

# IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Mar 31 2022 03:32 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

JAMES HOWARD HAYES, JR.,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Case No: C-19-338412-1

Docket No: 84404

# RECORD ON APPEAL VOLUME 1

**ATTORNEY FOR APPELLANT**  
JAMES HAYES # 1175077,  
PROPER PERSON  
P.O. BOX 208  
INDIAN SPRINGS, NV 89070

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

**I N D E X**

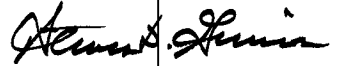
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I N D E X

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CLERK OF THE COURT

**JUSTICE COURT, LAS VEGAS TOWNSHIP**  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

JAMES HOWARD HAYES JR,

Defendant

District Court Case No.: C-19-338412-1  
Dept.: XIX

Justice Court Case No.: 19F01534X

**CERTIFICATE**

I hereby certify the foregoing to be a full, true and correct copy of the proceedings as  
the same appear in the above case.

Dated this 26th day of February, 2019



Justice of the Peace, Las Vegas Township

**JUSTICE COURT, LAS VEGAS TOWNSHIP**  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

JAMES HOWARD HAYES JR

Defendant

District Court Case No.:

Justice Court Case No.: 19F01534X

**BINDOVER and ORDER TO APPEAR**

An Order having been made this day by me that **JAMES HOWARD HAYES JR** be held to answer before the Eighth Judicial District Court, upon the charge(s) of **Burglary, (1st) [50424]; Use/poss hotel key [50841]** committed in said Township and County, on January 26, 2019 .

**IT IS FURTHER ORDERED** that said defendant is commanded to appear in the Eighth Judicial District Court, Regional Justice Center, Lower Level Arraignment Courtroom "A", Las Vegas, Nevada on February 28, 2019 at 10:00 AM for arraignment and further proceedings on the within charge(s).

**IT IS FURTHER ORDERED** that the Sheriff of the County of Clark is hereby commanded to receive the above named defendant(s) into custody, and detain said defendant(s) until he/she can be legally discharged, and be committed to the custody of the Sheriff of said County, until bail is given in the sum of \$0.00.

Dated this 26th day of February, 2019



Justice of the Peace, Las Vegas Township

JUSTICE COURT, LAS VEGAS TOWNSHIP  
CLARK COUNTY, NEVADA

JAN 29 2019  
BY: [Signature]

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES HOWARD HAYES, aka,  
James Howard Hayes, Jr. #2796708,

Defendant.

CASE NO: 19F01534X

DEPT NO: 14

CRIMINAL COMPLAINT

The Defendant above named having committed the crime of BURGLARY (Category B Felony - NRS 205.060 - NOC 50424), in the manner following, to wit: That the said Defendant, on or about the 26th day of January, 2019, at and within the County of Clark, State of Nevada, did willfully, unlawfully, and feloniously enter a hotel room, owned or occupied by MIRAGE HOTEL & CASINO, located at 3400 South Las Vegas Boulevard, Las Vegas, Clark County, Nevada, with intent to commit larceny.

All of which is contrary to the form, force and effect of Statutes in such cases made and provided and against the peace and dignity of the State of Nevada. Said Complainant makes this declaration subject to the penalty of perjury.

[Signature]  
01/28/19

19F01534X  
CRM  
Criminal Complaint  
10463973



19F01534X/cb  
LVMPD EV# 190100120467  
(TK14)

**Justice Court, Las Vegas Township  
Clark County, Nevada**

Department: 14

**Court Minutes**



L010465510

**19F01534X State of Nevada vs. HAYES JR, JAMES HOWARD**

Lead Atty: Michael W. Sanft, ESQ

**1/29/2019 8:30:00 AM Status Check on Filing of  
Criminal Complaint (In Custody)**

Result: Matter Heard

**PARTIES** State Of Nevada Dickerson, Michael  
**PRESENT:** Defendant HAYES JR, JAMES HOWARD

**Judge:** Chelini, Amy

**Court Reporter:** Fluker, Kris

**Court Clerk:** Cochran, Deanna

**PROCEEDINGS**

**Attorneys:** **Sanft, Michael W.,** HAYES JR, JAMES HOWARD Added  
**ESQ**

**Hearings:** 2/12/2019 10:00:00 AM: Preliminary Hearing Added

1/30/2019 8:30:00 AM: Status Check Added

**Events:** **Criminal Complaint**

*Filed In Open Court*

**Initial Appearance Completed**

*Advised of Charges on Criminal Complaint, Waives Reading of Criminal Complaint*

**Counsel Appointed**

*M. Sanft, Esq*

**Discovery Placed in Contract Attorney Box**

**Comment**

*Public Defender Had A Conflict*

**Court Continuance**

*for Status Check on Revoking Defendant on other cases and or possibly resetting bail.*

**Bail Stands - Cash or Surety**

*Counts: 001 - \$0.00/\$0.00 Total Bail*



**Justice Court, Las Vegas Township  
Clark County, Nevada**

Department: 14

**Court Minutes**



L010472496

**19F01534X State of Nevada vs. HAYES JR, JAMES HOWARD**

Lead Atty: Michael W. Sanft, ESQ

**1/30/2019 8:30:00 AM Status Check (In Custody)**

Result: Matter Heard

<b>PARTIES</b>	State Of Nevada	Malkova, Mariya
<b>PRESENT:</b>	Attorney	Sanft, Michael W., ESQ
	Defendant	HAYES JR, JAMES HOWARD

**Judge:** Pro Tempore, Judge

**Court Reporter:** Fluker, Kris

**Pro Tempore:** Stoberski, Holly S.

**Court Clerk:** Proctor, Mauresha

<b>PROCEEDINGS</b>
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<b>Hearings:</b>	1/31/2019 8:30:00 AM: Status Check	Added
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**Events:** **Motion by Defense for an O.R. Release**

*Objection from State-Motion denied*

**Court Continuance**

*for Judge Chelini to make the decision to revoke the Defendant's bail*

**Future Court Date Stands**

*02/12/19 @ 10am*

**Bail Stands - Cash or Surety**

*Counts: 001 - \$0.00/\$0.00 Total Bail*

**Justice Court, Las Vegas Township  
Clark County, Nevada**

Department: 14

**Court Minutes**



L010476907

**19F01534X State of Nevada vs. HAYES JR, JAMES HOWARD**

Lead Atty: Michael W. Sanft, ESQ

**1/31/2019 8:30:00 AM Status Check (In custody)**

Result: Matter Heard

<b>PARTIES</b>	State Of Nevada	Getler, Stephanie
<b>PRESENT:</b>	Attorney	Sanft, Michael W., ESQ
	Defendant	HAYES JR, JAMES HOWARD

**Judge:** Chelini, Amy

**Court Reporter:** Fluker, Kris

**Court Clerk:** Proctor, Mauresha

**PROCEEDINGS**

<b>Hearings:</b>	2/1/2019 8:30:00 AM: Status Check	Added
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**Events:** **Bail Argument Made**

*Defense request \$5,000 total bail*

*State request \$0.00 total bail*

**Court Continuance**

*for status check/State to file a motion in District Court to revoke the Defendant's District bail*

**Bail Stands - Cash or Surety**

*Counts: 001 - \$0.00/\$0.00 Total Bail*

**Future Court Date Stands**

*02/12/19 @ 10am*

**Justice Court, Las Vegas Township  
Clark County, Nevada**

Department: 14

**Court Minutes**



L010481192

**19F01534X State of Nevada vs. HAYES JR, JAMES HOWARD**

Lead Atty: Michael W. Sanft, ESQ

**2/1/2019 8:30:00 AM Status Check (In custody)**

Result: Matter Heard

<b>PARTIES</b>	State Of Nevada	Pandelis, Christopher
<b>PRESENT:</b>	Defendant	HAYES JR, JAMES HOWARD
<b>Judge:</b>	Chelini, Amy	
<b>Court Reporter:</b>	Fluker, Kris	
<b>Court Clerk:</b>	Proctor, Mauresha	

**PROCEEDINGS**

**Events:**      **Bail Stands - Cash or Surety**  
*Counts: 001 - \$0.00/\$0.00 Total Bail*

**Future Court Date Stands**  
*02/12/19 @ 10am*

**Justice Court, Las Vegas Township  
Clark County, Nevada**

Department: 14

**Court Minutes**



L010516798

**19F01534X State of Nevada vs. HAYES JR, JAMES HOWARD**

Lead Atty: Michael W. Sanft, ESQ

**2/11/2019 8:30:00 AM Motion (In custody)**

Result: Matter Heard

<b>PARTIES PRESENT:</b>	State Of Nevada	Malkova, Mariya
	Attorney	Sanft, Michael W., ESQ
	Defendant	HAYES JR, JAMES HOWARD

**Judge:** Chelini, Amy

**Court Reporter:** Fluker, Kris

**Court Clerk:** Proctor, Mauresha

**PROCEEDINGS**

<b>Hearings:</b>	2/12/2019 10:00:00 AM: Preliminary Hearing	Canceled
	2/12/2019 8:30:00 AM: Status Check	Added

**Events:** **Notice of Motion**  
*and Motion to Continue-Objection from Defense-Motion granted*

**Court Continuance**  
*to reset an earlier preliminary hearing date*

**Future Court Date Vacated**  
*02/12/19 @ 10am*

**Bail Stands - Cash or Surety**  
*Counts: 001 - \$0.00/\$0.00 Total Bail*

**Justice Court, Las Vegas Township  
Clark County, Nevada**

Department: 14

**Court Minutes**



L010524625

**19F01534X State of Nevada vs. HAYES JR, JAMES HOWARD**

Lead Atty: Michael W. Sanft, ESQ

**2/12/2019 8:30:00 AM Status Check (In custody)**

Result: Matter Heard

<b>PARTIES</b>	State Of Nevada	Beverly, Leah
<b>PRESENT:</b>	Attorney	Sanft, Michael W., ESQ
	Defendant	HAYES JR, JAMES HOWARD
<b>Judge:</b>	Chelini, Amy	
<b>Court Reporter:</b>	Fluker, Kris	
<b>Court Clerk:</b>	Cochran, Deanna	

**PROCEEDINGS**

**Hearings:** 2/26/2019 10:00:00 AM: Preliminary Hearing

Added

**Events:** **Preliminary Hearing Date Reset**

**Bail Stands - Cash or Surety**

*Counts: 001 - \$0.00/\$0.00 Total Bail*

**Justice Court, Las Vegas Township  
Clark County, Nevada**

Department: 14

**Court Minutes**



L010576542

**19F01534X State of Nevada vs. HAYES, JAMES HOWARD**

Lead Atty: Michael W. Sanft, ESQ

**2/26/2019 10:00:00 AM Preliminary Hearing (In Custody)**

Result: Bound Over

<b>PARTIES PRESENT:</b>	State Of Nevada	Beverly, Leah
	Attorney	Sanft, Michael W., ESQ
	Defendant	HAYES, JAMES HOWARD

**Judge:** Chelini, Amy  
**Court Reporter:** Fluker, Kris  
**Court Clerk:** Flores, Jessica

**PROCEEDINGS**

**Events: Amended Criminal Complaint**

*Filed in open court*

**Preliminary Hearing Held**

*Motion to Exclude Witnesses by State - Motion Granted*

*States Witnesses:*

*Ryan Ernheart - Identifies Defendant*

*Officer Austin Fox - Identifies Defendant*

*James McGroth - Does not identify defendant*

*State Rests.*

*Defendant Advised of His Statutory Right to call witnesses, present evidence and/or to testify on his own behalf. Defendant understands his rights and following the advice of his defense counsel, waives his rights at preliminary hearing.*

*Defense Rests.*

*State Submitted Without Argument*

*Defense Submitted without Argument*

**Bound Over to District Court as Charged**

Review Date: 2/27/2019

**District Court Appearance Date Set**

*Feb 28 2019 10:00AM: In Custody - \$0.00/0.00*

**Case Closed - Bound Over**

**Remand - Cash or Surety**

*Counts: 001; 002 - \$0.00/\$0.00 Total Bail*

**Charges: 002: Use or possess hotel key**

**Plea/Disp: 001: Burglary, (1st) [50424]**

Disposition: Bound Over to District Court as Charged (PC Found)

**002: Use/poss hotel key [50841]**

Disposition: Bound Over to District Court as Charged (PC Found)

**Justice Court, Las Vegas Township  
Clark County, Nevada**

**Justice Court, Las Vegas Township  
Clark County, Nevada**

**Court Minutes**

Department: PC



L010455593

**PC19F01534X State of Nevada vs. HAYES JR, JAMES HOWARD**

**1/27/2019 9:00:00 AM Initial Appearance Justice  
Court (PC Review)**

Result: Matter Heard

**PARTIES PRESENT:** State Of Nevada Fattig, John  
Defendant HAYES JR, JAMES HOWARD

**Judge:** De La Garza, Melisa

**Court Clerk:** Cardenas, Pompeya

**PROCEEDINGS**

**Hearings:** 1/29/2019 8:30:00 AM: Status Check on Filing of Criminal Complaint Added

**Events:** **Probable Cause Found**

**72-Hour Hearing Completed**

**Counsel Provisionally Appointed**

*J. Robison, Esq- Public Defender provisionally appointed for limited purposes of first appearance hearing.*

**Bail Argument Heard**

*The Court has heard arguments from the prosecution and defense counsel regarding custody of the Defendant*

**Bail Reset - Cash or Surety**

*Counts: 001 - \$0.00/\$0.00 Total Bail*

**Motion to Continue - State**

*Granted*

**Continued for Status Check on filing of Criminal  
Complaint**



ORIGINAL

FILED

2019 FEB -7 A 8:24

JUSTICE COURT  
LAS VEGAS NEVADA

BY AMC  
DEPUTY

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
Leah Beverly  
Chief Deputy District Attorney  
Nevada Bar #0012556  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2211  
(702) 671-2500  
Attorney for Plaintiff

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES HOWARD HAYES,  
#2796708

Defendant.

CASE NO: 19F01534X  
DEPT NO: 14

**NOTICE OF MOTION AND MOTION TO CONTINUE**

DATE OF HEARING: February 11, 2019

TIME OF HEARING: 8:30 A.M.

TO: James H. Hayes, Defendant; and

TO: Michael Sanft., Attorney for Defendant

YOU, AND EACH OF YOU WILL PLEASE TAKE NOTICE that the State respectfully moves this Court to continue the above entitled case.

///

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19F01534X  
NOMO  
Notice of Motion  
10502317

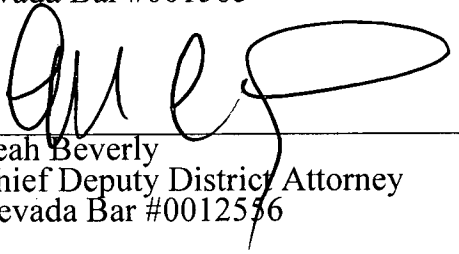


1 This Motion, which will be heard in Justice Court on the 11th day of February, 2019,  
2 at 8:30 o'clock, A.M., is based upon Hill v. Sheriff of Clark County, 85 Nev. 234 (1969), and  
3 is supported by the following Affidavit.

4 DATED this 6th day of February, 2019

5  
6 STEVEN B. WOLFSON  
DISTRICT ATTORNEY  
Nevada Bar #001565

7  
8  
9 BY

  
10 Leah Beverly  
11 Chief Deputy District Attorney  
12 Nevada Bar #0012556  
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**AFFIDAVIT**

STATE OF NEVADA        )  
COUNTY OF CLARK        )ss:

Leah Beverly, being first duly sworn, deposes and says:

1. That James McGrath is a witness for the State of Nevada in this matter; that his present address is 4024 Palomar Blvd, Lexington, KY;

2. That the following efforts were made to procure the attendance of this witness at the preliminary hearing scheduled in this matter for February 12, 2019; that a subpoena was issued on February 1, 2019; that said subpoena was emailed to the witness and contact was made via telephone;

3. That James McGrath is an essential witness in that the witness is the victim of the burglary, would testify that Defendant came into his hotel room at 2 am and that Defendant did not have permission to be there; that to affiant's present knowledge there is no other witness who could so testify;

4. Said witness will be available to testify after April 1, 2019; that it will be necessary to seek a continuance in this matter due to the unavailability of this witness; that affiant learned that the witness is completing a lengthy business move in Kentucky and cannot leave Kentucky due to his schedule at the current time;

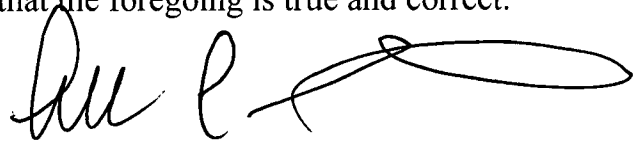
5. That Defendant is currently being held on no bail in case C315718 from Department 19 because he picked up the instant case pending sentencing in C315718. The State is now seeking habitual criminal treatment in C315718. The sentencing in that case is set for March 6, 2019.

6. That this Motion is made in good faith and not for the purpose of delay.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on    2-6-19

(Date)



(Signature)

**THIS SEALED  
DOCUMENT,  
NUMBERED PAGE(S)  
16 - 46  
WILL FOLLOW VIA  
U.S. MAIL**



**INFM**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**W.C. ROWLES**  
Deputy District Attorney  
Nevada Bar #013577  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

I.A. 02-28-2019  
10:00 A.M.  
M. SANFT

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

**JAMES HOWARD HAYES, aka,**  
**James Howard Hayes, Jr., #2796708**  
  
Defendant.

CASE NO: **C-19-338412-1**

DEPT NO: **XIX**

**I N F O R M A T I O N**

STATE OF NEVADA     }  
COUNTY OF CLARK    } ss.

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

That **JAMES HOWARD HAYES, aka, James Howard Hayes, Jr.**, the Defendant above named, having committed the crimes of **BURGLARY (Category B Felony - NRS 205.060 - NOC 50424)** and **UNLAWFUL USE OF HOTEL KEY (Gross Misdemeanor - NRS 205.900 - NOC 50841)**, on or about the 26th day of January, 2019, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

**COUNT 1 - BURGLARY**

did willfully, unlawfully, and feloniously enter a hotel room, owned or occupied by **MIRAGE HOTEL & CASINO**, located at 3400 South Las Vegas Boulevard, Las Vegas, Clark County, Nevada, with intent to commit larceny.

1 COUNT 2 - UNLAWFUL USE OF HOTEL KEY

2 did then and there willfully and unlawfully possess a key or other device used by a  
3 guest in a hotel, or by the hotel to gain entrance to a room in a hotel, under circumstances that  
4 demonstrate Defendant's intent to use or to allow the use of the device in the commission of a  
5 crime, to wit: Burglary, and/or Theft or Attempt Theft, and/or Petit Larceny, and/or Trespass.

6  
7 STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
8

9 BY W.C. Rowles  
10 W.C. ROWLES  
Deputy District Attorney  
Nevada Bar #013577  
11  
12

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

15 BATOAN, APOLONIO; 3400 S. Las Vegas Blvd., LVN

16 CUSTODIAN OF RECORDS; CCDC

17 CUSTODIAN OF RECORDS; LVMPD Communications

18 CUSTODIAN OF RECORDS; LVMPD Records

19 CUSTODIAN OF RECORDS; Mirage Hotel & Casino, 3400 S. Las Vegas Blvd., LVN

20 ERHART, RYAN; 3400 S. Las Vegas Blvd., LVN

21 FOX, A.; LVMPD #16559

22 HUANG, BRANDON; 3400 S. Las Vegas Blvd., LVN

23 JEZ, L.; LVMPD #16622

24 MCELROY, D.; LVMPD #16995

25 MCGROTH, JAMES; c/o CCDA's Office, 200 Lewis Ave., LVN

26 VARSIN, E.; LVMPD #16252  
27  
28

1 **DO NOT READ TO THE JURY**

2 **UNDER NO CIRCUMSTANCES IS THE LANGUAGE CONTAINED**  
3 **HEREINAFTER TO BE READ TO A JURY HEARING THE PRIMARY OFFENSE**  
4 **FOR WHICH THE DEFENDANT IS PRESENTLY CHARGED.**

5 **NOTICE OF PRIOR BURGLARY AND/OR HOME INVASION CONVICTIONS**

6 The State of Nevada hereby places Defendant **JAMES HOWARD HAYES, aka,**  
7 **James Howard Hayes, Jr.** on notice that in the event of a Burglary conviction pursuant to  
8 NRS 205.060 and/or a Home Invasion conviction pursuant to NRS 205.067 in the above-  
9 entitled action, he will not be eligible for probation as Defendant **JAMES HOWARD**  
10 **HAYES, aka, James Howard Hayes, Jr.** has already suffered ONE (1) prior Burglary and/or  
Home Invasion conviction(s), to wit:

11 That on or about the 23rd day of February, 2017, the Defendant was convicted in the  
12 Eighth Judicial District Court, in and for the County of Clark, State of Nevada, for the crime  
13 of BURGLARY, in Case No. C315125-1.

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

17 BY W.C. Rowles  
18 W.C. ROWLES  
19 Deputy District Attorney  
20 Nevada Bar #013577  
21  
22  
23

24 **DO NOT READ TO THE JURY**

25  
26  
27 19F01534X/jg/L2  
28 LVMPD EV#190100120467  
(TK14)

1 CLARK NO: C338412-1

2 DEPT NO: 14

3  
4 IN THE DISTRICT COURT OF LAS VEGAS, JUDICIAL  
5 COUNTY OF CLARK, STATE OF NEVADA

6 THE STATE OF NEVADA, )

7 Plaintiff, )

8 vs. ) CASE NO. 1901531X

9 JAMES EDWARD HAYES, JR., )

10 Defendant. )

11 \_\_\_\_\_ )

12  
13 REPORTER'S TRANSCRIPT  
14 OF  
15 PRELIMINARY HEARING

16 BEFORE THE HONORABLE AMY CHURCH  
17 JUDGE OF THE PEACE

18 Tuesday, February 26, 2019  
19 10:00 a.m.

20 APPEARANCES:

21 For the State: WILLIAM ROWLES, ESQ.,  
22 DEPUTY DISTRICT ATTORNEY

23 For the Defendant: MICHAEL SANFT, ESQ.

24 Reported by: KRISTINE A. FOSBER, CDR NO. 402

Electronically Filed

2/28/2019 8:23 PM

3

1 LAS VEGAS, CLARK COUNTY JUDGE FEB. 26, 2019

10:00 A.M.

Steven D. Grierson

CLERK OF THE COURT  
PROCEEDINGS

3 THE COURT: James Hayes, Jr.,

4 He's present in custody with Mr. Sanft.

5 What are we doing?

6 MR. SANFT: Your Honor, we're going forward  
7 with the preliminary hearing.

8 THE COURT: You are going forward. Okay.

9 MR. ROWLES: The State is ready to proceed,  
10 Your Honor. We anticipate calling three witnesses.

11 I have two housekeeping matters before the  
12 Court, if I may?

13 THE COURT: Go for it.

14 MR. ROWLES: Judge, the State did file an  
15 Amended Criminal Complaint this morning. I believe it  
16 was provided to Mr. Sanft sometime ago. It adds one  
17 count of gross misdemeanor unlawful possession of hotel  
18 key card.

19 THE COURT: Okay.

20 MR. ROWLES: Second, Your Honor, the State  
21 did extend an offer to Mr. Hayes to plead guilty to one  
22 count of burglary.

23 As a result or in exchange for his plea to  
24 Count 1, the State would agree to stand by his  
25 negotiations in the Department 19 case in exchange for

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1 him stipulating to felony treatment in that matter, and  
2 in exchange for him stipulating to small habitual  
3 treatment in this particular case and a sentence of 5 to  
4 12 and a half years in the Nevada Department of  
5 Corrections.

6 I understand that that offer is relatively  
7 stiff for a pre-preliminary hearing offer; however, this  
8 is an individual who is currently on parole for  
9 committing the exact same offense from the Harrah's  
10 Hotel Casino. That's why the State's position is as it  
11 is.

12 THE COURT: Okay.

13 MR. ROWLES: It's my understanding that he's  
14 been extended that offer and he has discussed it with  
15 Mr. Sanft, and he's rejected that offer.

16 THE COURT: All right. That's the case?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right. Go ahead and have a  
19 seat next to Mr. Sanft.

20 If there's any other witnesses in this case  
21 -- everyone just get out of the courtroom.

22 MR. ROWLES: Your Honor, I apologize. I  
23 have a third matter to bring to the Court's attention.

24 THE COURT: Of course.

25 MR. ROWLES: Given the fact that he had



<p style="text-align: right;">5</p> <p>1 previously been convicted of burglary, in the event of</p> <p>2 conviction of Count 1, this would be treated for</p> <p>3 sentencing enhancement purposes as a second offense,</p> <p>4 which extends the punishment from a mandatory -- or a 1</p> <p>5 to 10 to a mandatory prison sentence of a 2 to 15. I'm</p> <p>6 just bringing that to the defendant's attention at the</p> <p>7 time.</p> <p>8 THE COURT: All right. Do you understand?</p> <p>9 THE DEFENDANT: Yes. I just heard that.</p> <p>10 Yes, ma'am.</p> <p>11 THE COURT: All right. Are all of the</p> <p>12 witnesses out of the courtroom?</p> <p>13 MR. ROWLES: Besides my first witness, yes.</p> <p>14 THE COURT: Okay. Let's go.</p> <p>15 MR. ROWLES: State's first witness is Ryan</p> <p>16 Erhart.</p> <p>17 THE COURT: Erhart, come on up. Good</p> <p>18 morning, sir. Raise your right hand, please.</p> <p>19 Whereupon,</p> <p>20 <u>RYAN ERHART,</u></p> <p>21 having been first duly sworn to testify to the truth,</p> <p>22 the whole truth and nothing but the truth, was examined</p> <p>23 and testified as follows:</p> <p>24 THE CLERK: Please be seated. State your</p> <p>25 name and spell your full name for the record.</p>	<p style="text-align: right;">7</p> <p>1 I had a description. He was wearing black</p> <p>2 pants with the white jacket. He was a questionable</p> <p>3 suspect or suspect, supposedly entered a room that day</p> <p>4 that wasn't registered to him.</p> <p>5 I made contact with him right in front of</p> <p>6 our atrium, which is right in front Tom Colicchio's</p> <p>7 Steakhouse.</p> <p>8 THE COURT: In front of what?</p> <p>9 THE WITNESS: Tom Colicchio's Steakhouse.</p> <p>10 THE COURT: Spell that. I couldn't</p> <p>11 understand a work.</p> <p>12 THE WITNESS: Tom, T-o-m, Colicchio I</p> <p>13 wouldn't be able to spell.</p> <p>14 THE COURT: Oh, Colicchio?</p> <p>15 THE WITNESS: Yes, Colicchio.</p> <p>16 THE COURT: Okay. That's just for a clear</p> <p>17 record.</p> <p>18 THE WITNESS: I understand.</p> <p>19 MR. ROWLES:</p> <p>20 Q. So you made contact with the individual that you</p> <p>21 believed to be the person who entered the room?</p> <p>22 A. <b>Yes, that fit that description.</b></p> <p>23 Q. Do you see that person here in court today?</p> <p>24 A. <b>I do.</b></p> <p>25 Q. Can you please point to him and describe an</p>
<p style="text-align: right;">6</p> <p>1 THE WITNESS: My name is Ryan Erhart. First</p> <p>2 name is spelled R-y-a-n. Last name Erhart, E-r-h-a-r-t.</p> <p>3 THE COURT: Go ahead, State.</p> <p>4 DIRECT EXAMINATION</p> <p>5 BY MR. ROWLES: Thank you, Your Honor.</p> <p>6 Q. Sir, how are you currently employed?</p> <p>7 A. <b>As a full-time employee, a security officer at</b></p> <p>8 <b>Mirage Hotel &amp; Casino.</b></p> <p>9 Q. How long have you worked there?</p> <p>10 A. <b>Coming on three years March 9th.</b></p> <p>11 Q. January 26th, 2019, were you employed as a</p> <p>12 security officer at the Mirage Hotel &amp; Casino?</p> <p>13 A. <b>Yes.</b></p> <p>14 Q. Is the Mirage located here in Las Vegas, Nevada?</p> <p>15 A. <b>Yes, it is, 3400 South Las Vegas Boulevard.</b></p> <p>16 Q. And on that day were you working at the Mirage?</p> <p>17 A. <b>Yes, I was.</b></p> <p>18 Q. At some point in the morning on January 26th,</p> <p>19 2019, did you receive a call for service regarding an</p> <p>20 individual who entered a room of another guest?</p> <p>21 A. <b>I did.</b></p> <p>22 Q. Can you walk us through the initial steps that</p> <p>23 you took at that time?</p> <p>24 A. <b>I received a call on the radio to make contact</b></p> <p>25 <b>with the black male adult, BMA for short on the radio.</b></p>	<p style="text-align: right;">8</p> <p>1 article of clothing that he's wearing today?</p> <p>2 A. <b>Blue jump suit, BMA, right over here next to the</b></p> <p>3 <b>yes.</b></p> <p>4 THE COURT: The record will reflect the</p> <p>5 identification of the defendant.</p> <p>6 MR. ROWLES:</p> <p>7 Q. At that point in time did you place the -- did</p> <p>8 you detain the individual?</p> <p>9 A. <b>I explained to him that we were going to have to</b></p> <p>10 <b>detain him. He was is question for an incident that</b></p> <p>11 <b>happened upstairs in our hotel.</b></p> <p>12 He informed me that -- I asked him if he can</p> <p>13 accompany me voluntarily to our processing room, our</p> <p>14 holding room for if Metro has to be involved.</p> <p>15 Q. Did he comply with you?</p> <p>16 A. <b>Not at first. He said that he had to meet</b></p> <p>17 <b>somebody out at our main valet, and that once he did</b></p> <p>18 <b>that, then he would voluntarily go back with me to</b></p> <p>19 <b>processing.</b></p> <p>20 Q. Did you allow him to go to the valet?</p> <p>21 A. <b>He pretty much walked to the valet. He was</b></p> <p>22 <b>refusing to stop. I stayed with him the entire way to</b></p> <p>23 <b>the doors.</b></p> <p>24 We got out to the main valet and I asked him</p> <p>25 where his so-called friend was. At that time I read him</p>

9

1 our trespass card, the NRS 207.20, and informed him that  
 2 he had been trespassed. And when I told him I was going  
 3 to trespass him, he stood there and he acknowledged it  
 4 and I told him, you know, he needed to leave.  
 5 Then we got the call shortly after from our  
 6 dispatch to place him in mechanical restraints and  
 7 escort him back to the processing room for further  
 8 questioning.  
 9 Q. Did you eventually do that?  
 10 A. Yes, we did.  
 11 Q. When you had him back in the room, did you  
 12 conduct a search of the defendant?  
 13 A. We did, myself and one other officer.  
 14 Q. Did you find anything of note when that search  
 15 occurred?  
 16 A. He said he didn't have his ID, and we found his  
 17 ID. And he also had a Mirage room key. It was an exact  
 18 -- the picture on the front was a Terry Fader room key,  
 19 but it's one of the Mirage Hotel room keys that we use.  
 20 Q. Now, as a security officer at the Mirage Hotel &  
 21 Casino, are you aware of the security procedures that  
 22 take place when an individual tries to enter the  
 23 elevators to go to the rooms?  
 24 A. Yes, I am.  
 25 Q. Does the Mirage place security at the bank of the

10

1 elevators?  
 2 A. We do. It's not 24-hour surveillance, but it is  
 3 between the hours of 10:00 p.m. and 6:00 a.m. in the  
 4 morning.  
 5 Q. What is the purpose of those security officers?  
 6 A. The purpose of those security officers is to  
 7 prevent anyone that does not have a room key not and is  
 8 not a registered guest to allow access up to the hotel  
 9 towers without having a room key to a room or being a  
 10 registered guest or a guest of a registered guest.  
 11 So then we ran his name through our system  
 12 called Opera, and he didn't come back as a registered  
 13 guest.  
 14 Q. So when you searched him, he had a hotel key card  
 15 for the Mirage?  
 16 A. Yes.  
 17 Q. Which would have allowed him to bypass security  
 18 at the elevators?  
 19 A. Yes.  
 20 Q. That night, however, when you searched his name  
 21 in the system that the Mirage maintains at operates, was  
 22 he a registered guest?  
 23 A. He was not a registered guest.  
 24 MR. ROWLES: Nothing further, Your Honor.  
 25 THE COURT: Cross?

11

1 CROSS-EXAMINATION  
 2 BY MR. SANFT:  
 3 Q. How does it work if you are a guest of a guest?  
 4 A. If you're a guest of a guest, usually they don't  
 5 have room keys. What we do is we have them notify the  
 6 guest to come down and meet them, and they have to  
 7 acknowledge us. We have to acknowledge that they know  
 8 who the guest is.  
 9 But it's very rare. And, like I said, if  
 10 he's a guest in the hotel, they're usually not given a  
 11 key. Because you have to have -- you have to be  
 12 registered to the room to be able to have possession of  
 13 a key.  
 14 Q. All right. Let me ask you this then. You say  
 15 you have to be registered to a room to have possession  
 16 of a key?  
 17 A. Um-hum.  
 18 Q. Is that a yes?  
 19 A. Yes.  
 20 Q. Are you telling this Court and us that when I  
 21 registered at the Mirage, I sign some document saying  
 22 that the key that I possess I cannot give to any other  
 23 person? Is that what you're telling this Court?  
 24 A. Pretty much, yes.  
 25 THE COURT: Is that yes? What's pretty much

12

1 mean?  
 2 THE WITNESS: It's yes.  
 3 MR. SANFT: All right.  
 4 Q. And just to make sure we're clear, you say you  
 5 worked -- you work for security at the Mirage. How long  
 6 have you been working there, sir?  
 7 A. This March 9th will be three years. I started  
 8 there March 9th of 2016.  
 9 Q. And with regards to the key itself, did you ever  
 10 verify what room that key was for?  
 11 A. To my knowledge, no, the key was not verified  
 12 what it was to. We had a description from a witness,  
 13 stating him in the room.  
 14 Q. That's not my question. My question is, the key  
 15 that you took from my client, did you ever run that key  
 16 to determine what room it was for?  
 17 A. To my knowledge I did not, no. If another  
 18 officer did, I do not know.  
 19 Q. So at this particular point your testimony is  
 20 that this person was up in a room. You don't know  
 21 anything about that room or what happened, necessarily.  
 22 All you know is that you detained him at some point when  
 23 he was walking out to the valet area and you 86'd him  
 24 and then you brought him back into the hotel area.  
 25 A. We were informed that any time --

13

1     **Q.** Let me make sure we're clear. I'm talking about  
2 you. Not about we. You specifically. Your role here  
3 in this case and what you're testifying about is  
4 basically you detained this man outside by the valet,  
5 you 86'd him, and then at some point you brought him  
6 back into the casino and brought him into your holding  
7 area in the back of the casino?  
8     **A. Yes.**  
9     **Q.** Anything else besides that?  
10    **A. No.**  
11           MR. SANFT: No further questions, Your  
12 Honor.  
13           THE COURT: Anything else?  
14           MR. ROWLES: No.  
15           THE COURT: Sir, thank you very much for  
16 your testimony. You are free to go. Just don't discuss  
17 it with anyone. Okay?  
18           THE WITNESS: Thank you.  
19           THE COURT: Next witness.  
20           MR. ROWLES: Officer Austin Fox.  
21 Whereupon,  
22           OFFICER AUSTIN FOX,  
23 having been first duly sworn to testify to the truth,  
24 the whole truth and nothing but the truth, was examined  
25 and testified as follows:

14

1           THE CLERK: Please be seated. State your  
2 name and spell your full name for the record.  
3           THE WITNESS: Austin Fox, A-u-s-t-i-n,  
4 F-o-x.  
5           THE COURT: Thank you, sir.  
6           Go ahead.  
7           DIRECT EXAMINATION  
8 BY MR. ROWLES:  
9     **Q.** Sir, how are you currently employed?  
10    **A. With the Las Vegas Metropolitan Police**  
11 **Department.**  
12     **Q.** How long have you worked with the police  
13 department?  
14     **A. One year, ten months.**  
15     **Q.** January 26, 2019, were you working as a police  
16 officer with the Las Vegas Metropolitan Police  
17 Department?  
18     **A. Yes, sir.**  
19     **Q.** Did you receive a call for service to respond to  
20 the Mirage Hotel & Casino?  
21     **A. Yes, sir.**  
22     **Q.** What was the nature of the call?  
23     **A. It was a black male adult in custody for entering**  
24 **a hotel guest room without the occupant's consent.**  
25     **Q.** Did you eventually arrive on scene?

15

1     **A. Yes, sir.**  
2     **Q.** When you arrived on scene was there an individual  
3 in custody by security?  
4     **A. Yes, sir.**  
5     **Q.** Or was there an individual detained by security?  
6     **A. Yes, sir.**  
7     **Q.** Do you see that person here in court today?  
8     **A. Yes, sir.**  
9     **Q.** Can you please point to him and describe an  
10 article of clothing that he's wearing today?  
11    **A. Blue CCDC jumpsuit.**  
12           MR. ROWLES: Your Honor, may the record  
13 reflect the identification of the defendant?  
14           THE COURT: Yes, so reflected.  
15           MR. ROWLES:  
16     **Q.** When you arrived on scene with the defendant  
17 having been detained by security at that point in time,  
18 did you eventually make contact with the room occupant  
19 in the matter?  
20     **A. Yes, sir.**  
21     **Q.** And at that point in time did you conduct a  
22 show-up with the room occupant?  
23     **A. Yes, sir.**  
24     **Q.** Was he able to positively identify the individual  
25 that you just identified in court?

16

1     **A. Yes, sir.**  
2           MR. ROWLES: Nothing further, Your Honor.  
3           THE COURT: Cross?  
4           CROSS-EXAMINATION  
5 BY MR. SANFT:  
6     **Q.** Were you the first officer on the scene?  
7     **A. I am not sure.**  
8     **Q.** The reason I ask that question is, you understand  
9 based upon Metropolitan policy and procedure, if you're  
10 the first officer, you're technically the primary  
11 officer that's responsible for the investigation, right?  
12     **A. Yes, sir.**  
13     **Q.** Were you officer responsible for the  
14 investigation in the case?  
15     **A. Yes, sir.**  
16     **Q.** Did you write a report?  
17     **A. Yes, sir.**  
18     **Q.** Now, during the course of your investigation did  
19 you find anything on my client with regards to a room  
20 key?  
21     **A. There was a room key found on him. I'm not sure**  
22 **if I was the officer who searched him.**  
23     **Q.** But as the primary officer that's responsible for  
24 the overall investigation, did you do anything with that  
25 room key to verify whether he was an invited guest of

1 the Mirage?

2 **A. Mirage stated that he was not an invited guest.**

3 **Q.** And when you say Mirage stated, who stated to you  
4 that he was not --

5 MR. ROWLES: Objection. Hearsay.

6 MR. SANFT: I'm not asking about what was  
7 said. I'm asking as to who said it. That's not  
8 hearsay.

9 THE COURT: Overruled.

10 MR. SANFT:

11 **Q.** Please.

12 **A. One of the security personnel.**

13 **Q.** Do you recall who that person was?

14 **A. No, sir.**

15 **Q.** Was that somebody that you put into your report  
16 as part of your writing of the report as to what  
17 happened on this particular night?

18 **A. I would have to look back at my report.**

19 **Q.** Just to verify, I'm going to tell you right now,  
20 to cut to the chase, you don't put anybody in that  
21 report. But with regards to that information, would  
22 that have been information that you would have sought if  
23 you had conducted an investigation in this case as to  
24 whether or not my client had a legal basis to be at the  
25 Mirage at that time?

1 **A. I was told he did not.**

2 **Q.** I understand you were told that. But -- okay,  
3 let me back up. So you relied upon somebody else's  
4 representations to you as to whether or not my client  
5 was there legally or not?

6 **A. Because they had access to hotel information.**

7 **Q.** All right. So these would have been the people  
8 that were on staff, security officers or people at the  
9 Mirage who was informing you that he did not have legal  
10 permission to be present on the premises?

11 **A. Correct.**

12 **Q.** With regards to the individual that you did the  
13 show-up with, the individual in this room, did you get a  
14 chance to go into the room and look at the room?

15 **A. No, sir.**

16 **Q.** When you first met the individual, where was that  
17 at? Was that up in the hallway of his room? Was it  
18 down in the holding area of the Mirage? Where was it  
19 at?

20 **A. It was outside. Not near the holding area, but  
21 in the back hallway.**

22 **Q.** Okay. And with regards to my client, he was the  
23 only person that you showed to this individual that was  
24 the alleged victim in this case, right?

25 **A. Yes, sir.**

1 **Q.** No other person?

2 **A. No, sir.**

3 **Q.** Did you get a chance to look at the video in this  
4 case from the Mirage?

5 **A. No, sir.**

6 **Q.** The surveillance video that would have shown my  
7 client walking through or in a hallway or anything like  
8 that. Did you ever --

9 **A. They don't have video of the hallways.**

10 **Q.** Did they have videos of the elevator banks where  
11 people first walk to the banks to go up and down into  
12 the rooms and so forth? Do you know if you saw that  
13 video?

14 **A. I did not see it. I can't confirm if they had  
15 the video or not.**

16 **Q.** Officer, did you have anyone else with you on  
17 this particular night as a partner when you responded to  
18 the call at the Mirage?

19 **A. Yes, sir.**

20 **Q.** Who was that other officer?

21 **A. Three other officers: Officer Jacks, Farson and  
22 McElroy.**

23 **Q.** Now, once again, to make sure we're clear, as the  
24 primary officer in this case you would be responsible  
25 for collecting any other evidence that they may have

1 found in the course and scope of their duties as police  
2 officers in relation to this case; would that be fair to  
3 say?

4 **A. Yes, sir.**

5 MR. SANFT: I have no further questions,  
6 Your Honor.

7 THE COURT: Anything?

8 REDIRECT EXAMINATION

9 BY MR. ROWLES:

10 **Q.** Sir, when you arrived to investigate a crime at  
11 one of the hotel properties here, do you interact with  
12 security?

13 **A. Yes, sir.**

14 **Q.** And do you take the information that they present  
15 to you in determining whether there's probable cause for  
16 an arrest?

17 **A. Yes, sir.**

18 **Q.** Now, as a police officer and having worked near  
19 the Strip with the hotel properties here, is it your  
20 understanding that all hotels employ their own security  
21 details?

22 **A. Yes, sir.**

23 **Q.** And conduct their own internal investigations?

24 **A. Yes, sir.**

25 MR. ROWLES: Nothing further, Your Honor.

21

1 THE COURT: Anything else?

2 MR. SANFT: No, Your Honor.

3 THE COURT: All right. Officer, thank you

4 for your testimony. You're free to go. Just don't

5 discuss it with anyone.

6 THE WITNESS: Thank you. Yes, ma'am.

7 MR. ROWLES: Your Honor, the State's next

8 witness would be James McGrath.

9 THE COURT: Come on up, sir.

10 Whereupon,

11 JAMES MCGRATH,

12 having been first duly sworn to testify to the truth,

13 the whole truth and nothing but the truth, was examined

14 and testified as follows:

15 THE CLERK: Go ahead and have a seat. State

16 your first and last name and spell it for the record.

17 THE WITNESS: James McGrath. McGrath is

18 M-c-G-r-a-t-h.

19 THE COURT: Go ahead.

20 DIRECT EXAMINATION

21 BY MR. ROWLES: Thank you, Your Honor.

22 Q. Sir, I would like to turn your attention to the

23 weekend of January 25th, 2019, into the weekend of

24 January 26th or the day of January 26th. Were you at

25 the Mirage Hotel & Casino?

22

1 A. Yes.

2 Q. Were you here for a business trip?

3 A. Yes.

4 Q. Did you bring anybody with you during that

5 business trip?

6 A. No.

7 Q. Did you have any other guests or any occupants of

8 the hotel room that you stayed in at the Mirage?

9 A. No.

10 Q. Do you know a person by the name of James Howard

11 Hayes?

12 A. No.

13 Q. Have you ever given an individual by the name of

14 James Howard Hayes permission to enter one of your hotel

15 rooms?

16 A. No.

17 Q. If you could look around the entire courtroom and

18 see, have you ever given anyone in this courtroom

19 permission to enter the hotel room that you were at in

20 the Mirage that weekend?

21 A. No.

22 Q. I want to talk a little bit about what happened

23 on January 26, 2019, in the morning hours of that date

24 when you were at the Mirage. Can you walk us through

25 what happened in the morning hours?

23

1 A. I went to sleep somewhere around midnight. At

2 2:00 in the morning I heard my door open, and I sat up

3 in bed and looked over at the door. At the door I left

4 the lights on to illuminate kind of the bathroom/closet

5 area, and I saw the door open with a person standing

6 there that I did not recognize. And he looked a little

7 bit startled. I was startled. He quickly left the

8 room.

9 Q. Do you see that person here in court today?

10 A. Yes.

11 Q. Could you point to him and describe an article of

12 clothing that he's wearing today?

13 A. An article of clothing? Blue.

14 Q. Can you point to him?

15 THE COURT: Where are you pointing?

16 MR. ROWLES:

17 Q. Do you -- take another look.

18 MR. SANFT: Your Honor. Just for the

19 record, he has identified somebody -- I'm sorry, can you

20 describe something about what the person wearing blue,

21 please?

22 THE WITNESS: He has a bracelet on his right

23 arm. No, wait. Never mind.

24 MR. ROWLES:

25 Q. Can you take another look around, sir?

24

1 THE COURT: Hold on. Just for the record,

2 he's identifying an in-custody who is sitting down.

3 THE WITNESS: Third one from the right.

4 THE COURT: Third one from the right. That

5 would be this defendant with the beard on him?

6 THE WITNESS: Yes.

7 THE COURT: Okay. Go ahead.

8 MR. ROWLES:

9 Q. How positive are you, sir?

10 A. Apparently not very positive at this point.

11 Q. Do you see anyone else in the courtroom --

12 MR. SANFT: Objection, Your Honor. I don't

13 understand why we're going with this line of questioning

14 now. He's already identified who he believes is the

15 person standing in the doorway. Now the State wants to

16 have another shot at the ring here. So I think he's

17 already identified who he believed was the person.

18 MR. ROWLES: That's fine, Judge. I'll move

19 on.

20 THE COURT: Yeah, it's sustained. I think

21 we've established that.

22 MR. ROWLES:

23 Q. At that point in time you said the individual

24 left the courtroom -- left the house?

25 A. Yes.

1 Q. Or room. Did you eventually make contact with  
2 security?

3 A. Yes.

4 Q. When you made contact with security, did they  
5 bring you to a holding area?

6 A. Yes, they did.

7 Q. Did they show you the individual that they had in  
8 custody?

9 A. Yes.

10 Q. Was Metro there as well?

11 A. Yes. There were approximately six Metro  
12 officers.

13 Q. Did you identify the person that they had  
14 detained as the individual in your room?

15 A. Yes, and I identified him for a number of ways --  
16 now I'm obviously questioning it -- but he was wearing  
17 the same clothing that I saw in my room. It was kind of  
18 a white jacket or a white fleece maybe or something like  
19 that.

20 Q. And did you give a specific percentage as to  
21 positive you were?

22 A. At the time I said I was about 80 percent.

23 MR. ROWLES: Nothing further, Your Honor.

24 THE COURT: Cross?

25 CROSS-EXAMINATION

1 BY MR. SANFT:

2 Q. Sir, what were you doing in Las Vegas at the  
3 time?

4 A. I was on a business trip.

5 Q. Like a conference of some sort?

6 A. Yes.

7 Q. And when I say conference, is it one of the ones  
8 where you go with other people in your industry and you  
9 meet and talk about kinds of --

10 A. Yes. It was a furniture show. It's actually the  
11 furniture -- it's the marketplace near here.

12 Q. So the marketplace that's right down here?

13 A. Yeah.

14 Q. And on this particular night you were in your  
15 hotel room. You were there about midnight. Somewhere  
16 around between that and 2:00 you went to sleep?

17 A. Yes.

18 Q. So prior to that were you out having a good time,  
19 enjoying the Strip?

20 A. No, I was on business. And, no, I was not.

21 Q. So what were you doing prior to midnight between  
22 the hours --

23 A. Oh, well, I mean, I had -- I went out to dinner.  
24 Actually, no, I didn't. I'm trying to think. I hadn't  
25 thought about that until just now. I had just gotten

1 in --

2 MR. ROWLES: Your Honor, I'm going to object  
3 as to relevance.

4 THE COURT: That's okay. Overruled.

5 THE WITNESS: I met probably four or five  
6 people from my company at the hotel.

7 MR. ROWLES:

8 Q. Do you know where at the hotel you were meeting  
9 your people?

10 A. Various places. I don't remember specifically,  
11 no.

12 Q. Did you, during the time that you were with the  
13 people from your group, have drinks and --

14 A. Yes, I did.

15 Q. What were you drinking that night?

16 A. It was Maker's Mark 46.

17 Q. Okay.

18 THE COURT: I don't know what that is. What  
19 is that?

20 THE WITNESS: It's a bourbon.

21 MR. SANFT: Maker's Mark.

22 THE COURT: Oh, okay.

23 MR. SANFT:

24 Q. Now, with regards to Maker's Mark, how are you  
25 drinking it? Do you drink that neat? Do you drink it

1 on the rocks?

2 A. On the rocks.

3 Q. Okay. On the rocks. Do you recall how many  
4 drinks that you had that night prior to going to bed?

5 A. Maybe three or four.

6 Q. Okay. Now, when --

7 A. Let's go with three.

8 Q. Three is good. Now, in terms of that night, you  
9 go to bed and you're laying in bed and then you say you  
10 leave the light on. Is that the light in the hallway of  
11 the room or is it the one in the bathroom?

12 A. So it's the light in the hallway. As I remember,  
13 it was sort of in front of the door. And I think there  
14 was a closet there and also the bathroom. So just right  
15 in that area, but it was not the bathroom light.

16 Q. And the room that you were in, was that a single  
17 bed or was it --

18 A. Double bed.

19 Q. Double bed. And when you were sleeping in your  
20 room on this night, which bed did you choose, one closer  
21 to the bathroom or the one closest to the window?

22 A. Closest to the window.

23 Q. Okay. So you said you heard basically at some  
24 point the door open, and you looked over and you could  
25 see someone standing there?

<p style="text-align: right;">29</p> <p>1     <b>A. Direct line of sight.</b></p> <p>2     <b>Q.</b> Right. So you said that he opened the door and</p> <p>3 he looked startled that you were there?</p> <p>4     <b>A. Yes.</b></p> <p>5     <b>Q.</b> He didn't say anything to you?</p> <p>6     <b>A. I thought he said "I'm sorry" or something like</b></p> <p>7 <b>that.</b></p> <p>8             MR. ROWLES: Objection. Hearsay. Move to</p> <p>9 strike.</p> <p>10            THE COURT: I think he's just saying I</p> <p>11 thought. I'm going to overrule it for right now.</p> <p>12            MR. SANFT:</p> <p>13     <b>Q.</b> So whatever was said in the room, did he take a</p> <p>14 step into the room?</p> <p>15     <b>A. I thought he took a step in, but it was not very</b></p> <p>16 <b>far. It was right at the doorway and --</b></p> <p>17     <b>Q.</b> Was that before or after he said what he said to</p> <p>18 you?</p> <p>19     <b>A. It would have been before.</b></p> <p>20     <b>Q.</b> And then he turned around and walked out?</p> <p>21     <b>A. Yes, and he closed the door.</b></p> <p>22            MR. SANFT: Okay. I have no further</p> <p>23 questions.</p> <p>24            THE COURT: Anything else, State?</p> <p>25            REDIRECT EXAMINATION</p>	<p style="text-align: right;">31</p> <p>1 Defense rests.</p> <p>2             MR. ROWLES: Submit for rebuttal, Your</p> <p>3 Honor.</p> <p>4             THE COURT: Submit.</p> <p>5             MR. SANFT: Your Honor, we'll submit as</p> <p>6 well.</p> <p>7             THE COURT: All right. Sir, the purpose of</p> <p>8 today is for preliminary hearing. It's slight or</p> <p>9 marginal evidence that a crime was committed or that</p> <p>10 these crimes were committed and that you committed it.</p> <p>11            Based upon the testimony today with the</p> <p>12 guest, even though he identified the wrong person, he</p> <p>13 identified someone that night that came into his room</p> <p>14 without permission.</p> <p>15            A person was later detained. That person</p> <p>16 was you. And you had the Mirage key in the pocket. So</p> <p>17 I find that the State has than met its burden.</p> <p>18            So it appears to me from the Complaint on</p> <p>19 file that the following crimes were committed, to-wit:</p> <p>20 Count 1, burglary; Count 2, unlawful use of hotel key.</p> <p>21            I hereby order the said defendant to be held</p> <p>22 to answer to said charges in the Eighth Judicial</p> <p>23 District Court, County of Clark, State of Nevada, at the</p> <p>24 following date and time.</p> <p>25            THE CLERK: February 28th, 10:00 a.m., lower</p>
<p style="text-align: right;">30</p> <p>1 BY MR. ROWLES:</p> <p>2     <b>Q.</b> Sir, do you wear glasses?</p> <p>3     <b>A. No.</b></p> <p>4             MR. ROWLES: Nothing further.</p> <p>5             THE COURT: Sir, thank you very much for</p> <p>6 your testimony. You're free to go. Just don't discuss</p> <p>7 it with anyone. Okay?</p> <p>8             THE WITNESS: Okay.</p> <p>9             THE COURT: Thank you, sir.</p> <p>10            MR. ROWLES: Judge, I'll rest.</p> <p>11            THE COURT: Okay.</p> <p>12            MR. SANFT: Your Honor, I've spoken to my</p> <p>13 client. He will respectfully decline his right to</p> <p>14 testify at this preliminary hearing, and we will also</p> <p>15 rest at this time.</p> <p>16            THE COURT: All right. Sir, do you</p> <p>17 understand that by not testifying today, I will not use</p> <p>18 that against you in any way? Do you understand?</p> <p>19            THE DEFENDANT: Yes, ma'am.</p> <p>20            THE COURT: All right. And it's my</p> <p>21 understanding that you are seeking -- you're listening</p> <p>22 to the advice of counsel and not going to be testifying</p> <p>23 today, right?</p> <p>24            THE WITNESS: Correct.</p> <p>25            THE COURT: All right. The State rests.</p>	<p style="text-align: right;">32</p> <p>1 level arraignment.</p> <p>2             THE COURT: We'll remand him on Count 2 so</p> <p>3 he gets his credit.</p> <p>4             MR. SANFT: Thank you, Your Honor.</p> <p>5             MR. ROWLES: Thank you, Judge.</p> <p>6             -oOo-</p> <p>7 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF</p> <p>8 PROCEEDINGS.</p> <p>9</p> <p>10</p> <p>11            /S/Kristine Fluker</p> <p>12</p> <p>13            KRISTINE A. FLUKER, CCR NO. 403</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

1  
2 AFFIRMATION  
3 Pursuant to NRS 239B.030  
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7  
8

9 The undersigned does hereby affirm that the  
10 preceding bind over filed in District Court Case  
11 No. C338412-1 does not contain the Social Security  
12 Number of any person.  
13  
14  
15

16 Dated this 28th day of February, 2019.  
17

18 /S/Kristine Fluker  
19

20 KRISTINE A. FLUKER, CCR NO. 403  
21  
22  
23  
24  
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

**JAMES HOWARD HAYES, JR.,  
#2796708**

Defendant.

CASE NO: **C-19-338412-1**

DEPT NO: **XIX**

**STATE'S NOTICE OF MOTION  
AND MOTION TO ADMIT OTHER ACT EVIDENCE**

**YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through W.C. ROWLES, Deputy District Attorney, will bring a **Motion to Admit Other Act Evidence** before the above entitled Court on the \_\_\_\_ day of \_\_\_\_\_, 2019, at the hour of 8:30 o'clock A.M., or as soon thereafter as counsel may be heard.

This Motion is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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**1. CASE NO. C315125 – Harrah’s Hotel and Casino**

On April 2, 2016, security investigators were conducting an integrity check at the Harrah's Hotel and Casino. See State's 1 at 6-7. An integrity check occurs when hotel security investigators "set up a room to make it look like an occupied room and place it with money and other valuable items." Id. The investigators left the door slightly ajar (to make it appear as if a guest may have forgotten to close the door) and conducted surveillance on the hotel room. Id.

While conducting the integrity check, security investigators observed Defendant James Hayes come down the hallway, push the door open, and walk into the hotel room. Id. at 10. Once inside, Defendant surveyed the items inside, and subsequently stole \$350 in bait money from a wallet inside the room. Id. at 9-12. Defendant then proceeded to search through the other items (such as luggage) in the room before leaving. Id. at 13. Defendant was subsequently detained by security investigators with the bait money in tow. Id. 14. Defendant did not have permission to be inside the hotel room. Id.

On January 10, 2017, Defendant was found guilty of the crime of burglary.

**2. CASE NO. C315718 – Excalibur Hotel and Casino**

On April 9, 2013, Joshua Jarvis was staying at the Excalibur Hotel and Casino while on vacation here in Las Vegas, Nevada. See State’s 2 at 5. While sleeping in his hotel room, Mr. Jarvis heard some “rattling.” Id. at 6. Mr. Jarvis then noticed Defendant inside the hotel room searching through luggage. Id. Mr. Jarvis “freaked out,” jumped out of bed and asked Defendant who he was. Id. at 12. Defendant immediately attempted to run for the door. Id. Mr. Jarvis proceeded to stop Defendant, patted him down, and detained him. Id. Defendant then apologized to Mr. Jarvis multiple times. Id. at 18. Defendant did not have permission to be inside the hotel room. Id. at 20. Defendant was subsequently arrested on the arrest warrant after committing the offense in C315125.

On March 6, 2019, Defendant was adjudicated guilty of attempt grand larceny, a felony, and sentenced under the habitual criminal statute.

1     **3.     INSTANT MATTER**

2             On January 26, 2019, while pending sentencing for C315718, and having recently been  
3     paroled from C315125, Defendant once again entered a hotel room that did not belong to him.  
4     See RT 2-26-19 at 6. The occupant of the hotel room was visiting town and fell asleep  
5     “somewhere around midnight.” Id. at 23. A few hours later, the occupant heard the door open  
6     and noticed Defendant standing inside his room. The occupant did not recognize Defendant  
7     and did not give Defendant permission to enter the room. Defendant looked “startled” and  
8     quickly left the room. Id. Defendant was detained by security and identified by the room  
9     occupant. Defendant had a room key to the hotel. Id. at 8. Defendant was not a registered  
10    guest of the hotel. Id.

11            On February 27, 2019, the State filed an information charging Defendant with one  
12    count of burglary and one count of unlawful use of a hotel key. Defendant’s trial is currently  
13    set for May 13, 2019.

14                             **ARGUMENT**

15            Evidence of the Excalibur Hotel and Casino burglary and the Harrah’s Hotel and Casino  
16    Burglary is admissible in the instant case to show Defendant’s intent when he entered the  
17    Mirage hotel room, Defendant’s common plan/scheme of committing door-push burglaries,  
18    Defendant’s identity, and Defendant’s absence of mistake when he entered the hotel room.  
19    Said evidence is admissible pursuant to well-established case law and NRS 48.045, the other-  
20    admissible-acts statute. Indeed, NRS 48.045(2) provides:

21                   Evidence of other crimes, wrongs or acts is not admissible to prove  
22                   the character of a person in order to show that the person acted in  
23                   conformity therewith. It may, however, be admissible for other  
24                   purposes, such as proof of motive, opportunity, intent, preparation,  
                    plan, knowledge, identity, or absence of mistake or accident.

25    See NRS 48.045(2).

26    ///

27    ///

28    ///



1       **1. EVIDENCE OF THE PRIOR ACTS ARE ADMISSIBLE, NON-PROPENSITY**  
2       **EVIDENCE OF DEFENDANT'S INTENT REGARDING THE BURGLARY IN**  
3       **THIS CASE.**

4       Here, Defendant is charged with the crime of burglary. Burglary is a crime requiring  
5       proof of a specific intent rather than mere general criminal intent. See NRS 205.060(1); Carr  
6       v. Sheriff, 95 Nev. 688, 690 (1979) ("The offense of burglary is complete when the house or  
7       other building is entered with the specific intent to commit larceny..."). In other words, the  
8       State is required to prove beyond a reasonable doubt that Defendant possessed the specific  
9       intent to commit larceny the very moment that he stepped into the hotel room. See NRS  
10       205.060(1).

11       When a defendant is charged with a specific intent crime, his intent is inherently at  
12       issue. See Hubbard v. State, 422 P.3d 1260, 1265 (2018); Hubbard v. State, Nev. App. 129  
13       No. 66185 (2016) (unpublished) (Tao, J. concurring in part and dissenting in part). In United  
14       States v. Gomez, 763 F.3d 845, 858-859 (7th Cir. 2014), the court noted that "for general  
15       intent crimes, the defendant's intent can be inferred from the act itself, so intent is not  
16       automatically at issue." (internal quotations and citations omitted). "In contrast, when intent  
17       is at issue—in cases involving specific intent crimes ... other-act evidence may be admissible  
18       to prove intent." Id. (internal quotations and citations omitted); see United States v. Tan, 254  
19       F.3d 1204, 1212 n.8 (10th Cir. 2001) ("because specific intent cannot be inferred from the  
20       charged conduct, other act evidence may be especially probative in cases where the defendant  
21       is charged with a specific intent crime"); United States v. Van Metre, 150 F.3d 339, 350-51  
22       (4th Cir. 1998) (bad acts evidence is especially probative of specific intent); United States v.  
23       Johnson, 27 F.3d 1186, 1192 (6th Cir. 1994) ("intent is in issue precisely because a specific  
24       intent, separate and apart from underlying prohibited conduct, is made an element of the crime  
25       charged ... In prosecuting specific intent crimes, prior acts evidence may often be the only  
26       method of proving intent.") (citations omitted); United States v. Gruttadauro, 818 F.2d 1323,  
27       1327-28 (7th Cir. 1987) ("Evidence of prior bad acts is admissible to prove intent if intent is  
28       automatically in issue or if the defendant puts his or her intent in issue. We have said that  
      intent is automatically in issue in a criminal case ... if the crime is a 'specific intent' crime.").

1 This is because the crime of burglary is commonly committed in secret. Edwards v. State, 90  
2 Nev. 255, 258 (1974). Rare is the case in which a defendant announces at the top of his lungs  
3 “I am here to commit larceny.” Because of this, the crime of burglary must frequently be  
4 proven by circumstantial evidence. Id. Indeed, in determining the intent with which entry  
5 was made is a question of fact, which may be inferred from a defendant’s conduct before,  
6 during, and after the entry, and all other circumstances disclosed by the evidence. See Flynn  
7 v. State, 93 Nev. 247, 562 P.2d 1135 (1977).

8 Notably, in Darnell v. State, 92 Nev. 680 (1976), the Court noted that evidence of other  
9 acts was properly admitted to prove the defendant’s criminal intent. Id. at 682. In Darnell,  
10 the defendant was convicted of attempted possession of stolen property. Prior to the  
11 defendant’s conduct in the charged offense, an informant told police that he had previously  
12 sold stolen property to the defendant. While working for police, the informant again sold  
13 (what the defendant believed to be stolen) property to the defendant. During trial, the State  
14 introduced evidence of the prior encounters. On appeal, the Court noted that an attempt charge  
15 requires only that the appellant have an intent to commit the crime and that he take a direct  
16 but ineffectual act toward the commission of the crime. Id. at 682. The Court further noted  
17 that because the evidence of other acts was only “offered for the limited purposes of showing  
18 [defendant’s] criminal *intent*,” the evidence was relevant and admissible. Id.

19 In United States v. Beechum, 582 F.2d 898 (CA5 1978), the case of a United States  
20 Postal Service letter carrier unlawfully possessing a 1890 silver dollar that had been stolen  
21 from the mail, the government introduced evidence of defendant’s possession of two credit  
22 cards stolen from addresses on the defendant’s mail route some ten months earlier. The court  
23 held in that:

24 Where the issue addressed is defendant's intent to commit the  
25 offense charged, the relevancy of the extrinsic offense derives  
26 from the defendant's indulging himself in the same state of mind  
27 in the perpetration of both the extrinsic and charged offenses. The  
28 reasoning is that because the defendant had unlawful intent in the  
extrinsic offense, it is less likely that he had lawful intent in the  
present offense.

1 Id., 582 F.2d at 911.

2 As to the time period between the 2013 Excalibur hotel room burglary and the 2016  
3 Harrah's hotel room burglary, and the instant matter, the court in United States v. Kirk, 528  
4 F.2d 1057 (CA5 1976) held that the fact that another offense occurred three years prior to the  
5 charged offense does not make it inadmissible. In Kirk, defendant was charged with  
6 threatening the life of the President of the United States of America. At trial, the prosecution  
7 presented evidence showing that three years earlier defendant had committed the same crimes.  
8 The court ruled this evidence to be properly admissible to show defendant's intent, holding as  
9 follows:

10 Whether the prior intended to show that defendant made this threat  
11 intentionally or as the result of "alcohol taking," was a matter for  
12 the jury's termination. The fact that the former offense occurred  
three years prior to the offense charged does not make it so remote  
as to be excluded.

13 528 F.2d at 1061. Likewise, in United States v. Wilson, 732 F.2d 404 (CA5 1984), the  
14 defendant was convicted of conspiracy and illegal shipping of explosives to Libya in 1977.  
15 The prosecution introduced evidence concerning extraneous offenses and incidents involving  
16 terrorism, including a 1979 incident and a 1982 incident in which similar explosives were  
17 discovered. The court ruled the evidence concerning the extraneous offenses and incidents  
18 were properly admissible to establish defendant's motive, intent, and plan.

19 In this case, Defendant committed the same crime in the same exact manner. Given the  
20 specific and unique crime Defendant is charged with, Defendant's prior conduct is relevant to  
21 show intent. Because Defendant's specific intent cannot solely be inferred from the fact that  
22 he entered the hotel room, and so his conduct and participation in strikingly similar crimes, all  
23 of which are identical in design, evidence of the other acts are relevant, highly probative and  
24 material in demonstrating the existence of his specific intent to commit larceny inside the  
25 Mirage room. Therefore, evidence of the Excalibur burglary is properly admissible, non-  
26 propensity evidence of Defendant's intent.

27 ///

28 ///

1     **2.     EVIDENCE OF THE PRIOR CONDUCT IS ADMISSIBLE, NON-**  
2     **PROPENSITY EVIDENCE OF DEFENDANT’S COMMON PLAN OR**  
3     **SCHEME REGARDING THE BURGLARY IN THIS CASE.**

4         In order for a crime to constitute a common “scheme or plan,” there must exist some  
5     “design or plan formed to accomplish some purpose – a system. A plan is a method of design  
6     or action, procedure, or arrangement for accomplishment of a particular act or object. Method  
7     of putting into effect an intention or proposal.” Weber v. State, 121 Nev. 554, 572, 119 P.3d  
8     107, 119-20 (2005) (internal quotations omitted). Essentially, the Court has noted that  
9     purposeful design is central to a scheme or plan. Id. Nonetheless, the Court noted that “this  
10    does not mean that every scheme or plan must exhibit rigid consistency or coherency ...” Id.  
11    Indeed, the Court noted that “a scheme or plan may have to contend with contingencies, and  
12    therefore [] can in practice reflect some flexibility and variation....” Id.

13         In Graves v. State, 112 Nev. 118 (1996), the defendant was charged with two counts of  
14     burglary, first for entering the one casino and attempting to steal coins from a patron, and  
15     second for entering another casino and attempting to steal money from a cashier’s booth. The  
16     Court held that the district court did not abuse its discretion in allowing the two charges to be  
17     joined because the defendant “systematically walked from casino to casino and acted similarly  
18     suspicious at each casino.” Id. at 128, 912 P.2d at 239. This Court held that both offenses  
19     were part of a common scheme or plan. Id.

20         In Brinkley v. State, 101 Nev. 676, 708 P.2d 1026 (1985), defendants Brinkley and  
21     Drummond were convicted of five (5) counts of Unlawfully Obtaining a Controlled Substance  
22     and one (1) count of Unlawful Conspiracy to Obtain a Controlled Substance. The prosecution  
23     successfully offered evidence revealing that subsequent to the occurrence of the substantive  
24     crimes, Drummond attempted to pass a forged prescription while Brinkley waited outside in a  
25     car. Under these facts, the high court stated:

26                 Evidence under the "common plan or scheme" exception must  
27                 tend to prove the charged crimes by revealing that the defendant  
28                 planned to commit the crimes . . . [t]he offense must tend to  
                    establish a preconceived plan which resulted in the commission of  
                    the charged crime . . .

///

1 Defendant's actions in the instant burglary and in the prior offenses demonstrate a  
2 systematic design by him to unlawfully enter into hotel rooms and systematically search  
3 through the contents inside the rooms in order to steal any items of value. As noted, in all  
4 cases, Defendant enters a hotel room by pushing open the door, begins to search the room and  
5 luggage inside the room. This is no different than in Graves, when the defendant  
6 systematically walked from casino to casino attempting to steal money. Here, Defendant has  
7 entered multiple hotels searching for hotel rooms to burglarize. Review of the Defendant's  
8 actions in the all cases show they are woven together with the same common scheme.  
9 Defendant's plan was to gain entrance to hotel rooms to commit larceny therein. Evidence of  
10 Defendants common scheme is extremely probative of his intent, which is an element of the  
11 charged crime, and to rebut his probable defense of mistake—in light of the statements made  
12 to security on the night of the arrest. Therefore, evidence of the other acts are properly  
13 admissible, non-propensity evidence of Defendant's common plan or scheme of committing  
14 hotel room door-push burglaries.

15 **3. EVIDENCE OF THE PRIOR ACTS ARE ADMISSIBLE, NON-PROPENSITY**  
16 **EVIDENCE OF DEFENDANT'S IDENTITY**

17 Although evidence of other crimes is inadmissible to prove a person's character to show  
18 that he acted in conformity of that character, such evidence is admissible, among other reasons,  
19 for the purpose of establishing the identity of the perpetrator. See Quiriconi v. State, 96 Nev.  
20 766, 770 (1980). In Quiriconi, the Court noted that testimony of prior act evidence placing a  
21 defendant in the same car and with a similar firearm was admissible when the victim in the  
22 matter before the court had only seen the defendant on two occasions before the trial. In the  
23 instant matter, the other acts would greatly assist the jury in determining the identity of the  
24 defendant given the similar conduct involved especially considering that the occupant of the  
25 room had never seen Defendant before and only saw him briefing in the early morning hours  
26 before identifying him during a show-up. The State notes that the probative value of the  
27 evidence increased ten-fold when the occupant was unable to ID in open court during the  
28

1 preliminary hearing—understandable given the passage of time and limited interaction with  
2 Defendant.

3 Additionally, in Frisaura v. State, 96 Nev. 13, 14-16 (1980), the court further addressed  
4 situations in which other act evidence would be admissible in trial. The Court noted that when  
5 a proffered defense of mistaken identity is raised, evidence “very similar crimes” where the  
6 defendant was identified was admissible at trial. Id. In this matter, the occupant of the hotel  
7 room was unable to ID Defendant in open court. Testimony regarding “very similar crimes”  
8 where the Defendant was identified is admissible in the instant matter to prove that Defendant  
9 was the man who entered the hotel room that night.

10  
11 **4. EVIDENCE OF THE PRIOR ACTS ARE ADMISSIBLE, NON-PROPENSITY**  
12 **EVIDENCE OF DEFENDANT’S ABSENCE OF MISTAKE REGARDING THE**  
13 **BURGLARY IN THIS CASE.**

14 In Petrocelli v. State, 101 Nev. 46 (1985), the defendant was convicted of First Degree  
15 Murder and the death penalty was imposed. The Court affirmed the verdict. One issue raised  
16 on appeal concerned the admissibility of testimony relating to the prior killing of Petrocelli's  
17 girlfriend. Petrocelli had gotten into an argument with his fiancé and tried to drag her away  
18 from work; she refused and a struggle ensued. Petrocelli pulled out a gun and killed his fiancé  
19 in a flurry of shots; he claimed the death was accidental. After killing his fiancé, Petrocelli  
20 fled Washington and eventually ended up in Reno, Nevada. While test driving a vehicle in  
21 Reno, Petrocelli shot and killed the car dealer with the same gun used on his fiancé, robbed  
22 the victim, and hid the car dealer’s body under rocks and sagebrush. At trial for the murder  
23 of the car dealer, Petrocelli claimed he had gotten into an argument with the car dealer and as  
24 they struggled for the gun it went off two or three times. The Court held the testimony of the  
25 other act was properly admissible under NRS 48.045(2) to show absence of mistake or  
26 accident stating:

27 . . . that the "two killings with the same gun involving the same  
28 person, Mr. Petrocelli, who within a short period of time  
[committed both killings]" bore sufficient similarity to admit the  
evidence at trial.

101 Nev. at 50.

In United States v. DeLoach, 654 F.2d 763 (D.C.C.A. 1980), defendants were convicted for submitting false application for labor certification of an alien. The court allowed admission of testimony of three government witnesses, all undocumented immigrants, that defendant was a swindler who took their money with false promises to find them jobs and labor certifications. The testimony showed that defendant's swindling conduct occurred over a year and a half prior to the offense charged. The court held in 654 F.2d at 769:

These prior acts were instead introduced to show intent. In this case, where intent was the only real issue, and where appellant predictably raised the defense of mistake, the admissible bad acts evidence need not show incidents identical to the events charged, so long as they are closely related to the offense and tend to rebut the defense of mistake.

In this case, it became apparent at the preliminary hearing that Defendant intends to predictably raise a defense of mistake. This defense of mistake is quickly rebutted by the relevant and highly probative evidence of Defendant's nearly identical hotel room burglaries at the Excalibur and the Harrah's. For this reason, the Court should permit the State to admit evidence of the Excalibur burglary as it is necessary to rebut the deceiving defense of mistake or accident.

**5. EVIDENCE OF THE PRIOR ACTS ARE MORE PROBATIVE THAN PREJUDICIAL AND HAVE ALREADY BEEN PROVEN BY CLEAR AND CONVINCING EVIDENCE**

The State bears the burden of requesting the admission of the evidence and establishing its admissibility. Tavares v. State, 117 Nev. 725, 731, 30 P.3d 1128, 1131 (2001). To accomplish this task, the State must demonstrate, at a hearing outside the presence of the jury, that: "(1) the incident is relevant to the crime charged; (2) the act is proven by clear and convincing evidence; and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice." Rhymes v. State, 107 P.3d 1278, 1281 (2005); Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997).

For the foregoing reasons, the State has shown that the prior acts are relevant to show Defendant's intent, common scheme/plan, and absence of mistake. As follows, after a court

finds that evidence of other crimes does not violate NRS 48.045(2), the court must then review the evidence in regard to NRS 48.035. This statute requires a weighing of probative value against prejudicial effect. Tucker v. State, 82 Nev. 127 (1966). The court in Tucker then went on to state how the balancing of “probative vs. prejudicial” is to occur in 8 Nev. at 130:

The reception of such evidence is justified by necessity and, if other evidence has substantially established the element of the crime involved (motive, intent, identity, absence of mistake, etc.), the probative value of showing another offense is diminished, and the trial court should rule it inadmissible even though relevant and within an exception to the rule of exclusion.

As demonstrated above, the evidence of Defendant's intent and absence of mistake are not established by other substantial evidence. Therefore, evidence of the prior acts are necessary to establish the burglary-element of intent and to rebut the defense of mistake in the instant matter.

The State must also show by clear and convincing evidence that the defendant committed the other crime, Petrocelli v. State, *supra*. The State has attached the preliminary hearing transcripts of both matters. At that hearing, Defendant had the full opportunity for cross-examination and so it is properly relied upon to determine whether the prior acts are proven by clear and convincing evidence. Furthermore, Defendant has either been found guilty by a jury, or pleaded guilty—further establishing that the prior acts can be proven by clear and convincing evidence.

## CONCLUSION

Based on the aforementioned, this Court should grant the State's motion.

DATED this 11th day of April, 2019.

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

BY /s/ W.C. Rowles  
W.C. ROWLES  
Deputy District Attorney  
Nevada Bar #13577



1                                    CERTIFICATE OF ELECTRONIC TRANSMISSION

2                    I hereby certify that service of the above and foregoing was made this 11th day of April,  
3 2019, by electronic transmission to:

4                                    MICHAEL SANFT, ESQ.  
5                                    Email Address: michael@sanftlaw.com

6                                    BY: /s/ J. Georges  
7                                    Secretary for the District Attorney's Office

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1 CASE NO. C315125

2 DEPARTMENT NO. 1

3

4 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

5 COUNTY OF CLARK, STATE OF NEVADA

6

\* \* \* \* \*

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THE STATE OF NEVADA, )

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Plaintiff, )

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vs. )

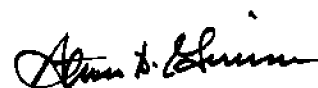
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JAMES HOWARD HAYES, JR., )

11

Defendant. )

12



CLERK OF THE COURT

CASE NO. 16F05242X

13

REPORTER'S TRANSCRIPT

14

OF

15

PRELIMINARY HEARING

16

BEFORE THE HONORABLE HOLLY STOBERSKI  
JUSTICE OF THE PEACE PRO TEMPORE

17

MONDAY, MAY 23, 2016  
9:00 A.M.

18

19

20 APPEARANCES:

21

For the State: WILLIAM ROWLES, ESQ.  
Deputy District Attorney

22

23

For the Defendant: TYLER GASTON, ESQ.  
Deputy Public Defender

24

25 Reported by: Shawna J. McIntosh, CCR No. 770

SHAWNA J. MCINTOSH, CCR NO. 770  
(702) 671-3464

## I N D E X

STATE OF NEVADA v. JAMES HOWARD HAYES, JR.

CASE NO. 16F05242X

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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STATE'S WITNESS:

David Travis	6	14	28	29
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DEFENSE WITNESSES:

(No Witnesses)	--	--	--	--
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<u>EXHIBITS MARKED AND ADMITTED:</u>	<u>Marked</u>	<u>Admitted</u>
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(No Exhibits)	--	--
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MISCELLANEOUS

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Closing Argument by Mr. Gaston.....	32
Rebuttal Argument by Mr. Rowles.....	34

\* \* \* \* \*

SHAWNA J. MCINTOSH, CCR NO. 770  
(702) 671-3464

1 LAS VEGAS, NEVADA, MAY 23, 2016

2 \* \* \* \* \*

3  
4  
5 THE COURT: This is the date and time  
6 scheduled for the preliminary hearing in the matter of  
7 James Howard Hughes, Jr., Case Number 16F05242X.

8 It's the Court's understanding that  
9 both parties are ready to proceed; is that correct?

10 MR. ROWLES: Yes, Your Honor.

11 And before the State calls its first  
12 witness, there are a few housekeeping matters that I'd  
13 like to put on the record. Do you want me to do that  
14 now?

15 THE COURT: Go ahead.

16 MR. ROWLES: Your Honor, I would just like to  
17 note for the record that the State did extend an offer  
18 to plead guilty to a Category B felony in this matter,  
19 16F05242X. The State would agree to make no  
20 recommendation at the time of sentencing. In  
21 addition, the State would agree to dismiss 13F10723X  
22 after rendition of sentence in this, which is also  
23 another Category B felony, and also another burglary  
24 charge that the defendant, Mr. Hayes, currently faces.

25 Additionally, I was provided video

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1 surveillance this morning. I have it. I informed  
2 defense counsel that I am in possession of the video  
3 surveillance. There are a number of copies that I'd  
4 like to sort out before I provide that over to him. I  
5 think what I have is a copy of each camera that was  
6 used. I did inform Mr. Gaston that I do not intend to  
7 use these, and I will provide these to him as soon as  
8 possible.

9 MR. GASTON: He actually -- he actually gave  
10 me a chance to view them this morning, too, if I  
11 wanted, and he was going to give me his copies. But I  
12 think that was all the copies, so he said he would go  
13 back to his office and send an e-mail and whatnot. I  
14 haven't had an opportunity to review them, just this  
15 morning, but I don't think that's a basis to continue  
16 the prelim. And he indicated that they're not going  
17 to be used in preliminary hearing.

18 MR. ROWLES: Yes.

19 THE COURT: Thank you.

20 How many witnesses does the State  
21 anticipate calling?

22 MR. ROWLES: One to two.

23 THE COURT: One to two.

24 MR. ROWLES: I believe this may be able to be  
25 done in one witness, Your Honor.

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1           THE COURT: Go ahead and call your first  
2 witness.

3           MR. ROWLES: The State's first witness would  
4 be David Travis, Your Honor.

5           MR. GASTON: And I'd just invoke the  
6 exclusionary rule at this point.

7           THE COURT: If there are any parties in the  
8 courtroom today that are anticipated to testify in the  
9 preliminary hearing or the trial in this matter, I'm  
10 going to ask you to please step outside until your  
11 name is called.

12          MR. ROWLES: I do believe, just for the  
13 record, there is one additional witness,  
14 Richard Lazo, who is in the courtroom. He will be  
15 present outside.

16          THE COURT: Great. Thank you.

17          MR. GASTON: Thank you, Your Honor.

18  
19 Whereupon,

20                         DAVID TRAVIS,  
21 having been first duly sworn to testify to the truth,  
22 the whole truth, and nothing but the truth, was  
23 examined and testified as follows:

24

25          THE CLERK: Please be seated. I'll have you

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1 state your name and spell it for the record.

2 THE WITNESS: My name is David Travis.

3 D-a-v-i-d. My last name is T-r-a-v-i-s.

4 THE COURT: Please proceed.

5 MR. ROWLES: Thank you, Your Honor.

6

7 DIRECT EXAMINATION

8 BY MR. ROWLES:

9 Q. Sir, how are you currently employed?

10 A. I'm the security investigator at Harrah's  
11 Las Vegas.

12 Q. And how long have you been employed?

13 A. I've been employed by Caesar's Entertainment  
14 for 15 years.

15 Q. Okay. Sir, I'd like to turn your attention  
16 to April 2, 2016. On that day were you employed by  
17 the Harrah's Hotel and Casino?

18 A. Yes, sir.

19 Q. And were you located at the Harrah's Hotel  
20 and Casino?

21 A. Yes, sir.

22 Q. And is that located here in Clark County,  
23 Nevada?

24 A. Yes, sir.

25 Q. Okay. What's the address?

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1           A.     3475 Las Vegas Boulevard South.

2           Q.     Sir, and were you working in your capacity as  
3 a security investigator on that day?

4           A.     Yes, sir.

5           Q.     And on that day, were you conducting an  
6 integrity check?

7           A.     Yes, sir.

8           Q.     And could you just briefly describe for the  
9 Court what an integrity check is?

10          A.     What we do is that we set up a room to make  
11 it look like an occupied room and place it with money  
12 and other valuable items in it. And then we'll leave  
13 the door open, ajar, to make it look like a guest may  
14 have forgot to close the door.

15          Q.     Okay. And where within the hotel were you  
16 conducting that integrity check?

17          A.     That would have been done on the Mardi Gras,  
18 9th floor.

19                 THE COURT REPORTER: I'm sorry. Mardi Gras?

20                 THE WITNESS: Mardi Gras.

21                 THE COURT REPORTER: Okay. Thank you.

22 BY MR. ROWLES:

23          Q.     And what is the Mardi Gras? Is that in one  
24 of the towers?

25          A.     That's the name of the towers we have. We

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1 have three -- we have two towers. We have the Mardi  
2 Gras tower and the Carnival tower.

3 Q. What rooms were you specifically occupying?

4 A. I believe it was Mardi Gras 946 and 948.

5 Q. Okay. And what room were you present in?

6 A. I believe I was in Mardi Gras 946.

7 Q. Okay. And so the -- the integrity check  
8 would have been in?

9 A. Mardi Gras 948.

10 Q. Okay. While conducting the integrity check,  
11 did you come into contact with anyone that you see  
12 here in the courtroom?

13 A. Yes, sir.

14 Mr. Hayes walked into our room about  
15 1:49 at night.

16 Q. You referenced Mr. Hayes. Can you please  
17 point to that individual and describe an article of  
18 clothing?

19 A. (Indicating) He's in the white suit, the  
20 gentleman in the white suit.

21 MR. ROWLES: Your Honor, may the record  
22 reflect the identification of the defendant?

23 MR. GASTON: No objection.

24 THE COURT: I just want to make sure that --  
25 the color of the suit.

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1 THE WITNESS: White or beige or --

2 THE COURT: Green perhaps?

3 THE WITNESS: Green.

4 THE COURT: All right. So noted.

5 THE WITNESS: The light colored suit.

6 THE COURT: The defendant has -- I  
7 apologize -- the witness has identified the defendant.

8 Thank you.

9 BY MR. ROWLES:

10 Q. You testified that you came into contact with  
11 Mr. Hayes while conducting the integrity check. Can  
12 you describe how you came into contact with the  
13 defendant?

14 A. What we do is that we set two cameras up  
15 inside the room. And one is on our luggage that we  
16 have on the wall inside, and the other one is on the  
17 door. We also have a camera in the hallway that we  
18 use.

19 Q. And these -- these cameras, during the  
20 integrity check, are you watching this in realtime?

21 A. Yes. We're watching it live from the  
22 observation room, which was Mardi Gras 946.

23 Q. And you're personally watching this; correct?

24 A. Yes. I am personally watching it at all  
25 times.

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1 Q. You referenced that in the integrity check  
2 room, 948, there was luggage. What was inside the  
3 luggage?

4 A. The luggage had a white ladies' wallet with  
5 \$350 in it, costume jewelry, and other ladies'  
6 articles of clothing.

7 Q. And the room, 948, is the door -- is it  
8 closed? Or ajar?

9 A. It's ajar. We leave it ajar.

10 Q. Okay. And so while you're conducting this  
11 integrity check, what do you see the defendant do?

12 A. He comes down the hallway. He sees the door  
13 open. He pushes the door. He walks into the room.  
14 He closes the door behind him. He comes up to our  
15 luggage. He looks in the luggage and sees the wallet,  
16 appears to see the wallet. Walks over to our  
17 electronics, but doesn't appear to touch the  
18 electronics. Goes back to the wallet.

19 MR. GASTON: I'm going to object at this  
20 point. It seems like he's giving a narrative. If he  
21 can just answer questions asked by the State.

22 THE COURT: I agree.

23 Mr. Travis, can you please make sure  
24 that you limit your answers --

25 THE WITNESS: Okay.

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1 THE COURT: -- to the questions that are  
2 asked? And the State's attorney will go ahead and ask  
3 you the appropriate questions.

4 THE WITNESS: Okay.

5 THE COURT: All right.

6 BY MR. ROWLES:

7 Q. We'll break this down step by step.

8 A. Okay.

9 Q. Sir, you mentioned that you saw the defendant  
10 approach the room?

11 A. Yes, sir.

12 Q. Did he enter the room?

13 A. Yes, sir. He pushed the door open and  
14 entered the room.

15 Q. And after he entered the room, where did he  
16 go?

17 A. He went over to the luggage.

18 Q. What did he do when he went to the luggage?

19 A. He looked at the luggage at that point but  
20 didn't touch anything at that second.

21 Q. What was inside the luggage?

22 A. A white ladies' wallet, clothing, and costume  
23 jewelry.

24 Q. So you're saying he didn't grab anything  
25 inside the luggage, he was just looking at it?

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1 A. At that time.

2 Q. What does he do after that?

3 A. He walked over to where we had electronics,  
4 an iPad, and another piece of reading material.

5 Q. What did he do when he was in that area?

6 A. He didn't touch that part of the item either.

7 Q. Okay. And so after he was looking at the  
8 electronics, what did he do?

9 A. He walked back over to the luggage, picked up  
10 the white wallet, took the money out of the white  
11 wallet, turned around, and put it into his left  
12 pocket, turned around and checked the costume  
13 jewelry -- checked through the jewelry, checked  
14 through the rest of the jewelry, and then closed the  
15 lid to the luggage.

16 Q. Okay. You referenced that he grabbed the  
17 money out of the wallet. How much money was there?  
18 How much money did you guys place in there before --

19 A. \$350.

20 Q. Okay. And so he placed that money -- where  
21 did you place that money?

22 A. The left front pocket of his pants.

23 Q. Okay. And then so he also -- you also  
24 mentioned that he looked at some jewelry; did he take  
25 any of the jewelry?

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1           A.    He didn't take any of the jewelry.

2           Q.    Okay.  What did he do after that?

3           A.    He went through the rest of the luggage, the  
4 ladies' luggage.  When he was done, he closed the lid.

5           Q.    After closing the lid, where did he go?

6           A.    He started heading out.  Once he opened the  
7 door, he exited.

8           Q.    Okay.  And so after he exited the room, was  
9 he subsequently detained by security officials?

10          A.    He was detained by security as soon as he  
11 opened the door to leave, yes, sir.

12          Q.    Did you -- after detaining the defendant, was  
13 Metro contacted?

14          A.    Yes, they were.

15          Q.    And did Metro respond?

16          A.    Yes, sir.

17          Q.    Were you present when Metro was speaking with  
18 the defendant?

19          A.    Yes, sir.

20          Q.    And did you observe anything at that time?

21          A.    Metro -- we searched him, read him his  
22 rights, searched him, and removed the money from his  
23 left pocket.  And they verified the money with our  
24 photo copies.

25          Q.    And did you personally observe the money that

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1 was confiscated from the defendant?

2 A. Yes, sir.

3 Q. And was that the money that you placed in the  
4 luggage?

5 A. Yes, sir.

6 Q. Sir, did -- with regards to Room 248, who was  
7 the registered occupant of that room?

8 A. Do you mean 948? That would have been --

9 Q. 948.

10 A. It was under a fictitious name. And it was  
11 my room, but we used a different name in case an  
12 employee is involved.

13 Q. And did you give the defendant permission to  
14 enter Room 948?

15 A. I did not.

16 MR. ROWLES: Court's indulgence, Your Honor.

17 (Pause in proceedings)

18 MR. ROWLES: I'll pass the witness,  
19 Your Honor.

20 THE COURT: Cross-examination.

21

22 CROSS-EXAMINATION

23 BY MR. GASTON:

24 Q. Where do you work, again?

25 A. Harrah's Las Vegas.

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1 Q. And how long have you been working there?

2 A. I've been at Harrah's Las Vegas for 15 -- for  
3 13 years. Excuse me.

4 Q. What's your job title?

5 A. Security investigator.

6 Q. What does that mean?

7 A. I'm responsible for investigating any crimes  
8 or activities -- illegal activities on property.

9 Q. Okay. And you call this an "integrity  
10 check"; correct?

11 A. Yes, sir.

12 Q. What it really is, is, like, kind of, a bait  
13 operation; right?

14 THE COURT REPORTER: I'm sorry. Could you  
15 please repeat that?

16 BY MR. GASTON:

17 Q. What it really is, kind of, like, a bait  
18 operation; right?

19 A. You can call it that. Yes, sir.

20 Q. So you guys essentially set up bait and watch  
21 it on cameras and wait for someone to come and take  
22 it; right?

23 A. Yes, sir.

24 Q. Okay. About how many of these integrity  
25 checks, just a guesstimate, would you say you've done?

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1 MR. ROWLES: Objection, Your Honor.  
2 Relevance.

3 MR. GASTON: I think it goes to their  
4 procedures, and it goes to what their actions are and  
5 whatnot.

6 THE COURT: I'm going to overrule the  
7 objection.

8 THE WITNESS: I have done probably --  
9 probably a dozen of them

10 BY MR. GASTON:

11 Q. A dozen of them. Okay.

12 And that's over about 13 years?

13 A. No, sir. That's over the last 4 years  
14 probably.

15 Q. Okay. Is there a reason you didn't do any of  
16 them prior to 4 years ago?

17 A. Before I was an investigator, I was only a  
18 supervisor.

19 Q. So --

20 A. I've been an investigator for 4 years.

21 Q. So it just wasn't your job function?

22 A. Yes, sir.

23 Q. But the security office itself was still  
24 doing integrity checks; right?

25 A. Excuse me?

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1 Q. The security office itself --

2 A. The security department, yes, sir.

3 THE COURT REPORTER: I need you to both go  
4 one at a time, please.

5 MR. GASTON: I'm sorry.

6 THE COURT REPORTER: Thank you.

7 BY MR. GASTON:

8 Q. How many -- how many cameras did you set up  
9 in the room?

10 A. I had two in the room and one in the hallway.

11 Q. Okay. And did you provide all of that  
12 surveillance video to the State?

13 A. Yes, I did.

14 Q. Is that the surveillance video that you --

15 A. There is two copies of each. I could show  
16 you which ones are which.

17 Q. That's okay.

18 A. There is two copies of each. Yes, sir.

19 Q. So they should have gotten six disks; right?

20 A. Actually -- sorry -- actually, the video is  
21 small enough that they were put on the same disk, and  
22 then you have the interviewing disk. So you've got  
23 three cameras on one disk and they each have a  
24 separate disk.

25 Q. Okay. How many people were in this room

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1 watching the video?

2 A. Three of us.

3 Q. And who were those people?

4 A. It was myself, Richard Lazo, and then  
5 Anthony Maliwat.

6 Q. Okay. And what were the items set up in the  
7 room again? You have ladies' luggage; right?

8 A. Ladies' luggage.

9 Q. And what's in there, just clothing items?

10 A. We have two suitcases, ladies' luggage, with  
11 clothing in it.

12 Q. Okay.

13 A. Costume jewelry, various hygiene products.  
14 There's a ladies' wallet in this case and the money.  
15 We also had an iPad, and a reading device that was on  
16 the table.

17 Q. What's a reading device?

18 A. This one -- this device I used was a  
19 hearing-impaired reading device.

20 Q. So, if you know, what's the approximate value  
21 of the costume jewelry?

22 A. I haven't -- can't answer. I don't know.

23 Q. Okay. If you know, what's the approximate  
24 value of the wallet itself?

25 A. The wallet we valued at \$25.

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1 Q. Okay. Was there anything else in the wallet  
2 other than just cash?

3 A. There was gift cards or -- correction -- it  
4 was, I guess, a Smiths, kind of, reward card. There  
5 was also a Sam's Club card. There was some -- a fake  
6 ID in there that we used. And there was also other  
7 items inside the bait that made it look like a real  
8 wallet.

9 Q. Were there any credit cards inside?

10 A. No, sir. We don't use credit cards in that  
11 wallet.

12 Q. Any actual gift cards?

13 A. No, sir. Nothing with actual value in it.

14 Q. If you know --

15 A. Besides the money.

16 Q. If you know, let's talk about the suitcase  
17 that has the clothing inside. What is the approximate  
18 value of that suitcase?

19 A. \$20, approximately.

20 Q. What about the other suitcase?

21 A. Probably about \$10.

22 Q. Okay. What about the clothing inside?

23 A. I can't answer that.

24 Q. Okay. Excuse me. I'm sorry. I'm not  
25 feeling very well.

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1                   What's the approximate value of the  
2 iPad?

3           A.     That iPad was valued at \$200.

4           Q.     Okay. What about the hearing-impaired  
5 reading device?

6           A.     I don't have a value on that, sir.

7           Q.     So originally the defendant looked through  
8 the luggage; right?

9           A.     Yes, sir.

10          Q.     And he looked through the wallet; right?

11          A.     He doesn't look -- he looks at the luggage  
12 originally, but doesn't go through it until he comes  
13 back to it.

14          Q.     Okay. So when is the first time he saw the  
15 wallet?

16          A.     That would be speculative. I'm assuming he  
17 saw it when he first walked by.

18          Q.     Okay. So he walked by the wallet. He didn't  
19 take it out at that point; right?

20          A.     No.

21          Q.     He goes and he looks at the iPad and the  
22 electronic devices; right?

23          A.     Yes, sir.

24          Q.     But he didn't try to pocket any of those or  
25 anything; right?

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1       A.    No, sir.

2       Q.    He didn't try to conceal them under his shirt  
3 or his jacket or something like that?

4       A.    No, sir.

5       Q.    And he didn't take anything else from the  
6 room; right?

7       A.    No, sir.

8       Q.    So then he goes back to the luggage; right?

9       A.    Yes, sir.

10      Q.    And then he checked the wallet?

11      A.    Yes, sir.

12      Q.    At that point he sees the cash inside?

13      A.    Yes, sir.

14      Q.    And he takes the cash?

15      A.    Yes, sir.

16      Q.    But he doesn't take anything else from the  
17 wallet; right?

18      A.    No, sir.

19      Q.    And he doesn't take anything from the  
20 luggage; right?

21      A.    No, sir.

22      Q.    So nothing else was taken from the room other  
23 than the cash?

24      A.    Correct.

25      Q.    What exactly happens when someone falls for

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1 your integrity check?

2 A. I --

3 Q. What do -- what do you do when you --

4 A. We --

5 Q. -- the room, what do you do?

6 A. -- we arrest them. We detain them.

7 Q. And you have authority to do that?

8 A. Yes, sir.

9 Q. So what does that mean? What do you do?

10 A. We detain them, we bring them down, and we  
11 call Metro.

12 Q. Do you place them in handcuffs?

13 A. Yes, sir.

14 Q. Do you guys have handcuffs?

15 A. Yes, sir.

16 Q. And you guys -- and it's your understanding  
17 that the law allows you to handcuff the individual?

18 A. Yes, sir.

19 Q. And detain them?

20 A. Yes, sir.

21 Q. Which means prevent them from leaving?

22 A. Yes, sir.

23 Q. And you put them in, kind of, a room, or what  
24 do you do with them?

25 A. We put them in the room, sir, and wait for

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1 Metro.

2 Q. And then you said you call Metro?

3 A. Yes, sir.

4 Q. And then Metro comes out and does what they  
5 do; right?

6 A. Yes, sir.

7 Q. Okay. If you know, you've had some  
8 experience with this job function. You were a  
9 supervisor before this; right?

10 A. Yes, sir.

11 Q. So, if you know, I'm not asking you to guess,  
12 but if you know, why do you guys do this operation  
13 instead of Metro doing the operation?

14 MR. ROWLES: Objection, Your Honor.  
15 Relevance.

16 MR. GASTON: I think it's relevant to an  
17 entrapment defense on statute because we're going to  
18 talk about whether it's a state action or not. And  
19 because the first element of entrapment is government  
20 instigation. And in this case if we want to go with  
21 an entrapment defense, we have to show government  
22 instigation. In this case I think security is so  
23 intertwined with Metro and especially its operations  
24 as to amount to state action. So I'm trying to follow  
25 and develop that.

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1 MR. ROWLES: Your Honor, if I may respond?

2 THE COURT: Yes.

3 MR. ROWLES: Your Honor, what we're here for  
4 is the preliminary hearing. It's the justice court's  
5 jurisdiction to determine whether or not there's  
6 slight or marginal evidence that a crime was committed  
7 and this defendant committed the crime. Any  
8 constitutional issues are best left to the district  
9 court. And on that, I'll submit it.

10 MR. GASTON: If I can respond?

11 A couple points. Number one,  
12 constitutional issues are relevant in justice court.  
13 There are statutes on point, they are the subject of  
14 litigation, and there's disagreement among various  
15 justice courts. Judge Lippis is under the position,  
16 which she's made very clear, that she does consider  
17 justice court to have jurisdiction on constitutional  
18 issues.

19 Additionally, the confrontation clause  
20 doesn't apply to preliminary hearings in Nevada;  
21 however, in Colorado it does. And when deciding that,  
22 the Nevada Supreme Court ultimately decided that when  
23 we do a preliminary hearing in Nevada, we give  
24 attorneys much more leeway on the questioning and  
25 whatnot, rather than Colorado, which is one reason why

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1 the confrontation clause doesn't apply at prelim, but  
2 it would apply at Colorado. And on that, I'd submit.

3 THE COURT: I'm going to go ahead and  
4 overrule the objection and allow Mr. Gaston to  
5 continue questioning.

6 MR. GASTON: Thank you.

7 BY MR. GASTON:

8 Q. If you know -- if you know, in your  
9 experience and whatnot, is there a reason that you  
10 guys conduct these operations instead of just letting  
11 Metro try to do it?

12 A. I have no clue, sir. We have always done  
13 them.

14 Q. You have always done them?

15 A. Well, yes, sir. As long as I've been around.

16 MR. GASTON: Court's indulgence.

17 (Pause in proceedings)

18 BY MR. GASTON:

19 Q. Now, you said that you didn't give him  
20 permission to enter the room; correct?

21 A. Correct.

22 Q. Do you know if any of the other people gave  
23 him permission to enter the room?

24 A. No one gave him permission to enter our room.

25 Q. But, I mean, you don't know for sure, though;

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1 right?

2 A. I know for sure. No one gave him permission  
3 to enter my room.

4 Q. Okay. How do you know that nobody gave him  
5 permission to enter the room?

6 A. Because only three people knew it was our  
7 room. And it was -- I was sitting in the room all by  
8 myself. And in order to enter the room, someone had  
9 to give him permission; for example, if you don't have  
10 your key, you don't have whatever, we send an officer  
11 up to do a check, we verify through the front desk  
12 that your name is correct, and then we have you enter  
13 the room.

14 Q. We can agree, though, it's possible that some  
15 other individual told him, Hey, my money's up in that  
16 room. Will you go get it for me? Right?

17 A. I don't know that, sir.

18 Q. You don't know one way or the other?

19 A. I don't know.

20 Q. You said you've done about 12 or 13 integrity  
21 checks?

22 A. Approximately, that many, yes, sir.

23 Q. And in those 12 or 13 times, how many times  
24 did somebody not enter the room?

25 A. (No verbal response)

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1 Q. So you guys just sat there and, kind of,  
2 watched TV for a while?

3 A. Probably -- probably four sets.

4 Q. I'm sorry?

5 A. Probably four -- four sets.

6 Q. How long do you run the operation until you  
7 guys, kind of, give up?

8 A. We have a set period of time depending on  
9 what shift we're looking at. At this operation, for  
10 this one, was 16 hours.

11 Q. And about how long -- you were into the  
12 operation for about 16 hours before my client entered  
13 the room?

14 A. Not -- no. We were only on this -- this  
15 one before he walked into the room was 10 hours,  
16 10 1/2 hours.

17 Q. So then you took care of all of the stuff you  
18 had to do with him, and then you resume the operation?

19 A. Yes, sir.

20 Q. Did anyone else get arrested that day  
21 entering that room?

22 A. No, sir.

23 Q. Did anyone else try to enter that room?

24 A. No, sir.

25 Q. He never actually left the room, though;

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1 correct? With the property?

2 A. He opened the door. And as soon as he opened  
3 the door, we detain him right as he was leaving the  
4 room. Yes, sir.

5 Q. Okay. So as soon as he opened the door, you  
6 guys rushed in?

7 A. Yes, sir.

8 MR. GASTON: No further questions.

9 THE COURT: Redirect?

10

11 REDIRECT EXAMINATION

12 BY MR. ROWLES:

13 Q. Sir, you work for the Harrah's Hotel and  
14 Casino; is that correct?

15 A. Yes, sir.

16 Q. And is that a private corporation?

17 A. It's --

18 MR. GASTON: Objection. Foundation. If he  
19 knows.

20 THE COURT: I'm going to sustain the  
21 objection.

22 BY MR. ROWLES:

23 Q. Were you directed by the Metropolitan Police  
24 Department to conduct this operation?

25 A. No, we were not.

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1 Q. When you observed the defendant enter the  
2 room, did he use a room key?

3 A. No, sir.

4 Q. Did he punch in a code?

5 A. No, sir.

6 Q. When he was subsequently detained, did he  
7 present the room key to you?

8 A. No, sir.

9 Q. Did he present a receipt showing access --  
10 that he had purchased the room?

11 A. No, sir.

12 MR. ROWLES: I'll pass the witness,  
13 Your Honor.

14 MR. GASTON: Really brief recross.  
15

16 RECROSS-EXAMINATION

17 BY MR. GASTON:

18 Q. Did he say anything to you? When you  
19 arrested him, did he say anything to you?

20 A. I don't remember the conversation we might  
21 have had up in the hallway.

22 Q. But he didn't -- but it's your understanding  
23 that you don't remember whether he said anything or  
24 not?

25 A. I was -- I was the one watching the camera.

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1 The officer detained him. But he didn't say nothing  
2 to me at the hallway or in the hallway.

3 Q. If he had said something, like a reason for  
4 entering the room or vice versa, if he said anything  
5 admitting that he was trying to steal stuff, you would  
6 have put that into your report; correct?

7 A. I would. If he said something before we took  
8 him down, yes, sir. And I don't remember the  
9 conversation in the interview room, but the interview  
10 room was recorded.

11 Q. I'm sorry?

12 A. I don't remember the conversation we had with  
13 him in the interview room, but the interview room is  
14 recorded.

15 Q. All right. Thank you.

16 Do we have video surveillance of that  
17 interview?

18 A. Yes, you do.

19 Q. And you provided that to the State?

20 A. Yes, sir.

21 MR. GASTON: No further questions.

22 THE COURT: Great. Thank you.

23 Mr. Travis, a quick point. You  
24 indicated that you personally provided those CDs?

25 THE WITNESS: Yes, ma'am.

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1           THE COURT: And just as a housekeeping thing,  
2 can you, just by looking at them, tell them what is  
3 what?

4           THE WITNESS: Yes, ma'am.

5           MR. ROWLES: Your Honor, I think I know where  
6 you're going with this. I was going to have  
7 Mr. Travis wait a little bit so that he can sort these  
8 out, and then provide them to the defense.

9           THE COURT: Okay. All right.

10          MR. GASTON: And I think he's going to do  
11 that.

12          THE COURT: I thought that as long as he's  
13 here.

14          THE WITNESS: They're marked. I can do it,  
15 yes, ma'am.

16          THE COURT: All right. Great. Thank you.  
17 Neither side has any further questions. Thank you for  
18 your time.

19          THE WITNESS: Thank you.

20          THE COURT: State, are there any other  
21 witnesses that you wish to present at this time?

22          MR. ROWLES: No, Your Honor. I'll rest.

23          THE COURT: Great. Thank you.

24                   Does the defense have any witnesses  
25 that it wishes to put on?

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1           MR. GASTON: No, Your Honor. I've advised my  
2 client of his right to testify. Based on my advice,  
3 he's going to decline to do so today. And the defense  
4 would rest.

5           THE COURT: Great.

6                     Mr. Hayes, I just want to make sure  
7 that information is correct. You have been informed  
8 by your counsel that you have the right to testify and  
9 the right to remain silent and that cannot be held  
10 against you?

11           THE DEFENDANT: Yes, ma'am.

12           THE COURT: Do you understand that?

13           THE DEFENDANT: Yes, ma'am.

14           THE COURT: And you've elected not to  
15 testify; is that correct?

16           THE DEFENDANT: Yes, ma'am.

17           THE COURT: Great. Thank you.

18                     The Court is ready to hear closing  
19 arguments.

20                     State.

21           MR. ROWLES: Submit and reserve, Your Honor.

22           MR. GASTON: Court's indulgence.

23                     (Pause in proceedings)

24           MR. GASTON: Your Honor, at this time I'm  
25 going to move to dismiss this case. I don't think

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1 they've met their burden of probable cause to show  
2 that when he entered the room, he intended to commit a  
3 larceny. We've heard about what he did when we was  
4 actually in the room. We've also heard it was, kind  
5 of, a bait set up. He originally didn't take the  
6 wallet when he first saw it. He didn't take the  
7 electronic devices when he had the opportunity to do  
8 so. He didn't take any jewelry. He didn't take  
9 anything else. Ultimately, yes. Did he give into  
10 temptation? According to the evidence and light most  
11 favorable to the State, did he give into temptation  
12 and take the cash? Yes, he did. But there's nothing  
13 to show that he intended to do so when he entered the  
14 room.

15                   Now, I know that officer said he  
16 didn't give him specific permission to enter that  
17 room, but he doesn't know if someone else might have  
18 told him to go get the cash for him in the room  
19 because they're gambling downstairs or what his reason  
20 was for going into the room. The State didn't present  
21 any evidence to show the intent. If he had been  
22 charged with petty larceny here or theft or something,  
23 then they would be in a different situation. But they  
24 have to show his intent when he enters the room, and  
25 all they have to do so is his eventual actions. And I

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1 think that's pretty -- that's countered by the fact  
2 that he didn't take the cash when he first entered the  
3 room. He didn't take everything. In fact, it shows a  
4 man who was looking for -- we don't know what he was  
5 doing, but when he was in that room, he ultimately  
6 gave in to temptation. But he still only took the  
7 cash. An iPad is obviously valuable, and he didn't  
8 take that. And on that, I would submit.

9 MR. ROWLES: Your Honor, the question with  
10 which the defendant enters with any intent is a  
11 question left for the jury. I will touch briefly upon  
12 this right now. With regards to any affirmative  
13 defense with regard to entrapment, that is an  
14 affirmative defense. That's a question for the jury,  
15 not for here.

16 Intent, the crime is completed for  
17 burglary when he enters the room. You're well aware.  
18 Defendants don't enter rooms saying, I am here to  
19 commit larceny. You look at the circumstances and  
20 conduct before, during, and after. In fact, even the  
21 mere fact that a crime was committed after entry is  
22 sufficient to prove intent with regards to that. And  
23 the fact that it's a question that's left for the  
24 ultimate trier of fact, the jury, I'll submit it,  
25 Your Honor.

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1 THE COURT: Great. Thank you.

2 Mr. Hayes.

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: The Court having heard the  
5 evidence that's been presented, including the  
6 testimony of Mr. David Travis in this matter, finds  
7 that at this time the State has met its burden by  
8 establishing by slight or marginal evidence that the  
9 crime of burglary occurred in this matter. We're  
10 going to bind this case over to district court. You  
11 are to appear in district court to answer these  
12 charges on the date that we provide you.

13 THE CLERK: June 1st, 10 a.m., lower level,  
14 district court arraignment.

15 (Proceedings concluded)

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17  
18 Attest: Full, true, and accurate transcript of  
19 proceedings.

20  
21 /s/ Shawna J. McIntosh

22 Shawna J. McIntosh, CCR No. 770

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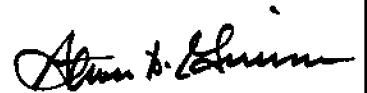
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SHAWNA J. MCINTOSH, CCR NO. 770  
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CLERK OF THE COURT

TRAN

Case No. C-16-315718-1

Dept. 5

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP  
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA, )

Plaintiff, )

vs. )

JAMES HOWARD HAYES, )

Defendant. )

PRELIMINARY HEARING  
JC Case No. 13F10723X

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE JUDGE CYNTHIA CRUZ, JUSTICE OF THE PEACE  
Tuesday, June 14, 2016, 9:00 a.m.

APPEARANCES:

For the State: Michael Dickerson, Esq.  
Deputy District Attorney

For the Defendant: Kelli DeVaney-Sauter, Esq.  
Deputy Public Defender

REPORTED BY: BILL NELSON, RMR, CCR No. 191

## I N D E X

WITNESS	DR	CR	RDR	RCR
Joshua Jarvis	5	21	31	

1 LAS VEGAS, NEVADA; TUESDAY, JUNE 14, 2016

2  
3 P R O C E E D I N G S  
4

5 THE COURT: Let's get everybody moving.

6 And we're going to get going on James Howard  
7 Hayes, unless we have a final resolution.

8 All right. So let's transport the in-custodies  
9 out, so that we can get going on the preliminary  
10 hearing.

11 James Howard Hayes, 13F10723X.

12 He's present out of custody with the assistance  
13 of the Public Defender.

14 This is the time and date set for the preliminary  
15 hearing.

16 MS. DEVANEY-SAUTER: Your Honor, the Defense is  
17 ready to proceed.

18 MR. DICKERSON: The State's ready to proceed,  
19 Your Honor.

20 THE COURT: All right. Any preliminary motions  
21 to make at this particular juncture?

22 MS. DEVANEY-SAUTER: Your Honor, I would ask the  
23 exclusionary rule be invoked at this time.

24 THE COURT: Counsel invoked the exclusionary  
25 rule.

1 All witness, aside from the State's first  
2 witness, please step outside the courtroom.

3 State, call your first witness.

4 MR. DICKERSON: The State's first witness is  
5 Joshua Jarvis.

6 THE MARSHAL: Please step up to the witness  
7 stand.

8 Remain standing, and face the clerk to be sworn.

9

10 **JOSHUA JARVIS,**

11

12 who, being first duly sworn to tell  
13 the truth, the whole truth, and  
14 nothing but the truth, was examined  
15 and testified as follows:

16 THE CLERK: Please be seated.

17 Please state your full name, spelling both your  
18 first and last name for the record.

19 THE WITNESS: Joshua Jeremiah Jarvis,  
20 J-o-s-h-u-a, last name Jarvis, J-a-r-v-i-s, middle name  
21 Jeremiah, J-e-r-e-m-i-a-h.

22

23

24

25

- - - -

**DIRECT EXAMINATION OF JOSHUA JARVIS**

BY MR. DICKERSON:

Q. Mr. Jarvis, on April 9th, 2013 were you here in Las Vegas on vacation?

A. Yes.

Q. And at that point in time were you staying at the Excalibur Hotel casino?

A. Yes, I was.

Q. Located at 3850 south Las Vegas Boulevard?

A. That's correct.

Q. And specifically that is here in Clark County, Nevada?

A. Yeah.

Q. And the room that you were staying in was room 17151?

A. I believe so.

I'm not -- It was a while ago, I'm not sure exactly.

Q. That rings a bell to you?

A. Yes.

Q. At that point in time in the morning hours of April 9th, 2013 where were you?

A. I was in the room the whole time.

Q. In that hotel room?

1 A. Yes.

2 Q. At the Excalibur Hotel?

3 A. That's correct.

4 Q. The one you were staying in?

5 A. Yes.

6 Q. And did something out of the ordinary happen in  
7 the early morning hours of April 9th, 2013?

8 A. I heard some rattling, which was kind of  
9 upsetting because my sister and her friends were out, so  
10 I was guessing it was them, until I saw him in the room,  
11 and I was wondering if if he was with the people I was  
12 with -- on vacation with, and then I noticed that there  
13 was no one else there besides him, so that's when I got  
14 up, and he proceeded to run out the door -- or tried to  
15 run out the door.

16 Q. Okay. So you're saying, he, you saw he in the  
17 room.

18 Who are you referring to?

19 A. James, that guy right there.

20 MR. DICKERSON: Your Honor, if the record could  
21 reflect, the witness just identified the Defendant?

22 THE COURT: It will.

23

24

25



1 BY MR. DICKERSON:

2 Q. So the Defendant is the individual you saw in  
3 your room?

4 A. That's correct.

5 Q. And in the -- early in the morning?

6 A. That's correct.

7 Q. What did you happen to see when you wake up?

8 A. I just heard rattling, I saw him going through  
9 luggage.

10 I kind of yelled at him, and then he ran through  
11 the door.

12 I ran towards him.

13 He didn't seem to be aggressive at all.

14 I turned around, patted him down, and then I took  
15 his wallet out. At that time I told him to sit down on  
16 the bed and put the license right in front of the camera  
17 and took a picture of him.

18 Q. Okay. So we'll get to all of that.

19 Firstly, who were you staying with in the hotel  
20 room?

21 A. It was my sister, her friend, which was in the  
22 hotel room, she was pretty much knocked out, and my  
23 girlfriend at the time.

24 Q. Okay. What is your sister's name?

25 A. Jessica Jarvis.

1 Q. And what is -- or what was your girlfriend at the  
2 time, her name?

3 A. Misty Mustafa.

4 Q. And you were staying with both of them in that  
5 room 17151?

6 A. That's correct.

7 Q. Now, it's approximately 7:05 a.m. when these  
8 events start?

9 A. That's correct.

10 Q. Who's in the room at that point in time?

11 A. At that time it was just me and my sister's  
12 friend, Daisy.

13 Q. Daisy is who?

14 A. My sister's friend, she's the third person that  
15 was on vacation with us.

16 Q. Okay. Is she staying in that room?

17 A. Yes, that's correct.

18 Q. And are you guys awake?

19 A. I was awake the whole time.

20 She was asleep.

21 Q. So were you awake prior to this event, or asleep?

22 A. Negative.

23 I was asleep.

24 Q. So at approximately 7:05 a.m. you hear something?

25 A. That --

1 Q. What exactly does it sound like?

2 A. Just rustling around under -- I didn't hear any  
3 door open, just really sounds I'm not accustomed to  
4 because usually my sister's -- or her friends come in  
5 really loud.

6 Q. Okay. So it was quiet?

7 A. Yes, it was quiet.

8 Q. Rustling?

9 A. Yes.

10 Q. Where did you hear that sound coming from?

11 A. From like the lower end of my bed towards the  
12 wall.

13 Q. Okay. What -- or where is this area?

14 A. When you walk in, there's the dresser with the  
15 TV.

16 When you first walk in, that's where tall luggage  
17 was at.

18 So it's like there's two beds, and then the  
19 hallway is right there at the end of the bed next to the  
20 wall, next to the TV.

21 Q. Okay. And the luggage was next to the wall.

22 Is there a window there as well?

23 A. Negative.

24 Q. If you could, describe the room from the point of  
25 entry from the door, could you do that for the Court?

1       A.   Standing up or --

2       Q.   No, describing if you're looking into the room  
3   from the door to the room.

4       A.   When you look into the room, there's a window  
5   facing 12:00.

6           To the right side there's two beds.

7           As soon as you pass the hallway, there's a TV on  
8   the left side, just before you get to the window, and  
9   there's luggage right before you get to the TV.

10       Q.   Okay.  So the luggage was directly in front of  
11   the bed?

12       A.   That's correct.

13       Q.   And is that the bed you were sleeping on?

14       A.   Yes.

15       Q.   Was the individual you identified as Daisy, was  
16   she also sleeping in that bed?

17       A.   Negative.

18           On the bed to the right of me.

19       Q.   Was there anybody else sleeping in that room?

20       A.   Negative.

21           Just me and her.

22       Q.   Okay.  Now, when you wake up, what was the first  
23   thing you see?

24       A.   I see him going through the luggage, that's the  
25   first thing I see.

1 Q. The Defendant?

2 A. Yes.

3 Q. So you see the Defendant going through luggage  
4 that you identified as being at the foot of your bed?

5 A. That's correct.

6 Q. Can you see what part of his body at this point  
7 in time?

8 A. I just saw his back, didn't see his face.

9 Q. Okay. And what did he look like at that point in  
10 time?

11 A. At that point in time?

12 I don't really understand.

13 Q. What did you see, what did you recognize the  
14 individual to be?

15 A. Just a guy, older male, going through my luggage,  
16 or my sister's luggage.

17 Q. Did you recognize him?

18 A. Not from any time frame when we were in Vegas,  
19 no.

20 That was the first time I ever seen him, when he  
21 went into the hotel room.

22 Q. So you didn't know the Defendant before  
23 approximately 7:05 a.m. on April 9th, 2013?

24 A. No.

25 Q. And when you wake up, you see this, what do you

1 do?

2 A. I just freaked out, just reacted and asked who he  
3 is.

4 Q. What did he say?

5 A. He just stared at me and made a run for the door.

6 Q. What did you do?

7 A. I ran to the door to stop him, and at that time  
8 he wasn't aggressive at all.

9 Q. How was it that you stopped him?

10 A. Just turned him around, patted him down, and then  
11 at the bed sat him down at the bed, and he said, sorry.

12 MS. DEVANEY-SAUTER: Objection, Your Honor.

13 Narrative.

14 MR. DICKERSON: I don't believe so.

15 THE COURT: Overruled.

16 BY MR. DICKERSON:

17 Q. Go ahead, sir.

18 So you stopped him how?

19 A. I stopped him before he got to the door and then  
20 just patted him down, and then as soon as I patted him  
21 down I took his wallet out, took a picture with the  
22 phone.

23 Q. So he's heading towards the door, you have to  
24 grab him, you get in front of him?

25 A. I get in front of him.

1 Q. And as soon as you get in front of him what does  
2 he do?

3 A. He wasn't aggressive, just --

4 Q. He just stopped?

5 A. He just stopped.

6 Q. And then you took the steps to pat him down?

7 A. That's true.

8 Q. How did you pat him down?

9 A. Just from left to right, and then took his wallet  
10 out, and took his ID out, and took a picture.

11 Q. Was he facing you, or facing away from you, when  
12 you patted him down?

13 A. I'm pretty sure he was facing away from me at the  
14 beginning.

15 Q. Okay. So you had him turned away from you when  
16 you patted him down?

17 A. That's correct.

18 Q. And while you're patting him down, you take his  
19 wallet out?

20 A. That's correct.

21 Q. And once you take his wallet out, do you see  
22 whether there's any identification in that wallet?

23 A. Yes, that's correct.

24 Q. And did you retrieve that identification?

25 A. That's correct.

1 Q. Did you recognize that identification as a Nevada  
2 driver's license?

3 A. From the picture, yeah.

4 Q. The picture you took?

5 A. That's correct.

6 Q. So you say you pulled the wallet out, pulled the  
7 ID out, then you take a picture.

8 What do you take a picture with?

9 A. With my phone.

10 Q. Your cell phone?

11 A. That's correct.

12 Q. It has a standard camera on it?

13 A. That's correct.

14 MR. DICKERSON: I'm going to ask to approach,  
15 Your Honor.

16 I'll be showing him State's Proposed Exhibit a  
17 and 2.

18 MS. DEVANEY-SAUTER: No objection, Your Honor.

19 MR. DICKERSON: I've already shown this to  
20 Defense counsel.

21 THE COURT: Go ahead.

22 BY MR. DICKERSON:

23 Q. Sir, take a look at State's Proposed Exhibits 1  
24 and 2.

25 Do you recognize these two documents?



1 A. That's correct.

2 Q. Okay.

3 A. I also seen that she was sleeping over there the  
4 whole time.

5 Q. How do you recognize first State's Exhibit 1,  
6 what do you recognize it to be?

7 A. This is what I took the picture of and told him  
8 to sit down, and this --

9 Q. So State's Exhibit 1 is a picture you took?

10 A. That.

11 Q. Of the Defendant?

12 A. Yes, that's correct.

13 Q. And State's Exhibit 2, do you recognize this?

14 A. Yeah, I took that picture as well. It has my  
15 finger on it.

16 MR. DICKERSON: Okay. The state moves for  
17 admission of State's Exhibit 1 and 2, Your Honor.

18 MS. DEVANEY-SAUTER: No objection.

19 THE COURT: 1 and 2 will be admitted for the  
20 purposes of the preliminary hearing only.

21 BY MR. DICKERSON:

22 Q. First we'll go into State's Exhibit 1, which is  
23 right there in front of you.

24 What is that?

25 A. That's a picture of him on the bed with me taking

1 a picture of his driver's license that I took out of his  
2 pocket.

3 Q. So the foreground is that the Defendant's  
4 driver's license?

5 A. That's correct.

6 Q. That's the driver's license you pulled out of his  
7 wallet?

8 A. Yeah.

9 Q. All right. And in the background sitting on the  
10 bed, who is that?

11 A. That's my sister's friend Daisy.

12 Q. Sitting on the bed?

13 A. Sitting on the bed is the Defendant.

14 Q. That's that same individual you identified today  
15 as being in your room?

16 A. Yes.

17 Q. And this is the picture you took of him in your  
18 room?

19 A. That's correct.

20 Q. How long after you awoke was it you took this  
21 picture?

22 A. I want to say, within like five to ten minutes.

23 Q. Okay. And at that point in time did you also  
24 take another picture?

25 A. Yes, I did.

1 Q. Looking at State's Exhibit 2, is that the other  
2 picture that you took?

3 A. That's correct.

4 Q. What is that a picture of?

5 A. His driver's license.

6 I took a second picture because I wasn't sure if  
7 the first picture was good.

8 Q. So you took the second picture, so you could get  
9 a better view of the license?

10 A. That's correct.

11 Q. And, in fact, this was the same license you  
12 pulled out of the Defendant's wallet?

13 A. That's correct.

14 Q. You see the Defendant's name on that license?

15 A. Yes, I do.

16 Q. What does it say?

17 A. It says, James -- This one is black and white, so  
18 I can't really see the middle one, Howard, Jr.

19 Q. Okay. And after you took these two photographs,  
20 what did you do?

21 A. He wasn't aggressive, and he didn't seem like he  
22 was --

23 Q. Did you say anything to him?

24 A. I can't remember much of what I said to him.

25 I just I remember him saying he was sorry.

1 Q. How many times did he tell you he was sorry?

2 A. A multiple amount of times. I can't remember  
3 exactly how many times.

4 Q. That is the primary substance of what he said?

5 A. Yes, that's correct.

6 Q. Do you recall him saying anything else?

7 A. Negative.

8 Q. Did you at any point in time decide to call for  
9 assistance?

10 A. From the time I apprehended him, no, and then  
11 after that we called I guess the authorities within the  
12 building.

13 Q. Okay. That would be security at the Excalibur  
14 Hotel?

15 A. Yes.

16 Q. So you called security at Excalibur Hotel?

17 A. That's correct.

18 Q. And does anything happen during that time you're  
19 calling security?

20 A. No, just they wanted to have us explain what  
21 happened and a report, and that was it.

22 Q. Had the Defendant already run out of the room by  
23 then?

24 A. Yeah, he left.

25 Q. How did he leave?

1 A. I just let him leave.

2 Q. He walked right out the front door?

3 A. Yeah.

4 Q. And how long after he left was it that you called  
5 security?

6 A. I want to say, within like 20 minutes.

7 Q. Very short?

8 A. Yes.

9 Q. Now, you pointed out on State's Exhibit 1 that  
10 Daisy was on the other bed?

11 A. Yes, that's correct.

12 Q. Was that the opposite bed that you -- that she  
13 was originally on?

14 A. She was on the right side of me.

15 Q. Is that the bed that is closest to the wall?

16 A. Yeah, that's to the wall to the doorway on the  
17 right side.

18 Q. Is that the bed that is directly -- or the  
19 luggage that the Defendant was going through was  
20 directly in front of you?

21 A. No, it was in front of my bed.

22 Q. In front of the bed close to the door?

23 A. Yes.

24 Q. The same bed he's seen sitting on in State's  
25 Exhibit 1?

1       A.   Yes, that's correct.

2       Q.   Okay.  Now, the items that he was going through  
3   in front of that bed, what were they?

4       A.   I don't know, that's not my luggage.  That was my  
5   sister and her friends' luggage.

6       Q.   Okay.  Do you have any idea -- or do you know at  
7   all what was in there?

8       A.   All I know is, she took out extra money, which I  
9   told her not to do, and I don't know anything else that  
10   was inside that luggage.

11      Q.   Do you know how much extra money?

12      A.   I think a hundred bucks or something like that.

13           MR. DICKERSON:  Okay.  Court's brief indulgence.

14           THE COURT:  Yes.

15   BY MR. DICKERSON:

16      Q.   Did you ever give the Defendant permission to be  
17   in your room at Excalibur Hotel on April 9th, 2013?

18      A.   Negative.

19      Q.   Do you have knowledge of whether any of your  
20   roommates staying in that room at that time gave the  
21   Defendant permission to be in that room on April 9th,  
22   2013?

23      A.   Actually, no, one of them was actually crying  
24   when she found out she was asleep the whole time someone  
25   actually entered the room.

1 Q. Who was that?

2 A. That was Daisy.

3 Q. And so your answer whether any of your roommates  
4 gave the Defendant permission to be in the room?

5 A. No, there was no permission given.

6 Q. And Daisy, why was she crying?

7 A. She felt like if I wasn't there, something could  
8 have happened to her.

9 Q. Were there any steps taken after security was  
10 called as far as relation to Daisy?

11 A. Just to calm her down, that was pretty much it,  
12 like gave her a bottle of water and just talked to her,  
13 and that was it.

14 MR. DICKERSON: The State will pass the witness.

15 THE COURT: Cross.

16 - - - -

17 **CROSS-EXAMINATION OF JOSHUA JARVIS**

18 BY MS. DEVANEY-SAUTER:

19 Q. Mr. Jarvis, there had been three other people  
20 staying in this hotel room with you?

21 A. Correct.

22 Q. And to make sure I'm clear, the first is your  
23 sister, Jessica Jarvis?

24 A. Yes.

25 Q. The second is Jessica's friend, Daisy Ramirez?

1 A. That's correct.

2 Q. And the third was your girlfriend?

3 A. Yes.

4 Q. And then would you repeat her name again?

5 A. Misty Mustafa.

6 Q. Thank you.

7 Okay. And how long had you known Ms. Ramirez at  
8 this point?

9 A. Daisy?

10 Q. Yes.

11 A. I have known her since I was little.

12 Q. Since you were a child?

13 A. Yeah.

14 Q. How long had the four of you been in Las Vegas?

15 A. Let me see.

16 That's was our first night.

17 Q. Your first night in town?

18 A. We were coming back from California.

19 Q. What time did you arrive at the Excalibur?

20 A. Afternoonish.

21 I can't be exactly sure, that was like three  
22 years ago.

23 Q. But it was daylight you think when you arrived?

24 A. Yeah, it was.

25 Q. And had you all gone out to do any partying after



1 arriving in Las Vegas?

2 A. No, not me.

3 I was the one driving, so --

4 Q. So you opted to stay behind, make sure you're the  
5 designated driver and sober?

6 A. Yes, that's correct.

7 Q. And then the three ladies went out on The Strip?

8 A. The three ladies went out.

9 One of them came back at first, was Daisy, and  
10 the other two stood out.

11 Q. So Misty and Jessica had remained out on the The  
12 Strip?

13 A. That's correct.

14 Q. Do you remember what time Daisy had returned to  
15 the hotel room?

16 A. I do not recall exactly what time.

17 I would say, probably around 1:00 -- 1:00.

18 Q. And at the time of this incident Misty and  
19 Jessica had not yet returned to the hotel room?

20 A. No.

21 Q. But you had been asleep during these hours?

22 A. While they were out, yes.

23 Q. When do you believe you fell asleep?

24 A. I was pretty much -- So they took like three  
25 hours to get ready, so I fell asleep around probably

1 9:00.

2 When they were ready to go out, which was around  
3 I want to say 11:00, I told them to go out, they were  
4 taking too long, and I have to drive in the morning.

5 The other two decided to stay out, and the other  
6 one came back, and that's when I went back to sleep.

7 Q. To make sure I have it clear then, you went to  
8 sleep at 9 p.m., you awoke again at 11 when the ladies  
9 were ready to go out?

10 A. Yeah, I woke up, and one other person came back.

11 Q. You fell asleep again at some point after they  
12 had gone out?

13 A. Exactly.

14 Q. From there, did you stay asleep until about 7  
15 a.m.?

16 A. I stayed asleep until he came in.

17 MS. DEVANEY-SAUTER: Court's brief indulgence.

18 THE COURT: Yes.

19 BY MS. DEVANEY-SAUTER:

20 Q. When you were woken up, you didn't see anybody  
21 going through your luggage?

22 A. No.

23 I kept all my luggage inside the vehicle.

24 Q. So this was just the ladies' luggage then in the  
25 hotel room?

1       A.   Exactly, most of it, yes.

2       Q.   And had it all been collected at the foot of the  
3   bed?

4       A.   Most of it, yes.

5           The girls would leave everything all over the  
6   room, so --

7       Q.   So they had property kind of strewn about?

8       A.   In the bathroom and stuff like that.

9       Q.   Clothes everywhere, that kind of getting ready to  
10   go out mess?

11      A.   Not particularly, like mostly in the bathroom.

12      Q.   Okay.  And do you know if you didn't know what  
13   was in this luggage?

14      A.   Yes, I didn't know, besides she took extra money  
15   out.

16      Q.   Okay.  And so you had patted down Mr. Hayes after  
17   waking to find him in the room?

18      A.   Yes, that's correct.

19      Q.   But first you had been yelling and using  
20   profanity you noted?

21      A.   Yes, I did.

22      Q.   Do you remember what you had said?

23      A.   Do you want me to say verbatim?

24      Q.   I don't mind profanity, yes.

25      A.   I told him -- I said, who the fuck are you, and

1     what are you doing in here, and he looked at me and with  
2     like just a deer in the headlights, and he tried to make  
3     a run for the door, and so I patted him down to make  
4     sure he didn't have any weapons or anything like that.

5           Q.   And you had been then very freaked out to be  
6     yelling at the stranger in your room?

7           A.   Me or him?

8           Q.   You.

9           A.   Yeah.

10           I don't know, you would be freaked out if someone  
11    came into your hotel, tried to rob you.

12           Q.   Understandable.

13           A.   Okay.

14           Q.   So you, even though you noted that he had not  
15    been aggressive, you had been aggressive?

16           A.   I'm sorry?

17           Rephrase that.

18           Q.   You noted earlier that the man in your room had  
19    not been aggressive towards you?

20           A.   When I say, he wasn't aggressive, I mean in terms  
21    of when he ran for the door, and I stopped him, he  
22    didn't try to hit me, or try to do anything, that's what  
23    I meant by not being aggressive.

24           Q.   So you took control of the situation?

25           A.   Exactly.

1 Q. All right. And at this time then you patted him  
2 down?

3 A. Correct.

4 Q. You noted earlier you were afraid of any sort of  
5 a weapon?

6 A. Exactly.

7 Q. So you had been I take it moving quickly patting  
8 him down?

9 A. Well, yeah, fairly quickly.

10 Q. You wanted to make sure as quickly as possible  
11 there wasn't any sort of a weapon on his person?

12 A. Yes, that's correct.

13 Q. So --

14 MS. DEVANEY-SAUTER: Court's indulgence.

15 BY MS. DEVANEY-SAUTER:

16 Q. So you didn't do a very thorough search of this  
17 person?

18 A. Ma'am, I've done a lot of searches in the past,  
19 my search was good enough to know he didn't have a  
20 weapon on him that could hurt me or Daisy that was in  
21 the room.

22 Q. That's okay.

23 A. Can I ask you a question?

24 Do you find him innocent?

25 MS. DEVANEY-SAUTER: Well, actually --

1 THE COURT: No, you can't ask her questions.

2 It's for her to ask questions of you.

3 Don't answer that question.

4 BY MS. DEVANEY-SAUTER:

5 Q. So backing up a bit, you had not gone out with  
6 the women onto The Strip?

7 A. No, not with my sister and her friends.

8 Q. So you don't know whether or not they were  
9 drinking that night?

10 A. It's Vegas I'm pretty sure they were.

11 Q. You don't have any reason to know whether they  
12 had met anybody out on The Strip?

13 A. I'm pretty sure that they did not know this guy.

14 Q. But you couldn't say for sure?

15 A. No, I couldn't say for sure.

16 Q. Because you had not gone out with the ladies?

17 A. No, because I know them, I grew up with them.

18 They are not stupid, they are street smart.

19 Q. But you weren't with them to see if they talked  
20 to anybody while out on The Strip?

21 A. First of all, they ain't going to find him  
22 attractive, so they're not going to talk to him.

23 Q. I'm simply asking you, confirming you had not  
24 been with them and seen their interactions with anybody  
25 that night?

1       A.   I told you I was in the hotel.

2       Q.   So you're telling me today then you don't believe  
3   that they would have had a drink with this gentleman  
4   here today?

5           MR. DICKERSON:  Speculation, Your Honor.

6           THE COURT:  Sustained.

7           THE WITNESS:  No, I don't think so at all.

8           THE COURT:  You don't have to answer that.

9   BY MS. DEVANEY-SAUTER:

10       Q.   The three women staying in the hotel room with  
11   you were all adults, correct?

12       A.   I hope so, yeah.

13       Q.   And each one then had the ability to go out on  
14   their own on The Strip?

15       A.   Yes, that's correct.

16       Q.   Okay.  And you had not been with them every  
17   moment of the trip?

18       A.   No.

19       Q.   And as each of them was an adult in the room,  
20   each would have the ability to invite someone back to  
21   the room?

22       A.   They would never do that.

23       Q.   But they have the ability to invite people back?

24       A.   They would not do that.

25       Q.   But you're not making the statement today based

1 on anything you had witnessed on the night of May 28th  
2 to the morning of May 29th?

3 MR. DICKERSON: Vague, Your Honor.

4 THE COURT: Actually --

5 MS. DEVANEY-SAUTER: My apologies on the date.

6 THE COURT: Why don't you rephrase the question.

7 BY MS. DEVANEY-SAUTER:

8 Q. You were not basing that statement though on  
9 having been with them through the night and into the  
10 early morning before this incident?

11 A. In terms of a lot, so you are saying that --  
12 you're asking me, or stating that they met this guy, and  
13 somehow invited him --

14 Q. Well, I'm not stating anything.

15 I'm asking you questions, sir.

16 A. Rephrase the question then.

17 Q. You say that these young women would not have had  
18 any interaction with Mr. Hayes, or anyone?

19 A. Interaction?

20 Q. I'm clarifying your basis for that statement that  
21 it is based on your impression of these women and your  
22 opinion about Mr. Hayes, not about anything that you had  
23 witnessed on the night or early morning leading into  
24 this incident?

25 A. I'm basing it on my knowledge of my sister and



1 her friends, that I know that they did not meet after  
2 speaking with him.

3 After the incident, they never seen the person,  
4 after showing the picture that I took, so yes, I'm  
5 basing it on the fact I was not with them that night.

6 MS. DEVANEY-SAUTER: No other questions, Your  
7 Honor.

8 THE COURT: Redirect?

9 MR. DICKERSON: Thank you, Your Honor.

10 - - - -

11 **REDIRECT EXAMINATION OF JOSHUA JARVIS**

12 BY MR. DICKERSON:

13 Q. Mr. Jarvis, you said that you conducted a lot of  
14 searches?

15 A. Yes, that's correct.

16 Q. What did you mean by that?

17 A. I did searches in Afghanistan for people trying  
18 to come inside, that I was conducting a detail.

19 Q. What do you do for a living?

20 A. Right now -- I used to be in the military for  
21 nine years.

22 I'm switching over to a cop.

23 Q. Doing what?

24 A. Special forces.

25 Q. And on April 9th, 2013 can you estimate how many

1 searches you've done before that date?

2 A. I don't know, probably like 60.

3 Q. Were those searches when you were in Afghanistan  
4 for weapons?

5 A. That's correct.

6 Q. The search you conducted on April 9th, 2013 of  
7 the Defendant, was that also a search for weapons?

8 A. That's right.

9 Q. Did you search the Defendant for any property  
10 that he may have stolen?

11 A. Negative, no.

12 Q. So if there was something that was concealed upon  
13 his person that was not a weapon, your search was not  
14 designed to detect that?

15 A. Negative, no.

16 Q. That's correct?

17 A. Yes.

18 Q. And, in fact, you didn't find any weapons on him?

19 A. No, I did not.

20 Q. And so at that point in time was when you had him  
21 sit down on the bed, you took the pictures?

22 A. That's correct.

23 Q. And to your knowledge nobody that you were here  
24 in Las Vegas with gave the Defendant permission to be in  
25 that room?

1       A.   That's correct.

2           MR. DICKERSON:  The State has no further  
3 questions for this witness.

4           MS. DEVANEY-SAUTER:  Court's indulgence.  
5 No questions, Your Honor.

6           THE COURT:  Mr. Jarvis, thank very much for your  
7 time and testimony today.

8           You're excused.

9           You may step down.

10          Please don't discuss your testimony with anybody,  
11 aside from a representative of the Public Defenders  
12 office or District attorneys office.  Both will identify  
13 themselves appropriately.

14          State, call your next witness.

15          MR. DICKERSON:  The State has no further  
16 witnesses in this matter, Your Honor.

17          THE COURT:  The State rests?

18          MR. DICKERSON:  Prior to resting, the State's  
19 going to strike Count 2, attempt grand larceny count.

20          THE COURT:  All right.  Count 2 is stricken by  
21 the State.

22          MR. DICKERSON:  If I could, Your Honor, Mr.  
23 Jarvis, can you could just wait outside?

24          Thanks.

25          THE COURT:  The State rests as to Count 1?

1 MR. DICKERSON: The State rests as to Count 1.

2 THE COURT: All right.

3 MS. DEVANEY-SAUTER: Court's brief indulgence.

4 THE COURT: Any witnesses or evidence on behalf  
5 of the Defense today?

6 MS. DEVANEY-SAUTER: No, Your Honor.

7 I have advised Mr. Hayes of his right to testify  
8 in this matter, and he's opting not to testify in  
9 accordance with my advice.

10 THE COURT: Mr. Hayes, is that correct, you had a  
11 discussion with your attorney, and you are following her  
12 advice today?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. The Defense rests?

15 MS. DEVANEY-SAUTER: The Defense rests.

16 THE COURT: State.

17 MR. DICKERSON: The State will waive and rebut.

18 THE COURT: Defense.

19 MS. DEVANEY-SAUTER: Your Honor, I will note that  
20 the State has failed to meet its burden of establishing  
21 probable cause as to entering the hotel room on the  
22 count of burglary.

23 While Mr. Jarvis here today was able to testify  
24 that he had not given Mr. Hayes permission to enter the  
25 room, or go through any property, he simply is unable to

1 state whether or not the other ladies in the room whose  
2 luggage it was actually could have given him that  
3 permission.

4 He is only able to say that he doesn't think they  
5 would have been attracted to Mr. Hayes, but not that he  
6 had been present with them the whole night, and did not  
7 know to his knowledge -- Court's indulgence -- He's not  
8 able to say he had been present with him the entire  
9 night, or he had not, or he had been in a position to  
10 know whether they would have actually permitted someone  
11 access to the room in order to obtain property for them.

12 THE COURT: State.

13 MR. DICKERSON: Your Honor, the intent element of  
14 burglary is well established by the Defendant's actions  
15 once inside the room.

16 Upon first being seen in the room, the Defendant  
17 was seemingly rummaging through the property of the  
18 occupants of the room, which lends to the reasonable  
19 inference that in rummaging through property that is not  
20 yours he was there to commit a larceny of that property.

21 Upon being confronted, he looked like a deer in  
22 the headlights, and he attempted to run for the door,  
23 also showing his intent that was not above board intent,  
24 showing what he was doing with that luggage was likely  
25 trying to commit a larceny.

1           Then after being confronted by Mr. Jarvis, the  
2 Defendant said, I'm sorry, which only indicates more  
3 that he was not supposed to be in that room and had  
4 felonious intent to be in that room.

5           It's pretty clear, Your Honor, the reasonable  
6 inference is drawn, and the preliminary hearing slight  
7 or marginal evidence is met for the intent element of  
8 burglary.

9           THE COURT: Mr. Hayes, I do find the State has  
10 met their burden of proof to hold you to answer in the  
11 Eighth Judicial District Court on the charges of  
12 burglary.

13           You will appear with your attorney in the Lower  
14 Level Arraignment Court on the following date and time.

15           THE CLERK: June 23rd, 10 a.m., lower level  
16 District Court arraignment.

17           THE COURT: My suggestion is, Mr. Hayes, stay out  
18 of the resort corridor.

19           Sir, stay in contact with your attorney.

20           Make sure you make your lower level arraignment.

21           All right?

22           THE DEFENDANT: Yes, ma'am.

23           (Proceedings concluded.)  
24  
25

1  
2  
3 REPORTER'S CERTIFICATE  
4

5 I, Bill Nelson, a Certified Court Reporter in and  
6 for the State of Nevada, hereby certify that pursuant to  
7 NRS 2398.030 I have not included the Social Security  
8 number of any person within this document.

9 I further Certify that I am not a relative or  
10 employee of any party involved in said action, nor a  
11 person financially interested in said action.  
12  
13

14 /s/ Bill Nelson

15 Bill Nelson, RMR, CCR 191  
16  
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C E R T I F I C A T E

STATE OF NEVADA )

) ss.

CLARK COUNTY )

I, Bill Nelson, RMR, CCR 191, do hereby certify  
that I reported the foregoing proceedings; that the same  
is true and correct as reflected by my original machine  
shorthand notes taken at said time and place.

/s/ Bill Nelson

-----  
Bill Nelson, RMR, CCR 191  
Certified Court Reporter  
Las Vegas, Nevada



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**young** [1] - 30:17



**EIGHTH JUDICIAL DISTRICT COURT  
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER  
200 LEWIS AVENUE, 3<sup>rd</sup> FL.  
LAS VEGAS, NEVADA 89155-1160  
(702) 671-4554

Steven D. Grierson  
Clerk of the Court

Anntoinette Naumec-Miller  
Court Division Administrator

---

April 15, 2019

**Attorney:** Michael W. Sanft  
Sanft Law  
Attn Michael W Sanft  
324 South 3rd Street - 2nd Floor  
Las Vegas NV 89101

**Case Number:** C-19-338412-1  
**Department:** Department 19

**Defendant:** James Howard Hayes

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

Pleadings: **Motion To Dismiss Information**

**Rule 3.70. Papers which May Not be Filed**

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,  
DC Criminal Desk # 7  
Deputy Clerk of the Court

1  
2  
3  
4  
5 State of Nevada

6  Plaintiff,

7 vs.

8  
9 JAMES H. HAYES

10  Defendant

Case No.: C-19-338482-1

Dept. No.: XIX

Docket No.: \_\_\_\_\_

11  
12  
13 Motion To Dismiss

14 Comes now, JAMES H. HAYES, alleged defendant,  
15 Not submitting to the Court's jurisdiction, who  
16 hereby moves this Court to Dismiss the information  
17 filed by Clark County, Nevada for lack of ratification  
18 of commencement, No corpus delicti, and lack  
19 of personam jurisdiction.  
20

21 This motion is made and based pursuant  
22 to the supporting Points and Authorities attached  
23 hereto, as well as all papers, pleadings, and  
24 documents on file herein.

25  
26 Points AND Authorities

27  
28 2. THERE IS NO CORPUS DELICTI, CRIME IS A breach

1. of laws or governing authority. While this alleged offense was  
2. a violation of the law it was not a crime. As my limited  
3. understanding permits, these matters are criminal. Notwith-  
4. standing, proof of the corpus delicti is required in all  
5. criminal matters:

6. "Proof of the Corpus Delicti is required in all criminal  
7. cases... There are three basic elements in the proof of a  
8. crime: (1) the occurrence of loss or injury, (2) criminal  
9. causation of that loss or injury and, (3) the identity of  
10. the defendant as the perpetrator of the crime."  
11. This prohibits the prosecution from proving the corpus  
12. delicti based solely on extrajudicial acts. As the  
13. prosecution must establish the corpus delicti with  
14. corroborating evidence in order to secure a conviction.

15.  
16. 2. LACK OF EVIDENCE. A charges filed <sup>information</sup> ~~complaint~~ with no  
17. bond issue, or conviction issue is hearsay, and therefore  
18. irrelevant, and in legal contemplation is inoperative,  
19. as though it had never been issued.

20. For a crime to exist, there must be an injured party.  
1. There can be no penalty imposed on one because of this  
2. exercise of constitutional rights. Shaw v. Cullen, 481 F.945  
3. The claim and exercise of a constitutional right  
4. cannot be converted into a crime. Miller v. U.S. 230 F  
5. 2nd 486, 489

6. Where rights secured by the Constitution are



1. INVOLVED, THERE CAN BE NO RULEMAKING OR LEGISLATION WHICH
2. WOULD ABROGATE THEM. MIRANDA V. ARIZONA 384 U.S. 436, 125
- 3.

### 4. 3. Objection for Lack of Ratification of Commencement.

5. FEDERAL AND STATE RULES OF CIVIL PROCEDURE, RULE 17(a)

### 6. REAL PARTIES IN INTEREST:

7. EVERY ACTION SHALL BE PROSECUTED IN THE NAME OF THE REAL PARTY
8. IN INTEREST. A PARTY WITH WHOM OR IN WHOSE NAME A CONTRACT
9. HAS BEEN MADE FOR THE BENEFIT OF ANOTHER, OR A PARTY AUTHORIZED
10. BY STATUTE MAY SUE IN THAT PERSON'S OWN NAME WITHOUT JOINING
11. THE PARTY FOR WHOSE BENEFIT THE ACTION IS BROUGHT; AND WHEN
12. A STATUTE OF THE UNITED STATES SO PROVIDES, AN ACTION FOR THE USE
13. OR BENEFIT OF ANOTHER SHALL BE BROUGHT IN THE NAME OF THE
14. UNITED STATES.

15. NO ACTION SHALL BE DISMISSED ON THE GROUND THAT IT IS NOT
16. PROSECUTED IN THE NAME OF THE REAL PARTY IN INTEREST UNTIL A
17. REASONABLE TIME HAS BEEN ALLOWED AFTER OBJECTION FOR RATIFICATION
18. OF COMMENCEMENT OF THE ACTION BY THE REAL PARTY IN INTEREST,
19. AND SUCH RATIFICATION SHALL HAVE THE SAME EFFECT AS IF THE
20. ACTION HAD BEEN COMMENCED IN THE NAME OF THE REAL PARTY
21. IN INTEREST.

22.

23. FEDERAL RULES OF CIVIL PROCEDURE, RULE 2: THERE IS  
4. ONE FORM OF ACTION "THE CIVIL ACTION".

5. THERE IS NEITHER AN INJURED PARTY NOR TRESPASS. AS ALL CRIMES
6. ARE COMMERCIAL, AND EVERY ALLEGED CRIME HAS TO HAVE

1. NATURE AND CAUSE.

2.

3. 4. There is no ~~no~~ plaintiff. This is an adversarial

4. proceeding, and adversarial proceedings require real

5. adversaries: Properly understood the general principle

6. is sound, for courts only adjudicate justiciable

7. controversies. Courts must look behind names that

8. symbolize the parties to determine whether a justiciable

9. case is presented. UNITED STATES V. INTERSTATE COMMERCE

10. COMMISSION, 337 U.S. 426

11.

12. Statement of Facts

13.

14. NO CORPUS DELICTI:

15. Whereas, alleged victim James J. McGroth testified

16. at preliminary hearing that the defendant was NOT

17. the perpetrator of the alleged event and 100% sure

18. Not 80% as reported in his extrajudicial statement.

19. The victim further stated that the perpetrator did NOT

20. enter said room only stood in door way said sorry

21. and close the door leaving no loss or injury and

22. no causation. Where the victim did not testify of

23. any loss of valuables or property.

24. Whereas, the victims ~~was~~ extrajudicial voluntary

25. statement was contradictory to his testimony under

26. oath at preliminary hearing and no corroborating evidence

1. LACK OF EVIDENCE: NO EYEWITNESS NO VIDEO OF  
2. ALLEGED EVENT. NO LOSS OR INJURY

3. WHEREAS, THE DEFENDANT HAD A VALID HOTEL KEY  
4. WITH AN ABSOLUTE RIGHT TO ENTER THE MIREAGE HOTEL  
5. AND CASINO SO DEFENDANT CANNOT COMMIT BURGLARY  
6. OF THAT STRUCTURE, AS THERE WAS NO UNAUTHORIZED  
7. ENTRY.

8. WHEREAS, THE DEFENDANT CONTENDS THAT IT WAS  
9. LEGALLY IMPOSSIBLE TO BURGLARIZE HIS OWN HOTEL AS HE  
10. WAS AN OCCUPANT OF THE HOTEL WITH A KEY TO ENTER  
11. AND THE LEGAL AUTHORITY TO DO SO, AS HE DID NOT  
12. TRESPASS.

13. WHEREAS, THE DEFENDANT WAS NOT GIVEN NOTICE OF  
14. THE CHARGE ~~THE~~ UNLAWFUL USE OF HOTEL KEY NRS 205.900  
15. OR ALLOWED TO ENTER A PLEA PRIOR TO THE PRELIMINARY  
16. HEARING. WHETHER AT COMMON LAW OR UNDER STATUTE, THE  
17. ACCUSATION MUST INCLUDE A CHARACTERIZATION OF THE  
18. CRIME AND SUCH DESCRIPTION OF THE PARTICULAR ACT ALLEGED  
19. TO HAVE BEEN COMMITTED BY THE ACCUSED AS WILL ENABLE  
20. HIM PROPERLY TO DEFEND AGAINST THE ACCUSATION, AND  
21. THE DESCRIPTION OF THE OFFENSE MUST BE SUFFICIENTLY FULL  
22. AND COMPLETE TO ~~THE~~ ACCORD TO THE ACCUSED HIS  
23. CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW. THAT IN THIS  
24. CASE THE DEFENDANT WASN'T AFFORDED.

25.

26.

CONCLUSION

1. There is no lawful method for government to put  
2. restrictions or limitations on rights belonging to the people.  
3. There is no question that NRS 205.600 and NRS 205.900  
4. are indeed converting a right into a crime. If the  
5. alleged defendant is to be subject to the alleged criminal  
6. acts it is concluded that no act was in fact broken.  
7.

8. Wherefore, because there is no ratification of commence-  
9. ment, the courts lack of personam jurisdiction, and no  
10. corpus delicti thus no justiciable controversy or cause  
11. of action before this Honorable Court; and based on the  
12. foregoing facts and constitutional violations this Honorable  
13. Court is respectfully motion to dismiss the Informations  
14. filed against me  
15.

16. Dated this 8<sup>th</sup> day of April, 2019

17. I, James H. Hayes, do solemnly swear,  
18. under the penalty of perjury, that the  
19. above Motion to Dismiss is accurate,  
20. correct, and true to the best of my  
21. knowledge. NRS 171.102 and NRS 208.165  
22.

23. Respectfully submitted,

24. James H. Hayes #1175077

25. P.O. Box 650 H.D.S.P

26. Indian Springs, NV 89070

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion

to Dismiss  
(Title of Document)

filed in District Court Case number C-19-338412-1

☒ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

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

James H. Hayes  
Signature

4-8-2019  
Date

James H Hayes # 1175077  
Print Name

alleged defendant  
Title

1 I, JAMES H. NAYLES, certify that the foregoing "Motion ~~to~~ to Dismiss

2 ~~Modification of Sentence~~", was served upon the Respondent pursuant to NRCP 5 (b), by placing same in  
3 the United States Postal Service, postage being fully pre-paid, and addressed as follows:

4  
5  
6 Clerk of Courts

7 200 LEWIS AVE. 3<sup>RD</sup> FLOOR  
8 LAS VEGAS, NV 89155

District Attorney's Office

9 200 LEWIS AVE  
10 LAS VEGAS, NV 89155

11 NEVADA ATTY GENERAL

12 WERNER BRIEN WILLIAMS  
13 22010 Cold Creek Rd; P.O. Box 650  
14 INDIAN SPRINGS, NV 89070

15 Dated this 8<sup>th</sup> day of April, 2019.

16  
17 By:

James H. Nayles

18 JAMES H NAYLES # 1175077

19 High Desert State Prison  
20 22010 Cold Creek Rd.  
21 P.O. Box 650  
Indian Springs, NV. 89070

22 ~~alleged~~ Defendant, ~~In Proper Person~~

Pages 211758277  
4.8.5.7  
P.O. Box 650  
Tucson Arizona, NV  
89070

WILHELM MICHELSON

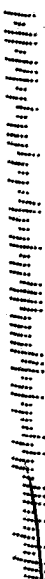
10.00

UNIT 1 C/D

INTAKE

NSF 3763

8910136300 0073



Clerk County District Courts

"Clerk of the Courts"

200 LEWIS AVE, 3rd Floor

Las Vegas, Nevada

89155 - 1120

LEGA/

Mail

WQD 0773M215400



NWEW  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
W.C. ROWLES  
Deputy District Attorney  
Nevada Bar #013577  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

**JAMES HOWARD HAYES, aka,  
James Howard Hayes, Jr., #2796708**  
  
Defendant.

CASE NO: **C-19-338412-1**

DEPT NO: **XIX**

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

**TO: JAMES HOWARD HAYES, aka, James Howard Hayes, Jr., Defendant; and**

**TO: MICHAEL SANFT, ESQ., Counsel of Record:**

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

BATOAN, APOLONIO; 3400 S. Las Vegas Blvd., LVN

CUSTODIAN OF RECORDS; CCDC

CUSTODIAN OF RECORDS; LVMPD Communications

CUSTODIAN OF RECORDS; LVMPD Records

CUSTODIAN OF RECORDS; Mirage Hotel & Casino, 3400 S. Las Vegas Blvd., LVN

ERHART, RYAN; 3400 S. Las Vegas Blvd., LVN

FOX, A.; LVMPD #16559

HUANG, BRANDON; 3400 S. Las Vegas Blvd., LVN



JARVIS, JOSHUA; 46 Kenneth St., Hartford, CT

JEX, L.; LVMPD #16622

MCELROY, D.; LVMPD #16995

MCGROTH, JAMES; c/o CCDA's Office, 200 Lewis Ave., LVN

TRAVIS, DAVID; 3475 Las Vegas Blvd., LVN

VARVIN, E.; LVMPD #16252

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

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

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

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

BY /s/ W.C. Rowles  
W.C. ROWLES  
Deputy District Attorney  
Nevada Bar #013577

#### CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this 18th day of April, 2019, by electronic transmission to:

MICHAEL SANFT, ESQ.  
Email Address: michael@sanftlaw.com

BY: /s/ J. Georges  
Secretary for the District Attorney's Office

jg/L2



**NOTC**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**W.C. ROWLES**  
Deputy District Attorney  
Nevada Bar #013577  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

**JAMES HOWARD HAYES, aka,**  
**James Howard Hayes, Jr., #2796708**  
  
Defendant.

CASE NO: **C-19-338412-1**

DEPT NO: **XIX**

**STATE'S NOTICE OF INTENT TO SEEK PUNISHMENT AS  
A HABITUAL CRIMINAL**

**TO: JAMES HOWARD HAYES, aka, James Howard Hayes, Jr., Defendant; and**

**TO: MICHAEL SANFT, ESQ., Counsel of Record:**

**YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE** that pursuant to  
NRS 207.010, the STATE OF NEVADA will seek punishment of Defendant JAMES  
HOWARD HAYES, aka, James Howard Hayes, Jr., as a habitual criminal in the event of a  
felony conviction in the above-entitled action.

That in the event of a felony conviction in the above-entitled action, the STATE OF  
NEVADA will ask the court to sentence Defendant JAMES HOWARD HAYES, aka, James  
Howard Hayes, Jr. as a habitual criminal based upon the following felony convictions, to wit:

1. That on or about the 13th day of December, 1995, the Defendant was convicted  
in the 176th District Court, in and for the County of Harris, State of Texas, for the crime of  
CREDIT CARD FRAUD (felony), in Cause No. 059191701010.

1           2.       That on or about the 15th day of April, 2009, the Defendant was convicted in the  
2       185th District Court, in and for the County of Harris, State of Texas, for the crimes of  
3       CREDIT/DEBIT CARD ABUSE (felony) and FRAUD/USE/POSSESS ID INFORMATION  
4       OF ANOTHER (felony), in Cause No. 108378501010.

5           3.       That on or about the 23rd day of August, 2011, the Defendant was convicted in  
6       the Eighth Judicial District Court, in and for the County of Clark, State of Nevada, for the  
7       crime of ATTEMPT POSSESSION OF CREDIT OR DEBIT CARD WITHOUT  
8       CARDHOLDER'S CONSENT (felony), in Case No. C270308-1.

9           4.       That on or about the 23rd day of February, 2017, the Defendant was convicted  
10      in the Eighth Judicial District Court, in and for the County of Clark, State of Nevada, for the  
11      crime of BURGLARY (felony), in Case No. C-16-315125-1.

12          5.       That on or about the 6th day of March, 2019, the Defendant was convicted in the  
13      Eighth Judicial District Court, in and for the County of Clark, State of Nevada, for the crime  
14      of ATTEMPT GRAND LARCENY – SMALL HABITUAL CRIMINAL, in Case No. C-16-  
15      315718-1.

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

19                               BY     /s/ W.C. Rowles  
20                                       W.C. ROWLES  
21                                       Deputy District Attorney  
22                                       Nevada Bar #013577

23                               CERTIFICATE OF ELECTRONIC TRANSMISSION

24           I hereby certify that service of the above and foregoing was made this 18th day of April,  
25      2019, by electronic transmission to:

26                               MICHAEL SANFT, ESQ.  
27                               Email Address: michael@sanftlaw.com

28                               BY: /s/ J. Georges  
                                     Secretary for the District Attorney's Office

jg/L2



**OPI**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**W.C. ROWLES**  
Deputy District Attorney  
Nevada Bar #013577  
200 Lewis Avenue  
Las Vegas, Nevada, 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
Plaintiff,

-vs-

**JAMES HOWARD HAYES, aka,  
James Howard Hayes, Jr., #2796708**

Defendant.

CASE NO. **C-19-338412-1**

DEPT NO. **XIX**

**ORDER FOR PRODUCTION OF INMATE  
JAMES HOWARD HAYES, BAC #1175077**

DATE OF HEARING: 05-08-2019  
TIME OF HEARING: 8:30 A.M.

**TO: NEVADA DEPARTMENT OF CORRECTIONS; and**

**TO: JOSEPH LOMBARDO, Sheriff of Clark County, Nevada:**

Upon the ex parte application of THE STATE OF NEVADA, Plaintiff, by STEVEN B. WOLFSON, District Attorney, through W.C. ROWLES, Deputy District Attorney, and good cause appearing therefor,

IT IS HEREBY ORDERED that NEVADA DEPARTMENT OF CORRECTIONS shall be, and is, hereby directed to produce JAMES HOWARD HAYES, Defendant in Case Number C-19-338412-1, wherein THE STATE OF NEVADA is the Plaintiff, inasmuch as the said JAMES HOWARD HAYES is currently incarcerated in the NEVADA DEPARTMENT OF CORRECTIONS located in Clark County, Nevada, and his presence will be required in

1 Las Vegas, Nevada, commencing on 05-08-2019, at the hour of 8:30 o'clock A.M. and  
2 continuing until completion of the prosecution's case against the said Defendant.

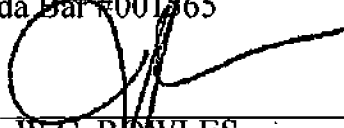
3 IT IS FURTHER ORDERED that JOSEPH LOMBARDO, Sheriff of Clark County,  
4 Nevada, shall accept and retain custody of the said JAMES HOWARD HAYES in the Clark  
5 County Detention Center, Las Vegas, Nevada, pending completion of said matter in Clark  
6 County, or until the further Order of this Court; or in the alternative shall make all  
7 arrangements for the transportation of the said JAMES HOWARD HAYES to and from the  
8 Nevada Department of Corrections facility which are necessary to insure the JAMES  
9 HOWARD HAYES's appearance in Clark County pending completion of said matter, or until  
10 further Order of this Court.

11 DATED this 22nd day of April, 2019.

12   
13 DISTRICT JUDGE  
14 

15 STEVEN B. WOLFSON  
16 Clark County District Attorney  
17 Nevada Bar #001365

18 BY

  
19 W.C. ROWLES  
20 Deputy District Attorney  
21 Nevada Bar #013577  
22  
23  
24  
25  
26  
27

28 jg/L2



AINF  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
W.C. ROWLES  
Deputy District Attorney  
Nevada Bar #013577  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

**JAMES HOWARD HAYES, aka,  
James Howard Hayes, Jr., #2796708**

Defendant.

CASE NO. C-19-338412-1

DEPT NO. XIX

**AMENDED  
INFORMATION**

STATE OF NEVADA        }  
COUNTY OF CLARK       } ss:

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

That **JAMES HOWARD HAYES, aka, James Howard Hayes, Jr.**, the Defendant above named, having committed the crime of **DISORDERLY CONDUCT (Misdemeanor - CCC 12.33.010 - NOC 56761)**, on or about the 26th day of January, 2019, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did then and there willfully and unlawfully conduct himself in a disorderly manner at 3400 South Las Vegas Boulevard, Clark County, Nevada, to wit: possessing a key or other device used by a guest in

///

///

///

1 a hotel or by the hotel to gain entrance to a room in a hotel, then using said key or other device  
2 to gain entrance to an occupied room.

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

6 BY /s/ W.C. Rowles  
7 W.C. ROWLES  
Deputy District Attorney  
Nevada Bar #013577  
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27 DA#19F01534X/jg/SVU  
28 LVMPD EV#190100120467  
(TK14)



**EIGHTH JUDICIAL DISTRICT COURT  
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER  
200 LEWIS AVENUE, 3<sup>rd</sup> FL.  
LAS VEGAS, NEVADA 89155-1160  
(702) 671-4554

Steven D. Grierson  
Clerk of the Court

Anntoinette Naumec-Miller  
Court Division Administrator

---

June 04, 2019

**Attorney:** Michael W. Sanft  
Sanft Law  
Attn Michael W Sanft  
324 South 3rd Street - 2nd Floor  
Las Vegas NV 89101

**Case Number:** C-19-338412-1  
**Department:** Department 19

**Defendant:** James Howard Hayes

Attached are pleadings received by the Office of the District Court Clerk which are being forwarded to your office pursuant to Rule 3.70.

Pleadings: **Petition For Writ Of Habeas Corpus**

**Rule 3.70. Papers which May Not be Filed**

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed but must be marked with the date received and a copy forwarded to the attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to Rule 7.40(b)(2)(ii).

Cordially yours,  
DC Criminal Desk # 7  
Deputy Clerk of the Court



Case No. C-19-338412-1  
Dept. No. XIX

IN THE 8th JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

JAMES H. HAYES  
Petitioner,

v.

PETITION FOR WRIT  
OF HABEAS CORPUS  
(POSTCONVICTION)

State of Nevada/Brown  
Respondent. Williams

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: High Desert State Prison, Nevada
2. Name and location of court which entered the judgment of conviction under attack: Clark County District Courts, Clark County, Nevada
3. Date of judgment of conviction: 5-6-2019
4. Case number: C-19-338412-1
- (a) Length of sentence: TIME SERVED

RECEIVED  
JUN -4 2019

CLERK OF THE COURT

(b) If sentence is death, state any date upon which execution is scheduled:....

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

Yes ☒ No .....

If "yes," list crime, case number and sentence being served at this time: Burglary C-16-315125-1  
21 to 72 months

7. Nature of offense involved in conviction being challenged: Disorderly Conduct

8. What was your plea? (check one)

(a) Not guilty .....

(b) Guilty .....

(c) Guilty but mentally ill .....

(d) Nolo contendere ☒

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated, give details:

Burglary / Unlawful use of Hotel Key - Not Guilty;  
Disorderly Conduct - Nolo contendere

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

(a) Jury .....

(b) Judge without a jury .....

11. Did you testify at the trial? Yes ..... No ☒

12. Did you appeal from the judgment of conviction? Yes ..... No ☒

13. If you did appeal, answer the following:

(a) Name of court: .....

(b) Case number or citation: .....

(c) Result: .....

(d) Date of result: .....

(Attach copy of order or decision, if available.)

1 14. If you did not appeal, explain briefly why you did not:

Plea Agreement

2  
3  
4 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any  
5 petitions, applications or motions with respect to this judgment in any court, state or federal? Yes ..... No ☒

6 16. If your answer to No. 15 was "yes," give the following information:

7 (a) (1) Name of court: .....

8 (2) Nature of proceeding: .....

9  
10 (3) Grounds raised: .....

11  
12  
13 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ..... No .....

14 (5) Result: .....

15 (6) Date of result: .....

16 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:

17  
18 (b) As to any second petition, application or motion, give the same information:

19 (1) Name of court: .....

20 (2) Nature of proceeding: .....

21 (3) Grounds raised: .....

22 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ..... No .....

23 (5) Result: .....

24 (6) Date of result: .....

25 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:

26  
27 (c) As to any third or subsequent additional applications or motions, give the same information as above, list  
28 them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes ..... No .....

Citation or date of decision: .....

(2) Second petition, application or motion? Yes ..... No .....

Citation or date of decision: .....

(3) Third or subsequent petitions, applications or motions? Yes ..... No .....

Citation or date of decision: .....

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

PLEA AGREEMENT

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: .....

(b) The proceedings in which these grounds were raised: .....

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

1 .....  
2 19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing  
3 of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in  
4 response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the  
5 petition. Your response may not exceed five handwritten or typewritten pages in length.) .....  
6 .....

7 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment  
8 under attack? Yes ..... No ☒ .....

9 If yes, state what court and the case number: .....  
10 .....

11 21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on  
12 direct appeal: Michael Souff .....  
13 .....

14 22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under  
15 attack? Yes ☒ ..... No .....  
16 .....

17 If yes, specify where and when it is to be served, if you know: NDOC SERVING 21 to 72 .....  
18 PRESENTLY .....

19 23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the  
20 facts supporting each ground. If necessary you may attach pages stating additional grounds and facts  
21 supporting same.  
22  
23  
24  
25  
26  
27  
28

(a) Ground ONE: Violation of United States and Nevada  
Constitution & Federal and State Constitutional  
Violations 3; NRS Violations...

Supporting FACTS (Tell your story briefly without citing cases or law.): WHEREAS, there was no  
corpus delicti; crime is a breach of laws or governing  
authority. While this alleged offense was a alleged violation  
of the law it was not a crime. Notwithstanding, proof  
of the corpus delicti that is required in all criminal matters.

WHEREAS, proof of the corpus delicti is required in all  
criminal cases. There are three basic elements in the proof  
of a crime: 1. The occurrence of loss or injury, and in  
this instant offense there was no loss or injury upon  
alleged victim James McGroth by the alleged victims own  
admittance through his voluntary statement and prelim  
hearing testimony. 2. Criminal causation of that loss or  
injury, and in this instant offense there was no criminal  
causation through clear and convincing evidence, as the  
alleged victim James McGroth own admission when he  
testified at preliminary hearing that the perpetrator  
did not enter said room only stood at door and said  
sorry then closed the door and left without incident.  
3. The identity of the petitioner as the perpetrator of  
the crime, and in this instant offense the alleged victim  
James McGroth testified under oath that the defendant  
was not the perpetrator of the alleged offense and stated  
repeatedly he was 100% sure of it.

WHEREAS, there was lack of evidence, as a criminal

1 (b) Ground ~~Two~~ <sup>ONE</sup> CONTINUE:.....  
2 .....  
3 .....  
4 .....

5 Supporting FACTS (Tell your story briefly without citing cases or law.): complaint with NO basis  
6 ISSUE OR CONVICTION ISSUE IS HEARSAY AND THEREFORE IRRELEVANT  
7 AND IN legal contemplation IS INOPERATIVE AS THOUGH IT  
8 HAD NEVER BEEN ISSUED.

9 WHEREAS, FOR A CRIME TO EXIST, THERE MUST BE AN  
10 INJURED PARTY, THERE CAN BE NO PENALTY IMPOSED ON  
11 DEFENDANT BECAUSE OF THIS EXERCISE OF CONSTITUTIONAL  
12 RIGHTS, AS IN THE INSTANT CASE THERE WAS NO INJURED PARTY  
13 AND NO TRESPASS OR UNLAWFUL ENTRY.

14 WHEREAS, THE CLAIM AND EXERCISE OF A CONSTITUTIONAL  
15 RIGHT CANNOT BE CONVERTED INTO A CRIME.

16 WHEREAS, THE JUSTICE COURT JUDGE IN CASE NO. 19F01534X  
17 IN DEPT 14 ERRED WHEN SHE ISSUED THE AFFIDAVIT OF PROBABLE  
18 CAUSE WHEN THERE WAS NO SLIGHT OR MARGINAL EVIDENCE TO  
19 DOUND OVER CHARGES TO DISTRICT COURT, AND THIS IS A  
20 MISFEASANCE OF JUSTICE DUE TO THE FACT THAT THE JUSTICE  
21 COURT JUDGE DID NOT PROCEED ON THE FACTS AND THE LAW  
22 THAT GREATLY PREJUDICE THE DEFENDANT AND HE HAS SUFFERED  
23 IRREPERIBLE INJURY.

24 WHEREAS, THE DISTRICT COURT DID NOT DIVEST JURISDICTION  
25 TO ISSUE CHARGING INFORMATION FOR THE CHARGES OF BURGLARY  
26 (NRS 205.060) AND UNLAWFUL USE OF HOTEL KEY (NRS 205.900)  
27 CASE NO. C-19-338412-1 IN DEPT XIX BECAUSE THERE WAS  
28 NO RATIFICATION OF COMMENCEMENT, THE COURT LACK OF

1 (c) Ground ~~THREE~~: ONE CONTINUE:  
2  
3  
4

5 Supporting FACTS (Tell your story briefly without citing cases or law.): PERSONEM JURISDICTION  
6 AND NO CORPUS DELECTI thus NO JUSTICIZABLE CAUSE OF  
7 ACTION BEFORE THE DISTRICT COURT.

8 WHEREFORE, PETITIONER REQUESTS THAT: THE COURT  
9 GRANT PETITIONER'S WRIT OF HABEAS CORPUS AND GRANT  
10 SUCH RELIEF TO WHICH PETITIONER IS ENTITLED.  
11  
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28



BEFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 29 day of the month of May, 2019.

James H. Hayes

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

### VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

James H. Hayes

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

### AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number C-19-338412-1 Does not contain the social security number of any person.

James H. Hayes

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

### CERTIFICATE OF SERVICE BY MAIL

I, James H. Hayes, hereby certify pursuant to N.R.C.P. 5(b), that on this 29 day of the month of May, 2019, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

~~D.W. Neven, Warden High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070~~

Attorney General of Nevada  
100 North Carson Street  
Carson City, Nevada 89701

Clark County District Attorney's Office  
200 Lewis Avenue  
Las Vegas, Nevada 89155

James H. Hayes

High Desert State Prison  
Post Office Box 650  
Indian Springs, Nevada 89070  
Petitioner in Proper Person

\* Print your name and NDOC back number and sign

Heqes # 1194028

H.D.S.P

P.O. Box 650

Indian Springs, NV

89070

**INTAKE  
NSF 3763**

Clark County District Courts  
"Clarks of the Courts"

2000 E. 16th Ave; 3rd Floor

UNIT 2, Nevada 89155-1160

LEED  
MEI

UCANTEMELE.COM

FILED

JUN 24 2019

CLERK OF COURT

James H. Hayes ID NO. 1175077

HIGH DESERT STATE PRISON  
22010 COLD CREEK ROAD  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA 89018

IN THE 8<sup>th</sup> Judicial District Court  
OF THE STATE OF NEVADA (Clark County)

State of Nevada

~~Plaintiff~~

plaintiff

v.

James H. Hayes defendant

C-19-338412-1

CASE NO.: ~~C-19-338412-1~~

DEPT. NO.: XIX

DOCKET:

July 15, 2019 at 8:30AM

~~Motion to Withdraw Counsel~~

DATE OF HEARING:

TIME OF HEARING:

ORAL ARGUMENT REQUESTED, YES — NO —

COMES NOW, ~~defendant~~ James H. Hayes, herein above respectfully  
moves this Honorable Court for an Order granting him permission to  
withdraw his present counsel of record in the proceeding  
action namely, Case No.

This Motion is made and based upon the accompanying Memorandum of Points and  
Authorities,

DATED: this 18 day of JUNE, 2019

BY: James H. Hayes  
James H. Hayes # 1175077  
Defendant/In Proper Personam

C-19-338412-1  
MWCN  
Motion to Withdraw As Counsel  
4844751



1 **POINTS AND AUTHORITIES**

2 NRS 7.055 states in pertinent part:

- 3 1. An attorney who has been discharged by his client shall upon demand and payment of the fee  
4 due from the client, immediately deliver to the client all papers, documents, pleadings and items  
5 of tangible personal property which belong to or were prepared for that client.
- 6 2. . . . If the court finds that an attorney has, without just cause, refused or neglected to obey its  
7 order given under this section, the court may, after notice and fine or imprison him until the  
8 contempt purged. If the court finds that the attorney has, without just cause, withheld the  
9 client's papers, documents, pleadings, or other property, the attorney is liable for costs and  
10 attorney's fees.

11 Counsel in the above-entitled case was court-appointed due to Defendant's indigence. Defendant  
12 does not owe counsel any fees.

13 **WHEREFORE,** Defendant prays this Honorable Court, Grant his Motion to Withdraw Counsel  
14 and that counsel deliver to Defendant all papers, documents, pleadings, discovery and any other  
15 tangible property which belong to or were prepared for the Defendant to allow Defendant the proper  
16 assistance that is needed to insure that justice is served.

17  
18  
19 DATED: this 18 day of JUNE, 2019.

20 Respectfully submitted,

21 BY: James H. Noyes  
22 James H. Noyes #1195272  
23 /In Propria Personam  
24 Post Office Box 650 [HDSP]  
25 Indian Springs, Nevada 89018  
26  
27  
28

NAME: James H. Hayes, # 1175077

HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA 89018

DATE: ~~6-18-19~~ 6-18-19

TO: Clark County District  
Court Dept XIX; Michael Sanft, Esq.  
200 Lewis Ave  
Las Vegas, NV  
89155-1160

SUBJECT: TERMINATION OF COUNSEL/TRANSFER OF RECORDS

CASE NO.: ~~19-338412-1~~ C-19-338412-1

DEPT. NO.: XIX

CASE NAME: \_\_\_\_\_

Please be advised that from this date forward, your authority as Attorney of Record in the above-stated action is hereby terminated. All of the professional relations of Attorney and Client do hereby cease.

Please enter your withdrawal from this action with the Court immediately.

Pursuant to NRS 7.055, I respectfully request that you deliver to me, forthwith, all documents, papers, pleadings and tangible personal property that is in your possession that relates to the above-named action.

Your prompt attention to this request is genuinely appreciated.

Respectfully,

James H. Hayes

////

////

////

**CERTIFICATE OF SERVICE BY MAILING**

I, James H. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 18  
day of JUNE, 2019, I mailed a true and correct copy of the foregoing, "

Motion To Withdraw Counsel"  
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
addressed as follows:

Clerk of the Court  
200 LAUGHLIN AVE. 3RD FL  
LAS VEGAS, NV  
702-735-1160

CC: FILE

DATED: this 18 day of JUNE, 2019.

James H. Hayes  
JAMES H. HAYES # 1175044  
/In Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion

To Withdraw Counsel  
(Title of Document)

filed in District Court Case number C-19-338412-1

☒ Does not contain the social security number of any person.

-OR-

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

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

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

James H. Hayes  
Signature

6-18-19  
Date

JAMES H. HAYES  
Print Name

defendant  
Title

Pages #1175092  
U.S.S.P.  
P.O. Box 650  
Rudolph, NY  
89020

3762

HIGH DESERT STATE PRISON  
JUN 18 2019  
UNIT 6 C/D

Clark County District Courts  
"Office of the Clerk"  
200 Lewis Ave, 3rd Floor  
Las Vegas, Nevada  
89155-1160

LEGO  
Mail

US POSTAGE \$000.65  
06/20/2019  
ZIP 89101  
011E12650516





**ORDR**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
FRANK LOGRIPPO  
Deputy District Attorney  
Nevada Bar #013911  
200 Lewis Avenue  
Las Vegas, NV 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES HOWARD HAYES, aka  
James Howard Hayes, Jr.,  
#2796708

Defendant.

CASE NO: C-19-338412-1

DEPT NO: XIX

**ORDER GRANTING DEFENDANT'S MOTION TO WITHDRAW COUNSEL**

DATE OF HEARING: July 15, 2019  
TIME OF HEARING: 08:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 15th day of July, 2019, the Defendant not being present, in proper person, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through FRANK LOGRIPPO, Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

///

///

///

///

///

1 IT IS HEREBY ORDERED that the Defendant's Motion to Withdraw Counsel, shall  
2 be, and it is GRANTED.

3 DATED this 25<sup>th</sup> day of July, 2019.

4 Will Kye  
5 DISTRICT JUDGE

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

9 BY

10 FRANK LOGRIPPO  
11 Deputy District Attorney  
12 Nevada Bar #013911

13 **CERTIFICATE OF SERVICE**

14 I certify that on the 29<sup>th</sup> day of July, 2019, I mailed a copy of the foregoing Order

15 to:

16 JAMES HAYES, BAC #1175077  
17 HIGH DESERT STATE PRISON  
18 P.O. BOX 650  
19 INDIAN SPRINGS, NV 89018

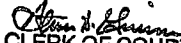
20 BY

21 C. Garcia  
22 C. Garcia  
23 Secretary for the District Attorney's Office  
24

25 cg/L2  
26  
27  
28

FILED

JUL 29 2019

  
 CLERK OF COURT

#  
 /In Propria Personam  
 Post Office Box 650 [HDSP]  
 Indian Springs, Nevada 89018

IN THE JUDGE JUDICIAL DISTRICT COURT OF THE  
 STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

JAMES HAYES  
Plaintiff

vs.

GARRETT T. OGATA  
Defendant

Case No.

 Dept. No. C-19-338412-1  
 Dept. 19

Docket

**MOTION TO WITHDRAW COUNSEL**
 Date of Hearing: August 21, 2019  
 8:30 AM

Time of Hearing:

 'ORAL ARGUMENT REQUESTED, Yes \_\_\_ No ☒


**COMES NOW**, Defendant, GARRETT T. OGATA, proceeding in proper person,  
 moves this Honorable Court for an ORDER Granting him permission to withdraw his present counsel  
 of record in the proceeding action, namely,

JAMES HAYES

This Motion is made and based on all papers and pleadings on file with the Clerk of the Court  
 which are hereby incorporated by this reference, the Points and Authorities herein, and attached  
 Affidavit of Defendant.

 DATED: this 26 day of JUNE, 2019.

BY:



#

/In Propria Personam

RECEIVED

JUL 29 2019

CLERK OF THE COURT

1 POINTS AND AUTHORITIES

2 NRS 7.055 states in pertinent part:

- 3 1. An attorney who has been discharged by his client shall upon demand and payment of the fee  
4 due from the client, immediately deliver to the client all papers, documents, pleadings and items  
5 of tangible personal property which belong to or were prepared for that client.  
6  
7 2. . . If the court finds that an attorney has, without just cause, refused or neglected to obey its  
8 order given under this section, the court may, after notice and fine or imprison him until the  
9 contempt purged. If the court finds that the attorney has, without just cause, withheld the  
10 client's papers, documents, pleadings, or other property, the attorney is liable for costs and  
11 attorney's fees.

12 Counsel in the above-entitled case was court-appointed due to Defendant's indigence. Defendant  
13 does not owe counsel any fees.

14 **WHEREFORE,** Defendant prays this Honorable Court, Grant his Motion to Withdraw Counsel  
15 and that counsel deliver to Defendant all papers, documents, pleadings, discovery and any other  
16 tangible property which belong to or were prepared for the Defendant to allow Defendant the proper  
17 assistance that is needed to insure that justice is served.

18 **DATED:** this 26 day of JUNE, 2019.

19 Respectfully submitted,

20 **BY:**

*James Harris*

#

21 /In Propria Personam  
22 Post Office Box 650 [HDSP]  
23 Indian Springs, Nevada 89018  
24  
25  
26  
27  
28

NAME: HAYES JAMES, # 87108

HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA 89018

DATE: JUNE 26 2019

TO: GARRETT T. OGATA  
3841 CHARLESTON BLVD.  
SUITE 205  
LAS VEGAS, NEVADA  
89102

SUBJECT: TERMINATION OF COUNSEL/TRANSFER OF RECORDS

CASE NO.: \_\_\_\_\_

DEPT. NO.: 14

CASE NAME: \_\_\_\_\_

Please be advised that from this date forward, your authority as Attorney of Record in the above-stated action is hereby terminated. All of the professional relations of Attorney and Client do hereby cease.

Please enter your withdrawal from this action with the Court immediately.

Pursuant to NRS 7.055, I respectfully request that you deliver to me, forthwith, all documents, papers, pleadings and tangible personal property that is in your possession that relates to the above-named action.

Your prompt attention to this request is genuinely appreciated.

Respectfully,

James Hayes

//////

//////

//////

**CERTIFICATE OF SERVICE BY MAILING**

I, JAMES T. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 26  
day of JUNE, 2019, I mailed a true and correct copy of the foregoing, "TO DISMISS  
COUNSEL AND TO WITHDRAW COUNSEL ON MY BEHALF."

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
addressed as follows:

HAYES JAMES  
STONE STREET CAPITAL  
6130 EXECUTIVE BLVD.  
ROCKVILLE, MD 20852

JAMES HAYES 16099835  
330 S. CASINO BLVD.  
LAS VEGAS, NEVADA  
89101 CCDC

JAMES HAYES  
LAW OF GARRETT T. OGATA  
3841 W. CHARLESTON BLVD.  
SUITE 205  
LAS VEGAS, NV 89102

JAMES HAYES  
PREACHTREE  
1200 MORRIS  
CHESTER BOOK, PA  
19087

JAMES T. HAYES  
POSTED OFFICE #203  
174 W. LINCOLN AVE.  
ANIMAS, CA  
CC:FILE 96704  
ORANBE COUNTY

JAMES HAYES  
TASHA GOLDMAN  
4370 TWIN VIEW CIRCLE  
APT. 2  
LAS VEGAS, NV 89105

DATED: this 26 day of JUNE, 2019.

James Hayes

#

/In Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION

TO WITHDRAW COUNSEL BE GRANTED BY RESPECTFUL JUDGE  
(Title of Document)

filed in District Court Case number \_\_\_\_\_

☐ Does not contain the social security number of any person.

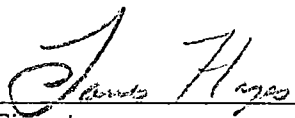
-OR-

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

A. A specific state or federal law, to wit: WITHDRAW  
COUNSEL IN DISTRICT COURT NRS. 7.055  
(State specific law)

-or-

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

  
Signature

6.26.2019  
Date

Hayes James  
Print Name

WITHDRAW COUNSEL  
Title

giving out my information and talking to anyone on the phone that has my information someone has robb me and Stael all of my information while I was incarcerated in NDOC. Because of this I am in debt, I cant effort to pay my bills on time. I cant effort to find a place to stay. I cant effort to take care of my kids. I cant effort to pay for transportation. I cant effort to pay for my EDUCATION. I CANT effort to pay for my medical EXPAINESS. I CANT effort to pay for my own Doctor. I CANT effort to started my own Business. I cant effort to take care of my family. I cant effort to pay for my 10 Kids, school, MEDICAL, FOOD, Baby sitting, Housing. I cant effort to go to college at UNLV. I cant effort to hirer my own Attorney. I cant effort all the things I need for work. Because they SOLD EVERYTHING I Had to my name and I didn't autherized them to do so. I Have a really Bad memory. And I am a special EDUAction Strdent and people always try to get over on people who are gifted with money legally it is not RIGHT That these type of Business companys can ROBB, and Steal people funds, money, checks, income, benefits. I want all my benefits back from preach-tree 1200 MORRIS ChesterBOOK, PA 19081 and I want them to Follow The NRS 7.055 States in pertinent part: as of points and Authorities.

WHEREFORE, Plaintiff(s) prays the Honorable Court of Nevada, Grants SUMMONS - civil, SUMMONS/COMPLAINT, SUMMONIS, SUBPOENA, NOTICE, NOTICE OF MOTION, SMALL CLAIMS, AMENDED, Complaint / Petition to preachtree-owners, civil Rights complaint.

Thankyou very much your Honorable Judge of Nevada courts please have a blessed day.



UNITED STATES  
HIGH DESERT  
P.O. BOX 650  
Indian Springs, NV  
89070

07/16/2019  
USPS **POSTAGE** \$001.45



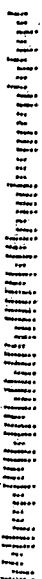
ZIP 89101  
041E12650764

LEGAL MAIL

3762

Justice Court,  
Las Vegas Township  
200 Lewis Ave.  
Las Vegas, NV 89155

9510135300 0075



LEGAL MAIL

LEGAL MAIL

1 / In Propria Personam  
2 Post Office Box 650 [HDSP]  
3 Indian Springs, Nevada 89018

FILED

JUL 29 2019

*Ann L. Blum*  
CLERK OF COURT

4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 JAMES HAYES  
9 Plaintiff

10 vs.

11 GARRETT T. OGATA  
12 Defendant

Case No.

Dept No. C-19-338412-1  
Dept. 19

Docket

13  
14 NOTICE OF MOTION

15 YOU WILL PLEASE TAKE NOTICE, that JAMES HAYES, will BE  
16 DISMISSING AND WITHDRAWING COUNSEL

17 will come on for hearing before the above-entitled Court on the  
18 at the hour of 7 o'clock 30 M. In Department 14, of said C

August 21, 2019  
8:30 AM

19

20 CC:FILE

21  
22 DATED: this 26 day of JUNE, 2019.

23  
24 BY: James Hayes

25 #  
26 /In Propria Personam  
27  
28

DISTRICT COURT  
CLARK COUNTY, NEVADA

JAMES HAYES  
PLAINTIFF  
vs.  
GARRETT T. OGATA  
DEFENDANT

Case No.

Dept. No.

C-19-338412-1  
Dept. 19

Docket

**ORDER**

Upon reading the motion of defendant, GARRETT T. OGATA, requesting withdrawal of counsel, IN THE DISTRICT COURT, Esq., of the Clark county Public Defender's Office, and Good Cause Appearing,

**IT IS HEREBY ORDERED** that defendant's Motion for Withdrawal of Counsel is GRANTED.

**IT IS HEREBY FURTHER ORDERED** that Counsel deliver to defendant at his address, all documents, papers, pleadings, discovery and any other tangible property in the above-entitled case.

DATED and DONE this 26 day of JUNE, 2019.

DISTRICT COURT JUDGE

C - 19 - 338412 - 1  
LSF  
Left Side Filing  
4852389





1 COSCC

2  
3  
4  
5 DISTRICT COURT  
CLARK COUNTY, NEVADA

6 \* \* \* \*

7 STATE OF NEVADA

CASE NO.: C-19-338412-1

8 VS

DEPARTMENT 19

9 JAMES HAYES

10  
11 CRIMINAL ORDER TO STATISTICALLY CLOSE CASE


12 Upon review of this matter and good cause appearing,

13 IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to  
14 statistically close this case for the following reason:

15 **DISPOSITIONS:**

- 16 ☐ Nolle Prosequi (before trial)
- 17 ☐ Dismissed (after diversion)
- 18 ☐ Dismissed (before trial)
- 19 ☒ Guilty Plea with Sentence (before trial)
- 20 ☐ Transferred (before/during trial)
- 21 ☐ Bench (Non-Jury) Trial
- 22 ☐ Dismissed (during trial)
- 23 ☐ Acquittal
- 24 ☐ Guilty Plea with Sentence (during trial)
- 25 ☐ Conviction
- 26 ☐ Jury Trial
- 27 ☐ Dismissed (during trial)
- 28 ☐ Acquittal
- ☐ Guilty Plea with Sentence (during trial)
- ☐ Conviction
- ☐ Other Manner of Disposition

DATED this 7th day of October, 2020.

  
WILLIAM D. KEPHART  
DISTRICT COURT JUDGE

1 NOYES, JAMES H #1175077

2 / In Propria Personam  
3 Post Office Box 208 S.D.C.C.  
4 Indian Springs, Nevada 89018

FILED

JAN 14 2022

*John H. Hume*  
CLERK OF COURT

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 JAMES H. NOYES  
8 (defendant)

9 v.

10 STATE OF NEVADA  
11 (respondent)

"HEARING REQUESTED"

Case No. C-19-338412-1

Dept No. 19

Docket \_\_\_\_\_

13  
14 NOTICE OF MOTION

15 YOU WILL PLEASE TAKE NOTICE, that \_\_\_\_\_

16  
17 will come on for hearing before the above-entitled Court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
18 at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ M. In Department \_\_\_\_\_, of said Court.

19  
20 CC:FILE

21  
22 DATED: this 5<sup>th</sup> day of January, 2022

23  
24 BY:

James H. Noyes  
JAMES H. NOYES #1175077  
/In Propria Personam

1 Hayes, James H. ID NO. 1175077

2 SOUTHERN DESERT CORRECTIONAL CTN.  
3 20825 COLD CREEK RD.  
4 P.O. BOX 208  
5 INDIAN SPRINGS, NV 89070

FILED

JAN 14 2022

*John J. Williams*  
CLERK OF COURT

6 IN THE 8<sup>th</sup> Judicial District Court of the  
7 STATE OF NEVADA IN AND FOR THE COUNTY  
8 of Clark

9 James H. Hayes  
10 (Defendant)

v.

11 State of Nevada  
12 (Respondent)

"HEARING REQUESTED"

CASE NO.: C-19-338412-1

DEPT. NO.:

DOCKET: February 7, 2022  
8:30 AM

13 "Motion in the Nature of a Writ of Coram  
14 Nobis."

17 COMES NOW defendant James H. Hayes, herein above respectfully  
18 moves this Honorable Court for an RECONSIDERATION of judgment for  
19 good cause as the court made a mistake in rendering  
20 judgment... correct manifest injustice!!

21 This Motion is made and based upon the accompanying Memorandum of Points and  
22 Authorities,

23 DATED: this 5<sup>th</sup> day of JANUARY, 2022

24 BY: James H. Hayes  
25 James H. Hayes # 1175077  
26 Defendant In Proper Personam

27 **RECEIVED**

JAN 10 2022

28 CLERK OF THE COURT

-1-

ADDITIONAL FACTS OF THE CASE:

1 COMES NOW the defendant MR. JAMES H. NEAL  
2 IN PRO SE IN NECESSITY, and hereby "MOVES" this  
3 honorable court to issue writ of CORAM NOBIS to  
4 correct manifest injustice. In support, the defendant  
5 shows the court the following:

6 1.) To achieve justice a motion in the nature  
7 of CORAM NOBIS is available to correct errors of the  
8 most fundamental character under circumstances  
9 where no other remedy is available, meaning it's  
10 available to correct violations of the constitution  
11 and laws of the United States.

12 2.) Fact remains that courts which make a  
13 mistake in rendering a judgment, which works to the  
14 extreme detriment of the defendant, can not allow  
15 it to stand uncorrected.

16 3.) Guilty plea was the product of ignorance,  
17 fear, inadvertence and coercion, and must be vacated  
18 as void since it is violative of constitutional safe-  
19 guards, and the passage of time does not close the  
20 door to reconsideration. (See WARDEN V. PETER 429 P.2d  
21 549)

22 4.) Preliminary hearing showed that alleged  
23 victim James McGroth while under oath facing the  
24 penalty of perjury was unable to identify defendant  
25 as the perpetrator of the ipse dixit crime in open  
26 court rendering the evidence false, and rise to  
27 irreparable misidentification (See DALEMAN V. DADES

1 954 F.2d 1501) (Simmons v. United States 390 U.S. 377)  
2 Thus, Clark County District Court failed to provide on the  
3 record proof that the court had subject-matter  
4 jurisdiction, or an essential element to prosecute  
5 defendant pursuant to the powers granted to the  
6 State of Nevada under the United States Constitution.

7 5.) Coram Nobis is used to address errors of  
8 fact outside the record that have affected the validity  
9 of the decision made and would have precluded the  
10 judgment from being rendered. As here the errors of  
11 fact involved subject-matter jurisdiction and personal  
12 jurisdiction errors regarding the status of defendant  
13 which would have prevented a judgment from being  
14 entered against defendant. Furthermore, this error was  
15 not reasonably available to be raised by defendant  
16 while in custody due to his constitutional guarantee  
17 of effective assistance of counsel thus challenge  
18 could not be raised by defendant pro se, so defendant  
19 had no available legal remedy.

20 6.) Coram Nobis is the forum to correct only  
21 the most egregious factual errors that would have  
22 precluded entry of the judgment of conviction had  
23 the error been known to the court. At the time, court's  
24 determination was based on several factual inaccuracies  
25 and representations that were not supported by or  
26 contained within the record.

27 7.) Accordingly, defendant has demonstrated



1 HE IS NO LONGER IN CUSTODY AND CHALLENGE OF JUDGMENT  
2 OF CONVICTION IS BASED ON ERRORS OF FACT THAT HE  
3 WOULD HAVE PREVAILED ON HED COUNSEL MEET THE  
4 OBJECTIVE STANDARD OF REASONABLENESS AND BEEN  
5 FAMILIAR WITH THE FACTS AND LAW RELEVANT TO  
6 DEFENDANT'S CASE TO INCLUDE A SUFFICIENCY OF THE  
7 EVIDENCE AND LACK OF PROBABLE CAUSE CLAIM.

8 E.) IN CLOSING, THERE IS NO GREATER EVIDENCE  
9 THAN THE VICTIMS SWORN TESTIMONY AND IN-COURT  
10 IDENTIFICATION OF PERPETRATOR...

11 WHEREFORE NOW, ABOVE PREMISES CONSIDERED,  
12 THE DEFENDANT "MOVES" THIS COURT TO RENDER JUDGMENT  
13 IN HIS CORAM NOBIS MOTION. THE DEFENDANT RESPECT-  
14 FULLY "MOVES" THIS COURT TO ENTER JUDGMENT AS  
15 REQUIRED BY LAW, LIBERTY, AND JUSTICE...

16  
17 \* NOTE: ~~THE DEFENDANT~~ HAS BEEN CONVICTED OF A CRIME  
18 HE DID NOT COMMIT AND THE ~~PROSECUTION~~ WAS  
19 MALIGNANT AS NO PROBABLE CAUSE EXIST AND  
20 VENEDICTIVE TO USE MISPLACED TRUST OF PROBABLE  
21 CAUSE TO ENHANCE AND DRESS GUILTY PLEA  
22 AGREEMENT IN CASE C-16-315718-1 TO COMMIT  
23 "FRAUD" UPON THE COURT  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE BY MAILING**

I, JAMES H. HAYES, hereby certify, pursuant to NRC P 5(b), that on this 5th day of JANUARY, 2022, I mailed a true and correct copy of the foregoing, "MOTION IN THE NATURE OF A WRIT OF HABEAS CORPUS" by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

CLARK COUNTY DISTRICT COURT  
OFFICE OF THE CLERK  
200 LAUREL AVE. 3RD FLOOR  
LAS VEGAS, NV  
89105-1100

CLARK COUNTY DISTRICT ATTORNEY  
200 LAUREL AVE  
LAS VEGAS, NV  
89105-2212

CC:FILE

DATED: this 5th day of JANUARY, 2022.

James H. Hayes  
JAMES H. HAYES #1175087  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

Subscribe and share "YOUTUBE" channel... Thanks!!

GOOGLE:

UCCANTCME

Southern Desert  
Correctional Center  
JAN 6 2022  
OUTGOING-MAIL

213  
JAMES, JAMES #175022  
SUCC  
P.O. Box 208  
INDIAN SPRINGS NV  
89070



LAS VEGAS NV 890  
6 JAN 2022 PM 4

Clark County District Courts  
"OFFICE OF THE CLERK"

200 LEAVIS AVE; 3RD FLOOR

Las Vegas, Nevada

89155-1160

LEGAL  
MAIL

000003-10158



**OPPS**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JONATHAN E. VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
Plaintiff,

-vs-

**JAMES HOWARD HAYES,**  
**#2796708**

Defendant.

CASE NO: **C-19-338412-1**

DEPT NO: **III**

**STATE'S OPPOSITION TO DEFENDANT'S MOTION**  
**IN THE NATURE OF A WRIT OF *CORAM NOBIS***

DATE OF HEARING: **FEBRUARY 7, 2022**  
TIME OF HEARING: **8:30 AM**

The State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JONATHAN E. VANBOSKERCK, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in State's Opposition to Defendant's Motion in the Nature of a Writ of *Coram Nobis*.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

//

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 James Howard Hayes Jr. (hereinafter "Defendant") was charged by Information with  
4 one count of Burglary (Category B Felony – NRS 205.060) and one count of Unlawful Use of  
5 Hotel Key (Gross Misdemeanor – NRS 205.900).

6 At his initial arraignment on February 28, 2019, a security guard and a police officer  
7 identified Defendant. Ryan Erhart, security guard at the Mirage Hotel and Casino, identified  
8 Defendant as the person who matched the description of a person who had entered a guest  
9 room without the permission of the lawful occupant. When Erhart searched Defendant, he  
10 found a Mirage key card, even though Defendant was not a guest of the Mirage. Austin Fox,  
11 a police officer with Las Vegas Metropolitan Police Department, identified Defendant as the  
12 person in the custody of Mirage security. Immediately upon his arrival at the Mirage, Officer  
13 Fox showed Defendant to the victim, who confirmed Defendant was the person who had  
14 intruded into his room shortly before. James McGrath, the victim, was unable to positively  
15 identify Defendant at arraignment. McGrath again described the clothing worn by the intruder,  
16 which matched the clothing worn by Defendant when he was detained for trespassing at the  
17 Mirage.

18 In finding probable cause for the charges against Defendant, the magistrate said, "the  
19 purpose of today is for preliminary hearing. It's slight or marginal evidence that a crime was  
20 committed or that these crimes were committed and that you committed it. Based upon the  
21 testimony today with the guest, even though he identified the wrong person, he identified  
22 someone that night that came into his room without permission. A person was later detained.  
23 That person was you. And you had the Mirage key in the pocket. So I find that the State has  
24 than met its burden." Defendant was remanded to district court.

25 In district court, on March 13, 2019, Defendant pled not guilty and the matter was set  
26 for trial. He invoked his right to a speedy trial. On April 18, 2019, the State filed a notice of  
27 intent to seek punishment as a habitual criminal.

28 //

1 On May 6, 2019, Defendant pled no contest to a misdemeanor charge of disorderly  
2 conduct. The district court adjudicated him guilty and sentenced him to time served. The State  
3 filed an Amended Information reflecting that charge the same day.

4 On January 14, 2022, Defendant filed the instant Motion in the Nature of a Writ of  
5 *Coram Nobis* (hereinafter “Motion”).

#### 6 **STATEMENT OF THE FACTS**

7 On January 26, 2019, Defendant entered the hotel room of James McGrath at the Mirage  
8 Hotel and Casino in Las Vegas, Nevada, without the permission of Mr. McGrath. Mr. McGrath  
9 was in town for a business convention. He went to bed around midnight and awoke at two AM  
10 when he heard his hotel room door open. The entry to the room was illuminated, and Mr.  
11 McGrath saw a strange black man wearing a white jacket standing in his room. The man  
12 mumbled an apology and fled. Mr. McGrath contacted security.

13 Mirage security located Defendant, wearing the described clothing, in front of one of  
14 the resort’s restaurants. Security followed Defendant to valet parking, where he claimed a  
15 friend was to pick him up. Security frisked Defendant and found a hotel key card, even though  
16 Defendant was not a guest of the hotel. Security restrained Defendant until the police arrived.

17 The first police officer on the scene conducted a show-up and Mr. McGrath identified  
18 Defendant as the person he had seen in his room. Defendant was arrested and charged with  
19 burglary and unlawful possession of a hotel key.

#### 20 **ARGUMENT**

##### 21 **I. DEFENDANT’S CLAIMS ARE NOT COGNIZABLE UNDER A WRIT OF** 22 ***CORAM NOBIS***

23 Defendant seeks to set aside his judgment of conviction through the mechanism of  
24 *coram nobis*. Motion at 2. *Coram nobis* is an extraordinary remedy designed to correct  
25 egregious errors of fact. Because Defendant’s claims are legal rather than factual, this writ is  
26 not available to him.

27 //

28 //

1 After a defendant has been released from custody, the only relief he may seek from his  
2 conviction is through a writ of *coram nobis*. A writ of habeas corpus is not available to a  
3 defendant who is no longer in custody, nor is a motion to withdraw a plea. Although a writ of  
4 *coram nobis* is an available remedy in Nevada, it is limited in its application and scope. Trujillo  
5 v. State, 129 Nev. 706, 716-17, 310 P.3d 594, 600-601 (2013).

6 The writ of *coram nobis* is only available for factual claims that would have precluded  
7 conviction, not for legal claims of any sort. If, for example, someone were convicted of  
8 underage drinking and then released, he could use the writ to allege he was unaware of his  
9 actual age and was actually over the statutory age at the time of the offense. The writ could  
10 not be used to allege no witnesses observed him drinking while underage. “[L]egal errors fall  
11 entirely outside the scope of the writ.” Id. at 717, 310 P.3d at 601 (citing People v. Hyung Joon  
12 Kim, 90 Cal.Rptr.3d 355, 202 P.3d at 446; State v. Diaz, 283 Neb. 414, 808 N.W.2d 891, 896  
13 (2012)).

14 In Trujillo, the Court articulated the history of *coram nobis*, noting it was a common  
15 law remedy stretching back to the sixteenth century and existing in the common law “as a  
16 means of reviewing errors of fact outside the record that affected the validity and regularity of  
17 the decision itself and would have precluded the judgment from being rendered had they been  
18 known.” 129 Nev. at 710, 310 P.3d at 597. It is not enough for the factual error to have a  
19 potential to change the outcome of a previous proceeding. State v. Diaz, 283 Neb. 414, 420,  
20 808 N.W.2d 891, 896 (2012). Instead, the error must be of a nature that would have prevented  
21 a conviction. Trujillo, 129 Nev. at 710, 310 P.3d at 597. Examples of the scope of *coram nobis*  
22 as it existed in sixteenth-century England included clerical errors, the infancy or death of a  
23 party, coverture, or the insanity of a defendant at the time of trial. Id.

24 Further, in order to qualify for *coram nobis* relief, the factual errors could not have been  
25 known or reasonably discoverable prior to the filing of the petition. Id. at 710, 310 P.3d at  
26 597; see also, People v. Shipman, 62 Cal. 2d 226, 230, 397 P.2d 993, 995 (1965) (“Petitioner  
27 ‘must show that the facts upon which he relies were not known to him and could not in the  
28 exercise of due diligence have been discovered by him at any time substantially earlier than

1 the time of his motion for the writ.””) (quoting People v. Shorts, 32 Cal.2d 502, 513, 197 P.2d  
2 350 (1948)).

3 The Trujillo Court noted that coram nobis as a remedy had been rejected or supplanted  
4 by a majority of states through the statutory adoption of various post-conviction remedies. Id.  
5 at 712-13, 310 P.3d at 598 (noting only 12 states recognized coram nobis in 2013). Further,  
6 of the states that still recognized coram nobis, most restricted the availability of the remedy to  
7 the form that existed at common law. Id. at 712, 310 P.3d at 598. A minority of states, as well  
8 as the federal government, adopted a more liberal approach to the availability of coram nobis.  
9 Id. at 711-12, 310 P.3d at 598.

10 The Trujillo Court adopted the common-law definition of *coram nobis*, limiting the writ  
11 available to defendants to claims of factual error as a post-conviction challenge to their  
12 conviction when they had already expired their sentence, and declined to adopt the more liberal  
13 approach that a minority of states, as well as the federal government, have adopted. Id. at 710,  
14 310 P.3d at 598. Specifically, the Trujillo Court limited the availability of coram nobis to errors  
15 of fact outside the record that affect the validity and regularity of the decision itself and would  
16 have precluded the judgment from being rendered. Id.

17 The Trujillo Court listed the requirements for exercising the writ: it may only challenge  
18 a sentence after the defendant is no longer in custody on the conviction being challenged; it  
19 may only challenge errors of fact outside the record that could not have been raised earlier; the  
20 errors of fact must affect the validity and regularity of the decision itself; and if known at the  
21 time, the facts would have precluded the judgment from being rendered. Id. at 708, 310 P.3d  
22 at 596. Further, the error must not have been withheld by the defendant and the error must be  
23 egregious. Id. at 717, 310 P.3d at 601. The limited scope of *coram nobis* relief requires a  
24 conjunctive showing of (1) facts not known to the Court at the time of conviction, (2) that were  
25 not withheld by the defendant, (3) that would have prevented entry of judgment. Id. at 717,  
26 310 P.3d at 601.

27 //

28 //



1 The writ may not be used to argue ineffective assistance of counsel:

2 while there is undeniably a factual underpinning to a claim of  
3 ineffective assistance of counsel, the ultimate issue is the legal  
4 question of whether the representation was constitutionally adequate:  
5 whether the performance of counsel fell below an objective standard  
6 of reasonableness and whether there was resulting prejudice such that  
7 there is a reasonable probability that, but for counsel's errors, the  
8 outcome of the proceedings would have been different.

9 Id. at 718, 310 P.3d at 602.

10 The writ may not be used to argue newly discovered evidence:

11 Although we do not attempt to precisely define the realm of factual  
12 errors that may give rise to a writ of *coram nobis*, that realm is limited  
13 to errors involving facts that were not known to the court, were not  
14 withheld by the defendant, and would have prevented entry of the  
15 judgment. For example, a factual error does not include claims of  
16 newly discovered evidence because these types of claims would not  
17 have precluded the judgment from being entered in the first place.

18 Id. at 717, 310 P.3d at 601.

19 The writ may not be used to argue actual innocence:

20 “A writ of *coram nobis* is not, however, the forum to relitigate the  
21 guilt or innocence of the petitioner. We have long emphasized the  
22 importance of the finality of judgments, and we are gravely concerned  
23 that recognizing this writ, even in the very limited form that we do  
24 today, will result in a proliferation of stale challenges to convictions  
25 long since final.”

26 Id. at 717, 310 P.3d at 601.

27 The writ may not be raised while the petitioner is in custody:

28 [A]ny error that was reasonably available to be raised while the  
petitioner was in custody is waived, and it is the petitioner's burden  
on the face of his petition to demonstrate that he could not have  
reasonably raised his claims during the time he was in custody.

Id. at 717–18, 310 P.3d at 601–02.

Defendant can not meet his burden under Trujillo. Defendant alleges the writ of *coram nobis* is “available to correct errors of the most fundamental character under circumstances where no other remedy is available, meaning it’s available to correct violations of the constitution and laws of the United States.” Motion at 2. This is an incorrect statement of Nevada law. The writ can only address errors of fact that would have prevented the court from

entering judgment. Id. at 717, 310 P.3d at 601.

Defendant contends his guilty plea “was the product of ignorance, fear, inadvertence, and coercion, and must be vacated as void since it is violative of constitutional safeguards.” Motion at 2. The validity of a guilty plea may only be challenged through a writ of habeas corpus undertaken while the prisoner remains in custody on the challenged conviction. Id. at 717–18, 310 P.3d at 601–02.

Defendant claims the court had no jurisdiction over him because the victim did not identify him in court. Motion at 2-4. If a crime occurs in Nevada, a Nevada court has jurisdiction. Jurisdiction is a legal issue, not one of fact. Legal claims may not be raised by a writ of *coram nobis*. Id. at 717, 310 P.3d at 601.

Defendant claims he was unable to raise the issue of the court’s lack of jurisdiction because he had an attorney. Motion at 3. He claims this “error” was unknown to the court at the time of his conviction. Motion at 3.

Defendant appears to claim his counsel was ineffective for not realizing the court had no jurisdiction over him. Motion at 4. He “would have prevailed on” his claim if his counsel had “met the objective standard of reasonableness and been familiar with the facts and law relevant to defendant’s case to include a sufficiency of the evidence and lack of probable cause claim.” Motion at 4. The effectiveness of counsel is a legal claim, not a factual one, and may not be asserted in a writ of *coram nobis*. Id. at 717, 310 P.3d at 601.

Finally, Defendant appears to assert an actual innocence claim. “Mr. Hayes has been convicted of a crime he did not commit and the prosecution was malicious as no probable cause exists and vindictive to use misplace ruling of probable cause to enhance and breach guilty plea agreement in case C-16-315718-1 to commit fraud upon the court.” Although Defendant makes no attempt to clarify this naked assertion, it does not matter, as actual innocence may not be raised in a writ of *coram nobis*. Id. at 717, 310 P.3d at 601.

Defendant fails to allege the Court was unaware of any fact at the time of his guilty plea that would have prevented entry of judgment. This Court should find the writ unavailable to Defendant. Further, because Defendant has completed his sentence, his claims are outside the

1 scope of a petition for writ of habeas corpus AND he may not file a motion to withdraw his  
2 plea. NRS 34.724. There is no remedy that will allow Defendant to undo his conviction.

3 **CONCLUSION**

4 For the above reasons, the State respectfully requests that this Court deny Defendant's  
5 Motion in the Nature of a Writ of *Coram Nobis*.

6 DATED this 20<sup>th</sup> day of January, 2022.

7 Respectfully submitted,

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

10 BY /s/ Jonathan E. Van Boskerck  
11 JONATHAN E. VANBOSKERCK  
12 Chief Deputy District Attorney  
Nevada Bar #006528

13  
14  
15  
16  
17 **CERTIFICATE OF SERVICE**

18 I hereby certify that service of the above and foregoing was made this 20th day of  
19 JANUARY 2022, to:

20 JAMES HOWARD HAYES, BAC#1175077  
21 S.D.C.C.  
22 P.O.BOX 208  
INDIAN SPRINGS, NV 89070

23  
24 BY /s/ Howard Conrad  
25 Secretary for the District Attorney's Office  
Special Victims Unit

26  
27  
28 hjc/SVU

~~IMMEDIATE~~

Filing  
Requested

FILED

FEB 11 2022

*John A. Williams*  
CLERK OF COURT

In the 8<sup>th</sup> Judicial District Court of the  
State of Nevada in and for the County  
of Clark...

JAMES H. HAYES  
v. (Defendant)  
State of Nevada  
(Respondent)

CASE NO: C-19-338412-1  
DEPT. NO: 3

HEARING REQUESTED!!

"Reply to State's Opposition to Defendant's  
Motion in the Nature of a Writ of Coram  
Nobis"

Comes Now the defendant MR. JAMES H. HAYES, in  
Pro Se, in Necessity, and hereby "MOVES" this honorable  
Court to "GRANT" writ of Coram Nobis to redress manifest  
injustice. In support, the defendant shows the Court that  
State's opposition is untenable for the following reason(s)...

1.) State's opposition is contrary to, and involved  
an unreasonable application of, clearly established federal  
law, as determined by the Supreme Court of the United States.

2.) United States v. Morgan 346 U.S. 502, clearly  
established Supreme Court precedent offer a holding, not  
merely dictum, that squarely addresses the issue(s) raised by  
the defendant in his "Motion in the Nature of Writ of Coram  
Nobis" and provides a clear answer to the questions presented.

RECEIVED

FEB - 7 2022

CLERK OF THE COURT

3.) United States Supreme Court in *Morgan* explained "that, to achieve justice a motion in the nature of *coram nobis* would be available to correct errors of the most fundamental character under circumstances where no other remedy was available..." In a breathtaking expansion of the common-law writ the *Morgan* court indicated that a motion in the nature of *coram nobis* was the same general character as a motion under 28 U.S.C. § 2253 - meaning it would be available to correct violations of the Constitution and laws of the United States." *Id.* 505 n.4 See also *United States v. Kurnat*, 407 F.3d 1005, 1011 (9<sup>th</sup> Cir 2005)

4.) State's opposition was based on an unreasonable determination of the facts in light of the evidence presented in preliminary hearing and the Nevada Supreme Court decision in *Trujillo v. State*, 310 P.3d 544 See also *Lockyer v. Andrade*, 538 U.S. 63, 70-71 (2003)

5.) State identifies the correct governing legal principle from the Nevada Supreme Court decision but unreasonably applies the principle to the facts of the defendant's case. (*Williams v. Taylor*, 529 U.S. 362, 405 (2000)). The state's opposition "unreasonable application" of Supreme Court precedent is more than merely incorrect or erroneous. Rather, it's so unreasonable no fair-minded individual would agree with it. (*Herrington v. Richter*, 562 U.S. 86 (2011))

6.) State district courts are presumed to know and follow the law thus district court decisions should not contradict clearly established Supreme Court precedent. State's opposition is an incorrect statement of Nevada law, as

1 as the Supreme Court of Canada in its decision in,  
2 Truitt, 310 P.3d 594 (2013) states "At common law, many  
3 of errors of fact involves jurisdictional errors".

4 WHEREAS, the Clark County District Court lack jurisdiction  
5 of defendant was an error of fact outside the record  
6 that effect the validity and regularity of the decision  
7 by the court and would have precluded the judgment  
8 from being rendered as insufficient evidence was produced  
9 at preliminary hearing to establish probable cause against  
10 the defendant, as alleged victim testified under oath  
11 that defendant was NOT the perpetrator and 100% sure  
12 of it of the rape charge, rendering all the evidence  
13 produced at preliminary hearing false and irreparable  
14 misidentification (Dantherm v. Deeds, 954 F.2d 1501; Simmons v.  
15 United States, 390 U.S. 377). This is the most egregious  
16 factual error and would have precluded entry of the  
17 judgment as jurisdiction error and constitutional violations.

18 2.) Thus no reasonable basis for the Clark County  
19 District Court to deny relief, when there is no open question  
20 in the U.S and Canada Supreme Court jurisprudence. Indeed,  
21 State fails to identify even a single United States Supreme  
22 Court case that contradicts defendant claim(s). State may  
23 be attempting to wait to hearing date to meet their burden  
24 and the federal law. However, such impermissible maneuvering  
25 would violate the longstanding view that parties may not  
26 raise an argument that defendant has no opportunity to  
27 refute, such argument would prejudice defendant and there-  
28 fore must not be permitted. As such, State has not and

1 cannot satisfy their burden. It's states responsibility, not  
2 the courts to seek the decisions issued by the United  
3 states and Nevada Supreme court to find the appropriate  
4 case law that may benefit the state, thus bare assertion  
5 does not defeat a meritorious claim.

6 8.) In closing, the preliminary hearing was devoid  
7 of probable cause that defendant was the perpetrator.  
8 therefore state fails to show district court had personal  
9 and subject-matter jurisdiction and no reasonable  
10 basis exists to support jurisdiction in the Clark County  
11 district court, thus states claims are so lacking in just-  
12 ification that there was an error well understood and  
13 comprehended in existing law beyond any possibility  
14 for a fair minded disagreement. Because the courts lack  
15 of personal jurisdiction and no corpus delicti exists  
16 thus no justiciable controversy or cause of action properly  
17 before the Clark County district court. I motion that the  
18 court vacate the conviction as there is neither an injured  
19 party nor trespass, for a crime to exist, there must be an  
20 injured party and Mr. Hayes had a valid hotel key issued  
21 to him by a registered guest of the hotel, that Metro  
22 police and hotel security failed to verify by doing a  
23 simple investigation into the key and the registered guest  
24 that the keys investigation would have lead to...

**CERTIFICATE OF SERVICE BY MAILING**

I, JAMES H. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 28<sup>th</sup> day of JANUARY, 2022 I mailed a true and correct copy of the foregoing, "Reply to State's opposition to defendant's motion in the nature..." by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Clark County District Courts  
OFFICE OF THE CLERK  
200 LAUREL AVE, 3RD FLOOR  
LAS VEGAS, NV  
87155-1160

Clark County District Attorney  
200 LAUREL AVE  
LAS VEGAS, NV  
87155-2212

Attorney General of Nevada  
100 N. CARSON ST  
CARSON CITY, NV  
89701

CC:FILE

DATED: this 28<sup>th</sup> day of JANUARY, 2022.

James H. Hayes  
JAMES H. HAYES #1175077  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
**IN FORMA PAUPERIS:**



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Google

South  
Corr. Inst.  
Prison Center  
JAN 31 2022  
OUTGOING MAIL

227  
Haley, James # 1175077  
50CC  
P.O. Box 208  
Indian Springs, NV  
89070

Clerk County District Courts  
"Office of the Clerk"  
200 LEWIS AVE; 3RD FLOOR  
LAS VEGAS, NEVADA

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 May

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FILED

FEB 24 2022

*Sharon A. Blinn*  
CLERK OF COURT

Hayes, James #1175077

In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CLARK

State of Nevada  
Plaintiff,

vs.

JAMES H. HAYES  
Defendant.

Case No. C-19-338412-1

Dept. No. 3

Docket \_\_\_\_\_

**NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,  
JAMES H. HAYES, in and through his proper person, hereby  
appeals to the Supreme Court of Nevada from the ORDER denying and/or  
dismissing the

Motion in the Nature of a Writ of Coram Nobis

ruled on the 27 day of February, 2022.

Dated this 22nd day of February, 2022.

Respectfully Submitted,

James H. Hayes

C-19-338412-1  
NOASC  
Notice of Appeal (Criminal)  
4985763



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MAR 16 2022

CLERK OF THE COURT

**CERTIFICATE OF SERVICE BY MAILING**

I, JAMES H. JAMES, hereby certify, pursuant to NRCP 5(b), that on this 22<sup>ND</sup>  
day of FEBRUARY, 2022 I mailed a true and correct copy of the foregoing, "Notice of  
MOTION"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

Clerk County District Courts  
200 LEWIS AVE. 3RD FL  
LAS VEGAS, NV  
89135-1160

Clerk County District Attorney  
200 LEWIS AVE  
LAS VEGAS, NV  
89135-2212

SUPREME COURT of Nevada  
201 S. PERCIVAL ST. SUITE 201  
CARSON CITY, NV  
89701

CC:FILE

DATED: this 22<sup>ND</sup> day of FEBRUARY, 2022.

James H. James  
JAMES H. JAMES #1175022  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
**IN FORMA PAUPERIS:**

Haley, James #1173877  
5000  
P.O. Box 208  
Indian Springs, NV  
89020

LAS VEGAS NV 890

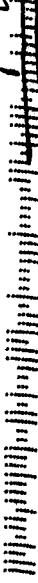
22 FEB 2022 PM 4 L

Nevada Supreme Court  
"Office of the Clerk"  
201 South Carson St.; Suite 201  
Carson City, Nevada

89701

Legal Mail

150824-10258



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National Center  
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Hayes, James H. 1175077  
Petitioner/In Propria Persona  
Post Office Box 208, SDCC  
Indian Springs, Nevada 89070-0208

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FEB 24 2022

*Sharon A. Blinn*  
CLERK OF COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CLARK

State of Nevada

Plaintiff,

vs.

James H. Hayes

Defendant.

CASE No. C-19-338412-1  
DEPT. No. 3

DESIGNATION OF RECORD ON APPEAL

TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C-19-338412-1  
DROA  
Designation of Record on Appeal  
4985764



The above-named Plaintiff hereby designates the entire record of the above-entitled case, to include all the papers, documents, pleadings, and transcripts thereof, as and for the Record on Appeal.

DATED this 22nd day of February, 2022.

RESPECTFULLY SUBMITTED BY:

James H. Hayes  
JAMES H. HAYES #1175077  
Plaintiff/In Propria Persona

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MAR 16 2022

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HALES, JAMES H ID NO. 1175077

SOUTHERN DESERT CORRECTIONAL CTN.  
20825 COLD CREEK RD.  
P.O. BOX 208  
INDIAN SPRINGS, NV 89070

FILED

MAR - 2 2022

Sharon A. Hoffman  
CLERK OF COURT

In the 8th Judicial District Court of the  
State of Nevada in and for the County  
of Clark

JAMES H. HALES

v.

State of Nevada

HEARING REQUESTED

CASE NO.: C-19-338412-1

DEPT. NO.: 3

DOCKET: -

Hearing: 3/23/2022  
Time: 8:30 AM

Motion for Rehearing for Defendant's Motion  
in the Nature of a Writ of Coram Nobis

COMES NOW, ~~defendant~~, JAMES H. HALES, herein above respectfully  
moves this Honorable Court for an order for rehearing of its order  
ENTERED ~~February 2, 2022~~ February 2, 2022

This Motion is made and based upon the accompanying Memorandum of Points and  
Authorities,

DATED: this 22<sup>nd</sup> day of February, 2022

BY: James H. Hales  
JAMES H. HALES # 1175077  
Defendant In Proper Personam

ADDITIONAL FACTS OF THE CASE:

Memorandum of Points and Authorities:

Comes now the defendant, MR. JAMES H. HARRIS, in PRO SE, in NECESSITY and hereby "MOVES" this honorable court to "GRANT" rehearing of its order that contains a glaring error that clearly affected the court's consideration of defendant's reply that prejudice him. In support, the defendant shows the court must consider why each particular ground for relief was prejudicial to him, that's particularized in defendant's REPLY to state's opposition.

1) Defendant's reply was dated stamped outgoing mail on January 31, 2022 and received by the Clerk of the Court on February 7, 2022 noted with "Immediate filing requested" that was eventually filed on February 11, 2022.

2.) That failure to consider defendant's "Reply" to state's opposition would violate the long-standing view that parties may not raise an argument that defendant has no opportunity to refute. Such action would prejudice defendant and therefore must not be permitted, As such, rehearing is warranted.

3) That state's opposition is based on a legal and factual error. (See defendant's reply pgs 2-4) and this would have changed the ruling of the court. In so holding, that state's opposition was ~~unpersuasive~~ unpersuasive and wholly irrelevant.

1 to the Supreme Court's analysis of A motion in the  
2 Nature of a writ of Coram Nobis.

3 4.) Thus, had this court considered all of  
4 the briefing, together with the Supreme Court's  
5 ruling in United States v. Morgan, 346 U.S. 502, it is  
6 clear that there would have been a different outcome  
7 to Mr. Hayes' Motion in the Nature of a writ of  
8 Coram Nobis.

#### 9 Conclusion:

10 For the foregoing reasons, defendant James A.  
11 Hayes prays that this honorable court "GRANT" rehearing  
12 and that upon rehearing, he be discharged from his  
13 unlawful conviction and sentence.



**CERTIFICATE OF SERVICE BY MAILING**

I, JAMES H. HEWES, hereby certify, pursuant to NRCP 5(b), that on this 22<sup>ND</sup> day of FEBRUARY, 2022, I mailed a true and correct copy of the foregoing, "Motion for Rehearing for Defendant's Motion in the Nature..." by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Clerk County District Courts  
OFFICE OF THE CLERK  
200 LEWIS AVE. 3RD FL  
LAS VEGAS, NV  
89155-1160

Clerk County District Attorney  
200 LEWIS AVE  
2ND FLOOR  
LAS VEGAS, NV  
89155-2212

CC:FILE

DATED: this 22<sup>ND</sup> day of FEBRUARY, 2022.

James H. Hewes  
JAMES H. HEWES # 1173077  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:



Legal Mail

Clark County District Courts  
"Office of the Clerk"  
200 LEWIS AVE, 3rd Floor  
Las Vegas, Nevada  
89155-1160

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CLERK OF THE COURT

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Correctional Center  
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89155  
IN SERVICE  
PO BOX 208  
LAS VEGAS, NV

2408111 - CHIEF CLERK

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MAR - 2 2022

*James A. Hays*  
CLERK OF COURT

1 JAMES JAMES #1175077  
2 / In Propria Personam  
3 Post Office Box 208 S.D.C.C.  
4 Indian Springs, Nevada 89018

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 JAMES H. HAYS

8 vs.

9 STATE OF NEVADA

HEARING REQUESTED

Case No. C-19-338412-1

Dept No. 3

Docket

Hearing: 3/23/2022  
Time: 8:30 AM

13 NOTICE OF MOTION

14 YOU WILL PLEASE TAKE NOTICE, that \_\_\_\_\_

15 \_\_\_\_\_  
16 \_\_\_\_\_  
17 will come on for hearing before the above-entitled Court on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
18 at the hour of \_\_\_\_ o'clock \_\_\_\_ M. In Department \_\_\_\_ of said Court.

19  
20 CC:FILE

21  
22 DATED: this 22<sup>nd</sup> day of February, 2022.

23  
24 BY: James H. Hays #1175077  
25 JAMES H. HAYS  
26 /In Propria Personam

27 RECEIVED

28 FEB 28 2022

CLERK OF THE COURT



*Heather L. Hume*  
CLERK OF THE COURT

**ORDR**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**STACEY KOLLINS**  
Chief Deputy District Attorney  
Nevada Bar #005391  
200 Lewis Avenue  
Las Vegas, NV 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
Plaintiff,

-vs-

**JAMES HOWARD HAYES,**  
**#2796708**

Defendant.

CASE NO: **C-19-338412-1**

DEPT NO: **III**

**ORDER DENYING DEFENDANT'S MOTION IN**  
**THE NATURE OF A WRIT OF CORAM NOBIS**

DATE OF HEARING: **FEBRUARY 7, 2022**  
TIME OF HEARING: **8:30 A.M.**

THIS MATTER having presented before the above entitled Court on the 7th day of  
FEBRUARY, 2022; Defendant not present, IN PROPER PERSON; Plaintiff represented by  
STEVEN B. WOLFSON, District Attorney, through MICHAEL SCARBOROUGH, Deputy  
District Attorney; and without argument, based on the pleadings and good cause appearing,

//

//

//

//

//

**IT IS HEREBY ORDERED** that DEFENDANT'S MOTION IN THE NATURE OF A WRIT OF CORAM NOBIS shall be and is **DENIED**.

**Dated this 7th day of March, 2022**

g Bonaventura

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

**508 119 3F6A 6F31**  
**Joe Bonaventure Sr.**  
**District Court Judge**

BY

for

MICHAEL S. RIBBOROUGH  
Deputy District Attorney  
Nevada Bar #0142656

## hjc/SVU

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 State of Nevada

CASE NO: C-19-338412-1

7 vs

DEPT. NO. Department 3

8 James Hayes  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 3/7/2022

15 Michael Sanft

michael@sanftlaw.com

16 District Attorney

motions@clarkcountyda.com



**OPPS**

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JONATHAN VANBOSKERCK  
Chief Deputy District Attorney  
Nevada Bar #006528  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

**JAMES HAYES,  
#2796708**

Defendant.

CASE NO: **C-19-338412-1**

DEPT NO: **III**

**STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR REHEARING FOR  
DEFENDANT'S MOTION IN THE NATURE OF A WRIT OF CORAM NOBIS**

**DATE OF HEARING: MARCH 23, 2022  
TIME OF HEARING: 8:30 AM**

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JONATHAN VANBOSKERCK, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in State's Opposition to Defendant's Motion to Correct Illegal Sentence.

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

//

//

//



1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 James Howard Hayes Jr. (hereinafter “Defendant”) was charged by Information with  
4 one count of Burglary and one count of Unlawful Use of Hotel Key. On May 6, 2019,  
5 Defendant pled no contest to a misdemeanor charge of disorderly conduct and the other  
6 charges were dropped. The district court sentenced him to time served and he was released.

7 Defendant filed a “Motion in the Nature of a Writ of Coram Nobis” on January 14,  
8 2022 (“Coram Nobis Motion”). The State’s Opposition was filed on January 20, 2022. The  
9 Court denied the Motion on February 7, 2022. Defendant filed his Reply on February 11, 2022.  
10 The Court’s Order was filed on March 7, 2022.

11 On March 2, 2022, Defendant filed the instant “Motion for Rehearing for Defendant’s  
12 Motion in the Nature of a Writ of Coram Nobis” (“Motion”).

13 **STATEMENT OF FACTS**

14 On January 26, 2019, Defendant entered the hotel room of James McGrath at the Mirage  
15 Hotel and Casino in Las Vegas, Nevada. Mr. McGrath went to bed around midnight and awoke  
16 at two AM when he heard his hotel room door open. He saw a strange black man wearing a  
17 white jacket standing in his room. The man mumbled an apology and fled. Mr. McGrath  
18 contacted security.

19 Mirage security located Defendant, wearing the described clothing, in front of one of  
20 the resort’s restaurants. Security followed Defendant to valet parking, where he claimed a  
21 friend was to pick him up. Security frisked Defendant and found a hotel key card, even though  
22 Defendant was not a guest of the hotel. Security restrained Defendant until the police arrived.  
23 The first police officer on the scene conducted a show-up and Mr. McGrath identified  
24 Defendant as the person he had seen in his room.

25 **ARGUMENT**

26 Defendant claims an entitlement to have the Court rehear his Petition for Coram Nobis  
27 because the Court ruled before receiving his reply to the State’s Opposition. He asserts the  
28 arguments in his reply would have caused the Court to rule in his favor.

1 The Defendant's Reply was untimely, so this Court was not required to consider it.  
2 Further, this untimely Motion must be denied as Defendant did not seek the Court's leave to  
3 file it. The relief Defendant seeks is that he be "discharged from his unlawful conviction and  
4 sentence." Motion at 3. This Court cannot discharge him from his sentence, as he was released  
5 from custody on the day he pled guilty, with no term of probation.

6 **I. DEFENDANT FAILED TO SEEK LEAVE OF THE COURT FOR**  
7 **RECONSIDERATION.**

8 Defendant asks this Court to rehear his Motion in the Nature of a Writ of Coram Nobis.  
9 Motion at 1. To the extent he intends this to be a Motion to Reconsider, it is improperly before  
10 this Court and must be summarily denied due to Defendant's failure to secure leave of court  
11 to seek reconsideration.

12 The rules of this Court are clear that a defendant must request permission prior to filing  
13 a motion for reconsideration. Eighth Judicial District Court Rule (EDCR) 2.24 addresses the  
14 conditions under which a party may ask the Court to reconsider its ruling:

15 (a) No motions once heard and disposed of may be renewed in the  
16 same cause, nor may the same matters therein embraced be reheard,  
17 unless by leave of the court granted upon motion therefore, after  
notice of such motion to the adverse parties.

18 (b) A party seeking reconsideration of a ruling of the court, other than  
19 any order which may be addressed by motion pursuant to NRCP  
20 50(b), 52(b), 59, or 60, must file a motion for such relief within 10  
21 days after service of written notice of the order or judgment unless the  
time is shortened or enlarged by order. A motion for rehearing or  
reconsideration must be served, noticed, filed and heard as is any other  
motion. A motion for reconsideration does not toll the 30-day period  
for filing a notice of appeal from a final order or judgment.

22 Likewise, EDCR 7.12 bars multiple applications for relief:

23 When an application or a petition for any writ or order shall have been  
24 made to a judge and is pending or has been denied by such judge, the  
25 same application, petition or motion may not again be made to the  
26 same or another district judge, except in accordance with any  
applicable statute and upon the consent in writing of the judge to  
whom the application, petition or motion was first made.

27 Additionally, EDCR 13(7) prohibits pursuit of reconsideration without leave of  
court:

28 No motion once heard and disposed of shall be renewed in the same  
cause, nor shall the same matter therein embraced be reheard, unless

1 by leave of the court granted upon motion thereof, after notice of such  
2 motion to the adverse parties.

3 Nevada Rules of Criminal Practice for the District Courts Rule 8(7) allows a  
4 party to seek reconsideration of a pretrial motion upon a showing of changed  
5 circumstances:

6 (A) No motion once heard and disposed of shall be renewed in the  
7 same cause, nor shall the same matters therein embraced be reheard,  
8 unless by leave of the court granted upon motion therefor, after notice  
9 of such motion to the adverse parties.

10 (B) A party may seek reconsideration of a ruling of the court upon a  
11 showing of changed circumstances.

12 Though this rule is inapplicable here, as the instant motion is not a pretrial motion, it  
13 illustrates the Nevada Supreme Court's continued requirement that leave of the court is  
14 necessary before filing a motion for reconsideration. Further, the Supreme Court requires the  
15 party to show changed circumstances between the time of the adverse order and the seeking  
16 of leave to file a motion for reconsideration in order to justify the court's granting the leave.  
17 Here, not only has Defendant failed to seek the Court's leave, he fails to show any changed  
18 circumstances since the denial of his Coram Nobis Motion.

19 The Nevada Supreme Court has repeatedly noted the law does not favor multiple  
20 applications for the same relief. Whitehead v. Nevada Com'n. on Judicial Discipline, 110 Nev.  
21 380, 388, 873 P.2d 946, 951-52 (1994) ("it has been the law of Nevada for 125 years that a  
22 party will not be allowed to file successive petitions for rehearing . . . The obvious reason for  
23 this rule is that successive motions for rehearing tend to unduly prolong litigation"); Groesbeck  
24 v. Warden, 100 Nev. 259, 260, 679 P.2d 1268, 1269 (1984), superseded by statute as  
25 recognized by Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000) ("petitions that are filed many  
26 years after conviction are an unreasonable burden on the criminal justice system. The necessity  
27 for a workable system dictates that there must exist a time when a criminal conviction is  
28 final."). The less than favorable view of successive applications for the same relief explains  
why there is no right to appeal the denial of a motion for reconsideration. See Phelps v. State,  
111 Nev. 1021, 1022, 900 P.2d 344, 346 (1995). It also justifies why a motion for  
reconsideration does not toll the time for filing a notice of appeal. See In re Duong, 118 Nev.  
920, 923, 59 P.3d 1210, 1212 (2002).

1           These rules make it crystal clear: a defendant *must* obtain leave of the court before filing  
2 a motion to reconsider. Because Defendant did not obtain leave of this Court before filing the  
3 instant Motion, it is improperly before the Court.

4       **II. THE DISTRICT COURT PROPERLY CONSIDERED DEFENDANT'S**  
5       **MOTION, AS HIS REPLY WAS UNTIMELY FILED.**

6           Defendant asserts the District Court erred by considering his motion on its merits before  
7 receiving his reply to the State's opposition. Motion at 2. Because his reply was filed more  
8 than seven days after the filing of the State's opposition, it was untimely.

9           "The moving party may serve and file reply points and authorities within 7 days after  
10 service of the answering points and authorities." District Court Rule 13(4). The State filed its  
11 Opposition on January 20, 2022, so Defendant had until January 27, 2022, to reply. Instead,  
12 his Reply was filed on February 11, 2022, more than fifteen days after his deadline. Defendant  
13 himself admits he mailed his reply on January 31, 2022, several days after the filing deadline.  
14 Motion at 2.

15           The District Court was entitled to consider the matter at the time scheduled for  
16 consideration, even if Defendant had not yet gotten around to replying. The Court was not  
17 required to cancel the hearing scheduled for February 7, 2022, on the off-chance Defendant  
18 might choose to reply. The Court did not err in deciding the matter based on the pleadings, and  
19 Defendant has no legal justification for requesting the Court do its work again.

20       **III. EVEN IF THIS COURT HAD HAD THE OPPORTUNITY TO REVIEW**  
21       **DEFENDANT'S REPLY, HE ALLEGED NOTHING NEW.**

22           Defendant assures this Court that if it would only take a moment to consider his Reply  
23 to the State's Opposition, the Court would rule in his favor. Motion at 2. He finds the State's  
24 opposition "unpersuasive and wholly irrelevant." Motion at 2. "Thus, had this court considered  
25 all of the briefing, together with the Supreme Court's ruling in United States v. Morgan, 346  
26 U.S. 502, [74 S.Ct. 247 (1954)] it is clear that there would have been a different outcome."  
27 Motion at 3.

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