I wouldn't even be there if it wasn't, if that shit wasn't good you know what I'm sayin'?

INTERVIEW WITH ERIN WARE

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EW: Yes sir.

UC: So uh you know, hey we talkin' some local shit or, I gotta, I gotta a travel?

EW: Uh we, we probably move travel.

UC: Okay.

EW: Ain't no probably we will have to, but uh it's a, it's a, it'll be a good look my nigga. It'll be a good look. Talkin' about uh maybe like a couple hundit.

UC: Okay, for sure.

EW: Yeah.

UC: Alright. How soon we talkin'?

EW: Shit uh as soon as uh, as soon as I hit the bricks. As soon as I hit the bricks. It's already in motion. My people wanna—my people good. I just gotta get out there.

UC: Yeah and get that shit.

EW: And uh, yeah man and it's, and it's lovely, it's real lovely, real sweet.

UC: 'Kay. That shit, uh shit I hope his women that motherfucker that's hit as cold as hell on this bitch.

EW: Yeah, man it's real warm.

UC: Yeah, yeah.

EW: Yeah it's real warm.

UC: Alright. Like that?

EW: Yeah, yeah I've been, I've been uh, I've been playin' around and uh I really ain't the, the, I really ain't you know trust to get down they seem kinda shaky to me but, I know it's really real now. So you know uh, I'm goin' all in man, head first.

UC: Uh yeah we could, we could do that shit bro. Like I said we, you know let's, let's handle this one and uh, uh said we'll huh make a little business, make a little business out of it.

EW: Yeah absolutely.

UC: You know.

INTERVIEW WITH ERIN WARE

151209-3323

EW: Absolutely, absolutely. Hey look, I'm mean uh you know uh every mo—every, every superhero will be looking for you know that type of partner. You feel me? Like uh bort—batman got robin you know what I'm sayin' and, and, such and such man niggas that was on my team was they, they wasn't, we wasn't at the same level. You know what I'm sayin'?

UC: Right.

EW: I, they had, they had me fool man, they had me really fool man, but they, they...

UC: (Inaudible)

EW: ...really was built like that man.

UC: It ain't to me, it ain't to me real soldiers out there anymore bro.

EW: Yeah.

UC: You know.

EW: Yeah.

UC: You know I says it's lot of fakers and shit you know, lot of poses but you know not, not to many good ones left.

EW: Yeah absolutely.

UC: You know...

EW: Absolutely.

UC: Yeah, you know, you know, you know what's up in the streets right now.

EW: Yeah, yeah, yeah, well yeah man uh like I said hit that line you can hit probably hit it, hit it tomorrow, hit it the day before and you know what I'm sayin' you all could have everything established and we, we good, we on a green light man.

UC: Alright we talkin' that half right? The half...

EW: Yeah.

UC: The half stack.

EW: Yeah.

UC: Alright.

INTERVIEW WITH ERIN WARE

151209-3323

EW: Yeah.

UC: Alright I just now you know no disrespect but like I said I just you know we talkin' about somebody I ain't dealt with and shit and uh if you say he good you know just like my family said you good uh we get down but if you know I don't want to have no you know no problems and shit and, and, and, and run late you know what I mean?

EW: Yeah absolutely.

UC: And you know, you know miss that, miss that, miss that 17th the, the dead line on that trash and shit so.

EW: Yeah, yeah.

UC: So yeah just let's, let your, let your folks know I'm gonna, I'll reach out and shit uh probably uh like Tue, you know Tuesday and shit and uh we'll get that together and uh you'll know. We'll get it, you'll know, you'll know by uh the time you walk through uh, uh them doors on the 17th and shit.

EW: For sho, for sho.

UC: Cool.

EW: Yep.

UC: What else I can do for you bro?

EW: I appreciate you. No that shit, that shit my nigger. I appreciate it.

UC: Alright fool.

EW: Alright be easy.

UC: You too.

End of taped conversation #2

Transcribed by Sharon De La Fuente, P# 7259

December 31, 2015 0947 hours

Exhibit “4”

Jaime

Check what's the deal bruh? Im gonna be real brief. Im in
County Jail For Attempted murder & Robbery for some shit
that I didnt do And wouldnt even be here if a nigga wouldnt
have put my name to it. I heard that your a clean up man
and I need the Carbone to be taken out. Handle it and I got 2
stacks for you. The Carbone also 5'5, Blondish Brown Hair
with Glasses, Thin Build, Address is LV, NV
89113. I dont care how you do it, just Clean up before the 17th
of December & the \$ is yours.


CLERK OF THE COURT

MOT
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

ERIN DESHAUN WARE,
#2652033
Defendant.

CASE NO: C-15-310099-1

DEPT NO: IX

**NOTICE OF MOTION AND MOTION TO PERMIT THE STATE TO INTRODUCE
RES GESTAE EVIDENCE AND EVIDENCE OF FLIGHT**

DATE OF HEARING: 02/25/16
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through KRISTINA RHOADES, Deputy District Attorney, and files this Notice of Motion and Motion to Permit the State to Introduce Res Gestae Evidence and Evidence of Flight.

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

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1 **NOTICE OF HEARING**

2 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned
3 will bring the foregoing motion on for setting before the above entitled Court, in Department
4 IX thereof, on Thursday, the 25th day of February, 2016, at the hour of 9 o'clock AM, or as
5 soon thereafter as counsel may be heard.

6 DATED this 4th day of February, 2016.

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

9 BY /s//KRISTINA RHOADES
10 KRISTINA RHOADES
11 Deputy District Attorney
Nevada Bar #012480

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13 **POINTS AND AUTHORITIES**

14 **STATEMENT OF THE CASE**

15 On October 27, 2015, the State charged Erin Deshaun Ware (hereinafter "Defendant")
16 by a Second Amended Information with: Count 1 - Burglary While in Possession of a Deadly
17 Weapon; Count 2 - Robbery with Use of a Deadly Weapon; Count 3 - Robbery with Use of a
18 Deadly Weapon; Count 4 - Battery with Intent to Commit a Crime; Count 5 - Battery with Use
19 of a Deadly Weapon Resulting in Substantial Bodily Harm; Count 6 - Attempt Murder with
20 Use of a Deadly Weapon; Count 7 - Assault with Use of a Deadly Weapon; Count 8 -
21 Discharge of a Firearm From or Within a Structure or Vehicle; Count 9 - Discharge of a
22 Firearm From or Within a Structure or Vehicle; Count 10 - Discharge of Firearm From or
23 Within a Structure or Vehicle; and Count 11 - Ownership or Possession of Firearm by
24 Prohibited Person.

25 At his Arraignment on October 27, 2015, Defendant invoked his right to a speedy trial. A jury
26 trial was scheduled for January 4, 2016, in District Court Department IX. At the calendar call
27 on December 17, 2015, Defendant waived his right to a trial within 60 days and requested a
28 continuance. The trial is currently scheduled for March 28, 2016. In anticipation of the trial,

1 the State files this Notice of Motion and Motion to Permit the State to Introduce Res Gestae
2 Evidence and Evidence of Flight.

3 **STATEMENT OF FACTS**

4 On June 10, 2015, Defendant entered the Subway restaurant at 8790 South Maryland
5 Parkway in Las Vegas. He asked the restaurant's owner, Ruth Garn, for a cup of water, who
6 said that a courtesy cup cost 25 cents. Defendant then asked various customers who were
7 eating at the time for a quarter, purchased his courtesy cup, and walked out of the restaurant.
8 Defendant then reentered the restaurant, went to the restroom, and asked Ms. Garn if he could
9 stay for a while. Ms. Garn said he could. As the other customers had already left, Ms. Garn
10 and her employee, Jaime Nourie, then walked into the back room to put dishes away.

11 Defendant left the customer area and entered the back room, where he put a revolver to
12 Ms. Nourie's head. He demanded money, ignored Ms. Garn's pleas to not rob them, and
13 demanded their purses. He then pushed Ms. Garn into her desk, grabbed Ms. Nourie, put the
14 gun to her neck, and threatened to kill her. Ms. Garn, who possessed a concealed carry permit,
15 drew her own revolver, a .357 Ruger Security Six, pointed it at Defendant, and told him to put
16 down his gun. Defendant then turned, fired his gun, striking Ms. Garn in the face. The bullet
17 entered below her left eye, traveled underneath her nose, and underneath her cheekbone before
18 exiting the right side of her face. Defendant then yelled at Ms. Nourie, and forced her to lay
19 on the floor. Ms. Garn tried to get up, but Defendant shot her a second time, through her arm
20 and into her stomach. Defendant then demanded Ms. Nourie to go to the front of the store and
21 open the safe, to which she complied. Meanwhile, Ms. Garn told Defendant to stop shooting
22 her. Defendant raised the gun to her head, as she raised her arm to shield herself, and shot her
23 a third time in her breast. Around this time Defendant also picked up Ms. Garn's revolver,
24 which had fallen on the floor. Defendant then walked to the safe, put a gun to Ms. Nourie's
25 neck, and made her try to open the safe. Ms. Nourie accidentally entered the wrong
26 combination, which locked the safe so she was unable to access it. Defendant then visually
27 scanned the outside of the store, before demanding that Ms. Nourie to open the cash register.
28

1 She pulled the drawer out, Defendant looked at it, and then ran out of the restaurant. Defendant
2 then ran away from the scene, shoving a bystander as he passed by, and disappeared.

3 Ms. Nourie called 911 and tried to render first aid on Ms. Garn. Ms. Garn was
4 transported to UMC, where she was kept sedated and intubated for two days, and released only
5 after four days. She had the orbital floors in both eyes destroyed, could not move her left arm,
6 could not stand, could not go to the bathroom, could barely see, and suffered bleeding in her
7 brain. While in the hospital, she also underwent surgery to remove the bullet that had lodged
8 in her stomach. She also had stitching, which left scars that are still visible today, on both
9 sides of her forearm, both sides of her left and right breasts, underneath her eye, and on the
10 right side of her head. At the time of the Preliminary Hearing on October 15, 2015, Ms. Garn
11 still had severe vision problems, had no sense of taste or smell, inner ear damage, nerve
12 deafness, numbness in three fingers, and the complete inability to use her thumb. She also had
13 no ability to stand and balance herself without the use of a walker.

14 Less than a week after the robbery and shooting, on June 15, 2015, police issued a
15 media release about the robbery, including a sketch of Defendant. On June 20, 2015,
16 Defendant sent a SMS text message to a contact named "Pops" saying: "Just go on Google
17 and type in subway robbery in Las Vegas nv." The reply: "Shit iz real !! you ill negga" and
18 "I'm proud of you."¹

19 Around the same time, Defendant fled to Reno. Before leaving Las Vegas, however,
20 Defendant discarded the .357 Ruger Security Six, which he stole from Ms. Garn. Prior to
21 flying to Reno, Defendant told his girlfriend, Trudy Presutti, that he wanted to bring a firearm
22 with him to Reno. Trudy advised him he could not take the firearm with him. At that point,
23 Defendant advised Trudy that he wanted to sell it because he needed the money. Thereafter,
24 Ruth's firearm turned up in a Pawn Shop in Las Vegas. On August 27, 2015, not long after
25 Defendant's arrest, a black male adult approached Emmett Hall with the weapon and offered
26 Mr. Hall \$60 if he would pawn the gun. Mr. Hall agreed, and pawned the weapon to a pawn
27 shop on Boulder Highway, where police recovered it. Police also tracked Defendant down in

28 ¹ Investigators recovered these text messages from Defendant's cell phone, pursuant to a search warrant authorized by Judge Sciscento on August 12, 2015.

1 Reno, and executed a search warrant on the residence where he was staying. Defendant
2 attempted to flee out the back of the residence, however, he was apprehended, placed under
3 arrest, and transported back to Las Vegas.

4 ARGUMENT

5 I.

6 EVIDENCE OF DEFENDANT'S DISPOSAL OF MS. GARN'S WEAPON IS 7 ADMISSIBLE PURSUANT TO THE DOCTRINE OF RES GESTAE

8 The State is entitled by law to present to the jury all the facts of this case in order to
9 explain all of the surrounding circumstances to the jury. NRS 48.035(3) states:

10 Evidence of another act or crime which is so closely related to an act in
11 controversy or a crime charged that an ordinary witness cannot describe the act
12 or controversy or the crime charged without referring to the other act or crime
13 shall not be excluded, but at the request of an interested party, a cautionary
14 instruction shall be given explaining the reason for its admission.

15 The general rule of law pertaining to the "complete story" or res gestae was set forth
16 by the Nevada Supreme Court in Dutton v. State, 94 Nev. 461, 581 P.2d 856 (1978). As the
17 Court stated:

18 Courts have long adhered to the rule that all the facts necessary to prove the
19 crime charged in the indictment, when linked to the chain of events which
20 support that crime, are admissible. **The state is entitled to present a full and
21 accurate account of the circumstances of the commission of the crime, and
22 if such an account also implicates the defendant or defendants in the
23 commission of other crimes for which they have not been charged, the
24 evidence is nevertheless admissible.**

25 Id. at 94 Nev. at 464, 581 P.2d at 858 (internal citations omitted) (overruled on other grounds
26 by Gray v. State, 100 Nev. 556, 558, 688 P.2d 313, 314 (1984)).

27 In Dutton, Dutton and a co-offender entered a police sponsored store that was fronting
28 as a "fencing" operation. Dutton entered negotiations regarding several items of property,
including some bronzeware and a camera. As a result of that conduct, he was indicted for
possession of the stolen camera. Evidence at trial was admitted regarding Dutton's possession
of the bronzeware that was stolen from the same victim at the same time as the camera. The
Court found no error.

**PLEADING
CONTINUES
IN NEXT
VOLUME**