IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN RODNEY ORTH,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No.: 85229

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(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 VII
Bates Nos.:
AA001136 – AA001244

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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.

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION FOR ORDER OF THE COURT

DATE OF HEARING: 10/5/2021
TIME OF HEARING: 11:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through NOREEN DEMONTE, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Motion to Dismiss or in the Alternative Motion for Order of the Court.

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

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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.

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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 a Supplemental Petition which was denied on June 1, 2021.

On July 29, 2021, Defendant was granted leave to represent himself.

He filed the instant Motion to Dismiss on September 13, 2021. The State discovered the instant Motion when responding to his Motion to Dismiss filed on September 21, 2021, his Motion to Suppress also filed on September 21, 2021, and his Petition for Writ of Habeas Corpus also filed on September 21, 2021.

The State's response to the instant Motion 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

Defendant's Motion appears to be based upon a complaint that he has not been granted sufficient access to the law library at the prison. This is not a basis to dismiss his charges. To the extent that he is requesting law library privileges, he needs to follow the appropriate channels within the Nevada Department of Corrections and serve any appropriate motions upon the Nevada Attorney General, as the Clark County District Attorney does not represent the Nevada Dapartment of Corrections.

The State respectfully requests this Hororable Court deny this Motion to Dismiss.

DATED this 1st day of October, 2021.

Respectfully submitted,

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

BY ***/s/ Noreen DeMonte***
NOREEN DEMONTE
Chief Deputy District Attorney
Nevada Bar #008213

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 1st day of October, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

SEAN RODNEY ORTH, #96723
HIGH DESERT STATE PRISON
PO BOX 650
INDIAN SPRINGS, NV 89070

BY _***/s/ E. Del Padre***_____
E. DEL PADRE
Secretary for the District Attorney's Office

ND/ed/GCU

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

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

DATE OF HEARING: 10/12/2021
TIME OF HEARING: 11:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through NOREEN DEMONTE, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Motion to Dismiss Charges for Violation of the Double Jeopardy Clauses of the Constitutions of Nevada and the United States.

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

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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.

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STATEMENT OF THE FACTS

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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

In the Instant Motion, Defendant merely refiled the same claim contained in his Petition for Writ of Habeas Corpus that the State is precluded from pursuing the charge of Stop Required on Signal of a Police Officer because he already plead guilty to a misdemeanor Obstructing a Public Officer charge in Las Vegas Municipal Court. This claim was denied by Henderson Justice Court on December 9, 2020, and later denied Judge Holthus on June 1, 2021. Defendants 's motion here must also be denied.

Defendant continuously and 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 should be denied again.

DATED this 1st day of October, 2021.

Respectfully submitted,

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

BY ***/s/ Noreen DeMonte***
NOREEN DEMONTE
Chief Deputy District Attorney
Nevada Bar #008213

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 1st day of October, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

SEAN RODNEY ORTH, #96723
HIGH DESERT STATE PRISON
PO BOX 650
INDIAN SPRINGS, NV 89070

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

ND/ed/GCU

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CLERK OF THE COURT

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200 Lewis Avenue
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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

STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

DATE OF HEARING: 10/12/2021
TIME OF HEARING: 11:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through NOREEN DEMONTE, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Petition For Writ Of Habeas Corpus.

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

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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.

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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

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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

NRS 34.700 provides that a pretrial petition for writ of habeas corpus "may not be considered unless... [t]he petition and all supporting documents are filed within 21 days after the first appearance of the accused" in District Court. See, also, EDCR 3.40. In Sheriff v.

Jensen, 95 Nev. 595, 600 P.2d 222 (1979), the Nevada Supreme Court ruled that the 21-day requirement for a pretrial petition for writ of habeas corpus was mandatory and therefore and untimely petition must be denied. In Jensen, the petition was filed only ten days late. The phrase "first appearance" has been interpreted as the appearance of the accused for arraignment. Palmer v. Sheriff, 93 Nev. 648, 572 P.2d 218 (1977).

Under Jensen, failure to file such a petition in a timely manner makes the petition not cognizable for the District Court and not reviewable by the Supreme Court. Jensen, 95 Nev. at 596, 600 P.2d at 223. Under NRS 34.710,5 the district court shall not consider any pretrial petition for habeas corpus that fails to comply with the timely filing requirements of NRS 34.700. Under NRS 34.700 and NRS 34.710, the 21-day filing period is jurisdictional. The Defendant's failure to file a timely petition for writ of habeas corpus or seek an extension within the 21-day filing period prevents the court from taking jurisdiction to hear the Defendant's motion.

In this case, Defendant's first appearance in District Court was on December 18, 2020. Defendant filed a Petition for Writ of Habeas Corpus on February 3, 2021, which was denied on June 1, 2021. It is worth noting that Defendant never asked for leave to file a Motion to reconsider that Petition. This subsequent Petition is filed well past the mandatory statutory time requirements and must, therefore, be denied.

DATED this 1st day of October, 2021.

Respectfully submitted,

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

BY ***/s/ Noreen DeMonte***
NOREEN DEMONTE
Chief Deputy District Attorney
Nevada Bar #008213

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 1st day of October, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

SEAN RODNEY ORTH, #96723
HIGH DESERT STATE PRISON
PO BOX 650
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BY _***/s/ E. Del Padre***_____
E. DEL PADRE
Secretary for the District Attorney's Office

ND/ed/GCU

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STEVEN B. WOLFSON
Clark County District Attorney
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200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

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

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

DATE OF HEARING: 10/12/2021
TIME OF HEARING: 11:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through NOREEN DEMONTE, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Motion to Suppress.

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

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POINTS AND AUTHORITIES

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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.

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On March 16, 2021, Defendant requested the Public Defender be appointed as counsel as he no longer wished to represent himself. On March 30, 2021, 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, 2021, Defendant filed a Supplemental Petition which was denied on June 1, 2021.

On July 29, 2021, Defendant was granted leave to represent himself.

Defendants filed a Motion to Dismiss on September 13, 2021, another Motion to Dismiss, Petition for Writ of Habeas Corpus, and the Instant Motion to Suppress on September

The State's response to the instant Motion 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

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ARGUMENT

In the Instant Motion, Defendant merely refiled the same motion that was denied by Henderson Justice Court on December 9. Defendants 's motion here must also be denied.

Defendant makes two (2) claims related to search and seizure issues. First, Defendant alleges police improperly arrested him without a warrant. Second, Defendant alleges Detective Lippisch withheld material information affecting the probable cause determination in the warrant affidavit. Defendant's claim lacks merit and must be denied.

With regard to Defendant's first claim, it is well settled that police are lawfully permitted to arrest an individual without a warrant so long as probable cause exists. Defendant seems to be claiming that all evidence must be suppressed because Defendant was arrested without a warrant. This is not the law. Only two circumstances would require a warrant to be obtained for an arrest. Neither of those situations apply to the instant case. Defendant was not arrested inside his home (which would require a warrant under Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371 (1980)), nor was Defendant arrested within the home of a non-consenting third party's home (which would require a separate warrant under Steagald v. U.S. 451 U.S.204, 101 S.Ct. 1642 (1981).

Probable cause is sufficient for a lawful arrest in a public place, even if the arresting officer had time to obtain an arrest warrant. U.S. v. Watson, 423 U.S. 411, 96 S.Ct. 820 (1976). Moreover, the officer conducting the arrest need not have knowledge of each and every single fact included in probable cause if, as in this case, collectively he and other officers involved in the investigation possessed probable cause. Doleman v. State, 107 Nev. 409, 812 P.2d 1287 (1991); see also Whitley v. Warden, 401 U.S. 560, 91 S. Ct. 1031 (1971) (establishing the "fellow officer rule"). Defendant's arrest was completely valid.

Next, Defendant claims that the warrant is invalid. Search warrants must not issue absent a showing of probable cause. U.S. Const. Amend IV; N.V. Const. Art. I, § 18; NRS 179.045. Probable cause requires trustworthy facts and circumstances which would cause a person of reasonable caution to believe that it is more likely than not that the specific items to be searched are seizable and will be found in the place to be searched. State v. Sample, 134

Nev. 169, 414 P.3d 814 (2018), citing Keesee v. State, 110 Nev. 997, 879 P.2d 63 (1994). Id. While generally not admissible at trial, a suspect's criminal history, including arrests and convictions, is a practical consideration of everyday life that may be considered for probable cause determination. U.S. v. Harris, 403 U.S. 573, 91 S.Ct. 2075 (1971).

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

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

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

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

As to the first prong, the deliberate falsehood or reckless disregard for the truth, the defendant must show the affiant entertained serious doubts with regard to the truth of the search warrant's allegations. Pamieri v. Clark County, 131 Nev. 1028, 367 P.3d 442 (2015), internal citations omitted. Alternatively, the defendant may claim the affiant deliberately

withheld the truth based on circumstances evincing obvious reason to doubt the veracity of the allegations in the search warrant affidavit. Id. Conclusory assertions and allegations of negligence or innocent mistake are not sufficient to warrant an evidentiary hearing. Id. Moreover, a defendant attacking a search warrant affidavit cannot rely on false statements of a nongovernmental agent. Id. The challenge is limited to reckless disregard or deliberate falsity of the affiant. Id.

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

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

Officers had Mr. Polanco's statement that Defendant threatened him with a firearm and took his property, to include a tan duffle bag containing firearms. While Ms. Caracciolo indicated she did not see a firearm and did not realize a robbery occurred, she indicated Defendant and Mr. Polanco were in another room together and she felt something odd was

happening. Ms. Caracciolo then saw Defendant leave the apartment with the bag in question. Moreover, the witnesses reported in the call to police that Defendant was outside the apartment in a white Malibu. Police responded and in fact found Defendant in a white Malibu. When officers attempted to stop Defendant he fled the scene, refused to stop despite officers' lights and sirens, crashed the vehicle into a gate, fled on foot while carrying a tan duffle bag matching that described as stolen by the witnesses, continued ignoring officers' commands to stop until they tased and physically restrained him.

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

In light of the foregoing, Defendant cannot demonstrate Detective Lippisch intentionally made a material omission in failing to state he subsequently learned Mr. Polanco may have let Defendant borrow his phone or car on a prior occasion. Further, Defendant cannot show that, had such information been included in the warrant affidavit that probable cause would have been defeated.

Defendant is therefore not entitled to a hearing on the matter and the Motion must be summarily denied.

DATED this 1st day of October, 2021.

Respectfully submitted,

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

BY ***/s/ Noreen DeMonte***
NOREEN DEMONTE
Chief Deputy District Attorney
Nevada Bar #008213

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 1st day of October, 2021, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

SEAN RODNEY ORTH, #96723
HIGH DESERT STATE PRISON
PO BOX 650
INDIAN SPRINGS, NV 89070

BY _***/s/ E. Del Padre***_____
E. DEL PADRE
Secretary for the District Attorney's Office

ND/ed/GCU

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. SEAN ORTH, Defendant.	CASE NO. C-20-352701-1 DEPT. VI

BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE

TUESDAY, OCTOBER 5TH, 2021

RECORDER'S TRANSCRIPT OF PROCEEDINGS:
MOTION TO DISMISS CHARGES OR IN THE ALTERNATIVE MOTION FOR ORDER OF THE COURT

APPEARANCES:

For the Plaintiff: ERIKA MENDOZA, ESQ., Deputy District Attorney

For the Defendant: PRO SE
KARA M. GASTON, ESQ., Deputy Public Defender
Standby Counsel

RECORDED BY: VANESSA MEDINA, COURT RECORDER

Las Vegas, Nevada; Tuesday, October 5, 2021

[Hearing commenced at 12:38 p.m.]

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THE COURT: I know Ms. Demonte had filed a response. He's having some trouble accessing the prison law library which since he is representing himself, I think has been a bit of an issue. It looks like there are -- since Mr. Orth is not here today, there's a motion to suppress that on the 12th. I would anticipate that he was going to be present for that so I'm just going to move the motion to dismiss to the same date as those other motions on the 12th so hopefully he can be present.

MS. MENDOZA: Thank you, Your Honor.

THE COURT: Thank you.

[Proceeding concluded at 12:38 p.m.]

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

Vanessa Medina, Court Recorder/Transcriber

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C-20-352701-1
	)	DEPT. NO. 6
vs.	)	
	)	
SEAN RODNEY ORTH,	)	
	)	
Defendant.	)	

BEFORE THE HONORABLE ERIKA BALLOU, DISTRICT JUDGE FOR THE HONORABLE JACQUELINE M. BLUTH, DISTRICT JUDGE

TUESDAY, OCTOBER 12, 2021 AT 11:49 A.M.

RECORDER'S TRANSCRIPT RE:
MISCELLANEOUS MOTIONS

APPEARANCES:

FOR THE STATE: ERIKA MENDOZA, ESQ.
Chief Deputy District Attorney
(Via Videoconference)

FOR THE DEFENDANT: PRO SE
(Via Videoconference)

ALSO PRESENT: KARA M.T. GASTON, ESQ.
(Via Videoconference)

Recorded by: SUSAN SCHOFIELD, COURT RECORDER

(TUESDAY, OCTOBER 12, 2021 AT 11:49 A.M.)

THE COURT: Page Number 20, State of Nevada versus Sean Orth, Case Number C-20-352701-1. Mr. Orth Is representing himself and is present in the jail, Ms. Mendoza for the State. So I looked at these, and now I forgot what I read. I try and prepare all these calendars this week and there was a lot on this one, so I don't remember.

Okay. So on the petition for writ of habeas corpus, Mr. Orth, under NRS 34.710 the District Court shall not consider pretrial petition for habeas corpus or any petition for habeas corpus that fails to comply with the timely filing requirements under NRS 34.700, and that's a jurisdictional filing period and your first appearance was on December 18th of 2020.

You did file a petition for writ that was on February 3rd of 2021 and it was denied on June 1st, and you haven't filed a motion to reconsider that ruling nor have you filed an ex-parte application to extend the time for filing. So this new petition is well past the mandatory statutory requirement, and it also raises issues that could have been included in the original petition. So that petition for writ of habeas corpus is going to be denied. Ms. Mendoza, would you please prepare an order?

MS. MENDOZA: Yes, Your Honor.

THE DEFENDANT: And, Your Honor, could I just make a brief record?

THE COURT: Sure.

THE DEFENDANT: Under NRS 34.700, Paragraph 3, it says that the Court may extend the time to file a petition for good cause. There was good cause stated within the petition. The actual statute doesn't mandate an ex-parte

motion for extension of time. The extension was based on the State withheld discovery in the Justice Court proceedings, and I cited to ***Bizon versus Warden*** (phonetic)***, 416 Nev. 46 at 2000*** (sic) which establishes that you may use the -- State's burden to disclose discovery timely as a means to overcome the procedural bar of NRS 34.700, so I did state that within my petition.

The State did not deny that the discovery was withheld, and they did not at all object to any of the showings of good cause to overcome the procedural bar. The second procedural bar, Your Honor, was that in Justice Court proceedings I was not allowed access to any audio/visual listening or viewing equipment while I was in the custody of Nevada Department of Prisons -- excuse me, Nevada Department of Corrections, and because of that I was unable to look at the body cam, I was unable to look at the -- or unable to listen to the audio of the 911 call.

Ms. Gaston -- excuse me, Ms. Simmons-Gaston was my attorney at the time, and at the time the warden was refusing to have anybody come down and visit, so she was the only means of me being able to watch or listen to the audio/video, and the newly discovered evidence that's been disclosed are actually the police record -- the State transcripts of police recorded interviews that undermine the State's suppression issues -- excuse me, their arguments against suppression and actually demonstrate that the officers have committed perjury. And I've fully explained that in the petition as good cause, so I would just like that to be recognized if you're going to dismiss the petition.

THE COURT: That petition is going to be denied, and based on the reasons stated earlier, Ms. Mendoza, please prepare the order. And I allowed you to make your record, Mr. Orth, so thank you.

THE DEFENDANT: I appreciate it.

THE COURT: So, then, there's a motion to dismiss, and it looks as if it's based on the fact that you're not granted sufficient access to the law library. That's not a basis to dismiss the charge. So, Mr. Orth, would you like to be heard on that?

THE DEFENDANT: Well, there's two different -- there's actually the first -- there was actually the first motion to be granted access as an alternative. I was just -- what I did is I guess the Court, the prosecutor and Ms. Gaston had a hearing recently and it was ex-parte. I wasn't here. I was appointed Pro Se status back on August 17th. Since that time, apparently the State and Ms. Gaston were able to submit briefs to the Court. None of those were served on me. I never had a chance or an opportunity to prepare them. I don't know what the briefs discussed.

But I presented in the two separate motions, one, was I went to my right of access to the Court under ***Bounds versus Smith*** instead of just the self-representation right under the Sixth Amendment. I explained that I do have a right to research law and present motions to the Court, and usually it's my understanding although I don't have a right to access to a law library under the Sixth Amendment, I still would have that right to access the Court under the ***Bounds versus Smith*** case.

So I presented that briefing. The motion that I asked to dismiss upon was the -- again, the failure to disclose discovery timely. I cited to ***Hooker versus Eighth Judicial District Court*** where the Nevada Supreme Court has dismissed a case where the State failed to produce discovery under NRS 171.1965, and now it's continued over to the District Court and now that newly

discovered evidence under ***Mayans v State's*** (phonetic) arguments in the Justice Court, and the Nevada Supreme Court recognized that the only remedy was to dismiss the case because at the time the remedy would have been to grant a continuance to receive the discovery and proceed upon the merits of the discovery.

The State has not addressed any of that. They have not denied that they did not disclose the discovery. They have not denied the prejudice. They are quite simply saying that, well, you can't have it dismissed because of your right to represent yourself. So the motions are twofold. One, that I didn't have the discovery, I still have not had the ability to view the discovery or listen to the discovery even if the State does possess it, and there has -- there has to be some balance here. You can't just --

I cited to ***Milton versus Warth*** (phonetic), it's a Ninth Circuit case. I do understand it's a circuit court case law, but it's the same situation as what's going on here. I'm being denied access to any ability to look and listen to the evidence. The State's withholding the evidence while putting officers on the stand and committing perjury, one, specifically denying that he even -- that he even interviewed the witnesses, and now I've presented four interviews of four different witnesses that he interviewed.

Then I have another officer who committed perjury in the actual warrant application, and all of this would have came out in Justice Court, but the State refused the discovery and they're not disputing that. There's no dispute that that discovery was not withheld. I briefed it all. Now I'm denied access to the law library. I'm denied any ability to even use a telephone right now. I can't investigate the case whatsoever or the law. And to be honest, Your

Honor, that's just not -- that's just not consistent with the case law that I've cited to --

THE COURT: So --

THE DEFENDANT: -- and the State has not presented any that I know of that allows that this is how we're going to prosecute -- that allowed the prosecution to proceed this way.

THE COURT: So, Mr. Orth, again, that's not a basis to dismiss the charges against you, so, Ms. Mendoza, would you please prepare the order?

MS. MENDOZA: Yes, Your Honor. Just so we're clear, he has two separate --

THE COURT: Yeah. But the next one is on for the motion to dismiss for the violation of double jeopardy.

MS. MENDOZA: Okay. Gotcha. I just wanted to make sure we're --

THE COURT: Yes. This one was just the motion to dismiss or in the alternative access to the law library, and I can't order access to the law library either. That's not an order that I can make. That's up to the jail or prison that he's housed in. So I can't even order that, so that's going to be denied.

Now, as to the motion to dismiss charges for violation of the double jeopardy clause, I'm also inclined to deny that one. This is -- so it appears to be the same -- the same claim that was denied by Judge Holthus on June 1st. So I mean this is the same claim, so I'm inclined to deny it. Go ahead, Mr. Orth.

THE DEFENDANT: It's not the same claim, Your Honor, and I cite to ***HSU versus County of Clark***, and if we're talking about collateral estoppel,

HSU versus County of Clark allows me to overcome collateral estoppel, and I understand law of the case doctrine and what it states, basically if you are able to present new or substantially different information, you can overcome the law of the case doctrine. And basically that's what you're saying, you're saying there's already been a ruling upon this.

What happened is in Ms. Gaston's writ of habeas corpus, she did challenge the double jeopardy violation. However, she did not submit the declaration of arrest from the Justice Court, and in the Justice Court declaration of arrest it stated that I was being charged with resist public officer because I quote, unquote, failed to yield to officers who are initiating a lawful stop.

So if the officer is stating in his declaration he'd know the probable cause to arrest me for resist under NRS 199.280, Section 3, that my argument is is that's why I pled to that charge. That's the notice that I was giving while I was being charged, that is in the declaration of arrest, and the State, what they did is the State said that the failing to stop and signal a police is not in any way related to the resist public charge.

The declaration of arrest that I have submitted to you absolutely demonstrates that that's fraud. It is absolutely directly related to the failing to stop that I'll remind you, Your Honor, the patrol officers in this case didn't charge me with failing to stop, the prosecutor did, and then as I stated in my motion, she came on record about a month later and said she didn't even have the reports from the officers at the time that she charged me with the evading.

So I brought in the declaration of arrest, I'm asking for it to be looked at again, and, again, the State doesn't respond to the new declaration of

arrest that I'm submitting and the arguments. Now I'm losing to no opposition at all, Your Honor, and quite frankly the last ruling they mislead the Court and said that the resist had nothing to do with the failing to stop. That's an absolute lie.

THE COURT: So --

THE DEFENDANT: The declaration of arrest proves it.

THE COURT: Mr. --

THE DEFENDANT: So basically what I'm arguing, Your Honor, is I'm saying if we're going to go through statutory interpretation and we're going to look and see whether or not, you know, resist falls under the lesser -- as a lesser included offense basically under the ***Chance versus State*** (phonetic), and I understand the ***Blockburger*** test completely, if we're going to do that if there's an ambiguity than we should just use rule amenity and just resolve it in my favor and we should use the declaration of arrest to look at that and say the officer obviously felt probable cause to charge that, so why can't the State address it.

THE COURT: Mr. Orth, the officers don't get to decide the charges, so that's not a winning legal argument. So that motion is denied. Ms. Mendoza, please prepare the order. Then I've got the motion to suppress.

THE DEFENDANT: I absolutely (indiscernible).

THE COURT: And I'm also inclined to deny that motion. The -- I don't think this has any merit whatsoever. The claims related to the certainty, I mean I just -- these are not meritorious, Mr. Orth, so, go ahead, Mr. Orth.

THE DEFENDANT: Okay. Well, first of all, Your Honor, I see what's going on here, and I'm just being honest and we can just be honest with each other, you're an intelligent Judge, so let me make my record. First and foremost, the State is now -- I've shown newly discovered evidence. I've shown

three interviews that occurred before the search warrant application was even obtained that were withheld in the Justice Court. That's number one.

Number two, the State is now arguing that there was probable cause for my arrest which they argued at Page 5. They're arguing ***Dolan versus State***. ***Dolan versus State*** is using the collateral or imputed knowledge doctrine, if you will, and so probable cause is based on the collective knowledge of all officers involved. So City of Henderson Police Department Officer Eric Zell (phonetic) is the first one who was to interview the alleged victim in a robbery that never occurred, and he's never testified, so his collective knowledge is not there.

The 911 call that was in -- that he responded to that said the guy was robbed at 9:30 was never introduced into the record. That's within their collective knowledge. The body cam and the recording of Mr. Louie Polanco and Ms. Caracciolo have never been introduced into the record. There has never been -- you cannot just come into court and say there was probable cause.

Your ability under ***McKellips versus State*** is to come in and to provide specific and articulable facts that I have committed a crime for which they're stopping me for. That isn't even their motion. They're not even saying what I was arrested for. They're just saying, we have probable cause. That's it. That's the only thing they said, not probable cause for a crime.

So for me -- for it to be said that what I'm presenting is not meritorious, to be honest, Your Honor, I'm going to object to that. But there's no basis for the Court to even determine that the officer had probable cause because no officer has ever stepped into a courtroom and said, I have probable cause to arrest this man ever. Show me the record. It's not there --

THE COURT: Okay.

THE DEFENDANT: -- and so I'm losing to a probable cause that is stated by a Deputy Chief District Attorney who, A, wasn't at the crime scene, B, wasn't involved in the arrest, and, C, has never even said what I was arrested for. So I will go under ***Dolan versus State***. If they'd like to use ***Wiley versus Warden*** (phonetic) and they want to use the fellow officer rule of ***Wiley versus Warden***, which they did at Page 4, then I'd cite to ***U.S. versus Hensley*** who stated that, yes, they can rely on another officer, but their obligation is to say what officer they're relying upon and what the probable cause is that that officer had. That's never happened, so I'll stop there with the arrest part.

Moving on to the warrant application, the newly discovered evidence demonstrates -- and I've cited to you ***State versus Nelson*** as well as ***Hardin versus State***, it is the State's burden to demonstrate a valid exception to the warrant requirement. In doing so, they also have the obligation to demonstrate what it was that they -- the course of obtaining a warrant prior to the search and seizure.

The detective in this case, Detective Lippisch, this is all briefed, and, Your Honor, the warrant application and the statements that I'm referring to are all within the new motion to suppress that I filed based on the new evidence, but in his warrant application he said that he seized the duffle bag and he seized the car and he took it to the police station for eight hours and then he obtained a warrant. So it's the State's burden under ***Nelson versus State*** to demonstrate a valid exception to the warrant requirement. They have not done so. In fact, they didn't even mention it. They just skipped right over it.

So when it comes -- then when it comes down to the State having to show what, you know, prevented the officer from obtaining a warrant

before he seized it, again, the State has nothing to say because there's no reason. We have telephonic warrants under NRS 179.035 and .045, and they could have obtained a telephonic warrant before they took it to the police station and played with it for eight hours. So, again, the State is silenced on that because they know it was a violation.

Then we move on to the ***Franks*** hearing, ***Franks versus Delaware***. We're talking about omissions or falsehoods presented in the warrant applications, which I've specifically presented to you that the officer committed perjury, specifically Mr. Polanco said that in the robbery I forced him to take a duffle bag that had guns in it and put it in the trunk. However, when the other detective, Detective Lapeer, when Detective Lapeer is talking to this Jessie Caracciolo, she's stating that I left the apartment carrying a green duffle bag and I left alone. That's substantially different from me forcing somebody to carry a tan duffle bag. I also submitted to you, Your Honor, that --

THE COURT: So Mr. Orth -- Mr. Orth, I've got a long calendar, I read everything, and so I'm going to --

THE DEFENDANT: They haven't addressed any of this, Your Honor.

THE COURT: Okay. Mr. Orth -- Mr. Orth, I'm going to have to cut you off, I've got a lot of people, so that motion is denied. Ms. Mendoza, again, please prepare the order. Ms. Mendoza, I believe you should probably send all those orders to me in the DC 24 inbox because I'm the one who heard this as opposed to the DC 6 inbox, and I'll just note that I'm signing because I was the sitting Judge that day.

MS. MENDOZA: So, Your Honor, and just so -- because Mr. Orth tends to have a hard time with reciting historical facts, whether it's intentional or not, I just want the record to be clear that I absolutely do dispute that there's any discovery issues. I've kept meticulous notes about the transfer of discovery in this case, so everything has been turned over either to Mr. Orth or to Ms. Gaston.

THE COURT: Okay.

THE DEFENDANT: And no opposition to that, Your Honor. I received Ms. Gaston's --

THE COURT: Mr. Orth -- Mr. Orth, please, no. No more. Thank you.

THE DEFENDANT: Are we done?

THE COURT: Mr. Orth, have a seat. Mr. Orth, have a seat. Thank you.

THE DEFENDANT: Can I say one thing?

THE COURT: No. Mr. Orth, have a seat. Thank you.

THE DEFENDANT: I'm calling --

THE COURT: Mr. Orth, have a seat. Thank you.

MS. GASTON: Your Honor, I do have a quick question about Mr. Orth and what you think would be appropriate. I'm currently appointed -- this is Kara Gaston on behalf of Mr. -- well, as standby counsel for Mr. Orth. I have a procedural question. Because Mr. Orth has previously raised in motions hearings that he has concerns with my prior and continued appointment, my prior appointment as his actual attorney and my continued appointment as his standby counsel, I wasn't sure if that's something Your Honor would want me to raise just orally or file -- if I have to file a motion on his behalf.

THE COURT: I believe you should probably file a motion on his behalf, Ms. Gaston, about just that issue, about you acting as standby counsel.

MS. GASTON: Perfect. Thank you, Your Honor.

THE COURT: Thank you, Ms. Gaston.

(Whereupon, the proceedings concluded.)

* * * * *

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

LISA A. LIZOTTE
Court Recorder

REPLY

Sean Rodney Orth 96123
PO Box 650
Indian Springs, Nevada 89010
Pro Se

FILED
OCT 18 2021
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
PLAINTIFF,
V.S.
SEAN RODNEY ORTH,
DEFENDANT.

Case No. C-20-352701-1
Dept. no. VI

DEFENDANT'S REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

Comes now, Sean Rodney Orth, Defendant proceeding pro se, who respectfully replies to Plaintiff's Opposition to Defendant's motion to Suppress filed October 1, 2021.

This motion is supported by the record and the attached memorandum of points and authorities with attached exhibits.

RECEIVED
OCT 14 2021
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POINTS AND AUTHORITIES.

A. LEGAL ARGUMENTS.

I. PLAINTIFF FAILS TO DEMONSTRATE PROBABLE CAUSE TO JUSTIFY DEFENDANT'S STOP.

Defendant did raise this issue in the Justice court in a Motion to Suppress filed December 1, 2020.[1] Plaintiff declined to address the issue when filing an opposition on December 8, 2020.[1]

There is a 911 call by Mr. Lane Polanco to HPD at about 12:30 a.m. October 28, 2020 alleging he was robbed at 9:30 p.m. the previous day (according to CAD (recorded communications). Plaintiff has not afforded Defendant access to this call or provided it to the court.

There was an investigation by HPD Aaron Zell after the 12:30 a.m. call. HPD Zell, who was informed Mr. Polanco stated he was robbed at 9:30 p.m., obtained a written statement from Mr. Polanco who stated that he was robbed by ~~[illegible]~~ Defendant "around 2:30 p.m." the previous day. Attached Ex. 18 (written statement by Lane Polanco to HPD Zell). This obviously conflicts with the statement to dispatch he was robbed at 9:30 p.m.

HPD Zell then obtained a written statement from Ms. Jessie Caracciolo, Mr. Polanco's girlfriend, that stated she was at the apartment with

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1. Defendant has requested copies of the motion to suppress and opposition filed in Justice Court from standby counsel who Defendant mailed them to when she took over the case briefly. Defendant does not have them at this time and submits they are the record.

Defendant and Mr. Polanco at 6:30 p.m. when Defendant left the apartment around 6:30 p.m., she did not see a robbery, she did not see Defendant with a gun. Attached Ex. 19 (written statement of Jessie Carancolo to HPD Zell). This statement obviously impeaches Mr. Polanco's statements.

At the preliminary examination the prosecutor then conceded that Defendant was not arrested in connection with the robbery allegations which the magistrate took judicial notice of. Ex. 4 (PHT) at 81-82. Also, HPD Detective Lypinski testified at the prelim there was not probable cause to arrest Defendant on the robbery allegations. id at 114. The Magistrate refused to allow me to ask why. id at 115. This restriction on cross-examination violated my right to cross-examine under NRS 176.196(5) and is cause to allow me to now elicit this highly exculpatory information that counters the claims the prosecutor makes to this honorable court which is as follows:

"...the officer conducting the arrest need not have knowledge of each and every single fact included in probable cause if, as in this case, collectively he and others involved in the investigation possessed probable cause. Doleman v. State, 107 Nev. 409, 812 P.2d 1287 (1991); See Also Whiteley v. Warden, 401 U.S. 560, 91 S.Ct. 1031 (1971) (establishing the "fellow officer rule"). Defendant's arrest was completely valid."

State's Opposition to Defendant's Motion to Suppress, filed 10/11/2021 ("Oppi herein) at 5.

There was a robbery call, HPD Zell responded, a stop occured, no arrest for robbery was made and the prosecutor has conceded such below. Here

the prosecutor is "saying" there was probable cause and is claiming a "fellow officer rule" but does not apprise the court of who has probable cause or who is using the fellow officer Rule et cetera. That's not how it works.

It is long standing law that probable cause exists when police have, at the moment of arrest, knowledge of facts and circumstances grounded in reasonable trustworthy information sufficient in itself to justify a belief by a prudent person that a suspect has committed or is about to commit a crime. State v. McKellips, 118 Nev. 465 (2002); NRS 171.124; Beck v. Ohio, 379 U.S. 89, 91 (1964). The officer must be able to point to specific and articulable facts to support a finding of probable cause. Stuart v. State, 94 Nev. 721 (1978). "Conclusory statements of police officers cannot suffice to satisfy specific and articulable facts." Hayse v. State, 106 Nev. 543 (1990)

Here the police never articulated any facts that they had probable cause to arrest for robbery or any offense. It is the prosecutor making conclusory statements there was probable cause.

Probable cause must be weighed based on the collective knowledge of all officers involved. Doleman 109 Nev. at 413-414. The reasonableness of the officers actions is based on the totality of the circumstances. State v. Lisenbee, 116 Nev. 1124, 1128 (2000). The prosecutor dodges these requirements. HPD Zell never testified, the original 911 call is not in the record, a second 911 call by Ms. Carucciolo is not

in the record and CAD nor the HPD Dispatch Officer relied upon never testified. The prosecutor has therefore failed to present the collective knowledge of all officers involved and the totality of circumstances as required by Dolman and Lisenbee.

In my motion I also showed HPD Nelson testified he had a reasonable suspicion that I was at the apartment door armed because Ms. Caracciolo originally told police dispatch that but then dispatch asked if the gun was out or at my side and Ms. Caracciolo informed police that she did not see me with a gun and could not provide a basis for making her false statement which was evidenced in CAD but omitted in HPD Nelson's false testimony. Motion, at 11 (citing Ex. 4 (PHT) at 52, Ex. 1 (CAD). The prosecutor dodges this argument and here alone is an example why the collective knowledge of all officers involved must be weighed.

To highlight the prosecutor's arguments, the prosecutor argues HPD Nelson also was responding to a "potential robbery" Opp at 3. A potential robbery is not probable cause which requires police to articulate a ~~common~~ specific facts that are trustworthy and give a reasonable belief a crime has been committed. Mckellips.

In regards to the Fellow Officer Rule the prosecutor refers to

the United States Supreme court reviewed and applied Whiteley v. v. Warden, 401 U.S. 560 (1971) in their decision in U.S. v. Hensley, 469 U.S. 221 (1985) and explained:

> Thus Whiteley supports the proposition that, when evidence is uncovered during a search incident to arrest in reliance merely on a flyer or bulletin, its admissibility turns on whether the officer who issued the flyer possessed probable cause to make the arrest. It does not turn on whether those relying on the flyer were themselves aware of the specific facts which led their colleagues to seek their assistance

Id at 231.

Defendant is unaware of any flyer or bulletin that directed anyone to stop me. None has been presented to the court because it does not exist.

The Hensley court went on to hold:

"Assuming the police make a Terry stop in objective reliance on a flyer or bulletin, we hold that the evidence uncovered in the course of the stop is admissible if the police who issued the flyer or bulletin possessed a reasonable suspicion justifying a stop"

Id at 233.

In reaching its conclusion that the instigating officer did have sufficient information to be relied upon the ~~court~~ Hensley court relied on the record where the officer relied upon testified to specific articulable

facts to the court's satisfaction. Id at 233-234. No such testimony has been provided this honorable Court.

The police seized a duffle bag they claim contained Mr. Polanco's 20 guage shotgun which is the product of an illegal arrest of Defendant in violation of U.S. Const. Amends IV and XIV, Nev. Const. art. 1 § 8. The evidence must be suppressed as it was obtained in violation of U.S. Const. Amend IV and therefore is barred from use in State courts. Mapp v. Ohio, 367 U.S. 643, 655 (1961) (Evidence obtained in violation of the 4th Amendment is barred from use in State courts); State v. Beckman, 129 Nev. 481 (2013) (The government cannot benefit from evidence that police officers obtained through a clear violation of an individuals Fourth Amendment rights).

II. THE STATE FAILED TO DEMONSTRATE A SPECIFIC EXCEPTION TO THE WARRANT REQUIREMENT. THE STATE FAILED TO SHOW PROBABLE CAUSE AND EXIGENT CIRCUMSTANCES TO SEIZE THE DUFFLE BAG.

Defendant asserted and proved the duffle bag was seized without warrant for over eight and a half hours in the motion. Id at 17-18. The State had the burden of proving a specific exception to the warrant requirement. Nelson v. State, 96 Nev. 363 (1980) and must show "the situation which made the course [of obtaining a warrant] imperative" State v. Hardin, 90 Nev. 10, 14 (1974). Police have a heavy burden to prove an exigency that allows an exception to the

warrant requirement. Welsh v. Wisconsin, 466 U.S. 740, 749-750 (1984).

The state failed to show probable cause and exigent circumstances, or any other exception, for the warrantless seizure of the duffle bag which violated the 4th Amendment to the United States constitution or Nev. Const. art. 1 § 8 which requires suppression. Mapp at 655, Beckman at 481.

There was no probable cause as evidenced below and in the motion.

III. THE PROSECUTOR MISAPPREHENDS OR IGNORES THE CORE BASIS TO THE FRANKS V. DELEWARE, 438 U.S. 154 (1990) ISSUE AND THE STATE AGAIN LIES TO THE COURT.

The prosecutor has made the unfortunate mistake of repeating the state's arguments, verbatim, made in the justice court December 8, 2020 opposition.[1] New discovery demonstrates the prosecutor lied in those proceedings and the lie continue here.

The prosecutor tells this honorable court

.. the totality of evidence leading up to the search warrant support a finding ~~that~~ of probable cause that he would be in possession of evidence related to a robbery. Officers had Mr. Polanco's statement that Defendant threatened him with a firearm and took his property, to include a tan duffle bag containing firearms. While Ms. Caracciolo indicated she did not see a firearm and did not realize a robbery occured. She indicated Defendant and Mr. Polanco were in another room together and she felt something was odd happening. Ms. Caracciolo then saw Defendant leave the apartment with the bag in question."

Opp. at 7-8.

Defendant proved this to not be true in the Motion to Suppress. id at at pp. 21-22.

Mr. Polanco told Detectives I made him carry the tan bag down to his car and put it in the trunk and it contained firearms, laptop and the cell phone. Ex. 9 at 17-20, 34.

Jessie Carucciolo told Detective Lapeer in an interview I left carrying a green duffle bag which she did not know what it contained. Ex. 7 at 6. This is consistent with Jessie's written statement to LVPD Zell. Attached Ex. 19.

Although Jessie told Detective Lypisch I left alone carrying a green bag (not that Louie left carrying a tan bag down to the car)(Ex. 7 at 6) Detective Lypisch committed perjury in his warrant application and testified Jessie and Louie both stated I left with a tan bag (i.e. falsely testified Jessie Corroborated Louie when she in fact impeached him):

"I was later advised by Detective Ozawa and Lapeer that Louis and Jessie... both stated that Sean had left the apartment the prior evening with a tan bag that contained property that belonged to them" Ex. 6 (warrant application by Detective Lypisch).

Detective Lapeer actually interviewed Jessie (Ex. 7) then Jessie and Christian (Ex. 8) and then he and Detective Ozawa went and interv-

ieved Louie Polumo (Ex. 10). Detective Lapeer spoke to Louie. id at 10.

Unfortunately Detective Lapeer committed perjury himself when he was asked if Louie and Jessie's statements conflicted Detective Lapeer falsely testified he only interviewed Jessie and did not have a chance to speak to Louie. Ex. 4 (PHT) at 66, 75. The prosecutor condoned and did not correct any of this perjury.

As to the prosecutor's false claim that police had probable cause leading up to the search warrant application (opp. at 7-8) This to is a lie. Jessie Carracciolo told Detective Lapeer that after making the robbery call She and Louie called his bank to report that there were unauthorized transactions on October 25 and 26 2020 and the computer and phone were stolen. (i.e. access was gained by the electronics stolen in the robbery). Ex. 8 at 19-20. Because the robbery of electronics was not said to have occured until October 27th Detective Lapeer immediately stated the robbery couldn't have occured yesterday. id at 20.

I paid Mr. Polumo to move in. He kept my money, called in a fake robbery and then used the fake robbery to fraud his bank into returning unauthorized transaction withdrawals to his account. Then the police violated Defendant's rights and have done nothing but lie to the courts, withold evidence et cetera.

Defendant has demonstrated gross misconduct which continues in this court and apologizes for the court coming to know me in

this way. It has been (15) years since my last felony and I was free two years without violation before Mr. Polanco used my past against me.

I stand by my motion to suppress. I will defeat the false claim I evaded police.

B. Conclusion.

Defendant prays this honorable court will suppress the firearm and dismiss the firearm charge.

Respectfully Submitted, October 6, 2021.

Sean Orth

Sean Orth

This document does not contain the Social Security number of any person. Sean Orth

2. Defendant pleads to not be prejudiced by a claim of evade. HPD Nelson is a liar. HPD Nelson first testified I jumped out of a moving car. Ex. 4 (PHT) at 46, 55. But in cross-examination he admitted I completely stopped the vehicle, exited the vehicle when it was completely stopped and no one was in danger when I exited the car. id at 61-62.

Certificate of Service

I do hereby certify that on October 7, 2021 I did mail a true and correct copy of the foregoing reply to Noreen Demonte, Chief Deputy District Attorney 200 Lewis Ave., Las Vegas, NV 89155-2212.

Sean Orth

Sean Orth

EXHIBIT 18

HENDERSON POLICE DEPARTMENT

WITNESS STATEMENT

HPD 0155

PAGE 1 OF 1

DR# 20-16989

DATE: 10/18/2020

TIME: 0115

STATE OF NEVADA)
)
COUNTY OF CLARK)

SS: HENDERSON

I, Louis Polanco, date of birth

Social Security Number Occupation

Home Address, Email Address

Business Address

Phone #'s: (H) (W) (C)

do hereby make the following true statements to: A. ZELL #2621 of the Henderson Police Department, of my own free will. There have been no threats, or promises of immunity or reward made to me to make this statement. It is further understood that this statement may be used either wholly or in part as evidence in a Court of Law.
I can read this and write the English language.

friend of mine contact by was texting me his friend came got drunk and they went to bed 4 wake he was gone to car came by today around 2 and told me he had a gun to sit down and took phone and computer too unplug crossa was going thru my accounts changing passwords had gun and took mine Smith & Wesson gun and Winchester model 12 20-Gauge key and car told me not to call the cop or he'll kill me and my son left with those computer guns and car

Officer #621

Witness Signature

Information collected per NRS 179A.075.

EXHIBIT 19

HENDERSON POLICE DEPARTMENT

NARRATIVE SHEET

REFER TO DM-0381

HPD 0080

DR# 20-18989

(1) Narrative
(2) Describe physical evidence, location found, and disposition.

Given rule to re do, I do know the shotgun given was Smith Wesson 9mm - Black & Silver. Ross also stated to me that the police were at his property at Grand Lum - and stated this man (who I came to find at his name as Sean Roth) stated he would harm Ross's family if he fed anyone or called the police. I stated we needed to call.

Officer

Witness Signature

HENDERSON POLICE DEPARTMENT

WITNESS STATEMENT

HPD 0155

PAGE 1 OF 2

DR# 20-18989

DATE: 10/28/2020

TIME: 0115

STATE OF NEVADA)
)
COUNTY OF CLARK)

SS: HENDERSON

I, Jessie Caracciolo, date of birth

Social Security Number Occupation

Home Address Email Address

Business Address

Phone #'s: (H) (C)

do hereby make the following true statements to: A. ZELL #2621
of the Henderson Police Department, of my own free will. There have been no threats, or promises of immunity or reward made to me to make this statement. It is further understood that this statement may be used either wholly or in part as evidence in a Court of Law.
I can read this and write the English language.

I came over Sunday morning around between 2-3 to his Apt, a male that I did not know was here passed out he left sometime between 3-? I woke up around 8am he was gone I came back today Tuesday oct. 28th little after 6:30pm; hers (bf's) son and the male answered the door asked why I was here stated I needed my other work. he then yelled at him & pointed to bedroom. They both went in closed the door. few minutes later they walked out and the guy was carrying green heavy duffe bag and left. later after he left was when his (bf) told me he had taken his phone, computer, his military gun and a shot gun belonging to me that I had

Officer

Witness Signature

Information collected per NRS 179A.075.

HIGH
OCT 0 2021
UNIT

Sean Orth 96723
PO Box 650
Fordum Springs, NV
89070

Clerk of the Court,
Eighth Judicial District Court
Clark County, Nevada
200 Lewis Ave
Las Vegas, Nevada 89155

Objectional
legal
mail

Sean Rodney Orth #96223
PO Box 650
Indian Springs, Nevada 89070
Pro Se

FILED
OCT 18 2021
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
PLAINTIFF,
VS.
SEAN RODNEY ORTH,
DEFENDANT.

CASE NO. C-20-352701-1
DEPT. NO V1

DEFENDANT'S REPLY TO 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.

Comes now, Sean Orth, Defendant appearing, pro se, who respectfully replies to 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 filed October 1, 2021.

This reply is supported by all papers, pleadings and documents on file in this case and the attached Points and authorities.

POINTS AND AUTHORITIES.

A. LEGAL ARGUMENTS.

I. THE NEW MOTION TO DISMISS ON GROUNDS DOUBLE JEOPARDY PROHIBITIONS WILL BE VIOLATED IS BASED ON SUBSTANTIALLY DIFFERENT AND NEW EVIDENCE REQUIRING ADJUDICATION OF THE ISSUE ANEW.

Plaintiff's assertion is that this issue has been resolved previously. Opp. At 5. This is true. However, in each of the prior instances Plaintiff falsely argued that the Resist Public Officer, NRS 199.280, charge had nothing to do with, or was "completely seperate" from the Failing To Stop At Signal Of Police, NRS 484B.550(1-3)(b), charge. State's Return to Petition For Writ of Habeas Corpus [redacted] At p. 7[1]

Defendant has now provided an exhibit showing that the Declaration of Arrest for Resist Public Officer clearly states the officer was arresting Defendant and asserted he had probable cause under NRS 199.280 because Defendant "Failed to yield to HPD patrol officers initiating a lawful stop..." Ex. 2. As such, there is no collateral estoppel issue where there is "new" or "substantially different evidence presented" HSU v. County of Clark, 123 Nev. 625 (2007).

Defendant stands by the arguments presented in the motion.

---

1. Defendant is unaware of the date the Return was filed challenging the April 20, 2021 petition.

3. Conclusion.

Wherefore it is the prayer of Defendant this honorable court will dismiss the Failing to stop charge as violative of the Double Jeopardy clause.

Respectfully submitted, October 7, 2021

Sean Orth

Sean Orth

This document does not contain the social security number of any person.

Sean Orth

Certificate of Service.

I Sean Orth do hereby certify that on October 7, 2021 I did mail a true and correct copy of the foregoing Reply to Moreen-Demonte, Chief Deputy District Attorney, 200 Lewis Ave. Las Vegas Nevada 89155.

Sean Orth

SEAN RODNEY ORTH #96723
PO BOX 650
Indian Springs, Nevada 89070
Pro Se

FILED
OCT 18 2021
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
PLAINTIFF,
VS.
SEAN RODNEY ORTH,
DEFENDANT.

CASE NO. C-20-352701-1
DEPT NO. VI

DEFENDANTS REPLY TO STATES RESPONSE TO DEFENDANT'S PETITION FOR A WRIT OF HABEAS CORPUS.

Comes Now, Sean Orth, Defendant appearing pro se, who respectfully replies to State's Response to Defendant's Petition For A Writ of Habeas Corpus filed October 1, 2021.

This reply is supported by all papers, pleadings and documents on file in the case, the attached memorandum of points and authorities.

POINTS AND AUTHORITIES.

A. LEGAL ARGUMENT.

I. THERE IS GOOD CAUSE TO ALLOW DEFENDANT TO PROCEED ON THE MERITS OF THE PETITION.

Defendant/Petitioner demonstrates in the Petition that the Plaintiff/Respondent has violated discovery provisions and is denying Petitioner access to audio visual recordings. which Petitioner asserted as good cause, Petition at 13-17. Respondent does not challenge these issues. NRS 34.700 (3) provides, in relevant part, "The court may extend, for good cause, the time to file a petition." id. As such, Petitioner should be allowed to proceed upon the merits of the petition.

B. Conclusion.

Wherefore, Defendant prays this honorable court will allow him to proceed on the merits of the petition.

Respectfully Submitted, October 7, 2021.

Sean Orth

Sean Orth

This document does not contain the social security number of any person.

Sean Orth

Certificate of Service.

I Sean Orth do hereby certify that on October 7, 2021 I did mail a true and correct copy of the foregoing Reply to Moree Demanke, Chief Deputy District Attorney, 200 Lewis Ave, Las Vegas, Nevada 89511.

Sean Orth

Sean Orth

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12/20/2022 3:40 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

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

BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE

TUESDAY, OCTOBER 19, 2021

RECORDER'S TRANSCRIPT RE:
CALENDAR CALL

APPEARANCES:

For the State: ERIKA MENDOZA, ESQ.

For the Defendant: KARA M. GASTON, ESQ.

TRANSCRIBED BY: MATTHEW YARBROUGH, COURT RECORDER

LAS VEGAS, NEVADA, TUESDAY, OCTOBER 19, 2021, 11:22 A.M.

* * * * *

THE COURT CLERK: State of Nevada versus Sean Orth.

MR. ORTH: Good morning, Your Honor.

THE COURT: Good morning. Go ahead and state your appearance.

MRS. GASTON: Good morning, Your Honor. Kara Gaston, bar number 14621. I am Mr. Orth's standby counsel. Erika Mendoza should be - - I can't see actually see her name, but she is the District Attorney on this case.

MARSHALL: She is on it.

MRS. GASTON: Okay.

MR. ORTH: Your Honor, could I speak to standby counsel before we proceed? Can you trail this, please?

MRS. GASTON: I don't mind calling him; that's fine.

THE COURT: Okay. We'll trail it.

MR. ORTH: Thank you.

THE COURT: Thank you.

[Court trailed matter at 11:35 a.m.]

[Court recalled matter at 12:11 p.m.]

THE COURT CLERK: Recalling page number six, C352701-1. State of Nevada versus Sean Orth.

MR. ORTH: Good morning, Your Honor.

THE COURT: Good morning.

MRS. GASTON: Good afternoon, Your Honor. - -

THE COURT: - - Afternoon, yes - -

/ / /

MRS. GASTON: - - Kara Gaston, again. Obviously, I am standby - - but in this intermediate period, it appears that we have this case negotiated. Mr. Orth is going to be pleading guilty to Count 2; there will be a stipulated sentence of twelve to thirty, and the plea will be conditional upon the sentencing judge accepting the negotiation.

Obviously, I am standby, but I am willing to help facilitate the signing of the Guilty Plea Agreement. He is up at NDOC, so we will need time to somehow get him a copy of it. So that he can either sign it himself and send it down to be filed or, worst case scenario, I would drive up to High Desert to have it signed and bring it down to file it. But that will, unfortunately, take some time to do.

THE COURT: Okay. Is that the State's understanding?

MS. MENDOZA: That is the State's understanding, Your Honor. This is Erika Mendoza; um; we just worked this out on the phone right now. So, I don't have a G.P.A. already - -

THE COURT: - - That's all right - -

MS. MENDOZA: - - But however, long Ms. Simmons would be a good amount of time for us. And I think that Mr. Orth is well aware of this, but just so it's in the record. I just want to make sure that he understands that this sentence will be consecutive to his parole term.

MR. ORTH: Understood.

THE COURT: Okay.

MRS. GATSON: I am assuming that if I were to sign it on his behalf, I would need his permission. I could add some additional language in there based on my conversation with Mr. Orth, if necessary.

MR. ORTH: I consent, Your Honor, to that. It's fine.

THE COURT: Okay. You consent to Mrs. Gatson - - Mrs. Gatson, now?

MRS. GATSON: Yes.

THE COURT: Okay. Congratulations.

MRS. GATSON: Thank you.

THE COURT: To sing on your behalf?

MR. ORTH: I do, Your Honor.

THE COURT: Okay. So, how far out do you want for that?

MRS. GASTON: Just because he is not receiving credit ideally, could if we get two weeks? That would be plenty of time for me to get a copy from Ms. Mendoze and mail it to him and hopefully have to go over it with him.

THE COURT: Okay. Two weeks for the guilty plea.

THE COURT CLERK: And that will be November 4th, 2021, at 11:00 a.m.

MR. ORTH: Thank you, Your Honor.

THE COURT: Thank you, sir.

THE COURT CLERK: And, Judge, the trial date is vacated, correct?

THE COURT: Trial date vacated, yeah. Thank you.

[Proceedings concluded, 12:14 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.

MATTHEW YARBROUGH
Court Recorder/Transcriber

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CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C-20-352701-1
	)	DEPT. NO. 6
vs.	)	
	)	
SEAN RODNEY ORTH,	)	
	)	
Defendant.	)	

BEFORE THE HONORABLE JOE HARDY, DISTRICT JUDGE FOR THE

HONORABLE JACQUELINE M. BLUTH, DISTRICT JUDGE

TUESDAY, OCTOBER 19, 2021 AT 11:22 A.M.

RECORDER'S TRANSCRIPT RE:
CALENDAR CALL

APPEARANCES:

FOR THE STATE: ERIKA MENDOZA, ESQ.
Chief Deputy District Attorney
(Via Videoconference)

FOR THE DEFENDANT: PRO SE
(Via Videoconference)

ALSO PRESENT: KARA M.T. GASTON, ESQ.

Recorded by: MATT YARBROUGH, COURT RECORDER

(TUESDAY, OCTOBER 19, 2021 AT 11:22 A.M.)

THE CLERK: Page Number 6, C352701, State of Nevada versus Sean Orth.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: Good morning. Go ahead and state your appearance.

MS. GASTON: Good morning, Your Honor. Kara Gaston, Bar Number 14621. I am Mr. Orth's standby counsel. Erika Mendoza should be -- I can't see actually her name. She is the District Attorney on this case.

THE CLERK: She's on.

MS. GASTON: Okay.

THE DEFENDANT: And, Your Honor, can I speak to standby counsel before we proceed? Could you trail this, please?

MS. GASTON: I don't mind calling him. That's fine.

THE COURT: Okay. We'll trail it.

THE DEFENDANT: Thank you.

THE COURT: Thank you.

(Whereupon, the matter was trailed and then recalled at 12:11 p.m.)

THE CLERK: Recalling Page Number 6, C352701-1, State of Nevada versus Sean Orth.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: Good morning.

MS. GASTON: Good afternoon, Your Honor.

THE COURT: Good afternoon, yeah.

MS. GASTON: Kara Gaston again. Obviously I'm standby, but in this intermediate period it does appear we have this case negotiated. Mr. Orth is going to be pleading guilty to Count 2. There would be a stipulated sentence of 12 to 30, and the plea would be conditional upon the sentencing Judge accepting the negotiation.

Obviously I'm standby, but I'm willing to help facilitate the signing of the guilty plea agreement. He is up at NDOC, so we'll need time to somehow get him a copy of it so that he can either sign it himself and send it down to be filed or in the worst case scenario I drive up to High Desert to have it signed and bring it down just to file it, but that will take unfortunately time to do.

THE COURT: Okay. Is that the State's understanding?

MS. MENDOZA: That is the State's understanding, Your Honor. This is Erika Mendoza. We just worked this out on the phone right now, so I don't have a GPA already --

THE COURT: No, that --

MS. MENDOZA: But however long Ms. Simmons thinks would be a good amount of time would be fine for us, and I think Mr. Orth is well aware of this, but just so it's on the record I just want to make sure he does understand that the sentence will be consecutive to his parole term.

THE DEFENDANT: Understood.

MS. GASTON: I'm assuming if I were to sign it on his behalf, I would need his permission. I could add some additional language in there based on my conversation with Mr. Orth if necessary.

THE DEFENDANT: And I consent, Your Honor, to that. That's fine.

THE COURT: Okay. You consent to Ms. Gaston now --

MS. GASTON: Yes.

THE COURT: Okay. Congratulations.

MS. GASTON: Thank you.

THE COURT: -- to sign on your behalf?

THE DEFENDANT: I do, Your Honor.

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THE COURT: Thank you, sir.

THE CLERK: And, Judge, the trial date is vacated; correct?

THE COURT: Yeah, trial date vacated.

MS. GASTON: Thank you.

(Whereupon, the proceedings concluded.)

* * * * *

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

LISA A. LIZOTTE
Court Recorder

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Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

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

BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE

TUESDAY, OCTOBER 19, 2021

RECORDER'S TRANSCRIPT RE:
CALENDAR CALL

APPEARANCES:

For the State: ERIKA MENDOZA, ESQ.

For the Defendant: KARA M. GASTON, ESQ.

TRANSCRIBED BY: MATTHEW YARBROUGH, COURT RECORDER

LAS VEGAS, NEVADA, TUESDAY, OCTOBER 19, 2021, 11:22 A.M.

* * * * *

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MARSHALL: She is on it.

MRS. GASTON: Okay.

MR. ORTH: Your Honor, could I speak to standby counsel before we proceed? Can you trail this, please?

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[Proceedings concluded, 12:14 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.

MATTHEW YARBROUGH
Court Recorder/Transcriber

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11/4/2021 11:09 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

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- SEAN RODNEY ORTH, #6111549 Defendant.	CASE NO: C-20-352701-1 DEPT NO: VI A M E N D E D I N F O R M A T I O N

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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 **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, 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

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

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11/4/2021 10:31 AM
Steven D. Grierson
CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: **STOP REQUIRED ON SIGNAL OF POLICE OFFICER (Category B Felony - NRS 484B.550.3b - NOC 53833)**, as more fully alleged in the charging document attached hereto as Exhibit "1".

My decision to plead guilty is based upon the plea agreement in this case which is as follows:

Both parties stipulate to twelve (12) to thirty (30) months to run consecutive to CR05-1459 with zero (0) days credit for time served. The negotiations are contingent upon the Court following the stipulated sentence. The State will not oppose the Defendant's request to withdraw plea if the Court is not inclined to follow the stipulated sentence. All remaining counts contained in the Criminal Complaint which were bound over to District Court shall be dismissed when Defendant is adjudged guilty and sentenced.

I agree to the forfeiture of any and all weapons or any interest in any weapons seized and/or impounded in connection with the instant case and/or any other case negotiated in

whole or in part in conjunction with this plea agreement.

I understand and agree that, if I fail to interview with the Department of Parole and Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate, by affidavit review, confirms probable cause against me for new criminal charges including reckless driving or DUI, but excluding minor traffic violations, the State will have the unqualified right to argue for any legal sentence and term of confinement allowable for the crime(s) to which I am pleading guilty, including the use of any prior convictions I may have to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without the possibility of parole, life with the possibility of parole after ten (10) years, or a definite twenty-five (25) year term with the possibility of parole after ten (10) years.

Otherwise I am entitled to receive the benefits of these negotiations as stated in this plea agreement.

CONSEQUENCES OF THE PLEA

I understand that by pleading guilty I admit the facts which support all the elements of the offense(s) to which I now plead as set forth in Exhibit "1".

I understand that as a consequence of my plea of guilty the Court must sentence me to imprisonment in the Nevada Department of Corrections for a minimum term of not less than one (1) year and a maximum term of not more than six (6) years. The minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment. I understand that I may also be fined up to $5,000.00. I understand that the law requires me to pay an Administrative Assessment Fee.

I understand that, if appropriate, I will be ordered to make restitution to the victim of the offense(s) to which I am pleading guilty and to the victim of any related offense which is being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to reimburse the State of Nevada for any expenses related to my extradition, if any.

I understand that I am eligible for probation for the offense(s) to which I am pleading guilty. I understand that, except as otherwise provided by statute, the question of whether I receive probation is in the discretion of the sentencing judge.

I understand that I must submit to blood and/or saliva tests under the Direction of the Division of Parole and Probation to determine genetic markers and/or secretor status.

I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home, Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation and may receive a higher sentencing range.

I understand that if more than one sentence of imprisonment is imposed and I am eligible to serve the sentences concurrently, the sentencing judge has the discretion to order the sentences served concurrently or consecutively.

I understand that information regarding charges not filed, dismissed charges, or charges to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the Court within the limits prescribed by statute.

I understand that if my attorney or the State of Nevada or both recommend any specific punishment to the Court, the Court is not obligated to accept the recommendation.

I understand that if the offense(s) to which I am pleading guilty was committed while I was incarcerated on another charge or while I was on probation or parole that I am not eligible for credit for time served toward the instant offense(s).

I understand that if I am not a United States citizen, any criminal conviction will likely result in serious negative immigration consequences including but not limited to:

1. The removal from the United States through deportation;
2. An inability to reenter the United States;
3. The inability to gain United States citizenship or legal residency;
4. An inability to renew and/or retain any legal residency status; and/or
5. An indeterminate term of confinement, with the United States Federal Government based on my conviction and immigration status.

Regardless of what I have been told by any attorney, no one can promise me that this conviction will not result in negative immigration consequences and/or impact my ability to become a United States citizen and/or a legal resident.

I understand that the Division of Parole and Probation will prepare a report for the sentencing judge prior to sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. This report may contain hearsay information regarding my background and criminal history. My attorney and I will each have the opportunity to comment on the information contained in the report at the time of sentencing. Unless the District Attorney has specifically agreed otherwise, the District Attorney may also comment on this report.

WAIVER OF RIGHTS

By entering my plea of guilty, I understand that I am waiving and forever giving up the following rights and privileges:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.

3. The constitutional right to confront and cross-examine any witnesses who would testify against me.

4. The constitutional right to subpoena witnesses to testify on my behalf.

5. The constitutional right to testify in my own defense.

6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this conviction, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

VOLUNTARINESS OF PLEA

I have discussed the elements of all of the original charge(s) against me with my attorney and I understand the nature of the charge(s) against me.

I understand that the State would have to prove each element of the charge(s) against me at trial.

I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

I am not now under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

DATED this 4 day of ~~October~~ November, 2021.

Sean Orth

SEAN RODNEY ORTH
Defendant

AGREED TO BY:

Signature affixed by Kara Gaston #14621 at the direction of Sean Orth.

/s/ Erika Mendoza
ERIKA MENDOZA
Chief Deputy District Attorney
Nevada Bar #012520

CERTIFICATE OF COUNSEL:

I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court hereby certify that:

1. I have fully explained to the Defendant the allegations contained in the charge(s) to which guilty pleas are being entered.

2. I have advised the Defendant of the penalties for each charge and the restitution that the Defendant may be ordered to pay.

3. I have inquired of Defendant facts concerning Defendant's immigration status and explained to Defendant that if Defendant is not a United States citizen any criminal conviction will most likely result in serious negative immigration consequences including but not limited to:

   a. The removal from the United States through deportation;

   b. An inability to reenter the United States;

   c. The inability to gain United States citizenship or legal residency;

   d. An inability to renew and/or retain any legal residency status; and/or

   e. An indeterminate term of confinement, by with United States Federal Government based on the conviction and immigration status.

   Moreover, I have explained that regardless of what Defendant may have been told by any attorney, no one can promise Defendant that this conviction will not result in negative immigration consequences and/or impact Defendant's ability to become a United States citizen and/or legal resident.

4. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent with the facts known to me and are made with my advice to the Defendant.

5. To the best of my knowledge and belief, the Defendant:

   a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement,

   b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily, and

   c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with the Defendant as certified in paragraphs 1 and 2 above.

Dated: This 4 day of October, 2021.

Kara Gaston #14621

KARA GASTON-SIMMONS
Standby Counsel

ed/GCU

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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 **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, 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

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

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Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. SEAN RODNEY ORTH, Defendant.	CASE#: C-20-352701-1 DEPT. VI

BEFORE THE HONORABLE JACQUELINE M. BLUTH,

DISTRICT COURT JUDGE

THURSDAY, NOVEMBER 4, 2021

RECORDER'S TRANSCRIPT OF HEARING:
ENTRY OF PLEA

APPEARANCES: [All appearances via videoconference]

For the State: ERIKA MENDOZA, ESQ.
Chief Deputy District Attorney

For the Defendant: PRO SE
KARA M. GASTON, ESQ.
Deputy Public Defender
Standby Counsel

RECORDED BY: DE'AWNA TAKAS, COURT RECORDER

Las Vegas, Nevada, Thursday, November 4, 2021

[Case called at 12:28 p.m.]

THE COURT: Number or page 13, please. State of Nevada versus Sean Rodney Orth, C352701.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: Good morning, sir. All right.

MS. GASTON: Good morning, Your Honor, Kara Gaston. I'm standby counsel for Mr. Orth. My secretary did file the Guilty Plea Agreement.

THE COURT: Yes.

MS. GASTON: The negotiation is that Mr. Orth will be pleading guilty to Count 2, the failure to stop, felony count. The parties would stipulate to a 12 to 30 sentence.

THE COURT: All right. Is that a correct statement of the negotiations, Ms. Mendoza?

MS. MENDOZA: Yes, with the additional caveat that he understands that it has to run consecutive to his parole case, which is named in the Guilty Plea Agreement. And he understands he will have zero days credit for time served.

THE COURT: All right. Sir, may I have your full name for the record.

THE DEFENDANT: Sean Rodney Orth.

THE COURT: How old are you?

THE DEFENDANT: 49.

THE COURT: How far did you go in school?

THE DEFENDANT: One year of college.

THE COURT: Do you read, write, and understand the English language?

THE DEFENDANT: I do.

THE COURT: Are you under the influence of any drug, alcoholic beverage, or medication today?

THE DEFENDANT: No.

THE COURT: Do you understand the proceedings that are happening here today?

THE DEFENDANT: Yes.

THE COURT: Have you received a copy of the Guilty Plea Agreement and Amended Information charging you with one count of stop required on the signal of a police officer, a category B felony.

THE DEFENDANT: Yes.

THE COURT: Do you understand that charge?

THE DEFENDANT: Yes.

THE COURT: Have you had the opportunity to discuss this case with your attorney?

THE DEFENDANT: I am the attorney in the case now, I'm representing pro se, so I have --

THE COURT: Oh, yeah, I apologize. I forgot that you are representing yourself. But have you had the opportunity to discuss with standby counsel any questions that you may have had?

THE DEFENDANT: We really haven't discussed the defenses

or anything like that ma'am. She's just taking the -- she actually was ordered to basically not assist me a couple weeks ago. But other than that, I understand the defenses, etcetera, that are involved.

THE COURT: All right. Do you waive the formal reading of this charge into the record right now?

THE DEFENDANT: I do, ma'am.

THE COURT: As to the charge set forth in the Guilty Plea Agreement and Amended Information, one Count of stop required on the signal of a police officer, a category B felony, how do you plead guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: Are you making this plea freely and voluntarily?

THE DEFENDANT: I do.

THE COURT: Has anyone forced or threatened you or forced or threatened anyone close to you to get you to enter this plea?

THE DEFENDANT: They have not.

THE COURT: Has anyone made you any promises other than what's contained in this document to get you to enter into this plea?

THE DEFENDANT: Only what's contained in the document.

THE COURT: Okay. Now I am looking at the document and it looks like on page 5 of the Guilty Plea Agreement dated November 4th of 2021, above the signature line Sean Rodney Orth, Defendant, is a signature on your behalf by your standby attorney because of Covid-19. Did you give permission to your standby attorney to sign this paper on your behalf?

THE DEFENDANT: You said on which page now? I'm sorry, page 5?

THE COURT: Page 5, yeah. In order to sign the Guilty Plea Agreement she had to sign it on your behalf because of Covid-19.

THE DEFENDANT: Oh, yes. Yes, ma'am.

THE COURT: All right.

THE DEFENDANT: I did concede.

THE COURT: Did you make that decision freely and voluntarily?

THE DEFENDANT: I did.

THE COURT: Do you understand that her signing that document on your behalf because of Covid-19 at your direction and request, it has the same legal effects and consequences as if you had signed the document yourself?

THE DEFENDANT: I do.

THE COURT: Therefore you can't come back later and try to get out of these negotiations claiming that's not your signature.

THE DEFENDANT: Agreed.

THE COURT: All right. Now before you asked your standby counsel to sign the document on your behalf, did you have the opportunity to go through these documents fully and completely?

THE DEFENDANT: To the extent of the plea agreement, yes, ma'am.

THE COURT: Yeah, that's what I'm talking about, --

THE DEFENDANT: Yes, ma'am.

THE COURT: -- the Guilty Plea Agreement. Okay. Do you understand everything contained in these documents including the constitutional and appellate rights you'll be giving up by entering into these negotiations?

THE DEFENDANT: I do, Your Honor.

THE COURT: Are you a United States citizen?

THE DEFENDANT: I am, Your Honor.

THE COURT: All right. Now it looks like the parties stipulated to a period of 12 to 30 months in the Nevada Department of Corrections. And if the Court is not inclined to follow this stipulating sentence the State is not going to oppose you withdrawing your plea. Is that your understanding?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. Are you pleading guilty because in truth and in fact or about the third day of November 2020, within the County of Clark, State of Nevada, you did then and there while driving a motor vehicle in the area of 981 Whitney Ranch, Clark County, Nevada, willfully, unlawfully, and feloniously fail or refuse to bring to a said vehicle of 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 you did operate said motor vehicle in a manner which endangered or was likely to endanger any person other than yourself or the property of any person other than yourself.

THE DEFENDANT: I did, Your Honor.

THE COURT: All right. Do you have any questions, sir, that you'd like to ask before I go ahead and accept your plea?

THE DEFENDANT: Yes, ma'am. Is it possible, because it's conditional plea agreement that I be sentenced today? Is that possible?

THE COURT: Um.

THE DEFENDANT: I've been in the [Indiscernible] Department of Corrections and within their care and custody for the last 15 years without any other conditions. So I'm hoping that today maybe we can resolve this entirely and I could be sentenced, because I'm going to the revocation board on the 9th to deal with this and accept my punishment there. And I'd appreciate it if the Court is advised if we could just resolve this now.

THE COURT: Sorry, sir. No, we can't do that today. I don't have a PSI or anything in which to look at these negotiations or the deal, so I won't be able to do that.

The Court finds that the Defendant's plea of guilty is freely and voluntarily made and that he understands the nature of the offense and he consequences of his plea and therefore accepts his plea of guilty. This matter will be referred to the Department of Parole and Probation for a PSI with an in-custody date please.

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THE CLERK: December 16th at 11:00.

[Hearing concluded at 12:35 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.

Jessica Kirkpatrick

Jessica Kirkpatrick
Court Recorder/Transcriber

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11/21/2022 12:01 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C-20-352701-1
	)	DEPT. NO. 6
vs.	)	
	)	
SEAN RODNEY ORTH,	)	
	)	
Defendant.	)	

BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT JUDGE FOR THE HONORABLE JACQUELINE M. BLUTH, DISTRICT JUDGE

THURSDAY, DECEMBER 16, 2021 AT 1:17 P.M.

RECORDER'S TRANSCRIPT RE: SENTENCING

APPEARANCES:

FOR THE STATE: ERIKA MENDOZA, ESQ.
Chief Deputy District Attorney
(Via Videoconference)

FOR THE DEFENDANT: PRO SE
(Via Videoconference)

ALSO PRESENT: KARA M.T. GASTON, ESQ.
(Via Videoconference)

Recorded by: YVETTE G. SISON, COURT RECORDER

(THURSDAY, DECEMBER 16, 2021 AT 1:17 P.M.)

THE CLERK: Page 15, C352701, State of Nevada versus Orth.

THE COURT: Mr. Orth?

THE DEFENDANT: Yes. I'm here, Your Honor.

THE COURT: Do you represent yourself?

THE DEFENDANT: I do, Your Honor.

THE COURT: All right. This is the time set for entry of judgment, imposition of sentence. Is there any legal cause or reason why judgment should not be pronounced against you at this time?

THE DEFENDANT: The only thing I wanted to ask, Your Honor, is I was -- I haven't received the PSI. I don't know if Ms. Gaston has got it.

THE COURT: Okay. I don't know, how do we get them to them when they're Pro Se? Does anybody know?

MS. GASTON: Your Honor, good afternoon. Kara Gaston, Bar Number 14621. I was appointed as standby counsel, Your Honor. I actually never received a PSI. I'm checking in Odyssey right now. Obviously Ms. Mendoza can correct me if one was created in this case.

THE COURT: I have one, so, yes, it was. All right. How long do we need? I'll pass this for you to get him a copy, please. Would you do that for me?

MS. GASTON: Yeah. I'm more than happy to mail that to him. If I get a copy of it, yeah, I can't download it from Odyssey because I'm not the attorney of record, so if someone can provide that to me, I can get that mailed out to him today.

MS. MENDOZA: I'll send it to you.

THE DEFENDANT: What I was saying, Your Honor, on your September 7th order to Ms. Gaston you appointed her to be basically the liaison in discovery, and I have not been able to see the video of the body cam that I wanted to present at sentencing. Is there any way that you can make it work so I can present that to you, the body and dash cam videos that are part of the failing to stop?

THE COURT: I mean it won't be --

MS. GASTON: Would Your Honor like me to address that?

THE COURT: You can send it to chambers, and Judge Bluth will take a look at it or whoever has it.

MS. MENDOZA: Well, if somebody identifies it for me, tells me which one it is, I can send it to the department ahead of time. But the deal is a stipulated sentence, and so if Mr. Orth intends on arguing for something other than the stipulated sentence, then the State will as well.

THE DEFENDANT: So just because I want to present -- it's a stipulated conditional sentence; is that correct, Your Honor? Just my understanding is that even though it's conditional not to exceed the 12 to 30 months, I thought I would be able to present the evidence. I didn't know I would waive that. I'm not trying to make --

THE COURT: I suppose you technically could, but to what end? What's your goal? Are you concerned that Judge Bluth won't go along with the negotiation or are you hoping that she'll give you something better than you negotiated for --

THE DEFENDANT: No. I'm afraid she's not going to go --

THE COURT: -- or do you just want to -- I'm sorry?

THE DEFENDANT: I haven't -- I've never had access to the dash cam/body cam which is the sole -- which is the biggest evidence in this case that shows that there really wasn't a felony evade in this, but if you want to go along with -- if it's conditional and it's not going to matter and you want to move forward, I understand your position.

THE COURT: I don't have the actual guilty plea in front of me. Is it conditional?

How about we'll do this, we'll pass it for you to get the PSI, and then if Judge Bluth is inclined to not follow the negotiation, then you can address showing her the camera then? How about that?

THE DEFENDANT: Okay.

THE COURT: Does that work for everybody? Does that make sense to anybody but me?

MS. MENDOZA: It makes lots of sense, Your Honor.

THE DEFENDANT: Well, here's the problem, Your Honor. I'm not getting any time served for it. I'm not getting any time served for it. I would like to look at the video myself. It's not a matter of just the Judge being able to be -- I've never even seen it. They've never given it to me. So I've requested it, that motion to compel was denied and I'd just like to go forward on that.

THE COURT: All right. Well, here's -- you've gone way beyond what I can do today. So for today's purposes, I'm going to pass this for how long to get that PSI to him?

MS. GASTON: I just received it --

MS. MENDOZA: I'm going to send it to Ms. Gaston right away, so however long she thinks it would take from today.

MS. GASTON: I just received a copy actually from Ms. Jacobs, the JEA for Judge Bluth, so I'll send this to my secretary now to get mailed out. I don't know what to expect with the holidays, but however long -- it should be quick no matter what, but however long it would take to get an order to transport Mr. Orth should be enough time.

THE COURT: All right. Shall we go with early January return?

THE DEFENDANT: Yes, please.

MS. MENDOZA: That's fine with the State.

THE COURT: Okay. Let's do that. We'll put it on in early January. Mr. Orth, if you need to file some motion or something between now and then go ahead, but I can't be ruling on things that are just raised orally. All I was here for was sentencing. Okay?

THE DEFENDANT: Thank you.

THE CLERK: January 4th, 11:00 a.m.

THE DEFENDANT: Thank you, Your Honor.

(Whereupon, the proceedings concluded.)

* * * * *

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

LISA A. LIZOTTE
Court Recorder

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Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C-20-352701-1
	)	DEPT. NO. 6
vs.	)	
	)	
SEAN RODNEY ORTH,	)	
	)	
Defendant.	)	

BEFORE THE HONORABLE TIERRA JONES, DISTRICT JUDGE FOR THE HONORABLE JACQUELINE M. BLUTH, DISTRICT JUDGE

THURSDAY, JANUARY 6, 2022 AT 11:47 A.M.

RECORDER'S TRANSCRIPT RE: SENTENCING

APPEARANCES:

FOR THE STATE: ERIKA MENDOZA, ESQ.
Chief Deputy District Attorney
(Via Videoconference)

FOR THE DEFENDANT: NOT PRESENT

ALSO PRESENT: KARA M.T. GASTON, ESQ.
(Via Videoconference)

Recorded by: VICTORIA BOYD, COURT RECORDER

(THURSDAY, JANUARY 6, 2022 AT 11:47 A.M.)

THE COURT: Let's go to Page 23, C352701, State of Nevada versus Sean Orth. CCDC, do you have Orth over there?

THE CORRECTIONS OFFICER: No, Your Honor.

THE COURT: All right. May the record reflect he is not present. Ms. Mendoza is here on behalf of the State. He is Pro Se. Does he have standby counsel?

MS. GASTON: Yes, Your Honor. Kara Gaston, Bar Number 14621. I'm his standby counsel.

THE COURT: All right. Well, the order to transport him was not signed until yesterday, so I'm not shocked that he's not here because it was submitted on the 4th and signed yesterday, so that's why he's not here.

MS. MENDOZA: Yes. It's my fault, Your Honor. I had this down as scheduled for the 4th, so I didn't realize about the scheduling confusion until I showed up on the 4th and it wasn't on calendar.

THE COURT: Okay. So you're going to need to do a new order to transport, and I'm going to continue this out for two weeks so that they can get him here. That date is --

THE CLERK: January 20th at 11:00 a.m.

MS. GASTON: Thank you, Your Honor.

MS. MENDOZA: Thank you.

THE COURT: Thank you.

(Whereupon, the proceedings concluded.)

* * * * *

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

LISA A. LIZOTTE
Court Recorder

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Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

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

BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

MONDAY, JANUARY 24, 2022

RECORDER'S TRANSCRIPT OF PROCEEDING:

SENTENCING

APPEARANCES:

For the State: ALEXANDER G. CHEN, ESQ.
Chief Deputy District Attorney

For the Defendant: PRO SE
Stand-by Counsel KARA M. GASTON, ESQ.,
Deputy Public Defender

RECORDED BY: VICTORIA BOYD, COURT RECORDER

Las Vegas, Nevada; Monday, January 24, 2022

[Proceeding commenced at 9:03 a.m.]

THE COURT: Let's go to page 15, C352701, State of Nevada versus Sean Orth.

THE CORRECTION'S OFFICER: I don't believe he was transported, Your Honor. He hasn't showed up yet on our side.

THE COURT: All right. Hold on.

Mr. Chen, I think this is Ms. Mendoza's case; are you covering this?

MR. CHEN: I don't have any notes on this particular one.

THE COURT: All right. Well here's the issue. When we were here -- Mr. Chen, I'm just going to ask you to stand in. May the record reflect the defendant is not here. He's pro se. Ms. Gaston is here on his behalf, I mean as stand-by counsel. Ms. Gaston, can we get your bar number?

MS. GASTON: 14621.

THE COURT: All right. Mr. Chen is standing on behalf of the State. Mr. Chen, here's the issue. He was on calendar on January 6th the last time. The State sent over an order to produce on the 5th, well they send it over on the 4th it got signed on the 5th, so they didn't bring him.

We reset it to this date and there was no new order that was done. So for that reason the prison doesn't know he's supposed to be here today. So the prison didn't bring him. So I'm going to continue this

for two weeks. You guys need to do a new order to transport so that he can actually be here. And may the record reflect that none of this is his fault. So I know you guys agreed that he was going to get zero days credit but I'm going to start giving him credit since January 6th. Because the fact he hasn't been able to get sentenced is not his fault. So we're going to continue this matter for two --

MR. CHEN: Is two weeks enough to get him here, Your Honor?

THE COURT: I'm sorry, Mr. Chen?

MR. CHEN: Is two weeks enough to get him here with a transport order?

THE COURT: Well that's what I've been told in the past.

MR. CHEN: Okay. I want to make sure.

THE COURT: You want three weeks just to be sure?

MR. CHEN: Just to be sure.

THE COURT: All right. We're going to out three weeks since he's getting credit now, we're going out three weeks. State, I do need a new order to transport.

THE COURT CLERK: Okay. February 14th at 8:30. Credit from?

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MS. GASTON: Thank you, Your Honor.

THE COURT: Credit will be from January 6th.

THE COURT CLERK: All right. Thank you.

THE COURT: All right. Thank you.

[Proceeding concluded at 9:05 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.

Connie Coll
Court Recorder/Transcriber