IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN RODNEY ORTH,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No.: 85229

Electronically Filed
Aug 15 2023 10:39 AM
Elizabeth A. Brown
Clerk of Supreme Court

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

APPELLANT'S OPENING BRIEF
Volume III
Bates Nos.:
AA000433 – AA000622

C. BENJAMIN SCROGGINS, ESQ.
Nevada Bar No. 7902
THE LAW FIRM OF
C. BENJAMIN SCROGGINS, CHTD.
629 South Casino Center Boulevard
Las Vegas, Nevada 89101
Tel.: (702) 328-5550
info@cbscrogginslaw.com

Attorney for Appellant,
SEAN RODNEY ORTH

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN RODNEY ORTH, Appellant, vs. THE STATE OF NEVADA, Respondent.	Docket No.: 85229

APPELLANT'S APPENDIX
ALPHABETICAL INDEX

Amended Complaint (11/12/2020) . . . . . **Vol. 1 – Bates Nos.: AA000023 – 24**

Amended Information (11/04/2021) . . . . . **Vol. 7 – Bates Nos.: AA001215 – 1216**

Criminal Bindover (12/15/2020) . . . . . .**Vol. 2 – Bates Nos.: AA000230 - 351**

Criminal Complaint (11/04/2020) . . . . . .**Vol. 1 – Bates Nos.: AA000012 – 15**

Defendant's Amended Writ of Habeas Corpus,
(02/03/2021) . . . . . **Vol. 2 – Bates Nos.: AA000362 – 363**

Defendant's Exhibits in Support of Petition for a Writ of Habeas Corpus,
(09/21/2021) . . . . . **Vol. 4 – Bates Nos.: AA000648 – 848**

Defendant's Notice of Motion & Motion to Suppress for Violations to U.S.C.A. a.m. IV and Nev. Const. Art. 1-18, Henderson Justice Court,
(12/01/2020) . . . . . .**Vol. 1 – Bates Nos.: AA000046 – 62**

Defendant's Reply to State's Opposition to Defendant's Motion to Suppress Evidence (10/18/2021) . . . . . **Vol. 7 – Bates Nos.: AA001178 – 1195**

Defendant's Reply to State's Opposition to Defendant's Motion to Dismiss Charges for Violation Clauses of the Constitution of Nevada and United States Law,
(10/18/2021) . . . . . **Vol. 7 – Bates Nos.: AA001196 – 1198**

Defendant's Reply to State's Opposition to Defendant's Motion to Dismiss Charges for Violations of Double Jeopardy,
(07/29/2022). . . . . **Vol. 9 – Bates Nos.: AA001928 – 2060**

Defendant's Reply to State's Opposition to Defendant's Motion to Withdraw Plea & Motion to Dismiss Charges
(04/02/2022) . . . . . **Vol. 8 – Part 3 – Bates Nos.: AA001856 – 1878**

Defendant's Reply to State's Response to Defendant's Petition for a Writ of Habeas,
(10/18/2021) . . . . . **Vol. 7 – Bates Nos.: AA001199 – 1201**

Defendant's Request to Remove the Office of the Public Defender and Represent Himself, (07/19/2021) . . . . . .**Vol. 3 – Bates Nos.: AA000615 – 619**

First Amended Petition for Writ of Habeas Corpus (Pre-Trial), District Court case number: A-23-869964-W,
(01/19/2021) . . . . . **Vol. 2 – Bates Nos.: AA000364 – 417**

First Amended Petition for Writ of Habeas Corpus (Post Conviction)
(05/02/2023) . . . . . .**Vol. 9 – Bates Nos.: AA002063 – 2091**

Guilty Plea Agreement,(11/04/2021). . . . . .**Vol. 7 – Bates Nos.: AA001217 – 1224**

Information, (12/16/2020). . . . . **Vol. 2 – Bates Nos.: AA000352 - 354**

Judgment of Conviction, (08/08/2022). . . . . **Vol. 9 – Bates Nos.: AA002058 – 2060**

Motion to Dismiss Charges,
(06/01/2022). . . . . .**Vol. 9 – Bates Nos.: AA001900 – 1915**

Motion to Dismiss Charges or in the Alternative Motion for Order of the Court,
(09/13/2021) . . . . . **Vol. 4 – Bates Nos.: AA000637 – 647**

Motion to Dismiss Petition for Writ of Habeas Corpus, District Court case number: A-23-869964-W, (06/22/2023) . . . . . **Vol. 10 – Bates Nos.: AA002192 – 2201**

Motion to Withdraw Due to Conflict,
(02/24/2022). . . . . .**Vol. 8 – Part 3 – Bates Nos.: AA001774 – 1781**

Motion to Withdraw Plea of Guilty/Motion to Dismiss Charges as Violative of Brown v. Ohio, 432 U.S. 161 (1977),
(03/09/2022) . . . . . **Vol. 8 – Part 3 – Bates Nos.: AA001778 – 1838**

Notice in Lieu of Remittitur (05/09/2022) . . . . . .**Vol. 9 –- Bates Nos.: AA001899**

Notice of Manual Filing of Exhibit J, in Support of The State's Motion to Dismiss, District Court case number: A-23-869964-W,
(06/22/2023). . . . . **Vol. 10 – Bates Nos.: AA002187 – 2191**

Notice of Motion Defendant's Motion to Suppress Evidence Obtained in Violation of U.S. Const. Amends IV and XIV and Nev. Const. Art. 1, 18 and Request for Evidentiary Hearing,
(10/01/2021) . . . . . .**Vol. 6 – Bates Nos.: AA000915 – 1135**

Notice of Motion to Dismiss Charges for Violation to the Double Jeopardy Clauses of the Constitutions of Nevada and the United States,
(09/21/2021) . . . . . **Vol. 5 – Bates Nos.: AA000849 – 870**

Notice of Motion; Request to Submit Supplement to Defendant's Motion to Withdraw Plea; Motion to Dismiss Charges For Violation to Double Jeopardy Prohibition, (04/27/2022) . . . . . .**Vol. 8 - Part 3 – Bates Nos.: AA001888 – 1895**

Order for Petition for Writ of Habeas Corpus, District Court case number: A-23-869964-W, (05/08/2023) . . . . . .**Vol. 10 – Bates Nos.: AA002182 – 2183**

Order Denying Petition for a Writ of Mandamus, Docket number 84180,
(04/14/2022). . . . . .**Vol. 8 – Part 3 – Bates Nos.: AA001885 – 1879**

Order of Limited Remand for Designation of Counsel,
(09/02/2022). . . . . **Vol. 9 – Bates Nos.: AA002061**

Order Setting Briefing Schedule, (10/04/2022) . . . . . **Vol. 9 – Bates Nos.: AA002062**

Order for Writ of Habeas Corpus,
(04/22/2021). . . . . .**Vol. 3 – Bates Nos.: AA000580 – 583**

Petition for Writ of Habeas Corpus,
(04/20/2021). . . . . .**Vol. 3 – Bates Nos.: AA000476 – 579**

Petition for a Writ of Habeas Corpus,
(09/21/2021) . . . . . **Vol. 5 – Bates Nos.: AA000871 – 914**

Petitioner's Addendum on Exhibits 7 and 18 in Support of Writ of Habeas Corpus (Pre-trial), (02/24/2021) . . . . . **Vol. 3 – Bates Nos.: AA000433 – 442**

Petitioner's Appendix of Exhibits in Support of First Amended Petition for a Writ of Habeas Corpus, District Court case number: A-23-869964-W (Exhibits 1 thru 15), (05/02/2023). . . . . **Vol. 10 – Bates Nos.: AA002092 – 2181**

Petitioner's Appendix of Exhibits in Support of Writ of Mandamus,
(02/03/2022) . . . . . .**Vol. 8 - Part 1 – Bates Nos.: AA001245 – 1494, Vol. 8 – Part 2: Bates Nos.: AA001487 – 1736, Vol. 8 – Part 3: Bates Nos.: AA001737 – 1745**

Preliminary Hearing Transcript – Henderson Municipal Court,
(10/29/2020) . . . . . **Vol. 1 - Bates Nos.: AA000001 - 11**

Public Defender's Brief on Whether Standby Counsel is Required,
(08/18/2021) . . . . . **Vol. 4 – Bates Nos.: AA000623 – 627**

Recorder's Transcript of Hearing: Initial Arraignment,
(12/18/2020) . . . . . **Vol. 2 – Bates Nos.: AA000355 – 361**

Recorder's Transcript of Hearing: Entry of Plea
(11/04/2021). . . . . **Vol. 7 – Bates Nos.: AA001225 – 1232**

Recorder's Transcript of Proceedings: All Pending Motions,
(03/07/2022) . . . . . **Vol. 8 – Part 3 – Bates Nos.: AA001774 – 1777**

Recorder's Transcript of Proceedings: All Pending Motions,
(06/27/2022). . . . . **Vol. 9 – Bates Nos.: AA001920 – 1927**

Recorder's Transcript RE: Sentencing (12/16/2021)
. . . . **Vol. 7 – Bates Nos.: AA001233 – 1237**

Recorder's Transcript RE: Sentencing (01/06/2022) . . . . . **Vol. 7 – Bates Nos.: AA001238 – 1240**

Recorder's Transcript RE: Status Check: Arguments to Determine if Standby Counsel Needs Appointing, (09/07/2021) . . . . . **Vol. 4 – Bates Nos.: AA000636**

Recorder's Transcript of Proceedings: All Pending Motions, (03/30/2022) . . . . . .**Vol. 8 – Part 3 – Bates Nos.: AA001851 – 1855**

Recorder's Transcript of Proceedings: Defendant's Pro Se Motion to Withdraw Plea of Defendant's Pro Se Motion to Withdraw Plea of Guilty/Motion to Dismiss Charges as Violative of Brown v. Ohio 432 U.S. 161 (1977), (04/13/2022) . . . . . **Vol. 8 – Part 3 – Bates Nos.: AA001879 – 1884**

Recorder's Transcript of Proceedings: Motion to Dismiss Charges, (06/22/2022) . . . . . .**Vol. 9 – Bates Nos.: AA1916 – 1919**

Recorder's Transcript of Proceedings: Motion to Dismiss Charges or in the Alternative Motion for Order of the Court, (10/05/2021) . . . . . .**Vol. 7– Bates Nos.: AA001163 - 1164**

Recorder's Transcript of Proceedings: Sentencing (01/24/2022) . . . . . **Vol. 7 – Bates Nos.: AA001241 – 1244**

Recorder's Transcript of Proceedings: Sentencing, (02/14/2022). . . . . **Vol. 8 – Part 3 – Bates Nos.: AA001770 – 1773**

Recorder's Transcript of Proceedings: Status Check/ All Pending Motions, (03/14/2022) . . . . . **Vol. 8 – Part 3 – Bates Nos.: AA01847 – 1850**

Recorder's Transcript of Proceeding: Status Check, (05/02/2022) . . . . . .**Vol. 8 – Part 3 – Bates Nos.: AA001896 - 1898**

Recorder's Transcript RE: Calendar Call, (10/19/2021) . . . . . **Vol. 7 – Bates Nos.: AA001202 - 1205**

Recorder's Transcript RE: Calendar Call (10/19/2021) . . . . . .**Vol. 7 – Bates Nos.: AA001206 - 1210**

Recorder's Transcript RE: Calendar Call (10/19/2021). . . . . **Vol. 7 – Bates Nos.: AA001211 – 1214**

Recorder's Transcript RE: Miscellaneous Motions, (10/12/2021) . . . . . .**Vol. 7 – Bates Nos.: AA001165 – 1177**

Recorder's Transcript RE: Status Check: Arguments to Determine if Standby Counsel Needs Appointing, (09/07/2021). . . . . .**Vol. 3 – Bates Nos.: AA000636**

Reporter's Transcript of Proceedings, Henderson Justice Court, (11/05/2020) . . . . . **Vol. 1 – Bates Nos.: AA0000016 - 22**

Reporter's Transcript of Proceedings, Henderson Justice Court, (11/17/2020) . . . . . **Vol. 1 – Bates Nos.: AA000025 – 42**

Reporter's Transcript of Preliminary Hearing, Henderson Justice Court, (12/09/2020). . . . . .**Vol. 1 – Bates Nos.: AA000082 - 227**

Response to State's Return to Defendant's Writ of Habeas Corpus, (03/29/2021) . . . . . **Vol. 3– Bates Nos.: AA000455 – 459**

Respondent's Index of Exhibits, District Court case number: A-23-869964-W, (06/22/2023) . . . . . **Vol. 10 – Bates Nos.: AA002202 – 2304**

Second Amended Complaint, (12/09/2020) . . . . . .**Vol. 1 – Bates Nos.: AA000228 – 229**

State's Notice of Intent to Seek Punishment as a Habitual Criminal, (02/19/2021) . . . . . **Vol. 2 – Bates Nos.: AA000418 - 419**

State's Notice of Motion and Motion to Continue, Henderson Justice Court, 11/17/2020. . . . . **Vol. 1 – Bates Nos.: AA0000043 - 45**

State's Opposition to Defendant's Motion to Dismiss Charges, Henderson Justice Court, (12/08/2020) . . . . . **. .Vol. 1 – Bates Nos.: AA000063 - 73**

State's Opposition to Defendant's Motion to Dismiss Charges for Violation of the Double Jeopardy Clauses of the Constitutions of Nevada and the United States, (10/01/2021) . . . . . **Vol. 7 – Bates Nos.: AA001142 – 1147**

State's Opposition to Defendant's Motion to Dismiss or in the Alternative Motion for Order of the Court, (10/01/2021) . . . . . **Vol. 7 – Bates Nos.: AA1136 – 1141**

State's Opposition to Defendant's Motion to Suppress, (10/01/2021) . . . . . **Vol. 7 – Bates Nos.: AA001154 - 1162**

State's Opposition to Defendant's Motion to Suppress, Henderson Justice Court, (12/08/2020) . . . . . .**Vol. 1 – Bates Nos.: AA000074 – 81**

State's Response to Defendant's Brief on Whether Standby Counsel is Required, (08/19/2021) . . . . . **Vol. 4 – Bates Nos.: AA000628 – 630**

State's Response to Defendant's Petition for Writ of Habeas Corpus, (10/01/2021) . . . . . .**Vol. 7 – Bates Nos.: AA001148 – 1153**

State's Response to Petitioner's Petition for Writ of Habeas Corpus, District Court case number: A-23-869964-W, (06/07/2023). . . . . .**Vol. 10 – Bates Nos.: AA002184 – 2186**

State's Return to Writ of Habeas Corpus, (02/19/2021) . . . . . **Vol. 2 – Bates Nos.: AA000420 – 426**

State's Return to Writ of Habeas Corpus, (05/10/2021) . . . . . .**Vol. 3 – Bates Nos.: AA000586 – 598**

State's Return to Writ of Habeas Corpus, (05/11/2021) . . . . . **. Vol. 3 – Bates Nos.: AA000599 – 608**

Supplemental Brief on Issue of Standby Counsel, (08/31/2021). . . . . .**Vol. 4 – Bates Nos.: AA000631 – 635**

Transcript of Proceedings – Argument: Writ of Habeas Corpus, (06/01/2021) . . . . . **Vol. 3 – Bates Nos.: AA000609 – 614**

Transcript of Proceedings – Defendant's Amended Writ of Habeas Corpus (Pre-Trial), (02/23/2021) . . . . . **Vol. 2 – Bates Nos.: AA000427 – 432**

Transcripts of Proceedings – Defendant's Amended Writ of Habeas Corpus (Pre-Trial), (03/11/2021) . . . . . **Vol. 3 – Bates Nos.: AA000443 – 444**

Transcripts of Proceedings – Defendant's Amended Writ of Habeas Corpus (Pre-trial) Calendar Call, (03/16/2021) . . . . . **Vol. 3 – Bates Nos.: AA000445 – 454**

Transcripts of Proceedings – Defendant's Amended Writ of Habeas Corpus, (Pre-Trial) (03/30/2021) . . . . . **Vol. 3 – Bates Nos.: AA000460 – 475**

Transcript of Proceedings – Defendant's Request to Remove the Office of the Public Defender and Represent Himself, (07/29/2021). . . . . .**Vol. 3 – Bates Nos.: AA000620 – 622**

Writ of Habeas Corpus, (04/29/2021) . . . . . **Vol. 3 – Bates Nos.: AA000584 – 585**

Writ of Mandamus (02/03/2022). . . **Vol. 8 – Part 3 – Bates Nos.: AA001746 – 1761**

CERTIFICATE OF SERVICE

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

Aaron Ford
Alexander Chen

CERTIFIED this __ day of August, 2023.

_____
KELLY JARVI, Legal Assistant to
THE LAW FIRM OF
C. BENJAMIN SCROGGINS, CHTD.

FILED
FEB 24 2021
CLERK OF COURT

1 STEVE RODNEY ORTA
2 POST OFFICE BOX 650
3 PRIMM SPRINGS, NEVADA 89020
4 Pro Se
5
6 EIGHTH JUDICIAL DISTRICT COURT
7 IN AND FOR CLARK COUNTY, NEVADA
8 STEVE RODNEY ORTA,
9 PETITIONER,
10 VS
11 WARDEN, HIGH DESERT
12 STATE PRISON,
13 STATE OF NEVADA,
14 REAL PARTIES IN INTEREST,
15 RESPONDENTS.
16
17

Case No. C-20-352701-1
Dept No. XVIII
PETITIONER'S ADDENDUM OF EXHIBITS 7 AND 8 IN SUPPORT OF WRIT HABEAS CORPUS (PRE TRIAL)

C-20-352701-1
ADDM
Addendum
4945322

FILED
FEB 24 2021
CLERK OF COURT

TABLE OF EXHIBITS:

Ex. 7: Report HPD Detective LAPEER

Ex. 18: Notice of Intent Audiovisual Technology

On 10/28/20, I Detective K. LaPeer #1446 assisted Det K. Lippisch #1710 with a robbery investigation. I was tasked with conducting interviews with witnesses or family members of the victim.
At 0853 hours, I conducted a recorded interview with Jessie Caracciolo (DOB 7/11/81) who is the victim's girlfriend. Jessie advised that she arrived at Louis's apartment at 1830 hours and was greeted at the door by Sean and Christian, and that Sean asked, "Why are You Here". Jessie stated that Louis looked at her and she could tell something was wrong, but that Sean asked Louis to go to his bedroom and they did.

Jessie stated that she sat at the dining room table while Sean and Louis entered his room. I asked if Sean was armed and she stated that he was not. Jessie advised that Louis and Sean emerged from the bedroom with Sean holding a large green duffel bag and Sean left the apartment at approximately 1900 hours.

After Sean left, Jessie advised that Louis told her he was robbed in the bedroom and that Sean had an unknown weapon on him. Louis advised Jessie that inside the green duffel bag was her shotgun, Louis's handgun, and his laptop. Jessie stated that Sean threatened to harm Louis's family if he called the police. Jessie stated that Louis was nervous as they talked for several hours trying to convince him to call the police.

Jessie stated that she did her own research and located a rap sheet for Sean and realized he was a bad guy. Jessie stated they called the police around 2230 hours. Jessie then stated that Sean took Louis's car that night as well.

At 0700 hours, Jessie advised that Sean returned to the apartment and knocked on the door. That Louis called the police and he and Jessie took cover in his son's room Christian. Jessie was unable to give a viable answer for why a person that just robbed her boyfriend and stole his car, would return in the morning.

Jessie claimed to have very little knowledge of Sean other than seeing him sleeping on Louis's couch a few days prior and this incident in question. I ended the interview at this point
I then conducted a recorded interview with Christian Polanco (DOB 12/1/08) who is the son to Louis. Christian advised that Sean did not live at the apartment like Sean was claiming, but Christian advised that Sean has been at the apartment for the last three days, and furthermore that he and Louis met Sean approximately 10 days ago.
Christian advised that his father seemed anxious and nervous while Sean was at the house the night of the incident, but stated that it was normal practice that Louis and Sean would enter Louis's bedroom and talk and hang out in there.

Christian advised that he liked Sean and considered him a friend, stating that they played football a few times. Christian was then asked about the incident the night before and Christian stated that his father didn't tell him anything related to the robbery.

Christian then advised that he was sleeping in his room when Sean returned to the apartment the following morning.

Christian stated that his father was robbed of $10,000 last year where a male suspect had access to his debit card and would gamble with Louis's money.

I asked Christian if Louis had any problems with Sean recently and he stated, "Yes". Christian advised that Sean would keep turning off the camera on their front door and has stolen a wine bottle. Christian stated that he and Louis would leave Sean at the apartment occasionally.

Christian advised that Sean could borrow his dad's car that Jessie claimed was stolen. Christian advised that Sean would drive the car for a couple of days before he returned it. Christian then stated that Sean has access to Louis's cellular phone and his bank accounts as well. It became evident that Sean was more of a friend than a suspect who committed a robbery.
Jessie then stated that Sean had access to Louis's Navy Credit Union and USAA credit union accounts. Jessie advised that last night they called and put a stop to his accounts. Jessie stated that several charges were found on Louis's account on 10/25 and 10/26.

It was clear that Louis's laptop was not stolen when Sean left with the green duffel bag as it was now learned Sean had Louis's laptop since Monday. Jessie advised that Louis also gave Sean his cell phone because Sean needed a phone. Jessie stated Sean has had the phone since at least Tuesday.

1	Date:	Officer:	Subject:
	10/29/2020	LAPEER, KEVIN	Search warrant narrative

On 10/29/20, I Detective K. LaPeer #1446 was assisting Det. K. Lippisch #1710 with a potential robbery investigation. Det. Lippisch authored search warrants for a large tan duffel bag as well as a white Chevrolet Malibu. The search warrants were reviewed by a district attorney and signed by a Henderson Justice court judge.

At 0700 hours, I executed the search warrant on the tan duffel bag. The following items of evidence were located and documented on the search warrant return.

1. Black "Fuel" motorcycle helmet
2. Model 12, .20-gauge Winchester shotgun. S/N 1291469
3. Federal .20-gauge ammunition HI-Brass (25) live shells
4. Surefire tactical flashlight with mount
5. Vice grips
6. Lenovo laptop S/N YD05BV4H
7. Grace USA chisel tool

All items were photographed by Detective D. Ozawa #1531 and later uploaded into digital evidence. I then properly booked all evidence in the main station vault. A copy of the search warrant return and sealing order were left inside the duffel bag.

At approximately 1400 hours, Detective Lynaugh #1554, CSA D. Proietto #2147 and I executed the search warrant on the white Malibu bearing NV Body Shop 6528. CSA Proietto processed the vehicle for forensic evidence and documented the vehicle with photographs. The following items of evidence were recovered:

1. DNA swabs from steering wheel
2. Drivers door, rear view mirror possible latent print lifts

A copy of the search warrant return and sealing order were left on the passenger seat of the vehicle. The vehicle will be returned to the victim.

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.[1]

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."[2]

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."[3]

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.[4] 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.[5] Finally, the Director of the National Institute of Allergy and Infectious Diseases

---

[1] 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."
[2] NRS 171.1975.2
[3] https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020
[4] https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak
[5] 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

noted: "[w]hen you're dealing with an emerging infectious disease outbreak, you are always behind where you think you are...."[6]

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."[7]

Clark County, as well as many cities therein, issued their own Declarations of Emergency in response to the COVID-19 outbreak.[8] 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."[9]

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."[10]

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.[11] 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.[12]

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,

---

[6] 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%7Ctwterm%5E1239638144955437056&ref_url=https%3A%2F%2Fwww.redditmedia.com%2Fmediaembed%2Ffjr106%3Fresponsive%3Dtrue%26is_nightmode%3Dfalse

[7] 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/,

[8] https://www.fox5vegas.com/coronavirus/las-vegas-clark-county-surrounding-cities-declare-state-of-emergency/article_7e1d4c6a-672d-11ea-be3d-6f2ce56da2c4.html,

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

[10] https://nvcourts.gov/COVID-19-restrictions/

[11] http://www.clarkcountycourts.us/res/rules-and-orders/2020-03-14_11_43_36_admin%20order%2020-1.pdf

[12] 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."[13]

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.[14] Finally, President Trump declared COVID-19 an "invisible enemy."[15]

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.

---

[13] http://www.lasvegasjusticecourt.us/Admin%20Order%2020-03.pdf

[14] 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

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

Scott Dunn
650
Henderson NV
89070

RECEIVED
JAN 19 2021
CLERK OF THE COURT

89101-630000

LAS VEGAS NV 890
13 JAN 2021 PM 3 L

Hasl
01/1
USP

Clerk of the C
Elizabeth Brown
200 Lewis
Las vegas N

AA000441

HIGH DESERT S

JAN 1 2

UNIT

Electronically Filed
12/28/2022 5:08 PM
Steven D. Grierson
CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. SEAN RODNEY ORTH Defendant.	)	CASE NO. C-20-352701-1 DEPT. XVIII **Transcript of Proceedings**

BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE

THURSDAY, MARCH 11, 2021

DEFENDANT'S AMENDED WRIT OF HABEAS CORPUS (PRE-TRIAL)

APPEARANCES:

FOR THE STATE: ERIKA MENDOZA, ESQ.
Deputy District Attorney
[Present via Bluejeans}

FOR THE DEFENDANT: PRO SE
[The Defendant is not Present]

ECORDED BY: YVETTE SISON, COURT RECORDER

LAS VEGAS, NEVADA, THURSDAY, MARCH 11, 2021 AT 12:50 P.M.

THE COURT CLERK: State of Nevada versus Sean Orth, C352701. March 16th at 11 a.m.

MS. MENDOZA: Thanks.

THE COURT: Thank you.

The Proceedings Concluded at 12:51 p.m.

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

Yvette G. Sison
Court Recorder/Transcriber

Electronically Filed
12/28/2022 5:08 PM
Steven D. Grierson
CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. SEAN RODNEY ORTH Defendant.	)	CASE NO. C-20-352701-1 DEPT. XVIII **Transcript of Proceedings**

BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE

TUESDAY, MARCH 16, 2021

DEFENDANT'S AMENDED WRIT OF HABEAS CORPUS (PRE-TRIAL)
CALENDAR CALL

[ALL PARTIES PRESENT VIA BLUEJEANS]

APPEARANCES:

FOR THE STATE: ERIKA MENDOZA, ESQ.
Deputy District Attorney

FOR THE DEFENDANT: PRO PER
KARA SIMMONS, ESQ.
Deputy Public Defender
[Standby Counsel]

RECORDED BY: YVETTE SISON, COURT RECORDER

LAS VEGAS, NEVADA, TUESDAY, MARCH 16, 2021 AT 12:25 P.M.

THE COURT CLERK: State of Nevada versus Sean Orth, C352701.

THE COURT: This is on for calendar call.

THE DEFENDANT: Good Morning, Your Honor.

MS. MENDOZA: Your Honor, what we have to deal with today is the continuation of the petition for writ of habeas corpus.

THE COURT: All right, we also have a calendar call. Mr. Orth, you're representing yourself, correct?

THE DEFENDANT: Correct, ma'am.

THE COURT: I did not receive a reply from you, was that your intention not to file one?

THE DEFENDANT: No ma'am, I did file -- I did file the reply to the return to Ms. Simmons, out of an abundance of caution. She should have received it. It took me about two weeks to get it. So, [indiscernible due to audio/video difficulty] exhibits, just addressing the procedural bar issues. It’s a clerical issue. I did file an amended petition, timely; that’s the first issue.

So, I wanted to send a letter from the Court Clerk that was sent to me where the petition was sent to Ms. Simmons, reading that she was counsel of record. So, they sent it to Ms. Simmons as a fugitive document, not realizing that I was pro

per. So, I tried to send that -- I had to send that letter as an exhibit with the reply. So, she should have it. It should be on its way to you. I agree we're probably going to have to vacate, but I don't believe I'm procedurally barred -- if you'd like, I could just verbally argue it, but I still need you to read the exhibit, which is the letter from Clerk Grierson.

THE COURT: Well no, if you took the -- I certainly want to review the reply. Did you get a copy of it Ms. Mendoza?

MS. MENDOZA: No, Your Honor; and the last I text Ms. Simmons, she didn't have it either.

THE DEFENDANT: It was sent out on the 9th.

THE COURT: Did you keep a copy?

THE DEFENDANT: Oh I couldn't -- I was having issues with the law library -- we were locked down, there is no law library. So, my copy is with Ms. Simmons. My access to the law library is Ms. Simmons, so I just sent it directly to her so she could make a copy and file it with the Court.

THE COURT: She's representing that --

THE DEFENDANT: I also had copies of -- transaction on the telephone. You -- to allow the initial petition to use as an exhibit, just as proof, so. I believe that once the Court gets both of those, I'll amend the petition and I'll also state that I filed a previous petition [indiscernible due to audio/video difficulty] --

THE COURT: All right.

MS. MENDOZA: I will say that when I talk to Ms. Simmons it was before the last court date, the one that got continued because the internet wasn't working, so she could've received it [indiscernible due to audio/video difficulty].

THE COURT: Let’s put this over about a week. We're going to obviously vacate the trial date. Are you in waive status, Mr. Orth? Did you waive your 60 days?

THE DEFENDANT: I did --

MS. MENDOZA: Well, that’s kind of the issue with the petition.

THE DEFENDANT: -- well, Your Honor, because on my -- the 60 days [indiscernible due to audio/video difficulty] waiver by stating that I only waived to adjudicate the petition.

Our trial date was originally set within the 60-day clock from December 18th, was the arraignment, so we set a trial on February 8th. After filing the petition, the Court moved the trial date to March 22nd to accommodate adjudicating with the petition.

So, according to how I received my waiver, the [indiscernible due to audio/video difficulty], it's a pro se document, and I did run with the 60-day window [indiscernible due to audio/video difficulty], so I don't think the Court is going to have too many problems unless the Court -- we run into the issue again with the trial within 60 days. So, again, the Court received my letter and continue the trial date to March

22nd, outside the 60-day window on #178556.

THE COURT: Okay. All right, we're going to go ahead as of this moment with respect -- because of the writ, he is -- it appears to me he is in waived status, but in an abundance of caution since there are issues outstanding, we'll go ahead and reset the trial in 60, and let's do a -- continue the -- let's do a status check on the writ because I want to make sure we have it before we set it again, so I don't have to re-read it if we don't have what we need. So, let's do it in a week or two and ask the State to get ahold of Ms. Simmons and see where we are on this, and if there's a copy, to get it to us maybe; and if not, ask her to please jump on, so we can kind of talk about it.

MS. MENDOZA: Can we do two weeks please, I think I'm -- I'll be in trial next week.

THE COURT: Okay. Trial date vacated.

MS. SIMMONS: Good Morning, Your Honor, Kara Simmons. I apologize. I didn't have this in my calendar, I was just informed that it's on calendar.

THE COURT: All right. Mr. Orth indicated that he sent his reply to you and that -- or he tried to file it because they said it was a fugitive document, they thought it was you and they sent it to you. I'm not 100% sure. Mr. Orth, I guess -- well you could probably tell her yourself.

THE DEFENDANT: If I can, let me clarify. So, the

amended position is what I was talking about.

The amended petition on -- I mailed the amended petition on January 3rd. The probable cause of termination transcripts weren't even filed until January 6th. So, I had originally mailed my petition because I didn't have any access to the law library or access to Ms. Simmons because she's not allowed to visit me, and there is extremely limited daytime phone access. So, I filed the amended petition on January 3rd.

Like I said, the probable cause termination transcripts were filed on the 6th under NRS 34.700. Its 21 days from the probable cause of termination. The critical date would then be January 27th, so the amended petition was filed timely. However, the Court Clerk received it, and seeing Ms. Simmons as counsel of record, and the amended petition as an exhibit to Ms. Simmons as a fugitive document.

Since then, the State has filed a return seeking -- arguing -- argument procedural bar; the second being that I hadn't provided to the Court consent waiver.

I recently just filed the reply and sent the exhibits that I spoke of, which are the amended -- the counts transaction form and the copy from the Court Clerk saying that it was being sent to Ms. Simmons.

So, that's where we're at right now. I did send a reply to Ms. Simmons. Things have been going a little slow lately. Like I said it took me two weeks to get a copy of the

return that the State had filed.

MS. MENDOZA: Kara, the Judge wants to know if you received the reply from Mr. Orth.

MS. SIMMONS: And so, I just got back into town. I'm going to double check right now, if that's okay. I don't -- as of last -- as of two Fridays ago, I haven't received anything, but I'll check Odyssey to see if I have something on my desk, if you give me just a moment.

THE COURT: Ms. Simmons, are you standby counsel?

MS. MENDOZA: Yes she is.

THE COURT: Thank you.

MS. SIMMONS: Yes, Your Honor, so in this -- in Justice Court, the Judge had appointed our office as Standby Counsel, and then I was ultimately the attorney that his preliminary hearing date fell on, and so I was the attorney who was standby counsel appointed.

THE COURT: Okay.

MS. SIMMONS: I don't have any mail as of today. I followed up with my secretary last week while I was gone and asked her to watch for it, and we had not yet received anything. So, as of right now, I have not yet received his mail. I know that I had my secretary looking for it, and he did previously indicate to me that he was mailing in the reply but I don't have it yet.

THE COURT: All right, so --

THE DEFENDANT: And Your Honor, to simplify this, Your Honor, I haven't received something [indiscernible due to audio/video difficulty] -- this attorney, so it would help us all and to make things a little bit easier, since I do have a petition on file and my reply forthcoming, I'm about to go ahead and invoke and let Ms. Simmons take over the case. I think that it's going to be a lot easier process for all of us.

THE COURT: I'm sorry --

MS. MENDOZA: I just want to clarify when he makes -- when you say you invoke, you mean you want to let Ms. Simmons represent you? You don't want to represent yourself anymore?

THE DEFENDANT: I'm going to go ahead and let Ms. Simmons and represent me. It's next to impossible for me to represent myself in prison, with all the law library issues being shut down constantly and it's hard to communicate with Ms. Simmons, it's just impossible to make everything -- it's extremely hard for everybody, so I'm going to go ahead and let Ms. Simmons take over my case. I trust her fully, and yeah.

THE COURT: All right. Then Ms. Simmons will be re-appointed. So now that -- we vacate trial date, and -- Ms. Simmons, how much time do you need to either -- to locate his reply and/or to file your own reply?

MS. SIMMONS: If I could just have two weeks, I should hopefully get his reply, and if not speak with him about what he was intending to put in that reply, since it is -- obviously

it’s a little awkward, since I'm now appointed as his primary counsel, and since this was something he was previously working on, I want to make sure I'm coordinating that effort. So, if I could just have two weeks.

THE COURT CLERK: That’ll be March 30th at 11 a.m.

THE COURT: And for the time being, I'm going to set the trial date within 60 days.

MS. SIMMONS: Thank you, Your Honor.

THE DEFENDANT: Thank you very much, Your Honor.

THE COURT CLERK: Calendar call will be May 18th at 9 a.m., jury trial May 24th at 1 p.m., and this would be waiving nine days.

THE DEFENDANT: Thank you.

THE COURT: And for the record, I'm not necessarily saying that he is in invoke status, but for the time being we're going to go with that.

THE CORRECTIONS OFFICER: Your Honor, can you repeat the dates? We were not able to hear any of the dates.

THE COURT: Sure.

THE COURT CLERK: The status check will be March 30th at 11 a.m. Calendar call --

THE CORRECTIONS OFFICER: We still can’t hear anything.

THE COURT: You can't hear or it’s garbled?

THE COURT RECORDER: Everybody needs to mute.

MS. MENDOZA: The clerk is really quiet. Maybe, Your Honor, if you could just repeat the dates.

THE COURT: All right. March 30th at 11 a.m. for the petition. May 8th at 11 a.m. for -- 18th, I'm sorry, May 18th at 11 a.m. for calendar call, and May 24th at 1 p.m. for trial.

MS. MENDOZA: Thank you.

MS. SIMMONS: Thank you, Your Honor.

THE COURT: Thank you.

THE DEFENDANT: Thank you.

The Proceedings Concluded at 12:51 p.m.

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

Yvette G. Sison
Court Recorder/Transcriber

Electronically Filed
3/29/2021 1:51 PM
Steven D. Grierson
CLERK OF THE COURT

DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR NO. 5674
KARA M. SIMMONS, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 14621
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
Kara.Simmons@clarkcountynv.gov
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. SEAN RODNEY ORTH, Defendant,	CASE NO. C-20-352701-1 DEPT. NO. XVIII DATE: March 30, 2021 TIME: 11:00 a.m.

RESPONSE TO STATE'S RETURN TO DEFENDANT'S WRIT OF HABEAS CORPUS

COMES NOW, the Defendant, SEAN RODNEY ORTH, by and through KARA M. SIMMONS, Deputy Public Defender and hereby asks this Court to grant Mr. Orth's Writ and dismiss his case.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 29th day of March, 2021.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/ *Kara M. Simmons*
KARA M. SIMMONS, #14621
Deputy Public Defender

DECLARATION

KARA M. SIMMONS makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am a Deputy Public Defender for the Clark County Public Defender's Office appointed to represent Defendant Sean Rodney Orth in the present matter;
2. I am more than 18 years of age and am competent to testify as to the matters stated herein. I am familiar with the procedural history of the case and the substantive allegations made by The State of Nevada. I also have personal knowledge of the facts stated herein or I have been informed of these facts and believe them to be true.
3. Mr. Orth was arraigned in this case in Henderson Justice Court Department 2 on November 5, 2020.
4. Mr. Orth completed a Faretta hearing and was permitted to represent himself in this case. The Justice Court appointed the Office of the Public Defender as Mr. Orth's standby counsel. His preliminary hearing date was set for November 17, 2020.
5. However, on that date, the State filed a motion in court asking for a continuance based on the nonappearance of the police officers the State wished to call at the hearing. Mr. Orth objected but the Court granted the continuance and reset the Preliminary Hearing to December 3, 2020.
6. On December 3, 2020, Mr. Orth was not transported from the Nevada Department of Corrections, so the hearing was continued without his presence.
7. On December 9, 2020, the preliminary hearing was held with Mr. Orth being present and he was held to answer on the charges.
8. On December 14, 2020, Mr. Orth sent a letter to his standby counseling asking for certain pieces of discovery as well as the transcripts so that he may file a writ. The preliminary hearing transcripts were not yet filed.
9. On December 18, 2020, Mr. Orth pleaded not guilty and invoked his right to a trial in sixty days.

10. On December 22, 2020, Mr. Orth sent another letter to his standby counsel indicating he had finished a draft of his Writ but needed the transcripts as well as advice regarding case law.
11. On January 6, 2021, the transcripts for the preliminary hearing were filed. Unfortunately, defense counsel did not receive notice that the transcripts were filed right away.
12. On January 11, 2021, defense counsel simultaneously received a letter from Mr. Orth indicating he had mailed a copy of his Writ directly to the Court and sent a letter to Mr. Orth upon seeing the transcripts were filed. The letter to Mr. Orth explained he had 21 days from January 6, 2021 to file his Writ.
13. On January 20, 2021, Mr. Orth wrote a letter to defense counsel and enclosed a copy of his Amended Writ. Unfortunately, defense counsel's notes are not clear as to when this letter was received but it was provided to defense counsel's secretary for filing but it was not officially filed or set until February 3, 2021 after discovering part of the issue may have been that Mr. Orth's current counsel was only standby counsel at the time.
14. Defense counsel has spoken to Mr. Orth about his rights as they pertain to filing writs and does not waive his right to a trial within sixty days as this writ may be heard and determined prior to his jury trial setting, which is currently May 24, 2021.
15. I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 29th day of March, 2021.

/s/ *Kara M. Simmons*
KARA M. SIMMONS

LEGAL ARGUMENT

NRS 34.700(3) allows this Court to extend the time for filing of a petition if there is good cause to do so. First, Mr. Orth directly mailed an original Writ before the deadline, even before the transcripts were filed. Though all parties are struggling to find that Writ, it was sent to the Court and Mr. Orth received a letter from the clerk acknowledging receipt.

Second, even if the Court ignores that first filing, Mr. Orth was representing himself at the time and was totally dependent on his standby counsel to get him information as quickly as possible and could find good cause for any short delay in the filing. Unfortunately, there was no way to get Mr. Orth the transcripts as soon as they were filed but they were provided as soon as counsel was made aware of them. Additionally, Mr. Orth sent off his Amended Writ the day before his deadline. It is not Mr. Orth's fault that there are delays in the mail and that there were difficulties filing his Amended Writ based on his current counsel's previous status as standby counsel.

Finally, the State argues that because Mr. Orth did not include the statutory waivers that the Petition must be dismissed. Mr. Orth acknowledged the waivers in this Amended Writ when he wrote that he waives the sixty days, if necessary. Beyond that, the jury trial is currently set on May 24, 2021 and Mr. Orth has spoken at length with his attorney about his rights. He would be happy to make it more clear in court that he consents to the Court moving his trial date if the Writ cannot be determined within 15 days of the trial.

As of this date, the State has had since February 19, 2021 to file a substantive response to Mr. Orth's arguments but has failed to do so. This Court may consider the State's failure to address his substantive arguments as an admission that Mr. Orth's Writ is meritorious pursuant to EDCR 3.20(c).

///

///

///

///

CONCLUSION

Mr. Orth asks this Court to grant his Writ and dismiss the case against him. The Writ was filed timely and even if the Court ignores the first filing, there is good cause to grant the short delay in filing as Mr. Orth mailed the Amended Writ prior to the deadline. Additionally, the State has had nearly two months to file a substantive response but has failed to do so; therefore, this Court may treat that failure to respond as an admission that the Writ was meritorious.

DATED this 29th day of March, 2021.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/ *Kara M. Simmons*
KARA M. SIMMONS, #14621
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and forgoing RESPONSE TO STATE'S RETURN TO DEFENDANT'S WRIT OF HABEAS CORPUS was served via electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountyda.com on this 29th day of March, 2021.

By: */s/ Jane Palmer*
An employee of the
Clark County Public Defender's Office

Electronically Filed
12/28/2022 5:08 PM
Steven D. Grierson
CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. SEAN RODNEY ORTH Defendant.	)	CASE NO. C-20-352701-1 DEPT. XVIII **Transcript of Proceedings**

BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE

TUESDAY, MARCH 30, 2021

DEFENDANT'S AMENDED WRIT OF HABEAS CORPUS (PRE-TRIAL)

APPEARANCES:

FOR THE STATE: ERIKA MENDOZA, ESQ.
Deputy District Attorney
[Present via BlueJeans]

FOR THE DEFENDANT: KARA SIMMONS, ESQ.
Deputy Public Defender

RECORDED BY: YVETTE SISON, COURT RECORDER

LAS VEGAS, NEVADA, TUESDAY, MARCH 30, 2021 AT 11:07 A.M.

THE COURT CLERK: State of Nevada versus Sean Orth, C352701.

MS. SIMMONS: Good Morning, Your Honor, Kara Simmons, bar #14621 on behalf of Mr. Orth. He does appear to be present via BlueJeans, in custody.

THE COURT: Are you there Mr. Orth?

THE DEFENDANT: Yes, Your Honor.

[Colloquy - The Court and Court Staff]

THE COURT: Mr. Orth, are you there?

THE DEFENDANT: Yes, Your Honor.

MS. VILLEGAS: Judge, this is Ms. Mendoza's case, and so right now she's going back and forth to DC 32; hold on, she's sending a text at the moment.

THE COURT: Okay.

MS. VILLEGAS: She'll be back on to your court, Judge, in seconds.

MS. MENDOZA: Are you all waiting for me?

THE COURT: We are, welcome.

MS. MENDOZA: Okay, which one -- which case is this?

THE COURT: Sean Orth, page 12.

MS. MENDOZA: Orth? Okay, all right.

THE COURT: Let me just -- okay, go ahead.

MS. SIMMONS: So, Your Honor, obviously procedurally,

I'm in a little bit of a weird position because I was just recently appointed as primary counsel, as Your Honor remembers, Mr. Orth previously represented himself.

One thing that we were hoping to get -- I was hoping to get filed was his response that he had sent to me. I got it this morning, but I talked to Mr. Orth previously, so my summarized -- my very short reply is based on the conversation that I had with him before.

The State's return focuses on the timeliness of the writ that he -- or the amended writ that he had filed and also on the consents and waivers.

As far as the timeliness of it, Mr. Orth was able to provide me with exhibits that I could provide to the Court. I could email them, but I have them physically here as well.

They show that on January 3rd, he had sent a request to have legal mail sent; that's the date that he had sent the original writ that he had filed before the preliminary hearing transcripts were even filed.

He also attached the letter that he received in response, dated February 9th, indicating that the clerk -- the Clerk of the Court, the Deputy Clerk of the Court, would not be accepting that writ because he had an attorney, but he did not have an attorney at that time.

I checked my office; I had my secretary check my office, and we never received that original writ; but he did

attempt to file something prior to transcripts even being filed in this case.

He also sent me a receipt here showing that he had mailed the amended writ to our office on January 20th, which would've been the day before the deadline; unfortunately, with the mail delayed, it didn't get to me until afterwards, and then I filed it as soon as my clerk could.

Again, we had some difficulty because we were both, at some points considered counsel, but not considered counsel because we were standby.

So, I think that even if Your Honor ignores the fact that he filed that first writ, there is good cause to give that very brief continuance, or I guess find an exception for that brief short delay in filing the amended simply because he was pro se at the time up in the prison and going --

THE COURT: Although that is one of the things we tell them in Faretta, that when you're pro se, you don't get special consideration because you're pro se, but --

MS. SIMMONS: -- right, but unfortunately now in Covid, there was even additional problems. He was denied access to the law library. I had difficulty contacting him, and things like that.

THE COURT: -- here’s kind of what I'm contemplating; to let it proceed, but because he’s no longer pro per, I don't think it’s fair to have the State have to respond to a

substantive pro per motion.

MS. SIMMONS: Okay.

THE COURT: So what I'm inclined to do is give you the opportunity to file something.

MS. SIMMONS: File a writ.

THE COURT: Yes.

MS. SIMMONS: Okay.

THE COURT: State, did you want to be heard?

MS. MENDOZA: Your Honor, that was one of the issues that I don't think that the -- his [indiscernible due to audio/video difficulty] any longer now that he’s not representing himself.

So, I guess the proper thing would be deny his and then give Ms. Simmons a date by which she has to file a new one, if she has anything to brief.

THE COURT: Does that sound good to you?

MS. SIMMONS: If that’s Your Honor’s ruling, obviously Mr. Orth -- because -- again, I'm in a weird predicament. He filed the original one. He is hoping for a substantive response on the merits of the arguments that he previously made.

THE COURT: Well, I mean, he could give them to you, but if -- if --

MS. SIMMONS: Right, I have those, and so if you are inclined to just let me re-file one, then I will do so.

THE COURT: -- yes; that’s what I'm going to do.

Do you understand Mr. Orth?

THE DEFENDANT: I do, Your Honor.

THE COURT: Okay. So, I guess I'll deny his --

MS. MENDOZA: Well, Your Honor, if it's going to --

THE COURT: -- I'm sorry, go ahead.

MS. MENDOZA: -- I mean if it's going to be the same exact thing, then I think that the same issues stick, unless you're finding there's good cause for him to -- have been untimely, which it sounds like -- it sounds like the only reason he's not untimely is because he wants special treatment because he's pro se, which, as you mentioned, he doesn't get special treatment; that's part of being pro se.

You acknowledge that you're going to be in a more difficult situation than if you had an attorney, and he doesn't, and he decided to go forward in that matter.

THE COURT: I one hundred percent agree, but here's what I'm saying, I am finding that there is good cause. He was only a couples days late technically, and because of Covid and the way things are, filing and stuff -- I mean in the old days, it seemed a little easier to require the pro se's to go and file with the clerk's office or whoever, but now there's -- there's just so many different issues going on, so I think we could give him a little more latitude, it's only a couple of days.

But, I also think that because I'm kind of giving him the extra latitude, because of his pro per status, I think that

he doesn't get to use that and file his own pro per as well, so I'm -- I'm not going to require the State to respond to his pro per. I'm going to deny that, since he's no longer pro per, and I'm going to give his attorney the opportunity to file something if she wants to.

MS. MENDOZA: So to -- I would think that's -- that's 21 days from today, that's number one.

THE COURT: Does that work for you Ms. Simmons?

MS. SIMMONS: That's fine, Your Honor.

MS. MENDOZA: And then number two, what -- I just want to be clear, there are times -- where I've seen situations like this where the Defense Attorney just slaps the cover page on the Defendant's handwritten -- [indiscernible due to audio/video difficulty] --

THE COURT: No, she's not going to do that.

MS. MENDOZA: -- and claims that [indiscernible due to audio/video difficulty] -- that's not what your -- your intent, correct?

THE COURT: It is absolutely not. We already have that.

MS. SIMMONS: Understood, correct.

MS. MENDOZA: Okay. Thank you.

THE COURT: Now do we -- 21 days, 14, 7, 7?

MS. SIMMONS: I think she said -- I would have 21 days to file something.

THE COURT: That's what you want?

MS. MENDOZA: I'm sorry -- everybody is cutting out a little bit. I think you're asking how much time I want. I would ask for the ten days after it's filed.

THE COURT: Okay. And then you want to reply to that?

MS. MENDOZA: Quite frankly, at that point, I'll be out, so someone else will be taking over, so they might have to ask you for a little bit more time; but, I would request for ten days.

THE COURT: All right. Why don't we do two weeks.

MS. SIMMONS: That's fine.

MS. MENDOZA: Okay.

THE COURT CLERK: First date will be April 20th; response May 4th; reply May 18th; and argument June 1st at 11 a.m.

MS. SIMMONS: Your Honor, I actually won't need that much time for the reply, and he currently had calendar call set on the 18th. If we could just set the hearing for it -- the week -- the court date after May 4th, if possible.

THE COURT CLERK: So, pretty much, the reply date will be May 18th -- I mean the argument date will be May 18th.

THE COURT: Mr. Orth, you have waived your 60-day trial right, is that correct, in order to have this petition heard?

THE DEFENDANT: To be adjudicated, yes ma'am.

MS. SIMMONS: To be honest, I couldn't hear that.

When I previously spoke with him the statute for writs is waive 60 days or if it can't be heard within 15 days, that we can move the trial to accommodate the hearing of the writ.

So, if we can get it heard prior to the 24th of May, then it shouldn't be a problem, but I'll defer to Your Honor's calendar at that point. I should have my reply done prior to May 18th, if you wanted to set it that day.

THE COURT: Well, then do I get everything to read it and get it ready?

MS. SIMMONS: Oh, no I mean I can have argument that day. Oh -- oh, you want a date for everything ahead of time. Let me just check the calendar real quick.

THE COURT: But, I am confirming Mr. Orth, you did waive your 60-day trial right in order to have this heard, correct?

THE DEFENDANT: I did, Your Honor. I did on the face of the first petition filed on the 3rd and on the amended petition, I do also.

THE COURT: All right.

MS. SIMMONS: I'll defer to all of you.

THE COURT: So, where does that put us timing wise?

THE COURT CLERK: May 18th, that would be the calendar call date if you did it after Ms. Mendoza's response, two weeks after her response is due. Ms. Simmons is asking for the reply date to actually be the argument date.

THE COURT: Oh, and you aren't going to reply? Is that what you're saying?

MS. SIMMONS: -- I'm saying I could reply prior to May 18th, but if you need a date so that you have time in between to review everything, I'll defer to all of you, since he just said that he was waiving his 60 days.

THE COURT: Okay. Yeah, let's do -- I mean realistically, this is going to be probably not a priority trial set. I don't mean to be rude but, so yes. Do you want to go ahead and reset the trial right now, so that you get a -- sooner than a later stack?

MS. SIMMONS: That's fine.

THE COURT CLERK: So, are we going to do the June 1st date or the May 18th?

THE COURT: The June 1st date.

MS. SIMMONS: So, I'll have my reply done by the 18th, and then --

THE COURT: I apologize, our calendars are just so slammed that it's --

MS. SIMMONS: No, I understand.

THE COURT CLERK: And reset the trial date for June or October?

THE COURT: June or October for trial?

MS. SIMMONS: It would depend for me when in June. I'm out the entire end of June for my wedding. Otherwise, if

it’s in the beginning of June I can do it, if it’s -- otherwise, I can't.

THE COURT: Well, we have this set for June 1st right, for the argument?

THE COURT CLERK: Yes.

THE COURT: So, what would be the trial --

MS. MENDOZA: I [indiscernible due to audio/video difficulty] Defendant, October is probably the better idea.

MS. SIMMONS: That’s fine.

THE DEFENDANT: October is long --

MS. MENDOZA: I would be shocked if we're trying ways to finding [indiscernible due to audio/video difficulty] --

THE COURT: -- I as well; but, we can set early -- how long will this trial take?

MS. MENDOZA: -- it would be done in a week.

THE COURT: We can set early June, with the understanding that it's probably going to go to October. How about a settlement conference? Have you all thought about that?

MS. MENDOZA: If it -- if it doesn't go in June, we probably won't be tacking on October, it’ll probably be tacking on December, which is why I said October now.

THE COURT: I see.

MS. SIMMONS: Mr. Orth, do you understand what they’re saying about the -- unfortunately, with the Covid backlog, we could have a realistic trial date in October, or we could see if

we can go in June -- it be unlikely, and then have to reset it at that time and get an even later date.

THE DEFENDANT: You do whatever is best, Ms. Simmons.

MS. SIMMONS: Ah, that’s difficult.

THE DEFENDANT: I would prefer June personally, obviously. I mean, if we're not successful on the writ, I’d definitely like to see a speedy trial as fast as I can. It depends on your calendars; that’s just my preference.

I already waived my speedy trial; I would like a June trial if necessary, but again you're my counsel. I trusted my case to you, so I leave it to you.

MS. SIMMONS: Unfortunately, I do think being realistic, October is a much more --

THE COURT: Okay.

MS. SIMMONS: -- a realistic date that’s actually going -- because October -- I think Ms. Mendoza is correct. I don't think they’re going to be accepting out-of-custody waived -- or waived clients at that time.

THE DEFENDANT: Understood.

MS. SIMMONS: Thank you, Mr. Orth.

THE COURT: All right. And again, you can always try a settlement conference or something before.

MS. SIMMONS: Thank you.

THE COURT: So, we're going to go ahead and vacate trial date. Did you give all the dates for everything now?

THE COURT CLERK: Calendar call will be October 19th at 9 a.m.; jury trial October 25th at 1 p.m.; and there's a central trial readiness conference for tomorrow -- you want to vacate that or --

MS. SIMMONS: I can try and contact the Court to let them know that it's moved already, so that they can take us off.

THE COURT: Okay. I mean I supposed theoretically, you could withdraw the writ, if you want to go to Central Trial Readiness tomorrow.

MS. SIMMONS: That's true. Mr. Orth, do you want to withdraw -- if we withdraw the writ, we could say that we're going to be ready for trial in May.

THE DEFENDANT: I understand -- first of all, Your Honor, if I may, what happening is the prison is on complete lockdown, so my attorney can't talk to me, so we're doing this all on the fly. Could you trail me for a minute, can I speak to my attorney for just a moment?

THE COURT: Do you have time Ms. Simmons?

MS. SIMMONS: Ummm --

THE COURT: Officers is the phone open there?

THE CORRECTIONS OFFICER: Yes.

MS. SIMMONS: -- I will do that real quick.

THE COURT: Do you need a phone number?

MS. SIMMONS: Oh, I'm going to need a phone number.

THE MARSHAL: It's 671-8324.

MS. SIMMONS: I will do that, thank you.

THE COURT: Okay, we'll recall it when you're ready.

MS. SIMMONS: Thank you.

THE DEFENDANT: Thank you, Your Honor.

[Case trailed at 11:24 a.m.]

[Case recalled at 11:41 a.m.]

THE COURT CLERK: Recalling Sean Orth, C352701.

THE COURT: You there, Mr. Orth?

THE DEFENDANT: I am, Your Honor.

THE COURT: Did you get this figured out?

MS. SIMMONS: I did speak with him, Your Honor. He does want to pursue the writ still, so I'm going to ask that we keep the previous briefing schedule and the calendar -- the trial dates in October.

THE COURT: Okay. Is that correct, Mr. Orth?

THE DEFENDANT: It is Your Honor. May I ask one question, just out of clarification?

THE COURT: Yes.

THE DEFENDANT: Just for the purpose of the waiver, so I can't prove that I did file my writ on the 3rd, if anything else by mailbox rule, and a letter from Mr. Grierson, the Clerk; I just received something the other day showing that on February 23rd, my addendum to my exhibits to that petition were also received by him right around January 22nd, that he filed on February. So, for clarification, I have some proof that I did

file within time, and I just want to make sure that that's on the record and that those exhibits that she has filed today demonstrate that I did file it timely; in case there's some type of appellate issue with the District Attorney challenging you finding cause for the slight delay to counsel to re-file.

So, I just wanted to go on record with the clarification with the letter from the Court Clerk, showing that I filed -- and the new exhibits that he just now filed shows that I was filing my --

MS. SIMMONS: So, Mr. Orth --

THE COURT: All right, Mr. Orth -- Mr. Orth, let me -- a couple of things here, okay.

THE DEFENDANT: Okay.

THE COURT: You made your record, I've made my ruling, and now you have counsel, so I'm not going to do double argument every time you come in here, all right. You made the record. She made the thing. I made the finding. I gave you the time. I'm letting you have your writ heard, okay?

THE DEFENDANT: All right.

THE COURT: All right.

THE DEFENDANT: Thank you, Your Honor.

MS. SIMMONS: Thank you, Your Honor.

THE COURT: Thank you.

The Proceedings Concluded at 11:44 a.m.

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

Yvette G. Sison
Court Recorder/Transcriber

Electronically Filed
4/20/2021 4:31 PM
Steven D. Grierson
CLERK OF THE COURT

0014
DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR NO. 5674
KARA M. SIMMONS, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 14621
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
Kara.Simmons@clarkcountynv.gov
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. SEAN RODNEY ORTH, Defendant,	CASE NO. C-20-352701-1 DEPT. NO. XVIII DATE: June 1, 2021 TIME: 11:00 a.m.

PETITION FOR WRIT OF HABEAS CORPUS

TO: The Honorable Judge of the Eighth Judicial District Court of The State of Nevada, in and for the County of Clark

The Petition of Sean Rodney Orth submitted by KARA M. SIMMONS, Deputy Public Defender, as attorney for the above-captioned individual, respectfully affirms:

1. That she is a duly qualified, practicing and licensed attorney in the City of Las Vegas, County of Clark, State of Nevada.

2. That Petitioner makes application for a Writ of Habeas Corpus; that the place where the Petitioner is imprisoned actually or constructively imprisoned and restrained of his liberty is the Clark County Detention Center; that the officer by whom he is imprisoned and restrained is the Sheriff of Clark County Nevada.

3. That the imprisonment and restraint of said Petitioner is unlawful in that: the State failed to prove Count 2 by probable cause; the State never should have been permitted to add Count 2; and the State received an improper continuance.

4. That Petitioner consents that if Petition is not decided within 15 days before the date set for trial, the Court may, without notice of hearing, continue the trial indefinitely to a date designated by the Court.

5. That Petitioner personally authorized his aforementioned attorney to commence this action.

WHEREFORE, Petitioner prays that this Honorable Court make an order directing the County of Clark to issue a Writ of Habeas Corpus directed to the said the Sheriff of Clark County Nevada, commanding him to bring the Petitioner before your Honor, and return the cause of his imprisonment.

DATED this 20th of April, 2021.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/*Kara M. Simmons*
KARA M. SIMMONS, #14621
Deputy Public Defender

DECLARATION

KARA M. SIMMONS makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and I am familiar with the facts and circumstances of this case.

2. That I am the attorney of record for Petitioner in the above matter; that I have read the foregoing Petition, know the contents thereof, and that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true; that Petitioner, SEAN RODNEY ORTH, personally authorizes me to commence this Writ of Habeas Corpus action.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 20th day of April, 2021.

/s/*Kara M. Simmons*
KARA M. SIMMONS

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW the Petitioner, SEAN RODNEY ORTH, by and through his counsel, KARA M. SIMMONS, the Clark County Public Defender's Office, and submits the following Points and Authorities in Support of Defendant's Petition for a pre-trial Writ of Habeas Corpus.

STATEMENT OF FACTS

Mr. Orth was arraigned in this case in Henderson Justice Court Department 2 on November 5, 2020. Mr. Orth completed a Faretta hearing and was permitted to represent himself in this case. The Justice Court appointed the Office of the Public Defender as Mr. Orth's standby counsel. His preliminary hearing date was set for November 17, 2020. However, on that date, the State filed a motion in court asking for a continuance based on the nonappearance of the police officers the State wished to call at the hearing. Mr. Orth objected but the Court granted the continuance and reset the Preliminary Hearing to December 3, 2020. On December 3, 2020, Mr. Orth was not transported from the Nevada Department of Corrections, so the hearing was continued without his presence. On December 9, 2020, the preliminary hearing was held with Mr. Orth being present and he was held to answer on the charges.

Prior to the preliminary hearing, Mr. Orth had filed a motion to dismiss based on the State's request to continue the original preliminary hearing.[1] On December 9, 2020, Mr. Orth argued the State was given an improper continuance based on the nonappearance of its officers as the State had subpoenaed the officers and they simply chose not to appear. See Preliminary Hearing Transcripts (heretofore "PHT")[2], 7:5-9:9. Mr. Orth argued that the State had previously represented that one officer was unavailable but there were two it could rely upon and the second officer had informed the District Attorney that morning that he (Officer Ozawa) was leaving for vacation that day. PHT, 11:8-10. Mr. Orth argued because the State had provided a Notice of Intent to Use Audiovisual Testimony, had subpoenaed Officer Ozawa, and he was still in the

[1] See Exhibit A, Defendant's Motion to Dismiss (based on an improper continuance).
[2] Attached as Exhibit B.

jurisdiction[3] that he was required to be in court and had no legitimate excuse to not be there and so the State failed to meet its burden when seeking the continuance so the case must have been dismissed on December 3, 2020. PHT 11:22-13:5. The Justice Court ruled the State had complied with NRS 171.196 and Hill v. State and its progeny which outlines the requirements for seeking a continuance at a preliminary hearing based on the nonappearance of a witness. PHT 15:2-16:17. The Justice Court did acknowledge that it could make the officers appear even if they were on vacation or in a mandatory training based on the subpoena; however, the court continued, motions to continue are permitted to avoid scheduling conflicts as long as those requests comply with Nevada law. PHT 16:21-25. The Justice Court denied Mr. Orth's motion. PHT 17:12.

Mr. Orth additionally filed a motion to suppress on two grounds: one for an illegal arrest and one for an illegal search. On December 9, 2020, the Justice Court summarily denied the portion relating to Mr. Orth's arrest and held that NRS 171.124 permits officers to arrest someone without a warrant if there is probable cause to believe the person committed a felony or gross misdemeanor. PHT 26:7-19. The Court, over the State's objection, decided to treat the preliminary hearing as an evidentiary hearing as to the merits of Mr. Orth's motion to suppress based on an illegal search. PHT 30:10-14.

At the preliminary hearing, Officer Nelson testified that he responded to 981 Whitney Ranch Drive around 7:11am on October 28, 2020 due to a call for service of a person reportedly banging on a door with a firearm. PHT 36:2-18. Officer Nelson testified that the suspect had allegedly robbed the person reporting the night before over Mr. Orth's objection. PHT 40:9-11. Dispatch described the suspect as being in possession of the person reporting's white Chevy Malibu. PHT 42:9. Based on what he heard over the radio, Officer Nelson positioned his patrol vehicle in front of the exit and entrance gate. PHT 43:9-12. Officer Nelson saw a white Chevy Malibu drive toward the gate where he was parked with two police cars behind the Malibu with

[3] The State clarified that it was not certain the officer was actually in the jurisdiction but did know he was leaving that same day and that he had been provided the correct date, time, and location of the preliminary hearing. PHT 10:23-11:10.

their lights and sirens activated. PHT 43:23-44:3. Officer Nelson explained that after he initially parked, he had gotten out of his car, but upon seeing the Malibu approach the gate, he relocated to the side of the gate. PHT 45:2-6. Eventually the Malibu stopped, and Officer Nelson saw Mr. Orth exit the driver's seat; however, the Malibu was not properly placed in park, so it rolled forward until it hit the gate. PHT 45:16-24. Officer Nelson saw Mr. Orth exit the car, go toward the back, then he lost sight of him, but later saw Mr. Orth place a brown bag on top of a wall that Mr. Orth then jumped over. PHT 47:21-48:2. A foot pursuit then begins and Officer Nelson attempted to use his taser, which was ineffective. PHT 48:12-16. Officer Nelson was not issuing commands, but other officers were doing so. PHT 48: 23-24. When attempting to use his taser, Officer Nelson fell to the ground and after looking up, he saw that another officer had Mr. Orth in custody without the bag, but this bag was later found near the wall Mr. Orth was seen jumping over previously. PHT 50:7-11; 51:6-12.

On cross examination, Officer Nelson stated that he never saw Mr. Orth with a firearm that day. PHT 51:24-25. Officer Nelson further explained that the Malibu was ten to fifteen yards from Officer Nelson's position when the car stopped. PHT 61:5-10. The car appeared to be going twenty to twenty-five miles per hour prior to stopping; however, Officer Nelson also admitted that when the car was stopped that no one was in danger. PHT 62:3-5. When asked about why they were pursuing Mr. Orth, Officer Nelson stated that they were attempting to stop Mr. Orth based on the reasonable suspicion that he had committed a robbery the night previously and that Mr. Orth may have been in a stolen vehicle. PHT 52:5-11. However, Officer Nelson also explained that he was not aware of the investigation from the night before and that he did not know if an arrest warrant was issued or requested based on the allegations from the night before. PHT 52:23-24; 53:13-18. Officer Nelson admitted during Mr. Orth's arrest that several officers were on top of Mr. Orth as he lay face down on the ground, and additionally admitted to personally hitting Mr. Orth during this arrest. PHT 58:6-22.

Detecitve LaPeer then testified that he was part of "a potential robbery investigation located at 981 Whitney Ranch Drive." PHT 64:5-8. Detective LaPeer explained he assisted

Detective Lippisch execute a search warrant on a tan duffle bag. PHT 64:15-19. The State entered a picture of the duffle bag and then asked Detective LaPeer if this picture depicted "some" of the items found in the bag, but also asked if this is what the bag looked like when it was opened, to which Detective LaPeer answered yes. PHT 65:10-15. Inside the bag there was a shotgun. PHT 66:1.

On cross examination, Detective LaPeer testified about his participation in the robbery investigation. He explained how he interviewed a possible witness by the name of Jessie Caracciolo. PHT 66:23-25. During his interview of Ms. Caracciolo, she stated the night before she had seen Mr. Orth go into a bedroom behind closed doors with Louis Polanco so she had not seen what happened inside the room, but she had seen Mr. Orth leave with a duffle bag. PHT 72:10-14. He learned from Ms. Caracciolo that Mr. Orth was not armed. PHT 73:6-8. Ms. Caracciolo had arrived at the apartment after Mr. Orth. PHT 82:5-8. Detective LaPeer provided the information learned from Ms. Caracciolo to Detective Lippisch that same day (October 28th). PHT 76:8-11.

Next, Detective Lippisch testified that he was involved in the potential robbery investigation at 981 Whitney Ranch Drive. PHT 84:11-14. Detective Lippisch arrived after Mr. Orth was already arrested and inside a patrol vehicle. PHT 85:5-6. He then interviewed Mr. Orth after providing him with the Miranda warnings. PHT 85:17-24. Mr. Orth told Detective Lippisch that he had seen two patrol cars behind him with their lights activated and Mr. Orth assumed he simply needed to get out of the way. PHT 86:20-25. When Mr. Orth realized the officers were not trying to pass him, he thought he might be being set up, so he continued to drive. PHT 87:2-8. Mr. Orth believed there must be items in the duffle bag being used to set him up as it was the only thing in the car, which was why he grabbed the bag as he got out. PHT 87:16-22. Mr. Orth explained that he did not know what was in the bag. PHT 87:25-88:1. Mr. Orth said he had tried to come home to the apartment with the duffle bag from the car but could not get inside. PHT 88:14-17. Detective Lippisch explained that he was the officer who requested the search warrant of the duffle bag but had not been the one to search the bag. PHT

91:6-8, 15-17.

On cross examination, Detective Lippisch did investigate the information provided to police from the initial investigation the night before Mr. Orth was arrested, specifically the detective reviewed the police report after responding to the scene. PHT 95:5-8; 97:14-17. Detective Lippisch explained that he did not interview any of the other witnesses personally, but the officers who did the interviews reported to him. PHT 92:13-19. Detective Ozawa interviewed Louie Polanco and provided Detective Lippisch with portions of that interview, which Detective Lippisch had prior to requesting the search warrant. PHT 93:3-8; 111:21-25. Detective LaPeer interviewed Jessie Caracciolo, after which he informed Detective Lippisch that some of her statements conflicted with those of Louis Polanco. PHT 99:7-12. Specifically, Ms. Caracciolo said they had known Mr. Orth for about a week, which was different from Mr. Polanco's version. PHT 99:20-23. Detective Lippisch also admitted that she had indicated Mr. Orth may have had permission to use a phone alleged to have been stolen and that she did not see Mr. Orth with a weapon as she was in a different room. PHT 99:15-16; 100:1-3. Additionally, Mr. Polanco claimed his car was stolen; however, officers learned that Mr. Orth had permission to use the car. PHT 101:7-9. Mr. Polanco ultimately admitted that Mr. Orth had permission to use the phone previously alleged to have been stolen. PHT 101:10-13. Detective Lippisch admitted Mr. Orth had told the detective that Mr. Orth was returning home to return the car and phone he had permission to use. PHT 101:14-18. However, Detective Lippisch later changed his testimony by saying Mr. Orth may have previously had permission to use these items but did not on the night of the robbery. PHT 110:10-17. Detective Lippisch claimed he created his Declaration of Arrest after the affidavit for his search warrant. PHT 113:9-10. The search warrant was signed by Judge Gibson on October 28th at 3:15pm. PHT 114:1-4. Detective Lippisch agreed that at the time he requested the search warrant that he did not have probable cause to arrest Mr. Orth for robbery. PHT 114:2-23. Near the end of the cross examination, the Justice Court ruled on the motion to suppress based on the illegal search and denied Mr. Orth's motion. PHT 117:20-21.

After the testimony of Detective Lippisch, there was an argument as to whether the State could add what is now Count 2 as Mr. Orth had already been charged and pleaded guilty to a misdemeanor resisting charge in Henderson Municipal Court. PHT 132:20-138:15. At the end of the hearing, the Court held Mr. Orth to answer for the charges as filed.

LEGAL ARGUMENT

A magistrate shall hold a defendant to answer in district court if from the evidence presented there is probable cause to believe that the charged offense has been committed and that the defendant has committed that crime. N.R.S. 171.206. "Probable cause to bind a defendant over for trial may be based on slight, even marginal, evidence because it does not involve a determination of guilt or innocence of an accused." Sheriff, Washoe County v. Dhadda, 115 Nev. 175, 980 P.2d 282 (1999) (emphasis added). "[A]lthough the state's burden . . . is slight, it remains incumbent upon the state to produce some evidence that the offense charged was committed by the accused." Woodall v. Sheriff, 95 Nev. 218, 220, 591 P.2d 1144, 1145 (1979). Even if the State presents circumstantial evidence, the justice court still must determine whether the evidence presented "establishes a reasonable inference that the defendant committed the crime." Morgan v. Sheriff of Clark County, 86 Nev. 23, 25, 467 P.2d 600, 601 (1970). "[T]he purpose of the preliminary proceedings is to weed out groundless or unsupported charges of grave offenses and to relieve the accused of the degradation and the expense of a criminal trial. Many unjustifiable prosecutions are stopped at that point, where the lack of probable cause is clearly disclosed." Nevada v. Brincken, 86 Nev. 769, 772, 476 P.2d 733, 735 (1970); citing People v. Elliot, 354 P.2d 225, 229 (Cal. 1960).

///

///

///

///

///

I. The State failed to prove Mr. Orth committed Stop Required Upon Signal of Peace Officer (Count 2).

NRS 484B.550(1) says:

> "Except as otherwise provided in this section, the driver of a motor vehicle on a highway or premises to which the public has access who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude a peace officer in a readily identifiable vehicle of any police department or regulatory agency, when given a signal to bring the vehicle to a stop is guilty of a misdemeanor."

Subsection 3b further says if while violating the provisions of subsection 1, the driver operates the car in a manner which endangers or is likely to endanger any other person or the property of any other person that the driver is guilty of a category B felony. There is only one published case in Nevada addressing what it means to endanger people or property under this statute. In Nelson v. State, the Nevada Supreme Court ruled there was sufficient evidence to support the defendant's conviction under the felony statute. 123 Nev. 534 (2007). The Court cited to a Massachusetts Supreme Court case that said "[t]o endanger the lives and safety of the public by the operation of an automobile on a public way is not an intangible and shadowy act. *It has specific relation to possible contact with human beings*." Id. at 542 (citing Commonwealth v. Pentz, 247 Mass. 500, 143 N.E. 322, 324 (1924) (emphasis added)). In that case, the State presented evidence the defendant failed to stop on signal of police officers and drove more than ninety miles per hour through red traffic lights. Id.

In this case, the State failed to show that Mr. Orth endangered or was likely to endanger any other person or property at the time of the event. The testimony of Detective Nelson was that he saw the car make a left turn while driving about twenty to twenty-five miles per hour, but then the car came to a complete stop and Mr. Orth got out of the car. Officer Nelson admitted that no one was in danger when the car was stopped as the car was between ten and fifteen yards away from Officer Nelson. It was only after Mr. Orth got out of the car that it rolled forward and struck the gate. The State was required to show "endangerment" which can be shown through the specific relation to possible contact with people or property. The State did not show what

possible contact there was with people other than being at least ten yards from Officer Nelson at the time Mr. Orth came to a complete stop. That is not close enough to endanger anyone. As to the car rolling into the gate, that was after Mr. Orth had exited the car so cannot be attributed to his attempt to evade the police in the car as he was not in the car. Plus, he intentionally came to a full stop at least ten yards away from the gate, indicating he was avoiding possibly endangering anyone or anything. The State failed to prove Mr. Orth endangered anyone or anything, and simply failing to stop when ordered to do so by officers is not a felony. As such. Count 2 must be dismissed for lack of evidence.

II. The State should not have been permitted to amend the criminal complaint to include the charge of Stop Required Upon Signal of Peace Officer (Count 2).

At the preliminary hearing, the State was permitted to add Count 2 over the defendant's objection. At the time of his arrest, Mr. Orth was also arrested on a misdemeanor charge of Resisting Arrest for which Mr. Orth pleaded guilty.[4]

"The Double Jeopardy Clause protects against ... multiple punishments for the same offense." Jackson v. State, 128 Nev. 598, 604 (2012). "In accord with principles rooted in common law and constitutional jurisprudence," the Supreme Court "presume[s] that 'where two statutory provisions proscribe the "same offen[c]e,"' a legislature does not intend to impose two punishments for that offense." Id. (citing Rutledge v. United States, 517 U.S. 292, 297 (1996) (quoting Whalen v. United States, 445 U.S. 684, 691-92 (1980)).

"To determine whether two statutes penalize the 'same offence,' both the Supreme Court and this court look to Blockburger v. United States, 284 U.S. 299, 304 (1932)." Id. "The Blockburger test 'inquires whether each offense contains an element not contained in the other; if not, they are the 'same offence' and double jeopardy bars additional punishment and successive prosecution." Id. (citing United States v. Dixon, 509 U.S. 688, 696 (1993)); see also Barton v. State, 117 Nev. 686, 692 (2001) ("under Blockburger, if the elements of one offense are entirely included within the elements of a second offense, the first offense is a lesser included offense

[4] Exhibit C, Henderson Municipal Court Complaint.

and the Double Jeopardy Clause prohibits a conviction for both offenses").

NRS 199.280 says a person is guilty of misdemeanor Resisting a Public Officer when he willfully resists, delays or obstructs a public officer in discharging or attempting to discharge any legal duty of his or her office. As quoted above, Stop Required Upon Signal of Officer is completed when a person fails to stop, flees, or attempts to elude an officer who has activated his emergency lights and sirens. The question here is: are the elements of Stop Required completely included within the elements of Resisting? And the answer is yes. One cannot fail to stop when ordered to do so by an officer without also resisting/delaying/obstructing a public officer in discharging or attempting to discharge any legal duty of his office.

The Justice Court underwent the wrong analysis as the State directed it to simply look at the factual allegations. The caselaw is clear that the first step is to perform the Blockburger test. Under the Blockburger test, misdemeanor Resisting is a lesser included offense of felony Stop Required; therefore, when Mr. Orth pleaded guilty in Henderson Municipal Court, it prevented the State from charging him again for the same conduct. As such, the State should not have been permitted to add Count 2 as it violates the Double Jeopardy Clause.

III. The State received an improper continuance so the charges must be dismissed.

The State has the burden of procuring its necessary witnesses for preliminary hearing, but if the State fails to do so, it is required to show good cause to continue the hearing or the case must be dismissed. See N.R.S. 171.196. According to the Nevada Supreme Court:

> "A prosecutor should be prepared to present his case to the magistrate at the time scheduled or show good cause for his inability to do so. This is not an unfair burden. The business of processing criminal cases will be frustrated if continuances are granted without good cause."

Bustos v. Sheriff, Clark Cty., 87 Nev. 622, 624, 491 P.2d 1279, 1280 (1971).

A court must look at the totality of the circumstances when determining if there is "good cause" to grant a continuance. See Sheriff, Clark County v. Terpstra, 111 Nev. 860, 863 (1995). Granting a continuance without good cause gives the State leave to "frustrate the judicial system." See Bustos, 87 Nev. at 624. There is no presumption that good cause exists when

requesting a continuance. Ex Parte Morris, 78 Nev. 123, 125 (1962). "[O]ur criminal justice system can ill afford to bestow on prosecutors, or on defense counsel, largesse through continuances for which no cause is shown." See McNair v. Sheriff, Clark County, 89 Nev. 434, 436-37, 514 P.2d 1175, 1176 (1973). While the decision to grant a continuance is within the court's discretion, there is no legal principle that requires a judge to "grant a continuance on the hope that a recalcitrant witness will later agree to testify." See McCabe v. State, 98 Nev. 604, 606-07 (1982); see also Zessman v. State, 94 Nev. 28, 31 (1978).

In this case, the record is not sufficient to support the State's continuance from November 17th. At the time of the hearing, the State claimed it needed one of two officers and that is had known one officer was unavailable, so it expected the second officer to appear. However, the State claimed with little notice it was made aware that the second officer was leaving for vacation that day so could not be present. The State even clarified that it was not aware if the officer was in jurisdiction or when he was leaving, but that the officer did acknowledge receiving the subpoena; therefore, the officer knew of the date, time, and place of the preliminary hearing prior to contacting the district attorney of his possible conflict.

Nowhere in Nevada law does it define "good cause" for unavailability to be an inconvenience. The record is not clear if the officer was already gone, leaving that moment, or leaving that evening, which would have given him time to testify at the preliminary hearing. The record is not clear if the officer could testify via audio visual testimony, for which the State had provided notice it may intend to use at the preliminary hearing. As the State knew it would rely upon one of these two officers and had already been made aware that one officer was unavailable, the State failed to perform due diligence in ensuring the presence of the second officer. As the State failed on multiple fronts to meet its burden to continue the initial preliminary hearing, the case must be dismissed.

///

///

///

CONCLUSION

The State failed to prove by probable cause that Mr. Orth committed the offense of Stop Required Upon Signal of Police Officer, so this charge must be dismissed. Additionally, the State never should have been permitted to add that charge as it violates Mr. Orth's Double Jeopardy protections. Finally, the State received an improper continuance, so the entire case must be dismissed.

DATED this 20th of April, 2021.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: */s/Kara M. Simmons*
KARA M. SIMMONS, #14621
Deputy Public Defender

NOTICE OF HEARING

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the foregoing PETITION FOR WRIT OF HABEAS CORPUS will be heard on June 1, 2021, at 11:00 a.m. in District Court, Department XVIII.

DATED this 20th day of April, 2021.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: */s/Kara M. Simmons*
KARA M. SIMMONS, #14621
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and foregoing MOTION was served via electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountyda.com on this 20TH day of April, 2021

By: */s/Melissa Boudreault*
An employee of the
Clark County Public Defender's Office

EXHIBIT A

Sean R. Orth
330 S. Casino Blvd
Las Vegas Nevada 89139
Pro Se

JUSTICE COURT, HENDERSON TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
vs.
SEAN RODNEY ORTH,
Defendant

Case NO. 20CRH001571
Dept NO. JH#1
DA Case NO. 20204770 6C

NOTICE OF MOTION/
MOTION TO DISMISS
CHARGES

Comes now, Sean Rodney Orth, Defendant in the above-entitled matter appearing pro se wherein Defendant gives notice of motion and respectfully requests this honorable court dismiss the charges in this case for the reasons stated below.

This motion is supported by the attached memorandum of points and authorities, is made in good faith and not for undue delay.

A. MEMORANDUM OF POINTS AND AUTHORITIES.

I. PROCEDURAL HISTORY.

Sean Rodney Orth (Petitioner herein) was charged by affidavit and complaint in Justice Court, Henderson Township, Case NO. 20CRH001571, by Henderson Police Department (HDP herein) officer Leppisch with Possession of Firearm By Prohibited Person, a Category B Felony under NRS 202.360.

Petitioner was arraigned in the Justice Court, Henderson Township on November 2, 2020. Preliminary examination was set for November 17, 2020.

On November 17, 2020 the parties appeared. The Chief Deputy District Attorney Erika Mendoza (Prosecutor Mendoza herein) represented the State of Nevada. That morning Prosecutor Mendoza served upon Petitioner a motion for continuance with attached supporting affidavit (attached hereto as Exhibit 1 (Ex. 1) MOTION FOR CONTINUANCE/AFFIDAVIT OF ERIKA MENDOZA, CHIEF DEPUTY DISTRICT ATTORNEY). The court heard verbal arguments upon the motion, the court denied Petitioner's motion to dismiss the charges for failing to provide a timely examination and granted the State a continuance of an additional eighteen days, the examination to be held December 3, 2020.

II. STATEMENT OF FACTS.

On the night of October 27, 2020 Louie Polanco called Henderson Police Department (HPD) and reported that he was robbed by Sean Orth (Defendant herein).[1] Ex. 2 at 1.

Polanco called police back at about 7 a.m. the next morning and told police Defendant had returned. Patrol officers responded and saw a white vehicle matching the description said by Polanco to be taken in the robbery by Defendant. Police assert they attempted to stop the vehicle, the vehicle did not initially stop but when it did Defendant exited the vehicle with a tan duffle bag and Defendant ran on foot briefly, dropped the bag and was arrested for obstruct resist police officer. Ex. 2 at 2-3.

HPD Detectives Ozawa, LaPeer, Christopher and Lippisch all responded soon thereafter because the allegations were for robbery. Id.

---

1. HPD Detective K. Lippisch wrote a Declaration of Arrest, attached hereto as EXHIBIT 2 and an Affidavit in Supp. of Application for Search Warrant, attached hereto as EXHIBIT 3. Defendant has not received any discovery other than these items and a body cam video. The initial report on the night of October 27, 2020 is within HPD DR#20-18989 and not disclosed by the State. This motion relies on the facts in EXHIBITS 1-3.

Detectives LaPeer and Ozawa were tasked with talking to Polanco and his girlfriend Jessie Caracciolo. Ex. 2 Polanco told police that Defendant displayed a 9mm handgun and told him he was taking his guns, a 9mm Smith and Wesson and 20 guage shotgun as well as a laptop computer. Defendant then instructed Polanco to go to the master bedroom where Defendant loaded the items into into a brown duffle bag and Defendant left the residence stealing Polanco's car. Ex. 2 at 2. Detectives stated that Caracciolo gave a much different account. Caracciolo told police she was in the kitchen area of the apartment and did not witness Defendant with a gun and did not witness Defendant commit a robbery. Ex. 2 at 2.

Detectives Christopher and Lippsch were tasked with talking to Defendant. Defendant told police that I was staying at Polanco's apartment, I did not commit robbery, the duffle bag was left in the car, I was allowed to borrow the car and Louie's cellphone that was in my pocket, I just called his girlfriend on his phone I was borrowing to tell her I was returning that morning, I returned at the time I said I would that morning; Louie left the duffle in the car, I took it up to the apartment, knocked, nobody answered which was weird since I just called, I returned to the car to go get milk, felt odd when police used lights

to stop, I felt set up with the bag. Ex. 2 at 2-3; Ex. 3 at 2-4.

Detective Lippisch conveyed to Detectives Osana and LaPeer what I said and Polanco was questioned. Polanco admitted that he did allow me to borrow the car and phone. Ex. 2 at 2-3.

In his affidavit in support of a request for issuance of a search warrant Detective Lippisch withheld from the Magistrate of this court that Polanco first said that I robbed him for his car but later told police he lent me the car and cell phone. Detective Lippisch also left out that Polanco's girlfriend told police she did not see me with a gun and did not witness a robbery. See Search warrant Application. Ex. 3.

2. Detective Lippisch states in his search warrant affidavit "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 probable cause pertaining to the search of the location referred to above". Ex. 3 at 4, 9 1/2 S. This sworn statement is perjury demonstrated by Detective Lippisch's sworn Declaration of Arrest which describes his knowledge that Polanco's girlfriend impeached his claim I had a gun and robbed him and that Polanco ~~[illegible]~~ initially told police I robbed him for car but then told police he lent me car and cell phone. Ex. 2.

Polanco has capitalized on his knowledge I am on parole and for his own reason left his bag in the car and called his car in as stolen with several items in it. I was returning the car and his duffle bag with his phones. I have only had a traffic ticket in all of my time out of prison - nearly two years. -

III. LEGAL ARGUMENT.

A. LAWS APPLICABLE TO CONTINUANCES OF THE PRELIMINARY EXAMINATION.

An initial appearance on the charge of Prohibited Person in Possession of a Firearm was afforded Defendant in this court on November 2, 2020. The crucial date to hold a preliminary examination within (15) fifteen days of the initial appearance under NRS 171.196(2) would be by November 17, 2020.

NRS 171.196(2) provides, in relevant part:

If the defendant does not waive examination the magistrate shall hear the evidence within 15 days unless for good cause shown the magistrate extends the time

Id.

The examination was to be held on November 17, 2020 and the prosecutor made a Supreme Motion to continue

1 upholding the courts rulings in Hill v. Sheriff, 85
2 Nev. 234 (1969); Bustos v. Sheriff 82 Nev. 622 (1971)
3 and Monaco v. Sheriff, 89 Nev. 434 (1973) the Nevada
4 Supreme court reiterated its requirements for grant-
5 ing of continuances at a preliminary examination
6 in the justice court in Sheriff v. Terpstra, 111
7 Nev. 860, 862-863 (1995).
8 "A prosecutor seeking a continuance of a prelim-
9 inary examination because of the absence of a
10 witness can demonstrate good cause by submitting
11 an affidavit stating:
12 names of an absent witness and their present
13 residence if known, the diligence used to procure
14 their attendance, a brief summary of their
15 testimony and whether the same facts can be
16 proven by other witnesses, when it was first
17 learned attendance of the witness could not
18 be obtained and that the continuance was
19 being sought in good faith and not for delay.
20 It has been our aim that criminal accusations
21 proceed on principles compatible with judicial
22 economy, fair play and reason and we have
23 applied these rules firmly, consistently, but
24 realistically."
25 Id.
26
27
28

A. THE PROSECUTOR WAS CONSCIOUSLY INDIFFERENT TO RULES OF PROCEDURE WHEN NOT FILING HER MOTION FOR CONTINUANCE AT LEAST FIVE DAYS BEFORE THE NOVEMBER 17, 2020 HEARING REQUIRING DISMISSAL OF THE ACTION.

Although Sheriff v. Davis, 106 Nev. 145 (1990) did deal with an ex parte continuance motion by the prosecutor the case clearly outlines that it is a willful or conscious indifference to rules of procedure that effects a defendant's rights where a written motion could have been made at least five days prior to the hearing and was not (as occured in the case at bar.

"motions must be in writing with five days notice unless 'cause is shown' NRS 178.478 (1), NRS 178.476; See also DCR 14 ... [Defendant] Flangas was not notified or consulted prior [to a continuance being granted] even if he was there would only have been one day notice, not five. Fundemental due process requires, at a minimum adequate notice to the accused and an opportunity to prepare for a hearing. See Nev. const. art. 1 § 8; Farrow v. District court, 64 Nev. 109, 126, 178 P.2d 371, 379 (1947). Having deprived the [Defendant] sheriff by denying him adequate notice the justice of the peace had no jurisdiction to hold an ex parte hearing of this kind Davis, 106 Nev. at 149-150.

1 meaning absolutely no disrespect to the prosecutor
2 or this honorable court - a colloquy between the
3 court and prosecutor occured wherein the court
4 stated it was assuming that the prosecutor did
5 not file a written motion on November 12, 2020
6 when it was learned Detective LaPeer was unavail-
7 able because the prosecutor was going to rely on
8 Detective Osawa but did not learn Detective Osawa
9 was unavailable until he contacted the Prosecutor
10 on November 16 2020 to tell her he would be on
11 vacation November 17, 2020.[4] The prosecutor merely
12 agreed to this version of the court's assumption wh-
13 ich is a matter of record. The prosecutor cannot
14 be said to have shown good cause as nowhere
15 does she swear to such and although the prosecu-
16 tor may supplement her motion on short notice
17 in order for it to be accepted as good cause it
18 must be sworn to by the prosecutor. Bostos v. Sher-
19 iff, 82 Nev. 622 (1971). Nowhere did the prosecutor
20 swear she did not file a motion on November 12, 2020
21 because she planned to proceed solely on Detective Osawa-
22 ana. The prosecutor just as likely didn't realize she
23 should have filed a written Hall motion on November 12.
24 3. The prosecutor conceded she knew of Detective LaPeer
25 being unavailable on November 12, 2020 but learned Det-
26 ective Osawa would not appear on November 17, 2020
27 because he was starting vacation one November 17, 2020.
28 4. Defendant shows Osawa was not unavailable below.

The motion for continuance should have been denied. Dismissal was and is required here where there was a willful or conscious disregard for the rules.

"It has been our aim that criminal accusations should proceed on principles compatible with judicial economy, fair play and reason. We have applied the above rules firmly consistently and realistically"

Terpstra, III Nev. 862-863.

This court should also firmly apply the rules.

B. THE PROSECUTOR'S MOTION MUST FAIL UPON THE RECORD THAT DEMONSTRATES THAT DETECTIVE OSAWA'S PRESENCE COULD HAVE BEEN OBTAINED.

First, the prosecutor states in her affidavit that Detective Osawa was served a subpoena on November 12, 2020 and ~~[illegible]~~ suspiciously he did not contact the prosecutor until the 16th of November to say that he "will be" starting his vacation on November 17th, the day of the examination. Ex. 1 at 3.

It is a matter of record at the November 17th hearing that Detective Osawa was in communication with the prosecutor and upon the court asking if Detective Osawa was in Las Vegas still the prosecutor stated that he was.

Detective Osawa's presence could have been obtained on the morning of November 17th and it is not "Fair Play" or compatible with "judicial economy" to schedule a hearing and not proceed where the defense is prepared and defendant is in jail. Detective Osawa would suffer little prejudice to his vacation; he accuses Defendant and was under subpoena making an excuse at the last second rather than immediately.

At no time did the prosecutor state, nor could she "when it was learned attendance of the witness could not be obtained" Tr. at 862-863 and therefore the court erred in granting a continuance and not dismissing the action. Davis at 149-150.

In this case Detective Osawa accepted his subpoena served on him and did not contact the prosecutor to claim his vacation would start on November 17th until the eve of the hearing. If Defendant tried that he would be in jail for contempt if he did not appear.

NRS 22.010 provides:

ACTS OR OMISSIONS CONSTITUTING CONTEMPT

5. Disobedience of a subpoena duly served or refusing to be sworn or answer as contempt"

NRS 174.385 provides in relevant part.

Failure of a person without an adequate excuse to obey a subpoena ... served upon ~~[illegible]~~ the person and accepted should be deemed a contempt of court from which the subpoena issued ... or the court where a preliminary hearing is to be held. Id (emphasis added).

If the parties would have appeared and proceeded Detective Osawa's appearance could have been obtained simply by the prosecutor telling him on the 16th that his vacation would have to be delayed by a short appearance on the 17th because he was a critical witness and Detective LaPeer was in training. The prosecutor or court could have simply told the officer he should have immediately contacted them and did not requiring him to obey the subpoena he accepted. It is axiomatic that contempt of court is not good cause for delay within the principles our Honorable Nevada Supreme Court has layed out.

C. DETECTIVES OSAWA AND LaPEER DO NOT APPEAR TO BE CRITICAL WITNESSES REQUIRED TO PROVE THE ALLEGATION OF DEFENDANT'S POSSESSION OF A GUN.

Defendant does not agree the State can prove his possession as alleged in the complaint and it appears Detectives Osawa and LaPeer are not critical to prove possession of the gun by Defendant.

According to Detective Lippisch in his Declaration of Arrest He and Detectives LaPeer and Osawa did not appear until after Defendant's arrest and they were only tasked with questioning Polanco and his girlfriend. Ex. 2 at 2-3. Detective Lippisch then obtained a search warrant for the bag, served it and alleges to have found the gun. Id. Patrolman are alleged to have seen Defendant exit the car and leave the bag. Id. It appears complainants Polanco and Caracciolo could testify to the events of October 27 if the allegation is possession when taking the gun but Defendant is not charged with robbery or a stolen gun. If the State seeks to create the nexus that patrol said Defendant with the bag and Detective Lippisch later served the warrant and located the gun in the bag the patrolman and Lippisch could have gave the necessary testimony. Indeed, Detective Lippisch is the declarant in support of arrest. Ex. 2. Detectives Osawa and LaPeer could only serve to impeach the State's case and Detective Lippisch who knowingly withheld facts from the magistrate at this court that impeach Polanco.

The prosecutor could not legitimately make a "brief

summary of their and whether the same facts can be proven by other witnesses" Terpstra III Nev. at 862-863. The charges should be dismissed.

Due to the surprise motion made by the prosecutor served upon pro se Defendant in court on the 17th of November the above arguments were not immediately apparent and this honorable court may have overlooked or misapprehended applicable law and facts which should allow for consideration.

It would not comport with judicial economy to not address the issues above and if agreed to favor Defendant not grant this motion as such would cause petition to the higher courts prior to trial, please see e.g. 2015 Solomon v. Eighth Judicial Dist. Court, Nev. unpub. Lexis 571 (Granting Petition for issuance mandamus before trial based on illegal continuance of preliminary examination).

D. FEDERALIZATION.

The above state rules, laws and guarantees under Nev. Const. art 1 § 8 create liberty interests protected by U.S.C.A. Am. 5, 6 and 14 which will be violated should this motion not be granted.

IV. Conclusion.

Defendant, if the motion is not immediately granted on the merits, should the court allow, reserves right to renew this motion upon evidence in the examination or motion hearing;

Wherefore, Defendant prays this honorable court will allow this motion and grant it for the willful or conscious disregard to rules that affected Defendant's rights dismissing the action.

Respectfully Submitted, November 20, 2020.

Sean Orth

Sean Orth

Defendant.

Certificate of Service

Pursuant to NRCP Rule 5(b) I do hereby certify that on a true and correct copy of the foregoing MOTION TO DISMISS was served upon Deputy Chief District Attorney Erika Mendoza

EXHIBIT 1

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ERIKA MENDOZA
Chief Deputy District Attorney
Nevada Bar #12520
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

JUSTICE COURT, HENDERSON TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- SEAN ORTH, #6111549 Defendant.	CASE NO: 20CRH001571 DEPT NO: 1

STATE'S NOTICE OF MOTION AND MOTION TO CONTINUE

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

TO: SEAN ORTH, Defendant; and

TO: KARA SIMMONS, Attorney for Defendant

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

///

///

///

///

///

///

///

///

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

DATED this 17 day of November, 2020.

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

BY
ERIKA MENDOZA
Chief Deputy District Attorney
Nevada Bar #12520

AFFIDAVIT

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

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)

EXHIBIT 2

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 prohibit 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 duffle 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 duffle 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.

Lippisch, K.
Declarant's Name

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 ind Jessie Caracciolo (DOE 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 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 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.

Lippisch, K.
Declarant's Name

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 duffle 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: 1291469), 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.

Lippisch, K.
Declarant's Name

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).

Lippisch, K.
Declarant's Name

EXHIBIT 3.

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.

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 duffle 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 duffle 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,

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 duffle 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.

EXHIBIT B

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

W I T N E S S E S

ALEX NELSON
Direct Examination by Ms. Mendoza 38
Cross-Examination by Defendant Orth 51
Redirect Examination by Ms. Mendoza 59
Recross-Examination by Defendant Orth 60
Further Redirect Examination by Ms. Mendoza 62

KEVIN LAPEER
Direct Examination by Ms. Mendoza 63
Cross-Examination by Defendant Orth 66
Redirect Examination by Ms. Mendoza 81

KARL LIPPISCH
Direct Examination by Ms. Mendoza 84
Cross-Examination by Defendant Orth 91
Redirect Examination by Ms. Mendoza 123
Recross-Examination by Defendant Orth 125

INDEX OF EXHIBITS

Exhibit	Description	Admitted
STATE'S 1	PHOTOGRAPH OF DUFFEL BAG	65
STATE'S 2 - 5	JUDGMENTS OF CONVICTIONS	145

HENDERSON, NEVADA, DECEMBER 9, 2020

* * * * * * * * * * * *

THE COURT: Sean Orth, 20CRH1571, who is representing himself with Miss Simmons here as standby counsel.

All right. Mr. Orth, let's take up your motions first and then we'll start the prelim depending how I rule on your motions, okay?

DEFENDANT ORTH: Yes, sir. I'd like to invoke the rule of witnesses.

THE COURT: Of what?

DEFENDANT ORTH: The rule of witnesses. To exclude them.

THE COURT: We'll exclude the witnesses once the preliminary hearing starts. So your motions to dismiss. You received Miss Mendoza's responses, correct, sir?

DEFENDANT ORTH: I received them today, your Honor.

THE COURT: Have you reviewed them?

DEFENDANT ORTH: Yes. And I'd like to reply.

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 17th. 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 17th 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 17th 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 17th 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 17th
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 17th 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 27th 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 17th 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 17th, 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 16th saying I haven't gotten them
6 yet. And I came straight here the morning of the
7 17th. I didn't go to the office the morning of the
8 17th 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 18th I had
3 to leave work because I had COVID symptoms. On the
4 19th 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 17th 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 there was an ex parte hearing on the continuance and in fact they faulted the Court and the prosecutor for not even discussing whether or not there was good cause. When the State gives a motion of -- gives a notice of
11:35AM intent that they can do things by audio visual and strip me of my rights, then they can also follow those same procedures to make sure that I have that preliminary examination. You have the statute -- I understand they're saying well, the prison didn't bring
11:35AM you. Well, if we would have set up audio visual technology and had me appearing by audio visual technology and showing cause to do that --

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

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

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

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

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

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

11:37AM DEFENDANT ORTH: Your Honor --

THE COURT: Hang on a second. The case law is that during a preliminary hearing a motion to suppress can be addressed, it can be brought up based
11:37AM upon the evidence and sometimes that evidence is the same for purposes of probable cause, sometimes you would need some separate evidence to address a motion to suppress on the search warrant. So let's get started, let's see where it goes and then if there's
11:37AM evidence at the time that would indicate a need to have a hearing on the separate witness for your motion to suppress, then we'll take that up.

MS. MENDOZA: Just so the record is clear so it's not brought up later down the road.

11:38AM THE COURT: Yes.

MS. MENDOZA: We disagree as to what he's in possession of. He is insisting as of today he still doesn't have some reports which you have already ruled don't matter. But I provided them to Miss Simmons.

11:38AM THE COURT: Which reports specifically? Is it that other event number 1989?

MS. MENDOZA: Yes. She was provided a packet of discovery that included an incident report from that event, his Washoe County JOCs, a number of
11:38AM CADs, audio of 911, photos. All kinds of things back

11:38AM on November 25th.

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

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

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

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

THE COURT: Yes.

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

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

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

THE COURT: Well, let's see what happens. Her argument for the continuance was she had two witnesses that could testify as to the gun. One was Detective Lapeer, one was Detective Ozawa. Detective
11:39AM 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 27th 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 Are we ready for witnesses?
MS. SIMMONS: The only thing I wanted to make a record of is last week your Honor gave me permission to try to subpoena Louis Polanco and Jessie
11:44AM Caracciolo.
THE COURT: Do we have a spelling?
DEFENDANT ORTH: C-A-R-I-C-C-O-L-L-O.
MS. SIMMONS: That was on Thursday. My investigator has been unable to subpoena them. I know
11:45AM that Mr. Orth previously expressed to me he would like to have them here. The State has indicated their intention not to call them, to call either of them. My investigator did attempt in this short period of time to contact them and has not had contact with them.
11:45AM THE COURT: And has had zero contact?
MS. SIMMONS: She attempted prior to the first preliminary hearing date as well, but had no contact.
THE COURT: Anything else, Miss Simmons?
11:45AM MS. SIMMONS: I believe that's everything from me, your Honor.
THE COURT: He's invoked the exclusionary rule. Who is your first witness, Ms. Mendoza?
MS. MENDOZA: The first witness will be
11:45AM Officer Nelson.

11:45AM I have some JOCs that I was going to make a record of or we can do it at the end.
THE COURT: We can do it at the end.
Let's get Officer Nelson and the other two
11:45AM detectives need to step out into the hallway for me.
Raise your right hand for me.
THE CLERK: Do you solemnly swear that the testimony that you are about to give will be the truth, the whole truth and nothing but the truth, so help you
11:46AM God?
THE WITNESS: Yes, ma'am.
THE CLERK: Please be seated.
Please state your first and last name and spell each for the record.
11:46AM THE WITNESS: First name is Alex, A-L-E-X. Last name Nelson, N-E-L-S-O-N.
THE COURT: All right, State. Go ahead.
MS. MENDOZA: Thank you, your Honor.

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

DIRECT EXAMINATION

BY MS. MENDOZA:
Q. How are you employed?
11:46AM A. I'm a police officer with the Henderson

11:46AM Police Department.
Q. And were you working in that capacity on October 28th of this year around 7:11 a.m.?
A. Yes, ma'am.
11:46AM Q. Were you actually on duty at that time?
A. Yes, ma'am.
Q. And around that time did you respond to 781 Whitney Ranch Drive?
A. It was 981 Whitney Ranch Drive.
11:46AM Q. Thank you very much.
A. You're very welcome.
Q. Is that located here in Clark County?
A. Yes, ma'am.
Q. Now, what was the reason that you
11:47AM responded to that address?
A. Henderson dispatch had received a call that a subject was in possession of a firearm banging on the door of an apartment.
DEFENDANT ORTH: Objection. Hearsay.
11:47AM MS. MENDOZA: It's offered not for the truth of the matter asserted.
THE COURT: I'm assuming it's offered for why they went out or what they did next; is that correct?
11:47AM MS. MENDOZA: Correct. And the impression

11:47AM the officers would have been under when they arrived at the scene.
THE COURT: I'm going to overrule it and I'm not admitting it that what they heard from these
11:47AM witnesses is actually true. Just that's why they went out. So it's overruled.
Go ahead.
BY MS. MENDOZA:
Q. Was also part of that was that the suspect
11:47AM had robbed the person reporting the night before?
A. Yes, ma'am.
DEFENDANT ORTH: Same objection.
THE COURT: And same ruling. I'm not --
DEFENDANT ORTH: It's continuing, your
11:47AM Honor.
THE COURT: I understand. I'm not utilizing it as substantive evidence that you did any of those things.
So go ahead.
11:48AM BY MS. MENDOZA:
Q. Did dispatch relay any kind of information about what type of transportation you might expect this potential suspect to be in?
A. Eventually they did, yes, ma'am.
11:48AM 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
21 DIRECT EXAMINATION
22 BY MS. MENDOZA:
23 Q. How are you employed?
24 A. I'm a detective with the Henderson Police
12:08PM 25 Department.
Q. Were you working in that capacity on

12:08PM 1 October 28th 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 28th 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,
having been first duly sworn, did testify as follows:
2
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 28th 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 over, decides there's something bad in this bag, flees in the car with the bag, correct?
A. Correct.
Q. So you had talked to Mr. Orth about this
12:32PM bag. Had the officers when you first arrived on scene also alerted your attention to a bag that was in the area?
A. Yes, they did. The officers, when I first responded, had told me that when Mr. Orth exited the
12:32PM vehicle, he exited the vehicle with a tan duffel bag which was in his hands as he exited. He then refused to comply with officers' commands and ran towards -- walked or ran towards a block wall that would go out to Whitney Ranch. He threw the bag over the wall and then
12:33PM he jumped over the wall. And then as he was -- I was told as he was fleeing across Whitney Ranch he initially attempted to pick up the bag. However, kind of fumbled with picking it up and then left it behind. And so then when they took him into custody, they also
12:33PM secured the tan duffel bag.
Q. So the bag was still in the area when you went out to Whitney Ranch?
A. When I arrived they'd already secured it into a patrol vehicle just to make sure that no
12:33PM bystander or somebody didn't take it.

12:33PM Q. So the bag was with patrol officers when you got there?
A. Yes, it was.
Q. Did you ultimately obtain a search warrant
12:33PM for that bag?
A. Yes, I did.
MS. MENDOZA: Permission to approach the witness?
THE COURT: Yes.
12:34PM BY MS. MENDOZA:
Q. Showing you what's been admitted as State's Exhibit 1. Do you recognize what we're looking at in this picture?
A. Yes, I do.
12:34PM Q. What's that?
A. That's the tan duffel bag and it's currently open.
Q. Do you recognize this as the same tan duffel bag you got from the officers when you arrived
12:34PM there?
A. Yes.
Q. So did you ever go into that bag and see what's in there?
A. I did not because I was actually not at
12:34PM the station when it was opened.

12:34PM Q. Did you take the bag from the scene somewhere else?
A. I took custody of the bag at the scene and I'm the one who brought it back and secured it at the
12:34PM police station.
Q. Did you ultimately obtain a search warrant for that bag?
A. Yes, I did.
Q. And did you ask some other officers to
12:34PM assist you in searching that bag?
A. Yes, I did.
Q. Would that specifically be Detectives Ozawa and Lapeer?
A. Yes.
12:34PM Q. And you indicated you were not present when that bag was searched, correct?
A. Correct.
Q. Did Detective Lapeer and/or Ozawa report back to you about what they had found in that bag?
12:35PM A. Yes, they did.
Q. Did that include the Winchester shotgun?
A. Yes, it did.
MS. MENDOZA: Pass the witness.
THE COURT: Mr. Orth.

CROSS-EXAMINATION
BY DEFENDANT ORTH:
Q. Good morning, Detective Lippisch.
A. Good morning.
12:35PM 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
12:35PM 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?
12:35PM A. I did not. Detectives that responded with me contacted the witnesses.
Q. And those detectives reported to you, correct?
A. Yes.
12:35PM Q. What did they report to you if you remember?
MS. MENDOZA: Objection. Vague.
THE COURT: Let's see --
DEFENDANT ORTH: I will itemize.
12:35PM 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 28th 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 28th.
12:59PM 20 THE WITNESS: On October 28th 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 28th. I do not know the exact time.

1:00PM 1 THE COURT: For the record it's a court
2 document. October 28th it was signed by looks like
3 Judge Gibson at 3:51 p.m. Does that sound correct on
4 October 28th?
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 THE COURT: He doesn't have to. We've already gone over this. He's got information from the other witnesses who have testified to include an officer who saw you get out of the vehicle with the bag.

1:07PM DEFENDANT ORTH: Nobody has testified to a brown bag.

THE COURT: They just did. They just did. The first witness came in here and testified to it. We're not going to keep covering --

1:07PM DEFENDANT ORTH: Getting out of the car with the bag, your Honor. We're talking about the night before.

THE COURT: We're not talking about the night before. We're talking about the bag that you were seen with by the first officer that testified, that's the bag they searched and that's the bag that they found the firearm in. As we sit here today I'm not going to continue this probable cause hearing when I have probable cause. The first witness Mr. Nelson came in and said he saw you get out of the vehicle with this duffel bag that ultimately was searched. This was the duffel bag. He saw you having it. He saw you walk with it. He saw you put it on the wall. He saw you jump over the wall with the bag. They did a search

1:08PM warrant on this bag. They found a gun in it. That's probable cause. So I don't know what else you want to argue.

BY DEFENDANT ORTH:

1:08PM Q. Let me ask you this. Do you have any facts that I had knowledge of what was in that bag, the mens rea? Do you have any facts that I knew what was in that Louis Polanco's bag?

A. Are you asking me if you told me --

1:08PM Q. No. Do you have any evidence that I knew what was in that bag?

A. You stated to me that you did not know. However, you took it with you when you fled.

Q. Do you have any evidence that I had

1:09PM knowledge that there was a gun in that bag?

THE COURT: Asked and answered. Next question.

BY DEFENDANT ORTH:

Q. Is that no?

1:09PM THE COURT: He just said that you specifically said you didn't know.

BY DEFENDANT ORTH:

Q. So lastly, I told you that I was coming back home, I was returning a car and I was returning a

1:09PM cell phone. Was that consistent with what you learned

1:09PM in the course of your investigation?

A. No.

MS. MENDOZA: Objection. Relevance. And vague.

1:09PM THE COURT: What's the relevance?

DEFENDANT ORTH: I'm telling him the truth.

THE COURT: Okay.

DEFENDANT ORTH: And he's not telling the

1:09PM Court exactly what's going on when he gets a search warrant to make it seem like I'm lying.

THE COURT: We're done with the search warrant. I've already made a decision on the search warrant. Any other questions?

1:10PM DEFENDANT ORTH: No more questions, your Honor.

THE COURT: Okay. Anything on redirect?

MS. MENDOZA: Just so the record is clear, I'm not conceding to any issues regarding the search

1:10PM warrant. If we were continuing that argument, I would ask more questions, but since we're not I won't.

REDIRECT EXAMINATION

BY MS. MENDOZA:

1:10PM Q. I just want to clarify. So patrol

1:10PM officers responded in the middle of the night about the robbery?

A. Correct.

Q. Now, let's say Mr. Orth never returned to

1:10PM the apartment. Would that have been routed to the robbery detectives and eventually a robbery detective would have followed up for continued investigation?

A. It would depend on patrol's involvement and they are able to -- if they want to retain the

1:10PM report for the investigation because it's something that's within their capabilities, they're able to go ahead and investigate it. However, if it's beyond their scope, it would be routed to a robbery detective.

Q. So either it would have stayed with

1:11PM patrol, or if robbery took over, you guys would have gone out and done subsequent investigation, correct?

A. Yes.

Q. So essentially the same thing you ended up doing that morning --

1:11PM A. Yes.

Q. -- of interviewing witnesses and figuring out if there's physical evidence and things like that, correct?

A. Yes.

1:11PM 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 17th. 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

said he had no objection.

THE COURT: They're admitted.

MS. MENDOZA: Thank you.

(State's Exhibits 2 - 5 were admitted.)

THE COURT: Anything else, Ms. Mendoza?

MS. MENDOZA: No, Your Honor.

THE COURT: It appears to me from the complaint on file herein and from the testimony adduced at the preliminary examination that a crime, that being felony possession and evading, has been committed. There is sufficient evidence to believe the defendant Mr. Orth committed said crimes. I hereby order said defendant be bound over to the Eighth Judicial District Court, State of Nevada to answer the charges on the following date.

THE CLERK: December 18th, 8:00 a.m., lower level arraignment.

THE COURT: Now, I don't know if they are going to be able to get you back down.

Does the State need to prepare an order to get him back down?

MS. MENDOZA: I'll do an order to transport. I don't know if every time he comes here he is going to have to sit through quarantine again.

THE COURT: Do you know what their

procedure is once he goes back? Does he go back through quarantine?

THE OFFICER: I believe so. We were here today to hear this so we are going to forward that information to our office.

THE COURT: When is the date again?

THE CLERK: December 18th.

THE COURT: We can go into the next week just to make sure.

THE OFFICER: It's okay.

THE COURT: We'll keep that date. That'll be your date for your entry of plea in District Court. Good luck. And seriously rethink getting an attorney, okay?

DEFENDANT ORTH: Thank you, Your Honor.

THE COURT: Good luck.

(The proceedings concluded.)

* * * * *

ATTEST: Full, true and accurate transcript of proceedings.

/S/Lisa Brenske

LISA BRENSKE, CSR No. 186

ATTEST: [1] 146/18
BY DEFENDANT ORTH: [63]
BY MS. MENDOZA: [23] 38/22 40/7 40/19 41/9 41/20 42/2 42/21 43/12 45/14 46/10 47/10 50/18 59/10 59/24 62/13 63/20 65/1 65/22 81/23 84/3 88/6 90/9 123/23
DEFENDANT ORTH: [133]
MS. MENDOZA: [142]
MS. SIMMONS: [15] 32/3 37/1 37/7 37/15 37/19 73/25 107/4 117/21 118/2 118/7 129/24 130/7 130/15 132/19 132/24
THE CLERK: [8] 38/6 38/11 63/5 63/10 83/14 83/19 145/15 146/6
THE COURT: [310]
THE OFFICER: [2] 146/2 146/9
THE WITNESS: [39] 38/10 38/14 42/1 43/8 47/9 54/19 57/8 57/19 58/1 58/16 63/9 63/13 68/18 68/22 71/20 72/9 72/23 73/2 74/2 74/19 79/6 83/18 83/22 93/6 97/11 98/10 99/17 107/23 108/1 108/24 109/11 110/5 110/9 110/19 111/4 111/10 111/13 112/19 114/4

.

.20 [1] 66/4
.380 [1] 142/9

/

/S/Lisa [1] 146/23

1

1 with [1] 129/21
10 [4] 34/24 61/10 61/11 139/14
11 [3] 14/3 14/3 14/11
113 [1] 34/16
118 [1] 24/2
1291469 [1] 66/5
14 [1] 34/24
15 [4] 8/6 11/25 15/15 15/21
15 feet [1] 139/14
15 yards [2] 61/10 61/11
16 [2] 17/22 17/23
16th [1] 22/5
171.124 [3] 26/10 35/4 36/16
171.196 [1] 15/20
171.1965 [1] 21/16
171.19751 [1] 7/13
179.045 [1] 34/18
17th [12] 7/12 7/20 10/16 17/23 18/18 19/13 21/5 21/22 22/7 22/8 23/8 130/10
18 [1] 17/22
186 [2] 1/25 146/24
18th [3] 23/2 145/16 146/7
19 [1] 128/3
1956 [1] 34/23
1968 [1] 34/9
1974 [1] 34/25
1980 [1] 34/20
1989 [2] 22/14 31/21
199.280 [3] 133/8 133/18 133/20
1992 [1] 34/17
1998 [2] 129/11 129/12
19th [1] 23/4
1:15 [1] 74/23
1B [1] 36/18

2

20 miles [1] 139/17
2007 [6] 127/21 127/24 128/4 128/17 129/9 129/10
202 [1] 133/10
202.484 [1] 133/12
2020 [3] 1/18 4/1 9/23
2037 [1] 129/11
20CR007366 [1] 25/16
20CRH001571 [1] 1/9
20CRH1571 [1] 4/5
236-page [1] 32/5
25 miles [1] 61/21
2523 [1] 129/10
25th [1] 32/1
2621 [1] 74/14
27th [2] 19/24 35/7
28th [10] 39/3 64/1 74/17 84/9 97/19 112/19 112/20 113/25 114/2 114/4

3

30 [1] 10/4
321 [1] 133/15
335 [1] 34/23
35 [1] 34/9
363 [1] 34/20
392 [1] 34/9
399 [1] 24/2
3:51 p.m [1] 114/3

4

451 [1] 34/23
456 [1] 34/23
484B [2] 133/11 133/13
484B.550 [2] 133/16 137/12

5

550 [1] 133/13

7

781 [1] 39/8
7:00 a.m [1] 82/25
7:11 [2] 39/3 64/1
7:15 in [1] 84/9

8

823 [1] 95/2
891 [2] 94/22 95/1
8:00 a.m [1] 145/16
8th [1] 9/23

9

90 [1] 34/24
911 [3] 20/14 31/25 94/6
919 [1] 133/15
952 [1] 34/17
96 [1] 34/20
981 [3] 39/9 64/6 84/12

A

A-L-E-X [1] 38/15
a.m [4] 39/3 64/1 82/25 145/16
abandoned [1] 8/14
abide [1] 28/8
ability [2] 30/1 142/20
abject [1] 70/3
able [5] 33/10 80/12 124/9 124/11 145/19
about [63]
above [1] 22/20
absent [1] 15/25
absolutely [2] 36/17 60/10
accelerate [1] 43/24
accelerated [1] 60/6
accelerating [1] 44/19
access [9] 56/24 76/17 76/19 108/20 109/15 109/18 109/18 110/14 110/15
accidentally [1] 139/11
according [3] 9/15 102/24 139/4
accurate [2] 65/13 146/20
accused [1] 8/2
accusing [1] 12/25
acknowledge [1] 88/12
acquiesced [1] 137/5
across [2] 86/14 89/16
act [4] 134/18 136/22 137/13 140/2
acting [1] 80/16
action [1] 44/11
actions [1] 126/19
activated [4] 42/15 44/2 44/6 86/23
active [1] 57/10
acts [5] 134/13 134/16 137/9 137/12 138/14
actual [4] 24/23 24/24 96/11 112/7
actually [22] 9/3 16/6 25/3 39/5 40/5 44/23 46/12 59/14 64/3 67/20 77/20 82/24 84/15 87/3 87/6 90/24 131/7 135/12 137/5 141/16 142/20 142/24
add [3] 18/19 117/23 128/12
added [1] 118/6
adding [1] 129/7
addition [1] 18/14
additional [13] 5/12 5/12 18/8 18/17 19/3 80/23 81/7 126/22 126/25 129/22 130/11 130/20 132/16
address [4] 13/9 31/7 34/5 39/15
addressed [1] 31/4
adduced [1] 145/8
admit [4] 65/16 70/3 106/21 144/23
admitted [12] 3/2 7/22 65/21 65/22 87/9 90/11 108/14 140/4 140/12 144/21 145/2 145/4
admitting [1] 40/4
advance [2] 21/19 34/11
advantage [1] 8/11
advice [2] 133/2 133/3
advised [1] 42/14

A

affect [2] 43/3 103/10
affects [1] 102/18
affiant [2] 16/3 68/14
affidavit [13] 15/24 19/19 19/19 104/8 105/21 113/3 113/11 113/18 113/23 115/7 116/22 117/9 118/5
affirmations [1] 20/7
after [30] 14/23 22/8 22/24 44/16 47/19 50/2 50/5 50/7 51/10 54/14 60/6 82/19 82/20 82/25 97/15 98/20 113/12 113/18 113/21 115/1 130/1 134/5 135/19 135/20 135/21 136/1 136/6 136/14 137/14 144/14
afternoon [2] 22/2 22/5
afterward [1] 136/11
afterwards [1] 118/6
again [6] 47/25 55/5 62/17 92/10 145/24 146/6
ago [1] 93/17
agree [5] 7/5 28/18 114/17 116/12 116/21
agreed [2] 85/22 106/17
ahead [22] 5/22 6/11 11/21 22/18 27/11 34/6 38/17 40/7 40/19 43/8 45/14 51/20 59/2 63/16 66/18 70/17 83/25 100/20 124/12 125/11 129/15 132/24
alerted [2] 89/6 95/3
Alex [2] 38/15 38/20
all [55]
allegation [6] 18/23 20/20 98/5 98/6 110/18 136/13
allegations [6] 18/7 23/22 24/6 98/13 142/4 144/10
alleged [17] 19/23 20/4 20/24 21/8 21/10 21/23 22/1 22/13 52/6 52/11 54/1 54/15 72/7 95/21 111/2 119/3 135/15
allegedly [2] 98/7 139/13
alleges [1] 134/1
allow [7] 7/14 30/3 43/6 69/24 101/8 132/15 143/3
allowed [8] 35/11 101/12 104/5 108/20 108/22 110/15 125/9 143/22
allowing [7] 12/24 25/5 70/6 72/5 100/16 105/22 106/1
allows [1] 13/2
alluding [1] 127/25
almost [2] 15/16 132/14
already [18] 30/8 31/18 42/14 45/4 45/4 59/2 82/7 89/23 98/3 114/8 120/11 120/15 121/2 123/13 125/17 127/23 130/6 131/11
also [36] 7/23 11/9 15/11 17/16 23/25 26/20 26/24 29/6 34/22 35/13 40/9 41/2 44/1 75/3 75/22 76/12 77/22 78/3 82/5 82/12 85/25 89/6 89/19 93/22 99/24 100/4 101/10 104/11 104/19 106/20 108/21 117/6 128/12 132/20 138/11 142/15
alternative [1] 30/4
although [2] 100/5 105/10
am [2] 15/18 84/7
ambushed [3] 8/18 11/25 12/16
amended [7] 18/3 19/3 25/2 128/21 128/23 128/24 129/21
amendment [2] 25/5 129/20
amendments [2] 127/18 130/22
amount [1] 48/3
and/or [3] 91/18 108/18 136/10
another [6] 10/4 29/14 45/8 47/24 50/9 132/21
answer [9] 57/18 58/15 72/4 72/8 109/8 109/9 126/4 140/10 145/14
answered [3] 97/9 122/16 125/17
anticipatory [1] 36/14
any [64]
anybody [1] 142/6
anybody's [1] 27/17
anymore [1] 117/18
anyone [1] 138/5
anything [35] 7/1 8/7 10/14 14/19 17/17 19/2 20/4 30/11 37/19 41/5 48/22 60/15 61/2 80/24 86/17 87/14 87/23 88/18 88/19 100/5 100/17 103/23 104/23 105/16 111/15 113/9 118/18 118/23 123/17 125/2 126/5 140/17 143/10 144/19 145/5
anyway [2] 25/7 25/7
anywhere [1] 144/2
apartment [15] 35/22 39/18 48/1 52/22 54/25 64/10 82/6 88/13 88/15 88/17 88/19 88/21 110/12 111/19 124/5
apartment's [1] 35/21
apologize [2] 46/24 100/25
appeal [1] 118/12
appear [6] 8/13 12/2 17/5 17/6 17/16 32/19
APPEARANCES [1] 1/19
appeared [3] 7/24 45/21 47/22
appearing [3] 6/4 16/23 29/11
appears [1] 145/7
application [3] 19/20 100/17 112/25
applied [6] 15/13 24/8 53/16 113/24 114/20 115/1
apply [3] 15/8 15/10 24/4
applying [1] 15/3
appoint [1] 143/3
appreciate [3] 36/24 141/12 141/14
approach [10] 13/11 41/18 50/12 50/17 64/20 64/25 73/25 74/1 90/7 107/5
approached [2] 20/16 88/21
appropriate [2] 26/5 102/12
approval [1] 34/11
approximately [2] 99/23 110/13
are [92]
area [4] 51/13 60/13 89/7 89/21
arguably [1] 16/21
argue [2] 122/3 139/24
arguing [2] 14/25 129/5
argument [17] 8/22 27/10 32/16 32/22 35/14 36/21 68/25 69/1 103/5 103/6 123/20 132/22 133/20 135/11 135/14 144/4 144/6
arguments [14] 5/12 5/15 5/19 24/14 25/23 36/23 118/10 131/9 138/18 141/18 141/20 141/22 143/7 144/3
armed [3] 72/20 73/6 116/25
around [12] 35/9 36/2 39/3 39/7 45/3 60/4 64/1 78/5 84/9 84/11 111/7 143/15
arraignment [1] 145/17
arrest [62]
arrested [8] 26/14 26/18 36/21 79/25 80/3 80/25 81/1 81/5
arresting [1] 36/2
arrests [1] 36/8
arrive [3] 82/19 135/25 136/5
arrived [19] 40/1 42/11 42/12 42/12 42/13 42/14 49/22 49/24 50/2 82/6 82/7 82/11 82/24 85/4 85/5 89/5 89/23 90/19 136/1
arriving [1] 42/23
as [107]
aside [1] 81/12
ask [22] 11/17 11/18 12/9 17/10 43/6 49/19 51/18 55/4 64/15 66/17 69/4 70/18 71/24 78/18 91/9 102/1 104/5 117/23 122/5 123/21 125/10 130/3
asked [16] 24/11 60/18 72/20 73/6 73/17 75/17 78/21 79/12 97/8 101/14 107/14 110/21 122/16 125/3 125/10 136/4
asking [19] 8/3 54/13 54/16 55/15 59/21 67/21 67/22 67/24 68/8 69/7 69/15 71/17 72/4 77/11 80/14 95/18 100/11 100/24 122/9
asserted [3] 21/15 39/21 140/7
assist [1] 91/10
assisted [2] 50/10 78/22
assisting [1] 79/2
associated [5] 21/9 22/13 81/2 129/12 142/19
assume [1] 30/14
assumed [2] 61/2 61/3
assuming [3] 39/22 129/17 130/21
assumption [2] 60/23 60/24
at [123]
attempt [3] 20/18 37/13 130/14
attempted [8] 37/16 48/15 86/13 87/7 89/17 130/9 141/23 142/1

A

attempting [2] 87/5 92/9
attempts [2] 130/18 135/16
attend [1] 16/8
attendance [3] 16/1 16/4 16/10
attention [2] 89/6 133/4
attorney [5] 1/21 141/17 143/2 143/4 146/13
attorney's [1] 56/23
audio [23] 6/7 7/1 7/8 7/9 7/16 7/18 7/24 7/25 8/10 8/15 8/17 28/7 29/5 29/10 29/11 29/14 29/19 29/22 30/3 30/5 31/25 76/16 95/24
authority [2] 28/13 28/14
automatically [1] 57/1
automobile [1] 35/20
availability [1] 16/24
available [5] 7/17 11/9 20/18 21/7 111/22
aware [15] 52/8 52/21 52/24 53/15 75/3 87/18 93/22 93/23 93/25 94/5 95/22 96/1 97/17 119/2 119/8
away [4] 29/16 87/13 131/22 135/13

B

back [24] 14/8 16/15 18/4 18/18 18/21 23/25 27/23 31/25 47/23 48/20 84/8 85/5 88/25 91/4 91/19 92/9 98/8 111/7 122/24 130/10 145/19 145/21 146/1 146/1
background [1] 42/16
backpack [1] 72/14
bad [3] 88/3 88/8 89/1
bag [116]
banging [1] 39/17
barebones [1] 16/17
barrel [1] 142/9
Barrios [2] 34/16 36/13
Barrios-Lomeli [1] 34/16
base [2] 119/15 120/1
based [27] 5/12 5/18 5/19 8/22 9/16 10/23 17/8 17/12 20/20 30/6 31/4 36/5 43/2 52/4 52/5 67/23 108/15 118/12 118/20 120/2 125/10 126/18 127/19 129/21 134/12 134/24 137/10
basically [4] 7/10 13/4 80/15 80/19
basing [1] 119/13
basis [11] 16/11 17/3 18/7 18/16 18/25 54/10 69/2 70/7 118/12 134/9 134/10
BATEMAN [1] 1/16
be [68]
beating [4] 56/11 57/14 58/12 58/16
became [1] 20/18
because [42] 5/5 6/1 6/25 7/22 8/19 8/20 12/6 12/17 13/12 15/5 16/25 19/3 21/13 22/4 22/21 23/3 23/12 26/9 30/24 33/16 70/3 78/10 80/7 85/19 86/25 87/20 87/21 90/24 93/20 98/4 98/6 100/2 105/12 105/23 117/3 118/16 124/10 125/4 132/3 139/3 139/14 142/12
bedroom [3] 72/11 72/13 82/2
been [40] 12/3 12/15 12/20 15/13 24/10 25/8 26/16 28/9 29/15 37/9 38/20 40/1 45/22 46/20 47/4 50/15 50/20 62/1 63/18 65/3 74/12 78/3 81/1 81/5 84/1 88/23 90/11 101/12 102/2 102/20 105/13 110/12 118/9 124/5 128/4 130/13 137/17 137/19 141/12 145/10
before [50]
beginning [1] 102/11
behalf [1] 130/7
behavior [3] 60/3 60/8 60/11
behind [6] 43/25 44/5 47/16 72/11 86/22 89/18
being [27] 9/17 10/1 10/15 11/11 11/19 11/22 11/23 12/11 23/12 25/11 52/9 52/10 60/23 67/13 74/12 85/10 87/6 87/21 87/24 109/5 110/22 128/3 133/16 133/23 143/24 143/25 145/9
belief [1] 116/1
believe [30] 10/23 15/12 19/21 22/2 25/15 26/17 26/21 37/20 51/12 56/24 60/11 71/4 71/8 77/22 78/2 79/18 82/23 98/21 101/24 103/11 109/12 116/4 120/12 126/10 126/11 142/16 142/18 144/17 145/11 146/3
believed [5] 86/24 87/6 87/16 87/18 101/8
below [1] 14/20
benefit [1] 143/5
best [2] 70/2 139/21
better [1] 129/4
between [1] 25/25
beyond [3] 22/20 66/15 124/12
bifurcating [1] 130/3
bifurcation [1] 131/5
bind [2] 128/23 139/23
bit [3] 83/10 106/11 116/8
black [1] 36/7
block [2] 43/11 89/13
Blockburger [4] 26/1 133/14 133/22 137/25
blue [1] 44/10
body [13] 20/15 41/4 56/18 56/21 56/22 57/3 57/8 57/10 61/11 61/15 78/6 95/20 97/7
borrowed [2] 101/16 101/16
both [6] 33/13 33/15 82/16 118/4 133/6 134/16
bottom [3] 13/16 14/3 14/11
bound [1] 145/13
box [1] 51/12
boy [1] 133/13
brain [2] 140/20 140/22
Brandonn [2] 9/2 9/22
break [1] 137/15
Brenske [3] 1/25 146/23 146/24
brief [2] 16/1 16/9
bring [8] 8/14 27/15 29/9 33/9 88/10 88/19 88/24 116/8
brings [1] 88/24
Brink [2] 47/7 47/17
brought [6] 27/25 31/4 31/14 88/20 91/4 133/4
brown [5] 47/25 119/4 120/9 120/10 121/7
bunch [1] 22/25
burden [4] 17/10 34/21 34/25 36/3
Bustos [2] 15/6 28/20
but [56]
bystander [1] 89/25

C

C-A-R-I-C-C-O-L-L-O [1] 37/7
C352701 [1] 1/2
C352701-1 [1] 1/2
CAD [1] 19/21
CADs [1] 31/25
call [12] 20/14 21/11 37/12 37/12 39/16 63/1 94/6 94/9 94/15 94/15 94/17 94/18
called [2] 76/15 126/8
calling [1] 59/13
calls [2] 63/2 119/7
cam [11] 20/15 56/18 56/21 56/22 57/3 57/8 57/10 61/12 61/15 95/20 97/7
came [19] 5/6 8/11 10/2 12/1 22/6 45/18 52/16 55/12 55/16 56/3 60/4 61/22 61/24 119/20 121/9 121/21 136/14 140/5 143/14
cameras [1] 139/16
cams [2] 78/6 78/7
can [64]
can't [8] 8/13 16/8 27/19 36/21 79/4 88/24 140/22 141/4
cannot [2] 102/18 133/16
capabilities [1] 124/11
capacity [5] 39/2 63/25 97/18 97/23 97/23
capture [1] 61/15
car [48] 9/6 54/24 55/2 55/6 55/8 55/10 55/12 55/13 55/15 60/4 60/22 60/25 61/5 61/17 82/20 85/6 85/10 88/21 88/23 88/25 89/2 99/16 101/2 101/6 101/9 101/16 101/22 103/8 106/21 107/16 108/7 108/14 108/16 108/18 109/13 110/14 110/23 121/11 122/24 134/19 134/20 138/22 138/22 139/3 139/5 139/9 139/10 139/13
Caracciolo [21] 20/14 37/5 66/24 73/14 74/16 75/4 76/9 76/13 77/7 78/3 79/6 79/8 79/11 96/18 98/20 99/2 99/7 116/13 116/21 130/5 131/7
carry [1] 78/5
carrying [1] 51/6
case [41] 1/2 1/9 9/6 12/10 15/6 15/19 16/6 17/3 17/6 17/8 17/9 17/12 17/15 18/20 25/19 30/4 30/7 31/2 36/13

C

case... [22] 36/14 36/15 44/25 53/19 64/13 66/14 66/21 68/9 72/17 72/19 79/3 81/11 106/14 118/24 126/17 127/22 128/1 128/5 128/14 140/21 141/21 144/2
cases [4] 8/4 15/7 36/8 134/16
cause [89]
CCDC [1] 28/15
CCR [1] 1/25
cell [8] 14/16 14/22 101/11 101/17 108/22 110/14 110/16 122/25
cetera [2] 20/8 139/16
chance [6] 34/5 53/20 66/13 66/20 66/23 140/10
change [2] 101/5 108/6
changed [5] 23/21 101/21 108/13 115/5 118/6
changing [5] 109/17 109/21 109/22 110/1 115/9
characterizes [1] 103/1
charge [19] 18/8 18/14 18/17 18/19 19/1 19/3 19/5 23/9 24/18 25/1 25/7 25/8 25/12 25/16 94/21 94/24 114/11 137/22 142/24
charged [4] 25/6 140/19 143/24 144/1
charges [3] 23/20 127/22 145/14
chased [2] 134/7 136/3
Chevy [10] 41/15 42/9 43/14 43/23 44/18 45/5 45/20 47/23 52/20 86/10
Chief [1] 1/21
choice [1] 29/23
chose [1] 137/6
circumstance [2] 35/19 35/24
circumstances [3] 24/4 24/9 34/15
citations [2] 13/2 13/2
cited [5] 12/9 15/4 20/1 36/13 36/18
cites [1] 13/1
citing [3] 20/24 34/22 133/14
citizen [1] 59/13
city [3] 7/21 10/20 133/5
claim [1] 138/5
claimed [1] 87/25
claiming [1] 9/12
clarification [3] 32/14 103/21 118/16
clarified [1] 118/15
clarify [15] 22/17 53/21 54/12 59/7 62/11 70/15 81/21 95/16 100/8 100/9 103/17 108/9 115/16 117/24 123/25
CLARK [3] 1/5 39/12 64/11
clause [1] 25/13
clean [1] 129/4
clear [7] 17/21 28/24 31/13 123/18 129/17 137/23 138/10
clearly [3] 10/22 44/1 126/16
clerk [3] 50/13 64/21 144/20
close [1] 48/14
closed [1] 72/11
cloud [1] 57/1
collect [1] 81/10
color [4] 50/24 119/5 119/13 119/14
colors [1] 44/9
come [9] 12/9 16/19 17/2 33/1 33/2 88/12 88/14 136/10 141/7
comes [3] 62/20 139/13 145/23
coming [11] 16/14 19/1 29/21 44/24 45/5 45/8 45/9 61/19 61/20 87/3 122/23
commands [8] 46/22 48/21 48/24 49/8 49/10 89/12 134/2 134/8
commingling [1] 100/21
commit [2] 116/25 133/18
committed [11] 26/14 26/16 26/18 41/2 52/14 92/8 105/12 133/17 144/11 145/10 145/12
committing [2] 133/17 133/19
compare [1] 80/12
complainant [2] 19/23 52/22
complainants [1] 69/14
complaining [2] 6/10 116/6
complaint [15] 6/23 18/3 20/6 25/2 25/12 35/7 52/21 92/5 127/8 127/12 133/25 134/1 135/8 135/15 145/8
complete [1] 62/20
completed [4] 13/23 96/7 113/10 127/22
completely [4] 13/24 103/5 109/4 143/18
complex [7] 35/22 42/13 48/1 54/25 64/10 86/22 87/8
complied [1] 24/7
comply [4] 15/12 16/25 34/13 89/12
complying [3] 15/17 49/14 87/10
conceding [2] 123/19 137/24
concerned [4] 18/13 18/21 60/9 109/5
concluded [1] 146/18
conclusion [1] 143/14
conduct [1] 70/12
conducted [1] 53/3
confessed [1] 13/5
confirmed [1] 14/25
conflict [5] 17/1 73/9 99/10 106/17 115/19
conflicted [1] 75/12
conflicting [9] 70/15 70/16 70/23 70/25 71/2 103/2 105/5 106/6 115/10
confront [2] 29/22 30/2
confrontation [1] 7/10
confused [2] 62/15 133/23
confusion [1] 93/21
conjunction [1] 27/2
connection [2] 9/18 41/11
conscious [1] 87/12
consider [1] 130/3
consideration [2] 10/11 24/3
considered [1] 81/16
consistent [1] 122/25
consistently [2] 15/13 24/5
conspiracy [2] 127/24 128/9
constitution [1] 30/2
contact [6] 37/14 37/14 37/15 37/18 92/13 92/14
contacted [1] 92/16
contain [1] 19/4
contained [4] 9/13 16/13 22/25 144/12
contempt [6] 12/2 12/11 12/14 12/14 13/3 16/23
content [3] 21/2 94/15 129/8
contents [6] 26/21 59/23 65/10 87/25 110/16 111/23
continuance [17] 5/18 5/19 6/11 10/16 12/6 12/9 12/15 15/23 17/10 17/14 17/15 24/16 29/1 30/6 32/14 32/22 132/15
continuances [1] 24/2
continue [13] 5/4 13/15 15/3 15/9 15/14 17/13 18/20 27/13 27/14 27/18 51/6 121/19 143/6
continued [8] 15/22 44/25 45/21 49/15 55/12 55/18 124/7 141/18
continuing [5] 40/14 48/19 82/15 123/20 134/18
contradictory [1] 99/15
contrary [1] 135/5
control [2] 28/17 28/17
controlled [1] 128/17
convicted [2] 128/3 128/4
conviction [2] 129/9 129/10
convictions [3] 3/4 129/8 129/12
cops [1] 36/2
copy [5] 72/22 103/13 113/2 129/5 129/7
copying [1] 23/1
corner [1] 60/4
correct [74]
correctly [3] 10/19 11/7 17/23
could [38] 7/11 7/23 8/17 8/25 9/1 10/2 10/3 10/6 11/15 11/16 12/19 12/20 16/4 16/13 16/21 16/22 17/4 17/6 28/9 32/23 33/3 33/5 35/10 35/19 47/20 57/6 61/7 62/1 69/4 70/15 77/19 94/1 94/23 131/24 139/15 139/16 142/22 142/23
couldn't [2] 33/1 33/2
counsel [6] 1/23 4/7 27/20 32/9 64/23 132/18
count [4] 127/21 129/21 138/19 138/19
counts [1] 128/7
COUNTY [6] 1/5 31/24 39/12 64/11 128/10 129/9
couple [2] 12/24 59/7
course [11] 21/14 35/2 35/2 67/22 67/25 68/6 69/12 73/10 80/2 123/1 142/25
court [34] 1/4 10/10 10/10 10/12 11/9 11/10 12/10 12/12

C

court... [26] 12/23 13/3 17/2 25/1 25/4 25/16 25/20 29/2 29/21 29/22 34/17 34/24 102/12 104/16 106/1 114/1 123/10 131/1 134/1 135/1 135/8 135/16 138/7 139/4 145/14 146/12
Court's [2] 41/8 139/25
courthouse [1] 30/18
courtroom [2] 46/2 84/22
courts [3] 16/22 24/3 28/8
cover [1] 104/7
covering [1] 121/10
COVID [2] 23/3 23/4
CR [1] 128/13
CR05 [1] 128/1
CR051459 [2] 128/6 129/9
CR062177 [2] 128/17 129/8
CR98 [2] 129/10 129/11
CR98-2037 [1] 129/11
CR98-2523 [1] 129/10
crashed [3] 45/1 46/16 46/20
create [4] 113/18 113/22 114/23 115/1
created [2] 17/1 112/24
credibility [1] 125/7
crime [9] 54/15 72/7 72/7 116/5 126/10 126/12 135/14 142/21 145/9
crimes [3] 137/17 138/14 145/12
criminal [3] 18/3 25/2 135/15
criteria [4] 16/12 16/15 16/16 16/17
CROSS [3] 51/22 66/9 92/1
CROSS-EXAMINATION [3] 51/22 66/9 92/1
CSR [1] 146/24
cumulative [2] 112/5 112/6
currently [4] 25/2 52/15 84/5 90/17
curtilage [4] 35/21 35/24 54/25 139/19
custody [7] 6/3 50/11 51/11 58/3 89/19 91/3 114/10

D

DA's [1] 6/23
danger [5] 61/24 62/1 62/3 139/12 139/13
dash [1] 78/7
database [4] 78/4 112/1 112/7 112/12
date [10] 8/18 37/17 81/1 111/8 130/10 132/21 145/15 146/6 146/11 146/12
dated [3] 9/23 74/17 129/9
dates [1] 129/13
Davis [5] 8/5 8/7 15/11 15/18 28/24
dawned [1] 9/2
day [20] 6/24 15/4 17/4 20/9 27/14 33/6 74/17 76/10 77/17 77/18 77/18 77/19 78/24 79/8 97/19 112/11 112/18 113/24 114/25 116/14
days [10] 8/6 10/4 11/25 15/16 15/21 17/22 17/22 17/23 21/18 23/16
deadly [5] 127/24 127/25 128/4 128/8 128/9
deal [2] 15/2 105/25
DECEMBER [6] 1/18 4/1 9/23 129/11 145/16 146/7
December 18th [1] 145/16
DECEMBER 9 [1] 1/18
decide [2] 5/9 126/14
decided [5] 43/3 88/2 133/1 137/16 141/13
decides [2] 88/24 89/1
decision [6] 34/8 87/12 114/13 115/20 123/13 132/10
declaration [15] 18/10 19/18 19/19 21/1 25/15 106/14 106/16 106/24 107/9 113/3 113/10 114/23 115/4 115/9 118/4
deemed [2] 12/2 12/13
defendant [15] 1/11 1/22 8/2 13/21 29/24 46/9 64/24 85/1 102/24 103/1 103/9 110/12 128/3 145/11 145/13
defendant's [3] 11/24 12/21 99/14
defendants [1] 7/8
Defender [1] 1/24
defense [2] 50/15 64/23
define [1] 94/23
delay [1] 16/6
demonstrate [1] 8/5
denying [1] 137/20
Department [7] 9/22 14/5 20/19 39/1 63/24 84/6 94/6
depend [1] 124/8
depending [2] 4/9 110/11
depict [1] 65/10
depicted [1] 50/21
depiction [1] 65/13
deploy [2] 48/15 49/16
deployed [2] 50/5 50/7
Deputy [2] 1/21 1/24
describe [7] 42/10 43/20 45/18 46/4 47/18 48/10 84/24
described [5] 42/9 52/19 60/4 82/1 119/8
describing [5] 9/23 43/3 60/2 131/16 131/17
description [2] 3/2 35/5
detain [1] 141/10
detained [1] 86/14
detect [1] 139/15
detective [57]
detectives [15] 9/7 33/3 38/5 76/17 91/12 92/15 92/17 101/24 108/18 110/25 111/10 112/2 112/22 119/21 124/6
determination [2] 33/21 126/2
determine [1] 25/24
develop [1] 126/6
devices [1] 78/6
did [264]
didn't [64]
different [11] 5/16 5/17 45/6 86/25 116/6 130/17 130/18 134/10 134/13 134/20 138/12
digital [14] 9/24 13/21 13/22 14/11 76/15 77/13 77/14 78/4 78/10 78/11 78/12 81/17 81/17 112/1
diligence [2] 15/25 16/10
DIRECT [3] 38/22 63/20 84/3
directed [1] 107/11
directing [1] 107/17
direction [2] 43/15 44/19
directions [1] 110/1
directly [4] 43/25 47/16 76/18 112/21
disagree [2] 31/16 36/25
disclosed [2] 5/13 6/6
discovered [1] 65/11
discovery [17] 5/12 6/6 6/13 6/14 6/17 7/4 9/2 18/18 19/9 19/12 21/17 22/20 23/12 23/23 24/15 31/23 131/14
discussed [2] 21/2 81/14
discussing [1] 29/3
dismiss [7] 4/18 5/17 17/12 17/14 19/11 24/15 24/17
dismissed [1] 17/6
disobeyed [2] 134/2 134/7
dispatch [4] 39/16 40/21 52/11 59/13
disputes [1] 19/10
distinct [1] 137/17
district [6] 1/21 56/23 106/1 138/7 145/13 146/12
do [94]
document [2] 32/5 114/2
documented [1] 112/10
documents [1] 131/2
does [24] 8/7 12/13 16/6 16/11 30/5 35/25 42/4 42/7 61/15 65/10 65/12 73/16 76/19 76/20 76/24 103/10 107/25 109/18 109/20 114/3 114/5 136/9 145/20 146/1
doesn't [15] 12/8 14/19 17/16 23/21 28/12 28/14 31/18 33/8 57/11 121/1 127/22 135/9 139/9 139/10 144/16
doing [11] 6/18 7/7 23/2 42/20 48/18 67/14 85/23 98/2 117/18 124/19 141/12
don't [79]
done [11] 7/11 8/17 9/8 27/14 42/1 42/1 59/2 107/19 117/19 123/12 124/16
door [5] 39/18 41/3 48/6 52/15 88/22
doors [1] 72/12
double [8] 19/7 24/24 25/13 25/24 132/22 134/21 137/21 142/9
doublechecking [1] 32/5
down [11] 14/11 27/16 27/23 31/14 57/15 58/6 58/20 136/25 143/8 145/19 145/21
DR [1] 19/24
drift [1] 35/15
Drive [4] 39/8 39/9 64/7 84/13
driver [1] 86/10

D

driver's [4] 45/20 46/1 48/6 86/12
driving [3] 44/4 46/13 60/3
drove [1] 135/13
Due [1] 47/20
duffel [43] 3/3 9/4 9/7 9/8 9/9 9/10 9/13 9/14 9/15 9/24 10/9 13/22 13/23 47/25 55/20 64/18 65/8 65/11 65/14 67/24 72/1 72/14 79/9 86/13 87/18 87/19 89/10 89/20 90/16 90/19 106/3 116/2 119/3 120/9 120/10 121/22 121/23 126/21 131/17 131/19 132/2 142/5 142/7
Duffy [1] 47/12
duly [3] 38/20 63/18 84/1
dump [2] 14/16 32/6
duration [1] 99/14
during [3] 30/21 31/3 52/19
duty [3] 39/5 64/3 82/24

E

each [3] 38/14 63/13 83/22
earlier [1] 75/17
easier [2] 103/21 137/25
easiest [1] 128/13
easy [1] 29/17
effect [1] 67/12
effectively [1] 111/2
effort [2] 130/7 141/21
efforts [1] 130/11
Eighth [1] 145/13
either [3] 37/12 110/22 124/14
element [1] 138/12
elements [1] 133/9
else [16] 10/14 19/6 37/19 49/3 71/15 91/2 103/23 111/15 118/23 122/2 125/2 126/5 126/13 143/10 144/19 145/5
else's [1] 78/14
eluding [1] 128/9
email [4] 22/4 128/22 129/5 129/6
emails [1] 32/5
emergency [1] 86/23
emotional [1] 34/13
employed [3] 38/24 63/22 84/5
end [5] 8/21 38/2 38/3 51/10 85/7
endangerment [5] 138/23 139/2 139/5 139/6 139/20
ended [4] 24/10 51/9 124/18 134/6
enough [2] 60/9 129/3
enter [3] 9/19 35/24 76/23
entered [3] 76/25 77/23 78/3
entering [1] 132/2
entire [3] 25/9 109/4 111/23
entitled [4] 15/20 19/14 23/14 23/15
entrance [3] 43/11 44/14 45/23
entry [1] 146/12
ERIKA [1] 1/20
error [1] 13/5
especially [2] 8/4 134/25
essentially [3] 17/1 124/18 137/15
establish [3] 42/21 102/2 130/19
estimate [2] 48/4 61/8
et [2] 20/8 139/15
evade [3] 87/8 139/22 139/24
evaded [1] 86/10
evading [14] 25/7 25/8 133/9 133/18 134/10 135/22 137/3 137/12 137/18 137/22 139/7 139/7 139/8 145/10
even [19] 15/17 16/19 22/22 26/15 27/19 28/24 29/3 30/19 30/23 102/15 103/12 109/14 131/20 131/25 132/4 132/13 133/21 138/12 144/17
event [8] 21/23 22/14 23/24 31/21 31/24 41/12 81/2 84/18
events [2] 82/16 85/10
eventually [10] 20/21 40/24 43/14 45/11 45/16 45/17 45/19 48/13 49/16 124/6
ever [7] 9/13 9/14 15/10 15/13 79/25 80/3 90/22
every [3] 6/24 15/5 145/23
everybody [1] 110/5
everything [5] 22/20 22/24 37/20 82/20 143/18
evidence [30] 19/4 21/6 21/19 31/5 31/5 31/7 31/10 40/17 76/15 77/13 77/15 78/10 78/11 78/19 81/10 81/13 81/16 81/17 104/6 116/1 116/5 122/10 122/14 124/22 126/10 126/11 140/14 142/16 142/19 145/11
ex [1] 29/1
exact [4] 15/1 113/25 114/25 119/5
exactly [2] 110/5 123/10
examination [16] 7/15 9/24 29/8 38/22 51/22 59/10 60/20 62/13 63/20 66/9 81/23 84/3 92/1 123/23 125/13 145/9
exception [5] 34/21 35/1 35/25 36/11 141/3
excess [1] 139/18
exclude [3] 4/15 4/16 27/6
exclusionary [1] 37/22
exculpatory [2] 106/4 118/8
excuse [1] 105/18
excused [1] 34/14
execute [2] 68/18 78/21
executed [8] 8/6 14/15 65/9 65/24 68/19 68/22 76/4 126/17
execution [3] 64/16 78/22 79/9
exhibit [9] 3/2 9/19 50/16 50/21 64/24 65/4 65/17 65/22 90/12
Exhibit 1 [1] 90/12
exhibits [5] 3/1 127/5 127/15 127/19 145/4
exigent [4] 34/14 35/1 35/18 35/23
existence [1] 30/5
exists [1] 7/14
exit [12] 9/6 43/11 44/25 45/19 45/23 46/1 46/23 46/24 47/1 62/16 71/25 119/23
exited [19] 46/12 46/19 47/15 47/19 47/21 55/3 55/7 55/8 55/18 61/5 62/6 62/16 62/17 62/18 72/13 89/9 89/10 89/11 137/13
exiting [3] 61/18 62/19 62/21
expect [1] 40/22
expected [2] 16/1 16/9
experience [1] 109/3
explanation [1] 16/7
expressed [1] 37/10
extending [1] 15/18
extension [1] 8/22
extensive [1] 16/7
extent [2] 36/20 69/25
exterior [1] 55/1
eyes [1] 42/14

F

face [3] 57/14 58/6 58/20
fact [15] 7/12 8/7 10/20 16/8 18/25 26/16 28/25 29/2 86/9 86/11 109/12 110/16 126/3 130/8 135/1
facts [19] 16/2 20/24 52/8 52/9 52/24 53/7 54/9 97/17 98/23 98/24 102/14 112/6 122/6 122/7 134/15 134/24 134/25 135/3 135/15
factual [3] 133/22 134/9 134/10
failed [1] 140/8
failing [1] 42/17
failure [1] 34/13
fair [1] 65/13
faith [1] 16/5
familiar [3] 74/18 74/21 74/25
far [4] 29/19 61/5 106/5 109/5
fast [2] 61/14 61/16
fault [1] 100/25
faulted [1] 29/2
feel [4] 109/3 109/4 115/18 115/19
feet [1] 139/14
fell [2] 50/8 56/4
felon [1] 128/4
felonies [1] 129/19
felony [7] 26/14 26/16 26/19 139/7 139/8 139/23 145/10
felt [3] 62/1 105/10 139/16
female [1] 69/16
fence [2] 126/20 136/3
figuring [1] 124/21
file [6] 102/13 118/12 128/25 138/6 138/7 145/8
filed [7] 6/24 12/16 16/11 24/23 24/24 26/7 26/8
filing [2] 18/3 19/3
find [9] 17/3 19/2 23/23 32/6 65/25 129/17 137/14 137/21 143/20

F

finding [1] 129/18
fine [1] 61/9
firearm [8] 20/22 39/17 52/16 80/23 102/7 120/21 121/18 128/18
firmly [1] 24/5
first [40] 4/9 6/2 6/9 8/22 16/3 19/16 19/17 22/23 37/17 37/23 37/24 38/13 38/15 38/20 49/24 51/2 63/12 63/18 69/3 75/5 75/17 76/8 83/21 84/1 85/3 85/15 89/5 89/8 104/4 105/8 121/9 121/16 121/20 128/14 130/9 130/15 134/21 136/18 138/20 141/7
fishy [1] 80/18
five [3] 15/4 21/18 23/15
five-day [1] 15/4
fled [6] 18/24 122/13 134/3 141/5 142/2 144/11
flee [9] 49/15 51/14 86/14 87/8 88/9 137/6 137/16 138/24 141/1
fleeing [12] 18/11 21/8 49/25 86/17 87/20 89/16 134/17 135/2 135/7 137/8 142/12 143/25
flees [1] 89/1
follow [2] 29/6 133/1
followed [3] 12/21 12/23 124/7
following [7] 18/12 44/5 47/5 77/19 79/8 87/3 145/15
follows [3] 38/20 63/18 84/1
foot [7] 48/12 88/9 134/7 134/9 136/4 136/14 137/16
footage [1] 95/20
footing [1] 50/8
force [1] 58/18
form [3] 6/22 51/19 54/10
formed [1] 18/16
forward [11] 23/8 23/21 45/21 62/20 62/21 85/23 128/21 139/12 140/22 143/3 146/4
found [11] 10/3 12/17 20/22 33/1 33/2 33/4 33/6 91/19 121/18 122/1 141/5
foundation [3] 42/21 68/10 98/23
four [2] 41/3 129/12
four-door [1] 41/3
free [5] 62/10 62/23 83/6 102/12 127/1
front [4] 30/2 43/10 52/15 87/8
full [2] 105/8 146/20
fumbled [1] 89/18
further [9] 7/16 59/4 60/16 62/8 62/13 81/19 83/4 124/25 143/23
future [1] 138/4

G

gate [7] 43/11 44/14 44/20 44/21 45/22 45/23 46/17
gates [1] 55/1
gauge [1] 66/4
gave [8] 6/6 8/10 37/3 70/10 71/4 105/4 133/25 143/17
gear [4] 60/23 61/1 61/3 139/11
generally [1] 29/20
get [47] 12/6 13/18 27/21 29/14 30/1 30/21 31/8 33/23 35/11 38/4 60/9 71/16 72/5 72/8 78/8 86/24 87/12 88/24 92/9 94/15 101/7 102/15 105/18 105/22 106/1 106/3 106/9 121/4 121/21 128/20 130/4 132/6 132/13 133/21 135/3 138/13 139/3 140/20 140/22 142/15 142/17 142/22 143/15 144/1 144/2 145/19 145/21
gets [5] 76/16 123/10 126/9 126/12 126/15
getting [10] 6/23 59/22 60/3 67/12 80/19 88/25 120/13 121/11 132/12 146/13
Gibson [1] 114/3
girlfriend [2] 20/14 66/24
give [18] 20/6 20/7 35/13 38/8 61/7 63/7 69/19 70/23 71/2 71/3 71/7 75/20 76/18 77/11 83/16 107/1 110/4 110/9
given [7] 6/17 20/3 28/7 56/25 119/6 141/19 141/20
gives [2] 29/4 29/4
giving [3] 49/11 85/18 102/2
go [55]
God [3] 38/10 63/9 83/18
goes [7] 7/16 24/6 31/9 33/10 57/1 68/8 146/1
going [81]
gone [5] 103/5 117/20 120/11 121/2 124/16
good [25] 7/13 8/9 8/18 8/19 10/5 12/10 12/11 12/17 13/4 15/21 15/23 16/5 17/11 28/20 29/3 30/6 66/11 66/12 92/3 92/4 127/4 133/3 141/17 146/13 146/16
got [26] 13/19 14/14 17/18 20/21 27/23 29/16 34/5 35/15 45/2 45/4 47/24 48/14 50/8 90/2 90/19 121/2 132/1 134/19 135/12 135/17 135/21 136/25 138/21 139/9 139/14 143/8
gotten [2] 22/5 115/23
granted [1] 17/11
great [1] 116/10
green [3] 119/3 119/9 131/17
gross [2] 26/14 26/16
ground [7] 50/8 50/10 56/4 56/8 56/10 57/15 58/6
guess [3] 27/15 30/23 69/3
guilty [2] 135/1 135/3
gun [21] 9/9 9/13 9/14 9/17 10/3 32/23 33/3 33/5 51/24 67/20 70/5 70/6 120/25 122/1 122/15 126/13 140/3 141/5 142/8 143/25 144/12
gunpoint [1] 35/25
guns [1] 78/25
guys [3] 124/15 127/4 129/1

H

H-E [1] 47/8
H-E-H-N [1] 47/10
had [117]
hadn't [3] 11/5 18/18 55/23
hallway [1] 38/5
halt [1] 116/9
hand [9] 14/24 38/6 51/3 56/1 63/5 83/14 99/25 127/14 142/6
handgun [3] 105/7 105/10 105/15
hands [1] 89/11
handwritten [2] 73/24 74/19
hang [26] 10/13 14/2 14/14 26/13 31/2 56/15 57/25 57/25 72/3 72/3 83/7 83/9 93/9 93/16 95/14 105/6 107/23 110/3 113/17 128/2 129/24 135/10 135/10 135/10 141/9 142/16
happen [3] 80/7 103/4 131/21
happened [17] 19/22 25/4 44/15 48/10 50/5 52/6 82/2 82/17 82/20 86/7 101/15 103/3 104/13 110/4 110/5 110/9 136/7
happening [3] 24/11 43/20 110/2
happens [1] 32/21
hard [1] 140/21
Harden [1] 34/24
has [33] 12/10 12/18 13/5 14/6 14/21 15/13 16/8 17/1 26/14 26/16 26/17 34/21 37/9 37/11 37/14 37/15 54/14 58/13 80/21 80/24 100/16 102/16 117/11 117/19 121/6 126/9 126/21 129/6 130/2 133/1 141/7 143/20 145/10
hasn't [4] 20/3 81/5 120/23 132/8
have [215]
haven't [8] 22/5 23/19 23/20 24/16 26/4 29/16 140/24 140/25
having [7] 18/15 38/20 54/14 63/18 84/1 111/1 121/23
he [272]
he's [29] 8/20 8/20 12/25 13/12 13/24 31/16 32/15 32/19 37/22 42/20 46/5 48/19 51/3 59/2 59/2 62/19 68/8 71/13 84/25 85/1 102/12 109/25 121/2 123/9 125/17 126/5 133/4 138/22 139/14
head [1] 119/19
heading [1] 43/15
hear [8] 42/15 48/23 59/12 59/15 59/17 94/17 100/8 146/4
heard [7] 40/4 43/2 49/7 108/24 131/5 134/4 138/21
hearing [33] 1/15 4/17 5/4 5/20 8/4 8/6 8/12 10/19 11/16 11/24 12/22 15/19 15/21 21/5 21/19 22/23 23/16

H

hearing... [16] 26/2 26/4 28/24 29/1 30/13 30/20 31/3 31/11 37/17 42/24 59/14 102/16 121/19 130/10 130/15 140/11
hearings [4] 15/9 15/14 21/17 130/18
hearsay [14] 39/19 42/18 59/19 67/7 67/10 70/3 104/12 104/13 104/16 107/13 119/10 140/7 140/11 143/13
Hehn [3] 47/7 47/8 47/16
help [5] 38/9 63/8 64/15 83/17 126/14
HENDERSON [18] 1/4 4/1 9/3 9/22 14/5 20/19 22/25 28/10 38/25 39/16 43/17 43/21 44/5 44/9 63/23 84/6 85/6 94/5
Hennebuel [1] 49/5
her [23] 7/12 7/17 8/11 8/24 10/5 13/1 13/2 28/3 29/19 32/16 32/22 36/3 71/24 73/15 73/17 77/9 79/4 79/12 105/12 105/16 116/24 135/4 140/10
here [47] 4/6 5/7 5/16 8/1 12/4 12/4 12/6 15/2 19/6 19/22 22/6 22/8 23/16 24/13 25/17 27/4 27/5 27/13 27/15 27/18 27/22 27/23 28/9 30/1 32/6 33/10 33/17 37/11 39/12 64/11 77/22 80/6 80/7 81/14 103/12 104/18 105/20 106/10 121/9 121/18 130/5 133/5 133/8 133/22 140/5 145/23 146/3
Here's [2] 110/1 120/8
hereby [1] 145/12
herein [1] 145/8
herself [1] 67/4
hey [3] 8/13 10/2 12/5
high [2] 43/24 60/5
Hill [8] 12/18 15/6 15/22 16/6 16/12 16/15 17/9 28/20
him [94]
himself [2] 4/6 13/16
his [45] 8/20 9/16 11/23 12/8 12/19 12/24 14/21 30/19 31/24 41/3 51/3 52/15 60/8 67/14 68/1 69/25 71/11 84/21 85/13 85/15 85/19 89/11 97/2 97/23 101/2 101/5 101/11 101/16 101/16 101/21 102/13 103/6 105/21 108/13 111/24 125/5 125/6 125/7 125/7 130/7 132/19 133/1 133/1 139/14 139/16
hit [2] 45/22 58/20
hold [8] 16/22 28/12 71/3 73/23 73/23 93/10 109/11 109/17
holding [2] 9/20 34/10
home [3] 88/14 101/15 122/24
Honestly [1] 131/20
Honor [52]
HONORABLE [1] 1/16
hopefully [1] 24/12
hour [2] 61/21 139/17
hours [1] 12/25
house [2] 20/16 100/6
how [18] 4/10 9/24 13/19 13/23 35/10 38/24 45/18 47/8 48/4 58/6 59/22 61/5 61/14 61/16 63/22 113/12 113/16 117/14
However [12] 7/24 9/1 30/22 87/5 88/16 89/17 101/24 102/13 103/10 110/14 122/13 124/12
HPD [1] 19/24
huh [2] 61/23 62/5
Huh-uh [1] 62/5

I

I'd [6] 4/11 4/23 5/2 27/10 34/4 43/6
I'll [7] 5/14 12/5 57/18 63/4 66/17 129/16 145/22
I'm [96]
I've [14] 8/4 23/6 25/8 29/15 30/7 36/6 102/2 106/5 107/11 120/15 123/13 131/10 141/19 141/20
idea [1] 80/24
identifiable [1] 44/1
identification [1] 46/9
identified [1] 21/20
identify [1] 84/17
if [93]
ignored [1] 143/18
illegal [3] 12/14 27/2 140/24
imagine [1] 142/23
immediately [1] 50/8
impeachment [1] 104/15
imperative [3] 35/2 35/3 35/10
impossible [1] 15/16
impracticable [1] 34/18
impression [1] 39/25
Improper [1] 107/12
in [326]
inability [1] 17/2
inadmissible [1] 85/20
incident [7] 14/4 31/23 74/17 79/14 79/15 79/16 79/17
incidents [1] 135/4
include [8] 24/1 91/21 103/7 106/4 106/6 115/4 115/6 121/3
included [8] 7/4 31/23 102/23 105/14 116/2 134/17 134/23 134/24
including [3] 6/23 126/19 135/2
incoherent [1] 143/7
incomplete [2] 69/20 69/22
incorrect [1] 141/18
incredibly [1] 118/13
incriminate [1] 87/19
indeed [1] 36/11
independent [1] 35/12
INDEX [1] 3/1
indicate [2] 31/10 86/16
indicated [9] 37/11 41/16 42/23 45/25 46/12 51/2 68/7 82/9 91/15
indicating [1] 41/14
indication [1] 23/17
indulgence [1] 41/8
ineffective [1] 48/16
information [62]
informed [2] 132/25 144/21
initial [1] 7/4
initially [7] 44/13 44/23 45/7 85/17 86/20 86/24 89/17
initiated [1] 48/13
injured [1] 44/22
injury [1] 60/12
inside [7] 42/13 65/25 88/16 88/16 88/24 88/24 111/18
insisting [1] 31/17
instead [2] 12/7 12/23
intended [1] 23/18
intending [1] 22/12
intends [1] 7/1
intent [7] 6/7 6/17 7/7 8/10 8/23 21/5 29/5
intention [2] 21/9 37/12
intentional [2] 102/17 103/11
intentionally [1] 87/9
intents [1] 61/4
interest [2] 131/23 132/5
interlineation [1] 129/2
interpreted [1] 24/8
interrupt [1] 11/20
interview [24] 67/1 67/3 69/17 69/19 75/18 75/23 76/13 76/21 77/6 77/8 77/12 79/2 79/3 79/8 79/12 81/15 81/16 86/1 95/21 99/2 99/6 100/8 111/21 117/16
interviewed [5] 30/18 69/15 75/16 93/2 98/20
interviewing [3] 101/20 110/25 124/21
interviews [2] 21/2 117/3
into [40] 13/18 24/3 25/12 30/21 38/5 45/1 46/16 48/14 50/11 51/10 57/1 58/3 71/25 72/5 72/11 76/17 76/23 76/25 77/12 77/14 78/3 82/1 89/19 89/24 90/22 92/9 102/15 104/16 105/20 105/22 106/1 106/3 112/2 112/11 112/14 113/3 132/3 132/12 139/11 146/8
investigate [12] 25/10 74/7 94/18 95/6 96/21 96/22 124/12 126/9 126/12 142/1 142/5 142/10
investigated [4] 54/14 75/2 95/13 142/25
investigating [8] 78/18 78/20 82/10 95/1 97/18 112/16 126/6 142/3
investigation [41] 13/21 13/22 14/12 19/13 25/6 53/4 64/6 67/14 67/23 68/2 69/6 69/13 69/14 73/11 74/7 78/25 79/19 79/21 80/3 80/18 82/15 84/12 92/11 94/21 95/5 110/8 110/10 111/18 112/22 114/15 118/21 123/1 124/7 124/10 124/16 126/16 141/11 142/13

I

investigation... [3] 142/19 142/22 143/24
investigations [1] 143/23
investigator [3] 37/9 37/13 130/9
invoke [1] 4/12
invoked [1] 37/22
involve [1] 137/11
involved [8] 13/25 47/12 64/5 78/24 79/1 79/1 84/11 84/18
involvement [3] 79/3 79/7 124/8
irrelevant [2] 6/25 115/24
is [254]
isn't [14] 30/6 30/17 30/23 67/3 67/4 73/5 100/4 101/14 101/17 101/19 106/13 106/20 108/12 108/21
issue [8] 13/10 25/25 26/2 26/7 33/18 33/18 48/21 133/22
issues [3] 24/16 120/14 123/19
issuing [4] 46/22 48/24 49/8 104/17
it [284]
It'll [3] 46/10 65/21 128/23
it's [63]
item [1] 113/12
itemize [1] 92/24
items [1] 87/19
its [3] 16/11 35/4 138/23
itself [1] 68/22

J

jail [2] 25/7 114/9
jeopardy [7] 19/7 24/25 25/13 25/25 132/22 134/21 137/21
Jessie [24] 20/14 37/4 66/24 69/17 69/19 70/20 74/16 75/20 79/3 81/25 98/20 99/6 103/1 103/3 104/21 104/22 105/4 105/6 105/9 106/17 108/18 115/5 116/13 130/4
Jessie's [2] 75/12 99/10
job [1] 132/10
JOCs [5] 31/24 38/1 127/7 127/11 144/21
judge [8] 17/7 114/3 115/7 115/12 118/9 125/15 125/21 132/10
judgment [2] 35/12 129/8
JUDGMENTS [1] 3/4
judicial [2] 81/1 145/13
jump [4] 48/2 51/14 83/13 121/25
jumped [8] 55/10 55/13 86/11 86/13 89/15 136/25 137/1 142/6
jumping [2] 126/20 137/20
jumpsuit [2] 46/7 85/2
jurisdiction [4] 7/18 7/23 11/6 28/10
just [80]
JUSTICE [2] 1/17 102/12
JUSTICE'S [1] 1/4

K

K-A-R-L [1] 83/23
K-E-V-I-N [1] 63/14
KARA [1] 1/23
Karl [2] 83/23 84/1
keep [6] 14/6 24/13 121/10 141/14 141/22 146/11
kept [1] 28/10
Kevin [3] 63/3 63/14 63/18
keys [1] 110/16
kick [1] 58/23
kidding [1] 33/1
kind [13] 5/6 5/7 14/7 15/10 15/11 29/25 36/7 40/21 42/20 71/17 89/17 106/10 115/23
kinds [1] 31/25
kitchen [1] 105/13
knew [11] 11/10 30/23 30/24 80/17 85/19 87/23 99/20 99/22 122/7 122/10 136/5
know [68]
knowledge [7] 42/5 54/14 78/14 95/10 112/5 122/6 122/15
known [5] 53/7 67/25 73/10 104/15 112/16
knows [1] 131/6

L

L-A-P-E-E-R [1] 63/15
L-I-P-P-I-S-C-H [1] 83/24
LaChance [2] 133/15 135/5
lack [2] 69/2 106/2
lady [1] 117/10
landmark [1] 34/8
language [1] 16/16
Lapeer [25] 9/1 10/1 10/7 32/24 32/25 33/2 33/9 63/3 63/14 63/18 69/4 71/15 72/9 74/24 80/11 80/24 91/13 91/18 99/6 99/8 99/9 100/13 100/14 100/15 127/3
Las [4] 7/21 7/23 8/13 10/21
last [11] 5/6 32/10 32/13 37/3 38/13 38/16 63/12 79/4 83/21 143/11 144/4
lastly [1] 122/23
late [1] 5/6
later [7] 9/7 9/8 9/16 13/18 31/14 101/5 105/25
law [10] 12/8 12/10 31/3 126/22 132/11 141/11 141/14 141/16 143/1 143/17
lay [4] 21/12 58/6 68/9 98/23
laying [3] 51/11 57/14 58/20
lead [1] 64/13
leading [4] 45/12 45/13 60/3 68/2
learn [2] 108/17 120/9
learned [8] 16/3 75/19 76/9 93/5 93/8 108/12 108/19 122/25
least [2] 18/24 32/8
leave [1] 23/3
leaving [6] 11/1 11/6 11/8 11/14 33/7 52/18
led [3] 49/16 71/7 85/10
leeway [2] 102/2 141/19
left [14] 11/2 11/15 11/16 43/24 44/18 60/23 61/1 61/3 89/18 102/14 102/20 102/21 102/25 110/17
legal [8] 12/11 12/14 13/1 25/23 126/2 141/18 141/22 143/7
legality [1] 25/10
legally [1] 22/22
legitimate [2] 36/24 36/24
lend [1] 101/21
lent [9] 101/6 101/10 103/9 106/21 108/7 108/14 108/16 108/18 109/23
lesser [2] 134/23 134/24
let [23] 5/14 13/6 13/11 19/6 19/14 29/13 57/18 58/15 66/17 72/4 76/5 78/18 88/16 93/20 102/1 103/16 107/16 107/19 108/10 109/8 116/8 122/5 127/2
let's [9] 4/8 31/8 31/9 32/21 38/4 92/23 92/25 106/10 124/4
letter [1] 36/7
level [1] 145/17
Lewis [1] 103/3
lifting [1] 56/9
lights [11] 18/12 44/2 44/6 44/9 86/23 135/2 135/7 136/7 136/21 137/4 139/15
like [26] 4/11 4/23 5/2 5/23 9/19 10/12 14/4 14/5 14/15 21/21 23/21 27/10 28/1 28/10 33/6 34/1 34/4 37/10 44/8 65/14 73/24 76/16 114/2 123/11 124/22 142/8
limit [1] 139/19
limits [1] 139/18
line [2] 74/4 128/3
Lippisch [34] 19/18 19/20 30/24 64/14 68/13 68/14 69/5 70/11 75/11 75/20 76/3 76/10 76/14 76/18 76/21 77/6 78/22 79/2 80/9 80/10 80/15 80/17 83/12 83/23 84/1 92/3 102/14 103/7 106/24 107/18 134/3 134/4 136/10 136/10
Lippisch's [1] 69/5
Lisa [3] 1/25 146/23 146/24
listed [4] 127/8 127/12 127/20 127/23
listen [2] 142/17 143/2
little [5] 83/10 103/20 106/11 116/8 142/9
Lizonbe [2] 35/13 141/2
located [5] 39/12 64/6 64/11 66/1 85/3
location [8] 42/11 43/25 45/6 45/8 48/20 92/10 100/2 116/5
locations [1] 112/9
Lomeli [1] 34/16
long [5] 48/4 113/12 113/16 117/20 131/1
longer [2] 52/17 99/21
look [8] 15/5 23/21 42/1 48/19 112/11 112/14 115/25 142/8

L

looked [5] 10/24 16/15 18/4 18/21 65/14
looking [5] 15/1 41/22 65/5 90/12 132/3
looks [5] 14/4 14/5 14/15 73/23 114/2
lost [4] 47/22 48/3 50/7 54/23
lot [4] 102/1 141/12 141/19 141/21
Louie [9] 19/23 66/13 66/20 93/2 93/15 99/10 106/18 108/18 115/5
Louie's [1] 72/11
Louis [11] 37/4 99/21 103/2 105/12 105/16 106/21 108/6 108/13 111/21 122/8 130/4
Louis's [1] 104/19
lower [1] 145/17
luck [2] 146/13 146/16
lying [2] 13/12 123/11

M

ma'am [29] 38/11 39/4 39/6 39/13 40/11 40/24 41/13 41/24 42/7 43/1 43/5 43/16 43/19 44/7 45/2 45/10 46/6 46/15 46/18 47/14 48/9 49/15 49/18 50/1 50/4 51/15 60/6 60/14 64/12
made [37] 16/5 23/13 26/4 26/20 27/1 27/5 27/7 27/24 30/8 30/8 33/8 33/17 35/2 35/2 44/18 52/21 60/5 60/8 72/18 86/18 87/11 106/13 106/17 106/18 106/19 111/22 114/12 115/6 116/14 116/20 120/15 123/13 126/18 130/6 130/11 130/14 131/11
magistrate [1] 7/14
main [1] 14/8
make [41] 5/11 5/15 5/15 5/18 10/21 12/18 16/21 16/22 16/24 17/21 26/24 27/10 27/22 28/1 28/3 29/7 34/4 37/3 38/1 41/5 43/24 66/2 72/17 74/10 89/24 102/3 103/20 103/21 103/25 105/23 123/11 127/12 127/19 129/17 132/10 138/17 141/17 141/20 141/23 143/6 146/9
making [12] 10/5 33/21 36/4 115/19 117/18 129/20 131/9 132/9 135/11 135/14 141/20 141/22
malfunctioned [2] 61/1 139/10
Malibu [24] 41/15 42/9 43/14 43/18 43/21 43/24 44/4 44/12 44/18 44/24 45/5 45/7 45/8 45/11 45/16 45/20 45/20 46/13 46/13 46/16 46/20 47/23 52/20 86/10
mandatory [1] 16/20
Mangan [9] 49/4 49/20 134/2 134/5 134/6 135/24 136/5 136/9 136/13
manipulate [1] 104/16
many [2] 58/7 117/14
marked [4] 50/16 50/20 65/3 127/6
mask [2] 6/1 46/6
material [1] 102/14
matter [7] 7/17 10/21 21/14 31/19 39/21 126/3 143/13
may [6] 28/3 80/8 116/4 129/9 129/10 143/8
maybe [6] 48/5 61/10 77/18 77/20 83/7 111/7
McDonald [1] 34/22
me [126]
mean [4] 11/20 30/5 94/23 138/6
means [3] 70/16 95/17 136/19
meet [1] 16/11
meets [1] 30/19
members [1] 94/25
MENDOZA [25] 1/20 6/5 7/1 10/25 13/6 18/9 18/19 19/11 20/25 21/17 25/15 26/22 30/15 37/23 42/21 60/18 81/4 81/20 98/25 100/20 102/8 102/21 103/24 144/19 145/5
Mendoza's [1] 4/18
mens [1] 122/7
mentioned [1] 28/11
merge [1] 137/24
messaging [1] 20/15
met [2] 16/17 17/10
middle [3] 48/14 82/21 124/1
might [5] 22/21 40/22 60/12 126/10 126/14
miles [2] 61/21 139/17
mind [1] 72/24
mine [1] 35/22
minimum [1] 141/23
minute [2] 57/14 93/17
Miranda [6] 85/13 85/16 85/18 85/19 85/21 85/22
miscalculation [1] 17/24
misconduct [1] 25/11
misdemeanor [9] 24/25 26/15 26/16 114/12 135/12 137/13 139/5 139/7 139/22
misread [1] 17/17
misrepresentation [2] 102/17 103/12
misrepresenting [2] 13/24 141/14
Miss [33] 4/6 4/18 6/5 7/1 10/24 14/24 18/19 21/17 22/4 23/1 25/15 26/22 31/19 32/2 37/19 42/21 73/14 75/4 76/9 76/13 77/6 78/3 79/8 79/11 81/3 96/18 98/25 100/20 103/24 116/21 129/6 129/24 141/16
Miss Caracciolo [3] 79/11 96/18 116/21
Miss Mendoza's [1] 4/18
Miss Simmons [5] 23/1 31/19 37/19 129/6 141/16
missing [1] 118/5
misstatement [1] 10/9
Misstates [2] 98/22 109/24
misstating [1] 98/24
misunderstanding [1] 144/5
model [1] 41/6
more [14] 16/13 48/25 68/10 92/25 94/11 98/23 100/24 118/22 123/15 123/21 127/8 127/9 127/11 137/25
morning [31] 11/1 11/6 11/9 11/15 17/18 22/2 22/3 22/6 22/7 64/3 64/5 66/11 66/12 82/11 82/17 82/21 84/9 86/7 88/15 92/3 92/4 95/3 97/16 97/18 97/19 98/2 98/6 98/13 98/15 124/19 131/14
most [1] 15/17
motion [42] 6/10 8/24 12/16 12/17 15/3 16/5 16/11 16/13 16/17 16/24 17/12 17/14 17/20 18/2 19/10 24/15 24/23 24/24 26/7 26/8 26/20 26/24 27/1 27/13 27/14 27/17 27/24 29/4 30/10 30/20 30/21 31/3 31/7 31/11 32/17 36/4 69/25 102/11 105/24 137/21 140/9 140/10
motions [13] 4/9 4/10 4/17 5/8 5/16 5/17 15/8 15/14 19/11 24/17 24/18 34/3 138/7
motor [1] 86/21
move [6] 7/25 27/12 45/21 59/1 65/16 144/23
moving [5] 45/24 47/23 55/11 55/14 61/17
Mr [10] 10/14 15/3 32/9 59/1 72/10 81/7 93/12 100/11 104/2 127/15
Mr. [75]
Mr. Lapeer [4] 33/2 71/15 72/9 74/24
Mr. Lippisch [2] 76/3 107/18
Mr. Nelson [1] 121/20
Mr. Orth [51]
Mr. Orth's [6] 20/23 21/7 51/1 60/2 107/20 118/10
Mr. Polanco [5] 30/18 75/16 82/1 101/2 101/20
Mr. Polanco's [3] 75/13 88/13 100/22
Mr. Schifalacqua [1] 136/7
Mr. Trotter [2] 14/15 17/16
Ms [4] 18/9 81/20 102/21 145/5
Ms. [8] 13/6 19/11 20/25 30/15 37/23 60/18 102/8 144/19
Ms. Mendoza [8] 13/6 19/11 20/25 30/15 37/23 60/18 102/8 144/19
much [2] 39/10 115/19
multiple [1] 112/9
Municipal [7] 24/25 25/16 25/20 134/1 135/1 135/8 135/16
murder [2] 142/24 142/25
must [10] 7/14 8/6 8/9 15/23 16/19 28/8 34/10 87/18 88/2 88/8
my [68]
myself [1] 56/9

N

name [11] 14/21 38/13 38/15 38/16 63/12 74/4 79/4 83/21 84/21 97/2 97/3
named [1] 93/23
names [2] 15/24 93/21
narrative [5] 9/21 10/11 41/11 41/22 42/20
nature [3] 78/7 102/5 102/6
necessarily [2] 16/7 30/5
need [17] 26/19 30/25 31/7 31/10 33/23 35/6 36/11 38/5 53/21 54/12 100/8 100/23 108/8 131/25 132/5 132/6 145/20
needed [7] 33/13 33/14 86/24 118/16 131/21 132/13 144/17
needs [2] 68/9 98/23
negate [1] 35/6
Nelson [9] 24/2 34/20 37/25 38/4 38/16 38/20 121/20 136/3 136/4
NEVADA [11] 1/5 1/7 4/1 12/10 12/23 24/2 34/16 34/20 34/23 34/24 145/14
Nevada's [1] 6/3
never [8] 8/18 34/5 75/2 75/15 75/16 77/5 124/4 144/2
new [3] 6/13 9/2 25/11
news [1] 13/10
next [19] 17/20 39/23 51/11 51/11 52/16 56/15 58/4 59/3 63/1 63/2 67/14 72/15 77/18 83/11 112/11 122/16 128/13 128/16 146/8
nexus [1] 9/17
night [38] 8/12 12/5 19/24 35/18 36/2 40/10 41/2 52/6 52/14 52/22 54/15 70/21 82/11 82/16 82/22 92/8 94/6 94/8 95/7 95/10 95/21 95/24 96/3 96/8 96/14 96/18 96/23 98/5 98/7 99/25 109/14 110/15 110/19 119/24 120/2 121/13 121/15 124/1
ninth [1] 27/21
no [88]
nobody [6] 27/24 61/24 121/6 131/6 140/5 143/14
non [1] 143/7
none [4] 13/3 15/7 65/20 132/5
not [199]
note [1] 66/2
noteworthy [1] 65/25
nothing [6] 38/9 63/8 83/17 117/20 131/6 135/6
notice [10] 6/6 6/16 7/6 7/12 8/10 8/23 28/7 29/4 29/19 81/1
noticed [1] 50/9
notify [2] 76/21 76/24
November [6] 7/12 7/20 10/16 21/5 32/1 130/10
November 17th [4] 7/12 7/20 10/16 21/5
November 25th [1] 32/1
now [29] 17/18 18/2 22/9 22/22 23/17 23/20 27/7 32/15 39/14 42/10 46/19 50/5 52/1 70/4 93/18 101/14 103/4 103/6 104/13 106/20 109/22 120/9 124/4 125/22 132/23 135/4 141/5 143/5 145/18
NRS [11] 6/8 7/13 12/1 15/20 26/10 34/18 35/4 36/16 133/8 133/17 133/19
NSP [3] 24/10 28/16 29/15
number [19] 19/25 22/14 23/24 30/19 31/21 31/24 66/3 66/5 68/5 68/7 74/14 95/1 102/16 102/17 102/25 127/23 128/1 128/5 128/14
numbers [1] 105/8

O

oath [1] 20/7
obey [2] 12/8 12/13
obeying [1] 12/7
object [4] 8/16 8/16 71/9 71/11
objected [2] 140/7 140/11
objecting [1] 70/14
objection [42] 28/2 28/4 28/5 28/6 29/24 39/19 40/12 57/4 57/17 58/13 59/19 59/24 65/18 66/15 67/7 67/10 69/23 71/10 80/4 88/4 92/22 93/6 94/10 95/11 95/15 97/8 97/21 98/22 100/7 107/12 108/8 109/6 109/24 112/13 113/14 115/22 116/16 119/10 123/3 129/23 130/25 145/1
objections [1] 34/2
obligated [1] 22/22
obligation [2] 22/20 28/20
observe [1] 51/11
observed [8] 42/11 43/23 45/5 45/19 47/6 48/2 105/7 105/9
obstruct [1] 134/23
obstructing [1] 114/9
obtain [9] 34/11 34/19 35/6 35/19 69/6 70/8 70/11 90/4 91/6
obtained [8] 9/7 12/19 12/20 16/4 27/3 68/10 68/12 104/12
obtaining [2] 35/3 68/8
obviously [2] 12/4 134/3
occur [8] 70/24 71/5 71/8 71/14 71/16 71/20 111/13 113/13
occurred [7] 20/15 82/10 100/3 105/13 116/3 137/3 142/25
occurrence [1] 137/8
occurring [2] 136/20 136/20
occurs [4] 20/5 135/23 136/22 144/14
October [12] 19/24 35/7 39/3 64/1 74/17 84/9 97/19 112/19 112/20 114/2 114/4 129/11
October 27th [2] 19/24 35/7
October 28th [8] 39/3 64/1 84/9 97/19 112/19 112/20 114/2 114/4
odd [1] 105/11
off [10] 18/6 56/10 75/5 79/18 82/24 119/14 119/15 119/18 120/1 129/5
offense [3] 133/15 134/23 134/24
offered [4] 39/20 39/22 59/23 67/13
offering [1] 70/6
offhanded [1] 15/10
office [4] 6/23 22/7 56/23 146/5
officer [69]
officer's [6] 26/15 35/6 74/4 97/3 119/7 119/24
officers [50]
officers' [1] 89/12
oftentimes [1] 29/23
oh [3] 15/11 46/24 135/20
Ohio [5] 34/7 34/9 141/8 141/10 141/25
okay [41] 4/10 5/3 5/10 5/15 22/16 32/8 36/24 42/2 51/19 54/3 57/24 58/4 67/16 72/19 73/9 73/13 74/3 78/13 80/11 80/13 80/20 92/11 94/4 100/18 103/22 104/10 107/5 107/22 108/10 110/10 111/6 113/11 114/17 118/7 123/8 123/17 126/22 133/24 134/11 146/10 146/14
omit [2] 113/8 113/9
omitted [3] 116/13 116/17 116/22
on [189]
once [12] 4/17 42/11 42/12 44/17 44/24 46/19 47/21 47/24 48/10 48/12 62/2 146/1
one [52]
ones [3] 36/9 49/5 49/12
ongoing [1] 114/16
only [18] 15/9 19/17 21/18 30/3 30/24 34/14 37/2 47/20 49/5 49/12 82/5 87/17 100/16 117/22 118/5 125/9 129/23 143/15
onto [3] 10/13 50/8 56/8
open [2] 77/2 90/17
opened [3] 65/14 90/25 131/24
operate [1] 29/25
operating [1] 18/5
operator [2] 59/15 59/17
opinion [3] 71/12 109/6 125/24
opportunity [4] 5/2 35/17 51/18 130/2
opposed [1] 129/2
opposition [1] 23/6
options [1] 17/7
or [78]
orange [3] 46/6 46/7 85/2
order [6] 15/22 102/15 136/19 145/12 145/20 145/22
original [6] 5/19 6/11 18/4 18/10 19/4 128/24
ORTH [63]
Orth's [6] 20/23 21/7 51/1 60/2 107/20 118/10
other [48] 5/19 8/25 10/6 16/2 18/17 19/9 24/14 26/7

O

other... [40] 27/14 29/23 30/4 31/21 33/3 33/4 33/14 36/1 38/4 42/25 43/3 43/17 43/21 48/23 49/7 50/10 57/3 57/8 73/9 75/3 76/23 81/10 81/13 81/13 81/14 91/9 94/25 104/20 108/13 108/17 112/2 112/17 117/10 119/21 121/3 123/14 126/5 136/3 143/22 144/3
otherwise [1] 7/13
our [4] 34/10 43/10 48/20 146/5
out [51]
over [33] 11/23 14/24 21/18 29/24 42/24 48/2 48/7 48/8 48/11 48/12 51/3 51/14 56/22 69/5 86/13 87/24 89/1 89/14 89/15 117/16 120/11 121/2 121/25 124/15 126/20 128/3 128/24 135/22 137/20 139/23 142/6 144/1 145/13
overlap [1] 138/15
overrule [3] 36/20 40/3 59/24
overruled [2] 40/6 88/6
own [4] 46/23 46/25 133/1 138/23
Ozawa [24] 7/20 8/1 8/12 9/1 9/5 10/7 10/20 30/17 30/23 32/15 32/24 33/4 33/9 91/13 91/18 93/3 93/4 93/11 93/17 93/22 98/16 98/20 99/1 100/12
Ozawa's [1] 111/21

P

P.3d [1] 133/15
p.m [1] 114/3
packet [2] 22/24 31/23
packets [1] 7/4
page [11] 14/3 14/11 32/5 34/8 34/9 34/23 34/24 72/21 105/8 106/25 107/4
Page 11 [1] 14/11
Page 14 [1] 34/24
Page 3 [1] 107/4
Page 35 [1] 34/9
Page 456 [1] 34/23
Page 8 [1] 72/21
paragraph [11] 105/9 106/25 107/4 107/10 107/17 107/24 108/15 109/20 115/8 118/5 118/13
Paragraph 3 [2] 107/4 107/17
park [1] 45/22
parked [2] 44/16 44/17
parking [1] 44/13
part [11] 6/12 15/15 40/9 44/3 57/13 57/22 58/1 58/2 68/7 69/13 138/23
parte [1] 29/1
particular [11] 15/8 15/19 17/3 17/4 17/8 17/13 18/25 30/4 30/7 118/16 126/19
particularly [1] 65/25
Pass [3] 51/16 66/6 91/23
past [1] 87/3
pasted [1] 113/2
path [1] 43/11
patrol [21] 9/6 43/10 44/13 44/20 45/3 46/23 46/25 47/15 47/16 78/5 85/6 85/10 86/21 86/22 89/24 90/1 94/19 97/3 97/5 123/25 124/15
patrol's [1] 124/8
patrolman [1] 9/15
PD [1] 9/3
PEACE [1] 1/17
pending [1] 25/5
people [1] 109/3
per [2] 41/1 61/21
perceive [1] 100/5
perception [1] 61/16
performed [1] 9/24
period [2] 12/3 37/13
permission [11] 37/4 41/18 50/12 64/20 64/25 90/7 110/23 111/1 111/3 111/7 118/14
permitted [2] 13/15 117/23
person [19] 1/22 12/12 26/14 26/18 29/14 40/10 41/1 46/1 59/14 60/14 67/19 67/19 68/10 70/5 74/5 84/20 93/12 98/7 128/19
personal [3] 54/14 71/12 109/6
personally [4] 54/6 54/7 76/14 77/5
pertained [1] 104/7
pertains [1] 68/1
phone [21] 10/24 13/20 14/16 14/22 99/16 99/17 101/10 101/11 101/17 101/22 101/25 102/6 103/8 107/16 108/22 109/13 110/14 110/16 110/24 111/8 122/25
photo [2] 50/22 65/5
photograph [2] 3/3 9/4
photographs [1] 9/25
photos [1] 31/25
physical [1] 124/22
pick [1] 89/17
picked [1] 142/7
picking [2] 60/7 89/18
picture [1] 90/13
place [3] 48/7 56/1 69/3
placed [5] 25/11 45/22 47/25 112/2 139/11
placing [1] 56/2
plaintiff [2] 1/8 25/6
plates [1] 41/4
plea [2] 135/1 146/12
plead [1] 135/3
pleading [1] 25/5
please [9] 38/12 38/13 63/11 63/12 83/20 83/21 94/1 94/24 107/10
pled [4] 18/7 25/21 136/8 137/11
point [42] 6/25 10/1 11/19 11/22 23/11 23/23 27/9 43/9 43/23 46/4 48/15 50/2 50/10 56/10 59/24 61/6 61/7 61/18 61/25 62/3 70/1 70/2 84/24 94/16 102/4 104/3 105/18 105/19 109/2 114/8 114/13 114/18 115/24 117/21 118/17 119/2 120/5 120/8 130/21 138/18 139/4 142/12
Polanco [15] 19/23 20/13 30/18 37/4 66/13 66/21 75/16 82/1 96/18 101/2 101/20 106/18 111/22 130/4 131/8
Polanco's [5] 75/13 88/13 99/11 100/22 122/8
police [32] 8/3 9/22 14/5 16/18 20/9 20/19 34/10 36/7 38/25 39/1 43/17 43/21 44/1 44/5 44/9 49/12 59/14 63/23 84/6 86/7 86/11 86/15 86/17 86/18 91/5 94/5 95/6 96/18 97/14 116/14 116/21 127/25
policies [2] 6/5 28/15
policy [1] 34/18
portion [5] 6/10 13/16 14/3 19/8 140/5
Portions [1] 93/7
position [12] 16/18 27/20 28/3 28/3 28/19 28/19 36/25 55/6 84/8 102/8 102/14 108/6
positioned [2] 43/10 45/2
positioning [1] 47/20
positive [1] 23/4
possessing [1] 143/25
possession [19] 9/18 20/23 21/7 21/21 21/22 22/1 22/3 31/17 39/17 51/1 52/7 52/15 56/2 80/22 82/12 120/21 128/18 131/22 145/10
possibility [1] 99/16
possibly [6] 52/7 52/18 103/9 109/15 110/13 144/12
potential [5] 40/23 64/6 84/12 84/17 116/1
potentially [4] 19/1 19/5 25/23 86/1
power [1] 51/12
practicable [1] 34/11
preferred [1] 24/9
prelim [3] 4/9 5/9 33/7
preliminary [30] 1/15 4/17 5/4 5/20 7/15 8/3 8/6 11/16 11/24 12/22 15/9 15/14 15/19 15/21 21/5 21/17 21/19 22/23 23/16 26/1 26/3 28/23 29/8 30/13 31/3 37/17 130/9 130/15 130/18 145/9
premises [1] 64/9
prepare [1] 145/20
presence [3] 12/19 12/20 26/15
present [10] 7/1 7/11 21/6 22/12 23/9 30/12 67/5 70/20 91/15 130/2
presented [2] 8/4 138/25
presenting [1] 21/9
presume [2] 20/20 70/7
presumed [1] 29/20
previously [1] 37/10
printed [1] 133/6
prior [17] 37/16 55/8 55/23 56/2 61/18 61/20 68/2 85/12 109/15 109/18 109/19 110/15 111/5 111/8 119/17 129/19

P

prior... [1] 130/9
prison [2] 10/4 29/9
privacy [3] 36/12 131/23 132/4
private [1] 139/17
probable [69]
probably [2] 56/9 143/4
problem [2] 8/2 19/22
procedure [3] 6/4 34/12 146/1
procedures [3] 6/5 28/16 29/7
proceedings [2] 146/18 146/21
process [3] 23/2 35/8 35/8
procure [2] 15/25 16/10
product [2] 140/23 144/15
professional [2] 109/2 125/24
proffer [1] 68/24
prohibited [1] 128/18
PROPER [1] 1/22
property [5] 35/22 36/13 60/12 60/14 139/17
prophylactic [1] 132/14
Proposed [5] 50/16 50/21 64/24 65/4 65/17
prosecutor [4] 7/7 7/25 10/19 29/2
prove [5] 34/21 35/1 35/25 141/3 141/3
proven [1] 16/2
provide [4] 15/24 75/10 76/2 76/12
provided [29] 8/25 11/5 13/3 14/4 22/10 23/19 25/14 31/19 31/22 32/7 32/9 52/10 68/21 74/12 74/14 75/22 95/6 96/18 100/11 100/15 111/25 112/21 116/14 118/9 119/6 119/16 119/21 140/25 141/1
provisions [1] 17/9
proximity [1] 48/14
Public [1] 1/24
pulled [2] 87/24 88/25
purely [1] 132/14
purports [1] 74/15
purpose [5] 7/9 80/8 87/1 112/14 112/15
purposes [5] 16/6 31/6 61/4 72/6 102/3
pursuant [2] 6/7 7/13
pursuing [4] 46/21 48/25 49/3 49/4
pursuit [5] 48/12 51/7 56/6 134/6 136/15
put [5] 11/23 104/19 104/19 117/17 121/24
putting [1] 23/13

Q

qualified [1] 143/6
quarantine [2] 145/24 146/2
question [34] 44/8 45/13 51/19 54/13 55/4 56/16 58/4 59/3 66/23 67/18 69/9 69/12 70/18 72/15 73/3 78/16 93/11 93/12 94/12 97/23 99/4 105/20 107/14 107/20 108/3 111/4 118/2 120/6 122/17 126/4 129/25 132/21 133/16 133/18
questioning [2] 104/8 105/20
questions [24] 51/18 51/19 59/5 60/18 62/8 66/17 72/4 76/5 80/23 81/7 81/19 83/5 104/5 110/21 117/23 118/22 123/14 123/15 123/21 124/25 125/10 125/10 126/5 126/22
quick [1] 129/25
quite [1] 102/4

R

radio [2] 20/15 42/24
raise [3] 38/6 63/5 83/14
raised [3] 105/18 132/8 140/9
ram [1] 44/21
ran [6] 45/5 48/13 89/12 89/13 137/1 138/22
Ranch [12] 39/8 39/9 48/1 48/15 64/7 84/12 86/14 89/14 89/16 89/22 94/22 95/1
randomly [2] 88/2 88/23
rate [2] 43/24 60/5
rea [1] 122/7
reach [2] 130/12 143/13
reached [1] 130/14
read [17] 18/22 23/6 23/6 36/6 85/12 85/19 103/23 104/18 106/5 106/6 107/10 107/18 107/24 115/8 117/13 127/24 134/25
reading [2] 17/9 85/21
ready [1] 37/1
real [1] 133/18
realistically [2] 24/5 24/8
realized [2] 87/2 87/4
really [7] 6/25 27/19 27/23 36/15 59/22 70/1 87/17
reask [1] 76/6
reason [12] 12/11 12/15 15/15 16/23 21/13 39/14 68/7 71/4 100/16 126/10 144/7 144/8
reasonable [6] 26/17 52/3 58/17 126/9 141/10 141/24
rebuttal [1] 129/16
recall [9] 41/16 49/6 49/13 96/20 97/3 101/7 101/9 119/5 144/25
receive [4] 19/12 69/4 98/15 98/19
received [13] 4/18 4/20 5/1 13/17 13/18 18/18 19/17 19/21 22/2 39/16 94/6 103/8 131/14
receiving [1] 32/3
recently [1] 82/6
recognize [6] 47/1 50/21 50/23 65/4 90/12 90/18
recollection [6] 20/24 41/23 42/4 107/20 108/1 110/7
record [29] 7/22 10/21 17/21 24/1 28/2 28/4 28/11 30/8 31/13 32/14 37/3 38/2 38/14 46/8 63/13 74/10 80/25 83/22 102/3 105/23 114/1 123/18 127/13 128/22 128/23 130/19 137/23 138/9 140/13
recorded [18] 67/1 75/22 76/13 76/21 77/6 77/8 77/12 81/15 81/16 86/2 95/9 95/17 95/23 96/2 116/13 116/17 116/20 117/3
recording [5] 78/6 81/18 86/1 86/4 112/8
records [2] 14/6 22/25
recovered [1] 119/22
recross [3] 60/17 60/20 125/13
Red [1] 44/10
redirect [6] 59/6 59/10 62/13 81/23 123/17 123/23
reference [5] 18/6 18/15 18/22 18/24 19/4
referenced [1] 15/18
referring [12] 6/15 10/16 36/9 53/22 76/22 77/24 78/15 96/10 96/12 111/1 118/14 138/10
refill [1] 128/21
reflect [2] 46/8 46/10
refresh [3] 41/22 42/4 107/25
refreshes [1] 107/19
refused [4] 86/2 87/5 89/11 117/3
regard [13] 15/3 18/2 23/22 23/24 24/1 24/15 24/18 24/24 30/10 125/2 132/16 137/22 138/19
regarding [5] 21/7 21/23 21/25 123/19 135/24
reinterviewed [1] 110/22
reiterate [1] 76/8
relate [1] 131/10
related [4] 60/17 87/15 102/7 135/16
relates [2] 25/24 70/4
relationship [1] 99/15
relay [1] 40/21
relayed [2] 101/20 101/23
relevance [7] 57/17 58/14 67/8 71/11 80/4 123/3 123/5
relevant [9] 30/23 32/15 32/17 36/15 36/18 102/23 109/7 109/14 118/19
rely [2] 27/19 143/22
remain [4] 28/13 28/15 63/4 83/14
remember [11] 10/18 10/22 11/7 17/23 19/10 20/17 32/2 41/5 41/14 92/21 114/25
remembered [1] 24/12
repeat [1] 73/3
repeated [2] 27/8 52/9
rephrase [1] 109/10
reply [3] 4/24 5/2 5/4
report [34] 9/16 13/12 13/17 14/3 14/5 14/25 17/18 18/4 18/5 18/22 19/4 20/13 20/17 21/13 23/5 23/7 31/23 32/6 41/17 72/17 72/18 73/5 73/19 91/18 92/20 93/4 96/7 96/22 97/14 106/22 109/19 119/7

R

report... [2] 119/24 124/10
reported [5] 1/25 14/8 92/7 92/17 119/25
REPORTER'S [1] 1/13
reporting [2] 40/10 41/1
reports [8] 20/6 21/22 21/25 22/9 22/25 23/14 31/18 31/20
repositioned [1] 44/19
represent [3] 13/16 141/13 143/6
representation [1] 10/10
representations [2] 33/8 103/25
representing [2] 4/6 27/18
requested [1] 22/19
require [2] 16/7 25/23
required [5] 17/5 18/8 24/3 25/1 25/25
requirement [4] 34/14 34/22 36/1 36/6
requires [1] 131/2
research [1] 26/3
reserve [1] 129/16
reserving [1] 138/16
reset [2] 17/22 17/22
residence [1] 110/17
resist [3] 114/9 134/23 136/19
resisting [14] 24/18 24/25 25/16 114/10 133/5 133/9 133/17 133/19 134/9 135/12 135/23 136/23 137/19 139/4
respond [4] 13/7 39/7 84/15 95/4
responded [9] 21/13 39/15 89/9 92/15 94/5 94/7 94/19 96/22 124/1
responding [4] 92/5 92/7 97/15 119/17
response [6] 13/1 67/9 68/4 70/13 85/15 92/12
responses [1] 4/18
rest [1] 106/9
restate [1] 71/6
resting [1] 130/21
rests [1] 34/25
retain [1] 124/9
rethink [1] 146/13
retreat [1] 34/10
returned [2] 22/24 124/4
returning [4] 101/15 101/16 122/24 122/24
revealed [1] 110/11
review [4] 41/25 96/6 96/9 97/14
reviewed [3] 4/22 96/7 97/15
rifle [1] 142/9
right [55]
rights [7] 7/10 11/24 12/22 29/6 36/12 85/13 85/19
rise [2] 134/16 134/22
road [1] 31/14
robbed [1] 40/10
robbery [91]
RODNEY [1] 1/10
roll [1] 55/13
rolling [5] 55/18 62/17 62/19 62/20 62/21
room [1] 71/25
rough [1] 61/8
routed [2] 124/5 124/13
rule [8] 4/10 4/12 4/14 15/4 37/23 105/24 137/10 138/2
ruled [1] 31/18
rules [2] 24/4 24/7
ruling [14] 26/4 27/5 27/7 30/7 30/8 33/17 40/13 117/19 120/16 131/11 131/25 132/9 132/14 138/13
run [2] 45/8 48/19
running [7] 14/7 48/17 126/20 126/20 131/22 134/8 137/20

S

said [64]
same [16] 10/8 15/1 16/2 29/7 30/14 30/15 31/6 40/12 40/13 51/13 68/24 90/18 124/18 133/19 134/16 134/22
SAMUEL [1] 1/16
satisfy [1] 131/1
saw [22] 43/20 44/24 45/25 47/1 47/24 48/7 49/25 51/2 51/13 55/2 71/24 71/25 72/12 86/21 119/23 121/4 121/21 121/23 121/23 121/24 121/24 143/21
say [33] 8/12 54/23 58/9 58/10 58/11 68/5 70/5 71/19 71/21 71/23 72/2 72/8 72/12 73/16 76/2 79/4 80/10 80/16 87/23 88/18 99/24 101/2 101/5 101/10 104/23 108/6 109/18 109/22 124/4 128/22 136/9 137/7 141/4
saying [32] 7/10 9/17 10/6 13/1 22/5 23/6 28/8 29/9 33/22 42/16 54/24 55/10 57/13 59/15 59/16 59/18 68/17 70/9 71/13 83/2 93/20 109/18 109/23 111/3 119/13 120/1 132/3 135/18 136/22 137/2 138/22 144/5
says [16] 11/14 13/12 14/11 14/21 15/20 15/22 16/8 32/15 34/8 74/24 103/3 103/3 105/4 135/6 139/8 140/12
scene [11] 40/2 49/22 84/15 85/4 89/5 91/1 91/3 92/9 94/8 119/22 134/3
Schifalacqua [1] 136/7
school [1] 141/17
Scoble [1] 49/5
scope [2] 66/16 124/13
scrambling [1] 5/7
sealed [1] 131/1
SEAN [9] 1/10 4/5 10/4 72/20 73/6 84/21 105/7 105/10 105/11
search [106]
searched [4] 13/20 91/16 121/17 121/22
searching [8] 67/14 67/23 68/2 68/6 69/13 91/10 116/6 131/18
seat [3] 45/20 46/1 86/12
seated [4] 38/12 63/11 83/20 105/13
sec [1] 26/13
second [23] 10/13 14/2 28/12 31/2 47/14 47/15 57/25 58/1 72/3 72/4 93/9 93/10 93/16 103/6 105/6 107/1 110/3 113/17 128/20 128/23 128/24 141/9 142/17
Secondly [2] 8/24 139/24
seconds [1] 48/5
secured [3] 89/20 89/23 91/4
sedan [1] 41/3
see [37] 9/13 9/14 13/16 19/6 23/11 24/14 31/9 32/21 43/14 44/15 45/7 46/1 47/20 49/20 49/22 51/9 51/24 56/8 56/11 56/14 57/6 67/4 71/23 72/12 77/3 82/2 84/22 90/22 92/23 99/24 100/2 103/4 105/15 106/22 116/25 120/8 120/25
seeing [1] 35/5
seek [2] 15/23 104/6
seeking [1] 34/25
seem [1] 123/11
seen [9] 9/6 9/15 50/24 55/20 55/23 55/25 55/25 121/16 127/15
sees [1] 52/17
seize [3] 35/24 36/12 120/20
seized [2] 113/12 113/19
seizure [3] 34/12 35/20 35/20
senses [1] 34/13
sensitivity [1] 32/25
separate [11] 31/7 31/11 134/18 135/4 135/13 137/11 137/17 137/19 138/14 138/14 140/2
separates [1] 48/1
separation [1] 137/9
serial [2] 66/3 66/5
seriously [1] 146/13
service [1] 119/7
services [1] 141/16
set [4] 29/10 87/7 87/21 132/21
setting [1] 22/23
setup [1] 87/15
seven [2] 82/20 83/1
several [3] 57/14 58/9 58/10
several-minute [1] 57/14
shall [2] 12/2 12/13
she [102]
she's [5] 21/20 23/21 117/25 134/18 136/2
Sheriff [1] 12/18
shift [1] 83/1
shipped [1] 24/10
shop [1] 41/4
short [2] 27/21 37/13
shotgun [4] 66/1 66/3 91/21 126/21
should [9] 10/10 12/3 12/21 13/15 28/9 30/21 83/7 118/9 127/24
shouldn't [2] 71/15 103/12
show [15] 7/25 14/10 15/23

S

show... [12] 16/21 16/22 17/11 28/20 35/10 35/17 102/16 102/18 103/11 104/14 118/4 140/8
showed [2] 12/1 110/9
showing [10] 8/14 10/5 13/4 29/12 50/15 50/20 64/23 65/3 90/11 106/23
shown [4] 8/9 15/22 74/12 139/21
side [5] 44/20 48/6 118/4 118/4 136/3
sight [3] 47/22 48/3 54/23
signed [1] 114/2
silly [1] 44/8
SIMMONS [11] 1/23 4/6 14/24 22/4 23/1 31/19 32/2 37/19 129/6 129/24 141/16
simply [2] 16/8 113/2
since [3] 87/16 123/21 130/11
single [1] 15/5
sir [13] 4/11 4/19 52/25 55/22 56/5 56/7 58/22 73/5 106/13 107/8 116/12 130/24 136/18
sirens [6] 18/12 42/15 44/2 44/6 86/24 135/7
sit [5] 5/25 23/16 121/18 142/8 145/24
sitting [3] 25/8 28/9 85/1
situation [3] 8/8 28/25 35/1
skip [1] 35/14
so [269]
solemnly [3] 38/7 63/6 83/15
solitary [1] 15/5
some [25] 10/25 14/16 16/20 18/17 19/12 25/23 26/2 27/10 31/7 31/18 38/1 42/21 42/24 49/7 50/2 65/10 68/9 91/9 99/12 102/2 106/19 111/8 127/5 127/8 127/21
somebody [4] 71/15 78/13 89/25 142/24
someone [2] 60/12 82/12
something [17] 14/21 24/11 35/6 44/21 46/5 65/25 80/18 84/25 87/7 87/21 88/3 88/8 89/1 98/8 102/21 103/17 124/10
sometimes [2] 31/5 31/6
somewhere [1] 91/2
sorry [9] 4/25 9/11 17/14 53/12 55/4 72/14 127/10 135/20 139/1
sort [4] 14/16 16/20 19/13 142/21
sought [1] 134/25
sound [1] 114/3
sounds [2] 21/21 44/8
speak [6] 5/25 53/20 54/7 66/13 66/20 67/19
speaking [3] 53/23 75/4 130/1
specific [5] 16/16 92/25 94/11 100/24 108/15
specifically [20] 31/20 35/9 49/19 52/12 54/10 54/13 85/9 91/12 94/14 99/20 100/24 103/2 105/14 116/24 117/1 117/9 119/20 122/21 136/4 136/6
specificity [1] 16/13
Speculation [1] 88/5
sped [1] 54/24
speed [8] 43/25 60/5 60/7 61/15 106/10 139/15 139/18 139/18
spell [5] 38/14 47/9 63/13 83/22 94/1
spelling [1] 37/6
spent [1] 141/21
spoke [1] 110/11
squared [1] 29/16
stand [3] 5/24 35/9 83/13
standard [2] 6/21 30/19
standby [6] 1/23 4/6 27/19 32/9 117/25 132/18
standing [3] 36/2 63/4 83/14
standpoint [1] 30/25
start [5] 4/9 8/20 62/17 83/1 128/3
started [5] 14/23 23/1 31/9 79/18 85/16
starts [7] 4/17 62/19 62/19 62/21 62/21 88/25 136/22
state [38] 1/5 1/7 1/20 6/3 7/17 15/16 15/23 17/10 23/25 24/1 28/14 28/19 29/4 33/8 34/16 34/20 34/20 34/24 35/13 37/11 38/13 38/17 63/2 63/12 63/16 70/20 72/20 83/21 83/25 117/3 127/18 133/4 133/15 137/24 140/8 141/2 145/14 145/20
State's [11] 9/5 50/16 50/20 56/23 64/24 65/3 65/16 65/22 90/12 127/15 145/4
stated [23] 10/20 16/12 34/25 72/20 73/6 73/7 85/18 86/20 87/6 87/16 88/14 88/20 99/22 101/24 102/11 105/7 105/9 106/20 108/19 108/21 109/13 122/12 140/5
statement [25] 12/18 20/13 20/16 73/13 73/15 73/18 73/24 74/8 74/11 74/13 74/19 74/25 75/2 76/3 78/2 78/11 100/22 104/19 106/23 107/8 109/17 109/22 116/20 116/23 116/24
statements [28] 20/8 23/13 69/20 69/22 75/12 78/8 96/3 96/9 96/10 96/11 96/12 96/13 96/15 96/16 96/17 99/10 99/11 101/18 103/2 105/5 106/6 106/17 106/18 106/19 111/10 112/2 126/18 131/7
states [5] 7/12 12/1 12/12 15/24 34/22
stating [1] 141/25
station [2] 90/25 91/5
status [1] 25/19
statute [14] 8/14 12/1 12/12 15/5 15/10 15/12 15/13 15/17 15/18 21/17 21/20 29/8 131/2 133/10
statutes [1] 15/8
stayed [2] 25/4 124/14
staying [1] 110/12
step [1] 38/5
stepped [1] 14/24
still [13] 11/12 20/9 26/1 26/3 29/16 31/17 36/22 46/13 62/1 89/21 101/24 114/16 120/13
stipulate [1] 81/3
stock [1] 6/22
stole [2] 52/18 110/16
stolen [13] 41/3 52/7 82/12 98/8 101/2 101/25 102/5 102/6 109/13 119/4 119/14 120/10 131/18
stop [50]
stopped [17] 20/21 45/23 55/3 55/6 61/4 61/25 62/2 62/4 62/16 62/18 134/19 137/5 137/15 138/21 139/3 139/9 139/14
stopping [3] 55/9 60/22 137/14
stored [1] 112/10
stories [3] 115/5 115/10 115/11
story [3] 101/5 101/21 108/13
straight [1] 22/6
straightforward [1] 138/1
strictly [1] 12/23
strike [2] 78/16 99/3
strip [1] 29/6
subject [3] 7/8 39/17 52/13
subpoena [11] 11/10 12/2 12/3 12/7 12/7 12/8 12/21 16/25 17/1 37/4 37/9
subpoenaed [2] 12/13 16/19
subsection [1] 36/18
subsequent [2] 124/16 137/13
substance [1] 128/18
substantive [1] 40/17
such [3] 16/4 60/8 60/11
suddenly [2] 47/24 47/24
sufficient [1] 145/11
suggesting [1] 138/11
summary [7] 16/1 16/9 59/16 59/17 110/4 111/24 112/7
supervisor [1] 56/25
supplemental [4] 72/18 72/19 72/23 73/19
supported [1] 19/5
supposed [1] 77/13
suppress [13] 26/8 26/8 26/20 27/2 30/10 31/4 31/8 31/12 32/17 36/5 69/25 102/12 105/24
suppressing [1] 118/17
suppression [2] 131/10 131/11
Supreme [3] 12/10 12/23 34/23
sure [9] 13/11 27/23 29/7 53/5 58/8 89/24 102/4 118/25 146/9
surprise [1] 27/14
suspect [10] 40/9 40/23 41/1 52/5 52/6 52/17 52/17 52/18

S

suspect... [2] 84/17 92/8
suspicion [4] 52/3 126/9 141/10 141/24
sustain [1] 42/19
Sustained [1] 119/11
swear [3] 38/7 63/6 83/15
sworn [7] 20/13 38/20 63/18 84/1 106/23 107/8 109/22
symptoms [1] 23/3
synonymous [1] 115/10
system [7] 76/15 76/17 76/20 76/24 76/25 77/3 78/9

T

T-E-R-P-S-T-R-A [1] 15/7
table [1] 85/1
take [24] 4/8 5/5 5/8 6/9 10/10 20/5 24/3 25/22 26/2 26/5 30/11 31/12 36/22 44/11 57/13 66/2 73/13 74/3 89/25 91/1 118/17 125/4 132/23 143/20
taken [3] 24/16 51/10 95/10
taking [5] 9/25 50/11 58/2 80/25 143/12
talk [7] 85/9 85/21 85/25 86/6 108/9 132/19 134/21
talked [4] 81/25 86/9 89/4 115/9
talking [17] 20/2 79/11 85/7 85/12 85/16 86/3 93/17 93/18 93/21 96/15 110/23 120/17 121/12 121/14 121/15 128/5 134/20
talks [3] 13/19 18/11 141/10
tally [1] 14/7
tan [11] 64/18 86/12 87/18 87/19 89/10 89/20 90/16 90/18 110/17 131/18 131/18
taped [1] 76/3
taser [4] 48/16 49/17 50/6 50/7
technically [3] 26/19 81/15 134/19
technology [13] 6/7 7/9 7/16 7/19 7/24 8/1 8/11 8/15 8/17 28/7 29/11 29/12 29/15
telephonic [1] 34/19
tell [19] 20/8 29/13 42/1 67/19 70/2 71/15 72/9 75/11 82/5 87/14 93/11 93/15 94/14 99/9 104/3 115/12 125/15 125/21 128/14
telling [8] 7/7 8/19 59/12 73/18 109/3 123/6 123/9 143/7
terms [5] 24/2 30/12 60/22 70/15 86/6
Terpstra [2] 8/5 15/7
Terry [5] 34/7 34/8 141/7 141/9 141/24
test [2] 26/1 133/14
tested [1] 23/4
testified [9] 10/2 10/23 33/5 98/4 121/3 121/6 121/9 121/16 143/14
testify [14] 7/15 10/6 10/7 10/8 21/12 32/23 33/3 33/10 38/20 63/18 84/1 132/19 133/2 136/14
testifying [1] 9/5
testimony [16] 7/11 16/1 16/9 30/22 38/8 62/25 63/7 83/16 104/12 104/13 130/2 134/4 135/24 143/12 143/20 145/8
text [2] 19/21 20/15
than [7] 48/25 81/13 81/14 99/21 127/8 127/11 134/10
Thank [6] 38/18 39/10 62/22 62/25 145/3 146/15
that [747]
That'll [1] 146/11
that's [85]
their [28] 6/4 6/5 14/6 15/25 16/1 16/9 16/10 17/2 17/10 20/4 28/15 35/12 35/23 37/11 44/2 46/23 46/25 57/10 86/23 115/5 115/25 124/11 124/13 134/7 137/5 142/19 143/23 145/25
them [50]
then [68]
theory [6] 9/5 30/22 138/24 139/22 139/25 140/1
there [93]
there's [35] 16/23 19/2 25/24 30/3 31/9 33/21 33/22 48/25 69/2 70/4 74/4 77/20 89/1 100/19 100/21 102/25 103/11 106/2 118/18 124/22 125/25 126/8 126/11 126/14 126/16 129/3 132/1 133/22 137/13 137/15 138/12 139/7 139/8 142/16 142/19
these [12] 40/4 43/2 76/24 82/16 109/3 110/22 111/10 112/1 127/15 129/21 130/19 131/14
they [180]
they'd [2] 89/23 142/23
they're [17] 7/7 7/10 9/12 9/16 16/20 29/9 30/14 59/15 59/16 59/18 116/5 124/11 134/12 136/22 137/2 137/2 145/2
they've [2] 98/3 130/13
thing [18] 7/6 10/8 15/1 18/20 19/17 32/10 32/13 33/16 37/2 80/6 80/10 87/17 117/22 124/18 137/8 139/21 141/19 143/11
things [15] 29/5 31/25 40/18 42/24 59/8 76/16 78/7 80/12 102/25 112/9 116/7 124/22 126/8 134/21 142/1
think [42] 6/25 10/24 13/15 17/17 18/5 19/13 24/5 24/7 24/12 24/22 26/8 27/5 29/17 30/19 30/20 32/16 54/18 59/21 71/13 80/5 83/7 93/10 97/10 98/3 104/1 118/15 118/18 118/19 120/13 129/4 130/14 131/20 131/24 132/12 132/13 133/22 135/11 135/14 136/7 137/25 141/15 143/8
this [137]
those [39] 15/7 15/8 16/11 16/15 17/6 17/9 22/9 22/10 23/14 23/22 27/3 29/6 32/3 34/25 36/9 40/18 47/2 47/4 49/7 52/8 52/9 52/24 53/1 58/11 69/22 80/12 86/18 92/17 97/17 98/13 101/18 107/15 110/24 111/6 117/2 117/7 129/12 129/19 130/22
though [3] 22/22 78/14 109/14
thought [3] 87/15 87/21 144/21
three [4] 5/16 10/8 48/5 128/7
threw [1] 89/14
through [18] 7/15 7/18 8/15 34/12 44/21 57/1 59/15 59/17 72/24 73/1 86/3 117/24 118/3 119/21 137/8 141/18 145/24 146/2
throughout [2] 51/6 73/10
Thursday [1] 37/8
thus [1] 9/18
time [52]
timeline [1] 110/9
times [1] 117/14
timestamp [2] 77/20 114/6
timing [1] 118/20
today [30] 4/20 5/2 5/5 5/8 5/13 6/19 7/5 8/21 9/1 13/17 13/18 13/19 23/19 30/18 31/17 32/20 36/3 46/2 81/14 84/22 121/18 129/18 130/7 130/14 131/5 132/14 134/4 134/19 138/3 146/4
together [1] 105/19
told [23] 11/8 12/5 71/14 72/8 75/16 77/5 77/8 85/18 85/20 89/9 89/16 93/12 105/12 105/16 107/15 109/5 110/24 120/2 120/4 122/9 122/23 125/22 143/23
ton [1] 141/20
too [2] 115/19 117/20
took [8] 20/13 20/16 74/5 89/19 91/3 122/13 124/15 131/7
top [5] 47/25 55/21 56/1 58/7 119/18
totality [1] 24/4
towards [11] 43/25 44/19 45/9 47/23 48/13 48/17 48/20 69/25 87/8 89/12 89/13
town [2] 11/12 33/7
TOWNSHIP [1] 1/4
trafficking [1] 128/17
trainee [2] 42/13 43/9
training [2] 16/21 32/25
TRAN [1] 1/1
transaction [2] 134/17 134/22
transcript [2] 1/13 146/21
transpired [1] 105/11
transport [1] 145/23
transportation [1] 40/22
traveled [2] 138/23 139/12
traveling [2] 136/24 139/6
tried [4] 86/7 88/15 88/19

T

tried... [1] 137/4
Trotter [11] 9/3 9/22 10/2 13/9 13/20 13/25 14/2 14/15 14/20 14/21 17/16
true [16] 18/23 40/5 67/3 67/5 73/5 100/4 101/14 101/17 101/19 106/13 106/20 108/12 108/21 126/3 144/17 146/20
trump [1] 13/2
trustworthy [1] 115/18
truth [20] 21/14 38/8 38/9 38/9 39/21 59/23 63/7 63/8 63/8 67/11 67/13 83/16 83/17 83/17 109/4 123/7 140/4 140/8 140/12 143/12
try [8] 27/21 29/25 37/4 44/11 80/15 87/12 130/4 135/4
trying [12] 24/13 27/22 29/14 86/19 87/10 104/14 105/18 130/19 134/18 137/2 137/7 142/13
turn [6] 21/18 29/22 43/24 44/18 60/5 60/6
turnaround [1] 27/21
turned [2] 56/22 69/5
Turns [1] 126/12
Twenty [1] 61/21
twice [1] 130/7
two [24] 5/16 24/17 27/3 32/22 38/4 44/1 44/4 47/6 48/5 68/7 76/5 86/21 86/22 102/17 102/25 116/6 130/17 130/18 134/12 134/20 137/11 137/17 138/13 138/14
type [3] 40/22 42/5 64/9
types [1] 49/10

U

U.S [2] 34/9 34/23
uh [2] 61/23 62/5
Uh-huh [1] 61/23
ultimately [7] 26/4 46/16 64/15 69/9 90/4 91/6 121/22
unable [3] 37/9 130/12 130/13
unavailability [2] 24/6 28/23
unavailable [5] 8/8 8/20 28/25 33/13 33/15
unaware [1] 77/21
under [27] 8/5 8/14 10/11 12/3 12/7 12/18 12/20 21/16 24/1 24/9 25/25 26/10 28/19 28/20 30/2 34/18 36/16 40/1 113/21 133/17 133/19 137/12 137/24 138/24 139/22 139/25 140/7
underlying [1] 142/21
understand [16] 27/6 27/9 28/2 28/3 29/9 33/18 33/19 40/16 82/9 97/22 102/11 109/25 131/13 131/15 143/19 144/5
understandable [1] 17/19
understanding [9] 6/24 25/4 25/9 26/22 33/11 102/13 102/20 111/9 144/6
unfortunately [1] 24/13
United [1] 34/22
unless [1] 15/21
unreasonable [1] 141/2
until [9] 22/8 82/19 105/12 105/16 134/5 136/6 136/10 142/23 144/1
untrue [1] 117/6
up [42] 4/8 5/5 5/8 5/25 6/9 10/22 16/21 16/22 23/13 24/10 24/11 24/16 25/22 26/2 26/5 29/10 30/11 31/4 31/12 31/14 36/22 42/1 50/8 51/9 54/24 60/3 60/7 65/14 68/2 77/2 83/13 85/7 87/7 87/21 88/21 89/17 89/18 106/10 124/7 124/18 132/23 142/7
upheld [1] 34/17
upload [3] 76/15 77/14 77/21
uploaded [3] 76/17 77/12 78/8
upon [5] 31/5 35/5 35/24 67/24 126/18
upset [1] 12/24
us [9] 20/3 42/1 42/10 47/18 48/10 48/19 59/12 128/21 129/6
use [19] 6/7 7/9 7/15 7/25 8/10 8/15 8/16 29/19 34/18 35/8 35/11 99/16 99/17 101/9 101/12 107/16 108/22 110/14 110/23
used [6] 15/25 16/10 58/17 70/11 104/13 112/20
using [2] 80/16 104/12
usually [1] 15/15
utilizing [2] 40/17 141/15

V

vacation [5] 8/21 11/6 11/23 12/24 16/20
vague [10] 70/14 92/22 93/6 94/10 97/21 112/13 113/14 116/16 118/13 123/4
various [1] 14/7
Vegas [4] 7/21 7/23 8/13 10/21
vehicle [73]
vehicles [9] 43/18 43/22 44/2 44/5 46/23 46/25 86/18 86/21 86/22
veracity [3] 125/5 125/8 125/9
verbal [2] 96/16 134/8
versus [12] 12/18 25/1 34/7 34/8 34/16 34/20 34/22 34/24 35/13 36/10 82/21 141/2
very [5] 12/22 28/24 39/10 39/11 141/17
via [1] 112/7
vicinity [1] 43/18
victim [3] 52/11 52/19 119/3
victims [9] 53/19 53/24 53/25 54/2 95/21 95/24 96/3 96/13 99/15
video [5] 6/18 29/25 56/24 76/16 95/24
violates [1] 12/8
violation [5] 23/12 23/23 36/5 36/12 133/16
violative [1] 25/12
visual [21] 6/7 7/2 7/8 7/9 7/16 7/18 7/24 8/1 8/10 8/15 8/17 28/7 29/5 29/10 29/11 29/14 29/19 29/23 30/3 30/5 47/21

W

wait [1] 142/23
waiting [1] 10/4
waiving [1] 138/16
walk [1] 121/23
walked [4] 45/3 72/11 89/13 139/9
walking [1] 48/5
wall [20] 47/25 48/2 48/6 48/7 48/8 48/11 48/12 51/3 51/11 55/21 56/1 56/2 86/13 89/13 89/14 89/15 121/24 121/25 137/20 142/6
want [27] 5/3 5/14 5/15 5/18 6/9 17/21 80/17 85/19 95/16 100/7 102/3 103/25 104/2 122/2 123/25 124/9 127/19 128/22 128/24 129/1 129/17 130/3 132/18 138/4 138/9 138/17 139/21
wanted [5] 18/19 23/25 37/2 81/21 130/1
wants [1] 138/7
warden [1] 27/15
warrant [136]
warrants [6] 34/19 34/19 36/10 36/10 36/11 142/22
was [348]
Washoe [3] 31/24 128/10 129/9
wasn't [14] 27/4 27/5 27/13 27/15 27/17 32/17 67/20 78/20 102/22 111/3 115/20 126/13 132/4 139/11
way [14] 14/6 15/10 15/11 29/25 33/10 60/9 76/20 86/25 103/1 117/20 128/13 136/8 137/11 143/15
we [75]
we'd [1] 5/4
we'll [7] 4/9 4/16 5/9 31/12 35/14 134/21 146/11
we're [27] 5/7 5/7 15/1 29/20 65/4 77/13 80/9 80/9 80/14 80/19 90/12 93/21 100/18 104/5 117/18 117/19 120/13 120/17 121/10 121/12 121/14 121/15 123/12 123/21 129/5 131/18 134/20
we've [5] 19/17 81/13 120/11 121/1 130/17
weapon [4] 67/4 99/25 100/2 128/5
wearing [4] 46/5 46/6 84/25 85/2
WEDNESDAY [1] 1/18
week [7] 27/22 29/16 37/3 99/23 110/13 110/13 146/8
welcome [1] 39/11
well [35] 5/3 5/6 22/21 29/9

W

well... [31] 29/10 32/21 33/25 36/4 37/17 47/13 48/8 59/21 69/1 70/10 71/13 77/8 80/16 80/20 86/21 94/11 99/15 100/22 102/10 104/18 111/7 119/21 119/22 119/24 130/6 130/15 134/20 136/18 138/6 138/11 141/4
went [19] 16/14 18/4 18/21 39/23 40/5 47/19 48/8 48/11 48/12 82/1 89/22 98/4 98/5 98/12 111/7 119/6 136/25 137/4 141/16
were [102]
weren't [8] 21/22 23/8 27/18 27/24 80/5 115/18 119/8 144/21
what [189]
what's [24] 25/19 28/5 50/15 50/20 50/21 65/3 71/10 74/11 74/12 80/7 90/11 90/15 90/23 95/14 102/20 103/19 110/1 120/5 123/5 123/10 127/8 127/11 133/9 133/20
whatever [9] 5/15 6/3 23/22 80/21 80/21 102/3 110/8 126/13 138/7
when [105]
whenever [1] 34/10
where [15] 14/21 22/21 31/9 47/18 48/15 50/24 51/9 51/13 85/3 86/14 100/18 109/18 115/24 120/9 139/13
wherein [1] 9/23
whether [28] 11/4 12/4 15/6 15/6 15/6 16/2 18/23 25/10 25/24 28/13 28/14 28/15 29/3 36/23 54/13 58/14 70/4 100/11 100/14 100/16 102/5 102/5 102/6 106/2 107/15 107/19 138/8 142/25
which [27] 7/21 8/15 11/14 12/1 12/22 20/23 31/18 31/20 35/1 36/9 41/3 45/23 48/16 52/19 57/9 77/13 89/11 96/10 96/12 98/24 103/9 112/1 117/23 118/10 118/15 128/5 141/24
while [7] 52/15 55/11 57/14 58/6 58/20 134/8 137/18
white [7] 41/3 41/15 42/9 43/23 46/13 52/20 86/10
Whitney [12] 39/8 39/9 48/1 48/15 64/6 84/12 86/14 89/14 89/16 89/22 94/22 95/1
who [59]
who's [1] 104/20
whoever [1] 59/13
whole [8] 28/8 38/9 51/7 63/8 83/17 135/13 137/8 141/19
wholly [1] 18/17
whom [1] 74/15
Whose [1] 74/11
why [22] 13/17 13/19 16/7 17/11 36/1 39/23 40/5 42/20 58/25 70/7 73/1 73/24 79/11 79/13 83/9 115/4 115/12 115/16 115/17 115/20 131/18 140/18
WiFi [1] 57/2
will [15] 7/17 30/11 37/24 38/8 46/8 58/15 63/7 83/16 92/24 99/3 109/8 109/10 128/20 132/20 133/1
willing [1] 30/3
Winchester [2] 66/5 91/21
wish [2] 28/17 29/17
withheld [1] 104/14
within [12] 6/4 8/6 11/12 11/24 15/15 15/21 34/25 35/21 78/13 112/6 124/11 139/19
without [7] 18/14 26/11 36/21 85/21 133/17 133/19 142/14
witness [28] 7/10 7/14 30/21 31/11 37/23 37/24 41/19 50/17 51/16 51/18 62/9 62/23 63/1 64/25 66/6 73/24 73/25 78/8 83/6 83/13 90/8 91/23 96/13 112/8 118/16 121/9 121/20 127/1
witness's [1] 12/19
witnesses [44] 4/12 4/14 4/16 6/19 7/17 8/8 15/25 16/3 16/4 21/6 21/9 21/12 22/13 23/13 24/7 27/22 28/23 28/25 29/20 29/21 29/22 30/1 30/12 30/14 30/16 32/23 37/1 40/5 92/11 92/13 92/14 92/16 95/24 96/3 107/15 110/22 110/24 111/6 111/10 121/3 124/21 126/25 130/20 132/16
won't [1] 123/21
wondering [1] 102/19
words [2] 36/1 76/23
work [3] 23/3 24/14 141/12
working [5] 23/1 29/15 39/2 63/25 84/8
world [1] 143/4
worry [1] 12/5
would [77]
wouldn't [2] 12/15 141/17
writ [1] 118/12
write [1] 41/11
writing [2] 115/14 115/15
written [11] 12/16 73/13 73/15 73/17 78/11 78/11 96/2 96/15 96/17 131/7 140/10
wrong [8] 18/6 19/2 117/20 118/18 141/11 141/22 142/1 143/1
wrote [4] 73/20 115/10 117/4 117/8

Y

yards [2] 61/10 61/11
yeah [5] 46/24 66/4 73/1 82/23 126/21
year [3] 39/3 64/1 84/9
yes [168]
yet [5] 11/2 22/6 24/23 26/5 103/22
yield [1] 42/17
you [639]
you'd [1] 143/4
you'll [2] 10/18 81/3
you're [62]
you've [11] 15/4 18/22 26/20 30/8 56/25 76/25 130/6 141/12 141/13 141/18 143/8
your [176]
yours [1] 5/6
yourself [7] 27/19 52/1 94/15 107/18 141/13 143/4 143/6

Z

Z-E-L-L [2] 74/14 94/2
Zell [7] 93/15 93/23 93/23 94/2 94/3 130/5 131/5
Zell's [1] 78/2
zero [1] 37/15

EXHIBIT C

MUNICIPAL COURT OF THE CITY OF HENDERSON

IN THE COUNTY OF CLARK, STATE OF NEVADA

FILED

2020 OCT 29 A 9:28

MUNICIPAL COURT

CITY OF HENDERSON, NEVADA, Plaintiff, vs. SEAN RODNEY ORTH, Defendant.	**CRIMINAL COMPLAINT** CASE NO. 20CR007866 (PCN 1) Nicholas G. Vaskov, Esq., City Attorney

The defendant has committed the crime of:
RESISTING A PUBLIC OFFICER (Misdemeanor - NRS 199.280, Henderson City Charter, Section 2.140) within the City of Henderson, in the County of Clark, State of Nevada, in the manner following, that the said defendant, on or about October 28, 2020:

did willfully and unlawfully resist, delay, or obstruct, Officer A. Mangan and/or Officer K. Lippisch, a public officer, in discharging or attempting to discharge any legal duty of his or her office, to-wit: did disobey commands to stop and/or did flee the scene, all of which occurred in the area of 981 Whitney Ranch Drive.

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 City of Henderson, State of Nevada. Said Complainant makes this declaration on information and belief subject to the penalty of perjury.

Marc M. Schifalacqua, Esq.
Sr. Assistant City Attorney

Dated: October 29, 2020
CAO File #: 033078
PCN#: NVHP5147578C

Electronically Filed
04/22/2021 1:57 PM
CLERK OF THE COURT

ORDR
DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR NO. 5674
KARA M. SIMMONS, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 14621
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. SEAN RODNEY ORTH, Defendant,	CASE NO. C-20-352701-1 DEPT. NO. XVIII

ORDER FOR WRIT OF HABEAS CORPUS

The Petition of SEAN RODNEY ORTH submitted by KARA M. SIMMONS, Deputy Public Defender, as attorney for the above-captioned individual, having been filed in the above-entitled matter,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that you, STEVEN GRIERSON, Clerk of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, issue a Writ of Habeas Corpus.

DATED AND DONE at Las Vegas, Nevada, this _____ of April, 2021.

Dated this 22nd day of April, 2021

DISTRICT COURT JUDGE

35A 3C6 E642 AF27
Mary Kay Holthus
District Court Judge

Submitted By:
DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/*Kara M. Simmons*
KARA M. SIMMONS, #14621
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and forgoing ORDER FOR WRIT OF HABEAS CORPUS was served via electronic e-filing to the Clark County District Attorney's Office at Motions@ClarkCountyDA.com on this _____ day of April, 2021

By: /s/*Melissa Boudreault*
An employee of the
Clark County Public Defender's Office

Case Name: SEAN RODNEY ORTH

Case No.: C-20-352701-1

Dept. No.: XVIII

WRIT

Runner Instructions

Date: April 21, 2021
PD #: CRH-2020-00387
Case #: C-20-352701-1

Court: District Court
Dept.: XVIII
Defendant: Sean Rodney Orth

****

A. Petition

1. Serve Petition on DA's office.

2. File with Clerk's office.

- - - -

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada vs Sean Orth	CASE NO: C-20-352701-1 DEPT. NO. Department 18

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 4/22/2021

Dept 18 Law Clerk	Dept18LC@clarkcountycourts.us
Melissa Boudreault	mezama@clarkcountynv.gov
Kara Simmons	Kara.Simmons@ClarkCountyNV.gov
D A	motions@clarkcountyda.com
Public Defender	pdclerk@clarkcountynv.gov
Jane Palmer	palmerje@ClarkCountyNV.gov

Electronically Issued
4/26/2021 8:50 AM

Electronically Filed
4/29/2021 10:08 AM
Steven D. Grierson
CLERK OF THE COURT

WRTH
DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR NO. 5674
KARA M. SIMMONS, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 14621
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. SEAN RODNEY ORTH, ID #6111549 Defendant,	CASE NO. C-20-352701-1 DEPT. NO. XVIII DATE: June 1, 2021 TIME: 11:00 a.m.

WRIT OF HABEAS CORPUS

To: Clark County Sheriff
Clark County, Nevada

GREETINGS:

We command that you have the body of the above-captioned person, by you imprisoned and detained, as it is alleged, together with the time and cause of such imprisonment and detention, by whatever name said above-captioned person shall be called or charged, before the Honorable Mary Kay Holthus, District Court Judge, at his/her chambers or his/her courtroom in the County Courthouse Building in the City of Las Vegas, County of Clark, State of Nevada, on June 1, 2021 at the hour of 11:00 am, to do and receive that which shall then and there be considered concerning the said above-captioned person; and have you then and there this Writ.

DATED AND DONE this 29th day of April, 2021.

STEVEN GRIERSON, CLERK OF THE COURT

By: Michelle McCarthy 4/29/2021
DEPUTY
Michelle McCarthy

Case Number: C-20-352701-1

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the foregoing WRIT OF HABEAS CORPUS was made this 29th day of April, 2021 by electronic service to the District Attorney's Office at motions@clarkcountyda.com and District Court Department XVIII.

By: /s/*Melissa Boudreault*
An employee of the
Clark County Public Defender's Office

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the foregoing WRIT OF HABEAS CORPUS was made this 29th day of April, 2021, by facsimile transmission to:

CLARK COUNTY DETENTION CENTER
FAX #702-671-3763

By: /s/*Melissa Boudreault*
An employee of the
Clark County Public Defender's Office

Case Name: SEAN RODNEY ORTH
Case No.: C-20-352701-1
Dept. No. XVIII

Electronically Filed
5/10/2021 8:59 AM
Steven D. Grierson
CLERK OF THE COURT

RET
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
EKATERINA DERJAVINA
Deputy District Attorney
Nevada Bar #14047
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of Application, of SEAN RODNEY ORTH, #6111549 for a Writ of Habeas Corpus.	CASE NO: C-20-352701-1 DEPT NO: XVIII

STATE'S RETURN TO WRIT OF HABEAS CORPUS

DATE OF HEARING: June 1, 2021
TIME OF HEARING: 11:00 A.M.

COMES NOW, JOE LOMBARDO, Sheriff of Clark County, Nevada, Respondent, through his counsel, STEVEN B. WOLFSON, Clark County District Attorney, through EKATERINA DERJAVINA, Deputy District Attorney, in obedience to a writ of habeas corpus issued out of and under the seal of the above-entitled Court on the 26th day of April, 2021, and made returnable on the 1st day of June, 2021, at the hour of 11 o'clock A.M., before the above-entitled Court, and states as follows:

1. Respondent admits the allegations of Paragraph 2 of the Petitioner's Petition for Writ of Habeas Corpus.

2. Respondent denies the allegations of Paragraph 3 of the Petitioner's Petition for Writ of Habeas Corpus.

3. Paragraphs 1, 4, and 5 do not require admission or denial.

///

4. The Petitioner is in the actual or constructive custody of JOE LOMBARDO, Clark County Sheriff, Respondent herein, pursuant to a Criminal Information, a copy of which is attached hereto as Exhibit 1 and incorporated by reference herein.

Wherefore, Respondent prays that the Writ of Habeas Corpus be discharged and the Petition be dismissed.

DATED this 10th day of May, 2021.

Respectfully submitted,

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

BY /s/ EKATERINA DERJAVINA
EKATERINA DERJAVINA
Deputy District Attorney
Nevada Bar #14047

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On November 5, 2020, Sean Rodney Orth ("Defendant") was arraigned on one count of Possession of a Firearm by Prohibited Person (Category B Felony). Defendant invoked his 6th amendment right and requested to represent himself with the public defender appointed as stand by counsel. A Faretta canvas was conducted and Defendant's request was granted. A preliminary hearing was scheduled for November 17, 2020. Id. On November 17, 2020, the State filed a Motion to Continue because both Detectives D. Ozawa and K. Lapeer were unavailable. See, Defense Exhibit A p. 34-36. The Court granted the continuance and rescheduled the hearing for December 3, 2020. The State also filed an Amended Criminal Complaint adding Count 2: Stop Required on Signal of Police Officer (Category B Felony).

On December 1, 2020, Defendant filed several motions, including two (2) Motions to Dismiss Charges. While the titles of the Motions are the same, the substance differed. One Motion to Dismiss focused mainly on alleged problems with the State's Motion to Continue. See, Defense Exhibit A p. 17-37.

Prior to the December 3, 2020, preliminary hearing Defendant was transported to Nevada Department of Corrections ("NDOC"). Due to Covid-19 quarantine issues, Defendant was not transported to Court for the December 3, 2020, hearing. As such, the Court rescheduled the hearing for December 9, 2020.

On December 9, 2020, the Court heard and denied Defendant's Motions to Dismiss. At that time, the preliminary hearing was held. After the preliminary hearing, Defendant claimed that the State could not proceed on Count 2 as Defendant was charged with and had already pled guilty to Resisting a Public Officer. The Court denied Defendant's motion to dismiss Count 2 and Defendant was bound over on all charges.

On December 18, 2020, Defendant was arraigned in District Court and pled not guilty. On February 3, 2021, Defendant filed a Petition for Writ of Habeas Corpus. On February 19, 2020, the State filed the State's Return to Writ of Habeas Corpus.

On March 16, 2020, Defendant requested the Public Defender be appointed as counsel as he no longer wished to represent himself. On March 30, 2020, Defendant waived his right to a speedy trial. Additionally, at that time the Court denied Defendant's pro per Writ and defense counsel was given time to file a supplemental Petition for Writ of Habeas Corpus ("Petition"). On April 20, 2020, Defendant filed the instant Petition. The State responds as follows.

STATEMENT OF THE FACTS

On October 28, 2020, Henderson Police Officer Alex Nelson ("Officer Nelson") responded to 981 Whitney Ranch Drive, in reference to a call about a subject in possession of a firearm and a potential robbery that had occurred the night before. Preliminary Hearing Transcript ("PHT") p. 39-40. When Officer Nelson arrived other officers inside the complex advised that they had eyes on a vehicle which was failing to yield to them. PHT p. 42. Officer Nelson could hear sirens activated in the background. Id. At that time, Officer Nelson positioned his patrol vehicle in front of the exit and entrance gate of the complex, to block the path of the vehicle. PHT p. 43. Eventually Officer Nelson saw a Chevy Malibu ("the car") heading in his direction. Id. He observed the car make a left turn and accelerate at a high rate

towards his location. PHT p. 43. Following directly behind the car were two clearly identifiable police vehicles with their red and blue light and sirens activated. PHT p. 43-44. Officer Nelson had to move away from his patrol vehicle, to the side of the gate so he would not be injured. PHT p. 44. Defendant had accelerated after the turn and was picking up speed, in such a way that made Officer Nelson concerned enough to get out of the way. PHT p. 60. Defendant was driving in such a way that Officer Nelson had concerns that Defendant might cause injury to property or someone in the area. Id. Eventually the car stopped, and Defendant exited from the driver's door. PHT p. 45. The car continued to move forward until it hit the gate, it appeared as it had not been placed in park. Id. The officers that were pursuing Defendant exited their vehicles and issued commands for Defendant to stop. PHT p. 46. Officer Nelson recognized the officers as Officer Hehn, Officer Brink, and Officer Duffy. PHT p. 47. Officer Nelson saw Defendant place a brown duffle bag ("the bag") on top of a wall that separated the apartment complex and the street and saw Defendant jump over that wall with the bag. PHT p. 48. A foot pursuit was initiated, and Officer Nelson ran towards Defendant. Id. Defendant continued to run as officers were issuing him commands to stop. Id. Once Officer Nelson got close enough, he attempted to deploy his taser, which was ineffective. Id. Officer Nelson lost footing and fell, as he got up saw that another officer had Defendant on the ground. PHT 49.

Henderson Police Department Detective Karl Lippisch ("Detective Lippisch") arrived on scene and contacted Defendant, who was sitting in the back of a patrol car. PHT p. 84-85. Initially Defendant did not want his Miranda rights to be read to him, that way any statements made by him would be inadmissible. PHT p. 85. After being told by Detective Lippisch that he would not speak to Defendant without reading him his Miranda rights, Defendant agreed to have his Miranda rights read to him. Id. However, Defendant did not want the interview to be recorded. PHT p. 86. Defendant stated that initially he thought the patrol cars were in the apartment complex for a different purpose. PHT p. 86-87. However, Defendant realized they were attempting to stop him, but he refused to stop. PHT p. 87. Defendant admitted that he attempted to evade and flee to try to get away. Id. Defendant stated that he believed he was being set up for something in the bag. Id. Defendant claimed he did not know the contents of

the bag. PHT p. 87-88. Ultimately Detective Lippisch obtained a search warrant for the bag. PHT p. 90. He took the bag from the scene to the police station and secured it. PHT p. 91. Henderson Police Department Detective Kevin Lapper ("Detective Lapeer") executed the search warrant on the bag. PHT p. 64. Inside the bag he located a .20 gauge Winchester shotgun. PHT p. 66.

ARGUMENT

It is well settled that a district court's function in reviewing a pretrial writ of habeas corpus challenging the sufficiency of probable cause is to determine whether enough competent evidence was presented to establish a reasonable inference that the accused committed the offenses. State v. Fuchs, 78 Nev. 63, 386 P.2d 869 (1962). The finding of probable cause to support a criminal charge may be based on "slight, even 'marginal' evidence . . . because it does not involve a determination of the guilt or innocence of the accused." Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). "To commit an accused for trial, the State is not required to negate all inferences which might explain his conduct, but only to present enough evidence to support a reasonable inference that the accused committed the offense." Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971). Sheriff v. Miley, 99 Nev. 377 (1983). Thus, the court need not consider whether the evidence presented to a Grand Jury, or presented at a preliminary hearing, may, by itself, sustain a conviction, because the State need not produce the quantum of proof required to establish the guilt of the accused beyond a reasonable doubt. See Hodes, 96 Nev. at 186, 606 P.2d at 180; Miller v. Sheriff, 95 Nev. 255, 592 P.2d 952 (1979); McDonald v. Sheriff, 87 Nev. 361, 487 P.2d 340, (1971).

The Nevada Supreme Court has explicitly held that a probable cause determination is "not a substitute for trial," and that the "full and complete exploration of all facets of the case" should be reserved for trial. Marcum v. Sheriff, 85 Nev. 175, 178, 451 P.2d 845, 847 (1969); Robertson v. Sheriff, 85 Nev. 681, 683, 462 P.2d 528, 529 (1969). If the evidence produced establishes reasonable inference that the defendant committed the crime, the probable cause to order the defendant to answer in the district court has been established. Morgan v. Sheriff, 86

Nev. 23, 467 P.2d 600 (1970). Accordingly, the issue of guilt or innocence is not involved and "the evidence need not be sufficient to support a conviction." Kinsey, 87 Nev. at 363 (citing Masklay v. State, 85 Nev. 111, 450 P.2d 790 (1969)); Hodes, 96 Nev. at 184, 606 P.2d at 180.

I. THE STATE PRESENTED SLIGHT OR MARGINAL EVIDENCE THAT DEFENDANT COMMITTED COUNT 2: STOP REQUIRED ON SIGNAL OF POLICE OFFICER

In this case Defendant is charged with feeling from police in a manner which endangered or was likely to endanger a person or property of another person. NRS 484B.550(3)(b). Defendant claim that the Court should dismiss Count 2 because the State failed to show that Defendant endangered or was likely to endanger any other person or property at the time of the event. Petition p. 10-11. Specifically, Defendant's argument is that because he stopped and jumped out of the car ten yards from Officer Nelson, he was not close enough to endanger anyone. Id. However, such a claim is meritless.

In State v. Nelson, citing to Commonwealth v. Pentz, the Nevada Supreme Court held ""[t]o endanger the lives and safety of the public by the operation of an automobile on a public way is not an intangible and shadowy act. It has specific relation to possible contact with human beings." 123 Nev. at 542, 170 P.3d at 523. In this case, Officer Nelson testified that Defendant was driving in an apartment complex and that he observed Defendant make a left turn and accelerate at a high rate towards his location. PHT p. 43. Officer Nelson testified that Defendant had accelerated after then turn and picked up speed in such a way that it made him concerned enough to get out of the way. PHT p. 60. Officer Nelson was concerned that the way the Defendant was driving, he might cause injury to property or someone in the area. Id. Accordingly, the State presented sufficient evidence to sustain Count 2 and Defendant's Petition should be denied.

///

///

///

II. THE COURT PROPERLY ALLOWED THE STATE TO AMEND THE CRIMINAL COMPLAINT TO ADD COUNT 2: STOP REQUIRED UPON A SIGNAL OF A POLICE OFFICER

Defendant claims that the State was precluded from adding Count 2 because he was charged and pled to Resisting a Public Officer in Henderson municipal court. Petition p. 11-12. Specifically, Defendant claims the Court underwent the wrong analysis by looking at the specific factual allegations in each of the complaints and finding that Defendant was charged with two separate acts in each one. Id. p. 12. However, Defendant's claim is meritless.

First, the Court properly found that Count 2 and Defendant's charge in Henderson Municipal Court have different factual allegations to sustain the charges. PHT p. 134-137. In Henderson, Defendant was charged with willfully and unlawfully resisting, delaying, or obstructing Officer A. Mangan and/or Officer K. Lippisch by disobeying commands to stop and/or did flee the scene, all of which occurred in the area of 981 Whitney Ranch Drive. *See*, Exhibit C.

In Count 2, Defendant is charged with willfully and unlawfully failing or refusing to bring his vehicle to a stop or otherwise flee to attempt to elude a peace officer in a readily identifiable vehicle, specifically HPD Officer P. Duffy, and/or B. Brink, and/or J. Hehn, after being given a sign to bring the vehicle to a stop, and he did operate the vehicle in such manner which endangered or was likely to endanger an person other than himself or property of another.

At the preliminary hearing Officer Nelson testified that Officer Mangan did not arrive at the scene until after Defendant was out of his vehicle. PHT p. 48-50. Detective Lippisch testified when he arrived Defendant was already in the back of the patrol car. PHT p. 85. Accordingly, Defendant's charge of attempting to flee from police in his car is separate and distinct from disobeying commands to stop by Officer Mangan and fleeing from Officer Mangan. Therefore, Defendant's Petition should be denied.

Second, Defendant erroneously claims that the State was precluded from charging Count 2 because Resisting a Public Officer is a lesser included offense of felony Stop

Required. Petition p. 12. Nevada has adopted the double jeopardy test set forth in Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932), where the U.S. Supreme Court held that if "the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." Owens, 100 Nev. at 288, 680 P.2d at 594 (quoting Blockburger, 284 U.S. at 304, 52 S.Ct. at 182). Moreover, as the Blockburger court went on to hold, if the individual acts are the target of the law, then separate indictments and prosecutions are permissible, even if the acts together constitute a common course of action. 284 U.S. at 304, 52 S. Ct. at 182.

Pursuant to NRS 199.280, "a person who, in any case or under any circumstances not otherwise specially provided for, willfully resists, delays or obstructs a public officer in discharging or attempting to discharge any legal duty of his or her office" is guilty of resisting a public officer.

Pursuant to NRS 484B.550, "the driver of a motor vehicle on a highway or premises to which the public has access who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude a peace officer in a readily identifiable vehicle of any police department or regulatory agency, when given a signal to bring the vehicle to a stop is guilty of a misdemeanor and operates the motor vehicle in a manner which endangers or is likely to endanger any other person or the property of any other person" is guilty of felony Stop Required Upon Signal of a Police Officer.

Accordingly, resisting a public officer is not a lesser included charge of felony Stop Required Upon Signal of a Police Officer. Therefore, Defendant claim is meritless, and Defendant's Petition should be denied.

III. THE COURT PROPERLY GRANTED THE STATE'S REQUEST FOR A CONTINUANCE

Defendant's claim that the Court improperly granted the State's request to continue the preliminary hearing on November 17, 2020 is meritless. Petition p. 13. On November 17, 2020, the State filed a Motion pursuant to Hill v. Sheriff of Clark County, 85 Nev. 234, 452

P.2d 918 (1969). Pursuant to Hill, the State is entitled to move for a continuance when the State has exercised due diligence in securing the presence of a necessary witness and the witness is unavailable. Id. Furthermore, the Nevada Supreme Court has held that '[G]ood cause' is not amenable to a bright-line rule. The justices' court must review the totality of the circumstances to determine whether 'good cause' has been shown." State v. Nelson, 118 Nev. 399, 404, 46 P.3d 1232, 1235 (2002).

Defendant claims the State's Motion to Continue should have been denied as Detective Ozawa's vacation did not begin until November 17, 2020, the same day as the preliminary hearing, thus he should have been required to attend Court prior to leaving on his trip or been required to testify via audiovisual testimony. Petition p. 13. On November 16, 2020, when the State spoke to Detective Ozawa about the preliminary hearing, he was in receipt of a subpoena issued for 9:15am on November 17, 2020. Detective Ozawa informed the State he was unavailable as he was on vacation and leaving in the morning. The State did not inquire as to his specific time of departure nor did the State ask for a copy of his itinerary to corroborate his claim. Detective Ozawa is an experienced detective well versed in the responsibilities of subpoenas and court testimony. The State trusts that when Detective Ozawa said he will be unavailable at the time of the subpoena due to vacation plans he was in fact unavailable. Accordingly, the State had good cause to request a continuance and the Court properly granted that request. Therefore, Defendant's Petition should be denied.

CONCLUSION

For the foregoing reasons, the State respectfully requests that Defendant's Petition for Writ of Habeas Corpus be DENIED.

DATED this 10th day of May, 2021.

Respectfully submitted,

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

BY /s/ EKATERINA DERJAVINA
EKATERINA DERJAVINA
Deputy District Attorney
Nevada Bar #14047

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of State's Return to Writ Of Habeas Corpus, was made this 10th day of May, 2021, by Electronic Filing to:

DEPUTY PUBLIC DEFENDER
pdclerk@clarkcountynv.gov

/s/ J. MOSLEY
Secretary for the District Attorney's Office

Electronically Filed
12/16/2020 6:48 AM
Steven D. Grierson
CLERK OF THE COURT

INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ERIKA MENDOZA
Chief Deputy District Attorney
Nevada Bar #012520
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

I.A. 12/18/2020
8:00 AM
PD

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- SEAN RODNEY ORTH, #6111549 Defendant.	CASE NO: C-20-352701-1 DEPT NO: XV INFORMATION

STATE OF NEVADA)
COUNTY OF CLARK) ss.

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

That SEAN RODNEY ORTH, the Defendant(s) 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)**, on or about the 3rd day of November, 2020, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

//

//

//

V:\2020\477\06\202047706C-INFM-(SEAN RODNEY ORTH)-001.DOCX

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

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

BY ***/s// ERIKA MENDOZA***
ERIKA MENDOZA
Chief Deputy District Attorney
Nevada Bar #012520

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

LAPEER, KEVIN – HPD #1446

LIPPISCH, KARL – HPD #1710

NELSON, ALEX – HPD # 2195

20CRH001571/ed - GCU
HPD EV#2018994; 2018989
(TK)

Electronically Filed
5/11/2021 11:11 AM
Steven D. Grierson
CLERK OF THE COURT

RET
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
EKATERINA DERJAVINA
Deputy District Attorney
Nevada Bar #14047
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of Application, of SEAN RODNEY ORTH, #6111549 for a Writ of Habeas Corpus.	CASE NO: C-20-352701-1 DEPT NO: XCIII

STATE'S RETURN TO WRIT OF HABEAS CORPUS

DATE OF HEARING: June 1, 2021
TIME OF HEARING: 11:00 A.M.

COMES NOW, JOE LOMBARDO, Sheriff of Clark County, Nevada, Respondent, through his counsel, STEVEN B. WOLFSON, Clark County District Attorney, through EKATERINA DERJAVINA , Deputy District Attorney, in obedience to a writ of habeas corpus issued out of and under the seal of the above-entitled Court on the 26th day of April, 2021, and made returnable on the 1st day of June, 2021, at the hour of 11 o'clock A.M., before the above-entitled Court, and states as follows:

1. Respondent admits the allegations of Paragraph 2 of the Petitioner's Petition for Writ of Habeas Corpus.

2. Respondent denies the allegations of Paragraph 3 of the Petitioner's Petition for Writ of Habeas Corpus.

3. Paragraphs 1, 4, and 5 do not require admission or denial.

//

4. The Petitioner is in the actual or constructive custody of JOE LOMBARDO, Clark County Sheriff, Respondent herein, pursuant to a Criminal Information, a copy of which is attached hereto as Exhibit 1 and incorporated by reference herein.

Wherefore, Respondent prays that the Writ of Habeas Corpus be discharged and the Petition be dismissed.

DATED this 11th day of May, 2021.

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

BY /s/ *Ekaterina Derjavina*
EKATERINA DERJAVINA
Deputy District Attorney
Nevada Bar #14047

POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On November 5, 2020, Sean Rodney Orth ("Defendant") was arraigned on one count of Possession of a Firearm by Prohibited Person (Category B Felony). Defendant invoked his 6th amendment right and requested to represent himself with the public defender appointed as stand by counsel. A Faretta canvas was conducted and Defendant's request was granted. A preliminary hearing was scheduled for November 17, 2020. Id. On November 17, 2020, the State filed a Motion to Continue because both Detectives D. Ozawa and K. Lapeer were unavailable. See, Defense Exhibit A p. 34-36. The Court granted the continuance and rescheduled the hearing for December 3, 2020. The State also filed an Amended Criminal Complaint adding Count 2: Stop Required on Signal of Police Officer (Category B Felony).

On December 1, 2020, Defendant filed several motions, including two (2) Motions to Dismiss Charges. While the titles of the Motions are the same, the substance differed. One Motion to Dismiss focused mainly on alleged problems with the State's Motion to Continue. See, Defense Exhibit A p. 17-37.

//

Prior to the December 3, 2020, preliminary hearing Defendant was transported to Nevada Department of Corrections ("NDOC"). Due to Covid-19 quarantine issues, Defendant was not transported to Court for the December 3, 2020, hearing. As such, the Court rescheduled the hearing for December 9, 2020.

On December 9, 2020, the Court heard and denied Defendant's Motions to Dismiss. At that time, the preliminary hearing was held. After the preliminary hearing, Defendant claimed that the State could not proceed on Count 2 as Defendant was charged with and had already pled guilty to Resisting a Public Officer. The Court denied Defendant's motion to dismiss Count 2 and Defendant was bound over on all charges.

On December 18, 2020, Defendant was arraigned in District Court and pled not guilty. On February 3, 2021, Defendant filed a Petition for Writ of Habeas Corpus. On February 19, 2020, the State filed the State's Return to Writ of Habeas Corpus.

On March 16, 2020, Defendant requested the Public Defender be appointed as counsel as he no longer wished to represent himself. On March 30, 2020, Defendant waived his right to a speedy trial. Additionally, at that time the Court denied Defendant's pro per Writ and defense counsel was given time to file a supplemental Petition for Writ of Habeas Corpus ("Petition"). On April 20, 2020, Defendant filed the instant Petition. The State responds as follows.

STATEMENT OF THE FACTS

On October 28, 2020, Henderson Police Officer Alex Nelson ("Officer Nelson") responded to 981 Whitney Ranch Drive, in reference to a call about a subject in possession of a firearm and a potential robbery that had occurred the night before. Preliminary Hearing Transcript ("PHT") p. 39-40. When Officer Nelson arrived other officers inside the complex advised that they had eyes on a vehicle which was failing to yield to them. PHT p. 42. Officer Nelson could hear sirens activated in the background. Id. At that time, Officer Nelson positioned his patrol vehicle in front of the exit and entrance gate of the complex, to block the path of the vehicle. PHT p. 43. Eventually Officer Nelson saw a Chevy Malibu ("the car") heading in his

direction. Id. He observed the car make a left turn and accelerate at a high rate towards his location. PHT p. 43. Following directly behind the car were two clearly identifiable police vehicles with their red and blue light and sirens activated. PHT p. 43-44. Officer Nelson had to move away from his patrol vehicle, to the side of the gate so he would not be injured. PHT p. 44. Defendant had accelerated after the turn and was picking up speed, in such a way that made Officer Nelson concerned enough to get out of the way. PHT p. 60. Defendant was driving in such a way that Officer Nelson had concerns that Defendant might cause injury to property or someone in the area. Id. Eventually the car stopped, and Defendant exited from the driver's door. PHT p. 45. The car continued to move forward until it hit the gate, it appeared as it had not been placed in park. Id. The officers that were pursuing Defendant exited their vehicles and issued commands for Defendant to stop. PHT p. 46. Officer Nelson recognized the officers as Officer Hehn, Officer Brink, and Officer Duffy. PHT p. 47. Officer Nelson saw Defendant place a brown duffle bag ("the bag") on top of a wall that separated the apartment complex and the street and saw Defendant jump over that wall with the bag. PHT p. 48. A foot pursuit was initiated, and Officer Nelson ran towards Defendant. Id. Defendant continued to run as officers were issuing him commands to stop. Id. Once Officer Nelson got close enough, he attempted to deploy his taser, which was ineffective. Id. Officer Nelson lost footing and fell, as he got up saw that another officer had Defendant on the ground. PHT 49.

Henderson Police Department Detective Karl Lippisch ("Detective Lippisch") arrived on scene and contacted Defendant, who was sitting in the back of a patrol car. PHT p. 84-85. Initially Defendant did not want his Miranda rights to be read to him, that way any statements made by him would be inadmissible. PHT p. 85. After being told by Detective Lippisch that he would not speak to Defendant without reading him his Miranda rights, Defendant agreed to have his Miranda rights read to him. Id. However, Defendant did not want the interview to be recorded. PHT p. 86. Defendant stated that initially he thought the patrol cars were in the apartment complex for a different purpose. PHT p. 86-87. However, Defendant realized they were attempting to stop him, but he refused to stop. PHT p. 87. Defendant admitted that he

attempted to evade and flee to try to get away. Id. Defendant stated that he believed he was being set up for something in the bag. Id. Defendant claimed he did not know the contents of the bag. PHT p. 87-88. Ultimately Detective Lippisch obtained a search warrant for the bag. PHT p. 90. He took the bag from the scene to the police station and secured it. PHT p. 91. Henderson Police Department Detective Kevin Lapper ("Detective Lapeer") executed the search warrant on the bag. PHT p. 64. Inside the bag he located a .20 gauge Winchester shotgun. PHT p. 66.

ARGUMENT

It is well settled that a district court's function in reviewing a pretrial writ of habeas corpus challenging the sufficiency of probable cause is to determine whether enough competent evidence was presented to establish a reasonable inference that the accused committed the offenses. State v. Fuchs, 78 Nev. 63, 386 P.2d 869 (1962). The finding of probable cause to support a criminal charge may be based on "slight, even 'marginal' evidence . . . because it does not involve a determination of the guilt or innocence of the accused." Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). "To commit an accused for trial, the State is not required to negate all inferences which might explain his conduct, but only to present enough evidence to support a reasonable inference that the accused committed the offense." Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971). Sheriff v. Miley, 99 Nev. 377 (1983). Thus, the court need not consider whether the evidence presented to a Grand Jury, or presented at a preliminary hearing, may, by itself, sustain a conviction, because the State need not produce the quantum of proof required to establish the guilt of the accused beyond a reasonable doubt. See Hodes, 96 Nev. at 186, 606 P.2d at 180; Miller v. Sheriff, 95 Nev. 255, 592 P.2d 952 (1979); McDonald v. Sheriff, 87 Nev. 361, 487 P.2d 340, (1971).

The Nevada Supreme Court has explicitly held that a probable cause determination is "not a substitute for trial," and that the "full and complete exploration of all facets of the case" should be reserved for trial. Marcum v. Sheriff, 85 Nev. 175, 178, 451 P.2d 845, 847 (1969);

Robertson v. Sheriff, 85 Nev. 681, 683, 462 P.2d 528, 529 (1969). If the evidence produced establishes reasonable inference that the defendant committed the crime, the probable cause to order the defendant to answer in the district court has been established. Morgan v. Sheriff, 86 Nev. 23, 467 P.2d 600 (1970). Accordingly, the issue of guilt or innocence is not involved and "the evidence need not be sufficient to support a conviction." Kinsey, 87 Nev. at 363 (citing Masklay v. State, 85 Nev. 111, 450 P.2d 790 (1969)); Hodes, 96 Nev. at 184, 606 P.2d at 180.

I. THE STATE PRESENTED SLIGHT OR MARGINAL EVIDENCE THAT DEFENDANT COMMITTED COUNT 2: STOP REQUIRED ON SIGNAL OF POLICE OFFICER

In this case Defendant is charged with feeling from police in a manner which endangered or was likely to endanger a person or property of another person. NRS 484B.550(3)(b). Defendant claim that the Court should dismiss Count 2 because the State failed to show that Defendant endangered or was likely to endanger any other person or property at the time of the event. Petition p. 10-11. Specifically, Defendant's argument is that because he stopped and jumped out of the car ten yards from Officer Nelson, he was not close enough to endanger anyone. Id. However, such a claim is meritless.

In State v. Nelson, citing to Commonwealth v. Pentz, the Nevada Supreme Court held ""[t]o endanger the lives and safety of the public by the operation of an automobile on a public way is not an intangible and shadowy act. It has specific relation to possible contact with human beings." 123 Nev. at 542, 170 P.3d at 523. In this case, Officer Nelson testified that Defendant was driving in an apartment complex and that he observed Defendant make a left turn and accelerate at a high rate towards his location. PHT p. 43. Officer Nelson testified that Defendant had accelerated after then turn and picked up speed in such a way that it made him concerned enough to get out of the way. PHT p. 60. Officer Nelson was concerned that the way the Defendant was driving, he might cause injury to property or someone in the area. Id. Accordingly, the State presented sufficient evidence to sustain Count 2 and Defendant's Petition should be denied.

//

//

//

II. THE COURT PROPERLY ALLOWED THE STATE TO AMEND THE CRIMINAL COMPLAINT TO ADD COUNT 2: STOP REQUIRED UPON A SIGNAL OF A POLICE OFFICER

Defendant claims that the State was precluded from adding Count 2 because he was charged and pled to Resisting a Public Officer in Henderson municipal court. Petition p. 11-12. Specifically, Defendant claims the Court underwent the wrong analysis by looking at the specific factual allegations in each of the complaints and finding that Defendant was charged with two separate acts in each one. Id. p. 12. However, Defendant's claim is meritless.

First, the Court properly found that Count 2 and Defendant's charge in Henderson Municipal Court have different factual allegations to sustain the charges. PHT p. 134-137. In Henderson, Defendant was charged with willfully and unlawfully resisting, delaying, or obstructing Officer A. Mangan and/or Officer K. Lippisch by disobeying commands to stop and/or did flee the scene, all of which occurred in the area of 981 Whitney Ranch Drive. *See*, Exhibit C.

In Count 2, Defendant is charged with willfully and unlawfully failing or refusing to bring his vehicle to a stop or otherwise flee to attempt to elude a peace officer in a readily identifiable vehicle, specifically HPD Officer P. Duffy, and/or B. Brink, and/or J. Hehn, after being given a sign to bring the vehicle to a stop, and he did operate the vehicle in such manner which endangered or was likely to endanger an person other than himself or property of another.

At the preliminary hearing Officer Nelson testified that Officer Mangan did not arrive at the scene until after Defendant was out of his vehicle. PHT p. 48-50. Detective Lippisch testified when he arrived Defendant was already in the back of the patrol car. PHT p. 85. Accordingly, Defendant's charge of attempting to flee from police in his car is separate and

//

//

//

//

distinct from disobeying commands to stop by Officer Mangan and fleeing from Officer Mangan. Therefore, Defendant's Petition should be denied.

Second, Defendant erroneously claims that the State was precluded from charging Count 2 because Resisting a Public Officer is a lesser included offense of felony Stop Required. Petition p. 12. Nevada has adopted the double jeopardy test set forth in Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932), where the U.S. Supreme Court held that if "the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." Owens, 100 Nev. at 288, 680 P.2d at 594 (quoting Blockburger, 284 U.S. at 304, 52 S.Ct. at 182). Moreover, as the Blockburger court went on to hold, if the individual acts are the target of the law, then separate indictments and prosecutions are permissible, even if the acts together constitute a common course of action. 284 U.S. at 304, 52 S. Ct. at 182.

Pursuant to NRS 199.280, "a person who, in any case or under any circumstances not otherwise specially provided for, willfully resists, delays or obstructs a public officer in discharging or attempting to discharge any legal duty of his or her office" is guilty of resisting a public officer.

Pursuant to NRS 484B.550, "the driver of a motor vehicle on a highway or premises to which the public has access who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude a peace officer in a readily identifiable vehicle of any police department or regulatory agency, when given a signal to bring the vehicle to a stop is guilty of a misdemeanor and operates the motor vehicle in a manner which endangers or is likely to endanger any other person or the property of any other person" is guilty of felony Stop Required Upon Signal of a Police Officer.

//

//

//

//

Accordingly, resisting a public officer is not a lesser included charge of felony Stop Required Upon Signal of a Police Officer. Therefore, Defendant claim is meritless, and Defendant's Petition should be denied.

III. THE COURT PROPERLY GRANTED THE STATE'S REQUEST FOR A CONTINUANCE

Defendant's claim that the Court improperly granted the State's request to continue the preliminary hearing on November 17, 2020 is meritless. Petition p. 13. On November 17, 2020, the State filed a Motion pursuant to Hill v. Sheriff of Clark County, 85 Nev. 234, 452 P.2d 918 (1969). Pursuant to Hill, the State is entitled to move for a continuance when the State has exercised due diligence in securing the presence of a necessary witness and the witness is unavailable. Id. Furthermore, the Nevada Supreme Court has held that '[G]ood cause' is not amenable to a bright-line rule. The justices' court must review the totality of the circumstances to determine whether 'good cause' has been shown." State v. Nelson, 118 Nev. 399, 404, 46 P.3d 1232, 1235 (2002).

Defendant claims the State's Motion to Continue should have been denied as Detective Ozawa's vacation did not begin until November 17, 2020, the same day as the preliminary hearing, thus he should have been required to attend Court prior to leaving on his trip or been required to testify via audiovisual testimony. Petition p. 13. On November 16, 2020, when the State spoke to Detective Ozawa about the preliminary hearing, he was in receipt of a subpoena issued for 9:15am on November 17, 2020. Detective Ozawa informed the State he was unavailable as he was on vacation and leaving in the morning. The State did not inquire as to his specific time of departure nor did the State ask for a copy of his itinerary to corroborate his claim. Detective Ozawa is an experienced detective well versed in the responsibilities of subpoenas and court testimony. The State trusts that when Detective Ozawa said he will be unavailable at the time of the subpoena due to vacation plans he was in fact unavailable.

Accordingly, the State had good cause to request a continuance and the Court properly granted that request. Therefore, Defendant's Petition should be denied.

//

CONCLUSION

For the foregoing reasons, the State respectfully requests that Defendant's Petition for Writ of Habeas Corpus be DENIED.

DATED this 11th day of May, 2021.

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

BY /s/ *Ekaterina Derjavina*
EKATERINA DERJAVINA
Deputy District Attorney
Nevada Bar #14047

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of Return to Writ of Habeas Corpus, was made this 11th day of May, 2021, by electronic transmission to: Kara Simmons, DPD
kara.simmons@clarkcountynv.gov

BY: /s/ *Zem Martinez*
Zem Martinez,
Employee of the District Attorney's Office

ED/zm/L5

Electronically Filed
12/28/2022 5:08 PM
Steven D. Grierson
CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. SEAN RODNEY ORTH Defendant.	)	CASE NO. C-20-352701-1 DEPT. XVIII **Transcript of Proceedings**

BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE

TUESDAY, JUNE 1, 2021

ARGUMENT: WRIT OF HABEAS CORPUS

[All PARTIES PRESENT VIA BLUEJEANS]

APPEARANCES:

FOR THE STATE: NOREEN DEMONTE, ESQ.
Deputy District Attorney

FOR THE DEFENDANT: KARA SIMMONS, ESQ.
Deputy Public Defender

RECORDED BY: YVETTE SISON, COURT RECORDER

LAS VEGAS, NEVADA, TUESDAY, JUNE 1, 2021 AT 11:19 A.M.

THE COURT CLERK: Case #C352701, State of Nevada versus Sean Rodney Orth, and case #C352701-1.

MS. SIMMONS: Kara Simmons on behalf of Mr. Orth, present in custody.

THE COURT: Anybody have anything to add? I've read everything.

MS. DEMONTE: None by the State.

MS. SIMMONS: Your Honor, I just have a brief response, if possible.

In reviewing the State's return, I think that -- unfortunately, the District Attorney, and obviously it wasn't Ms. Demonte; the District Attorney who filed the response, he didn't actually directly address the issue in a couple of places.

So, specifically as to how the State failed to prove slight or marginal evidence as far as Count 2 is concerned; one thing that the State [indiscernible due to audio/video difficulty] order I guess confuses is the actual thing that needed to be proven.

In order to prove the felony evading, the State has to prove that the actions by Mr. Orth were that would have placed somebody in possible danger.

In this case, the State's response, as well as the

officer told us that he felt that he could've been in danger and that’s why he moved.

That is isn’t an assault charge, so it doesn't necessarily matter how the officer felt. It matters if the facts indicated that the actions that Mr. Orth took on this date were such that someone could have been in danger and that’s not what happened.

The facts actually prove that Mr. Orth stopped the vehicle, got out of the vehicle, and then the vehicle rolled, that there was substantial distance between Mr. Orth and any near person, and so there was no evidence to show that Mr. Orth had placed anybody in any sort of danger. So, the State actually did fail to prove Count 2, even with the low standard of probable cause.

But, beyond that Your Honor, I think what the State neglects in its response in talking about the motion to continue is that for their motion to continue, they had to show that they had good cause for that motion to continue, and that the officer could not have been available. That’s not what was provided or proved based on the record that was given at the time.

What Ms. Mendoza testified to when sworn under oath -- or when she was questioned by Judge Bateman in Justice Court was that she had learned that the officer was going to be out of the jurisdiction.

Judge Bateman also acknowledged that he could have

enforced the officer to testify and be there for the preliminary hearing, because nowhere in those transcripts and nowhere on the record given by Ms. Mendoza, was it clear that the officer was completely unavailable versus simply not wanting to be there that morning.

So, for the motion to continue, it wasn't appropriate. The State did not prove the standards under *Hill* and under any of its progeny, that the officer could not have been there that morning and that they were surprised by his non-appearance; therefore, the case should've been dismissed.

But, specifically as to Count 2, as I mentioned previously, the State failed not only to prove that Mr. Orth put anybody in danger by probable cause, but also in doing the evaluation about the double jeopardy, the State does the process wrong.

The process is first to look at *Blockburger* and then if you have to, you look at the facts and the allegations in [indiscernible due to audio/video difficulty].

If you look at *Blockburger*, the misdemeanor resisting that Mr. Orth pled to was the same factual allegation, but beyond that, the resisting is a lesser included of the felony evasion. He can't be charged with both, so the State should never have been permitted to add that charge in the first place.

THE COURT: Okay. Anything else?

MS. SIMMONS: I'm sorry.

THE COURT: Anything else?

MS. DEMONTE: No, Your Honor, I think everything was addressed in the State's return specifically within the statement of facts that was used at preliminary hearing.

Also, Judge Bateman was completely within his rights to grant a continuance. So, we'll submit it.

THE COURT: All right. The writ will be denied based on -- as set forth in the State's opposition. I don't think there's -- there's two things going on here, there's the evading and the car and there's the resisting and evading running way, number one.

Number two, the fact that he doesn't stop and then even when he does stop, doesn't actually stop because he never apparently puts the car in park, to me, is potentially endangering property and/or life.

And the continuance, if someone died on vacation out of the jurisdiction, we don't generally make a habit of ordering them to come into court the morning of, because they simply can't. So, it's denied on all those bases. State, will you prepare the order please.

MS. DEMONTE: We will, Your Honor.

THE COURT: Thank you.

MS. SIMMONS: Thank you, Your Honor.

MS. DEMONTE: Thank you.

The Proceedings Concluded at 11:24 a.m.

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

Yvette G. Sison
Court Recorder/Transcriber

Electronically Filed
7/19/2021 9:09 AM
Steven D. Grierson
CLERK OF THE COURT

MOT
DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR NO. 5674
KARA M. SIMMONS, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 14621
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
Kara.Simmons@clarkcountynv.gov
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. SEAN RODNEY ORTH, Defendant.	CASE NO. C-20-352701-1 DEPT. NO. XVIII DATE: July 29, 2021 TIME: 11:00 a.m.

DEFENDANT'S REQUEST TO REMOVE THE OFFICE OF THE PUBLIC DEFENDER AND REPRESENT HIMSELF

COMES NOW, the Defendant, SEAN RODNEY ORTH, by and through KARA M. SIMMONS, Deputy Public Defender and hereby asks this Court to remove the Office of the Public Defender as his counsel and allow him to represent himself.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 16th day of July, 2021.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/ *Kara M. Simmons*
KARA M. SIMMONS, #14621
Deputy Public Defender

DECLARATION

KARA M. SIMMONS makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am a Deputy Public Defender for the Clark County Public Defender's Office appointed to represent Defendant Sean Rodney Orth in the present matter.
2. I am more than 18 years of age and am competent to testify as to the matters stated herein. I am familiar with the procedural history of the case and the substantive allegations made by The State of Nevada. I also have personal knowledge of the facts stated herein or I have been informed of these facts and believe them to be true.
3. On July 11, 2021, Mr. Orth mailed a letter to his current defense counsel requesting she file a motion that permitted him to represent himself. Upon receiving that letter, this motion was filed.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 16th day of July, 2021.

/s/ *Kara M. Simmons*
KARA M. SIMMONS

RELEVANT PROCEDURAL BACKGROUND

Mr. Orth was arraigned in this case in Henderson Justice Court Department 2 on November 5, 2020. Mr. Orth completed a Faretta hearing and was permitted to represent himself in this case. The Justice Court appointed the Office of the Public Defender as Mr. Orth's standby counsel. However, with the COVID restrictions at the prison and his inability to get access to resources to aid in his own defense, Mr. Orth asked this Court to appoint the Office of the Public Defender on March 30, 2021. At that time, the Court appointed the then-standby counsel to represent Mr. Orth. Mr. Orth now wishes to represent himself in this case.

LEGAL ARGUMENT

NRS Const. Art. 1, § 8 protects a defendant's right to represent himself at trial. "The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. It is the accused, not counsel, who must be 'informed of the nature and cause of the accusation,' who must be 'confronted with the witnesses against him,' and who must be accorded 'compulsory process for obtaining witnesses in his favor.' Although not stated in the Amendment in so many words, the right to self-representation—to make one's own defense personally—is thus necessarily implied by the structure of the Amendment. The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails." Faretta v. California, 422 U.S. 806, 819-20 (1975).

In this case, the Henderson Justice Court held a hearing to determine if Mr. Orth was competent enough to represent himself and that magistrate determined Mr. Orth was capable of representing himself. Therefore, Mr. Orth is asking this Court to allow him to represent himself again.

///

///

///

///

///

///

CONCLUSION

Mr. Orth asks this Court to remove the Office of the Public Defender as his counsel and allow him to represent himself as he was previously determined to be competent under the standards set forth in Faretta.

DATED this 16th day of July, 2021.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/ *Kara M. Simmons*
KARA M. SIMMONS, #14621
Deputy Public Defender

NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing MOTION on for hearing before the Court on the 29th day of July, 2021, at 11:00 a.m.

DATED this 16th day of July, 2021.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/ *Kara M. Simmons*
KARA M. SIMMONS, #14621
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and forgoing MOTION was served via electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountyda.com on this 19th day of July, 2021.

By: /s/ *Jennifer Georges*
An employee of the
Clark County Public Defender's Office

Electronically Filed
12/28/2022 5:08 PM
Steven D. Grierson
CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. SEAN RODNEY ORTH Defendant.	)	CASE NO. C-20-352701-1 DEPT. XVIII **Transcript of Proceedings**

BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE

THURSDAY, JULY 29, 2021

DEFENDANT'S REQUEST TO REMOVE THE OFFICE OF THE PUBLIC DEFENDER AND REPRESENT HIMSELF

APPEARANCES:

FOR THE STATE: MORGAN THOMAS, ESQ.
Deputy District Attorney

FOR THE DEFENDANT: KARA SIMMONS, ESQ.
Deputy Public Defender

RECORDED BY: YVETTE SISON, COURT RECORDER

LAS VEGAS, NEVADA, THURSDAY, JULY 29, 2021 AT 11:09 A.M.

THE COURT CLERK: Case #C352701, State of Nevada versus Sean Rodney Orth.

MS. SIMMONS: Good Morning, Your Honor, Kara Simmons bar #14621 on behalf of Mr. Orth. It appears he was not transported this morning.

MS. THOMAS: Morgan Thomas for the State.

THE COURT: All right, well.

MS. SIMMONS: Do we want to try setting it in three weeks. We can file a transport order. But, there's also a way we can try and get him to appear remotely, and I'll look into that as well.

THE COURT: We can do that, depending on trials and stuff, it may be a Senior Judge --

MS. SIMMONS: Okay.

THE COURT: -- that's the only thing. So, that being the case, just let him know. So what's a Tuesday in three weeks?

THE COURT CLERK: August 17th at 11 a.m.

MS. SIMMONS: Thank you, Your Honor.

THE COURT: And it takes a week or two to get that set up, so get ahold of Kelly and she'll let you know.

MS. SIMMONS: I can do that. Thank you.

The Proceedings Concluded at 11:10 a.m.

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

Yvette G. Sison
Court Recorder/Transcriber