

**No. 83346**

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IN THE NEVADA SUPREME COURT

Electronically Filed  
Mar 07 2022 10:33 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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**Eric Abasta,**

Appellant,

v.

**State of Nevada,**

Respondent.

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Direct Appeal from a Judgment of Conviction (Plea of Guilty)  
Eighth Judicial District Court  
Honorable Michael Villani, District Court Judge; Honorable  
David Barker, District Court Judge; Honorable Cristina Silva,  
District Court Judge, District Court Case No. C-20-349045-1

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**Appellant's Appendix (Volume 2 of 3)**

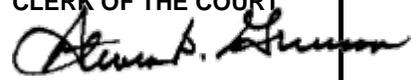
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EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

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THE STATE OF NEVADA, )  
)  
Plaintiff, )  
)  
vs. ) GJ No. 19CGJ051A-C  
) DC No. C349045  
ERIC ABASTA, aka Eric Abasta, )  
Jr., MASON ARNEY, JAMES WAYLON )  
ARNEY, aka Waylan Arney, Jr., )  
)  
Defendants. )  

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Taken at Las Vegas, Nevada  
Thursday, June 25, 2020  
10:05 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
VOLUME 2

Reported by: Danette L. Antonacci, C.C.R. No. 222

12:00 1 GRAND JURORS PRESENT ON JUNE 25, 2020  
2  
3 KENNETH DICKINSON, Foreperson  
4 JANSSEN REMBERT, Deputy Foreperson  
12:00 5 DENISE WALLACE, Secretary (Did not deliberate, gone for  
6 p.m. portion.)  
7 WENDY MOORE, Assistant Secretary  
8 GULLIVER FLYNN  
9 DONNA DEAN-HANCOCK  
12:00 10 BELINDA MILLER  
11 EMMETT MORGAN  
12 ANEDA MURRAY  
13 JOHN PLUNKETT  
14 VIRGIL RAYOS  
12:00 15 SAFAK SAHIN  
16 JESSIE SAULSON  
17 SCOTT STEVENSON  
18 DANIEL WILLIAMS  
19 Also present at the request of the Grand Jury:  
12:00 20 Nicole Cannizzaro, Chief Deputy District Attorney  
21 Michael Dickerson, Deputy District Attorney  
(Present for p.m. portion ony.)  
22  
23  
24  
25

12:00

1

INDEX OF WITNESSES

2

Examined

3

4

THOMAS MURRAY

7

12:00

5

LOGAN BODILY

18

6

ISAIAH WASHINGTON

26

7

WAYLON ARNEY

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BRYAN MOORE

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ERIC STAFFORD

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12:00	1	<u>INDEX OF EXHIBITS</u>	
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12:00

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LAS VEGAS, NEVADA, JUNE 25, 2020

2

\* \* \* \* \*

3

4

DANETTE L. ANTONACCI,

12:00

5

having been first duly sworn to faithfully

6

and accurately transcribe the following

7

proceedings to the best of her ability.

8

9

MS. CANNIZZARO: Good morning ladies and

10:05

10

gentlemen of the Grand Jury. My name is Nicole

11

Cannizzaro. I am a chief deputy district attorney with

12

the Clark County District Attorney's Office and I am

13

here to continue the presentation of the State of Nevada

14

Eric Abasta, Mason Arney and James Waylon Arney under

10:06

15

Grand Jury case number 19CGJ051A-C. For the record the

16

Grand Jury has been provided with 1A which is the

17

proposed Indictment. It removes Count 18 that was in

18

the previous Indictment and changes some language

19

regarding the robbery count to comport with testimony by

10:06

20

Mr. Ernesto Santana last week. I would note that all

21

members of the Grand Jury do have a copy of that revised

22

proposed Indictment marked as Exhibit 1A.

23

At this point in time do any members of the

24

Grand Jury have any questions regarding that proposed

10:06

25

Indictment? Then we'll start with our first witness who

10:06 1 is going to be Detective Murray.

2 THE FOREPERSON: Please raise your right  
3 hand.

4 You do solemnly swear the testimony you are  
10:07 5 about to give upon the investigation now pending before  
6 this Grand Jury shall be the truth, the whole truth, and  
7 nothing but the truth, so help you God?

8 THE WITNESS: Yes.

9 THE FOREPERSON: Please be seated.

10:07 10 You are advised that you are here today to  
11 give testimony in the investigation pertaining to the  
12 offenses of assault with a deadly weapon, ownership or  
13 possession of firearm by prohibited person, carrying  
14 concealed firearm or other deadly weapon, attempt  
10:08 15 robbery with use of a deadly weapon, murder with use of  
16 a deadly weapon, conspiracy to commit robbery, robbery  
17 with use of a deadly weapon, grand larceny auto, attempt  
18 robbery, attempt murder with use of a deadly weapon, and  
19 battery with use of a deadly weapon resulting in  
10:08 20 substantial bodily harm, involving Eric Abasta, Mason  
21 Arney and James Waylon Arney.

22 Do you understand this advisement?

23 THE WITNESS: Yes.

24 THE FOREPERSON: Please state your first

10:08 25 and last name and spell both for the record.

10:08 1 THE WITNESS: Thomas Murray. T-H-O-M-A-S,  
2 M-U-R-R-A-Y.

3 THE FOREPERSON: Thank you.

4 THOMAS MURRAY,

10:08 5 having been first duly sworn by the Foreperson of the  
6 Grand Jury to testify to the truth, the whole truth,  
7 and nothing but the truth, testified as follows:

8

9 EXAMINATION

10:08 10

11 BY MS. CANNIZZARO:

12 Q. Good morning, Detective. How are you  
13 currently employed?

14 A. With Las Vegas Metropolitan Police  
10:08 15 Department.

16 Q. How long have you been employed with the  
17 police department?

18 A. Thirteen years.

19 Q. In your capacity with the police department  
10:08 20 are you often asked to conduct follow-up investigation  
21 regarding calls for service?

22 A. Yes.

23 Q. I want to direct your attention to January  
24 of 2020. Did you become involved in an investigation

10:09 25 regarding an alleged assault with use of a deadly weapon

10:09 1 from January 5th of 2020 near Tom's Smoke Shop?

2 A. Yes.

3 Q. And that's Tom's Smoke Shop at 4910 East  
4 Tropicana Avenue?

10:09 5 A. Yes.

6 Q. Is that located in Las Vegas, Clark County,  
7 Nevada?

8 A. Yes.

9 Q. Was your understanding of that particular  
10:09 10 incident that the victim had been in the parking lot  
11 when a silver car pulled up and a male exited the  
12 vehicle and threatened him with a firearm?

13 A. Yes.

14 Q. Based upon that description that you  
10:09 15 received, were you able to then engage in a follow-up  
16 investigation to include retrieving video from Tom's  
17 Smoke Shop?

18 A. Yes.

19 Q. Were you able to retrieve video from Tom's  
10:09 20 Smoke Shop?

21 A. Yes.

22 Q. When you reviewed that video, do you recall  
23 seeing in that video a suspect vehicle, a silver  
24 vehicle, pull up into Tom's Smoke Shop as the victim's  
10:09 25 vehicle was pulling out?

10:09 1 A. Yes.

2 Q. Do you recall seeing an individual get out  
3 of the silver vehicle and approach the victim's vehicle?

4 A. Yes.

10:09 5 Q. Do you recall seeing that same individual  
6 then reach into the silver vehicle to grab a firearm?

7 A. Yes.

8 Q. Do you then recall seeing him place that  
9 firearm in his waistband and approach the victim's  
10 vehicle again?

10:10 10  
11 A. Yes.

12 Q. And do you remember him eventually pulling  
13 out that firearm and pointing it at the victim's  
14 vehicle?

10:10 15 A. Yes.

16 Q. Do you remember in that video if he then  
17 placed that firearm back inside of his waistband?

18 A. Yes.

19 Q. Did he enter the store after that?

10:10 20 A. Yes.

21 Q. When he was in the store, were you able to  
22 collect video from him inside of the store?

23 A. Yes.

24 Q. From that video were you able to gather

10:10 25 some still shots in order to hopefully identify that

10:10 1 individual?

2 A. Yes.

3 Q. And this individual was a male; is that  
4 correct?

10:10 5 A. Correct.

6 Q. And did he have visible tattoos on his  
7 arms?

8 A. Yes.

9 Q. Were you able to isolate some of those in  
10:10 10 the still shots?

11 A. Yes.

12 Q. I am going to show you what has been marked  
13 as Grand Jury Exhibits Numbers 31 through 33. Do you  
14 recognize these photographs?

10:10 15 A. I do.

16 Q. How do you recognize these photographs?

17 A. These are the still photographs that I  
18 obtained from the video.

19 Q. There also appears to be some arrows as  
10:11 20 well. Is that markings that you had made?

21 A. Yeah, I put the markings on there.

22 Q. Is that again in an attempt to identify the  
23 tattoos that you were looking at?

24 A. Yes.

10:11 25 Q. I am going to publish for members of the

10:11 1 Grand Jury Grand Jury Exhibit Number 31.

2 Now Detective, we see again this red arrow  
3 here. Is that something you indicated on this  
4 particular video?

10:11 5 A. Correct.

6 Q. And that's pointing to a tattoo on a right  
7 forearm; is that right?

8 A. Yes.

9 Q. Grand Jury Exhibit Number 32. Again we see  
10:11 10 a red arrow pointing towards that same right forearm; is  
11 that accurate?

12 A. Yes.

13 Q. And then Grand Jury Exhibit Number 33, we  
14 can see that he has tattoos on both forearms; is that  
10:11 15 correct?

16 A. Correct.

17 Q. When you were able to get close enough to  
18 those photographs in the still shots, you were able to  
19 notice that he had some tattoos on his right forearm; is  
10:12 20 that right?

21 A. That's correct.

22 Q. Specifically do you recall seeing on the  
23 outer right arm, a naked woman image?

24 A. Yes.

10:12 25 Q. And on the inner right arm do you remember

10:12 1 seeing a mouth with fang teeth?

2 A. Yes.

3 Q. Were you able to conduct a records check --  
4 sorry, let me ask you a different question first. Did  
10:12 5 you also happen to notice that he had tattoos on his  
6 face?

7 A. That's correct.

8 Q. Were you able to conduct a records check to  
9 determine if there was a match for those types of  
10:12 10 tattoos?

11 A. Yes.

12 Q. Were you able to identify a suspect by the  
13 name of Eric Abasta?

14 A. Yes.

10:12 15 Q. Were you able to pull some of the  
16 photographs of that right forearm for Mr. Abasta?

17 A. Yes.

18 Q. I am going to show you Grand Jury Exhibits  
19 Numbers 10 and 11. Do you recognize these photographs?

10:12 20 A. Yes.

21 Q. And how do you recognize these photographs?

22 A. I obtained these from a booking photo of  
23 Mr. Abasta from several years prior.

24 Q. And I will note for the members of the

10:12 25 Grand Jury that any reference to prior booking photos or

10:13 1 prior arrests is offered only to show, only to give  
2 context for these particular photographs. It should not  
3 be used by any of you with respect to your evaluation of  
4 these particular charges and in no way should impart bad  
10:13 5 character on the part of any of the alleged defendants  
6 in this Indictment.

7 So you obtain these photographs. Were you  
8 able to compare them with the still shots you received  
9 from Tom's Smoke Shop?

10:13 10 A. Yes.

11 Q. I'm going to show for the members of the  
12 Grand Jury Exhibit Number 10.

13 Detective, in this photograph it appears to  
14 be the right inner forearm and there also appears to be  
10:13 15 sort of a mouth character with bad teeth. Is that the  
16 same tattoo we were discussing earlier?

17 A. Yes.

18 Q. And then there was another tattoo on the  
19 opposite arm. Grand Jury Exhibit Number 11, do you see  
10:13 20 that tattoo on this arm?

21 A. Yes.

22 Q. And this is not the same naked lady tattoo  
23 we were referring to earlier; right?

24 A. Right.

10:13 25 Q. This tattoo is also something you were able

10:14 1 to compare to the video surveillance stills?

2 A. Yes.

3 Q. Based upon that information, did you  
4 eventually put together a photographic line-up?

10:14 5 A. I did.

6 Q. Do you recall placing Mr. Abasta in that  
7 photographic line-up?

8 A. Yes.

9 Q. Did you show this photo line-up to the  
10:14 10 victim Isaiah Washington on January 31st of 2020?

11 A. Yes, I did.

12 Q. I'm going to show you Grand Jury Exhibit  
13 Number 34. Do you recognize this packet of documents?

14 A. Yes.

10:14 15 Q. And how do you recognize these documents?

16 A. This is our photo line-up documents that we  
17 use.

18 Q. This is the same photo line-up we were just  
19 discussing?

10:14 20 A. Yes.

21 Q. Is your name and personnel number on the  
22 front of this packet?

23 A. Yes.

24 Q. There appears to be a set of instructions.

10:14 25 Did you read those instructions to Mr. Washington?

10:14 1 A. Yes.

2 Q. Did he understand those instructions?

3 A. Yes.

4 Q. Did you then show him a copy of six photos?

10:14 5 A. Yes.

6 Q. I'm going to publish for members of the

7 Grand Jury page number 1 of Grand Jury Exhibit

8 Number 34.

9 These are those instructions you were just

10:15 10 discussing?

11 A. Yes.

12 Q. And this is your name on this particular

13 photo line-up; is that correct?

14 A. Yes.

10:15 15 Q. Now I'm going to show you page 2 of this

16 photographic line-up. There appears to be a circle and

17 a signature by the person in position number 4; is that

18 right?

19 A. Yes.

10:15 20 Q. Did Mr. Washington make that indication?

21 A. Yes.

22 Q. And then on page 3 there's another set of

23 those same six photographs with names next to them. Is

24 the person in number 4 identified as Eric Abasta?

10:15 25 A. Yes.

10:15 1 MS. CANNIZZARO: I have no further  
2 questions for this witness. Do any members of the Grand  
3 Jury have questions?

4 THE FOREPERSON: No questions.

10:15 5 By law, these proceedings are secret and  
6 you are prohibited from disclosing to anyone anything  
7 that has transpired before us, including evidence and  
8 statements presented to the Grand Jury, any event  
9 occurring or statement made in the presence of the Grand  
10:15 10 Jury, and information obtained by the Grand Jury.

11 Failure to comply with this admonition is a  
12 gross misdemeanor punishable by up to 364 days in the  
13 Clark County Detention Center and a \$2,000 fine. In  
14 addition, you may be held in contempt of court  
10:15 15 punishable by an additional \$500 fine and 25 days in the  
16 Clark County Detention Center.

17 Do you understand this admonition?

18 THE WITNESS: Yes.

19 THE FOREPERSON: Thank you. You're

10:16 20 excused.

21 THE WITNESS: Thank you.

22 THE FOREPERSON: Please raise your right  
23 hand.

24 You do solemnly swear the testimony you are  
10:16 25 about to give upon the investigation now pending before

10:16 1 this Grand Jury shall be the truth, the whole truth, and  
2 nothing but the truth, so help you God?

3 THE WITNESS: Yes.

4 THE FOREPERSON: Please be seated.

10:17 5 You are advised that you are here today to  
6 give testimony in the investigation pertaining to the  
7 offenses of assault with a deadly weapon, ownership or  
8 possession of firearm by prohibited person, carrying  
9 concealed firearm or other deadly weapon, attempt

10:17 10 robbery with use of a deadly weapon, murder with use of  
11 a deadly weapon, conspiracy to commit robbery, robbery  
12 with use of a deadly weapon, grand larceny auto, attempt  
13 robbery, attempt murder with use of a deadly weapon, and  
14 battery with use of a deadly weapon resulting in

10:17 15 substantial bodily harm, involving Eric Abasta, Mason  
16 Arney and James Waylon Arney.

17 Do you understand this advisement?

18 THE WITNESS: Yes.

19 THE FOREPERSON: Please state your first  
10:17 20 and last name and spell both for the record.

21 THE WITNESS: Logan Bodily. L-O-G-A-N,  
22 B-O-D-I-L-Y.

23 THE FOREPERSON: Thank you.

24 ///

10:18 25 ///

10:18 1 LOGAN BODILY,  
2 having been first duly sworn by the Foreperson of the  
3 Grand Jury to testify to the truth, the whole truth,  
4 and nothing but the truth, testified as follows:

10:18 5  
6 EXAMINATION

7

8 BY MS. CANNIZZARO:

9 Q. Good morning, Mr. Bodily. How are you  
10:18 10 currently employed?

11 A. I am a forensic lab technologist for the  
12 Las Vegas Metropolitan Police Department forensic lab in  
13 the firearms section.

14 Q. And how long have you been employed in that  
10:18 15 position?

16 A. For a year and a half.

17 Q. Do you have any training, education or  
18 experience that has prepared for you that position?

19 A. Yes. I have a Bachelor's degree in  
10:18 20 forensic science from Utah Valley University. I've  
21 completed in-house training for my position, including  
22 reading technical manuals, lab manuals. I've also  
23 completed supervised case work related to my current  
24 position. I've completed a training program put on by  
10:18 25 the ATF for NIBIN entry.

10:18 1 Q. And in your current position would it be  
2 fair to say that you have the opportunity to either test  
3 fire or examine cartridge casings from test fires of  
4 firearms?

10:19 5 A. Yes, ma'am.

6 Q. Those would technically be firearms that  
7 might be recovered by an officer or detective during an  
8 investigation?

9 A. Yes, ma'am.

10:19 10 Q. Do you also in your current position often  
11 examine cartridge casings in order to conduct an  
12 analysis of those casings that are recovered from  
13 different crime scenes?

14 A. Yes, ma'am, I take cartridge cases and  
10:19 15 analyze them and put them in for NIBIN entry.

16 Q. Now NIBIN, fair to say that's a system that  
17 will record some of the markings on those casings and  
18 allow you to then conduct further analysis?

19 A. Yes.

10:19 20 Q. I want to direct your attention to a number  
21 of case, lab case numbers that you were involved in. Do  
22 you recall becoming involved in lab case number  
23 20-04607.1?

24 A. Yes, ma'am.

10:20 25 Q. Did you have an opportunity to examine a

10:20 1 test cartridge that had been fired from a Marlin 925  
2 .22 caliber long rifle?

3 A. Can I refer to my report?

4 Q. If it would refresh your recollection, yes,  
10:20 5 please.

6 A. Yes.

7 Yes, I viewed the correlations for the test  
8 fired cartridge case from the Marlin 925.

9 Q. And that would have been a Marlin with  
10:20 10 serial number 91685890?

11 A. That's correct.

12 Q. So you're actually in that case are  
13 examining the markings from a test fired cartridge  
14 casing?

10:20 15 A. I viewed the images of the markings from  
16 that cartridge case in the NIBIN system and looked for a  
17 potential association within the NIBIN system.

18 Q. Now did you also happen to conduct, to  
19 become involved in lab case number 20-04607.2?

10:21 20 A. Yes.

21 Q. And again with that specific case number  
22 you were involved with examining entries into the NIBIN  
23 system for at least two different cartridge casings; is  
24 that correct?

10:21 25 A. Yes.

10:21 1 Q. One of those would have been a Super X .22  
2 long rifle cartridge case?

3 A. Yes, ma'am.

4 Q. And one of those would have been a Sig  
10:21 5 9-millimeter Luger Plus P cartridge case?

6 A. That's right.

7 Q. When you examined those particular  
8 cartridge casings, did you find any possible  
9 associations?

10:21 10 A. Yes, ma'am. For the Super X .22 long rifle  
11 cartridge case I found an association between that  
12 cartridge case and the test fired cartridge case from  
13 the Marlin Model 925, serial number 91685890, impounded  
14 under the same event as the cartridge case.

10:22 15 Q. And so that would have been that same test  
16 fire image that you had reviewed under the prior case  
17 number?

18 A. Yes.

19 Q. And then with respect to the 9-millimeter  
10:22 20 cartridge casing, do you recall it having several  
21 possible associations with various event numbers?

22 A. Yes, ma'am, there were several.

23 Q. Specifically -- I'm going to ask you about  
24 each of those. There was an event number 191200105354  
10:22 25 wherein there were five casings, 9-millimeter casings,

10:23 1 that had been impounded; is that right?

2 A. That's correct.

3 Q. And there was a possible association with  
4 event number 191200037747 where there was one

10:23 5 9-millimeter cartridge casing impounded; is that  
6 correct?

7 A. That's correct.

8 Q. There was also a North Las Vegas event  
9 number under 1912140024831?

10:23 10 A. That's correct.

11 Q. And that would have been another  
12 9-millimeter cartridge casing that had been impounded?

13 A. Yes, ma'am.

14 Q. Did it also come back to matching a Nevada  
10:23 15 Highway Patrol event number 200200200?

16 A. That's correct, there were test fires from  
17 a Glock Model 17 Gen4.

18 Q. And that would have also been a  
19 9-millimeter caliber semi-automatic pistol; is that

10:24 20 correct?

21 A. Yes, ma'am.

22 Q. Did it also come back to matching a  
23 Henderson Police Department event number 20-00988?

24 A. Yes, ma'am.

10:24 25 Q. And that would have been one 9 millimeter

10:24 1 cartridge casing that was recovered under that event  
2 number?

3 A. Yes.

4 Q. And then did it also match event number  
10:24 5 191200047054?

6 A. Yes.

7 Q. And that would have been one additional  
8 9-millimeter cartridge casing that had been recovered;  
9 is that right?

10:24 10 A. That's correct.

11 Q. And when you're looking for possible  
12 associations, you are examining the NIBIN entry as well  
13 as the images from these entries for these event  
14 numbers; is that correct?

10:24 15 A. Yes, ma'am. When the images from the  
16 cartridge case are uploaded, they're searched against  
17 images of other cartridge cases that are currently in  
18 the data base. A list of possible associations come  
19 back. I view the possible associations and find

10:24 20 markings that correlate to each other within those  
21 images and when I find sufficient markings that are  
22 correlated I call them association.

23 Q. And those are those possible associations  
24 we just talked about in each of those event numbers?

10:25 25 A. Yes, ma'am.

10:25 1 MS. CANNIZZARO: I have no further  
2 questions for this witness. Do any members of the Grand  
3 Jury have questions?

4 THE FOREPERSON: No questions.

10:25 5 By law, these proceedings are secret and  
6 you are prohibited from disclosing to anyone anything  
7 that has transpired before us, including evidence and  
8 statements presented to the Grand Jury, any event  
9 occurring or statement made in the presence of the Grand  
10:25 10 Jury, and information obtained by the Grand Jury.

11 Failure to comply with this admonition is a  
12 gross misdemeanor punishable by up to 364 days in the  
13 Clark County Detention Center and a \$2,000 fine. In  
14 addition, you may be held in contempt of court  
10:25 15 punishable by an additional \$500 fine and 25 days in the  
16 Clark County Detention Center.

17 Do you understand this admonition?

18 THE WITNESS: Yes.

19 THE FOREPERSON: Thank you. You're  
10:25 20 excused.

21 Please remain standing. Please raise your  
22 right hand.

23 You do solemnly swear the testimony you are  
24 about to give upon the investigation now pending before  
10:26 25 this Grand Jury shall be the truth, the whole truth, and

10:26 1 nothing but the truth, so help you God?

2 THE WITNESS: I do.

3 THE FOREPERSON: Please be seated.

4 You are advised that you are here today to  
10:26 5 give testimony in the investigation pertaining to the  
6 offenses of assault with a deadly weapon, ownership or  
7 possession of firearm by prohibited person, carrying  
8 concealed firearm or other deadly weapon, attempt  
9 robbery with use of a deadly weapon, murder with use of  
10:26 10 a deadly weapon, conspiracy to commit robbery, robbery  
11 with use of a deadly weapon, grand larceny auto, attempt  
12 robbery, attempt murder with use of a deadly weapon, and  
13 battery with use of a deadly resulting in substantial  
14 bodily harm, involving Eric Abasta, Mason Arney and  
10:27 15 James Waylon Arney.

16 Do you understand this advisement?

17 THE WITNESS: Yes.

18 THE FOREPERSON: Please state your first  
19 and last name and spell both for the record.

10:27 20 THE WITNESS: Isaiah Washington.  
21 I-S-A-I-A-H, Washington, W-A-S-H-I-N-G-T-O-N.

22 THE FOREPERSON: Thank you.

23 A JUROR: He's going to have to speak way  
24 louder.

10:27 25 ///

10:27 1 ISAIAH WASHINGTON,  
2 having been first duly sworn by the Foreperson of the  
3 Grand Jury to testify to the truth, the whole truth,  
4 and nothing but the truth, testified as follows:

10:27 5  
6 EXAMINATION

7  
8 BY MS. CANNIZZARO:

9 Q. Good morning, Mr. Washington. I want to  
10:27 10 direct your attention to January 5th of 2020. Do you  
11 remember going to a shopping center wherein there was a  
12 Tom's Smoke Shop?

13 A. Yes.

14 Q. And that would have been a shopping center  
10:27 15 at 4910 East Tropicana Avenue?

16 A. Yes.

17 Q. Is that located in Las Vegas, Clark County,  
18 Nevada?

19 A. It is.

10:27 20 Q. You were a patron within that shopping  
21 center; is that correct?

22 A. I'm a patron, I was that night. Actually  
23 my job, that's one of our properties so I'm there often.

24 Q. Okay. That evening do you remember being  
10:28 25 in a vehicle?

10:28 1 A. Yes.

2 Q. What kind of vehicle were you in?

3 A. I was in my Chevy Camaro.

4 Q. When you were pulling away in your Chevy

10:28 5 Camaro, can you describe for the members of the Grand  
6 Jury what happened?

7 A. Yes. So as I was getting ready to reverse,  
8 I was just checking my mirrors, I noticed that a black  
9 Chevy Impala pulled up next to me on my left. So I was

10:28 10 looking to my left to make sure when I back out I don't  
11 hit anything. That's when I noticed the Hispanic male  
12 adult, he hopped out the rear passenger side of the  
13 vehicle, he was yelling something at me at first so I  
14 couldn't quite catch what he was saying so I rolled my

10:28 15 window down. At that point he just seemed very irate  
16 and angry. He asked me what are you looking at, what  
17 are you looking at. So I continued to back up. Then I  
18 noticed him go back to his vehicle and then I seen what  
19 was a gun he pulled out the car, tucked it behind his

10:29 20 back underneath his shirt and then proceeded to walk  
21 toward my car. At that point I did give him  
22 instructions, you know, don't walk up to my car, several  
23 times. He proceeded to walk up to my car, that's when  
24 he pulled the gun out cocked it, pointed it at me, and

10:29 25 then I sped off.

10:29 1 Q. So you said that there was what you  
2 believed to be a Chevy Impala pull up and this  
3 individual got out of the back passenger seat?

4 A. It was a black Chevy Impala.

10:29 5 Q. And when he approached you, at first he was  
6 saying something; is that correct?

7 A. Yes.

8 Q. And then he went back to the car and  
9 retrieved a firearm?

10:29 10 A. Yes.

11 Q. And he tucked it into his waistband?

12 A. Behind him.

13 Q. Form like behind, I'm sorry, behind his  
14 waistband?

10:29 15 A. Yeah, behind his waistband and he pulled  
16 his shirt over it.

17 Q. So that way it was totally concealed, you  
18 couldn't see it with your eyes at that point?

19 A. Correct.

10:29 20 Q. He then approached you again?

21 A. Yes. He started walking towards my car and  
22 then I was giving him, because at that point I already  
23 knew he had a gun on him, I was letting him know don't  
24 walk up on my vehicle. He proceeded to walk up, he

10:30 25 pulled the gun out, like I said he cocked it, pointed it

10:30 1 at me, and then I drove away.

2 Q. Now are you aware whether there are  
3 surveillance cameras in this particular property?

4 A. There is.

10:30 5 Q. I'm going to show you, and you'll see up  
6 here on the screen, does that video right there show the  
7 front of Tom's Smoke Shop?

8 A. It does.

9 Q. Do you see your vehicle?

10:30 10 A. I do.

11 Q. Is it this silver vehicle parked in that  
12 stall right in front?

13 A. It is.

14 Q. And so you would expect to see an  
10:30 15 individual come out of a car, the back passenger seat  
16 and approach you; is that correct?

17 A. Correct.

18 Q. And you actually see yourself in this video  
19 in that car?

10:30 20 A. Yeah. Like I said I had just gotten off  
21 work, that is one of our properties, I do armed  
22 security, so, yeah, that is me in that car.

23 Q. We start to see you pull out there about 35  
24 seconds in; is that right?

10:31 25 A. Yes.

10:31 1 Q. And this is the car you see pull up?

2 A. Absolutely.

3 Q. Now you recall it being a black Chevy  
4 Impala; is that right?

10:31 5 A. Yes.

6 Q. It looks a little more silver in this  
7 video; would that be fair to say?

8 A. Kind of like grayish silver, yeah.

9 Q. And there appears to be at about 50 seconds  
10:31 10 an individual getting out of the back passenger seat; is  
11 that right?

12 A. Yes.

13 Q. Is that when he's sort of talking to you?

14 A. Yeah.

10:31 15 Q. We see him reach back into the car at about  
16 1:03. Is that when you see him grabbing the firearm?

17 A. Yes.

18 Q. And we see at 1:14 someone walking up to  
19 your car.

10:32 20 And we just saw him reach into his  
21 waistband and point something at you. Was that the gun  
22 that you saw?

23 A. Yes, it was.

24 Q. We now see you start to speed away; is that  
10:32 25 correct?

10:32 1 A. Yes.

2 Q. You reported this to the police; is that  
3 correct?

4 A. I did.

10:32 5 Q. And do you recall in January, January 31st  
6 of 2020, meeting with a detective on this incident?

7 A. I do.

8 Q. Do you remember him showing you a  
9 photographic line-up?

10:32 10 A. He did.

11 Q. And when you looked at that line-up do you  
12 remember him reading you some instructions about that  
13 line-up?

14 A. He did.

10:32 15 Q. Do you remember looking at a set of six  
16 photographs?

17 A. I do.

18 Q. Do you remember selecting someone?

19 A. I do.

10:32 20 Q. I'm going to show you Grand Jury Exhibit  
21 Number 34. Do you recognize the first page of this  
22 document?

23 A. I do.

24 Q. And do you recognize the second page?

10:33 25 A. I do.

10:33 1 Q. I'm going to publish for members of the  
2 Grand Jury Grand Jury Exhibit Number 34.

3 This first page, Mr. Washington, these are  
4 the instructions you were read?

10:33 5 A. Yes.

6 Q. And then here there appears to be a  
7 statement. "I was able to recognize the suspect by the  
8 distinct tattoos on his face and the shape of his eyes."  
9 Is that your handwriting?

10:33 10 A. Yes, it is.

11 Q. Are these your signatures here where it  
12 says sign?

13 A. Yes, it is.

14 Q. On the second page there appears to be a  
10:33 15 circle around the person in spot number 4. Is that a  
16 circle that you made?

17 A. Correct.

18 Q. And is this your signature here?

19 A. It is.

10:33 20 Q. Is that the same individual that approached  
21 you and threatened you with a firearm?

22 A. It is.

23 MS. CANNIZZARO: I have no further  
24 questions for this witness. Do any members of the Grand  
10:33 25 Jury have questions?

10:33 1 THE FOREPERSON: No questions.

2 By law, these proceedings are secret and  
3 you are prohibited from disclosing to anyone anything  
4 that has transpired before us, including evidence and  
10:33 5 statements presented to the Grand Jury, any event  
6 occurring or statement made in the presence of the Grand  
7 Jury, and information obtained by the Grand Jury.

8 Failure to comply with this admonition is a  
9 gross misdemeanor punishable by up to 364 days in the  
10:33 10 Clark County Detention Center and a \$2,000 fine. In  
11 addition, you may be held in contempt of court  
12 punishable by an additional \$500 fine and 25 days in the  
13 Clark County Detention Center.

14 Do you understand this admonition?

10:34 15 THE WITNESS: Yes.

16 THE FOREPERSON: Thank you. You're  
17 excused.

18 THE WITNESS: Thank you.

19 MS. CANNIZZARO: Members of the Grand Jury,  
10:34 20 I will clarify for the record, the video that we watched  
21 has been marked as Grand Jury Exhibit Number 20.

22 And that will conclude my presentation for  
23 the time being. Thank you for your time.

24 (Proceedings, recessed at 10:34 a.m.)

10:34 25 (Proceedings resumed at 5:05 p.m. Juror

10:34 1 Denise Wallace no longer present. Attorney Michael  
2 Dickerson now also present.)

3 MS. CANNIZZARO: Good afternoon ladies and  
4 gentlemen of the Grand Jury. My name is Nicole  
05:13 5 Cannizzaro, chief deputy district attorney with the  
6 Clark County District Attorney's Office here for the  
7 continued presentation of the State of Nevada versus  
8 Eric Abasta, Mason Arney and James Waylon Arney under  
9 Grand Jury case number 19CGJ051A-C. The State is going  
05:13 10 to go ahead and call its next witness who will be Waylon  
11 Arney. Or James Waylon Arney.

12 THE FOREPERSON: Sir, please state your  
13 name.

14 MR. LIPPMANN: Daniel Lippmann, bar number  
05:14 15 11636. L-I-P-P-M-A-N-N.

16 THE FOREPERSON: Thank you.

17 A JUROR: Can you repeat that please? I'm  
18 sorry.

19 MR. LIPPMANN: Daniel Lippmann.  
05:14 20 L-I-P-P-M-A-N-N, Daniel.

21 A JUROR: Thank you.

22 THE FOREPERSON: Thank you.

23 Witness, can you please stand and raise  
24 your right hand.

05:14 25 You do solemnly swear the testimony you are

05:14 1 about to give upon the investigation now pending before  
2 this Grand Jury shall be the truth, the whole truth, and  
3 nothing but the truth, so help you God?

4 THE WITNESS: Yes, sir.

05:14 5 THE FOREPERSON: Please be seated.

6 You are advised that you are here today to  
7 give testimony in the investigation pertaining to the  
8 offenses of assault with a deadly weapon, ownership or  
9 possession of firearm by prohibited person, carrying  
05:14 10 concealed firearm or other deadly weapon, attempt  
11 robbery with use of a deadly weapon, murder with use of  
12 a deadly weapon, conspiracy to commit robbery, robbery  
13 with use of a deadly weapon, grand larceny auto, attempt  
14 robbery, attempt murder with use of a deadly weapon, and  
05:15 15 battery with use of a deadly weapon resulting in  
16 substantial bodily harm, involving Eric Abasta, Mason  
17 Arney and James Waylon Arney.

18 Do you understand this advisement?

19 THE WITNESS: Yes, sir.

05:15 20 THE FOREPERSON: Please state your first  
21 and last name and spell both for the record.

22 THE WITNESS: Waylon Arney. W-A-Y-L-O-N,  
23 A-R-N-E-Y.

24 THE FOREPERSON: Thank you.

05:15 25 ///

05:15 1 WAYLON ARNEY,  
2 having been first duly sworn by the Foreperson of the  
3 Grand Jury to testify to the truth, the whole truth,  
4 and nothing but the truth, testified as follows:

05:15 5  
6 EXAMINATION

7

8 BY MS. CANNIZZARO:

9 Q. Mr. Arney, you are here present before the  
05:15 10 Grand Jury with your counsel Mr. Lippmann. I'm going to  
11 show you a copy of a written waiver that you've already  
12 been provided and you've gone over with your attorney.  
13 This is a written waiver of constitutional privilege  
14 against self-incrimination. Are you familiar with this  
05:15 15 document?

16 A. Yes, ma'am.

17 Q. You had an opportunity with your attorney  
18 to review this document; is that right?

19 A. Yes, ma'am.

05:15 20 Q. I'm going to ask you to go ahead here where  
21 it says witness and I'm going to ask you to go ahead and  
22 sign that document here for us before the Grand Jury.

23 Can you date that for me as well? Today is  
24 the 25th of June.

05:16 25 If you would hand me that and I'm going to

05:16 1 give this to our foreperson for his signature as well.

2 Now Waylon, you understand that you're here  
3 to give testimony about some events pertaining to an  
4 incident that occurred on January 14th of 2020; is that  
05:16 5 right?

6 A. Uh-huh.

7 Q. You're going to have to speak up because  
8 this is a big room and you have a soft voice and you  
9 have a mask on so you have to project out.

05:17 10 A. Yes, ma'am.

11 Q. Perfect.

12 I would advise the ladies and gentlemen of  
13 the Grand Jury that Mr. Arney is here to give testimony  
14 relating to events from January 14th of 2020. I will  
05:17 15 note for the members of the Grand Jury that his  
16 testimony will pertain to Counts Number 4, 5 and 6 for  
17 members of the Grand Jury in the proposed Indictment  
18 that was provided to you under, marked as 1A earlier  
19 today. Mr. Arney will be giving testimony regarding  
05:17 20 those particular counts in this Indictment. He's also  
21 charged, as the members of the Grand Jury are aware, in  
22 a number of other counts. The State is going to be  
23 limiting his testimony today to the counts that I just  
24 listed. So as part of that, Mr. Lippmann has had an  
05:18 25 opportunity to speak with Mr. Arney.

05:18 1 Mr. Arney, you understand that you're here  
2 to give some testimony regarding that and as a result of  
3 that at a future date you may receive a plea deal with  
4 the State; is that correct?

05:18 5 A. Yes, ma'am.

6 Q. So I want to talk about January 14th, but  
7 before I do, I want to ask you about a couple of folks  
8 that you know. Who is Mason Arney to you?

9 A. My little brother.

05:18 10 Q. And does he have a nickname that he goes  
11 by?

12 A. Yeah.

13 Q. Is that Goon?

14 A. Yes, ma'am.

05:18 15 Q. That's G-O-O-N?

16 A. Yes, ma'am.

17 Q. And Eric Abasta, who is that to you?

18 A. Wikked.

19 Q. You know him as Wikked?

05:18 20 A. Yes, ma'am.

21 Q. Do you also know him to go by the name  
22 Junior?

23 A. Yes.

24 Q. Is he a friend of yours?

05:18 25 A. Yeah.

05:18 1 Q. Is it fair to say he's also related  
2 distantly through family?

3 A. Yes, ma'am.

4 Q. A cousin of sorts if you will; is that  
05:19 5 correct?

6 A. Yep.

7 Q. And then John Garcia, who is that?

8 A. Just a friend.

9 Q. Does he also go by a nickname?

05:19 10 A. Yes, ma'am.

11 Q. What do you call him?

12 A. Goofy.

13 Q. And that's G-O-O-F-Y?

14 A. Yes, ma'am.

05:19 15 Q. Do you also have a nickname?

16 A. Yes.

17 Q. What's your nickname?

18 A. Dopey.

19 Q. Dopey?

05:19 20 A. Yes, ma'am.

21 Q. So D-O-P-E-Y?

22 A. Uh-huh.

23 Q. I want to talk a little bit about late 2019  
24 and early into the beginning of this year. Do you  
05:19 25 recall having occasion, different occasions where you

05:19 1 would hang out with John Garcia, your brother Mason and  
2 Mr. Abasta?

3 A. Yes, ma'am.

4 Q. And what would you typically do with them?

05:19 5 What are some of the activities you would do?

6 A. Smoke weed, drink, and just do dumb stuff,  
7 like hit licks.

8 Q. Hit licks? A lick is a robbery?

9 A. Yes, ma'am.

05:20 10 Q. Are you familiar with the kind of car that  
11 Eric drives?

12 A. Yes, ma'am.

13 Q. What kind of car is that?

14 A. A Honda Accord or Civic.

05:20 15 Q. Some sort of Honda?

16 A. Yeah.

17 Q. Is it a two door or four door?

18 A. Four door.

19 Q. What color is it?

05:20 20 A. Silver.

21 Q. Do you know what kind of license plate it  
22 has?

23 A. Massachusetts.

24 Q. You know him to be from Boston?

05:20 25 A. He's not from Boston but he was out there

05:20 1 and that's when he got the car.

2 Q. And you know that because that's what he  
3 told you?

4 A. Yes.

05:20 5 Q. Now you mentioned hitting licks. What was  
6 kind of the way in which you would determine who was  
7 hitting what lick?

8 A. It just, well, let's say I was to hit a  
9 lick first, it would be somebody to hit the lick next  
05:20 10 cause it would be their turn to go make their money, you  
11 know.

12 Q. So fair to say you all would kind of take  
13 turns doing different robberies?

14 A. Yes, ma'am.

05:21 15 Q. When you would go and do these robberies,  
16 were you typically in Eric's car?

17 A. Yes, ma'am.

18 Q. Who drove Eric's car?

19 A. Eric.

05:21 20 Q. Did you ever see anybody else driving his  
21 car?

22 A. Never.

23 Q. Now I want to talk a little bit about that  
24 same time period. Do you remember Eric buying a gun  
05:21 25 from someone on the street?

05:21 1 A. Yes, ma'am.

2 Q. Were you with him when he purchased that  
3 gun?

4 A. Uh-huh.

05:21 5 Q. Is that a yes?

6 A. Yes, ma'am.

7 Q. When he purchased that gun, do you recall  
8 how much he purchased that gun for?

9 A. Four hundred I think.

05:21 10 Q. Four hundred you think?

11 A. Yeah.

12 Q. Remember to speak up so we can hear you.

13 A. Yes, ma'am.

14 Q. When he purchased that gun, you said you  
05:21 15 were with him. Where did you guys meet the guy you  
16 purchased the gun from?

17 A. Just in a parking lot.

18 Q. Do you remember where that parking lot was?

19 A. It was on Nellis and, uh, past Sahara.

05:22 20 Past Sahara. It was just in one of those little parking  
21 lots, like an Albertsons or a Smith's.

22 Q. What kind of gun was it that Eric  
23 purchased?

24 A. A Glock.

05:22 25 Q. It was a Glock?

05:22 1 Is that a yes?

2 A. Yes, ma'am.

3 Q. I want to talk a little bit about

4 January 14, 2020. Well, sorry, let me ask a different

05:22 5 question first.

6 The day that Eric purchased the gun, do you  
7 remember him shooting that gun at all that day?

8 A. No.

9 Q. Do you ever remember him ever telling you

05:22 10 that he had shot that gun after purchasing it?

11 A. No.

12 Q. January 14, 2020, do you remember meeting  
13 up with Eric that evening?

14 A. Yes, ma'am.

05:22 15 Q. How is it that you met up with Eric that  
16 evening?

17 A. He came to get me from my house.

18 Q. Where do you live?

19 A. Tropicana and Boulder Highway.

05:22 20 Q. Your brother Mason, was he with you at that  
21 house?

22 A. Yes, ma'am.

23 Q. Does your brother Mason also sometimes stay  
24 at another residence?

05:23 25 A. Yeah, he lives with his grandmother but he

05:23 1 comes to visit at my house on like the weekends.

2 Q. His grandmother, is that an address off of  
3 Defiance Avenue?

4 A. Yes, ma'am.

05:23 5 Q. And have you been to that residence before?

6 A. Yes, ma'am.

7 Q. And that's usually where Mason would stay?

8 A. Yeah, that's where he sleeps.

9 Q. But you said that he would also come over  
05:23 10 to your house; is that right?

11 A. Yes, ma'am.

12 Q. On January 14th of 2020 you remember Mason  
13 coming over to your house?

14 Is that a yes?

05:23 15 A. Yes, ma'am.

16 Q. And you said that Eric also came over to  
17 your house; is that right?

18 A. Yes, ma'am.

19 Q. When Eric came over to your house, did he  
05:23 20 come in his silver Honda?

21 A. Yes.

22 Q. What was the plan for what you guys were  
23 going to do that evening after Eric came to your house?

24 A. Hit licks and smoke weed.

05:23 25 Q. So you were going to go smoke some weed and

05:23 1 hit some licks if you found them?

2 A. Yes, ma'am.

3 Q. Do you remember what area of town you drove  
4 to after you left your house?

05:24 5 A. Henderson.

6 Q. In the car when you leave, who's in the  
7 car?

8 A. When I leave?

9 Q. When you leave your house, who is in the  
05:24 10 car?

11 A. Oh. Me, my little brother and Eric.

12 Q. Where are you inside the car?

13 A. I'm in the passenger.

14 Q. Front passenger?

05:24 15 A. Yeah, front passenger.

16 Q. Where is your brother?

17 A. In the back seat.

18 Q. Behind the driver or the passenger?

19 A. Like the middle or behind me.

05:24 20 Q. You said you drove out to the Henderson  
21 area?

22 A. Yes, ma'am.

23 Q. Where did you go when you got out to  
24 Henderson?

05:24 25 A. We went to go pick up some weed from my

05:24 1 plug like from a, like the gas, like the grocery store  
2 area.

3 Q. You just said plug. What's a plug?

4 A. Somebody who sells weed.

05:24 5 Q. So somebody who sells weed. Could it also  
6 be somebody who sells guns on the street?

7 A. Yes.

8 Q. That's what you would refer to them as, as  
9 a plug?

05:24 10 A. Yes.

11 Q. You say that you go to a gas station out in  
12 Henderson; is that right?

13 A. Yes, ma'am.

14 Q. Do you recall the general area where that  
05:25 15 gas station was located?

16 A. I know it was up Valle Verde.

17 Q. Do you remember it being somewhere on Valle  
18 Verde?

19 A. Yes, ma'am.

05:25 20 Q. Did you in fact meet up with someone and  
21 purchase some weed that evening?

22 A. Yes, ma'am.

23 Q. Did you get back into the car?

24 A. Yes, ma'am.

05:25 25 Q. Same three people in the car?

05:25 1 A. Yes.

2 Q. All three in the same place?

3 A. Yes.

4 Q. And I guess let me just clarify. Eric is

05:25 5 driving the car; is that right?

6 A. Yes. I didn't even really get out the car.

7 It was just like a quick transaction.

8 Q. So you kind of more or less stay inside the

9 car?

05:25 10 A. Yes.

11 Q. As you leave that gas station, where do you

12 go?

13 A. Well, we were on our way back to my house

14 from getting the weed, you know, and then, well, it's

05:25 15 Eric turn, we're all like all right, let's go get some

16 money, he's like all right, since it's his gun he's like

17 I'm going to go first. He goes and we pull over.

18 Q. Do you remember being in the area of Warm

19 Springs and Valle Verde at that point?

05:26 20 A. Yes, I know it was Valle Verde.

21 Q. You know you were on Valle Verde?

22 A. Yes, ma'am.

23 Q. Have you ever been to that neighborhood or

24 area before?

05:26 25 A. No.

05:26 1 Q. You said that you pulled over. What did  
2 you see before you pulled over, if anything?

3 A. We see somebody walking up Valle, up the  
4 hill. We see somebody walking with a backpack.

05:26 5 Q. Male, female?

6 A. A male.

7 Q. Do you see if, can you see if they have  
8 anything in their hands?

9 A. A phone.

05:26 10 Q. Do they appear to be talking on the phone?

11 A. No.

12 Q. But they have a phone in their hands?

13 A. (Inaudible response.)

14 Q. Can you see that?

05:26 15 A. Yes.

16 Q. You said it was Eric's turn; is that right?

17 A. Yes, ma'am.

18 Q. He's driving the car, he pulls over. How  
19 far is he from this person that you see walking on the

05:26 20 street?

21 A. About like, well, we pulled like around a  
22 little corner so it was like maybe a house separated.

23 Q. So do you actually pull into a residential  
24 area?

05:27 25 A. Yeah, we pulled into, like in front of

05:27 1 somebody's house.

2 Q. So when you pull into this residential  
3 area, there are a number of houses lining the street;  
4 would that be fair to say?

05:27 5 A. Yes, ma'am.

6 Q. So you're no longer on like Valle Verde  
7 where you first saw him, you pull into like a little  
8 side street?

9 A. Yeah.

05:27 10 Q. When you pull into the side street, where  
11 is the car in relation to the man you saw walking?

12 A. Okay. The man we saw walking, he's walking  
13 up Valle Verde, and we're driving, we make the first  
14 right into the first, just the first right we can into  
05:27 15 the neighborhood, and then we make another right and  
16 then we park in front of somebody's house. And then he  
17 gets his gun and, you know --

18 Q. I'm going to stop you right there. When  
19 you say he gets his gun, who you are referring to?

05:27 20 A. Eric.

21 Q. And you said he gets his gun. Where was he  
22 keeping his gun?

23 A. Like usually in, like usually in his door  
24 or in his like back of his jeans.

05:28 25 Q. Like in the back of his pants?

05:28 1 A. Yes, ma'am.

2 Q. Like tucked in there?

3 A. Yeah.

4 Q. You also said he sometimes keeps it in the

05:28 5 door. There's like a little container at the bottom of

6 the door?

7 A. Yeah, in the door, like a little pocket,

8 and then sometimes under the seat.

9 Q. So you see him grab for this gun. Does he

05:28 10 get out of the car at that point?

11 A. Yes, ma'am.

12 Q. Did you stay in the car?

13 A. Yes, ma'am.

14 Q. Did Mason stay in the car?

05:28 15 A. Yes, ma'am.

16 Q. Did Eric go towards where the man had been

17 seen walking?

18 A. Yeah.

19 Q. Did you watch him walk over to that man?

05:28 20 A. Well, I was on my phone mostly.

21 Q. So you're not really paying attention --

22 A. Yeah, but I --

23 Q. I'm sorry, go ahead.

24 A. I know like what he's doing. He's going

05:28 25 over there to hit a lick.

05:28 1 Q. When he goes outside of the car, what kind  
2 of happens next?

3 A. I just hear just scuffling around, like eh,  
4 eh, like trying to rip something out somebody's hand or  
05:29 5 something, you know, some type of altercation is going  
6 on.

7 Q. I'm going to stop you there for a second  
8 because you said eh, eh, eh. Who's saying that?

9 A. Eric.

05:29 10 Q. So you can hear him making a statement  
11 towards someone?

12 A. Yeah, like give me your stuff pretty much.

13 Q. Do you hear anything after that?

14 A. I hear a shot.

05:29 15 Q. You hear one shot?

16 A. Yes, ma'am.

17 Q. Or multiple shots?

18 A. Just one.

19 Q. After that, after you hear that shot, what  
05:29 20 happens after that?

21 A. Runs, jumps in the car, we fly through the  
22 neighborhood.

23 Q. Eric gets back in the car?

24 A. Yes, ma'am.

05:29 25 Q. Does he still have the gun with him?

05:29 1 A. Yeah. Well, he's putting it up.  
2 Q. So you can see him kind of tucking it in  
3 the side of the car?  
4 Is that a yes?  
05:30 5 A. Yes, ma'am.  
6 Q. You said that he kind of came running into  
7 the car; is that right?  
8 A. Yes.  
9 Q. Did you ask him at that point what  
05:30 10 happened?  
11 A. Well, I didn't really want to but he was  
12 just, you know, he's like, I assumed he shot up in the  
13 air or something, you know, trying to scare somebody.  
14 Q. Did he have anything with him? A cell  
05:30 15 phone?  
16 A. No.  
17 Q. A wallet? Anything like that?  
18 A. Nothing.  
19 Q. Did you ask him why he didn't have anything  
05:30 20 with him?  
21 A. He says he ran.  
22 Q. So Eric tells you that the guy you saw on  
23 the side of the road actually ran?  
24 A. Yeah.  
05:30 25 Q. Does Eric ever tell you that he shot that

05:30 1 man?

2 A. No, I find out later.

3 Q. So at that point in time you assume he had  
4 shot in the air and the guy ran away; is that right?

05:30 5 A. Yes, ma'am.

6 Q. Eric does not tell you at that point that  
7 he shot anybody?

8 A. No.

9 Q. You said you sped through the neighborhood;  
05:30 10 is that right?

11 A. Yes.

12 Q. Where did you go after you left the  
13 neighborhood?

14 A. We, he went to take me and my brother to my  
05:31 15 house.

16 Q. So you go back to your house?

17 A. Yes.

18 Q. At some point you mentioned that you found  
19 out that he had shot someone. When did that happen?

05:31 20 A. He was showing me like, like a little, just  
21 a news thing.

22 Q. Was it on his phone?

23 A. Yes.

24 Q. What was that conversation like?

05:31 25 A. I didn't want to know about it. I didn't

05:31 1 want nothing to do with it, you know.

2 Q. So you didn't ask a lot of questions at  
3 that point?

4 A. No.

05:31 5 Q. You didn't ask him if he actually shot the  
6 man?

7 Is that a no?

8 A. No.

9 Q. But he did show you a news article?

05:31 10 A. Yes, ma'am.

11 Q. Was that news article about someone who had  
12 been shot and killed?

13 A. Yes.

14 Q. Out in Henderson?

05:31 15 A. Yes.

16 Q. What did you think when you saw that  
17 article?

18 A. I didn't think right back to it but it was  
19 just like, like bro, like you're dumb, you know.

05:32 20 THE REPORTER: Did you say dumb or done?

21 THE WITNESS: Dumb.

22 THE REPORTER: D-U-M-B?

23 THE WITNESS: Yes.

24 BY MS. CANNIZZARO:

05:32 25 Q. When he shows you that article, does he

05:32 1 reference that robbery from Henderson?

2 A. No.

3 Q. He doesn't say anything to you?

4 A. No.

05:32 5 Q. He just shows it to you?

6 A. Yeah.

7 Q. And you don't say anything back to him?

8 Is that a no?

9 A. No.

05:32 10 MS. CANNIZZARO: I have no further

11 questions for this witness. Do any members of the Grand  
12 Jury have questions?

13 THE FOREPERSON: No questions.

14 By law, these proceedings are secret and

05:32 15 you are prohibited from disclosing to anyone anything

16 that has transpired before us, including evidence and

17 statements presented to the Grand Jury, any event

18 occurring or statement made in the presence of the Grand

19 Jury, and information obtained by the Grand Jury.

05:32 20 Failure to comply with this admonition is a

21 gross misdemeanor punishable by up to 364 days in the

22 Clark County Detention Center and a \$2,000 fine. In

23 addition, you may be held in contempt of court

24 punishable by an additional \$500 fine and 25 days in the

05:32 25 Clark County Detention Center.

05:32 1 Do you understand this admonition?  
2 THE WITNESS: Yes, sir.  
3 THE FOREPERSON: Thank you. You're  
4 excused.

05:33 5 MS. CANNIZZARO: State next witness will be  
6 Detective Bryan Moore.  
7 THE FOREPERSON: Please raise your right  
8 hand.  
9 You do solemnly swear the testimony you are  
05:33 10 about to give upon the investigation now pending before  
11 this Grand Jury shall be the truth, the whole truth, and  
12 nothing but the truth, so help you God?  
13 THE WITNESS: I do.  
14 THE FOREPERSON: Please be seated.

05:33 15 You are advised that you are here today to  
16 give testimony in the investigation pertaining to the  
17 offenses of assault with a deadly weapon, ownership or  
18 possession of firearm by prohibited person, carrying a  
19 concealed firearm or other deadly weapon, attempt  
05:34 20 robbery with use of a deadly weapon, murder with use of  
21 a deadly weapon, conspiracy to commit robbery, robbery  
22 with use of a deadly weapon, grand larceny auto,  
23 attempted robbery, attempt murder with use of a deadly  
24 weapon, and battery with use of a deadly weapon  
05:34 25 resulting in substantial bodily harm, involving Eric

05:34 1 Abasta, Mason Arney and James Waylon Arney.

2 Do you understand this advisement?

3 THE WITNESS: I do.

4 THE FOREPERSON: Please state your first  
05:34 5 and last name and spell both for the record.

6 THE WITNESS: First name is Bryan,  
7 B-R-Y-A-N, last of Moore, M-O-O-R-E.

8 THE FOREPERSON: Thank you.

9 BRYAN MOORE,

05:34 10 having been first duly sworn by the Foreperson of the  
11 Grand Jury to testify to the truth, the whole truth,  
12 and nothing but the truth, testified as follows:

13

14 EXAMINATION

05:34 15

16 BY MS. CANNIZZARO:

17 Q. Good afternoon, Detective. How are you  
18 currently employed?

19 A. I've been employed with the Las Vegas

05:34 20 Metropolitan Police Department for the past nine years.

21 Q. I want to direct your attention to  
22 March 24th of 2020. Were you working on that day?

23 A. I was.

24 Q. Do you recall being called out to 8109

05:35 25 Defiance Avenue?

05:35 1 A. I do.

2 Q. Is that near the area of Cimarron and  
3 Alexander?

4 A. Yes.

05:35 5 Q. Do you recall the purpose of that being a  
6 call for an assault with use of a deadly weapon that had  
7 occurred at Cimarron and Alexander?

8 A. That's correct.

9 Q. When you arrived at that residence, were  
05:35 10 there already patrol officers on scene?

11 A. Yes.

12 Q. That residence, did you come to learn that  
13 residence was the residence of Mason Arney's  
14 grandmother?

05:35 15 A. Yes.

16 Q. Now as patrol had already arrived, fair to  
17 say you did not come into immediate contact with them as  
18 they were being stopped at that residence?

19 A. That's correct.

05:35 20 Q. There had been to your knowledge a number  
21 of individuals taken out of a car at that residence; is  
22 that right?

23 A. Yes.

24 Q. One of which had been identified as Eric  
05:35 25 Abasta?

05:35 1 A. That's correct.

2 Q. There was also an individual by the name of  
3 Justice Abasta who was taken out of that vehicle?

4 A. Yes.

05:36 5 Q. And also Alexis Cunningham; is that right?

6 A. Yes.

7 Q. The vehicle that we're talking about is a  
8 Honda Accord; is that correct?

9 A. Yes.

05:36 10 Q. And did that Honda Accord have  
11 Massachusetts license plates?

12 A. It did.

13 Q. Did you come to find out who the registered  
14 owner was of that vehicle?

05:36 15 A. It was Eric Abasta.

16 Q. Now at the time that you arrived, had  
17 patrol also already done what's referred to as show-up  
18 identifications with Matthew Warren?

19 A. That's correct.

05:36 20 Q. At the time did you understand that  
21 Mr. Warren had identified Alexis Cunningham as having  
22 been the individual who pointed the gun at him?

23 A. Yes.

24 Q. Were you able to observe Miss Cunningham at  
05:36 25 the scene?

05:36 1 A. Not at the scene, I saw her later on at  
2 headquarters when she was being interviewed.

3 Q. Now did you happen to also come into  
4 contact with someone by the name of Mason Arney?

05:37 5 A. I did.

6 Q. When you were taking a look at Mr. Arney  
7 and thinking about Miss Cunningham's, being able to  
8 observe her as well, what if anything did you notice  
9 about the two of them?

05:37 10 A. They have similar build and appearance.  
11 They were both wearing dark colored sweaters with light  
12 writing on them.

13 Q. Would it also be fair to say that they have  
14 a similar haircut?

05:37 15 A. Yes.

16 Q. And so you said they were both similar  
17 build. How would you describe them?

18 A. On the shorter side, slender builds with,  
19 as I said, sweaters, and at night I could definitely see  
05:37 20 them being mistaken.

21 Q. Mason and Alexis both have a shorter shaggy  
22 haircut; would that be fair to say?

23 A. Yes.

24 Q. You mentioned they were both wearing a dark  
05:37 25 colored sweatshirt with light writing on it?

05:37 1 A. Yes.

2 Q. At the time do you also recall being  
3 involved in a search of that silver Honda Accord?

4 A. Yes.

05:38 5 Q. Do you recall searching specifically the  
6 back seat and that area of the vehicle?

7 A. Yes.

8 Q. Do you remember Detective Stafford helping  
9 you with that search as well?

05:38 10 A. Yes.

11 Q. Inside of that vehicle in the back seat on  
12 the floorboard, do you recall recovering a .22 caliber  
13 cartridge casing?

14 A. I do.

05:38 15 Q. Did you happen to remember what the head  
16 stamp was of that casing?

17 A. It's Super X.

18 Q. Now at some point did you also become  
19 involved in a search of the home?

05:38 20 A. Yes.

21 Q. And was it your understanding that Mason's  
22 grandmother had given consent to search?

23 A. Yes.

24 Q. And were there also other detectives inside  
05:38 25 of the home at that time?

05:38 1 A. Yes.

2 Q. Do you recall Mason leading yourself and  
3 other detectives out to the garage?

4 A. Yes, I do.

05:38 5 Q. Was the purpose of that to retrieve a  
6 rifle?

7 A. It was.

8 Q. Were you able to retrieve that rifle?

9 A. Yes.

05:39 10 Q. Where was that rifle?

11 A. It was in the garage underneath a large  
12 piece of furniture, kind of like an entertainment  
13 center.

14 Q. You were able to get that rifle and take it  
05:39 15 out of the residence; is that correct?

16 A. Yes.

17 Q. At some point did you have an opportunity  
18 to take a look at whether that rifle was loaded with  
19 ammunition?

05:39 20 A. It was.

21 Q. And when you observed that ammunition, do  
22 you remember anything about the head stamp of that  
23 ammunition?

24 A. The head stamps I observed were all Super  
05:39 25 X, as was the one in the car.

05:39 1 Q. Now did you also at some point later on  
2 have an opportunity to conduct an interview with Mason  
3 Arney?

4 A. I did.

05:39 5 Q. When you conducted that interviewed were  
6 you also accompanied by Detective McGill?

7 A. Yes.

8 Q. Do you recall Detective McGill reading him  
9 his Miranda rights?

05:39 10 A. I do.

11 Q. Did Mason agree to speak with you?

12 A. He did.

13 Q. Do you remember Mason telling you he was in  
14 the area of East Hacienda on the day prior to your  
05:39 15 arrival at Defiance, that would have been March 23rd?

16 A. I do.

17 Q. Do you recall him relaying to you an  
18 incident where in he got into an argument with a male as  
19 he was trying to take that male's backpack?

05:40 20 A. Yes.

21 Q. Do you remember Mason also telling you that  
22 he had that same rifle on him that day?

23 A. Yes.

24 Q. Do you recall Mason telling you that he had  
05:40 25 pointed that rifle at that male and tried to get that

05:40 1 backpack using the rifle?

2 A. Yes.

3 Q. Do you remember him telling you that the  
4 male tried to pull the rifle away?

05:40 5 A. Yes, they were struggling over it.

6 Q. After the struggle did Mason tell you  
7 whether he shot that male?

8 A. Yes, he said he shot him in the chest.

9 Q. At the time do you remember Mason telling  
05:40 10 you he was with someone by the name of Junior?

11 A. Yes.

12 Q. Did he also tell you on that day that you  
13 were called out to Defiance on the 24th of March that he  
14 was in the car with Junior again?

05:40 15 A. Yes.

16 Q. Do you remember him telling you that he was  
17 actually the person in the back seat?

18 A. Yes, I do.

19 Q. So he admitted to actually being the  
05:41 20 individual in the back passenger seat who pointed a  
21 rifle out of the window?

22 A. That is correct.

23 Q. Do you remember him telling you that he had  
24 gotten into an argument with some people who were

05:41 25 walking?

05:41 1 A. Yes.

2 Q. And that he had stopped and asked what  
3 their problem was because he did not like the way they  
4 were looking at him?

05:41 5 A. That's correct.

6 Q. Did he also tell you that he hid that rifle  
7 inside of the residence prior to officers arriving?

8 A. Yes.

9 Q. Now you had also been involved in that  
05:41 10 incident on March 23rd as part of the investigation; is  
11 that correct?

12 A. That is correct.

13 Q. And that would have been an incident  
14 wherein Ernesto Santana had been shot off of East  
05:41 15 Hacienda?

16 A. Yes.

17 Q. That would be referred to as sort of the  
18 east side of town; would that be a fair description?

19 A. Yes.

05:41 20 Q. And do you remember the description of a  
21 vehicle that day being a silver four door car?

22 A. I do.

23 Q. Did that vehicle description from the 23rd  
24 match Mr. Abasta's car at the residence on the 24th?

05:41 25 A. Yes.

05:42 1 Q. You also, as part of that investigation  
2 there was a bullet that had been recovered from the  
3 scene of the Hacienda shooting; is that correct?

4 A. That is correct.

05:42 5 Q. And that bullet, was it consistent, do you  
6 recall it being consistent with a .22 caliber?

7 A. Yes, it was a small caliber projectile.

8 Q. Ultimately that bullet was not able to be  
9 compared to the rifle you recovered; is that right?

05:42 10 A. That is correct.

11 Q. And this Grand Jury has heard testimony  
12 from some forensic analysts, but that was also  
13 information you received as part of the investigation?

14 A. Yes, it was.

05:42 15 Q. I want to direct your attention to  
16 April 20th of 2020. Did you become involved with the  
17 service of a search warrant at 3667 Hollycroft Avenue?

18 A. I was.

19 Q. And during the search at Hollycroft Avenue,  
05:42 20 do you recall retrieving a handwritten note that was  
21 inside of a bedroom?

22 A. Yes.

23 Q. I am going to show you Grand Jury Exhibit  
24 Number 6 and I'll publish it for the members of the

05:43 25 Grand Jury.

05:43 1                    Detective, does this appear to be a fair  
2 and accurate photocopy of that letter?

3            A.        Yes, it does.

4            Q.        This was a handwritten letter; is that  
05:43 5 correct?

6            A.        Yes.

7            Q.        The individual whose house this was, is  
8 that Marianne Espinoza?

9            A.        Yes, it is.

05:43 10           Q.        At the top of the letter it says Mari,  
11 M-A-R-I. And again Mari Espinoza was the owner of that  
12 house?

13           A.        Yes.

14           Q.        Who is that to Eric Abasta?

05:43 15           A.        His mother. Excuse me, his grandmother.

16           Q.        Grandmother?

17           A.        Yes.

18           Q.        Is it fair so say he also refers to her as  
19 mother?

05:43 20           A.        Yes.

21           Q.        In this letter did you also note that there  
22 was language that included listing here two different  
23 email accounts and then also a password listed here as  
24 well?

05:43 25           A.        Yes.

05:43 1 Q. And here it appears to read "Delete all  
2 locations history, you might have to go into Goggle Maps  
3 or, I don't know, but do that. Also my Abasta192312.  
4 Have Justice change all passwords."

05:44 5 Who is Justice to Eric Abasta?

6 A. His wife.

7 Q. The rest of this letter reads "Talk to  
8 Dopey about no matter what he needs to not say nothing.  
9 If they ask him anything, don't try making up an alibi,  
05:44 10 as far as we know, we don't know, WTF we was doing,  
11 quote, three months ago. We drive all around Vegas  
12 doing rides, buying weed, seeing people, just whatever."

13 Do you also remember seeing that on the  
14 letter?

05:44 15 A. I do.

16 MS. CANNIZZARO: At this point in time I  
17 have no further questions for this witness. Do any  
18 members of the Grand Jury have questions? Yes.

19 BY A JUROR:

05:44 20 Q. One question, sir. I just wanted to be  
21 double sure.

22 A. Uh-huh.

23 Q. You said that Mason Arney admitted to  
24 shooting Mr. Santana on March 23rd in the chest and also  
05:45 25 positively said they were in the silver Accord of

05:45 1 Mr. Abasta; is that correct?

2 A. That's correct, and he was riding with  
3 Junior.

4 Q. Okay.

05:45 5 A. Which is how he referred to Eric Abasta.

6 Q. And he used a small .22 rifle?

7 A. It's a .22 caliber rifle where the stock  
8 was sawed off and then there was black tape around the  
9 part that had been sawed off.

05:45 10 Q. Okay. Thank you. That's consistent.

11 BY MS. CANNIZZARO:

12 Q. I'll clarify that briefly, Detective.

13 Mr. Arney told you he had shot a man in the chest, he  
14 did not have a name of that man; is that correct?

05:45 15 A. That's correct.

16 Q. You later learned that victim's name to be  
17 Ernesto Santana?

18 A. Whenever we had arrived at the Defiance  
19 scene, we were initially, had looked at the car, and  
05:45 20 based on the initial details that we had received was  
21 that car and then like a short rifle being used, we  
22 immediately remembered the shooting that we were on the  
23 previous evening.

24 Q. Right.

05:46 25 A. And then we later found everything that

05:46 1 connected it to being the same ones and then that  
2 admittance was brought out on the interview with Mason.

3 THE FOREPERSON: No further questions.

4 By law, these proceedings are secret and  
05:46 5 you are prohibited from disclosing to anyone anything  
6 that has transpired before us, including evidence and  
7 statements presented to the Grand Jury, any event  
8 occurring or statement made in the presence of the Grand  
9 Jury, and information obtained by the Grand Jury.

05:46 10 Failure to comply with this admonition is a  
11 gross misdemeanor punishable by up to 364 days in the  
12 Clark County Detention Center and a \$2,000 fine. In  
13 addition, you may be held in contempt of court  
14 punishable by an additional \$500 fine and 25 days in the  
05:46 15 Clark County Detention Center.

16 Do you understand this admonition?

17 THE WITNESS: I do.

18 THE FOREPERSON: Thank you. You're  
19 excused.

05:46 20 THE WITNESS: Thank you.

21 THE FOREPERSON: Please raise your right  
22 hand.

23 You do solemnly swear the testimony you are  
24 about to give upon the investigation now pending before  
05:47 25 this Grand Jury shall be the truth, the whole truth, and

05:47 1 nothing but the truth, so help you God?

2 THE WITNESS: I do.

3 THE FOREPERSON: Thank you. Please be  
4 seated.

05:47 5 THE WITNESS: Thank you.

6 THE FOREPERSON: You are advised that you  
7 are here today to give testimony in the investigation  
8 pertaining to the offenses of assault with a deadly  
9 weapon, ownership or possession of firearm by prohibited

05:47 10 person, carrying concealed firearm or other deadly  
11 weapon, attempt robbery with use of a deadly weapon,  
12 murder with use of a deadly weapon, conspiracy to commit  
13 robbery, robbery with use of a deadly weapon, grand

14 larceny auto, attempt robbery, attempt murder with use  
05:47 15 of a deadly weapon, and battery with use of a deadly  
16 weapon resulting in substantial bodily harm, involving  
17 Eric Abasta, Mason Arney and James Waylon Arney.

18 Do you understand this advisement?

19 THE WITNESS: I do.

05:48 20 THE FOREPERSON: Please state your first  
21 and last name and spell both for the record.

22 THE WITNESS: Absolutely. Eric Stafford.  
23 E-R-I-C, S-T-A-F-F-O-R-D.

24 THE FOREPERSON: Thank you.

05:48 25 THE WITNESS: Thank you.

05:48 1                   ERIC STAFFORD,  
2           having been first duly sworn by the Foreperson of the  
3           Grand Jury to testify to the truth, the whole truth,  
4           and nothing but the truth, testified as follows:

05:48 5  
6                                   EXAMINATION

7

8           BY MS. CANNIZZARO:

9                   Q.       Good afternoon, Detective, How are you  
05:48 10           currently employed?

11                   A.       As a detective with the Las Vegas  
12           Metropolitan Police Department.

13                   Q.       How long have you been employed with the  
14           police department?

05:48 15                   A.       Eleven years.

16                   Q.       I want to direct your attention to  
17           March 24th of 2020. Were you working on that day?

18                   A.       I believe so.

19                   Q.       Did you have occasion on that day to  
05:48 20           respond to 8109 Defiance Avenue?

21                   A.       I did.

22                   Q.       Was that in relation to an investigation  
23           ongoing regarding an alleged assault with use of a  
24           deadly weapon?

05:48 25                   A.       That's correct.

05:48 1 Q. When you arrived, would it be fair to say  
2 patrol had already arrived at the scene?

3 A. Yes.

4 Q. And when you arrived was there also a  
05:48 5 silver Honda Accord at the house?

6 A. Yes, ma'am.

7 Q. Were you ever tasked with doing a search of  
8 that silver Honda Accord?

9 A. I was.

05:49 10 Q. That silver Honda Accord, did you  
11 understand that that was a vehicle belonging to Eric  
12 Abasta?

13 A. Yes.

14 Q. Did it have Massachusetts license plates?

05:49 15 A. It did.

16 Q. That Accord, do you specifically recall  
17 searching the front seat and surrounding areas of that  
18 vehicle?

19 A. I do.

05:49 20 Q. What if anything do you recall recovering  
21 from that search of the vehicle?

22 A. I remember recovering a 9-millimeter  
23 cartridge casing in the center console and possessory  
24 items in the name of Eric Abasta.

05:49 25 Q. So that would have been, that's a casing

05:49 1 that has been fired from a weapon; is that right?

2 A. That's correct.

3 Q. And that was inside of that center console?

4 A. That's correct.

05:49 5 Q. Now at some point that evening did you  
6 also, or that evening going into the next day, did you  
7 have an opportunity to interview Mr. Abasta?

8 A. Yes.

9 Q. When you interviewed him do you remember  
05:49 10 Detective Marin also being there with you?

11 A. I do.

12 Q. Did Detective Marin read Mr. Abasta his  
13 Miranda rights?

14 A. He did.

05:50 15 Q. Did Mr. Abasta understand those rights?

16 A. Yes.

17 Q. Did he agree to speak with you?

18 A. Yes.

19 Q. When you spoke with him do you recall him  
05:50 20 telling you that he's the only person who drives that  
21 vehicle?

22 A. I do remember that.

23 Q. Do you also recall him saying with respect  
24 to that evening's events that he did pull up to an

05:50 25 individual and ask if there was a problem?

05:50 1 A. Yes, he did state that.

2 Q. He never admitted to you that there was a  
3 weapon pointed at them; is that fair to say?

4 A. I would say he minimized the interaction  
05:50 5 and omitted any reference to a firearm.

6 Q. He more or less said there were just some  
7 words exchanged; would that be accurate?

8 A. Correct.

9 Q. Did he also say after the words were  
05:50 10 exchanged they just drove away?

11 A. Yes.

12 Q. Do you also remember him saying that he was  
13 aware there was a 9-millimeter casing in that console?

14 A. Yes.

05:50 15 Q. Did he also tell you that he was on the  
16 east side of town the day prior, the 23rd of March?

17 A. I remember that, yes.

18 Q. And do you remember him saying he was not  
19 aware of the .22 caliber casing that had been discovered  
05:51 20 in the back seat?

21 A. That's correct, he was unaware of it.

22 Q. That evening did you also have an  
23 opportunity to search a room that was belonging or where  
24 Mason Arney resided?

05:51 25 A. Yes.

05:51 1 Q. Within that -- it was a bedroom; is that  
2 correct?

3 A. That's correct.

4 Q. Within that bedroom do you recall  
05:51 5 recovering some ammunition?

6 A. Yes.

7 Q. What do you remember, if anything, about  
8 that ammunition?

9 A. It was Winchester 9-millimeter ammunition.  
05:51 10 If my memory serves it was Super X.

11 Q. So there was some ammunition in there that  
12 had a Super X head stamp?

13 A. That's correct.

14 Q. Now were there also some cellular  
05:51 15 telephones retrieved from Mr. Abasta and Mr. Arney that  
16 evening?

17 A. There were.

18 Q. Do you remember the following day also  
19 being able to further conduct a search of other items  
05:51 20 located inside of that vehicle?

21 A. Yes.

22 Q. Specifically do you remember locating a  
23 wallet with a debit card in the name of Eric Abasta?

24 A. Yes.

05:52 25 Q. And also a prescription bottle with his

05:52 1 name?

2 A. Yes.

3 Q. And do you recall there being a backpack on  
4 the rear of the bench seat?

05:52 5 A. Yes.

6 Q. And in that backpack do you remember it  
7 having name tags that said Mason?

8 A. I believe it was a work ID for Mason.

9 Q. Now those cell phones that were recovered,  
05:52 10 do you specifically recall being able to search cell  
11 phones that were belonging to Mr. Abasta?

12 A. Several phones all after search warrants,  
13 yes.

14 Q. Now specifically I want to talk just a  
05:52 15 little bit about some of the contents of those cell  
16 phones.

17 A. Yes.

18 Q. Mr. Abasta had several cell phones; is that  
19 right?

05:52 20 A. A tablet and a cell phone, yes.

21 Q. Within those, the contents are things that  
22 you can view by just opening up the phone; would that be  
23 fair to say?

24 A. Yes, after a warrant, yes.

05:52 25 Q. These are things like text messages or

05:52 1 group chats?

2 A. Yes.

3 Q. Do you specifically remember a group chat  
4 that had been nicknamed Maniacs?

05:53 5 A. Yes.

6 Q. And do you remember there being contact in  
7 that group chat for individuals by the name of Goon,  
8 Goofy and Dopey?

9 A. Yes.

05:53 10 Q. When you also searched Mason's room did you  
11 find any drawings in that room?

12 A. Yes.

13 Q. Fair to say there was a notebook with some  
14 drawings on it?

05:53 15 A. Yes.

16 Q. I'm going to show you what has been marked  
17 as Grand Jury Exhibit Number 15. Do you recall  
18 retrieving this as one of those drawings?

19 A. Yes.

05:53 20 Q. Would it be fair to say that in this  
21 drawing there appears to be the words Goofy, Goon, Dopey  
22 and Wikked?

23 A. Yes.

24 Q. And also the name Maniacs?

05:53 25 A. Yes.

05:53 1 Q. And this was located among Mason's items in  
2 his bedroom?

3 A. In a three-ring binder in his bedroom, yes.

4 Q. When you were able to view the contents of  
05:53 5 Mr. Abasta's phone, do you also remember finding a  
6 video?

7 A. Yes.

8 Q. And would that have been a video taken of  
9 what appeared to be someone attempting to hit a  
05:54 10 maintenance man?

11 A. Yes.

12 Q. Were you able to identify the individual  
13 who was attempting to hit that maintenance man?

14 A. Yes.

05:54 15 Q. And who would that be?

16 A. John Garcia.

17 Q. John Garcia, his initials would be J.G.;  
18 is that fair to say?

19 A. Correct.

05:54 20 Q. Was Mr. Abasta also involved in that  
21 incident?

22 A. Yes.

23 Q. Did you become aware of, as part of your  
24 investigation, a report by someone by the name of Pavel  
05:54 25 who had worked as a maintenance man and reported someone

05:54 1 attempting to take a golf cart and attempting to hit  
2 him?

3 A. Yes.

4 Q. Were you also able to view some text  
05:54 5 messages that were located on Mr. Abasta's phone?

6 A. Yes.

7 Q. Do you recall there being a contact by the  
8 name of Gunner and S.P.?

9 A. Yes.

05:54 10 Q. Were you able to identify that as an  
11 individual by the name of Nash Hosier? H-O-S-I-E-R.

12 A. Yes. That's correct, yes.

13 Q. In those text messages do you recall Gunner  
14 speaking with Mr. Abasta about purchasing firearms?

05:55 15 A. Yes.

16 Q. Specifically was there a conversation about  
17 purchasing a Glock firearm?

18 A. Yes.

19 Q. Do you remember him talking about getting a  
05:55 20 Glock handgun for \$300?

21 A. Yes.

22 Q. Now later on do you also recall finding  
23 some text messages from January 14, 2020 earlier that  
24 day, like in the early afternoon?

05:55 25 A. Yes.

05:55 1 Q. And specifically these were between  
2 Mr. Abasta and Mr. Hosier and they were referencing sort  
3 of whether or not a, quote unquote, bitch you gave me is  
4 dirty; is that correct?

05:55 5 A. Yes.

6 Q. I'm showing you what's been marked as Grand  
7 Jury Exhibit Number 21 on page 21. We see that text  
8 message here that says "Ay foo. Is the bitch you gave me  
9 dirty?" Is that correct?

05:56 10 A. Yes.

11 Q. There is then a conversation wherein  
12 Mr. Hosier responds "yes" and Mr. Abasta says "Haha.  
13 Ight. About how many was she fucking on on." And  
14 Mr. Hosier responds "four."

05:56 15 Is that correct?

16 A. Yes.

17 Q. In your review of these conversations, what  
18 did you believe they were talking about?

19 A. They were talking about a handgun. Well, a  
05:56 20 firearm.

21 Q. When they're talking about whether or not  
22 the, quote unquote, bitch was fucking anybody else, what  
23 are they talking about that handgun being used for?

24 A. If it's been used in crimes. It's a thinly  
05:56 25 veiled code, you're talking about crimes, how many times

05:56 1 a gun's been discharged more than likely in crimes.

2 Q. And Mr. Abasta goes onto say "Fosho. Cuz I  
3 wanted to know if she need her ink removed. I notice  
4 they still there."

05:57 5 A. Yes.

6 Q. And again they're talking about a handgun  
7 in this exchange?

8 A. I believe a firearm, yes.

9 Q. It does not expressly say that; is that  
05:57 10 fair to say?

11 A. Correct.

12 Q. But based on your training and experience,  
13 this is a conversation about a handgun that had been  
14 used at least four times prior?

05:57 15 A. Yes.

16 Q. Mr. Abasta specifically referred to a  
17 handgun he had purchased from Mr. Hosier prior to  
18 January 14th; is that right?

19 A. Yes, that's correct.

05:57 20 Q. Now were you familiar in this investigation  
21 with NIBIN reports and reports from a forensic exam  
22 regarding the casing found in the center console of  
23 Mr. Abasta's car?

24 A. Yes.

05:57 25 Q. Now this Grand Jury has heard from forensic

05:57 1 technicians regarding that. Was it your understanding  
2 that that particular casing did have an association with  
3 a Glock handgun that was found just off of Rochelle  
4 Avenue?

05:58 5 A. Yes.

6 Q. Was it also associated with a January 14th  
7 homicide investigation out of Henderson?

8 A. Yes.

9 Q. There were a number of other events that  
05:58 10 that particular casing was associated with; is that also  
11 correct?

12 A. Yes.

13 Q. Specifically there were four prior  
14 incidents where casings had been impounded and then  
05:58 15 associated with that same handgun?

16 A. Yes.

17 Q. Those four other incidents, were they all  
18 prior to January 14th of 2020?

19 A. They were.

05:58 20 Q. Now are you familiar with call data  
21 records?

22 A. Yes.

23 Q. And call data records are basically  
24 pinpoints for where a cell phone is being used with  
05:58 25 respect to a cell phone tower; is that correct?

05:58 1 A. Yes, more or less.

2 Q. Do you have training and experience that  
3 allows you to read call detail records?

4 A. Yes.

05:58 5 Q. What is that training and experience?

6 A. I've taken about 32 hours of specialized  
7 training specifically related to cell phones and call  
8 data records and how to interpret them and map them  
9 specifically. Multiple different agencies over spanning  
05:59 10 probably four or five years and I've done it hundreds of  
11 times.

12 Q. That was going to be my next question.  
13 Fair to say this data will give you a tower that the  
14 cell phone is connecting with and a specific sector on  
05:59 15 the tower that the cell phone is connecting with?

16 A. Yes.

17 Q. Within that sector it will give an area  
18 that that cell phone is likely to be; is that fair?

19 A. Yes, that's fair enough.

05:59 20 Q. Now you cannot say for sure that that cell  
21 phone is within that sector, but more likely than not,  
22 if it's communicating with that sector on that tower,  
23 that cell phone is that area?

24 A. You can say it's in that sector, yes.

05:59 25 Q. Let me rephrase that question. You can't

05:59 1 tell specifically where in that sector that particular  
2 cell phone is?

3 A. Correct.

4 Q. Sometimes you can if you get very specific  
05:59 5 data, but usually you just know what sector it is?

6 A. Generally from call data records alone  
7 you're only going to get a sector.

8 Q. Now were you able to request with a warrant  
9 cell data records for Mr. Abasta's cell phones?

06:00 10 A. Yes.

11 Q. And he had three different cell phone  
12 numbers; is that right?

13 A. That's correct.

14 Q. You recall them being (702)964-7255?

06:00 15 A. Yes.

16 Q. (978)729-1703?

17 A. Yes.

18 Q. That specific number, those records ended  
19 in December of 2019; is that right?

06:00 20 A. Yes.

21 Q. And then (702)863-1697; is that right?

22 A. That's correct.

23 Q. Those records started January 30th of 2020;  
24 is that right?

06:00 25 A. That's correct.

06:00 1 Q. When you were looking at those records then  
2 with respect to January 14th of 2020, you were  
3 inspecting the records for the number ending in 7255?

4 A. That's correct.

06:00 5 Q. And were you able to actually plot those  
6 records on a map?

7 A. Yes.

8 Q. Were you able to generate copies of those  
9 maps?

06:01 10 A. Yes.

11 Q. Were you also able to gather evidence from  
12 Mr. Mason's cell data records?

13 A. Yes.

14 Q. And also how about Waylon's cell data  
06:01 15 records?

16 A. Yes.

17 Q. And did you also look at those data records  
18 specifically for January 14th of 2020?

19 A. For all of the Maniacs crew, yes.

06:01 20 Q. And so that would have been, specifically  
21 we're going to talk about Mr. Waylon Arney and Mr. Mason  
22 Arney.

23 A. Yes.

24 Q. I'm going to show you Grand Jury Exhibit

06:01 25 Number 7, page 1. Do you recall Mr. Abasta's call data

06:01 1 records from approximately 7:35 p.m. placing him at his  
2 residence which is located right here where it says  
3 Abasta house?

4 A. That's likely where he was at at that time,  
06:02 5 correct.

6 Q. This blue area we're seeing here, that's  
7 the sector; is that correct?

8 A. That's a likely coverage area for where  
9 that cell site sector can cover and his residence is  
06:02 10 within that cell site sector so it's reasonable to  
11 believe he was at his house.

12 Q. That would be at 7:35 p.m.?

13 A. That's correct.

14 Q. At 8:23 that evening he contacts Mason  
06:02 15 Arney and it shows that in this particular area that it  
16 is not far from where Mason's residence is; is that fair  
17 to say?

18 A. That's accurate.

19 Q. We see Mason's residence is just outside of  
06:02 20 that coverage area here in the corner?

21 A. Correct.

22 Q. Later on that evening at approximately 8:45  
23 there's again another text with respect to Mr. Abasta's  
24 cell phone that shows that he is likely at this address  
06:03 25 here which is an Arney house, that's where Waylon lives;

06:03 1 is that correct?

2 A. That's correct.

3 Q. That house is within this coverage area we  
4 see here; is that correct?

06:03 5 A. It is.

6 Q. And then at about 9:17 p.m., which is  
7 approximately 13 minutes prior to the homicide call out  
8 in Henderson, do we also see that Mr. Abasta's cell  
9 phone is in the area that is within about two miles or  
06:03 10 less from the location of that homicide?

11 A. Yes.

12 Q. And we see that depicted on page 4?

13 A. Yes.

14 Q. Following the homicide at about 9:45 p.m.

06:03 15 there was a text exchange between Mr. Abasta and another  
16 number that again places him within this particular  
17 coverage area that includes Mr. Waylon Arney's house; is  
18 that correct?

19 A. That's accurate.

06:04 20 Q. And that would have been after the call for  
21 the homicide in Henderson?

22 A. Yes.

23 Q. You mentioned that you were also able to  
24 retrieve some data from Waylon Arney's cell phone; is  
06:04 25 that correct?

06:04 1 A. From his call data records, yes, ma'am.

2 Q. Not his cell phone, his call data records.

3 Do we see that depicted in this coverage area?

4 A. Yes.

06:04 5 Q. And this would have been at approximately

6 7:49 p.m.; is that right?

7 A. Yes.

8 Q. And this would place him in the coverage

9 area of that same home where he is known to reside?

06:04 10 A. Likely at his residence.

11 Q. You were also able to get call detail

12 records for Mason Arney; is that right?

13 A. Yes.

14 Q. And at 6:28 p.m. it is showing this

06:05 15 particular coverage area which would include just on the

16 outskirts here this home which is where Mason is known

17 to reside?

18 A. Yes.

19 Q. And that's on page 7?

06:05 20 A. Yes.

21 Q. Again at about 8:24 p.m. when he receives a

22 call from Mr. Abasta it would show that he is also still

23 in that same coverage for that home where he is known to

24 reside at?

06:05 25 A. That's correct.

06:05 1 Q. Then we'll move onto page 9. At about  
2 9:54 p.m. Mason's call detail records place him within  
3 this coverage area that includes the address where  
4 Waylon resides; is that correct?

06:05 5 A. That's correct.

6 Q. And that would have been after the homicide  
7 call in Henderson?

8 A. Yes.

9 Q. Were you also able to obtain a search  
06:05 10 warrant from Goggle for Mr. Abasta's accounts?

11 A. Yes.

12 Q. That search warrant, I'm going to show you  
13 Grand Jury Exhibit Number 8, you were also given some  
14 details from Goggle including a letter authenticating  
06:06 15 that information; is that right?

16 A. That's correct.

17 Q. And you were able to pull certain images  
18 from his Goggle searches; would that be accurate?

19 A. Yes.

06:06 20 Q. Do you recall there being an email account  
21 by the name of Abasta123@gmail.com that belonged to  
22 Mr. Abasta?

23 A. Yes.

24 Q. Did you also have an opportunity to examine  
06:06 25 whether location history had been deleted from that

06:06 1 account?

2 A. I did.

3 Q. And do you recall it being deleted two  
4 times on the evening of January 14th of 2020?

06:06 5 A. Yes.

6 Q. And that would have been from 10:51 on; is  
7 that correct?

8 A. Yes.

9 Q. Do you also recall whether you were able to  
06:06 10 see if he had looked for any maps?

11 A. Yes.

12 Q. Do you recall him looking for the area of  
13 Warm Springs and Valle Verde at approximately 11:55 p.m.  
14 on the 14th?

06:06 15 A. Yes.

16 Q. Were you also able to get information from  
17 Goggle searches?

18 A. Yes.

19 Q. Do you remember finding information that  
06:07 20 Mr. Abasta had searched for a replacement Glock fire pin  
21 at approximately 1:17 a.m.?

22 A. Yes.

23 Q. I'm showing you Grand Jury Exhibit  
24 Number 9. Do you recognize this first page?

06:07 25 A. I do.

06:07 1 Q. Was this an image from that particular  
2 search?

3 A. Yes.

4 Q. Do you remember him at 7:19 p.m. starting  
06:07 5 to search for homicides in Henderson, Nevada?

6 A. Yes.

7 Q. And did he also happen to find this article  
8 where it says, "Police, a drug rip leads to Henderson's  
9 first homicide investigation of 2020"?

06:07 10 A. Yes.

11 Q. He went onto conduct additional searches  
12 for Henderson homicide; would that be fair to say?

13 A. Yes.

14 Q. On page 3 there appears to be another  
06:08 15 article that references "Henderson police investigate  
16 man's shooting death" and that was accessed at  
17 7:22 p.m.; is that right?

18 A. Yes.

19 Q. This specific article is in relation to a  
06:08 20 Henderson, the Henderson homicide that came back as  
21 associated with the cartridge casing you found in the  
22 vehicle?

23 A. That's correct.

24 Q. Mr. Abasta also continued to search for  
06:08 25 that looking up additional articles to include this

06:08 1 article "Henderson Police seek witnesses to deadly  
2 shooting on sidewalk." Is that correct?

3 A. That's accurate.

4 Q. This is again the same article that  
06:08 5 references that same Henderson homicide?

6 A. Yes.

7 Q. Again he was looking for additional, excuse  
8 me, searches for homicides in Henderson, Nevada and came  
9 upon this article we see on page 5; is that correct?

06:09 10 A. Yes.

11 Q. Now we heard from Detective Lynaugh from  
12 the Henderson Police Department. Was it your  
13 understanding that law enforcement was looking for any  
14 leads in this particular incident?

06:09 15 A. That's correct.

16 Q. And would that have predated this  
17 particular article?

18 A. I believe so, yes.

19 Q. And there was another search that would  
06:09 20 have involved this, what we see on page 6, where  
21 Henderson Police are also looking for additional  
22 information regarding that shooting?

23 A. Yes.

24 Q. Mr. Abasta also completed several searches  
06:09 25 regarding Glock firing pins. Do you recall finding that

06:09 1 as well?

2 A. I do.

3 Q. Would this be one of those searches that we  
4 see on page 7?

06:09 5 A. Yes.

6 Q. On page 8 there's also another search for a  
7 Glock firing pin. Is that also reflected in his Goggle  
8 searches?

9 A. Yes.

06:09 10 Q. On page 9 there appears to be a Goggle for  
11 deaths in Las Vegas last night. Was this also a search  
12 Mr. Abasta conducted on his phone?

13 A. Yes.

14 Q. Again there was another search where it  
06:10 15 says can you trace a gun by the bullet. Was that  
16 another search Mr. Abasta conducted?

17 A. Yes.

18 Q. There appears to be an article here that  
19 says how can a bullet be identified from a particular  
06:10 20 gun. Was that part of Mr. Abasta's Goggle search?

21 A. Yes.

22 Q. And again there was another search for a  
23 Glock 17 firing pin as reflected here on page 12?

24 A. Yes.

06:10 25 Q. On page 13 do you see another image from

06:10 1 the searches of Glock firing pins?

2 A. Yeah, it appears to be, yes.

3 Q. There we go. And again was he searching  
4 Glock 17-barrel as well?

06:11 5 A. Yes.

6 Q. And finally do you recall him searching  
7 here on page 15, does Ring record 24/7?

8 A. I do.

9 Q. These searches for the Glock firing pin,  
06:11 10 the Henderson homicides and the Ring doorbell, were  
11 these all after or subsequent to the Henderson homicide  
12 investigation?

13 A. Most of them very close to after, yes.

14 Q. I'm going to direct your attention now to  
06:11 15 March 28, 2020. Were you able to listen to a phone call  
16 made by Mr. Abasta?

17 A. Yes.

18 Q. And there were actually a couple of phone  
19 calls made by Mr. Abasta in that time frame; is that  
06:11 20 correct?

21 A. Several from jail.

22 Q. Did he call someone by the name of Marianne  
23 Espinoza?

24 A. Correct.

06:11 25 Q. And Miss Espinoza you know this to be

06:11 1 related to Mr. Abasta how?

2 A. His biological mother.

3 Q. He calls her his mom?

4 A. Yes.

06:12 5 Q. Would it surprise you if someone also  
6 referred to him as his grandmother?

7 A. Yes. Well, no, it wouldn't.

8 Q. Fair to say he calls her mom?

9 A. Yes.

06:12 10 Q. Well, those conversations, do you recall  
11 Mr. Abasta specifically discussing an ongoing homicide  
12 investigation out of Henderson?

13 A. He did not, no.

14 Q. Did Miss Espinoza?

06:12 15 A. Yes.

16 Q. And she talked about that with Mr. Abasta?

17 A. And she instructed him not to say anything  
18 about it, yes.

19 Q. Did he seem to acknowledge that?

06:12 20 A. Yes.

21 Q. Did Mr. Abasta also talk with Miss Espinoza  
22 about getting rid of some evidence?

23 A. Yes.

24 Q. Based on those conversations that you

06:12 25 overheard, were you then able to obtain a search warrant

06:12 1 for a residence where Miss Espinoza lived?

2 A. My section obtained a search warrant, yes.

3 Q. Would that be at 3776 Hollycroft?

4 A. That's correct.

06:12 5 Q. Were you involved as part of that search?

6 A. I was.

7 Q. Do you recall searching in an upstairs

8 bedroom?

9 A. Yes.

06:13 10 Q. In that upstairs bedroom was there  
11 information relating to several individuals to include  
12 Eric Abasta, Robert Abasta, Justice Abasta and also  
13 Miss Espinoza?

14 A. Yes.

06:13 15 Q. Specifically do you recall finding a  
16 backpack?

17 A. I do.

18 Q. In that backpack, whose information was in  
19 that backpack?

06:13 20 A. Dozens upon dozens of pieces of paperwork  
21 in the name of Eric Abasta.

22 Q. Was it only Eric Abasta's information in  
23 that backpack?

24 A. Yes.

06:13 25 Q. Also in that backpack do you recall finding

06:13 1 a 9-millimeter casing?

2 A. I do.

3 Q. Do you also recall finding 9-millimeter  
4 ammunition?

06:13 5 A. Yes.

6 Q. Detective Moore was also part of that  
7 search as well?

8 A. Yes.

9 Q. Do you recall him finding a handwritten  
06:13 10 letter?

11 A. Yes.

12 Q. I'm going to show you Grand Jury Exhibit  
13 Number 6. Do you recognize this letter?

14 A. Yes.

06:13 15 Q. Let me zoom out here. Is this the same  
16 letter that was recovered by Detective Moore?

17 A. Yes.

18 Q. When you looked at this letter, do you  
19 recall recognizing those, at least two of those email

06:14 20 addresses?

21 A. Yes.

22 Q. Specifically the Abasta1923?

23 A. Yes. And the ES13 Locos.

24 Q. And -- I'm sorry, the ES13?

06:14 25 A. And the Locos as well.

06:14 1 Q. And the Locos one?

2 A. Uh-huh.

3 Q. Were you able to eventually get a search  
4 warrant for Goggle, from Goggle for deletion data?

06:14 5 A. Yes.

6 Q. And that would relate to these specific  
7 emails addresses?

8 A. Yes.

9 Q. Do you recall for the ES Locos, L-O-C-O-S,  
06:14 10 @gmail.com address seeing that there had been location  
11 data erased two times, on April 6th of 2020 and  
12 April 7th of 2020?

13 A. Yes.

14 Q. Do you also recall finding that there had  
06:14 15 been location data erased for ELE13wikked, W-I-K-K-E-D,  
16 @gmail.com?

17 A. Yes.

18 Q. And that had been erased two times as well;  
19 is that correct?

06:15 20 A. Yes.

21 Q. That would have also been on April 7th and  
22 then one time on April 6th?

23 A. Yes.

24 Q. You did not find deletion data for the  
06:15 25 Abasta1923 email address; is that right?

06:15 1 A. Correct.

2 Q. And the elewikked, W-I-K-K-E-D, @gmail was  
3 not a valid address; is that right?

4 A. Correct.

06:15 5 Q. Were you also able to draft a search  
6 warrant for the IP addresses associated with those  
7 deletions?

8 A. It was an administrative subpoena.

9 Q. Did you obtain information from Cox related  
06:15 10 to that?

11 A. I did.

12 Q. And where were those IP addresses  
13 associated with?

14 A. The Eric Abasta residence in the name of  
06:15 15 Marianne Espinoza.

16 Q. And that would be the same 3776 Hollycroft  
17 address?

18 A. That's correct. That's where the internet  
19 service came from.

06:16 20 MS. CANNIZZARO: I have no further  
21 questions for this witness. Do any members of the Grand  
22 Jury have questions?

23 THE FOREPERSON: No questions.

24 By law, these proceedings are secret and  
06:16 25 you are prohibited from disclosing to anyone anything

06:16 1 that has transpired before us, including evidence and  
2 statements presented to the Grand Jury, any event  
3 occurring or statement made in the presence of the Grand  
4 Jury, and information obtained by the Grand Jury.

06:16 5 Failure to comply with this admonition is a  
6 gross misdemeanor punishable by up to 364 days in the  
7 Clark County Detention Center and a \$2,000 fine. In  
8 addition, you may be held in contempt of court  
9 punishable by an additional \$500 fine and 25 days in the  
06:16 10 Clark County Detention Center.

11 Do you understand this admonition?

12 THE WITNESS: I do, sir.

13 THE FOREPERSON: Thank you. You are  
14 excused.

06:16 15 THE WITNESS: Thank you guys. Have a good  
16 evening.

17 A JUROR: Thank you.

18 MS. CANNIZZARO: Ladies and gentlemen of  
19 the Grand Jury, you also have for your consideration in  
06:17 20 this case Grand Jury Exhibits Numbers 13 and 14. Grand  
21 Jury Exhibit Number 13 is a Judgment of Conviction for  
22 Eric Abasta under case number C318316 for the felony  
23 crime of attempt carrying a concealed firearm or other  
24 deadly weapon. Grand Jury Exhibit Number 14 is a  
06:17 25 Judgment of Conviction for Eric Abasta under case number

06:17 1 C311831 for the felony crimes of conspiracy to commit  
2 robbery and battery with substantial bodily harm. These  
3 Judgments of Conviction are offered to you as they  
4 pertain to alleged elements of the offenses that are  
06:17 5 listed in the proposed Indictment. You are to consider  
6 them solely for those purposes and not to show the bad  
7 character of Mr. Abasta, nor should they be considered  
8 by you for any other purpose other than whether they  
9 meet the elements of crimes charged wherein prior felony  
06:18 10 convictions are an element of those crimes.

11 Ladies and gentlemen of the Grand Jury, I  
12 would also note that I am going to instruct you pursuant  
13 to NRS 172.145. The State did not receive a request  
14 from a defendant, but per statute and out of an  
06:18 15 abundance of caution I'm going to instruct you that as  
16 it pertains to offenses against Pasqual Abasta, there  
17 was a preliminary hearing held as to those offenses.  
18 The Justice of the Peace did not hold Mr. Abasta, Mr.  
19 Eric Abasta, over to District Court for trial for those  
06:18 20 offenses. I will also note that this Grand Jury has  
21 heard additional evidence from that which was presented  
22 at the preliminary hearing to include forensic testimony  
23 as well as text message testimony that was presented to  
24 you in the exhibits before you for your consideration.  
06:19 25 It is completely up to this Grand Jury as to whether

06:19 1 there is sufficient evidence for those charges. I will  
2 also note you heard testimony regarding recovery of a  
3 firearm that was also not presented to the Grand Jury  
4 (sic) for that particular charge. It is up to this  
06:19 5 Grand Jury as to whether or not the State has met its  
6 burden, but I wanted to advise you as to the prior  
7 proceeding with respect to those counts and also to the  
8 evidence which you have received in this particular  
9 case.

06:19 10 With that, I will submit this for your  
11 consideration unless anybody has any questions regarding  
12 the offenses or the instructions.

13 Seeing none, I thank you for your time and  
14 I will leave this for your deliberation.

06:19 15 (At this time, all persons, other than  
16 members of the Grand Jury, exit the room at 6:19 p.m.  
17 and return at 6:36 p.m.)

18 THE FOREPERSON: Madame District Attorney,  
19 by a vote of 12 or more grand jurors a true bill has  
06:36 20 been returned against defendants Eric Abasta Jr., Mason  
21 Arney and James Waylon Arney charging the crimes of  
22 assault with a deadly weapon, ownership or possession of  
23 firearm by prohibited person, carrying concealed firearm  
24 or other deadly weapon, attempt robbery with use of a  
06:37 25 deadly weapon, murder with use of a deadly weapon,

06:37 1 conspiracy to commit robbery, robbery with use of a  
2 deadly weapon, grand larceny auto, attempt robbery,  
3 attempt murder with use of a deadly weapon, and battery  
4 with use of a deadly weapon resulting in substantial  
06:37 5 bodily harm, in Grand Jury case number 19CGJ051A-C. We  
6 instruct you to prepare an Indictment in conformance  
7 with the proposed Indictment previously submitted to us.

8 MS. CANNIZZARO: Thank you.

9 (Proceedings concluded.)

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**REPORTER'S CERTIFICATE**

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**STATE OF NEVADA** )

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**COUNTY OF CLARK** )

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6

I, Danette L. Antonacci, C.C.R. 222, do

7

hereby certify that I took down in Shorthand (Stenotype)

8

all of the proceedings had in the before-entitled matter

9

at the time and place indicated and thereafter said

06:37

10

shorthand notes were transcribed at and under my

11

direction and supervision and that the foregoing

12

transcript constitutes a full, true, and accurate record

13

of the proceedings had.

14

Dated at Las Vegas, Nevada,

06:37

15

July 12, 2020.

16

17

/s/ Danette L. Antonacci

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Danette L. Antonacci, C.C.R. 222

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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER 19CGJ051ABC:

X Does not contain the social security number of any person,

-OR-

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

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

-OR-

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

/s/ Danette L. Antonacci

\_\_\_\_\_  
Signature

7-12-20  
Date

Danette L. Antonacci  
Print Name

Official Court Reporter  
Title

	<b>\$500 [6]</b> 16/15 24/15 33/12 55/24 70/14 101/9	80/23 101/20 101/24
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<b>BY MS.</b>	<b>-OR [2]</b> 106/10 106/14	<b>1697 [1]</b> 85/21
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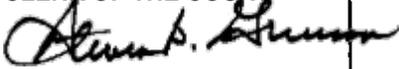
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1 **IND**  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

CASE NO: C-20-349045-1  
DEPT NO: III

11 -vs-

12 **ERIC ABASTA, aka**  
13 **Eric Abasta, Jr., #5010484**  
14 MASON ARNEY, #8412715  
15 JAMES WAYLON ARNEY, aka,  
16 Waylan Arney Jr., #5098193

INDICTMENT

15 Defendant(s).

16 STATE OF NEVADA )  
17 COUNTY OF CLARK ) ss.

18 The Defendant(s) above named, ERIC ABASTA, aka Eric Abasta, Jr., MASON  
19 ARNEY, JAMES WAYLON ARNEY, aka, Waylan Arney Jr., accused by the Clark County  
20 Grand Jury of the crime(s) of ASSAULT WITH A DEADLY WEAPON (Category B Felony  
21 - NRS 200.471 - NOC 50201); OWNERSHIP OR POSSESSION OF FIREARM BY  
22 PROHIBITED PERSON (Category B Felony - NRS 202.360 - NOC 51460); CARRYING  
23 CONCEALED FIREARM OR OTHER DEADLY WEAPON (Category C Felony - NRS  
24 202.350 (1)(d)(3) - NOC 51459); ATTEMPT ROBBERY WITH USE OF A DEADLY  
25 WEAPON (Category B Felony - NRS 200.380, 193.330, 193.165 - NOC 50145); MURDER  
26 WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165  
27 - NOC 50001); CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS  
28 200.380, 199.480 - NOC 50147); ROBBERY WITH USE OF A DEADLY WEAPON

1 (Category B Felony - NRS 200.380, 193.165 - NOC 50138); GRAND LARCENY AUTO  
2 (Category B Felony - NRS 205.228.3 - NOC 56014); ATTEMPT ROBBERY (Category B  
3 Felony - NRS 200.380, 193.330 - NOC 50144); ATTEMPT MURDER WITH USE OF A  
4 DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 - NOC  
5 50031) and BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN  
6 SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.481 - NOC 50226),  
7 committed at and within the County of Clark, State of Nevada, on or between January 5, 2020  
8 and March 24, 2020, as follows:

9 COUNT 1 - ASSAULT WITH A DEADLY WEAPON

10 Defendant ERIC ABASTA Jr. did on or about January 5, 2020 willfully, unlawfully,  
11 feloniously and intentionally place another person in reasonable apprehension of immediate  
12 bodily harm and/or did willfully and unlawfully attempt to use physical force against another  
13 person, to wit: ISIAH WASHINGTON, with use of a deadly weapon, to wit: a firearm, by  
14 pointing an unknown make and/or model firearm at the said ISIAH WASHINGTON.

15 COUNT 2 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

16 Defendant ERIC ABASTA Jr. did on or about January 5, 2020 willfully, unlawfully,  
17 and feloniously own, or have in his possession and/or under his custody or control, a firearm,  
18 to wit: an unknown make and/or model firearm, the Defendant being a convicted felon, having  
19 in 2016, been convicted of Battery with Substantial Bodily Harm, in Case No. C311831-1,  
20 and/or, having in 2016, been convicted of Attempt Carry Conceal Weapon, in case No.  
21 C318316-1, in the Eighth Judicial District Court, Clark County, a felony under the laws of the  
22 State of Nevada.

23 COUNT 3 - CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON

24 Defendant ERIC ABASTA Jr. did on or about January 5, 2020 then and there willfully,  
25 unlawfully and feloniously carry concealed upon his person, a firearm or other deadly weapon,  
26 to wit: an unknown make and/or model firearm.

27 //

28 //

1 COUNT 4 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

2 Defendant ERIC ABASTA, Jr., did on or about January 14, 2020, willfully, unlawfully,  
3 and feloniously attempt to take personal property, to wit: a cell phone, from the person of  
4 KEVIN FARNSWORTH, or in his presence, without the consent and against the will of  
5 KEVIN FARNSWORTH, by means of force or violence or fear of injury, immediate or future,  
6 to his person, the person of a member of his family, or of anyone in his company at the time  
7 of the robbery, defendant using force or fear to attempt to obtain or retain possession of the  
8 property, attempt to prevent or overcome resistance to the taking of the property, and/or  
9 attempt to facilitate escape, by approaching the said KEVIN FARNSWORTH and shooting at  
10 ot into the body of the said KEVINS FARNSWORTH while attempting to take his property,  
11 with use of a deadly weapon, to wit: a firearm.

12 COUNT 5 - MURDER WITH USE OF A DEADLY WEAPON

13 Defendant ERIC ABASTA, Jr., did on or about January 14, 2020, willfully, unlawfully,  
14 feloniously and with malice aforethought, kill KEVIN FARNSWORTH, a human being, with  
15 use of a deadly weapon, to wit: a firearm, by shooting at or into the body of the said KEVIN  
16 FARNSWORTH, the said killing having been willful, deliberate and premeditated.

17 COUNT 6 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

18 Defendant ERIC ABASTA, Jr. did on or about January 14, 2020, willfully, unlawfully,  
19 and feloniously own, or have in his possession and/or under his custody or control, a firearm,  
20 to wit: a firearm, the Defendant being a convicted felon, having in 2016, been convicted of  
21 Conspiracy to Commit Robbery and Battery With Substantial Bodily Harm, in Case No.  
22 C311831 and/or Attempt Carrying Concealed Firearm or Other Deadly Weapon in Case No.  
23 C318316, in the Eighth Judicial District Court, Clark County, felonies under the laws of the  
24 State of Nevada.

25 COUNT 7 - CONSPIRACY TO COMMIT ROBBERY

26 Defendants ERIC ABASTA, Jr. and JAMES WAYLON ARNEY did on or about  
27 January 26, 2020 willfully, unlawfully, and feloniously conspire with each other and J.G. to  
28 commit a robbery, by the Defendants and J.G. committing the acts as set forth in Counts 8 - 9,

1 said acts being incorporated by this reference as though fully set forth herein.

2 COUNT 8 - ROBBERY WITH USE OF A DEADLY WEAPON

3 Defendants ERIC ABASTA, Jr. and JAMES WAYLON ARNEY did on or about  
4 January 26, 2020 willfully, unlawfully, and feloniously take personal property, to wit: U.S.  
5 Currency, a telephone, identification and a Mazda bearing Nevada License No. 890ZFW, from  
6 the person of TRISTAN HIMLIN, or in his presence, without the consent and against the will  
7 of TRISTAN HIMLIN, by means of force or violence or fear of injury, immediate or future,  
8 to his person, the person of a member of his family, or of anyone in his company at the time  
9 of the robbery, defendant using force or fear to obtain or retain possession of the property, to  
10 prevent or overcome resistance to the taking of the property, and/or to facilitate escape, with  
11 use of a deadly weapon, to wit: a firearm; the Defendant(s) being criminally liable under one  
12 or more of the following principles of criminal liability, to wit: (1) by directly committing this  
13 crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this  
14 crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or  
15 otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to  
16 commit this crime, with the intent that this crime be committed, Defendants and/or J.G. aiding  
17 or abetting and/or conspiring by Defendants and/or J.G. acting in concert throughout.

18 COUNT 9 - ROBBERY WITH USE OF A DEADLY WEAPON

19 Defendants ERIC ABASTA, Jr. and JAMES WAYLON ARNEY did on or about  
20 January 26, 2020 willfully, unlawfully, and feloniously take personal property, to wit: U.S.  
21 Currency, a telephone, identification and a Mazda bearing Nevada License No. 890ZFW, from  
22 the person of KAREN SALAZAR, or in her presence, without the consent and against the will  
23 of KAREN SALAZAR, by means of force or violence or fear of injury, immediate or future,  
24 to her person, the person of a member of her family, or of anyone in her company at the time  
25 of the robbery, defendant using force or fear to obtain or retain possession of the property, to  
26 prevent or overcome resistance to the taking of the property, and/or to facilitate escape, with  
27 use of a deadly weapon, to wit: a firearm; the Defendant(s) being criminally liable under one  
28 or more of the following principles of criminal liability, to wit: (1) by directly committing this

1 crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this  
2 crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or  
3 otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to  
4 commit this crime, with the intent that this crime be committed, Defendants and/or J.G. aiding  
5 or abetting and/or conspiring by Defendants and/or J.G. acting in concert throughout.

6 COUNT 10 - ASSAULT WITH A DEADLY WEAPON

7 Defendant JAMES WAYLON ARNEY did on or about January 26, 2020 willfully,  
8 unlawfully, feloniously and intentionally place another person in reasonable apprehension of  
9 immediate bodily harm and/or did willfully and unlawfully attempt to use physical force  
10 against another person, to wit: TRISTAN HIMLIN, with use of a deadly weapon, to wit: a  
11 firearm, by pointing said firearm at the said TRISTAN HIMLIN.

12 COUNT 11 - ASSAULT WITH A DEADLY WEAPON

13 Defendant JAMES WAYLON ARNEY did on or about January 26, 2020 willfully  
14 unlawfully, feloniously and intentionally place another person in reasonable apprehension of  
15 immediate bodily harm and/or did willfully and unlawfully attempt to use physical force  
16 against another person, to wit: KAREN SALAZAR, with use of a deadly weapon, to wit: a  
17 firearm, by pointing said firearm at the said KAREN SALAZAR.

18 COUNT 12 - GRAND LARCENY AUTO

19 Defendants ERIC ABASTA, Jr. and JAMES WAYLON ARNEY did on or about  
20 January 26, 2020 then and there willfully, unlawfully, feloniously, and intentionally, with  
21 intent to deprive the owner permanently thereof, steal, take and carry away, drive away or  
22 otherwise remove a motor vehicle owned by another person, having a value of \$3,500.00, or  
23 greater, in the possession of TRISTAN HIMILIN, to wit: a 2014 Mazda 6, bearing Nevada  
24 License No. 890ZFW; the Defendant(s) being criminally liable under one or more of the  
25 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or  
26 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be  
27 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise  
28 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this

1 crime, with the intent that this crime be committed, Defendants and/or J.G. aiding or abetting  
2 and/or conspiring by Defendants and/or J.G. acting in concert throughout.

3 COUNT 13 - ASSAULT WITH A DEADLY WEAPON

4 Defendant ERIC ABASTA, Jr. did on or about February 2, 2020 willfully, unlawfully,  
5 feloniously and intentionally place another person in reasonable apprehension of immediate  
6 bodily harm and/or did willfully and unlawfully attempt to use physical force against another  
7 person, to wit: PASQUAL ABASTA, with use of a deadly weapon, to wit: a firearm, by  
8 brandishing said firearm in the said PASQUAL ABASTA'S presence while cocking it and  
9 walking towards him.

10 COUNT 14 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

11 Defendant ERIC ABASTA, Jr. did on or about February 2, 2020 willfully, unlawfully,  
12 and feloniously own, or have in his possession and/or under his custody or control, a firearm,  
13 to wit: a firearm, the Defendant being a convicted felon, having in 2016, been convicted of  
14 Conspiracy to Commit Robbery and Battery With Substantial Bodily Harm, in Case No.  
15 C311831 and/or Attempt Carrying Concealed Firearm or Other Deadly Weapon in Case No.  
16 C318316, in the Eighth Judicial District Court, Clark County, felonies under the laws of the  
17 State of Nevada.

18 COUNT 15 - CONSPIRACY TO COMMIT ROBBERY

19 Defendant ERIC ABASTA, Jr. did on or about March 15, 2020 willfully, unlawfully,  
20 and feloniously conspire with J.G. to commit a robbery, by the Defendant and/or J.G.  
21 committing the acts as set forth in Count 16, said acts being incorporated by this reference as  
22 though fully set forth herein.

23 COUNT 16 - ATTEMPT ROBBERY

24 Defendant ERIC ABASTA, Jr. did on or about March 15, 2020 willfully, unlawfully,  
25 and feloniously attempt to take personal property, to wit: a golf cart and/or cellular telephone,  
26 from the person of PAVEL ALLING-PENA, or in his presence, without the consent and  
27 against the will of PAVEL ALLING-PENA, by means of force or violence or fear of injury,  
28 immediate or future, to his person, the person of a member of his family, or of anyone in his

1 company at the time of the robbery, defendant using force or fear to attempt to obtain or retain  
2 possession of the property, attempt to prevent or overcome resistance to the taking of the  
3 property, and/or attempt to facilitate escape, by demanding the keys to said golf cart and/or  
4 attempting to take said cellular telephone from PAVEL ALLING-PENA while striking him;  
5 the Defendant being criminally liable under one or more of the following principles of criminal  
6 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the  
7 commission of this crime, with the intent that this crime be committed, by counseling,  
8 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit  
9 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this  
10 crime be committed, Defendant and/or J.G. aiding or abetting and/or conspiring by Defendant  
11 and/or J.G. acting in concert throughout..

12 COUNT 17 - ASSAULT WITH A DEADLY WEAPON

13 Defendant ERIC ABASTA, Jr. did on or about March 15, 2020 willfully, unlawfully,  
14 feloniously and intentionally place another person in reasonable apprehension of immediate  
15 bodily harm and/or did willfully and unlawfully attempt to use physical force against another  
16 person, to wit: PAVEL ALLING-PENA, with use of a deadly weapon, to wit: a vehicle, by  
17 driving said vehicle at the said PAVEL ALLING-PENA, attempting to strike him.

18 COUNT 18 - CONSPIRACY TO COMMIT ROBBERY

19 Defendants ERIC ABASTA, Jr. and MASON ARNEY did on or about March 23,  
20 2020, willfully, unlawfully, and feloniously conspire with each other to commit a robbery, by  
21 the Defendants committing the acts as set forth in Count 20, said acts being incorporated by  
22 this reference as though fully set forth herein.

23 COUNT 19 - ROBBERY WITH USE OF A DEADLY WEAPON

24 Defendants ERIC ABASTA, Jr. and MASON ARNEY did on or about March 23,  
25 2020, willfully, unlawfully, and feloniously take personal property, to wit: a cellular telephone,  
26 from the person of ERNESTO SANTANA-ROSAS, or in his presence, without the consent  
27 and against the will of ERNESTO SANTANA-ROSAS, by means of force or violence or fear  
28 of injury, immediate or future, to his person, the person of a member of his family, or of anyone

1 in his company at the time of the robbery, Defendants using force or fear to obtain or retain  
2 possession of the property, to prevent or overcome resistance to the taking of the property,  
3 and/or to facilitate escape, with use of a deadly weapon, to wit: a firearm; the Defendant(s)  
4 being criminally liable under one or more of the following principles of criminal liability, to  
5 wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission  
6 of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring,  
7 commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3)  
8 pursuant to a conspiracy to commit this crime, with the intent that this crime be committed,  
9 Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

10 COUNT 20 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

11 Defendants ERIC ABASTA, Jr. and MASON ARNEY did on or about March 23, 2020,  
12 willfully, unlawfully, feloniously and with malice aforethought attempt to kill ERNESTO  
13 SANTANA-ROSAS, a human being, with use of a deadly weapon, to wit: a firearm, by  
14 shooting at or into the body of the said ERNESTO SANTANA-ROSAS; the Defendant(s)  
15 being criminally liable under one or more of the following principles of criminal liability, to  
16 wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission  
17 of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring,  
18 commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3)  
19 pursuant to a conspiracy to commit this crime, with the intent that this crime be committed,  
20 Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

21 COUNT 21 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN  
22 SUBSTANTIAL BODILY HARM

23 Defendants ERIC ABASTA, Jr. and MASON ARNEY did on or about March 23, 2020,  
24 willfully, unlawfully, and feloniously use force or violence upon the person of another, to wit:  
25 ERNESTO SANTANA-ROSAS, with use of a deadly weapon, to wit: a firearm, by shooting  
26 at or into the body of the said ERNESTO SANTANA-ROSAS, resulting in substantial bodily  
27 harm to ERNESTO SANTANA-ROSAS, the Defendant(s) being criminally liable under one  
28 or more of the following principles of criminal liability, to wit: (1) by directly committing this

1 crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this  
2 crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or  
3 otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to  
4 commit this crime, with the intent that this crime be committed, Defendants aiding or abetting  
5 and/or conspiring by Defendants acting in concert throughout.

6 COUNT 22 - ASSAULT WITH A DEADLY WEAPON

7 Defendants ERIC ABASTA, Jr. and MASON ARNEY did on or about March 24,  
8 2020, willfully, unlawfully, feloniously and intentionally place another person in reasonable  
9 apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use  
10 physical force against another person, to wit: MATTHEW WARREN, with use of a deadly  
11 weapon, to wit: a firearm, by pointing said firearm at the said MATTHEW WARREN; the  
12 Defendant(s) being criminally liable under one or more of the following principles of criminal  
13 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the  
14 commission of this crime, with the intent that this crime be committed, by counseling,  
15 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit  
16 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this  
17 crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in  
18 concert throughout.

19 COUNT 23 - ASSAULT WITH A DEADLY WEAPON

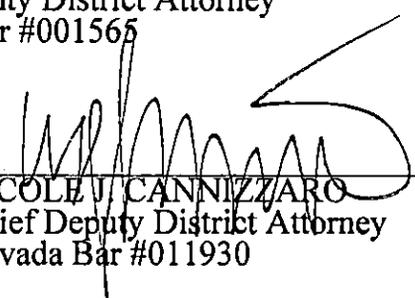
20 Defendants ERIC ABASTA, Jr. and MASON ARNEY did on or about March 24,  
21 2020, willfully, unlawfully, feloniously and intentionally place another person in reasonable  
22 apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use  
23 physical force against another person, to wit: KATELYN MENDES, with use of a deadly  
24 weapon, to wit: a firearm, by pointing said firearm at the said KATELYN MENDES; the  
25 Defendant(s) being criminally liable under one or more of the following principles of criminal  
26 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the  
27 commission of this crime, with the intent that this crime be committed, by counseling,  
28 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit

1 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this  
2 crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in  
3 concert throughout.

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

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

8 BY

9   
10 \_\_\_\_\_  
11 NICOLE J. CANNIZZARO  
12 Chief Deputy District Attorney  
13 Nevada Bar #011930

14 ENDORSEMENT: A True Bill

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16 \_\_\_\_\_  
17 Foreperson, Clark County Grand Jury  
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1 Names of Witnesses and testifying before the Grand Jury:

- 2 ABASTA, PASQUAL – c/o CCDA, 200 Lewis Avenue, LV, NV 89101
- 3 ALLING-PINA, PAVEL – c/o CCDA, 200 Lewis Avenue, LV, NV 89101
- 4 ARNEY, JAMES WAYLAN – c/o CCDA, 200 Lewis Avenue, LV, NV 89101
- 5 BARNHART, WADE – CLARK COUNTY PARK POLICE
- 6 BODILY, LOGAN – LVMPD
- 7 FLETCHER, STEPHANIE – LVMPD
- 8 FOESCH, BRITTA – NHP
- 9 GAVIN, DR. LISA – MEDICAL EXAMINER
- 10 GUERRERO, ANTHONY – CLARK COUNTY PARK POLICE
- 11 HAWKINS, ARTHUR – LVMPD
- 12 HIMLIN, TRISTAN – c/o CCDA, 200 Lewis Avenue, LV, NV 89101
- 13 LYNAUGH, DOUGLAS – HPD
- 14 MARIAM, NICOLE – HPD
- 15 MCGILL, SOLON – LVMPD
- 16 MOORE, BRYAN – LVMPD
- 17 MURRAY, THOMAS – LVMPD
- 18 PICANTE, ANDREW – NHP
- 19 SALAZAR, KAREN – c/o CCDA, 200 Lewis Avenue, LV, NV 89101
- 20 SANTANA, ERNESTO – c/o CCDA, 200 Lewis Avenue, LV, NV 89101
- 21 STAFFORD, ERIC – LVMPD
- 22 WARREN, MATT – c/o CCDA, 200 Lewis Avenue, LV, NV 89101
- 23 WASHINGTON, ISIAH – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

24  
25 Additional Witnesses known to the District Attorney at time of filing the Indictment:

- 26 CUSTODIAN OF RECORDS - CCDC
- 27 CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS
- 28 CUSTODIAN OF RECORDS - LVMPD RECORDS

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26 B/20F06403X/C348152(20F07884X)/20F07202X/ed-GJ  
27 LVMPD EV#200300114309; 200300108165; 200100022920  
28 CCPP EV# 20010124150  
HPD EV# 2000988  
(TK3)



1 Las Vegas, Nevada, Friday, June 26, 2020

2  
3 [Case called at 11:41 a.m.]

4 MS. BOTELHO: Returned a true bill against Eric Abasta,  
5 Mason Arney, James Waylon Arney for the following charges:

6 As to Abasta: five counts of assault with a deadly weapon,  
7 three counts of ownership or possession of a firearm by prohibited  
8 person, one count carrying a concealed firearm or other deadly weapon,  
9 one count attempt robbery with use of a deadly weapon, one count  
10 murder with use of a deadly weapon, three counts conspiracy to commit  
11 robbery, three counts robbery with use of a deadly weapon, one count  
12 grand larceny auto, one count attempt robbery, one count attempt  
13 murder with use of a deadly weapon, one count battery with use of a  
14 deadly weapon resulting in substantial bodily harm.

15 As to defendant Mason Arney: two counts assault with a  
16 deadly weapon, one count conspiracy to commit robbery, one count  
17 robbery with use of a deadly weapon, one count attempt murder with  
18 use of a deadly weapon, one count battery with use of a deadly weapon  
19 resulting in substantial bodily harm.

20 As to defendant James Arney: two counts of assault with a  
21 deadly weapon, one count conspiracy to commit robbery, two counts of  
22 robbery with use of a deadly weapon, and one count grand larceny auto.

23 THE COURT: Mr. Foreman, did at least twelve members of  
24 the grand jury concur in finding a true bill as to each charge contained in  
25 the indictment?

1 THE FOREPERSON: Yes, Your Honor.

2 THE COURT: Thank you. Indictment will be filed with respect  
3 to Mr. Abasta and receive case number C-20-349045-1. Indictment will  
4 be filed with respect to Mr. Arney and receive case number C-20-  
5 349045-2. And indictment will be filed with respect to James Arney and  
6 receive case number C-20-349045-3. Cases will be assigned to  
7 department number three.

8 What is the position of the State regarding a warrant or a  
9 summons?

10 MR. DICKERSON: As for James Waylon Arney we are asking  
11 for a summons.

12 THE COURT: All right.

13 MR. DICKERSON: He is currently on an OR, has been  
14 cooperative in the investigation and prosecution of this case, and we  
15 would as that OR and summons stand.

16 THE COURT: Okay.

17 MR. DICKERSON: As for Mason Arney. We're going to ask  
18 for a bail setting of \$100,000 based upon the new information and  
19 additional charge of substantial bodily harm as added in the indictment.  
20 And I'll get into the facts of the overall conspiracy of what you're seeing  
21 behind these charges. He's currently in custody with a setting of \$30,000  
22 and high level electronic monitoring with an order of no contact with the  
23 victims. I would note that he is a juvenile and has no record.

24 Eric Abasta, we are asking for no bail to be set on him. That's  
25 going to be pursuant to NRS 171.484 subsection four based upon the

1 first degree murder that's charged in this case.

2 In this particular instance we also added one count of robbery  
3 with a deadly weapon in addition to the murder with deadly weapon and  
4 possession of firearm by prohibited person, which he wasn't previously  
5 charged with. Also we indicted on two cases that previously were in the  
6 Justice Court but were dismissed, those cases being assault with a  
7 deadly weapon and two counts of possession of firearm by prohibited  
8 person as well as a carrying concealed firearm.

9 What we have here is that Mr. Abasta is a three time  
10 convicted felon having been convicted in 2015 of battery with substantial  
11 bodily harm and conspiracy robbery, and in 2016 of attempt carrying  
12 concealed firearm. It's worth noting that in that 2015 case he bench  
13 warranted -- at his sentencing and then ultimately picked up the 2016  
14 conviction.

15 That -- Mr. Abasta he's committed a series of crimes with  
16 these two brothers, these two young men, Mr. James Waylon Arney and  
17 Mason Arney. Started in late December early January 2020 when  
18 Abasta purchased a glock seventeen hand gun from an identified  
19 individual for \$300. At that time he was a convicted felon, he had several  
20 other conversations that we found through digital evidence of him trying  
21 to purchase other firearms on the street during that time.

22 Go forward a couple days to January 5th, 2020 he ends up  
23 going to a smoke shop here in town has the firearm in his waist band  
24 pulls it out, points it at the victim, and threatens the victim. The victim  
25 ends up leaving in his car and Mr. Abasta places the gun back in his

1 waist band. He's identified in that case through his tattoos and a photo  
2 lineup by the victim.

3           So just a couple days later, January 14th, 2020, Mr. Abasta's  
4 driving with Mason and Waylon as they approach Kevin Farnsworth  
5 whose just walking on the street in Henderson. He's walking down the  
6 street talking to his sister on the phone when Abasta pulls his silver  
7 Honda over, gets out of the car with Waylon Mason sitting still in the car,  
8 attempts to rob Kevin Farnsworth by pointing the gun at him and saying  
9 something to him indicating he's robbing him and that's when Mr.  
10 Farnsworth turns around and runs from Mr. Abasta. Mr. Abasta then  
11 shoots Mr. Farnsworth in the back; the bullet enters Kevin's back, severs  
12 arteries and goes through his lungs, ultimately exiting his chest. He is  
13 still on the phone with his sister after he hits the ground tells her he  
14 believes he's been shot ultimately dies there on the side of the street.  
15 Police recovered a nine millimeter cartridge case from that scene which  
16 would ultimately be forensically compared to the glock seventeen  
17 handgun that I'd mentioned earlier and found to be a match.

18           A couple days after that January 26, 2020, Mr. Abasta was  
19 driving near Sunset Park with Waylon and Mason and another individual  
20 identified by us. That group decided to steal a car from a couple so they  
21 were doing a carjacking. That's when the other identified individual and  
22 Waylon approached the vehicle with firearms and pulled those folks out  
23 of the car. Ultimately police were notified get in a chase with those two in  
24 the stolen vehicle and then Mr. Abasta is stopped in the area as he is  
25 taking Waylon Arney away from the scene where he had fled from that

1 crashed Mazda. Ultimately Waylon Arney's identified by the victims and -  
2 - but Mr. Abasta was let go during that indecent because they had not  
3 seen him as he was the getaway driver in the flight.

4 Just a few days after that February 2nd, 2020, Mr. Abasta's at  
5 his grandfather's house on 4331 East Rochelle when he gets into an  
6 argument with his uncle. He's asked to leave by his grandfather. Mr.  
7 Abasta, being the way that he is, decides to instead go back to his car  
8 grab his firearm, the glock seventeen, and then walk back in his house  
9 ultimately making threats and having a gun in his possession at the time.  
10 What our evidence seems to indicate is that Mr. Abasta then being  
11 worried that he's obviously identified by his family members who have --  
12 he's threatened and who he knows where calling the police ditches the  
13 gun down the street and that's why the next day NHP officers are  
14 notified by a Nevada Department of Transportation worker who finds the  
15 glock seventeen down the street from that Rochelle Avenue house.  
16 Ultimately that firearm, as I said, was forensically tested and matched to  
17 the cartridge cases from the murder.

18 March 23rd, 2020 Abasta is then driving a Honda near  
19 Hacienda and Morris. Mason Arney is in the back seat that's when they  
20 pull up next to another victim Ernesto Santana who was just riding his  
21 bike. Mason jumps out of the car with a twenty-two rifle. Abasta also  
22 jumps out of the car they approach Ernesto, a struggle ensues over the  
23 weapon and then Mason shoots Ernesto in the chest. They ultimately  
24 take Ernesto's cell phone and flee the area. A twenty-two caliber bullet  
25 was recovered from that scene. Then very shortly thereafter two other

1 people, an individual named Matthew Warren and his girlfriend are  
2 walking down the street near Alexander and Cimarron when the Honda  
3 pulls up to them. The driver of that Honda is later identified as Abasta,  
4 Masons the rear seat passenger, they roll down the window Mason  
5 points the rifle at Matthew and his girlfriend and then Mason asks  
6 Matthew if they have a problem. Matthew responds no and they drive  
7 away. That's when police end up being able to locate Abasta at his  
8 grandmother's -- at Mason's grandmother's house just around the corner  
9 of Alexander and Cimarron.

10 They then identify him as the driver, they search the vehicle  
11 they find a twenty-two caliber cartridge case in the backseat and they  
12 find a nine millimeter cartridge case in the middle console. Abasta  
13 admits to knowing the nine millimeter cartridge case was there.  
14 Ultimately those are forensically compared and also match the murder  
15 that nine millimeter does. Mason then shows detectives where the  
16 twenty-two caliber rifle was inside the house and he admits to pointing it  
17 at Matthew. He also admits to shooting Ernesto the day prior. The case  
18 from the -- the cartridge case from the vehicle is matched to the case  
19 from the murder as I said and as search of Abasta's phones revealed  
20 that as right after that murder he begins searching for whether a gun can  
21 be traced and then he begins searching for replacement parts for the  
22 glock seventeen including a barrel and a new firing pin. He also is  
23 searching for bus tickets to Idaho. We also have information from  
24 Waylon that immediately after that Abasta who had left items at  
25 Waylon's house on a regular basis just to have them there goes and just

1 starts collecting all of his items -- indicating that he's getting ready to get  
2 out of town.

3 In addition to that, Mr. Abasta has had several jail calls with  
4 his mother as well as a letter to his mother asking her to destroy  
5 evidence in this case including deleting location data from email and  
6 Google accounts. He's also tried to separately delete information himself  
7 when he was out. In another letter to his mother he asked her to get the  
8 other witnesses to the murder, that obviously being the Arney brothers,  
9 not to talk to the police and to lie about their whereabouts that day.

10 Mr. Abasta is no doubt a flight risk and he is definitely a  
11 danger to the community. Mr. Mason -- Arney is so to obviously heavily  
12 involved in this overall crime spree including shooting an innocent  
13 individual in the chest just because of their common course of conduct of  
14 trying to rob people in the street.

15 THE COURT: All right thank you. So with respect to Mr.  
16 Abasta it appears that he is both a flight risk and a danger to the  
17 community given the resuscitation from the State. Additionally he is  
18 charged with first degree murder and given the level of proof provided by  
19 the State it appears appropriate under NRS 178.484 to issue a warrant  
20 and hold him no bail.

21 With respect to Mason Arney given the -- issues raised by the  
22 State relative to these offences warrant will issue bail will be set at  
23 \$100,000 and with the additional conditions of high level electronic  
24 monitoring and no contact with any of the victims.

25 With respect to James Arney he'll -- summons will issue and

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we'll set a date one week in the department as to all.

THE CLERK: July 2nd at 3:30.

THE COURT: Exhibits 1 through 24 and 26 through 35 will be lodged with the Clerk of the Court. Exhibit 25 was misnumbered. Las Vegas Justice Court Case 20F02017A and B will be dismissed.

Were there any material witness warrants in this case?

MR. DICKERSON: No, Your Honor.

THE COURT: All right, thank you.

MR. DICKERSON: Thank you.

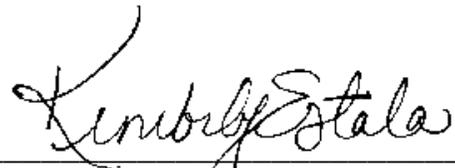
MS. BOTELHO: Thank you, Judge.

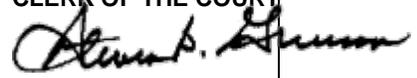
THE COURT: Thank you.

[Proceedings concluded at 11:54 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.

  
\_\_\_\_\_  
Kimberly Estala  
Court Recorder/Transcriber



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RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ERIC ABASTA, JR.,  
MASON ARNEY,  
JAMES WAYLON ARNEY,

Defendants.

CASE#: C-20-349045-1  
CASE#: C-20-349045-2  
CASE#: C-20-349045-3

DEPT. III

BEFORE THE HONORABLE DOUGLAS W. HERNDON,  
DISTRICT COURT JUDGE  
THURSDAY, JULY 2, 2020

**RECORDER'S TRANSCRIPT OF HEARING:  
INDICTMENT WARRANT RETURN  
INITIAL ARRAIGNMENT**

ALL APPEARANCES VIA BLUEJEANS:

For the State: NICOLE J. CANNIZZARO, ESQ.  
Chief Deputy District Attorney

For Defendant Abasta: ROBERT ARROYO, ESQ.  
Chief Deputy Special Public Defender

For Defendant Mason Arney: JAMES C. GALLO, ESQ.

For Defendant James Arney: DANIEL F. LIPPMANN, ESQ.

RECORDED BY: STACEY RAY, COURT RECORDER

1 Las Vegas, Nevada, Thursday, July 2, 2020

2  
3 [Case called at 3:40 p.m.]

4 THE COURT: How about Mr. Arney's matter on -- we have  
5 James Arney and mason Arney, as well as Eric Abasta, those are on  
6 pages one, two and three.

7 Who all is present on behalf of those defendants?

8 MR. LIPPMANN: Judge, Daniel Lippmann on behalf of  
9 Mr. Arney.

10 THE COURT: James Arney?

11 MR. LIPPMANN: Yes.

12 THE COURT: Thank you.

13 Mr. Gallo, are you there?

14 MR. LIPPMANN: Actually, I spoke with Mr. Gallo before. I  
15 can stand in for him briefly. He said he wasn't going to be able to, kind  
16 of, login for another ten minutes or so.

17 THE COURT: Okay. Well, are you going to stand in to  
18 arraign his client, or you have any --

19 MR. LIPPMANN: Yeah, I can certainly do that if his client will  
20 allow that.

21 THE COURT: All right.

22 What about Mr. Abasta?

23 Ms. Border, are you there?

24 MR. ARROYO: Your Honor, Robert Arroyo on behalf of  
25 Special Public Defender.

1 THE COURT: Okay.

2 MR. ARROYO: We were going to confirm as counsel today  
3 on that.

4 THE COURT: Oh, got it, great.

5 All right. So, Robert, have you-all talked to Mr. Abasta about  
6 the charges in the Indictment?

7 MR. ARROYO: I was just assigned the case yesterday, but I  
8 believe Mr. Savage from my office did go over the charges with him  
9 yesterday.

10 THE COURT: All right. Do we have Mr. Abasta?

11 DEFENDANT ABASTA: Yeah, I'm right here, sir.

12 THE COURT: OH, Okay.

13 Mr. Abasta, is that correct; did the attorneys discuss the  
14 charges in the Indictment with you?

15 DEFENDANT ABASTA: Yeah, a little bit.

16 THE COURT: What do you mean a little bit?

17 DEFENDANT ABASTA: Well, like to a certain extent, but, I  
18 mean -- well, yeah, I guess.

19 THE COURT: I'm not talking about did they discuss your full  
20 case, discuss any defenses you may have, just did they make you  
21 aware of what the charges are that you're facing in the Indictment?

22 DEFENDANT ABASTA: Yeah, I was told, but I wasn't really  
23 sure which ones are which cuz like there was like a -- like a list. And  
24 then like, I guess, some of them were mine and some of them weren't.

25

1 So, like I know what they are. I just didn't know which ones were directly  
2 toward me.

3 THE COURT: Okay.

4 MR. ARROYO: And, Your Honor, I wasn't a part of the phone  
5 call but when I did speak with Mr. Savage this morning --

6 THE COURT: Okay.

7 MR. ARROYO: -- he did say that he went over the Indictment  
8 and discussed which charges applied to Mr. Abasta and which ones  
9 didn't.

10 THE COURT: Well, obviously Mr. Abasta still has some  
11 questions, so we're going to continue his arraignment.

12 And Mason Arney, we're going to wait for Mr. Gallo.

13 Mr. Lippmann, how about with regard to James Arney, have  
14 you discussed the charges in the Indictment with James Arney?

15 MR. LIPPMANN: Yes, we have.

16 THE COURT: Where's James Arney?

17 MR. LIPPMANN: Is he not on BlueJeans right now?

18 THE COURT: James Arney?

19 Got no James Arney.

20 MR. LIPPMANN: Yes --

21 THE COURT: So I'm going to --

22 MR. LIPPMANN: -- it doesn't appear that he -- he got linked  
23 on right now.

24 THE COURT: Okay. So we will continue all of those until we  
25 can --

1 MR. LIPPMANN: Okay.

2 THE COURT: -- get the client back, as well as Mr. Gallo,  
3 Okay?

4 MR. LIPPMANN: All right.

5 DEFENDANT ABASTA: Your Honor --

6 THE COURT: Thank you.

7 [Hearing trailed at 3:43 p.m.]

8 [Hearing recalled at 4:01 p.m.]

9 THE COURT: All right. Let me get back to Nicole and see if  
10 we have everybody that we need on that other case yet.

11 Is Mr. Gallo here yet?

12 MR. GALLO: Yes, Your Honor. Can you hear me?

13 THE COURT: Yes, I can.

14 Did you have a chance to discuss the Indictment with your  
15 client Mason Arney?

16 MR. GALLO: Judge, I did not have that chance. I went to the  
17 detention center the last two days to see him and both times he was in  
18 transit.

19 THE COURT: Okay.

20 MR. GALLO: So he -- he's not really understanding what the  
21 procedure was. My -- if I had the opportunity, I would be telling him to  
22 plead not guilty and invoke today.

23 THE COURT: No, no, no, I --

24 MR. GALLO: But my intent would be to go see him on  
25 Monday.

1 THE COURT: -- I understand.

2 Mr. Abasta had some questions about it as well. So I'm going  
3 to give the special public defender an opportunity to talk further with their  
4 client as well.

5 So, Mr. Lippmann, did we ever get James Arney back?

6 MR. LIPPMANN: He should be on, yes.

7 THE COURT: James Arney, are you there?

8 DEFENDANT JAMES ARNEY: Yes, sir, I'm here.

9 THE COURT: Okay.

10 DEFENDANT JAMES ARNEY: Yeah, I'm here.

11 THE COURT: All right. So, hold on one second, James.

12 As to Mason Arney and Eric Abasta, we are going to continue  
13 the Indictment over to Tuesday, give the attorneys an opportunity to talk  
14 with them about the charges and then we'll formally get them arraigned.

15 So that'll be --

16 THE CLERK: July 7<sup>th</sup> at 3:30.

17 THE COURT: -- July 7<sup>th</sup> at 3:30. Okay, guys?

18 MR. GALLO: Thank you very much, Your Honor.

19 THE COURT: Thank you.

20 All right. And then as to James Arney, Mr. Arney, is your true  
21 name James Waylon Arney?

22 DEFENDANT JAMES ARNEY: My first name is James, sir.

23 THE COURT: Okay. How old are you, sir?

24 DEFENDANT JAMES ARNEY: I mean, my first name is  
25 Waylon, sir.

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THE COURT: Oh, your first name is Waylon.

DEFENDANT JAMES ARNEY: And my middle name is James.

THE COURT: Got it. Thank you.

DEFENDANT JAMES ARNEY: Yeah, I'm 18 years old.

THE COURT: 18.

How far did you go in school?

DEFENDANT JAMES ARNEY: Yes sir.

To 12<sup>th</sup> grade. I took my GED. I just need to finish it. I passed three out of five tests.

THE COURT: Perfect. Good Job. Okay

So, you read, write, and understand English?

DEFENDANT JAMES ARNEY: Yes, sir.

THE COURT: Okay. You've had a chance to discuss with your attorney the charges in the Indictment, you're charged with one count of conspiracy robbery, two counts of robbery with a deadly weapon, two counts of assault with a deadly weapon, and one count of grand larceny auto.

Is it correct that you had a chance to discuss those charges with your attorney?

DEFENDANT JAMES ARNEY: I believe so.

THE COURT: Okay. And how do you plead -- they're all felonies, how do you plead to those six felony charges?

DEFENDANT JAMES ARNEY: Um.

MR. LIPPMANN: Waylon, the plea for now is not guilty.

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DEFENDANT JAMES ARNEY: Okay.

THE COURT: So are you pleading not guilty?

DEFENDANT JAMES ARNEY: Yes, sir.

THE COURT: Okay. Dan, are you guys going to waive or invoke your right to speedy trial?

MR. LIPPMANN: We will waive.

If you can give me a status check, different dates, possibly two weeks out as to Mr. Arney, Waylon Arney.

THE COURT: Well, I'm probably, Dan, going to continue it over to Tuesday with the other two just so I keep it together for getting it assigned out to a department.

MR. LIPPMANN: Okay.

THE COURT: I'll waive --

MR. LIPPMANN: I got you.

THE COURT: -- your client's presence for Tuesday.

I just need to get the other two guys arraigned and then formally assign all three of them to a homicide department. Okay?

MR. LIPPMANN: That's perfectly fine. And then we'll set a date with that department.

THE COURT: Yeah, absolutely. All right.

MR. LIPPMANN: Okay.

THE COURT: All right. So, Mr. Arney, is that correct; do you waive your right to speedy trial?

DEFENDANT JAMES ARNEY: Um.

MR. LIPPMANN: Yes, Waylon, that's what we want to do.

1 DEFENDANT JAMES ARNEY: I'm not really -- yes, sir.

2 THE COURT: Okay, thank you.

3 This is -- was an Indictment, you'll have 21 days after receipt  
4 of copy of all transcripts for any writs.

5 I'm guessing -- well, I don't know. Nicole, is -- I mean, if he's  
6 18 -- is this case going to death review?

7 MS. CANNIZZARO: Your Honor, I don't --

8 THE COURT: Well, he doesn't --he's not facing a homicide  
9 charge. I'm sorry. Okay.

10 MS. CANNIZZARO: Right, right. It's just Mr. Abasta.

11 THE COURT: Okay.

12 Is the Abasta case going to go to death review?

13 MS. CANNIZZARO: Your Honor, I don't -- I don't believe so.

14 THE COURT: Okay.

15 All right. So, we're going to continue Waylon Arney's case to  
16 Tuesday, July 7<sup>th</sup>, along with the other two defendants, and at that time  
17 we'll get all three cases assigned out to a department.

18 Mr. Arney, you do not need to get on the line on Tuesday,  
19 your attorney can just appear for you --

20 DEFENDANT JAMES ARNEY: Okay.

21 THE COURT: -- and get the next court date. Just make sure  
22 you stay in contact with him --

23 DEFENDANT JAMES ARNEY: Okay.

24 THE COURT: -- okay?

25 DEFENDANT JAMES ARNEY: All right. Yes, sir.

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THE COURT: All right. Thank you.

DEFENDANT JAMES ARNEY: All right.

THE COURT: All right, Dan, thank you.

MR. LIPPMANN: All right. Thanks, Judge.

THE COURT: Nicole, was that all that you had?

MS. CANNIZZARO: That's all I have, Judge, Thank you.

THE COURT: Okay, thank you.

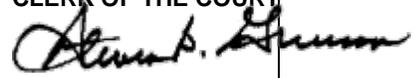
[Hearing concluded at 4:06 p.m.]

\* \* \* \* \*

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.



Rebeca Gomez  
Court Recorder/Transcriber



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RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ERIC ABASTA, JR.,  
MASON ARNEY,  
JAMES WAYLON ARNEY,

Defendants.

CASE#: C-20-349045-1

CASE#: C-20-349045-2

CASE#: C-20-349045-3

DEPT. III

BEFORE THE HONORABLE DOUGLAS W. HERNDON,

DISTRICT COURT JUDGE

TUESDAY, JULY 7, 2020

**RECORDER'S TRANSCRIPT OF HEARING:  
ARRAIGNMENT CONTINUED (ERIC ABASTA and MASON ARNEY)  
STATUS CHECK: CASE REASSIGNMENT  
(JAMES WAYLON ARNEY)**

ALL APPEARANCES VIA BLUEJEANS:

For the State:

ASHLEY A. LACHER, ESQ.  
Deputy District Attorney

For Defendant Abasta:

ROBERT ARROYO, ESQ.  
Chief Deputy Special Public Defender

For Defendant Mason Arney:

JAMES C. GALLO, ESQ.

For Defendant James Arney:

DANIEL F. LIPPMANN, ESQ.

RECORDED BY: STACEY RAY, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, July 7, 2020

2  
3 [Case called at 3:43 p.m.]

4 THE COURT: Dan, what do you have?

5 THE CLERK: Page 14.

6 THE COURT: Oh, you've got Mr. Arney, okay.

7 MR. LIPPMANN: Yeah, Waylon Arney.

8 THE COURT: Got it.

9 And then do we have Mr. Gallo? That would be no; okay.

10 MR. GALLO: Judge, Judge, I'm here.

11 THE COURT: Oh, you're there? All right.

12 Hey James, how are you today?

13 MR. GALLO: I'm doing good, Judge. Thank you.

14 THE COURT: All right. Did you guys have an opportunity to  
15 talk to your clients about the -- well, I think we already did it on behalf of  
16 Waylon, didn't we?

17 MR. LIPPMANN: Correct, yeah, I'm just here for a -- to get  
18 the dates together.

19 THE COURT: To get the --

20 MR. GALLO: That's correct, Judge, I did get a chance to meet  
21 with Mr. Arney and go over everything. Based upon our discussion he  
22 was going to waive a reading of the Indictment. He understands the  
23 charges, enter a plea of not guilty, and invoke his speedy trial right.

24 THE COURT: Got it. All right.

25

1                   So Mason Arney, wave your hand for me, if you would,  
2 please.

3                   DEFENDANT MASON ARNEY: [Indicating.]

4                   THE COURT: Thank you. All right.

5                   Mason, is that correct, did you have a chance to discuss the  
6 charges with your attorney?

7                   DEFENDANT MASON ARNEY: Yes, sir.

8                   THE COURT: All right. And is Mason Arney your true name?

9                   DEFENDANT MASON ARNEY: Yes, sir.

10                  THE COURT: How old are you, sir?

11                  DEFENDANT MASON ARNEY: 17.

12                  THE COURT: All right. You're charged -- and you read, write,  
13 and understand English, correct?

14                  DEFENDANT MASON ARNEY: Yes, sir.

15                  THE COURT: You're charged with one count of conspiracy to  
16 commit robbery, one count of robbery with a deadly weapon, one count  
17 of attempt murder with a deadly weapon, one count of battery with a  
18 deadly weapon resulting in substantial bodily harm, and two counts of  
19 assault with a deadly weapon.

20                  How do you plead to those six felony charges?

21                  DEFENDANT MASON ARNEY: Not guilty.

22                  THE COURT: Are you-all going to waive or invoke your right  
23 to speedy trial, James?

24                  MR. GALLO: Invoke, Your Honor.

25                  THE COURT: Is that correct, Mr. Arney?

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DEFENDANT MASON ARNEY: Yes, sir.

THE COURT: All right. Thank you.

All right. 21 days after receipt of copy of all transcripts for any writs.

All right. And then what about on behalf of Eric Abasta, do we have Robert? Are you here on behalf of --

MR. ARROYO: Yeah, Robert Arroyo.

THE COURT: Thank you.

Let's get Mr. Abasta, if we could.

THE CORRECTIONS OFFICER: He's on the screen, Your Honor.

DEFENDANT ABASTA: Right here, sir.

THE COURT: Oh, thank you, I'm sorry.

All right. Mr. Abasta, you've had a chance now to discuss your charges with your attorney as well?

DEFENDANT ABASTA: Yes sir.

THE COURT: All right.

And is Eric Abasta your true name?

DEFENDANT ABASTA: It's Eric Abasta, Jr.

THE COURT: Eric Abasta, Jr. Thank you.

And how old are you, sir?

DEFENDANT ABASTA: 22.

THE COURT: You read, write, and understand English?

DEFENDANT ABASTA: Yes sir.

THE COURT: Thank you.

1           You're charged with, looks like five counts of assault with a  
2 deadly weapon, three counts of ownership or possession of firearm by a  
3 prohibited person, one count of carry and concealed firearm, one count  
4 of attempt robbery with a deadly weapon, one count of murder with a  
5 deadly weapon, three counts of conspiracy to commit robbery, three  
6 counts of robbery with a deadly weapon, one count of grand larceny  
7 auto, one count of attempt robbery, one count of attempt murder with a  
8 deadly weapon, one count of battery with a deadly weapon with  
9 substantial bodily harm.

10           How do you plead to those 21 felony charges?

11           DEFENDANT ABASTA: Not guilty.

12           THE COURT: Are you going to invoke or waive your right to a  
13 speedy trial, Robert?

14           MR. ARROYO: Invoke.

15           THE COURT: Thank you.

16           Is that correct, Mr. Abasta, are you going to invoke?

17           DEFENDANT ABASTA: Yeah, I'm invoking.

18           THE COURT: Thank you very much.

19           Who's got this for the State? Ashley, do you have this?

20           MS. LACHER: Your Honor, yes, I have it. It hasn't been to  
21 the death review board per Nicole. It's unlikely. We were just asking for  
22 murder department.

23           THE COURT: Okay.

24           MS. LACHER: And whatever [audio distortion] setting. But it  
25 hasn't been before the committee yet.

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THE COURT: Got it.

So on behalf of Mr. Abasta, as well, 21 days for -- after receipt of copy of all transcripts for any writs. Because the folks invoked we'll go ahead and assign you out to Department 17. We're going to set it over there for a status check on trial setting, which will be on?

THE CLERK: Thursday, July 16<sup>th</sup> at 10:15 a.m.

THE COURT: And that will be as to all three defendants, Mr. Abasta, Mason Arney, and James Waylon Arney as well.

DEFENDANT ABASTA: Thank you.

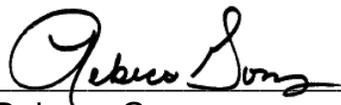
MR. ARROYO: Thank you, Your Honor.

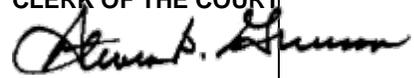
THE COURT: All right guys, thank you.

MR. LIPPMANN: Thank you, Your Honor.

[Hearing trailed at 3:48 p.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.

  
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Rebeca Gomez  
Court Recorder/Transcriber



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RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,  
Plaintiff,

vs.

ERIC ABASTA, JR., MASON  
ARNEY, JAMES WAYLON  
ARNEY,  
Defendant(s).

CASE NO: C-20-349045-1  
C-20-349045-2  
C-20-349045-3

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE  
THURSDAY, JULY 16, 2020

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:  
STATUS CHECK: TRIAL SETTING**

APPEARANCES ON PAGE 2:

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

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APPEARANCES:

For the State: SARAH OVERLY, ESQ.  
Chief Deputy District Attorney

For Defendant Abasta: ROBERT ARROYO, ESQ.  
Chief Deputy Special Public Defender  
(via BlueJeans)

For Defendant M. Arney: JAMES C. GALLO, ESQ.

For Defendant J. Arney: DANIEL F. LIPPMANN, ESQ.  
(via BlueJeans)

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Las Vegas, Nevada; Thursday, July 16, 2020

[Proceeding commenced at 11:02 a.m.]

THE COURT: Five is Eric Abasta, Special Public Defender case. Who's here on that case?

MR. ARROYO: Robert Arroyo on behalf of Mr. Abasta, Your Honor.

THE COURT: Okay, and then on page 6, Mason Arney, Mr. Gallo is here. And page 7 is Daniel Lippmann on James Abney -- Arney, excuse me, Arney. Is Mr. Lippmann on the line? Yes, he is. I see that.

So this is --

MR. LIPPMANN: I'm here, Your Honor.

THE COURT: -- status check -- good morning. Good morning, sir.

This is status check on trial setting. Have the parties met and discussed a convenient time for all three defense attorneys and the DA? And who's here on for the DA?

MS. OVERLY: Sarah Overly, Your Honor.

THE COURT: Okay.

MR. ARROYO: Your Honor, we haven't met, but Mr. Abasta and I think the rest of his co-Defendants have invoked, so I just ask that it be set at a time within the 60 days.

MR. GALLO: That's correct, Your Honor. Also, this case is being handled by Ms. Cannizzaro who's up for a Legislature, so --

1 THE COURT: All right. She's trying to find some money for  
2 everybody, right?

3 MR. GALLO: Somewhere, right?

4 THE COURT: All right, we'll go out 60 days from July 7,  
5 assuming we're doing trials then.

6 THE COURT CLERK: Calendar call will be August 25<sup>th</sup>, 8:30.  
7 Jury trial will be September 8<sup>th</sup>, 9:00 a.m.

8 THE COURT: Does anyone know if the Grand Jury  
9 transcripts have been filed?

10 MR. GALLO: They have.

11 THE COURT: Okay. Twenty-one days from the filing of a  
12 transcript or from today if this is the initial arraignment, okay, for all  
13 parties.

14 THE MARSHAL: Eight.

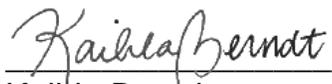
15 THE COURT: Okay, thank you everybody.

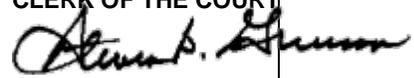
16 MR. ARROYO: Thank you.

17 [Proceeding concluded at 11:03 a.m.]

18 \* \* \* \* \*

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed  
22 the audio/video proceedings in the above-entitled case to the best of my  
23 ability.

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25 Kaihla Berndt  
Court Recorder/Transcriber



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RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,  
Plaintiff,

vs.

ERIC ABASTA, JR., MASON  
ARNEY, JAMES WAYLON  
ARNEY,

Defendant(s).

CASE NO: C-20-349045-1  
C-20-349045-2  
C-20-349045-3

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE  
TUESDAY, AUGUST 25, 2020

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:  
CALENDAR CALL**

APPEARANCES ON PAGE 2:

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

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APPEARANCES:

For the State: NICOLE CANNIZZARO, ESQ.  
Chief Deputy District Attorney

For Defendant Abasta: ROBERT ARROYO, ESQ.  
Chief Deputy Special Public Defender  
(via BlueJeans)

For Defendant M. Arney: JAMES C. GALLO, ESQ.  
(via BlueJeans)

For Defendant J. Arney: DANIEL F. LIPPMANN, ESQ.

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Las Vegas, Nevada; Tuesday, August 25, 2020

[Proceeding commenced at 10:12 a.m.]

THE COURT: Four is James Arney. This is time set for calendar call.

THE COURT CLERK: We also have -- there's co-Defendants on five and page six -- or five and three.

UNIDENTIFIED SPEAKER: And Ms. Cannizzaro is handling those cases.

THE COURT RECORDER: Two, four, and five.

THE COURT CLERK: Two, four, and five are co-Defendants, Judge.

THE COURT: Okay. Let's go to two, is Eric Abasta -- and Special Public Defender. Who's here on -- for Mr. Abasta?

[No audible response]

THE COURT: Do we have the Special PD on the line?

[No audible response]

THE COURT: Nope. How about -- two, four, and five.

THE COURT CLERK: Gallo.

THE COURT: Is Mr. Gallo on BlueJeans? Nope. All right. Mr. Lippmann, the co-Defendants' counsel are not present.

MR. LIPPMANN: Okay.

THE COURT: Do you have their cell phone numbers?

MR. LIPPMANN: Yeah, I was actually texting with Mr. Arroyo. Who is the other one's attorney?

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[Telephonic interruption]

THE COURT CLERK: Mr. Gallo.

THE COURT: Mr. Gallo.

MR. LIPPMANN: Mr. Gallo? I have both of them. I'll get them on.

THE COURT: All right, if you could, and we'll call your case as soon as --

MR. LIPPMANN: Thank -- thanks.

THE COURT: -- you have some representation to make. Thank you.

UNIDENTIFIED DEFENDANT: Sir, do you want me to sit down?

THE MARSHAL: Fourteen.

THE COURT: Yeah, have a seat, sir. We're going to recall your case in just a moment.

UNIDENTIFIED DEFENDANT: All right.

[Matter trailed]

[Matter recalled at 10:29 a.m.]

THE COURT: James Arney. And -- try this one again. Mr. Lippmann is here. Ms. Cannizzaro is handling the case. This is time set for calendar call. We do have some co-Defendants. And --

THE MARSHAL: It's 2 and 5.

THE COURT: -- is someone from the Special PD's Office present on --

MR. ARROYO: Yes, Your Honor.

1 THE COURT: -- Eric Abasta?

2 MR. ARROYO: Robert Arroyo. Robert Arroyo on behalf of  
3 Mr. Abasta.

4 THE COURT: All right, thank you. And we have Mr.  
5 Lippmann here on behalf of James Arney. And then, do we have James  
6 Gallo or someone on his behalf for Mason Arney?

7 MR. GALLO: Judge, I'm present, can you hear me?

8 THE COURT: I can hear you perfectly, thank you. This is  
9 calendar call for all three Defendants for trial September 8. And parties  
10 may know, we are not conducting trials on September 8. We hope to  
11 perhaps later in September, but it's a moving target right now.

12 So, I am going to vacate the trial date for the three  
13 Defendants. Did any of the Defendants invoke their right to speedy  
14 trial?

15 MR. LIPPMANN: I believe co-Defendants had.

16 MS. CANNIZZARO: Yes, Your Honor.

17 UNIDENTIFIED SPEAKER: I did.

18 MR. LIPPMANN: My client had waived.

19 THE COURT: Okay.

20 MR. LIPPMANN: Obviously, we want to be [indiscernible].

21 THE COURT: We'll go out another -- we'll try in 60 days.

22 THE COURT CLERK: Okay, calendar call October 13<sup>th</sup>, 8:30.

23 Jury trial --

24 THE COURT: Or actually that -- isn't that during the homicide  
25 stack.

1 THE COURT CLERK: That's during the criminal stack.

2 THE COURT: Oh, it is?

3 THE COURT CLERK: Did you want homicide --

4 THE COURT: October what?

5 THE COURT CLERK: Did you want homicide trial

6 [indiscernible]?

7 THE COURT: No, no, this is not a homicide.

8 MS. CANNIZZARO: It is a homicide.

9 MR. LIPPMANN: It is.

10 THE COURT: Oh, it is. I'm sorry.

11 MS. CANNIZZARO: It is a homicide, Your Honor.

12 THE COURT: I'll need to put it in -- the homicide stack would  
13 be -- the next one is November 16, but then the following week is  
14 Thanksgiving, which we'll have difficulty. I can give it November 30<sup>th</sup>,  
15 counsel?

16 MS. CANNIZZARO: That works for the State, Your Honor.

17 THE COURT: Due -- and I am finding good cause due to the  
18 Court's schedule and the holidays and the nature of these cases. I am  
19 finding good cause to extend the 60 days to the next available date,  
20 which is November 30<sup>th</sup> for trial. Here's your calendar call date.

21 THE COURT CLERK: Calendar call will be on November 17<sup>th</sup>,  
22 10:15 a.m.

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MR. LIPPMANN: Thank you, Your Honor.

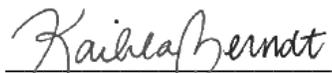
THE COURT: All right, thank you.

MS. CANNIZZARO: Thank you, Judge.

[Proceeding concluded at 10:31 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.

  
\_\_\_\_\_  
Kaihla Berndt  
Court Recorder/Transcriber



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RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,  
vs.  
ERIC ABASTA  
MASON ARNEY  
Defendants.

CASE#: C-20-349045-1  
C-20-349045-2  
DEPT. XVII

BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE  
WEDNESDAY, NOVEMBER 25, 2020

**RECORDER'S TRANSCRIPT OF HEARING:  
CENTRAL CALENDAR CALL**

APPEARANCES:

For the State: NICOLE CANNIZZARO, ESQ.  
Deputy District Attorney  
Appeared by Video

For the Defense: ROBERT ARROYO, ESQ.  
Deputy Special Public Defender  
JAMES GALLO, ESQ.  
Appeared By Video

RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, November 25, 2020

2  
3 [Case called at 2:38 p.m.]

4 MS. CANNIZZARO: Cannizzaro on behalf of the State.

5 THE COURT: All right.

6 MR. GALLO: Good Afternoon Judge, James Gallo here for  
7 Mr. Arney who is in custody.

8 THE COURT: And it looks like --

9 MR. GALLO: There should be a co-defendant Judge.

10 THE COURT: Oh all right.

11 MR ARROYO: Yes Your Honor, Eric Abasta is the co-  
12 defendant and Robert Arroyo and Tegan Machnich for Mr. Abasta.

13 THE COURT: Great thank you Mr. Arroyo. All right, so this is  
14 set for calendar call today unfortunately we're just not going to be able to  
15 go forward.

16 How are things going? Because I know that there had been  
17 some pretty significant issues in terms of getting -- and getting through  
18 the discovery.

19 MS. CANNIZZARO: Yes, Your Honor, I did do a file review  
20 with Mr. Arroyo and there was a list of some additional discovery which  
21 he was requesting. I have requested that from my detectives. I did get  
22 some of it and I'm waiting to get I think the last little bit so that I can turn  
23 it over to Mr. Arroyo.

24 MR. ARROYO: That is correct.

25 THE COURT: All right, and then I was a little bit confused Mr.

1 Gallo. There was a motion --

2 MR. GALLO: Judge we -- I addressed that with Judge Villani -  
3 - Your Honor. I'm still working on some negotiations with the State so we  
4 just trailed that issue to the second week of December, Your honor.

5 THE COURT: All right I understand so okay -- so what I can  
6 do, I can do one of two things; I can reset the trial and set a new  
7 calendar call, or I can just vacate the trial and on the status check also  
8 have it for to reset the trial, whichever you prefer.

9 MR. ARROYO: Your Honor, I think Mr. Abasta would prefer  
10 that we set the trial now. He's been demanding a trial within his speedy  
11 trial limit or time so I think it would make him happy if we just reset it at  
12 this time.

13 THE COURT: That's fine.

14 THE CLERK: And we'll have -- a jury trial of January 19th at 9  
15 a.m. with a central calendar call of January 13th at 2 p.m.

16 THE COURT: All right, and then we'll vacate that November  
17 30th trial date but leave the status check on the 10th.

18 MR. GALLO: Thank you Judge.

19 MS. CANNIZZARO: Thank you Judge.

20 THE COURT: Thank you gentlemen.

21 MR. ARROYO: Thank you.

22 THE DEFENDANT ABASTA: Can I ask a question?

23 THE COURT: Yes.

24 THE DEFENDANT ARNEY: Can I ask a question real quick?

25 THE COURT: Of course.

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THE DEFENDANT ARNEY: I was wondering if there's like a way I can be sent back to juvi? I feel like I sent up to the county way to quick.

THE COURT: That's something you need to talk to your lawyer about.

THE DEFENDANT ARNEY: All right. Thank you.

THE COURT: Okay.

THE DEFENDANT ABASTA: Miss can I ask a question too?

THE COURT: Sure.

THE DEFENDANT ABASTA: Okay I just had a question because you said something about that you were setting a status check on December 10th is that for me as well or just my co-defendant? I'm Abasta.

THE COURT: I'm not -- I'm -- sir it looks just -- it looks like that's just for your co-defendant.

THE DEFENDANT ABASTA: Okay.

THE COURT: It was just on his attorney.

THE DEFENDANT ABASTA: All right, thank you.

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THE COURT: All right.

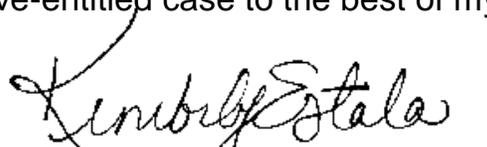
MR. ARROYO: Thank you.

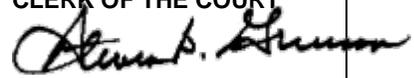
THE COURT: Thank you.

[Proceedings concluded at 2:42 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.

  
\_\_\_\_\_  
Kimberly Estala  
Court Recorder/Transcriber



1 RTRAN

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

9

Plaintiff,

CASE NO. C-20-349045-1  
C-20-349045-2

10

vs.

DEPT. X

11

ERIC ABASTA, JR.  
MASON ARNEY,

12

Defendants.

13

***BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE***

14

**WEDNESDAY, JANUARY 13, 2021  
RECORDER'S TRANSCRIPT RE:  
CENTRAL CALENDAR CALL**

15

16

17

APPEARANCES:

18

For the State:

NICOLE CANNIZZARO, Esq.  
Chief Deputy District Attorney

19

20

21

For Defendant Abasta:

TEGAN MACHNICH, Esq.  
Special Public Defender

22

23

24

25

RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, January 13, 2021 at 2:08 p.m.

2  
3 THE COURT: State of Nevada v. Abasta, State of Nevada v. Mason Arney.

4 Do we have somebody here from the Special Public Defender for Mr. Abasta?

5 MS. MACHNICH: Yes, Your Honor. Good afternoon. Tegan Machnich,  
6 special public defender, 11642, here on behalf of Mr. Abasta.

7 THE COURT: Okay. And who has this case from the State?

8 MS. CANNIZZARO: Good afternoon, Judge. Nicole Cannizzaro for the State.  
9 Bar Number 11930.

10 THE COURT: And we have both the defendants who are present. This is the  
11 date and time that is set for central calendar call. As you guys know you were set  
12 for jury trial on Tuesday, the 19<sup>th</sup>. The Court cannot currently do jury trials at this  
13 time based on orders from the Governor so I'm going to have to vacate that jury trial  
14 date in regards to both defendants. I'm going to set this case down for central trial  
15 readiness January 27<sup>th</sup> of 2021 at 11:30 for both defendants.

16 MS. CANNIZZARO: Thank you, Judge.

17  
18 (Proceedings concluded at 2:09 p.m.)

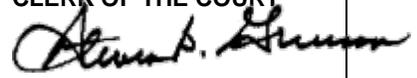
19 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
20 audio/video proceedings in the above-entitled case to the best of my ability.

21  
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23 *Victoria W. Boyd*

9-23-21

24 \_\_\_\_\_  
Victoria W. Boyd  
25 Court Recorder/Transcriber

\_\_\_\_\_  
Date



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DISTRICT COURT  
CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,

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9 Plaintiff,

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10 vs.

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11 ERIC ABASTA, JR.  
12 MASON ARNEY,

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12

13 Defendants.

13

CASE NO. C-20-349045-1  
C-20-349045-2

DEPT. X

**BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE**

14

**WEDNESDAY, JANUARY 27, 2021  
RECORDER'S TRANSCRIPT RE:  
CENTRAL TRIAL READINESS**

15

16

17

APPEARANCES:

18

19 For the State:

19

DANIEL PIEPER, Esq.  
Chief Deputy District Attorney

20

21 For Defendant Abasta:

21

ROBERT ARROYO, Esq.  
Special Public Defender

22

23 For Defendant Arney:

23

JAMES GALLO, Esq.

24

25

RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, January 27, 2021 at 12:34 p.m.

2  
3 THE COURT: Eric Abasta, Jr., is present in custody. Mr. Arroyo is here on  
4 his behalf. Mr. Arney is present in custody. Mr. Gallo, are you here?

5 MR. GALLO: I am, Judge. Can you hear me?

6 THE COURT: Yes, Mr. Gallo is here on his behalf. So this is on for central  
7 trial readiness. And I have you guys - - the Court can accommodate you guys in the  
8 February 22<sup>nd</sup> jury trial stack in the number two spot.

9 MR. ARROYO: Your Honor, we plan to be ready for that.

10 THE COURT: Okay. Ms. Pieper?

11 MS. PIEPER: Judge, it's my understanding that Mr. Arroyo is going to pick up  
12 some discovery and then after - -

13 MR. ARROYO: That is correct. We got - - I got the email today from Ms.  
14 Cannizzaro saying to send over 128 gigabyte drive to get new discovery. Of course  
15 that might change things but after we pick it up we might have to either file motions  
16 to exclude, but at this point we'd like to be set for the February 22<sup>nd</sup> trial.

17 THE COURT: Understood.

18 Mr. Gallo.

19 MR. GALLO: I don't have a problem with that. We're still working on  
20 resolving my end, Judge.

21 THE COURT: All right. So I'm going to put down that you guys can be ready  
22 so I'm going to set you guys for a central jury trial date February 22<sup>nd</sup> of 2021 at 9  
23 a.m. And I'm going to have you guys back here for central calendar call February  
24 17<sup>th</sup> of 2021 at 2 p.m.

25 MS. PIEPER: Judge, the trial readiness or whatever on 202221 that's at 9

1 o'clock, is that here?

2 THE COURT: Which one are you talking about? No, the jury trial date is  
3 February 22<sup>nd</sup> at 9 a.m. The central calendar call is February 17<sup>th</sup> at 2 and, yes,  
4 that's here.

5 MS. PIEPER: Okay. And then, Mr. Arroyo, contact me Daniel Pieper  
6 because I'm taking over part of Nicole's case load.

7 MR. ARROYO: Will do. Thank you.

8 THE COURT: Thank you, guys.

9 MR. ARROYO: We're going to bring the drive today, this afternoon.

10 MR. GALLO: Danielle, are you taking over this case at this point?

11 MS. PIEPER: Yes, for the time being I am.

12 MR. GALLO: How long is that?

13 THE COURT: Okay. Can you guys have this conversation off line - -

14 MR. GALLO: Sorry, Judge.

15 THE COURT: Thank you.

16  
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18 (Proceedings concluded at 12:37 p.m.)

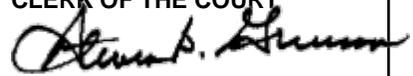
19 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
20 audio/video proceedings in the above-entitled case to the best of my ability.

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23 *Victoria W. Boyd*

9-23-21

24 \_\_\_\_\_  
Victoria W. Boyd  
25 Court Recorder/Transcriber

\_\_\_\_\_  
Date



1 **MAMI**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 MICHAEL R. DICKERSON  
6 Chief Deputy District Attorney  
7 Nevada Bar #013476  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,

CASE NO: C-20-349045-1

DEPT NO: XVII

11 -vs-

12 ERIC ABASTA,  
13 aka Eric Abasta, Jr., #5010484

14 Defendant(s).

15 **STATE'S MOTION TO AMEND INDICTMENT**

16 DATE OF HEARING:  
17 TIME OF HEARING:  
18 **HEARING REQUESTED**

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
19 District Attorney, through MICHAEL R. DICKERSON, Chief Deputy District Attorney, and  
20 moves this Court to amend the Indictment heretofore filed pursuant to NRS 173.095(1). This  
21 Motion is made and based upon all the papers and pleadings on file herein, the attached

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000404

1 Declaration of counsel, and oral argument at the time of the hearing if deemed necessary by  
2 this Honorable Court.

3 DATED this 10th day of February, 2021.

4 Respectfully submitted,

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

8 BY /s/ MICHAEL R. DICKERSON  
9 MICHAEL R. DICKERSON  
10 Chief Deputy District Attorney  
11 Nevada Bar #013476

12 NOTICE OF MOTION

13 TO: ERICA ABASTA, aka Eric Abasta, Jr., Defendant; and

14 TO: ROBERT ARROYO, Chief Deputy Special Public Defender, Attorney for Defendant

15 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned  
16 will bring the foregoing motion before the above entitled Court, in Department IX thereof, on  
17 the \_\_\_\_ day of February, 2021, at the hour of \_\_\_\_\_ o'clock a.m.

18 DATED this 10th day of February, 2021.

19 Respectfully submitted,

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

23 BY /s/ MICHAEL R. DICKERSON  
24 MICHAEL R. DICKERSON  
25 Chief Deputy District Attorney  
26 Nevada Bar #013476

1 **POINTS AND AUTHORITIES**

2 The State hereby moves for leave of the Court to file an Amended Indictment, which  
3 would add notice pleading to Court 5, Murder with Use of a Deadly Weapon, regarding the  
4 State’s theory of the murder being committed in the perpetration or attempted perpetration of  
5 robbery pursuant to NRS 200.030(1)(b).

6 Defendant is charged by way of Indictment filed June 26, 2020, with the following  
7 crimes: Count 1 - Assault With A Deadly Weapon, Count 2 - Ownership Or Possession Of  
8 Firearm By Prohibited Person, and Count 3 - Carrying Concealed Firearm Or Other Deadly  
9 Weapon, reference the January 5, 2020 event related to named victim Isiah Washington; Count  
10 4 - Attempt Robbery With Use Of A Deadly Weapon, Count 5 - Murder With Use Of A Deadly  
11 Weapon, and Count 6 - Ownership Or Possession Of Firearm By Prohibited Person reference  
12 the January 14, 2020 event related to named, deceased victim Kevin Farnsworth; Count 7 -  
13 Conspiracy To Commit Robbery, Counts 8 and 9 - Robbery With Use Of A Deadly Weapon,  
14 and Count 12 - Grand Larceny Auto reference the January 26, 2020 event related to named  
15 victims Tristan Himlin and Karen Salazar; Count 13 - Assault With A Deadly Weapon and  
16 Count 14 - Ownership Or Possession Of Firearm By Prohibited Person reference the February  
17 2, 2020 event related to named victim Pasqual Abasta; Count 15 - Conspiracy To Commit  
18 Robbery, Count 16 - Attempt Robbery, and Count 17 - Assault With A Deadly Weapon  
19 reference the March 15, 2020 event related to named Pavel Alling-Pena; Count 18 -  
20 Conspiracy To Commit Robbery, Count 19 - Robbery With Use Of A Deadly Weapon, Count  
21 20 - Attempt Murder With Use Of A Deadly Weapon, and Count 21 - Battery With Use Of A  
22 Deadly Weapon Resulting In Substantial Bodily Harm reference the March 23, 2020 event  
23 related to named victim Ernesto Santana-Rosas; Counts 22 and 23 - Assault With A Deadly  
24 Weapon reference the March 24, 2020 event and related to named victims Matthew Warren  
25 and Katelyn Mendes.

26 Charges shown by evidence at preliminary hearing may be added by amendment of the  
27 original indictment so long as the substantial rights of the defendant are not prejudiced. NRS  
28 173.095(1); Nall v. State, 85 Nev. 1, 448 P.2d 826 (1969); Green v. State, 94 Nev. 176 (1978).

1 “The court may permit an indictment or information to be amended at any time before verdict  
2 or finding if no additional or different offense is charged and if substantial rights of the  
3 defendant are not prejudiced.” NRS 173.095(1). “Such a determination is within the district  
4 court's discretion.” Viray v. State, 121 Nev. 159, 162, 111 P.3d 1079, 1081 (2005) (citing  
5 Green v. State, 94 Nev. 176, 177, 576 P.2d 1123, 1123 (1978).

6 A criminal defendant has a substantial and fundamental right to be informed of the  
7 charges against him so that he can prepare an adequate defense. Jennings v. State, 116 Nev.  
8 488, 490, 998 P.2d 557, 559 (2000). As a result, the Supreme Court of Nevada has held that  
9 "the State required to give adequate notice to the accused of the various theories of  
10 prosecution." State v. Dist. Ct., 116 Nev. 374, 377, 997 P.2d 126, 129 (2000). An indictment  
11 must properly include "a statement of the acts constituting the offense in ordinary and concise  
12 language." Jennings, 116 Nev. at 490, 998 P.2d at 559 (internal quotation marks and citations  
13 omitted). An inaccurate information does not prejudice a defendant's substantial rights if the  
14 defendant had notice of the State's theory of prosecution. Dist. Ct., 116 Nev. at 378-79, 997  
15 P.2d at 129; Koza v. State, 104 Nev. 262, 264, 756 P.2d 1184, 1185 (1988). Allowing the  
16 State leave to amend the Indictment, including to add a theory of prosecution, is supported by  
17 well-established law.

18 In Nall, 85 Nev. 1, 448 P.2d 826, the trial court allowed the State to amend the original  
19 information adding the charge of extortion. Nevada Supreme Court found no error and noted  
20 that “plentiful evidence of extortion was adduced at the preliminary hearing.”

21 In Armstrong v. State, 92 Nev. 675, 557 P.2d 272 (1976), the State was permitted by  
22 the trial court to amend the information and add a witness to the witness list. This amendment  
23 was permitted the day before the trial but the defense had been informed of the witness four  
24 days before trial. The Nevada Supreme Court found no abuse of discretion on the part of the  
25 trial court.

26 In Green, 94 Nev. 176, the State moved to amend the information after all the evidence  
27 had been presented at trial. The amendment changed the allegation of what the defendant had  
28 allegedly committed. The Supreme Court reversed the conviction and remanded the case for

1 a new trial on an amended information. Amendments to the charging document may be  
2 properly made when the Defendant can still present his defense.

3 In the present case, the State is seeking to amend the original Indictment prior to trial  
4 to provide a more accurate description of the theory of murder under which the State will be  
5 proceeding. Sufficient evidence was presented before the Grand Jury to place Defendant on  
6 notice of the felony-murder theory of prosecution and the Defendant was in fact indicted for  
7 the crime of Attempt Robbery With Use of A Deadly Weapon arising out of the same facts as  
8 the murder. (See Reporter's Transcript, Vol. 2, filed 7/12/20, at 40-53 (Defendant killed Kevin  
9 Farnsworth in the attempted perpetration of a robbery). Thus, the Amended Indictment would  
10 provide the Defendant fair and accurate notice of the crime which he is alleged to have  
11 committed and would not bring a new charge nor prejudice his substantial rights. Therefore,  
12 the State respectfully requests the Court grant the State's Motion and allow the State to file  
13 the Amended Indictment that is attached hereto as Exhibit 1.

14 Based upon the foregoing, the State respectfully requests this Honorable Court grant  
15 the State leave to amend the Indictment to add notice pleading to Court 5, Murder with Use of  
16 a Deadly Weapon, regarding the State's theory of the murder being committed in the  
17 perpetration or attempted perpetration of robbery pursuant to NRS 200.030(1)(b).

18 DATED this 10th day of February, 2021.

19 Respectfully submitted,

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

23 BY /s/ MICHAEL R. DICKERSON  
24 MICHAEL R. DICKERSON  
25 Chief Deputy District Attorney  
26 Nevada Bar #013476  
27  
28

CERTIFICATE OF ELECTRONIC FILING

1 I hereby certify that service of the foregoing, was made this 10th day of February, 2021,  
2  
3 by Electronic Filing to:

4 ROBERT ARROYO, Chief Deputy Special Public Defender  
5 E-mail Address: rarroyo@clarkcountynv.gov  
6 elizabeth.raiza@clarkcountynv.gov

7 /s/ Laura Mullinax  
8 Secretary for the District Attorney's Office  
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28 20F06387A/MRD/lm/GU

# Exhibit 1

1 **AIND**  
STEVEN B. WOLFSON  
2 Clark County District Attorney  
Nevada Bar #001565  
3 MICHAEL R. DICKERSON  
Chief Deputy District Attorney  
4 Nevada Bar #013476  
200 Lewis Avenue  
5 Las Vegas, Nevada 89155-2212  
(702) 671-2500  
6 Attorney for Plaintiff

7  
8 DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

CASE NO: C-20-349045-1

11 -vs-

DEPT NO: XVII

12 **ERIC ABASTA,**  
**aka Eric Abasta, Jr., #5010484**  
13 MASON ARNEY, #8412715  
14 JAMES WAYLON ARNEY,  
aka Waylan Arney, Jr., #5098193

**A M E N D E D  
I N D I C T M E N T**

15 Defendant(s).

16 STATE OF NEVADA     )  
                                  ) ss.  
17 COUNTY OF CLARK     )

18 The Defendant(s) above named, ERIC ABASTA, aka Eric Abasta, Jr., MASON  
19 ARNEY, and JAMES WAYLON ARNEY, aka Waylan Arney, Jr., accused by the Clark  
20 County Grand Jury of the crime(s) of **ASSAULT WITH A DEADLY WEAPON (Category**  
21 **B Felony - NRS 200.471 - NOC 50201); OWNERSHIP OR POSSESSION OF FIREARM**  
22 **BY PROHIBITED PERSON (Category B Felony - NRS 202.360 - NOC 51460);**  
23 **CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON (Category C**  
24 **Felony - NRS 202.350 (1)(d)(3) - NOC 51459); ATTEMPT ROBBERY WITH USE OF**  
25 **A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.330, 193.165 - NOC**  
26 **50145); MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS**  
27 **200.010, 200.030, 193.165 - NOC 50001); CONSPIRACY TO COMMIT ROBBERY**  
28 **(Category B Felony - NRS 200.380, 199.480 - NOC 50147); ROBBERY WITH USE OF**

1 **A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138);**  
2 **GRAND LARCENY AUTO (Category B Felony - NRS 205.228.3 - NOC 56014);**  
3 **ATTEMPT ROBBERY (Category B Felony - NRS 200.380, 193.330 - NOC 50144);**  
4 **ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony -**  
5 **NRS 200.010, 200.030, 193.330, 193.165 - NOC 50031) and BATTERY WITH USE OF A**  
6 **DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B**  
7 **Felony - NRS 200.481 - NOC 50226),** committed at and within the County of Clark, State of  
8 Nevada, on or between January 5, 2020, and March 24, 2020, as follows:

9 COUNT 1 - ASSAULT WITH A DEADLY WEAPON

10 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about January 5, 2020,  
11 willfully, unlawfully, feloniously and intentionally place another person in reasonable  
12 apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use  
13 physical force against another person, to wit: ISIAH WASHINGTON, with use of a deadly  
14 weapon, to wit: a firearm, by pointing an unknown make and/or model firearm at the said  
15 ISIAH WASHINGTON.

16 COUNT 2 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

17 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about January 5, 2020,  
18 willfully, unlawfully, and feloniously own, or have in his possession and/or under his custody  
19 or control, a firearm, to wit: an unknown make and/or model firearm, the Defendant being a  
20 convicted felon, having in 2016, been convicted of Battery with Substantial Bodily Harm, in  
21 Case No. C311831-1, and/or, having in 2016, been convicted of Attempt Carry Conceal  
22 Weapon, in case No. C318316-1, in the Eighth Judicial District Court, Clark County, a felony  
23 under the laws of the State of Nevada.

24 COUNT 3 - CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON

25 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about January 5, 2020, then  
26 and there willfully, unlawfully and feloniously carry concealed upon his person, a firearm or  
27 other deadly weapon, to wit: an unknown make and/or model firearm.

28 //

1 COUNT 4 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

2 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about January 14, 2020,  
3 willfully, unlawfully, and feloniously attempt to take personal property, to wit: a cell phone,  
4 from the person of KEVIN FARNSWORTH, or in his presence, without the consent and  
5 against the will of KEVIN FARNSWORTH, by means of force or violence or fear of injury,  
6 immediate or future, to his person, the person of a member of his family, or of anyone in his  
7 company at the time of the robbery, defendant using force or fear to attempt to obtain or retain  
8 possession of the property, attempt to prevent or overcome resistance to the taking of the  
9 property, and/or attempt to facilitate escape, by approaching the said KEVIN FARNSWORTH  
10 and shooting at ot into the body of the said KEVINS FARNSWORTH while attempting to  
11 take his property, with use of a deadly weapon, to wit: a firearm.

12 COUNT 5 - MURDER WITH USE OF A DEADLY WEAPON

13 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about January 14, 2020,  
14 willfully, unlawfully, feloniously and with malice aforethought, kill KEVIN FARNSWORTH,  
15 a human being, with use of a deadly weapon, to wit: a firearm, by shooting at or into the body  
16 of the said KEVIN FARNSWORTH, the said killing having been (1) willful, deliberate and  
17 premeditated, and/or (2) committed during the perpetration or attempted perpetration of a  
18 robbery.

19 COUNT 6 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

20 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about January 14, 2020,  
21 willfully, unlawfully, and feloniously own, or have in his possession and/or under his custody  
22 or control, a firearm, to wit: a firearm, the Defendant being a convicted felon, having in 2016,  
23 been convicted of Conspiracy to Commit Robbery and Battery With Substantial Bodily Harm,  
24 in Case No. C311831 and/or Attempt Carrying Concealed Firearm or Other Deadly Weapon  
25 in Case No. C318316, in the Eighth Judicial District Court, Clark County, felonies under the  
26 laws of the State of Nevada.

27 //

28 //

1 COUNT 7 - CONSPIRACY TO COMMIT ROBBERY

2 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and JAMES WAYLON ARNEY,  
3 aka Waylan Arney, Jr. did on or about January 26, 2020, willfully, unlawfully, and feloniously  
4 conspire with each other and J.G. to commit a robbery, by the Defendants and J.G. committing  
5 the acts as set forth in Counts 8 and 9, said acts being incorporated by this reference as though  
6 fully set forth herein.

7 COUNT 8 - ROBBERY WITH USE OF A DEADLY WEAPON

8 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and JAMES WAYLON ARNEY,  
9 aka Waylan Arney, Jr. did on or about January 26, 2020, willfully, unlawfully, and feloniously  
10 take personal property, to wit: U.S. Currency, a telephone, identification and a Mazda bearing  
11 Nevada License No. 890ZFW, from the person of TRISTAN HIMLIN, or in his presence,  
12 without the consent and against the will of TRISTAN HIMLIN, by means of force or violence  
13 or fear of injury, immediate or future, to his person, the person of a member of his family, or  
14 of anyone in his company at the time of the robbery, defendant using force or fear to obtain or  
15 retain possession of the property, to prevent or overcome resistance to the taking of the  
16 property, and/or to facilitate escape, with use of a deadly weapon, to wit: a firearm; the  
17 Defendant(s) being criminally liable under one or more of the following principles of criminal  
18 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the  
19 commission of this crime, with the intent that this crime be committed, by counseling,  
20 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit  
21 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this  
22 crime be committed, Defendants and/or J.G. aiding or abetting and/or conspiring by  
23 Defendants and/or J.G. acting in concert throughout.

24 COUNT 9 - ROBBERY WITH USE OF A DEADLY WEAPON

25 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and JAMES WAYLON ARNEY, aka  
26 Waylan Arney, Jr. did on or about January 26, 2020, willfully, unlawfully, and feloniously  
27 take personal property, to wit: U.S. Currency, a telephone, identification and a Mazda bearing  
28 Nevada License No. 890ZFW, from the person of KAREN SALAZAR, or in her presence,

1 without the consent and against the will of KAREN SALAZAR, by means of force or violence  
2 or fear of injury, immediate or future, to her person, the person of a member of her family, or  
3 of anyone in her company at the time of the robbery, defendant using force or fear to obtain or  
4 retain possession of the property, to prevent or overcome resistance to the taking of the  
5 property, and/or to facilitate escape, with use of a deadly weapon, to wit: a firearm; the  
6 Defendant(s) being criminally liable under one or more of the following principles of criminal  
7 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the  
8 commission of this crime, with the intent that this crime be committed, by counseling,  
9 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit  
10 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this  
11 crime be committed, Defendants and/or J.G. aiding or abetting and/or conspiring by  
12 Defendants and/or J.G. acting in concert throughout.

13 COUNT 10 - ASSAULT WITH A DEADLY WEAPON

14 Defendant JAMES WAYLON ARNEY, aka Waylan Arney, Jr. did on or about  
15 January 26, 2020, willfully, unlawfully, feloniously and intentionally place another person in  
16 reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully  
17 attempt to use physical force against another person, to wit: TRISTAN HIMLIN, with use of  
18 a deadly weapon, to wit: a firearm, by pointing said firearm at the said TRISTAN HIMLIN.

19 COUNT 11 - ASSAULT WITH A DEADLY WEAPON

20 Defendant JAMES WAYLON ARNEY, aka Waylan Arney, Jr. did on or about January  
21 26, 2020, willfully unlawfully, feloniously and intentionally place another person in  
22 reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully  
23 attempt to use physical force against another person, to wit: KAREN SALAZAR, with use of  
24 a deadly weapon, to wit: a firearm, by pointing said firearm at the said KAREN SALAZAR.

25 COUNT 12 - GRAND LARCENY AUTO

26 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and JAMES WAYLON ARNEY,  
27 aka Waylan Arney, Jr. did on or about January 26, 2020, then and there willfully, unlawfully,  
28 feloniously, and intentionally, with intent to deprive the owner permanently thereof, steal, take

1 and carry away, drive away or otherwise remove a motor vehicle owned by another person,  
2 having a value of \$3,500.00, or greater, in the possession of TRISTAN HIMILIN, to wit: a  
3 2014 Mazda 6, bearing Nevada License No. 890ZFW; the Defendant(s) being criminally liable  
4 under one or more of the following principles of criminal liability, to wit: (1) by directly  
5 committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with  
6 the intent that this crime be committed, by counseling, encouraging, hiring, commanding,  
7 inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a  
8 conspiracy to commit this crime, with the intent that this crime be committed, Defendants  
9 and/or J.G. aiding or abetting and/or conspiring by Defendants and/or J.G. acting in concert  
10 throughout.

11 COUNT 13 - ASSAULT WITH A DEADLY WEAPON

12 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about February 2, 2020,  
13 willfully, unlawfully, feloniously and intentionally place another person in reasonable  
14 apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use  
15 physical force against another person, to wit: PASQUAL ABASTA, with use of a deadly  
16 weapon, to wit: a firearm, by brandishing said firearm in the said PASQUAL ABASTA'S  
17 presence while cocking it and walking towards him.

18 COUNT 14 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

19 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about February 2, 2020,  
20 willfully, unlawfully, and feloniously own, or have in his possession and/or under his custody  
21 or control, a firearm, to wit: a firearm, the Defendant being a convicted felon, having in 2016,  
22 been convicted of Conspiracy to Commit Robbery and Battery With Substantial Bodily Harm,  
23 in Case No. C311831 and/or Attempt Carrying Concealed Firearm or Other Deadly Weapon  
24 in Case No. C318316, in the Eighth Judicial District Court, Clark County, felonies under the  
25 laws of the State of Nevada.

26 COUNT 15 - CONSPIRACY TO COMMIT ROBBERY

27 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about March 15, 2020,  
28 willfully, unlawfully, and feloniously conspire with J.G. to commit a robbery, by the

1 Defendant and/or J.G. committing the acts as set forth in Count 16, said acts being incorporated  
2 by this reference as though fully set forth herein.

3 COUNT 16 - ATTEMPT ROBBERY

4 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about March 15, 2020,  
5 willfully, unlawfully, and feloniously attempt to take personal property, to wit: a golf cart  
6 and/or cellular telephone, from the person of PAVEL ALLING-PENA, or in his presence,  
7 without the consent and against the will of PAVEL ALLING-PENA, by means of force or  
8 violence or fear of injury, immediate or future, to his person, the person of a member of his  
9 family, or of anyone in his company at the time of the robbery, defendant using force or fear  
10 to attempt to obtain or retain possession of the property, attempt to prevent or overcome  
11 resistance to the taking of the property, and/or attempt to facilitate escape, by demanding the  
12 keys to said golf cart and/or attempting to take said cellular telephone from PAVEL ALLING-  
13 PENA while striking him; the Defendant being criminally liable under one or more of the  
14 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or  
15 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be  
16 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise  
17 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this  
18 crime, with the intent that this crime be committed, Defendant and/or J.G. aiding or abetting  
19 and/or conspiring by Defendant and/or J.G. acting in concert throughout..

20 COUNT 17 - ASSAULT WITH A DEADLY WEAPON

21 Defendant ERIC ABASTA, aka Eric Abasta, Jr. did on or about March 15, 2020,  
22 willfully, unlawfully, feloniously and intentionally place another person in reasonable  
23 apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use  
24 physical force against another person, to wit: PAVEL ALLING-PENA, with use of a deadly  
25 weapon, to wit: a vehicle, by driving said vehicle at the said PAVEL ALLING-PENA,  
26 attempting to strike him.

27 //

28 //

1 COUNT 18 - CONSPIRACY TO COMMIT ROBBERY

2 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and MASON ARNEY did on or  
3 about March 23, 2020, willfully, unlawfully, and feloniously conspire with each other to  
4 commit a robbery, by the Defendants committing the acts as set forth in Count 19, said acts  
5 being incorporated by this reference as though fully set forth herein.

6 COUNT 19 - ROBBERY WITH USE OF A DEADLY WEAPON

7 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and MASON ARNEY did on or  
8 about March 23, 2020, willfully, unlawfully, and feloniously take personal property, to wit: a  
9 cellular telephone, from the person of ERNESTO SANTANA-ROSAS, or in his presence,  
10 without the consent and against the will of ERNESTO SANTANA-ROSAS, by means of force  
11 or violence or fear of injury, immediate or future, to his person, the person of a member of his  
12 family, or of anyone in his company at the time of the robbery, Defendants using force or fear  
13 to obtain or retain possession of the property, to prevent or overcome resistance to the taking  
14 of the property, and/or to facilitate escape, with use of a deadly weapon, to wit: a firearm; the  
15 Defendant(s) being criminally liable under one or more of the following principles of criminal  
16 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the  
17 commission of this crime, with the intent that this crime be committed, by counseling,  
18 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit  
19 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this  
20 crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in  
21 concert throughout.

22 COUNT 20 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

23 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and MASON ARNEY did on or about  
24 March 23, 2020, willfully, unlawfully, feloniously and with malice aforethought attempt to  
25 kill ERNESTO SANTANA-ROSAS, a human being, with use of a deadly weapon, to wit: a  
26 firearm, by shooting at or into the body of the said ERNESTO SANTANA-ROSAS; the  
27 Defendant(s) being criminally liable under one or more of the following principles of criminal  
28 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the

1 commission of this crime, with the intent that this crime be committed, by counseling,  
2 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit  
3 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this  
4 crime be committed, Defendants aiding or abetting and/or conspiring by Defendants acting in  
5 concert throughout.

6 COUNT 21 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN  
7 SUBSTANTIAL BODILY HARM

8 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and MASON ARNEY did on or about  
9 March 23, 2020, willfully, unlawfully, and feloniously use force or violence upon the person  
10 of another, to wit: ERNESTO SANTANA-ROSAS, with use of a deadly weapon, to wit: a  
11 firearm, by shooting at or into the body of the said ERNESTO SANTANA-ROSAS, resulting  
12 in substantial bodily harm to ERNESTO SANTANA-ROSAS, the Defendant(s) being  
13 criminally liable under one or more of the following principles of criminal liability, to wit: (1)  
14 by directly committing this crime; and/or (2) by aiding or abetting in the commission of this  
15 crime, with the intent that this crime be committed, by counseling, encouraging, hiring,  
16 commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3)  
17 pursuant to a conspiracy to commit this crime, with the intent that this crime be committed,  
18 Defendants aiding or abetting and/or conspiring by Defendants acting in concert throughout.

19 COUNT 22 - ASSAULT WITH A DEADLY WEAPON

20 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and MASON ARNEY did on or  
21 about March 24, 2020, willfully, unlawfully, feloniously and intentionally place another  
22 person in reasonable apprehension of immediate bodily harm and/or did willfully and  
23 unlawfully attempt to use physical force against another person, to wit: MATTHEW  
24 WARREN, with use of a deadly weapon, to wit: a firearm, by pointing said firearm at the said  
25 MATTHEW WARREN; the Defendant(s) being criminally liable under one or more of the  
26 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or  
27 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be  
28 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise

1 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this  
2 crime, with the intent that this crime be committed, Defendants aiding or abetting and/or  
3 conspiring by Defendants acting in concert throughout.

4 COUNT 23 - ASSAULT WITH A DEADLY WEAPON

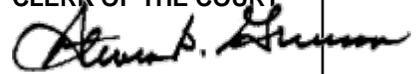
5 Defendants ERIC ABASTA, aka Eric Abasta, Jr. and MASON ARNEY did on or  
6 about March 24, 2020, willfully, unlawfully, feloniously and intentionally place another  
7 person in reasonable apprehension of immediate bodily harm and/or did willfully and  
8 unlawfully attempt to use physical force against another person, to wit: KATELYN MENDES,  
9 with use of a deadly weapon, to wit: a firearm, by pointing said firearm at the said KATELYN  
10 MENDES; the Defendant(s) being criminally liable under one or more of the following  
11 principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by  
12 aiding or abetting in the commission of this crime, with the intent that this crime be committed,  
13 by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the  
14 other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the  
15 intent that this crime be committed, Defendants aiding or abetting and/or conspiring by  
16 Defendants acting in concert throughout.

17 DATED this 9th day of February, 2021.

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

21 BY /s/ MICHAEL R. DICKERSON  
22 MICHAEL R. DICKERSON  
23 Chief Deputy District Attorney  
24 Nevada Bar #013476

25 19CGJ051A-C/C348213(20F06387A-B)/20F02017A-  
26 B/20F06403X/C348152(20F07884X)/20F07202X/ed/lm/GU  
27 LVMPD EV#200300114309; 200300108165; 200100022920  
28 CCPP EV# 20010124150  
HPD EV# 2000988  
(TK3)



1 **OPPS**  
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2 SPECIAL PUBLIC DEFENDER  
Nevada Bar #4771  
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Chief Deputy Special Public Defender  
4 Nevada Bar #11512  
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9 Attorneys for Abasta

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 THE STATE OF NEVADA, )  
13 Plaintiff, ) CASE NO. C-20-349045-1  
14 v. ) DEPT. NO. 17  
15 ERIC ABASTA, ID #5010484 )  
16 Defendant, )  
17

18 **OPPOSITION TO STATE’S MOTION TO AMEND THE INDICTMENT**

19 COMES NOW, the defendant, ERC ABASTA, by and through his attorney of  
20 record, ROBERT ARROYO, Chief Deputy Special Public Defender, and hereby opposes  
21 the State’s Motion to Amend the Indictment.  
22

23 This Opposition is based upon the attached points and authorities, the papers and  
24 pleadings on file herein, and any oral argument at the time set for hearing on the matter.  
25

26 ///  
27 ///  
28 ///

MEMORANDUM OF POINTS AND AUTHORITIES

1  
2 This Court should deny the State’s request to Amend the Indictment without  
3 presenting the proposed amendment to the original grand jury. Neither the State nor  
4 this Court have the authority to substantively amend the grand jury indictment. NRS  
5 173.095(1) provides that a court may permit an indictment “to be amended at any time  
6 before verdict or finding *if no additional or different offense is charged and if substantial*  
7 *rights of the defendant are not prejudiced.*” (Emphasis added). Unlike an Information,  
8 which is the product of a court proceeding, an Indictment “may be found *only* upon the  
9 concurrence of 12 or more jurors.” NRS 172.255(1) (Emphasis added). The proposed  
10 amendment here, which would add a theory of felony murder, would amount to more than  
11 a correction of a clerical error because it would materially alter the Indictment.  
12  
13

14 It has long been the law of this state that the Grand Jury alone may materially  
15 alter its Indictment:  
16

17 There can be no difference of opinion as to what is meant  
18 by the expression “indictment of a grand jury.” It manifestly  
19 means a written accusation made and presented by the  
20 inquisition known as a grand jury. But if, after being presented  
21 to the court, an indictment so found be in any particular  
22 materially modified or altered; if anything of substance be added  
23 to or taken therefrom by the court, in cannot with any degree of  
24 propriety be denominated an indictment of a grand jury. If, as in  
25 this case, something material be added to it, the portion so added  
26 would not be a finding or accusation by the jury, but by the court;  
27 nor if it modified in any essential matter would the portion so  
28 modified be their work.

If the courts have the power to add or to take from anything  
material in an indictment, where is the limit to that power? If  
one can arrogate to itself any portion, upon what rule could it be  
held that it should not take upon itself the entire duties of the  
grand jury? Clearly no indictment upon which a person can be  
legally tried can be found except by a grand jury, and the courts

1 have no more authority to add any material charge, accusation or  
2 allegation to it than they have to find the bill in the first instance.

3 State v. Chamberlain, 6 Nev. 257, 260 (1871). Allowing the State to substantively change  
4 the indictment by adding a new theory of murder would grant the State power reserved  
5 to the Grand Jury.

6 The State cited to several cases in support of its Motion to Amend the Indictment.  
7 See State's Motion, page 4. However, every case cited by the State involved amending an  
8 Information as opposed to amending an Indictment. The State has not cited to any  
9 Nevada law which would grant the State or this Court the authority to materially change  
10 a Grand Jury Indictment by adding a new theory of murder not presented to the Grand  
11 Jury.  
12

13 Any amendment to the Indictment without presentment to the original Grand Jury  
14 will deny Eric his right to due process because it cannot be said that the Grand Jury  
15 would have found probable cause for the accusation of felony murder. In certain  
16 instances, "an amendment to an indictment can implicate rights under the U.S.  
17 Constitution which are applicable to the states, such as fair notice of criminal charges,  
18 double jeopardy, and effective assistance of counsel." Watson v. Jago, 558 F.2d 330, 338  
19 (6th Cir. 1977). "An amendment of the indictment occurs when the charging terms of the  
20 indictment are altered, either literally or in effect, by the prosecutor or court after the  
21 grand jury has last passed on them." United States v. Montgomery, 384 F.3d 1050, 1060  
22 (9th Cir. 2004). If the change in the indictment constitutes an amendment, it is  
23 prejudicial per se and may warrant reversal of a conviction. Jones v. Smith, 231 F.3d  
24 1227, 1232 (9th Cir. 2000).  
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**CONCLUSION**

This Court should deny the State's request to materially amend the Indictment without presenting the proposed amendment to the original Grand Jury. The State and this Court lack the authority to make substantive changes to an Indictment.

Dated: February 17, 2021

SUBMITTED BY:

/s/ ROBERT ARROYO

\_\_\_\_\_  
ROBERT ARROYO  
Attorney for Abasta

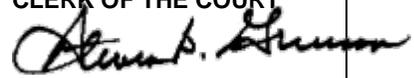
**CERTIFICATE OF SERVICE**

I hereby certify that service of the above Opposition to the State's Motion to Amend the Indictment, was made on February 17, 2021, by Electronic Filing to:

DISTRICT ATTORNEY'S OFFICE  
email: [motions@clarkcountyda.com](mailto:motions@clarkcountyda.com)

/s/ Elizabeth (Lisa) Araiza

\_\_\_\_\_  
Legal Secretary  
Special Public Defender



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RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

ERIC ABASTA, JR.  
MASON ARNEY,

Defendants.

CASE NO. C-20-349045-1  
C-20-349045-2

DEPT. X

**BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE**

**WEDNESDAY, FEBRUARY 17, 2021  
RECORDER'S TRANSCRIPT RE:  
CENTRAL CALENDAR CALL**

APPEARANCES:

For the State:

MIKE DICKERSON, Esq.  
Chief Deputy District Attorney

For Defendant Abasta:

ROBERT ARROYO, Esq.  
Special Public Defender

For Defendant Arney:

JAMES GALLO, Esq.

RECORDED BY: VICTORIA BOYD, COURT RECORDER

1  
2 Las Vegas, Nevada, Wednesday, February 17, 2021 at 2:44 p.m.

3  
4 THE COURT: Mr. Gallo is here on his behalf. This is the date and time set  
5 for Central Calendar Call. Are you guys prepared to go forward?

6 MR. ARROYO: Your Honor, Robert Arroyo - - Sorry.

7 THE COURT: Hold on. Who is here from the State?

8 MR. DICKERSON: Mike Dickerson on behalf of the State, Your Honor.

9 THE COURT: Mr. Arroyo.

10 MR. ARROYO: Yes, Your Honor. Mr. Dickerson recently took over the case  
11 from Ms. Cannizzaro. Since he's been on the case we've received a lot of new  
12 discovery. Some of it exculpatory that's going to - - we're going to need to travel out  
13 of state to find new witnesses. Mr. Abasta does not want to waive his right to a  
14 speedy trial, but our position is we would have been ready if it wasn't for the  
15 disclosure of the discovery. I spoke with Mr. Dickerson. I don't think he would  
16 object to keeping Mr. Abasta in an invoked status but pushing the trial out for 45, 60  
17 days.

18 MR. DICKERSON: Mike Dickerson on behalf of the State. That's correct. We  
19 had spoken about this. I indicated that I would not be objecting to the request to  
20 continue or remaining invoked. I also indicated we had conveyed an offer in this  
21 case and been open to negotiations but to do that we would request that Mr. Abasta  
22 waive certain period of time to have a status check so that we can fully negotiate the  
23 case. But that's our position as it stands today.

24 THE COURT: Okay. Mr. Gallo, what is your position?

25 MR. GALLO: We would be fine with a continuance as long as he can remain  
invoked at this point.

1 THE COURT: Mr. Abasta, did you hear the representations that were made  
2 by the State?

3 THE DEFENDANT: Yeah, I heard it. I'm not sure he said something about  
4 that he had extended negotiation or something but I haven't heard nothing about  
5 that. As far as continuing 60 to 45 days but saying invoked status, I mean, I would  
6 ask my attorney to at least put a motion in for at least so I can get a bail or an OR  
7 due to - - I mean I've been sitting here for years so now I get the pandemic and all  
8 this stuff but they've had enough time - - now to ask for more time, I'm willing to  
9 figure something out but it would be something I'd had to talk to my attorney about.

10 THE COURT: But, sir, what your attorney is saying is he just got a whole lot  
11 of information that is about to be used against you that was given to him. So your  
12 attorney is not going to just roll in there not having reviewed any of this information  
13 or had an opportunity to look at it. That's what he is saying. He can file any motions  
14 he deems appropriate. If your attorney wants to file a bail motion in front of Judge  
15 Villani he's more than welcome to do that. That's going to be totally something you  
16 and him need to discuss at a different time. Do you understand?

17 THE DEFENDANT: I understand that.

18 THE COURT: Mr. Arney, did you hear the representations that were made?  
19 I'm sorry, Mr. Abasta, can you move back and let him have the mic. You just have  
20 to answer out loud, sir.

21 DEFENDANT ARNEY: Yes, Ma'am.

22 THE COURT: Thank you, sir.

23 This is what I'm inclined to do. Mr. Arroyo, your client wants you to file a bail  
24 motion on his behalf. You will have to file that and that needs to be heard by Judge  
25 Villani because I'm not in charge of that. I'm just the gatekeeper down here. I'm

1 going to vacate the jury trial date that is set for February 22<sup>nd</sup>. I am going to leave  
2 both of the defendants in their invoked status. And I am going to reset the jury trial  
3 date for March 29<sup>th</sup> for Central Jury Trial with a Central Calendar Call date of March  
4 24<sup>th</sup> at 2 p.m.. The jury trial is at 9 a.m. And the State has a motion on in front of  
5 Judge Villani tomorrow. That date will stand.

6 MR. ARROYO: Thank you, Your Honor.

7 MR. DICKERSON: Thank you, Your Honor.

8 THE COURT: Thank you.

9  
10 (Proceedings concluded at 2:47 p.m.)

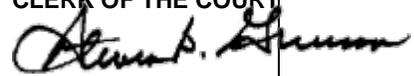
11 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
12 audio/video proceedings in the above-entitled case to the best of my ability.

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14 *Victoria W. Boyd*

15 9-23-21

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RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

vs.

ERIC ABASTA, aka, Eric Abasta, Jr.,  
MASON ARNEY, JAMES WAYLON  
ARNEY, aka, Waylan Arney, Jr.,  
Defendants.

CASE: C-20-349045-1  
C-20-349045-2

DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE  
TUESDAY, FEBRUARY 23, 2021

**RECORDER'S TRANSCRIPT OF HEARING:  
STATE'S MOTION TO AMEND INDICTMENT (ABASTA)  
DA REQUEST RE: ENTRY OF PLEA (ARNEY)**

APPEARANCES via Bluejeans:

For the State:

MARC DiGIACOMO, ESQ.  
LEAH BEVERLY, ESQ.  
Chief Deputy District Attorneys  
MICHAEL DICKERSON, ESQ.  
YU MENG, ESQ.  
Deputy District Attorneys

APPEARANCES CONTINUED ON PAGE 2



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Las Vegas, Nevada, Tuesday, February 23, 2021

[Hearing begins at 8:59 a.m.]

THE COURT: 16 is Abasta.

[Colloquy between Court and staff]

THE MARSHAL: 16 and 17.

THE COURT: Okay, page 16 is Mr. Abasta, which is Special PD. Who has this for the Special PD?

MR. ARROYO: Robert Arroyo on behalf of Mr. Abasta.

THE COURT: All right. And then on page 17, Mason Arney is James Gallo. Is Mr. Gallo – it says possible entry of plea.

Okay, this is the State’s motion to amend. Who is handling this for the State?

MR. MENG: Your Honor, its either Mr. Dickerson or Ms. Nicole Cannizzaro so I don’t have [indiscernible], Your Honor.

MS. BEVERLY: This is Leah Beverly for the State. I – they’re on my team. I can try to handle this, Judge.

THE COURT: I’m sorry, you say you can handle it or are you going to try and call them?

MS. BEVERLY: I can try and handle it. What is it on for, Judge? I’m sorry.

THE COURT: Well, it’s a motion to amend Indictment and there is an opposition filed.

MS. BEVERLY: Okay, let me text Mr. Dickerson; okay?

THE COURT: All right.

[Colloquy between Court and State regarding another case]

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THE COURT: All right, we'll recall the Abasta matter.

[Matter trailed at 9:01 a.m.]

[Matter recalled at 9:46 a.m.]

THE COURT: Eric Abasta.

THE MARSHAL: And 17.

THE COURT: And 17 which is – this is Mr. Gallo. Do we have Mr. Gallo present or someone on his behalf?

MR. DICKERSON: I don't believe that Mr. Gallo is on at this time, but we – I think we can handle Mr. Abasta's case.

THE COURT: Okay. And we have Mr. Arroyo still on.

MR. ARROYO: Yes, Your Honor.

THE COURT: All right, go ahead. It's the State's motion to amend.

MR. DICKERSON: Your Honor, we're requesting to amend the Complaint to add the theory of felony murder to this particular pleading. This is not something that is outside the bounds of precedent and the laws, specifically State verse U.S. Supreme – or sorry, State verse Eight Judicial Court dealt with this exact issue, amending to add the felony murder theory to the Information in that case, which was found proper and [indiscernible] to the fact the Defendant had proper notice of the circumstances leading to that theory.

Here in this case, Defendant has also been on notice based upon the testimony before the grand jury which indicates that this was murder that was committed in furtherance of an attempt robbery. With that, the Defenses' argument seems to be primarily that we can – you

1 know, we can amend an Information but not a Complaint, relying in the  
2 most part on case Chamberlin from 1871. So that was approximately 6  
3 years after the State of Nevada became a state. It wasn't until 103 years  
4 after the State of Nevada became a state that NRS 173.095 subsection  
5 1 came into effect through the Nevada Legislature, which specifically  
6 says that the State can amend both an Indictment and an Information.  
7 So, that was in 1967. That's been the law since.

8 Based upon that, the law is clear and the State is within its full  
9 right to move to amend this and we request that Your Honor grant that.

10 THE COURT: All right, thank you.

11 Mr. Arroyo.

12 MR. ARROYO: Yes, Your Honor. I think its telling that in the  
13 State's motion they couldn't find any cases which would allow the State  
14 or Your Honor to add a new theory of prosecution to an Information – I  
15 mean to an Indictment. All the cases argued by the State have to do with  
16 cases that went to preliminary hearing and then amend an Information.  
17 There's no case law out there that says that they can materially change  
18 an Indictment without going back to the grand jury and that's what  
19 they're seeking to do here. They're seeking to broaden the charges  
20 against Mr. Abasta by adding a new theory of prosecution. I don't think  
21 its [indiscernible], but there's been –

22 [Colloquy by other Bluejeans participants]

23 THE COURT: Okay, excuse me. Hang on. One minute.

24 MR. ARROYO – you know, no change. I think it's just --

25 THE COURT: Hang on, Mr. Arroyo. One minute, please.

1                   If this is not your case, please mute your phone or computer.

2 Thank you.

3                   Go ahead, Mr. Arroyo.

4                   MR. ARROYO: And, Your Honor, that case has held up since  
5 the – I think it was eighteen something that it was – it came out and I  
6 think that’s just on the basic notion that the grand jury has certain  
7 powers and those powers are reserved to the grand jury. An Indictment  
8 needs to be returned by twelve members of the grand jury. So, if you’re  
9 going to materially change it and broaden the charges, it needs to go  
10 back to that grand jury.

11                  THE COURT: All right, thank you.

12                  MR. ARROYO: I submit on that, Your Honor.

13                  THE COURT: Mr. Dickerson, anything further?

14                  MR. DICKERSON: No, Your Honor. We’ll submit.

15                  THE COURT: All right. I know this matter was on calendar  
16 previously. Unfortunately, this didn’t get into my packet that I took home  
17 last night. I’m going to review it again and you’ll have a decision out  
18 today or tomorrow.

19                  MR. DICKERSON: Absolutely. Thank you, Your Honor.

20                  THE COURT: Thank you.

21                  MR. ARROYO: Thank you, Your Honor.

22                  MR. DICKERSON: And then I’ll just wait on the line for Mr.  
23 Arney’s counsel.

24                  THE COURT: All right, anyone here on Mason Arney?

25                  [Colloquy between Court and Counsel on another case]

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[Matter trialed at 9:50 a.m.]

[Matter recalled at 9:53 a.m.]

THE COURT: Page 17.

MR. MENG: And, Your Honor, I actually texted Mr. Gallo. I didn't get a response back yet, but I did let him know that the hearing is going on.

MR. DICKERSON: And Mike Dickerson on behalf of the State. So, this is a matter that we are requesting we just clear the courtroom and [indiscernible] no other inmates, who I think we're at that point with CCDC. I can make sure that Mr. Gallo is aware and appears when the Court is ready for that.

THE COURT: I'm ready for that now.

Officer, if we can get the room for the next five minutes.

THE CORRECTIONS OFFICER: That's [indiscernible]. We're ready. He's the only one present. Come on.

THE COURT: Okay. Now, is this matter – okay, he's the only one present. Is this matter resolved, Mr. Dickerson?

MR. DICKERSON: This matter is resolved, Your Honor.

THE COURT: And where is Mr. Gallo or someone from his office? Anyone from his office present?

[Brief pause in proceedings]

Do you have any information, Mr. Dickerson?

MR. DICKERSON: I've texted him, Your Honor, and I was speaking to him earlier. He indicated that he was down in justice court, I believe, and he would be coming back on.

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THE COURT: Because at 10:00 o'clock the officers have to bring in another set of inmates for the next calendar.

[Colloquy between Court and Counsel from another case]

THE COURT: Do we have someone from Mr. Gallo's office?

[Brief pause in proceedings]

THE COURT: Is there supposed to be a GPA filed because I do not see one?

MR. DICKERSON: Mr. Gallo should have provided the GPA to chambers. If not, I would just request a special setting later this week.

THE COURT: We'll put it at the end of Thursday's calendar.

MR. DICKERSON: Thank you.

THE COURT CLERK: Okay, so that will be February 25<sup>th</sup>, 8:30.

THE COURT: And please have him file the GPA.

MR. DICKERSON: Yes, Your Honor. Thank you.

THE COURT: Thank you.

[Hearing concludes at 9:56 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  
Court Recorder/Transcriber  
District Court Dept. XVII



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RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,  
Plaintiff,

vs.

ERIC ABASTA, JR.,  
Defendant.

CASE NO: C-20-349045-1  
DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE  
TUESDAY, FEBRUARY 23, 2021

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:  
STATE'S MOTION TO AMEND INDICTMENT**

APPEARANCES VIA BLUEJEANS VIDEO CONFERENCING:

For the State: MICHAEL DICKERSON, ESQ.  
Chief Deputy District Attorney

For the Defendant: ROBERT ARROYO, ESQ.  
Chief Deputy Special Public Defender

ALSO PRESENT: LEAH BEVERLY, ESQ.

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

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Las Vegas, Nevada; Tuesday, February 23, 2021

[Proceeding commenced at 8:58 a.m.]

THE COURT: Sixteen is Eric Abasta.

THE COURT RECORDER: Co-Defendants on --

THE COURT CLERK: And 17.

THE COURT: And a co-Defendant -- it's on page 17?

THE MARSHAL: Sixteen and Seventeen.

THE COURT: Okay, page 16, Mr. Abasta, which is Special PD. Who has this for the Special PD?

MR. ARROYO: Robert Arroyo on behalf of Mr. Abasta.

THE COURT: All right, and then on page 17, Mason Arney, is James Gallo. Is Mr. Gallo -- it says here possible entry of plea.

Okay, this is the State's motion to amend. Who's handling this for the State?

UNIDENTIFIED SPEAKER: Your Honor, it's either Mr. Dickerson or Ms. Nicole Cannizzaro. So, I don't have their [indiscernible], Your Honor.

MS. BEVERLY: This is Leah Beverly for the state. They're on my team. I can try to handle this, Judge.

THE COURT: I'm sorry, you say you can handle it or are you going to try to call them?

MS. BEVERLY: I can try to handle it. What is it on for, Judge? I'm sorry.

THE COURT: It was a motion to amend indictment, and there

1 is an opposition filed.

2 MS. BEVERLY: Okay, let me text Mr. Dickerson, okay?

3 THE COURT: All right.

4 [Matter trailed at 9:01 a.m.]

5 [Matter recalled at 9:46 a.m.]

6 THE COURT: Eric Abasta.

7 THE MARSHAL: And 17.

8 THE COURT: And 17, which is -- is Mr. Gallo. Do we have  
9 Mr. Gallo present or someone on his behalf?

10 MR. DICKERSON: I don't believe that Mr. Gallo is on at this  
11 time.

12 THE COURT: Oh, it's --

13 MR. DICKERSON: But we -- I think we can handle Mr.  
14 Abasta's case.

15 THE COURT: Okay, and we have Mr. Arroyo still on?

16 MR. ARROYO: Yes, Your Honor.

17 THE COURT: All right, go ahead, it's State's motion to  
18 amend.

19 MR. DICKERSON: Your Honor, we're requesting to amend  
20 the complaint to add the theory of felony murder to this particular  
21 pleading. This is not something that is outside the bounds of precedent.  
22 And the law, specifically *State versus U.S. Supreme* -- or sorry, *Eighth*  
23 *Judicial District Court*, dealt with this exact issue, amending to add the  
24 felony murder theory to the information in that case, which was found  
25 proper and fine given the fact the Defendant had proper notice of the

1 circumstances leading to that theory.

2 Here in this case, Defendant also has been on notice based  
3 upon the testimony before the Grand Jury, which indicates that this was  
4 a murder that was committed in furtherance of an attempt robbery. With  
5 that, the defense's argument seems to be primarily that we can amend  
6 an Information but not a complaint, relying in the most part on case  
7 *Chamberlain* from 1871. So, that was approximately six years after the  
8 State of Nevada became a state.

9 It wasn't until 103 years after the State of Nevada became a  
10 state that NRS 173.095, subsection 1, came into effect through the  
11 Nevada Legislature, which specifically says that the State can amend  
12 both an Indictment and an Information. So, that was in 1967; that's  
13 been the law since. Based upon that, the law is clear, and the State is  
14 within its full right to move to amend this, and we would request that  
15 Your Honor grant that.

16 THE COURT: All right, thank you. Mr. Arroyo?

17 MR. ARROYO: Yes, Your Honor. I think it's telling that in the  
18 State's motion they couldn't find any cases which would allow the State  
19 or Your Honor to add a new theory of prosecution to an Information -- I  
20 mean to an Indictment. All the cases cited by the State have to do with  
21 cases that went to preliminary hearing and then amend an Information.  
22 There's no case law out there that says they can materially change an  
23 Indictment without going back to the Grand Jury.

24 And that's what they're seeking to do here. They're seeking to  
25 broaden the charges against Mr. Abasta by adding a new theory of

1 prosecution just to [indiscernible] --

2 [Telephonic interruption]

3 MR. ARROYO: -- but there's been no --

4 THE COURT: Okay, excuse me.

5 MR. ARROYO: -- change --

6 THE COURT: Hang on, one minute.

7 MR. ARROYO: I think it's just --

8 THE COURT: Hang on, Mr. Arroyo.

9 MR. ARROYO: And I don't know where that noise is coming  
10 from, but --

11 THE COURT: Mr. Arroyo, one minute please. If this is not  
12 your case, please mute your phone or computer. Thank you. Go  
13 ahead, Mr. Arroyo.

14 MR. ARROYO: And Your Honor, that case has held up since  
15 the -- since I think it was 18-something that it was -- it came out, and I  
16 think that's just on the basic notion that the Grand Jury has certain  
17 powers and that those powers are reserved to the Grand Jury.  
18 Indictment needs to be returned by 12 members of the Grand Jury, so if  
19 you're going to materially change it and broaden the charges, it needs to  
20 go back to that Grand Jury.

21 THE COURT: All right, thank you. Mr. Dickerson --

22 MR. ARROYO: I'll submit on that, Your Honor.

23 THE COURT: -- anything further?

24 MR. DICKERSON: No, Your Honor, we'll submit.

25 THE COURT: All right, I know this matter was on calendar

1 previously. Unfortunately, this didn't get into my packet that I took home  
2 last night. I'm going to review it again, and you'll have a decision out  
3 today or tomorrow.

4 MR. DICKERSON: Absolutely, thank you, Your Honor.

5 THE COURT: Thank you.

6 MR. ARROYO: Thank you, Your Honor.

7 [Proceeding concluded at 9:50 a.m.]

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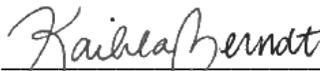
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed  
22 the audio/video proceedings in the above-entitled case to the best of my  
23 ability.

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Kaihla Berndt  
Court Recorder/Transcriber