

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 SEAN RODNEY ORTH,

3                   Appellant,

4                   vs.

5 THE STATE OF NEVADA,

6                   Respondent.

Docket No.: 85229   Electronically Filed  
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Elizabeth A. Brown  
Clerk of Supreme Court

7 (Appeal From A Final Judgment Of The Eighth Judicial District Court, In And For  
8                   The County Of Clark, State Of Nevada)

9                   **APPELLANT'S OPENING BRIEF**

10                   **Volume I**

11                   **Bates Nos.:**

12                   **AA000001 – AA000229**

13  
14  
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16 Nevada Bar No. 7902

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8 **CERTIFICATE OF SERVICE**

9 Pursuant to NRAP 25(c)(1)(E) I certify that I served the foregoing Appellant’s  
10 Appendix by causing it to be served by electronic means to the registered users of  
11 the Court’s electronic filing system consistent with NEFCR 9 to the following:

12 Aaron Ford  
13 Alexander Chen

14 CERTIFIED this \_\_ day of August, 2023.

15 \_\_\_\_\_  
16 KELLY JARVI, Legal Assistant to  
17 THE LAW FIRM OF  
18 C. BENJAMIN SCROGGINS, CHTD.  
19  
20  
21



1 CLERK: Judge that take us to page 6. City  
2 versus Sean Orth, 20CR007366.

3 COURT: (INAUDIBLE) on that last probation  
4 violation.

5 CLERK: Thank you Judge.

6 COURT: Present and in custody. Hello Sir.

7 MS. MATHER: How you doing Judge?

8 COURT: I'm well, thank you. Public  
9 Defender representing the defendant, Ms. Purser.

10 MS. PURSER: Your Honor, with the court's  
11 permission he would like to enter a non-contest plea  
12 to the resist public office. The recommendation is  
13 thirty days in in custody. I believe he has credits.

14 MS. MATHER: That's correct, Your Honor.

15 COURT: And your stipulating to the facts?

16 MS. PURSER: Yes.

17 COURT: Sir, do you understand the  
18 negotiations?

19 DEFENDANT: (INAUDIBLE) Your Honor, I  
20 haven't been in trouble for fifteen years.  
21 (INAUDIBLE) It's hard for me to enter the plea.

22 COURT: Well, you don't necessarily need  
23 to enter the plea. My question is do you understand  
24 what the negotiations are?

25 DEFENDANT: Yes, sir.

1 COURT: Do you understand that sentencing  
2 is up to the Court?

3 DEFENDANT: Yes.

4 COURT: Did you go over that admonishment  
5 of rights with Ms. Purser before you signed it?

6 DEFENDANT: Yes.

7 COURT: Do you have any questions about  
8 the rights you're waiving if you enter the  
9 negotiations?

10 DEFENDANT: No.

11 COURT: So how do you want to plead to the  
12 charge? No contest or not guilty?

13 DEFENDANT: No contest.

14 COURT: You sure?

15 DEFENDANT: No contest, Your Honor.

16 COURT: Okay. Are you pleading no contest  
17 freely and voluntarily?

18 DEFENDANT: (INAUDIBLE)

19 COURT: I'm sorry, but I can't hear you.

20 DEFENDANT: Is there any way to lighten  
21 my sentence and how it works ---

22 COURT: We can talk about that in a  
23 minute, but I need to know if you are entering your  
24 plea free and voluntarily?

25 DEFENDANT: I agree, I do, Your Honor.

1 COURT: The Court accepts your plea and  
2 enters a find of guilt for the record. So, what is it  
3 you're trying to tell me?

4 DEFENDANT: I was working (INAUDIBLE) for  
5 two additional (INAUDIBLE) I was about to be employed  
6 and I was just asking you if you can suspend it. In  
7 other words, if you would consider giving me a break.  
8 I haven't been in trouble for fifteen years other  
9 than a traffic ticket.

10 COURT: Why you run?

11 DEFENDANT: I wasn't being smart.  
12 (INAUDIBLE) I was beaten up by twelve officers and not  
13 interested in pursuing that and took quite a beating  
14 and this all started over somebody calling  
15 (INAUDIBLE) basically. They called in and said I was  
16 a burglar at my own house. (INAUDIBLE) knocking at my  
17 door and that's when this all started. Though it was  
18 a joke, though it was funny and (INAUDIBLE) wasn't  
19 (INAUDIBLE).

20 COURT: Okay.

21 DEFENDANT: So, that's what started all  
22 this and I'm just asking for a break Your Honor.

23 COURT: Okay. Well, let me hear from the  
24 city in terms to what the report says and what your  
25 record is.

1 MS. MATHER: Your Honor, the report  
2 indicated that Henderson units were dispatched to 981  
3 Whitney Ranch Drive. Reference to a reported arm  
4 robbery suspect at the location. The caller indicated  
5 that the person, that is the suspect had committed an  
6 arm robbery at the location the night before and was  
7 currently at their door possible armed and was most  
8 likely driving a white Chevrolet Malibu. Which was  
9 the caller's vehicle and had gone missing as well.  
10 When police arrived, they observed the vehicle and  
11 several units in marked Henderson Police vehicles  
12 began following that vehicle and initiated a stop by  
13 activating their emergency lights and sirens, but the  
14 driver who was the suspect in the vehicle failed to  
15 yield and continued to the end of the apartment  
16 complex towards the exit. An additional HPD unit  
17 arrived and was outside the exit gate, which was  
18 closed. The suspect opened the driver side door and  
19 jumped out and immediately ran. The suspect vehicle  
20 continued to drive forward, unoccupied, crashing into  
21 the exit gate of the apartment complex. The suspect  
22 was carrying a tan duffle bag as he fled and he threw  
23 it over the property wall before he climbed over the  
24 same wall. Officers initiated a foot pursuit issuing  
25 commands to stop, but he continued to run. Leaving

1 the duffle bag behind because he struggled to pick it  
2 up, pick it back up to quickly. He ran across Whitney  
3 Ranch Drive attempting to evade officers but they  
4 were able to overtake him and place him in custody  
5 after a short struggle. In addition, he has --- He is  
6 an eleven-time registered felon. He is correct, his  
7 last --- Looks like his last trouble with run in with  
8 the law was in 2006. Where he had --- He was charged  
9 with convicted person failed to register. Which was  
10 dismissed. He was charged with trafficking a  
11 controlled substance and there was a guilty on that  
12 and then ex-felon prohibited person possessing a  
13 firearm and he was guilty on that. Then I can go back  
14 on the course of his history of issues. Your Honor,  
15 there are twenty-nine entries in ---

16 COURT: On the 2006--- No, on the 2006 did  
17 he go to prison or has he just been out of trouble  
18 for fourteen years?

19 MS. MATHER: Well, the information I  
20 have is that he was sentenced (INAUDIBLE) 2007 and  
21 the sentence was life with the possibility of parole.

22 COURT: Oh, so he did go to prison. Okay.  
23 Well, when did you get out of prison?

24 DEFENDANT: Seventeen months ago, Your  
25 Honor.

1 COURT: Well, that explains why you stayed  
2 out of trouble.

3 DEFENDANT: Well, I mean, still I stayed  
4 out of trouble (INAUDIBLE) this opportunity.

5 COURT: Well, it's hard to get in trouble  
6 when you're in prison.

7 DEFENDANT: No, not really.

8 COURT: Well, I mean, yeah, you can get in  
9 trouble in prison, but not out in the public  
10 committing crimes, so. I am going to go along with  
11 the negotiation. I think that is very reasonable,  
12 very light actually, but since your attorney put that  
13 together for you and the facts of this case. I'll go  
14 ahead and won't exceed to that. Thirty days in jail  
15 and I'll give you two days credit.

16 DEFENDANT: Thank you.

17 COURT: That's all.

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CERTIFICATE OF TRANSCRIBER

STATE OF NEVADA )

) ss.

COUNTY OF CLARK )

I, HUMBERTO RODRIGUEZ, declare as follows:

That I transcribed the AUDIO FILE presented.

I further declare that I am not a relative  
or employee of any party involved in said action, nor  
a person financially interested in the action.

Dated at Las Vegas, Nevada this 3rd day of  
November, 2022.



/s/Humberto Rodriguez

HUMBERTO RODRIGUEZ

	<b>4:15</b>	<b>5:15,20,25</b>	<b>5:8</b>	<b>forward (1)</b>
<b>*</b>	<b>beaten (1)</b> 4:12	<b>controlled (1)</b> 6:11	<b>duffle (2)</b> 5:22;6:1	5:20
<b>*** (1)</b> 7:18	<b>beating (1)</b> 4:13	<b>convicted (1)</b> 6:9	<b>E</b>	<b>fourteen (1)</b> 6:18
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JUSTICE COURT, HENDERSON TOWNSHIP  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, HENDERSON JUSTICE COURT

Plaintiff

11/05/2020  
FILED IN OPEN COURT

CASE NO: 20CR4001571

DEPT NO: I

DA CASE NO: 202047706C

-vs-

SEAN RODNEY ORTH #6111549,

Defendant.

CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony - NRS 202.360 - NOC 51460), in the manner following, to wit: That the said Defendant, on or about the 3rd day of November, 2020, at and within the County of Clark, State of Nevada, did willfully, unlawfully, and feloniously own, or have in his possession and/or under his custody or control, a firearm, to wit: a Winchester, bearing Serial No. 1291469, the Defendant being a convicted felon, having in 2007, been convicted of Robbery with a Deadly Weapon, Possession of Firearm by Prohibited Person, and/or Evade a Police Officer, in Case No. unknown, Washoe County, feloniesp under the laws of the State of Nevada.

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

  
11/04/20

/js  
HPD EV# 2018994  
(TK)

NOTICE OF INTENT TO USE AUDIOVISUAL TECHNOLOGY PURSUANT TO NRS  
171.1975 TO PRESENT LIVE TESTIMONY AT PRELIMINARY EXAMINATION DUE TO  
COVID-19 OUTBREAK

Pursuant to NRS 171.1975, if the preliminary hearing in this matter is conducted during the COVID-19 outbreak, the State of Nevada intends to present the testimony of all victims and witnesses, regardless of geographical location, through the use of audiovisual technology. The court must allow the use of such audiovisual technology if good cause exists.<sup>1</sup>

Prior to the preliminary hearing in this matter, the witness will be sworn and will sign the previously provided declaration, which acknowledges that "the witness understands that he or she is subject to the jurisdiction of the courts of this state and may be subject to criminal prosecution for the commission of any crime in connection with his or her testimony, including, without limitation, perjury, and that the witness consents to such jurisdiction."<sup>2</sup>

There is good cause existing to limit in-person testimony at a preliminary hearing during the COVID-19 outbreak due to the following facts and circumstances:

On March 11, 2020, the World Health Organization, noting their deep concern as to "both [] the alarming levels of spread and severity, and [] the alarming levels of inaction," to the COVID-19 outbreak, officially declared the outbreak as a **pandemic**. While doing so, the WHO noted they "have never before seen pandemic that can be controlled," and since they were first notified, they have "called everyday [*sic*] for countries to take urgent and aggressive action," further noting, "[w]e have rung the alarm bell loud and clear."<sup>3</sup>

Since this classification of the COVID-19 outbreak as a pandemic, Federal, State, County, and Local governments across the United States of America have taken swift and significant action to prevent the spread of this disease.

On Friday, March 13, President Trump declared a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.<sup>4</sup> Three days after this initial proclamation, President Trump and the White House Coronavirus Task Force issued stronger guidelines in an effort to slow the spread of this disease. Notably, the guidelines stated "[e]ven if you are young, or otherwise healthy, you are at risk and your activities can increase the risk for others. It is critical that you do your part to slow the spread of the coronavirus." President Trump called for gatherings to be no larger than ten people and to avoid eating and drinking in bars, restaurants, or food courts.<sup>5</sup> Finally, the Director of the National Institute of Allergy and Infectious Diseases

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<sup>1</sup> NRS 171.1975.1 "... if good cause otherwise exists, the magistrate must allow the witness to testify at the preliminary examination through the use of audiovisual technology."

<sup>2</sup> NRS 171.1975.2

<sup>3</sup> <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

<sup>4</sup> <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak>

<sup>5</sup> <https://www.whitehouse.gov/briefings-statements/coronavirus-guidelines-america/>,  
[https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20\\_coronavirus-guidance\\_8.5x11\\_315PM.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf)

noted: “[w]hen you’re dealing with an emerging infectious disease outbreak, you are always behind where you think you are....”<sup>6</sup>

Governor Sisolak issued a Declaration of Emergency in the State of Nevada on March 12, 2020. On Sunday, March 15, 2020, Governor Sisolak ordered all K-12 schools in the State of Nevada closed through April 6, 2020. Later that same day, he announced further directives, which included: closing state offices to the public, a call to transition to working as much as possible over the phone or online for essential services, and strongly encouraged gaming properties to close to the public. Governor Sisolak stated these efforts are required to “protect the health and safety of the public and our state workforce while ensuring that the important work of our state government does not grind to a halt.” Further, he noted that we all “must do what we can to be part of the solution and share[] responsibility for each other as Nevadans.”<sup>7</sup>

Clark County, as well as many cities therein, issued their own Declarations of Emergency in response to the COVID-19 outbreak.<sup>8</sup> Federal, state, and local courts also responded to the outbreak with varying administrative orders, citing the COVID-19 outbreak as good cause to suspend court proceedings or scale back operations.

The U.S. District Court for the District of Nevada continued all trials through April 20, 2020, among other modifications and visitor restrictions “to do its part in slowing the spread of COVID-19.”<sup>9</sup>

The Nevada Supreme Court and Court of Appeals imposed visitor restrictions to minimize exposure, noting, “... the best way to prevent illness is to avoid being exposed to the virus.”<sup>10</sup>

The Eighth Judicial District Court issued Administrative Order 20-01, which suspended all jury trials for 30 days and encouraged any essential hearings to be heard through alternative means to in-person appearances. Additionally, the order provided restrictions on public and employee entry into the courthouse.<sup>11</sup> Three days later, through Administrative Order 20-02, the court discontinued in-person meetings or gatherings and issued a direction to conduct court business through social distancing.<sup>12</sup>

The Las Vegas Township Justice Court issued Administrative Order 20-03, which provided for amended procedures due to the COVID-19 outbreak. However, all preliminary hearings,

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<sup>6</sup> <https://www.nytimes.com/2020/03/16/us/politics/trump-coronavirus-guidelines.html>, [https://twitter.com/ABC/status/1239638144955437056?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwt%5E1239638144955437056&ref\\_url=https%3A%2F%2Fwww.redditmedia.com%2Fmediaembed%2FFjr106%3Fresponsive%3Dtrue%26is\\_nightmode%3Dfalse](https://twitter.com/ABC/status/1239638144955437056?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwt%5E1239638144955437056&ref_url=https%3A%2F%2Fwww.redditmedia.com%2Fmediaembed%2FFjr106%3Fresponsive%3Dtrue%26is_nightmode%3Dfalse)

<sup>7</sup> <https://nvhealthresponse.nv.gov/preparation-in-nv/>, [http://gov.nv.gov/News/Press/2020/Governor\\_Sisolak\\_Updates\\_Public\\_on\\_State\\_Action\\_and\\_Guidance\\_Regarding\\_COVID-19/](http://gov.nv.gov/News/Press/2020/Governor_Sisolak_Updates_Public_on_State_Action_and_Guidance_Regarding_COVID-19/)

<sup>8</sup> [https://www.fox5vegas.com/coronavirus/las-vegas-clark-county-surrounding-cities-declare-state-of-emergency/article\\_7e1d4c6a-672d-11ea-be3d-6f2ce56da2c4.html](https://www.fox5vegas.com/coronavirus/las-vegas-clark-county-surrounding-cities-declare-state-of-emergency/article_7e1d4c6a-672d-11ea-be3d-6f2ce56da2c4.html)

<sup>9</sup> <https://www.clarkcountybar.org/wp-content/uploads/USDC-NV-03-16-2020-Press-Release-Final.pdf>

<sup>10</sup> <https://nvcourts.gov/COVID-19-restrictions/>

<sup>11</sup> [http://www.clarkcountycourts.us/res/rules-and-orders/2020-03-14\\_11\\_43\\_36\\_admin%20order%2020-1.pdf](http://www.clarkcountycourts.us/res/rules-and-orders/2020-03-14_11_43_36_admin%20order%2020-1.pdf)

<sup>12</sup> [http://www.clarkcountycourts.us/res/rules-and-orders/2020-03-16\\_09\\_07\\_52\\_administrative%20order%2020-02.pdf](http://www.clarkcountycourts.us/res/rules-and-orders/2020-03-16_09_07_52_administrative%20order%2020-02.pdf)

regardless of custody status, are still expected to proceed in person, although alternative appearances for the attorneys are "encouraged when possible."<sup>13</sup>

While there are precautionary measures in place to screen for those exhibiting symptoms of the virus before entering the courthouse, the courthouse is open to the public as of March 16, 2020. A person infected with this virus, and who is contagious, may take up to two weeks to exhibit the symptoms that are the current focus of any screening. Further, multiple new studies strongly suggest that those who are infected, but are asymptomatic, are likely a significant force driving the spread of COVID-19.<sup>14</sup> Finally, President Trump declared COVID-19 an "invisible enemy."<sup>15</sup>

Considering preliminary hearings are still scheduled and expected to be heard in the Las Vegas Township Justice Court, where attorneys are encouraged to use alternative methods to appear, limiting the in-person testimony of all victims and witnesses is required in the interest of public health and the safety of our community. Therefore, the State of Nevada intends to introduce such testimony at the preliminary hearing through the use of audiovisual technology should this hearing proceed during the COVID-19 outbreak.

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<sup>13</sup> <http://www.lasvegasjusticecourt.us/Admin%20Order%202020-03.pdf>

<sup>14</sup> <https://www.cnn.com/2020/03/14/health/coronavirus-asymptomatic-spread/index.html>,  
<https://science.sciencemag.org/content/early/2020/03/13/science.abb3221?rss=1>,  
<https://www.sciencenews.org/article/coronavirus-most-contagious-before-during-first-week-symptoms>,  
<https://www.foxnews.com/media/dr-siegel-bars-concerts-coronavirus-highly-contagious>

<sup>15</sup> <https://www.politico.com/news/2020/03/16/trump-recommends-avoiding-gatherings-of-more-than-10-people-132323>



1 CASE NO.

2 IN THE JUSTICE'S COURT OF HENDERSON TOWNSHIP

3 COUNTY OF CLARK, STATE OF NEVADA

4  
5 STATE OF NEVADA, )

6 Plaintiff, )

7 vs. )

8 SEAN R. ORTH, )

9 Defendant. )

CASE NO. 20CRH1571

**COPY**

10 ----- )

11  
12 REPORTER'S TRANSCRIPT

13 OF

14 PROCEEDINGS

15  
16 BEFORE THE HONORABLE STEPHEN GEORGE  
17 JUSTICE OF THE PEACE

18 THURSDAY, NOVEMBER 5, 2020

19  
20 APPEARANCES:

21 For the State:

CHRIS PANDELIS, ESQ.  
Deputy District Attorney

22  
23 For the Defendant:

ERIC RUSLEY, ESQ.  
Deputy Public Defender

24  
25 Reported by: Sherry L. Graham, CCR #378

1 HENDERSON, NEVADA, NOVEMBER 5, 2020, 9:00 A.M.

2 \* \* \* \* \*

3 THE COURT: Sean Orth, Case Number  
4 20CRH1571. Good morning, Mr. Orth.

5 THE DEFENDANT: Good morning, your Honor.

6 THE COURT: Do you have a copy of your  
7 complaint, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do me a favor and take a look  
10 at your complaint and tell me is that your true name  
11 on the complaint, sir?

12 THE DEFENDANT: It is, sir.

13 THE COURT: And is it spelled correctly?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that you are  
16 being charged with the offense of ownership or  
17 possession of a firearm by a prohibited person?

18 THE DEFENDANT: I do.

19 THE COURT: Have you hired an attorney to  
20 represent you on this case today?

21 THE DEFENDANT: No.

22 THE COURT: Can you afford to hire an  
23 attorney on your own?

24 THE DEFENDANT: I do not.

25 THE COURT: At this time, I will appoint

1 the public defender's office to represent you on  
2 this case.

3 Mr. Rusley, do we have this resolved?

4 MR. RUSLEY: It's not involved Judge. He  
5 is on a parole hold. We will reserve any custody  
6 arguments at this time. I would like to ask that a  
7 preliminary hearing be set within 15 days.

8 THE COURT: I'm showing that the bond is  
9 set at \$5,000 cash or surety. We can go forward  
10 with the bail hearing if you like or if you like to  
11 waive that, we can do that at this time and set it  
12 for prelim, short setting.

13 MR. RUSLEY: We would just like to set it  
14 for a preliminary hearing.

15 THE COURT: So ordered. This is a  
16 Department 1 case.

17 Thank you, sir.

18 THE CLERK: November 17, 9:30,  
19 Department 1.

20 THE DEFENDANT: Before we close, sir -- I'm  
21 sorry. I'm sorry. I didn't want to be rude. I  
22 just had a Sixth Amendment indication --

23 THE COURT: Yeah. Make sure --  
24 I can't hear him.

25 THE CLERK: I couldn't hear what he was

1 saying either.

2 THE COURT: Are you saying that you want to  
3 represent yourself?

4 THE DEFENDANT: The Sixth Amendment  
5 indication, sir, to represent myself.

6 THE COURT: Okay. You want to represent  
7 yourself, is that what you're saying?

8 THE DEFENDANT: Yes. I understand that you  
9 appointed me counsel as cocounsel.

10 THE COURT: Oh, with cocounsel. So you  
11 want to represent yourself with the public  
12 defender's office to assist you?

13 THE DEFENDANT: Yes.

14 THE COURT: We will go ahead and appoint  
15 the public defender's office at this time to assist  
16 you to represent you. But let me go ahead just for  
17 an abundance of caution go through the screening  
18 because we don't advise that at all. Let me go  
19 through it with you.

20 Hopefully, you understand that  
21 self-representation is unwise, and you may conduct a  
22 defense to your detriment; that you are responsible  
23 for knowing and complying with the same procedural  
24 rules as all lawyers, and you cannot be expected to  
25 receive help from the judge in complying with the

1 procedural rules; that you will not be allowed to  
2 complain on an appeal about the competency or  
3 effectiveness of your representation; that the State  
4 will be represented by experienced professional  
5 counsel who will have an advantage of skill,  
6 training and ability, that if you are unfamiliar  
7 with the legal procedures, you may allow the  
8 prosecutor a great advantage; that your  
9 effectiveness of your own defense may be diminished  
10 by your dual role as attorney and accused.

11           You do understand that you do have the  
12 right to representation at no cost, if you are  
13 unable to pay. I have already appointed the public  
14 defender's office to represent you on this case. It  
15 sounds like you are going to allow them to assist  
16 you in the case, but I would recommend allowing them  
17 to fully, completely represent you on this  
18 particular matter.

19           I need to know that you understand that if  
20 you are found guilty of any of the offenses that you  
21 are charged with, that you may be ordered to  
22 substantial jail time on these matters.

23           Also, I want to inform you that you are --  
24 I want to make sure that you are waiving your rights  
25 to counsel freely, voluntarily and knowing and that

1 you are -- you fully appreciate and understand your  
2 waiver and its consequences, and that we, myself, I  
3 strongly discourage you to waive that right to  
4 counsel because of the great disadvantage you may be  
5 in by self-representation.

6           You understand everything I have just told  
7 you?

8           THE DEFENDANT: Yes, sir, your Honor. I  
9 understand Supreme Court Rule 123 --

10          THE COURT: Okay.

11          THE DEFENDANT: -- versus California --

12          THE COURT: That's fine. I want to make  
13 sure that you understood, and we strongly discourage  
14 you from self-representation.

15               We will set it in Department 1 for  
16 preliminary hearing. We still have the public  
17 defender's office appointed on this matter.  
18 Hopefully, you will allow them to assist you, and we  
19 will just go from there.

20           MR. PANDELIS: Your Honor, is the P.D.'s  
21 office appointed as standby only?

22          THE COURT: Yes.

23          MR. PANDELIS: Okay.

24          THE COURT: Thank you.

25          THE CLERK: November 17, 9:30,

1 Department 1.

2 THE DEFENDANT: Thank you.

3 THE COURT: You're welcome.

4 THE DEFENDANT: I appreciate it.

5 \* \* \* \* \*

6 Attest: Full, true, accurate and certified  
7 transcript of proceedings.

8

9

10 /s/Sherry L. Graham  
11 -----  
12 Sherry L. Graham, CCR #378

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JUSTICE COURT, HENDERSON TOWNSHIP  
CLARK COUNTY, NEVADA

HENDERSON JUSTICE COURT  
11/13/20  
FILED IN OPEN COURT

THE STATE OF NEVADA,

Plaintiff,

-vs-

SEAN RODNEY ORTH #6111549,

Defendant.

CASE NO: 20CRH001571

DEPT NO:

DA CASE NO: 202047706C

AMENDED  
CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony - NRS 202.360 - NOC 51460) and STOP REQUIRED ON SIGNAL OF POLICE OFFICER (Category B Felony - NRS 484B.550.3b - NOC 53833), in the manner following, to wit: That the said Defendant, on or about the 3rd day of November, 2020, at and within the County of Clark, State of Nevada,

COUNT 1 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

did willfully, unlawfully, and feloniously own, or have in his possession and/or under his custody or control, a firearm, to wit: a Winchester, bearing Serial No. 1291469, the Defendant being a convicted felon, having in 2007, been convicted of Robbery with a Deadly Weapon, Possession of Firearm by Prohibited Person, and/or Evade a Police Officer, in Case No. unknown, Washoe County, felonies under the laws of the State of Nevada.

COUNT 2 - STOP REQUIRED ON SIGNAL OF POLICE OFFICER

did while driving a motor vehicle in the area of 981 Whitney Ranch, Clark County, Nevada, willfully, unlawfully, and feloniously fail or refuse to bring said vehicle to a stop, or otherwise flee or attempt to elude a peace officer in a readily identifiable vehicle of any police department or regulatory agency, specifically HPD Officers P. Duffy and/or B. Brink and/or J. Hehn, after being given a signal to bring the vehicle to a stop, and did operate said motor vehicle in a manner which endangered, or was likely to endanger any person other than

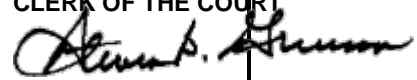


1 himself/herself or the property of any person other than himself.

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

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28 HPD EV# 2018994  
(TK)



TRAN

CASE NO. C352701-1

IN THE JUSTICE'S COURT OF HENDERSON TOWNSHIP  
COUNTY OF CLARK, STATE OF NEVADA

STATE OF NEVADA,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	CASE NO. 20CRH001571
	)	
SEAN RODNEY ORTH,	)	
	)	
Defendant.	)	
_____	)	

REPORTER'S TRANSCRIPT

OF

CONTINUATION OF PRELIMINARY HEARING  
BEFORE THE HONORABLE SAMUEL G. BATEMAN  
JUSTICE OF THE PEACE

TUESDAY, NOVEMBER 17, 2020

APPEARANCES:

For the State:	ERIKA MENDOZA Chief Deputy District Attorney
For the Defendant:	IN PROPER PERSON
Standby Counsel:	KARA SIMMONS Deputy Public Defender

Reported by: Lisa Brenske, CCR #186

AA000025

HENDERSON, NEVADA, NOVEMBER 17, 2020

\* \* \* \* \*

9:51AM THE COURT: Sean Orth, 20CRH1571.

On the preliminary hearing calendar. Is it on or off? Is that yours, Miss Simmons?

9:52AM MS. SIMMONS: Your Honor, apparently our office was appointed as standby counsel. Mr. Orth did a Faretta motion and he was allowed to represent himself. But I have been assisting him, and the district attorney provided me with the motion that I provided him this morning.

THE COURT: Okay.

9:52AM MS. MENDOZA: Your Honor, that's correct. I also filed an amended criminal complaint adding stop required on signal of a police officer which I provided to Miss Simmons last week.

9:52AM THE COURT: Okay. So I didn't realize this. So hang on one second.

Is it Mr. Orth?

THE DEFENDANT: Yes, sir.

9:52AM THE COURT: Looks like you decided you wanted to represent yourself; is that correct?

THE DEFENDANT: Yes, your Honor.

9:52AM 1 THE COURT: And they appointed the public  
2 defender as standby to help out.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Have you had any contact  
9:52AM 5 with -- I don't want you to tell me what you talked  
6 about. Have you been in communication with  
7 Miss Simmons?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Miss Mendoza, were you in  
9:52AM 10 communication with Miss Simmons about the continuance?

11 MS. MENDOZA: Your Honor, I didn't learn  
12 that I was going to need the continuance until after I  
13 talked to Miss Simmons yesterday at which point I knew  
14 she wasn't going to be able to get ahold of Mr. Orth

9:53AM 15 again. So I just gave her the Hill motion this  
16 morning.

17 THE COURT: So what's happened this  
18 morning, Mr. Orth, it looks like the DA's office is  
19 filing an amended criminal complaint. Do you have a  
9:53AM 20 copy of that?

21 THE DEFENDANT: I do.

22 THE COURT: And you added a stop required;  
23 is that right?

24 MS. MENDOZA: Yes.

9:53AM 25 THE COURT: So it looks like they added

9:53AM 1 Count 2. And then they also filed a motion to continue  
2 the preliminary hearing.

3 So it looks like you're missing Mr. Lapeer  
4 and Mr. Ozawa; is that correct?

9:53AM 5 MS. MENDOZA: Correct.

6 THE COURT: Do you have a copy of the  
7 motion?

8 THE DEFENDANT: I do, sir.

9 THE COURT: Looks like scheduling  
9:54AM 10 conflicts. One is in training and one is actually out  
11 of the jurisdiction. Do you have any opposition to the  
12 motion at this point, Mr. Orth, or did you want to  
13 communicate with Miss Simmons a little bit this  
14 morning?

9:54AM 15 Did you have a chance to talk to him at  
16 all?

17 MS. SIMMONS: I did.

18 THE COURT: You did talk to Miss Simmons?

19 THE DEFENDANT: Yes. And I'd like to  
9:54AM 20 respond.

21 THE COURT: Go ahead.

22 THE DEFENDANT: The Nevada Supreme Court  
23 made it clear in Sheriff Nye County versus Davis which  
24 I have a copy for you, your Honor.

9:54AM 25 THE COURT: Do you have a copy of this,

9:54AM 1 Ms. Mendoza?

2 THE DEFENDANT: I apologize. I just  
3 received a copy from my attorney so I didn't get a  
4 chance to give it to Miss Mendoza.

9:54AM 5 THE COURT: Off the top of my head I'm not  
6 familiar with it. What's your argument based on this  
7 case?

8 THE DEFENDANT: Well, here is the  
9 argument, your Honor. First I would like to address  
9:54AM 10 the motion for continuance.

11 THE COURT: That's what I want you to  
12 address.

13 THE DEFENDANT: Under Nevada Supreme Court  
14 stated in Nye County versus Davis that in order for a  
9:55AM 15 preliminary examination to be continued, the prosecutor  
16 has the obligation of making a motion within five days  
17 under NRS 178.478 and/or the requirements of Hill  
18 versus Sheriff which I'm sure the Court is familiar  
19 with.

9:55AM 20 THE COURT: That's what this motion is.  
21 So their argument is this motion is based on Hill.

22 THE DEFENDANT: I don't mean to interrupt.

23 THE COURT: No, no. Go ahead.

24 THE DEFENDANT: So she's making a Hill  
9:55AM 25 motion. The problem is, your Honor, she can't satisfy

9:55AM 1 the Bustos section of it -- the Bustos part of it.  
2 Our Supreme Court has said that DCR 14 of the District  
3 Court does apply in preliminary examinations and that  
4 the district attorney is required to show cause to make  
9:55AM 5 motion on short notice. The district attorney just  
6 said she was not aware of the unavailability of these  
7 witnesses until the 16<sup>th</sup> I believe which was  
8 yesterday, but her affidavit that she has sworn to on  
9 Page 3, line 11 says that on November -- if I may read  
9:56AM 10 it into the record?

11 THE COURT: You got it. She says on  
12 November 12<sup>th</sup> she learned one witness and then on  
13 November 16<sup>th</sup> she learned the other witness.

14 THE DEFENDANT: Correct. So she could  
9:56AM 15 have filed a motion on the 12<sup>th</sup> and we would have had  
16 five days and I could have answered. Today is the  
17 17<sup>th</sup>. So she hasn't shown good cause for that witness.  
18 She's now saying that on November 16<sup>th</sup> yesterday  
19 Officer Ozawa informed the undersigned that he is  
9:56AM 20 unavailable for the preliminary hearing and he will be  
21 out of town on vacation. He was not out of town on  
22 vacation as of yet.

23 Your Honor, these officers have accused me  
24 of a crime that I did not commit. I'm fully capable of  
9:56AM 25 representing this case.

9:56AM 1 THE COURT: And I have no problem letting  
2 you represent yourself, Mr. Orth.

3 THE DEFENDANT: Please, I'm not trying to  
4 impress the Court or the district attorney. I'm just  
9:57AM 5 trying to state that in the first instance she said  
6 that she did not have notice until the 16<sup>th</sup> and which  
7 is contradicted by the fact that she could have filed a  
8 motion on the 12<sup>th</sup>. And she could have then asked if  
9 Mr. Ozawa was available and could do it himself. So  
9:57AM 10 she has not shown good cause to file a motion on short  
11 notice and therefore these charges should be dismissed  
12 with prejudice as the Nevada Supreme Court found in  
13 Sheriff Nye County.

14 I would like to add one last minor thing,  
9:57AM 15 your Honor, if you don't mind.

16 THE COURT: Go ahead.

17 THE DEFENDANT: If these officers are  
18 going to plan that their vacation is more important  
19 than my sitting in custody and lockdown in a COVID  
9:57AM 20 facility, I would say that that also is not cause to  
21 accuse me of a criminal accusation and bring it before  
22 this Honorable Court and then at the very last second  
23 say, oh, I'm going to be on vacation but I haven't left  
24 yet. Unfortunately, your Honor, I think that the  
9:58AM 25 officer may, and I do not mean to disrespect any



9:58AM 1 officer, he may have continued his vacation maybe by  
2 one day since he's making these allegations against me.  
3 I do not think there is good cause.

4 And further she has not stated a  
9:58AM 5 difference between what these officers would have  
6 testified to and their value to the preliminary  
7 examination which would be part of her cause shown.

8 THE COURT: Okay. Do you have anything  
9 else?

9:58AM 10 THE DEFENDANT: No, sir. On that motion.

11 THE COURT: What's your other motion?

12 THE DEFENDANT: Same issue. We have a  
13 motion to amend the criminal complaint. Objection.  
14 She could have filed this amended complaint with five  
9:58AM 15 days' notice. Again she did not file it. She's trying  
16 to give me a surprise motion now. I've already pleaded  
17 to obstruct resist based upon the plea. So the now  
18 evade will be a double jeopardy claim and I would just  
19 like to -- excuse me.

9:59AM 20 THE COURT: I'm going to have you sit down  
21 for one second. There's a lot going on.

22 Do you need to get anywhere else, Miss  
23 Mendoza, or can you hang around?

24 MS. MENDOZA: No, I can.

9:59AM 25 THE COURT: I will give you these to

9:59AM 1 respond. Sounds like it'll take a little bit of time.  
2 (Other matters heard.)  
3 THE COURT: Back to Mr. Orth.  
4 Ms. Mendoza, you have the case there?  
10:24AM 5 MS. MENDOZA: Yes. Do you want it back?  
6 THE COURT: Yes, I do actually want it  
7 back.  
8 Can you tell me what your response first  
9 is to Mr. Orth's arguments? Let me see if I can't  
10:25AM 10 narrow it a little bit. Looks to me from your motion  
11 that you're alleging that both Detective Ozawa and  
12 Detective Lapeer could probably testify to the  
13 allegation that they located the firearm in relation to  
14 the defendant; is that correct?  
10:25AM 15 MS. MENDOZA: I need one or the other.  
16 THE COURT: One or the other. So either  
17 one of those two can testify. And so it looks to me  
18 like what you've written here is that you first learned  
19 from Lapeer on the 12<sup>th</sup> and so you probably didn't  
10:25AM 20 file a motion at that time because you assumed  
21 Detective Ozawa could also do it, you didn't need  
22 Lapeer if Ozawa showed up. But now then on the 16<sup>th</sup>  
23 you found out that Detective Ozawa was out of town.  
24 You also wrote in here that he will be out  
10:25AM 25 town and I think Mr. Orth was concerned about whether

10:25AM 1 he was out of town today.

2 MS. MENDOZA: Well, when I talked to Mr.

3 Ozawa -- sorry, I'm looking at our conversation.

4 THE COURT: Yes. Did you email Mr. Ozawa

10:26AM 5 or did you speak to him?

6 MS. MENDOZA: I emailed him the sub and

7 then when we were talking about whether or not he was

8 available today, I was texting him.

9 THE COURT: Okay.

10:26AM 10 MS. MENDOZA: That was our conversation

11 yesterday. And he said I'm actually on vacation and

12 I'm leaving tomorrow morning. So he was talking about

13 this morning.

14 THE COURT: Leaving this morning?

10:26AM 15 MS. MENDOZA: Correct. And then as to

16 sounds like your next question I asked when are you

17 coming back. Judge will ask if you're available, and

18 he said he'll be back on November 24<sup>th</sup>. So that's

19 less than 15 days from today.

10:26AM 20 THE COURT: He informed you that he was

21 leaving this morning?

22 MS. MENDOZA: Correct.

23 THE COURT: So did I surmise correctly

24 from your motion as to how things went down?

10:26AM 25 MS. MENDOZA: Yes. In terms of first I

10:26AM 1 found out about Lapeer and then I was waiting because I  
2 knew that I could use one or the other, and then  
3 yesterday I checked in with Ozawa, yes.

4 THE COURT: Then as to Mr. Orth's  
10:27AM 5 arguments regarding Nye County versus Davis 106 Nevada  
6 145.

7 MS. MENDOZA: In terms of that, you know,  
8 I don't think that we can rely on that case so long as  
9 to assume that the District Court rules in terms of the  
10:27AM 10 five-day would apply here. I would need to research  
11 that issue some more. However, even if we assume it  
12 does, the problem in that case was the prosecutor did  
13 not have good cause to overcome that five-day  
14 requirement. In that case they found there was a

10:27AM 15 complete willful disregard for any attempt to follow  
16 the rules because the reason why they needed a  
17 continuance was something that they knew about two  
18 months prior. Moreover, the Court was offended by the  
19 fact that the district attorney in that case actually

10:27AM 20 just had a, quote, unquote, hearing for this motion to  
21 continue during an ex parte phone conversation with the  
22 justice of the peace. So that case was more about  
23 prosecutorial misconduct and willful disregard for the  
24 rules and that's why it didn't overcome the good cause  
10:28AM 25 rule to get around the five days.

10:28AM 1 So even if we are to assume that I had to  
2 file this five days in advance, here is different  
3 because I have good cause as in I didn't learn until  
4 yesterday that Mr. Ozawa was not available. Even if I  
10:28AM 5 went by the date I learned Detective Lapeer wasn't  
6 available, yes, that's five days prior to today, but it  
7 wouldn't have been on calendar probably until today.  
8 And with COVID, you know, we're all trying to limit the  
9 number of appearances.

10:28AM 10 I will note that in case the Court didn't  
11 notice Mr. Orth is on a parole hold anyway. So it's  
12 not just the fault of these officers or the State that  
13 he's in custody. He is going to be in custody  
14 regardless.

10:29AM 15 THE DEFENDANT: I'd like to respond.

16 THE COURT: Go ahead.

17 THE DEFENDANT: First of all, the only  
18 reason that I am on a parole hold is because I'm  
19 charged in this case. That's first and foremost. They  
10:29AM 20 did bring allegations only because the district  
21 attorney brought these allegations against me.

22 Secondly, I would note that the prosecutor  
23 has stated that she didn't even serve the officers with  
24 a subpoena until four days before the preliminary  
10:29AM 25 hearing and thereby made sure by doing so that she

10:29AM 1 could not have made a motion for continuance if they  
2 said they were not available. So she made -- she  
3 subpoenaed them right on the fifth day. He said I  
4 can't come. Minimally she could have filed a motion.  
10:29AM 5 She could have spoke to Officer Ozawa then and found  
6 out if he was available and made her motion then. She  
7 has not stated that she did any investigation on the  
8 12<sup>th</sup> when she found out that Mr. Lapeer was not  
9 available. So any showing of cause that she's doing  
10:30AM 10 now she could have done in a motion, but she didn't  
11 even look into it. She didn't call Mr. Ozawa and say  
12 sir, can you be available? So she has not shown cause  
13 to make a motion on short notice. She could have made  
14 this motion on time and she could have subpoenaed these  
10:30AM 15 officers long before the 12<sup>th</sup>.  
16 MS. MENDOZA: Your Honor, in terms of when  
17 I subpoenaed the officers, I would note that I received  
18 this file on the 6th. And I reviewed it. And the  
19 arrest report that's included in the file doesn't  
10:30AM 20 identify what officers searched the bag or even what  
21 officers were involved in the evading. So --  
22 THE COURT: Let me guess. It says  
23 officers.  
24 MS. MENDOZA: Correct.  
10:30AM 25 THE COURT: So here's the deal. I don't

10:30AM 1 know in a situation where you have a 15-day setting  
2 based on an indication of a preliminary hearing that it  
3 usually is reasonable to apply the time requirements in  
4 NRS 178.478. To the extent they do apply to a Hill  
10:31AM 5 motion I would say that they are more relaxed because  
6 you've got a 15-day turnaround to try to get things  
7 subpoenaed and then get on calendar to file a Hill  
8 motion. If I went through the Hill cases, I'm pretty  
9 sure that most of those Hill motions are filed in open  
10:31AM 10 court. And so I don't think that the five days at  
11 issue is dispositive.

12 I think that Miss Mendoza has obviously  
13 represented that she subpoenaed the case and that she  
14 learned that two witnesses that would testify to the  
10:31AM 15 facts that she needs to prove the preliminary hearing  
16 are unavailable. I appreciate your frustration that  
17 one of the detectives is on vacation and that that is  
18 the basis for the good cause to continue. I understand  
19 your frustration on that, sir, but I'm going to grant  
10:32AM 20 the motion to continue at this time for 15 days.

21 When's our next 15-day setting?

22 THE CLERK: November 30<sup>th</sup>.

23 THE COURT: You're still in CCDC?

24 He's in CCDC, Miss Simmons?

10:32AM 25 MS. SIMMONS: Yes, your Honor. But

10:32AM 1 because he does have that parole hold the concern I  
2 would have is that at any time he can get a ticket and  
3 be taken to NDOC. To my knowledge he hasn't received  
4 that yet so I don't think that --

10:32AM 5 THE COURT: How many witnesses do you  
6 need?

7 MS. MENDOZA: You know, the evading part  
8 is kind of -- I would say up to five.

9 THE COURT: Are they all officers?

10:32AM 10 MS. MENDOZA: Yes.

11 THE COURT: The problem is Thanksgiving  
12 holiday. Soonest I can do it is the 30<sup>th</sup>.

13 MS. MENDOZA: I was going to say I'm out  
14 the 30<sup>th</sup>, I will be back the 1st. So I would ask  
10:32AM 15 that we go to the 1st.

16 THE COURT: I don't have the 1st because I  
17 don't sit on the 1st. The next one is the 3rd which  
18 would be outside of his 15 days. Is there somebody  
19 else in your office that can handle it on the 30<sup>th</sup>?

10:33AM 20 MS. MENDOZA: I'm sure they could.

21 MS. SIMMONS: The only thing I wanted to  
22 note from speaking with Mr. Orth is that as he  
23 mentioned he was charged and convicted in Municipal  
24 Court for a related charge. And so we need to get that  
10:33AM 25 police report in some way. I hadn't specifically



10:33AM 1 emailed the DA about it because I didn't know.

2 THE COURT: I was going to delay making a  
3 ruling on what I presume is some type of double  
4 jeopardy argument until I know more about it.

10:33AM 5 MS. MENDOZA: I didn't even know that  
6 happened in Municipal Court. However, I'm guessing my  
7 issue is going to be that a stop required and  
8 obstructing will have different elements.

9 THE COURT: I'm assuming there's some  
10 Blockburger issues there that I'd have to take a look  
11 at, but I need to see something.

12 Okay. Here is the problem, Mr. Orth.  
13 When you represent yourself and you are going to make a  
14 motion, you can possibly bring it up at a preliminary  
10:34AM 15 hearing, but I prefer to see a motion on it ahead of  
16 time so arguably I can rule on it ahead of time.

17 THE DEFENDANT: I just learned of these  
18 motions today.

19 THE COURT: I understand.

10:34AM 20 THE DEFENDANT: They just handed them to  
21 me this morning.

22 THE COURT: The best I can do is try to  
23 take that up on the next hearing. What I recommend is  
24 that we go out past the 15 days so that Miss Mendoza  
10:34AM 25 has some additional time on the 3rd. We just move your

10:34AM 1 preliminary hearing. I'm not waiving your right to 15  
2 days. But for purposes of the calendar if we can go to  
3 December 3<sup>rd</sup>, Miss Mendoza is going to get that  
4 record out of Municipal Court for me, correct?

10:34AM 5 MS. MENDOZA: I will do my best, but it  
6 sounds like it's his --

7 THE COURT: Well, I would request --

8 MS. MENDOZA: I will do my best.

9 THE COURT: -- that you contact an  
10 individual by the name of Marc Schifalacqua --

11 MS. MENDOZA: I've heard of him.

12 THE COURT: -- and see if you can get us  
13 the information we need on that, because it's arguably  
14 a constitutional issue that we're going to have to end  
10:34AM 15 up taking care of one way or the other. I'm assuming,  
16 Mr. Orth, that you would agree -- I mean, you objected  
17 to the continuance. I'm going to grant the  
18 continuance. I want you to acquiesce to us setting it  
19 on the 3rd so we can get that information regarding the  
10:35AM 20 potential for a double jeopardy, issue, all right?

21 THE DEFENDANT: And if you would, your  
22 Honor, just to make a record, I just don't want to  
23 implicate a waiver --

24 THE COURT: No.

10:35AM 25 THE DEFENDANT: So over my objection,

10:35AM 1 fine.  
2 THE COURT: You're still invoked. Just  
3 for purposes of the calendar I will set it on the 3rd.  
4 We are going to take up the issue with regard to the --  
10:35AM 5 I'm assuming it would only relate to Count 2, Ms.  
6 Mendoza, and if you could please communicate with  
7 Mr. Schifalacqua and get that relevant information, I'd  
8 appreciate it. We are going to reset the preliminary  
9 hearing for December 3<sup>rd</sup>. I'll see you then, Mr.  
10:35AM 10 Orth.

11 THE DEFENDANT: Thank you.

12 THE COURT: We'll take up whatever issues  
13 you want to take up at that time.

14 MS. MENDOZA: Thank you.

10:35AM 15 THE CLERK: December 3<sup>rd</sup>, 9:30.

16

17 (The proceedings concluded.)

18

19 \* \* \* \* \*

9:35AM 20

21 ATTEST: Full, true and accurate  
22 transcript of proceedings.

23

24 /S/Lisa Brenske

9:35AM 25 LISA BRENSKE, CCR No. 186

1 STEVEN B. WOLFSON  
2 Clark County District Attorney  
3 Nevada Bar #001565  
4 ERIKA MENDOZA  
5 Chief Deputy District Attorney  
6 Nevada Bar #12520  
7 200 Lewis Avenue  
8 Las Vegas, Nevada 89155-2212  
9 (702) 671-2500  
10 Attorney for Plaintiff

HENDERSON JUSTICE COURT  
11/17/20  
FILED IN OPEN COURT

11 JUSTICE COURT, HENDERSON TOWNSHIP  
12 CLARK COUNTY, NEVADA

13 THE STATE OF NEVADA,

14 Plaintiff,

15 -vs-

CASE NO: 20CRH001571

16 SEAN ORTH,  
17 #6111549

DEPT NO: 1

18 Defendant.

19 STATE'S NOTICE OF MOTION AND MOTION TO CONTINUE

20 DATE OF HEARING: NOVEMBER 17, 2020  
21 TIME OF HEARING: 9:30 A.M.

22 TO: SEAN ORTH, Defendant; and

23 TO: KARA SIMMONS, Attorney for Defendant

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

26 ///

27 ///

28 ///

///

///

///

///

///

1 This Motion, which will be heard in Justice Court on the 17th day of November, 2020,  
2 at 9:30 o'clock, A.M., is based upon Hill v. Sheriff of Clark County, 85 Nev. 234 (1969), and  
3 is supported by the following Affidavit.

4 DATED this 17 day of November, 2020.

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

8 BY

Erika Mendoza  
9 ERIKA MENDOZA  
10 Chief Deputy District Attorney  
11 Nevada Bar #12520  
12  
13  
14  
15  
16  
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A F F I D A V I T

STATE OF NEVADA        }  
COUNTY OF CLARK       }ss:

ERIKA MENDOZA, being first duly sworn, deposes and says:

1. That Detectives Kevin Lapeer and/or Dennis Ozawa are witnesses for the State of Nevada in this matter; that their present address is with the Henderson Police Department;

2. That the following efforts were made to procure the attendance of these witnesses at the preliminary hearing scheduled in this matter for NOVEMBER 17, 2020; that a subpoena was issued on or about November 12, 2020; that the undersigned delivered said subpoenas to the above officers on November 12, 2020; on November 12, 2020 K. Lapeer informed the undersigned that he is unavailable for the preliminary hearing as he has a previously scheduled mandatory training class scheduled at a time that would conflict with the hearing; on November 16, 2020 D. Ozawa informed the undersigned that he is unavailable for the preliminary hearing as he will be out of town on vacation;

3. That K. Lapeer and/or D. Ozawa are essential witnesses in that Defendant is charged with Possession of a Firearm by a Prohibited Person and K. Lapeer and D. Ozawa were the officers who discovered the firearm; that to affiant's present knowledge there is no other witness who could so testify;

4. That said witnesses will be available to testify after at a later date; that it will be necessary to seek a continuance in this matter due to the unavailability of these witnesses; that affiant first learned on November 16, 2020, that these witnesses would not be available to testify at the scheduled preliminary hearing;

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

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

Executed on

11/17/20  
(Date)

Erika Mendoza  
(Signature)

HENDERSON JUSTICE  
COURT

2020 DEC -1 A 10:34

1 Sean Rodney Orth  
2 611549  
3 330 S. Casino Center Blvd  
4 Las Vegas, Nevada 89101  
5  
6

FILED

7 Justice Court, HENDERSON TOWNSHIP  
8 CLARK COUNTY, NEVADA  
9

10 STATE OF NEVADA,

11 PLAINTIFF,

CASE NO. 20CRH001571

12 VS

DOPT. NO. JH #7

13 SEAN RODNEY ORTH

DA CASE NO. 202097706C

14 DEFENDANT.

15 DEFENDANT'S NOTICE OF MOTION /  
16 MOTION TO SUPPRESS FOR  
17 VIOLATIONS TO U.S.C.A. AM. IV  
18 and Nev. Const. Art I § 18.  
19  
20  
21

22 Comes now, Sean Orth, Defendant appearing  
23 in proper person who for the reasons stated below  
24 seeks an order by the Court suppressing from use  
25 in evidence all evidence seized in this case  
26 or the product of such seizure and search by police.  
27

28 This motion is supported by the attached memo-  
29 randum of points and authorities and is made in  
30 good faith and not for undue delay.  
31  
32

I. MEMORANDUM OF POINTS AND AUTHORITIES

A. DEFENDANT HAS CONSTITUTIONAL RIGHT TO  
BE FREE FROM UNREASONABLE SEARCH AND  
SEIZURE UNDER THE CONSTITUTIONS OF THE  
UNITED STATES AND NEVADA.

The Fourth Amendment to the United States  
Constitution provides:

the right of the people to be secure in their  
persons, houses, papers and effects, against  
unreasonable search and seizure, shall not  
be violated. No warrants shall issue, but  
upon probable cause.

U.S.C.A. Ann. IV (emphasis added)

Article I, Section 18 of the Nevada Constitution

Similarly provides

The right of the people to be secure in their  
persons, houses, papers and effects against  
unreasonable seizures and searches shall not  
be violated and no warrant shall issue  
but on probable cause.



## B. POLICE ACTIONS IN ARRESTING DEFENDANT

## VIOLATED WARRANTS-WITH-PRAGMATIC POLICY

## REQUIRING SUPPRESSION OF THE EVIDENCE.

Defective Lipsch described in his declaration to

Arrest in this court that Louie Polanco actually carried

HPO on the night of October 27, 2020 and made a

complaint defendant rejected him in HPO case 20-18989.<sup>1</sup>

Defendant was then served with a warrant on the morn-

ing of October 28, 2020 by HPO, supposedly on ground

Defendant committed said robbery. However, Defendant

was never arrested with robbery by HPO. Police after

stepping defendant claim defendant resisted/obstructed

The State has the burden to demonstrate an arrest

to the warrant requirement. Nelson v. State, 96

Neu. 363, 366, 609 P.2d 717, 719 (1980)

The Nevada Supreme Court has made it clear that both

the constitutional of the United States and Nevada have a

"warrants-when-practicable" policy. Barrios-

Lomelle v. State, 113 Nev. 952, 956, 944 P.2d 791, 79-93 (1997)

These officers have violated said policy when

not obtaining a warrant of arrest or for search and

seizure of automobile, cell/le bag and contents regu-

lary suppression of evidence. It is axiomatic that

police cannot circumvent all legal, not seek a warrant

effect arrest the next morning and claim exigent circum-

stances existed to dispense with that warrant requirement.

As of the date this instrument is drafted the prosecu-

tor has not provided defendant with information in

1  
2 B. THE SEARCH AND SEIZURE BY WARRANT WAS UNREA-  
3 SONABLE WHERE POLICE DID NOT HAVE PROBABLE  
4 CAUSE AND EXIGENT CIRCUMSTANCES AND BOTH  
5 OMITTED INFORMATION AND COMMITTED PERTURB  
6 IN THE SEARCH WARRANT AFFIDAVIT TO OBTAIN  
7 AN ILLEGAL SEARCH WARRANT.

8  
9 In His Declaration of Arrest Detective Lypnisch testifi-  
10 ed that he was aware that Louis Polanco and his girl-  
11 friend Jessie Cariccolo gave conflicting accounts of the  
12 robbery. Polanco told police that Defendant pulled a 9mm  
13 handgun in the living area of the apartment and made  
14 him go to his room where defendant loaded a brown duffle  
15 bag with his computer, Smith and Wesson 9mm and 20 gauge  
16 shotgun and Defendant stole Louis's car. Girlfriend Cariccolo  
17 told police she was present, never saw Defendant with  
18 a gun nor did she witness a robbery. She was in  
19 the kitchen. EXHIBIT 3 at 1-2.

20  
21 Detective Lypnisch then swears that Defendant told  
22 him that he stayed with Louis Polanco at the apart-  
23 ment, Polanco beat him the car and cell phone, there  
24 was no robbery, I called Louis's girlfriend just  
25 before I returned that morning which police could  
26 confirm on the cell phone, I was returning the  
27 car on time that morning which had the duffle bag  
28 in it, I took it up to the apartment to return it.

29  
30 But it will have to be demonstrated through testimony that  
31 in the apartment you are in the living area if you are  
32 in the kitchen. Defendant could not commit robbery in the  
33 apartment without the girlfriend knowing which police  
34 had to know due to the small size of the apartment.

1 to Polanco, it was weird there was no answer at the  
2 apartment especially since I just called Polanco's  
3 girlfriend and it decided to go get milk when there  
4 was no answer. Police then stopped me. Ex. 1 at 2-3.

5  
6 Detective Lepisch states in his declaration my informat-  
7 ion was relayed to the detectives questioning Jessie  
8 and Polanco and they confirmed that I was lent the  
9 car and cell phone. Id.

10  
11 Jessie did not say she witnessed me with a gun or  
12 that she witnessed a robbery which highly impeaches  
13 Polanco.

14 Polanco minimally told police that I took car in robbery  
15 which was a false accusation of a crime against me  
16 once police were told Polanco actually lent me the car.

17  
18 Police were aware I had honestly told them I was  
19 lent the car and cell phone which the couple confirmed.

20  
21 The cell phone was never alleged stolen or police could  
22 have called Defendant or tracked its GPS. Polanco's story  
23 was fatally wounded because I just called Jessie to  
24 say I was returning on his cell phone he lent me.  
25 At that point, police knew it was not trustworthy to  
26 believe Polanco. A robber does not ask to borrow a  
27 car and cell phone and then is nice enough to return  
28 them on time. Police had no reason to believe Polanco  
29 at all and had every reason to believe Defendant truth-  
30 ful.

31 Police did not arrest Defendant with robbery, or theft  
32 or stolen property.

1 Detective Lippisch then applied for a search warrant  
2 in this honorable court and withheld impeachment evi-  
3 dence that impeached Polanco, withheld information that  
4 bolstered defendant's credibility and Lippisch gave false  
5 testimony when swearing to the court that he did provide  
6 the court all facts related to probable cause. See Ex. 2  
7 (Affidavit in support by Detective Lippisch.)

9  
9 It is not hard to see that Detective Lippisch was aware  
10 that Jessie impeached Polanco by telling police she  
11 did not see me with a gun nor did she witness a  
12 robbery and that Polanco's story was impeached when  
13 he admitted the car was not taken in the robbery but  
14 was lent to defendant, as was his cell phone, when  
15 Lippisch applied for the warrant. He admits knowing  
16 this information and factually omitted the information  
17 in his affidavit for search warrant issuance. Ex. 1  
18 versus Ex. 2.

19  
20 The magistrate was deprived of evidence which  
21 impeached Polanco's story of robbery and bolstered  
22 defendant's credibility that he did not rob Polanco  
23 and was lent the vehicle and the car. Also, the  
24 magistrate can now discern that Detective Lippisch  
25 is not a credible informant because of his fallacy  
26 upon the court and his false sworn statement in  
27 his affidavit that he did provide all information  
28 related to probable cause.

29  
30 As such any warrant should be reweighed and if  
31 determined there was not cause to issue a search  
32 warrant or to search and seize any evidence.  
33 Please see Frank's v. Delaware 438 U.S. 154 (1978).  
34 (A probable cause determination should be reweighed

1  
2 upon a showing relevant information was withheld )  
3

4 The evidence should be suppressed under the exclu-  
5 sionary rules under Federal and Nevada laws. See  
6 Mapp v. Ohio, 367 U.S. 643, 654-55 (1961). This  
7 should include all evidence found or that became  
8 known upon such evidence found by police.  
9

10  
11 C. Conclusion  
12

13 Wherefore, it is Defendant's prayer this court find  
14 cause to grant the motion to suppress without  
15 hearing and if necessary allow a hearing on  
16 the motion on December 3, 2020. Suppression  
17 to include all evidence found in the above-  
18 entitled case.  
19  
20

21 Respectfully Submitted this 21 day November 2020  
22

23 Sean O'K  
24 Sean O'K  
25 Defendant  
26  
27  
28

EXHIBIT 1

AA000053

# Henderson Police Department

223 Lead Street, Henderson Nevada 89015

## Declaration of Arrest

DR#: 20-18994

Arrestee's Name: ORTH, SEAN RODNEY

Date and time of Arrest: 11/3/2020 8:34:33 AM

Charge(s)	Degree	NRS/HMC
Own/poss gun by prohibt pers	B	202.360.1

THE UNDERSIGNED MAKE THE FOLOWING DECLARATIONS SUBJECT TO THE PENALTY OF PERJURY AND SAYS: That I am a Peace Officer with the Henderson PD, Clark County Nevada. I learned the following facts and circumstances which led me to believe that the above-named subject committed (or was committing) the above offense/offenses at the location of 981 Whitney Ranch Dr Henderson, NV 89014 And that the offense approximately occurred at 11/3/2020 8:34:33 AM

### Details of Probable Cause

On 10/28/2020 at approximately 0711 HPD Units were dispatched to The Marlow Apartments, 981 Whitney Ranch Drive #823, reference a reported armed robbery suspect who was currently at the location. Dispatch advised that the person reporting had stated that the suspect who had committed an armed robbery at the location the night before (reported under HPD DR#20-18989) was currently at their door, possibly armed, and was most likely driving their white Chevrolet Malibu with unknown "Body Shop" plates that he had unlawfully taken the night before.

Upon arrival HPD Patrol Officers observed a vehicle matching that description backing out of a parking space and driving from the area of the apartment. Several uniformed Patrol Units in marked Henderson Police Department Police vehicles began following the vehicle and initiated a stop by activating their overhead emergency lights and sirens, however the suspect vehicle failed to yield and continued towards the exit of the apartment complex, accelerating towards the exit gate. An additional HPD Unit arrived and was outside the exit gate, which was closed, and the suspect opened the driver side door, jumped out, and immediately ran. The suspect vehicle continued to drive forward, unoccupied, crashing into the exit gate of the apartment complex. The suspect was carrying a tan duffie bag as he fled and he threw it over the property wall just before he climbed over the same wall, running out to Whitney Ranch Drive.

Patrol Officers initiated a foot pursuit, issuing commands for the suspect to stop, however he continued to run leaving the duffie bag behind because he struggled to pick it back up quickly. The suspect ran across Whitney Ranch Drive, attempting to evade HPD Officers, however Officers were able to overtake the suspect and he was placed in custody after a short struggle due to the fact that the suspect refused to comply. The suspect was identified as Sean Orth (DOE) and was confirmed to be the same suspect identified in the previous robbery.

Due to the fact that Sean failed to yield to HPD Patrol Officers who initiated a lawful stop on a suspect in a felony crime, the fact that Sean then fled from Officers after jumping out of the suspect vehicle, and the fact that Sean failed to comply with lawful orders which resulted in a foot pursuit to take him into custody, Sean was taken into custody for NRS 199.280.3 Resist Public Officer and secured in an HPD Patrol Vehicle.

# Henderson Police Department

223 Lead Street, Henderson Nevada 89015

## Declaration of Arrest

DR#: 20-18994

Due to the fact that Sean was the suspect in an armed robbery HPD ISD was contacted and I, Detective K. Lippisch, as well as, Detective D. Ozawa, Detective K. LaPeer, and Detective R. Christopher, responded and assumed the investigation. After being advised of the above facts Detective Christopher and I made contact with Sean while Detectives Ozawa and LaPeer contacted the victims of the robbery, Louis Polanco (DOB [redacted] and Jessie Caraccio (DOE [redacted])

*roommate*

I was later advised by Detectives Ozawa and LaPeer that Louis and Jessie had differentiating accounts of what had occurred over the past week, however they both stated that Sean had left the apartment the prior evening with a tan duffel bag that contained property that belonged to them (Louis and Jessie), not Sean. Louis stated that Sean had displayed a handgun and told Louis that he was taking Louis' guns and laptop, and then had directed Louis to the master bedroom where the items were placed into the tan duffel bag. Sean then left the residence with the items that did not belong to him which included: Louis' black and red Smith and Wesson MMP Shield 9mm handgun (unknown serial #), Jessie's Winchester Model 12 20 Gauge Shotgun (unknown serial #), and Louis' Military ID. Sean exited the apartment, walked to Louis' 2007 white Chevrolet Malibu with NV Body Shop plate 652B, entered the driver side of the vehicle, and drove away. Louis advised that in addition to the above items Sean was also in possession of his laptop and cellular phone.

Jessie stated that she had not observed Sean with a handgun and although she felt that what had just transpired was odd, she did not know that Sean had committed the robbery until Louis told her because she had been seated in the kitchen when this occurred. Louis did not initially want to report the incident due to the fact that Sean had threatened to come back and hurt them if the Police were notified, however Jessie convinced Louis that this needed to be reported so they called HPD, completed the report, HPD DR#20-18989, and stated they wanted to press charges for the crimes that Sean had committed.

Detective Christopher and I contacted Sean in the back of the patrol vehicle, and I advised him that I would like to interview him regarding the incidents that he had been involved in. Sean agreed to talk with me, and he was placed in the front passenger seat of my unmarked department vehicle. I entered the front driver seat and Detective Christopher entered the rear passenger seat. Sean immediately stated that he did not want the interview recorded and initially stated that he did not want to be read Miranda. I advised Sean that due to the fact that he was in handcuffs and not free to leave I was going to read him Miranda, which I did at 0842 hours, and which he stated he understood and waived. Sean then stated the following:

He has known Louis for approximately a week, as well as Louis' girlfriend however he could not recall her (Jessie's) name. He advised that he has been spending time with them, using the vehicle at times, and also using Louis' cellular phone because his vehicle is getting worked on and his cellular phone is busted. Sean stated that he had been at the apartment yesterday until approximately 1900 hours and then he left in the Chevrolet Malibu to go see his girlfriend, who he was never able to locate. Sean stayed out until approximately 0600 hours this morning, which is when he returned to the apartment, with the Chevrolet Malibu. Sean exited the vehicle with the tan duffel bag, which he stated had been inside the vehicle the entire time and he was just planning on bringing it inside the apartment for Louis since it was his. Sean walked up to the apartment door and knocked, however no one answered. Sean thought this was odd since he stated he was supposed to return the vehicle before sunrise per his arrangement with Louis, so he continued knocking several times. After still getting no answer, Sean returned to the vehicle, still carrying the tan duffel bag, and then started to drive away. Sean had decided to go to the store and get milk before returning and attempting contact at the apartment again. Sean additionally stated that it was odd that no one answered because prior to arriving at the apartment he had used Louis' cellular phone to call Louis' girlfriend and tell her that he was on his way. Sean then stated that when he had been stopped by HPD Units the phone had been in his pocket.



# Henderson Police Department

223 Lead Street, Henderson Nevada 89015

## Declaration of Arrest

DR#: 20-18994

As Sean started to drive towards the exit to the complex, he observed several HPD Patrol Vehicles and an HPD Motors Unit in the complex. Sean then observed that the marked patrol vehicles were following him and that they had activated their overhead lights and sirens. At first Sean thought they were attempting to pass him, but then he realized that they were attempting to stop and contact him. Sean immediately felt that he had been set up and that the duffel bag in the vehicle must contain items that would get him into trouble, so he didn't stop. Sean continued driving, swerving because he was reaching for the duffel bag, and then when he realized he wouldn't be able to make it out the exit gate Sean exited the vehicle with the duffel bag and fled, jumping the wall of the property.

I asked Sean why he would flee because he claimed that he had not done anything wrong and that he didn't know what was inside the duffel bag (despite taking it with him when he fled). Sean responded by stating that he felt he had been set up and that it must be related to the duffel bag, and that he had made up his mind that he was going to try and get away.

Upon conclusion of the interview I contacted Detectives Ozawa and LaPeer, advised them of the information that Sean had provided, and asked them to clarify previous statements that Louis and Jessie had made. Detectives re-interviewed Louis and Jessie and they did admit to the fact that they had allowed Sean access to the Chevy Malibu and the cellular phone, as well as the fact that Sean had been spending time at the apartment for approximately a week.

Due to the above facts Sean was transported to the Henderson Detention Center where he was booked accordingly for Resist Public Officer. A records search returned to reveal that Sean was also a convicted felon (trafficking controlled substance, ex-felon possess firearm, robbery w/ deadly weapon, evade Police Officer, manufacture short barrel gun, and assault) and that he was P&P Priority 5. Initial attempts to contact his Supervising Officer were negative, however contact was eventually made and his Supervising Officer was advised of the above facts.

Due to the fact that Sean was the suspect in an armed robbery, that he had been operating the 2007 white Chevrolet Malibu, the fact that he had been in possession of the tan duffel bag that had been recovered by HPD Patrol, as well as the fact that he had been in possession of Louis' cellular phone and had stated that he had used the phone, I authored a search warrant to be issued for the previous mentioned items including: the 2007 white Chevrolet Malibu bearing NV Body Shop plate 6528 that had been towed from the scene and secured in the Henderson Police Department CSA garage, the tan duffel bag currently secured at the Henderson Police Department Main Station, and Louis' black LG cellular phone which had been in Sean's possession and was currently secured with Sean's property at the Henderson Detention Center. The search warrant was reviewed and approved by Clark County Deputy District Attorney Marc DiGiacomo and then reviewed and signed by the Honorable Henderson Justice Court Judge David Gibson Sr.

On 10/29/2020 the search warrant was served on the items previously listed. The following items were located in the tan canvas bag: black Fuel motorcycle helmet, Winchester Model 12 .20 gauge shot gun (SN: 1291489), Federal Ammunition Hi-Brass .20 gauge ammunition live rounds (25 count), Surefire tactical light w/ mount, vice grips, Lenovo Laptop, and a Grace USA chisel tool.

Due to the above stated facts, specifically that fact that Sean is a convicted felon and currently P&P Priority 5 and the fact that Sean fled from Officers while in possession of the tan canvas bag which contained a Winchester Model 12 .20 gauge shotgun and 25 live rounds, I determined that there was probable cause to arrest Sean for NRS 202.360 Ex-felon Possess Firearm. Due to the fact that Sean is in custody at the Henderson Detention Center I arrested him at that location for this additional charge.

# **Henderson Police Department**

223 Lead Street, Henderson Nevada 89015

## **Declaration of Arrest**

DR#: 20-18994

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are a misdemeanor).

EXHIBIT 2

AA000058

**APPLICATION AND AFFIDAVIT  
PROPERTY TO BE SEIZED  
EXHIBIT 2**

**DR: 20-18994**

- All forensic processing necessary to conduct and complete robbery w/ deadly weapon investigation which along with confirming and/or establishing the identity of the suspect, as well as any other persons present. This will include but will not be limited to latent processing, photographs as well as the collection of all trace, biological or other physical evidence from the vehicle and duffel bag.
- Forensic collection of items located in the vehicles and duffel bag which may contain or possess forensic value which need to be relocated to a laboratory environment for further processing.
- Any and all firearms, ammunition, and accessories to firearms deemed to possibly be related to the incident and the original call for service to the Henderson Police Department Dispatch.
- Limited items of personal property showing identity of persons having possessory interest or to establish or clarify who all the victims and suspects are. Such located information is at the discretion to be collected or photographed.
- Any and all locked devices which are able to contain anything of evidentiary value to this investigation.
- DNA buccal swabs, known exemplar prints, and photographs of/from the person of Sean Orth (DOB \_\_\_\_\_ for comparison to forensic processing completed from the vehicle, duffel bag, and items located within previous locations.
- Cellular Phones
  - Any and all cellular phones, including any inserted data storage cards, power cords and/or charging materials, regardless of the phone's connection or service status.
- Forensic Search
  - That Affiant requests permission to forensically search the aforementioned electronic storage device(s) or media for all digital data files, records, documents and materials or otherwise evidence described in the warrant. Such search may be conducted on-scene or at an off-site location. Namely Affiant requests that a bit by bit image of all data storage devices be made by a forensic examiner to be searched through at a later date. All of the components could be seized and taken into the custody of the Henderson Police Department; if evidence relating to a felony is located the equipment may be seized as per the NRS.
- A forensic search of the collected evidence may require a range of data analysis techniques, therefore affiant requests permission to use whatever data analysis techniques appear necessary to locate and retrieve the evidence described in this affidavit.

AA000059

**APPLICATION AND AFFIDAVIT  
PROBABLE CAUSE  
EXHIBIT 3**

**DR: 20-18994**

On 10/28/2020 at approximately 0711 HPD Units were dispatched to The Marlow Apartments, 981 Whitney Ranch Drive #823, reference a reported armed robbery suspect who was currently at the location. Dispatch advised that the person reporting had stated that the suspect who had committed an armed robbery at the location the night before (reported under HPD DR#20-18989) was currently at their door, possibly armed, and was most likely driving their white Chevrolet Malibu with unknown "Body Shop" plates that he had unlawfully taken the night before.

Upon arrival HPD Patrol Officers observed a vehicle matching that description backing out of a parking space and driving from the area of the apartment. Several uniformed Patrol Units in marked Henderson Police Department Police vehicles began following the vehicle and initiated a stop by activating their overhead emergency lights and sirens, however the suspect vehicle failed to yield and continued towards the exit of the apartment complex, accelerating towards the exit gate. An additional HPD Unit arrived and was outside the exit gate, which was closed, and the suspect opened the driver side door, jumped out, and immediately ran. The suspect vehicle continued to drive forward, unoccupied, crashing into the exit gate of the apartment complex. The suspect was carrying a tan duffel bag as he fled and he threw it over the property wall just before he climbed over the same wall, running out to Whitney Ranch Drive.

Patrol Officers initiated a foot pursuit, issuing commands for the suspect to stop, however he continued to run leaving the duffel bag behind because he struggled to pick it back up quickly. The suspect ran across Whitney Ranch Drive, attempting to evade HPD Officers, however Officers were able to overtake the suspect and he was placed in custody after a short struggle due to the fact that the suspect refused to comply. The suspect was identified as Sean Orth (DOB ) and was confirmed to be the same suspect identified in the previous robbery.

Due to the fact that Sean failed to yield to HPD Patrol Officers who initiated a lawful stop on a suspect in a felony crime, the fact that Sean then fled from Officers after jumping out of the suspect vehicle, and the fact that Sean failed to comply with lawful orders which resulted in a foot pursuit to take him into custody, Sean was taken into custody for NRS 199.280.3 Resist Public Officer and secured in an HPD Patrol Vehicle.

Due to the fact that Sean was the suspect in an armed robbery HPD ISD was contacted and I, Detective K. Lippisch, as well as, Detective D. Ozawa, Detective K. LaPeer, and Detective R. Christopher, responded and assumed the investigation. After being advised of the above facts Detective Christopher and I made contact with Sean while Detectives Ozawa and LaPeer contacted the victims of the robbery, Louis Polanco (DOB ) and Jessie Caracciolo (DOB ).

I was later advised by Detectives Ozawa and LaPeer that Louis and Jessie had differentiating accounts of what had occurred over the past week, however they both stated that Sean had left the apartment the prior evening with a tan duffel bag that contained property that belonged to them (Louis and Jessie), not Sean. Louis stated that Sean had displayed a handgun and told Louis that he was taking Louis' guns and laptop, and then had directed Louis to the master bedroom where the items were placed into the tan duffel bag. Sean then left the residence with the items that did not belong to him which included: Louis' black and red Smith and Wesson MMP Shield 9mm handgun (unknown serial #), Jessie's Winchester Model 12 20 Gauge Shotgun (unknown serial #), and Louis' Military ID. Sean exited the apartment,

AA000060

**APPLICATION AND AFFIDAVIT  
PROBABLE CAUSE  
EXHIBIT 3**

walked to Louis' 2007 white Chevrolet Malibu with NV Body Shop plate 6528, entered the driver side of the vehicle, and drove away. Louis advised that in addition to the above items Sean was also in possession of his laptop and cellular phone.

Jessie stated that she had not observed Sean with a handgun and although she felt that what had just transpired was odd, she did not know that Sean had committed the robbery until Louis told her because she had been seated in the kitchen when this occurred. Louis did not initially want to report the incident due to the fact that Sean had threatened to come back and hurt them if the Police were notified, however Jessie convinced Louis that this needed to be reported so they called HPD, completed the report, HPD DR#20-18989, and stated they wanted to press charges for the crimes that Sean had committed.

Detective Christopher and I contacted Sean in the back of the patrol vehicle, and I advised him that I would like to interview him regarding the incidents that he had been involved in. Sean agreed to talk with me, and he was placed in the front passenger seat of my unmarked department vehicle. I entered the front driver seat and Detective Christopher entered the rear passenger seat. Sean immediately stated that he did not want the interview recorded and initially stated that he did not want to be read Miranda. I advised Sean that due to the fact that he was in handcuffs and not free to leave I was going to read him Miranda, which I did at 0842 hours, and which he stated he understood and waived. Sean then stated the following:

He has known Louis for approximately a week, as well as Louis' girlfriend however he could not recall her (Jessie's) name. He advised that he has been spending time with them, using the vehicle at times, and also using Louis' cellular phone because his vehicle is getting worked on and his cellular phone is busted. Sean stated that he had been at the apartment yesterday until approximately 1900 hours and then he left in the Chevrolet Malibu to go see his girlfriend, who he was never able to locate. Sean stayed out until approximately 0600 hours this morning, which is when he returned to the apartment, with the Chevrolet Malibu. Sean exited the vehicle with the tan duffel bag, which he stated had been inside the vehicle the entire time and he was just planning on bringing it inside the apartment for Louis since it was his. Sean walked up to the apartment door and knocked, however no one answered. Sean thought this was odd since he stated he was supposed to return the vehicle before sunrise per his arraignment with Louis, so he continued knocking several times. After still getting no answer, Sean returned to the vehicle, still carrying the tan duffel bag, and then started to drive away. Sean had decided to go to the store and get milk before returning and attempting contact at the apartment again. Sean additionally stated that it was odd that no one answered because prior to arriving at the apartment he had used Louis' cellular phone to call Louis' girlfriend and tell her that he was on his way. Sean then stated that when he had been stopped by HPD Units the phone had been in his pocket.

As Sean started to drive towards the exit to the complex, he observed several HPD Patrol Vehicles and an HPD Motors Unit in the complex. Sean then observed that the marked patrol vehicles were following him and that they had activated their overhead lights and sirens. At first Sean thought they were attempting to pass him, but then he realized that they were attempting to stop and contact him. Sean immediately felt that he had been set up and that the duffel bag in the vehicle must contain items that would get him into trouble, so he didn't stop. Sean continued driving, swerving because he was reaching for the duffel bag, and then when he realized he wouldn't be able to make it out the exit gate Sean exited the vehicle with the duffel bag and fled, jumping the wall of the property.

**APPLICATION AND AFFIDAVIT  
PROBABLE CAUSE  
EXHIBIT 3**

I asked Sean why he would flee because he claimed that he had not done anything wrong and that he didn't know what was inside the duffel bag (despite taking it with him when he fled). Sean responded by stating that he felt he had been set up and that it must be related to the duffel bag, and that he had made up his mind that he was going to try and get away.

Upon conclusion of the interview Sean was transported to the Henderson Detention Center where he was booked accordingly for Resist Public Officer. A records search returned to reveal that Sean was also a convicted felon (trafficking controlled substance, ex-felon possess firearm, robbery w/ deadly weapon, evade Police Officer, manufacture short barrel gun, and assault) and that he was P&P Priority 5, however attempts to contact his Supervising Officer have been negative at this time.

Due to the fact that Sean is the suspect in an armed robbery, that he had been operating the 2007 white Chevrolet Malibu, the fact that he had been in possession of the tan duffel bag that had been recovered by HPD Patrol, and the fact that he had been in possession of Louis' cellular phone and had stated that he had used the phone, the Affiant is requesting a search warrant be issued for the previous mentioned items including; the 2007 white Chevrolet Malibu bearing NV Body Shop plate 6528 that is currently in the custody of the Henderson Police Department and is currently located in the secured Henderson Police Department CSA garage, the tan duffel bag that is currently secured at the Henderson Police Department Main Station, and Louis' black LG cellular phone which had been in Sean's possession and which is currently secured with Sean's property at the Henderson Detention Center.

Due to the fact that it is known that suspect(s) in these types of criminal cases will use cellular and/or electronic devices to research, coordinate, and plan their actions, as well as the fact that they are likely to communicate their actions with others via their cellular device, and the fact that cellular devices commonly have active and passive GPS data collection that will correspond with the time and location of their crime(s) the Affiant requests that the cellular and electronic device be collected and forensically searched at the Henderson Police Department Main Station.

That this affidavit does not contain each and every fact known to your affiant related to this investigation but rather includes that information related to the probable cause pertaining to the search of the location referred to above.

That Affiant request that this Affidavit be sealed due to the fact this investigation is ongoing and additional follow up is needed. Information and further follow up learned from this search warrant could be jeopardized, if details of this case were to be released.

WHEREFORE, Affiant requests that a Search Warrant be issued directing a search for and seizure of the aforementioned items at the location set forth herein between the hours of 7:00 am and 7:00 pm.

1 STEVEN B. WOLFSON  
Clark County District Attorney  
2 Nevada Bar #001565  
ERIKA MENDOZA  
3 Chief Deputy District Attorney  
Nevada Bar #12520  
4 200 Lewis Avenue  
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5 (702) 671-2500  
Attorney for Plaintiff  
6

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COURT

2020 DEC -8 P 3:05

FILED *KZ*

7 JUSTICE COURT, HENDERSON TOWNSHIP  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 SEAN RODNEY ORTH,  
13 #6111549

14 Defendant.

CASE NO: 20CRH001571

DEPT NO: 1

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS CHARGES**

16 DATE OF HEARING: December 9, 2020  
17 TIME OF HEARING: 9:30 am

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
19 District Attorney, through ERIKA MENDOZA, Chief Deputy District Attorney, and hereby  
20 submits the attached Points and Authorities in Opposition to Defendant's MOTION TO  
21 DISMISS CHARGES.

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

25 //

26 //

27 //

28 //



1 POINTS AND AUTHORITIES

2 STATEMENT OF FACTS

3 Offense

4 On October 28, 2020, Henderson Police received a call wherein the person reporting  
5 said a man who robbed him the night before had returned to his residence and was banging on  
6 the door. See, Declaration of Arrest, Defendant Exhibit 1. The person reporting said the  
7 suspect was possibly armed and likely driving a white Malibu with "body shop" plates. Id.  
8 When police arrived, they saw said vehicle backing out of a parking space and attempted to  
9 initiate a stop by activating their lights and sirens. Id. The driver failed to stop and accelerated  
10 towards the exit gate of the apartment complex, which was closed. Id. The driver, later  
11 identified as Defendant, jumped out of the vehicle carrying a tan duffle bag and fled on foot,  
12 leaving the vehicle to crash into the exit gate. Id. Defendant ignored multiple officers'  
13 commands to stop. Id. During the pursuit Defendant dropped the bag. Id. Officers eventually  
14 tased and apprehended Defendant. Id. Even after in police custody Defendant continued to  
15 struggle and refused to comply. Id.

16 Detectives Ozawa and Lapeer responded and spoke with Louis Polanco and Jessie  
17 Caracciolo, the individuals possibly involved in the robbery from the night prior. Id.  
18 Detectives Lippisch and Christopher made contact with Defendant. Id.

19 Detectives Ozawa and Lapeer relayed their conversations with Mr. Polanco and Ms.  
20 Caracciolo to Detective Lippisch, who later memorialized a summary of the conversations in  
21 the Declaration of Arrest. Id. According to the Declaration of Arrest, Mr. Polanco told  
22 detectives that Defendant had come to the residence the night before, displayed a handgun,  
23 directed Mr. Polanco to the bedroom, demanded Mr. Polanco's guns and laptop, placed (or  
24 directed Mr. Polanco to place) the items into a tan duffle bag, left the apartment with the duffle  
25 bag, got into Mr. Polano's white Malibu and drove away. Id. Mr. Polanco said Defendant was  
26 also in possession of Mr. Polanco's phone. Id. According to the Declaration of Arrest, Ms.  
27 Caracciolo told detectives she was in the kitchen when the events occurred. Id. Ms. Caracciolo  
28 said she did not see Defendant with a gun but felt something odd was happening. Id. Ms.

1 Caracciolo saw Defendant leave with the tan duffle bag, then Mr. Polanco told her about the  
2 robbery. Id.

3 Defendant told Detectives Lippisch and Christopher that he would talk but refused to  
4 be recorded. Id. Defendant told detectives he has known Mr. Polanco and Ms. Caracciolo for  
5 approximately a week. Id. Defendant said he has been spending time with them, has been using  
6 Mr. Polanco's phone because Defendant's is broken, and has used Mr. Polanco's vehicle at  
7 times. Id. Defendant said he was at Mr. Polanco's apartment until approximately 7:00pm the  
8 night before and left in Mr. Polanco's vehicle to go see his (Defendant's) girlfriend but was  
9 never able to find her. Id. While he did not find his girlfriend, Defendant stayed out until  
10 approximately 6:00am when he returned to the apartment with the vehicle. Id. Defendant said  
11 there was a tan duffle bag with unknown contents in the vehicle the entire time he possessed  
12 the vehicle and randomly decided to bring the bag inside when he returned to Mr. Polanco's  
13 residence. Id. Defendant knocked on Mr. Polanco's door, but no one answered. Id. Defendant  
14 returned to the vehicle with the duffle bag and started to drive away. Id. Defendant noticed  
15 officers attempting to stop him with their lights and sirens activated and concluded he must  
16 have been set up and there must be something problematic in the duffle bag. Id. Defendant  
17 therefore decided he needed to try and get away from the police. Id.

18 According to the Declaration of Arrest, Detective Lippisch contacted Detectives Ozawa  
19 and Lapeer, told them Defendant's version of events, and asked them to follow up with Mr.  
20 Polanco and Ms. Caracciolo. Id. Detectives Ozawa and Lapeer spoke with witnesses again,  
21 relayed the conversation back to Detective Lippisch, who summarized the conversation in the  
22 Declaration of Arrest. Id. The Declaration of Arrest describes that Mr. Polanco and Ms.  
23 Caracciolo admitted they had allowed Defendant to use the vehicle and cell phone at some  
24 point and that Defendant had been spending time at the apartment for approximately a week.  
25 Id.

26 Detectives subsequently learned Defendant was a convicted felon for numerous  
27 offenses, including Trafficking Controlled Substance, Possession Firearm by Prohibited  
28 Person, Robbery With Use of a Deadly Weapon, Evading Police Officer, Manufacture Short

1 Barreled Gun, and Assault. Id. Moreover, Detectives discovered Defendant was on supervision  
2 with the Department of Parole and Probation. Id.

3 Based on the foregoing, Detectives obtained a warrant to search the vehicle, the duffle  
4 bag, and a phone. Id. Detectives Lapeer and Ozawa searched the bag and discovered a firearm,  
5 laptop, motorcycle helmet, ammunition, tactical light with mount, vice grips, and a chisel tool.  
6 Id. Defendant was arrested and charged with Possession of Firearm by Prohibited Person in  
7 the instant case. Id.

### 8 **Procedural History**

9 Defendant was arraigned on November 5, 2020 and a preliminary hearing was  
10 scheduled for November 17, 2020. Id. On November 17, 2020, the State filed a Motion to  
11 Continue because both Detectives Ozawa and Lapeer were unavailable. The Court granted the  
12 continuance and rescheduled the hearing for December 3, 2020. The State also filed an  
13 Amended Criminal Complaint adding a charge for Stop Required on Signal of Police Officer.  
14 Defendant claimed he had already pled guilty to Resisting Public Officer for the same event  
15 in Henderson Municipal Court, alleged there were potential double jeopardy problems, and  
16 objected to the additional charge. The Court requested the State to investigate the Municipal  
17 Court case to allow all parties to more substantively discuss any potential double jeopardy  
18 issues at a later date.

19 On December 1, 2020, Defendant filed several motions, including two (2) Motions to  
20 Dismiss Charges. While the titles of the Motions are the same, the substance differs. One  
21 Motion to Dismiss focuses mainly alleged problems with the State's Motion to Continue. The  
22 other focuses on alleged problems with discovery and the State's Amended Criminal  
23 Complaint. Herein, the State responds to the Motion to Dismiss alleging problems with the  
24 discovery and Amended Criminal Complaint.

25 Defendant was transported to NDOC prior to the December 3, 2020 preliminary  
26 hearing. Due to covid quarantine issues, Defendant was not transported to Court for the  
27 December 3, 2020 hearing. As such, the Court rescheduled the hearing for December 9, 2020.

28 //

1 **Discovery**

2 At initial arraignment Defendant was provided with initial discovery, which included,  
3 among other items, the Declaration of Arrest. The State reviewed the Declaration of Arrest on  
4 November 6, 2020, the day the undersigned received the file. The State subsequently requested  
5 additional reports and items related to the original robbery event (20-18989) and the arrest  
6 (20-18994)<sup>1</sup>.

7 The State has periodically received various items from Henderson Police Department  
8 in multiple batches. The State has been provided the items to defense counsel as it received  
9 them. However, the State notes the undersigned left work on November 18, 2020 due to covid  
10 symptoms. On November 19, 2020, the undersigned tested positive for covid and was  
11 instructed by the County not to work from the office or remotely. The undersigned arranged  
12 for some colleagues to tend to the outstanding discovery in the instant case, but the County  
13 instructed employees to avoid entering the undersigned's office until November 23, 2020 due  
14 to possible covid contamination. Once employees were allowed in the undersigned's office,  
15 they assisted in copying additional discovery for defense counsel.

16 On November 30, 2020, the undersigned returned to work. Since returning to work the  
17 undersigned has continued to provide discovery items to defense counsel upon receipt.

18 **ARGUMENT**

19 Defendant requests the Court to dismiss the charges based on three (3) separate  
20 grounds. The State addresses each in turn.

21 **A. Review and Disclosure of Discovery**

22 **1. Disclosure of Discovery**

23 First, Defendant alleges State violated 171.1965(a)(b)(c) by not disclosing the name  
24 of any officers or statements or reports made by them or discovery related to the evading  
25 charge. As to the officers' names, nothing in NRS 171.1965 requires the State to provide said  
26

27  
28 <sup>1</sup> The State is not conceding all items requested and/or provided are statutorily required to be disclosed prior to preliminary hearing or necessary to conduct an informed preliminary hearing. The State often provides discovery above and beyond that which it is legally required to provide.

1 names prior to the preliminary hearing. Moreover, the State believes a witness list, which  
2 contains several officers' names was provided at initial arraignment<sup>2</sup>.

3 As to the reports, the Declaration of Arrest, which contains the facts underlying both  
4 the Stop Required and Possession of Firearm by Prohibited Person charges, was provided at  
5 initial arraignment. The State has since provided additional reports. NRS 171.1965(a) requires  
6 the State to provide reports "within the possession or custody of the prosecuting attorney".  
7 The language is more narrow than the corresponding discovery statute for trial, which requires  
8 the State to turn over reports "within the possession, custody or control of the State, the  
9 existence of which is known, or by the exercise of due diligence may become known, to the  
10 prosecuting attorney". The different language between the statutes acknowledges the undue  
11 burden that would be placed on the State if it were required to disclose everything possibly in  
12 its constructive, rather than actual, possession five (5) days prior to a fifteen (15) day hearing  
13 setting.

14 While the State does not concede it was statutorily required to provide any additional  
15 reports prior to the preliminary hearing, it did request and provide additional reports. Defense  
16 counsel is in possession of all reports the State received in response to its inquiry for reports  
17 under both events and by the time of the next preliminary hearing date will have been in  
18 possession of said reports for two (2) weeks. Thus, even assuming NRS 171.1965 requires  
19 disclosure of these additional reports, the State has met its duty.

20 Moreover, to the extent Defendant claims he should have had said reports five (5) days  
21 prior to the initial preliminary hearing setting, Defendant provides no authority for his  
22 argument that the remedy for late disclosure is dismissal. NRS 171.1965(d) specifically  
23 provides that the Court should not continue a hearing due to failure to disclose required  
24 discovery unless the defendant is prejudiced by the failure to disclose. Thus, NRS 171.1965(d)  
25 contemplates the remedy for failure to disclose is a continuance, rather than dismissal.  
26 Moreover, even if Defendant were simply seeking a continuance rather than a dismissal, his

27  
28 <sup>2</sup> The initial discovery was been provided at initial arraignment, for which the undersigned was not present. The State does not have an itemized list of what was included in said initial discovery, however, based on experience the State believes this witness list would have been included in the initial discovery.

1 request would fail under NRS 171.1965(d) as he has not been prejudiced by late disclosure of  
2 additional reports because the Declaration of Arrest contains the facts underlying the charged  
3 offenses. Defendant's claim should therefore be denied.

4 2. Investigation of Discovery

5 Second, Defendant alleges the charges should be dismissed as the State failed to  
6 investigate the discovery. Defendant arrives at such conclusion because the Declaration of  
7 Arrest says Defendant was arrested for Resisting Public Officer, but the State informed the  
8 Court on November 17, 2020, that it was unaware of the Henderson Municipal Court case  
9 involving said charge arising out of the same event. However, simply because Defendant was  
10 arrested for Resisting does not mean there was a Municipal Court case and/or that Defendant  
11 pled guilty in said case. Moreover, such is irrelevant as the Resisting charge does not prohibit  
12 the State from charging Stop Required by Signal of Police Officer in the instant case<sup>3</sup>. The  
13 State informed the Court of as much when the matter was discussed on November 17, 2020.

14 Further, Defendant cites Davis v. Sheriff, 106 Nev. 145, 787 P.2d 1241 (1990) to  
15 support his conclusion that "failure to investigate discovery" should lead to dismissal.  
16 However, as discussed at the last hearing, the issue in Davis v. Sheriff was the State asked for  
17 a continuance via ex parte communication the day before the preliminary hearing. Id. The  
18 Court found such was improper because the reason for the continuance was an issue the State  
19 should have known about several months prior. Id. Thus, the State's failure to investigate at  
20 an earlier time amounted to a conscious indifference to the defendant's rights, which led the  
21 Court to conclude the State did not have good cause for its late request to continue the  
22 preliminary hearing. Id. Here, by contrast, the State's alleged failure to investigate, even if  
23 true, was not the cause of the continuance nor any prejudice to Defendant. The preliminary  
24 hearing was continued because necessary witnesses for the Possession of Firearm by  
25 Prohibited Person charge were unavailable. Defendant's claim should therefore be denied.

26 //

27 //

28 <sup>3</sup> The State will not engage in the double jeopardy legal analysis here as Defendant has yet to present a Motion on double jeopardy grounds.

1       3. Discovery Related to Stop Required Charge

2       Third, Defendant cites to Hooker v. Eighth Judicial District Court, 130 Nev. 1189, 2014  
3 WL 1998741 (2019), to suggest the charges should be dismissed. Defendant Hooker was  
4 initially charged with alcohol DUI. Id. At the preliminary hearing the State filed an Amended  
5 Complaint adding a DUI drugs theory and Reckless driving. Id. The State insisted there was  
6 no additional discovery relevant to the DUI drugs charge. Id. However, during the preliminary  
7 hearing the State admitted a toxicology report demonstrating Hooker was under the influence  
8 of marijuana at the time of the charged offense. Id. The report was the only evidence of  
9 marijuana intoxication to support the DUI drugs theory and the State admitted it had not  
10 provided Hooker with the toxicology report. Id. The Supreme Court found the State acted  
11 intentionally or recklessly and thereby violated its duty to act with honesty, candor, and  
12 fairness. Id. The Supreme Court also noted that the proper remedy at the time of the  
13 preliminary hearing would have been a continuance rather than a dismissal. Id. However,  
14 because at the time the Nevada Supreme Court considered the matter it was already set for  
15 trial in District Court, the Nevada Supreme Court found the only remedy was dismissal of the  
16 DUI drugs theory. Id.

17       The instant case is distinguishable from Hooker in several ways. First, the State in  
18 Hooker at one moment claimed there was no additional discovery for the DUI drugs charge,  
19 then later the same day attempted to admit additional discovery for the DUI charge which had  
20 never been provided to Hooker. Thus, the State was apparently in possession of the new  
21 discovery when it claimed there was no new discovery. Here, by contrast, the State has  
22 consistently been turning discovery over to defense counsel as soon as practically possible.  
23 Second, in Hooker, the only evidence of the DUI drugs charge was contained in the late  
24 disclosed report. Here, the Declaration of Arrest, which Defendant received at initial  
25 arraignment, contains the facts related to the Stop Required charge. The Declaration of Arrest  
26 was in fact the only report the State had when it decided to add the Stop Required charge.  
27 Thus, Defendant, unlike Hooker, can ascertain the basis for the Stop Required charge from  
28 discovery that was in his possession from his first appearance. Third, the Nevada Supreme

1 Court in Hooker noted the proper remedy under NRS 171.1965 for failure to provide discovery  
2 prior to preliminary hearing is a continuance rather than a dismissal. The only reason it  
3 dismissed the charges in Hooker is because of the procedural history, which is different than  
4 the instant case, specifically that Hooker's case was already pending in District Court thus he  
5 had already been prejudiced by the Justice Court's failure to grant the proper remedy of a  
6 continuance. Thus, here, even if the State failed to provide Defendant with necessary discovery  
7 to support new the charge, the remedy is a continuance. Defendant's claim should therefore  
8 be denied.

9 **B. Failure to File Motion to Amend Complaint Five (5) Days Prior to Preliminary**  
10 **Hearing**

11 Defendant alleges the State violated NRS 171.178, 178.478, and 178.476 by filing an  
12 Amended Complaint on November 17, 2020 at the time set for preliminary hearing. Defendant  
13 does not explain how NRS 171.178 relates to his claim. Defendant similarly does not explain  
14 how NRS 178.476 relates to his claim. As to NRS 178.478, Defendant claims the District  
15 Court motion timing rules apply in Justice Court and require the State to file a Motion to  
16 Amend Criminal Complaint five (5) days prior to the preliminary hearing.

17 As to application of NRS 178.478 in Justice Court, Defendant cites Davis v. Sheriff,  
18 106 Nev. 145, 787 P.2d 1241 (1990). The Court in Davis did suggest NRS 178.478 applies to  
19 motions made in Justice Court despite the rule specifically applying to District Court trials.  
20 However, the State could find no other case referring to such standard. Notably, this Defendant  
21 is distinguishable from the defendant Davis as it appears defendant Davis was out of custody  
22 and the case had been pending for several months. Here, by contrast, the preliminary hearing  
23 in question was just fifteen (15) days after the initial arraignment, making compliance with  
24 NRS 178.478 more unreasonable.

25 This Court already noted on November 17, 2020 that applying the District Court timing  
26 rules to motions in Justice Court prior to fifteen (15) day preliminary hearing setting is  
27 unreasonable and unduly burdensome. The undersigned has never once in nine (9) years seen  
28 a defense attorney, the party generally requesting to continue hearings, file a written motion  
to continue five (5) days in advance of a preliminary hearing. The State suspects the Court has



1 never received a written motion to continue from a defense attorney five (5) days in advance  
2 of a preliminary hearing. Requiring motions five (5) days prior to preliminary hearing would  
3 be especially unreasonable in Henderson Justice Court as the Court is only in session every  
4 third day Monday to Thursday and not in session on Fridays. Here, Defendant was arraigned  
5 on November 5, 2020. While the State knew the facts of the Evading upon reading the  
6 Declaration of Arrest, it did not learn the names of the officers involved, which is part of the  
7 State's pleading language, until November 10, 2020. The Court's next session was November  
8 17, 2020, the day the State filed the Amended Complaint. Thus, the State filed the Amended  
9 Complaint as soon as possible.

10 Even assuming NRS 178.478 applies to require parties to file motions five (5) days in  
11 advance of a preliminary hearing, Defendant provides no authority to suggest a motion is even  
12 necessary for the State to file an Amended Complaint. The State is free to charge Defendant  
13 with any crimes for which probable cause exists. The State did email the Amended Criminal  
14 Complaint to defense counsel on November 12, 2020, so defense counsel was on notice of the  
15 proposed additional charge five (5) days prior to the preliminary hearing. Defendant's claim  
16 should therefore be denied.

17 **C. Preliminary Hearing Delay to Investigate Charges**

18 Defendant alleges the Court abused its discretion in agreeing to continue the  
19 preliminary hearing to allow the State to investigate the Municipal Court charges to determine  
20 whether charging the Stop Required offense would violate double jeopardy. Defendant  
21 misrepresents the basis for the continuance. The preliminary hearing was continued due to  
22 unavailability of a necessary witness, not to investigate the Municipal Court charge. Moreover,  
23 Defendant has yet to even file a formal motion alleging double jeopardy applies.

24 Defendant also alleges the Court improperly continued the preliminary hearing  
25 eighteen (18) days rather than fifteen (15) days. On December 3, 2020, the Court indicated it  
26 would not entertain this claim as the Court is permitted to exceed the general fifteen (15) day  
27 rule to accommodate its calendar. Defendant's claim should therefore be denied.

28 //

1 CONCLUSION

2 In light of the foregoing, the State respectfully requests that the Court deny Defendant's  
3 Motion to Dismiss charges.

4 DATED this 8th day of December, 2020.

5 Respectfully submitted,

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

9 BY /s// ERIKA MENDOZA  
10 ERIKA MENDOZA  
11 Chief Deputy District Attorney  
12 Nevada Bar #12520

13 CERTIFICATE OF ELECTRONIC TRANSMISSION

14 I hereby certify that service of the above and foregoing was made this 8th day of  
15 December, 2020, by electronic transmission to:

16 PUBLIC DEFENDER  
17 pdclerk@clarkcountynv.gov

18 BY /s// E. Del Padre  
19 E. DEL PADRE  
20 Secretary for the District Attorney's Office  
21  
22  
23  
24  
25  
26  
27

28 EM/em/GCU

1 STEVEN B. WOLFSON  
Clark County District Attorney  
2 Nevada Bar #001565  
ERIKA MENDOZA  
3 Chief Deputy District Attorney  
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Attorney for Plaintiff  
6

HENDERSON JUSTICE  
COURT

2020 DEC -8 P 3: 07

FILED KZ

7 JUSTICE COURT, HENDERSON TOWNSHIP  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 SEAN RODNEY ORTH,  
13 #6111549

14 Defendant.

CASE NO: 20CRH001571

DEPT NO: 1

15 STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

16 DATE OF HEARING: DECEMBER 9, 2020  
17 TIME OF HEARING: 9:30 AM

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
19 District Attorney, through ERIKA MENDOZA, Chief Deputy District Attorney, and hereby  
20 submits the attached Points and Authorities in Opposition to Defendant's MOTION TO  
21 SUPPRESS.

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

25 //

26 //

27 //

28 //

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 On October 28, 2020, Henderson Police received a call wherein the person reporting  
4 said a man who robbed him the night before had returned to his residence and was banging on  
5 the door. See, Declaration of Arrest, Defendant Exhibit 1. The person reporting said the  
6 suspect was possibly armed and likely driving a white Malibu with "body shop" plates. Id.  
7 When police arrived they saw said vehicle backing out of a parking space and attempted to  
8 initiate a stop by activating their lights and sirens. Id. The driver failed to stop and accelerated  
9 towards the exit gate of the apartment complex, which was closed. Id. The driver, later  
10 identified as Defendant, jumped out of the vehicle with a tan duffle bag and fled on foot,  
11 leaving the vehicle to crash into the exit gate. Id. Defendant ignored multiple officers'  
12 commands to stop. Id. During the pursuit Defendant dropped the bag. Id. Officers eventually  
13 tased and apprehended Defendant. Id. Even after in police custody Defendant continued to  
14 struggle and refused to comply. Id.

15 Detectives Ozawa and Lapeer responded and spoke with Louis Polanco and Jessie  
16 Caracciolo, the individuals possibly involved in the robbery from the night prior. Id.  
17 Detectives Lippisch and Christopher made contact with Defendant. Id.

18 Detectives Ozawa and Lapeer relayed their conversations with Mr. Polanco and Ms.  
19 Caracciolo to Detective Lippisch, who later memorialized a summary of the conversations in  
20 the Declaration of Arrest. Id. According to the Declaration of Arrest, Mr. Polanco told  
21 detectives that Defendant came to the residence the night before, displayed a handgun, directed  
22 Mr. Polanco to the bedroom, demanded Mr. Polanco's guns and laptop, placed (or directed  
23 Mr. Polanco to place) the items into a tan duffle bag, left the apartment with the duffle bag,  
24 got into Mr. Polano's white Malibu and drove away. Id. Mr. Polanco said Defendant was also  
25 in possession of Mr. Polanco's phone. Id. According to the Declaration of Arrest, Ms.  
26 Caracciolo told detectives she was in the kitchen when the events occurred. Id. Ms. Caracciolo  
27 said she did not see Defendant with a gun, but felt something odd was happening. Id. Ms.  
28

1 Caracciolo saw Defendant leave with the tan duffle bag, then Mr. Polanco told her about the  
2 robbery. Id.

3 Defendant told Detectives Lippisch and Christopher that he would talk, but refused to  
4 be recorded. Id. Defendant told detectives he has known Mr. Polanco and Ms. Caracciolo for  
5 approximately a week. Id. Defendant said he has been spending time with them, has been using  
6 Mr. Polanco's phone because Defendant's is broken, and has used Mr. Polanco's vehicle at  
7 times. Id. Defendant said he was at Mr. Polanco's apartment until approximately 7:00pm the  
8 night before and left in Mr. Polanco's vehicle to go see his (Defendant's) girlfriend, but was  
9 never able to find her. Id. While he did not find his girlfriend, Defendant stayed out until  
10 approximately 6:00am when he returned to the apartment with the vehicle. Id. Defendant said  
11 there was a tan duffle bag in the vehicle the entire time he possessed the vehicle and randomly  
12 decided to bring the bag inside when he returned to Mr. Polanco's residence. Id. Defendant  
13 knocked on Mr. Polanco's door, but no one answered. Id. Defendant returned to the vehicle  
14 with the duffle bag and started to drive away. Id. Defendant noticed officers attempting to stop  
15 him with their lights and sirens activated and, instead of complying, he concluded he must  
16 have been set up and there must be something problematic in the duffle bag. Id. Defendant  
17 therefore decided he needed to try and get away from the police. Id.

18 According to the Declaration of Arrest, Detective Lippisch contacted Detectives Ozawa  
19 and Lapeer, told them Defendant's version of events, and asked them to follow up with Mr.  
20 Polanco and Ms. Caracciolo. Id. Detectives Ozawa and Lapeer spoke with witnesses again,  
21 relayed the conversation to Detective Lippisch, who summarized the conversation in the  
22 Declaration of Arrest. Id. The Declaration of Arrest describes that Mr. Polanco and Ms.  
23 Caracciolo admitted they had allowed Defendant to use the vehicle and cell phone at some  
24 point and that Defendant had been spending time at the apartment for approximately a week.  
25 Id.

26 Detectives subsequently learned Defendant was a convicted felon for numerous  
27 offenses, including Trafficking Controlled Substance, Possession Firearm by Prohibited  
28 Person, Robbery With Use of a Deadly Weapon, Evading Police Officer, Manufacture Short

1 Barreled Gun, and Assault. Id. Moreover, Detectives discovered Defendant was on supervision  
2 with the Department of Parole and Probation. Id.

3 Based on the foregoing, Detectives obtained a warrant to search the vehicle, the duffle  
4 bag, and a phone. Id.; Defendant's Exhibit 2, Search Warrant Affidavit. Detectives Lapeer and  
5 Ozawa searched the bag and discovered a firearm, laptop, motorcycle helmet, ammunition,  
6 tactical light with mount, vice grips, and a chisel tool. Defendant Exhibit 1, Declaration of  
7 Arrest. Defendant was arrested and charged with Possession of Firearm by Prohibited Person  
8 in the instant case. Id.

9 On December 1, 2020, Defendant filed a Motion to Suppress Evidence, to which the  
10 State responds below.

### 11 ARGUMENT

12 Defendant makes two (2) claims related to search and seizure issues. First, Defendant  
13 alleges police improperly arrested him without a warrant. On December 3, 2020, the Court  
14 indicated it would not consider said argument as police are lawfully permitted to arrest an  
15 individual without a warrant so long as probable cause exists. The State will therefore not  
16 address Defendant's first claim. Second, Defendant alleges Detective Lippisch withheld  
17 material information affecting the probable cause determination in the warrant affidavit.  
18 Defendant's claim lacks merit and must be denied.

19 Search warrants must not issue absent a showing of probable cause. U.S. Const. Amend  
20 IV; N.V. Const. Art. I, § 18; NRS 179.045. Probable cause requires trustworthy facts and  
21 circumstances which would cause a person of reasonable caution to believe that it is more  
22 likely than not that the specific items to be searched are seizable and will be found in the place  
23 to be searched. State v. Sample, 134 Nev. 169, 414 P.3d 814 (2018), citing Keese v. State,  
24 110 Nev. 997, 879 P.2d 63 (1994). Id. While generally not admissible at trial, a suspect's  
25 criminal history, including arrests and convictions, is a practical consideration of everyday life  
26 that may be considered for probable cause determination. U.S. v. Harris, 403 U.S. 573, 91  
27 S.Ct. 2075 (1971).

1 The probable cause showing must be based on truthful statements set forth by an affiant  
2 presenting facts to a magistrate. Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674 (1978). As  
3 to the definition of “truthful”, the Supreme Court specifically explained –

4 “This does not mean ‘truthful’ in the sense that every fact recited in the warrant  
5 affidavit is necessarily correct, for probable cause may be founded upon hearsay  
6 and upon information received from informants, as well as upon information  
7 within the affiant’s own knowledge that sometimes must be garnered hastily.  
8 But surely it is to be ‘truthful’ in the sense that the information put forth is  
9 believed or appropriated accepted by the affiant as true.”

10 Id. at 165. Where the affidavit includes deliberate falsehoods or statements made with reckless  
11 disregard for the truth, and but for such statements, probable cause would be lacking, the  
12 resulting search warrant is voided and any evidence obtained therefrom excluded. Id.

13 Defendants alleging the a search warrant contained falsehoods or misrepresentations  
14 must meet two (2) conditions to warrant an evidentiary hearing – 1) the defendant must make  
15 an allegation, accompanied by an offer of proof, of a deliberate falsehood or reckless disregard  
16 for the truth included within the affidavit; and 2) but for the statement that is the subject of the  
17 alleged falsity or reckless disregard, the warrant lacks probable cause. Id. at 171-72. Where  
18 the alleged falsity or reckless is disregard is related to a material omission, the defendant must  
19 show that had the omitted information been included in the application probable cause would  
20 have been defeated. U.S. v. Cokley-Johnson, 899 F.2d 297 (4<sup>th</sup> Cir. 1990). If a defendant does  
21 not meet both conditions, he is not entitled to a hearing and the motion must be summarily  
22 denied. Id.

23 As to the first prong, the deliberate falsehood or reckless disregard for the truth, the  
24 defendant must show the affiant entertained serious doubts with regard to the truth of the  
25 search warrant’s allegations. Pamieri v. Clark County, 131 Nev. 1028, 367 P.3d 442 (2015),  
26 internal citations omitted. Alternatively, the defendant may claim the affiant deliberately  
27 withheld the truth based on circumstances evincing obvious reason to doubt the veracity of the  
28 allegations in the search warrant affidavit. Id. Conclusory assertions and allegations of  
negligence or innocent mistake are not sufficient to warrant an evidentiary hearing. Id.  
Moreover, a defendant attacking a search warrant affidavit cannot rely on false statements of

1 a nongovernmental agent. Id. The challenge is limited to reckless disregard or deliberate falsity  
2 of the affiant. Id.

3 Defendant alleges Detective Lippisch intentionally withheld crucial information which  
4 impeaches Louis Polanco's initial report of a robbery. Specifically, Defendant says Detective  
5 Lippisch should have included Jessie Carcciolo's statement that she did not see a gun or  
6 witness a robbery. Defendant must have missed two (2) entire paragraphs of the affidavit  
7 dedicated to explaining Mr. Polanco's and Mrs. Carcciolo's statements, including that Mr.  
8 Polanco said Defendant displayed a firearm and took property while Ms. Carcciolo said she  
9 did not see a firearm and did not realize a robbery occurred. See, Defendant's Exhibit 2,  
10 Affidavit, p.1-2. Further, the State notes that even assuming the summary of Ms. Caracciolo's  
11 statement is comprehensive and accurate, the fact that she did not see a gun or a robbery does  
12 not preclude the occurrence of a robbery in another room.

13 Further, Defendant alleges Detective Lippisch should have included the information  
14 that Mr. Polanco admitted he lent Defendant his car and cell phone. Defendant fails to meet  
15 his burden for an evidentiary hearing under either prong of Franks. The absence of the later  
16 revelation that Mr. Polanco may have on some prior date allowed Defendant to borrow his  
17 phone or car is not a material deliberate falsehood that affects probable cause. Regardless of  
18 whether Mr. Polanco previously allowed Defendant to use his car and cell phone, the totality  
19 of evidence leading up the search warrant support a finding of probable cause that he would  
20 be in possession of evidence related to a robbery.

21 Officers had Mr. Polanco's statement that Defendant threatened him with a firearm and  
22 took his property, to include a tan duffle bag containing firearms. While Ms. Caracciolo  
23 indicated she did not see a firearm and did not realize a robbery occurred, she indicated  
24 Defendant and Mr. Polanco were in another room together and she felt something odd was  
25 happening. Ms. Caracciolo then saw Defendant leave the apartment with the bag in question.  
26 Moreover, the witnesses reported in the call to police that Defendant was outside the apartment  
27 in a white Malibu. Police responded and in fact found Defendant in a white Malibu. When  
28 officers attempted to stop Defendant he fled the scene, refused to stop despite officers' lights



1 and sirens, crashed the vehicle into a gate, fled on foot while carrying a tan duffle bag matching  
2 that described as stolen by the witnesses, continued ignoring officers' commands to stop until  
3 they tased and physically restrained him.

4 While Detective Lippisch and the reviewing Court were aware of Defendant's claim  
5 that he was completely innocent and had no idea what was in the bag such is not persuasive  
6 enough to negate the exculpatory inference created by his flight when police attempted to stop  
7 him. Defendant's version of events is especially questionable as he refused to be recorded, is  
8 a multiple time convicted felon for similar crimes, and is currently on supervision with the  
9 Department of Parole and Probation.

10 In light of the foregoing, Defendant cannot demonstrate Detective Lippisch  
11 intentionally made a material omission in failing to state he subsequently learned Mr. Polanco  
12 may have let Defendant borrow his phone or car on a prior occasion. Further, Defendant cannot  
13 show that, had such information been included in the warrant affidavit that probable cause  
14 would have been defeated. Defendant is therefore not entitled to a hearing on the matter and  
15 the Motion must be summarily denied.

16 **CONCLUSION**

17 In light of the foregoing, the State respectfully requests that the Court deny Defendant's  
18 Motion to Suppress.

19 DATED this 8th day of December, 2020.

20 Respectfully submitted,

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

24 BY /s/ ERIKA MENDOZA  
25 ERIKA MENDOZA  
26 Chief Deputy District Attorney  
27 Nevada Bar #12520  
28

1                                    CERTIFICATE OF ELECTRONIC TRANSMISSION

2            I hereby certify that service of the above and foregoing was made this 8th day of  
3   December, 2020, by electronic transmission to:

4                                    PUBLIC DEFENDER  
5                                    pdclerk@clarkcountynv.gov

6                                    BY /s// E. Del Padre  
7                                    E. DEL PADRE  
8                                    Secretary for the District Attorney's Office

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TRAN

CASE NO. C352701-1

IN THE JUSTICE'S COURT OF HENDERSON TOWNSHIP

COUNTY OF CLARK, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

SEAN RODNEY ORTH,

Defendant.

CASE NO. 20CRH001571

REPORTER'S TRANSCRIPT

OF

PRELIMINARY HEARING

BEFORE THE HONORABLE SAMUEL G. BATEMAN

JUSTICE OF THE PEACE

WEDNESDAY, DECEMBER 9, 2020

APPEARANCES:

For the State:

ERIKA MENDOZA

Chief Deputy District Attorney

For the Defendant:

IN PROPER PERSON

Standby Counsel:

KARA SIMMONS

Deputy Public Defender

Reported by: Lisa Brenske, CCR #186

AA000082

12:00AM	1	<u>W</u> <u>I</u> <u>T</u> <u>N</u> <u>E</u> <u>S</u> <u>S</u> <u>E</u> <u>S</u>	
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25**INDEX OF EXHIBITS**

<u>Exhibit</u>	<u>Description</u>	<u>Admitted</u>
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STATE'S 2 - 5	JUDGMENTS OF CONVICTIONS	145

12:00AM 1 HENDERSON, NEVADA, DECEMBER 9, 2020  
2  
3 \* \* \* \* \*  
4  
11:03AM 5 THE COURT: Sean Orth, 20CRH1571, who is  
6 representing himself with Miss Simmons here as standby  
7 counsel.  
8 All right. Mr. Orth, let's take up your  
9 motions first and then we'll start the prelim depending  
11:04AM 10 how I rule on your motions, okay?  
11 DEFENDANT ORTH: Yes, sir. I'd like to  
12 invoke the rule of witnesses.  
13 THE COURT: Of what?  
14 DEFENDANT ORTH: The rule of witnesses.  
11:04AM 15 To exclude them.  
16 THE COURT: We'll exclude the witnesses  
17 once the preliminary hearing starts. So your motions  
18 to dismiss. You received Miss Mendoza's responses,  
19 correct, sir?  
11:04AM 20 DEFENDANT ORTH: I received them today,  
21 your Honor.  
22 THE COURT: Have you reviewed them?  
23 DEFENDANT ORTH: Yes. And I'd like to  
24 reply.  
11:04AM 25 THE COURT: I'm sorry?

11:04AM 1 DEFENDANT ORTH: I just received them  
2 today and I'd like the opportunity to reply.

3 THE COURT: Okay. Well, if you want to  
4 reply we'd have to continue the preliminary hearing.

11:04AM 5 So I'm going to take them up today, all right? Because  
6 yours kind of came in late as well from the last time  
7 we were here. So we're kind of scrambling. So we're  
8 just going to take up all the motions today and then  
9 we'll decide what we are going to do with the prelim,

11:04AM 10 okay?

11 DEFENDANT ORTH: Are we going to make  
12 additional arguments based on additional discovery  
13 disclosed to me today?

14 THE COURT: You can if you want. I'll let  
11:05AM 15 you make whatever arguments you want to make, okay? We  
16 have three different motions here. You had two  
17 different motions to dismiss, Mr. Orth. So one of them  
18 was based on the continuance. Did you want to make any  
19 other arguments based on the original continuance of

11:05AM 20 the preliminary hearing?

21 DEFENDANT ORTH: I do, your Honor.

22 THE COURT: Go ahead.

23 DEFENDANT ORTH: Would you like me to  
24 stand?

11:05AM 25 THE COURT: You can sit. Just speak up

11:05AM 1 because you have your mask on.

2 DEFENDANT ORTH: First of all, your Honor,

3 I'm in the state of Nevada's custody. Whatever

4 procedure they have for me appearing is within their

11:06AM 5 procedures, their policies. Miss Mendoza, when she

6 disclosed discovery to me, she gave me a notice of

7 intent to use audio visual technology pursuant to

8 NRS --

9 THE COURT: First I want to take up the

11:06AM 10 portion of your motion that you're complaining about

11 the original continuance. So go ahead.

12 DEFENDANT ORTH: This is part of it. This

13 is new discovery that I have.

14 THE COURT: What discovery are you

11:06AM 15 referring to?

16 DEFENDANT ORTH: This is the notice of

17 intent that was in the discovery that was given to me.

18 THE COURT: Are you doing any video

19 witnesses today?

11:06AM 20 MS. MENDOZA: No. And that is a

21 standard --

22 THE COURT: That's just a stock form that

23 the DA's office is including with the complaint getting

24 filed every day. So it's my understanding that that's

11:06AM 25 really irrelevant at this point because I don't think



11:06AM 1 Miss Mendoza intends to present anything by audio  
2 visual, correct?

3 MS. MENDOZA: That is correct. And that  
4 was included in all initial discovery packets.

11:07AM 5 DEFENDANT ORTH: I agree with that today,  
6 your Honor, but the thing is that in this notice of  
7 intent what the prosecutor is doing is they're telling  
8 defendants that they are subject to audio visual, the  
9 use of audio visual technology for the purpose of  
11:07AM 10 witness confrontation rights. They're basically saying  
11 they can present testimony. So we could have done that  
12 on November 17<sup>th</sup>. In fact, she states in her notice  
13 that pursuant to NRS 171.19751, if good cause otherwise  
14 exists, the magistrate must allow the witness to  
11:07AM 15 testify at the preliminary examination through the use  
16 of audio visual technology. She further goes on to  
17 state that her witnesses will be available no matter  
18 what jurisdiction they are in through audio visual  
19 technology.

11:07AM 20 So on November 17<sup>th</sup> Officer Ozawa, who  
21 was in the city of Las Vegas at the time, which we know  
22 because she admitted that on record, was in the  
23 jurisdiction of Las Vegas, and he also could have  
24 appeared by audio visual technology. However, the  
11:08AM 25 prosecutor did not move to show cause to use audio

11:08AM 1 visual technology so Officer Ozawa was not here. The  
2 problem is is that we have the defendant who is accused  
3 by the police and he is asking for a preliminary  
4 hearing in the cases that I've presented especially  
11:08AM 5 under Terpstra and Davis. They demonstrate that the  
6 preliminary hearing must be executed within 15 days.  
7 In fact, Davis does not have anything to do with  
8 unavailable witnesses. In that situation they just  
9 said good cause must be shown. So what she did is she  
11:08AM 10 gave notice of intent to use the audio visual  
11 technology to her advantage, but then when it came time  
12 for Officer Ozawa the night before the hearing to say  
13 hey, I'm in Las Vegas but I can't appear, then she  
14 abandoned showing cause under the statute to bring him  
11:08AM 15 in through use of audio visual technology, all of which  
16 I did not object to. So I didn't object to the use of  
17 audio visual technology. She could have done so. So  
18 she never had good cause. She ambushed me on that date  
19 and said I have good cause because he is telling me  
11:09AM 20 that he's unavailable because he's going to start his  
21 vacation today. That was it. That was the end of it.  
22 So that's the first extension to my argument based on  
23 this notice of intent.  
24 Secondly, she said in her motion that no  
11:09AM 25 other officer could have provided the information that

11:09AM 1 Officer Ozawa or Lapeer could have. However, today I  
2 was dawned with new discovery by a Detective Brandonn  
3 Trotter of Henderson PD. He is actually the one who  
4 did the search and photograph of the duffel bag that  
11:09AM 5 Ozawa is going be testifying to. The State's theory in  
6 this case is that patrol officers seen me exit the car  
7 with a duffel bag, then later detectives obtained the  
8 duffel bag and a search was later done by warrant and  
9 in the duffel bag there was a gun --

11:10AM 10 THE COURT: In the duffel bag there was  
11 what? I'm sorry.

12 DEFENDANT ORTH: They're claiming the  
13 duffel bag contained a gun. So they didn't ever see me  
14 with a gun. They didn't ever see me with a duffel bag.  
11:10AM 15 The patrolman seen me with a duffel bag according to  
16 his report. Then later on based on the search they're  
17 saying that there was a gun in the bag, the nexus being  
18 thus the connection for the possession. So I would  
19 like to enter this as an exhibit.

11:10AM 20 THE COURT: What is it you're holding?

21 DEFENDANT ORTH: It is a narrative by  
22 Henderson Police Department Officer Brandonn Trotter  
23 dated the 8th of December 2020 wherein he is describing  
24 how he performed a digital examination of the duffel  
11:10AM 25 bag and was taking photographs and he did the search

11:10AM 1 with Detective Lapeer. So my point being is that  
2 Detective Trotter could have came in and testified hey,  
3 I found the gun in the bag and we could have not had  
4 Sean waiting in prison for another 30 days. So when  
11:11AM 5 she was making her showing of good cause and she was  
6 saying that no other officer could testify to what  
7 Detective Ozawa is going to testify to, or Lapeer, they  
8 all three can testify to the same thing, the search of  
9 the duffel bag. So that was a misstatement in the  
11:11AM 10 representation to the Court. The Court should take  
11 that under consideration with the narrative if the  
12 Court would like.

13 THE COURT: Hang onto it for one second.  
14 Anything else, Mr. Orth?

11:11AM 15 DEFENDANT ORTH: That being said so that's  
16 just referring to the November 17<sup>th</sup> continuance.

17 THE COURT: Correct.

18 DEFENDANT ORTH: If you'll remember  
19 correctly, at that hearing, your Honor, the prosecutor  
11:12AM 20 stated that Officer Ozawa was in fact in the city of  
21 Las Vegas. That is a matter of record. I didn't make  
22 it up. I remember it clearly.

23 THE COURT: I believe she testified based  
24 on -- I don't think you looked at your phone, Miss  
11:12AM 25 Mendoza, you had some information that said he was

11:12AM 1 leaving this morning.

2 DEFENDANT ORTH: But he had not left yet.

3 MS. MENDOZA: I didn't know.

4 THE COURT: I don't know whether he had or

11:12AM 5 hadn't. The information that was provided was that he

6 was leaving on vacation the jurisdiction that morning

7 if I remember correctly.

8 MS. MENDOZA: He told me he was leaving

9 that morning so he was not available for court and also

11:12AM 10 he had the subpoena so he knew what time court was.

11 DEFENDANT ORTH: So that being said so he

12 was still within town.

13 THE COURT: We don't know that. I have

14 the information that I have which says he was leaving

11:12AM 15 that morning. He could have left before the

16 preliminary hearing, he could have left --

17 DEFENDANT ORTH: We can ask him, right?

18 THE COURT: You can ask him.

19 DEFENDANT ORTH: So my point being -- I

11:13AM 20 don't mean to interrupt, your Honor.

21 THE COURT: No. Go ahead.

22 DEFENDANT ORTH: So my point being is that

23 that being said that his vacation was put over, the

24 defendant's rights to have a preliminary hearing within

11:13AM 25 15 days, I was ambushed with that. So what I did is I

11:13AM 1 came in and showed the NRS statute which states that it  
2 shall be deemed contempt to not appear for a subpoena  
3 period. He was under subpoena. He should have been  
4 here. Whether or not he was here -- obviously he was  
11:13AM 5 told the night before hey, don't worry about it, I'll  
6 get a continuance, because he was here then, but he was  
7 under subpoena. So instead of obeying the subpoena, he  
8 violates the law and he doesn't obey his subpoena and  
9 they come in and ask you for a continuance. I cited  
11:13AM 10 good case law. The Nevada Supreme Court has said that  
11 good cause is a legal reason. Being in contempt of  
12 court, and the statute states that if a person is  
13 subpoenaed and he does not obey it, he shall be deemed  
14 in contempt. Contempt is illegal, it is not a legal  
11:13AM 15 reason for a continuance. If I wouldn't have been  
16 ambushed with the motion, I would have filed my written  
17 motion and we would not have found good cause because  
18 under Hill versus Sheriff she has to make a statement  
19 that the witness's presence could not be obtained. His  
11:14AM 20 presence could have been obtained. He was under  
21 subpoena. We should have followed the defendant's  
22 rights to have a preliminary hearing which is very  
23 strictly followed by the Nevada Supreme Court instead  
24 of allowing him -- we would upset his vacation a couple  
11:14AM 25 hours, and he's the one who is accusing me. All I'm

11:14AM 1 saying is that in her response she cites no legal  
2 citations that allows her to trump the citations that I  
3 provided the Court. None. Not one on the contempt, on  
4 the showing good cause, any of that. So she basically  
11:14AM 5 has confessed to error, your Honor.

6 THE COURT: Let me have Ms. Mendoza  
7 respond.

8 MS. MENDOZA: Your Honor --

9 THE COURT: Can you address the Trotter  
11:15AM 10 issue. That's news to me.

11 MS. MENDOZA: Sure. Let me approach  
12 because he's lying to you about what this report says.

13 THE COURT: All right.

14 MS. MENDOZA: And if this is going to  
11:15AM 15 continue, I don't think he should be permitted to  
16 represent himself. You can see at the bottom portion  
17 of this report that I just received today, that's why  
18 he just received it today, and later we can get into  
19 why I got it today. But it talks about how this  
11:15AM 20 Trotter searched a phone. He didn't search a bag. The  
21 defendant said he did a digital investigation of the  
22 duffel bag? I don't know what a digital investigation  
23 of a duffel bag would be or how it would be completed.  
24 But he's completely misrepresenting to your Honor that  
11:15AM 25 this Trotter was involved in the search of the bag, and

11:15AM 1 as he was --

2 THE COURT: Hang on a second. Trotter is  
3 the bottom portion of Page 11 of 11 of the report you  
4 just provided me. It looks like this is an incident  
11:16AM 5 report from Henderson Police Department. It looks like  
6 it has -- the way they keep their records is this is  
7 kind of the running tally of what various officers did  
8 and reported back to the main officer, correct?

9 MS. MENDOZA: Correct.

11:16AM 10 THE COURT: All right. So I show on  
11 Page 11 down at the bottom it says digital  
12 investigation.

13 MS. MENDOZA: And as he was --

14 THE COURT: Hang on. He got a search  
11:16AM 15 warrant. This looks like Mr. Trotter executed a search  
16 warrant or some sort of cell phone dump. Is that what  
17 he did?

18 MS. MENDOZA: Yes.

19 THE COURT: This doesn't have anything to  
11:16AM 20 do with the bag, Mr. Orth. What Trotter did is below  
21 where his name says Trotter and it has something to do  
22 with the cell phone.

23 MS. MENDOZA: And after Mr. Orth started  
24 with that, I stepped over and had Miss Simmons hand me  
11:16AM 25 the report he was arguing from and I confirmed that



11:16AM 1 we're looking at the same exact thing.

2 THE COURT: So here is the deal. With

3 regard to the motion to continue I'm not applying, Mr.

4 Orth, the five-day rule that you've cited in the

11:17AM 5 statute because if you look at every single solitary

6 case, whether it's Hill, whether it's Bustos, whether

7 it's Terpstra, T-E-R-P-S-T-R-A, none of those cases

8 apply in those particular statutes to motions to

9 continue preliminary hearings. The only one that's

11:17AM 10 ever kind of in an offhanded way apply to that statute

11 and Davis kind of said, oh, by the way, they also

12 didn't comply with that statute. So I don't believe

13 that statute has ever been applied consistently to

14 motions to continue preliminary hearings. So I'm not.

11:17AM 15 And the reason in part would be that usually within 15

16 days the State would have an almost impossible time

17 even complying with that statute most of the time. So

18 I am not extending the statute referenced in Davis to

19 the preliminary hearing in this particular case.

11:18AM 20 NRS 171.196 says you're entitled to a

21 preliminary hearing within 15 days unless for good

22 cause shown that it's continued. Hill says in order to

23 seek a continuance and show good cause the State must

24 provide an affidavit that states the names of the

11:18AM 25 absent witnesses, the diligence used to procure their

11:18AM 1 attendance, a brief summary of their expected testimony  
2 and whether the same facts can be proven by other  
3 witnesses. When the affiant first learned that the  
4 attendance of such witnesses could not be obtained, and  
11:18AM 5 that the motion is made in good faith and not for the  
6 purposes of delay. The Hill case actually does not  
7 necessarily require an extensive explanation of why in  
8 fact they can't attend. It simply says it has to have  
9 a brief summary of their expected testimony and  
11:19AM 10 diligence used to procure their attendance. And so the  
11 motion at its basis that was filed does meet those  
12 criteria A, B, C, D and E as it's stated in Hill.  
13 Could the motion have contained more specificity as to  
14 when they were coming and going? Yes. But when I went  
11:19AM 15 back and looked at Hill, those are the criteria.  
16 That's the specific language of the criteria and the  
17 motion met that barebones criteria.  
18 Your position that if a police officer was  
19 subpoenaed that they must come even if they are going  
11:20AM 20 on vacation or they're in some sort of mandatory  
21 training, yes, I arguably could make them show up.  
22 Courts could make them show up and hold them in  
23 contempt for not appearing, but the reason that there's  
24 this availability of this motion is to make it so that  
11:20AM 25 they don't have to comply with the subpoena because the

11:20AM 1 subpoena has essentially created a conflict for them,  
2 their inability to come to court. And so in this  
3 particular case were I to find that there was no basis  
4 for it on the particular day of, then, yes, I could  
11:20AM 5 have required them to appear and when they didn't  
6 appear, I could have dismissed the case. Those are the  
7 options for the judge.

8 In this particular case based on my  
9 reading of the Hill case and those provisions that the  
11:20AM 10 State met their burden to ask for a continuance and to  
11 show good cause and so that's why I granted it. And so  
12 I'm not going to dismiss the case based on your motion  
13 to continue at this particular time for the  
14 continuance -- I'm sorry -- your motion to dismiss for  
11:21AM 15 the continuance in this case.

16 Also it doesn't appear that Mr. Trotter  
17 had anything to do with your bag. I think you misread  
18 that report. Now, you just got it this morning so  
19 that's understandable.

11:21AM 20 What was the next motion you had? I just  
21 want to make it clear for the record that you said I  
22 reset it in 18 days. I did reset it in 16 days. So  
23 the 17<sup>th</sup> is 16 days if I remember correctly.

24 DEFENDANT ORTH: That's my miscalculation,  
11:21AM 25 your Honor.

11:21AM 1 THE COURT: That's all right.

2 Now, with regard to the motion and the

3 filing of the amended criminal complaint. At the time

4 I went back and looked at the report. The original

11:22AM 5 report that I think you had and that I was operating

6 off of did, correct me if I'm wrong, reference

7 allegations that you pled and that was the basis of the

8 additional charge of stop required.

9 Is that correct, Ms. Mendoza?

11:22AM 10 MS. MENDOZA: The original Declaration of

11 Arrest talks about him fleeing in a vehicle when

12 officers are following with lights and sirens, yes.

13 THE COURT: So what I was concerned about

14 at the time was the addition of that charge without

11:22AM 15 having reference to any information that you would have

16 had at the time that would have formed the basis for

17 the additional charge. If it was some wholly other

18 discovery that you hadn't received back on the 17<sup>th</sup>

19 and Miss Mendoza wanted to add that charge and then

11:22AM 20 continue the case, that's one thing that I was

21 concerned about at the time. I went back and looked at

22 the report. There was reference to, and you've read

23 it. It's an allegation. Whether it's true or not, the

24 reference was that you had fled and that was at least a

11:22AM 25 basis of fact for you to know that that particular

11:23AM 1 charge was potentially coming. So I'm not going to  
2 find that there's anything wrong at the time with  
3 filing the amended with that additional charge because  
4 the original report did contain reference to evidence  
11:23AM 5 that would have potentially supported that charge.

6 Let me see what else you have here.

7 DEFENDANT ORTH: As to the double jeopardy  
8 portion of it, your Honor?

9 THE COURT: Was there any other discovery  
11:23AM 10 disputes that was in the motion that you remember,  
11 Ms. Mendoza? In the motions to dismiss? You said you  
12 didn't receive discovery or that she didn't do some  
13 sort of investigation by the 17<sup>th</sup> that you think you  
14 were entitled to. Can you let me know what that is,  
11:23AM 15 Mr. Orth.

16 DEFENDANT ORTH: Correct. As of the first  
17 the only thing that we've received as of the first was  
18 the Declaration of Arrest by Detective Lippisch, the  
19 declaration for the affidavit -- affidavit on  
11:24AM 20 application for search warrant by Lippisch, and I  
21 believe we had received the CAD text from the officers.  
22 The problem is that -- here is what happened. The  
23 complainant Louie Polanco, he alleged the robbery on  
24 the night of October 27<sup>th</sup> and that's in HPD DR  
11:24AM 25 number --

11:24AM 1 THE COURT: You cited it. I know what  
2 you're talking about.

3 DEFENDANT ORTH: So she hasn't given us  
4 anything on that. So as of then is when their alleged  
11:24AM 5 probable cause to arrest me occurs, is when they take  
6 that complaint. So they don't give me any reports,  
7 they don't give me any oath or affirmations,  
8 statements, et cetera. They don't tell me who the  
9 police officers are. I still don't know to this day  
11:24AM 10 who they are.

11 THE COURT: Who is?

12 DEFENDANT ORTH: Who the -- who did the  
13 report, who took the sworn statement from Polanco or  
14 Jessie Caracciolo, the girlfriend, the 911 call or any  
11:25AM 15 radio or text messaging or body cam that occurred when  
16 they approached the house and they took that statement.

17 THE COURT: If I remember the report, that  
18 information became available and there was an attempt  
19 by Henderson Police Department to stop Mr. Orth I  
11:25AM 20 presume based on that information. The allegation is  
21 he didn't stop, they eventually stopped him and got a  
22 search warrant for the bag, and then found the firearm  
23 in the bag which was in Mr. Orth's possession. And I'm  
24 just citing my recollection of the alleged facts.

11:25AM 25 Is that correct, Ms. Mendoza?

11:25AM 1 MS. MENDOZA: In the Declaration of Arrest  
2 it discussed the content of the interviews the robbery  
3 detective did with them.

4 THE COURT: Right. So at the  
11:26AM 5 November 17<sup>th</sup> preliminary hearing your intent was to  
6 present evidence, if you had the witnesses at the time  
7 available, regarding Mr. Orth's possession of the bag  
8 and the alleged fleeing. You at that time had no  
9 intention of presenting any witnesses associated with  
11:26AM 10 the alleged robbery or --

11 MS. MENDOZA: I was not going to call any  
12 lay witnesses. I would have the officers testify that  
13 the reason they responded was because of this report,  
14 but of course that's not for the truth of the matter  
11:26AM 15 asserted.

16 THE COURT: So under 171.1965, that's the  
17 discovery statute at preliminary hearings, Miss Mendoza  
18 would only have to turn over to you five days in  
19 advance of the preliminary hearing any of the evidence  
11:26AM 20 that is identified in that statute if she's in  
21 possession of it at the time, and it sounds like you  
22 weren't in possession of it on the 17<sup>th</sup>, the reports  
23 regarding the alleged robbery from that event; is that  
24 correct?

11:27AM 25 MS. MENDOZA: The reports regarding the

11:27AM 1 alleged robbery I was not in possession of that  
2 morning. I believe I received them that afternoon. I  
3 know I was not in possession of that them that morning  
4 because I have an email to Miss Simmons on the  
11:27AM 5 afternoon of the 16<sup>th</sup> saying I haven't gotten them  
6 yet. And I came straight here the morning of the  
7 17<sup>th</sup>. I didn't go to the office the morning of the  
8 17<sup>th</sup> until after I was here.

9 THE COURT: Do you have those reports now  
11:27AM 10 and have you provided those to Mr. Orth?

11 MS. MENDOZA: Yes, your Honor.

12 THE COURT: Are you intending to present  
13 any witnesses associated with the alleged robbery in  
14 Event Number 1989?

11:27AM 15 MS. MENDOZA: No.

16 THE COURT: Okay.

17 MS. MENDOZA: Can I just clarify?

18 THE COURT: Go ahead.

19 MS. MENDOZA: So I had requested  
11:27AM 20 everything above and beyond my discovery obligation  
21 because I know where this is going, I might as well do  
22 it now even though I'm not legally obligated. As of  
23 that first preliminary hearing setting I didn't have  
24 everything. After I returned I had a packet from  
11:28AM 25 Henderson records that contained a bunch of reports. I



11:28AM 1 started working on copying them for Miss Simmons. I  
2 was in the process of doing that. On the 18<sup>th</sup> I had  
3 to leave work because I had COVID symptoms. On the  
4 19<sup>th</sup> I tested positive for COVID.

11:28AM 5 THE COURT: That's all in the report. I  
6 read your opposition. I've read it. I'm saying that  
7 you did not have the report at the time and on the  
8 17<sup>th</sup> were you to go forward, you weren't going to  
9 present -- and you didn't charge him with robbery.

11:28AM 10 MS. MENDOZA: Correct.

11 THE COURT: So at this point I don't see  
12 there being a discovery violation because it -- if they  
13 are putting witnesses up that have made statements and  
14 it's in those reports, then you're entitled to have  
11:28AM 15 that information and you're entitled to have it five  
16 days before the preliminary hearing. As I sit here  
17 right now I don't have any indication that that's what  
18 they intended to do, Mr. Orth, and if they did or they  
19 did it today and they haven't provided you the

11:29AM 20 information, but as of right now the charges haven't  
21 changed. And it doesn't look like she's going forward  
22 with regard to whatever those allegations were. So I  
23 don't find any discovery violation at this point with  
24 regard to that event number.

11:29AM 25 I wanted to go back and also state with

11:29AM 1 regard just to include in the record that under State  
2 v. Nelson 118 Nevada 399, in terms of continuances that  
3 courts are required to take into consideration the  
4 totality of the circumstances and apply the rules

11:29AM 5 firmly, consistently but realistically. So I think  
6 that goes to the allegations about the unavailability  
7 of the witnesses. I think I complied with the rules  
8 and interpreted them and applied them realistically  
9 under the circumstances. I would have preferred you

11:29AM 10 not have been shipped up to NSP, but that's what ended  
11 up happening. And it's not something that I asked them  
12 to do. I think I remembered at the time hopefully  
13 trying to keep him here, but unfortunately that didn't  
14 work out. So I don't see any other arguments with

11:30AM 15 regard to the motion to dismiss for any discovery  
16 issues or the continuance that I haven't taken up.

17               There were two motions to dismiss. One of  
18 your motions was regard to the resisting charge; is  
19 that right, Mr. Orth?

11:30AM 20               DEFENDANT ORTH: One of them is, your  
21 Honor.

22               THE COURT: I don't think that was in your  
23 actual motion that you filed just yet. Is there an  
24 actual motion that you filed with regard to double

11:30AM 25 jeopardy on the misdemeanor resisting in Municipal

11:30AM 1 Court versus the charge of stop required that is  
2 currently in the amended criminal complaint?

3 DEFENDANT ORTH: No, Your Honor. Actually  
4 what happened was my understanding was the Court stayed  
11:30AM 5 allowing the amendment of the pleading pending the  
6 investigation by the plaintiff and I was charged with  
7 evading anyway at the jail with the charge anyway. And  
8 I've been sitting there with the evading charge on me  
9 for this entire time. But my understanding was she was

11:31AM 10 going to investigate the legality of whether or not  
11 there was misconduct that was being placed with the new  
12 charge into the complaint that is violative of the  
13 double jeopardy clause.

14 THE COURT: All right. So you provided I  
11:31AM 15 believe, Miss Mendoza, the Declaration of Arrest and  
16 the charge in Municipal Court 20CR007366 for resisting  
17 and I have it here; is that correct?

18 MS. MENDOZA: Yes, your Honor.

19 THE COURT: What's the status of that case  
11:31AM 20 in Municipal Court?

21 MS. MENDOZA: He pled to it.

22 THE COURT: I'm going to take that up.  
23 That would potentially require some legal arguments as  
24 it relates to determine whether there's a double  
11:32AM 25 jeopardy issue between that and the stop required under

11:32AM 1 the Blockburger test. We can still do the preliminary  
2 hearing and I can take up that issue and do some  
3 research on it. But we can still do the preliminary  
4 hearing. So I haven't ultimately made a ruling on that  
11:32AM 5 yet, but I'm going to take that up at the appropriate  
6 time.

7 The other issue is you filed a motion to  
8 suppress. I think you filed a motion to suppress your  
9 arrest because they didn't have a warrant, Mr. Orth,  
11:32AM 10 under NRS 171.124. They can do a probable cause arrest  
11 without a warrant.

12 DEFENDANT ORTH: So --

13 THE COURT: Hang on one sec. When a  
14 person arrested has committed a felony or a gross  
11:32AM 15 misdemeanor, even not in the officer's presence, when a  
16 felony or gross misdemeanor has in fact been committed  
17 and the officer has reasonable cause to believe the  
18 person arrested to have committed it. So they don't  
19 technically need a warrant to arrest you for a felony.

11:33AM 20 You've also made a motion to suppress I  
21 believe the contents of the search warrant.

22 Is that your understanding, Miss Mendoza?

23 MS. MENDOZA: Yes, your Honor.

24 THE COURT: Did you also make that motion,  
11:33AM 25 Mr. Orth?

11:33AM 1 DEFENDANT ORTH: I made the motion to  
2 suppress in conjunction with the illegal arrest and the  
3 search warrant that was obtained. Those are the two,  
4 your Honor. I would just -- I wasn't here so I don't  
11:33AM 5 think -- I wasn't here when you made the ruling to  
6 exclude the probable cause. I do understand --

7 THE COURT: I just made the ruling now. I  
8 just repeated it to you.

9 DEFENDANT ORTH: I understand the point.  
11:33AM 10 I'd like to make some argument on that.

11 THE COURT: Go ahead.

12 DEFENDANT ORTH: But before we move on for  
13 the motion to continue, I wasn't here so that was a  
14 surprise motion to continue done the other day when I  
11:33AM 15 wasn't here by when the warden I guess didn't bring me  
16 down.

17 THE COURT: That wasn't anybody's motion  
18 to continue. You weren't here and you're representing  
19 yourself so I can't even rely really on your standby  
11:33AM 20 counsel. So we were just in a position of we did a  
21 short turnaround on the ninth to try to get all the  
22 witnesses here and then all week we were trying to make  
23 sure that they got you back down here. So really  
24 nobody made a motion. It's just that you weren't  
11:34AM 25 brought.

11:34AM 1 DEFENDANT ORTH: I would just like to make  
2 my objection on the record. I understand your  
3 position, I understand her position. May I make that  
4 objection on the record?

11:34AM 5 THE COURT: What's the objection?

6 DEFENDANT ORTH: The objection is that  
7 they were given notice of audio visual technology this  
8 whole time and you're saying the courts must abide by  
9 it. I should have been sitting here. She could have  
11:34AM 10 kept me in the jurisdiction of Henderson and like you  
11 had mentioned on the record, she didn't.

12 THE COURT: Hold on a second. She doesn't  
13 have authority of whether you are going to remain --  
14 the State doesn't have authority of whether you are  
11:34AM 15 going to remain in CCDC or whether their policies and  
16 procedures are going to cause you to have to go to NSP.  
17 I wish I had that control. I don't have that control.

18 DEFENDANT ORTH: I agree. That's not my  
19 position. My position is that the State is under the  
11:34AM 20 obligation to show good cause under Bustos and Hill.

21 THE COURT: To do what?

22 DEFENDANT ORTH: It is not just for  
23 unavailability of witnesses. Any time a preliminary  
24 hearing -- Davis is very clear. They didn't even have  
11:35AM 25 unavailable witnesses in that situation. In fact,

11:35AM 1 there was an ex parte hearing on the continuance and in  
2 fact they faulted the Court and the prosecutor for not  
3 even discussing whether or not there was good cause.

4 When the State gives a motion of -- gives a notice of  
11:35AM 5 intent that they can do things by audio visual and  
6 strip me of my rights, then they can also follow those  
7 same procedures to make sure that I have that  
8 preliminary examination. You have the statute -- I  
9 understand they're saying well, the prison didn't bring

11:35AM 10 you. Well, if we would have set up audio visual  
11 technology and had me appearing by audio visual  
12 technology and showing cause to do that --

13 THE COURT: Let me just tell you. We have  
14 another person that I'm trying to get on audio visual  
11:35AM 15 technology from NSP and I've been working on it for a  
16 week and we still haven't got it squared away. So it's  
17 not as easy as you think it is. I wish it was but it's  
18 not.

19 As far as her notice to use audio visual  
11:36AM 20 for witnesses, it's generally presumed that we're going  
21 to have witnesses coming to court. You have a right to  
22 confront your witnesses in court. So we turn to audio  
23 visual when we have no other choice, and oftentimes  
24 it's over the objection of the defendant that I have  
11:36AM 25 them on video. So kind of the way we operate is to try

11:36AM 1 to get witnesses in here so that you have the ability  
2 to confront them under the constitution in front of you  
3 and I'm only willing to allow audio visual when there's  
4 no other alternative. And in this particular case the  
11:36AM 5 existence of audio visual does not necessarily mean  
6 that a continuance isn't based on good cause and I'm  
7 not ruling that it is in this particular case. So I've  
8 already made my ruling on that, you've made your record  
9 on that.

11:36AM 10 With regard to your motion to suppress  
11 anything from the search warrant, we will take that up  
12 in terms of the witnesses that you are going to present  
13 at the preliminary hearing.

14 I assume they're the same witnesses; is  
11:36AM 15 that right, Ms. Mendoza? It would be the same  
16 witnesses?

17 MS. MENDOZA: Detective Ozawa isn't in the  
18 courthouse today and he interviewed Mr. Polanco.  
19 Number one, I don't think he meets his standard to even  
11:37AM 20 have a hearing on the motion. So I don't think we  
21 should get into the motion during the witness  
22 testimony. However, if we are going to, in theory -- I  
23 guess what Detective Ozawa knew isn't even relevant  
24 because it's only what Detective Lippisch knew. So  
11:37AM 25 from my standpoint we don't need him.



11:37AM 1 DEFENDANT ORTH: Your Honor --

2 THE COURT: Hang on a second. The case

3 law is that during a preliminary hearing a motion to

4 suppress can be addressed, it can be brought up based

11:37AM 5 upon the evidence and sometimes that evidence is the

6 same for purposes of probable cause, sometimes you

7 would need some separate evidence to address a motion

8 to suppress on the search warrant. So let's get

9 started, let's see where it goes and then if there's

11:37AM 10 evidence at the time that would indicate a need to have

11 a hearing on the separate witness for your motion to

12 suppress, then we'll take that up.

13 MS. MENDOZA: Just so the record is clear

14 so it's not brought up later down the road.

11:38AM 15 THE COURT: Yes.

16 MS. MENDOZA: We disagree as to what he's

17 in possession of. He is insisting as of today he still

18 doesn't have some reports which you have already ruled

19 don't matter. But I provided them to Miss Simmons.

11:38AM 20 THE COURT: Which reports specifically?

21 Is it that other event number 1989?

22 MS. MENDOZA: Yes. She was provided a

23 packet of discovery that included an incident report

24 from that event, his Washoe County JOCs, a number of

11:38AM 25 CADs, audio of 911, photos. All kinds of things back

11:38AM 1 on November 25<sup>th</sup>.

2 THE COURT: Miss Simmons, do you remember  
3 receiving those?

4 MS. SIMMONS: Your Honor, I was just  
11:38AM 5 doublechecking my emails. It was a 236-page document  
6 dump, but I did find the report here that I have  
7 provided to him.

8 THE COURT: Okay. So it was at least  
9 provided to your standby counsel, Mr. Orth.

11:38AM 10 DEFENDANT ORTH: One last thing, your  
11 Honor.

12 THE COURT: Yes.

13 DEFENDANT ORTH: One last thing just for  
14 clarification on the record. You did a continuance for  
11:38AM 15 Officer Ozawa and now she says he's not relevant.

16 THE COURT: I think her argument was he  
17 wasn't relevant to your motion to suppress the search  
18 warrant.

19 DEFENDANT ORTH: He's not going to appear  
11:39AM 20 today?

21 THE COURT: Well, let's see what happens.  
22 Her argument for the continuance was she had two  
23 witnesses that could testify as to the gun. One was  
24 Detective Lapeer, one was Detective Ozawa. Detective  
11:39AM 25 Lapeer was in sensitivity training -- I'm just

11:39AM 1 kidding -- so he couldn't come. So when she found out  
2 Mr. Lapeer couldn't come, she found out if there was  
3 any other detectives that could testify as to the gun,  
4 she found out that Detective Ozawa was the other  
11:39AM 5 detective that could have testified to the gun and  
6 that's when she found out it was like a day before the  
7 prelim that he was leaving town. That's the  
8 representations that the State made. So she doesn't  
9 have to bring Detective Ozawa in if Detective Lapeer is  
11:39AM 10 here to be able to testify. So that's the way it goes.

11 Is that your understanding?

12 MS. MENDOZA: Yes, your Honor. They were  
13 both unavailable. I needed one. I have one.

14 THE COURT: She needed one or the other  
11:40AM 15 and they were both unavailable.

16 DEFENDANT ORTH: One thing because I was  
17 not here when you made your ruling on the probable  
18 cause issue. I understand your probable cause issue on  
19 the warrant. Just so we understand --

11:40AM 20 THE COURT: That's of your arrest. And  
21 I'm not making a determination that there's probable  
22 cause. What I'm saying is if there's probable cause,  
23 they can arrest you. They don't need to go get an  
24 arrest warrant.

11:40AM 25 DEFENDANT ORTH: Well, your Honor, I would

11:40AM 1 like --

2 THE COURT: Your objections are in your  
3 motions.

4 DEFENDANT ORTH: I'd like to make -- I  
11:40AM 5 never got a chance to address that.

6 THE COURT: Go ahead.

7 DEFENDANT ORTH: In Terry versus Ohio the  
8 landmark decision it says at page -- it's Terry versus  
9 Ohio at 392 U.S. 1 (1968) at Page 35. We do not  
11:40AM 10 retreat from our holding that police must, whenever  
11 practicable, obtain advance approval of search and  
12 seizure through the warrant procedure. Or that  
13 emotional senses failure to comply with the warrant  
14 requirement can only be excused by exigent  
11:41AM 15 circumstances.

16 In Barrios-Lomeli versus State 113 Nevada  
17 952 (1992) the Court upheld the warrant when  
18 impracticable policy. Under NRS 179.045 we have use of  
19 telephonic warrants to obtain warrants for arrest. In  
11:41AM 20 Nelson versus State 96 Nevada 363 (1980). The State  
21 has the burden to prove an exception to the warrant  
22 requirement. Also citing McDonald versus United States  
23 335 U.S. 451 at Page 456 (1956). The Nevada Supreme  
24 Court in State versus Harden 90 Nevada 10 at Page 14,  
11:41AM 25 (1974) stated the burden rests within those seeking the

11:41AM 1 exception to prove the exigent of the situation which  
2 made the course imperative -- made the course of  
3 obtaining a warrant imperative.

4 At no time did NRS 171.124 in its  
11:42AM 5 description of probable cause upon an officer seeing  
6 something negate the officer's need to obtain a warrant  
7 when on October 27<sup>th</sup> they have a complaint, they have  
8 a warrant process, they can use a warrant process and  
9 they don't, and they stand around. Specifically they  
11:42AM 10 have to show how it was imperative that they could not  
11 go and get a warrant. They are not allowed to use  
12 their independent judgment.

13 I also can give you State versus Lizonbe.  
14 We'll just skip that argument.

11:42AM 15 THE COURT: I got your drift.

16 DEFENDANT ORTH: So she had the  
17 opportunity, your Honor, to show that they had probable  
18 cause that night and if there was an exigent  
19 circumstance that they could not obtain a warrant for  
11:43AM 20 my seizure or the seizure of the automobile. They are  
21 on the apartment's curtilage. They are within the  
22 property of mine. My apartment complex. They are  
23 there. What is their probable cause and exigent  
24 circumstance to enter upon that curtilage and seize me  
11:43AM 25 at gunpoint? And if she does not prove that exception

11:43AM 1 to the warrant requirement -- in other words, why were  
2 the cops standing around all night and not arresting  
3 Mr. Orth, then that's her burden today.

4 THE COURT: Well, you're making a motion  
11:43AM 5 to suppress based on the violation of the warrant  
6 requirement for your arrest. What I've read to you,  
7 and it's kind of black letter that police officers can  
8 do probable cause arrests. Of the cases that you're  
9 referring to I don't know which ones of those are

11:43AM 10 search warrants versus arrest warrants. Search  
11 warrants indeed they would need an exception if it's a  
12 violation of your privacy rights to search or seize any  
13 of your property. And the case you cited Barrios was a  
14 search warrant case and it was an anticipatory search  
11:44AM 15 warrant case. So that's not really relevant to your  
16 probable cause arrest. And so under NRS 171.124 they  
17 can absolutely do a probable cause arrest if they have  
18 the relevant information that I cited in subsection 1B  
19 and C.

11:44AM 20 So I'm going to overrule it to the extent  
21 your argument is that you can't be arrested without an  
22 arrest warrant. I'm still going to take up any of your  
23 arguments about the search warrant and whether that was  
24 legitimate or not legitimate, okay? So I appreciate  
11:44AM 25 your position but I disagree with it.

11:44AM 1 Are we ready for witnesses?

2 MS. SIMMONS: The only thing I wanted to

3 make a record of is last week your Honor gave me

4 permission to try to subpoena Louis Polanco and Jessie

11:44AM 5 Caracciolo.

6 THE COURT: Do we have a spelling?

7 DEFENDANT ORTH: C-A-R-I-C-C-O-L-L-O.

8 MS. SIMMONS: That was on Thursday. My

9 investigator has been unable to subpoena them. I know

11:45AM 10 that Mr. Orth previously expressed to me he would like

11 to have them here. The State has indicated their

12 intention not to call them, to call either of them. My

13 investigator did attempt in this short period of time

14 to contact them and has not had contact with them.

11:45AM 15 THE COURT: And has had zero contact?

16 MS. SIMMONS: She attempted prior to the

17 first preliminary hearing date as well, but had no

18 contact.

19 THE COURT: Anything else, Miss Simmons?

11:45AM 20 MS. SIMMONS: I believe that's everything

21 from me, your Honor.

22 THE COURT: He's invoked the exclusionary

23 rule. Who is your first witness, Ms. Mendoza?

24 MS. MENDOZA: The first witness will be

11:45AM 25 Officer Nelson.

11:45AM 1 I have some JOCs that I was going to make  
2 a record of or we can do it at the end.

3 THE COURT: We can do it at the end.

4 Let's get Officer Nelson and the other two  
11:45AM 5 detectives need to step out into the hallway for me.

6 Raise your right hand for me.

7 THE CLERK: Do you solemnly swear that the  
8 testimony that you are about to give will be the truth,  
9 the whole truth and nothing but the truth, so help you  
11:46AM 10 God?

11 THE WITNESS: Yes, ma'am.

12 THE CLERK: Please be seated.

13 Please state your first and last name and  
14 spell each for the record.

11:46AM 15 THE WITNESS: First name is Alex, A-L-E-X.  
16 Last name Nelson, N-E-L-S-O-N.

17 THE COURT: All right, State. Go ahead.

18 MS. MENDOZA: Thank you, your Honor.

19

11:46AM 20 **ALEX NELSON,**  
21 having been first duly sworn, did testify as follows:

22 DIRECT EXAMINATION

23 BY MS. MENDOZA:

24 Q. How are you employed?

11:46AM 25 A. I'm a police officer with the Henderson



11:46AM 1 Police Department.

2 Q. And were you working in that capacity on

3 October 28<sup>th</sup> of this year around 7:11 a.m.?

4 A. Yes, ma'am.

11:46AM 5 Q. Were you actually on duty at that time?

6 A. Yes, ma'am.

7 Q. And around that time did you respond to

8 781 Whitney Ranch Drive?

9 A. It was 981 Whitney Ranch Drive.

11:46AM 10 Q. Thank you very much.

11 A. You're very welcome.

12 Q. Is that located here in Clark County?

13 A. Yes, ma'am.

14 Q. Now, what was the reason that you

11:47AM 15 responded to that address?

16 A. Henderson dispatch had received a call

17 that a subject was in possession of a firearm banging

18 on the door of an apartment.

19 DEFENDANT ORTH: Objection. Hearsay.

11:47AM 20 MS. MENDOZA: It's offered not for the

21 truth of the matter asserted.

22 THE COURT: I'm assuming it's offered for

23 why they went out or what they did next; is that

24 correct?

11:47AM 25 MS. MENDOZA: Correct. And the impression

11:47AM 1 the officers would have been under when they arrived at  
2 the scene.

3 THE COURT: I'm going to overrule it and  
4 I'm not admitting it that what they heard from these  
11:47AM 5 witnesses is actually true. Just that's why they went  
6 out. So it's overruled.

7 Go ahead.

8 BY MS. MENDOZA:

9 Q. Was also part of that was that the suspect  
11:47AM 10 had robbed the person reporting the night before?

11 A. Yes, ma'am.

12 DEFENDANT ORTH: Same objection.

13 THE COURT: And same ruling. I'm not --

14 DEFENDANT ORTH: It's continuing, your  
11:47AM 15 Honor.

16 THE COURT: I understand. I'm not  
17 utilizing it as substantive evidence that you did any  
18 of those things.

19 So go ahead.

11:48AM 20 BY MS. MENDOZA:

21 Q. Did dispatch relay any kind of information  
22 about what type of transportation you might expect this  
23 potential suspect to be in?

24 A. Eventually they did, yes, ma'am.

11:48AM 25 Q. What was that?

11:48AM 1 A. Per the person reporting the suspect who  
2 had committed the robbery the night before had also  
3 stolen his vehicle which was a white four-door sedan  
4 with body shop plates.

11:48AM 5 Q. Do you remember anything about make or  
6 model?

7 A. I do not.

8 MS. MENDOZA: Court's indulgence.

9 THE COURT: Yes.

11:49AM 10 BY MS. MENDOZA:

11 Q. Did you write a narrative in connection  
12 with this event?

13 A. I did, yes, ma'am.

14 Q. And do you remember indicating in there  
11:49AM 15 that it was a white Chevy Malibu?

16 A. I don't recall if I indicated it in the  
17 report or not.

18 MS. MENDOZA: Permission to approach the  
19 witness?

11:49AM 20 THE COURT: Yes.

21 BY MS. MENDOZA:

22 Q. Would looking at your narrative refresh  
23 your recollection?

24 A. Yes, ma'am, it would.

11:49AM 25 THE COURT: Review that and when you're

11:49AM 1 done just look up and tell us you're done.

2 THE WITNESS: Okay.

3 BY MS. MENDOZA:

4 Q. Does that refresh your recollection about  
11:49AM 5 what knowledge you had about the type of vehicle it  
6 was?

7 A. It does, yes, ma'am.

8 Q. And what was that?

9 A. It was described as a white Chevy Malibu.

11:49AM 10 Q. Now, can you describe for us what you  
11 observed once you arrived at that location?

12 A. Once I arrived -- by the time I arrived  
13 and my trainee arrived officers inside of the complex  
14 had already arrived and advised that they had eyes on  
11:50AM 15 the vehicle. And I can hear the sirens activated in  
16 the background and they are saying the vehicle is  
17 failing to yield to them.

18 DEFENDANT ORTH: Hearsay.

19 THE COURT: I'm going to sustain that one.

11:50AM 20 He's kind of doing a narrative. Why don't you  
21 establish some foundation, Miss Mendoza.

22 BY MS. MENDOZA:

23 Q. So as you're arriving you indicated you're  
24 hearing over the radio some things that are going on  
11:50AM 25 from other officers, correct?

11:50AM 1 A. Yes, ma'am.

2 Q. And did based on what you heard these

3 other officers describing affect what you decided to

4 do?

11:50AM 5 A. Yes, ma'am.

6 MS. MENDOZA: So I'd ask to allow him

7 to --

8 THE COURT: Go ahead. What did you do?

9 THE WITNESS: So at that point my trainee

11:50AM 10 and I positioned our patrol vehicle in front of the

11 exit and entrance gate to block the path of the

12 vehicle.

13 BY MS. MENDOZA:

14 Q. Did you eventually see a Chevy Malibu

11:50AM 15 heading in your direction?

16 A. I did, yes, ma'am.

17 Q. And was there any other Henderson police

18 officer vehicles in the vicinity of the Malibu?

19 A. Yes, ma'am.

11:51AM 20 Q. Can you describe what you saw happening

21 with the Malibu and the other Henderson police officer

22 vehicles?

23 A. At that point I observed the white Chevy

24 Malibu make a left turn and accelerate at a high rate

11:51AM 25 of speed towards my location. Directly behind that

11:51AM 1 vehicle was also two clearly identifiable police  
2 vehicles with their lights and sirens activated. And  
3 then that's part of that.

4 Q. So as the Malibu is driving there is two  
11:51AM 5 Henderson police officer vehicles following behind with  
6 lights and sirens activated, correct?

7 A. Yes, ma'am.

8 Q. Sounds like a silly question, but the  
9 colors of the Henderson police lights are?

11:51AM 10 A. Red and blue.

11 Q. And so did you take any action to try and  
12 stop the Malibu?

13 A. Initially was just parking my patrol  
14 vehicle at the entrance gate.

11:52AM 15 Q. And what happened and what did you see  
16 after you parked your vehicle there?

17 A. Once I parked my vehicle there, that's  
18 when the Chevy Malibu made that left turn and was  
19 accelerating towards my direction. And I repositioned

11:52AM 20 from my patrol vehicle to the side of the gate so that  
21 if something -- if he did ram through the gate, I would  
22 not be injured.

23 Q. So you were actually initially in your  
24 vehicle and once you saw the Malibu coming at you, you  
11:52AM 25 had to exit your vehicle in case the vehicle continued

11:52AM 1 and crashed into your vehicle?

2 A. No, ma'am. Positioned my vehicle, got  
3 out. As I walked around my patrol vehicle I was  
4 already -- I already had got out of my vehicle, I then  
11:52AM 5 observed the Chevy Malibu coming, so I ran to a  
6 different location.

7 Q. So you initially are out, see the Malibu  
8 coming, you run to another location as the Malibu is  
9 coming towards you?

11:52AM 10 A. Yes, ma'am.

11 Q. Did the Malibu eventually stop?

12 DEFENDANT ORTH: Leading.

13 THE COURT: That's not a leading question.

14 Go ahead.

11:53AM 15 BY MS. MENDOZA:

16 Q. Did the Malibu eventually stop?

17 A. Eventually, yes.

18 Q. Can you describe how that came about?

19 A. Eventually I observed Mr. Orth exit the  
11:53AM 20 driver's seat of the Chevy Malibu. The Malibu  
21 continued to move forward and it appeared that it had  
22 not been placed in park, and then it hit the gate, the  
23 entrance and exit gate, which stopped the vehicle from  
24 moving.

11:53AM 25 Q. You indicated you said you saw Mr. Orth

11:53AM 1 exit the driver's seat. Do you see that person in the  
2 courtroom today?

3 A. I do.

4 Q. Can you point to him and describe  
11:53AM 5 something he's wearing.

6 A. Yes, ma'am. He is wearing an orange mask  
7 and an orange jumpsuit.

8 MS. MENDOZA: Will the record reflect  
9 identification of the defendant?

11:53AM 10 THE COURT: It'll so reflect.  
11 BY MS. MENDOZA:

12 Q. So you indicated that he actually exited  
13 that white Malibu as the Malibu was still driving,  
14 correct?

11:53AM 15 A. Yes, ma'am.

16 Q. And the Malibu ultimately crashed into the  
17 gate?

18 A. Yes, ma'am.

19 Q. Now, once Mr. Orth exited the vehicle and  
11:53AM 20 the Malibu crashed, what did the officers who had been  
21 pursuing him do?

22 A. They were issuing him commands to stop.

23 Q. Did they exit their own patrol vehicles?

24 A. Oh, yeah. I apologize. They did exit  
11:54AM 25 their own patrol vehicles.



11:54AM 1 Q. When you saw them exit, did you recognize  
2 those officers?

3 A. I did.

4 Q. Who were those officers who had been  
11:54AM 5 following him?

6 A. The two officers I observed was Officer  
7 Hehn and then Officer Brink.

8 THE COURT: Hehn is H-E -- how do you  
9 spell it?

11:54AM 10 THE WITNESS: H-E-H-N.

11 BY MS. MENDOZA:

12 Q. Was there an Officer Duffy involved as  
13 well?

14 A. Yes, ma'am, he was. He was the second --  
11:54AM 15 he exited the second patrol vehicle that was -- the  
16 patrol vehicle directly behind Officer Hehn and Officer  
17 Brink.

18 Q. So can you describe for us where Mr. Orth  
19 went and what he did after he exited the vehicle.

11:54AM 20 A. Due to my positioning I could only see  
21 him -- once he exited the vehicle I had a visual of him  
22 and then I lost sight of him. And it appeared he was  
23 moving towards the back of the Chevy Malibu. And then  
24 suddenly I got another -- I suddenly saw him once  
11:55AM 25 again. He placed a brown duffel bag on top of a wall

11:55AM 1 that separates the apartment complex to Whitney Ranch.

2 And then I observed Mr. Orth jump over the wall.

3 Q. This amount of time that you lost sight of  
4 him, how long would you estimate that to be?

11:55AM 5 A. Maybe two to three seconds. From walking  
6 to the driver's side door to the wall.

7 Q. So you saw him place the bag over the wall  
8 and he went over the wall as well?

9 A. Yes, ma'am, he did.

11:55AM 10 Q. Can you describe for us what happened once  
11 he went over the wall.

12 A. Once he went over the wall a foot pursuit  
13 was initiated. I ran towards Mr. Orth. I eventually  
14 got into close proximity of him in the middle of

11:55AM 15 Whitney Ranch where at that point I attempted to deploy  
16 my taser which was ineffective.

17 Q. And as you're running towards him what is  
18 he doing?

19 A. He's continuing to run from us and look  
11:56AM 20 back towards our location.

21 Q. And did you issue any commands or  
22 anything?

23 A. I did not, but I did hear other officers  
24 issuing commands.

11:56AM 25 Q. So there's more than one officer pursuing

11:56AM 1 Mr. Orth?

2 A. There is.

3 Q. Who else if you know was pursuing?

4 A. Officer Mangan was pursuing, Officer

11:56AM 5 Scoble, Officer Hennebuel and that's the only ones I

6 recall.

7 Q. And you heard some of those other officers

8 issuing commands to Mr. Orth?

9 A. I did.

11:56AM 10 Q. And what types of commands were they

11 giving?

12 A. Stop, police, and that's the only ones I

13 recall.

14 Q. And was he complying?

11:56AM 15 A. No, ma'am. He continued to flee.

16 Q. Is that what led you to eventually deploy

17 your taser?

18 A. Yes, ma'am.

19 Q. I'm going to ask you specifically as to

11:56AM 20 Officer Mangan. Did you see when -- is it he or she?

21 A. It's a she.

22 Q. Did you see when she arrived on scene?

23 A. I did not.

24 Q. Was she there when you first arrived and

11:57AM 25 saw him fleeing in the vehicle?

11:57AM 1 A. No, ma'am.

2 Q. So she arrived at some point after he was  
3 out of the vehicle?

4 A. Yes, ma'am.

11:57AM 5 Q. Now, what happened after you deployed your  
6 taser?

7 A. After I deployed my taser I lost my  
8 footing and fell onto the ground. I immediately got up  
9 and I noticed that another officer had Mr. Orth on the  
11:57AM 10 ground. At that point I assisted the other officer  
11 with taking him into custody.

12 MS. MENDOZA: Permission to approach the  
13 clerk?

14 THE COURT: Yes.

11:57AM 15 MS. MENDOZA: Showing defense what's been  
16 marked as State's Proposed Exhibit 1. If I can  
17 approach the witness?

18 THE COURT: Yes.

19 BY MS. MENDOZA:

11:57AM 20 Q. Showing you what's been marked as State's  
21 Proposed Exhibit 1. Do you recognize what's depicted  
22 in this photo?

23 A. I recognize the bag.

24 Q. And where have you seen a bag this color  
11:58AM 25 before?

11:58AM 1 A. In Mr. Orth's possession.

2 Q. And you indicated that you first saw him  
3 with that bag in his hand as he's going over the wall,  
4 correct?

11:58AM 5 A. Yes.

6 Q. Did he continue carrying it throughout the  
7 whole pursuit?

8 A. He did not.

9 Q. Did you see where it ended up?

11:58AM 10 A. At the end -- after he was taken into  
11 custody I did observe it laying next to the wall next  
12 to I believe it was a power box.

13 Q. Is that in the same area where you saw him  
14 jump over and flee?

11:58AM 15 A. Yes, ma'am.

16 MS. MENDOZA: Pass the witness.

17 THE COURT: Mr. Orth, it's your  
18 opportunity to ask this witness questions. They have  
19 to be questions in the form of a question, okay? Go  
11:58AM 20 ahead.

21

22 CROSS-EXAMINATION

23 BY DEFENDANT ORTH:

24 Q. Officer, did you see me with the gun?

11:58AM 25 A. I did not.

11:58AM 1 Q. Now, did you yourself have probable cause  
2 to stop me?

3 A. I had reasonable suspicion.

4 Q. Based on what?

11:58AM 5 A. Based on that you were a suspect --  
6 alleged suspect in a robbery that happened the night  
7 before and possibly in possession of a stolen vehicle.

8 Q. Were you aware of those facts -- were  
9 those facts being repeated to you?

11:59AM 10 A. It's information being provided to me by  
11 my dispatch from the alleged victim.

12 Q. What specifically was that information?

13 A. The information was that the subject who  
14 had committed the robbery the night before was  
11:59AM 15 currently at his front door while in possession of a  
16 firearm. The next information that came out was that  
17 the suspect -- he no longer sees the suspect and the  
18 suspect is possibly leaving in a vehicle that he stole  
19 during the robbery from the victim which was described  
11:59AM 20 as a white Chevy Malibu.

21 Q. Were you aware of the complaint made by  
22 the complainant the night before to the apartment?

23 A. I was not.

24 Q. You were not aware of those facts?

11:59AM 25 A. No, sir.

11:59AM 1 Q. Do you know who those officers are?

2 A. What officers?

3 Q. The officers who conducted that

4 investigation?

11:59AM 5 A. I don't know who did it, but I'm sure I

6 know the officer.

7 Q. But you don't have any facts known to

8 them?

9 A. No.

12:00PM 10 Q. Do you know if they had a warrant for my

11 arrest?

12 A. I'm sorry?

13 Q. Do you know if they had a warrant for my

14 arrest?

12:00PM 15 A. I was not aware of a warrant for arrest.

16 Q. Do you know if they applied for a warrant

17 for my arrest?

18 A. I do not.

19 Q. Do you know the victims in this case? Did

12:00PM 20 you have a chance to speak with them?

21 THE COURT: I need you to clarify. Who

22 are you referring to?

23 DEFENDANT ORTH: I'm speaking of the

24 victims.

12:00PM 25 THE COURT: The victims of what?

12:00PM 1 DEFENDANT ORTH: The alleged robbery  
2 victims.  
3 THE COURT: Okay.  
4 BY DEFENDANT ORTH:  
12:00PM 5 Q. Do you know who they are?  
6 A. I personally do not know them.  
7 Q. Did you speak to them personally?  
8 A. I did not.  
9 Q. So you have no facts from them  
12:00PM 10 specifically to form the basis of probable cause,  
11 correct?  
12 THE COURT: I need you to clarify your  
13 question. You're asking him whether he specifically  
14 has personal knowledge after having investigated that  
12:00PM 15 alleged crime the night before? Is that what you're  
16 asking?  
17 DEFENDANT ORTH: Yes, your Honor.  
18 THE COURT: And I think you said no,  
19 correct?  
12:00PM 20 THE WITNESS: I said no.  
21 THE COURT: All right.  
22 BY DEFENDANT ORTH:  
23 Q. When you say you lost sight of me, you  
24 were saying that the car sped up. Were you on the  
12:01PM 25 curtilage of the apartment complex at that time?



12:01PM 1 A. I was on the exterior of the gates.

2 Q. And then you said the car saw you and

3 stopped and I exited the vehicle, correct?

4 A. I'm sorry. Can you ask that question

12:01PM 5 again?

6 Q. So your position is that the car stopped

7 and I exited the vehicle, correct?

8 A. You exited the vehicle prior to the car

9 stopping, yes.

12:01PM 10 Q. So you're saying I jumped out of the car

11 while it was moving?

12 A. It came to a stop, the car continued to

13 roll and you jumped out of the vehicle as the car was

14 moving.

12:01PM 15 Q. That's not what I'm asking. So the car

16 came to a stop --

17 A. Yes, it did.

18 Q. -- I exited and then it continued rolling?

19 A. Yes, it did.

12:01PM 20 Q. So when you seen the duffel bag, you said

21 it was on top of the wall?

22 A. Yes, sir.

23 Q. But prior to that you hadn't seen me with

24 it?

12:01PM 25 A. I seen -- yes, I seen you have it in your

12:01PM 1 hand and place it on top of the wall, so you were in  
2 possession of it prior to placing it on the wall.

3 Q. So when the officers came -- you said you  
4 fell on the ground, correct?

12:02PM 5 A. Yes, sir, I did.

6 Q. In the pursuit?

7 A. Yes, sir.

8 Q. You didn't see me go onto the ground?

9 A. I did not. I was probably lifting myself  
12:02PM 10 off the ground at that point.

11 Q. Did you see all of the officers beating  
12 me?

13 A. I did not.

14 Q. You didn't see --

12:02PM 15 THE COURT: Hang on. He said no. Next  
16 question.

17 BY DEFENDANT ORTH:

18 Q. Did you have body cam on?

19 A. I did.

12:02PM 20 Q. You did?

21 A. I did have body cam.

22 Q. Have you turned that body cam over to the  
23 State's district attorney's office?

24 A. I believe they have access to that video.

12:02PM 25 Q. You've given it to your supervisor?

12:02PM 1 A. It goes into a cloud automatically through  
2 WiFi.

3 Q. Did the other officers have body cam on?

4 MS. MENDOZA: Objection.

12:02PM 5 BY DEFENDANT ORTH:

6 Q. That you could see.

7 THE COURT: Do you know if any of the  
8 other officers had body cam going?

9 THE WITNESS: I don't know which officer

12:02PM 10 had their body cam active or not.

11 THE COURT: He doesn't know.

12 BY DEFENDANT ORTH:

13 Q. You're saying you did not take part in the  
14 several-minute beating of me while I was laying face  
12:03PM 15 down on the ground?

16 A. No.

17 MS. MENDOZA: Objection. Relevance.

18 THE COURT: I'll let him answer that. Was  
19 that no?

12:03PM 20 THE WITNESS: Yes, I was.

21 BY DEFENDANT ORTH:

22 Q. You were part of that?

23 A. Yes.

24 Q. Okay.

12:03PM 25 THE COURT: Hang on a second. Hang on a

12:03PM 1 second. You were part of what?

2 THE WITNESS: I was part of taking him

3 into custody.

4 THE COURT: Okay. Next question.

12:03PM 5 BY DEFENDANT ORTH:

6 Q. While I lay face down on the ground how

7 many officers were on top of me?

8 A. I'm not sure.

9 Q. Would you say several?

12:03PM 10 A. I would say several, yes.

11 Q. Would you say that those officers were

12 beating me or not?

13 MS. MENDOZA: Objection. This has no

14 relevance to whether or not --

12:03PM 15 THE COURT: I will let him answer.

16 Were you beating Mr. Orth?

17 THE WITNESS: No. I used the reasonable

18 force.

19 BY DEFENDANT ORTH:

12:03PM 20 Q. While I was laying face down did you hit

21 me?

22 A. Yes, sir, I did.

23 Q. Did you kick me?

24 A. I did not.

12:03PM 25 Q. Why?

12:03PM 1 THE COURT: We are going to move on, Mr.  
2 Orth. He's already said what he's done. So go ahead.  
3 Next question.

4 DEFENDANT ORTH: I have no further  
12:03PM 5 questions, your Honor.

6 THE COURT: Any redirect?

7 MS. MENDOZA: Just to clarify a couple of  
8 things.

9  
12:04PM 10 REDIRECT EXAMINATION

11 BY MS. MENDOZA:

12 Q. When you're telling us about what you hear  
13 from dispatch, whoever the citizen is who is calling  
14 the police, are you actually hearing that person and  
12:04PM 15 what they're saying or do you hear through an operator  
16 a summary of what they're saying?

17 A. I hear through an operator a summary of  
18 what they're saying.

19 DEFENDANT ORTH: My objection is hearsay,  
12:04PM 20 your Honor.

21 THE COURT: Well, I think you were asking  
22 how was he getting the information so it's not really  
23 offered for the truth of what the contents are at this  
24 point. I'm going to overrule that objection.

25

12:04PM 1 BY MS. MENDOZA:

2 Q. And when you were describing Mr. Orth's  
3 driving behavior leading up to him getting out of the  
4 car, you described that he came around the corner and  
12:04PM 5 made a turn at a high rate of speed, correct?

6 A. He accelerated after the turn, yes, ma'am,  
7 and was picking up speed.

8 Q. And his behavior was such that it made you  
9 concerned enough that you had to get out of the way?

12:04PM 10 A. Absolutely.

11 Q. So was the behavior such that you believe  
12 he might cause injury to property or someone in the  
13 area?

14 A. Property or person, yes, ma'am.

12:05PM 15 MS. MENDOZA: I don't have anything  
16 further.

17 THE COURT: Any recross that's related to  
18 the questions that Ms. Mendoza just asked?

19

12:05PM 20 RECROSS EXAMINATION

21 BY DEFENDANT ORTH:

22 Q. So in terms of the car stopping and it  
23 being left in gear, is that an assumption by you?

24 A. It's an assumption, yes.

12:05PM 25 Q. So you don't know if the car

12:05PM 1 malfunctioned, you don't know if it was left in gear,  
2 you don't know anything, you just assumed?

3 A. I assumed, yes, that it was left in gear.

4 Q. But for all intents and purposes I stopped  
12:05PM 5 and exited the car. How far was the vehicle from you  
6 at that point?

7 A. From me at that point? I could give you a  
8 rough estimate.

9 Q. That's fine.

12:05PM 10 A. Maybe 10 to 15 yards.

11 Q. So 10 to 15 yards. And you had your body  
12 cam on at that time, right?

13 A. Yes.

14 Q. So about how fast was the vehicle going?

12:06PM 15 A. My body cam does not capture speed.

16 Q. In your perception about how fast was the  
17 car moving?

18 A. From the point of you exiting or prior to  
19 you coming --

12:06PM 20 Q. Just prior to coming to a stop.

21 A. Twenty to 25 miles per hour.

22 Q. So then it came to a stop?

23 A. Uh-huh.

24 Q. Nobody was in danger when it came to a  
12:06PM 25 stop at that point when it stopped, right?

12:06PM 1 A. I still felt I could have been in danger.  
2 But once it stopped, no.

3 Q. No one was in danger at the point it  
4 stopped, right?

12:06PM 5 A. Huh-uh.

6 Q. And then I exited the vehicle?

7 A. Yes.

8 DEFENDANT ORTH: No further questions.

9 THE COURT: All right. Is this witness  
12:06PM 10 free to go?

11 MS. MENDOZA: Can I clarify?

12

13 FURTHER REDIRECT EXAMINATION

14 BY MS. MENDOZA:

12:06PM 15 Q. I'm confused. There was a stop and then  
16 he exited. Did he exit it when the vehicle was stopped  
17 or did it start rolling again and then he exited?

18 A. He stopped, exited the vehicle and the  
19 vehicle starts rolling, and as he's exiting it starts  
12:06PM 20 rolling forward. So it comes to a complete stop, he  
21 starts exiting and then it starts rolling forward.

22 MS. MENDOZA: Thank you.

23 THE COURT: Is this witness free to go?

24 MS. MENDOZA: Yes.

12:07PM 25 THE COURT: Thank you for your testimony.



12:07PM 1 Call your next witness.

2 MS. MENDOZA: State next calls Detective

3 Kevin Lapeer.

4 THE COURT: I'll have you remain standing

12:08PM 5 and raise your right hand, detective.

6 THE CLERK: Do you solemnly swear that the

7 testimony that you are about to give will be the truth,

8 the whole truth and nothing but the truth, so help you

9 God?

12:08PM 10 THE WITNESS: Yes.

11 THE CLERK: Please be seated.

12 Please state your first and last name and

13 spell each for the record.

14 THE WITNESS: Kevin Lapeer. K-E-V-I-N,

12:08PM 15 L-A-P-E-E-R.

16 THE COURT: Go ahead, State.

17

18 **KEVIN LAPEER,**

19 having been first duly sworn, did testify as follows:

20 DIRECT EXAMINATION

21 BY MS. MENDOZA:

22 Q. How are you employed?

23 A. I'm a detective with the Henderson Police

24 Department.

12:08PM 25 Q. Were you working in that capacity on

12:08PM 1 October 28<sup>th</sup> of this year around 7:11 a.m.?

2 A. Yes, I was.

3 Q. Were you actually on duty that morning?

4 A. Yes.

12:08PM 5 Q. And that morning were you involved in a  
6 potential robbery investigation located at 981 Whitney  
7 Ranch Drive?

8 A. Yes, I was.

9 Q. And what type of premises is that?

12:08PM 10 A. It's an apartment complex.

11 Q. And is that located here in Clark County?

12 A. Yes, ma'am.

13 Q. Who is the lead detective on this case?

14 A. Detective Lippisch.

12:08PM 15 Q. Did he ask you to ultimately help him in  
16 the execution of a search warrant?

17 A. Yes, he did.

18 Q. Was that on a tan duffel bag?

19 A. Yes.

12:09PM 20 MS. MENDOZA: Permission to approach the  
21 clerk?

22 THE COURT: Yes.

23 MS. MENDOZA: Showing defense counsel and  
24 defendant State's Proposed Exhibit 1.

12:09PM 25 Permission to approach the witness?

12:09PM 1 THE COURT: Yes.

2 BY MS. MENDOZA:

3 Q. Showing you what's been marked as State's

4 Proposed Exhibit 1. Do you recognize what we're

12:09PM 5 looking at in this photo?

6 A. Yes.

7 Q. What is this?

8 A. This is the duffel bag that the warrant

9 was executed on.

12:09PM 10 Q. And does this depict some of the contents

11 that you discovered in that duffel bag?

12 A. Yes, it does.

13 Q. Is this a fair and accurate depiction of

14 what that duffel bag looked like when you opened it up?

12:09PM 15 A. Yes.

16 MS. MENDOZA: Move to admit State's

17 Proposed Exhibit 1.

18 THE COURT: Any objection at this time,

19 Mr. Orth?

12:09PM 20 DEFENDANT ORTH: None.

21 THE COURT: It'll be admitted.

22 (State's Exhibit 1 was admitted.)

23 BY MS. MENDOZA:

24 Q. So when you executed the search warrant

12:09PM 25 did you find something particularly noteworthy inside?

12:09PM 1 A. Yes. Located a shotgun.

2 Q. And did you take note of the make and

3 serial number of that shotgun?

4 A. Yeah. It was -- yes. It was a .20 gauge

12:10PM 5 Winchester, serial number is 1291469.

6 MS. MENDOZA: Pass the witness.

7 THE COURT: Mr. Orth.

8

9 CROSS-EXAMINATION

12:10PM 10 BY DEFENDANT ORTH:

11 Q. Detective, good morning.

12 A. Good morning.

13 Q. You had a chance to speak to Louie Polanco

14 in this case?

12:10PM 15 MS. MENDOZA: Objection. Beyond the

16 scope.

17 THE COURT: I'll let him ask questions.

18 Go ahead.

19 BY DEFENDANT ORTH:

12:10PM 20 Q. Did you have a chance to speak to Louie

21 Polanco in this case?

22 A. No.

23 Q. So did you have a chance to question

24 Jessie Caracciolo the girlfriend?

12:10PM 25 A. Yes, I did.

12:10PM 1 Q. And was that interview recorded?

2 A. Yes.

3 Q. In that interview isn't it true that she

4 said that she herself did not see a weapon -- isn't it

12:10PM 5 true that she said she was present at the time of the

6 robbery?

7 MS. MENDOZA: Objection. Hearsay and

8 relevance.

9 THE COURT: What is your response to the

12:11PM 10 hearsay objection, Mr. Orth?

11 DEFENDANT ORTH: Not for the truth of the

12 effect on getting the warrant. And the search. It's

13 not being offered for the truth. It's just for what he

14 did next and doing his investigation and searching the

12:11PM 15 bag.

16 THE COURT: Okay.

17 MS. MENDOZA: It's not --

18 THE COURT: The question is did this

19 detective speak to that person and did that person tell

12:11PM 20 them that there actually wasn't a gun, is that what

21 you're asking?

22 DEFENDANT ORTH: I'm asking in the course

23 of the investigation he said he was searching, based

24 upon a robbery, the duffel bag. So we are asking what

12:11PM 25 was known to him in the course of that search that

12:11PM 1 pertains to the robbery. And that would be in his  
2 investigation prior to and leading up to him searching  
3 that bag.

4 THE COURT: Any response?

12:11PM 5 MS. MENDOZA: Number one, he didn't say  
6 that he was searching in the course of a robbery.  
7 Number two, Mr. Orth indicated that part of the reason  
8 he's asking about this goes to them obtaining the  
9 warrant, and if that's the case, he needs to lay some  
12:12PM 10 more foundation as he is not the person who obtained  
11 the warrant.

12 THE COURT: Who obtained the warrant?

13 MS. MENDOZA: Lippisch.

14 THE COURT: Lippisch is the affiant of the  
12:12PM 15 warrant?

16 MS. MENDOZA: Yes.

17 THE COURT: Are you saying, detective, you  
18 were just there to execute the warrant?

19 THE WITNESS: That's correct. I executed  
12:12PM 20 the warrant.

21 THE COURT: You were provided the warrant  
22 information itself and you executed the search warrant?

23 THE WITNESS: That's correct.

24 DEFENDANT ORTH: I proffer the same, your  
12:12PM 25 Honor, as my argument.

12:12PM 1 THE COURT: Well, if your argument is  
2 going to be that there's a lack of basis for the search  
3 warrant in the first place, I don't know -- I guess you  
4 could ask did Lapeer receive information that he then  
12:12PM 5 would have turned over to Lippisch in Lippisch's  
6 investigation to obtain a search warrant. Is that what  
7 you're asking?

8 DEFENDANT ORTH: Yes.

9 THE COURT: So the question ultimately  
12:13PM 10 was?

11 BY DEFENDANT ORTH:

12 Q. The question was in the course of your  
13 investigation to searching the bag were you part of the  
14 investigation of the complainants?

12:13PM 15 A. Are you asking me if I interviewed the  
16 female?

17 Q. Did you interview Jessie?

18 A. Yes, I did.

19 Q. And in that interview did Jessie give you  
12:13PM 20 incomplete statements about the robbery?

21 A. Yes.

22 Q. And what were those incomplete statements?

23 MS. MENDOZA: Objection.

24 THE COURT: I'm going to allow it to the  
12:13PM 25 extent that it's going towards his motion to suppress

12:13PM 1 the search warrant. It's not really going to the point  
2 of probable cause at this point as best as I can tell.  
3 I'm going to admit it because it's abject hearsay as it  
4 relates right now whether there's probable cause. If  
12:13PM 5 this person said you had a gun or didn't say you had a  
6 gun, I'm not allowing it in for that. You're offering  
7 it as a basis I presume for why the officers did or did  
8 not obtain a search warrant. Is that what you're  
9 saying?

12:14PM 10 DEFENDANT ORTH: Well, he gave this  
11 information to Officer Lippisch who used it to obtain  
12 the search warrant and conduct the search.

13 THE COURT: What is your response?

14 MS. MENDOZA: I'm objecting as to vague in  
12:14PM 15 terms of conflicting. If he could just clarify what he  
16 means by conflicting.

17 THE COURT: All right. So go ahead and  
18 ask the question, Mr. Orth.

19 BY DEFENDANT ORTH:

12:14PM 20 Q. Did Jessie state that she was present that  
21 night at the robbery?

22 A. Yes.

23 Q. Did she give you conflicting information  
24 that the robbery didn't occur?

12:14PM 25 MS. MENDOZA: Conflicting with what?



12:14PM 1 BY DEFENDANT ORTH:

2 Q. Did she give you conflicting

3 information -- hold on. Did she give you information

4 that gave you reason to believe that a robbery did not

12:14PM 5 occur?

6 A. Can you restate that?

7 Q. Did she give you information that led you

8 to believe that a robbery did not occur or that --

9 MS. MENDOZA: I would object.

12:15PM 10 THE COURT: What's your objection?

11 MS. MENDOZA: Object as to relevance. His

12 personal opinion as to what --

13 THE COURT: Well, I think what he's saying

14 is if she told him that a robbery didn't occur, then

12:15PM 15 Mr. Lapeer shouldn't tell somebody else that a robbery

16 did occur and then get a search warrant.

17 Is that kind of what you're asking?

18 DEFENDANT ORTH: Yes.

19 THE COURT: All right. So did she say

12:15PM 20 that a robbery didn't occur?

21 THE WITNESS: No, she did not say that.

22 BY DEFENDANT ORTH:

23 Q. Did she say that she didn't see a robbery?

24 A. I didn't ask her if she saw a robbery.

12:15PM 25 She said that she saw you go into the room and exit

12:15PM 1 with a duffel bag.

2 Q. Did she say --

3 THE COURT: Hang on a second. Hang on a

4 second. Let him answer. You're asking him questions

12:15PM 5 about what she said and I'm allowing you to get into it

6 for purposes of the search warrant, not for probable

7 cause of your crime or the alleged crime. So he is

8 going to get to answer and say what it is she told him.

9 So what did she tell you, Mr. Lapeer?

12:15PM 10 THE WITNESS: She said that Mr. Orth

11 walked into Louie's bedroom and they were behind closed

12 doors. So she did not say that she saw or didn't see.

13 And then that you exited that bedroom with

14 a backpack -- I'm sorry. A duffel bag.

12:16PM 15 THE COURT: Next question, Mr. Orth.

16 BY DEFENDANT ORTH:

17 Q. Did you make a report in this case?

18 A. I made a supplemental report, yes.

19 Q. Okay. In your supplemental case did you

12:16PM 20 state, I asked if Sean was armed and she stated that he

21 was not? Page 8.

22 THE COURT: Do you have a copy of your

23 supplemental?

24 THE WITNESS: Do you mind if I go through

12:16PM 25 it?

12:16PM 1 THE COURT: Yeah, why don't you go through  
2 it.

3 THE WITNESS: Can you repeat the question.

4 BY DEFENDANT ORTH:

12:17PM 5 Q. Isn't it true, sir, that in your report  
6 you stated that I asked if Sean was armed and she  
7 stated that he was not?

8 A. That's correct.

9 Q. Okay. Did that conflict with any other  
12:17PM 10 information known to you throughout the course of your  
11 investigation?

12 A. No.

13 Q. Okay. Did you take this written statement  
14 from Miss Caracciolo?

12:17PM 15 A. That's not her written statement, so no.

16 Q. Does this not say --

17 A. You asked if that was her written  
18 statement and I'm telling you it's not. It's my  
19 supplemental report.

12:17PM 20 Q. You wrote this?

21 A. Yes.

22 MS. MENDOZA: No.

23 THE COURT: Hold on. Hold on. That looks  
24 like a handwritten witness statement. Why don't you

12:17PM 25 approach the witness.

12:17PM 1 MS. SIMMONS: Can I approach?  
2 THE COURT: Yes.  
3 THE WITNESS: Okay. No, I did not take  
4 that. There's an officer's name on that line. That  
12:17PM 5 would be the person who took it.  
6 BY DEFENDANT ORTH:  
7 Q. In your investigation did you investigate  
8 that statement?  
9 A. No.  
12:18PM 10 MS. MENDOZA: Can we make a record?  
11 THE COURT: Whose statement is it, what's  
12 being provided, what's been shown?  
13 DEFENDANT ORTH: This is a statement that  
14 was provided to an Officer Z-E-L-L, Number 2621.  
12:18PM 15 THE COURT: It purports to be by whom?  
16 DEFENDANT ORTH: By Jessie Caracciolo  
17 dated the 28<sup>th</sup> of October, the day of the incident.  
18 THE COURT: Are you familiar with that  
19 handwritten statement?  
12:18PM 20 THE WITNESS: I'm not.  
21 THE COURT: He is not familiar with it.  
22 MS. MENDOZA: Is there a time on it?  
23 DEFENDANT ORTH: 1:15.  
24 THE COURT: Mr. Lapeer says he is not  
12:18PM 25 familiar with that statement.

12:18PM 1 BY DEFENDANT ORTH:

2 Q. So you never investigated this statement.

3 So were you aware that this other officer was also

4 speaking to Miss Caracciolo?

12:18PM 5 A. First off I don't know who that officer

6 is, and no.

7 Q. You don't know who that officer is, and

8 no?

9 A. No.

12:18PM 10 Q. At any time did you provide Officer

11 Lippisch information about the robbery and tell him

12 that Jessie's statements conflicted with that of

13 Mr. Polanco's?

14 A. No.

12:19PM 15 Q. You never said that?

16 A. I never interviewed Mr. Polanco. I told

17 you that earlier when you asked me the first time. I

18 didn't interview him.

19 Q. But the information that you learned from

12:19PM 20 Jessie you did give to Officer Lippisch?

21 A. That's correct.

22 Q. And also you provided him the recorded

23 interview?

24 A. Yes, I did.

12:19PM 25 Q. You did? Was that before the search

12:19PM 1 warrant?

2 THE COURT: When you say did he provide

3 the information to Mr. Lippisch, the taped statement

4 before the search warrant was executed?

12:19PM 5 DEFENDANT ORTH: It's two questions. Let

6 me reask.

7 BY DEFENDANT ORTH:

8 Q. So first of all did you reiterate the

9 information that you learned from Miss Caracciolo to

12:20PM 10 Officer Lippisch that day?

11 A. Yes, I did.

12 Q. And did you also provide to him the

13 recorded interview with Miss Caracciolo?

14 A. Personally to Detective Lippisch no, but

12:20PM 15 we have a system called digital evidence and upload

16 audio or video and things like that. So it gets

17 uploaded into a system that all detectives have access

18 to. So did I give it directly to Detective Lippisch?

19 No. Does he have access to it? Yes.

12:20PM 20 Q. Does the system or did you in any way

21 notify Detective Lippisch of that recorded interview?

22 A. What are you referring to?

23 Q. In other words, when you enter it into

24 your system, all these officers, does it notify them

12:20PM 25 that you've entered into the system?

12:20PM 1 A. No.

2 Q. It's just there so if they open up the

3 system, they see it?

4 A. That's correct.

12:20PM 5 Q. So you never personally told Officer

6 Lippisch you have a recorded interview of Miss

7 Caracciolo?

8 A. Well, I told him I recorded an interview

9 with her.

12:21PM 10 Q. When was that?

11 A. You were asking me did I give him the

12 recorded interview and I said no, it was uploaded into

13 digital evidence which is what we're supposed to do.

14 Q. When did you upload it into digital

12:21PM 15 evidence?

16 A. I don't know.

17 Q. Was it that day?

18 A. It would be that day, maybe the next day,

19 it could be the following day. I don't know. But

12:21PM 20 there's maybe a timestamp on it when you actually

21 upload it, but I'm unaware if there is.

22 Q. You believe this officer here would also

23 have entered this --

24 THE COURT: What are referring to?

25

12:21PM 1 BY DEFENDANT ORTH:

2 Q. Do you believe Officer Zell's statement of

3 Miss Caracciolo would have also been entered into your

4 digital database?

12:21PM 5 A. No. Patrol officers don't carry around

6 recording devices. They have body cams and they have

7 dash cams and things of that nature.

8 Q. So do witness statements get uploaded to

9 the system?

12:21PM 10 A. To digital evidence? No. Because a

11 written statement would be written. Digital evidence

12 is digital.

13 Q. Okay. So that would be within somebody

14 else's knowledge, though?

12:22PM 15 THE COURT: What are you referring to?

16 DEFENDANT ORTH: Strike that question.

17 BY DEFENDANT ORTH:

18 Q. Let me ask you. Were you investigating

19 that bag for evidence of a robbery?

12:22PM 20 A. I wasn't investigating the bag. I was

21 asked to execute the search warrant and that's what I

22 did. I assisted Detective Lippisch with the execution

23 of the search warrant.

24 Q. So on that day were you involved in the

12:22PM 25 investigation of a robbery of guns?



12:22PM 1 A. I was involved -- I was involved in  
2 assisting Detective Lippisch with an interview. So my  
3 involvement of this case was an interview with Jessie  
4 and I can't say her last name.

12:22PM 5 THE COURT: What is it?

6 DEFENDANT ORTH: Caracciolo.

7 THE WITNESS: So my involvement was an  
8 interview with Miss Caracciolo and the following day is  
9 the execution of a search warrant for the duffel bag.

12:23PM 10 BY DEFENDANT ORTH:

11 Q. Why were you talking to Miss Caracciolo?

12 A. I was asked to interview her.

13 Q. Why?

14 A. About the incident.

12:23PM 15 Q. What incident?

16 A. The incident that we were there for.

17 Q. What incident was that?

18 A. It would be -- I believe it started off as  
19 a robbery investigation.

12:23PM 20 Q. So you were there for a robbery  
21 investigation, right?

22 A. That's what I said.

23 Q. Did you arrest me for robbery?

24 A. I didn't arrest you.

12:23PM 25 Q. Was I ever arrested by you at all?

12:23PM 1 A. No.

2 Q. Do you know in the course of the

3 investigation was I ever arrested for robbery at all?

4 MS. MENDOZA: Objection. Relevance.

12:23PM 5 THE COURT: I think we know you weren't.

6 DEFENDANT ORTH: Here is the thing, your

7 Honor, because here is what's going to happen. If I

8 may, just for the search warrant purpose. This is what

9 we're going to have. We're going to have Lippisch and

12:23PM 10 Lippisch is going to say one thing and then we are

11 going to have Officer Lapeer, okay? And we are going

12 to be able to compare those things.

13 THE COURT: Okay.

14 DEFENDANT ORTH: So what we're asking

12:24PM 15 Officer Lippisch basically is they are going to try to

16 say well, he was acting -- he was using a warrant, but

17 we want to know if Officer Lippisch knew there was

18 something fishy with the robbery investigation. That's

19 what basically we're getting at.

12:24PM 20 THE COURT: Okay. Well, the warrant is

21 going to have whatever the warrant has. Whatever the

22 probable cause is that you're in possession of a

23 firearm. So do you have any additional questions for

24 Detective Lapeer? He has no idea what if anything you

12:24PM 25 were arrested for, and for the record I'm taking

12:24PM 1 judicial notice that you have not to date been arrested  
2 for the robbery that's associated with that event.

3 Correct? You'll stipulate to that, Miss  
4 Mendoza?

12:24PM 5 MS. MENDOZA: That he hasn't been arrested  
6 for that, yes.

7 THE COURT: Any additional questions, Mr.  
8 Orth?

9 BY DEFENDANT ORTH:

12:24PM 10 Q. Did you collect any other evidence in the  
11 case?

12 A. From the bag or aside from the bag?

13 Q. Any other evidence other than what we've  
14 discussed here today other than the bag?

12:25PM 15 A. Technically the recorded interview is  
16 considered evidence, so yes. The recorded interview  
17 that is in digital evidence, so yes. The digital  
18 recording.

19 DEFENDANT ORTH: No further questions.

12:25PM 20 THE COURT: Ms. Mendoza.

21 MS. MENDOZA: I just wanted to clarify.

22

23 REDIRECT EXAMINATION

24 BY MS. MENDOZA:

12:25PM 25 Q. When you talked to Jessie you said that

12:25PM 1 she described that Mr. Orth and Mr. Polanco went into a  
2 bedroom and she didn't see what happened in there,  
3 correct?

4 A. That's correct.

12:25PM 5 Q. Did she also tell you that she had only  
6 recently arrived at the apartment and Mr. Orth was  
7 already there when she arrived?

8 A. Yes.

9 Q. And I understand you indicated you were  
12:25PM 10 investigating -- there was a robbery that occurred the  
11 night before, but then the morning you arrived there,  
12 there was also someone in possession of a stolen  
13 vehicle and this bag, correct?

14 A. That's correct.

12:26PM 15 Q. So it was a continuing investigation of  
16 both of these events, the night before and then what  
17 happened that morning, correct?

18 A. Correct.

19 Q. And you didn't arrive until after  
12:26PM 20 everything happened with the car after seven in the  
21 morning versus this officer who was there in the middle  
22 of the night before, correct?

23 A. Yeah, that's correct. I believe I was  
24 actually off duty when I arrived there. So it was

12:26PM 25 after 7:00 a.m.

12:26PM 1 Q. You start your shift at seven. Is that  
2 what you're saying?  
3 A. Yes, I do.  
4 MS. MENDOZA: All right. No further  
12:26PM 5 questions.  
6 THE COURT: Is this witness free to go?  
7 MS. MENDOZA: I think maybe he should hang  
8 out.  
9 THE COURT: Why don't you hang out for a  
12:26PM 10 little bit.  
11 Who is next?  
12 MS. MENDOZA: Detective Lippisch.  
13 THE COURT: Jump up on the witness stand,  
14 raise your right hand and remain standing for me.  
12:27PM 15 THE CLERK: Do you solemnly swear that the  
16 testimony that you are about to give will be the truth,  
17 the whole truth and nothing but the truth, so help you  
18 God?  
19 THE WITNESS: I do.  
12:27PM 20 THE CLERK: Please be seated.  
21 Please state your first and last name and  
22 spell each for the record.  
23 THE WITNESS: Karl, K-A-R-L. Lippisch,  
24 L-I-P-P-I-S-C-H.  
12:27PM 25 THE COURT: Go ahead, State.

12:27PM 1 **KARL LIPPISCH,**  
2 having been first duly sworn, did testify as follows:

3 DIRECT EXAMINATION

4 BY MS. MENDOZA:

12:27PM 5 Q. Are you currently employed as a detective  
6 with the Henderson Police Department?

7 A. Yes, I am.

8 Q. Were you working in that position back on  
9 October 28<sup>th</sup> of this year around 7:15 in the morning?

12:27PM 10 A. Yes, I was.

11 Q. Around that time were you involved in a  
12 potential robbery investigation at 981 Whitney Ranch  
13 Drive?

14 A. Yes.

12:28PM 15 Q. Did you actually respond to that scene?

16 A. Yes, I did.

17 Q. And did you identify a potential suspect  
18 involved in that event?

19 A. Yes, I did.

12:28PM 20 Q. Who is that person?

21 A. His name is Sean Orth.

22 Q. Do you see him in the courtroom today?

23 A. Yes, I do.

24 Q. Can you point him out and describe  
12:28PM 25 something he's wearing.

12:28PM 1 A. He's sitting at the defendant table  
2 wearing an orange jumpsuit.

3 Q. Where was Mr. Orth located when you first  
4 arrived at that scene?

12:28PM 5 A. When I arrived he was in the back of a  
6 Henderson patrol car.

7 Q. Did you end up talking to Mr. Orth?

8 A. Yes, I did.

9 Q. And did you specifically talk to him about  
12:28PM 10 the events that led to him being in the patrol car?

11 A. Yes, I did.

12 Q. Prior to talking to him did you read him  
13 his Miranda rights?

14 A. Yes, I did.

12:28PM 15 Q. What was his response when you first  
16 started talking to him about Miranda?

17 A. When I initially had him in the vehicle  
18 and told him I was giving Miranda, he stated he didn't  
19 want me to read him his Miranda rights because he knew  
12:28PM 20 if I did not it was inadmissible. I told him I would  
21 not talk to him without reading Miranda. And then he  
22 agreed to go with Miranda.

23 Q. So did you go forward with doing that?

24 A. Yes, I did.

12:29PM 25 Q. And did you also talk to him about

12:29PM 1 potentially recording the interview?

2 A. I did, and he refused to have it recorded.

3 Q. But did you go through with talking to him  
4 not recording?

12:29PM 5 A. Yes, I did.

6 Q. So what did you talk to him about in terms  
7 of what had happened that morning when the police tried  
8 to stop him?

9 A. So I talked to him about the fact that he  
12:29PM 10 was the driver of a white Chevy Malibu that had evaded  
11 police officers and then the fact that he had jumped  
12 out of the driver's seat of the vehicle with a tan  
13 duffel bag and jumped over the wall and then attempted  
14 to flee across Whitney Ranch where he was detained by  
12:29PM 15 police officers.

16 Q. And did he indicate that when he was  
17 fleeing from police officers there was anything going  
18 on with those police vehicles that made him know that  
19 they were trying to stop him?

12:30PM 20 A. Yes, he did. He initially stated that he  
21 saw the two patrol vehicles as well as motor officers  
22 in the complex. The two patrol vehicles were behind  
23 them and they activated their emergency lights and  
24 sirens. He initially believed that he needed to get  
12:30PM 25 out of the way because they were there for a different



12:30PM 1 purpose.

2 So he then realized that they were not  
3 coming past him and that they were actually following  
4 him and at that time he realized that they were

12:30PM 5 attempting to stop him. However, he refused to stop.  
6 He actually stated to me that he believed he was being  
7 set up for something. And so that's when he attempted  
8 to evade and flee towards the front of the complex.

9 Q. So he admitted that he was intentionally  
12:30PM 10 not complying with the officers trying to stop him?

11 A. Yes, he did. He said he made the  
12 conscious decision that he was going to try to get  
13 away.

14 Q. Did he tell you anything about what he  
12:30PM 15 thought the setup was related to?

16 A. He stated that he believed since in the  
17 vehicle really the only thing in there that he was  
18 aware of was a tan duffel bag so he believed there must  
19 be items in the tan duffel bag that would incriminate  
12:31PM 20 him. And so that's when he was fleeing because he was  
21 thought he was being set up because of something in the  
22 bag.

23 Q. Did he say he knew anything about what was  
24 in that bag before he was being pulled over?

12:31PM 25 A. He claimed to not know the contents of the

12:31PM 1 bag.

2 Q. But randomly decided there must be

3 something bad in this bag?

4 DEFENDANT ORTH: Objection, your Honor.

12:31PM 5 Speculation.

6 THE COURT: Overruled.

7 BY MS. MENDOZA:

8 Q. There must be something bad in this bag so

9 I'm going to flee in a vehicle and then on foot and I'm

12:31PM 10 going to bring the bag with me?

11 A. That's correct.

12 Q. Did he acknowledge that he had come from

13 Mr. Polanco's apartment?

14 A. Yes. He stated that he had come home to

12:32PM 15 that apartment in the morning and he had tried to go

16 inside. However, no one would let him inside the

17 apartment.

18 Q. And did he say anything about what if

19 anything he tried to bring to the apartment with him?

12:32PM 20 A. He stated that he had brought the bag from

21 the car up to the apartment when he approached the

22 door.

23 Q. The bag had been in the car, he randomly

24 decides to bring it inside, can't get inside, brings

12:32PM 25 the bag back to the car, then starts getting pulled

12:32PM 1 over, decides there's something bad in this bag, flees  
2 in the car with the bag, correct?

3 A. Correct.

4 Q. So you had talked to Mr. Orth about this  
12:32PM 5 bag. Had the officers when you first arrived on scene  
6 also alerted your attention to a bag that was in the  
7 area?

8 A. Yes, they did. The officers, when I first  
9 responded, had told me that when Mr. Orth exited the  
12:32PM 10 vehicle, he exited the vehicle with a tan duffel bag  
11 which was in his hands as he exited. He then refused  
12 to comply with officers' commands and ran towards --  
13 walked or ran towards a block wall that would go out to  
14 Whitney Ranch. He threw the bag over the wall and then

12:33PM 15 he jumped over the wall. And then as he was -- I was  
16 told as he was fleeing across Whitney Ranch he  
17 initially attempted to pick up the bag. However, kind  
18 of fumbled with picking it up and then left it behind.  
19 And so then when they took him into custody, they also  
12:33PM 20 secured the tan duffel bag.

21 Q. So the bag was still in the area when you  
22 went out to Whitney Ranch?

23 A. When I arrived they'd already secured it  
24 into a patrol vehicle just to make sure that no  
12:33PM 25 bystander or somebody didn't take it.

12:33PM 1 Q. So the bag was with patrol officers when  
2 you got there?

3 A. Yes, it was.

4 Q. Did you ultimately obtain a search warrant  
12:33PM 5 for that bag?

6 A. Yes, I did.

7 MS. MENDOZA: Permission to approach the  
8 witness?

9 THE COURT: Yes.

12:34PM 10 BY MS. MENDOZA:

11 Q. Showing you what's been admitted as  
12 State's Exhibit 1. Do you recognize what we're looking  
13 at in this picture?

14 A. Yes, I do.

12:34PM 15 Q. What's that?

16 A. That's the tan duffel bag and it's  
17 currently open.

18 Q. Do you recognize this as the same tan  
19 duffel bag you got from the officers when you arrived  
12:34PM 20 there?

21 A. Yes.

22 Q. So did you ever go into that bag and see  
23 what's in there?

24 A. I did not because I was actually not at  
12:34PM 25 the station when it was opened.

12:34PM 1 Q. Did you take the bag from the scene  
2 somewhere else?

3 A. I took custody of the bag at the scene and  
4 I'm the one who brought it back and secured it at the  
12:34PM 5 police station.

6 Q. Did you ultimately obtain a search warrant  
7 for that bag?

8 A. Yes, I did.

9 Q. And did you ask some other officers to  
12:34PM 10 assist you in searching that bag?

11 A. Yes, I did.

12 Q. Would that specifically be Detectives  
13 Ozawa and Lapeer?

14 A. Yes.

12:34PM 15 Q. And you indicated you were not present  
16 when that bag was searched, correct?

17 A. Correct.

18 Q. Did Detective Lapeer and/or Ozawa report  
19 back to you about what they had found in that bag?

12:35PM 20 A. Yes, they did.

21 Q. Did that include the Winchester shotgun?

22 A. Yes, it did.

23 MS. MENDOZA: Pass the witness.

24 THE COURT: Mr. Orth.

25

CROSS-EXAMINATION

BY DEFENDANT ORTH:

Q. Good morning, Detective Lippisch.

A. Good morning.

Q. So you were responding to a complaint of a robbery, correct?

A. No. I was responding to a reported suspect who had committed a robbery the night before that was back on scene and attempting to get into the location again.

Q. Okay. What investigation of witnesses did you do in response to that?

A. I did not contact the witnesses.

Q. You didn't contact any witnesses?

A. I did not. Detectives that responded with me contacted the witnesses.

Q. And those detectives reported to you, correct?

A. Yes.

Q. What did they report to you if you remember?

MS. MENDOZA: Objection. Vague.

THE COURT: Let's see --

DEFENDANT ORTH: I will itemize.

THE COURT: Let's be more specific.

12:36PM 1 BY DEFENDANT ORTH:

2 Q. So who interviewed Louie?

3 A. Detective Ozawa.

4 Q. And did Detective Ozawa report what he had

12:36PM 5 learned to you?

6 MS. MENDOZA: Objection. Vague.

7 THE WITNESS: Yes, he did. Portions of

8 what he learned.

9 MS. MENDOZA: Hang on a second.

12:36PM 10 THE COURT: Hold on a second. I think the

11 question is did Detective Ozawa tell you what this

12 person told him. Is that what your question is, Mr.

13 Orth?

14 BY DEFENDANT ORTH:

12:36PM 15 Q. Did Detective Zell tell you what Louie --

16 THE COURT: Hang on a second. You were

17 talking about Detective Ozawa a minute ago. Who are we

18 talking about now?

19 BY DEFENDANT ORTH:

12:36PM 20 Q. So you're saying -- let me do this because

21 we have a confusion of names. We're talking about

22 Detective Ozawa. Are you also aware of a detective

23 named Zell? Are you aware of Detective Zell?

24 A. No.

12:36PM 25 Q. You're not aware of him at all?

12:36PM 1 A. Could you spell that, please.

2 Q. Z-E-L-L. A. Zell.

3 A. Detective Zell, no.

4 Q. You don't know who that is. Okay. So

12:37PM 5 when you responded were you aware that Henderson Police

6 Department had received a 911 call the night before?

7 A. I know that officers responded to that

8 scene the night before, yes.

9 Q. And what do you know about that call?

12:37PM 10 MS. MENDOZA: Objection. Vague.

11 THE COURT: Well, be more specific in your

12 question.

13 BY DEFENDANT ORTH:

14 Q. Can you tell me specifically what was the

12:37PM 15 content of that call? Did you get the call yourself at

16 any point?

17 A. I did not hear the call, no.

18 Q. You didn't go in and investigate the call?

19 A. No, I did not. Patrol officers responded

12:37PM 20 to that.

21 Q. Are you in charge of the investigation of

22 a robbery at 891 Whitney Ranch?

23 A. Could you define what you mean by in

24 charge, please.

12:37PM 25 Q. Are you or you and other members



12:37PM 1 investigating a robbery at 891 Whitney Ranch, Number  
2 823?

3 A. We were alerted to it in the morning and  
4 we did respond, yes.

12:38PM 5 Q. So in your investigation did you  
6 investigate the information that was provided to police  
7 the night before?

8 A. Yes, I did.

9 Q. And was there any recorded information  
12:38PM 10 taken that night to your knowledge?

11 MS. MENDOZA: Objection.

12 BY DEFENDANT ORTH:

13 Q. That you investigated.

14 THE COURT: Hang on. What's the  
12:38PM 15 objection?

16 MS. MENDOZA: I want him to clarify what  
17 he means by recorded.

18 THE COURT: What are you asking?

19 BY DEFENDANT ORTH:

12:38PM 20 Q. Was there any body cam footage for the  
21 interview of the alleged victims the night before?

22 A. I'm not aware if there is or is not.

23 Q. Was there any recorded information by  
24 audio video of the victims or witnesses the night  
12:38PM 25 before?

12:39PM 1 A. Not that I'm aware of at this time.

2 Q. Were there any written or recorded

3 statements by the victims or witnesses the night

4 before?

12:39PM 5 A. Yes, there were.

6 Q. Did you review them?

7 A. I reviewed the report that was completed

8 from the night before, yes.

9 Q. Did you review the statements?

12:39PM 10 A. Which statements are you referring to?

11 Q. The actual statements.

12 A. Which statements are you referring to?

13 Q. The victims or witness statements from the

14 night before.

12:39PM 15 A. Are you talking about written statements,

16 verbal statements?

17 Q. Were there any written statements by

18 Miss Caracciolo or Polanco provided to police the night

19 before?

12:39PM 20 A. I do not recall at this time.

21 Q. So you didn't investigate that. Did you

22 investigate a report by the officer who responded the

23 night before?

24 A. Yes, I did.

12:39PM 25 Q. You did?

12:39PM 1 A. Yes.

2 Q. What was his name?

3 A. I don't recall the patrol officer's name

4 at this time.

12:39PM 5 Q. So it was a patrol officer?

6 A. Yes, it was.

7 Q. Did he have body cam on?

8 MS. MENDOZA: Objection. Asked and

9 answered.

12:39PM 10 THE COURT: I think you said you don't

11 know.

12 THE WITNESS: Correct.

13 BY DEFENDANT ORTH:

14 Q. When did you review that police report?

12:40PM 15 A. I reviewed it after responding in the

16 morning.

17 Q. So you were aware of those facts that

18 morning. So in what capacity were you investigating

19 that day, the October 28<sup>th</sup> on the morning of the

12:40PM 20 arrest?

21 MS. MENDOZA: Objection. Vague.

22 THE COURT: I don't understand your

23 question, in what capacity. His capacity as a

24 detective?

25

12:40PM 1 BY DEFENDANT ORTH:

2 Q. What were you doing that morning?

3 THE COURT: I think they've already

4 testified that they went out because there was the

12:40PM 5 allegation of a robbery the night before and they went

6 out this morning because there was an allegation that

7 the person who allegedly did the robbery the night

8 before was back and had something to do with a stolen

9 vehicle.

12:40PM 10 Is that correct?

11 THE WITNESS: Correct.

12 THE COURT: That's what they went out that

13 morning for. Those allegations.

14 BY DEFENDANT ORTH:

12:40PM 15 Q. That morning did you receive information

16 from Officer Ozawa?

17 THE COURT: From who?

18 BY DEFENDANT ORTH:

19 Q. Did you receive any information from

12:40PM 20 Officer Ozawa after he interviewed Jessie Caracciolo?

21 A. I believe --

22 MS. MENDOZA: Objection. Misstates the

23 facts. He needs to lay more foundation.

24 THE COURT: Which facts is he misstating,

12:41PM 25 Miss Mendoza?

12:41PM 1 MS. MENDOZA: Detective Ozawa didn't  
2 interview Caracciolo.  
3 DEFENDANT ORTH: I will strike that  
4 question.  
12:41PM 5 BY DEFENDANT ORTH:  
6 Q. Did Officer Lapeer interview Jessie  
7 Caracciolo?  
8 A. Detective Lapeer did, yes.  
9 Q. Did Detective Lapeer tell you that  
12:41PM 10 Jessie's statements were in conflict with Louie  
11 Polanco's statements?  
12 A. Some of them were, yes.  
13 Q. And what were they?  
14 A. The duration of the defendant's  
12:41PM 15 relationship with the victims was contradictory as well  
16 as the possibility of the use of a phone in the car.  
17 THE COURT: Use of a phone?  
18 THE WITNESS: Correct.  
19 BY DEFENDANT ORTH:  
12:42PM 20 Q. So specifically she said she knew me  
21 longer than Louis said?  
22 A. She stated that she knew you for  
23 approximately a week.  
24 Q. Didn't she also say that she did not see a  
12:42PM 25 weapon that night in my hand?

12:42PM 1 A. That's correct. She said that she did not  
2 see the weapon because she was not in the location that  
3 the robbery occurred.

4 Q. Isn't it also true that she did not  
12:42PM 5 perceive anything to be a robbery although she was in  
6 the house?

7 MS. MENDOZA: Objection. I want to  
8 clarify he did not hear this interview. We need to  
9 clarify that --

12:42PM 10 THE COURT: This is information that was  
11 provided -- you're asking whether Mr. --

12 DEFENDANT ORTH: Ozawa.

13 THE COURT: No. Lapeer. This is the  
14 information that Detective Lapeer and whether Detective  
12:42PM 15 Lapeer provided that information to this detective, and  
16 the only reason I'm allowing that is whether it has  
17 anything to do with the application for the search  
18 warrant. Okay? So that's where we're at.

19 MS. MENDOZA: There's --

12:43PM 20 THE COURT: Go ahead, Miss Mendoza.

21 MS. MENDOZA: There's commingling of  
22 Mr. Polanco's statement as well.

23 THE COURT: All right. So you need to be  
24 more specific. What are you specifically asking?

12:43PM 25 DEFENDANT ORTH: My fault. I apologize.

12:43PM 1 BY DEFENDANT ORTH:

2 Q. So did Mr. Polanco say his car was stolen  
3 in the robbery?

4 A. Yes, he did.

12:43PM 5 Q. Did he later change his story and say that  
6 he lent me the car?

7 A. I do not recall if he did, but I did get  
8 information that he believed he was going to allow you  
9 to use the car, but I don't recall who said that.

12:43PM 10 Q. Did he also say that he lent me the phone,  
11 his cell phone?

12 A. He said that you had been allowed to use  
13 it.

14 Q. Now, isn't it true that when you asked me  
12:43PM 15 what happened, I said I was returning home, that I was  
16 returning his car that I borrowed, and I borrowed his  
17 cell phone? Isn't that true?

18 A. Yes, those were your statements.

19 Q. And isn't it true that that information  
12:43PM 20 was relayed to the officers interviewing Mr. Polanco  
21 and then he changed his story and said yes, I did lend  
22 him the car and the phone?

23 A. That information was relayed to  
24 detectives. However, I believe he still stated that  
12:44PM 25 you had stolen the vehicle and the phone.

12:44PM 1 THE COURT: Let me ask you this. A lot of  
2 this I've been giving you some leeway to establish  
3 whatever record you want to make for the purposes of  
4 the search warrant. I'm not quite sure at this point  
12:44PM 5 whether the nature of the vehicle whether it was stolen  
6 or the nature of the phone and whether it was stolen is  
7 related to the search warrant for the firearm.

8 So, Ms. Mendoza, do you have any position  
9 on that?

12:44PM 10 MS. MENDOZA: Well, your Honor, as I  
11 stated from the beginning, I understand that a motion  
12 to suppress is appropriate in Justice Court. He's free  
13 to file that. However, my understanding is his  
14 position is that Detective Lippisch left material facts  
12:45PM 15 out of this warrant, and in order to even get into that  
16 at a hearing, he has to show, number one, that it was  
17 an intentional misrepresentation and, number two, that  
18 it affects probable cause, and he cannot show that.

19 THE COURT: That's what I'm wondering, is  
12:45PM 20 what's been left out? Is that what your understanding  
21 is, Ms. Mendoza, that something was left out of the  
22 search warrant or that there wasn't probable cause if  
23 they had included all the relevant information?

24 MS. MENDOZA: According to defendant  
12:45PM 25 there's two things that were left out. Number one,



12:45PM 1 that the way defendant characterizes it is that Jessie  
2 and Louis have conflicting statements. Specifically  
3 that Lewis says this robbery happened, that Jessie says  
4 she didn't see it happen. Now, that information is in  
12:45PM 5 the warrant. So that argument is completely gone.

6 Now, what his second argument is that  
7 Detective Lippisch didn't include in the warrant that  
8 he received information that the car and phone were  
9 possibly lent to defendant, which is not in the  
12:46PM 10 warrant. However, that does not affect probable cause  
11 and I don't believe he can show there's an intentional  
12 misrepresentation here. So we shouldn't even --

13 THE COURT: Do you have a copy of the  
14 search warrant?

12:46PM 15 MS. MENDOZA: Yes.

16 THE COURT: Let me have that.

17 DEFENDANT ORTH: Can I clarify something,  
18 your Honor?

19 THE COURT: What's that?

12:46PM 20 DEFENDANT ORTH: Can I make a little  
21 clarification to make it easier?

22 THE COURT: Not just yet, okay?

23 I read the search warrant. Anything else,  
24 Miss Mendoza? I didn't know if you had any  
12:49PM 25 representations you want to make.

12:49PM 1 MS. MENDOZA: Yes. I think --

2 THE COURT: Mr. Orth, what do you want to

3 tell me at this point?

4 DEFENDANT ORTH: First of all, the warrant

12:49PM 5 was for a robbery so we're allowed to ask questions

6 about the robbery. The warrant was to seek evidence

7 that pertained to the robbery. It's right on the cover

8 of the search warrant affidavit. Questioning about the

9 robbery.

12:49PM 10 THE COURT: Okay.

11 DEFENDANT ORTH: Also as you know the

12 search warrant can be obtained using hearsay testimony.

13 So he used hearsay testimony when it happened. Now,

14 I'm just trying to show that he withheld the

12:49PM 15 impeachment information that was known to him as

16 hearsay so that he can manipulate the Court into

17 issuing a warrant.

18 THE COURT: Well, what I read in here is

19 that he put Louis's statement and then he also put --

12:49PM 20 who's the other one?

21 MS. MENDOZA: Jessie.

22 THE COURT: -- Jessie who said that she

23 didn't say anything.

24 DEFENDANT ORTH: That's not in the

12:50PM 25 warrant.

12:50PM 1 THE COURT: Yes, it is.

2 DEFENDANT ORTH: It is?

3 THE COURT: Yes.

4 DEFENDANT ORTH: It says Jessie gave

12:50PM 5 conflicting statements and that was it.

6 THE COURT: Hang on a second. Jessie

7 stated that she had not observed Sean with a handgun.

8 I don't have page numbers on it. It's the first full

9 paragraph. Jessie stated that she had not observed

12:50PM 10 Sean with a handgun and although she felt that what had

11 just transpired was odd, she did not know that Sean had

12 committed the robbery until Louis told her because she

13 had been seated in the kitchen when this occurred.

14 They included specifically in the warrant that she said

12:50PM 15 that she didn't see you with a handgun or didn't know

16 anything about the robbery until Louis told her.

17 DEFENDANT ORTH: Right. But what I'm --

18 excuse me. What I'm trying to get at the point raised

19 is that at that point when they are together and

12:50PM 20 questioning him, can I just go into the question here

21 on his affidavit for arrest?

22 THE COURT: I'm allowing you to get into

23 this information so that we can make a record because

24 I'm going to rule on your motion to suppress the search

12:51PM 25 warrant so we don't have to later deal with this in

12:51PM 1 District Court. So I'm allowing you to get into  
2 whether there's lack of probable cause in the search  
3 warrant to get into the duffel bag. You said that they  
4 didn't include exculpatory information in the search  
12:51PM 5 warrant, and so far from what I've read they did  
6 include the conflicting statements. I just read it to  
7 you.

8 DEFENDANT ORTH: Yes, you did, and I'm  
9 going to get to the rest of it.

12:51PM 10 THE COURT: Let's kind of speed it up here  
11 a little bit.

12 BY DEFENDANT ORTH:

13 Q. Isn't it true, sir, that you made a  
14 Declaration of Arrest in this case?

12:51PM 15 A. Yes, I did.

16 Q. And in that Declaration of Arrest you  
17 agreed that statements made by Jessie were in conflict  
18 with the statements that Louie Polanco made?

19 A. Some of the statements made, yes.

12:52PM 20 Q. Now, isn't it true that you also stated  
21 that Louis did admit that he lent me the car?

22 A. I would have to see my report.

23 Q. What I'm showing is a sworn statement, a  
24 Declaration of Arrest by Detective Lippisch.

12:52PM 25 MS. MENDOZA: What page and paragraph?

12:52PM 1 DEFENDANT ORTH: Give me one second, your  
2 Honor.  
3 THE COURT: Yes.  
4 DEFENDANT ORTH: Page 3, Paragraph 3.  
12:53PM 5 MS. SIMMONS: Is it okay if I approach?  
6 THE COURT: Yes.  
7 BY DEFENDANT ORTH:  
8 Q. Sir, is that a sworn statement by you?  
9 A. This is my Declaration of Arrest, yes.  
12:53PM 10 Q. Would you please read the paragraph that  
11 I've directed you to.  
12 MS. MENDOZA: Objection. Improper  
13 hearsay.  
14 THE COURT: You asked him a question as to  
12:53PM 15 whether those witnesses told this detective that they  
16 had let you use the car and the phone. So you're  
17 directing him to Paragraph 3.  
18 Read that to yourself, Mr. Lippisch, and  
19 let me know when you're done and whether it refreshes  
12:54PM 20 your recollection as to Mr. Orth's question.  
21 BY DEFENDANT ORTH:  
22 Q. Okay. So --  
23 THE COURT: Hang on.  
24 THE WITNESS: I have read the paragraph.  
12:54PM 25 THE COURT: Does it refresh your

12:54PM 1 recollection?

2 THE WITNESS: Yes.

3 THE COURT: What is your question,

4 Mr. Orth?

12:54PM 5 BY DEFENDANT ORTH:

6 Q. Did Louis change position and say that he

7 lent me the car?

8 MS. MENDOZA: Objection. We need to

9 clarify he did not talk to him.

12:54PM 10 DEFENDANT ORTH: Okay. Let me do this.

11 BY DEFENDANT ORTH:

12 Q. Isn't it true that you learned information

13 from other officers that Louis had changed his story

14 and had admitted that he lent me the car?

12:54PM 15 A. Based on this paragraph it is not specific

16 to who said that they lent you the car.

17 Q. Did you learn information from other

18 detectives that Louie and/or Jessie lent me the car?

19 A. I learned that one of them had stated that

12:55PM 20 they had allowed you access to the vehicle.

21 Q. Isn't it true that one of them also stated

22 that they had allowed me to use the cell phone?

23 A. Yes.

24 MS. MENDOZA: So you heard?

12:55PM 25 THE WITNESS: Correct.

12:55PM 1 BY DEFENDANT ORTH:

2 Q. At that point in your professional

3 experience did you feel that these people were telling

4 you completely -- did you feel that the entire truth

12:55PM 5 was being told as far as a robbery is concerned?

6 MS. MENDOZA: Objection. Personal opinion

7 is not relevant.

8 THE COURT: I will let him answer.

9 You can answer.

12:55PM 10 DEFENDANT ORTH: I will rephrase.

11 THE COURT: Hold on.

12 THE WITNESS: I believe the fact that they

13 had stated that you had stolen the car and the phone

14 the night before was relevant even though that you had

12:56PM 15 possibly had access to it prior.

16 BY DEFENDANT ORTH:

17 Q. Hold on. You're changing your statement.

18 You're saying access prior. Where does it say access

19 prior in your report?

12:56PM 20 A. In that paragraph it does not.

21 Q. Right. So you're changing it, right?

22 You're changing your sworn statement to now say that

23 they were saying that they lent it to me before?

24 MS. MENDOZA: Objection. Misstates.

12:56PM 25 DEFENDANT ORTH: I don't understand. He's

12:56PM 1 changing directions, your Honor. Here's what's  
2 happening.

3 THE COURT: Hang on a second.

4 What happened? Give me a summary of  
12:56PM 5 exactly what happened and what everybody said.

6 THE WITNESS: So --

7 MS. MENDOZA: From your recollection.

8 THE COURT: Whatever your investigation  
9 showed as to what happened when and give me a timeline.

12:56PM 10 THE WITNESS: Okay. So the investigation  
11 revealed that, depending on who you spoke with, the  
12 defendant had been staying at the apartment for  
13 approximately a week and in that week had possibly had  
14 access to use the car and the cell phone. However, the  
12:57PM 15 prior night he was not allowed the access and he in  
16 fact stole the keys and the cell phone and the contents  
17 of the tan bag and left the residence.

18 THE COURT: That was the allegation from  
19 the night before?

12:57PM 20 THE WITNESS: Correct.

21 THE COURT: So when he asked you questions  
22 about either one of these witnesses being reinterviewed  
23 and talking about that he had permission to use the car  
24 or to have the phone, when one of those witnesses told  
12:57PM 25 one of the detectives who was interviewing them, when



12:57PM 1 were they referring to him having had permission? Was  
2 it before the alleged robbery or are they effectively  
3 saying it wasn't a robbery and that he had permission?  
4 That's my question.

12:57PM 5 THE WITNESS: Prior to the robbery.

6 THE COURT: Okay. So those witnesses then  
7 went back around and said well, maybe he had permission  
8 to have the vehicle and the phone at some date prior to  
9 the robbery. That's your understanding of what the  
12:58PM 10 statements of the witnesses to these detectives was?

11 THE WITNESS: Correct.

12 THE COURT: Not that a robbery didn't  
13 occur?

14 THE WITNESS: Correct.

12:58PM 15 THE COURT: Anything else?

16 DEFENDANT ORTH: Yes.

17 BY DEFENDANT ORTH:

18 Q. So in your investigation did you go inside  
19 the apartment?

12:58PM 20 A. I did not.

21 Q. So was Ozawa's interview with Louis  
22 Polanco made available to you before the warrant?

23 A. The entire contents, no, it was not.

24 Q. So his summary was?

12:58PM 25 A. The information he provided to me, yes.

12:58PM 1 Q. You have a digital database which these  
2 statements are placed into by the other detectives,  
3 right?

4 A. Yes.

12:58PM 5 Q. So that all of the cumulative knowledge  
6 and all of the cumulative facts are within that  
7 database via a summary by the officer or an actual  
8 recording of that witness, correct?

9 A. We have multiple locations that things are  
12:59PM 10 documented, yes, and stored.

11 Q. And that next day did you look into that  
12 database?

13 MS. MENDOZA: Objection. Vague.

14 THE COURT: Look into it for what purpose?

12:59PM 15 DEFENDANT ORTH: For the purpose of  
16 investigating all the information known to all the  
17 other officers.

18 THE COURT: On what day?

19 DEFENDANT ORTH: October 28<sup>th</sup>.

12:59PM 20 THE WITNESS: On October 28<sup>th</sup> I used the  
21 information provided directly to me by the officers --  
22 or the detectives for my investigation.

23 BY DEFENDANT ORTH:

24 Q. And you're the one who created the  
12:59PM 25 application for the search warrant, correct?

12:59PM 1 A. Yes.

2 Q. You simply copy and pasted your

3 Declaration of Arrest into the affidavit for search

4 warrant; is that correct?

1:00PM 5 A. No.

6 Q. You didn't?

7 A. No.

8 Q. What did you omit?

9 A. I didn't omit anything. The search

1:00PM 10 warrant was completed before the Declaration of Arrest.

11 Q. Okay. So the search warrant affidavit

12 was -- how long after you seized the item did that

13 occur?

14 MS. MENDOZA: Objection. Vague.

1:00PM 15 BY DEFENDANT ORTH:

16 Q. How long --

17 THE COURT: Hang on a second. You said

18 when did he create the search warrant affidavit after

19 he seized --

1:00PM 20 BY DEFENDANT ORTH:

21 Q. After you had me under arrest in your

22 vehicle when did you create the search warrant

23 affidavit?

24 A. I applied for the search warrant that day,

1:00PM 25 the 28<sup>th</sup>. I do not know the exact time.

1:00PM 1 THE COURT: For the record it's a court  
2 document. October 28<sup>th</sup> it was signed by looks like  
3 Judge Gibson at 3:51 p.m. Does that sound correct on  
4 October 28<sup>th</sup>?

1:00PM 5 THE WITNESS: That does.

6 THE COURT: That's the timestamp I have.

7 BY DEFENDANT ORTH:

8 Q. So at that point you already had me in  
9 jail for obstructing resist?

1:01PM 10 A. You were in custody for the resisting  
11 charge.

12 Q. And misdemeanor, and you had made the  
13 decision not to arrest me for robbery at that point,  
14 correct?

1:01PM 15 A. At that time the robbery investigation was  
16 still ongoing.

17 Q. Okay. So would you agree that you did not  
18 have probable cause at that point to arrest me for  
19 robbery?

1:01PM 20 A. At the time that I applied for the search  
21 warrant I did not have probable cause to arrest you for  
22 the robbery.

23 Q. When did you create a Declaration of  
24 Arrest?

1:01PM 25 A. I don't remember the exact day.

1:02PM 1 Q. Did you create it after you applied for  
2 the search warrant?

3 A. Yes.

4 Q. Why did you include in your Declaration of  
1:02PM 5 Arrest that Jessie and Louie changed their stories, but  
6 you didn't include that when you made your search  
7 warrant affidavit to the judge?

8 A. The paragraph you just had me read from  
9 the declaration talked about the changing of the  
1:02PM 10 stories. I wrote that synonymous with the conflicting  
11 stories.

12 Q. Why didn't you tell the judge you didn't  
13 have probable cause to arrest me for robbery?

14 A. I was not writing an arrest warrant. I  
1:02PM 15 was writing a search warrant.

16 Q. So to clarify, why didn't you have  
17 probable cause -- why did you not have probable cause  
18 on the robbery? Did you feel they weren't trustworthy?  
19 Did you feel there was too much conflict? In making a  
1:03PM 20 decision why wasn't there probable cause to arrest for  
21 robbery?

22 MS. MENDOZA: Objection.

23 THE COURT: It's kind of gotten to the  
24 point where it's irrelevant, Mr. Orth. With the search  
1:03PM 25 warrant they had probable cause to look for -- their

1:03PM 1 belief was potential for evidence from a robbery was  
2 included in the duffel bag. They don't have to have  
3 probable cause that a robbery occurred to arrest you to  
4 have probable cause to believe that there may be  
1:03PM 5 evidence of a crime in a location that they're  
6 searching for. So you're complaining two different  
7 things.

8 DEFENDANT ORTH: Let me bring a little bit  
9 of a halt to this.

1:03PM 10 THE COURT: That would be great.  
11 BY DEFENDANT ORTH:

12 Q. So, sir, you would agree that you have  
13 omitted the recorded information from Jessie Caracciolo  
14 that was provided to police that day when you made your  
1:04PM 15 search warrant, correct?

16 MS. MENDOZA: Objection. Vague. What  
17 recorded information omitted from what?

18 THE COURT: What information?

19 BY DEFENDANT ORTH:

1:04PM 20 Q. If there was a recorded statement made by  
21 Miss Caracciolo to police, would you agree that you  
22 omitted that from your search warrant affidavit?

23 THE COURT: What statement? Do they have  
24 a statement specifically from her in the search warrant  
1:04PM 25 that said she didn't see you commit an armed robbery?

1:04PM 1 It's specifically in the search warrant.

2 DEFENDANT ORTH: We don't have those

3 recorded interviews because the State refused --

4 THE COURT: He wrote it in the search

1:04PM 5 warrant.

6 MS. MENDOZA: That's also untrue. They

7 have those.

8 THE COURT: I know. He wrote it in the

9 search warrant affidavit. He specifically said in

1:04PM 10 there that this other lady --

11 DEFENDANT ORTH: No, he has not. Your

12 Honor --

13 THE COURT: I read it to you. I don't

14 know how many times I have to.

1:04PM 15 DEFENDANT ORTH: He just said he didn't go

16 over the interview.

17 THE COURT: I just -- he put in the search

18 warrant -- we're not doing this anymore. I'm making my

19 ruling on the search warrant. We're done. This has

1:04PM 20 gone on way too long. There is nothing wrong with the

21 search warrant at this point.

22 MS. SIMMONS: The only thing that I would

23 add if I were permitted to ask questions, which is to

24 clarify, is that if he were to go through --

1:04PM 25 MS. MENDOZA: She's standby.

1:05PM 1 THE COURT: That's all right.  
2 What is your question?  
3 MS. SIMMONS: If I were to go through and  
4 show both the declaration side by side with the arrest  
1:05PM 5 affidavit, that is the only paragraph that was missing  
6 or added or changed afterwards.  
7 THE COURT: Okay.  
8 MS. SIMMONS: And so that is exculpatory  
9 information that should have been provided to the judge  
1:05PM 10 which is one of Mr. Orth's arguments.  
11 THE COURT: All right. That is going to  
12 be a basis you can file a writ or appeal based on that  
13 one paragraph that is incredibly vague as to when they  
14 were referring to the permission that he had to have  
1:05PM 15 the vehicle which I think I clarified with this  
16 particular witness because I needed the clarification.  
17 So I take your point. I'm not suppressing the search  
18 warrant. I don't think there's anything wrong with the  
19 search warrant. I think the relevant information was  
1:05PM 20 in the search warrant based on the timing of the  
21 investigation.  
22 No more questions about the search  
23 warrant. Do you have anything else about probable  
24 cause in this case, Mr. Orth?  
1:05PM 25 DEFENDANT ORTH: Sure.



1:05PM

1 BY DEFENDANT ORTH:

2 Q. So at any point were you aware that the  
3 alleged victim said there was a green duffel bag that  
4 was stolen, not a brown one?

1:06PM

5 A. I don't recall the exact color that was  
6 given. I went from the information that was provided  
7 in the calls for service in the officer's report.

8 Q. You weren't aware that they described it  
9 as a green bag?

1:06PM

10 MS. MENDOZA: Objection. Hearsay.

11 THE COURT: Sustained.

12 BY DEFENDANT ORTH:

13 Q. So you're saying you're basing the color  
14 off of who? The color of the bag that was stolen in  
1:06PM 15 robbery, who did you base that off?

16 A. All the information that I was provided  
17 prior and when responding.

18 Q. So you don't know off the top of your  
19 head?

1:06PM

20 A. Specifically it came from the information  
21 I was provided through other detectives as well as  
22 officers on scene that recovered the bag as well as the  
23 officers that saw you exit the vehicle with the bag,  
24 and as well as the officer's report from the night  
1:06PM 25 before when the robbery was reported.

1:07PM 1 Q. So you're saying that you did base it off  
2 the information based on what was told to you the night  
3 before?

4 A. Not what was told to me, no.

1:07PM 5 THE COURT: Mr. Orth, what's the point of  
6 your question?

7 BY DEFENDANT ORTH:

8 Q. Here's the point. You see me with the  
9 brown duffel bag. Now, where did you learn that the  
1:07PM 10 brown duffel bag was stolen in the robbery?

11 THE COURT: We've already gone over this.  
12 I believe it was in the search warrant, correct?

13 MS. MENDOZA: I think we're still getting  
14 to search warrant issues.

1:07PM 15 THE COURT: Right. And I've already made  
16 the ruling on the search warrant.

17 DEFENDANT ORTH: We're talking about  
18 probable cause.

19 THE COURT: Right.

1:07PM 20 DEFENDANT ORTH: Probable cause to seize  
21 and arrest me for possession of a firearm.

22 THE COURT: Correct.

23 DEFENDANT ORTH: He hasn't --

24 BY DEFENDANT ORTH:

1:07PM 25 Q. Did you see me with a gun?

1:07PM 1 THE COURT: He doesn't have to. We've  
2 already gone over this. He's got information from the  
3 other witnesses who have testified to include an  
4 officer who saw you get out of the vehicle with the  
1:07PM 5 bag.

6 DEFENDANT ORTH: Nobody has testified to a  
7 brown bag.

8 THE COURT: They just did. They just did.  
9 The first witness came in here and testified to it.  
1:07PM 10 We're not going to keep covering --

11 DEFENDANT ORTH: Getting out of the car  
12 with the bag, your Honor. We're talking about the  
13 night before.

14 THE COURT: We're not talking about the  
1:08PM 15 night before. We're talking about the bag that you  
16 were seen with by the first officer that testified,  
17 that's the bag they searched and that's the bag that  
18 they found the firearm in. As we sit here today I'm  
19 not going to continue this probable cause hearing when

1:08PM 20 I have probable cause. The first witness Mr. Nelson  
21 came in and said he saw you get out of the vehicle with  
22 this duffel bag that ultimately was searched. This was  
23 the duffel bag. He saw you having it. He saw you walk  
24 with it. He saw you put it on the wall. He saw you

1:08PM 25 jump over the wall with the bag. They did a search

1:08PM 1 warrant on this bag. They found a gun in it. That's  
2 probable cause. So I don't know what else you want to  
3 argue.

4 BY DEFENDANT ORTH:

1:08PM 5 Q. Let me ask you this. Do you have any  
6 facts that I had knowledge of what was in that bag, the  
7 mens rea? Do you have any facts that I knew what was  
8 in that Louis Polanco's bag?

9 A. Are you asking me if you told me --

1:08PM 10 Q. No. Do you have any evidence that I knew  
11 what was in that bag?

12 A. You stated to me that you did not know.  
13 However, you took it with you when you fled.

14 Q. Do you have any evidence that I had  
1:09PM 15 knowledge that there was a gun in that bag?

16 THE COURT: Asked and answered. Next  
17 question.

18 BY DEFENDANT ORTH:

19 Q. Is that no?

1:09PM 20 THE COURT: He just said that you  
21 specifically said you didn't know.

22 BY DEFENDANT ORTH:

23 Q. So lastly, I told you that I was coming  
24 back home, I was returning a car and I was returning a  
1:09PM 25 cell phone. Was that consistent with what you learned

1:09PM 1 in the course of your investigation?

2 A. No.

3 MS. MENDOZA: Objection. Relevance. And

4 vague.

1:09PM 5 THE COURT: What's the relevance?

6 DEFENDANT ORTH: I'm telling him the

7 truth.

8 THE COURT: Okay.

9 DEFENDANT ORTH: And he's not telling the

1:09PM 10 Court exactly what's going on when he gets a search

11 warrant to make it seem like I'm lying.

12 THE COURT: We're done with the search

13 warrant. I've already made a decision on the search

14 warrant. Any other questions?

1:10PM 15 DEFENDANT ORTH: No more questions, your

16 Honor.

17 THE COURT: Okay. Anything on redirect?

18 MS. MENDOZA: Just so the record is clear,

19 I'm not conceding to any issues regarding the search

1:10PM 20 warrant. If we were continuing that argument, I would

21 ask more questions, but since we're not I won't.

22

23 REDIRECT EXAMINATION

24 BY MS. MENDOZA:

1:10PM 25 Q. I just want to clarify. So patrol

1:10PM 1 officers responded in the middle of the night about the  
2 robbery?

3 A. Correct.

4 Q. Now, let's say Mr. Orth never returned to  
1:10PM 5 the apartment. Would that have been routed to the  
6 robbery detectives and eventually a robbery detective  
7 would have followed up for continued investigation?

8 A. It would depend on patrol's involvement  
9 and they are able to -- if they want to retain the  
1:10PM 10 report for the investigation because it's something  
11 that's within their capabilities, they're able to go  
12 ahead and investigate it. However, if it's beyond  
13 their scope, it would be routed to a robbery detective.

14 Q. So either it would have stayed with  
1:11PM 15 patrol, or if robbery took over, you guys would have  
16 gone out and done subsequent investigation, correct?

17 A. Yes.

18 Q. So essentially the same thing you ended up  
19 doing that morning --

1:11PM 20 A. Yes.

21 Q. -- of interviewing witnesses and figuring  
22 out if there's physical evidence and things like that,  
23 correct?

24 A. Yes.

1:11PM 25 MS. MENDOZA: No further questions, your

1:11PM 1 Honor.

2 THE COURT: Anything else in regard to

3 what she just asked?

4 DEFENDANT ORTH: Because you have to take

1:11PM 5 his veracity --

6 THE COURT: His what?

7 DEFENDANT ORTH: His credibility and his

8 veracity.

9 THE COURT: Veracity. You're only allowed

1:11PM 10 to ask questions based on what she asked questions

11 about. So go ahead.

12

13 RECROSS EXAMINATION

14 BY DEFENDANT ORTH:

1:11PM 15 Q. Did you tell the judge there was probable

16 cause to arrest me for robbery?

17 THE COURT: He's already answered that.

18 He just said that at the time there was not probable

19 cause to arrest you.

1:11PM 20 BY DEFENDANT ORTH:

21 Q. Did you tell the judge that?

22 THE COURT: He just told me right now.

23 BY DEFENDANT ORTH:

24 Q. So in your professional opinion is there

1:12PM 25 probable cause to not arrest me but there's probable

1:12PM 1 cause to search?

2 THE COURT: That's a legal determination

3 and the fact of the matter is yes, that's true. So you

4 don't have to answer the question.

1:12PM 5 Anything else? Any other questions? He's

6 investigating to develop probable cause.

7 DEFENDANT ORTH: Right.

8 THE COURT: So there's things called

9 reasonable suspicion, he gets to investigate, he has

1:12PM 10 reason to believe there might be evidence of a crime.

11 It's probable cause to believe there's evidence of a

12 crime in a bag. He gets to investigate it. Turns out

13 if there wasn't a gun in there or whatever else, that

14 might help him decide that there's not probable cause

1:12PM 15 to arrest you for robbery. But he gets to do an

16 investigation and there's clearly probable cause in

17 this case for him to have executed the search warrant

18 based upon the statements that were made.

19 And including your particular actions,

1:12PM 20 Mr. Orth, in running and jumping over a fence, running

21 with a duffel bag that has a shotgun in it. So yeah,

22 that's the law. Okay. Any additional questions,

23 Mr. Orth?

24 DEFENDANT ORTH: No.

1:13PM 25 THE COURT: Any additional witnesses? Is



1:13PM 1 this witness free to go?

2 MS. MENDOZA: I'm going to let him and

3 Detective Lapeer go.

4 THE COURT: You guys are good to go.

1:13PM 5 Did you have some exhibits that you

6 marked?

7 MS. MENDOZA: Yes. The JOCs. And I have

8 some more than what's listed in the complaint.

9 THE COURT: You have more what? I'm

1:13PM 10 sorry.

11 MS. MENDOZA: I have more JOCs than what's

12 listed in the complaint. So if I can just make a

13 record.

14 THE COURT: All right. I have in my hand

1:14PM 15 State's Exhibits 2, 3, 4, 5. Have you seen these, Mr.

16 Orth?

17 DEFENDANT ORTH: I have, your Honor.

18 THE COURT: State, what amendments do you

19 want to make based on your exhibits?

1:14PM 20 MS. MENDOZA: So the one listed in there

21 in the count is the 2007 robbery and some of the

22 charges are completed and it doesn't have the case

23 number. So for the one that's already listed, it

24 should read 2007 robbery with a deadly, conspiracy

1:14PM 25 robbery with a deadly, alluding of a police officer and

1:15PM 1 that's Case Number CR05 --

2 THE COURT: Hang on. I'm going to have

3 you start over. Line 19, defendant being a convicted

4 felon, 2007 been convicted of robbery with a deadly

1:15PM 5 weapon. Which case number are we talking?

6 MS. MENDOZA: CR051459.

7 THE COURT: Is it three counts?

8 MS. MENDOZA: Yes. Robbery with a deadly,

9 conspiracy robbery with a deadly and eluding.

1:15PM 10 THE COURT: You have Washoe County on

11 that.

12 MS. MENDOZA: Yes. And I would also add,

13 going to the next one would be CR -- is the easiest way

14 for me to do it is to tell you the case number first?

1:16PM 15 THE COURT: Yes.

16 MS. MENDOZA: The next one would be

17 CR062177, and that's a 2007 trafficking controlled

18 substance and possession of firearm by prohibited

19 person.

1:16PM 20 THE COURT: Will you get me a second

21 amended and refill it out and forward it to us. Just

22 say it on the record and then I want you to email me a

23 second amended. It'll be for the record when we bind

24 it over. What I want is the original second amended in

1:17PM 25 the file.

1:17PM 1 MS. MENDOZA: You want it with you guys as  
2 opposed to just by interlineation?

3 THE COURT: Yes. There's enough of it  
4 there that I think it's better to just have a clean  
1:17PM 5 copy that we're arguing off of. So if you can email it  
6 to us and then email it to Miss Simmons so that she has  
7 a copy of it. It's just what you're adding is the  
8 content of the judgment of convictions in CR062177,  
9 Washoe County, conviction dated May of 2007. CR051459,  
1:17PM 10 the conviction from May of 2007. And then CR98-2523  
11 from December of 1998, and CR98-2037 from October of  
12 1998. So the convictions associated with those four  
13 dates, correct?

14 MS. MENDOZA: Yes, your Honor.

1:18PM 15 THE COURT: All right. Go ahead.

16 MS. MENDOZA: I'll reserve for rebuttal.  
17 I just want to make clear that assuming you are to find  
18 probable cause today, you are finding probable cause on  
19 all those prior felonies?

1:18PM 20 THE COURT: You're making this amendment.  
21 It would be based on an amended Count 1 with these  
22 additional.

23 DEFENDANT ORTH: My only objection is --

24 THE COURT: Hang on. I have Miss Simmons.

1:18PM 25 MS. SIMMONS: Just a quick question.

1:18PM 1 After speaking with Mr. Orth he wanted to know so he  
2 has the opportunity and the right to present testimony.  
3 He did want to ask your Honor to consider bifurcating  
4 so he can try to get Louis Polanco and Jessie  
1:18PM 5 Caracciolo here and Officer Zell.

6 THE COURT: Well, you've already made an  
7 effort today on his behalf twice.

8 MS. SIMMONS: I know for a fact that my  
9 investigator attempted prior to the first preliminary  
1:19PM 10 hearing date back on November 17<sup>th</sup>. I don't know what  
11 additional efforts she made since then. I just know at  
12 that time she was unable to reach them.

13 THE COURT: So they've been unable to be  
14 reached today and I think you said you made an attempt  
1:19PM 15 before the first preliminary hearing as well.

16 MS. SIMMONS: Yes.

17 THE COURT: So we've had two different  
18 attempts at two different preliminary hearings. What  
19 record are you trying to establish with these  
1:19PM 20 additional witnesses?

21 I'm assuming you're resting at this point  
22 with those amendments, correct?

23 MS. MENDOZA: Yes.

24 THE COURT: All right. Yes, sir.

1:19PM 25 DEFENDANT ORTH: I have no objection as

1:19PM 1 long as they satisfy that they are court sealed  
2 documents as the statute requires.

3 THE COURT: They are.

4 DEFENDANT ORTH: And as to the

1:19PM 5 bifurcation, as you heard today we have Officer Zell  
6 who nobody knows nothing about. He is the one who  
7 actually took the written statements by Caracciolo and  
8 Polanco.

9 THE COURT: The arguments you're making

1:19PM 10 relate to the suppression of the search warrant. I've  
11 already made my ruling on the suppression of the search  
12 warrant.

13 DEFENDANT ORTH: I understand that. I  
14 just received these in discovery this morning.

1:20PM 15 THE COURT: I understand.

16 DEFENDANT ORTH: When they were describing  
17 it, they were describing that a green duffel bag was  
18 stolen, not a tan one. So why we're searching a tan  
19 duffel bag I don't know.

1:20PM 20 THE COURT: Honestly I don't even think  
21 they needed a search warrant. You happen to be in  
22 possession of that bag when you were running away. I  
23 don't know that you had a privacy interest in that bag.  
24 I think they could have opened the bag. That's my  
1:20PM 25 ruling. They didn't even need a search warrant, but

1:20PM 1 they got a search warrant and there's probable cause in  
2 the search warrant for entering the duffel bag and  
3 looking into it. Because what you're saying is it  
4 wasn't even your bag. So what was your privacy  
1:20PM 5 interest in it? None. They didn't need a search  
6 warrant to get in that bag. They didn't need a search  
7 warrant.

8 DEFENDANT ORTH: She hasn't raised that.

9 THE COURT: I'm making the ruling. That's  
1:20PM 10 my job. I'm the judge. I make the decision as to what  
11 the law is. There was probable cause in the search  
12 warrant for getting into that bag. I don't think they  
13 even needed to get a search warrant. I think it was  
14 almost purely prophylactic and that's my ruling today.

1:21PM 15 So I'm not going to allow a continuance for any  
16 additional witnesses with regard to the search warrant  
17 at this time.

18 You're standby counsel. Do you want to  
19 talk to him about his right to testify?

1:21PM 20 MS. SIMMONS: I will do that. But also I  
21 have a question. Are we going to set another date as  
22 to the double jeopardy argument?

23 THE COURT: We can take that up now. So  
24 go ahead.

1:21PM 25 MS. SIMMONS: Your Honor, I informed him

1:21PM 1 of his right. He has decided he will follow his own  
2 advice and not testify.

3 THE COURT: Good advice, Mr. Orth.

4 State, he's brought to your attention the  
1:21PM 5 resisting in the city. I have it here.

6 MS. MENDOZA: I have them both printed  
7 out.

8 THE COURT: I have it here. NRS 199.280  
9 is resisting. The elements are -- what's my evading  
1:23PM 10 statute? 202 --

11 MS. MENDOZA: 484B.

12 THE COURT: 202.484?

13 MS. MENDOZA: No. 484B as in boy 550.

14 THE COURT: So the Blockburger test citing  
1:25PM 15 LaChance v. State, 321 P.3d 919. The offense in  
16 question, that being a violation of 484B.550, cannot be  
17 committed without committing resisting under NRS  
18 199.280. The real question is can you commit evading  
19 without at the same time committing resisting under NRS  
1:26PM 20 199.280. What's your argument?

21 MS. MENDOZA: So before you even get to  
22 Blockburger, there's a factual issue here that I think  
23 is being confused.

24 THE COURT: Okay.

1:26PM 25 MS. MENDOZA: I gave you the complaint

1:26PM 1 from Municipal Court and in that complaint it alleges  
2 that he disobeyed commands to stop from Officer Mangan  
3 or Lippisch and fled the scene. Obviously Officer  
4 Lippisch was not there and we heard testimony today  
1:26PM 5 that Officer Mangan was not there until after the  
6 vehicle pursuit ended. Officer Mangan was one of the  
7 officers who chased him on foot and he disobeyed their  
8 verbal commands to stop while they were running on  
9 foot. So the factual basis for the resisting is  
1:27PM 10 different than the factual basis for the evading.  
11 THE COURT: Okay.  
12 MS. MENDOZA: They're based on two  
13 different acts.  
14 THE COURT: Mr. Orth.  
1:27PM 15 DEFENDANT ORTH: All of the facts, your  
16 Honor, in both cases rise out of the same acts or  
17 transaction. The fleeing is included -- it's a  
18 continuing act and she's trying to separate. And  
19 technically today he said the car stopped and I got out  
1:27PM 20 of the car. Well, we're talking about two different  
21 things. First we'll talk about the double jeopardy.  
22 They all rise out of the same transaction. It's a  
23 lesser included offense. An obstruct and resist arrest  
24 is a lesser included offense. Based on the facts,  
1:28PM 25 especially if you read the facts that they sought the



1:28PM 1 guilty plea for the Municipal Court. In fact, they  
2 were including the fleeing in the vehicle, lights, all  
3 that, as facts to get me to plead guilty to that. So  
4 for her to now try to separate the incidents is  
1:28PM 5 contrary to LaChance.

6 MS. MENDOZA: It says nothing about  
7 fleeing in a vehicle or lights or sirens in the  
8 Municipal Court complaint.

9 DEFENDANT ORTH: It doesn't have to.

1:28PM 10 THE COURT: Hang on. Hang on. Hang on.  
11 So I think that the argument you're making is that you  
12 can do a misdemeanor resisting before you actually got  
13 in a vehicle and drove away and it was a whole separate  
14 crime, not that -- I think the argument you're making  
1:29PM 15 is that the facts alleged in the criminal complaint  
16 from Municipal Court would have related to attempts to  
17 stop before he got in the vehicle. Is that what you're  
18 saying?

19 MS. MENDOZA: After.

1:29PM 20 THE COURT: Oh, I'm sorry. After. Right.  
21 So after he got out of the vehicle --

22 MS. MENDOZA: The evading is over by the  
23 time that resisting occurs.

24 THE COURT: The testimony regarding Mangan  
1:29PM 25 was when did he arrive?

1:29PM 1 MS. MENDOZA: She arrived after he was out  
2 of the vehicle. She's one of the officers who was on  
3 the other side of the fence with Nelson and who chased  
4 him on foot. And I specifically asked Officer Nelson  
1:30PM 5 when did Mangan arrive, and he said that he knew  
6 specifically that it was not until after the vehicle  
7 lights happened. And I think that Mr. Schifalacqua  
8 pled it that way.

9 THE COURT: It does say Officer Mangan  
1:30PM 10 and/or Officer Lippisch. Lippisch didn't come until  
11 afterward.

12 MS. MENDOZA: Correct.

13 THE COURT: So the allegation was Mangan  
14 who he did testify came after and there was a foot  
1:30PM 15 pursuit, correct?

16 MS. MENDOZA: Correct.

17 THE COURT: Mr. Orth.

18 DEFENDANT ORTH: Yes, sir. Well, first of  
19 all, in order for there to be a resist that means there  
1:30PM 20 is an arrest occurring. So the arrest is occurring  
21 when they stop me with the lights. That's when it  
22 starts. So they're saying that the act occurs -- the  
23 resisting arrest when they go to stop me. And then I'm  
24 traveling in the vehicle. They didn't stop me and then  
1:30PM 25 I jumped in the vehicle and then went down and got of

1:30PM 1 the vehicle and then jumped out of the vehicle and ran.  
2 They're trying to stop me and they're saying that I'm  
3 evading arrest. The arrest occurred in the vehicle  
4 when the lights went on and they tried to stop me and I  
1:31PM 5 actually stopped. I acquiesced to their stop and then  
6 I chose to flee.

7 So what I'm trying to say is that the  
8 fleeing through the whole thing is one occurrence and  
9 not -- there is not a separation in the acts.

1:31PM 10 THE COURT: I'm going to rule that based  
11 on the way he pled it, it would involve two separate  
12 acts. One was the evading under 484B.550 and then  
13 there's a subsequent misdemeanor act when you exited  
14 the vehicle after stopping it. I'm going to find that  
1:31PM 15 there's essentially a break when you stopped the  
16 vehicle and then decided to flee on foot and they are  
17 two separate and distinct crimes. One would have been  
18 the evading while you were in the vehicle and then the  
19 separate one would have been the resisting when you  
1:32PM 20 were running and jumping over the wall. So I'm denying  
21 your motion at this time to find double jeopardy with  
22 regard to the evading charge.

23 MS. MENDOZA: Just so the record is clear.  
24 The State is not conceding that they would merge under  
1:32PM 25 Blockburger. I just think it's easier and more

1:32PM 1 straightforward.

2 THE COURT: That's what I'm going to rule

3 today.

4 MS. MENDOZA: In the future I don't want

1:32PM 5 anyone to claim that --

6 THE COURT: Well, I mean, he can file

7 whatever motions he wants to file in District Court as

8 to whether --

9 MS. MENDOZA: I just want the record to be

1:32PM 10 clear that that's not what I was referring to.

11 THE COURT: Well, you're also suggesting

12 that there's a different element. But I'm not even

13 going to get to that. I'm ruling that it's two

14 separate acts and two separate crimes and that they

1:32PM 15 don't overlap.

16 So you're waiving and reserving.

17 Mr. Orth, did you want to make any

18 arguments about probable cause at this point with

19 regard to Count 1 and Count 2?

1:32PM 20 DEFENDANT ORTH: First of all, your Honor,

21 as you heard the officer said I stopped and got out of

22 the car and that I ran and he's saying then the car

23 traveled on its own. So any endangerment was not part

24 of the flee if you go under what theory you just

1:33PM 25 presented, correct?

1:33PM 1 THE COURT: I'm sorry?

2 DEFENDANT ORTH: There is no endangerment

3 because the car stopped. I get out and then I'm

4 resisting arrest according to the Court at that point a

1:33PM 5 misdemeanor. So any endangerment of the car

6 traveling -- there is no endangerment. There is no

7 felony evading. There's misdemeanor evading and then

8 there's felony evading and the officer says that I

9 stopped the car, got out and walked out and he doesn't

1:33PM 10 know if the car malfunctioned, he doesn't know if it

11 just wasn't placed into gear or if it accidentally

12 traveled forward and there was danger. But that's

13 where the danger allegedly comes in. So the car

14 stopped 10 to 15 feet before him because he's got his

1:33PM 15 lights on and he said he could not detect speed, et

16 cetera, and his cameras could not. He felt it was

17 about 20 miles an hour on private property. There is

18 no speed limits. So I'm not in excess of the speed

19 limit within the curtilage, so there is no

1:34PM 20 endangerment.

21 So the best thing shown is if they want to

22 go under your theory is misdemeanor evade. They do not

23 have probable cause to bind me over of the felony

24 evade. Secondly, I would argue that -- and that's just

1:34PM 25 going under the Court's theory that there was --

1:34PM 1 THE COURT: It's not my theory.

2 DEFENDANT ORTH: -- a separate act.

3 So as to the probable cause for the gun

4 there was no probable cause admitted for the truth as

1:34PM 5 to the arrest portion. Nobody came in here and stated

6 they had probable cause to arrest me. It was all

7 objected to under hearsay and it was not asserted as

8 the truth. So all the State failed to show probable

9 cause for the arrest as I raised in my motion and she

1:34PM 10 had a chance to answer it in her written motion and in

11 this hearing. So all I did is I objected to hearsay

12 and she says it's not admitted for the truth. So we

13 don't have probable cause to arrest me on the record.

14 No evidence.

1:35PM 15 THE COURT: Probable cause to arrest you

16 for what?

17 DEFENDANT ORTH: Robbery. For anything.

18 Why did you stop me?

19 THE COURT: You are not charged with

1:35PM 20 robbery. You have to get that out of your brain. You

21 are going to have a hard time in this case going

22 forward if you can't get it out of your brain.

23 DEFENDANT ORTH: It's the product of an

24 illegal stop, your Honor. You stop me, you haven't

1:35PM 25 provided probable cause for the stop. If you haven't

1:35PM 1 provided probable cause for the stop, I can flee an  
2 unreasonable stop. State versus Lizonbe. You have to  
3 prove an exception. You have to prove probable cause  
4 to stop me. You can't stop me and then say well, we  
1:35PM 5 found a gun and we did a search and you fled and so now  
6 we have probable cause. What was the probable cause  
7 for the stop? That has to come first. That's Terry  
8 vs. Ohio.

9 THE COURT: Hang on a second. Terry vs.  
1:35PM 10 Ohio talks about a reasonable suspicion to detain you  
11 for investigation. You're wrong on the law. I  
12 appreciate that you've been doing a lot of work on  
13 this. But you've decided to represent yourself and you  
14 keep misrepresenting what the law is. I appreciate you  
1:36PM 15 think you know. If I were you, I would be utilizing  
16 the services of Miss Simmons who actually went to law  
17 school and is a very good attorney and wouldn't make  
18 incorrect legal arguments. You've continued through  
19 this whole thing, and I've given you a lot of leeway to  
1:36PM 20 make the arguments you're making. I've given you a ton  
21 of time. I spent a lot of effort on this case. You  
22 keep making wrong legal arguments.

23 So at a minimum they attempted to make a  
24 reasonable suspicion stop on you which is Terry v.  
1:36PM 25 Ohio, it is not probable cause. You're stating the

1:36PM 1 wrong things. So they attempted to investigate and you  
2 fled and they have the right to stop you and they don't  
3 have to have a warrant. They are investigating  
4 allegations of a robbery. They have the right to stop  
1:36PM 5 you and investigate. And you had a duffel bag in your  
6 hand that you jumped over a wall with and that anybody  
7 that picked up that duffel bag would know there was a  
8 gun in it. I can sit and look at it. It's not like  
9 it's a little .380. It's a double barrel rifle. So  
1:37PM 10 they had the right to investigate, they had the right  
11 to stop you and they didn't have to have probable cause  
12 at that point because you were fleeing and they were  
13 trying to do an investigation. So they had the right  
14 to stop you without probable cause.

1:37PM 15 They also have the right to get a search  
16 warrant if they believe there's evidence -- hang on a  
17 second. Listen to me. They have a right to get a  
18 search warrant if they have probable cause to believe  
19 there's evidence associated with their investigation.

1:37PM 20 They don't actually have to have the ability to arrest  
21 you for that underlying crime to do any sort of  
22 investigation to get search warrants. Could you  
23 imagine that? They'd have to wait until they could  
24 actually arrest somebody on a murder charge before they  
1:37PM 25 investigated whether a murder occurred? Of course not.



1:37PM 1 And so you're wrong on the law.

2 And if you would listen to your attorney

3 and going forward if you would allow me to appoint you

4 an attorney, you'd probably do yourself a world of

1:38PM 5 benefit. But as you're going right now you are not

6 qualified to continue to represent yourself and make

7 incoherent, non legal arguments and I'm just telling

8 you that. You may think you've got it down, but you

9 don't.

1:38PM 10 So anything else, Mr. Orth?

11 DEFENDANT ORTH: One last thing. Your

12 Honor is taking all the testimony as the truth of the

13 matter and not as hearsay, correct? To reach that

14 conclusion you just came to. Nobody testified probable

1:38PM 15 cause to stop me, right? So the only way to get around

16 that were --

17 THE COURT: I just gave you what the law

18 is and you completely ignored everything I just said.

19 DEFENDANT ORTH: I did understand you.

1:38PM 20 But he has to take the testimony to find --

21 THE COURT: They saw you with the bag and

22 they are allowed to rely on what the other

23 investigations as told to them to further their

24 investigation. And so you are being charged with

1:38PM 25 fleeing and possessing a gun. You are not being

1:38PM 1 charged with robbery, and until you get over that, you  
2 are never going to get anywhere with this case.

3 Any other arguments?

4 DEFENDANT ORTH: My last argument. I  
1:39PM 5 understand what you're saying. You're misunderstanding  
6 my argument. My understanding is before you stop me,  
7 you have to have a reason.

8 THE COURT: They did have a reason.

9 DEFENDANT ORTH: What was it?

1:39PM 10 THE COURT: The allegations that you  
11 committed a robbery and that you fled from them and  
12 that you had a bag that possibly contained a gun. They  
13 had all that information.

14 DEFENDANT ORTH: That occurs after the  
1:39PM 15 stop. That's a product of the stop.

16 THE COURT: No, it doesn't. That's not  
17 true and I don't believe they even needed a search  
18 warrant.

19 Anything else, Ms. Mendoza?

1:39PM 20 MS. MENDOZA: Your Honor, the clerk just  
21 informed me that the JOCs weren't admitted. I thought  
22 we did that when --

23 THE COURT: You move to admit them,  
24 correct?

1:39PM 25 MS. MENDOZA: Yes. And as I recall he

1:39PM 1 said he had no objection.

2 THE COURT: They're admitted.

3 MS. MENDOZA: Thank you.

4 (State's Exhibits 2 - 5 were admitted.)

1:39PM 5 THE COURT: Anything else, Ms. Mendoza?

6 MS. MENDOZA: No, Your Honor.

7 THE COURT: It appears to me from the

8 complaint on file herein and from the testimony adduced

9 at the preliminary examination that a crime, that being

1:39PM 10 felony possession and evading, has been committed.

11 There is sufficient evidence to believe the defendant

12 Mr. Orth committed said crimes. I hereby order said

13 defendant be bound over to the Eighth Judicial District

14 Court, State of Nevada to answer the charges on the

1:40PM 15 following date.

16 THE CLERK: December 18<sup>th</sup>, 8:00 a.m.,

17 lower level arraignment.

18 THE COURT: Now, I don't know if they are

19 going to be able to get you back down.

1:40PM 20 Does the State need to prepare an order to

21 get him back down?

22 MS. MENDOZA: I'll do an order to

23 transport. I don't know if every time he comes here he

24 is going to have to sit through quarantine again.

1:40PM 25 THE COURT: Do you know what their

1:40PM 1 procedure is once he goes back? Does he go back  
2 through quarantine?  
3 THE OFFICER: I believe so. We were here  
4 today to hear this so we are going to forward that  
1:40PM 5 information to our office.  
6 THE COURT: When is the date again?  
7 THE CLERK: December 18<sup>th</sup>.  
8 THE COURT: We can go into the next week  
9 just to make sure.  
1:40PM 10 THE OFFICER: It's okay.  
11 THE COURT: We'll keep that date. That'll  
12 be your date for your entry of plea in District Court.  
13 Good luck. And seriously rethink getting an attorney,  
14 okay?  
1:40PM 15 DEFENDANT ORTH: Thank you, Your Honor.  
16 THE COURT: Good luck.  
17  
18 (The proceedings concluded.)  
19 \* \* \* \* \*  
1:41PM 20 ATTEST: Full, true and accurate  
21 transcript of proceedings.  
22  
23 /S/Lisa Brenske  
24 LISA BRENSKE, CSR No. 186  
1:41PM 25

JUSTICE COURT, HENDERSON TOWNSHIP  
CLARK COUNTY, NEVADA

2020 DEC -9 P 3:54

THE STATE OF NEVADA,

Plaintiff,

-vs-

SEAN RODNEY ORTH #6111549,

Defendant.

FILED KZ  
CASE NO: 20CRH001571

DEPT NO: 1

DA CASE NO:

SECOND AMENDED  
CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony - NRS 202.360 - NOC 51460) and STOP REQUIRED ON SIGNAL OF POLICE OFFICER (Category B Felony - NRS 484B.550.3b - NOC 53833), in the manner following, to wit: That the said Defendant, on or about the 3rd day of November, 2020, at and within the County of Clark, State of Nevada,

COUNT 1 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

did willfully, unlawfully, and feloniously own, or have in his possession and/or under his custody or control, a firearm, to wit: a Winchester, bearing Serial No. 1291469, the Defendant being a convicted felon, having been convicted of the following felonies in Washoe County Nevada cases: 2007 CR05-1459 Robbery With Use of a Deadly Weapon, Conspiracy Robbery With Use of a Deadly Weapon, and Eluding a Police Officer; 2007 CR06-2177 Trafficking Controlled Substance and Possession Firearm by Prohibited Person; 1998 CR98-2037 Possession Short Barreled Shotgun; 1998 CR98-2523 Eluding Police Officer.

COUNT 2 - STOP REQUIRED ON SIGNAL OF POLICE OFFICER

did while driving a motor vehicle in the area of 981 Whitney Ranch, Clark County, Nevada, willfully, unlawfully, and feloniously fail or refuse to bring said vehicle to a stop, or otherwise flee or attempt to elude a peace officer in a readily identifiable vehicle of any police department or regulatory agency, specifically HPD Officers P. Duffy and/or B. Brink and/or

1 J. Hehn, after being given a signal to bring the vehicle to a stop, and did operate said motor  
2 vehicle in a manner which endangered, or was likely to endanger any person other than  
3 himself/herself or the property of any person other than himself.

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

7  
8 /s// ERIKA MENDOZA

9 12/09/2020  
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