

1 shall be filed and served on or before forty-five (45) days prior to the scheduled trial date, any oppositions
2 thereto shall be filed and served within ten (10) days thereafter, and any replies to oppositions shall be filed
3 and served within five (5) days thereafter. In all situations where Defendant has not waived time, the
4 deadline for filing all Pretrial Motions shall be thirty (30) days prior to the scheduled trial date; the
5 deadlines for filing any oppositions and replies shall remain the same. The foregoing Pretrial Motions and
6 Offers of Proof shall be accompanied by written points and authorities that clearly articulate that party's
7 position as to why the evidence in question should be admitted or excluded at the trial.

8 4. **Except upon a showing of unforeseen extraordinary circumstances, or unless**
9 **specifically excused by law, no additional pre-trial motions may be filed or orally presented later**
10 **than as described above in paragraph 4.**

11 PENDING MOTIONS

12 5. Fifteen (15) days prior to trial, each party shall file a list of any pending motions and
13 provide a copy to chambers. That list shall include the title of the motion, its filing date, and any
14 subsequent filings related thereto, including the date of filing. The list shall also include whether a hearing
15 is requested on any pending motion and an estimate of the time such a hearing will require.

16 TRIAL EVIDENCE

17 6. No later than thirty (30) days before trial, the parties shall meet and confer with respect to
18 submission of a joint list of witnesses, a joint list of trial exhibits, and a joint list of discovery material
19 which each party intends to offer in evidence during the course of trial. To accommodate witness
20 schedules, the parties shall also address the anticipated dates of witness attendance, including any experts.

21 7. The parties shall file and lodge with chambers no later than fifteen (15) days prior to trial
22 a copy of the joint list of witnesses (including any anticipated appearance dates) and joint list of trial
23 exhibits (identifying whether a witness or an exhibit is that of the State or Defendant) which each party
24 intends to offer in evidence during the course of trial. The joint list shall indicate any witness, exhibit, or
25 other item of evidence to which an objection continues to be raised by the opposing party. If no objection
26 is raised or reserved, the Court will view this as a stipulation of admissibility.

8. Trial counsel for all parties shall contact Faye Fleury at the Elko County Clerk's Office [(775) 753-4600] no later than ten (10) days prior to trial, to arrange a date and time to mark trial exhibits. All State's exhibits shall be marked in one numbered series (Exhibit 1, 2, 3, etc.). All Defense exhibits shall be marked alphabetically (Exhibit A, B, C, etc.). All exhibits shall be placed in binders provided by counsel with a bound copy provided to the court. Once trial exhibits are marked by the clerk, they shall remain in the custody of the clerk. When marking the exhibits with the clerk, counsel shall advise the clerk of all exhibits which may be admitted without objection and those that may be admissible subject to reserved objections.

JURY INSTRUCTIONS AND VERDICT FORMS

9. The Court shall give Instructions 1 and 2 to the jury prior to the commencement of the trial. The Court shall give the attached instruction 3 during trial, if necessary, and the attached instructions 4 through 22 prior to closing arguments. Any objection to these instructions (attached hereto) shall be filed at least fifteen (15) days prior to the scheduled trial date.

10. On or before fifteen (15) days prior to trial, the State shall provide to the Court and opposing counsel its proposed jury instructions and verdict forms. **Both parties are hereby ordered NOT to submit duplicates of Instructions 1-22.** The parties shall then meet and confer regarding the State's proposed instructions and verdict forms. The parties shall submit to the Court, signed by counsel for both parties, the instructions and verdict forms upon which they agree, no later than seven (7) days before trial. Defendant shall submit his/her proposed instructions and verdict forms to the Court no later than seven (7) days before trial, and to opposing counsel no later than after Defendant's opening statement.

(i) Any pattern instructions must be *identical* to those instructions as they appear in the most recent publication of the pattern jury instructions and include a citation to the pattern jury instruction.

(ii) Any original instructions shall be accompanied by a separate copy of the instruction containing a citation to the form instruction, statutory or case authority supporting that instruction. All modifications made to pattern instructions taken from statutory or other authority

1 shall be specifically noted on the citation page.

2 (iii) On or before seven (7) days prior to trial, counsel shall also jointly provide this
3 Court with a USB drive ("thumb-drive") containing the complete set of agreed-upon and/or
4 individually proposed jury instructions and verdict forms in MS Word or WordPerfect, or email
5 said instructions to the Court's Judicial Administrator. Said instructions and verdict forms shall
6 be prepared in 12 point Times New Roman font.

7 11. Should the parties negotiate a resolution of the case, a written Memorandum of Plea
8 Agreement must be filed before the case is taken off calendar.

9 12. Nothing in this Order is intended to require Defendant to waive or violate any of his/her
10 Constitutional rights.

11 13. Failure to comply with any provision of this Pretrial Order may result in the imposition of
12 sanctions.

13 DATED this 30 day of October, 2014.

14
15 
16 NANCY PORTER
17 District Judge - Department 1
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CERTIFICATE OF HAND DELIVERY

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department 1, and that on this 30th day of October, 2014, I personally hand delivered a true file-stamped copy of the foregoing PRETRIAL ORDER (Criminal Case) addressed to:

Mark D. Torvinen, Esq.
Elko County District Attorney
540 Court Street, 2nd Floor
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]

Sherburne M. Macfarlan, III, Esq.
Lockie & Macfarlan, Ltd.
919 Idaho Street
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]

Elko County Jury Commissioner
C/O Elko County Clerk
550 Court Street, Third Floor
Elko, NV 89801
{1 File Stamped Copy}
[Box in Clerk's Office]


JULIE L. THUEMLER, PES

(292)

#0264

1 Case No. CR-FP-14-635

2 Dept. No. 1

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THE STATE OF NEVADA,

10

Plaintiff,

11

V.

12

DEVON RAY HOCKEMIER,

13

Defendant.

14

15

INSTRUCTION NO. 1

16

LADIES AND GENTLEMEN OF THE JURY:

17

This instruction is intended to serve as an introduction to the trial of this case. It is not a substitute for the detailed instructions on the law and the evidence which I will give you at the close of the case and before you retire to consider your verdict.

18

19

20

This is a criminal case commenced by the State of Nevada, which I may sometimes refer to as "the State," against DEVON RAY HOCKEMIER, Defendant. The case is based on a Criminal Information, which has been read to you.

21

22

23

You should distinctly understand that the Criminal Information simply contains a charge. It is not, in any sense, evidence of the allegations it contains, nor is it a substitute for the instructions which detail the elements of the crimes charged which I will give you at the close of this case.

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The Defendant has plead "not guilty" to the crimes charged in the Criminal Information. The State,

1 therefore, has the burden of proving each of the essential elements of the crimes charged beyond a
2 reasonable doubt. The purpose of the trial is to determine whether the State can meet this burden.

3 The trial will proceed in the following order:

4 FIRST: The parties have the opportunity of making opening statements. The State may make
5 an opening statement at the beginning of the case. The Defendant may make an opening statement
6 following the opening statement for the State, or may defer the making of an opening statement until the
7 close of the State's case. Neither party is obliged to make an opening statement. What is said in the
8 opening statements is not evidence. The statement simply serves the purpose of an introduction to the
9 evidence which the party making it intends to produce.

10 SECOND: The State will introduce evidence in support of the charges contained in the Criminal
11 Information.

12 THIRD: After the State has presented its evidence the Defendant may present evidence; however,
13 he is not obliged to do so. The burden is always on the State to prove every element of the offense charged
14 beyond a reasonable doubt. The law never imposes on the Defendant in a criminal case the burden of
15 calling any witnesses or introducing any evidence.

16 FOURTH: I will instruct you on the applicable law. Your verdict must be unanimous.

17 FIFTH: After reading the instructions, each party has the opportunity to present oral argument in
18 support of the respective case of each. What is said in closing argument is not evidence, just as what is said
19 in the opening statements is not evidence. The arguments are designed to present to you the contentions
20 of the parties as to what the evidence has shown and what inferences may be drawn from the evidence.
21 The State has the right to open and close the argument.

22 Your purpose as jurors is to find and determine the facts. Under our system of criminal procedure
23 you are the sole judge of the facts. If, at any time, I should make a comment regarding the facts, you are
24 admonished to disregard it. It is especially important that you perform your duty of determining the facts
25 diligently and conscientiously, for ordinarily there is no means of correcting an erroneous determination
26 of the facts by a jury.

1 On the other hand, and with equal emphasis, I instruct you that the law as given by the Court
2 constitutes the only law for your guidance. It is your duty to accept and follow it. It is your duty to follow
3 the law as I give it to you even though you may disagree with the law.

4 You are to determine the facts in the case solely from the evidence produced at trial, which consists
5 of the testimony of witnesses and exhibits received in evidence. Questions asked by lawyers are not
6 evidence, for the evidence consists of answers given by witnesses to questions posed by the lawyers.
7 Again, statements and arguments of counsel are not evidence. Counsel, however, may enter into
8 agreements or stipulations of facts which are not in dispute. When they do so, you are to accept the facts
9 as stipulated by counsel. On occasion, I may tell you that I am taking judicial notice of certain facts. You
10 then may accept those facts as true, but are not required to. It is up to you to decide what inferences are
11 to be drawn from the evidence, and what facts are established by the evidence.

12 The parties may sometimes present objections to some of the testimony or other evidence. It is the
13 duty of a lawyer to object to evidence which he believes may not properly be offered, and you should not
14 be prejudiced in any way against a lawyer who makes objections or against the party he represents. At
15 times I may sustain objections, or direct that you disregard certain testimony or exhibits. You must not
16 consider any evidence to which an objection has been sustained, or which I have instructed you to
17 disregard.

18 In considering the weight and value of the testimony of any witness, you may take into
19 consideration the appearance, attitude and behavior of the witness; the extent of his opportunity and ability
20 to see or hear or otherwise become aware of, and to remember and communicate; the interest of the witness
21 in the outcome of the case, if any; the existence or non-existence of a bias or other motive; the inclination
22 of the witness to speak truthfully or not; the probability or improbability of the statements of the witness;
23 a statement previously made by him or her that is inconsistent with his or her testimony; evidence of the
24 existence or non-existence of any fact testified to by him; and all other facts and circumstances in evidence.

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1 No statement, ruling, remark or comment which I may make during the course of the trial is
2 intended to indicate my opinion as to how you should decide the case, or to influence you in any way in
3 your determination of the facts. At times I may ask questions of witnesses. If I do so it is for the purpose
4 of bringing out matters which I feel should be brought out, and not in any way to indicate my opinion about
5 the facts or to indicate the weight I feel you should give the testimony of the witnesses. I may also find
6 it necessary to admonish the lawyers. If I do, you should not show prejudice toward a lawyer or his client
7 because I have found it necessary to admonish him.

8 It is the duty of an attorney to present to you his client's case in the most favorable light consistent
9 with the truth and the law. During the trial, I ask you not to communicate with the attorneys even on
10 matters having no connection whatsoever with this case. The attorneys are officers of the court, and they
11 are aware of their responsibilities as such. Even if you are acquainted with the attorney, you will observe
12 that he will avoid any contact with you during the trial, and you should not be offended thereby. He will
13 be attempting merely to comply with the rules of professional conduct in avoiding any appearance of
14 impropriety.

15 Not only must your conduct as jurors be above reproach, but you must avoid the appearance of
16 improper conduct. Do not talk to the parties, attorneys or witnesses during the trial, even upon matters
17 unconnected with the case. In the event that anyone should attempt to improperly influence you in any
18 manner, you should promptly report the matter to me or to the bailiff. If you notice anything out of the
19 ordinary, you should promptly report the matter to me or to the bailiff.

20 You must not consider anything you have read or heard about the case outside the courtroom,
21 whether before or during the trial.

22 Under our system of criminal procedure you are not to concern yourself in any way with the
23 sentence which the Defendant might receive if you should find him guilty. Your function is solely to
24 decide whether the Defendant is guilty or not guilty of the charges against him. If, and only if, you find
25 him guilty of the charges in this case, then it becomes the duty of the Court to pronounce sentence.

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1 Until this case is submitted to you, you must not discuss it with anyone, even with your fellow
2 jurors. After it is submitted to you, you must discuss it only in the jury room with your fellow jurors.
3 It is important that you keep an open mind and not decide any issue in the case until the entire case has
4 been submitted to you under instructions of the Court.

5 INSTRUCTION NO. 2

6 You will be given the opportunity to ask written questions of any witnesses called to testify in this
7 case. However, I caution you that you are not to consider yourselves advocates, and you are not
8 encouraged to ask large numbers of questions because it is the primary responsibility of each lawyer to
9 present his client's case and evidence. You may ask a question which you need to have answered in order
10 obtain all of the facts necessary for your deliberations.

11 Questions may be asked only in the following manner:

12 After both lawyers have finished questioning a witness, I will ask the jury if it has any questions.
13 Your questions must be written with your juror number on each question. In order to ask a question,
14 simply raise your hand, and the bailiff will deliver your written question to the Court. Questions must be
15 directed to the witness instead of the lawyers or the judge. After consulting with counsel at a sidebar
16 conference, the Court will determine if your written question is legally proper. If it is, I will ask it. Only
17 questions permissible under the rules of evidence will be asked. No adverse inference should be drawn
18 if the Court does not allow a particular question to be asked. After the question has been answered, the
19 Court may ask follow-up questions and will permit the attorneys to ask follow-up questions. The jury must
20 not place undue weight on the responses to its questions.

21 It is not necessary that you spell each word in a given jury question correctly. Please try to be
22 specific with your questions, and cover only one subject with each question. Phonetic spelling is
23 acceptable. Do not concern yourselves with the form of the question because I will reword it so that it is
24 presented to the witness in the proper manner.

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297

INSTRUCTION NO. 3

You are about to hear testimony which tends to show that the Defendant committed wrongs or acts other than that for which he is on trial.

Such testimony may not be considered by you to prove that he is a person of bad character or that he has a disposition or propensity to commit crimes.

Such testimony may be considered by you only for the limited purpose of determining if it tends to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or a common scheme or plan.

For the limited purpose for which you may consider such testimony, you must weigh it in the same manner as you do all other evidence in the case.

You are not permitted to consider such testimony for any other purpose.

INSTRUCTION NO. 4

To warrant a conviction of any crime, the Defendant must be proven guilty beyond a reasonable doubt of the crime charged and of each and every element of the crime. The failure to prove any element of a crime beyond a reasonable doubt must result in a verdict of not guilty of that crime.

INSTRUCTION NO. 5

You are here to determine the guilt or lack of guilt of the Defendant from the evidence in the case. You are not called upon to return a verdict as to the guilt or lack of guilt of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant you should so find, even though you may believe one or more persons are also guilty.

INSTRUCTION NO. 6

A reasonable doubt is one based on reason. It is not a mere possible doubt, but is such a doubt as would govern or control a person in more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

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INSTRUCTION NO. 7

Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt. This is a presumption of law with which the Defendant is clothed, and it abides with the Defendant throughout the entire trial of the case until it is overcome by competent evidence sufficient in your minds to establish the Defendant's guilt as to the crime charged. In determining the guilt or innocence of the Defendant, it is not necessary that he establish innocence, but it is sufficient in order to warrant an acquittal if a reasonable doubt exists in your minds as to guilt, and it makes no difference whether the reasonable doubt thus created exists or is established from the evidence produced on the part of the State or that produced on the part of the Defendant, or from the lack of evidence, or its unreliability or weight.

INSTRUCTION NO. 8

In every crime or public offense there must exist a union, or joint operation, of act and intention.

INSTRUCTION NO. 9

Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused.

INSTRUCTION NO. 10

There are two types of evidence which a jury may properly consider. One is direct evidence, such as the testimony of an eyewitness. The other is circumstantial evidence, proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence. It simply requires that, before convicting a defendant, the jury be satisfied of guilt beyond a reasonable doubt from all the evidence in the case. Facts may be proven by direct evidence or circumstantial evidence. Both direct evidence and circumstantial evidence are acceptable as a means of proof. Neither is entitled to a greater weight than the other.

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INSTRUCTION NO. 11

It is not necessary to call as witnesses all persons who may have been present at any of the events disclosed by the evidence or who may appear to have some knowledge of these events, or to produce all objects or documents mentioned or suggested by the evidence.

INSTRUCTION NO. 12

Motive is not an element of the crime charged and need not be shown. However, you may consider motive or lack of motive as a circumstance in this case. Presence of motive may tend to establish guilt. Absence of motive may tend to establish innocence. You will therefore give its presence or absence, as the case may be, the weight to which you find it to be entitled.

INSTRUCTION NO. 13

A statement made by the Defendant other than at this trial may be an admission or a confession. An admission is a statement by the Defendant which, by itself, is not sufficient to warrant an inference of guilt, but which tends to prove guilt when considered with the rest of the evidence.

A confession is a statement by the Defendant which discloses intentional participation in the criminal act for which he is on trial and which discloses guilt of that crime.

You are the exclusive judges as to whether an admission or a confession was made by the Defendant, and, if so, whether such statement is true, in whole or in part. If you should find that any such statement is entirely untrue, you must reject it. If you find it is true in part, you may consider that part which you find to be true.

INSTRUCTION NO. 14

You have heard evidence that a witness made statements on an earlier occasion which counsel argues are inconsistent with his/her trial testimony.

If you find that the witness made earlier statements that conflict with his/her trial testimony, you may consider that fact in deciding how much of his/her trial testimony, if any, to believe.

In making this determination, you may consider whether the witness purposely made a false statement, or whether it was an innocent mistake; whether the inconsistency concerns an important

1 fact, or whether it had to do with a small detail; whether the witness had an explanation for the
2 inconsistency, and whether that explanation appealed to your common sense.

3 It is exclusively your duty, based upon all the evidence and your own good judgment, to
4 determine whether the prior statements were inconsistent. If you find that a witness made prior
5 inconsistent statements, it is your duty to determine how much, if any, weight to be given to the
6 inconsistent statements.

7 Evidence that at some other time a witness made a statement or statements that is or are
8 inconsistent with his/her testimony in this trial, may be considered by you for not only the purpose of
9 testing the credibility of the witness, but also as evidence of the truth of the facts as stated by the
10 witness on that former occasion.

11 INSTRUCTION NO. 15

12 A witness willfully false in one material part of his/her testimony is to be distrusted in others.
13 You may reject the whole testimony of a witness who willfully has testified falsely as to a material
14 point, unless, from all the evidence, you shall believe the probability of truth favors his/her testimony
15 in other particulars. However, discrepancies in the testimony of a witness or between his/her testimony
16 and that of others, if there were any, do not necessarily mean that the witness should be discredited.
17 Failure of recollection is not uncommon. It is a fact also that two persons witnessing an incident or a
18 transaction often will see or hear it differently. Whether a discrepancy pertains to a fact of importance
19 or only to a trivial detail should be considered in weighing its significance.

20 INSTRUCTION NO. 16

21 Evidence has been received tending to show that the Defendant committed wrongs or acts other
22 than that for which he is on trial.

23 Such evidence was not received and may not be considered by you to prove that he is a person
24 of bad character or that he has a disposition to commit crimes. Such evidence was received and may be
25 considered by you only for the limited purpose of determining if it tends to prove motive, opportunity,
26 intent, preparation, plan, knowledge, identity, absence of mistake or accident, or a common scheme or

1 plan.

2 For the limited purpose for which you may consider such evidence, you must weigh it in the
3 same manner as you do all other evidence in the case.

4 You are not permitted to consider such evidence for any other purpose.

5 INSTRUCTION NO. 17

6 It is your duty as jurors to consult with one another and to deliberate with a view of reaching an
7 agreement, if you can do so without violence to your individual judgment. You each must decide the
8 case for yourself, but should do so only after a consideration of the case with your fellow jurors, and
9 you should not hesitate to change an opinion if you become convinced that it is erroneous. However,
10 you should not be influenced to vote, in any way, on any question submitted to you by the single fact
11 that a majority of the jurors, or any of them, favor such a decision. In other words, you should not
12 surrender your honest convictions concerning the effect or weight of the evidence for the mere purpose
13 of returning a verdict or solely because of the opinion of the other jurors.

14 INSTRUCTION NO. 18

15 You are further instructed that you should also keep in mind the importance to the parties of the
16 results of your deliberations, and be just to the Defendant as well as to the State of Nevada. Both the
17 State and the Defendant have a right that you determine, and they do so demand and expect, that you
18 will carefully and dispassionately weigh and consider the evidence and the law of the case, and give
19 each your conscientious judgment; and, that you will reach a verdict that will be just to both sides,
20 regardless of what the consequences may be.

21 INSTRUCTION NO. 19

22 If, during your deliberation, you should desire to be further informed on any point of law or
23 hear again portions of the testimony, you must reduce your request to writing signed by the foreperson.
24 The officer will then return you to court where the information sought will be given to you in the
25 presence of, and after notice to, the State and the Defendant and counsel.

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1 Playbacks of testimony are time consuming and are not encouraged unless you deem it a
2 necessity. Should you require a playback, you must carefully describe the testimony to be played back
3 so that the court recorder can arrange her notes. Remember, the Court is not at liberty to supplement
4 the evidence.

5 INSTRUCTION NO. 20

6 The Court has already instructed you that you are made the sole judges of the testimony, and of
7 the weight to be given the same. In determining questions of fact presented in this case, you should be
8 governed solely by the evidence introduced and admitted before you. You are to bring to the
9 consideration of the evidence before you your everyday common sense and judgment as reasonable
10 men and women.

11 INSTRUCTION NO. 21

12 Statements made by the attorneys during the trial are not evidence. However, if the attorneys
13 have stipulated or agreed to a fact as stated to you by the judge, you must regard that fact or facts as
14 proven.

15 INSTRUCTION NO. 22

16 LADIES AND GENTLEMEN, it takes twelve, or all, of your number to agree upon your
17 verdict in this matter. When you have agreed upon your verdict, you will have the verdict agreed upon
18 signed by the foreperson and returned to the Court. In determining whether the Defendant is guilty or
19 not guilty of the charge against him you will follow the evidence and the law.

20 You will choose your own foreperson, and when you have agreed upon your verdict and the
21 verdict is signed and dated by your foreperson, you will return all verdict forms into the Court.

Macfarlan Copy
(Exh #36)
1024
FILED

OCT 14 AM 10:11
ELKO CO DISTRICT COURT
CLERK DEPUTY

CASE NO. CR-FP-14-0635
DEPT. NO. 1

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

DEVON RAY HOCKEMIER,

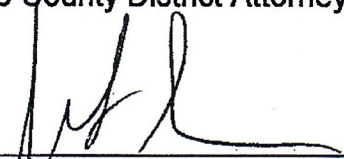
Defendant.

REQUEST FOR DISCLOSURE BY
DEFENDANT OF EVIDENCE
RELATING TO DEFENSE

COMES NOW, Plaintiff, State of Nevada, by and through its attorneys, MARK TORVINEN, District Attorney for the County of Elko, and JONATHAN L. SCHULMAN, Deputy District Attorney, and submits this Request For Disclosure By Defendant Of Evidence Relating To Defense pursuant to NRS 174.245, NRS 174.285, and NRS 174.295. This Request For Disclosure By Defendant Of Evidence Relating To Defense is made and based upon the Points and Authorities attached hereto, together with all pleadings and papers on file herein.

Dated this 13th day of October, 2014.

MARK TORVINEN
Elko County District Attorney

By: 
JONATHAN L. SCHULMAN
Deputy District Attorney
State Bar No. 9180

RECEIVED OCT 15 2014

(304)

Affirmation Pursuant to NRS 239B.030

SSN Does Appear
SSN Does Not Appear

15 0296

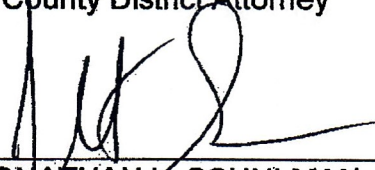
(Exh. #36)
304

1 174.245(1) material discovered by, DEVON RAY HOCKEMIER, and/or Counsel,
2 SHERBURNE M. MACFARLAN III, no less than thirty (30) days before trial pursuant to NRS
3 174.295.

4 This Request For Disclosure By Defendant Of Evidence Relating To Defense will
5 remain in effect including any continuances of the trial in the above-captioned matter.

6 Dated this 13 day of October, 2014.

7
8 MARK TORVINEN
Elko County District Attorney

9
10
11 By: 
12 JONATHAN L. SCHULMAN
13 Deputy District Attorney
14 State Bar Number. 9180
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POINTS AND AUTHORITIES

NRS 174.245(1):

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

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

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

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

A request made pursuant to NRS 174.235 or 174.245 may be made only within 30 days after arraignment or at such reasonable later time as the Court may permit. NRS 174.285(1). This Request For Disclosure By Defendant Of Evidence Relating To Defense is made within thirty (30) days of the Arraignment date of Defendant DEVON RAY HOCKEMIER.

Based upon the foregoing statutes, the State hereby gives Defendant, DEVON RAY HOCKEMIER, and Counsel, SHERBURNE M. MACFARLAN III, notice that it expects compliance with NRS 174.245, NRS 174.285, and NRS 174.295. Not less than thirty (30) days before trial, the State expects that it will be given the opportunity to inspect and copy or photograph the material set forth in NRS 174.245(1), should any exist. Further, the State expects that it will be given the opportunity to inspect and copy or photograph additional NRS

(Exh. #36)
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CERTIFICATE OF SERVICE

I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the Elko County District Attorney's Office, and that on the 14th day of October, 2014, I served the foregoing REQUEST FOR DISCLOSURE BY DEFENDANT OF EVIDENCE RELATING TO DEFENSE, by delivering, mailing or by facsimile transmission or causing to be delivered, mailed or transmitted by facsimile transmission, a copy of said document to the following:

By delivering to:

HONORABLE NANCY PORTER
FOURTH JUDICIAL DISTRICT COURT
ELKO COUNTY COURTHOUSE
ELKO, NV 89801

By mailing to:

SHERBURNE M. MACFARLAN III
ATTORNEY AT LAW
919 IDAHO ST
ELKO, NV 89801

Kurri Sullivan
KURRI SULLIVAN
FELONY CASEWORKER

DA# 94099

(307)

#0279

MacFarlan Copy
(Exh. #38)
10/14

FILED

2015 JAN -8 AM 10:39
ELKO CO DISTRICT COURT
CLERK _____ DEPUTY: *JS*

1 CASE NO.: CR-FP-14-0635
2 DEPT.NO.: 1
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6 IN THE FOURTH JUDICIAL DISTRICT COURT
7 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA
8

9 THE STATE OF NEVADA,
10
11 Plaintiff,
12 vs.
13 DEVON RAY HOCKEMIER,
14 Defendant.

NOTICE OF INTENT TO
USE EXPERT WITNESS(ES)

15 TO: SHERBURNE M. MACFARLAN III, Attorney for Defendant, and
16 To the Honorable NANCY PORTER, District Judge.

17 COMES NOW, Plaintiff, State of Nevada (State), and advises the Court and Counsel,
18 pursuant to NRS 174.234(2), of the intent to call the following expert witness(es) in its case-
19 in-chief and/or rebuttal case in the above-captioned matter.

20 **Dr. Kristen MacLeod, 5301 Reno Corporate Dr., Reno, NV 89511**

21 It is anticipated that Kristen MacLeod (MacLeod) will testify regarding the CARES
22 exam that she helped perform on the alleged victim, O.M. NRS 174.234(a). The substance
23 of the testimony expected to be rendered by MacLeod includes all observations and
24 conclusions with the treatment of the alleged victim in the above captioned matter.

25 A copy of MacLeod's curriculum vitae is attached hereto as Exhibit 1. NRS
26 174.234(2)(b). Copies of all reports have previously been provided as discovery pages 65-
27 71 and pages 73-80. NRS 174.234(2)(c).
28

///

RECEIVED JAN 12 2015

Affirmation Pursuant to NRS 239B.030
SSN Does Appear
SSN Does Not Appear JS

308

#

(Exh. #37)
2 of 14

1 **Carrie Power, 247 Bluffs Ave., Elko, NV 89801**

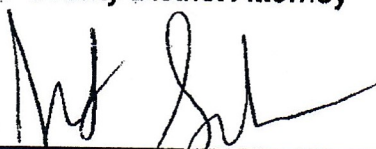
2 It is anticipated that Carrie Power (Power) will testify regarding the CARES exam that
3 she helped perform on the alleged victim, O.M. NRS 174.234(a). The substance of the
4 testimony expected to be rendered by Power includes all observations and conclusions with
5 the treatment of the alleged victim in the above captioned matter.

6 A copy of Power's curriculum vitae is attached hereto as Exhibit 2. NRS
7 174.234(2)(b). A copy of all reports made by or at Power's direction are attached hereto as
8 Exhibit 3. NRS 174.234(2)(c).

9 In accordance with the provisions of NRS 174.234, the State reserves the right to
10 amend this Notice of Intent To Use Expert Witness(es) should additional or different expert
11 witnesses come to the State's attention between the filing of this pleading and the
12 commencement of the trial in the above-captioned matter.

13 Dated this 8th day of January, 2015.

14
15 **MARK TORVINEN**
16 **Elko County District Attorney**

17
18 By: 
19 **JONATHAN L. SCHULMAN**
20 **Deputy District Attorney**
21 **State Bar No. 9180**

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1001

CERTIFICATE OF SERVICE


I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the Elko County District Attorney's Office, and that on the 8th day of January, 2015, I served the foregoing NOTICE OF INTENT TO USE EXPERT WITNESS(ES), by delivering, mailing or by facsimile transmission or causing to be delivered, mailed or transmitted by facsimile transmission, a copy of said document to the following:

By delivering to:

HONORABLE NANCY PORTER
FOURTH JUDICIAL DISTRICT COURT
ELKO COUNTY COURTHOUSE
ELKO, NV 89801

By mailing to:

SHERBURNE M. MACFARLAN III
ATTORNEY AT LAW
919 IDAHO ST.
ELKO, NV 89801


KURRI SULLIVAN
FELONY CASEWORKER

(Exh.#37)
4 of 14

Exhibit 1

STATE OF NEVADA
VS.
DEVON RAY HOCKEMIER

(311)

#0982

(Exh. #37)
56f14

Kristen J. MacLeod, MD
4790 Caughlin Pkwy, #365
Reno, NV 89519
Tel: (775-303-7731)
Email: kj_macleod@sbcglobal.net

PERSONAL INFORMATION

Date of Birth: December 30, 1968
Place of Birth: Beverly, MA
Citizenship: USA

PROFESSIONAL AND ACADEMIC POSITIONS

Volunteer Clinical Professor <i>University of California Davis Med Ctr, Department of Pediatrics</i>	10/2006 - present
Child Abuse Consultant <i>Children's Justice Act Task Force, DCFS, Carson City, NV</i>	8/2009 - present
Washoe County CARES Program Physician <i>Washoe County, Reno, NV</i>	1/2011 - present
Medical Director Washoe County CARES Program <i>Washoe County, Reno, NV</i>	3/2011 - present
Medical Director, Elko Co. Child Sexual Assault Program <i>Elko, NV</i>	10/2012 - present
Child Abuse Physician <i>University of California Davis, Med Ctr., CAARE Ctr.</i>	10/2006- 10/2009

EDUCATION

College	<i>Princeton University</i>	1987-1991
	Degree: BA in French and German Comparative Literature	
Postgraduate	<i>Wellesley College</i>	1993-1994
Medical School	<i>Tufts University School of Medicine</i>	1995-1999
	Degree: MD	
Residency	<i>University of California Davis Medical Center</i>	1999 - 2002
	Department of Pediatrics	
Chief Residency	<i>University of California Davis Medical Center</i>	2002 - 2003
	Department of Pediatrics	
Fellowship	<i>Child Abuse and Primary Care Outcomes Research</i>	
	<i>University of California Davis Medical Center</i>	2003 - 2006
	Department of Pediatrics	

312

#6284

MEDICAL LICENSURE and CERTIFICATION

California A073942
Nevada 13653
DEA On request
American Board of Pediatrics Certified in General Pediatrics since October 2002
American Board of Pediatrics Child Abuse Pediatrics certified since November 2011

HONORS AND AWARDS

2007 Carmel Scholars Award Western Society for Pediatric Research
2002 Dennis Styne Academic Achievement Award
2002 Department of Pediatrics Award for Outstanding Leadership
2000 Department of Pediatrics Award for Outstanding Leadership

PROFESSIONAL AND SOCIETY MEMBERSHIPS

American Academy of Pediatrics	2000 - present
American Academy of Pediatrics Section on Child Abuse and Neglect	2003 - present
International Society for the Prevention of Child Abuse and Neglect	2005- present
The American Professional Society on the Abuse of Children	2008 - present
American Academy of Pediatrics Section on Young Physicians	2003- 2008
UCD Department of Pediatrics Intern Selection Committee	2002-2004

PUBLIC HEALTH EXPERIENCE

Task Force on the Prevention of the Sexual Abuse of Children
Nevada State Legislature SB258, Appointed Member 2013 - present

University of California Davis 2003-2004
Sutter County Child Protective Services Assistant Liaison
Conducted research on missed opportunities for intervention in high risk families and acted as a clinical pediatric and child abuse consultant under the guidance of Robert Byrd, MD, MPH, General Pediatrics Section Chief UC Davis Medical Center

University of California Davis 2000-2002
HOPE Clinic
CATCH Grant Project Director
Directed grant to organize and implement focus groups to evaluate the health needs of homeless families in neighborhood shelter with the goal of identifying a medical home for these children

313

California Department of Health Services
Maternal and Child Health Branch
Research Coordinator

1999-2000

Performed month long needs assessment of the department's current programs addressing Family Violence and child witnesses in order to identify areas of need for future research and intervention.

Massachusetts Department of Public Health
Refugee and Immigrant Health Program
Class A/B Tuberculosis Coordinator

1994 - 1995

Developed and implemented a protocol to coordinate efforts of state and local health officials in the tracking and evaluation of foreign-born arrivals at high risk for TB exposure and disease.

PRESENTATIONS

MacLeod, KJ. "Neuroradiology in Abusive Head Trauma," Presented at the Washoe County conference for on Child Maltreatment Conference," Regional Public Safety Training Center, October 2012, October 2013

MacLeod, KJ. "Understanding the Medical Evaluation of Sexually Abused Children," Presented at the Washoe County conference for on Child Maltreatment Conference," Regional Public Safety Training Center, October 2012, October 2013

MacLeod, KJ and Wagoner, C. "Timing is Everything: Acute Exam Criteria in Pediatric Sexual Assault." Presented at Washoe County District Attorney's Medical Meets Legal Conference, Reno, NV. April 2011.

MacLeod, KJ. "Pediatric Sexual Assault and the Medical Exam." Presented at the AORN Conference, Renown Regional Medical Center, Reno, NV. February 2010.

MacLeod, KJ. "Pediatric Sexual Assault and the Medical Exam: "Terminology, Technology and Techniques." Presented at Grand Rounds, Northeastern Nevada Regional Hospital, Elko, NV. August 2009.

MacLeod, KJ. "Telemedicine in Child Abuse." Presented to the Children's Justice Act Task Force, Carson City, NV. October 2007.

MacLeod, K J Telemedicine in "Pediatric Sexual Assault." Presented at PAS 2007 as part of the workshop entitled "Telemedicine and Its Applications in Pediatrics." May 2007.

MacLeod, K J Telemedicine in "Pediatric Sexual Assault." Presented again at PAS 2006 as part of the workshop entitled "Telemedicine and Its Applications in Pediatrics." May 2006.

314

#0286

RESEARCH

MacLeod KJ, Byrd RS. "Improving Care and Identifying Missed Opportunities for Earlier Intervention Prior to Foster Placement." Abstracted accepted for presentation at the Pediatric Academic Society May 2005.

Mitchell C, **MacLeod KJ**, Rogers K. "The Co-morbidities of Intimate Partner Violence in Children Facing Foster Placement." Abstract accepted for presentation at the Pediatric Academic Society May 2005.

MacLeod, K J, Rogers K, Boyle C, Miyamoto S, Marcin J. "Using telemedicine to improve the care delivered to sexually abused children in rural, underserved hospitals." Pediatrics. 2009 Jan;123(1):223-8.

Miyamoto S, Dharmar M, Boyle C, Yang N, **MacLeod KJ**, Rogers K, Nesbitt, T and Marcin J. "Impact of Telemedicine on Forensic sexual Abuse Examinations in Rural Communities" submitted for publication to Pediatrics. September 2013.

Continuing Education

AAP Intensive Review and Update on Child Abuse pediatrics	July 2011
APSAC Advanced Course on Pediatric Sexual Assault.	January 2011, 2014
Annual San Diego Int'l Conference on Child and Family Maltreatment	January '11, '12, '14
11 th Annual International Conference on Abusive Head Trauma	September 2010
California Medical Training Center Medical Director Training	September 2009
UC Davis National Child Abuse and Neglect Conference	September 2009
2 nd International Conference on Pediatric Abusive Head Trauma.	June 2009
APSAC Advanced Course on Abusive Head Trauma.	January 2009
California Medical Training Center, Pediatric Sexual Abuse Forensic Examiner Training	April 2006
California Medical Training Center, Courtroom Communications.	September 2006

(Exh. #37)
9 of 14

Exhibit 2

STATE OF NEVADA
VS.
DEVON RAY HOCKEMIER

316

#0288

Carrie Elizabeth Power

391 Edgebrook Drive Spring Creek, NV 89815 Phone: (775) 934-5298 Fax (775) 738-1201

Objective:

My main objective is to provide the highest quality health care and assist my patients in achieving and maintaining optimal health.

Expertise Highlights

- CEO of Morning Star Health Center
- Family Nurse Practitioner
- Ob/Gyn Nurse Practitioner
- Coordinator of services with Fertility Specialist
- Administrative Experience
- Supervisory Expertise
- Pediatric Safe Training
- Private Practice

Professional Experience

MORNING STAR HEALTH CENTER CEO AND NURSE PRACTITIONER-FAMILY PRACTICE, GYN SERVICES, AESTHETICS	February 2007 to present
Sexual Abuse Forensic Examiner	December 2012 to present
The Nevada Center of Reproductive Medicine-Sonograms	April 2009 to Present
Family Nurse Practitioner, Lab Director of Indian Health Services-Family Practice	2004 to December 2006
Community Health Nurse Supervisor, Nurse Practitioner	1996-2004
State of Nevada Bureau of Community Health Services	
Director /RN/Nurse Practitioner-Well Child Exams	1986 to 1995
Smoky Valley Clinic, Round Mountain, NV	
Family Nurse Practitioner-Family Practice	
Dr. Daniel Dees and Dr. Gerald Peterson, Tonopah, NV	1986
Family Nurse Practitioner-Family Practice	
Smoky Valley Clinic, Round Mountain, NV	1984 to 1985

Carrie Elizabeth Power

391 Edgebrook Drive Spring Creek, NV 89815 + Phone: (775) 934-5298 + Fax (775) 738-1201

OB/GYN Nurse Practitioner-OB/GYN Care

Pinal County Health Department, Home Health Care Florence, AZ 1977 to 1983

Staff Nurse-Public Health Care

Kennecott Hospital, Kearny AZ-RN Services-Inpatient Clinic 1976 to 1977

Private Duty Nursing-Pediatrics 1975 to 1976

My professional service in health care began immediately following graduation and has continued to advance through a variety of locations until acquiring supervisory experience. However, continued additional training and advancement led to owning and operating my own practice under the supervision of a collaborating physician. This journey has led my down the path of continued improvement, compassion for my patients, and a desire to promote optimal health throughout our community and country.

Training

- Associate of Nursing Degree May 1976 Central Arizona College
- Bachelor of Science Degree in Nursing 1997 Clarkson, College, Omaha, Nebraska
- Master of Science Degree in Nursing May 2005 University of Las Vegas-Nevada
- Sexual Abuse Forensic Examiner trained at California Clinical Forensic Medical Training Center, September 13 & 14, 2010

Additional Training including but not limited to:

- *Biopsy-Cryosurgery*
- *IUD Insertion*
- *Minor Surgical Procedures*
- *Joint Injections*
- *BLS/CPR*

Licenses

- APRN111
- APRN259
- RN 13672
- DEA-USA

(Exh. #37)

120A/14

Carrie Elizabeth Power

391 Edgebrook Drive Spring Creek, NV 89815 + Phone: (775) 934-5298 + Fax (775) 738-1201

References

Kirin Madden

Specialty: Family Medicine

515 Shoshone Circle

Elko, Nevada 89801

(775) 738-2252

Troy Eden PA-C, RDCS, RVT

Specialty: Family Medicine Cardiology

262 Country Club Circle

Spring Creek, NV 89815

(775) 777-3535

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(Exh. #37)
13 of 14

Exhibit 3

STATE OF NEVADA

VS.

DEVON RAY HOCKEMIER

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(Exh. #37)
14 of 14

The CARES report contains confidential and personal information on one of the alleged victims, OM. A copy has already been provided to the Defense, and a copy will be provided for an in camera review by the Court should the Court want a copy of it.

321

Macfarlan Copy
(Exh.#38)
1 of 6

FILED

1 CASE NO. CR-FP-14-0635

2 DEPT. NO. 1

2015 JAN 16 AM 10:41

ELKO CO. DISTRICT COURT

CLERK DEPUTY: *[Signature]*

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6 IN THE FOURTH JUDICIAL DISTRICT COURT
7 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA
8

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 DEVON RAY HOCKEMIER,

13 Defendant.
14

MOTION IN LIMINE REGARDING THE
COURT'S OBLIGATION TO CONDUCT A
VOLUNTARINESS HEARING WITH
RESPECT TO THE DEFENDANT'S
STATEMENTS

15 COMES NOW, Plaintiff, State of Nevada, by and through its attorneys, MARK
16 TORVINEN, District Attorney for the County of Elko, and JONATHAN L. SCHULMAN,
17 Deputy District Attorney, and submits the following Motion in Limine. This Motion in Limine is
18 made and based upon the Points and Authorities attached hereto, together with all pleadings
19 and papers on file herein.
20

21 Dated this 5th day of January, 2015.

22 MARK TORVINEN
23 Elko County District Attorney

24
25 By: *[Signature]*
26 JONATHAN L. SCHULMAN
27 Deputy District Attorney
28 State Bar Number: 9180

RECEIVED JAN 8 - 2015

322

POINTS AND AUTHORITIES

In this case, the State intends to introduce incriminating statements made by Defendant to Detective Hessing. At the preliminary hearing, Detective Hessing testified that he/she interviewed Defendant regarding the allegations in this case, during the course of which Defendant made numerous incriminating statements. The State intends to introduce the interview with Detective Hessing, into evidence at the time of trial.

At this point, Defendant has not yet filed a Motion to Suppress any of these statements on the usual constitutional issues (e.g., 5th Amendment Miranda violation, Due Process violation because confession was involuntary, etc.). However, despite the fact that Defendant has not filed a Motion to Suppress the statements, the State believes, for the reasons expressed hereafter, that the Court is obligated to:

1. Conduct a hearing outside the presence of the Jury selected to hear the matter with respect to the issue of voluntariness prior to the presentation of evidence of said statement; and
2. If the Court concludes that the State has shown by a preponderance of the evidence that it was voluntarily made then the Court is to instruct the Jury with respect to that issue (see *infra*).

In July of 1968 the Nevada Supreme Court decided a case entitled Criswell vs. State, 84 Nev. 459 (1968)¹, wherein the Court observed, in a case wherein what has come to be called a *Jackson vs. Denno* Hearing was not conducted before evidence of the Defendant's Statements were adduced before the Jury, that:

Jackson v. Denno, 378 U.S. 368 (1964), laid down a constitutional rule that ***a jury is not to hear a confession unless and until the trial judge has determined that it was freely and voluntarily given.*** The judge must first make the primary determination of voluntariness at a hearing conducted for

¹ As a matter of historical interest Criswell, supra, arose in Elko County.

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11.95

1 that purpose, and his conclusion that the confession is voluntary must
2 "appear from the record with unmistakable clarity." Sims v. Georgia, 385
3 U.S. 538 (1967) and 389 U.S. 404 (1967). This doctrine rests upon the due
4 process clause of the Fourteenth Amendment, is basic to a fair trial, and is
5 given retroactive application. McNerlin v. Denno, 378 U.S. 575 (1964); 324
6 F.2d 46 (1963).

7 See Criswell, supra, 84 Nev. 459 at 465 (1968) (emphasis added by the State).

8 Two months later, in September of 1968, the Court decided Carlson vs. State, 84 Nev.
9 534 (1968) wherein the Court pronounced that:

10 In line with the command of Jackson v. Denno, 378 U.S. 368 (1964), the
11 trial court, in the absence of the jury, received evidence to determine
12 whether the defendant's confession was voluntary. The court specifically
13 found that the confession was voluntary [cf. Sims v. Georgia, 385 U.S. 538
14 (1967); Criswell v. State, 84 Nev. 459, 443 P.2d 552 (1968)], and it was
15 later received in evidence before the jury without objection, and the
16 footnoted instruction given. The instruction adopts the "Massachusetts
17 Rule." The court first hears the evidence in voluntariness before allowing
18 the confession into evidence. If found to be voluntary, the jury is then
19 instructed that it must also find that the confession was voluntary before it
20 may be considered. This court has never decided whether the
21 Massachusetts Rule should be followed, or some other procedure. State v.
22 Fouquette, 67 Nev. 505, 533-34, 221 P.2d 404, 419 (1950). ***We now***
23 ***approve that rule as the rule for Nevada.***

24 See Carlson, supra, 84 Nev. 534 at 535 and 536 (1968) (emphasis added by the State).

25 The Court in Carlson, supra, 84 Nev. 534 at 536 (1968) in Footnote 2 thereof also
26 approved the following instruction with respect to the issue of voluntariness:

27 The fact that the court has admitted into evidence the alleged confession or
28 admission of a defendant does not bind the jury to accept the court's
conclusion; and the jury, before it may take a confession or admission into
consideration, must for itself find whether or not it was a voluntary
confession or admission. If the jury concludes that a confession or
admission was not made voluntarily, it is the duty of the jury to entirely
disregard the same and not consider it for any purpose.

The test to determine voluntariness was discussed by the Nevada Supreme Court as
follows:

To determine the voluntariness of a confession, the court must consider the
effect of the totality of the circumstances on the will of the defendant. See

(324)

1 Schneckloth v. Bustamonte, 412 U.S. 218, 226-227 (1973). The question in
2 each case is whether the defendant's will was overborne when he
3 confessed. Id. at 225-226. Factors to be considered include: the youth of the
4 accused; his lack of education or his low intelligence; the lack of any advice
5 of constitutional rights; the length of detention; the repeated and prolonged
6 nature of questioning; and the use of physical punishment such as the
7 deprivation of food or sleep. Id. at 226.

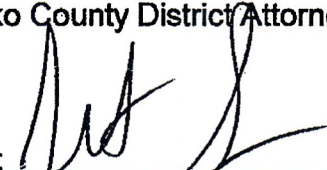
8 Passama v. State, 103 Nev. 212, 214-215 (1987).

9 The federal cases articulate the standard that must be met as follows: "Before a
10 criminal defendant's statement can be used against him, the government must prove its
11 voluntariness by a preponderance of the evidence." United States v. Guerrero, 847 F.2d
12 1363, 1365-1367 (9th Cir. 1988) citing Lego v. Twomey, 404 U.S. 477, 489 (1972).

13 Based upon the above authority the State now files this Motion in Limine requesting
14 that a hearing be held for the court to determine whether the incriminating statements were
15 voluntarily made. The voluntariness determination may be made either at the time of the
16 hearing on pre-trial motions, or at the time of trial, outside the presence of the jury,
17 immediately before the statements are admitted into evidence at trial.

18 Dated this 5th day of January, 2015.

19 MARK TORVINEN
20 Elko County District Attorney

21 
22 By: _____
23 JONATHAN L. SCHULMAN
24 Deputy District Attorney
25 State Bar Number: 9180

(Exh, #38)
50 fC

NOTICE

TO: SHERBURNE M. MACFARLAN III, Attorney for the above-named Defendant and to the Clerk of the Fourth Judicial District Court.

A hearing on this Motion in Limine is requested and a court reporter is requested. It is estimated that one (1) hour should be set aside for the hearing on this Motion in Limine.

Dated this 5 day of January, 2015.

MARK TORVINEN
Elko County District Attorney

By:

JONATHAN L. SCHULMAN
Deputy District Attorney
State Bar Number: 9180

326

CERTIFICATE OF SERVICE

I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the Elko County District Attorney's Office, and that on the 10th day of January, 2015, I served the foregoing Motion In Limine, by delivering, mailing or by facsimile transmission or causing to be delivered, mailed or transmitted by facsimile transmission, a copy of said document to the following:

By delivering to:

THE HONORABLE NANCY PORTER
FOURTH JUDICIAL DISTRICT COURT
ELKO COUNTY COURTHOUSE
ELKO, NV 89801

By mailing to:

SHERBURNE M. MACFARLAN III
ATTORNEY AT LAW
919 IDAHO ST.
ELKO, NV 89801


KURRI SULLIVAN
FELONY CASEWORKER

327

**IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA**

RECORD OF COURT PROCEEDINGS

Present - Honorable NANCY PORTER, District Judge,
and Officers of the Court.

STATE OF NEVADA,

VS.

Plaintiff,

Date: 1/29/15

Case No.: CR-FP-14-0000635

Dept: 1

DEVON RAY HOCKEMIER,

Defendant.

State of Nevada represented by Jonathan Schulmer, Esq.
and Tanner Sharp, Esq.

Defendant present, in custody, and represented by
Sherburne M. Macfarlan III, Esq.
Court Clerk, Faye Fleury, present.

STATUS HEARING

The Court noted the presence of the parties.

The matter was before the Court for a status hearing.

Defense advised they were waiting for an offer from the State.

The State advised there may be an offer, but they needed to confer with the victim's family.

The Court inquired as to pending motion in limine regarding voluntariness.

The State would request to withdraw the motion in limine.

Defense advised he did not believe it would be refilling that motion.

The Court advised a Senior Judge would be presiding over the trial.

Court adjourned.

328

HT 02/06

Macfarlan Copy
(Exh. # 40)
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FILED

CASE NO.: CR-FP-14-0635

DEPT.NO.: 1

2015 JAN 29 PM 3:07

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY _____

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

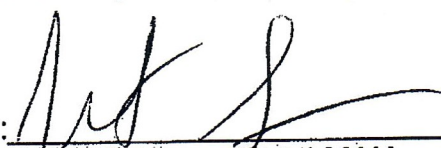
THE STATE OF NEVADA,
Plaintiff,
vs.
DEVON RAY HOCKEMIER,
Defendant.

MOTION WITHDRAWING MOTION IN LIMINE
REGARDING THE COURT'S OBLIGATION
TO CONDUCT A VOLUNTARINESS
HEARING WITH RESPECT TO THE
DEFENDANT'S STATEMENTS

COMES NOW, Plaintiff, State of Nevada, by and through its attorneys, MARK TORVINEN, District Attorney for the County of Elko, and JONATHAN L. SCHULMAN, Deputy District Attorney, and submits the following Points and Authorities in support of this Motion, together with all pleadings and papers on file herein.

Dated this 29th day of January, 2015.

MARK TORVINEN
Elko County District Attorney

By: 
JONATHAN L. SCHULMAN
Deputy District Attorney
State Bar No. 9180

329

DA#94099

RECEIVED FEB 2 - 2015

Affirmation Pursuant to NRS 239B.030

SSN Does Appear

SSN Does Not Appear

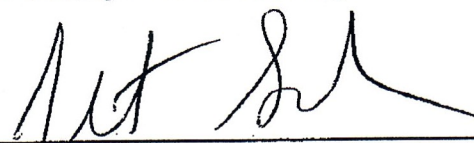
Document 2014-32800

1 The State previously filed a motion in limine regarding the Court's obligation to
2 conduct a voluntariness hearing with respect to the Defendant's statements. The State filed
3 that motion believing that we had an obligation to file the motion. After reviewing Wilkins v.
4 State, 96 Nev. 367, 372, 609 P.2d 309, 312 (1980) citing Guynes v. State, 92 Nev. 693, 695,
5 558 P.2d 626, 627 (1976), the State withdraws its motion as it is not the State's responsibility
6 to file a motion requiring a hearing to determine the voluntariness of the Defendant's
7 statements. "A trial court is not obligated to conduct a Jackson v. Denno hearing on its own
8 motion; rather, the onus is on the defendant to challenge the voluntariness of his admissions
9 or confessions and to request the appropriate hearing." Wilkins, 96 Nev. at 372, 609 P.2d at
10 312.
11

12
13 Therefore, the State is withdrawing its motion requesting a voluntariness hearing as it
14 is the Defendant's responsibility to file a motion if he chooses to challenge his statements.

15 Dated this 29th day of January, 2015.

16
17 MARK TORVINEN
18 Elko County District Attorney

19
20 By: 

21 JONATHAN L. SCHULMAN
22 Deputy District Attorney
23 State Bar No. 9180
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the Elko County District Attorney's Office, and that on the 29th day of January, 2015, I served the foregoing Motion, by hand delivering, mailing or by facsimile transmission or causing to be hand delivered, mailed or transmitted by facsimile transmission, a copy of said document to the following:

By delivering to:

HONORABLE NANCY PORTER
IN THE FOURTH JUDICIAL DISTRICT COURT
ELKO COUNTY COURTHOUSE
ELKO, NV 89801

By mailing to:

SHERBURNE M. MACFARLAN III
ATTORNEY AT LAW
919 IDAHO ST.
ELKO, NV 89801


KURRI SULLIVAN
FELONY CASEWORKER

MacFarlan Copy
(Exh. # 41)
10 of 3

FILED

1 CASE NO. CR-FP-14-0635

2 DEPT. NO. 1

2015 JAN 30 PM 3:25

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY *B*

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5
6 IN THE FOURTH JUDICIAL DISTRICT COURT
7 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

8
9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

NOTICE OF PENDING MOTIONS

12 DEVON RAY HOCKEMIER,

13 Defendant

14 TO: SHERBURNE M. MACFARLAN III, Attorney for Defendant, and
15 The Honorable NANCY PORTER, District Court Judge, Department 1.

16 COMES NOW, Plaintiff, State of Nevada (State), and advises the Court and Counsel
17 of the pending motions as required by the Pre-Trial Order.

- 18
19 1. Motion in Limine Regarding the Court's Obligation to Conduct a Voluntariness
20 Hearing with Respect to the Defendant's Statement, filed January 16, 2015;
21 and,
22 2. Motion Withdrawing Motion in Limine Regarding the Court's Obligation to
23 Conduct a Voluntariness Hearing with Respect to the Defendant's Statement,
24 filed January 29, 2015.

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Affirmation Pursuant to NRS 239B.030

SSN Does Appear

SSN Does Not Appear

B #

1 A hearing is not requested on the pending motions.

2 Dated this 30th day of January, 2015.

3 MARK TORVINEN
4 Elko County District Attorney

5
6
7 By: 

8 JONATHAN L. SCHULMAN
9 Deputy District Attorney
10 State Bar Number: 9180
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CERTIFICATE OF SERVICE

I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the Elko County District Attorney's Office, and that on the 30th day of January, 2015, I served the foregoing NOTICE OF PENDING MOTIONS, by delivering, mailing or by facsimile transmission or causing to be delivered, mailed or transmitted by facsimile transmission, a copy of said document to the following:

By delivering to:

THE HONORABLE NANCY PORTER
FOURTH JUDICIAL DISTRICT COURT
ELKO COUNTY COURTHOUSE
ELKO, NV 89801

By mailing to:

SHERBURNE M. MACFARLAN III
ATTORNEY AT LAW
919 IDAHO ST.
ELKO, NV 89801



KURRI SULLIVAN
FELONY CASEWORKER

DA# 94099

MacFarlan Copy
(Exh #42)
1 of 4
FILED

2015 FEB -4 AM 10:38
ELKO CO DISTRICT COURT
CLERK _____ DEPUTY *JS*

1 CASE NO. CR-FP-14-0635
2 DEPT. NO. 1
3
4
5

6 IN THE FOURTH JUDICIAL DISTRICT COURT
7 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA
8

9 THE STATE OF NEVADA,
10 Plaintiff,
11 vs.
12 DEVON RAY HOCKEMIER,
13 Defendant.
14

JOINT LIST OF WITNESSES,
EXHIBITS AND DISCOVERY TO
BE OFFERED AS EVIDENCE

15 COMES NOW, Plaintiff, State of Nevada, by and through its attorney JONATHAN L.
16 SCHULMAN, Deputy District Attorney, and DEVON RAY HOCKEMIER, by and through his
17 attorney, SHERBURNE M. MACFARLAN III, and hereby file this JOINT LIST OF
18 WITNESSES, EXHIBITS AND DISCOVERY TO BE OFFERED AS EVIDENCE as ordered by
19 this Court.
20

WITNESS LIST

21 State's Proposed List of Witnesses

22 Charles Bridge
23 91 Park Rd.
24 Elko, NV 89801

25 S.B.
26 Address Redacted

27 Pamela Ernestine
28 560 Juniper St. #9
Elko, NV 89801

/// RECEIVED FEB 9 - 2015

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1 Zachary Hessing
2 1401 College Ave.
3 Elko, NV 89801

4 Jared Lowry
5 1401 College Ave.
6 Elko, NV 89801

7 Dr. Kristen MacLeod
8 5301 Reno Corporate Dr.
9 Reno, NV 89511-2381

10 O.M.
11 Address Redacted

12 Hydrie Overholser
13 91 Park Rd.
14 Elko, NV 89801

15 Carrie Power
16 247 Bluffs Ave. #102
17 Elko, NV 89801

18 Alisha Turner
19 1010 Ruby Vista Dr. #101
20 Elko, NV 89801

21 Defendant's Proposed List of Witnesses

22 None, however the Defendant reserves the right to call any of the State's witnesses
23 above listed and/or the Defendant if he so chooses to testify. Furthermore, the Defendant
24 reserves the right to object to the nature of the testimony if it is not admissible pursuant to the
25 rules of evidence.

26 EXHIBIT LIST

27 State's Proposed Exhibit's

- 28
1. Carrie Power's portion of CARES exam
 2. Dr. Kriston Macleod's portion of CARES exam
 3. Defendant's Redacted Audio Interview
 4. Hydrie Overholser's Redacted Audio Interview
 5. S.B.'s Audio Interview

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