IN THE SUPREME COURT OF THE STATE OF NEVADA

Michael Lee,
Petitioner

vs.

The Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, and the Honorable D. Barker, Senior District Judge,
Respondent,

and

The State of Nevada,
Real Party in Interest.

Electronically Filed
Mar 04 2022 09:50 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

PETITIONER'S APPENDIX INDEX
Bates 001-167

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Electronically Filed
11/17/2021 12:58 PM
Steven D. Grierson
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MOT
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN GIORDANI
Chief Deputy District Attorney
Nevada Bar #0012381
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- MICHAEL ALAN LEE, #1699107 Defendant.	CASE NO: C-11-277650-1 DEPT NO: IX

STATE'S NOTICE OF MOTION AND MOTION TO ADMIT PRIOR SWORN TESTIMONY OF MERRIDEE MOSHIER

DATE OF HEARING: 11/19/2021
TIME OF HEARING: 1:30 PM
HEARING REQUESTED

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JOHN GIORDANI, Chief Deputy District Attorney, and files this Notice Of Motion And Motion To Admit Prior Sworn Testimony Of Merridee Moshier.

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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NOTICE OF HEARING

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing motion on for setting before the above entitled Court, in Department IX thereof, on Friday, the 19th day of November, 2021, at the hour of 1:30 PM, or as soon thereafter as counsel may be heard.

DATED this 17th day of November, 2021.

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

BY /s/ John Giordani
JOHN GIORDANI
Chief Deputy District Attorney
Nevada Bar #0012381

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On November 18, 2011, Defendant Michael Alan Lee was charged by way of Information with: Count 1 – Murder (NRS 200.010, 200.030, 200.508) and Count 2: Child Abuse and Neglect with Substantial Bodily Harm (Felony – NRS 200.508).

Defendant's jury trial commenced on August 4, 2014. On August 15, 2014, the jury returned a verdict of guilty on both counts. On October 21, 2014, Defendant was adjudicated guilty and sentenced as follows: Count 1 – life without the possibility of parole; and Count 2 – 96 to 240 months, consecutive to Count 1. Defendant received no credit for time served, as all credit was applied to case C199242, a violent robbery series for which Defendant was on parole when he committed the instant offenses.

The Judgment of Conviction was filed on November 10, 2014. A Notice of Appeal was filed on November 24, 2014. On August 10, 2016, the Nevada Supreme Court Affirmed the Judgment of Conviction. Remittitur issued September 6, 2016. On May 12, 2017, Petitioner filed a Petition for Writ of Habeas Corpus. The State filed its Response on June 20, 2017. This Court denied the Petition on June 28, 2017. The Findings of Fact, Conclusions of Law and

Order issued on July 31, 2017. Defendant filed a Notice of Appeal on September 19, 2017. On December 19, 2017, the Nevada Supreme Court dismissed the appeal and Remittitur issued. Defendant then filed a Second Petition for Writ of Habeas Corpus on February 6, 2018. Said Petition was denied, and Defendant appealed. On November 15, 2019, the Nevada Supreme Court reversed and remanded the case for a new trial based upon a faulty jury instruction. Jury Trial is currently set for December 6, 2021, and the State anticipates announcing ready at Calendar Call.

LEGAL ARGUMENT

The State seeks to admit the prior sworn testimony of the victim's grandmother, Merridee Moshier, at Defendant's trial. NRS 171.198(7)(b) codifies the former testimony exception to the hearsay rule. It provides that prior sworn testimony may be used:

> By the state if the defendant was represented by counsel or affirmatively waived his right to counsel, …upon the trial of the cause, and in all proceedings therein, when the witness is sick, out of the State, dead, or persistent in refusing to testify despite an order of the judge to do so, or when the witness's personal attendance cannot be had in court.

NRS 171.198(7)(b).

Although NRS 171.198(7)(b) does not impose a cross-examination requirement for the admissibility of such testimony at a criminal trial, the Nevada Supreme Court imposed the requirement in Drummond v. State, 86 Nev. 4, 7, 462 P.2d 1012, 1014 (1970), when it reasoned that:

> [T]he transcript of the Testimony of a material witness given at the preliminary examination may be received in evidence at the trial if three preconditions exist: first, that the defendant was represented by counsel at the preliminary hearing; second, that counsel cross-examined the witness; third, that the witness is shown to be actually unavailable at the time of trial.

Drummond, 86 Nev. at 7, 462 P.2d at 1014; see also Aesoph v. State, 102 Nev. 316, 319-320, 721 P.2d 379, 381-382 (1986) (holding that preliminary hearing testimony of physician who conducted autopsy on victim was admissible where physician was unavailable at time of trial). However, since Drummond and its progeny, the Nevada Supreme Court, citing the United States Supreme Court in Crawford, has clarified that prior testimony from a witness unavailable at trial is admissible as long as the defendant had "a prior *opportunity* for cross-

examination." State v. Eighth Jud. Dist. Ct. in & for Cty. of Clark, 134 Nev. 104, 108, 412 P.3d 18, 22 (2018); *see also* Crawford v. Washington, 541 U.S. 36, 68, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). Notably, defense counsel need not have actually cross-examined the witness, but only had a fair and full opportunity to do so. Id.

Consequently, there are three elements necessary before a witness's prior sworn testimony may be admitted as evidence at trial: (1) the defendant must have had counsel represent him at the prior proceeding; (2) the defendant's counsel must have had the opportunity to cross-examine the witness who is later unavailable for trial; and (3) the witness is actually "unavailable" at trial. Funches, 113 Nev. at 920, 944 P.2d at 777-78; State v. Eighth Jud. Dist. Ct., 134 Nev. at 108, 412 P.3d at 22.

In the instant case, a jury trial was held in 2014, at which time witness Merridee Moshier testified. *See* Exhibit 1 *attached hereto*. Defendant was represented by Steve Altig, Esq. and Nadia Von Magdenko, Esq.. Counsel was given the opportunity to question Merridee Moshier, and did so vigorously, as demonstrated in the transcript attached hereto. As such, the first two factors have been established in this case. The only remaining factor is whether Merridee Moshier is actually unavailable for trial.

The United States Supreme Court has held that the ultimate question in determining "unavailability" for Confrontation Clause purposes is whether the witness is unavailable despite good-faith efforts undertaken by the prosecution, prior to trial, to locate and present that witness. See Ohio v. Roberts, 448 U.S. 56, 74, 100 S.Ct. 2531, 2543 (1980) (overruled on other grounds by Crawford, 541 U.S. at 36, 124 S. Ct. at 1354). "What constitutes a good-faith effort is a question of reasonableness." Quillen v. State, 112 Nev. 1369, 1375, 929 P.2d 893, 897 (1996). In the instant case, the State has good contact with the victim's family, to include Mrs. Moshier, therefore the State's efforts and ability to procure her are not at issue here.

However, the State has learned that Mrs. Moshier has unfortunately been diagnosed with Lewy Body Dementia since she testified at trial in 2014. In Funches v. State, 113 Nev. 916, 920, 944 P.2d 775, 777 (1997), the Nevada Supreme Court expressly stated that "in

addition to the specific grounds for unavailability enumerated in NRS 171.198(6), the district court may also consider NRS 51.055 which defines unavailability, and the more general provisions of the evidence code when determining a witness's unavailability in order to admit the witness's preliminary hearing testimony at trial." Funches, 113 Nev. at 922–23, 944 P.2d at 779.

NRS 51.055(c) expressly states that a declarant is "unavailable as a witness" if she is unable to testify at the hearing because of "then existing physical or mental illness or infirmity." According to the Alzheimer's Association, the symptoms of Lewy Body Dementia include changes in thinking and reasoning, confusion, well-formed visual hallucinations, delusions, and memory loss. *See* https://www.alz.org/alzheimers-dementia/what-is-dementia/types-of-dementia/lewy-body-dementia . Upon information and belief, many of these symptoms are present in Mrs. Moshier[1], rendering her unavailable for trial due to mental infirmity. *See* NRS 51.055(c); *see also* NRS 171.198(7)(b). As such, the State seeks to admit her prior sworn testimony at trial in December of 2021.

CONCLUSION

For the foregoing reasons, the State respectfully requests this Court admit the foregoing prior sworn testimony at Defendant's trial.

DATED this 17th day of November, 2021.

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

BY /s/ John Giordani
JOHN GIORDANI
Chief Deputy District Attorney
Nevada Bar #0012381

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[1] The State can provide medical documentation upon request (under seal or directly to the Court due to HIPPA and the sensitive nature of medical records).

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this 17th day of November, 2021, by Electronic Filing to:

Damian Sheets, Esq.

dsheets@defendingnevada.com

BY: /s/ Stephanie Johnson
Secretary for the District Attorney's Office

11FH1653X/sj/MVU

EXHIBIT 1

1 [illegible]

2 THE WITNESS: My first name is Merridee, M-e-r-r-i-d-e-e. Last name

3 Moshier, [illegible]

4 THE [illegible]: [illegible] over you're ready.

5 MS. [illegible]: Thank you, Your Honor.

6 EXAMINATION OF MERRIDEE MOSHIER

7 BY MS. [illegible]:

8 Q. Ms. [illegible], who are you to Brodie Aschenbrenner?

9 A. [illegible] mother, his nana.

10 Q. [illegible] ask you a series of questions about your background in

11 the [illegible] 1. During that time period, ma'am, how were you

12 employed?

13 A. [illegible] University Medical Center, here in town.

14 Q. [illegible] you do there at UMC?

15 A. [illegible] managing cath lab, cardiac lab, specialty [illegible]

16 resume [illegible].

17 Q. [illegible] how many years in June of 2001 (sic) had you been

18 [illegible]?

19 A. [illegible].

20 Q. [illegible] your prior experiences, job assignments and [illegible],

21 [illegible]?

22 A. [illegible]. My husband was military so I was ICU. [illegible]

23 Q. [illegible] you. ICU means what?

24 A. [illegible] I'm sorry.

25 Q. [illegible] intensive care unit in a general hospital?

A In hospitals. Some of the hospitals were good big hospitals, including, others rural rural. CMA, critical care unit, medicine, laboratory--

Q Let me before back to CCU. What type of patients are --

A [illegible]--

Q And keep on going. That's you.

A Inpatient, outpatient. Two nurse clinics. Perhaps a nurse-doctor for various dispensaries in and around. The rural population. Primarily EM. Pretty much anything except for OB. I didn't ever do that.

Q Thank you--

A Right.

Q --[illegible]?

A [illegible].

Q Okay. I want to ask you how many kids children do you have?

A Three boys and one daughter.

Q And how many grandchildren do you have?

A Three kids, including twins.

MR. STRATTON: May I approach, Your Honor?

THE COURT: Yes, you.

BY MR. STRATTON:

Q I'm going to show you what has been marked as State's Exhibit 1 and for the record, the State's Exhibit -- all these photographs to defense counsel. Do you recognize what is depicted in that photograph?

A The Zoodle's house.

Q And who is that in back?

A My daughter.

Q And what order in your daughters or your children [illegible] Arlea?

A Arlea's the youngest except my step[illegible] younger.

Q Okay. Do you have a general idea [illegible] that -- that that photograph would have been taken?

A This was taken in our rental in Las Vegas, [illegible] years before this occurred.

Q Okay, so sometime in June of summer [illegible]

A Yes.

Q And does it accurately depict your grandson, [illegible] your daughter, Arlea, at that time?

A It's beautiful, of course.

Q Okay.

MR. STANTON: Move for it's admission at this time.

THE WITNESS: He's laughing.

MR. ALTIG: No objection.

THE COURT: Objections?

MS. VON MAGDENKO: No objection, Your Honor.

MR. ALTIG: Not to that photograph.

THE COURT: Admitted.

[State's Exhibit 3 admitted]

BY MR. STANTON:

Q Now, Ms. Moshier, do you recognize [illegible] in close in the front of this photograph, this red item?

A That looks like the top of his Power Wheels.

Q His Power Wheels?

A Yeah.

Q Is that a gift that your grandson, Brodie, had?

A Yes, I don't remember which Christmas he received it, but it was because I was sick.

Q And can you tell me generally speaking, Ms. Moshier, about what Brodie was like as a toddler? In particular, the April, May, beginning of June 2011, how did he act and behave?

A Brodie was — just he was a girl. And he'd come in the door yells nana, nana. And he would watch cartoons, he'd crawl up on the couch, he would get out of the chair, he'd climb like climbs on my coffee table to The Wiggles, and you'd walk by and he'd be like catch me and he'd just jump, one, two, three, jump and you'd catch him. He'd climb up stairs in my refrigerator. He's just — he was one of those babies that didn't cry. He just was loving and generous and laughing all the time.

Q He was happy?

A Always happy, very happy.

Q And during the course of your interaction with Brodie, would you say that you interacted — and my question is focusing into the timeframe of the year 2011 — on a regular basis with Brodie?

A Yes, quite a lot, right — prior to this, for nine months after Brodie left me. He lived and we always had Brodes. And then when Arica left and moved out, was later then I had also weekend night, sometimes two.

Q Okay. At some time you said that Brodie and Arica actually lived with you and your husband?

A From his — when he was like nine months old up until the time

she moved out with Mike which was -- I think it was February, March.

Q Of 2011?

A Correct.

Q And when you say the individual by the name of Mike, is that the defendant, Michael Lee?

A Yes.

Q Do you see him in court today?

A He's sitting there in a black suit with a red tie.

MR. STANTON: May the record reflect --

THE WITNESS: Right there (indicating).

MR. STANTON: -- the identification of the defendant?

THE COURT: It will.

BY MR. STANTON:

Q Were you familiar in your experience both in your background as a nurse, as a mother and a grandmother, and your involvement in Brodie's life of the normal injuries, bruises, abrasions that Brodie would get both as to the number of them, the location of them, and the severity?

A Yes, I was.

Q And you indicated that there was a transition of where Arica and Brodie lived in February or March of 2011. Someone earlier, specifically in October of 2010, did it become known to you that Arica had a new boyfriend and that is the defendant?

A Correct.

Q Were you able to observe the interaction -- and now we're talking the timeframe of October of 2010 until June of 2011 -- how Brodie interacted with the

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1 defendant?

2 A. When they were first dating, Mike would come over and sit and watch

3 TV or hang out, and so Brodie would be there with us and Mike and Ariea.

4 Sometimes the three of them would leave and go do various activities. Sometimes

5 they'd be at the house with us. So I was -- I was there. I could see the interaction.

6 Q. And do you have an opinion based upon what you observed as to

7 whether or not there was any change in that behavior, that is, what you observed

8 Brodie interact with the defendant, especially leading up to the month of June of

9 2011?

10 A. Brodie right there at -- towards the end would get upset with Mike

11 picked him up. However, sometimes he would get upset no matter who picked him

12 up. He -- he really loves playing at our house. You know, it was -- we're

13 grandparents, we spoil him, let him do probably things his mother never would, as

14 you know, sometimes he just wanted to stay with us, but there were times he did not

15 want to leave with Mike.

16 Q. And that was different -- noticeably different to you from what she had

17 part of the relationship in the intervening between Brodie and the defendant?

18 A. I would say so, yes.

19 Q. Now, I want to direct your attention to about 20 days prior to March of

20 2011.

21 A. Okay.

22 Q. Did you become aware of the fact that Ariea and Brodie was in a

23 tender height?

24 A. Yes. I was -- she called me when they were in the week. Ariea began

25 by the junior high. She was going to be one of my other granddaughters. And I left

[illegible] the car with Brodie [illegible]

Q. [illegible] stopped, you went to the [illegible]

A. [illegible] parking lot. The -- the junior high [illegible] -- I don't remember the road. My mind is -- anyway, it was on the left [illegible] so they pulled into the parking lot [illegible]

Q. Now --

A. [illegible] the fire department, so --

Q. [illegible] you have an interaction with [illegible]

A. I did. I have him and I was walking around with him and -- [illegible] -- Brodie and his shoes, they were [illegible]. I don't know what happened with the shoes, so I had picked him up and [illegible] and we were playing while this was going on [illegible]. They were talking to [illegible]. And then John, my brother-in-law, came [illegible] and got Brodie and took him back to the house with Lily.

Q. [illegible] you with Brodie physically at the [illegible]?

A. Yes, because John -- we live on the other side of town, so it probably [illegible] -- school's over, [illegible].

Q. During this four period you believed that you actually picked up [illegible]?

A. Oh, the [illegible] June or whatever month. [illegible]

Q. [illegible] --

1 A Yes.

2 Q -- that's what you were doing?

3 A Yeah.

4 Q At anytime, anytime, did you ever see any signs or indications that

5 Brodie had any of the following injuries, and I'm just going to list them off and then

6 you answer me, okay?

7 A This is pertaining to the wreck?

8 Q That's --

9 A Okay.

10 Q Yes, exactly, ma'am. Abdominal pain?

11 A No.

12 Q Loss of appetite?

13 A No.

14 Q That his neck was hurting?

15 A No.

16 Q And that he was vomiting?

17 A No.

18 Q Did you ever see any of those symptoms from Brodie in days after July

19 A No.

20 Q I'm going to show you now Exhibit 77 which is marked to you. Ms.

21 Mosher, is a calendar month of June of 2011. I want to ask you about a specific

22 incident that occurred on or around -- this being the Third June, Wednesday -- the

23 9th, almost -- or six days before --

24 A Right.

25 Q -- Thursday. Did you or were you aware of anything that happened

1 been an incident with Brodie and the Power Wheels that you had previously
2 described in that photograph?
3 A Arica informed me --
4 Q I don't want to get into the conversation, just --
5 A No. Yes.
6 Q -- let me just --
7 A She did.
8 Q -- walk you through this. Did you become advised about an incident
9 with Brodie and the Power Wheel?
10 A Yes.
11 Q At or around the same time, were you advised about Brodie and
12 something with his eyes?
13 A He had pinkeye.
14 Q And you're familiar with pinkeye?
15 A Conjunctitis (sic), yes.
16 Q And that's --
17 A Really with a lot of kids, yes.
18 Q Both your own and at work?
19 A Correct. And grandkids. It goes through like wildfire.
20 Q And would this have been -- do you recall the day that you would have
21 found out about Brodie and pinkeye, looking at the map or the calendar?
22 A It was Friday, the 10th, and I don't remember if we were waiting or
23 waiting and that particular night Brodie was supposed to come over to [illegible]
24 while Arica worked and because my oldest daughter's children were also at my
25 home, we didn't want the kids to get infected with the pinkeye because they were

1 going to go to Montana, so Anna had called or texted and asked if we could watch
2 Brodie at her house.
3 Q. What your older daughter's name is again?
4 A. Amanda. And Wayne.
5 Q. And then Wayne is the most youngest?
6 A. The youngest, yes.
7 Q. So Amanda has some kids. There's some [illegible] that's [illegible]
8 [illegible] in the first 24 hours. So it's decided that Brodie is coming to your house?
9 A. Right, and so I text Amanda and Alayne because Alayne was in town.
10 She lived in San Diego then. And asked them -- I'm sorry, I'm [illegible], my husband, if he
11 could go watch Brodie till I got off work or if I should get Amanda or Alayne to go
12 there.
13 Q. And did you, to the best of your knowledge, believe that Brad knew
14 [illegible] and did that and he was away from your house [illegible]?
15 A. Yes, he went and watched Brodie.
16 Q. Now I'd like to direct your attention to Saturday, the 11th of June. The
17 [illegible] a day -- it's an [illegible] day, mid-am, while you [illegible] Brodie is still for
18 the [illegible] weekend?
19 A. It was -- he didn't come over. It was somewhere and I don't know the exact
20 time, between 11 or 12 that particular day so Anna [illegible] him.
21 Q. Was it 11 -- is that in the morning or [illegible]?
22 A. The morning, 11 a.m.
23 Q. Brodie is delivered to your home where you and Brad live?
24 A. Correct.
25 Q. Brad's home?

A [illegible] we had Lily, the other little -- my [illegible] three, my little [illegible]

Q [illegible] be Amanda's daughter?

A [illegible] youngest.

Q [illegible] on Saturday is you and your husband, Lily and Brodie, is that correct?

A [illegible]

Q [illegible] occasion to observe [illegible] injuries on Brodie?

A He had a little fingertip bruise on his [illegible] of his pinky, and it was turning to yellow. And there was that [illegible] happened on the [illegible] wheel. And then he had a little bruise like an [illegible] (indicating) below under his left eye that we felt was from [illegible].

Q [illegible] just demonstrated that in the [illegible] went across [illegible] the makeup eyeliner [illegible] -

A [illegible]

Q -- of Brodie's left eye?

A From the outer corner maybe about halfway through to the pupil.

Q [illegible] Brodie doing anything [illegible] Saturday?

A No [illegible] his eyes. He had pinkeye, they felt.

Q [illegible] medication for the pinkeye?

A We had Gentamicin drops and Atrica [illegible] -- in fact, I had to send her back to the pharmacy to get them. So the drops were [illegible] three times a day. It should have been four. So we put the drops in.

1 Q. When you say me, who would have done that?

2 A. Brad helped because [illegible] typically don't -- they sling

3 your legs behind, so he didn't like that.

4 Q. He helped?

5 A. Being Smith --

6 Q. Okay.

7 A. -- didn't like having his legs.

8 Q. And so when you [illegible] you and Brad [illegible] the

9 drugs in?

10 A. I was Brad just took his [illegible] and then I opened the eye with my thumb

11 and index finger indicating and then you take your pinky, and you pull back the lid

12 because you drop the drug actually in the inside of the eye, not the eye itself.

13 Q. Okay, and so you're demonstrating that you'll take the upper lid and

14 the lower lid to put the drops in the underneath?

15 A. Correct. And then you pull the eyes down with your pinky [illegible].

16 Q. And would you have done that for both of his eyes, his right eye and his

17 left?

18 A. Yes, because I'll just travel to the other one.

19 Q. How about Brad's behavior on Monday? How would you describe his

20 demeanor? Typical?

21 A. Brad normal. He was just [illegible] into trouble and [illegible] he

22 were playing and they had a little [illegible] pool in the back yard and they [illegible]

23 been outside, they were running around and getting in the pool or [illegible]. At one

24 point they took all the [illegible] and put it in the dog's water so we had a big mess

25 with that and they were just being [illegible] running through the house.

Q. Nothing unusual?

A. No.

Q. How about his appetite?

A. Fredie was eating everything. I think I remember finding the cookies that he'd get into the fridge by himself and get yogurt. He seemed more in tune to everything on his bedroom shelf, otherwise he would always stay out of my refrigerator to get things.

Q. I'm going to go through a list of injuries. Any bruising pain?

A. No.

Q. Any loss of appetite?

A. No.

Q. Head hurting?

A. No.

Q. Vomiting?

A. No.

Q. Fredie goes to bed Saturday night. There's no indication of anything detrimental that occurs that day?

A. Typical night, dinner, bathe, teeth, go to bed.

Q. And when you found Fredie's body last on Sunday night and Monday, did you notice any sign of discomfort or injury to his bedroom floor?

A. No, you know, sometimes the kids would get in the bed and would give them a cup of water and then we'd give them a bottle and with their buddies and let them break in the tub. And then of course we'd have to force them because they wouldn't get out the space. They were two and three.

Q. On an Saturday and Sunday would you normally sound out physically

brush Brodie's teeth?

A Uh-huh.

Q Is that a yes?

A Yes.

Q Thank you, ma'am. Now let me transition to Sunday, the 15th of June.

A Okay.

Q Presume Brodie gets up Sunday morning and what are the activities of Sunday?

A He typically got up fairly early and Lily did not. She's a sleeper-in. So Brad would get up early with him so it was the same. You know, they were running around and playing and Brodie was probably up first and then — my middle daughter came and picked the kids up at some point, like noon, 1:00, and they went to one of the waterparks here in town for a while.

Q You did not go there?

A No. I took a nap.

Q And at some time they returned?

A They came back four, five o'clock. We were barbecuing hamburgers.

Q And once again, can you tell me around the barbecue time? Who's at the home?

A Alayna's there, my middle daughter, at that point, and Brodie and Brad and me and Lily.

Q So the same four, plus your daughter, Alayna's now there?

A Correct.

Q And did there come a time in the evening of Sunday, prior to Kelly coming over, where you and Alayna were bathing both Brodie and his cousin

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A. Yes.

Q. [illegible] of evening would that have been?

A. After dinner, [illegible], you know, dinner five, I don't know, six, [illegible] in there. [illegible] after dinner we'd yell tubby time and they'd go [illegible] up the stairs.

Q. [illegible] time was kind of a term used within your family?

A. Yes.

Q. [illegible] Brodie react when it was tubby time?

A. [illegible] up the stairs in his diaper.

Q. [illegible] in tubby time? Can you kind of describe [illegible] general [illegible] that was like Sunday evening?

A. [illegible] would come up with me so one of us would start [illegible]. We had [illegible]. He would strip and get right in the tub. Brodie would [illegible] and then play in [illegible]. There's this big wall-to-ceiling mirror. And [illegible] play in them. [illegible] have to say a couple times get in the tub, Brodie, get in the tub. [illegible] the kids were just playing and splashing [illegible] and -- [illegible] would have washed their hair because I can't [illegible] hair, I've [illegible]. So when she start washing hair, then [illegible] the master bedroom [illegible] because we could see each other. And she's [illegible] kids off [illegible] out and I would always lotion them and [illegible].

Q. [illegible] Brodie come to you after the bath and they're [illegible] completely naked?

A. [illegible] they're wrapped in a towel but they are

Q. [illegible] they're --

A. [illegible]

Q ... completely naked?

A They're naked.

Q And when you bring them down, would it be fair to say or you tell me, could you see their entire body near to me?

A Correct, head to toe. The little kids would get dry in the desert heat, you'd have to -- I always bathed them.

Q Tell me the circumstances that you saw on Brodie Sunday as you're bathing his body.

A He had the little bruise on his right cheek. It was fading. He had the little eyelid over his eye. His eyes were a little bit red, the conjunctiva, because he had been crying and had been rubbing. He probably had one or two little skins on his lip because that was normal for him. I think he had a scratch that he placed his face on something so maybe it was a little ripped, but that's -- going back through it in my mind, that's what I remember.

Q And at any time as you're bathing Brodie on his face and his head, did he complain that his head was hurting?

A No. I don't recall his eyes hurt or hurt -- you know, eyes hurt but -- they were red, so --

Q Did you ever see you admired bathing his chest and his back? Did he ever complain of excessive pain?

A No, he was just being his normal little wiggle worm. You'd be bathing and he'd be squirming and then you're trying to get the diaper on and he's kicking and -- and, you know, it was just -- I was a parent.

Q Have you in your career, professionally or as a mother and a grandmother, ever pulled or touched or pinched either your children or babies

involved in a medical procedure or examination of a child patient where you've touched an area or palpated it and it hurt and the child reacted to that pain?

A Yes.

Q Did Brodie in any way, shape or form react to any pain when you palpated his entire body Sunday evening?

A No, he was just laughing and squirming. The Wiggles were on TV, that was our normal.

Q Did he ever complain of any of the vomiting, loss of appetite, head injury, head hurting on Sunday?

A No.

Q Ma'am, I'm going to show you a series of photographs. These photographs are taken after Brodie's death of June 13th. And I want you to look at them and I've told you previously that the screen to your left will act as a blackboard, the pressure of your finger will make a line. And my question is going to be the same on every single one of these photographs and that is, can you tell me if you see any injuries on these photographs that you recall seeing on Brodie on Sunday, June 11th. Okay?

A Okay.

Q I'm going to show you first State's Exhibit 53. Does anything look familiar?

A No.

Q I'm sorry, ma'am.

A No.

Q Exhibit 52. And I want to direct your attention to the upper left hand shoulder area, as well as to the left side from the temple down to the chin of Brodie.

1 Do you recognize any of the injuries depicted in that area?

2 A No. No.

3 Q Showing you now Exhibit 49. I'm going to zoom in to Brodie's right

4 side --

5 A Oh my god.

6 Q -- to his right hip and to the right flank area. Did you see any of those

7 injuries?

8 A No.

9 Q Exhibit 50. Specifically, I'll represent to you that is Brodie's right shoulder.

10 Did you see any of those injuries in the size, severity and location?

11 A No.

12 Q Now to Brodie's left eye in Exhibit 57. You described earlier --

13 A Oh my god, that's not it. That's not conjunctivitis.

14 Q You did not see that injury --

15 A No.

16 Q -- when you were putting the eye drops in Brodie on any time --

17 A No.

18 Q -- the three times on either Saturday or Sunday --

19 A No.

20 Q -- is that correct?

21 A That's correct.

22 Q Exhibit 59, the lower right lip in the area called the frenulum. When you

23 were brushing Brodie's teeth Saturday and Sunday, did you see any tenderness or any

24 signs of sensitivity or pain when the area was touched during those brushing

25 incidences?

1 A No.

2 Q Finally, I'm going to look briefly in Brodie's blue boot in the

3 photograph. Did you see anything like that on his back when you informed him?

4 A No.

5 Q Have you testified that this is Brodie's upper right thigh or

6 right belly area. Correct, Mr. Mueller, that would be Brodie's seat. This

7 would be in the upper shoulder area. Did you see any bruise or injury in

8 those areas when you looked at photograph?

9 A No.

10 Q Finally, Mr. Brodie's right ear. Did you see any injury like that?

11 A No.

12 Q The actual injuries that you saw on Brodie, largest bruise, I just

13 just replied to you in any of those photographs seem to be what you would

14 consider bruises or Brodie injuries in normal play?

15 A No.

16 MR. STAMPS: Pass the witness.

17 THE COURT: Okay.

18 [Pause]

19 MR. [illegible]: Do you need a minute, ma'am?

20 THE WITNESS: [Inaudible response.]

21 MR. VON [illegible]: Okay.

22 THE COURT: Do you need to take a break, ma'am?

23 THE WITNESS: [Inaudible response.]

24 THE COURT: All right. Ladies and gentlemen, we don't we take a 10-minute

25 break. Please [illegible] 25 after. You're admonished not to converse among

[illegible] or with anyone in anyone's presence connected with this trial, do not read, watch or listen to any report of or commentary on this trial, and do not form or express an opinion. Please come back —

[Jury out at 2:15 p.m.]

THE COURT: Hold on a second. Don't go off, Mark, please.

Everyone out of the — yeah, everyone out of the courtroom, all the jurors are out.

At the bench you guys made an objection to certain testimony. Would you please go ahead and make a record of that?

MR. ALTIER: Yes, Your Honor.

MR. STANTON: Your Honor, can I have the witness go out to the courtroom with —

THE COURT: Yeah, that's fine.

MR. STANTON: Thank you, Your Honor.

THE COURT: Jess, would you show him where to go, please?

THE MARSHAL: I will.

MR. STANTON: I appreciate, Your Honor.

[Witness out at 2:17 p.m.]

THE COURT: All right, so the witness has stepped out.

Again, you made objections to certain testimony. If you guys just please make the objections and which specific testimony you're objecting to and the basis.

MS. VON NIEDENHOF: Okay, I —

MR. STANTON: Sure. These were the ones.

MS. VON NIEDENHOF: Okay, Your —

ALL-STATE LEGAL
[illegible]

MR. STANTON: They're not a group. They're not essential as you'll have to --

MS. VON MAGDENKO: Your Honor, we objected to the witness being shown State's Exhibit 52, 49, 54, 50, 57, 53, 59, 61, 62, and 63. And for -- 63 shows the back of the ear. There's actually no evidence that she actually pulled his ear back during the time she had him.

These were also shown -- all of these photos were shown to the jury before and the re-showing of them we believe just inflames the jury and is focusing on the photos instead of the evidence. He could have simply asked what injuries he had. He could have asked the witness what injuries Brodie had during the weekend when she had him.

Also specifically to photo number 57, this photo shows small or little so pulled down with a forcep of the eye. There's no evidence that she actually took a forcep and pulled down that low to see when she was giving the drops that he would have this mark under his lower eyelid.

Also she testified that she brushed Brodie's teeth. Picture number 58 shows the forcep again being pulled up about an inch or two. There's no evidence that when you brush a child's teeth, you -- she didn't testify to it, but you would pull the top of the lip an inch or two to do that, so therefore she wouldn't have seen this internal type of injury.

Those are our objections, Your Honor.

MR. STANTON: Your Honor, the relevance of these photographs -- there was a pretrial motion filed by the defense and the State responded and the Court has previously ruled as it relates to Dr. Gavin addressing cause and manner and the number of injuries involved in this case.

1 As I'm sure the Court is aware, the nature of injuries, the location and
2 severity are critical to the jury making the determination -- end of the cause of the
3 case -- as to whether or not the death of Brodie Ashenbrenner is accidental versus
4 non-accidental. I think not only is it amplified now from the opening statements of
5 yesterday than it was prior to trial when the Court ruled in that at least to the extent I
6 was able to grasp the gravamen of the counsel's opening statement was that key,
7 at least in part, centered that Brodie's injuries were accidental in nature. I think it
8 was directly attributed to the Power Wheels incident several weeks before, or
9 several days before.
10 Thus, the probative value of these photographs became exponentially
11 heightened and what we have here is a nurse of 27 years who testified she did not
12 examine him from head to toe on Sunday evening and we are now talking about
13 within at least about 48 hours of the time that Brodie's life ebbs, let's say when
14 the fatal injuries are delivered, which I think the evidence going in shows that
15 occurred at two distinct periods of time.
16 In addition, Your Honor, to all that -- and I know the Court not aware of
17 this because it hasn't been probably served on the Court, but in the reliance briefs
18 of the defense counsel, they noticed three experts, two pediatrics, one forensic
19 pathologist out of those two, and then a biomechanical engineer. My reading of
20 their reports and the opinions expressed in there, at least to a significant degree,
21 attempt to argue and place the aging of these injuries back days and hours prior to
22 what you heard Dr. Gaur express yesterday as the two fundamental
23 injuries; that is, the major and the minor component of the cause of Brodie's death,
24 the head trauma and the acute peritonitis.
25 Therefore, based upon the defense's own opening statement, the timing

of these injuries, the location, the severity of these injuries in toto and in particular, this injury relevant to the prime suspect in this case.

Now we've got witnesses to hit, the eye, and hit of the trooper, and he's saying that he's no evidence to say that they saw that. I would respectfully disagree. What we have is the testimony of the nurse that is actually involved in care, that she is involved in that physically in doing it besides observing, and her question is did she see any of the trauma? And maybe she can answer questions of how far she saw with her (sic) lip pulled up, but the more specific question to, is whether or not Brodie reacted in any pain when the body was touched.

And the witness — and I'll leave it for the record as the Court observed Ms. Lehner demonstrating pulling both the light eye and the brother's eyelid open simultaneously to put in the eye drops, but that specific demonstration I think goes to whether or not she would have been a participant witness to whether if pictures were even present on that day.

And finally the ear. I would just submit that when you look at the pictures of Brodie, half the height of his ear and the back of his ear would be relatively similar to any person near him based upon the hair length and that it is visible to the naked eye.

MR. [illegible]: Your Honor, if I may just briefly? Thank you.

THE COURT: Everybody right. There was a motion that was filed by the defense, a motion in limine, asking that we prevent certain photographs — these photographs have arrived before the Court. The State argued that they were needed and required because the coroner needed them to describe their testimony. We disagreed in the Court that we believed that the photographs were much more

prejudicial that they were probative, if anything, but you allowed them to be introduced for purposes of the coroner's testimony.

And here we're a day later and they're being introduced again and shown to the jury again through a different witness. They aren't needed to explain the witness's testimony. They aren't needed for anything that's probative. They're being introduced prejudicial effect on the jury and to bring out the bias of the jury to have an emotional reaction of the jury. That's what they're being shown again. They're not being shown for any probative value. You can simply ask the witness did any of these photographs at the time you saw Brodie and the witness can say no, they didn't. You don't need to -- showing the -- publishing the photographs over and over and over again.

So we believe on the objection that they're not probative of anything. We believe we actually would believe that the showing of them to the particular witness violated the Court's order with regard to the motion in limine that they could be used only -- shown to the coroner for explanation of the coroner's testimony.

And actually I think at this point, Your Honor, since that order's been violated, a mistrial or mistrial may even be needed at this point because the Court's order on the motion in limine to use them only solely for the purpose of the coroner's testimony has been violated. They've been published to the jury again and we do move for a mistrial and would move for a mistrial.

THE COURT: Okay. Let me just run -- let me make the basis for allowing the State to show the photos.

As the testimony unfolded over the course of the trial, as you've noted, since there's been questions regarding this four-minute injury, the child was Shaken Baby, there were several rationales for him because

he was always bumping into things, falling and everything else, it's obvious that the position for both sides is all going to come down to timing when did the injuries occur.

It's obviously the State's position that the injuries occurred in a short window of time and closer to the time of death. It's been the defense's position, both based upon the questions asked as well as the statements that were made during openings, that the injuries that ultimately resulted in Brodie's death were actually sooner than that.

The grandmother can help put the timeframe into context. That's why the Court finds it more probative than prejudicial in that she was someone who saw Brodie a couple days before the death occurred. She can put the injuries into context whether or not they did in fact exist at the time she saw him, which was several days before death like the defense seems to allude, or whether the injuries were newer and occurred after she saw him closer to the time the actual death occurred.

As far as the showing of the eye, the ear and the frenulum, you know, Brodie has short hair so I do think that there is appropriate foundation laid that the grandmother in putting lotion on him and just taking care of him and dealing with the face by putting drops into the eyes that that would be an area of the body which would be readily apparent. And again, he is a boy and he had short hair as evidenced in the photographs.

As far as the eye and the frenulum -- I can't -- I'm having difficulties with that word. But anyways, I think there was appropriate foundation laid with respect to that as well in that she had just a couple days prior been looking at the eye, doing things around the eye because the child had conjunctivitis and needed drops in the

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1 eye, and also that she was active in making sure [illegible] had [illegible] the [illegible].
2 And the Court [illegible] that she is a nurse who [illegible] in the area dealing with
3 injuries to individuals.
4 [illegible] the Court's order, the [illegible] did not violate the
5 Court's order. When the photographs were originally shown to me, I mean I only
6 get a brief glimpse of the -- the other respective positions at the time of [illegible] and at
7 that point [illegible] I was aware it would -- they would [illegible] the case. The
8 coroner and the [illegible] that it was [illegible] and [illegible] to the jury for the coroner
9 to have photographs in order what was done exactly and what the coroner believed
10 to be the manner and cause of death and -- but I did not know that the grandmother
11 was also -- you know, the intent was to have the grandmother [illegible] to see the
12 timing in [illegible].
13 So had I known that, I would not have [illegible] my ruling. My
14 ruling was based upon the information that was provided to me at that time. So the
15 request for [illegible] would likewise be denied.
16 [illegible] to go to the restroom real quick, if you --
17 MS. ALTIC: Thank you.
18 THE COURT: -- stop need to go.
19 MS. ALTIC: Yes, please.
20 MR. VON [illegible]: Yes.
21 THE COURT: And then we'll bring the grandmother in. [illegible] proceed.
22 MS. ALTIC: Thank you.
23 [Off the record at 2:28 p.m.]
24 [Proceedings resumed at 2:29 p.m.]
25 [Outside the presence of the jury]

[Witness in at 2:38 p.m.]

THE WITNESS: I'm sorry.

THE COURT: It's okay.

THE MARSHAL: Distinct Court XXII jury is present.

[Jury in at 2:39 p.m.]

THE COURT: All right. The jury is back. I noted for the record, present, sworn.

MS. VON MASTERSON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. VON MASTERSON:

Q. Mikayla, Brodie was at your house from Saturday morning to Sunday night in that account?

A. Sunday at about probably eight, yes.

Q. Eight, yes?

A. Mm-hmm.

Q. Is that yes just for the record?

A. Yes.

Q. And you testified earlier that when you were pulling the drugs in Brodie's eyes -- your husband's name is Brad, correct?

A. Correct.

Q. And that Brad only held down Brodie's hands? That's what you told the jury when the prosecutor was asking you questions, right?

A. Okay.

Q. That happened 10 minutes ago, is that correct? Is that what you told the jury?

1 A Correct.

2 Q Okay. Do you recall being interviewed by the police previously?

3 A Yes.

4 Q Okay. And do you recall that that took place on June 23rd, 2011?

5 A Correct.

6 Q And did you tell the police the truth then?

7 A Yes.

8 Q Okay. And do you recall then telling the police when they asked you

9 about that Blackmailer phrase, that you actually said Brad --

10 MR. STANTON: Your Honor, I'm going to object to the form of this question.

11 This witness is entitled to refresh her recollection if counsel's

12 challenging her memory here. I'd ask that she be afforded that opportunity.

13 MS. VON MASSENHAU: Okay. May I approach --

14 THE COURT: Counsel's correct.

15 MS. VON MASSENHAU: -- the witness, Your Honor?

16 THE COURT: Yes, you may.

17 BY MS. VON MASSENHAU:

18 Q I want you to read --

19 MR. STANTON: Page number?

20 MS. VON MASSENHAU: Is page 16 of the incident report. It's that particular

21 question and answer of Maritza Montoya.

22 BY MS. VON MASSENHAU:

23 Q Can you read this part to yourself?

24 A Uh-huh.

25 Q Did you read it?

A I read it.

Q Okay. Has it refreshed your recollection?

A Vaguely, yes.

Q Okay. Isn't it true that you actually told the police not that [illegible] held down Brodie's hands, but that he had to actually hold down his arms and his legs, isn't that true?

A That's true.

Q Okay. So what you told the jury was not true?

A I remembered part of it. This is three years ago.

Q Okay, so then we can't rely on your testimony today?

MR. STANTON: Objection, argumentative.

THE COURT: Sustained.

BY MS. VON MAGDENKO:

Q You testified earlier that Brodie had an eyeliner type of bruise?

A Correct.

Q That was his left eye?

A Correct.

Q Was that on the top or the bottom?

A It was the bottom lid.

Q Okay. And do you think Alice saw that bruise?

MR. STANTON: Objection, speculation.

THE WITNESS: I don't know what Alice saw.

BY MS. VON MAGDENKO:

Q Did you tell the police whether or not you thought Alice saw that?

MR. STANTON: Once again, speculation, Your Honor, objection.

1 THE COURT: Overruled.

2 THE WITNESS: I believe I told the police that there was a bruise -- or

3 whatever bruise on the left lower lid, yes.

4 BY MS. VON MAGDENKO:

5 Q. But did you tell the police you didn't think Anka noticed that?

6 A. I don't recall.

7 Q. Okay.

8 MS. VON MAGDENKO: And this is all the same summary statement.

9 Your Honor, may I proceed and refresh the witness's recollection?

10 THE COURT: You may.

11 MR. STANTON: Page counsel?

12 MS. VON MAGDENKO: Page 7-B.

13 THE COURT: And just for the record, what are you showing her?

14 MS. VON MAGDENKO: It's the same -- it's all the same. I'm showing the

15 witness only one document and that is the incident report. It's the transcript of the

16 statement of Mernidee Moshiko taken on June 23rd, 2011, pages 12 through 24.

17 THE COURT: Okay, thanks.

18 BY MS. VON MAGDENKO:

19 Q. If you can just read from here to here, the highlighted portion.

20 A. Okay.

21 Q. Okay. So isn't it true that you told the police that you didn't think your

22 own daughter even noticed that bruise on my eye? Is that correct?

23 A. Is that what the verbiage just said?

24 Q. Yes.

25 A. Yes.

Q Okay

A It was a small bruise.

Q Oh I didn't ask a question, so you can just wait till I ask a question. So Brodie had nicknames; is that correct?

A Correct.

Q And one of them was Bambam?

A Correct.

Q And one of them was the bruiser?

A Uh-huh. Yes.

Q And why was he given the nickname of the bruiser?

A It went with the Bambam nickname.

Q And what was the Bambam nickname for?

A Because he liked to play -- we had this baseball thing that was a stick with a ball attached to it that you -- that you give to small children and he had a bat and he'd hit that and then we would take the ball off the stick and at two years old he could hit the ball and he'd carry the bat. So he'd hit the ball like Bambam from the Flintstones and then Lily would catch it.

Q Okay, so that explains Bambam. How does -- how does bruiser -- can you explain that?

A Because he was always getting into things. He would get bruises. He would get bruises on his knees. He would get into things.

Q Okay. But so -- but was it abnormal because you called him the bruiser? Would you call Lily the bruiser?

A No. They were different children.

Q Okay. So Brodie was different?

1 A Uh-huh.

2 Q Is that a yes just [illegible]?

3 A Yes.

4 Q Okay. And so you [illegible] children?

5 A Correct.

6 Q And are any of [illegible] any of them get bruises [illegible]

7 Brodie got bruises?

8 A My middle grandchild [illegible].

9 Q But not the other [illegible]?

10 A Not the girls, no.

11 Q Okay. Would Brodie [illegible] the counter top?

12 A If you -- yes, he [illegible].

13 Q Okay. And would [illegible] the table?

14 A The coffee table.

15 Q Okay. And would [illegible] the sitting his head on [illegible]

16 corners?

17 A Not constantly, [illegible].

18 Q Okay. It happened, [illegible] got a bruise from it, right?

19 A Usually he'd get a [illegible] because the right side of his forehead.

20 Q Okay. And even [illegible] a bruise and even though he [illegible]

21 himself, he wouldn't cry, would [illegible]

22 A Not always, no.

23 Q Okay. In fact, you [illegible] that he would just walk off, walk it off?

24 A For a small bruise, [illegible] just walk it off.

25 Q And so he regularly [illegible] on his forehead from your [illegible]

countertops?

A. This was just for a couple weeks because he was in the habit of going around the corner, if he was running and playing [illegible] he would hit the corner.

Q. Did he outgrow that before his death?

A. No.

Q. Okay. So at the time of his death, he would regularly smack his head against on your countertops?

A. What's your definition of regularly?

Q. What -- okay. Let me rephrase your testimony. This is page 12-

MR. STANTON: Your Honor, I'm objecting. The witness didn't answer the question. She didn't have a recollection.

BY MS. VON MAGDENKO:

Q. I'm going to say -- I'm going to define regularly as every time.

THE COURT: I'm sorry, are you being from hearsay?

MS. VON MAGDENKO: No, no, no, she stated it. I am trying to repeat it for the collection.

BY MS. VON MAGDENKO.

Q. So I'll define regularly as every time.

A. He did not hit the corner every time he walked through the kitchen, no.

Q. Okay.

MS. VON MAGDENKO: Your Honor, I'd like to approach the witness and refresh her recollection.

THE COURT: Let me see the transcript, please. And what page are you on?

MS. VON MAGDENKO: I'm on page 12 and I'm not the beginning of

so.

THE COURT: You can show it to him.

MS. VON MASCENKO: This is page 17 for the prosecution.

BY MS. VON MASCENKO:

Q And if you could just read this answer starting with so?

A So every time.

Q Okay, just read this to yourself and tell me when you're finished.

A I'm finished.

Q Okay. Does this refresh your recollection that every time he would strike the corner in your kitchen he would smack his head on your cupboard?

A That's what the statement says, yes.

Q And is this statement incorrect?

A He would walk through the kitchen probably 20 times a day, so, no, he didn't hit his head 20 times a day every time he walked through the kitchen, no.

Q Okay. So this typewritten statement's incorrect?

MR. [illegible]: Objection. She'd have no foundation laid that she would ever know whether the transcript is correct. She didn't prepare it.

BY MS. VON MASCENKO:

Q Do you believe the substance of what is – what was written earlier and read is incorrect?

A I'm not really sure what you want me to answer.

Q You told the detectives that every time he would hit his head on the corner. Did you tell the detectives that?

A Yes, I did.

Q Okay. Thank you. And he would get a forehead bruise when he would

1 seat?

2 A Yes, that's what I said.

3 Q Okay. And in the weekend before his death he was at your house?

4 A Correct.

5 Q And those countertops were still there?

6 A Correct.

7 Q You weren't remodeling?

8 A No.

9 Q Okay. You had --

10 A I --

11 Q Did Brodie play the game monkeys falling off the bed?

12 A Yes.

13 Q Was that just a verbal game or would he actually fall off the bed?

14 A He did not fall off the bed.

15 Q Okay. So you're just saying the words?

16 A So when him and Lily would get out of the tub, they would jump on the

17 bed and I would be on the bed with them and I would start singing the song about

18 monkeys jumping off the bed and hit their head and we had to call the doctor. So

19 then we'd put them on the floor and they'd laugh.

20 Q So would he -- he wouldn't stay on the bed, he'd jump on the floor?

21 A We'd put them back on the floor.

22 Q You would just pick Brodie up and set him on the floor?

23 A Right, or we'd say get off the bed and they'd scream off.

24 Q Okay. When the kids were at your house, you just mostly just sat there

25 and, right?

A. They were supervised.

Q. That wasn't my question. I said when Brodie was at your house and the other children, you would nearly just let them run?

A. They weren't around, no.

Q. That wasn't my question. When Brodie was at your house with the other children, you would just let them run?

A. Sure.

Q. And your house was so dirty, you would have to clean up toys off the floor?

A. Should I also add I said there?

Q. I'm just asking you a question first. So you have to —

A. Small toys would get on my floor. There was — there was many small boys and they —

Q. How old were they at the time?

A. Brodie was two. Zach was maybe six. Five was seven. Eighteen was and little boys, toys and get on the floor. Yes, they did.

Q. Are you talking about the bedroom or other places?

A. The bedroom.

Q. Okay. So Brodie only in the bedroom but would pee on his floor?

A. Correct.

Q. Okay. And left, if was that Brodie, according to you, always had bruises on his lower legs?

A. He would have bruises on his eye, yes.

Q. That wasn't my question.

A. Yes.

Q. Isn't it true that you could have stopped that beating on Malcolm's head?

A. Yes, I could that.

Q. Okay. And that's true for -- they didn't have to stop, you could have stopped?

A. Is that what I said?

Q. Well I need to ask you that before I can refresh your recollection. Do you remember --

A. I would have to see what I was asked.

Q. No, no, no. I mean -- you've been here and you've talked to me, you remember things that happened three years ago, right?

A. Uh-huh.

Q. Is that a yes for the court reporter? You have to answer verbally. You can't just say uh-huh. It's being recorded, so that's why I'm asking. So yes, you have to say yes or no. You can't say uh-huh or huh-uh --

A. Would you repeat the question?

Q. Okay. Didn't you stop, you the juvenile, stop your conduct when you saw blood?

A. Correct.

Q. And during the encounter, he asked you numerous times to stop or else he would start beating, stating the conduct that you had been.

A. Correct.

Q. Okay. Now, if Derrick has testified on his behalf numerous times, you would have him?

A. I don't understand that question, sir.

Q. Okay. Did your brother ever testify in court?

A. Never.

Q And would that leave bruising on Brady?

A It left two small bruises.

Q Okay. And was that that weekend?

A I don't honestly remember if it was that weekend.

Q Okay, so you don't actually remember what bruising Brady had that weekend, do you?

A I remember the ones I noted.

Q There could have been others that you don't remember?

A There could have been small bruises, yes.

Q Okay. Would Brady get up on the edge of the bathtub during baby time?

A Yes.

Q And you would let him climb into the tub?

A He would get on the edge of the tub on his little feet squatted down and slide down the tub.

Q Okay. And did you think that they were going to hurt themselves because of what they were doing in the bathtub? Him and Lily? Did you fear that actually that? Do you remember that?

A I don't remember that.

Q Okay. Let me – It's page 21.

MR. VON MAGDENKO: If I can approach the witness to refresh her recollection?

THE COURT: Yes.

BY MR. VON MAGDENKO:

Q So let's start in here to here.

EAT FRIDAY STRATEGIES & TRANSCRIPTS, LLC
1000 W. Alameda Drive, Tempe, AZ 85282 (602) 263-0885

A Yes, I said that.

Q Okay. So you thought Brodie was going to hurt himself he was playing so rough that weekend?

A I stated you guys are going to hurt yourself to the children.

Q Okay. So did you say that and you mean it?

A I don't think I meant that you're going to hurt yourself. It was more like you guys are going to hurt yourself, kids.

Q Okay. Did Brodie run into the side of your house leaving a bruise mark on his forehead?

A He did, but not that weekend.

Q When was it?

A Did I state in the [illegible] [illegible]

Q Do you remember?

A I remember him doing it, but it wasn't that weekend.

Q When was it?

A It was one of the other weekends we had him.

Q Do you remember which one?

A No.

Q And you — do you know if Brodie would throw a fit if Aries came to pick him up from your house?

A Sometimes he would be unhappy. He liked to stay with us.

Q Okay. So -- and you testified to the jury that in the month preceding Brodie's death that Brodie was unhappy when Aries came to pick him up?

A Sometimes he was.

Q But sometimes he wasn't?

A I don't think it was an every single time Mike picked him up, no. There were days he did not want to go with Mike. I think I said that.

Q Okay. So it wasn't just some kind of a sudden starting in June, Brodie didn't want to go with Michael? That's inconsistent statement? I just want to make sure that I understand your testimony. Correct me if I'm wrong.

A Sometimes he did not like to go with Mike. No. Sometimes he did not like to go with Africa. Our home was fun.

Q Okay. So it wasn't then -- my -- tell me if my statement's correct. It wasn't that all of a sudden starting in June, Brodie did not want to go with Michael.

A I did -- I do remember telling Africa I would prefer that she picked up Brodie, not Mike.

Q Why?

A Because Brodie was starting to get upset when Mike picked him up and I don't like it when he's upset.

Q And Brodie could get upset when Mike picked him up too?

A Sometimes.

Q Okay. And are you -- you're a nurse?

A Yes.

Q Okay. And as a nurse, are you a mandatory reporter?

A Yes.

Q And can you explain to the jury what a mandatory reporter is?

A If you see or suspect abuse, you have to call child protective services or adult protective services.

Q And you never reported any abuse, did you?

A No.

Q. Okay, and you never suspected anything else then?

A. No.

Q. Okay. Or. The weekend prior to his death, did Brooke have bruising on his body?

A. He had a lot of it.

Q. No, that's not my question. The weekend prior to his death, did Brooke have bruising on his body?

A. He might have had a bruised eye.

Q. Yes?

A. Yes.

Q. Okay. So that's the only injury earlier, you actually had forgotten some additional bruising, isn't that correct?

A. Think I said he had a bruised eye.

Q. That wasn't my question. You told the jury of three areas of bruising: the chest, the eye, and facially. You didn't even mention the knees bruising, you just mentioned the eye. But in prior examination, now you remember additional bruising on the body, arms, feet --

A. I don't remember any on the arms.

Q. You don't remember on the arms?

A. No.

Q. Did Brooke have bruising on the arms?

A. He could have, you know, had one or two on his upper-arm area in a while, you know -- but that weekend I don't remember -- I do not recall anything on his arms, ma'am.

Q. You don't recall. So there could have been? Right?

A When I gave the statement to the detective, it was much more fresh. It was a week later. [illegible] I believe.

Q But sitting here today, you don't remember all of the [illegible] that weekend, do you?

A If there was more, I can't recall them, no.

Q Okay. When [illegible] was at your house that weekend, he wasn't eating much, was he?

A Which meal?

Q Just -- [illegible] you told the jury [illegible] time he was at your house that weekend, right?

A He was eating Saturday and Sunday, yes.

Q Okay.

MS. [illegible]: Your Honor, show the witness page [illegible] to refresh her recollection?

THE COURT: All right.

THE WITNESS: You're referring to [illegible] syrup at a restaurant.

BY MS. [illegible]:

Q So he wasn't eating much, right?

A Not dinner. He ate lunch with my daughter.

Q Okay. So now your testimony's changing?

MR. [illegible]: Objection. [illegible] tell the jury about what testimony is changing.

BY MS. [illegible]:

Q. So [illegible] —

THE COURT: [illegible]

BY MR. VON MAECHEN:

Q. [illegible] eating [illegible], [illegible]?

A. No, he that [illegible] [illegible].

Q. But you [illegible] [illegible] eating [illegible]?

A. I told the [illegible] [illegible] [illegible].

Q. Did you [illegible] [illegible] [illegible]? Or did you [illegible] [illegible] eating [illegible]?

A. [illegible] [illegible] [illegible].

Q. Okay, so [illegible] [illegible] [illegible]?

A. Correct.

Q. Okay. So your [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] —

MR. STANTON: Objection —

Q. — [illegible]?

MR. STANTON: — [illegible].

THE COURT: Overruled.

THE WITNESS: [illegible] because [illegible] [illegible] with [illegible].

MR. VON MAECHEN: [illegible] [illegible].

THE COURT: Rather.

REDIRECT EXAMINATION

BY MR. STANTON:

Q. Counsel [illegible] [illegible] [illegible] [illegible] [illegible].

1 approached you with a transcript of a statement that you gave.

2 A Correct.

3 Q Do you recall giving that statement?

4 A Yes. Yes.

5 Q Do you remember when in time to June 15th -- I'll put Exhibit 15 up

6 front of you. Wednesday, June 15th, when you gave the recorded statement that

7 you just referred to myself?

8 A I believe it was June 23rd.

9 Q She -- it would have been a little over a week after the incident?

10 A Correct.

11 Q You indicated that Brad is your husband and he played a game called

12 [illegible].

13 A Correct.

14 Q Could you explain that game to me?

15 A He was tickling Brodie and he just -- he'd be typewriter on his chest.

16 Well, you know, it's a game and Brodie would laugh and giggle and again.

17 Q Do you anticipated my next question to you is what was Brodie's

18 reaction when he was the recipient of the typewriter as you just described?

19 A He had the most infectious laugh of any baby I've ever seen or heard.

20 Q And what would he do when typewriter was placed on his chest?

21 A Just giggle and laugh. It was a deep belly laugh that he had.

22 Q Thank you.

23 MR. STANTON: Nothing further.

24 THE COURT: Anything else before Ms. Meghler's excused?

25 RECROSS EXAMINATION

BY MS. VON MAGDENKO:

Q. Is Brad right handed or left handed?

A. He's right handed, I believe.

Q. Okay. And were you on – taking any medication at the time of Brad's death that weekend?

A. I – that's a long time ago. I don't remember.

Q. You don't remember if you were taking any – you have a back problem?

A. Yes, I do.

Q. And do you take medication for that?

A. Currently, yes.

Q. Okay. And did you back then?

A. We had just moved – I – I honestly don't remember if – if I was taking medication then. I could have been.

Q. Okay.

MS. VON MAGDENKO: Court's indulgence.

[Colloquy between counsel]

BY MS. VON MAGDENKO:

Q. So you don't recall if you were taking Percocet pills at the time?

A. No, I don't.

Q. Okay. Have you ever taken it?

A. Yes.

Q. Are you taking it currently?

A. Yes.

Q. Okay. When did your back problem start?

A. Yes.

Q. Okay. Would they watch wrestling? On TV?

A. Yeah. They would.

Q. Would they try -- would they wrestle then, try and act it out?

A. I don't recall that. I don't -- I don't watch wrestling with them.

Q. Who else?

A. Brad or John or -- [illegible]. Wrestling's not my thing.

Q. Who is John?

A. John's my -- my son-in-law married to Amanda.

Q. Okay. Amanda's husband.

A. Husband. Correct.

Q. Okay. Thank you.

MS. VON HAGEN: No further questions.

MR. STANTON: Nothing further, Your Honor.

THE COURT: All right, ma'am, thank you for your time. You're free to go.

THE WITNESS: Thank you.

THE COURT: Next witness, please.

MR. STANTON: Your Honor, the State would call Anica Foster.

[Pause]

THE MARSHAL: Please remain standing, raise your right hand. Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God, or by your word, please.

ANICA FOSTER

[having been called as a witness and being first duly sworn, testified as follows:]

THE CLERK: Please be seated. State and spell your first and last name for the record.

Electronically Filed
2/11/2022 2:08 PM
Steven D. Grierson
CLERK OF THE COURT

MOT
NEVADA DEFENSE GROUP
Damian Sheets, Esq.
Nevada Bar No. 10755
Kelsey Bernstein, Esq.
Nevada Bar No. 13825
714 S. Fourth Street
Las Vegas, Nevada 89101
Telephone: (702) 988-2600
Facsimile: (702) 988-9500
dsheets@defendingnevada.com
Attorney for Defendant
Michael Lee

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada, Plaintiff vs. Michael Alan Lee, Defendant	Case No.: C-11-277650-1 Dept. No: IX **DEFENDANT'S MOTION TO DISQUALIFY DISTRICT ATTORNEY'S OFFICE AND FOR APPOINTMENT OF SPECIAL PROSECUTOR** **Hearing Requested**

COMES NOW, Defendant Michael Alan Lee, by and through his attorney of record, DAMIAN SHEETS, ESQ. of the firm Nevada Defense Group, hereby submits this Defendant's Motion to Disqualify District Attorney's Office and for Appointment of Special Prosecutor.

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NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff; and

TO: Clark County District Attorney's Office,

PLEASE TAKE NOTICE that the undersigned will bring the foregoing **MOTION** on for hearing on the _____day of _____, 2022, at _____.m., or as soon thereafter as counsel may be heard in the above-entitled Court.

DATED this 11 day of February, 2022.

NEVADA DEFENSE GROUP

BY /s/ Kelsey Bernstein
Kelsey Bernstein, ESQ.
Nevada Bar No. 13825

MEMORANDUM OF POINTS AND AUTHORITIES

I. Statement of Facts

On or about January 7, 2022, Defense filed two separate Ex Parte Applications for Records and Order Under Seal. The documents were filed under temporary seal with the District Court.

However, prior to granting the Applications, the Court requested Defense file an Amended Ex Parte Application with additional information to justify the ex parte nature of the request and why the documents should be filed under seal. Pursuant to the District Court's request, Defense filed two Amended Ex Parte Applications for Records and Order Under Seal on January 24, 2022. These Amended documents contained extensive confidential and privileged information about the Defense's entire trial strategy and why the request for documents should be granted ex parte and filed under seal. In essence, these documents set forth the *entire* defense strategy pertaining to two key witnesses in a first degree murder trial.

Given the extreme sensitivity of the material, Defense stressed in both the Application itself and the accompanying Order the need for strict confidentiality, and included a request for the Application to remain under seal whether the Application was granted or denied; similarly, the Order included a provision to file under seal.

However, on February 7, 2022, the entire substance of both Applications – including all of Defense's confidential and privileged trial strategy disclosed at the request of the District Court, as well as the signed Order (including a provision to seal) – was filed publicly.

The documents were electronically served to *five* different emails in the District Attorney's Office, as well as the Attorney General's Office, a key witness in the case which was the subject of one of the Applications, and three separate Eighth Judicial District Court departments.

Although the Court filed the documents under seal less than an hour later, it was not possible to recall the service of the documents. Therefore, unfortunately through no fault of either Defense or the State, the State has been made aware of highly sensitive, privileged trial strategy information which goes to the heart of the trial issue itself. As a result, the State must be disqualified from the case in order to ensure Mr. Lee receives a fair trial. Additionally, given that service was made to five separate emails in the Clark County District Attorney's Office, there is no viable screening mechanism that would ensure full screening of the privileged information.

II. Timeline of Events

The following is a comprehensive timeline of events that occurred leading up to the public filing and dissemination of the Ex Parte Applications for Records and Order under seal. *See*, Declaration of Fikisha Miller, Esq. (**Exhibit 1**), Declaration of Kelsey Bernstein, Esq. (**Exhibit 2**), Declaration of Matthew Rogers (**Exhibit 3**).

///

January 7, 2022: Kelsey Bernstein, Esq. filed two Ex Parte Applications for Records and Order under seal, one pertaining to witness Merridee Moshier and the other to witness Alayne Opie, Esq. (**Exhibit 4**).

January 13, 2022: Fikisha Miller, Esq. called District Court Department 9 ("DC 9") to ask about the status of the Orders because a hearing on the matter was set for the next day, and the call was not answered; Kelsey Bernstein, Esq. submitted the Ex Parte Applications and Order directly to the DCInbox email for DC 9 at the request of the Court.

January 14, 2022: A hearing was held and a briefing schedule was set regarding the State's Motion to Admit Prior Testimony of Merridee Moshier, which was directly related to the Ex Parte Application for Records and Order under seal for witness Merridee Moshier; at this hearing, Fikisha Miller, Esq. – without directly mentioning the Ex Parte Applications and Orders – strongly implied to the Court that it could not meet the briefing schedule deadlines unless the Orders were signed timely.

January 18, 2022: Fikisha Miller, Esq. called DC 9 to inquire about the status of the Orders and was informed they had not yet been signed.

January 19, 2022: Kelsey Bernstein, Esq. received an email that it was inclined to grant the Application as to witness Merridee Moshier, but requested additional information as to why the Applications are ex parte and should be sealed (**Exhibit 5**); this e-mail was forwarded to Fikisha Miller, Esq. who the same day called the law clerk for DC 9 for additional clarification regarding the Court's email; the law clerk asked if Ms. Miller would unseal the Application regarding Alayne Opie, Esq. so the State could respond,

and Ms. Miller strongly advised of the need for the request to remain confidential; Ms. Miller asked the law clerk to reject the Application or allow Defense to supplement, to which the law clerk indicated Defense could supplement.

January 20, 2022 (1:20pm): The original Ex Parte Applications and Order under seal were rejected per the law clerk's discussion with Fikisha Miller, Esq. (**Exhibit 6**).

January 20, 2022 (4:05pm): Amended Ex Parte Applications and Order under seal, one pertaining to witness Merridee Moshier and the other to witness Alayne Opie, Esq., were filed and submitted to the DCInbox email for DC 9 (**Exhibit 4**); each Application contained supplemental information regarding Defense's trial strategy, how the records requested relate to Defense's trial strategy, and the need for strict confidentiality as to the State (explaining the ex parte request) and the general public (explaining the request for filing under seal); each Amended Application also included a specific request to have the Applications filed under seal, whether granted or not, due to the highly sensitive nature of the information disclosed therein as it pertains to Defense's trial strategy; the Orders attached to the Amended Ex Parte Applications included an order to file the Application and Order under seal.

January 24, 2022: Fikisha Miller, Esq. called DC 9 to ask about the status of the Orders, and was told they were not signed yet.

January 25, 2022: Matthew Rogers called DC 9 to ask about the status of the Orders, and the call was not answered.

January 27, 2022: Fikisha Miller, Esq. was present during a Criminal Bench Bar Meeting, during which Judge Silva disclosed that she had surgery scheduled on February 2, 2022.

January 28, 2022: Fikisha Miller, Esq. called DC 9 to ask about the status of the Orders, and also indicated her concern with getting them signed before Judge Silva was out for her surgery, and the JEA stated that the Orders were not yet signed but Judge Silva would take care of the Orders before her surgery; thereafter that same day, Ms. Miller called chambers for Chief Judge Bell and spoke to the JEA regarding procedures and remedies for getting Orders signed timely, and was told that there was nothing they could do and the original department must handle it.

January 31, 2022: Matthew Rogers called DC 9 to ask about the status of the Amended Ex Parte Application for Records and Orders under seal, and spoke with the law clerk, who stated that she was aware there were orders waiting for Judge Silva to sign, she could not give him a time they would be signed but she would remind Judge Silva about the pending orders.

February 1, 2022: Matthew Rogers emailed the DC 9 law clerk to ask about the status of the Orders, and did not receive a response (**Exhibit 7**).

February 2, 2022: Matthew Rogers called DC 9 to ask when the Orders would be signed, and was told she would leave a message with the JEA and the JEA would call him back; Mr. Rogers left his phone number but did not receive a call back; this same day, Fikisha Miller, Esq. called chambers for Chief Judge Bell and spoke to the JEA, explaining that the Orders still had not been signed and that Judge Silva was now out for her surgery;

Ms. Miller further explained that the delay in getting the Orders signed made it impossible to meet the set briefing schedule; Ms. Miller inquired what the process is for getting the Orders signed if the sitting Judge is absent, and was told that a senior judge will review the Orders and no resubmission was necessary.

February 4, 2022: Matthew Rogers emailed the DC 9 JEA to ask about the status of the Orders, and received a response that Judge Silva stated previously she would review them, and when Judge Silva returned from her surgery the JEA would follow up as soon as they could speak with her again (**Exhibit 8**).

February 7, 2022 (1:21pm): Fikisha Miller, Esq. was served with the signed Order and the Amended Ex Parte Application for Records and Order under seal, which had been filed publicly and served to numerous other individuals, including five people in the Clark County District Attorney's Office, the Attorney General's Office, Alayne Opie, Esq., three Eighth Judicial District Court departments, and even a deceased attorney (**Exhibit 9**); Ms. Miller immediately called the JEA for DC 9, and the call was not answered, and then immediately thereafter called the law clerk for DC 9, and the call was not answered; simultaneously, Kelsey Bernstein, Esq. attempted to contact chambers for Chief Judge Bell, and briefly spoke to the JEA; Ms. Bernstein explained the situation regarding the public filing and service, and the JEA indicated she would speak to the Judge, and placed her on a brief hold before returning and stating there was nothing they could do, and the matter must be handled by the original department (District Court Department 9); Ms. Bernstein informed the JEA that Department 9 could not be reached, and the longer the documents remained public,

the greater the likelihood that our trial strategy would be revealed to adverse parties; the JEA indicated again there was nothing they could do, and it would have to be handled through the original department.

February 7, 2022 (1:35pm): Fikisha Miller, Esq. went physically to the Regional Justice Center courtroom for DC 9, which was closed; Ms. Miller then went to chambers for DC 9 and spoke in person with the JEA, who saw the Order had been signed and delivered; at Ms. Miller's oral request, the Court immediately thereafter sealed the Applications and Orders; Ms. Miller asked if it was possible to recall electronic service, and the JEA stated it was not possible; Ms. Miller thereafter went in person to the Eighth Judicial District Court Clerk's Office, and spoke to a supervisor to inquire if there was any ability to recall electronic service, and was told it was not possible; upon returning to my office, Ms. Miller verified that the Ex Parte Applications and Orders were then sealed and could not be opened on Odyssey, but also confirmed that the "download" link provided through the Application and Orders' electronic service was still active, and therefore determined that all parties who had been served through electronic service still had access to the Applications and Orders; an email was thereafter sent by Damian Sheets, Esq. to everyone electronically served with the Application and Order asking them to disregard and destroy the documents.

III. Disqualification and Appointment of Special Prosecutor

The appointment of a special prosecutor following disqualification is authorized per NRS 252.100. "The disqualification of a prosecutor's office rests with the sound discretion of

the district court. In exercising that discretion, the trial judge should consider all the facts and circumstances and determine whether the prosecutorial function could be carried out impartially and without breach of any privileged communication." *Collier v. Legakes*, 98 Nev. 307, 309-10, 646 P.2d 1219, 1220 (1982) (citing *Tomlin v. State*, 81 Nev. 620, 407 P.2d 1020 (1965); *Hawkins v. 8th District Court*, 67 Nev. 248, 216 P.2d 601 (1950); *Trone v. Smith*, 621 F.2d 994 (9th Cir. 1980)).

Although the Supreme Court initially utilized an "appearance of impropriety" standard in *Collier* to govern prosecutorial disqualification, that standard was amended in criminal cases to "whether the individual lawyer's conflict would render it unlikely that the defendant would receive a fair trial unless the conflict is imputed to the prosecutor's office." *State v. Eighth Judicial Dist. Court of the State (Zogheib)*, 130 Nev. 158, 160, 321 P.3d 882, 883 (2014):

> There is, however, a broader concern in criminal cases that cannot be overlooked: the defendant's right to a fair trial. Based on that concern we agree with Collier that an individual prosecutor's conflict of interest may be imputed to the prosecutor's entire office in extreme cases. But rather than making that determination based on an appearance of impropriety, we conclude that the appropriate inquiry is whether the conflict would render it unlikely that the defendant would receive a fair trial unless the entire prosecutor's office is disqualified from prosecuting the case. This approach strikes the correct balance between the competing concerns of the State and the right of the defendant to a fair trial. *Id.*

In this case, there is no doubt that the prosecutor received confidential and privileged information that would strongly and adversely impact Mr. Lee's right to a fair trial; there is no greater confidential and privileged information that would affect these rights than the disclosure of Defense's entire defense strategy and the basis of why it must *not* be disclosed

to the State. Additionally, it is impossible to guarantee that Mr. Lee would receive a fair trial absent the disqualification of the entire District Attorney's office, as the Court's accidental dissemination of this material caused it to be served to five different individuals in the office (it is further believed that two of the e-mails that received service are accessible by more than one individual).

For these reasons, Mr. Lee will not receive a fair trial given the disclosure of his privileged defense strategy, and he respectfully requests the disqualification of the Clark County District Attorney's Office and the appointment of a special prosecutor.

DATED this 11 day of February, 2022.

By:
NEVADA DEFENSE GROUP

By: /s/ Kelsey Bernstein
Kelsey Bernstein, Esq.
Nevada Bar No. 13825
714 S. Fourth Street
Las Vegas, Nevada 89101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11 day of February, 2022 I served a true and correct copy of the foregoing MOTION, upon each of the parties by electronic service through Wiznet, the Eighth Judicial District Court's e-filing/e-service system, pursuant to N.E.F.C.R.9; and by depositing a copy of the same in a sealed envelope in the United States mail, Postage Pre-Paid, addressed as follows:

Clark County District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155
motions@clarkcountyda.com
pdmotions@clarkcountyda.com

/s/ Kelsey Bernstein
An Employee of Nevada Defense Group

EXHIBIT 1

DECLARATION OF FIKISHA MILLER, ESQ.

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

FIKISHA MILLER, deposes and says:

1. I have personal knowledge of the facts as stated herein, and I am competent to testify to the matters stated herein; and the following affirmations are made to the best of my personal knowledge and recollection:
2. I am an attorney at law duly licensed to practice before all of the courts of the State of Nevada.
3. I am presently an associate attorney for DAMIAN R. SHEETS, ESQ., counsel of record for Defendant, MICHAEL LEE, in the above-titled action.
4. I offer the following as good cause in support of Counsel's Motion.
   a. On January 7, 2022, attorney Kelsey Bernstein filed two Ex Parte Applications for Records and Order under seal, one pertaining to witness Merridee Moshier and the other to witness Alayne Opie, Esq.
   b. On January 13, 2022, I called District Court Department 9 ("DC 9") to ask about the status of the Orders because a hearing on the matter was set for the next day, and the call was not answered.
   c. On January 14, 2022, a hearing was held and a briefing schedule was set regarding the State's Motion to Admit Prior Testimony of Merridee Moshier, which was directly related to the Ex Parte Application for Records and Order under seal for witness Merridee Moshier;
   d. During this hearing, on the record, I indicated to the Court that the Defense may not be able to meet the briefing schedule set by the Court, without directly mentioning the Ex Parte Applications, and the Court held that the schedule was appropriate. I believe that based on my representations, the

Court appeared to understand the necessity of having the Orders signed in a timely manner;

e. On January 18, 2022, I called DC 9 to inquire about the status of the Orders and was informed they had not been signed;

f. On January 19, 2022 I received an email from DC 9, forwarded by attorney Kelsey Bernstein, which requested additional information as to why the Applications are ex parte and should be sealed;

g. On January 19, 2022 I called the law clerk for DC 9 for additional clarification regarding the Court's email;

    i. The law clerk asked if I would unseal the Application regarding Alayne Opie, Esq. so the State could respond, and I strongly advised of the need for the request to remain confidential;

    ii. I asked the law clerk to reject the Application or allow us to supplement, to which the law clerk indicated we could supplement.

h. On January 20, 2022, attorney Kelsey Bernstein submitted Amended Ex Parte Applications for Records and Order Under Seal, one pertaining to witness Merridee Moshier and the other to witness Alayne Opie, Esq.;

i. On January 24, 2022, I called DC 9 to ask about the status of the Orders, and was told they were not signed yet;

j. On January 27, 2022, I was present during a Criminal Bench Bar Meeting, during which Judge Silva disclosed that she had surgery scheduled on February 2, 2022;

k. On January 28, 2022, I called DC 9 to ask about the status of the Orders, and also indicated my concern with getting them signed before Judge Silva was out for her surgery, and the JEA stated that the Orders were not yet signed but Judge Silva would take care of the Orders before her surgery;

l. On January 28, 2022, I called chambers for Chief Judge Bell and spoke to the JEA regarding procedures and remedies for getting Orders signed timely, and was told that there was nothing they could do and the original department must handle it;

m. On February 2, 2022, I called chambers for Chief Judge Bell and spoke to the JEA, explaining that the Orders still had not been signed and that Judge Silva was now out for her surgery;
    i. I further explained that the delay in getting the Orders signed made it impossible to meet the set briefing schedule;
    ii. I inquired what the process is for getting the Orders signed if the sitting Judge is absent, and was told that a senior judge will review the Orders and no resubmission was necessary;
n. On February 7, 2022 at 1:21pm, I was served with the signed Order and the Amended Ex Parte Application for Records and Order under seal, which had been filed publicly and served to numerous other individuals, including the Clark County District Attorney's Office, the Attorney General's Office, and Alayne Opie, Esq.;
o. I immediately called the JEA for DC 9, and the call was not answered;
p. I immediately thereafter called the law clerk for DC 9, and the call was not answered;
q. I was told that attorney Kelsey Bernstein had also called chambers for Chief Judge Bell, who indicated that the matter must be handled by DC 9;
r. I physically went to the Regional Justice Center courtroom for DC 9, which was closed at 1:35pm;
s. I then went to chambers for DC 9 and spoke in person with the JEA, who saw the Order had been signed and delivered;
    i. At my oral request, the Court immediately thereafter sealed the Applications and Orders;
    ii. I asked if it was possible to recall electronic service, and the JEA stated it was not possible.
t. I thereafter went in person to the Eighth Judicial District Court Clerk's Office, and spoke to a supervisor to inquire if there was any ability to recall electronic service, and was told it was not possible.

u. Upon returning to my office, I verified that the Ex Parte Applications and Orders were then sealed and could not be opened on Odyssey;

v. After confirming that public access was closed, I also confirmed that the "download" link provided through the Application and Orders' electronic service was still active, and therefore determined that all parties who had been served through electronic service still had access to the Applications and Orders;

w. The same day, an email was sent by Damian Sheets, Esq. to everyone electronically served with the Application and Order asking them to disregard and destroy the documents.

I DECLARE UNDER PENALTY OF PERJURY that the foregoing is true and correct.

Dated this ____ day of _____, 2022.

Fikisha Miller

FIKISHA MILLER

EXHIBIT 2

DECLARATION OF KELSEY BERNSTEIN, ESQ.

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

KELSEY BERNSTEIN, deposes and says:

1. I have personal knowledge of the facts as stated herein, and I am competent to testify to the matters stated herein; and the following affirmations are made to the best of my personal knowledge and recollection:
2. I am an attorney at law duly licensed to practice before all of the courts of the State of Nevada.
3. I am presently an associate attorney for DAMIAN R. SHEETS, ESQ., counsel of record for Defendant, MICHAEL LEE, in the above-titled action.
4. I offer the following as good cause in support of Counsel's Motion.
   a. On January 7, 2022, I filed two Ex Parte Applications for Records and Order under seal, one pertaining to witness Merridee Moshier and the other to witness Alayne Opie, Esq.
   b. On January 7, 2022, I filed an Errata to the Ex Parte Application for Record and Order under seal pertaining to Merridee Moshier to correct a spelling error of Moshier's name.
   c. On January 13, 2022, at the request of the Court, I submitted the Application to the DC9 Inbox.
   d. On January 19, 2022, the Court sent an email that it was inclined to grant the Application as to witness Merridee Moshier, but requested additional information as to why the Applications are ex parte and should be sealed;
   e. On January 20, 2022, I submitted Amended Ex Parte Applications for Records and Order Under Seal, one pertaining to witness Merridee Moshier and the other to witness Alayne Opie, Esq;

i. Each contained supplemental information regarding Defense's trial strategy, how the records requested relate to Defense's trial strategy, and the need for strict confidentiality as to the State (explaining the ex parte request) and the general public (explaining the request for filing under seal);

ii. Each Amended Application included a specific request to have the Applications filed under seal, whether granted or not, due to the highly sensitive nature of the information disclosed therein as it pertains to Defense's trial strategy;

iii. The Orders attached to the Amended Ex Parte Applications also included an order to file the Application and Order under seal;

f. On February 7, 2022, I learned that the Amended Ex Parte Applications for Records and Order under seal had been filed publicly and served to at least 5 individuals in the Clark County District Attorney's Office, as well as the Nevada Attorney General's Office and Alayne Opie, Esq. directly; they had also been distributed to Judge Tierra Jones, Judge Nadia Krall, and even a deceased attorney.

g. Immediately after learning about the public filing and electronic service, I attempted to contact chambers for Chief Judge Bell, and briefly spoke to the JEA;

i. I explained the situation regarding the public filing and service, and the JEA indicated she would speak to the Judge, and placed me on a brief hold before returning and stating there was nothing they could do, and the matter must be handled by the original department (District Court Department 9);

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///

ii. I informed the JEA that Department 9 could not be reached, and the longer the documents remained public, the greater the likelihood that our trial strategy would be revealed to adverse parties; the JEA indicated again there was nothing they could do, and it would have to be handled through the original department.

I DECLARE UNDER PENALTY OF PERJURY that the foregoing is true and correct.

Dated this ____ day of _____, 2022.

KELSEY BERNSTEIN

EXHIBIT 3

DECLARATION OF MATTHEW ROGERS

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

MATTHEW ROGERS, deposes and says:

1. I have personal knowledge of the facts as stated herein, and I am competent to testify to the matters stated herein; and the following affirmations are made to the best of my personal knowledge and recollection:
2. I am presently a criminal paralegal for DAMIAN R. SHEETS, ESQ., counsel of record for Defendant, MICHAEL LEE, in the above-titled action.
3. I offer the following as good cause in support of Counsel's Motion.
   a. On January 25, 2022, I called District Court Department 9 ("DC 9") to ask about the status of the Orders, and nobody answered;
   b. On January 31, 2022, I called DC 9 to ask about the status of the Amended Ex Parte Application for Records and Orders under seal, and spoke with the law clerk, who stated that she was aware there were orders waiting for Judge Silva to sign, she could not give me a time they would be signed but she would remind Judge Silva about the pending orders;
   c. On February 1, 2022, I emailed the DC 9 law clerk to ask about the status of the Orders, and did not receive a response;
   d. On February 2, 2022, I called DC 9 to ask when the Orders would be signed, and was told she would leave a message with the JEA and the JEA would call me back; I left my phone number but did not receive a call back.
   e. On February 4, 2022, I emailed the DC 9 JEA to ask about the status of the Orders, and received a response that Judge Silva stated previously she would review them, and when Judge Silva returned from her surgery the JEA would follow up as soon as they could speak with her again;

f. On February 7, 2022, I became aware that the Orders had been filed publicly and electronically served to multiple parties.

I DECLARE UNDER PENALTY OF PERJURY that the foregoing is true and correct.

Dated this ____ day of _____, 2022.

Matt Rogers

MATTHEW ROGERS

EXHIBIT 4

Register of Actions

Case No. C-11-277650-1

State of Nevada vs Michael Lee

Case Type:	**Felony/Gross Misdemeanor**
Date Filed:	**11/17/2011**
Location:	**Department 9**
Cross-Reference Case Number:	**C277650**
Defendant's Scope ID #:	**1699107**
Lower Court Case # Root:	**11FH1653**
Lower Court Case Number:	**11FH1653A**
Supreme Court No.:	**66963**
	74089
	76330

Party Information

Defendant **Lee, Michael Alan**
P O Box 20100
Jean, NV 89019
Other Agency Numbers
1699107 Scope ID Subject Identifier

Lead Attorneys
Damian Sheets
Retained
702-988-2600(W)

Plaintiff **State of Nevada**

Steven B Wolfson
702-671-2700(W)

Charge Information

Charges: Lee, Michael Alan	**Statute**	**Level**	**Date**
1. MURDER	200.010	Felony	06/14/2011
2. CHILD ABUSE WITH SUBSTANTIAL BODILY HARM	200.508.1a2	Felony	06/13/2011

Events & Orders of the Court

DISPOSITIONS

08/15/2014 **Plea** (Judicial Officer: Miley, Stefany)
1. MURDER
Adjudicated
2. CHILD ABUSE WITH SUBSTANTIAL BODILY HARM
Adjudicated

10/21/2014 **Disposition** (Judicial Officer: Miley, Stefany)
1. MURDER
Guilty
2. CHILD ABUSE WITH SUBSTANTIAL BODILY HARM
Guilty

10/21/2014 **Sentence** (Judicial Officer: Miley, Stefany)
1. MURDER
Sentenced to Nevada Dept. of Corrections
Term: Life without the possibility of parole
Consecutive: Case Number C199242

10/27/2014 **Sentence** (Judicial Officer: Miley, Stefany)
2. CHILD ABUSE WITH SUBSTANTIAL BODILY HARM
Sentenced to Nevada Dept. of Corrections
Term: Minimum:96 Months, Maximum:240 Months
Consecutive: Charge 1
Fee Totals:
Administrative Assessment Fee $25 $25.00
Fee Totals $ $25.00
$150.DNAF Previously Imposed

11/03/2021 **Amended Plea** (Judicial Officer: Miley, Stefany) Reason: Amended
1. MURDER
Guilty

11/03/2021 **Amended Plea** (Judicial Officer: Miley, Stefany) Reason: Amended
2. CHILD ABUSE WITH SUBSTANTIAL BODILY HARM
Guilty

11/03/2021 **Amended Disposition** (Judicial Officer: Miley, Stefany) Reason: Amended
1. MURDER
Guilty

Bates 078

11/03/2021 **Amended Disposition** (Judicial Officer: Miley, Stefany) Reason: Amended
2. CHILD ABUSE WITH SUBSTANTIAL BODILY HARM
Guilty

OTHER EVENTS AND HEARINGS

11/09/2011 **Bail Set**
$20,000
11/17/2011 **Criminal Bindover** **Doc ID# 1**
[1]
11/18/2011 **Information** **Doc ID# 2**
[2] Information
11/21/2011 **Initial Arraignment** (10:30 AM) (Judicial Officer De La Garza, Melisa)
Parties Present
Minutes
Result: Plea Entered
11/23/2011 **Reporters Transcript** **Doc ID# 3**
[3] Reporter's Transcript of Preliminary Hearing - Heard November 8, 2011
12/02/2011 **Media Request and Order** **Doc ID# 4**
[4] Media Request and Order for Camera Access to Court Proceedings
12/12/2011 **Petition for Writ of Habeas Corpus** **Doc ID# 5**
[5]
12/13/2011 **Notice of Rescheduling** **Doc ID# 6**
[6] Notice Resetting Date and Time of Hearing
12/13/2011 **Receipt of Copy** **Doc ID# 7**
[7]
12/15/2011 **Notice** **Doc ID# 8**
[8] Notice of Expert Witnesses
12/15/2011 **Notice** **Doc ID# 9**
[9] Notice of Witnesses
12/15/2011 **Notice** **Doc ID# 10**
[10] Notice of Witnesses
12/22/2011 **Return** **Doc ID# 11**
[11] Return To Writ Of Habeas Corpus
12/30/2011 **Reply** **Doc ID# 12**
[12] Reply to State's Return to Petition for Writ of Habeas Corpus
01/11/2012 **Calendar Call** (9:30 AM) (Judicial Officer Miley, Stefany)
Minutes
Result: Matter Heard
01/17/2012 *CANCELED* **Jury Trial** (1:00 PM) (Judicial Officer Miley, Stefany)
Vacated - per Judge
01/18/2012 **Order for Production of Inmate** **Doc ID# 13**
[13] Michael A Lee BAC #81950
01/30/2012 **Petition for Writ of Habeas Corpus** (11:00 AM) (Judicial Officer Miley, Stefany)
Minutes
01/04/2012 Reset by Court to 01/30/2012
Result: Motion Denied
05/01/2012 **Ex Parte Order** **Doc ID# 14**
[14] Ex Parte Order Declaring the Defendant's Indigent for Purposes of Authorizing Payment of Specific Categories of Ancillary Defense Costs
05/01/2012 **Ex Parte** **Doc ID# 15**
[15] Ex Parte Application for Court Approval of Payment of Specific Categories of Ancillary Defense Costs
06/19/2012 **Motion to Continue Trial** **Doc ID# 16**
[16] Motion to Continue Trial
06/20/2012 **Receipt of Copy** **Doc ID# 17**
[17]
07/02/2012 **Motion** (9:30 AM) (Judicial Officer Miley, Stefany)
Defendant's Motion to Continue Trial
Minutes
Result: Motion Granted
07/18/2012 *CANCELED* **Calendar Call** (9:30 AM) (Judicial Officer Miley, Stefany)
Vacated - per Judge
07/23/2012 *CANCELED* **Jury Trial** (1:00 PM) (Judicial Officer Gonzalez, Elizabeth)
Vacated - per Judge
01/11/2013 **Supplemental** **Doc ID# 18**
[18] Supplemental Notice of Witnesses
01/11/2013 **Supplemental** **Doc ID# 19**
[19] Supplemental Notice of Expert Witnesses
03/04/2013 **Request** (9:30 AM) (Judicial Officer Miley, Stefany)
DA Setting Slip - State's Request: Reset TD
Minutes
Result: Matter Heard
03/11/2013 **Order for Production of Inmate** **Doc ID# 20**
[20] Order for Production of Inmate
03/13/2013 **Confirmation of Counsel** (9:30 AM) (Judicial Officer Miley, Stefany)
(Nadia von Magdenko)
Minutes
Result: Matter Heard
05/08/2013 *CANCELED* **Calendar Call** (9:30 AM) (Judicial Officer Miley, Stefany)
Vacated - per Judge
05/13/2013 *CANCELED* **Jury Trial** (1:00 PM) (Judicial Officer Miley, Stefany)

Bates 079

Vacated - per Judge

10/17/2013 **Motion in Limine** **Doc ID# 21**
[21] Motion in Limine to Exclude Prior Bad Acts of Defendant

10/28/2013 **Motion in Limine** (9:30 AM) (Judicial Officer Miley, Stefany)
Defendant's Motion in Limine to Exclude Prior Bad Acts of Defendant

Minutes

Result: Motion Denied

10/30/2013 **Notice of Motion** **Doc ID# 22**
[22] Notice of Motion and Motion for Proper and Correct Service

11/13/2013 *CANCELED* **Motion** (9:30 AM) (Judicial Officer Miley, Stefany)
Vacated - Moot
State's Notice of Motion and Motion for Proper and Correct Service

12/11/2013 **Notice of Witnesses and/or Expert Witnesses** **Doc ID# 23**
[23] Defendant Michael Allan Lee's Witness Disclosure

12/11/2013 **Production of Documents** **Doc ID# 24**
[24] Defendant Michael Allan Lee's Disclosure of Documents

01/02/2014 **Motion in Limine** **Doc ID# 25**
[25] Notice Of Motion And Motion In Limine Re: Defendant's Expert (Rundell) And To Foundational Aspects Of The Defense Experts' Opinion

01/08/2014 **Calendar Call** (9:30 AM) (Judicial Officer Miley, Stefany)

Minutes

Result: Matter Heard

01/13/2014 *CANCELED* **Jury Trial** (1:00 PM) (Judicial Officer Miley, Stefany)
Vacated - per Judge

01/17/2014 **Notice of Motion** **Doc ID# 26**
[26] State's Motion for Production of Discoverable Material Pursuant to NRS 174.245's Reciprocal Discovery Provisions and NRS 174.234 Governing Expert Witness Disclosures

06/05/2014 **Opposition** **Doc ID# 27**
[27] Defendant's Opposition to Motion in Limine re: Defendant's Expert (Rundell) and to the Foundational Aspects of the Defense Experts' Opinion

06/05/2014 **Opposition** **Doc ID# 28**
[28] Defendant's Opposition to State's Motion for Production of Discoverable Material

06/10/2014 **Motion in Limine** **Doc ID# 29**
[29] Defendant's Motion in Limine to Exclude Autopsy Photographs

06/10/2014 **Motion** **Doc ID# 30**
[30] Defendant's Motion for Dismissal

06/13/2014 **Opposition** **Doc ID# 31**
[31] State's Opposiiton to Defendant's Motion for Dsimissal

06/20/2014 **Opposition** **Doc ID# 32**
[32] State's Opposition To Defendant's Motion In Limine To Exclude Autopsy Photographs

06/25/2014 **Motion in Limine** (9:30 AM) (Judicial Officer Miley, Stefany)
State's Motion in Limine Re: Defendant's Expert (Rundell) and to Foundational Aspects of the Defense Experts' Opinion

01/13/2014 Reset by Court to 06/25/2014

Result: Granted

06/25/2014 **Motion in Limine** (9:30 AM) (Judicial Officer Miley, Stefany)
Defendant's Motion in Limine to Exclude Autopsy Photographs

06/23/2014 Reset by Court to 06/25/2014

Result: Denied

06/25/2014 **Motion to Dismiss** (9:30 AM) (Judicial Officer Miley, Stefany)
Defendant's Motion for Dismissal
Result: Denied

06/25/2014 **Motion for Discovery** (9:30 AM) (Judicial Officer Miley, Stefany)
State's Motion for Production of Discoverable Material Pursuant to NRS 174.245's Reciprocal Discovery Provisions and NRS 174.234 Governing Expert Witness Disclosures
Result: Granted

06/25/2014 **All Pending Motions** (9:30 AM) (Judicial Officer Miley, Stefany)

Parties Present

Minutes

Result: Matter Heard

07/10/2014 **Order** **Doc ID# 33**
[33] Order Denying Defendant's Motion in Limine to Exclude Autopsy Photographs and Order Denying Defendant's Motion for Dismissal

07/28/2014 **Notice of Witnesses and/or Expert Witnesses** **Doc ID# 34**
[34] Second Supplemental Notice of Witnesses

07/30/2014 **Calendar Call** (9:30 AM) (Judicial Officer Miley, Stefany)

Minutes

Result: Matter Heard

08/04/2014 **Jury Trial** (1:00 PM) (Judicial Officer Miley, Stefany)
08/04/2014, 08/05/2014, 08/06/2014, 08/07/2014, 08/08/2014, 08/11/2014, 08/14/2014, 08/15/2014

Parties Present

Minutes

08/14/2014 Reset by Court to 08/14/2014

Result: Trial Continues

08/04/2014 **Jury List** **Doc ID# 36**
[36]

08/06/2014 **Media Request and Order** **Doc ID# 35**
[35] Media Request And Order For Camera Access To Court Proceedings.

08/14/2014 **Proposed Jury Instructions Not Used At Trial** **Doc ID# 39**
[39] Defendant's Proposed Jury Instructions Not Used At Trial

08/14/2014 **Proposed Jury Instructions Not Used At Trial** **Doc ID# 42**
[42] State's Proposed Jury Instructions Not Used At Trial

08/15/2014 **Verdict** **Doc ID# 38**

Bates 080

[38]
08/15/2014 **Instructions to the Jury** **Doc ID# 40**
[40]
08/15/2014 **Amended Jury List** **Doc ID# 43**
[43]
08/18/2014 **Jury Trial** (1:00 PM) (Judicial Officer Miley, Stefany)
Jury Trial (Penalty Phase)
Minutes
Result: Matter Heard
08/18/2014 **Motion** **Doc ID# 37**
[37] Motion for Judgment of Acquittal
08/18/2014 **Stipulation** **Doc ID# 41**
[41] Stipulation Pursuant to NRS 175.552 (2) Waiving Penalty Hearing And Agreeing To Have Sentence Imposed By Trial Judge
08/20/2014 **Motion for New Trial** **Doc ID# 44**
[44] Motion for New Trial
08/20/2014 **Receipt of Copy** **Doc ID# 45**
[45] Receipt of Copy
08/20/2014 **Document Filed** **Doc ID# 46**
[46] Clarification Of Record No Hearing Requested
08/21/2014 **Opposition** **Doc ID# 47**
[47] State's Opposition to Defendant's Motion for Judgment of Acquittal
08/22/2014 **Opposition** **Doc ID# 48**
[48] State's Opposition to Defendant's Motion for New Trial
08/29/2014 **Reply to Opposition** **Doc ID# 49**
[49] Reply to State's Opposition to Motion for Judgment of Acquittal and Motion for New Trial
09/03/2014 **Motion for Judgment** (9:30 AM) (Judicial Officer Miley, Stefany)
Defendant's Motion for Judgment of Acquittal
Result: Motion Denied
09/03/2014 **Motion for New Trial** (9:30 AM) (Judicial Officer Miley, Stefany)
Defendant's Motion for New Trial
Result: Motion Denied
09/03/2014 **All Pending Motions** (9:30 AM) (Judicial Officer Miley, Stefany)
Minutes
Result: Matter Heard
09/16/2014 **Order** **Doc ID# 50**
[50] Order Denying Defendant's Motion for Judgment of Acquittal and Order Denying Defendant's Motion for New Trial
10/01/2014 **PSI** **Doc ID# 51**
[51]
10/14/2014 **Memorandum** **Doc ID# 52**
[52] Sentencing Memorandum
10/20/2014 **Sentencing** (9:30 AM) (Judicial Officer Miley, Stefany)
10/20/2014, 10/21/2014
Minutes
Result: Matter Continued
10/20/2014 **Order for Production of Inmate** **Doc ID# 53**
[53] Order For Production Of Inmate - Michael Alan Lee, BAC #81950
10/27/2014 **Further Proceedings** (11:00 AM) (Judicial Officer Miley, Stefany)
Further Proceedings: Clarification of Sentence on Count 2
Parties Present
Minutes
Result: Defendant Sentenced
11/10/2014 **Judgment of Conviction** **Doc ID# 54**
[54] JUDGMENT OF CONVICTION (JURY TRIAL)
11/24/2014 **Notice of Appeal (Criminal)** **Doc ID# 55**
[55] Notice of Appeal
11/24/2014 **Case Appeal Statement** **Doc ID# 56**
[56] Case Appeal Statement
12/08/2014 **Criminal Order to Statistically Close Case** **Doc ID# 57**
[57] Criminal Order to Statistically Close Case
01/15/2015 **Recorders Transcript of Hearing** **Doc ID# 58**
[58] Recorder's Transcript of Proceedings Re: Calendar Call January 11, 2012
01/15/2015 **Recorders Transcript of Hearing** **Doc ID# 59**
[59] Recorder's Transcript of Proceedings Re: Defendant's Motion to Continue Trial July 02, 2012
01/15/2015 **Recorders Transcript of Hearing** **Doc ID# 60**
[60] Recorder's Transcript of Proceedings Re: State's Request: Reset Trial Date March 04, 2013
01/15/2015 **Recorders Transcript of Hearing** **Doc ID# 61**
[61] Recorder's Transcript of Proceedings Re: Confirmation of Counsel (Nadia Von Magdenko) March 13, 2013
01/15/2015 **Recorders Transcript of Hearing** **Doc ID# 62**
[62] Recorder's Transcript of Proceedings Re: Defendant's Motion in Limine to Exclude Prior Bad Acts of Defendant October 28, 2013
01/15/2015 **Recorders Transcript of Hearing** **Doc ID# 63**
[63] Recorder's Transcript of Proceedings Re: Calendar Call January 8, 2014
01/15/2015 **Recorders Transcript of Hearing** **Doc ID# 64**
[64] Recorder's Transcript of Proceedings Re: Calendar Call July 30, 2014
01/15/2015 **Recorders Transcript of Hearing** **Doc ID# 65**
[65] Recorder's Transcript of Proceedings Re: Sentencing October 20, 2014
01/15/2015 **Recorders Transcript of Hearing** **Doc ID# 66**
[66] Recorder's Transcript of Proceedings Re: Further Proceedings: Clarification of Sentence on Count 2 October 27, 2014
01/21/2015 **Recorders Transcript of Hearing** **Doc ID# 67**
[67] Recorder's Transcript of Proceedings Defendant's Petition for Writ of Habeas Corpus 1/30/12
01/21/2015 **Recorders Transcript of Hearing** **Doc ID# 68**
[68] Recorder's Transcript of Proceedings October 21, 2014 Sentencing

01/21/2015 **Recorders Transcript of Hearing** **Doc ID# 69**
[69] Recorder's Transcript of Proceedings September 3, 2014 Defendant's Motion for Judgment on Acquittal; Defendant's Motion for New Trial
01/21/2015 **Recorders Transcript of Hearing** **Doc ID# 70**
[70] Recorder's Transcript of Proceedings Monday, January 30, 2012 Defendant's Petition for Writ of Habeas Corpus
01/21/2015 **Recorders Transcript of Hearing** **Doc ID# 71**
[71] Recorder's Transcript of Proceedings June 25, 2014 Defendant's Motion in Limine to Exclude Autopsy Photographs; Defendant's Motion for Dismissal; State's Motion for Production of Discoverable Material pursuant NRS 174.245's Reciprocal Discovery Provisions; State's Motion in Limine re: Defendant's Expert and to Foundational Aspects of the Defense Expert's Opinion.
01/26/2015 **Recorders Transcript of Hearing** **Doc ID# 72**
[72] Recorder's Transcript of Hearing Re: Arraignment
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 73**
[73] Transcript of Proceedings: Jury Trial - Day 1 August 4, 2014
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 74**
[74] Transcript of Proceedings: Jury Trial - Day 3 August 6, 2014
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 75**
[75] Transcript of Proceedings: Jury Trial - Day 3 August 6, 2014
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 76**
[76] Transcript of Proceedings: Jury Trial - Day 4 August 7, 2014
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 77**
[77] Transcript of Proceedings: Jury Trial - Day 5 August 8, 2014
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 78**
[78] Transcript of Proceedings: Jury Trial - Day 6 August 11, 2014
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 79**
[79] Transcript of Proceedings: Jury Trial - Day 7 August 14, 2014
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 80**
[80] Transcript of Proceedings: Jury Trial - Day 8 August 15, 2014
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 81**
[81] Transcript of Proceedings: Jury Trial - Day 9 August 18, 2014
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 82**
[82] Transcript of Proceedings: Jury Trial - Day 2 August 5, 2014
09/13/2016 **NV Supreme Court Clerks Certificate/Judgment - Affirmed** **Doc ID# 83**
[83] Nevada Supreme Court Clerk's Certificate Judgment - Affirmed
05/12/2017 **Petition for Writ of Habeas Corpus** **Doc ID# 84**
[84] Petition for Writ of Habeas Corpus
06/19/2017 **Errata** **Doc ID# 85**
[85] Errata to Petition for Writ of Habeas Corpus
06/20/2017 **Response** **Doc ID# 86**
[86] State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)
06/28/2017 **Petition for Writ of Habeas Corpus** (9:30 AM) (Judicial Officer Miley, Stefany)
Defendant's Petition for Writ of Habeas Corpus
Parties Present
Minutes
Result: Denied
07/12/2017 **Recorders Transcript of Hearing** **Doc ID# 87**
[87] Recorder s Transcript of Proceedings: Defendant s Petition for Writ of Habeas Corpus June 28, 2017
07/31/2017 **Findings of Fact, Conclusions of Law and Order** **Doc ID# 88**
[88]
08/02/2017 **Notice of Entry** **Doc ID# 89**
[89] Notice of Entry of Findings of Fact, Conclusions of Law and Order
08/18/2017 **Motion to Withdraw As Counsel** **Doc ID# 90**
[90] Potter Law Offices Motion to Witdraw as Counsel and Stay Proceedings
08/30/2017 **Motion to Withdraw as Counsel** (9:30 AM) (Judicial Officer Miley, Stefany)
08/30/2017, 09/13/2017
Potter Law Offices' Motion to Witdraw as Counsel and Stay Proceedings
Parties Present
Minutes
Result: Matter Continued
09/19/2017 **Notice of Appeal (Criminal)** **Doc ID# 91**
[91] Notice of Appeal
09/21/2017 **Case Appeal Statement** **Doc ID# 92**
[92] Case Appeal Statement
12/19/2017 **NV Supreme Court Clerks Certificate/Judgment - Dismissed** **Doc ID# 93**
[93] Nevada Supreme Court Clerk's Certificate Judgment - Dismissed
02/06/2018 **Petition** **Doc ID# 94**
[94] Defendant's Petition for Writ of Habeas Corpus
04/03/2018 **Response** **Doc ID# 95**
[95] State's Response to Defendant s Third Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)
04/09/2018 **Petition for Writ of Habeas Corpus** (11:00 AM) (Judicial Officer Miley, Stefany)
Defendant's Petition for Writ of Habeas Corpus
Parties Present
Minutes
Result: Granted
07/05/2018 **Findings of Fact, Conclusions of Law and Order** **Doc ID# 96**
[96] Findings of Fact, Conclusions of Law and Order Granting Petition for Writ of Habeas Corpus (Post-Conviction)
07/09/2018 **Notice of Entry** **Doc ID# 97**
[97] Notice of Entry of Findings of Fact, Conclusions of Law and Order
07/09/2018 **Notice of Appeal (Criminal)** **Doc ID# 98**
[98] Notice of Appeal
07/09/2018 **Case Appeal Statement** **Doc ID# 99**
[99] Case Appeal Statement
11/19/2019 **Notice of Hearing** **Doc ID# 100**

Bates 082

[100] Notice of Hearing

12/02/2019 **Status Check** (9:30 AM) (Judicial Officer Miley, Stefany)
STATUS CHECK RE: SUPREME COURT ORDER FILED ON 11/15/19
Parties Present
Minutes
Result: Matter Heard

12/17/2019 **Status Check** (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Status Check: Appointment of Counsel & Trial Setting Per Supreme Court Order Filed on 11/15/19
Parties Present
Minutes
12/19/2019 Reset by Court to 12/17/2019
01/08/2020 Reset by Court to 01/22/2020
Result: Matter Continued

12/18/2019 **NV Supreme Court Clerks Certificate/Judgment -Remanded** **Doc ID# 101**
[101] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Reversed and Remand

12/18/2019 **Order for Production of Inmate** **Doc ID# 102**
[102] Order for Production of Inmate

01/10/2020 **Motion to Reduce** **Doc ID# 103**
[103] Defendant's Motion to Reinstate and/or Reduce Bail

01/10/2020 **Clerk's Notice of Hearing** **Doc ID# 104**
[104] Notice of Hearing

01/14/2020 **Opposition to Motion** **Doc ID# 105**
[105] State's Opposition to Defendant's Motion to Reinstate and/or Reduce Bail

01/16/2020 **Motion to Reduce** (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Defendant's Motion to Reinstate and/or Reduce Bail
Parties Present
Minutes
01/15/2020 Reset by Court to 01/16/2020
Result: Motion Denied

01/22/2020 **Notice of Department Reassignment** **Doc ID# 106**
[106] Notice of Department Reassignment

01/30/2020 **Status Check: Trial Setting** (9:30 AM) (Judicial Officer Cherry, Michael A.)
Parties Present
Minutes
Result: Hearing Set

01/30/2020 **Order Denying Motion** **Doc ID# 107**
[107] Order Denying Defendant's Motion to Reinstate and/or Reduce Bail

02/20/2020 **Hearing** (9:30 AM) (Judicial Officer Bixler, James)
HEARING: BAIL AND TRIAL SETTING
Parties Present
Minutes
Result: Trial Date Set

04/29/2020 **Motion for Own Recognizance Release/Setting Reasonable Bail** **Doc ID# 108**
[108] Defendant's Renewed Motion to Reinstate and/or Reduce Bail

04/29/2020 **Clerk's Notice of Hearing** **Doc ID# 109**
[109] Notice of Hearing

04/30/2020 **Opposition to Motion** **Doc ID# 110**
[110] State's Opposition to Defendant's Third Motion to Reinstate and/or Reduce Bail

04/30/2020 **Reply** **Doc ID# 111**
[111] Defendant's Reply in Support of Renewed Motion to Reinstate and/or Reduce Bail

05/12/2020 **Motion to Reinstate** (3:30 PM) (Judicial Officer Barker, David)
Defendant's Renewed Motion to Reinstate and/or Reduce Bail
Parties Present
Minutes
Result: Motion Denied

05/15/2020 **Motion for Production of Transcript** **Doc ID# 112**
[112] Request for Transcript of Proceedings

09/03/2020 **Status Check: Trial Readiness** (3:30 PM) (Judicial Officer Adair, Valerie)
Parties Present
Minutes
04/23/2020 Reset by Court to 07/07/2020
07/07/2020 Reset by Court to 09/03/2020
09/03/2020 Reset by Court to 09/03/2020
Result: Matter Heard

09/07/2020 **Motion to Continue Trial** **Doc ID# 113**
[113] Defendant's Motion to Continue Trial Date and For Bail Hearing Pursuant to Valdez-Jimenez

09/18/2020 **Opposition to Motion** **Doc ID# 114**
[114] State's Opposition to Defendant's Fourth Motion to Reinstate and/or Reduce Bail

09/24/2020 **Motion to Continue Trial** (3:30 PM) (Judicial Officer Adair, Valerie)
09/24/2020, 10/08/2020
Defendant's Motion to Continue Trial Date and For Bail Hearing Pursuant to Valdez-Jimenez
Parties Present
Minutes

Bates 083

Result: Granted in Part
10/20/2020 **Order Denying Motion** **Doc ID# 115**
[115] Order Denying Motion for Bail Hearing
10/22/2020 *CANCELED* **Calendar Call** (3:30 PM) (Judicial Officer Bixler, James)
Vacated - per Judge
10/22/2020 Reset by Court to 10/22/2020
10/22/2020 Reset by Court to 10/22/2020
10/26/2020 *CANCELED* **Jury Trial** (9:00 AM) (Judicial Officer Jones, Tierra)
Vacated - per Judge
10/26/2020 Reset by Court to 10/26/2020
12/09/2020 **Receipt of Copy** **Doc ID# 116**
[116] Receipt of Copy
01/04/2021 **Case Reassigned to Department 9**
Judicial Reassignment to Judge Cristina Silva
01/05/2021 **Notice of Change of Hearing** **Doc ID# 117**
[117] Notice of Change of Hearing
01/29/2021 **Status Check: Trial Readiness** (1:30 PM) (Judicial Officer Silva, Cristina D.)
Parties Present
Minutes
01/07/2021 Reset by Court to 01/29/2021
Result: Set Status Check
02/19/2021 *CANCELED* **Calendar Call** (1:30 PM) (Judicial Officer Silva, Cristina D.)
Vacated - per Judge
02/25/2021 Reset by Court to 02/19/2021
03/01/2021 *CANCELED* **Jury Trial** (9:30 AM) (Judicial Officer Silva, Cristina D.)
Vacated - per Judge
03/01/2021 Reset by Court to 03/01/2021
03/01/2021 Reset by Court to 03/01/2021
04/23/2021 **Status Check: Reset Trial Date** (1:30 PM) (Judicial Officer Silva, Cristina D.)
Parties Present
Minutes
Result: Trial Date Set
10/08/2021 **Status Check: Trial Readiness** (1:30 PM) (Judicial Officer Silva, Cristina D.)
Parties Present
Minutes
07/30/2021 Reset by Court to 09/24/2021
09/24/2021 Reset by Court to 10/08/2021
Result: Matter Heard
10/20/2021 **Recorders Transcript of Hearing** **Doc ID# 118**
[118] Recorder's Transcript of Hearing Re: May 12, 2020 - Defendant's Renewed Motion to Reinstate and/or Reduce Bail
11/03/2021 **Amended Information** **Doc ID# 119**
[119] Amended Information
11/05/2021 **Notice of Witnesses and/or Expert Witnesses** **Doc ID# 120**
[120] State's Notice of Witnesses and/or Expert Witnesses
11/08/2021 **Notice of Witnesses and/or Expert Witnesses** **Doc ID# 121**
[121] Defendant Michael Lee's Notice of Witnesses and/or Expert Witnesses
11/12/2021 **Notice of Witnesses and/or Expert Witnesses** **Doc ID# 122**
[122] State's Amended Notice of Witnesses and/or Expert Witnesses
11/17/2021 **Motion to Admit Evidence** **Doc ID# 123**
[123] State's Notice of Motion and Motion to Admit Prior Sworn Testimony of Merridee Moshier
11/18/2021 **Clerk's Notice of Hearing** **Doc ID# 124**
[124] Notice of Hearing
11/18/2021 **Motion** **Doc ID# 125**
[125] Motion Allowing Defendant To Remain At The Clark County Detention Center Pending His Murder Trial
11/19/2021 **Calendar Call** (1:30 PM) (Judicial Officer Silva, Cristina D.)
Parties Present
Minutes
09/15/2021 Reset by Court to 11/19/2021
Result: Matter Heard
11/19/2021 **Clerk's Notice of Hearing** **Doc ID# 126**
[126] Notice of Hearing
11/22/2021 **Motion in Limine** **Doc ID# 127**
[127] Defendant's Renewed Motion in Limine
11/23/2021 **Clerk's Notice of Hearing** **Doc ID# 128**
[128] Notice of Hearing
11/27/2021 **Opposition to Motion** **Doc ID# 129**
[129] Defendant's Opposition to State's Motion to Admit Prior Sworn Testimony of Merridee Moshier
11/29/2021 **Motion to Admit Evidence** (11:00 AM) (Judicial Officer Silva, Cristina D.)
11/29/2021, 02/25/2022
Plaintiff's State's Notice of Motion and Motion to Admit Prior Sworn Testimony of Merridee Moshier
Result: Decision Pending
11/29/2021 **Motion** (11:00 AM) (Judicial Officer Silva, Cristina D.)
Motion Allowing Defendant To Remain At The Clark County Detention Center Pending His Murder Trial
Result: Motion Granted
11/29/2021 **Notice of Witnesses and/or Expert Witnesses** **Doc ID# 130**

Bates 084

[130] State's Superseding Notice of Witnesses and/or Expert Witnesses

11/30/2021 **Motion to Continue Trial** **Doc ID# 131**
[131] Defendant's Motion to Continue Trial

12/01/2021 **Central Calendar Call** (2:00 PM) (Judicial Officer Jones, Tierra)
Parties Present
Minutes
Result: Matter Heard

12/01/2021 **Motion to Continue Trial** (2:00 PM) (Judicial Officer Jones, Tierra)
12/01/2021, 12/03/2021
Defendant's Motion to Continue Trial
12/03/2021 Reset by Court to 12/01/2021
12/13/2021 Reset by Court to 12/03/2021
Result: Matter Continued

12/01/2021 **Clerk's Notice of Hearing** **Doc ID# 132**
[132] Notice of Hearing

12/01/2021 **All Pending Motions** (2:00 PM) (Judicial Officer Jones, Tierra)
Result: Matter Heard

12/02/2021 **Receipt of Copy** **Doc ID# 133**
[133] Receipt of Copy

12/03/2021 **Status Check** (1:30 PM) (Judicial Officer Jones, Tierra)
Status Check: Pre-Trial Motion Decision
Result: Off Calendar

12/03/2021 **Calendar Call** (1:30 PM) (Judicial Officer Jones, Tierra)
Result: Trial Date Set

12/03/2021 **All Pending Motions** (1:30 PM) (Judicial Officer Jones, Tierra)
Parties Present
Minutes
Result: Matter Heard

12/06/2021 *CANCELED* **Jury Trial** (9:30 AM) (Judicial Officer Silva, Cristina D.)
Vacated
09/27/2021 Reset by Court to 12/06/2021

12/06/2021 *CANCELED* **Motion in Limine** (11:00 AM) (Judicial Officer Bluth, Jacqueline M.)
Vacated - per Attorney or Pro Per
[127] Defendant's Renewed Motion in Limine

01/07/2022 **Temporary Seal Pending Court Approval** **Doc ID# 134**
[134] Ex Parte Application and Order

01/07/2022 **Temporary Seal Pending Court Approval** **Doc ID# 135**
[135] Errata to Ex Parte Application and Order

01/07/2022 **Temporary Seal Pending Court Approval** **Doc ID# 136**
[136] Ex Parte Application for Records and Order

01/14/2022 **Status Check: Trial Readiness** (1:30 PM) (Judicial Officer Silva, Cristina D.)
Parties Present
Minutes
Result: Matter Heard

01/20/2022 **Temporary Seal Pending Court Approval** **Doc ID# 137**
[137] Supplement to Ex Parte Application and Order

01/20/2022 **Temporary Seal Pending Court Approval** **Doc ID# 138**
[138] Supplement to Ex Parte Application and Order

01/24/2022 **Clerk's Notice of Nonconforming Document** **Doc ID# 139**
[139] Clerk's Notice of Nonconforming Document

02/07/2022 **Filed Under Seal** **Doc ID# 140**
[140] Sealed per Minute Oder 02/07/2022 Supplement to Ex Parte Application for Records and Order

02/07/2022 **Filed Under Seal** **Doc ID# 141**
[141] Sealed per Minute Order 02/07/2022 Supplement to Ex Parte Application for Records and Order

02/07/2022 **Minute Order** (1:50 PM) (Judicial Officer Barker, David)
Minutes
Result: Minute Order - No Hearing Held

02/08/2022 **Motion** **Doc ID# 142**
[142] Defendant's Motion to Continue Briefing Schedule

02/09/2022 **Clerk's Notice of Hearing** **Doc ID# 143**
[143] Notice of Hearing

02/16/2022 **Motion to Continue** (11:00 AM) (Judicial Officer Silva, Cristina D.)
Defendant's Motion to Continue Briefing Schedule
02/23/2022 Reset by Court to 02/16/2022

02/25/2022 *CANCELED* **Motion to Admit Evidence** (1:30 PM) (Judicial Officer Silva, Cristina D.)
Vacated - Duplicate Entry

03/04/2022 **Calendar Call** (1:30 PM) (Judicial Officer Silva, Cristina D.)

03/14/2022 **Jury Trial** (9:30 AM) (Judicial Officer Silva, Cristina D.)

Financial Information

Defendant Lee, Michael Alan

Total Financial Assessment	25.00
Total Payments and Credits	0.00
Balance Due as of 02/11/2022	**25.00**

Bates 085

10/30/2014	Transaction Assessment	25.00

Bates 086

EXHIBIT 5

Gmail

Kelsey Bernstein <kbernstein@defendingnevada.com>

C-11-277650-1 Michael Lee

2 messages

Castaneda, Elva <dept09lc@clarkcountycourts.us> Wed, Jan 19, 2022 at 2:51 PM
To: Kelsey Bernstein <kbernstein@defendingnevada.com>

Good afternoon,

Judge Silva is inclined to grant the ex parte orders submitted on this matter, but would like to know why it 1) needs to be sealed; and 2) why it's an ex parte request? There is a reciprocal obligation and she would like some clarification.

Thank you,

Elva Castañeda

Law Clerk to the Honorable Cristina D. Silva

Department IX, Eighth Judicial District Court

Ph: (702) 671-4392

Email: dept09lc@clarkcountycourts.us

Kelsey Bernstein <kbernstein@defendingnevada.com> Wed, Jan 19, 2022 at 4:59 PM
To: Fikisha Miller <fmiller@defendingnevada.com>

[Quoted text hidden]

--

Kelsey Bernstein, Esq.
Partner
Nevada Defense Group
714 S. Fourth Street
Las Vegas, Nevada 89101
(702) 988-2600
KBernstein@DefendingNevada.com

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EXHIBIT 6

Gmail

Kelsey Bernstein <kbernstein@defendingnevada.com>

Eighth Judicial District Court - Proposed Order Returned

1 message

NoReply@clarkcountycourts.us <NoReply@clarkcountycourts.us> Thu, Jan 20, 2022 at 1:29 PM
To: Kelsey Bernstein <kbernstein@defendingnevada.com>

Lee, C-11-277650-1 Ex Parte Application and Order

Your proposed order or document requiring a judge's signature to the court has been returned for the following reason(s):
The ex-parte application will be expanded as discussed by law clerk and Fikisha Miller

EXHIBIT 7

Gmail

Kelsey Bernstein <kbernstein@defendingnevada.com>

Fwd: Michael Lee, Proposed Order, C-11-277650-1

Matthew Rogers <matt@defendingnevada.com> Thu, Feb 10, 2022 at 5:31 PM
To: Kelsey Bernstein <kbernstein@defendingnevada.com>

---------- Forwarded message ----------
From: **Matthew Rogers** <matt@defendingnevada.com>
Date: Tuesday, February 1, 2022
Subject: Michael Lee, Proposed Order, C-11-277650-1
To: "Castaneda, Elva" <dept09lc@clarkcountycourts.us>

Good afternoon,

Attorney Kelsey Bernstein submitted orders for the above case. Could we possibly get an eta or an update on the orders? Please let me know if you need any further information.

Thank you

--
Matt Rogers
Criminal Paralegal
Nevada Defense Group
714 S. 4th Street
Las Vegas, Nevada 89101
Phone 702-988-2600
Fax 702-988-9500

--
Matt Rogers
Criminal Paralegal
Nevada Defense Group
714 S. 4th Street
Las Vegas, Nevada 89101
Phone 702-988-2600
Fax 702-988-9500

EXHIBIT 8

Gmail

Kelsey Bernstein <kbernstein@defendingnevada.com>

Fwd: Michael Lee, Proposed Order, C-11-277650-1

Matthew Rogers <matt@defendingnevada.com> Thu, Feb 10, 2022 at 5:31 PM
To: Kelsey Bernstein <kbernstein@defendingnevada.com>

---------- Forwarded message ----------
From: **Castaneda, Elva** <dept09lc@clarkcountycourts.us>
Date: Friday, February 4, 2022
Subject: Michael Lee, Proposed Order, C-11-277650-1
To: Matthew Rogers <matt@defendingnevada.com>, "Beltran, Jaye" <BeltranJ@clarkcountycourts.us>

Good afternoon,

I brought the orders to Judge Silva's attention when we previously spoke and stated she would review them. Unfortunately, since we last spoke Judge Silva's previously postponed surgery was rescheduled with very short notice. She will be out of the hospital sometime this weekend at which point we can contact her again. We will follow up with you as soon as we get an opportunity to speak to her.

I apologize for the delay.

Elva Castañeda

Law Clerk to the Honorable Cristina D. Silva

Department IX, Eighth Judicial District Court

Ph: (702) 671-4392

Email: dept09lc@clarkcountycourts.us

From: Matthew Rogers [mailto:matt@defendingnevada.com]
Sent: Friday, February 4, 2022 12:33 PM
To: Beltran, Jaye; Castaneda, Elva
Subject: Fwd: Michael Lee, Proposed Order, C-11-277650-1

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Good afternoon,

Just following up on the status of the proposed orders that attorney Kelsey Bernstein submitted on January 20th. The attorneys are concerned with a deadline coming up on February 18th, and argument on February 25th we're just waiting on the proposed orders. Our office previously attempted to contact the department via phone and were told the clerk would give Judge Silva a reminder about the orders. On February 3rd our office reached out via phone again and were told we would receive a call back with an update. If you need any further information please let me know.

---------- Forwarded message ---------
From: **Matthew Rogers** <matt@defendingnevada.com>
Date: Tue, Feb 1, 2022 at 2:58 PM
Subject: Michael Lee, Proposed Order, C-11-277650-1
To: Castaneda, Elva <dept09lc@clarkcountycourts.us>

Good afternoon,

Attorney Kelsey Bernstein submitted orders for the above case. Could we possibly get an eta or an update on the orders? Please let me know if you need any further information.

Thank you

--

Matt Rogers

Criminal Paralegal
Nevada Defense Group

714 S. 4th Street
Las Vegas, Nevada 89101

Phone 702-988-2600

Fax 702-988-9500

--

Matt Rogers

Criminal Paralegal
Nevada Defense Group

714 S. 4th Street
Las Vegas, Nevada 89101

Phone 702-988-2600

Fax 702-988-9500

EXHIBIT 9

Gmail

Kelsey Bernstein <kbernstein@defendingnevada.com>

Fwd: Notification of Service for Case: C-11-277650-1, State of NevadavsMichael Lee for filing Service Only, Envelope Number: 9315498

Fikisha Miller <fmiller@defendingnevada.com> Tue, Feb 8, 2022 at 1:26 PM
To: Kelsey Bernstein <kbernstein@defendingnevada.com>

Fikisha Miller
Senior Trial Attorney
Nevada Defense Group
714 South Fourth Street
Las Vegas, Nevada 89101
www.nevadadefensegroup.com
(702) 988-2600 Phone
(702) 988-9500 Fax

---------- Forwarded message ---------
From: <no-reply@efilingmail.tylertech.cloud>
Date: Mon, Feb 7, 2022 at 1:21 PM
Subject: Notification of Service for Case: C-11-277650-1, State of NevadavsMichael Lee for filing Service Only, Envelope Number: 9315498
To: <fmiller@defendingnevada.com>

Notification of Service

Case Number: C-11-277650-1
Case Style: State of NevadavsMichael Lee
Envelope Number: 9315498

This is a notification of service for the filing listed. Please click the link below to retrieve the submitted document.

Filing Details	
Case Number	C-11-277650-1
Case Style	State of NevadavsMichael Lee
Date/Time Submitted	2/7/2022 1:21 PM PST
Filing Type	Service Only
Filing Description	Ex Parte Order
Filed By	DC EFile Service
Service Contacts	Other Service Contacts not associated with a party on the case: Carrie Connolly . (connolcm@ClarkCountyNV.gov) Clark County District Attorney . (pdmotions@clarkcountyda.com) Eileen Davis . (Eileen.Davis@clarkcountyda.com) Jennifer Garcia . (Jennifer.Garcia@clarkcountyda.com) Nadia von Magdenko . (nadia@injurylawlv.com)

Bates 097

	PD Motions . (PDMotions@clarkcountyda.com) Alayne Opie (opiea@gtlaw.com) Law Clerk (dept09lc@clarkcountycourts.us) State of Nevada: Adam Laxalt, Esq. (dwilson@ag.nv.gov) Law Clerk (dept10lc@clarkcountycourts.us) Fikisha Miller (fmiller@defendingnevada.com) John Giordani (John.giordani@clarkcountyda.com) State Nevada (motions@clarkcountyda.com) State Nevada (pdmotions@clarkcountyda.com) Michael Alan Lee: Stacie Comerio (stacie@potterlawoffices.com) Cal Potter (cpotter@potterlawoffices.com) Damian Sheets (dsheets@defendingnevada.com) Tanya Bain (tanya@potterlawoffices.com)

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Electronically Filed
2/14/2022 1:34 PM
Steven D. Grierson
CLERK OF THE COURT

OPPS
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN GIORDANI
Chief Deputy District Attorney
Nevada Bar #012381
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- MICHAEL ALAN LEE, #1699107 Defendant.	CASE NO: C-11-277650-1 DEPT NO: IX

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO EXTEND BRIEFING SCHEDULE AND MOTION TO DISQUALIFY THE DISTRICT ATTORNEY'S OFFICE

DATE OF HEARING: 02/16/2022
TIME OF HEARING: 11:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JOHN GIORDANI, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion To Extend Briefing Schedule And Motion To Disqualify The District Attorney's Office.

This Opposition 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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POINTS AND AUTHORITIES

STATEMENT OF THE FACTS[1]

In December of 2008, Arica Foster gave birth to Brodie Aschenbrenner. Brodie's father was Dustin Aschenbrenner. When Arica's relationship with Brodie's father dissolved, she kept custody of Brodie. Brodie was a loving, fearless, and rambunctious child. In October of 2010, Arica met and began dating Defendant after they were introduced to each other by their respective sisters. At the time, Defendant was on parole in case C199242, an extremely violent series of armed robberies for which Defendant served six years in prison. Arica was unaware of the details of Defendant's past and his extremely violent nature, so she allowed him to be around her little boy, Brodie.

In the beginning of the relationship, Defendant and 2-year-old Brodie appeared to be getting along fine. In February of 2011, Arica, Brodie, and Defendant moved into an apartment together. At some point, Arica became concerned about Brodie's physical condition, as she started to notice bruises on Brodie. Arica noticed that the bruises were appearing on Brodie's face and were much darker than the normal everyday bumps Brodie used to get.

In early May of 2011, Arica and Defendant began to have arguments over Brodie. Defendant felt that Arica was babying Brodie too much and that Brodie should have been potty trained by that point. Arica and Defendant also argued about Defendant waking Brodie up in the early mornings to use the bathroom and changing him from his diaper into his pull-up underwear. Arica kept waking up and finding Brodie in his pull-up underwear instead of the diaper she had put on him the night before. Arica and Defendant also argued about keeping Brodie's bedroom door open at night. While Arica wanted the door open so she could hear Brodie at night, Defendant insisted on the door being closed. When Arica would wake up in the morning, she would find Brodie's bedroom door closed.

Around the same time, Brodie's demeanor towards Defendant began to change. Brodie began to not want to be around Defendant; Brodie would cower, cry and run over to Arica whenever Defendant approached him. Brodie's fearful demeanor around Defendant began to

[1] The majority of these facts are derived from the State's Answering Brief filed with the Nevada Supreme Court on October 13, 2015. Citations to the Appellant's Appendix have been removed.

put a strain on his and Arica's relationship. Whenever Arica asked Defendant about Brodie's bruises, Defendant provided an innocuous reason or excuse. After the bruising didn't subside, Arica decided to have her sister Amanda babysit Brodie instead of Defendant's sister Jennifer. Once Amanda started babysitting Brodie, the bruising stopped for about two to three weeks. Eventually the bruising started back up again. The bruises began to show up more frequently, and in different locations on Brodie's body. This time, the bruises were more much severe than usual. At some point, Arica researched nanny cams to watch Defendant with Brodie because she was concerned about the escalating injuries.

On May 25, 2011, Arica and Brodie were involved in a fender bender. Brodie was in his car seat at the time of the accident. After the impact, Arica turned around in her seat to look at Brodie and he appeared fine. Arica went to the hospital to be checked out, while her mother took Brodie home. When Arica returned home, she examined Brodie and felt no concern as he was acting like his normal playful self. The next day, Arica brought Brodie to ABC Pediatrics just to be safe. Brodie was examined by Dr. Sirsy, who found Brodie to be injury free. In June 2011, Arica decided to take Brodie's racecar bed apart and put padding around it so Brodie would not bump his head on the wall. Around the same time, Arica began to look for a new place to live because Brodie did not like Defendant or want to be around him anymore.

On the evening of June 6, 2011, Arica noticed that Brodie had a fat lip underneath his nose. Arica was not home at the time the injury happened, so she asked Defendant about the injury since he was with Brodie. Defendant claimed that the board from the toddler bed fell on Brodie. On June 9, 2011, Brodie was riding his power wheel while walking the dogs around the apartment complex with Arica. While riding his power wheel, Brodie hit a curb and fell off. After falling down, Brodie jumped back up and continued to act like his normal self. Brodie ended up with a tiny little bruise on his cheek from the fall. That night Brodie never complained about being in any type of pain and appeared normal. On June 10, 2011, Arica noticed that Brodie's eyes were goopy, so she took him to ABC Pediatrics, where he was diagnosed with pink eye and prescribed eye drops.

On June 11, 2011, Arica dropped Brodie off at her parents' house while she went to work. After work, Arica and Defendant went out to dinner. At dinner they had a discussion regarding the jealousy that had been building between Defendant and Brodie. Arica told Defendant that Brodie was her number one priority. On June 12, 2011, Defendant told Arica that he would do whatever it took for everything to work out and for them to be together. That evening, Arica picked Brodie up from her parent's house. When Arica and Brodie came home, Brodie got upset because Defendant was there.

On June 13, 2011, Arica, Brodie and Defendant went to the swimming pool with Defendant's sister Jennifer and her two boys. Brodie swam in the pool and acted like his normal self. They left the swimming pool around 1:20 p.m. and Arica left for work around 4 p.m. Prior to leaving for work, Arica put Brodie down for a nap and then left him alone with Lee. Arica returned home around 8:15 p.m. and checked on Brodie. When she bent down to give Brodie a kiss, Arica noticed a quarter sized bruise on his forehead. When she asked Defendant about the bruise, he told her that Brodie fell in some rocks while leaving his friend Danny Fico's house.

The next morning June 14th, when Brodie woke up, Arica noticed that he had a lot more bruises on him than the night before. He had a couple of bruises on his forehead and the bruise on his cheek was a lot bigger and darker. Brodie also seemed very upset; he ran into Arica's room screaming and wanting to be cuddled. That type of behavior was not normal for Brodie. That day Arica, Brodie and Defendant had plans to go the Mandalay Bay Shark Reef. After Brodie ate breakfast, Arica dressed him for the day. When Arica was dressing him, Brodie complained that his head hurt. Before leaving the house, Defendant mentioned to Arica that he did not want to bring Brodie anywhere because of his bruises – Defendant was concerned that people would think they beat him. Arica laughed it off, and they proceeded with their day.

Before going to the Shark Reef, they made a stop at the gas station where Defendant worked. Defendant told Arica that he did not want her to bring Brodie inside the store because of his bruises. Arica and Brodie went inside the store, while Defendant went to the car wash

part of the gas station. Inside the store, Arica ran into Danny Fico, who commented on the bruises on Brodie's face. When they got to the Shark Reef and began walking inside, Brodie refused to hold Defendant's hand. Arica had to tell Brodie that if he did not hold Defendant's hand they would not go to the Shark Reef.

After the Shark Reef, they went to a McDonalds in Circus Circus to eat. While in McDonalds, Brodie had an accident and wet himself through his pull-ups. Defendant became annoyed and commented that Brodie should have been potty trained. Before returning home that day, Arica stopped by a hair salon. She left Brodie, who was sleeping in his car seat, with Lee. Arica was gone approximately 5-10 minutes. When she returned, Brodie was crying and screaming hysterically inside the car. Defendant claimed nothing had happened, and told her that Brodie just woke up when she got out of the car. Afterwards, they went to Best Buy where Brodie kept saying "night night," which was a way of him telling Arica he was tired and wanted to go to bed. Inside Best Buy, Brodie wanted to get a movie. Arica told Brodie that if he wanted the movie he had to be nice to Lee. However, when Defendant attempted to walk up to Brodie, Brodie got angry and kept saying "no, no, no," so Arica had to put the movie back. When they got home, Arica put Brodie in his room and went to make dinner. During dinner, Arica had to spoon feed Brodie to get him to eat, which was not normal.

After dinner, Arica put Brodie to bed. Arica then told Defendant she had to go grocery shopping and run some errands. Defendant got upset and asked Arica why she just didn't do it earlier. Arica told Defendant that if he didn't want her to leave Brodie with him, she would wake him up and take him with her. Defendant told her to just leave Brodie at home. Arica was gone for approximately an hour. When Arica got home, she put the groceries away, took a bath and went to bed. At approximately 1:00 a.m. the next morning, June 15th, Arica woke up and noticed Defendant walking into their bedroom. Defendant told her that he went to use Brodie's bathroom and it stunk and he thought Brodie had thrown up.

Arica immediately got up to check on Brodie. When she went into Brodie's room Arica could smell vomit and saw that Brodie was covered in vomit. She took him to the bathroom, where he threw up again. Brodie told Arica that his head hurt. Arica cleaned Brodie up, laid

him down on the couch in the living room, and laid next to him for a short time until Brodie drifted off to sleep. After Brodie fell asleep, Arica went back to bed. Sometime in the early morning when it was still dark outside, Defendant carried Brodie into the bedroom and laid him next to Arica. When Arica woke up around 8:50 a.m. she began rubbing Brodie's back. As she was rubbing his back, Arica noticed that he was cold to the touch. Arica jumped up out of bed and ran around the bed to face Brodie, whose eyes were open but not moving. At that point, Arica called 911. Brodie was pronounced dead at 11:00 a.m.

Clark County Coroner's Office Medical Examiner Dr. Lisa Gavin performed an autopsy on Brodie on June 16, 2011. The autopsy revealed Brodie had suffered fatal internal injuries along with several external injuries. Brodie's injuries were not only numerous, but were inflicted over an extended period of time. In other words, Defendant didn't just punch Brodie once, severing his internal organs and killing him – he beat him repeatedly over an extended period of time, as evidenced by the healing and acute injuries. Ultimately, Dr. Gavin determined Brodie died from blunt force trauma to his head and abdomen resulting in a transected duodenum and acute peritonitis. Dr. Gavin ruled Brodie's death a homicide.

STATEMENT OF THE CASE

On November 18, 2011, Defendant Michael Alan Lee was charged by way of Information with: Count 1 – Murder (NRS 200.010, 200.030, 200.508) and Count 2: Child Abuse and Neglect with Substantial Bodily Harm (Felony – NRS 200.508).

Defendant's jury trial commenced on August 4, 2014. On August 15, 2014, the jury returned a verdict of guilty on both counts. On October 21, 2014, Defendant was adjudicated guilty and sentenced to life in prison without the possibility of parole. Defendant received no credit for time served, as all credit was applied to case C199242, a violent robbery series for which Defendant was on parole when he committed the instant offenses.

The Judgment of Conviction was filed on November 10, 2014. A Notice of Appeal was filed on November 24, 2014. On August 10, 2016, the Nevada Supreme Court Affirmed the Judgment of Conviction. Remittitur issued September 6, 2016. On May 12, 2017, Petitioner filed a Petition for Writ of Habeas Corpus. The State filed its Response on June 20, 2017. This

Court denied the Petition on June 28, 2017. The Findings of Fact, Conclusions of Law and Order issued on July 31, 2017. Defendant filed a Notice of Appeal on September 19, 2017. On December 19, 2017, the Nevada Supreme Court dismissed the appeal and Remittitur issued. Defendant then filed a Second Petition for Writ of Habeas Corpus on February 6, 2018. Said Petition was denied, and Defendant appealed. On November 15, 2019, the Nevada Supreme Court reversed and remanded the case for a new trial, finding ineffective assistance of counsel for failing to object to a jury instruction.

Defense counsel has successfully delayed this retrial for two years now. On January 16, 2020, after the remand from the Supreme Court, the State invoked its right to a speedy trial. On January 13 and February 20, 2020, the parties argued over a "realistic" setting of the trial date, due to defense counsel's "trial schedule." The State requested a trial date within 60 days, and defense counsel requested it be set much further out to the fall of 2020. The Court acknowledged the State had invoked speedy trial but set the trial in October of 2020 anyway.

In September of 2020, defense counsel indicated that it had been difficult to prepare for trial because Defendant was being housed at NDOC (serving out his sentence on the prior robbery series case) and therefore intended on filing a Motion to Continue the October 2020 trial. Defense counsel filed the Motion to Continue thereafter. On September 24, 2020, defense counsel's Motion to Continue was granted – again over the State's objection. The trial was reset to March of 2021. That trial date was later vacated due to Covid, and the trial was, yet again, continued to September of 2021. In July of 2021, for unknown[2] reasons, the September trial was continued, once again. Trial was then reset to December of 2021.

On October 8, 2021, both parties told the Court they would be ready for the December 2021 trial. Prior to the December 2021 trial date, the State learned that Merridee Moshier, Brodie's grandmother, had unfortunately developed severe symptoms consistent with dementia rendering her unavailable to testify. Since Ms.

[2] The Court Minutes are incomplete.

Moshier had testified previously in the 2014 trial and been subjected to rigorous cross-examination, the State filed a Motion to Admit Prior Sworn Testimony of Merridee Moshier on November 17, 2021. The State subsequently provided medical documentation to the Court and defense counsel which indicated that Ms. Moshier's condition had rendered her unavailable as a witness pursuant to NRS 51.055(c) and NRS 171.198(7)(b). The State later supplemented the initial packet of medical documentation[3] with a sworn affidavit from the witness's daughter, as well as a letter from the Social Security Administration indicating that the witness was declared disabled due to her condition as of September 2021.

On November 19, 2021, the parties appeared in front of The Honorable Cristina Silva for calendar call. The State announced ready for trial, yet again. Defense counsel represented to the State and to the Court that the child victim had been admitted to a hospital at some point in the weeks leading up to his murder and that they needed to obtain those hospital records. The State was surprised to learn this, as the same Deputy has been on this case for a decade and never heard of this alleged hospital stay. Nonethless the State offered to assist in obtaining those records, assuming they actually existed[4], in order to avoid any further delay of the trial date. The case was sent to Central Calendar Call on December 1, 2021.

At 5:28 P.M. the night before Central Calendar Call, defense counsel filed a Motion to Continue Trial. The next day, The Honorable Chief Criminal Judge Tierra Jones heard arguments of counsel. The State opposed the defense's Motion to Continue. Defense counsel argued they apparently needed more time to investigate the veracity of Merridee Moshier's dementia because she "had 4 active nursing licenses in separate states." Judge Jones continued the Central Calendar Call to December 3, 2021. On that date, out of an abundance of caution, the State elected to withdraw its opposition to defense counsel's Motion to Continue Trial. However, the parties agreed that the trial

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[3] The State will provide said documentation to the Court again, if necessary, upon request.

[4] Followup investigation revealed that there was no such hospital stay, therefore there were no records to obtain and thus no grounds to continue the trial.

would be continued to March 14th on a firm trial and the Court indicated that would be a firm trial date. The State's Motion to Admit Prior Sworn Testimony of Merridee Moshier was taken off calendar.

Since then, defense counsel has apparently filed several ex parte orders or motions. With the March 14 trial date looming, the State requested a supplemental briefing schedule be set on the issue of the State's Motion to Admit Prior Sworn Testimony of Merridee Moshier. On January 14, 2022, The Honorable Judge Cristina Silva ordered any supplemental brief to be filed by February 18, 2022, wand ordered arguments to be heard on February 25, 2022. On February 8, 2022, Defendant filed a Motion to Continue Briefing Schedule. On February 11, 2022, Defendant filed a Motion to Disqualify the District Attorney's Office and Appoint a Special Prosecutor.

The State hereby opposes any continuance of the briefing schedule or the argument on the Motion. Moreover, the State opposes defense counsel's attempt to disqualify the Clark County District Attorney's Office and Appoint a Special Prosecutor.

ARGUMENT

I. THE COURT SHOULD DENY DEFENDANT'S MOTION TO CONTINUE BRIEFING SCHEDULE AND RULE UPON THE STATE'S MOTION TO ADMIT PRIOR SWORN TESTIMONY OF MERRIDEE MOSHIER

Somehow, defense counsel has obscured the simple issue before this Court. The only question posed by the State's Motion to Admit the Prior Sworn Testimony of Merridee Moshier is whether or not she is unavailable for trial in March of 2022 due to her mental condition. *See* State's Motion to Admit Prior Sworn Testimony of Merridee Moshier; *see also* NRS 51.055; *see also* NRS 171.198(6); *see also* Funches v. State, 113 Nev. 916, 920, 944 P.2d 775, 777 (1997); see also State v. Eighth Jud. Dist. Ct., 134 Nev. at 108, 412 P.3d at 22. Based upon the medical records the State provided to the Court and defense counsel – to include a ***full neuropsychological evaluation*** of the witness – the answer is unequivocally: yes, the witness is unavailable due to her mental condition.

The question before this Court is ***not*** when the witness became unavailable. The question before this Court is ***not*** when the witness started declining into dementia. The question before this Court is ***not*** when her nursing licenses were renewed or when they expired. And the question before this Court is certainly ***not*** going to be found in whatever records the defense is trying to obtain via subpoena. There is no valid reason to delay the Court's ruling on the State's Motion.

There is no evidence whatsoever to suggest that the witness was unavailable or incompetent to testify when she did so at the 2014 trial. The transcript[5] of her prior sworn testimony makes it abundantly clear that the witness was not incompetent to testify eight (8) years ago. And the medical records provided to the Court and defense counsel make it abundantly clear that the witness' cognitive decline happened recently. The State would urge the Court to ask defense counsel what exactly they expect to uncover during their fishing expedition. How would nursing applications or records from years ago possibly be relevant to whether or not the witness is unavailable in March of 2022? This is yet another delay tactic and the Motion to Extend Briefing Schedule should be denied.

II. THERE IS NO REASON TO DISQUALIFY THE CLARK COUNTY DISTRICT ATTORNEY'S OFFICE

Defense counsel is apparently asking this Court to disqualify the entire Clark County District Attorney's ("CCDA's") Office, the Attorney General's Office, and the two specific prosecutors assigned to the case based upon a filing error. Defense counsel cites to law[6] that infers some form of conflict of interest upon the people who were inadvertently served with the document. If the State understands Defendant's Motion to Disqualify correctly, it appears defense counsel was attempting to advocate its trial theory and/or strategy to the Court in an ex parte manner and the document was inadvertently served on multiple email addresses to include the undersigned Deputy, secretarial staff at the CCDA's Office, the Attorney General's

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[5] Said transcript was attached to the State's Motion to Admit Prior Sworn Testimony of Merridee Moshier.

[6] Ironically, in the case defense counsel relies upon, State v. Zogheib, 130 Nev. 158, 160, 321 P.3d 882, 883, the Nevada Supreme Court found that the District Court acted arbitrarily and capriciously when it disqualified the CCDA's Office.

Office, a deceased lawyer, former defense counsel, and a witness[7]. While the State is in no way imparting any fault upon the Court for defense counsel's ex parte communications, it is troubling that defense counsel would feel the need to advocate or argue its entire defense strategy to the trial court ex parte, outside the presence of the State's attorneys. That aside, defense counsel has failed to establish any conflict of interest on behalf of the CCDA's Office, let alone the specific prosecutors assigned to the case. This is yet another delay tactic and the Motion to Disqualify should be denied.

CONCLUSION

Based upon the foregoing, the State respectfully requests that Defendant's Motions be denied in their entirety and that trial commence as scheduled on March 14, 2022.

DATED this 14th day of February, 2022.

Respectfully submitted,

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

BY /s/ John Giordani
JOHN GIORDANI
Chief Deputy District Attorney
Nevada Bar #012381

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this 14th day of February 2022, by Electronic Filing to:

Damian Sheets, Esq.
dsheets@defendingnevada.com

BY: /s/ Stephanie Johnson
Secretary for the District Attorney's Office

11FH1653X/sj/MVU

[7] To the extent defense counsel infers any wrongdoing on behalf of the witness, they will certainly have the opportunity to cross-examine her at the time of trial as to whether she received, much less read, their inadvertent filing.

Electronically Filed
2/24/2022 5:28 PM
Steven D. Grierson
CLERK OF THE COURT

REP
NEVADA DEFENSE GROUP
Kelsey Bernstein, Esq.
Nevada Bar No. 13825
Fikisha Miller, Esq.
Nevada Bar No. 13539
714 S. Fourth Street
Las Vegas, Nevada 89101
Telephone: (702) 988-2600
Facsimile: (702) 988-9500
kbernstein@defendingnevada.com
Attorney for Defendant
Michael Lee

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada, Plaintiff vs. Michael Alan Lee, Defendant	Case No.: C-11-277650-1 Dept. No: IX **DEFENDANT'S REPLY IN SUPPORT OF MOTION TO DISQUALIFY DISTRICT ATTORNEY'S OFFICE AND FOR APPOINTMENT OF SPECIAL PROSECUTOR**

COMES NOW, Defendant Michael Alan Lee, by and through his attorney of record, DAMIAN SHEETS, ESQ. of the firm Nevada Defense Group, hereby submits this Defendant's Reply in Support of Motion to Disqualify District Attorney's Office and for Appointment of Special Prosecutor.

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MEMORANDUM OF POINTS AND AUTHORITIES

Defense respectfully requests the State's Opposition to its Motion to Disqualify be stricken or otherwise not considered for failure to comply with basic rules of criminal procedure. Specifically, Nevada Rule of Criminal Procedure 8, governing Pre-Trial Motions, subsection 6, states:

> Points and Authorities Supporting Motions: Any pretrial motion and opposition shall contain or be accompanied by points and authorities in support of each ground thereof and any affidavits or declarations relied upon. The absence of such points and authorities may be construed as an admission that the motion is not meritorious, as cause for its denial, or as a waiver of any ground not so supported.

The State improperly combined two separate motions, on two entirely separate issues, into one "combination" opposition (specifically, the State drafted a single combination response from separate filings for a Motion to Extend Briefing Schedule and the Motion to Disqualify the District Attorney's Office and Appoint Special Prosecutor). Following the State's copy and pasted recitation of the facts and procedural history (both of which contain several misstatements that are not relevant to the issue here), the entire substance of the State's opposition on the Motion to Disqualify is *one paragraph* with *no points and authorities whatsoever*.[1]

Motions filed by Defense Counsel are frequently denied if the motion contains no substantive points and authorities in support of its relief requested; Defense is asking that

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[1] Upon review of this filing, Counsel, out of courtesy, notified the State that these were two separate motions set to be heard on separate days (see **Exhibit 1**). The State did not respond to Counsel or provide any additional filings or legal support for its argument.

the State be held to the same standard here. This is an extremely important request that is not undertaken lightly, and which goes to the heart of Mr. Lee's right to a fair trial, and yet the State felt it warranted a single paragraph response with no law, no authorities, no argument, and no affidavits or declarations in support.

The only point raised in opposition to Defense's motion is in the form a single sentence: "[D]efense counsel has failed to establish any conflict of interest on behalf of the CCDA's Office, let alone the specific prosecutors assigned to the case." To the contrary, Defense asserted numerous authorities and grounds for why the disclosure of its confidential trial strategy of key witnesses in a first degree murder case impacts his constitutional right to a fair trial. The State's single conclusory sentence that it does not create a conflict, in the absence of any legal authority, is almost insulting given the caliber of the issue. If the State does not feel the issue is significant enough to warrant a proper opposition, Defense requests the Motion be granted in its entirety under the Rules of Criminal Procedure.

Given Defense provided a legal and factual basis for the conflict and how it would affect Mr. Lee's substantial rights, and the State failed to provide any legally supported argument for why there is no conflict, Mr. Lee respectfully requests his Motion to Disqualify be granted substantively and procedurally for non-opposition.

Alternatively, incorporating by reference the same law previously cited, Defense can establish additional bases for a conflict of interest with the State in this case, and the particular prosecutor involved. Defense asserts that the State has utterly failed to remain

objective in the prosecution of this case, potentially tainted the perspective of at least one key witness, and failed to maintain the appearance of propriety with that same witness.

A full rendition of the State's conduct requires a more thorough recitation of the relevant procedural history in this case. Due to the extensive procedural history of this case, Counsel is providing only the relevant portions for the purposes of demonstrating the currently known conflicts of interest.

I. The State's Demonstrated Lack of Objectivity Towards Mr. Lee

On post-conviction appeal to the Nevada Supreme Court, the Court held that Mr. Lee's original trial counsel was ineffective, such that the Court reversed Mr. Lee's conviction on *the insufficiency of the evidence*, claiming that the errors committed were so egregious *that they undermined the Supreme Court's confidence in the jury's verdict such that a reversal on the merits was warranted*. Following remand, Defense filed a series of bail motions to address that Mr. Lee was being held without bail in direct contradiction to the Nevada Supreme Court's ruling and where he'd previously had monetary bail prior to the first trial. Specifically, the Nevada Constitution only permits a no-bail detention in cases of first degree murder where the is proof evident and a great presumption of guilt.

In one of these bail arguments, *the State conceded on the record that the evidence is sufficient for* ***second degree*** *murder* (**Exhibit 2**, Court Minutes). Specifically, the minutes from the bail argument on January 16, 2020 reflect: "Mr. Giordani argued the Supreme Court reversed the case, however stated the evidence was sufficient for second degree murder." The Nevada Supreme Court, in reversing his conviction on the merits of the evidence,

explicitly ruled that the strength of the case does not rise to the level necessary for a no-bail detention, yet the State continued to request that Mr. Lee be held without bail in violation of his constitutional rights.

The State is also continuing to prosecute Mr. Lee for first degree murder and has openly stated on the record that there are no negotiations offered. If the State concedes on the record that the evidence supports *second* degree murder, yet continues to prosecute the defendant for first degree murder, there is a clear implication of vindictive prosecution.

II. The State Providing False Statements to Key Witnesses Regarding the Case

On October 8, 2021, both parties indicated they would be ready for trial. Notably, the discovery that had been disclosed at that time was a total of 3.28gb worth of data, exactly 1,711 individual files. On November 16, Defense sent via e-mail an additional discovery request for three items: metadata from the photographs taken to determine the date, time and location of the photos; the phones that were seized so Defense can conduct its own forensic examination; and medical records from hospital visits that were referred to in the police reports and pediatric records that were previously provided (**Exhibit 3**, e-mail dated November 16, 2021 [other discussion redacted]).

Of these three items, only two were for digital information (the request for the physical phones was ignored). The State wrote in its Opposition that in a footnote that no such records existed. Based on Defense's supplemental discovery request, the *only* additional digital discovery requested, therefore, was photograph metadata.

Specifying the items requested is significant to this Motion because Defense made only a *very limited* supplemental discovery request for a small amount of additional information. However, one week before trial, the State provided an additional flash drive to Defense that contained 91gb of additional discovery, or 8,774 files. To reiterate, for two years the State claimed that these 1,711 files were "everything" in its possession, but **one week before trial**, **the State provided a flash drive with additional discovery that was *7 times* the number the files previously disclosed**.

At the same time that the State dumped the documents, he informed the State's witness, Alayne Opie, that the Defense is "fabricating" discovery issues. This falsity appears to have the intended effect on the State's witness (see **Exhibit 4**).

III. The State has Failed to Maintain the Appearance of Propriety with State Witnesses

Most recently, Defense became aware of some disturbing interactions between the State and witness Alayne Opie. The situation became known to Defense when the State filed its Motion to Admit the Prior Testimony of Merridee Moshier, the grandmother of the child victim. The State based its Motion on representations from Alayne Opie, Esq., which was also contained in a sworn affidavit. Ms. Opie is a practicing attorney in the State of Nevada, and is the aunt of the child victim.

Ms. Opie represented to the State in text messages, who then represented to the Court, that her mother (Merridee Moshier) had dementia and substantial memory issues (**Exhibit 5**, Text Messages). Based on that representation alone, the State filed for an extraordinary remedy in a first degree murder trial – by requesting to admit Ms. Moshier's prior testimony

and therefore entirely prevent Mr. Lee from cross-examining her in the upcoming trial. Without substantiation and without a review of readily available public information, the State relied on Ms. Opie's assertion that Ms. Moshier is incompetent.

The State indicated that these issues began several years ago, which led to further investigation because Defense was able to determine after a cursory public search that Ms. Moshier is an actively licensed nurse. Since a nursing license requires certification every two years, there were legitimate questions as to whether Ms. Moshier was truly incompetent to testify. Further investigation into the medical documentation provided by the State revealed strong inconsistencies in the representations made by Ms. Opie in a sworn affidavit.

Additional inquiry into Ms. Opie's role in the case revealed that Ms. Opie had listed herself as the point of contact for Arica Foster, the child victim's mother and the alternate suspect in the crime; indeed, the crux of the case is whether Mr. Lee or Arica Foster killed the child. Physical evidence, as well as witness statements and medical documents, point to Arica Foster being the abuser – at least until several months *after* the child's death, when Arica Foster's family members began changing their stories about their interactions with Mr. Lee in a transparent attempt to deflect blame away from Ms. Foster.

Noting that Ms. Opie is listed as the representative for Ms. Foster, Ms. Opie also listed her address as her law firm in Las Vegas on the State's Notice of Witness list (**Exhibit 6**, State's Witness List). Additionally, Defense confirmed that **Alayne Opie used her attorney credentials to add herself to the e-service list on this case using her law firm's e-mail address** (**Exhibit 7**, Electronic Service List).

In summation, Ms. Opie – a witness in the case – provided her contact information as her law firm, used her attorney credentials to log in to Odyssey and add herself to e-service, is using her law firm's work e-mail on the e-service list, and used her work contact information for Arica Foster, another witness in the case (specifically, the State's Notice of Witness List for Arica Foster provides her address as

FOSTER, ARICA	C/O Alayne Opie, 10845 Griffith Peak Drive, #600, Las Vegas, NV 89135

Ms. Opie has also logged into several hearings on Mr. Lee's case and introduced herself as an attorney with her name and bar number (**Exhibit 8**). Lastly, Ms. Opie requested Defense Counsel serve her law firm with a subpoena for records related to this case. Given the totality of circumstances – namely, listing her law firm as the contact information for Arica Foster, using her attorney credentials to add herself to electronic service, using her law firm's contact information for service (including her work email), introducing herself as an attorney, and requiring her law firm's general counsel to be served with a criminal subpoena for this case – it objectively appears that Ms. Opie, a witness in the case, is serving in some legal capacity for other witnesses in the case.

Another text message makes it clear that the State is not objectively interacting with a witness in this case (see **Exhibit 9**). Given the clear opportunity to establish boundaries or maintain the appearance of propriety, the State failed to do so by not immediately rejecting the use of a witness's private property for personal use. The State's lack of impartiality and objectivity has tainted Ms. Opie's perspective and testimony in this case. Further, that the State is using Ms. Opie as a "point of contact" for other witnesses in this case means that a

bias or taint as to Ms. Opie is equally attributable to the other witnesses. It is completely improper for the State to allow one witness who, by all objective accounts, is acting as a legal representative for other witnesses in the case to act as both a legal representative and independent witness in the same case.

Defense will not guess as to the State's motivations behind the conduct it has displayed in this case, but its failure to maintain the appearance of propriety and objectivity toward a material witness in the case is evident. The conduct of the State has been increasingly egregious and has absolutely impacted Mr. Lee's ability to receive a fair and impartial trial and due process rights. Coupled with the State's improper conduct with a material witness in the case, which potentially has tainted multiple witnesses and created a conflict of interest by allowing a witness in a case to seemingly act with legal authority for other witnesses, the State should be disqualified.

These supplemental grounds establishing a conflict of interest are only included for the Court's consideration in the event the Court does not find the original basis sufficient for disqualification; it also serves to refute the State's single-sentence opposition that Defense has not established any conflict of interest in this case.

DATED this 24 day of February, 2022.

By:
NEVADA DEFENSE GROUP

By: /s/ Kelsey Bernstein
Kelsey Bernstein, Esq.
Nevada Bar No. 13825
714 S. Fourth Street
Las Vegas, Nevada 89101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24 day of February, 2022 I served a true and correct copy of the foregoing REPLY, upon each of the parties by electronic service:

Clark County District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155
motions@clarkcountyda.com
pdmotions@clarkcountyda.com

/s/ Kelsey Bernstein
An Employee of Nevada Defense Group

EXHIBIT 1

Gmail

Fikisha Miller <fmiller@defendingnevada.com>

Michael Lee, C-11-277650-1, Opposition

1 message

Matthew Rogers <matt@defendingnevada.com> Tue, Feb 15, 2022 at 3:05 PM
To: John.giordani@clarkcountyda.com
Cc: Fikisha Miller <fmiller@defendingnevada.com>

Mr. Giordani,

We are in receipt of your Opposition to the two motions we filed. The attorney did want to note that our two motions, *Motion to Continue Briefing Schedule* and *Motion to Disqualify District Attorney's Office and for Appointment of Special Prosecutor* were filed separately, and have been set to be heard on two different dates. The Motion to Continue being set for tomorrow, and the Motion for Disqualification set on February 28th.

--
Matt Rogers
Criminal Paralegal
Nevada Defense Group
714 S. 4th Street
Las Vegas, Nevada 89101
Phone 702-988-2600
Fax 702-988-9500

EXHIBIT 2

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **January 16, 2020**

C-11-277650-1 State of Nevada
vs
Michael Lee

January 16, 2020 **9:00 AM** **Motion to Reduce** **Defendant's Motion to Reinstate and/or Reduce Bail**

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Kory Schlitz

RECORDER: Jill Jacoby

PARTIES PRESENT:

Giordani, John	Attorney for State
Lee, Michael A	Defendant
Sheets, Damian	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Defendant not present and in custody in the Nevada Department of Corrections. Upon Court's inquiry, Mr. Sheets stated they do not have a record of a Pre-Trial Risk Assessment being completed, adding the Defendant is not present as he was transported to Department 23, and then sent back to the prison, and they informed him it would be another two weeks for him to be present again. Mr. Sheets pointed out even though the State wishes to go forward today; he is requesting the Defendant be present for arguments. COURT STATED the case needs to be reassigned out to a Murder department, indicating the case came from Department 23, adding the Court will rule on the bail motion today, and parties can revisit the issue in the new department. Mr. Sheets stated he would submit on the briefing, stating the Supreme Court did find there was ineffective assistance of counsel. Mr. Sheets argued the prior Court thought bail at $20,000.00 was appropriate and requested this Court set the bail amount the same, arguing the Defendant is not a flight risk, has ties to the community, and his family resides in North Las Vegas, adding the Defendant can also be placed on High Level Electronic Monitoring. COURT STATED the bail was set in Justice Court at $100,000.00 Cash Only. Mr. Sheets stated they read $20,000.00 when reviewing the documents from the appeal.

Mr. Giordani stated the bail never changed in District Court, arguing the presumption of innocence does reattach, however the Defendant didn't just murder the baby, he went on a violent robbery spree. Mr. Giordani argued the Supreme Court reversed the case, however stated the evidence was sufficient for second degree murder. Mr. Giordani further argued by the time the Defendant gets to trial in this case, the Defendant is a 22 time felon, adding this was not a case where neglect caused the death. Mr. Giordani requested the Defendant be held without bail, and INVOKED his right to a speedy trial. Upon Court's inquiry, Mr. Sheets stated they were retained for the Post-Conviction and did not complete the original trial, and he will not be ready for trial within 60 days. COURT STATED ITS FINDINGS and ORDERED, Defendant will have a NO BAIL HOLD; Status check set for January 22, 2020 is VACATED; and DIRECTED the State to prepare an Order to Transport Defendant; adding the Defense cab re-litigate the bail motion at the next status check. Pursuant to Administrative Order 17-05 this COURT ORDERS the case REASSIGNED to Department 21; status check SET.

NDC

1/30/2020 9:30 A.M. STATUS CHECK: TRIAL SETTING (DEPT 21)

EXHIBIT 3

Gmail

Kelsey Bernstein <kbernstein@defendingnevada.com>

Michael Lee

14 messages

Damian Sheets <dsheets@defendingnevada.com> Tue, Nov 16, 2021 at 6:23 AM
To: John Giordani <John.Giordani@clarkcountyda.com>, Kelsey Bernstein <kbernstein@defendingnevada.com>

John,
I have gone through a couple of things and have some specific requests. Please let me know if you can or are willing to assist in procuring these items.

1) Metadata - We would like the metadata from all photographs taken. This provides the date, time, and location that each were taken. Please let me know when this can be obtained. It is imperative that we are provided this information.

2) Phone - It is my understanding that the police department impounded and pulled information from cell phones and/or digital devices. We would like this these devices provided for forensic examination.

3) Medical records - It appears that the victim in this case was taken to hospitals a couple of times during the time frames reflected in both the police report and the pediatric records provided. Are you able to provide those medical records we are seeking (From the hospital visits)? If not, are you able to request them? If you aren't willing to do that, will you sign a stipulation to have an order issued for their production and provide us the name of the hospital they were generated at?

[redacted]

Please let me know when you would be available for a call. The sooner, the better please.

Damian R. Sheets Esq.
Founding Partner
Nevada Defense Group
714 South Fourth Street
Las Vegas, Nevada 89101
www.nevadadefensegroup.com
(702) 988-2600 Phone
(702) 988-9500 Fax
(725) 222-9003 Text Only

EXHIBIT 4

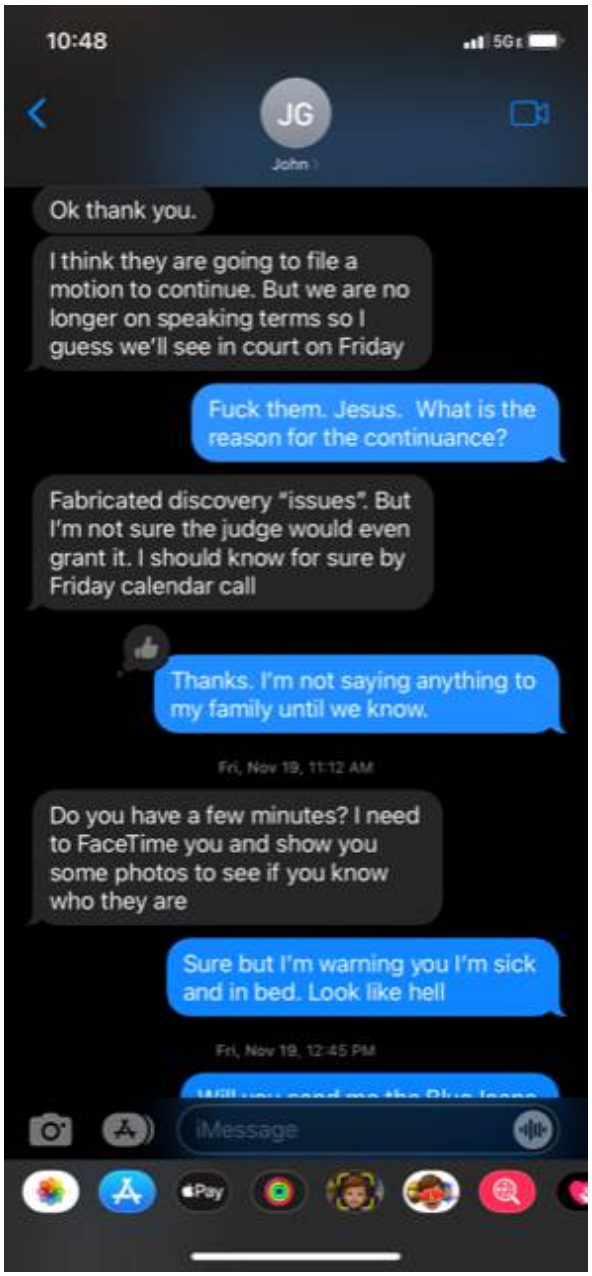
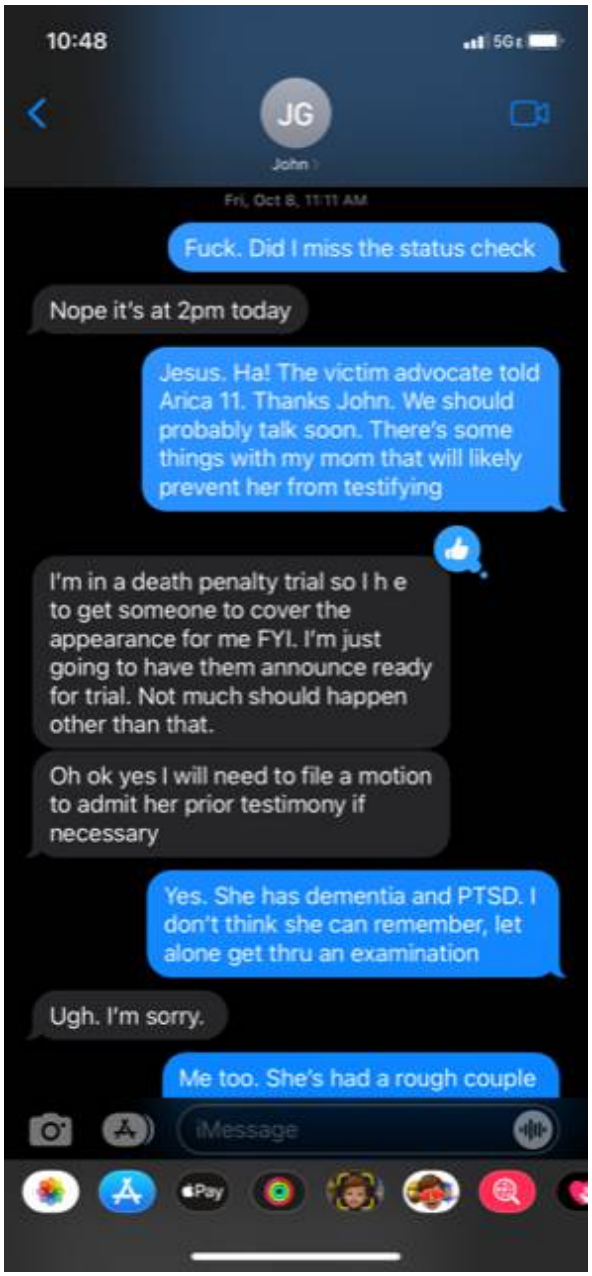

10:48
5G
JG
John
Ok thank you.
I think they are going to file a motion to continue. But we are no longer on speaking terms so I guess we'll see in court on Friday
Fuck them. Jesus. What is the reason for the continuance?
Fabricated discovery "issues". But I'm not sure the judge would even grant it. I should know for sure by Friday calendar call
Thanks. I'm not saying anything to my family until we know.
Fri, Nov 19, 11:12 AM
Do you have a few minutes? I need to FaceTime you and show you some photos to see if you know who they are
Sure but I'm warning you I'm sick and in bed. Look like hell
Fri, Nov 19, 12:45 PM
iMessage

EXHIBIT 5


10:48
JG
John
Fri, Oct 8, 11:11 AM
Fuck. Did I miss the status check
Nope it's at 2pm today
Jesus. Ha! The victim advocate told Arica 11. Thanks John. We should probably talk soon. There's some things with my mom that will likely prevent her from testifying
I'm in a death penalty trial so I h e to get someone to cover the appearance for me FYI. I'm just going to have them announce ready for trial. Not much should happen other than that.
Oh ok yes I will need to file a motion to admit her prior testimony if necessary
Yes. She has dementia and PTSD. I don't think she can remember, let alone get thru an examination
Ugh. I'm sorry.
Me too. She's had a rough couple
iMessage

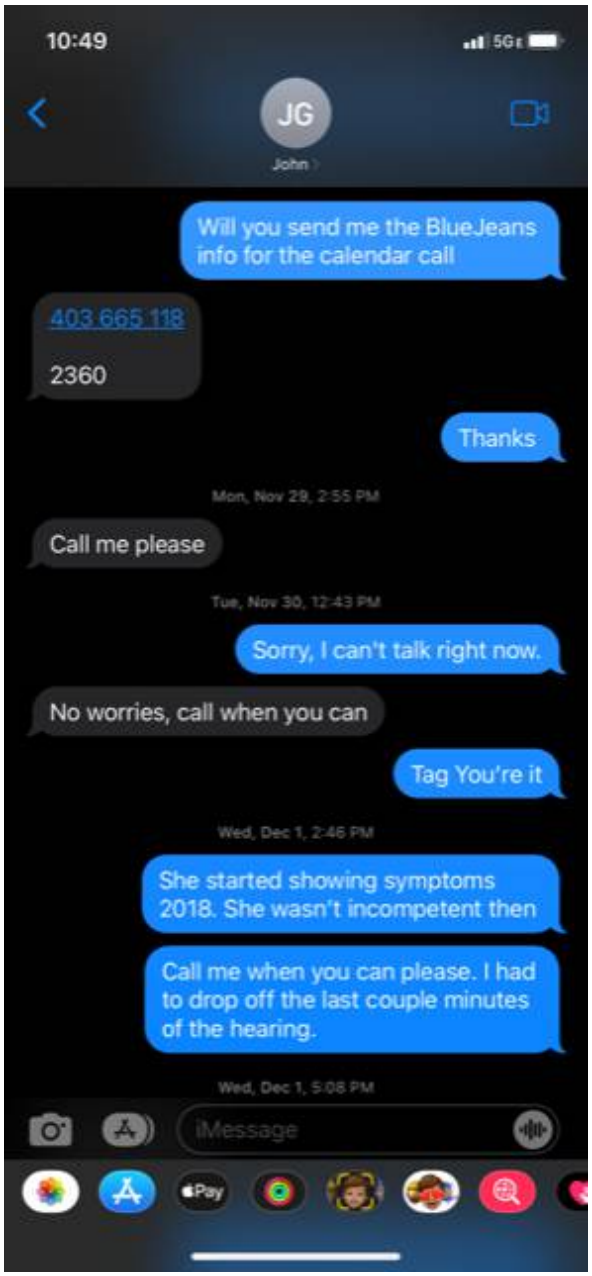

10:49
5G
JG
John
Will you send me the BlueJeans info for the calendar call
403 665 118
2360
Thanks
Mon, Nov 29, 2:55 PM
Call me please
Tue, Nov 30, 12:43 PM
Sorry, I can't talk right now.
No worries, call when you can
Tag You're it
Wed, Dec 1, 2:46 PM
She started showing symptoms 2018. She wasn't incompetent then
Call me when you can please. I had to drop off the last couple minutes of the hearing.
Wed, Dec 1, 5:08 PM
iMessage

EXHIBIT 6

Electronically Filed
2/14/2022 1:34 PM
Steven D. Grierson
CLERK OF THE COURT

NWEW
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JOHN GIORDANI
Chief Deputy District Attorney
Nevada Bar #012381
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- MICHAEL ALAN LEE, #1699107 Defendant.	CASE NO: C-11-277650-1 DEPT NO: IX

STATE'S SUPERSEDING NOTICE OF WITNESSES AND/OR EXPERT WITNESSES [NRS 174.234]

TO: MICHAEL ALAN LEE, Defendant; and

TO: DAMIAN SHEETS, 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:

NAME	ADDRESS
ACUNA, RON OR DESIGNEE	INVESTIGATOR C.C. DISTRICT ATTORNEY
ASCHENBRENNER, DUSTIN	2600 S. Montana, Butte, MT 59701
BECKWITH, KAMI	CITY OF HENDERSON
BENJAMIN, FELICIA	HPD #720
BURTON, KATHLEEN	Unknown
BUTLER, AMANDA	Unknown

CARTER, CANDICE	NV DEPT PAROLE & PROBATION
COLLINS, GERARD	HPD #324
CUSTODIAN OF RECORDS OR DESIGNEE	ABC Pediatrics 10950 S. Eastern Ave., Henderson, NV
CUSTODIAN OF RECORDS OR DESIGNEE	Clark County Detention Center, 330 S. Casino Center Blvd., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	Clark County Detention Center, Communications 330 S. Casino Center Blvd., Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	HENDERSON POLICE DEPT. COMMUNICATION
CUSTODIAN OF RECORDS OR DESIGNEE	HENDERSON POLICE DEPT RECORDS
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Communications, Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	LVMPD Records Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	Nevada Department of Corrections (NDOC) Las Vegas, NV
CUSTODIAN OF RECORDS OR DESIGNEE	Nevada Department of Parole and Probation (P&P) Las Vegas, NV
DEMORGANDIE, SHAWN	Penalty Phase Witness
FICO, DANNY	Unknown
FOSTER, ARICA	C/O Alayne Opie, 10845 Griffith Peak Dr., #600, Las Vegas, NV 89135
GAVIN, DR. LISA	C.C. CORONER'S OFFICE
GREEN, CHARITY	HPD #1419
HENDERSON FIRE DEPT.	RESCUE #98, 240 Water St., Henderson, NV
HENSON, REBECCA	Penalty Phase Witness

EXHIBIT 7

nevada.tylerhost.net/OfsWeb/FileAndServeModule/Envelope

CAS | MyCase | Calendar | Mail | Dropbox | QuickBooks | LVDC ATTY Corner | LVJC | NLVJC, HJC, LJC, MJ... | LVMC | LVMC Disco | NLVMC | Other bookmarks

ODYSSEY eFileNV

Go To Assist | Show Me How To...

Service Contacts: Case # C-11-277650-1 - State of NevadavsMichael Lee (Silva, Cristina D.)

Name	Email	
Party: State of Nevada - Plaintiff		Actions
Law Clerk	dept10lc@clarkcountycourts.us	Actions
John Giordani	John.giordani@clarkcountyda.com	
Adam Laxalt, Esq.	dwilson@ag.nv.gov	
Fikisha Miller	fmiller@defendingnevada.com	Actions
State of Nevada	motions@clarkcountyda.com	Actions
State of Nevada	pdmotions@clarkcountyda.com	Actions
Party: Michael Alan Lee - Defendant		Actions
Tanya Bain	tanya@potterlawoffices.com	
Stacie Comerio	stacie@potterlawoffices.com	
Cal Potter	cpotter@potterlawoffices.com	
Damian R. Sheets	dsheets@defendingnevada.com	Actions
Other Service Contacts		Actions
Carrie Connolly .	connolcm@ClarkCountyNV.gov	
Clark County District Attorney .	pdmotions@clarkcountyda.com	
Eileen Davis .	Eileen.Davis@clarkcountyda.com	
Jennifer Garcia .	Jennifer.Garcia@clarkcountyda.com	
Nadia von Magdenko .	nadia@injurylawlv.com	
PD Motions .	PDMotions@clarkcountyda.com	
Law Clerk	dept09lc@clarkcountycourts.us	Actions
Alayne M. Opie	opiea@gtlaw.com	

1 | 10 items per page | 1 - 3 of 3 items

Service Contact Details for the Party: None

First Name
Alayne

Middle Name
M.

Last Name
Opie

Email
opiea@gtlaw.com

Administrative Copy

Firm Name
Greenberg Traurig, LLP

Address
3773 Howard Hughes Parkway, Suite 400N 702-792-3773 Las Vegas, 89169

Country
United States of America

Phone Number

Created By	
Firm Name:	Greenberg Traurig, LLP
Phone:	702-792-3773
Address:	10845 Griffith Peak Drive, Suite 600 Las Vegas, Nevada 89135

Help

EXHIBIT 8

4:29 5G

Chat(28)

Brian Rutledge

Brian Rutledge for Kevin White

leah

Leah Beverly on Torres/Herrera

Josh Tomsheck

Josh Tomsheck for Eugene Ross

Alayne Opie

Alayne Opie (12623) from Greenberg Traurig observing Mike Lee

Dayvid Figler, Esq. #4264

Dayvid Figler, also for Eugene Ross

Lisa Luzaich

Lisa Luzaich for the State on Seydlitz

Alexis E. Minichini, Esq.(#15438)

Observing

Christopher Hamner

Chris Hamner for the State on Okelberry

Damian Sheets on behalf of Michael Lee

Gary Modafferi

Gary Modafferi 12450 for Robert Rogersky

Everyone Private Chat

Type a message Send

2:35 5G

Damian Sheets on behalf of Michael Lee

odafferi

Gary Modafferi 12450 for Robert Rogersky

Everyone Private Chat

Type a message Send

Add to album | Move to Archive | Delete from device | Order photo | Mov Loc Fol

Fri, Nov 19, 2021 • 4:29 PM

Add description...

Search inside this photo

Select text in image

Google Lens

Copy text | Search | Listen | T

Details

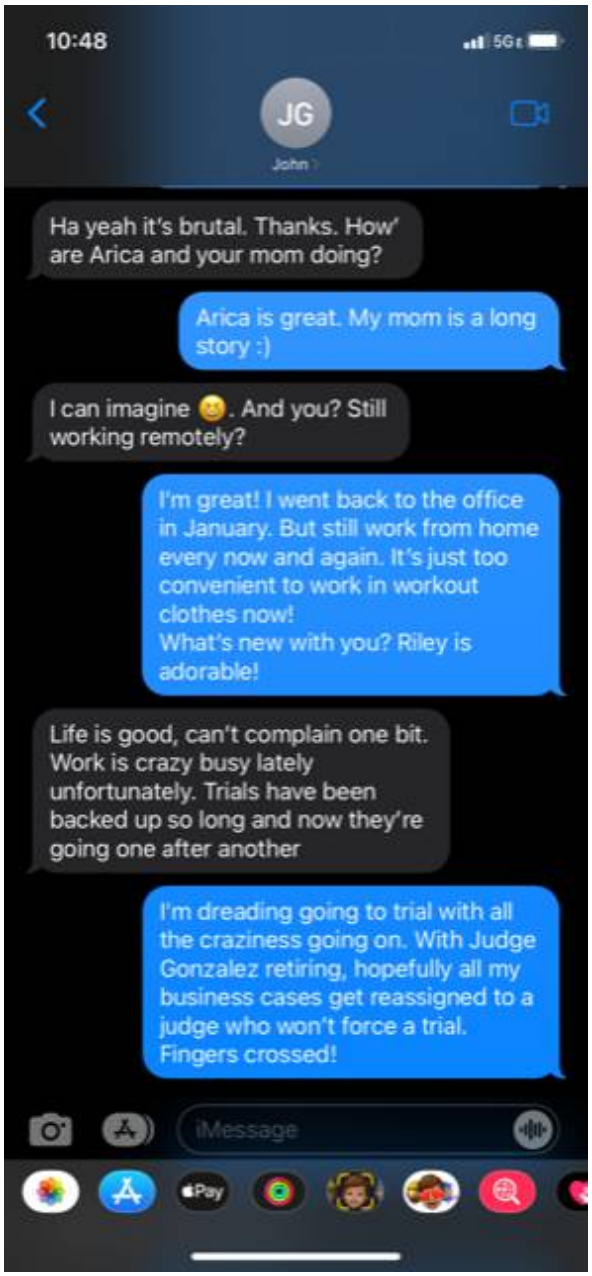
/storage/emulated/0/DCIM/Screenshots/Screenshot_20211119-162901_BlueJeans.jpg

2.6MP 1080 x 2400 486 kB

Add a location

EXHIBIT 9

10:47
5G
JG
John
asking to move this one a month or two since my other case is older and i don't want to wait until the last minute and lose our place on the priority list.
Kk. She knows about it. Sure two more months isn't going to make much of a difference for her
Wed, Apr 28, 12:12 PM
Ok our new date is 12/6/21. Sorry about that.
No problem! I totally get it
Told her. She's good. Works out better in December
Ok good
Wed, Aug 25, 8:09 AM
It didn't dawn on me that you drop off at that school and deal with that fucked up car line. #[redacted]s the gate code to Savona. We are [redacted] [redacted]f you ever want to park and walk your kid in
iMessage


10:48
5G
JG
John
Ha yeah it's brutal. Thanks. How' are Arica and your mom doing?
Arica is great. My mom is a long story :)
I can imagine 😉. And you? Still working remotely?
I'm great! I went back to the office in January. But still work from home every now and again. It's just too convenient to work in workout clothes now!
What's new with you? Riley is adorable!
Life is good, can't complain one bit. Work is crazy busy lately unfortunately. Trials have been backed up so long and now they're going one after another
I'm dreading going to trial with all the craziness going on. With Judge Gonzalez retiring, hopefully all my business cases get reassigned to a judge who won't force a trial. Fingers crossed!
iMessage

Electronically Filed
2/24/2022 2:22 PM
Steven D. Grierson
CLERK OF THE COURT

OPP
NEVADA DEFENSE GROUP
Damian Sheets, Esq.
Nevada Bar No. 10755
Kelsey Bernstein, Esq.
Nevada Bar No. 13825
714 S. Fourth Street
Las Vegas, Nevada 89101
Telephone: (702) 988-2600
Facsimile: (702) 988-9500
dsheets@defendingnevada.com
Attorney for Defendant
Michael Lee

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada, Plaintiff vs. Michael Alan Lee, Defendant	Case No.: C-11-277650-1 Dept. No: IX **DEFENDANT'S OPPOSITION TO STATE'S MOTION TO ADMIT PRIOR SWORN TESTIMONY OF MERRIDEE MOSHIER** **Hearing Date: February 25, 2022**

COMES NOW, Defendant Michael Alan Lee, by and through his attorney of record, DAMIAN SHEETS, ESQ. of the firm Nevada Defense Group, hereby submits this Defendant's Opposition to State's Motion to Admit Prior Sworn Testimony of Merridee Moshier.

///

///

///

MEMORANDUM OF POINTS AND AUTHORITIES

On or about November 17, 2021, the State filed a Motion to Admit Prior Sworn Testimony or Merridee Moshier, a nurse and grandmother of the deceased victim in this case. The State's Motion relied on representations made by Alayne Opie, Esq., who is Ms. Moshier's daughter and the biological aunt of the deceased victim, that Ms. Moshier was unavailable and suffering from substantial mental health issues which would prevent her from testifying. Based on this unavailability, the State argued that it should be permitted to use Ms. Moshier's sworn testimony from the prior trial in this case.

Defense respectfully opposes the State's request to admit the prior sworn testimony of Merridee Moshier because there was no opportunity to effectively cross-examine her and she is not legally "unavailable" for purposes of *Crawford* and its progeny. "[T]he Sixth Amendment's right of an accused to confront the witnesses against him is likewise a fundamental right and is made obligatory on the States by the Fourteenth Amendment. It cannot seriously be doubted at this late date that the right of cross-examination is included in the right of an accused in a criminal case to confront the witnesses against him. And probably no one, certainly no one experienced in the trial of lawsuits, would deny the value of cross-examination in exposing falsehood and bringing out the truth in the trial of a criminal case." *Pointer v. Texas*, 380 U.S. 400, 403-04, 85 S. Ct. 1065, 1068 (1965) (citations omitted).

The State cites the historically relevant test for determining when the prior sworn testimony of a witness may be admitted:

> [F]irst, that the defendant was represented by counsel at the preliminary hearing; second, that counsel cross-examined the witness; third, that the witness is shown to be actually unavailable at the time of trial. *Drummond v. State*, 86 Nev. 4, 7, 462 P.2d 1012, 1014 (1970)

The only element of this test that can be satisfied is the first; Mr. Lee was admittedly represented by counsel during the prior proceedings, but the second two prongs of the test cannot be satisfied due to the current status of the law.

The State argues that under *Crawford*, the law only requires a "full and fair opportunity" to cross examine the witness. What the State fails to include, however, is law that explicitly requires not just the opportunity to cross examine, but the opportunity to *effectively* cross examine. In this case, trial counsel was declared ineffective by the Nevada Supreme Court, which is why the original conviction was vacated and reversed. Because Mr. Lee has never had the opportunity to cross-examine Ms. Moshier with effective counsel, the second prong of the admission test is not met.

In *Delaware v. Fensterer*, 474 U.S. 15, 19-20, 106 S. Ct. 292, 294 (1985), the Appellant challenged whether cross-examine described as "futile" could nonetheless be admitted in subsequent proceedings; the Court held that ordinarily, there will not be a separate inquiry into the effectiveness of prior cross-examination as an ancillary analysis when determining whether prior testimony can be admitted, so long as there was an opportunity at effective cross-examination. "Generally speaking, the Confrontation Clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Delaware v. Fensterer*, 474 U.S. 15, 19-20, 106 S. Ct. 292, 294 (1985) (citing *Ohio v. Roberts*, 448 U.S. 56 (1980) ("even

where the only opportunity the defense has to cross-examine the declarant is at a preliminary hearing, except in 'extraordinary cases' where defense counsel provided ineffective representation at the earlier proceeding, 'no inquiry into 'effectiveness' is required'").

However, both *Fensterer* and subsequent cases carve an exception for instances where there has already been a finding of ineffective counsel. Ordinarily, there is no basis to independently examine the effectiveness of prior cross-examination within the context of a request to admit prior testimony, but an existing judicial finding of ineffectiveness can in fact negate any prior opportunity for effective cross-examination. See also, *Kentucky v. Stincer*, 482 U.S. 730, 739 (1987); *United States v. Owens*, 484 U.S. 554, 559, 108 S. Ct. 838, 842 (1988) (noting the requirement for effective cross-examination).

The State's request to admit Ms. Moshier's testimony ignores the significant fact that counsel was judicially declared ineffective by the Nevada Supreme Court. As a result, this fits within the exception carved out in *Fensterer* and *Roberts* that a judicial finding of ineffective counsel can be grounds to deny admission of prior testimony based on the Defendant's right to *effective* cross-examination. Mr. Lee in this case does not need to argue that prior counsel's representation during the original trial was ineffective, because the Nevada Supreme Court has already made that finding. In the absence of effective counsel, there can be no effective cross-examination, and therefore admission of the prior testimony would violate Mr. Lee's confrontation rights under the Sixth and Fourteenth Amendments.

Lastly, the third prong of the test is also not met regarding Ms. Moshier's unavailability. From a legal perspective, "unavailability" is **very strictly** construed given the importance and fundamental nature of the right to cross-examination.

This sentiment is clearly reflected in state and federal case law. As noted by the United States Supreme Court in the landmark *Crawford* case, "Courts, meanwhile, developed relatively strict rules of unavailability, admitting examinations only if the witness was demonstrably unable to testify in person." *Crawford v. Washington*, 541 U.S. 36, 45, 124 S. Ct. 1354, 1360 (2004). This is likewise reflected in Nevada law. In *Power v. State*, 102 Nev. 381, 383, 724 P.2d 211, 212 (1986), the Court held:

> The basic litmus of Sixth Amendment unavailability is established: "[A] witness is not 'unavailable' for purposes of ... the exception to the confrontation requirement unless the prosecutorial authorities have made a good-faith effort to obtain his presence at trial." [Citation omitted.] ... [I]f there is a possibility, albeit remote, that affirmative measures might produce the declarant, the obligation of good faith may demand their effectuation. "The lengths to which the prosecution must go to produce a witness ... is a question of reasonableness."
>
> [Citation omitted.] The ultimate question is whether the witness is unavailable despite good-faith efforts undertaken prior to trial to locate and present that witness. As with other evidentiary proponents, the prosecution bears the burden of establishing this predicate. *Id.*

The State argues that Ms. Moshier is unavailable because she is diagnosed with Lewy Body Dementia and suffering from extreme symptoms. In writing, the State properly acknowledges that this representation is made "upon information and belief"; the State has further clarified in prior hearings on this issue, that the information regarding Ms. Moshier's

diagnosis is based on representations made to the State by Alayne Opie, a licensed attorney in Nevada.

On November 8, 2021, Ms. Opie represented to the State (which subsequently formed the basis of the Motion) that her mother, Ms. Moshier, was diagnosed with dementia, and she could "not remember let alone get through an examination". Ms. Opie made these representations to the State via text message, and also on the record in these proceedings by way of a sworn affidavit. Specifically, Ms. Opie provided a sworn affidavit dated November 30, wherein she represented that Ms. Moshier was diagnosed with Lewy Body Dementia, and her symptoms were so severe that she is unable to work or drive (**Exhibit 1**). The State also provided an evaluation to Counsel to support its belief that Ms. Moshier is "unavailable to testify" on the day the instant motion was set to be heard.[1]

Upon a detailed review of the medical evaluation provided, it is apparent that the representations made in Ms. Opie's affidavit were clearly contradicted by the medical professionals responsible for her care. Two sets of records were provided to Defense: the first being a neuropsychological evaluation from December 2020, and the second being a patient health summary generated on October 7, 2021 (one month before the Motion). Based on the most recent records, Defense had serious concerns about the representations made by Ms. Opie regarding the status and severity of Ms. Moshier's mental state as it pertains to her legal ability to testify because the records do not confirm those representations.

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[1] These records contain medically sensitive information. They are already in the possession of the State, and will be provided to the Court separately prior to hearing, and should be filed under seal at the time of hearing.

In the 2020 evaluation, the following is from the "Mental Status/Behavior Observations" noted:

> She presented as alert, tired, and fatigued – yet fully-oriented, appropriately responsive, interactive, and cooperative. Her expressive speech was spontaneous, productive, fluent, and non-dysarthric with normal volume and pitch. She had some mild word finding, similar to last year. Her receptive language abilities were functional, as evidenced by her appropriate responses. Her attentional capacity waxed and waned across the day, especially as she became visibly more tired. She did not present as fidgety or hyperactive – but somewhat rather hypoactive. She was explicitly asked about and denied any suicidal or homicidal ideation, plan, or intent.
>
> **Biographical memory was functional, as evidenced by her capacity to provide historical information regarding past life events, as well as prior medical problems and purpose for the current assessment**. Her thought content was linear, goal-oriented, and without evidence for preservation, confabulation, or delusional content. She did not endorse abnormal perceptual phenomena or unusual ideation – outside of what was mentioned above. Insight and judgment were unremarkable.

At the time of this evaluation, Ms. Moshier also indicated that she had accepted a job as a travelling nurse, was actively working as a nurse, dispensing medication to patients, and driving. Though the evaluator expressed concern with the possible onset of an unspecified neurological disorder, **the evaluator even made a particular note that her concern may be "premature".** In the 2020 evaluation, Ms. Moshier was not diagnosed with any form of dementia and further testing was recommended.

Given the contradiction between the State's asserted belief in Ms. Moshier's incompetence as solely supported by Ms. Opie's affidavit and the clear medical evidence provided, Counsel sought additional discovery regarding Ms. Moshier's physical and mental health. Ms. Moshier, as of the filing of this Opposition, is still licensed as a registered

practicing nurse in Nevada, California, and Washington. Nurses practicing in Nevada, like attorneys, are subject to state reporting requirements and must certify their fitness for duty. Per her self-executed declaration made on August 7, 2020, she had no "condition or impairment including, but not limited to, substance abuse, alcohol abuse, or a mental, emotional or nervous disorder or condition) which in anyway currently affects or limits your ability to practice safely and in a competent and professional manner."[2]

This comports with the subsequent medical records provided from October 2021, almost 11 months later. For these records, Ms. Moshier underwent testing for a cognitive complaint listed as a "dopamine transport evaluation in a patient with a parkinsonian syndrome." The testing, however, revealed "normal physiologic dopamine transporters" and the conclusion was "She does not have features of parkinsonism on exam, denies orthostatic intolerance or hyposmia, and does not have dream enactment behaviors by history." A test was recommended to evaluate for Lewy Body Dementia at Ms. Moshier's request – again, she was *not* diagnosed with Lewy Body Dementia.

More importantly, one month before the State filed a Motion to declare Ms. Moshier "incompetent," the medical records report that "[s]he is currently working at a house for developmentally disabled people – sometimes doing tech work, sometimes nursing work where she is in charge of dispensing the right medications to the right person." It also specifically noted that "She is still driving." Both of these directly contradict the

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[2] These records also contain personal information. They will be provided to the State and Court separately prior to hearing, and should be filed under seal at the time of hearing.

representations made by Ms. Opie to the State and the Court, that Ms. Moshier was not working and not driving as a result of her "diagnosis."

In summation, Ms. Moshier is not diagnosed with Lewy Body Dementia – at least, not one month before the State filed its Motion. Ms. Moshier's historical memory was found to be perfectly fine in December 2020, and no further findings or diagnoses were found in October 2021. Per Ms. Moshier's medical records, Ms. Moshier was still working and still driving as of October 2021 – again, only one month prior to the State's filing.

Accordingly, Defense maintains she is not unavailable because there is no basis to declare her incompetent. If Ms. Moshier has no serious symptoms, no diagnosis, is still regularly driving and *is still acting as a working nurse and dispensing medication*, she cannot simultaneously be so mentally infirm that she is physically and mentally unable to testify. Correspondingly, the apparent conflict between Ms. Moshier's statements to her doctors and Ms. Opie's representations to the State of Nevada regarding her mental health also support the denial of the State's motion.

In summation, the State's offered basis to prohibit cross-examination of Ms. Moshier does not comport with the "strict rules of unavailability" necessary to overcome Mr. Lee's right to confront his accuser:

> First, in conformance with the Framers' preference for face-to-face accusation, the Sixth Amendment establishes a rule of necessity. In the usual case (including cases where prior cross-examination has occurred), the prosecution must either produce, or demonstrate the unavailability of, the declarant whose statement it wishes to use against the defendant.
>
> The law does not require the doing of a futile act. Thus, if no possibility of procuring the witness exists (as, for example, the witness' intervening

> death), "good faith" demands nothing of the prosecution. But if there is a possibility, albeit remote, that affirmative measures might produce the declarant, the obligation of good faith *may* demand their effectuation. *Ohio v. Roberts*, 448 U.S. 56, 65, 100 S. Ct. 2531, 2538 (1980), abrogated in part by *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004) (citing See *Mancusi v. Stubbs*, 408 U.S. 204, 92 S.Ct. 2308 (1972); *Barber v. Page*, 390 U.S. 719, 88 S.Ct. 1318 (1968); *Motes v. United States*, 178 U.S. 458, 20 S.Ct. 993 (1900)).

For these reasons, Defense respectfully argues there is no basis to admit her prior sworn testimony, and asks the State's Motion be denied so Ms. Moshier can testify in person and be subject to effective cross-examination.

DATED this 23 day of February, 2022.

By:
NEVADA DEFENSE GROUP

By: /s/ Kelsey Bernstein
Kelsey Bernstein, Esq.
Nevada Bar No. 13825
714 S. Fourth Street
Las Vegas, Nevada 89101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23 day of February, 2022 I served a true and correct copy of the foregoing OPPOSITION, upon each of the parties by electronic service through Wiznet, the Eighth Judicial District Court's e-filing/e-service system, pursuant to N.E.F.C.R.9; and by depositing a copy of the same in a sealed envelope in the United States mail, Postage Pre-Paid, addressed as follows:

Clark County District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155
motions@clarkcountyda.com
pdmotions@clarkcountyda.com

/s/ Kelsey Bernstein
An Employee of Nevada Defense Group

EXHIBIT 1

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA Plaintiff, v. MICHAEL ALAN LEE #1699107 Defendant.	Case No. C-11-277650-1 Dept. IX **DECLARATION OF ALAYNE M. OPIE IN SUPPORT OF PLAINTIFF'S MOTION TO ADMIT PRIOR SWORN TESTIMONY OF MERRIDEE MOSHIER**

I, Alayne M. Opie, declare as follows:

1. I am a Nevada resident, of sound mind and over the age of 18 years. Moreover, I am the deceased victim, Brodie Aschenbrenner's, aunt, and the victim's grandmother, Merridee Moshier's, daughter.

2. This Declaration is submitted in support of Plaintiff's Motion to Admit Prior Sworn Testimony of Merridee Moshier.

3. Since testifying at trial in this matter in 2014, upon information and belief, my mom has regrettably been diagnosed with dementia, consistent with Lewy Body Dementia. Her symptoms, described below, began in approximately 2018.

4. My mom suffers from auditory and visual hallucinations on a regular basis and often hallucinates Brodie back to life; creates false and non-existent memories; has a severely diminished memory – forgetting, not only minor details that most people take for granted (*i.e.* how to dial a phone), but also long-standing and significant information (*i.e.* forgetting who her sister is when standing right in front of her); often loses the ability to find words; experiences what I can only describe as time lapse, where she believes we are living in the 90's and thinks her great-granddaughter is her granddaughter; among other physical and mental impairments.

5. My mother regularly has episodes where she will blackout, lose all sense of awareness and is unresponsive to verbal or physical cues. Upon information and belief, her medical team recently diagnosed her as having a seizure disorder of an unknown origin.

6. Unfortunately, this disease is progressing at a rapid rate, recently rendering her unable to work or drive.

7. Presently, my dad, Brad Moshier, is my mom's sole caretaker. However, he has expressed great concern with my mom's decline and her safety, and is currently working toward moving them to Las Vegas to be closer to the family who will also help care for her.

8. I, Alayne M. Opie, declare under the penalty of perjury, pursuant to NRS 53.045, that the foregoing statements are true and correct.

Executed this 30th date of November, 2021.

Alayne Opie

C-11-277650-1

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **March 01, 2022**

C-11-277650-1 State of Nevada
vs
Michael Lee

March 01, 2022 **8:00 AM** **Motion to Disqualify Attorney**

HEARD BY: Barker, David **COURTROOM:** Chambers

COURT CLERK:
Kory Schlitz

PARTIES PRESENT: None – Minute Order Issued from Chambers

JOURNAL ENTRIES

- Pending before the Court is Defendant's Motion to Disqualify the District Attorney's Office and Appointment of a Special Prosecutor. This matter came before the Court on the February 25, 2022 oral calendar. Having reviewed the pleadings, including the Defendant's Motion to Disqualify the District Attorney s Office and Appointment of a Special Prosecutor; Opposition, Reply; as well as argument of counsel; the Motion is hereby DENIED. Factually, Defense counsel filed two separate Ex-Parte Applications for Records requesting that the effort proceed under seal. The Ex-Parte Orders were signed and processed electronically, but unsealed for approximately one hour prior to the Court becoming aware of the error, and subsequently sealing the documents. When the Ex-Parte Orders were processed, they were also served to all parties, including the District Attorney. Defense counsel acknowledges that the error was through no fault of theirs or the District Attorney, but nonetheless seeks to disqualify the District Attorney arguing that their Defense strategy has been disclosed, and that the individual Prosecutor assigned to the case is not objective or fair. The Court looks to State v. Eighth Judicial Dist. Ct. (Zogheib), 130 Nev. 158 (2014) for direction and notes the test is whether the conflict(s) would render it unlikely that the Defendant would receive a fair trial unless the office is disqualified from prosecuting the case. The Court finds that it is not likely that the Defendant's trial will be unfair. The case is approximately eleven (11) years old and set for retrial; the evidence can be weighed a fair result on the merits can be found without this extreme remedy. Therefore, Defendant's Motion to Disqualify the District Attorney's Office and Appointment of a Special Prosecutor is hereby DENIED. The State is directed to submit a proposed order consistent with this decision to

DC9Inbox@clarkcountycourts.us within 30 days of this minute order.

CLERK S NOTE: Counsel are to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the registered service recipients via Odyssey eFileNV E-Service (3-1-2022 ks).

Register of Actions

Case No. C-11-277650-1

State of Nevada vs Michael Lee

Case Type:	**Felony/Gross Misdemeanor**
Date Filed:	**11/17/2011**
Location:	**Department 9**
Cross-Reference Case Number:	**C277650**
Defendant's Scope ID #:	**1699107**
ITAG Case ID:	**2461890**
Lower Court Case # Root:	**11FH1653**
Lower Court Case Number:	**11FH1653A**
Supreme Court No.:	**66963** **74089** **76330**

Party Information

Defendant **Lee, Michael Alan**
P O Box 20100
Jean, NV 89019
Other Agency Numbers
1699107 Scope ID Subject Identifier

Lead Attorneys
Damian Sheets
Retained
702-988-2600(W)

Plaintiff **State of Nevada**

Steven B Wolfson
702-671-2700(W)

Charge Information

Charges: Lee, Michael Alan	**Statute**	**Level**	**Date**
1. MURDER	200.010	Felony	06/14/2011
2. CHILD ABUSE WITH SUBSTANTIAL BODILY HARM	200.508.1a2	Felony	06/13/2011

Events & Orders of the Court

DISPOSITIONS

08/15/2014 **Plea** (Judicial Officer: Miley, Stefany)
1. MURDER
Adjudicated
2. CHILD ABUSE WITH SUBSTANTIAL BODILY HARM
Adjudicated

10/21/2014 **Disposition** (Judicial Officer: Miley, Stefany)
1. MURDER
Guilty
2. CHILD ABUSE WITH SUBSTANTIAL BODILY HARM
Guilty

10/21/2014 **Sentence** (Judicial Officer: Miley, Stefany)
1. MURDER
Sentenced to Nevada Dept. of Corrections
Term: Life without the possibility of parole
Consecutive: Case Number C199242

10/27/2014 **Sentence** (Judicial Officer: Miley, Stefany)
2. CHILD ABUSE WITH SUBSTANTIAL BODILY HARM
Sentenced to Nevada Dept. of Corrections
Term: Minimum:96 Months, Maximum:240 Months
Consecutive: Charge 1
Fee Totals:
Administrative Assessment Fee $25 $25.00
Fee Totals $ $25.00
$150.DNAF Previously Imposed

11/03/2021 **Amended Plea** (Judicial Officer: Miley, Stefany) Reason: Amended
1. MURDER
Guilty

11/03/2021 **Amended Plea** (Judicial Officer: Miley, Stefany) Reason: Amended
2. CHILD ABUSE WITH SUBSTANTIAL BODILY HARM
Guilty

11/03/2021 **Amended Disposition** (Judicial Officer: Miley, Stefany) Reason: Amended
1. MURDER
Guilty

Bates 159

11/03/2021 **Amended Disposition** (Judicial Officer: Miley, Stefany) Reason: Amended
2. CHILD ABUSE WITH SUBSTANTIAL BODILY HARM
Guilty

OTHER EVENTS AND HEARINGS

11/09/2011 **Bail Set**
$20,000
11/17/2011 **Criminal Bindover** **Doc ID# 1**
[1]
11/18/2011 **Information** **Doc ID# 2**
[2] Information
11/21/2011 **Initial Arraignment** (10:30 AM) (Judicial Officer De La Garza, Melisa)
Parties Present
Minutes
Result: Plea Entered
11/23/2011 **Reporters Transcript** **Doc ID# 3**
[3] Reporter's Transcript of Preliminary Hearing - Heard November 8, 2011
12/02/2011 **Media Request and Order** **Doc ID# 4**
[4] Media Request and Order for Camera Access to Court Proceedings
12/12/2011 **Petition for Writ of Habeas Corpus** **Doc ID# 5**
[5]
12/13/2011 **Notice of Rescheduling** **Doc ID# 6**
[6] Notice Resetting Date and Time of Hearing
12/13/2011 **Receipt of Copy** **Doc ID# 7**
[7]
12/15/2011 **Notice** **Doc ID# 8**
[8] Notice of Expert Witnesses
12/15/2011 **Notice** **Doc ID# 9**
[9] Notice of Witnesses
12/15/2011 **Notice** **Doc ID# 10**
[10] Notice of Witnesses
12/22/2011 **Return** **Doc ID# 11**
[11] Return To Writ Of Habeas Corpus
12/30/2011 **Reply** **Doc ID# 12**
[12] Reply to State's Return to Petition for Writ of Habeas Corpus
01/11/2012 **Calendar Call** (9:30 AM) (Judicial Officer Miley, Stefany)
Minutes
Result: Matter Heard
01/17/2012 *CANCELED* **Jury Trial** (1:00 PM) (Judicial Officer Miley, Stefany)
Vacated - per Judge
01/18/2012 **Order for Production of Inmate** **Doc ID# 13**
[13] Michael A Lee BAC #81950
01/30/2012 **Petition for Writ of Habeas Corpus** (11:00 AM) (Judicial Officer Miley, Stefany)
Minutes
01/04/2012 Reset by Court to 01/30/2012
Result: Motion Denied
05/01/2012 **Ex Parte Order** **Doc ID# 14**
[14] Ex Parte Order Declaring the Defendant's Indigent for Purposes of Authorizing Payment of Specific Categories of Ancillary Defense Costs
05/01/2012 **Ex Parte** **Doc ID# 15**
[15] Ex Parte Application for Court Approval of Payment of Specific Categories of Ancillary Defense Costs
06/19/2012 **Motion to Continue Trial** **Doc ID# 16**
[16] Motion to Continue Trial
06/20/2012 **Receipt of Copy** **Doc ID# 17**
[17]
07/02/2012 **Motion** (9:30 AM) (Judicial Officer Miley, Stefany)
Defendant's Motion to Continue Trial
Minutes
Result: Motion Granted
07/18/2012 *CANCELED* **Calendar Call** (9:30 AM) (Judicial Officer Miley, Stefany)
Vacated - per Judge
07/23/2012 *CANCELED* **Jury Trial** (1:00 PM) (Judicial Officer Gonzalez, Elizabeth)
Vacated - per Judge
01/11/2013 **Supplemental** **Doc ID# 18**
[18] Supplemental Notice of Witnesses
01/11/2013 **Supplemental** **Doc ID# 19**
[19] Supplemental Notice of Expert Witnesses
03/04/2013 **Request** (9:30 AM) (Judicial Officer Miley, Stefany)
DA Setting Slip - State's Request: Reset TD
Minutes
Result: Matter Heard
03/11/2013 **Order for Production of Inmate** **Doc ID# 20**
[20] Order for Production of Inmate
03/13/2013 **Confirmation of Counsel** (9:30 AM) (Judicial Officer Miley, Stefany)
(Nadia von Magdenko)
Minutes
Result: Matter Heard
05/08/2013 *CANCELED* **Calendar Call** (9:30 AM) (Judicial Officer Miley, Stefany)
Vacated - per Judge

05/13/2013 *CANCELED* **Jury Trial** (1:00 PM) (Judicial Officer Miley, Stefany)
Vacated - per Judge

10/17/2013 **Motion in Limine** **Doc ID# 21**
[21] Motion in Limine to Exclude Prior Bad Acts of Defendant

10/28/2013 **Motion in Limine** (9:30 AM) (Judicial Officer Miley, Stefany)
Defendant's Motion in Limine to Exclude Prior Bad Acts of Defendant
Minutes
Result: Motion Denied

10/30/2013 **Notice of Motion** **Doc ID# 22**
[22] Notice of Motion and Motion for Proper and Correct Service

11/13/2013 *CANCELED* **Motion** (9:30 AM) (Judicial Officer Miley, Stefany)
Vacated - Moot
State's Notice of Motion and Motion for Proper and Correct Service

12/11/2013 **Notice of Witnesses and/or Expert Witnesses** **Doc ID# 23**
[23] Defendant Michael Allan Lee's Witness Disclosure

12/11/2013 **Production of Documents** **Doc ID# 24**
[24] Defendant Michael Allan Lee's Disclosure of Documents

01/02/2014 **Motion in Limine** **Doc ID# 25**
[25] Notice Of Motion And Motion In Limine Re: Defendant's Expert (Rundell) And To Foundational Aspects Of The Defense Experts' Opinion

01/08/2014 **Calendar Call** (9:30 AM) (Judicial Officer Miley, Stefany)
Minutes
Result: Matter Heard

01/13/2014 *CANCELED* **Jury Trial** (1:00 PM) (Judicial Officer Miley, Stefany)
Vacated - per Judge

01/17/2014 **Notice of Motion** **Doc ID# 26**
[26] State's Motion for Production of Discoverable Material Pursuant to NRS 174.245's Reciprocal Discovery Provisions and NRS 174.234 Governing Expert Witness Disclosures

06/05/2014 **Opposition** **Doc ID# 27**
[27] Defendant's Opposition to Motion in Limine re: Defendant's Expert (Rundell) and to the Foundational Aspects of the Defense Experts' Opinion

06/05/2014 **Opposition** **Doc ID# 28**
[28] Defendant's Opposition to State's Motion for Production of Discoverable Material

06/10/2014 **Motion in Limine** **Doc ID# 29**
[29] Defendant's Motion in Limine to Exclude Autopsy Photographs

06/10/2014 **Motion** **Doc ID# 30**
[30] Defendant's Motion for Dismissal

06/13/2014 **Opposition** **Doc ID# 31**
[31] State's Opposiiton to Defendant's Motion for Dsimissal

06/20/2014 **Opposition** **Doc ID# 32**
[32] State's Opposition To Defendant's Motion In Limine To Exclude Autopsy Photographs

06/25/2014 **Motion in Limine** (9:30 AM) (Judicial Officer Miley, Stefany)
State's Motion in Limine Re: Defendant's Expert (Rundell) and to Foundational Aspects of the Defense Experts' Opinion
01/13/2014 Reset by Court to 06/25/2014
Result: Granted

06/25/2014 **Motion in Limine** (9:30 AM) (Judicial Officer Miley, Stefany)
Defendant's Motion in Limine to Exclude Autopsy Photographs
06/23/2014 Reset by Court to 06/25/2014
Result: Denied

06/25/2014 **Motion to Dismiss** (9:30 AM) (Judicial Officer Miley, Stefany)
Defendant's Motion for Dismissal
Result: Denied

06/25/2014 **Motion for Discovery** (9:30 AM) (Judicial Officer Miley, Stefany)
State's Motion for Production of Discoverable Material Pursuant to NRS 174.245's Reciprocal Discovery Provisions and NRS 174.234 Governing Expert Witness Disclosures
Result: Granted

06/25/2014 **All Pending Motions** (9:30 AM) (Judicial Officer Miley, Stefany)
Parties Present
Minutes
Result: Matter Heard

07/10/2014 **Order** **Doc ID# 33**
[33] Order Denying Defendant's Motion in Limine to Exclude Autopsy Photographs and Order Denying Defendant's Motion for Dismissal

07/28/2014 **Notice of Witnesses and/or Expert Witnesses** **Doc ID# 34**
[34] Second Supplemental Notice of Witnesses

07/30/2014 **Calendar Call** (9:30 AM) (Judicial Officer Miley, Stefany)
Minutes
Result: Matter Heard

08/04/2014 **Jury Trial** (1:00 PM) (Judicial Officer Miley, Stefany)
08/04/2014, 08/05/2014, 08/06/2014, 08/07/2014, 08/08/2014, 08/11/2014, 08/14/2014, 08/15/2014
Parties Present
Minutes
08/14/2014 Reset by Court to 08/14/2014
Result: Trial Continues

08/04/2014 **Jury List** **Doc ID# 36**
[36]

08/06/2014 **Media Request and Order** **Doc ID# 35**
[35] Media Request And Order For Camera Access To Court Proceedings.

08/14/2014 **Proposed Jury Instructions Not Used At Trial** **Doc ID# 39**
[39] Defendant's Proposed Jury Instructions Not Used At Trial

08/14/2014 **Proposed Jury Instructions Not Used At Trial** **Doc ID# 42**
[42] State's Proposed Jury Instructions Not Used At Trial

08/15/2014 **Verdict** **Doc ID# 38**
[38]
08/15/2014 **Instructions to the Jury** **Doc ID# 40**
[40]
08/15/2014 **Amended Jury List** **Doc ID# 43**
[43]
08/18/2014 **Jury Trial** (1:00 PM) (Judicial Officer Miley, Stefany)
Jury Trial (Penalty Phase)
Minutes
Result: Matter Heard
08/18/2014 **Motion** **Doc ID# 37**
[37] Motion for Judgment of Acquittal
08/18/2014 **Stipulation** **Doc ID# 41**
[41] Stipulation Pursuant to NRS 175.552 (2) Waiving Penalty Hearing And Agreeing To Have Sentence Imposed By Trial Judge
08/20/2014 **Motion for New Trial** **Doc ID# 44**
[44] Motion for New Trial
08/20/2014 **Receipt of Copy** **Doc ID# 45**
[45] Receipt of Copy
08/20/2014 **Document Filed** **Doc ID# 46**
[46] Clarification Of Record No Hearing Requested
08/21/2014 **Opposition** **Doc ID# 47**
[47] State's Opposition to Defendant's Motion for Judgment of Acquittal
08/22/2014 **Opposition** **Doc ID# 48**
[48] State's Opposition to Defendant's Motion for New Trial
08/29/2014 **Reply to Opposition** **Doc ID# 49**
[49] Reply to State's Opposition to Motion for Judgment of Acquittal and Motion for New Trial
09/03/2014 **Motion for Judgment** (9:30 AM) (Judicial Officer Miley, Stefany)
Defendant's Motion for Judgment of Acquittal
Result: Motion Denied
09/03/2014 **Motion for New Trial** (9:30 AM) (Judicial Officer Miley, Stefany)
Defendant's Motion for New Trial
Result: Motion Denied
09/03/2014 **All Pending Motions** (9:30 AM) (Judicial Officer Miley, Stefany)
Minutes
Result: Matter Heard
09/16/2014 **Order** **Doc ID# 50**
[50] Order Denying Defendant's Motion for Judgment of Acquittal and Order Denying Defendant's Motion for New Trial
10/01/2014 **PSI** **Doc ID# 51**
[51]
10/14/2014 **Memorandum** **Doc ID# 52**
[52] Sentencing Memorandum
10/20/2014 **Sentencing** (9:30 AM) (Judicial Officer Miley, Stefany)
10/20/2014, 10/21/2014
Minutes
Result: Matter Continued
10/20/2014 **Order for Production of Inmate** **Doc ID# 53**
[53] Order For Production Of Inmate - Michael Alan Lee, BAC #81950
10/27/2014 **Further Proceedings** (11:00 AM) (Judicial Officer Miley, Stefany)
Further Proceedings: Clarification of Sentence on Count 2
Parties Present
Minutes
Result: Defendant Sentenced
11/10/2014 **Judgment of Conviction** **Doc ID# 54**
[54] JUDGMENT OF CONVICTION (JURY TRIAL)
11/24/2014 **Notice of Appeal (Criminal)** **Doc ID# 55**
[55] Notice of Appeal
11/24/2014 **Case Appeal Statement** **Doc ID# 56**
[56] Case Appeal Statement
12/08/2014 **Criminal Order to Statistically Close Case** **Doc ID# 57**
[57] Criminal Order to Statistically Close Case
01/15/2015 **Recorders Transcript of Hearing** **Doc ID# 58**
[58] Recorder's Transcript of Proceedings Re: Calendar Call January 11, 2012
01/15/2015 **Recorders Transcript of Hearing** **Doc ID# 59**
[59] Recorder's Transcript of Proceedings Re: Defendant's Motion to Continue Trial July 02, 2012
01/15/2015 **Recorders Transcript of Hearing** **Doc ID# 60**
[60] Recorder's Transcript of Proceedings Re: State's Request: Reset Trial Date March 04, 2013
01/15/2015 **Recorders Transcript of Hearing** **Doc ID# 61**
[61] Recorder's Transcript of Proceedings Re: Confirmation of Counsel (Nadia Von Magdenko) March 13, 2013
01/15/2015 **Recorders Transcript of Hearing** **Doc ID# 62**
[62] Recorder's Transcript of Proceedings Re: Defendant's Motion in Limine to Exclude Prior Bad Acts of Defendant October 28, 2013
01/15/2015 **Recorders Transcript of Hearing** **Doc ID# 63**
[63] Recorder's Transcript of Proceedings Re: Calendar Call January 8, 2014
01/15/2015 **Recorders Transcript of Hearing** **Doc ID# 64**
[64] Recorder's Transcript of Proceedings Re: Calendar Call July 30, 2014
01/15/2015 **Recorders Transcript of Hearing** **Doc ID# 65**
[65] Recorder's Transcript of Proceedings Re: Sentencing October 20, 2014
01/15/2015 **Recorders Transcript of Hearing** **Doc ID# 66**
[66] Recorder's Transcript of Proceedings Re: Further Proceedings: Clarification of Sentence on Count 2 October 27, 2014
01/21/2015 **Recorders Transcript of Hearing** **Doc ID# 67**
[67] Recorder's Transcript of Proceedings Defendant's Petition for Writ of Habeas Corpus 1/30/12
01/21/2015 **Recorders Transcript of Hearing** **Doc ID# 68**

[68] Recorder's Transcript of Proceedings October 21, 2014 Sentencing
01/21/2015 **Recorders Transcript of Hearing** **Doc ID# 69**
[69] Recorder's Transcript of Proceedings September 3, 2014 Defendant's Motion for Judgment on Acquittal; Defendant's Motion for New Trial
01/21/2015 **Recorders Transcript of Hearing** **Doc ID# 70**
[70] Recorder's Transcript of Proceedings Monday, January 30, 2012 Defendant's Petition for Writ of Habeas Corpus
01/21/2015 **Recorders Transcript of Hearing** **Doc ID# 71**
[71] Recorder's Transcript of Proceedings June 25, 2014 Defendant's Motion in Limine to Exclude Autopsy Photographs; Defendant's Motion for Dismissal; State's Motion for Production of Discoverable Material pursuant NRS 174.245's Reciprocal Discovery Provisions; State's Motion in Limine re: Defendant's Expert and to Foundational Aspects of the Defense Expert's Opinion.
01/26/2015 **Recorders Transcript of Hearing** **Doc ID# 72**
[72] Recorder's Transcript of Hearing Re: Arraignment
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 73**
[73] Transcript of Proceedings: Jury Trial - Day 1 August 4, 2014
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 74**
[74] Transcript of Proceedings: Jury Trial - Day 3 August 6, 2014
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 75**
[75] Transcript of Proceedings: Jury Trial - Day 3 August 6, 2014
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 76**
[76] Transcript of Proceedings: Jury Trial - Day 4 August 7, 2014
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 77**
[77] Transcript of Proceedings: Jury Trial - Day 5 August 8, 2014
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 78**
[78] Transcript of Proceedings: Jury Trial - Day 6 August 11, 2014
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 79**
[79] Transcript of Proceedings: Jury Trial - Day 7 August 14, 2014
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 80**
[80] Transcript of Proceedings: Jury Trial - Day 8 August 15, 2014
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 81**
[81] Transcript of Proceedings: Jury Trial - Day 9 August 18, 2014
03/30/2015 **Recorders Transcript of Hearing** **Doc ID# 82**
[82] Transcript of Proceedings: Jury Trial - Day 2 August 5, 2014
09/13/2016 **NV Supreme Court Clerks Certificate/Judgment - Affirmed** **Doc ID# 83**
[83] Nevada Supreme Court Clerk's Certificate Judgment - Affirmed
05/12/2017 **Petition for Writ of Habeas Corpus** **Doc ID# 84**
[84] Petition for Writ of Habeas Corpus
06/19/2017 **Errata** **Doc ID# 85**
[85] Errata to Petition for Writ of Habeas Corpus
06/20/2017 **Response** **Doc ID# 86**
[86] State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)
06/28/2017 **Petition for Writ of Habeas Corpus** (9:30 AM) (Judicial Officer Miley, Stefany)
Defendant's Petition for Writ of Habeas Corpus
Parties Present
Minutes
Result: Denied
07/12/2017 **Recorders Transcript of Hearing** **Doc ID# 87**
[87] Recorder s Transcript of Proceedings: Defendant s Petition for Writ of Habeas Corpus June 28, 2017
07/31/2017 **Findings of Fact, Conclusions of Law and Order** **Doc ID# 88**
[88]
08/02/2017 **Notice of Entry** **Doc ID# 89**
[89] Notice of Entry of Findings of Fact, Conclusions of Law and Order
08/18/2017 **Motion to Withdraw As Counsel** **Doc ID# 90**
[90] Potter Law Offices Motion to Witdraw as Counsel and Stay Proceedings
08/30/2017 **Motion to Withdraw as Counsel** (9:30 AM) (Judicial Officer Miley, Stefany)
08/30/2017, 09/13/2017
Potter Law Offices' Motion to Witdraw as Counsel and Stay Proceedings
Parties Present
Minutes
Result: Matter Continued
09/19/2017 **Notice of Appeal (Criminal)** **Doc ID# 91**
[91] Notice of Appeal
09/21/2017 **Case Appeal Statement** **Doc ID# 92**
[92] Case Appeal Statement
12/19/2017 **NV Supreme Court Clerks Certificate/Judgment - Dismissed** **Doc ID# 93**
[93] Nevada Supreme Court Clerk's Certificate Judgment - Dismissed
02/06/2018 **Petition** **Doc ID# 94**
[94] Defendant's Petition for Writ of Habeas Corpus
04/03/2018 **Response** **Doc ID# 95**
[95] State's Response to Defendant s Third Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)
04/09/2018 **Petition for Writ of Habeas Corpus** (11:00 AM) (Judicial Officer Miley, Stefany)
Defendant's Petition for Writ of Habeas Corpus
Parties Present
Minutes
Result: Granted
07/05/2018 **Findings of Fact, Conclusions of Law and Order** **Doc ID# 96**
[96] Findings of Fact, Conclusions of Law and Order Granting Petition for Writ of Habeas Corpus (Post-Conviction)
07/09/2018 **Notice of Entry** **Doc ID# 97**
[97] Notice of Entry of Findings of Fact, Conclusions of Law and Order
07/09/2018 **Notice of Appeal (Criminal)** **Doc ID# 98**
[98] Notice of Appeal
07/09/2018 **Case Appeal Statement** **Doc ID# 99**
[99] Case Appeal Statement

11/19/2019 **Notice of Hearing** **Doc ID# 100**
[100] Notice of Hearing
12/02/2019 **Status Check** (9:30 AM) (Judicial Officer Miley, Stefany)
STATUS CHECK RE: SUPREME COURT ORDER FILED ON 11/15/19
Parties Present
Minutes
Result: Matter Heard
12/17/2019 **Status Check** (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Status Check: Appointment of Counsel & Trial Setting Per Supreme Court Order Filed on 11/15/19
Parties Present
Minutes
12/19/2019 Reset by Court to 12/17/2019
01/08/2020 Reset by Court to 01/22/2020
Result: Matter Continued
12/18/2019 **NV Supreme Court Clerks Certificate/Judgment -Remanded** **Doc ID# 101**
[101] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Reversed and Remand
12/18/2019 **Order for Production of Inmate** **Doc ID# 102**
[102] Order for Production of Inmate
01/10/2020 **Motion to Reduce** **Doc ID# 103**
[103] Defendant's Motion to Reinstate and/or Reduce Bail
01/10/2020 **Clerk's Notice of Hearing** **Doc ID# 104**
[104] Notice of Hearing
01/14/2020 **Opposition to Motion** **Doc ID# 105**
[105] State's Opposition to Defendant's Motion to Reinstate and/or Reduce Bail
01/16/2020 **Motion to Reduce** (9:00 AM) (Judicial Officer Herndon, Douglas W.)
Defendant's Motion to Reinstate and/or Reduce Bail
Parties Present
Minutes
01/15/2020 Reset by Court to 01/16/2020
Result: Motion Denied
01/22/2020 **Notice of Department Reassignment** **Doc ID# 106**
[106] Notice of Department Reassignment
01/30/2020 **Status Check: Trial Setting** (9:30 AM) (Judicial Officer Cherry, Michael A.)
Parties Present
Minutes
Result: Hearing Set
01/30/2020 **Order Denying Motion** **Doc ID# 107**
[107] Order Denying Defendant's Motion to Reinstate and/or Reduce Bail
02/20/2020 **Hearing** (9:30 AM) (Judicial Officer Bixler, James)
HEARING: BAIL AND TRIAL SETTING
Parties Present
Minutes
Result: Trial Date Set
04/29/2020 **Motion for Own Recognizance Release/Setting Reasonable Bail** **Doc ID# 108**
[108] Defendant's Renewed Motion to Reinstate and/or Reduce Bail
04/29/2020 **Clerk's Notice of Hearing** **Doc ID# 109**
[109] Notice of Hearing
04/30/2020 **Opposition to Motion** **Doc ID# 110**
[110] State's Opposition to Defendant's Third Motion to Reinstate and/or Reduce Bail
04/30/2020 **Reply** **Doc ID# 111**
[111] Defendant's Reply in Support of Renewed Motion to Reinstate and/or Reduce Bail
05/12/2020 **Motion to Reinstate** (3:30 PM) (Judicial Officer Barker, David)
Defendant's Renewed Motion to Reinstate and/or Reduce Bail
Parties Present
Minutes
Result: Motion Denied
05/15/2020 **Motion for Production of Transcript** **Doc ID# 112**
[112] Request for Transcript of Proceedings
09/03/2020 **Status Check: Trial Readiness** (3:30 PM) (Judicial Officer Adair, Valerie)
Parties Present
Minutes
04/23/2020 Reset by Court to 07/07/2020
07/07/2020 Reset by Court to 09/03/2020
09/03/2020 Reset by Court to 09/03/2020
Result: Matter Heard
09/07/2020 **Motion to Continue Trial** **Doc ID# 113**
[113] Defendant's Motion to Continue Trial Date and For Bail Hearing Pursuant to Valdez-Jimenez
09/18/2020 **Opposition to Motion** **Doc ID# 114**
[114] State's Opposition to Defendant's Fourth Motion to Reinstate and/or Reduce Bail
09/24/2020 **Motion to Continue Trial** (3:30 PM) (Judicial Officer Adair, Valerie)
09/24/2020, 10/08/2020
Defendant's Motion to Continue Trial Date and For Bail Hearing Pursuant to Valdez-Jimenez
Parties Present

Bates 164

Minutes
Result: Granted in Part
10/20/2020 **Order Denying Motion** **Doc ID# 115**
[115] Order Denying Motion for Bail Hearing
10/22/2020 *CANCELED* **Calendar Call** (3:30 PM) (Judicial Officer Bixler, James)
Vacated - per Judge
10/22/2020 Reset by Court to 10/22/2020
10/22/2020 Reset by Court to 10/22/2020
10/26/2020 *CANCELED* **Jury Trial** (9:00 AM) (Judicial Officer Jones, Tierra)
Vacated - per Judge
10/26/2020 Reset by Court to 10/26/2020
12/09/2020 **Receipt of Copy** **Doc ID# 116**
[116] Receipt of Copy
01/04/2021 **Case Reassigned to Department 9**
Judicial Reassignment to Judge Cristina Silva
01/05/2021 **Notice of Change of Hearing** **Doc ID# 117**
[117] Notice of Change of Hearing
01/29/2021 **Status Check: Trial Readiness** (1:30 PM) (Judicial Officer Silva, Cristina D.)
Parties Present
Minutes
01/07/2021 Reset by Court to 01/29/2021
Result: Set Status Check
02/19/2021 *CANCELED* **Calendar Call** (1:30 PM) (Judicial Officer Silva, Cristina D.)
Vacated - per Judge
02/25/2021 Reset by Court to 02/19/2021
03/01/2021 *CANCELED* **Jury Trial** (9:30 AM) (Judicial Officer Silva, Cristina D.)
Vacated - per Judge
03/01/2021 Reset by Court to 03/01/2021
03/01/2021 Reset by Court to 03/01/2021
04/23/2021 **Status Check: Reset Trial Date** (1:30 PM) (Judicial Officer Silva, Cristina D.)
Parties Present
Minutes
Result: Trial Date Set
10/08/2021 **Status Check: Trial Readiness** (1:30 PM) (Judicial Officer Silva, Cristina D.)
Parties Present
Minutes
07/30/2021 Reset by Court to 09/24/2021
09/24/2021 Reset by Court to 10/08/2021
Result: Matter Heard
10/20/2021 **Recorders Transcript of Hearing** **Doc ID# 118**
[118] Recorder's Transcript of Hearing Re: May 12, 2020 - Defendant's Renewed Motion to Reinstate and/or Reduce Bail
11/03/2021 **Amended Information** **Doc ID# 119**
[119] Amended Information
11/05/2021 **Notice of Witnesses and/or Expert Witnesses** **Doc ID# 120**
[120] State's Notice of Witnesses and/or Expert Witnesses
11/08/2021 **Notice of Witnesses and/or Expert Witnesses** **Doc ID# 121**
[121] Defendant Michael Lee's Notice of Witnesses and/or Expert Witnesses
11/12/2021 **Notice of Witnesses and/or Expert Witnesses** **Doc ID# 122**
[122] State's Amended Notice of Witnesses and/or Expert Witnesses
11/17/2021 **Motion to Admit Evidence** **Doc ID# 123**
[123] State's Notice of Motion and Motion to Admit Prior Sworn Testimony of Merridee Moshier
11/18/2021 **Clerk's Notice of Hearing** **Doc ID# 124**
[124] Notice of Hearing
11/18/2021 **Motion** **Doc ID# 125**
[125] Motion Allowing Defendant To Remain At The Clark County Detention Center Pending His Murder Trial
11/19/2021 **Calendar Call** (1:30 PM) (Judicial Officer Silva, Cristina D.)
Parties Present
Minutes
09/15/2021 Reset by Court to 11/19/2021
Result: Matter Heard
11/19/2021 **Clerk's Notice of Hearing** **Doc ID# 126**
[126] Notice of Hearing
11/22/2021 **Motion in Limine** **Doc ID# 127**
[127] Defendant's Renewed Motion in Limine
11/23/2021 **Clerk's Notice of Hearing** **Doc ID# 128**
[128] Notice of Hearing
11/27/2021 **Opposition to Motion** **Doc ID# 129**
[129] Defendant's Opposition to State's Motion to Admit Prior Sworn Testimony of Merridee Moshier
11/29/2021 **Motion to Admit Evidence** (11:00 AM) (Judicial Officer Silva, Cristina D.)
11/29/2021, 02/25/2022, 03/04/2022
Plaintiff's State's Notice of Motion and Motion to Admit Prior Sworn Testimony of Merridee Moshier
Result: Decision Pending
11/29/2021 **Motion** (11:00 AM) (Judicial Officer Silva, Cristina D.)
Motion Allowing Defendant To Remain At The Clark County Detention Center Pending His Murder Trial
Result: Motion Granted

11/29/2021 **Notice of Witnesses and/or Expert Witnesses** **Doc ID# 130**
[130] State's Superseding Notice of Witnesses and/or Expert Witnesses
11/30/2021 **Motion to Continue Trial** **Doc ID# 131**
[131] Defendant's Motion to Continue Trial
12/01/2021 **Central Calendar Call** (2:00 PM) (Judicial Officer Jones, Tierra)
Parties Present
Minutes
Result: Matter Heard
12/01/2021 **Motion to Continue Trial** (2:00 PM) (Judicial Officer Jones, Tierra)
12/01/2021, 12/03/2021
Defendant's Motion to Continue Trial
12/03/2021 Reset by Court to 12/01/2021
12/13/2021 Reset by Court to 12/03/2021
Result: Matter Continued
12/01/2021 **Clerk's Notice of Hearing** **Doc ID# 132**
[132] Notice of Hearing
12/01/2021 **All Pending Motions** (2:00 PM) (Judicial Officer Jones, Tierra)
Result: Matter Heard
12/02/2021 **Receipt of Copy** **Doc ID# 133**
[133] Receipt of Copy
12/03/2021 **Status Check** (1:30 PM) (Judicial Officer Jones, Tierra)
Status Check: Pre-Trial Motion Decision
Result: Off Calendar
12/03/2021 **Calendar Call** (1:30 PM) (Judicial Officer Jones, Tierra)
Result: Trial Date Set
12/03/2021 **All Pending Motions** (1:30 PM) (Judicial Officer Jones, Tierra)
Parties Present
Minutes
Result: Matter Heard
12/06/2021 *CANCELED* **Jury Trial** (9:30 AM) (Judicial Officer Silva, Cristina D.)
Vacated
09/27/2021 Reset by Court to 12/06/2021
12/06/2021 *CANCELED* **Motion in Limine** (11:00 AM) (Judicial Officer Bluth, Jacqueline M.)
Vacated - per Attorney or Pro Per
[127] Defendant's Renewed Motion in Limine
01/07/2022 **Temporary Seal Pending Court Approval** **Doc ID# 134**
[134] Ex Parte Application and Order
01/07/2022 **Temporary Seal Pending Court Approval** **Doc ID# 135**
[135] Errata to Ex Parte Application and Order
01/07/2022 **Temporary Seal Pending Court Approval** **Doc ID# 136**
[136] Ex Parte Application for Records and Order
01/14/2022 **Status Check: Trial Readiness** (1:30 PM) (Judicial Officer Silva, Cristina D.)
Parties Present
Minutes
Result: Matter Heard
01/20/2022 **Temporary Seal Pending Court Approval** **Doc ID# 137**
[137] Supplement to Ex Parte Application and Order
01/20/2022 **Temporary Seal Pending Court Approval** **Doc ID# 138**
[138] Supplement to Ex Parte Application and Order
01/24/2022 **Clerk's Notice of Nonconforming Document** **Doc ID# 139**
[139] Clerk's Notice of Nonconforming Document
02/07/2022 **Filed Under Seal** **Doc ID# 140**
[140] Sealed per Minute Oder 02/07/2022 Supplement to Ex Parte Application for Records and Order
02/07/2022 **Filed Under Seal** **Doc ID# 141**
[141] Sealed per Minute Order 02/07/2022 Supplement to Ex Parte Application for Records and Order
02/07/2022 **Minute Order** (1:50 PM) (Judicial Officer Barker, David)
Minutes
Result: Minute Order - No Hearing Held
02/08/2022 **Motion** **Doc ID# 142**
[142] Defendant's Motion to Continue Briefing Schedule
02/09/2022 **Clerk's Notice of Hearing** **Doc ID# 143**
[143] Notice of Hearing
02/11/2022 **Motion to Disqualify Attorney** **Doc ID# 144**
[144] Defendant's Motion to Disqualify District Attorney's Office and for Appointment of Special Prosecutor
02/14/2022 **Clerk's Notice of Hearing** **Doc ID# 145**
[145] Notice of Hearing
02/14/2022 **Opposition to Motion** **Doc ID# 146**
[146] 146] State's Opposition to Defendant's Motion to Extend Briefing Schedule and Motion to Disqualify the District Attorney's Office
02/14/2022 **Notice of Witnesses and/or Expert Witnesses** **Doc ID# 147**
[147] State's Superseding Notice of Witnesses and/or Expert Witnesses [NRS 174.234]
02/16/2022 **Motion to Continue** (11:00 AM) (Judicial Officer Gibbons, Mark)
Defendant's Motion to Continue Briefing Schedule
Parties Present
Minutes
02/23/2022 Reset by Court to 02/16/2022
Result: Granted in Part
02/23/2022 **Status Check** (11:00 AM) (Judicial Officer Barker, David)

STATUS CHECK: PRODUCTION OF DOCUMENTS FROM NURSING BOARD

Parties Present

Minutes

Result: Matter Heard

02/24/2022 **Recorders Transcript of Hearing** **Doc ID# 148**
[148] RECORDER'S TRANSCRIPT OF HEARING: DEFENDANT'S MOTION TO CONTINUE TRIAL. STATUS CHECK: PRETRIAL MOTION DECISION. CALENDAR CALL. HEARD ON DECEMBER 3, 2021

02/24/2022 **Opposition** **Doc ID# 149**
[149] Defendant's Opposition to State's Motion to Admit Prior Sworn Testimony of Merridee Moshier

02/24/2022 **Reply** **Doc ID# 150**
[150] Reply in Support of Motion to Disqualify District Attorney's Office and For Appointment of Special Prosecutor

02/25/2022 *CANCELED* **Motion to Admit Evidence** (1:30 PM) (Judicial Officer Barker, David)
Vacated - Duplicate Entry

02/25/2022 **Motion to Disqualify Attorney** (1:30 PM) (Judicial Officer Barker, David)
02/25/2022, 03/01/2022
[144] Defendant's Motion to Disqualify District Attorney's Office and for Appointment of Special Prosecutor

Minutes

02/28/2022 Reset by Court to 02/25/2022

03/04/2022 Reset by Court to 03/01/2022

Result: Matter Continued

02/25/2022 **All Pending Motions** (1:30 PM) (Judicial Officer Barker, David)

Parties Present

Result: Matter Heard

02/28/2022 **Motion** **Doc ID# 151**
[151] State's Notice of Motion and Motion to Allow Detective (Ret.) Monique Panet-Swanson to Appear by Simultaneous Audiovisual Transmission Equipment at the March 14, 2022 Trial

02/28/2022 **Clerk's Notice of Hearing** **Doc ID# 152**
[152] Notice of Hearing

03/02/2022 **Motion** **Doc ID# 153**
[153] State's Notice of Motion and Motion to Allow Dr. Sandra Cetl to Appear by Simultaneous Audiovisual Transmission Equipment at the March 14, 2022 Trial

03/02/2022 **Notice** **Doc ID# 154**
[154] State's Notice of Intent to Seek Punishment as a Violent Habitual Felon

03/03/2022 **Clerk's Notice of Hearing** **Doc ID# 155**
[155] Notice of Hearing

03/04/2022 **Calendar Call** (1:30 PM) (Judicial Officer Silva, Cristina D.)

03/11/2022 **Motion** (1:30 PM) (Judicial Officer Silva, Cristina D.)
State's Motion to Allow Detective (Ret.) Monique Panet-Swanson to Appear by Simultaneous Audiovisual Transmission Equipment at the March 14, 2022 Trial

03/14/2022 **Jury Trial** (9:30 AM) (Judicial Officer Silva, Cristina D.)

03/18/2022 **Motion** (1:30 PM) (Judicial Officer Silva, Cristina D.)
State's Motion to Allow Dr. Sandra Cetl to Appear by Simultaneous Audiovisual Transmission Equipment at the March 14, 2022 Trial

Financial Information

	Defendant Lee, Michael Alan	
	Total Financial Assessment	25.00
	Total Payments and Credits	0.00
	Balance Due as of 03/03/2022	**25.00**
10/30/2014	Transaction Assessment	25.00

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