IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA, Appellant, v. DUSTIN LEWIS, Respondent.	Case No. 85158

APPELLANT'S OPENING BRIEF

Appeal From Grant of Motion to Suppress
Eighth Judicial District Court, Clark County

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JURISDICTIONAL STATEMENT

NRS 177.015(2) provides jurisdiction to entertain an appeal from the granting of a suppression motion.

ROUTING STATEMENT

Routing of this appeal is submitted to the Supreme Court's discretion, as NRAP 17 expresses no presumption of retention by the Supreme Court or assignment to the Court of Appeals for an appeal of the granting of a motion to suppress.

STATEMENT OF THE ISSUE

Whether the district court erred in granting the Motion to Suppress Based on

Fourth Amendment Violation and Fruit of the Poisonous Tree.

STATEMENT OF THE CASE

On May 3, 2019, the State filed an Indictment charging Dustin Lewis ("Lewis") and Margaux Ornelas ("Ornelas") with the following: Count 1 – Conspiracy to Commit Burglary (Gross Misdemeanor – NRS 205.060, 199.480); Count 2 – Burglary (Category B Felony – NRS 205.060); Count 3 – Burglary (Category B Felony – NRS 205.060); Count 4 – Burglary (Category B Felony – NRS 205.060); Count 5 – Grand Larceny (Category B Felony – NRS 205.220.1, 205.222.3); Count 6 – Conspiracy to Commit Burglary (Gross Misdemeanor – NRS 205.060, 199.480); Count 7 – Burglary (Category B Felony – NRS 205.060).[1] Vol. I Appellant's Appendix ("AA") Vol. I 160-64.

On February 26, 2021, Lewis filed a Motion to Suppress Evidence Based on Fourth Amendment Violation and Fruit of the Poisonous Tree Doctrine ("Motion to Suppress"). II AA 165-238. On March 3, 2021, Ornelas filed a Joinder to the Motion to Suppress. II AA 239-40. On March 4, 2021, the State filed its Opposition. II AA 241-46. On March 12, 2021, Lewis filed a Reply. II AA 247-54. On March 29, 2021, the State filed a Response to the Reply. II AA 255-59.

[1]Two additional defendants, Tyree Faulkner and Thomas Herod, were also charged with Counts 6 and 7. I AA 01, 03-04. These defendants are not respondents in the instant appeal.

On April 5, 2021, the district court heard argument on the Motion. II AA 260-66. After hearing argument, the district court orally granted the motion in its entirety. II AA 266. On April 8, 2021, the district court filed its Order granting the Motion to Suppress. II AA 267-69.

The State filed Notices of Appeal with the district court and this Court on April 9, 2021. II AA 270. On March 18, 2022, this Court issued an order vacating the district court's granting of the Motion to Suppress, and instructing the district court to conduct an evidentiary hearing. II AA 273-76.

On June 10, 2022, the district court held an evidentiary hearing on the Motion to Suppress. II AA 278-313. At the conclusion of the hearing, the court granted the Motion to Suppress. II AA 310. On August 11, 2022, the district court filed its Findings of Fact, Conclusions of Law, and Order Granting Dustin Lewis's and Margaux Ornelas's Motions to Suppress Evidence. II AA 314-26.

On August 12, 2022, the State filed a Notice of Appeal. On August 31, 2022, the State filed its Points and Authorities in Support of Propriety of Appeal. On January 12, 2023, this Court issued its Order Directing Full Briefing.

STATEMENT OF THE FACTS

Facts of the Offenses

In December of 2018, Nedy Macedo was the on-site manager of Storage One at 9960 West Flamingo Road, Las Vegas, Nevada. I AA 31. On the morning of

December 8, 2018, Macedo observed several units in building B that were open with no lock. I AA 34. Macedo also observed damage to the door of unit B145. I AA 35. Macedo noticed that the doors to units B151 and B147 were open. I AA 36. Macedo then notified her manager, as well as the customers for units B151, B147, and B145. I AA 36. Macedo provided the police with Storage One surveillance video from the previous night. I AA 36-37. The surveillance video showed two individuals walking out of Storage One. I AA 37-38. One individual appeared to be pushing a wheelchair while another appeared to be carrying a couple of duffle bags. I AA 38.

In December of 2018, Michael Rodrigue was renting storage unit B147 from Storage One. I AA 14. On December 8, 2018, the police and Storage One informed Rodrigue that it appeared his unit had been burglarized. I AA 16. Upon arriving at Storage One, Rodrigue observed a hole in the side of his storage unit which had not been present the last time he saw the unit. I AA 16. Rodrigue also observed that multiple items were missing from his unit: a wooden chess set, an Army jacket, and Army dog tags. I AA 16-17.

In December of 2018, Marc Falcone was renting five units from Storage One. I AA 21. One of those units was unit B151. I AA 21. On December 8, 2018, Falcone was notified by the manager of Storage One that it appeared one of his units, B151, had been burglarized. I AA 21-22. Falcone is a watch collector and was storing numerous watches in B151. I AA 23. Upon arriving at Storage One, Falcone

observed that the lock to his unit was damaged. I AA 22-23. Falcone also observed that some of the watches he had been storing in the unit were missing. I AA 24. The total value of the missing watches was approximately $2.2 million. I AA 24. Five of the missing watches were Panerai brand watches. I AA 28.

On December 8, 2018, Las Vegas Metropolitan Police Department ("LVMPD") crime scene analyst Whitney Scharpf responded to Storage One to process the scene. I AA 74-75. Scharpf processed unit B151. I AA 194-95. Scharpf dusted various areas to obtain fingerprints. I AA 76. Scharpf dusted the walls of the unit as well as a safe inside of the unit. I AA 76. Scharpf was able to obtain multiple fingerprints, which were impounded and forwarded to LVMPD's latent print section for forensic analysis. I AA 78.

On December 10, 2018, LVMPD Detective Ethan Grimes was assigned to investigate the burglaries at Storage One. I AA 82-83. After being assigned to the case, Detective Grimes reviewed still photos from the video surveillance of the incident on December 8, 2018. I AA 84. Detective Grimes observed one male and one female suspect; the female suspect was pushing a wheelchair with a chess board. I AA 84-85. Detective Grimes observed the male suspect was carrying multiple bags and wearing an Army jacket. I AA 85.

On the night of December 11, 2018, a squad of police officers canvassed the area near Storage One in an attempt to locate the suspects. I AA 85. In a fenced-in

desert area adjacent to Storage One, east of a Chevron gas station, the officers observed in the area a tent with a wheelchair approximately 25 yards away from it. I AA 87. The officers challenged the tent to determine if there was anyone inside. I AA 88. When the officers received no answer, they unzipped the tent and observed that there was a large chess board and numerous watch boxes, one with the Panerai brand name, inside the tent. I AA 88. Detective Grimes and Officer Andrew Shark obtained a search warrant for the tent and the surrounding area. I AA 88-89.

After the search warrant was obtained, Detective Grimes and other officers entered the tent and observed a Panerai bag, as well as other items that matched the victims' descriptions of the missing items. I AA 89. Items recovered from the tent included a chess board, business cards bearing Marc Falcone's name and a Panerai watch box. I AA 90. Crime scene analysts responded to the scene to obtain fingerprints from various items located inside the tent and near the tent. I AA 89-90. The Panerai watch box was dusted for fingerprints. I AA 90. The serial number on the Panerai watch box matched the Panerai serial number that Mr. Falcone had reported missing. I AA 91.

After impounding the items from the scene, officers returned to the scene near the tent in an attempt to locate an officer's missing cellular phone. I AA 92. While the detectives were there, at approximately 11:00pm, they heard an alarm sound at Storage One. I AA 93. Detective Grimes and other officers responded to the scene

to assist in setting up a perimeter, because the alarm indicated individuals were on the property. I AA 93. Officers began searching Storage One for the intruders, and subsequently located an unoccupied black Lincoln Navigator parked outside of the facility, with what appeared to be a watch in a plastic case on the passenger seat. I AA 94; II AA 183. The vehicle had an Eagle Trace Apartments sticker on it. II AA 184. Eventually it was determined that the lock had been cut off of unit B-151, although nothing appeared to be missing. II AA 183, 185.

In response to the alarm, Detective Grimes positioned himself in the Storage One parking lot on the southeast side of the facility. I AA 93. While in that position, Detective Grimes observed a U-Haul parked in a nearby Chevron parking lot. I AA 95. Detective Grimes and other officers approached the U-Haul with the key discovered at the Storage One, and observed two black male individuals exit the Chevron and get inside of a vehicle with a Lyft sign on it. I AA 95. The two individuals were eventually identified as Tyree Faulkner and Thomas Herod. I AA 95-96.

At approximately 1:00am the officers were notified that a carjacking incident had been reported at the Chevron next to the Storage One. I AA 96. The person reporting the crime stated he was at his apartment at the Eagle Trace Apartments. I AA 97.

Detective Grimes contacted the emergency contact for Storage One, who

responded to Storage One and obtained surveillance video. I AA 97. Upon reviewing the surveillance video, Detective Grimes observed three male individuals and recognized one of them from the December 8th surveillance video. I AA 97-98. Detective Grimes recognized the other two individuals as the black male individuals he had observed entering the Lyft vehicle in the Chevron parking lot. I AA 98.

The caller who reported the robbery was eventually identified as Tyree Faulkner, who was subsequently arrested. I AA 98. After Faulkner was read his Miranda rights, Detective Grimes interviewed him. I AA 99. Faulkner told Detective Grimes that he made up the robbery incident because he left his wallet in the Lincoln Navigator and he knew that he would be identified as being involved in the burglaries at Storage One. I AA 100-01. Faulkner stated that the other black male individual was his cousin, who had met the white male individual on the video when they were in jail. I AA 100. He stated that he met the white male and female a couple of days ago, and the white male asked his cousin if he could take them places because they didn't have a car. I AA 101. The white male gave Faulkner and his cousin $500 to drive them around to various places. I AA 101.

Faulkner stated that on December 11th he and his cousin ran into the white male again, at which time the white male asked if they would drive him around again, in exchange for some watches. I AA 102. Faulkner and his cousin looked at the watches but didn't want them. I AA 102. The white male then agreed to pay Faulkner

and his cousin $1000 each. I AA 102. They drove to Storage One, and Faulkner's cousin and the white male went inside, where the white male opened the exit gate. I AA 103. The white male used a bolt cutter to cut locks from one of the units. I AA 103. The alarm then went off, but the white male said no one was going to come. I AA 103. They left when they heard a police helicopter flying over the facility. I AA 103.

A search warrant was executed on the Lincoln Navigator. II AA 186. During the execution of the search warrant, a Panerai watch and a Greubel Forsey watch in a plastic case were recovered, as well as Faulkner's wallet with his identification inside. II AA 186. LVMPD crime scene analyst Tasha Olson photographed the Lincoln Navigator and dusted items inside for fingerprints. I AA 68-69. The fingerprints obtained were then submitted to LVMPD's latent print section for forensic analysis. I AA 71.

Lori Haines, a latent print examiner working in the LVMPD forensic laboratory was assigned to examine multiple fingerprints collected in this case. I AA 47, 49. She compared a fingerprint obtained from the handle of a wheelchair with prints obtained from five known individuals. I AA 57. Haines determined that the fingerprint from the wheelchair matched the right thumb of Lewis. I AA 57. Haines also examined a fingerprint obtained from a wooden Panerai watch box, and determined that it matched the right middle finger of Ornelas. I AA 61-62. Haines

also examined a fingerprint obtained from a green Sears box and determined that it matched the right middle finger of Ornelas. I AA 62. Haines also examined a fingerprint obtained from a white watch box and determined it matched the left thumb of Ornelas. I AA 62.

Haines also examined a fingerprint obtained from a plastic case found in the tent. I AA 62. Haines entered the fingerprint into an AFIS database and received a positive hit. I AA 62. Haines then compared the AFIS hit with the fingerprint and rendered a conclusion of identification to the left thumb of Lewis. I AA 62.

Haines also examined a palm print obtained from the exterior wall of Storage One unit B145. I AA 64. Haines determined that the palm print matched the right palm of Lewis. I AA 64. Haines also determined that a fingerprint lifted from the exterior wall of Storage One unit B145 matched the right thumb of Ornelas. II AA 189.

Detective Grimes learned that latent prints from items found in the tent had been entered into AFIS, and identified as belonging to Ornelas and Lewis. II AA 186. Detective Grimes then informed the surveillance squad that Ornelas and Lewis needed to be located. II AA 187. The surveillances squad eventually located Ornelas in Unit 110 at the Fun City Motel. II AA 187-88. Ornelas was taken into custody and a search warrant was executed on the motel room. II AA 188. Three watches belonging to Falcone were recovered from the hotel room. II AA 188.

Detective Grimes interviewed Lewis after reading Lewis his Miranda rights. II AA 189. Lewis denied stealing or selling any watches, or breaking into the storage unit. II AA 189. Detective Grimes asked Lewis who had the watches and Lewis stated he should talk to Ornelas. II AA 190. Detective Grimes showed Lewis the location of Storage One on a map and Lewis said he was not sure if he had ever been there or not. II AA 190.

Suppression Hearing

In October of 2018, David Inman acquired a plot of land in Las Vegas, at the intersection of Flamingo and Hualapai. II AA 284-85. There was nothing located on the property at the time Inman acquired it. II AA 285. There was a wall separating the property from the storage units next door. II AA 288.

On or about November 10, 2018, the manager of a convenience store near the property informed Inman that homeless individuals were placing tents and lighting fires on the property. II AA 290. Inman then went out to the property, and observed three or four tents on the property. II AA 293. Inman then contacted LVMPD about the situation, and requested LVMPD remove the homeless individuals from his property. II AA 293. LVMPD informed Inman he needed to put a fence and a sign on the property before LVMPD could assist him. II AA 293. Within a couple days after November 19, 2018, Inman had a chain link fence erected to surround the property. II AA 285. The day after the fence was installed Inman placed "no

trespassing" signs on the property. II AA 286, 289. Inman then contacted LVMPD again, who advised him they would take care of the situation. II AA 294. In December of 2018 Inman received a letter from LVMPD stating that they had removed the homeless individuals from the property, and there were items remaining on the property that Inman needed to clean up. II AA 294.

On the night of December 11, 2018, LVMPD Officer Andrew Shark was working as part of a flex squad that was assigned to conduct follow-up tasks and canvass the area near Storage One, where numerous burglaries had taken place. II AA 295-96. The squad was walking around the area and talking to people in the area, particularly any transient individuals, to see if they could obtain any leads or information that could assist with the investigation. II AA 296. After talking with multiple transient individuals, Shark and his squad entered the lot at the corner of Flamingo and Hualapai. II AA 297. Officer Shark observed an area of the surrounding fence that was bent inward and appeared damaged. II AA 297. Shark and his squad entered the lot through the damaged area. II AA 298.

When Officer Shark entered the lot, he observed what appeared to him to be a transient camp. II AA 298. He observed a tent and several pieces of trash scattered throughout the area. II AA 298. Officer Shark and his squad approached the tent to see if they could make contact with anyone inside the tent. II AA 298-99. The officers identified themselves as police officers, advised anyone inside that they

were investigating a crime, and requested anyone inside the tent come out and speak with them. II AA 299. The officers received no response. II AA 299.

The officers then approached the tent. II AA 299. The tent was zipped closed with a slight opening. II AA 303. Officer Shark recognized that a tent in an open area is not a good situation tactically, because individuals can attack through tents, and tents and an open lot don't provide any cover. II AA 299-300. Thus, the officers determined that the best way to ensure the safety of officers and everyone in the area was to approach the tent and open it to ensure that there was no one inside. II AA 300.

The officers opened the tent. II AA 300. They observed there was no one inside, and that there were multiple items inside, including a chess board. II AA 300. The officers were aware that one of the missing items from the storage burglaries was a chess board. II AA 300. None of the officers entered the tent at that time. II AA 300. The officers then contacted the investigating detective to relay the discovery of the tent, and froze the premises. II AA 300. The officers then obtained a search warrant for the tent. II AA 300-01.

SUMMARY OF THE ARGUMENT

The district court erred by granting the Motion to Suppress. Lewis failed to demonstrate he had standing to challenge the search of the tent because he presented no evidence he was using the tent as a temporary home, or that he had any personal

expectation of privacy in the tent. Even if Lewis had been using the tent as a temporary residence, as he claimed, Lewis did not have a legitimate expectation of privacy in the tent, its contents, or the surrounding area, because he was not authorized to erect a tent or reside on the premises. Additionally, even if this Court were to find the search of the tent violated the Fourth Amendment, this Court still must find that the district court erred by suppressing additional evidence as "fruit of the poisonous tree." This evidence was sufficiently attenuated from the search of the tent such that any taint from the search of the tent was purged.

ARGUMENT

STANDARD OF REVIEW

"Suppression issues present mixed questions of law and fact. While this court reviews the legal questions de novo, it reviews the district court's factual determinations for sufficient evidence." Johnson v. State, 118 Nev. 787, 794, 59 P.3d 450, 455 (2002), *overruled on other grounds by* Nunnery v. State, 127 Nev. 749, 263 P.3d 235 (2011). This Court reviews findings of fact for clear error, but the legal consequences of those facts are reviewed de novo. State v. Beckman, 129 Nev. 481, 486, 305 P.3d 912, 916 (2013).

THE DISTRICT COURT ERRED BY GRANTING THE MOTION TO SUPPRESS BECAUSE LEWIS DID NOT HAVE A LEGITIMATE EXPECTATION OF PRIVACY IN THE TENT AND THE SURROUNDING AREA

The district court erred by suppressing all of the evidence recovered from the

tent and the surrounding area, when Lewis failed to establish that he had standing to challenge the search of the tent. Lewis presented no evidence that he had any legitimate expectation of privacy regarding the tent or its contents. In fact, there is no evidence in the record that Lewis had any connection to the tent at all, beyond his fingerprints being found on some of the items inside. The district court granted the motion to suppress on an overly broad conclusion that "[w]arrantless searches of tents, therefore, violate the Fourth Amendment." II AA 320. The district court ignored the fact that Lewis did not establish that *his* personal Fourth Amendment rights were violated. Furthermore, even if Lewis were residing in the tent as he alleged in the Motion to Suppress, he would have no legitimate expectation of privacy in an area where he was trespassing. Accordingly, the district court's decision must be reversed.

A. Lewis Failed to Demonstrate he had Standing to Challenge the Search of the Tent on Fourth Amendment Grounds

Though given the opportunity to present evidence at the suppression hearing, Lewis declined to present any evidence showing he possessed the requisite standing to challenge the search of the tent as a violation of his constitutional rights. "Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted." Rakas v. Illinois, 439 U.S. 128, 133-34, 99 S.Ct. 421, 425 (1978) (quoting Alderman v. United States, 394 U.S. 165, 174, 89 S.Ct.

961, 966 (1969)). Therefore, to benefit from the exclusionary rule, a defendant *must* establish that the defendant has "standing" to challenge the admission of illegally obtained evidence. Alderman, 394 U.S. at 171-73, 89 S.Ct. at 966-67. "[A] court may not exclude evidence under the Fourth Amendment unless it finds that an unlawful search or seizure violated the defendant's own constitutional rights." United States v. Payner, 447 U.S. 727, 731, 100 S. Ct. 2439, 2444 (1980).

"[A] person seeking to exclude evidence allegedly obtained in violation of the fourth amendment must have standing to challenge the illegal conduct that led to the discovery of the evidence." United States v. Pulliam, 405 F.3d 782, 786 (9th Cir. 2005). "The established principle is that suppression of the product of a Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself, not by those who are aggrieved solely by the introduction of damaging evidence." Alderman, 394 U.S. at 171–72, 89 S. Ct. at 965. In other words, "the defendant's Fourth Amendment rights are violated only when the challenged conduct invaded *his* legitimate expectation of privacy rather than that of a third party." Payner, 447 U.S. at 731, 100 S. Ct. at 2444 (emphasis in original).

Importantly, the proponent of a motion to suppress has the burden of proving standing. See Rawlings v. Kentucky, 448 U.S. 98, 104, 100 S. Ct. 2556, 2561 (1980) ("Petitioner, of course, bears the burden of proving not only that the search of Cox's

purse was illegal, but also that he had a legitimate expectation of privacy in that purse."); Rakas, 439 U.S. at 132, 99 S. Ct. at 424 ("The proponent of a motion to suppress has the burden of establishing that *his own* Fourth Amendment rights were violated by the challenged search or seizure.") (emphasis added); United States v. Silva, 247 F.3d 1051, 1055 (9th Cir. 2001) ("Defendants have the burden of establishing that, under the totality of the circumstances, the search or the seizure violated their legitimate expectation of privacy.").

In United States v. Salvucci, 448 U.S. 83, 100 S.Ct. 2547 (1980), the defendants claimed they possessed "automatic standing" merely due to being charged with crimes of possession. 448 U.S. at 84-85, 100 S.Ct. at 2549-50. The United States Supreme Court rejected the "automatic standing" doctrine and found that the defendants had failed to establish a legitimate expectation of privacy in the location where the items were seized. Id. at 95, 100 S.Ct. at 2555. Consequently, the Court remanded the case "so that respondents will have an opportunity to demonstrate, if they can, that *their own* Fourth Amendment rights were violated." Id. (emphasis added). Here, Lewis was given this opportunity, and he failed to present any evidence that he personally had a legitimate expectation of privacy in the tent or the items therein.

More recently, the First Circuit emphasized that "Fourth Amendment rights are *personal* ones" and thus a defendant challenging a search must present evidence

establishing a personal privacy interest in the search area. United States v. Rivera-Carrasquillo, 933 F.3d 33, 40 (1st Cir. 2019) (emphasis in original). "[A] criminal defendant wishing to challenge a search must prove that he had "a legitimate expectation of privacy" in the searched area…" Id. (quoting Rakas, 439 U.S. at 143, 99 S.Ct. at 430).

In Rivera-Carrasquillo, the defendant claimed he had a reasonable expectation of privacy in the area searched due to being an overnight guest, but the only evidence he offered in support was an untranslated Spanish-language declaration. 933 F.3d at 40. Because federal courts may not consider untranslated documents, the Court found "this evidentiary gap devastates his suppression argument, because *a failure to present evidence on the reasonable privacy front prevents a defendant from making a claim for suppression under the Fourth Amendment*." Id. (emphasis added) (internal quotation marks omitted). See also United States v. Nagle, 803 F.3d 167, 178 (3d. Cir. 2015) (finding no valid Fourth Amendment claim for search of corporate property because defendant failed to establish a personal connection to the location that was searched).

Here, Lewis presented the district court with absolutely no evidence that he had any personal privacy interest in the tent or its contents, or that he had any connection to it at all. His allegation in his Motion to Suppress that the tent was his home is not evidence. II AA 173. "Facts or allegations contained in a brief are not

evidence and are not part of the record." Phillips v. State, 105 Nev. 631, 634, 782 P.2d 381, 383 (1989). The tent was unoccupied when the officers opened it; neither Lewis nor his codefendant were present at the search. II AA 300. The record is devoid of any evidence that any person, let alone Lewis, was living in the tent on the date in question. While Lewis' fingerprints were found on some items inside the tent, such evidence does not establish that he was ever using the tent as a residence. The State maintains that the fingerprints connect him to the thefts from Storage One, but they do not prove he was residing in the tent at the time it was searched. It is his burden to prove his claim that he was living in the tent at the time the police opened it. He failed to do so, even when given the opportunity. Thus, there is no basis for the district court's conclusion that Lewis and his codefendant "absolutely had an expectation of privacy in the home the maintained during this case, the tent" II AA 323. The record in this case does not support this conclusion, as it is devoid of any evidence that the tent was Lewis' home. Given this clear failure to establish standing to assert his Fourth Amendment rights in this case, the district court's ruling should be reversed.

B. Even if Lewis Were Using the Tent as a Residence, He Did Not Have a Legitimate Expectation of Privacy in the Tent

By claiming that his Fourth Amendment rights were violated, Lewis had the burden of demonstrating that the challenged government action infringed upon his legitimate expectation of privacy. Rakas, 439 U.S. at 129, 99 S. Ct. at 423; Katz v.

United States, 389 U.S. 347, 353, 88 S.Ct. 507, 512 (1967)). "Legitimation of expectations of privacy by law must have a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society." Rakas, 439 U.S. at 143, 99 S. Ct. at 430. A legitimate expectation of privacy requires both a subjective expectation of privacy in the place searched or items seized, and that this privacy expectation be one that society is prepared to recognize as reasonable. Katz, 389 U.S. at 361, 88 S.Ct. at 516 (Harlan, J., concurring); State v. Taylor, 114 Nev. 1071, 1077, 968 P.2d 315, 320 (1998).

a. Lewis Did Not Have a Subjective Expectation of Privacy in the Tent and the Surrounding Area Because the Location Was Exposed to the Public

Even if Lewis were using the tent as a residence at the time it was opened by law enforcement, Lewis would not have an expectation of privacy in the tent or its contents. Assuming for the sake of argument that Lewis was using the tent to some extent as a temporary residence, this would not endow him a subjective expectation of privacy in the tent or the surrounding area. A subjective expectation of privacy is demonstrated by action taken to keep objects, activities, or statements private. Byrd v. U.S., 138 S.Ct. 1518, 1531 (2018). "A subjective expectation of privacy is exhibited by conduct which shields an individual's activities from public scrutiny." Young v. State, 109 Nev. 205, 211, 849 P.2d 336, 340 (1993). "What a person

knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." Katz, 389 U.S. at 351, 88 S. Ct. at 511.

Here, Lewis did not possess a subjective expectation of privacy in the tent, as it was located in an area readily visible to the public, and that could easily be accessed by anyone due to the damage to the surrounding fence. II AA 297-98. The tent was also not located in an isolated area far from public view, but in a commercial area near other businesses. It was an open desert area next to the Storage One and a Chevron parking lot. I AA 86. Zipping the tent partially closed did little to prevent others from accessing the items therein, especially upon leaving the area. Furthermore, if Lewis were actually using the tent as a home, as he claimed, then he likely would have been aware that LVMPD had previously removed individuals from the property at the behest of the rightful owner. II AA 294. He also would have observed the numerous "no trespassing" signs and known he was not allowed to be on the property. It would have been highly irrational for Lewis to expect his property to remain secure when he was not authorized to stay on the property, and the rightful owner had taken steps to remove unauthorized individuals and their property from the location.

Furthermore, the district court not only suppressed evidence collected from inside the tent, but evidence collected from the surrounding area. This includes the wheelchair which was recovered from *outside* the tent. The wheelchair was not

concealed in any way, and was exposed to public view. See Katz, 389 U.S. at 351, 88 S.Ct. at 511; Florida v. Riley, 488 U.S. 445, 451-52, 109 S.Ct. 693, 697 (1989); Cal v. Greenwood, 486 U.S. 35, 40-41, 108 S.Ct. 1625, 1628-29 (1988). Accordingly, Lewis cannot reasonably claim a subjective expectation of privacy in the tent or the surrounding area.

b. As a Trespasser, Lewis Did Not Have an Objectively Reasonable Expectation of Privacy in the Tent and the Surrounding Area

Even if Lewis was using the tent and the surrounding area as a temporary residence, and had a subjective expectation of privacy in the tent and the surrounding area, this expectation is not one that society is prepared to recognize as reasonable. "[A]n individual is not cloaked with Fourth Amendment protection simply by taking steps to conceal his activities. An objective expectation of privacy, i.e., one which society recognizes as reasonable, must also exist." Young, 109 Nev. at 211, 849 P.2d at 340. If Lewis was using the tent as a temporary residence, then he was trespassing on private property. Thus, he did not have a reasonable expectation of privacy in the tent because his occupation and the tent's presence on the land were unauthorized.

The district court focused largely on cases in which courts found the defendants had objectively reasonable expectations of privacy in the tents that they were using as temporary residences. Under some circumstances, an individual may have a reasonable expectation of privacy in a tent. However, that will not be the case in all circumstances. Because "the Fourth Amendment protects people, not places"

the central question is not what type of structure was searched, but whether the individual had a sufficient connection to the area searched such that a privacy expectation was objectively reasonable. Katz, 389 U.S. at 350, 88 S.Ct. at 511.

Individuals may enjoy an objectively reasonable expectation of privacy in public places under circumstances in which one would reasonably expect temporary freedom from intrusion. Conversely, individuals may not enjoy an objectively reasonable expectation of privacy in places typically considered private if the information has been willingly exposed to public view. Katz, 389 U.S. at 361, 88 S.Ct. at 516-17 (Harlan, J., concurring); Young, 109 Nev. at 213, 849 P.2d at 341-42.

Lewis lacked an objectively reasonable expectation of privacy in the tent because he was not authorized to place a tent, store property, or reside on the premises. Approximately one month before the search of the tent, the owner of the property had placed "no trespassing" signs on the property, and had law enforcement remove the individuals who were trespassing on the property. II AA 294. When an individual is not legally permitted to be on the premises, then the individual lacks a reasonable privacy expectation in those premises, and cannot assert a violation of his or her Fourth Amendment rights. "[A] defendant may not invoke the Fourth Amendment to challenge a search of land upon which he trespasses." United States v. Schram, 901 F.3d 1042, 1044 (9th Cir. 2018).

The United States Supreme Court has long recognized this principle, noting that "[a] burglar plying his trade in a summer cabin during the off season may have a thoroughly justified subjective expectation of privacy, but it is not one which the law recognizes as 'legitimate.'" Rakas, 439 U.S. at 143 n.12, 99 S. Ct. at 430 n.12. The reason the burglar has no reasonable expectation of privacy is not simply because he is engaging in criminal activity, but because *his very presence* in the burglarized cabin is unlawful. Id. The Ninth Circuit has noted this as well, stating that "while a defendant does not lose his Fourth Amendment rights simply by engaging in illegal acts, a defendant still may lack Fourth Amendment rights to challenge the search of a residence *when the law prevents him from being there in the first place*." United States v. Schram, 901 F.3d 1042, 1045 (9th Cir. 2018) (emphasis added).

Many other courts, both State and federal, have also concluded that trespassers have no reasonable expectation of privacy in premises on which they trespass: United States v. Curlin, 638 F.3d 562, 565 (7th Cir. 2011) (finding a tenant who had unlawfully remained on the premises after eviction did not have a legitimate expectation of privacy because his occupation of the residence was unlawful); United States v. Struckman, 603 F.3d 731, 747 (9th Cir. 2010) (finding trespassers cannot claim the protections of the Fourth Amendment); United States v. Washington, 573 F.3d 279, 284 (6th Cir. 2009) (finding trespassers cannot claim the

protections of the Fourth Amendment); United States v. McRae, 156 F.3d 708, 711 (6th Cir. 1998) (finding defendant "did not have a legitimate expectation of privacy by virtue of having stayed a week in the vacant premises that he did not own or rent."); United States v. Gale, 136 F.3d 192, 195–96 (D.C.Cir. 1998) (finding defendant who changed the locks on an apartment rented to another and used it for packaging drugs did not have a legitimate expectation of privacy because he did not have legal authority to be in the apartment); Zimmerman v. Bishop Est., 25 F.3d 784, 788 (9th Cir. 1994) (finding squatters had no reasonable expectation of privacy because they were occupying the property unlawfully); United States v. Carr, 939 F.2d 1442, 1446 (10th Cir. 1991) (finding that the defendant's three-week occupancy of a hotel room that was not registered to him, or someone he was sharing it with, could not be the basis of a legitimate expectation of privacy in the room);); United States v. Ruckman, 806 F.2d 1471, 1472–74 (10th Cir. 1986) (finding that individual lacked reasonable privacy expectation in cave in which he resided on federal land); United States v. Sanchez, 635 F.2d 47, 64 (2d Cir. 1980) (finding trespassers cannot claim the protections of the Fourth Amendment); Amezquita v. Hernandez-Colon, 518 F.2d 8, 11 (1st Cir. 1975) ("[the plaintiffs knew they had no colorable claim to occupy the land…That fact alone makes ludicrous any claim that they had a reasonable expectation of privacy."); People v. Nishi, 207 Cal. App. 4th 954, 961, 143 Cal. Rptr. 3d 882, 889 (2012) (finding that a defendant camping on federal land

without a permit had no reasonable expectation of privacy because "he was illicitly occupying the premises without consent or permission"); Whiting v. State, 389 Md. 334, 363, 885 A.2d 785, 802 (2005) (finding that a defendant squatting in a house had no reasonable expectation of privacy because he did not lawfully own, lease, control, occupy, or possess the premises searched); See also Schram, 901 F.3d at 1046 ("Like a burglar, trespasser, or squatter, an individual violating a court no-contact order is on property that the law prevents him from entering. We therefore hold that such an individual lacks a legitimate expectation of privacy in that place and may not challenge its search on Fourth Amendment grounds.").

Further, this very Court has long-recognized that a trespasser does not have a reasonable expectation of privacy in the property on which he trespasses. In State v. McNichols, 106 Nev. 651, 799 P.2d 550 (1990), this Court found that a former occupant who had re-entered a house from which he had been evicted had no reasonable expectation of privacy because the re-entry into the house was a trespass. 106 Nev. at 652-53, 799 P.2d at 551. This Court found that while the former occupant may have had a subjective expectation of privacy, "this expectation was not one that society is prepared to recognize as reasonable." Id. at 652, 799 P.2d at 551. This Court found that the individual had lost his legal interest in the property upon foreclosure, and lost any possessory interest upon his eviction. Id. Accordingly,

the former occupant's "trespassory re-entry did not create an objective expectation of privacy." Id.

So too here, any expectation of privacy Lewis may have had was not one which society is prepared to recognize as reasonable. He also had no ownership, lawful possession, or lawful control of the area that was searched. If he was using the tent as a residence, then he was trespassing on private property. Furthermore, as discussed above in Section I(A), Lewis has failed to support his claim that he was using his tent as a residence.

c. The District Court Erred by Basing Its Decision on the State of Mind of the Police

The district court failed to recognize that the relevant inquiry was whether or not Lewis had a legitimate expectation of privacy in the tent. Instead, the court focused on the state of mind of the police at the time of the search. II AA 320-21. The determination as to whether or not a defendant's Fourth Amendment rights were violated is dependent upon the totality of the circumstances in a particular case, and is not limited to what the police officers believed at the time of the search. The state of mind of the police is not determinative as to whether or not Lewis had a legitimate expectation of privacy.

In fact, when analyzing an expectation of privacy in the context of the Fourth Amendment, "[t]he officer's subjective motivation is irrelevant." Brigham City, Utah v. Stuart, 547 U.S. 398, 404, 126 S. Ct. 1943, 1948 (2006). The United States

Supreme Court has repeatedly recognized that the motivations of police are irrelevant when determining if a defendant is entitled to Fourth Amendment protection from a search. See Bond v. United States, 529 U.S. 334, 338, n. 2, 120 S.Ct. 1462, 1465 n.2 (2000) ("the subjective intent of the law enforcement officer is irrelevant in determining whether that officer's actions violate the Fourth Amendment"); Whren v. United States, 517 U.S. 806, 813, 116 S.Ct. 1769, 1774 (1996) ("[W]e have been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers"). This very court has also recognized that when determining whether or not a search violated a defendant's Fourth Amendment rights "a law enforcement officer's 'subjective motivation is irrelevant.'" Hannon v. State, 125 Nev. 142, 147, 207 P.3d 344, 347 (2009) (quoting Brigham City, 547 U.S. at 404, 126 S.Ct. at 1948).

Here, the district court's granting of the Motion to Suppress was largely based on the subjective motivations of the officers. Despite the United States Supreme Court and this Court stating such considerations are irrelevant, the district court found the officers violated Lewis' Fourth Amendment rights because, at the time of the search, the police were not investigating a potential trespassing and did not know if the owner had granted anyone permission to be on the land. II AA 320. The court also found it relevant that Officer Sharp testified he did not remember if he saw no

trespassing signs on the property or not. II AA 320. By law, none of these findings are relevant to whether or not Lewis had a legitimate expectation of privacy in the tent.

As discussed more fully above, a trespasser does not have a legitimate expectation of privacy. A defendant is a trespasser regardless of whether trespassing is the subject of an officer's investigation at the time of the search or seizure in question. None of the cases finding trespassers lack a legitimate expectation of privacy require a police officer to be investigating a trespassing at the time of a search. For example, in Schram, detectives were searching for the defendant because they had probable cause to believe he was guilty of bank robbery, and ultimately located and arrested him inside of his girlfriend's home, which the detectives also searched. 901 F.3d at 1043-44. The defendant's attempt to challenge the detectives' entry into and search of the home failed because a no-contact order prohibited him from entering his girlfriend's home, and "a defendant may not invoke the Fourth Amendment to challenge a search of land upon which he trespasses." Id. at 1044. That the detectives were investigating the defendant for robbery, and not for illegal entry into the home was not relevant; what mattered was that the law prohibited the defendant from being on the premises, and thus he had no legitimate expectation of privacy. Id. at 1046.

Here, the district court based its decision on legally irrelevant factors. The court's task was to analyze the legitimacy of the defendant's claimed privacy expectation, not the subjective motivations of the officers. Accordingly, the court's decision must be overturned.

d. The District Court Wrongly Concluded that Tents Have a Blanket Fourth Amendment Protection

The district court concluded that tents enjoy such special protection under the Fourth Amendment that they can never be searched without a warrant under any circumstances. The district court cited this Court's decision in Alward v. State, 112 Nev. 141, 912 P.2d 243 (1996), for the proposition that "[w]arrantless searches of tents, therefore, violate the Fourth Amendment." II AA 320. This assertion is flatly wrong because "the Fourth Amendment protects people, not places." Katz, 389 U.S. at 350, 88 S.Ct. at 511. Even houses do not receive such a blanket protection under the Fourth Amendment that all warrantless searches of them automatically violate the Fourth Amendment. Regardless of the type of area that was searched, the correct inquiry for Fourth Amendment purposes is always whether or not the *individual defendant* possessed a legitimate expectation of privacy in the area searched and the items seized.

The decisions on which the district court relied are inapposite. These cases involved significantly different factual circumstances than the instant case. In each case, there was no question of fact as to whether or not the defendant was using the

tent as a temporary residence, and the facts did not indicate the defendant was a trespasser. For example, in United States v. Gooch, 6 F.3d 673, 676 (9th Cir. 1993), the defendant was camping in a tent located on a public campground. The Court found that a public campground was essentially "a situation where campers were invited to set up a tent" and therefore such campers had legitimate privacy expectations in these temporary dwellings, similar to guests at a hotel. Id. at 678. In Alward, this Court adopted the reasoning of Gooch, and found that a camper on federal land had a legitimate expectation of privacy in the tent where he camped. 112 Nev. at 150, 912 at 249. This Court also found the defendant was similarly situated to a guest at a hotel. Id.

These cases are clearly inapplicable to the instant case. It was undisputed in both Alward and Gooch that the defendants were in fact temporarily residing in the searched tents. Here, Lewis alleged he was using the tent as a residence, but provided no evidence in support of that claim. More importantly, the tent in this case was placed not on a campground, but on private property with "no trespassing" signs posted. II AA 285-86. The tent was in a lot in a commercial area, not a place that could be mistaken for a campground. The owner of the property had taken steps to remove trespassers from the area. II AA 294. Lewis, if he was residing in the tent, was not similarly situated to a guest in a hotel. Residing in that tent would make him

a squatter or a trespasser, and would not give him a reasonable expectation of privacy.

The district court's reliance on the Ninth Circuit case of United States v. Sandoval, 200 F.3d 659, 660–61 (9th Cir. 2000) is similarly misplaced. In that case the Court found a defendant had a reasonable expectation of privacy in a tent he erected on Bureau of Land Management land, despite it being unclear whether or not the defendant was permitted to camp there. Id. The Court noted that it was not overruling its earlier decision that "a squatter in a residential home [does] not have an objectively reasonable expectation of privacy because he [has] no legal right to occupy the home." Id. at 661 (citing Zimmerman, 25 F.3d at 787-88). The Court found that a camper on public land had a reasonable expectation of privacy because "*public land is often unmarked and may appear to be open to camping*." Id. (emphasis added).

Importantly, Sandoval must be read in combination with the Ninth Circuit's more recent cases in which the Court clearly stated that trespassers do not possess reasonable expectations of privacy: Schram, 901 F.3d at 1045 ("a defendant may not invoke the Fourth Amendment to challenge a search of land upon which he trespasses"); Struckman, 603 F.3d at 747 (noting that "had [the defendant] been an actual trespasser, he would not have been able to claim the protections of the Fourth Amendment").

The district court clearly erred in finding that Sandoval was a basis for granting the Motion to Suppress. II AA 324. Lewis was not a camper on federal land that could easily be mistaken for a public campground. Unlike the tent in Sandoval, which was "heavily covered by vegetation and virtually impenetrable," the tent in this case was in a private lot in a commercial area, exposed an open to public view. tent in this case was placed on private property with a "no trespassing sign" posted. 200 F.3d at 660. If Lewis was residing in the tent, then he was a trespasser on private property, and occupied the tent in bad faith, in violation of the "no trespassing" signs. Such occupation is unlawful, and therefore he did not have an objectively reasonable expectation of privacy.

C. The District Court Erred by Suppressing the Evidence from the Tent's Surrounding Area Without a Legal Basis

The district court suppressed all evidence recovered from the tent, as well as the surrounding, despite no legal basis being presented for this suppression. II AA 324. The district court did not find, and Lewis did not argue, that the evidence from the surrounding area—the wheelchair located 25 feet away from the tent—was suppressible as fruits of the poisonous tree. Yet the district court concluded that evidence from the surrounding area was itself seized in violation of the Fourth Amendment. Id.

The record below provides a legal or factual basis for this conclusion, as the district court found the search that violated the Fourth Amendment was the

unzipping of the tent prior to seeking a warrant. II AA 323. The wheelchair was seized from *outside* the tent. The area outside the tent was not a defined residential curtilage in which Lewis had a reasonable expectation of privacy. See United States v. Dunn, 480 U.S. 294, 299, 107 S.Ct. 1134, 1139 (1987). Nor did Lewis offer such argument. The court found that the tent was Lewis' home, and therefore he had a legitimate expectation of privacy as to the items therein. But there was no evidence in the record to support a finding that he had a legitimate expectation of privacy in the surrounding area, or the wheelchair that was 25 feet away from the tent.

The exclusionary rule only allows for the exclusion of evidence that was obtained in violation of the Fourth Amendment. See, e.g., Mapp v. Ohio, 367 U.S. 643, 654-55, 81 S.Ct. 1684, 1691 (1961). Even if this Court found that the officers violated Lewis' Fourth Amendment rights by unzipping the tent, that would not render the wheelchair suppressible. The wheelchair was not discovered as a result of the unzipping of the tent. When there is no causal connection between a Fourth Amendment violation and the collection of an item of evidence, that evidence is not suppressible. Wong Sun v. United States, 371 U.S. 471, 488, 83 S. Ct. 407, 417 (1963).

The wheelchair also was not concealed from public view, and thus Lewis had neither a subjective nor objectively reasonable expectation of privacy in it. Katz, 389 U.S. at 351, 88 S.Ct. at 511; Riley, 488 U.S. at 451-52, 109 S.Ct. at 697; Greenwood,

486 U.S. at 40-41, 108 S.Ct. at 1628-29. See also United States v. Castleman, 795 F.3d 904, 913-14 (8th Cir. 2015) (upholding a warrantless search of bags in open field owned by defendant lawful because officers and public could still access field despite installation of gate, fences, and signs, and defendant did not take steps to preserve bags' privacy); United States v. Jackson, 728 F.3d 367, 372-74 (4th Cir. 2013) (upholding warrantless search of trash bags pulled from trashcan behind residence where defendant regularly stayed lawful because defendant had no reasonable privacy expectation for trashcan on common property outside of curtilage).

Furthermore, the wheelchair could also have been seized pursuant to the plain view exception, as the officers were aware the wheelchair appeared to be the same stolen wheelchair observed on the video surveillance. I AA 23; Ford v. State, 122 Nev. 796, 803–04, 138 P.3d 500, 505 (2006) (finding evidence lawfully seized under the plain view exception when "the intrusion of the police is lawful, the discovery of the incriminating evidence by the police is inadvertent, and it is immediately apparent that the items they observed may be evidence of a crime."). Therefore, the district court clearly erred by suppressing evidence recovered from the area surrounding the tent and this decision must be overturned.

THE DISTRICT COURT ERRED BY SUPPRESSING ALL INCRIMINATING EVIDENCE AS "FRUIT OF THE POISONOUS TREE"

Even if this Court were to find Lewis' Fourth Amendment rights were violated

by the unzipping of the tent, this Court must find that the district court erred by issuing an overly broad suppression order. The district court suppressed virtually all incriminating evidence, even that which was causally unconnected to the search of the tent, as "fruit of the poisonous tree." II AA 324. All of this evidence was either collected prior to the search of the tent, seized pursuant to a search warrant not based upon the search of the tent, was attenuated from the search of the tent, or was subject to the doctrines of independent source and inevitable discovery. Further, the district court's suppression of all evidence relating to Lewis' identity goes beyond what can legally be suppressed as a consequence of a Fourth Amendment violation.

The district court suppressed the following items as fruits of the poisonous tree:

1) Lewis' handprint recovered from the exterior wall of storage unit B145
2) The interviews of and all statements attributed to Lewis and Ornelas
3) All evidence related to the identities of Lewis and Ornelas
4) Evidence obtained from the Lincoln Navigator
5) Evidence obtained from the Fun City Hotel Room

II AA 324.

Assuming for the sake of argument that the officers' unzipping of the tent was a Fourth Amendment violation, none of these items were properly suppressed as "fruit of the poisonous tree." The district court's order is devoid of any legal reasoning or factual findings to justify suppressing this evidence. II AA 324. Ironically, the sole case the district court cited does not support suppression of this

evidence. In Segura v. United States, the United States Supreme Court stated that it has "never held that evidence is fruit of the poisonous tree simply because it would not have come to light but for the illegal actions of the police." 468 U.S. 796, 815, 104 S.Ct. 3380, 3391 (1984) (internal quotations omitted). "Suppression is not warranted unless 'the challenged evidence is in some sense *the product of* illegal government activity." Id. (emphasis added) (quoting United States v. Crews, 445 U.S. 463, 471, 100 S. Ct. 1244, 1250 (1980)).

Evidence is not "fruit of the poisonous tree simply because it would not have come to light but for the illegal actions of the police." Wong Sun, 371 U.S. at 487-88, 83 S.Ct. at 417. The relevant question is whether the evidence was obtained "by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." Id. at 488, 83 S.Ct. at 417 (quotation omitted). "[E]xclusion may not be premised on the mere fact that a constitutional violation was a 'but-for' cause of obtaining evidence." Hudson v. Michigan, 547 U.S. 586, 592, 126 S. Ct. 2159, 2164 (2006).

None of the excluded "fruits" evidence could conceivably be considered a product of the search of the tent. This evidence was not obtained as a result of the search of the tent, and therefore is not suppressible. The alarm activation at Storage One was an independent and intervening act that purged the taint of the allegedly illegal search of the tent. See Wong Sun, 317 U.S. at 488, 83 S.Ct. at 417. This

independent and separate incident lead to the discovery of the Lincoln Navigator, a discovery of a new burglary at Storage One, and the identification of co-conspirator Faulkner. Further, Lewis' palm print and Ornelas' thumb print were obtained from the exterior of unit B-145, which connected them to the original burglary that occurred three days before the search of the tent. Thus, the identification of Lewis and Ornelas as suspects was attenuated from the search of the tent, was attributable to an independent source, and was subject to inevitable discovery. The State addresses the specific items of suppressed "fruit" evidence as follows.

A. Lewis' Handprint

Lewis' handprint recovered from the exterior wall of storage unit B145 was inappropriately suppressed due to a lack of a causal connection between the search of the tent and the collection of the handprint. Even when a Fourth Amendment violation has occurred, a court may admit evidence if the causal connection between the illegal conduct and the acquisition of the evidence is sufficiently attenuated. Wong Sun, 371 U.S. at 488, 83 S. Ct. at 417. Suppression is not warranted if "the chain of causation proceeding from the unlawful conduct has become so attenuated or has been interrupted by some intervening circumstance so as to remove the "taint" imposed upon that evidence by the original illegality." Crews, 445 U.S. at 471, 100 S. Ct. at 1250. In Brown v. Illinois, the United States Supreme Court listed three factors for courts to consider in determining whether the causal chain is sufficiently

attenuated: 1) the time elapsed between the constitutional violation and the acquisition of the evidence; 2) the presence of intervening circumstances; 3) the purpose and flagrancy of the misconduct. 422 U.S. 590, 603-04, 95 S.Ct. 2254, 2261-62 (1975).

Here, Lewis' handprint is obviously not causally connected to the search of the tent because it was collected *three days prior* to the search of the tent. It was collected from the exterior wall of storage unit B-145 by a crime scene analyst on December 8, 2018. I AA 64, 75-76. Law enforcement did not search the tent until December 11, 2018. I AA 85; II AA 296. Thus, there is absolutely no causal connection between the search of the tent and the collection of the handprint. To be suppressible as fruits of an illegal search, the evidence must be collected *subsequent to* the illegal search. See, e.g., Segura, 468 U.S. at 804, 104 S. Ct. at 3385 (defining fruit of the poisonous tree as "evidence later discovered and found to be derivate of an illegality"). Thus, the handprint cannot be conceivably viewed as fruit of the poisonous tree and its suppression was unwarranted.

B. All Statements

All statements made by Lewis and Ornelas were inappropriately suppressed because neither Lewis nor Ornelas demonstrated that they made any statements that were causally related to the alleged Fourth Amendment violation. No specific

statements were identified; the district court appears to have assumed that all statements must be causally linked to the alleged Fourth Amendment violation.

Here, the sole basis offered for suppression of these statements was that Lewis and Ornelas would never have been located by the police if the allegedly illegal search had not occurred. II AA 173-74. This "but-for" argument is legally inadequate. Hudson, 547 U.S. at 592, 126 S. Ct. at 2164. Accordingly, the blanket order of suppression of all statements must be overturned.

C. All Evidence Related to Identity

The district court erred in suppressing "all evidence related to the identities of Lewis and Ornelas. Even if a Fourth Amendment violation occurred, the identity of a defendant is never suppressible. "The 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred." I.N.S. v. Lopez-Mendoza, 468 U.S. 1032, 1039, 104 S. Ct. 3479, 3483–84 (1984). See also United States v. Garcia-Beltran, 443 F.3d 1126, 1132 (9th Cir. 2006) ("evidence concerning the identity of a defendant, obtained after an illegal police action, is not suppressible as 'fruit of the poisonous tree.'"); United States v. Guzman-Bruno, 27 F.3d 420, 421 (9th Cir. 1994), as amended (Sept. 23, 1994) ("A defendant's identity need not be suppressed merely because it is discovered as the result of an illegal arrest or search.").

Furthermore, evidence related to the identities of both Lewis and Ornelas are admissible pursuant to the doctrine of inevitable discovery. See Nix v. Williams, 467 U.S. 431, 444, 104 S.Ct. 2501, 2509 (1984). The fingerprints of both Lewis and Ornelas were contained in the AFIS database, and therefore the prints collected from Storage One would have eventually been identified, whether or not the tent was searched. Accordingly, the suppression of this evidence must be overturned.

D. All Evidence Recovered From the Lincoln Navigator

The district court erred by suppressing the evidence recovered from the Lincoln Navigator because this evidence was subject to both the attenuation and independent source doctrines. The discovery and search of the Lincoln Navigator had no causal relationship to the allegedly illegal search of the tent. Brown, 422 U.S. 590, 603-04, 95 S.Ct. 2254, 2261-62; Nardone v. United States, 308 U.S. 308, 60 S.Ct. 266 (1939). The discovery of the Lincoln Navigator was due to an intervening event – the officers hearing the security alarm activate at Storage One as a result of the second burglary incident. I AA 93; II AA 183. Several hours also elapsed between the search of the tent and the discovery of the Lincoln Navigator. The tent was opened by police at approximately 6:10pm and the Lincoln Navigator was discovered at approximately 11:58pm. II AA 183, 196. Thus, the relationship between the unzipping of the tent and the discovery of the Lincoln Navigator is

clearly attenuated, such that any "taint" from the search of the tent was sufficiently purged by the intervening burglary incident.

Further, the evidence recovered from the Lincoln Navigator is admissible pursuant to the independent source doctrine. See Murray v. United States, 487 U.S. 533, 536-37, 100 S.Ct. 2529, 2532-33 (1988); Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392, 40 S. Ct. 182, 183 (1920). Under this doctrine, even if police engage in illegal investigatory activity, evidence will be admissible if it is discovered through a source independent of the illegal activity. When evidence is discovered pursuant to a search warrant not based upon evidence discovered via illegal means, then the evidence is admissible because it was obtained independently of the initial illegality. See Murray, 487 U.S. at 536-37, 100 S.Ct. at 2532-33 (allowing admission of the evidence obtained through search warrant obtained independently of the initial illegality); Segura, 468 U.S. at 814, 104 S.Ct. at 3390 (finding evidence admissible because search warrant issued solely on basis of information known before previous illegal entry and items not seen by officers during prior illegal search). This is precisely what occurred here. The Lincoln Navigator was searched pursuant to a search warrant application that made no mention of evidence discovered in the tent. II AA 209-18. Accordingly, even assuming for the sake of argument that the search of the tent violated the Fourth

Amendment, suppression of this evidence is not warranted because of the independent source.

E. All Evidence Recovered From the Fun City Motel Room

The district court erred by suppressing all evidence recovered from the Fun City motel room because the search of the hotel room was sufficiently attenuated from the search of the tent, and the evidence recovered therein was subject to the doctrine of inevitable discovery. The Fun City hotel room was searched on December 14, 2018—six days after the search of the tent. Multiple intervening events—the discovery and search of the Lincoln Navigator, the interview of coconspirator Faulkner—occurred between the search of the tent and the search of the hotel room. Thus, under Brown, the search of the hotel room was sufficiently attenuated from the allegedly illegal search of the tent.

Further, the items recovered from the hotel room would inevitably have been discovered in this case, regardless of the search of the tent. A court may admit illegally obtained evidence if the evidence would inevitably have been discovered through independent, lawful means. Nix, 467 U.S. at 444, 104 S.Ct. at 2509. Even if the officers had not searched the tent, the officers would have eventually identified Ornelas as a suspect due to Faulker's confession, surveillance video of Ornelas and Lewis at Storage One in possession of the stolen items, and the fact that Lewis' palm print and Ornelas' thumb print were located on the exterior wall of one of the

burglarized units. II AA 189. Both Lewis' and Ornelas' prints were in the AFIS database, and thus they would inevitably have been identified as suspects in this case, and the police would have eventually located Ornelas in the hotel room. II AA 186. Accordingly, there is no basis for the suppression of this evidence as "fruit of the poisonous tree."

CONCLUSION

The district court ignored the fact that Lewis failed to demonstrate he had a personal privacy interest in the tent and therefore lacked standing to challenge the search on Fourth Amendment grounds. The district court erred in finding that Lewis' Fourth Amendment rights were violated by the search of the tent, as the record demonstrates that if Lewis was living in the tent he was trespassing on private land. But even if Lewis had shown that the search of the tent violated his Fourth Amendment rights, the district court would still have erred by issuing an overly broad suppression order in direct contravention of Fourth Amendment "fruit" analysis. Accordingly, the State respectfully requests that this Court overturn the district court's order granting the Motion to Suppress.

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Dated this 31st day of January, 2023.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points of more, contains 10,925 words.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 31st day of January, 2023.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 31st day of January, 2023. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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