IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO LEE MIXON,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: C-17-327439-1
Related Case A-22-847754-W
Docket No: 84677

RECORD ON APPEAL
VOLUME
5

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THE COURT: -- ladies and gentlemen, we don't have a court reporter, you know a –

JUROR NO. 120: Sorry.

THE COURT: -- stenographer. And everything in this courtroom is audio recorded; okay? So, the audio recording won't identify who is speaking so that's why we need your name and badge number.

JUROR NO. 120: Okay; Heather Booker, badge 120.

THE COURT: Yes, ma'am?

JUROR NO. 120: When I was in my teens the bus service stopped running and the only other – 'cause my parents didn't have a telephone, the only other alternative was to call the police department. I was with my niece. They came out. They picked me up and they took me home with my niece and made us safe.

THE COURT: Do you feel that that experience from when you were – you said a teenager?

JUROR NO. 120: Yes.

THE COURT: Okay, is -- would come into play if you were selected as a juror in this case?

JUROR NO. 120: Not – I just – I don't know. I can be biased [indiscernible].

THE COURT: I'm sorry, you could be biased?

JUROR NO. 120: I could be biased until the all the facts are, um –

THE COURT: Assuming that the officers that may or may not

testify in this case were not involved in your situation, --

JUROR NO. 120: Yes.

THE COURT: -- okay, assuming that's accurate, would you have any bias or prejudice because of your situation in that –

JUROR NO. 120: No.

THE COURT: Okay. But if they were the same officers you would have an issue with them?

JUROR NO. 120: Probably so.

THE COURT: Okay. All right, thank you, ma'am. Anyone else that we haven't already spoke to? Okay.

Ladies and gentlemen, at the end of the trial I will read to you the jury instructions. The jury instructions are the laws that apply to this particular case. If you've been a juror in a civil case in the past or one in – or a criminal case in the past, no matter what State you are in, more than likely the judge at the end of the trial read to you the jury instructions. They are the laws that apply to the case. I assure you they will be our statutory laws, the laws of the United States Constitution or the Nevada Constitution; okay? Its my job to give you those laws that apply to this particular case.

We do not give you the jury instructions at the beginning of the trial because we haven't heard any evidence. We don't know what applies yet. Like I said, we've heard nothing, okay, because no one has called – has been called to testify. And I understand that you don't have those in front of you, the jury instructions, but is there anyone here feel that they could not follow the law that I give you? Again, I assure you it

will be the law of Nevada and the United States. Anyone here feel they could not follow the law? No hands being raised.

Some people may disagree with – you may think a particular street should be a 45 mile an hour zone and its only a 35 mile zone; you got a ticket. You probably think, well, it's a construction zone so maybe it should have been 45, but you still need to follow the law. Does anyone feel – that's an example I just give. And a lot of people don't like to pay their taxes April 15th. Well, it's a law that we may not like but we know we have to follow that. So, I that's why I just want you to think about any bias or prejudices but there is no – I just want to double check. Even if you disagree with the law, it would be your duty to follow the law that I give you. Anyone feels they could not follow the law? No hands being raised. Thank you.

Ladies and gentlemen, we're going to give the microphone to Ms. Basques; okay? And, ladies and gentlemen, we're going to go through this process – I'm going to ask you a question on background. Its going to be the exact same question for all of you, the exact same question for the people in the gallery when we get to you, okay, so please listen to this. It has a couple of subparts, ma'am. Let me just go through the subparts first, all right, and then we'll have you answer.

JUROR NO. 119: Okay.

THE COURT: And I'll probably – I'll have to – I'm probably going to remind you a second time as well.

Okay, the question is – let me go through them first before you answer and I'll call your names off so you don't need to list your name or

your badge number; okay? The question is what do you do for a living; if you are unemployed or retired, what do normally do; if you have a spouse or a significant other, what do they do for a living; if they're unemployed or retired, what do they normally do for a living; if you have any children, give us their names – I mean not the names, give us their ages; if they are of working age, tell us what they do for a living. You have a 28 year old who, let's say is – you know is – works on the Strip. You would tell us what they do. If you have a 14 year you would say they're in school; okay? So, let me just recap: what do you do for a living; if you're unemployed or retired, what do you normally do; spouse or significant other same question, what do they do for a living; if they're unemployed or retired, what do they normally do; give us the ages of your children and if they are of working age, tell us what they do for a living. Okay, so Ms. Basques, go ahead.

JUROR NO. 119: Accounting and my husband is a warehouse manager. I have no children.

THE COURT: All right. We'll just go – thank you. Let's go to Ms. Booker.

JUROR NO. 120: Reservations. My husband is retired and I have no children.

THE COURT: What is your husband retired from?

JUROR NO. 120: From the airlines.

THE COURT: Okay. What did he do for the airlines?

JUROR NO. 120: He was a head fueler.

THE COURT: Okay, thank you. We'll go to Ms. Campbell.

JUROR NO. 121: I work in – as a banquet server. My husband works as a banquet server. I have two children. They are both – one has graduated from school and lives in Arizona, the other one in California. And we also have a 19 year old in spring break right – not spring break, excuse me, Christmas break.

THE COURT: The first two children you mentioned, are they employed at this time?

JUROR NO. 121: They both are employed, yes.

THE COURT: What type of work do they do?

JUROR NO. 121: My daughter works as an esthetician and my son works in the – for a show in the back, like administrative stuff for a show in California.

THE COURT: Like behind a stage?

JUROR NO. 121: Behind stage, yes, like administrative.

THE COURT: Stage work?

JUROR NO. 121: Yes.

THE COURT: Okay. All right; thank you.

Ms. Dennis?

JUROR NO. 122: I'm a special education teacher. I have one son. He's 9.

THE COURT: All right, thank you.

Ms. Warner.

JUROR NO. 123: I am retired and my husband is retired. And I have two children, 35 and 37. My son is an executive chef in Pensacola, Florida, and my daughter is an executive at the

Cosmopolitan.

THE COURT: And what are you retired from, what type of work?

JUROR NO. 123: I worked for oil industry and my husband worked for the federal government and I did too but the state government and federal government for a little bit.

THE COURT: Okay. Thank you.

Ms. – was it Sneddon?

JUROR NO. 125: Yes. I'm a sales rep for a construction company and I'm a single mom to a 6 year old and a 2 year old.

THE COURT: All right, thank you.

Ms. Stahl.

JUROR NO. 126: Yes. I worked at a – or as a veterinary assistant for five years. I stopped doing that two years ago when I married my husband who is a real estate broker and so I'm a stay at home wife with him.

THE COURT: Any children?

JUROR NO. 126: No children.

THE COURT: All right, thank you.

Ms. Crayton.

JUROR NO. 127: Yes. I'm sorry, my voice is –

THE COURT: That's okay. All right.

JUROR NO. 127: [indiscernible]. I'm separated. I work for MGM as a [indiscernible]. I have no kids.

THE COURT: Okay. All right; thank you.

Marshal, pick that up and hand it to – we'll go to the middle row and that's Ms. Chester; is that correct?

JUROR NO. 137: I'm in social work. I'm a case manager. I have three boys, two are students and my 18 year old is a full time college student and works at Costco.

THE COURT: All right, thank you.

Ms. Gonzalez-Quinonez.

JUROR NO. 138: Yes. My name is Ana Gonzalez-Quinonez and I work in the Westgate Casino, Las Vegas --

THE COURT: Okay.

JUROR NO. 138: -- for 27 years and two daughters, one 31 years and 21 the next.

THE COURT: And what does your two children do for a living? Are they working?

JUROR NO. 138: Yeah.

THE COURT: And what do they do?

JUROR NO. 138: In Las Vegas – in the hotel, Westgate Casino.

THE COURT: Okay.

JUROR NO. 138: -- before its Las Vegas Hotel.

THE COURT: All right, and that's for the two children?

JUROR NO. 138: Yeah.

THE COURT: Okay. All right; thank you. Oh, did you – do you have a spouse or a significant other? Do you have husband or a significant other?

JUROR NO. 138: No. I don't know [indiscernible] husband [indiscernible] divorce in '95, divorce, yeah. I don't know [indiscernible] my husband.

THE COURT: Okay. All right; thank you.

Mr. Birds.

JUROR NO. 140: I'm an analyst at a consulting firm and I'm finishing my doctorate in public affairs with a criminal justice specialization. My wife is a NICU nurse. She's an RN. And we have a son that's 6 months old.

THE COURT: All right, thank you.

Ms. Northington.

JUROR NO. 141: I do web design and I am a substitute teacher.

THE COURT: Any children?

JUROR NO. 141: No children.

THE COURT: Or a spouse or significant other?

JUROR NO. 141: No.

THE COURT: All right, thank you.

JUROR NO. 209: I do part –

THE COURT: Oh, hang on, this is – Ms. Nava; okay.

JUROR NO. 209: I do part time ultrasound and I have a husband who does a part time casino dealer at Caesars and we have three children, grade 6, grade 7 and a 4 year old.

THE COURT: All right, thank you.

Ms. Leavitt.

JUROR NO. 147: I'm retired from construction work. My husband is a 100 percent disabled Veteran. I have a daughter 43 who's a substitute teacher; a daughter 41 who is a pharmacist; a son, 39, who is a mechanic; a son 37 who works for Station Casinos; and a daughter 29 who is a stay at home mom.

THE COURT: All right, thank you.

Mr., was it, Dowty?

JUROR NO. 157: Yes. A pharmacist, retired, and single and no children.

THE COURT: All right, thank you.

We'll come around to the front row; Mr. Nix.

JUROR NO. 162: I'm single, I work in the gaming industry, and I have no children.

THE COURT: All right, thank you, sir.

Ms. Anderson.

JUROR NO. 168: My husband is an optometrist. I work in his office. We have three kids: 22, 25, 29. Two are college students; one performs lithotripsy in hospitals in Utah.

THE COURT: All right, thank you.

Was it Mr. Duchene?

JUROR NO. 172: I'm married. My wife's currently unemployed. My 26 year old, he's the one that just got out of jail on July – I mean December 26. Andi have another son who is a valet like me. He's 24.

THE COURT: All right; thank you, sir.

[Colloquy between Court and Recorder]

THE COURT: All right, and next up is Ms., was it, Doneva?

JUROR NO. 210: Doneva.

THE COURT: Doneva; okay.

JUROR NO. 210: I'm a software engineer. Husband is a driver. Two kids, 10 and 3.

THE COURT: All right, thank you.

Mr., is it –

JUROR NO. 184: Elsaker, Fouad.

THE COURT: Yes.

JUROR NO. 184: Yeah, I'm a pharmacist and I have two children; dentist, 34 years in Texas and my daughter is 29. She is a wife and she goes to school.

THE COURT: All right – and I'm sorry, did you say – do you have a spouse or a significant other?

JUROR NO. 184: Oh, my spouse doesn't work.

THE COURT: Okay.

JUROR NO. 184: [indiscernible].

THE COURT: All right, thank you.

Mr., is it, Ullon?

JUROR NO. 197: Ullon.

THE COURT: Ullon.

JUROR NO. 197: I'm a stage technician for live shows. My girlfriend is a waitress. And I don't have any kids.

THE COURT: All right, thank you.

Mr. Burgess.

JUROR NO. 201: I am single and I am a writer for the City.

THE COURT: Okay. All right. No children?

JUROR NO. 201: Nope, no children.

THE COURT: Okay, thank you.

And, Ms., is it Dufrene?

JUROR NO. 204: I am a elementary school office manager. My husband owns a plumbing company. And I have two kids, 7 and 5.

THE COURT: All right, thank you.

Ladies and gentlemen, did the jury commissioner have you come down to the courthouse at 8:00 this morning?

THE JURY VENIRE: Yes.

THE COURT: Okay. We only needed you at 10:30 and there was some delay here. The reason why the jury commissioner had you come down so early, and I'm assuming the jury room was full this morning, okay, the jury commissioner has to process three to four hundred people this morning for the various courtrooms who are conducting trials this week. And it's a big process to check everybody in, get them assigned to the courtrooms, and then wait for the courtrooms to be ready, and then to have you here. So, I apologize for having you come down so early but I hope you understand why they have you come down so early. It's just a big task for our jury commissioner. She works very hard and we apologize for any inconvenience, but it's just essential that we go through this process. And I know you've been here for quite some time -- and Ladies and gentlemen, what we're going to do is we're

going to take a lunch break.

Now, there's a couple of things during the lunch break you have to be aware of. One is if you see any of the attorneys, my staff, or even myself during the lunch break we are all under strict orders not to have any communications with you. It is just common practice, you see someone that you just met to say hello, how is it going, nice weather, something along those lines. All of us will not even acknowledge your comment. The reason why we do that is because we're under strict rules of ethics not to have any communications with you because it might appear that we're discussing the case. And I'm sure all of you would understand how inappropriate that would be for us – for any of the staff members or the attorneys to talk to you about the case. So as to alleviate any concern about that, we won't even acknowledge you. So we're not being rude or antisocial. It's just that we're under strict rules not to have any communications with you. The only person you would communicate with would be the marshal and that would be in the hallway; okay?

Now, ladies and gentlemen, downstairs in this building there is a sandwich shop. Across the street from the main steps when you come into the courthouse there is 4 or 5 eating establishments and on most of the floors there are vending machines. I am not endorsing any of these locations for your lunch. I'm just telling where they're located; okay? I bring my lunch every day, okay, but I'm just telling you where they're located. It's strictly up to you; okay?

And so, we're going to take a one hour break. Now, we need

you to come back and take the exact same seat that you have now. Now, understand that you are under a court order to return at 1:30. Now, I have conducted over 100 trials and on one occasion about 18 months ago a person did not return; okay? And that person was held in contempt of court and did some jail time. I did not like to do that. I shouldn't have had to do it. Just don't make me do it again, okay, because I hope all of you just return. We're going to get through the process today. The jury will be selected today, all right, so we're going to know who is going to be on this jury panel and who is going to be excused, so just bear with us. We do need you to come back. Please be prompt. Wait outside this courtroom until the marshal escorts you back in. Another thing is look to your right, look to your left, help that person find their seat when you come back; okay?

Now, ladies and gentlemen, each and every time we take a break I must read to you the following admonishment so when we come back and we take a mid-afternoon break around 3:00 o'clock or so or 3:30, I'm going to read you the same admonishment, and at the end of the day I'll read you the same – every time we take a break I'm going to read this to you because I'm required by law and you're required to follow it, so please listen very carefully.

During this lunch recess, it is your duty not to converse among yourselves or with anyone else on any subject connected with the trial, or to read, watch, or listen to any report of or comment during trial by any person connected to the trial, or by any medium of information, including without limitation newspaper, television, radio, or the internet.

You are not to form or express an opinion on any subject connected with this case until this matter is submitted to you, and that's, again, if you are selected when you go to deliberate this case with your fellow jurors. So, ladies and gentlemen, have a good lunch. We'll see you back promptly at 1:30. Please wait outside the courtroom until the marshal escorts you in.

THE MARSHAL: All rise for the exit of the jury.

[Outside the presence of the jury venire]

THE COURT: All right, Counsel, we had a couple of jurors with hardships and then also we had an issue that we needed to address by the – the Defense had requested that we have a new jury panel. I want to take – resolve those matters when we – let's have Counsel come back at 1:20; okay?

MS. SISOLAK: Okay.

MS. MACHICH: Okay.

THE COURT: We'll resolve those matters. If there's any agreement on hardships perhaps you can discuss those during the break.

MS. SISOLAK: I'll text you.

MS. KALLAS: Okay.

THE COURT: But otherwise, I'll see you at 1:20. The jury will be back at 1:30 so we do need the Defendant back here at 1:20.

MS. KALLAS: Thank you, Your Honor.

MS. MACHNICH: Thank you, Your Honor.

THE MARSHAL: All rise Department 17 is in recess.

[Court in recess at 12:38 p.m.]

[Trial resumes at 1:25 p.m.]

[Outside the presence of the jury venire]

THE COURT: All right, on the issue of the venire panel, Defense?

MS. MACHNICH: Yes, Your Honor. So the motion that we made, Your Honor, was prior to the questioning of the jury, in the start of the venire process which was a timely objection in our opinion. And as stated up at the bench, and I'm not sure how much of our bench conferences, if any, are recorded, I want to make clear that we did make this objection at that time.

The record I would like to make is as follows. Upon receiving he packet of potential jurors in this case, the venire provided by the jury commissioner, I went through and looked at the reported race listed thereon as is relevant for the composition of the make-up of the jury. Looking through here, there were 45 jurors listed and there was only one person who reported as African American. There were also 6 people who reported as Other, or did not report. However, upon viewing the jury pool, there was not anyone else who was apparently of African American race. I – to somewhat – to some extent we are limited by what they do self-report, but we did try to do that to see if there was a possibility there were more that we didn't see. Given that there was one, I calculated that to be 2 percent of the jury venire. And according to the 2013 census numbers for Clark County, there's an 11.5 percent African American population in Clark County. I believe that has actually gone up,

but those are the latest numbers that I can report in good faith to the Court. So, at 11.5 percent, we are grossly under the representative amount of African Americans in the Clark County.

Now, Your Honor, in this case, African Americans are a distinctive group in the community as they are measured by a census. And specifically, when relating to Williams and Batson issues, it does become an issue in this case. Additionally, some of the case law that applies is Duran v. Mississippi, a US Supreme Court case, Castaneda v. Partida, a US Supreme Court case, Williams v. State which is a Nevada Supreme Court case, and Evans v. State, which is also a Nevada Supreme Court case. I – personally, I'm most familiar with Williams having cited it before.

Now, therein, the Nevada Supreme Court considered the fact that there were only two sources for the jury pool. I realize now our understanding is that there is a third source. However, we don't have the details of how that has been effectuated by the jury commissioner. I know personally, while I have tried cases with this issue, I have not had a chance to question the jury commissioner since the enlargement, or apparent enlargement of the jury pool by that third source.

But the issue that we have here today is the Williams case pointed out if its – if there's more than a 50 percent error range, and I don't think I'm articulating that correctly, but if we're looking at – if there's 11.5 percent – if you want to round that to 11 percent we can round it down, that would be a 5.5 percent sort of room for error and I believe that was the amount that was listed in Williams as what would be

understandable based upon the process. However, in this case, we are even below a 5.5 percent which means that we are significantly outside that range.

Because of that, Your Honor, we believe that this venire is not an accurate cross-section and we would affirmatively request a hearing with the jury commissioner to go through the process in front of Your Honor about how the cross-section of the community is accumulated, how it is brought, and eventually brought up before Your Honor's court. And if Your Honor will not allow us to have that evidentiary hearing at this point, we would request to make an offer of proof.

THE COURT: Do you have any information or evidence that there was a systematic exclusion of African Americans from the jury panel for my courtroom?

MS. MACHNICH: Your Honor, all of my information is anecdotal based upon prior trials, prior testimony of the jury commissioner generally. I can't speak to you this specific pool as it was obviously created by the jury commissioner, that information would be something that I would have to glean from the jury commissioner herself who we would request to have testify so that we can make that argument.

THE COURT: All right.

Let me hear from the State.

MS. KALLAS: And, Your Honor, I would object to having any type of evidentiary hearing or having the commissioner come in. It's – my understanding, and, Your Honor, correct me if I'm wrong, that there –

she has already testified before and that those transcripts have been passed out to the judges within this courthouse. I'm not sure if you have or have not, but I would –

THE COURT: That was my transcript –

MS. KALLAS: That was your –

THE COURT: -- so I'm very –

MS. KALLAS: -- transcript? All right.

THE COURT: -- familiar with it.

MS. KALLAS: And so, I would be objecting it on the basis that we've already heard from the commissioner. The answer is going to be the same. So I would just ask that you take judicial notice of her – of, is it his or hers testimony within that transcript to show that there isn't any systematic exclusion from the jury – or with the jury, I apologize.

THE COURT: All right, thank you.

This exact issue was brought up in Battle versus State of Nevada, there's an order of affirmance by the Nevada Supreme Court, August 10, 2016 where the Supreme Court said: Regardless of whether distinctive groups were under represented on the jury, Battle must first – must also demonstrate systematic exclusion as long as the jury selection process is designed to select jurors from a fair cross-section of the community, then random variations that produce venires without a specific class of persons or with an abundance of that class are permissible. And then they go on to state: The district court provided the parties with transcript from a hearing in a different case – which was my case which is State of Nevada versus Christian Williams where I did

have the jury commissioner testify as to the process of assigning individuals to courtrooms as well as sending out jury summons.

AB207 from the 2017 Nevada Legislature included the people that are covered under the Employment Security Division and the Department of Employment, Training and Rehabilitation I think is for unemployment and mail, so it would include welfare but I know it definitely includes people on the unemployment rolls.

And so, it is clear to me that there is no systematic exclusion nor is there any specific allegation in this particular case. And the Supreme Court has stated that just because in a particular panel we don't have a specific percentage of a particular race does not make – does not establish any systematic exclusion nor is there any evidence here. If I could have one of the Counsel approach, here's a copy of AB207, the Battle's case and the transcript of the hearing that Battle's references.

So, the motion for an evidentiary hearing is denied.

MS. MACHNICH: Your Honor, may I be heard just slightly further on this --

THE COURT: Sure.

MS. MACHNICH: -- to finish off the record? I respect your ruling.

I would note that the Battle case is one that I tried and made a similar record. As to this one, although the exclusion wasn't quite as complete as this with only 2 percent, I believe we had closer to 4 or 5 percent in Battle, but also, Your Honor, I will note in the Battle case they

did include the hearing from Your Honor's case. They did not allow us to question the jury commissioner at that time and both in this case and in that case had we had the opportunity to question the jury commissioner I would have asked her specifically about her knowledge of – when the rolls are created from Nevada Power, speaking specifically to duplicative entries, how are knowledge of how Nevada Power accumulates those numbers based upon -- what's the best way to this -- people who have their name on a power bill necessarily have a residence that's under their name. And –

THE COURT: Or an apartment or condo.

MS. MACHNICH: Often, Your Honor, multi-family dwellings, such as apartment or condo, the landlord will have it under their name in many circumstances. Additionally, people who are lower income tend to have more individuals living in a household therefore there is, again, only one under that household. Also we have another issue of exclusion of what tend to be lower income individuals. I know that this was in theory partially remedied by the assembly bill that Your Honor just mentioned. However, we have not had a chance to speak with the jury commissioner since that bill and what its implementation has looked like in Clark County, also have they had a chance to speak – or if we would have a chance to speak with the jury commissioner in this case we would re-inquire about how the ID's versus DMV, are we talking about licenses, are we talking about ID, are we talking about car registrations because once you start getting into duplicative entries for people who have car registrations and people who have driver licenses you're

starting to get into situations where you're disproportionately excluding people of lower income so we have some of that issue as well.

Additionally, I believe the jury commissioner has previously testified – I don't know if this is still currently the case, that when the summons' go out they go out to all of the zip codes proportionally in the city and in the county. The problem with that, Your Honor, is that low income and often African American individuals are clustered more tightly together in certain zip codes within Clark County so I would want to question the jury commissioner specifically about how she takes into account the fact that some of the zip codes primarily the lower income zip codes and those of higher minority representation how that is justified and how that is wed with the idea that summons' are sent out equally pursuant to zip codes so the same zip code in Summerlin that has – and I don't know the numbers, Your Honor, but a thousand residents might – a similar zip code in North Las Vegas might have ten thousand residents. And so, we have that issue when you're sending three there and three there. You're necessarily under representing people of color and people of lower income.

So, those are just some of the things that we would have asked the jury commissioner had Your Honor allowed us to question her in this case. And I will note that things have changed a little bit theoretically for the better but we don't know what the actual implementation has been in effect since the last time the jury commissioner was questioned and Battle was a couple of years ago and I know that Your Honor's case was prior to that.

Thank you.

THE COURT: All right, thank you.

Have the parties had an opportunity to talk about the hardship issues? This would only be if there's an agreement because if either side wishes to question them further then that's fine.

MS. SISOLAK: We did come to an agreement on several jurors, Your Honor.

THE COURT: Okay, sure.

MS. SISOLAK: We would like to thank and excuse juror number 125, juror number 137, juror number 184, juror number 209, --

THE COURT: Wait, wait, wait, so you have 137; what's next?

MS. SISOLAK: 184, --

THE COURT: Okay.

MS. SISOLAK: -- 209, 233, --

THE COURT: Okay.

MS. SISOLAK: -- 246 and 287.

THE COURT: State, do you agree with those?

MS. KALLAS: Yes, Your Honor.

THE COURT: Okay, let's write this down, Ms. Clerk.

Marshal, we're going to give you the numbers and names of these individuals; okay? Call them off out there to tell them they're way off to the side; --

THE MARSHAL: Okay.

THE COURT: -- okay? And then we'll bring the others in; --

THE MARSHAL: Okay.

THE COURT: -- all right? And after we get all situated then you can tell them they're excused, but just right now just call these names and numbers off and tell them to stand off to the side.

THE MARSHAL: [Indiscernible] outside?

THE COURT: Right.

THE MARSHAL: Okay.

THE COURT: Hang on. Let's get it –

MS. KALLAS: And, Your Honor, we do have a motion for cause for one of the jurors if you want us to make that now or later?

THE COURT: At any time someone gives an answer, please just have a motion to make and I'll make note of it.

MS. MACHNICH: I think there are two that we did not agree upon, one for the State and one for the Defense, so.

THE COURT: On hardship?

MS. MACHNICH: Um, --

MS. KALLAS: Not on --

MS. SISOLAK: Well, --

MS. KALLAS: Not on hardship, no.

MS. SISOLAK: -- not on hardship.

MS. MACHNICH: For cause.

THE COURT: Okay – I mean let's get the hardship going here. So, double check your notes because I don't want to release someone that's not appropriate: 125, Ms. Sneddon; correct?

MS. KALLAS: Correct.

THE COURT: 137, Ms. Chester.

MS. SISOLAK: Correct.

THE COURT: 184, Mr. Elsakr, E-L-S-A-K-R.

MS. SISOLAK: Correct.

THE COURT: 209, Ms. Nava.

MS. SISOALAK: Correct.

THE COURT: 233, Ms. Agnew.

MS. SISOLAK: Correct.

THE COURT: 246, Ms. Gallagher.

MS. SISOLAK: Correct.

THE COURT: And 287, Ms. Pitcher.

MS. SISOLAK: Correct.

THE COURT: Okay, so let's give that list to the Marshal and the Marshal will tell them to stand off to the side.

THE MARSHAL: So I have –

THE COURT: No, she's going to write it down for you. Did you write those down?

THE CLERK: Yeah. I just [indiscernible].

THE COURT: Put it on a post-it or a piece of paper. Unless you have – do you have it, Marshal?

THE MARSHAL: Yes, I have 125, 137, 184, 209, 233, 246, and 287.

THE COURT: Yes.

And someone had a motion on some of our jurors?

MS. KALLAS: Oh, yes, Your Honor. I'd like to make a motion for cause on juror badge number 172, Mr. Duchene. He stated that he is

currently suing the Nevada Department of Corrections. That's essentially our victim in this case. Our officer works for the Nevada Department of Corrections. So, I think based on his statements I don't think he can be fair and impartial.

MS. SISOLAK: Your Honor, if I may?

THE COURT: If you – right at this point since no one is questioned him further unless you agree, I'll make a note. Okay, so –

MS. KALLAS: Thank you.

THE COURT: -- when you question them if you want to focus in on him a little bit, then that's fine and I'll let the Defense –

MS. KALLAS: I probably don't want to bring –

THE COURT: -- do the same.

MS. KALLAS: -- to light too many issues he had with the Nevada –

THE COURT: Okay.

MS. KALLAS: -- Department of Corrections, but I understand, --

THE COURT: All right, is there any others?

MS. KALLAS: -- Your Honor.

THE COURT: Any others?

MS. SISOLAK: Your Honor, we would be –

THE COURT: Wait; any others by the State? Any others by the State?

MS. KALLAS: No, Your Honor, not at this time.

THE COURT: How about the Defense?

MS. SISOLAK: Your Honor, we do have one motion. It would be on juror badge number 140. He stated repeatedly he's teaching policing at UNLV. He has an unlimited number of law enforcement contacts.

THE COURT: That's fine. I mean unless the State is agreeing, I'll allow the State, just as I'm going to allow you on the other –

MS. SISOLAK: Understood, Your Honor.

THE COURT: -- person to question him further, so you understood that 140 they're going to seek to have him removed for cause, so --

MS. KALLAS: Yes, Your Honor.

THE COURT: -- take note of it. And for the Defense, take note that the State is seeking to get rid of – to remove Mr. Duchene.

MS. MACHNICH: And, Your Honor, we have one further issue, and it may require or at least our request to be – to handle it outside the presence. Ms. Booker, juror number 120, her sister was killed by a serial killer so obviously she's a victim of a homicide. If our client elects to testify in this case, and we don't know if whether he will be making that election or not at this time, his prior that would come it would be for I believe voluntary manslaughter with use of a deadly weapon, so its unfortunately someone deceased. Obviously, there were circumstances surrounding it that lead to it being reduced to what it was, but we would have some concerns, without having to get into that specifically in front of the entire jury about whether she could be fair and impartial knowing that her sister was the victim and my client was the

Defendant --

MS. SISOLAK: Charged.

MS. MACHNICH: -- in a murder case basically, and I think most people would be able to deduce that. Even if they were instructed not to consider that, its going to be in the back of her mind specifically because of the situation and so I don't know if we should question her further or if we can make the motion for cause now but what we don't want to do is taint the entire jury pool with that.

THE COURT: Well, what I – at this point, unless the State agrees which I don't think –

MS. KALLAS: We do not, Your Honor.

THE COURT: -- okay, then either side's free to question her further and see what bias she may or may not have. I know you have to walk a tight – you know a tightrope because you don't want to divulge right now –

MS. SISOLAK: Understood, Your Honor.

THE COURT: -- as far as your client's background.

MS. SISOLAK: That being said, would Your Honor be willing to allow us to do that outside the presence of the rest of the panel?

THE COURT: I would. Okay.

MS. MACHNICH: Thank you.

MS. SISOLAK: Thank you, Your Honor.

THE COURT: All right, let's bring the jury panel in now.

[Colloquy between Court and Clerk]

THE MARSHAL: Ones – 138 is not back yet.

THE COURT: All right, well let's bring them in and then hopefully she'll show up in just a minute.

[Colloquy]

[In the presence of the jury venire]

THE MARSHAL: All rise for the entry of the jury.

THE COURT: All right, welcome back, ladies and gentlemen. Is Ms. Gonzalez here? Hopefully she'll show up in just a moment. We need to fill the spot of seat number 6. Next in order, please?

THE CLERK: Badge number 232, Gaspar Pineda.

[Colloquy between Court and Marshal]

THE COURT: Good afternoon, Mr. Pineda. Did you hear the previous question I asked people in the jury box?

JUROR NO. 232: I have.

THE COURT: Okay, I'm going to go over those with you at this time, sir, okay so – Counsel, then – after – let me fill in the spots and then we'll open it up for the attorneys.

MS. SISOLAK: Thank you, Your Honor.

THE COURT: So, I'm going to go over those questions with you again, sir. As far as the law enforcement, would you be answering yes to any of those questions, sir?

JUROR NO. 232: Yes, I have.

THE COURT: Okay. And who is involved in law enforcement?

JUROR NO. 232: Sorry?

THE COURT: Who – you said –

JUROR NO. 232: Oh, I'm so sorry. I made a mistake

[indiscernible].

THE COURT: Okay, so the answer is no?

JUROR NO. 232: I don't have any relatives in law enforcement.

THE COURT: Or yourself or your family members?

JUROR NO. 232: None.

THE COURT: Okay. All right, the same question regarding either a victim of a crime; okay? I just want to recap right – anyone in the gallery who will be called up to fill the spots and for you, Mr. Pineda, when I ask these questions it will be either yourself, a close family member, anyone closely associated with you. So the next question – we had law enforcement; you said no, correct?

JUROR NO. 232: Yes, sir.

THE COURT: Make sure you use the microphone; okay?

JUROR NO. 232: Yes, sir.

THE COURT: All right.

JUROR NO. 232. Yes, Your Honor.

THE COURT: The next question is victim of a crime.

JUROR NO. 232: I was.

THE COURT: Okay, and tell us –

JUROR NO. 232: Back in 2014, our house was burglarized and a lot of stuff was stolen.

THE COURT: Okay. Was law enforcement called out?

JUROR NO. 232: My neighbor did but we weren't at the premises at the time.

THE COURT: Do you know if they ever caught the perpetrator or perpetrators?

JUROR NO. 232: Not to my knowledge, Your Honor.

THE COURT: Based upon the facts and circumstances of you situation – your burglary, were you satisfied with the services of law enforcement?

JUROR NO. 232: Not satisfied.

THE COURT: Okay, and why not, sir?

JUROR NO. 232: I just got one phone call and that's about it.

THE COURT: All right. And sir, I'll go to the next question, have you ever been accused of a crime?

JUROR NO. 232: No, Your Honor.

THE COURT: Okay. Then we talked about have you had any – besides your home burglary, have you ever had a particularly positive or negative experience with law enforcement?

JUROR NO. 232: Positive; yes, I have.

THE COURT: Okay, tell us about that, sir.

JUROR NO. 232: I have [indiscernible] and I asked for direction from law enforcement. They willingly gave me the direction where to go so that's something positive.

THE COURT: Do you recall which – was it Metro or North Las Vegas, Henderson PD?

JUROR NO. 232: No, it was back in Texas.

THE COURT: Okay. All right, and sir, have you ever had prior jury service?

JUROR NO. 232: Yes, I have, in California.

THE COURT: Okay, and let me go over that with you, sir. I think you are the first person to have prior jury service that we've talked to so far. Prior jury service is – let me go over the questions for you, was it – let me go over them first before you answer, civil or criminal; all right? Then the next question is did the jury reach a verdict without setting forth the verdict. Just say yes we reached a verdict or not we did not -- were you the foreperson; okay? So, prior jury service?

JUROR NO. 232: I probably have to clarify. I wasn't selected to sit –

THE COURT: Okay.

JUROR NO. 232: -- on any –

THE COURT: Okay, can –

JUROR NO. 232: -- panel.

THE COURT: All right. Ladies and gentlemen, did I ask that question of all of you?

THE JURY VENIRE: No.

THE COURT: Okay, I will in just a moment. I apologize. I was trying to get you to your lunch break as soon as possible but we'll get to that; okay? Thank you.

And, sir, your background. Remember, it's what do you do for a living; if your unemployed or retired, what do you normally do; spouse or significant other, same question; if you have any children, give us their ages; if they are of working age, give us their – what they do for a living.

JUROR NO. 232: Yes, Your Honor. My name is Gaspar Pineda., number 232. Married. I retired from the United States Navy as an enlisted person in 2009. In 2012, I retired from University of California in Irvine as a power plant operator. My wife retired from the post office due to a disability. I have – well, we have 4 children. The oldest one is a [indiscernible] teacher out of Los Angeles County School District. My second daughter she's a doctor, anesthesiologist at [indiscernible] Hospital out of the State of Washington. My son is a safety officer for Northrop Grumman. And my youngest one she's a registered nurse out of Southern Hills here in Nevada.

THE COURT: All right. Thank you, sir.

Ladies and gentlemen, I missed that question for all of you. Prior jury service, who has had prior jury service? All right, a couple. Marshal, if you can hand it to juror number 1 please which is 119 – seat number 1 I should say? And you understand, ma'am, the question is civil or criminal, did the jury reach a verdict without telling us what it was, were you the foreperson?

JUROR NO. 119: It was a civil case. No, there was no decision. They settled out of court while we were at lunch.

THE COURT: And how long ago was that service?

JUROR NO. 119: About four and a half years ago.

THE COURT: Was that here in Clark County?

JUROR NO. 119: Yes.

THE COURT: Okay. And how did you find that experience?

JUROR NO. 119: Good.

THE COURT: All right.

JUROR NO. 119: A lot of detail we had to –

THE COURT: All right.

JUROR NO. 119: -- go through.

THE COURT: Well, we appreciate you on in your second jury summons. Anyone else in the back row prior jury service? Middle row? Front row? I think we had one or two hands. Name and badge number, sir?

JUROR NO. 162: Scott Nix, 162. Twice I served in a jury. One was civil, one was criminal, approximately 1987. I was not the foreman on either jury.

THE COURT: And did they reach a verdict in those two trials?

JUROR NO. 162: We did the same day.

THE COURT: Okay. And were you the foreperson in either one of those jury's?

JUROR NO. 162: No, I was not.

THE COURT: And, sir, was that here in Clark County, Nevada?

JUROR NO. 162: It was in Milwaukee, Wisconsin.

THE COURT: Okay. And I'm sorry, how long ago was that, sir?

JUROR NO. 162: 1987.

THE COURT: Both of them were in '87?

JUROR NO. 162: Yes.

THE COURT: Okay. And how did you find that experience,

sir?

JUROR NO. 162: It was different.

THE COURT: Okay; different.

JUROR NO. 162: It was my first time doing it, so.

THE COURT: All right.

JUROR NO. 162: A big gap between times.

THE COURT: All right. All right. Well, thank you, sir, for honoring your summons. And we had a lady at the end of the row here.

JUROR NO. 204: Heather Dufrene, 204. It was a civil case probably about 12 years ago and I was not the foreman.

THE COURT: And did that jury reach a verdict?

JUROR NO. 204: Yes.

THE COURT: Okay. And was that here in Clark County?

JUROR NO. 204: Yes.

THE COURT: All right. I'm sorry, you said civil?

JUROR NO. 204: Yes.

THE COURT: Okay. And how did you find that experience?

JUROR NO. 204: Interesting.

THE COURT: All right. All right, thank you, ma'am.

And we need to fill the other seat, seat number 9.

THE CLERK: Badge number 240, Rebekah Fredrickson.

[Colloquy between Court and Clerk]

THE COURT: All right, Ms. Fredrickson, I'm going to go over the same questions that I went over with the rest of the panel and Mr. Pineda recently here as far as anyone involved in law enforcement.

JUROR NO. 240: My cousin's husband is Henderson police force.

THE COURT: Cousin's?

JUROR NO. 240: Husband.

THE COURT: Husband; okay, I got it. Okay. How often do you see that individual?

JUROR NO. 240: Its been a few years.

THE COURT: Okay. As you heard, we may have some law enforcement officers testifying in this case. The fact that your cousin's husband is involved in law enforcement is that going to cause you to have any bias or prejudice –

JUROR NO. 240: No.

THE COURT: -- in this case? Okay. Anyone else in law enforcement?

JUROR NO. 240: No.

THE COURT: Okay. How about victim of a crime?

JUROR NO. 240: No.

THE COURT: How about being accused of a crime?

JUROR NO. 240: Yes.

THE COURT: Okay, tell us about that.

JUROR NO. 240: Well, does DUI count? Is that –

THE COURT: Yeah, why don't you go ahead on the DUI, yes.

JUROR NO. 240: Okay, so I have several family members who've had DUI's.

THE COURT: Is it here in Clark County?

JUROR NO. 240: Yes.

THE COURT: Okay. Can you give us the years, I mean like recently, 10 years ago?

JUROR NO. 240: So, within the past 5 years my brother twice and then within the past 10 years my father, within the past 15 years probably would be my mom.

THE COURT: Were any of those felonies? You know where there was a possibility that they went to prison?

JUROR NO. 240: No.

THE COURT: Okay. And those are – I'm sorry, those are all in Clark County?

JUROR NO. 240: Yes.

THE COURT: Okay. Do you know if any of those cases were prosecuted by the District Attorney's Office because some can be prosecuted by one of the local City Attorney's Office, either Las Vegas City or North Las Vegas or Henderson or Boulder City or some could be prosecuted by the DA's office, do you recall if –

JUROR NO. 240: I don't know.

THE COURT: Okay. The fact that some family members were prosecuted by some prosecutors' office, we have two prosecutors here in our courtroom, is that going to play into any part in your ability to be a fair juror here because we have two prosecutors?

JUROR NO. 240: No.

THE COURT: Okay. Anyone else accused of a crime, ma'am?

JUROR NO. 240: Yes.

THE COURT: Okay.

JUROR NO. 240: My uncle for – but it was – I don't – I think it was in Arkansas, so.

THE COURT: Do you know what that was for?

JUROR NO. 240: Trafficking.

THE COURT: A drug case?

JUROR NO. 240: Yes.

THE COURT: Do you know how long ago that was?

JUROR NO. 240: He just got out of prison a month ago, so he was in prison for 5 years.

THE COURT: Okay. Now, in that case there definitely was a prosecutor. There was law enforcement involved.

JUROR NO. 240: Yes.

THE COURT: Okay, and we have law enforcement in this case and we have prosecutors in this case. Does your – I'm sorry, is it brother – your uncle, okay, -- because of your uncle's situation, will that prevent you from being a fair juror in this case?

JUROR NO. 240: No.

THE COURT: Okay. All right, thank you. Anyone else, ma'am?

JUROR NO. 240: No.

THE COURT: All right, thank you. And have you ever had a particularly positive or negative experience with law enforcement?

JUROR NO. 240: Yes.

THE COURT: Okay, can you tell us about that.

JUROR NO. 240: I've had positive experiences with Metro police who have come – been called out to my home just for domestic stuff actually with my teenage sons and such. So, very positive experience with Metro police. And then particularly negative also with regards to situations with my brother and my dad actually where I feel that maybe they weren't as respectful as they could have been.

THE COURT: Okay. So, you've had some positives, some negative?

JUROR NO. 240: Yes.

THE COURT: Okay. And as you heard, we may have some law enforcement officers testifying in this case. Your positive and negative experiences in the past is that going to come into play in any way in your ability to be a fair juror in this case?

JUROR NO. 240: No.

THE COURT: All right, thank you. Have you had prior jury service?

JUROR NO. 240: No.

THE COURT: Okay. And I'm going to ask you about your background question. Let me just recap: what do you do for a living; spouse or significant other; you have any children, their ages; if they're working age, what do they do for a living. Go ahead.

JUROR NO. 240: So I'm in social work. I'm a case manager. I'm single and I have three adult children, a 23 year old who's in call center work. My 20 year old is unemployed and my 18 year old just

graduated and he works in fast food [indiscernible].

THE COURT: Okay. Thank you.

And we need to – thank you, ma'am -- and we need to fill the space for – next to you was Ms. Gonzalez who hasn't shown up yet; is that correct?

THE MARSHAL: Correct.

THE COURT: Still not showed up?

THE MARSHAL: I'll double check outside.

THE COURT: Okay, but let's handle – the next space open.

THE CLERK: And that would be seat number 13, badge number 241, Zachary Taylor.

THE COURT: Good afternoon, Mr. Taylor.

JUROR NO. 241: Good afternoon.

THE COURT: We're going to go over the same questions with you, sir; law enforcement?

JUROR NO. 241: My uncle is a police officer in Washington. We have a close family friend who is a police officer in Idaho Falls. And then my father is a lawyer. I don't know if that qualifies.

THE COURT: All right, sir, as you know, we may have some law enforcement officers testifying here. You have two family members, I guess they're police officers, would the fact that you have family members in law enforcement would that prevent you from being a fair juror in this case?

JUROR NO. 241: No.

THE COURT: Okay. And ever been a victim of a crime, again,

the same group of individuals, victim of a crime?

JUROR NO. 241: No.

THE COURT: How about accused of a crime beyond a traffic matter?

JUROR NO. 241: Family members?

THE COURT: Either yourself, close family member, anyone closely associated with you.

JUROR NO. 241: My cousin was accused and convicted of sexual assault.

THE COURT: Was that here in Clark County?

JUROR NO. 241: No, that was in Washington.

THE COURT: And about how long ago was that, sir?

JUROR NO. 241: 10 to 12 years ago.

THE COURT: Sir, in that case he was accused of that. Did he actually go to court do you know or –

JUROR NO. 241: Yeah, he went to prison.

THE COURT: Okay, went to prison. All right, in that scenario I assure you that there was law enforcement involved and there was some prosecutors involved. We have potentially law enforcement officers who will testify here and we have some prosecutors in our courtroom, obviously not the ones from the State of Washington, the question is what happened to your cousin would that have any impact on your ability to be fair to both sides in this case?

JUROR NO. 241: No.

THE COURT: Okay. And, sir, have you had any particularly

positive or negative experience with law enforcement?

JUROR NO. 241: None that stick out.

THE COURT: Okay. Have you ever had prior jury service?

JUROR NO. 241: No.

THE COURT: And the – I'm going to ask you the background question now, sir. Do you remember its what do you –

JUROR NO. 241: Yeah.

THE COURT: -- do, spouse, children.

JUROR NO. 241: Yeah, so I'm working in a warehouse and installing shutters and will start school soon. My wife stays at home with our kids who are 3 and 18 months so they don't hold jobs.

THE COURT: Okay. All right.

JUROR NO. 241: It would be nice though.

THE COURT: All right, thank you.

And then we're going to fill the next space, the seat in front here.

THE CLERK: Okay number – Ms. Abella, badge number 242.

THE COURT: Good afternoon, Ms. Abella. The microphone, ma'am. Thank you – and thank you, sir. Ma'am, I'm going to go over the same questions with you; law enforcement?

JUROR NO. 242: I don't have anyone.

THE COURT: Okay. How about being a victim of a crime?

JUROR NO. 242: No.

THE COURT: How about accused of a crime?

JUROR NO. 242: No.

THE COURT: How about a particularly positive or negative experience with law enforcement?

JUROR NO. 242: I don't have any.

THE COURT: All right. How about jury service?

JUROR NO. 242: I was not being pick.

THE COURT: I'm sorry? No. All right, then we just go to the background question for you.

JUROR NO. 242: I am a senior risk coordinator in the bank. I'm single, no kids.

THE COURT: All right, thank you.

I think we have all the spots. Now, State, do you have any general or specific questions for our –

MS. KALLAS: I do, Your Honor, but can we approach just briefly?

THE COURT: Sure.

[Bench conference begins – transcribed as follows:]

MS. KALLAS: Your Honor, we would just ask if we can question 172. He was [Indiscernible] the Nevada Department of Corrections. Could we question him outside the presence of the jury kind of for the same reasons that they want to question the other juror Ms. Booker? We don't want anything said to possibly prejudice [indiscernible].

THE COURT: What was the one that you wanted? What's the one --

MS. MACHNICH: We wanted Ms. Booker, 120, and we'll

submit on that request.

THE COURT: Sure. All right, --

MS. MACHNICH: Okay.

THE COURT: -- I mean let's move forward on this and then he --

MS. MACHNICH: Yeah. [Indiscernible].

UNKNOWN SPEAKER: [Indiscernible].

THE COURT: -- may answer questions that another juror may [indiscernible] about what you – both sides ask [indiscernible] specifically – I mean the issues --

UNKNOWN SPEAKER: About that issue.

THE COURT: – of concern, but go ahead and ask him the other questions you may [indiscernible] --

MS. SISOLAK: [Indiscernible].

MS. KALLAS: Thank you, Your Honor.

THE COURT: -- whatever they may be.

[Bench conference ends]

THE COURT: Go ahead, State.

MS. KALLAS: Good afternoon, everyone. My name is Chelsea Kallas. I am a Deputy Attorney General with the Attorney General's Office. And I have my co-counsel here, Jason Gunnell. He's also a – he's a Senior Deputy Attorney General.

Basically what – as Judge Villani explained to you, the purpose of right now if just for me to ask you a couple of questions to get to know you better. So really all you have to do, as Judge Villani told

you, is be as open and honest as possible. There's no right or wrong answer. Who better to open up to than a complete stranger? Obviously, you're all [indiscernible] that – most of my questions really for everyone are follow ups because Judge Villani stole all of my questions. So, I'll just get started.

Juror number 120, Ms. Booker, you said that your sister was imprisoned; is that correct?

JUROR NO. 120: Yes, she [indiscernible].

THE COURT: We need the microphone.

MS. KALLAS: Do you need me to have the – oh. I feel like I'm pretty loud enough. I never had any complaints for that.

JUROR NO. 120: Yes.

MS. KALLAS: And could you just tell me a little about what happened in that case?

JUROR NO. 120: Well, she forged [indiscernible] checks and she went to federal prison and she served I think like 5 years. And she got [indiscernible] – she got pregnant by a guard there and so.

MS. KALLAS: And what ended up happening with that?

JUROR NO. 120: Well, she had the child and the girl is 30 years old now.

MS. KALLAS: Okay. And – I mean this might sound like a silly question, but [indiscernible] follow up questions and sometimes might actually will be silly but we'll see, but did you feel like she was treated fairly while her case was being prosecuted? Do you know if she pleaded guilty or did she go to trial?

JUROR NO. 120: She went to trial and they did find her guilty, so, yeah.

MS. KALLAS: But you [indiscernible] –

JUROR NO. 120: I don't know a lot of –

MS. KALLAS: -- [indiscernible] –

JUROR NO. 120: I was young. I'm the baby of the family so I didn't get into – I wasn't there for all the details of it. I just know she went to prison. She did have a trial. It was in Arizona and her husband got off and she went.

MS. KALLAS: You said her husband got off?

JUROR NO. 120: Mm-hmm.

MS. KALLAS: Was he involved in the case as well? Was he a co-Defendant?

JUROR NO. 120: Yes.

MS. KALLAS: Okay. Did they – did he go to trial as well and was he found – or --

JUROR NO. 120: I don't know. I couldn't answer that.

MS. KALLAS: Okay. And then you also said – you spoke briefly that your sister was also murdered as well?

JUROR NO. 120: Yes.

MS. KALLAS: And you were not satisfied you said with the investigation?

JUROR NO. 120: I wasn't satisfied with the detectives.

MS. KALLAS: And why was that?

JUROR NO. 120: Because the detectives they subpoenaed

me here and – which was fine to go to California but they put me in the same hotel room as the person that did the crime girlfriend.

MS. KALLAS: The same hotel?

JUROR NO. 120: Yes, in the same hotel. I was – we were picked up at the airport at the same time – and I didn't know this until me and her went down and was having dinner. She thought that I knew him also and I thought she had a sister that got killed also.

MS. KALLAS: Okay, and do you know whatever ended up happening? Was there – did they have a Defendant in that case? Was there a suspect?

JUROR NO. 120: Yes. He went to trial. I was there. He went to trial and they found him guilty.

MS. KALLAS: And do you believe that he was treated fairly? Was there anything – any concerns you had at that trial?

JUROR NO. 120: I felt he was treated fairly. I felt that they did a good – our main point as a family member was to get the right person, not just to get someone. So, yeah, I feel they got the right person and they did it fairly.

MS. KALLAS: Okay. Number – juror number 240, right in front of you. Like I said, I've just got mostly follow up questions for everyone. You said that a number of your family had contact with law enforcement and I believe you said there was – you had some positive, had some negative; could you tell me a little bit about the negative, why you felt it was a negative experience?

JUROR NO. 240: Sure. My brother was – I think he was

intoxicated in public or something like that, so police officers came and we're talking to him and apparently it did not go well. I mean I think he was – I don't know. There was a whole bunch of police officer vehicles – what he said, so you know sometimes if there's one, now there's 10 and they use pepper spray like so much to the extent – I mean there were so many and just him, but so much to where they had to call out paramedics to wash his eyes and then take him you know down – I mean –

MS. KALLAS: Did you know that --

JUROR NO. 240: --I' m pretty sure –

MS. KALLAS: -- [indiscernible] did it go to trial or what [indiscernible] happen?

JUROR NO. 240: He was walking and got – I don't know how you get pulled over when you're walking, but he was. But anyway, so, no --

MS. KALLAS: Had they ever [indiscernible] –

JUROR NO. 240 – or nothing –

MS. KALLAS: charged or anything, for any of those [indiscernible]?

JUROR NO. 240: Yeah, actually – yeah, and it was something like he was resisting arrest or something like that.

MS. KALLAS: Okay. And then I think you said also your dad you had – he had an issue with that –

JUROR NO. 240: Yes.

MS. KALLAS: -- person. Can you tell me a little bit about that?

JUROR NO. 240: And I think it – something about – I'm pretty sure that was when he got a DUI and he was – so he's 74 now so I think he maybe was like 68 or something and they [indiscernible].

MS. KALLAS: Did he ever end up suing or did anything happen?

JUROR NO. 240: No.

MS. KALLAS: -- from there? Okay. And you said you also had some positive.

JUROR NO. 240: Yes.

MS. KALLAS: All right, well, that's good. Okay, can you tell me a little bit about that?

JUROR NO. 240: Sure. I have 3 boys and its been very challenging. And as a single mom, -- I mean especially since they're you know just been without their dad, the police officers have been called out to my home on several occasions with the boys fighting or you know being crazy, and they've just been amazing the way they talk to my boys and – or try to encourage them or – unfortunately, my brother, the one who I was just talking about, committed suicide and so actually since then there – my boys have been through a lot of ups and downs as well, and the police officers – I mean as to within the last 5 years have come out to my house at least 3 times a year, so that's a lot and they're going to be –

MS. KALLAS: Okay, great.

Juror number – do you want to pass it down to 140, right here wearing a checkered shirt. You said that you teach policing?

JUROR NO. Yeah, I taught for 5 years intro to policing and community policing and problem solving at UNLV.

MS. KALLAS: At UNLV?

JUROR NO. 140? Yeah.

MS. KALLAS: Okay, what – I mean this in the most respectful way possible, what makes you qualified to do that? What have you done kind of beforehand?

JUROR NO. 140: Yeah, absolutely, so as a grad student in the criminal justice program as well as doctoral student, its mostly my academic experience, so teaching introductory classes is done a lot of times by graduate students and so my experience working with faculty and on the projects they work on and research related topics that's pretty much it.

MS. KALLAS: Okay.

Juror number, is it 241 right here? Is that – sorry, [indiscernible] keep mixing around. Okay, so your dad's a lawyer?

JUROR NO. 241: Yeah. He went to law school. He didn't take the bar here in Nevada but –

MS. KALLAS: Okay.

JUROR NO. 241: -- he's taken the bar in California, Idaho, and Utah.

MS. KALLAS: He has already taken it so he's passed?

JUROR NO. 241: Those – yeah, --

MS. KALLAS: Working?

JUROR NO. 241: -- those three states.

MS. KALLAS: All right. What kind of law does he do?

JUROR NO. 241: So here he hasn't taken it so he doesn't practice law here.

MS. KALLAS: But just in general, what kind of law does he do in all those other states?

JUROR NO. 241: He's done family law and business law.

MS. KALLAS: And do you ever have any interest or do you talk with him about law at all?

JUROR NO. 241: Well, he came here and chose not to take the bar so I take it that he wanted to get out of specific law work being a lawyer so I don't really have any interest in it, no.

MS. KALLAS: No? Okay. All right. And you also said you had, was it, what kind of family member that –

JUROR NO. 241: A cousin.

MS. KALLAS: A cousin, and he was convicted of sexual assault?

JUROR NO. 241: Yes.

MS. KALLAS: Did you have any, I don't want to say involvement in that case, any – did you follow that case at all, any – for their trial, what was going on with it?

JUROR NO. 241: I just followed it through what my aunt communicated to us about. He's her stepson and it was just within the family there so she would call and talk to my mom, who is her sister, about everything that's going on so I just got my information through there.

MS. KALLAS: And you have any reason to believe that he wasn't treated fairly at all?

JUROR NO. 241: No.

MS. KALLAS: Okay.

Juror number 125 right behind you, green shirt. No, you right there in the vest.

JUROR NO. 232: 232.

MS. KALLAS: Oh. My bad. What was it again, 232?

JUROR NO. 232: 232.

MS. KALLAS: A lot of numbers to keep track of. All right, you mentioned that you were involved in the service?

JUROR NO. 232: Yes.

MS. KALLAS: Can you tell me a little bit about that?

JUROR NO. 232: I serve for about 20 years and 6 months as – in the engineering department. What I did with – I'm a boiler operator. I produce power to propel and move the ship.

MS. KALLAS: Okay. All right, well, that's it. You're easy.

Juror number 162 for just a quick follow up. I won't bother you too much. 162; right down here.

You said you were a part of – you've served on a jury before; correct?

JUROR NO. 162: Yes. Yes.

MS. KALLAS: How many?

JUROR NO. 162: Twice.

MS. KALLAS: [Indiscernible] you say –

JUROR NO. 162: Well, --

MS. KALLAS: -- what was – how did you describe it again?

JUROR NO. 162: It was interesting. Well, the way they did it back then was – 'cause each trial – one was only one day and one was two days so you're in the pool for the whole week, so on two occasions during that week I was part of a trial.

MS. KALLAS: The best time of your life?

JUROR NO. 162: I don't remember saying that.

MS. KALLAS: No? Okay.

JUROR NO. 162: It wasn't the worse, though.

MS. KALLAS: Maybe it was my hearing. My bad. All right, was it civil or criminal again?

JUROR NO. 162: One of each.

MS. KALLAS: One of each. And for the criminal, were they convicted or not convicted?

JUROR NO. 162: Yes. It was a young boy who stole an old lady's purse.

MS. KALLAS: I'm sorry, an old lady's purse?

JUROR NO. 162: Yes.

MS. KALLAS: And he was convicted?

JUROR NO. 162: Yes.

MS. KALLAS: And – okay, I think that's it. Court's indulgence.

[Colloquy between State Counsel]

MS. KALLAS: All right, we'll pass the panel, Your Honor.

THE COURT: And I know you had some follow up questions

on one of the other jurors which we'll handle later, but --

MS. KALLAS: That's correct.

THE COURT: -- otherwise, you pass for cause?

MS. KALLAS: I do, Your Honor.

THE COURT: Okay.

MS. SISOLAK: Court's indulgence just one moment, Your Honor. I apologize.

MS. KALLAS: Thank you.

[Pause in proceedings]

MS. SISOLAK: All right. I'm sorry I have to pick on you. I'll try to make this as painless as possible, though.

All right, first let's start with who is excited to be here? You're allowed to be excited to be at jury selection. They never pick me but I always want to. Nobody's excited? Nobody's interested?

UNKNOWN JUROR: I am.

MS. SISOLAK: I got to address [indiscernible]. Nobody's excited? All right. Mr. Nix, I believe; correct?

JUROR NO. 162: Yes.

MS. SISOLAK: You said you had a pretty good experience in jury service? You said it wasn't the worst.

JUROR NO. 162: That's right. It was not the worst.

MS. SISOLAK: Okay, that's something. So, memorable, at least; right?

JUROR NO. 162: Yes, I remember each case, yeah.

MS. SISOLAK: All right. Interesting.

Let's start – let me start by asking a question of everybody. I'm sure you've already noticed, or if you haven't, you are going to notice that at least my co-counsel and I, if not all four of us, are on our cell phones, I apologize. I know it appears rude. Most of the time we are coordinating witnesses or information and we have a team back in our office that takes care of those things for us and we're very fortunate that they are kind of at our beck and call. Is there any reason to hold that against us? You think we're rude? Okay. Perfect.

All right, Ms. Basques, you has said you were a juror in a civil trial; right?

JUROR NO. 119: Yes.

MS. SISOLAK: All right. And you – I'm sure you understand now that the burdens are different. The burden of proof is different between a civil and a criminal trial.

JUROR NO. 119: Okay.

MS. SISOLAK: Okay, so in a criminal trial, the proof is beyond a reasonable doubt. Can you think of any reasons why that might be a higher burden than in a civil trial?

JUROR NO. 119: No.

MS. SISOLAK: Okay. Is there anyone who can think of a reason that the burden in a criminal trial might be higher than a civil trial?

Can you pass the mic on down to Mr. Pineda?

JUROR NO. 232: Yes, [indiscernible].

MS. SISOLAK: One sec. Wait till you get the mic so we can hear you.

JUROR NO. 232: I think in –

THE COURT: You need to identify the juror number and name. Is it Mr. Pineda?

MS. SISIOLAK: That's Mr. Pineda.

JUROR NO. 232: Yes, Your Honor. Yes, Your Honor.

THE COURT: All right. Go ahead.

JUROR NO. 232: I think in a criminal trial there's more at stake.

MS. SISOLAK: Exactly.

JUROR NO. 232: The Defendant could face life in prison or possibly death.

MS. SISOLAK: Okay.

JUROR NO. 232: I think that's one of the difference.

MS. SISOLAK: I think that's a great answer. Is there anyone who disagrees with that sort of idea? Okay. Awesome.

Who haven't I talked to? Ms. Campbell. Can you pass it down to Ms. Campbell? Thank you.

So, let's set a scenario.

JUROR NO. 121: Okay.

MS. SISOLAK: You're driving to court. You got here because you had that great jury summons you were so excited about. And you're sitting here and an officer walks in the back and he says, Ms. Campbell, here's your speeding ticket. What are you going to do? How do you prove that you weren't speeding?

JUROR NO. 121: I wasn't driving.

MS. SISOLAK: Okay. Let's –

JUROR NO. 121: My husband was driving.

MS. SISOLAK: -- pretend like you were. Okay, what if you were driving. Let's say you were. Its kind of a hard question, huh?

JUROR NO. 121: It is a very difficult – I'm pretty good about my speed, you know. I don't think I can prove that.

MS. SISOLAK: But its hard to prove; right?

JUROR NO. 121: It is hard to prove. But I would definitely take him to court. I would be –

MS..SISOLAK: Okay.

JUROR NO. 121: like yeah. I think. Yeah.

MS. SISOLAK: So, --

JUROR NO. 121: Unless he show me a picture of it, you know what I mean?

MS. SISOLAK: Yeah. No, I got you. Is there anyone who disagrees with the idea that myself and Ms. Machnich can sit there and literally ask zero questions, call zero witnesses, object zero times, and prove nothing to you because the burden is with the State? Does anyone have a problem with that? You made a face.

JUROR NO. 121: Well, --

JUROR NO. 120: I would think that you – I would –

THE COURT: We need a name and –

THE RECORDER: Ma'am, --

THE COURT: -- we need the microphone, name and badge number.

JUROR NO. 120: Heather Booker, 120. I would think that you should try to prove your case, you know, and say something and –

MS. SISOLAK: Okay. But its not our case. It's the State's case; you understand that?

JUROR NO. 120: I understand it's the State but if you're trying to get someone off, you need to try to prove what – you know that they didn't do this, try to have witnesses and stuff like that that they didn't do it.

MS. SISOLAK: But if we don't and we do nothing, are you still willing to hold the State to their burden?

JUROR NO. 120: If they can prove it, yeah.

MS. SISOLAK: That's kind of what I'm getting at.

JUROR NO. 120: Yes.

MS. SISOLAK: Whether I do anything or not, the State has to meet that bar.

JUROR NO. 120: Yeah, they would have to prove that he physically did it, yeah --

MS. SISOLAK: Okay.

JUROR NO. 120: -- or she.

MS. SISOLAK: Fair. Fair.

Let's pass it to Ms. Warner. Sorry, your turn. Everyone is getting a turn, so. Ms. Warner. You know a little bit about the case so far.

JUROR NO. 120: Yes.

MS. SISOLAK: The State told you a little bit. The secret is out.

My client was incarcerated at the time that the alleged offense occurred. Are you going to hold that against him?

JUROR NO. 120: No.

MS. SISOLAK: Okay. So you're okay with the fact that each – him being incarcerated is completely separate from allegedly occurred that day. Are you okay with that?

JUROR NO. 120: Yes, correct.

MS. SISOLAK: Is there anyone who is not okay with that?

Anyone who hears the word prisoner and is kind of feels icky about it? Okay.

Ms. Leavitt, we haven't heard from you. Sorry; I know this is awkward. It's uncomfortable for all of us. Believe or not, I still get nervous doing this. Ms. Leavitt, how do you feel about my client not having to testify?

JUROR NO. 147: Well, that's his constitutional right.

MS. SISOLAK: Can you think of some reasons why he wouldn't want to testify?

JUROR NO. 147: Well, like you said, they have the burden of proof so if they can't prove it why should he say anything.

MS. SISOLAL: That's a good reason. Is there anyone who can think of another reason?

UNKNOWN JUROR: He could incriminate himself.

MS. SISOLAK: He could incriminate himself. That's correct. What about maybe fear of public speaking, like we're all currently having, things like that? So, is there anyone who feels sort of, I don't

know, any kind of way about the fact that he doesn't have to testify? Is there anyone who doesn't like that? Mr. Birds, you kind of made a face; sorry.

JUROR NO. 140: I did?

MS. SISOLAK: How – yeah, a little bit.

JUROR NO. 140: Oh.

MS. SISOLAK: Can you pass that on down? Thank you, Ms. Leavitt.

JUROR NO. 140: Jonathan Birds, 140. No, I don't feel that way about it at all. Its absolutely the way it should be with the burden being with the State.

MS. SISOLAK: Okay.

JUROR NO. 140: There's no reason he should have to testify.

MS. SISOLAK: Okay. And you had talked about you're a PhD at UNLV in criminal justice.

JUROR NO. 140: Correct.

MS.. SISOLAK: Awesome.

JUROR NO. 140: I'm working on that. I'm not a PhD yes so I can't even start yet.

MS. SISOLAK: Coming soon to a jury box near you.

All right, you had mentioned you have a lot of contacts with law enforcement. You can put those all aside, fair and impartial?

JUROR NO. 140: Yeah, I believe so. I don't believe that's going to affect how I understand the justice system works.

MS. SISOLAK: Okay.

JUROR NO. 140: I believe I can keep that separate.

MS. SISOLAK: So would you say that because of your position in life, so to speak, you have a different sort of outlook on how the system works?

JUROR NO. 140: I believe I do compared to most police officers. I have a different prospective on the justice system, not just procedurally what a police officer goes through. I understand that I'm not an expert in being a police officer.

MS. SISOLAK: Okay.

JUROR NO. 140: My understanding of policing is very different than most police officers and like I said I'm not a police officer, so I do find that my view of the justice system is – has a little bit of a deviation from a lot of police officers specifically.

MS. SISOLAK: Okay. Will you pass that mic back to Ms. Dennis? All right, Ms. Dennis, here's a tough one. If you were sitting where my client is sitting, would you want you on your jury?

JUROR NO. 122: Yes.

MS. SISOLAK: Why?

JUROR NO. 122: Because I'm open minded and will listen to everything presented and –

MS. SISOLAK: Okay.

JUROR NO. 122: -- take it from there.

MS. SISOLAK: All right. All right.

Let's pass that down 1, 2, 3, to Ms. Stahl.

All right, let's say this case is a race. Do you think that the

State and the Defense are even at the starting line right now or do you think that the Defense is already at the finish line?

JUROR NO. 126: I think they're even right now.

MS. SISOLAK: Okay. So, then you believe that I would have to show you something to beat the State or do you believe that it's the State's race to run?

JUROR NO. 126: I guess it's the race to – oh, well, no.

MS. SISOLAK: Honesty is all we're looking for.

JUROR NO. 126: Yeah. Now I have to rethink that. I guess what I want to say just even from the beginning is – I want to hear from both sides –

MS. SISOLAK: And I think –

JUROR NO. 126 – equally.

MS. SISOLAK: -- that's a natural thing to want to do is hear everything. What if you don't hear anything from us?

JUROR NO. 126: I am still very open to thinking, discussing with you know your side.

MS. SISOLAK: You're still going to make the State prove everything they need to prove to you?

JUROR NO. 126: I'd like to hear as much as I could.

MS. SISOLAK I understand that. But let's say you don't hear anything from us. You get back into deliberations.

JUROR NO. 126: That wouldn't make me be against you. No.

MS. SISOLAK: Okay.

JUROR NO. 126: No.

MS. SISOLAK: Okay.

Ms. Crayton. I'll try to keep it brief. I just got my voice back. Ms. Crayton, would you want you on your jury?

JUROR NO. 127: Sorry?

MS. SISOLAK: Would you want to be on your jury?

JUROR NO. 127: I would, yeah.

MS. SISOLAK: Because it's a new experience and I'm a citizen.

MS. SISOLAK: All right, those are great reasons. Will you pass if forward to Mr. Dowty.

THE COURT: Excuse me, Ms. Crayton, do you need a cup of water or something?

JUROR NO. 127: Yes, please.

THE COURT: Okay, the Marshal will get that for you.

MS. SISOLAK: We can do that.

Mr. Dowty, its 5:00 o'clock tomorrow. Everybody wants to go home. You're the one hold out. Are you going to be strong enough to say I'm not folding because its 5:00 o'clock?

JUROR NO. 157: Yes, I think so.

MS. SISOLAK: Okay. Do you think you're a leader or a follower?

JUROR NO. 157: A follower.

MS. SISOLAK: Okay. Do you think that's a good quality?

JUROR NO. 157: Not necessarily.

MS. SISOLAK: Do you think that in this situation you could

sort of, knowing that you tend to follow, do you think that you could be a strong voice for your opinion?

JUROR NO. 157: I guess if I don't believe the case.

MS. SISOLAK: Okay. But you could stand up and you could be strong?

JUROR NO. 157: I think so.

MS. SISOLAK: Okay. Pass it on down to Mr. Taylor. All right, what about you, leader or a follower?

JUROR NO. 241: I guess it depends.

MS. SISOLAK: Okay. On what?

JUROR NO. 241: I'm going to be honest. Just the situation.

MS. SISOLAK: Okay.

JUROR NO. 241: I can both lead and follow.

MS. SISOLAK: Okay. Do you think that you could speak up to everybody else being against you?

JUROR NO. 241: Yeah.

MS. SISOLAK: Okay. And you think you can stand on your opinion and you wouldn't have trouble sharing that?

JUROR NO. 241: Yup.

MS. SISOLAK: All right.

Ms. Northington, are you okay with the fact that my client was in prison?

JUROR NO. 141: Yes. I mean, yes.

MS. SISOLAK: You kind of hesitated.

JUROR NO. 141: Well, I – I mean he went to prison so I

assume it was a jury of his peers who elected to put him there and that was for a reason, so –

MS. SISOLAK: Okay.

JUROR NO. 141: -- but I also believe that the prison system is a good – not necessarily good, but I think that people can be reformed and –

MS. SISOLAK: Okay.

JUROR NO. 141: -- you know choose a better path in life and –

MS. SISOLAK: Okay.

JUROR NO. 141: -- make changes that way.

MS. SISOLAK: All right. Are you familiar with plea deals?

JUROR NO. 141: Yes.

MS. SISOLAK: So you understand – does everybody understand that its like 5 percent of cases that go to trial. It's very low. Now, does that change your mind that maybe it wasn't a jury of his peers?

JUROR NO. 141: If it wasn't a jury of his peers but – I mean I believe that the system works. I think that you know that plea deals do happen. My sister-in-law is a lawyer and – you know, so –

MS. SISOLAK: Okay.

JUROR NO. 141: -- you know I do understand you know the system so to speak a little bit and I do get that plea deals do happen and you know it could be the best case scenario for an individual to choose to plead instead of you know face a jury of their peers --

MS. SISOLAK: Okay.

JUROR NO. 141: -- at that time.

MS. SISOLAK: You said your sister-in-law is a lawyer. What kind of law?

JUROR NO. 141: She's actually a clerk here at the courthouse.

MS. SISOLAK: She is; do you know what department she works in?

JUROR NO. 141: 3A I believe –

MS. SISOLAK: Okay.

JUROR NO. 141: -- with Judge Bare.

MS. SISOLAK: Perfect. Will you pass that mic back to Ms. Warner? You shook your head a little bit. Same question, how do you feel?

JUROR NO. 123: I had two family members who were – oh, I'm sorry – correctional officers --

MS. SISOLAK: Okay.

JUROR NO. 123: -- and you said – I mean she said that they can be reformed.

MS. SISOLAK: Okay.

JUROR NO. 123: I don't believe that.

MS. SISOLAK: Okay.

JUROR NO. 123: Not in our prison system.

MS. SISOLAK: Okay.

JUROR NO. 123: I mean it –

MS. SISOLAK: Are you saying that people can't be reformed or that our prison system doesn't focus on reform?

JUROR NO. 123: That the prison system does not focus on reform.

MS. SISOLAK: Okay. But once guilty always guilty or –

JUROR NO. 123: Oh, no. I [indiscernible] –

MS. SISOLAK: Okay. Is there anybody that feels that way, once guilty always guilty? All right.

Ms. Gonzalez, we haven't heard from you. Are you going to be okay if my client decides not to testify?

JUROR NO. 138: Excuse me? What's –

MS. SISOLAK: If my client doesn't testify, is that okay with you? If he doesn't tell his side is that okay with you?

JUROR NO. 138: That's okay.

MS. SISOLAK: Okay. All right, is there anyone who wants – isn't going to be able to hold the State to their burden if my client doesn't tell you anything? Okay.

JUROR NO. 121: [Indiscernible]. I'm sorry.

MS. SISOLAK: Yeah?

THE COURT: Let's get the –

JUROR NO. 121: Campbell, 121 I think. It's not that I know he has a right not to. I would like to hear from him.

MS. SISOLAK: I understand you might want to hear.

JUROR NO. 121: I would like to [indiscernible] point is going to be or from any other perspective that he has since I'm only going to

get to hear one.

MS. SISOLAK: But what if you –

JUROR NO. 121: [Indiscernible].

MS. SISOLAK: Oh, totally, totally. But what if you only get to hear the one, are you going to be able to make the State do their job?

JUROR NO. 121: Oh, yeah, the State to do their job. I would want them to.

MS. SISOLAK: And I think the difference is coming in as you might want to hear from the Defendant but I'm asking if you need to? Is there anybody who needs to?

JUROR NO. 120: I think I need to.

MS. SISOLAK: Okay, but you understand he has the right not to testify, right?

JUROR NO. 120: I know that [indiscernible] constitutional right.

MS. SISOLAK: Will you pass it down to Ms. Booker?

JUROR NO. 120: Booker, 120. I know that's his constitutional right. It would be my constitutional right. But I – somehow in my heart and soul feel that would need to hear that person's side. That way I have both sides of – to factor [indiscernible].

MS. SISOLAK: [Indiscernible]?

JUROR NO. 120: I know that the State has to prove and you don't have to, but its still in my heart and soul that I would think I have to hear from the Defendant.

MS. SISOLAK: So you think you'd hold it against him if he

didn't testify?

JUROR NO. 120: Not against him as a – just – I would have to – its kind of hard to say. I – it just – it's this fine line there. I'm not holding it against him as a person as being – you know I just feel that I need to hear that side 'cause there's two sides to each story.

MS. SISOLAK: I understand. And –

JUROR NO. 120: All right, does that kind of make sense? I'm not –

MS. SISOLAK: It does. It does.

JUROR NO. 120: 'Cause his background of all that other in the past doesn't make it different. Its what's happening now and what happened then, what happened –

MS. SISOLAK: [Indiscernible] –

JUROR NO. 120: -- that he's getting accused of.

MS. SISOLAK: Okay. But basically him testifying – him not testifying is something you can't consider; are you okay with that?

JUROR NO. 120: I would have to be okay with it. I mean it still would be in the back of my mind –

MS. SISOLAK: Okay.

JUROR NO. 120: -- [indiscernible].

MS. SISOLAK: We talked about that. There are a lot of reasons why he might not want to.

JUROR NO. 120: Maybe the constitution, maybe doesn't want to speak, you know – you know, be scared of speaking and – but its --

MS. SISOLAK: I mean –

JUROR NO. 120: -- something that would [indiscernible] – I don't want to judge a person but I –

MS. SISOLAK: Like ever?

JUROR NO. 120: -- use something – yeah. I don't like to judge people. I'm the type of person I don't like to judge people –

MS. SISOLAK: Okay.

JUROR NO. 120: -- so I don't want – I'm saying i don't want to judge him for – because he doesn't want to talk 'cause there's a lot of times I don't want to talk and I want to be back, but if I – its kind of like being at work, if one person says you did something and you don't speak up, then you get accused of something. You never spoke up 'cause that – the other – the boss is taking that person's side. So, I don't know if that makes sense to you, but if I speak up you know then they have both sides of the story. Then they can filter between both. And I know its his constitu – I don't want to you know –

MS. SISOLAK: I get it.

JUROR NO. 120: -- go against him for that but I'm just saying there might be something in the back of my head saying what if – if he could have spoke about it.

MS. SISOLAK: Okay.

THE COURT: Excuse me, Ms. Sisolak, either you or our juror there, potential juror, made a comment about that you would be advised about someone who – about the law regarding someone not testifying. And like I said before, I'm not going to give you jury instructions at this

time. I will tell you that a jury instruction that I could give, or if requested, would state that all the jurors are not to consider whether a person has testified or not in making the determination of whether or not the State has met their burden of beyond a reasonable doubt. Bottom line is if they don't meet that burden, no matter if its [indiscernible] or a thousand witnesses are called, you must return a verdict of not guilty. The State bears 100 percent burden, not 99, but 100 percent burden of proving their case beyond a reasonable doubt. And at the end of the trial we have a very specific legal definition of beyond a reasonable doubt. We ask the jurors to apply the facts to the definition of beyond a reasonable doubt. And I will give the definition at the end of the trial.

JUROR NO. 120: Okay.

MS. SISOLAK: And that's all we're asking is for you –

JUROR NO. 120: Okay.

MS. SISOLAK: -- to be honest about whether that's something you can do or not.

JUROR NO. 120: Okay.

MS. SISOLAK: Is there anyone who doesn't think they can do that if my client doesn't testify? Okay.

Let's bring it on down to Ms. Anderson. All right, 5:00 o'clock on Wednesday. Can you hold up?

JUROR NO. 168: Yes.

MS. SISOLAK: Okay. Would you want you on your jury?

JUROR NO. 168: Yes.

MS. SISOLAK: Why?

JUROR NO. 168: 'Cause I think I can be open minded and fair.

MS. SISOLAK: Okay. Is there anyone who feels they're particularly good at following instructions? Okay.

Is there anyone who thinks they're bad at following instructions? That's good. I think that's good.

Pass it two down – I'm sorry I interrupted your drink.

UNKNOWN JUROR: I [indiscernible] sure if I'm allowed so I'm going.

MS. SISOLAK: Ms. Doneva. All right, let's see. Are you going to hold it against my client that he was in prison?

JUROR NO. 210: No.

MS. SISOLAK: Okay. You think you can hear everything and make a decision –

JUROR NO. 210: Sure.

MS. SISOLAK: -- based on what you hear? All right.

Ms. Abella.

JUROR NO. 242: Oh, shoot.

MS. SISOLAK: Everyone is getting a turn. The four of us are like –

JUROR NO. 210: That's okay.

MS. SISOLAK: -- on an eternal turn.

JUROR NO. 210: That's okay.

MS. SISOLAK: All right, Ms. Abella, let's say the officer walks in, says you were speeding. Should you have to prove you were

innocent?

JUROR NO. 210: I have to.

MS. SISOLAK: You'd have to?

JUROR NO. 210: Because I mean I don't know how to prove it but –

MS. SISOLAK: It's a hard question, right?

JUROR NO. 210: Yeah, it is.

MS. SISOLAK: And so you understand that we don't have to do anything and the State has to do all the things and that's okay with you?

JUROR NO. 210: Sort of. Yeah.

MS. SISOLAK: What do you mean sort of?

JUROR NO. 210: There's a lot of things that we need to take a look at it before we make some final decision or be a juror. We have to hear a lot of things.

MS. SISOLAK: Okay.

JUROR NO. 210: So, being said that, I would rather know first what is going on before I go –

MS. SISOLAK: Okay.

JUROR NO. 210: -- through and through.

MS. SISOLAK: Okay. All right. That's fair.

One down, Ullon?

JUROR NO. 197: Ullon.

MS. SISOLAK: Ullon.

JUROR NO. 197: Yeah.

MS. SISOLAK: Okay. Are you a leader or a follower?

JUROR NO. 197: I'm a leader as long as there's not much other people trying to be leaders.

MS. SISOLAK: Okay. So, you're like –

JUROR NO. 197: I don't like to compete for it too much but --

MS. SISOLAK: Fair.

JUROR NO. 197: -- I can lead.

MS. SISOLAK: Fair. You can hold your ground, stand strong?

JUROR NO. 197: Yeah.

MS. SISOLAK: You're going to tell the CO's you were on a jury?

JUROR NO. 197: Say that again?

MS. SISOLAK: You had mentioned earlier that –

JUROR NO. 197: Oh, the – my – [indiscernible] --

MS. SISOLAK: -- you might not tell people you're on a jury?

JUROR NO. 197: No, I would tell them.

MS. SISOLAK: Okay, but you'd be –

JUROR NO. 197: I mean I'll –

MS. SISOLAK: -- indiscernible] –

JUROR NO. 197: -- probably – like obviously I'm not supposed to tell them right now.

MS. SISOLAK: So not now, --

JUROR NO. 197: I wouldn't –

MS. SISOLAK: -- after tell them

JUROR NO. 197: -- tell them right now but –

MS. SISOLAK: Okay.

JUROR NO. 197: -- I would tell them, yeah.

MS. SISOLAK: You'd be okay telling them no matter what verdict you return that that's what you guys did –

JUROR NO. 197: Oh, yeah.

MS. SISOLAK: -- and then you [indiscernible]?

JUROR NO. 197: Yeah.

MS. SISOLAK: Perfect.

Burgess. Okay, of all the questions, which one did you want me to ask? We're coming up on the end.

JUROR NO. 203: Are you a leader or a follower.

MS. SISOLAK: Okay, give me an answer.

JUROR NO. 203: I'm a leader.

MS. SISOLAK: Okay. Do you think that's an important quality?

JUROR NO. 203: Yeah, I think so. I think you can divide the – or make people listen –

MS. SISOLAK: Okay.

JUROR NO. 203: -- to one solid voice.

MS. SISOLAK: Okay. And you're prepared to be that voice if you're asked to?

JUROR NO. 203: Yeah.

MS. SISOLAK: Would you want you on your jury?

JUROR NO. 203: Yes, because I would fight for what's right.

MS. SISOLAK: Fair.

Last but not least, Ms. Dufrene. All right, you had mentioned

you were on a civil trial as well, right, so you understand the burdens are different and we kind of went over why. So, you're okay with that?

JUROR NO. 204: Yes.

MS. SISOLAK: All right. You can follow instructions?

JUROR NO. 204: Yes.

MS. SISOLAK: Any other question you really wanted me to ask?

JUROR NO. 204: No.

MS. SISOLAK: All right.

Nothing further, Your Honor.

MS. SISOLAK: Oh, Court's indulgence.

[Colloquy between Defense Counsel]

MS. SISOLAK: Nothing further, Your Honor. Thank you.

THE COURT: All right, ladies and gentlemen, we had some specific follow up questions with two of our jurors. We're going to do that during the break. We're just going to take a very short recess. I need Ms. Booker to stay in your seat. We just want to have some follow up with you.

JUROR NO. 120: All right.

THE COURT: And then we also need Mr. Duchene just to stay close to the door. We just have some follow up for you.

JUROR NO. 172: Can I go to the restroom first?

THE COURT: Oh, absolutely.

MS. SISOLAK: Your Honor, may we approach –

THE COURT: Sure.

MS. SISOLAK: -- very quickly.

THE COURT: Sure.

[Bench conference begins – transcribed as follows:]

THE COURT: Yes?

MS. SISOLAK: Your Honor, the State and I agree that we should release Ms. Booker.

MS. KALLAS: And that's correct, Your Honor, --

THE COURT: It's okay? [Indiscernible] the jury?

MS. KALLAS: -- so then we don't have to keep –

THE COURT: [Indiscernible] wanted Duchene? Okay.

MS. SISOLAK: Just that one.

THE COURT: All right.

MS. SISOLAK: Thank you.

MS. KALLAS: Thank you, Your Honor.

[Bench conference ends]

THE COURT: Actually, Ms. Booker, what we're going to do is we are going to release you from this case. Thank you very much for your time today. We're going to fill up the next juror.

THE CLERK: Badge number 255 [sic], Iliana Rodriguez.

THE COURT: All right, good afternoon, Ms. Rodriguez. I'm going to follow up with those questions what we've done before; okay? The first question is – we'll get the microphone to you, first off. Anyone involved in law enforcement?

JUROR NO. 231: No.

THE COURT: Okay. Anyone ever been a victim of a crime?

JUROR NO. 231: No.

THE COURT: Accused of a crime?

JUROR NO. 231: Is child neglect one?

THE COURT: Yes.

JUROR NO. 231: My brother.

THE COURT: Okay, and how long ago was that?

JUROR NO. 231: About four years ago.

THE COURT: Is that here in Clark County?

JUROR NO. 231: Yes.

THE COURT: Okay. Do you know if formal charges were filed against him?

JUROR NO. 231: It was not. There was not.

THE COURT: Okay. Based upon the facts and circumstances of that situation that you know about, do you think he was treated fairly by the system?

JUROR NO. 231: Yes.

THE COURT: Okay. Anyone else accused of a crime?

JUROR NO. 231: No.

THE COURT: Okay. Have you ever had any particularly positive or negative experience, again you, family member, anyone closely associated with you, particularly positive or negative experience with law enforcement?

JUROR NO. 231: There was once that I was heading to work. The light had turned green for me to make a left turn so I went for it. I was the first one. The police stopped me, saying that I ran a red light.

And I kind of explained to him that it was green which on his side 'cause he was in front of me, so when I turned he went back behind me, and I was like it was green. It had turned green. And he had to think about it twice and he actually caught that it was on green for me. I don't know how or why he thought I was – I passed a red light. So, he apologized and let me go.

THE COURT: Okay. Are you considering that a particularly negative –

JUROR NO. 231: Both.

THE COURT: -- or positive, or both?

JUROR NO. 231: Both.

THE COURT: Okay.

JUROR NO. 231: 'Cause I always run -- I was running late for work so that it pushed me back.

THE COURT: Anything else? Any – you know –

JUROR NO. 231: No.

THE COURT: -- the situations? Okay, thank you.

Have you ever had prior jury service?

JUROR NO. 231: No.

THE COURT: And then we'll go to the background question, ma'am, as far as what do you do for a living; spouse or significant other; and children.

JUROR NO. 231: I – I'm an office manager and I'm a certified CA for a chiropractor's office, been there for 12 years. I'm married. My husband is an electrician. We have three children, a one year old, a four

year old, and a five year old.

THE COURT: All right, thank you.

State, do you have any follow up for Ms. Gallagher [sic]?

MS. KALLAS: I don't, Your Honor.

THE COURT: Defense, any follow up for Ms. Gallagher [sic]?

MS. SISOLAK: Thank you, Your Honor.

Ms. Rodriguez, is there anything you were hoping we'd ask you? You're allowed to have fun, guys. Easy questions.

THE COURT: Oh, did I say – did I call you Ms. Gallagher and [indiscernible] --

JUROR NO. 231: You did.

THE COURT: -- Ms. Rodriguez; I'm sorry.

JUROR NO. 231: Rodriguez.

THE COURT: Go ahead.

JUROR NO. 231: Go for it.

MS. SISOLAK: Okay. Would you want you on your jury?

JUROR NO. 231: Yes.

MS. SISOLAK: Why?

JUROR NO. 231: Its just a different experience and its something different --

MS. SISOLAK: Okay.

JUROR NO. 231: -- opinions; I like to give out –

MS. SISOLAK: Sounds a little like --

JUROR NO. 231: -- my opinion.

MS. SISOLAK: -- someone's interested. We'll see. Anything

else you think you should share with us?

JUROR NO. 231: No.

MS. SISOLAK: Okay, perfect. Thank you.

Nothing further, Your Honor.

THE COURT: Okay. All right. Actually, then Mr. Duchene, if you can just stay in the courtroom.

Ladies and gentlemen, we're just going to take a quick five to ten minute break.

During this lunch recess, it is your duty not to converse among yourselves or with anyone else on any subject connected with the trial, or to read, watch, or listen to any report of or comment during trial by any person connected to the trial, or by any medium of information, including without limitation newspaper, television, radio, or the internet. You are not to form or express an opinion on any subject connected with this case until this matter is submitted to you. I'll see you back in ten minutes. Please wait outside the courtroom until the marshal escorts you back in.

THE MARSHAL: All rise for the exit of the jury.

[Outside the presence of the jury venire]

THE COURT: Mr. Duchene, the parties just had a couple of follow up questions. That's all, so you're here by yourself but no one's in trouble or anything. We just had some follow up questions for you, sir.

State, do did you have any follow up questions?

MS. KALLAS: Yes, Your Honor.

THE COURT: Thank you.

MS. KALLAS: Mr. Duchene, you said that you are currently suing the Nevada Department of Corrections?

JUROR NO. 172: Well, we have to get a lawyer. We're trying to – 172, James Duchene. My son was – his – in jail you got to have paperwork to show what kind of crime you did, and my son was – they jumped him because they thought he was a child molester because he popped off going in. And –

MS. KALLAS: Sorry, what do you mean he popped off going in?

JUROR NO. 172: Like probably to the cops because he was drunk and had a gun on him and pulled his shirt up and got 2 years in [indiscernible], so he really didn't think he did the crime so I'm sure he mouthed off and –

MS. KALLAS: What was he [indiscernible] –

JUROR NO. 172: -- I believe they held –

MS. KALLAS: -- but what was he charged with? I just want to kind of go bit by bit.

JUROR NO. 172: It was robbery of a thirteen dollar jacket –

MS. KALLAS: Okay.

JUROR NO. 172: -- after he purchased four hundred dollars' worth of clothing. And they said the jacket wasn't included and he was – had been drinking and he bought the gun the same day and he had put it in his shirt and when he walked out, undercover security had grabbed him. He just – he – and after grabbing him a few times, get the fuck off – sorry – get off me. He pulled his shirt up and gave him 2 years.

MS. KALLAS: Okay, so –

JUROR NO. 172: And then they [indiscernible] – they didn't give him his paperwork so he got jumped in prison 'cause they didn't know if he was a molester or what. You got to show your paperwork. And miraculously it shows you know a – you know a couple of days later you know after he's already been life flighted to the hospital. So I just – I feel a little stained. I feel good for the Defense. I don't feel good for the prosecutor even if they were guilty. I'm like, what buttons were pushed. And its not right to think like that but um, I feel they tried to keep him in.

MS. KALLAS: They tried to keep him in prison?

JUROR NO. 172: Yeah.

MS. KALLAS: And why is that?

JUROR NO. 172: What do you mean? Make money – for the prison to make money. I feel they want him in there.

MS. KALLAS: And did your son did he –

JUROR NO. 172: [Indiscernible] buttons are pushed.

MS. KALLAS: Did your son did he plead guilty or was there a trial?

JUROR NO. 172: No, it was at a trial. I paid fourteen thousand dollars and lost.

MS. KALLAS: Okay. And do you mind me asking your son's name?

JUROR NO. 172: Bryson Duchene.

MS. KALLAS: Sorry. Court's indulgence.

JUROR NO. 172: He's at home now. He survived it, but I just

feel this way all the time, tested.

MS. KALLAS: Do you know if anybody was ever prosecuted or anything ever happen to the people that jumped him?

JUROR NO. 172: I don't know. They – just – I [indiscernible] there trying to find out if he's alive or anything, just – never mind.

MS. KALLAS: Does he know the people who jumped him?

JUROR NO. 172: No. It was – he got told – the guy got told by other people to jump him. My son is a UFC fighter, very tough. And the waited till he was asleep and the guy pounded him in the head with his television set and they had to life flight him to the hospital.

MS. KALLAS: Okay, so I understand that the – it was another prisoner that attacked him but --

JUROR NO. 172: Yes.

MS. KALLAS: -- do you all have any blame to the correction officers?

JUROR NO. 172: I think it could have been handled way different. I don't see – they know that paperwork is important. You can't go in there with the people thinking you're a molester or not knowing your crime –an abuser – I'm not sure all what they'll attack you for but I raised him on my own.

MS. KALLAS: So, really what the purpose of our questioning is trying to decide whether or not you can be fair and impartial. Do you think you can be?

JUROR NO. 172: That's why I told you at first I don't think I could be fair.

MS. KALLAS: Okay.

JUROR NO. 172: To be honest with you I do not like the correction officers in the prison. I have a nephew who in a Nevada one who is a correction officer.

MS. KALLAS: Okay.

JUROR NO. 172: And him and I have some heated arguments, you know, saying his facts and stating his. I understand it's a hard job, but –

MS. KALLAS: Do you know what prison he works at?

JUROR NO. 172: Its in Nevada as well. I'm not sure which one.

MS. KALLAS: And you said your son was at Indian Springs, correct?

JUROR NO. 172: He was at Indian Springs and then they transferred him to Nevada – don't know why – he got transferred up to Nevada prison. I'm not sure what it is, up in Reno. And then that's when the attack came when – all his paperwork transferred fine and that's when the attack happened.

[Colloquy between State Counsel]

MS. KALLAS: Your Honor, can we approach briefly, or I don't know if you need us to?

THE COURT: No. I [indiscernible] Defense yet. Are you done with – any follow up questions, State?

MS. KALLAS: We'll pass, Your Honor. We can approach after.

MS. SISOLAK: Mr. Duchene –

JUROR NO. 172: Duchene.

MS. SISOLAK: Duchene; I am sorry for what happened to your son. I understand these things are real. I'm sorry for what happened to him.

Your Honor, I'd submit on the State's motion.

THE COURT: Okay.

All right, sir, thank you very much. Just have a – just go outside and take your break with everybody else and do not discuss these questions with your fellow jurors, sir.

All right. Thank you, sir.

JUROR NO. 172: Can I say one thing to you, Your Honor? I had –

THE COURT: Sir, you have to – you need to have the microphone; okay?

JUROR NO. 172? I had surgery, okay, and I have to go to the bathroom like every – or is there any way I can just clean or do something else that I cannot sit down? I had colon surgery and I'm just uncomfortable.

THE COURT: Okay. All right, we'll take everything into consideration, sir. Thank you. Just have a seat out front with your – or take a break, whatever.

[Pause in proceedings as Juror 172 exits courtroom]

THE COURT: All right, we have a State's challenge, argument on Mr. Duchene –

MS. SISOLAK: Your Honor, --

THE COURT: -- or is the State – is the Defense, are you going to contest it?

MS. MACHNICH: No, we're going to submit, Your Honor.

THE COURT: I think its clear to the Court that he has a very deep seated bias against law enforcement, in particular correction officers that work in the prison system. He says, I don't think I can be fair, I don't like correction officers. He argues with a friend or – I think he said either a friend or relative who is a correction officer. He's thinking about suing the Department of Corrections. He thinks corrections officers keep people in prison so the prison system can make money. And he even used a phrase, my son survived the prison system. So, its clear to me that he cannot meaningfully deliberate or be fair in this case. So, the challenge is accepted.

MS. KALLAS: And, Your Honor, just for the record as well, obviously the Attorney General has jurisdiction over all the prison crimes, and Mr. Gunnell, my co-counsel seems to believe that we're possibly prosecuting the offenders in his son's attack. So, I would just like that to be on the record as well so we [indiscernible] that entire motion as well.

THE COURT: There was a motion by the Defense for Mr. Birds, 140.

MS. SISOLAK: We withdraw our motion, Your Honor.

THE COURT: Okay. So, all we need to do is fill in Mr. Duchene's place and we have our jury panel.

MS. KALLAS: Well, Your Honor, I just wanted to address – I

[indiscernible] a chance to speak with Counsel, juror number 138, Gonzalez, I don't know if they agree to move her. She was late. She wasn't here. I think she might have been sleeping.

MS. SISOLAK: Why would you think that?

MS. KALLAS: Her eyes were closed.

MS. SISOLAK: Oh, sleeping here. I thought you meant –

MS. KALLAS: Yeah. Oh, no, no.

MS. SISOLAK: -- like sleeping somewhere.

MS. KALLAS: She came I think you know later. You had already started and I believe I saw her eyes close. I don't know if that was just me.

MS. MACHNICH: We would have no problem.

MS. SISOLAK: We'd have no problem, Your Honor.

THE COURT: No problem, what?

MS. MACHNICH: With striking her.

MS. SISOLAK: Striking her if Your Honor is so inclined.

THE COURT: Mr. Marshal, did she tell you why she was late?

THE MARSHAL: She said she got lost.

THE COURT: I didn't see that she was sleeping and –

MS. KALLAS: Maybe I just caught her right where her eyes were --

THE COURT: Yeah. And then –

MS. KALLAS: -- a little tired.

THE COURT: -- throughout the trial I'm always watching and I see if we need to take a break, so I'm not going to release her at this

point. So, we just need to fill Mr. Duchene's spot and then we'll have our – we'll have enough for the peremptory challenges; okay?

MS. SISOLAK: Thank you, Your Honor.

THE COURT: So, as soon as they're ready bring them on in.

MS. KALLAS: Your Honor, sorry, can I just –

THE COURT: Sure.

MS. KALLAS: -- double check.

[Colloquy between State Counsel]

THE CLERK: We can release Duchene?

THE COURT: Duchene can be released.

MS. SISOLAK: Okay.

THE COURT: Were we just told –

MS. KALLAS: How does Your Honor work, I guess, when someone's released? Do you go – does this person then –

THE COURT: I'm sorry? We're going to pull them from the gallery.

[Colloquy between Marshal and Clerk]

MS. KALLAS: Okay, but as far as right here.

MS. SISOLAK: No, --

MS. MACHNICH: Strikes – it's the last 12 –

MS. SISOLAK: 12.

MS. KALLAS: Oh, okay, [indiscernible].

MS. MACHNICH: -- are in the jury and the 13th is the alternate.

THE COURT: Right.

MS. KALLAS: Can I not count [indiscernible]. Oh, okay. Never

mind, Your Honor.

MS. SISOLAK: And, Your Honor, I don't believe we inquired about the alternate. Is it random or do they know?

THE COURT: No, 13.

MS. SISOLAK: Okay.

THE COURT: And then just for the record, I met with Counsel in chambers and both sides wanted to exercise 5 peremptory challenges.

MS. MACHNICH: Yes, Your Honor.

MS. SISOLAK: Thank you, Your Honor.

THE COURT: Is that correct, Defense? Is that correct, --

MS. MACHNICH: Correct.

THE COURT: -- State?

MR. GUNNELL: That's correct, Your Honor.

THE COURT: Okay. All right. Counsel, take your break if you need one. If not, the jury can come back in or – is he getting them now?

THE MARSHAL: There's one in the restroom.

THE COURT: Okay.

[Court in short recess]

THE COURT: All right, let's get our jury. So we just need to fill Duchene's spot.

THE CLERK: Yes.

[Colloquy]

[In the presence of the jury venire]

THE MARSHAL: All rise for the entry of the jury.

[Colloquy between Court and Clerk]

THE COURT: All right, welcome back, ladies and gentlemen. And we need to call another potential juror for our seat, our empty seat.

THE CLERK: Badge number 256, Kerri Sweeney.

THE COURT: Good afternoon, Ms. Sweeney.

JUROR NO. 256: Good afternoon.

THE COURT: I'm going to ask you the same questions that you've heard all morning and afternoon. And again, these questions relate to yourself, a close family member, and anyone closely associated with you. Anyone involved in law enforcement?

JUROR NO. 256: Yes. I'm a former marine so I have several marine friends that are law enforcement all over the country.

THE COURT: Is that military police or law – actually like police officers, correctional officers?

JUROR NO. 256: Law enforcement.

THE COURT: Okay, and can you tell us a little bit about that, who you know or who you're affiliated with?

JUROR NO. 256: I know one in Phoenix, St. Louis, one in California, don't know where exactly.

THE COURT: And are the police officers, correctional officers, highway patrol?

JUROR NO. 256: Police officers.

THE COURT: All three?

JUROR NO. 256: Yes.

THE COURT: Okay. And how often do you stay in touch with

those individuals?

JUROR NO. 256: Maybe communicate a couple of times a year just saying hi, catching up of it.

THE COURT: Did you ever discuss with them their job duties?

JUROR NO. 256: No.

THE COURT: Okay. And you heard that we may have some law enforcement officers testifying in this case.

JUROR NO. 256: Yes, sir.

THE COURT: The fact that your friends with various police officers throughout the – actually throughout the country, is that going to impact your ability to be a fair juror in this case?

JUROR NO. 256: No, sir.

THE COURT: Okay. And if you are selected, will you hold the State to their burden of beyond a reasonable doubt?

JUROR NO. 256: Yes.

THE COURT: Okay. The next question is ever been a victim of crime?

JUROR NO. 256: No.

THE COURT: Accused of a crime?

JUROR NO. 256: No.

THE COURT: A particularly positive or negative experience with law enforcement?

JUROR NO. 256: All positive. With being in the Marines we did a lot of charity work with a local station in Hawaii and so I just worked

with her so I've only had a positive experience.

THE COURT: Okay. And have you had prior jury service?

JUROR NO. 256: No.

THE COURT: And what I call the background question as far as what is your employment, spouse or significant, and any children [indiscernible].

JUROR NO. 256: I'm a design consultant, single, and no kids.

THE COURT: Okay.

State, do you have any follow up questions for Ms. Sweeney?

MS. KALLAS: Ms. Sweeney, you said you were excited to be here?

JUROR NO. 256: Yes.

MS. KALLAS: Was that you? Okay, I just want to double check.

That's all my questions, Your Honor.

THE COURT: All right; Defense.

MS. SISOLAK: Briefly, Your Honor.

All right, Ms. Sweeney, you did say you were excited to be here.

JUROR NO. 256: Yes.

MS. SISOLAK: Why?

JUROR NO. 256: Well, my little sister actually does mock trial for the University of Georgia so she's actually applying to law school right now, so I've been to plenty of her mock trials. I know it's a mock trial but at the same time its interesting. It's seeing both sides and just all

of the information its –

MS. SISOLAK: All right.

JUROR NO. 256: -- yeah, the different side of it I guess.

MS. SISOLAK: Interesting. I haven't heard of that one before. Was there any question you wanted me to ask you?

JUROR NO. 256: No, ask away. Whatever you want.

MS. SISOLAK: [Indiscernible] you wanted me to ask, like a favor?

JUROR NO. 256: Follower or leader.

MS. SISOLAK: Which are you?

JUROR NO. 256: I think a little bit of both because as being a marine you have to be, one, a good follower to be a good leader, so you have to be a little bit of both in order to then help the followers then tow the line.

MS. SISOLAK: Okay. Would you want you on your jury?

JUROR NO. 256: Yes.

MS. SISOLAK: Why?

JUROR NO. 256: Fair, open minded, like knowing all the information before making an educated decision.

MS. SISOLAK: All right. Anything else you think we should know?

JUROR NO. 256: No.

MS. SISOLAK: Nothing further, Your Honor. Thank you.

THE COURT: Do you pass for cause?

MS. SISOLAK: Yes, Your Honor.

THE COURT: And the State passed for cause for – all right.

MS. KALLAS: Yes, Your Honor.

THE COURT: May I have Counsel approach, please?

[Bench conference begins – transcribed as follows:]

THE COURT: Okay, that gives us our 23. She's going to print out the sheet and –

MS. KALLAS: Okay.

THE COURT: -- [indiscernible] back and forth and –

MS. SISOLAK: Okay.

MS. MACHNICH: Sounds like a plan.

MS. SISOLAK: Thanks.

MS. KALLAS: Thank you, Your Honor.

THE COURT: Okay, go ahead and print it out.

THE CLERK: Huh?

THE COURT: Go ahead and print out the sheet for everybody.

THE CLERK: Yes.

THE COURT: Make an original and copies for everybody.

[Colloquy between Court and Clerk]

[Colloquy between Defense Counsel]

THE COURT: You have some witnesses today?

UNKNOWN SPEAKER: We do. They're [indiscernible] right here, so they should be pretty fast, though. We're going to try and knock them out.

THE COURT: I'll give the [indiscernible] instruction and

[indiscernible] --

MS. KALLAS: And we do have just the one housekeeping matter with the stipulations just because we'd like that read to them prior to opening statements.

MR. GUNNELL: [Indiscernible] read that [indiscernible].

MS. MACHNICH: [Indiscernible].

MS. KALLAS: Oh, well that – we're just going to – we're calling [indiscernible] about like two minutes to take a look at it.

THE COURT: I'm sorry?

MS. KALLAS: We just need to talk about the stipulation I think for probably another two minutes.

MS. MACHNICH: We can go do that. Do you --

THE COURT: What I'll do is –

MS. MACHNICH: -- want to go do that?

THE COURT: -- I'll give my permanent instructions and then I'll just tell the jurors that you want to organize your notes for the opening and take a short break.

MS. KALLAS: Okay.

MS. SISOLAK: Thank you.

MS. MACHNICH: Sounds good.

[Bench conference ends]

[Colloquy between Court and Clerk]

THE COURT: Marshal, can you hand the originals to the attorneys?

Ladies and gentlemen, you may have noticed either the Court

or the attorneys have a packet of materials in front of us. This is the information that we've received from the jury commissioner. When you received your jury summons you were asked to call or go online and provide certain information. That's all been printed out for myself as well as the attorneys.

Based upon this information from the jury commissioner, all of my questions of the parties, of the – excuse me, of the potential jurors, and the questions of the attorneys, they feel they have sufficient information to select those jurors to hear this case.

In this particular case, each side has the right to exercise what we call peremptory challenges. Each side has a right to exercise five peremptory challenges which means they can strike off five names without setting forth any reason whatsoever. And we're going to start this process now.

State, would you please exercise your first.

MS. KALLAS: Thank you, Your Honor.

THE COURT: And we do this by secret ballot. They're just going to hand a paper back and forth with the names stricken off.

[Peremptory challenge begins at 3:10 p.m. and ends at 3:19 p.m.]

THE COURT: All right, ladies and gentlemen, it appears to the Court that the parties have either exercised or waived their five peremptory challenges. In just a moment the court clerk will call the roll call of those individuals who have been selected to hear this case.

Those individuals in the jury box please grab all your items and just have a seat in the gallery to my left.

THE COURT: All right, ladies and gentlemen, the court clerk is going to call the roll call of those individuals. Please when your name is called please approach the jury box. The marshal will escort you to your seat and we'll start with the second seat in on – from both rows one and two and you'll have – and he'll give you a badge and a notepad and a pen for you.

THE COURT: Go ahead, Ms. Clerk.

THE CLERK: Badge number 255, Iliana Rodriguez; badge number 122, Tonya Dennis; badge number 123, Okeama Warner; badge number 126, Linzy Stahl; badge number 140, Jonathan Birds; badge 241, Zachary Taylor; badge number 147, Linda Leavitt.

THE COURT: We'll need to fill that last spot there in the back row.

THE CLERK: 162, Scott Nix; 168, Suzanne Anderson; 210, Silviya Doneva; 242, Leonila Abella; 203, Shaun Burgess; 204, Heather Dufrene.

THE COURT: Ladies and gentlemen, those of you who are not seated in the jury box you do have my thanks and the thanks of the attorneys for your time today. It is important that we go through this process and so we really appreciate your service here. You are excused from this case. The marshal will pick up your plastic cardholders. They need to be turned in. You can keep the little card in there as a memento of your day today or you can throw it away, its up to you. But again, thank you for your service today. We appreciate it.

THE COURT: All right, ladies and gentlemen, those of you in

the jury box we're going to swear you in to hear this case. Please stand up, raise your right hand.

[Jury sworn in]

THE COURT: All right, have a seat. Thank you.

Ladies and gentlemen, as I had mentioned before I'm going to read to you jury instructions which are the laws that apply to this particular case. However, at this time, I'm going to read to you some preliminary instructions to give you a better idea as what to expect during the trial.

As you know this is a criminal case brought by the State of Nevada against the Defendant. This case is based upon an Information. The clerk will now read to you the Information and state the Defendant's plea.

[Clerk reads Information]

THE COURT: Ladies and gentlemen, you should distinctly understand that the Information just read to you is simply a description of the charges by the State against the Defendant. It is not evidence of anything. It does not prove anything. Therefore, the Defendant starts out with a clean slate. The Defendant has pled not guilty and is presumed innocent.

In a criminal case there are two basic rules to keep in mind. One, the Defendant is presumed innocent unless proven guilty beyond a reasonable doubt. The Defendant is not required to present any evidence or prove his innocence. The law never imposes upon a Defendant in a criminal case the burden of calling any witnesses or

introducing any evidence. Two, to convict, the State must prove beyond a reasonable doubt the crimes were committed and the Defendant is the person who committed them.

Certain things are not evidence and you must not consider them as evidence in deciding the facts of this case; statements and arguments by the attorneys, questions and objections of the attorneys, testimony I instruct you to disregard, and anything that you see or hear when court is not in session, even if it comes from one of the parties or witnesses. Remember, evidence is sworn testimony by a witness while court is in session and documents and other things received into evidence as exhibits.

There are rules of law which control what can be received into evidence. When a lawyer asks a question or offers an exhibit into evidence and the lawyer on the other side thinks that it is not permitted by the rules, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered and the exhibit cannot be received. Whenever I sustain an objection, ignore the question and do not guess what the answer might have been. Sometimes I may order evidence stricken from the record and tell you to disregard or ignore such evidence. This means that you cannot consider this evidence when you are deciding the case. It is the duty of a lawyer to object when they believe that the admission of evidence would violate the rules. You should not be prejudiced in any way against the lawyer who makes objections on behalf of the party the lawyer represents. Also, I may find it

necessary to admonish a lawyer. If I do, you should not be prejudiced towards the lawyer or client because I have found it necessary to admonish the lawyer.

In deciding the facts of this case you may decide which witnesses to believe and which witnesses not to believe. You may believe everything a witness says or only part of it or none of it. In considering the weight or value of the testimony of any witness you may consider the appearance, attitude, and behavior of the witness when testifying and a number of other things including the witness' ability to see, hear, or know of the things the witness testifies to. The quality of the witness' memory, the inclination of the witness to speak truthfully, whether or not a witness has any interest in the outcome of the case or any motive, bias, or prejudice, whether the witness is contradicted by anything the witness said or wrote before trial, and how reasonable is the witness' testimony when considered with other evidence which you believe. Deciding whether or not to believe a witness, keep in mind that people sometimes forget things. You need to consider whether the contradiction was due to an innocent lapse of memory or an intentional falsehood and that may depend on whether it has to do with an important fact or only a small detail. The weight and value of evidence does not necessarily depend on the number of witnesses testifying for one side. You must consider all the evidence and you may decide the testimony of a smaller number of witnesses on one side has more weight or value than that presented by a larger number of witnesses on the other side.

During this trial you will be given the opportunity to ask written questions of any of the witnesses called to testify in this case. You are not encouraged to ask a large number of questions because that is the primary responsibility of the attorneys. Once the attorneys have finished their questions, I will ask whether any of the jurors have any questions. If you do have a question, please write it down on a piece of paper that's been provided with your juror number and raise your hand. The marshal will then collect the question. Questions must be factual in nature, designed to clarify information already presented and addressed to the witness. Jurors must not place undo influence – excuse me, undo weight on the responses to their questions. After consulting with the attorneys, the Court will determine whether your question is legally proper. No adverse inference should be drawn if the Court does not ask a particular question.

Until this case is submitted to you do not talk to each other about the case or anyone who has anything to do with it until the end of the case when you go to the jury room to decide your verdict. Do not talk with anyone else about the case or anyone that has anything to do with it until the trial has ended and you have been discharged as jurors. This includes members of your family and your friends. You may tell them that you are a juror in a criminal case but that is all. Do not let anyone talk to you about the case or about anyone who has anything to do with it. If someone should try to talk to you about the case please report it immediately to the marshal. Do not read any news stories, listen to any radio broadcast, watch any television reports about the case or about

anyone who has any – involved with it. Do not do any research or make any investigation about the case on your own. You may be tempted to visit a particular location. Please do not do so. During this trial do not make up your mind about what the verdict should be until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence. It is important to keep an open mind throughout the trial.

At the end of the trial you will have to make your decision based upon what you recall of the evidence. You will not have a written transcript to consult. Please pay close attention to the testimony as it is very difficult and time consuming for the court recorder to play back lengthy testimony. If you wish you may take notes to help you remember what a witness said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not allow notetaking to distract you from what the witness is saying. You should rely upon your own memory of what was said and not be overly influenced by the notes of the other jurors.

As I had mentioned before, during the course of the trial the attorneys for both sides and all court personnel, other than the marshal, are not permitted to converse with members of the jury. These individuals are not trying to be antisocial or rude. They are bound by ethics and the law not to talk to you. To do so might contaminate your verdict.

There are two types of evidence that can be presented in this case: direct and circumstantial evidence. Direct evidence is what a

person personally saw, heard, or did. Circumstantial evidence is a chain of facts which tend to prove another fact. For example, if you wake up in the morning and you see the ground is wet, water is running down the gutters you may infer from those facts that it rained during the night. It is proof of one or more facts which you can find another fact. If you are awake during the night and actually saw the rain fall, that would be direct evidence which is something you personally saw or did. The law allows you to provide – or – allows you to consider both direct and circumstantial evidence and weigh them the same.

Ladies and gentlemen, the trial will proceed in the following manner. One of the Deputy Attorney General's will make an opening statement which will outline what the State expects to prove. Then the Defense attorney may make an opening statement. However, this is not required. Opening statements serve as an introduction to the evidence. The State will then present its evidence and Counsel for the Defendant may cross-examine the witnesses. Following the State's case, the Defense may present evidence and the Deputy Attorney General may cross-examine the witnesses. However, as I've said, the Defendant is not obligated to present any evidence.

After all the evidence has been presented I will instruct you on the law. After the instructions of the law have been read to you each side has the opportunity to present oral argument. What is said in closing argument is not evidence. The arguments are designed to summarize and interpret the evidence. Since the State has the burden of proving the Defendant guilty beyond a reasonable doubt, the State has the right to

open and close the arguments. After the arguments have been completed you will retire to deliberate your verdict.

Ladies and gentlemen, the attorneys are going to get their notes together and present their opening – or the State will present their opening statement to you. They're just going to take a few minutes here to get their notes and presentation ready for you. So, we're just going to take a very short recess.

And during this recess, Ladies and gentlemen, it is your duty not to converse among yourselves or with anyone else on any subject connected with this case, or to read, watch, or listen to any report of or comment during trial by any person connected to the trial, or by any medium of information, including without limitation newspaper, television, radio, or the internet. You are not to form or express an opinion on any subject connected with this case until this matter is submitted to you. See you back in five or ten minutes. Please leave your notepads and your pens on the chair and from now on you'll wear your blue name badge.

THE MARSHAL: All rise for the exit of the jury.

[Outside the presence of the jury]

THE COURT: Defense, do you envision making your opening at this time, and if so, would you be including what you believe that these witnesses may testify as far as you've subpoenaed warden, the associate warden and some other individuals?

MS. SISOLAK: Court's indulgence.

[Colloquy between Defense Counsel]

MS. MACHNICH: Your Honor, depending on what comes out in the State's opening, 'cause again, we don't have a full idea of what that might be at this point. We may reserve.

THE COURT: All right, State, do you have any objection to the Defense in-camera providing me with their proffer of testimony of these individuals?

MR. GUNNELL: Your Honor, we object to it. I don't think its necessary to have in-camera. I mean these individuals weren't there. I don't even see the relevance. Like, the first standard is relevance and I don't – unless they – something's crazy I've never heard of before they pull it out which maybe they are, we do just object to it. But you know let's get this thing going, so if you want to do the in-camera [indiscernible] we're fine with that.

MS. SISOLAK: Your Honor, I'm not willing to give away my theory of defense.

THE COURT: I'm sorry?

MS. SISOLAK: I'm simply not willing to turn my theory of defense over to the State knowing that we break in an hour and a half for the day.

THE COURT: Right. Well, why don't we do this. If the State, -- I know they said they don't have any objection, why don't we – why don't you just have – stand in the hallway in the back. We'll close both doors and, Cynthia, this portion here when the State leaves the courtroom will be – the transcript will be under seal.

THE RECORDER: Okay.

THE COURT: Okay?

MS. SISOLAK: Thank you.

THE COURT: Just make sure that door closed. Is that one propped open or is it closed?

THE CLERK: It's closed.

THE COURT: Now, if there is any witnesses in this case, you're –

MS. SISOLAK: They're not witnesses, Your Honor.

MS. MACHNICH: Just a second.

MS. SISOLAK: They're employees.

MS. MACHNICH: Are you guys – you're with the AG's office, right?

UNKNOWN SPEAKER: I am.

MS. MACHNICH: Can you please step outside then?

UNKNOWN SPEAKER: Sure.

MS. KALLAS: Sorry.

MS. MACHNICH: If that's okay –

MS. KALLAS: Yeah, sorry, Your Honor.

MS. MACHNICH: -- with Your Honor, I just –

THE COURT: Sure. Absolutely.

MS. MACHNICH: Sorry. We thought you might be and we don't want to like – okay, thank you.

THE COURT: Are all the doors – those doors are shut?

MS. SISOLAK: Yup.

THE COURT: Okay; all doors are shut.

All right, Ms. Sisolak.

[The following portion of hearing sealed - 3:40 to 3:53 p.m.]

THE COURT: If you can get the AG's and then you get the jury in.

All right, State, I – obviously I met with Defense Counsel in a closed hearing. The transcript of the hearing is going to be sealed upon order – by order of the Court. At this time if they're going to have – they're going to reserve their opening so we can have your opening and call any witnesses that are available today.

MS. KALLAS: Okay, Your Honor. Thank you.

MS. SISOLAK: Your Honor, we did need maybe five minutes to speak with the Attorney General about the stipulation, make sure the wording is correct.

THE COURT: Can you do that now or –

MS. MACHNICH: We can do it right now.

MS. SISOLAK: Absolutely.

THE COURT: -- is it something you can just do with your first witness perhaps or – I mean do you already have the stip – the framework of your stipulation?

MS. MACHNICH: We do.

MS. KALLAS: We already have it, Your Honor. We're fine with it.

[Colloquy]

MS. KALLAS: And we also have an instruction we would like to [indiscernible].

MS. MACHNICH: Well, we'll deal with that with jury instructions.

THE COURT: Right, but do you have –

MS. KALLAS: We would like an instruction read to them prior to openings.

MR. GUNNELL: Or – Your Honor, that instruction -- the case law we provided to you before is Tavares v. State. Its 11 – or excuse me, 117 Nev. 725. And in that instruction it says – or excuse me, in that case it says it's the burden of the State and the conclusion of that case that: The burden of the State, that limiting instruction be given both at the time of the evidence introduction and the final charge to the jury. So we just like when that stip is read that that instruction be provided as well and then at the time –

MS. SISOLAK: And we would have no objection, Your Honor.

MR. GUNNELL: -- of jury instruction.

THE COURT: Okay, do you have – my instruction may be on my desk. Do you have an extra copy somewhere?

MR. GUNNELL: I do, Your Honor.

UNKNOWN SPEAKER: We have one.

[Colloquy]

THE COURT: So, just tell me when this – the witness will testify regarding these issues and I will chime in with this instruction.

MR. GUNNELL: Its part of the stipulation, I believe.

THE COURT: Okay.

MR. GUNNELL: Its part – it all comes out of the stipulation

there, so.

THE COURT: Okay.

MS. MACHNICH: And, yeah, based upon the stipulation that we've now discussed with the State and we have no objection to the instruction.

THE COURT: Do you believe that I need to read this one as a stipulation or – the parties can read, either one I don't care, but then I need to read this as far as the witness testify because it's the exact same thing. Its not really talking about evidence of other crimes or acts.

MS. MACHNICH: Your Honor, I believe what the State was getting at and what we would agree to as well is the State will go forward with their opening and then the opening of their evidence, they would like and we all agree, it would be appropriate to read both the stipulation and this instruction at that time, and that they then also be included with the jury instruction packet when we settle instructions

THE COURT: Okay. All right, let's get the jury in.

THE MARSHAL: All rise for the entry of the jury.

[Hearing concludes at 3:57 p.m.]

* * * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO LEE MIXON, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 78900
District Court Case No. C327439

FILED

APR 15 2020

CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 19 day of March, 2020.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this April 13, 2020.

Elizabeth A. Brown, Supreme Court Clerk

By: Danielle Friend
Chief Assistant Clerk

C-17-327439-1
CCJA
NV Supreme Court Clerks Certificate/Judgn
4909227

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ANTONIO LEE MIXON, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78900-COA

FILED
MAR 19 2020
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

Antonio Lee Mixon, Jr. appeals from a judgment of conviction entered pursuant to a guilty plea of attempted possession or control of a dangerous weapon or facsimile by an incarcerated person. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Mixon argues the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. Mixon contends the district court erred because it did not specifically address his claim that he was coerced into entering a guilty plea when it denied the motion.

A defendant may move to withdraw a guilty plea before sentencing, NRS 176.165, and "a district court may grant a defendant's motion to withdraw his guilty plea before sentencing for any reason where permitting withdrawal would be fair and just," *Stevenson v. State*, 131 Nev. 598, 604, 354 P.3d 1277, 1281 (2015). In considering the motion, "the district court must consider the totality of the circumstances to determine whether permitting withdrawal of a guilty plea before sentencing would be fair and just." *Id.* at 603, 354 P.3d at 1281.

In his motion to withdraw his guilty plea, Mixon contended he was coerced into entering a guilty plea because the State requested a bail

increase. At the hearing concerning the motion, Mixon asserted his plea was not voluntarily entered because he had been unable to examine the weapon. The district court stated that it read Mixon's motion and reviewed the record. The district court found Mixon acknowledged at the plea canvass that he entered his guilty plea knowingly, voluntarily, and freely. The district court also found the record demonstrated Mixon was aware of any evidentiary issues prior to entry of his plea.

The district court found, based on the totality of the circumstances, Mixon did not demonstrate a fair and just reason to permit withdrawal of his guilty plea. After review of the record, we conclude Mixon has not demonstrated the district court failed to address his claims or abused its discretion by denying his motion to withdraw his guilty plea. *See Hubbard v. State*, 110 Nev. 671, 675, 877 P.2d 519, 521 (1994) (reviewing the district court's denial of a motion to withdraw guilty plea for an abuse of discretion). Accordingly, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons

_____, J.
Tao

_____, J.
Bulla

cc: Hon. Valerie Adair, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Attorney General/Las Vegas
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO LEE MIXON, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 78900
District Court Case No. C327439

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: April 13, 2020

Elizabeth A. Brown, Clerk of Court

By: Danielle Friend
Chief Assistant Clerk

cc (without enclosures):
Hon. Valerie Adair, District Judge
Clark County Public Defender
Attorney General/Las Vegas
Clark County District Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on APR 15 2020.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED
APPEALS
APR 15 2020
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor **COURT MINUTES** **November 01, 2017**

C-17-327439-1 State of Nevada
vs
Antonio Mixon

November 01, 2017 **10:00 AM** **Initial Arraignment**

HEARD BY: De La Garza, Melisa **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Kimberly Estala
Lauren Kidd

RECORDER: Kiara Schmidt

REPORTER:

PARTIES PRESENT:

Kallas, Chelsea	Attorney
Mixon, Antonio Lee	Defendant
Sisolak, Ashley L.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT. MIXON ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT FURTHER ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript. Ms. Sisolak advised for the record there will not be any transcripts.

CUSTODY (COC-NDC)

12/12/17 8:30 AM CALENDAR CALL (DEPT 17)

01/02/18 JURY TRIAL (DEPT 17)

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	December 05, 2017

C-17-327439-1 State of Nevada
vs
Antonio Mixon

December 05, 2017 **8:30 AM** **Motion to Compel**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Olivia Black

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Kallas, Chelsea	Attorney
Mixon, Antonio Lee	Defendant
Sisolak, Ashley L.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Court noted this was Defendant's Motion for Discovery and inquired as to Ms. Sisolak request for items 43-49 regarding electronic devices. Ms. Sisolak noted that was an error. COURT ORDERED, Request 43-49 DENIED. Court stated if Ms. Sisolak learn those items existed to re-file the matter. Ms. Kallas advised it was her understanding there were none used. Ms. Sisolak noted the Attorney General turned over a disk of documents as well as her office picked up documents, this was their standard motion. Court stated it prepared a minute order entry and the Court would forward to counsel this afternoon. Ms. Sisolak was to prepare a formal Order with the Court's decision and submit to opposing counsel to sign off as to form and content.

NIC (COC-NDC)

CLERK'S NOTE: Subsequent to Court, via e-mail the Department XVII Law Clerk forwarded the minute order entry to Ms. Kallas and Ms. Sisolak.//ob/12/6/17.

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	December 12, 2017

C-17-327439-1 State of Nevada
vs
Antonio Mixon

December 12, 2017 **8:30 AM** **Calendar Call**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Olivia Black

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Kallas, Chelsea	Attorney
Mixon, Antonio Lee	Defendant
Sisolak, Ashley L.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Ms. Sisolak advised she was prepared to announce ready; however, Ms. Sisolak further advised she received a letter from Defendant requesting her to file a motion based on the denial of his ability to represent himself. Ms. Sisolak noted in Justice Court Judge Bennett conducted a Faretta Canvas and determined Defendant could not represent himself thereafter the Public Defender's Office was appointed. Ms. Sisolak advised Defendant stated he would like to represent himself. Ms. Kallas announced ready for trial. Court noted Defendant had a trial date set for January 2nd and inquired as to Defendant being ready for trial if he represented himself. Defendant stated he would not be ready for trial. Further statements by Defendant. Upon Court's inquiry, Ms. Sisolak advised Defendant had not requested to represent himself since arriving in District Court. Ms. Sisolak further advised she received a letter from Defendant yesterday stating he was entitled to represent himself based on the denial from Justice Court. Court stated based upon counsel's representation and Defendant stating he would not be ready to go forward, COURT ORDERED, Defendant's request DENIED as that would cause his trial to be continued; Trial date STANDS. Counsel estimated 2 to 3

witnesses and 1 day for trial.

NIC (COC-NDC)

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	January 02, 2018

C-17-327439-1 State of Nevada
vs
Antonio Mixon

January 02, 2018 **8:30 AM** **Motion to Withdraw as Counsel**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Louisa Garcia
Andrea Natali

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Gunnell, Jason	Attorney
Kallas, Chelsea	Attorney
Machnich, Tegan	Attorney
Mixon, Antonio Lee	Defendant
Sisolak, Ashley L.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. present in custody on other charges. Attorney General not present. Upon Court's inquiry, Deft. stated he wanted Ms. Sisolak to continue representing him on this matter. COURT SO ACKNOWLEDGE and ADVISED the Jury Trial currently set today at 10:30 AM stands.

NIC (COC-NDC)

1/2/18 - 10:30 AM - JURY TRIAL

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	January 02, 2018

C-17-327439-1 State of Nevada
vs
Antonio Mixon

January 02, 2018 **10:30 AM** **Jury Trial**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Louisa Garcia

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Gunnell, Jason	Attorney
Kallas, Chelsea	Attorney
Machnich, Tegan	Attorney
Mixon, Antonio Lee	Defendant
Sisolak, Ashley L.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- PROSPECTIVE JURY PANEL PRESENT: Role Call. Voir Dire Oath administered. Introduction by the Court and counsel. CONFERENCE AT THE BENCH. General Voir Dire conducted. Jurors excused. Voir Dire Continued.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Ms. Machnich stated she made a timely objection with regards to the jury poll, and argued as to the systematic exclusion of African Americans and requested an evidentiary hearing with the Jury Commissioner regarding the process. If not, they would make an offer. Upon Court's inquiry, counsel stated her information was based upon prior trials and testimony. Ms. Kallis objected as they have already heard from the Commissioner and the answer is going to be same. Counsel requested the Court take judicial notice of her testimony from within that transcript to show there is no systematic exclusion with the jury.

Court stated its findings and ORDERED, Motion for Evidentiary Hearing DENIED.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire Continued. CONFERENCE AT THE BENCH. Additional Panel Members excused for cause and for Peremptory Challenges during discussions at the Bench. Twelve jurors and one alternate selected and sworn. Jury list FILED IN OPEN COURT. Clerk read the Information to the jury and stated the defendant's plea thereto. Court instructed the jury.

OUTSIDE THE PRESENCE OF THE JURY: Upon Court's inquiry, Ms. Machnich stated depending on what comes out on State's opening, they may reserve. State objected to Defense providing a proffer, in camera. Statement by the Court. Exclusionary Rule INVOKED. COURT ORDERED, hearing sealed. Hearing conducted and outside the presence of the Attorney General. JAVS FILE SEALED from 3:40:11 to 3:53:14. Following closed hearing, Court advised State he met with defense in a closed hearing, and the transcript of the hearing was going to be sealed. At this time, Defense reserved their opening. Colloquy regarding jury instructions. Based upon stipulation Defense had no objection to reading the instruction to the jury relating to Defendant's custody status.

INSIDE THE PRESENCE OF THE JURY: Opening Statement by Mr. Gunnell. Testimony and Exhibits. CONFERENCES AT THE BENCH. Court advised the jury a legal issue has arisen in this case which is requiring the Court to declare a Mistrial. Court thanked and EXCUSED the Jury.

Ms. Sisolak requested the Court issue a mistrial with prejudice based on the fact there was a statement on a C-1 form, that was filled out by Officer Ontiveros, that should have been turned over in discovery. Ms. Kallis objected as the first time they heard about a worker's comp claim was when Officer Ontiveros testified on the stand today. They reached out to the Inspector General's office and were informed they had everything. Officer Ontiveros never discussed injuries; therefore, they did not have any reason to believe he would have to make worker' s comp claim. Ms. Kallis stated it was not exculpatory, nor a Brady violation, and thinks a curative instructive could cure any type of prejudice. COURT ADVISED it does not find any egregious conduct or recklessness on behalf of the State. Court stated the C-I form was strictly a worker's comp form and has to be filed anytime someone is injured. It was not part of the investigation file, more administrative. However, the Court did order that all statements by the witnesses be turned over. Court does not believe the State was aware that there was C-I form; therefore, Court is not dismissing the case with prejudice. Court advised if counsel has any evidence this was intentional or a gross negligence act they can file the appropriate motion. COURT ORDERED, matter SET for status check.

CUSTODY

1/4/18 8:30 AM STATUS CHECK: RESET TRIAL

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	January 04, 2018

C-17-327439-1 State of Nevada
vs
Antonio Mixon

January 04, 2018 **8:30 AM** **Status Check**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Olivia Black

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Kallas, Chelsea	Attorney
Mixon, Antonio Lee	Defendant
Sisolak, Ashley L.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Ms. Sisolak noted she did received the C1 form on a disk. Ms. Sisolak further noted the State had offered Defendant negotiations; however, Defendant was not inclined to accept the negotiations. Ms. Sisolak placed the offer on the record. Defendant concurred. Following representations by Ms. Sisolak, COURT ORDERED, matter SET for trial.

CUSTODY (COC-NDC)

03/20/18 8:30 AM CALENDAR CALL

03/26/18 9:00 AM JURY TRIAL

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	February 08, 2018

C-17-327439-1 State of Nevada
vs
Antonio Mixon

February 08, 2018 **8:30 AM** **Status Check**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Olivia Black

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Engler, Alissa	Attorney
Mixon, Antonio Lee	Defendant
Sisolak, Ashley L.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- CONFERENCE AT BENCH. Court noted the Defendant's upcoming trial date. Upon Court's inquiry, Ms. Sisolak confirmed she had received the C1 form and noted her upcoming motion practice. COURT SO NOTED.

NIC (COC-NDC)

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	March 15, 2018

C-17-327439-1 State of Nevada
vs
Antonio Mixon

March 15, 2018 **8:30 AM** **All Pending Motions**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Olivia Black
Vanessa Medina

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Kallas, Chelsea	Attorney
Mixon, Antonio Lee	Defendant
Sisolak, Ashley L.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE
Arguments by counsel regarding the merit of the motion. COURT stated its FINDINGS and ORDERED, Motion DENIED.

DEFENDANT'S MOTION TO DISQUALIFY THE ATTORNEY GENERAL'S OFFICE
Arguments by counsel regarding the merit of the motion. COURT stated its FINDINGS and ORDERED, Motion DENIED.

DEFENDANT'S MOTION TO DISMISS BASE UPON VINDICTIVE PROSECUTION
Arguments by counsel regarding the merit of the motion. Statement by Defendant. Court instructed Defendant several times to be quiet as counsel were arguing the motions. Defendant escorted out of the courtroom. COURT ORDERED, Motion CONTINUED; Trial date VACATED and Status Check

SET for resetting the trial.

NIC (COC-NDC)

03/29/18 8:30 AM - DEFENDANT'S MOTION TO DISMISS BASE UPON VINDICTIVE PROSECUTION...STATUS CHECK: RESET TRIAL

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	March 29, 2018

C-17-327439-1 State of Nevada
vs
Antonio Mixon

March 29, 2018 **8:30 AM** **All Pending Motions**

HEARD BY: Becker, Nancy **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Olivia Black
Vanessa Medina

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Kallas, Chelsea	Attorney
Machnich, Tegan	Attorney
Mixon, Antonio Lee	Defendant
Sisolak, Ashley L.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- STATUS CHECK: TRIAL SETTING...DEFENDANT'S MOTION TO DISMISS BASED UPON VINDICTIVE PROSECUTION

Ms. Kallas stated there was a tortured history with this case and noted during the trial the Defense gave an in-camera review where they gave a proffer of their defense and there was a mistrial for an unrelated issue. Ms. Kallas further noted after the mistrial the Court instructed the defense to file this motion and requested a continuance for the sitting Judge to hear the motion. COURT ORDERED, matters CONTINUED.

CUSTODY (COC-NDC)

CONTINUED TO: 04/05/18 8:30 AM

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	April 05, 2018

C-17-327439-1 State of Nevada
vs
Antonio Mixon

April 05, 2018 **8:30 AM** **All Pending Motions**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Olivia Black

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- STATUS CHECK: TRIAL SETTING...DEFENDANT'S MOTION TO DISMISS BASED UPON VINDICTIVE PROSECUTION...DEFENDANT'S PRO PER MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD, REQUEST TO OBTAIN COPY OF DEFENDANT'S FILE, AND REQUEST FOR SELF-REPRESENTATION

Ms. Sisolak gave a background of the previous hearing and noted at the last hearing Judge Becker was not willing to make a ruling and continued the matter. Ms. Sisolak further noted since then Defendant filed a Motion to Withdraw counsel and represent himself. Ms. Kallas concurred. Upon Court s inquiry, Defendant stated he could not afford to hire his own attorney. Ms. Sisolak advised Defendant just wanted to represent himself and didn't believe he had an issue with her personally. COURT ORDERED, matters CONTINUED; Faretta Canvass SET. COURT FURTHER ORDERED, Defendant s Pro Per Motion for Withdrawal of Attorney of Record ADVANCED and CONTINUED.

04/06/18 9:00 AM FARETTA CANVASS...DEFENDANT'S MOTION TO DISMISS BASED UPON VINDICTIVE PROSECUTION...DEFENDANT'S PRO PER MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD, REQUEST TO OBTAIN COPY OF DEFENDANT S FILE, AND REQUEST

FOR SELF-REPRESENTATION...STATUS CHECK: TRIAL SETTING

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	April 06, 2018

C-17-327439-1 State of Nevada
vs
Antonio Mixon

April 06, 2018 **9:00 AM** **All Pending Motions**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Lauren Kidd

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Kallas, Chelsea	Attorney
Mixon, Antonio Lee	Defendant
Sisolak, Ashley L.	Attorney
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Upon Court's inquiry, Defendant advised he wanted to withdraw his attorney from representation and proceed pro se. Court provided notice to the Defendant of constitutional right of self-representation and advised of the risks involved in self-representation. Court inquired as to the reason Defendant did not want Ms. Sisolak to remain as his counsel. Defendant stated Ms. Sisolak did not file his motion to dispute the Court's jurisdiction in this matter. Ms. Sisolak stated she reviewed Defendant's motion, saw no basis for Defendant's argument and decided not to file the frivolous motion. Court advised Defendant that in the past, similar motions had been filed and the Court had denied those motions. FARETTA CANVAS was Administered by the Court. CONFERENCE AT BENCH. Colloquy regarding trial dates. COURT FURTHER ORDERED, matter SET for JURY TRIAL.

AS TO DEFENDANT'S PRO PER MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD, REQUEST TO OBTAIN COPY OF DEFENDANT'S FILE, AND REQUEST FOR SELF-

REPRESENTATION, COURT ORDERED, Motion GRANTED; Ms. Sisolak to forward a copy of discovery to Defendant.

AS TO DEFENDANT'S MOTION TO DISMISS BASED UPON VINDICTIVE PROSECUTION, COURT ORDERED, motion CONTINUED.

CUSTODY (COC-NDC)

8/21/18 8:30 AM CALENDAR CALL...DEFENDANT'S MOTION TO DISMISS BASED UPON VINDICTIVE PROSECUTION

8/27/18 9:00 AM JURY TRIAL

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	June 05, 2018

C-17-327439-1 State of Nevada
vs
Antonio Mixon

June 05, 2018 **8:30 AM** **Motion**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Olivia Black

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Gunnell, Jason	Attorney
Mixon, Antonio Lee	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Martin Hart, Esq. also present.

Upon Court's inquiry, Defendant requested a private investigator and paralegal. Defendant stated he did not have an investigator in mind. Court noted it could not pick an investigator for Defendant. Mr. Hart noted Mark Prusch from Global Reliance for a private investigator was who Drew Christensen used for Pro Se Defendants. COURT ORDERED, Motion for Private Investigator GRANTED. Defendant inquired as to a paralegal. Court noted Defendant was representing himself. Defendant stated he has been denied access to the law library. Court instructed the State to follow up with the prison system and inquiry why Defendant has been denied. COURT FURTHER ORDERED, Status Check SET as to Defendant's library privilege.

CUSTODY (COC-NDC)

06/19/18 8:30 AM STATUS CHECK: DEFENDANT'S LIBRARY PRIVILEGE

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	June 19, 2018

C-17-327439-1 State of Nevada
vs
Antonio Mixon

June 19, 2018 **8:30 AM** **Status Check**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Olivia Black

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Gunnell, Jason	Attorney
Mixon, Antonio Lee	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Court noted at the previous hearing there was an issue with Defendant's library privilege as well as an investigator. Mr. Gunell advised he contacted the High Desert Prison law library supervisor and they stated Defendant was in housing were he couldn't go to the library they brought the documents to Defendant. Mr. Gunell further advised the law library gave Defendant a number of documents but the Defendant refused the documents. Defendant stated he received the documents but it wasn't complete so he refused to sign it and there was no where to note that on the documents. Court suggested putting in a requesting advising the law library it was incomplete. Court stated it was not going to order special transport and the issue was resolved. As to the investigator, Court stated it would resend the minutes from the previous hearing with the investigator name. Defendant requested an Order to allow the investigator to visit. Mr. Gunnell noted the investigator was allowed to visit. At the request of Defendant COURT ORDERED, Trial dates VACATED and RESET.

CUSTODY (COC-NDC)

10/23/18 8:30 AM CALENDAR CALL

10/29/18 9:00 AM JURY TRIAL

CLERK'S NOTE: The above minute order has been distributed to:

ANTONIO MIXON #1019828
PO Box 650
Indian Springs, NV 89070 //ob/06/20/18

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	August 30, 2018

C-17-327439-1 State of Nevada
vs
Antonio Mixon

August 30, 2018 **8:30 AM** **Motion**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Haly Pannullo

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Gunnell, Jason	Attorney
Mixon, Antonio Lee	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Colloquy regarding Motions. At request for Defendant, COURT ORDERED, Motion GRANTED; 09/18/18 Motion VACATED; trial dates VACATED and RESET. State noted a Transport Order will be prepared.

CUSTODY (NDC)

01/03/19 8:30 CALENDAR CALL

01/07/19 9:00 AM JURY TRIAL

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	October 11, 2018

C-17-327439-1 State of Nevada
vs
Antonio Mixon

October 11, 2018 **8:30 AM** **All Pending Motions**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Haly Pannullo

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Gunnell, Jason	Attorney
Mixon, Antonio Lee	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFENDANT'S PRO PER MOTION TO SUPPRESS AND OR PURSUANT TO NRS 47.090 ... DEFENDANT'S PRO PER MOTION FOR EXPERT WITNESS

At request of the Defendant, COURT ORDERED, Motion for Expert Witness GRANTED. Court inquired as to what expert witness the Defendant is wanting to retain. Defendant advised he is in communication with his private investigator with regards to who to retain. Court directed the Defendant to submit the appropriate Order. As to the Motion to Suppress, Defendant submitted. Mr. Gunnell argued in regards to the Motion to Suppress. COURT ORDERED, Motion to Suppress DENIED; State to prepare Order. Upon Court's inquiry, Defendant announced not ready and will file a Motion for an Extension of Time. Court stated that Motion will be dealt with in due course.

CUSTODY (COC-NDC)

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	October 25, 2018

C-17-327439-1 State of Nevada
vs
Antonio Mixon

October 25, 2018 **8:30 AM** **All Pending Motions**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Haly Pannullo

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Kallas, Chelsea	Attorney
Mixon, Antonio Lee	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFENDANT'S PRO PER MOTION FOR LEAVE TO FILE AN AMENDED MOTION TO SUPPORT AND MOTION FOR EXPERT WITNESSES ... DEFENDANT'S MOTION FOR EXTENSION OF TIME ... MOTION FOR EXTENSION OF TIME

COURT ORDERED, Motion for Expert Witness MOOT as it was previously granted; Motion to File an Amended Motion to Suppress DENIED; Motion for Extension of Time DENIED. Court directed the Defendant to be prepared for trial as trial is not going to be continued; trial is going forward.

CUSTODY (COC)

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	November 20, 2018

C-17-327439-1 State of Nevada
vs
Antonio Mixon

November 20, 2018 **8:30 AM** **All Pending Motions**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Alice Jacobson

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Kallas, Chelsea	Attorney
Mixon, Antonio Lee	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT'S MOTION FOR EXTENSION OF TIME

DEFT'S NOTICE OF MOTION

Defendant argued to continue the trial for a private investigator and forensic expert to testify that his prints were not on the shank. State advised it was not going to bring in the finger prints as there was a witness to the incident. Defendant disputed that he ever had the shank. Colloquy regarding trial. Court advised the Defendant that the Jury Instructions and Voir Dire will be dealt with at the start of trial. Trial date RESET.

CUSTODY (NDC)

3/5/19 8:30AM CALENDAR CALL
3/11/19 9:00AM JURY TRIAL

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	December 11, 2018

C-17-327439-1 State of Nevada
vs
Antonio Mixon

December 11, 2018	8:30 AM	Motion For Stay	Motion for Stay of Trial Setting and or Motion for Time Extension

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Haly Pannullo
April Watkins

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Kallas, Chelsea	Attorney
Mixon, Antonio Lee	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Ms. Kallas advised extended to March and believes issue is with handwriting expert. Deft. stated he has had no success with investigator. Colloquy. Ms. Kallas further stated she believes Deft. is requesting to take classes to become educated in finger prints. COURT ORDERED, request DENIED as to taking classes and motion DENIED. Trial date STANDS.

CUSTODY (COC-NDC)

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	January 08, 2019

C-17-327439-1 State of Nevada
vs
Antonio Mixon

January 08, 2019 **8:30 AM** **All Pending Motions**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Olivia Black
Haly Pannullo

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Gunnell, Jason	Attorney
Mixon, Antonio Lee	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

- MOTION FOR LEAVE TO AMEND ... MOTION TO CONTINUE TRIAL

Upon Court's inquiry, Defendant noted he is missing 37 articles and/or documents. Colloquy regarding discovery. Mr. Gunnell advised a complete copy of what the State has can be provided to the Defendant's investigator. COURT SO NOTED. Court suggested the State complete an index of everything that is being provided to the Defendant. Colloquy regarding the Defendant serving subpoenas. Court directed the Defendant to utilize the court appointed investigator to serve subpoenas. COURT FURTHER ORDERED, Motion to Continue Trial DENIED; Motion for Leave to Amend DENIED; Motion to Place on Calendar set for 01/10/19 VACATED. Colloquy regarding Motion to Dismiss that is being heard on 03/05/19. COURT ORDERED, Hearing for Motion to Dismiss STANDS; Defendant is to file supplemental briefs he believes it to be appropriate and the State is to respond.

CUSTODY (COC)

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	March 05, 2019

C-17-327439-1 State of Nevada
vs
Antonio Mixon

March 05, 2019 **8:30 AM** **All Pending Motions**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Olivia Black

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Kallas, Chelsea	Attorney
Mixon, Antonio Lee	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mark Perch, Investigator also present on behalf of Defendant.

MOTION TO DISMISS...STATE'S NOTICE OF MOTION AND MOTION TO PLACE ON CALENDAR...CALENDAR CALL

CONFERENCE AT BENCH. Upon Court's inquiry, Defendant stated he had nothing to add to his motion. Ms. Kallas submitted. COURT ORDERED, Motion DENIED as there was no legal bases set forth to dismiss the case. Court stated it had been advised Defendant had been sending the prosecutor love letters. Court ADMONISHED Defendant regarding sending inappropriate letters to counsel. Upon Ms. Kallas inquiry, Court stated it had not reviewed the State's motion but would review it before trial. Court noted there was a private investigator recently retained. Upon Court's inquiry, Defendant stated he just talked to him and requested a trial continuance to finger print the knife. Defendant requested a Court Order to allow the Nevada Department of Corrections to send

the investigator the knife to be tested. State had no objection to the continuance; however, Ms. Kallas requested a status check set. Upon Court's inquiry, Mr. Perch advised the lab was located out of state, Ron Smith and Associates. Mr. Perch further stated the cost was $1600.00 and it would take eight hours to perform the test and two weeks to return. COURT FURTHER ORDERED, Oral Witness Motion GRANTED to pay for expert fees of $1600.00. Court stated it would advised Drew Christensen's office and instructed Mr. Perch to contact his office to obtain the check. Court instructed counsel to prepare a stipulation that the knife would be retested and chain of custody. Court further instructed Defendant to sign the stipulation once received and send it back to counsel. COURT ORDERED, Trial date VACATED; Status Check SET to reset trial.

CUSTODY (COC-NDC)

04/04/19 8:30 AM STATUS CHECK: TRIAL SETTING

CLERK'S NOTE: The above minute order has been distributed to:

ANTONIO MIXON #1019828
HDSP
P O BOX 650
INDIAN SPRINGS, NV 89070//ob/03/06/19

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	March 26, 2019

C-17-327439-1 State of Nevada
vs
Antonio Mixon

March 26, 2019	8:30 AM	Motion to Increase	State's Motion to Increase Bail

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK:
April Watkins

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Kallas, Chelsea	Attorney
Mixon, Antonio Lee	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Amended Information FILED IN OPEN COURT...NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT

DEFT. MIXON ARRAIGNED AND PLED GUILTY to ATTEMPT POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACSIMILE BY AN INCARCERATED PERSON (F). Court ACCEPTED plea and ORDERED, matter referred to the Division of Parole and Probation (P & P) and set for sentencing. FURTHER ORDERED, State's Motion OFF CALENDAR and status check set for April 4, 2019, VACATED.

CUSTODY (COC-NDC)

5/21/19 8:30 AM SENTENCING

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	April 30, 2019

C-17-327439-1 State of Nevada
vs
Antonio Mixon

April 30, 2019 **8:30 AM** **All Pending Motions**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Olivia Black

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES PRESENT:

Kallas, Chelsea	Attorney
Mixon, Antonio Lee	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

- STATE'S MOTION FOR AN EXTENSION OF TIME...MOTION TO WITHDRAW GUILTY PLEA

Ms. Kallas advised Defendant didn't received the opposition which was filed on Thursday. Upon Court's inquiry, Defendant confirmed he wanted an opportunity to reply. COURT ORDERED, matter CONTINUED.

CUSTODY (COC-NDC)

CONTINUED TO: 05/21/19 8:30 AM

CLERK'S NOTE: The above minute order has been distributed to:

ANTONIO MIXON #1968172

330 S. CASINO CENTER BLVD
LAS VEGAS, NV 89101//ob/05/01/19

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	May 21, 2019

C-17-327439-1 State of Nevada
vs
Antonio Mixon

May 21, 2019 **8:30 AM** **All Pending Motions**

HEARD BY: Bell, Linda Marie **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Olivia Black

RECORDER: Renee Vincent

REPORTER:

PARTIES PRESENT:

Kallas, Chelsea	Attorney
Mixon, Antonio Lee	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

- MOTION TO WITHDRAW GUILTY PLEA...SENTENCING

Arguments by parties regarding the merit of the motion. Court stated it appeared the plea was knowingly and voluntarily entered. Court further stated Defendant was aware of the evidence prior to entering the plea. COURT ORDERED, Motion DENIED; State to prepare the Order.

Upon Court's inquiry, Defendant confirmed he was ready to be sentenced today. Ms. Kallas advised Defendant never received the Pre- Sentence Investigation (PSI) report. Upon Court's further inquiry, Defendant confirmed he went over the PSI today and wished to go forward today. Defendant requested appellate counsel regarding the matter. DEFT MIXON ADJUDGED GUILTY of ATTEMPT POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACSIMILE BY AN INCARCERATED PERSON (F). State submitted. Statement by Defendant. Pursuant to NRS 176.063, COURT ORDERED, in addition to the $25.00 Administrative Assessment fee and $3.00 DNA

Collection fee, Deft. SENTENCED to a MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of THIRTY (30) MONTHS in the Nevada Department of Corrections (NDC), CONSECUTIVE TO C277977 with ZERO (0) credit for time served. COURT FURTHER ORDERED, DNA fee and testing WAIVED, having been previously submitted. COURT ORDERED, Public Defender's Office APPOINTED for Defendant's appeal.

NDC

Certification of Copy and Transmittal of Record

State of Nevada
County of Clark } **SS:**

Pursuant to the Supreme Court order dated May 16, 2022, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises five volumes with pages numbered 1 through 1102.

STATE OF NEVADA,

Plaintiff(s),

vs.

ANTONIO LEE MIXON,

Defendant(s),

Case No: C-17-327439-1
Related Case A-22-847754-W
Dept. No: XIX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 24 day of May 2022.

Steven D. Grierson, Clerk of the Court

Amanda Hampton, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO LEE MIXON,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: C-17-327439-1
Related Case A-22-847754-W
Docket No: 84677

RECORD ON APPEAL
VOLUME
4

ATTORNEY FOR APPELLANT
ANTONIO MIXON # 1019828,
PROPER PERSON
P.O. BOX 1989
ELY, NV 89301

ATTORNEY FOR RESPONDENT
AARON D. FORD
ATTORNEY GENERAL
555 E. WASHINGTON AVE., STE. 3900
LAS VEGAS, NV 89101

C-17-327439-1 State of Nevada vs Antonio Mixon

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vs
Antonio Mixon

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C-17-327439-1 State of Nevada
vs
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vs
Antonio Mixon

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ORIGINAL

GPA
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FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
MAR 26 2019
BY, APRIL WATKINS, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1968172 Defendant.	Case No.: C-17-327439-1 Dept. No.: 17

C-17-327439-1
GPA
Guilty Plea Agreement
4825638

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: ATTEMPT POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACSIMILE BY AN INCARCERATED PERSON, a CATEGORY "C" Felony, in violation of NRS 212.185(c), NRS 193.330, as more fully alleged in the charging document attached hereto as Exhibit "1."

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

1. The State and I agree to jointly recommend a sentence of 12 to 30 months of incarceration in the Nevada Department of Corrections, to run consecutive to any sentence that I am currently serving.

2. I agree to waive any defects or infirmities as to the form of the charging document attached as Exhibit "1."

Furthermore, I understand that, pursuant to NRS 176.015(3), victims so desiring will be allowed to make impact statements. I understand and agree that, if I fail to interview with the Department of Parole and Probation, fail to appear at any subsequent hearings in this case, or an independent judge or magistrate, by affidavit review or other satisfactory proof, confirms probable cause against me for new

criminal charges, including reckless driving or DUI, but excluding minor traffic violations, the State will have the unqualified right to argue for any legal sentence and term of confinement allowable for the crime(s) to which I am pleading guilty, including the use of any prior convictions I may have to increase my sentence as a habitual criminal to five (5) to twenty (20) years, life without the possibility of parole, life with the possibility of parole after ten (10) years, or a definite twenty-five (25) year term with the possibility of parole after ten (10) years. Otherwise, I am entitled to receive the benefits of these negotiations as stated in the plea agreement.

CONSEQUENCES OF THE PLEA

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

I understand that as a consequence of my plea of guilty the Court must sentence me to imprisonment in the Nevada Department of Corrections for a minimum term of not less than one (1) year and a maximum term of not more than five (5) years. The minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment. I understand that I may also be fined up to $10,000.00. I understand the law requires me to pay an Administrative Assessment Fee.

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

I understand that I am eligible for probation for the offense(s) to which I am pleading guilty. I further understand that, except as otherwise provided by statute, the question of whether I receive probation is in the discretion of the sentencing judge.

I also understand that I must submit to blood and/or saliva tests under the direction of the Division of Parole and Probation to determine genetic markers and/or secretor status.

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

I understand that information regarding charges not filed, dismissed charges, or charges to be

dismissed pursuant to this agreement may be considered by the judge at sentencing.

I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the Court within the limits prescribed by statute. I understand that if my attorney or the State of Nevada or both recommend any specific punishment to the Court, the Court is not obligated to accept the recommendation.

I understand the Division of Parole and Probation will prepare a report for the sentencing judge prior to sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. This report may contain hearsay information regarding my background and criminal history. My attorney and I will each have the opportunity to comment on the information contained in the report at the time of sentencing. Unless the Attorney General has specifically agreed otherwise, the Attorney General may also comment on this report.

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

I understand that if I am not a United States citizen, this criminal conviction will likely result in serious negative immigration consequences including but not limited to: removal from the United States through deportation; an inability to reenter the United States; the inability to gain United States citizenship or legal residency; an inability to renew and/or retain any legal residency status; and/or an indeterminate term of confinement, with the United States Federal Government based on my conviction and immigration status. Regardless of what I have been told by an attorney, no one can promise me that this conviction will not result in negative immigration consequences and/or impact my ability to become a United States citizen and/or legal resident.

WAIVER OF RIGHTS

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

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense charged.

3. The constitutional right to confront and cross-examine any witnesses who would testify against me.

4. The constitutional right to subpoena witnesses to testify on my behalf.

5. The constitutional right to testify in my own defense.

6. The right to appeal the conviction, with the assistance of an attorney, either appointed or retained, unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings and except as otherwise provided in subsection 3 of NRS 174.035.

VOLUNTARINESS OF PLEA

I have discussed the elements of all the original charges against me with my attorney and I understand the nature of the charges against me.

I understand the State would have to prove each element of the charges against me at trial.

I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

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

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

DATED this 26th day of March, 2019.

ANTONIO LEE MIXON, Defendant

AGREED TO BY:

CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

EXHIBIT 1

EXHIBIT 1

AINF
AARON D. FORD
Attorney General
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-5707
F: (702) 486-0660
CKallas@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1968172 Defendant.	Case No.: C-17-327439-1 Dept. No.: 17

AMENDED INFORMATION

AARON D. FORD, Attorney General for the State of Nevada, complains and charges that:

The above-named defendant, ANTONIO LEE MIXON, has committed the crime of one (1) count of ATTEMPT POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACSIMILE BY AN INCARCERATED PERSON, a category "C" felony in violation of NRS 212.185(c), NRS 193.330.

All of the acts alleged herein have been committed or completed on or about December 4, 2015, by the above-named defendant, within the County of Clark, State of Nevada, in the following manner:

COUNT I
ATTEMPT POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACSIMILE BY AN INCARCERATED PERSON
Category "C" Felony - NRS 212.185(c), NRS 193.330

That the Defendant, ANTONIO LEE MIXON, on or about December 4, 2015, while incarcerated at High Desert State Prison, did attempt to possess or have in his custody or control any dirk, dagger, switchblade knife or sharp instrument to wit: the Defendant did attempt to possess or have in his custody or

control a sharp instrument commonly referred to as a "shank."

All of which is contrary to the form, force and effect of the statutes in such cases made and provided, and against the peace and dignity of the state of Nevada.

DATED this 21 day of March, 2019.

SUBMITTED BY

AARON D. FORD
Attorney General

By: Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General
Attorneys for the State of Nevada

EXHIBIT "2"

EXHIBIT "2"

Electronically Filed
4/18/2019 3:19 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

TUESDAY, MARCH 26, 2019

RECORDER'S TRANSCRIPT OF HEARING:
STATE'S MOTION TO INCREASE BAIL

APPEARANCES:

For the State: CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

For the Defendant: PRO SE

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Tuesday, March 26, 2019

[Hearing begins at 8:56 a.m.]

THE MARSHAL: Page 25.

THE COURT: Antonio Mixon.

THE DEFENDANT: Good morning.

THE COURT: Good morning, sir.

MS. KALLAS: Good morning, Your Honor, Chelsea Kallas of the Attorney Generals. If I may approach? I have a Guilty Plea Agreement. This matter is negotiated.

THE COURT: All right.

[Colloquy]

THE COURT: And what are the negotiations?

MS. KALLAS: And, Your Honor, the Defendant will be pleading guilty to one count of attempt possession or control of a dangerous weapon by an incarcerated person, a category C felony. The State and the Defendant would recommend a sentence of 12 to 30 months of incarceration and that will run consecutive to any sentence he's currently serving.

THE COURT: Is that correct, Mr. Mixon?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. As you know, you went through a Faretta canvass. You represent yourself. I just want to make sure that you've had an opportunity to review the Guilty Plea Agreement and you're in agreement with the negotiations and everything set forth in the agreement; is that correct?

THE DEFENDANT: Correct.

THE COURT: All right.

For the record, what is your true name?

THE DEFENDANT: Antonio Lee Mixon, Junior.

THE COURT: How old are you?

THE DEFENDANT: 28.

THE COURT: How far did you go in school?

THE DEFENDANT: Community College of Southern Nevada semester.

THE COURT: All right. Do you read, write, and understand the English language?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And, sir, are you entering a guilty plea to the charge of attempt possession or control of dangerous weapon or facsimile by an incarcerated person?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Before I can accept your plea of guilty I must make sure it's freely and voluntarily given. Is anyone forcing you to plead guilty?

THE DEFENDANT: No, Your Honor.

THE COURT: Has anyone threatened anyone closely associated with you in order to get you to plead guilty?

THE DEFENDANT: No, Your Honor.

THE COURT: Sir, do you understand that the potential sentencing range of this charge is a maximum term of 5 years, a

minimum term of 1 year in the Nevada Department of Corrections and you can also be fined to $10,000.00?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that sentencing is strictly up to the Court, no one can promise you probation, leniency, or any special treatment?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Now, you understand that there's an agreement between you and the State that both of you are going to recommend to me that you be sentenced to the minimums which is a maximum term of 30 months, a minimum term of 12 months. Do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: However, the Court is free to sentence as it sees fit. Do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Sir, is one of the reasons you're guilty – pleading guilty to this charge is in truth and fact you are guilty of this charge?

THE DEFENDANT: I'm guilty, Your Honor.

THE COURT: All right.

Sir, I have a copy of the Guilty Plea Agreement in front of me. Is this your signature on page 5 of the agreement?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Did you read it and understand everything

contained within the agreement?

THE DEFENDANT: Everything.

THE COURT: All right. If you had any questions were they answered – I know she's not your attorney, but did you ask the Deputy Attorney General if you had any questions?

THE DEFENDANT: I don't have any questions.

THE COURT: All right. And, sir, are you a U.S. citizen?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Sir, did you on or about December 4th, 2015, here in Clark County, Nevada, while incarcerated at High Desert State Prison, did attempt to possess or have in your custody or control any dirk, dagger, switchblade knife, or sharp instrument to wit: Defendant did attempt to possess or have in his custody a – in your custody or control a sharp instrument commonly referred to as a shank. Did you do those things, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Are you entering your plea freely and voluntarily?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And I just want to – I'm going to ask you again, sir, are you sure you want to go through with these negotiations?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right; Court finds the plea is freely and voluntarily entered.

MS. KALLAS: And, Your Honor, I apologize, may I just note

one thing? On page 4 of the plea, it's kind of our standard language regarding the voluntariness and I think you already kind of addressed it that its says he's discussed this element – these elements with his attorney, that he's waiving those because we've already had the Faretta canvass and he's representing himself.

THE COURT: Right. Okay.

All right, I'm going to set the sentencing on the following day, sir.

THE CLERK: Do you want a new PSI?

THE DEFENDANT: Tomorrow?

THE COURT: Sir, we have to have a Presentence Investigation Report prepared. They will probably do this over the phone. So someone –

THE DEFENDANT: Can I waive it?

THE COURT: -- from the Probation Department will interview you.

THE DEFENDANT: Can I waive the Presentence Investigation?

THE COURT: No. On a felony we have to have a Presentence Report.

THE DEFENDANT: All right.

THE COURT: Okay?

THE CLERK: It's going to be May 21st, at 8:30.

And can we vacate the April 4th status check date?

THE COURT: The April 4th date is vacated. We'll see you

back on that day, sir.

THE DEFENDANT: Thank you, Your Honor.

MS. KALLAS: Thank you, Your Honor.

THE COURT: Thank you.

[Hearing concludes at 9:00 a.m.]

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

ROPP

Antonio Lee Mixon
/ In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

District Court
Clark County, Nevada.

The State of Nevada
Plaintiff

vs.

Antonio Lee Mixon Jr.
Defendant.

Case No. C-17-327439-1
Dept No. XVII
Docket

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that Defendant's Reply to State's Opposition to Defendant's Motion to Withdraw Guilty Plea will come on for hearing before the above-entitled Court on the ___ day of ___, 2019, at the hour of ___ o'clock A.M. M. In Department 17, of said Court.

CC:FILE

RECEIVED
MAY 16 2019
CLERK OF THE COURT

DATED: this 10th day of May, 2019.

BY: Antonio Lee Mixon Jr.
A. L. Mixon Jr. #1019826
/In Propria Personam

2 of 15

ROPP

Antonio Mixon ID NO. 1019828

HIGH DESERT STATE PRISON
22010 COLD CREEK ROAD
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89018

FILED
MAY 16 2019
CLERK OF COURT

7

District Court
Clark County, Nevada.

The State of Nevada, Plaintiff

v.

Antonio Lee Mixon, Defendant.

CASE NO.: C-17-327439-1
DEPT. NO.: XVII
DOCKET:

Defendant's Reply to state's Opposition to Defendant's Motion to Withdraw Guilty Plea.

COMES NOW, Defendant, Antonio Lee Mixon, herein above respectfully moves this Honorable Court for an Order granting Defendant permission to withdraw Defendant's Guilty Plea.

This Motion is made and based upon the accompanying Memorandum of Points and Authorities.

DATED: this 10th day of May, 2019

BY: Antonio Lee Mixon Jr.
A. L. Mixon Jr. #1019828
Defendant/In Proper Personam

RECEIVED
MAY 16 2019
CLERK OF THE COURT

Memorandum of Points And Authorities

On December 4, 2015, Antonio Lee Mixon (herein Defendant) was accused of striking Senior Correctional officer D. Ontiveros in the abdomen with a rock, while Defendant was incarcerated at High Desert State Prison. Defendant was also accused of removing a prison made weapon, commonly referred to as a "shank" From his shoe. Senior Correctional officer later exclaimed Defendant blurt: "You're lucky my friends were here" see Exhibit "Y" page 22 lines 6-8 of Exhibit "Y", and Lines 19-25 of Ex. "Y"

On September 19, 2018, Defendant Filed a Motion For Expert Witness, requesting a Fingerprint expert, the Court granted Defendant's motion on October, 11, 2018. On March 5, 2019 The Court instructed the state to prepare a stipulation between Defendant and the state to prepare the chain of custody for the weapon. The Court advised Defendant that if he didn't sign and file with the Court the stipulation the Court wouldn't allow the introduction of evidence. The state never prepared the stipulation instead filed a Motion to increase bail. Defendant Forced out of trial and into an unknowingly, involuntarily and unintelligently entered Guilty Plea Agreement on March 26, 2019. Calendar call set For April 4, 2019. Count one dismissed.

On April 5, 2019, Defendant Filed a Motion to Withdraw Plea, The state responded, this brief follows.

Argument

A guilty plea is presumptively valid but Court's give deference to the Courts factual findings if supported by substantial evidence and not clearly erroneous but review the Court's application of the law to those facts see Lader v. warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005). On de novo the state has the burden of proving Defendant's entered their pleas

Knowingly, Voluntarily, and intelligently see Whitney V. State, 122 Nev. 499, 502, 915 P.2d 881, 883 (1996). Whitney V. State, 122 Nev. 499, 502, 915 P.2d 881, 883 (1996). Because the state has the burden of proving a defendant's guilt beyond a reasonable doubt / preponderance of evidence see Barron V. State, 105 Nev. 767, 778, 783 P.2d 444, 451 (1989). It is impermissible for the state to suggest to the Judge that it is the defendant's burden see Barron V. State, 105 Nev. 767, 778, 783 P.2d 444, 451 (1989). In determining whether a guilty plea was Knowingly, Voluntarily, and intelligently entered, The Court reviews the mental state of Defendant in regards to the Knowingly prong see Morris Leland vs State of Oregon, 343 US 790, 96 Led 1302, 72 S Ct 1002 (1952); TOT v. United states, 319 US 463, 87 Led 1519, 63 S Ct. 1241 (1943) Did the Defendant have a guilty mind that coexited with the doing of the prescribed act which constitutes a criminal offense? (see Morris Leland vs state of oregon, 343 US 790, 96 Led 1302, 72 S Ct 1002 (1952); TOT v. United states, 319 US 463, 87 Led 1519, 63 S Ct. 1241 (1943)) at the time Defendant pled guilty? In this instant case Defendant Mr. Miton had Not Guilty Knowledge (innocence is established Until sufficient evidence is introduced to overcome the proof which law has created) at the time Defendant pled guilty which the state hindered from being presented to the Court see Roberts VS The Peoples, 103 Colo. 250, 259; 87 P.2d 251, 256; 1938 Colo. Lexis 204 (1938) (quoting Coffin V. United state, 156 U.S. 432, 459 [39 Sup. Ct. 481, 493]. Nevada Supreme Court have "consistently* held that the defense has the right to have the Judge instructed on what actutually occurred as disclosed by the evidence no matter how weak or incredible that evidence may be see Crawford V. State, 121 Nev. 746, 751, 121 P. 3d 582, 586 (2005). In this instant case

Defendant was apprehended in the proximity of an abandoned weapon that Doesn't belong to him and that he didn't possess. The state's theory of the case was along the lines of involuntary convenience see Rosky V. State, 121 Nev. 184, 199, 111 P. 3d 690, 699-700 (2005). The second prong the Court reviews is the Suggest advisability to enter a guilty plea satisfy Both prongs of Strickland V. Washington, 466 U.S. 668 and Id at 688, in regards to whether plea was entered in to intelligently. Once the Knowingly and intelligently entering of a guilty plea are satisfied then the Court can say the plea was entered into Knowingly, Voluntarily, and intelligently, in the instant case state cant prove that. In the Brady rule, the Nevada Supreme Court has reversed a conviction where the prosecutor intentionally failed to disclose [*17] a psychiatrist's report see Wallace V. State, 88 Nev. 549, 501 P.2d 1036 (1972). Moreover Nev. Rev. Stat. §175.291(2) provides in part that if, Subsequent to compliance with a discovery order and prior to or during trial, a party discovers additional Material previously requested or ordered that is Subject to discovery or instruction, she shall promptly notify the other parties or attorneys of the existence of additional Material. A true Violation occurs only when a court determines that the Suppressed evidence amounted to a violation of a right an accused shall enjoy in criminal Prosecutions see Thomas V. Eighth Judicial Dist. Court, 133 Nev., adv. Op. 63, 402 P. 3d 619, 628 n. 12 (2017). A reviewing Court must look beyond the plea canvass to the entire record to correct a manifest injustice see Rubio, 124 at 1038-1039, 194 P. 3d at 1228 (2008). Exhibit "Z" is the Exhibit that shows Counsel was to prepare stipulation and change of custody of evidence. Counsel never prepared the Stipulation Defendant never received stipulation from Prosecutor.

Conclusion

The Defendant's Motion to Withdraw Guilty Plea be granted and expeditiously in that Double Jeopardy is not only a post-verdict Constitutional finality but also a post verdict remedy upon granting an appeal and/or reversal see U.S.C.A. V. Double Jeopardy clause.

I Declare ~~Under~~ penalty of perjury that the Foregoing facts and circumstances in this motion are true and correct to the best of my belief and knowledge pursuant to NRS. 53.045.

EXECUTED on 05/10/2019 a.f. rivera, Jr.
(Signature)

Furthermore, I certify that the Certificate of Service by mailing is true and correct to the best of my belief and Knowledge and I certify this Under penalty of perjury pursuant to NRS. 53.045.

EXECUTED on 05/10/2019 a.f. Rivera Jr.
(Signature)

***Defense wants to note here we asked the state about any testing of this weapon by them and Mr. Connell stated there was no reports of such in the state's possessions. Defendant knows his DNA is not on the weapon and coupled with what the state told Defense is the reasons why Defense even moved for the said evidence to begin with.

CERTFICATE OF SERVICE BY MAILING

I, Antonio L. Mixon, hereby certify, pursuant to NRCP 5(b), that on this 13th day of May, 2019, I mailed a true and correct copy of the foregoing, "Defendant's Reply to State's Opposition to Defendant's Motion to Withdraw Guilty Plea" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

Chelsea Kellis Bar No. 13402
Deputy Attorney General
Office of the Attorney General
555 E. Washington Ave, Suite 3900
Las Vegas, Nevada 89101

STEVEN D. GRIERSON,
Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

CC:FILE

DATED: this 13th day of May, 2019

Antonio L. Mixon
A. L. Mixon Jr. # 1015824
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Defendant's Reply to state's opposition to Defendant's Motion to Withdraw Guilty Plea
(Title of Document)

filed in District Court Case number C-17-327439-1

☑ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-or-

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

G.G. Mitton Jr. 05/13/2019
Signature Date

Mitton, Antonio
Print Name

Defendant/p.o-se
Title

8 OF 15

EXHIBIT "Y"

EXHIBIT "Y"

4 OF 15

Electronically Filed
2/1/2018 8:12 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. ANTONIO LEE MIXON, Defendant.	CASE NO.: C-17-327439-1 DEPT. XVII

BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

TUESDAY, JANUARY 2, 2018

RECORDER'S PARTIAL TRANSCRIPT OF HEARING
JURY TRIAL - DAY 1
[STATE'S OPENING; DIRECT AND CROSS-EXAMINATION OF DEAN ONTIVEROS]

APPEARANCES:

For the State: JASON GUNNELL, ESQ.
Senior Deputy Attorney General
CHELSEA KALLAS, ESQ.
Deputy Attorney General

For the Defendant: ASHLEY SISOLAK, ESQ.
TEGAN MACHNICH, ESQ.
Deputy Public Defenders

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

A I couldn't even tell you.

UNKNOWN SPEAKER: 30?

BY MS. KALLAS:

Q About 30 feet?

A Maybe 25 yards.

Q And that -- and so as this was going on was the Defendant saying anything to you?

A Once we put restraints on him and I stood up and the other officers were holding him down, he said something to the point that you're lucky my friends were here.

MS. SISOLAK: Objection, Your Honor.

THE COURT: He said what?

MS. SISOLAK: May we approach?

THE WITNESS: You're lucky my friends are here.

THE COURT: Approach.

[Bench conference begins]

MR. GUNNELL: [Indiscernible].

THE COURT: Who's going to argue? Come closer to the mic.

MS. MACHNICH: Okay, um, Your Honor, we're going to object as to one discovery violation. This was not provided us. Something like this was mentioned this morning in passing by the AG and actually a different version of the statement was told to us right before they started their case so we didn't know that this happened. All this threat-ish statement was not in the officer's report and it was not provided to us as a statement of the Defendant at any point and an incorrect version of it was provided to

EXHIBIT "Z"

EXHIBIT "Z"

DISTRICT COURT

CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	March 05, 2019

C-17-327439-1 State of Nevada
vs
Antonio Mixon

March 05, 2019 **8:30 AM** **All Pending Motions**

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Olivia Black

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES PRESENT:

Kallas, Chelsea	Attorney
Mixon, Antonio Lee	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

- Mark Perch, Investigator also present on behalf of Defendant.

MOTION TO DISMISS...STATE'S NOTICE OF MOTION AND MOTION TO PLACE ON CALENDAR...CALENDAR CALL

CONFERENCE AT BENCH. Upon Court's inquiry, Defendant stated he had nothing to add to his motion. Ms. Kallas submitted. COURT ORDERED, Motion DENIED as there was no legal bases set forth to dismiss the case. Court stated it had been advised Defendant had been sending the prosecutor love letters. Court ADMONISHED Defendant regarding sending inappropriate letters to counsel. Upon Ms. Kallas inquiry, Court stated it had not reviewed the State's motion but would review it before trial. Court noted there was a private investigator recently retained. Upon Court's inquiry, Defendant stated he just talked to him and requested a trial continuance to finger print the knife. Defendant requested a Court Order to allow the Nevada Department of Corrections to send

the investigator the knife to be tested. State had no objection to the continuance; however, Ms. Kallas requested a status check set. Upon Court's inquiry, Mr. Perch advised the lab was located out of state, Ron Smith and Associates. Mr. Perch further stated the cost was $1600.00 and it would take eight hours to perform the test and two weeks to return. COURT FURTHER ORDERED, Oral Witness Motion GRANTED to pay for expert fees of $1600.00. Court stated it would advised Drew Christensen's office and instructed Mr. Perch to contact his office to obtain the check. Court instructed counsel to prepare a stipulation that the knife would be retested and chain of custody. Court further instructed Defendant to sign the stipulation once received and send it back to counsel. COURT ORDERED, Trial date VACATED; Status Check SET to reset trial.

CUSTODY (COC-NDC)

04/04/19 8:30 AM STATUS CHECK: TRIAL SETTING

CLERK'S NOTE: The above minute order has been distributed to:

ANTONIO MIXON #1019828
HDSP
P O BOX 650
INDIAN SPRINGS, NV 89070//ob/03/06/19

Stratford Career Institute
Mailing/Shipping Address:
1 Champlain Commons, Unit 3, PO Box 1560
St. Albans, VT 05478-5560

Main Office:
8675 Darnley Road, Mount-Royal, QC H4T 1X2
1-800-435-5338

**********AUTO**MIXED AADC 054

Antonio Lee Mixon 9768 T3 935
1019828
High Desert State Prison
PO Box 650
Indian Springs NV 89070-0650

Student No.: **G225409**

Assignment No.: **BWC1A3**

Date Graded: May 2, 2019

Reference No.: LAC201905029

Overall Grade: 95%

Dear Antonio Lee Mixon,

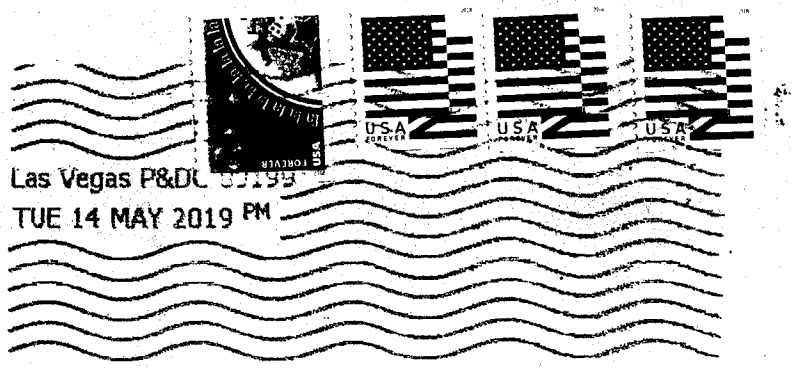
I have reviewed your work for: **Psychology/Social Work Exam 1 Module 1**

The following results outline your answers for each question.

Question Number	Your Answer	Correct Answer	Reference
1	B	B	Correct
2	C	C	Correct
3	A	A	Correct
4	D	D	Correct
5	D	D	Correct
6	A	A	Correct
7	B	B	Correct
8	C	C	Correct
9	A	A	Correct
10	C	(A)	See P. 4
11	B	B	Correct
12	D	D	Correct
13	B	B	Correct
14	C	C	Correct
15	A	A	Correct
16	A	A	Correct
17	C	C	Correct
18	B	B	Correct
19	D	D	Correct
20	B	B	Correct

Your superlative performance here indicates your dedication to your studies and your aptitude for them.

Your answers will be on file for 30 days. Notify us within 30 days if you have any question about your test score.



From: Antonio Mixon, Inmate#1019820
High Desert State Prison
P.O. BOX 650
Indian Springs, NV 89070

TO: STEVEN D. Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155-1160

Electronically Filed
5/23/2019 5:11 PM
Steven D. Grierson
CLERK OF THE COURT

NOAS
DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR No. 5674
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. ANTONIO MIXON, Defendant.	CASE NO. C-17-327439-1 DEPT. NO. XVII **NOTICE OF APPEAL**

TO: THE STATE OF NEVADA

STEVEN WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY, NEVADA and DEPARTMENT NO. XVII OF THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK.

NOTICE is hereby given that Defendant, Antonio Mixon, presently incarcerated in the Nevada State Prison, appeals to the Supreme Court of the State of Nevada from the judgment entered against said Defendant on the 21 day of May, 2019 whereby he was convicted of Attempt Possession or Control of Dangerous Weapon or Facsimile by an Incarcerated Person and sentenced to $25 Admin.

Fee; $3 DNA collection fee; 12-30 months in NDC, consecutive to C277977 with 0 days CTS. DNA fee and testing waived.

DATED this 23 day of May, 2019.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: */s/ Howard S. Brooks*
HOWARD S. BROOKS, #3374
Deputy Public Defender
309 S. Third Street, Ste. 226
Las Vegas, Nevada 89155
(702) 455-4685

DECLARATION OF MAILING

Carrie Connolly, an employee with the Clark County Public Defender's Office, hereby declares that she is, and was when the herein described mailing took place, a citizen of the United States, over 21 years of age, and not a party to, nor interested in, the within action; that on the 23 day of May, 2019, declarant deposited in the United States mail at Las Vegas, Nevada, a copy of the Notice of Appeal in the case of the State of Nevada v. Antonio Mixon, Case No. C-17-327439-1, enclosed in a sealed envelope upon which first class postage was fully prepaid, addressed to Antonio Mixon, c/o High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070. That there is a regular communication by mail between the place of mailing and the place so addressed.

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

EXECUTED on the 23 day of May, 2019.

/s/ Carrie M. Connolly
An employee of the Clark County
Public Defender's Office

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this 23 day of May, 2019, by Electronic Filing to:

District Attorneys Office
E-Mail Address:

PDMotions@clarkcountyda.com

Jennifer.Garcia@clarkcountyda.com

Eileen.Davis@clarkcountyda.com

ckallas@ag.nv.gov

/s/ Carrie M. Connolly
Secretary for the
Public Defender's Office

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5/23/2019 5:11 PM
Steven D. Grierson
CLERK OF THE COURT

CAS

DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR No. 5674
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C-17-327439-1
	)	
v.	)	DEPT. NO. XVII
	)	
ANTONIO MIXON,	)	
	)	
Defendant.	)	
	)	

CASE APPEAL STATEMENT

1. **Appellant filing this case appeal statement:** Antonio Mixon.

2. **Judge issuing the decision, judgment, or order appealed from:** Elissa Cadish.

3. **All parties to the proceedings in the district court (the use of et al. To denote parties is prohibited):** The State of Nevada, Plaintiff; Antonio Mixon, Defendant.

4. **All parties involved in this appeal (the use of et. al. to denote parties is prohibited):** Antonio Mixon, Appellant; The State of Nevada, Respondent.

5. **Name, law firm, address, and telephone number of all counsel on appeal and party or parties whom they represent:**

DARIN F. IMLAY
Clark County Public Defender
309 South Third Street, #226
Las Vegas, Nevada 89155-2610

Attorney for Appellant

STEVEN B. WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

ADAM LAXALT
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

Counsel for Respondent

6. **Whether appellant was represented by appointed or retained counsel in the district court:** Appointed.

7. **Whether appellant is represented by appointed or retained counsel on appeal:** Appointed.

8. **Whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:** N/A.

9. **Date proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):** Information filed 10/25/17.

DATED this 23rd day of May, 2019.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: */s/ Howard S. Brooks*
HOWARD S. BROOKS, #3374
Deputy Public Defender
309 S. Third Street, Ste. 226
Las Vegas, Nevada 89155
(702) 455-4685

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this 23rd day of May, 2019, by Electronic Filing to:

District Attorneys Office
E-Mail Address:
PDMotions@ccdanv.com

Jennifer.Garcia@ccdanv.com

Eileen.Davis@ccdanv.com

ckallas@ag.nv.gov

/s/ Carrie M. Connolly
Secretary for the
Public Defender's Office

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5/28/2019 7:34 AM
Steven D. Grierson
CLERK OF THE COURT

JOCP

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ANTONIO LEE MIXON
#1968172

Defendant.

CASE NO: C-17-327439-1

DEPT NO: XVII

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of ATTEMPT POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACSIMILE BY AN INCARCERATED PERSON (Category C Felony) in violation of NRS 212.185(d), 193.330; thereafter, on the 21st day of May, 2019, the Defendant Pro Se was present in court for sentencing, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in addition to $25.00 Administrative Assessment Fee plus $3.00 DNA Collection Fee, the Defendant is sentenced to a MAXIMUM of THIRTY (30) MONTHS and a MINIMUM of TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC), CONSECUTIVE to C277977; with ZERO (0) DAYS credit for time served. As the $150.00 DNA Analysis Fee and Genetic Testing have been previously imposed, the Fee and Testing in the current case are WAIVED.

DATED this 22 day of May, 2019.

Valerie Adair for
Linda Bell
DISTRICT COURT JUDGE

RECEIVED BY
DEPT 17 ON
MAY 23 2019

- [ ] Nolle Prosequi (before trial)
- [ ] Dismissed (after diversion)
- [ ] Dismissed (before trial)
- [x] Guilty Plea with Sent. (before trial)
- [ ] Transferred (before trial)
- [ ] Other Manner of Disposition
- [ ] Bench (Non-Jury) Trial
- [ ] Dismissed (during trial)
- [ ] Acquittal
- [ ] Guilty Plea with Sent. (during trial)
- [ ] Conviction

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6/5/2019 4:25 PM
Steven D. Grierson
CLERK OF THE COURT

ORIGINAL

ORDR

AARON D. FORD
Attorney General
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-5707
F: (702) 486-0660
Ckallas@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1968172 Defendant.	Case No.: C-17-327439-1 Dept. No.: 17

ORDER AND DECISION ON DEFENDANT'S MOTION TO WITHDRAW PLEA

The above-entitled matter having come on for hearing on the original Motion to Withdraw Plea filed, by Defendant ANTONIO MIXON; and the Court having considered the responsive points and authorities filed by the Office of the Attorney General represented by Deputy Attorney General, CHELSEA KALLAS; the Court makes the following order:

Defendant's Motion to Withdraw Plea is DENIED.

IT IS SO ORDERED.

DATED this 6 day of June, 2019.

for

DISTRICT COURT JUDGE Linda Bell

Respectfully Submitted By:
AARON D. FORD
Attorney General

By: Chelsea Kallas
CHELSEA KALLAS
Deputy Attorney General

RECEIVED BY
DEPT 17 ON
JUN 04 2019

Case Number: C-17-327439-1

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Steven D. Grierson
CLERK OF THE COURT

REQT
DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR No. 5674
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. ANTONIO MIXON, Defendant.	CASE NO. C-17-327439-1 DEPT. NO. XVII

REQUEST FOR ROUGH DRAFT TRANSCRIPT

TO: Sharon Nichols, Court Recorder
District Court, Dept. AA

Cynthia Georgilas, Court Recorder
District Court, Dept. XVII

ANTONIO MIXON, Defendant named above, requests a preparation of a rough draft transcript of certain portions of the proceedings before the District Court, as follows:

Dates or dates of proceedings: 11/01/17, 12/05/17, 12/12/17, 01/02/18, 01/04/18, 02/08/18, 03/15/18, 03/29/18, 04/05/18, 04/06/18, 06/05/18, 06/19/18, 08/30/18, 10/11/18, 10/25/18, 11/20/18, 12/11/18, 01/08/19, 03/05/19, 04/30/19, 05/21/19.

Portion of the transcript requested: (11/01/17 - Sharon Nichols) - Any and all proceedings, all transcripts to include word index; **(12/05/17, 12/12/17, 01/02/18, 01/04/18, 02/08/18,**

03/15/18, 03/29/18, 04/05/18, 04/06/18, 06/05/18, 06/19/18, 08/30/18, 10/11/18, 10/25/18, 11/20/18, 12/11/18, 01/08/19, 03/05/19, 04/30/19, 05/21/19 - Cynthia Georgilas) - Any and all proceedings, all transcripts to include word index; **(01/02/18 - Cynthia Georgilas)** - Trial transcripts - All transcripts, include word index - Any and all proceedings, ***jury voir dire, jury selection,*** opening statements, testimony, matters heard outside the presence of the jury, settling of instructions, closing arguments, verdict, and any and all bench conferences.

This Notice requests a transcript of only those portions of the District Court proceedings which counsel reasonably and in good faith believes are necessary to determine whether appellate issues are present. Voir dire examination of jurors, opening statements and closing arguments of trial counsel and the reading of jury instructions shall not be transcribed unless specifically requested above.

I recognize that I must personally serve a copy of this form on the above-named court reporter and opposing counsel.

That the above-named court reporter shall have twenty (20) days from the date of service of this document to prepare an original plus three copies at State expense and file with the District Court Clerk the original rough draft transcript(s) requested herein.

Further, pursuant to NRAP 3C(d)(3)(iii), **the court reporter shall also deliver copies of the rough draft transcript**

to the Supreme Court Clerk, to appellant's counsel and respondent counsel no more than twenty (20) days after the date of the appellant's request.

DATED this 24 day of June, 2019.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: */s/ Howard S. Brooks*
HOWARD S. BROOKS, #3374
Deputy Public Defender
309 S. Third Street, Ste. #226
Las Vegas, Nevada 89155
(702) 455-4685

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this 24 day of June, 2019, by Electronic Filing to:

District Attorneys Office
E-Mail Address:

PDMotions@clarkcountyda.com

Jennifer.Garcia@clarkcountyda.com

Eileen.Davis@clarkcountyda.com

nicholss@clarkcountycourts.us

georgilasc@clarkcountycourts.us

/s/ Carrie M. Connolly
Secretary for the
Public Defender's Office

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7/3/2019 4:29 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. ANTONIO MIXON, Defendant.	CASE#: C-17-327439-1 DEPT. XVII Heard In Lower Level Arraignment

BEFORE THE HONORABLE MELISA DE LA GARZA, DISTRICT COURT JUDGE

WEDNESDAY, NOVEMBER 1, 2017

RECORDER'S TRANSCRIPT OF HEARING: INITIAL ARRAIGNMENT

APPEARANCES:

For the State: CHELSEA KALLAS, ESQ.
Deputy Attorney General

For the Defendant: ASHLEY L. SISOLAK, ESQ.
Deputy Public Defender

RECORDED BY: KIARA SCHMIDT, COURT RECORDER

Case Number: C-17-327439-1

Las Vegas, Nevada, Wednesday, November 1, 2017

[Hearing began at 10:05 a.m.]

THE COURT: All right. Page 21, State of Nevada versus Antonio Mixon, C327439. He is present, in custody. Ms. Sisolak is here on his behalf. And for the State?

MS. KALLAS: Chelsea Kallas from the Attorney General's Office, Your Honor.

THE COURT: All right. Sir, did you receive a copy of the Information stating the charges against you?

THE DEFENDANT: Yes, Your Honor.

THE COURT: I'm sorry?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand the charges?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you want to waive a formal reading of the charges?

THE DEFENDANT: Yes, Your Honor.

THE COURT: How do you plead?

THE DEFENDANT: Not guilty.

THE COURT: You do have a right to a trial within 60 days; do you want to waive or invoke that right?

THE DEFENDANT: Invoke my right.

THE COURT: Speedy trial.

THE CLERK: Ms. A.G., can I have your bar number?

MS. KALLAS: 13902.

THE CLERK: Thank you. You have a calendar call date of December 12th, 8:30 a.m.; jury trial, January 2nd, 9 a.m.; Department 17.

THE COURT: Counsel, pursuant to statute, you have 21 days from today for the filing of any writs. If the transcript has not been filed as of today, you have 21 days from the filing. Thank you.

MS. SISOLAK: And, Your Honor, just for the record, there will not be a transcript. We waived [indiscernible] preliminary hearing.

THE COURT: Okay. Thank you.

[Hearing concluded at 10:06 a.m.]

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Sharon M. Nichols

Court Recorder/Transcriber

Electronically Filed
7/11/2019 10:30 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

TUESDAY, DECEMBER 5, 2017

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING: DEFENDANT'S MOTION TO COMPEL PRODUCTION OF DISCOVERY & BRADY MATERIAL

APPEARANCES:

For the State: CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

For the Defendant: ASHLEY SISOLAK, ESQ.
Deputy Public Defender

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Tuesday, December 5, 2017

[Hearing begins at 8:41 a.m.]

MS. SISOLAK: Good morning, Your Honor. I am ready to go. I have Mr. Mixon on page 7, bottom.

THE COURT: All right; this is your motion for discovery.

MS. KALLAS: Good morning, Your Honor, Chelsea Kallas for the Attorney General's Office.

MS. SISOLAK: Good morning, Your Honor, Ashley Sisolak present on behalf of Mr. Mixon. He is present and in custody at this time.

THE COURT: And, Ms. Sisolak, on your request number 43 through 49 talks about electronic control devices, was there any – do you have any information like GPS that you're looking for?

MS. SISOLAK: I don't believe so, Your Honor. That may have been entered in error. I apologize.

THE COURT: Okay. I'm going to deny requests 43 through 49, and if you learn, Ms. Sisolak, that those items do exist, then please refile –

MS. KALLAS: And for the record, Your Honor, it's my understanding in talking to the correctional officers that there was none used.

THE COURT: All right.

MS. SISOLAK: With that being said, Your Honor, Ms. -- the Attorney General did turn over to me today another disc of documents as well as my office picked up stuff last week. I believe I have everything. This was just our standard [indiscernible].

THE COURT: Can you just – have one moment?

[Colloquy between Court and Law Clerk]

THE COURT: All right, Counsel, what I've been doing on these motions for discovery of Brady material, I have been preparing, I don't want to say it's a formal decision, but it's more of a minute entry and we will forward that on to both of you this afternoon.

And then, Ms. Sisolak, if you can just prepare a – for your protection and your client, prepare a formal order –

MS. SISOLAK: Absolutely, Your Honor.

THE COURT: -- with my decisions and have Counsel sign off approved as to form and content.

MS. KALLAS: I will, Your Honor. Thank you.

THE COURT: All right?

MS. SISOLAK: Thank you, Your Honor.

THE COURT: Thank you.

MS. KALLAS: Thank you, Your Honor.

[Hearing concludes at 8:43 a.m.]

* * * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

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7/11/2019 10:33 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

TUESDAY, DECEMBER 12, 2017

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING: CALENDAR CALL

APPEARANCES:

For the State: CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

For the Defendant: ASHLEY SISOLAK, ESQ.
Deputy Public Defender

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Tuesday, December 12, 2017

[Hearing begins at 8:43 a.m.]

MS. SISOLAK: Your Honor, the Attorney General is present now.

THE COURT: I'm sorry, which page, which case?

MS. SISOLAK: Mr. Mixon for calendar call.

THE COURT: Is this matter resolved?

MS. SISOLAK: It is not, Your Honor. We do have a small hiccup. I was prepared to announce ready today. I received a letter from my client asking me to file a motion based on the denial of his ability to represent himself. In Justice Court, Judge Bennett had told him he – did a Faretta canvass basically and told him he could not represent himself and appointed the Public Defender instead. We have moved forward from there. I did provide him with a copy of Faretta today. I can't file a motion based on a denial that never occurred, so at this time I was prepared to announce ready but I believe Mr. Mixon would like to represent himself on this matter.

MS. KALLAS: And good morning, Your Honor Chelsea Kallas –

THE COURT: Answer –

MS. KALLAS: -- Chelsea Kallas for the Attorney General's Office. We are prepared to answer ready as well.

THE COURT: Sir, we have a trial set for January 2nd. If I let you represent yourself, will you be ready to go forward?

THE DEFENDANT: And, Your Honor, --

THE COURT: Listen to me. It's a very simple question.

THE DEFENDANT: I know but [indiscernible] --

THE COURT: Will you be –

THE DEFENDANT: -- [indiscernible] –

THE COURT: Will you be ready to go forward January, is it 2nd?

THE DEFENDANT: [Indiscernible].

THE COURT: I couldn't hear you.

THE DEFENDANT: [Indiscernible].

THE COURT: I'm sorry?

THE DEFENDANT: [Indiscernible] if I'll be ready or not.

THE COURT: Its one of the most important questions.

THE DEFENDANT: I know you want me to say yes or no but can I speak so I can –

THE COURT: After you – because, sir, if you're late request is going to cause the case to be continued –

THE DEFENDANT: [Indiscernible] --

THE COURT: -- that –

THE DEFENDANT: -- I'm not gonna be ready.

THE COURT: Sir, -- okay.

THE DEFENDANT: I'm gonna need some time. And I'm gonna need some time to prepare for your canvass also.

THE COURT: Marshal, we need the microphone.

THE RECORDER: Yeah, I can't understand –

THE COURT: Go ahead, sir.

THE DEFENDANT: Did you get – did I answer your question?

[Colloquy]

MS. SISOLAK: Is that better, Your Honor?

THE COURT: Yes.

THE DEFENDANT: Did I answer the question whether or not I was gonna be ready on January 2nd for trial?

THE COURT: Correct, and your answer –

THE DEFENDANT: I answered that for you?

THE COURT: And your answer is what?

THE DEFENDANT: I'm not gonna be ready. I'm gonna need some time to prepare for your canvass, for one. And I did send her a letter, you know what I'm saying, in regards to putting it – not just a motion for denial of self-representation, but also for a motion that my Fourth Amendment right to due process was violated in that the Nevada Department of Corrections let me know through a memorandum, through a memo they went – go to the Attorney General Office for a referral for criminal prosecution. That's what I actually put a motion in. Since she don't want to put that motion in for either one of those issues I feel she's not in my best interest so I want to represent myself and I'm not gonna be ready January 2nd for trial.

MS. SISOLAK: Your Honor, if I may?

THE DEFENDANT: I need to prepare for your canvass also.

MS. SISOLAK: Your Honor, if I may? As Your Honor knows, I have a duty to file motions appropriate with the Court. Unfortunately, there's no legal basis for me to file a motion.

THE COURT: When is the first time he's asked you that he – or he advised you that he wishes to represent himself?

MS. SISOLAK: Your Honor, he attempted a Faretta canvass in Judge Bennett Haron's department at the justice court date at which point she declined his request and appointed my office. I explained to Mr. Mixon that we were basically stuck with each other and that, you know, I was going to do my best for him and I would be up to the prison to talk to him and that we would get rolling on this case. I thought we were on fairly good terms. I still believe we are on fairly good terms. I think Mr. Mixon doesn't like the answer that I have no legal basis to file the motion he wants filed. But in addition to that, I can't file a motion based on a denial of his right to represent himself if he was never denied.

THE DEFENDANT: Not the only motion.

THE COURT: Sir, hang on.

Since arriving in district court, has he requested you to file a motion to allow him to represent himself?

MS. SISOLAK: He has not. He requested that I file a motion that he is entitled to represent himself based on the denial from justice court.

THE COURT: When did he ask you to file that motion?

MS. SISOLAK: I received the letter requesting that yesterday, Your Honor.

THE COURT: Okay. All right, based upon that representation, and that the Defendant will not be ready to go forward,

that is, I am going to deny his request because that would cause this trial to be continued. And so, we will – is this my only calendar call? We have another calendar call – is this an invoked or waived case?

MS. KALLAS: It's invoked, Your Honor.

THE COURT: Mr. Green, is your case going forward because that's my other calendar call today?

[Colloquy between Court and Counsel on another case]

THE COURT: All right, then that's my only other calendar call, and so we'll go forward on the Mixon matter January 2nd and we'll start at 10:30.

THE DEFENDANT: I can't put in a motion to withdraw counsel, that's what you're saying?

THE COURT: You can file whatever motion you want, sir. Right now before me is calendar call. You were only – you only requested it in district court yesterday and you're saying you're not going to be ready and I'm not going to continue –

THE DEFENDANT: So, you're –

THE COURT: -- the trial.

THE DEFENDANT: -- denying me my self-representation when I got a right, –

THE COURT: I just set forth --

THE DEFENDANT: -- Title 28, --

THE COURT: -- the basis for --

THE DEFENDANT: -- United States code, --

THE COURT: -- that, sir.

THE DEFENDANT: -- section 1654?

MS. SISOLAK: Thank you, Your Honor.

THE COURT: All right, thank you.

MS. KALLAS: Thank you, Your Honor.

THE COURT: Oh, how many days will this trial take?

MS. SISOLAK: One.

MS. KALLAS: Probably – it depends how long jury selection take, but we only have 2 - 3 witnesses that aren't going to take very long at all.

THE COURT: All right, thank you.

MS. SISOLAK: I don't anticipate anything for my – for the Defense, Your Honor.

THE COURT: All right, thank you.

MS. KALLAS: Thank you, Your Honor.

[Hearing concludes at 8:48 a.m.]

* * * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

Electronically Filed
7/11/2019 10:35 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

TUESDAY, JANUARY 2, 2018

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING: DEFENDANT'S MOTION TO WITHDRAW AND ALLOW DEFENDANT TO REPRESENT HIMSELF PURSUANT TO FARETTA V. CALIFORNIA WITH EXHIBITS

APPEARANCES:

For the State: KENNETH N. PORTZ, ESQ.
Deputy District Attorney

For the Defendant: ASHLEY SISOLAK, ESQ.
Deputy Public Defender

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Tuesday, January 2, 2018

[Hearing begins at 10:04 a.m.]

THE COURT: Bottom of 12, Antonio Mixon.

MS. SISOLAK: Good morning, Your Honor. The Attorney General was here. Is this the motion, Your Honor?

THE COURT: Yes.

MS. SISOLAK: I believe Mr. Mixon wants to withdraw the motion.

THE DEFENDANT: Correct.

MS. SISOLAK: Do you want to withdraw the motion?

THE DEFENDANT: Correct. Yup.

THE COURT: I'm sorry, sir?

THE DEFENDANT: Yes.

THE COURT: Okay, so you want –

THE DEFENDANT: Correct.

THE COURT: -- Ms. Sisolak to continue to represent you?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. We're set for –

MS. SISOLAK: Thank you.

/ / / / /

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/ / / / /

/ / / / /

THE COURT: -- 10:30 this morning. All right, we'll see everybody at that time.

[Hearing concludes at 10:04 a.m.]

* * * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

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7/11/2019 10:37 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

THURSDAY, JANUARY 4, 2018

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING: STATUS CHECK: RESET TRIAL

APPEARANCES:

For the State: CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

For the Defendant: ASHLEY SISOLAK, ESQ.
Deputy Public Defender

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Thursday, January 4, 2018

[Hearing begins at 9:54 a.m.]

THE COURT: Do you have anything else, anybody?

MS. SISOLAK: Yeah, Your Honor, we can go on Mr. Mixon.

THE COURT: Which page?

MS. SISOLAK: Mr. Mixon.

THE COURT: All right, status check to reset trial date.

MS. SISOLAK: Good morning, Your Honor, Ashley Sisolak present on behalf of Mr. Mixon. I'm sure you remember from Tuesday we're resetting this trial date.

For the record, I did receive a C-1 form on a disc today. In addition to that, Your Honor, I did want to make it clear that the State has offered negotiations. I believe the most current negotiation was for a category B felony with 12 to 30 months consecutive or a category C felony with 19 to 48 months consecutive. My client is not inclined to negotiate in any manner.

THE COURT: All right. Is that correct, sir?

THE DEFENDANT: Correct.

THE COURT: All right, we'll get you a trial date. How about March 12th? Is that good for you, Ms. – you said you had some other trials March/April.

MS. SISOLAK: I have two going March 12th, Your Honor. I have another one going – oh, I lied. I do not have another one in March. I'm available either the week following March 12th or the week of March 26th.

MS. KALLAS: And both of those are fine with the State, Your Honor.

THE COURT: The 26th; is that good for you?

MS. KALLAS: The 26th works.

THE COURT: The 26th?

MS. SISOLAK: That's perfect, Your Honor.

THE COURT: All right.

THE CLERK: Calendar call will be March 20th, 8:30 a.m. Trial date will be March 26th, 9:00 a.m.

MS. KALLAS: Thank you, Your Honor.

THE COURT: All right, thank you.

MS. SISOLAK: Thank you, Your Honor.

[Hearing concludes at 9:56 a.m.]

* * * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

Electronically Filed
7/11/2019 10:40 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

THURSDAY, FEBRUARY 8, 2018

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING: STATUS CHECK: PRE-TRIAL MOTIONS

APPEARANCES:

For the State: ROBERT B. TURNER, ESQ.
Chief Deputy District Attorney
ALISSA ENGLER, ESQ.
Deputy Attorney General

For the Defendant: ASHLEY SISOLAK, ESQ.
Deputy Public Defender

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Thursday, February 8, 2018

[Hearing begins at 10:04 a.m.]

THE COURT: Antonio Mixon.

MS. SISOLAK: Your Honor, Ms. Engler from the Attorney General was here earlier. She did have another courtroom to appear in. I'm not sure what Your Honor would like to do. I don't have a means by which to get a hold of her. I can make representations as to my half.

THE COURT: Okay.

MS. SISOLAK: I also have spoken with her about what they plan to file, but she is not here.

THE COURT: Mr. Turner, could you be so kind to stand in for the AG on a procedural matter? Are you allowed – I don't want you to get in trouble.

MR. TURNER: Well, Judge, if –

THE COURT: If you think it will get you in – its just not a procedural matter, if you think it will get you in trouble then we'll set this for another day.

MR. TURNER: I would – since I know nothing about it, Judge, and I don't know if there's representations that she would want to make; I would ask the Court to pass it. I apologize.

MS. SISOLAK: And, Your Honor, --

THE COURT: That's fine.

MS. SISOLAK: -- it's sort of –

MR. TURNER: I know she was here.

MS. SISOLAK: I know she – she's coming back.

THE COURT: Is she – oh, she is coming back?

MS. SISOLAK: Yeah.

THE COURT: I thought she left. Oh.

MS. SISOLAK: No, no, she's coming –

THE COURT: Oh, oh.

MS. SISOLAK: -- back. I just don't want Your Honor to have to wait.

THE COURT: No, I misunderstood. I'll call it – I'll recall it.

[Matter trailed at 10:04 a.m.]

[Matter recalled at 10:20 a.m.]

THE MARSHAL: All rise, Department 17 is back in session.

THE COURT: We'll recall Mixon matter on page 3.

THE MARSHAL: Please be seated and come back to order.

MS. SISOLAK: Good morning, Your Honor, Ashley Sisolak, present on behalf of Mr. Mixon. He is present and in custody at this time.

MS. ENGLER: Good morning, Your Honor, Alissa Engler for the Attorney General.

THE COURT: All right, can I have Counsel approach, please?

MS. SISOLAK: Sure.

[Bench conference begins – transcribed as follows:]

THE COURT: At the time of the trial we had things out of the presence of the AG's office, and issue on a potential defense. My research on that is that needs to be – you need to file a pre-trial motion on that theory of –

MS. SISOLAK: Okay.

THE COURT: -- defense because –

MS. SISOLAK: Okay.

THE COURT: -- they can't rebut any showing that you make you know without advance notice and we don't even get there unless you have a pre-trial motion.

MS. SISOLAK: Okay.

THE COURT: All right? So, okay I' just going to – I'll just say status check on trial readiness.

[Bench conference ends]

THE COURT: All right, Counsel, we do have a calendar call March 20th, trial date March 26, and there was some issue of some perhaps missing reports or discovery. Ms. Sisolak, have you had an opportunity to obtain those?

MS. SISOLAK: I have Your Honor. I do have that C-1 form now.

THE COURT: Okay. All right. I'm assuming this case is either going to negotiate or go to trial so we'll see everybody on March 20th. If there's any other motions that need to be filed, please do so in plenty enough time if we need to have any evidentiary hearings on that before this March 26th date.

MS. SISOLAK: Your Honor, in complete candor with the Court, my special litigation department is currently briefing the mistrial and we did intend to file briefing on it. I wanted to give your court a heads up that it is coming. I anticipate it can all be dealt with prior to the end of March however.

THE COURT: If there's any other motions that would require an evidentiary hearing –

MS. SISOLAK: Understood.

THE COURT: -- please file that well in advance; --

MS.SISOLAK: Thank you, Your Honor.

THE COURT: -- okay?

MS. ENGLER: Thank you, Your Honor.

THE COURT: Thank you.

[Hearing concludes at 10:21 a.m.]

* * * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

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7/11/2019 10:43 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

THURSDAY, MARCH 15, 2018

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING: DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE DEFENDANT'S MOTION TO DISQUALIFY THE ATTORNEY GENERAL'S OFFICE DEFENDANT'S MOTION TO DISMISS BASED UPON VINDICTIVE PROSECUTION

APPEARANCES:

For the State: CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

For the Defendant: ASHLEY SISOLAK, ESQ.
Deputy Public Defender

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Thursday, March 15, 2018

[Hearing begins at 9:59 a.m.]

THE COURT: Antonio MIxon.

MS. SISOLAK: Good morning, Your Honor, Ashley Sisolak for Mr. Mixon. He is present and in custody at this time. We're ready to move forward.

MS. KALLAS: And, Your Honor, Chelsea Kallas for the Attorney General's Office.

THE COURT: All right, and you have three motions on calendar: motion to dismiss with prejudice, motion to disqualify the AG's Office, motion to dismiss based upon vindictive prosecution. The first question I have for both parties is the document in question is the C-2 [sic] form, the worker's comp form; have you received that, Ms. Sisolak, and what did it say?

MS. SISOLAK: Your Honor, I did receive the C-1 form. It was relatively standard. I received that 2 to 3 days after the mistrial. I do unfortunately have to bring to Your Honor's attention; two days ago I received another form that has exculpatory information in it.

THE COURT: Can I see it?

MS. SISOLAK: Absolutely, Your Honor. I also have the e-mail sent by the Attorney General's Office that I can pick it up. And if you would note it was given to the Nevada Department of Corrections in 2015. It has an expressly exculpatory statement about a belt.

MS. KALLAS: And, Your Honor, we've made all efforts to get discovery in this case. I've requested it from NDOC multiple times and

I'm not in control of how – or how soon they get it to us. I've given her everything right after we've received it. And I've also informed Ms. Sisolak too that we are – since she did bring the – his disciplinary proceedings up in her motions, we've requested those documents from NDOC. I just received part of them yesterday and apparently they're still looking through them 'cause there's apparently – there's some recordings from Mr. Mixon's proceedings, so we're waiting on that as well.

I do have the e-mails to [indiscernible] requested them and e-mail document. I sent the discovery order to the investigator asking him to give me everything back in February. He – I'm not claiming that he should win employee of the month. Obviously, he's taking a long time, but I'm not in control of that, Your Honor. We've – the prosecutors in this case have done everything we can to get them discovery.

THE COURT: Ms. Sisolak, you said about a belt? Where am I supposed to look?

MS. SISOLAK: I can point it out to you, Your Honor.

MS. KALLAS: And can I approach, Your Honor, too, just to be sure?

THE COURT: Sure.

MS. SISOLAK: That's the one I am specifically referencing.

THE COURT: Okay. All right. Any – obviously, you're familiar with –

MS. KALLAS: Can I see it just to see which line?

THE COURT: So, at this point you – Ms. Sisolak, you believe

that there's other documents or there might be some more documents forthcoming?

MS. KALLAS: [Indiscernible], I don't see his disciplinary proceedings as relevant at all, Your Honor. Obviously what happens – how he's punished in the prison doesn't necessarily impact us bringing criminal charges against him, but since they have raised it as an issue we've kind of gone above and beyond to get these documents, anything that has to do with them. So, I am still waiting on the recordings from that case.

THE COURT: Why don't we do this so we have –

MS. SISOLAK: Your Honor, may I respond?

THE COURT: Yes. Sure.

MS. SISOLAK: I understand Ms. Mixon – Ms. – excuse me, Ms. Kallas has requested the documents. That's not the standard. I also understand that Ms. Kallas doesn't believe they're relevant but that's also not the standard. The standard is I'm supposed to have everything, particularly exculpatory things, 30 days before trial. Not only did I have – not have them 30 days before the previous trial, I didn't have them 30 days before the second trial.

THE COURT: Well, the issue was that there was the worker's comp form and that was – that's an administrative form that's required to submit the form. And I'm looking at where you highlighted exculpatory evidence, the best to my recollection the prison guard said he hit me with two rocks, I think maybe chest or stomach area or something similar to that –

MS. KALLAS: Correct, and he's – he said the same thing to me anytime I've ever spoke with –

THE COURT: Right. And the report here it says: Patient reports at work an inmate threw a rock at him twice -- it's consistent --

MS. SISOLAK: That's consistent.

THE COURT: -- hitting him in the left abdomen. He thinks it hits him in the belt which absorbed most of the impact.

MS.SISOLAK: That – Your Honor, if I may, that's the first time I've ever heard that. In addition that, in prior testimony, the witness stated that a rock hit him also in the thigh and there's no recollection of that in the report. My bone to pick, so to speak, with this report is it was clearly in possession of the Nevada Department of Corrections. It was cc'd to them on December 9th of 2015, blatantly on the front of the document.

MS. KALLAS: And, Your Honor, he did testify that multiple rocks were thrown at him so I think that's something she could have addressed with him during cross-examination maybe one –

MS. SISOLAK: Had we not mistried.

MS. KALLAS: -- may –

THE COURT: One at a time, please.

MS. KALLAS: Maybe one hit him on the thigh, maybe one hit him in the stomach. And also he said there were multiple; he could have hit him on his belt as well. He doesn't say none – he didn't say that any rocks didn't hit him on his thigh or stomach. They're not – so they're not necessarily inconsistent.

THE COURT: All right. No, and I don't see this as exculpatory. I mean its something you can confront him with that –

MS. KALLAS: He's still throwing –

THE COURT: Right.

MS. KALLAS: He's still throwing rocks. It's still a –

THE COURT: And it doesn't matter –

MS. KALLAS: -- battery.

THE COURT: -- the extent of the injury. It's strictly the –

MS. KALLAS: Correct, Your Honor.

THE COURT: -- harmful or offensive touching and throwing a rock at someone, whether it's in the belt, the chest, stomach area, it's you know it's still a crime. I mean this is something you can use for cross-examination that he's mistaken –

MS. SISOLAK: I –

THE COURT: -- where on the body it hit him, but I don't see this as exculpatory.

MS.. SISOLAK: I under -- I would disagree, Your Honor, but I understand the Court's ruling. My issue is that I was supposed to have it 30 days before the trial that was set for January 2nd. I understand that Ms. Kallas has requested it. It's not her – it's not my fault that the prison didn't turn anything over. It's not – it's certainly not my client's fault that the prison didn't turn anything over, but the prison had it.

THE COURT: Okay, let's argue the motion. Go ahead. Anything else?

MS. SISOLAK: I -- which motion?

THE COURT: You have three.

MS. KALLAS: I think we weren't starting the motions. I think we were just talking about the discovery since we have a trial –

THE COURT: The first thing on calendar –

MS. KALLAS: -- coming up.

THE COURT: -- is a motion to dismiss with prejudice; second, disqualify the AG; third is dismiss based upon vindictive prosecution. Go ahead.

MS. SISOLAK: Your Honor, as far as dismissing this case with prejudice, I would submit on my motion asking you to also consider the fact that now not only did we have one discovery violation, we have a second discovery violation and Ms. Kallas has admitted that we're going to have continued discovery violations 'cause there's more things coming.

You ruled on a discovery order. You told them to give me what I was entitled to and it didn't happen for whatever reason. That is not my fault, its not my client's fault.

MS. KALLAS: And, Your Honor, I would submit it on the motion as well, but just in response to that, obviously, I don't think this is necessarily the second discovery violation. Obviously, I don't think it's a violation, has anything to do with what happened at the first trial. I don't really see it as relevant to her motion, but I would submit it.

THE COURT: Okay, well –

MS. KALLAS: And I'm sorry, Your Honor, I apologize, but I have made every single effort I can. I think I've included the e-mail as

part of our motion. I also have additional e-mails too if Your Honor would like to see that. I have done everything I can. I can't physically go into NDOC and look through all of their files. I have to get it as they give it to me. I've e-mailed them multiple and multiple times to get this discovery.

MS. SISOLAK: Your Honor, my contention is, while I appreciate that Ms. Kallas has e-mailed [indiscernible], the standard is not e-mail and ask about potential discovery and when it gets to you turn it over. The standard is give the Defense what they're entitled to 30 days before trial.

MS. KALLAS: But that doesn't have anything to do with this motion. That's not the standard in the motion. The standard in the motion is intentional conduct, that second prong of Thomas and we weren't intentionally withholding anything. I think that's what this motion comes down to. So the discovery violation I think is a separate issue.

THE COURT: Okay, the discovery order by the Court was to turn over all reports, I guess that's its generally Brady material, Giglio material. This report does not explain away the charges so I don't find a violation that would warrant dismiss the case with prejudice. The unfortunate aspect of the case was there's a criminal file, if you want to call it that, and then there's just the worker's comp file, and they just – they're just these two separate files, they're never together because one is administrative and it goes to the medical clinic and follows him through worker's comp proceedings, so I don't find anything in the records, the pleadings or at trial that there is anything on behalf of the Attorney General's Office of withholding discovery, any bad faith on their part, or

even gross negligence on [indiscernible] part. In retrospect, maybe some negligence, but I mean we just don't think of going to worker's comp when -- under the circumstances of this case, so I'm not going to dismiss the case with prejudice.

I don't find any basis to disqualify the Attorney General's Office from prosecuting this case.

Now, on the third motion, can the –

MS. KALLAS: So, that motion is denied, the second motion then, Your Honor?

THE COURT: Yes. On the third motion, when did he file his federal action –

MS. SISOLAK: Court's indulgence, Your Honor.

THE COURT: -- and then in relationship to filing the charges here?

MS.SISOLAK: His federal actions were filed prior to this. Your Honor, this –

THE COURT: Do we have a date?

MS. KALLAS: They were filed prior to the investigator ever giving our office even the report. I think I included that in our motion is that we received the investigative report from Dick Daniels who is the criminal investigator –

THE DEFENDANT: Your Honor, may I say something --

MS. KALLAS: -- on this case --

MS. SISOLAK: Stop.

THE DEFENDANT: -- [indiscernible] finish?

MS. SISOLAK: No. Stop.

MS. KALLAS: -- in December I believe. I believe the date was December 19th and that's attached to the motion for prosecutorial vindictiveness, Your Honor. So, I couldn't have even – I couldn't have even brought charges before that point.

THE DEFENDANT: [Indiscernible].

MS. SISOLAK: Your Honor, if I'm – I believe I'm answering your question correctly; the charges were filed August 9th, 2017. This incident happened August 18th.

MS. KALLAS: I think that's –

MS. SISOLAK: Correction, August 18th, 2017 these charges were filed by the Attorney General's Office. Attached to the motion are the filings. I have one filing from October of 2016 and –

THE DEFENDANT: [Indiscernible].

THE COURT: Sir, please be quiet.

THE DEFENDANT: [Indiscernible].

THE COURT: Sir, please be quiet.

THE DEFENDANT: Article [indiscernible] –

THE COURT: Okay, sir, --

THE DEFENDANT: [Indiscernible] --

MS. SISOLAK: Stop.

THE DEFENDANT: -- [indiscernible] Article 'cause --

THE COURT: Right now we're talking –

THE DEFENDANT: -- I got a right to be heard --

MS. SISOLAK: Stop.

THE DEFENDANT: -- but I can't be heard?

THE COURT: Okay, Counsel, --

THE DEFENDANT: [Indiscernible] grabbing me for?

THE COURT: -- I'm going to continue the hearing if he says –

THE DEFENDANT: [Indiscernible] keep grabbing me for?

THE COURT: -- another word.

MS. SISOLAK: Stop. Stop. Please, let me do my job.

THE DEFENDANT: Well, do your job –

MS. SISOLAK: Please, shhh.

THE DEFENDANT: -- then. Do your --

MS.. SISOLAK: Just nothing, --

THE DEFENDANT: -- job then.

THE COURT: Okay.

MS. SISOLAK: -- nothing. Thanks.

THE COURT: All right, two – okay, two weeks from now we'll – trial date vacated -- two weeks from now for a continuation of the hearing.

[Defendant escorted out of the courtroom]

THE CLERK: March 29th.

MS. SISOLAK: Your Honor, my client's invoked his right to a speedy trial.

THE COURT: Well, he's just – well, I can't hear this motion now because of his misconduct in court.

MS. KALLAS: And, I'm sorry, what was the new date, Your Honor?

THE CLERK: March 29th.

MS. KALLAS: And is that just to hear the motions, we'll reset trial at that point?

THE COURT: For the record, I told him at least four times to be quiet; he refused the Court's directive. He was disrupting the court. I cannot go forward with the hearing.

MS. KALLAS: And, Your Honor, is the March 29 date is to hear the motions but then will we be –

THE COURT: I'm sorry?

MS. KALLAS: For the March 29th date we're going to hear the motions and then are we going to be setting a trial date from there?

THE COURT: Yes.

MS. KALLAS: Thank you, Your Honor.

MS. SISOLAK: Thank you, Your Honor.

[Hearing concludes at 10:11 a.m.]

* * * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

Electronically Filed
7/11/2019 10:46 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE NANCY BECKER, SENIOR DISTRICT COURT JUDGE

THURSDAY, MARCH 29, 2018

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING: STATUS CHECK: TRIAL SETTING DEFENDANT'S MOTION TO DISMISS BASE UPON VINDICTIVE PROSECUTION

APPEARANCES:

For the State: CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

For the Defendant: ASHLEY SISOLAK, ESQ.
TEGAN MACHNICH, ESQ.
Deputy Public Defenders

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Thursday, March 29, 2018

[Hearing begins at 9:05 a.m.]

THE COURT: State of Nevada versus Antonio Mixon.

MS. SISOLAK: Good morning, Your Honor, Ashley Sisolak and Tegan Machnich here on behalf of Mr. Mixon.

MS. KALLAS: Good morning, Your Honor, Chelsea Kallas, with the Attorney General's Office.

THE COURT: And Mr. Mixon is present in custody.

MS. KALLAS: And, Your Honor, I was going to be asking, because there's somewhat of a tortured history with this case –

THE COURT: I've read the tortured history. The only –

MS. KALLAS: Oh, you have.

THE COURT: -- thing that's –

MS. KALLAS: Okay.

THE COURT: -- left here is Judge Villani decided the other two motions before he discontinued the hearing the last time.

MS. SISOLAK: That's correct, Your Honor.

THE COURT: So the only motion left is the vindictive prosecution.

MS. KALLAS: And that's correct. The only reason I was going to be asking to continue it is that during trial Defense gave an in-camera review where they gave a proffer of their defense. There was a mistrial for an unrelated issue. But after that Judge Villani specifically instructed them to file this motion so obviously he was aware of something during that discussion that both you and I are not aware of, so that's why I

prefer him to hear it but obviously I'd leave that to the Court's discretion.

THE COURT: That's a decent reason to continue it to the sitting judge. I'll allow that.

MS. KALLAS: Thank you, Your Honor.

MS. SISOLAK: Thank you, Your Honor.

THE COURT: He did –

MS. KALLAS: We –

THE COURT: -- contemplate whether he wanted it continued and he said no, Judge Becker can go ahead and read it and make an ultimate decision, but that representation is a little bit different, so –

MS. KALLAS: Can we still set this trial date or would you rather us wait for Judge Villani?

THE COURT: No, I think I'd rather let Judge Villani hear the motion first because he'll have to decide whether he wants to set an evidentiary hearing or not.

MS. SISOLAK: Thank you, Your Honor.

MS. KALLAS: Thank you, Your Honor.

THE CLERK: April 5th, 8:30.

MS. SISOLAK: And, Your Honor, the State will prepare a transport order.

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MS. KALLAS: We will.

MS. SISOLAK: Thank you, Your Honor.

[Hearing concludes at 9:08 a.m.]

* * * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

Electronically Filed
7/11/2019 10:48 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

THURSDAY, APRIL 5, 2018

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:
STATUS CHECK: TRIAL SETTING
DEFENDANT'S MOTION TO DISMISS BASED UPON VINDICTIVE PROSECUTION

APPEARANCES:

For the State: CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

For the Defendant: ASHLEY SISOLAK, ESQ.
Deputy Public Defender

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Thursday, April 5, 2018

[Hearing begins at 8:59 a.m.]

THE COURT: Antonio Mixon.

MS. SISOLAK: Good morning, Your Honor, Ashley Sisolak present on behalf of the Public Defender's Office and Mr. Mixon. Your Honor, I do have a special request this morning. There is a motion set next week – or a week and a half from now on the 17th. I'm going to be in a three week-long trial. If we could hear the motion to dismiss me today I would appreciate it.

MS. KALLAS: I haven't had a chance to review it so if we could just trail the matters I can take a look at it, Your Honor.

THE COURT: Sure. We'll recall it.

MS. SISOLAK: Thank you, Your Honor.

[Matter trailed at 9:00 a.m.]

[Matter recalled at 9:29 a.m.]

THE COURT: All right, Mixon.

MS. SISOLAK: Good morning, Your Honor, Ashley Sisolak present on behalf of the Public Defender's Office and Mr. Mixon. He is present

MS. KALLAS: Good morning –

MS. SISOLAK: -- and in custody, Your Honor.

MS. KALLAS: Good morning, Your Honor, Chelsea Kallas for the Attorney General's Office.

THE COURT: All right, it seems like March 15th –

MS. SISOLAK: If Your Honor wants me to refresh your

recollection I can. We were here on a motion to dismiss for vindictive prosecution. Things got out of hand. Your Honor ceased the hearing and rescheduled it for last week. Unfortunately, at that time, Judge Becker was here and she was not willing to make a ruling; she continued it for Your Honor. Since then, Mr. Mixon has filed another motion to fire me and represent himself.

MS. KALLAS: And that's all correct, Your Honor.

THE COURT: Sir, why do you want a new – well, first off, can you afford to hire your own attorney?

THE DEFENDANT: If I could I would.

THE COURT: And what is your issue with Ms. Sisolak who has filed motions to dismiss your case, obtained a mistrial on your behalf, and has been fighting every issue on this case as possible?

MS. SISOLAK: Your Honor, I don't think it has much to do with me as much as it is Mr. Mixon would like to represent himself. He can make representations as to his distrust and dislike of me, but I believe it comes down to Mr. Mixon's always wanted to represent himself on this matter.

MS. KALLAS: And that's --

THE COURT: And you wish –

MS. KALLAS: -- correct, Your Honor. But just for the record, he's already been given a private canvass in justice court by Bennett Haron.

MS. SISOLAK: He was farettaed in justice court, Your Honor. I did file a motion, basically for lack of a better term, appealing that ruling.

Mr. MIxon has –

MS. KALLAS: [Indiscernible].

MS. SISOALK: -- an affirmative right to represent himself. It's his constitutional right to do so.

THE COURT: Is he the one, on one of the prior occasions, wanted to represent himself but came in at calendar call and he said he would not be ready, and as you know there's a legal basis –

MS. SISOLAK: Yes.

THE COURT: -- for me to deny that.

MS. SISOLAK: That –

THE COURT: It would cause a continuance.

MS. SISOLAK: -- is correct, Your Honor. But at this time, since we don't have a trial set, I don't see a reason why Mr. Mixon wouldn't be entitled to represent himself.

THE COURT: Do I have a –

MS. SISOLAK: I can have his file sent to NDOC asap.

[Colloquy between Court and Clerk]

THE COURT: I'll give you a Faretta canvass tomorrow at 9:00 o'clock.

MS. SISOLAK: Your Honor, would you like me to be present for that?

THE COURT: Sure, because right –

MS. SISOLAK: Thank you, Your Honor.

THE COURT: -- you're still his attorney of record until tomorrow.

MS. SISOLAK: Thank you, Your Honor.

THE COURT: All the motions will be heard at that time either by Ms. Sisolak arguing them or Mr. Mixon.

MS. SISOLAK: Your Honor, that being said, I – Ms. Kallas and I have already argued the motion to dismiss for vindictive prosecution. We were just waiting for a ruling, so I wouldn't have further argument tomorrow.

THE COURT: All right. I'll ask the both – I'll ask if – if Mr. Mixon's representing himself I'll ask him if he has any additional arguments on the motion so, State, be ready for any additional argument.

MS. KALLAS: I will be, Your Honor.

MS. SISOLAK: Thank you, Your Honor.

THE COURT: Okay? All right, sir?

So, sir, do you understand I'm going to give you a Faretta canvass tomorrow at 9:00?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay, because you wish to represent yourself; is that correct?

THE DEFENDANT: Correct.

MS. SISOLAK: Your Honor, if I may briefly on the record ask Mr. Mixon if he would like another copy of Faretta and a questionnaire?

THE DEFENDANT: I got it with me.

MS. SISOLAK: Okay; he has a –

THE COURT: All right.

MS. SISOLAK: -- copy I've provided to him.

THE COURT: All right, I'll see everybody tomorrow at 9:00.

[Hearing concludes at 9:33 a.m.]

* * * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

Electronically Filed
7/11/2019 10:52 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

FRIDAY, APRIL 6, 2018

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING: DEFENDANT'S PRO PER MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD, REQUEST TO OBTAIN COPY OF DEFENDANT'S FILE, AND REQUEST FOR SELF-REPRESENTATION DEFENDANT'S MOTION TO DISMISS BASED UPON VINDICTIVE PROSECUTION STATUS CHECK: TRIAL SETTING FARETTA CANVASS

APPEARANCES:

For the State: CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

APPEARANCES CONTINUED ON PAGE 2

For the Defendant: ASHLEY SISOLAK, ESQ.
Deputy Public Defender

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Friday, April 6, 2018

[Hearing begins at 9:38 a.m.]

THE COURT: All right, Mr. Mixon –

MS. SISOLAK: Good morning, Your Honor, --

THE COURT: -- I was advised last court appearance that you wished to represent yourself. Is that correct, sir?

THE DEFENDANT: Represent myself.

THE COURT: I'm sorry?

THE DEFENDANT: Represent myself and have Ms. Sisolak as stand-by counsel.

MS. SISOLAK: Your Honor, I would object being stand-by counsel. I'm not going to prep for a case that I'm not on and I'm not going to not prep for a trial.

THE COURT: Sir, I'm not going to – these charges here are not overly complex or sophisticated, strictly the allegation that you threw a rock, a couple of rocks at a correction officer in the prison system. If you're going to represent yourself you represent yourself. If you want Ms. Sisolak to represent you then you're going to have her.

THE DEFENDANT: I work with myself. I work with myself.

THE COURT: Okay. Sir, I have been doing this for 11 years and I've had a couple of people represent themselves and there's not single individual has won their trial. You still have that right to do that and I'm sure there's people out there that perhaps have won the trial representing themselves but I'm just going to advise you it's probably not in your best interest, but I'm going to go through your rights with you and

if you still insist on representing yourself then I'm going to grant you that right. Do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right.

Under the Sixth Amendment of the United States Constitution, you are entitled to the assistance of an attorney at all stages of the criminal proceedings; do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You have the right to represent yourself and conduct your own defense. I cannot force a lawyer upon you should you insist that you want to conduct your own defense. You are given the rights under the United States Supreme Court decision of Faretta v. California, but you must first knowingly, voluntarily, and intelligently waive and give up your right to the assistance of an attorney before you can represent yourself. Do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Sir, do you understand you have the right to the assistance of an attorney at all proceedings?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that you have the right to the assistance of an attorney at no cost if you are unable to afford an attorney?

THE DEFENDANT: Yes, Your Honor.

THE COURT: What is your age, sir?

THE DEFENDANT: 27.

THE COURT: What is your level of education?

THE DEFENDANT: Community College of Southern Nevada.

THE COURT: I'm sorry?

THE DEFENDANT: Community College of Southern Nevada.

THE COURT: All right. And do you read and write the English language?

THE DEFENDANT: Yes, Your Honor.

MS. KALLAS: Your Honor, I apologize for interrupting, but I reviewed his previous PSI and I do not think he went to college, that's from my understanding. I can find it while you're canvassing him.

THE COURT: Do you have a college degree, sir?

THE DEFENDANT: If I can get the transcripts. I was at High Desert. I asked High Desert if they could give me –

THE COURT: I'm just asking you, did you go to college, did you get a college degree?

THE DEFENDANT: Yeah, I went to college for my – I was management, business management but I never finished college in that I was incarcerated for –

THE COURT: Okay, did you receive your high school diploma or your GED?

THE DEFENDANT: I received a GED.

THE COURT: All right, thank you.

Sir, do you presently have any health issues?

THE DEFENDANT: As far as that Shingles that's probably it, but it –

THE COURT: I'm sorry?

THE DEFENDANT: As far as the Shingles but it come and go.

THE COURT: Okay, anything that would prevent you – anything that would affect your mental abilities, sir?

THE DEFENDANT: No, Your Honor.

THE COURT: Sir, are you presently taking any medication?

THE DEFENDANT: Aspirin.

THE COURT: Okay. Are you under the influence of any alcohol or any illicit drugs?

THE DEFENDANT: No, Your Honor.

THE COURT: Sir, have you been coerced or threatened in any way for you to waive your right to an attorney?

THE DEFENDANT: No, Your Honor.

THE COURT: Sir, why have you decided to represent yourself?

THE DEFENDANT: I been trying to put this motion in about State having lack of jurisdiction to charge me with this offense for 7 months now. I still haven't got that motion. I even asked Ms. Sisolak to put a motion in with the evidence I had to support it. I never got nowhere so I guess I had to – well, I believe I have to represent myself to put this motion on calendar and get evidence –

THE COURT: And what motion do you want, sir?

THE DEFENDANT: That's the motion about the State having lack of jurisdiction to charge with me this offense and that Nevada

Department of Corrections kept jurisdiction over these allegations.

MS. SISOLAK: Your Honor, if I may respond?

THE COURT: Sure.

MS. SISOLAK: Mr. Mixon has brought to my attention this motion. I have looked into it fully. It is my duty not to file frivolous motions with the Court. There's no basis for the motion.

THE COURT: Sir, I've handled numerous cases involving batteries and offenses in the prison system and I don't recall I've ever dismissed a case saying that I don't have jurisdiction to hear this case.

MS. SISOLAK: Your Honor, the issue is that Mr. Mixon was punished administratively for this offense. As Your Honor knows, that was my defense. --

THE COURT: And, sir, I've also –

MS. SISOLAK: -- quite frankly.

THE COURT: -- handled cases where someone was administratively punished as well as criminal charges were filed against them.

THE DEFENDANT: Well, I have this memorandum right here and --

THE COURT: I understand that, sir, but I'm just telling you that a similar motion has been filed in front of me before; I've denied it. Now, I haven't read your motion. You may have new law or you know different facts because I'm always open-minded to look at any pleadings, I'm just telling you in the past a similar motion has been denied by this Court. Do you understand that, sir?

THE DEFENDANT: Um –

THE COURT: All I'm asking – you don't --

THE DEFENDANT: I'm sure you had a lot of those motions come here --

THE COURT: Okay, all I'm asking you, sir, do you –

THE DEFENDANT: -- without evidence –

THE COURT: -- understand what I --

THE DEFENDANT: -- to support it.

THE COURT: -- just told you?

THE DEFENDANT: Yeah, I understand it.

THE COURT: Okay.

THE DEFENDANT: I totally understand it.

THE COURT: And do you feel that you can better present your case than a trained attorney?

THE DEFENDANT: I sure do.

THE COURT: All right.

Sir, criminal law is a complex area of the law where experienced professional training is both required and desirable. Do you have any prior experience or familiarity with the legal proceedings?

THE DEFENDANT: As far as studying Chapter 175 and going to trial here, that's -- and going to the law library, that's probably the farthest of [indiscernible] my -- how – me knowing about the law I guess.

THE COURT: Do you have any formal legal training, sir?

THE DEFENDANT: Never took the Nevada bar exam in my life.

THE COURT: Or any other form of legal training?

THE DEFENDANT: No, Your Honor.

THE COURT: Do you know the difference between an opening statement and a closing argument?

THE DEFENDANT: Um, opening statement at trial – I give an opening statement and then at the end of trial closing arguments.

THE COURT: It doesn't really appear that you do understand that, sir, but that's your right.

Do you know how to object to a question that you believe may be improper?

THE DEFENDANT: Um, yup.

THE COURT: Okay. Do you understand that you have 30 days within which to file an appeal from the entry of an order denying – or excuse me, if – excuse me, 30 days within which to file an appeal from the entry of a judgment of conviction? Do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that if you have an attorney, they are trained in the law and they have the skill and experience [indiscernible] conduct a defense on your case. Do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Sir, an attorney knows the elements of the offense that you have been charged with and the possible defenses that may be presented on your behalf; do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Sir, criminal trials present difficult choices as to strategy and tactics, and even attorneys can differ as to the proper defense to make in a case. You are not trained to make those decisions, sir. An attorney knows the degree of proof that the State must meet to prove you guilty beyond a reasonable doubt, and by investigation and review of the State's evidence, it may be determined that the State cannot prove its case. Sir, you must be aware of dangers and disadvantages and consequences of self-representation. You must realize that you are required to [indiscernible] the same procedural rules as lawyers; do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: I cannot help you or advise you of these rules of procedure; do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You must follow all legal rules even though you may not know them.

THE DEFENDANT: Yes, Your Honor.

THE COURT: You will not be allowed to complain, later on appeal, about the competency of your own effectiveness; do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand either in the prison system or if you're down here in jail you will not be given special library privileges?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Sir, do you understand the effectiveness of your defense may be diminished by your dual role as an attorney and as the accused?

THE DEFENDANT: Yes, Your Honor, I understand.

THE COURT: Sir, once you decide on self-representation, you may not change your mind in the middle of proceedings and request an attorney; do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

MS. KALLAS: Your Honor, may I approach before you make your decision? It can be after the canvass.

THE COURT: Sure.

MS. KALLAS: Now?

THE COURT: Yes, with Ms. Sisolak.

MS. SISOLAK: Thank you, Your Honor.

[Bench conference begins – transcribed as follows]

MS. KALLAS: I know its up to Your Honor's discretion, my only concern is that you're almost essentially giving him the answer –

THE COURT: I'm sorry?

MS. KALLAS: My concern is he's just answering yes to everything asked. You asked, do you know you have 30 days to appeal, and you just told me that – and [indiscernible] do you know that you – how to object to a question? Yes. Well, how?

THE COURT: Well, I don't have to ask him that.

MS. KALLAS: You don't?

THE COURT: I have to advise him – no, I just –

MS. KALLAS: Okay. It's just --

THE COURT: -- have to advise here's the law –

MS. KALLAS: -- that I'm just nervous –

THE COURT: -- [indiscernible] your understanding.

MS. KALLAS: -- about his competency because he was already canvassed and he didn't know those things in justice court.

THE COURT: All right.

MS. SISOLAK: That being said, --

MS. KALLAS: That was my only concern.

MS. SISOLAK: -- I –

THE COURT: [Indiscernible] the advisement of his rights –

MS. SISOLAK: I understand.

THE COURT: -- and that a bad decision he's making.

MS. SISOLALK: As far as him being canvassed in justice court, I believe I have a copy of the transcript in my file. Judge Bennett never grants a [indiscernible]. That's just not her [indiscernible].

MS. KALLAS: And I wouldn't know that yes or no. But yeah, I just know that he –

MS. SISOLAK: She didn't –

MS. KALLAS: -- didn't know certain things then and I don't know how [indiscernible] competent now.

MS. SISOLAK: Because he answered her -- all of [indiscernible] the questions and she said, well, I don't think you've [indiscernible] legal training and she's never --

THE COURT: You don't need it.

MS. SISOLAK: I know.

THE COURT: You don't need it.

MS. SISOLAK: I know.

THE COURT: That's not the law.

MS. KALLAS: Your Honor, and again, it's up to Your Honor's discretion.

MS. SISOLAK: And, Your Honor, –

MS. KALLAS: I just wanted to raise my concerns.

MS. SISOLAK: -- while we're here, if Your Honor does grant Mr. Mixon's request, all of the discovery is on discs.

THE COURT: You'll have to have it – print them out.

MS. SISOLAK: I'll have to print it and I'll have to –

THE COURT: And send it to him.

MS. SISOLAK: -- send them to him so I'll just need the time. And then do you want my office to keep the discs? I – given the nature of the charges I don't know if they're going to let him have a CD.

MS. KALLAS: Well, one of the things is a recording on his disciplinary hearings. I don't know how he's going to be able to listen to that.

MS. SISOLAK: That's not my problem.

THE COURT: Is there a transcript –

MS. SISOLAK: No.

THE COURT: -- of it? Okay. All right, I'll just do that. You know –

MS. SISOLAK: Well, I can send him that disc. I'll just let the

prison – I'll call the prison [indiscernible] --

THE COURT: Yeah, because they'll probably stop it.

MS. KALLAS: [Indiscernible].

MS. SISOLAK: Thank you, Your Honor.

MS. KALLAS: Thank you, Your Honor.

[Bench conference ends]

THE COURT: Sir, you understand that someone being unfamiliar with the legal procedures inadvertently allow a prosecutor an advantage. You may not make effective use of your rights and you may make tactical decisions with unintended consequences; do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Sir, do you know how to subpoena witnesses to testify on your behalf?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right.

Sir, I must advise you an attorney is trained to observe jurors and select the ones most favorable to their case. Do you know how to disqualify a juror?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right.

Do you know the consequences if you decide to testify on your own behalf?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Sir, do you understand that nature of the

charges against you?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Sir, do you understand what a lesser included offense means?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you know what the possible defenses are to these charges, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand what mitigating facts you may be able to assert in this case?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Sir, an attorney can research the law in similar cases and present possible defenses. Do you know how to research the law?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you know the range of punishment for these two charges?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Does the Defendant have more than two prior felony convictions?

MS. SISOLAK: I believe --

MS. KALLAS: You know – Court's indulgence.

THE COURT: Would he be eligible for habitual?

MS. KALLAS: I don't think he's habitual eligible, Your Honor.

MS. SISOLAK: I don't believe he's habitual eligible.

MS. KALLAS: And we wouldn't be seeking any [indiscernible].

THE COURT: Okay.

MS. SISOLAK: I believe he has one prior felony outside of this department on voluntary manslaughter.

MS. KALLAS: He also has a '06 conspiracy to commit robbery.

THE COURT: All right.

MS. KALLAS: So, he would be, but we wouldn't be seeking it, Your Honor.

THE COURT: Sir, are you waiving your right to counsel freely, knowingly, voluntarily and intelligently?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Sir, as I mentioned before, you have a constitutional right to represent yourself in this matter. I don't think a lot of people have been successful in representing themselves but that's your choice. Do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: The Court does find that the Defendant's decision to represent himself is freely, knowingly, voluntarily, and intelligently made, that he does have a full appreciation and understanding of the consequences of your [sic] actions.

All right, sir, how – Ms. Sisolak is going to copy all of the discovery all for you and send it to you. She has them on a disc but she needs to send them in paper form to you in the prison system. It may take a couple of weeks to do that. How long do you need to prepare for

your trial, sir? Assuming she gets these to you in a couple of weeks, how long will you need, after receipt of all the paperwork, do you need to prepare for your trial?

THE DEFENDANT: I invoked my right for a speedy trial from the beginning so I'll be invoking my right to a speedy trial again after I get --

THE COURT: Sir, listen to me. We already had a trial. There was a mistrial. Okay, you're going to get some – you're going to get -- was it a couple of hundred pages? Do you know how many pages there are?

MS. SISOLAK: It's a couple of hundred.

THE COURT: Okay, you're probably going to get a couple of hundred pages in 2 to 3 weeks, how long will it take you to review all that and prepare for your case so you can go to trial?

MS. SISOLAK: In candor with the Court, Your Honor, Mr. Mixon has the vast majority of the discovery that I've already given him prior to his first trial. In addition, we've – as you know, we've prepped this case up with Mr. Mixon's help.

THE COURT: I'm just asking you, how much time do you need, sir?

THE DEFENDANT: Um, I don't have no discovery at all, but um, like 120 days I guess.

THE COURT: I'm sorry?

THE DEFENDANT: 120 days if you don't mind, but --

THE COURT: All right, that's fine. Here we are –

THE DEFENDANT: After she send the whole discovery –

THE COURT: I'm sorry?

THE DEFENDANT: After she send the whole discovery, 120 days after –

THE COURT: Okay.

THE DEFENDANT: -- I receive it?

MS. SISOLAK: And, Your Honor, I'll have the discovery sent by next Thursday. If you'd like a status check I could – I'm happy to appear for that.

THE COURT: Okay, how about August 27th? That would give you your – basically your 120 days.

THE DEFENDANT: Sure.

THE COURT: Okay, here is –

THE DEFENDANT: Thank you.

THE COURT: -- your calendar call date.

THE CLERK: That will be August 21st at 8:30 a.m.

THE COURT: And, sir, on the 21st I'm going to hear any further argument on the motions that have been filed. You can file any supplements you deem appropriate. You should be prepared to argue those motions. Make sure the mailings that you give him, Ms. Sisolak, include the motions that you filed.

MS. SISOLAK: Absolutely, Your Honor.

THE COURT: All right, see you back at that time. Thank you.

MS. KALLAS: Thank you, Your Honor.

[Hearing concludes at 9:53 a.m.]

[Case recalled at 9:54 a.m.]

THE COURT: Well, I did put on the record that we had this Faretta canvassing here. Sir, your request to represent yourself is granted; all right?

THE DEFENDANT: Thank you, Your Honor.

MS. SISOLAK: Thank you, Your Honor

THE COURT: Good luck to you, sir. Good luck to you.

MS. KALLAS: Thank you, Your Honor.

[Hearing concludes at 9:54 a.m.]

* * * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

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CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

TUESDAY, JUNE 5, 2018

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING: DEFENDANT'S PRO PER MOTION FOR EXPERT WITNESSES/TRANSPORT ORDER

APPEARANCES:

For the State:	JASON GUNNELL, ESQ. Sr. Deputy Attorney General
For the Defendant:	PRO SE
Also appearing:	MARTIN HART, ESQ.

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Tuesday, June 5, 2018

[Hearing begins at 8:58 a.m.]

THE MARSHAL: 8 bottom.

THE COURT: And that is Antonio Mixon.

Good morning, sir. This is your pro per motion for expert witness. What type of expert do you need, sir, since you're representing yourself?

THE DEFENDANT: Probably an investigator and a paralegal is what I put in the motion, Your Honor.

THE COURT: Do you have an investigator in mind that you wish to retain?

THE DEFENDANT: Whomever the Court appoints. It wouldn't matter.

THE COURT: Okay. Well, sir, I'm not going to – I can't pick one for you. Mr. Hart, are you familiar with one or Mr. Wood or –

MR. HART: I know that Drew has a couple that he tends to use on pro pers. Mark – just a second. Let me –

THE COURT: Sure.

MR. HART: If I – I apologize.

[Pause in proceedings]

THE COURT: Sir, you can use whatever private investigator you want. Mr. Hart, who is a criminal defense attorney, he's – apparently he's familiar with a private investigator. You can use him or her, or you can pick one of your own, but I need to have a name. So, Mr. Hart, do you have a name?

MR. HART: Mark – and I'm sorry, I don't have his last name. I have his phone number, 328-2464. I know when I've done standby he's the one that I ended up using. And I can pass the information on. I know he does court-appointed work. He does – it's a $50.00 an hour rate.

THE COURT: Mr. Hart, I would appreciate it if you could be so kind, contact my chambers and just give us the name.

MR. HART: I'll call you – I'm going to step out in the hall and try to get a hold of him.

THE COURT: Okay. And we'll get that name for you, sir, and we'll give him your contact information so he can you know, he'll probably go and see you; okay? So, your motion for a private investigator is granted and we'll get that specific name for you, sir.

THE DEFENDANT: And a paralegal? The motion --

THE COURT: Well, sir, you're representing yourself; okay?

THE DEFENDANT: Right.

THE COURT: And that was one of your decisions; --

THE DEFENDANT: Right.

THE COURT: -- all right? Because you didn't want an attorney –

THE DEFENDANT: Okay.

THE COURT: -- and so –

THE DEFENDANT: Would the law –

THE COURT: And I explained before that I can't help you file motions and you wouldn't be given any extra library –

THE DEFENDANT: Correct.

THE COURT: -- privileges.

THE DEFENDANT: Right. But I'm being denied access to the law library. I been contacting the law library's supervisor so I can you know try and put the memorandum of law together for these motions. When they come to my door –

THE COURT: Have you filled out any request forms and they have to send it back to you saying that they're not granting you library privileges?

THE DEFENDANT: I did you know the State of Nevada um – this is the exhibit that I went to the law library with the request for my stuff like that.

THE COURT: I don't have anything attached to your motion, sir.

THE DEFENDANT: I have it right here. I did send a copy to the State. I didn't attach it to the motion. I apologize but I do have it right here. The marshal can hand it to you.

THE COURT: State, do you have any information regarding library privileges?

MR. GUNNELL: We just have what was in the – his motion that he filed.

THE COURT: It wasn't attached to my motion. What does it say?

MR. GUNNELL: It was just his representations that he wasn't allowed to go in to the library.

THE COURT: State, if you can be so kind to follow up with

the prison system and then find out what the –

MR. STORMS: We can do that, Your Honor.

THE COURT: -- if there's any issues as far as their denying his right to go to the library?

And, sir, what we're going to – is two weeks enough time, Counsel?

MR. GUNNELL: That would be. We could check on that, Your Honor.

THE COURT: Okay.

Sir, what we're going to do is we'll go out two weeks. We're going to order you to come back in two weeks. We're going to find out what the issue is with your library privileges.

THE DEFENDANT: I did send the State what the problem was about the law library privileges. I didn't attach it to the motion but I did send the State a copy. I do have a copy for the Court right here. I didn't attach it.

THE COURT: All right, give it to the marshal. But also I'm going to have him check with the prison system to find out what the issue is; all right? I want to hear from both sides.

THE DEFENDANT: Right.

THE COURT: Okay?

So, I am ordering you that you be returned in two weeks on the following day -- and State, so you'll follow up. I'm going to look at what Mr. Mixon has and I'll review this before the next court appearance. And, State, you have a copy of this?

MR. GUNNELL: I believe – may I approach, Your Honor.

THE COURT: Sure.

MR. GUNNELL: I'm not sure we have a copy of that.

MR. HART: And, Your Honor, I do have the name of the potential investigator. And his company is licensed number.

THE COURT: All right go ahead and put it on the record please, Mr. Hart.

MR. HART: Global Reliance is his company, 1898 and its March Perusch.

THE COURT: All right, we'll contact him, his office to see if he's willing to take this appointment so we'll have all this resolved in the two week status check.

THE CLERK: June 19th, 8:30 a.m.

THE COURT: All right, anything else, sir?

THE DEFENDANT: No; thank you.

THE COURT: All right; next case.

[Hearing concludes at 9:03 a.m.]

* * * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

TUESDAY, JUNE 19, 2018

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING: STATUS CHECK: LIBRARY PRIVILEGE

APPEARANCES:

For the State: JASON GUNNELL, ESQ.
Sr. Deputy Attorney General

For the Defendant: PRO SE

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Tuesday, June 19, 2018

[Hearing begins at 9:20 a.m.]

THE COURT: Okay, we'll handle the bottom of 3, Antonio Mixon.

MR. ALBRIGHT: That's an AG case so I'm not sure –

THE DEFENDANT: And, Your Honor, the State – the AG hasn't arrived yet.

THE COURT: All right, because he was supposed to – it was Mr. Gunnell, Jason Gunnell, the AG's office to check the library issue. Marshal, can you see if Mr. Gunnell, Jason Gunnell, G-U-N-N-E-L-L, see if you can call his office. So, we'll recall this matter, sir, okay?

THE DEFENDANT: All right.

[Matter trailed at 9:20 a.m.]

[Matter recalled at 9:24 a.m.]

THE COURT: Marshal, can you call that AG?

THE MARSHAL: I did.

THE COURT: Oh, you did. Is he enroute?

THE MARSHAL: I left him a message.

THE COURT: Oh. All right, we'll wait. Call me when someone shows up.

THE MARSHAL: All rise. Department 17 is in a short recess.

[Matter trailed at 9:25 a.m.]

[Matter recalled at 9:51 a.m.]

THE MARSHAL: Department 17 is back in session. Please be seated and come to order; 3 bottom.

THE COURT: Which is Antonio Mixon.

THE DEFENDANT: Present.

MR. GUNNELL: Good morning, Your Honor, Jason Gunnell with the Attorney General's Office for the State.

THE COURT: All right, Counsel, last time we were here there was an issue on the library and then also –which is – which I asked you to check into, but also the issue on the investigator which was not your responsibility. But on the issue of the library privileges, can you enlighten us?

MR. GUNNELL: I can. I actually – we contacted High Desert and I actually received an e-mail from the library – law library supervisor, and part of that is that Mr. Mixon is – his housing – the housing is now he can't – actually can't go to the library but they can bring things to him from the library. And he just has to fill out a form. They actually provided me with the form. On May 18th, 2018, he requested a number of documents but he actually refused those documents on that date. So, he does have access to the library through this system. He just can't go to the library. He can request documents be –

THE COURT: So, you're saying he did request them on occasion and they were going to give him their documents and then he refused?

MR. GUNNELL: Correct.

THE COURT: Mr. Mixon.

THE DEFENDANT: I did request the documents. When they came to my door, I inspected it at the door. I seen it was incomplete so I

refused to sign it. And I did submit that in a declaration to this Court I believe and I sent that –

THE COURT: Sir, probably the better course would have been to sign it and say I'm missing items 1 through 3 and you're accepting items, for example, 4, 5 and 6 instead of just saying if I don't get them all I don't want any because then you can at least prepare the 3 or 4 documents you are getting. That just seems to me would have been the better course of conduct. And how do they know which ones you're missing? So, you could sign and say receipt of documents 1 through 3, did not receive documents 5, 6, and 7 or whatever it may be.

THE DEFENDANT: When they come to the door with the request you know I could have received – well, I inspected at the door and I seen that it was incomplete and I could have take it and um signed it but there's nowhere on their document to know that the request is incomplete so I let the law library – librarian know that it was incomplete right there and that I wouldn't sign it 'cause it was incomplete. But that's not the first time I requested from their law library and they gave me something that was incomplete. And they continue to –

THE COURT: Well, sir, like put in another request and in your written request you can say I had previously requested these items. I only received half of them and these are the ones that are missing plus I want the following additional items. That way there's a paper trail; okay? That way you're not agreeing that you've received everything because you're putting in writing that you – that some of the documents were missing; okay? So, it seems like – I'm not going to order that they have

special transportation for you. It seems like there is an avenue for you to get these documents. And so, I'm satisfied that that issue is resolved. Put in your request and they'll drop off these documents and if you find some of them are missing then make another request for the missing documents; okay?

As you will recall when you decided to represent yourself I told you you would not get any special library privileges. If you're housed in a certain location where they can – they will not transport you to the library, and basically they're going to transport the library to you, then that's the situation. I told you when you represent yourself, you know there's certain things that you're not going to have access to; okay? So, that's resolved as far as I'm concerned.

And then did a private investigator contact you, sir?

THE DEFENDANT: I didn't even get his first and last name. They trailed it for me [indiscernible] –

[Colloquy between Court and Clerk]

THE COURT: Did you receive the minutes from the Court, sir?

THE DEFENDANT: No, I didn't. No, I did not. I didn't get his contact information.

[Colloquy between Court and Clerk]

THE COURT: Where are you being housed now, sir?

THE DEFENDANT: I'm currently housed in Hall 23 [indiscernible].

THE COURT: I'm sorry?

THE DEFENDANT: I'm in the hole right now.

THE COURT: Where?

THE DEFENDANT: I'm in administrative segregation; in the shoe. I guess they call it the hole.

THE COURT: No, I mean are you in the jail here, are you in the –

THE DEFENDANT: Oh, I'm in High Desert State Prison.

THE COURT: Okay. All right, my clerk will resend the minutes to you with the private investigator's name on that. So, she'll put it in the mail today or tomorrow, assuming you'll get that information the next couple of days through the mail.

THE DEFENDANT: And can I get a order so the prison will allow these contact visits from the private investigator?

THE COURT: How do they handle that, Counsel?

MR. GUNNELL: They – Your Honor, typically attorneys have access. Its just the day they go up for visitations like any other – I mean there are visitations that attorneys have and the investigators are a part of that as well.

THE COURT: Okay.

MR. GUNNELL: So its just they have to schedule by alphabetical order, your day of the week, and the time that you can have.

THE COURT: And it sounds like this investigator should know the proper procedure.

THE DEFENDANT: Also, Your Honor, um –

THE COURT: Yes, sir.

THE DEFENDANT: Since I'm on calendar right now, if the AG doesn't mind, I got trial – there's a trial date in August and I'm not gonna probably be ready by August, so if we can get a status check to get a – to reset the trial date?

THE COURT: Okay, how much time do you need, sir?

THE DEFENDANT: Um, probably like 120 days give or take.

[Colloquy between the Court and Clerk]

THE DEFENDANT: Unless you want to set it in January of next year.

THE COURT: This trial won't take that long, so we'll go – Counsel, are you available October 29?

MR. GUNNELL: I should be, Your Honor.

THE COURT: Because that will give you from that part of June here, July, August, September, and the end of October so that's – should give you enough time, sir.

THE DEFENDANT: Very well. So, thank you.

THE COURT: All right. You're welcome, sir.

MR. GUNNELL: And, Your Honor, we'll try to contact the investigator again and get him a copy of the discovery as well –

THE COURT: Okay.

MR. GUNNELL: -- so it's easier just to – on everybody.

THE COURT: Appreciate it. Thank you.

All right. Thank you, Mr. Mixon.

THE MARSHAL: Page 11.

THE CLERK: Calendar call –

THE COURT: Wait. Hang on.

THE CLERK: Calendar call date October 23rd, 8:30. And the trial date is October 29th, at 9:00 a.m.

THE COURT: And we'll need Mr. Mixon to be returned on that date for calendar call.

THE DEFENDANT: And what's the date?

THE CORRECTIONS OFFICER: I already got it for you.

THE DEFENDANT: All right, thank you.

[Hearing concludes at 9:59 a.m.]

* * * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

THURSDAY, AUGUST 30, 2018

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING: DEFENDANT'S PRO PER MOTION FOR STATUS CHECK; TRIAL READINESS; DISCOVERY ISSUE; TRANSPORTATION ORDER; ORAL AGREEMENT REQUESTED

APPEARANCES:

For the State: JASON GUNNELL, ESQ.
Sr. Deputy Attorney General

For the Defendant: PRO SE

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Thursday, August 30, 2018

[Hearing begins at 8:40 a.m.]

THE COURT: Antonio Mixon.

THE DEFENDANT: Present.

THE COURT: Good morning, sir.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: This is your motion – well, we have a status check for trial readiness and discovery issues.

THE DEFENDANT: And, Your Honor, I amended that motion. I don't know if you have a copy of that yet.

THE RECORDER: I'm sorry, I can't –

THE COURT: All right, hang on. Repeat it, sir.

THE DEFENDANT: I amended that motion right there. I haven't got a copy yet. You got a copy of the amended one? I [indiscernible] –

THE COURT: When did you file that, sir, because I don't look like I have an amended one?

THE DEFENDANT: I filed it on the -- around or about on the 23rd I believe.

THE COURT: The motion for – on discovery issues was -- the one I have, sir, is August 8.

THE DEFENDANT: Yeah, I amended that one. I amended that one and I sent it – I mailed it around like the 23rd I believe, around or about that time.

THE CLERK: Judge, there's another motion set for September

18th.

THE COURT: Apparently, it's set for – I don't know if you heard, September 18.

THE DEFENDANT: Can we put it on calendar today or can we trail this so I can – 'cause I'm – unless you're gonna let me amend it?

THE COURT: Well, I don't know if the State has a copy of it and they've had an opportunity to reply.

MR. GUNNELL: We don't have a copy of it, Your Honor.

THE DEFENDANT: I sent them a copy.

MR. GUNNELL: Well, we don't have a [indiscernible].

THE COURT: But, sir, listen. It's okay for you to represent yourself but you're under the same rules and that motion to amend is set for the 18th, and so we can resolve the motions today that are on calendar for today or we can continue everything to the 18th.

THE DEFENDANT: We can't get a date before the 18th to resolve both of the motions? I mean its just amended. It's – I just amended that one.

THE COURT: What's the difference?

THE DEFENDANT: I want you to hear the amended one besides that one. If they want to write a opposition to it, if they want a chance to do that they –

THE COURT: Sir, what's the difference in the amended from the original?

THE DEFENDANT: The difference between that one and the amended, the amended is – has case law in there and some Nevada

revised statutes I want you to consider when you adjudicate it. That's the difference.

THE COURT: All right. State, how long will it take you to respond?

MR. GUNNELL: I don't know how long, Your Honor, because we actually we have a copy but we can't read it because the writing is so light on it. And I know with this motion we provided him discovery already that contains the statements. I mean if that's the issue I can provide him additional copies of the statements of the witnesses.

THE COURT: Sir, I think when I read your motion you wanted to know what these witnesses were going to testify to and it sounds like that there was witness statements from these individuals. Do you have copies of those? We can make copies right now, sir, if you don't have those copies.

THE DEFENDANT: I don't have copies at all, but if you got copies I'll totally take those copies.

MR. GUNNELL: Yeah, they – and they're pretty [indiscernible] discovery, that's bates Exhibit 7 and bates Exhibit number – or excuse me, page number 9 –

THE COURT: All right. Can you just hand them to the marshal and the marshal will hand to Mr. Mixon.

THE DEFENDANT: Can I affirm that these are the witnesses on this [indiscernible]?

THE COURT: Sure, why don't you look at them.

[Pause in proceedings]

THE DEFENDANT: Okay. That settles that discovery issue. As far as the trial readiness goes –

THE COURT: I'm sorry?

THE DEFENDANT: I said that – this – these two reports settles that discovery issue as far as that part of that motion goes. And then there's – as far as the trial readiness go -- the motion to reset the trial –

THE COURT: Okay, that – we can handle that one today, sir. And how much more time do you need?

THE DEFENDANT: I – if you could set it to a date in January if they don't mind 'cause my private investigator still gather evidence of witnesses in this case so can put my case in chief together and stuff like that. And I got to file pretrial motions and stuff.

MR. GUNNELL: Your Honor, we'd just like to get this thing going. I mean it was previously set when he was represented by the PD and I don't think – its not a difficult case to prepare for. I don't know what evidence he's looking for. We'd just like to go to trial, but I mean we're not going to strenuously oppose any new trial setting.

THE COURT: Okay, sir, I'm going to grant your –

THE DEFENDANT: [Indiscernible] –

THE COURT: Sir, listen. I'm – you know what, I'm ruling in your favor, really not much more to say, okay, I'm going to grant –

THE DEFENDANT: I know but I want to seem like I'm delaying time –

THE COURT: Sir, I –

THE DEFENDANT: I'm trying to [indiscernible] know where I'm exactly at right now with everything.

THE COURT: Sir, I am going to grant your motion; --

THE DEFENDANT: Okay.

THE COURT: -- okay? We will set the trial January 7th; okay? And here is your calendar call date. This will give you September, October, November, December. That's four months; okay? That's plenty of time.

THE DEFENDANT: I appreciate it.

THE COURT: So, we're going to go to trial January 7th, and here is your calendar call date.

THE CLERK: January 3rd, at 8:30.

THE COURT: Okay, and we do need – do we need another transport order or is that sufficient –

THE DEFENDANT: Can I get a transport order? Do I got [indiscernible]?

MR. GUNNELL: We can – we'll prepare one, Your Honor.

THE COURT: Okay.

MR. GUNNELL: We always prepare –

THE COURT: All right, we'll make sure you're here, sir, and if you have any motions to file please do so in a timely fashion.

THE DEFENDANT: I appreciate –

THE COURT: You'll be under the same rules as an attorney; okay?

THE DEFENDANT: When I file a motion it take me 30 days to

get on calendar [indiscernible]. I just want the -- to let the Court know that. [Indiscernible] --

THE COURT: It shouldn't take that long, sir. We'll hear – I'm going to vacate the September 18th motion because we resolved it today. All right, so we'll wait for any other motions, sir; okay? We'll hear those in due course.

THE DEFENDANT: All right. I appreciate it.

THE COURT: Thank you.

THE CLERK: And the State, can I please have your name and bar number?

MR. GUNNELL: Jason Gunnell, 13997.

[Hearing concludes at 9:45 a.m.]

* * * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

THURSDAY, OCTOBER 11, 2018

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING: DEFENDANT'S PRO PER MOTION FOR EXPERT WITNESS DEFENDANT'S PRO PER MOTION TO SUPPRESS AND OR PURSUANT TO NRS 47.090

APPEARANCES:

For the State: JASON GUNNELL, ESQ.
Sr. Deputy Attorney General

For the Defendant: PRO SE

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Thursday, October 11, 2018

[Hearing begins at 8:54 a.m.]

THE COURT: Antonio Mixon.

THE MARSHAL: I'll grab him.

[Pause in proceedings as defendant is led into courtroom]

THE COURT: All right Mr. Mixon is present at liberty – I mean in custody, excuse me.

Mr. Mixon, you filed two motions, one is for the Court to appoint an expert witness for you on the fingerprint analysis and the second one is to suppress the evidence. Did you receive – on the fingerprint expert, did you receive the opposition filed by the State which sets forth that they are – they do not have a fingerprint expert and they are not going to present a fingerprint expert?

THE DEFENDANT: I did not receive that.

THE COURT: Okay. Does that now make your motion moot because they are stipulating that they are not going to have a fingerprint expert testify in your case?

THE DEFENDANT: I'm requesting a expert witness --

THE COURT: Okay.

THE DEFENDANT: -- a fingerprint expert.

THE COURT: And why would you need that, sir?

THE DEFENDANT: My fingerprints is not on that weapon and the expert witness is gonna come testify and give an expert opinion as why my – first they're gonna do the test. Then after that they're gonna give an opinion why they believe my fingerprints in not on that weapon.

THE COURT: All right. Well, actually even though the State is not going to have a fingerprint expert, if I recall the State has some witnesses who will say they saw the Defendant with a shiver, the knife, whatever you want to call it and this could go to his argument to rebut that so I'm going to grant your motion, sir. Consider this a Widdis motion. Do you know what expert you wish to retain?

THE DEFENDANT: No. I'm talking to my private investigator right now.

THE COURT: Okay.

THE DEFENDANT: He's been busy, so.

THE COURT: All right. Just submit the appropriate order to me and I'll sign off on that; okay?

Now, the second motion you have is a motion to suppress and this is regarding the statement that you made. Any further argument on the motion, sir? I have reviewed your brief and the State -- did you get the State's opposition?

THE DEFENDANT: I did receive an opposition.

THE COURT: Okay. Any argument, sir?

THE DEFENDANT: I'll submit it without the motions – the arguments of the motion.

THE COURT: All right, State, do you have any argument?

MR. GUNNELL: Yes, Your Honor. As to – the statement's relevant as to the fact that we charged that he had possession of a shank or a shiver, an instrument, and he said essentially, you're lucky you had that mace or else I would have stuck your bitch ass, or

something along those lines. That goes just to show that he had a weapon on him. It goes to show it's relevant to the case. It's a statement of party/opponent interest. And we'll just submit on that, Your Honor.

THE COURT: All right, sir, I'm going to deny your motion. At least according to your brief and the State's brief, although you were in custody and obviously you were in the prison system, it was – its alleged and it appears from even your own argument that it's something that you had blurted out. It wasn't based upon any questioning by the State so we don't have a custodial interrogation. And for that reason, I'm going to deny your motion to suppress. That statement will come in with the proper foundation.

All right, State, would you please prepare the appropriate order for that motion?

And we do have a calendar call January 3rd, the trial date January 7th. Mr. Mixon, will you be prepared to go forward on those dates?

THE DEFENDANT: I don't believe so.

THE COURT: You don't or do?

THE DEFENDANT: I don't believe so, but I put a motion in for extended time.

THE COURT: I'm sorry?

THE DEFENDANT: I said I don't believe I'm gonna be ready but I'm in the process of putting the motion in to extend the time. --

THE COURT: All right, well, you need –

THE DEFENDANT: -- 'cause I'm not gonna be –

THE COURT: -- to file that as soon as possible. I'm not ruling on that today; okay? I do want to get this matter moving forward and that's one of the issues of you representing yourself, there are delays here but that's something that you need to consider or you should have considered when you requested to represent yourself. I don't know what your motion is going to state and we'll deal with it in due course; all right? Thank you, sir.

THE DEFENDANT: Thank you.

[Hearing concludes at 8:58 a.m.]

* * * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

THURSDAY, OCTOBER 25, 2018

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING: DEFENDANT'S PRO PER MOTION FOR LEAVE TO FILE AN AMENDED MOTION TO SUPPORT AND MOTION FOR EXPERT WITNESSES

APPEARANCES:

For the State: CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

For the Defendant: PRO SE

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Thursday, October 25, 2018

[Hearing begins at 9:03 a.m.]

THE MARSHAL: Page 10.

THE COURT: Antonio Mixon.

MS. KALLAS: Good morning, Your Honor, Chelsea Kallas for the Attorney General's Office.

THE COURT: This is Defendant's motion to file an amended motion to suppress and motion for expert witness. I've already granted his – sir, we already granted your motion for expert witness the last time we were here. I –

THE DEFENDANT: This motion was filed after that initial motion.

THE COURT: Okay. All right, so that motion is off calendar as being moot.

And then you have a motion, an amended motion – actually, it should be a motion for reconsideration, sir.

Anything new to add to your original motion regarding the suppression?

MS. KALLAS: I'm sorry; I don't think I received that, Your Honor.

THE DEFENDANT: Can you repeat that, Judge?

THE COURT: I have here a motion – to file an amended motion to suppress and motion for expert witness.

MS. KALLAS: I received that, and it was my understanding it was just for if he wanted fix a typo in his original motion.

THE COURT: Is that correct, sir?

THE DEFENDANT: And add some citations to that motion.

THE COURT: All right, sir, I – the last time we were here, the law is very clear on this particular matter and that's why I denied your motion to suppress. There's nothing new here. This Court was not under any mistake of fact or of law when I originally ruled on your motion. So, I'm denying your motion to amend your motion to suppress. And so, you do have your expert witness. I've ruled in your favor. I've denied your motion to suppress. And I think we're done – and then we have a calendar call January 3rd and trial date January 7th; all right?

MS. KALLAS: I believe we also have a date on November 6th as well. There was another motion filed.

THE COURT: And what is that motion for, does anyone know?

MS. KALLAS: It was a motion for extension of time. He's asking for a year.

THE COURT: For what?

MS. KALLAS: A year to extend trial.

THE DEFENDANT: And, Your Honor, I amended that motion too.

THE COURT: I'm sorry?

THE DEFENDANT: I amended that motion too so I just sent it yesterday the motion for November 8 to extend – motion to extend time --

THE COURT: Okay, why do you need –

THE DEFENDANT: -- for time.

THE COURT: -- a year to --

THE DEFENDANT: 'Cause I'm preparing a writ of [indiscernible] and a – from a – in a case from the Ninth Circuit. I'm preparing a federal habeas writ from a judgment in this courtroom.

THE COURT: Sir, if you need to file those files I'm not continuing the trial. This was the whole situation you representing yourself. We gave you more time. The trial was set quite some time ago and I'm denying – I'm going to rule on that motion right now to extend – basically the motion to continue trial is denied. We are going forward on January – January 3rd is your calendar call so we'll need him back here on January 3rd for calendar call; and your trial is January 7th.

MS. KALLAS: So is the November 6th date vacated, Your Honor?

THE COURT: That is correct, yes.

MS. KALLAS: Thank you.

THE COURT: Thank you.

[Hearing concludes at 9:06 a.m.]

* * * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

TUESDAY, NOVEMBER 20, 2018

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING: DEFENDANT'S AMENDED MOTION FOR EXTENSION OF TIME DEFENDANT'S NOTICE OF MOTION

APPEARANCES:

For the State: CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

For the Defendant: PRO SE

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Tuesday, November 20, 2018

[Hearing begins at 8:56 a.m.]

THE COURT: Antonio Mixon.

THE DEFENDANT: Good morning, Court.

THE COURT: Good morning, sir.

MS. KALLAS: Good morning, Your Honor, Chelsea Kallas for the Attorney General's Office.

THE COURT: And Mr. Mixon, this is your motion.

THE DEFENDANT: [Indiscernible] marshal [indiscernible]?

THE COURT: I'm sorry?

THE DEFENDANT: [Indiscernible].

THE CLERK: Counsel, can I get your bar number?

MS. KALLAS: 13902.

THE COURT: This is a motion for extension of time. Is that for the trial, sir?

THE DEFENDANT: Your Honor, this motion is for an extension of time to prepare for trial. I've been trying to contact my private investigator. I sent him two corresponces [phonetic]. He got a busy schedule. He hasn't got back with me yet. I just have him get the evidence to cross-examine the State's witnesses. I'm waiting for him to contact me. I just spoke to him – its been like almost 60 days. He came to see me twice. He got other clients. He's very busy. And then um, I need him to get like three witnesses for me, a sergeant escort officer, a [indiscernible] officer, and the nurse, and then one officer that made a report about the evidence in this case. And then – oh, I – and then you

granted the motion for the forensic expert and I asked him can he, you know what I'm saying, find me someone – find a forensic expert. If not, I'm gonna request to be my own forensic expert in this case if the Court allows and the State wouldn't mind.

THE COURT: I'm sorry, say that again, you –

THE DEFENDANT: I said if I cannot locate a forensic expert with my private investigator or if the Court didn't want to appoint me one or the State doesn't have anybody in mind, I will request to be my own forensic expert, but that's gonna take 6 months to get that diploma and its gonna cost the State $3,200.00. And [indiscernible], its gonna cost –

THE COURT: Okay, what is the forensic expert – for what?

THE DEFENDANT: It was – you granted it for a fingerprint expert and a –

THE COURT: For fingerprint?

THE DEFENDANT: -- forensic linguist so it was either gonna be one forensic expert that has training in both of those areas.

THE COURT: Okay, well I understand, sir, and Counsel for the State correct me if I'm wrong that the shank and – the alleged shank was not tested for fingerprints; is that correct?

MS. KALLAS: No, Your Honor, but it was – someone – there's an eyewitness that sees it in his hand. It was found – there's pictures of it right next to him.

THE COURT: So, sir, is the forensic expert determine fingerprints because they're saying they don't have fingerprint evidence?

THE DEFENDANT: My fingerprints is not on that shank and

the witness that the State alleges seeing I had it in my hand made other reports that's inconsistent with the report that she's referencing here today, and said there's no witnesses that witnessed what happened. The other witnesses they were part of a wrongful death and a prison official couldn't –

THE COURT: Okay, so sir, I want to talk about the expert; okay?

THE DEFENDANT: Oh, let's talk about the expert.

THE COURT: It sounds like –

THE DEFENDANT: I'm having problems locating one [indiscernible].

THE COURT: Okay, well they don't have evidence that your fingerprints are on it.

THE DEFENDANT: At the last trial they tried to – the victim got on the stand, tried to testify and explain without him being an expert and give an expert opinion why my fingerprints wasn't on that weapon. A forensic expert is gonna come and say my fingerprints is not on that weapon and my fingerprints is not on that weapon 'cause I didn't have it in my hand.

THE COURT: Okay. Well, a fingerprint expert cannot state that second part.

THE DEFENDANT: I mean I will be – that will be my theory but he'll be –

MS. KALLAS: Your Honor, we don't intend to bring a fingerprint expert. All we're going to have is a witness testifying that they

saw the shank in his hand.

THE DEFENDANT: And my witness is gonna testify that my fingerprints isn't on that weapon and my theory to the jury is gonna be I didn't have it in my hand.

THE COURT: Okay. Why is it –

THE DEFENDANT: Your Honor, you already granted a forensic expert.

THE COURT: I understand. I'm just trying to understand this a little bit better; okay? I am not going to continue this for 6 months, sir. It doesn't – you don't need that much time.

THE DEFENDANT: I'm just trying to get a forensic expert. I said 6 months but if I have to be the forensic expert it's going to take me time to get the diploma.

THE COURT: All right, we're going to – Counsel, I'm going to reset the trial date March 11 at 9:00 o'clock and here is your calendar call date. You need to get everything done by then. Its plenty of time.

THE DEFENDANT: Oh, can I ask you one more thing? Can I get a whole transcript of this from the procedures in this case, please, 'cause –

THE COURT: You need to file the appropriate request.

THE DEFENDANT: Okay.

THE COURT: Okay?

THE DEFENDANT: Thank you all. I appreciate it. God bless. I sure need it.

THE COURT: Now sir, we have some motions on for –

THE DEFENDANT: It's the 27, can it wait till the 27th?

THE COURT: Okay, hang on. Okay, what are they for? It says motion for jury instructions. I'm not sure, what's that –

THE DEFENDANT: It's the 27, Your Honor. Can we wait till the 27th?

THE COURT: No, tell me about –

THE DEFENDANT: I wasn't prepared for [indiscernible] –

THE COURT: -- them because I don't need to have you keep coming –

THE DEFENDANT: -- I want to have – I'm not prepared for --

THE COURT: Sir, are –

THE DEFENDANT: -- the 27th –

THE COURT: -- you refusing to answer my question?

THE DEFENDANT: What's your question, Your Honor? I'm gonna answer you.

THE COURT: You do that one more time –

THE DEFENDANT: I'm gonna answer your question.

THE COURT: No, be quiet. You do that one more time, playing games, and you won't be representing yourself. Do you understand me?

THE DEFENDANT: I sure do.

THE COURT: Because the whole basis for you – a Faretta canvass is to advise you –

THE DEFENDANT: I'm listening to you.

THE COURT: Well, you look at me when I talk to you. I look

at you because I show the courtesy to you and I show the courtesy to everybody else in this courtroom and I expect the same courtesy from you as well as everybody else.

THE DEFENDANT: You got it.

THE COURT: November 27th is request for jury instructions. I don't want to have you keep coming back and forth if we don't need to. What is that motion?

THE DEFENDANT: The motion for November 27th, Your Honor, is three motions. One is a motion to dismiss this –

THE COURT: No, one – I'm talk --

THE DEFENDANT: -- entire case.

THE COURT: Listen to me. I asked about jury instructions.

THE DEFENDANT: Oh, the jury instructions. There was -- one of the jury instructions was the victim in this case reported that I unlawfully attempted to injure him 'cause I had the [indiscernible] to do something 'cause I was on the yard and since he made that report I asked for the jury instruction since that's what he reported and they didn't charge me with assault or attempt battery that the jury should render a not –

THE COURT: Okay, sir, we –

THE DEFENDANT: -- guilty verdict.

THE COURT: -- resolved the jury instructions after all the evidence has been presented in the case; okay? And since we're having trial in March, no evidence has been presented; okay? The second one is for *voir dire* and what is that request?

THE DEFENDANT: *Voir dire*? The *voir dire* was when I asked the jury 6 questions if you allow me and –

THE COURT: Okay, we'll resolve that on the day that we're picking the jury.

THE DEFENDANT: Your Honor, the only reason why I filed these motions 'cause when I did my legal research, it said I have to file it before trial so I filed it.

THE COURT: Okay. Jury instructions are resolved if you, again, if you had an attorney, they would tell you at the end of the trial we resolve the jury instructions. We don't resolve them now because we don't know what the evidence is going to be. On the *voir dire*, before we start I will go over the procedures with both sides and then you ask your questions; all right? So, those two motions are off.

The motion to dismiss; specifically, what's that?

THE DEFENDANT: Can I – can we go back real fast to the motions you just took off calendar real fast?

THE COURT: Okay.

THE DEFENDANT: You just said that the *voir dire*, without granting or denying that motion that we're gonna wait till trial 'cause I read the –

THE COURT: *Voir dire* is when the jury is the – when the potential juror is in the box and you – and we ask them questions. We don't have a jury yet.

THE DEFENDANT: No, but it says a request – to make that request before trial so the only reason why I made that request – if it

said make that request at trial I would have made it at trial.

THE COURT: Its automatic, sir. Both sides will be allowed to question the jury; okay?

THE DEFENDANT: Is the motion to dismiss, you want to wait till the 27th?

THE COURT: Well, what is that regarding?

THE DEFENDANT: The motion to dismiss I filed that. I didn't receive an opposition from the State and the rules of this courtroom if they don't file an opposition –

THE COURT: What is the –

THE DEFENDANT: -- with the 7 days –

THE COURT: -- basis for it?

THE DEFENDANT: -- you're supposed to dismiss the case.

THE COURT: What is the basis?

THE DEFENDANT: The basis is that um the sergeant – oh, excuse me, the victim, alleged [indiscernible] admitted these allegations, wrote a report you know and the sergeant held a hearing. I went to the hearing. The sergeant made a decision and gave some sanctions. I had a 10 day grace period to put in an appeal to appeal the sergeant's decision and sanctions. I put that grievance in. A superior of the sergeant was [indiscernible] that was acting warden issued a memorandum and said that um I would be free from this criminal prosecution and that the High Desert State Prison wouldn't file a referral for criminal prosecution and give it to the Attorney General Office. Twenty months later, I issued – I was issued a motion for an initial

arraignment from the State and um –

THE COURT: I will hear that motion on the calendar call date.

THE DEFENDANT: On calendar call date?

THE COURT: Yes.

MS. KALLAS: And, Your Honor, the one issue with the motion to dismiss, my co-counsel and I were kind of having a difficult time understanding it. That kind of better clarified what he was saying, but the issue is that I don't have that memorandum. He said in his motion to dismiss he would bring it to court. I – it's difficult for me to respond if I don't have what memo he's talking about.

THE DEFENDANT: And the State does have that memorandum. It's sequenced from –

THE COURT: Sir, if you are referencing any exhibits in your – if your referencing any documents in your motions you should attach them as exhibits. I will allow you to supplement the motion with any exhibits you want me to consider; okay? Same with the State; if they have any exhibits they want me to consider they'll have to attach it to the motion.

THE DEFENDANT: The reason why I didn't attached a memorandum to the motion 'cause I was scared to send it to – 'cause I was – everybody – I – like they don't have the memorandum, they never seen it, you know the AG's office didn't give it to the [indiscernible] to give to the Attorney General, the wardens don't have it. I'm the only person to have it. My [indiscernible] don't have it [indiscernible] last representing me in this case, so the only reason why I didn't attach it, I

said the motion I was gonna bring down here because when I send it to the law library, give to the law library supervisor, I'm having problems with receiving my legal mail back, you know what I'm saying. So I don't want it – I didn't want it to get tampered with. I didn't want it to – you know what I'm saying, I wanted it to be no problems with that. When I came – when I was here for trial, you know what I'm saying, my lawyer had it. When I got it back it had a paper in there that I never even received so I'm having problems with the [indiscernible] so –

THE COURT: All right, that --

THE DEFENDANT: -- I was scared and I kept it so –

THE COURT: Okay, sir –

THE DEFENDANT: -- it [indiscernible] my intention –

THE COURT: -- you can submit whatever you want, but I'm telling you if it's not submitted to the Court then I cannot consider an exhibit; okay?

THE DEFENDANT: So you're gonna let me --

THE COURT: That's up to you what you want to do. Again, it's the same rules as an attorney. If she wanted to reference something that she didn't submit, I'm not going to consider it; okay? You're under the same rules as an attorney; all right? So, --

THE DEFENDANT: So since the 27th is coming, how much – how long you're gonna let me –

THE COURT: Okay, I just told you.

THE DEFENDANT: -- attach an [indiscernible]. I'll give it to you right now. I got it right now if you want it.

THE COURT: Listen. The jury instructions and *voir dire* motion is off calendar.

THE DEFENDANT: [Indiscernible] calendar call.

THE COURT: The motion to dismiss I said we'll hear on the calendar call date.

THE DEFENDANT: And then you said you wanted me to do what to this motion, to add – to attach this memorandum?

THE COURT: If you want me to consider any documents as part of your motion you need to submit them with your motion. You can file a supplement to the motion attaching whatever documents you want me to consider.

THE DEFENDANT: You want me to rewrite the entire motion?

THE COURT: No. No. You can just do a supplement and say here's exhibits 1 and 2, or whatever it may – A and B because the defendant's is by alphabet if you want me to consider them. It's up to you. I'm not telling you to file it or not file it; okay? So, we'll hear the motion on the calendar call date.

THE CLERK: Okay, jury trial date is March 11th at 9:00 a.m.; calendar call date is March 5th at 8:30 a.m., 2019.

THE DEFENDANT: Thank you.

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MS. KALLAS: Thank you, Your Honor.

THE COURT: You're welcome.

[Hearing concludes at 9:08 a.m.]

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ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

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7/11/2019 11:09 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

TUESDAY, DECEMBER 11, 2018

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING: MOTION FOR STAY OF TRIAL SETTING AND OR MOTION FOR TIME EXTENSION

APPEARANCES:

For the State: CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

For the Defendant: PRO SE

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Tuesday, December 11, 2018

[Hearing begins at 9:10 a.m.]

THE MARSHAL: Page 12.

THE COURT: Antonio Mixon.

THE DEFENDANT: Good morning, [indiscernible].

THE COURT: Good morning, sir.

MS. KALLAS: Good morning, Your Honor, Chelsea Kallas, for the Attorney General's Office.

THE DEFENDANT: And I don't even know why I'm here, sir.

THE COURT: Okay. Sir, you had filed a motion for stay of the trial setting and motion for time extension. I think we did resolve that a couple of weeks ago.

MS. KALLAS: We did. I think you set it to March, Your Honor. I think the main issue that he was having, from my reading of his motion, was the forensic expert. I don't know if he's had contact with him.

THE COURT: Sir, last time we were here there was an issue with your handwriting expert and you were going to try to re-contact the private investigator that we appointed for you. Have you had any success with the investigator?

THE DEFENDANT: I haven't had any success with the investigator but I did file a stipulation with the Court to – about that forensic expert if you got it or not.

THE COURT: I'm sorry?

THE DEFENDANT: I did file a stipulation about that forensic expert. I don't know if you got it or not.

MS. KALLAS: I think he says in his motion he wants us to sign him up for a class so he can become the expert.

THE COURT: Is that correct, sir?

THE DEFENDANT: I didn't even hear her.

THE COURT: She said that she interpreted one of your motions that you wanted to take classes so that you can become educated in the area of fingerprints and testify as an expert in your case. Is that correct?

THE DEFENDANT: That's correct.

THE COURT: Okay, sir, I'm going to deny that request if that's your request.

We – and we've already set the trial date for March 11th so you have four months to be ready; okay? And if there's any other motions to go forward we'll hear them in due course; okay? I would suggest that you contact – send a letter to your investigator and have him contact you; okay, sir?

THE DEFENDANT: Thank you.

THE COURT: Thank you.

MS. KALLAS: Thank you, Your Honor.

THE CLERK: State, can I have your bar number?

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MS. KALLAS: 13902.

THE CLERK: Thank you.

[Hearing concludes at 9:12 a.m.]

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ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

Electronically Filed
7/11/2019 11:12 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

TUESDAY, JANUARY 8, 2019

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:
MOTION FOR LEAVE TO AMEND
MOTION TO CONTINUE TRIAL

APPEARANCES:

For the State: JASON GUNNELL, ESQ.
Sr. Deputy Attorney General

For the Defendant: PRO SE

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Tuesday, January 8, 2019

[Hearing begins at 9:15 a.m.]

THE MARSHAL: Page 17.

THE COURT: Antonio Mixon. This is motion to continue trial setting.

THE DEFENDANT: If I can – can I approach the marshal please? [Indiscernible].

THE COURT: You can hand – what do you have there, sir?

THE DEFENDANT: This is subject to my argument to –

THE COURT: You have to show the State.

THE DEFENDANT: -- pursuant to NRS 530.45. This is a motion to continue trial and is events in this case that I was unaware of, I just became aware of on like I forget the 26th of December and I've been litigating -- I've been believing I've been litigating from the complete files but now I've learned that I'm missing like 37 articles, so to speak, and –

THE COURT: Newspaper articles?

THE DEFENDANT: Excuse – no, excuse me, no like I have – there was an Information filed in this case with a list of witnesses and then like around or about December 26th of last year I believe I was – I received a case summary from the Clerk of the Court and I noticed that there was a notice of witnesses and/or expert witnesses so I guess that led me to believe that there's additional witnesses additional to that witness list. I [indiscernible] I'm unaware of and that there was an unsworn declaration in this case that I'm unaware of and like 35 other things that was filed in this case that I'm unaware of. Some hearings I

wasn't even present in and there was ruled – [indiscernible] was made of this Court and I'm – I don't have any of those documents or things like that. And I'm – I was – I prepared a motion to compel but I'll file it when I get back to High Desert State Prison. And um also I've just spoken to my private investigator. He lets me know his investigation is ongoing and his presence has been excused by his sickness. He says he's been sick and he informed me that he'll be coming to see me on or about in a week or so. And also –

THE COURT: Sir, do you know what specifically you're missing? I know you said there's a witness list.

State, did you file any supplemental witness list in the month of December?

MR. GUNNELL: We have not, Your Honor. I have no idea what he's talking about.

THE DEFENDANT: Specifically, I'm missing 10/24/2017 criminal bindover packet, Las Vegas, Justice Court; 10/24/17 criminal bindover, confidential; 11/14/2017 motion to compel, motion to compel production of discovery and Brady material.

THE COURT: Well, sir, I granted that motion so that should – the items that were requested should have been in the file from the Public Defender – I think it was the Public Defender's Office had the case.

THE DEFENDANT: That motion to compel?

THE COURT: You're right. Well --

THE DEFENDANT: Were you able –

THE COURT: -- I granted –

THE DEFENDANT: -- to grant it?

THE COURT: -- it so whatever items they wanted they were turned over by the State, and so they should have been – that would have been in the file that was turned over to you.

THE DEFENDANT: No, I just don't have the motion I [indiscernible].

THE COURT: Okay, you don't need that to go to trial, sir.

THE DEFENDANT: All right. Okay, the opposition to the – I guess – okay, I don't need that since – notice of witnesses and expert witnesses, I believe I need that for trial. There's a notice of intent to use a COR affidavit or unsworn declaration so that's a statement I'm unaware of. I think I'm going to need that at trial too.

THE COURT: Okay, one at a time. So the notice of witness; do you have an extra copy in your file?

MR. GUNNELL: I don't have –

THE COURT: We're going to print one out right not for you, sir, for --

THE DEFENDANT: Right now?

THE COURT: -- the notice of witnesses.

THE DEFENDANT: I appreciate [indiscernible].

THE COURT: Okay? And –

THE CLERK: What's that, Judge?

THE COURT: -- an unsworn declaration is not evidence in this case because I will not allow that in evidence against you.

THE DEFENDANT: Thank you.

THE COURT: All right, --

THE DEFENDANT: All right, um –

THE COURT: -- because they have to have live witnesses here.

THE DEFENDANT: And there was a Defense prepared by prior counsel. I don't know if some of these motions were present. Some of the motions I filed 'cause some of them will be kind of the same and we know multiple applications is prohibited so I don't know how that's going to work.

THE COURT: Okay, we're getting you the witness list right now, sir. What else are you missing? And the State did not file any supplemental witness list in December – actually, its December – yes, its December 15th, Counsel.

THE DEFENDANT: Well, I kind of just wanted the prior counsel's entire defense and [indiscernible] the State's oppositions to prior counsel's defense.

MR. GUNNELL: You know what, in order to facilitate this, we can provide the investigator a complete copy of everything we have again, and then when he goes up and visits him in NDOC he can provide that to him.

THE COURT: What I would do is – do you understand that, sir? Just have your investigator contact Counsel here. He'll make a whole new set, a copy of everything for you. What I suggest that you do is you do an index of everything that's being turned over.

THE DEFENDANT: Can I mention one more thing before –

THE COURT: Yes, sir.

THE DEFENDANT: There's motions – 'cause we're on calendar for two motions, a motion to continue trial today and the motion to amend [indiscernible] to motion to dismiss, the motion to dismiss are pending but they're not denied and I'm –

THE COURT: Hang on, sir. Your motion to dismiss is set for March 5th.

THE DEFENDANT: I want to um, I want to ask – request of this Court that the motions to – there was a motion to dismiss that was put on calendar that was argued by prior counsel that hasn't been adjudicated on, but then there was another motion to dismiss filed after counsel was substituted for me and I don't want them to you know prejudice each other but – and there was a supplement too so I don't want to confuse the Court that that supplement is supplemented either the counsel's – prior counsel's motion to dismiss or my motion to dismiss so I wanted to vacate my motion to dismiss and supplemented – and supplemental to that motion to dismiss only if the Court grant me the right to refile it as an entire supplement to what prior counsel – prior counsel's motion to dismiss that was filed that was argued but it wasn't adjudicated on. And it's the same stuff that's gonna be in the motion to dismiss – I mean supplement to the motion to dismiss is gonna be in the supplemental to dismiss that I want to refile because I want the exhibit to be constitution and considerable given that the witness that issued that memorandum is now deceased. He had a heart attack or something so

I've been informed by corrections officers at the prison. This is what they're telling me so due to his unavailability and you know I believe there's a procedure to go through to make that constitutionally considerable when you make a [indiscernible] on whether or not this case would be dismissed so I wanted the motion to dismiss [indiscernible] and supplement to that motion to be vacated and I can just refile the supplement to prior counsel's motion to dismiss but –

THE COURT: All right, sir, so you have a motion to dismiss March 5th so what I'm understanding from you is you want to make it a brand new one, make it clean, and start over; is that correct?

THE DEFENDANT: It's gonna be the same. It's gonna be the same. It's gonna be the same stuff that's in there but I just want to –

THE COURT: Redo it basically.

THE DEFENDANT: I want the exhibit to be authenticated, Your Honor, and I want to verify the contents –

THE COURT: Okay.

THE DEFENDANT: -- of the motion.

THE COURT: What I can do, sir, is if you want we can just have you – I can order that that motion to dismiss pending for March 5th is withdrawn so you can redo it and put everything in there that you want. Do you want me to do that, sir? This way you can refile a brand new one and put everything – all the arguments you want, any exhibits you want.

THE DEFENDANT: Can I get a copy of those motions so I can remember what was in them?

THE COURT: It's your – it's the motion you filed. It's your own motion, sir.

THE DEFENDANT: Yeah. That – I never got a – I believe I have a – the motion to – the initial motion to dismiss and I'm not 100 percent positive whether or not I have it but I was just wondering If the Court could just send me a copy of what I'm withdrawing to, refile it so I can just look at for – as notes so I can put it back together.

[Colloquy between Court and Clerk]

THE COURT: Sir, we're not showing that your previous counsel filed a motion to dismiss. It probably would have been a writ of habeas corpus and if it was argued I guarantee you I would have ruled on it. You filed a previous motion to dismiss –

THE DEFENDANT: Your Honor, I was removed from the courtroom. I was removed out of this courtroom. There was three motions that prior counsel filed after the mistrial in this case. One was for, I believe, double jeopardy. That was denied. And one was for vindictive prosecution which prior counsel –

[Colloquy between Court and Clerk]

THE COURT: We're going to print those out for you right now, sir.

THE DEFENDANT: All right. I got one more. One more. Excuse me, my bad. Um, and I was wondering if I can have the Las Vegas marshals subpoena -- our process [indiscernible] to serve my subpoenas if –

THE COURT: Sir, you represent yourself. I cannot order them

to do the subpoenas. You have an investigator that I appointed on your behalf and you can speak with your investigator or with anyone you need to subpoena.

THE DEFENDANT: So I have to find a different corporation or company? I can't go through the Las Vegas marshals to process serve the subpoenas?

THE COURT: No. Use your investigator, sir. That's why we – the State's paying for it.

THE DEFENDANT: All right.

THE COURT: Okay? We're going to give you those motions right now, sir. Your motion to continue trial, which is on calendar here, there is no good cause I'm finding at this point. I'm denying that motion. And you want us to withdraw that motion set for March 5th, sir, the motion to dismiss?

THE DEFENDANT: I don't think I'm gonna have enough time to file it. If I was to get all the copies today and start today with that motion which you're saying give to my private investigator to put it all together which I filed a subpoena in this courtroom already to subpoena you know what I'm saying the – excuse me, of this unavailable witness to attach it to the memorandum. Just say, just like hypothetically speaking that there was a speedy trial invoked right now and this motion was filed, it wouldn't be able to be heard until after 3 days of what the day is for trial right now, so I would at least need 3 days right from –

THE COURT: Sir, you're not listening. Do you want me to vacate that motion or not? If not, we'll keep it on the day.

THE DEFENDANT: I need time to prepare for that motion, that's what I'm saying. The motion –

THE COURT: Okay, so just keep it March 5th?

THE DEFENDANT: If I leave it on March 5th you're not gonna consider it. You ain't gonna just dismiss if for jurisdictional defects. I'm trying to get it together.

THE COURT: Why is there –

THE DEFENDANT: I mean I don't – I mean the 90 day request doesn't have to be 90 days. You know, 30 days –

THE COURT: I'm going to keep it. It's on March 5th. It's been filed, set by the Clerk's Office, and we'll hear it March 5th. Do you want to file any supplements? I'm not saying you have the authority to do that. File whatever you think is appropriate and the State will respond; okay?

THE DEFENDANT: Can I get like 15 days, 20 days extension from March?

THE COURT: Sir, just – I can't advise you of the time frame to file things. That's one of the downfalls of you representing yourself; okay? File whatever you think is appropriate.

THE DEFENDANT: Well, Your Honor, this is a big case. I'm facing life.

THE COURT: Okay, this –

THE DEFENDANT: I'm not facing –

THE COURT: -- is not a life term, –

THE DEFENDANT: -- life without.

THE COURT: -- sir. Listen to me carefully. I can't tell you

what to file, when to file it, what deadlines you have. I gave you a Faretta canvassing and I went over it very thoroughly, advised you this is the pitfalls –

THE DEFENDANT: Your Honor, you originally told me you're not giving me no more [indiscernible].

THE COURT: You interrupt me again, we're done. You were taken out of the courtroom before. Do you remember that?

THE DEFENDANT: I sure do.

THE COURT: Okay. Listen to me carefully. You have an investigator. You got rid of your attorneys. You thought you knew more than they did. Clearly, you don't. But that's your right to represent yourself. You file whatever you think is appropriate, the State will file whatever response they think is appropriate, and I rule accordingly; all right?

THE DEFENDANT: All right, thank you. I appreciate it.

THE COURT: Everything stands.

[Colloquy between Court and Clerk]

THE COURT: Okay, motion to leave on calendar is denied. Motion to continue trial is denied. And here are your former pleadings, sir. The marshal will hand these to you.

THE DEFENDANT: Thank you.

[Colloquy between Court and Clerk]

THE COURT: We'll get those to you in just a moment, all of them.

[Colloquy between Court and Clerk]

THE COURT: Okay, apparently there's another motion on for this Thursday; that's off calendar, okay? Now let's wait for any new motions or the calendar call which is set for March 5th.

THE DEFENDANT: We'll be ready.

THE COURT: And the marshal will hand you copies of all the pleadings.

THE CLERK: Here's three motions that were filed previous to dismiss.

THE COURT: All right. Thank you.

THE MARSHAL: Page 37.

MR. GUNNELL: All right. Thank you, Your Honor.

[Hearing concludes at 9:28 a.m.]

* * * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

Electronically Filed
7/11/2019 11:14 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

TUESDAY, MARCH 5, 2019

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:
MOTION TO DISMISS
STATE'S NOTICE OF MOTION AND MOTION TO PLACE ON CALENDAR
CALENDAR CALL

APPEARANCES:

For the State: CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

For the Defendant: PRO SE

APPEARANCES CONTINUED ON PAGE 2.

Also appearing: ASHLEY SISOLAK, ESQ.
Deputy Public Defender

MARK PERUSCH
Investigator

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Tuesday, March 5, 2019

[Hearing begins at 8:46 a.m.]

THE MARSHAL: Page 6.

THE COURT: Antonio Mixon.

MS. KALLAS: And, Your Honor, when he gets out here could we approach and I have Ms. Sisolak here as a friend of the Court.

MS. SISOLAK: I'd be happy to stand in, Your Honor.

THE COURT: Any objection, Mr. Mixon --

THE DEFENDANT: For [indiscernible] –

THE COURT: -- to Ms. --

THE CLERK: He just got here.

THE COURT: Why don't you restate it because I don't know if the Defendant heard you?

MS. KALLAS: I would just like to approach and Ms. Sisolak here is a friend of the Court.

THE DEFENDANT: No objection.

THE COURT: All right.

MS. SISOLAK: Thank you.

[Bench conference begins – transcribed as follows]

MS. KALLAS: There is just a couple of things I want to make the Court aware of with him; one, -- so, he has been appointed an investigator so he was able to meet with him. And Mr. Mixon basically said that what he wants is, I'm trying to think of the best way to explain it, he invented an App for Apple and had the patent for that and that the CO's stole it from him, like this is a conspiracy against him and are

collecting royalty checks for him. So, that's one issue the investigator's office [indiscernible] having to [indiscernible] through it.

I've been receiving like love letters from him which – I mean Defense counsel [indiscernible] to me would be inappropriate and its still inappropriate. And then I've been getting these letters, like he wants to plead guilty to habitual, then he doesn't want to plead, and so I guess my main concern I just want to make you aware of that. I don't know if he's incompetent. I don't know his ability to represent himself, especially in some of his pleadings as far as his notice of defense is civil – I don't even remember what it was. It was like Ensuria [phonetic] some – I forget because I've never had to deal with it, so –

THE COURT: Well, sometimes you know [indiscernible] – someone [indiscernible] –

MS. KALLAS: Files it.

THE COURT: -- [indiscernible] –

MS. KALLAS: Exactly.

MS. SISOLAK: Oh, that's not Mr. Mixon.

MS. KALLAS: But as far as like the other stuff, you know, the conspiracy against him and letters, I just want to make sure the Court was aware. I asked him just now, I said do you want to you know make – have an offer, take a deal; he doesn't want anything at all.

THE COURT: Okay.

MS. KALLAS: I was trying to resolve it. Its not like I enjoy – like, I just can't make sense of anything that he writes me. I try my best to respond but its been really difficult.

MS. SISOLAK: I don't know if Your Honor remembers this. I used to represent Mr. Mixon.

MS. KALLAS: That's why I dragged her here.

MS. SISOLAK: Mr. Mixon has kind of always been off for lack of a better term. He never wanted to deal. Then we went to trial, he wanted to deal. Then it was – I was getting these very intense relatively creepy and offense love letters. Then I stopped getting letters because Ms. Kallas is now getting the letters.

MS. KALLAS: [Indiscernible].

THE COURT: I mean are they specific? I mean are they –

MS. KALLAS: I have [indiscernible] –

MS. SISOLAK: Mine –

MS. KALLAS: -- like he said [indiscernible] we're going to go to Italy, me and my daughter are Italian, if I can't have you I don't want anybody else. He accused me of fooling around with my co-counsel.

THE COURT: Okay.

MS. KALLAS: I just want to make – I wasn't really sure what to do. I just want to make sure the Court was aware of it.

THE COURT: All right.

MS. KALLAS: And I'm not really sure what to –

MS. SISOLAK: Ms. Kallas and I will have to fight it out about that child because I'm also having one of Mr. [indiscernible], at least one.

THE COURT: Okay. All right. Okay.

MS. KALLAS: And then also, I can put this [indiscernible] on the record. He – you had ordered him his fingerprint expert – and his

investigator is here too if you want to speak with him, they haven't been able to do that yet and so I told him you know that's not – Mr. Mixon that that's not going to be ready. So, if he still wants that he's going to have to ask for a continuance today. And we're going to answer ready, but –

THE COURT: Okay.

MS. KALLAS: -- I think he's going to want that done. There's like a whole process that it I guess takes, so.

THE COURT: Okay. All right. Thank you.

MS. KALLAS: All right.

MS. SISOLAK: Thanks, Your Honor.

[Bench conference ends]

THE COURT: All right, first up on the calendar is a motion to dismiss that Mr. Mixon that you had filed. Do you wish to add anything to your motion, any oral argument for me to consider, sir?

THE DEFENDANT: Is that the notice of the motion on? I filed a notice, that's a notice of [indiscernible] motion.

THE COURT: All right, I have the motion. I'm saying – and I read it. I'm asking you if you want to make any oral argument, anything to add because – did you receive the State's – you did receive the State's opposition because you filed a reply brief, so I'm just asking you if you want to have anything to add?

THE DEFENDANT: I don't got nothing to add to it.

THE COURT: No? All right, State.

MS. KALLAS: Your Honor, as expressed last time, I did have difficulty kind of making out exactly what Mr. Mixon's arguments were.

To the extent I understood them, it was that there is a piece of paper out there that says we can't charge him. I don't even see that piece of paper attached and I elaborate that on – in my motion. So, I would submit it on that.

THE COURT: All right, I'm denying the motion, Mr. Mixon. There's no legal basis that you have set forth to dismiss the case.

Mr. Mixon, I've been advised that you have been sending the prosecutor what might be considered love letters. That is most inappropriate. I'm assuming that its not going to assist you in getting a better deal or the State agreeing to dismiss the case. Sometimes that just gets someone more convinced to prosecute to the full extent or and there may be a potential of adding new charges. So, if you're doing that, I would suggest that you stop. That could have an impact on whatever freedoms you have at the prison system; okay? So there's no motion right now but just – if you're doing it, I suggest you stop.

All right, and we do have – this is time set for calendar call.

MS. KALLAS: Your Honor, there was one other matter –

THE COURT: Sure.

MS. KALLAS: -- and I expressed that with your clerk. I think, and this was way back when Ms. Sisolak was on the case, there was one motion that I think we've argued, I forget, but the motion for prosecutorial vindictiveness that I don't think was ever – [indiscernible] made a ruling on, I think Mr. – at that time Mr. Mixon got taken out of the courtroom.

THE COURT: I haven't reviewed that recently. I'll have to look

at that.

MS. KALLAS: Okay.

THE COURT: But I will address that before the trial starts.

MS. KALLAS: No problem.

THE COURT: Okay.

Mr. Mixon, the Court did authorize you to retain a private investigator and I understand one has been retained and has been – has contacted you. Are you going to be ready to go to trial next week?

THE DEFENDANT: Well, he just let me know that.

THE COURT: I'm sorry?

THE DEFENDANT: I just spoke to him right now and I was requesting for an extension so we can [indiscernible] and he advised me that it would be $1,600.00 and we can get a court order for that and then a court order for the Nevada Department of Corrections to send him the knife so he can send it out of state to get a forensic scientist. And, um, yeah, that's –

MS. KALLAS: And I have –

THE COURT: Okay.

MS. KALLAS: -- no objection to continuing it. I would just ask – I think its kind of a lengthy process. They have to pay for it first, then I think its shipped out to South Carolina or somewhere, so I would just ask that we set a status check date so we don't have to keep coming here prepping for this. This is the third time the State's prepped and been ready for trial.

THE COURT: Do we have your investigator here, Mr. Mixon?

MS. KALLAS: He's here, Your Honor.

THE COURT: Sir, can you come up; Your name for the record.

MR. PREUSCH: Certainly, my name is Mark Preusch, P-R-E-U-S-C-H.

THE COURT: And sir, were you the individual who was able to locate a lab that will fingerprint the knife in question?

MR. PREUSCH: Yes, sir. It's out of state.

THE COURT: All right; have they given you an indication as to how long it will take upon receipt of the knife and of the funds? Apparently, that's the most important thing, but –

MR. PREUSHCH: Yeah, the funds most importantly; $1600.00 is their flat lab fee. It takes about 8 hours is what they told me. It shouldn't' take that long. Their turnaround time would probably be around 2 weeks but he wasn't very specific with me on that.

THE COURT: And what's the name of the expert?

MR. PERUSCH: Ron Smith and Associates, and its Ron Smith is the principal.

THE COURT: Okay.

All right, I am going to order – I guess there is a oral Widdis motion, order to pay for the expert fees of $1600.00. We'll advise Drew Christiansen's office of that today. And, sir, if you could please contact his office probably tomorrow –

MR. PERUSCH: Absolutely.

THE COURT: -- and find out the process of getting a check

through his office; okay?

Counsel, if you can prepare a stipulation that it will be retested, chain of custody issues, I'm sure you're going to want a chain of custody to be confirmed on this even though its being sent out of state and back.

MS. KALLAS: Yes, Your Honor.

THE COURT: Now, Mr. Mixon, Counsel here is going to prepare a stipulation for your signature; okay? You're going to need to sign it – you're going to review it, you're going to need to sign it because basically we talked about sending it out of state, get it retested, coming back you need a report; okay? And also we want to make sure the chain of custody is protected. Failure on your part to sign the stipulation, okay, then that's going to prevent you from bringing any evidence forward regarding the knife as far as fingerprints go. Do you understand?

THE DEFENDANT: Its' going to be sent to [indiscernible]?

THE COURT: I'm sorry?

THE DEFENDANT: It's going to be sent to me from –

THE COURT: They're going to send – they'll either – someone might hand deliver it to you or they're going to send it to you –

MS. KALLAS: We usually just mail it, yeah.

THE COURT: Okay. They'll mail it to you. They'll give you a return envelope with postage paid; okay? You need to sign it and then return it to them because not until that is signed and filed with the Court can we send the knife out of state; okay? So, you will be the one that will be holding up if you don't immediately review it, sign it, and return it. Do

you understand, sir?

THE DEFENDANT: Yes, sir.

THE COURT: All right, what I'm going to do is we'll set a 30 day status check from today. Like I said, we'll contact Drew Christiansen's office today, and sir, if you can contact his office tomorrow about the payment and the check.

MR. PERUSCH: Absolutely.

THE COURT: And then, Counsel, you'll get over a – you'll get a stipulation order over to Mr. Mixon.

MS. KALLAS: I will, Your Honor.

THE COURT: All right.

THE CLERK: April 4th --

MS. KALLAS: And that is just – I apologize, just as to the chain of custody?

THE COURT: Well, I mean that's going to be sent to this organization. They're going to – you're going to send it from the evidence vault and [indiscernible] be returned – I don't know if you want to write certified mail, whatever, that Mr. Mixon is waiving any chain of custody issues on the knife.

MS. KALLAS: Okay. Thank you, Your Honor.

THE COURT: All right, thank you.

THE CLERK: April 4th, 8:30 a.m.

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THE COURT: We'll see everybody back at that time.

MS. KALLAS: Thank you, Your Honor.

THE COURT: Thank you.

[Hearing concludes at 8:57 a.m.]

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ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

TUESDAY, APRIL 30, 2019

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:
STATE'S MOTION FOR AN EXTENSION OF TIME
MOTION TO WITHDRAW GUILTY PLEA

APPEARANCES:

For the State: CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

For the Defendant: PRO SE

RECORDED BY: SANDRA PRUCHNIC, COURT RECORDER

Las Vegas, Nevada, Tuesday, April 30, 2019

[Hearing begins at 8:49 a.m.]

THE MARSHAL: Page 4.

THE COURT: Antonio Mixon. This is motion to withdraw guilty plea filed by Mr. Mixon who is in proper person.

MS. KALLAS: And good morning, Your Honor, Chelsea Kallas for the Attorney General. I did just speak with Mr. Mixon. He didn't receive our opposition yet. We filed it Thursday but it takes a little time because he's in prison. I have a copy here I can give him but I didn't know if he was going to want to reply or not.

THE COURT: Mr. Mixon, would you want an opportunity to file a reply brief?

THE DEFENDANT: Yes.

THE COURT: Okay. Counsel, if you can just hand your opposition to the Marshal; hand it to Mr. Mixon.

We'll continue – Mr. Mixon, we're going to continue this out for two weeks for argument on the motion. So, you're going to get the motion today, file your reply brief, and then we'll see you in two weeks. Actually, let's go three weeks out.

THE CLERK: May 21st, 8:30 a.m.

THE MARSHAL: Page 10

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MS. KALLAS: Thank you, Your Honor.

THE COURT: Thank you.

[Hearing concludes at 8:51 a.m.]

* * * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Cynthia Georgilas

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE LINDA MARIE BELL, CHIEF DISTRICT COURT JUDGE

TUESDAY, MAY 21, 2019

RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING: MOTION TO WITHDRAW GUILTY PLEA SENTENCING

APPEARANCES:

For the State: CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

For the Defendant: PRO SE

Also appearing: ERIKA D. BALLOU, ESQ.
Deputy Public Defender

RECORDED BY: RENEE VINCENT, COURT RECORDER

Las Vegas, Nevada, Tuesday, May 21, 2019

[Hearing begins at 8:44 a.m.]

THE COURT: All right, we're ready on 8 on Mixon.

MS. KALLAS: Yes, Your Honor.

THE COURT: Okay, page 8, State of Nevada versus Antonio Mixon, case number C327439.

MS. KALLAS: Good morning, Your Honor, Chelsea Kallas for the Attorney General's Office.

THE COURT: All right, and Mr. Mixon is present in custody. He's representing himself.

All right, so this is on for motion to withdraw guilty plea. It is also on for sentencing.

[Colloquy between Court and Clerk]

THE COURT: So, let's start with the motion to withdraw guilty plea. Mr. Mixon, it's your motion.

THE DEFENDANT: You said that this was on for sentencing also?

THE COURT: I have it on for both today but I don't – if you're not prepared to go forward we can reset the sentencing to another date, depending on how it goes –

THE DEFENDANT: I'm not prepared to go.

THE COURT: -- with the motion.

THE DEFENDANT: I wasn't even aware there was going to be sentencing today.

THE COURT: It may be just so that didn't get lost so don't

worry about that. Let's just hear the motion and then we can set a sentencing date if that's appropriate after I hear your motion.

THE DEFENDANT: In regards to these motions; you read them already?

THE COURT: The motion to withdraw guilty plea? Yes, sir.

THE DEFENDANT: Okay, so we're gonna address this first?

THE COURT: That's the only motion I have. Did you have another motion besides that?

THE DEFENDANT: No.

THE COURT: Okay.

THE DEFENDANT: Well, I have – you said sentencing; you're gonna throw that off, right?

THE COURT: Yes.

THE DEFENDANT: Okay.

THE COURT: So did you – is there anything you wanted to say about your motion?

THE DEFENDANT: Yes. Yes. Sure. I filed this motion to withdraw guilty plea. The State was ordered by this Court to prepare chains of custody of a weapon in this case from where it was held to my private investigator. And to prepare a stipulation order, the chain of custody and send the stipulation to me so I could sign it and send it back to Counsel and to this Court. Basically, there was negotiations in this case and prior to those negotiations I was supposed to receive a stipulation from the State in regards to –

THE COURT: All right, but sir you didn't have it when you

pled guilty; right?

THE DEFENDANT: I didn't have what?

THE COURT: I mean you knew you didn't have that from the State when you pled guilty.

THE DEFENDANT: I didn't have what?

THE COURT: The stipulation.

THE DEFENDANT: I was supposed to receive it. Instead of me receiving a stipulation, I received a motion to increase bail from the State with two alleged supporting facts. One of them was 12 months old and another one was 7 months old. That day I called the State and from there negotiations commenced. This evidence shows that my DNA is not on that weapon and doesn't belong to me. I didn't possess it. That's what actually occurred. That's the evidence. And it's the State's job, prior to negotiations, during negotiations to – and that's Nevada Revised Statutes, they're supposed to go over the status of – that chain of custody, the stipulation, that's not my job. We asked this Court, well, let it be my job. Let me go through the Nevada Department of Corrections to do the chain of custody to get the stipulation so I can get this evidence in this courtroom. The Judge --

THE COURT: All right, but sir, -- so the standard for withdrawing a guilty plea, I have to look at whether you – it was knowing and voluntary. And it isn't about what the evidence was in the case. It's whether you made a decision to plead guilty –

THE DEFENDANT: Voluntarily, right?

THE COURT: -- voluntarily.

THE DEFENDANT: Why would this plea be considered voluntarily entered into if there's evidence showing that I'm not guilty of the offense that --

THE COURT: All right, --

THE DEFENDANT: -- is on this Guilty Plea Agreement? That evidence shows I'm innocent of this attempt possession. Their State's theory of this case was involuntary [indiscernible]. They said I had this weapon, ran, made a dispossession of it, and was then apprehended approximating this weapon. That didn't occur, you know what I'm saying? This weapon was abandoned by someone else, I don't know who, and I was apprehended in the proximity of this weapon. I never had it. I didn't possess it. The victim in this case warned me thoroughly, coming out of his unit –

THE COURT: Okay, but –

THE DEFENDANT: -- with a metal detector.

THE COURT: Sir, I have on – in the transcripts, when you plead guilty, Judge Villani asked you: Sir, is one of the reasons you are guilty – pleading guilty to this charge is in truth and in fact you're guilty of the charge? And you said, I'm guilty, Your Honor.

THE DEFENDANT: Your Honor, that – those answers are [indiscernible] to the questions of the courtroom are incredible. Okay, the Defendant had not guilty and I was at the time those answers was given to the Judge. There's no way you can say that those answers to those questions are credible without this evidence being on the record. Those answers are totally incredible.

THE COURT: And when Judge Villani asked you if you possessed, attempt to possess or have in your control dirk, dagger, switchblade, knife, or sharp instrument, –

THE DEFENDANT: That answer to that question was incredible also.

THE COURT: -- you said – he said, did you do those things, and you said, yes, Your Honor.

THE DEFENDANT: That answer was incredible also. This plea is totally involuntarily, unknowingly answered – unintelligently answered. There was not guilty knowledge that I had at the time of those answers being given to the questions of this courtroom that was prevented from being in this courtroom because the State didn't do their job. I can't do their job for them. The Court ordered them to do their job. I asked them to do their job. They were supposed to do that stipulation. In lieu of them supposed to do that, they sent the motion to increase bail. I called them that – I called the State that exact date, like, what's going on with this stipulation, what is this chain of custody. They didn't have an offer. They just brung me down here 4 days later and shoved an offer in my face. Now I have the grisly choice of going to trial without this evidence, being subject to being found guilty, punished to 5 and a half, 12 years in prison versus a 1 to 3, a 12 to 30 months. And then I get a PSI today, the P&P didn't even come interview me. I'm going to allow that as due process. This plea is totally involuntary. She – the State cannot prove beyond a reasonable doubt that I possessed that weapon in no courtroom in the world – or attempt to possess that weapon given

that evidence. That I was granted a private – I mean I was granted a forensic scientist. The -- $1,600.00 – a check was coming from the Public Defender Office to give to the private investigator so he can go send it to Ron Smith out of state. It was only gonna take 2 weeks – be returned in 2 weeks and it was only going to be 8 hours. She's known that 3 weeks prior – excuse me, 3 weeks following that order, she just sent a motion to increase bail. All she had to do was call to – and in this PSI it says they keep on contacting Nevada corrections. They're not getting any response. They're not getting any response. So, I don't know what steps she took to contact the Nevada Department of Corrections about the chain of custody of this weapon so it can be fingerprinted.

THE COURT: All right. Okay. Thank you, sir.

So, I'm going to deny the motion. It appears from the plea canvass that the plea was knowing and voluntary and freely entered. And it also appears that Mr. Mixon was aware of whatever evidentiary concern there was prior to entering the plea. So, the motion is denied; if the State could prepare the order, please?

MS. KALLAS: Yes, Your Honor.

THE COURT: And then – sir, so you had a stipulated sentence of 12 to 30. Do you want to do that today or do you want me to – or do you want some more time?

THE DEFENDANT: You gonna give me probation?

THE COURT: No; it's a 12 – it's a stipulated sentence of –

THE DEFENDANT: The probation –

THE COURT: -- 12 to – it was a stipulated sentence of 12 to

30. That was the negotiation.

THE DEFENDANT: That was the recommended negotiation? It was [indiscernible] probation.

THE COURT: Well, sir, what you agreed to was 12 to 30 consecutive to the other charges.

THE DEFENDANT: And I was eligible for probation?

THE COURT: All right, so are you ready to move forward with sentencing today or do you want me to continue it?

THE DEFENDANT: You might as well. Your Honor denied the motion.

THE COURT: Okay.

MS. KALLAS: Your Honor, my only concern was, and I'm not sure, in regards to the PSI, I just – I gave him a copy of it today; he never got one. P&P never went out and interviewed them. I'm not sure if that's their normal practice when they're already incarcerated, but I know he had mentioned that was an issue earlier.

THE COURT: All right so, sir, is there anything that you see that's incorrect in the PSI? Have you had a chance to look at it?

THE DEFENDANT: You want me to go over all this –

THE COURT: Okay, well we'll just continue it so that you have a chance to look over it, sir, because if there's any error –

THE DEFENDANT: No, I've already looked at it before you got on the bench.

THE COURT: If there's any errors in it they have to be fixed before you get sentenced.

THE DEFENDANT: There's no – there's – only errors is this will be constitutional [indiscernible] ready for the appeal.

THE COURT: Okay.

THE DEFENDANT: And I do want to go along with sentencing today and I want ask you if I can get penalty counsel in this case so I can appeal this guilty plea all the way to wherever we got to go.

THE COURT: Okay.

THE DEFENDANT: Or, grant my application to proceed *informa pauperis* so I can start my appellate process and I can be [indiscernible].

THE COURT: Well, I mean, sir, so which one would you like to do? Would you – I mean do you want to represent --

THE DEFENDANT: I would like to get sentenced, you grant my application to proceed *informa pauperis* so I can start the appellate –

THE COURT: Okay.

THE DEFENDANT: -- process and give me appellate counsel if you can so I can start the appellate process. I want the appellate counsel.

THE COURT: Okay. All right, so is there any legal cause or reason we should not go forward with sentencing today?

MS. KALLAS: No, Your Honor.

THE DEFENDANT: And can I say one more thing before you pass sentence?

[Colloquy between Court and Clerk]

THE COURT: Yeah.

THE DEFENDANT: Can I say one thing?

THE COURT: Sure.

THE DEFENDANT: Um, in this PSI it has all of my prior convictions. I've already did time for it. I've already been punished for it. I been in prison – 7 years, going on 8 year. In 3 months it will be 8 years. This prison facility already says they wasn't even gonna charge me in the courtroom for this case I'm being down here for. They already gave me 7 months – excuse me, 6 months just for being accused of this in the prison, then brung down here and sentenced me again. Now you [indiscernible] give me another whatever you're gonna give me. So, I've been punished twice for this here. Then this PSI has every allegation I ever been sentenced for or accused of and I think just considering this is just totally be biased and prejudiced. I gave my time for these things that I've been convicted of, you know what I'm saying? These things has been dismissed. Obviously, I didn't do them. What I'm currently in prison for – I'm to go to parole board. I was going home in 3 months and now I'm down here facing now. With this I'll be – it will be 6 years I go home from now [indiscernible] this case if I don't want [indiscernible] this. And I'm just asking that you don't consider any of these priors. I think it would be biased. I think that's against my Fifth Amendment right to consider you know priors in this case, priors bad acts, prior [indiscernible], prior convictions. The Fifth Amendment says you can't be subjected to be punished twice for the same offense and I'm just – [indiscernible]. I don't know what [indiscernible] you guys are going by. I don't know what

jurisdiction you're going by. I don't know what you all adopting. But I'm going by the Fifth Amendment and it totally sounds like you shouldn't consider none –

THE COURT: Okay.

THE DEFENDANT: -- of these priors in this PSI and just consider --

THE COURT: Hang on.

THE DEFENDANT: -- the facts [indiscernible] –

THE COURT: Hang on. Just –

THE DEFENDANT: -- of this offense.

THE COURT: Okay. So, sir, by virtue of your plea of guilty to attempt possession or control of a dangerous weapon or facsimile by an incarcerated person, a felony, a category C felony, I adjudicate you guilty of that offense. Does the State submit it on the negotiations?

MS. KALLAS: Yes, Your Honor. And I would –

THE COURT: All right.

MS. KALLAS: -- just like to make one thing for the record clear that he discussed in his motion. Defendant called us asking for a negotiation. We didn't force anything down his throat. I know you've already ruled on that, but he called us and I'm not sure if that's because he was up for parole and wanted it –

THE DEFENDANT: I have a [indiscernible] of evidence.

THE COURT: All right.

MS. KALLAS: -- figured out but he had called my office asking for the negotiation and then the next day we report is when he pled

guilty. And he had agreed and stipulated to the sentence. I would just ask that you follow that, Your Honor.

THE COURT: All right.

Okay, so is there anything else that you would like to say?

THE DEFENDANT: No. I appreciate your time.

THE COURT: Okay. So, -- sir, and what I'm considering here is –

THE DEFENDANT: Probation.

THE COURT: -- not your record but the negotiation that you agreed to with the Attorney General And I know that you're not agreeing now, but when you pled guilty what you agreed to was a sentence of 12 to 30 months. So, in accordance with the laws of the State of Nevada, I sentence you to a minimum of 12 and a maximum of 30 months in the Nevada Department of Corrections that will run consecutively to C277977. You will not get any credit for time served on this one. And you will also be required to pay a $25.00 administrative assessment fee; DNA was previously taken so it won't be ordered but there is a $3.00 DNA administrative assessment. And I think that's it.

THE DEFENDANT: Can I – what about the appellate counsel? Can I get appellate counsel [indiscernible]?

THE COURT: Oh. Yup, and –

THE DEFENDANT: Can someone follow an order around here that you ordered them to do something?

[Colloquy between Court and Clerk]

THE COURT: Sir, who was your attorney previously? You

had the –

THE DEFENDANT: I don't even remember.

THE COURT: -- it looks like Ms.—

THE DEFENDANT: I don't even remember.

THE COURT: You had the Public –

MS. KALLAS: It was Ashley Sisolak from the Public Defenders.

THE COURT: You had the Public Defender's Office so I will reappoint the Public Defender's Office to pursue the appeal.

THE DEFENDANT: Thank you.

THE COURT: All right.

MS. BALLOU: Your Honor, I'm not sure our office takes those kinds of appointments.

THE DEFENDANT: [Indiscernible].

THE COURT: He was your client and then he was representing himself.

MS. BALLOU: Right, but I don't know that we do, though. I think that –

THE DEFENDANT: If they don't want to get on the case [indiscernible] do you have –

MS. BALLOU: I'm just not sure, so.

THE DEFENDANT: -- appointed counsel –

THE COURT: Ms. Ballou, why would you –

THE DEFENDANT: -- prior appointed counsel or something like that?

THE COURT: It's not a post-conviction. It's just a straight appeal --

MS. BALLOU: Okay.

THE COURT: -- on a guilty plea.

THE COURT: All right.

THE MARSHAL: Page 24.

THE DEFENDANT: Thank you for the 6 years.

[Hearing concludes at 8:59 a.m.]

* * * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

Electronically Filed
7/11/2019 11:23 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

TUESDAY, JANUARY 2, 2018

RECORDER'S ROUGH DRAFT PARTIAL TRANSCRIPT:
JURY TRIAL – DAY 1
[VOIR DIRE & JURY SELECTION]

APPEARANCES:

For the State: JASON GUNNELL, ESQ.
Senior Deputy Attorney General
CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

For the Defendant: ASHLEY SISOLAK, ESQ.
TEGAN MACHNICH, ESQ.
Deputy Public Defenders

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Tuesday, January 2, 2018

[Hearing begins at 11:25 a.m.]

[Inside the presence of jury venire]

THE CLERK: Okay, I'm going to call roll. Just – I may mispronounce the names so just bear with me.

[Roll call of the jury venire]

THE MARSHAL: All the jury is accounted for. Please be seated.

[Pause in proceedings]

THE MARSHAL: All rise, the Honorable Michael Villani presiding. Department 17 is now in session. Please be seated and come to order.

THE COURT: Good morning, Ladies and gentlemen, and hope you had a good holiday season. And I'm sure all of you were looking forward to jury duty after the holidays, right? Okay, good.

Ladies and gentlemen, on behalf of my courtroom, Department 17, I am Judge Michael Villani, the presiding judge here and the attorneys in our court today, we appreciate your honoring your jury summons and coming down. All of us realize that jury service may not be the most convenient thing for you to perform. But please understand that our system of justice does not work unless we have individuals such as yourself willing to serve. In other countries they have government officials who make the decisions on civil and criminal cases. We don't have a perfect system but it is the best in the world. Its best that we have a cross-section of our community to make the tough decisions, again,

whether it's a civil or criminal case. I handle both civil and criminal cases. I am scheduled this week to handle a criminal case, so if you are selected you'll be hearing a criminal case here in my courtroom.

Ladies and gentlemen, the process we're going to go through today is I'm going to ask some questions, general background questions of all of you and after I complete my general questions I'm going to open up the questioning by the attorneys so they can just get a little bit more information on your background to make sure you're the type of person that would be fair to both sides in this case. And I want to emphasize that, in all trials, jurors need to be fair to both sides. Listen to the evidence, follow the law, and apply the law to the facts as you find them and make the decision. So, that's what we're looking for. We do this process under oath. We assume all [indiscernible] will tell the truth, however, we are required to place you under oath to make sure that all of your answers are truthful. So at this time, if everyone could please stand, the Clerk will swear in – swear all of you in to make sure that you will give honest answers.

[Jury venire sworn in]

THE COURT: All right, have a seat. Thank you.

Ladies and gentlemen, --

MS. MACHNICH: And, Your Honor, may we approach just briefly?

THE COURT: All right.

MS. MACHNICH: Thank you.

THE COURT: Counsel, approach, please.

[Bench conference begins – transcribed as follows:]

MS. MACHNICH: [Indiscernible] challenge the venire at this time. We can do it outside the presence later, but just in short so we can make a permanent decision if Your Honor is willing to do that, there's a [indiscernible] one person who's [indiscernible] who's African American on this jury.

UNKNOWN SPEAKER: [Indiscernible].

MS. MACHNICH: [Indiscernible] is 45. That's 2 percent. The representative population in the community is approximately 11.5 percent [indiscernible], 2013 census. We're outside the 13 percent variance on that as well set out by the Nevada Supreme Court and therefore, we'd be –

MS. SISOLAK: It's a Batson.

MS. MACHNICH: -- asking that the venire be struck and [indiscernible] be brought up at this time in front of them and to do that we would have to be requesting an evidentiary hearing at the [indiscernible] Your Honor, in this case to mark [indiscernible].

THE COURT: Okay. Will you ask that at one of our breaks, our next break; okay?

MS. SISOLAK: Thank you, Your Honor.

MS. MACHNICH: Thank you.

[Bench conference ends]

THE COURT: Ladies and gentlemen, one of the most important portions of our Constitution is trial by jury, whether civil or criminal. It's something that our forefathers fought for and part of our

United States Constitution, also the Constitution of the State of Nevada, and so all of – the attorneys as well as myself take that very seriously and hope all of you do as well because it is essential that we uphold that right of all individuals, whether civil or criminal case.

Ladies and gentlemen, the oath you took is just to make sure that all of your answers will be honest. The only wrong answer you can give is one that is not truthful. So there – that's the only wrong answer you can give is one that's not truthful. We're just asking you for your personal opinions. Everyone here has different backgrounds, life experiences because you're different ages, different education levels, different parents, different socio-economic status, different – you know, your own education, your life experiences, so we realize that and that's probably why our jury system is the best because we have a good cross-section of our community to try these particular cases.

All of you received one of these jury summons in the mail and you have it – you fold back the little corner and you're wearing that badge. This jury summons has my name on it. Actually, I have three. I was lucky enough to get three. One is from 2008, 2012, and 2017. Some of you may think, well, you had a jury summons but you didn't have to serve. I was a sitting judge in 2008. I received my jury summons. I went down to the 3rd floor like all of you did. Actually, I had to wait all morning. They told me to come back at 1:30 and at 1:30 my number was called off. I was marched to a courtroom just like all of you this morning and I was – even though I was a sitting judge, I was selected as a juror in a civil case and I sat for two and a half weeks being a juror in a civil case.

One of our Nevada Supreme Court Justices, two years ago, received a jury summons up, I think it was Washoe County or perhaps – I think it was Washoe County in a criminal case. And one of our Supreme Court Justices was selected as a juror in a criminal case. And we have another judge down here about 8 years ago or so received a jury summons and was a juror in a civil case. So, we receive jury summons and we are ready, willing, and able to serve and I hope all of you are willing to serve as well.

Ladies and gentlemen, before we go any further, I'm going to ask the attorneys from both sides – one of the attorneys for each side to introduce themself, their co-counsel and a representative of the State in front of me to my right, and advise you of the nature of the charges and any potential witnesses that may be called, so the nature of the charges, any relevant dates, locations, and any potential witnesses.

Please listen to these names very carefully because some of these individuals may be friends, neighbors, or co-workers of yours and we need to know if you're familiar with these individuals. Then I'll turn to the Defense Counsel and ask the same question. I'll let them introduce themselves, their client, and any potential witnesses that they may call.

State.

MR. GUNNELL: Good morning, ladies and gentlemen, my name is Jason Gunnell. I'm with Chelsea Kallas. We represent the State. We're both Deputy Attorney Generals with the Office of the Attorney General's Office here in Las Vegas. Just to let you know what the general allegations of this case are, on or about December 4, 2015, the

Defendant, at or near High Desert State Prison, committed a battery on a corrections officer by throwing a rock at him. And then there's also the Defendant is charged with having in his possession a sharp instrument, commonly referred to as a shank, at that time and that was on or about December 4, 2015 while in custody of NDOC.

And as to the witnesses we anticipate calling at this trial, we anticipate calling three witnesses. I'll just give you their names. First of all, one – our first witness is going to be Dean Ontiveros. He's a correction officer with the Nevada Department of Corrections. Our second witness is going to be Tyler Mcaninch. And I apologize; I slaughter names all the time. He actually is a former corrections officer out there at High Desert State Prison. And our third witness is going to be Dustin Mumpower. He actually works for the taxicab authority now but he was actually a sergeant out there at Nevada Department of Corrections. And that's [indiscernible].

THE COURT: Thank you, Counsel.

Is anyone familiar with either the two Counsel from the Attorney General's Office or any of the potential witnesses that they may call in this matter, please raise your hand? No hands. Anyone familiar with the alleged incident in this matter? Okay, no hands are being raised. Thank you.

We'll turn to the Defense Counsel table.

MS. SISOLAK: Thank you, Your Honor.

Good morning. Thank you, guys, for being here. My name is Ashley Sisolak along with Tegan Machnich. We represent Mr. Mixon in

this matter. We may potentially be calling Bryan Wong, Toni Worthman, Jay Barth, Eric Romero, Victor Daniels, Keith Mckeehan, Brian Williams, Jerry Howell, Jennifer Nash, and Perry Russell.

Thank you.

THE COURT: Thank you, Counsel.

Anyone familiar with the Defense Counsel, the Defendant, or any of their potential witnesses that may be called in this matter? All rignt; no hands being raised. Thank you.

Ladies and gentlemen, before we go any further there's a certain qualification questions I have to ask you. One is, is anyone here not a U.S. citizen -- not a U.S. citizen [emphasis added]? No hands being raised. Anyone here have a felony conviction? No hands being raised. Anyone here have any difficulty understanding the English language? All right, Marshal, if you can – the lady in the middle row with the red coat. And if you are called upon, please give us your name and the last three numbers on your badge. You can have a seat, ma'am. You can sit down. Your name, ma'am, and your last three numbers on your badge?

JUROR NO. 143: My name is Yu, Iorio, last badge number is 0143.

THE COURT: And, ma'am, did you understand the oath when everyone stood up and swore to tell the truth? Did you understand that?

JUROR NO. 143: A little bit.

THE COURT: Okay. What is your native language?

JUROR NO. 143: Korean.

THE COURT: All right. How long have you been in the United States?

JUROR NO. 143: Twenty some year.

THE COURT: Okay. Are you employed, ma'am?

JUROR NO. 143: Yes.

THE COURT: Okay. And what type of work do you do?

JUROR NO. 143: I'm working casino dealer.

THE COURT: I'm sorry?

JUROR NO. 143. Dealer, 21 dealer.

THE COURT: Oh, 21 dealer, okay. And you did not understand the oath that we gave? I just want to make sure.

JUROR NO. 143: That's [indiscernible] barely needed too much English.

THE COURT: Okay. Well, its essential that all jurors understand the English language so we can make sure that you understand all the testimony and hear the arguments of the attorneys. Any objection by either side to release?

MS. SISOLAK: No objection at this time, Your Honor.

MS. KALLAS: No objection, Your Honor.

THE COURT: All right. Ma'am, you're going to be released. In the future we can maybe have a court interpreter for you so you can serve; all right? But at this time we're going to excuse you.

JUROR NO. 143. Thank you.

THE COURT: Okay? Thank you. And just turn your badge in to the Marshal and we're going to call the next juror.

THE CLERK: Maria Theresa Nava.

THE COURT: Ms. Nava, if you can just come on up and take the chair.

And we had another hand in the front row; Mr. Marshal, right here, a gentleman here, the fourth one.

Yes, sir, your name and badge number?

JUROR NO. 173: My name is Georgios Kotzageorgis and my job – my badge number –

THE COURT: Can you help him, Marshal?

JUROR NO. 173: 173.

THE COURT: Sir, did you understand the oath that my clerk gave everybody when she had everyone stand up?

JUROR NO. 173: Yeah. I – yeah –

THE COURT: Did you understand it?

JUROR NO. 173: No, no really very well. I speak but not very well. I don't understand very well.

THE COURT: All right. What is your native language, sir?

JUROR NO. 173: Greek.

THE COURT: All right. And how long have you been in the United States?

JUROR NO. 173: 1997.

THE COURT: Okay, and are you employed, sir?

JUROR NO. 173: Yes, sir.

THE COURT: And what type of work do you do?

JUROR NO. 173: Baggage handler.

THE COURT: Baggage handler in one of the hotels?

JUROR NO. 173. No, airport.

THE COURT: At the airport, okay. And I just want to make sure that you did – did you understand the oath when my clerk had everyone raise their right hand and swear to tell the truth?

JUROR NO. 173: I listen to it too.

THE COURT: No, did you understand what she said?

JUROR NO. 173: You?

THE COURT: No, my clerk.

JUROR NO. 173: No really. No very well.

THE COURT: All right, State, any objection to releasing?

MS. KALLAS: No, Your Honor.

THE COURT: Defense?

MS. SISOLAK: No, Your Honor.

THE COURT: All right, sir, we're going to release you because we have to make sure that everyone that potentially will serve understands 100 percent of the English language; okay? And so, you are excused, and in the future we'll advise the Court – the jury commissioner maybe we can get a court interpreter for you. All right; thank you, sir.

All right, and anyone else in the jury box area? How about – there was someone's hand in the gallery, Marshal?

Ma'am, your name?

JUROR NO. Ana Maria Rodriguez.

THE COURT: And is your badge number 231?

JUROR NO. 231: 010231.

THE COURT: And, ma'am, what is your native language? Is it Spanish?

JUROR NO. 231: Ah-ha, Espanola.

THE COURT: Okay. Ma'am, did you understand the oath?

JUROR NO. 231: No.

THE COURT: State, any objection to releasing her?

MS. KALLAS: No objection, Your Honor.

THE COURT: Defense?

MS. SISOLAK: No objection, Your Honor.

THE COURT: All right, Ms. Rodriguez you are released and in the future we may be able to get a court interpreter so you can serve. Anyone else in the gallery has any language issues? All right, no other hands being raised.

All right, now actually we need to call another juror, the next up in line.

THE CLERK: Badge number 210, Sylviya Doneva.

THE COURT: Ladies and gentlemen, as I had mentioned before, this is a criminal case. And two things you must keep in mind for a criminal case, the first is our two prosecutors here bear the burden to prove this case beyond a reasonable doubt. They bear the sole burden of – the Defense does not have to prove anything; okay? The State must prove the case beyond a reasonable doubt. Secondly, the Defense does not have to call any witnesses. They do not have to present any evidence. The reason for that rule is the first rule, the State bears 100

percent burden to prove the case beyond a reasonable doubt. If they fail to prove the case beyond a reasonable doubt, it will be your duty to vote not guilty in this case. If the State proves the case beyond a reasonable doubt, then you would vote guilty. It's that simple.

The evidence in this case will come from witnesses who will be called to the witness stand to my right. They'll be sworn, give testimony in front of you. Any documents or tangible items admitted into evidence as exhibits and any stipulations by the parties that they agree on particular facts, that will be the evidence in the case, again, testimony, any documents or tangible things or any stipulations by the attorneys; that's the evidence in the case.

Ladies and gentlemen, if I sent you to the jury room right now, what would your verdict have to be? Anyone want to volunteer for that answer?

Sir; Mr. Marshal, the gentleman in the front row, far right. Again, name and badge number, please.

JUROR NO. 162: Badge number 162, and you have to make him innocent 'cause they haven't proved anything yet.

THE COURT: That's right. That is an easy question. It wasn't a trick question, everybody. The State has not proved anything, have they? They haven't called a single witness. There hasn't been a single stipulation. There hasn't been a single exhibit admitted into evidence. There is no evidence. The State has not met, as of this moment, -- and we don't know, its up to all of you to decide – they have not met their burden to prove the case beyond a reasonable doubt and it would be

your duty to vote not guilty. Its just – it's a very important theory – issue, but its very simple and its very important. They meet the burden then you would vote guilty. If they fail to meet that burden, its your duty to vote not guilty.

Thank you, sir, for volunteering.

Ladies and gentlemen, as I had mentioned before about bias and prejudice and we talked about everyone has different backgrounds, family lives, you know, values that our parents teach us, and I hope there isn't any history teachers here or history professors because I hope my story is accurate. In 1770, during the Revolutionary War or before the Revolutionary War there was the Boston Massacre. Its alleged that some British soldiers shot into a crowd of colonists and killed various people. Unusual for the time was that those British soldiers were charged with murder and various offenses and they went to trial. Now, you can imagine at that time that the feelings of the community were quite high as far as either supporting the British soldiers or against the British soldiers because we were just in the middle of the Revolutionary War. They went to trial. Some of them were found guilty and some of them were found not guilty. And they were tried by a jury. And the reason why I tell you that story is because you can imagine the bias and prejudice at the time. Those jurors in that case were able to listen to the evidence, follow the law, and make a decision not based on bias and prejudice, but based upon the facts of the particular case. And some of you may know from your history, the Defense attorney for the British officers was our second president, John Adams, defended the

British soldiers; okay?

So, when I talk about bias or prejudice or the attorneys if they follow up on the issue of bias and prejudice that you may or may not have, the question that we have for all of you is if – we all have bias and prejudice, can you put those aside and base whatever decision you may make in this case from the evidence that's been presented and the law that I will give you? Okay, so hopefully all of you can do that.

Now, ladies and gentlemen, at any given time in this courthouse there are construction defect cases going on. Some of you may read about those in the newspaper where they say there's a housing development and all the roofs have issues or there – I think one 2 years ago there's a issue with all the plumbing fixtures in a large development. City Center had the Harmon Tower. There was a construction defect case on that particular matter. The average construction defect trial lasts 6 months, okay? You did not get that trial; okay? All right? The average jury trial is 6 judicial days. You did not get that type of trial. I met with the attorneys earlier this morning and they feel that this case will either be completed on – tomorrow or the next day thereafter. So, it would be two and a half days; okay? Our trial schedule typically is around the noon hour we take a lunch break, mid-afternoon around 3:00 or so we take an afternoon break and we endeavor to adjourn promptly at 5:00 o'clock. On Wednesday, tomorrow, if you are selected you would start at 9:30. Same schedule, you take a lunch break around the noon hour, 3:30 or so mid-afternoon, 5:00 o'clock adjourn, and then Thursday the trial should be completed. I will – after all the

evidence has been presented, I will read to you jury instructions and then you'll hear arguments of the attorneys and then you'll deliberate the case. So, that's our schedule. It's about a two and a half day trial. Again, the normal trial is 6 days and on any given day we have construction defect cases which is average 6 months long. The Harmon case that was scheduled to go forward was scheduled to take 13 months and so I don't think any of you received that jury summons for that case. But they were able to pick a jury who could sit for 13 months. We're not going to ask you to do that for this particular case. This case is just as important as any other case. It doesn't matter about the length of the trial. Every case is very important.

Is there anyone here with our trial schedule I just gave you would have an extreme hardship to serve just two and a half days? Okay, Mr. Marshal, we have a hand in the back row.

THE MARSHAL: Who's first, Judge?

THE COURT: The back row is the lady, she's behind you there.

THE COURT: Name and badge number, ma'am, just the last three numbers?

JUROR NO. 125: The last three is 125. My name is Mary Sneddon.

THE COURT: And your hardship?

JUROR NO. 125: I have two little kids and I actually have my boss watching my oldest right now while she's on winter break.

THE COURT: Okay. Is there – when you say little, what's the

age of the children?

JUROR NO. 125: 6 and 2.

THE COURT: Okay.

JUROR NO. 125: The 6 year old is recovering from pneumonia and the 2 year old is recovering from the flu --

THE COURT: Okay.

JUROR NO. 125 – and I had to shove her in daycare.

THE COURT: If you are selected, is there like another family member or friend that can watch the kids for the next – if you were selected?

JUROR NO. 125: Yeah. I have my mother but she is getting sick from my daughters right now so she's not really the happiest person.

THE COURT: Is there anyone else that could watch them if you were selected?

JUROR NO. 125: No. I just have my – I'm a single mom so I don't have anyone else out here.

THE COURT: Okay. And do you work, ma'am?

JUROR NO. 125: Yes, I do.

THE COURT: Okay. Who watches the kids when you're at work?

JUROR NO. 125: Normally they go – its winter break so my oldest, she's in first grade so she goes to the before care in that school and my work schedule I don't work until 8:00 to 4:30 so I can get to them, drop them off on time, pick them up on time, so.

THE COURT: All right. All right, thank you, ma'am.

JUROR NO. 125: Thank you.

THE COURT: Anyone else in the back row, extreme hardship? How about the middle row? All the way to the end, back row.

JUROR NO. 119: Cheryl Basques, 119.

THE COURT: Yes, ma'am?

JUROR NO. 119: I don't get paid for sitting here at the –

THE COURT: I'm sorry?

JUROR NO. 119: I don't get paid while I'm sitting here at jury duty.

THE COURT: Okay.

JUROR NO. 119: My company does not pay.

THE COURT: All right. The jury commissioner provides a fee, not a lot, but they do provide a fee for the next – like if you were selected for the – but I understand that's financial issues; okay? Thank you. Any other part of the – any other hardship, ma'am?

JUROR NO. 119: No, that's it.

THE COURT: Okay, no? All right, if you hand the – anyone in the second row? A couple of hands in the second row.

JUROR NO. 137: Elaine Chester, 137.

THE COURT: Yes?

JUROR NO. 137: My – it's a financial hardship for me as well. I'm a single parent and if I'm not working I'm not getting paid.

THE COURT: And did you check with your employer because most employers do pay at least for –

JUROR NO. 137: I did. It's –

THE COURT: -- a couple of days.

JUROR NO. 137: I did and they said no.

THE COURT: Okay. All right, thank you. And if you can hand it to your right, the gentleman in the strip shirt.

JUROR NO. 140: Jonathan Birds, badge number 140.

THE COURT: Yes, sir?

JUROR NO. 140: I just started a new job. I've only been there two weeks. I'm still in my probationary period. This week we're supposed to be assigning projects to work on so I'll be missing an important week at a new job, and like is said, I'm still in my probationary period there.

THE COURT: And does your employer know that you have a jury summons?

JUROR NO. 140: They do.

THE COURT: Okay. All right, thank you, sir. Anyone else in the middle row? Can you just hand it to your right.

JUROR NO. 209: Nava, 148, juror.

THE COURT: All right.

JUROR NO. 209: Same thing, I have a financial hardship. I work –

THE COURT: I'm sorry?

JUROR NO. 209: Financial hardship.

THE COURT: Okay.

JUROR NO. 209: I work two part time jobs and I just recently started on the second part time so I'm still on probation.

THE COURT: I'm sorry, your number is 140?

THE RECORDER: It's not, Judge. It's 209.

THE COURT: 209.

JUROR NO. 209: 209. I'm sorry, badge number 209.

THE COURT: And I'm sorry, are you working, ma'am?

JUROR NO. 209: Yes, two part time jobs and I just recently started the second part time job and I'm still on probation.

THE COURT: All right, thank you, ma'am. Anyone else in the middle row, extreme hardship? Okay, how about the front row here?

JUROR NO. 172: I'm juror 172.

THE COURT: Yes, sir?

JUROR NO. 172: I work for tips and I only have like 10 days to get my mortgage and I need to make money to be able to do that. I had surgery two months ago and I still have an infection from it so I'm very uncomfortable as well.

THE COURT: Do you work in one of the casinos, sir? When you say tips usually it's a casino worker or –

JUROR NO. 172: No, I work in – at a club.

THE COURT: Okay. And did you check with your employer?

JUROR NO. 172: Excuse me?

THE COURT: Did you check with your employer because like I said most employers will pay 2 or 3 days worth of salary if you are selected as a juror?

JUROR NO. 172: Yes, sir. I make ten bucks an hour but I make my money on tips.

THE COURT: All right, thank you, sir. Anyone else in the front row? Sir, if you can just hand it to your right?

JUROR NO. 184: Its also financial for me.

THE COURT: Your name and badge number, sir?

JUROR NO. 184. My number is 184.

THE COURT: Yes, sir?

JUROR NO. 184: Its financial problem. I don't get paid if I didn't work and I work –

THE COURT: And what type of work do you do now, sir?

JUROR NO. 184: I work as a pharmacist for CVS.

THE COURT: Okay. I believe we've had other CVS pharmacists as jurors before and at least –

JUROR NO. 184: No, we don't – we don't get paid.

THE COURT: Because I thought they paid for, I think its 3 days.

JUROR NO. 184: No.

THE COURT: Did you check with your employer?

JUROR NO. 184: Yup.

THE COURT: And are you a pharmacist or a pharmacist tech?

JUROR NO. 184: Pharmacist.

THE COURT: All right. All right, thank you. Anyone else in the front row? How about the gallery, for the front row of the gallery? Sir -- Marshal, the front row. We had a hand in the front row.

JUROR NO. 233: Allison Agnew, my number is 233 and I am

in the process of trying to change jobs and actually have a series of job interviews set up tomorrow through Sunday of this week.

THE COURT: All right, thank you, ma'am. Anyone else in the front row of the gallery? How about the middle row of the gallery?

JUROR NO. 246: Hello, I'm Tamara Gallagher, number 246 and I am a stay at home mom and I don't have daycare.

THE COURT: And who is watching the children today?

JUROR NO. 246: Shortly she'll be home alone, but my husband is there until he goes to work.

THE COURT: Okay, and what are his hours?

JUROR NO. 246: He goes in at 1:30.

THE COURT: Okay. Is there any other family, friends, neighbors, or – that can assist –

JUROR NO. 246: No, 'cause I –

THE COURT: -- if you were selected?

JUROR NO. 246: No. I also home school her so it makes it difficult. She does a charter school but its online so we go in once a week so I help with that, otherwise it wouldn't be as big of an issue, but.

THE COURT: All right, thank you, ma'am. Anyone else in the middle row? We'll go to the back row of the gallery.

JUROR NO. 287: Hi, Your Honor, my name is Maria Pitcher and my number is 287.

THE COURT: Yes?

JUROR NO. 287: I am a caregiver to my husband. He's a disabled Veteran. He's 100 percent disabled. Tomorrow he has 3

appointments that are related to his disability and I have to drive him. I drive him everywhere. He doesn't drive, so. I would love to stay here all day. I love Judge Judy.

THE COURT: How about Judge Mike?

JUROR NO. 287: Yes.

THE COURT: All right, thank you. All right, all right, thank you ma'am. All right, and we'll address those issues in just a – throughout today. Thank you.

All right, ladies and gentlemen, what I'm going to do is I'm going to direct my next set of questions to the individuals in the jury box and in front of the box. And then later, we'll address the same questions with those of you in the gallery. Please – those of you in the gallery, please listen to those questions because you're going to get the exact same questions, so you can think about your answer and we can speed up the process when you are called to answer the questions; okay? So, please don't tune us out. Please listen very carefully.

Again, for just those individuals in the box and in front of the box, either yourself, a family member, or anyone closely associated with you involved in law enforcement? It can be a police officer, a highway patrol officer, correction officer, maybe a security guard, military police, anything involved with law enforcement? No hands in the back row. We'll go to the second row, and always name and badge number.

JUROR NO. 137: 137.

THE COURT: Yes, ma'am?

JUROR NO. 137: My brother is a correction officer.

THE COURT: Here in Clark County?

JUROR NO. 137: California.

THE COURT: Okay. Do you know how long he's held that position?

JUROR NO. 137: Almost 20 years.

THE COURT: All right. And how often do you speak with him?

JUROR NO. 137: Once or twice a month.

THE COURT: Okay, and do you talk to him about his work?

JUROR NO. 137: Yes.

THE COURT: Okay. All right, thank you, ma'am. Now, ma'am, its alleged that there's a – one of the counts, battery by a prisoner, okay, your brother – you said brother or brother-in-law, I'm sorry?

JUROR NO. 137: Brother.

THE COURT: Okay. Its alleged that there was a battery by a prisoner; okay? And I'm very careful to use the word alleged, because as I mentioned before there's no evidence in this case; okay? Its just an allegation and the State – our two prosecutors here have to prove this case beyond a reasonable doubt and it would be your duty if you were selected to vote not guilty if the State failed to prove the case beyond a reasonable doubt, the fact that your brother is a correction officer in California would that cause you to have a bias or prejudice that would prevent you from being fair to both sides in this case?

JUROR NO. 137: No. I don't think so.

THE COURT: Will you hold – if you are selected, will you hold

the State to their burden of beyond a reasonable doubt?

JUROR NO. 137: Yes.

THE COURT: All right, thank you, ma'am. If you can hand it to your right I think there's another person who raised their hand.

JUROR NO. 140: Jonathan Birds, badge 140. I'm currently finishing my Ph.d in public affairs, specializing in the criminal justice at UNLV. I've worked with law enforcement, gone to school with law enforcement for about the last 7 or 8 years. I also teach a policing class at UNLV for the last 4 years so I – countless friends and people I work with are law enforcement officers.

THE COURT: Okay. Same question to you sir, we have an allegation here. We may have some correction officers testifying in this particular case. Based upon your employment and your experience – or your interaction with some officers, do you feel that that would cause you to have a bias or prejudice that would prevent you from being fair to both sides in this case?

JUROR NO. 140: I don't believe so.

THE COURT: If you were selected, sir, will you hold the State to their burden of beyond a reasonable doubt?

JUROR NO. 140: I will.

THE COURT: All right, thank you, sir. Anyone else in the middle row? If you can just hand it to your right.

JUROR NO. 141: Courtney Northington, badge number 141.

THE COURT: Yes, ma'am?

JUROR NO. 141: My dad, my brother, my ex-husband, and

my cousin are all in law enforcement.

THE COURT: Okay, specifically what type?

JUROR NO. 141: My cousin is a corrections officer in Utah, and my dad and brother are both highway patrol and so is my ex-husband.

THE COURT: I'm sorry, [indiscernible] dad and brother highway patrol here in Nevada?

JUROR NO. 141: My dad in California and my brother in Nevada.

THE COURT: Okay. And was there a fourth one?

JUROR NO. 141: My ex-husband.

THE COURT: Okay.

JUROR NO. 141: And my cousin.

THE COURT: Okay. All right, how about your husband, what –

JUROR NO. 141: He was California Highway Patrol.

THE COURT: Okay. And your ex-husband?

JUROR NO. 141: Oh, I'm sorry. My ex-husband is California Highway Patrol. My cousin is corrections in Utah.

THE COURT: Okay, I thought you said – and a husband, a present husband?

JUROR NO. 141: No, no present husband.

THE COURT: Oh, okay. I'm sorry. All right, and same question to you, ma'am, as I had mentioned to the two other jurors to your left there, we may have some correction officers testifying in this

case. You have some family members that have been or presently involved in law enforcement. Will that cause you to have any bias or prejudice which would prevent you from being a fair juror to both sides in this case?

JUROR NO. 141: I'd certainly try my best not to have any bias.

THE COURT: Well, [indiscernible] want, we need a commitment from you because –

JUROR NO. 141: Oh.

THE COURT: -- like I said, the bottom line is the State has to call witnesses to the witness box; okay? They have to – and if they're going to admit any exhibits, you know, documents or tangible items and any stipulations that they may – the parties may enter into, will you hold the State to their burden of beyond a reasonable doubt?

JUROR NO. 141: Yes.

THE COURT: Because you have so many family members involved in law enforcement, would you feel any pressure whatsoever to favor one side or the other?

JUROR NO. 141: Honestly, I feel like the corrections officers would – testimony would have more weight.

THE COURT: Okay. If – one of the jobs – and this would apply to everybody, one of the jobs of the jurors – and there will be a jury instruction to this – is that the jurors make the decision on credibility of the witnesses. I think we would all agree that there are some good attorneys, some bad attorneys, some good judges and bad judges, and

some good individuals involved in law enforcement and some bad individuals or individuals that aren't as good as with their job in law enforcement. If you were selected, would you – a part of the job of all jurors would be to make a determination of the credibility of the witnesses. Would you – is that something you would be able to do, ma'am?

JUROR NO. 141: Yes.

THE COURT: I understand that because of – you have family members in law enforcement that you may have a certain feeling towards them, but if you were selected we would want you to make a credibility call on every witness any of the parties may or may not call; do you understand that?

JUROR NO. 141: Yes.

THE COURT: And is that something that you would be able to do in this case if you were selected?

JUROR NO. 141: Yes.

THE COURT: And even though you have some people -- some family members involved in law enforcement, you understand you would still need to hold the State for their burden beyond a reasonable doubt?

JUROR NO. 141: Yes.

THE COURT: Thank you, ma'am. Anyone else in the middle row, law enforcement? How about the front row, law enforcement? We have one hand here, a gentleman. Yes, sir?

JUROR NO. 197: Jonathan Ullion, number 197. My sister-in-

law is a CO as well as her husband at Clark County Detention Center. My girlfriend's uncle was ex- Metro and a friend is Henderson police.

THE COURT: All right, same question to you, sir. You have – obviously, you have family members involved in law enforcement. We may have some law enforcement officers testifying in this case. The fact that you have members of your family involved in law enforcement, would that prevent you from being a fair juror in this case?

JUROR NO. 197: No.

THE COURT: Okay. Would you – so, you would be able to put aside any bias and prejudice you may have and hold the State to their burden of beyond a reasonable doubt?

JUROR NO. 197: Yeah, I would.

THE COURT: Sir, would you feel any pressure from your family members to vote a certain way in this matter because they are involved in law enforcement?

JUROR NO. 197: Not unless they knew I was here.

THE COURT: Okay. Well, one of the things I will tell all the jurors is that when we go through this process and you're officially selected as a juror, you're under a strict admonishment that you cannot discuss the case with anybody until the case is over. All you're allowed to tell anybody if they ask you, you can say I am a juror in a criminal case. That's all you can tell them – or if it's a civil case. If it's a civil case I would tell you the same thing. You can tell them I am a juror in a civil case. And that is it because you can't talk to them about the facts of the case because the only – any decision you may make in a particular case

has to be based upon the evidence in the courtroom. Do you understand that, sir?

JUROR NO. 197: Yeah.

THE COURT: Okay. Anyone else in the jury box area regarding law enforcement that we haven't already talked to? All right, no other hands; thank you.

Anyone in the area here ever been a victim of a crime, yourself, a family member, or anyone closely associated with you? Okay, we'll go to the back row.

JUROR NO. 119: Cheryl Basques, 119.

THE COURT: Yes, ma'am?

JUROR NO. 119: A number of years ago, probably 15 or 20 in that vicinity, my brother broke into my house, stole a bunch of personal items, whatever he could pawn, and left my house wide open for anybody to walk into.

THE COURT: Okay. And you said about 20 years ago?

JUROR NO. 119: It was 15, maybe 18, somewhere in that vicinity.

THE COURT: Was law enforcement called out to that?

JUROR NO. 119: Yes.

THE COURT: Okay. And based upon the facts and circumstances of that situation, were you satisfied with law enforcement's services?

JUROR NO. 119: Nothing was ever found or really done about it.

THE COURT: When you – I just want to know, were you satisfied –

JUROR NO. 119: No, not –

THE COURT: -- dissatisfied?

JUROR NO. 119: -- really. No.

THE COURT: You were not satisfied?

JUROR NO. 119: No.

THE COURT: Okay. We – as you heard from one of our Attorney Generals here that we may have some law enforcement officers testifying in this case. The fact that you were dissatisfied with the investigation in your case, is that something you're going to hold against any officers who may testify here?

JUROR NO. 119: No. No.

THE COURT: Okay. The fact that you've been a victim of a crime in the past, you said about 18, 20 years ago, do you feel that that will cause you to have any bias or prejudice for or against either side in this case?

JUROR NO. 119: No.

THE COURT: Okay. There's a hand to your right I believe, the lady to your right.

JUROR NO. 120: Heather Booker, 120.

THE COURT: Yes?

JUROR NO. 120: My sister was killed by a serial killer.

THE COURT: And how long ago was that?

JUROR NO. 120: 26 years ago.

THE COURT: Was that here in Clark County, Nevada?

JUROR NO. 120: No, California.

THE COURT: I'm assuming law enforcement was called out in that situation?

JUROR NO. 120: Yes.

THE COURT: Okay.

JUROR NO. 120: I dealt with the detectives and all that.

THE COURT: Based upon the facts and circumstances of that situation, were you satisfied with the services of law enforcement?

JUROR NO. 120: I wasn't satisfied with the detectives.

THE COURT: Okay. How about the law enforcement in general for the case?

JUROR NO. 120: The law enforcement in general in the case and everything, yes.

THE COURT: Okay. And as you heard, we may have some law enforcement officers testifying in this case. The fact that you were at least dissatisfied with one or maybe more law enforcement officers from about 26 years ago or so, will that come into play in your ability to be a fair juror in this case?

JUROR NO. 120: No, it wouldn't come in to play.

THE COURT: And will you – if you are selected, will you hold the State to their burden of beyond a reasonable doubt?

JUROR NO. 120: Yes, I would.

THE COURT: All right, thank you. Anyone else in the back row? Can you just hand it to your right?

JUROR NO. 121: My name is Anna Campbell and my number I think is 121.

THE COURT: Yes?

JUROR NO. 121: About 15 years ago my brother-in-law was caught with drugs.

THE COURT: All right, we'll get back to that because actually the next question is accused of crime, either yourself or –

JUROR NO. 121: Accused of a crime.

THE COURT: -- family member. So, let's get back to you in just – or actually, we'll just deal with it now. So, your brother-in-law was accused of crime. Was that here in Clark County?

JUROR NO. 121: No, it was in Arizona.

THE COURT: Okay. Do you know if formal charges were ever filed against him?

JUROR NO. 121: I don't know but he served – he served here actually, Nellis, for 4 years I think.

THE COURT: Okay. That may have been a federal charge, do --

JUROR NO. 121: I think it –

THE COURT: -- you know?

JUROR NO. 121: -- was, yeah.

THE COURT: Okay. In that case there would have been prosecutors. They would have been U.S. Attorneys who prosecuted the case. We have two prosecutors in our case. The fact that your brother-in-law was prosecuted is that going to prevent you from being a fair juror

in this case?

JUROR NO. 121: No.

THE COURT: All right. Will you hold the State to their burden of beyond a reasonable doubt?

JUROR NO. 121: Yes.

THE COURT: All right, thank you, ma'am. Anyone else in the back row, victim of a crime? How about the middle row, victim of a crime? No hands. How about the front row? We have a couple of hands.

And ladies and gentlemen, you may hear you know similar questions that I ask of various jurors; okay? And I do that because I – one, it is essential that I ask each and every one of you if you have any of these issues that we're talking about here that you know if there's any bias or prejudice, if there's – you can still hold the State to their burden of beyond reasonable doubt and those types of questions, so it may sound monotonous like a broken record but it is essential and I want all jurors to think when I ask you these questions. You know think them out and you give us your best answer. So, thank you, ma'am, go ahead.

JUROR NO. 168: My husband is an optometrist.

THE COURT: Name and badge number.

JUROR NO. 168: Oh, Suzanne Anderson, 168.

THE COURT: All right. Yes, ma'am?

JUROR NO. 168: My husband is an optometrist and we own a private practice and we've been broken into 6 times.

THE COURT: You have a practice here in Clark County,

Nevada?

JUROR NO. 168: Yes.

THE COURT: Okay. Was law enforcement called out to those situations?

JUROR NO. 168: Yes.

THE COURT: Okay. And based upon all the facts and circumstances of those situations, were you satisfied with the services of law enforcement?

JUROR NO. 168: Yes.

THE COURT: Okay. Do you know if they ever caught the perpetrators in --

JUROR NO. 168: No.

THE COURT: Okay – in those situations, okay. The fact that your husband's office has been burglarized I think you said 6 times, would that prevent you from being a fair juror in this case?

JUROR NO. 168: No.

THE COURT: Okay. And if you are selected, will you hold the State to their burden of beyond a reasonable doubt?

JUROR NO. 168: Yes.

THE COURT: All right; thank you, ma'am. Any other hands in the front row? If you can just hand it to your right?

JUROR NO. 172: James Duchene, 172.

THE COURT: Yes, sir?

JUROR NO. 172: My son just got out of Indian Springs Prison and a few instances I don't think he was treated too fair in there and he

also got jumped in there so we're going to be filing a case for it. This one is in Nevada, Reno prison when they transferred him there then back to Indian Springs.

THE COURT: All right, sir, -- and as you heard earlier that we may have some correction officers testifying in this case and you said your son was in the prison system but he's since been released; is that correct, sir?

JUROR NO. 172: Yes, sir.

THE COURT: Okay.

JUROR NO. 172: Two weeks ago.

THE COURT: Okay. And this goes to what we talked about bias and prejudice, sir. Do you feel that you have any bias or prejudice, sir, that would prevent you from being fair to both sides in this case or either side – I should say either side?

JUROR NO. 172: I've been dealing with the correction officers and I really don't – and my son. I really don't like them too much. I don't think they're too fair.

THE COURT: Okay.

JUROR NO. 172: I know their jobs hard but I don't like how they treated my son for sure.

THE COURT: Okay. Now, you're not familiar with the names that have been identified in this case; correct?

JUROR NO. 172: No. I didn't know anyone in the prison.

THE COURT: Okay. And so –

JUROR NO. 172: And I'm not sure about the guards unless I

saw them.

THE COURT: Okay. So just so I'm clear, sir, that the – you're not familiar with the names involved in your son's case but you may recognize their faces; is that correct?

JUROR NO. 172: Yes.

THE COURT: Okay. And you wouldn't know if any –

JUROR NO. 172: On visitations and stuff like that.

THE COURT: I'm sorry?

JUROR NO. 172: Visiting there over the last 2 years.

THE COURT: And you wouldn't know in this case whether or not you're familiar with any officers because – until you saw their face because you're just not familiar with the names; is that correct?

JUROR NO. 172: Yes, sir.

THE COURT: Okay. All right; thank you, sir. Anyone else in the front row? If you can just hand it to your right.

JUROR NO. 197: Jonathan Ullion, 197. I had my house broken into and burglarized around '09 I believe.

THE COURT: Is that here in Clark County?

JUROR NO. 197: Yes.

THE COURT: Was law enforcement called out?

JUROR NO. 197: Yup.

THE COURT: Okay. Based upon all the facts and circumstances of your case, were you satisfied with their services?

JUROR NO. 197: Not completely. I mean I would have liked my stuff back and [indiscernible] you know.

THE COURT: Okay. And as you heard, we may have some law enforcement officers testifying in this case. The fact that you were a victim of a burglary, was it about 8 years – 8, 9 years ago and you weren't satisfied with all the officers involved, would that cause you to have any bias or prejudices against the officers who may testify in this case?

JUROR NO. 197: No.

THE COURT: Okay. If you were selected, sir, will you hold the State to their burden of beyond a reasonable doubt?

JUROR NO. 197: Yup.

THE COURT: All right. Thank you, sir. Anyone else in the jury box area? No other hands. Thank you.

And we'll go to the question that we followed up with the one of the other lady here, ever been accused of a crime, yourself, a close family member, or anyone closely associated with you? We're talking about more than a traffic offense. Anyone in the back row? Anyone in the middle row? Oh, we have a hand in the back row.

JUROR NO. 120: The same sister that got killed, she was accused of federal forging check and was put in federal prison and she served 5 years there.

THE COURT: And this is Ms. Booker; right?

JUROR NO. 120: Yeah, 120; I'm sorry.

THE COURT: 120. Okay, the fact that you have a family member accused of a crime, do you think that would prevent you from being a fair juror in this case?

JUROR NO. 120: Yes.

THE COURT: It would prevent you? And why would that –

JUROR NO. 120: No, no, I'm sorry. I would be fair.

THE COURT: Okay.

JUROR NO. 120: I'm sorry.

THE COURT: All right; thank you, ma'am. Anyone else in the back row accused of a crime? How about the middle row? How about the front row? All right, we do have a hand here; either yourself, a family member, or anyone closely associated with you.

JUROR NO. 197: Jonathan Ullon, 197. I had a DUI.

THE COURT: Okay, and how long ago was that, sir?

JUROR NO. 197: It's um, oh, 3 I believe.

THE COURT: Was that here in Clark County, Nevada?

JUROR NO. 197: Yeah.

THE COURT: Okay.

JUROR NO. 197: It was '04 actually.

THE COURT: All right. And I'm assuming there would have been either highway patrol or Metro or one of the other –

JUROR NO. 197: Yeah, Metro.

THE COURT: Okay, and they're a police officer or someone involved in law enforcement. And you heard we may have some law enforcement officers testifying in this case. The fact that you had an officer involved in '04 about what 13 years ago or so, 14 years ago, would that prevent you from being a fair juror in this case?

JUROR NO. 197: No.

THE COURT: Sir, do you know if that case was handled city court or in justice court?

JUROR NO. 197: City court.

THE COURT: Okay. And, similarly, there would have been a City Attorney, a prosecutor involved. We have two prosecutors here today. The fact that you had prosecutors filed a case against 13, 14 years ago, and we have prosecutors here – these aren't the same ones because they're in a different office, does that cause you to have any bias or prejudice for or against either side in this case?

JUROR NO. 197: No.

THE COURT: All right; thank you, sir.

Anyone else in the jury box area? No other hands being raised.

Besides the ones that have already brought this up, is there anyone in the jury box have a particular positive or negative experience with law enforcement, besides the people we've already talked to or those situations, anyone?

JUROR NO. 120: I have a –

THE COURT: Sure. Let's – we'll get the –

JUROR NO. 120: My positive is when I was --

THE COURT: Name and badge number.

JUROR NO. 120: Oh.

THE COURT: I know we just spoke to you but as you can see we don't –

JUROR NO. 120: Sorry.

PLEADING CONTINUES IN NEXT VOLUME

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO LEE MIXON,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: C-17-327439-1
Related Case A-22-847754-W
Docket No: 84677

RECORD ON APPEAL
VOLUME
3

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C-17-327439-1 State of Nevada vs Antonio Mixon

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vs
Antonio Mixon

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2	8/8/2018	Motion for Status Check; Trial Readiness; Discovery Issue; Transportation Order. Oral Agreement Requested. (Reset Trial Date)	389 - 393
3	11/16/2018	Motion for Stay of Trial Setting and/or Motion for Time Extension.	512 - 518
3	11/2/2018	Motion for Voir Dire	484 - 489
1	12/29/2017	Motion in Limine to Exclude Defense Witnesses from Testifying	132 - 135
1	11/14/2017	Motion to Compel Production of Discovery & Brady Material	40 - 73
3	11/2/2018	Motion to Dismiss	495 - 504
1	3/5/2018	Motion to Dismiss Based Upon Vindictive Prosecution	191 - 216
1	3/5/2018	Motion to Disqualify the Attorney General's Office (Continued)	217 - 238
2	3/5/2018	Motion to Disqualify the Attorney General's Office (Continuation)	239 - 271
3	3/18/2019	Motion to Increase Bail	651 - 655
3	12/18/2018	Motion to Place on Calendar	574 - 578
1	12/15/2017	Motion to Withdraw and Allow Defendant to Represent Himself Pursuant to Faretta v. California	95 - 116

C-17-327439-1 State of Nevada
vs
Antonio Mixon

I N D E X

VOL	DATE	PLEADING	PAGE NUMBER:
1	12/15/2017	Motion to Withdraw and Allow Defendant to Represent Himself Pursuant to Faretta v. California with Exhibits	117 - 124
5	4/15/2020	Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Affirmed	1063 - 1067
3	11/29/2018	Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed	522 - 526
3	2/21/2019	Notice Advising the Court and Plaintiff that Plaintiff's Pleadings on Complaint Should be Precluded from a Trial in this Court	643 - 647
2	10/15/2018	Notice of Appeal	454 - 457
4	5/23/2019	Notice of Appeal	748 - 751
3	1/18/2019	Notice of Defense	623 - 626
2	4/4/2018	Notice of Hearing	378 - 378
3	3/19/2019	Notice of Hearing	656 - 656
3	4/16/2019	Notice of Hearing	691 - 691
3	1/3/2019	Notice of Intent to Use Citation Memorandum of Law Points and Authorities	579 - 581
1	12/13/2017	Notice of Intent to Use COR Affidavit and/or Unsworn Declaration	90 - 91
2	8/8/2018	Notice of Motion	388 - 388
2	9/19/2018	Notice of Motion	401 - 401
2	9/19/2018	Notice of Motion	402 - 402
2	10/1/2018	Notice of Motion	439 - 440
3	10/30/2018	Notice of Motion	483 - 483
3	11/2/2018	Notice of Motion	505 - 505

C-17-327439-1 State of Nevada
vs
Antonio Mixon

I N D E X

VOL	DATE	PLEADING	PAGE NUMBER:
3	11/2/2018	Notice of Motion	506 - 506
3	11/2/2018	Notice of Motion	507 - 507
2	9/26/2018	Opposition to Defendant's Motion for Expert Witnesses	424 - 427
2	9/26/2018	Opposition to Defendant's Motion to Suppress	428 - 432
3	4/25/2019	Opposition to Defendant's Motion to Withdraw Guilty Plea (Continued)	709 - 715
4	4/25/2019	Opposition to Defendant's Motion to Withdraw Guilty Plea (Continuation)	716 - 731
4	6/5/2019	Order and Decision on Defendant's Motion to Withdraw Plea	756 - 756
2	10/22/2018	Order Denying Defendant's Motion to Suppress	469 - 469
1	1/25/2018	Order for Transcript	141 - 142
3	4/24/2019	Presentence Investigation Report (Unfiled) Confidential	699 - 708
1	12/15/2017	Renotice of Hearing on Motion to Withdraw and Allow Defendant to Represent Himself Pursuant to Faretta v. California	125 - 126
2	10/9/2018	Reply to State's Opposition to Defendant's Motion for Expert Witnesses.	449 - 453
3	2/4/2019	Reply to State's Opposition to Defendant's Motion to Dismiss, Supplemental Motion to Dismiss and Supplement to Jury Instructions.	637 - 639
2	10/9/2018	Reply to State's Opposition to Defendant's Motion to Suppress.	441 - 448

C-17-327439-1 State of Nevada
vs
Antonio Mixon

I N D E X

VOL	DATE	PLEADING	PAGE NUMBER:
4	6/24/2019	Request for Rough Draft Transcript	757 - 760
2	3/13/2018	State's Amended Opposition to Defendant's Motion to Dismiss Based Upon Vindictive Prosecution	295 - 304
2	3/13/2018	State's Amended Opposition to Defendant's Motion to Disqualify the Attorney General's Office	305 - 311
3	2/27/2019	State's First Amended Notice of Witnesses and/or Expert Witnesses	648 - 650
3	2/21/2019	State's Notice of Motion and Motion to Place on Calendar	640 - 642
1	12/15/2017	State's Notice of Witnesses and/or Expert Witnesses	92 - 94
3	11/15/2018	State's Opposition to Defendant's Amended Motion for Extension of Time	508 - 511
3	11/19/2018	State's Opposition to Defendant's Motion for Jury Instructions	519 - 521
1	12/1/2017	State's Opposition to Defendant's Motion to Compel Discovery & Brady Material	74 - 89
2	3/12/2018	State's Opposition to Defendant's Motion to Dismiss Based Upon Vindictive Prosecution	282 - 288
2	3/14/2018	State's Opposition to Defendant's Motion to Dismiss with Prejudice	312 - 374
3	1/15/2019	State's Opposition to Defendant's Motion to Dismiss, Supplemental Motion to Dismiss and Supplement to Jury Instructions	619 - 622
2	3/12/2018	State's Opposition to Defendant's Motion to Disqualify the Attorney General's Office	289 - 294

C-17-327439-1 State of Nevada
vs
Antonio Mixon

I N D E X

VOL	DATE	PLEADING	PAGE NUMBER:
3	12/4/2018	Supplement to Motion to Dismiss and Supplement to Jury Instructions of the Defendants'.	532 - 556
3	2/4/2019	Supplemental to Jury Instructions	631 - 636
4	7/11/2019	Transcript of Hearing Held on April 30, 2019	897 - 899
4	7/11/2019	Transcript of Hearing Held on April 5, 2018	801 - 806
4	7/11/2019	Transcript of Hearing Held on April 6, 2018	807 - 825
4	7/11/2019	Transcript of Hearing Held on August 30, 2018	840 - 846
4	7/11/2019	Transcript of Hearing Held on December 11, 2018	869 - 872
4	7/11/2019	Transcript of Hearing Held on December 12, 2017	767 - 773
4	7/11/2019	Transcript of Hearing Held on December 5, 2017	764 - 766
4	7/11/2019	Transcript of Hearing Held on February 8, 2018	780 - 784
1	2/1/2018	Transcript of Hearing Held on January 2, 2018	143 - 189
4	7/11/2019	Transcript of Hearing Held on January 2, 2018	774 - 776
4	7/11/2019	Transcript of Hearing Held on January 2, 2018 (Continued)	914 - 953
5	7/11/2019	Transcript of Hearing Held on January 2, 2018 (Continuation)	954 - 1062
4	7/11/2019	Transcript of Hearing Held on January 4, 2018	777 - 779

C-17-327439-1 State of Nevada
vs
Antonio Mixon

I N D E X

VOL	DATE	PLEADING	PAGE NUMBER:
4	7/11/2019	Transcript of Hearing Held on January 8, 2019	873 - 884
4	7/11/2019	Transcript of Hearing Held on June 19, 2018	832 - 839
4	7/11/2019	Transcript of Hearing Held on June 5, 2018	826 - 831
4	7/11/2019	Transcript of Hearing Held on March 15, 2018	785 - 796
3	4/18/2019	Transcript of Hearing Held on March 26, 2019	692 - 698
4	7/11/2019	Transcript of Hearing Held on March 29, 2018	797 - 800
4	7/11/2019	Transcript of Hearing Held on March 5, 2019	885 - 896
4	7/11/2019	Transcript of Hearing Held on May 21, 2019	900 - 913
4	7/3/2019	Transcript of Hearing Held on November 1, 2017	761 - 763
4	7/11/2019	Transcript of Hearing Held on November 20, 2018	856 - 868
4	7/11/2019	Transcript of Hearing Held on October 11, 2018	847 - 851
4	7/11/2019	Transcript of Hearing Held on October 25, 2018	852 - 855
2	10/22/2018	Unfiled Document(s) - Notice of Entry of Order; Unsigned Order Denying State's Opposition to Defendant's Motion to Expert Witnesses	470 - 476
4	5/16/2019	Unfiled Document(s) - Notice of Motion	732 - 732

C-17-327439-1 State of Nevada
vs
Antonio Mixon

I N D E X

VOL	DATE	PLEADING	PAGE NUMBER:
3	1/7/2019	Unfiled Document(s) - Unissued Supoena (Duces Tecum)	582 - 591
3	1/18/2019	Unsigned Document(s) Department Memo w/Copy of Unsigned Order to Proceed in Forma Pauperis (Confidential)	627 - 630
3	12/18/2018	Unsigned Document(s) - Order for Production of Inamte Antonio Lee Mixon, BAC #1019828	570 - 573
2	10/15/2018	Unsigned Document(s) - Order for Expert Witnesses	462 - 463
2	8/6/2018	Unsigned Document(s) - Order Request	387 - 387
3	11/29/2018	Unsigned Document(s) - Stipulation and Order for Confirmation of Expert Witness(es)	527 - 531

1 MEOT

2 ANTONIO LEE Mixon Jr.
3 Pro-se
4 H.D.S.P.
5 P.O. BOX 650
6 INDIAN Springs, NV 89070

FILED
OCT 29 2018
CLERK OF COURT

8 District Court
9 Clark County, NV

10 ANTONIO LEE Mixon Jr. | CASE NO.: C-17-327439-1
11 Defendant | Dept No.: IT
12 v. | DATE OF HEARING: 11-20-18
13 The state of Nevada | TIME OF HEARING: 8:30 AM
14 Plaintiff | AMENDED MOTION FOR EXTENSION
15 | OF TIME.
16

17 Comes Now, the Defendant, Antonio LEE Mixon Jr., by and
18 through Self-representation, and hereby requests this Honorable Court
19 to grant this motion for an Extension of time.
20 These Points and Authorities are made and
21 based Upon all the papers and pleadings on File herein, and oral
22 arguement at the time Set For hearing.
23 DATED this 24th day of October, 2018
24 Antonio LEE Mixon Jr.
26 Self-representative
27 by: Antonio LEE Mixon, # 1019826
28 a. L. Mixon Jr.

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C-17-327439-1
MOT
Motion
4791974

Memorandum of Points and Authorities

Defendant is preparing a Writ of Certiorari in case No.: 17-17496 of the Ninth Circuit. Defendant is preparing a Writ of Habeas Corpus (post-conviction) ~~2255~~ 2254 in case C-11-277977-1 of The Eighth Judicial District Court Dept. 17, Federal Writ. Defendant is preparing the Notice of witnesses in case no.: C-17-327439-1 in the Eighth Judicial District Court Dept. 17; notice of conFirmation of Expert witnesses, Curriculum Vitae's. DeFense's Private investigator is in the process of gathering witnesses in DeFense's Favor. Defendant is preparing ~~an Informal brief for the~~ A Writ of Certiorari From the Ninth Circuit case no.: 18-16884 and case U.S. District Court Case District of ~~Nevada case no.:~~ Reno, Nevada No.: 3:17-CV-00146-MMD-CBC. Defendant is preparing Subpoenas in case number C-17-327439-1 in this Court and For all the Foregoing reason defendant ask this Court For an 365 day Extension of time to do legal research and For the convenience of all party's concerned. This is the Defendant's Declaration.

a L. Mixon Jr.

Certificate of Service

I certify that I am the Defendant the Self-represented in this case and that on the 24th day of October, 2018, I caused to be deposited For mailing a true and correct copy of the Foregoing, Motion For extension of time, to the Following:

Attorney General's office	Steven D. Grierson,
Chelsea N. Kallas	clerk of the Court
Deputy Attorney General	200 Lewis Avenue 3rd Floor
Office of the Attorney General	LV, NV 89155-1160
555 East Washington Ave. Ste. 3900	
Las Vegas, Nevada 89101	

cc: File

Transport order request

Antonio LEE Mixon Jr. #1019828
High Desert state Prison
22010 Cold Creek rd.
P.O. BOX 650
INDIAN Springs, NV 89070

IN the 8th Judicial District Court of the state of Nevada in and For the County of Clark in the matter of Antonio LEE MIXON, Defendant V. State of Nevada, plaintiff asks this Court For an order to transport and produce inmate For hearing based on the circumstances For oral argument, the presence of Antonio LEE MIXON is necessary For the hearing on this motion scheduled in this case on the 20 day of NOV, 2018 at the hour of 8:30 o'clock a.m. at the Following address Michael P. Villani, District Judge Dept. 17 of the Eighth Judicial District Court, regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155. Therefore this Court should grant the order that pursuant to NRS 209.274 and any other applicable NRS, Warden, Brian E. williams High Desert state prison, 22010 Cold Creek rd., Indian Springs, NV 89070 should be ordered to have Antonio LEE MIXON Jr. #1019828 transported to appear before this Court, a specified as court directs. Upon completion of the hearing, Antonio LEE MIXON Jr. #1019828, will be and Should be transported to the above-named institution.

Dated this 24th day ~~October~~ of October, 2018.

Antonio L. Alton 1019828
H.D.S.P.
P.O.BOX 650
Indian Springs, NV 89070

Master
10/25/2018
U.S. POSTAGE $000.45
ZIP 89101
011E12660764

Steven D. Grierson,
Clerk of the Court
200 Lewis Avenue 3rd Floor
LV, NV 89155-1160

3762

33 HRDFNMP 89155

482

HIGH DESERT STATE PRISON
OCT 24 2018
UNIT 4 A/B

27

NOM

Antonio Lee Mixon Jr.

Pro-se

N.D.S.P.

P.O. Box 650

Indian Springs, NV 89070

FILED
OCT 29 2018
CLERK OF COURT

District Court

Clark County, Nevada

Antonio Lee Mixon Jr	Case No.: C-17-327439-1
Defendant	Dept. No.: 17
v.	Date of Hearing: 11-20-18
The State of Nevada	Time of Hearing: 8:30 AM
plaintiff	

NOTICE OF MOTION

You will please take notice, that Antonio Lee Mixon Jr. will come on for hearing before the Court Dept. 17 on the day and year at the hour and time in Dept. 17 as the Court Deems appropriate. ~~"Motion For Extension of time" is attached.~~ "Amended Motion For Extension of time" is attached"

Dated this 24th of Oct, 2018

A. L. Mixon Jr.

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CLERK OF THE COURT

C-17-327439-1
NOTM
Notice of Motion
4791956

MNVD

Antonio Lee Mixon Jr.

H.D.S.P.

P.O. Box 650

Indian Springs, NV 89070

Pro-se

FILED
NOV 02 2018
CLERK OF COURT

District Court

Clark County, Nevada

The State of Nevada	)	Case No.: C-17-327439-1
Plaintiff,	)	Dept. No.: XVII
vs.	)	Date of Hearing: NOV 27 2018
Antonio Lee Mixon Jr.	)	~~Date of Time~~: 8:30AM
Defendant	)	Time of Hearing:

Motion For Voir Dire

Comes now, The Defendant, Antonio Lee Mixon, by and through self-representation, and hereby requests this Honorable Court to grant this Motion For Voir Dire Examination OF Jurors.

These Memorandum of Points and Authorities are made and based upon all the papers and pleadings on File herein, and oral argument at the time set for hearing.

Dated this 26th day of ~~May~~ Oct., 2018

Antonio L. Mixon

Pro-se

A. L. Mixon Jr.

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C-17-327439-1
MOT
Motion
4793462

Memorandum of Points and Authorities

STATEMENT OF CASE

Defense had a Motion FOR Extension of time to reset the trial schedule that's on calendar For November 6th the Motion was heard by this Court and Denied, the request was For 365 days to prepare for trial. That motion was heard on ~~October 2~~ or about October 25th, 2018. The original trial schedule stands.

Since the denial of the motion to reschedule trial dates that requested 365 days to interview witnesses, seek and File Confirmation of Expert witnesses, test evidence in possession of prosecution, gather Subpoenas and send to clerk of this Court to process service of, do legal research For prep on additional motions By the defense, list with expert witnesses, all this plus in Sixty days would not be complete given the schedules of all parties concerned and that the Defense has no Computer access, its 4,000 plus prisoners in H.D.S.P., the law library Supervisor has no time to answer requests, the state gave Defense no opposition to Defenses paralegal request, that this Court denied, which the paralegal was to be given Subject Matter and was to issue Defense Citations and Cross-references Citations to have Defendant prepare motions, so This instant Motion follows.

Memorandum of Points and Authorities

I. THE DEFENSE REQUEST THE Following Voir Dire EXAMINATION ; Voir Dire EXAMINATION NUMBER ONE, By THE DEFENSE,

Q1.) Do Any OF you Jurors watch THE T.V. PROGRAM Judge Judy, Judge Joe Brown, Judge Mathis and/or Judge Jackie Glass? YES, NO, MAYBE So?

Court The Defense wishes to ask the Jurors this Question in regards to Defendant's Constitutional Right to Represent himself Because in those Shows From What The Defense Seen watching those programs is individuals Representing themselves in the Court of law.

Q2 By the DeFense

Q2.) So have any OF you all Jurors here today ever represented yourself(s) in any Court OF law?

Q3. By the DeFense

Q3.) Is their any Juror here today that Does not Know that the Burden OF proof is on the state of Nevada's attorney(s) and not the Defenses Representation?

Q4 By the DeFense

Q4.) Is their Any Juror here today that does not know what that Burden is?

Q5 DeFense Request the Court to give to The Jurors, in the Event this request is denied, then the Defense wishes to ask this question with all the Other proposed, IF granted.

Q5.) Would any Juror here today lighten the state's Burden of Proving their case beyond a reasonable doubt or make the state's Burden of proving their case beyond a reasonable doubt more Burden some Giving the Fact that the Attorney(s) For the state of Nevada is/are Duly

Memorandum of Points and Authorities Continued

licensed to practice law here in nevada and experts Versus the attorney For the defense not Duly licensed to practice law herein nevada but has the Constitutional right to represent himself Under the Constitution of Nevada and Under the Constitution of the United states of America?

Q6) By the Defense

Q6) Giving that the defendant is mormon and you all will probably hear that within this trial, would that prevent any of you jurors here today From adjudicating on the Facts Fairly?

These Voir dire examination questions are to examine the Jurors ~~and~~ For any prejudices to an individual(s) Constitutional right to Self-representation.

Respectfully Submitted

ANTONIO LEE MIXON

Pro-Se

a. L. Mixon Jr.

Dated: Oct. 26th 2018.

Certificate of mailing, of service

I hereby certify that in the representation for the defendant in this instant case and sent a copy of the Motion For Voir Dire on 10/29/2018 by placing said Motion in mailing addressed to the following:

Chelsea Kellys
Deputy Attorney General
555 East Washington Ave., Suite #3900
Las Vegas, NV 89101

Steven D. Grierson,
Clerk of Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

cc: File

Transport order request

Antonio Lee Mixon Jr. #1019828

High Desert state Prison

22010 Cold creek rd.

P.O. Box 650

Indian Springs, NV 89070

IN the 8th Judicial District court of the state of Nevada in and For the County of clark in the matter of Antonio Mixon, Defendant v. State of Nevada, plaintiff asks this Court For an order to transport and produce inmate For hearing Based on the circumstances of oral argument, the presence of Antonio Lee Mixon is necessary for the hearing on this Motion scheduled in this case on the ___ day of ___, 2018 at the hour of ___ o'clock ___.m. at the Following address Michael P. Villani, District Judge, Eighth Judicial District Court, Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155. in Dept. 17. Therefore this Court should grant the order that pursuant to NRS 209.274 and any other applicable NRS(s), Warden; Brian E. Williams High Desert State Prison, 22010 Cold creek rd., Indian Springs, NV 89070 should be ordered to have Antonio Lee Mixon Jr. #1019828 transported to appear Before this Court, a specified as court directs. Upon Completion of the hearing, Antonio Lee Mixon Jr., #1019828 will be and should be transported to the above-named institution.

Dated this 29th day of Oct. 2018

MFJI

ANTONIO LEE MIXON
H.D.S.P.
P.O. BOX 650
Indian Springs, NV 89070
PRO-SE

FILED
NOV 02 2018
CLERK OF COURT

District Court
Clark County, Nevada

The State of Nevada	)	Case No.: C-17-327439-1
Plaintiff	)	Dept. No.: 17
vs.	)	Date of Hearing: NOV 27 2018
Antonio LEE MIXON JR.	)	Time of Hearing: 8:30 AM
Defendant	)	

Motion For Jury Instructions

Comes Now, The Defendant, Antonio Lee Mixon, by and through Self-representation, and hereby requests this honorable Court to grant this Motion.

These memorandum of Points and Authorities are made and based upon all the papers and pleadings on File herein, and oral argument.

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CLERK OF THE COURT

C-17-327439-1
MOT
Motion
4793457

Memorandum of Points and Authorities

I. The Defense request the following Jury instruction:

(1) Jury should render a not guilty verdict for Count one IF Majority of the jury believe state did not meet it's burden of proving beyond a reasonable doubt that Victim DID not report that the Defendant had attempted to Batter Victim because Defendant had present ability to do so. And because the state did not charge Defendant with attempt Battery or assault coupled with Majority of the jury believing state Did not meet it's burden Mentioned above, jury should render a not guilty verdict for the charge of battery by prisoner.

(2). Jury instruction request number two the Defense request the following Jury instruction:

Court should instruct jury on actual possession by theory, that consist of, " IF Someone seen or heard Someone had possession or control of a weapon ~~Because~~ THEN At the time Suspect was apprehended, then put into restraints, that person is not in possession or control of any weapon. And therefore jury should render a verdict of not guilty to Count Two which is possession or Control of Dangerous Weapon OR Facimile By AN INCARCERATED PERSON.

Court Defendant DID not say he had possession or control of Dangerous weapon or Facimile By An Incarcerated Person.

Certificate of Mailing of Service

I hereby certify that im the representation For the Defendant in this instant case and sent a copy of Motion For Jury Instructions on 10/29/2018 By Placing Said Motion In mailing addressed to the Following:

Chelsea Rollis
Deputy Attorney General
555 East Washington Ave., Suite #3900
Las Vegas, NV 89101

Steven D. Grierson,
Clerk of Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

cc: File

Transport order request

Antonio Lee Mixon Jr. #1019828

High Desert state Prison

22010 Cold creek rd.

P.O. Box 650

Indian Springs, NV 89070

In the 8th Judicial District court of the state of Nevada in and For the County of clark in the matter of Antonio Mixon, Defendant V. State of Nevada. Plaintiff asks this court For an order to transport and produce inmate For hearing Based on the circumstances of oral argument, the presence of Antonio Lee Mixon is necessary For the hearing on this motion Scheduled in this case on the ___ day of ___, 2018 at the hour of ___ o'clock ___.m. at the Following address Michael P. Villani, District Judge, Eighth Judicial District court, Regional Justice Center, Dept. 17., 200 Lewis Avenue, Las Vegas, Nevada 89155. Therefore this court should grant the order that pursuant to NRS. 209. 274 and any other applicable NRS(s) warden Brian E. Williams, High desert state prison, 22010 Cold creek rd., Indian Springs, NV 89070 should be ordered to have Antonio Lee Mixon Jr. #1019828 transported to appear before this court, as specified as court directs. Upon completion of the hearing, Antonio Lee Mixon Jr. #1019828, will be and should be transported to the above-named institution.

Dated this 29th day of Oct., 2018

ANTONIO LEE MIXON, #1014669
H.D.S.P.
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89070

HIGH DESERT STATE PRISON
OCT 29 2018
UNIT A/B

Steven D. Grierson,
Clerk of the Court
200 Lewis AVENUE 3rd Floor
Las Vegas, NEVADA 89155-1160

494

MOTD

ANTONIO LEE MIXON JR.
H.D.S.P., P.O.BOX 650
Indian Springs, NV 89070
Pro-se

FILED
NOV 02 2018
CLERK OF COURT

District Court
Clark County, Nevada

The state of Nevada
Plaintiff,
vs
ANTONIO LEE MIXON JR.
DEFENDANT

Case NO.: C-17-327439-1
Dept. NO.: 17
DATE OF HEARING: NOV 27 2018
TIME OF HEARING: 8:30 AM

MOTION TO DISMISS

Comes NOW, The Defendant, Antonio Lee Mixon, by and through Self-representation, and hereby requests this honorable Court to grant this Motion To Dismiss.

These memorandum of Points and Authorities are made and based upon all the papers and pleadings on File herein, and oral argument at the time set for hearing.

DATED this 27th day of Oct., 2018

ANTONIO LEE MIXON
Pro-se
/s/ A. Mixon Jr.

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NOV 02 2018
CLERK OF THE COURT

C-17-327439-1
MDSM
Motion to Dismiss
4793463

Memorandum Points of Authorities

Statement of Case

Court December 4th, 2015 Defendant was placed in administrative segregation pending investigation. December 7th, 2015 Defendant was served a notice of administrative charges By Correctional officer Eric Romero. That same day Summary of Hearing officer's Inquiry and disposition was prepared By officer Eric Romero. His statement is that the evidence relied on At the time of his report is officer's report, weapon recovered and booked into the evidence Vault, video recording of the aftermath of the incident, officer's alleged injuries resulting in a CI packet needing to be Filled out. NONE of the reports by additional officers about the incident was prepared the day of incident existed at the time Romero made his statement as to what evidence existed at the time of the Summary of Hearing officer's inquiry and disposition he prepared, which the state acts as if the reports did as they Submitted these For evidence. later on December 7th, 2015 officer Barth, Jay requested that Defendant be Criminally prosecuted. December 17th, 2015 The Defendant Filed a grievance that the Findings of probable cause For ~~Extremity~~ criminal prosecution was in Error and that. ~~that~~ sanction is extremely harsh, cruel, and Unusual Punishment in violation of Defendants 8th United States Constitutional right to be Free From cruel and unusual punishment. December 23, 2015 B. Stroud acting Warden issued a Memorandum responding to Defendants grievance stating A referral For Criminal Prosecution is cruel, harsh, and unusal and giving the circumstances ~~Charged~~ the Sanctions issuing that the prison isn't going to file a referral ~~today~~ ~~File a referral~~ For Criminal prosecution and that the memorandum Frees Defendant From any arbitrary action by the state Under the 8th and 14th amendments of the U.S. Constution. Twenty Months later

Memorandum of points and Authorities Continued

STATEMENT OF CASE Continued

Defendant received a motion For initial arraignment in Justice Court to ~~Count~~ NRS 200.481(2)(E) and Count Two NRS 212.185(c) which is not within Title FIFteen of the Nevada Revised Statutes Chapters 193-202 and title FIFteen governs over all crimes and punishment here in Nevada so thats not a charge and should be dismissed. Defendant then appeared in Justice Court For arraignment their Counsel for Defendant being a Friend ~~the~~ of the Court wanted defendant to take in consideration an offer from the state. Defendant refused to take any offer From the state into consideration. Defendant put on record the issue with the memorandum, Defendant mention this issue to public Defender and nothing. Defendant then had a preliminary hearing Defendant requested Counsel Waive it so it was waived. At lower Court arraignment Defendant asked Counsel again before hearing Commenced to File a motion about the issue ~~with the~~ memorandum i was ignored, ~~arraigned~~ arraigned and case transferred to Dept 17 District Court. A Speedy trial date was given. The Counsel made no motions about the issue calendar call came that day the jury was selected, trial commenced, there was a mistrial. Counsel then Filed three Motions ~~to dismiss court~~ and/or in the alternative requested Court issue Counsel Defense a Jury instruction. Two OF Counsel's Motions were denied, one being in stay Court never adjudicated ~~adjudicating~~ on because Defendant had to be excused From the Courtroom. Defendant then ~~Request~~ requested SELF-representation and before this or between this Court decided Defendant could add to ~~Counsel~~ prior counsel's Motion to dismiss. Defendant was granted the

Memorandum Points And Authorities

Statement of Case Continued

Constitutional right to represent himself, court ordered previous Counsel send entire File to Defendant. Upon going through the File received From previous Counsel coupled with all of the times i've requested prior counsel to File motion about the issue which Counsel ignored, i read the state's response to previous Counsel's motion to dismiss and their argument Said that the motion this Court ruled Defendant could add to should be denied because previous counsel Failed to raise that before the first trial, Court i requested numerous times For prior Counsel about the issue had Counsel Filed the motion i requested when it would of been on time and not procedurally barred the state would'nt have that argument and i Kinda agree with the state in regards that prior Counsel should have Filed Motion about those issues which the issue i requested of prior counsel to File and attach exhibits of prior counsel to File and attach Memorandum was withon her motion so that leads My Exhibit in Jeapordy of Not getting Consider Because prior counsel's ineffective assistance, so instead of Defendant Filing a motion to place prior Counsel's Motion back on Calendar to Submitt prior counsel's argument and to attach Memo would be me at lost of Justice so this instant motion Follows and Exhibit to be consider once Defendant appears For oral arguement on this Matter Because Defendant have problems with the law library Supervisor Receiving important documents to Copy So have to bring Memorandum and returning, So i have to bring Memorandum. This is Defendants Declaration.

Memorandum of Points And Authorities

Legal Argument

I. The Defendant invoked the Federal Constitution's Eighth Amendments and the equal protection clause of 14th Amendment. See Memorandum

Drawing upon the internal prison grievance ~~System~~ procedure see Exhibit Memorandum and Prisons and Convicts §1, where there is Sufficient evidence Significant enough to give rise to a Liberty Intrest the Defendant Prisoners is entitled to procedural Protections under due-process clause of the Federal's Constitution's 14th admendment See Evidence § 504.3 and ~~for~~ 909.3.

The Liberty Intrest here is the criminal prosecution and the prosecution and the being subjected to a lost of liberty. reforcal For criminal. The Procedural Protections required to be given to prisoners when prison subject Prisoner to a lost of Liberty is that prisoner ~~to a lost of liberty is that prisoner~~ is to be given "notice". Here these ~~two~~ things (1) the prisoner being Subjected to a conviction and sentence of a lot years ~~Execution~~ ~~&~~ gives rise to the liberty intrest spoken of above. (2) The liberty intrest analysis ~~is applied~~ should be applied here because this is not a ~~situation~~ a case where the defendant is subjected to relative a "Delayed release From the parole board" on A already existing ~~Ju~~ Judgment of conviction Seperate From the allegations in this instant case, as a direct result of the allegations in this instant Case, rather here in this case prisoner is subjected to a Criminal prosecution, a lost of

Memorandum of points and Authorities

Legal Argument

Liberty upon entire new Judgment of Conviction, a lot of more years in prison. Defendant was issued a Memorandum ~~Fee~~ that Frees Defendant from arbitrary action by the State, that action is this criminal prosecution. When State infringed upon that Right of Defendant state was to and/or ~~Prison~~ Prison was to put Defendant on notice after to be received the Memorandum Defendant didn't receive no notice of the Prosecution By Reason the motion For Into initial arraignment which is in violation of Defendant Due-process Rights of the 14th amendment.

For all the Foregoing reasons Defense asks this Court to apply the "Liberty Instrust" analysis to these circumstances and that Court finds that Defendant was Freed From this criminal prosecution and Defendant was not put on notice From the time Memorandum issued and since Defendant's Rights have been Violated by the Prison and state this Case should be dismissed. The Prison Violated Defendant's 14th amendment Right to be put on notice when it subjects Prisoners to a lost of liberty because after the ~~Memorandum~~ Memorandum issued ~~which~~ stated ~~State~~ Prison, is not Filing ~~Dismissed~~ For criminal Prosecution, twenty Months later, state issued a Motion For initial arraignment State Violated defendant's 14th and 8th amendment Right to ~~Free~~ be Free From arbitrary actions of the state when after the Memorandum issued by the Prison stating ~~stated~~ defendant is to ~~Free~~ be Free From Criminal prosecution, the State went ahead and prosecuted defendant criminally in total disregard of the Memo. Whomever this Fault is For the Defendant's Rights being Violated who Knows ~~that~~ what Matter Most here is Defendant's Rights. Respectfully Submitted

Memorandum of Points and Authorities

Legal argument

III. Count Two NRS 212.105(6) isn't an NRS, Title Fifteen governs over all crimes and punishments From NRS Chapter 193 Until NRS Chapter 202. "NRS" defined - Nevada Revised Statutes. Given that Prior counsel didn't challenge this issue before last trial and before lower court arraignment commenced coupled with just ~~day~~ today Defendant became aware of this issue, ~~and~~ Defendant was granted self-representation on or about April the charge should be dismissed See NRS 174.105(1) provides: "Defenses and objections based on defects in the institution of the prosecution, other than insufficiency of the evidence to warrant an indictment, or in the indictment, information or complaint, other than it fails to show jurisdiction in the court or to charge an offense may be raised only by Motion before trial. Defendant possessed Memorandum before last trial but it wasn't Defendant's Duty to set up Defenses in fact it was prior counsel's Defense. Prior counsel visited Defendant where prior counsel was made aware of Memorandum because prior counsel viewed it and asked Defendant to bring it with him to trial. This was Time before. Prior counsel had been made aware that Memo Existed so if Prior Counsel didn't already have it From the state then Prior counsel could have Filed Motion. Defendant Brought Memo down to CCDC For trial on a week before ~~Clan~~ calendar call Defendant Filled out a property transaction Form to receive Memo but nothing. The day of Calendar Call Defendant was asked by prior counsel for Memo. Memo Was still in property. Prior counsel asked

Memorandum of Points and Authorities

Legal argument

The CCDC officer to get MEMO ~~the~~ Defendant then failed out another Property transaction Form and didn't receive ~~the that~~ MEMO Until ~~the~~ like the middle of trial during a recess of trial. So DID Prior Counsel have Memo before the First trial? well when Prior Counsel sent entire file the MEMO was numbered with state ~~Exhibit~~ Exhibit numbers on them But their was a page within their Defendant never received from the Prison and the Prison was whom issued the MEMO. So it's NOT The Defendants Fault about these issues being raised.

For all the Foregoing Reasons

This Motion should be granted.

And Court should dismiss the criminal Prosecution with Prejudice.

And dismiss case with Prejudice.

Respectfully

Submitted

Dated; this 27th day of October

2018.

Certificate of mailing, of service

I hereby that im the representation For the Defendant in this instant case and sent a copy of Motion to Dismiss ~~by placing said motion in mailing addressed to the Following~~ on 10/24/2018 by placing said Motion in mailing addressed to the Following:

Chelsea Kallas	Steven D. Grierson,
Deputy Attorney General	Clerk of Court
555 East Washington Ave., Suite #3900	200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89101	Las Vegas, NV 89155-1160

CC: File

Transport order request

Antonio Lee Mixon Jr. #1019828
High Desert State Prison
22010 Cold Creek rd.
P.O. Box 650
Indian Springs, NV 89070

to the 8th Judicial District Court of the State of Nevada in and for the County of Clark in the matter Antonio Mixon, Defendant V. State of Nevada, plaintiff asks this Court for an order to transport and produce inmate for hearing Based on the circumstances of oral argument, the presence of Antonio Lee Mixon is necessary for the hearing on this motion scheduled in this case on the ___ day of ___, 2019 at the hour of ___ o'clock ___.m. at the following address Michael P. Villani, District Judge, Eighth Judicial District Court, regional Justice center, Dept. 17, 200 Lewis Avenue, Las Vegas, Nevada 89155. Therefore this Court should grant the order that pursuant to NRS 209.274 and any other applicable ~~NRS(S)~~ NRS(s), Warden Brian E. Williams High Desert State Prison, 22010 Cold Creek rd, INDIAN Springs, NV 89070 should be ordered to have Antonio LEE Mixon Jr. #1019828 transported to appear before this Court, a specified as Court directs. Upon Completion of the hearing, Antonio Lee Mixon Jr. #1019828, will be and should be transported to the above-named institution.

~~NOTM~~ NOTIS
~~MRVA~~

Antonio Lee Milton Jr.
H.D.S.P.
P.O. Box 650
Indian Springs, NV 89070
Pro-Se

FILED
NOV 02 2018
CLERK OF COURT

District Court
Clark County, Nevada

The State of Nevada
Plaintiff,
vs.
Antonio Lee Milton Jr.
Defendant

Case No.: C-17-327439-1
Dept. No.: 17
DATE OF HEARING:
~~DATE OF TIME~~:
TIME OF HEARING:

NOTICE OF MOTION

TO office of the Attorney General and Attorney for plaintiff,
And Department XVII, You will please take notice that the Defendant will bring the ~~above~~ attached ~~and foregoing~~ Motion on For hearing ~~before~~ the Court on the 27 day of NOV, 2018 at 8:30 o'clock 8:30 AM.

Dated this 26th day of Oct., 2018

A. Lee Milton Jr.
Pro-Se.

RECEIVED
NOV 02 2018
CLERK OF THE COURT

C-17-327439-1
NOTM
Notice of Motion
4793469

P.P
DA

1 NOTM
2 ANTONIO LEE MIXON JR.
3 N.D.S.P.
4 P.O. BOX 650
5 INDIAN SPRINGS, NV 89070
6 PRO-SE

FILED
NOV 02 2018
CLERK OF COURT

7 District Court
8 Clark County, Nevada
9 The State of Nevada) Case Number C-17-327439-1
10 Plaintiff,) Dept. NO.: 17
11 Vs.) Date of Hearing:
12 ANTONIO LEE MIXON JR.) Time of Hearing:
13 DEFENDANT)
14
15 NOTICE OF MOTION
16 To: Office of the Attorney General, and Dept. 17 and
17 Attorney For Plaintiff, you will please take notice that the
18 Self-Representative will bring the ~~above~~ attached and foregoing Motion
19 on For hearing before the Court on the 27 day of Nov,
20 2018 at o'clock 8:30 AM
21
22 DATED this 27th day of Oct, 2018
23 A. Mixon Jr.
24
25
26
27
28

RECEIVED
NOV 02 2018
CLERK OF THE COURT

C-17-327439-1
NOTM
Notice of Motion
4793470

1 MTD

2 Antonio Lee Mixon Jr.

3 H.D.S.P.

4 P.O. Box 650

5 Indian Springs, NV 89070

6 Pro-Se

FILED

NOV 02 2018

CLERK OF COURT

7 District Court

8 Clark County, Nevada

9 The state of Nevada } Case No.: C-17-327439-1

10 Plaintiff, } Dept. No.: 17

11 VS. } Date of Hearing:

12 Antonio Lee Mixon Jr. } Time of Hearing

13 Defendant }

14

15 Notice of Motion

16 To office of the Attorney General and Attorney For plaintiff,

17 and department XVII, you will ~~take~~ please take notice that the Defendant

18 will bring the attached Foregoing Motion on For hearing before the Court

19 on the 27 day of NOV, 2018 at o'clock 8:30 AM .m.

20

21 Dated this ~~27th~~ 27th day of Oct., 2018

22 A. L. Mixon Jr.

23 Pro-Se.

24

25

26

27

28

RECEIVED
NOV 02 2018
CLERK OF THE COURT

C-17-327439-1
NOTM
Notice of Motion
4793468

Electronically Filed
11/15/2018 3:23 PM
Steven D. Grierson
CLERK OF THE COURT

OPPM
ADAM PAUL LAXALT
Attorney General
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-5707
F: (702) 486-0660
Ckallas@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, 1019828, Defendant.	Case No.: C-17-327439-1 Dept. No.: XVII Hearing Date: November 20, 2018 Hearing Time: 8:30 AM

STATE'S OPPOSITION TO DEFENDANT'S AMENDED MOTION FOR EXTENSION OF TIME

ADAM PAUL LAXALT, Attorney General for the State of Nevada, through Deputy Attorney General, Chelsea Kallas, hereby submits the State's Opposition to Defendant's Amended Motion for Extension of Time. This motion is made and based upon the pleadings on file, the following memorandum of points and authorities, and any oral arguments the Court may allow.

Dated this 15th day of November, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

Case Number: C-17-327439-1

MEMORANDUM OF POINTS AND AUTHORITIES

On October 25, 2017, Antonio Lee Mixon (hereinafter "Defendant") was charged by way of Information with the following: Count 1 – Battery By A Prisoner (Category B Felony – NRS 200.482(2)(f)); and Count 2 – Possession or Control of Dangerous Weapon or Facsimile By An Incarcerated Person (Category B Felony – NRS 212.185(c)). On November 1, 2017, Defendant pled not guilty and invoked his right to a speedy trial. On November 14, 2017, Defendant filed a Motion to Compel Production of Discovery and Brady Material. On December 1, 2017, the State filed its Opposition. On December 5, 2017, the Court issued a minute order directing the State to turn over, among other things, all witness statements. The Court requested that Defendant file the order. On January 2, 2018, Defendant's trial commenced. On that same day, the Court declared a mistrial. A new trial was scheduled to commence on March 26, 2018. However, on March 15, 2018, the Court vacated Defendant's upcoming trial date due to Defendant acting out in Court.

On March 28, 2018, Defendant filed a Motion to Withdrawl of Attorney of Record, Request to Obtain Copy of Defendant's File, and Request for Self-Representation. On April 6, 2018, the Court administered a Farretta Canvass and Defendant's Motion was granted. At this time, Defendant informed the Court he would need 120 days to prepare for trial. A new trial was scheduled to commence on August 27, 2018. On June 19, 2018, Defendant requested a continuance of trial and a new trial date was scheduled to commence on October 28, 2018. On August 8, 2018, Defendant filed a Motion for Status Check; Trial Readiness; Discovery Issue; Transportation Order; Oral Agreement Requested. On August 30, 2018, Defendant's Motion was granted and at the request of Defendant, the trial date was again vacated. Calendar Call is set for January 3, 2019, and trial is scheduled to commence on January 7, 2019.

On October 15, 2018, Defendant filed a Motion for Extension of Time, where he requested a 365 day trial extension. On October 25, 2018, Defendant's Motion was denied. On October 29, 2018, Defendant filed a Motion for Leave to Amend and an Amended Motion for Extension of Time. The State responds as follows.

ARGUMENT

Defendant again requests a trial continuance so he can file documents in the instant case, as well as his other cases. The Court already denied this request on October 25, 2018. Defendant fails to cite any new

reasons for a continuance in his instant Motion. Additionally, this case has been continued several times already, providing Defendant with plenty of time to file any necessary documents related to the instant case. Further, Defendant's request for more time so he can prepare documents in another unrelated case is not good cause to continue trial in the instant matter. As such, Defendant's Motion should be denied.

CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court deny Defendant's Amended Motion for Extension of Time.

DATED this 15th day of November, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on November 15, 2018, I filed the forgoing STATE'S OPPOSITION TO DEFENDANT'S AMENDED MOTION FOR EXTENSION OF TIME via this Court's electronic filing system.

I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or e-mail; or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following unregistered participants:

Antonio Mixon, Inmate ID #1019828
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

/s/ A. Reber
An employee of the Office of the Attorney General

Antonio L. Mixon ID NO. 1019228

HIGH DESERT STATE PRISON
22010 COLD CREEK ROAD
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89018

FILED
NOV 19 2018
CLERK OF COURT

Eighth Judicial District Court
Clark County, Nevada

Antonio LEE Mixon
Defendant

v.

The State of Nevada
Plaintiff

CASE NO.: C-17-327439-1
DEPT. NO.: XVII
DOCKET:

December 11, 2018 @ 8:30 AM

Motion For stay of Trial Setting and/or Motion for Time extension.

COMES NOW, Defendant, Antonio L. Mixon Pro-se, herein above respectfully moves this Honorable Court for an Order granting a stay of trial Setting and/or order for an extension of time to prepare for trial.

This Motion is made and based upon the accompanying Memorandum of Points and Authorities.

DATED: this 15th day of November, 2018

BY: Antonio Lee Mixon Sr.
A.L. Mixon JR. # 1019228
Defendant/In Proper Personam

RECEIVED
NOV 19 2018
CLERK OF THE COURT

C-17-327439-1
MSTY
Motion to Stay
4797311

Memorandum of Points and Authorities

STATEMENT OF CASE

Since the granting of the Motion for Forensic Expert Witnesses Defense has tried Everything in its power to locate A Forensic Expert. Defense attempted Consultation TWICE to Private Investigator to get impeaching evidence of state's witnesses and to get witnesses for Defense's Defense. Defense has also tried to locate a business, company, or corp. agency that will service process of subpoenas so witness will attend trial. The Defendant as of today only been the representation for like Seven Months for the Defendant in this Case.

Argument I.

Your honor as far as the Forensic Expert Situation goes IF Defendant has to be the Forensic Expert then Defendant request this Court And/or state to pay for the enrollment in Stratford Career institute For Forensic Science. The course can be ~~Stud~~ Studied From a cell and a diploma can issue in as little as Six months. The course covers everything from processing the crime scene to the Fundamentals of DNA analysis, and handwriting and Document examinations. It's An Affordable Education, on your home, on Your terms, Student Get 50 % off the Regular tuition Price, Evelyn Daymond is the Director of admissions. Can call 1-800-363-1058 EXT. 9973 / www.Scitraining.com. The tuition is $544.50 per program (15 monthly payments @ $34.96). Defendant, once diploma is received, charges $2,600 for the expert opinion/testimony.

Argument II.

Your honor the issue with the evidence Defense is seeking, is The Defendant is invoking his right to impeach witnesses the state wishes to call. The credibility of a witness may be ~~attacked~~ attacked by any party, including the party calling the witness, See NRS 50.075. The Evidence Sought is the Fact that the correctional officers the state wishes to call to testify in this case are participant(s) in a wrongful death cover-up of a prison offical(s) Killing a Prisoner and attempting to Kill another prisoner. The Defense believes that since those witnesses of the state (which are Correctional officers) are part of that type of Corruption those witnesses wouldn't have a problem coming to Defendant's trial to tell a little White lie. And Evidence of character and conduct of Witness can be inquired into on cross-examination for truthfulness or Untruthfulness See NRS 50.085. In the event state wishes not to call said Witnesses Defense ask permission of this Court to call witnesses to the direct examination of Defense's case in chief to interrogate by leading questions in cross-examining said witnesses ~~See NRS 50.115 3(a), NRS 50.115 4(a), 4(b)~~, for the ascertainment of the truth, See NRS 50.115 3(a) also see NRS 50.115 4(a) and 4(b). Giving these arguments and the Fact (CONCLUSION) defendant needs time to Subpoena, Defense believes this request is not For delay and this Motion should be granted. Defense Request any extension of time Court deems appropriate. Defendant wishes to be his own Forensic expert. Defense request that the Trial Setting is stayed and/or an extension of time should be granted to prepare for trial. Defense is seeking a S.S.E, C.E.R.T., and maybe a Canteen witness(es), and a Nurse.

Notice of Motion / Hearing

To office of the Attorney General, and Dept. 17 and Attorney For Plaintiff, you will please take notice that the Self-representative will bring the Foregoing Motion on For hearing before the Court on the ___ day of ___, 2018 at o'clock ~~8:30 A.m~~ ___: A.m.

DATED this 15th day of NOV. 2018.

/s/ A. Mixon Jr.

Transportation order

IN the 8th Judicial District Court of the state of Nevada in and for the County of Clark in the matter of Antonio Mixon, Defendant V. State of Nevada Defendant asks this Court for an order to transport and produce inmate For hearing based on the circumstances of oral argument, the presence of Antonio Lee Mixon is necessary for the hearing on this Motion scheduled in this case on the ___ day of ___, 2018 at the hour of ___ o'clock ___ .m. at the following address Michael P. Villani, District Judge, Eighth Judicial District Court, Regional Justice Center, Dept. 17, 200 Lewis Avenue, Las Vegas, Nevada 89155. Therefor this Court should grant the order that pursuant to NRS. 209. 274 and any other applicable NRS(S). Warden Brian E. Williams, High Desert state prison, 22010 Cold Creek rd., Indian Springs, NV 89070 should be ordered to have Antonio LEE Mixon Jr. #1019828 transported to appear before this Court, as specified as ~~Court~~ Court directs upon completion of the hearing, Antonio LEE Mixon Jr. #1019828, will be and should be transported to the above-named place.

Dated. this 15th day of NOV, 2018.

CERTIFICATE OF SERVICE

I, Antonio J. Mixon, hereby certify that I am the Defendant ~~petitioner~~ in this matter and I am representing myself in propria persona.

On this 16th day of November, 2018, I served copies of the Motion For stay of trial Setting and/or Motion For Time extension.,

in case number: C-17-327439-1 and placed said motion(s) in U.S. First Class Mail, postage pre-paid:

Address: 200 Lewis Avenue 3rd floor LV, NV 89155-1160
Sent to: Steven D. Grierson Clerk of the Court

Address, 555 East Washington Ave, Suite #3900 LV, NV 89101
Sent to: Chelsea Kallas Deputy Attorney General

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the Defendant ~~petitioner~~ in the above-entitled action, and he, the defendant has read the above CERTIFICATE OF SERVICE and that the information contained therein is true and correct. 28 U.S.C. §1746, 18 U.S.C. §1621.

Executed at H.D.S.P.

on this 16th day of November, 2018.

Antonio J. Mixon 1198228
DOP#

Defendant
~~PETITIONER~~ -- In Proper Person

Mr. Antonio Lee Milton #1019828
P.O. Box 650
Indian Springs, NV 89070

Steven D. Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

~~[illegible]~~

~~[illegible]~~

~~[illegible]~~

89155$9999

517

HIGH DESERT STATE PRISON
NOV 14 2018
UNIT 4 A/B

Electronically Filed
11/19/2018 10:32 AM
Steven D. Grierson
CLERK OF THE COURT

OPPM
ADAM PAUL LAXALT
Attorney General
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-5707
F: (702) 486-0660
Ckallas@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1019828 Defendant.	Case No.: C-17-327439-1 Dept. No.: XVII Hearing Date: November 27, 2018 Hearing Time: 8:30 AM

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR JURY INSTRUCTIONS

ADAM PAUL LAXALT, Attorney General for the State of Nevada, through Deputy Attorney General, Chelsea Kallas, hereby submits the State's Opposition to Defendant's Motion for Jury Instructions. This motion is made and based upon the pleadings on file, the following memorandum of points and authorities, and any oral arguments the Court may allow.

Dated this 19th day of November, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

Case Number: C-17-327439-1

MEMORANDUM OF POINTS AND AUTHORITIES

On October 25, 2017, Antonio Lee Mixon (hereinafter "Defendant") was charged by way of Information with the following: Count 1 – Battery By A Prisoner (Category B Felony – NRS 200.482(2)(f)); and Count 2 – Possession or Control of Dangerous Weapon or Facsimile By An Incarcerated Person (Category B Felony – NRS 212.185(c)). On November 1, 2017, Defendant pled not guilty and invoked his right to a speedy trial. On November 14, 2017, Defendant filed a Motion to Compel Production of Discovery and Brady Material. On December 1, 2017, the State filed its Opposition. On December 5, 2017, the Court issued a minute order directing the State to turn over, among other things, all witness statements. The Court requested that Defendant file the order. On January 2, 2018, Defendant's trial commenced. On that same day, the Court declared a mistrial. On March 28, 2018, Defendant filed a "Motion to Withdrawl of Attorney of Record, Request to Obtain Copy of Defendant's File, and Request for Self-Representation." On April 6, 2018, the Court administered a Farretta Canvass and Defendant's Motion was granted. Calendar Call is set for January 3, 2019, and Jury Trial is scheduled to commence on January 7, 2019.

On November 2, 2018, Defendant filed a Motion for Jury Instructions. The State responds as follows.

ARGUMENT

Defendant's request for jury instructions is premature. Additionally, Defendant fails to provide any argument whatsoever as to why the jury should be provided with these instructions. It is not the State's job to make Defendant's arguments for him. As such, Defendant's Motion should be denied.

CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court deny Defendant's Motion for Jury Instructions.

DATED this 19th day of November, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on November 19, 2018, I filed the foregoing STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR JURY INSTRUCTIONS via this Court's electronic filing system.

I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or e-mail; or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following unregistered participants:

Antonio Mixon, Inmate ID #1019828
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

/s/ A. Reber
An employee of the Office of the Attorney General

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO LEE MIXON, JR.
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 77206
District Court Case No. C327439

FILED
NOV 29 2018
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER this appeal DISMISSED."

Judgment, as quoted above, entered this 2nd day of November, 2018.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this November 27, 2018.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll
Chief Deputy Clerk

C-17-327439-1
CCJD
NV Supreme Court Clerks Certificate/Judgi
4799738

S

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO LEE MIXON, JR.
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 77206

FILED

NOV 02 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a district court order denying a pretrial motion to suppress. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

This court's review of this appeal reveals a jurisdictional defect. Specifically, no statute or court rule allows a defendant to appeal from an order denying a pretrial motion to suppress evidence. *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990) (right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists); *see also* NRS 177.015(2) (only the state may appeal from an order granting or denying a pretrial motion to suppress). Accordingly, we conclude that lack jurisdiction over this appeal, and we

ORDER this appeal DISMISSED.

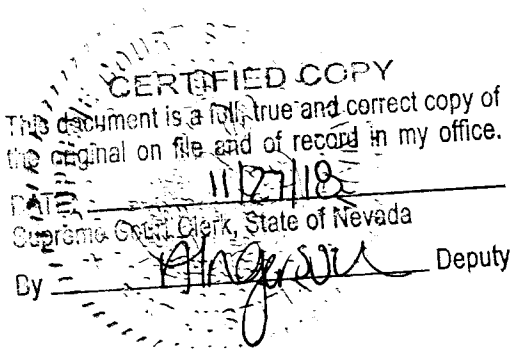
Pickering, J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

18-43155

cc: Hon. Michael Villani, District Judge
Antonio Lee Mixon, Jr.
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk


CERTIFIED COPY
This document is a full, true and correct copy of the original on file and of record in my office.
DATED: 11/27/18
Supreme Court Clerk, State of Nevada
By: Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO LEE MIXON, JR.
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 77206
District Court Case No. C327439

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: November 27, 2018

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll
Chief Deputy Clerk

cc (without enclosures):
Hon. Michael Villani, District Judge
Antonio Lee Mixon, Jr.
Attorney General/Carson City
Clark County District Attorney

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the REMITTITUR issued in the above-entitled cause, on NOV 2 9 2018.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED
APPEALS
NOV 2 9 2018
CLERK OF THE COURT

SAO

ANTONIO LEE MIXON
1019828
High Desert STATE PRISON
POST OFFICE BOX 650
INDIAN SPRINGS, NV 89070
Attorney For ANTONIO MIXON

IN THE EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NV

THE STATE OF NEVADA

PLAINTIFF,

VS.

ANTONIO MIXON, #1968772

DEFENDANT.

Case NO. C-17-327439-1
Dept NO. XVII

STIPULATION AND ORDER FOR CONFIRMATION OF EXPERT WITNESS(ES)

THE UNDERSIGNED Counsel hereby stipulate to THE CONFIRMATION OF DEFENDANT AS Forensic Expert as The Forensic linguist AND FINGERPRINT EXPERT, With a Substitution OF Counsel For The DIRECT EXAMINATION OF Forensic Expert PURSUANT TO EDCR 7.40, With The Substitution OF Counsel being only For The place and STEAD OF The Defenses' Direct Examination of The Forensic Expert of The Defenses case in chief.

///

///

///

RECEIVED
NOV 29 2018
CLERK OF THE COURT

C-17-327439-1
LSF
Left Side Filing
4799648

5

Futhermore That Defendant's Expert Testimony Be in limine, limited To Just THE Forensic Expert Testimony About THE Findings. And THE Expert witness Qualifications And/or Training.

AT THE STATE'S EXPENSE STATE ENROLL DEFENDANT in THE STRATFORD CAREER INSTITUTE FOR THE FORENSIC SCIENCE COURSE. THE FANTASTIC COURSE CAN BE STUDIED FROM A CELL AND A Diploma CAN ISSUE IN AS little AS MONTHS. THE COURSE COVERS EVERYTHING From Processing THE CRIME Scene to THE Fundamentals OF DNA Analysis, And Handwriting AND Document EXAMINATIONS. THE program OFFER limited time offer OF 50% OFF student TUITION WHEN AN ENROLLment Agreement IS inputed ~~IT~~ INTO OFFER LAST 30 days.

Evelyn Daymond is one of THE Directors of Admissions, AND CAN BE CONTACTED And/or A representative CAN BE CONTACTED AT 1-800-363-0058 EXT. 9973 or by web AT WWW.SCITRAINING.com. ONCE DEFENDANT RECEIVES Diploma AT THE EXPENSE OF THE STATE ~~ANNOUNCEMENT~~ ISSUE Forensic Expert $2,600 To HIS Account. THE Diploma Will be Due in MONTHS.

DATED THIS 25th of November, 2018.

G. L. Mixon Jr.

ANTONIO LEE MIXON
POST OFFICE BOX 650
H.O.S.P.
Attorney For ANTONIO L MIXON

DATED THIS ____ of ~~Nov~~, 2019

ADAM PAUL LAXALT.
Chelsea N. Kallas.
Deputy Attorney General
OFFICE OF Attorney General
Attorneys For STATE OF NEVADA

ORDER FOR CONFIRMATION OF EXPERT WITNESSES

THE PARTIES HAVING STIPULATED, AND GOOD CAUSE APPEARING THEREFOR, THE COURT ORDERS THAT THE CONFIRMATION OF EXPERT WITNESS (FORENSIC EXPERT) IS AS FOLLOWS:

ANTONIO LEE MIXON JR.

SSN: 530-49-6782

IT IS SO ORDERED

DATED THIS ____ OF _____, 2019.

_____

MICHAEL VILLANI

EIGHTH JUDICIAL DISTRICT COURT

DISTRICT COURT JUDGE

AFFIRMATION

PURSUANT TO 239B.030

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PRECEDING DOCUMENT DOES CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON.

CERTIFICATE OF SERVICE BY MAILING

I, ANTONIO L. MIXON, hereby certify, pursuant to NRCP that on this 25th OF NOV., 2018, I mailed a true and correct copy of the Foregoing Stipulation and order by placing document in a sealed prepostage paid envelope and deposited said envelope in the United State Mail addressed to the following;

chelsea N. Kallas
Deputy Attorney General
office of the Attorney General
555 E. WASHington AVE., STE. ~~3900~~ 3200
LV, NV 89101-1068

STEVEN D. Grierson
clerk OF THE COURT
200 LEWIS AVENUE 3rd FLOOR
LV, NV 89155-1160

TO Be Signed By Attorney General then Signed by Judge THEN STAMPED Filed AND RETURNED TO DEFENDANT.

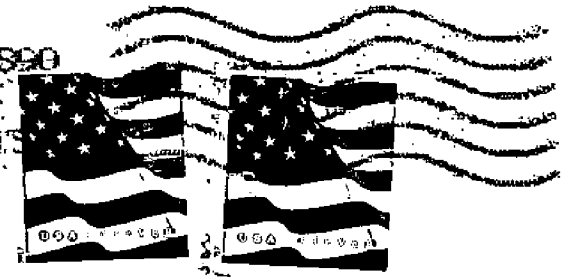
CC: FILE

DATED: THIS 25th OF NOVEMBER, 2018

A.L. Mixon Jr.
ANTONIO LEE MIXON #1019828
IN Propria Personam
H.D.S.P.
POST OFFICE BOX 650
INDIAN Springs, NV 89070
IN PRO SE.

ANTONIO LEE MIXON JR. #1019020
H.D.S.P.
P.O. BOX 650
INDIAN SPRINGS, NV 89070

LAS VEGAS NV 890
26 NOV 2018 PM



STEVEN D. GRIERSON,
CLERK OF THE COURT
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS, NEVADA 89155-1160

HIGH DESERT STATE PRISON
NOV 25 2018
UNIT 4 A/B

89101-630000

531

SMTD/JI

ANTONIO LEE MIXON JR.
SELF-REPRESENTATIVE

HIGH DESERT STATE PRISON
POST OFFICE BOX 650
INDIAN SPRINGS, NEVADA 89070

FILED
DEC 04 2018
CLERK OF COURT

Eighth Judicial District Court
CLARK COUNTY, NEVADA

THE STATE OF NEVADA
PLAINTIFF,
VS.
ANTONIO LEE MIXON
DEFENDANT.

CASE NO. C-17-327439-1
DEPT. XVII

Supplemeot to Motion to Dismiss And Supplement to Jury INSTRUCTIONS of the DEFENDANTS:

EXHIBIT H "MEMO" ATTACHED

COMES NOW, ANTONIO L. MIXON JR., DEFENDANT through SELF-REPRESENTATION AND MOVES THIS HONORABLE COURT FOR AN ORDER GRANTING DEFENDANT A DISMISSAL OF THIS CASE IN WHOLE OR IN PART OR IN THE ALTERNATIVE AN ORDER GRANTING JURY INSTRUCTIONS.

THIS MOTION IS BASED ON ALL PAPERS AND PLEADINGS ON FILE AND THE MEMORANDUM OF POINTS AND AUTHORITIES ~~HEREIN~~ AND ANY ORAL ARGUMENT THE COURT MAY ALLOW AT THE TIME OF HEARING. AND EXHIBIT H ATTACHED.

SUBMITTED BY: MIXON, ANTONIO
A. L. MIXON JR.

DATED THIS: 11/29/2018

RECEIVED
DEC - 4 2018
CLERK OF THE COURT

C-17-327439-1
SUPPL
Supplement
4800867

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

NOVEMBER 20, 2018, ON OR ABOUT, THE DEFENDANT PRESENT IN COURT DEFENDANT MOTION TO DISMISS WAS STAYED UNTIL MARCH 05, 2019 ORDERED BY THE COURT FOR DEFENDANT TO FILE SUPPLEMENTAL TO DEFENDANTS MOTION TO DISMISS FOR COURT TO CONSIDER MEMORANDUM. THIS INSTANT MOTION FOLLOWS AND EXHIBIT MEMORANDUM ATTACHED, IN SUPPORT OF BOTH DEFENDANT'S SUPPLEMENTAL TO MOTION TO DISMISS OF DEFENDANTS' AND DEFENDANT'S SUPPLEMENTAL TO DEFENDANT'S MOTION FOR JURY INSTRUCTIONS.

Argument I

MOTION TO DISMISS

COURT THERE IS NO CONTROLLING PRECEDENT FOR THE COURT TO W GH IN COURTS DECFERENCE WHICH THE GRANTING OF THIS MOTION IS OF THE COURTS DISCRETION IN THAT THE UNITED STATES SUPREME COURT HAS NOT EVER VENTURED AN EXAMPLE OF SUCH CIRCUMSTANCES. THE EXAMPLE THE SUPREME COURT MENTIONED THEY HAVE YET TO VENTURE IS A PRISONER SUBJECTED TO A CRIMINAL PROSECUTION RATHER A DELAYED RELEASE FROM THE PAROLE BOARD WITHOUT ANY PROCEDURE OR NOT ENOUGH PROCEDURE SUCH AS A NOTICE FROM PRISON TO PRISONER IN REGARDS TO A LOST OF LIBERTY FOR MANY YEARS VIOLATES DUE-PROCESS. THE EXAMPLE MENTIONED ABOVE EXISTS IN THIS INSTANT CASE. WHATS MORE STRIKING IS COUPLED WITH THAT EXAMPLE IS THAT THE DEFENDANT WAS ISSUED THE ATTACHED MEMORANDUM STATING THAT THE EXAMPLE SUPREME COURT HAS YET TO VENTURE DEFENDANT IS TO BE FREE FROM AND THAT IT WOULDN'T COMMENCE AND YET THE STATE COMMENCED A CRIMINAL PROSECUTION REGARDLESS OF THE FACTS ABOVE AND IN TOTAL DISREGARD OF THE CONSTITUTION OF THE STATE AND AMERICA.

MEMORANDUM OF POINTS AND AUTHORITIES CONTINUED

ARGUMENT I CONTINUED

TWO important Supreme Court Cases govern due-process rights For prisoners THE DEFENSE WANTS THE COURT TO look AT ; THE FIRST CASE WOLFF V. McDONNELL, 418 U.S. 539 (1974). THE second important case is Scandin v. Conner, 515 U.S. 472 (1995). IN Scadin, 915 U.S. 472 (1995) the decision in WOLFF was sharply limited and set a higher standard that you have to meet in order to show that you have a liberty interest.

THIS instant DEFENDANT MIXON'S CASE Exceeds the higher standard that has to be met in Scadin, 915 U.S. 472 (1995).

Court once this Court READS THE Exhibit MEMORANDUM THATS ATTACHED DEFense believes considering THAT, THIS Motion, THE (NITIAL) MOTION TO DISMISS IT is concluded THAT THIS CASE is TO be DISMISSED regardless OF Any Argument OF THE STATE.

ARGUMENT II.

MOTION FOR JURY INSTRUCTIONS

THE same Exhibit MEMORANDUM is used to Support grounds that the Jury instruction For THE BATTERY charge be granted IN the EVENT COURT DENIES DEFENDANTS MOTION TO DISMISS CASE.

Conclusion

(1) Relief Sought From Defense is This case be dismissed with prejudice.

(2) A. The Institutional transfer From Medium/MAX Custody TO A Super MAX Custody be reversed.

B. The Restitution thats been "TO BE DETERMINED" For ALMOST Three Years be reversed.

The relief in Subsection 1, 2(A), 2(B) THE MEMORANDUM Supports EXHIBIT MEMORANDUM SUPPORTS THAT RELIEF Should be granted.

C. The parole referral be reversed.

This Court has Jurisdiction to order such relief pursuant to Edwards V. Balisok, 520 U.S. 641 (1997), IN Edwards V. Balisok, 520 U.S. 641 (1997) the Court held that the results of A disciplinary hearing Can be reversed in a state proceeding And the relief sought Above should be And could be granting Even though some of the relief Sought affects Prisoner's length OF CONFINEMENT, Coupled with Any other Jurisdiction Court CAN USE TO GRANT All THE RELIEF Sought.

IN ALTERNATIVE GRANT THE Jury Instructions IN THE EVENT COURT DENIES The RELIEF ABOVE LINE 20 OF This Conclusion.

NOTICE OF HEARING / MOTION

TO: STATE OF NEVADA ATTORNEY GENERAL, Attorney FOR Plaintiff:

YOU WILL PLEASE TAKE NOTICE THAT THE DEFENDANT will bring the ABOVE And Foregoing Motion on FOR HEARING BEFORE the COURT ON THE DATE AND TIME OF DEC. 11, 2018 8:30 a.m. OR MARCH 05, 2019 AT 8:30 a.m.

DATED THIS 29th day of NOV., 2018.

A. Z. Mixon Jr.
Self-Representative

CERTIFICAT OF SERVICE by Mailing

I hereby certify that service of the above and Foregoing motion was mailed to the following addresses on this 29th day OF NOVEMBER, 2018:

Chelsea N. Kallas
Deputy Attorney General
OFFICE OF Attorney General
555 Washington Ave., Suite #3900
Las Vegas, Nevada 89101-1068

STEVEN D. GRIERSON,
clerk of the court
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155-1160

Transportation order

Antonio Lee Mixon Jr. #1019828
High Desert state Prison
22010 cold creek rd.
Post OFFICE BOX 650
Indian Springs, NEVADA 89070

IN THE 8th Judicial District court of the state of

Transportation order continued

NEVADA ON AND FOR the county of clark IN the matter OF ANTONIO LEE MIXON JR., DEFENDANT V. STATE OF NEVADA, DEFENDANT ASK THIS COURT FOR AN order to have High Desert STATE Prison transport And produce INMATE FOR HEARING BASED ON the circumstances of oral argument AND DEFENDANT'S PRESENCE IS needed AT EVERY HEARING GIVEN THE FACT DEFENDANT IS THE ATTORNEY IN THIS INSTANT CASE, THE PRESENCE OF ANTONIO LEE MIXON IS NECESSARY FOR THE HEARING ON THIS MOTION Attached THAT precedes THIS ORDER scheduled IN this instant case ON DEC 11., 2018 AT 8:30am and/or MARCH 05, 2019 AT 8:30 A.M. at the following address; Judge Michael P. Villani, District Judge, Dept. XVII, Eighth Judicial District Court, Regional Justice Center, 200 LEWIS AVENUE, LAS VEGAS, NEVADA 89155. THEREFORE THIS Court should grant THIS order PURSUANT TO NRS 209.274 And Any other applicable transportation of prisoner Statutes that WARDEN BRIAN E. WILLIAMS AT High Desert STATE Prison, 22010 Cold Creek rd., INDIAN Springs, NEVADA 89070 should be ordered to have WARDEN Brian E. Williams transport ANTONIO LEE MIXON to Appear before this Court, as specified as Court DIRECTS. Upon Completion of the hearing Defendant will be And should be transported to the above-named institution.

Michael P. Villani,
DISTRICT Judge

EXHIBIT 5BB

STATE OF NEVADA
DEPARTMENT OF CORRECTIONS

High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070-0208
Phone (702) -879-6789 Fax (702)-879-6618
D.W. NEVEN
WARDEN

1D-2274

MEMORANDUM

TO: Mixon, Antonio NDOC #1019828

FROM: B. Stroud, Acting Warden

DATE: December 23, 2015

RE: Disciplinary Appeal/Grievance 2006-30-13886

CHARGES:

- MJ-10- Security threat Group Activities: A validated Security Threat Group member who has engaged or is engaging in criminal activities, threatens the order and security of the institution and/or promotes racism. (Class A)
- MJ-26- Possession of contraband, including items that present a threat to safety and security of the institutions, excluding drugs or drug paraphernalia. (Class A).
- MJ-41- Gathering around, blocking, or impeding any correctional employee or visitor, in a threatening or intimidating manner and exhibiting conduct, which causes the person to fear for his safety. (Class A)
- MJ-2- Assault: unlawful attempt coupled with present ability to commit a violent injury on the person of another. (Class A)

FINDINGS: On 12/07/2015 you appeared before Disciplinary Hearing Officer Sgt. Barth and were found guilty of MJ-10 Gang activities, MJ-26 Possession of contraband, MJ-41 blocking/Threatening Staff & MJ-2 Assault.

SANCTIONS:

- 24 months Disciplinary Segregation for MJ-2. 18 months Disciplinary Segregation for the MJ-26. 18 months Disciplinary Segregation for MJ-41. 18 months Disciplinary Segregation for MJ-10.
- Stat A Loss Referral for MJ-26, Stat Loss Referral for MJ-41, Stat Loss Referral for the MJ-10, Stat A Loss referral for MJ-2
- Property Forfeiture for MJ-26
- Restitution

- Attorney General Referral
- Institutional Transfer

BASIS FOR APPEAL:

- Inmate claims that the sanctions are extremely harsh.
- Inmate claims that there is nothing in the officer's report to support the finding of guilty for any of the charges.
- Inmate claims that he never had an altercation or incident with C/O Brown

WARDEN'S FINDINGS:

- The Hearing Officer's decision was based on Officer's Report and pictures. The inmate hit the officer with a rock and through several rocks at the officers, then pulled out a prison made weapon (shank out of his shoe) and threatened the officer with it. However after review of the sanctions the MJ-2, MJ-10, MJ-26 & MJ-41; you will receive 24 months Total & Stat A Loss referral.
- The Hearing Officer conducted the disciplinary hearing in accordance with AR707.

- **WARDEN'S DECISION:** The decision of the Hearing Officer is upheld with changes to sanction: MJ-2, MJ-10, MJ-26 & MJ-41 you will receive 24 months Total & Stat A Loss referral.

cc: grievance file

State of Nevada
Department of Corrections

INMATE GRIEVANCE REPORT

ISSUE ID# 20063013886 **ISSUE DATE:** 12/18/2015

INMATE NAME	NDOC ID	TRANSACTION TYPE	ASSIGNED TO
MIXON, ANTONIO LEE	1019828	RTRN_L1	BSTROUD

LEVEL	TRANSACTION DATE	DAYS LEFT	FINDING	USER ID	STATUS
1	03/11/2016		Denied	MVELEZ	A

INMATE COMPLAINT

OFFICIAL RESPONSE

On 12/07/2015 you appeared before Disciplinary Hearing Officer Sgt. Barth and were found guilty of MJ-10 Gang activities, MJ-26 Possession of contraband, MJ-41 blocking/Threatening Staff & MJ-2 Assault.

* 24 months Disciplinary Segregation for MJ-2. 18 months Disciplinary Segregation for the MJ-26. 18 months Disciplinary Segregation for MJ-41. 18 months Disciplinary Segregation for MJ-10.

* Stat A Loss Referral for MJ-26, Stat Loss Referral for MJ-41, Stat Loss Referral for the MJ-10, Stat A Loss referral for MJ-2

* Property Forfeiture for MJ-26
* Restitution
* Attorney General Referral
* Institutional Transfer

The decision of the Hearing Officer is upheld with changes to sanction: MJ-2, MJ-10, MJ-26 & MJ-41 you will receive 24 months Total & Stat A Loss referral.

GRIEVANCE RESPONDER

Log Number 3000013886

NEVADA DEPARTMENT OF CORRECTIONS
FIRST LEVEL GRIEVANCE

NAME: Nixon, Antonio I.D. NUMBER: 1019828

INSTITUTION: H.D.S.P. UNIT: 10-22

I REQUEST THE REVIEW OF THE GRIEVANCE, LOG NUMBER _____, IN A FORMAL MANNER. THE ORIGINAL COPY OF MY GRIEVANCE AND ALL SUPPORTING DOCUMENTATION IS ATTACHED FOR REVIEW.

SWORN DECLARATION UNDER PENALTY OF PERJURY

INMATE SIGNATURE: _____ DATE: 12/17/15

WHY DISAGREE: The findings of guilt are in error. Inmate Nixon is innocent of M32, M34, M36, M310. The sanctions are extremely harsh and cruel and unusual punishment in violation of the 8th U.S.C.A. Date of service of notice of charges was 12/04/2015

GRIEVANCE COORDINATOR SIGNATURE: _____ DATE: 12-18-15

FIRST LEVEL RESPONSE: _____

_____ GRIEVANCE UPHELD ✓ GRIEVANCE DENIED _____ ISSUE NOT GRIEVABLE PER AR 740

WARDEN'S SIGNATURE: _____ TITLE: Warden DATE: 3/28/16

GRIEVANCE COORDINATOR SIGNATURE: _____ DATE: 3/29/16

_____ INMATE AGREES ✓ INMATE DISAGREES

INMATE SIGNATURE: _____ DATE: 04/13/16

FAILURE TO SIGN CONSTITUTES ABANDONMENT OF THE CLAIM. A SECOND LEVEL GRIEVANCE MAY BE PURSUED IN THE EVENT THE INMATE DISAGREES.

Original:	To inmate when complete, or attached to formal grievance
Canary:	To Grievance Coordinator
Pink:	Inmate's receipt when formal grievance filed
Gold:	Inmate's initial receipt

RECEIVED
DEC 18
NDSP

Log Number [illegible]

NEVADA DEPARTMENT OF CORRECTIONS
FIRST LEVEL GRIEVANCE

NAME: [illegible] I.D. NUMBER: [illegible]

INSTITUTION: H.D.S.P. UNIT: [illegible]

I REQUEST THE REVIEW OF THE GRIEVANCE, LOG NUMBER _____, IN A FORMAL MANNER. THE ORIGINAL COPY OF MY GRIEVANCE AND ALL SUPPORTING DOCUMENTATION IS ATTACHED FOR REVIEW.

SWORN DECLARATION UNDER PENALTY OF PERJURY

INMATE SIGNATURE: [illegible] DATE: [illegible]

WHY DISAGREE: The findings of fact and [illegible] made
[illegible] - misconduct - misconduct, since the
[illegible] are extremely harsh and overboard and
Unusual punishment in violation of the 8th U.S.C.A.
Due process and notice charges was 12/4/2015.

GRIEVANCE COORDINATOR SIGNATURE: [illegible] DATE: [illegible]

FIRST LEVEL RESPONSE: _____

_____ GRIEVANCE UPHELD ✓ GRIEVANCE DENIED _____ ISSUE NOT GRIEVABLE PER AR 740

WARDEN'S SIGNATURE: [illegible] TITLE: [illegible] DATE: 3/2/16

GRIEVANCE COORDINATOR SIGNATURE: [illegible] DATE: [illegible]

_____ INMATE AGREES ✓ INMATE DISAGREES

INMATE SIGNATURE: [illegible] DATE: [illegible]

FAILURE TO SIGN CONSTITUTES ABANDONMENT OF THE CLAIM. A SECOND LEVEL GRIEVANCE MAY BE PURSUED IN THE EVENT THE INMATE DISAGREES.

Original:	To inmate when complete, or attached to formal grievance
Canary:	To Grievance Coordinator
Pink:	Inmate's receipt when formal grievance filed
Gold:	Inmate's initial receipt

RECEIVED
DEC 18 2015
HDSP

12/17/15

NEVADA DEPARTMENT OF CORRECTIONS
GRIEVANT'S STATEMENT CONTINUATION FORM

NAME: Mixon, Antonio I.D. NUMBER: 1019826

INSTITUTION: HDSP UNIT #: ID-22

GRIEVANCE #: _____ GRIEVANCE LEVEL: Disciplinary Appeal

GRIEVANT'S STATEMENT CONTINUATION: PG. 1 OF 1

Inmate Mixon didn't receive all Disciplinary Forms until one or two days before today's date. Officer Barth metioned 15 days to Appeal During the Recorded Proceeding. Theres nothing in the officers report to support the finding of guilt for MJ2. Theres nothing in the officers report to support a finding of guilt for MJ4. Theres nothing in the officers report to support the finding of guilt for MJ26. Theres nothing in the officers report to support the Finding of guilt for MJ10. The Behavioral characteristics that can be depicted from the officers report (in the event if where true) that would constitute a mental evaluation is solely up to the Medical Department. The Restitution is a P. Scheme. Respectfully Submitted.

Original: Attached to Grievance
Pink: Inmate's Copy

RECEIVED
DEC 18
HDSP

DOC – 3097 (01/02)

Log Number 20160130886

NEVADA DEPARTMENT OF CORRECTIONS
INFORMAL GRIEVANCE

NAME: Mora, Antonio I.D. NUMBER: 1019878

INSTITUTION: H.D.S.P UNIT: 10

GRIEVANT'S STATEMENT:

"For Tracking Purposes Only"

SWORN DECLARATION UNDER PENALTY OF PERJURY

INMATE SIGNATURE: _____ DATE: 12/17/15 TIME: _____

GRIEVANCE COORDINATOR SIGNATURE: JNam DATE: 12-18-15 TIME: 10:30 AM

GRIEVANCE RESPONSE: Tracking

CASEWORKER SIGNATURE: _____ DATE: _____

___GRIEVANCE UPHELD ___ GRIEVANCE DENIED ___ ISSUE NOT GRIEVABLE PER AR 740

GRIEVANCE COORDINATOR APPROVAL: JNam DATE: 12-18-15

_____ INMATE AGREES _____ INMATE DISAGREES

INMATE SIGNATURE: _____ DATE: _____

FAILURE TO SIGN CONSTITUTES ABANDONMENT OF THE CLAIM. A FIRST LEVEL GRIEVANCE MAY BE PURSUED IN THE EVENT THE INMATE DISAGREES.

Original:	To inmate when complete, or attached to formal grievance
Canary:	To Grievance Coordinator
Pink:	Inmate's receipt when formal grievance filed
Gold:	Inmate's initial receipt

RECEIVED
DEC 18 2015
HDSP

DOC 3091 (12 / 01)

Log Number 20030138B6

NEVADA DEPARTMENT OF CORRECTIONS
INFORMAL GRIEVANCE

NAME: Mixon, Antonio I.D. NUMBER: 1019878

INSTITUTION: H.D.S.P UNIT: 10

GRIEVANT'S STATEMENT:

"FOR TRACKING PURPOSES ONLY"

SWORN DECLARATION UNDER PENALTY OF PERJURY

INMATE SIGNATURE: [signature] DATE: 12/17/15 TIME:

GRIEVANCE COORDINATOR SIGNATURE: [signature] DATE: 12-19-15 TIME: 1030 AM

GRIEVANCE RESPONSE: Tracking

CASEWORKER SIGNATURE: DATE:

___GRIEVANCE UPHELD ___GRIEVANCE DENIED ___ISSUE NOT GRIEVABLE PER AR 740

GRIEVANCE COORDINATOR APPROVAL: [signature] DATE: 12-19-15

___ INMATE AGREES ___ INMATE DISAGREES

INMATE SIGNATURE: DATE:

FAILURE TO SIGN CONSTITUTES ABANDONMENT OF THE CLAIM. A FIRST LEVEL GRIEVANCE MAY BE PURSUED IN THE EVENT THE INMATE DISAGREES.

Original:	To inmate when complete, or attached to formal grievance
Canary:	To Grievance Coordinator
Pink:	Inmate's receipt when formal grievance filed
Gold:	Inmate's initial receipt

RECEIVED
DEC 18 2015
HDSP

DOC 3091 (12 / 01)

Log Number [illegible]

NEVADA DEPARTMENT OF CORRECTIONS
INFORMAL GRIEVANCE

NAME: Nash Antonio I.D. NUMBER: 1019978

INSTITUTION: H.D.S.P. UNIT: 1D

GRIEVANT'S STATEMENT:

"For Tracking Purposes Only"

SWORN DECLARATION UNDER PENALTY OF PERJURY

INMATE SIGNATURE: [signature] DATE: 12/13/15 TIME: [illegible]

GRIEVANCE COORDINATOR SIGNATURE: [signature] DATE: 12-18-15 TIME: [illegible]

GRIEVANCE RESPONSE: Tracking

CASEWORKER SIGNATURE: _____ DATE: _____

___GRIEVANCE UPHELD ___GRIEVANCE DENIED ___ISSUE NOT GRIEVABLE PER AR 740

GRIEVANCE COORDINATOR APPROVAL: [signature] DATE: 12-18-15

_____ INMATE AGREES _____ INMATE DISAGREES

INMATE SIGNATURE: _____ DATE: _____

FAILURE TO SIGN CONSTITUTES ABANDONMENT OF THE CLAIM. A FIRST LEVEL GRIEVANCE MAY BE PURSUED IN THE EVENT THE INMATE DISAGREES.

Original:	To inmate when complete, or attached to formal grievance
Canary:	To Grievance Coordinator
Pink:	Inmate's receipt when formal grievance filed
Gold:	Inmate's initial receipt

RECEIVED
DEC 18 2015
HDSP

DOC 3091 (12 / 01)

State of Nevada
Department of Corrections
DISCIPLINARY FORM I
NOTICE OF CHARGES

INMATE INFORMATION	VIOLATION INFORMATION
INMATE NAME: MIXON, ANTONIO 1019828	**CHARGING EMPLOYEE** SC/O Ontiveros
CURRENT LOCATION: HDSP-U1-D-22-A; : ;NC	**DATE OF INCIDENT:** 12/04/2015
OIC#: 400461	**DATE CHARGES WRITTEN:** 12/04/2015

CHARGES AND EVIDENCE

Chrg	Description	Evidence	Evidence Disposition
MJ2:	Assault		
MJ41:	Blocking / Threatening Staff		
MJ26:	Possession of contraband	photo	imported into OIC
MJ10:	Gang Activities	validated Crip	

REPORT OF VIOLATION

On December 4, 2015 at approximately 0900, I Senior Correctional Officer (SC/O) D. Ontiveros was assigned to unit 6C/D floor. While supervising yard, Officer Mcaninch and myself noticed and inmate, later identified as Mixon, Antonio #1019828, housed in cell 6D-27A, pacing the yard and acting as if he was upset with someone or something. I advised Officer Mcaninch to keep an eye on him. After stating this, inmate Mixon approached us in an aggressive manner and Within approximately 10 to 15 feet from us picked up a good sized rock, then threw it in our direction, hitting me in the lower abdomen. Officer Mcaninch and I then pursued him to where he backed up and reached down and picked up another rock. He again threw it in our direction, hitting me on my upper left thigh. Officer Mcaninch and I quickened the pace driving him towards the walkway in front of unit 5A/B. Mixon then reached down and picked up a hand full of dirt threw it in our direction, then removed his left shoe, reached inside of it and brandished a prison made weapon (shank). I immediately removed the OC spray from my belt and gave inmate Mixon several orders to get on the ground to which he refused. Once he heard the responding Officers yell out to the yard to get on the ground, Mixon complied then dropped the weapon to ground. I then placed my right knee on his upper back between his shoulder blade, holding his right wrist in a wrist-lock until wrist restraint could be applied. -End of Report-

CHARGING EMPLOYEE SIGNATURE _____

SUPERVISOR SIGNATURE _____

SERVICE OF NOTICE OF CHARGES

DATE OF SERVICE: 12/7/15 **TIME OF SERVICE:** 0855

PRINTED NAME OF HEARING OFFICER Romero EM

SIGNATURE OF HEARING OFFICER _____

SIGNATURE OF INMATE _____

(Signature indicates receipt of notice only. It is not a plea; refusal to sign should be noted)

DISTRIBUTION

Primary Hearing Officer (Original)

Charging employee (Copy)

Inmate (Copy)

RECEIVED
DEC 19
HDSP

State of Nevada
Department of Corrections

DISCIPLINARY FORM II

SUMMARY OF HEARING OFFICER'S INQUIRY AND DISPOSITION

INMATE INFORMATION		HEARING INFORMATION	
INMATE NAME:	MIXON, ANTONIO 1019828	DATE OF HEARING	12/07/2015 TIME OF HEARING 08:59 am
CURRENT LOCATION:	HDSP-U1-D-22-A; : ;NC	NAME OF HEARING OFFICER	ROMERO, ERIC
OIC#:	400461	DATE OF SERVICE OF NOTICE OF CHARGES:	12/04/2015

IF LATE, PROVIDE EXPLAINATION OF EXCEPTIONAL CIRCUMSTANCE

Within Timeframe

CHARGES

Chrg	Description	Plea
MJ2	Assault	Not Guilty
MJ41	Blocking / Threatening Staff	Not Guilty
MJ26	Possession of contraband	Not Guilty
MJ10	Gang Activities	Not Guilty

PRELIMINARY STATEMENT OF OFFENDER

I would like to remain silent

PRELIMINARY INSTITUTION PRESENTATION

PRELIMINARY HEARING OFFICER ACTION

Chrg	Description	RChrg	Description	Finding
MJ2	Assault	MJ2	Assault	Refer to Disciplinary Hearing
MJ41	Blocking / Threatening Staff	MJ41	Blocking / Threatening Staff	Refer to Disciplinary Hearing
MJ26	Possession of contraband	MJ26	Possession of contraband	Refer to Disciplinary Hearing
MJ10	Gang Activities	MJ10	Gang Activities	Refer to Disciplinary Hearing

RESULTS OF INFORMAL SUMMARY HEARIN

Line	Description	Mths	Days	Eff. Date	End Date	SSL	Rest. Act	Penalty Comment

EVIDENCE RELIED ON FOR PRELIMINARY HEARING

Date	UserName	Statement
12/07/2015	S C/O Romero E.	Officer's report, weapon recovered and booked into the evidence vault, video recording of the aftermath of incident, Officer's injuries resulting in a C-1 packet needing to be filled out

ADVISEMENT TO DISCIPLINARY COMMITTEE

Counsel Substitute Requested: ☐ **Name of Counsel Substitute:** no

WITNESS INFORMATION

Witness Decision Justification: Not at this time

Name	NDOC/ID#	Decision	Reason	Table

Report Name: NVRSID
Reference Name: NOTIS-RPT-OR-0062.8
Run Date: DEC-14-15 11:38 AM

RECEIVED
DEC 16
HDSP

State of Nevada
Department of Corrections

DISCIPLINARY FORM II

SUMMARY OF HEARING OFFICER'S INQUIRY AND DISPOSITION

INMATE INFORMATION	HEARING INFORMATION
INMATE NAME: MIXON, ANTONIO 1019828	DATE OF HEARING 12/07/2015 TIME OF HEARING 08:59 am
CURRENT LOCATION: HDSP-U1-D-22-A; : ;NC	NAME OF HEARING OFFICER ROMERO, ERIC
OIC#: 400461	DATE OF SERVICE OF NOTICE OF CHARGES: 12/04/2015

SIGNATURES AND RECEIPT	DISTRIBUTION
DATE OF SERVICE: _____ **TIME OF SERVICE:** _____	Primary Hearing Officer (Original)
PRINTED NAME OF HEARING OFFICER _____	Charging employee (Copy)
SIGNATURE OF HEARING OFFICER _____	
SIGNATURE OF INMATE _____	Inmate (Copy)

(Signature indicates receipt only. It is not a plea; refusal to sign should be noted)

Report Name: NVRSID
Reference Name: NOTIS-RPT-OR-0062.8
Run Date: DEC-14-15 11:38 AM

RECEIVED
DEC 16
HDSP

State of Nevada
Department of Corrections

DISCIPLINARY FORM III
SUMMARY OF DISCIPLINARY HEARING

INMATE INFORMATION

INMATE NAME: MIXON, ANTONIO 1019828
CURRENT LOCATION: HDSP-U1-D-22-A; : ;NC
LOCATION OF INCIDENT: HIGH DESERT STATE PRISON Unit 6 Recreati
OIC#: 400461

HEARING INFORMATION

DATE OF HEARING: 12/07/2015 TIME OF HEARING: 09:09 am
NAME OF HEARING OFFICER: BARTH, JAY
DATE OF SERVICE OF NOTICE OF CHARGES: 12/04/2015
CHARGING EMPLOYEE: MCKEEHAN, KEITH

CHARGES AND PLEAS

Chrg	Description	Plea
MJ2	Assault	Not Guilty
MJ41	Blocking / Threatening Staff	Not Guilty
MJ26	Possession of contraband	Not Guilty
MJ10	Gang Activities	Not Guilty

ADDITIONAL HEARING INFORMATION

Counsel Substitute Requested: [ ]
Name of Counsel Substitute:
Proceeding Recorded: [X]
Stat Forfeiture Possible: [X]
Potential Category: [ ]
Offender Cautioned Regarding Possible Criminal Charges and Right to Remain Silent: [X]

WITNESS INFORMATION

Name [ ] NDOC/ID# [ ] Decision Reason [ ] Table

CONFIDENTIAL INFORMATION (CI) CHECKLIST (BOTH A & B MUST BE 'YES' TO RELY ON CI)

A CI RELIABLE [ ] CHECK AT LEAST ONE BOX BELOW

- [ ] INVESTIGATION OFFICER TESTIFIES PERSONALLY AS TO THE TRUTHFULNESS OF THE CONFIDENTIAL INFORMATION IN HIS REPORT.
- [ ] CORROBORATING TESTIMONY
- [ ] DISCIPLINARY CHAIR HAS FIRST HAND KNOWLEDGE OF SOURCE AND SOURCE HAS BEEN RELIABLE IN THE PAST
- [ ] IN-CAMERA REVIEW OF DOCUMENTS FOUND RELIABLE

B STATEMENT BY CORRECTIONAL OFFICIAL: SAFETY PREVENTS DISCLOSURE OF CI [ ]

DISCIPLINARY STATEMENT OF OFFENDER

I AM WILLING TO WAIVE MY RIGHTS TO 24 HR BETWEEN PH AND DH. I HAVE THE RIGHT TO REMAIN SILENT.

INSTITUTION PRESENTATION

EVIDENCE RELIED ON FOR DISCIPLINARY HEARING

Date	UserName	Statement
12/07/2015	SGT BARTH	OFFICER REPORT AND PICTURES

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DEC 18 2015
HDSP

State of Nevada
Department of Corrections

DISCIPLINARY FORM III
SUMMARY OF DISCIPLINARY HEARING

INMATE INFORMATION

INMATE NAME: MIXON, ANTONIO 1019828
CURRENT LOCATION: HDSP-U1-D-22-A; : ;NC
LOCATION OF INCIDENT: HIGH DESERT STATE PRISON Unit 6 Recreati
OIC#: 400461

HEARING INFORMATION

DATE OF HEARING: 12/07/2015 TIME OF HEARING: 09:09 am
NAME OF HEARING OFFICER: BARTH, JAY
DATE OF SERVICE OF NOTICE OF CHARGES: 12/04/2015
CHARGING EMPLOYEE: MCKEEHAN, KEITH

DISCIPLINARY HEARING ACTION

Chrg	Description	RChrg	Description	Finding
MJ2	Assault	MJ2	Assault	Guilty
MJ2	Assault	MJ2	Assault	Refer to Disciplinary Hearing
MJ41	Blocking / Threatening Staff	MJ41	Blocking / Threatening Staff	Guilty
MJ41	Blocking / Threatening Staff	MJ41	Blocking / Threatening Staff	Refer to Disciplinary Hearing
MJ26	Possession of contraband	MJ26	Possession of contraband	Guilty
MJ26	Possession of contraband	MJ26	Possession of contraband	Refer to Disciplinary Hearing
MJ10	Gang Activities	MJ10	Gang Activities	Guilty
MJ10	Gang Activities	MJ10	Gang Activities	Refer to Disciplinary Hearing

RESULTS OF DISCIPLINARY HEARING

Line	Description	Mths	Days	Eff. Date	End Date	SSL	Rest. Act	Penalty Comment
12	REST			12/07/2015			ALL_RES T	Your account will be frozen until the amount is determined and posted
13	AG_REF			12/07/2015				
14	DS	24		12/07/2015	12/07/2017			
15	INST_TRN			12/07/2015				
16	STAT_REF			12/07/2015				STAT A
20	DS	18		06/07/2019	12/07/2020			
21	STAT_REF			12/07/2015				
17	DS	18		12/07/2017	06/07/2019			
18	STAT_REF			12/07/2015			ALL_RES T	Your account will be frozen until the amount is determined and posted
19	PRP_FORT			12/07/2015				
22	DS	18		12/07/2020	06/07/2022			
23	STAT_REF			12/07/2015				

ANCILLARY INFORMATION AND INSTRUCTIONS

[X] STAT FORFEITURE REFERRAL
[ ] RECOMMENDED CATEGORY
[X] POST DISCIPLINARY CLASSIFICATION

RECEIVED
DEC 16
HDSP

State of Nevada
Department of Corrections

DISCIPLINARY FORM III
SUMMARY OF DISCIPLINARY HEARING

INMATE INFORMATION	HEARING INFORMATION
INMATE NAME: MIXON, ANTONIO 1019828	DATE OF HEARING 12/07/2015 TIME OF HEARING 09:09 am
CURRENT LOCATION: HDSP-U1-D-22-A; : ;NC	NAME OF HEARING OFFICER: BARTH, JAY
LOCATION OF INCIDENT HIGH DESERT STATE PRISON Unit 6 Recreati	DATE OF SERVICE OF NOTICE OF CHARGES: 12/04/2015
OIC#: 400461	CHARGING EMPLOYEE: MCKEEHAN, KEITH

HEARING QUESTIONS:	HEARING ANSWERS:
Inmate Defendant Present?	Yes
Counsel Substitute Requested	No
Stat forfeiture possible?	
Proceedings Recorded?	Yes
Stat Referral Sent	Yes
Recommended Category?	Cat A
Potential Category?	CAT A
Cautioned for Possible Criminal Charges?	Yes
Reminded of Right to Remain Silent?	Yes
Corroboration Testimony for CI Info?	No
Does Investigator Validate CI?	No
Does Chair Validate CI Source?	No
Are CI Documents Reliable?	No
Does Safety Prevent Disclosure of CI?	No
Was CI Info Accepted?	No
Parole Board Referal?	Yes
Post Disciplinary Classification?	Yes
Director Review Required?	Yes
Does the offender want a witness	Was asked and does not want a witness

RECEIVED
DEC 16
HDSP

State of Nevada
Department of Corrections

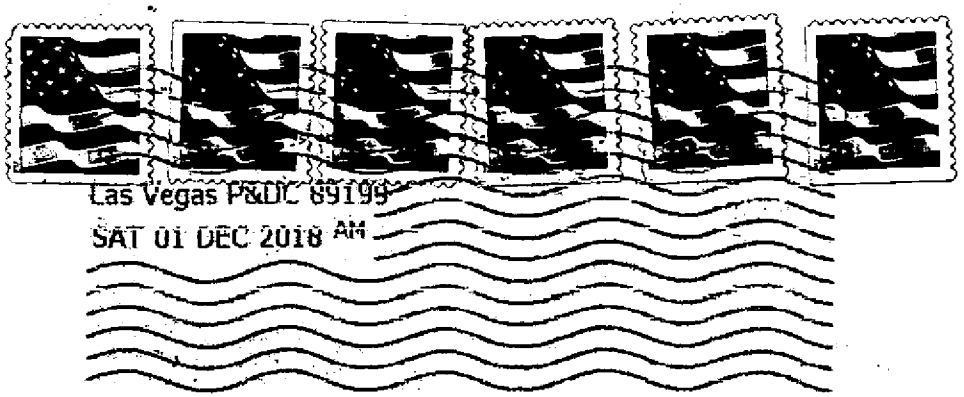
DISCIPLINARY FORM III
SUMMARY OF DISCIPLINARY HEARING

INMATE INFORMATION	HEARING INFORMATION
INMATE NAME: MIXON, ANTONIO 1019828	DATE OF HEARING 12/07/2015 TIME OF HEARING 09:09 am
CURRENT LOCATION: HDSP-U1-D-22-A; : ;NC	NAME OF HEARING OFFICER: BARTH, JAY
LOCATION OF INCIDENT HIGH DESERT STATE PRISON Unit 6 Recreati	DATE OF SERVICE OF NOTICE OF CHARGES: 12/04/2015
OIC#: 400461	CHARGING EMPLOYEE: MCKEEHAN, KEITH

SIGNATURES AND RECEIPT	DISTRIBUTION
DATE OF SERVICE: _____ TIME OF SERVICE: _____	I-FILE (Original)
PRINTED NAME OF HEARING OFFICER_____	Inmate Services (Copy)
SIGNATURE OF HEARING OFFICER _____	Inmate (Copy)
SIGNATURE OF INMATE _____ (Signature indicates receipt only. It is not a plea; refusal to sign should be noted)	
WARDEN/DESIGNEE _____	

RECEIVED
DEC 16 2015
HDSP

ANTONIO LEE MILTON JR. #1019878
HIGH DESERT STATE PRISON
POST OFFICE BOX 650
INDIAN SPRINGS, NEVADA 89070



555

STEVEN D. GRIERSON,
CLERK OF THE COURT
200 LEWIS AVENUE, 3rd FLOOR
LAS VEGAS, NEVADA 89155-1160

556

HIGHDESERT STATE PRISON
NOV 29 2018
UNIT 4 A/B

MOT

ANTONIO LEE MIXON
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070
"NO FAX number" and/or "no e-mail address"
Attorney For: ANTONIO LEE MIXON

FILED
DEC 10 2018
CLERK OF COURT

January 8 2019
@ 8:30 AM

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA
Plaintiff, ~~Plt.~~
VS.
ANTONIO LEE MIXON
DEFENDANT.

CASE NO.: C-17-327439-1
DEPT. XVII

DEFENDANT'S MOTION to CONTINUE trial settings AND order(S)

COMES NOW, ANTONIO LEE MIXON, DEFENDANT, herein above respectfully moves this HONORABLE COURT for an order for continuing trial settings.

ORAL ARGUMENT REQUESTED.

This motion is made and based upon the accompanying Memorandum of Points and Authorities.

DATED: This 6th of December, 2018.

BY: ANTONIO LEE MIXON JR.

A. L. Mixon Jr. #1968172
DEFENDANT IN ~~PROPRIA PERSONAM~~
PROPER PERSON

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DEC 10 2018
CLERK OF THE COURT

C-17-327439-1
MTCT
Motion to Continue Trial
4802003

Memorandum of Points and Authorities

This motion For continuance is made on the ground that witnesses is or will be absent at time of trial.

Declaration

(I). Mark Preusch a licensed Private investigator in the state of nevada. Home address unknown. Global Reliance investigations, present employment, location 9811 W. charleston., Ste. 2-774 Las Vegas, Nevada 89117. Witness has been absent I'm led to believe from since on or about 06/27/2018 about Five months now. I have sent two letters to his place of employment within this absence and made a phone call TO 702-320-2464 which I'm led to believe that is his contact info By phone and not his Fax. I need this witness to Secure witnesses deposition and attendance For trial. The causes i believe is the cause of Failure to procure the same are the absent of funds maybe. Apart of my diligence to procure mister Preusch's attendance, I today on Dec. 06, 2018 prepared a Law library request Form requesting Title 18 Chapter 226 of the Nevada Revised statutes' index to see if I could Find any Funding From the STATE EXECUTIVE DEPARTMENT; STATE Treasurer. Also requesting title 20 chapter 249 of the Nevada Revised statutes' index to see if i could Find any funding From the Counties and Townships; Formation, Government and officers; County Treasurers, and County assessors. The absent witness testimony is to be of his Findings and the same Facts are to be proven by witnesses this witness is supposed to procure, and for his Findings. I can't obtain none of My witnesses without Mr Preusch. Days after i sent letters and received no response on or about mid or late October i believe. This Application is made in good Faith and not merely For delay. I declare Under Penalty of perjury that the Foregoing is true and Correct. EXECUTED on Dec. 06, 2018. Pursuant to 28 USC 1746. 90 days requested.

A. L. Mixon Jr.
Defendant's Signature

~~90 days~~

NOTICE OF HEARING /MOTION

TO: Deputy Attorney General; Attorney For Plaintiff:

You will Please take notice that the Foregoing Motion to Continue trial settings will be heard on the 11th day of Dec., 2018. at 8:30 o'clock a.m. and/or ~~the~~ on the ___ day of ___, 20__. in Department No. 17 District Court.

Dated this 6th day of December, 2018.

BY: Antonio L. Mixon
Defendant pro se

Accordingly, the Court Finds Defendant is entitled to a Continuance and his motion is granted.

ORDER

Therefore, It is HEREBY ORDERED that the Motion to continue trial settings shall be, and it is hereby granted.

DATED this ___ day of ___, 20__.

District Judge Signature

ANTONIO LEE MIXON JR
Defendant Prose
#1406172

BY G. L. Mixon Jr.
Defendant Prose

Certificate of Service by Mailing

I certify that on December 6th, 2018, I mailed a copy of the Foregoing proposed Motion to Continue trial settings and order(s) to: (First-class postage paid)

Chelsea N. Kalles
Deputy Attorney General
555 E. Washington Ave, STE 3900. Las Vegas, NV 89101-1068

Steven D. Grierson, Clerk of Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

Transportation order

The Court orders Warden Brian E. Williams of High Desert State Prison on 22010 Cold Creek rd., Indian Springs, NV 89070, where Defendant is located, to transport and produce inmate Mixon For hearing to appear before the Court, in District Court Eighth Judicial (Dept. 17) District Court, Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155 pursuant to NRS 209.274 and pursuant to any other applicable NRS For the hearing on this Motion scheduled in this Case on the 11th day of Dec, 2018 at the hour of 8:00 a.m. and/or 8:30 a.m. and/or as specified as court directs. Upon Completion of the hearing, Defendant will be and should be transported to the above-named institution.

District Judge

Dated this 6th day of Dec., 2018.

Declaration Under PENALTY OF PERJURY

The Undersigned declares under penalty of perjury that he is the Defendant in the entitled action, and he, the defendant has read the ~~above~~ Certificate of Service and that the information Contained thereon is true and Correct. 28 U.S.C. §1746

EXECUTED At High Desert State Prison
on this 6th day of Dec., 2018.

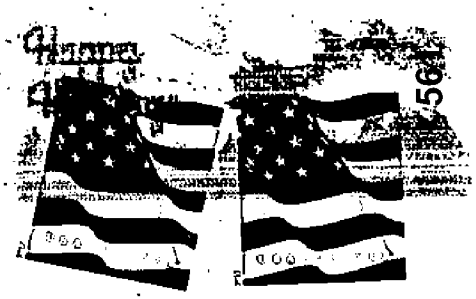
C. Cy Mixon Jr
Defendant

Pro se

cc: File

Antonio Lee Mitchell Jr. 1019628
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

LAS VEGAS NV 890



Steven D. Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

891018G300 0075

DEC 06 20
UNIT 4

PBA

MOT

ANTONIO LEE MIXON

Pro Se

High Desert State Prison

P.O. Box 650

Indian Springs, NV 89070

FILED

DEC 11 2018

CLERK OF COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT

Clark County, NV.

The State of Nevada,

Plaintiff

vs.

Antonio Lee Mixon #1968172

Defendant

Case No.: C-17-327439-1

Dept. XVII

January 8 2019

@ 8:30 AM

MOTION FOR LEAVE TO AMEND ~~Motion To Add Supplemental~~ Defendant's Supplemental to Defendant's Motion to Dismiss And Defendant's Motion to Dismiss, And order

Comes Now, the Defendant Antonio Mixon, by and through Self-representation, and Hereby, moves the Court to enter an order granting Defendant's Motion to Amend said Motions To Amend Defendant's Supplemental to Defendant's Motion to Dismiss And Defendant's Motion to Dismiss.

DATED this 6th day of December 2018.

ANTONIO LEE MIXON SR.
PRO SE

A. L. Mixon Jr.
ANTONIO LEE MIXON JR.
PRO SE

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DEC 11 2018
CLERK OF THE COURT

C-17-327439-1
MAME
Motion to Amend
4802492

Declaration

ANTONIO LEE MIXON makes the following declaration:

I. I am the Defendant pro se assigned to represent myself in the instant matter, and the Defendant has represented the following facts and circumstances of this case.

I declare under penalty of perjury that the foregoing is true and correct. Pursuant to 28 USC 1746 and NRS 53.045.

EXECUTED AT High Desert State Prison

On the 6th day of December, 2018.

Antonio Lee Mixon

Pro se

Memorandum of Points And Authorities.

STATEMENT OF FACTS

Defendant Filed Motion to dismiss Court ordered Defendant Supplement motion for court to consider Exhibit. To cure all jurisdictional defect motions have this instant motion follows.

Argument -

To make sure motion to dismiss is not dismissed based on the jurisdictional defect/lack of personal jurisdiction Defendant asks this Court For leave to amend various motions to assist court in determining merits of pending motions to dismiss See Dominguez V. American Home Prods. Corp. (In re Norplant Contraceptive Liab. Litig.) (1995, ED TEX) 900 F Supp 92, motion den sub nom Thasen V. American Home Prods. Corp. (In re Norplant Contraceptive Prods. Liab. Litig.) (1995, ED TEX) 907 F Supp 244, motion den Sub nom Bugwell V. Wyeth-Ayerst Lab. (IN re Norplant Contraception Prods. Liab. Litig.) (1995 ED TEX) 907 F Supp 243.

Also To make sure that said motions ~~[illegible]~~ Conform with Courts requirements of showing that ~~[illegible]~~ motions ~~[illegible]~~ is timely Filed. See Ashburn V. Janecka (2009, CA10 NM) 2009 US App Lexis 7092.

Also to assure pers. to whom "Certificate" is presented that the certificate of Service Comply with statutes See Miller V. Advantage Credit Counseling Service (In re Miller) ~~(Bankr. BC WD Pa)~~ (2006, BC WD Pa) 336 BR 232.

Also to show Defendant's ~~[illegible]~~ use of prison's regular mail System which documents ~~[illegible]~~ is given to prison authorities ~~[illegible]~~ and attesting that postage is prepaid See Price V. Philpot (2005, CA10 Okla) 420 F.3d 1158

Requested Relief

Based upon the foregoing, Mr. Mixon request that this court grant him leave to amend said motion so court can review them

DATED 6th December, 2019.

Antonio Lee Mixon Jr.
pro se / Defendant

A. L. Mixon Jr.
Defendant Pro se

NOTICE OF HEARING / MOTION

TO: Attorney General, Deputy Attorney General, Attorny For Plaintiff:

You will please take notice that the foregoing Motion For leave to amend "Defendant's Supplemental to Defendant's Motion to dismiss and Defendant's motion to dismiss will be heard on the ___ day of ___ 20__ at 8:30 a.m. in Department XVII District Court

Transportation order

Court order to have Warden Brian E. Williams transport Defendant to appear before this court pursuant to NRS 209.379 and all other NRS available. Upon completion of hearing Defendant will be and should be transported to the High Desert state Prison.

District Judge

DATED 6th Dec, 2019.

Certificate of Service by mailing

I hereby certify that I ~~am~~ placed a true and correct copy of the foregoing mail system at prison with First-Class postage prepaid on the 6th day of Dec, 2019 to the following addresses:

c/o/s/o N. Keller, Deputy Attorney General, 555 E. Washington Ave, STE. 3900 LV, NV, 89101-1068. STEVEN D. GRIERSON, clerk of the Court, 200 Lewis Ave. 3rd Floor, LV, NV 89155

Declaration Under Penalty of Perjury

The Undersigned declares Under penalty of perjury that he is the Defendant in the above-entitled action, and he, the defendant has read the above Certificate of Service and that the information Contained therein is true and Correct. Pursuant to 28 U.S.C. § ~~FRS~~ 1746. ~~EXECUTED~~ And NRS ~~50~~ 53.045.

Executed at High Desert State prison
on this 6th day of Dec., 2018.

Antonio Lee Mixon Jr.
Pro Se Defendant

C.A. Mixon Jr.
Pro se Defendant

Steven D. Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

Anthony Lee Miller Jr. #1045628
P.O. Box 650
Jean, NV 89019

89101-830000

HIGH DESERT DIALYSIS
DEC 06 2018
UNIT 4 A/B

OPI

Antonio Lee Mixon

Post Office Box 650

Indian Springs, NV 89070

"No Fax number" and/or "no email address"

Attorney For: Defendant, Antonio Lee Mixon

District Court

Clark County, Nevada

The State of Nevada

Plaintiff,

vs

Antonio Lee Mixon Jr. #1988172

Defendant;

C-17-327439-1
LSF
Left Side Filing
4803928

ORDER FOR PRODUCTION OF INMATE

Antonio Lee Mixon, BAC#1019828

Date of Hearing: Dec. 23, 2018. ~~or~~ or on any date court allows

Time of Hearing: 8:30 A.m or any time Court allows

TO: Brian E. Williams, Warden of the High Desert State Prison;

TO: SHERIFF, Sheriff of Clark County, Nevada

Upon the ex parte application of The Defendant, Defendant, by Antonio Lee Mixon, through Self-representation, and good cause appearing therefor,

IT IS HEREBY ORDERED that Brian E. Williams, Warden of the High Desert State Prison shall be, and is, hereby directed to produce Antonio Lee Mixon, in Case Number C-17-327439-1, wherein The Defendant is Defendant and is currently incarcerated in the High Desert State Prison in Indian Springs, Nevada and his presence will be required

CLERK OF THE COURT
DEC 10 2018
RECEIVED

in Las Vegas, Nevada commencing on [redacted] 23, 2018, at the hour of 8:30 o'clock a.m. and continuing ~~Completion~~ until completion of the prosecution's case against the said Defendant.

IT IS FURTHER ORDERED that the Sheriff of Clark County, Nevada, shall accept and retain custody of the said ANTONIO LEE MIXON in the Clark County ~~Jail~~ Detention Center, Las Vegas, Nevada, pending completion of said matter in Clark County, or until the further Order of this Court; or in the alternative shall make all arrangements for the transportation of the said ANTONIO LEE MIXON to and from the Nevada State Prison Facility which are necessary to insure the ANTONIO LEE MIXON's appearance in Clark County pending completion of said matter(s), or until further order of this Court.

DATED this 13 day of January, 2018.

District Judge

ANTONIO LEE MIXON
Defendant/pro se

By: A. L. Mixon Jr.
ANTONIO LEE MIXON
Defendant/pro se

Antonio Lee Mitchell #1019828
High Desert State Prison
Post Office Box 650
Indian Springs, NV 89070

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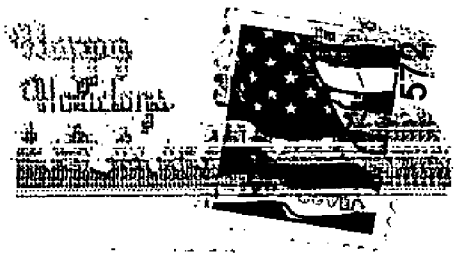
DEC 18 2018
CLERK OF THE COURT

89101-630000

LAS VEGAS NV 890



Steven D. Grierson,
Clerk of Court
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155-1160

DEC 13 2018
UNIT 4 A/B

PP
PA

MOT -

ANTONIO LEE MIXON
Post office Box 650
INDIAN SPRINGS, NV 89070
"no Fax number" and/or "no e-mail address"
Attorney For: Defendant, ANTONIO LEE MIXON

FILED
DEC 18 2018
CLERK OF COURT

DISTRICT COURT
Clark County, NEVADA

THE STATE OF NEVADA
Plaintiff, ~~Plaintiff,~~
vs.
ANTONIO LEE MIXON
Defendant.

CASE NO. C-17-327439-1
Dept. XVII

January 10, 2019
@ 8:30 AM

MOTION TO PLACE ON CALENDAR
DATE OF HEARING:
TIME OF HEARING:

Comes now, ANTONIO LEE MIXON, through Self-representative, submits this motion to place on calendar for purposes of argument and of issues on the motion to dismiss and Supplemental to that motion of Mr. Mixon's which were previously-submitted Motion to amend Motion to dismiss, Motion to dismiss, Supplemental to Motion to dismiss.

DATED: this 13 of December, 2018.

ANTONIO LEE MIXON
Defendant

A. L. Mixon Jr.

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DEC 18 2018
CLERK OF THE COURT

C-17-327439-1
MOT
Motion
4803946

I declare under penalty and perjury to the best of my belief and knowledge that the following facts and circumstances are true and correct pursuant to 28 USCS 1746. Executed on 12/13/2018. A. L. Mann Jr.

Signature of Defendant

Memorandum of points and authorities

Defendant submitted Motions in regards to dismiss this case and wants to Know the status of the activity of those motions and they are all in regards to dismissing this case. (1) Motion to dismiss, (2) Supplemental to Motion to dismiss, (3) motion to amend said motions above in (1), (2). (2) Bar code (document coded) SUPPL 4800867.

NOTICE OF MOTION

Please take notice that the above-entitled Motion to Place on Calendar will be heard on the ~~23~~ day of ~~December, 2018~~, at ~~8:30 A~~ AM/PM in Dept. XVII of the Eighth Judicial District Court, Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada.

DATED: this 13 of December, 2018.

Antonio Lee Mixon

a.k.a. Mixon Jr.

Certificate of Service

I hereby certify that i am a person competent to mail papers; I have placed in an envelope and/or placing said motion in Prison's regular Mailing System with ~~First~~ First-class prepaid postage this motion addressed to the following:

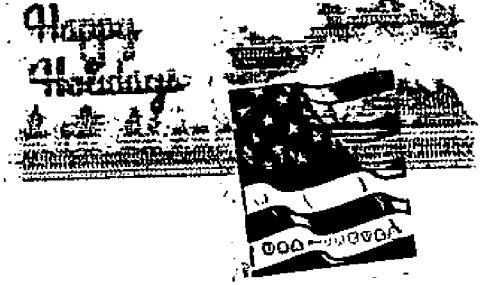
(on 12/13/2018) Chelsea N. Kallas
Deputy Attorney General
Office of Attorney General
555 East Washington Ave., Suite #3900
Las Vegas, NV 89101

Steven D. Grierson,
Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

I certify Under penalty and perjury to the best of my belief and knowledge that the Foregoing Certificate of Service is true and correct pursuant to NRS 53.045 and 28 USCS 1746. Executed on 12/13/2018. a.k.a. Mixon Jr.
Signature of Defendant

Antonio Lee Mixon Jr. #1019828
High Desert State Prison
Post Office Box 650
Indian Springs, NV 89070

LAS VEGAS NV 650



STEVEN D. Grierson,
Clerk of Court
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155-1160

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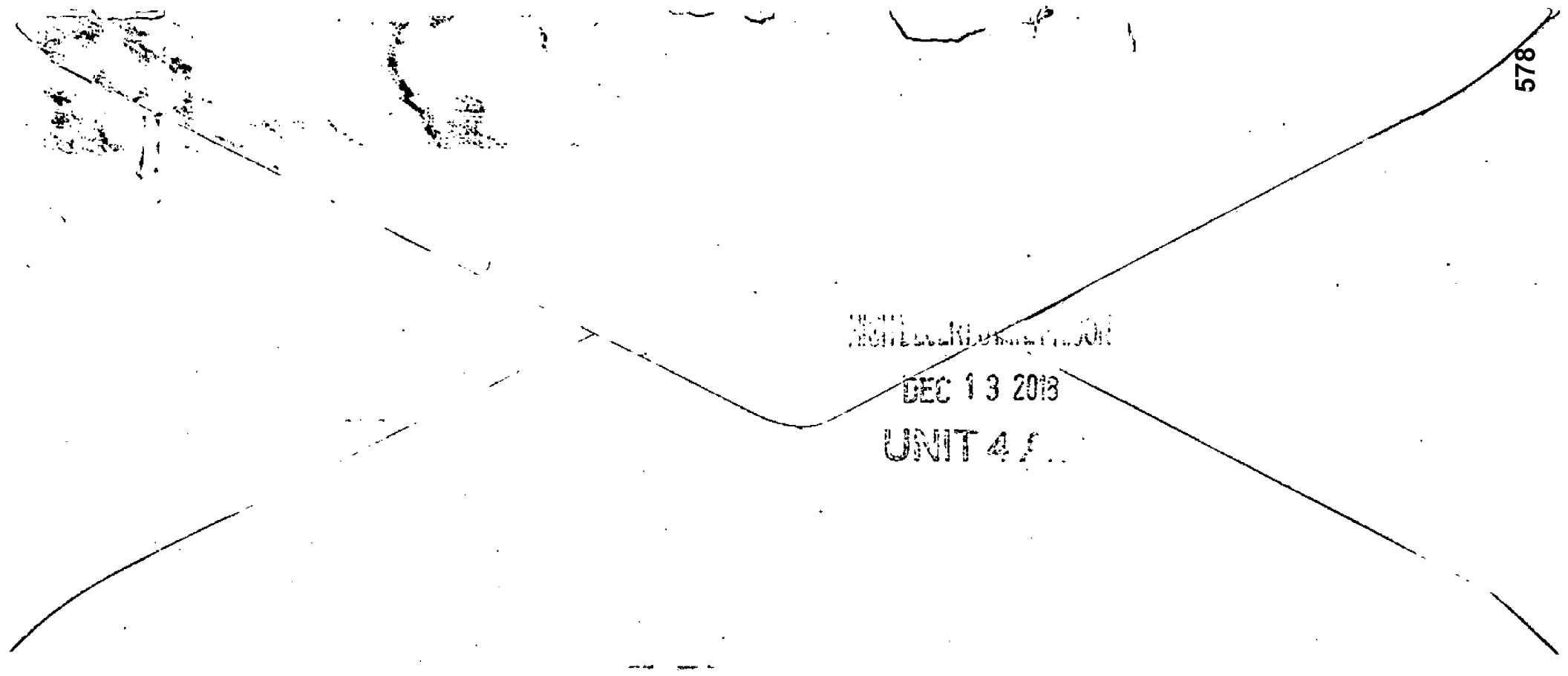
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ANTONIO LEE Mixon Jr.
Pro Se
High Desert State Prison
P.O. BOX 650
INDIAN Springs, NV 89070

FILED
JAN 03 2019
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA
Plaintiff
-VS-
ANTONIO LEE Mixon Jr.
Defendant

CASE NO. C-17-327439-1
Dept. No. XVII

C-17-327439-1
NOTC
Notice
4806847

NOTICE OF INTENT TO USE CITATION
Memorandum of Law Points and Authorities

In the Foregoing citation sheehan V. Stout (In re stout)(2006), BC NO W Va) 348 BR 61, The author's written OATH of OFFICE had EFFECT TO THE Authors' Written Signed and dated documents which Satisfied the Verification requirements of the U.S. Constitution when Both the author's Written oath of office and the authors' written Signed and dated documents are authenticated by written Certification that satisfy the certification requirements of the U.S. Constitution when both those written Certifications are of the same Custodian of records. IN THIS INSTANT CASE, giving the Unavailability of the authors of the memorandum (Exhibit H) of the defenses' Motion to dismiss, a certified copy of the Exhibit H by the Custodian of Records and certified copies of the authors(s) written oath of office by the same Custodian of Records Verifys and authenticates Exhibit H of the defenses' Motion to dismiss This Fact makes Exhibit H Constitutionally considerable for the Courts' Consideration for which the Court determines the decision on whether or not dismissal of this case is warranted. Coupled with whichever other evidence and argument of the defense Court Considers. I declare Under penalty of perjury that to the best of my belief and knowledge the Foregoing Facts and Circumstances are true and correct Pursuant to NRS. 53.045

Executed on December 29th, 2018. A. L. 579
(Signature)

RECEIVED
JAN 03 2019
CLERK OF THE COURT

Certificate of service by mailing

I defendant placed and/or placing said NOTICE OF INTENT TO USE CITATION In an envelope and/or placed and/or placing said envelope thats first-class postaged prepaid in Persons' regular Mailing System on or about December 30th, 2018 addressed to the following:

Chelsea N. Kallas
Deputy Attorney General
OFFICE OF ATTORNEY General
555 E. Washington Avenue, Suite 3900
Las Vegas, NEVADA 89101-1068

STEVEN D. GRIERSON,
Clerk of the Court
200 LEWIS AVENUE, 3rd Floor
Las Vegas, NV 89155-1160

I Declare Under penalty of perjury that to the best of my belief and Knowledge the Foregoing Certificate of Service is true and correct see NRS 53.045 EXECUTED on or about December 30th, 2018, J. L. Nieves Jr.
(signature)

CC: File

Antonio Lee Mixon Jr. #1019828
High Desert State Prison
Post Office Box 650
Indian Springs, NV 89070

LAS VEGAS NEV 890
31 DEC 2018 PM 3 L

NEVADA DEPT. OF CORRECTIONS
DEC 30 2018
UNIT 4 A/B

STEVEN D. GRIERSON,
Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

89101-630000

~~ADMINISTRATIVE~~

District Court

Clark County, Nevada

The State of Nevada

Plaintiff(s),

vs.

Antonio Lee Milton Jr.

Defendant

CASE NO. C-17-327439-1

Dept. NO. XVII

SUBPOENA (DUCES TECUM)

The State of Nevada Sends Greetings TO:

You hereby Commanded that all and singular, business and excuses set aside, you appear and attend on the ___ day of ___, 20__ at the hour of ___ .m. in the Operations Building of High Desert State Prison of the NDOC, Indian Springs, Nevada. The address where you are required to appear is High Desert State Prison 22010 Cold Creek Road, Indian Springs, NV 89070. Your attendance is required to produce documents in your possession, custody or control and produce inmate Antonio Lee Milton #1019808 also. You are required to bring with you at the time of your appearance any items set forth in the items to be Produce within this Subpoena.

RECEIVED
JAN 02 2018
CLERK OF THE COURT

C-17-327439-1
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POINTS AND AUTHORITIES

Statement of Facts

You are further ordered to bring with you at the time of your appearance the books, documents, or tangible things set forth below that are in your possession, custody, or control. All documents shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories listed. NRCP 45(d)(1).

Witness Fees: You are entitled to witness fees and mileage traveled as provided by NRS 50.225. This Subpoena must be accompanied by the fees for one day's attendance and mileage, unless issued on behalf of the State or a state agency. NRCP 45(c).

CONTEMPT: Failure by any person without adequate excuse to obey a Subpoena served upon that person may be deemed a Contempt of the Court, NRCP 45(e), punishable by a Fine not exceeding $500 and imprisonment not exceeding 25 days, NRS 22.100(2). Additionally, a witness disobeying a Subpoena shall forfeit to the aggrieved party $100 and all damages sustained as a result of the Failure to attend, and a warrant may issue for the witness' arrest. NRS 50.195, 50.205, and 22.100(3).

Please see the attached Exhibit "A" For information regarding your rights and responsibilities relating to this Subpoena.

Michael Villani

By: _____ (Signature) DATE:
District Judge

STEVEN D. Grierson, Clerk of Court

By: _____ (Signature) DATE:
Deputy Clerk

Submitted By: A. Lee Miten Jr. (signature) 12/27/2018

Antonio Lee Miten Pro-se Party Submitting Subpoena.

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

EXECUTED this _____ day of _____, 20_____.

_____
Signature of person making service

ITEMS TO BE PRODUCED

The oath of office of AWO Bruce stroud.
A Certified copy of the Memorandum Signed and dated under penalty of perjury by the Custodian of records that it is a true and correct copy. This Memorandum is of Bruce stroud and was issued to inmate Antonio LEE Mixon SC. #1019828.
A Certified Copy of AWO Bruce stroud's oath of office Signed and dated under penalty and perjury by the Custodian of records,
These items.
Eric Romero's oath of office, A certified copy of Correctional officer's Eric Romero's oath of office Signed and dated under penalty of perjury by the Custodian of records that it is a true and correct copy,
Produce inmate ANTONIO LEE mixon BAC#1019828 to operations At high Desert to receive said items, on date and time commanded.
Also Correctional officer Jay Baeth's oath of office Certified by the Custodian of records Signed and dated under penalty of perjury that it is a true and correct copy by the Custodian of records,
TWO S.S.E Correctional officers And TWO CERT. C/O's Identifications.

AFFIDAVIT/DECLARATION OF SERVICE

STATE OF NEVADA)
) ss.
COUNTY OF _____)

I, *(insert name of person making service)* _____, being duly sworn, or under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a party to or interested in the proceedings in which this Affidavit/Declaration is made; that I received a copy of the **DEPOSITION SUBPOENA (DUCES TECUM)** on *(insert date person making service received Subpoena)* _____; and that I served the same on *(insert date person making service served Subpoena)* _____, by delivering and leaving a copy with *(insert name of witness)* _____ *(insert address where witness was served)* at _____.

Executed on: _____ _____
(Date) *(Signature of Person Making Service)*

SUBSCRIBED AND SWORN to before me this
_____ day of _____, 20____.

_____
NOTARY PUBLIC in and for the
County of _____, State of _____.

OR ONE OF THE FOLLOWING: Per NRS 53.045

(a) If executed in the State of Nevada: "I declare under penalty of perjury that the foregoing is true and correct."

Executed on: _____ _____
(Date) *(Signature of Person Making Service)*

(b) If executed outside of the State of Nevada: "I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct."

Executed on: _____ _____
(Date) *(Signature of Person Making Service)*

~~Page 4~~
Page 4

EXHIBIT A

EXHIBIT "A"

NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT A

CERTIFICATE OF SERVICE BY MAILING

I, Antonio Lee Milton Jr., hereby certify, pursuant to NRCP 5(b), that on this 27th day of December, 2018, I mailed a true and correct copy of the foregoing, "Subpoena (Duces Tecum)."

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

Steven D. Grierson
Clerk of the Court
200 Lewis Ave, 3rd Floor
LV, NV 89155-1160 to be stamped
Filed Signed and returned not Filed

CC:FILE

DATED: this 27th day of December, 2018.

Antonio Lee Milton Jr.
A. L. Milton Jr. #1015820
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

I certify under penalty of perjury that to the best of my belief and knowledge the Certificate of Service is true and correct. Executed on 12/27/2018. A. L. Milton Jr.

Dear Clerk of the Court. C-17-327434-1 MITON VS STATE.

Please find enclosed Subpoena (Duces Tecum) to be Signed by the Deputy Clerk and/or District Judge Michael Villani then sent back to be filled out and served. START Receive but don't File unless Law prescribes, but once the rest of the Subpoena is complete it will be sent back to the Clerk of the Court for Filing. Thank you so Much.

ATTENTION CLERK MITON DEFENDANT PRO/SE.

G. L. Miton Jr. ~~Jr~~ 12/27/2018

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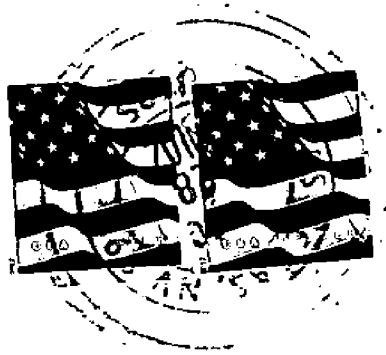
JAN 02 2019
CLERK OF THE COURT

Antonio Lee Milton Jr #1019628
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070



Steven D. Grierson,
Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

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HIGH DESERT STATE PRISON
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UNIT 4 A/B

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Electronically Filed
1/15/2019 11:45 AM
Steven D. Grierson
CLERK OF THE COURT

OPPM
AARON D. FORD
Attorney General
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-5707
F: (702) 486-0660
Ckallas@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1019828 Defendant.	Case No.: C-17-327439-1 Dept. No.: XVII Hearing Date: March 5, 2019 Hearing Time: 8:30 AM

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, SUPPLEMENTAL MOTION TO DISMISS AND SUPPLEMENT TO JURY INSTRUCTIONS

AARON D. FORD, Attorney General for the State of Nevada, through Deputy Attorney General, Chelsea Kallas, hereby submits the State's Opposition to Defendant's Motion to Dismiss, Supplemental Motion to Dismiss and Supplement to Jury Instruction. This motion is made and based upon the pleadings on file, the following memorandum of points and authorities, and any oral arguments the Court may allow.

Dated this 15th day of January, 2019.

SUBMITTED BY:

AARON D. FORD
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

MEMORANDUM OF POINTS AND AUTHORITIES

On October 25, 2017, Antonio Lee Mixon (hereinafter "Defendant") was charged by way of Information with the following: Count 1 – Battery By A Prisoner (Category B Felony – NRS 200.482(2)(f)); and Count 2 – Possession or Control of Dangerous Weapon or Facsimile By An Incarcerated Person (Category B Felony – NRS 212.185(c)). On November 1, 2017, Defendant pled not guilty and invoked his right to a speedy trial. On November 14, 2017, Defendant filed a Motion to Compel Production of Discovery and Brady Material. On December 1, 2017, the State filed its Opposition. On December 5, 2017, the Court issued a minute order directing the State to turn over, among other things, all witness statements. The Court requested that Defendant file the order. On January 2, 2018, Defendant's trial commenced. On that same day, the Court declared a mistrial. On March 28, 2018, Defendant filed a "Motion to Withdrawl of Attorney of Record, Request to Obtain Copy of Defendant's File, and Request for Self-Representation." On April 6, 2018, the Court administered a Farretta Canvass and Defendant's Motion was granted. Calendar Call is set for January 3, 2019, and Jury Trial is scheduled to commence on January 7, 2019. On November 2, 2018, Defendant filed a Motion for Jury Instructions and a Motion for Voir Dire. On November 20, 2018, the Court ruled that jury instructions and voir dire will be dealt with at the start of trial.

Defendant filed a Motion to Dismiss ("Motion") on November 2, 2018, and filed a "Supplement to Motion to Dismiss and Supplement to Jury Instructions" ("Supplemental Motion") on December 4, 2018. The State responds as follows.

ARGUMENT

Defendant appears to allege in his Motion and Supplemental Motion that the charges in the instant case should be dismissed because a memorandum he received supposedly bars the State from criminally prosecuting him.[1] However, this claim is without merit, as there is no place in the memorandum that discusses how or why the State is not permitted to criminally prosecute Defendant. (See Defendant's Supplemental Motion, Exhibit H). In fact, the memorandum specifically states that the instant case would

[1]Defendant also appears to allege that his "liberty interests" pursuant to the Due Process Clause of the Fourteenth Amendment to the Federal Constitution were violated, thus the instant case should be dismissed. Defendant's arguments appear to be misplaced, as the "liberty interest" and case law Defendant cites to in his Motion and Supplemental Motion, specifically apply to prison disciplinary proceedings *not* criminal prosecution proceedings. As such, this claim should be denied.

be referred to the Attorney General's Office and that Defendant was "cautioned regarding possible criminal charges." As such, this claim should be denied.

Defendant also appears to allege the instant case should be dismissed because he is not charged with actual crimes. As discussed above, Defendant is charged with Battery By A Prisoner and Possession or Control of Dangerous Weapon of Facsimile by an Incarcerated Person, both crimes pursuant to NRS 200.482(2)(f) and NRS 212.185(c), respectively. As such, this claim should be denied.[2]

CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court deny Defendant's Motion to Dismiss, Supplemental Motion to Dismiss and Supplement to Jury Instructions.

DATED this 15th day of January, 2019.

SUBMITTED BY:

AARON D. FORD
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

[2] Defendant also requests the Court to use the "the same exhibit memorandum" to "support grounds that the jury instruction for the battery charge be granted in the event the Court denies Defendant's Motion to Dismiss." The Court has already found Defendant's request for jury instructions to be premature, with the Court specifically noting that jury instructions would be dealt with the day of trial. As such, this request should be denied.

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on January 15, 2019, I filed the foregoing STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, SUPPLEMENTAL MOTION TO DISMISS AND SUPPLEMENT TO JURY INSTRUCTIONS this Court's electronic filing system.

I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or e-mail; or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following unregistered participants:

Antonio Mixon, Inmate ID #1019828
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

/s/ A. Reber
An employee of the Office of the Attorney General

1 ~~NOTC~~ NOTC

2 ANTONIO LEE MIXON

3 PRO SE

4 High Desert STATE Prison

5 P.O. Box 650

FILED

JAN 18 2019

CLERK OF COURT

6 DISTRICT COURT

7

8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA — CASE No.: C-17-327439-1

10 PLAINTIFF, — DEPT. No. XVII

11 -VS-

12 ANTONIO LEE MIXON SR.

13 DEFENDANT

14

C-17-327439-1
NOTC
Notice
4810351

15 NOTICE OF DEFENSE

16 This is The Defense's denial, answer, or plea opposing the truth

17 or validity of the plaintiff's case, given notice that defense intends

18 to introduce testimony or other evidence designed to refute

19 all or part of the allegations of the plaintiff's case. For count one

20 Defense invokes "INJURIA ABSQUE DAMNO;" AS Defense;

21 The state pleads a cause of action where that injury is an

22 element The Defendant Defense's maxim express the Defense

23 that a wrong which causes no injury recognized as such by

24 the law cannot give rise to a cause of action. For count two

25 The state pleads a cause of action that requires actual or constructive

26 possession or control and/or Criminal possession. Defendant invokes

27 the "peaceable possession" Defense which precludes the existence of

28 ~~adverse~~ claims WHEN AN Actual ~~dispossession made~~ Attempt dispossessis made

CLERK OF THE COURT

1. This may be accomplished by cross-examination or by
2 demurrer.

3 Certificate of service by mailing

4 I Defendant placed and/or placing said "NOTICE OF DEFENSE"
5 IN envolope and/or placed and/or placing said envolope thats
6 First-class postaged prepaid in Prisons' regular mailing System(s)
7 on or about January 14, 2019 addressed to the following:

8 Chelsea N. Kallas
9 Deputy Attorney General
10 OFFICE OF Attorney General
11 555 E. Washington Avenue, Suite 3900 Las Vegas, NV 89155-1160
12 Las Vegas, Nevada 89101-1068

STEVEN D. GRIERSON,
Clerk of the Court
200 LEWIS AVENUE, 3rd floor

13

14 I Declare Under penalty of perjury that to the best of
15 my belief and knowledge the Foregoing Certificate of service
16 is true and correct see NRS 53.045. Executed on or about
17 January 14, 2019. _____
(Signature)

18

19

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23

24

25

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27

28

Anthony Lee Mixon Jr. #91928
High Desert State Prison
P.O. Box 650
Indian Springs NV 89070

LAS VEGAS NV 890
15 JAN 2019 PM 3 L

Steven D. Grierson,
Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

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HIGH DESERT STATE PRISON
JAN 14 2019
UNIT 4 A/B

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627 - 630
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Suppl

ANTONIO LEE MIXON 1019828
High Desert State Prison
INDIAN Springs, NV 89070
"No Fax number" and "No e-mail address"
Attorney For: Antonio Lee Mixon

FILED
FEB 04 2019
CLERK OF COURT

DISTRICT COURT
Clark County, Nevada

The State of Nevada
Plaintiff
vs.
Antonio Lee Mixon
Defendant.

Case No. C-17-327439-1
Dept. XVII
DATE OF HEARING: March 5, 2019
Time of Hearing: 8:30 A.M.

~~AMENDED~~ Supplemental to Jury Instructions

Antonio Lee Mixon Jr. through Self representation hereby Submits Defendants Supplemental TO Defendant's Jury Instructions. This Motion is Made AND based upon the pleadings on File, the following Memorandum of Points and Authorities and any oral arguments the Court may allow.

I hereby Verify Under penalty of perjury that to the best of my belief and Knowledge the following Facts and circumstances are true and Correct pursuant to NRS. 53.045. EXECUTED on Jan. 28th, 2019. A. Mixon Jr.
(Signature)

C-17-327439-1
SUPP
Supplemental
4814190

Suppl

Memorandum of Points and Authorities

Defendant Filed a NOTICE OF DEFENSE And this Request For Jury instructions is in support of said notice but in ~~support~~ release of the initial request for Jury instructions.

Argument

Defendant's jury instruction in support of Defendant's defense For count one of the plaintiff's case that's listed in the Defendant's NOTICE of Defense is that the plaintiff has insufficient elements to support the Degree of charge in that the essential element in any to vehicle of "B" By "A" coupled with the severity of the injury that resulted is used to measure the severity of the Various desperate elements of the plaintiff's complaint for the plaintiff to classify count one as an aggravated assault that requires a punishment of six years in prison. Defense believes Plaintiff used the circumstances as Elements of the victim being an unsworn officer, the age of 54, the allegation that a rock was thrown at victim coupled with the allegation that the rock struck him. One, Battery is a misdemeanor at common law Depending on the Severity of the injury, misdemeanor would be 30 days in County jail. Here plaintiff's attorney charges Defendant with a Felony. No one Can Say this is a Bias Crime against officer's not giving the injury. Being Bias For officers would just Be Bias against Prisoners. Exclude That Bias. Victim is not a Senior Citizen Let alone 60 or older. Based off No injury No one Can Say that the alleged throwing of the rock was with deadly force making it a Dangerous weapon. Its millions of Dimensions away from a deadly weapon. Your honor it also is apparent that it's Less than 50 % of the Victims own Fault that he's Complaining. For one, hurt with Foreseeability. The victim alleges he Seen a Subject walking in circles this Subject coming Upon him Kneeled

Suppl

down grabed some dirt, From here the victim alleges Subject was 10 to 15 Feet away the victim had mase didn't spray plus he could have simply just moved out the way. This isn't like he's alleging it was unforeseen, unpreventable, hindsight occurrence where the Victim had to make a split-second Life or death decision, A little Breach and Trust of duty merely Forgetfullness even, here. Defense believes Plaintiff's attorney's excuse For Filing the criminal prosecution in this case after 20 months From when this incident was alleged to have occurred is because she/he did a thorough investigation of the defendant to find aggravating Circumstances to increase the Severity of the crime given defendant Constitutional right to Collateral estoppel, (Un. 397 US 436, 25 L Ed 2d 469, 90 S Ct 1189 Argued Nov. 13, 1969, Decided Apr. 6, 1970 quoted). In the Case Of Is Lee MINNIX The serious bodily injury was an essential element required under the statutory definition of aggravated assault. The Victims injury in MINNIX were Contusions on his Face and laceration of the lip and he ~~and~~ Underwent Surgical deprivement, under a local anesthesia to suture the lip in layers, layers meaning tissue, fat, muscles. MINNIX was given 90 days in County Jail For that and appealed, the Court modified MINNIX's sentence to 30 days in Jail with a FINE of $100, Because the evidence was insufficient to meet the limited statutory definition of aggravated assault See Otis Lee MINNIX, Plaintiff, V. The State of Oklahoma, Defendant Court of Criminal Appeals of Oklahoma 1955 OK CR 37; 282 P.2d 772; 1955 Okla. Crim. App. LEXIS 199 March 9, 1955. It was held that whether fractured jawbone was a serious bodily injury that would justify Conviction of one who inflicted it of aggravated assault and battery was For the Jury See Davis V. State, 150 TEX. CR. R. 131, 199 S.W. 2d 167 (quoted in MINNIX At P2) (page 21). Defense ask For a jury instruction accordingly given the Facts and Circumstances. NOTE: Victim in this case took no Medications, None was given or prescribed.

Suppl

Some jurisdictions have by statute defined criminal assault to include what at common law was the battery - the actual physical injury. In these jurisdictions an offense of "menacing" often replaces the common law assault. See E.g., N.Y. Penal Law, Art. 120; Model Penal Code 211.1. Some modern criminal statutes no longer retain the misdemeanor/Felony distinction. Instead crimes and offenses are classified according to degrees See Model Penal Code 1.04. The measure of the seriousness of a criminal act which determines the range of criminal sanctions that may imposed the crime. For instance, Under the Model Penal code, assault can be classified into any of Four degrees depending upon the victim or manner of commission. A simple assault could be petty misdemeanor carrying a sentence of not more than thirty days or misdemeanor carrying a sentence not more than one year; an aggravated assault could be a crime of the third degree exposing the defendant to five years or a crime of the second degree carrying of ten years see Model penal Code 211.1 et seq. 6.06. and ~~6.07~~ 6.08. The core of the defense's Argument is The World acts as IF It doesn't Know what CONSTitute a CRIME. Your honor, INJURY, LOSS, or DAMAGE constitutes a crime. The Severity of the INJURY, LOSS, or DAMAGE Constitutes ~~a crime~~ the Severity of the crime. And This Basis, Core, Soul IS the analysis Defendant needs Court to use in deciding the granting of this Supplement. I certify Under penalty of perjury that to the best of my belief I caused to be deposited this Supplemental in the regular mailing system with First-Class Prepaid postage addressed to the following: Chelsea N. Kallas, Deputy Attorney General, 555 E. Washington Avenue, STE. 3900, LAS Vegas, NV, 89101-1068. STEVEN D. GRIERSON, Clerk of the Court, 200 Lewis Avenue, 3rd Floor, LV, NV 89155-1160 and that this Certificate of Service is true and correct. Executed on Jan. 13th, 2019. A.G. Nixon Jr.

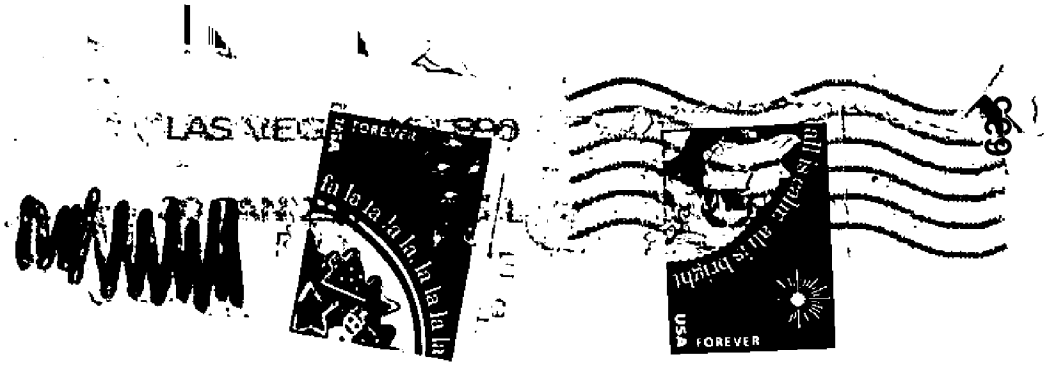
Certificate of service by mailing

(signature)

CC: File

ANTONIO LEE MILTON JR. 1019828
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

* LEGAL MAIL *



STEVEN D. GRIERSON,
Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

(2 motions inside)

89101-630000

HIGH DESERT STATE PRISON
JAN 23 2018
UNIT 4 A/B

HIGH DESERT STATE PRISON
JAN 23 2018
UNIT 4 A/B

ROPP

ANTONIO LEE MIXON 1019828
High Desert STATE Prison
INDIAN SPRINGS, NV 89070
"NO FAX number" and/or no "E-mail address"
Attorney FOR: ANTONIO LEE MIXON JR.

FILED
FEB 04 2019
CLERK OF COURT

C-17-327439-1
ROPP
Reply to Opposition
4814189

DISTRICT COURT
Clark County, Nevada

The state of Nevada
plaintiff,
vs.
ANTONIO LEE MIXON,
Defendant.

Case No. C-17-327439-1
Dept. XVII
DATE OF HEARING: March 5, 2019
TIME OF HEARING: 8:30 A.m.

Reply ~~STATE~~ TO STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, SUPPLEMENTAL MOTION TO DISMISS AND Supplement TO JURY INSTRUCTIONS.

Antonio LEE MIXON JR. through Self-representation hereby submits the Defendant's Reply to state's opposition to Defendant's Motion to Dismiss, Supplemental Motion to Dismiss and Supplement to Jury ~~instruction~~ instructions. This motion/reply is made and based upon the pleadings on file, the following Memorandum of points and authorities of points and authorities, and any oral arguments the court may allow.

Dated this 22nd day of January, 2019.

Submitted By: Antonio LEE MIXON

CLERK OF THE COURT
FEB 04 2019
RECEIVED

ROPP

I Certify Under penalty of perjury that to the best of My belief and knowledge the following Facts and circumstances are true and correct pursuant to NRS 53.045. Executed on Jan, 23rd 2019. Nicholas Moon Jr.
(Signature)

ROPP

Memorandum of Points And Authorities

The Motion's State opposed to are Vacated. Defendant is granted leave by this Court to place back on calendar the motion(s) Defendant withdrew.

Argument

The Defendant has no intentions to place said motions back on calendar whatsoever. Only a new Supplemental to the initial Request For Jury instructions will be submitted. Court Defense will have that Filed before Feb. 23rd, 2019. Other than that Filing in between now and Feb. 23rd, 2019 the only other Filings if necessary are a notice of witnesses and/or Subpoenas.

Conclusion

The state's opposition is moot, premature, and for no reason. The plaintiff's action on motion should be denied for failure to state a cause of action upon which relief can be granted.

Certificate of Service Mailing

I hereby Certify Under penalty of perjury that to the best of my belief and knowledge I caused My ROPP to be deposited in the Prisons regular mailing System First-class prepaid postage to the following addresses: Chelsea N. Kallas, Deputy Attorney General, State of Nevada, office of attorney General, 555 E. Washington Ave., STE. 3900, Las Vegas, Nevada 89101-1068. STEVEN D. GRIERSON, clerk of the Court, 200 Lewis Avenue, 3rd floor Las Vegas, NV 89155-1160. And that this Certificate of Service by Mailing is true and correct. Executed on Jan. 23rd, 2019. A. L. Myers Jr. (Signature)

cc: File

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2/21/2019 8:59 AM
Steven D. Grierson
CLERK OF THE COURT

NOTM
AARON D. FORD
Attorney General
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-5707
F: (702) 486-0660
Ckallas@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff(s), vs. ANTONIO LEE MIXON, ID #1968172 Defendant(s).	Case No. C-17-327439-1 Dept. No. 17

STATE'S NOTICE OF MOTION AND MOTION TO PLACE ON CALENDAR

THE STATE OF NEVADA, through legal counsel, AARON D. FORD, Attorney General of the State of Nevada, by and through Deputy Attorney General, CHELSEA KALLAS, moves this Court to place the above-entitled matter on the Court's calendar for the purpose of obtaining the parties trial readiness status.

SUBMITTED BY:

AARON D. FORD
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

NOTICE OF MOTION

TO: Antonio Lee Mixon

YOU WILL PLEASE TAKE NOTICE that the undersigned requests that the above-entitled matter be placed on calendar on the 5th day of ~~February~~ March, 2019, at 8:30 AM in Department No. 17 for the purpose of obtaining the parties trial readiness status.

DATED this 21th day of February, 2019.

SUBMITTED BY:

AARON D. FORD
Attorney General

By: /s/ Chelsea Kallas
Chelsea Kallas, Bar No. 13902
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing STATE'S NOTICE OF MOTION AND MOTION TO PLACE ON CALENDAR with the Clerk of the Court by using the electronic filing system on the 20th day of February, 2019.

I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or e-mail; or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following unregistered participants:

Antonio Lee Mixon 1019828
High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070-0650

/s/ A. Reber
A. Reber, An employee of the office
of the Nevada Attorney General

NOT.

ANTONIO LEE MIXON 1019828
High Desert STATE Prison
P.O. Box 650
INDIAN Springs, NV 89070
"NO Fax number" and/or "no e-mail address"

C-17-327439-1
NOTC
Notice
4817399

FILED
FEB 21 2019
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA
Plaintiff,
VS.
ANTONIO LEE MIXON JR.

Case NO. C-17-327439-1
Dept. XVII
ORAL ARGUMENT: OPEN COURT
(IF NECESSARY)

NOTICE advising THE COURT and Plaintiff that Plaintiff's Pleadings on Complaint should be precluded from a trial in this Court For Failure to state a cause of action upon which relief could be granted because of want of Prosecution. For the Following reasons:

The TERRITORIAL Court which makes all needful rules and regulations respecting territory or other property belonging to the United states. 370 U.S. 530, 543; 371 F.2d 79, 81 and Under Art. IV. Sec. 3, Cl. 2 of the U.S. Const. Which establishes Territorial Jurisdiction which is the territory over which a government or a subdivison thereof has jurisdiction, 147 P.2d 858, 861; relates to a tribunal's power with regard to the territory within which it is to be exercised, and connotes power over property and persons within such territory. 44 N.E. 2d 438, 440. The Victim in the Plaintiff's Complaint has already been benefitted and compensated For the same allegations in a court system Military Court system. The Victim had a choice to restitution or Fine but elected Restitution A Subject realized

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FEB 22 2019
CLERK OF THE COURT

A sentence of confinement of six months imprisonment total and a lost of privilages and rights for 24 Mos. pursuant to 10 U.S.C. 801 makes the territory Victim alleges these allegations occurred military jurisdiction. Whether people within that territory have military status or not that Jurisdiction governs non-military offenses which are those that are alleged to have occurred within its territory but the citizen or people there doesn't have military status. The Court system within that territory /state ~~can~~ generally deal with capital cases that are alleged to have occurred within its territory pursuant to 10 U.S.C. 818. Can hear all other cases pursuant to 10 U.S.C. 819 and 10 U.S.C. 820. That Court system can give and gives sentence of confinements pursuant to 10 U.S.C. 858, 858a and can extend confinements by given sentence confinements pursuant to 10 U.S.C. 819 For non-capital offenses. The PlaintIFF Filing the Complaint now in this District court is moot. and Unlawful. The defendant not residing in a Jurisdiction that governs any allegations against defendant to be heard in this Court And the Victim where ever he resides if not where he alleges this took place creates Either a Federal question Jurisdiction in which only the Federal district Courts and that system can hear pursuant to 28 U.S.C. 1331 and/or a diversity of citizenship which only the Federal district courts and that system can hear pursuant to 28 U.S.C. 1332 the highest Court in that system the U.S. Supreme Court has Judicial Power to hear those types of case pursuant to Art. III sec. 2 of the U.S. Const. In this instant case the different states that exist is agreed upon See 8 U.S.C. 1101(a)(29)(36); 2. character; 3 Condition, States, or situation; 4. Circumstances; 5. display, say or declare. I've asked Correctional officers within the territory are there cp's on the reserved list to be deployed to the military and they said "yes." The 11th U.S. Const. Amend. Bar Plaintiff's Complaint also. In addition to that the Supreme Court has held that the 10th U.S. Const. Amend. bars Congress From exercising power that impinges dicatly upon state functions essential to the state's seperate and independent existence see 426 U.S. 833, 851. Schwartz, Const. the Hond Law § 2.2 (2d ed 1979). The Court letting this matter proceed would intend to cause Defendant to Suffer Physical restraint; physical restraining

1 or, threatening to physically restrain Defendant by Plaintiff/Court by
2 abusing the legal process see MINN. stat. ch. 609 § 291 (2009).
3 I declare Under penalty of perjury that to the best of my belief and Knowledge that
4 the contents of this Notice is true and correct, 28 U.S.C. 1746, NRS 53.045
5 EXECUTED on or about Feb. 18, 2019 a.y. Mixon Jr. On the Courts own
6 motion Court should dismiss Plaintiff's Complaint. And Defense wants to
7 note that in the case Mixon VS. Nevada case No. C218245, (CV06-3029) Evidential
8 /Seized Property which state alleges was in the Constructive Possession of
9 the defendant ~~of~~ that case those weapons being (2) set martial Arts daggers,
10 (1) set of NUN-chukas (1) semi-automatic replica air pistol. The Defendant
11 of that case received sixty days imprisonment. You can't use prior Convictions
12 to increase the punishment of a crime in the event an accused is convicted
13 or subject to conviction, that would punish accused twice ~~for~~ of past offenses
14 which would violate a fundamental Right of the accused which is the accuses
15 Fifth Amendment Right of the U.S. Const. to be Free From Multiple punishments
16 or punished twice for the same offense see 395 U.S. 717.
17 Certificate of Service by mailing
18 I hereby certify that I caused to be deposited the NOTICE on or about
19 Feb. 18, 2019 First-class prepaid postage paid caused to be deposited
20 in the prison's regular ~~mail~~ mailing system to the following addresses:
21 STEVEN D. GRIERSON, clerk of the Court, 200 Lewis Avenue, 3rd Floor, las Vegas,
22 Nevada 89155-1160. Chelsea N. Kallas, ~~Deputy~~ Attorney General, State of
23 Nevada, office of Attorney General, 555 E. Washington Ave., STE. 3900,
24 Las Vegas, Nevada 89101-1068. I certify Under penalty of perjury that to
25 the best of my belief and Knowledge the Certificate of service by
26 Mailing is true and correct. 28 U.S.C. 1746, NRS 53.045 EXECUTED
27 on or about Feb. 18th, 2019. a.y. Mixon Jr.
28 cc: File

Antonio Lee Mixon #1019828
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

LAS VEGAS NV

19 FEB 2019 PM

STEVEN D. GRIERSON,
Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

646

89101-630000

HIGH DESERT STATE PRISON
FEB 18 2019
UNIT 4 A/B

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2/27/2019 9:06 AM
Steven D. Grierson
CLERK OF THE COURT

ANOT
AARON D. FORD
Attorney General
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-3420
F: (702) 486-0660
Ckallas@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff(s), vs. ANTONIO LEE MIXON, ID #1968172 Defendant(s).	Case No. C-17-327439-1 Dept. No. 17

STATE'S FIRST AMENDED NOTICE OF WITNESSES AND/OR EXPERT WITNESSES

AARON D. FORD, Attorney General of the State of Nevada, by and through Deputy Attorney General, CHELSEA KALLAS, in accordance with NRS 174.234 sets forth the State's list of witnesses for trial in the above referenced matter as follows:

1. Victor Daniel
   Former Investigator
   Office of the Inspector General

2. Kurt Krohm
   Correction Officer
   High Desert State Prison
   22010 Cold Creek Road
   Indian Springs, NV 89070

3. Tyler Mcaninch
   Former Correction Officer
   High Desert State Prison

///

///

Case Number: C-17-327439-1

4. Dean Ontiveros
Correction Officer
High Desert State Prison
22010 Cold Creek Road
Indian Springs, NV 89070

5. Dustin Mumpower
2090 East Flamingo Road, Suite 200
Las Vegas, NV 89104

6. Brian Crooks
Correction Officer
High Desert State Prison
22010 Cold Creek Road
Indian Springs, NV 89070

DATED this 27th day of February, 2019

AARON D. FORD
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Cooperation AGREEMENT with the Clerk of the Court by using the electronic filing system on the 27th day of February 2019.

I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or e-mail; or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following unregistered participants:

Antonio Lee Mixon 1019828
High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070-0650

/s/ R. Holm
An employee of the office
of the Nevada Attorney General

Electronically Filed
3/18/2019 2:12 PM
Steven D. Grierson
CLERK OF THE COURT

MINC
AARON D. FORD
Attorney General
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-5707
F: (702) 486-2377
Ckallas@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1968172 Defendant.	Case No.: C-17-327439-1 Dept. No.: 17

MOTION TO INCREASE BAIL

Comes now the STATE OF NEVADA by and through AARON D. FORD, Attorney General and his Deputy Attorney General, CHELSEA KALLAS, hereby moves this Court for an order to increase bail in this matter.

This motion is made and based upon the pleadings and papers on file, the following memorandum of points and authorities, and any oral argument the Court may allow.

DATED this 18th day of March, 2019.

SUBMITTED BY:

AARON D. FORD
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

Case Number: C-17-327439-1

NOTICE OF MOTION

TO: All Interested Parties and their Counsel

YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the forgoing MOTION TO INCREASE BAIL on for a hearing in Department 17 of the 8th Judicial District Court (RJC), State of Nevada, on the _____ day of _____, 2019, at _____ am/pm or as soon thereafter as counsel may be heard.

DATED this 18th day of March, 2019.

SUBMITTED BY:

AARON D. FORD
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS AND RELEVANT PROCEDURAL HISTORY

On December 4, 2015, Antonio Lee Mixon (hereinafter "Defendant"), struck Senior Correctional Officer D. Ontiveros in the abdomen with a rock, while Defendant was incarcerated at High Desert State Prison. After being struck, Senior Correctional Officer Ontiveros approached Defendant, at which time Defendant removed a prison made weapon, commonly referred to as a "shank" from his shoe. Senior Correctional Officer Ontiveros removed his oleoresin capsicum spray and ordered Defendant get on the ground. Defendant dropped the weapon and was placed in restraints. Defendant later exclaimed "you're lucky you had that mace or I would have stuck your bitch ass."

On August 18, 2017, Defendant was charged by way of Criminal Complaint with the following: Count 1 – Battery By A Prisoner (Category B Felony – NRS 200.482(2)(f)); and Count 2 – Possession or Control of Dangerous Weapon or Facsimile By An Incarcerated Person (Category B Felony – NRS 212.185(c)). On August 22, 2017, Defendant's bail was set at a total of $10,000. On October 24, 2017, the Court reduced Defendant's bail to $250. On that same date, Defendant waived his right to a preliminary hearing and the matter was bound up to District Court. On November 1, 2017, Defendant pled not guilty and invoked his right to a speedy trial. The instant case has continued for over a year and a half with six (6) trial settings. A status check is currently set for April 4, 2019.

Defendant is currently serving an aggregate sentence of 8 to 20 years for Voluntary Manslaughter with a Deadly Weapon in Case No. C-11-277977-1. Defendant is eligible for release on parole in that case on September 18, 2019.

SUBSEQUENT ACTIONS BY DEFENDANT AFTER BAIL REDUCTION

Since Defendant's bail reduction on October 24, 2017, Defendant has repeatedly made threats of physical violence against correctional officers, similar to the threat Defendant made in the instant case.

On December 12, 2017, a maintenance worker at High Desert State Prison inadvertently opened Defendant's cell door, at which time Defendant exited his cell. Correctional officers ordered Defendant to return to his cell, explaining to Defendant that his door opened accidentally. Defendant refused and became combative with correctional officers, opening his shirt and saying "Fuck it. Let's do it."

/ / /

On August 23, 2018, Defendant made several threats to Correctional Officer S. Kurdali, stating "when you open this door I will kill you bitch ass CO." When Correctional Officer S. Kurdali asked Defendant why he was upset, Defendant responded by spitting at his cell window and kicking his door. Defendant threatened Correctional Officer S. Kurdali again, exclaiming that he would "beat [his] ass you soft pig."

ARGUMENT

NRS 178.499 provides "At any time after a district or justice's court has ordered bail to be set at a specific amount, and before acquittal or conviction, the court may upon its own motion or upon motion of the district attorney and after notice to the defendant's attorney or record or, if none, to the defendant, increase the amount of bail for good cause shown."

The Court should increase Defendant's bail pursuant to NRS 178.499(1), as Defendant's current bail is clearly insufficient. Defendant has failed to stay out of trouble and has clearly demonstrated that he continues to be a danger to this community, evidenced by his continued threats of violence. As such, Defendant's bail in the instant case should be increased to at least $10,000.

CONCLUSION

Based on the foregoing, the State respectfully requests that the Court increase Defendant's bail to the amount of $10,000.

DATED this 18th day of March, 2019.

SUBMITTED BY:

AARON D. FORD
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on March 18, 2019, I filed the foregoing **MOTION TO INCREASE BAIL** this Court's electronic filing system.

I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or e-mail; or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following unregistered participants:

Antonio Mixon, Inmate ID #1019828
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

/s/ A. Reber
An employee of the Office of the Attorney General

Electronically Filed
3/19/2019 8:33 AM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
****

State of Nevada vs Antonio Mixon	Case No.: C-17-327439-1 Department 17

NOTICE OF HEARING

Please be advised that the above-entitled matter has been scheduled for State's Motion to Increase Bail, to be heard in Department 17, at the Regional Justice Center, 200 Lewis Ave, Las Vegas, Nevada 89101, on the 26th day of March, 2019, at the hour of 8:30 AM.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that this 19th day of March, 2019, a copy of this Notice of Hearing was electronically served to all registered parties in the Eighth Judicial District Court Electronic Filing Program and/or placed in the attorney's folder maintained by the Clerk of the Court and/or mailed, postage prepaid, by United States mail to the proper parties as follows:

Antonio Lee Mixon #1079828
P.O. Box 650
Indian Springs, NV 89070

By: /s/ Michelle McCarthy
Deputy Clerk of the Court

NWEW

ANTONIO L MIXON
PRO-SE
H.D.S.P.
P.O. BOX 650
INDIAN SPRINGS, NV 89070
"NO Phone number" and/or "no Email"
Attorney for The Defendant

FILED
MAR 21 2019
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
PLAINTIFF,
v.
ANTONIO LEE MIXON, ID #1968172

Case No.: C-17-327439-1
Dept. NO.: 17

Defendant's Notice OF WITNESSES AND/OR Expert Witness

ANTONIO LEE MIXON SR., pro-se, by and through SELF-representation, in accordance with NRS 174.234 sets forth the Defense's ~~Witness~~ list of witnesses for trial/in the above-referenced matter as follows:

1. Mark Preusch
9811 W. Charleston, STE. 2-774 Las Vegas, Nevada 89117
(Expert witness and/or lay witness expert witness pursuant to Fed. R. Evid. 701).

Mr. Preusch Is Expected to testify to his Discovery Review/research in the above-referenced matter. Dated: 02/20/19 By: A.L. Mixon Jr.

RECEIVED
MAR 21 2019
CLERK OF THE COURT

C-17-327439-1
NOTC
Notice
4824428

I hereby verify under penalty of perjury that to the best of my belief and knowledge the Notice of Witnesses AND/or Expert Witnesses of the Defendant's, is true and correct. 28 U.S.C. 1746; NRS 53.045. Executed on or about Feb. 20th, 2019. G.G. Nixon Jr.

Certificate of Service by mailing

I certify ~~under penalty~~ I've caused and/or is causing the said notice to be deposited in the prison's regular mailing system, First-class Mail, postage prepaid to the following addresses: STEVEN D. GRIERSON, Clerk of the Court, 200 Lewis Avenue, 3rd Floor, Las Vegas, Nevada 89155-1160.

Chelsea N. Kallas, Deputy Attorney General, of the office of Attorney General, 555 E. Washington Ave., STE. 3900, Las Vegas, Nevada 89101-1068. Attorney For the State OF Nevada.

I certify under penalty ~~of~~ of perjury that to the best of my belief and knowledge the Foregoing certificate of service by mailing is true and correct, 28 U.S.C. 1746; NRS 53.045. Executed on or about Feb. 19th, 2019. G.G. Nixon Jr.

CC: FILE

Exhibit A

Discovery Review/Research

Antonio Mixon

Prepared By: Global Reliance Investigations, LLC 9811 W. Charleston Ste. 2-774 Las Vegas, Nevada 89117
Nevada State License No. 1890A

Discovery summary:

Suspect:
Antonio Mixon

Involved Persons/ Victim:
Senior Correctional Officer- Dean Ontiveros

Charges: Battery by a Prisoner, Possession or Control of Dangerous Weapon or Facsimile by Incarcerated Person.

Location: High Desert State Prison- 5/6 Small Yard

Summary: On December 4th, 2015 at 9:05 a.m, correctional officer Dean Ontiveros was supervising the prison yard at High Desert State Prison when he noticed an inmate, suspect Antonio Mixon appearing upset. Officer Dean Ontiveros advised another officer to "keep an eye on him." Upon hearing this, suspect Mixon approached Officer Ontiveros and Officer Mcanich and threw a rock in their direction. The rock struck officer Ontiveros in the lower abdomen. Mixon then pulled out a prison made weapon from his shoe. Officer Ontiveros pulled out OC spray and ordered suspect Mixon to get on the group. Initially Mixon refused but eventually dropped the weapon and was apprehended by Officer Ontiveros.

Witnesses: (Note: all witness listed in State's discovery are correctional officers at High Desert State Prison)

1. Senior Correctional Officer Dean Ontiveros: Relays consistent information contained in the investigation report.
2. Senior Correctional Officer Franklin Dickens: Dickens report records the wrong day of incident November 4th, 2015.

INCIDENT DATE AND TIME	INSTITUTION	LOCATION
12-04-2015 0905HRS	High Desert State Prison	UNIT 5/6 SMALL YARD

THE FOLLOWING IS A COPY OF THE 026 SUBMITTED IN NOTIS BY SENIOR CORRECTIONAL OFFICER FRANKLIN DICKENS

On the 4th of November 2015 at approximately 0905 I Sc/o Dickens while performing duties as the lead Search & Escort Officer at HDSP was notified via radio of a 10-33 officer nees assistance call in the 5-6 quad. Myself and the S&E's C/O's Estill and Hesler responded to the 5-6 quad, We yelled for all the inmates to get on the ground. Sc/o Ontiveros and C/o t Mcininch were on the ground each holding inmate Mixon NDOC # 1019828 arms. i responded assist by putting the restraints on inmate Mixon.Medical showed up along.CERT Members to assist escorting inmate Mixon to intake then to his new unit. I then with the other C/O's who responded to the incident done a pat down on all the inmates that were on yard at this time. End of report.

3. Correctional Officer Ryan Hessler: Relays consistent information contained in the investigation report.
4. Correctional Sergeant Dustin Mumpower: Relays consistent information contained in the investigation report.
5. Correctional Officer Benjamin Estill: Relays consistent information contained in the investigation report.
6. Correctional Officer Kurt Krohm: Relays consistent information contained in the investigation report.
7. Correctional Officer Brian Crooks: Relays consistent information contained in the investigation report.

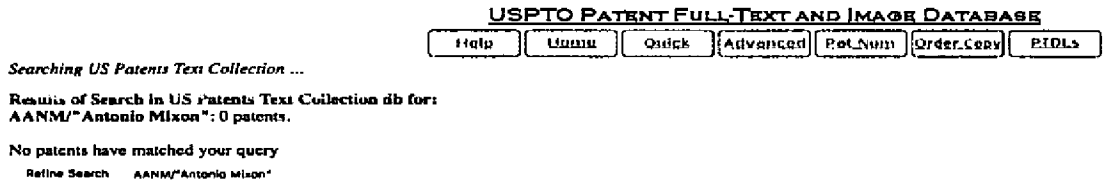
Additional Information:

- Officer Dean Ontiveros returned to work the next day for his scheduled shift.
- Officer was paid for the day of his injury.
- The radiology report for officer Ontiveros shows no acute findings.
- Officer Ontiveros is seeking disability reimbursement from workers compensation.

Existing Patents under Antonio Mixon

Existing Patent's Under the Name 'Antonio Mixon':

While using the United States Patent and Trademark Office's online Patent Full Text Database (http://ap-pft.uspto.gov), I searched under "applicant name" in the patent search bar and typed 'Mixon' into the last name search bar and 'Antonio' into the first name search bar. The search results pulled up existing patents from 1976- present that exist in the United States. The result revealed that there are zero patents existing under the name Antonio Mixon. See photo below.


USPTO PATENT FULL-TEXT AND IMAGE DATABASE

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Searching US Patents Text Collection ...

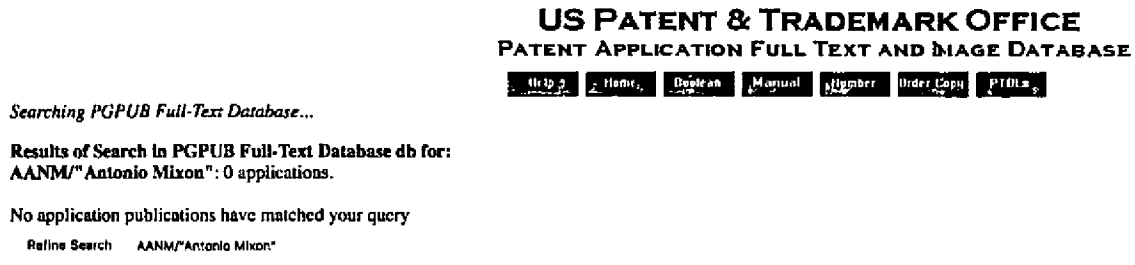
Results of Search in US Patents Text Collection db for:
AANM/"Antonio Mixon": 0 patents.

No patents have matched your query

Refine Search AANM/"Antonio Mixon"

Applications for Patents Under the Name 'Antonio Mixon.':

While using the United States Patent and Trademark Office's online Patent Full Text Database (http://ap-pft.uspto.gov) , I searched under "applicant name" in the patent search bar and typed 'Mixon' into the last name search bar and 'Antonio' into the first name search bar. The search results pulled up applications for patents from 1976- present that exist in the United States. The result revealed that there are zero patents in the application process that are under the name Antonio Mixon. See photo below.


US PATENT & TRADEMARK OFFICE

PATENT APPLICATION FULL TEXT AND IMAGE DATABASE

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AANM/"Antonio Mixon": 0 applications.

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Information Regarding Apple Shareholders and Dividends

- According to Apple's Stock Ownership Guidelines.... "The following may be used in determining share ownership: 1. Shares owned directly (including open market purchases or acquired and held upon vesting of Company equity awards) 2. Shares owned jointly with or separately by the individuals spouse. 3. Shares held in trust for the benefit of the individual, the individual's spouse and /or children."
- If an individual is arrested or put into prison he or she still has control over their shares. Unless otherwise specified by the shareholder before the arrest, their rights to their shares will not be impacted by imprisonment. (Source: Dana Shultz Esq.)
- There are two ways dividends are typically paid out. 1. In the form of a check. 2. Reinvestment into other stocks.
- On the date that dividends are expected to be paid, major corporations use the Depository Trust Company (DTC). If payments are made in cash, they are sent to brokerage firms that apply cash dividends to the specific client who owns the shares.
- The DTC is responsible for paying out dividends to many shareholders. The DTC is registered with the Securities and Exchange Commission and is a member of the Federal Reserve System. The DTC is responsible for over a trillion dollars' worth of securities.

Information Regarding High Desert State Prison:

- "High Desert State Prison is located in Indian Springs Nevada. It is currently the largest correctional facility in the Nevada Department of Corrections. It is one of the most technologically advanced prisons in the country and is the reception center for all inmates in Southern Nevada. The current capacity of this prison is 4,176 inmates and is still expanding as High Desert State Prison becomes the first facility in a complex of several that will make up the Southern Nevada Prison Complex."(www.prisonpro.com)

- The Bureau of Justice Assistance along with the National Prea Resource Center conducts what they call "PREA Audits" on adult prisons and jails. On January 7th, 2015 an audit was conducted on High Desert State Prison. The audit includes touring the facility, interviewing randomized inmates and staff. The audit rates various areas of the prison with 1. Exceeds Standards 2. Meets Standards or 3. Does Not Meet Standard. The results were as follows:
    - Supervision and Monitoring (this includes providing adequate staffing levels and video monitoring): High Desert State Prison-**Meets Standard.**
    - Hiring and Promotion Decisions (the audit goes through hiring records and looks for staff members who have in the past engaged in sexual abuse, have been convicted of engaging in violence by force): High Desert State Prison-**Meets Standard.**
    - Employee Training: High Desert State Prison-**Meets Standard**
    - Criminal and Administrative Investigations (the audit checks if the prison is compliant to the Peace Officer's Bill of Rights which has very strict requirements for administrative investigations for staff members.) High Desert State Prison- **Meets Standards.**

- Evidentiary Standards for Administrative Investigations: High Desert State Prison-**Meets Standards.**

END

INTERVIEW-ATTORNEY WORK PRODUCT

Case No. C 17 327439-1 Antonio Mixon 06/27/2018

I, Mark Preusch, a licensed private investigator in the State of Nevada, met with and interviewed Antonio Mixon at the High Desert state prison where he is currently incarcerated. Mr. Mixon provided the following information concerning his case:

Mr. Mixon believes he was set up by the Ely prison guards because they are vindictive and have been stealing his invention patents. He claims to have invented and patented a steaming music phone application, as well as several other un-named inventions.

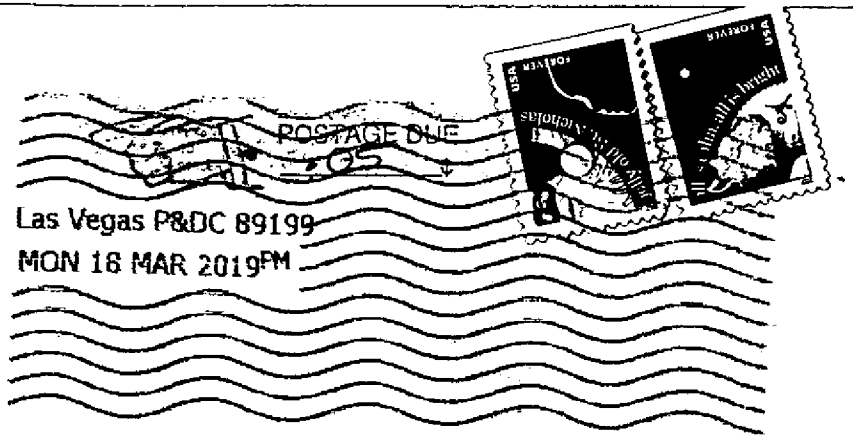
He believes the prison employees are getting dividend checks from the Apple Corporation as a result of his invention that they have stolen and sold to Apple.

Mr. Mixon requested that I research his patent applications and determine if the prison employees at the Ely State prison are getting dividend checks from his invention (s).

END

GLOBAL RELIANCE INVESTIGATIONS
Nevada State License No. 1890A
702-328-2464 FAX: 702-656-7827
Globalrelianceinvestigations.com
9811 W. Charleston., Ste. 2-774 Las Vegas, Nevada 89117

ANTONIO LEE MIXON SR. #1019828
High Desert State Prison
P.O. Box 650
INDIAN Springs NV 89070



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STEVEN D. GRIERSON,
CLERK OF THE COURT
200 LEWIS AVENUE, 3rd FLOOR
LAS VEGAS, NEVADA 89155-1160

HIGH DESERT STATE PRISON

FEB 20 2019

UNIT 4 A/B

ORIGINAL

AINF
AARON D. FORD
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Attorneys for the State of Nevada

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
MAR 26 2019
BY, APRIL WATKINS, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1968172 Defendant.	Case No.: C-17-327439-1 Dept. No.: 17

C-17-327439-1
AINF
Amended Information
4825637

AMENDED INFORMATION

AARON D. FORD, Attorney General for the State of Nevada, complains and charges that:

The above-named defendant, ANTONIO LEE MIXON, has committed the crime of one (1) count of ATTEMPT POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACSIMILE BY AN INCARCERATED PERSON, a category "C" felony in violation of NRS 212.185(c), NRS 193.330.

All of the acts alleged herein have been committed or completed on or about December 4, 2015, by the above-named defendant, within the County of Clark, State of Nevada, in the following manner:

COUNT I
ATTEMPT POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACSIMILE BY AN INCARCERATED PERSON
Category "C" Felony - NRS 212.185(c), NRS 193.330

That the Defendant, ANTONIO LEE MIXON, on or about December 4, 2015, while incarcerated at High Desert State Prison, did attempt to possess or have in his custody or control any dirk, dagger, switchblade knife or sharp instrument to wit: the Defendant did attempt to possess or have in his custody or

control a sharp instrument commonly referred to as a "shank."

All of which is contrary to the form, force and effect of the statutes in such cases made and provided, and against the peace and dignity of the state of Nevada.

DATED this 21 day of March, 2019.

SUBMITTED BY

AARON D. FORD
Attorney General

By: Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General
Attorneys for the State of Nevada

ORIGINAL

GPA
AARON D. FORD
Attorney General
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General
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Las Vegas, Nevada 89101-1068
P: (702) 486-5707
F: (702) 486-0660
CKallas@ag.nv.gov
Attorneys for the State of Nevada

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
MAR 26 2019
BY, APRIL WATKINS, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

v.

ANTONIO LEE MIXON, ID #1968172

Defendant.

Case No.: C-17-327439-1

Dept. No.: 17

C-17-327439-1
GPA
Guilty Plea Agreement
4826638

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: ATTEMPT POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACSIMILE BY AN INCARCERATED PERSON, a CATEGORY "C" Felony, in violation of NRS 212.185(c), NRS 193.330, as more fully alleged in the charging document attached hereto as Exhibit "1."

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

1. The State and I agree to jointly recommend a sentence of 12 to 30 months of incarceration in the Nevada Department of Corrections, to run consecutive to any sentence that I am currently serving.

2. I agree to waive any defects or infirmities as to the form of the charging document attached as Exhibit "1."

Furthermore, I understand that, pursuant to NRS 176.015(3), victims so desiring will be allowed to make impact statements. I understand and agree that, if I fail to interview with the Department of Parole and Probation, fail to appear at any subsequent hearings in this case, or an independent judge or magistrate, by affidavit review or other satisfactory proof, confirms probable cause against me for new

criminal charges, including reckless driving or DUI, but excluding minor traffic violations, the State will have the unqualified right to argue for any legal sentence and term of confinement allowable for the crime(s) to which I am pleading guilty, including the use of any prior convictions I may have to increase my sentence as a habitual criminal to five (5) to twenty (20) years, life without the possibility of parole, life with the possibility of parole after ten (10) years, or a definite twenty-five (25) year term with the possibility of parole after ten (10) years. Otherwise, I am entitled to receive the benefits of these negotiations as stated in the plea agreement.

CONSEQUENCES OF THE PLEA

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

I understand that as a consequence of my plea of guilty the Court must sentence me to imprisonment in the Nevada Department of Corrections for a minimum term of not less than one (1) year and a maximum term of not more than five (5) years. The minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment. I understand that I may also be fined up to $10,000.00. I understand the law requires me to pay an Administrative Assessment Fee.

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

I understand that I am eligible for probation for the offense(s) to which I am pleading guilty. I further understand that, except as otherwise provided by statute, the question of whether I receive probation is in the discretion of the sentencing judge.

I also understand that I must submit to blood and/or saliva tests under the direction of the Division of Parole and Probation to determine genetic markers and/or secretor status.

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

I understand that information regarding charges not filed, dismissed charges, or charges to be

dismissed pursuant to this agreement may be considered by the judge at sentencing.

I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the Court within the limits prescribed by statute. I understand that if my attorney or the State of Nevada or both recommend any specific punishment to the Court, the Court is not obligated to accept the recommendation.

I understand the Division of Parole and Probation will prepare a report for the sentencing judge prior to sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. This report may contain hearsay information regarding my background and criminal history. My attorney and I will each have the opportunity to comment on the information contained in the report at the time of sentencing. Unless the Attorney General has specifically agreed otherwise, the Attorney General may also comment on this report.

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

I understand that if I am not a United States citizen, this criminal conviction will likely result in serious negative immigration consequences including but not limited to: removal from the United States through deportation; an inability to reenter the United States; the inability to gain United States citizenship or legal residency; an inability to renew and/or retain any legal residency status; and/or an indeterminate term of confinement, with the United States Federal Government based on my conviction and immigration status. Regardless of what I have been told by an attorney, no one can promise me that this conviction will not result in negative immigration consequences and/or impact my ability to become a United States citizen and/or legal resident.

WAIVER OF RIGHTS

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

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense charged.

3. The constitutional right to confront and cross-examine any witnesses who would testify against me.

4. The constitutional right to subpoena witnesses to testify on my behalf.

5. The constitutional right to testify in my own defense.

6. The right to appeal the conviction, with the assistance of an attorney, either appointed or retained, unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings and except as otherwise provided in subsection 3 of NRS 174.035.

VOLUNTARINESS OF PLEA

I have discussed the elements of all the original charges against me with my attorney and I understand the nature of the charges against me.

I understand the State would have to prove each element of the charges against me at trial.

I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

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

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

DATED this 26th day of March, 2019.

ANTONIO LEE MIXON, Defendant

AGREED TO BY:

CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

EXHIBIT 1

EXHIBIT 1

AINF
AARON D. FORD
Attorney General
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General
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CKallas@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1968172 Defendant.	Case No.: C-17-327439-1 Dept. No.: 17

AMENDED INFORMATION

AARON D. FORD, Attorney General for the State of Nevada, complains and charges that:

The above-named defendant, ANTONIO LEE MIXON, has committed the crime of one (1) count of ATTEMPT POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACSIMILE BY AN INCARCERATED PERSON, a category "C" felony in violation of NRS 212.185(c), NRS 193.330.

All of the acts alleged herein have been committed or completed on or about December 4, 2015, by the above-named defendant, within the County of Clark, State of Nevada, in the following manner:

COUNT I
ATTEMPT POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACSIMILE BY AN INCARCERATED PERSON
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That the Defendant, ANTONIO LEE MIXON, on or about December 4, 2015, while incarcerated at High Desert State Prison, did attempt to possess or have in his custody or control any dirk, dagger, switchblade knife or sharp instrument to wit: the Defendant did attempt to possess or have in his custody or

control a sharp instrument commonly referred to as a "shank."

All of which is contrary to the form, force and effect of the statutes in such cases made and provided, and against the peace and dignity of the state of Nevada.

DATED this 21 day of March, 2019.

SUBMITTED BY

AARON D. FORD
Attorney General

By: Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General
Attorneys for the State of Nevada

OPP

ANTONIO LEE MIXON #1017878
SELF-REPRESENTATIVE
High Desert State Prison
P.O. BOX 650
INDIAN SPRINGS, NV 89070
NO EMAIL/NO FAX or PHONE
Attorney for Defendant

FILED
MAR 28 2019
CLERK OF COURT

DISTRICT COURT
Clark County, Nevada

STATE OF NEVADA
Plaintiff,
v.
ANTONIO LEE MIXON, ID#1968122
Defendant

Case No.: C-17-327439-1
Dept. No.: 17

Defendants' OPPOSITION TO Plaintiff's MOTION TO INCREASE BAIL

COMES NOW The Defendant by and through Pro-se, ANTONIO LEE MIXON and hereby Moves this honorable Court for an order to dismiss Plaintiff's Motion to increase bail in this matter.

This motion is made and based upon the pleadings and papers on file, the following memorandum of points and authorities, and any oral argument the Court may allow.

DATED this 25th day of March, 2019.

Submitted By:
ANTONIO LEE MIXON
Pro-se
By: A. J. Mixon Jr.
Self-Representative

RECEIVED
MAR 28 2019
CLERK OF THE COURT

Memorandum of points and authorities

Argument

Generally Bail is a form of security given to insure the appearance of the defendant at every stage of the proceedings. See 120 P. 2d 960. Those posting bail with money is the security for the accused's appearance. It's used "to procure release of a prisoner by securing his future attendance." 42 F. 2d 26, 28;. The Basis for the Bail reduction prior counsel argued and won is that the defendant wouldn't be able to afford the $10,000 bail initially set because defendant was indigent status which affects his responsibility to pay fines, certain Fees, such as court costs 497 P. 2d 523, 525; 452 F. Supp. 939, 942. The defendant status of Indigent has not changed. The $10,000 bail requested of the Plaintiff is Excessive bail which is prohibited by the Eighth Amendment to the United states Constitution and by the constitution of various states. By Plaintiff DEMANDING BAIL in such ~~amount~~ amount is in fact a denial of bail where a right to bail exists. 342 US. 524, 544. It is provided only that if bail is permitted it may not be set at an excessive amount. 416 A. 2d 137. The $250 bail is reasonably calculated to fulfill the purpose of assuring that the accused will stand trial and submit to sentence if found guilty. 342 U.S. 1, 4.

Conclusion

The $250 bail should stand and Plaintiff's Motion to increase such amount should be denied.

Declaration of Defendant

I Declare that to the best of my belief and knowledge that the foregoing facts and circumstances in this motion is true and correct and I declare this Under penalty of perjury pursuant to NRS 53.045 EXECUTED on the 25th of March, 2019

signature: /s/ J. Mixon Jr.

NOTICE OF MOTION

TO: All interested Parties and Counsel

You will Please take notice that the Undersigned will bring the Forgoing OPPOSITION to STATE'S MOTION TO INCREASE BAIL on For a hearing in Dept 17 of the 8th Judicial District Court (CRTC), STATE of Nevada Clark county on the ___ day of ___, 2019, at ___ am/pm or as soon thereafter as ~~Counsel~~ Pro-Se may be heard. DATED 25th, March, 2019. Submitted By:

ANTONIO LEE MIXON

By: A. L. Mixon Jr.

Certificate of service By Mailing

~~Defendant~~ certify that on 25th March 2019 Defendant caused to be deposited Defendant's opposition to Plaintiff's Motion to Increase Bail by First-class Mail, postage prepaid to the following address(s):

STEVEN D. GRIERSON, Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

Chelsea N. Kallas
Deputy Attorney General
Office of the Attorney General
555 E. Washington Ave., STE. 3900

~~Defendant~~ certify Under penalty of perjury that to the best of my belief the certificate of service by mailing is true and correct.

EXECUTED on 25th, March, 2019. NRS 53.045

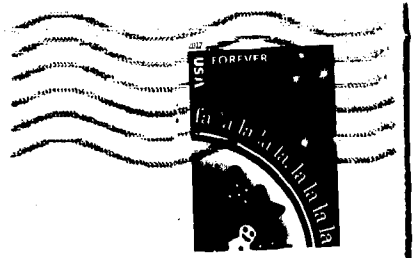
(signature): A. L. Mixon Jr.

CC: File

ANTONIO LEE MIXON #1014828
HDSP
P.O. BOX 650
INDIAN SPRINGS, NV 89070

LAS VEGAS NV 890

26 MAR 2008 PM 4 L



STEVEN D. GRIERSON, Clerk of the Court
200 LEWIS AVENUE, 3rd FLOOR
LAS VEGAS, NV 89155-1160

89101-630000

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RECEIVED
MAR 28 2008
CLERK OF THE COURT

ANTONIO LEE MITON
PRO-SE
HDSP
P.O. BOX 650
INDIAN SPRINGS, NV 89070
"NO FAX", "NO EMAIL"
Attorney For Defendant

FILED
APR 05 2019
CLERK OF COURT

District Court
Clark County, NV

April 30 2019
@ 8:30 AM

The STATE of Nevada
Plaintiff
vs.
ANTONIO LEE MITON
Defendant

Case NO: C-17-327439-1
Dept. NO: XI

DEFENDANT'S MOTION TO Withdraw Guilty PLEA

COMES NOW, Defendant, ANTONIO LEE MITON, hereinabove respectfully moves this Honorable Court for an order granting ~~DEFENDANT~~ permitting the Defendant to withdraw his Guilty PLEA.

This Motion is Made and based upon the accompanying Memorandum of Points and Authorities.

DATED: This 01 day of ~~OCT~~ April, 2019

BY: ANTONIO LEE MITON JR.

A. L. Miton Jr. 1968172
Defendant / Pro-se

RECEIVED
APR 05 2019
CLERK OF THE COURT

Memorandum of Points And Authorities

Argumen - I.

The state was ordered by the court to propose the change of custody of a weapon in the instant case from where it's held to the private investigator of the defendant and to prepare a stipulation order of this change of custody and send the stipulation to defendant to sign and file and return. The defendant's private investigator was to send the weapon to South Carolina to be fingerprinted. The weapon does not have the Defendant's DNA on it. The expert witness (forensic) was to prepare the report and make a general appearance on behalf of the defendant at trial. Instead of the state following through with the courts order state sent Defense ~~a~~ motion to increase bail. Trial to commence in days/weeks. Defendant called Ms Kallas and asked about state's offer she never mentioned anything about the weapon's results in negotiations and in lieu of that evidence moved to increase bail. Ms Kallas knew evidence was in defendant's favor but insisted this case be resolved in negotiations or trial without the defense having said evidence. Defendant forced to resolve case without the evidence. The evidence brings an Affirmative defense to "Attempt" possession which supported the defense to Attempt. in that state would have failed to prove their case of "possession" beyond a reasonable doubt without the evidence and with the evidence may have failed to prove it's case of attempt possession beyond a reasonable doubt and/or the "Attempt" severity wouldn't be as severe to warrant a punishment of anything other than Probation. The Sixth Amendment includes the rights necessary to a full ~~defe~~ defense Because these rights are basic to our adversary system of criminal justice, they are a part of "due process of Law" that is guaranteed by the Fourteenth Amendment to defendant's in the criminal courts of the states. The rights to compulsory process, notice, confrontation when taken together guarantee that a criminal charge may be answered in a manner now considered fundamental

to a Fair ~~[illegible]~~ administration of american justice through calling and interrogation of favorable witnesses and the orderly INTRODUCTION OF EVIDENCE In short the ~~[illegible]~~ Amendment ~~[illegible]~~ constitutionalizes the right in an adversary criminal trial to make a defense as we know it see Faretta Vs. California, 422 US 806, 818 (1975) see California V Green, 399 US 149, 176, 26 L Ed 2d 489, 90 S Ct 1930 (Harlan, J., concurring). The right to defend See 422 U.S. 806, 819 (1975).

The right of an accused to have compulsory process for obtaining witnesses. in his favor observes that "a person's right to offer expert testimony describes what is regarded as the most basic ingredients of due process of law which are basic in our system of jurisprudence see re oliver, 333 US 257, 92 ~~[illegible]~~ L.ed 682, 685. Ct. 499 (1948), 333 US, at 273, 92 L ed at 694 See Washington v TEXAS, 388 US 14, 18 (1967).

Argument II.

The Guilty Plea is against the [Manifest Weight of the] evidence an evidentiary standard permitting trial court after accepting a guilty plea to permit defendant withdraw his guilty plea and ~~[illegible]~~ order new trial where the guilty plea though based on legally sufficient evidence, appears in the view of the trial court judge to be unsupported by the substantial credible evidence. On such claim it is the duty of the [trial judge] to set aside the guilty plea by permitting defendant to withdraw and grant a new trial, if he is of the opinion that the guilty plea is against the clear weight of the evidence, or is based on evidence which is false or result in a miscarriage of Justice Even though there may be substantial evidence which would prevent the direction of the guilty plea and its acceptance by the court. Gunning vs. Looley, 201 U.S. 90, 50 S.Ct. 231, 74 L. Ed. 720. Aetna Casualty and Surety Co. v. Yeatts, 122 F.2d 350, 354 (1941).

Argument II Cont.

The Seventh Amendment which provides that no Fact tried by a jury shall otherwise be re-examined in any court of the United states than according to the rules of the Common Law. More Frequently the granting or refusing permitting defendant to withdraw his guilty plea and order a new trial is a matter within the discretion of the trial court. See AETNA Casualty & Surety Co v. YEATTS, 122 F. 2d 350, 355 (1941) See Montgomery Ward & Co. v. Duncan, Supra, 311 U.S. 243, 61 S. Ct 189, 85 L. Ed. 147 see Fairmont Glass Works v. Cub Fork Coal Co., Supra [287 U.S. 474, 53 S. Ct. 254, 77 L. Ed. 439].

I Declare Under penalty and perjury that to the best of my belief and knowledge the Foregoing Motion to withdraw Defendant's guilty plea is true and correct, NRS 53.045 EXECUTED on 04/01/2019

G. Z. Mitchell Jr.
Signature

Certificate of Service By Mailing

I caused to be deposited Defendant's Motion to withdraw guilty plea. First-class postage prepaid to the following addresses:

Chelsea N. Kalles, Deputy Attorney General
STATE OF NEVADA
OFFICE OF THE Attorney General
555 E. Washington Avenue, Suite 3400
Las Vegas, Nevada 89101-1068

STEVEN D. GRIERSON,
Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

I Certify that the Certificate of ~~mailing~~ Service By Mailing is true and correct and I Certify this Under penalty of perjury. NRS 53.045 Executed on 04/01/2019 G. Z. Mitchell Jr.
Signature

NOTICE OF MOTION

The Defendant's Motion to withdraw guilty plea is sent to all concerned parties and placed on calendar soon as possible.

conclusion

Defendant be permitted to withdraw guilty plea and court order new trial.

ANTONIO LEE MILLER JR. #1019828
H.D.S.P.
P.O. BOX 650
INDIAN SPRINGS, NV 89070

STEVEN D. GRIERSON,
Clerk of The Court
200 LEWIS AVENUE, 3rd FLOOR
LAS VEGAS, NV 89155-1160

89101$6301 C075

HIGH DESERT
MAR 31 2015
UNIT 4 A/B

686

Electronically Filed
4/16/2019 10:02 AM
Steven D. Grierson
CLERK OF THE COURT

MOT
AARON D. FORD
Attorney General
CHELSEA KALLAS (Bar No. 13902)
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555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-5707
F: (702) 486-2377
Ckallas@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1968172 Defendant.	Case No.: C-17-327439-1 Dept. No.: 17 HEARING REQUESTED

MOTION FOR AN EXTENSION OF TIME

Comes now the STATE OF NEVADA by and through AARON D. FORD, Attorney General and his Deputy Attorney General, CHELSEA KALLAS, hereby moves this Court for an extension of time in this matter.

This motion is made and based upon the pleadings and papers on file, the following memorandum of points and authorities, and any oral argument the Court may allow.

DATED this 16th day of April, 2019.

SUBMITTED BY:

AARON D. FORD
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

NOTICE OF MOTION

TO: All Interested Parties and their Counsel

YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the forgoing MOTION FOR EXTENSION OF TIME on for a hearing in Department 17 of the 8th Judicial District Court (RJC), State of Nevada, on the 23rd day of April, 2019, at 8:30 am or as soon thereafter as counsel may be heard.

DATED this 16th day of April, 2019.

SUBMITTED BY:

AARON D. FORD
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS AND RELEVANT PROCEDURAL HISTORY

On October 25, 2017, Antonio Lee Mixon (hereinafter "Defendant") was charged by way of Information with the following: Count 1 – Battery By A Prisoner (Category B Felony – NRS 200.482(2)(f)); and Count 2 – Possession or Control of Dangerous Weapon or Facsimile By An Incarcerated Person (Category B Felony – NRS 212.185(c)). On March 26, 2019, Defendant pled guilty pursuant to a Guilty Plea Agreement. Sentencing is set for May 21, 2019.

On April 5, 2019, Defendant filed a Motion to Withdraw Plea (hereinafter "Motion"). Arguments on this Motion are set to be heard by the Court on April 30, 2019.

ARGUMENT

On April 5, 2019, Defendant filed Motion to Withdraw Plea arguing that he was forced to resolve the instant case without "the evidence." Motion at 2. The State has ordered transcripts from Defendant's entry of plea in order to properly respond to Defendant's arguments. However, as of this date, the transcripts have not been filed. Thus, the State is requesting an extension of time to respond to Defendant's Motion. The State requests an extension of seven (7) days from the date the transcripts are filed.

CONCLUSION

Based on the foregoing, the State respectfully requests that the Court grant the State an extension of time to respond to Defendant's Motion.

DATED this 16th day of April, 2019.

SUBMITTED BY:

AARON D. FORD
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on April 16, 2019, I filed the foregoing **MOTION FOR EXTENSION OF TIME** this Court's electronic filing system.

I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or e-mail; or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following unregistered participants:

Antonio Mixon, Inmate ID #1019828
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

/s/ A. Reber
An employee of the Office of the Attorney General

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4/16/2019 10:07 AM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
****

State of Nevada vs Antonio Mixon	Case No.: C-17-327439-1 Department 17

NOTICE OF HEARING

Please be advised that the State's Motion For An Extension of Time in the above-entitled matter is set for hearing as follows:

Date: April 30, 2019

Time: 8:30 AM

Location: RJC Courtroom 11A
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Miriam Vazquez
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Miriam Vazquez
Deputy Clerk of the Court

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4/18/2019 3:19 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANTONIO LEE MIXON,

Defendant.

CASE: C-17-327439-1

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE

TUESDAY, MARCH 26, 2019

RECORDER'S TRANSCRIPT OF HEARING:
STATE'S MOTION TO INCREASE BAIL

APPEARANCES:

For the State: CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

For the Defendant: PRO SE

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

Las Vegas, Nevada, Tuesday, March 26, 2019

[Hearing begins at 8:56 a.m.]

THE MARSHAL: Page 25.

THE COURT: Antonio Mixon.

THE DEFENDANT: Good morning.

THE COURT: Good morning, sir.

MS. KALLAS: Good morning, Your Honor, Chelsea Kallas of the Attorney Generals. If I may approach? I have a Guilty Plea Agreement. This matter is negotiated.

THE COURT: All right.

[Colloquy]

THE COURT: And what are the negotiations?

MS. KALLAS: And, Your Honor, the Defendant will be pleading guilty to one count of attempt possession or control of a dangerous weapon by an incarcerated person, a category C felony. The State and the Defendant would recommend a sentence of 12 to 30 months of incarceration and that will run consecutive to any sentence he's currently serving.

THE COURT: Is that correct, Mr. Mixon?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. As you know, you went through a Faretta canvass. You represent yourself. I just want to make sure that you've had an opportunity to review the Guilty Plea Agreement and you're in agreement with the negotiations and everything set forth in the agreement; is that correct?

THE DEFENDANT: Correct.

THE COURT: All right.

For the record, what is your true name?

THE DEFENDANT: Antonio Lee Mixon, Junior.

THE COURT: How old are you?

THE DEFENDANT: 28.

THE COURT: How far did you go in school?

THE DEFENDANT: Community College of Southern Nevada semester.

THE COURT: All right. Do you read, write, and understand the English language?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And, sir, are you entering a guilty plea to the charge of attempt possession or control of dangerous weapon or facsimile by an incarcerated person?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Before I can accept your plea of guilty I must make sure it's freely and voluntarily given. Is anyone forcing you to plead guilty?

THE DEFENDANT: No, Your Honor.

THE COURT: Has anyone threatened anyone closely associated with you in order to get you to plead guilty?

THE DEFENDANT: No, Your Honor.

THE COURT: Sir, do you understand that the potential sentencing range of this charge is a maximum term of 5 years, a

minimum term of 1 year in the Nevada Department of Corrections and you can also be fined to $10,000.00?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that sentencing is strictly up to the Court, no one can promise you probation, leniency, or any special treatment?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Now, you understand that there's an agreement between you and the State that both of you are going to recommend to me that you be sentenced to the minimums which is a maximum term of 30 months, a minimum term of 12 months. Do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: However, the Court is free to sentence as it sees fit. Do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Sir, is one of the reasons you're guilty – pleading guilty to this charge is in truth and fact you are guilty of this charge?

THE DEFENDANT: I'm guilty, Your Honor.

THE COURT: All right.

Sir, I have a copy of the Guilty Plea Agreement in front of me. Is this your signature on page 5 of the agreement?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Did you read it and understand everything

contained within the agreement?

THE DEFENDANT: Everything.

THE COURT: All right. If you had any questions were they answered – I know she's not your attorney, but did you ask the Deputy Attorney General if you had any questions?

THE DEFENDANT: I don't have any questions.

THE COURT: All right. And, sir, are you a U.S. citizen?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Sir, did you on or about December 4th, 2015, here in Clark County, Nevada, while incarcerated at High Desert State Prison, did attempt to possess or have in your custody or control any dirk, dagger, switchblade knife, or sharp instrument to wit: Defendant did attempt to possess or have in his custody a – in your custody or control a sharp instrument commonly referred to as a shank. Did you do those things, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Are you entering your plea freely and voluntarily?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And I just want to – I'm going to ask you again, sir, are you sure you want to go through with these negotiations?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right; Court finds the plea is freely and voluntarily entered.

MS. KALLAS: And, Your Honor, I apologize, may I just note

one thing? On page 4 of the plea, it's kind of our standard language regarding the voluntariness and I think you already kind of addressed it that its says he's discussed this element – these elements with his attorney, that he's waiving those because we've already had the Faretta canvass and he's representing himself.

THE COURT: Right. Okay.

All right, I'm going to set the sentencing on the following day, sir.

THE CLERK: Do you want a new PSI?

THE DEFENDANT: Tomorrow?

THE COURT: Sir, we have to have a Presentence Investigation Report prepared. They will probably do this over the phone. So someone –

THE DEFENDANT: Can I waive it?

THE COURT: -- from the Probation Department will interview you.

THE DEFENDANT: Can I waive the Presentence Investigation?

THE COURT: No. On a felony we have to have a Presentence Report.

THE DEFENDANT: All right.

THE COURT: Okay?

THE CLERK: It's going to be May 21st, at 8:30.

And can we vacate the April 4th status check date?

THE COURT: The April 4th date is vacated. We'll see you

back on that day, sir.

THE DEFENDANT: Thank you, Your Honor.

MS. KALLAS: Thank you, Your Honor.

THE COURT: Thank you.

[Hearing concludes at 9:00 a.m.]

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
699 - 708
WILL FOLLOW VIA
U.S. MAIL

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CLERK OF THE COURT

OPPM
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DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, vs ANTONIO LEE MIXON, ID #1968172, Defendant.	Case No.: C-17-327439-1 Dept. No.: 17

OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA

AARON D. FORD, Attorney General for the State of Nevada, through his Deputy Attorney General, CHELSEA KALLAS, hereby submits this Opposition to Defendant's Motion to Withdraw Guilty Plea.

This opposition is made and based upon, the pleadings and papers on file, the following memorandum of points and authorities, and any oral argument the Court may allow.

DATED this 25th day of April, 2019.

AARON D. FORD
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General
Attorneys for the State of Nevada

Case Number: C-17-327439-1

MEMORANDUM OF POINTS AND AUTHORITIES

On December 4, 2015, Antonio Lee Mixon (hereinafter "Defendant"), struck Senior Correctional Officer D. Ontiveros in the abdomen with a rock, while Defendant was incarcerated at High Desert State Prison. After being struck, Senior Correctional Officer Ontiveros approached Defendant, at which time Defendant removed a prison made weapon, commonly referred to as a "shank" from his shoe. Senior Correctional Officer Ontiveros removed his oleoresin capsicum spray and ordered Defendant to get on the ground. Defendant dropped the weapon and was placed in restraints. Defendant later exclaimed "you're lucky you had that mace or I would have stuck your bitch ass."

On October 25, 2017, Defendant was charged by way of Information with the following: Count 1 – Battery By A Prisoner (Category B Felony – NRS 200.482(2)(f)); and Count 2 – Possession or Control of Dangerous Weapon or Facsimile By An Incarcerated Person (Category B Felony – NRS 212.185(c)). On November 1, 2017, Defendant pled not guilty to the charges contained in the Information. On January 2, 2018, Defendant's trial commenced. On the same day, the Court declared a mistrial. On September 19, 2018, Defendant filed a Motion for Expert Witness, requesting a fingerprint expert. The State filed an Opposition on September 26, 2018. On October, 11, 2018, the Court granted Defendant's Motion. On March 5, 2019, Defendant requested a trial continuance to have the shank tested for fingerprints. The Court instructed the State to prepare a stipulation between Defendant and the State regarding chain of custody for the shank. The Court also set the matter for a status check on April 4, 2019. On March 18, 2019, the State filed a Motion to Increase Bail. On March 26, 2019, prior to the status check, Defendant pled guilty pursuant to a Guilty Plea Agreement ("GPA") to an amended charge of Attempt Possession or Control of Dangerous Weapon or Facsimile By An Incarcerated Person (Category C Felony – NRS 212.185(c), 193.330). Sentencing is set for May 21, 2019.

On April 5, 2019, Defendant filed a Motion to Withdraw Plea (hereinafter "Motion"). The State responds as follows.

ARGUMENT

A guilty plea is presumptively valid. *Wynn v. State*, 96 Nev. 673, 675, 615 P.2d 946, 947 (1980). Defendants have the burden of proving that they did not enter their pleas knowingly or voluntarily. *Bryant v. State*, 102 Nev. 268, 271, 721 P.2d 364, 367 (1986) (superseded by statute, on other grounds, by

Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000)); *see also Wynn*, 96 Nev. at 675. In determining whether a guilty plea was knowingly and voluntarily entered, the Court reviews the totality of the circumstances surrounding the plea. *Bryant* 102 Nev. at 271, superseded by statute. In addition, when a guilty plea is accepted by the trial Court after proper canvassing as to whether the Defendant knowingly and intelligently entered his plea, such plea will be deemed properly accepted. *Id.*

If a proper canvass is conducted, the record will reflect the following: "(1) the Defendant knowingly waived his privilege against self-incrimination, the right to trial by jury, and the right to confront his accusers; (2) the plea was voluntary, was not coerced, and was not the result of a promise of leniency; (3) the defendant understood the consequences of this plea and the range of punishment; and (4) the Defendant understood the nature of the charge, i.e. the elements of the crime." *Wilson v. State,* 99 Nev. 362, 366, 664 P.2d 328, 330 (1983). However, the failure to conduct a ritualistic oral canvass does not require that the plea be invalidated. *State v. Freese,* 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). The Court "has a duty to review the entire record to determine whether the plea was valid...[and] may not simply review the plea canvass in a vacuum." *Mitchell v. State*, 109 Nev. 137, 141, 848 P.2d 1060, 1062 (1993); see also *Bryant*, 102 Nev. at 271, 721 P.2d at 367 ((superseded by statute)(stating that, in determining whether a guilty plea was knowingly and voluntarily entered, the Court reviews the totality of the circumstances surrounding the plea).

"[A] Motion to withdraw a plea of guilty...may be made only before sentence is imposed or imposition of sentence is suspended" unless it is necessary "to correct manifest injustice." N.R.S. 176.164; *Baal v. State*, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). The District Court may grant a Motion made prior to sentencing or adjudication of guilt for any substantial reason that is fair and just. *State v. District Court*, 85 Nev. 381, 385, 455 P.2d 923, 926 (1969). "The district court must consider the totality of the circumstances to determine whether permitting withdrawal of a guilty plea before sentencing would be fair and just." *Stevenson v. State*, 131 Nev. Adv. Op. 61, 354 P.3d 1277, 1281 (2015).

Here, Defendant fails to demonstrate his plea was not made knowingly and voluntarily. By signing his GPA, Defendant attested that his plea was voluntarily made and that he understood the rights he was giving up. *See Exhibit 1, GPA* at 3-5. Additionally, the Court thoroughly canvassed Defendant regarding the entry of his plea and Defendant acknowledged that he understood the nature of the charges against him

and was voluntarily pleading guilty. *See Exhibit 2, Reporter's Transcript, March 26, 2019*, at 3-5.

Defendant confirmed that he had read and understood the GPA and that he did not have any questions. *Exhibit 2* at 3-5. Defendant also stated he was not coerced into making this decision and understood the consequences of his plea. *Exhibit 2* at 3-4. Finally, Defendant acknowledged that he was pleading guilty because in truth and in fact he had committed the crime charged. *Exhibit 2* at 4.

Defendant alleges the State did not comply with the Court's order to prepare a trial stipulation regarding chain of custody for the shank. Rather, the State filed a Motion to Increase Bail and somehow forced Defendant to resolve his case without fingerprint evidence. However, Defendant's claims are without merit. First, Defendant fails to articulate how the State's filing of a Motion to Increase Bail demonstrates the State did not intend to comply with the Court's order and somehow forced Defendant to resolve his case, which is not surprising considering Defendant's claim is absolutely absurd. The State fully intended to send Defendant a stipulation regarding chain of custody. However, Defendant reached out to the State seeking an offer, which he concedes is his Motion, prior to the stipulation being sent to Defendant. By Defendant seeking to negotiate his case and subsequently pleading guilty, the need for the State to send Defendant a *trial* stipulation became moot.

Further, the shank had yet to be tested for fingerprint evidence. Thus, the State could not have possibly withheld evidence from Defendant that the State never had. To the extent Defendant alleges he was unable to present this evidence at trial, such claim is also without merit. Defendant had the opportunity to have the shank tested for fingerprints and present such evidence a trial. However, by pleading guilty he waived this right, which he specifically acknowledged he understood. *Exhibit 1* at 3-4. Defendant had previously exercised his right to trial in the instant case. Thus, he was well aware how to exercise this right if he wished to proceed to trial again.

Lastly, as to Defendant's assertion that the State insisted Defendant plead guilty, such claim is belied by Defendant's own statement that he sought an offer from the State, as well as Defendant's GPA and subsequent canvass. As discussed above, Defendant attested that he was not coerced into making this decision and was pleading guilty because in truth and in fact he had committed the crime charged. *Exhibit 2* at 3-4. Because Defendant's plea was knowingly, voluntarily and intelligently entered, he cannot demonstrate there is a substantial reason that is fair and just for his Motion to be granted. As such,

Defendant's Motion should be denied.

DATED this 25th day of April, 2019

AARON D. FORD
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General
Attorneys for the state of Nevada

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on April 25, 2019, I filed the foregoing OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA with the Court's electronic filing system.

I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or e-mail; or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following unregistered participants:

Antonio Mixon, Inmate ID #1019828
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

/s/ A. Reber
An employee of the Office of the Attorney General

EXHIBIT “1”

EXHIBIT “1”

PLEADING CONTINUES IN NEXT VOLUME

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO LEE MIXON,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: C-17-327439-1
Related Case A-22-847754-W
Docket No: 84677

RECORD ON APPEAL
VOLUME
2

ATTORNEY FOR APPELLANT
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ELY, NV 89301

ATTORNEY FOR RESPONDENT
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ATTORNEY GENERAL
555 E. WASHINGTON AVE., STE. 3900
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C-17-327439-1 State of Nevada vs Antonio Mixon

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vs
Antonio Mixon

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C-17-327439-1 State of Nevada
vs
Antonio Mixon

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vs
Antonio Mixon

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C-17-327439-1 State of Nevada
vs
Antonio Mixon

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C-17-327439-1 State of Nevada
vs
Antonio Mixon

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C-17-327439-1 State of Nevada
vs
Antonio Mixon

I N D E X

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2	3/14/2018	State's Opposition to Defendant's Motion to Dismiss with Prejudice	312 - 374
3	1/15/2019	State's Opposition to Defendant's Motion to Dismiss, Supplemental Motion to Dismiss and Supplement to Jury Instructions	619 - 622
2	3/12/2018	State's Opposition to Defendant's Motion to Disqualify the Attorney General's Office	289 - 294

C-17-327439-1 State of Nevada
vs
Antonio Mixon

I N D E X

VOL	DATE	PLEADING	PAGE NUMBER:
3	12/4/2018	Supplement to Motion to Dismiss and Supplement to Jury Instructions of the Defendants'.	532 - 556
3	2/4/2019	Supplemental to Jury Instructions	631 - 636
4	7/11/2019	Transcript of Hearing Held on April 30, 2019	897 - 899
4	7/11/2019	Transcript of Hearing Held on April 5, 2018	801 - 806
4	7/11/2019	Transcript of Hearing Held on April 6, 2018	807 - 825
4	7/11/2019	Transcript of Hearing Held on August 30, 2018	840 - 846
4	7/11/2019	Transcript of Hearing Held on December 11, 2018	869 - 872
4	7/11/2019	Transcript of Hearing Held on December 12, 2017	767 - 773
4	7/11/2019	Transcript of Hearing Held on December 5, 2017	764 - 766
4	7/11/2019	Transcript of Hearing Held on February 8, 2018	780 - 784
1	2/1/2018	Transcript of Hearing Held on January 2, 2018	143 - 189
4	7/11/2019	Transcript of Hearing Held on January 2, 2018	774 - 776
4	7/11/2019	Transcript of Hearing Held on January 2, 2018 (Continued)	914 - 953
5	7/11/2019	Transcript of Hearing Held on January 2, 2018 (Continuation)	954 - 1062
4	7/11/2019	Transcript of Hearing Held on January 4, 2018	777 - 779

C-17-327439-1 State of Nevada
vs
Antonio Mixon

I N D E X

VOL	DATE	PLEADING	PAGE NUMBER:
4	7/11/2019	Transcript of Hearing Held on January 8, 2019	873 - 884
4	7/11/2019	Transcript of Hearing Held on June 19, 2018	832 - 839
4	7/11/2019	Transcript of Hearing Held on June 5, 2018	826 - 831
4	7/11/2019	Transcript of Hearing Held on March 15, 2018	785 - 796
3	4/18/2019	Transcript of Hearing Held on March 26, 2019	692 - 698
4	7/11/2019	Transcript of Hearing Held on March 29, 2018	797 - 800
4	7/11/2019	Transcript of Hearing Held on March 5, 2019	885 - 896
4	7/11/2019	Transcript of Hearing Held on May 21, 2019	900 - 913
4	7/3/2019	Transcript of Hearing Held on November 1, 2017	761 - 763
4	7/11/2019	Transcript of Hearing Held on November 20, 2018	856 - 868
4	7/11/2019	Transcript of Hearing Held on October 11, 2018	847 - 851
4	7/11/2019	Transcript of Hearing Held on October 25, 2018	852 - 855
2	10/22/2018	Unfiled Document(s) - Notice of Entry of Order; Unsigned Order Denying State's Opposition to Defendant's Motion to Expert Witnesses	470 - 476
4	5/16/2019	Unfiled Document(s) - Notice of Motion	732 - 732

C-17-327439-1 State of Nevada
vs
Antonio Mixon

I N D E X

VOL	DATE	PLEADING	PAGE NUMBER:
3	1/7/2019	Unfiled Document(s) - Unissued Supoena (Duces Tecum)	582 - 591
3	1/18/2019	Unsigned Document(s) Department Memo w/Copy of Unsigned Order to Proceed in Forma Pauperis (Confidential)	627 - 630
3	12/18/2018	Unsigned Document(s) - Order for Production of Inamte Antonio Lee Mixon, BAC #1019828	570 - 573
2	10/15/2018	Unsigned Document(s) - Order for Expert Witnesses	462 - 463
2	8/6/2018	Unsigned Document(s) - Order Request	387 - 387
3	11/29/2018	Unsigned Document(s) - Stipulation and Order for Confirmation of Expert Witness(es)	527 - 531

GROUND FOUR

INEFFECTIVE ASSISTANCE OF COUNSEL THAT WAS APPOINTED TO AND FOR PETITION FOR A WRIT OF HABEAS CORPUS WHICH WAS THE STATE PETITION FOR HABEAS CORPUS. IN VIOLATION OF MY 6TH AMENDMENT TO EFFECTIVE COUNSEL, FAILED TO SUBPOENA AND ATTACH THE 'X' AMOUNT OF IMAGE FRAMES PER SECOND FOR OFFER OF PROOF PURPOSES AND OMITTED CLAIMS AND/OR GROUNDS THAT HAS MERIT. I ASKED COUNSEL TO TAKE NOTHING OUT WHEN HE PREPARES AND FILE SUPPLEMENT TO MY PETITION. THE IMAGE FRAMES PER SECOND (SCREENSHOTS) FROM CAMERA THREE WHERE VICTIM WAS FOUND WERE TO BE ATTACHED AND THE WITNESSES WHO SEEN CAMERA THREE'S FOOTAGE AND THESE SCREEN SHOTS WHERE TO BE SUBPOENA. THERES CONTRADICTIONS WITH THE SIGNS OF LIFE AND/OR CONSCIOUSNESS BEFORE VICTIM COLLASPED AND THERES CONTRADICTIONS WITH THE SIGNS OF LIFE AND/OR CONSCIOUSNESS AFTER VICTIM COLLASPED. SOME OF THESE CONTRADICTIONS AROSE AT EVIDENTIARY HEARING AND SOME ALREADY EXISTED AT HEARING. COUPLED WITH INJURY OF THE VICTIM, HYPOVOLEMIC SHOCK WHICH IS BLEEDING OUT. MEDICAL EXAMINER TESTIFIED ABOUT THE INTERNAL EXAMINATION AND MECHANISM OF DEATH. HYPOVOLEMIC WAS MENTIONED BUT ASPHYXIATION WASN'T ASPHYXIATION LIKELY TO CAUSE OR UNDERGO UNCONSCIOUSNESS OR DEATH FROM LACK OF OXYGEN, THE DOCTOR DID TESTIFY THAT THE LUNG WAS WOUNDED BY THE COURSE OF THE BULLET. I MENTIONED THIS IN REGARDS TO THE INEFFECTIVENESS OF COUNSEL FOR NOT SUBPOENAING FOR OFFER OF PROOF PURPOSES IN REGARDS TO THE AUTHENTICITY OF THE

GROUND FOUR CONTINUED

Dying - Declaration. State Agencies, State Legislature, And State are decidedly not in harmony in whether or not the victim made any implications at all. I have witnesses and LVMPD papers from state agencies that prove these contradictions along with witnesses to be subpoenaed. Counsel was ineffective in violation of my Sixth Amendment right to effective counsel for failing to subpoena and attach and for omitting grounds and/or claims that has merit, grounds which has or I can and will take polygraph to offer proof I said "I plead the fifth" and that the officer replied "Rights, you have no rights." Counsel was ineffective in the initial collateral review proceeding. See Hill v. Lockhart, Strickland v. Washington, and Ha Van Nguyen v. Ben Curry. These cases cited in their entirety that shows counsel is the cause for all procedural default and in parts of those cases that you apply for causes for the procedural default which is counsel fault and in parts of those cases cited that you apply to show counsel was totally ineffective on purpose with that I was denied due-process of law and effective assistance of counsel, in the initial collateral review proceeding. And I ask the court if I could get the right to subpoena witnesses and evidence in support of this ground. I was asked by the lower court was I satisfied with counsel's representation before the hearing commenced and I'm totally not.

Page 6 A

- **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

___ Yes ✓ No. If no, explain why not: THIS ISSUE AROSE AT THE INITIAL COLLATERAL REVIEW PROCEEDING.

- **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

___ Yes ✓ No. If no, explain why not: THIS ISSUE AROSE AT THE INITIAL COLLATERAL REVIEW PROCEEDING.

If yes, name of court: _____ date petition filed ___/___/___.

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court?___ Yes ✓ No. If no, explain why not: ~~THIS ARISE~~ AT INITIAL COLLATERAL REVIEW PROCEEDING.

If yes, did you raise this issue?___ Yes ___ No. If no, explain why not: _____.

- **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

___ Yes ___ No. If yes, explain why: _____.

If yes, name of court: _____ date petition filed ___/___/___.

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court?___ Yes ___ No. If no, explain why not: _____.

If yes, did you raise this issue?___ Yes ___ No. If no, explain why not: _____.

- **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? ___ Yes ✓ No. If yes, explain: _____.

State concisely every ground for which you claim that the state court conviction and/or sentence is

#PI 6B

~~Ground Three~~ Ground Five. I allege that my State Court Conviction and/or Sentence are Unconstitutional in Violation of My Fifth Amendment Rights. The provisions concerning prosecution and due process of law. Double Jeopardy Restriction. ~~Supporting FACTS (Tell your story briefly without citing cases or law):~~ Private Property not to be taken without compensation.

Supporting Facts.

Detective officer Mogg came into contact with me in a different apartment complex parking lot from the apartment complex parking lot where the victim was found. Mogg initiated and asked me a question I stated, "I plead the fifth" He replied "Rights, you have no Rights" took my drivers license and forced me to headquarters against my will, against my free will. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. The procedural default is because of appointed initial - collateral review counsel dismissed grounds And this ground is very merit and compelling. Polygraph Requested for offer of Proof. There to be no Arrest Report no Preliminary hearing, and no information filed against me - See U.S. Amend. V

pg. 7

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND SIX

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my 14th Amendment right to Due-Process,

based on these facts:

THE POLICE TAMPERED with the CRIME SCENE by chiseling BALLISTICS AND PLANTING BALLISTICS, THE JUDGE IN THIS CASE ENGAGED IN BEHAVIOR THE Judge IN BRACEY V. WARDEN HAD, A polygraph TEST should be administered to show ~~HIS~~ ABOUT THE TRUTH ABOUT THE CRIME SCENE BEING TAMPERED WITH. THE Judge WENT TO VIEW TAPE IN CHAMBERS OFF RECORD ACCORDING TO SUBJECT-MATTER JURISDIC-TION EM ALLOWED IN CHAMBERS AND VIEW JUDGES OATH OF OFFICE SO I Should BEEN ABLE TO VIEW TAPE ALSO. THE Judge Had FLAT SCREEN TV'S IN THE COURTROOM. THE OFFICER TESTIFIED AT PRELIMINARY HEARING THAT ONCE HE ARRIVED AND SOON AS HE ARRIVED, HE GOT OUT HIS PATROL UNIT THEN WENT TO VICTIM KNEELED DOWN AS IF TO HEAR VICTIM BETTER. BUT WITNESSES SAY SOON AS HE ARRIVED HE GOT OUT CAR FLASHED FLASHLIGHT AT VICTIM AND PROCEEDING TO DIFFERENT AREAS. THESE TWO THINGS CONTRADICT ONE ANOTHER AND SINCE THATS THE CASE AND THE FACT THAT THE Judge WENT TO VIEW CAMERA TAPE IN HIS CHAMBERS OUT OF MY PRESENCE WHEN I CAN SEE HIS OATH OF OFFICE N.R. WAIVE, FOR THESE REASONS STATE HAS NO DYING DECLARATION TRANSCRIPTS OFFICER SAY VICTIM WAS MOVING, Judge WATCHED TAPE SAID VICTIM NOT MOVING.

Exhaustion of state court remedies regarding Ground SIX

3 7A-1

- **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

___ Yes ✓ No. If no, explain why not: Just Discovered

- **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

___ Yes ✓ No. If no, explain why not: Just Discovered

If yes, name of court: _____ date petition filed ___/___/___.

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court?___ Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue?___ Yes ___ No. If no, explain why not: _____

- **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

___ Yes ✓ No. If yes, explain why: _____

If yes, name of court: _____ date petition filed ___/___/___.

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court?___ Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue?___ Yes ___ No. If no, explain why not: _____

- **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? ___ Yes ✓ No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is

7A · 2

CONCLUSION

WHEREFORE, PETITIONER RESPECTFULLY PRAYS THAT THIS HONORABLE COURT ISSUE AN ORDER DIRECTING THE CLERK OF THE UNITED STATES DISTRICT COURT, DISTRICT OF NEVADA IN AND FOR THE DISTRICT OF NEVADA, COUNTY OF CLARK, STATE OF NEVADA, TO ISSUE A WRIT OF HABEAS CORPUS POST-CONVICTION DIRECTED TO DIRECTOR AND WARDENS OF NEVADA STATE PRISON (NDOC) AND WHOMEVER ELSE IS ILLEGALLY CONFINING AND RESTRAINING ME OF MY LIBERTY, COMMANDING THEM TO BRING THE ABOVE CAPTIONED PETITIONER BEFORE YOUR HONOR, AND RETURN THE CAUSE FOR RESTRAINT OF MYSELF THE PETITIONER, GRANT WRIT, ALLOW PETITIONER TO WITHDRAW/ PLEA (GPA), DISMISS ~~[illegible]~~ THE INFORMATION, AND DISCHARGE THE PETITIONER, AND VACATE JUDGEMENT. EVIDENTIARY HEARING REQUESTED SO THE VIDEO IN CAN BE SHOWN ON RECORD AND THAT I CAN SUBPOENA MY WITNESSES THAT SEEN THE VIDEO. AND THE WITNESSES I TEND TO SUBPOENA CAN TAKE POLYGRAPH ALSO AS TO WHAT THEY SEEN ON CAMERAS. Respectfully submitted

EVIDENTIARY HEARING REQUESTED

Page 7A3

→ Direct Appeal: Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

___ Yes ✓ No. If no, explain why not: No direct appeal filed.

▸ **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

___ Yes ✓ No. If no, explain why not: It was not in my original but omitted By Counsel.

If yes, name of court: _____ date petition filed ___/___/___.

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court? ___ Yes ✓ No. If no, explain why not: Counsel omitted

If yes, did you raise this issue? ___ Yes ___ No. If no, explain why not: _____

▸ **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

___ Yes ___ No. If yes, explain why: _____

If yes, name of court: _____ date petition filed ___/___/___.

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court? ___ Yes ___ No. If no, explain why not: _____

If yes, did you raise this issue? ___ Yes ___ No. If no, explain why not: _____

▸ **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? ___ Yes ✓ No. If yes, explain: _____

WHEREFORE, petitioner prays that the court will grant him such relief to which he is entitled in this federal petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 by a person in state custody. And That I BE ABLE TO withdrawal PLEA and BE discharged AND NOT Re-prosecuted.

P [redacted] pg. 7A

(Name of person who wrote this complaint if not Plaintiff)

(Signature of Plaintiff)

08/18/17
(Date)

(Signature of attorney, if any)

(Attorney's address & telephone number)

DECLARATION UNDER PENALTY OF PERJURY

I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.** See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Executed at High Desert State Prison (Location) on 08/18/17 (Date).

(Signature)

1019328
(Inmate prison number)

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CERTIFICATE OF SERVICE BY MAILING

I, Antonio Lee Mixon, hereby certify, pursuant to NRCP 5(b), that on this ____ day of _____, 20__, I mailed a true and correct copy of the foregoing, "Petition For A Writ Of Habeas Corpus Pursuant To 28 U.S.C. 2254" by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

Clerk, U.S. District Court
District of Nevada
Lloyd D. George U.S. Courthouse
333 LV, NV 89101

CC:FILE

DATED: this 18th day of 08, 20~~17~~ 2017.

Antonio Lee Mixon
1015826
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. 2254
(Title of Document)

filed in District Court Case number Pending By Clerk

☑ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-or-

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

08/18/2017
Signature Date

Antonio Lee Minor
Print Name

Petitioner
Title

PS-10

Antonio Lee Mixon #1019828
Ely State Prison
P.O. Box 1989
Ely, NV 89301

Postage $2.24

Clerk, U.S. District Court
District of Nevada
Lloyd D. George U.S. Courthouse
333 Las Vegas, NV 89101

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. 2254 LEGAL MAIL

EXHIBIT B

ADAM PAUL LAXALT
Attorney General
Jeffrey M. Conner (Bar. No. 11543)
Assistant Solicitor General
State of Nevada
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717
(775) 684-1200 (phone)
(775) 684-1108 (fax)
jconner@ag.nv.gov
Attorneys for Respondent

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ANTONIO LEE MIXON, Petitioner(s), vs. BRIAN E. WILLIAMS, *et al.*, Respondent(s).	Case No. 2:17-cv-02292-RFB-NJK **NOTICE OF APPEARANCE FOR RESPONDENTS**

The State of Nevada, by and through counsel, ADAM PAUL LAXALT, Attorney General of the State of Nevada, hereby notifies the Court and respective parties to this action that Assistant Solicitor General JEFFREY M. CONNER has assumed responsibility for representing the interests of the named respondent, the Attorney General of the State of Nevada, and the interests of the State of Nevada in the above-entitled action.

Attorney General Adam Paul Laxalt should be removed from notices on this case and all future pleadings and notices should be directed to the undersigned counsel.

RESPECTFULLY SUBMITTED this 6th day of December, 2017.

ADAM PAUL LAXALT
Attorney General

By: /s/ Jeffrey M. Conner
JEFFREY M. CONNER (Bar. No. 11543)
Assistant Solicitor General

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 6th day of December, 2017, I served a copy of the foregoing NOTICE OF APPEARANCE FOR RESPONDENTS, by placing said document in the U.S. Mail, postage prepaid, addressed to:

Antonio L Mixon #1019828
High Desert State Prison
P O Box 650
Indian Springs, Nevada89070-0650

/s/ Laurie Sparman

EXHIBIT C

ANTONIO LEE MIXON
Name
Ely STATE PRISON (ISP)
P.O. BOX 1989
Ely, NV 89301
PRISON # 1019828
Prison Number

FILED ____ RECEIVED
ENTERED ____ SERVED ON
COUNSEL/PARTIES OF RECORD
OCT 24 2016
CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY: _____ DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTONIO LEE MIXON
Plaintiff,

vs.

(1) NEVADA DEPARTMENT OF CORRECTIONS
(2) Ely STATE PRISON
(3) THE STATE OF NEV.

Defendant(s).

2:16-cv-02490-RFB-VCF

CIVIL RIGHTS COMPLAINT
PURSUANT TO
42 U.S.C. § 1983

A. JURISDICTION

1) This complaint alleges that the civil rights of Plaintiff, ANTONIO MIXON, (Print Plaintiff's name) who presently resides at Ely STATE PRISON, were violated by the actions of the below named individuals which were directed against Plaintiff at Ely STATE PRISON (institution/city where violation occurred) on the following dates 09/16/2016 (Count I), 09/17/2016 (Count II), and _____ (Count III).

Make a copy of this page to provide the below information if you are naming more than five (5) defendants

2) Defendant Ely STATE (full name of first defendant) resides at UNK (address if first defendant) and is employed as GOVERNMENTAL OFFICIAL (defendant's position and title, if any). This defendant is sued in his/her ___ individual ✓ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: RUNCHED ME while IN RESTRAINTS. SLAMMED ME IN TO METAL WALL (KILL ME OR SOMETHING) DIDN'T FEED ME BREAKFAST THE FOLLOWING DAY AND TOOK MY LUNCH STACK UPON my ARRIVAL.

3) Defendant _____ (full name of first defendant) resides at _____ (address if first defendant) and is employed as _____ (defendant's position and title, if any). This defendant is sued in his/her ___ individual ____ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: _____

4) Defendant _____ (full name of first defendant) resides at _____ (address if first defendant) and is employed as _____ (defendant's position and title, if any). This defendant is sued in his/her ___ individual ____ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: _____

5) Defendant _____ (full name of first defendant) resides at _____ (address if first defendant) and is employed as _____ (defendant's position and title, if any). This defendant is sued in his/her ___ individual ____ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: _____

6) Defendant _____ resides at _____,
(full name of first defendant) (address if first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
___ individual ____ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: _____

_____

7) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343 (a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional statutes, list them below.

_____

_____

B. NATURE OF THE CASE

1) Briefly state the background of your case.

PUNCHED ME IN MY BACK WHILE IN RESTRAINTS SLAMMED ME INTO METAL WALL STICKING OUT CEMENT WALL, CALLED ME NIGGER, OFFICERS USED EXCESSIVE FORCE AND RACIAL SLURS AND/OR TERMINOLOGY. DON'T FEED ME BREAKFAST THE FOLLOWING DAY. TOOK MY LUNCH WHEN I ARRIVED. SLAMMED ME ON MY KNEES. ALL WHILE IN RESTRAINTS. POLYGRAPH REQUEST, CIVIL TRIAL REQUEST TO EXERCISE MY 7TH U.S.CA. RIGHT TO CIVIL TRIAL WHEN CONTROVERSY EXCEEDING $20 + ABLE TO SUBPOENA WITNESSES AND EVIDENCE IN SUPPORT OF THIS CLAIM/GROUNDS.

C. CAUSE OF ACTION

COUNT I

The following civil rights has been violated: The My 8th U.S.C.A. Cruel and Unusual punishment or treatment

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

On 09/16/2016 I was transferred from High Desert State Prison to Ely State Prison Dale I arrived I was snatched off the van By an officer that use excessive force, I wasn't disrespectful, once I was in a holding cell By self I was searched and officer Alleged I was in possession of Contraband to wit a Prison made weapon they hung up and lied and said I had contraband in my hand and was in a threatening Manner. That's not true, I was in restraints, My face, nose, was up in the wall, The said contraband was what Alleged was found in My pockets. They stormed in punched me in my Back with what seemed and felt like a whole Fist slammed me to my knees, After I was cuffed searched I was moved to Be housed is when officer start using Racial words called me a Nigger. once I arrived at the unit I was slammed my shoulder that was slammed in to a metal Concrete slab pinballing out the wall Then again slammed to my knees, So He could put on leggy Collar, once in cell I was yanked to the door, All this while in restraints and I didn't say or Resist at any time.

c) The case was dismissed because it was found to be (check one): _____ frivolous ____ malicious or ____ failed to state a claim upon which relief could be granted.

d) Issues raised: _____

_____

e) Approximate date it was filed: _____

f) Approximate date of disposition: _____

Lawsuit #3 dismissed as frivolous, malicious, or failed to state a claim:

a) Defendants: _____

b) Name of court and case number: _____

c) The case was dismissed because it was found to be (check one): _____ frivolous ____ malicious or ____ failed to state a claim upon which relief could be granted.

d) Issues raised: _____

_____

e) Approximate date it was filed: _____

f) Approximate date of disposition: _____

3) Have you attempted to resolve the dispute stated in this action by seeking relief from the proper administrative officials, e.g., have you exhausted available administrative grievance procedures? ✓ Yes ___ No. If your answer is "No", did you not attempt administrative relief because the dispute involved the validity of a: (1) ___ disciplinary hearing; (2) ___ state or federal court decision; (3) ___ state or federal law or regulation; (4) ___ parole board decision; or (5) ___ other _____.

If your answer is "Yes", provide the following information. Grievance Number _____.

Date and institution where grievance was filed _____.

Response to grievance: NO RESPONSE DO TO RETALIATION AND THIS PRISON DONT WANT TO ISSUE MY FINANCIAL CERTIFICATE WHICH IS ALONG WITH MY 7TH AND 14TH U.S.C.A. 8TH U.S.C.A. AND THE COURT THEY DONT HAVE AVAILABLE REMEDY THIS LAWSUIT SUPPORTED MY GRIEVANCES ABOUT THIS CLAIM.

COUNT III

The following civil rights has been violated: _____

_____

_____

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

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_____

_____

_____

D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

1) Have you filed other actions in state or federal courts involving the **same or similar facts** as involved in this action? ____ Yes ✓ No. If your answer is "Yes", describe each lawsuit. (If more than one, describe the others on an additional page following the below

outline).

a) Defendants: _____

b) Name of court and docket number: _____

c) Disposition (for example, was the case dismissed , appealed or is it still pending?):

_____

d) Issues raised: _____

_____

_____

e) Approximate date it was filed: _____

f) Approximate date of disposition: _____

2) Have you filed an action in federal court that was **dismissed because it was determined to be frivolous, malicious, or failed to state a claim upon which relief could be granted?**

___ Yes ✓ No. If your answer is "Yes", describe each lawsuit. (If you had more than three actions dismissed based on the above reasons, describe the others on an additional page following the below outline.)

Lawsuit #1 dismissed as frivolous, malicious, or failed to state a claim:

a) Defendants: _____

b) Name of court and case number: _____

c) The case was dismissed because it was found to be (check one): _____ frivolous

____ malicious or ____ failed to state a claim upon which relief could be granted.

d) Issues raised: _____

_____

e) Approximate date it was filed: _____

f) Approximate date of disposition: _____

Lawsuit #2 dismissed as frivolous, malicious, or failed to state a claim:

a) Defendants: _____

b) Name of court and case number: _____

E. REQUEST FOR RELIEF

I believe that I am entitled to the following relief:

SINCE your GROSS DOMESTIC PRODUCT IS 136 BILLION DOLLARS ± BELIEVE 0.000002 % OF THIS STATE GDP SHOULD BE WORTH RE JUST COMPENSATION THAT EQUALS $72,000 YEARLY FOREVER. THANK YOU.

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.** See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

(Name of Person who prepared or helped prepare this complaint if not Plaintiff)

(Signature of Plaintiff)

10/20/2016
(Date)

(Additional space if needed; identify what is being continued)

Antonio Lee Milton Sr. #1017822
Ely State Prison
P.O. Box 1989
Ely, NV 89301

Clerk, U.S. District Court
District of Nevada
Lloyd D. George U.S. Courthouse
333 Las Vegas Blvd. So. - RM 1334
LV, NV 89101

USA
FIRST-CLASS MAIL
LAS VEGAS NV
OCT 21 2016
USPS

Jan Clerk of Court

* Do to the Pauper Letter sent to the Financial Certificate to the District Court Denying me my 28 U.S.C. § 1915 that I see that I am owed

EXHIBIT D

United States District Court
District of Nevada (Reno)
CIVIL DOCKET FOR CASE #: 3:17-cv-00146-MMD-VPC

Mixon v. Nevada Department of Corrections et al
Assigned to: Judge Miranda M. Du
Referred to: Magistrate Judge Valerie P. Cooke
Case: 3:16-cv-02490-RFB-VCF
Case in other court: Southern District Court of Nevada, 16cv2490
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 03/07/2017
Jury Demand: None
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

Antonio Lee Mixon

represented by **Antonio Lee Mixon**
1019828
High Desert State Prison
PO Box 650
Indian Springs, NV 89070-0650
PRO SE

V.

Defendant

Nevada Department of Corrections
[12] Screening Order
TERMINATED: 08/17/2017

Defendant

Ely State Prison
[12] Dismissed
TERMINATED: 08/17/2017

Defendant

Nevada, State of
[12] Screening Order
TERMINATED: 08/17/2017

Defendant

Mike Byrne
AWO - added per ECF No. 7

represented by **Adam P. Laxalt**
Nevada Attorney General
100 North Carson Street
Carson City, NV 89701
775-684-1100
Fax: 775-684-1108
Email: usdcfilings@ag.nv.gov
TERMINATED: 02/06/2018
LEAD ATTORNEY

Benjamin R. Johnson
Deputy Attorney General
State of Nevada - Office of the Attorney

[X]

Public Safety Division - Bureau of Litigation
100 N Carson St
Carson City, NV 89701-4717
775-684-1254
Fax: 775-684-1275
Email: bjohnson@ag.nv.gov
ATTORNEY TO BE NOTICED

Defendant

C/O Diamond
per ECF No. 7

Defendant

J. Crowder
C/O - added per ECF No. 7

Defendant

Sunday
C/O - added per ECF No. 7

Defendant

Escabella
[12] Screening Order
TERMINATED: 08/17/2017

Defendant

Davis
[12] Screening Order

Defendant

Hasley
[12] Screening Order

Defendant

P. Hernanez
[12] Screening Order
TERMINATED: 08/17/2017

Defendant

Ashdown
[12] Screening Order

Defendant

Sharp
[12] Screening Order

Defendant

Dudley
[12] Screening Order

[X]

Date Filed	#	Docket Text
02/06/2018	22	NOTICE of Appearance by attorney Benjamin R. Johnson on behalf of Defendant Mike Byrne. *Limited Notice of Appearance* (Johnson, Benjamin) (Entered: 02/06/2018)
01/22/2018	21	MOTION for Permission to File..., filed by Plaintiff Antonio Lee Mixon. Responses due by 2/5/2018. (KW) (Entered: 01/22/2018)
01/16/2018	20	ORDERED that pursuant to the Court's screening order (ECF No. 12), this action shall proceed as specified herein. (See pdf order for specifics.) This action is STAYED for 90 days to permit parties to settle. AG shall file a report re stay by 4/16/2018. If case does not settle then P shall pay $350 filing fee. If any party seeks to have this case excluded from the inmate mediation program, that party shall file a motion by 2/6/2018. Clerk shall SERVE AG this order and the original screening order (ECF No. 12) and a copy of Plaintiff's first amended complaint (ECF No. 7). (E-service (1/16/2018) ; Screening order and complaint via NEF regeneration) AG shall advise by 2/6/2018 re appearance for settlement purposes. Signed by Magistrate Judge Valerie P. Cooke on 1/16/2018. (Copies have been distributed pursuant to the NEF - DRM) (Entered: 01/16/2018)
01/12/2018	19	NOTICE of Docket Correction to 18 Motion : DISCOVERY DOCUMENTS: Pursuant to Local Rules of Civil practice, rule 26-8, written discovery, including discovery request, responses, depositions notice and transcripts must not be filed with the Court, unless ordered by the Court. Plaintiff advised that filing Motion 18 should not have been filed. **(no image attached)** (WJ) (Entered: 01/12/2018)
01/11/2018	18	DISCOVERY DOCUMENT per 19 ~~MOTION *First Request for Production of Documents* by Plaintiff Antonio Lee Mixon. Responses due by 1/25/2018. (LH)~~ Modified on 1/12/2018 see notice 19 . (WJ). (Entered: 01/11/2018)
11/15/2017	17	ORDER - ECF No. 16 Motion to extend time is granted. Second Amended Complaint due by 1/8/2018. If P chooses not to file a second amended complaint then this action will proceed Ds Byrne, Doe 2, Diamond, Crowder, Davis, Ashdown, Sunday, Sharp, Dudley and Doe 3 on Count 1, and Ds Doe 3 and Hasley on Count II only. Signed by Magistrate Judge Valerie P. Cooke on 11/15/2017. (Copies have been distributed pursuant to the NEF - DRM) (Entered: 11/15/2017)
10/02/2017	16	MOTION to Extend Time regarding discovery/nondispositive matter (Second Request) by Plaintiff Antonio Lee Mixon. (LH) (Entered: 10/04/2017)
09/20/2017	15	NOTICE of Change of Address by Plaintiff Antonio Lee Mixon. **Updated Address to High Desert State Prison** (JM) (Entered: 09/22/2017)
09/18/2017	14	ORDER **granting** ECF No. 13 Motion for Extension of Time; If Plaintiff chooses to file a second amended complaint, the second amended complaint must be filed by **11/9/2017**. Signed by Magistrate Judge Valerie P. Cooke on 09/18/2017. (Copies have been distributed pursuant to the NEF - KW) (Entered: 09/18/2017)
09/14/2017	13	MOTION for Enlargement of Time (First Request) re 12 Screening Order, by Plaintiff Antonio Lee Mixon. (KW) (Entered: 09/14/2017)
08/17/2017	12	SCREENING ORDER ORDER - A decision on IFP Application (ECF No. 2) is deferred. The operative complaint is the First Amended Complaint (ECF No. 7). Counts shall proceed or are dismissed as specified herein. Defendant State of Nevada is dismissed from this case, with prejudice. Plaintiff's ex parte Motion for Appointment of Counsel (ECF No. 3) is denied without prejudice. Clerk shall send Plaintiff a copy of ECF No. 4 , in response to his ECF Nos. 8 , 9 requests. (Mailed 8/17/2017.) Plaintiff's Motion for Consideration of Attached Letter (ECF No. 6) is denied without prejudice. The motions to add exhibits (ECF No. 10 , 11) are denied without prejudice. "Second Amended" Complaint due by

[X]

		9/16/2017. Clerk shall send Plaintiff a 1983 form, instructions, and a copy of his First Amended Complaint (ECF No. 7). (Mailed to P with instant order on 8/17/2017.) (See pdf order for additional details and specifics.) Signed by Judge Miranda M. Du on 8/17/2017. **(copy of first amended complaint sent to P)**(Copies have been distributed pursuant to the NEF - DRM) (Entered: 08/17/2017)
07/25/2017	11	EXHIBIT(s), filed by Plaintiff Antonio Lee Mixon. (Attachments: # 1 Exhibits)(KW) (Entered: 07/25/2017)
07/21/2017	10	*MORE* EXHIBITS, filed by Plaintiff Antonio Lee Mixon. (DRM) (Entered: 07/21/2017)
07/12/2017	9	NOTICE - Amended Submission of Process, by Antonio Lee Mixon, re ECF No. 8 Notice. (KR) (Entered: 07/14/2017)
06/22/2017	8	NOTICE - Submission of Process, by Antonio Lee Mixon. (KW) (Entered: 06/26/2017)
05/01/2017	7	AMENDED COMPLAINT, filed by Antonio Lee Mixon. (KW) (Entered: 05/01/2017)
03/20/2017	6	MOTION *For Consideration of Attached Letter to Judge...*, by Plaintiff Antonio Lee Mixon. Responses due by 4/3/2017. (DRM) (Main Document 6 replaced on 3/20/2017) (DRM). (Entered: 03/20/2017)
03/08/2017	5	ADVISORY LETTER to litigant. (MR) (Entered: 03/08/2017)
03/08/2017		Case assigned to District Judge Miranda M. Du and Magistrate Judge Valerie P. Cooke. (WJ) (Entered: 03/08/2017)
03/07/2017	4	ORDER. IT IS ORDERED that the motion to move the case to the unofficial northern division is granted. IT IS FURTHER ORDERED that the Clerk of the Court shall transfer and docket 1 the complaint, 2 the application to proceed *in forma pauperis*, 3 the motion for appointment of counsel, and this Order in the new case. IT IS FURTHER ORDERED that the motion for extension of time is granted in part. IT IS FURTHER ORDERED that Plaintiff shall file his first amended complaint within sixty (60) days from the date of this Order. See Order for further details. Signed by Magistrate Judge Cam Ferenbach on 3/7/17. (Copies have been distributed pursuant to the NEF - MR) (Entered: 03/08/2017)
12/14/2016	2	APPLICATION for Leave to Proceed in forma pauperis by Plaintiff Antonio Lee Mixon. (MR) (Entered: 03/08/2017)
10/24/2016	1	COMPLAINT against All Defendants filed by Antonio Lee Mixon. (MR) (Entered: 03/08/2017)

PACER Service Center			
Transaction Receipt			
03/05/2018 14:10:25			
PACER Login:	cc8847:3543847:0	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	3:17-cv-00146-MMD-VPC
Billable Pages:	3	**Cost:**	0.30

[X]

EXHIBIT E

ADAM PAUL LAXALT
Attorney General
BENJAMIN R. JOHNSON, Bar No. 10632
Deputy Attorney General
State of Nevada
Bureau of Litigation
Public Safety Division
100 N. Carson Street
Carson City, Nevada 89701-4717
Tel: (775) 684-1254
E-mail: bjohnson@ag.nv.gov

Attorneys for Defendants

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ANTONIO LEE MIXON,

Plaintiff,

v.

MIKE BYRNE, et al.,

Defendants

Case No. 3:17-cv-00146-MMD-VPC

LIMITED NOTICE OF APPEARANCE

Pursuant to this Court's Order (ECF No. 20), Adam Paul Laxalt, Attorney General of the State of Nevada, and Benjamin R. Johnson, Deputy Attorney General, appear for the limited purpose of settlement discussion only on behalf of Defendants.

Attorney General Adam Paul Laxalt should be removed from the CM/ECF notices on this case.

DATED this 6th day of February, 2018.

ADAM PAUL LAXALT
Attorney General

By: Benjamin R. Johnson
BENJAMIN R. JOHNSON
Deputy Attorney General
State of Nevada
Bureau of Litigation
Public Safety Division

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 6th day of February, 2018, I caused to be deposited for mailing a true and correct copy of the foregoing, **LIMITED NOTICE OF APPEARANCE**, to the following:

Antonio Lee Mixon #1019828
Ely State Prison
P. O. Box 1989
Ely, NV 89301

_____
An employee of the
Office of the Attorney General

Electronically Filed
3/5/2018 3:22 PM
Steven D. Grierson
CLERK OF THE COURT

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. ANTONIO MIXON, #1968172 Defendant.	CASE NO. C-17-327439-1 DEPT. NO. XVII DATE: March _____, 2018 TIME: 8:30 a.m.

DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE

COMES NOW, the Defendant, ANTONIO MIXON, by and through ASHLEY SISOLAK, Deputy Public Defender, and hereby requests this Honorable Court to dismiss this case with prejudice.

These Points and Authorities are made and based upon all the papers and pleadings on file herein, and oral argument at the time set for hearing.

DATED this 5th day of March, 2018.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/Ashley Sisolak*
ASHLEY SISOLAK, #13958
Deputy Public Defender

Case Number: C-17-327439-1

INTRODUCTION

On January 2, 2018, the Honorable Judge Michael P. Villani granted a mistrial based on the State of Nevada's failure to make mandatory discovery disclosures as required by *Brady*. In a pre-trial discovery ruling, the Court required all statements and records regarding the incident be turned over to the Defense. In fact the State was explicitly familiar with the necessity to obtain records from the Nevada Department of Corrections as the AAG specifically noted in an email dated December 18, 2017. (See Exhibit A)

Under Defense cross-examination, Officer Ontiveros testified to the fact he had completed a "C1 packet" used by medical personnel for workman compensation evaluations. Officer Ontiveros stated it was "protocol" for prison guards involved in physical altercations to be referred for medical evaluation, and required to complete the C1 packet. Completion of a C1 packet necessarily involves making a written statement of the circumstances leading to the potential injury. (*T.T.*, pg. 28).

> Q Mr. Ontiveros, so in talking about that day, after Mr. Mixom [sic] was cuffed, what was your next action?
>
> A Waiting for the -- waiting for people to come and you know like the incident commander and whoever. Medical was called so I can get assessed at the scene.
>
> Q Did you have any injuries?
>
> A Just a sore stomach and a sore thigh.
>
> Q Were any pictures taken of those injuries?
>
> A No, but I was sent to Concentra.
>
> Q What does that mean?
>
> A Concentra is like if anything that happens within the prison and you get hurt, injured, slip, fall, whatever, it's a protocol that we use with a C-1 packet that we have to go to see to Concentra to ensure that you know there's no injuries.
>
> Q And you took part in a C-1 packet interview or you filled out a C-1 packet?
>
> A Yes.

The State claimed to the Court the trial testimony was the first time they were made aware of such a statement. The State's position was that the statement was not potentially exculpatory, and that any potential prejudice could be cured with a jury instruction. Following a bench conference, the Court instructed the defense to clarify the testimony. (*T.T.*, pg. 35-36).

THE COURT: All right, next question, Counsel.

BY MS. SISOLAK:

Q Mr. Ontiveros, when you proceeded to, I think you said it was Concentra --

A Yes.

Q -- and you began the C-1 proceedings, did you fill out a statement?

A Yeah. We have to do our reports before we leave the institution.

Q So, when you got to Concentra, did you fill out a C-1 packet?

A You fill it out before you go.

Q So, at some point you wrote down on a C-1 form various information pertaining to this incident?

A The C-1 packet -- for me to explain what that is, it's a -- basically, it's an injury report as -- you know 'cause -- I don't know, you slam your finger, you slip and fall, you have to fill out a C-1 form.

Q So, if you are injured in any matter -- in any manner, you fill out a document as to how you were injured?

A Yes.

Q Do you, in that document, give any sort of narrative as to how the injury occurred? For instance, would you say I was exiting my car door and as I slammed the door my finger got caught; is that something that you would include in the report?

A Sure.

Based on the fact the statement in question was from the victim in the case, and that statement had not been disclosed to the defense as ordered, the Court granted the defense request

for a mistrial. The Court declined to declare a mistrial with prejudice, instead instructing the Defense to file the instant motion.

LEGAL ARGUMENT

The Double Jeopardy Clauses of both the United States and Nevada Constitutions protect a criminal defendant from repeated prosecutions for the same offense. U.S., Const. Amend. V; Nev. Const. Art. 1, §8. Jeopardy attaches when a jury has been selected and sworn." *Hylton v. State*, 103 Nev. 418, FN1 (1987) (citing *Downum v. U.S.*, 372 U.S. 734 (1963); *Wheeler v. District Court*, 82 Nev. 225 (1966)). Typically, when a defendant agrees to or requests a mistrial, he is not entitled to claim that Double Jeopardy bars a subsequent trial for the same offense. *United States v. Dinitz*, 424 U.S. 600, 607-610 (1976)[1]. However, this rule is not without exception. The Double Jeopardy Clause affords a defendant protection from the State retrying a case where he can show "...an intent on the part of the prosecutor to subvert the protections afforded by the Double Jeopardy Clause." *Oregon v. Kennedy*, 456 U.S. 667, 675-676 (1982).

Following a mistrial, a case *should* be dismissed with prejudice where the judge finds that, under the circumstances, the State's conduct "constitutes 'overreaching' or 'harassment' intended to goad [a defendant] into moving for mistrial." *Melchor-Gloria v. State*, 99 Nev. 174, 178, 660 P.2d 109, 112 (1983) (referencing *Oregon v. Kennedy*, 456 U.S. 667, ---, 102 S.Ct. 2083, 2093 (1982) (internal citations omitted). In other words, "...where the governmental conduct in question is intended to 'goad' the defendant into moving for a mistrial... a defendant [may] raise the bar of double jeopardy to a second trial after having succeeded in aborting the first on his own motion." *Id.*

In *Hylton*, the Nevada Supreme Court delineates a "two part inquiry." 103 Nev. at 422. A court should first consider whether a "declaration of the mistrial was dictated by manifest necessity ...and, second, ... whether the prosecutor is responsible for the circumstances which necessitated declaration of a mistrial." *Id.* at 422-23. While there is no bright line rule, the *Hylton* Court reasoned that "manifest necessity" may be present where "there is an interference with the administration of honest, fair, even-handed justice to either, both or any of the parties to the

[1] Federal Double Jeopardy principles were made obligatory upon the States by *Benton v. Maryland*, 395 U.S. 784, 793-6, 89 S.Ct. 2056, 2061-8 (1969).

proceeding.'" *Id.* at 423 (citing *People v. Clark*, 705 P.2d 1017, 1019 (Colo. Ct. App. 1985)) (internal quotations omitted).

The Nevada Supreme Court has since further applied a broader standard—the conjunctive 3-part *Pool* test—for motions to dismiss pursuant to the Double Jeopardy Clause in cases where the defendant either requested or consented to the mistrial which was granted. See *Thomas v. Eighth Judicial District*, 402 P.3d 619 (2017). The *Pool* test states that courts should consider whether:

> (1) Mistrial is granted because of improper conduct or actions by the prosecutor; and
> (2) such conduct is not merely the result of legal error, negligence, mistake, or insignificant impropriety, but, taken as a whole, amounts to intentional conduct which the prosecutor knows to be improper and prejudicial, and which he pursues for any improper purpose with indifference to a significant resulting danger of mistrial; and
> (3) the conduct causes prejudice to the defendant which cannot be cured by means short of a mistrial.

Id. at 626-7. The Court held the defendant met the three requisite *Pool* prongs and thus double jeopardy barred re-prosecution on all counts. *Id.* at 630. As to the first prong, the mistrial in this case was clearly granted because of improper conduct or actions by the prosecutor – there was no external or third party source responsible for the State's failure to correctly investigate their case and turn over required discovery. Similarly, with respect to the third prong, His Honor previously held that a mistrial was the only cure for the discovery violation. The primary analysis therefore relates to the second prong.

With respect to the second prong, the Court noted the question of whether a prosecutor intends improper and prejudicial conduct "should generally be measured by objective factors" which include:

> "the situation in which the prosecutor found himself, the evidence of actual knowledge and intent and any other factors which may give rise to an appropriate inference or conclusion. [A trial court] may also consider the prosecutor's own explanations of his 'knowledge' and 'intent' to the extent that such explanation can be given credence *in light of the minimum requirements expected of all lawyers.*" (emphasis added)

Id. at 627. Additionally, the Court reiterated that the misconduct must amount to more than just "insignificant impropriety." *Id.* An important distinction exists between simple prosecutorial errors such as a loss of temper or isolated misstatements versus "misconduct so egregious that it raises concerns over the integrity and fundamental fairness of the trial itself." *Id.*

To apply this second prong of analysis, a court should consider whether the State engaged in conduct that amounted to bad faith or gross negligence – a finding of either satisfies the 'fault' requirement. *Melchor-Gloria*, 99 Nev. at 178. Bad faith is synonymous with intentional conduct by the State. If the State's conduct is found to be unintentional but still negligent, a court should consider whether the negligence is "excusable" or "inexcusable." *Hylton*, 103 Nev. at 426 (holding the State's conduct inexcusably negligent where the prosecutor had adequate notice and could have prevented the circumstances for a mistrial from occurring, even though he was allegedly subjectively unaware of the substantive ramifications of his actions) (emphasis added).

In this case, the State's conduct was inexcusably negligent.

A. INEXCUSABLY NEGLIGENT

It is clear that the State acted with *at least* inexcusable negligence. Even if it was remotely possible the Attorney General had no prior knowledge of the existence of the statement in question, it is undeniably clear that they *should* have known. This was not some obscure piece of evidence buried deep in the bowels of some nameless file. This was also not an act on the part of the victim that was totally unforeseen, undisclosed, and therefore unknown by the Attorney General. If the victim had sought private medical treatment on his own and failed to report it, the argument would be different. Rather, this was a statement that was *required* by State of Nevada protocol, made under the full knowledge and direction of the Nevada Department of Corrections, and was of such routine nature that it was apparently common knowledge. Again, this was a State employee doing the bidding of the State following an incident that occurred in a State prison. That the State Attorney General would not make a simple inquiry about routine protocol and steps taken immediately following an incident in a case such as this paints an accurate picture of gross negligence.

CONCLUSION

Therefore, the just and fair result would be for Double Jeopardy to attach and Mr. Mixon's case be dismissed with prejudice.

DATED this 5th day of March, 2018.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/Ashley Sisolak*
ASHLEY SISOLAK, #13958
Deputy Public Defender

NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the **15th** day of March, 2018, at 8:30 a.m.

DATED this 5th day of March, 2018.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/ Ashley Sisolak*
ASHLEY SISOLAK #13958
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and foregoing motion was served via electronic e-filing to the Clark County Attorney General's Office at wiznetfilings@ag.nv.gov on this 5th day of March, 2018.

By: */s/ Erin Prisbrey*
Employee of the Public Defender's Office

EXHIBIT A

Ashley Sisolak

From: Jason H. Gunnell <JGunnell@ag.nv.gov>
Sent: Monday, December 18, 2017 10:17 AM
To: Konie Baldwin; Ashley Sisolak
Cc: Chelsea N. Kallas; Salvador Heredia-Chacon
Subject: Re: Antonio Mixon, C-17-327439-1

Good morning,

The Order looks good except for Request No. 12 The evidence would be in the possession of NDOC not Metro. Probably just a typo on the Court's minute order, because the majority of cases that go to trial are investigated by Metro :)

Jason

From: Chelsea N. Kallas
Sent: Thursday, December 14, 2017 4:10 PM
To: Jason H. Gunnell
Subject: FW: Antonio Mixon, C-17-327439-1

From: Konie Baldwin [mailto:baldwikj@ClarkCountyNV.gov]
Sent: Thursday, December 14, 2017 3:06 PM
To: Chelsea N. Kallas <CKallas@ag.nv.gov>
Cc: Ashley Sisolak <Ashley.Sisolak@ClarkCountyNV.gov>
Subject: Antonio Mixon, C-17-327439-1

Good afternoon,

Attached please find the discovery order for Antonio Mixon, C-17-327439-1. Please approve as to form, sign and email back to me so I can get it filed.

Thank you for your help in this matter. Should you have any questions, you may reach Ashley Sisolak at 455-0397.

Konie Baldwin, Legal Secretary
Public Defender's Office
Phone: (702) 455-6351
Fax: (702) 366-1306
Team 7, DC6, DC17, DC22
Outer Courts, Henderson I
North Las Vegas 2

Electronically Filed
3/12/2018 4:34 PM
Steven D. Grierson
CLERK OF THE COURT

OPPM
ADAM PAUL LAXALT
Attorney General
Jason Gunnell (Bar No. 13997)
Senior Deputy Attorney General
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jgunnell@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1968172, Defendant.	Case No.: C-17-327439-1 Dept. No.: 17 Hearing Date: March 15, 2018 Hearing Time: 8:30 AM

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS BASED UPON VINDICTIVE PROSECUTION

ADAM PAUL LAXALT, Attorney General for the State of Nevada, through Senior Deputy Attorney General, Jason Gunnell, hereby submits the State's Opposition to Defendant's Motion to Dismiss Based upon Vindictive Prosecution. This motion is made and based upon the pleadings on file, the following memorandum of points and authorities, and any oral arguments the Court may allow.

Dated this 12th day of March, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Jason Gunnell
JASON GUNNELL (Bar No. 13997)
Senior Deputy Attorney General

Case Number: C-17-327439-1

DECLARATION

JASON GUNNELL makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am a Senior Deputy Attorney General assigned as one of the prosecutors in this instant matter.
2. Ms. Chelsea Kallas and I are members of the Criminal Prosecution Unit which is part of the Bureau of Criminal Justice.
3. I am more than 18 years of age and am competent to testify as to the matters stated herein. I also have personal knowledge of the facts stated herein or I have been informed of these facts and believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 12th day of March, 2018.

/s/ Jason Gunnell
JASON GUNNELL

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS AND RELEVANT PROCEDURAL HISTORY

On December 4, 2015, Defendant – an NDOC inmate – possessed a shank and threw a rock at a corrections officer. According to the defense, on August 24, 2016 and October 24, 2016, Defendant filed lawsuits against the State and various State agencies, including the NDOC and its officials. Motion to Dismiss, at 3:19-3:25. At some point after those lawsuits were filed, the NDOC referred criminal charges to the Office of the Attorney General ("OAG") relating to the December 4, 2015 incident noted above.

On August 18, 2017, the State filed a criminal complaint charging Defendant with Battery By a Prisoner (a category B felony) and Possession or Control of Dangerous Weapon or Facsimile By an Incarcerated Person (a category B felony). According to the complaint, on December 4, 2015, Defendant – an NDOC inmate – possessed a shank and threw a rock at a corrections officer. On October 24, 2017, following a preliminary hearing, the matter was bound up to district court.

On December 20, 2017, the State offered Defendant the opportunity to enter into a plea agreement under the terms of which Defendant would plead guilty to the crime of Attempt Possession of a Dangerous Weapon by an Inmate (a category C felony) and the parties would jointly recommend an 18- to 48-month term of imprisonment. The plea offer was consistent with plea deals offered by the OAG for similar crimes.

On January 2, 2018, a trial commenced. The Court declared a mistrial based on the fact that one of the witnesses apparently gave a statement that had not been turned over to the defense. Said statement: (1) was not exculpatory; and (2) was previously not known by the OAG to have existed. The trial has been reset to commence on March 26, 2018. On March 5, 2018, the defense filed the present Motion.

ARGUMENT

In the present Motion, the defense accuses the prosecutors in the present matter of prosecutorial misconduct. Specifically, the defense argues that, "[i]t wasn't until after Mixon invoked his legal rights in federal court that the State vindictively charged Mixon with crimes related to an incident that he had been reasonably led to believe was closed." Motion to Dismiss, at 5:18-5:20. The Motion is untimely and frivolous.

NRS 174.105(1) provides: "Defenses and objections based on defects in the institution of the prosecution, other than insufficiency of the evidence to warrant an indictment, or in the indictment, information or complaint, other than that it fails to show jurisdiction in the court or to charge an offense, may be raised only by motion **before trial. The motion shall include all such defenses and objections then available to the defendant.**" (emphasis added). Similarly, NRS 174.125(1) states, in pertinent part: "all . . . motions which by their nature, if granted, delay or postpone the time of trial must be made before trial, unless an opportunity to make such a motion before trial did not exist or the moving party was not aware of the grounds for the motion before trial." The defense's Motion to Dismiss Based upon Vindictive Prosecution is based on information Defendant possessed before the first trial was held in the present matter. Thus, by failing to file this Motion prior to the first trial, the defense waived any argument based on an alleged vindictive prosecution.[1] In the event that the Court entertains the present Motion, it should be denied as meritless.

"In our adversarial system, the State has an almost exclusive right to decide how to charge a criminal defendant. . . ." *Righetti v. Eighth Judicial District Cour ex rel. County of Clark*, 388 P.3d 643, 647, 133 Nev. Adv. Op. 7 (2017). "[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute . . . generally rests entirely in his discretion." *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978).

A prosecutor is "vested with immense discretion in deciding whether to prosecute a particular defendant that necessarily involves a degree of selectivity." *Salaiscooper v. Eighth Judicial District Cour ex rel. County of Clark*, 117 Nev. 892, 902-03 (2001) (internal quotation marks omitted). The Nevada Supreme Court has explained that, "in exercising this discretion, the [prosecutor] is clothed with the presumption that he acted in good faith and properly discharged his duty to enforce the laws." *Id.*, at 903.

In the present Motion, the defense essentially argues that the timeline of events establishes a basis to "**presume**" that the charges levied against Defendant are the product of the prosecution's vindictive motive. Motion to Dismiss, 5:3-6:8 (emphasis added). The defense fails to cite a single case to support its claim that a presumption of vindictiveness attaches in a pretrial setting where the State charges a defendant with a crime after the defendant files a civil rights lawsuit that relates to the prosecuting office. The lack of

[1] The Nevada Supreme Court held as much in the unpublished opinion issued in *Griffo v. State*, 2015 WL 5176815 (Nev. 2015).

authority is not surprising, as the argument is utterly absurd and flies in the face of the evidence and applicable case law. *See United States v. Gallegos-Curiel*, 681 F.2d 1164, 1168 (9th Cir.1982) ("[T]he link of vindictiveness cannot be inferred simply because the prosecutor's actions followed the exercise of a right, or because they would not have been taken but for exercise of a defense right.").

In *Goodwin* – a case cited by the defense – the United States Supreme Court stated: "There is good reason to be cautious before adopting an inflexible presumption of prosecutorial vindictiveness in a pretrial setting." 457 U.S., at 381.[2] In *Goodwin*, the Court ultimately found that the filing of more serious charges after a defendant chooses to exercise his right to a trial by jury does not give rise to a presumption of prosecutorial vindictiveness. *Id.*, at 384.

Here, the prosecutors' conduct was even more benign than that of the prosecutor in *Goodwin*. Here, the evidence clearly suggests that, until the investigative report and evidence relating to the underlying crime was submitted to the prosecutors, said prosecutors did not even know who Antonio Mixon was, let alone the fact that he committed any crimes or had filed federal civil rights lawsuits against various State agencies. Specifically, on page one of the discovery, one can clearly see that the investigative report submitted to the OAG for this particular case was signed on December 19, 2016. Exhibit 1 (Investigative Report Cover). Thus, the State did not even have the opportunity to file criminal charges against Defendant before he filed his civil rights lawsuits. Dismissing the criminal charges under these circumstances would lead to absurd results. Specifically, any defendant who is arrested for a crime could prevent his prosecution by simply filing a civil rights lawsuit before the State files criminal charges against him. According to the defense's unsupported and ridiculous contentions, such a timeline would create a presumption that any such prosecution is the product of vindictiveness.

In *Goodwin*, the Court noted that "[a] prosecutor should remain free before trial to exercise the broad discretion entrusted to him to determine the extent of the societal interest in the prosecution." 457 U.S., at 382. That is exactly what the prosecutors in the present case did: They were presented with evidence clearly indicating that Defendant committed multiple crimes, so they properly filed criminal charges.

[2] While the defense cited *Goodwin* in its Motion, not surprisingly, it made no mention of this clearly applicable caution.

"A charging decision does not levy an improper 'penalty' unless it results **solely** from the defendant's exercise of a protected legal right, rather than the prosecutor's normal assessment of the societal interest in prosecution." *United State v. Goodwin*, 457 U.S. 368, 380 n.11 (1982) (citing Westen & Westen, A Constitutional Law of Remedies for Broken Plea Bargains, 66 Calif.L.Rev. 471, 486 (1978)) (emphasis added). Here, the prosecutors' actions did not result in any way – let alone solely – from the defendant's filing of his civil lawsuits; the prosecutors' actions resulted from the State's statutory duties to protect individuals in NDOC facilities and prosecute prisoners who commit crimes, *see* NRS 228.170, as well as Defendant's inability to abide by the law. As the Ninth Circuit Court of Appeals has so aptly stated: "When increased charges are filed in the routine course of prosecutorial review or as a result of continuing investigation . . ., there is no realistic likelihood of prosecutorial abuse, and therefore no appearance of vindictive prosecution arises merely because the prosecutor's action was taken after a defense right was exercised." *Gallegos-Curiel*, 681 F.2d, at 1169.

To the extent that the defense is attempting to argue that the NDOC's alleged delay in referring the case to the OAG for prosecution is the basis for the claim of prosecutorial misconduct, the Court should deny the Motion as wholly unsupported by fact or law. The defense fails to cite a single authority to support the principle that, for the purposes of a vindictive prosecution argument, the alleged vindictiveness of an investigator can be imputed to the prosecutor.

While the State respects the fact that the defense has a duty to provide a zealous defense, that duty does not give rise to a right to make baseless accusations of prosecutorial misconduct. Should the defense continue to make such accusations, the State will respond with a request for sanctions. *See Young v. Ninth Judicial District Court*, 107 Nev. 642 (1991) (upholding sanctions against defense counsel for making unsubstantiated allegations of misconduct).

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CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court deny Defendant's Motion to Dismiss Based upon Vindictive Prosecution.

DATED this 12th day of March, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Jason Gunnell
JASON GUNNELL (Bar No. 13997)
Senior Deputy Attorney General

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DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1968172, Defendant.	Case No.: C-17-327439-1 Dept. No.: 17 Hearing Date: March 15, 2018 Hearing Time: 8:30 AM

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISQUALIFY THE ATTORNEY GENERAL'S OFFICE

ADAM PAUL LAXALT, Attorney General for the State of Nevada, through Senior Deputy Attorney General, Jason Gunnell, hereby submits the State's Opposition to Defendant's Motion to Disqualify the Attorney General Office. This motion is made and based upon the pleadings on file, the following memorandum of points and authorities, and any oral arguments the Court may allow.

Dated this 12th day of March, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Jason Gunnell
JASON GUNNELL (Bar No. 13997)
Senior Deputy Attorney General

Case Number: C-17-327439-1

DECLARATION

JASON GUNNELL makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am a Senior Deputy Attorney General assigned as one of the prosecutors in this instant matter.
2. Ms. Chelsea Kallas and I are members of the Criminal Prosecution Unit which is part of the Bureau of Criminal Justice.
3. I am more than 18 years of age and am competent to testify as to the matters stated herein. I also have personal knowledge of the facts stated herein or I have been informed of these facts and believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 12th day of March, 2018.

/s/ Jason Gunnell
JASON GUNNELL

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS AND RELEVANT PROCEDURAL HISTORY

On December 4, 2015, Defendant – an NDOC inmate – possessed a shank and threw a rock at a corrections officer. According to the defense, on August 24, 2016 and October 24, 2016, Defendant filed lawsuits against the State and various State agencies, including the NDOC and its officials. Motion to Disqualify, at 3:7-3:14. At some point after those lawsuits were filed, the NDOC referred criminal charges to the Office of the Attorney General ("OAG") relating to the December 4, 2015 incident noted above.

On August 18, 2017, the State filed a criminal complaint charging Defendant with Battery By a Prisoner (a category B felony) and Possession or Control of Dangerous Weapon or Facsimile By an Incarcerated Person (a category B felony). According to the complaint, on December 4, 2015, Defendant – an NDOC inmate – possessed a shank and threw a rock at a corrections officer. On October 24, 2017, following a preliminary hearing, the matter was bound up to district court.

On December 20, 2017, the State offered Defendant the opportunity to enter into a plea agreement under the terms of which Defendant would plead guilty to the crime of Attempt Possession of a Dangerous Weapon by an Inmate (a category C felony) and the parties would jointly recommend an 18- to 48-month term of imprisonment. The plea offer was consistent with plea deals offered by the OAG for similar crimes.

On January 2, 2018, a trial commenced. The Court declared a mistrial based on the fact that one of the witnesses apparently gave a statement that had not been turned over to the defense. Said statement: (1) was not exculpatory; and (2) was previously not known by the OAG to have existed. The trial has been reset to commence on March 26, 2018. On March 5, 2018, the defense filed the present Motion.

ARGUMENT

The defense argues that the OAG should be disqualified because, prior to the filing of the criminal complaint, Defendant – a prisoner incarcerated in an NDOC facility – "filed several separate civil rights lawsuits in the U.S. District Court" and "[t]he named defendants in these various suits include; Ely State Prison, High Desert State Prison, the State of Nevada, the Nevada Department of Corrections, various wardens and corrections officers." Motion to Disqualify, at 3:8-3:14.

NRS 174.105(1) provides: "Defenses and objections based on defects in the institution of the prosecution, other than insufficiency of the evidence to warrant an indictment, or in the indictment, information or complaint, other than that it fails to show jurisdiction in the court or to charge an offense, may be raised only by motion **before trial. The motion shall include all such defenses and objections then available to the defendant.**" (emphasis added). Similarly, NRS 174.125(1) states, in pertinent part: "all . . . motions which by their nature, if granted, delay or postpone the time of trial must be made before trial, unless an opportunity to make such a motion before trial did not exist or the moving party was not aware of the grounds for the motion before trial." The defense's Motion to Disqualify is based on information Defendant possessed before the first trial was held in the present matter. Thus, by failing to file this Motion prior to the first trial, the defense waived any argument the OAG must be disqualified.

In the event that the Court entertains the present Motion, it should be denied as meritless. In support of their frivolous and untimely Motion, the defense cites two cases.

First, the defense misquotes *State v. Eighth Jud. Dist. Ct. (Zogheib)*, 321 P.3d 882 (Nev. 2014), and states that "the appropriate inquiry to determine disqualification of an office 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." Motion to Disqualify, at 4:5-4:9. Not surprisingly, the defense fails to mention that, in *Zogheib*, the Nevada Supreme Court noted "several policy arguments in favor of a test that **limits** the disqualification of an entire [prosecution] office," including:

(1) "there is a large cost to the county in paying for a special prosecutor to prosecute the case";

(2) "an attorney is presumed to perform his ethical duties, including keeping the confidences of a former client"; and

(3) "the courts should not unnecessarily interfere with the performance of a prosecutor's duties."

321 P.3d, at 886 (emphasis added). Moreover, the issue the Court addressed in *Zogheib* was "whether [a] conflict of interest [with Clark County District Attorney Steve Wolfson] was properly imputed to all of the lawyers in his office . . . ." 321 P.3d, at 883. In other words, the applicability of the primary case upon the defense's argument rests is questionable at best.

Second, the defense cites *Summers v. Warden of Nev. State Prison*, 440 P.2d, 388, 390 (Nev. 1968), for the principle that "due process forbids action which is fundamentally unfair and shocking to the

universal sense of justice." Motion to Disqualify, at 4:23-4:25. However, the defense fails to cite a single fact related to the present matter that any reasonable person would find shocking.

While it appears that the Nevada Supreme Court has never addressed the precise issue raised by the defense, other courts that have addressed it have rejected the argument that a prosecuting office must be disqualified because the defendant has a pending civil action against said prosecuting office (or individuals employed by the office).

Faced with a similar argument that suggested a more direct conflict of interest than that asserted in the present case, the Missouri Court of Appeals stated: "Filing a civil rights lawsuit against the prosecutor does not establish hostility of the prosecutor toward a criminal defendant." *State v. Sonka*, 893 S.W.2d 388, 389 (Mo. Ct. App. 1995). As the Missouri Court of Appeals so aptly stated, "[a]llowing the filing of such litigation to require the disqualification of a prosecutor could paralyze prosecutions of criminal defendants." *Id.; see State v. Tyler*, 587 S.W.2d 918, 930 (Mo. Ct. App. 1979) (Where defendant had 14 or 15 civil rights lawsuits pending against various government officials, including the prosecutor: "[T]he defendant could paralyze the prosecution if he could secure the disqualification of prosecutors and other law enforcement officials by the simple expedient of filing a lawsuit against them.").

Similarly, in *Kindred v. State*, the Indiana Supreme Court denied the defendant's claim that a special prosecutor should have been appointed because: (1) one day prior to the filing of a criminal complaint against the defendant, the defendant had filed a federal civil rights lawsuit against the prosecutor; and (2) there were allegations that the defendant had threatened the prosecutor's life. 521 N.E.2d 320, 327 (Ind. 1988). The Supreme Court of Indiana correctly agreed with the State that "to allow prosecutors to be disqualified merely upon the unilateral action of defendants, *e.g.*, filing lawsuits, would lead to absurd consequences." *Id.; see Aschliman v. State*, 578 N.E.2d 759, 765-66 (Ind. 1991) (same holding where defendant filed a federal lawsuit and a bar complaint).

In *Strongsville v. Waiwood*, 62 Ohio App.3d 521 (1989), the Court of Appeals of Ohio was confronted with the following facts. The defendants got in a scuffle with police officers. *Id.*, at 523. As a result, the City filed criminal complaints against the defendants, charging them with resisting arrest and assault. *Id.* After their arrests, the defendants "filed a civil suit in federal district court against the . . . city." *Id.*, at 533. The defendants "subpoenaed the [City's] law director to be deposed" and "subpoenaed a

representative of the city to bring certain records to a deposition." *Id.* "The prosecutor in this case appeared at these depositions in his official capacity as the law director for the . . . city and as the city's representative for the purpose of delivering records." *Id.* The Court of Appeals of Ohio upheld the denial of a disqualification motion filed by the defendants. *Id.*, at 534.

Turning back to the present case, given (i) the lack of facts and law supporting the defense's Motion to Disqualify, (ii) the defense's failure to file the motion in a timely manner, and (iii) the abundance of case law from sister jurisdictions illustrating the shortcomings of the defense's argument, it is clear that there is no merit to said Motion.

CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court deny Defendant's Motion to Disqualify the Attorney General's Office.

DATED this 12th day of March, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Jason Gunnell
JASON GUNNELL (Bar No. 13997)
Senior Deputy Attorney General

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DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1968172, Defendant.	Case No.: C-17-327439-1 Dept. No.: 17 Hearing Date: March 15, 2018 Hearing Time: 8:30 AM

STATE'S AMENDED OPPOSITION TO DEFENDANT'S MOTION TO DISMISS BASED UPON VINDICTIVE PROSECUTION

ADAM PAUL LAXALT, Attorney General for the State of Nevada, through Senior Deputy Attorney General, Jason Gunnell, hereby submits the State's Opposition to Defendant's Motion to Dismiss Based upon Vindictive Prosecution. This motion is made and based upon the pleadings on file, the following memorandum of points and authorities, and any oral arguments the Court may allow.

Dated this 13th day of March, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Jason Gunnell
JASON GUNNELL (Bar No. 13997)
Senior Deputy Attorney General

Case Number: C-17-327439-1

DECLARATION

JASON GUNNELL makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am a Senior Deputy Attorney General assigned as one of the prosecutors in this instant matter.
2. Ms. Chelsea Kallas and I are members of the Criminal Prosecution Unit which is part of the Bureau of Criminal Justice.
3. I am more than 18 years of age and am competent to testify as to the matters stated herein. I also have personal knowledge of the facts stated herein or I have been informed of these facts and believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 13th day of March, 2018.

/s/ Jason Gunnell
JASON GUNNELL

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In the present Motion, the defense accuses the prosecutors in the present matter of prosecutorial misconduct. Specifically, the defense argues that, "[i]t wasn't until after Mixon invoked his legal rights in federal court that the State vindictively charged Mixon with crimes related to an incident that he had been reasonably led to believe was closed." Motion to Dismiss, at 5:18-5:20. The Motion is untimely and frivolous.

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"In our adversarial system, the State has an almost exclusive right to decide how to charge a criminal defendant. . . ." *Righetti v. Eighth Judicial District Cour ex rel. County of Clark*, 388 P.3d 643, 647, 133 Nev. Adv. Op. 7 (2017). "[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute . . . generally rests entirely in his discretion." *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978).

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[1] The Nevada Supreme Court held as much in the unpublished opinion issued in *Griffo v. State*, 2015 WL 5176815 (Nev. 2015).

authority is not surprising, as the argument is utterly absurd and flies in the face of the evidence and applicable case law. *See United States v. Gallegos-Curiel*, 681 F.2d 1164, 1168 (9th Cir.1982) ("[T]he link of vindictiveness cannot be inferred simply because the prosecutor's actions followed the exercise of a right, or because they would not have been taken but for exercise of a defense right.").

In *Goodwin* – a case cited by the defense – the United States Supreme Court stated: "There is good reason to be cautious before adopting an inflexible presumption of prosecutorial vindictiveness in a pretrial setting." 457 U.S., at 381.[2] In *Goodwin*, the Court ultimately found that the filing of more serious charges after a defendant chooses to exercise his right to a trial by jury does not give rise to a presumption of prosecutorial vindictiveness. *Id.*, at 384.

Here, the prosecutors' conduct was even more benign than that of the prosecutor in *Goodwin*. Here, the evidence clearly suggests that, until the investigative report and evidence relating to the underlying crime was submitted to the prosecutors, said prosecutors did not even know who Antonio Mixon was, let alone the fact that he committed any crimes or had filed federal civil rights lawsuits against various State agencies. Specifically, on page one of the discovery, one can clearly see that the investigative report submitted to the OAG for this particular case was signed on December 19, 2016. Exhibit 1 (Investigative Report Cover). Thus, the State did not even have the opportunity to file criminal charges against Defendant before he filed his civil rights lawsuits. Dismissing the criminal charges under these circumstances would lead to absurd results. Specifically, any defendant who is arrested for a crime could prevent his prosecution by simply filing a civil rights lawsuit before the State files criminal charges against him. According to the defense's unsupported and ridiculous contentions, such a timeline would create a presumption that any such prosecution is the product of vindictiveness.

In *Goodwin*, the Court noted that "[a] prosecutor should remain free before trial to exercise the broad discretion entrusted to him to determine the extent of the societal interest in the prosecution." 457 U.S., at 382. That is exactly what the prosecutors in the present case did: They were presented with evidence clearly indicating that Defendant committed multiple crimes, so they properly filed criminal charges.

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[2] While the defense cited *Goodwin* in its Motion, not surprisingly, it made no mention of this clearly applicable caution.

"A charging decision does not levy an improper 'penalty' unless it results **solely** from the defendant's exercise of a protected legal right, rather than the prosecutor's normal assessment of the societal interest in prosecution." *United State v. Goodwin*, 457 U.S. 368, 380 n.11 (1982) (citing Westen & Westen, A Constitutional Law of Remedies for Broken Plea Bargains, 66 Calif.L.Rev. 471, 486 (1978)) (emphasis added). Here, the prosecutors' actions did not result in any way – let alone solely – from the defendant's filing of his civil lawsuits; the prosecutors' actions resulted from the State's statutory duties to protect individuals in NDOC facilities and prosecute prisoners who commit crimes, *see* NRS 228.170, as well as Defendant's inability to abide by the law. As the Ninth Circuit Court of Appeals has so aptly stated: "When increased charges are filed in the routine course of prosecutorial review or as a result of continuing investigation . . ., there is no realistic likelihood of prosecutorial abuse, and therefore no appearance of vindictive prosecution arises merely because the prosecutor's action was taken after a defense right was exercised." *Gallegos-Curiel*, 681 F.2d, at 1169.

To the extent that the defense is attempting to argue that the NDOC's alleged delay in referring the case to the OAG for prosecution is the basis for the claim of prosecutorial misconduct, the Court should deny the Motion as wholly unsupported by fact or law. The defense fails to cite a single authority to support the principle that, for the purposes of a vindictive prosecution argument, the alleged vindictiveness of an investigator can be imputed to the prosecutor.

While the State respects the fact that the defense has a duty to provide a zealous defense, that duty does not give rise to a right to make baseless accusations of prosecutorial misconduct. Should the defense continue to make such accusations, the State will respond with a request for sanctions. *See Young v. Ninth Judicial District Court*, 107 Nev. 642 (1991) (upholding sanctions against defense counsel for making unsubstantiated allegations of misconduct).

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CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court deny Defendant's Motion to Dismiss Based upon Vindictive Prosecution.

DATED this 13th day of March, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Jason Gunnell
JASON GUNNELL (Bar No. 13997)
Senior Deputy Attorney General

EXHIBIT 1

EXHIBIT 1

STATE OF NEVADA
DEPARTMENT OF CORRECTIONS
OFFICE OF THE INSPECTOR GENERAL

CASE NO: IN-2015-467

INVESTIGATION REPORT

Investigation Type: Charges of NRS 220.481 Battery of a Peace Officer, NRS 212.160 Furnishing of a weapon by a prisoner, and NRS 207.012 Habitual Felon

Victim/Involved Person: Mixon (Last Name) 1019828 (BAC #) Antonio (First Name) (Middle Initial)

Address: High Desert State Prison **Telephone** N/A

Location of Occurrence: High Desert State Prison

Date & Time of Occurrence: December 4, 2015 **Date Assigned:** December 11, 2015

Assigned Investigator(s): Victor Daniel

Case Status/Disposition: *Referred to Warden* ( ) *Referred to Attorney General* (X)
Referred to Outside Agency ( ) *Referred to District Attorney* ( )

Closed ( )

By Arrest ( ) (Criminal Charges Filed)

Other ( ) (Criminal Charges Declined or Insufficient Evidence to Arrest/Charge)

Inmate Discipline ( ) (Referred to Institution for Appropriate Action on Inmate)

No Further Action/Resolved ( ) (Non-Criminal Matter Resolved)

Unfounded ( ) (Investigation Disclosed Incident did not occur)

Inactive ( ) (Per Director/IG or Referred to another agency for investigation)

Investigation Continues ( )

Further Investigation ( )

Pending Prosecution Decision ( ) (By Appropriate Prosecutor's Office)

PREA ( )

Substantiated ( )

Unsubstantiated ( )

Unfounded ( )

Investigator

12-19-16
Report Date

Office of the Inspector General

APPROVED

Supervisor

Pamela Del Porto

Inspector General

OFFICIAL USE ONLY

THIS DOCUMENT IS THE PROPERTY OF THE STATE OF NEVADA, DEPARTMENT OF CORRECTIONS. THE CONTENTS ARE CONSIDERED CONFIDENTIAL AND MAY NOT BE REPRODUCED OR DISSEMINATED WITHOUT THE EXPRESSED WRITTEN PERMISSION OF THE OFFICE OF THE INSPECTOR GENERAL.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing STATE'S AMENDED OPPOSITION TO DEFENDANT'S MOTION TO DISMISS BASED UPON VINDICTIVE PROSECUTION with the Clerk of the Court by using the electronic filing system on the 13th day of March, 2018.

The following participants in this case are registered electronic filing system users and will be served electronically

Ashley Sisolak

/s/ Julie A. FoxMcCullough
An employee of the Office of the Attorney General

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1968172, Defendant.	Case No.: C-17-327439-1 Dept. No.: 17 Hearing Date: March 15, 2018 Hearing Time: 8:30 AM

STATE'S AMENDED OPPOSITION TO DEFENDANT'S MOTION TO DISQUALIFY THE ATTORNEY GENERAL'S OFFICE

ADAM PAUL LAXALT, Attorney General for the State of Nevada, through Senior Deputy Attorney General, Jason Gunnell, hereby submits the State's Opposition to Defendant's Motion to Disqualify the Attorney General's Office. This motion is made and based upon the pleadings on file, the following memorandum of points and authorities, and any oral arguments the Court may allow.

Dated this 13th day of March, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Jason Gunnell
JASON GUNNELL (Bar No. 13997)
Senior Deputy Attorney General

Case Number: C-17-327439-1

DECLARATION

JASON GUNNELL makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am a Senior Deputy Attorney General assigned as one of the prosecutors in this instant matter.
2. Ms. Chelsea Kallas and I are members of the Criminal Prosecution Unit which is part of the Bureau of Criminal Justice.
3. I am more than 18 years of age and am competent to testify as to the matters stated herein. I also have personal knowledge of the facts stated herein or I have been informed of these facts and believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 13th day of March, 2018.

/s/ Jason Gunnell
JASON GUNNELL

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS AND RELEVANT PROCEDURAL HISTORY

On December 4, 2015, Defendant – an NDOC inmate – possessed a shank and threw a rock at a corrections officer. According to the defense, on August 24, 2016 and October 24, 2016, Defendant filed lawsuits against the State and various State agencies, including the NDOC and its officials. Motion to Disqualify, at 3:7-3:14. At some point after those lawsuits were filed, the NDOC referred criminal charges to the Office of the Attorney General ("OAG") relating to the December 4, 2015 incident noted above.

On August 18, 2017, the State filed a criminal complaint charging Defendant with Battery By a Prisoner (a category B felony) and Possession or Control of Dangerous Weapon or Facsimile By an Incarcerated Person (a category B felony). According to the complaint, on December 4, 2015, Defendant – an NDOC inmate – possessed a shank and threw a rock at a corrections officer. On October 24, 2017, Defendant waived his right to a preliminary hearing and the matter was bound up to district court.

On December 20, 2017, the State offered Defendant the opportunity to enter into a plea agreement under the terms of which Defendant would plead guilty to the crime of Attempt Possession of a Dangerous Weapon by an Inmate (a category C felony) and the parties would jointly recommend an 18- to 48-month term of imprisonment. The plea offer was consistent with plea deals offered by the OAG for similar crimes.

On January 2, 2018, a trial commenced. The Court declared a mistrial based on the fact that one of the witnesses apparently gave a statement that had not been turned over to the defense. Said statement: (1) was not exculpatory; and (2) was previously not known by the OAG to have existed. The trial has been reset to commence on March 26, 2018. On March 5, 2018, the defense filed the present Motion.

ARGUMENT

The defense argues that the OAG should be disqualified because, prior to the filing of the criminal complaint, Defendant – a prisoner incarcerated in an NDOC facility – "filed several separate civil rights lawsuits in the U.S. District Court" and "[t]he named defendants in these various suits include; Ely State Prison, High Desert State Prison, the State of Nevada, the Nevada Department of Corrections, various wardens and corrections officers." Motion to Disqualify, at 3:8-3:14.

/ / /

NRS 174.105(1) provides: "Defenses and objections based on defects in the institution of the prosecution, other than insufficiency of the evidence to warrant an indictment, or in the indictment, information or complaint, other than that it fails to show jurisdiction in the court or to charge an offense, may be raised only by motion **before trial. The motion shall include all such defenses and objections then available to the defendant.**" (emphasis added). Similarly, NRS 174.125(1) states, in pertinent part: "all . . . motions which by their nature, if granted, delay or postpone the time of trial must be made before trial, unless an opportunity to make such a motion before trial did not exist or the moving party was not aware of the grounds for the motion before trial." The defense's Motion to Disqualify is based on information Defendant possessed before the first trial was held in the present matter. Thus, by failing to file this Motion prior to the first trial, the defense waived any argument the OAG must be disqualified.

In the event that the Court entertains the present Motion, it should be denied as meritless. In support of their frivolous and untimely Motion, the defense cites two cases.

First, the defense misquotes *State v. Eighth Jud. Dist. Ct. (Zogheib)*, 321 P.3d 882 (Nev. 2014), and states that "the appropriate inquiry to determine disqualification of an office 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." Motion to Disqualify, at 4:5-4:9. Not surprisingly, the defense fails to mention that, in *Zogheib*, the Nevada Supreme Court noted "several policy arguments in favor of a test that **limits** the disqualification of an entire [prosecution] office," including:

(1) "there is a large cost to the county in paying for a special prosecutor to prosecute the case";

(2) "an attorney is presumed to perform his ethical duties, including keeping the confidences of a former client"; and

(3) "the courts should not unnecessarily interfere with the performance of a prosecutor's duties."

321 P.3d, at 886 (emphasis added). Moreover, the issue the Court addressed in *Zogheib* was "whether [a] conflict of interest [with Clark County District Attorney Steve Wolfson] was properly imputed to all of the lawyers in his office . . . ." 321 P.3d, at 883. In other words, the applicability of the primary case upon the defense's argument rests is questionable at best.

Second, the defense cites *Summers v. Warden of Nev. State Prison*, 440 P.2d, 388, 390 (Nev. 1968), for the principle that "due process forbids action which is fundamentally unfair and shocking to the

universal sense of justice." Motion to Disqualify, at 4:23-4:25. However, the defense fails to cite a single fact related to the present matter that any reasonable person would find shocking.

While it appears that the Nevada Supreme Court has never addressed the precise issue raised by the defense, other courts that have addressed it have rejected the argument that a prosecuting office must be disqualified because the defendant has a pending civil action against said prosecuting office (or individuals employed by the office).

Faced with a similar argument that suggested a more direct conflict of interest than that asserted in the present case, the Missouri Court of Appeals stated: "Filing a civil rights lawsuit against the prosecutor does not establish hostility of the prosecutor toward a criminal defendant." *State v. Sonka*, 893 S.W.2d 388, 389 (Mo. Ct. App. 1995). As the Missouri Court of Appeals so aptly stated, "[a]llowing the filing of such litigation to require the disqualification of a prosecutor could paralyze prosecutions of criminal defendants." *Id.; see State v. Tyler*, 587 S.W.2d 918, 930 (Mo. Ct. App. 1979) (Where defendant had 14 or 15 civil rights lawsuits pending against various government officials, including the prosecutor: "[T]he defendant could paralyze the prosecution if he could secure the disqualification of prosecutors and other law enforcement officials by the simple expedient of filing a lawsuit against them.").

Similarly, in *Kindred v. State*, the Indiana Supreme Court denied the defendant's claim that a special prosecutor should have been appointed because: (1) one day prior to the filing of a criminal complaint against the defendant, the defendant had filed a federal civil rights lawsuit against the prosecutor; and (2) there were allegations that the defendant had threatened the prosecutor's life. 521 N.E.2d 320, 327 (Ind. 1988). The Supreme Court of Indiana correctly agreed with the State that "to allow prosecutors to be disqualified merely upon the unilateral action of defendants, *e.g.*, filing lawsuits, would lead to absurd consequences." *Id.; see Aschliman v. State*, 578 N.E.2d 759, 765-66 (Ind. 1991) (same holding where defendant filed a federal lawsuit and a bar complaint).

In *Strongsville v. Waiwood*, 62 Ohio App.3d 521 (1989), the Court of Appeals of Ohio was confronted with the following facts. The defendants got in a scuffle with police officers. *Id.*, at 523. As a result, the City filed criminal complaints against the defendants, charging them with resisting arrest and assault. *Id.* After their arrests, the defendants "filed a civil suit in federal district court against the . . . city." *Id.*, at 533. The defendants "subpoenaed the [City's] law director to be deposed" and "subpoenaed a

representative of the city to bring certain records to a deposition." *Id.* "The prosecutor in this case appeared at these depositions in his official capacity as the law director for the . . . city and as the city's representative for the purpose of delivering records." *Id.* The Court of Appeals of Ohio upheld the denial of a disqualification motion filed by the defendants. *Id.*, at 534.

Turning back to the present case, given (i) the lack of facts and law supporting the defense's Motion to Disqualify, (ii) the defense's failure to file the motion in a timely manner, and (iii) the abundance of case law from sister jurisdictions illustrating the shortcomings of the defense's argument, it is clear that there is no merit to said Motion.

CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court deny Defendant's Motion to Disqualify the Attorney General's Office.

DATED this 13th day of March, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Jason Gunnell
JASON GUNNELL (Bar No. 13997)
Senior Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing STATE'S AMENDED OPPOSITION TO DEFENDANT'S MOTION TO DISQUALIFY THE ATTORNEY GENERAL'S OFFICE with the Clerk of the Court by using the electronic filing system on the 13th day of March, 2018.

The following participants in this case are registered electronic filing system users and will be served electronically

Ashley Sisolak

/s/ Julie A. FoxMcCullough
An employee of the Office of the Attorney General

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DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1968172, Defendant.	Case No.: C-17-327439-1 Dept. No.: 17 Hearing Date: March 15, 2018 Hearing Time: 8:30 AM

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE

ADAM PAUL LAXALT, Attorney General for the State of Nevada, through Deputy Attorney General, Chelsea Kallas, hereby submits the State's Opposition to Defendant's Motion to Dismiss With Prejudice. This motion is made and based upon the pleadings on file, the following memorandum of points and authorities, and any oral arguments the Court may allow.

Dated this 14th day of March, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

Case Number: C-17-327439-1

MEMORANDUM OF POINTS AND AUTHORITIES

On October 25, 2017, Antonio Lee Mixon (hereinafter "Defendant") was charged by way of Information with the following: Count 1 – Battery By A Prisoner (Category B Felony – NRS 200.482(2)(f)); and Count 2 – Possession or Control of Dangerous Weapon or Facsimile By An Incarcerated Person (Category B Felony – NRS 212.185(c)). On November 1, 2017, Defendant pled not guilty and invoked his right to a speedy trial. On November 14, 2017, Defendant filed a Motion to Compel Production of Discovery and Brady Material. On December 1, 2017, the State filed its Opposition. On December 5, 2017, the Court issued a minute order directing the State to turn over, among other things, all witness statements. The Court requested that Defendant file the order. On January 2, 2018, Defendant's trial commenced. On that same day, the Court declared a mistrial. On January 4, 2018, two days after a mistrial was granted, Defendant filed the discovery order. On March 5, 2018, Defendant filed the instant Motion to Dismiss With Prejudice (hereinafter "Motion"), arguing that retrial is barred by the Double Jeopardy Clause. The State responds as follows.

ARGUMENT

Defendant's present Motion is based on a misrepresentation of the facts and the applicable law. Defendant begins the Motion by falsely stating that the Court granted a mistrial because the State failed "to make mandatory discovery disclosures as required by *Brady*." Motion at 2. The Court most certainly did not find that the State failed to turn over exculpatory evidence, in violation of *Brady*; instead, the Court – noting that there was no evidence that the State acted with intent or even negligence – found that, after the Court issued its discovery order, the State failed to turn over a witness statement that needed to be disclosed pursuant to said order. (Exhibit A – Reporter's Transcript, January 2, 2018 ("RT") at 46).

As will be explained in further detail below, Defendant then attempts to persuade the Court to apply an inapplicable standard when analyzing the double jeopardy issue.

"Generally, a state may not put a defendant in jeopardy twice for the same offense." *Thomas v. Eighth Judicial District Court, in and for County of Clark*, 204 P.3d 619, 624 (Nev. 2017) (citing U.S. Const. amend. V; Nev. Const. art. 1, § 8). While defense counsel cites *Thomas* in the present Motion, she does not simply fail to point out that in that case, the Nevada Supreme Court explained that the applicable standard for analyzing double jeopardy issues when the prosecutor requests a mistrial is different from the

standard that applies when the defense requests a mistrial, *see Thomas*, 204 P.3d, at 624-25; defense counsel actually takes it a step further and attempts to persuade the Court to apply the standard applicable to cases where the prosecutor requests the mistrial. Motion at 4-6. In *Thomas*, the defendant moved for a mistrial. 204 P.3d, at 622. The Nevada Supreme Court first stated that, under the Double Jeopardy Clause of the United States Constitution, "a defendant's motion for, or consent to, a mistrial generally removes any double jeopardy bar to reprosecution." *Id.*, at 624. The Court then acknowledged "a narrow exception," where, "in those circumstances where the prosecutor **intentionally** provokes or 'goad[s]' the defendant into moving for a mistrial, a defendant may raise double jeopardy as a defense to subsequent reprosecution." *Id.*, at 624 (quoting *Oregon v. Kennedy*, 456 U.S. 667, 673-74 (1982)) (emphasis added).

In the present case, the State quite clearly did not intend to cause a mistrial, as evidenced by the fact that the State vigorously opposed the defense's request for a mistrial. (Exhibit A – RT at 29-47). Moreover, in the present Motion, the defense does not even accuse the State of **intentionally** causing the mistrial. Thus, the present Motion does not assert any factual allegations – let alone include any evidentiary support – sufficient to support a finding that retrial is barred under the Double Jeopardy Clause of the United States Constitution.

These same shortcomings nullify any argument that retrial is barred under the Double Jeopardy Clause of the Nevada Constitution. In *Thomas*, the Court opined that:

> [W]hen evaluating a double jeopardy claim [under the Nevada Constitution] **following a defendant's motion for mistrial**, courts should consider whether:
>
> > 1. Mistrial is granted because of improper conduct or actions by the prosecutor; and
> >
> > 2. such conduct is not merely the result of legal error, **negligence**, mistake, or insignificant impropriety, but, taken as a whole, amounts to **intentional conduct** which the prosecutor knows to be improper and prejudicial, and which he pursues for any improper purpose with indifference to a significant resulting danger of mistrial . . .; and
> >
> > 3. the conduct causes prejudice to the defendant which cannot be cured by means short of a mistrial.

402 P.3d, at 626-27 (quoting *Pool v. Superior Court*, 139 Ariz. 98, 677 P.2d 261, 271-72 (1984) (interpreting Arizona's Double Jeopardy Clause)) (emphasis added). Applying that standard with respect to Defendant's present Motion, it is clear that Defendant has failed to allege the intent required by *Thomas*,

let alone provide any evidentiary support for such an allegation. Moreover, any prejudice could have been cured by a short continuance of the trial.

With respect to the first prong of the *Thomas* analysis, it is quite clear that the mistrial was not the product of any improper conduct by the State. There is not a shred of evidence that, prior to the issue being raised on cross examination, the State was aware that the witness made a statement in relation to a workers' compensation claim. Workers' compensation claims are made when a worker is injured. In all of the evidence provided to the State prior to the trial, there is no mention of the witness being injured, let alone him making a statement in relation to a workers' compensation claim. Failure to turn over a statement that was not known to have existed cannot be a basis for a finding of improper conduct. In fact, after the Court granted Defendant's motion for a mistrial, the State was informed that Defendant possibly did have knowledge about these statements prior to the commencement of trial. If so, then Defendant, not the State, acted improperly.

With respect to the second prong of the *Thomas* analysis, as explained above, there is simply no basis to find that the State **intentionally** acted improperly. In fact, in the present Motion, Defendant does not even make that allegation. Instead, Defendant characterizes the State's conduct as "inexcusably negligent." Motion at 6. Setting aside the fact that, Defendant cites to no **evidence** whatsoever in support of that characterization, it is clear that the defense's Motion is defeated by its own allegations (or lack thereof); by failing to allege that the mistrial was a product of the State's **intentional** conduct, the defense has failed to allege – much less support – conduct that bars retrial under Nevada's Double Jeopardy Clause.

Seemingly in recognition of the weakness of the present Motion, Defendant: (1) ignores the "intent" requirement of the second prong of the *Thomas* analysis; and (2) cites *Hylton v. Eighth Judicial Dist. Court*, 103 Nev. 418 (1987) – a case the *Thomas* Court made clear "relates to those instances in which the **State requests** a mistrial" – to support the argument that mere negligence can satisfy the second prong of the *Thomas* analysis. Motion at 4-6. In other words, Defendant's entire argument is based upon a misrepresentation of the applicable law. Thus, it is clear that, in the present case, the defense has not and cannot (and has not even attempted to) satisfy the "intent" requirement of the second prong of the *Thomas* analysis. Moreover, Defendant appears to blatantly disregard the Court's multiple rulings at trial that it did

not find the State's conduct intentional. (Exhibit A – RT at 33, 35, 37, 40, 42, and 46). Because the Court has already ruled that there was no intentional conduct by the State, any allegations by Defendant to the contrary should be denied. Additionally, Defendant conveniently forgets his own representations at trial that he did not believe the State's conduct was intentional:

> MS. SISOLAK: ***--I'm not making the accusation that it was intentionally withheld.***

(Exhibit A – RT at 33) (emphasis added). In fact, Defendant specifically asked the Court to find the State's conduct was *unintentional*:

> THE COURT: I'm saying there's nothing in front of me at this time to show intentional (indiscernible).
>
> MS. KALLAS: And then that's –
> MS. SISOLAK: ***Not intentional. I'm asking if you would deem it grossly negligent which is unintentional negligence.***

(Exhibit A – RT at 42) (emphasis added).

Here, the State did not engage in any bad faith conduct or intend to act in any way that could possibly result in a mistrial. The State did not intentionally withhold CO Ontiveros' C1 packet from Defendant as the State never had it in its possession, which the Court noted during trial (Exhibit A – RT at 46).

Defendant argues the State should have made a simple inquiry regarding this evidence. If such inquiry is as simple as Defendant asserts, the State is unclear why Defendant did not make the inquiry himself.[1] Moreover, the State did in fact reach out to the assigned criminal investigator in the instant case

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[1] Defendant has an obligation to investigate and obtain exculpatory and impeachment information. It cannot simply sit on its hands and then claim a *Brady* violation if the information was equally available through the exercise of due diligence:

> It is well-settled that the government does not violate *Brady* by failing to disclose exculpatory or impeaching evidence that is available to the defense from other sources in the exercise of due diligence. *See, e.g., United States v. Hicks*, 848 F.2d 1, 4 (1st Cir.1988) (no *Brady* violation for failure to disclose grand jury testimony of potential witness not called to testify at trial because defense knew of and had access to witness and thus was "on notice of the essential facts required to enable him to take advantage of [the] exculpatory testimony") (citation omitted); *Lugo v. Munoz*, 682 F.2d 7, 9-10 (1st Cir.1982) (government has no Brady burden when facts are readily available to a diligent defender); *United States v. Zackson*, 6 F.3d 911, 918 (2d Cir.1993) ("Evidence is not "suppressed" if the defendant either knew, or should have known, of the essential facts permitting him to take advantage of any exculpatory evidence."); *United States v. Perdomo*, 929 F.2d 967, 973 (3d Cir.1991) (*dicta*) ("Evidence is not considered suppressed if the defendant either knew or should have known of the essential facts permitting him to take advantage of any exculpatory evidence."); *United States v. Todd*, 920 F.2d 399, 405 (6th Cir.1990) (nondisclosure of possible exculpatory material does not violate *Brady* when the "defendant was aware of the

to ascertain whether the State had all discovery. The investigator confirmed to the State that they had the "entire file." (See Exhibit B). Additionally, the State spoke with CO Ontiveros multiple times before trial and at no point did he mention filling out a C-1 packet. In fact, the State did not become aware that CO Ontiveros filled out this packet until he testified to doing so during trial. (Exhibit A – RT at 30, 32, 33, 34, 45 and 46). Because the State (1) did not have possession of the C-1 packet; and (2) was entirely unaware of the C-1 packets existence it could not possibly have intentionally withheld such statements from Defendant.

With respect to the third prong of the *Thomas* analysis, it is clear that any prejudice caused by the failure to turn over a brief and non-exculpatory statement could have easily been cured by means short of a mistrial. The statement at issues is a mirror image of the prior statements made by CO Ontiveros (See Exhibit C and Exhibit D). The Court could have ordered a brief continuance of the trial to allow the defense to review the statement – a review that should have taken minutes, not days. *See Thomas*, 402 P.3d, at 627-29 (Noting that, while such a continuance may be proper, it was not proper in *Thomas*, given, *inter alia*, "the exculpatory nature and volume of the documents disclosed, and the number of witnesses that had already testified . . . ."). Because Defendant has undeniably failed to meet the three prong test under *Thomas*, he may be retried without implicating the Double Jeopardy Clause and his Motion should be denied.

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essential facts that would enable him to take advantage of the exculpatory evidence."); *United States v. Romo*, 914 F.2d 889, 899 (7th Cir.1990) (when defense counsel knows about a witness with possible exculpatory information, and has an opportunity to subpoena that witness, prosecutor has no obligation to seek out and provide the information).

U.S. v. Ringwalt, 213 F.Supp.2d 499, 517 (E.D.Pa., 2002).

CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court deny Defendant's Motion to Dismiss With Prejudice.

DATED this 14th day of March, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Chelsea Kallas
CHELSEA KALLAS (Bar No. 13902)
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE with the Clerk of the Court by using the electronic filing system on the 14th day of March, 2018.

The following participants in this case are registered electronic filing system users and will be served electronically:

Ashley Sisolak

/s/ Salvador Heredia
An employee of the Office of the Attorney General

EXHIBIT A

EXHIBIT A

Electronically Filed
2/1/2018 8:12 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. ANTONIO LEE MIXON, Defendant.	CASE NO.: C-17-327439-1 DEPT. XVII

BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

TUESDAY, JANUARY 2, 2018

RECORDER'S PARTIAL TRANSCRIPT OF HEARING
JURY TRIAL - DAY 1
[STATE'S OPENING; DIRECT AND CROSS-EXAMINATION OF DEAN ONTIVEROS]

APPEARANCES:

For the State: JASON GUNNELL, ESQ.
Senior Deputy Attorney General
CHELSEA KALLAS, ESQ.
Deputy Attorney General

For the Defendant: ASHLEY SISOLAK, ESQ.
TEGAN MACHNICH, ESQ.
Deputy Public Defenders

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

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Las Vegas, Nevada, Tuesday, January 2, 2018

[Jury trial began at 11:20 a.m.- not transcribed]

[State's opening statement begins at 3:57 p.m.]

[Inside the presence of the jury]

THE COURT: All right, welcome back ladies and gentlemen.

State, are you ready for your opening?

MS. KALLAS: Court's indulgence, Your Honor.

THE COURT: Sure.

MS. KALLAS: I apologize.

[Colloquy between State and Defense Counsel]

MS. SISOLAK: Thank you, Your Honor.

THE COURT: Go ahead, State.

[STATE OPENING STATEMENT]

MR. GUNNELL: Good afternoon, ladies and gentlemen.

On December 4th, 2015 it started out as an average day for Officer Ontiveros and Officer Mcaninch. Officer Mcaninch had just came on board at NDOC. It was his third day on his job. He hadn't even gone to training. Officer Ontiveros had a little more experience and you'll see him testify today. He's now a sergeant with Nevada Department of Corrections. At the time, he was kind of the trainee training Officer Mcaninch.

They're up at High Desert State Prison. They're out on the yard, the exercise place for the inmates up there, and they notice something kind of -- something going along with the Defendant sitting at the table. And as they approached him, the Defendant picked up one of

the rocks that's on the yard -- southern Nevada there was a lot of rocks everywhere -- picked up one of the rocks and threw it and it struck Officer Ontiveros. After that, he pulled out what we call is a shank or weapon, a homemade weapon, a prison weapon out of his shoe. He brandished that. At that time, and you'll hear the testimony of the two corrections officers who were involved in that, their discussions with these individuals -- they told him to get on the ground. Certain things happened not that long in time and then he actually went to the ground. He dropped the shank and they actually put him in custody.

Ladies and gentlemen, this is a simple case. That's it. That's what happened and that's why we're here today. It's not complex and you're not going to hear from the State a bunch of craziness occurring. You're not going to see crazy CSI what you -- on TV or anything like that. It's a simple case.

A correction officer was struck by a rock and then the Defendant had in his possession a shank, a tool, you know, used to stick -- you know stab people or things like that in prison and --

MS. MACHNICK: Your Honor, I'm going --

MR. GUNNELL: -- that's it.

MS. MACHNICK: -- to object to argumentative at this point. I don't know if what if this is within --

THE COURT: Sustained.

MS. MACHNICK: Thank you.

THE COURT: Okay.

MR. GUNNELL: Ladies and gentlemen, the evidence will show, and

you'll hear testimony of that today, the evidence will show through three witnesses that we're going to call, the two corrections officers and a third who was there at the scene and overheard some statements, and he'll discuss those statements. Ladies and gentlemen, we'll just ask you at the end of the evidence that you find the Defendant guilty.

Thank you.

THE COURT: All right, thank you, Counsel.

Does the Defense wish to exercise their right for an opening at this time?

MS. MACHNICK: Your Honor, at this time, the Defense will be reserving the right for an opening statement to the opening of the Defense case.

THE COURT: All right.

MS. MACHNICK: Thank you.

THE COURT: Thank you.

State, call your first witness, please.

MS. KALLAS: The state's first witness is Dean Ontiveros. Oh, Your Honor, did you want to do the stipulations first --

THE COURT: Yes, we can -- go ahead and do the stipulation.

[Colloquy between State and Defense counsel]

The Defense and the State have stipulated that on December 4, 2015, Defendant Antonio Lee Mixon was in lawful custody at the Nevada Department of Corrections and was incarcerated at the Henderson -- or High Desert State Prison as a prisoner.

THE COURT: Is that correct, Defense Counsel? You are entering

into that stipulation?

MS. SISOLAK: That is correct, Your Honor.

THE COURT: Ladies and gentlemen, I had previously advised you that the evidence in this case comes from the witness testimony and any exhibits admitted into evidence, and also stipulated facts. The stipulation just read to you by the Deputy Attorney General is a stipulated fact by both sides. You are to consider that fact as proof for this case.

DEAN ONTIVEROS

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

THE CLERK: Please state and spell your first and last name for the record.

THE WITNESS: First name Dean Ontiveros.

THE CLERK: Spell your name, please?

THE WITNESS: Last name, O-N-T-I-V as in Victor-E-R-O-S.

THE COURT: Go ahead, Counsel.

MS. KALLAS: Court's indulgence.

Your Honor, may we approach?

THE COURT: All right.

[Bench conference begins]

MS. KALLAS: Are you going to read the instruction not --

THE COURT: I'm sorry?

MS. KALLAS: Were you going to read the instruction that Jason gave regarding the stipulation?

MR. GUNNELL: Yeah; we just need that read 'cause it's a --

THE COURT: Okay, I'll read it now.

MR. GUNNELL: Yeah.

THE COURT: Okay.

MS. SISOLAK: Thank you.

[Bench conference ends]

THE COURT: Ladies and gentlemen, as I had mentioned before, the parties have stipulated to the fact that the Defendant is an inmate, or was at the time of the alleged offense -- was an inmate in lawful custody in the Nevada Department of Corrections as a prisoner and he was incarcerated at High Desert State Prison at the time of the incident. You should not guess or speculate as to the reason why the Defendant was in the custody of the Nevada Department of Corrections. You cannot use the fact the Defendant was incarcerated or any fact that resulted in his incarceration for any purpose other than to establish the Defendant was in fact incarcerated at the time of the alleged -- that the events alleged. You may not convict a person simply because you believe he may have committed some other act at another time. Keep in mind that the Defendant is on trial for the crimes charged in this case and for these crimes only.

Go ahead, Counsel.

DIRECT EXAMINATION

BY MS. KALLAS:

Q Sir, how are you employed?

A [Indiscernible]

Q How are you employed?

A How? I don't understand the question.

Q What do you do for a living?

A Oh, what I do. Oh, my bad. I'm a correctional officer at the High Desert State Prison.

Q And how long have you been a correction officer with the prison?

A 12 years and some change, coming up on 13 in October.

Q As a correction officer, do you work at the Nevada Department of Corrections?

A Yes, ma'am.

Q Specifically, what are your job responsibilities as a corrections officer?

A Public safety, inmate safety, staff safety.

Q Could you take me through a typical day what you do exactly?

A Oh, if we're talking about the incident at hand, when I was --

Q Not at hand, just in general.

A Just in general --

Q Just your general specific responsibilities.

A As a sergeant for the Department of Corrections I'm responsible for about approximately 10 to 11 officers right now in the section that I work at. We prepare close to 4000 meals -- well, more than -- about 4000 meals a day for the incarcerated inmates. A typical day we just do what we do, you know, feed, get things ready, you know, um feed the inmates and go home.

Q And in December 2015 were you employed in that capacity?

A No; at that time I was a senior correctional officer.

Q And what were your job responsibilities at that time?

A I was basically a, like a junior sergeant within the unit. There was approximately -- we had approximately 168 inmates. I was in charge of training young officers, security of the officers and inmates, shake down, you know, searches, looking for whatever we had to do, walk medical personnel around when they do their pill calls and stuff like that. So, basically just oversee the whole unit of 168 inmates on a normal day, just make sure they're safe.

Q Mr. Ontiveros, are you familiar with the person by the name of Antonio Mixon?

A Yes, ma'am.

Q How is it that you're familiar with Mr. Mixon?

A Mr. Mixon was a inmate in my unit.

Q And do you see Mr. Mixon in the courtroom today?

A Yes, ma'am.

Q Could you please point to him and identify an article of clothing he's wearing?

A Tie and a, looks like a gray shirt or something. I can't --

MS. KALLAS: Your Honor, may the record reflect the witness has identified the Defendant?

THE COURT: Yes, it will.

BY MS. KALLAS:

Q Directing your attention to December 4th, 2015, were you working your capacity as a corrections officer on that day?

A Yes.

Q And what shift were you working?

A Working day shift.

Q And what hours does that entail?

A I was working twelves. I -- it was 5 to 5, 5:00 a.m. to 5:00 p.m.

Q And was that your normal shift?

A Yes, ma'am.

Q And which prison facility were you working at?

A High Desert State Prison.

Q Is High Desert State Prison located in Clark County, Nevada?

A Yes.

Q And could you just take me through the beginning of your day, how the day started?

A It starts every day we relieve the off going shift. We get a brief in what's been happening, you know, throughout the night. We end up feeding -- you know we have to feed the inmates. And basically, like I said, when they bring new officers in my job is to train them, ensure that I go through the operational procedures and everything else. And then we have different schedules like tier schedules for inmates to go out on tier or inmates to go out on yard. We have to ensure and, you know, make sure that we're watching them, you know, for any type of illegal activities that they might be doing, gambling or whatever the case may be. And it goes on all day with one hundred -- you got an officer upstairs and you got two on the floor.

Q And would you classify that as part of your normal routine?

A Yes.

Q And specifically on December 4, 2015, where in the prison were you working around 9:00 a.m. that morning?

A We had just -- I was -- we just let a group of inmates go out to the inner quad -- or inner yard for their yard time.

Q Could you describe what the, what did you say, the inner yard is?

A Yes, ma'am. It's a -- High Desert State Prison you have a -- you have quads. You have a unit called 5AB, 5CD, 6AB and 6CD. And the inner quad is where we let the inmates go out to get their exercise, handball, and do push-ups or whatever they want to do for recreation.

Q Could you describe, I guess, what it looks like, what the rec yard looks like?

A It's basically you have pull up bars on one side, cement slabs here in front of like 6AB, a cement slab in front of 5CD, cement slab in my unit which is 6CD where the inmates play handball. You got walkways and a lot of dirt and rocks.

Q And when you're out on the yard, did you see the Defendant at that time?

A Yes.

Q And was he alone or was he by himself?

A He was by himself.

Q And what, if anything, unusual happen when you saw the Defendant that morning?

A Well, it's just-- like I said, it was just like a real normal day. I

had an officer with me, his third day on the yard and I was teaching him the -- you know, the lay of the land --

Q And what was this --

A -- so to speak.

Q I apologize for interrupting; what was this--

A Right.

Q -- officer's name?

A Officer Macinnich.

Q Okay, I apologize. So, what if anything unusual happen?

A So, you know I was showing him the lay of the land of what inmates do what and just something about Mr. Mixon pacing back and forth. I said -- you know, it seemed like a red flag to me and I told him that's -- this is the kind of behavior you need to watch because when you're out there you'll see a routine of officers -- oh, excuse me, inmates doing their thing, handball, exercising, pull ups. One group always walks around in a, you know, clockwise circle and he was just by himself just pacing.

Q And what if anything happened next?

A Well, he just approached me. So like if we're standing in front of my unit when inmates want to go in to use the bathroom or anything like that they walk up to you and say, hey, oh, I need to go to the bathroom. I yell up at my officer upstairs to open up the door, let him in. And I thought that's what Mr. Mixon was going to do but he came up, stopped within I don't know 10 - 15 feet from me, reached down, picked up a rock and just threw it at me.

Q And when Mr. Mixon threw that rock, did he say anything to you?

A Nothing.

Q Had you said anything -- prior to him throwing that rock, had you said anything --

A No, ma'am.

Q -- to him? Okay, so he throws a rock at you. How big is that rock?

A About that big [witness demonstrates with his hands]. I couldn't even tell you. I don't know how big would that be; a little more than a golf ball.

Q And what happened after that?

A I was in shock. I never had that happen to me before. So, I took a couple of steps towards him and when I did that he reached down picked up another rock. And at this time I was like, what is he going to do with this rock and I started doing that dodge ball kind of thing. And when he just chucked it again, I kind of like twisted this way to -- you know, 'cause he hit me once in the abdomen, I was able to twist enough to where he hit my left thigh with the rock.

Q Okay, so you said that he hit you once in the abdomen and then he hit you once in the thigh?

A Yes, ma'am.

Q Okay, and how far away was the Defendant while he was throwing those rocks?

A I'd say anywhere between 10 to 15 feet away from me.

Q And at any time did you consent to the Defendant hitting you with those rocks?

A No, ma'am.

Q And prior to him -- the Defendant hitting you with the rocks, had you ever spoken to him?

A No, ma'am.

Q Had you ever met him?

A Nah, I --

Q And to your knowledge, did you and the Defendant have any issues?

A No, ma'am. I had no knowledge.

Q So at any time during this incident or prior to this incident, had you ever consented to the Defendant hitting you with rocks?

A No.

Q And did the Defendant say anything to you at all while he was throwing rocks at you?

A Nothing.

Q And did you say anything to the Defendant?

A When he hit me I said you -- I -- all I could do was react and I started walking towards him. Then when I started walking towards him he -- I quickened the pace after the second rock. Then he reached down before he hit the -- there's a sidewalk that leads to unit 5AB, right before he hit -- he had reached that sidewalk, he reached down, picked up another handful of dirt and rock and threw it in my direction again.

Q And did any of those rocks hit you?

A Yes, ma'am.

Q Where?

A Just all over the -- all over my body. It's just like -- it was like picking up a handful of dirt and rock. So when he did it I shield myself and when I went to pursue him again that's when I noticed him taking off his shoe and brandished that prison made weapon.

MS. SISOLAK: Your Honor, I'd object. May we approach?

THE COURT: Okay.

[Bench conference begins]

MS. SISOLAK: Your Honor, he's not charged with brand --

THE COURT: I'm sorry?

MS. SISOLAK: He's not charged with brandishing the shank. He's charged with having the shank. I would ask that this witness not be able to testify to something he's not charged with.

MS. KALLAS: It's his perception why he does it --

THE COURT: I'm sorry?

MS. KALLAS: -- brandishing -- it's his perception of what the Defendant was doing with that, how he was holding it, but [indiscernible] it's just a descriptive word of how he was holding a shank. I think its --

MS. SISOLAK: It's also a crime.

MS. KALLAS: It's a crime he's not charged with. It's called [indiscernible] possession which it also entails holding a shank. It's the same thing as brandishing.

MS. SISOLAK: But possession doesn't necessarily [indiscernible] than holding a shank though.

MS. KALLAS: I don't think the jury is going to be misled in regards to another bad act and the decision based on the fact that he's using the word brandishing.

MS. SISOLAK: [Indiscernible].

THE COURT: I'm sorry?

MS. SISOLAK: [Indiscernible] that the word brandishing is prejudicial.

THE COURT: I can't hear you. Say --

MS. SISOLAK: That the word brandishing is prejudicial. Holding is a different word than brandishing. Brandishing in and of itself is another bad act that they could have been charged.

THE COURT: Are you asking for a cautionary instruction at this time or just for me to direct him to -- walk him through that he just had, you know, [indiscernible] he's not using the word brandishing. [Indiscernible] request it.

MS. KALLAS: I mean I have a feeling he's going to say it again if we don't advise him not to obviously. I mean that's his way he described the -- it's his perception of the act.

MS. MACHNICH: [Indiscernible].

THE COURT: I'm sorry?

MS. MACHNICH: [Indiscernible] that we [indiscernible] to you, disregard that and want him to go [indiscernible].

THE COURT: Can you say was he [indiscernible] it, where was it? You can get around it. Just -- okay?

MS. KALLAS: Okay.

THE COURT: I'll instruct the jury to disregard the [indiscernible].

MS. SISOLAK: Thank you.

[Bench conference ends]

THE COURT: Ladies and gentlemen, the witness used the word brandishing. I am instructing you to disregard that answer.

Go ahead.

MS. KALLAS: May I proceed, Your Honor?

THE COURT: Yes.

BY MS. KALLAS:

Q So, you said the Defendant he hit you with a bunch of rocks and then you're walking towards him -- and you start walking towards him, what happened after that?

A He took off his shoe and reached into one of them. I was going to tell you exactly what shoe he picked up and pulled out a knife, a prison made weapon.

MS. KALLAS: Court's indulgence.

BY MS. KALLAS:

Q Could you describe what that item looked like?

A It's a shiny object to a point wrapped up with something so he wouldn't -- I don't know, just like -- I couldn't even explain what a prison made weapon is. It's just folded metal sharpened up to a point with this -- that's all I could see in his hand, just something shiny.

Q And where did you say he pulled that item out of?

A One of his shoes.

Q And is there a common term used to describe a prison made

weapon like this?

A Just a shank.

MS. KALLAS: Your Honor, may I approach the witness?

THE COURT: Yes.

BY MS. KALLAS:

Q I'm showing what's been previously marked State's proposed Exhibit number 2; will you take a look at that?

THE COURT: Defense, have you seen this?

MS. SISOLAK: Yes, Your Honor.

THE COURT: Okay.

MS. KALLAS: I provided them [indiscernible], Your Honor.

BY MS. KALLAS:

Q Do you recognize what's in that picture?

A It looks like the shiny object he had.

Q And is -- and again, what did you refer to this object as?

A A shank.

Q And is that a fair and accurate depiction of the shank you saw the Defendant holding?

A Yes, ma'am

MS. KALLAS: Your Honor, I'd move to admit this picture into evidence.

THE COURT: Defense?

MS. MACHNICH: No, objection.

MS. SISOLAK: No, objection, Your Honor.

THE COURT: It will be admitted.

[State Exhibit 2 admitted]

BY MS. KALLAS:

Q Now, did the Defendant say anything as he pulled the shank from his shoe?

A Nothing.

Q Were you saying anything to the Defendant?

A I tell you it happened so fast I probably could have said something but I think I said something like, that's it. I don't know.

Q And what did you mean by that's it?

A I -- when you start -- something like that happens, your adrenaline goes so high because now you're talking -- you know we have this thing -- use of force thing, a use of force to contain your men. When you start talking a weapon, its --

MS. MACHNICH: Objection, --

THE WITNESS: -- life or limb --

MS. MACHNICH: -- Your Honor, may we --

THE WITNESS: -- kind of stuff.

MS. MACHNICH: -- approach?

THE COURT: There is an objection?

MS. MACHNICH: Yes, Your Honor.

MS. SISOLAK: Yes, Your Honor.

THE COURT: What is the objection?

MS. MACHNICH: Relevance.

THE COURT: Overruled.

Go ahead; next question.

BY MS. KALLAS:

Q You can finish, --

A Oh, so --

Q -- Mr. Ontiveros.

A -- anyway, it was just -- it happened so quick and stuff like that. We just react. What I meant by what I said you're -- that's it, I was going to do everything possible to actually protect myself and probably him too just because there was a weapon involved, part of my training and job that I need to do.

Q All right. So, after the Defendant pulled a shank out of his shoe, what happened next?

A Apparent -- I heard other officers -- okay, I don't even know if it's true or not or what happened 'cause it happened so fast.

Q I need --

A Go ahead.

Q -- you to testify to what you do know to your knowledge.

A Okay, what I do know --

Q What you remember.

A -- is I heard somebody yell, get down on the ground. Then that's when the Defendant went ahead and threw himself to the ground and that's when I approached him. I -- per protocol, put my knee to hold him down and put him in a wrist lock until restraints can be put on him. I held him there because -- in that wrist lock because there's still a weapon in the area.

Q Okay, I just want to go back actually a little bit when the

Defendant pulls the shank out of his shoe; how is he holding it?

A Like this [witness demonstrates with his hands] -- in his right hand and just looking at me like -- you know.

Q Okay. So, after you said that he drop -- he eventually drops it?

A When he heard the responding officer say get on the ground.

Q Okay, and then after you put your knee on him, what happened?

A I just grabbed his right hand, put it in a wrist lock until other officers come by and one of my other officers said, I got this, and then he -- I let him go. He -- I gave control over to the other officer. They restrained him and that was the end of it, you know.

Q When you say restrained him, what do you mean?

A Put the wrist restraints, handcuffs on him.

Q And did you see where that -- the Defendant threw the shank?

A It was just in the area. I couldn't tell you exactly where it was but it was in front of him while he was on the ground.

Q And was there anyone else around while this was happening, any other inmates?

A We had a yard full of inmates. Well, I couldn't give you an exact amount, but there were inmates -- yes, they were out -- inmates around us.

Q How far away was the closest inmate to the Defendant while this was happening?

A I'd say maybe from here to that wall, the corner.

Q About how many feet would you estimate? I'm not good at it.

A I couldn't even tell you.

UNKNOWN SPEAKER: 30?

BY MS. KALLAS:

Q About 30 feet?

A Maybe 25 yards.

Q And that -- and so as this was going on was the Defendant saying anything to you?

A Once we put restraints on him and I stood up and the other officers were holding him down, he said something to the point that you're lucky my friends were here.

MS. SISOLAK: Objection, Your Honor.

THE COURT: He said what?

MS. SISOLAK: May we approach?

THE WITNESS: You're lucky my friends are here.

THE COURT: Approach.

[Bench conference begins]

MR. GUNNELL: [Indiscernible].

THE COURT: Who's going to argue? Come closer to the mic.

MS. MACHNICH: Okay, um, Your Honor, we're going to object as to one discovery violation. This was not provided us. Something like this was mentioned this morning in passing by the AG and actually a different version of the statement was told to us right before they started their case so we didn't know that this happened. All this threat-ish statement was not in the officer's report and it was not provided to us as a statement of the Defendant at any point and an incorrect version of it was provided to

us earlier today, and so we would object pursuant to *Brady*, pursuant to the discovery law and --

MS. SISOLAK: Your order.

MS. KALLAS: And, Your Honor, I did tell them almost specifically [indiscernible] that you did say that you're lucky your friends were around, so I don't understand it.

THE COURT: I'm sorry; say --

MS. SISOLAK: That's not --

MS. KALLAS: I did let them know this morning that he did say that you're lucky your friends are around, so I don't think that was provided to them this morning.

UNKNOWN SPEAKER: [Indiscernible] --

MS. KALLAS: As far as *Brady*, I don't think its exculpatory whatsoever and it goes -- but there[s also a statement that have been provided to them that you're lucky -- along the lines of you're lucky I had that shank or I would have stuck your [indiscernible]. I think this is essentially in accordance with that same type of behavior. It's not a bad act. It's not a threat.

MS. MACHNICH: Well, he --

MS. KALLAS: He's talking trash.

MS. MACHNICH: What that officer just testified to is not the same thing she just said. He said you're lucky my friends aren't around.

MR. GUNNELL: [Indiscernible].

MS. MACHNICH: Those are two different things.

THE COURT: You [indiscernible two people -- who's handling the

witness?

MS. MACHNICH: What?

THE COURT: You're handing the witness and you're handling the witness?

MS. MACHNICH: You handle this.

MS. SISOLAK: I'm handling this, Your Honor.

THE COURT: Okay. [Indiscernible] --

MS. SISOLAK: I understand.

THE COURT: The parties who handle the witness argue the motion.

MS. SISOLAK: I understand. The issue I have, Your Honor, is that we were -- [indiscernible] Ms. Kallas [indiscernible] similar understanding this morning. It is in none of the reports and it is not in any of the discovery provided per your order. I have never heard it until this morning and it's a violation. If it was disclosed to me this morning it's a violation.

MS. KALLAS: And, Your Honor, I do [indiscernible] was disclosed. I -- Mr. Ontiveros acknowledged to me that he didn't put it in his report and he didn't think -- I think he thought it was [indiscernible] whatever his reasons [indiscernible] when I found out about it. I disclosed it to them this morning. I don't think it's prejudicial in any way. She can discuss it -- with him during cross-examination. And, again, he made that same statement, you're lucky, you know I would have stuck you in the [indiscernible] if you didn't have that knee.

THE COURT: Okay, [indiscernible]--

MS. SISOLAK: And

MS. KALLAS: He's making threat and talking --

THE COURT: -- you turned over --

MS. KALLAS: -- trash.

THE COURT: -- all reports this morning, its not in any of your reports?

MS. KALLAS: No.

MS. SISOLAK: And, Your Honor, I do want to clarify. If the statement is you're lucky your friends were around are referring to the officers, co-officers, we have a completely different story then if the statement is you're lucky my friends weren't around, as in my client's friends.

MS. KALLAS: I can ask him. I'm not sure which one is --

MS. SISOLAK: The violation is the same but one is obviously more prejudicial than the other.

MS. KALLAS: I have --

MS. SISOLAK: And we can inquire which it was.

THE COURT: How does he remember this after a year and a half to two years?

MS. KALLAS: I'm sorry, what?

THE COURT: How does he remember this if it's not in any report?

MS. KALLAS: [Indiscernible], not sure, Your Honor. I can ask him again. I'm not sure if he said my friend. I can ask him to explain what he meant by my friends, if he was talking about --

MS. SISOLAK: It's still a *Brady* violation.

MR. GUNNELL: Again, it's not *Brady*.

MS. KALLAS: It's *Brady*; it's not exculpatory.

MR. GUNNELL: It's exculpatory.

MS. SISOLAK: All [indiscernible] -- discovery.

MR. GUNNELL: That -- it [indiscernible].

MS. SISOLAK: *Brady* is not exculpatory.

MR. GUNNELL: It's not *Brady.* It's a different rule -- discovery --

MS. SISOLAK: It is a --

MS. KALLAS: And its --

MS. SISOLAK: -- statement --

MS. KALLAS: -- not prejudicial --

MS. SISOLAK: -- by my client --

MS. KALLAS: -- [indiscernible].

MS. SISOLAK: -- that I am entitled to --

THE COURT: Okay.

MS. SISOLAK: -- that you ordered me to have.

THE COURT: So what are you requesting?

MS. KALLAS: And, Your Honor, I did find out about it after when I did my witness prep after your order.

MS. SISOLAK: I would ask that it be stricken and that he not be able to -- that the State may not be allowed to inquire any further into that statement in any way.

MS. MACHNICH: [Indiscernible].

MS. SISOLAK: And that the jury disregard it.

THE COURT: Does this go to any other issues by the Defense?

MS. SISOLAK: Not that I can [indiscernible] at this point, Your Honor.

THE COURT: No, I'm going to allow it, okay.

MS. KALLAS: Okay, thank you, Your Honor.

MS. SISOLAK: Thank you, Your Honor.

[Bench conference ends]

THE COURT: Objection overruled.

MS. KALLAS: Okay, and, Your Honor, may I approach the witness?

THE COURT: Yes.

BY MS. KALLAS:

Q Mr. Ontiveros, I'm showing what's previously marked State's proposed Exhibit number 1. Can you take a look at that picture; do you recognize what's in that picture?

A Yes.

Q And what is that?

A An officer pointing at the shank. He put a pen there to see how long -- you know, to verify the length of it more or less.

Q And is that the shank that you saw the Defendant holding?

A Yes.

Q Okay. And what else do you recognize in that picture?

A Mr. Mixon.

Q And do you -- is that a fair and accurate depiction of the Defendant and the shank he was holding after he was placed in those restraints?

A Yes.

MS. KALLAS: Your Honor, I move to admit State's Exhibit 1.

MS. SISOLAK: No, objection, Your Honor.

THE COURT: It will be admitted.

[State's Exhibit 1 admitted]

MS. KALLAS: Court's indulgence.

[Colloquy between State Counsel]

MS. KALLAS: I'll pass the witness, Your Honor.

THE COURT: Any cross-examination?

MS. SISOLAK: Yes, Your Honor. Court's indulgence.

CROSS-EXAMINATION

BY MS. SISOLAK:

Q Mr. Ontiveros, so in talking about that day, after Mr. Mixom was cuffed, what was your next action?

A Waiting for the -- waiting for people to come and you know like the incident commander and whoever. Medical was called so I can get assessed at the scene.

Q Did you have any injuries?

A Just a sore stomach and a sore thigh.

Q Were any pictures taken of those injuries?

A No, but I was sent to Concentra.

Q What does that mean?

A Concentra is like if anything that happens within the prison and you get hurt, injured, slip, fall, whatever, it's a protocol that we use with a C-1 packet that we have to go to see to Concentra to ensure that you know there's no injuries.

Q And you took part in a C-1 packet interview or you filled out a C-1 packet?

A Yes.

Q Did you provide that to the State?

A No.

Q Do you have a copy of that?

A No, ma'am.

Q Does the prison keep a copy of that?

A They should.

MS. SISOLAK: Your Honor, may we approach?

THE COURT: Okay.

[Bench conference begins]

THE COURT: The C-1 forms are a worker's comp form, just so [Indiscernible] familiar with that; that's what it is.

MS. SISOLAK: Your Honor, but its directly related to any injuries that the victim had in this case.

THE COURT: [Indiscernible].

MS. SISOLAK: But the statement of --

MR. GUNNELL: It's a what?

MS. SISOLAK: -- it's directly --

MS. KALLAS: We can't hear.

MS. SISOLAK: -- related to the incident. I mean I've had -- I filed a workman's comp claim. I had to write a statement of what happened. And the witness testified that he provided a statement in the C-1 packet and conducted a -- potentially an interview and a C-1 packet.

THE COURT: So in the C-1 form you have to write down what happened.

MR. GUNNELL: I think he already did that as [indiscernible].

MS. SISOLAK: That's our client's medical record.

MR. GUNNELL: Yeah, but our guy didn't get any injuries.

MS. SISOLAK: But he still filed a workman's comp claim.

THE COURT: No, but the C-1 form --

MS. KALLAS: And that's the [indiscernible] that we're hearing about, that he filed a [indiscernible] because it was our understanding that he didn't have any injuries and we spoke to the prison and we asked if there was any medical records in regards to this happening --

THE COURT: Well, --

MS. KALLAS: -- but [indiscernible] not had any treatment. He didn't, so --

THE COURT: I'm not concerned about the injury. In the C-1 form it says what do you injuries or how did it happen. So he would have wrote down whatever, and his take of how it happened.

MS. SISOLAK: It's an additional statement [indiscernible].

MS. KALLAS: I understand. That's -- it's just our first, to be honest, ever hearing about the fact that he ever filed the claim and that he would ever had any kind of [indiscernible].

MR. GUNNELL: Who filed the worker's comp?

MS. SISOLAK: He did.

THE COURT: [Indiscernible] but I know he [indiscernible] false. He's has a, you know, a bruised ego --

MS. SISOLAK: I was --

THE COURT: -- he fell on the ground.

MR. GUNNELL: Well, my understanding --

THE COURT: It's tough to fill out the C-1 form. He says he filled one out.

MR. GUNNELL: My understanding of this, Your Honor, the form he filled out wasn't -- it was the -- it was for the Defendant. It wasn't for [indiscernible]. That's --

MS. MACHNICH: No, you're thinking of a medical form [indiscernible] because [indiscernible] separate from a worker's comp.

MR. GUNNELL: But he just testified that that was scrapes and bruises and --

MS. SISOLAK: He testified to his sores to make his sore thigh. And he said what did you do next; he said I went to Concentra --

MR. GUNNELL: Okay.

MS. SISOLAK: -- and filled out a C-1.

THE COURT: A C-1 form.

MR. GUNNELL: Okay.

MS. SISOLAK: I'd ask that the witness' testimony be stricken.

THE COURT: On his entire testimony or --

MS. SISOLAK: Any testimony as to what occurred. He filled out a statement that we don't have.

THE COURT: Regarding the C-1 form?

MS. SISOLAK: He shouldn't be able to testify to anything included in that statement which was the entire event.

THE COURT: Okay, I'm not sure, are you asking just that the testimony regarding him going to the office and filling out a C-1 form be stricken or what?

MS. SISOLAK: I'm asking that his testimony as to the incident that was memorialized in the C-1, so the entire event be stricken. I don't have it.

THE COURT: So all of his testimony?

MS. SISOLAK: Yes.

MS. KALLAS: And, Your Honor, I object to that. She can obviously cross [indiscernible] what he wrote and what he stated in -- on that form [indiscernible] but I don't think his entire testimony needs to be stricken.

MS. SISOLAK: We don't know what's in that statement.

THE COURT: All right.

MS. SISOLAK: Chances are, quite frankly, Your Honor, two years later [indiscernible].

THE COURT: Are you seeking a mistrial?

MS. MACHNICH: Potentially with prejudice [indiscernible].

THE COURT: I mean potentially, yes or no? I --

MS. SISOLAK: With --

MS. MACHNICH: It would be [indiscernible] --

MS. SISOLAK: It would be --

MS. MACHNICH: -- prejudice, --

MS. SISOLAK: -- prejudice.

MS. MACHNICH: -- not without prejudice. [Indiscernible] direct violation and the [indiscernible], something [indiscernible]. This case is going on for two years. The State's known about it and they didn't turn this over in a timely manner and this is their complaining witness.

MS. KALLAS: And, Your Honor, since this is our first time that we've

ever heard about him [indiscernible] making a worker's comp claim or anything like that, it was our understanding he didn't have any injuries from it so why would we look into whether or not he needed a --

MS. MACHNICH: It's --

MS. KALLAS: -- worker's comp if he didn't have any --

MS. MACHNICH: -- Your Honor, its --

MR. GUNNELL: Why would he --

THE COURT: Okay, wait, wait. Who's talking?

UNKNOWN SPEAKER: [Indiscernible].

THE COURT: The point is it's not the injuries because he wrote a witness -- he may not have written a statement. [Indiscernible] typically what happened. That's what --

MS. KALLAS: But I don't think its --

THE COURT: -- I've seen them.

MS. KALLAS: -- our duty to investigate every single thing that -- how would we have known that he ever did a worker's comp?

THE COURT: I'm not making any statement right now that it was intentionally withheld by your office.

MS. SISOLAK: No, Your Honor, --

THE COURT: I'm not making that.

MS. SISOLAK: -- I'm not making the accusation that it was intentionally withheld. I making the accusation that for whatever reason nobody inquired what happened next because what happened next was he went to a place where he filled out a statement that we know now. It absolutely is the State's responsibility to inquire into is there anything

else that you wrote down in your version of the story.

MS. KALLAS: And, Your Honor, even if somehow -- obviously, we don't think that his testimony should be stricken and I don't think there needs to be a mistrial yet. Other witnesses who've witnessed the event can still testify as to what happened.

THE COURT: But they don't have his statement. So, --

MS. KALLAS: I understand.

MS. SISOLAK: And, quite --

MS. KALLAS: But, Your Honor, I'd like --

THE COURT: -- it's a motion for --

MS. SISOLAK: -- frankly, Your Honor, --

THE COURT: -- discovery.

MS. KALLAS: -- to ask him about [indiscernible]. We don't know anything about this [indiscernible] and so I'd ask --

MS. SISOLAK: Quite frankly, Your Honor, the next witness they're calling -- I don't have a statement from either. I have no statement from this officer. My --

MR. GUNNELL: He didn't make a statement.

MS. SISOLAK: But my entire line of --

THE COURT: Okay, hang on, hang on.

MS. KALLAS: He didn't make a statement because --

THE COURT: But the problem is the injuries [indiscernible].

MR. GUNNELL: Yeah.

THE COURT: Okay. No, but in the C-1 form that asks what did you -- what happened and he would have wrote down what happened

which is a statement by him. You had a motion for discovery in this case?

MS. SISOLAK: We did and you granted the order. I prepared --

THE COURT: Okay.

MS. SISOLAK: -- the order and the State signed off on it and its been filed.

THE COURT: You know, this may say -- this may be 100% consistent with what he's testified to, okay? It may be. But it was supposed to be turned over. I'm not saying you guys were [indiscernible]. I'm not saying it was intentional. I'm not making that finding now, okay? But it was supposed to have been turned over. If you're on their side you would say, hey, you didn't turn over the statement you would have been making the same motion.

MS. KALLAS: Well, did he even testify that he made a statement? Didn't he just say that he filled out a form?

MS. SISOLAK: He said he completed --

MS. KALLAS: Do we know that --

MS. SISOLAK: -- an interview --

MS. KALLAS: -- he actually --

MS. SISOLAK: -- and filled out a statement. I'll ask him again.

THE COURT: Why don't you ask to clarify; okay?

MS. SISOLAK: Thank you.

[Bench conference ends]

THE COURT: All right, next question, Counsel.

BY MS. SISOLAK:

Q Mr. Ontiveros, when you proceeded to, I think you said it was

Concentra --

A Yes.

Q -- and you began the C-1 proceedings, did you fill out a statement?

A Yeah. We have to do our reports before we leave the institution.

Q So, when you got to Concentra, did you fill out a C-1 packet?

A You fill it out before you go.

Q So, at some point you wrote down on a C-1 form various information pertaining to this incident?

A The C-1 packet -- for me to explain what that is, it's a -- basically, it's an injury report as -- you know 'cause -- I don't know, you slam your finger, you slip and fall, you have to fill out a C-1 form.

Q So, if you are injured in any matter -- in any manner, you fill out a document as to how you were injured?

A Yes.

Q Do you, in that document, give any sort of narrative as to how the injury occurred? For instance, would you say I was exiting my car door and as I slammed the door my finger got caught; is that something that you would include in the report?

A Sure.

MS. SISIOLAK: Your Honor, may we approach?

THE COURT: Okay; both Counsel.

[Bench conference begins]

MS. SISOLAK: I would ask if Your Honor is not inclined to grant a

mistrial with prejudice or dismiss the entire -- the witness' entire testimony, I'd ask for a curative instruction and that the jury be --

THE COURT: I'm not going to strike his testimony. I have to grant a mistrial and I don't want to but there's a report that was ordered. It's not -- I'm sure it's not in your packet.

MS. KALLAS: It's absolutely not. We --

THE COURT: No, I'm not --

MS. KALLAS: -- reached out to the Inspector General's Office.

THE COURT: Your office has never had a reputation --

MS. KALLAS: This is literally the first we've ever --

THE COURT: -- of withholding evidence. I'm not aware of any, but this form, he just testified [indiscernible] as to how it occurred. It was not turned over --

MS. SISOLAK: And --

THE COURT: -- to you which in turn was not turned over to them.

MS. SISOLAK: -- I'm not insinuating that Ms. Kallas or Mr. Gunnell --

THE COURT: I know. I'm not making any finding.

MS. SISOLAK: I'm just [indiscernible] --

MS. KALLAS: Is there any way we can just strike his testimony --

MS. SISOLAK: -- it was grossly --

MS. KALLAS: -- and then have --

MS. SISOLAK: -- negligent.

MS. KALLAS: -- another witness testify?

MR. GUNNELL: There could be an issue with [indiscernible] turning

over because if it's his medical records --

MS. SISOLAK: It can be --

MR. GUNNELL: -- that could be HIPAA.

THE COURT: No, it's not a --

MS. SISOLAK: It can be turned over, redacted.

THE COURT: -- medical form. It's a form that you fill out. It says I hurt my knee, I slipped on a banana.

MS. SISOLAK: I only know about this because I was exposed to measles at trial and I had to fill it out but I didn't get measles but I had to say my client breathed on me.

MS. KALLAS: Your Honor, if you do [indiscernible], I was just asking if -- I'd rather his testimony be stricken. We do have other witnesses that could come testify in --

MS. SISOLAK: Your Honor, --

MS. KALLAS: -- regards to this event. I think a curative instruction would cure any type of prejudice that the jury possibly -- is possibly hearing his testimony. There was another witness to this event.

MS. MACHNICH: The [indiscernible].

MS. KALLAS: Defense is aware of that.

THE COURT: Is there other witnesses who would say they saw him throw rocks and hit him?

MS. KALLAS: Absolutely; there's a person who testified that there was someone standing right next to him.

MS. SISOLAK: Your Honor, this person --

MS. KALLAS: I think that he's not -- they're not going to be

prejudiced. I think the curative instruction -- essentially, his testimony is going to be the exact same [indiscernible] so I think if you strike his testimony and give a curative instruction he's not going to be prejudiced by --

MS. SISOLAK: Your Honor, I'm still asking --

MS. KALLAS: -- and -- all --

MS. SISOLAK: -- for --

THE COURT: Hang on. Let her finish.

MS. SISOLAK: Go ahead; I'm sorry.

MS. KALLAS: And not only that, obviously I don't feel that this -- we don't feel that these statements are exculpatory and [indiscernible] made. I don't think the Defendant's prejudiced -- I mean I don't think that --

THE COURT: Well --

MS. KALLAS: -- the jury is going to -- [indiscernible] the jury [indiscernible] file a curative instruction. I think that, again, they're going to hear the same testimony from someone else. There's nothing that they heard that they're not going to hear from Officer Mcannich. We have [indiscernible] making a statement inconsistent with what he has already testified to.

THE COURT: But we don't know what he said.

MS. SISOLAK: But, Your Honor, --

THE COURT: That's the problem and I ordered the State to [indiscernible] any statements --

MS. SISOLAK: And --

THE COURT: -- to be turned over.

MS. SISOLAK: But, Your Honor --

MS. KALLAS: And strike his testimony but I don't think we need a mistrial based on that fact, Your Honor.

MS. SISOLAK: But, Your Honor, then they're asking you to move forward with the trial with no victim.

THE COURT: Well, they can --

MS. KALLAS: We absolutely still have a victim. You don't need --

THE COURT: They can still --

MS. KALLAS: -- a victim to testify just to --

MS. SISOLAK: I -- understand that they can have this other witness testify to what he believes is [indiscernible] -- [indiscernible], I'm still asking for a mistrial with prejudice. They didn't turn over a statement. At very best, it's grossly negligent.

MS. KALLAS: And its -- but it's not exculpatory [indiscernible].

THE COURT: Well, we don't -- see, the --

MS. KALLAS: -- and I think its --

THE COURT: -- problem is I ordered all statements to be turned over. You were not aware of this. This is not -- I don't find it intentional but the bottom line is if the roles were reversed and you have a witness who probably filled out statements and lo and behold they didn't turn them over to you, you would scream bloody murder because they're ordering reciprocal discovery to turn over documents to you.

MS. KALLAS: Well then, Your Honor, I'd ask that a curative instruction be given and I would ask that his -- I'd rather his testimony be stricken.

MS. SISOLAK: It's not a problem we can cure.

THE COURT: Right. Right.

MS. KALLAS: I think it's absolutely a problem --

THE COURT: I'm going to --

MS. KALLAS: -- we can cure.

THE COURT: -- declare it a mistrial; okay?

MS. SISOLAK: Is that going to be with prejudice, Your Honor?

THE COURT: No. You can file a motion later on that I didn't find any intentional act of bad faith or outrageous conduct on behalf of the Attorney General's Office.

MS. SISOLAK: But --

MS. KALLAS: Are we going to pick the next jury tomorrow?

THE COURT: We'll do it in --

MS. KALLAS: And, Your Honor, as a [indiscernible] finding --

MS. MACHNICH: Can we -- are we going [indiscernible] and pick the jury tomorrow?

MS. SISOLAK: Another jury?

THE COURT: What?

MS. MACHNICH: Are we going to try this case again tomorrow? I mean can we start over again [indiscernible] --

MS. KALLAS: We'll look into the statement [indiscernible] --

THE COURT: I don't know.

MS. SISOLAK: I mean --

MS. KALLAS: It's still a day and a half --

THE COURT: I doubt it because you know the jury commissioner

[indiscernible] tomorrow is Wednesday. Normally, we [indiscernible] Tuesday for the --

MS. SISOLAK: I understand, Your Honor. But the issue --

THE COURT: I'll set a short trial date --

MS. SISOLAK: -- but Your Honor, --

THE COURT: -- if you can put this together in two weeks.

MS. SISOLAK: Part of the issue is --

THE COURT: You can file any motions for dismissal.

MS. SISOLAK: Your Honor, I'm set in your department every week from now till kingdom come. Like, I have a trial set every week until March.

MS. KALLAS: We can get the statement. We can look into it [indiscernible] statements today hopefully if we get out of here and --

MS. SISOLAK: Your Honor, --

MS. KALLAS: -- get [indiscernible] them, get it done.

THE COURT: We're just -- I'm going to put this on calendar for Thursday for resetting a trial date.

MS. SISOLAK: Your Honor, can we get on the record that you're considering the conduct grossly negligent?

THE COURT: I'm sorry?

MS. SISOLAK: That we're considering the --

THE COURT: I'm saying there's nothing in front of me at this time to show intentional [indiscernible].

MS. KALLAS: And then that's --

MS. SISOLAK: Not intentional. I'm asking if you would deem it

grossly negligent which is unintentional negligence.

THE COURT: No, I'm not making any finding on that. You can file a motion [indiscernible] you have other information, but right now I don't have enough evidence to make that finding.

MS. KALLAS: And, Your Honor, I would --

MS. SISOLAK: Thank you, Your Honor.

MS. KALLAS: -- ask that since you are going to grant a mistrial that it be on the record why the jury is somehow so prejudiced that a mistrial was necessary --

THE COURT: I'm just going to advise --

MS. KALLAS: -- and a curative instruction.

THE COURT: -- them there's a legal issue to grant a mistrial.

MS. SISOLAK: Thank you, Your Honor.

MS. KALLAS: Thank you.

[Bench conference ends]

THE COURT: Ladies and gentlemen, during trials legal -- various legal issues arise and in this case a legal issue has arisen which is requiring me to declare a mistrial. It's not something that I do lightly. And unfortunately, I feel it's to protect everyone's constitutional rights in this matter that I do declare a mistrial. I do find it a manifest necessity that I do declare a mistrial. I apologize to all of you. You were here ready, willing, and able to serve and unfortunately we can't go forward.

So, you are discharged with my thanks for being here today. I hope this doesn't sour, you know, sour you for future jury service. I have been advised by the Jury Commissioner, after someone's been

empaneled, you are out of the computer for about 18 months so you should not be receiving another jury summons either in federal court or state court and we welcome you back when you get your next jury summons.

So, again, thank you very much for your time today. The marshal will pick up your badges.

[Colloquy between Court and clerk]

THE COURT: Okay, what we're going to do, ladies and gentlemen, the marshal's just going to escort you to the jury room and he'll give you further information; if you could just follow the marshal. Leave your notepads, your badges, and your pens on your chair and just follow the marshal, please.

THE MARSHAL: All rise for the exiting of the jury.

[Outside the presence of the jury]

MS. KALLAS: Your Honor, may we make a brief record on this?

THE COURT: Yes, that's why we're going to do that -- the -- everything is recorded in my courtroom. However, the recording system at the bench is not the best --

MS. SISOLAK: Understood.

THE COURT: -- and so that's why I was going to have the officer leave and then I'll put it on the record.

Ms. Sisolak, you made a motion for a mistrial which I granted. Would you please put it on the record the basis for that motion?

MS. SISOLAK: Your Honor, I did ask Your Honor to grant us a mistrial based on the fact that there is a statement in a C-1 form that was

filled out by Officer Ontiveros that would have been required to be turned over in discovery. The Defense would allege that because it is protected by the order and we did not receive the statement, we are entitled to the mistrial. We did ask Your Honor to issue that mistrial with prejudice, and I believe we discussed that I would file a motion and we would determine that at another time.

THE COURT: All right, State.

MS. KALLAS: And, Your Honor, we're obviously going to be objecting to the declaration of a mistrial. As I stated at the bench, the very first time we ever heard about any type of workers comp claim was today when Officer Ontiveros made that statement on the stand. It's the first time I've ever heard it. We reached out to the Inspector General's Office which is the investigators on this case. We've asked for every and anything that they have in relation to this case and they told us that we had everything. In Mr. -- in Officer Ontiveros' report and any statements he's ever made to me I don't -- he didn't write about any injuries. He -- I mean he essentially was hit by a rock. We didn't have any reason to believe that he would then have to make a workers comp claim about this, that he wasn't working anymore, anything like that. So obviously it wasn't intentional whatsoever.

Also, we obviously don't think that it was anything exculpatory and we don't believe it was a *Brady* violation. He didn't make any comments that were inconsistent with the statements that he has previously made.

So, I would be objecting to a mistrial based on that. I think that

a curative instruction could have cured any type of prejudice in regards to Officer Ontiveros' testimony. And -- Court's indulgence.

[Colloquy between State Counsel]

MS. KALLAS: Just brief indulgence, Your Honor. We're just looking at the discovery motion.

THE COURT: Sure.

[Colloquy between Court, recorder, and clerk]

MS. KALLAS: And again, Your Honor, I just want to emphasize the fact this wasn't a statement that we had that was in our possession that we just decided not to turn over. We were absolutely unaware of it. Officer Ontiveros, I've spoken with him a couple of times, has never once mentioned it. The Inspector General's Office has never mentioned it. No one in relation to this case ever has. So, again, it wasn't an intentional violation.

THE COURT: Well, at this point I don't find any intentional act on behalf of the State, nor do I find any -- actually, I don't find any egregious conduct or recklessness on behalf of the State because it wasn't part -- I'm assuming -- well, I know the C-i [sic] form is strictly a worker's comp slap in the face, a trip and fall, or a broken leg. Its -- I'm sure it -- unless I've been proven otherwise, it's not part of the investigation files. It's more of an administrative file, something internal. However, the Court did order that all statements by the witnesses be turned over and this is a statement by the witness that was not turned over. I don't believe at this point that the State was aware that there was a C-i [sic] form, and so I'm not dismissing this case with prejudice. And so, that's my ruling. We'll

come back on Thursday for resetting of new trial date.

THE CLERK: January 4th, at 8:30.

MS. MACHNICH: Your Honor,

MS. SISOLAK: Your Honor, --

MS. MACHNICH: -- just to clarify that your ruling that the State has not acted with bad faith or gross negligence at this time and you're not granting a mistrial with prejudice; is that a ruling without prejudice allowing us to brief the matter and potentially file a motion?

THE COURT: Well, if you can -- if you have any evidence that they were aware of this, that it's intentional or gross negligence, then file the appropriate motion.

MS. SISOLAK: Will do, Your Honor.

MS. KALLAS: Thank you.

THE COURT: Thank you, everybody.

THE MARSHAL: All rise. Department 17 is now adjourned.

[Proceedings concluded at 4:46 p.m.]

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

EXHIBIT B

EXHIBIT B

From: Victor Daniel
To: Jennifer M. Shumway
Subject: Re: FW: FW: State of Nevada v Antonio Mixon / Your File No. HDSP-17-03-AG / Our File No. 11801-2558.01
Date: Wednesday, December 13, 2017 4:00:52 PM

Yes that should be the entire file. I will be available Wednesday after 1 pm to meet if that works.

Victor Daniel
Criminal Investigator
Nevada Department of Corrections
Office of the Inspector General
Fusion Information Sharing Team Coordinator
Office: (702) 486-9932
Cell : (702) 249-1821

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>>> On 12/13/2017 at 3:43 PM, in message
<be26b3db49124d7f9e9abba5f6ffadf4@AGEXCHANGE13.AGOF.STATE.NV.US>, "Jennifer M. Shumway"
<JShumway@ag.nv.gov> wrote:
Mr. Daniel,
I hope your training in California went well. As you know, this matter is going to trial next month and we want to make sure that we have produced the entire investigative file to opposing counsel.
This is everything that was given to us by your office. We also have video footage that was taken after the incident which is too large to email. Can you please confirm that we have the complete file?
Also, Ms. Kallas would like to meet with you next week to prepare for the trial. Are you available Wednesday or Thursday afternoon?
Thank you

Jennifer Shumway
Legal Researcher
Bureau of Criminal Justice
Office of the Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Email: jshumway@ag.nv.gov
Direct: (702) 486-0659
Facsimile: (702) 486-0660

From: Jennifer M. Shumway
Sent: Wednesday, December 13, 2017 2:14 PM

To: 'James Jones' <jjones@doc.nv.gov>
Cc: 'Dean Ontiveros' <dontiveros@doc.nv.gov>; Chelsea N. Kallas <CKallas@ag.nv.gov>
Subject: FW: FW: State of Nevada v Antonio Mixon / Your File No. HDSP-17-03-AG / Our File No. 11801-2558.01

Mr. Jones,
Thank you for providing Mixon's medical form. I just wanted to double check and see if there were any medical forms for Ontiveros?
Thank you

Jennifer Shumway
Legal Researcher
Bureau of Criminal Justice
Office of the Attorney General
555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101
Email: jshumway@ag.nv.gov
Direct: (702) 486-0659
Facsimile: (702) 486-0660

From: James Jones [mailto:jjones@doc.nv.gov]
Sent: Monday, December 4, 2017 12:58 PM
To: Jennifer M. Shumway <JShumway@ag.nv.gov>
Subject: RE: FW: State of Nevada v Antonio Mixon / Your File No. HDSP-17-03-AG / Our File No. 11801-2558.01

Here is the medical form

James K. Jones
Supervisory Criminal Investigator
Office of the Inspector General
Nevada Department of Corrections
Office: 702-486-9924
Cell: 702-525-4942
jjones@doc.nv.gov

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EXHIBIT C

EXHIBIT C

STATE OF NEVADA DEPARTMENT OF CORRECTIONS
INCIDENT 028 REPORT

REPORT OF INCIDENT

INCIDENT DATE AND TIME	INSTITUTION	LOCATION
12-04-2015 0905HRS	High Desert State Prison	UNIT 5/6 SMALL YARD

THE FOLLOWING IS A COPY OF THE 028 SUBMITTED IN NOTIS BY SENIOR CORRECTIONAL OFFICER DEAN ONTIVEROS

On December 4, 2015 at approximately 0900, I Senior Correctional Officer (SC/O) D. Ontiveros was assigned to unit 6C/D floor. While supervising yard, Officer Mcaninch and myself noticed and inmate, later identified as Mixon, Antonio #1019828, housed in cell 6D-27A, pacing the yard and acting as if he was upset with someone or something. I advised Officer Mcaninch to keep an eye on him. After stating this, inmate Mixon approached us in an aggressive manner and Within approximately 10 to 15 feet from us picked up a good sized rock, then threw it in our direction, hitting me in the lower abdomen. Officer Mcaninch and I then pursued him to where he backed up and reached down and picked up another rock. He again threw it in our direction, hitting me on my upper left thigh. Officer Mcaninch and I quickened the pace driving him towards the walkway in front of unit 5A/B. Mixon then reached down and picked up a hand full of dirt threw it in our direction, then removed his left shoe, reached inside of it and brandished a prison made weapon (shank). I immediately removed the OC spray from my belt and gave inmate Mixon several orders to get on the ground to which he refused. Once he heard the responding Officers yell out to the yard to get on the ground, Mixon complied then dropped the weapon to ground. I then placed my right knee on his upper back between his shoulder blade, holding his right wrist in a wrist-lock until wrist restraint could be applied. -End of Report-

IN-2015-467

REPORTING STAFF: SC/O ONTIVEROS	DATE: 12-04-2015
REVIEWING ADMINISTRATOR:	DATE:

EXHIBIT D

EXHIBIT D

IR-2015-HDSP-004080

INCIDENT/STAFF REPORT

____Accident/Injury (Staff or Inmate)	____Drugs/Syringe	____Search
X Assault (Physical or Sexual)	____Foods/Culinary	____Visiting Problem
____Contraband	____Alcohol/Pruno	____Weapon
____Use of Force	____Information	____Maintenance Issue
____Forced Medication Order	____Keys/Locks	____Other
____Destruction of State Property	____Security Concern	_____

Inmate involved: Mixon, A (Name) 1019828 (Number) Housing Assignment: HDSP-U6-D-27-B

December 4, 2015 (Date of Incident) 0905 (Time of Incident) _____ (Signature of Reporting Employee/ID Number)

Location of Incident: 5/6 recreation yard

SC/O D. Ontiveros (Printed Name of Reporting Employee)

Witness: _____

DETAILED DESCRIPTION OF INCIDENT: (Print or Type) – Include: What happened, where, when, how and why:

On December 4, 2015 at approximately 0900, I Senior Correctional Officer (SC/O) D. Ontiveros was assigned to unit 6C/D floor. While supervising yard, Officer Mcaninch and myself noticed and inmate, later identified as Mixon, Antonio #1019828, housed in cell 6D-27A, pacing the yard and acting as if he was upset with someone or something. I advised Officer Mcaninch to keep an eye on him. After stating this, inmate Mixon approached us in an aggressive manner and Within approximately 10 to 15 feet from us picked up a good sized rock, then threw it in our direction, hitting me in the lower abdomen. Officer Mcaninch and I then pursued him to where he backed up and reached down and picked up another rock. He again threw it in our direction, hitting me on my upper left thigh. Officer Mcaninch and I quickened the pace driving him towards the walkway in front of unit 5A/B. Mixon then reached down and picked up a hand full of dirt threw it in our direction, then removed his left shoe, reached inside of it and brandished a prison made weapon (shank). I immediately removed the OC spray from my belt and gave inmate Mixon several orders to get on the ground to which he refused. Once he heard the responding Officers yell out to the yard to get on the ground, Mixon complied then dropped the weapon to ground. I then placed my right knee on his upper back between his shoulder blade, holding his right wrist in a wrist-lock until wrist restraint could be applied. -End of Report-

Supervisor's Comments and Action Taken:

Entered into NOTIS.

DISTRIBUTION:

Original – Daily Folder
Copy – Associate Warden of Operations/Designee
Warden

Lt. K. McKeehan (Shift Supervisor Signature) 12/04/2015 (Date)

Electronically Filed
3/28/2018 12:21 PM
Steven D. Grierson
CLERK OF THE COURT

MC
PP
P.D.

The 8th Judicial District Court
Clark County, Nevada

The State of Nevada
Plaintiff
v.
Antonio L. Mixon
Defendant

Case No: C-17-327-439-1
Dept. No: 17
04-18-18 @ 8:30 am

A. Defendant's motion for withdrawal of attorney of record, request to obtain copy of Defendant's file, and request for Self-representation.

Comes now the Defendant, Antonio Lee Mixon, in proper person, and hereby moves this honorable Court to grant an order allowing ordering the public defender's office to withdraw as attorney of record. Additionally the Defendant ask that a copy of his entire file be immediately produced and given to defendant. This Motion based upon all the papers and Pleadings on file herein. The attached Points and Authorities, and oral argument at time of hearing.

Points and Authorities, Requesting Motion for withdrawl of Attorney of record to represent self 28 USC 1654. Request to obtain copy of Defendant's file.

RECEIVED
MAR 20 2018
CLERK OF THE COURT

RECEIVED
MAR 28 2018 10
CLERK OF THE COURT

• CERTIFICATE OF SERVICE

I HEREBY CERTIFY PURSUANT TO N.R.C.P. 5(b) THAT I AM THE PETITIONER / PLAINTIFF IN THE FORGOING MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD, REQUEST TO OBTAIN COPY OF DEFENDANT'S FILE, AND REQUEST FOR SELF-REPRESENTATION, & SUBMISSION OF MOTION, AND THAT ON THIS ~~2nd day of December, 2017~~ 15th day of MARCH, 2018, I did SERVE A TRUE AND CORRECT COPY OF THE ABOVE MENTIONED DOCUMENT, BY GIVING IT TO A PRISON OFFICIAL AT THE High Desert STATE PRISON TO DEPOSIT IN THE U.S. MAIL, SEALED IN AN ENVELOPE, POSTAGE PRE-PAID, AND ADDRESSED AS FOLLOWS: STEVEN D. GRIERSON, CLERK OF THE COURT

200 LEWIS AVENUE, 3RD FLOOR

LAS VEGAS, NV 89155-1160

• AFFIRMATION PURSUANT TO NRS. 239B.030

I ANTONIO LEE MIXON, NDOC# 1019828, CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE ATTACHED DOCUMENT ENTITLED MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD:

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS ~~2nd day of December, 2017~~ 15th day of MARCH, 2018.

SIGNATURE: [signature]

INMATE PRINTED NAME: MIXON, ANTONIO

INMATE NDOC #: 1019828

INMATE ADDRESS: P.O. BOX 650, INDIAN SPRINGS, NV 89070

(2) OF 2

Antonio J. Mixon #1014820
P.O. Box 650
Indian Springs, NV 89070

LAS VEGAS NV 890
16 MAR 2018 PM 5 L

Steven D. Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

89101$6300 C075

* Urgent Motion to Withdraw Plea [illegible]

HIGH DESERT STATE PRISON
MAR 15 2018
UNIT 4

377

Electronically Filed
4/4/2018 12:05 PM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
****

State of Nevada vs Antonio Mixon	Case No.: C-17-327439-1 Department 17

NOTICE OF HEARING

TO: Antonio Lee Mixon et. al.,

Please be advised that the above-entitled matter has been scheduled for **Motion to Withdraw as Counsel**, to be heard by the Honorable Michael Villani, at the Regional Justice Center, 200 Lewis Ave, Las Vegas, Nevada 89101, on the 17th day of April, 2018, at the hour of 8:30 AM, in Department 17.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Miriam Vazquez
Miriam Vazquez, Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that this 4th day of April, 2018

☒ The foregoing Notice of Hearing was electronically served to all registered parties for case number C-17-327439-1.

/s/ Miriam Vazquez
Miriam Vazquez, Deputy Clerk of the Court

Electronically Filed
5/14/2018 10:38 AM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT

Clark County, Nevada

STATE OF Nevada, Plaintiff,

vs.

Antonio Lee Mixon

Defendant.

Case No.: C-17-327439-1
Dept. No.: 17
DATE: ~~MAY ___, 2018~~ 06-05-18
TIME: 8:30 a.m.

Defendant's Motion For Expert Witnesses/transcript order

Comes NOW, the Defendant, ANTONIO MIXON, by and through Self representation, and hereby requests this Honorable Court to grant this Motion For Expert Witnesses IN Whole.

These Points And Authorities are made and based upon all the papers and pleadings on file hereon, and oral argument at the time set For hearing.

Dated this 6th day of May, 2018.

Antonio Lee Mixon
Self-representative

By: Antonio Lee Mixon, #1019878
A. L. Mixon Jr. Self-Representative

RECEIVED
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CLERK OF THE COURT

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MAY 10 2018
CLERK OF THE COURT

Introduction

ON April ___, 2018, the defendant moved For Self-representation Under 28 U.S.C. 1654, the Court's canvass granted self-representation. The Court ordered Counsel of record to send defendant the complete File. ON receiving the File on April 13, 2018, the defendant thoroughly examined File. After examining the file the compulsory process For obtaining witnesses in Defendant's Favor is more than NECESSARY, And that a private investigator/ expert witness(s) Would be essential in assisting obtaining said witnesses. Futhermore, On being granted Self-representation defendant Contacted the Law Library Supervisor in regards to preparing the Documents, the summary of the facts of the case, the relevant laws, and the arguements on how the law is applies to the factual situations, Defendant has been deprived of access to law library AND has not been granted access to Law Library SINCE April 19th, 2018 what-so-ever this Coupled with the Conflict of Interest; that being the Victim in this case is AN employee of the same Department of Corrections, The expert witness/paralegal is NECESSARY in dealing with the preparation of the document's forensics.

Legal Argument

The Amendment VI of the United states of America guarantees the defendant a Constitutional right In all Criminal prosecutions to have compulsory process For obtaining Witnesses in his Favor. see Amendment 6th of the United states of America. Given that this right is a guarantee a private Investigator is necessary plus needed. given the totality of the circumstances in this case. The private Investigator would be of service to the indigent defendant, the Court, and the state in gathering witnesses in defendant's Favor which would assist in sharpening the issues in the case, shaping examination of witnesses, and ultimately shortening trial and assisting in the just determination, At the states expense should the service of this expert witness be financed ~~In~~ that the defendant is indigent. This expert witness has the ability to investigate crucial factors.

A paralegal is needed in this case in that defendant isn't being granted access to the prison law library whatsoever. Defendant made calls to law library Supervisor plus went through all process to attend law library still to no avail. Also, the law as to what is needed and required in a prison law library has been addressed and settled by federal Courts here in Nevada. see Craig V. Hocker, 405 F. Supp. 656 (D. Nev. 1975). There are also Ninth Circuit cases that deal with the requirements of law library: Johnson V. Moore, 948 F. 2d 517, 521 n. 2, (9th Cir. 1991); Lindquist v. Idaho state Bd. of Corrections, 776 F. 2d 851, 856 n. 1, (9th cir. 1985); and holding that inmates ~~[illegible]~~ need not make a showing of prejudice where core Bounds requirements are denied, see Harris v. Mahoney, 827 F. Supp. 1488 (D. Mont. 1993).

Legal Argument cont'd

The service of the paralegal would be of service to the indigent defendant at the expense of the State. On April 19th 2018 Defendant moved to check out NRS. Title One chapters 1-7 as One Book, NRS. Title 3 chapters 34; Habeas Corpus, NRS. Title 4 chapters 47-56, NRS. title 14 chapters 169-179, NRS. title 15 chapters 193-207, All these seperate titles of the NRS with chapters as one Book. To the extent the state wants to argue that these books are being used/or being put together For check out, or they don't have it or whatever any excuse they can come up with given that in preparing Documents in three other active cases the expert witness in this case would be of service to the indigent defendant. Respectfully Submitted, The Memorandum of law is crucial in preparing For trial.

CONCLUSION

Therefore, the just and fair result would be for this court to grant defendant's motion And appoint Mr. Mixon the services of said expert witnesses At state's expense. And grant transportation order for defendant's presence for oral arguments.

Dated this 6th day of May, 2018.

ANTONIO LEE Mixon
Self-representative

By: ANTONIO LEE MIXON

A. L. Mixon Jr. #1019828
Self-representative

Notice of Motion

To: Office of the Attorney General, Attorney For Plaintiff,
you will please take notice that the Self-representative
will brings the above and foregoing Motion on for hearing
before the court on the ~~day of May~~, 2018, at 8:30 a.m.
Jun. 5 2018 at 8:30 am

Dated this 6th day of May, 2018.

Antonio Lee Milton
Self-representative

By: Antonio Lee Milton
A. Lee Milton Jr. #1015828
Self-representative

Certificate of [redacted] Service

I hereby certify that service of the above and foregoing motion was mailed on the 6th day of May 2018 to the Clark County's Attorney General office.

A. L. Milton Jr.

Transport order request

ANTONIO Lee MITON Jr. #1019828
High Desert State Prison
22010 Cold creek rd.
P.O. Box 650
INDIAN Springs, NV 89070

IN the 8th Judicial District Court of the State of Nevada IN and For the County of Clark IN the matter of ANTONIO MITON, Defendant V. State of Nevada, plaintiff asks this court For an order to transport and produce inmate for hearing based ON the circumstances of oral argument, the presence of ANTONIO Lee MITON IS NECESSARY For the hearing on this motion scheduled in this case ON the ___ day of _____, 2018 at the hour of _____ o'clock ___ .m. at the following address Michael P. VILLANI, District Judge, Eighth Judicial District Court, Regional Justice center, 200 Lewis Avenue, Las Vegas, Nevada 89155. Therefore this court should grant the order that pursuant to NRS. 209.274 and any other applicable NRS, Warden. Brian E. williams High Desert State prison, 22010 Cold creek rd., INDIAN SPRINGS, NV 89070 should be ordered to have ANTONIO Lee MITON Jr. #1019828 transported to appear before this court, a specified as court directs. Upon completion of the hearing, ANTONIO Lee MITON Jr. #1019828, will be and should be transported to the above-named institution.

Dated this 6th day of May, 2018.

Mr. Antonio Lee Mixon Sr. #1019828
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

Steven D. Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

89101863B0 0075

UNIT 4 AUB
MAY 06 2018
HIGH DESERT STATE PRISON

Transportation Order

IN The 8th Judicial District Court

of the state of Nevada in and For the County of Clark

IN the matter of:

Antonio Lee Mixon | case NO.: C-17-327439-1

Defendant | Dept. NO.: 17

V. |

State of Nevada |

Plaintiff |

order request

To transport and produce inmate for hearing

Based upon the application to transport, Defendant prays this Court Finds the presence of Antonio Mixon is necessary for the hearing that is scheduled in this case on the ___ day of ___, 2018 at the hour of ___ o'clock ___ .m at the following address:

Michael P. Villani

District Judge

Eighth Judicial District Court

Regional Justice Center

200 Lewis Avenue

LV, NV 89155

Dept. 17 DC.

C-17-327439-1
LSF
Left Side Filing
4768678

It should be ordered that Pursuant to NRS 209.274 and (All NRS pertaining transport of inmate), Warden Brian E. Williams H.D.S.P., have defendant transported to Appear.

Electronically Filed
8/8/2018 11:26 AM
Steven D. Grierson
CLERK OF THE COURT

8

PP
DA
MC

ANTONIO LEE MIXON
/ In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

DISTRICT COURT

CLARK COUNTY, NEVADA

State of Nevada
Plaintiff,

vs.

Antonio Lee Mixon, ID#1968173
1019828
Defendant

Case No. C-17-327439-1

Dept No. 17

Docket _____

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that Antonio Lee Mixon (For a status check) will come on for hearing before the above-entitled Court on the ____ day of August 30, 2018, at the hour of 8:30 am o'clock ___. M. In Department 17, of said Court.

CC:FILE

DATED: this ____ day of _____, 2018.

BY: Antonio Lee Mixon
A. L. Mixon Jr. #1968173
/In Propria Personam

RECEIVED
AUG 08 2018
CLERK OF THE COURT

RECEIVED
AUG 01 2018
CLERK OF THE COURT

Case Number: C-17-327439-1

Electronically Filed
8/8/2018 11:26 AM
Steven D. Grierson
CLERK OF THE COURT

8

Antonio Lee Mixon ID NO. 1968172 / 1019828

HIGH DESERT STATE PRISON
22010 COLD CREEK ROAD
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89018

PP
DA
MC

District Court
Clark County, Nevada

August 30, 2018 @ 8:30 am

State of Nevada
Plaintiff

v.

Antonio Lee Mixon
Defendant

CASE NO.: C-17-327439-1

DEPT. NO.: 17

DOCKET: -

Motion For status check; Trial readiness; Discovery issue; Transportation order. Oral arguement requested. (Re-set hrg date)

COMES NOW, Defendant Antonio Lee Mixon, herein above respectfully moves this Honorable Court for an order granting Defendants appearance and an order granting the Motion for status check; Trial readiness; Discovery issue.

This Motion is made and based upon the accompanying Memorandum of Points and Authorities.

DATED: this 29th day of July, 2018

BY: Antonio Lee Mixon
A. L. Mixon Jr. #1019828
Defendant/In Proper Personam 1968172

RECEIVED
AUG 08 2018
CLERK OF THE COURT

RECEIVED
AUG 01 2018
CLERK OF THE COURT

5

Statement of Case

In preparing For trial Defendant went through state's witness list and came across two witnesses that are not on any documents in the discovery Defendant received which leaves The Defense without any idea of what said witnesses are expected to testify there to. Said Witnesses Listed on the witness list of the information Filed by the state are: 1) Dustin Mumpower Correctional Sergent 2) Kurt Krohm Correctional officer, Defendant contacted the state's Attorney General's office requesting From them What these said Witnesses are expected to testify thereto so defendant Could prepare For trial. The Attorney General's office has Failed to respond, Defendant files this instant motion, in good Faith to receive what said witnesses are expected to ~~testify~~ thereto, May The local Rules of this Court and NRCP govern over said Motion.

Memorandum of Points and Authorities

(1) Discovery

Prior to Filing this discovery Motion Defendant first Undertook a good Faith effort to resolve any discovery dispute among the parties. The Defendant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without Court order. After written personal consultation and sincere effort to do so, the parties have been unable to resolve the matter without court action, While Courts recorgnizes an inmate might not be able to meet personally with opposing counsel, nevertheless an inmate will still be required to attempt to resolve any discovery dispute either by a telephone Consultation or a written Communication whereby the inmate sincerely attempted to resolve the discovery dispute. The discovery Originally Sought are What are Witnesses 1.) Dustin Mumpower and 2.) Kurt Krohm expected to testify thereto. State never respond back to defendant.

(2) Conclusion

(a) A statement specifying (from the state) the discovery completed by the state as of the date of motion. (b) A specific description of the discovery which remains to be completed; (c) The reasons why said and such remaining discovery was not completed within the existing discovery; and A proposed schedule for the completion of all remaining discovery, including what 1.) Dustin Mumpower and 2.) Kurt Krohm are expected to testify thereto So Defendant can prepare examination of Witnesses.

CERTIFICATE OF SERVICE

I, Antonio Lee Milton Sr, hereby certify that I am the Defendant ~~petitioner~~ in this matter and I am representing myself in propria persona.

On this 29th day of July, 2018, I served copies of the Motion For status check; trial readiness; Discovery issue; transportation order; Re-set trial date, in case number: C-17-327439-1 and placed said motion(s) in U.S. First Class Mail, postage pre-paid:

Address: 200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160
Sent to: STEVEN D. Grierson, clerk of the Court
Address: 555 E. Washington Ave., Ste. 3900
LV, NV 89101-1068
Sent to: Chelsea N. Kallas (Bar No. 13902)

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is/the petitioner in the above-entitled action, and he, the defendant has read the above CERTIFICATE OF SERVICE and that the information contained therein is true and correct. 28 U.S.C. §1746, 18 U.S.C. §1621.

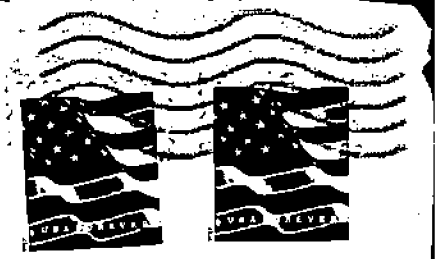
Executed at H.D.S.P.
on this 29th day of July, 2018.

1968172
A.L. Milton Sr. 10/9828
DOP#

Defendant
~~PETITIONER~~ -- In Proper Person

Antonio Lee Milton 1019878
H.D.S.P.
22010 Cold Creek road
P.O. Box 650
Indian Springs, Nevada 89018

LAS VEGAS NV 890
30 JUL 2018 PM 5 L



HIGH DESERT STATE PRISON
JUL 29 2018
UNIT 4 A/B

Steven D. Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

89101-630000

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8/27/2018 11:32 AM
Steven D. Grierson
CLERK OF THE COURT

ANTONIO L MIXON 1968172
Antonio L Mixon ID NO. 1019828

HIGH DESERT STATE PRISON
22010 COLD CREEK ROAD
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89018

PP
DA
MC

District Court
Clark County, Nevada

STATE OF NEVADA
Plaintiff
v.
Antonio L. Mixon Jr.
Defendant

CASE NO.: C-17-327439-1
DEPT. NO.: 17
DOCKET:
Date: 09/18/18 Time: 8:30 AM

"Urgent Attention"

Motion for Discovery, For Trial date to be resetted and For order transporting Inmate for oral arguement at the time of the hearing. "AMENDED"

COMES NOW, Antonio Mixon Defendant, herein above respectfully moves this Honorable Court for an order granting Motion.

This Motion is made and based upon the accompanying Memorandum of Points and Authorities.

DATED: this 21st day of Aug., 2018

BY: /s/ A. L. Mixon Jr.
Antonio L. Mixon Jr. #1019828
Defendant/In Proper Person

RECEIVED
AUG 24 2018
CLERK OF THE COURT

RECEIVED
AUG 27 2018
CLERK OF THE COURT

Statement of Case

In preparing for preliminary hearings on evidence pursuant to 47.090 and preparing for trial The Defense went through the states witness list and came across two witnesses that are not on any documents in the Discovery Defendant received From Public Defender. Defendant Contacted the state Attorney General's office requesting what these witnesses were expected to testify thereto/to. The Attorney General's office has been Failing to communicate and has of yet responded.

memorandum of Points and Authorities

Pursuant to 47.090. Preliminary hearings on evidence allegedly unlawfully obtained shall be conducted outside the hearing of the Jury. Pursuant to 50.025 1. A witness may not testify to a matter unless: (a) evidence is introduced sufficient to support a finding that the witness has personal has personal Knowledge of the matter. Accordingly merely just placing those witnesses on a witness list is not sufficient to support the finding mandated above. Pursuant to 50.025 (2) Evidence to prove personal Knowledge may, but not need to consist of the testimony of the witness. Court HERE The Defendant only requested the state turnover to the Defense what these witnesses are expected to testify to/thereto and not the testimony itself. The state is entitled to present a full and accurate account of the circumstances of the commission of a crime. See. 94 Nev. 461; 100 Nev. 536. Court without handing over to the defense what these TWO witness are to testify thereto/to is not a full and accurate account as mention above. Therefore For the Foregoing reason listed above the state should be order to Fulfill the Defenses request.

In preparing For trial Your Honor The Defense is still gathering witnesses and evidence in preparing Defenses Case in Chief And pretrial Motions The Date For trial re-set should be granted.

Memorandum of Points and Authorities Continued

Those two witnesses are; (1) Kurt Krohm. (2) Dustin Mumpower. Depending on the nature of the evidence requested of the state it's admissibility may come into light it may present some credibility issues pursuant to 50.075 The credibility of a witness may be attacked by any party. including the party calling the witness. That has a lot to do with perception, memory, truthfullness. The Remoteness in this case between December 4, 2015 The date the state alleged ~~committed or committed~~ the Defendant committed or completed All of the acts alleged is almost three years, The Defense Knows Remoteness goes to Credibility not admissibility But pursuant to NRS 50.075 what these witness are to testify there to is warrant in preparing For trial and For all the Foregoing reason in all of the Memorandum of Points and Authorities this motion should be granting ordering the State to fulfill The Defendant's Request. Accordingly and pursuants are of NRS's ~~locale~~ that are listed herein.

Declaration of Defendant

I Antonio LEE Milton The Defendant in this case attempted to contact the Attorney General in this case via letter requesting what Witnesses: (1) Kurt Krohm. And (2) Dustin Mumpower are to testify ~~to~~ there to. I have in good Faith conferred or attempted to confer with the person or party Failing to make disclosure or discovery in an effort to obtain it without Court order and that, after personal consultation and sincere attempted efforts to do so, the parties have been Unable to resolve the matter without Court action. Executed at H.D.S.P. on or about 08/21/2018. pursuant to penalty ~~of~~ perjury. A.L. Milton Jr. The Defendant hereby Declare and Certify the above Contents of the Declaration Under penalty of

Declaration of Defendant Continued

perjury.

Memorandum of law continued

General rule for transport of inmate for court appearance

The Nevada Department of Corrections is required to transport the inmate to and from the courthouse if the inmate is required or requested to appear before the court per NRS 209.274. Here The Defendant is required to be at court in that the Defendant is the lawyer in this case and oral arguement is requested. Therefore, Court the motion for transport order should be granted. For the time, date, place as court deems appropriate for Defendants appearance.

Notice of Motion

You will please Take Notice, that Antonio Lee Milton Jr. will come on for hearing before the Court Dept. 17 on the day and year at the hour and time in Dept 17 as Court Deems appropriate. Dated on or about 08/21/2018

Certificate of Mailing

I, Antonio Lee Milton, hereby certify, pursuant to NRCP 5(b), that on or about 08/21/2018 I mailed a true and correct copy of the foregoing "Limited motion" by depositing it in the high Desert State Prison with First-Class Postage, fully Prepaid, addressed as follows:

Steven D. Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

Chelsea N. Kallas (Bar No. 13902)
Deputy Attorney General
555 E. Washington Ave., Ste. 3900
LV, NV 89101-1068

ONE copy to be Stamped, Filed and returned.

Dated: this on or about the 21st day of Aug. 2018. A. Milton Jr. Self-representative

Memorandum of law continued

Certification

Fed. R. Civ. P. 37(a)(1) mandates that any discovery motion "must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in a effort to obtain it without court order

I certify that the movant has complied with Fed. R. Civ. P. 37(a)(1) and Local-Rule 26-7(c) and see 9/10 LR IA 3-3(F) of the District Courts of Nevada U.S. District Courts in preparing this Motion. Under penalty of perjury ~~executed~~ executed on or about 08/21/2018 of the U.S.D.C

The request complied with NRCP 34 contents of request

Affirmation

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding "Mixed Motion..." Filed in District Court Case number C-17-327439-1 Does not contain the Social Security of any person.

G.L. Mixon Jr. 08/21/2018

Mixon, Antonio Lee B.R.

Self-Representative.

Conclusion

In regards to the motion for discovery (a) a statement specifying the discovery completed by the state as of date of this motion (B). A specific description of the discovery which remains to be completed; (C) The reasons why such remaining discovery was not completed within the existing discovery. (D) A proposed schedule for the completion of all remaining discovery. And The Defendant's request for what witnesses kurt krahn and Dustin Mumpower are expected to testify thereto.

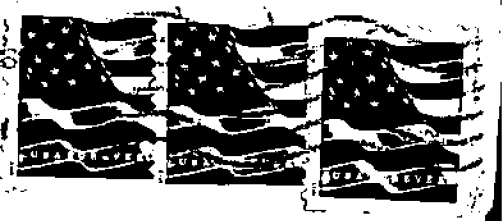
The motion for new trial date should be granted because im still gathering witnesses and evidence in preparing for pre-trial motions and my "case in chief".

The motion for transport of inmate should be granted because the Defendant's appearance is required in that defendant is the lawyer in this case and oral argument is requested at the time of hearing.

The State hands over the requested discovery.

Antonio Lee Milton Jr 1015828
H.D.S.P.
P.O. Box 650
Indian Springs, NV 89070

LAS VEGAS NV
22 AUG 2018 PM



Steven D. Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

89101$6300 C075

HIGH DESERT STATE PRISON
AUG 21 2018
UNIT 4 A/B

400

RP
DA

Case No. C-17-327439-1

Dept. No. 17

FILED
SEP 19 2018
CLERK OF COURT

1

IN THE Eighth JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark

The State of Nevada
Plaintiff

vs.

Antonio Lee Milton Jr.
Defendant

Case No. C-17-327439-1

Dept No. 17

Docket

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that Antonio Lee Milton Jr.

October 11, 2018

will come on for hearing before the above-entitled Court on the ~~3rd~~ 3rd day of ~~September~~ ~~2018~~

at the hour of ~~10 o'clock A~~ M. In Department 17, of said Court. @ 8:30 AM

CC:FILE

DATED: this 13th day of Sep., 2018.

BY: Antonio Lee Milton Jr.
Antonio Lee Milton Jr. #1966112
/In Propria Personam

RECEIVED
SEP 19 2018
CLERK OF THE COURT

C-17-327439-1
NOTM
Notice of Motion
4780856

Case No. C-17-327439-1

Dept. No. 17

FILED
SEP 19 2018
CLERK OF COURT

1

IN THE Eighth JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark

The State of Nevada
Plaintiff

vs.

Defendant

Case No. C-17-327439-1

Dept No. 17

Docket

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that Antonio Lee Mixon Sr. pursuant Eighth Judicial Court rules, Rule 3.20 will come on for hearing before the above-entitled Court on the ~~3rd day of October~~ 3rd day of October, 2018, at the hour of ~~10 o'clock A.M.~~ 10 o'clock A.M. In Department 17, of said Court.

October 11, 2018 @ 8:30AM

CC:FILE

DATED: this 13th day of September, 2018.

BY: MIXON, ANTONIO Sr.
A. L. Mixon Sr. #1966112
/In Propria Personam

RECEIVED
SEP 19 2018
CLERK OF THE COURT

C-17-327439-1
NOTM
Notice of Motion
4780864

2

Antonio Lee Mixon
/ In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

FILED
SEP 19 2018
CLERK OF COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

The State of Nevada,

Plaintiff,

vs.

Antonio Lee Mixon Jr.,

Defendant.

October 11, 2018
@ 8:30 AM

Case No. C-17-327439-1

Dept. No. 17

Docket _____

"Motion To Suppress" And/or Pursuant to NRS 47.090

COMES NOW, Antonio Mixon Defendant herein above respectfully moves this Honorable Court for an order granting Motion

oral argument requested

This Motion is made and based upon the accompanying Memorandum of Points and Authorities.

DATED: this 13th day of Sep., 20 18.

BY: Antonio Lee Mixon Jr.
A. L. Mixon Jr. #1960172
Defendant/In Propria Personam

RECEIVED
SEP 19 2018
CLERK OF THE COURT

C-17-327439-1
MOT
Motion
4780855

Memorandum of points And Authorities

The motion to supperss is normally used to preclude the introduction of evidence at trial which is claimed to be inadmissible for Constitutional reasons. This motion is directed to the alledged confession the state alledges The defendant in regards to possession of a weapon. Which what the state alledged to have been said by the defendant is: " You lucky you had that OC ~~Spray~~ or I would a stuck your bitch ass!" First Court that alledged statement has no relevance to the charge of Battery By a Prisoner NRS 200.481 (2)(F) In that the element of that charge is that state alledge- Defendant Battered the Victim by throwing a rock at said Victim Futhermore in the Victim's report Victim describes what he alledge to have occured that is he ~~said~~ alledge he was struck with a rock then he goes on to alledge defendant came out of his person brandishing a weapon. That alledge statement is not relevant to the issue of Battery, to no Circumstances surrounding the issue of Battery. In fact irrelevant evidence is inadmissible see NRS 48.025. (2). In the event the Court denies this motion part. The defense asks For the Jury gets a Cautionary warning explaining the reason for it's admission when evidence of another allegation is not closely related to the act in Controversy or accusation charged that an ordinary Witness Cannot describe without referring to the other alledged act or crime

Memorandum of Points And Authorities Cont'd, see NRS 48.035(3). Futhermore in regards to the alledge statement state alledges defendant made and thats "You lucky you had that OC or I would stuck your bitch ass!" Amend. V. of the Constitution of America is well settled that no person shall be compelled in any criminal case to be a witness against himself. See Amend. V. of the U.S. Const. The term "compelled" today is used as the synonymic term "compulsion". See Bram V. United states, 168 U.S. 532. Whatever may have been the character of the compulsion the confession must be excluded. See Bram V. United states, 168 U.S. 532, 42 L.ed 568, 18 S.Ct. 183, 266 US, at 14-15, 69 L.ed at 148. Given that in the Roy allen stewart case the Court in that case would not presume that the defendant have been advised of his right to remain silent. See 10 A.L.R. 3d 974, or a record that any warnings had been given or that any effective alternative had been employed The Supreme Court held that the ~~we~~ confession was not admissible See 10 A.L.R. 3d 974. This being the case the "Compulsion" can be merely "no Cautionary Warnings" ~~on record~~ given (absent a showing on the record) by ~~accused~~ officer to the accused aside from an officers words and actions which were not to illicit incriminating replys See 62 cal 2d 571, 43 cal Rptr 201, 400 P2d 97. See STATE OF California, Petitioner VS. Roy Allen Stewart 10 A.L.R. 3d 974. The practice of the FBI

Memorandum of points and authorities Cont'd. The practice of the FBI which requires that any statement made be given by accused without questioning by police requires a Cautionary warning See 384 U.S. 486 - 384 U.S. 488. That practice can readily be emulated by state and local law enforcement agencies See 384 U.S. 488. Accordingly Nevada Department of Corrections is a state agency. The public officer (that put defendant in restraints right after they ~~defendant~~ alledge defendant Committed a criminal act) is ~~constructive~~ ~~case~~ must go by the practice mentioned above. That public officer didn't as the record reflects. As recently strengthened the rules require that a Cautionary Warning be given by a police officer "public officer" as soon he has evidence that affords him reasonable grounds for suspicion 5th A 384 U.S. 488. The defendant in this case did not knowingly and intelligently waive his right to remain silent because he was never given the Cautionary Warning mandated by law. In Fact the alledged Confession alledge ~~th~~ made by the defendant were more reflective of defendant's frustration at being put in restraints "Arrested" than demonstrative of his consciousness of guilt. The public officer words and actions caused the frustration. Instead of the public officer given the defendant a cautionary warning his words and actions was otherwise disrespectful conduct. Furthermore Ex 1, 2, and the videotape in this case ~~Come~~ otherwise witnesses came after the alledged ~~statements~~ alledged confession was alledgedly made. Given the Custodial settings and the defendant being deprived of his Fourth Significantly that statement should be suppressed and any witness the ~~defendant~~ State wishes to testify as to what defendant alledgedly said should be precluded from doing so.

CERTIFICATE OF SERVICE BY MAILING

I, Antonio Lee Milton Jr., hereby certify, pursuant to NRCP 5(b), that on this 13th day of Sep., 2018, I mailed a true and correct copy of the foregoing, "Motion to Suppress"

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

Attorney General's office
Bureau of Public Affairs
And Public Safety Division
Attn: Chelsea Mellas
Deputy Attorney General
555 East Washington Ave. Suite #3900
LV, NV 89101

Steven D. Grierson
Clerk of the Court
200 Lewis Avenue 3rd Floor
LV, NV 89155-1160

CC:FILE

DATED: this 13th day of Sep., 2018.

Milton Antonio Jr.
Antonio Lee Milton Jr. #1062172
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion to Suppress
(Title of Document)

filed in District Court Case number C-17-327439-1

☐ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-or-

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

A. I. Milton Jr. — Signature
04/13/2018 — Date

Antonio Lee Milton Jr. — Print Name

Defendant — Title

DECLARATION OF PROBABLE CAUSE FOR ARREST

FILED

2017 AUG 18 A 9:04

JUSTICE COURT
LAS VEGAS, NEVADA
BY GEG
DEPUTY

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Victor Daniel, based upon information and belief, do hereby swear the assertions of this declaration are true:

1. That I am a Criminal Investigator for the State of Nevada, Office of the Inspector General, in Clark County, Nevada.

2. That I believe the following facts and circumstances give rise for finding probable cause to believe that the crime of BATTERY BY A PRISONER, a Category "B" felony in violation of NRS 200.481(2)(f), and POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACSIMILE BY AN INCARCERATED PERSON, a Category "B" felony in violation of NRS 212.185(c) occurred within the County of Clark, State of Nevada.

3. That according to the official investigation, the following occurred: On December 4, 2015, at approximately 0905 hrs, on the Unit 5/6 recreation yard at High Desert State Prison, Correctional Officer Brian Crooks called via radio for emergency assistance. Officer Crooks reported that he observed inmate Antonio Mixon #1019828 throwing rocks at Senior Correctional Officer Dean Ontiveros and Correctional Officer Tyler Mcaninch.

According to Senior Correctional Officer Ontiveros, inmate Mixon struck him in the abdomen with one of the rocks that was being thrown at him. At that time, Senior Correctional Officer Ontiveros called for assistance via radio. Officers instructed inmates in that area to get on the ground. Senior Correctional Officer Ontiveros and other responding correctional staff reported that inmate Mixon retrieved a prison made weapon, commonly referred to as a "shank," from his shoe. Other officers arrived on scene and inmate Mixon dropped the weapon and was restrained. According to reports, while inmate Mixon was in restraints he stated, "You lucky you had that OC or I woulda stuck your bitch ass!"

EXHIBIT 3
EX 3

409B

STATE OF NEVADA DEPARTMENT OF CORRECTIONS
INCIDENT 028 REPORT

REPORT OF INCIDENT

INCIDENT DATE AND TIME	INSTITUTION	LOCATION
12-04-2015 0905HRS	High Desert State Prison	UNIT 5/6 SMALL YARD

THE FOLLOWING IS A COPY OF THE 028 SUBMITTED IN NOTIS BY CORRECTIONAL SERGEANT DUSTIN MUMPOWER

On December 4, 2015 I, CERT Sergeant D. Mumpower was on duty at High Desert State Prison. At approximately 9:05 am a call for officer assistance in the 5/6 quad was transmitted via institutional radio. CERT Officer Krohm and I immediately responded to the incident. Upon entering the 5/6 yard gate all inmates were laying on the ground prone and compliant. One inmate later identified as Mixon #1019828 was in mechanical wrist restraints and under video coverage by Officer Johnson. I was briefed that the inmate was in possession of a weapon that was on the ground next to his person. It is alleged that inmate Mixon was purposely throwing rocks at Senior Officer Ontiveros. Upon being struck with a rock Ontiveros approached inmate Mixon and at that time the weapon was displayed. Multiple officers responded along with the attention of the 5/6 gun rail officer. Due to officer response and presence Inmate Mixon lay on the ground and submitted to wrist restraints with no shots fired and no force utilized. The inmate did state, "You lucky you had that OC or I woulda stuck your bitch ass!" I proceeded to take multiple photographs of the inmate, incident area, and the weapon inmate Mixon was in possession of. The weapon is approximately 5 inches in length made from a metal outlet cover and wrapped with a white sheet for a handle. The weapon was placed in evidence bag #B 0000070181 by CERT Officer Krohm to be transported to the HDSP evidence vault. Mixon was afforded a medical assessment by HDSP medical staff and was released back to custody with no injury noted. Mixon was then escorted to administrative segregation unit 1 D-22 per Lt. McKeehan pending disciplinary charges by CERT Officer Krohm and me. All video footage and photographs will be uploaded and distributed accordingly.

IN-2015-467

REPORTING STAFF: SGT MUMPOWER	DATE: 12-04-2015
REVIEWING ADMINISTRATOR:	DATE:

[redacted]

Exhibit 2

Pg 9

[redacted]

STATE OF NEVADA DEPARTMENT OF CORRECTIONS
INCIDENT 028 REPORT

REPORT OF INCIDENT

INCIDENT DATE AND TIME	INSTITUTION	LOCATION
12-04-2015 0905HRS	High Desert State Prison	UNIT 5/6 SMALL YARD

THE FOLLOWING IS A COPY OF THE 028 SUBMITTED IN NOTIS BY CORRECTIONAL OFFICER KURT KROHM

On Friday December 4th 2015 at approximately 09:05, while on duty. I Officer K. Krohm assigned to C.E.R.T. at High Desert State Prison. Responded with C.E.R.T. Sgt D. Mumpower to a 1033(Staff assault) in 5/6 Quad. Upon walking into the 5/6 Quad all I/M's were lying on the ground. S C/O D. Ontiveros, S C/O F. Dickens, C/O B. Estill, LT K. Mckeehan and R. Hesler were standing around I/M Antonio Mixon #1019828. I/M Mixon #1019828 assaulted S C/O Ontiveros with Rocks and a Shank (Prison Made Weapon). In a aggressive tone I/M Mixon told S C/O D. Ontiveros ?you are lucky you had that can of O.C. Spray or I would have stuck your bitch ass" The shank looked to be an outlet cover that was bent, sharpened and wrapped in a cloth type material. The Shank was approximately five inches in length. Sgt D Mumpower took pictures of where the incident took place as well as where the Shank was found. The Shank was put into evidence bag B0000070181 by myself and placed into Evidence Vault. I/M Mixon #1019828 was evaluated by medical staff before being escorted by C.E.R.T. Sgt D. Mumpower and K. Krohm to Intake. I/M Mixon #1019828 was then stripped out and taken out of his State blues, and placed into an orange jumpsuit. I/M Mixon #1019828 was then brought to Unit 1-D-22. END of REPORT

IN-2015-467

REPORTING STAFF: C/O KROHM	DATE: 12-04-2015
REVIEWING ADMINISTRATOR:	DATE:

Exhibit one 1

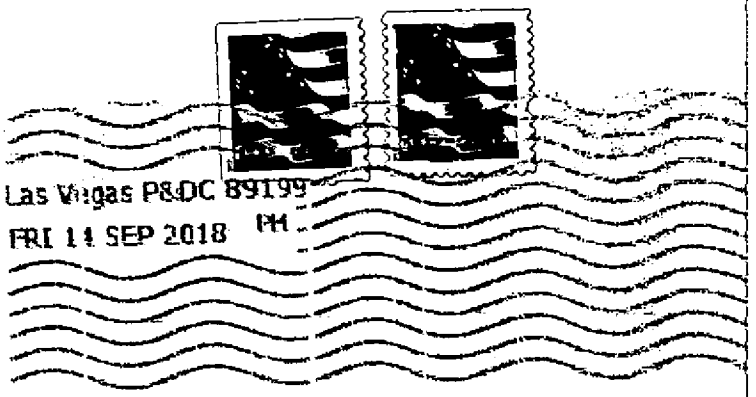
Transport order request

Antonio Lee Mixon Jr. #1019828
High Desert State Prison
22010 Cold Creek rd.
P.O. Box 650
Indian Springs, NV 89070

In the 8th Judicial District Court of the State of Nevada in and For the County of Clark in the matter of Antonio Mixon, Defendant V. State of Nevada, plaintiff asks this Court For an order to transport and produce inmate For hearing based on the circumstances For oral arguement, the presence of Antonio Lee Mixon is Necessary For the hearing on this motion scheduled in this case on the 3rd day of Oct. 2018 at the hour of 10 A.M. O'clock. at the following address Micheal P. Villani, District Judge, EJDC, Regional Justice Center, 200 Lewis Avenue, LV, NV 89155. Therefore this court should grant the order that pursuant to NRS. 209.274 and any other applicable NRS. Warden Brian E. Williams High Desert State prison, 22010 Cold Creek rd., Indian Springs, NV 89070 Should be ordered to have Mr. Mixon #1019828 transported to appear before this Court, as specified as Court directs. Upon Completion of the hearing, Mr Mixon #1019828, will be and should be transported to the above-named institution.

Dated this day 13th day of Sep. 2018.

Antonio Lee Mitton Jr. #1019828
HDSP P.O.BOX 650
Indian Springs, NV 89070



Steven D. Grierson, Clerk of the Court
200 Lewis Ave. 3rd Floor
LV, NV 89155-1160

443

DESERT STATE PRISON
SEP 13 2018
INIT 4 A/B

Mixon, Antonio Sr
In Propria Personam
Post Office Box 650 [HDSP]
Indian Springs, Nevada 89018

FILED
SEP 19 2018
CLERK OF COURT

7

DISTRICT COURT

CLARK COUNTY, NEVADA

The STATE of Nevada,

Plaintiff,

vs.

Antonio Lee Mixon Jr 1968172,

Defendant.

October 11, 2018
@ 8:30 AM

Case No. C-17-327439-1

Dept. No. 17

Docket

Motion For Expert Witnesses

COMES NOW, Antonio Lee Mixon Jr. Defendant herein above respectfully moves this Honorable Court for an order granting motion For the Expert Witnesses described herein.

This Motion is made and based upon the accompanying Memorandum of Points and Authorities.

DATED: this 13th day of September, 2018.

BY: Mixon Jr., Antonio
A. L. Mixon Jr. #1968172
Defendant/In Propria Personam

RECEIVED
SEP 19 2018
CLERK OF THE COURT

C-17-327439-1
MOT
Motion
4780882

Declaration

1. I am the attorney with the Constitutional right to practice law in the state of Nevada; I am a Self-representative assigned to represent myself in the instant matter. 2. That the instant motion Springs From my review and My consults ~~about~~ over discovery with the state in this matter. on the date ~~Record-~~ing of court preceding this motion the state was asked by the defense is their any reports in regards to Finger-Prints obtained if any From the weapon state alledge the defendant possessed. The state replied they didn't believe a report was made. The Defense believes the defendants Fingerprints isn't on the weapon state alledge Defendant possessed. Also Victim (LEPHF Pg 6) ~~Irrelevant~~ to explain why he believed Defendants Fingerprints weren't on the weapon. So This Motion Follows For the assistance of Fingerprint expert. Given that the defendant has a right to Expert, inspect, examine, or test physical evidence in possession of prosecution the need For a Forensic linguistics expert in regards to evidence of linguistics or typing style as basis of identification of typist or author in regards to incident report state alledge witnesses made, when theres a report in this matter that clearly would lead a reasonable mind to believe the said reports aren't genuine. I declare under penalty of perjury that i believe the foregoing is true and correct. (NRS 53.045). Executed this 13th day of Sep., 2018 A.D. Miguel Jr

Argument

Right of Accused to Compulsory Process.

Sixth Amendment right to notice, Confrontation and compulsory process, taken together, guarantee that criminal charge may be answered in manner now considered fundamental to fair administration of American Justice, through calling and interrogation of favorable witnesses, cross-examination of adverse witnesses, and orderly introduction of evidence; in short, Sixth Amendment Constitutionalizes right to an adversary criminal trial to make defense as we know it. See U.S.C.A. Const. Amend. 6. Opinions: Experts. 1). The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. 2). If of a type reasonable relied upon by experts in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence, see NRS 50.285. Expert Witnesses: 1). The court may order defendant or the state or both to show cause why expert witnesses should not be appointed, and may request parties to submit nominations. 4). A witness so appointed shall advise the parties of the witness's findings, if any, and may thereafter be called to testify by the court. See NRS 174.271. The defendant has a right as an indigent defendant in state criminal cases to assistance of fingerprint expert. See 72 A.L.R. 4th 8 74. Admissibil-

Argument Continued

-lty and weight of fingerprint evidence obtained or visualized by chemical, laser, and digitally enhanced imaging processes. See 110 A.L.R. 5th 213. The defense asked state for or if state had report in regards to any evidence mentioned above state said they didn't believe a report was made. Also Victim testified explaining why Defendants Fingerprints isn't on the Weapon. Accordingly The Defense would need expert to Make a report and testify to the Findings because the defendants Fingerprints arenot on that weapon. Theres no fingerprints on that Weapon. That report is crucial For defendants defense. Secondly Right of accused in state Courts to have expert inspect, examine or test physical evidence in possession of prosecution. See A.L.R. 4th. 1108. Admissibility of evidence as to linguistics or typing style (Forensic linguistics) as basis of identification of typist or author. See 36 A.L.R. 4th 598. In this case there's report that indicate that there is only one ~~fifth~~ initial report made about this incident when it occured now twenty Months later the State has a lot more reports in regards to this incident. The only report was ~~of~~ the victim's.

CERTIFICATE OF SERVICE BY MAILING

I, Antonio Lee Milton Jr., hereby certify, pursuant to NRCP 5(b), that on this 13th day of Sep., 2018, I mailed a true and correct copy of the foregoing, "Motion for expert witnesses."

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

Attorney General's office
Bureau of Public Affairs
and Public Safety Division
Attn: Chelsea Kallas
Deputy Attorney General
555 ~~Washington~~ East
Washington Ave. Suite #3900
LV, NV 89101

Steven D. Grierson
Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

CC:FILE

DATED: this 13th day of Sep., 2018.

Antonio Lee Milton Jr.
A. L. Milton Jr. # 1141881

/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion For Expert Witnesses

(Title of Document)

filed in District Court Case number C-17-327439-1

☐ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

(State specific law)

-or-

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

A. L. Mixon Jr. — Signature

09/13/2018 — Date

Mixon, Antonio Jr.

Print Name

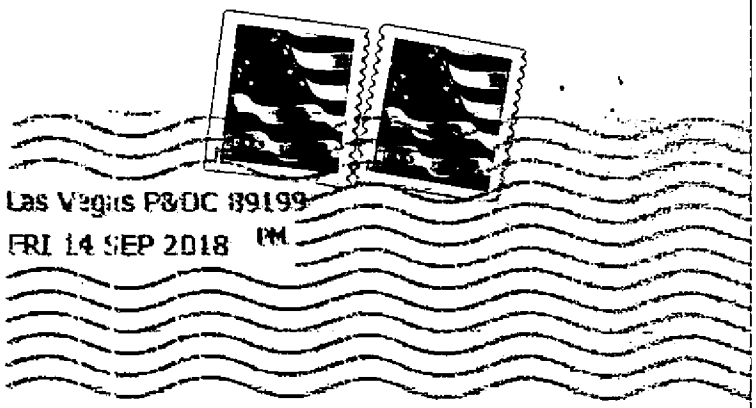
Defendant.

Title

Transport order request

1. Antonio Lee Mixon Jr. #1019828
2. High Desert state Prison
3. 22010 Cold creek rd.
4. P.O Box 650
5. Indian Springs, NV 89070
6. In the 8th Judicial District court of the State of
7. Nevada in and for the County of clark in the matter
8. of Antonio mixon, Defendant V. State of Nevada, Plaintiff
9. asks this Court for an order to transport and produce
10. inmate for hearing ~~on this motion scheduled in this case~~
11. Based on the circumstances oral arguement, the presence
12. of Antonio Lee Mixon is necessary for the hearing on this
13. motion scheduled in this case on the 3rd day of
14. Oct., 2018. at the hour of 10 A.M. o'clock. at the
15. Following address Michael P. Villani, District ~~Court~~
16. Judge, EJDC, regional Justice center, 200 Lewis Ave.,
17. Las Vegas, NV 89155. Therefore this Court should grant
18. the order pursuant to NRS. 209.274 and any other applicable
19. NRS, warden Brian E. Williams High Desert State Prison,
20. 22010 Cold creek rd., Indian Springs, NV 89070 should be
21. ordered to have Antonio Lee Mixon Jr. #1019828 transported
22. to appear before this Court, as specified as Court directs.
23. Upon completion of the hearing, Antonio Lee Mixon Jr. #1019828,
24. will be and should be transported to the above-named institution.
25. Dated this 13th day of Sep., 2018.

Antonio Lee Milton #1019828
HDSP P.O. Box 650
Indian Springs, NV 89018



Steven D. Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

422

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9/26/2018 4:49 PM
Steven D. Grierson
CLERK OF THE COURT

OPPM
ADAM PAUL LAXALT
Attorney General
Jason Gunnell (Bar No. 13997)
Senior Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-3904
F: (702) 486-0660
jgunnell@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1968172, Defendant.	Case No.: C-17-327439-1 Dept. No.: XVII Hearing Date: October 11, 2018 Hearing Time: 8:30 A.M.

OPPOSITION TO DEFENDANT'S MOTION FOR EXPERT WITNESSES

ADAM PAUL LAXALT, Attorney General for the State of Nevada, through Senior Deputy Attorney General, Jason Gunnell, hereby submits the State's Opposition to Defendant's Motion for Expert Witnesses. This motion is made and based upon the pleadings on file, the following memorandum of points and authorities, and any oral arguments the Court may allow.

Dated this 26th day of September, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Jason Gunnell
JASON GUNNELL (Bar No. 13997)
Senior Deputy Attorney General

Case Number: C-17-327439-1

DECLARATION

JASON GUNNELL makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am a Senior Deputy Attorney General assigned as one of the prosecutors in this instant matter.
2. I am more than 18 years of age and am competent to testify as to the matters stated herein. I also have personal knowledge of the facts stated herein or I have been informed of these facts and believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 25th day of September, 2018.

/s/ Jason Gunnell
JASON GUNNELL

MEMORANDUM OF POINTS AND AUTHORITIES

I.
FACTS AND RELEVANT PROCEDURAL HISTORY

On October 25, 2017, Antonio Lee Mixon (hereinafter "Defendant") was charged by way of Information with the following: Count 1 – Battery By A Prisoner (Category B Felony – NRS 200.482(2)(f)); and Count 2 – Possession or Control of Dangerous Weapon or Facsimile (hereinafter shank) By An Incarcerated Person (Category B Felony – NRS 212.185(c)).

According to the Information, on December 4, 2015, Defendant – an NDOC inmate – possessed a shank and threw a rock at a corrections officer. The possession of the shank was witnessed by a number individuals to include two correction officers. The shank possessed by the defendant was seized by prison officials. The shank was never submitted for analysis to determine whether any latent fingerprints were found on the shank.

On or about September 19, 2018, the Defendant filed a Motion for Expert Witnesses. In the motion, Defendant assumes the shank was tested for latent finger prints. However, the shank was never

submitted for latent fingerprint analysis.

II.
ARGUMENT

The State requests the Defendant's Motion for Expert Witnesses be denied. The shank was never submitted for fingerprint testing. Consequently, testimony from a latent print expert is not required to show any issues arose out of testing.

III.
CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court deny Defendant's Motion for Expert Witnesses.

DATED this 26th day of September, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Jason Gunnell
JASON GUNNELL (Bar No. 13997)
Senior Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on September 26, 2018, I filed the foregoing OPPOSITION TO DEFENDANT'S MOTION FOR EXPERT WITNESSES via this Court's electronic filing system.

I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or e-mail; or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following unregistered participants:

Antonio Mixon, Inmate ID #1019828
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

/s/ A. Reber
An employee of the Office of the Attorney General

Electronically Filed
9/26/2018 4:52 PM
Steven D. Grierson
CLERK OF THE COURT

OPPM
ADAM PAUL LAXALT
Attorney General
Jason Gunnell (Bar No. 13997)
Senior Deputy Attorney General
State of Nevada
Office of the Attorney General
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Las Vegas, Nevada 89101-1068
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F: (702) 486-0660
jgunnell@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1968172, Defendant.	Case No.: C-17-327439-1 Dept. No.: XVII Hearing Date: October 11, 2018 Hearing Time: 8:30 A.M.

OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

ADAM PAUL LAXALT, Attorney General for the State of Nevada, through Senior Deputy Attorney General, Jason Gunnell, hereby submits the State's Opposition to Defendant's Motion to Suppress. This motion is made and based upon the pleadings on file, the following memorandum of points and authorities, and any oral arguments the Court may allow.

Dated this 26th day of September, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Jason Gunnell
JASON GUNNELL (Bar No. 13997)
Senior Deputy Attorney General

Case Number: C-17-327439-1

MEMORANDUM OF POINTS AND AUTHORITIES

I.

FACTS AND RELEVANT PROCEDURAL HISTORY

On October 25, 2017, Antonio Lee Mixon (hereinafter "Defendant") was charged by way of Information with the following: Count 1 – Battery By A Prisoner (Category B Felony – NRS 200.482(2)(f)); and Count 2 – Possession or Control of Dangerous Weapon or Facsimile By An Incarcerated Person (Category B Felony – NRS 212.185(c)).

According to the Information, on December 4, 2015, Defendant – an NDOC inmate – possessed a prison made weapon (hereinafter "shank") and threw a rock at a corrections officer on the prison yard at High Desert State Prison. The Defendant also threatened the officers with the shank. In order to safely deescalate the situation, a correction officer deployed Oleoresin capsicum (OC) or pepper spray. The target of the spray was the Defendant. After the deployment of the OC spray, the Defendant was placed in hand restraints on the ground. At some point during the incident, a corrections officer was tasked with recording the event via a handheld video camera. The video shows at about the three minute mark, the defendant being asked to identify himself. After thirty seconds of conversation (3:30 mark), all dialogue with the Defendant ceased. At that point the officers focused their attention on processing the crime scene. The officers did not interaction with the Defendant again until after he uttered the phrase. At approximately five minutes into the recording, the Defendant states without provocation: "your lucky you had the mace I would'a have stuck your bitch ass" (herein after the "phrase").

II.

ARGUMENT

The State requests this Court deny the Defense's Motion to suppress, because the phrase is (1) relevant, (2) a statement against interest, (3) and a spontaneous declaration.

a. **Relevance:**

NRS 48.015: "'relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." NRS 48.25(1) states "all relevant evidence is admissible," except where certain rules prohibit its admission.

Here, the phrase (among other things) is relevant to show the Defendant was in possession of the shank, because the phrase refers to Defendant use of the shank to "stick" the correction officer's "bitch ass." The phrase tends to prove Defendant possessed a shank.

b. Statement Against Interest:

Party statements are non-hearsay when offered against the party who made them. *See* NRS 51.035(3)(a). Here, the phrase is admissible, because the statement would be offered by the State (opposing party) and it was made by the defendant.

c. Spontaneous Declaration:

Statements made by a defendant in custody are admissible pre *Miranda* if the statement (among other things) is a spontaneous declaration. *Miranda* requires a custodial interrogation.[1] "The United States Supreme Court has declared that 'interrogation' need not take the form of express questioning, but may also be conduct amounting to the 'functional equivalent' of express questioning:"[2]

> [T]he term "interrogation" under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police.
>
> [T]he definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response.
>
> *Rhode Island v. Innis,* 446 U.S. 291, 301–02, 100 S.Ct. 1682, 1689–90, 64 L.Ed.2d 297 (1980) (emphasis in original).

> In *Innis,* the police arrested the defendant for robbing a taxicab driver. The defendant had used a shotgun in the robbery. The police immediately advised him of his rights. The defendant refused to waive his right to remain silent, and two policemen escorted the defendant toward the police station. While en route, the officers engaged in a discussion concerning the whereabouts of the shotgun. One officer said, "God forbid one of [the handicapped children] might find a weapon and shells and they might hurt themselves." The defendant interrupted the conversation and led the officers to the shotgun. The Court found that this did not violate the Fifth Amendment because "the conversation was, at least in form,

[1] *Miranda v. Arizona*, 384 U.S. 436, 445, 86 S. Ct. 1602, 1612, 16 L. Ed. 2d 694 (1966)

[2] *Weathers v. State*, 105 Nev. 199, 201, 772 P.2d 1294, 1296 (1989)

> nothing more than a dialogue between the two officers to which no response from the [defendant] was invited." *Weathers v. State*, 105 Nev. 199, 201, 772 P.2d 1294, 1296 (1989) Citing *Innis* at 302, 100 S.Ct. at 1690.

Although the Defendant was in custody, an interrogation as articulated in *Weathers* and *Innis* did not occur. The officers' were merely processing the crime scene when the Defendant uttered the phrase. They were not interacting with the Defendant nor trying to elicit any kind of statement from him, nor did they invite the Defendant to join their conversation. This shows the officers' actions (processing the crime scene) were unlikely to elicit an incriminating response. In other words, *Miranda* does not apply, because a custodial interrogation did not occur. Express questioning did not occur nor did the words or actions on the part of the officers elicit an incriminating response from the suspect.

III.
CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court deny Defendant's Motion to Suppress, because the phrase is (1) relevant, (2) a statement against interest, (3) and a spontaneous declaration.

DATED this 26th day of September, 2018.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Jason Gunnell
JASON GUNNELL (Bar No. 13997)
Senior Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing State's OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS with the Clerk of the Court by using the electronic filing system on the 26th day of September, 2018.

I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or e-mail; or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following unregistered participants:

Antonio Mixon, Inmate ID #1019828
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

/s/ A.Reber
An employee of the Office of the Attorney General

October 25 2018
@ 8:30 AM

Antonio LEE Mixon
In Propria Personam
Post office Box 650 H.D.S.P.
Indian Springs, NV 89070

FILED
OCT 01 2018
CLERK OF COURT

District Court
Clark County, Nevada

C-17-327439-1
MOT
Motion
4784775

The State of Nevada
Plaintiff,
vs.
Antonio LEE Mixon Jr.
Defendant.

Case No. C-17-327439-1
Dept No. 17

Motion For leave to File an amended "Motion to Suppress" And "Motion For expert witnesses". oral argument requested

Comes, NOW, Antonio LEE Mixon Defendant, herein above respectfully moves this honorable Court for an order granting motion.

This Motion is made and based upon the accompanying Memorandum of Points and Authorities. ~~with the proposed amended "Motion to Suppress" attached to be Filed.~~

Dated: this 26th day of Sep., 2018. ~~And Motion For expert witnesses amended.~~

By: Antonio LEE Mixon
Defendant/In Propria Personam. A. L. Mixon Jr.

RECEIVED
OCT 01 2018
CLERK OF THE COURT

Memorandum of points And Authorities

Do to the typographical error's in the mentioned motions in this motion which is The term "allege" is type "a l l e d g e". To make sure the Facts and dations in Both motions are not construed The Defense ask permission From this Court to grant said motion For leave to File the amended motions TO cure ~~the~~ every deficiency. The said deficiency is throughout both motions ~~and is to be corrected.~~ are in need of that correction.

Respectfully submitted

A. L. Miller Jr.

Certificate of service By Mailing

I, Antonio Lee Mixon Jr., hereby certify, pursuant to NRCP 5(b), that on this 26th day of Sep., 2018, I mailed a true and correct copy of the foregoing, "Motion for leave to File Amended Motions" by depositing it in the high Desert State Prison, Legal library, first-class Postage, fully prepaid, addressed as follows:

Attorney General's office
Chelsea Kallas
Deputy Attorney General
555 East Washington Ave. Suite #3900
LV, NV 89101

Steven D. Grierson
Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

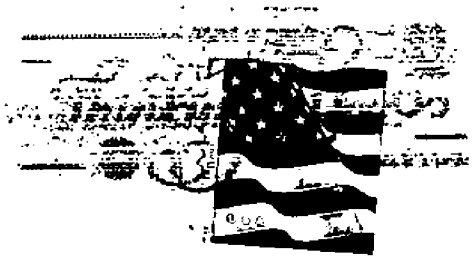
Transport order request

Antonio Lee Mixon Jr. #1019828
High Desert state Prison
22010 Cold creek rd.
P.O Box 650
Indian Springs, NV 89070

In the 8th Judicial District court of the State of Nevada in and for the County of Clark in the matter of Antonio Mixon, Defendant v. State of Nevada, Plaindiff asks this Court for an order to transport and produce inmate for hearing ~~on this motion scheduled in this case~~ Based on the circumstances oral agreement, the presence of Antonio Lee Mixon is necessary for the hearing on this motion scheduled in this case on the ~~3rd day of~~ 11th day of Oct., 2018. at the hour of ~~10 A.M.~~ 8:30 A.M o'clock. at the Following address Michael P. Villani, District ~~Court~~ Judge, EJDC Regional Justice Center, 200 Lewis Ave., Las Vegas, NV 89155. Therefore this Court should grant the order pursuant to NRS. 209.274 and any other applicable NRS, warden Brian E. Williams High Desert State Prison, 22010 Cold creek rd., Indian Springs, NV 89070 Should be ordered do have Antonio Lee Mixon Jr. #1019828 transported to appear before this Court, as specified as Court directs. Upon completion of the hearing, Antonio Lee Mixon Jr. #1019828 will be and should be transported to the above-named institution.

Dated this ~~13th~~ 12th day of Sep., 2018,

ANTONIO LEE MIXON JR. 1019828
H.D.S.P.
P.O. BOX 650
INDIAN SPRINGS, NV 89070



Steven D. Grierson
Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

437

89101-630000

HIGH DESERT STATE PRISON
SEP 2 5 2018
UNIT 4 A/B

Case NO. C-17-327439-1

Dept. NO. 17

FILED
OCT 01 2018
CLERK OF COURT

pp
DA

In the Eighth Judicial District Court of
The STATE of Nevada in and For the County of Clark

The state of Nevada
Plaintiff

vs.

Antonio Lee Mixon Jr.
Defendant

October 25 2018
@ 8:30 AM

Case NO. C-17-327439-1
Dept. No. 17

NOTICE OF MOTION

You will Please take notice, that Antonio Mixon defendant will come before the above-entitled Court on the ~~11th~~ day of oct., 2018, at the hour of ~~8 o'clock~~ 8:30 o'clock A.M. In Department 17, of said Court.

cc: File

Dated: this ~~25th~~ 26th day of Sep., 2018.

By: Antonio Lee Mixon
A. L. Mixon Jr. #1968172
In propria personam

RECEIVED
OCT 01 2018
CLERK OF THE COURT

C-17-327439-1
NOTM
Notice of Motion
4784776

Dear clerk of the Court,

Enclosed please find the motion to be filed. Pursuant to LOCKule 3.20(8) this motion is in need of emergency attention from the court and so I ask if you could put the motion on calendar for 8:30 A.m. Dept. 17 on Oct. 11th 2018 in that its asking the Court for leave to amended Motions you've already placed on Calendar Oct, 11th, 2018 in Dept. 17 at 8:30 A.M. Thx.

a. L. Mann Jr.

PP
DA

FILED
OCT 09 2018
CLERK OF COURT

District Court
Clark County, Nevada

STATE of Nevada Plaintiff, v. Antonio Lee Milton, ID#1966172 Defendant.	Case No.: C-17-327439-1 Dept. No.: XVII Hearing Date: October 11, 2018 Hearing Time: 8:30 A.M.

Reply to STATE's opposition to Defendant's Motion to Suppress.

Antonio Lee Milton, Self-representative, through Self-representation, pro se, hereby submits the ~~Motion~~ Defendant's Reply to state's opposition to Defendant's Motion to Suppress. This motion is made and based upon the pleadings on File, the following memorandum of points and authorities, and any oral arguments the Court may allow.

Dated this ~~26th~~ 22nd day of October, 2018.

RECEIVED
OCT 09 2018
CLERK OF THE COURT

C-17-327439-1
ROPP
Reply to Opposition
4786582

Memorandum OF Points And Authorities

1.

Facts And Relevant Procedural history.

On October 25, 2017, Antonio Lee Mixon (hereinafter "Defendant") was charged by way of Information with the following: Count 1 - Battery By A Prisoner (Category B Felony - NRS 200.481(2)(E); and Count 2 - Possession or Control of Dangerous Weapon or Facsimile By An Incarcerated Person (Category B Felony - NRS 212.185(2)).

According to the information, All of the acts alleged have been committed, or completed on or about December 4, 2015, by the above-named defendant, within the County of Clark, State of Nevada, in the Following Manner: Count 1 Battery by prisoner Category "B" Felony - NRS 200.481(2)(E). That the Defendant, ANTONIO LEE MIXON, on or about December 4, 2015, in the County of Clark, STATE of Nevada, did willfully, Unlawfully, and Feloniously use Force or violation upon the person of another, while being held in lawful custody of Nevada Department of Corrections as a prisoner to wit: the Defendant, while incarcerated at High Desert State Prison, struck Senior Correctional Officer Dean Ontiveros in the abdomen with a rock. Count 11 possession or Control of Dangerous Weapon or Facsimile By An incarcerated Person Category "B" Felony - NRS 212.185(2). That the Defendant, Antonio Lee Mixon, on or about December 4, 2015, while incarcerated at High Desert State Prison, did possess or have in his Custody or control any dirk, dagger, switchblade knife or sharp instrument to wit: the Defendant did possess or have in his custody or control a sharp instrument commonly referred to as a "shank".

Memorandum of Points And Authorities Continued

II.

Argument

The Defendant respectfully requests this Court grant the Defendant's Motion to Suppress, because the phrase is (1) ~~not relevant~~ Irrelevant to Count 1 And should be ~~held~~ held inadmissible see NRS 48.025, it's irrelevent because the evidence contained within that phrase Do not tends to make the existence of any ~~fact~~ allegation there-in count). (2) The Defense is not alleging the ~~statement~~ Phrase is inadmissible because it's hearsay. The phrase/statement Violates the Defendant's V Amendment Constitutional right that no person shall be compelled in any Criminal case to be a witness against himself see ~~U.S.C.A.~~ United states Constitutional Amendment Five. (3) and is not a spontaneous declaration ~~But A phrase uttered~~ Because of the provocation of interacting officers.

A. Relevance. Evidence which is not relevant is not admissible see 48.025(2). NRS. 48.035 states ~~not relevant~~ Exclusion of relevant evidence on grounds of prejudice, confusion or waste of time. (1) Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, or confusion of the issues or of misleading the jury. Here The Defense argued that the phrase/statement is not relevant to Count 1 because the evidence contained within that phrase Do not tend to make the existence of any of the allegation there-in Count 1 and in the event the Court dismissed this motion in part that the Court should give a Cautionary ~~instruction~~ instruction explaining the reason for its admission. In the event the state argues it's relevant to count one The Excessive prejudicial

Memorandum of Points And Authorities Continued

II.

Argument Continued

Nature of the evidence: (1) The evidence confuses the issues, (2). it misleads the jury, (3) The Witness's ~~give~~ can describe what they alleged to have seen or alleged to have heard without referring to the other allegeds act or alleged crime and/or alleged count. ~~Court~~ the nature of the evidence mandates exclusion preventing the State from using the phrase as evidence For count one see NRS 48.035(3).

B. The Defendant's Constitutional rights have been Violated. Without any questioning by the police and preceding an interview The Practice of the FBI is that a Cautionary Warning be given See 384 U.S. 488. Miranda do not apply to the circumstances in This case. Miranda requires a custodial interrogation, ~~The~~ The Practice of the FBI is that a Cautionary warning be given preceding an Interview see 384 U.S. 488. Milton's case it is "Custodial Surroundings" not "Custodial Interrogation." That same Cautionary Warning is to be given Without any questioning by the police. see 384 U.S. 488. Case innis do not apply to the Circumstances in Milton's case neither. In innis case police arrested defendant the police immediately advised him of his rights. Milton's case, officers apprehended defendant put him in restraints and never advised him of his rights preceding an Interview. The Law that do apply to Milton's Circumstances are as Follows: The practice of the FBI see 384 U.S. 486 ~~384 U.S. 488~~ - 384 U.S. 488. This practice can readily be emulated by State and local law enforcement agencies. See 384 U.S. 488. The officers in Milton's case didn't go by the FBI's Practice. Amendment V of the U.S. Constitution, ~~states~~ which states no person shall be

Memorandum of Points And Authorities Continued

Compelled in any criminal case to be a witness against himself See U.S. Constitution V. The term "Compelled" today is used as "Compulsion" see Bram V. United states, 168 U.S. 532. The compulsion in Miton's case is that the officers DID. not give a "Cautionary Warning" preceding an interview and without questioning by police which is mandated by Law see 384 U.S. 488. And whatever may have been the character of the compulsion the phrase in Miton's case must be excluded see Bram V. United States, 168 U.S. 532, 42 L.ed. 568, 18 S.Ct. 183, 266 U.S., at 14-15, ~~6~~ 69 L.ed at 148. The "Custodial Surroundings" in Miton's case is ~~After~~ Miton being apprehended and put in restraints by officers. The Supreme Court has held that ~~IF~~ IN the event officers Fail to go by the practice of The FBI when it comes to the U.S. Constitution V, the confession is not admissible see 62 cal 2d 571, 43 Cal Rptr 201, 400 P 2d 97 see also STATE of California, Petitioner VS. Roy Allen stewart 10 A.L.R. 3d 974. The Case Weathers don't apply spitter, because the Const. law don't care what the Charact~~Conclusion~~ or of the compulsion is. Conclusion

~~For~~ Because of the Foregoing reasons in this Reply The Defense asks this Court to grant Defendant's Motion to Suppress and exclude the and all Witnesses including the videotape in regards to the phrase because it Violates Defendant Fifth Amendment Right of the U.S. Constitution that protects Defendant's From being Compelled in any criminal case to be a witness against himself.

Certificate ~~Service~~ of Service

I hereby certify that I Antonio Lee Mixon, on this 2nd day of Oct. 2018, I mailed a true and correct copy of the Foregoing "~~Motion to~~" Reply to state's opposition to Defendant's motion to suppress by depositing it in the High Desert State Prison, First-class Postage, fully prepaid, addressed as follows:

Attorney General's office
Bureau of public Affairs
Attn: Chelsea Kallas
Deputy Attorney General
555 East Washington Ave. Suite #3900
LV, NV 89101

Steven D. Grierson
clerk of the Court
200 Lewis Avenue 3rd Floor
LV, NV 89155-1160

Antonio Lee Mixon
501F-representative
A. L. Mixon Jr.

CC: File

Dated: this 2nd day of Oct. 2018

Antonio Lee Milton 1018828
H.D.S.P.
P.O. Box 650
Indian Springs, NV 89070

LAS VEGAS NV 890
03 OCT 2018 PM 3 L

447

Steven D. Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

89101-630000

HIGH DESERT STATE PRISON
OCT 02 2018
UNIT 4 A/B

PP
DA

FILED
OCT 09 2018
CLERK OF COURT

District Court
Clark County, Nevada

STATE OF Nevada,
Plaintiff,
V.
Antonio Lee Miton, ID#1960172
Defendant,

Case No.: C-17-327439-1
Dept. No.: XVII
Hearing Date: October 11, 2018
Hearing Time: 8:30 A.M.

Reply To state's Opposition to Defendant's Motion For expert witnesses.

Antonio Lee Miton, Self-representative, through himself, hereby submits the Defenses Reply to state's opposition to Defendant's Motion For expert witnesses. This Motion is based upon the pleadings on File, the Following memorandum of points and authorities, and any oral arguments the Court may allow. Dated this 2nd day of Oct. 2018.

Submitted by:
Antonio Lee Miton Jr.
A. L. Miton Jr.

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OCT 09 2018
CLERK OF THE COURT

C-17-327439-1
RPLY
Reply
4786661

Memorandum of Points And Authorities

Argument 1.

~~There Do where in the Infraction~~ The report made by the victim in this case asked victim to list any witnesses that witnessed what the victim alleged to have occurred, the victim left that space Blank. Futhermore, Court, The Victim used a metal detector on the defendant For a "shank" before Defendant Exited the Unit And entered the yard area with a Wand, thoroughly, the defendant was cleared by the victim to go to the yard. Not only that ~~some of~~ the state's witnesses that allege to have witnessed defendant possess "shank" Didn't sign their incident reports. Also these Search and escort personnel is A witness with a witness in this case that is a ~~defendant~~ witness in a wrongful death ~~tiltsuit~~ ~~in that~~ he covered up a prisoner's Death with other NDOC C/O's For Six Months without reporting the incident to Family of the inmate and public, to ~~the~~ lie. The expert opinion would be needed in the Defendant's Defense because the Defendant's Finger Prints is not on that "shank" And the jury has a right to know that and why is that.

As For the other expert witness the Defense Requested it should be granted because the State made no opposition to the motion which state agrees the Defense should be granted that ~~witness~~ witness See EJDCR 3.20(c).

Certificate of Service By Mailing

I, Antonio Lee Milton Jr., hereby certify, that on this 2nd day of Oct., 2018, I mailed a true and correct copy of the foregoing, "Reply to state's opposition to Defendant's Motion For expert witnesses" by depositing it in the high Desert state Prison, First-Class Postage, fully prepaid, addressed as follows:

Attorney General's office
Bureau of public Affairs
Attn: Chelsea N. Kallas
Deputy Attorney General
555 East Washington Ave. Suite. #3900
LV, NV 89101

Steven D. Grierson
Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

CC; File

Dated: this 2nd day of Oct., 2018.

Antonio Lee Milton Jr.
Self-representative

Antonio Lee Mixon Jr. 1019828
N.D.S.P.
P.O. Box 650
Indian Springs, ~~AK~~ NV 89070

LAS VEGAS NV 890
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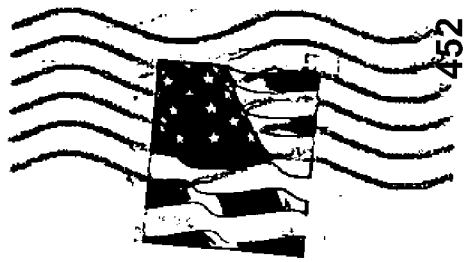

Steven D. Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

89101-630000

HIGH DESERT STATE PRISON
OCT 02 2018
UNIT 4 A/B

Electronically Filed
10/15/2018 3:33 PM
Steven D. Grierson
CLERK OF THE COURT

IN THE Eighth Judicial District Court
For the County of Clark IN Nevada

ANTONIO LEE Mixon Jr :
Defendant :
V. : NOTICE OF Appeal
The STATE OF Nevada : Date of Hearing: Oct. 25th, 2018
Plaintiffs : TIME OF Hearing: 8:30 A.M.
Case NO.: C-17-327439-1 Dept. 17

Notice is hereby given that Antonio Lee Mixon Jr, Defendant in the above named case, hereby Appeal to the SUPREME Court OF NEVADA From the Final Judgment, From an order denying Defendant's MOTION TO Suppress Entered in this action on the 11th day OF October, 2018

Dated: 10/11/2018

A. L. Mixon Jr.
ANTONIO LEE MIXON JR
High Desert State Prison
P.O. BOX 650
INDIAN Springs, Nevada 89070

RECEIVED
OCT 15 2018
CLERK OF THE COURT

33

Case Number: C-17-327439-1

Memorandum Of Points And Authorities

Notice is hereby given that the Defendant in the named case, hereby Appeal to the Supreme Court of Nevada From the Final Judgment, From an order ~~denying~~ denying Defendant's Motion to Suppress Entered in this action on the 11th day of October, 2018.

Certificate of Service

I certify that I am the Defendant pro-se and that on this 11th day of october, 2018, I caused to be deposited For mailing a true and correct copy of the Foregoing, Notice of Appeal, to the Following:

Chelsea N. Kallas	STEVEN D. GRIERSON,
Deputy Attorney General	clerk of the Court
office of the Attorney General	200 Lewis Avenue, 3rd Floor
555 E. Washington Ave., STE. 3900	Las Vegas, NV 89155-1160
Las Vegas, Nevada 89101-1068	

CC: File

Dated: 10/11/2018

a. L. Mason Jr.

Defendant

Self-representative

Anthony Mixon 1019828
H.D.S.P.
P.O. Box 650
Indian Springs, NV 89070

LAS VEGAS NV 890
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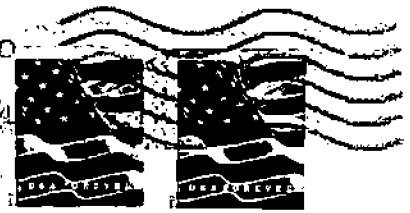

Steven D. Grierson,
Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

89101-630000

HIGH DESERT STATE PRISON
OCT 11 2018
UNIT 4 A/B

Electronically Filed
10/15/2018 3:33 PM
Steven D. Grierson
CLERK OF THE COURT

MEOT

ANTONIO Lee Mixon JR.
Self-representative
High Desert State Prison
P.O. Box 650
Indian Springs, Nevada 89070

District Court
Clark County, Nevada

ANTONIO LEE Mixon JR.	Case No.: C-17-327439-1
Defendant	Dept. No.: 17
V.	Date of Hearing: 10/25/2018 Time: 8:30 A.m.
The STATE OF Nevada	Motion For Extension of time
Plaintiff	

November 6, 2018 at 8:30 am

Comes Now, the Defendant, Antonio Lee Mixon JR., by and through Self-representation, and hereby requests this Honorable Court to grant this motion For an Extension of time.

These Points And Authorities are made and based Upon all the papers and pleadings on File herein, and oral argument at the time Set for hearing.

Dated this 11th day of October 2018

Antonio Lee Mixon JR
Self-representative
By: Antonio LEE Mixon, #1019828
A. L. Mixon JR. Self-Representative

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OCT 15 2018
CLERK OF THE COURT

Memorandum of Points and Authorities

Defendant is preparing a Writ of Certiorari in Case No 17-17496 of the Ninth Circuit. Defendant is preparing a writ of Habeas Corpus (post-Conviction) 2255 in case C-11-277977-1 of the Eighth Judicial District Court Dept 17 (Federal Writ). Defendant is preparing the Notice of Witnesses in case no. C-17-327439-1; ~~Additional Witness~~, Notice of Confirmation of expert Witnesses, Curriculum Vitae's, Defense's Private investigator is in the process of gathering Witnesses in Defense's Favor. Defendant is preparing ~~For~~ an informal Brief For the Ninth Circuit in case number 18-16084 of the Ninth Circuit. Defendant is preparing Subpoenas in case number C-17-327439-1 in this Court and For all the Foregoing reason defendant ask this Court For an 365 day Extension of time do to the legal research and convenience of the defense team. This is the defendant's Declaration.

a. L. Mixon Jr.

Certificate of Service

I Certify that I am the ~~de~~ Defendant and Self-representative, and that on the 11th day of October, 2018, I caused to be deposited for mailing a true and correct copy of the Foregoing, ~~order~~ Motion For Extension of time, to the following:

Attorney General's office
Chelsea N. Kallas
Deputy Attorney General
555 East Washington Ave. Ste. 3900
LV, NV 89101

Steven D. Grierson,
Clerk of the Court
200 Lewis Avenue 3rd Floor
LV, NV 89155-1160

cc: File

Transport order request

Antonio LEE MIXON JN #1019828

H.D.S.P.

22010 Cold creek rd.

P.O. Box 650

Indian Springs, NV 89070

In the 8th Judicial District Court of the state of Nevada
In and For the County of Clark in the matter of Antonio Mixon,
Defendant V. State of Nevada, plaintiff asks this Court For
an order to transport and produce inmate For hearing Based
on the circumstances of oral argument, the presence of
Defendant is necessary for the hearing on this Motion
scheduled in this case on the 25th day of October, 2018 at
the hour of 9 O'clock 30 p.m. at the following address Michael P.
Villani, District Judge, Eighth Judicial District Court, Regional
Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155.
Therefore this Court should grant the order that pursuant to
NRS 209.204 and any other applicable NRS, Warden
Brian E. Williams H.D.S.P., 22010 Cold creek rd., Indian
Springs, NV 89070 should be ordered to have Defendant transported
to appear before this Court, a specified as Court directs. Upon
Completion of the hearing, Defendant, will be and Should be
transported to the above-named Courtroom.

Dated: 10/11/2018

Antonio Lee Mixon Jr.
Defendant, Self-representative
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

District Court
Clark County, Nevada

Antonio Lee Mixon Jr.
Defendant

vs

The State of Nevada
Plaintiff

Case No.: C-17-327439-1
Dept. No.: 17
Order For Expert witnesses

After having reviewed the Motion For Expert witnesses (Fingerprint expert and Forensic linguist typist expert),

IT IS HEREBY ORDERED that the Petitioner's Motion For Expert Witnesses is granted and Said Request and Order shall be Filed.

Dated: October, 11th, 2018

District Court Judge

Antonio Lee Mixon Jr.
Antonio Lee Mixon Jr.
P.O. Box 650
Indian Springs, NV 89070

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OCT 15 2018
CLERK OF THE COURT

C-17-327439-1
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4788368

Certificate of Service

I Certify that I am the Defendant and Self-representative, and that on this 11th day of October, 2018, I caused to be deposited for mailing a true and correct Copy of the Foregoing, order For Expert Witnesses, to the Following:

Attorney General's office	Steven D. Grierson,
Chelsea N. Kallas	Clerk of the Court
Deputy Attorney General	200 Lewis Avenue, 3rd Floor
555 East Washington Ave. Ste. 3900	LV, NV 89155-1160
LV, NV 89101	

CC: File

Date: 10/11/2018

A. J. Mixon Jr.

Antonio Lee Mixon

PPOA

MEOT

NOVEMBER 8 2018 @ 8:30 am

ANTONIO Lee Mixon Jr.
Self-representative
High Desert State Prison
P.O. BOX 650
Indian Springs, Nevada 89070

FILED
OCT 15 2018
CLERK OF COURT

C-17-327439-1
MOT
Motion
4789072

District Court
Clark County, Nevada

ANTONIO LEE Mixon Jr. Defendant	Case No.: C-17-327434-1
v.	Dept. No.: 17
The STATE OF Nevada Plaintiff	Date of Hearing: ~~11/15/2018~~ Time: ~~8:30 a.m.~~
	Motion For Extension of time

Comes Now, the Defendant, Antonio Lee Mixon Jr., by and through Self-representation, and hereby requests this Honorable Court to grant this motion For an Extension of time.

These Points And Authorities are made and based upon all the papers and pleadings on File herein, and oral argument at the time Set for hearing.

Dated this 11th day of October, 2018

Antonio Lee Mixon Jr
Self-representative
By: Antonio LEE Mixon, #1019828
A. L. Mixon Jr. Self-Representative

RECEIVED
OCT 15 2018
CLERK OF THE COURT

Memorandum of Points and Authorities

Defendant is preparing a Writ of Certiorari in Case No 17-17496 of the Ninth Circuit. Defendant is preparing a writ of Habeas Corpus (post-Conviction) 2255 in case C-11-277977-1 of the Eighth Judicial District Court Dept 17, (Federal Writ). Defendant is preparing the Notice of Witnesses in case no. C-17-327439-1; ~~Amended Notice~~, Notice of Confirmation of expert Witnesses, Curriculum Vitae's, Defense's Private investigator is in the process of gathering witnesses in Defense's Favor. Defendant is preparing ~~For~~ an informal Brief For the Ninth Circuit in case number 18-16084 of the Ninth Circuit. Defendant is preparing Subpoenas in case number C-17-327439-1 in this Court and For all the Foregoing reasons defendant ask this Court For an 365 day Extension of time do to the legal research and convenience of the defense team. This is the defendant's Declaration.

a. L. Mixon Jr.

Certificate of Service

I Certify that I am the ~~De~~ Defendant and Self-representative, and that on the 11th day of October, 2018, I caused to be deposited for mailing a true and correct copy of the Foregoing, ~~order~~ Motion For Extention of time, to the following:

Attorney General's office
Chelsea N. Kallas
Deputy Attorney General
555 East Washington Ave. Ste. 3900
LV, NV 89101

Steven D. Grierson,
Clerk of the Court
200 Lewis Avenue 3rd Floor
LV, NV 89155-1160

cc: File

Electronically Filed
10/17/2018 1:19 PM
Steven D. Grierson
CLERK OF THE COURT

ASTA

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

STATE OF NEVADA,

Plaintiff(s),

vs.

ANTONIO LEE MIXON,

Defendant(s),

Case No: C-17-327439-1

Dept No: XVII

CASE APPEAL STATEMENT

1. Appellant(s): A. L. Mixon Jr.

2. Judge: Michael Villani

3. Appellant(s): A. L. Mixon Jr.

Counsel:

A. L. Mixon Jr. #1019828
P.O. Box 650
Indian Springs, NV 89070

4. Respondent: The State of Nevada

Counsel:

Adam Paul Laxalt, Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101-1068

(702) 486-3825

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

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

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

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

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

9. Date Commenced in District Court: October 24, 2017

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

    Type of Judgment or Order Being Appealed: Unknown

11. Previous Appeal: No

    Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

Dated This 17 day of October 2018.

Steven D. Grierson, Clerk of the Court

/s/ Courtnie Hoskin

Courtnie Hoskin, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: A. L. Mixon Jr.

Electronically Filed
10/22/2018 9:43 AM
Steven D. Grierson
CLERK OF THE COURT

ORDD
ADAM PAUL LAXALT
Attorney General
Jason Gunnell (Bar No. 13997)
Senior Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-3904
jgunnell@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1968172 Defendant.	Case No.: C-17-327439-1 Dept. No.: XVII

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

The above entitled matter having come on for hearing before this Honorable Court on the 11th day of October, 2018, with the Defendant Antonio Mixon representing himself, and Senior Deputy Attorney General Jason Gunnell appearing on behalf of Plaintiff State of Nevada, and the Court having considered all pleadings and documents on file herein; the Court makes the following order:

IT IS HEREBY ORDERED that Defendant's Motion to Suppress is DENIED.

DATED this 18th day of October, 2018.

THE HONORABLE Nancy Saitta for
Judge Michael Villani
JM

RESPECTFULLY SUBMITTED BY:

Jason Gunnell (Bar No. 13997)
Senior Deputy Attorney General

Case Number: C-17-327439-1

NEOJ

C-17-327439-1
LSF
Left Side Filing
4790002

District Court
Clark County, Nevada

ANTONIO MITTON,
Defendant,

vs.

The STATE OF Nevada,
Plaintiff

Case No.: C-17-327439-1
Dept. No.: XVII

Notice of Entry of order

PLEASE TAKE NOTICE that on October 11th, 2018, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court From the decision or order of this Court. IF you wish to appeal, you Must File a notice of appeal with the clerk of this Court within thirty-three days after the date this notice is mailed to you. This notice was mailed on ~~October 15th~~ October 14th, 2018.

STEVEN D. GRIERSON, Clerk of the Court

Deputy Clerk

RECEIVED
OCT 19 2018
CLERK OF THE COURT

Certificate of Service

I hereby certify that on this 14th day of October 2018, I placed a copy of this Notice of entry in:

☑ The United States mail addressed as follows:

Chelsea Kallas
Deputy Attorney General
555 E. Washington Ave., STE 3900
LV, NV 89101

STEVEN D. GRIERSON, clerk OF the Court
200 LEWIS Avenue, 3rd Floor
LV, NV 89155-1160

Certificate of Service

I certify that on the 15th day of October, 2018, I mailed a copy of the Foregoing ~~Order to:~~ Notice of Entry of order to:

Chelsea Kallas
Deputy Attorney General
555 E. Washington Ave., STE 3900
LV, NV 89101

~~Steven~~ D. Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

BY/ A. L. Mitton Jr.
A. Mitton
Self-Representative

CC: File

ORDR

Antonio L. Mixon

H.D.S.P.

P.O. Box 650

Indian Springs, NV 89070

District Court

Clark County, Nevada

The STATE OF Nevada,

Plaintiff,

-vs-

Antonio Lee Mixon,
#1966172

Case NO: C-17-327439-1

Dept NO: XVII

ORDER DENYING THE STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR EXPERT WITNESSES

DATE OF HEARING: October 11th, 2018

TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above Entitled Court on the 11th day of October, 2018, the Defendant present, REPRESENTED BY HIMSELF, the Plaintiff being represented by Adam Paul Laxalt, Attorney general, through Jason Connell, Senior Deputy Attorney General, with argument, based on the pleadings and good Cause appearing therefor,

IT IS HEREBY ORDERED that the Plaintiff's Opposition to Defendant's Motion For EXPERT Witnesses, Shall be, and it is DENIED, without prejudice; Court FURTHER ORDERED, Defendant's Motion For

Expert Witnesses, (Finger Print Expert), (Forensic linguist typist expert) is GRANTED.

Dated this ~~13th~~ 14th day of October, 2018.

District Judge
MICHAEL P. VILLANI

Antonio Lee Mixon
Self-Representative
#196872

By A. Lee Mixon Jr.
Self-Representative
Pro-Se

Certificate of Service

I certify that on the ~~15th~~ 14th day of October, 2018, I mailed a copy of the foregoing Order

to: Chelsea N. Kallas
Deputy Attorney General
555 E. Washington Ave., Ste 3900
LV, NV 89101

Steven D. Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
LV, NV 89155-1160

By a. L. Mixon Jr.
A. Mixon
Pro-SE

cc: File

ANTONIO LEE MEXON JR. #1019828
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

89101-630000

LAS VEGAS NV 890
15 OCT 2018 PM 5 L

STEVEN D. GRIERSON, Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155-1160

HIGH DESERT STATE PRISON
OCT 14 2018
UNIT 4 A/B

27

FILED
OCT 29 2018
CLERK OF COURT

MFLA
Antonio Lee Mixon Jr. 1019828
Pro-se
H.D.S.P.
P.O. Box 650
Indian Springs, NV 89070

District Court
Clark County, NV

Antonio Lee Mixon Jr.	Case No.: C-17-327439-1
Defendant	Dept No.: 17
v.	Date of Hearing: 11-20-18
The State of Nevada	Time of Hearing: 8:30AM
Plaintiff	Motion For Leave to Amend

Comes Now, the Defendant, Antonio Lee Mixon Jr., by and through Self-representation, and hereby requests this honorable Court to grant the motion For leave to Amend Defendant's ~~Motion For Extension of Time~~ "Amended Motion For Extension of Time" ~~to attached~~ which is attached.

Dated 24th October, 2018

A. L. Mixon Jr.

RECEIVED
OCT 29 2018
CLERK OF THE COURT

C-17-327439-1
MOT
Motion
4791973

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO LEE MIXON,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: C-17-327439-1
Related Case(s): A-22-847754-W
Docket No: 84677

Electronically Filed
May 24, 2022 3:27 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

RECORD ON APPEAL
VOLUME
1

ATTORNEY FOR APPELLANT
ANTONIO MIXON # 1019828,
PROPER PERSON
P.O. BOX 1989
ELY, NV 89301

ATTORNEY FOR RESPONDENT
AARON D. FORD
ATTORNEY GENERAL
555 E. WASHINGTON AVE., STE. 3900
LAS VEGAS, NV 89101

C-17-327439-1 State of Nevada vs Antonio Mixon

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vs
Antonio Mixon

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C-17-327439-1 State of Nevada
vs
Antonio Mixon

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vs
Antonio Mixon

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vs
Antonio Mixon

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vs
Antonio Mixon

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C-17-327439-1 State of Nevada
vs
Antonio Mixon

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C-17-327439-1 State of Nevada
vs
Antonio Mixon

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C-17-327439-1 State of Nevada
vs
Antonio Mixon

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C-17-327439-1 State of Nevada
vs
Antonio Mixon

I N D E X

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Electronically Filed
10/24/2017

CLERK OF THE COURT

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

Antonio Lee Mixon,

Defendant

District Court Case No.: C-17-327439-1
Dept.: XVII

Justice Court Case No.: 17F14741X

CERTIFICATE

I hereby certify the foregoing to be a full, true and correct copy of the proceedings as the same appear in the above case.

Dated this 24th day of October, 2017

Justice of the Peace, Las Vegas Township

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, vs. Antonio Lee Mixon Defendant	District Court Case No.: Justice Court Case No.: 17F14741X

BINDOVER and ORDER TO APPEAR

An Order having been made this day by me that **Antonio Lee Mixon** be held to answer before the Eighth Judicial District Court, upon the charge(s) of **Battery by prsnr/PnP [50229]; Poss dang weap or fake by incarcerated pers [53440]** committed in said Township and County, on December 04, 2015 .

IT IS FURTHER ORDERED that said defendant is commanded to appear in the Eighth Judicial District Court, Regional Justice Center, Lower Level Arraignment Courtroom "A", Las Vegas, Nevada on November 01, 2017 at 10:00 AM for arraignment and further proceedings on the within charge(s).

IT IS FURTHER ORDERED that the Sheriff of the County of Clark is hereby commanded to receive the above named defendant(s) into custody, and detain said defendant(s) until he/she can be legally discharged, and be committed to the custody of the Sheriff of said County, until bail is given in the sum of 250.00.

Dated this 24th day of October, 2017

Karen Bennett Haron

Justice of the Peace, Las Vegas Township

ORIGINAL

COMP
ADAM PAUL LAXALT
Attorney General
Chelsea N. Kallas (Bar No. 13902)
Deputy Attorney General
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-5707
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Ckallas@ag.nv.gov
Attorneys for the State of Nevada

FILED

2017 AUG 18 A 9:04

JUSTICE COURT
LAS VEGAS NEVADA
BY GEG
DEPUTY

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,

v.

ANTONIO LEE MIXON, ID #1968172

Defendant.

Case No.: 17F14741X

Dept. No.: 7

17F14741X
CRM
Criminal Complaint
8390316

CRIMINAL COMPLAINT

ADAM PAUL LAXALT, Attorney General for the State of Nevada, complains and charges that:

The above-named defendant, ANTONIO LEE MIXON, has committed the crimes of one (1) count of BATTERY BY A PRISONER, a category "B" felony in violation of NRS 200.481(2)(f), and one (1) count of POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACSIMILE BY AN INCARCERATED PERSON, a category "B" felony in violation of NRS 212.185(c).

All of the acts alleged herein have been committed or completed on or about December 4, 2015, by the above-named defendant, within the County of Clark, State of Nevada, in the following manner:

COUNT I
BATTERY BY A PRISONER
Category "B" Felony - NRS 200.481(2)(f)

That the Defendant, ANTONIO LEE MIXON, on or about December 4, 2015, in the County of Clark, State of Nevada, did willfully, unlawfully, and feloniously use force or violence upon the person of another, while being held in lawful custody of Nevada Department of Corrections as a prisoner to wit: the

Defendant, while incarcerated at High Desert State Prison, struck Senior Correctional Officer Dean Ontiveros in the abdomen with a rock.

COUNT II
POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACIMILE BY AN INCARCERATED PERSON
Category "B" Felony - NRS 212.185(c)

That the Defendant, ANTONIO LEE MIXON, on or about December 4, 2015, while incarcerated at High Desert State Prison, did possess or have in his custody or control any dirk, dagger, switchblade knife or sharp instrument to-wit: the Defendant did possess or have in his custody or control a sharp instrument commonly referred to as a "shank."

All of which is contrary to the form, force and effect of the statutes in such cases made and provided, and against the peace and dignity of the state of Nevada.

The Complainant requests an Arrest Warrant be issued at this time pursuant to NRS 171.106.

That Complainant knows these crimes occurred and that the defendant, ANTONIO LEE MIXON, has committed these crimes because Complainant is a Deputy Attorney General, and is in possession of, among other things, an affidavit written by Investigator Victor Daniel, known to Complainant to be employed with the Office of the Inspector General, a copy of which is attached and incorporated by reference for the limited purpose of securing a warrant of arrest.

Said Complainant makes this declaration under penalty of perjury.

DATED this 16th day of August, 2017.

SUBMITTED BY

ADAM PAUL LAXALT
Attorney General

By: Chelsea Kallas
Chelsea N. Kallas (Bar No. 13902)
Deputy Attorney General
Attorneys for the State of Nevada

Justice Court, Las Vegas Township
Clark County, Nevada

Department: 07

Court Minutes

L008408838

17F14741X State of Nevada vs. Mixon, Antonio Lee

8/22/2017 7:25:00 AM Arrest Warrant Request Result: Arrest Warrant Issued
(No Bail Posted)

PARTIES PRESENT:

Judge: Bennett-Haron, Karen P.

PROCEEDINGS

Events: **Probable Cause Found**

Request for Arrest Warrant Filed Review Date: 8/24/2017

granted

Arrest Warrant Ordered to be Issued

10,000/10,000 total

Justice Court, Las Vegas Township
Clark County, Nevada

Department: 07

Court Minutes

L008554953

17F14741X **State of Nevada vs. Mixon, Antonio Lee** Lead Atty: Public Defender

9/26/2017 8:00:00 AM Motion (No Bail Posted-ICOC (NSP)) Result: Motion Granted

PARTIES PRESENT: State Of Nevada — Kallas, Chelsea

Judge: Pro Tempore, Judge
Court Reporter: Ott, Shawn
Court Clerk: Meccia, Cherie
Pro Tempore: Jansen, William D.

PROCEEDINGS

Attorneys:
Public Defender Mixon, Antonio Lee — Added
Wood, Jeremy Mixon, Antonio Lee — Added

Hearings:
10/10/2017 9:00:00 AM: Preliminary Hearing — Added

Events:

Not in custody

Counts: 001; 002

Public Defender Appointed

Initial Appearance Completed

Defense Advised of Charges on Criminal Complaint, Waives Reading of Criminal Complaint

Comment

Defendant was being disruptive and was taken back to the Clark County Detention Center

Warrant Stands

Justice Court, Las Vegas Township
Clark County, Nevada

Department: 07

Court Minutes

L008614944

17F14741X **State of Nevada vs. Mixon, Antonio Lee** Lead Atty: Public Defender

10/10/2017 9:00:00 AM Preliminary Hearing (No bail posted - ICOC (NSP)) Result: Matter Heard

PARTIES PRESENT:	State Of Nevada	Kallas, Chelsea
	Attorney	Sisolak, Ashley
	Defendant	Mixon, Antonio Lee

Judge: Bennett-Haron, Karen P.
Court Reporter: Ott, Shawn
Court Clerk: Meccia, Cherie

PROCEEDINGS

Attorneys: **Sisolak, Ashley** Mixon, Antonio Lee — Added

Hearings: 10/24/2017 9:00:00 AM: Preliminary Hearing — Added

Events:

Oral Motion

by Defendant for an evidentiary hearing - denied

Comment

per Defense, defendant states that he wishes to represent himself -

Faretta Canvas held

Per Judge, defendant does not have the qualifications to represent himself - Public Defender to remain on the case - Preliminary Hearing reset

Comment

Defendant requests transcripts from the 9/26/17 hearing date and today's hearing - granted

Warrant Stands

Justice Court, Las Vegas Township
Clark County, Nevada

Department: 07

Court Minutes

L008865070

17F14741X **State of Nevada vs. Mixon, Antonio Lee** Lead Atty: Public Defender

10/24/2017 9:00:00 AM Preliminary Hearing (No bail posted - ICOC - NSP) Result: Bound Over

PARTIES PRESENT:	State Of Nevada	Kallas, Chelsea
	Attorney	Sisolak, Ashley
	Defendant	Mixon, Antonio Lee

Judge: Bennett-Haron, Karen P.
Court Reporter: Ott, Shawn
Court Clerk: Thomas, Veronica

PROCEEDINGS

Events: **Unconditional Bind Over to District Court** Review Date: 10/25/2017

Defendant unconditionally waives right to Preliminary Hearing. Defendant Bound Over to District Court as Charged. Defendant to Appear in the Lower Level Arraignment Courtroom A.

District Court Appearance Date Set

Nov 1 2017 10:00AM: In Custody

Case Closed - Bound Over

Warrant Ordered Quashed

Oral Motion

by Public Defender to Set Bail at $250-Motion granted

Bail Reset - Cash or Surety

Counts: 001 - $250.00/$250.00 Total Bail

Plea/Disp:

001: Battery by prsnr/PnP [50229]
Disposition: Waiver of Preliminary Hearing - Bound Over to District Court

002: Poss dang weap or fake by incarcerated pers [53440]
Disposition: Waiver of Preliminary Hearing - Bound Over to District Court

WARRANT ELECTRONICALLY GENERATED AND ENTERED INTO NCJIS
*** DO NOT MANUALLY ENTER INTO NCJIS ***

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY NEVADA

THE STATE OF NEVADA PLAINTIFF VS. MIXON, ANTONIO LEE ID# 01968172 DEFENDANT	CASE NO: 17F14741X DEPT. NO: 7 AGENCY: ATTY GENERAL ARREST WARRANT

THE STATE OF NEVADA,

TO: ANY SHERIFF, CONSTABLE, MARSHALL, POLICEMAN, OR PEACE OFFICER IN THIS STATE:

A COMPLAINT AND AN AFFIDAVIT UPON OATH HAS THIS DAY BEEN LAID BEFORE ME ACCUSING MIXON, ANTONIO LEE, OF THE CRIME(S):

COUNTS	CHARGE	BAIL: CASH	SURETY	PROPERTY
1	BATTERY BY PRSNR/PNP	10,000.00	10,000.00	
1	POSS DANG WEAP OR FAKE			

YOU ARE, THEREFORE, COMMANDED FORTHWITH TO ARREST THE ABOVE NAMED DEFENDANT AND BRING HIM BEFORE ME AT MY OFFICE IN LAS VEGAS TOWNSHIP, COUNTY OF CLARK, STATE OF NEVADA, OR IN MY ABSENCE OR INABILITY TO ACT, BEFORE THE NEAREST AND MOST ACCESSIBLE MAGISTRATE IN THIS COUNTY.

THIS WARRANT MAY BE SERVED AT ANY HOUR OF THE DAY OR NIGHT.

GIVEN UNDER MY HAND THIS 22ND DAY OF AUGUST, 2017.

Karen Bennett-Haron

JUSTICE OF THE PEACE IN AND FOR SAID TOWNSHIP
KAREN BENNETT-HARON

SHERIFF'S RETURN

I HEREBY CERTIFY THAT I RECEIVED THE ABOVE AND FOREGOING WARRANT ON THE _____ DAY OF _____, _____, AND SERVED THE SAME BY ARRESTING AND BRINGING DEFENDANT, _____, INTO COU COURT THIS _____ DAY OF _____, _____.

JOSEPH LOMBARDO, SHERIFF, CLARK COUNTY, NEVADA

BY: _____, DEPUTY

17F14741X
AWF
Arrest Warrant – Face Sheet
8407977

ORIGINAL

ADAM PAUL LAXALT
Attorney General
CHELSEA KALLAS (Bar. No. 13902)
Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave #3900
Las Vegas, NV 89101
(702) 486-3420 (phone)
(702) 486-0660 (fax)
Ckallas@ag.nv.gov
Attorney for Plaintiff

FILED
2017 AUG 23 A 7:58
JUSTICE COURT
LAS VEGAS NEVADA
BY DB
DEPUTY

IN THE JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,

v.

ANTONIO LEE MIXON, #1968172

Defendant.

Case No. 17F14741X

Dept. No. 7

MOTION FOR INITIAL ARRAIGNMENT

Date: September 26, 2017

Time: 8:00 am

THE STATE OF NEVADA, through legal counsel, ADAM PAUL LAXALT, Attorney General of the State of Nevada, by and through Deputy Attorney General, CHELSEA KALLAS, moves this Court to place the above-entitled matter on the Court's arraignment calendar. Defendant ANTONIO LEE MIXON, is being charged with the following offenses: One (1) count of BATTERY BY A PRISONER, a category "B" felony in violation of NRS 200.481(2)(f), and one (1) count of POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACSIMILE BY AN INCARCERATED PERSON, a category "B" felony in violation of NRS 212.185(c).

Proper arrangements are being made to ensure the Defendant's presence in Court.

DATED this 22nd day of August, 2017.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: Chelsea Kallas
CHELSEA KALLAS
Nevada Bar No. 10273

17F14741X
MOF
Motion
8408918

CERTIFICATE OF SERVICE

I hereby certify that, on the 22nd day of August 2017, service of the ***MOTION FOR INITIAL APPEARANCE*** was made this date by depositing a true and correct copy of the same for mailing, first class mail, at Las Vegas, Nevada, or via facsimile, addressed as follows:

Inmate Antonio Mixon, #1019828
c/o Ely State Prison
4569 No. State Rt.
P.O. Box 1989
Ely, NV 89301

Joye Barker

Joye Barker, Legal Secretary
An employee of the Office of the Attorney General

9/26

ORIGINAL

FILED

2017 AUG 25 A 8:33

JUSTICE COURT
LAS VEGAS NEVADA

BY_____
DEPUTY

ORDR
ADAM PAUL LAXALT
Attorney General
Chelsea Kallas
Deputy Attorney General
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-3420
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Ckallas@ag.nv.gov
Attorneys for the State of Nevada

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, STATE OF NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1968172 Defendant.	Case No.: 17F14741X Dept. No.: 7 **TRANSPORT ORDER**

TO: DELENE FENNELL, NEVADA DEPARTMENT OF CORRECTIONS

TIMOTHY FILSON, Warden, ELY STATE PRISON

THE COURT HEREBY FINDS that the Defendant is presently in the custody of the Nevada Department of Corrections, located at **ELY STATE PRISON**.

IT IS HEREBY ORDERED that the Warden of ELY STATE PRISON, or his designee, shall transport Defendant, ANTONIO LEE MIXON #1019828, from ELY STATE PRISON in Ely, Nevada, to the Las Vegas Justice Court, Department 7, on the 26th day of September, 2017, at 8:00 a.m. for his

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17F14741X
ORD
Order
8420154

RECEIVED
AUG 23 2017
JUSTICE COURT

Initial Appearance regarding the instant matter, and arrange for his appearance on said ***date, and all subsequent dates*, as relayed by Memorandum from the Office of the *Attorney General*.**

DATED this 24th day of August, 2017.

JUSTICE COURT JUDGE

Respectfully submitted,

ADAM PAUL LAXALT
Attorney General

By: Chelsea Kallas
CHELSEA KALLAS
Nevada Bar No. 13902

THIS SEALED DOCUMENT, NUMBERED PAGE(S) 15 - 36 WILL FOLLOW VIA U.S. MAIL

Electronically Filed
10/25/2017 1:49 PM
Steven D. Grierson
CLERK OF THE COURT

INFM
ADAM PAUL LAXALT
Attorney General
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Attorneys for the State of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1968172 Defendant.	Case No.: C-17-327439-1 Dept. No.: 17

INFORMATION

ADAM PAUL LAXALT, Attorney General for the State of Nevada, complains and charges that:

The above-named defendant, ANTONIO LEE MIXON, has committed the crimes of one (1) count of BATTERY BY A PRISONER, a category "B" felony in violation of NRS 200.481(2)(f), and one (1) count of POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACSIMILE BY AN INCARCERATED PERSON, a category "B" felony in violation of NRS 212.185(c).

All of the acts alleged herein have been committed or completed on or about December 4, 2015, by the above-named defendant, within the County of Clark, State of Nevada, in the following manner:

COUNT I
BATTERY BY A PRISONER
Category "B" Felony - NRS 200.481(2)(f)

That the Defendant, ANTONIO LEE MIXON, on or about December 4, 2015, in the County of Clark, State of Nevada, did willfully, unlawfully, and feloniously use force or violence upon the person of another, while being held in lawful custody of Nevada Department of Corrections as a prisoner to wit: the

Defendant, while incarcerated at High Desert State Prison, struck Senior Correctional Officer Dean Ontiveros in the abdomen with a rock.

COUNT II
POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACIMILE BY AN INCARCERATED PERSON
Category "B" Felony - NRS 212.185(c)

That the Defendant, ANTONIO LEE MIXON, on or about December 4, 2015, while incarcerated at High Desert State Prison, did possess or have in his custody or control any dirk, dagger, switchblade knife or sharp instrument to wit: the Defendant did possess or have in his custody or control a sharp instrument commonly referred to as a "shank."

All of which is contrary to the form, force and effect of the statutes in such cases made and provided, and against the peace and dignity of the state of Nevada.

DATED this 25th day of October, 2017.

SUBMITTED BY

ADAM PAUL LAXALT
Attorney General

By: /s/ Chelsea N. Kallas
Chelsea N. Kallas (Bar No. 13902)
Deputy Attorney General
Attorneys for the State of Nevada

WITNESS LIST

1. Victor Daniel
   Criminal Investigator
   3955 West Russell Road
   Las Vegas, NV 89118

2. Dean Ontiveros
   Senior Correctional Officer
   High Desert State Prison
   P. O. Box 650
   Indian Springs, NV 89070-0650

3. Tyler Mcaninch
   Correctional Officer
   High Desert State Prison
   P. O. Box 650
   Indian Springs, NV 89070-0650

4. Brian Crooks
   Correctional Officer
   High Desert State Prison
   P. O. Box 650
   Indian Springs, NV 89070-0650

5. Franklin Dickens
   Senior Correctional Officer
   1912 Hammer Lane
   N. Las Vegas, NV. 89031

6. Ryan Hessler
   Correctional Officer
   High Desert State Prison
   P. O. Box 650
   Indian Springs, NV 89070-0650

7. Dustin Mumpower
   Correctional Sergeant
   High Desert State Prison
   P. O. Box 650
   Indian Springs, NV 89070-0650

8. Benjamin Estill
   Correctional Officer
   High Desert State Prison
   P. O. Box 650
   Indian Springs, NV 89070-0650

9. Kurt Krohm
   Correctional Officer
   High Desert State Prison
   P. O. Box 650
   Indian Springs, NV 89070-0650

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11/14/2017 3:55 PM
Steven D. Grierson
CLERK OF THE COURT

MOT
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
ASHLEY L. SISOLAK, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 13958
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
Ashley.Sisolak@ClarkCountyNV.gov
Attorneys for Defendant

DISTRICT COURT, LAS VEGAS

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. ANTONIO MIXON, Defendant,	CASE NO. C-17-327439-1 DEPT. NO. 6 DATE: DECEMBER 5, 2017 TIME: 8:30 a.m.

MOTION TO COMPEL PRODUCTION OF DISCOVERY & BRADY MATERIAL

Defendant, ANTONIO MIXON, through counsel, ASHLEY L. SISOLAK, Deputy Public Defender, hereby requests this Honorable Court to order the State of Nevada to produce the discovery and Brady material discussed herein **at least 30 days before trial** pursuant to NRS 174.235; NRS 174.285; Kyles v. Whitley, 514 U.S. 419 (1995); Brady v. Maryland, 373 U.S. 83 (1963) (and their progeny).

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel and Memorandum of Points and Authorities, and oral argument at the time set for hearing this Motion.

DATED this 14th day of November, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/Ashley L. Sisolak*
ASHLEY L. SISOLAK, #13958
Deputy Public Defender

Case Number: C-17-327439-1

DECLARATION

ASHLEY L. SISOLAK makes the following declaration:

1. I am an attorney licensed to practice law in the State of Nevada and I am a Deputy Public Defender for the Clark County Public Defender's Office, counsel of record for Defendant ANTONIO MIXON, in the present matter;

2. I make this Declaration in support of Mr. Mixon's Motion for Production of Discovery & Brady material;

3. I am more than 18 years of age and am competent to testify as to the matters stated herein. I am familiar with the procedural history of the case and the substantive allegations made by The State of Nevada. I also have personal knowledge of the facts stated herein or I have been informed of these facts and believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 14th day of November, 2017.

/s/Ashley L. Sisolak
ASHLEY L. SISOLAK

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

Antonio Lee Mixon is charged with one count of Battery by a Prisoner, a category B felony, and one count of Possession or Control of a Dangerous Weapon or Facsimile by an Incarcerated Person, a category B felony.

Mixon was arraigned on the charges on September 26, 2017. On October 24, 2017, Mixon waived his right to Preliminary Hearing.

On November 1, 2017, Mixon appeared in District Court. He pleaded not guilty and jury trial is set in this matter on January 2, 2017.

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ARGUMENT

Prior to trial, prosecutors are required to disclose both inculpatory and exculpatory information within their actual or constructive possession.

I. Prosecutors must Disclose *Inculpatory* Evidence

NRS 174.235 requires prosecutors to disclose evidence "within the possession, custody or control of the state, the existence of which is known, or by the exercise of due diligence may become known," including:

- The defendant's written or recorded statements or confessions,
- Any witness's written or recorded statements the prosecuting attorney intends to call during the witness during the State's case in chief,
- Results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection with the particular case,[1] and
- Books, papers, documents, tangible objects, or copies thereof, which the prosecuting attorney intends to introduce during the State's case in chief.

NRS 174.235(1)(a)-(c).

A. Prosecutors must disclose all inculpatory evidence, regardless of whether the material is intended for use in the government's case in chief

Prosecutors may not lawfully withhold inculpatory information from the defense simply because they do not intend to present the information in the government's case-in-chief. State v. Harrington, 9 Nev. 91, 94 (1873); People v. Carter, 312 P.2d 665, 675 (Cal.1957); People v. Bunyard, 756 P.2d 795, 809 (Cal. 1988). Any holding to the contrary would allow prosecutors to engage in unfair surprise by withholding inculpatory material from the government's case-in-chief, only to surprise the defense by using it in rebuttal. Thus, prosecutors must disclose all

[1] This includes medical data, imaging, films, reports and slides, histological, colposcopic, or otherwise. The right to counsel guaranteed by the Sixth Amendment obligates defense counsel to conduct "an adequate pre-trial investigation into . . . medical evidence." Gersten v. Senkowski, 426 F.3d 588, 605 (2d Cir. 2005). This duty includes obtaining and reviewing pertinent medical imaging even if the testing reveals no significant findings. Id. at 605, 607-10 (discussing the exculpatory nature of "normal" medical examinations in cases in which a complainant alleges physical harm). Thus, the discovery obligations set forth in NRS 174.235(2) require prosecutors to disclose physical imaging and testing.

inculpatory evidence of which they are actually or constructively aware, including material not necessarily intended for introduction in the prosecution's case-in-chief.

B. Fundamental fairness requires that NRS 174.235 be interpreted to encompass all statements made by a defendant, regardless of whether they are reduced to writing or recorded

While NRS 174.235 obligates prosecutors to disclose a defendant's written or recorded statements, fundamental fairness requires disclosure of unrecorded statements and statements for which a defendant can be held vicariously liable.[2] Courts have recognized the fundamental fairness involved in "granting the accused equal access to his own words, no matter how the government came by them." U.S. v. Caldwell, 543 F.2d 1333, 1353 (D.D.C. 1974). This includes allowing an accused access to his unrecorded words, including adoptive or vicarious admissions. Since these admissions are admissible at trial whether recorded or not, NRS 174.235 must be construed to require pretrial disclosure of any unrecorded statements or admissions, including those for which the defendant can be held vicariously liable.

II. Prosecutors Must Disclose Exculpatory Evidence as Required by the U.S. and Nevada Constitutions

The United States and Nevada Constitutions require prosecutors to disclose all exculpatory information of which they are actually or constructively aware. U.S. Const. Amend. V, VI, XIV; Nev. Const. Art. 1, Sect. 8; Brady v. Maryland, 373 U.S. 83 (1963); Kyles v. Whitley, 514 U.S. 419, (1995). A prosecutor's failure to disclose exculpatory evidence violates the Due Process Clause. Jimenez v. State, 112 Nev. 610, 618 (1996). A due process violation occurs when exculpatory evidence is withheld, regardless of the prosecution's motive. Jimenez, 112 Nev. 610.

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[2] NRS 51.035(3)(a)-(e) provides that a defendant can be held vicariously liable for statements made by third parties. See also Fields v. State, 129 Nev. 785 (2009) (finding evidence of defendant's silence following wife's complaint that she was in jail because of his conduct admissible as an adoptive admission).

A. Brady Places Broad Disclosure Obligations on Prosecutors, Questions About Which Must Be Resolved In Favor Of Disclosure

Exculpatory evidence is information favorable to the defendant that is material to the issue of guilt or punishment. U.S. v. Bagley, 473 U.S. 667, 675 (1985). Evidence is material and favorable to the accused if its non-disclosure undermines confidence in the outcome of the trial. Kyles, 514 U.S. at 434-35. This evidence must be disclosed even in the absence of a Brady request.[3] Bagley, 473 U.S. at 680-82.

Ultimately, prosecutors are tasked with a "broad duty of disclosure." Strickler, 527 U.S. at 281; cf. U.S. v. Agurs, 427 U.S. 97, 108 (1976) (holding that "the prudent prosecutor will resolve doubtful questions in favor of disclosure"). As the Nevada Supreme Court has explained:

> Due process does not require simply the disclosure of "exculpatory" evidence. Evidence also must be disclosed if it provides grounds for the defense to attack the reliability, thoroughness, and good faith of the police investigation, to impeach the credibility of the state's witnesses, or to bolster the defense case against prosecutorial attacks. Furthermore, "discovery in a criminal case is not limited to investigative leads or reports that are admissible in evidence." Evidence "need not have been independently admissible to have been material."

Mazzan v. Warden, 116 Nev. 48, 67 (2000) (internal citations omitted). Thus, any question as to whether certain material, information, or evidence falls within the purview of Brady should be resolved in favor of disclosure. Agurs, 427 U.S. at 108; see also Kyles, 514 U.S. at 439 ("a prosecutor anxious about tacking too close to the wind will disclose a favorable piece of evidence.").

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[3] However, a specific Brady request changes the standard of review on appeal. When a defendant makes a specific request, a reversal is warranted when "there exists a reasonable *possibility* that the claimed evidence would have affected the judgment of the trier of fact." Jimenez, 112 Nev. 619; State v. Bennett, 119 Nev. 589 (2003). However, absent a specific request, reversal is warranted, "if there exists a reasonable *probability* that, had the evidence been disclosed, the result of the proceeding would have been different." Bagley, 473 U.S. at 667, 682, 685; Pennsylvania v. Ritchie, 480 U.S. 39, 57 (1986). A reasonable probability is a probability sufficient to undermine confidence in the outcome. Bagley, 473 U.S. at 678, 685; Ritchie, 480 U.S. at 57.

B. Favorable Evidence Includes Impeachment Information

The Due Process Clause of the Fifth and Fourteenth Amendments requires prosecutors to disclose "any information about its witnesses that could cast doubt on their credibility." U.S. v. Jennings, 960 F.2d 1488, 1490 (9th Cir. 1992). A witness can be attacked by "revealing possible biases, prejudices, or ulterior motives of the witnesses as they may relate directly to issues or personalities in the case at hand. The partiality of a witness is . . . always relevant [to] discrediting the witness and affecting the weight of his testimony." Davis, 415 U.S. at 316; see also Lobato v. State, 120 Nev. 512 (2004) (discussing the nine basic modes of impeachment). Accordingly, favorable evidence includes impeachment information pertaining to all government witnesses. Giglio v. U.S., 405 U.S. 150, 154 (1972); Youngblood v. West Virginia, 547 U.S. 867 (2006); U.S. v. Bagley, 473 U.S at 676 (requiring disclosure of all impeachment evidence).

1. Impeachment information includes cooperation agreements and benefits

Impeachment information includes all cooperation agreements between a government witness and prosecutors. Giglio v. U.S., 405 U.S. 150, 154 (1972) (requiring disclosure of cooperation agreement between government witness and prosecutors). It also includes benefits provided to a government witness, regardless of whether an explicit deal is outlined. Browning v. State, 120 Nev. 347, 369 (2004). It is the witness's own anticipation of reward, not the intent of the prosecutor, which gives rise to the required disclosure. Moore v. Kemp, 809 F.2d 702, 726, 729-30 (11th Cir. 1987); Duggan v. State, 778 S.W.2d 465, 468 (Tex. Crim. App. 1989) (noting that agreements need not be express or formal arrangements, and recognizing favorable treatment that is merely implied, suggested, insinuated, or inferred to be of possible benefit to a witness constitutes proper material for impeachment).

Notably, benefits are not limited to agreements made in relation to the case in which they are sought. Jimenez, 112 Nev. at 622-23. Benefits include evidence that a witness acted as a paid informant on one or more occasions. State v. Bennett, 119 Nev. 589, 603 (2003). Additionally, benefits include travel and lodging compensation, immigration assistance of any kind, whether actual or anticipatory, as well as counseling, treatment, or other assistance

provided to any witness. These benefits are relevant to issues regarding possible bias, credibility, and motive to lie, all of which constitute impeachment evidence. Davis v. Alaska, 415 U.S. 308 (1974).

2. A witness's criminal history constitutes impeachment information

Impeachment information includes evidence relating to a witness's criminal history. Briggs v. Raines, 652 F.2d 862, 865-66 (9th Cir. 1981). Under Brady, prosecutors must produce criminal histories useful to demonstrating a witness's history of, or propensity for, a relevant character trait. Id. Prosecutors must also produce criminal histories disclosing a witness's bias, prejudice or motive to lie. Davis, 415 U.S. at 354.

A witness's entire criminal record should be disclosed, even if it is more than ten years old. Moore, 809 F.2d 702. Prosecutors are often under the mistaken impression that they must disclose only felony convictions within the last ten years that can be utilized for impeachment under NRS 50.095. However, in Davis, the U.S. Supreme Court found that a witness can be attacked by "revealing possible biases, prejudices, or ulterior motives . . . . The partiality of a witness is . . . always relevant [to] discrediting the witness and affecting the weight of his testimony." 415 U.S. at 354 (internal quotations omitted). The Davis Court found that the policy interest in protecting offender records must yield to the defendant's right to cross-examine as to bias. Id. at 356; see also Lobato v. State, 120 Nev. 512 (2004), discussing the "nine basic modes of impeachment." Therefore, even juvenile records, misdemeanors, and older criminal records may yield information relevant to many forms of impeachment other than that outlined in NRS 50.095.

Prosecutors must also produce criminal history information maintained by law enforcement agencies other than the Nevada Department of Corrections, such as the federal government's National Crime Information Center ("NCIC") database.[4] "[K]nowledge [of the

[4] Federal law permits disclosure of NCIC information under circumstances such as those here. 28 C.F.R. Chapter 1 addresses the U.S. Dept. of Justice and Criminal Justice Information Systems. 28 C.F.R. Sec. 20.33 sets forth the instances in which NCIC information may be disclosed. It provides for NCIC disclosure "(1) To criminal justice agencies for criminal justice purposes . . . ." 28 C.F.R. Sec. 20.3(g) defines criminal justice agencies as *inter alia* courts. Additionally, 28 C.F.R. Sec. 20.3 defines the "[a]dministration of criminal justice" to include the

NCIC database] may be imputed to the prosecutor, or a duty to search may be imposed, in cases where a search for readily available background information is routinely performed, such as routine criminal background checks of witnesses." Odle v. Calderon, 65 F. Supp. 2d 1065, 1072 (N.D. Cal. 1999), rev'd on other grounds by Odle v. Woodford, 238 F.3d 1084 (9th Cir. 2001). A prosecutor's lack of knowledge regarding a witness's criminal history does not relieve the prosecutorial obligation to obtain and produce that information. Martinez v. Wainwright, 621 F.2d 184, 187-89 (5th Cir. 1980) (defendant entitled to criminal records of state-government witnesses, including data obtainable from the FBI; prosecutor's lack of awareness of alleged victim's criminal history did not excuse duty to obtain and produce rap sheet).

Requiring prosecutors to run background checks on their witnesses is not a novel proposition. See U.S. v. Perdomo, 929 F.2d 967 (3d Cir. 1991) (adopting 5th Circuit's rationale in requiring government to obtain complete criminal history on prosecution witnesses). It is the prosecutor's "obligation to make a thorough inquiry of all enforcement agencies that had a potential connection with the witnesses . . . ." U.S. v. Thornton, 1 F.3d 149 (3d Cir. 1993). If the witness has no criminal history, the prosecutor is not required to produce the NCIC printout, as it need not disclose a lack of criminal history. U.S. v. Blood, 435 F.3d 612, 627 (6th Cir. 2006). Thus, prosecutors must run a thorough background check on every witness they intend to call, and produce all criminal history information to the defense.

3. Impeachment information includes evidence contradicting a government witness's statement

Impeachment evidence encompasses prior inconsistent statements and other evidence that contradicts government witnesses. Accordingly, prosecutors must disclose prior inconsistent statements by prosecution witnesses. Lay v. State, 116 Nev. 1185, 1199 (2000). Prosecutors must also disclose other evidence contradicting the testimony of government witnesses. Rudin v. State, 120 Nev. 121, 139 (2004).

"performance of any of the following activities . . . adjudication . . . ." Therefore, the C.F.R. authorizes prosecutors to access and disclose NCIC data pursuant to Court order as part of a criminal case adjudication.

4. Confidential records must be disclosed if they contain impeachment information

Impeachment evidence can derive from privileged or confidential material. When this occurs, the privileged or confidential nature of the material at issue must yield to a defendant's constitutionally secured right to confront and cross-examine those who testify against him. Davis, 415 U.S. at 356 (finding the State's interest in maintaining confidentiality of juvenile records must yield to defendant's right to cross-examine as to bias); see also U.S. v. Nixon, 418 U.S. 683, 713 (1974) (generalized assertion of privilege must yield to demonstrated, specific need for evidence in a pending criminal case). Thus, prosecutors must obtain and disclose privileged and confidential records when the records contain information bearing on witness credibility.[5]

This includes mental health records. U.S. v. Lindstrom, 698 F.2d 1154, 1166-67 (11th Cir. 1983); U.S. v. Robinson, 583 F.3d 1265, 1271-74 (10th Cir. 2009); Wyman v. State, 125 Nev. 592, 607-08 (2009). It also includes Child Protective Services (or the functional equivalent) and school records. See Pennsylvania v. Ritchie, 480 U.S. 39, 60 (1987) (defendant entitled to *in camera* review of Child and Youth Services records[6]); and State v. Cardall, 982 P.3d 79, 86 (Utah 1999) (defendant entitled to complainant's school psychological records indicating she had propensity to lie and had fabricated prior rape allegations). It further includes adult and juvenile parole, probation, jail, and prison records. U.S. v. Strifler, 851 F.2d 1197, 1201 (9th Cir. 1988); Carriger v. Stewart, 132 F.3d 463, 479-82 (9th Cir. 1997) (requiring production of Department of Corrections file on principle government witness); Davis, 415 U.S. at 356; see also Bennett, 119 Nev.at 603 (2003) (failure to disclose co-conspirator's juvenile records in penalty hearing amounted to Brady violation). Thus, prosecutors cannot refuse

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[5] At a minimum, otherwise confidential or privileged material must be submitted to the Court for an *in camera* review to determine materiality. Pennsylvania v. Ritchie, 480 U.S. 39, 60 (1987).

[6] The Ritchie Court held that the State cannot claim privilege to refuse disclosure of CPS records, unless there is a statutory scheme that forbids any use, including disclosure to a prosecutor, of such records. Ritchie, 480 U.S. at 57-58. NRS 432B.290 allows for disclosure of such records to the prosecutor and to the court for *in camera* review.

disclosure of impeachment information on the basis that the information is privileged or confidential.

5. Impeachment Information Includes Prior Allegations of Sexual Misconduct and Prior Sexual Knowledge

Under Nevada law, prior false allegations of sexual misconduct amount to an exception to rape shield laws. Miller v. State 105 Nev. 497 (1989). Accordingly, Nevada law authorizes disclosure of prior false allegations, including those made by juvenile complainants. NRS 432B.290(3) specifically authorizes child welfare agencies to disclose "the identity of a person who makes a report or otherwise initiates an investigation . . . if a court, after reviewing the record *in camera* and determining that there is reason to believe that the person knowingly made a false report, orders the disclosure." Similarly, the Ninth Circuit recognizes it is error to exclude evidence of minor's prior false sexual assault allegations as this evidence "might reasonably have influenced the jury's assessment of [the complainant's] reliability or credibility . . . ." Fowler v. Sacramento Co. Sheriff's Dept., 421 F.3d 1027, 1032-33; 1040 (9th Cir. 2005).

Impeachment evidence in sexual misconduct cases further includes evidence of a complainant's prior sexual conduct to show sexual knowledge. Summitt v. State, 101 Nev. 159 (1985); see also Holley v. Yarborough, 568 F.3d 1091, 1099-1100 (9th Cir. 2009) (finding it was error to exclude evidence that complainant made comments to friends regarding a prior sexual encounter and claimed other boys expressed a desire to engage in sexual acts with her, as this evidence revealed complainant's active sexual imagination, and may have altered jury's perception of the complainant's credibility and reliability of her claims). Thus, prosecutors must disclose evidence of a complainant's prior accusations of sexual misconduct as well as evidence of a complainant's prior sexual conduct in cases where such evidence bears on the charged crimes.

6. Law enforcement personnel files may contain impeachment information

Under U.S. v. Henthorn, 931 F.2d 29, 31 (9th Cir. 1991), prosecutors must examine law enforcement personnel files upon defense request. See also U.S. v. Cadet, 727 F.2d 1453 (9th

Cir. 1984). A defendant is not required to make an initial showing of materiality before prosecutors must examine the files—the examination obligation arises solely from the defendant's request. Henthorn, 931 F.2d at 31. "Absent such an examination, [the State] cannot ordinarily determine whether it is obligated to turn over the files." Id. Once examined, prosecutors must "disclose information favorable to the defense that meets the appropriate standard of materiality . . . . If the prosecution is uncertain about the materiality of the information within its possession, it may submit the information to the trial court for an in camera inspection and evaluation . . . ." Henthorn, 931 F.2d at 30-31 (quoting Cadet, 727 F.2d at 1467-68). Thus, if requested to do so by the defense, the prosecution must canvass relevant law enforcement personnel files for information material to the case.

C. Favorable Evidence Includes Witnesses with Exculpatory Information

Prosecutors must disclose the identity of witnesses possessing exculpatory information, as no legitimate interest is served by precluding the defense from calling such witnesses for trial. U.S. v. Eley, 335 F.Supp. 353 (N.D. Ga. 1972); U.S. v. Houston, 339 F.Supp. 762 (N.D. GA 1972).

D. Favorable Evidence Includes Evidence of Third-Party Guilt

The U.S. Constitution guarantees a criminal defendant the right to present evidence of third-party guilt. See Holmes v. South Carolina, 547 U.S. 319 (2006) (holding that refusal to allow defendant to present evidence of third party guilt deprives him of a meaningful right to present a complete defense under the Sixth and Fourteenth Amendments to the U.S. Constitution). Under Brady, prosecutors must disclose all evidence suggesting another perpetrator committed the charged crimes. Lay, 116 Nev. at 1195-96. This includes evidence that another individual was arrested in connection with the charged crime. Banks v. Reynolds, 54 F.3d 1508, 1518 n.21 (10th Cir. 1995). It also includes evidence of investigative leads pointing to other suspects. Jimenez, 112 Nev. at 622-23 (withholding evidence of investigative leads to other suspects, regardless of admissibility, constitutes Brady violation).

Additionally, prosecutors must provide the actual documents, evidence, and reports pertaining to evidence of third-party guilt; it is not enough for prosecutors to provide the defense with a summary of the information relating to other suspects. Mazzan, 116 Nev. at 69 (summary of prosecutor's perspective on written reports relating to potential suspects were constitutionally inadequate; actual reports should have been disclosed pursuant to Brady); Bloodworth v. State, 512 A.2d 1056, 1059-60 (Md. 1986). Thus, prosecutors must disclose any information or evidence indicating someone other than the instant defendant committed the charged crimes.

E. Favorable Evidence Includes All Evidence that May Mitigate a Defendant's Sentence

Favorable evidence also includes evidence which could serve to mitigate a defendant's sentence upon conviction. Jimenez, 112 Nev. 610. Accordingly, prosecutors must disclose any evidence tending to mitigate punishment in the instant matter.

III. The Disclosure Obligations Conferred by NRS 174.235 and Brady Include Rough Notes

Raw notes made by any law enforcement officer or other prosecution agent in connection with the investigation of instant matter must be disclosed to the defense. See, e.g., State v. Banks, 2014 WL 7004489 (Nev. S.Ct. Dec. 10, 2014) (unpublished) (court did not take issue with lower court's order requiring preservation and disclosure of police officer's rough notes); see also U.S. v. Clark, 385 F.3d 609, 619 (6th Cir. 2004) (finding rough notes discoverable under F.R.C.P. 16); U.S. v. Molina-Guevara, 96 F.3d 698, 705 (3d Cir. 1996) (remanding on other grounds but noting that, on remand, production of rough notes required under F.R.C.P. 16); U.S. v. Harris, 543 F.2d 1247 (9th Cir. 1976) (noting as important, and requiring preservation of, law enforcement rough notes). Notably, this does not include information amounting to work product.

In Hickman v. Taylor, 329 U.S. 495, 508-11 (1947), the U.S. Supreme Court recognized the privileged nature of discussions relating to the preparation of a case for trial.[7] The work

[7] "In performing his various duties, however, it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel... Proper preparation of a client's case demands that he assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his

product doctrine announced in Hickman shelters not only material generated by an attorney in preparation for trial, but by his agent, as well:

> At its core, the work product doctrine shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client's case. But the doctrine is an intensely practical one, grounded in the realities of litigation in our adversary system. One of those realities is that attorneys often must rely on the assistance of investigators and other agents in preparation for trial. It is therefore necessary that the doctrine protect material prepared by agents for the attorney as well as those prepared by the attorney himself. Moreover, the concerns reflected in the work-product doctrine do not disappear once trial has begun . . . .

U.S. v. Nobles, 422 U.S. 225, 238-39 (1975). Codifying this, NRS 174.235(2) exempts from discovery:

> a) An internal report, document or memorandum that is prepared by or on behalf of the prosecuting attorney in connection with the investigation or prosecution of the case.
>
> b) A statement, report, book, paper, document, tangible object or any other type of item or information that is privileged or protected from disclosure or inspection pursuant to the constitution or laws of this state or the Constitution of the United States.

Accordingly, only raw notes generated by, or on behalf of, the prosecutor are exempted from disclosure under the work product doctrine. Any other raw notes compiled during the investigation of this matter must be turned over pursuant to the disclosure obligations imposed by NRS 174.235 and Brady.

IV. The Disclosure Obligations Set Forth Above Extend to All Material in the Prosecutors Actual or Constructive Possession

Prosecutors must turn over all material related to the case in the possession, control and custody of any government agent or agency. See U.S. v. Blanco, 392 F.3d 382, 388 (9th Cir.

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strategy without undue and needless interference... This work is reflected, of course, in interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible ways – aptly... termed... as the 'work product of the lawyer.' Were such materials open to opposing counsel on mere demand, much of what is now put down in writing would remain unwritten. An attorney's thoughts, heretofore inviolate, would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial. The effect on the legal profession would be demoralizing. And the interests of clients and the cause of justice would be poorly served." Id.

2004). Prosecutors are responsible for disclosing evidence in their possession as well as evidence held or maintained by other government agents, as "it is appropriate to charge the State with constructive knowledge" of evidence held by any investigating agency. Bennett, 119 Nev. at 603.

This constructive possession rule applies to evidence that is *withheld* by other agencies. Bennett, 119 Nev. at 603. Even if investigating officers withhold reports without the prosecutor's knowledge, "the state attorney is *charged with constructive knowledge and possession of evidence withheld by other state agents*, such as law enforcement officers." Id. (internal quotations and citation omitted) (emphasis added). "Exculpatory evidence cannot be kept out of the hands of the defense just because the prosecutor does not have it, where an investigative agency does." U.S. v. Zuno-Arce, 44 F.3d 1420, 1427 (9th Cir. 1995). "It is a violation of due process for the prosecutor to withhold exculpatory evidence, and his motive for doing so is immaterial." Jimenez, 112 Nev. at 618.

In fact, a prosecutor has an *affirmative obligation* to obtain Brady material and provide it to the defense, *even if the prosecutor is initially unaware of its existence.* "The prosecution's affirmative duty to disclose evidence favorable to a defendant can trace its origins to early 20th century strictures against misrepresentation and is of course most prominently associated with this Court's decision in Brady . . . ." Kyles, 514 U.S. at 432. This obligation exists even where the defense does not make a request for such evidence. Id. As the U.S. Supreme Court explained:

> This in turn means that the individual prosecutor *has a duty to learn* of any favorable evidence known to the others acting on the government's behalf in the case, including the police. But whether the prosecutor succeeds or fails in meeting this obligation (whether, that is, a failure to disclose is in good faith or bad faith), the prosecution's responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable. . . . Since then, the prosecutor has the means to discharge the government's Brady responsibility if he will, any argument for excusing a prosecutor from disclosing what he does not happen to know about boils down to a plea to substitute the police for the prosecutor, and even for the courts themselves, as the final arbiters of the government's obligation to ensure fair trials.

Kyles, 514 U.S. at 437-38 (emphasis added) (citations and footnotes omitted); see also Carriger, 132 F.3d at 479-82 (holding that "the prosecution has a duty to learn of any exculpatory evidence known to others acting on the government's behalf. *Because the prosecution is in a unique position to obtain information known to other agents of the government, it may not be excused from disclosing what it does not know but could have learned.*" (citations omitted) (emphasis added). Thus, the disclosure obligations outlined above extend not only to material directly in the possession of prosecutors, but material prosecutors constructively possess, as well.

V. An "Open File" Policy Does Not Obviate the Disclosure Obligations Outlined Above

Historically, the Clark County District Attorney's Office (CCDA) has employed an open file policy in which prosecutors allow defense counsel to review the discovery contained in the government's trial file. While the CCDA currently may not be adhering to this practice, it is worth noting that an open file policy does not vitiate above-referenced disclosure obligations. Strickler, 527 U.S. at 283 (holding that a prosecutor's open file policy does not in any way substitute for or diminish the State's obligation to turn over Brady material). "If a prosecutor asserts that he complies with Brady through an open file policy, defense counsel may reasonably rely on that file to contain all materials the State is constitutionally obligated to disclose under Brady." Strickler, 527 U.S. at 283, n.23.; see also Amando v. Gonzalez, 758 F.3d 1119, 1136 (9th Cir. 2014); McKee v. State, 112 Nev. 642, 644 (1996) (reversing a judgment of conviction based on prosecutorial misconduct where the prosecutor did not make available all relevant inculpatory and exculpatory evidence consistent with the county district attorney's open file policy); see also Furbay v. State, 116 Nev. 481 (2000) (discussing prosecution's duty to provide all evidence in its possession where it has promised to do so). Accordingly, if the defense relies on the government's assurance of an open file policy, the defense is not required to hunt down information otherwise obtained and maintained pursuant to that policy.

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VI. Adjudication of the Instant Motion is Necessary for Preservation of Issues Relating to Discovery Disclosures

NRS 174.235 requires disclosure of (1) written and recorded statements of a defendant or any witness the prosecutor intends to call in his case-in-chief; (2) results and reports of any examinations or tests conducted in connection with the case at bar; and (3) any document or tangible object the prosecutor intends to introduce in his case in chief—upon the request of the defense. Additionally, constitutional jurisprudence requires disclosure of any evidence tending to exculpate the accused. The instant Motion is brought, *inter alia*, to ensure the availability of appropriate sanctions should later discovery issues arise. This requires a Court Order compelling the production of the information and material sought herein. Donovan v. State, 94 Nev. 671 (Nev. 1978).

A. Nevada Law Provides for Judicial Oversight of the State's Discovery Obligations

Eighth Judicial District Court Rule (EDCR) 3.24 governs discovery motions in local criminal practice. It states:

> (a) Any defendant seeking a court order for discovery pursuant to the provisions of NRS 174.235 or NRS 174.245 may make an oral motion for discovery at the time of initial arraignment. The relief granted for all oral motions for discovery will be as follows:
>
> (1) That the State of Nevada furnish copies of all written or recorded statements or confessions made by the defendant which are within the possession, custody or control of the State, the existence of which is known or by the exercise of due diligence may become known to the district attorney.
>
> (2) That the State of Nevada furnish copies of all results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with this case which are within the possession, custody or control of the State, the existence of which is known or by the exercise of due diligence may become known to the district attorney.
>
> (3) That the State of Nevada permit the defense to inspect and copy or photograph books, papers, documents, tangible objects, buildings, places, or copies or portions thereof, which are within the possession, custody or control of the State, provided that the said items are material to the preparation of the defendant's case at trial and constitute a reasonable request.

> (b) Pursuant to NRS 174.255, the court may condition a discovery order upon a requirement that the defendant permit the State to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at the trial and which are within the defendant's possession, custody or control provided the said items are material to the preparation of the State's case at trial and constitute a reasonable request.

Thus, EDCR 3.24 specifically provides for the discovery motion brought in the instant matter.

Not surprisingly, the Nevada Supreme Court has held that a discovery motion and corresponding order is a prerequisite to obtaining relief under NRS 174.295[8] for later discovery violations:

> Although NRS 174.295 provides relief for a prosecutor's failure to notify defense counsel of all discoverable material, that statute is only operative in situations where a previous defense motion has been made and a court order issued. That provision is not applicable to any informal arrangements that are made, as here between counsel without benefit of court sanction.

Donovan, 94 Nev. 671 (internal citations omitted).

This comports with other portions of NRS 174, which, by implication, suggests criminal discovery is a matter that must be pursued by way of motion rather than a simple written or oral request. For example, NRS 174.285 states that "a request made pursuant to NRS 174.235 or 174.245 may be made only within 30 days after arraignment or at such reasonable time *as the court may permit.* A party shall comply with a request made pursuant to NRS 174.235 or 174.245 not less than 30 days before trial or at such reasonable later time *as the court may permit.*" (Emphasis added). The judicial permission required for late discovery requests and late compliance contemplates judicial oversight of discovery matters.

Similarly, NRS 174.125 contemplates discovery requests via written motion. NRS 174.125 requires that, any motion "which by [its] nature, if granted, delay[s] or postpone[s] the time of trial must be made before trial, unless an opportunity to make such a motion before trial did not exist or the moving party was not aware of the grounds for the motion before trial." A discovery request, depending on the timing and nature of the request, may necessarily cause a

[8] NRS 174.295 sets forth sanctions for discovery violations, such as inspection of material not properly disclosed, trial continuance, or exclusion of the undisclosed material.

trial delay. Accordingly, under NRS 174.125, discovery requests should be made via motion prior to trial. Id.

Thus, the statutorily-based discovery requests set forth herein are properly brought before this Honorable Court and must be adjudicated. Refusal to adjudicate the instant Motion obviates Mr. Mixon's statutorily created liberty interest in (1) ensuring access to the discoverable material covered by NRS 174 and (2) ensuring application of the enforcement and sanction provisions outlined in NRS 174. Such an arbitrary deprivation of a state-created liberty interest violates the Due Process Clause. See Hicks v. Oklahoma, 447 U.S. 343, 346 (1980) (arbitrary deprivation of state-created liberty interest amounts to Due Process violation).

B. Brady Material and Relevant Authority

Brady and related authority also contemplate pre-trial regulation and adjudication of prosecutorial disclosures. Brady is not a discovery rule but a rule of fairness and minimum prosecutorial obligation. Curry v. U.S., 658 A.2d 193, 197 (D.C. 1995) (internal quotations and citations omitted). It does not require the production of specific documents. It requires the production of information. This prosecutorial obligation is non delegable—it is not contingent on, nor is the defense required to make, specific Brady requests. See Strickler, 527 U.S. at 281-82 (setting forth the elements of a Brady claim and clarifying that there is no requirement that defense make request).[9]

However, to prevail on a Brady claim, should one arise, a defendant must establish that (1) the prosecution was in actual or constructive possession of favorable information; (2) the prosecution failed to disclose this information to the defense in a timely fashion or at all; and (3) the withheld information was material to the outcome of the trial. Strickler, 527 U.S. at 281-82. The standard for determining materiality depends upon whether defense counsel requested the

[9] Any argument by prosecutors that "the defense is able to independently seek out any discovery which they desire . . . it is not the State's responsibility to perform investigations or inquiries on behalf of the defense,"—common responses to defense discovery motions—is patently wrong. Strickler, 527 U.S. at 281-82 (rejecting the argument that defense counsel should have uncovered Brady information); Banks v. Dretke, 540 U.S. 668, 695-98 (2004) ("A rule thus declaring 'prosecutor may hide, defendant must seek' is not tenable in a system constitutionally bound to accord defendants due process.").

information at issue and, if a request was made, whether the request was specific or general in nature. "If a defendant makes no request or only a general request for information, the evidence is material when a reasonable *probability* exists that the result would have been different had it been disclosed." Bennett, 119 Nev. at 600 (emphasis added). Yet, "if the defense request is specific, the evidence is material upon the lesser showing that a reasonable *possibility* exists of a different result had there been disclosure." Id. (emphasis added) Accordingly, the fact and nature of a Brady request is critical to later adjudication of alleged Brady violations.

Defense counsel enjoys to the right to pursue Brady requests—and thereby construct the record on them—in the manner counsel sees fit. The best way to ensure that the record adequately reflects the nature and scope of a Brady request is via pre-trial discovery motion—a motion, as set forth above, specifically provided for by Nevada law.[10] See Myles v. State, 127 Nev. 1161 (2011) (unpublished) (no discovery violation where undisclosed photo not requested as part of discovery motion).

A cursory review of federal discovery jurisprudence reveals the broad authority with which trial courts are vested to regulate pretrial Brady disclosures and thereby ensure that this constitutional rule—which exists to prevent a miscarriage of justice—works as it should. Bagley, 473 U.S. at 675; U.S. v. Odom, 930 A.2d 157, 158 (D.C. 2007); see also U.S. v. W.R. Grace, 526 F.3d 499, 509 (9th Cir. 2008) (affirming trial court's order requiring government to disclose its finalized witness list a year prior to trial as an exercise of the court's inherent authority to manage its docket"); U.S. v. Coppa, 267 F.3d 132, 146 (2d Cir. 2001) (acknowledging trial court's discretion to order pretrial disclosures as a matter of sound case management); U.S. v. Rigas, 779 F. Supp. 408, 414 (M.D. Pa. 2011 (recognizing authority of trial court to order pretrial disclosure of Brady material to ensure effective administration of criminal justice system); U.S. v. Cerna, 633 F. Supp. 2d 1053, 1057 (N.D. Cal. 2009) (exercising power to issue Brady order); U.S. v. Thomas, 2006 WL 3095956 (D.N.J. 2006) (issuing pretrial order regulating, *inter alia*, Brady disclosures).

[10] This is especially true given the absence of compelling Nevada or other authority recognizing an informal Brady request as sufficient to preserve the record on this critical issue.

Indeed, trial courts must, as a constitutional matter, exercise this oversight power. Boyd v. U.S., 908 A.2d 39, 61 (D.C. 2006) ("courts have the obligation to assure that [prosecutorial discretion] is exercised in a manner consistent with the right of the accused to a fair trial"); see also Smith v. U.S., 665 A.2d 962 (D.C. 2008) (abuse of discretion for court to refuse to review a transcript *in camera* where prosecution concede there were "minor inconsistencies in the testimony as to how the shooting happened"). As such, judicial oversight of Brady disclosures is commonplace in federal criminal prosecutions. See, e.g., U.S. v. Johnson, 2010 WL 322143 (W.D. Pa. 2010) (trial court ordering government to disclose all Brady material, including impeachment material no later than ten days prior to trial); U.S. v. Lekhtman 2009 WL 5095379 at 1 (E.D.N.Y. 2009) (ordering disclosure of Brady material as it is discovered and Giglio material two weeks before commencement of trial); U.S. v. Rodriguez, 2009 WL 2569116 at 12 S.D.N.Y. 2009) (ordering government to turn over Brady material as it is discovered and Giglio material twenty-one days before trial); U.S. v. Libby, 432 F. Supp. 2d 81, 86-87 (D.D.C. 2006) (ordering immediate production of all Brady material); U.S. v. Thomas, 2006 CR 553, 2006 WL 3095956 (D.N.J. 2006) (unpublished) (ordering disclosure of "[a]ny material evidence favorable to the defense related to issues of guilt, lack of guilt, or punishment . . . within the purview of Brady and its progeny" within ten days of order). Thus, the constitutionally-based Brady requests set forth herein are properly brought before this Honorable Court and must be adjudicated to preserve Mr. Mixon's rights.

VII. The Court Must Adjudicate the Instant Motion Regardless of Whether a Discovery Dispute Exists

A dispute over the discoverability of certain material is not a prerequisite to compelling production of discovery and exculpatory information. This is because such disputes rarely occur. With the exception of records that are otherwise privileged (such as CPS or medical records), prosecutors typically do not inform defense counsel of material they intend to withhold from the defense. They simply keep the information hidden. The withheld information is later discovered

by the defense either through subsequent defense investigation, fortuitous circumstances, or during the post-conviction discovery process.

Recognizing this, the U.S. Supreme Court has not required defense counsel to divine (and bring to the Court's attention) particular information within the government's file that is being shielded from defense view:

> We rejected a similar argument in Strickler. There, the State contended that examination of a witness's trial testimony, alongside a letter the witness published in a local newspaper, should have alerted the petitioner to the existence of undisclosed interviews of the witness by the police. We found this contention insubstantial. In light of the State's open file policy, we noted, 'it is especially unlikely that counsel would have suspected that additional impeaching evidence was being withheld. Our decisions lend no support to the notion that defendants must scavenge for hints of undisclosed Brady material when the prosecution represents that all such material has been disclosed. As we observed in Strickler, defense counsel has no 'procedural obligation to assert constitutional error on the basis of mere suspicion that some prosecutorial misstep may have occurred.

Banks, 540 U.S. at 695-96 (internal citations omitted). Thus, a dispute need not exist over the discoverability of a particular piece of information in order for this Court to entertain motions such as that brought here and enforce the government's discovery obligations. Accordingly, Mr. Mixon respectfully requests that this Honorable Court adjudicate his Motion to Compel Production of Discovery.

VIII. Prosecutors Must Oppose or Concede Each Discovery Request; and the Court Must Adjudicate Each Request

Prosecutors often respond to discovery requests some combination of the following: (1) the government is aware of its discovery obligation and will act accordingly; (2) the government has complied with the requests or will facilitate review of discovery as needed; or (3) the request is objectionable as overbroad, immaterial, or not authorized by law. Only the last of these is responsive to a particular request; the first two are not. Each request needs to be opposed or conceded. Saying "we have complied" or "we are aware of our discovery obligations" or "we will facilitate a review of detective notebooks" is nothing more than attempt to subvert a ruling enforcing the discovery provisions mandated by state and federal law. It is a way to goad the court into believing the issue is moot. Discovery is a continuing obligation. A criminal

defendant is entitled to an order enforcing the discovery provisions outlined by state and federal law, regardless of whether the prosecutor has already provided certain requested material, is aware of pertinent discovery rules, and is willing to facilitate further discovery review. The prosecutor needs to oppose or concede each request. The Court needs to rule on each request, accordingly.[11]

IX. Defendant's Specific Discovery Requests

Based upon the foregoing, Mr. Mixon requests that this Honorable Court enter an order directing prosecutors to provide the following related to this case:[12]

General Discovery

1. Defendant's Statements and Any Potential Co-Defendants' Statements

All statements made by the defendant and any co-defendants, regardless of whether the statements were written or recorded, including but not limited to:

- Comments made at the time of arrest or during transport to the detention center,
- All conversations, telephonic or otherwise, intercepted by any law enforcement agencies, including federal authorities, and
- The substance of any statements, conversations, or correspondence overheard or intercepted by any jail personnel or other inmates which have not been recorded or memorialized.

2. Potential Witnesses' Statements

All written or recorded statements of witnesses and potential witnesses, including, but not limited to:

- Audio and video recording in any form collected by investigating officers or any other law enforcement agent as part of the investigation of this matter, as well as any related matters,
- Notes of interviews, such as notes of patrol officers, or notes of phone calls made to potential witnesses, or attempts to contact such witnesses, and

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[11] Combination responses, which contain conciliatory language in conjunction with some form of opposition, must be treated as an opposition to a particular request, thereby warranting adjudication by this Honorable Court.

[12] Significantly, this request is not in any way intended to be a substitute for the generalized duties described above.

- Interviews of any witness or investigative official involved in the instant matter and any related matter.

3. Records Related to Investigation

All records of the Nevada Department of Corrections and any other law enforcement agencies involved in the investigation of this or any related matter, including, but not limited to:

- Copies of handwritten or other notes,
- Investigative leads that were not followed up on,
- Any other matter bearing on the credibility of any State witness,
- Information pertaining to this case or any witnesses in this case, no matter what the form or title of the report, including:
  - "Case Monitoring Forms,"
  - Use of Force reports,
  - 911 recordings,
  - Dispatch logs, and
  - Information regarding leads or tips provided to law enforcement or a crime tip organization such as Crime Stoppers, including any reward or benefit received for such tip.

4. Crime Scene Analysis, Evidence Collection, and Forensic Testing

All requests, results, reports, and bench notes pertaining to all crime scene analysis, evidence collection and forensic testing performed in this case,[13] including, but not limited to:

- Photographic, video, and audio recordings of evidence collection and testing,
- Fingerprint Evidence: All latent prints recovered in the instant matter, regardless of their value for identification, as well as exemplars compiled in connection with the investigation of this matter, including:
  - photographs, reports, and recordings related to collecting and testing of fingerprints,

[13] This is required under NRS 171.1965(1)(b) and NRS 174.235(1)(b).

- Results of fingerprint collection and comparison, and
- Automated Fingerprint Identification System (AFIS) searches and results,

- DNA Evidence: DNA testing, raw data and Combined DNA Index System (CODIS) searches and results,
- Scientific Evidence: toxicological, chemical, biochemical, laboratory, and other laboratory or forensic analyses, including trace evidence analyses, crime scene reconstruction or blood spatter analysis, and
- Forensic Analysis: reports and notes related to any forensic analysis and requests for forensic analysis, regardless of the outcome of such request.

5. Medical Records

All records, including photos, reports, imaging studies, test results, and notes pertaining to:

- Any alleged victim generated pursuant to treatment provided in connection with the instant matter; including, without limitation, all emergency medical, fire department, hospital, or other medical care provider records, including all relevant prior medical records,
- All pathological, neuropathological, toxicological, or other medical evaluations of the victim, including all relevant prior medical records and
- The name and badge number of any paramedics who responded to the scene, and all documentation, notes, reports, charts, conclusions, or other diagnostic, prognostic, or treatment information pertaining to any person evaluated, assessed, treated, or cleared by a paramedic at the scene, or transported to a hospital from the scene.

6. Preservation of and Access to Raw Evidence

Access to and preservation of all material collected in the investigation of this case to include but not limited to:

- forensic material, raw data, biological samples and toxicological samples; and
- video surveillance, photographic negatives, and digital negatives.

7. OMITTED

8. Law Enforcement Video or Audio Recordings

All video and audio recordings obtained by Nevada Department of Corrections recording device, including but not limited to:

- Dashboard cameras,

- Body-mounted officer cameras,
- Any other recording equipment operational during the investigation of this case, and
- Any video footage captured by body cameras worn by any officer present for Nevada Department of Corrections and any other related or connected event.

9. Non-Activated Body Camera

The name and identifying information of any officer present for Nevada Department of Corrections and any related or connected Event Number who is required by department policy to wear, but did not activate his body-worn camera.

10. OMITTED

11. 911 and 311 Calls

Any and all 911 and 311 recordings to include, but not limited to:

- Car-to-car audio communications,
- Car-to-dispatch radio communications, and
- Unit Log incident print out related to the event.

12. Chain of Custody

All relevant chain of custody reports, including reports showing the destruction of any evidence in the case.[14]

13. Witness Contact Information

All updated witness contact information, including last known addresses and phone numbers. This includes the names and contact information for witnesses who may have information tending to exculpate Mr. Mixon.

14. OMITTED

Exculpatory Evidence

15. Alternative Suspects

[14] Destruction of evidence can result in dismissal of the case or a jury instruction stating such evidence is presumed favorable to the accused. Crockett v. State, 95 Nev. 859, 865 (1979); Sparks v. State, 104 Nev. 316, 319 (1988); Sanborn v. State, 107 Nev. 399, 409 (1991).

All information which shows that Mr. Mixon did not commit the crimes alleged, or which shows the possibility of another perpetrator, co-conspirator, aider and abettor, or accessory after the fact, including the names of those individuals. This includes, but is not limited to, any information concerning the arrest of any other individual for the charged crimes and any information suggesting that someone other than Mr. Mixon perpetrated one or more of the charged crimes.

16. Identification and Mis-Identification

All statements of identification associated with this case, including any information concerning witnesses who did not identify Mr. Mixon as the perpetrator of the alleged crimes. This request includes:

- Statements identifying another person as the perpetrator of this offense,
- Prior non-identifications by eyewitnesses now identifying Mr. Mixon as the perpetrator, and
- Color copies of all photographic lineups shown to any witness (including lineups created without Mr. Mixon) as well as any other identification procedures used to identify suspects including show-ups, lineups, photo-array lineups, single photo show-ups, photo compilations and composite drawings. This request includes:
    - The identification of each witness who was shown an identification procedure,
    - The date and time such procedures occurred,
    - The names of all persons who were present when the procedures took place,
    - Instructions given to the witnesses prior to the procedure,
    - The results of the procedure, including an accounting of each witness's statements before, during and after the identification procedure; the amount of time taken by each witness to make an identification; and any hesitancy or uncertainty of each witness in making an identification, and
    - Whether officers informed any witness that he identified the suspect officers believed committed the crime.

17. General Exculpatory Evidence Request

All information which shows that Mr. Mixon. This includes any evidence, in the form of other records, witness interviews, or other information bearing on the charge(s) at issue herein.

General Impeachment

18. Witness Benefits

Disclosure of all express or implied compensation, promises of favorable treatment or leniency, or any other benefit that any of the State's witnesses received in exchange for their cooperation with this or any related prosecution. This includes, but is not limited to:

- Records and notes from the CCDA Victim Witness Office, including records of any expectation of any benefit or assistance to be received, or already received by any witness in this case,
- Monetary benefits received as well as any express or implied promises made to any witness to provide counseling, treatment, or immigration assistance as a result of the witness's participation in this case,
- Names of all agencies, workers or other referrals that were given to any witness or his family member, relative, or guardian in connection with this case or any related matter, and
- Estimate of future benefits to be received by any witness during or after the trial, including travel expenses.

19. Prior Witness Statements

Disclosure of any and all statements, tangible or intangible, recorded or unrecorded, made by any witness that are in any manner inconsistent with the written or recorded statements previously provided to the defense. This includes oral statements made to an employee or representative of the CCDA or any other government employee, local or federal, during pre-trial conferences or other investigative meetings.

20. Law Enforcement Impeachment Information—Henthorn Request

Mr. Mixon hereby requests the prosecutor review the personnel files of each officer involved in this case. After review, the prosecutor must disclose all impeachment information located in the personnel files of any police witness called to testify at trial or any pretrial hearing in this matter, including, but not limited to, any Statement of Complaint regarding the witness or this investigation, any Employee Notice of Internal Investigation, any Internal Affairs Investigative Report of Complaint, any witness statement, any Bureau Investigation Supervisory Intervention, and any other

document maintained or generated by the Office of Internal Affairs, Critical Incident Review Panel, or other investigative agency.

21. Criminal History Information

Criminal history information on any actual or potential witness, showing specific instances of misconduct, instances from which untruthfulness may be inferred or instances which could lead to the discovery of admissible evidence. To this end, the defense requests that, in addition to any other lay witnesses the State intends to call at trial or upon whose testimony or statements the State will rely during either the guilt or penalty phases of trial, the CCDA provide NCIC reports. The defense further requests that the NCIC information be provided to defense counsel as soon as possible and that prosecutors identify those individuals for whom no NCIC information is found. While the defense is not insisting that prosecutors run NCICs on expert or law enforcement witnesses, the defense requests that the State be ordered to comply with its Brady obligations with respect to these witnesses. The instant criminal history request includes, but is not limited to:

- Juvenile records,
- Misdemeanors,
- Out-of-state arrests and convictions,
- Outstanding arrest warrants or bench warrants,
- Cases which were dismissed or not pursued by the prosecuting agency, and
- Any other information that would go to the issues of credibility or bias, or lead to the discovery of information bearing on credibility or bias, regardless of whether the information is directly admissible by the rules of evidence.

U Visa and Immigration Related Benefits[15]

22. OMITTED

23. OMITTED

[15] These requests are made out of an abundance of caution as the defense is unaware of the victim's and witnesses' alienage and legal statuses in the United States.

24. OMITTED

25. OMITTED

26. OMITTED

27. OMITTED

28. OMITTED

29. OMITTED

30. OMITTED

31. OMITTED

32. OMITTED

33. OMITTED

34. OMITTED

35. OMITTED

36. OMITTED

CPS and sexual assault related information

37. OMITTED

38. OMITTED

39. OMITTED

40. OMITTED

41. OMITTED

42. OMITTED

Taser-related discovery requests

43. Electronic Control Device Numbers

The serial numbers, brand, make, and model of the Electronic Control Device carried by any officers.

44. Use of Force Reports, Notes, and Memos

All documentation, including but not limited to, use of force, reports, notes, and memorandums, which identifies the date and time of Electronic Control Device

deployment, trigger pull, duration of the trigger pull, the number of cycles and length of those cycles of the Electronic Control Device carried by any officers.

45. Type of Cartridge Used

Identification of the type of cartridges carried on the Electronic Control Device issued to any officers.

46. Training Records

All records related to involved officer's training on the Electronic Control Device.

47. Training Officers

Name of the Electronic Control Device training officers for the Nevada Department of Corrections.

48. Training Manual

A copy of the Nevada Department of Corrections Electronic Control Device training manual.

49. Training Materials

All Electronic Control Device training materials, whether in print or electronic form (e.g. CD or DVD), used by the Nevada Department of Corrections.

Canine Unit Information

50. OMITTED

51. OMITTED

52. OMITTED

53. OMITTED

54. OMITTED

55. OMITTED

56. OMITTED

Arson-related requests

57. OMITTED

58. OMITTED

59. OMITTED

60. OMITTED

61. OMITTED

62. OMITTED

63. OMITTED

64. OMITTED

65. OMITTED

66. OMITTED

67. OMITTED

68. OMITTED

69. OMITTED

Catch-all request

70. Contacting Other Agencies

Finally, the defendant requests that this Court order the prosecution to contact other agencies or agents acting on behalf of or working with the prosecution, or in any other way a part of the prosecution team, and initiated to ascertain whether any of those agencies or agents possess or know of any material information that would tend to exculpate Mr. Mixon, impeach a prosecution witness, or mitigate Mr. Mixon's possible punishment.

IX. Request for Timely Disclosure

NRS 174.285(1) requires that any discovery request pursuant to NRS 174.235 be made "within 30 days after arraignment or at such reasonable later time as the court may permit." NRS 174.285(2) mandates that "A party shall comply with a request made pursuant to NRS 174.235 . . . not less than 30 days before trial or at such reasonable later time as the court may permit." Accordingly, Mr. Mixon requests that this Honorable Court enter an order directing prosecutors to provide the discovery sought herein within a reasonable time in advance of trial so as to enable counsel to effectively prepare. Further, Mr. Mixon requests that this Honorable

Court order that prosecutors be precluded from admitting at trial any discovery or evidence not timely produced. See NRS 174.295 ("If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with the provisions of NRS 174.235 to 174.295, inclusive, the court may order the party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or *prohibit the party from introducing in evidence the material not disclosed*, or it may enter such other order as it deems just under the circumstances.") (emphasis added).

CONCLUSION

Based on the foregoing, Mr. Mixon, respectfully requests that this Honorable Court grant the instant motion, and order the timely disclosure of the material sought herein. NRS 174.235; Brady v. Maryland, 373 U.S. 83 (1963); U.S.C.A. V, VI, XIV; and Nev. Const. Art. 1 § 8.

DATED this 14th day of November, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/Ashley L. Sisolak*
ASHLEY L. SISOLAK, #13958
Deputy Public Defender

NOTICE OF MOTION

TO: NEVADA ATTORNEY GENERAL, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the foregoing Motion on for hearing before the Court on the 5th day of December, 2017 at 8:30 a.m.

DATED this 14th day of November, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/Ashley L. Sisolak*
ASHLEY L. SISOLAK, #13958
Deputy Public Defender

CERTIFICATE OF FACSIMILE

I hereby certify and affirm that I served a copy of the foregoing Motion to Compel Production of Discovery and Brady Material and via facsimile to the attorney of record listed below on this 15th day of November, 2017.

Attorney General's Office
Bureau of Public Affairs
& Public Safety Division
ATTN: Behnaz Zalimia
Deputy Attorney General
555 East Washington Ave., Suite #3900
Las Vegas, NV 89101
Facsimile No: (702) 486-2377

_/s/ KONIE BALDWIN_____
Employee, Clark County Public Defender's Office

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12/1/2017 10:12 AM
Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

-vs-

ANTONIO LEE MIXON, ID#1968172

Defendant.

CASE NO: C-17-327439-1

DEPT NO: 17

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL DISCOVERY & BRADY MATERIAL

DATE OF HEARING: December 5, 2017
TIME OF HEARING: 8:30 A.M.

ADAM PAUL LAXALT, Attorney General for the State of Nevada, through CHELSEA N. KALLAS, Deputy Attorney General, hereby submits this STATE'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL DISCOVERY & BRADY MATERIAL.

This Opposition is made and based upon the pleadings and papers on file, the following memorandum of points and authorities, and any oral argument the Court may allow.

POINTS AND AUTHORITIES

On October 25, 2017, Antonio Lee Mixon was charged by way of Information with the following: Count 1 – Battery By A Prisoner (Category B Felony – NRS 200.481(2)(f)); and Count 2 – Possession or Control of Dangerous Weapon of Fascimile by an Incarcerated Person (Category B

Case Number: C-17-327439-1

Felony – NRS 212.185(c).

On November 1, 2017, Defendant pled not guilty and invoked his speedy trial rights. Calendar Call is set for December 12, 2017, and Jury Trial is scheduled to commence on January 2, 2018.

On November 14, 2017, Defendant filed the instant motion. The State responds as follows.

ARGUMENT

The Attorney General's Office will not permit discovery rules to be used as a vehicle wherein the State of Nevada is required to investigate and prepare the defendant's case.

All statements and reports submitted by the Nevada Department of Corrections, which includes witness statements and transcripts of interviews, as well as scientific reports and analysis have been or will be provided to the defense in this case.

Under Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, the defense cannot require that the prosecution conduct further investigation to uncover purported exculpatory evidence that it does not possess. The defendant is not entitled to all evidence known or believed to exist which is or may be favorable to the accused, or which pertains to the credibility of the prosecution's case. In United States v. Gardner, 611 F.2d 770, 774-775 (9th Cir. 1980), the court stated that the prosecution:

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

See also, United States v. Sukumolachan, 610 F.2d 685, 687 (9th Cir. 1980) (prosecution not required to create exculpatory material).

Under federal law, Brady does not create any pretrial discovery privileges not contained in the Federal Rules of Criminal Procedure (which served as the model for Nevada law). United States v. Flores, 540 F.2d 432, 438 (9th Cir. 1980).

In short, citation to Brady does not relieve a defendant of the obligation of doing his own investigation. The Defendant is free to seek the material he claims to want; he is not, however free to seek it from the prosecution.

The prosecution holds an indispensable legal duty to not only disclose to the defendant all

inculpatory evidence in its possession pursuant to statute, *see e.g.* NRS 174.233 et seq., but also to disclose to the defendant all material evidence in its possession that is favorable to an accused because it is either exculpatory or has impeachment value (hereinafter, such favorable evidence shall be referred to as "*Brady* material"). *Brady v. Maryland*, 373 U.S. 83 (1963); *U.S. v. Bagley*, 473 U.S. 667, 676 (1985). While the former requirement derives explicitly from statute, the latter requirement is of constitutional dimension. *Brady*, 373 U.S. at 87. This duty to disclose applies to the prosecution without regard to whether a defendant makes a request for discovery. *U.S. v. Agurs*, 427 U.S. 97, 107 (1976). A prosecutor's obligation to provide discovery to a defendant, however, is limited to only that information required by statute or *Brady*. *See Weatherford v. Busey*, 429 U.S. 545, 559 (1977) ("There is no general constitutional right to discovery in a criminal case, and *Brady* did not create one… 'the Due Process Clause has little to say regarding the amount of discovery which the parties must be afforded…'" [citation omitted]); *Kyles v. Whitley*, 514 U.S. 419, 436-37 (1995) ("We have never held that the Constitution demands an open file policy…"). In Nevada, NRS 174.235 outlines specifically the affirmative pretrial discovery obligations of the State:

> 1. Except as otherwise provided in NRS 174.233 to 174.295, inclusive, at the request of a defendant, the prosecuting attorney shall permit the defendant to inspect and to copy or photograph any: (a) Written or recorded statements or confessions made by the defendant, or any written or recorded statements made by a witness the prosecuting attorney intends to call during the case in chief of the State, or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; (b) Results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection with the particular case, or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; and (c) Books, papers, documents, tangible objects, or copies thereof, which the prosecuting attorney intends to introduce during the case in chief of the State and which are within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney.
>
> 2. The defendant is not entitled, pursuant to the provisions of this section, to the discovery or inspection of: (a) An internal report, document or memorandum that is prepared by or on behalf of the prosecuting attorney in connection with the investigation or prosecution of the case. (b) A statement, report, book, paper, document, tangible object or any other type of item or information that is privileged or protected from disclosure or inspection pursuant to the Constitution or laws of this

state or the Constitution of the United States.

> 3. The provisions of this section are not intended to affect any obligation placed upon the prosecuting attorney by the Constitution of this state or the Constitution of the United States to disclose exculpatory evidence to the defendant.

Beyond state statute, *Brady v. Maryland* also requires disclosure by the prosecution of only that "evidence favorable to an accused... where the evidence is material either to guilt or to punishment..." 373 U.S. at 87.

In interpreting the prosecution's discovery obligations under *Brady* and discovery statutes, this Court has recognized the limited nature of the prosecution's duty to disclose.

First, this Court has held in no uncertain terms that the prosecution need not disclose information immaterial to the defense, writing that "*the State is under no obligation to accommodate a defendant's desire to flail about in a fishing expedition...*" *Sonner v. State*, 112 Nev. 1328, 1340-41 (1996) (emphasis added). In other words, the prosecution need not "compile information or pursue an investigative lead simply because it could conceivably develop evidence helpful to the defense." *Evans v. State*, 117 Nev. 609, 627 (2001). In *Sonner*, citing Nevada's criminal discovery statute and *Brady*, the defendant sought disclosure of personnel records of the victim, a Nevada Highway Patrolman, "to rebut State evidence of [the victim's] value as a law enforcement officer and an individual." *Id* at 1340. In affirming the district court's denial of the defendant's discovery request, this Court held that

> [a] defendant must advance some factual predicate which makes it reasonably likely the requested file will bear information material to his or her defense. A bare assertion that a document "might" bear such fruit is insufficient.

Id at 1340-41 (quotations and citations omitted). Because Sonner's discovery request "was based on nothing more than the assertion of a general right to search for whatever mitigating evidence might be found in [the victim's] records," it was in excess of the prosecution's discovery obligations. *Id*; *see also Evans*, 117 Nev. 609 at 627.

Second, this Court has held that the prosecution does not violate its discovery obligations when it does not disclose information that is not "favorable" to the defense or "material either to guilt or to punishment." *Lay v. State*, 116 Nev. 1185, 14 P.3d 1256 (2000). Under *Brady,* evidence is "favorable" to an accused when it is information that is exculpatory or has impeachment value,

Brady, 373 U.S. at 87; *Bagley*, 473 U.S. at 676, and is "material" if its nondisclosure would undermine confidence in the outcome of the trial. *Lay*, 116 Nev. at 1194. The determination of the "character of a piece of evidence" as material and favorable to the defendant "will often turn on the context of the existing or potential evidentiary record," and it initially falls to the prosecutor to determine whether evidence should be disclosed. *Lay v. State*, 116 Nev. 1185, 1194 (2000).

Third, although a prosecutor must "learn of any favorable evidence known to the others acting on the government's behalf in [the] case, including the police," a prosecutor is under no duty to investigate potential *Brady* material not known to the prosecution and which exists outside the possession of investigative agents acting on the government's behalf in the case. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). In interpreting *Kyles*' mandate to learn of favorable evidence, the Supreme Court of California has noted that "[c]ourts have... consistently declined to draw a distinction between different agencies under the same government, focusing instead upon the 'prosecution team' which includes both investigative and prosecutorial personnel." *In re Brown*, 17 Cal.4th 873, 879 (1998) *quoting United States v. Auten*, 632 F.2d 478, 481 (5th Cir.1980); *see e.g. Smith v. Secretary Dept. of Corrections*, 50 F.3d 801, 824 (10th Cir.1995) ("the prosecution" extends to law enforcement personnel and other arms of the state involved in investigative aspects); *Moon v. Head*, 285 F.3d 1301, 1309 (11th Cir. 2002) (*Brady* applies only to favorable evidence possessed by the "prosecution team", meaning "the prosecutor or anyone over whom he has authority" (citations omitted)). In other words, only if a prosecutor is in the "*unique position* to obtain information known to other agents of the government" should a district court order the State to obtain and disclose such information. *See Carriger v. Stewart*, 132 F.3d 463 (9th Cir. 1997) (emphasis added). As this Court has held, the State bears no burden "to disclose evidence which is available to the defendant from other sources, including diligent investigation by the defense." *Steese v. State*, 114 Nev. 479, 495 (1998); *U.S. v. Davis*, F.2d 1501, 1505 (11th Cir. 1986). The State will address each of Defendant's requests specifically below:

1. Statements of the Defendant and Any Potential Co-Defendant(s)
    a. Statements made at the time of arrest or during transport to the detention center.

///

State's Response: The State has provided any statements by Defendant or any potential co-defendant related to this event. The State is not aware of any additional statements.

b. Any conversations, telephonic or otherwise, intercepted by any/all law enforcement agencies, including federal authorities.

State's Response: The State has provided any statements by Defendant or any potential co-defendant related to this event. The State is not aware of any additional statements.

c. The substance of any statements made by the defendant and any co-defendants which the prosecution intends to use as evidence at trial, including but not limited to any conversations or correspondence overheard or intercepted by any jail personnel or other inmates which have not been recorded or memorialized.

State's Response: The State has provided any statements by Defendant or any potential co-defendant related to this event. The State is not aware of any additional statements.

Statements of Potential Witnesses

d. Any **audio or video recording** collected by prosecutors, investigating officers or any other law enforcement agent as part of the investigation of this matter and any related matters. If a recording was made, but later lost, edited or destroyed, that fact must be revealed, along with the circumstances surrounding the spoliation of evidence.

State's Response: The State has provided audio and video recordings of witness statements. The State is not aware of any additional audio and video recordings.

e. Any **notes** of interviews that were not later recorded, such as notes of patrol officers, or notes of phone calls made to potential witnesses, or attempts to contact such witnesses. This also includes any police reports, notes, or other documents that contain information pertaining to this case or any witnesses in this case, no matter what the form or title of the report, including:

State's Response: Due process requires the prosecution to disclose materially exculpatory information in its possession to the defense upon a proper request. See United States v. Bagley, 473 U.S. 667 (1985); United States v. Agurs, 427 U.S. 97 (1976); Brady v. Maryland, 373 U.S. 83 (1963). Evidence is material if there is a reasonable probability that the result would have been different if the evidence had been disclosed. Jimenez v. State, 112 Nev. 610, 619 (1996).

NRS 174.235, subsection 2 provides:

> 2. Defendant is not entitled, pursuant to the provisions of this section, to the discovery or inspection of:
>
> > (a) An internal report, document or memorandum that is prepared by or on behalf of the prosecuting attorney in connection with the investigation or prosecution of the case.

Nevada's criminal discovery statute, NRS 174.245, specifically precludes discovery or inspection of "reports, memoranda or other internal state documents made by state agents in connection with the investigation or prosecution of the case..." The statute cited above provides for criminal discovery of all reasonable and material requests, but also specifically protects internal documents prepared by the prosecuting agency. Such investigative files as sought by defense are clearly protected from production under the "law enforcement evidentiary privilege", a common law privilege which is recognized even in absence of a specific statute. In re Dept of Investigations of City of New York, 856 F.2d 481 (2d Cir. 1988). The privilege is based primarily on the harm to law enforcement efforts which might arise from public disclosure. Black v. Sheraton Corp., 564 F.2d 531 (D.C. Cir. 1977). The common law privilege is partially codified in NRS 49.285, which provides: "A public officer shall not be examined as a witness as to communications made to him in official confidence."

An additional privilege is contained in NRS 49.335, which provides:

> The state or political subdivision thereof have a privilege to refuse to disclose the identity of a person who has furnished law enforcement officer information purporting to reveal the commission of a crime.

The purpose of the law enforcement evidentiary privilege is to prevent disclosure of law enforcement techniques and procedures, to preserve the confidentiality of sources, to protect witnesses and law enforcement personnel, to safeguard the privacy of individuals involved in an investigation and otherwise to prevent interference with an investigation. Dept of Investigations, supra, 856 F.2d at 484. Additionally, Defendant's request for notes of State actors covered by a single line of any discovery statute. If there is exculpatory information, the State obviously must produce it. However, there is no requirement that the notes of all officers be produced and the State

requests that this Court not expand the statutory text to include such a requirement.

Courts have held that officer notes are not subject to discovery statutes. In State v. Bray, 569 P.2d 688 (Ore. App. 1977), an officer arrested a suspect on a DUI charge. He recorded observations in a booklet. He later prepared a report from his penciled notes and erased the notes. The final report was furnished to the defense. At trial, the court ruled that because the officer had taken notes while speaking to a witness and those notes had been destroyed, the State would be precluded from calling the witness at trial. The issue on appeal was whether the fragmentary notes of the officer constituted a statement within the meaning of the state discovery statutes. The Appellate Court reversed the trial court:

> We construe the statute to require production of any "statement" which is intended by its maker as an account of an event or a declaration of a fact. The statutory purposes of providing witness statements are to minimize surprise, avoid unnecessary trial, provide adequate information for informed pleas and to promote truthful testimony by allowing examination based on prior inconsistent statements. . . Requiring preservation and availability of fragmentary notes intended only as a touchstone for memory would be more likely to discourage police officers from taking notes, with a consequent reduction in accuracy, than to promote the statutory goals. Furthermore, it would be unfair and misleading to allow cross-examination of a witness based upon fragmentary or cryptic notes which were never intended to express a complete statement. For these reasons, we hold that fragmentary notes are not subject to production under discovery statutes.

Id. at 690; State v. Wrisley, 909 P.2d 877 (Ore. App. 1995) (noting that police notes are not discoverable when their substance is incorporated into a report disclosed to the defendant); see also State v. Jackson, 571 P.2d 523 (Ore. App. 1978) (holding that a rough draft of a report an officer dictated to a stenographer was not discoverable). Additionally, the State will provide any 911 recordings, dispatch logs, and police reports related to this specific case along with transcripts and reports of any interviews conducted with witnesses.

2. Records Related to Investigation

State's Response: If the requested information exists it will be provided to defense. As to notes see State's Response to Defendant's specific request 2(b).

3. Crime Scene Analysis, Evidence Collection, and Forensic Testing

> The State must produce all requests, results, reports, and/or notes of any and all **crime scene analysis**, **evidence collection** and/or **forensic testing** performed in this case.

State's Response: The State is not aware of any crime scene analyst or forensic reports, however, if the requested information exists it will be provided to defense. As to notes see State's Response to Defendant's specific request 2(b).

4. Medical Records

State's Response: The State is not aware of any medical records pertaining to the instant case, however if the requested information exists the State will provide it to the defense.

5. Preservation of an Acces to Raw Evidence

State's Response: The State has preserved and provided Defendant access to the evidence.

6. Omitted

7. Law Enforcement Video or Audio Recordings

State's Response: Any audio, video, and photographic evidence that exists in this case has been provided to defense. If the State becomes aware of additional audio, video and photographic evidence it will provide this evidence to defense.

8. Non-Activated Body Camera

State's Response: The Nevada Department of Corrections does not utilize body-worn cameras.

9. Omitted

10. All 911 and 311 Calls

This request includes, but is not limited to, car-to-car audio communications, car-to-dispatch radio communications, and the Unit Log incident print out related to the instant event.

State's Response: A 911 or 311 call was not made in this case.

11. Chain of Custody

All relevant reports of chain of custody, including reports of any destruction of any evidence in the case.

State's Response: If any such reports exist for this case they will be provided to defense.

12. Witness Contact Information

All updated witness contact information, to include last known address and phone numbers. This includes the names/contact information for witnesses who may have information tending to exculpate the instant defendant.

State's Response: The State will only provide witness contact information for the witnesses it intends on calling at trial. The State objects to including the names and contact information for witnesses who may have information tending to exculpate the Defendant. Brady does not impose upon the State an obligation "to disclose evidence which is available to the defendant from other sources, including diligent investigation by the defense." *Steese v. State*, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998). Additionally, the State has no "duty to compile information or pursue an investigative lead simply because it could conceivably develop evidence helpful to the defense..." *Evans v. State*, 117 Nev. 609, 627, 28 P.3d 498, 511 (2001).

13. Omitted

14. Alternate Suspects

Any and all information which shows that the defendant did not commit the crime(s) alleged, or which shows the possibility of another perpetrator, co-conspirator, aider and abettor, or accessory after the fact, including the name(s) of those individual(s). This includes, but is not limited to, any information concerning an arrest of any other individual for the charged crime and any information suggesting a possible perpetrator other than the defendant.

State's Response: There are/were no other suspects in this case.

15. Identification and Mis-Identification

State's Response: The State has provided all statements of identification associated with this case. If any additional statements exist for this case they will be provided to defense. A photographic lineup was not conducted in this case.

16. General Exculpatory Evidence Request

State's Response: The State has provided records, witness interviews and other information bearing on the charges at issue herein. If additional information exists the State will provide such information to defense.

17. Witness Compensation

> Disclosure of any and all compensation, express or implied, promises of favorable treatment or leniency, or any other benefit that any of the State's witnesses may of have received in exchange for their cooperation with this or any related prosecution.

State's Response: It is well known that a witness fee in the amount of twenty-five (25) dollars plus mileage reimbursement is afforded to witnesses who testify in criminal proceedings as required by NRS 50.225. With the exception of the witness fee, the State's witnesses have not been provided any compensation or benefit in exchange for their cooperation with this prosecution.

18. Prior Witness Statements

> To the extent that it is not covered by prior discovery requests, defense requests disclosure of any and all statements, tangible or intangible, recorded or unrecorded, made by any witness that are in any manner consistent or inconsistent with the written and/or recorded statements previously provided to the defense

State's Response: The State objects to this request as overly broad. The defense is in receipt of reports the State has regarding this case. Statements made by all persons regarding this event are documented in the reports as well as written voluntary statements that have been provided. Moreover, NRS 174.235 only entitles Defendant to statements of witnesses that it intends to call in its case-in-chief and statements that would constitute Brady material. The State is currently not aware of any inconsistent statements made by any individual in the course of the investigation of this case. Should the State learn of such statements, they will be provided to the defense. The State objects to this request to the extent it is not covered by NRS 174.235.

19. Impeachment Information

> Any and all impeachment information located in the personnel files of any police witness called to testify at trial or any pretrial hearing in this matter. This includes, but is not limited to, any Statement of Complaint regarding the witness or this investigation, any Employee Notice of Internal Investigation, any Internal Affairs Investigative Report of Complaint, any witness statement, any Bureau Investigation Supervisory Intervention, and any other document maintained or generated by the Office of Internal Affairs, Critical Incident Review Panel, or other investigative agency.

///

State's Response: Defense counsel is not entitled to the personnel files of any State witness pursuant to NRS 174.235 or *Brady*. Furthermore, Defendant has failed to show that the personnel files contain information "material" to his defense as required by law. The Nevada Supreme Court has opined on this issue with regard to personnel files. In *Sonner v. State*, 112 Nev. 1328 (1996), the defense requested the personnel file of a Nevada Highway Patrol Trooper who was shot by the defendant. The Nevada Supreme Court emphatically stated:

> Although the State may not withhold evidence favorable to the accused and material to either guilt or sentence, the State is under no obligation to accommodate a defendant's desire to flail about in a fishing expedition to try to find a basis for discrediting a victim. *See* State v. Blackwell, 120 Wash.2d 822, 845 P.2d 1017, 1021 (1993) ("Defense counsel's broad unsupported claim that the police officers' personnel files may lead to material information does not justify automatic disclosure of the documents.") As the Washington Supreme Court observed: "A defendant must advance some factual predicate which makes it reasonably likely that requested file will bear information material to his or her defense. A bare assertion that a document 'might' bear such fruit is insufficient.

Id. at 1340-41. Here, Defendant has not advanced any "factual predicate" that would justify the release of these internal reports. Defendant has failed to show that the personnel files contain information "material" to his defense as required by law. As such, the State objects. However, in the event that the State learns of any exculpatory/impeachment information related to Defendant's request, that information will be disclosed to this Court and then this Court can make the determination as to whether that information is in fact exculpatory and should be disclosed.

20. Criminal Histories

> Criminal history information on any witness, actual or potential, relating to specific instances of misconduct or from untruthfulness may be inferred and/or which could lead to admissible evidence, impeachment or otherwise.

State's Response: The State is not required under Brady or its progeny and/or NRS 174.235 to investigate its witnesses to the extent Defendant is requesting. It is the Defendant's obligation to seek such information, should he find it necessary and worthwhile. Furthermore, Defendant has not set forth a good faith basis to inquire of these specific witnesses or a factual predicate to show that

such information is relevant[1] and/or proper impeachment material under NRS 50.085[2] and 50.095[3] and Defendant's request certainly goes beyond that allowed under NRS 50.085 and 50.095. Thus, the State will disclose, as required, all felony convictions admissible under NRS 50.095 and misdemeanor convictions and specific instances of conduct known to the State from commonly used methods such as pretrial interviews, running scope and/or NCIC that bear on victim's truthfulness. All other requests are outside the discovery requirements imposed upon the State. The State is

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[1] **NRS 48.015 "Relevant evidence" defined.** As used in this chapter, "relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.
(Added to NRS by 1971, 780)

NRS 48.035 Exclusion of relevant evidence on grounds of prejudice, confusion or waste of time.
1. Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury.
2. Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, waste of time or needless presentation of cumulative evidence.
3. Evidence of another act or crime which is so closely related to an act in controversy or a crime charged that an ordinary witness cannot describe the act in controversy or the crime charged without referring to the other act or crime shall not be excluded, but at the request of an interested party, a cautionary instruction shall be given explaining the reason for its admission.
(Added to NRS by 1971, 780; A 1979, 37)

[2] **NRS 50.085 Evidence of character and conduct of witness.**
1. Opinion evidence as to the character of a witness is admissible to attack or support the witness's credibility but subject to these limitations:
(a) Opinions are limited to truthfulness or untruthfulness; and
(b) Opinions of truthful character are admissible only after the introduction of opinion evidence of untruthfulness or other evidence impugning the witness's character for truthfulness.
2. Evidence of the reputation of a witness for truthfulness or untruthfulness is inadmissible.
3. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's credibility, other than conviction of crime, may not be proved by extrinsic evidence. They may, however, if relevant to truthfulness, be inquired into on cross-examination of the witness or on cross-examination of a witness who testifies to an opinion of his or her character for truthfulness or untruthfulness, **subject to the general limitations upon relevant evidence** and the limitations upon interrogation and subject to the provisions of NRS 50.090.
(Added to NRS by 1971, 789; A 1975, 1132)

[3] **NRS 50.095 Impeachment by evidence of conviction of crime.**
1. For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime is admissible but only if the crime was punishable by death or imprisonment for more than 1 year under the law under which the witness was convicted.
2. Evidence of a conviction is inadmissible under this section if a period of more than 10 years has elapsed since:
(a) The date of the release of the witness from confinement; or
(b) The expiration of the period of the witness's parole, probation or sentence, whichever is the later date.
3. Evidence of a conviction is inadmissible under this section if the conviction has been the subject of a pardon.
4. Evidence of juvenile adjudications is inadmissible under this section.
5. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.
6. A certified copy of a conviction is prima facie evidence of the conviction.
(Added to NRS by 1971, 789; A 1981, 1646)

legally prohibited from simply handing over SCOPE/NCIC printouts of the witnesses to the defense in this or any case. Thus, the State opposes the Defendant's request.

22– 42. Omitted

43-49. Electronic Control Device Numbers

State's Response: The State objects to this request as irrelevant, as there is no evidence that an Electronic Control Device was used in this case.

50-69 . Omitted

70. Contacting Other Agencies

State's Response: The State objects to this request. The State maintains that rather than being accountable for all evidence in the hands of all State agencies, it is only accountable for that evidence in the hands of State agencies who are actually acting on its behalf in the investigation and prosecution of the case. *See Kyles v. Whitley*, 514 U.S. 419, 437, 115 S.Ct. 1555, 1567 (1995) (stating "[t]his in turn means that the individual prosecutor has a duty to learn of any favorable evidence known to the others *acting on the government's behalf in the case, including the police.*"); *Carriger v. Stewart*, 132 F.3d 463, 479 (9th Cir. 1997) (stating "the prosecution has a duty to learn of any exculpatory evidence known to others *acting on the government's behalf.*"). Moreover, "[w]hile the prosecution must disclose any information within the possession or control of law enforcement personnel, … it has no duty to volunteer information that it does not possess or of which it is unaware." *United State v. Hsieh Hui Mei Chen*, 754 F.2d 817, 824 (9th Cir. 1985). Additionally, the State has no "duty to compile information or pursue an investigative lead simply because it could conceivably develop evidence helpful to the defense…" *Evans v. State*, 117 Nev. 609, 627, 28 P.3d 498, 511 (2001).

CONCLUSION

To the extent that Defendant's requests comply with the mandates of the Constitution and applicable statutes, and the extent that the State has access to such materials, the State intends to comply with such requests. However, as to those requests that exceed the scope of the discovery

statutes, the State objects. Furthermore, the State respectfully submits that *Brady* and its interpretive progeny squarely place the burden of determining what evidence is exculpatory and subject to disclosure pursuant to *Brady* on the shoulders of the State. See *Lay v. State*, 116 Nev. At 1194. In light of the foregoing, the State requests that the Court DENY Defendant's motion to the extent that the specific requests exceed the scope of the Nevada Revised Statutes, discovery statutes, and *Brady*.

DATED this 1st day of December, 2017.

ADAM PAUL LAXALT
Attorney General

By: /s/ Chelsea N. Kallas
Chelsea N. Kallas (Bar No. 13902)
Attorneys for the State of Nevada

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on December 1, 2017, I filed the foregoing document via this Court's electronic filing system. Parties that are registered with this Court's EFS will be served electronically. The following parties are not registered and therefore, a prepaid postage copy of this document has been placed in the U.S. mail.

Ashley L. Sisolak, Esq.
309 S. Third St., #226
Las Vegas, NV 89155

/s/ Salvador Heredia
Salvador Heredia, an employee of
the office of the Nevada Attorney General

Electronically Filed
12/13/2017 2:38 PM
Steven D. Grierson
CLERK OF THE COURT

NOTC
ADAM PAUL LAXALT
Attorney General
Chelsea N. Kallas (Bar No.13902)
Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101-3268
P: (702) 486-5707
F: (702) 486-0660
ckallas@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID# 1968172 Defendant.	Case No. C-17-327439-1 Dept. No. 17

NOTICE OF INTENT TO USE COR AFFIDAVIT AND/OR UNSWORN DECLARATION

ADAM PAUL LAXALT, Attorney General of the State of Nevada, by and through CHELSEA N. KALLAS, Deputy Attorney General, pursuant to NRS 52.260 and NRS 53.045 hereby notifies defendant and his counsel that the State of Nevada intends to use the sworn affidavit and/or unsworn declaration of the Custodian of Records for the Nevada Department of Corrections at trial. These records have been provided to defense counsel.

Dated this _____ day of_____, 2017.

SUBMITTED BY:

ADAM PAUL LAXALT
Attorney General

By: /s/ Chelsea N. Kallas
CHELSEA N. KALLAS (Bar No. 13902)
Deputy Attorney General

Case Number: C-17-327439-1

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **Notice of Intent to Use COR Affidavit and/or Unsworn Declaration** with the Clerk of Court by using the electronic filing system on the 13th day of December, 2017.

I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or e-mail; or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following unregistered participants:

Ashley Sisolak, Esq.
390 S. Third Street #226
Las Vegas, NV 89155

/s/ Salvador Heredia
Salvador Heredia, an employee of
the office of the Nevada Attorney General

Electronically Filed
12/15/2017 8:17 AM
Steven D. Grierson
CLERK OF THE COURT

NWEW
ADAM PAUL LAXALT
Attorney General
CHELSEA N. KALLAS (Bar No. 13902)
Deputy Attorney General
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
P: (702) 486-5707
F: (702) 486-0660
Ckallas@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, ID #1968172 Defendant.	Case No.: C-17-327439-1 Dept. No.: 17

STATE'S NOTICE OF WITNESSES AND/OR EXPERT WITNESSES

ADAM PAUL LAXALT, Attorney General of the State of Nevada, by and through CHELSEA N. KALLAS, Deputy Attorney General, in accordance with NRS 174.234 sets forth the State's list of witnesses for trial in the above-referenced matter as follows:

1. Victor Daniel
   3955 W. Russell Rd.
   Las Vegas, NV 89101

2. Kurth Krohm
   22010 Cold Creek Rd.
   Indian Springs, NV 89070

3. Tyler Mcaninch
   22010 Cold Creek Rd.
   Indian Springs, NV 89070

4. Dean Ontiveros
   22010 Cold Creek Rd.
   Indian Springs, NV 89070

///

///

5. Dustin Mumpower
2090 E. Flamingo Rd. Suite 200
Las Vegas, NV 89104

Dated this 15th day of December, 2017.

ADAM PAUL LAXALT
Attorney General

BY: /s/ CHELSEA N. KALLAS
Chelsea N. Kallas (Bar No. 13902)
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **STATE'S NOTICE OF WITNESSES AND/OR EXPERT WITNESSES** with the Clerk of the Court by using the electronic filing system on the 15th day of December, 2017.

I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or e-mail; or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following unregistered participants:

Ashley Sisolak, Esq.
Office of the Public Defender
309 South Third Street, Suite 226
Las Vegas, NV 89155-2610
Attorney for Defendant Antonio Lee Mixon

/s/ SALVADOR HEREDIA
Salvador Heredia An employee of the office
of the Nevada Attorney General

Electronically Filed
12/15/2017 10:11 AM
Steven D. Grierson
CLERK OF THE COURT

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. ANTONIO MIXON, Defendant.	CASE NO. C-17-327394-1 DEPT. NO. XVII DATE: January 9, 2018 TIME: ~~8:30 a.m.~~

MOTION TO WITHDRAW AND ALLOW DEFENDANT TO REPRESENT HIMSELF PURSUANT TO FARETTA V. CALIFORNIA

COMES NOW, the Defendant, ANTONIO MIXON, by and through ASHLEY L. SISOLAK Deputy Public Defender and hereby requests a hearing to allow defendant to represent himself as provided in Faretta v. California, 422 U.S. 806.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 15th day of December, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ ASHLEY L. SISOLAK
ASHLEY L. SISOLAK, #13958
Deputy Public Defender

Case Number: C-17-327439-1

DECLARATION

ASHLEY L. SISOLAK makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter.

2. That the instant motion springs from the Justice Court's denial of Petitioner's request to represent himself in the instant proceedings. On September 26, 2017, Mixon was arraigned in absentia on charges of one count of Battery by a Prisoner and one count of Possession or Control of a Dangerous Weapon or Facimile by an Incarcerated Person.

3. The Public Defender was appointed to represent Petitioner.

4. On October 10, 2017, Petitioner, then present, objected to the appointment of counsel and requested to represent himself. The Court denied Petitioner's request to represent himself because he failed to answer questions to the Faretta canvas to the Courts Satisfaction. (Justice Court minutes from 10/10/17, exhibit A; Reporter's Transcripts of Proceedings, October 10, 2017, exhibit B specifically pages 6-18). The Preliminary Hearing was set for October 24, 2017, and transcripts of the September 26, 2017 and October 10, 2017 hearing were requested and granted.

5. At the October 24, 2017 Preliminary Hearing Petitioner waived his right to a Preliminary Hearing against advice of his counsel.

6. On November 1, 2017 Mixon pleaded not guilty and invoked his right to a speedy trial. A trial date was set in the matter on January 2, 2018, with calendar call set for December 12, 2018.

7. On December 11, 2017, Counsel received a letter stating Mixon would like a motion to be filed based on the denial of his right to represent himself being violated.

8. On December 12, 2017, counsel informed Mixon that his right to represent himself had not been violated in District Court and he would have to ask the judge to represent himself. Counsel also provided Mixon a copy of Faretta and sample questions.

9. Upon the case being called counsel informed the Court of the new developments as well as the defense's intent to announce ready. Mixon asked to Court for more

time to be prepared for a canvas to represent himself.

10. The Court denied this request and asked Mixon if he would be ready to proceed at his trial date. Mixon informed the court he would not be ready.

11. At that time the Court declined to canvas Mixon at all and instead informed Mixon he would be going forward on January 2, 2018, represented by the Public Defender's Office.

12. This motion is not for purposes of delay.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 15th day of December, 2017.

/s/ ASHLEY L. SISOLAK
ASHLEY L. SISOLAK

STATEMENT OF FACTS

I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter. That the instant motion springs from the Justice Court's denial of Petitioner's request to represent himself in the instant proceedings. On September 26, 2017, Mixon was arraigned in abstenia on charges of one count of Battery by a Prisoner and one count of Possession or Control of a Dangerous Weapon or Facimile by an Incarcerated Person. The Public Defender was appointed to represent Petitioner.

On October 10, 2017, Petitioner, then present, objected to the appointment of counsel and requested to represent himself. The Court denied Petitioner's request to represent himself because he failed to answer questions to the Faretta canvas to the Courts Satisfaction. The Preliminary Hearing was set for October 24, 2017. At the October 24, 2017 Preliminary Hearing Petitioner waived his right to a Preliminary Hearing against advice of his counsel. On November 1, 2017 Mixon pleaded not guilty and invoked his right to a speedy trial. A trial date was set in the matter on January 2, 2018, with calendar call set for December 12, 2018. On December 11, 2017, Counsel received a letter stating Mixon would like a motion to be filed based on the denial of his right to represent himself being violated.

On December 12, 2017, counsel informed Mixon that his right to represent himself had not been violated in District Court and he would have to ask the judge to represent himself. Counsel also provided Mixon a copy of Faretta and sample questions. Upon the case being called counsel informed the Court of the new developments as well as the defense's intent to announce ready. Mixon asked to Court for more time to be prepared for a canvas to represent himself. The Court denied this request and asked Mixon if he would be ready to proceed at his trial date. Mixon informed the court he would not be ready. At that time the Court declined to canvas Mixon at all and instead informed Mixon he would be going forward on January 2, 2018, represented by the Public Defender's Office.

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ARGUMENT

The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment Faretta v. California 422 U.S. 806, 807, 95 S.Ct. 2525, 2527 (U.S.Cal. 1975). Because these rights are basic to our adversary system of criminal justice, they are part of the 'due process of law' that is guaranteed by the Fourteenth Amendment to defendants in the criminal courts of the States. Id

The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. Faretta at 819. It is the accused, not counsel, who must be 'informed of the nature and cause of the accusation,' who must be 'confronted with the witnesses against him,' and who must be accorded 'compulsory process for obtaining witnesses in his favor.' Id. Although not stated in the Amendment in so many words, the right to self-representation—to make one's own defense personally—is thus necessarily implied by the structure of the Amendment. Id. The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails. Id. at 820, citing Snyder v. Massachusetts, 291 U.S. 97, 54 S.Ct. 330, 78 L.Ed. 674; to testify on his own behalf, see Harris v. New York, 401 U.S. 222, 225, 91 S.Ct. 643, 645, 28 L.Ed.2d 1; Brooks v. Tennessee, 406 U.S. 605, 612, 92 S.Ct. 1891, 1895, 32 L.Ed.2d 358; cf. Ferguson v. Georgia, 365 U.S. 570, 81 S.Ct. 756, 5 L.Ed.2d 783, and to be convicted only if his guilt is proved beyond a reasonable doubt, In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368; Mullaney v. Wilbur, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed.2d 508.The inference of rights is not, of course, a mechanical exercise. Singer v. United States, 380 U.S. 24, 85 S.Ct. 783, 13 L.Ed.2d 630.

The question before the Faretta Court was whether the State of California could constitutionally hale a person into its criminal courts and there force a court-appointed public defender upon him, even when he insists that he wants to conduct his own defense. Faretta at 807.

In reviewing the U.S. Constitution, relevant case and common law, the Faretta Court held that, in forcing Faretta, under these circumstances, to accept against his will a state-appointed public defender, the California courts deprived him of his constitutional right to conduct his own defense. Faretta at 836. The Faretta Court held that a defendant must knowingly and intelligently relinquish the benefits associated with the right to counsel, and be made aware of the dangers and disadvantages of self-representation; but that a defendant's technical legal knowledge is not relevant to the assessment of his knowing exercise of this right to defend himself. Id.

The Supreme Court of Nevada has consistently held that "a criminal defendant has the right to represent himself so long as the district court finds that he is competent and that the waiver of counsel is knowing, voluntary, and intelligent." Hymon v. State, 121 Nev. 200,212, 111 P.3d 1092, 1101 (2005). "A criminal defendant's ability to represent himself has no bearing upon his competence to choose self-representation." Vanisi v. State, 117 Nev. 330, 341-42, 22 P.3d 1164, 1172 (2001). The relevant consideration under Faretta is whether the defendant understands the significance of the waiver of counsel and the risks of self-representation. Graves v. State, 112 Nev. 118, 124, 912 P.2d 234, 238 (1996).

Here, the Justice Court first denied Mr. Mixon's request to remove court-appointed counsel because the Court did not find Mr. Mixon's canvas sufficient. The Justice Court did question Petitioner regarding the detriments of self-representation, and the Petitioner agreed that he may make mistakes and suffer unintended consequences due to his lack of effective use of legal rights. The Justice Court also questioned Petitioner regarding his understanding of potential lesser-included offenses, the elements of the crime charged. The Justice Court found that, based on his

answers, Petitioner was not competent to represent himself and ordered the public defender to continue to represent Mr. Mixon. In District Court, a canvas was denied to the defendant.

While, the Justice Court's analysis and canvas may have been flawed, the District Court denied Mr. Mixon his right to represent himself and would not even allow him the attempt to do so. The case law is clear regarding self-representation: a defendant has a right to counsel, and he can waive that right so long as the defendant is competent and the waiver of the right is knowing, voluntary, and intelligent. There is no requirement or analysis regarding whether a defendant's can adequately represent himself, only that he be competent to waive his constitutional right to be represented by an attorney.

Consequently, Defendant now requests that the Court conduct a hearing pursuant to Farretta v. California so that Defendant may exercise his constitutional right to represent himself.

DATED this 15th of December, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ ASHLEY L. SISOLAK
ASHLEY L. SISOLAK #13958
Deputy Public Defender

NOTICE

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the foregoing MOTION TO WITHDRAW AND ALLOW DEFENDANT TO REPRESENT HIMSELF PURSUANT TO FARRETTA V. CALIFORNIA will be heard on the 9th day of January 2018 at ~~8:30~~ 9:30am a.m. in Department No. ~~17~~ XXI District Court.

DATED this 15th day of December, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ ASHLEY L. SISOLAK
ASHLEY L. SISOLAK, #13958
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

A COPY of the above and foregoing was sent via electronic to the Attorney General's Office (Chelsea Kallas) at Ckallas@ag.nv.gov on this 15th day of December, 2017.

By: /s/ KONIE BALDWIN
An employee of Clark County Public Defender's Office

CERTIFICATE OF FACSIMILE

I hereby certify and affirm that I served a copy of the foregoing Motion to withdraw and allow defendant to represent himself pursuant to Farretta V. California via facsimile to the attorney of record listed below on this 13th day of December, 2017.

Attorney General's Office
Bureau of Public Affairs
& Public Safety Division
Attn: Chelsea Kallas
Deputy Attorney General
555 East Washington Ave., Suite #3900
Las Vegas, NV 89101
Facsimile No: (702) 486-2377

/s/ KONIE BALDWIN
Employee, Clark County Public Defender's Office

EXHIBIT A

Justice Court, Las Vegas Township
Clark County, Nevada

Department: 07

Court Minutes

_008614344

17F14741X **State of Nevada vs. Mixon, Antonio Lee** Lead Atty: Public Defender

10/10/2017 9:00:00 AM Preliminary Hearing (No bail posted - ICOC (NSP)) Result: Matter Heard

PARTIES PRESENT:	State Of Nevada		Kailas, Chelsea
	Attorney	:	Sisolak, Ashley
	Defendant		Mixon, Antonio Lee

Judge: Bennett-Haron, Karen P.
Court Reporter: Ott, Shawn
Court Clerk: Meccia, Cherie

PROCEEDINGS

Attorneys: **Sisolak, Ashley** Mixon, Antonio Lee — Added

Hearings: 10/24/2017 9:00:00 AM: Preliminary Hearing — Added

Events:

Oral Motion

by Defendant for an evidentiary hearing - denied

Comment

per Defense, defendant states that he wishes to represent himself -

Faretta Canvas held

Per Judge, defendant does not have the qualifications to represent himself - Public Defender to remain on the case - Preliminary Hearing reset

Comment

Defendant requests transcripts from the 9/26/17 hearing date and today's hearing - granted

Warrant Stands

EXHIBIT B

CASE NO.

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

COUNTY OF CLARK, STATE OF NEVADA

-oOo-

COPY

THE STATE OF NEVADA,

Plaintiff,

vs.

CASE NO. 17F14741X

ANTONIO MIXON,

Defendant.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HON. KAREN BENNETT-HARON

JUSTICE OF THE PEACE

Tuesday, October 10, 2017

11:00 A.M.

APPEARANCES:

For the State: CHELSEA VALLAS, ESQ.
Deputy Attorney General

For the Defendant: ASHLEY SISCLAK, ESQ.
Deputy Public Defender

Reported by: SHAWN E. ETT, CCR NO. 877

Page 1

CASE NO.

IN THE [illegible]

[illegible]

vs.

THE STATE OF NEVADA,

Plaintiff,

ANTONIO MIXON,

Defendant.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

[illegible]

Tuesday, November 21, 2017

11:00 A.M.

APPEARANCES:

For the State: [illegible]

For the Defendant: [illegible]

Reported by: [illegible]

Page 2

1 LAS VEGAS, CLARK COUNTY, NEVADA, TUESDAY, [illegible]
2 11:00 A.M.
3 -oOo-
4 PROCEEDINGS
5 THE COURT: Antonio Mixon, Case
6 No. 17F14741X.
7 MS. SISOLAK: Good morning, Your Honor
8 Ashley Sisolak on behalf of the public defender's
9 office.
10 THE DEFENDANT: Your Honor --
11 MS. SISOLAK: One moment.
12 THE COURT: Good morning.
13 MS. SISOLAK: I have spoken with the
14 attorney general when she arrived this morning and
15 received an offer. In an attempt to convey it to
16 Mr. Mixon, he has informed me he would like to
17 represent himself and he was not inclined to hear my
18 offer.
19 THE COURT: Okay. Mr. Mixon, you didn't
20 want to listen to what the State has to offer you?
21 THE DEFENDANT: I want to represent
22 myself.
23 THE COURT: All right. Let's go through
24 the process to see if you are in a position --
25 THE DEFENDANT: First of all, I want to

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1 ask you this.
2 THE COURT: You want to ask me something
3 and you want to represent yourself?
4 THE DEFENDANT: Last time I was in your
5 courtroom, two weeks ago, I was kicked out of this
6 courtroom for no reason.
7 MS. KALLAS: Your Honor, he wasn't kicked
8 out of the courtroom. He was never brought up
9 because of his attitude.
10 THE DEFENDANT: I was in here. I came
11 right in this courtroom.
12 THE COURT: Okay. Slow your role. Calm
13 down. All right. Now, two weeks ago you were
14 scheduled to be in my court; is that correct?
15 MS. KALLAS: That's correct, Your Honor.
16 For initial arraignment.
17 THE COURT: And who made a decision that
18 he was not to be here?
19 MS. KALLAS: One of the correction
20 officers said that he had a bad attitude and they
21 weren't going to bring him in. That was all that I
22 was --
23 THE COURT: And nobody ever told me
24 anything about that?
25 MS. KALLAS: I believe it was on the

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1 record.
2 THE COURT: Was I here?
3 MS. KALLAS: I don't think you were here.
4 I think it was another judge.
5 THE COURT: No, I wasn't here because that
6 doesn't sound like something that would happen if I
7 was here.
8 MS. KALLAS: You weren't here. I
9 apologize. It was something that was online on the
10 record that the court noted.
11 THE COURT: So Judge Jansen was sitting in
12 for me. So there is nothing we can do about it at
13 this point.
14 THE DEFENDANT: I didn't have an
15 attitude. I came here to get the criminal
16 complaint. I was kicked out of this courtroom for no
17 reason. I didn't have no boxing gloves on. I didn't
18 have no spit mask. I didn't come in here in no
19 wheelchair. I was set in the cage for six hours to
20 eight hours without water, dehydrated, with Metro
21 walking in back and forth, not asking if I wanted any
22 water.
23 Due to the fact I was denied access to
24 this courtroom, I'm asking for the transcripts from
25 that date because I wasn't present. If there is

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anything that prejudices me in this case, in any shape, any form, any how, I want to bring it to the attention of this Court. So I'm asking for the transcripts from that hearing.

THE COURT: From that date.

MS. SISSAN: September 26, Your Honor.

THE COURT: September 26th. So who was the court reporter at that time?

All right. Okay.

THE DEFENDANT: Also on this case, if I can have an evidentiary hearing because this case, this Attorney General's Office, was dismissed per High Desert State Prison, dismissed, and I got the paper right here. 20 months later I was served with a motion for arraignment, a trial arraignment.

THE COURT: Okay. So first, Mr. Mixon, we have to go through a canvass. I have to ask you some questions, and then I will make a determination as to whether or not I think you are fit to represent yourself, and then once that happens, depending upon my decision, we'll then look at whether or not there are some motions that need to be filed regarding this case.

And if those motions are, in fact, filed, then we will schedule an evidentiary hearing and

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argument for resolution of those matters. Okay?

THE DEFENDANT: Can I ask you one thing?

THE COURT: Yes.

THE DEFENDANT: Can I give you a verbal motion for the evidentiary hearing?

THE COURT: No, no, today you can't. Okay. We are going to go through this process because you have already requested transcripts of the proceedings from the September hearing which I am going to ask my court reporter to provide. All right. That's going to take a minute for her to do, and then you have some motions that you want to do predicated upon whatever may or may not have happened at that time. I was not there, so I don't have any personal recollection of what happened. Okay.

So now we are going to go through this whole self-representation canvass which is the Faretta canvass. Okay.

THE DEFENDANT: Before you start, am I get the transcripts of this one also?

THE COURT: Do you get what?

THE DEFENDANT: The transcripts of this hearing also.

THE COURT: Certainly, certainly.

All right. So the first thing that I need

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to do, Mr. Mixon, in your quest to represent yourself is I need to warn you against some of the dangers and disadvantages and consequences of self-representation.

It is often unwise for people to represent themselves. If you are to represent yourself, you will be responsible for knowing and complying with the same procedural rules as any lawyer, and you cannot expect help from me in complying with these procedural rules.

If you are allowed to proceed and represent yourself, you will not be allowed to complain on appeal about the competency or the effectiveness of your representation.

The State is going to be represented by an experienced, professional lawyer who will have the advantage, skill and training and ability.

A person representing themselves with no legal background of any kind is not entitled to special library privileges.

If you are unfamiliar with legal procedures, you may allow the prosecutor an advantage because you won't be able to make effective use of your legal rights and you will not be -- you're not trained to make tactical decisions that produce unintended consequences, and so your defense may very

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well be dismissed by your role as both defendant and attorney. And that would be true even if you were a licensed lawyer.

It is just a very bad idea to represent yourself in a case. You need an objective person handling your case. But if you insist on proceeding, there are some questions that I need to ask you.

First, what is your age?

THE DEFENDANT: 37 years old.

THE COURT: And the extent of your education?

THE DEFENDANT: The last grade I completed was the eighth grade.

THE COURT: Okay. Do you have any prior experience or familiarity with legal proceedings other than being a defendant?

THE DEFENDANT: I litigate a lot. I know the Nevada Rules of Criminal Procedure.

THE COURT: I'm sorry. You litigate? I didn't hear you.

THE DEFENDANT: I been litigating since I was 15. I been litigating since I was 15 years old when certified as an adult. Actually, you was the judge that O.R.'d me when I was 15 years old, but --

THE COURT: You didn't do that on your

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okay?

THE DEFENDANT: Like I said, I am studying Nevada Rules of Criminal Procedure, Federal Rules of Criminal Procedure.

THE COURT: And where did you study these rules of criminal procedure?

THE DEFENDANT: In the law library.

THE COURT: Where?

THE DEFENDANT: In Indian Springs. I could subpoena -- in fact, I frequented the law library in 2014 for almost 24 months. I actually have the Nevada Rules of Criminal Procedure in my cell right now. I am actually litigating a civil rights complaint against the State of Nevada right now for deprivation of meals.

THE COURT: And that's a civil case. So let's stay focused on the criminal. Okay.

Tell me about your health. Are you taking any medication?

THE DEFENDANT: No, not at the present time.

THE COURT: Do you have any record of mental health issues?

THE DEFENDANT: Not at this moment, no.

THE COURT: Well, do you have a history of

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mental health problems?

THE DEFENDANT: Well, when I was fighting murder one, I had a brief mental health, but I had a psychiatrist. I was on meds. I stopped taking meds, but I have no mental issues anymore.

MS. KALLAS: And, Judge, if I may, I did speak with his case worker at the prison and I did inquire as to whether or not he had any mental health issues, and they state that he didn't, that they were aware of at this time.

THE COURT: Well, according to him, he's been a part of the system since at least 15. I would imagine if he made an appearance before me when he was 15 he was not representing himself, was represented by counsel.

MS. SISOLAK: Your Honor, I understand you are conducting a Faretta canvass and I understand Mr. Mixon's right to represent himself and to go through these proceedings. The offer on the table is relatively favorable.

If he would like as a friend of the court, not as his representation, but as a friend of the court for me to present the offer to him so he may consider it, I would be happy to do that and I would be happy to leave the courtroom so that he has some

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privacy as well. I mean, the two of us go to a cell and we can discuss the offer.

THE DEFENDANT: I don't want to take no offer from the State.

MS. SISOLAK: I understand that. I'm just making the offer as a friend of the court, not even as his representation, just present the offer to him.

THE COURT: Okay. Have you been coerced or threatened in any way to waive your right to an attorney?

THE DEFENDANT: No, ma'am.

THE COURT: And you do understand that you do have the right to have legal representation at no cost to you? You understand that; right?

THE DEFENDANT: I understand that right.

THE COURT: You do understand it or you don't?

THE DEFENDANT: I understand that right. What I don't understand is the limited special access to the law library. I don't understand what you mean by that.

THE COURT: Which means you don't get special privileges just because you are representing yourself. So whatever the standard is for your access to the law library, that's what it is.

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THE DEFENDANT: As of --

THE COURT: As of right now. So however you go to the law library now is how you would you do. You don't get like special time and extra hours and all that kind of stuff because you are representing yourself. Okay.

Now, can you tell me what the elements of each crime that you are charged with -- can you tell me what they are?

THE DEFENDANT: Yes, each crime.

THE COURT: Right. So right now you are charged in Count 1 with battery by a prisoner. Can you tell me the elements of that crime?

THE DEFENDANT: The elements would be, Count 1 -- you want me to read it out to you?

THE COURT: I want you to articulate for me the elements of the crime that is charged as defined in NRS 200.481. Subsection 1(2)(f).

THE DEFENDANT: I did not check out NRS 200.481 from the law library.

THE COURT: Let me ask you, do you know the elements of the crime of possession or control of a dangerous weapon or facsimile by an incarcerated person?

THE DEFENDANT: I didn't check out that

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NRS either, but I can check out both of those NRSs to get the elements of both of those.

THE COURT: Do you know -- I'm sorry?

THE DEFENDANT: I can check out both of these NRSs on both of these counts, if the elements on both of these counts are not demonstrated in this criminal complaint in writing right here in front of me.

THE COURT: Do you know what the possible penalties or punishments or total possible sentence that you could receive?

THE DEFENDANT: If you're not willing to let me know that.

THE COURT: I'm sorry?

THE DEFENDANT: If you're not willing to let me know that, I'm sure I can go get it from the law library.

THE COURT: If I'm not, is that what you said?

THE DEFENDANT: That's what I said.

THE COURT: Okay. So as we are talking right now, you don't know what your potential exposure is to punishment under this complaint; is that right?

THE DEFENDANT: Honestly, it looks like I'm facing habitual criminal if you ask me.

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THE COURT: Okay. Do you understand what defenses there may be available to you?

THE DEFENDANT: Federal Rules of Criminal Procedure has defenses available. Once I get the complete file from the State of Nevada, probably have a better idea of putting defenses together for these two counts.

THE COURT: Do you know that I could appoint what we call standby counsel who in the event that while the proceedings are ongoing if I find that you are not doing a good job for yourself you would then have appointed counsel to complete the representation of you in the proceedings? Do you understand that?

THE DEFENDANT: Yes. I am not interested in standby counsel at this time.

THE COURT: Do you know what your appellate rights are should you be found guilty of the crimes alleged in this criminal complaint?

THE DEFENDANT: Nevada Rules of Appellate Procedure and Federal Rules of Appellate Procedure I have an idea in the event there is a conviction --

THE COURT: I can hardly hear you.

THE DEFENDANT: The Nevada Rules of Appellate Procedure and Federal Rules of Appellate Procedure probably have an idea about the appellate rights I have in the event I was convicted of these counts.

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THE COURT: So what are they? If you have an idea, what is your idea?

THE DEFENDANT: If I go to trial and there was a judgment, a conviction instead of a judgment of acquittal, I register to the Supreme Court and I go through the process. I'm on habeas corpus post conviction right now for murder.

THE COURT: Well, we're not going to talk about that because that's not before me. We are just talking about this. I am asking if you understand what your appellate rights would be.

THE DEFENDANT: You're asking me if I understand what my appellate rights are in the event I was convicted of this case. I'm saying I'm litigating in a criminal case right now, as of right now, pro se, and I'm doing well for myself on that appellate proceeding. So in the event the State of Nevada gets a conviction on this case, I know my appellate rights.

THE COURT: What are they?

THE DEFENDANT: I have a right to appeal, direct appeal within 30 days to the Supreme Court on any grounds, if the State denies me due process of law, if they don't give me the complete discovery or whatever grounds else I can find. If the State violates my constitutional rights, I can put in a direct appeal, or any errors at trial the State may commit, stuff like that.

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In the event the Supreme Court denies the appeal during the first post conviction, first habeas corpus post conviction, file a writ of habeas corpus, go through the process in the event the State of Nevada got a conviction on this case.

THE COURT: Mr. Mixon, I am now required to make specific findings about whether or not I think you are competent to waive your right to counsel, and it is a very sacred right that you are attempting to forfeit, and based upon your responses to me, I have some very strong concerns about your competency in this area.

I do believe that you would provide a great level of assistance to your attorney, but I do not believe that you are suited, trained or have a full enough understanding of everything that would be available to you in defending this case unless you were represented by trained counsel.

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And so I am prepared at this point -- and I am making that decision primarily based upon your limited education and some of your history to date and the fact that you are already involved in a very serious -- at least two litigation matters that you have made reference to.

And so based upon that, I am going to decline your right to represent yourself at this time.

THE DEFENDANT: Do I get a right to appeal that?

THE COURT: You tell me.

THE DEFENDANT: I want to appeal that.

THE COURT: You can, and you can file the appropriate paperwork, but what we can do at this time is -- and Shawn is going to give you the transcript for today as well as from the September hearing, and then we will go ahead and schedule this matter for preliminary hearing --

Or was it --

MS. KALLAS: It was for preliminary today, Your Honor.

THE COURT: So do you want to go forward today then?

MS. KALLAS: We weren't prepared to go

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forward. I spoke with Ms. Sisolak and she talked it off to speak with Mr. Mixon.

MS. SISOLAK: That's correct, Your Honor.

Your Honor, my next day in here is the 23rd. I understand that is shorter. The following day I have in here is the 31st. Because I prepared the case, I would like to track the case; however if Your Honor is inclined to give him a 15-day set, I will attempt to make a special appearance. Court's pleasure. I should be available on the 24th which is the day that I believe we are currently setting.

THE COURT: Do 15 days.

THE DEFENDANT: Do I get my evidentiary hearing?

THE COURT: We are going to do 15 days. You're going to confer with counsel. You are going to file the appropriate documents so that you will be -- your request for an evidentiary hearing will be heard in the right context. Okay.

THE CLERK: October 24th at 9:00 a.m.

MS. KALLAS: Thank you, Your Honor.

MS. SISOLAK: Thank you, Your Honor.

THE COURT: Shawn, when can you have the transcripts?

THE REPORTER: A week.

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THE COURT: Is that sufficient, a week?

Ms. Sisolak, you want to confer with your client about that?

(Off-the-record discussion between the defendant and his counsel.)

MS. SISOLAK: Your Honor, if they are prepared in a week, I am not sure by what procedures that they will be transferred to him. I am happy to send them --

THE COURT: Well, no they won't be because you're his counsel. You'll get them and then you can give them to him.

MS. SISOLAK: As soon as they are available, I will send a copy to the Nevada Department of Corrections to him as well as keep a copy for myself and provide him any additional ones in court.

THE COURT: The reality is that even if you give him a week, he won't have them prior to preliminary hearing. He's telling me he thinks that whatever happened in September may very well have impacted the ability of the State to move forward at the preliminary hearing.

THE DEFENDANT: I want to know what happened at High Desert and wrote me up for

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assaulting a C.O. and they wrote me up for possession of a prison-made weapon, to wit, a shank.

I appealed the disciplinary process. When they responded to the grievance, they dismissed it at the attorney general's office for which then 20 months later I got the motion for initial arraignment.

I was denied my 4th Amendment right to due process. I was supposed to receive more procedure than that, receive more notice than that because I got the paper right here that said they dropped it, and I want my evidentiary hearing.

THE COURT: So you're thinking that in an administrative proceeding this case was denied or dismissed and then refiled without due -- proper notice to you? Is that what I'm hearing?

MS. SISOLAK: Court's indulgence just one moment.

(Off-the-record discussion between the defendant and his counsel.)

MS. SISOLAK: Your Honor, if he's at High Desert, I am happy to go out to the prison. I'll make arrangements to get there.

MS. KALLAS: He's in Ely, Your Honor.

THE DEFENDANT: I am in High Desert.

person, 45 minutes away from here.

MS. SISCO: If he's in High Desert, I can be there in 15 minutes, but if he's in Ely, my office, we are in a difficult predicament about getting there. I will have to be provided overnight accommodations. It is a much bigger deal if he's in Ely, Your Honor, and not High Desert.

MS. WILLIAMS: It's my understanding he's in Ely, Your Honor. That's where we did the transport order from.

THE DEFENDANT: I am in High Desert State Prison right now.

THE COURT: Is anybody here that brought him here?

[Indiscernible]: Ely.

MS. WILLIAMS: I believe he was in High Desert and then transferred to Ely. That is my understanding.

MS. SISCO: Well, maybe he was in Ely and

THE COURT: Okay, okay, okay. Who brought him here?

CORRECTIONAL OFFICER: Our State officers never come up to court with us, Your Honor. This morning I am sure Mr. Mixon can clarify they

transferred him from NDOC to Southern

THE DEFENDANT: I transferred me from High Desert prison. I been in High Desert for 30 days -- 32 days.

CORRECTIONAL OFFICER: He wouldn't be coming from Ely overnight to get here.

THE DEFENDANT: I'm not in Ely State Prison. I am at High Desert.

MS. SISCO: Either way, Your Honor, if he is in High Desert State Prison I will make arrangements to meet with him and discuss the case if it is available to me, but I don't know if he's in Ely, which is the allegations from the State. Ely takes me a lot longer to get accommodations for. High Desert, I can drive up on a Tuesday or any days, so dependent upon where he is located.

THE COURT: Okay. He's got a preliminary in two weeks. Can we keep him down here wherever he is?

MS. WILLIAMS: To be honest, Your Honor, I'm not sure. From my understanding, what happened last time, they told me that he would be sent back to prison and have to be transported back down here.

MS. SISCO: Because my understanding, Your Honor, I am in

[Brief interruption.]

MS. SISCO: As I understand it, Your Honor, I have no hearing nor ability to have any hearing upon where my clients are housed. So even if I call the prison and ask them to keep him here, I basically get told to kick rocks. I will do my best to arrange some sort of visitation between now and the preliminary hearing, hopefully after I have the transcript.

THE COURT: Shawn, can we get those transcripts sooner?

THE REPORTER: Wednesday, next Wednesday.

MS. SISCO: Just have whoever is here bring them back to me. I'll make sure it's taken care of, including if it is in Ely, if I have to go to Ely. I'll make it happen.

THE COURT: Okay. Preliminary hearing in 15 days.

THE CLERK: October 24th at 9:00 a.m.

[Proceedings concluded at 9:09 a.m.]

[illegible]

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. ANTONIO MIXON, Defendant.	CASE NO. C-17-327439-1 DEPT. NO. XVII DATE: January 9, 2018 TIME: 8:30 a.m.

MOTION TO WITHDRAW AND ALLOW DEFENDANT TO REPRESENT HIMSELF PURSUANT TO FARETTA V. CALIFORNIA

COMES NOW, the Defendant, ANTONIO MIXON, by and through ASHLEY L. SISOLAK Deputy Public Defender and hereby requests a hearing to allow defendant to represent himself as provided in Faretta v. California, 422 U.S. 806.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 15th day of December, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ ASHLEY L. SISOLAK
ASHLEY L. SISOLAK, #13958
Deputy Public Defender

Case Number: C-17-327439-1

DECLARATION

ASHLEY L. SISOLAK makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter.

2. That the instant motion springs from the Justice Court's denial of Petitioner's request to represent himself in the instant proceedings. On September 26, 2017, Mixon was arraigned in absentia on charges of one count of Battery by a Prisoner and one count of Possession or Control of a Dangerous Weapon or Facimile by an Incarcerated Person.

3. The Public Defender was appointed to represent Petitioner.

4. On October 10, 2017, Petitioner, then present, objected to the appointment of counsel and requested to represent himself. The Court denied Petitioner's request to represent himself because he failed to answer questions to the Faretta canvas to the Courts Satisfaction. (Justice Court minutes from 10/10/17, exhibit A; Reporter's Transcripts of Proceedings, October 10, 2017, exhibit B specifically pages 6-18). The Preliminary Hearing was set for October 24, 2017, and transcripts of the September 26, 2017 and October 10, 2017 hearing were requested and granted.

5. At the October 24, 2017 Preliminary Hearing Petitioner waived his right to a Preliminary Hearing against advice of his counsel.

6. On November 1, 2017 Mixon pleaded not guilty and invoked his right to a speedy trial. A trial date was set in the matter on January 2, 2018, with calendar call set for December 12, 2018.

7. On December 11, 2017, Counsel received a letter stating Mixon would like a motion to be filed based on the denial of his right to represent himself being violated.

8. On December 12, 2017, counsel informed Mixon that his right to represent himself had not been violated in District Court and he would have to ask the judge to represent himself. Counsel also provided Mixon a copy of Faretta and sample questions.

9. Upon the case being called counsel informed the Court of the new developments as well as the defense's intent to announce ready. Mixon asked to Court for more

time to be prepared for a canvas to represent himself.

10. The Court denied this request and asked Mixon if he would be ready to proceed at his trial date. Mixon informed the court he would not be ready.

11. At that time the Court declined to canvas Mixon at all and instead informed Mixon he would be going forward on January 2, 2018, represented by the Public Defender's Office.

12. This motion is not for purposes of delay.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 15th day of December, 2017.

/s/ ASHLEY L. SISOLAK
ASHLEY L. SISOLAK

STATEMENT OF FACTS

I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter. That the instant motion springs from the Justice Court's denial of Petitioner's request to represent himself in the instant proceedings. On September 26, 2017, Mixon was arraigned in abstenia on charges of one count of Battery by a Prisoner and one count of Possession or Control of a Dangerous Weapon or Facimile by an Incarcerated Person. The Public Defender was appointed to represent Petitioner.

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ARGUMENT

The Sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment Faretta v. California 422 U.S. 806, 807, 95 S.Ct. 2525, 2527 (U.S.Cal. 1975). Because these rights are basic to our adversary system of criminal justice, they are part of the 'due process of law' that is guaranteed by the Fourteenth Amendment to defendants in the criminal courts of the States. Id

The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. Faretta at 819. It is the accused, not counsel, who must be 'informed of the nature and cause of the accusation,' who must be 'confronted with the witnesses against him,' and who must be accorded 'compulsory process for obtaining witnesses in his favor.' Id. Although not stated in the Amendment in so many words, the right to self-representation—to make one's own defense personally—is thus necessarily implied by the structure of the Amendment. Id. The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails. Id. at 820, citing Snyder v. Massachusetts, 291 U.S. 97, 54 S.Ct. 330, 78 L.Ed. 674; to testify on his own behalf, see Harris v. New York, 401 U.S. 222, 225, 91 S.Ct. 643, 645, 28 L.Ed.2d 1; Brooks v. Tennessee, 406 U.S. 605, 612, 92 S.Ct. 1891, 1895, 32 L.Ed.2d 358; cf. Ferguson v. Georgia, 365 U.S. 570, 81 S.Ct. 756, 5 L.Ed.2d 783, and to be convicted only if his guilt is proved beyond a reasonable doubt, In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368; Mullaney v. Wilbur, 421 U.S. 684, 95 S.Ct. 1881, 44 L.Ed.2d 508.The inference of rights is not, of course, a mechanical exercise. Singer v. United States, 380 U.S. 24, 85 S.Ct. 783, 13 L.Ed.2d 630.

The question before the Faretta Court was whether the State of California could constitutionally hale a person into its criminal courts and there force a court-appointed public defender upon him, even when he insists that he wants to conduct his own defense. Faretta at 807.

In reviewing the U.S. Constitution, relevant case and common law, the Faretta Court held that, in forcing Faretta, under these circumstances, to accept against his will a state-appointed public defender, the California courts deprived him of his constitutional right to conduct his own defense. Faretta at 836. The Faretta Court held that a defendant must knowingly and intelligently relinquish the benefits associated with the right to counsel, and be made aware of the dangers and disadvantages of self-representation; but that a defendant's technical legal knowledge is not relevant to the assessment of his knowing exercise of this right to defend himself. Id.

The Supreme Court of Nevada has consistently held that "a criminal defendant has the right to represent himself so long as the district court finds that he is competent and that the waiver of counsel is knowing, voluntary, and intelligent." Hymon v. State, 121 Nev. 200,212, 111 P.3d 1092, 1101 (2005). "A criminal defendant's ability to represent himself has no bearing upon his competence to choose self-representation." Vanisi v. State, 117 Nev. 330, 341-42, 22 P.3d 1164, 1172 (2001). The relevant consideration under Faretta is whether the defendant understands the significance of the waiver of counsel and the risks of self-representation. Graves v. State, 112 Nev. 118, 124, 912 P.2d 234, 238 (1996).

Here, the Justice Court first denied Mr. Mixon's request to remove court-appointed counsel because the Court did not find Mr. Mixon's canvas sufficient. The Justice Court did question Petitioner regarding the detriments of self-representation, and the Petitioner agreed that he may make mistakes and suffer unintended consequences due to his lack of effective use of legal rights. The Justice Court also questioned Petitioner regarding his understanding of potential lesser-included offenses, the elements of the crime charged. The Justice Court found that, based on his

answers, Petitioner was not competent to represent himself and ordered the public defender to continue to represent Mr. Mixon. In District Court, a canvas was denied to the defendant.

While, the Justice Court's analysis and canvas may have been flawed, the District Court denied Mr. Mixon his right to represent himself and would not even allow him the attempt to do so. The case law is clear regarding self-representation: a defendant has a right to counsel, and he can waive that right so long as the defendant is competent and the waiver of the right is knowing, voluntary, and intelligent. There is no requirement or analysis regarding whether a defendant's can adequately represent himself, only that he be competent to waive his constitutional right to be represented by an attorney.

Consequently, Defendant now requests that the Court conduct a hearing pursuant to Farretta v. California so that Defendant may exercise his constitutional right to represent himself.

DATED this 15th of December, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ ASHLEY L. SISOLAK
ASHLEY L. SISOLAK #13958
Deputy Public Defender

NOTICE

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the foregoing MOTION TO WITHDRAW AND ALLOW DEFENDANT TO REPRESENT HIMSELF PURSUANT TO FARRETTA V. CALIFORNIA will be heard on the 9th day of January 2018 at 8:30 a.m. in Department No.17 District Court.

DATED this 15th day of December, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ ASHLEY L. SISOLAK
ASHLEY L. SISOLAK, #13958
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

A COPY of the above and foregoing was sent via electronic to the Attorney General's Office (Chelsea Kallas) at Ckallas@ag.nv.gov on this 15th day of December, 2017.

By: /s/ KONIE BALDWIN
An employee of Clark County Public Defender's Office

CERTIFICATE OF FACSIMILE

I hereby certify and affirm that I served a copy of the foregoing Motion to withdraw and allow defendant to represent himself pursuant to Farretta V. California via facsimile to the attorney of record listed below on this 13th day of December, 2017.

Attorney General's Office
Bureau of Public Affairs
& Public Safety Division
Attn: Chelsea Kallas
Deputy Attorney General
555 East Washington Ave., Suite #3900
Las Vegas, NV 89101
Facsimile No: (702) 486-2377

/s/ KONIE BALDWIN
Employee, Clark County Public Defender's Office

Electronically Filed
12/15/2017 2:33 PM
Steven D. Grierson
CLERK OF THE COURT

RENOT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA

Plaintiff,

vs.

ANTONIO MIXON,

Defendant.

CASE NO.: C-17-327439-1

DEPT. NO.: XVII

RENOTICE OF HEARING ON MOTION TO WITHDRAW AND ALLOW DEFENDANT TO REPRESENT HIMSEL PURSUANT TO FARETTA v. CALIFORNIA

TO: ALL PARTIES AND/OR TO THEIR RESPECTIVE COUNSEL OF RECORD.

PLEASE TAKE NOTICE that the **MOTION TO WITHDRAW AND ALLOW DEFENDANT TO REPRESENT HIMSEL PURSUANT TO FARETTA v. CALIFORNIA,** currently set for January 9, 2018 at 8:30 a.m., will be heard on **Tuesday, January 2, 2018, at 8:30 am**.

DATED this 15th day of December, 2017.

MICHAEL P. VILLANI
DISTRICT COURT JUDGE

MICHAEL P. VILLANI
DISTRICT JUDGE
DEPARTMENT XVII

Case Number: C-17-327439-1

CERTIFICATE OF SERVICE

I hereby certify that on or about the date signed, a copy of this Order was electronically served and/or placed in the attorney's folders maintained by the Clerk of the Court as follows:

Cheryl Carpenter
Judicial Executive Assistant

MICHAEL P. VILLANI
DISTRICT JUDGE
DEPARTMENT XVII

Electronically Filed
12/22/2017 3:46 PM
Steven D. Grierson
CLERK OF THE COURT

NOTC
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
ASHLEY L. SISOLAK, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 13958
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. ANTONIO MIXON, Defendant,	CASE NO. C-17-327439-1 DEPT. NO. XVII

DEFENDANT'S NOTICE OF WITNESSES, PURSUANT TO NRS 174.234

TO: CLARK COUNTY DISTRICT ATTORNEY:

You, and each of you, will please take notice that the Defendant, ANTONIO MIXON, intends to call the following witness in his case in chief:

Bryan A. Wong, Investigator C/O Public Defender's Office

Toni A. Worthman, Investigator C/O Public Defender's Office

Sergeant Jay Barth, NDOC

Eric Romero, NDOC

Keith Mckeehan, NDOC

Brian Williams, Warden, NDOC

Jerry Howell, Associate Warden, NDOC

Jennifer Nash, Associate Warden, NDOC

Perry Russell, Associate Warden, NDOC

Brian Crooks, Correctional Officer, NDOC

///

///

DATED this 22nd day of December, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ ASHLEY L. SISOLAK
ASHLEY L. SISOLAK, #13958
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

A COPY of the above and foregoing was sent via electronic to the District Attorney's Office at Motions@clarkcountyda.com on this 22nd day of December, 2017.

By: /s/ KONIE BALDWIN
An employee of Clark County Public Defender's Office

Case Name: Antonio Mixon

Case No.: C-17-327439-1

Dept. No.: District Court, Department XVII

Mo
DA
PD
PP

1. ANTONIO L. MIXON 1019825
NAME
2. P.O. BOX 650, INDIAN SPRINGS, NV 89070
ADDRESS
A.L. Mixon #1
DEFENDANT IN PROPER PERSON

Electronically Filed
12/29/2017 9:04 AM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

ANTONIO L. MIXON

Defendant.

CASE NO.: C-17-327439-1

DEPT. NO.: 17

1-23-18

DATE OF HRG: A.S.A.P.

TIME OF HRG: 8:30 A.M.

A. DEFENDANT'S MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD, REQUEST TO OBTAIN COPY OF DEFENDANT'S FILE, AND REQUEST FOR SELF-REPRESENTATION, & Submission of this Motion

COMES NOW, THE DEFENDANT, ANTONIO LEE MIXON, IN PROPER PERSON, AND HEREBY MOVES THIS HONORABLE COURT GRANT AN ORDER allowing THE PUBLIC DEFENDER'S OFFICE to withdraw AS ATTORNEY of RECORD. ADDITIONALLY, THE DEFENDANT ASKS that a COPY of his ENTIRE FILE BE immediately produced AND given TO THE DEFENDANT.

THIS MOTION is BASED UPON ALL THE PAPERS AND PLEADINGS ON FILE HEREIN, THE ATTACHED POINTS AND AUTHORITIES, AND ORAL argument At TIME of HEARING.

POINTS AND AUTHORITIES

REQUESTING MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD TO REPRESENT SELF, REQUEST TO OBTAIN COPY OF DEFENDANT'S FILE.

DOFR

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DEC 29 2017
CLERK OF THE COURT

RECEIVED
DEC 21 2017
CLERK OF THE COURT

• CERTIFICATE OF SERVICE

I HEREBY CERTIFY PURSUANT TO N.R.C.P. 5(b) THAT I AM THE PETITIONER/PLAINTIFF IN THE FORGOING MOTION FOR Withdrawal OF ATTORNEY OF RECORD, REQUEST TO OBTAIN Copy OF DEFENDANT'S FILE, AND REQUEST FOR SELF-REPRESENTATION, & SUBMISSION OF MOTION, AND THAT ON THIS 13th day OF DECEMBER, 2017, I did SERVE A TRUE AND CORRECT COPY OF THE ABOVE MENTIONED DOCUMENT, By giving it to A PRISON OFFICIAL AT the High Desert STATE PRISON TO deposit IN THE U.S. MAIL, SEALED IN AN ENVELOPE, POSTAGE PRE-PAID, And addressed AS FOLLOWS: STEVEN D. GRIERSON, CLERK OF THE COURT

200 LEWIS AVENUE, 3rd FLOOR

LAS VEGAS, NV 89155-1160

• AFFIRMATION PURSUANT TO NRS. 239B.030

I ANTONIO LEE MIXON, NDOC# 1019828, CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL And that THE ATTACHED DOCUMENT ENTITLED MOTION For: Withdrawal OF ATTORNEY OF RECORD

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

Dated This 13th day OF DECEMBER, 2017.

SIGNATURE: A. L. Mixon

INMATE PRINTED NAME: MIXON, ANTONIO

INMATE NDOC #: 1019828

INMATE ADDRESS: P.O. Box 650, INDIAN SPRINGS, NV 89070

ANTONIO LEE MIXON SR. #1019828
High Desert State Prison
P.O. BOX 650
INDIAN SPRINGS, NV 89070

3762

LAS VEGAS
NV 890
18 DEC '17

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STEVEN D. GRIERSON, CLERK OF THE COURT
200 LEWIS AVENUE, 3rd FLOOR
LAS VEGAS, NV 89155-1160

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HIGH DESERT STATE PRISON
DEC 1?
UNIT 3 C/D

HIGH DESERT STATE PRISON
DEC 1? 2017
UNIT 3 C/D

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12/29/2017 9:51 AM
Steven D. Grierson
CLERK OF THE COURT

MOT
ADAM PAUL LAXALT
Attorney General
Chelsea N. Kallas (Bar No. 13902)
Deputy Attorney General
State of Nevada
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
(702) 486-5707 (phone)
(702) 486-0660 (fax)
Ckallas@ag.nv.gov
Attorneys for the State of Nevada

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, v. ANTONIO LEE MIXON, #1968172 Defendant.	Case No.: C-17-327439-1 Dept. No.: 17 Hearing Date: Hearing Time:

MOTION IN LIMINE TO EXCLUDE DEFENSE WITNESSES FROM TESTIFYING

ADAM PAUL LAXALT, Attorney General for the State of Nevada, through his Deputy Attorney General Chelsea N. Kallas, hereby submits this MOTION IN LIMINE TO EXCLUDE DEFENSE WITNESSES FROM TESTIFYING.

This motion is made and based upon the pleadings and papers on file, the following memorandum of points and authorities, and any oral argument the Court may allow.

DATED this 28th day of December, 2017.

ADAM PAUL LAXALT
Attorney General

By: /s/ Chelsea N. Kallas
Chelsea N. Kallas (Bar No. 13902)
Attorneys for the State of Nevada

Case Number: C-17-327439-1

STATEMENT OF FACTS

On October 25, 2017, Antonio Lee Mixon was charged by way of Information with the following: Count 1 – Battery By A Prisoner (Category B Felony – NRS 200.481(2)(f)); and Count 2 – Possession or Control of Dangerous Weapon of Fascimile by an Incarcerated Person (Category B Felony – NRS 212.185(c).

On November 1, 2017, Defendant pled not guilty and invoked his speedy trial rights. Jury Trial is scheduled to commence on January 2, 2018.

On December 22, 2017, Defendant filed his witness list. A certificate of electronic service was attached to the filing. However, the State did not become aware of the filing until December 26, 2017 when they received Notification of Service via the Court's notification service.

Defendant's witness list includes the names of ten individuals, including a number of Senior Nevada Department of Corrections ("NDOC") staff that were not present at the time the crime occurred and/or were not involved in the investigation of this matter. The list includes the warden at the time the incident occurred, and three deputy wardens.

After the charged misconduct occurred in or around December 2015, Defendant was placed in administrative segregation by NDOC.

ARGUMENT

I. ANY EVIDENCE, TESTIMONY OR REFERENCE TO DEFENDANT'S ADMINISTRATIVE PUNISHMENT OR PROCEEDINGS MUST BE EXCLUDED

Defendant has failed to provide the State with any discovery demonstrating his witnesses' relevance to the instant case, thus the State is unclear as to why Defendant has named these individuals in his witness list. Nevada law mandates that "evidence which is not relevant is not admissible." NRS 48.025(2). As used in Chapter 48, "relevant evidence" means evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable that it would be without the evidence." NRS 48.015.

Here, to the extent Defendant intends to use these witnesses as evidence of Defendant's administrative proceedings or punishment by NDOC, such evidence should be excluded as it is irrelevant.

II. THE STATE REQUESTS A PROFFER AS TO HOW TESTIMONY FROM DEFENDANT'S WITNESSES IS RELEVANT

The State cannot fathom a reason why testimony from any of Defendant's witnesses would be relevant to the instant case. Defendant's witness list includes the names of ten individuals, including a number of NDOC staff that were not present at the time the crime occurred and/or were not involved in the investigation of this matter. As such, the State would request Defendant make a proffer as to how such evidence would be relevant prior to the evidence being admitted at trial.

DATED this 28th day of December, 2017.

ADAM PAUL LAXALT
Attorney General

By: /s/ Chelsea N. Kallas
Chelsea N. Kallas (Bar No. 13902)
Attorneys for the State of Nevada

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on December 28, 2017, I filed the foregoing document via this Court's electronic filing system. Parties that are registered with this Court's EFS will be served electronically. The following parties are not registered and therefore, a prepaid postage copy of this document has been placed in the U.S. mail.

Ashley L. Sisolak, Esq.
Office of the Public Defender
309 S. Third Street, Suite 226
Las Vegas, NV 89155-2610

/s/ Salvador Heredia
Salvador Heredia, an employee of
the office of the Nevada Attorney General

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

JAN 02 2018

BY, LOUISA GARCIA, DEPUTY

JURL

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ANTONIO LEE MIXON,

Defendant.

CASE NO. C-17-327439-1
DEPT. NO. XVII

JURY LIST

1. Lliana Rodriguez
2. Tonya Dennis
3. Okeama Warner
4. Linzy Stahl
5. Jonathan Birds
6. Zachary Taylor
7. Linda Leavitt
8. Scott Nix
9. Suzanne Anderson
10. Silviya Doneva
11. Leonila Abella
12. Shaun Burgess
13. Heather Dufrene

SECRET FROM ABOVE

C-17-327439-1
JURL
Jury List
4709333

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Steven D. Grierson
CLERK OF THE COURT

ORDR
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

ANTONIO MIXON,
#1968172

Defendant.

Case No. C-17-327439-1
Dept. No. XVII

Hearing Date: December 5, 2017
Hearing Time: 8:30 A.M.

DISCOVERY ORDER

This matter, Defendant ANTONIO MIXON's Motion for Discovery, having come before this Honorable Court on December 5, 2017, and good cause appearing therefor,

IT IS HEREBY ORDERED pursuant to Defendant ANTONIO MIXON's Motion for Discovery:

DEFENDANT'S REQUEST NO. 1: The State is ordered to turn over any reports under event number 170517-3937, associated case numbers, Brady, and Giglio material.

DEFENDANT'S REQUEST NO. 2: The State is ordered to turn over all video and audio recordings and comply with mandatory obligations under Brady, and Giglio.

DEFENDANT'S REQUEST NO. 3: The State is ordered to turn over all video and audio recordings, including 911 or CAD records in the possession of the State and comply with mandatory obligations under Brady, and Giglio.

DEFENDANT'S REQUEST NO. 4: The State is ordered to turn over all photographic, video, and audio recordings of evidence collection and testing, fingerprint evidence, DNA evidence,

Case Number: C-17-327439-1

and forensic results in their actual possession of State of Nevada. Otherwise, defense should subpoena them on their own. [1]

DEFENDANT'S REQUEST NO. 6: The State is ordered to turn over any reports under the above event number, associated event numbers, Brady, and Giglio.

DEFENDANT'S REQUEST NO. 8: The State is ordered to turn over any dashboard cameras, body cam footage, or video footage associated with the above event number. The State is further ordered to comply with NRS 174.2355, Brady, and Giglio.

DEFENDANT'S REQUEST NO. 9: The State is ordered to furnish the unit log to the Defendant.

DEFENDANT'S REQUEST NO. 11: The State is ordered to turn over all 911 and 311 recordings in their possession, if such are not available, the Defendant may subpoena the same.

DEFENDANT'S REQUEST NO. 12: The State is further ordered to comply with NRS 174.2355, Brady, and it's progeny. Chain of custody information contained in the NDOC evidence vault can be made by appointment by Defense counsel.

DEFENDANT'S REQUEST NO. 13: The State is further ordered to comply with NRS 174.2355(1)(a)(2).

DEFENDANT'S REQUEST NO. 15: The State is further ordered to comply with NRS 174.2355, Brady, and it's progeny, including identification of any known alternative suspects.

DEFENDANT'S REQUEST NO. 16: The State is further ordered to comply with NRS 174.2355, Brady, and it's progeny, including identification statements of identification or mis-identification.

DEFENDANT'S REQUEST NO. 17: The State is further ordered to comply with NRS 174.2355, Brady, and it's progeny.

DEFENDANT'S REQUEST NO. 18: The State is ordered to disclose any benefits beyond witness fees and Giglio Material, as well as all Brady and Giglio material required under NRS 174.2355.

[1] The following requests were omitted: 5, 7, 10, 14, 22-69

DEFENDANT'S REQUEST NO. 19: The State is further ordered to comply with NRS 174.2355, Brady, and it's progeny, including witness statements.

DEFENDANT'S REQUEST NO. 20: The State is further ordered to comply with United States v. Henthorn, 931 F.2d 29 (9th Cir 1991) by reviewing personal files of testifying officers for evidence of perjury or dishonest conduct and if said information is found it is to be provided to the Court for an in camera review.

DEFENDANT'S REQUEST NO. 21: If the State is aware of any witness that have felony convictions or convictions involving moral turpitude, they are to provide such information to Defense counsel.

DEFENDANT'S REQUEST NO. 70: The State is further ordered to comply with NRS 174.2355, Brady, and it's progeny.

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The COURT FURTHER ORDERS Defendant to provide the State with reciprocal discovery as enumerated in NRS 174.245. Counsel for Defendant is FURTHER ORDERED to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Both parties to approve said order as to form and content.

DATED 28 day of January, 2018.
Dec 2017

The Honorable Michael P. Villani
DISTRICT COURT JUDGE
Department XVII

Respectfully submitted by:

CLARK COUNTY PUBLIC DEFENDER

By /s/ ASHLEY L. SISOLAK
ASHLEY L. SISOLAK, #13958
Deputy Public Defender

Approved as to form and content:

CLARK COUNTY DISTRICT ATTORNEY
DATED 22nd day of December, 2017.

By /S/ JASON H. GUNNELL
JASON H. GUNNELL

Electronically Filed
1/25/2018 9:09 AM
Steven D. Grierson
CLERK OF THE COURT

EXPR
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
ASHLEY L. SISOLAK, DEPUTY PUBLIC DEFENDER
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PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 384-1969
Ashley.Sisolak@ClarkCountyNV.gov
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff,	CASE NO. C-17-327439-1
v.	DEPT. NO. XVII
ANTONIO MIXON, Defendant,	

ORDER FOR TRANSCRIPT

IT IS HEREBY ORDERED that the certified court reporter/recorder Cynthia Georglias, prepare at State expense, a transcript of the proceedings for case C-17-327439-1 heard on January 2, 2018 in DC17.

DATED this ~~18th~~ 22 day of January, 2018.

DISTRICT COURT JUDGE FG

Submitted by:
PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By /s/*Ashley L. Sisolak*
ASHLEY L. SISOLAK, #13958
Deputy Public Defender

CERTIFICATE OF MAILING

The forgoing Order was served by mailing a copy thereof, first class mail, postage prepaid on the 25th day of January, 2018, to the following:

Cynthia Georglias, Court Reporter
District Court 17
200 Lewis Avenue
Las Vegas, NV 89101

Konie J. Baldwin
An Employee of the
CLARK COUNTY PUBLIC DEFENDER'S OFFICE

Case Name: State of Nevada vs. Antonio Mixon

Case No. C-17-327439-1

Dept No. XVII

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. ANTONIO LEE MIXON, Defendant.	CASE NO.: C-17-327439-1 DEPT. XVII

BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

TUESDAY, JANUARY 2, 2018

RECORDER'S PARTIAL TRANSCRIPT OF HEARING
JURY TRIAL - DAY 1
[STATE'S OPENING; DIRECT AND CROSS-EXAMINATION OF DEAN ONTIVEROS]

APPEARANCES:

For the State: JASON GUNNELL, ESQ.
Senior Deputy Attorney General
CHELSEA KALLAS, ESQ.
Deputy Attorney General

For the Defendant: ASHLEY SISOLAK, ESQ.
TEGAN MACHNICH, ESQ.
Deputy Public Defenders

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

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Las Vegas, Nevada, Tuesday, January 2, 2018

[Jury trial began at 11:20 a.m.- not transcribed]

[State's opening statement begins at 3:57 p.m.]

[Inside the presence of the jury]

THE COURT: All right, welcome back ladies and gentlemen.

State, are you ready for your opening?

MS. KALLAS: Court's indulgence, Your Honor.

THE COURT: Sure.

MS. KALLAS: I apologize.

[Colloquy between State and Defense Counsel]

MS. SISOLAK: Thank you, Your Honor.

THE COURT: Go ahead, State.

[STATE OPENING STATEMENT]

MR. GUNNELL: Good afternoon, ladies and gentlemen.

On December 4th, 2015 it started out as an average day for Officer Ontiveros and Officer Mcaninch. Officer Mcaninch had just came on board at NDOC. It was his third day on his job. He hadn't even gone to training. Officer Ontiveros had a little more experience and you'll see him testify today. He's now a sergeant with Nevada Department of Corrections. At the time, he was kind of the trainee training Officer Mcaninch.

They're up at High Desert State Prison. They're out on the yard, the exercise place for the inmates up there, and they notice something kind of -- something going along with the Defendant sitting at the table. And as they approached him, the Defendant picked up one of

the rocks that's on the yard -- southern Nevada there was a lot of rocks everywhere -- picked up one of the rocks and threw it and it struck Officer Ontiveros. After that, he pulled out what we call is a shank or weapon, a homemade weapon, a prison weapon out of his shoe. He brandished that. At that time, and you'll hear the testimony of the two corrections officers who were involved in that, their discussions with these individuals -- they told him to get on the ground. Certain things happened not that long in time and then he actually went to the ground. He dropped the shank and they actually put him in custody.

Ladies and gentlemen, this is a simple case. That's it. That's what happened and that's why we're here today. It's not complex and you're not going to hear from the State a bunch of craziness occurring. You're not going to see crazy CSI what you -- on TV or anything like that. It's a simple case.

A correction officer was struck by a rock and then the Defendant had in his possession a shank, a tool, you know, used to stick -- you know stab people or things like that in prison and --

MS. MACHNICK: Your Honor, I'm going --

MR. GUNNELL: -- that's it.

MS. MACHNICK: -- to object to argumentative at this point. I don't know if what if this is within --

THE COURT: Sustained.

MS. MACHNICK: Thank you.

THE COURT: Okay.

MR. GUNNELL: Ladies and gentlemen, the evidence will show, and

you'll hear testimony of that today, the evidence will show through three witnesses that we're going to call, the two corrections officers and a third who was there at the scene and overheard some statements, and he'll discuss those statements. Ladies and gentlemen, we'll just ask you at the end of the evidence that you find the Defendant guilty.

Thank you.

THE COURT: All right, thank you, Counsel.

Does the Defense wish to exercise their right for an opening at this time?

MS. MACHNICK: Your Honor, at this time, the Defense will be reserving the right for an opening statement to the opening of the Defense case.

THE COURT: All right.

MS. MACHNICK: Thank you.

THE COURT: Thank you.

State, call your first witness, please.

MS. KALLAS: The state's first witness is Dean Ontiveros. Oh, Your Honor, did you want to do the stipulations first --

THE COURT: Yes, we can -- go ahead and do the stipulation.

[Colloquy between State and Defense counsel]

The Defense and the State have stipulated that on December 4, 2015, Defendant Antonio Lee Mixon was in lawful custody at the Nevada Department of Corrections and was incarcerated at the Henderson -- or High Desert State Prison as a prisoner.

THE COURT: Is that correct, Defense Counsel? You are entering

into that stipulation?

MS. SISOLAK: That is correct, Your Honor.

THE COURT: Ladies and gentlemen, I had previously advised you that the evidence in this case comes from the witness testimony and any exhibits admitted into evidence, and also stipulated facts. The stipulation just read to you by the Deputy Attorney General is a stipulated fact by both sides. You are to consider that fact as proof for this case.

DEAN ONTIVEROS

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

THE CLERK: Please state and spell your first and last name for the record.

THE WITNESS: First name Dean Ontiveros.

THE CLERK: Spell your name, please?

THE WITNESS: Last name, O-N-T-I-V as in Victor-E-R-O-S.

THE COURT: Go ahead, Counsel.

MS. KALLAS: Court's indulgence.

Your Honor, may we approach?

THE COURT: All right.

[Bench conference begins]

MS. KALLAS: Are you going to read the instruction not --

THE COURT: I'm sorry?

MS. KALLAS: Were you going to read the instruction that Jason gave regarding the stipulation?

MR. GUNNELL: Yeah; we just need that read 'cause it's a --

THE COURT: Okay, I'll read it now.

MR. GUNNELL: Yeah.

THE COURT: Okay.

MS. SISOLAK: Thank you.

[Bench conference ends]

THE COURT: Ladies and gentlemen, as I had mentioned before, the parties have stipulated to the fact that the Defendant is an inmate, or was at the time of the alleged offense -- was an inmate in lawful custody in the Nevada Department of Corrections as a prisoner and he was incarcerated at High Desert State Prison at the time of the incident. You should not guess or speculate as to the reason why the Defendant was in the custody of the Nevada Department of Corrections. You cannot use the fact the Defendant was incarcerated or any fact that resulted in his incarceration for any purpose other than to establish the Defendant was in fact incarcerated at the time of the alleged -- that the events alleged. You may not convict a person simply because you believe he may have committed some other act at another time. Keep in mind that the Defendant is on trial for the crimes charged in this case and for these crimes only.

Go ahead, Counsel.

DIRECT EXAMINATION

BY MS. KALLAS:

Q Sir, how are you employed?

A [Indiscernible]

Q How are you employed?

A How? I don't understand the question.

Q What do you do for a living?

A Oh, what I do. Oh, my bad. I'm a correctional officer at the High Desert State Prison.

Q And how long have you been a correction officer with the prison?

A 12 years and some change, coming up on 13 in October.

Q As a correction officer, do you work at the Nevada Department of Corrections?

A Yes, ma'am.

Q Specifically, what are your job responsibilities as a corrections officer?

A Public safety, inmate safety, staff safety.

Q Could you take me through a typical day what you do exactly?

A Oh, if we're talking about the incident at hand, when I was --

Q Not at hand, just in general.

A Just in general --

Q Just your general specific responsibilities.

A As a sergeant for the Department of Corrections I'm responsible for about approximately 10 to 11 officers right now in the section that I work at. We prepare close to 4000 meals -- well, more than -- about 4000 meals a day for the incarcerated inmates. A typical day we just do what we do, you know, feed, get things ready, you know, um feed the inmates and go home.

Q And in December 2015 were you employed in that capacity?

A No; at that time I was a senior correctional officer.

Q And what were your job responsibilities at that time?

A I was basically a, like a junior sergeant within the unit. There was approximately -- we had approximately 168 inmates. I was in charge of training young officers, security of the officers and inmates, shake down, you know, searches, looking for whatever we had to do, walk medical personnel around when they do their pill calls and stuff like that. So, basically just oversee the whole unit of 168 inmates on a normal day, just make sure they're safe.

Q Mr. Ontiveros, are you familiar with the person by the name of Antonio Mixon?

A Yes, ma'am.

Q How is it that you're familiar with Mr. Mixon?

A Mr. Mixon was a inmate in my unit.

Q And do you see Mr. Mixon in the courtroom today?

A Yes, ma'am.

Q Could you please point to him and identify an article of clothing he's wearing?

A Tie and a, looks like a gray shirt or something. I can't --

MS. KALLAS: Your Honor, may the record reflect the witness has identified the Defendant?

THE COURT: Yes, it will.

BY MS. KALLAS:

Q Directing your attention to December 4th, 2015, were you working your capacity as a corrections officer on that day?

A Yes.

Q And what shift were you working?

A Working day shift.

Q And what hours does that entail?

A I was working twelves. I -- it was 5 to 5, 5:00 a.m. to 5:00 p.m.

Q And was that your normal shift?

A Yes, ma'am.

Q And which prison facility were you working at?

A High Desert State Prison.

Q Is High Desert State Prison located in Clark County, Nevada?

A Yes.

Q And could you just take me through the beginning of your day, how the day started?

A It starts every day we relieve the off going shift. We get a brief in what's been happening, you know, throughout the night. We end up feeding -- you know we have to feed the inmates. And basically, like I said, when they bring new officers in my job is to train them, ensure that I go through the operational procedures and everything else. And then we have different schedules like tier schedules for inmates to go out on tier or inmates to go out on yard. We have to ensure and, you know, make sure that we're watching them, you know, for any type of illegal activities that they might be doing, gambling or whatever the case may be. And it goes on all day with one hundred -- you got an officer upstairs and you got two on the floor.

Q And would you classify that as part of your normal routine?

A Yes.

Q And specifically on December 4, 2015, where in the prison were you working around 9:00 a.m. that morning?

A We had just -- I was -- we just let a group of inmates go out to the inner quad -- or inner yard for their yard time.

Q Could you describe what the, what did you say, the inner yard is?

A Yes, ma'am. It's a -- High Desert State Prison you have a -- you have quads. You have a unit called 5AB, 5CD, 6AB and 6CD. And the inner quad is where we let the inmates go out to get their exercise, handball, and do push-ups or whatever they want to do for recreation.

Q Could you describe, I guess, what it looks like, what the rec yard looks like?

A It's basically you have pull up bars on one side, cement slabs here in front of like 6AB, a cement slab in front of 5CD, cement slab in my unit which is 6CD where the inmates play handball. You got walkways and a lot of dirt and rocks.

Q And when you're out on the yard, did you see the Defendant at that time?

A Yes.

Q And was he alone or was he by himself?

A He was by himself.

Q And what, if anything, unusual happen when you saw the Defendant that morning?

A Well, it's just-- like I said, it was just like a real normal day. I

had an officer with me, his third day on the yard and I was teaching him the -- you know, the lay of the land --

Q And what was this --

A -- so to speak.

Q I apologize for interrupting; what was this--

A Right.

Q -- officer's name?

A Officer Macinnich.

Q Okay, I apologize. So, what if anything unusual happen?

A So, you know I was showing him the lay of the land of what inmates do what and just something about Mr. Mixon pacing back and forth. I said -- you know, it seemed like a red flag to me and I told him that's -- this is the kind of behavior you need to watch because when you're out there you'll see a routine of officers -- oh, excuse me, inmates doing their thing, handball, exercising, pull ups. One group always walks around in a, you know, clockwise circle and he was just by himself just pacing.

Q And what if anything happened next?

A Well, he just approached me. So like if we're standing in front of my unit when inmates want to go in to use the bathroom or anything like that they walk up to you and say, hey, oh, I need to go to the bathroom. I yell up at my officer upstairs to open up the door, let him in. And I thought that's what Mr. Mixon was going to do but he came up, stopped within I don't know 10 - 15 feet from me, reached down, picked up a rock and just threw it at me.

Q And when Mr. Mixon threw that rock, did he say anything to you?

A Nothing.

Q Had you said anything -- prior to him throwing that rock, had you said anything --

A No, ma'am.

Q -- to him? Okay, so he throws a rock at you. How big is that rock?

A About that big [witness demonstrates with his hands]. I couldn't even tell you. I don't know how big would that be; a little more than a golf ball.

Q And what happened after that?

A I was in shock. I never had that happen to me before. So, I took a couple of steps towards him and when I did that he reached down picked up another rock. And at this time I was like, what is he going to do with this rock and I started doing that dodge ball kind of thing. And when he just chucked it again, I kind of like twisted this way to -- you know, 'cause he hit me once in the abdomen, I was able to twist enough to where he hit my left thigh with the rock.

Q Okay, so you said that he hit you once in the abdomen and then he hit you once in the thigh?

A Yes, ma'am.

Q Okay, and how far away was the Defendant while he was throwing those rocks?

A I'd say anywhere between 10 to 15 feet away from me.

Q And at any time did you consent to the Defendant hitting you with those rocks?

A No, ma'am.

Q And prior to him -- the Defendant hitting you with the rocks, had you ever spoken to him?

A No, ma'am.

Q Had you ever met him?

A Nah, I --

Q And to your knowledge, did you and the Defendant have any issues?

A No, ma'am. I had no knowledge.

Q So at any time during this incident or prior to this incident, had you ever consented to the Defendant hitting you with rocks?

A No.

Q And did the Defendant say anything to you at all while he was throwing rocks at you?

A Nothing.

Q And did you say anything to the Defendant?

A When he hit me I said you -- I -- all I could do was react and I started walking towards him. Then when I started walking towards him he -- I quickened the pace after the second rock. Then he reached down before he hit the -- there's a sidewalk that leads to unit 5AB, right before he hit -- he had reached that sidewalk, he reached down, picked up another handful of dirt and rock and threw it in my direction again.

Q And did any of those rocks hit you?

A Yes, ma'am.

Q Where?

A Just all over the -- all over my body. It's just like -- it was like picking up a handful of dirt and rock. So when he did it I shield myself and when I went to pursue him again that's when I noticed him taking off his shoe and brandished that prison made weapon.

MS. SISOLAK: Your Honor, I'd object. May we approach?

THE COURT: Okay.

[Bench conference begins]

MS. SISOLAK: Your Honor, he's not charged with brand --

THE COURT: I'm sorry?

MS. SISOLAK: He's not charged with brandishing the shank. He's charged with having the shank. I would ask that this witness not be able to testify to something he's not charged with.

MS. KALLAS: It's his perception why he does it --

THE COURT: I'm sorry?

MS. KALLAS: -- brandishing -- it's his perception of what the Defendant was doing with that, how he was holding it, but [indiscernible] it's just a descriptive word of how he was holding a shank. I think its --

MS. SISOLAK: It's also a crime.

MS. KALLAS: It's a crime he's not charged with. It's called [indiscernible] possession which it also entails holding a shank. It's the same thing as brandishing.

MS. SISOLAK: But possession doesn't necessarily [indiscernible] than holding a shank though.

MS. KALLAS: I don't think the jury is going to be misled in regards to another bad act and the decision based on the fact that he's using the word brandishing.

MS. SISOLAK: [Indiscernible].

THE COURT: I'm sorry?

MS. SISOLAK: [Indiscernible] that the word brandishing is prejudicial.

THE COURT: I can't hear you. Say --

MS. SISOLAK: That the word brandishing is prejudicial. Holding is a different word than brandishing. Brandishing in and of itself is another bad act that they could have been charged.

THE COURT: Are you asking for a cautionary instruction at this time or just for me to direct him to -- walk him through that he just had, you know, [indiscernible] he's not using the word brandishing. [Indiscernible] request it.

MS. KALLAS: I mean I have a feeling he's going to say it again if we don't advise him not to obviously. I mean that's his way he described the -- it's his perception of the act.

MS. MACHNICH: [Indiscernible].

THE COURT: I'm sorry?

MS. MACHNICH: [Indiscernible] that we [indiscernible] to you, disregard that and want him to go [indiscernible].

THE COURT: Can you say was he [indiscernible] it, where was it? You can get around it. Just -- okay?

MS. KALLAS: Okay.

THE COURT: I'll instruct the jury to disregard the [indiscernible].

MS. SISOLAK: Thank you.

[Bench conference ends]

THE COURT: Ladies and gentlemen, the witness used the word brandishing. I am instructing you to disregard that answer.

Go ahead.

MS. KALLAS: May I proceed, Your Honor?

THE COURT: Yes.

BY MS. KALLAS:

Q So, you said the Defendant he hit you with a bunch of rocks and then you're walking towards him -- and you start walking towards him, what happened after that?

A He took off his shoe and reached into one of them. I was going to tell you exactly what shoe he picked up and pulled out a knife, a prison made weapon.

MS. KALLAS: Court's indulgence.

BY MS. KALLAS:

Q Could you describe what that item looked like?

A It's a shiny object to a point wrapped up with something so he wouldn't -- I don't know, just like -- I couldn't even explain what a prison made weapon is. It's just folded metal sharpened up to a point with this -- that's all I could see in his hand, just something shiny.

Q And where did you say he pulled that item out of?

A One of his shoes.

Q And is there a common term used to describe a prison made

weapon like this?

A Just a shank.

MS. KALLAS: Your Honor, may I approach the witness?

THE COURT: Yes.

BY MS. KALLAS:

Q I'm showing what's been previously marked State's proposed Exhibit number 2; will you take a look at that?

THE COURT: Defense, have you seen this?

MS. SISOLAK: Yes, Your Honor.

THE COURT: Okay.

MS. KALLAS: I provided them [indiscernible], Your Honor.

BY MS. KALLAS:

Q Do you recognize what's in that picture?

A It looks like the shiny object he had.

Q And is -- and again, what did you refer to this object as?

A A shank.

Q And is that a fair and accurate depiction of the shank you saw the Defendant holding?

A Yes, ma'am

MS. KALLAS: Your Honor, I'd move to admit this picture into evidence.

THE COURT: Defense?

MS. MACHNICH: No, objection.

MS. SISOLAK: No, objection, Your Honor.

THE COURT: It will be admitted.

[State Exhibit 2 admitted]

BY MS. KALLAS:

Q Now, did the Defendant say anything as he pulled the shank from his shoe?

A Nothing.

Q Were you saying anything to the Defendant?

A I tell you it happened so fast I probably could have said something but I think I said something like, that's it. I don't know.

Q And what did you mean by that's it?

A I -- when you start -- something like that happens, your adrenaline goes so high because now you're talking -- you know we have this thing -- use of force thing, a use of force to contain your men. When you start talking a weapon, its --

MS. MACHNICH: Objection, --

THE WITNESS: -- life or limb --

MS. MACHNICH: -- Your Honor, may we --

THE WITNESS: -- kind of stuff.

MS. MACHNICH: -- approach?

THE COURT: There is an objection?

MS. MACHNICH: Yes, Your Honor.

MS. SISOLAK: Yes, Your Honor.

THE COURT: What is the objection?

MS. MACHNICH: Relevance.

THE COURT: Overruled.

Go ahead; next question.

BY MS. KALLAS:

Q You can finish, --

A Oh, so --

Q -- Mr. Ontiveros.

A -- anyway, it was just -- it happened so quick and stuff like that. We just react. What I meant by what I said you're -- that's it, I was going to do everything possible to actually protect myself and probably him too just because there was a weapon involved, part of my training and job that I need to do.

Q All right. So, after the Defendant pulled a shank out of his shoe, what happened next?

A Apparent -- I heard other officers -- okay, I don't even know if it's true or not or what happened 'cause it happened so fast.

Q I need --

A Go ahead.

Q -- you to testify to what you do know to your knowledge.

A Okay, what I do know --

Q What you remember.

A -- is I heard somebody yell, get down on the ground. Then that's when the Defendant went ahead and threw himself to the ground and that's when I approached him. I -- per protocol, put my knee to hold him down and put him in a wrist lock until restraints can be put on him. I held him there because -- in that wrist lock because there's still a weapon in the area.

Q Okay, I just want to go back actually a little bit when the

Defendant pulls the shank out of his shoe; how is he holding it?

A Like this [witness demonstrates with his hands] -- in his right hand and just looking at me like -- you know.

Q Okay. So, after you said that he drop -- he eventually drops it?

A When he heard the responding officer say get on the ground.

Q Okay, and then after you put your knee on him, what happened?

A I just grabbed his right hand, put it in a wrist lock until other officers come by and one of my other officers said, I got this, and then he -- I let him go. He -- I gave control over to the other officer. They restrained him and that was the end of it, you know.

Q When you say restrained him, what do you mean?

A Put the wrist restraints, handcuffs on him.

Q And did you see where that -- the Defendant threw the shank?

A It was just in the area. I couldn't tell you exactly where it was but it was in front of him while he was on the ground.

Q And was there anyone else around while this was happening, any other inmates?

A We had a yard full of inmates. Well, I couldn't give you an exact amount, but there were inmates -- yes, they were out -- inmates around us.

Q How far away was the closest inmate to the Defendant while this was happening?

A I'd say maybe from here to that wall, the corner.

Q About how many feet would you estimate? I'm not good at it.

A I couldn't even tell you.

UNKNOWN SPEAKER: 30?

BY MS. KALLAS:

Q About 30 feet?

A Maybe 25 yards.

Q And that -- and so as this was going on was the Defendant saying anything to you?

A Once we put restraints on him and I stood up and the other officers were holding him down, he said something to the point that you're lucky my friends were here.

MS. SISOLAK: Objection, Your Honor.

THE COURT: He said what?

MS. SISOLAK: May we approach?

THE WITNESS: You're lucky my friends are here.

THE COURT: Approach.

[Bench conference begins]

MR. GUNNELL: [Indiscernible].

THE COURT: Who's going to argue? Come closer to the mic.

MS. MACHNICH: Okay, um, Your Honor, we're going to object as to one discovery violation. This was not provided us. Something like this was mentioned this morning in passing by the AG and actually a different version of the statement was told to us right before they started their case so we didn't know that this happened. All this threat-ish statement was not in the officer's report and it was not provided to us as a statement of the Defendant at any point and an incorrect version of it was provided to

us earlier today, and so we would object pursuant to *Brady*, pursuant to the discovery law and --

MS. SISOLAK: Your order.

MS. KALLAS: And, Your Honor, I did tell them almost specifically [indiscernible] that you did say that you're lucky your friends were around, so I don't understand it.

THE COURT: I'm sorry; say --

MS. SISOLAK: That's not --

MS. KALLAS: I did let them know this morning that he did say that you're lucky your friends are around, so I don't think that was provided to them this morning.

UNKNOWN SPEAKER: [Indiscernible] --

MS. KALLAS: As far as *Brady*, I don't think its exculpatory whatsoever and it goes -- but there[s also a statement that have been provided to them that you're lucky -- along the lines of you're lucky I had that shank or I would have stuck your [indiscernible]. I think this is essentially in accordance with that same type of behavior. It's not a bad act. It's not a threat.

MS. MACHNICH: Well, he --

MS. KALLAS: He's talking trash.

MS. MACHNICH: What that officer just testified to is not the same thing she just said. He said you're lucky my friends aren't around.

MR. GUNNELL: [Indiscernible].

MS. MACHNICH: Those are two different things.

THE COURT: You [indiscernible two people -- who's handling the

witness?

MS. MACHNICH: What?

THE COURT: You're handing the witness and you're handling the witness?

MS. MACHNICH: You handle this.

MS. SISOLAK: I'm handling this, Your Honor.

THE COURT: Okay. [Indiscernible] --

MS. SISOLAK: I understand.

THE COURT: The parties who handle the witness argue the motion.

MS. SISOLAK: I understand. The issue I have, Your Honor, is that we were -- [indiscernible] Ms. Kallas [indiscernible] similar understanding this morning. It is in none of the reports and it is not in any of the discovery provided per your order. I have never heard it until this morning and it's a violation. If it was disclosed to me this morning it's a violation.

MS. KALLAS: And, Your Honor, I do [indiscernible] was disclosed. I -- Mr. Ontiveros acknowledged to me that he didn't put it in his report and he didn't think -- I think he thought it was [indiscernible] whatever his reasons [indiscernible] when I found out about it. I disclosed it to them this morning. I don't think it's prejudicial in any way. She can discuss it -- with him during cross-examination. And, again, he made that same statement, you're lucky, you know I would have stuck you in the [indiscernible] if you didn't have that knee.

THE COURT: Okay, [indiscernible]--

MS. SISOLAK: And

MS. KALLAS: He's making threat and talking --

THE COURT: -- you turned over --

MS. KALLAS: -- trash.

THE COURT: -- all reports this morning, its not in any of your reports?

MS. KALLAS: No.

MS. SISOLAK: And, Your Honor, I do want to clarify. If the statement is you're lucky your friends were around are referring to the officers, co-officers, we have a completely different story then if the statement is you're lucky my friends weren't around, as in my client's friends.

MS. KALLAS: I can ask him. I'm not sure which one is --

MS. SISOLAK: The violation is the same but one is obviously more prejudicial than the other.

MS. KALLAS: I have --

MS. SISOLAK: And we can inquire which it was.

THE COURT: How does he remember this after a year and a half to two years?

MS. KALLAS: I'm sorry, what?

THE COURT: How does he remember this if it's not in any report?

MS. KALLAS: [Indiscernible], not sure, Your Honor. I can ask him again. I'm not sure if he said my friend. I can ask him to explain what he meant by my friends, if he was talking about --

MS. SISOLAK: It's still a *Brady* violation.

MR. GUNNELL: Again, it's not *Brady.*

MS. KALLAS: It's *Brady*; it's not exculpatory.

MR. GUNNELL: It's exculpatory.

MS. SISOLAK: All [indiscernible] -- discovery.

MR. GUNNELL: That -- it [indiscernible].

MS. SISOLAK: *Brady* is not exculpatory.

MR. GUNNELL: It's not *Brady*. It's a different rule -- discovery --

MS. SISOLAK: It is a --

MS. KALLAS: And its --

MS. SISOLAK: -- statement --

MS. KALLAS: -- not prejudicial --

MS. SISOLAK: -- by my client --

MS. KALLAS: -- [indiscernible].

MS. SISOLAK: -- that I am entitled to --

THE COURT: Okay.

MS. SISOLAK: -- that you ordered me to have.

THE COURT: So what are you requesting?

MS. KALLAS: And, Your Honor, I did find out about it after when I did my witness prep after your order.

MS. SISOLAK: I would ask that it be stricken and that he not be able to -- that the State may not be allowed to inquire any further into that statement in any way.

MS. MACHNICH: [Indiscernible].

MS. SISOLAK: And that the jury disregard it.

THE COURT: Does this go to any other issues by the Defense?

MS. SISOLAK: Not that I can [indiscernible] at this point, Your Honor.

THE COURT: No, I'm going to allow it, okay.

MS. KALLAS: Okay, thank you, Your Honor.

MS. SISOLAK: Thank you, Your Honor.

[Bench conference ends]

THE COURT: Objection overruled.

MS. KALLAS: Okay, and, Your Honor, may I approach the witness?

THE COURT: Yes.

BY MS. KALLAS:

Q Mr. Ontiveros, I'm showing what's previously marked State's proposed Exhibit number 1. Can you take a look at that picture; do you recognize what's in that picture?

A Yes.

Q And what is that?

A An officer pointing at the shank. He put a pen there to see how long -- you know, to verify the length of it more or less.

Q And is that the shank that you saw the Defendant holding?

A Yes.

Q Okay. And what else do you recognize in that picture?

A Mr. Mixon.

Q And do you -- is that a fair and accurate depiction of the Defendant and the shank he was holding after he was placed in those restraints?

A Yes.

MS. KALLAS: Your Honor, I move to admit State's Exhibit 1.

MS. SISOLAK: No, objection, Your Honor.

THE COURT: It will be admitted.

[State's Exhibit 1 admitted]

MS. KALLAS: Court's indulgence.

[Colloquy between State Counsel]

MS. KALLAS: I'll pass the witness, Your Honor.

THE COURT: Any cross-examination?

MS. SISOLAK: Yes, Your Honor. Court's indulgence.

CROSS-EXAMINATION

BY MS. SISOLAK:

Q Mr. Ontiveros, so in talking about that day, after Mr. Mixom was cuffed, what was your next action?

A Waiting for the -- waiting for people to come and you know like the incident commander and whoever. Medical was called so I can get assessed at the scene.

Q Did you have any injuries?

A Just a sore stomach and a sore thigh.

Q Were any pictures taken of those injuries?

A No, but I was sent to Concentra.

Q What does that mean?

A Concentra is like if anything that happens within the prison and you get hurt, injured, slip, fall, whatever, it's a protocol that we use with a C-1 packet that we have to go to see to Concentra to ensure that you know there's no injuries.

Q And you took part in a C-1 packet interview or you filled out a C-1 packet?

A Yes.

Q Did you provide that to the State?

A No.

Q Do you have a copy of that?

A No, ma'am.

Q Does the prison keep a copy of that?

A They should.

MS. SISOLAK: Your Honor, may we approach?

THE COURT: Okay.

[Bench conference begins]

THE COURT: The C-1 forms are a worker's comp form, just so [Indiscernible] familiar with that; that's what it is.

MS. SISOLAK: Your Honor, but its directly related to any injuries that the victim had in this case.

THE COURT: [Indiscernible].

MS. SISOLAK: But the statement of --

MR. GUNNELL: It's a what?

MS. SISOLAK: -- it's directly --

MS. KALLAS: We can't hear.

MS. SISOLAK: -- related to the incident. I mean I've had -- I filed a workman's comp claim. I had to write a statement of what happened. And the witness testified that he provided a statement in the C-1 packet and conducted a -- potentially an interview and a C-1 packet.

THE COURT: So in the C-1 form you have to write down what happened.

MR. GUNNELL: I think he already did that as [indiscernible].

MS. SISOLAK: That's our client's medical record.

MR. GUNNELL: Yeah, but our guy didn't get any injuries.

MS. SISOLAK: But he still filed a workman's comp claim.

THE COURT: No, but the C-1 form --

MS. KALLAS: And that's the [indiscernible] that we're hearing about, that he filed a [indiscernible] because it was our understanding that he didn't have any injuries and we spoke to the prison and we asked if there was any medical records in regards to this happening --

THE COURT: Well, --

MS. KALLAS: -- but [indiscernible] not had any treatment. He didn't, so --

THE COURT: I'm not concerned about the injury. In the C-1 form it says what do you injuries or how did it happen. So he would have wrote down whatever, and his take of how it happened.

MS. SISOLAK: It's an additional statement [indiscernible].

MS. KALLAS: I understand. That's -- it's just our first, to be honest, ever hearing about the fact that he ever filed the claim and that he would ever had any kind of [indiscernible].

MR. GUNNELL: Who filed the worker's comp?

MS. SISOLAK: He did.

THE COURT: [Indiscernible] but I know he [indiscernible] false. He's has a, you know, a bruised ego --

MS. SISOLAK: I was --

THE COURT: -- he fell on the ground.

MR. GUNNELL: Well, my understanding --

THE COURT: It's tough to fill out the C-1 form. He says he filled one out.

MR. GUNNELL: My understanding of this, Your Honor, the form he filled out wasn't -- it was the -- it was for the Defendant. It wasn't for [indiscernible]. That's --

MS. MACHNICH: No, you're thinking of a medical form [indiscernible] because [indiscernible] separate from a worker's comp.

MR. GUNNELL: But he just testified that that was scrapes and bruises and --

MS. SISOLAK: He testified to his sores to make his sore thigh. And he said what did you do next; he said I went to Concentra --

MR. GUNNELL: Okay.

MS. SISOLAK: -- and filled out a C-1.

THE COURT: A C-1 form.

MR. GUNNELL: Okay.

MS. SISOLAK: I'd ask that the witness' testimony be stricken.

THE COURT: On his entire testimony or --

MS. SISOLAK: Any testimony as to what occurred. He filled out a statement that we don't have.

THE COURT: Regarding the C-1 form?

MS. SISOLAK: He shouldn't be able to testify to anything included in that statement which was the entire event.

THE COURT: Okay, I'm not sure, are you asking just that the testimony regarding him going to the office and filling out a C-1 form be stricken or what?

MS. SISOLAK: I'm asking that his testimony as to the incident that was memorialized in the C-1, so the entire event be stricken. I don't have it.

THE COURT: So all of his testimony?

MS. SISOLAK: Yes.

MS. KALLAS: And, Your Honor, I object to that. She can obviously cross [indiscernible] what he wrote and what he stated in -- on that form [indiscernible] but I don't think his entire testimony needs to be stricken.

MS. SISOLAK: We don't know what's in that statement.

THE COURT: All right.

MS. SISOLAK: Chances are, quite frankly, Your Honor, two years later [indiscernible].

THE COURT: Are you seeking a mistrial?

MS. MACHNICH: Potentially with prejudice [indiscernible].

THE COURT: I mean potentially, yes or no? I --

MS. SISOLAK: With --

MS. MACHNICH: It would be [indiscernible] --

MS. SISOLAK: It would be --

MS. MACHNICH: -- prejudice, --

MS. SISOLAK: -- prejudice.

MS. MACHNICH: -- not without prejudice. [Indiscernible] direct violation and the [indiscernible], something [indiscernible]. This case is going on for two years. The State's known about it and they didn't turn this over in a timely manner and this is their complaining witness.

MS. KALLAS: And, Your Honor, since this is our first time that we've

ever heard about him [indiscernible] making a worker's comp claim or anything like that, it was our understanding he didn't have any injuries from it so why would we look into whether or not he needed a --

MS. MACHNICH: It's --

MS. KALLAS: -- worker's comp if he didn't have any --

MS. MACHNICH: -- Your Honor, its --

MR. GUNNELL: Why would he --

THE COURT: Okay, wait, wait. Who's talking?

UNKNOWN SPEAKER: [Indiscernible].

THE COURT: The point is it's not the injuries because he wrote a witness -- he may not have written a statement. [Indiscernible] typically what happened. That's what --

MS. KALLAS: But I don't think its --

THE COURT: -- I've seen them.

MS. KALLAS: -- our duty to investigate every single thing that -- how would we have known that he ever did a worker's comp?

THE COURT: I'm not making any statement right now that it was intentionally withheld by your office.

MS. SISOLAK: No, Your Honor, --

THE COURT: I'm not making that.

MS. SISOLAK: -- I'm not making the accusation that it was intentionally withheld. I making the accusation that for whatever reason nobody inquired what happened next because what happened next was he went to a place where he filled out a statement that we know now. It absolutely is the State's responsibility to inquire into is there anything

else that you wrote down in your version of the story.

MS. KALLAS: And, Your Honor, even if somehow -- obviously, we don't think that his testimony should be stricken and I don't think there needs to be a mistrial yet. Other witnesses who've witnessed the event can still testify as to what happened.

THE COURT: But they don't have his statement. So, --

MS. KALLAS: I understand.

MS. SISOLAK: And, quite --

MS. KALLAS: But, Your Honor, I'd like --

THE COURT: -- it's a motion for --

MS. SISOLAK: -- frankly, Your Honor, --

THE COURT: -- discovery.

MS. KALLAS: -- to ask him about [indiscernible]. We don't know anything about this [indiscernible] and so I'd ask --

MS. SISOLAK: Quite frankly, Your Honor, the next witness they're calling -- I don't have a statement from either. I have no statement from this officer. My --

MR. GUNNELL: He didn't make a statement.

MS. SISOLAK: But my entire line of --

THE COURT: Okay, hang on, hang on.

MS. KALLAS: He didn't make a statement because --

THE COURT: But the problem is the injuries [indiscernible].

MR. GUNNELL: Yeah.

THE COURT: Okay. No, but in the C-1 form that asks what did you -- what happened and he would have wrote down what happened

which is a statement by him. You had a motion for discovery in this case?

MS. SISOLAK: We did and you granted the order. I prepared --

THE COURT: Okay.

MS. SISOLAK: -- the order and the State signed off on it and its been filed.

THE COURT: You know, this may say -- this may be 100% consistent with what he's testified to, okay? It may be. But it was supposed to be turned over. I'm not saying you guys were [indiscernible]. I'm not saying it was intentional. I'm not making that finding now, okay? But it was supposed to have been turned over. If you're on their side you would say, hey, you didn't turn over the statement you would have been making the same motion.

MS. KALLAS: Well, did he even testify that he made a statement? Didn't he just say that he filled out a form?

MS. SISOLAK: He said he completed --

MS. KALLAS: Do we know that --

MS. SISOLAK: -- an interview --

MS. KALLAS: -- he actually --

MS. SISOLAK: -- and filled out a statement. I'll ask him again.

THE COURT: Why don't you ask to clarify; okay?

MS. SISOLAK: Thank you.

[Bench conference ends]

THE COURT: All right, next question, Counsel.

BY MS. SISOLAK:

Q Mr. Ontiveros, when you proceeded to, I think you said it was

Concentra --

A Yes.

Q -- and you began the C-1 proceedings, did you fill out a statement?

A Yeah. We have to do our reports before we leave the institution.

Q So, when you got to Concentra, did you fill out a C-1 packet?

A You fill it out before you go.

Q So, at some point you wrote down on a C-1 form various information pertaining to this incident?

A The C-1 packet -- for me to explain what that is, it's a -- basically, it's an injury report as -- you know 'cause -- I don't know, you slam your finger, you slip and fall, you have to fill out a C-1 form.

Q So, if you are injured in any matter -- in any manner, you fill out a document as to how you were injured?

A Yes.

Q Do you, in that document, give any sort of narrative as to how the injury occurred? For instance, would you say I was exiting my car door and as I slammed the door my finger got caught; is that something that you would include in the report?

A Sure.

MS. SISIOLAK: Your Honor, may we approach?

THE COURT: Okay; both Counsel.

[Bench conference begins]

MS. SISOLAK: I would ask if Your Honor is not inclined to grant a

mistrial with prejudice or dismiss the entire -- the witness' entire testimony, I'd ask for a curative instruction and that the jury be --

THE COURT: I'm not going to strike his testimony. I have to grant a mistrial and I don't want to but there's a report that was ordered. It's not -- I'm sure it's not in your packet.

MS. KALLAS: It's absolutely not. We --

THE COURT: No, I'm not --

MS. KALLAS: -- reached out to the Inspector General's Office.

THE COURT: Your office has never had a reputation --

MS. KALLAS: This is literally the first we've ever --

THE COURT: -- of withholding evidence. I'm not aware of any, but this form, he just testified [indiscernible] as to how it occurred. It was not turned over --

MS. SISOLAK: And --

THE COURT: -- to you which in turn was not turned over to them.

MS. SISOLAK: -- I'm not insinuating that Ms. Kallas or Mr. Gunnell --

THE COURT: I know. I'm not making any finding.

MS. SISOLAK: I'm just [indiscernible] --

MS. KALLAS: Is there any way we can just strike his testimony --

MS. SISOLAK: -- it was grossly --

MS. KALLAS: -- and then have --

MS. SISOLAK: -- negligent.

MS. KALLAS: -- another witness testify?

MR. GUNNELL: There could be an issue with [indiscernible] turning

over because if it's his medical records --

MS. SISOLAK: It can be --

MR. GUNNELL: -- that could be HIPAA.

THE COURT: No, it's not a --

MS. SISOLAK: It can be turned over, redacted.

THE COURT: -- medical form. It's a form that you fill out. It says I hurt my knee, I slipped on a banana.

MS. SISOLAK: I only know about this because I was exposed to measles at trial and I had to fill it out but I didn't get measles but I had to say my client breathed on me.

MS. KALLAS: Your Honor, if you do [indiscernible], I was just asking if -- I'd rather his testimony be stricken. We do have other witnesses that could come testify in --

MS. SISOLAK: Your Honor, --

MS. KALLAS: -- regards to this event. I think a curative instruction would cure any type of prejudice that the jury possibly -- is possibly hearing his testimony. There was another witness to this event.

MS. MACHNICH: The [indiscernible].

MS. KALLAS: Defense is aware of that.

THE COURT: Is there other witnesses who would say they saw him throw rocks and hit him?

MS. KALLAS: Absolutely; there's a person who testified that there was someone standing right next to him.

MS. SISOLAK: Your Honor, this person --

MS. KALLAS: I think that he's not -- they're not going to be

prejudiced. I think the curative instruction -- essentially, his testimony is going to be the exact same [indiscernible] so I think if you strike his testimony and give a curative instruction he's not going to be prejudiced by --

MS. SISOLAK: Your Honor, I'm still asking --

MS. KALLAS: -- and -- all --

MS. SISOLAK: -- for --

THE COURT: Hang on. Let her finish.

MS. SISOLAK: Go ahead; I'm sorry.

MS. KALLAS: And not only that, obviously I don't feel that this -- we don't feel that these statements are exculpatory and [indiscernible] made. I don't think the Defendant's prejudiced -- I mean I don't think that --

THE COURT: Well --

MS. KALLAS: -- the jury is going to -- [indiscernible] the jury [indiscernible] file a curative instruction. I think that, again, they're going to hear the same testimony from someone else. There's nothing that they heard that they're not going to hear from Officer Mcannich. We have [indiscernible] making a statement inconsistent with what he has already testified to.

THE COURT: But we don't know what he said.

MS. SISOLAK: But, Your Honor, --

THE COURT: That's the problem and I ordered the State to [indiscernible] any statements --

MS. SISOLAK: And --

THE COURT: -- to be turned over.

MS. SISOLAK: But, Your Honor --

MS. KALLAS: And strike his testimony but I don't think we need a mistrial based on that fact, Your Honor.

MS. SISOLAK: But, Your Honor, then they're asking you to move forward with the trial with no victim.

THE COURT: Well, they can --

MS. KALLAS: We absolutely still have a victim. You don't need --

THE COURT: They can still --

MS. KALLAS: -- a victim to testify just to --

MS. SISOLAK: I -- understand that they can have this other witness testify to what he believes is [indiscernible] -- [indiscernible], I'm still asking for a mistrial with prejudice. They didn't turn over a statement. At very best, it's grossly negligent.

MS. KALLAS: And its -- but it's not exculpatory [indiscernible].

THE COURT: Well, we don't -- see, the --

MS. KALLAS: -- and I think its --

THE COURT: -- problem is I ordered all statements to be turned over. You were not aware of this. This is not -- I don't find it intentional but the bottom line is if the roles were reversed and you have a witness who probably filled out statements and lo and behold they didn't turn them over to you, you would scream bloody murder because they're ordering reciprocal discovery to turn over documents to you.

MS. KALLAS: Well then, Your Honor, I'd ask that a curative instruction be given and I would ask that his -- I'd rather his testimony be stricken.

MS. SISOLAK: It's not a problem we can cure.

THE COURT: Right. Right.

MS. KALLAS: I think it's absolutely a problem --

THE COURT: I'm going to --

MS. KALLAS: -- we can cure.

THE COURT: -- declare it a mistrial; okay?

MS. SISOLAK: Is that going to be with prejudice, Your Honor?

THE COURT: No. You can file a motion later on that I didn't find any intentional act of bad faith or outrageous conduct on behalf of the Attorney General's Office.

MS. SISOLAK: But --

MS. KALLAS: Are we going to pick the next jury tomorrow?

THE COURT: We'll do it in --

MS. KALLAS: And, Your Honor, as a [indiscernible] finding --

MS. MACHNICH: Can we -- are we going [indiscernible] and pick the jury tomorrow?

MS. SISOLAK: Another jury?

THE COURT: What?

MS. MACHNICH: Are we going to try this case again tomorrow? I mean can we start over again [indiscernible] --

MS. KALLAS: We'll look into the statement [indiscernible] --

THE COURT: I don't know.

MS. SISOLAK: I mean --

MS. KALLAS: It's still a day and a half --

THE COURT: I doubt it because you know the jury commissioner

[indiscernible] tomorrow is Wednesday. Normally, we [indiscernible] Tuesday for the --

MS. SISOLAK: I understand, Your Honor. But the issue --

THE COURT: I'll set a short trial date --

MS. SISOLAK: -- but Your Honor, --

THE COURT: -- if you can put this together in two weeks.

MS. SISOLAK: Part of the issue is --

THE COURT: You can file any motions for dismissal.

MS. SISOLAK: Your Honor, I'm set in your department every week from now till kingdom come. Like, I have a trial set every week until March.

MS. KALLAS: We can get the statement. We can look into it [indiscernible] statements today hopefully if we get out of here and --

MS. SISOLAK: Your Honor, --

MS. KALLAS: -- get [indiscernible] them, get it done.

THE COURT: We're just -- I'm going to put this on calendar for Thursday for resetting a trial date.

MS. SISOLAK: Your Honor, can we get on the record that you're considering the conduct grossly negligent?

THE COURT: I'm sorry?

MS. SISOLAK: That we're considering the --

THE COURT: I'm saying there's nothing in front of me at this time to show intentional [indiscernible].

MS. KALLAS: And then that's --

MS. SISOLAK: Not intentional. I'm asking if you would deem it

grossly negligent which is unintentional negligence.

THE COURT: No, I'm not making any finding on that. You can file a motion [indiscernible] you have other information, but right now I don't have enough evidence to make that finding.

MS. KALLAS: And, Your Honor, I would --

MS. SISOLAK: Thank you, Your Honor.

MS. KALLAS: -- ask that since you are going to grant a mistrial that it be on the record why the jury is somehow so prejudiced that a mistrial was necessary --

THE COURT: I'm just going to advise --

MS. KALLAS: -- and a curative instruction.

THE COURT: -- them there's a legal issue to grant a mistrial.

MS. SISOLAK: Thank you, Your Honor.

MS. KALLAS: Thank you.

[Bench conference ends]

THE COURT: Ladies and gentlemen, during trials legal -- various legal issues arise and in this case a legal issue has arisen which is requiring me to declare a mistrial. It's not something that I do lightly. And unfortunately, I feel it's to protect everyone's constitutional rights in this matter that I do declare a mistrial. I do find it a manifest necessity that I do declare a mistrial. I apologize to all of you. You were here ready, willing, and able to serve and unfortunately we can't go forward.

So, you are discharged with my thanks for being here today. I hope this doesn't sour, you know, sour you for future jury service. I have been advised by the Jury Commissioner, after someone's been

empaneled, you are out of the computer for about 18 months so you should not be receiving another jury summons either in federal court or state court and we welcome you back when you get your next jury summons.

So, again, thank you very much for your time today. The marshal will pick up your badges.

[Colloquy between Court and clerk]

THE COURT: Okay, what we're going to do, ladies and gentlemen, the marshal's just going to escort you to the jury room and he'll give you further information; if you could just follow the marshal. Leave your notepads, your badges, and your pens on your chair and just follow the marshal, please.

THE MARSHAL: All rise for the exiting of the jury.

[Outside the presence of the jury]

MS. KALLAS: Your Honor, may we make a brief record on this?

THE COURT: Yes, that's why we're going to do that -- the -- everything is recorded in my courtroom. However, the recording system at the bench is not the best --

MS. SISOLAK: Understood.

THE COURT: -- and so that's why I was going to have the officer leave and then I'll put it on the record.

Ms. Sisolak, you made a motion for a mistrial which I granted. Would you please put it on the record the basis for that motion?

MS. SISOLAK: Your Honor, I did ask Your Honor to grant us a mistrial based on the fact that there is a statement in a C-1 form that was

filled out by Officer Ontiveros that would have been required to be turned over in discovery. The Defense would allege that because it is protected by the order and we did not receive the statement, we are entitled to the mistrial. We did ask Your Honor to issue that mistrial with prejudice, and I believe we discussed that I would file a motion and we would determine that at another time.

THE COURT: All right, State.

MS. KALLAS: And, Your Honor, we're obviously going to be objecting to the declaration of a mistrial. As I stated at the bench, the very first time we ever heard about any type of workers comp claim was today when Officer Ontiveros made that statement on the stand. It's the first time I've ever heard it. We reached out to the Inspector General's Office which is the investigators on this case. We've asked for every and anything that they have in relation to this case and they told us that we had everything. In Mr. -- in Officer Ontiveros' report and any statements he's ever made to me I don't -- he didn't write about any injuries. He -- I mean he essentially was hit by a rock. We didn't have any reason to believe that he would then have to make a workers comp claim about this, that he wasn't working anymore, anything like that. So obviously it wasn't intentional whatsoever.

Also, we obviously don't think that it was anything exculpatory and we don't believe it was a *Brady* violation. He didn't make any comments that were inconsistent with the statements that he has previously made.

So, I would be objecting to a mistrial based on that. I think that

a curative instruction could have cured any type of prejudice in regards to Officer Ontiveros' testimony. And -- Court's indulgence.

[Colloquy between State Counsel]

MS. KALLAS: Just brief indulgence, Your Honor. We're just looking at the discovery motion.

THE COURT: Sure.

[Colloquy between Court, recorder, and clerk]

MS. KALLAS: And again, Your Honor, I just want to emphasize the fact this wasn't a statement that we had that was in our possession that we just decided not to turn over. We were absolutely unaware of it. Officer Ontiveros, I've spoken with him a couple of times, has never once mentioned it. The Inspector General's Office has never mentioned it. No one in relation to this case ever has. So, again, it wasn't an intentional violation.

THE COURT: Well, at this point I don't find any intentional act on behalf of the State, nor do I find any -- actually, I don't find any egregious conduct or recklessness on behalf of the State because it wasn't part -- I'm assuming -- well, I know the C-i [sic] form is strictly a worker's comp slap in the face, a trip and fall, or a broken leg. Its -- I'm sure it -- unless I've been proven otherwise, it's not part of the investigation files. It's more of an administrative file, something internal. However, the Court did order that all statements by the witnesses be turned over and this is a statement by the witness that was not turned over. I don't believe at this point that the State was aware that there was a C-i [sic] form, and so I'm not dismissing this case with prejudice. And so, that's my ruling. We'll

come back on Thursday for resetting of new trial date.

THE CLERK: January 4th, at 8:30.

MS. MACHNICH: Your Honor,

MS. SISOLAK: Your Honor, --

MS. MACHNICH: -- just to clarify that your ruling that the State has not acted with bad faith or gross negligence at this time and you're not granting a mistrial with prejudice; is that a ruling without prejudice allowing us to brief the matter and potentially file a motion?

THE COURT: Well, if you can -- if you have any evidence that they were aware of this, that it's intentional or gross negligence, then file the appropriate motion.

MS. SISOLAK: Will do, Your Honor.

MS. KALLAS: Thank you.

THE COURT: Thank you, everybody.

THE MARSHAL: All rise. Department 17 is now adjourned.

[Proceedings concluded at 4:46 p.m.]

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

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Steven D. Grierson
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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

ANTONIO MIXON,

Defendant,

CASE NO. C-17-327439-1

DEPT. NO. XVII

DATE: February 15, 2018
TIME: 8:30 a.m.

Approved by Dept. 17 LC

MOTION FOR CLARIFICATION ON LAST RULING AND ORDER

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office requests that the above entitled matter be placed on calendar on the February 15, 2018, at 8:30 a.m. in District Court Department No. XVII, for the purpose of Clarification on Last Ruling and Order.

DATED this 9th day of February, 2018.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/Ashley L. Sisolak*
ASHLEY L. SISOLAK, #13958
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and forgoing MOTION was served via electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountyda.com on this 9th day of February, 2018.

By: */s/Konie J. Baldwin*
An employee of the
Clark County Public Defender's Office

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. ANTONIO MIXON, #1968172 Defendant.	CASE NO. C-17-327439-1 DEPT. NO. XVII DATE: March _____, 2018 TIME: 8:30 a.m.

MOTION TO DISMISS BASED UPON VINDICTIVE PROSECUTION

COMES NOW, the Defendant, ANTONIO MIXON, by and through ASHLEY SISOLAK, Deputy Public Defender and hereby moves the court to enter an order granting Defendant's Motion to Dismiss, and dismiss the charges against him with prejudice.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 5th day of March, 2018.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/ Ashley Sisolak*
ASHLEY SISOLAK, #13958
Deputy Public Defender

Case Number: C-17-327439-1

DECLARATION

ASHLEY SISOLAK makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and the Defendant has represented the following facts and circumstances of this case.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 5th day of March, 2018.

/s/ Ashley Sisolak
ASHLEY SISOLAK

STATEMENT OF FACTS

On August 18, 2017, the State of Nevada Attorney General's Office filed charges of BATTERY BY A PRISONER, Category B Felony, NRS 200.481(2)(f) and POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACIMILE BY AN INCARCERATED PERSON, Category B Felony, NRS 212.185(c) against the Defendant, Antonio Mixon in relation to a prison yard incident at the High Desert State Prison on December 4, 2015.

On December 7, 2015, Mr. Mixon appeared before Disciplinary Hearing Officer Sgt. Barth at the High Desert State Prison to answer an NDOC notice of charges for GANG ACTIVITIES, POSSESSION OF CONTRABAND, BLOCKING/THREATENING STAFF, and ASSAULT related to the same incident. Mr. Mixon was found guilty of all charges, and sanctioned to a total of 78 months in Disciplinary Segregation, Stat A Loss referral, Property Forfeiture, and Restitution. Mr. Mixon timely appealed the sanctions as too harsh, and on December 23, 2015, the High Desert Acting Warden reduced the sanctions to 24 months total D-Segregation with Stat A Loss referral. When being notified of the Warden's decision, Mr. Mixon was informed the case was "closed."

Following the closure of the disciplinary process at High Desert, Mr. Mixon filed several separate civil rights lawsuits in the U.S. District Court, in accordance with his Constitutional rights, for example suits were filed on August 24, 2016 and October 24, 2016. (See Exhibit A and B respectively) The named defendants in these various suits include; Ely State Prison, High Desert State Prison, the State of Nevada, the Nevada Department of Corrections, various wardens and corrections officers.

On August 9, 2017, Criminal Investigator Victor Daniel completed an investigation, concluding there was "sufficient probable cause" to file charges if BATTERY BY A PRISONER, and POSSESSION OR CONTROL OF DANGEROUS WEAPON OR

FACSIMILE BY AN INCARCERATED PERSON. As noted above, the charges were filed on August 18, 2017.

On January 2, 2018, the Honorable Judge Michael P. Villani granted a State's motion for a defense proffer, outside the presence of the State as it related to the defense at trial and the witnesses noticed by the defense. At that time Judge Villani allowed the Defense to proceed. Later that day a mistrial was granted on unrelated issues. On February 8, 2018 the Judge sua sponte placed a status check on calendar informing the Defense that if they intended to use the prior defense a pretrial motion would be necessary. The trail defense was then revealed to the State in an email dated February 8, 2018, from the department.

ARGUMENT

If a defendant exercises a constitutional, statutory, or procedural right and a prosecutor files charges or seeks the imposition of a harsher sentence, then that prosecutor acts vindictively. See Blackledge v. Perry, 417 U.S. 21, 28-9 (1974). "To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort." Bordenkircher v. Hayes, 434 U.S. 357, 363 (1977).

To establish prosecutorial vindictiveness, a defendant must show, through objective evidence, that (1) the prosecutor acted with genuine animus toward the defendant and (2) the defendant would not have been prosecuted but for that animus. U.S. v. Wilson, 262 F.3d 305, 314 (4th Cir. 2001) (citing U.S. v. Goodwin, 457 U.S. 368, 380 (1982)). Alternately, if a defendant cannot present direct evidence of animus or vindictiveness on the part of the prosecutor, he may "present evidence of circumstances from which an improper vindictive motive may be presumed." Wilson, 262 F.3d at 314. By creating the presumption, the burden then shifts to the State to "justify its conduct." Id. "The "prophylactic" doctrine is designed, in part, "to prevent chilling the exercise of [legal] rights by other defendants who must make

their choices under similar circumstances in the future." United States v. DeMarco, 550 F.2d 1224, 1227 (9th Cir. 1977).

1. Appearance of Vindictiveness against Antonio Mixon

It appears the Nevada Department of Corrections viewed the facts of this case as relatively easy to discern and adjudicate. Mr. Mixon was called to a disciplinary hearing only three days following the alleged incident in question. Mr. Mixon was quickly found guilty and sentenced to a penalty later deemed too harsh by prison officials. Although the disciplinary hearing reflected a referral to the Attorney General's Office, there was no movement on the case at all until 20 months following the incident. A time frame that, coincidentally, follows the Attorney General being called to answer separate federal civil rights lawsuits brought by Mixon.

During the preceding 20 months, Nevada never attempted to charge Mixon with any crime related to the incident at High Desert Prison. Mr. Mixon operated under the presumption that the case was indeed "closed," as represented to him following the Acting Warden's ruling the original penalty ordered at the disciplinary hearing was too harsh.

It wasn't until after Mixon invoked his legal rights in federal court that the State vindictively charged Mixon with crimes related to an incident that he had been reasonably led to believe was "closed." The State of Nevada was satisfied enough in the quality of their evidence to move against Mixon with an NDOC disciplinary hearing *three days* following the incident. It is inconceivable that it took the Attorney General almost two years to put together a case using the same facts. Further, it is difficult to believe the timing was not vindictive retaliation for the various federal lawsuits Mixon filed. It stretches the imagination to believe the same government entity called into federal court to answer these civil rights lawsuits is then unaffected when ultimately deciding to file criminal charges against Mixon. This is

particularly true when viewed in light of the fact there was no discernable movement on this case until after the civil rights lawsuits, almost *two years* after the incident. This is certainly sufficient to satisfy the requirement to present "evidence of circumstances from which an improper vindictive motive may be presumed" as required by Wilson.

Mixon contends that the foregoing certainly creates the appearance of vindictiveness. Accordingly, the burden now shifts to the State to justify its decision to charge Mixon almost two years following the incident, and then only after he exercised his rights.

REQUESTED RELIEF

Based upon the foregoing, Mr. Mixon respectfully requests that this court dismiss this case based upon vindictive prosecution. If the Court is not inclined to grant a dismissal based on vindictive prosecution the defense would request an Evidentiary Hearing. If the Court is not inclined to grant an Evidentiary hearing the defense would request allowance to proceed at trial with a vindictive prosecution defense and request a jury instruction accordingly.

DATED this 5th day of March, 2018.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/ Ashley Sisolak*
ASHLEY SISOLAK, #13958
Deputy Public Defender

NOTICE OF MOTION

TO: STATE OF NEVADA ATTORNEY GENERAL, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the **15th** day of March, 2018, at 8:30 a.m.

DATED this 5th day of March, 2018.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/ Ashley Sisolak*
ASHLEY SISOLAK, #13958
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and foregoing motion was served via electronic e-filing to the Clark County Attorney General's Office at wiznetfilings@ag.nv.gov on this 5th day of March, 2018.

By: */s/ Erin Prisbrey*
Employee of the Public Defender's Office

EXHIBIT A

FILED ____ RECEIVED
ENTERED ____ SERVED ON
COUNSEL/PARTIES OF RECORD

AUG 24 2016

CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY: _____ DEPUTY

ANTONIO LEE MIXON
Name

1019838
Prison Number

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTONIO LEE MIXON,
Plaintiff,

vs.

THE STATE OF NEVADA, NEVADA DEPARTMENT OF CORRECTIONS; D.W. NEVEN, WARDEN; AND HIS DOLEGATES,
Defendant(s).

2:16-cv-02014-RFB-GWF

CIVIL RIGHTS COMPLAINT PURSUANT TO 42 U.S.C. § 1983

A. JURISDICTION

1) This complaint alleges that the civil rights of Plaintiff, ANTONIO LEE MIXON,
(Print Plaintiff's name)

who presently resides at H.D.S.P., were

violated by the actions of the below named individuals which were directed against

Plaintiff at H.D.S.P. on the following dates
(institution/city where violation occurred)

From April 2014 to 2016 (Count I) and 2/2/18 (Count III).

I hereby attest and certify on ____ (Count II) that the foregoing document is a full, true and correct copy of the original on file in my legal custody.

CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA

By R Danley Deputy Clerk

Make a copy of this page to provide the below information if you are naming more than five (5) defendants

2) Defendant THE STATE OF NEVADA resides at NEVADA,
(full name of first defendant) (address if first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
___ individual ✓ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: Violating My Civil Rights And United States Constitutional Rights

3) Defendant Nevada Department of Corrections resides at H.D.S.P,
(full name of first defendant) (address if first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
___ individual ✓ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: Violating My Civil Rights And United States Constitutional Rights

4) Defendant D.W. Neven And His Dologists resides at [redacted],
(full name of first defendant) (address if first defendant)
and is employed as Warden. This defendant is sued in his/her
(defendant's position and title, if any)
✓ individual ___ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: Violating My Civil Rights And United States Constitutional Rights

5) Defendant _____ resides at _____,
(full name of first defendant) (address if first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
___ individual ___ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: _____

6) Defendant _____ resides at _____,
(full name of first defendant) (address if first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
___ individual ____ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: _____

_____

7) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343 (a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional statutes, list them below.

_____

_____

B. NATURE OF THE CASE

1) Briefly state the background of your case.

H.D.S.P ARE RESPONSIBLE AND LIABLE FOR VIOLATING MY RIGHT TO PRIVACY, PROTECTION FROM PIRACY AND THE PROTECTION FROM PLAGIARISM. D.W. NEVEN AND HIS DELEGATES TOOK TRADE SECRETS, TRADE NAMES, TRADE MARKS, LOGO'S AND IDEAS, LYRICS FROM ALBUMS. I SENT NUMEROUS OF THESE ITEMS HOME TO BE COPYRIGHTED AMONGST SOME ENVELOPES NOT TO BE OPEN UNTIL FURTHER NOTICE, AND HAVE BEEN SINCE April, 2014. H.D.S.P STAFF, C/O GRAB TWO OF THE ENVELOPES MARKED "DON'T OPEN" ON THEM FROM MY DOOR AND ONE MADE IT HOME ONE OF THE ENVELOPES WAS GIVEN BACK OPENED THAT HADN'T BEEN LEFT THIS BUILDING AND GIVEN TO POST MASTER.

C. CAUSE OF ACTION

COUNT I

The following civil rights has been violated: Right to privacy, Right to the protection ~~against~~ Copyright infringement, Right to the protection against Plagiarism and Piracy.

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

The most recent infraction was in 2016. This institution could have or did make progeny out of the ideas taking listed in the name of case. And opened and resealed envelopes that clearly were marked "Don't open" that contained idea's that needed to be Copyrighted Amongst other things. I would ask for a hearing to be set on this matter and for a Civil Trial and for the Right to subpoena witnesses and evidence in support of this ground. Polygraph Requested for offer of Proof. The Envelope Return had no Return to Sender no post mark from Postmaster no Bar code. Just opened with a slanted line from one 90° degree angle to another 90° degree Angle in pen. I seen staff pick it up from my cubic and staff Betsy took back a day or two later.

1) D. NO PREVIOUS LAWSUITS AND THEY WONT BRING THE GRIEVANCE BOX.

outline).

a) Defendants: _____

b) Name of court and docket number: _____

c) Disposition (for example, was the case dismissed , appealed or is it still pending?):

_____

d) Issues raised: _____

_____

_____

e) Approximate date it was filed: _____

f) Approximate date of disposition: _____

2) Have you filed an action in federal court that was **dismissed because it was determined to be frivolous, malicious, or failed to state a claim upon which relief could be granted?**

___ Yes ✓ No. If your answer is "Yes", describe each lawsuit. (If you had more than three actions dismissed based on the above reasons, describe the others on an additional page following the below outline.)

Lawsuit #1 dismissed as frivolous, malicious, or failed to state a claim:

a) Defendants: _____

b) Name of court and case number: _____

c) The case was dismissed because it was found to be (check one): _____ frivolous

____ malicious or ____ failed to state a claim upon which relief could be granted.

d) Issues raised: _____

_____

e) Approximate date it was filed: _____

f) Approximate date of disposition: _____

Lawsuit #2 dismissed as frivolous, malicious, or failed to state a claim:

a) Defendants: _____

b) Name of court and case number: _____

c) The case was dismissed because it was found to be (check one): _____ frivolous _____ malicious or _____ failed to state a claim upon which relief could be granted.

d) Issues raised: _____

_____

e) Approximate date it was filed: _____

f) Approximate date of disposition: _____

Lawsuit #3 dismissed as frivolous, malicious, or failed to state a claim:

a) Defendants: _____.

b) Name of court and case number: _____.

c) The case was dismissed because it was found to be (check one): _____ frivolous _____ malicious or _____ failed to state a claim upon which relief could be granted.

d) Issues raised: _____

_____

e) Approximate date it was filed: _____

f) Approximate date of disposition: _____

3) Have you attempted to resolve the dispute stated in this action by seeking relief from the proper administrative officials, e.g., have you exhausted available administrative grievance procedures? ___ Yes ___ No. If your answer is "No", did you not attempt administrative relief because the dispute involved the validity of a: (1) ___ disciplinary hearing; (2) ___ state or federal court decision; (3) ___ state or federal law or regulation; (4) ___ parole board decision; or (5) ___ other _____.
If your answer is "Yes", provide the following information. Grievance Number _____.
Date and institution where grievance was filed _____.

Response to grievance: _____

_____

_____

E. REQUEST FOR RELIEF

I believe that I am entitled to the following relief:

$7,000,000.

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.** See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

(Name of Person who prepared or helped prepare this complaint if not Plaintiff)

(Signature of Plaintiff)

09/21/17

(Date)

(Additional space if needed; identify what is being continued)

CERTIFICATE OF SERVICE BY MAILING

I, ANTONIO LEE MILLON, hereby certify, pursuant to NRCP 5(b), that on this 21st day of OCT, 2016, I mailed a true and correct copy of the foregoing, " 1983 Civil Rights Complaint (Prisoner) " by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

Clerk U.S. District Court District of Nevada 333 Las Vegas Blvd South Room 1334 Las Vegas, NV 89101

1 File stamp Copy requested

CC:FILE

DATED: this 21st day of OCT, 2016.

ANTONIO LEE MILLON #1078220

/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

EXHIBIT B

ANTONIO LEE MIXON
Name
Ely STATE PRISON (ISP)
P.O. BOX 1989
Ely, NV 89301
PRISON # 1019828
Prison Number

FILED ____ RECEIVED ____
ENTERED ____ SERVED ON ____
COUNSEL/PARTIES OF RECORD

OCT 24 2016

CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY: _____ DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTONIO LEE MIXON
Plaintiff,

vs.

(1) NEVADA DEPARTMENT OF CORRECTIONS
(2) Ely STATE PRISON,
(3) THE STATE OF NEV.

Defendant(s).

2:16-cv-02490-RFB-VCF

CIVIL RIGHTS COMPLAINT PURSUANT TO 42 U.S.C. § 1983

A. JURISDICTION

1) This complaint alleges that the civil rights of Plaintiff, ANTONIO MIXON, (Print Plaintiff's name) who presently resides at Ely STATE PRISON, were violated by the actions of the below named individuals which were directed against Plaintiff at Ely STATE PRISON (institution/city where violation occurred) on the following dates 1/2/18 09/16/2016 (Count I), 09/17/2016 (Count II), and ____ (Count III).

I hereby attest and certify on that the foregoing document is a full, true and correct copy of the original on file in my legal custody.

CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA
By R Zanter Deputy Clerk

1

Make a copy of this page to provide the below information if you are naming more than five (5) defendants

2) Defendant Ely STATE (full name of first defendant) resides at UNK (address if first defendant) and is employed as GOVERNMENTAL OFFICIAL (defendant's position and title, if any). This defendant is sued in his/her ___ individual ✓ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: RANCHED ME while IN RESTRAINTS. SLAMMED ME IN A METAL WALL (all ME OFFICER) DIDN'T FEED ME BREAKFAST the following day AND TOOK MY LUNCH SACK UPON my ARRIVAL.

3) Defendant _____ (full name of first defendant) resides at _____ (address if first defendant) and is employed as _____ (defendant's position and title, if any). This defendant is sued in his/her ___ individual ___ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: _____

4) Defendant _____ (full name of first defendant) resides at _____ (address if first defendant) and is employed as _____ (defendant's position and title, if any). This defendant is sued in his/her ___ individual ___ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: _____

5) Defendant _____ (full name of first defendant) resides at _____ (address if first defendant) and is employed as _____ (defendant's position and title, if any). This defendant is sued in his/her ___ individual ___ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: _____

6) Defendant _____ resides at _____,
(full name of first defendant) (address if first defendant)
and is employed as _____. This defendant is sued in his/her
(defendant's position and title, if any)
___ individual ____ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: _____

_____

7) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343 (a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional statutes, list them below.

_____

_____

B. NATURE OF THE CASE

1) Briefly state the background of your case.

PUNCHED ME IN MY BACK WHILE IN RESTRAINTS SLAMMED ME INTO METAL WALL STICKING OUT CEMENT WALL, CALLED ME NIGGER, OFFICERS USED EXCESSIVE FORCE AND RACIAL SLURS AND/OR TERMINOLOGY. DON'T FEED ME BREAKFAST THE FOLLOWING DAY. TOOK MY LUNCH WHEN I ARRIVED. SLAMMED ME ON MY KNEES. ALL WHILE IN RESTRAINTS. POLYGRAPH REQUEST, CIVIL TRIAL REQUEST TO EXERCISE MY 7TH U.S.CA. RIGHT TO CIVIL TRIAL WHEN CONTROVERSY EXCEEDING $20 I ASK TO SUBPOENA WITNESSES AND EVIDENCE IN SUPPORT OF THIS CLAIM/GROUNDS.

C. CAUSE OF ACTION

COUNT I

The following civil rights has been violated: The My 8th U.S.C.A. Cruel and Unusual punishment or treatment

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

On 09/16/2016 I was transferred from high desert state prison to ely state prison due I arrived I was snatched off the van by an officer that use excessive force, I wasn't disrespectful, once I was in a holding cell by self I was searched and officer Alleged I was in possession of contraband to wit a prison made weapon they hung up and lied and said I had contraband in my hand and was in a threatening manner. That's not true, I was in restraints, my face, nose was wet in the cell, the said contraband was what Alleged was found in my pocket. They stormed in punched me in my back with what seemed and felt like a whole fireman slammed me to my knees. After I was strip searched I was moved to be housed is when officer start using racial words called me a Nigger. once I arrived at the unit I was slammed my shoulder that was slammed in to a metal concrete slab pinning out the wall then again slammed to my knees, so he could put on leg restraints. once in cell I was yanked to the door. All this while in restraints and I didn't say or resist at anytime.

c) The case was dismissed because it was found to be (check one): _____ frivolous _____ malicious or _____ failed to state a claim upon which relief could be granted.

d) Issues raised: _____

_____

e) Approximate date it was filed: _____

f) Approximate date of disposition: _____

Lawsuit #3 dismissed as frivolous, malicious, or failed to state a claim:

a) Defendants: _____.

b) Name of court and case number: _____.

c) The case was dismissed because it was found to be (check one): _____ frivolous _____ malicious or _____ failed to state a claim upon which relief could be granted.

d) Issues raised: _____

_____

e) Approximate date it was filed: _____

f) Approximate date of disposition: _____

3) Have you attempted to resolve the dispute stated in this action by seeking relief from the proper administrative officials, e.g., have you exhausted available administrative grievance procedures? ✓ Yes ___ No. If your answer is "No", did you not attempt administrative relief because the dispute involved the validity of a: (1) ____ disciplinary hearing; (2) ___ state or federal court decision; (3) ___ state or federal law or regulation; (4) ____ parole board decision; or (5) ___ other _____.

If your answer is "Yes", provide the following information. Grievance Number _____.

Date and institution where grievance was filed _____.

Response to grievance: NO RESPONCE DO TO RETALIATION AND THIS PRISON DONT WANT TO ISSUE MY FINANCIAL CERTIFICATE WHICH IS PART OF MY 7TH 14TH U.S.C.A. 8TH U.S.C.A. AND THE COURT MAY DONT HAVE ENOUGH REMEDY THIS LAWSUIT SUPPORTED MY GRIEVANCES ABOUT THIS CLAIM.

COUNT III

The following civil rights has been violated: _____

_____

_____

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

_____

_____

_____

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_____

D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

1) Have you filed other actions in state or federal courts involving the **same or similar facts** as involved in this action? ___ Yes ✓ No. If your answer is "Yes", describe each lawsuit. (If more than one, describe the others on an additional page following the below

outline).

a) Defendants: _____

b) Name of court and docket number: _____

c) Disposition (for example, was the case dismissed , appealed or is it still pending?):

_____

d) Issues raised: _____

_____

_____

e) Approximate date it was filed: _____

f) Approximate date of disposition: _____

2) Have you filed an action in federal court that was **dismissed because it was determined to be frivolous, malicious, or failed to state a claim upon which relief could be granted?** ___ Yes ✓ No. If your answer is "Yes", describe each lawsuit. (If you had more than three actions dismissed based on the above reasons, describe the others on an additional page following the below outline.)

Lawsuit #1 dismissed as frivolous, malicious, or failed to state a claim:

a) Defendants: _____.

b) Name of court and case number: _____.

c) The case was dismissed because it was found to be (check one): _____ frivolous ____ malicious or ____ failed to state a claim upon which relief could be granted.

d) Issues raised: _____

_____

e) Approximate date it was filed: _____

f) Approximate date of disposition: _____

Lawsuit #2 dismissed as frivolous, malicious, or failed to state a claim:

a) Defendants: _____.

b) Name of court and case number: _____.

E. REQUEST FOR RELIEF

I believe that I am entitled to the following relief:

SINCE your GROSS DOMESTIC PRODUCT IS 136 BILLION DOLLARS I BELIEVE 0.000002 % OF THIS STATES GDP SHOULD AND WOULD BE JUST COMPENSATION THAT EQUALS $272,000 YEARLY FOREVER. THANK YOU.

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.** See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

(Name of Person who prepared or helped prepare this complaint if not Plaintiff)

(Signature of Plaintiff)

10/20/2016
(Date)

(Additional space if needed; identify what is being continued)

Ronald Lee Milton Sr. #1018228

Ely State Prison
P.O. Box 1989
Ely, NV 89301

Clerk, U.S. District Court
District of Nevada
Lloyd D. George U.S. Courthouse
333 Las Vegas Blvd. So. - RM 1334
LV, NV 89101

Ten Blank Pages Coming

* Do to the prison keeping my financial account to a true filing fee being me pay the U.S. Gov. $ 400 filing fee

Electronically Filed
3/5/2018 3:15 PM
Steven D. Grierson
CLERK OF THE COURT

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. ANTONIO MIXON, #1968172 Defendant.	CASE NO. C-17-327439-1 DEPT. NO. XVII DATE: March _____, 2018 TIME: 8:30 a.m.

MOTION TO DISQUALIFY THE ATTORNEY GENERAL'S OFFICE

Comes now, the Defendant ANTONIO MIXON, through ASHLEY SISOLAK, Deputy Public Defender, hereby files the following motion to disqualify the Attorney General's office from the prosecution of his case. This motion is made based upon all the papers and pleadings on file, the attached declaration of counsel, and the attached exhibits.

DATED this 05 day of March, 2018.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/Ashley Sisolak*
ASHLEY SISOLAK, #13958
Deputy Public Defender

Case Number: C-17-327439-1

DECLARATION

ASHLEY SISOLAK makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and the Defendant has represented the following facts and circumstances of this case.

2. The Attorney General's Office is currently a defendant in a pending suit filed by Mr. Mixon (See Exhibit A).

3. The Solicitor General currently represents the Attorney General in the above referenced matter (See Exhibit B).

4. Additionally there is a pending Civil Rights complaint against the Nevada Department of Corrections (See Exhibit C and Exhibit D).

5. In the pending Civil Rights the case the Attorney General is currently appearing on behalf of the Defendants for settlement purposes (See Exhibit E).

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 5th day of March, 2018.

/s/ Ashley Sisolak
ASHLEY SISOLAK

RELEVANT BACKGROUND FACTS

On August 18, 2017, the State of Nevada Attorney General's Office filed charges of BATTERY BY A PRISONER, Category B Felony, NRS 200.481(2)(f) and POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACIMILE BY AN INCARCERATED PERSON, Category B Felony, NRS 212.185(c) against the Defendant, Antonio Mixon in relation to a prison yard incident at the High Desert State Prison on December 4, 2015.

Following the closure of the disciplinary process at High Desert, Mr. Mixon filed several separate civil rights lawsuits in the U.S. District Court, in accordance with his Constitutional rights, for example suits were filed on August 24, 2016 and October 24, 2016. The named defendants in these various suits include; Ely State Prison, High Desert State Prison, the State of Nevada, the Nevada Department of Corrections, various wardens and corrections officers.

On August 9, 2017, Criminal Investigator Victor Daniel completed an investigation, concluding there was "sufficient probable cause" to file charges if BATTERY BY A PRISONER, and POSSESSION OR CONTROL OF DANGEROUS WEAPON OR FACSIMILE BY AN INCARCERATED PERSON. As noted above, the charges were filed on August 18, 2017.

LEGAL ARGUMENT

The Nevada Supreme Court has found that "[t]he disqualification of a prosecutor's office rests with the sound discretion of the district court." See Zogheib at 884, (2014) citing Collier v. Legakes, 98 Nev. 307 at 309 (1982). It is therefore well within this Court's purview to make such a disqualification.

///

///

I. The Attorney General's office should be disqualified

The controlling Nevada case law determining the standard by which an entire District Attorney's office can be disqualified from prosecuting a case is found in State v. Eighth Jud. Dist. Ct. (Zogheib), 321 P.3d 882 (2014). The Supreme Court found in that case that "the appropriate inquiry to determine disqualification of an office 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" See Zogheib at 886.

This reversed the previous disqualification standard of appearance-of-impropriety.

If the Attorney is disqualified from acting in any matter coming before the district court, the court may appoint some other person to perform the duties of the Attorney General. NRS § 252.100. Thus, this Court must disqualify the Attorney General's office from prosecuting the current case and appoint a prosecutor, as required by NRS 252.100, to ensure Defendant's U.S. Constitutional and Nevada Constitutional Rights to Due Process of Law.

The Fourteenth Amendment of the U.S. Constitution commands that no state "shall deprive any person of life, liberty, or property, without **due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws" and the Sixth Amendment establishes that components of a criminal proceeding have been incorporated into a constitutional due process right to a fair trial. (Emphasis Added). The Fourteenth Amendment makes these guarantees binding upon the states. *See also* Article I, § 8 of the Nevada Constitution. The Nevada Supreme Court has expressly stated that "due process forbids action which is fundamentally unfair and shocking to the universal sense of justice." Summers v. Warden of Nev. State Prison, 440 P.2d 388 at 390 (Nev. 1968).

In order to maintain the dignity of the Courts and our system of justice, to avoid the "appearance of impropriety," to preserve the public trust and confidence in our criminal justice

system, and to ensure that Defendant receives a fair and just criminal trial as ensured by the United States Constitution and Nevada Constitution, it is necessary that the District Attorney's office be disqualified from this case and a special prosecutor appointed.

RELIEF SOUGHT

Pursuant to the above facts and arguments, Mixon seeks to have the Attorney General's office disqualified from further involvement in this case.

Instead of the Attorney General, Mr. Mixon requests that an order from the Court compelling the Attorney General to request an appointment of a Special Prosecutor in accordance with NRS 220.130 (5). That statute states in relevant part that "If the Attorney General…[d]etermines at any time before trial that it is impracticable or uneconomical or could constitute a conflict of interest for the Attorney General or a deputy attorney general to provide such assistance [in a criminal case], the Attorney General may…appoint a special prosecutor to present the criminal case." See NRS 220.130 (5)(a)-(b).

It is the argument and belief of the Defendant that such a disqualification and appointment is the only way to ensure that Mr. Mixon receive a fair trial.

CONCLUSION

For the above reasons, Mr. Mixon requests the disqualification of the Attorney General's office from the prosecution of his case and the appointment a Special Prosecutor in their stead.

This motion is filed in good faith and is not interposed for the purposes of delay.

DATED this 5th day of March, 2018.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/Ashley Sisolak*
ASHLEY SISOLAK, #13958
Deputy Public Defender

NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the **15th** day of March, 2018, at 8:30 a.m.

DATED this 5th day of March, 2018.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: */s/ Ashley Sisolak*
ASHLEY SISOLAK #13958
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and foregoing motion was served via electronic e-filing to the Clark County Attorney General's Office at wiznetfilings@ag.nv.gov on this 5th day of March, 2018.

By: */s/ Erin Prisbrey*
Employee of the Public Defender's Office

EXHIBIT A

FILED ____ RECEIVED
ENTERED ____ SERVED ON
COUNSEL/PARTIES OF RECORD
AUG 29 2017
CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY: ____ DEPUTY

Antonio Lee Mixon
Name
#1019828
Prison Number
High Desert State Prison
Place of Confinement

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Antonio Lee Mixon, Petitioner,
(Full Name)

vs.

D.W. Neven, Warden, Respondent,
(Name of Warden, Superintendent, jailor or authorized person having custody of petitioner)

and

The Attorney General of the State of Nevada

2:17-cv-02292-RFB-NJK

(To be supplied by the Clerk)

"Evidentiary Hearing Requested"

PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254 BY A PERSON IN STATE CUSTODY (NOT SENTENCED TO DEATH)

1. Name and location of court, and name of judge, that entered the judgment of conviction you are challenging: Michael Villani, Eighth District Court.

2. Full date judgment of conviction was entered: 12/18/12. (month/day/year)

3. Did you appeal the conviction? ___ Yes ✓ No. Date appeal decided: ___/___/___.

4. Did you file a petition for post-conviction relief or petition for habeas corpus in the state court? ✓ Yes ___ No. If yes, name the court and date the petition was filed: 12/12/13 (13/1/15) 12/11/13 Eighth DC 12/11/13. Did you appeal from the denial of the petition for post-conviction relief or petition for writ of habeas corpus? ✓ Yes ___ No. Date the appeal was decided: 08/16/2017. Have all of the grounds stated in this petition been presented to the state supreme court? ✓ Yes ___ No. If no, which grounds have not? NOT Consolidated - Ground Was Not Properly Raised (Ineffective Assistance of Post-Conviction Counsel)

5. Date you are mailing (or handing to correctional officer) this petition to this court: ___/___/___.

Attach to this petition a copy of all state court written decisions regarding this conviction.

6. Is this the first federal petition for writ of habeas corpus challenging this conviction? ✓ Yes ___ No. If no, what was the prior case number ? _____. And in what court was the prior action filed? _____.
Was the prior action ___ denied on the merits or ___ dismissed for procedural reasons (check one). Date of decision: ___/___/___. Are any of the issues in this petition raised in the prior petition? ___ Yes ___ No. If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this successive petition? ___ Yes ___ No.

7. Do you have any petition, application, motion or appeal (or by any other means) now pending in any court regarding the conviction that you are challenging in this action? ___ Yes ✓ No.
If yes, state the name of the court and the nature of the proceedings: _____
_____.

8. Case number of the judgment of conviction being challenged: C-11-277977-1

9. Length and terms of sentence(s): 96 mos to 240 months

10. Start date and projected release date: 09/19/11, 09/18/19, MPR = 10/8/21

11. What was (were) the offense(s) for which you were convicted: Voluntary Manslaughter with use of a Deadly Weapon

12. What was your plea? ___ Guilty ✓ Not Guilty ___ Nolo Contendere. If you pleaded guilty or nolo contendere pursuant to a plea bargain, state the terms and conditions of the agreement: Plea Bargain, 96 mos to 240 mos

13. Who was the attorney that represented you in the proceedings in state court? Identify whether the attorney was appointed, retained, or whether you represented yourself *pro se* (without counsel).

	Name of Attorney	Appointed	Retained	*Pro se*
arraignment and plea	Luis J. Rojas		✓	
trial/guilty plea	Karen Connolly	✓		
sentencing	Karen Connolly	✓		
direct appeal	—			
1st post-conviction petition	Julian Gregory	✓		
appeal from post conviction	Julian Gregory	✓		
2nd post-conviction petition				
appeal from 2nd post-conviction				

Pg 2

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 1

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my Sixth Amendment right to EFFECTIVE ASSISTANCE of COUNSEL based on these facts:

PETITIONER WAS DENIED his Right TO THE EFFECTIVE ASSISTANCE OF COUNSEL WHEN TRIAL COUNSEL FAILED TO THOROUGHLY INVESTIGATE AND EVALUATE THE EVIDENCE AGAINST PETITIONER. PETITIONER WAS DEPRIVED of his Right TO EFFECTIVE ASSISTANCE of COUNSEL UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND ARTICLE I, SECTIONS three, SIX, AND EIGHT OF THE NEVADA CONSTITUTION. TO ESTABLISH A claim of INEFFECTIVE ASSISTANCE OF COUNSEL, THE PETITIONER MUST show (1) THAT COUNSEL'S PERFORMANCE WAS BENEATH "AN OBJECTIVE STANDARD of REASONABLENESS," and (2) that, BUT FOR COUNSEL'S DEFICIENCY, a different RESULT would HAVE BEEN had AT TRIAL. STRICKLAND V. WASHINGTON, 466 U.S. 668, 688 (1984); RUBIO V. STATE, 124 NEV. 1032, 1039-40, 194 P.3d 1224, 1229 (2008). A REASONABLE PROBABILITY IS ONE that UNDERMINES CONFIDENCE IN the OUTCOME. STRICKLAND, 466 U.S. AT 694. "EFFECTIVENESS" MEANS PERFORMANCE "WITHIN the RANGE of COMPETENCE DEMANDED of ATTORNEYS IN CRIMINAL CASES." JACKSON V. WARDEN, 91 NEV. 430, 432, 537 P.2d 473, 474 (1975) (QUOTING MCMANN V. RICHARDSON, 397 U.S. 759, 771 (1970)). EFFECTIVENESS ENCOMPASSES MAKING "SUFFICIENT INQUIRY INTO the INFORMATION THAT IS PERTINENT" to THE CASE to MAKE "a REASONABLE,

Exhaustion of state court remedies regarding Ground 1:

GROUND 1 CONTINUED

STRATEGY DECISION ON HOW TO PROCEED WITH HIS CLIENT'S CASE." DOLEMAN V. STATE, 112 NEV. 843, 848, 921 P.2d 278, 280 (1996) (citing Strickland, 466 U.S. AT 690-91). THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL EXTENDS TO THE PLEA-BARGAINING PROCESS; THE STANDARD IS THE SAME AS THAT OUTLINED IN STRICKLAND. LAFLER V. COOPER, 132 S. CT. 1376, 1384 (2012). A DEFENDANT MUST SHOW THAT THE OUTCOME OF THE PLEA PROCESS WOULD HAVE BEEN DIFFERENT HAD COUNSEL BEEN EFFECTIVE. MISSOURI V. FRYE, 132 S. CT. 1399, 1409 (2012); LAFLER, 132 S. CT. AT 1384. WHEN A PLEA IS ACCEPTED, THE DEFENDANT MUST SHOW THAT, BUT FOR COUNSEL'S INEFFECTIVENESS, HE WOULD NOT HAVE ACCEPTED THE PLEA. HILL V. LOCKHART, 474 U.S. 52, 56 (1985). HERE, TRIAL COUNSEL FAILED TO ACCURATELY ASSESS THE EVIDENTIARY AND EXCULPATORY VALUE OF THE SECURITY VIDEO OBTAINED IN THIS CASE. AT THE TIME OF PETITIONER'S GUILTY PLEA, HE WAS UNAWARE OF THE CONTENTS OF A SECURITY VIDEO FROM THE APARTMENT COMPLEX WHERE VICTIM WAS FOUND. IN THAT VIDEO, PETITIONER HAS CAUSE TO BELIEVE, IT IS APPARENT THAT OFFICER STEINHAUER DID NOT HEAR THE VICTIM IMPLICATE ANYONE BY THE NAME OF "ANTONIO" AND DID NOT HEAR ANYTHING FROM

PG 3A

GROUND 1 CONTINUED

THE VICTIM. PETITIONER BASES THIS INFORMATION ON CONVERSATIONS HE HAS SINCE HAD WITH WITNESSES WHOM HAD AN OPPORTUNITY TO VIEW THE VIDEO AND DID VIEW THE VIDEO EVEN THOUGH PETITIONER HIMSELF DID NOT. PETITIONER WAS THEREFORE PERSUADED, OUT OF TRIAL COUNSEL'S LACK OF DILIGENCE, TO ACCEPT THE NEGOTIATION; TRIAL COUNSEL'S FAILURE IN THAT REGARD FELL BENEATH ANY STANDARD OF EFFECTIVE COUNSEL. THIS CALLS FOR THE ISSUANCE OF A WRIT AND PERMITTING THE WITHDRAWAL OF PETITIONER'S GUILTY PLEA. HAD (PETITIONER) BEEN GIVEN THE OPPORTUNITY TO BE FULLY AWARE OF THE EVIDENCE AGAINST ME, I WOULD NOT HAVE ENTERED INTO A PLEA NEGOTIATION AND PROCEEDED TO TRIAL. I WOULD ASK FOR A HEARING TO BE SET ON THIS MATTER AND FOR THE RIGHT TO SUBPOENA WITNESSES AND EVIDENCE IN SUPPORT OF THIS GROUND.

PD.38

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

___ Yes ✓ No. If no, explain why not: NO DIRECT APPEAL / TAKEN

▸ **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

✓ Yes ___ No. If no, explain why not: ___

If yes, name of court: Eighth Judicial Court Dept. 17 date petition filed 12/11/13.

Did you receive an evidentiary hearing? ✓ Yes ___ No. Did you appeal to the Nevada Supreme Court? ✓ Yes ___ No. If no, explain why not: ___

If yes, did you raise this issue? ✓ Yes ___ No. If no, explain why not: ___

▸ **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

___ Yes ___ No. If yes, explain why: ___

If yes, name of court: ___ date petition filed ___/___/___.

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court? ___ Yes ___ No. If no, explain why not: ___

If yes, did you raise this issue? ___ Yes ___ No. If no, explain why not: ___

▸ **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? ___ Yes ✓ No. If yes, explain: ___

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two

SEE pg. 3C

unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 2

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my FIFTH Amendment right to DUE PROCESS, based on these facts:

MR. MIXON'S guilty PLEA WAS NOT KNOWINGLY, VOLUNTARILY, OR INTELLIGENTLY ENTERED INTO, THEREBY VIOLATING his RIGHT to DUE PROCESS. AT THE TIME of My guilty plea, I WAS UNAWARE of the CONTENTS OF A SECURITY VIDEO FROM THE APARTMENT COMPLEX WHERE THE VICTIM WAS FOUND. IN THAT VIDEO, I HAVE CAUSE TO BELIEVE, IT IS APPARENT THAT OFFICER SKENANDORE did NOT HEAR THE VICTIM implicate ANYONE by THE NAME of "ANTONIO" And DID NOT HEAR ANYTHING FROM THE VICTIM. I BASE THIS INFORMATION ON CONVERSATIONS I HAVE SINCE had with WITNESSES whom had AN opportunity TO VIEW THE VIDEO And did View the VIDEO EVEN though I MYSELF did NOT. HAD I BEEN GIVEN THE OPPORTUNITY TO BE fully aware of THE EVIDENCE against ME. I Would NOT HAVE ENTERED into A PLEA NEGOTIATION And proceeded TO TRIAL. Although a guilty plea is presumptively valid, Wilson V. STATE, 99 NEV. 362, 373, 664 P.2d 328, 334 (1983) (quoting Wynn V. STATE, 96 NEV 673, 675, 615 P.2d 946, 947 (1980)), a REVIEWING COURT MUST ASSESS WHETHER THE PLEA WAS ENTERED INTO "VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY." RUBIO V. STATE, 124 NEV. 1032, 1038, 194 P.3d 1224, 1228 (2008); MOLINA V. STATE, 120 NEV. 185, 191, 87 P.3d 533, 537 (2004); SEE ALSO Hill V. Lockhart, 474,

Exhaustion of state court remedies regarding Ground 2:

- **Direct Appeal:**

13.4

Ground 2 Continued

U.S. 52, 56 (1985); McCarthy V. United States, 394 U.S. 459, 466-67 (1969); Johnson V. Zerbst, 304 U.S. 458, 467 (1938). A Reviewing Court must look beyond the plea canvass to the entire record and at the totality of the circumstances to correct a manifest injustice. Rubio, 124 at 1038 - 1039, 194 P.3d at 1228. Trial Counsel's lack of diligence in ensuring that I was presented with all of the evidence against me - including its weaknesses - led to me feeling coerced into taking a plea Negotiation. My plea was therefore, NOT a Constitutionally valid plea negotiation, implicating my right to due process guaranteed by the Fifth Amendment to the United State Constitution, and Article 1, Section Eight of the Nevada Constitution. Accordingly, I would ask this Court to issue a writ of habeas corpus and permit me to withdraw my guilty plea. In the alternative, I would ask for a hearing to be set on this matter and for the right to subpoena witnesses and evidence in support of this ground.

pg-4A

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

___ Yes ✓ No. If no, explain why not: NO direct Appeal taken.

▸ **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

✓ Yes ___ No. If no, explain why not: ___

If yes, name of court: Eighth Judicial Court Dept. 17 date petition filed 12/11/13.

Did you receive an evidentiary hearing? ✓ Yes ___ No. Did you appeal to the Nevada Supreme Court? ✓ Yes ___ No. If no, explain why not: ___

If yes, did you raise this issue? ✓ Yes ___ No. If no, explain why not: ___

▸ **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

___ Yes ___ No. If yes, explain why: ___

If yes, name of court: ___ date petition filed ___/___/___.

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court? ___ Yes ___ No. If no, explain why not: ___

If yes, did you raise this issue? ___ Yes ___ No. If no, explain why not: ___

▸ **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? ___ Yes ✓ No. If yes, explain: ___

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two

@ pg. 4B

Ground Three

I Allege That my STATE COURT CONVICTION AND/OR SENTENCE ARE UNCONSTITUTIONAL, IN VIOLATION OF my FOURTEENTH AMENDMENT Right TO DUE-PROCESS clause, BASED ON THESE FACTS: THE PROSECUTIONS SUPPRESSION AND/or withholding of THE EVIDENCE FAVORABLE TO ACCUSED VIOLATED THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT. THE OFFICER MOGG CAME INTO CONTACT WITH DEFENDENT IN A DIFFERENT APARTMENT COMPLEX PARKING from WHERE THE VICTIM WAS found. THE OFFICER initiated BOTH CONTACTS With DEFENDANT. THE OFFICER SAID HE WAS looking for [redacted] and ASKED DEFENDANT A question, DEFENDANT STATED, "I PLEAD THE FIFTH." THE OFFICER THAN REPLIED and said, "Rights, you have no Rights." STATE SUPPRESSED AND/or WITHHELD THESE STATEMENT which WERE FAVORABLE TO DEFENDANT. THIS is A FIFTH AMENDMENT CASE and THE STATE SUPPRESSED and/or WITHHELD THAT EVIDENCE THAT PROVE THEY VIOLATED DEFENDANTS FIFTH AMENDMENT Right [redacted] Officer Mogg TESTIFIED AT PRELIMINARY and you CAN SEE HE LEFT THESE STATEMENTS OUT and GAVE TESTIMONY ABOVE THE OCCURRENCE which BY HIM WITHHOLDING THE STATE VIOLATED My FIFTH AMENDMENT Right TO DUE-PROCESS, SEE Preliminary TRANSCRIPTS. HAD THESE STATEMENTS THAT THE STATE WITHHELD and/or SUPPRESSED officer Mogg WOULDN'T HAVE TESTIFIED which HIS TESTIMONY WAS TOTALLY INJUSTICE and SUPER PREJUDICE TO ME. Mogg's TESTIMONY WAS ALSO IMPEACHED ON THE RECORD which IF SHE HADN'T HAVE BEEN. AND SURELY WHEN A CRIMINAL DEFENDANT SAYS, "I PLEAD THE FIFTH" IT DOESN'T take A TRAINED LAWYER, A PH.D, OR A LAWYER TO KNOW WHAT HE MEANS. ENDED AS EARLY AS 1955, THE SUPREME COURT RECOGNIZED THAT "IN POPULAR PARLANCE AND (AND) A LEGAL REFERENCE, THE TERM 'FIFTH AMENDMENT' IN THE CONTEXT OF OUR TIME IS COMMONLY REGARDED AS BEING SYNONYMOUS WITH THE PRIVILEGE AGAINST SELF-INCRIMINATION." QUOTING Ullmann V. United States, 350 U.S. 155, 163, 75 S.Ct. 668, 99 L.Ed. 1164 (1955). ACCORD IN Re Johnny V., 85 Cal. App. 3d 778, 149 Cal. Rptr. 180, 184, 188 (Cal. Ct. App. (1978) (Holding that the statement "I'll TAKE THE FIFTH"

GROUND THREE CONTINUED

WAS AN ASSERTION OF THE FIFTH AMENDMENT PRIVILEGE). IT IS THE DUTY OF THE COURT TO DETERMINE FROM THE PROOF, USUALLY TAKEN OUT THE PRESENCE OF THE JURY IF OFFICER MOGG'S TESTIMONY ABOUT THE DEFENDANT - WHICH WAS WHAT OFFICER MOGG ALLEDGES WAS DID AND/OR SAID BY THE DEFENDANT WERE FREELY AND VOLUNTARILY MADE AND ADMISSIBLE. AS MENTIONED OFFICER ALLEGED ON LINE FIVE ON THIS PAGE THAT HE RECEIVED AN ORDER I.E. THE FIFTH AMENDMENT THAT IS THE FOURTEENTH AMENDMENT MAKES THE FIFTH AMENDMENT APPLICABLE TO THE STATES AND THAT WHAT THIS OFFICER'S TESTIMONY WOULD HAVE BEEN INADMISSIBLE [redacted]. ALSO AMENDMENT V. PROVISIONS CONCERNING PROSECUTION AND DUE PROCESS OF LAW. DOUBLE JEOPARDY DESTRUCTION, PRIVATE PROPERTY NOT TO BE TAKEN WITHOUT COMPENSATION. NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER; NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION. AS FOR AS WHETHER WHAT WAS WITHHELD WAS MATERIAL IT SURELY IS. THE ULTIMATE TEST REMAINS THAT WHICH HAS BEEN THE ONLY CLEARLY ESTABLISHED TEST IN ANGLO-AMERICAN COURTS FOR TWO HUNDRED YEARS: THE TEST OF VOLUNTARINESS. IS THE CONTENTS IN OFFICER MOGG'S TESTIMONY THAT HE ALLEDGES CAME FROM DEFENDANT - THE PRODUCT OF AN ESSENTIALLY FREE AND UNCONSTRAINED CHOICE BY ITS MAKER? IF IT IS, IF HE WILLED THAT BEING THE MAKER IT MAY BE USED AGAINST HIM. IF IT IS NOT, IF THE MAKER HAS BEEN OVERBORNE AND CRUSHED BY THE SELF-DETERMINATION CRITICALLY IMPAIRED, THE USE OF MOGG'S TESTIMONY OFFENDS DUE PROCESS. SEE 367 U.S. 568, 602, 6 L.Ed. 2d 1037, 81 S. Ct. 1860 (1961) SEE ALSO 412 U.S. 218,

Ground Three (Continued

225, 226, 3d Led 2d 654, 93 S.Ct. 1041 (1973). And thereby discretion still left open for this Court. I stated, "I plead the Fifth" was my very first words when this officer got initiated questioning he replied "Rights, you have no Rights." And that I have to answer his question, whatever this officer alleges Defendant and/or that I said to him besides "I plead the fifth" is not freely or voluntary and/or a free and uncoerced choice by me. I never said I shot and killed no one. I was forced to their homy-ness and once there invoked my right to remain silent I wasn't supposed to be questioned. The state has no probable cause, I know the lying-declarations has contradictions which I have proof which proves victim lied/lies and didn't implicate or make any implications as to who his shooter was at all. I can take a polygraph and in Arizona any polygraph is offer for proof that I said, "I plead the fifth" and that this officer said, "Rights, you have no Rights." And he said I have to answer his question. There was no evidentiary hearing in this case and the video was viewed off the record without me viewing it despite my depiction that I've complained about which caused false contradictions as to the signs of life and/or consciousness of victim that was then stenographed when Court commenced session. I have a right to see the Judges oath of office as I could have viewed that tape in his chambers as well. I ask this Court to consider and to take into consideration when forthcoming the proper test in this instant case that the Supreme Court has long held that a guilty plea constitutes a conviction. The Supreme Court held that a guilty plea's effects, purposes and effect from a confession, "it is itself a conviction. See Kercheval Id. at 223. Also take into consideration that Reviewing Court must look beyond the plea convict to the entire record and at the totality of the circumstances to correct a manifest injustice Rubio, 124 at 1038-1039, 194

GROUND THREE CONTINUED

P.3d at 1228. Also you have to do this knowledge that Apply's the harmless error analysis to Officer Mogg's testimony and what he introduced into evidence that is, without his testimony and what he introduced into evidence, the analysis would look at the remaining evidence against an defendant. In this instant case the state don't have probable cause for an arrest and in fact used Mogg's testimony which is insufficient. I plead the fifth, I was never under arrest and I never volunteered to go to headquarters in fact officer said I had to go. So I was forced there. It's contradictions with their dying declaration that alone shows they didn't have and I have evidence to show these contradictions plus witness to subpoena that viewed the video tape that I still haven't seen even though there was an evidentiary hearing in this case. First and foremost the evidence they withheld, had it been introduced I wouldn't be writing this petition. They have no evidence, no witness that can take a polygraph that they seen me with a firearm let alone that they seen me shooting. Plus Criminal Law 46.4 - Counsel - duties - duty to keep defendant informed of important developments in the course of the prosecution see 104 S.Ct. 2052, 80 L.Ed.2d 674 466 U.S. 668, Strickland v. Washington. In this instance case no important developments in the course of the prosecution. This ground was raised and asked counsel not to omit it nothing. The procedural default is on behalf of counsel. Something Appeal or Evidentiary

pg. 5C

[redacted] Ground Three Continued.

I would Ask For a hearing to be set on this matter and for the Right to Subpoena Witnesses And evidence in Support of This Grounds Also For Grounds Four And For Ground Five (Supporting FACTS (Tell your story briefly without citing cases or law): I would also Ask For a hearing to be set on Those matters And for the Right to Subpoena witnesses And Evidence in Support of Those grounds. Thank You. Had the State of Nevada introduce the withheld evidence I would have Refused to plead guilty And insisted on going to Trial. I was forced to preliminary And There my Specific Request was made when he was to testify to the Discurance about what happened when he came into Contact with Me.

pg. 5D

- **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

___ Yes ✓ No. If no, explain why not: _____

_____.

- **First Post Conviction:**

Did you raise this issue in a petition for post conviction relief or state petition for habeas corpus?

___ Yes ✓ No. If no, explain why not: Counsel omitted

_____.

If yes, name of court: _____ date petition filed ___/___/___.

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court?___ Yes ✓ No. If no, explain why not: Counsel omitted

_____.

If yes, did you raise this issue?___ Yes ___ No. If no, explain why not: _____

_____.

- **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

___ Yes ___ No. If yes, explain why: _____

_____.

If yes, name of court: _____ date petition filed ___/___/___.

Did you receive an evidentiary hearing? ___ Yes ___ No. Did you appeal to the Nevada Supreme Court?___ Yes ___ No. If no, explain why not: _____

_____.

If yes, did you raise this issue?___ Yes ___ No. If no, explain why not: _____

_____.

- **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? ___ Yes ✓ No. If yes, explain: _____

_____.

State concisely every ground for which you claim that the state court conviction and/or sentence is

• [redacted] PP. 5E

PLEADING CONTINUES IN NEXT VOLUME