

LLV 181200033889

FILED / of /

RETURN

(Must be made within 10 days of issuance of Warrant)

2018 DEC 21 10:31 AM
Electronically Filed
Jan 31 2023 09:31 AM

JUSTICE ELIZABETH A. BROWN
LAS VEGAS NEVADA
Clerk of Supreme Court

BY LO

The Search and Seizure Warrant authorizing a search and seizure at the following described location(s):

2233 S. LAS VEGAS BLVD, ROOM 110
LAS VEGAS, NV 89104

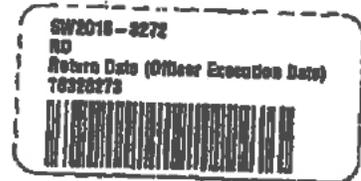
was executed on DECEMBER 14, 2018
(month, day, year)

A copy of this inventory was left with AT THE PLACE OF SEARCH

(name of person or "at the place of search")

The following is an inventory of property taken pursuant to the warrant:

- AUDEMAR PIGUET WATCH - SERIAL J63429
- PANERAI WATCH - SERIAL 5067/200 W/BAGS
- PATEK PHELEPPE ENVELOPE
- PANERAI WATCH - SERIAL T0392/1000
- 2 PANERAI MANUALS
- 1 ROLEX MANUAL
- 6 WATCH BANDS + 1 BAG
- 40 IDENTIFICATION CARDS
- 6 PASSPORTS
- 6 SOCIAL SECURITY CARDS
- 20 DEBIT/CREDIT CARDS
- 2 FIREARM REGISTRATION CARDS
- MISC PAPERWORK
- 1 CHECKBOOK



This inventory was made by: B. JONES, PH9679

J. HAYNES, PH9679

RECEIVED

(at least two officers including officer if present. If person from whom property is taken is present include that person.)

UNDP 710 DEC 19 2018

LAS VEGAS JUSTICE COURT
19F00933B - ORNELAS, MARGAUX

Page 92 of 167

Docket 85158 Document 2023-02967

AA 000237

181200033889

FILED of 1

RETURN

(Must be made within 10 days of issuance of Warrant)

2018 DEC 21 A 7:39 3272

SV2018
JUSTICE COURT
LAS VEGAS NEVADA
BY LG

The Search and Seizure Warrant authorizing a search and seizure at the following described location(s):

THE PERSON OF MARGAUX ORNELAS, BORN
03/27/77.

was executed on 12/17/18
(month, day, year)

A copy of this inventory was left with MARGAUX ORNELAS
(name of person or 'at the place of search')

The following is an inventory of property taken pursuant to the warrant:

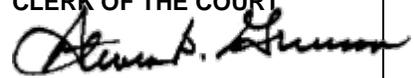
- EPITHELIAL CELLS FROM THE MOUTH
OF MARGAUX ORNELAS, DOB 03/27/77,
VIA BUCCAL SWABS.

This inventory was made by: E. GRIMES, #16079, M. SAUNDERS, #16074
RECEIVED

DEC 19 2018

(at least two officers including officers if present. If person from whom property is taken is present include that person.)

LAS VEGAS JUSTICE COURT



1 JOIN.
2 **MICHAEL A. TROIANO, ESQ.,**
3 Nevada Bar No. 11300
4 **THE LAW OFFICE OF MICHAEL A. TROIANO**
5 601 S. 7th Street
6 Las Vegas, NV 89101
7 (702) 843-5500
8 Attorney for Defendant

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,) Case No.: C-19-340051-2
9) Dept. No.: 24
10 Plaintiff,)
11 vs.)
12 MARGAUX ORNELAS,)
13 Defendant,)
14)

15 **DEFENDANT MARGAUX ORNELAS' JOINDER TO CO-DEFENDANT DUSTIN**
16 **LEWIS' MOTION TO SUPPRESS EVIDENCE BASED ON FOURTH**
17 **AMENDMENT VIOLATION AND FRUIT OF THE POISONOUS TREE**
18 **DOCTRINE**

19 COMES NOW, Defendant, MARGAUX ORNELAS, by and through her counsel
20 **MICHAEL A. TROIANO, ESQ.,** and hereby files this Joinder to Co-Defendant, Dustin Lewis
21 Motion to Suppress Evidence Based on Fourth Amendment Violation and Fruit of the Poisonous
22 Tree Doctrine.

23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 This Joinder incorporates the Memorandum of Points and Authorities in Co-Defendant,
2 Dustin Lewis Motion, the papers on file herein, and any oral argument the Court wishes to entertain
3 at the hearing for this Motion.

4 DATED this 3rd day of March, 2021.

5 LAW OFFICE OF MICHAEL A. TROIANO

6
7 By /s/ Michael A. Troiano
8 MICHAEL A. TROIANO, ESQ.
9 Nevada Bar No. 11300
10 601 S. 7th Street
11 Las Vegas, Nevada 89101
12 (702) 843-5500

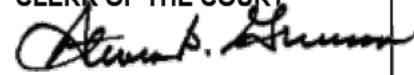
13 **CERTIFICATE OF ELECTRONIC SERVICE**

14 A COPY of the above and foregoing MOTION TO WITHDRAW PLEA was sent via
15 electronic mail to the District Attorney's Office at motions@clarkcountyda.com and Chief Deputy
16 District Attorney David Standton at david.stanton@clarkcountyda.com on this 3rd day of March,
17 2021.

18 LAW OFFICE OF MICHAEL A. TROIANO

19 By /s/ Noelle Steadmon
20 Employee of The Law Office of
21 Michael A. Troiano
22 601 S. 7th Street
23 Las Vegas, Nevada 89101
24 (702) 843-5500

25
26
27
28
AA 000240



1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 DAVID STANTON
6 Chief Deputy District Attorney
7 Nevada Bar #03202
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 DUSTIN LEWIS, #7030601
13 Defendant.

CASE NO: C-19-340051-1

DEPT NO: XXIV

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS EVIDENCE**
16 **BASED ON FOURTH AMENDMENT VIOLATION AND FRUIT OF THE**
17 **POISONOUS TREE DOCTRINE**

17 DATE OF HEARING: MARCH 8, 2021
18 TIME OF HEARING: 10:00 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through DAVID STANTON, Chief Deputy District Attorney, and hereby
21 submits the attached Points and Authorities in Opposition to Defendant's Motion To Suppress
22 Evidence Based On Fourth Amendment Violation And Fruit Of The Poisonous Tree Doctrine.

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

26 //

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1 POINTS AND AUTHORITIES

2 The instant motion fails to cite any authority that supports an absolute right to privacy
3 in a tent that by its very nature was evidence of a crime to wit – trespass. Defendant, relying
4 primarily on *Alward*, asserts that this Court should rely on that decision to grant the instant
5 Motion. A critical fact that separates the reasoning between *Alward* and the instant case is that
6 unlike the facts in *Alward* [tent lawfully on BLM land] the tent clearly evidenced, among other
7 things, a criminal act was being committed. The tent, conceded in the instant Motion as being
8 the Defendant’s property, was on private property. Also conceded in the Motion is the
9 uncontroverted fact that the property was fenced.

10 The land in question – immediately adjacent to the location of the crimes in this case –
11 was clearly the property of someone other than the Defendant and privately owned. This was
12 not BLM land or public lands. Thus, *Alward* is NOT dispositive of this case. The officers had
13 additional reasons to be concerned about the tent in question (discussed *infra*) as they
14 approached the tent. Not only did they have a duty to ascertain whether an ongoing crime was
15 being committed (trespassing) but they had observed a wheelchair in proximity to the tent
16 itself. The officers were obligated to see if the wheelchair was related to the occupants of the
17 tent for several reasons – “community caretaking.” *See, State v. Rincon*, 122 Nev. 1170, 1176,
18 147 P.3d 233, 237 (2006) (community caretaking); *S. Dakota v. Opperman*, 428 U.S. 364,
19 369, 96 S. Ct. 3092, 3097 (1976).

20 Officers announced themselves in close proximity to the tent and received no answer.
21 Their obligations as outlined *supra* still existed. The only way they could confirm or dispel
22 those concerns was to verify if the tent was occupied. Equally, the Officers were well within
23 the scope of their duties to seize the entire tent itself. Impounding the same would require
24 them to conduct an inventory of the obvious contents inside the tent.

25 It is uncontested that the following actions then took place. That officers immediately
26 recognized items of contraband and that someone appeared to be living inside the tent on
27 private property. Additionally, this private lot was surrounded by fencing to keep others from
28

1 trespassing on said property. That upon immediately recognizing several items to be
2 contraband, and before searching the tent, the sought and obtained a search warrant for same.

3 Most importantly is that the tent was sitting on private property that was surrounding
4 by significant fencing. When this fact is injected into the "right of privacy" analysis the Courts
5 addressing this issue are almost unanimous in finding that NO right to privacy if found to be
6 objectively reasonable.

7 Most courts have rejected an individual's claim to a right of privacy in the
8 temporary shelter he or she wrongfully occupies on public property. No
9 reasonable expectation of privacy has been found in a squatter's home under a
10 bridge, *State v. Mooney*, 218 Conn. 85, 588 A.2d 145, 152, 154 (1991)
11 (privacy right in duffel bag and cardboard box stored under the bridge, but not
12 in the defendant's home under the bridge), *cert. denied sub nom., Connecticut v.*
13 *Mooney*, 502 U.S. 919, 112 S.Ct. 330, 116 L.Ed.2d 270 (1991); in a squatter's
14 home in a cave on federal land, *United States v. Ruckman*, 806 F.2d 1471, 1472-
15 73 (10th Cir.1986) (no reasonable expectation of privacy in a cave from which
16 defendant could be ejected at any time); or in a squatters' home on state
17 land, *Amezquita v. Hernandez-Colon*, 518 F.2d 8, 11 (1st Cir.1975)(no
18 reasonable expectation of privacy on land which squatters had no right to
19 occupy), *cert. denied sub nom., Amezquita v. Colon*, 424 U.S. 916, 96 S.Ct.
20 1117, 47 L.Ed.2d 321 (1976). Thus, if an individual places his effects upon
21 premises where he has no legitimate expectation of privacy (for example, in an
22 abandoned shack or as a trespasser upon another's property), then he has no
23 legitimate reasonable expectation that they will remain undisturbed upon [those]
24 premises.⁴ W. LaFave, *Search and Seizure* § 11.3(c), at 305 (1987) (quoting M.
25 Gutterman, "A Person Aggrieved": Standing to Suppress Illegally Seized
26 Evidence in Transition, 23 *Emory L.J.* 111, 119 (1974)). Further, where "an
27 individual has no reasonable expectation of privacy in a particular area, the
28 police 'may enter on a hunch, a fishing expedition for evidence, or for no good
reason at all.'"⁵ *State v. Petty*, 48 Wash.App. 615, 620, 740 P.2d 879 (1987)
(quoting *State v. Bell*, 108 Wash.2d 193, 205, 737 P.2d 254 (1987) (Pearson, J.,
concurring)), *review denied*, 109 Wash.2d 1012 (1987).

20 Lance Cleator and Kahere Sidiq wrongfully occupied public land by living in
21 a tent **309 erected on public property. The public property was not a campsite,
22 and it is undisputed that neither Cleator nor Sidiq had permission to erect
23 a tent in that location.⁷ Under these circumstances, he could not reasonably
24 expect that the tent would remain undisturbed. As a wrongful occupant of public
25 land, Cleator had no reasonable expectation of privacy at the campsite because
26 he had no right to remain on the property and could have been ejected at any
27 time. See *United States v. Ruckman* and *Amezquita v. Hernandez-Colon*,
28 *supra*. Under the totality of the circumstances and taking into account that
the tent was not his, that the tent was a temporary, unsecured shelter, and that it
was wrongfully erected on public property which was not a campsite, Cleator's
legitimate privacy expectations, to the extent they existed, were limited to his
personal belongings. See *Mooney*, 588 A.2d at 152 (privacy right only in duffel
bag and cardboard box); *Ruckman*, at 1472 (Ruckman's cave and personal
belongings not subject to Fourth Amendment protection). Officer Denevers only
raised the tent flap and observed what was clearly visible and seized only that
which he knew to be wrongfully obtained. Because he did not disturb Cleator's

1 personal effects, his actions did not violate Cleator's
2 limited expectation of privacy.

3 *State v. Cleator*, 71 Wash. App. 217, 220–22, 857 P.2d 306, 308–09 (1993) (footnotes
4 omitted).

5 The facts as Defendant LEWIS argues in the instant motion are more directly on point
6 with *Cleator* than *Alward* or *Gooch*. In fact, the expectation of privacy analysis in all cases
7 cited fail to support LEWIS as he was not on a campground or public property – it was private
8 property.

9 Another critical fact separates LEWIS from the facts cited by defense counsel in *Gooch*.
10 In *Gooch*:

11 The officers then ordered Gooch's companion out of the tent and searched the
12 tent for the firearm, finding a loaded handgun under an air mattress. *Id.* The
13 court concluded that Gooch had both a subjective and an objectively reasonable
14 expectation of privacy in the tent, noting that camping in a public campground
15 as opposed to on private land was of no consequence since the Fourth
16 Amendment “protects people, not places.” *Id.* at 676–77 (quoting *Katz v. United*
17 *States*, 389 U.S. 347, 351, 88 S.Ct. 507, 511, 19 L.Ed.2d 576 (1967))

18 *Id.*, 6 F3d at 676.

19 It is uncontroverted that no such search was conducted in this case. Thus, for 2 distinct
20 and important facts separates *Gooch* from LEWIS.

21 The instant Motion quotes *Alward* in an interesting way. The Motion at page 8, lines
22 8-9 uses brackets to paraphrase the opinion. Specifically, the Motions states: “Simply because
23 [the Defendant] camped on land owned by another does not diminish his expectation of
24 privacy.” (Emphasis added). Of course, as indicated throughout this Opposition, the
25 ownership and type of ownership that the tent sits on is critical to the respective Court’s
26 analysis.

27 Thus, both the illegality, and defendant's awareness that he was illicitly
28 occupying the premises without consent or permission, are undisputed.
“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 v. Illinois* (1978) 439 U.S. 128, 143, fn. 12, 99 S.Ct. 421, 58 L.Ed.2d
387.) Defendant was not in a position to legitimately consider the campsite—or
the belongings kept there—as a place society recognized as private to him.
(*Dodds, supra*, 946 F.2d 726, 728–729.) Nor did he have the right to exclude
others from that place. He had no ownership, lawful possession, or lawful
control of the premises searched. (See *United States v. Gale* (D.C.Cir.1998) 136

1 F.3d 192, 195–196; *United States v. Carr* (10th Cir.1991) 939 F.2d 1442, 1446.)
2 A “person can have no reasonable expectation of privacy in premises on which
3 they are wrongfully present....” (*United States v. Gutierrez–*
Casada (D.Kan.2008) 553 F.Supp.2d 1259, 1270; see also *United States v.*
McRae (6th Cir.1998) 156 F.3d 708, 711; *Dodds, supra*, at pp. 728–729.)

4 *People v. Nishi*, 207 Cal. App. 4th 954, 961, 143 Cal. Rptr. 3d 882, 889 (2012).

5
6 In light of the Officer’s ability to impound the tent, they would have been duty bound
7 to then inventory the contents therein. This analysis further confirms courts decision as it
8 relates to tents on public versus private land. Additionally, there is no reasonable contention
9 that the land in question was private property and that considerable efforts had been made by
10 the owners to communicate to the general public by surrounding the property with significant
11 fencing.

12 Finally, it is important to note that not one legal citation in the instant Motion addresses
13 the critical inquiry that this Court needs to make whether the objective expectation of privacy
14 is one that society is prepared to recognize. There can be no question that numerous
15 jurisdictions properly find that an expectation of privacy does indeed exist inside of a tent on
16 public property. But the critical inquiry here is that this is not public land but private property
17 that LEWIS’ presence constitutes an illegal act and one that is ongoing in nature as it clearly
18 and reasonably appeared to Officers on the date in question.

19 The presence of the wheelchair in the same private fenced lot and near LEWIS’ tent
20 adds an important additional fact into the privacy interest of LEWIS. In either or both
21 interpretations of the wheelchair the officers were clearly bound to investigate further under
22 the long-held doctrine of “community caretaking.”

23 CONCLUSION

24 The instant Motion proclaims that the “evidence recovered from Mr. Lewis’ tent and
25 surrounding area” should be suppressed. No such argument has been made, let alone legal
26 authority to support, that evidence found outside the tent is suppressible under the theory of a
27 violation of a “right to privacy.” As outlined above, it is critical that this Court analyses the
28 facts in this case as being substantively and qualitatively different from those cases cited by

1 LEWIS that address the right of privacy in a tent on public land. That is NOT the underlying
2 facts in this case. That important distinction renders the mandatory "objective test" defective
3 in establishing a recognized "right to privacy."

4 DATED this 4th day of March, 2021.

5 Respectfully submitted,

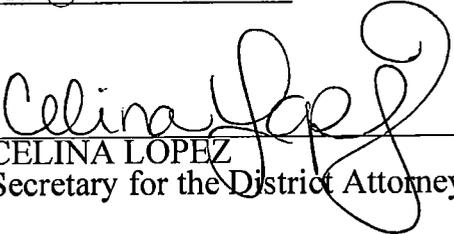
6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #001565

9 BY 
10 DAVID STANTON
11 Chief Deputy District Attorney
12 Nevada Bar #03202

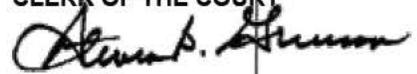
13 **CERTIFICATE OF ELECTRONIC TRANSMISSION**

14 I hereby certify that service of the above and foregoing was made this 4th day of March,
15 2021, by electronic transmission to:

16 CAESAR ALMASE
17 caesar@almaselaw.com

18 BY 
19 CELINA LOPEZ
20 Secretary for the District Attorney's Office

21
22
23
24
25
26
27
28 DS/c/L3



1 ALMASE LAW
2 CAESAR ALMASE, ESQ.
3 Bar No. 7974
4 526 S. 7th Street
5 Las Vegas, NV 89101
6 (702) 463-5590
7 Attorney For Defendant

5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7 STATE OF NEVADA,
8 Plaintiff,
9 v.
10 DUSTIN LEWIS,
11 #7030601
12 Defendant.

)
)
) Case No.: C-19-340051-1

)
) Dept. No.: XXIV

)
) **DEFENDANT DUSTIN LEWIS REPLY TO**
) **STATE'S OPPOSITION**
)
)
)

13
14 COMES NOW Defendant, DUSTIN LEWIS by and through his attorney of record,
15 CAESAR ALMASE of ALMASE LAW, and hereby files DEFENDANT DUSTIN LEWIS REPLY TO
16 STATE'S OPPOSITION. This Reply is based upon the contents herein, the underlying
17 Motion on file, and argument of Counsel at the hearing.

18 DATED this 16 of March 2021.

19
20 By 

21 Caesar Almase #7974
22 526 S. 7th Street
23 Las Vegas, NV 89101
24 (702) 463-5590
25 Attorney for Defendant

1 **NOTICE OF MOTION**

2 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

3 PLEASE TAKE NOTICE that the foregoing motion has been set for hearing on the

4 _____ day of _____ 2021, at 8:30 AM in District Court XXIV.

5 DATED this 11 day of March 2021.

6
7 By:



8 Caesar Almase #7974
9 526 S. 7th Street
10 Las Vegas, NV 89101
11 (702) 463-5590
12 Attorney for Defendant

13 **CERTIFICATE OF SERVICE**

14 I hereby certify I electronically filed the foregoing document with the Clerk of the
15 Court by using the electronic filing system on the _____ day of March 2021. Service was
16 made electronically and via email to:
17

18 Steven B. Wolfson
19 Clark County District Attorney
20 pdmotions@clarkcountyda.com

21 By:



22 CAESAR ALMASE, ESQ.
23 Attorney For Defendant
24
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RELEVANT FACTS

Defense incorporates the recitation of facts provided in the “Relevant Fact” section of the underlying Motion To Suppress. The State filed an Opposition to that Motion. In it, the State really makes one argument¹ against suppression of evidence: that the officers had a legal right to search Mr. Lewis’ tent, because the tent was presumably² illegally placed on private property. At the March 8 hearing, the State requested an evidentiary hearing to determine whether the tent was illegally pitched in that area, ostensibly to justify the officers’ intrusion. Defense counsel asked this Honorable Court permission to file the instant Reply, and after reading it, to assess whether an evidentiary hearing is actually necessary.

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MEMORANDUM OF POINTS AND AUTHORITIES

In its Opposition, the State cited to *State v. Cleator*, 71 Wash. App. 217 (1993), as persuasive authority, for the proposition that a tent placed illegally on land can be searched and seized, without regard to the privacy expectations of the occupier. In other words, police have a right to search and seize any property, including a tent, of a person who is trespassing, because that person is breaking the law by trespassing. Simply put, this is not the law in Nevada. Reliance on *Cleator* is completely misplaced and is not even followed by the Washington Appeals Court that issued the opinion. Defense urges this Honorable Court to instead follow the controlling authority for Fourth Amendment issues of this nature in the Ninth Circuit, *US v. Gooch*, 6 F.3d. 673 (9th Cir. 1993) and *US v. Sandoval*, 200 F.3d 659 (2000); and in Nevada state court, *State v. Alward*, 112 Nev. 141 (1996). *Alward*, as the

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25

¹The State mentions “community caretaking” as an alternate justification for the officers’ tent intrusion and cites to *State v. Rincon*, 122 Nev. 1170 (2006). *Rincon* is in no way applicable, as it dealt with officers’ ability to stop motorists in the interest of community caretaking, when an emergency may exist and no reasonable suspicion that a crime occurred can justify the stop. To argue it applies here is absurd.

1 lone Nevada Supreme Court case on point, is the controlling case regarding Fourth
2 Amendment privacy interests of tent occupiers in Nevada.

3 ***State v. Cleator Is Neither Controlling Nor Persuasive***

4 *State v. Cleator*, 71 Wash. App. 217 (1993) dealt with a tent located in an area the
5 investigating officer believed to be on city property, 150 yards from a residence where
6 items had been stolen. *Id. at 218*. Although there is no mention in the opinion as to
7 whether the tent was determined to be on public or private land, it was undisputed that the
8 defendants did not have permission to place the tent at that location. *Id. at 219-22*. The
9 Washington Court of Appeals, Division One, decided against suppression of the evidence,
10 citing to past cases, which the State recounts in the long block quotes on page 3 of the
11 Opposition.

12 Seven years after *Cleator*, the Ninth Circuit issued *US v. Sandoval* 200 F.3d 659
13 (2000), which drew from and bolstered *US v. Gooch* 6 F.3d 673 (1993), which is still the
14 lead case on Fourth Amendment law in the Ninth Circuit. The defendant, Sandoval, was one
15 of 18 defendants indicted for marijuana growing and conspiracy. *Id. at 660*. At issue, was
16 one of the sixteen grow sites; a “makeshift tent” that was closed on all sides, located
17 illegally on BLM land, and had a medicine bottle with Mr. Sandoval’s name on it, linking him
18 to the tent and other items of evidentiary value. *Id.* The tent was searched and seized
19 without a warrant, and the trial court denied a Motion to Suppress, reasoning that because
20 the tent was illegally on BLM land, the defendant could not have reasonably expected to
21 keep the tent private from intrusion. *Id.* However, the Ninth Circuit reversed, stating the
22 defendant did have a reasonable expectation of privacy:

23 First, the tent was located in an area that was heavily covered by vegetation
24 and virtually impenetrable. Second, the makeshift tent was closed on all four

25 ²It is presumed, as this Honorable Court pointed out at the hearing on March 8, because no information
has been presented to show the property was actually private; that the property owner even knew about
the tent; or that the tent was illegally pitched without the property owner’s permission.

1 sides, and the bottle could not be seen from outside. Third, Sandoval left a
2 prescription medicine bottle inside the tent; a person who lacked a subjective
3 expectation of privacy would likely not leave such an item lying around. The
4 government counters that Sandoval could not have had a subjective
5 expectation of privacy because he was growing marijuana illegally and was
6 not authorized to camp on BLM land. However, **we have previously**
7 **rejected the argument that a person lacks a subjective expectation of**
8 **privacy simply because he is engaged in illegal activity or could have**
9 **expected the police to intrude on his privacy.** See *United States v. Gooch*, 6
10 F.3d 673, 677 (9th Cir. 1993). According to this view, no lawbreaker would
11 have a subjective expectation of privacy in any place because the expectation
12 of arrest is always imminent.

13 *Id.* at 660. (quotes omitted) (emphasis added). The similarities to Mr. Lewis' situation are
14 apparent. Like the defendant in *Sandoval*, Mr. Lewis clearly showed a subjective
15 expectation of privacy in his home, the tent, by keeping it zipped up and closed to outsiders.
16 (see also *Alward v. State*, 112 Nev. 141, at 150, defendant "had a subjective expectation of
17 privacy in the tent and its contents. . .manifested. . .by leaving the tent. . .closed.")

18 The *Sandoval* Court goes further, stating the privacy expectation was objectively
19 reasonable too. *Id.* at 660-61.

20 In *LaDuke v. Nelson*, we held that a person can have an objectively reasonable
21 expectation of privacy in a tent on private property. In *Gooch*, we extended
22 that holding to find a reasonable expectation of privacy in a tent on a public
23 campground. Here, the tent was located on BLM land, not on a public
24 campground, and it is unclear whether Sandoval had permission to be there.
25 However, **we do not believe the reasonableness of Sandoval's**
expectation of privacy turns on whether he had permission to camp on
public land.

26 *Id.* (citations and footnotes omitted) (emphasis added). This language from *Sandoval*
27 makes clear that Fourth Amendment analysis regarding whether a person has a reasonable
28 expectation of privacy in their tent, does not depend on where the tent is, be it private or
29 public land, or whether it was pitched legally or illegally.

1 The Ninth Circuit cases of *US v. Sandoval* and *US v. Gooch*, and the Nevada Supreme
2 Court case of *State v. Alward* represent the current state of Fourth Amendment case law in
3 the Ninth Circuit and Nevada. The Washington Appeals Court, Division One case of *State v.*
4 *Cleator* should not figure into this analysis, not only because it does not control in Nevada,
5 but because it is not even followed in Washington. As if to clarify the error of *Cleator*,
6 twenty-four years after that ruling, the Washing Appeals Court, Division Two issued *State v.*
7 *Pippin*, 200 Wash. App. 826 (2017).

8 In *Pippin*, the appellant, who was living in a tent in downtown Vancouver WA, was
9 contacted by officers who were enforcing a new law that made camping on public ground
10 illegal. *Id. at 830-31*. During the interaction officers lifted a tarp covering the tent and saw
11 the defendant with methamphetamine. *Id. at 831-32*. He was charged with drug
12 possession, he moved to suppress under the Fourth Amendment, the State opposed saying
13 he did not have a privacy interest, and the trial court granted suppression, relying
14 primarily on *US v. Sandoval*, 200 F.3d 659 (2000). *Id.*

15 On appeal, the Washington Appeals Court upheld the lower court and took the
16 opportunity to announce abandonment of *Cleator* in favor of *Sandoval*, stating:

17 We decline to follow *Cleator* for several reasons. First, *Cleator* predominantly
18 analyzed the Fourth Amendment in determining that *Cleator's* privacy
19 interests were not violated. Further, in coming to its conclusion, *Cleator*
20 heavily relied on the proposition that other federal circuits had "rejected an
21 individual's claim to a right of privacy in the temporary shelter he or she
22 wrongfully occupies on public property."*Id.*at 220, 857 P.2d 306 (citing
23 *United States v. Ruckman*, 806 F.2d 1471, 1472-73 (10th Cir. 1986);
Amezquita v. Hernandez-Colon, 518 F.2d 8, 11 (1st Cir. 1975)).³ **Those cases,
24 though, have been called into question by the 9th Circuit, which has
25 held that the reasonableness of an individual's expectation of privacy is
not lessened when he or she wrongfully occupies public property. See
Sandoval.**

³It is noteworthy, that *US v. Ruckman* and *Amezquita v. Hernandez-Colon* are among the cases the State
cites to as authority on page 3 of its Opposition, for the specious argument that Courts addressing the
issue of a tent on private property, "are almost unanimous in finding that NO right to privacy if [sic]
found to be objectively reasonable." Opp., p. 3, ln. 5-6. This is clearly untrue.

1 *Pippin* at 842-43. (emphasis added).

2 The *Pippin* Court then revealed the Court that issued the *Cleator* opinion, its sister
3 court Washington Appeals Court, Division One, “itself has now departed from *Cleator*'s
4 view that unlawfully occupying land diminishes one's privacy rights.” *Id. at 843*, citing *State*
5 *v. Wyatt*, noted at 187 Wash.App. 1004, WL 1816052 (2015). The *Pippin* Court concluded,
6 “*Cleator*'s holding is inconsistent with *Sandoval*, and its rationale was abandoned by *Wyatt*.
7 For these and the other reasons just noted, we join the approach of *Sandoval* and *Wyatt* and
8 hold that Pippin's privacy interests are not diminished by his lack of permission to camp at
9 that location.” *Id. at 843-44*.

10
11 Just as the Washington Appeals Court, Division Two, abandoned *Cleator*, which was
12 their controlling case law, this Honorable Court should likewise reject it as unpersuasive.

13 **An Evidentiary Hearing Is Unnecessary**

14 The Fourth Amendment “protects people, not places.” *Gooch*, 6 F.3d at 676-77
15 (quoting *Katz v. United States*, 389 U.S. 347, 351 (1967)). “Simply because [the defendant]
16 camped on land [owned by another] does not diminish his expectation of privacy.” *Alward*,
17 112 Nev. at 150, 912 P.2d at 249. Under the Ninth Circuit case of *Gooch*, by extension
18 *Sandoval*, and our Nevada Supreme Court case of *Alward*, Mr. Lewis had a reasonable
19 expectation of privacy in his home, the tent. It does not matter whether Mr. Lewis was
20 actually trespassing, because he would still have a Fourth Amendment protected
21 expectation of privacy, which officers violated by opening the tent. Therefore, an
22 evidentiary hearing to determine whether Mr. Lewis illegally pitched the tent is
23 unnecessary and a waste of time.
24
25

1 **CONCLUSION**

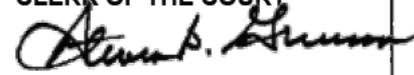
2 This Honorable Court should order the suppression of all tangible property and
3 physical evidence recovered from Mr. Lewis' tent and the surrounding area, as these items
4 were seized in violation of the Fourth Amendment of the US Constitution, *US v. Gooch*, 6
5 F.3d. 673 (9th Cir. 1993), *US v. Sandoval*, 200 F.3d 659 (2000), and *State v. Alward*, 112 Nev.
6 141 (1996). By extension under the Fruit of the Poisonous Tree doctrine and *Segura v.*
7 *United States*, 468 U.S. 796, 804 (1984), which was cited in the underlying Motion To
8 Suppress, Mr. Lewis' hand print, his interview, any statements attributed to him, all
9 documents, statements, any other tangible evidence relating to his identity, and any
10 evidence from the search of the Navigator and the Fun City Motel that the State intends to
11 use against Mr. Lewis at trial must be suppressed as well.
12

13 DATED this 11 day of March 2021.

14 By:



15 Caesar Almase #7974
16 526 S. 7th Street
17 Las Vegas, NV 89101
18 (702) 463-5590
19 Attorney for Defendant
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RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
DAVID STANTON
Chief Deputy District Attorney
Nevada Bar #003202
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-

DUSTIN LEWIS,
#7030601

Defendant.

CASE NO: C-19-340051-1

DEPT NO: XXIV

**STATE'S RESPONSE TO DEFENDANT'S DUSTIN LEWIS REPLY TO STATE'S
OPPOSITION**

DATE OF HEARING: MARCH 31, 2021
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through DAVID STANTON, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Dustin Lewis Reply To State's Opposition.

This Response 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 **POINTS AND AUTHORITIES**

2 The original Motion relies upon the Nevada case *Alward*¹ and two Ninth Circuit cases
3 *Gooch*² and *Sandoval*³. The Motion and Reply makes the same error – that the tent in question
4 is on private property, as opposed to government property, and that make s a significant legal
5 distinction. The authority relied upon by the State speaks directly to this issue and this analysis
6 is not only not in conflict with the Ninth Circuit but correctly embraces the analysis of the
7 presence of a tent on private land. LEWIS yet again fails to cite any authority that the search
8 of a tent on **private** land (not the defendant’s land) satisfies the 2nd prong of the *Katz* test
9 recognizing a legal right of privacy. *Katz v. United States*, 389 U.S. 347, 360-61, 88 S.Ct. 507,
10 19 L.Ed.2d 576 (1967) (Harlan, J., concurring)).

11 LEWIS also errs in outlining the underlying facts about the “search” in the instant case.
12 Specifically, the Reply **incorrectly** states the underlying facts in this case Reply at page 3, lns.
13 3-8. LEWIS claims that the Officers searched LEWIS’ tent after opening the flap. They did
14 not. They looked inside the tent, observed items of contraband. They sought and obtained a
15 search warrant of the LEWIS tent wherein those evidentiary items were impounded. This
16 important fact is highly relevant to appellate courts analysis of the objective/objective right of
17 privacy under *Katz*.

18 **PRIVATE PROPERTY MAKES A CRITICAL DISTINCTION**

19 Not surprisingly numerous appellate courts within the Ninth Circuit have addressed the
20 *Sandoval/Gooch* scenario as it relates to tents, trespassing and private property. Consistent
21 within these opinions is the rejection that one has an objectively reasonable expectation of
22 privacy in a tent/home/structure is one is trespassing.

23 Whiting, nevertheless, analogizes his situation to defendants who successfully
24 challenged searches of tents they themselves constructed, citing *United States v. Sandoval*, 200 F.3d 659, 661 (9th Cir.2000), *United*
25 *States v. Gooch*, 6 F.3d 673, 677 (9th Cir.1993), and *Kelley v. State*, 146
26 Ga.App. 179, 245 S.E.2d 872, 874 (1978). In *Sandoval*, 200 F.3d at 661, the
27 court found that the defendant possessed an objectively reasonable expectation
28 of privacy in the tent where he was staying on federally owned land. Although

1 ¹ *Alward*, 112 Nev 141 (1996)

2 ² 6 F.3d 673 (1993)

3 ³ 200 F.3d 659 (2000)

1 it was questionable whether the defendant had permission to do so, the court
2 stated:

3 [C]amping on public land, even without permission, is far different from
4 squatting in a private residence. A private residence is easily identifiable and
5 clearly off-limits, whereas public land is often unmarked and may appear to be
6 open to camping. Thus, we think it much more likely that society would
7 recognize an expectation of privacy for the camper on public land than for the
8 squatter in a private residence.

9 *Id.* at 661.

10 Finally, Whiting asserts that we should acknowledge an indigent's expectation
11 of privacy in the place where he or she stays because to not do so is to
12 discriminate against indigents and the homeless in favor of people who are
13 fortunate enough to have money. A person's monetary worth, however, is not
14 the issue; the issue is lawful occupancy.

15 Whiting neither lawfully owned, leased, controlled, occupied, nor rightfully
16 possessed 810 East Preston Street, or any part of the premises therein.
17 Accordingly, we find that Whiting lacked standing to challenge the April 27 and
18 May 4, 2001 searches because, although he may have possessed a subjective
19 expectation of privacy, that expectation was not objectively reasonable.

20 *Whiting v. State*, 389 Md. 334, 362–63, 885 A.2d 785, 801–02 (2005)

21 California court of appeals after extensively outlining *Gooch* and *Sandoval* rejected the
22 application of that to very similar facts to LEWIS.

23 We find the decision in *United States v. Ruckman* (10th Cir.1986) 806 F.2d
24 1471, persuasive in the present case. In *Ruckman*, the defendant lived in a
25 natural cave located in a remote area of southern Utah on land owned by the
26 United States and controlled by the Bureau of Land Management. He attempted
27 to enclose the cave by “fashioning a crude entrance wall from boards and other
28 materials which surrounded a so-called ‘door.’ ” (*Id.* at p. 1472.) A warrantless
search of the cave resulted in seizure of firearms and “anti-personnel booby
traps.” (*Ibid.*) As in the case before us, the evidence established
that *963 “Ruckman was admittedly a trespasser on federal lands and subject to
immediate ejection” (*ibid.*) by authorities “at any time.” (*Id.* at p. 1473.) The
court pointed out that “ ‘whether the occupancy and construction were in bad
faith,’ ” and the “ ‘legal right to occupy the land and build structures on it,’ ”
were factors “ ‘highly relevant’ ” to the issue of the defendant's expectation of
privacy. (*Id.* at p. 1474, quoting *Amezquita v. Hernandez-Colon* (1st Cir.1975)
518 F.2d 8, 12.) The court determined “that Ruckman's cave is **891 not subject
to the protection of the Fourth Amendment.” (*Ruckman, supra*, at p. 1472.)

29 *People v. Nishi*, 207 Cal. App. 4th 954, 962–63, 143 Cal. Rptr. 3d 882, 890–91 (2012).

1 All of the cited cases are post- *Gooch* and *Sandoval*. The relevance of the private
2 property/public property is important in determining whether an objectively reasonable right
3 to privacy exists.

4 TRESPASSING

5 Again, citing to *Sandoval* LEWIS claims that illegal activity does not affect one's
6 subjective expectation of privacy. Reply pg. 5, lns 4-7. *Sandoval* does not address the
7 criminal conduct as it relates to the critical component of the issues before this Court. Once
8 again issues that are not addressed by LEWIS. *Sandoval*, at least as it is cited by LEWIS, is
9 not in dispute by the State. The State understands that LEWIS is claiming a subjective
10 expectation of privacy in his illegal conduct by trespassing on private land. Once again, that
11 is not in dispute.

12 LEWIS fails to address the precise legal issue in the very next paragraph wherein it
13 states *Sandoval* yet again that talks about the objectively reasonable right of privacy on public
14 land. As several courts have noted that *Gooch* and *Sandoval* deal with structures on public
15 land that are normally used for camping. A critical fact that is missing in the instant case.

16 Finally, the *Cleator* case, contrary to the claim in the Reply, has not been overturned.
17 In fact, the only criticism post-decision has been based upon Washington's own constitution
18 and the questioning of *Cleator* was done that is the basis alone. *See Pippin*, 200 WashApp
19 826 (2017) and *State v. Wyatt*, 187 WashApp 1004 (2015).

20 EXIGENT CIRCUMSTANCES

21 The Reply does not address the uncontroverted fact that a wheelchair was found in
22 close proximity to the tent in question. Officers had a reasonable basis to inquire further as to
23 whether any person was present in the tent and could have potentially needed aid.

24 This is evidenced by the, once again, uncontroverted fact that the Officers announced
25 themselves when they were physically outside the tent and heard no response.

26 EVIDENTIARY HEARING

27 LEWIS states that there is no need for an evidentiary hearing. The State agrees but for
28 fundamentally different reasons. There cannot be any reasonable argument that LEWIS and

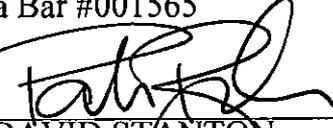
1 his co-defendant ORNELEAS were trespassing on private property. Without citation to one
2 case to the contrary, LEWIS asserts that the distinction of private/public property is irrelevant
3 to the objective privacy analysis. That clearly is not the case. The distinction is a very
4 important one and one that leads to the conclusion that no objectively reasonable expectation
5 of privacy exists in the instant case.

6 As such, the instant Motion should be denied.

7 DATED this 29th day of March, 2021.

8 Respectfully submitted,

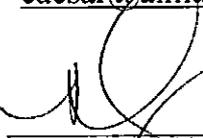
9 STEVEN B. WOLFSON
10 Clark County District Attorney
11 Nevada Bar #001565

12 BY: 
13 DAVID STANTON
14 Chief Deputy District Attorney
15 Nevada Bar #003202

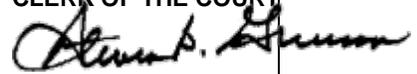
16 CERTIFICATE OF SERVICE

17 I certify that on the 29th day of March, 2021, I e-mailed a copy of the foregoing to:

18 CAESAR ALMASE, ESQ.
19 caesar@almaselaw.com

20 BY: 
21 M. HERNANDEZ
22 Secretary for the District Attorney's Office

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
vs.
DUSTIN LEWIS,
Defendant.

CASE#: C-19-340051-1
DEPT. XXIV

BEFORE THE HONORABLE ERIKA BALLOU, DISTRICT COURT JUDGE
APRIL 5, 2021

**RECORDER'S TRANSCRIPT OF HEARING:
ARGUMENT; MOTION TO DISMISS COUNSEL AND APPOINT
ALTERNATE COUNSEL**

APPEARANCES:

For the State: DAVID STANTON, ESQ.
Chief Deputy District Attorney

For the Defendant: CAESAR ALMASE, ESQ.
MICHAEL TROIANO, ESQ.

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 Las Vegas, Nevada, Wednesday, April 5, 2021

2 *****

3 [Proceeding began at 9:06 a.m.]

4 THE COURT: Page Numbers 10 and 11, State of Nevada
5 versus Margo Ornelas and Dustin Lewis, Case Numbers C-19-340051-1
6 and 2. Both Ms. Ornelas and Mr. Lewis are present in Court via – I'm
7 sorry, present in the jail via Blue Jeans. Mr. Almase present on behalf of
8 Mr. Lewis, Mr. Troiano present on behalf of Ms. Ornelas, and Mr.
9 Stanton for the State.

10 Mr. Stanton, you there?

11 MR. STANTON: [inaudible] Your Honor.

12 THE COURT: Okay. So I have read everything that's been,
13 you know, filed in this case. And, Mr. Almase, this is your matter so you
14 can go ahead and start.

15 MR. ALMASE: Judge, actually I'm just going to submit on the
16 pleadings and reserve for rebuttal.

17 THE COURT: Okay. Mr. Stanton.

18 MR. STANTON: Judge, in making his record last week, Mr.
19 Almase pronounced to this Court that the body of research backing his
20 various pleadings is that in mid-1980s, the Ninth Circuit pronounced a
21 ruling that there's a right of privacy recognized both subjectively and
22 objectively in a tent on private property.

23 He then went on to inform this Court that that doctrine has
24 been expanded through several cases, both in the Ninth Circuit as well
25 as in the State of Nevada, recognizing the right of privacy, both

1 objectively and reasonably, in public lands.

2 I would respectfully submit that the authority doesn't support
3 that claim whatsoever. The claim has to go back to the mid-1980s as
4 cited at least by the moving party that the Ninth Circuit recognized that
5 there was a -- in an injunctive action, not a criminal action, it was an
6 injunctive action brought on behalf of a large number of migrant laborers
7 in the State of California that were housed on private property, but the
8 distinction that's very important and not addressed, either Mr. Almase in
9 writing or in his oral presentation, that the presence on private property
10 in that case was done with the permission of the property owner which
11 clearly doesn't exist here.

12 So under the Katz test, this Court has to address two things.
13 Number one, is there a subjective expectation of privacy by the
14 defendants? Now there's nothing before this Court that's claiming as
15 evidence that these two defendants have an ownership interest in the
16 tent itself. It's presumed under the facts, but it's not sworn testimony in
17 any way, shape, or form.

18 There's no affidavit attached to any of the pleadings, and so it
19 may be inferred under the facts of the case that that tent was theirs in
20 whole or in part, but there are several other questions and facts that I
21 think are relevant, at least potentially, to this Court's assessment.

22 So number one, what are the facts of this case? Number one,
23 it's on private property. Now this Court indicated, hey, I read the police
24 report --

25 THE COURT: Mr. Stanton, there's nothing in the record that

1 says it's on private property. All there is is that it's a fenced-in lot. We
2 don't know who owns that lot. There's nothing in the police report that
3 says it, there's nothing in anything. I mean, we have nothing that says
4 that it's private property, or public property, or anything. We don't have
5 anything.

6 We also don't have anything saying that if it is private
7 property, they didn't have permission to be on that private property, so I
8 don't get where you're going here.

9 MR. STANTON: Okay. Well then if that's the Court's
10 concern, then I think we need an evidentiary hearing to establish those
11 facts, and we can proceed accordingly.

12 THE COURT: But here's the thing. If we don't know it from
13 the police report, then the police didn't know it at the time. They would
14 have put it in the police report. And so that means that they had
15 objective expectation of privacy on a zipped tent. The police report
16 clearly states that they unzipped the tent.

17 MR. STANTON: That's correct. But, Judge, I don't think the
18 police report is going to address the ongoing trespass because that was
19 not the focus of their investigation as they wrote up the report.

20 THE COURT: But it should have been when they knew that
21 they had to have done something to get that search warrant, when they
22 knew that they had to have done something to be able to unzip that tent.
23 If they didn't write that in their police report, then bad on them and they
24 need to be trained better.

25 MR. STANTON: Well but, Judge, they're not – the State's not

1 precluded and the State certainly is not limited by what's written in a
2 police report. The nature of what they did in the police report that was
3 attached by Mr. Almase was assessing the investigation that ultimately
4 they submitted for criminal prosecution that didn't address the underlying
5 trespass that was occurring at the time that they approached the tent.

6 THE COURT: But what I'm saying is that they knew. I mean,
7 I didn't even just read what Mr. Almase attached. I went back and I
8 looked and everything that was in the criminal bindover packet. I looked
9 at everything. They knew that they wrote in the police report that it was
10 a zipped tent, so there should have been something in there that says
11 that they had a reason to unzip that tent. And so –

12 MR. STANTON: I think – right. But the State's not limited to
13 the explanation of what the officers' state of mind and what their thought
14 process was by what was contained in a police report outlining the
15 investigation in a largely unrelated criminal investigation.

16 I mean, certainly the State is entitled to call the witnesses, the
17 detectives themselves, to explain what their perception of – and this is
18 clearly private property. It is [audio distortion], it has a no trespassing
19 sign on it, and it's not – the defendants did not have permission, and
20 they're not the owners of the property. That cannot be reasonably
21 disputed in this case.

22 THE COURT: So do you have the owners of the property?

23 MR. STANTON: Yes.

24 THE COURT: Okay.

25 MR. STANTON: And as one case sites, what they had to do

1 to render that property private from an exterior viewpoint. That is the
2 fencing and the no trespassing. I'm well aware of what it is, what they
3 did, and the timing of it.

4 THE COURT: They need to write better reports is all I'm
5 saying.

6 So go ahead, Mr. Almase.

7 MR. ALMASE: Judge, I agree with the Court, and I think it's
8 just very clear that there was no – the intent of the officers when he
9 unzipped the tent was to further their investigation. That is clear. There
10 was no thought that this was a trespass and they had to remedy the
11 trespass. There was nothing to indicate that they were checking on any
12 individuals for community caretaking, or whatever other reason the State
13 wants to give for their presence.

14 What they did was violate the Fourth Amendment by opening
15 my client's home. Period, that's it. And the State has not submitted any
16 authority against Alward, and we are in Alward. Alward is good law.
17 That's Nevada Supreme Court law. And the State hasn't given any case
18 law that goes against Alward, let alone Sandoval or Gooch.

19 And so I would submit, Judge, that this motion needs to be
20 granted in its entirety.

21 THE COURT: And, Mr. Troiano, I know that you are just on
22 as a joinder, but do you have anything you want to add?

23 MR. TROIANO: I concur with Mr. Almase, Your Honor.

24 THE COURT: Mr. Stanton, I understand where you're coming
25 from. I think that you're trying to, you know, do the best that you can to

1 cover, you know, for the officers who simply did a bad job and did not
2 follow the law, the Fourth Amendment.

3 This motion is granted in its entirety. And also as to Ms.
4 Ornelas, if you're able to proceed with anything else that's not fruit of the
5 poisonous tree, then you're free to do so.

6 MR. STANTON: And, Judge, so you're making a ruling that
7 I'm precluded from calling the officers and the owners of the property to
8 establish their state of mind and the ownership and lack of ownership
9 interest of the defendant.

10 THE COURT: I don't think it's necessary. I think that what's
11 happening is if they had, you know, if they had their – they should have
12 written a better police report. So I don't think it's necessary to have an
13 evidentiary hearing. If you'd like to, you know, take that up, you're free
14 to do so, but I don't think it's necessary.

15 And Mr. Almase, would you prepare the Order.

16 MR. ALMASE: I will, Judge.

17 THE COURT: Thank you.

18 MR. ALMASE: Thank you.

19 [Proceeding concluded at 9:18 a.m.]

20 * * * * *

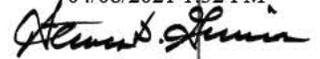
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video proceedings in the above-entitled case to the best of my
23 ability.

23

24

25


SUSAN SCHOFIELD
Recorder/Transcriber



CLERK OF THE COURT

1 ALMASE LAW
2 CAESAR ALMASE, ESQ.
3 Bar No. 7974
4 526 S. 7th Street
5 Las Vegas, NV 89101
6 (702) 463-5590
7 Attorney For Defendant

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 STATE OF NEVADA,

11 Plaintiff,

12 v.

13 DUSTIN LEWIS,
14 MARGAUX ORNELAS,

15 Defendants.

)
)
) Case Nos.: C-19-340051-1
) C-19-340051-2
)
) Dept. No.: XXIV

) **ORDER GRANTING DEFENDANT DUSTIN**
) **LEWIS MOTION TO SUPPRESS EVIDENCE**
) **BASED ON FOURTH AMENDMENT**
) **VIOLATION AND FRUIT OF THE**
) **POISONOUS TREE DOCTRINE**

16 THIS MATTER, having come before this Honorable Court on April 5, 2021, for
17 hearing on DEFENDANT DUSTIN LEWIS MOTION TO SUPPRESS EVIDENCE BASED ON
18 FOURTH AMENDMENT VIOLATION AND FRUIT OF THE POISONOUS TREE DOCTRINE; the
19 parties present through counsel, CAESAR ALMASE on behalf of DUSTIN LEWIS, MICHAEL
20 TROIANO on behalf of MARGAUX ORNELAS, having filed a Joinder, and DAVID STANTON on
21 behalf of the STATE OF NEVADA, having filed an Opposition and Response; that based on
22 the pleadings, argument of counsel on April 5, 2021, prior argument made in court, and
23 good cause shown,

24 **IT IS HEREBY ORDERED SUPRESSED,**

25 All tangible property and physical evidence recovered from the tent of DEFENDANT
LEWIS AND ORNELAS and the surrounding area, as these items were seized in violation of
the Fourth Amendment of the United States Constitution, *US v. Gooch*, 6 F.3d. 673 (9th Cir.

1 1993), *US v. Sandoval*, 200 F.3d 659 (2000), and *State v. Alward*, 112 Nev. 141 (1996);

2 **FURTHER ORDERED SUPPRESSED,**

3 Under the Fruit of the Poisonous Tree doctrine and *Segura v. United States*, 468 U.S.
4 796, 804 (1984), is the hand print of Mr. LEWIS; the interview of Mr. LEWIS; any
5 statements attributed to Mr. LEWIS and Ms. ORNELAS; all documents, statements, and any
6 other tangible or physical evidence relating to the identity of Mr. LEWIS and Ms. ORNELAS;
7 any evidence derived from the Lincoln Navigator that the State intends to use against Mr.
8 LEWIS and Ms. ORNELAS; and any evidence derived from the Fun City Motel that the State
9 intends to use against Mr. LEWIS.

10 DATED this 8 day of April 2021.

Dated this 8th day of April, 2021



11
12 ERIKA D. BALLOU
13 DISTRICT COURT JUDGE

C4B A6D 7676 1EAD
Erika Ballou
District Court Judge

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19 Submitted By:



20 Caesar Almase #7974
21 526 S. 7th Street
22 Las Vegas, NV 89101
23 (702) 463-5590
24 Attorney for Defendant Dustin Lewis
25

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: C-19-340051-1

7 vs

DEPT. NO. Department 24

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Dustin Lewis

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 4/8/2021

Caesar Almase

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Caesar Almase

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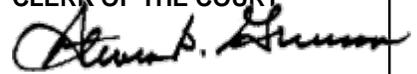
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AA 000269



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4 Nevada Bar #001565
5 KAREN MISHLER
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7 Nevada Bar #013730
8 200 Lewis Street
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)
10 Plaintiff,)
11 v.)
12 DUSTIN LEWIS,)
13 Defendant.)

Case No. C-19-340051-1
Dept. No. XXIV

NOTICE OF APPEAL

- 14
15 TO: DUSTIN LEWIS, Defendant; and
16 TO: CAESAR V. ALMASE, Attorney for Defendant; and
17 TO: ERIKA BALLOU, District Judge, Eighth Judicial District Court,
18 Dept. No. XXIV

19 NOTICE IS HEREBY GIVEN THAT THE STATE OF NEVADA, Plaintiff in the
20 above entitled matter, appeals to the Supreme Court of Nevada, pursuant to NRS 177.015(2)
21 from the order the district court filed APRIL 8, 2021, granting Defendant's Motion to
22 Suppress.

23 Dated this 9th day of April, 2021.

24 STEVEN B. WOLFSON,
25 Clark County District Attorney

26 BY /s/ Karen Mishler
27 KAREN MISHLER
28 Chief Deputy District Attorney
Nevada Bar #013730

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CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing NOTICE OF APPEAL was made April 9, 2021, by electronic transmission to:

CAESAR V. ALMASE
Email: caesar@almaselaw.com

JUDGE ERIKA BALLOU
Email: Dept24LC@clarkcountycourts.us

BY /s/ J. Garcia
Employee, District Attorney's Office

KM/jg

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
DUSTIN LEWIS,
Respondent.

THE STATE OF NEVADA,
Appellant,
vs.
MARGAUX ORNELAS,
Respondent.

Supreme Court No. 82750/82751
District Court Case No. C340051-1 # 2.

FILED

APR 13 2022

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

"ORDER the judgement of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order."

Judgment, as quoted above, entered this 18th day of March, 2022.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this April 12, 2022.

Elizabeth A. Brown, Supreme Court Clerk

By: Rory Wunsch
Deputy Clerk

C-19-340051-1
CCJR
NV Supreme Court Clerks Certificate/Judgr
4988832



lp

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
DUSTIN LEWIS,
Respondent.

No. 82750

THE STATE OF NEVADA,
Appellant,
vs.
MARGAUX ORNELAS,
Respondent.

No. 82750

FILED

MAR 18 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER VACATING AND REMANDING

These are consolidated appeals from a district court order granting a motion to suppress in a criminal matter. Eighth Judicial District Court, Clark County; Erika D. Ballou, Judge.

The State indicted Dustin Lewis and Margaux Ornelas on charges stemming from burglaries of storage units at a storage facility on two separate dates.

After the first date of burglaries, Las Vegas Metropolitan Police Department officers canvassing the area came across a tent and a wheelchair in a desert area adjacent to the storage facility. Officers approached the tent and when no one answered, they unzipped the front door of the tent. They found no one inside but saw what appeared to be items reported missing from storage units. Officers obtained a warrant and seized numerous items, and a crime scene analyst collected forensic evidence. Later that evening, a second incident of burglaries occurred at the storage facility.

Based on forensic analysis of items found in the tent and the wheelchair outside of the tent, analysis of fingerprints taken from

burglarized storage units, questioning of an alleged co-conspirator in the second incident of burglaries, surveillance footage, and review of recent booking photos, detectives identified Lewis and Ornelas as suspects. Respondents were then each indicted on charges of two counts of conspiracy to commit burglary, four counts of burglary, and grand larceny.

Lewis moved to suppress all evidence, and Ornelas joined the motion. The district court decided that no evidentiary hearing was necessary, even though the State requested to present witnesses. The district court granted Lewis's motion, ordering suppressed all tangible and physical evidence recovered from the tent and the surrounding area, stating the items were seized in violation of the Fourth Amendment. The district court additionally suppressed other incriminating evidence under the fruit-of-the-poisonous-tree doctrine. The State appeals this order.

The State argues the district court failed to make necessary factual findings on the record for this court to review on appeal. The State also argues the district court erred by granting the motion to suppress all evidence because respondents did not have a legitimate expectation of privacy in the seized materials. It additionally argues the district court erred by suppressing additional evidence under the fruit-of-the-poisonous-tree doctrine because the evidence was sufficiently attenuated from the search of the tent. Respondents assert the district court adopted by reference the facts in Lewis's motion to suppress and properly suppressed the evidence.

The district court's decision to suppress evidence presents a mixed question of law and fact. *State v. Beckman*, 129 Nev. 481, 485, 305 P.3d 912, 916 (2013). This court reviews a district court's findings of facts

for clear error but reviews the legal consequences of those factual findings de novo. *Id.* at 486, 305 P.3d at 916.

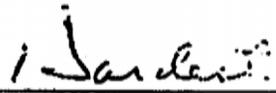
We agree with the State that the district court did not make proper factual findings for this court to review the legal conclusions on appeal. This court has clearly stated that the district court is required to make express factual findings on the record when deciding suppression motions. *State v. Rincon*, 122 Nev. 1170, 1177, 147 P.3d 233, 238 (2006). In this matter, it is apparent that the district court made factual determinations and inferences, but it did not do so on the record, and this court does not act as a factfinder. *See id.* at 1176-77, 147 P.3d at 237. In order for this court to properly review de novo the legal consequences of the district court's factual findings, district "courts must exercise their responsibility to make factual findings when ruling on motions to suppress." *Rosky v. State*, 121 Nev. 184, 191, 111 P.3d 690, 695 (2005) (internal quotation marks omitted). This court will not speculate about the factual inferences drawn by the district court. *Rincon*, 122 Nev. at 1177, 147 P.3d at 238.

In this matter, the district court did not make any factual findings in its order. We disagree with respondents that the district court adopted by reference the statement of facts included in Lewis's motion to suppress. The district court merely stated its decision was "based on the pleadings, argument of counsel on April 5, 2021, prior arguments made in court, and good cause shown." There is no indication in the district court's order that it intended to adopt any parties' statement of facts and it did not indicate it was incorporating by reference any other source of facts.

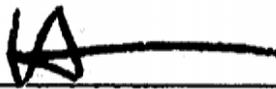
Accordingly, without factual findings on the record, we are unable to evaluate the State's additional arguments on appeal, and we

vacate and remand. *See Rincon*, 122 Nev. at 1177-78, 147 P.3d at 238 (remanding the matter to the district court for an evidentiary hearing because the record was insufficient to permit review by this court). For the reasons set forth above, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.¹


_____, J.
Hardesty


_____, J.
Stiglich


_____, J.
Herndon

cc: Hon. Erika D. Ballou, District Judge
Attorney General/Carson City
Clark County District Attorney
The Almase Law Group LLC
The Law Office of Michael A. Troiano
Eighth District Court Clerk

¹This order constitutes our final decision of this matter. Any subsequent appeal shall be docketed in this court as a separate matter.

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
Appellant,
vs.
DUSTIN LEWIS,
Respondent.

Supreme Court No. 82750/82751
District Court Case No. C340051-1 ~~2~~

THE STATE OF NEVADA,
Appellant,
vs.
MARGAUX ORNELAS,
Respondent.

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: April 12, 2022

Elizabeth A. Brown, Clerk of Court

By: Rory Wunsch
Deputy Clerk

cc (without enclosures):

Hon. Erika D. Ballou, District Judge
Clark County District Attorney
The Almase Law Group LLC

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on APR 13 2022.

Deputy HEATHER UNGERMANN
District Court Clerk

RECEIVED
APPEALS

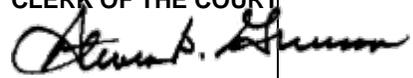
APR 13 2022

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22-11505

CLERK OF THE COURT

AA 000277



1 **RTRAN**

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5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7 **STATE OF NEVADA,**

8 **Plaintiff,**

9 **vs.**

10 **DUSTIN LEWIS,**

11 **Defendant.**

12) **CASE NO: C-19-340051-1**

13) **DEPT. XXIV**

14 **BEFORE THE HONORABLE ERIKA BALLOU, DISTRICT COURT JUDGE**
15 **FRIDAY, JUNE 10, 2022**

16
17 ***RECORDER'S TRANSCRIPT OF HEARING RE:***
18 ***EVIDENTIARY HEARING***

19 **APPEARANCES:**

20 **For the Plaintiff:**

ANN DUNN, ESQ.
Deputy District Attorney

21
22 **For the Defendant:**

CAESAR ALMASE, ESQ.

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25 **RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER**

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INDEX OF WITNESSES

<u>WITNESS:</u>	<u>PAGE</u>
DAVID INMAN	
Direct Examination by Ms. Dunn	7
Cross-Examination by Mr. Almase	12
Redirect Examination by Ms. Dunn	16
ANDREW SHARK	
Direct Examination by Ms. Dunn	18
Cross-Examination by Mr. Almase	25

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5
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INDEX OF EXHIBITS

STATE'S EXHIBITS:

PAGE

1 – Site Plan

11

2 – Invoice

9

1 Las Vegas, Nevada; Friday, June 10, 2022

2 *****

3 [Proceeding commenced at 1:33 P.M.]

4 THE COURT: Page Number 1, State of Nevada versus
5 Dustin Lewis, Case Number C-19-340051-1. Page Number 2, State of
6 Nevada versus Margo Ornelas, Case Number C-19-340051-2, and Page
7 Number 3, State of Nevada versus Thomas Herod, Case Number C-19-
8 340051-4. Mr. Lewis is present, in custody, with his attorney, Mr.
9 Almase. Mr. Troiano is present on behalf of Ms. Ornelas whose
10 presence – are we waiving her presence today?

11 MR. TROIANO: I would ask that her presence be waived,
12 Your Honor. As I've represented before, she's been in excellent contact
13 with myself, personally, since her release.

14 THE COURT: Okay. Ms. Ornelas's presence is waived
15 today. Mr. Herod is present, out of custody, with Mr. Altig on his behalf,
16 and this is on for the Evidentiary Hearing in this matter.

17 Ms. Dunn.

18 MS. DUNN: Yes, Your Honor.

19 THE COURT: I'm sorry. Ms. Dunn on behalf of the State.

20 And so, Ms. Dunn, you have witnesses and everything?

21 MS. DUNN: Yes, Your Honor. We have two witnesses.

22 MR. ALMASE: Judge, before witnesses are called, I wanted
23 to just address the Court primarily.

24 THE COURT: Sure.

25 MR. ALMASE: So my position when this case, before this

1 case was sent up to the Supreme Court, was that an evidentiary
2 hearing, at least testimony from witnesses, is unnecessary. And in
3 reading the Supreme Court's Order, they state that on Page 3, "The
4 district court merely stated its decision was 'based on the pleadings,
5 argument of counsel on April 5, 2021, prior arguments made in court,
6 and good cause shown.' There is no indication in the district court's
7 order that intended to adopt any party's statement of facts, and it did not
8 indicate it was incorporating by reference any other source of facts."

9 And then page 4 of the Order it states in parens, "Remanding
10 the matter to the district court." Vacate and remand was the Order, but
11 "(remanding the matter to the district court for an evidentiary hearing
12 because the record was insufficient to permit review by the Court)."

13 I would ask the Court to consider adopting at this point the
14 back portion of my moving document, the defendant Lewis motion to
15 suppress, in its entirety or perhaps distilling it down for this particular
16 issue, but if this Court in its mind when it made this decision was relying
17 on that factual recitation, then I don't see any need to have testimony
18 taken today. And it doesn't appear that the Supreme Court specifically
19 said testimony must be given in this matter because of X, Y, and Z. It
20 just was that it was insufficient. A factual basis was insufficient here at
21 the time.

22 And so I visit that it's unnecessary to have witnesses taken if
23 this Court is willing to adopt those findings.

24 THE COURT: Ms. Dunn.

25 MS. DUNN: And, Your Honor, the State does previously

1 request the evidentiary hearing, and we still stand by that. Our
2 argument is that the crux of this issue is whether the tent was on private
3 land and whether that constitutes a reasonable expectation of privacy,
4 so I think that having testimony to discuss what gave the defendants
5 notice that this was private land is important.

6 THE COURT: So here's where I am. I did rely on the
7 recitation of facts from Mr. Almase's motion. I do think that just because
8 it got remanded back that we should probably make a better record than
9 just me saying I'm going to adopt that, and that's why – I'm pretty sure
10 you said that when we set this evidentiary hearing, Mr. Almase, and I
11 just want to – this is just a CYA at this point –

12 MR. ALMASE: Right.

13 THE COURT: -- because I honestly think that if I had written
14 a better Order then it wouldn't have come back, but since the Order was
15 basically just – it's granted in its entirety, I think it would have just said –
16 then I think that's why they came back.

17 MR. ALMASE: Right.

18 THE COURT: But at this point because it did come back I do
19 want to have a full evidentiary hearing just because it came back and
20 just for that reason. I understand your argument, and had we, you
21 know, had I done a better job, I would have not – I think I would have not
22 necessarily needed it, but.

23 MR. ALMASE: Right. And I blame myself, Judge. The court
24 had tasked me with drafting the proposed order and I could have done
25 better with the actual recitation, so I understand.

1 THE COURT: Okay. So, okay.

2 So, Ms. Dunn, or does anybody wish to invoke the
3 exclusionary rule?

4 MR. ALMASE: Yes. Please, Judge.

5 THE COURT: Okay. So the exclusionary rule is invoked.
6 Anybody who is not going to be the State's first witness needs to go out
7 into the vestibule.

8 MS. DUNN: I did ask our second witness to step out.

9 THE COURT: Okay. So who is your first witness, Ms. Dunn?

10 MS. DUNN: David Inman.

11 THE CLERK: Please raise your right hand.

12 **DAVID INMAN**

13 [having been called as a witness and being first duly sworn, testified as
14 follows:]

15 THE CLERK: Can you please state and spell your name for
16 the record?

17 THE WITNESS: David Inman, D-A-V-I-D I-N-M-A-N.

18 THE COURT: Thank you. You can be seated. And, Ms.
19 Dunn, you may proceed.

20 MS. DUNN: Thank you.

21 **DIRECT EXMAINATION**

22 BY MS. DUNN:

23 Q Good afternoon, Mr. Inman. I would like to direct your
24 attention to the latter part of 2018, starting in October of 2018. At that
25 point did you acquire a piece of land here in Las Vegas?

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A I did.

Q And what were the cross streets for that property?

A It's on Flamingo at the light. Hualapai is about another block down, so it's kind of mid-block.

Q Okay. And what if anything was on that property when you acquired it in October?

A Nothing.

Q Nothing. Okay. Was it paved, was it desert, what was it like there?

A It was just raw land. The hospital had brought the utilities to it because they were going to sell the property, and I bought it to develop it.

Q Okay. In October of 2018, was there any sort of fencing around that property?

A There was none.

THE COURT: I'm sorry. I couldn't hear the answer.

THE WITNESS: There was none.

THE COURT: No. Okay.

BY MS. DUNN:

Q Was a fence ever erected?

A Yes it was.

Q When was that?

A Approximately mid-November.

Q Of which year?

A Of – in 2018.

1 Q After the fence was erected were there any no trespassing
2 signs placed?

3 A Yes, there was.

4 Q Who placed those signs?

5 A I did.

6 MS. DUNN: May I approach the witness, Your Honor?

7 THE COURT: Yes.

8 Q I'm showing you what's been marked as State's proposed
9 Exhibit 2. Do you recognize this?

10 A Yes. I do.

11 Q What is that?

12 A That's my invoice for putting up the fences.

13 Q Okay. And is that a fair and accurate copy of the invoice that
14 you received?

15 A Yes.

16 MS. DUNN: The State would move to admit Exhibit 2, Your
17 Honor.

18 MR. ALMASE: No objection.

19 THE COURT: And that'll be admitted.

20 **[Exhibit 2 Admitted]**

21 MS. DUNN: Thank you.

22 BY MS. DUNN:

23 Q Can you please tell me what date the fence was installed?

24 A The invoice for November 19th, 2018. It was probably installed
25 a couple days before or a couple days after.

1 Q Okay. Once it was installed did you go out and view the
2 fence?

3 A Yes.

4 Q Was that event in November, 2018?

5 A Yes.

6 Q I'm showing you what's been marked as State's proposed
7 Exhibit 1. Do you recognize that?

8 A Yes.

9 Q What is that?

10 A That's my site plan that I drew up where the fence was, where
11 the existing wall was.

12 Q Okay.

13 THE COURT: I'm sorry. Ms. Dunn, can you please move the
14 microphone closer to him? I'm having a real hard time hearing him.

15 THE WITNESS: I'm a low talker. I'm sorry.

16 THE COURT: Okay. Thank you.

17 BY MS. DUNN:

18 Q Can you please tell me what that is, State's proposed Exhibit
19 1?

20 A It's my site plan and where I was going to build the buildings.
21 This is the existing convenience store, and this is the existing hospital.

22 Q Okay. And we'll get to that in one second. But is that a fair
23 and accurate depiction of the site plan?

24 A Yes.

25 MS. DUNN: We would move to admit State's Exhibit 1.

1 MR. ALMASE: No objection.

2 THE COURT: Okay. That'll be admitted.

3 MS. DUNN: Thank you.

4 **[Exhibit 1 – Admitted]**

5 BY MS. DUNN:

6 Q I'm showing you Exhibit 1. I see some markings on here. Are
7 those markings you added yourself?

8 A I did.

9 Q Showing you I see a pink highlighter. Can you tell me what
10 that indicates?

11 A That's the existing wall between my property and the storage
12 units next door.

13 Q And then I see orange highlighters. Can you tell me what
14 those are?

15 A That's where they put the fence up.

16 Q What type of fence was it?

17 A Chain link.

18 Q And I see X's along the orange highlighter. What do those
19 indicate?

20 A That's the no trespassing signs that I put up myself.

21 Q And then is this the entirety of the lot you owned covered in
22 the pink and orange highlighters?

23 A Yes. I have easements going here and here, but that's the
24 property that I bought.

25 Q Okay. And just for the record, I see kind of green dots going

1 down where it says existing retail center to the right, and then you
2 indicated that was one easement, and another easement to the left
3 where it says it's the same retail center. Is that correct?

4 A Yes.

5 Q Do you recall when you placed the no trespassing signs?

6 A Within a day of the fence going up.

7 Q Would that still have been November of 2018?

8 A Yes.

9 MS. DUNN: I have no further questions for this witness, Your
10 Honor.

11 THE COURT: Go ahead, Mr. Almase.

12 MR. ALMASE: Thank you, Judge.

13 **CROSS-EXAMINATION**

14 BY MR. ALMASE:

15 Q Good afternoon, sir. How are you?

16 A Good.

17 Q Were you ever made aware of a tent that was on your
18 property back in 2018?

19 A I was.

20 THE COURT: I'm sorry. Can you please speak up. I really
21 can't hear you.

22 A I was.

23 Q Were you made aware in December of 2018?

24 A No. I was made aware of the weekend of November 10th I
25 was in New York at my son's wedding, and they called me and said a lot

1 of tents have been –

2 Q Hold on for a second. So you heard – was this 2018,
3 November, 2018?

4 A Yes.

5 Q And you got a phone call?

6 A Yes. I did.

7 Q From who?

8 A I believe it was the manager from the convenience store.

9 Q In that adjacent area?

10 A Yes. Next – contiguous to the property.

11 Q Okay. And they alerted you to this happening.

12 A They alerted me to the tents and the fires that were being
13 started at nighttime because they said they were having a problem, that
14 the homeless –

15 Q So, and I'm sorry to interrupt you.

16 A No problem.

17 Q If the State has some questions for you to follow up, they can
18 come back and ask you.

19 A Okay.

20 Q But just to answer my question.

21 A Got it.

22 Q The people at the 7-Eleven back in November, 2018, they
23 alerted you as to the existence of a tent on your property?

24 A Yes.

25 Q Okay. And then after that did you have any communication

1 with Metro or law enforcement in December of 2018 with regards to that
2 tent?

3 A No. In November.

4 Q In November the 7-Eleven people contacted you?

5 A No. You asked me about Metro?

6 Q Yes. Did Metro contact you in November?

7 A I contacted them.

8 Q You contacted Metro in November?

9 A Yes.

10 Q With regard to –

11 A The situation, and could they remove the homeless off my
12 property.

13 Q Okay. And they spoke to you. Did you get a name of the
14 Metro officer at that time?

15 A Four years ago, I don't remember.

16 Q Okay. Did you fill out a police report or anything like that?

17 A No. They told me I had to put up the sign in the fence before
18 they could act.

19 Q Okay. In December, let's focus on December, 2018. There
20 was nobody from Metro, if I understand you, that contacted you with
21 regard to a tent?

22 A I don't recall.

23 Q Okay. And specifically, if you don't recall, but you do recall
24 you had a conversation with them in November?

25 A Yes.

1 Q Okay. But specifically in December, December 8th, or around
2 that time, any time in that month, there was no communication with you
3 and law enforcement.

4 A I got a letter.

5 Q You got a letter?

6 A Um hmm.

7 Q Okay.

8 A Saying that they moved the –

9 Q Well, the question again. Maybe I'm being a little repetitive.

10 A I'm sorry.

11 Q There was no actual communication whether verbally over the
12 phone or in person with regard to a tent in December of 2018.

13 A I don't recall right at this moment.

14 Q Was there any written communication with regard to a tent,
15 not fires or anything else, but a tent?

16 A It's hard to answer that without explaining. Their letter to me
17 was they had moved the homeless off. They had left a lot of property
18 there, and I needed to clean it up.

19 Q That was from Metro in November?

20 A December. Right around there.

21 Q Do you have that letter?

22 A No.

23 Q Is that a no?

24 A That's a no. I'm sorry.

25 Q Okay. And that was never submitted to the District Attorney's

1 Office or anything like that?

2 A No.

3 MR. ALMASE: Okay. Pass the witness.

4 **REDIRECT EXAMINATION**

5 BY MS. DUNN:

6 Q I'm going to be clear about when you were contacted by the
7 convenience store in November. Was that in regard to a specific tent or
8 tents in general?

9 A They said that there was five or six tents. There was fires and
10 people were coming over to the convenience store at nighttime and
11 bothering the patrons of the convenience store.

12 Q Did you go out after receiving that call, did you go out to the
13 lot?

14 A I was in New York.

15 Q When you returned from New York?

16 A When I returned I went out there, yes.

17 Q And did you see any tents there?

18 A I saw three or four. Yes.

19 Q Was it at that point you contacted Metro?

20 A I did.

21 Q Okay. And what did they tell you?

22 A They said I have to put up a fence and put a no trespassing
23 sign before they could act.

24 Q And is that when you contacted the company to install the
25 fence?

1 A Yes I did.

2 Q After the fence was installed and after you put up the no
3 trespassing signs were there still tents on the property?

4 A Yes there were.

5 Q Do you recall how many?

6 A Three of four. I didn't go physically out there.

7 Q Did you call Metro again after you had the fence installed?

8 A I did.

9 Q And what did you tell them?

10 A I told them I had installed the fence and the signs, and they
11 said they'd take care of the situation, and they did.

12 Q Was it after that that you received that letter from Metro?

13 A After they removed everybody from the property, then I
14 received a letter from Metro saying that I had to clean it up or it would be
15 a \$1,000 a day fine if I didn't.

16 MS. DUNN: Pass the witness.

17 MR. ALMASE: Nothing further.

18 THE COURT: Okay. Please don't discuss – you're excused.

19 Please don't discuss your testimony with anyone. Thank you.

20 MS. DUNN: Your Honor, our next witness is Sergeant Andrew
21 Sharp.

22 THE COURT: Thank you.

23 **ANDREW SHARP**

24 [having been called as a witness and being first duly sworn, testified as
25 follows:]

1 THE CLERK: Can you please state and spell your name for
2 the record?

3 THE WITNESS: Andrew Sharp, A-N-D-R-E-W, last name S-
4 H-A-R-P.

5 THE CLERK: Thank you.

6 THE COURT: You can be seated. Please proceed, Ms.
7 Dunn.

8 **DIRECT EXAMINATION**

9 BY MS. DUNN:

10 Q Good afternoon, Sergeant Sharp. Can you please tell us how
11 you are employed?

12 A I'm currently employed as a Sergeant for Summerlin Area
13 Command.

14 Q Is that with the Las Vegas Metropolitan Police Department?

15 A Yes it is.

16 Q Were you employed by Metro in December of 2018?

17 A Yes I was.

18 Q What was your capacity with Metro at that point?

19 A In December of 2018, I was currently working for a flex squad
20 which basically they are tasked with doing multiple different missions
21 and duties at Spring Valley Area Command for LVMPD.

22 Q What part of town does Spring Valley Area Command cover?

23 A It's the southwest part of town. It's actually from, at that time it
24 was Charleston to Tropicana was the border, and then all the way from
25 the far west mountain to the 15.

1 Q Were you a Sergeant at that time?

2 A No. I was not. I was an officer.

3 Q A patrol officer?

4 A Yes.

5 Q Were you assigned to investigate some burglaries by the
6 Storage One facility?

7 A Yes I was. Our squad was tasked with conducting follow-up
8 and canvassing the area related to the burglary cases that were taking
9 place.

10 Q And, specifically, was that the Storage One at 9960 West
11 Flamingo?

12 A Yes it is.

13 Q And directing your attention to December 11th of 2018. Were
14 you working on that day?

15 A Yes I was.

16 Q And were you working on this case on that day?

17 A Yes I was.

18 Q What were your duties on that day?

19 A Like I say before, our duties were to canvas the area, just talk,
20 literally walk around the whole entire area, any hot spots around there,
21 talk to any people, any transient individuals, to see if we can get any
22 leads or information, or any possible witnesses, or evidence, or video, or
23 anything related to the case.

24 Q Is there a reason that you were interested in transient people?

25 A Just based off the details, the detective investigating the case

1 stated that he believed that was a possibility just due to the high amount
2 of transient subjects in the area.

3 Q Okay. At some point did you come upon a desert lot?

4 A Yes I did.

5 Q Was that at the corner or near the area of Flamingo and
6 Hualapai?

7 A Yes it was.

8 Q Did that lot have a fence around it?

9 A Yes it did.

10 Q Did you ever enter the lot?

11 A Yes we did.

12 Q Okay. What caused you to enter the lot?

13 A As we were canvassing the area, we were walking down a trail
14 path, like walking path that was on the 215 beltway. Again, this was
15 after talking with multiple different areas and multiple different transient
16 subjects. We noticed that the fenced-in area by that walkway was bent
17 over, collapsed as if someone, like, damaged the fence to make it –

18 MR. ALMASE: I would object to the speculation, Judge.

19 MS. DUNN: Your Honor, he's saying what he observed.

20 THE COURT: That's what it sounded like to me.

21 MR. ALMASE: Well, he said as if someone had –

22 THE COURT: Okay. So I will grant that as to that part, and I'll
23 strike him saying "as if", you know, what it was.

24 MR. ALMASE: Okay.

25 THE COURT: So he'll just say it was damaged.

1 BY MS. DUNN:

2 Q The portion of the fence that was on the ground, did it appear
3 to you to be professionally done?

4 A The fence itself was professionally done. The damage
5 appeared to be done by –

6 MR. ALMASE: I'm going to object to the speculation, Judge.

7 THE COURT: Again, so don't speculate, Sergeant. Just say
8 what you saw.

9 THE WITNESS: I understand.

10 THE COURT: So that is going to be sustained.

11 Q In your training and experience have you ever seen, you know
12 – I'm going to move on from that actually.

13 When you entered the portion of the fence, did you go through
14 the part that was torn down, or did you hop over the fence?

15 A Yes. My squad entered through the damage to the fence.

16 Q When you got into the lot, what, if anything, did you see?

17 A We – I observed on the wall that was – that the lot shares with
18 the storage unit, there appeared to be a transient camp from my training
19 and experience.

20 Q What made it look like a transient camp to you?

21 A There was several pieces of trash items scattered in the
22 desert area. There was a tent. From my experience it was a homeless
23 camp.

24 Q Did you approach the tent?

25 A Yes we did.

1 Q Why?

2 A Because, again, our duties that night were to canvass the
3 area, make contact with any subjects, make contact with anything that
4 stood out. So we approached tents to make contact with whoever
5 possibly could be inside.

6 Q When you arrived at the tent did you say anything, do
7 anything, what happened?

8 A Yeah, we identified ourselves as police officers and we
9 challenged the tent to see if we got a response.

10 Q When you say challenged the tent, was it –

11 A Again, identify ourselves as police officers, advise anyone
12 inside that we were there, that we were investigating a crime, and asked
13 for them to come out and speak with us.

14 Q Did you receive any response?

15 A We did not.

16 Q What happened next?

17 A After not receiving a response, based on the proximity of the
18 crime scene and the task that we had at hand, one of our officers on the
19 squad, we approached the tent. There was an opening in the front
20 entrance. Due to safety reasons of the tent we opened it to clear – to
21 assure us there was anyone inside the tent or not.

22 Q When you say safety reasons, can you tell me more about
23 that?

24 A Typically, based off our normal duties and how we're trained,
25 a tent is not a very good tactical situation, especially in a desert lot that

1 is open. It's very possible for subjects to attack through tents. The
2 barriers to a tent don't provide any cover, and the desert lot doesn't
3 provide much cover. Due to this and investigating the crime, the safest
4 and quickest way to insure the safety of officers and everyone around us
5 was to approach the tent and open it to insure that there was no one
6 inside.

7 Q When you opened it did you see anything inside?

8 A Yeah. We cleared the tent meaning that there was no
9 subjects inside, and we noticed that there was multiple items inside
10 including a chess board.

11 Q What was significant about the chess board?

12 A The chess board was one of the pieces of information
13 provided to us that was part of the burglary at the storage unit.

14 Q Did you ever enter the tent?

15 A I did not.

16 Q Did anyone with you at that point enter the tent?

17 A At that point no one entered the tent.

18 Q Okay. When you saw the chess board what, if anything, did
19 you do?

20 A We contacted the investigating detective to relay the
21 information. Again, this is after securing, freezing the premise, and
22 making the surrounding area safe, just relayed the information to them
23 to investigate.

24 Q After that point did Metro obtain the search warrant for the
25 tent?

1 A Yes.

2 Q And were you part of the team that executed that search
3 warrant?

4 A Yes I was.

5 Q Do you recall what, if anything, you recovered from the tent?

6 A We recovered several items that were related to the burglary
7 such as watch boxes to watches, multiple cell phones, and the chess
8 board, and I believe, if I remember correctly, items of clothing also.

9 Q What time of day was it that you went out to the tents?

10 A I do not remember the exact time. It was nighttime though.

11 Q Do you recall if it was earlier in the night or later at night?

12 A Later at night.

13 Q Do you recall seeing any No Trespassing signs on the fence?

14 A I do not recall if there was any posted No Trespassing signs.

15 MS. DUNN: Your Honor, may I approach the witness?

16 THE COURT: Yes.

17 BY MS. DUNN:

18 Q I'm showing you what has been admitted as State's Exhibit 1.
19 Can you point out on there where you found the tents?

20 A The tent was located I would say right in the middle area,
21 possibly more north, so on the – in the northwest side of the storage
22 property, by the wall.

23 Q And on the Exhibit you point to kind of in the middle of that
24 pink highlighted area. Is that correct?

25 A That is correct.

1 THE COURT: It was right, it was actually not, a little bit above
2 the middle, so closer to where the handwriting is. Is that correct?

3 THE WITNESS: That is correct. I would say even slightly
4 above the handwriting if I'm remembering correctly.

5 THE COURT: Okay, so further than half way?

6 THE WITNESS: Yeah, further north than halfway.

7 THE COURT: Okay.

8 MS. DUNN: Your Honor, may we approach?

9 THE COURT: Sure.

10 (Bench Conference)

11 MS. DUNN: In terms of everything else that was written in the
12 statement of facts, do you want me to [indiscernible] the panel or is your
13 plan to adopt his statement of facts as to, like, the course of the
14 investigation. My plan was to have testimony regarding, you know, the
15 fence being in the privacy.

16 THE COURT: That's all I think I needed.

17 MS. DUNN: Okay. Okay. I just wanted --

18 THE COURT: Thank you.

19 MS. DUNN: I will pass the witness, Your Honor.

20 THE COURT: Mr. Almase.

21 MR. ALMASE: Thank you, Judge.

22 **CROSS-EXAMINATION**

23 BY MR. ALMASE:

24 Q Good afternoon, Sergeant.

25 A Good afternoon, sir.

1 Q How are you?

2 A Fantastic. How are you doing?

3 Q Great.

4 So back in 2018, and you did a pretty thorough job reciting
5 what happened when you got to the tent. It's fair to say that based on
6 your direct testimony you did not speak to the owner of the property
7 before opening the tent. Is that fair?

8 A We did not.

9 Q And at the time your justification for opening it as you say was
10 for officer's safety?

11 A That is correct.

12 Q Okay. And to be fair and to be clear, you said there was an
13 opening but the tent was actually zipped, wasn't it?

14 A It was zipped. There was a slight opening. It wasn't
15 completely sealed at the bottom of the tent from my – from being in
16 tents before, it wasn't completely shut.

17 Q Do you have a complete recollection of that being some
18 opening?

19 A Yes.

20 Q There was a little bit of an opening there? How long of an
21 opening was this?

22 A It was a small opening. The reason I remember is when
23 opening the tent it was hard to grab the zipper so they actually moved
24 just through the gap that was opened to allow it to open.

25 Q You have a recollection of that.

1 A Yes I do.

2 Q But you had to nevertheless open the tent completely to look
3 inside. Is that fair?

4 A To adequately clear for a person, yes.

5 Q Right. And, again, you had no recollection of whether there
6 were any trespass signs up or not?

7 A I did not see any. I don't remember if there was any
8 trespassing signs.

9 MR. ALMASE: Okay. Pass the witness.

10 MS. DUNN: I have no further questions.

11 THE COURT: Do either of you have any questions?

12 MR. ALTIG: No, Your Honor.

13 THE COURT: Sorry, I should have asked that on the first
14 witness.

15 You're excused. Please do not discuss your testimony with
16 others. Thank you.

17 MS. DUNN: Your Honor, the State has no further witnesses.

18 THE COURT: And so the State will rest?

19 MS. DUNN: Yes.

20 THE COURT: Any witnesses?

21 MR. ALMASE: No witnesses, Judge.

22 THE COURT: The defense will rest?

23 MR. ALMASE: Yes.

24 THE COURT: So go ahead. Argument, Ms. Dunn.

25 MS. DUNN: We would save it for rebuttal, Your Honor.

1 THE COURT: Okay. Mr. Almase.

2 MR. ALMASE: Does the Court want to direct me to any
3 specific item or issue that is of primary concern?

4 THE COURT: Whatever you'd like to make the record of, Mr.
5 Almase. Go ahead.

6 MR. ALMASE: Judge, as Sandoval case makes clear, a
7 person has a reasonable expectation of privacy even if they are
8 trespassing. And in that case, it was BLM land. It was the defendant,
9 Sandoval, was one of 18 defendants who had a makeshift tent or shed
10 erected on BLM land and was illegally growing marijuana there. The
11 Ninth Circuit said he still had a reasonable expectation of privacy even
12 though he had been trespassed.

13 Here the situation is slightly different and, in fact, I think is
14 stronger because the officers at the time that they opened the tent and
15 my client's residence, in effect, did not know, had no knowledge as to
16 whether he was, in fact, trespassing or not. And I submit that it is not
17 enough for them to say that there was fencing up.

18 The officer very truthfully said that there was – he had no
19 recollection of no trespass signs, whether there were no trespass signs
20 or not. But even if there were, I think that it's a bit of a red herring to
21 focus any analysis there because, again, their subjective belief, and he
22 even said the justification for opening the tent was for officer's safety
23 which doesn't really jive with what we're talking about here.

24 It's whether a person has a reasonable or objective
25 expectation of privacy in their dwelling, in their home, and so the fact

1 that they didn't know whether that person, the occupants of that tent at
2 the time were, in fact, trespassing because they didn't stop to call the
3 property owner, looms large here.

4 As this Court's aware, a typical trespass case is where
5 officers will receive a call from the property owner saying, hey, these
6 people are trespassing right now, remove them, or they have
7 knowledge beforehand somehow that the people were actually
8 trespassing. And without that, without that explicit knowledge, then what
9 they did fails, and this Court's ruling should stand.

10 I stand by the analysis that was enunciated in Sandoval but
11 then also take into consideration the Alward case which shows that the
12 defendant there had a reasonable expectation of privacy, and that was a
13 homicide matter. And our State Supreme Court stated that, in fact, was
14 that person had a reasonable expectation of privacy as well.

15 We have this sort of situation, Judge, which clearly the items
16 that were seized from that tent and the surrounding area, all of it should
17 be suppressed, one, because they violated my client's reasonable
18 expectation of privacy, but due to everything else that was recovered
19 through the poisonous tree, all of it should be suppressed which this
20 Court did. And unless the Court has any questions, I think I'll submit on
21 that.

22 THE COURT: Ms. Dunn, go ahead.

23 MS. DUNN: Thank you.

24 Your honor, the difference between Sandoval and this case is
25 that in Sandoval the tent was on BLM land that was out in an isolated

1 area. I don't believe that the land there was fenced, and it was entirely
2 possible the Court ruled that a person could have easily mistaken it for
3 a public campground.

4 Here, there is no indication that this fenced-in lot in a
5 commercial area could be mistaken for a public campground. That is
6 the differentiating factor between this and Sandoval. Similarly, in
7 Alward that tent was on public land and it was lawfully there. He was
8 a camper on a public campground.

9 There's numerous case law that supports that someone who
10 is trespassing does not have a privacy interest. As we all know from
11 Katz that they must have not only a subjective expectation of privacy but
12 the privacy expectation must be one that society recognizes as
13 reasonable. And while there are certainly cases indicating that a tent
14 may have, you know, a person may have an expectation of privacy
15 that's not, you know, under dispute, and there's certainly case law that
16 indicates if somebody's on a campground or public land, or even as in
17 Sandoval land that they may think is a campground, there could be a
18 reasonable expectation of privacy that society is willing to accept.

19 But in this case this tent was found on land that was in the
20 middle of a commercial area, surrounded by fencing that had no
21 trespassing signs put up. That's not a right to privacy that society has
22 accepted nor one that is ready to accept.

23 In terms of the officer's subjective state of mind, that is not
24 determinative. As to whether the defendant had a legitimate expectation
25 of privacy, we have to look at the totality of the facts, and the totality of

1 the facts and circumstances in this case indicate that it was a lot, again,
2 in a commercial area with fencing and with no trespassing signs placed
3 on it.

4 In terms of the fruit of the poisonous tree doctrine, the State
5 would submit that much of the evidence that was previously ruled to be
6 suppressed by this Court wasn't fruit of the poisonous tree at all. The
7 handprint that was outside of the storage unit, that was collected prior to
8 the officers ever even encountering this tent.

9 The statement made by the defendant did not come from the
10 tent or from anything like that. The fingerprints that were in ATHIS from
11 both of the defendants, Lewis and Ornelas, those would have been
12 discovered regardless of what happened with the tent.

13 Evidence related to their identities, the identity of the
14 defendant is not something that could be suppressed based on the
15 Fourth Amendment. The evidence from the navigator that was
16 sufficiently attenuated from the tent, the officers discovered the
17 navigator because there was a second alarm at the storage unit and
18 when they went out there they found the navigator. So the evidence
19 from inside the navigator was not part of this tent as well.

20 So for all of those reasons, the State would submit that the
21 motion to suppress should not be re-granted, and even if it were those
22 items that the defense seeks to have suppressed based on fruit of the
23 poisonous tree are sufficiently attenuated from the search of the tent,
24 that the motion should not be granted as to those.

25 THE COURT: As far as I remember, you weren't trying to

1 suppress anything from the navigator. Is that correct, Mr. Almase?

2 MR. ALMASE: Judge, Court's Order was that under the
3 fruit of the poisonous tree doctrine, handprint of Mr. Lewis, interviewed
4 Mr. Lewis, any statements attributed to Mr. Lewis and Ms. Ornelas. All
5 documents, statements, and any other tangible, physical evidence
6 relating to the identity of Mr. Lewis and Ms. Ornelas, any evidence
7 derived from the Lincoln navigator that the State intends to use against
8 Mr. Lewis and Ms. Ornelas, that was the distinction that was drawn
9 because the navigator wasn't their property.

10 THE COURT: Right.

11 MR. ALMASE: And any evidence derived from the Fun City
12 Motel that the State intends to use against Mr. Lewis.

13 And so there's that distinction as to the navigator.

14 THE COURT: Okay. So do you want to add anything?

15 MR. ALMASE: Very briefly, Judge, if I may.

16 Ms. Dunn states that there is a lot of case law with regard to
17 trespassing. In fact, there is not to support her position. With all due
18 respect, the moving or the opposition filed by her predecessor, David
19 Stanton, cited to one case, Kleetor, which is a Washington State case
20 which I addressed in my reply and is no longer followed in Washington
21 State because of Sandoval. A subsequent Washington State case
22 Say that explicitly we are not following Kleetor anymore because of
23 Sandoval, and Sandoval again stated, even if a person is trespassing,
24 even if they don't have permission to be on land, they have a
25 reasonable expectation of privacy.

1 Now, there perhaps is a distinction between public and private
2 land, but even if a distinction is going to be drawn, that doesn't
3 necessarily apply here because they still didn't know whether – what
4 the status of that tent was when they opened it. And there is simply no
5 case law to support their position that my client did not have a
6 reasonable expectation of privacy under these circumstances. They
7 can't get away from Sandoval, Judge. It's solid law. And Alvert here
8 has not been overruled in Nevada Supreme Court.

9 And for all of those reasons, I would ask the Court to stand
10 by its original Order suppressing all of the evidence.

11 MS. DUNN: Just so the record's clear, Your Honor, the case
12 that Mr. Almase is referring to that sends out Kleetor that didn't rely
13 on the Fourth Amendment, and all assist that on the Washington
14 Constitution, so it's completely different than this case.

15 THE COURT: So, to me, Ms. Dunn, the fact of the matter is
16 that the officer didn't speak to the owner of the property, the officer didn't
17 even see the no trespassing signs, so, I mean, whether it's fenced in or
18 not, he doesn't know if they have, you know, permission to be there.
19 And so, because of that, I still think that the suppression is warranted in
20 this case, and so I still think that basically the order just needs to be
21 flushed out, and I'm going to grant it again. The way that it was
22 written, I'm just going to add some more information to the statement of
23 facts.

24 So, Mr. Almase, can you please e-mail me a copy of the
25 original order in Word so that I can work from it?

1 MR. ALMASE: Yes, ma'am.

2 THE COURT: Thank you.

3 MS. DUNN: Thank you.

4 MR. ALMASE: Thank you, Judge.

5 MR. TROIANO: Your Honor, we don't have hearing dates on
6 this.

7 THE COURT: As far as I know, that still means that they're
8 going to be able to go forward with a trial against Mr. Herod, and so we
9 probably just need to set a calendar call and trial date against
10 Mr. Herod. I'm not sure.

11 MS. DUNN: We will be re-appealing, Your Honor.

12 THE COURT: I'm sorry.

13 MS. DUNN: We will be appealing it again.

14 THE COURT: Okay. So we probably don't need to do
15 anything for a while.

16 And I'm sorry, Mr. Herod, what did you want to say?

17 MR. HEROD: How is it, the situation [indiscernible] – I'm just
18 trying to figure out what happened with his arrangements. That's all.

19 THE COURT: He's in bench warrant as far as I know, right?

20 MS. DUNN: That's correct.

21 THE COURT: Yeah. So he's still –

22 MR. HEROD: He's needed. I'm just saying.

23 THE COURT: Okay.

24 MR. ALMASE: Thank you, Judge.

25 THE COURT: So do we need to have a status check then on

1 the appeal so that we can – I don't want to –

2 MS. DUNN: We need to wait for the order to be filed. Once
3 it's ordered, we'll file our notice of appeal within two days of that. So I
4 don't know how long you anticipate the order taking, but I would
5 suggest a status check in maybe – I mean it won't be done with the
6 Supreme Court, but maybe sixty or ninety days, just to keep it on
7 everyone's radar.

8 THE COURT: Yeah. So –

9 MR. ALMASE: And I'll submit the Word document of the
10 Order. Did the Court want a Word document of the motion?

11 THE COURT: Sure. I'd like a Word document of all of you
12 guys' motions, so if everybody can just –

13 MS. DUNN: I will try to track that down.

14 THE COURT: Okay. If you can't then just send an e-mail to
15 my law clerk or something just so I know. Because it is, I mean, so that
16 it's easier so that I can cut and paste everything that I want to put in.

17 MR. ALMASE: Right.

18 THE COURT: And it would be easier to do that.

19 MR. ALMASE: And I will include Ms. Dunn on the e-mail.

20 THE COURT: Absolutely.

21 MS. DUNN: Thank you.

22 THE COURT: So, Ro, can we have a status check in 60
23 days?

24 THE CLERK: August 29th, at 9:30.

25 MS. DUNN: And may I approach, Your Honor?

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THE COURT: Yes. Thank you.

And, Mr. Herod, on these status checks, you can just appear via Blue Jeans like you've been doing. You can appear via Blue Jeans like you've been doing so you don't have to come.

MR. HEROD: I apologize, ma'am. [Indiscernible]

THE COURT: We hadn't started yet.

[Proceeding concluded at 2:18 P.M.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



SUSAN SCHOFIELD
Court Recorder/Transcriber

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DISTRICT COURT
CLARK COUNTY, NEVADA

The State of Nevada,
Plaintiff(s),

v.

Dustin Lewis,
Margaux Ornelas,
Defendant(s).

CASE NO. C-19-340051-1
C-19-340051-2

DEPT NO. XXIV

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING
DEFENDANT DUSTIN LEWIS'S AND MARGAUX ORNELAS'S MOTIONS TO
SUPPRESS EVIDENCE**

This matter having come before the Court on Dustin Lewis's ("Mr. Lewis") Motion to Suppress Evidence Based on Fourth Amendment Violation and Fruit of the Poisonous Tree Doctrine, filed on February 26, 2021, and Margaux Ornelas's ("Ms. Ornelas") Joinder to Co-Defendant Dustin Lewis's Motion to Suppress Evidence Based on Fourth Amendment Violation and Fruit of the Poisonous Tree Doctrine, filed on March 3, 2021. The State having filed an opposition, which was thoroughly reviewed by the Court, and the matter having come before the Court for argument on April 5, 2021, at which time the Court granted the defense motions in their entirety. The State then filed an interlocutory appeal to the Nevada Supreme Court, which vacated this Court's previous order and remanded for further proceedings consistent with its order. Thereafter, this Court had an Evidentiary Hearing on June 10, 2022, allowing the State to supplement its evidence with testimony from David Inman ("Inman"), the owner of the property, and Sgt. Andrew Shark (Sgt. Shark") from the Las Vegas Metropolitan Police Department ("Metro" or "LVMPD").

1 The Court, having read and considered the pleadings filed by the parties, having
2 carefully considered the evidence and testimony presented at the Evidentiary Hearing, and
3 having carefully considered the oral and written arguments of counsel and all related briefing,
4 and with the intent of deciding the matters pending before the Court, the Court makes the
5 following Findings of Fact, Conclusions of Law, and Order. If any findings of fact are properly
6 conclusions of law, or vice versa, they shall be treated as if appropriately identified and
7 designated.

8 **I. Findings of Fact**

- 9 1. On December 8, 2018, a StorageOne facility was burglarized. Three units in total
10 were burglarized that day.
- 11 2. One of the units which was burglarized, unit B-151, had been rented by Marc
12 Falcone (“Falcone”). Police were advised by Falcone that he was missing twenty-
13 one (21) high end, rare, collectible wrist watches with an approximate value of over
14 two million dollars. In addition, miscellaneous items were missing such as a
15 Panerai bag that was white with blue trim, watch boxes, a black canvas duffel bag,
16 and a leather briefcase.
- 17 3. One of the other units which was burglarized, unit B-147, had been rented by
18 Michael Rodrigue (“Rodrigue”). Rodrigue, at first, informed police that items in
19 his unit appeared to be moved but nothing take. He later updated that information
20 to inform the police that various miscellaneous items were missing but there was
21 nothing of great value taken. Some of the items that were missing included several
22 dolls, a green Army jacket with the name “Rodrigue” on it, a black briefcase, and a
23 large wooden chessboard.
- 24 4. Video surveillance from the storage facility showed two subjects entering the
25 facility and leaving approximately one hour and twenty minutes later with several
26 bags and a wheelchair.
- 27 5. Police were able to obtain still shots from the facility’s video surveillance. The
28 suspects appeared on video surveillance to be a white female adult, mid-30s to 40s,

1 with a light colored ponytail with dark roots, wearing a dark colored jacket, and
2 pushing the wheelchair. The second suspect was a white male adult, mid-30s, with
3 short, dark colored hair, dark colored hoodie, and dark colored jeans. Both were
4 potentially homeless.

5 6. Once police obtained the actual surveillance video, the white female adult is seen
6 to have a large wooden chessboard in the wheelchair.

7 7. Metro officers canvassed the area and spoke with homeless individuals about the
8 suspects. Some of the homeless individuals who were canvased confirmed to police
9 that there was a homeless couple fitting that description who had recently been seen
10 with a wheelchair and who lived in the area of Fort Apache and Tropicana. Police
11 were unable locate either subject.

12 8. Det. Linder of Metro conducted a records check of crime reports and field
13 interviews and located a field interview of a white female adult who was stopped in
14 the area of Fort Apache and Tropicana, named Annie Bishop (DOB 6/15/84, ID#
15 5599431) (“Bishop”) who was with her husband, James Gregg (DOB: 12/29/86, ID
16 # 7048098) (“Gregg”). Det. Linder was able to pull up prior booking photos for
17 both Bishop and Gregg. Bishop had blonde hair with dark roots. Police determined
18 that she could be a possible match for the female in the surveillance photos. Gregg
19 also had short, dark hair which could be a match for the male in the photos as well.

20 9. On December 11, 2018, LVMPD officers decided to re-canvas the area for the
21 suspects. Pages 6-7 of the LVMPD Continuation Report explain:

22 While walking along the bicycle/jogging path that
23 parallels I-215, they located a tent that was in the desert
24 area directly east of the StorageOne, north of the
25 Chevron gas station that is also directly east of the
26 StorageOne. They decided to hop the fence that
27 surrounds the desert area and challenged the tent to see
28 if anyone was inside. **There was no answer, so they**

1 **unzipped the door of the tent to see if anyone was**
2 **inside.** There was nobody inside, but they saw a large
3 wooden chessboard, which matched the one seen on
4 the video surveillance still shot that was in the
5 wheelchair being pushed by the female suspect. They
6 also saw what appeared to be watch boxes and could
7 see that one had “Panerai” written on it. They did not
8 enter the tent. They also saw that about 25 yards
9 directly east of the tent was a folded wheelchair that
10 also looked like the one in the video surveillance
11 photos.

12 (See LVMPD Continuation Report, attached as Exhibit A.) (Emphasis added.)

13 10. Police then obtained a search warrant, authored by Officer Shark.

14 11. Once inside the tent, police were able to lift several latent prints from various items,
15 including the wheelchair near the handle, the “Panerai” bag, and the chess board.

16 12. The search warrant also returned numerous items of evidentiary value including an
17 Army jacket with “Rodrigue” on it that had dog tags in the name of Michael
18 Rodrigue in one of the pockets, watch boxes, white “Panerai” bag, and black duffel
19 bag.

20 13. Police later returned to the scene of the search to recover Officer Shark’s lost cell
21 phone. While there, officers noticed that items, such as the duplicate original search
22 warrant and other miscellaneous items, were missing. Approximately fifteen
23 minutes after arrival, officers also heard the alarm sounding at the StorageOne
24 facility. Several police units responded.

25 14. Police on scene noticed a suspicious Lincoln Navigator parked on the west side wall
26 of the facility. This vehicle led to the arrest of co-defendants Thomas Herod
27 (“Herod”) and Tyree Faulkner (“Faulkner”). Faulkner spoke with police and
28 explained his part in the burglaries. Faulkner did not identify Mr. Lewis or Ms.

1 Ornelas, only stating his cousin (co-defendant Herod) knew the male. The vehicle
2 was eventually searched pursuant to a search warrant.

3 15. Latent prints lifted from the tent returned to defendants Dustin Lewis and Margaux
4 Ornelas. The two matched the suspects from the burglaries.

5 16. Officers later located Ms. Ornelas at a motel. Police obtained a search warrant for
6 the room where Ms. Ornelas was staying. More of Falcone's property was located
7 in the room.

8 17. Ms. Ornelas was taken into custody on an unrelated domestic battery. She did not
9 speak with police.

10 18. In January 2019, latent prints lifted from the exterior of the burglarized units
11 returned to Mr. Lewis and Ms. Ornelas.

12 19. The same day, Mr. Lewis was located at his mother's home. He was taken into
13 custody for an unrelated parole violation. He did not have any stolen property in
14 his possession. His mother gave officers permission to search her home, vehicle,
15 and storage room at her apartment complex. No stolen property was located.

16 20. Police interviewed Mr. Lewis who denied stealing or selling any watches. He
17 further denied breaking into the storage units at issue. When asked specifically
18 about who had the watches, Mr. Lewis told police to speak with Ms. Ornelas. Mr.
19 Lewis claimed he may have been to the storage facility but did not make any further
20 admissions.

21 21. On June 10, 2022, this Court held an evidentiary hearing allowing the State to
22 supplement its evidence.

23 22. David Inman testified that he was the owner of the land on which the tent in question
24 was located. When he purchased the land, there was no fencing.

25 23. Inman testified that he was made aware of a tent on his property on the weekend of
26 November 10, 2018. He remembered the date because he was in New York for his
27 son's wedding. He contacted Metro in November of 2018 to remove the homeless
28 from his property but he never filed a report because he was told that he had to put

1 up signs before any action could be taken.

2 24. He had the fence erected in November of 2018. It would have been within a day or
3 two of the November 19, 2018, invoice for that fence. He placed “No Trespassing”
4 signs on the fence within a day of the fence being erected.

5 25. Sgt. Shark testified that although he is now a sergeant in the Summerlin Area
6 Command, in December of 2018, he was a patrol officer in the Spring Valley Area
7 Command where this incident occurred.

8 26. On December 11, 2018, he was working the burglaries and speaking to transient
9 people. In this capacity, he came across the desert lot in question. He testified that
10 although the lot had fencing around it, the fencing was damaged. He entered
11 through the portion that was damaged. Sgt. Shark also testified that he does not
12 recall any posted “No Trespassing” signs.

13 27. He observed a transient camp on the lot. There were several pieces of trash and a
14 tent. He approached the tent to make contact with anyone inside. Sgt. Shark
15 identified himself as a police officer and challenged the tent to see if there would be
16 a response. He testified that he received no response. Sgt. Shark further testified
17 that based on the proximity of the tent to the wall, and due to officer safety **Metro**
18 **opened the tent to see if anyone was inside.** There was no one inside. While the
19 officers cleared the tent, he noticed several items of evidentiary value to the case
20 they were investigating including the chessboard. He then obtained a search warrant
21 for the tent where additional items of evidentiary value were located.

22 28. On cross-examination, Sgt. Shark testified that he did not speak with the owner of
23 the property before opening the tent. The justification for opening the tent was
24 officer safety.

25 29. He also claimed that there was a small opening so the tent was not completely
26 zipped.

27 **II. Conclusions of Law**

28 30. The Fourth Amendment to the United States Constitution protects citizens, persons

1 and property from unreasonable searches and seizures by government agents except
2 after obtaining a warrant supported by probable cause. Probable cause exists when
3 “there is a fair probability that contraband or evidence of a crime will be found in a
4 particular place.” Illinois v. Gates, 462 U.S. 213, 238 (1983). Evidence obtained
5 as a result of an illegal search is subject to exclusion, as is evidence later discovered
6 and “derivative of an illegality” as “fruit of the poisonous tree.” Segura v. United
7 States, 468 U.S. 796, 804 (1984) (quoting Nardona v. United States, 308 U.S. 338,
8 341 (1939)).

9 31. A person has a subjective expectation of privacy in a tent and its contents where
10 that person manifests such expectation, such as **by leaving it closed**. Alward v.
11 State, 112 Nev. 141, 150, 912 P.2d 243, 249 (1996), overruled on other grounds by
12 Rosky v. State, 121 Nev. 184, 111 P.3d 690 (2005); see also United States v. Gooch,
13 6 F.3d 673, 676 (9th Cir. 1993) (Emphasis added).

14 32. The Fourth Amendment “protects people, not places.” Gooch, 6 F.3d at 676-77
15 (quoting Katz v. United States, 389 U.S. 347, 351 (1967)).

16 33. **“Simply because [the defendant] camped on land [owned by another] does not**
17 **diminish his expectation of privacy.”** Alward, 112 Nev. at 150, 912 P.2d at 249.
18 Warrantless searches of tents, therefore, violate the Fourth Amendment. Id.

19 34. In its initial opposition to Mr. Lewis’s suppression motion, the State argued that the
20 Metro officers had “to ascertain whether an ongoing crime was being committed
21 (trespassing)” (See State’s Opposition filed March 4, 2021, at page 2, lines 13-14.)

22 a. Nothing in the original police reports in this matter would lead one to believe
23 that the police were concerned about the “ongoing crime of trespassing.” There
24 is no mention of trespassing at all in any of the police reports.

25 b. Sgt. Shark’s testimony was that although the property was fenced, the fencing
26 had damage and that he did not recall any “No Trespassing” signs on the
27 property.

28 c. Sgt. Shark further testified that he did not speak to the owner of the property

1 prior to opening the tent.

2 d. Inman’s testimony is that he did not file a police report related to trespassing as
3 he was informed that he must post signage before anything could be done.

4 35. For the same reason, the State’s argument that the entire tent and its contents could
5 be seized and inventoried (See State’s Opposition filed March 4, 2021, at page 2,
6 lines 22-24), also fails.

7 36. The State also argues in its initial opposition that the officers were duty bound, by
8 the doctrine of “community caretaking,” to open and investigate the tent. (See
9 State’s Opposition filed March 4, 2021, at page 5, lines 19-22.) The State chose not
10 to analyze in any way, shape, or fashion how the simple presence of a wheelchair
11 in the vicinity of a tent would induce the police to open a zipped tent without a
12 warrant.

13 a. The State mentions the “community caretaking” doctrine in its Opposition to
14 stand for the proposition that “The officers were obligated to see if the
15 wheelchair was related to the occupants of the tent for several reasons –
16 ‘community caretaking.’” (See State’s Opposition filed March 4, 2021, at page
17 2, lines 15-19).

18 b. The Rincon case cited by the State for this proposition is a case related to driving
19 under the influence. State v. Rincon, 122 Nev. 1170, 147 P.3d. 233 (2006).
20 “The community caretaking exception applies if a police officer initiates a traffic
21 stop based on a reasonable belief that a slow driver is in need of emergency
22 assistance.” Id. 122 Nev. at 1176, 147 P.3d at 237. A wheelchair in close
23 proximity to a tent does not relate to driving at all. Neither does a wheelchair
24 simply existing engender a reasonable belief that someone is in need of
25 emergency assistance.

26 37. The State also urges the Court to make a distinction between a tent found on public
27 land and that on private land. (See State’s Opposition filed March 4, 2021, at page
28 2, lines 2-12.) The State argues that this distinction shows that the tent in question

1 here evidenced the ongoing crime of trespass whereas tents on public land could be
2 lawfully present for such things as camping.

3 a. As noted elsewhere, Sgt. Shark did not recall ever seeing any posted signage
4 warning trespassers away from the property.

5 b. Neither did Sgt. Shark attempt to contact the property owner to determine
6 whether the campsite was permitted.

7 c. Inman, the property owner, testified that he did not file a police report related to
8 trespass on his property as he was told that he must post signage before he could
9 do so.

10 38. During his testimony, Sgt. Shark testified that the reason for opening the tent was
11 for officer safety.

12 a. Officer safety appears to be a pretextual, after-the-fact justification, as no
13 mention of officer safety appears in the original police reports.

14 b. Sgt. Shark testified that an attack “can happen through a tent” though there was
15 no discussion as to why officers would anticipate an attack – officers were only
16 speaking to civilians as potential witnesses. This reasoning is akin to officers
17 investigating a burglary three days prior at a business adjacent to a home and
18 then fully opening a door to the home when no one answered to speak with
19 officers. A partially closed door could also be seen as a bad tactical situation in
20 the same manner as a tent.

21 c. This was also not a hot pursuit situation where police knew there to be someone
22 inside the tent who could or would attack officers.

23 d. The State argued at the evidentiary hearing on June 10, 2022, that a person who
24 is trespassing does not have a privacy interest as the privacy interest must be one
25 that society is willing to accept. This devalues the interests of the Fourth
26 Amendment in preventing government overreach. Also as noted above, The
27 Fourth Amendment “protects people, not places.” Gooch, 6 F.3d at 676-77
28 (quoting Katz v. United States, 389 U.S. 347, 351 (1967)).

1 39. Mr. Lewis and Ms. Ornelas, like all citizens afforded the protection of the Fourth
2 Amendment of the US Constitution, absolutely had an expectation of privacy in the
3 home they maintained during this case, the tent. Officers unzipped the tent in clear
4 violation of the Fourth Amendment and case law. As such, every tangible piece of
5 property illegally seized from the tent and surrounding area must be suppressed.

6 40. As the US Supreme Court held in Segura v. United States, 468 U.S. 796, 804 (1984),
7 “evidence later discovered and found to be derivative of” an illegal search or seizure
8 must be excluded, as well as any primary evidence directly obtained from the
9 illegality. (Id. at 468 US 797). Based on the Fruit of the Poisonous Tree doctrine,
10 Mr. Lewis and Ms. Ornelas also seek to suppress: (1) Mr. Lewis’s and Ms. Ornelas’s
11 latent prints recovered from the exterior of the burglarized units at the StorageOne
12 facility; (2) the entirety of Mr. Lewis’s and Ms. Ornelas’s statements to police; (3)
13 all tangible documents, statements, and any other tangible evidence related to the
14 identities of Mr. Lewis and Ms. Ornelas; (4) any evidence from the search of the
15 Lincoln Navigator that the State intends to use against Mr. Lewis or Ms. Ornelas;
16 and (5) any evidence from the search of the Fun City Motel the State intends to use
17 against Mr. Lewis or Ms. Ornelas.

18 a. The State argues that the latent prints were obtained independently and therefore
19 shouldn’t be suppressed. However, as these prints were recovered from the
20 exterior of the burglarized units, the only way to link these to the burglary is
21 based on the illegally obtained evidence from the tent. Therefore, these latent
22 prints must be suppressed.

23 b. The police were investigating Bishop and Gregg in relation to these burglaries.
24 The only reason this focus shifted was due to the illegally obtained items from
25 the tent. Therefore, the statements Mr. Lewis and Ms. Ornelas made after
26 encountering police must be suppressed.

27 c. Because the only reason police shifted their sights onto Mr. Lewis and Ms.
28 Ornelas and away from Bishop and Gregg is based on the contents of the tent

1 which were illegally obtained, all tangible documents, statements, and any other
2 tangible evidence related to the identities of Mr. Lewis and Ms. Ornelas must be
3 suppressed.

4 d. Again, as the police only shifted their investigation from Bishop and Gregg to
5 Mr. Lewis and Ms. Ornelas after the illegal search of the tent, all evidence
6 derived from the Fun City Motel, must also be suppressed.

7 **III. Order**

8 Based on the above Findings of Fact and Conclusions of Law,

9 **IT IS HEREBY ORDERED SUPRESSED,**

10 All tangible property and physical evidence recovered from the tent of Mr. Lewis and
11 Ms. Ornelas and the surrounding area, as these items were seized in violation of the Fourth
12 Amendment to the United States Constitution, U.S. v. Gooch, 6 F.3d. 673 (9th Cir. 1993), U.S.
13 v. Sandoval, 200 F.3d 659 (2000), and State v. Alward, 112 Nev. 141 (1996);

14 **FURTHER ORDERED SUPPRESSED,**

15 Under the Fruit of the Poisonous Tree doctrine and Segura v. United States, 468 U.S.
16 796, 804 (1984), is the hand print of Mr. Lewis; the interviews of Mr. Lewis and Ms. Ornelas;
17 any statements attributed to Mr. Lewis and Ms. Ornelas; all documents, statements, and any
18 other tangible or physical evidence relating to the identity of Mr. Lewis and Ms. Ornelas; any
19 evidence derived from the Lincoln Navigator that the State intends to use against Mr. Lewis
20 and Ms. Ornelas; and any evidence derived from the Fun City Motel.

Dated this 11th day of August, 2022

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22 _____
23 **DEB 477 B137 8A16**
24 **Erika Ballou**
25 **District Court Judge**

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CERTIFICATE OF SERVICE

I hereby certify that on the date e-filed, a copy of the foregoing was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.

If indicated below, a copy of the foregoing was also

Mailed by the U.S. Postal Service, postage prepaid, to the proper parties listed below at their last known address(es):

Chapri Wright
Chapri Wright
Judicial Executive Assistant

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 State of Nevada

CASE NO: C-19-340051-1

7 vs

DEPT. NO. Department 24

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Dustin Lewis

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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