

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

2 SEAN RODNEY ORTH,

3 Appellant,

4 vs.

5 THE STATE OF NEVADA,

6 Respondent.

Docket No. 85229

Electronically Filed
Aug 15 2023 04:51 PM
Elizabeth A. Brown
Clerk of Supreme Court

7 (Appeal from a Final Judgment of Conviction of the Eighth Judicial District Court,
8 in and for the County of Clark, State of Nevada)

9 **APPELLANT'S OPENING BRIEF**

10 **Volume IX**

11 **Bates Nos.:**

12 **AA001899-AA002091**

13 C. BENJAMIN SCROGGINS, ESQ.

14 Nevada Bar No. 7902

15 **THE LAW FIRM OF**

16 **C. BENJAMIN SCROGGINS, CHTD.**

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21 *Attorney for Appellant,*

SEAN RODNEY ORTH

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

2 SEAN RODNEY ORTH,

3 Appellant,

4 vs.

5 THE STATE OF NEVADA,

6 Respondent.

Docket No.: 85229

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8 **CERTIFICATE OF SERVICE**

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

12 Aaron Ford
13 Alexander Chen

14 CERTIFIED this __ day of August, 2023.

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN RODNEY ORTH,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF CLARK,

Respondent,

and

THE STATE OF NEVADA,
Real Party in Interest.

Supreme Court No. 84180

District Court Case No. C352701

NOTICE IN LIEU OF REMITTITUR

TO THE ABOVE-NAMED PARTIES:

The decision and Order of the court in this matter having been entered on April 14th, 2022, and the period for the filing of a petition for rehearing having expired and no petition having been filed, notice is hereby given that the Order and decision entered herein has, pursuant to the rules of this court, become effective.

DATE: May 09, 2022

Elizabeth A. Brown, Clerk of Court

By: Andrew Lococo
Deputy Clerk

cc:

Clark County District Attorney \ Alexander G. Chen, Chief Deputy District Attorney
Steven D. Grierson, Eighth District Court Clerk
Eighth Judicial District Court, Chief Judge
Sean Rodney Orth

1. SEAN RODNEY ORTH #96723
2. POST OFFICE BOX 650
3. INDIAN SPRINGS, NEVADA 89070

4. PRO SE

FILED

JUN 01 2022

CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

June 22, 2022
8:30 AM

9. THE STATE OF NEVADA,

10. PLAINTIFF,

CASE NO. C-20-352701-1

11. VS.

DEPT NO. X

12. SEAN RODNEY ORTH,

13. DEFENDANT. /

MOTION TO DISMISS CHARGES.

14.

15.

16. COMES NOW, SEAN RODNEY ORTH, DEFENDANT, PRO SE, WHO RESPECTFULLY MOVES
17. THIS HONORABLE COURT TO DISMISS THE CHARGES AGAINST ME FOR THE REASONS
18. SHOWN HEREIN.

19. THIS MOTION IS SUPPORTED BY ALL PAPERS, PLEADINGS AND DOCUMENTS ON FILE
20. IN THIS CASE, THE MEMORANDUM OF POINTS AND AUTHORITIES BELOW AND THE
21. EXHIBITS ATTACHED HERETO.

22. /

23. /

24. /

25. /

26. /

27. /

28. /

CLERK OF THE COURT

JUN 31 2022

RECEIVED

AA001900

MEMORANDUM OF POINTS AND AUTHORITIES.

A. STATEMENT OF FACTS.

SEAN RODNEY ORTH (DEFENDANT "HELEN") WAS STOPPED ON OCTOBER 28, 2020 FOR MR. LOUIS POLANCO FALSELY CLAIMING DEFENDANT ROBBED HIM. City of Henderson Police Department ("HPD" HELEN) DETECTIVE KEVIN LAPIER REPORTED "IT BECAME EVIDENT THAT SEAN WAS MORE OF A FRIEND THAN A SUSPECT WHO COMMITTED ROBBERY" EXHIBIT 1 (REPORT, HPD DETECTIVE KEVIN LAPIER).

A GUN WAS STAGED IN DEFENDANT'S POSSESSION AS PART OF THE FAKE ROBBERY PLOT. EVIDENCE OF THIS IS THAT MR. POLANCO CLAIMED THAT I ROBBED HIM IN THE BEDROOM OF HIS APARTMENT, MADE HIM PUT THE .20 GAUGE SHOTGUN IN A SAND COLORED DUFFLE BAG WITH OTHER ITEMS AND MADE HIM WALK THE SAND COLORED DUFFLE BAG DOWN TO THE CURB, PUT IT IN THE TRUNK AND I TOOK THE VEHICLE. EXHIBIT 2 (REPORT, HPD DETECTIVE DEANUS OZUNA). HOWEVER, MS. JESSIE CARACCILO WAS PRESENT. MS. CARACCILO ~~IS~~ IS MR. POLANCO'S GIRLFRIEND. MS. CARACCILO TOLD DETECTIVE LAPIER I SPOKE TO MR. POLANCO IN THE BEDROOM A FEW MINUTES, I WAS NOT ARMED, I LEFT ALONE CARRYING A "GREEN" DUFFLE BAG (NOT THAT MR. POLANCO WALKED OUT WITH ME CARRYING A TAN BAG) EXHIBIT 1 (REPORT, HPD DETECTIVE KEVIN LAPIER). THE SAND COLORED BAG MADE IT INTO THE CAR AT A DIFFERENT TIME THAN MR. POLANCO CLAIMS. THE GUN WAS STAGED IN MY POSSESSION TO COOPERATE THE FAKE ROBBERY. THE TAN BAG WAS SEIZED IN THE STOP.

POLICE FOUND THE .20 GAUGE IN THE SAND COLORED BAG. EXHIBIT 1 AT 1. I AM PROSECUTED FOR PROHIBITED PERSON OWNING/POSSESSING A FIREARM, A FELONY VIOLATION OF NRS 202.360. THE STATE AGREES TO DISMISS THE GUN CHARGE AS PART OF A CONDITIONAL PLEA AGREEMENT, UPON THE COURT AGREEING, TO (12) TO (30) MONTHS FOR A VIOLATION OF STOP REQUIRED AT SIGNAL OF POLICE, A FELONY VIOLATION OF NRS 484B.530(3)(b). NOTHING PROHIBITS DEFENDANT FROM MOTIONING TO DISMISS THE CHARGES.

B. LEGAL ARGUMENTS.

I. THIS SECOND PROSECUTION IS BARRED BY COLLATERAL ESTOPPEL AND ASHE V.

SWENSON, 397 U.S. 436, 453-454, 90 S.Ct. 1189, n.7 (1970)

HPD DETECTIVE KARI LIPPISCH TESTIFIED THERE WAS NO PROBABLE CAUSE TO ARREST ME FOR ROBBERY BUT I WAS ARRESTED FOR RESISTING ARREST, EXHIBIT 3 (EXCERPT, TRANSCRIPTS OF PROCEEDINGS, DECEMBER 9, 2020 PRELIMINARY HEARING) AT 114.

THE RESIST PUBLIC OFFICER, A VIOLATION OF MRS 199.280(3), WAS PREMISED ON DEFENDANT "FAILED TO YIELD TO HPD PATROL OFFICERS WHO INITIATED A LAWFUL STOP ON A SUSPECT IN A FELONY CASE" EXHIBIT 4 (DECLARATION OF ARREST). THE COMPLAINT ALLEGED I FAILED TO OBEY COMMANDS TO STOP, EXHIBIT 5 (MULTIPLE COUNT COMPLAINT). THIS PROSECUTION WAS FINAL WHEN THE STATE OFFERED ME TO ENTER A PLEA THAT INCLUDED AN OCTOBER 29, 2020. I PLEADED NO CONTEST TO RESIST PUBLIC OFFICER AND RECEIVED A SENTENCE OF (30) DAYS WHICH I SERVED. EXHIBIT 6 (MULTIPLE COUNT COMMUNICATION).

THE DOUBLE JEOPARDY CLAUSE SELVES "A CONSTITUTIONAL POLICY OF FINALITY FOR THE DEFENDANT'S BENEFIT" UNITED STATES V. JORD, 400 U.S. 470, 479, 91 S.Ct. 542 (1971) AND FROM ATTEMPTS TO SECURE ADDITIONAL PUNISHMENT AFTER A PRIOR CONVICTION AND SENTENCE. GREEN V. UNITED STATES, 355 U.S. 184, 187-188, 78 S.Ct. 221 (1957). THE STATE HAS VIOLATED THIS LONG STANDING CONSTITUTIONAL POLICY.

AFTER THE OCTOBER 29, 2020 CONVICTION AND SENTENCE FOR RESIST PUBLIC OFFICER THE STATE INITIATED THIS SECOND PROSECUTION IN STATE OF NEVADA V. DEAN ROANEY BIRTH, CASE NO. 20CKH00571, JUSTICE COURT, HENDERSON TOWNSHIP CHARGING PROHIBITED PERSON OWNING/POSSESSING A FIREARM, HAS 202.360, AND VIOLATION OF STOP REQUIRED, MRS 484B.550(3)(b). EXHIBIT 7 (ARREST COMPLAINT). I WAS BOUND OVER TO JURY COURT

1 By DETENTION AT PRELIMINARY EXAMINATION, DECEMBER 9, 2020.

2

3 THE RESIST PUBLIC OFFICER (E.S. NO. 4, 5, 6), PROHIBITED PERSON OWNING/POSSESSING
4 A FIREARM AND VIOLATION TO STOP REQUIRED (E.S. 7) ALL ARISE OUT OF THE OCTOBER 25,
5 2020 STOP. DOUBLE JEOPARDY ONLY ALLOWS ONE PROSECUTION FOR "ALL THE CHARGES AGAINST
6 A DEFENDANT THAT GROW OUT OF A SINGLE ACT, OCCURRENCE, EPISODE OR TRANSACTION"
7 AS THE V. SWENSON, 397 U.S. 436, 453-454, 90 S. CT. 1189, N. 7 (1970), THIS SECOND
8 PROSECUTION VIOLATES DOUBLE JEOPARDY.

9

10 In BROWN V. OHIO, 432 U.S. 161 (1977) MR. JUSTICE BRENNAN AND MR. JUSTICE MARSHALL
11 JOINED CONCURRING, IN A SEPARATE OPINION:

12 "I JOIN THE COURT'S OPINION, BUT IN ANY EVENT WOULD REVERSE ON THE GROUND, NOT
13 ADDRESSED BY THE COURT, THAT THE STATE DID NOT PROSECUTE PETITIONER IN A SINGLE
14 PROCEEDING. I ADHERE TO THE VIEW THAT THE DOUBLE JEOPARDY CLAUSE OF THE FIFTH
15 AMENDMENT, APPLIED TO THE STATES THROUGH THE FOURTEENTH AMENDMENT, REQUIRES
16 THE PROSECUTION IN ONE PROCEEDING, EXCEPT IN EXTREMELY LIMITED CIRCUMSTANCES
17 NOT PRESENT HERE, OF "ALL THE CHARGES AGAINST A DEFENDANT THAT GROW OUT OF
18 A SINGLE ACT, OCCURRENCE OR EPISODE OR TRANSACTION." AS THE V. SWENSON, 397
19 U.S. 436, 453-454, 23 L. ED. 2D, 90 S. CT. 1189, N. 7 (1970) (BRENNAN, J., CONCURRING)
20 ; SEE THOMPSON V. OKLAHOMA, 429 U.S. 1053, 50 L. ED. 2D 720, 97 S. CT. 768 (1977) (B-
21 RENNAN, J., DISSENTING FROM DENIAL OF CERTIORARI) AND CASES COLLATED THEREIN. IN
22 MY VIEW THE COURT'S SUGGESTION, ANTE, AT 169, N. 8, 53 L. ED. 2D 196, THAT THE OHIO
23 LEGISLATURE MIGHT BE FREE TO MAKE VIOLATING A SEPARATE AND DISTINCT OFFENSE
24 FOR EACH DAY A MOTOR VEHICLE IS OPERATED WITHOUT THE OWNER'S CONSENT WOULD
25 NOT AFFECT THE APPLICABILITY OF THE SINGLE-TRANSACTION TEST, THOUGH UNDER SOME
26 CIRCUMSTANCES A LEGISLATURE MAY DIVINE A CONTINUING COURSE OF CONDUCT INTO
27 DISCRETE OFFENSES I WOULD NEVERTHELESS HOLD THAT ALL CHARGES GROWING
28 OUT OF CONDUCT CONSTITUTING A "SINGLE CRIMINAL ACT, OCCURRENCE, EPISODE OR...

1 TRANSACTION "MUST BE TRIED IN A SINGLE PROCEEDING."

2 432 U.S. AT 170.

3 THIS SECOND PROSECUTION VIOLATES DOUBLE JEOPARDY.

4

5 ADDITIONALLY, THE RESIST PUBLIC OFFICER WAS PREMISED ON DEFENDANT "FALLING

6 TO YIELD TO HIGH PATROL OFFICERS WHO INITIATED A LAWFUL STOP ON A PERSONAL SUSPECT

7 IN A FELONY CRIME "EX. 4 (DECLARATION OF ARREST). THE FACTUAL ISSUE IS DISCLOSED

8 COMMENTS TO STOP WERE IN THE COMPLAINT AS WELL. EX. 5 (COMPLAINT MULTIPLE COURT). THE

9 ALLEGATIONS IN MULTIPLE COURT MIRROR THE ALLEGATIONS IN THE STOP REQUIRED VIOLAT-

10 ION NOW BEING PROSECUTED. EX. 7. COLLATERAL ESTOPPEL PROHIBITS THIS PROSECUTION, AS HE

11 V. SWENSON, 397 U.S. 436, 443 (1970) COLLATERAL ESTOPPEL "MEANS, SIMPLY THAT

12 WHEN AN ISSUE OF ULTIMATE FACT HAS ONCE BEEN DETERMINED BY A VALID FINAL

13 JUDGMENT THAT ISSUE CANNOT AGAIN BE RELITIGATED IN ANY FUTURE LITIGATION")

14

15 THE BLOCKBURGER TEST IS NOT THE ONLY STANDARD FOR DETERMINING WHETHER

16 SUCCESSIVE PROSECUTIONS IMPERMISSIBLY INVOLVE THE SAME OFFENSE. EVEN

17 IF TWO OFFENSES ARE SUFFICIENTLY DIFFERENT TO PERMIT THE IMPOSITION OF

18 CONSECUTIVE PROSECUTIONS WILL BE BARRED IN SOME CIRCUMSTANCES WHERE

19 THE SECOND PROSECUTION REQUIRES THE RELITIGATION OF FACTUAL ISSUES ALREADY

20 RESOLVED BY THE FIRST"

21 BROWN, 432 U.S. AT 167, 176.

22

23 THIS PROSECUTION VIOLATES COLLATERAL ESTOPPEL. DISMISSAL OF CHARGES IS

24 REQUIRED. DEFENDANT PLAYS THIS HONORABLE COURT ACHIEVES.

25

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1 C. Conclusion.

2

3 DEFENDANT PRAYS THIS HONORABLE COURT WILL DISMISS THE CHARGES.

4

5

Respectfully Submitted, May 24, 2022

6

7

Sean Ortiz

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10

THIS DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON.

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CERTIFICATE OF SERVICE

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ON MAY 24, 2022 I SENT ORTH BY MAIL A TRUE AND CORRECT COPY OF THE FOREGOING MOTION TO DISMISS CHARGES TO: TERIKA MENDOZA, CHIEF DEPUTY DISTRICT ATTORNEY, CLARK COUNTY NORTHERN, 200 LEWIS AVE, LAS VEGAS NORTHERN 89155.

Sean Ortiz

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

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

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

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

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

Jessie claimed to have very little knowledge of Sean other than seeing him sleeping on Louis's couch a few days prior and this incident in question. I ended the interview at this point.

I then conducted a recorded interview with Christian Polanco (DOB 12/1/08) who is the son to Louis. Christian advised that Sean did not live at the apartment like Sean was claiming, but Christian advised that Sean has been at the apartment for the last three days, and furthermore that he and Louis met Sean approximately 10 days ago.

Christian advised that his father seemed anxious and nervous while Sean was at the house the night of the incident, but stated that it was normal practice that Louis and Sean would enter Louis's bedroom and talk and hang out in there.

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

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

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

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

Christian advised that Sean could borrow his dad's car that Jessie claimed was stolen. Christian advised that Sean would drive the car for a couple of days before he returned it. Christian then stated that Sean has access to Louis's cellular phone and his bank accounts as well. It became evident that Sean was more of a friend than a suspect who committed a robbery.

Jessie then stated that Sean had access to Louis's Navy Credit Union and USAA credit union accounts. Jessie advised that last night they called and put a stop to his accounts. Jessie stated that several charges were found on Louis's account on 10/25 and 10/26.

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

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

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

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

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

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

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

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

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

OZAWA

On 10-28-2020 at approximately 0855 hrs I, Detective Ozawa P#1531 was assisting Detective Lippisch in a robbery investigation that occurred at the Marlow Apartments located at 981 Whitney Ranch Drive, Henderson, NV 89014. I was tasked with interviewing a victim (Louis Polanco DOB [redacted] of the incident."

I made contact with Louis at his apartment (#823) and asked Louis if he would speak with me inside my Detective vehicle and he advised yes. I escorted Louis to my vehicle and he sat in the front passenger seat. I explained to Louis that I wanted to talk to him about what happened and that I was going to digitally record the interview. Louis gave consent for me to record the interview. During Louis' interview, I had to ask Louis to clarify details because Louis would give details out of chronological order.

Louis advised that he first met the suspect, who he identified as "Sean O" because he did not remember Sean's last name, on Sunday 10-25-2020 at approximately 2300 hrs when Sean came over to his apartment with Louis' friend "Benny." Louis stated that Benny lives out of town and had come to Nevada and contacted him through Instagram and asked if Louis wanted to hangout. Louis told Benny yes, and Benny said he would come over to his apartment and they could hang out and Benny would give Louis a tattoo. Benny came over with Sean on 10-25-2020 at approximately 2300 hrs and they all hung out together and drank alcohol. Louis advised that Sean fell asleep and Benny wanted to leave and Louis told Benny that Sean could sleep at his apartment. Benny left Louis' apartment at approximately 0300 hrs on 10-26-2020. After Benny left, Louis went to bed and when Louis woke up later in the morning, Sean was already gone. Louis did not know when Sean left or where Sean went.

Louis stated that he did not have any contact with Benny or Sean for the rest of Monday (10-26-2020). Then on Tuesday (10-27-2020) between the hours of 1400 to 1500 hrs, Sean came to Louis' apartment. Louis let Sean inside his apartment and when Sean came in, he pulled up his shirt and Louis observed a gun in his waistband. Sean then tells Louis to sit down and to give him Louis' computer and cell phone. Sean then tells Louis that he wanted to erase the video on his cameras and told Louis it was illegal to record people. I asked Louis about the cameras and he advised that he has Cox HomeLife and he has a camera inside his room. Louis advised that Sean pulled his camera from inside his room to disconnect the camera.

After a few minutes, Louis' son (Christian Polanco) came home and was crying. Louis advised that his son was crying because he had broken a glass bottle and some neighbors yelled at him. After some more time had passed, Henderson Police knocked on Louis' apartment door. Sean told Louis to stay seated and Sean answered the door and spoke with Officers. This incident was documented under HPD incident number HP201027000845.

At approximately 1800 hrs, Louis advised that his girlfriend (Jessie Caracciolo DOB [redacted]) came to the apartment. Sean then told Louis to talk with him in Louis' room and Louis walked into his bedroom with Sean. Sean asked Louis why Jessie was at his apartment, and Louis told him that she is his girlfriend. Sean then tells Louis to give him all his guns, and Louis puts a short barrel shotgun that belongs to Jessie and a handgun (Smith and Wesson Shield) that belongs to Louis in a sand colored duffel bag. After Louis packed the duffel bag, he walked out of the apartment with Sean and put the duffel bag in Louis' car (white Chevrolet Malibu) and Sean drove off with Louis' vehicle. Louis advised that the white Chevrolet Malibu belonged to a body shop that was loaning him the vehicle because the body shop was working on Louis' car (Gray BMW 328i). Louis also stated that prior to Sean stealing his car, Sean told him, "Don't call the cops or I'll blow up your home." This is why Louis did not call the Police right after the incident occurred.

Louis then called the Police later in the evening and Louis made contact with Police and a report was taken and documented under HPD report # 20-18989. Louis was then advised that if Sean returns, he needed to contact the Police right away and Louis advised okay.

I asked Louis what was stolen from him, and he advised that his cell phone, laptop, Winchester Shotgun and a Smith and Wesson handgun. I asked Louis to describe Sean and he advised that Sean was a white male, approximately six foot in height, 200 lbs and had a shaved head. The last clothing description that Louis could remember was Sean was wearing a blue shirt, blue pants and a blue hoodie. After speaking with Louis, I talked to Detective LaPeer who was also assisting Detective Lippisch and interviewed Christian and Jessie. Detective LaPeer advised me of what Christian and Jessie stated, which was inconsistent with Louis' statements. See Detective LaPeer's interview narrative for exact details of the interviews. Detective LaPeer stated that Jessie had advised that Louis had let Sean borrow his Chevrolet Malibu and had let Sean borrow his cell phone.

I then spoke with Louis one more time outside his apartment. I advised Louis his statement was slightly different from Jessie's statement. I asked Louis why his statement would be different from Jessie's and he advised he did not know why. I asked Louis if he ever let Sean borrow his vehicle and cell phone and Louis stated no. Louis stated that he did let Sean use his phone when he first met Sean and Sean used it to call unemployment. I advised Louis that he first advised me that he met Sean on Sunday night at 2300 hrs, so the unemployment office would be closed and he could not give a reason for letting Sean use his phone to call unemployment on a day that it was closed.

I asked Louis if he met Sean or Benny anywhere else prior to coming to his apartment on 10-25-2020 and he advised no. I asked Louis if he went anywhere during the past three days, and he advised that he had went to a PT's Bar on Saturday night and remembers talking to a female that night. I asked if Benny or Sean were at the bar and he advised no. The interview was then ended with Louis and Detective LaPeer and I left the apartment.

1 Date:	Officer:	Subject:
12/08/2020	TROTTER, BRANDONN	Digital Investigation

On 10/28/2020 I, Detective B. Trotter #1533 was contacted by Detective K. Lippisch #1710, regarding a request that I perform a digital analysis and examination for the following listed cell phone. I was provided the cellular phone at approximately 1730 hours. I was additionally provided with a search warrant signed and approved by the Honorable Judge David S. Gibson of the Henderson Justice Court, providing authority for a search of the device.

Device:
(1) Black LG Cellular Phone - Model: LM-Q710MS - Serial Number: 903CYGW293903 - IMEI: 352439102939034

The cellular device, and later it's SIM card, were connected to a Cellebrite Universal Forensic Extraction Device (UFED) for PC utilizing forensically accepted techniques, and the data was acquired from them.

The following phone number was reported by the devices:
(1) 17026850927

After acquiring the data, I subsequently booked the device into the Henderson Police Department Evidence Vault on 10/29/2020 at approximately 1859 hours.

A portable forensic reporting application was later generated for the device by a Cellebrite Physical Analyzer software program. A copy of the reporting application was subsequently provided to Detective Lippisch for review and further investigation.

A copy of the above-mentioned data will be maintained on a locked, isolated and air gapped, external Computer Crimes Evidence Storage System at the Henderson Police Department Main Station.

Documentation of the device examined will be later uploaded to the Henderson Police Department Digital Evidence Database.

PRATT

EXHIBIT 2

12:00AM 1 TRAN
2 CASE NO. C352701-1
3
4 IN THE JUSTICE'S COURT OF HENDERSON TOWNSHIP
5 COUNTY OF CLARK, STATE OF NEVADA
6
7 STATE OF NEVADA,
8 Plaintiff,
9 vs. CASE NO. 20CRH001571
10 SEAN RODNEY ORTH,
11 Defendant,
12
13 REPORTER'S TRANSCRIPT
14 OF
15 PRELIMINARY HEARING
16 BEFORE THE HONORABLE SAMUEL G. BAYEMAN
17 JUSTICE OF THE PEACE
18
19 WEDNESDAY, DECEMBER 9, 2020
20 APPEARANCES:
21 For the State: ERIKA MENDOZA
22 Chief Deputy District Attorney
23
24 For the Defendant: IN PROPER PERSON
25 Standby Counsel: KARA SIMMONS
Deputy Public Defender
12:00AM 26 Reported by: Lisa Brenske, CCR #186

12:00AM 1 WITNESSES
2
3 ALEX NELSON
4 Direct Examination by Ms. Mendoza 38
5 Cross-Examination by Defendant Orth 24
6 Redirect Examination by Ms. Mendoza 28
7 Recross-Examination by Defendant Orth 60
8 Further Redirect Examination by Ms. Mendoza 62
9
10 KEVIN LAPEER
11 Direct Examination by Ms. Mendoza 63
12 Cross-Examination by Defendant Orth 66
13 Redirect Examination by Ms. Mendoza 81
14
15 KARL LIPPISCH
16 Direct Examination by Ms. Mendoza 84
17 Cross-Examination by Defendant Orth 133
18 Redirect Examination by Ms. Mendoza 134
19 Recross-Examination by Defendant Orth 125
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12:00AM 1 INDEX OF EXHIBITS
2 Exhibit Description Admitted
3 STATE'S 1 PHOTOGRAPH OF DUFFEL BAG 65
4 STATE'S 2 - 5 JUDGMENTS OF CONVICTIONS 185
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12:00AM 1 HENDERSON, NEVADA, DECEMBER 9, 2020
2
3 * * * * *
4
5 11:03AM THE COURT: Sean Orth, 20CRH1571, who is
6 representing himself with Miss Simmons here as standby
7 counsel.
8 All right. Mr. Orth, let's take up your
9 motions first and then we'll start the prelim depending
10 how I rule on your motions, okay?
11 11:04AM DEFENDANT ORTH: Yes, sir. I'd like to
12 invoke the rule of witnesses.
13 THE COURT: Of what?
14 DEFENDANT ORTH: The rule of witnesses
15 To exclude them.
16 THE COURT: We'll exclude the witnesses
17 once the preliminary hearing starts. So your motions
18 to dismiss. You received Miss Mendoza's responses,
19 correct, sir?
20 11:04AM DEFENDANT ORTH: I received them today,
21 your Honor.
22 THE COURT: Have you reviewed them?
23 DEFENDANT ORTH: Yes. And I'd like to
24 reply.
25 11:04AM THE COURT: I'm sorry?

EXHIBIT 3

AA001908

12:55PM 1 A. Yes.
2 Q. You simply copy and pasted your
3 Declaration of Arrest into the affidavit for search
4 warrant; is that correct?
1:00PM 5 A. No.
6 Q. You didn't?
7 A. No.
8 Q. What did you omit?
9 A. I didn't omit anything. The search
10 warrant was completed before the Declaration of Arrest.
11 Q. Okay. So the search warrant affidavit
12 was -- how long after you seized the item did that
13 occur?
14 MS. MENDOZA: Objection. Vague.
15 BY DEFENDANT ORTH:
16 Q. How long --
17 THE COURT: Hang on a second. You said
18 when did he create the search warrant affidavit after
19 he seized --
1:00PM 20 BY DEFENDANT ORTH:
21 Q. After you had me under arrest in your
22 vehicle when did you create the search warrant
23 affidavit?
24 A. I applied for the search warrant that day,
1:00PM 25 the 28th. I do not know the exact time.

1:00PM 1 THE COURT: For the record it's a court
2 document. October 28th it was signed by looks like
3 Judge Gibson at 3:51 p.m. Does that sound correct on
4 October 28th?
1:00PM 5 THE WITNESS: That does.
6 THE COURT: That's the timestamp I have.
7 BY DEFENDANT ORTH:
8 Q. So at that point you already had me in
9 jail for obstructing resist?
1:01PM 10 A. You were in custody for the resisting
11 charge,
12 Q. And misdemeanor, and you had made the
13 decision not to arrest me for robbery at that point,
14 correct?
1:01PM 15 A. At that time the robbery investigation was
16 still ongoing.
17 Q. Okay. So would you agree that you did not
18 have probable cause at that point to arrest me for
19 robbery?
1:01PM 20 A. At the time that I applied for the search
21 warrant I did not have probable cause to arrest you for
22 the robbery.
23 Q. When did you create a Declaration of
24 Arrest?
1:01PM 25 A. I don't remember the exact day.

1:02PM 1 Q. Did you create it after you applied for
2 the search warrant?
3 A. Yes.
4 Q. Why did you include in your Declaration of
1:02PM 5 Arrest that Jessie and Louie changed their stories, but
6 you didn't include that when you made your search
7 warrant affidavit to the judge?
8 A. The paragraph you just had me read from
9 the declaration talked about the changing of the
10 stories. I wrote that synonymous with the conflicting
11 stories.
12 Q. Why didn't you tell the judge you didn't
13 have probable cause to arrest me for robbery?
14 A. I was not writing an arrest warrant. I
1:02PM 15 was writing a search warrant.
16 Q. So to clarify, why didn't you have
17 probable cause -- why did you not have probable cause
18 on the robbery? Did you feel they weren't trustworthy?
19 Did you feel there was too much conflict? In making a
20 decision why wasn't there probable cause to arrest for
21 robbery?
22 MS. MENDOZA: Objection.
23 THE COURT: It's kind of gotten to the
24 point where it's irrelevant, Mr. Orth. With the search
1:03PM 25 warrant they had probable cause to look for -- their

1:03PM 1 belief was potential for evidence from a robbery was
2 included in the duffel bag. They don't have to have
3 probable cause that a robbery occurred to arrest you to
4 have probable cause to believe that there may be
1:03PM 5 evidence of a crime in a location that they're
6 searching for. So you're complaining two different
7 things.
8 DEFENDANT ORTH: Let me bring a little bit
9 of a halt to this.
10 THE COURT: That would be great.
11 BY DEFENDANT ORTH:
12 Q. So, sir, you would agree that you have
13 omitted the recorded information from Jessie Caracciolo
14 that was provided to police that day when you made your
1:04PM 15 search warrant, correct?
16 MS. MENDOZA: Objection, Vague. What
17 recorded information omitted from what?
18 THE COURT: What information?
19 BY DEFENDANT ORTH:
20 Q. If there was a recorded statement made by
21 Miss Caracciolo to police, would you agree that you
22 omitted that from your search warrant affidavit?
23 THE COURT: What statement? Do they have
24 a statement specifically from her in the search warrant
1:04PM 25 that said she didn't see you commit an armed robbery?

1:39PM 1 said he had no objection.
 2 THE COURT: They're admitted.
 3 MS. MENDOZA: Thank you.
 4 (State's Exhibits 2 - 5 were admitted.)
 1:39PM 5 THE COURT: Anything else, Ms. Mendoza?
 6 MS. MENDOZA: No, Your Honor.
 7 THE COURT: It appears to me from the
 8 complaint on file herein and from the testimony adduced
 9 at the preliminary examination that a crime, that being
 1:39PM 10 felony possession and evading, has been committed.
 11 There is sufficient evidence to believe the defendant
 12 Mr. Orth committed said crimes. I hereby order said
 13 defendant be bound over to the Eighth Judicial District
 14 Court, State of Nevada to answer the charges on the
 1:40PM 15 following date.
 16 THE CLERK: December 18th, 8:00 a.m.,
 17 lower level arraignment.
 18 THE COURT: Now, I don't know if they are
 19 going to be able to get you back down.
 1:40PM 20 Does the State need to prepare an order to
 21 get him back down?
 22 MS. MENDOZA: I'll do an order to
 23 transport. I don't know if every time he comes here he
 24 is going to have to sit through quarantine again.
 1:40PM 25 THE COURT: Do you know what their

1:40PM 1 procedure is once he goes back? Does he go back
 2 through quarantine?
 3 THE OFFICER: I believe so. We were here
 4 today to hear this so we are going to forward that
 1:40PM 5 information to our office.
 6 THE COURT: When is the date again?
 7 THE CLERK: December 18th.
 8 THE COURT: We can go into the next week
 9 just to make sure.
 1:40PM 10 THE OFFICER: It's okay.
 11 THE COURT: We'll keep that date. That'll
 12 be your date for your entry of plea in District Court.
 13 Good luck. And seriously rethink getting an attorney,
 14 okay?
 1:40PM 15 DEFENDANT ORTH: Thank you, Your Honor.
 16 THE COURT: Good luck.
 17
 18 (The proceedings concluded.)
 19 * * * * *
 1:41PM 20 ATTEST: Full, true and accurate
 21 transcript of proceedings.
 22
 23 /s/Lisa Brenske
 24 LISA BRENSKE, CSR No. 186
 1:41PM 25

Henderson Police Department

223 Lead Street, Henderson Nevada 89015

Declaration of Arrest

DR#: 20-18994

Arrestee's Name: ORTH, SEAN RODNEY

Date and time of Arrest: 10/28/2020 7:19:46 AM

Charge(s)	Degree	NRS/HMC
Resist pub off	M	199.280.3

THE UNDERSIGNED MAKE THE FOLOWING DECLARATIONS SUBJECT TO THE PENALTY OF PERJURY AND SAYS: That I am a Peace Officer with the Henderson PD, Clark County Nevada. I learned the following facts and circumstances which led me to believe that the above-named subject committed (or was committing) the above offense/offenses at the location of 981 Whitney Ranch Dr Henderson, NV 89014 And that the offense approximately occurred at 10/28/2020 7:19:46 AM

Details of Probable Cause

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

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

Patrol Officers initiated a foot pursuit, issuing commands for the suspect to stop, however he continued to run leaving the duffel bag behind because he struggled to pick it back up quickly. The suspect ran across Whitney Ranch Drive, attempting to evade HPD Officers, however Officers were able to overtake the suspect and he was placed in custody after a short struggle due to the fact that the suspect refused to comply. The suspect was identified as Sean Orth (DOB 06/16/1972), and was confirmed to be the same suspect identified in the previous robbery.

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

EXHIBIT 4

COPY

**MUNICIPAL COURT OF THE CITY OF HENDERSON
IN THE COUNTY OF CLARK, STATE OF NEVADA**

CITY OF HENDERSON, NEVADA,

Plaintiff,

vs.

SEAN RODNEY ORTH,

Defendant.

2020 OCT 29 A 9 28
CRIMINAL COMPLAINT
MUNICIPAL COURT
CITY OF HENDERSON
CASE NO.
20CR007866 (PCN 1)

Nicholas G. Vaskov, Esq., City Attorney

The defendant has committed the crime of:

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

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

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



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

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

EXHIBIT 5

AA001912



Case #: 20CR007366
Henderson Municipal Court
243 Water Street, 3rd Floor
PO Box 95050 - MS621
Henderson NV 89009

Date: 3/17/2022

SEAN RODNEY ORTH # 96723
HDSP
P O BOX 650
INDIAN SPRINGS, NV 89070

Your request to the Municipal Court has been received and reviewed.

Regarding the case number mentioned in your request, 20CR007366, that sentence has already been served and that case is closed. See the attached docket for your records.

Cordially,

HENDERSON MUNICIPAL COURT

cc: File

EXHIBIT C

AA001913

1 JUSTICE COURT, HENDERSON TOWNSHIP
2 CLARK COUNTY, NEVADA

3 THE STATE OF NEVADA,

4 Plaintiff,

5 -vs-

6 SEAN RODNEY ORTH

7 Defendant.

CASE NO: 20CRH001571

DEPT NO:

DA CASE NO: 202047706C

8 AMENDED
9 CRIMINAL COMPLAINT

10 The Defendant above named having committed the crimes of OWNERSHIP OR
11 POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony - NRS
12 202.360 - NOC 51460) and STOP REQUIRED ON SIGNAL OF POLICE OFFICER
13 (Category B Felony - NRS 484B.550.3b - NOC 53833), in the manner following, to wit: That
14 the said Defendant, on or about the 3rd day of November, 2020, at and within the County of
15 Clark, State of Nevada,

16 COUNT 1 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

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

22 COUNT 2 - STOP REQUIRED ON SIGNAL OF POLICE OFFICER

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

Sean O'Riordan 96723
PO Box 650

Indian Springs, NV.
89070

3762

~~XXXXXXXXXX~~

The Clerk of the Court for the

8th Judicial District, Nevada

200 Lewis Ave, 3rd Floor

Las Vegas, NV 89155

quadrant

FIRST-CLASS MAIL

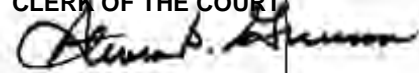
05/26/2022

US POSTAGE \$000.93



ZIP 89101

041M1254101



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 SEAN ORTH,

12 Defendant.

CASE NO. C-20-352701-1

DEPT. NO. X

13
14 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

15 WEDNESDAY, JUNE 22, 2022

16 **RECORDER'S TRANSCRIPT OF PROCEEDING:**

17 **MOTION TO DISMISS CHARGES**

18
19 APPEARANCES:

20 For the State:

ERIKA MENDOZA, ESQ.,
Chief Deputy District Attorney

21
22 For the Defendant:

No Appearance

23 MARCUS K. KOZAL, ESQ.,
24 (Stand-by counsel)

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 Las Vegas, Nevada; Wednesday, June 22, 2022

2 [Proceeding commenced at 8:33 a.m.]

3
4 THE COURT: All right. Let's go to page 9, C352701, State of
5 Nevada versus Sean Orth. May the record reflect the defendant is not
6 present. He's in custody in the Nevada Department of Corrections. He
7 is pro se. However, we have Mr. Kozal here as stand-by counsel. Ms.
8 Mendoza is here on behalf of the State.

9 This is on for the defendant's motion to dismiss the charges
10 against him. State, he is set for sentencing next week. I have not
11 received an opposition to the motion.

12 MS. MENDOZA: So I didn't receive this motion. Mr. Kozal
13 alerted me to it just a couple of days ago --

14 THE COURT: Okay.

15 MS. MENDOZA: -- because I didn't know about it. Obviously,
16 I didn't have time to get him here for today. So I was just going to ask to
17 pass this until Monday. There's already an order to transport done for
18 then.

19 THE COURT: Okay.

20 MS. MENDOZA: And I'll review this.

21 THE COURT: Okay. If you could just have a response done
22 by --

23 MS. MENDOZA: Yes.

24 THE COURT: -- Friday is fine. And we'll continue the motion
25 to Monday, June 27th at 8:30 because he'll already be here.

1 MR. KOZAL: And just with respect, Monday is actually the
2 sentencing.

3 THE COURT: Yeah.

4 MR. KOZAL: I couldn't get a PSI. Did he get a PS -- I don't --

5 MS. MENDOZA: Oh, for heaven's sakes. Let me double
6 check.

7 THE COURT: Yeah. Let me see if I have it.

8 MS. MENDOZA: This has been going on for so long I wonder
9 if --

10 MR. KOZAL: I'd just like it to move on.

11 THE COURT: You know what --

12 MS. MENDOZA: We do have one.

13 THE COURT: -- I think there's an old --

14 MS. MENDOZA: We have one.

15 THE COURT: -- because we -- there was a previous PSI
16 when he was set for sentencing and then there's been all this litigation
17 that occurred after that, so let me see. Yeah. The PSI was done
18 December 1st of 2021.

19 MS. MENDOZA: Yeah.

20 THE COURT: You can get it from the State or get it from
21 myself.

22 MR. KOZAL: And just get to him because I haven't sent him
23 one --

24 THE COURT: He should have it.

25 MR. KOZAL: -- [indiscernible - multiple speakers] I am

1 assuming he has it.

2 MS. MENDOZA: I am sure he has it.

3 THE COURT: Yeah. But if not, can you bring a copy on
4 Monday and then you can go over it with him.

5 MR. KOZAL: Got you.

6 THE COURT: Okay.

7 MR. KOZAL: Thank you, Judge.

8 THE COURT: All right. Thank you.

9 MS. MENDOZA: Thank you.

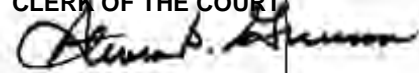
10 THE COURT: Thank you.

11 [Proceeding concluded at 8:35 a.m.]

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14 * * * * *

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

23 
24 _____
25 Michelle Ramsey
Court Recorder/Transcriber



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 SEAN ORTH,

12 Defendant.

CASE NO. C-20-352701-1

DEPT. NO. X

13
14 BEFORE THE HONORABLE TIERRA JONES, DISTRICT COURT JUDGE

15 MONDAY, JUNE 27, 2022

16 **RECORDER'S TRANSCRIPT OF PROCEEDING:**

17 **ALL PENDING MOTIONS**

18
19 APPEARANCES:

20 For the State:

ERIKA MENDOZA, ESQ.,
Chief Deputy District Attorney

21
22 For the Defendant:

Pro Per

23 MARCUS K. KOZAL, ESQ.,
24 (Stand-by counsel)

25 RECORDED BY: VICTORIA BOYD, COURT RECORDER

1 Las Vegas, Nevada; Monday, June 27, 2022

2 [Proceeding commenced at 10:00 a.m.]

3
4 THE COURT: All right. Let's go to page 16, C352701, State
5 of Nevada versus Sean Orth. May the record reflect that Mr. Orth is
6 present in custody. He is pro se. Mr. Kozal is here as stand-by counsel.
7 Ms. Mendoza's here on behalf of the State.

8 All right. Let's deal with the motion. I got the motion that you
9 filed to dismiss the charges against you. Did you receive the State's
10 opposition?

11 THE DEFENDANT: I did now.

12 THE COURT: You did?

13 THE DEFENDANT: I did.

14 THE COURT: Are you prepared to argue the motion?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay. I have read the motion. I've read the
17 State's opposition. Do you have anything you want to add to the
18 motion?

19 THE DEFENDANT: I do, Your Honor.

20 On page 2 and page 3 of her opposition, she explained in her
21 facts that the resist public officer in the now charged stop required
22 violation and the gun charge all arise out of the same transaction, okay
23 [indiscernible] --

24 THE COURT: Okay.

25 THE DEFENDANT: That's first and foremost. So she makes

1 a misrepresentation on page 3 --

2 THE COURT: Mr. Orth, I'm got to tell you, I'm not even
3 concerned with that --

4 THE DEFENDANT: Well --

5 THE COURT: -- because you pled guilty in this case --

6 THE DEFENDANT: -- well --

7 THE COURT: -- so you need to be arguing her first argument
8 which is once you plead guilty in that guilty --

9 THE DEFENDANT: Okay.

10 THE COURT: -- plea agreement you waived your right to
11 bring certain challenges and then since outside of the challenges to
12 which you could bring so if you can't overcome that, we don't even get to
13 the other issue.

14 THE DEFENDANT: Okay.

15 THE COURT: So I want you to address that because that's
16 where the Court is.

17 THE DEFENDANT: Sure. Contractual language in the plea
18 agreement would be ambiguous because I was never told that I could
19 not make constitutional challenges for [indiscernible] -- I waive my rights
20 to direct appeal and I was [indiscernible] nowhere in there does it say
21 that I waive right to motion to dismiss prior to conviction of sentencing.

22 Hence, you ruled on the merits of *Brown versus Ohio* motion
23 that I made last time. So there is no waiver of my being able to engage
24 by form to have you to see motion to dismiss for the [indiscernible] of
25 double jeopardy issue that I've raised. I waive my rights to appeal. I

1 didn't waive my right to bring this to your attention and have you rule on
2 the merits.

3 THE COURT: Okay. Any other arguments you want to
4 make?

5 THE DEFENDANT: Only if we're going off case law on
6 ambiguity, I would ask that she doesn't cite to [indiscernible] at all to be
7 honest with you she'll [indiscernible] from her response. And if it was
8 included, then I would like to have time to reply since I was heard in
9 open court and if you'd like I could bring it to you on that note.

10 THE COURT: Well I'm very concerned about that because I
11 got to tell you you waived a lot of rights in that guilty plea agreement. So
12 if you're allegation is you don't believe you waived those rights -- and
13 are you saying you got the State's opposition this morning?

14 THE DEFENDANT: I just got it now, but just collateral to what
15 you're speaking of you just ruled on my *Brown versus* --

16 THE COURT: As part of your motion to withdraw your plea.

17 THE DEFENDANT: Right. So that --

18 THE COURT: Right. You can file a motion to withdraw your
19 plea, but this isn't a motion to withdraw your plea. This is a motion to
20 dismiss. Those are two completely different things.

21 THE DEFENDANT: Well it has a motion to withdraw
22 [indiscernible] slash motion to dismiss.

23 THE COURT: Right. It was in conjunction with your motion to
24 withdraw your plea is what I'm saying.

25 THE DEFENDANT: Okay. All I would ask you is since I just

1 got this because I'm familiar with the plea agreement and contractual
2 language and ambiguity, etcetera, I would like the opportunity to brief
3 these.

4 THE COURT: All right. How long is it going to take you to file
5 a reply?

6 THE DEFENDANT: I would say five days.

7 THE COURT: All right. Well you have to file it and get it
8 served from the prison --

9 THE DEFENDANT: [indiscernible - multiple speakers]

10 THE COURT: -- so that's going to take --

11 THE DEFENDANT: Ten.

12 THE COURT: -- it's going to take two weeks for you to get
13 that done. All right. So you're reply -- what's today, the 27th. Your reply
14 will be due -- I'm going to make it July 12th because there is a holiday in
15 there and I don't know what the filing system situation will be. Your reply
16 will be due by July 12th. We'll set this down for a hearing, just a hearing
17 on the motion on July 18th. All right.

18 THE DEFENDANT: Thank you.

19 MS. MENDOZA: So is this now a motion to withdraw plea?

20 THE COURT: No. It's a motion to dismiss charges.

21 MS. MENDOZA: Okay.

22 THE COURT: He's filing a reply to the motion --

23 MS. MENDOZA: Okay.

24 THE COURT: -- to dismiss charges because he says he got
25 the opposition this morning.

1 MS. MENDOZA: Well --
2 MR. KOZAL: There was no --
3 MS. MENDOZA: -- he would -- if you -- we were here --
4 THE COURT: On Wednesday.
5 MS. MENDOZA: -- Wednesday --
6 THE COURT: Mm-hmm.
7 MS. MENDOZA: -- and I had only recently received --
8 THE COURT: Right. Right.
9 MS. MENDOZA: -- a notice of his motion.
10 THE COURT: So he got it this morning, so he has to have an
11 opportunity to file a reply. So he'll file the reply by July 12th and the
12 hearing will be July 18th.
13 MR. KOZAL: And I don't believe he has a PSI. So there was
14 one in 2021. You no longer have that?
15 MS. MENDOZA: He does have a PSI.
16 THE DEFENDANT: No. I have the new PSI and I was going
17 to make a request for amendment to it any way.
18 THE COURT: For based on what? Nothing --
19 THE DEFENDANT: It said I was in the robbery victim's car
20 and it wasn't a robbery. The police report [indiscernible] called it a fake
21 robbery. So the language in the PSI is that he --
22 THE COURT: Okay. Well you can challenge that at the time
23 of your sentencing. We have gotten there, but I'm not ordering a new
24 PSI.
25 THE DEFENDANT: Oh no.

1 THE COURT: That sounds like something that may -- if it
2 needs to be interlineated, it could be interlineated but I'm not ruling on
3 that right now because I haven't read the PSI in months since I first got
4 it.

5 THE DEFENDANT: [indiscernible - multiple speakers] the PSI
6 --

7 THE COURT: I'm sorry.

8 THE DEFENDANT: I'm just going to follow up in what is
9 stated in the PSI.

10 THE COURT: Right. We haven't gotten the sentencing yet,
11 but we got to get through your motions first. When we get to sentencing,
12 you can do that. But right now I'm not ordering P and P to amend the
13 PSI.

14 THE DEFENDANT: Okay. I'm so sorry. I just misunderstood.
15 You just said that I had to write a letter to the prosecutor explaining what
16 I wanted amended and send it to P and P, so I'm --

17 THE COURT: No. P and P is not going to do anything unless
18 I --

19 THE DEFENDANT: Okay.

20 THE COURT: -- order them to do it and I'm not ordering them
21 to do it right now.

22 THE DEFENDANT: Thank you.

23 THE COURT: All right. So we'll be back here for the motion
24 on July 18th at 8:30.

25 MS. MENDOZA: Thank you.

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THE COURT: Thank you.

State, can you do another order to transport just so we're
certain --

MS. MENDOZA: Of course.

THE COURT: -- that he's here. All right.

[Proceeding concluded at 10:06 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.



Michelle Ramsey
Court Recorder/Transcriber

1. SEAN RODNEY ORTH #96123
2. POST OFFICE BOX 650
3. INDIAN SPRINGS, NEVADA 89070
4. PLO SE

FILED

JUL 29 2022

APR 1 2022
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

9. STATE OF NEVADA,

10. PLAINTIFF,

CASE NO. C-20-352701-1

4. VS

DEPT NO. X

12. SEAN RODNEY ORTH,

13. DEFENDANT.

DEFENDANT'S REPLY TO STATE'S OPPOSITION
TO DEFENDANT'S MOTION TO DISMISS CHARGES
FOR VIOLATIONS OF DOUBLE JEOPARDY.

11. COMES NOW, SEAN RODNEY ORTH, DEFENDANT, WHO RESPECTFULLY APPEARS
18. IN THIS REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS CHARGES
19. FOR VIOLATION OF DOUBLE JEOPARDY.

20. THIS REPLY IS BASED ON ALL PAPERS MEMORANDA AND DOCUMENTS ON FILE IN
21. THIS CASE, THE ATTACHED MEMORANDUM EXHIBITS AND AUTHORIZES AND
22. ATTACHED EXHIBITS.

23. /

24. /

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CLERK OF COURT

RECEIVED
JUL 18 2022

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MEMORANDUM OF POINTS AND AUTHORITIES.

I. LEGAL ARGUMENTS.

A. THE PROSECUTOR MISREPRESENTS THE WAIVERS MADE IN THIS CASE.

IN THE STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS THE CHARGES ("OPP." herein) THE STATE CITES AUTHORITY THAT MY PLEA OF GUILTY WAIVED RIGHT TO MAKE LEGAL CHALLENGES SURROUNDING THE CHARGES THEREFROM AND THEREFOR THIS HONORABLE COURT SHOULD NOT ENTERTAIN MY CHALLENGES HERE. OPP. AT 5-6. THE STATE'S CITATIONS AND POSITION DO NOT APPLY HERE. IN THE GUILTY PLEA AGREEMENT ("GPA" herein) THE PARTIES SPECIFIED ONLY A LIMITED WAIVER OF THE RIGHT TO MAKE A DIRECT APPEAL OF A "CONVICTION" WOULD BE MADE. EXHIBIT 1 (GPA) AT 4.

I DID NOT WAIVE MY RIGHT TO MAKE ANY LEGAL CHALLENGES WHATSOEVER UPON PLEADING GUILTY AND SUCH WAIVER IS NOT SPECIFIED IN THE CONTRACT. THE CONTRACT ALSO AUTHORIZES POST-CONVICTION CHALLENGES UNDER HABEAS CORPUS PROVISIONS IN NRS 34 WHICH EVIDENCES THERE WAS NO WAIVER TO MAKE ANY LEGAL CHALLENGES UPON ENTRY OF PLEA. *Id.*

A WAIVER OF A CONSTITUTIONAL RIGHT MUST BE KNOWINGLY AND INTELLIGENTLY WAIVED. *JOHNSON V. ZERBST*, 304 U.S. 458, 464 (1983). I DID NOT WAIVE MY RIGHT TO MAKE DOUBLE JEOPARDY CHALLENGES PRIOR TO CONVICTION OR AFTER BY WAY OF HABEAS CORPUS. MY WAIVER OF RIGHTS IS NOT KNOWINGLY AND INTELLIGENTLY MADE IF SUCH IS FOUND. A DEFENDANT MUST BE SPECIFICALLY WARNED OF THE CONSEQUENCES OF HIS PLEA. *HOUSEWRIGHT V. POWELL*, 101 NEV. 736 (1985). RULE OF LENITY APPLIES AND ANY AMBIGUITY MUST BE RESOLVED IN DEFENDANT'S FAVOR. please see e.g. *U.S. V. SPEARS*, 753 F.3d 964, 968 (9th CIR. 2014) (WHEN AMBIGUITY RESOLVED IN DEFENDANT'S FAVOR APPEAL WAIVER NARROWLY INTERPRETED TO ALLOW APPEAL OF CONVICTION).

ALSO, THE DECISION TO PLEAD OCCURRED OCTOBER 19, 2021. OPP. AT 3-4. THIS COURT ACCEPTED THE GUILTY PLEA NOVEMBER 4, 2021. IT IS A MATTER OF RECORD THAT UP TO THE TIME OF PLEADING GUILTY I HAD NO ACCESS TO A LAW LIBRARY. THE PROSECUTOR MADE EX PARTE ARGUMENTS TO THE PREVIOUS JUDGE IN AN EX PARTE HEARING WHICH RESULTED IN THE COURT ORDERING MY STANDING COUNSEL TO NOT ASSIST ME OR SIT AT THE DEFENSE TABLE IN A TRIAL OR HEARING. EXHIBIT 2 (MINUTE ORDER, SEPTEMBER 7, 2021). I FILED A MOTION TO BE GRANTED ACCESS TO LEGAL RESEARCH MATERIALS ON SEPTEMBER 21, 2021. EXHIBIT 3 (MOTION FOR ORDER). THE STATE DID NOT DISPUTE MY CLAIMS AND ARGUED I SHOULD GRUVE TO THE NEVADA ATTORNEY GENERAL. EXHIBIT 4 (OPPOSITION TO MOTION FOR ORDER). THIS COURT DENIED MY MOTION ON OCTOBER 12, 2021. CONTRARY TO MY GUILTY PLEA, I COULD NOT KNOW THE LAW THE PROSECUTOR NOW SPEAKS OF AT THE TIME OF PLEA EVEN IF IT DID APPLY, BUT IT DOESN'T.

UPON PLEADING I FILED PETITION FOR A WRIT OF HABEAS CORPUS TO THE NEVADA SUPREME COURT RAISING DOUBLE JEOPARDY, DENIED MEANINGFUL ACCESS TO A LAW LIBRARY, DISCOVERY VIOLATIONS AND GROSS PROSECUTORIAL MISCONDUCT IN SEAN RODNEY ORTH V. EIGHTH JUDICIAL DISTRICT COURT, DOCKET NO. 84180 (2021). THE NEVADA SUPREME COURT'S REVIEW IS DISCRETIONARY AND REVIEW WAS DENIED WITHOUT ADJUDICATION ON THE MERITS OF THE CLAIMS MADE.

THE UNITED STATES SUPREME COURT REQUIRES A CRIMINAL DEFENDANT BE ENTITLED TO IMMEDIATELY APPEAL A DECISION DENYING DOUBLE JEOPARDY PROTECTIONS PRIOR TO CONVICTION, PRIOR TO THE SUBSEQUENT EXPOSURE.

1. EXHIBITS 1 - 16 REFERRED TO HERE ARE ATTACHED HERETO.

ABNEY V. UNITED STATES, 431 U.S. 651, 660-661 (1977) (CRITERIAL OF DOUBLE JEOPARDY ORDER IS APPEALABLE INTERLOCUTORY ORDER BECAUSE RIGHTS PROTECTED BY DOUBLE JEOPARDY WOULD BE "SIGNIFICANTLY UNDERMINED" IF APPELLATE REVIEW POSTPONED UNTIL AFTER CONVICTION)

SINCE MY PLEA I HAVE LEARNED OF THE SINGLE TRANSACTION TEST THAT REQUIRED ONE PROSECUTION FOR "ALL CHARGES AGAINST A DEFENDANT THAT GROW OUT OF A CRIMINAL ACT, TRANSACTION, OCCURRENCE OR EPISODE" ASHE V. SWENSON, 397 U.S. 436, 454-55 (1970). RESIST PUBLIC OFFICER, PROHIBITED PERSON OWNING/POSSESSING A FIREARM AND THE STOP REQUIRED CHARGE ALL GROW OUT OF THE OCTOBER 28, 2020 STOP AS FURNISHED IN MY MOTION WHICH THE STATE CONCEDES. OFF. AT 3-6. RESIST PUBLIC OFFICER WAS PROSECUTED ON OCTOBER 29, 2020, I PLEAED AND WAS SENTENCED TO 301 DAYS IN TAIL ON OCTOBER 29, 2020. THE STATE'S PROSECUTION IN THIS CASE FOR PROHIBITED PERSON OWNING/POSSESSING A FIREARM AND STOP REQUIRED AT SIGNAL OF POLICE WAS ILLEGALLY INITIATED IN VIOLATION OF ASHE IN JUSTICE COURT ON NOVEMBER 3, 2020 IN STATE V. ORTH, *ZOCKHOOLSTL,

IT SHOULD BE NOTED THAT IN BROWN V. OHIO, 432 U.S. 161, 162-168 (1977) SUPREME COURT JUSTICE BRENNAN WITH WHOM JUSTICE MARSHALL JOINED CONCURRING WROTE THAT EVEN IF THE STATE OF OHIO ENACTED LAW THAT MADE MISDAEMEANCH TRYING A SEPARATE ACT ON EACH DAY IT OCCURRED THEY ALL WOULD HAVE TO BE PROSECUTED IN ONE PROSECUTION WITH THE FELONY AUTO THEFT AS REQUIRED BY ASHE, 161. WHEN THIS SAME REASONING THE MISDAEMEANCH AND FELONY'S HERE WERE REQUIRED TO BE PROSECUTED IN ONE PROSECUTION AND WERE NOT REQUIRING THIS PROSECUTION TO BE DISMISSED.

I SAY THE FOLLOWING HUMBLY. THE PROSECUTOR MAKES THE MISTAKE OF MAKING FALSE ARGUMENT. THE FOLLOWING PLACES MY CASE IN A DIFFERENT LIGHT.

THE PROSECUTOR TELLS THIS HONORABLE COURT THAT THE OFFICERS IN THE MULTIPLE COURT COMPLAINT FOR RESIST PUBLIC OFFICER WERE NOT PRESENT WHEN THE VEHICLE STOP OCCURED AND THEREFOR THE RESIST CHARGE IS FOR ACTS ON FOOT AND SEPERATE FROM THE STOP REQUIRED ACTS. OPP. AT 6, N. 3.

HPD ASHLEY MANGAN IS THE OFFICER IN THE MULTIPLE COURT COMPLAINT, EXHIBIT 7 (COMPLAINT, MULTIPLE COURT). SHE IS VERY MUCH PRESENT.

AT 7:12:16 HPD ASHLEY MANGAN (ZNT1) AND HPD DUFFY (ZNU1) ARE IDENTIFIED, AT ~~7:12:16~~ 7:18:14 HPD DUFFY (ZNU1) ANNOCED HE IS ATTEMPTING A STOP, SIMULTANEOUSLY HPD MANGAN (ZNT1) ANNOUNCES AT 7:18:18 THAT SHE IS BLOCKING THE EXIT OF THE COMPLEX WHERE THE STOP OCCURED AND (9) SECONDS LATER HPD BRENT BOWLER (ZNS1) ANNOUNCES THAT HE IS JOINING HPD MANGAN (ZNT1) AT THE FRONT EXIT AT 7:18:27. EXHIBIT 5 (RECORDED COMMUNICATIONS / HPD). THE COMMUNICATIONS PROVE THAT HPD MANGAN WAS PRESENT WHEN THE STOP WAS VIOLATED. SHE DID NOT ARRIVE AFTER THE STOP. THERE IS ABSOLUTELY NO REASON FOR HPD MANGAN TO RADIO SHE IS BLOCKING THE EXIT WHEN THE STOP WAS VIOLATED IF SHE WASN'T. ALSO, HPD BOWLER IS NOT GOING TO RADIO THAT HE IS BLOCKING THE FRONT EXIT WITH HPD MANGAN (9) SECONDS AFTER HPD MANGAN RADIOS SHE IS BLOCKING EXIT IF HE WASN'T.

AT THE PRELIM HPD ALEX NELSON TESTIFIED THAT IT WAS HE WHO BLOCKED THE EXIT GATE TO THE COMPLEX TO STOP ME AND HPD MANGAN WAS NOWHERE IN SIGHT UNTIL AFTER THE STOP. EXHIBIT 6 (PHT) AT 42-43, 49-50. WE NOW KNOW THIS TO BE UNTRUE FROM THE RECORDED COMMUNICATIONS SUBSEQUENTLY OBTAINED.

THE PROSECUTOR USED HPD NELSON'S FALSE TESTIMONY TO MAKE A NICHE ARGUMENT. THE PROSECUTOR ARGUED THAT BASED ON HPD NELSON'S TESTIMONY THAT HPD MARGAN DID NOT ARRIVE UNTIL AFTER THE STOP THE RESIST PUBLIC OFFICER PERMANENTLY TO ACT ON FOOT AND WERE SEPARATE FILM CLIPS. EX. 6 (PH) AT 135. THE JUSTICE COURT AGREED AND DENIED DOUBLE JEOPARDY PROTECTION. Id. AT 138.

THE PROSECUTOR ALSO MISREPRESENTED THAT RESIST PUBLIC OFFICER DOES NOT SAY ANYTHING ABOUT MY BEING IN A VEHICLE WITH LIGHTS AND SIRENS ACTIVATED. Id. AT 136. THIS IS UNTRUE. THE MUNICIPAL COURT DECLARATION ACCUSES ME OF ¹FAILING TO YIELD TO HPD PATROL OFFICERS WHO INITIATED A LAWFUL STOP. ² EXHIBIT 8 (DECLARATION MUNICIPAL COURT). THE FAILING TO YIELD IN RESIST (Id.) IS IDENTICAL TO THE NOW FAILING TO STOP FELONY BEING PERSECUTED. EX. 10 (AMENDED COMPLAINT). RELITIGATION OF THE SAME FACTUAL ISSUES IS BARRED BY COLLATERAL ESTOPPEL. ASHE, 397 U.S. AT 443. (COLLATERAL ESTOPPEL "MEANS SIMPLY THAT WHEN AN ISSUE OF ULTIMATE FACT HAS ONCE BEEN DETERMINED BY A VALID AND FINAL JUDGMENT, THAT ISSUE CANNOT AGAIN BE LITIGATED BETWEEN THE SAME PARTIES IN ANY FUTURE LITIGATION") THE PROSECUTOR MISLED THE JUSTICE COURT TO AVOID APPLICATION OF COLLATERAL ESTOPPEL. THERE WOULD BE NO GUILTY PLEA TO THE CHARGES HAD SITE PRESERVED THE TRUE FACTS AND LAW FOR THE SINGLE TRANSACTION TEST IN ASHE AS WELL.

THE FOLLOWING WILL PUT MY CASE IN A WHOLE NEW LIGHT WITH THIS COURT.

2. DETECTIVE LIPPISCH WOULD LATER ADMIT THAT THERE WAS NO PROBABLE CAUSE TO ARREST ME FOR ROBBERY ETC. WHEN STOPPED SO I WAS TAKEN TO JAIL FOR RESISTING. EX (PH) AT 114. ITS MY POSITION FAILING TO YIELD BECAME THE PRETEXT TO WHY POLICE HAD CAUSE TO STOP ME.

THE PROSECUTOR ANNOUNCED THE COMPLAINT TO CHARGE ELLIOTT ON OR ABOUT NOVEMBER

16, 2020 AND SHE HERSELF ACCUSED ME OF "VIOLATING" HPO OFFICIALS P. DUFFY AND/

OR B. BARK AND/OR J. KEITH "ET AL" (UNIDENTIFIED COMPLAINT). THE PROSECUTOR ALSO

LETTER ASKED SHE ONLY WHO THE JUSTICE COURT DECLARATION WHEN SHE ASKED

ME OF ELLIOTT, ET AL. (EXCEPT, STATES OPPOSITION TO DECLARATIONS WERE IN

TO ADMITS, ELLIOTT/PROSECUTOR NOVEMBER 8, 2020, "LOCALHO01571, JUDGE COURT

HEAVENSON TOWNSHIP). HOWEVER, THE DECLARATION DOES NOT MENTION ELLIOTT.

ET AL (DECLARATION). THE PROSECUTOR ANNOUNCED THE DECLARATION DID NOT CONTRA-

DICTION IN NAMES, ET AL. 17 (TRANSCRIPTS OF PROCEEDINGS, NOVEMBER 17, 2020) AT 13.

AT THE POINT THE PROSECUTOR ANNOUNCED SHE DID NOT OBTAIN HPO REPORTS

UNTIL AFTER NOVEMBER 17TH. ILL. (PH) AT 21-22. THE PROSECUTOR ANNOUNCED

ME WITH A FELLOW WORKER THE REASONS? I WAS NOT CHARGED BY ANY

OFFICIAL WITH ELLIOTT, ELLIOTT, KEITH, AND SHE GOT THESE NAMES IF SHE

ONLY HAD THE MOST DECLARATION THAT DID NOT NAME OFFICERS?

ON NOVEMBER 17, 2020 THE PROSECUTOR ANNOUNCED SHE WAS UNWARE THAT ELLIOTT

WAS CHARGED. ET AL. 17 (TOP, NOVEMBER 17, 2020) AT 16-17. IT'S MY POSITION THAT

AT THAT POINT THE PROSECUTOR DECIDED THAT SHE WANTED TO MAKE A NUCLEAR ARGUMENT

TO AVOID COLLATERAL ESTOPPEL BEING APPLIED AND SUDDELY CALLED HPO ALEX

NELSON TO HAVE THEM TESTIFY THAT HPO WORKMAN WAS NOT AT THE SCENE WHEN

THE STOP WAS INITIATED.

HPO NELSON DID NOT TESTIFY I WAS DRIVING NORTHEASTWARDLY WHEN I CAME INTO

VIEW (WITH HPO OFFICER BEHIND ME). HPO NELSON'S CLAIM IS THAT IT WAS THE

WHO BLOCKED THE GATE AND I MOVED NORTHEASTWARDLY WHEN I ACCIDENTALLY TO

A HIGH RATE OF SPEED WHILE TURNING LEFT TOWARDS THE GATE. ET AL. (PH) AT 43.

AA001934

AA001935

THE GUN CHARGE IS NO BETTER.

DETECTIVES OZUNA AND KEVIN LAPORTE SHORTLY AFTER MY STOP.

MR. LOUIS POIRRE WAS ON SCENE AND INTERVIEWED BY DETECTIVE OZUNA. MR.

POIRRE TOLD DETECTIVE OZUNA THAT I RECALLED HIM IN THE REARVIEW OF THE

APARTMENT, I INVITE HIM OUT THE DOOR AND SHOTGUN AND LAPPED IN THE

"I AM LOCATED OUTSIDE THAT I INVITE HIM OUT TO THE WALKWAY AND

HE IT IN THE TRUNK AND I STOP THE CAR. ET. 12 REPORT, HPO DETECTIVE DENIES

OZUNA, OCTOBER 25, 2020.

HOWEVER, MR. POIRRE'S GUNWOUND MS. JESSIE CHATFIELD WAS ON SCENE,

SHE TOLD DETECTIVE KEVIN LAPORTE THAT SHE WAS PRESENT AT THE NIGHT ROOM WHILE

LOUIS I SPOKE TO MR. POIRRE IN THE ROOM, I WAS NOT ANSWERED (ENTERED)

FROM THE ROOM, CARRYING A LIGHT GREEN SUITCASE "AND LEFT THE APARTMENT

ALONE (NOT THAT MR. POIRRE LEFT WITH ME CARRYING A SAND BAGGED BAT DOWN

TO THE CAR). ET. 13 (REPORTS HPO DETECTIVE KEVIN LAPORTE, OCTOBER 25, 2020). IN

THIS REPORT DETECTIVE LAPORTE REPORTED "IT BECAME EVIDENT SEAN WAS MORE

OF A FRIEND THAN A SUSPECT WITH COMMITTED ROBBERY, IT WAS CLEAR LAPORE

LAPORTE WAS NOT SURE WHEN SEAN LEFT THE APARTMENT CARRYING A GUN IN

QUEEN HALL "ID.

THE BAT WITH A GUN IN IT WAS STAGED IN MY POSSESSION TO COOPERATE

THEY TALKED ROBBERS, I PAID \$200 TO HAVE OVER THE APARTMENT ON HOWEVER IT

AND OCTOBER 25 "THE USED MY PART TO CARRY HPO TO AMGUSH ME. IT

WAS KNOWN OCTOBER 25TH NO ROBBERY OCCURRED AND MS. CHATFIELD DID

NOT COOPERATE WITH LAPORTE'S STAY I WOULD HAVE COMING A YAN HALL DOWN

TO THE CAR, BUT IN FACT I INVITED MR. POIRRE STOPPING I LEFT ALONE

CARRYING A GUN IN THE HALL. ET. 13.

HEREIN, DETECTIVE LAPORTE ALREADY IN THE OF INVESTIGATION PERSON ACCOUNT

/GOSSIPING A FRIEND ON NOVEMBER 3, 2020. CLAIMING MR. POIRRE WAS

ROBBED, I COMMITTED THE ROBBERY AND BOTH MR. POINTLO AND MS. COLAC-
LOLO STATED I DID STEAL THE TAN BAG IN THE ROBBERY. EX. 9 (DECLARATION
, JUSTICE COURT) AT 2.

THE STATE ALSO FALSELY MAINTAINED A ROBBERY DID OCCUR, I COMMITTED IT
AND MR. POINTLO WAS COORDED BY MS. CAMACLO AND I STOLE THE TAN
COLORED BAG IN THE ROBBERY TO DEFEND MY SUPPRESSION MOTIONS IN THE
STATE'S OPPOSITION ON DECEMBER 8, 2020 IN JUSTICE COURT AND ALL THE
WAY UP TO ~~ON~~ OCTOBER 1, 2021 IN THE HONORABLE COURT. EX. 14 (EXCERPT,
STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS EVIDENCE, FILED
DECEMBER 8, 2020, JUSTICE COURT, HENRISON TOWNSHIP, "20 CRH001571"), EX. 15
STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS EVIDENCE, DISTRICT COURT,
OCTOBER 1, 2021). THE STATE KNOW OTHERWISE SINCE OCTOBER 28, 2021. EX. 5. 12
AND 13. THE STATE LIE TO DEFEND MY SUPPRESSION MOTIONS AND LIE TO DEFEND
MY DOUBLE JEOPARDY OBJECTIONS IN JUSTICE COURT AND TO THE COURT IN ITS
OPPOSITION.

ONLY BECAUSE HENRISON DENIED ME REVIEW OF THE DOUBLE JEOPARDY ISSUE
IN THE PETITION FOR A WRIT OF HABEAS CORPUS IN DOCKET NO. 84180 WHICH DENIES
ME THE REVIEW IN ABNEY V. UNITED STATES, 431 U.S. 621, 640-61 (1970) DID I
PUSH FOR WRIT OF HABEAS CORPUS IN THE UNITED STATES DISTRICT COURT IN DIST.
V. EIGHTH, 2:22-CV-00892-APL-RJA. I PRAY THIS COURT TAKES NO DISRESPECT
FROM THIS. I HAVE PRESENTED THE SINGLE-TRANSACTION TEST AND COLLATERAL
ESTOPPEL WHILE WITH THE MISCONDUCT ABOVE AS YOUR HONOR DID NOT HAVE
THIS CASE UNTIL RECENTLY AND I NEEDED TO CLARIFY. I PRAY THIS COURT
WILL FIND DOUBLE JEOPARDY PROHIBITS THIS PROSECUTION.

B. CONCLUSIONS

It is my prayer that HONORABLE COURT will FIND NUPUR JIZOMANDY
GARD PROTECTION OF THIS CASE.

Respectfully SUBMITTED, July 7, 2020

Scam Orth.

THIS DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON.

Scam Orth

CERTIFICATE OF SERVICE.

ON JULY 7, 2020 I DID MAIL A TRUE AND CORRECT COPY OF THE
FOREGOING REPLY TO ELLIE MENDOZA, C.O. D.A., 200 LEWIS AVE,
LAS VEGAS, NEVADA, 89155.

Scam Orth

INDEX OF EXHIBITS.

- EXHIBIT 1: GUILTY PLEA AGREEMENT.
- EXHIBIT 2: MINUTE ORDER, SEPTEMBER 7, 2021.
- EXHIBIT 3: MOTION FOR ORDER OF THE COURT.
- EXHIBIT 4: STATES OPPOSITION TO MOTION FOR ORDER.
- EXHIBIT 5: HPD RECEIVED COMMUNICATIONS.
- EXHIBIT 6: DECEMBER 9, 2020 PRELIMINARY HEARING TRANSCRIPTS.
- EXHIBIT 7: MUNICIPAL COURT COMPLAINT.
- EXHIBIT 8: MUNICIPAL COURT DECLARATION.
- EXHIBIT 9: JUSTICE COURT DECLARATION.
- EXHIBIT 10: AMENDED COMPLAINT.
- EXHIBIT 11: EXCERPT, STATES OPPOSITION TO DEFENDANT'S MOTION TO DISMISS
FILED DECEMBER 8, 2020 #20CRH001571 JUSTICE COURT, HENDERSON TOWNSHIP.
- EXHIBIT 12: REPORT, HPD DETECTIVE DENNIS OZAWA.
- EXHIBIT 13: REPORT, HPD DETECTIVE KEVIN LAPIER.
- EXHIBIT 14: EXCERPT, STATES OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS
EVIDENCE, FILED DECEMBER 8, 2020, STATE V. ORSH #20CRH001571
JUSTICE COURT, HENDERSON TOWNSHIP.
- EXHIBIT 15: STATES OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS EVIDENCE.
- EXHIBIT 16: LETTER FROM ATTORNEY KERRA SIMMONS.
- EXHIBIT 17: TRANSCRIPTS OF PROCEEDINGS NOVEMBER 17, 2020.

EXHIBIT ONE

AA001940

1 **GPA**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **ERIKA MENDOZA**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #012520**
8 **200 Lewis Avenue**
9 **Las Vegas, NV 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

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

9 **THE STATE OF NEVADA,**
10 **Plaintiff,**

11 **-vs-**

12 **SEAN RODNEY ORTH,**
13 **#6111549**

14 **Defendant.**

CASE NO: C-20-352701-1

DEPT NO: VI

15 **GUILTY PLEA AGREEMENT**

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

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

21 Both parties stipulate to twelve (12) to thirty (30) months to run consecutive to CR05-
22 1459 with zero (0) days credit for time served. The negotiations are contingent upon the Court
23 following the stipulated sentence. The State will not oppose the Defendant's request to
24 withdraw plea if the Court is not inclined to follow the stipulated sentence. All remaining
25 counts contained in the Criminal Complaint which were bound over to District Court shall be
26 dismissed when Defendant is adjudged guilty and sentenced.

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

AA001941

1 whole or in part in conjunction with this plea agreement.

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

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

13 CONSEQUENCES OF THE PLEA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 WAIVER OF RIGHTS

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

- 14 1. The constitutional privilege against self-incrimination, including the right
15 to refuse to testify at trial, in which event the prosecution would not be
16 allowed to comment to the jury about my refusal to testify.
- 17 2. The constitutional right to a speedy and public trial by an impartial jury,
18 free of excessive pretrial publicity prejudicial to the defense, at which
19 trial I would be entitled to the assistance of an attorney, either appointed
20 or retained. At trial the State would bear the burden of proving beyond
21 a reasonable doubt each element of the offense(s) charged.
- 22 3. The constitutional right to confront and cross-examine any witnesses who
23 would testify against me.
- 24 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 25 5. The constitutional right to testify in my own defense.
- 26 6. The right to appeal the conviction with the assistance of an attorney,
27 either appointed or retained, unless specifically reserved in writing and
28 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.

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EXHIBIT TWO

AA001947

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

September 07, 2021

C-20-352701-1 State of Nevada
vs
Sean OrthSeptember 07, 2021 11:00 AM Status Check: Arguments to Determine if Standby Counsel
Needs Appointing

HEARD BY: Holthus, Mary Kay COURTROOM: RJC Courtroom 03F

COURT CLERK: Boyle, Shelley; Burnett, Erin; Guerra, Valeria; Quamina, Jessica

RECORDER: Sison, Yvette G.

REPORTER:

PARTIES PRESENT:

Kara M. Simmons	Attorney for Defendant
Noreen C. Demonte	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

Deft. not present, not transported. Counsel present via Bluejeans.

Ms. Simmons-Gaston noted Deft. is in custody in the Nevada Department of Corrections; Deft. was sentenced on another case while the instant matter is pending. Court allowed Deft. to proceed Pro Se. Ms. Demonte argued nobody is required to be appointed as Stand-by Counsel. COURT ADVISED, It will rely on the Briefs. COURT STATED, Stand-by Counsel will be APPOINTED. They are strictly there to stay informed of the case in the event Deft. chooses to abandon their self representation. Stand-by Counsel will not sit at the defense table, they don't advise Deft; they may be called upon to facilitate discovery or deliberations. There are no legal obligations. They will not advise Deft.

Colloquy regarding Deft. potentially filing an Ineffective Assistance of Counsel Motion. COURT STATED It is just ruling on what is in front of It, the Motion regarding Stand-by Counsel.

CUSTODY (COC-NDC)

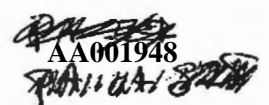
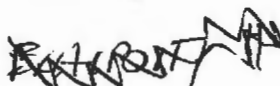

AA001948
PA/UA/STW

EXHIBIT THREE

AA001949

1 Sean Orth #96723

2 P.O. Box 650

3 Indian Springs Nevada 89070

4 pro se

FILED

SEP 13 2021

CLERK OF COURT

5
6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8
9 STATE OF NEVADA,

10 PLAINTIFF,

Case no. C-20-352701-1

11 VS

Dept. no. XVIII

12 SEAN RODNEY ORTH

13 DEFENDANT.

October 5, 2021
11:00 AM

14
15
16 MOTION TO DISMISS CHARGES

17 OR IN THE ALTERNATIVE MOTION

18 FOR ORDER OF THE COURT

19
20 Comes now, Sean Rodney Orth, Defendant appearing
21 pro se in this Motion to Dismiss Charges or In the Altern-
22 ative Motion For Order of The Court to respectfully request
23 the charges be dismissed or Order be made Defendant be
24 allowed meaningful access to a law library and equipment
25 to watch and/or listen to discoverable materials disclosed by
26 Plaintiff.

27 This motion is supported by the record and the attached
28 memorandum of points and authorities.

CLERK OF THE COURT

SEP 09 2021

RECEIVED

AA000950
PA 131
2A-503 507

MEMORANDUM OF POINTS AND AUTHORITIES.

A. STATEMENT OF FACTS.

Jeon Rodney Orth ("Defendant" herein) is charged in this honorable court with Prohibited Person Own/Possess Firearm and Failing to Stop At Signal of Police, both Felonies. Defendant was on Parole at the time of the allegations and therefore Warden High Desert State Prison (HDSP herein) holds Defendant awaiting adjudication of these charges. Defendant has pleaded not guilty and has invoked his right to represent himself. Under the Sixth Amendment to the United States Constitution which has been granted. Trial is set for October 22, 2021.

B. LEGAL ARGUMENTS.

1. THE CHARGES SHOULD BE DISMISSED OR ORDER BE MADE THAT DEFENDANT IMMEDIATELY BE GRANTED ACCESS TO A LAW LIBRARY OR PERSON TRAINED IN LAW TO ASSIST HIM AND BE GRANTED ACCESS TO HER EVIDENCE AND A MEANS TO WATCH AND LISTEN TO IT.

Warden HDSP holds me while Plaintiff prosecutes me. They are the same entity even if they are different departments. Any policy or practice of warden is Plaintiff's in this situation.

Plaintiff is gaining an unfair tactical advantage by refusing Defendant meaningful access to the courts, legal research materials and her evidence.

1 To order, regulations, statutes, rules, et cetera a prisoner must provide
2 a "specific citation". Exhibit 1 (Memorandum of Correction "MDOC"
3 heron) Law Library Request Form). This makes it next to impossible for a
4 person to research law who can provide a specific citation to every case
5 they need to learn about and research? Cases they do not know exist?

7 Alternatively, the form allows a prisoner to request a "Topical
8 Research". id. Defendant has requested topics and asked cases he shoped-
9 ical and received no response nine times. Prisoners in the law library
10 are not trained in law nor is there any person trained in law working
11 as staff to assist prisoners working the law library or requesting legal
12 research materials.

13 It takes up to three weeks, sometimes less, often times longer, to
14 receive requests back. Such access denies defendant access to the
15 courts and hinders his representation of himself.

17 Prisoners do have a "Constitutional right to access to the courts" that
18 requires States to assist prisoners in preparing and filing habeas petitions
19 by providing some sort of legal assistance such as adequate access to
20 law libraries or the assistance of persons trained in law. Bands
21 v. Smith, 430 U.S. 817, 821-828 (1977) overruled in part by Lewis
22 v. Casey, 518 U.S. 343, 354 (1996). The access provided is Constitutionally
23 deficient, please compare to Trijello v. Williams, 465 F.3d 1210, 1226-
24 1227 (10th Cir. 2006) (Lack of access to legal assistance where prisoner
25 must know exactly what materials to request which took on average
26 18 days to receive); Marshall v. Knight, 445 F.3d 965, 968-969 (7th Cir. 2006)
27 (Lack of access to legal assistance where prison officials denied
28 prisoners access to a law library which prevented prisoner

challenging length of incarceration)

The prison was in lockdown, Defendant in Segregation for (24) hours a day, the prison law library completely closed, with little to no access to the phone during daytime hours and legal calls allowed only on Tuesdays during the preliminary stages and arraignment in this court. The prison is still on lockdown and only prison workers untrained in law allowed access to the law library to assist Defendant in form request research. This is Constitutionally deficient, denies access to the courts and hinders Defendant's representation of himself. Please consider Hekke v. P. Ier, 627 F.3d 338, 340-341, 343 (9th Cir. 2010) (lack of access to legal assistance where prisoner alleged denial of access to prison law library while prison on lockdowns for 7 months); Tanner v. Jenkins, 776 F.3d 434, 438-39 (6th Cir. 2015) (Lack of access to legal assistance where guards wrongfully prevented petitioner from filing timely notice of appeal while on lockdown), with Tate v. Wood, 963 F.2d 20, 26 (2nd Cir. 1992) (remanded to determine whether due process violated by defendant's confinement in Segregation during period between arraignment and plea because no opportunity to prepare own defense); Milton v. Morris, 267 F.2d 1443, 1446-1447 (9th Cir. 1985) (Due Process violated when state unjustifiably hindered self-representation by denying meaningful access to telephone and current legal research materials.)

Certainly the constitutions of Nevada and the United States guarantee adequate notice of hearing and an opportunity to prepare. Sheriff v. Davis, 106 Nev. 185, 189-190 (1990) (Citing Nevada Const. Art.

1 188) as well as "right of equal protection under the laws" Lee v. Weishaar
2 390 U.S. 333, 333-334 (1968) which include the rights of "Due Process"
3 and "Fair Trial" under U.S. C. A. Art. 5, 6 and 14, New Const. art. 138.²
4
5 To prevent reversible error and fairness being center stage in this
6 request. Defendant seeks dismissal of the charges or in the
7 alternative be allowed:

1. Access to legal research materials or a person trained in law to litigate issues in the case;
2. Access to audio/video discoverable materials such as the 911 call, body cam, dash cam, audio recordings at businesses;
3. Transcripts of information in above paragraph 2 for purpose of presentation in litigation before and during trial;
4. Any and all discoverable discovery required under the law.
5. Any and all documents and/or litigation filed in this case.
6. An investigator to research and investigate evidence to present at trial.

1. Defendant cites from a Georgetown Law Journal, Annual Review
of Criminal Procedure (2020) that I personally bought and took
months to receive. It does not state Nevada's laws or decisions.

2. This information was discoverable "not less than 5 judicial days"
before the preliminary examination under NRS 171.196.5(4)(A) (901950).

C. Conclusion.

Wherefore, it is the prayer of Defendant this honorable Court dismiss the charges or in the alternative grant Defendant access to:

1. Legal research materials or person(s) trained in law to provide same;

2. Access to discoverable materials and/or audio recordings transcribed by the state;

3. Access to equipment to watch/listen to audio/visual discovery;

4. Access to all ~~audio~~ documents filed in the case and transcripts of the March 30, 2021 hearing and August 17, 2021 hearing;

5. Access to an investigator appointed by the court.

6. Any other relief the court deems appropriate.

Respectfully Submitted, August 20, 2021.

Sean Orth

Sean Orth

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

Sean Orth AA001955 136

Prison Book 96723
PO Box 650
Indian Springs, Nevada
89070

Clerk of the Court
District Court
Clark County Nevada
200 Lewis Ave
Las Vegas Nevada 89101

8910185301 0075



UNIT 8 C/D

AUG 31 2021

HIGH DESERT STATE PRISON



EXHIBIT FOUR

AA001957

Steven B. Wolfson

1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 NOREEN DEMONTE
6 Chief Deputy District Attorney
7 Nevada Bar #008213
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 SEAN RODNEY ORTH,
13 #6111549

14 Defendant.

CASE NO: C-20-352701-1

DEPT NO: VI

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

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

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

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

26 //

27 //

28 //

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

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

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

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

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

25 On December 18, 2020, Defendant was arraigned in District Court and pled not guilty.
26 On February 3, 2021, Defendant filed a Petition for Writ of Habeas Corpus. On February 19,
27 2020, the State filed the State's Return to Writ of Habeas Corpus.

28 //

1 On March 16, 2020, Defendant requested the Public Defender be appointed as counsel
2 as he no longer wished to represent himself. On March 30, 2020, Defendant waived his right
3 to a speedy trial. Additionally, at that time the Court denied Defendant's pro per Writ and
4 defense counsel was given time to file a supplemental Petition for Writ of Habeas Corpus
5 ("Petition"). On April 20, 2020, Defendant filed a Supplemental Petition which was denied
6 on June 1, 2021.

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

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

12 The State's response to the instant Motion follows.

13 14 STATEMENT OF THE FACTS

15 On October 28, 2020, Henderson Police Officer Alex Nelson ("Officer Nelson")
16 responded to 981 Whitney Ranch Drive, in reference to a call about a subject in possession of
17 a firearm and a potential robbery that had occurred the night before. Preliminary Hearing
18 Transcript ("PHT") p. 39-40. When Officer Nelson arrived other officers inside the complex
19 advised that they had eyes on a vehicle which was failing to yield to them. PHT p. 42. Officer
20 Nelson could hear sirens activated in the background. Id. At that time, Officer Nelson
21 positioned his patrol vehicle in front of the exit and entrance gate of the complex, to block the
22 path of the vehicle. PHT p. 43. Eventually Officer Nelson saw a Chevy Malibu ("the car")
23 heading in his direction. Id. He observed the car make a left turn and accelerate at a high rate
24 towards his location. PHT p. 43. Following directly behind the car were two clearly
25 identifiable police vehicles with their red and blue light and sirens activated. PHT p. 43-44.
26 Officer Nelson had to move away from his patrol vehicle to the side of the gate so he would
27 not be injured. PHT p. 44. Defendant had accelerated after the turn and was picking up speed,
28 in such a way that made Officer Nelson concerned enough to get out of the way. PHT p. 60.

1 Defendant was driving in such a way that Officer Nelson had concerns that Defendant might
2 cause injury to property or someone in the area. Id. Eventually the car stopped, and Defendant
3 exited from the driver's door. PHT p. 45. The car continued to move forward until it hit the
4 gate, it appeared as it had not been placed in park. Id. The officers that were pursuing
5 Defendant exited their vehicles and issued commands for Defendant to stop. PHT p. 46.
6 Officer Nelson recognized the officers as Officer Hehn, Officer Brink, and Officer Duffy. PHT
7 p. 47. Officer Nelson saw Defendant place a brown duffle bag ("the bag") on top of a wall
8 that separated the apartment complex and the street and saw Defendant jump over that wall
9 with the bag. PHT p. 48. A foot pursuit was initiated, and Officer Nelson ran towards
10 Defendant. Id. Defendant continued to run as officers were issuing him commands to stop.
11 Id. Once Officer Nelson got close enough, he attempted to deploy his taser, which was
12 ineffective. Id. Officer Nelson lost footing and fell, as he got up saw that another officer had
13 Defendant on the ground. PHT 49.

14 Henderson Police Department Detective Karl Lippisch ("Detective Lippisch") arrived
15 on scene and contacted Defendant, who was sitting in the back of a patrol car. PHT p. 84-85.
16 Initially Defendant did not want his Miranda rights to be read to him, that way any statements
17 made by him would be inadmissible. PHT p. 85. After being told by Detective Lippisch that
18 he would not speak to Defendant without reading him his Miranda rights, Defendant agreed
19 to have his Miranda rights read to him. Id. However, Defendant did not want the interview
20 to be recorded. PHT p. 86. Defendant stated that initially he thought the patrol cars were in
21 the apartment complex for a different purpose. PHT p. 86-87. However, Defendant realized
22 they were attempting to stop him, but he refused to stop. PHT p. 87. Defendant admitted that
23 he attempted to evade and flee to try to get away. Id. Defendant stated that he believed he was
24 being set up for something in the bag. Id. Defendant claimed he did not know the contents of
25 the bag. PHT p. 87-88. Ultimately Detective Lippisch obtained a search warrant for the bag.
26 PHT p. 90. He took the bag from the scene to the police station and secured it. PHT p. 91.
27 Henderson Police Department Detective Kevin Lapper ("Detective Lapeer") executed the
28

1 search warrant on the bag. PHT p. 64. Inside the bag he located a .20-gauge Winchester
2 shotgun. PHT p. 66.

3
4 **ARGUMENT**

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

11 The State respectfully requests this Honorable Court deny this Motion to Dismiss.

12 DATED this 1st day of October, 2021.

13 Respectfully submitted,

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

17 BY /s/ Noreen DeMonte
18 NOREEN DEMONTE
19 Chief Deputy District Attorney
20 Nevada Bar #008213
21
22
23
24
25
26
27
28

1 CERTIFICATE OF MAILING

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

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

8 BY /s/ E. Del Padre
9 E. DEL PADRE
10 Secretary for the District Attorney's Office
11
12
13
14
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28 ND/ed/GCU

EXHIBIT FIVE

AA001964

DE: ASSIST PD EMERGENCIES

ty: 1

Disposition: CLEAR

Status: Closed

ss: 981 WHITNEY RANCH DR

City: HEN

Bldg: 8

Apt: 823

ph: 1600 PATRICK LN

Cross Low: 1500 PLAIN SIGHT AVE

nt: THE MARLOW APTS

Jurisdiction:

BA: S82

S/B: 82B

SRA:

HP: 313165

Latitude: 36.07744330

Longitude: -115.05474545

nt: E82

Officer 1: E82 E82 E82

Officer 2:

le: COHCADWS91

Operator: HP1366 DINKEL A

911: Y

07

er: JESSIE CARACCILLO

Address: 981 WHITNEY RANCH DR

Phone:

te: 10/28/2020 7:20:31

Dispatch: 10/28/2020 7:20:47

Arrive: 10/28/2020 7:28:48

Close: 10/28/2020 7:37:40

Flight Text

07:11:39 Incident Created

HP2689 COHCADWS9107 MANN, J

07:11:39 PR MADE REPORT OF MALE BEING ON PROPERTY. PR SAYS HE IS ARMED. HES CURRENTLY AT PR'S DOOR. MALEE TOOK PR'S 413'S

HP2689 COHCADWS9107 MANN, J

07:11:53 MALE IS STANDING AT PR'S DOOR. PR IS IN THE BATHROOM

HP2689 COHCADWS9107 MANN, J

07:12:02 MALE IS SHAWN ORTH

HP2689 COHCADWS9107 MANN, J

07:12:16 Dispatch: HP/2N11 (Officers: HP/DUFFY PHILIP)

HP1366 COHCADWS9113 DINKEL A

07:12:16 Dispatch: HP/2N71 (Officers: HP/MANGAN ASHLEY)

HP1366 COHCADWS9113 DINKEL A

07:12:16 Incident Status From: Initial To: Active

HP1366 COHCADWS9113 DINKEL A

07:12:16 *Unit Status Change - From: AV To: D

HP1366 COHCADWS9113 DINKEL A

07:12:16 *Unit Status Change - From: AV To: D

HP1366 COHCADWS9113 DINKEL A

07:12:16 Unit Mgmt - Loc Name: From: To: THE MARLOW APTS

HP1366 COHCADWS9113 DINKEL A

07:12:16 Unit Mgmt - Location: From: To: 981 WHITNEY RANCH DR

HP1366 COHCADWS9113 DINKEL A

07:12:16 Unit Mgmt - Apartment: From: To: 823

HP1366 COHCADWS9113 DINKEL A

07:12:16 Unit Mgmt - Zip Code: From: To: 89014

HP1366 COHCADWS9113 DINKEL A

07:12:16 Unit Mgmt - City: From: To: HEN

HP1366 COHCADWS9113 DINKEL A

07:12:16 Unit Mgmt - City: From: To: HEN

HP1366 COHCADWS9113 DINKEL A

Member 12, 2021 10:33:10 AM

ORTH 20CRH001571 11-25-2020 06

Audite Text	Operator	Console	Name
7:12:16 Unit Mgmt - Building: From: To: 8	HP1366	COHCADWS9113	DINKEL, A
7:12:16 Unit Mgmt - Apartment: From: To: 823	HP1366	COHCADWS9113	DINKEL, A
7:12:16 Unit Mgmt - Building: From: To: 8	HP1366	COHCADWS9113	DINKEL, A
7:12:16 Unit Mgmt - Loc Name: From: To: THE MARLOW APTS	HP1366	COHCADWS9113	DINKEL, A
7:12:16 Unit Mgmt - Zip Code: From: To: 89014	HP1366	COHCADWS9113	DINKEL, A
7:12:16 Unit Mgmt - City: From: To: HEN	HP1366	COHCADWS9113	DINKEL, A
7:12:16 Unit Mgmt - Location: From: To: 981 WHITNEY RANCH DR	HP1366	COHCADWS9113	DINKEL, A
7:12:22 *Unit Status Change - From: D To: ER	HP2154	COHMDT3167	MANGAN, A
7:12:22 *Unit Status Change - Submitted: 2020-10-28 07:12:21	HP2154	COHMDT3167	MANGAN, A
7:12:27 MALE IS WMA 46 511/220 UNK CLOTHING	HP2689	COHCADWS9107	MANN, J
7:12:34 *Unit Status Change - From: D To: ER	HP2576	COHMDT3119	DUFFY, P
7:12:34 *Unit Status Change - Submitted: 2020-10-28 07:12:31	HP2576	COHMDT3119	DUFFY, P
7:12:55 Dispatch: HP/S1387 (Officers: HP/CLEAR JAIME)	HP1387	COHMDT3295	CLEAR, J
7:12:55 *Unit Status Change - From: AV To: ER	HP1387	COHMDT3295	CLEAR, J
7:12:55 Unit Mgmt - Location: From: To: 981 WHITNEY RANCH DR	HP1387	COHMDT3295	CLEAR, J
7:12:55 Unit Mgmt - Zip Code: From: To: 89014	HP1387	COHMDT3295	CLEAR, J
7:12:55 Unit Mgmt - Apartment: From: To: 823	HP1387	COHMDT3295	CLEAR, J
7:12:55 Unit Mgmt - Loc Name: From: To: THE MARLOW APTS	HP1387	COHMDT3295	CLEAR, J
7:12:55 Unit Mgmt - Building: From: To: 8	HP1387	COHMDT3295	CLEAR, J
7:12:55 Unit Mgmt - City: From: To: HEN	HP1387	COHMDT3295	CLEAR, J
7:13:15 IN RELATION TO DR # 20-18989	HP2689	COHCADWS9107	MANN, J
7:13:26 INC 032 THIS MORNING	HP2689	COHCADWS9107	MANN, J
7:13:41 MALE IS BANGING ON THE DOOR, CHILD IN THE RES	HP2689	COHCADWS9107	MANN, J
7:14:01 2N11 - CODE RED	HP1366	COHCADWS9113	DINKEL, A
7:14:08 PR IS NOT ARMED, ONLY HAS 413A	HP2689	COHCADWS9107	MANN, J
7:14:14 Dispatch: HP/2N41 (Officers: HP/BRINK TIMOTHY)	HP1168	COHCADWS9101	SCHILL, C
7:14:14 *Unit Status Change - From: AV To: D	HP1168	COHCADWS9101	SCHILL, C
7:14:14 Unit Mgmt - Loc Name: From: To: THE MARLOW APTS	HP1168	COHCADWS9101	SCHILL, C

ember 12, 2020 10:33:10 AM

ORTH 20CRH001571 11-25-2020 06

Audit Text	Operator	Console	Name
14:14 Unit Mgmt - Building: From: To: 8	HP1168	COHCADWS9101	SHELL, C
14:14 Unit Mgmt - Zip Code: From: To: 89014	HP1168	COHCADWS9101	SHELL, C
14:14 Unit Mgmt - City: From: To: HEN	HP1168	COHCADWS9101	SHELL, C
14:14 Unit Mgmt - Apartment: From: To: 823	HP1168	COHCADWS9101	SHELL, C
14:14 Unit Mgmt - Location: From: To: 981 WHITNEY RANCH DR	HP1168	COHCADWS9101	SHELL, C
14:35 Dispatch: HP/2W41 (Officers: HP/MURPHY BROOKE)	HP2274	COHMDT3102	MURPHY, B
14:35 *Unit Status Change - From: AV To: ER	HP2274	COHMDT3102	MURPHY, B
14:35 Unit Mgmt - Building: From: To: 8	HP2274	COHMDT3102	MURPHY, B
14:35 Unit Mgmt - Zip Code: From: To: 89014	HP2274	COHMDT3102	MURPHY, B
14:35 Unit Mgmt - City: From: To: HEN	HP2274	COHMDT3102	MURPHY, B
14:35 Unit Mgmt - Location: From: To: 981 WHITNEY RANCH DR	HP2274	COHMDT3102	MURPHY, B
14:35 Unit Mgmt - Loc Name: From: To: THE MARLOW APTS	HP2274	COHMDT3102	MURPHY, B
14:35 Unit Mgmt - Apartment: From: To: 823	HP2274	COHMDT3102	MURPHY, B
14:42 MALE IS STILL KNOCKING ON THE DOOR	HP2689	COHCADWS9107	MANN, J
14:52 UNITS ASKING IF MALE HAS THE 413 OUT OR JUST AT HIS SIDE	HP1366	COHCADWS9113	DINKEL, A
14:53 UNK IF ANYONE ELSE IS WITH THE MALE	HP2689	COHCADWS9107	MANN, J
15:12 **PREV INC # 018**	HP1130	COHCADWS9105	HENKE, M
15:34 PR NEVER SAW THE GUN ON HIM	HP2689	COHCADWS9107	MANN, J
15:36 *Unit Status Change - From: D To: ER	HP1366	COHCADWS9113	DINKEL, A
16:18 *Unit Status Change - From: ER To: AR	HP1366	COHCADWS9113	DINKEL, A
16:18 *Unit Status Change - From: ER To: AR	HP1366	COHCADWS9113	DINKEL, A
16:19 PR KNOWS ITS THE MALE FROM SEEING HIM THROUGH THE PEEPHOLE	HP2689	COHCADWS9107	MANN, J
16:53 Dispatch: HP/113 (Officers: HP/BALDINO PAUL)	HP1366	COHCADWS9113	DINKEL, A
16:53 Dispatch: HP/112 (Officers: HP/SCOBLE JASON)	HP1366	COHCADWS9113	DINKEL, A
16:53 *Unit Status Change - From: AV To: AR	HP1366	COHCADWS9113	DINKEL, A
16:53 *Unit Status Change - From: AV To: AR	HP1366	COHCADWS9113	DINKEL, A
16:53 Unit Mgmt - Building: From: To: 8	HP1366	COHCADWS9113	DINKEL, A
16:53 Unit Mgmt - Loc Name: From: To: THE MARLOW APTS	HP1366	COHCADWS9113	DINKEL, A

umber 12, 201) 10:33:10 AM

ORTH 20CRH001571 11-25-2020 3 03

Audio Text	Operator	Console	Name
17:16:53 Unit Mgmt - Apartment: From: To: 823	HP1366	COHCADWS9113	DINKEL, A
17:16:53 Unit Mgmt - Location: From: To: 981 WHITNEY RANCH DR	HP1366	COHCADWS9113	DINKEL, A
17:16:53 Unit Mgmt - Zip Code: From: To: 89014	HP1366	COHCADWS9113	DINKEL, A
17:16:53 Unit Mgmt - City: From: To: HEN	HP1366	COHCADWS9113	DINKEL, A
17:16:53 Unit Mgmt - Building: From: To: 8	HP1366	COHCADWS9113	DINKEL, A
17:16:53 Unit Mgmt - Zip Code: From: To: 89014	HP1366	COHCADWS9113	DINKEL, A
17:16:53 Unit Mgmt - Loc Name: From: To: THE MARLOW APTS	HP1366	COHCADWS9113	DINKEL, A
17:16:53 Unit Mgmt - Apartment: From: To: 823	HP1366	COHCADWS9113	DINKEL, A
17:16:53 Unit Mgmt - Location: From: To: 981 WHITNEY RANCH DR	HP1366	COHCADWS9113	DINKEL, A
17:16:53 Unit Mgmt - City: From: To: HEN	HP1366	COHCADWS9113	DINKEL, A
17:16:56 *Unit Status Change - From: AR To: CR	HP1366	COHCADWS9113	DINKEL, A
17:17:02 < PR IS IN THE BATHROOM, HER BOYF IS AT THE DOOR AND SHE DOESNT KNOW IF HE CAN SEE ANY 413'S ON THE MALE >	HP2689	COHCADWS9107	MANN, J
17:17:35 411 VEH IS WHI CHEV MALIBU UNK BODY SHOP PLATES	HP1366	COHCADWS9113	DINKEL, A
17:17:42 Dispatch: HP/2N51 (Officers: HP/BOWLER BRENT)	HP1545	COHMDT3161	BOWLER, B
17:17:42 *Unit Status Change - From: AV To: ER	HP1545	COHMDT3161	BOWLER, B
17:17:42 Unit Mgmt - Location: From: To: 981 WHITNEY RANCH DR	HP1545	COHMDT3161	BOWLER, B
17:17:42 Unit Mgmt - Building: From: To: 8	HP1545	COHMDT3161	BOWLER, B
17:17:42 Unit Mgmt - City: From: To: HEN	HP1545	COHMDT3161	BOWLER, B
17:17:42 Unit Mgmt - Zip Code: From: To: 89014	HP1545	COHMDT3161	BOWLER, B
17:17:42 Unit Mgmt - Apartment: From: To: 823	HP1545	COHMDT3161	BOWLER, B
17:17:42 Unit Mgmt - Loc Name: From: To: THE MARLOW APTS	HP1545	COHMDT3161	BOWLER, B
17:17:51 WHI CHEV MALIBU BACKING UP	HP1366	COHCADWS9113	DINKEL, A
17:18:14 FTY, 2N11 & 2N41 ATTG 487	HP1366	COHCADWS9113	DINKEL, A
17:18:18 2N71 BLOCKING EXIT	HP1366	COHCADWS9113	DINKEL, A
17:18:27 2N51 & 2N71 AT FRONT EXIT	HP1366	COHCADWS9113	DINKEL, A
17:18:30 FEM IS ADVG MALE IS STILL AT THE DOOR	HP2689	COHCADWS9107	MANN, J
17:18:39 QW/U:2N71, LASTNAME: ORTH, FIRSTNAME: SEAN, DOI:	HP1165	COHCADWS9104	GACEK, J

Member 12, 2023 10:33:10 AM

ORTH 20CRH001571 11-25-2020 06

EXHIBIT SIX

AA001969

12:00AM 1 TRAN
2 CASE NO. C352701-1
3
4 IN THE JUSTICE'S COURT OF HENDERSON TOWNSHIP
5 COUNTY OF CLARK, STATE OF NEVADA
6
7 STATE OF NEVADA,
8 Plaintiff,
9 vs. CASE NO. 20CRH001571
10 SEAN RODNEY ORTH,
11 Defendant.
12
13 REPORTER'S TRANSCRIPT
14 OF
15 PRELIMINARY HEARING
16 BEFORE THE HONORABLE SAMUEL G. BATEMAN
17 JUSTICE OF THE PEACE
18 WEDNESDAY, DECEMBER 9, 2020
19 APPEARANCES:
20 For the State: ERIKA MENDOZA
21 Chief Deputy District Attorney
22 For the Defendant: IN PROPER PERSON
23 Standby Counsel: KARA SIMMONS
24 Deputy Public Defender
12:00AM 25 Reported by: Lisa Brenske, CCR #186

12:00AM 1 WITNESSES
2
3 ALEX NELSON
4 Direct Examination by Ms. Mendoza 38
5 Cross-Examination by Defendant Orth 29
6 Redirect Examination by Ms. Mendoza 29
7 Recross-Examination by Defendant Orth 60
8 Further Redirect Examination by Ms. Mendoza 62
12:00AM 9
10 KEVIN LAPEER
11 Direct Examination by Ms. Mendoza 63
12 Cross-Examination by Defendant Orth 69
13 Redirect Examination by Ms. Mendoza 81
14
15 KARL LIPPISCH
16 Direct Examination by Ms. Mendoza 84
17 Cross-Examination by Defendant Orth 84
18 Redirect Examination by Ms. Mendoza 123
19 Recross-Examination by Defendant Orth 125
12:00AM 20
21
22
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12:00AM 1 INDEX OF EXHIBITS
2 Exhibit Description Admitted
3 STATE'S 1 PHOTOGRAPH OF DUFFEL BAG 69
4 STATE'S 2 - 5 JUDGMENTS OF CONVICTIONS 145
5
6
7
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12:00AM 1 HENDERSON, NEVADA, DECEMBER 9, 2020
2
3 * * * * *
4
5 THE COURT: Sean Orth, 20CRH1571, who is
6 representing himself with Miss Simmons here as standby
7 counsel.
8 All right. Mr. Orth, let's take up your
9 motions first and then we'll start the prelin depending
10 how I rule on your motions, okay?
11:04AM 11 DEFENDANT ORTH: Yes, sir. I'd like to
12 invoke the rule of witnesses.
13 THE COURT: Of what?
14 DEFENDANT ORTH: The rule of witnesses.
15 To exclude them.
16 THE COURT: We'll exclude the witnesses
17 once the preliminary hearing starts. So your motions
18 to dismiss. You received Miss Mendoza's responses,
19 correct, sir?
11:04AM 20 DEFENDANT ORTH: I received them today,
21 your Honor.
22 THE COURT: Have you reviewed them?
23 DEFENDANT ORTH: Yes. And I'd like to
24 reply.
11:04AM 25 THE COURT: I'm sorry?

11:04AM 1 DEFENDANT ORTH: I just received them
2 today and I'd like the opportunity to reply.
3 THE COURT: Okay. Well, if you want to
4 reply we'd have to continue the preliminary hearing.
11:04AM 5 So I'm going to take them up today, all right? Because
6 yours kind of came in late as well from the last time
7 we were here. So we're kind of scrambling. So we're
8 just going to take up all the motions today and then
9 we'll decide what we are going to do with the prelim,
11:04AM 10 okay?
11 DEFENDANT ORTH: Are we going to make
12 additional arguments based on additional discovery
13 disclosed to me today?
14 THE COURT: You can if you want. I'll let
11:05AM 15 you make whatever arguments you want to make, okay? We
16 have three different motions here. You had two
17 different motions to dismiss, Mr. Orth. So one of them
18 was based on the continuance. Did you want to make any
19 other arguments based on the original continuance of
11:05AM 20 the preliminary hearing?
21 DEFENDANT ORTH: I do, your Honor.
22 THE COURT: Go ahead.
23 DEFENDANT ORTH: Would you like me to
24 stand?
11:05AM 25 THE COURT: You can sit. Just speak up

11:05AM 1 because you have your mask on.
2 DEFENDANT ORTH: First of all, your Honor,
3 I'm in the state of Nevada's custody. Whatever
4 procedure they have for me appearing is within their
11:06AM 5 procedures, their policies. Miss Mendoza, when she
6 disclosed discovery to me, she gave me a notice of
7 intent to use audio visual technology pursuant to
8 NRS --
9 THE COURT: First I want to take up the
11:06AM 10 portion of your motion that you're complaining about
11 the original continuance. So go ahead.
12 DEFENDANT ORTH: This is part of it. This
13 is new discovery that I have.
14 THE COURT: What discovery are you
11:06AM 15 referring to?
16 DEFENDANT ORTH: This is the notice of
17 intent that was in the discovery that was given to me.
18 THE COURT: Are you doing any video
19 witnesses today?
11:06AM 20 MS. MENDOZA: No. And that is a
21 standard --
22 THE COURT: That's just a stock form that
23 the DA's office is including with the complaint getting
24 filed every day. So it's my understanding that that's
11:06AM 25 really irrelevant at this point because I don't think

11:06AM 1 Miss Mendoza intends to present anything by audio
2 visual, correct?
3 MS. MENDOZA: That is correct. And that
4 was included in all initial discovery packets.
11:07AM 5 DEFENDANT ORTH: I agree with that today,
6 your Honor, but the thing is that in this notice of
7 intent what the prosecutor is doing is they're telling
8 defendants that they are subject to audio visual, the
9 use of audio visual technology for the purpose of
11:07AM 10 witness confrontation rights. They're basically saying
11 they can present testimony. So we could have done that
12 on November 17th. In fact, she states in her notice
13 that pursuant to NRS 171.19751, if good cause otherwise
14 exists, the magistrate must allow the witness to
11:07AM 15 testify at the preliminary examination through the use
16 of audio visual technology. She further goes on to
17 state that her witnesses will be available no matter
18 what jurisdiction they are in through audio visual
19 technology.
11:07AM 20 So on November 17th Officer Ozawa, who
21 was in the city of Las Vegas at the time, which we know
22 because she admitted that on record, was in the
23 jurisdiction of Las Vegas, and he also could have
24 appeared by audio visual technology. However, the
11:08AM 25 prosecutor did not move to show cause to use audio

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

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

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

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

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

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

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

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

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

17 THE COURT: Correct.

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

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

11:12AM 1 leaving this morning.

2 DEFENDANT ORTH: But he had not left yet.

3 MS. MENDOZA: I didn't know.

4 THE COURT: I don't know whether he had or
11:12AM 5 hadn't. The information that was provided was that he
6 was leaving on vacation the jurisdiction that morning
7 if I remember correctly.

8 MS. MENDOZA: He told me he was leaving
9 that morning so he was not available for court and also
11:12AM 10 he had the subpoena so he knew what time court was.

11 DEFENDANT ORTH: So that being said so he
12 was still within town.

13 THE COURT: We don't know that. I have
14 the information that I have which says he was leaving
11:12AM 15 that morning. He could have left before the
16 preliminary hearing, he could have left --

17 DEFENDANT ORTH: We can ask him, right?

18 THE COURT: You can ask him.

19 DEFENDANT ORTH: So my point being -- I
11:13AM 20 don't mean to interrupt, your Honor.

21 THE COURT: No. Go ahead.

22 DEFENDANT ORTH: So my point being is that
23 that being said that his vacation was put over, the
24 defendant's rights to have a preliminary hearing within
11:13AM 25 15 days, I was ambushed with that. So what I did is I

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

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

11:14AM 5 has confessed to error, your Honor.
6 THE COURT: Let me have Ms. Mendoza
7 respond.

8 MS. MENDOZA: Your Honor --

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

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

13 THE COURT: All right.

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

11:15AM 1 as he was --

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

9 MS. MENDOZA: Correct.

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

13 MS. MENDOZA: And as he was --

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

18 MS. MENDOZA: Yes.

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

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

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

2 THE COURT: So here is the deal. With
3 regard to the motion to continue I'm not applying, Mr.
4 Orth, the five-day rule that you've cited in the
5 statute because if you look at every single solitary
6 case, whether it's Hill, whether it's Bustos, whether
7 it's Terpstra, T-E-R-P-S-T-R-A, none of those cases
8 apply in those particular statutes to motions to
9 continue preliminary hearings. The only one that's
10 ever kind of in an offhanded way apply to that statute
11 and Davis kind of said, oh, by the way, they also
12 didn't comply with that statute. So I don't believe
13 that statute has ever been applied consistently to
14 motions to continue preliminary hearings. So I'm not.
15 And the reason in part would be that usually within 15
16 days the State would have an almost impossible time
17 even complying with that statute most of the time. So
18 I am not extending the statute referenced in Davis to
19 the preliminary hearing in this particular case.

20 NRS 171.196 says you're entitled to a
21 preliminary hearing within 15 days unless for good
22 cause shown that it's continued. Hill says in order to
23 seek a continuance and show good cause the State must
24 provide an affidavit that states the names of the
25 absent witnesses, the diligence used to procure their

11:18AM 1 attendance, a brief summary of their expected testimony
2 and whether the same facts can be proven by other
3 witnesses. When the affiant first learned that the
4 attendance of such witnesses could not be obtained, and
5 that the motion is made in good faith and not for the
6 purposes of delay. The Hill case actually does not
7 necessarily require an extensive explanation of why in
8 fact they can't attend. It simply says it has to have
9 a brief summary of their expected testimony and
10 diligence used to procure their attendance. And so the
11 motion at its basis that was filed does meet those
12 criteria A, B, C, D and E as it's stated in Hill.

13 Could the motion have contained more specificity as to
14 when they were coming and going? Yes. But when I went
15 back and looked at Hill, those are the criteria.
16 That's the specific language of the criteria and the
17 motion met that barebones criteria.

18 Your position that if a police officer was
19 subpoenaed that they must come even if they are going
20 on vacation or they're in some sort of mandatory
21 training, yes, I arguably could make them show up.
22 Courts could make them show up and hold them in
23 contempt for not appearing, but the reason that there's
24 this availability of this motion is to make it so that
25 they don't have to comply with the subpoena because the

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

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

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

11:21AM 19 What was the next motion you had? I just
20 want to make it clear for the record that you said I
21 reset it in 18 days. I did reset it in 16 days. So
22 the 17th is 16 days if I remember correctly.

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

11:21AM 1 THE COURT: That's all right.
2 Now, with regard to the motion and the
3 filing of the amended criminal complaint. At the time
4 I went back and looked at the report. The original
11:22AM 5 report that I think you had and that I was operating
6 off of did, correct me if I'm wrong, reference
7 allegations that you pled and that was the basis of the
8 additional charge of stop required.

9 Is that correct, Ms. Mendoza?
11:22AM 10 MS. MENDOZA: The original Declaration of
11 Arrest talks about him fleeing in a vehicle when
12 officers are following with lights and sirens, yes.

13 THE COURT: So what I was concerned about
14 at the time was the addition of that charge without
15 having reference to any information that you would have
16 had at the time that would have formed the basis for
17 the additional charge. If it was some wholly other
18 discovery that you hadn't received back on the 17th
19 and Miss Mendoza wanted to add that charge and then
20 continue the case, that's one thing that I was
21 concerned about at the time. I went back and looked at
22 the report. There was reference to, and you've read
23 it. It's an allegation. Whether it's true or not, the
24 reference was that you had filed and that was at least a
11:22AM 25 basis of fact for you to know that that particular

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

6 Let me see what else you have here.
7 DEFENDANT ORTH: As to the double jeopardy
8 portion of it, your Honor?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 MS. MENDOZA: Yes, your Honor.

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

11:27AM 15 MS. MENDOZA: No.

16 THE COURT: Okay.

17 MS. MENDOZA: Can I just clarify?

18 THE COURT: Go ahead.

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

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

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

11:28AM 10 MS. MENDOZA: Correct.

11:28AM 11 THE COURT: So at this point I don't see
12 there being a discovery violation because it -- if they
13 are putting witnesses up that have made statements and
14 it's in those reports, then you're entitled to have
15 that information and you're entitled to have it five
16 days before the preliminary hearing. As I sit here
17 right now I don't have any indication that that's what
18 they intended to do, Mr. Orth, and if they did or they
19 did it today and they haven't provided you the
20 information, but as of right now the charges haven't
21 changed. And it doesn't look like she's going forward
22 with regard to whatever those allegations were. So I
23 don't find any discovery violation at this point with
24 regard to that event number.

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

11:29AM 1 regard just to include in the record that under State
2 v. Nelson 118 Nevada 399, in terms of continuances that
3 courts are required to take into consideration the
4 totality of the circumstances and apply the rules
5 firmly, consistently but realistically. So I think
6 that goes to the allegations about the unavailability
7 of the witnesses. I think I complied with the rules
8 and interpreted them and applied them realistically
9 under the circumstances. I would have preferred you
10 not have been shipped up to NSP, but that's what ended
11 up happening. And it's not something that I asked them
12 to do. I think I remembered at the time hopefully
13 trying to keep him here, but unfortunately that didn't
14 work out. So I don't see any other arguments with
15 regard to the motion to dismiss for any discovery
16 issues or the continuance that I haven't taken up.

11:29AM 17 There were two motions to dismiss. One of
18 your motions was regard to the resisting charge; is
19 that right, Mr. Orth?

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

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

11:30AM 1 Court versus the charge of stop required that is
2 currently in the amended criminal complaint?
3 DEFENDANT ORTH: No, Your Honor. Actually
4 what happened was my understanding was the Court stayed
11:30AM 5 allowing the amendment of the pleading pending the
6 investigation by the plaintiff and I was charged with
7 evading anyway at the jail with the charge anyway. And
8 I've been sitting there with the evading charge on me
9 for this entire time. But my understanding was she was
11:31AM 10 going to investigate the legality of whether or not
11 there was misconduct that was being placed with the new
12 charge into the complaint that is violative of the
13 double jeopardy clause.
14 THE COURT: All right. So you provided I
11:31AM 15 believe, Miss Mendoza, the Declaration of Arrest and
16 the charge in Municipal Court 20CR007366 for resisting
17 and I have it here; is that correct?
18 MS. MENDOZA: Yes, your Honor.
19 THE COURT: What's the status of that case
11:31AM 20 in Municipal Court?
21 MS. MENDOZA: He pled to it.
22 THE COURT: I'm going to take that up.
23 That would potentially require some legal arguments as
24 it relates to determine whether there's a double
11:32AM 25 jeopardy issue between that and the stop required under

11:32AM 1 the Blockburger test. We can still do the preliminary
2 hearing and I can take up that issue and do some
3 research on it. But we can still do the preliminary
4 hearing. So I haven't ultimately made a ruling on that
11:32AM 5 yet, but I'm going to take that up at the appropriate
6 time.
7 The other issue is you filed a motion to
8 suppress. I think you filed a motion to suppress your
9 arrest because they didn't have a warrant, Mr. Orth,
11:32AM 10 under NRS 171.124. They can do a probable cause arrest
11 without a warrant.
12 DEFENDANT ORTH: So --
13 THE COURT: Hang on one sec. When a
14 person arrested has committed a felony or a gross
11:32AM 15 misdemeanor, even not in the officer's presence, when a
16 felony or gross misdemeanor has in fact been committed
17 and the officer has reasonable cause to believe the
18 person arrested to have committed it. So they don't
19 technically need a warrant to arrest you for a felony.
11:33AM 20 You've also made a motion to suppress I
21 believe the contents of the search warrant.
22 Is that your understanding, Miss Mendoza?
23 MS. MENDOZA: Yes, your Honor.
24 THE COURT: Did you also make that motion,
11:33AM 25 Mr. Orth?

11:33AM 1 DEFENDANT ORTH: I made the motion to
2 suppress in conjunction with the illegal arrest and the
3 search warrant that was obtained. Those are the two,
4 your Honor. I would just -- I wasn't here so I don't
11:33AM 5 think -- I wasn't here when you made the ruling to
6 exclude the probable cause. I do understand --
7 THE COURT: I just made the ruling now. I
8 just repeated it to you.
9 DEFENDANT ORTH: I understand the point.
11:33AM 10 I'd like to make some argument on that.
11 THE COURT: Go ahead.
12 DEFENDANT ORTH: But before we move on for
13 the motion to continue, I wasn't here so that was a
14 surprise motion to continue done the other day when I
11:33AM 15 wasn't here by when the warden I guess didn't bring me
16 down.
17 THE COURT: That wasn't anybody's motion
18 to continue. You weren't here and you're representing
19 yourself so I can't even rely really on your standby
11:33AM 20 counsel. So we were just in a position of we did a
21 short turnaround on the ninth to try to get all the
22 witnesses here and then all week we were trying to make
23 sure that they got you back down here. So really
24 nobody made a motion. It's just that you weren't
11:34AM 25 brought.

11:34AM 1 DEFENDANT ORTH: I would just like to make
2 my objection on the record. I understand your
3 position, I understand her position. May I make that
4 objection on the record?
11:34AM 5 THE COURT: What's the objection?
6 DEFENDANT ORTH: The objection is that
7 they were given notice of audio visual technology this
8 whole time and you're saying the courts must abide by
9 it. I should have been sitting here. She could have
11:34AM 10 kept me in the jurisdiction of Henderson and like you
11 had mentioned on the record, she didn't.
12 THE COURT: Hold on a second. She doesn't
13 have authority of whether you are going to remain --
14 the State doesn't have authority of whether you are
15 going to remain in CCDC or whether their policies and
16 procedures are going to cause you to have to go to MSP.
17 I wish I had that control. I don't have that control.
18 DEFENDANT ORTH: I agree. That's not my
19 position. My position is that the State is under the
11:34AM 20 obligation to show good cause under Bustos and Hill.
21 THE COURT: To do what?
22 DEFENDANT ORTH: It is not just for
23 unavailability of witnesses. Any time a preliminary
24 hearing -- Davis is very clear. They didn't even have
11:35AM 25 unavailable witnesses in that situation. In fact,

11:35AM 1 there was an ex parte hearing on the continuance and in
2 fact they faulted the Court and the prosecutor for not
3 even discussing whether or not there was good cause.
4 When the State gives a motion of -- gives a notice of
11:35AM 5 intent that they can do things by audio visual and
6 strip me of my rights, then they can also follow those
7 same procedures to make sure that I have that
8 preliminary examination. You have the statute -- I
9 understand they're saying well, the prison didn't bring
10 you. Well, if we would have set up audio visual
11 technology and had me appearing by audio visual
12 technology and showing cause to do that --
13 THE COURT: Let me just tell you. We have
14 another person that I'm trying to get on audio visual
11:35AM 15 technology from MSP and I've been working on it for a
16 week and we still haven't got it squared away. So it's
17 not as easy as you think it is. I wish it was but it's
18 not.
19 As far as her notice to use audio visual
11:36AM 20 for witnesses, it's generally presumed that we're going
21 to have witnesses coming to court. You have a right to
22 confront your witnesses in court. So we turn to audio
23 visual when we have no other choice, and oftentimes
24 it's over the objection of the defendant that I have
11:36AM 25 them on video. So kind of the way we operate is to try

11:36AM 1 to get witnesses in here so that you have the ability
2 to confront them under the constitution in front of you
3 and I'm only willing to allow audio visual when there's
4 no other alternative. And in this particular case the
11:36AM 5 existence of audio visual does not necessarily mean
6 that a continuance isn't based on good cause and I'm
7 not ruling that it is in this particular case. So I've
8 already made my ruling on that, you've made your record
9 on that.
10 With regard to your motion to suppress
11 anything from the search warrant, we will take that up
12 in terms of the witnesses that you are going to present
13 at the preliminary hearing.
14 I assume they're the same witnesses; is
11:36AM 15 that right, Ms. Mendoza? It would be the same
16 witnesses?
17 MS. MENDOZA: Detective Ozawa isn't in the
18 courthouse today and he interviewed Mr. Polanco.
19 Number one, I don't think he meets his standard to even
11:37AM 20 have a hearing on the motion. So I don't think we
21 should get into the motion during the witness
22 testimony. However, if we are going to, in theory -- I
23 guess what Detective Ozawa knew isn't even relevant
24 because it's only what Detective Lippisch knew. So
11:37AM 25 from my standpoint we don't need him.

11:37AM 1 DEFENDANT ORTH: Your Honor --
2 THE COURT: Hang on a second. The case
3 law is that during a preliminary hearing a motion to
4 suppress can be addressed, it can be brought up based
11:37AM 5 upon the evidence and sometimes that evidence is the
6 same for purposes of probable cause, sometimes you
7 would need some separate evidence to address a motion
8 to suppress on the search warrant. So let's get
9 started, let's see where it goes and then if there's
10 evidence at the time that would indicate a need to have
11 a hearing on the separate witness for your motion to
12 suppress, then we'll take that up.
13 MS. MENDOZA: Just so the record is clear
14 so it's not brought up later down the road.
11:38AM 15 THE COURT: Yes.
16 MS. MENDOZA: We disagree as to what he's
17 in possession of. He is insisting as of today he still
18 doesn't have some reports which you have already ruled
19 don't matter. But I provided them to Miss Simmons.
11:38AM 20 THE COURT: Which reports specifically?
21 Is it that other event number 1989?
22 MS. MENDOZA: Yes. She was provided a
23 packet of discovery that included an incident report
24 from that event, his Washoe County JOCs, a number of
11:38AM 25 CADs, audio of 911, photos. All kinds of things back

11:38AM 1 on November 25th.
2 THE COURT: Miss Simmons, do you remember
3 receiving those?
4 MS. SIMMONS: Your Honor, I was just
11:38AM 5 doublechecking my emails. It was a 236-page document
6 dump, but I did find the report here that I have
7 provided to him.
8 THE COURT: Okay. So it was at least
9 provided to your standby counsel, Mr. Orth.
10 DEFENDANT ORTH: One last thing, your
11 Honor.
12 THE COURT: Yes.
13 DEFENDANT ORTH: One last thing just for
14 clarification on the record. You did a continuance for
11:38AM 15 Officer Ozawa and now she says he's not relevant.
16 THE COURT: I think her argument was he
17 wasn't relevant to your motion to suppress the search
18 warrant.
19 DEFENDANT ORTH: He's not going to appear
11:39AM 20 today?
21 THE COURT: Well, let's see what happens.
22 Her argument for the continuance was she had two
23 witnesses that could testify as to the gun. One was
24 Detective Lapeer, one was Detective Ozawa. Detective
11:39AM 25 Lapeer was in sensitivity training -- I'm just

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

11 Is that your understanding?

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

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

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

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

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

11:40AM 1 like --

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

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

6 THE COURT: Go ahead.

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

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

11:42AM 1 exception to prove the exigent of the situation which
2 made the course imperative -- made the course of
3 obtaining a warrant imperative.

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

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

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

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

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

4 THE COURT: Well, you're making a motion
11:43AM 5 to suppress based on the violation of the warrant
6 requirement for your arrest. What I've read to you,
7 and it's kind of black letter that police officers can
8 do probable cause arrests. Of the cases that you're
9 referring to I don't know which ones of those are
10 search warrants versus arrest warrants. Search
11 warrants indeed they would need an exception if it's a
12 violation of your privacy rights to search or seize any
13 of your property. And the case you cited Barrios was a
14 search warrant case and it was an anticipatory search
15 warrant case. So that's not really relevant to your
16 probable cause arrest. And so under NRS 171.124 they
17 can absolutely do a probable cause arrest if they have
18 the relevant information that I cited in subsection 1B
19 and C.

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

11:44AM 1 Are we ready for witnesses?
2 MS. SIMMONS: The only thing I wanted to
3 make a record of is last week your Honor gave me
4 permission to try to subpoena Louis Polanco and Jessie
11:44AM 5 Caracciolo.

6 THE COURT: Do we have a spelling?

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

8 MS. SIMMONS: That was on Thursday. My
9 investigator has been unable to subpoena them. I know
10 that Mr. Orth previously expressed to me he would like
11 to have them here. The State has indicated their
12 intention not to call them, to call either of them. My
13 investigator did attempt in this short period of time
14 to contact them and has not had contact with them.

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

16 MS. SIMMONS: She attempted prior to the
17 first preliminary hearing date as well, but had no
18 contact.

19 THE COURT: Anything else, Miss Simmons?

11:45AM 20 MS. SIMMONS: I believe that's everything
21 from me, your Honor.

22 THE COURT: He's invoked the exclusionary
23 rule. Who is your first witness, Ms. Mendoza?

24 MS. MENDOZA: The first witness will be
11:45AM 25 Officer Nelson.

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

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

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

6 Raise your right hand for me.

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

11 THE WITNESS: Yes, ma'am.

12 THE CLERK: Please be seated.

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

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

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

18 MS. MENDOZA: Thank you, your Honor.

19
20 **ALEX NELSON**,
having been first duly sworn, did testify as follows:

21 DIRECT EXAMINATION

22 BY MS. MENDOZA:

23 Q. How are you employed?

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

11:46AM 1 Police Department.

2 Q. And were you working in that capacity on
3 October 28th of this year around 7:11 a.m.?

4 A. Yes, ma'am.

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

6 A. Yes, ma'am.

7 Q. And around that time did you respond to
8 781 Whitney Ranch Drive?

9 A. It was 981 Whitney Ranch Drive.

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

11 A. You're very welcome.

12 Q. Is that located here in Clark County?

13 A. Yes, ma'am.

14 Q. Now, what was the reason that you
11:47AM 15 responded to that address?

16 A. Henderson dispatch had received a call
17 that a subject was in possession of a firearm banging
18 on the door of an apartment.

19 DEFENDANT ORTH: Objection. Hearsay.

11:47AM 20 MS. MENDOZA: It's offered not for the
21 truth of the matter asserted.

22 THE COURT: I'm assuming it's offered for
23 why they went out or what they did next; is that
24 correct?

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

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

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

7 Go ahead.

8 BY MS. MENDOZA:

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

11 A. Yes, ma'am.

12 DEFENDANT ORTH: Same objection.

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

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

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

19 So go ahead.

11:48AM 20 BY MS. MENDOZA:

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

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

11:48AM 25 Q. What was that?

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

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

7 A. I do not.

8 MS. MENDOZA: Court's indulgence.

9 THE COURT: Yes.

11:49AM 10 BY MS. MENDOZA:

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

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

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

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

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

11:49AM 20 THE COURT: Yes.

21 BY MS. MENDOZA:

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

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

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

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

2 THE WITNESS: Okay.

3 BY MS. MENDOZA:

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

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

8 Q. And what was that?

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

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

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

18 DEFENDANT ORTH: Hearsay.

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

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

22 BY MS. MENDOZA:

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

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

2 Q. And did based on what you heard these
3 other officers describing affect what you decided to
4 do?

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

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

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

9 THE WITNESS: So at that point my trainee
11:50AM 10 and I positioned our patrol vehicle in front of the
11 exit and entrance gate to block the path of the
12 vehicle.

13 BY MS. MENDOZA:

14 Q. Did you eventually see a Chevy Malibu
11:50AM 15 heading in your direction?

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

17 Q. And was there any other Henderson police
18 officer vehicles in the vicinity of the Malibu?

19 A. Yes, ma'am.

11:51AM 20 Q. Can you describe what you saw happening
21 with the Malibu and the other Henderson police officer
22 vehicles?

23 A. At that point I observed the white Chevy
24 Malibu make a left turn and accelerate at a high rate
11:51AM 25 of speed towards my location. Directly behind that

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

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

7 A. Yes, ma'am.

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

11:51AM 10 A. Red and blue.

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

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

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

17 A. Once I parked my vehicle there, that's
18 when the Chevy Malibu made that left turn and was
19 accelerating towards my direction. And I repositioned
11:52AM 20 from my patrol vehicle to the side of the gate so that
21 if something -- if he did ram through the gate, I would
22 not be injured.

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

11:52AM 1 and crashed into your vehicle?
 2 A. No, ma'am. Positioned my vehicle, got
 3 out. As I walked around my patrol vehicle I was
 4 already -- I already had got out of my vehicle, I then
 11:52AM 5 observed the Chevy Malibu coming, so I ran to a
 6 different location.
 7 Q. So you initially are out, see the Malibu
 8 coming, you run to another location as the Malibu is
 9 coming towards you?
 11:52AM 10 A. Yes, ma'am.
 11 Q. Did the Malibu eventually stop?
 12 DEFENDANT ORTH: Leading.
 13 THE COURT: That's not a leading question.
 14 Go ahead.
 11:53AM 15 BY MS. MENDOZA:
 16 Q. Did the Malibu eventually stop?
 17 A. Eventually, yes.
 18 Q. Can you describe how that came about?
 19 A. Eventually I observed Mr. Orth exit the
 11:53AM 20 driver's seat of the Chevy Malibu. The Malibu
 21 continued to move forward and it appeared that it had
 22 not been placed in park, and then it hit the gate, the
 23 entrance and exit gate, which stopped the vehicle from
 24 moving.
 11:53AM 25 Q. You indicated you said you saw Mr. Orth

11:53AM 1 exit the driver's seat. Do you see that person in the
 2 courtroom today?
 3 A. I do.
 4 Q. Can you point to him and describe
 11:53AM 5 something he's wearing.
 6 A. Yes, ma'am. He is wearing an orange mask
 7 and an orange jumpsuit.
 8 MS. MENDOZA: Will the record reflect
 9 identification of the defendant?
 11:53AM 10 THE COURT: It'll so reflect.
 11 BY MS. MENDOZA:
 12 Q. So you indicated that he actually exited
 13 that white Malibu as the Malibu was still driving,
 14 correct?
 11:53AM 15 A. Yes, ma'am.
 16 Q. And the Malibu ultimately crashed into the
 17 gate?
 18 A. Yes, ma'am.
 19 Q. Now, once Mr. Orth exited the vehicle and
 11:53AM 20 the Malibu crashed, what did the officers who had been
 21 pursuing him do?
 22 A. They were issuing him commands to stop.
 23 Q. Did they exit their own patrol vehicles?
 24 A. Oh, yeah. I apologize. They did exit
 11:54AM 25 their own patrol vehicles.

11:54AM 1 Q. When you saw them exit, did you recognize
 2 those officers?
 3 A. I did.
 4 Q. Who were those officers who had been
 11:54AM 5 following him?
 6 A. The two officers I observed was Officer
 7 Hehn and then Officer Brink.
 8 THE COURT: Hehn is H-E -- how do you
 9 spell it?
 11:54AM 10 THE WITNESS: H-E-H-N.
 11 BY MS. MENDOZA:
 12 Q. Was there an Officer Duffy involved as
 13 well?
 14 A. Yes, ma'am, he was. He was the second --
 11:54AM 15 he exited the second patrol vehicle that was -- the
 16 patrol vehicle directly behind Officer Hehn and Officer
 17 Brink.
 18 Q. So can you describe for us where Mr. Orth
 19 went and what he did after he exited the vehicle.
 11:54AM 20 A. Due to my positioning I could only see
 21 him -- once he exited the vehicle I had a visual of him
 22 and then I lost sight of him. And it appeared he was
 23 moving towards the back of the Chevy Malibu. And then
 24 suddenly I got another -- I suddenly saw him once
 11:55AM 25 again. He placed a brown duffel bag on top of a wall

11:55AM 1 that separates the apartment complex to Whitney Ranch.
 2 And then I observed Mr. Orth jump over the wall.
 3 Q. This amount of time that you lost sight of
 4 him, how long would you estimate that to be?
 11:55AM 5 A. Maybe two to three seconds. From walking
 6 to the driver's side door to the wall.
 7 Q. So you saw him place the bag over the wall
 8 and he went over the wall as well?
 9 A. Yes, ma'am, he did.
 10 Q. Can you describe for us what happened once
 11 he went over the wall.
 12 A. Once he went over the wall a foot pursuit
 13 was initiated. I ran towards Mr. Orth. I eventually
 14 got into close proximity of him in the middle of
 11:55AM 15 Whitney Ranch where at that point I attempted to deploy
 16 my taser which was ineffective.
 17 Q. And as you're running towards him what is
 18 he doing?
 19 A. He's continuing to run from us and look
 11:56AM 20 back towards our location.
 21 Q. And did you issue any commands or
 22 anything?
 23 A. I did not, but I did hear other officers
 24 issuing commands.
 11:56AM 25 Q. So there's more than one officer pursuing

11:56AM 1 Mr. Orth?
 2 A. There is.
 3 Q. Who else if you know was pursuing?
 4 A. Officer Mangan was pursuing, Officer
 11:56AM 5 Scoble, Officer Hennebuel and that's the only ones I
 6 recall.
 7 Q. And you heard some of those other officers
 8 issuing commands to Mr. Orth?
 9 A. I did.
 11:56AM 10 Q. And what types of commands were they
 11 giving?
 12 A. Stop, police, and that's the only ones I
 13 recall.
 14 Q. And was he complying?
 11:56AM 15 A. No, ma'am. He continued to flee.
 16 Q. Is that what led you to eventually deploy
 17 your taser?
 18 A. Yes, ma'am.
 19 Q. I'm going to ask you specifically as to
 11:56AM 20 Officer Mangan. Did you see when -- is it he or she?
 21 A. It's a she.
 22 Q. Did you see when she arrived on scene?
 23 A. I did not.
 24 Q. Was she there when you first arrived and
 11:57AM 25 saw him fleeing in the vehicle?

11:57AM 1 A. No, ma'am.
 2 Q. So she arrived at some point after he was
 3 out of the vehicle?
 4 A. Yes, ma'am.
 11:57AM 5 Q. Now, what happened after you deployed your
 6 taser?
 7 A. After I deployed my taser I lost my
 8 footing and fell onto the ground. I immediately got up
 9 and I noticed that another officer had Mr. Orth on the
 10 ground. At that point I assisted the other officer
 11 with taking him into custody.
 12 MS. MENDOZA: Permission to approach the
 13 clerk?
 14 THE COURT: Yes.
 11:57AM 15 MS. MENDOZA: Showing defense what's been
 16 marked as State's Proposed Exhibit 1. If I can
 17 approach the witness?
 18 THE COURT: Yes.
 19 BY MS. MENDOZA:
 11:57AM 20 Q. Showing you what's been marked as State's
 21 Proposed Exhibit 1. Do you recognize what's depicted
 22 in this photo?
 23 A. I recognize the bag.
 24 Q. And where have you seen a bag this color
 11:58AM 25 before?

11:58AM 1 A. In Mr. Orth's possession.
 2 Q. And you indicated that you first saw him
 3 with that bag in his hand as he's going over the wall,
 4 correct?
 11:58AM 5 A. Yes.
 6 Q. Did he continue carrying it throughout the
 7 whole pursuit?
 8 A. He did not.
 9 Q. Did you see where it ended up?
 11:58AM 10 A. At the end -- after he was taken into
 11 custody I did observe it laying next to the wall next
 12 to I believe it was a power box.
 13 Q. Is that in the same area where you saw him
 14 jump over and flee?
 11:58AM 15 A. Yes, ma'am.
 16 MS. MENDOZA: Pass the witness.
 17 THE COURT: Mr. Orth, it's your
 18 opportunity to ask this witness questions. They have
 19 to be questions in the form of a question, okay? Go
 11:58AM 20 ahead.
 21
 22 CROSS-EXAMINATION
 23 BY DEFENDANT ORTH:
 24 Q. Officer, did you see me with the gun?
 11:58AM 25 A. I did not.

11:58AM 1 Q. Now, did you yourself have probable cause
 2 to stop me?
 3 A. I had reasonable suspicion.
 4 Q. Based on what?
 11:58AM 5 A. Based on that you were a suspect --
 6 alleged suspect in a robbery that happened the night
 7 before and possibly in possession of a stolen vehicle.
 8 Q. Were you aware of those facts -- were
 9 those facts being repeated to you?
 11:58AM 10 A. It's information being provided to me by
 11 my dispatch from the alleged victim.
 12 Q. What specifically was that information?
 13 A. The information was that the subject who
 14 had committed the robbery the night before was
 11:58AM 15 currently at his front door while in possession of a
 16 firearm. The next information that came out was that
 17 the suspect -- he no longer sees the suspect and the
 18 suspect is possibly leaving in a vehicle that he stole
 19 during the robbery from the victim which was described
 20 as a white Chevy Malibu.
 21 Q. Were you aware of the complaint made by
 22 the complainant the night before to the apartment?
 23 A. I was not.
 24 Q. You were not aware of those facts?
 11:58AM 25 A. No, sir.

11:59AM 1 Q. Do you know who those officers are?
 2 A. What officers?
 3 Q. The officers who conducted that
 4 investigation?
 11:59AM 5 A. I don't know who did it, but I'm sure I
 6 know the officer.
 7 Q. But you don't have any facts known to
 8 them?
 9 A. No.
 12:00PM 10 Q. Do you know if they had a warrant for my
 11 arrest?
 12 A. I'm sorry?
 13 Q. Do you know if they had a warrant for my
 14 arrest?
 12:00PM 15 A. I was not aware of a warrant for arrest.
 16 Q. Do you know if they applied for a warrant
 17 for my arrest?
 18 A. I do not.
 19 Q. Do you know the victims in this case? Did
 12:00PM 20 you have a chance to speak with them?
 21 THE COURT: I need you to clarify. Who
 22 are you referring to?
 23 DEFENDANT ORTH: I'm speaking of the
 24 victims.
 12:00PM 25 THE COURT: The victims of what?

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

12:01PM 1 A. I was on the exterior of the gates.
 2 Q. And then you said the car saw you and
 3 stopped and I exited the vehicle, correct?
 4 A. I'm sorry. Can you ask that question
 12:01PM 5 again?
 6 Q. So your position is that the car stopped
 7 and I exited the vehicle, correct?
 8 A. You exited the vehicle prior to the car
 9 stopping, yes.
 12:01PM 10 Q. So you're saying I jumped out of the car
 11 while it was moving?
 12 A. It came to a stop, the car continued to
 13 roll and you jumped out of the vehicle as the car was
 14 moving.
 12:01PM 15 Q. That's not what I'm asking. So the car
 16 came to a stop --
 17 A. Yes, it did.
 18 Q. -- I exited and then it continued rolling?
 19 A. Yes, it did.
 12:01PM 20 Q. So when you seen the duffel bag, you said
 21 it was on top of the wall?
 22 A. Yes, sir.
 23 Q. But prior to that you hadn't seen me with
 24 it?
 12:01PM 25 A. I seen -- yes, I seen you have it in your

12:01PM 1 hand and place it on top of the wall, so you were in
 2 possession of it prior to placing it on the wall.
 3 Q. So when the officers came -- you said you
 4 fell on the ground, correct?
 12:02PM 5 A. Yes, sir, I did.
 6 Q. In the pursuit?
 7 A. Yes, sir.
 8 Q. You didn't see me go onto the ground?
 9 A. I did not. I was probably lifting myself
 12:02PM 10 off the ground at that point.
 11 Q. Did you see all of the officers beating
 12 me?
 13 A. I did not.
 14 Q. You didn't see --
 12:02PM 15 THE COURT: Hang on. He said no. Next
 16 question.
 17 BY DEFENDANT ORTH:
 18 Q. Did you have body cam on?
 19 A. I did.
 12:02PM 20 Q. You did?
 21 A. I did have body cam.
 22 Q. Have you turned that body cam over to the
 23 State's district attorney's office?
 24 A. I believe they have access to that video.
 12:02PM 25 Q. You've given it to your supervisor?

12:02PM 1 A. It goes into a cloud automatically through
2 Wi-Fi.
3 Q. Did the other officers have body cam on?
4 MS. MENDOZA: Objection.
12:02PM 5 BY DEFENDANT ORTH:
6 Q. That you could see.
7 THE COURT: Do you know if any of the
8 other officers had body cam going?
9 THE WITNESS: I don't know which officer
12:02PM 10 had their body cam active or not.
11 THE COURT: He doesn't know.
12 BY DEFENDANT ORTH:
13 Q. You're saying you did not take part in the
14 several-minute beating of me while I was laying face
12:03PM 15 down on the ground?
16 A. No.
17 MS. MENDOZA: Objection. Relevance.
18 THE COURT: I'll let him answer that. Was
19 that no?
12:03PM 20 THE WITNESS: Yes, I was.
21 BY DEFENDANT ORTH:
22 Q. You were part of that?
23 A. Yes.
24 Q. Okay.
12:03PM 25 THE COURT: Hang on a second. Hang on a

12:03PM 1 second. You were part of what?
2 THE WITNESS: I was part of taking him
3 into custody.
4 THE COURT: Okay. Next question.
12:03PM 5 BY DEFENDANT ORTH:
6 Q. While I lay face down on the ground how
7 many officers were on top of me?
8 A. I'm not sure.
9 Q. Would you say several?
12:03PM 10 A. I would say several, yes.
11 Q. Would you say that those officers were
12 beating me or not?
13 MS. MENDOZA: Objection. This has no
14 relevance to whether or not --
12:03PM 15 THE COURT: I will let him answer.
16 Were you beating Mr. Orth?
17 THE WITNESS: No. I used the reasonable
18 force.
19 BY DEFENDANT ORTH:
12:03PM 20 Q. While I was laying face down did you hit
21 me?
22 A. Yes, sir, I did.
23 Q. Did you kick me?
24 A. I did not.
12:03PM 25 Q. Why?

12:03PM 1 THE COURT: We are going to move on, Mr.
2 Orth. He's already said what he's done. So go ahead.
3 Next question.
4 DEFENDANT ORTH: I have no further
12:03PM 5 questions, your Honor.
6 THE COURT: Any redirect?
7 MS. MENDOZA: Just to clarify a couple of
8 things.
9
12:04PM 10 REDIRECT EXAMINATION
11 BY MS. MENDOZA:
12 Q. When you're telling us about what you hear
13 from dispatch, whoever the citizen is who is calling
14 the police, are you actually hearing that person and
12:04PM 15 what they're saying or do you hear through an operator
16 a summary of what they're saying?
17 A. I hear through an operator a summary of
18 what they're saying.
19 DEFENDANT ORTH: My objection is hearsay,
12:04PM 20 your Honor.
21 THE COURT: Well, I think you were asking
22 how was he getting the information so it's not really
23 offered for the truth of what the contents are at this
24 point. I'm going to overrule that objection.
25

12:04PM 1 BY MS. MENDOZA:
2 Q. And when you were describing Mr. Orth's
3 driving behavior leading up to him getting out of the
4 car, you described that he came around the corner and
12:04PM 5 made a turn at a high rate of speed, correct?
6 A. He accelerated after the turn, yes, ma'am,
7 and was picking up speed.
8 Q. And his behavior was such that it made you
9 concerned enough that you had to get out of the way?
12:04PM 10 A. Absolutely.
11 Q. So was the behavior such that you believe
12 he might cause injury to property or someone in the
13 area?
14 A. Property or person, yes, ma'am.
12:05PM 15 MS. MENDOZA: I don't have anything
16 further.
17 THE COURT: Any recross that's related to
18 the questions that Ms. Mendoza just asked?
19
12:05PM 20 RECROSS EXAMINATION
21 BY DEFENDANT ORTH:
22 Q. So in terms of the car stopping and it
23 being left in gear, is that an assumption by you?
24 A. It's an assumption, yes.
12:05PM 25 Q. So you don't know if the car

12:05PM 1 malfunctioned, you don't know if it was left in gear,
2 you don't know anything, you just assumed?
3 A. I assumed, yes, that it was left in gear.
4 Q. But for all intents and purposes I stopped
12:05PM 5 and exited the car. How far was the vehicle from you
6 at that point?
7 A. From me at that point? I could give you a
8 rough estimate.
9 Q. That's fine.
10 A. Maybe 10 to 15 yards.
11 Q. So 10 to 15 yards. And you had your body
12 can on at that time, right?
13 A. Yes.
14 Q. So about how fast was the vehicle going?
12:06PM 15 A. My body can does not capture speed.
16 Q. In your perception about how fast was the
17 car moving?
18 A. From the point of you exiting or prior to
19 you coming --
12:06PM 20 Q. Just prior to coming to a stop.
21 A. Twenty to 25 miles per hour.
22 Q. So then it came to a stop?
23 A. Uh-huh.
24 Q. Nobody was in danger when it came to a
12:06PM 25 stop at that point when it stopped, right?

12:06PM 1 A. I still felt I could have been in danger.
2 But once it stopped, no.
3 Q. No one was in danger at the point it
4 stopped, right?
12:06PM 5 A. Huh-uh.
6 Q. And then I exited the vehicle?
7 A. Yes.
8 DEFENDANT ORTH: No further questions.
9 THE COURT: All right. Is this witness
10 free to go?
11 MS. MENDOZA: Can I clarify?
12
13 FURTHER REDIRECT EXAMINATION
14 BY MS. MENDOZA:
12:06PM 15 Q. I'm confused. There was a stop and then
16 he exited. Did he exit it when the vehicle was stopped
17 or did it start rolling again and then he exited?
18 A. He stopped, exited the vehicle and the
19 vehicle starts rolling, and as he's exiting it starts
12:06PM 20 rolling forward. So it comes to a complete stop, he
21 starts exiting and then it starts rolling forward.
22 MS. MENDOZA: Thank you.
23 THE COURT: Is this witness free to go?
24 MS. MENDOZA: Yes.
12:07PM 25 THE COURT: Thank you for your testimony.

12:07PM 1 Call your next witness.
2 MS. MENDOZA: State next calls Detective
3 Kevin Lapeer.
4 THE COURT: I'll have you remain standing
12:08PM 5 and raise your right hand, detective.
6 THE CLERK: Do you solemnly swear that the
7 testimony that you are about to give will be the truth,
8 the whole truth and nothing but the truth, so help you
9 God?
10 THE WITNESS: Yes.
11 THE CLERK: Please be seated.
12 Please state your first and last name and
13 spell each for the record.
14 THE WITNESS: Kevin Lapeer. K-E-V-I-N,
12:08PM 15 L-A-P-E-E-R.
16 THE COURT: Go ahead, State.
17
18 KEVIN LAPEER,
19 having been first duly sworn, did testify as follows:
20 DIRECT EXAMINATION
21 BY MS. MENDOZA:
22 Q. How are you employed?
23 A. I'm a detective with the Henderson Police
24 Department.
12:08PM 25 Q. Were you working in that capacity on

12:08PM 1 October 28th of this year around 7:11 a.m.?
2 A. Yes, I was.
3 Q. Were you actually on duty that morning?
4 A. Yes.
5 Q. And that morning were you involved in a
6 potential robbery investigation located at 981 Whitney
7 Ranch Drive?
8 A. Yes, I was.
9 Q. And what type of premises is that?
12:08PM 10 A. It's an apartment complex.
11 Q. And is that located here in Clark County?
12 A. Yes, ma'am.
13 Q. Who is the lead detective on this case?
14 A. Detective Lippisch.
12:08PM 15 Q. Did he ask you to ultimately help him in
16 the execution of a search warrant?
17 A. Yes, he did.
18 Q. Was that on a tan duffel bag?
19 A. Yes.
20 MS. MENDOZA: Permission to approach the
21 clerk?
22 THE COURT: Yes.
23 MS. MENDOZA: Showing defense counsel and
24 defendant State's Proposed Exhibit 1.
12:09PM 25 Permission to approach the witness?

12:09PM 1 THE COURT: Yes.
 2 BY MS. MENDOZA:
 3 Q. Showing you what's been marked as State's
 4 Proposed Exhibit 1. Do you recognize what we're
 12:09PM 5 looking at in this photo?
 6 A. Yes.
 7 Q. What is this?
 8 A. This is the duffel bag that the warrant
 9 was executed on.
 12:09PM 10 Q. And does this depict some of the contents
 11 that you discovered in that duffel bag?
 12 A. Yes, it does.
 13 Q. Is this a fair and accurate depiction of
 14 what that duffel bag looked like when you opened it up?
 12:09PM 15 A. Yes.
 16 MS. MENDOZA: Move to admit State's
 17 Proposed Exhibit 1.
 18 THE COURT: Any objection at this time,
 19 Mr. Orth?
 12:09PM 20 DEFENDANT ORTH: None.
 21 THE COURT: It'll be admitted.
 22 (State's Exhibit 1 was admitted.)
 23 BY MS. MENDOZA:
 24 Q. So when you executed the search warrant
 12:09PM 25 did you find something particularly noteworthy inside?

12:09PM 1 A. Yes. Located a shotgun.
 2 Q. And did you take note of the make and
 3 serial number of that shotgun?
 4 A. Yeah. It was -- yes. It was a .20 gauge
 12:10PM 5 Winchester, serial number is 1291469.
 6 MS. MENDOZA: Pass the witness.
 7 THE COURT: Mr. Orth.
 8
 9 CROSS-EXAMINATION
 12:10PM 10 BY DEFENDANT ORTH:
 11 Q. Detective, good morning.
 12 A. Good morning.
 13 Q. You had a chance to speak to Louie Polanco
 14 in this case?
 12:10PM 15 MS. MENDOZA: Objection. Beyond the
 16 scope.
 17 THE COURT: I'll let him ask questions.
 18 Go ahead.
 19 BY DEFENDANT ORTH:
 12:10PM 20 Q. Did you have a chance to speak to Louie
 21 Polanco in this case?
 22 A. No.
 23 Q. So did you have a chance to question
 24 Jessie Caracciolo the girlfriend?
 12:10PM 25 A. Yes, I did.

12:10PM 1 Q. And was that interview recorded?
 2 A. Yes.
 3 Q. In that interview isn't it true that she
 4 said that she herself did not see a weapon -- isn't it
 12:10PM 5 true that she said she was present at the time of the
 6 robbery?
 7 MS. MENDOZA: Objection. Hearsay and
 8 relevance.
 9 THE COURT: What is your response to the
 12:11PM 10 hearsay objection, Mr. Orth?
 11 DEFENDANT ORTH: Not for the truth of the
 12 effect on getting the warrant. And the search. It's
 13 not being offered for the truth. It's just for what he
 14 did next and doing his investigation and searching the
 12:11PM 15 bag.
 16 THE COURT: Okay.
 17 MS. MENDOZA: It's not --
 18 THE COURT: The question is did this
 19 detective speak to that person and did that person tell
 12:11PM 20 them that there actually wasn't a gun, is that what
 21 you're asking?
 22 DEFENDANT ORTH: I'm asking in the course
 23 of the investigation he said he was searching; based
 24 upon a robbery, the duffel bag. So we are asking what
 12:11PM 25 was known to him in the course of that search that

12:11PM 1 pertains to the robbery. And that would be in his
 2 investigation prior to and leading up to him searching
 3 that bag.
 4 THE COURT: Any response?
 12:11PM 5 MS. MENDOZA: Number one, he didn't say
 6 that he was searching in the course of a robbery.
 7 Number two, Mr. Orth indicated that part of the reason
 8 he's asking about this goes to then obtaining the
 9 warrant, and if that's the case, he needs to lay some
 12:12PM 10 more foundation as he is not the person who obtained
 11 the warrant.
 12 THE COURT: Who obtained the warrant?
 13 MS. MENDOZA: Lippisch.
 14 THE COURT: Lippisch is the affiant of the
 12:12PM 15 warrant?
 16 MS. MENDOZA: Yes.
 17 THE COURT: Are you saying, detective, you
 18 were just there to execute the warrant?
 19 THE WITNESS: That's correct. I executed
 12:12PM 20 the warrant.
 21 THE COURT: You were provided the warrant
 22 information itself and you executed the search warrant?
 23 THE WITNESS: That's correct.
 24 DEFENDANT ORTH: I proffer the same, your
 12:12PM 25 Honor, as my argument.

12:12PM 1 THE COURT: Well, if your argument is
2 going to be that there's a lack of basis for the search
3 warrant in the first place, I don't know -- I guess you
4 could ask did Lapeer receive information that he then
12:12PM 5 would have turned over to Lippisch in Lippisch's
6 investigation to obtain a search warrant. Is that what
7 you're asking?

8 DEFENDANT ORTH: Yes.

9 THE COURT: So the question ultimately
10 was?

11 BY DEFENDANT ORTH:

12 Q. The question was in the course of your
13 investigation to searching the bag were you part of the
14 investigation of the complainants?

12:13PM 15 A. Are you asking me if I interviewed the
16 female?

17 Q. Did you interview Jessie?

18 A. Yes, I did.

19 Q. And in that interview did Jessie give you
12:13PM 20 incomplete statements about the robbery?

21 A. Yes.

22 Q. And what were those incomplete statements?

23 MS. MENDOZA: Objection.

24 THE COURT: I'm going to allow it to the
12:13PM 25 extent that it's going towards his motion to suppress

12:13PM 1 the search warrant. It's not really going to the point
2 of probable cause at this point as best as I can tell,
3 I'm going to admit it because it's abject hearsay as it
4 relates right now whether there's probable cause. If
12:13PM 5 this person said you had a gun or didn't say you had a
6 gun, I'm not allowing it in for that. You're offering
7 it as a basis I presume for why the officers did or did
8 not obtain a search warrant. Is that what you're
9 saying?

12:14PM 10 DEFENDANT ORTH: Well, he gave this
11 information to Officer Lippisch who used it to obtain
12 the search warrant and conduct the search.

13 THE COURT: What is your response?

14 MS. MENDOZA: I'm objecting as to vague in
12:14PM 15 terms of conflicting. If he could just clarify what he
16 means by conflicting.

17 THE COURT: All right. So go ahead and
18 ask the question, Mr. Orth.

19 BY DEFENDANT ORTH:

12:14PM 20 Q. Did Jessie state that she was present that
21 night at the robbery?

22 A. Yes.

23 Q. Did she give you conflicting information
24 that the robbery didn't occur?

12:14PM 25 MS. MENDOZA: Conflicting with what?

12:14PM 1 BY DEFENDANT ORTH:

2 Q. Did she give you conflicting
3 information -- hold on. Did she give you information
4 that gave you reason to believe that a robbery did not
12:14PM 5 occur?

6 A. Can you restate that?

7 Q. Did she give you information that led you
8 to believe that a robbery did not occur or that --

9 MS. MENDOZA: I would object.

10 THE COURT: What's your objection?

11 MS. MENDOZA: Object as to relevance. His
12 personal opinion as to what --

13 THE COURT: Well, I think what he's saying
14 is if she told him that a robbery didn't occur, then
12:15PM 15 Mr. Lapeer shouldn't tell somebody else that a robbery
16 did occur and then get a search warrant.

17 Is that kind of what you're asking?

18 DEFENDANT ORTH: Yes.

19 THE COURT: All right. So did she say
12:15PM 20 that a robbery didn't occur?

21 THE WITNESS: No, she did not say that.

22 BY DEFENDANT ORTH:

23 Q. Did she say that she didn't see a robbery?

24 A. I didn't ask her if she saw a robbery.

12:15PM 25 She said that she saw you go into the room and exit

12:15PM 1 with a duffel bag.

2 Q. Did she say --

3 THE COURT: Hang on a second. Hang on a
4 second. Let him answer. You're asking him questions
12:15PM 5 about what she said and I'm allowing you to get into it
6 for purposes of the search warrant, not for probable
7 cause of your crime or the alleged crime. So he is
8 going to get to answer and say what it is she told him.

9 So what did she tell you, Mr. Lapeer?

10 THE WITNESS: She said that Mr. Orth
11 walked into Louie's bedroom and they were behind closed
12 doors. So she did not say that she saw or didn't see.

13 And then that you exited that bedroom with
14 a backpack -- I'm sorry. A duffel bag.

12:16PM 15 THE COURT: Next question, Mr. Orth.

16 BY DEFENDANT ORTH:

17 Q. Did you make a report in this case?

18 A. I made a supplemental report, yes.

19 Q. Okay. In your supplemental case did you
12:16PM 20 state, I asked if Sean was armed and she stated that he
21 was not? Page 8.

22 THE COURT: Do you have a copy of your
23 supplemental?

24 THE WITNESS: Do you mind if I go through
12:16PM 25 it?

12:16PM 1 THE COURT: Yeah, why don't you go through
2 it.
3 THE WITNESS: Can you repeat the question.
4 BY DEFENDANT ORTH:
12:17PM 5 Q. Isn't it true, sir, that in your report
6 you stated that I asked if Sean was armed and she
7 stated that he was not?
8 A. That's correct.
9 Q. Okay. Did that conflict with any other
12:17PM 10 information known to you throughout the course of your
11 investigation?
12 A. No.
13 Q. Okay. Did you take this written statement
14 from Miss Caracciolo?
12:17PM 15 A. That's not her written statement, so no.
16 Q. Does this not say --
17 A. You asked if that was her written
18 statement and I'm telling you it's not. It's my
19 supplemental report.
12:17PM 20 Q. You wrote this?
21 A. Yes.
22 MS. MENDOZA: No.
23 THE COURT: Hold on. Hold on. That looks
24 like a handwritten witness statement. Why don't you
12:17PM 25 approach the witness.

12:17PM 1 MS. SIMMONS: Can I approach?
2 THE COURT: Yes.
3 THE WITNESS: Okay. No, I did not take
4 that. There's an officer's name on that line. That
12:17PM 5 would be the person who took it.
6 BY DEFENDANT ORTH:
7 Q. In your investigation did you investigate
8 that statement?
9 A. No.
12:18PM 10 MS. MENDOZA: Can we make a record?
11 THE COURT: Whose statement is it, what's
12 being provided, what's been shown?
13 DEFENDANT ORTH: This is a statement that
14 was provided to an Officer Z-E-L-L, Number 2621.
12:18PM 15 THE COURT: It purports to be by whom?
16 DEFENDANT ORTH: By Jessie Caracciolo
17 dated the 28th of October, the day of the incident.
18 THE COURT: Are you familiar with that
19 handwritten statement?
12:18PM 20 THE WITNESS: I'm not.
21 THE COURT: He is not familiar with it.
22 MS. MENDOZA: Is there a time on it?
23 DEFENDANT ORTH: 1:15.
24 THE COURT: Mr. Lapear says he is not
12:18PM 25 familiar with that statement.

12:18PM 1 BY DEFENDANT ORTH:
2 Q. So you never investigated this statement.
3 So were you aware that this other officer was also
4 speaking to Miss Caracciolo?
12:18PM 5 A. First off I don't know who that officer
6 is, and no.
7 Q. You don't know who that officer is, and
8 no?
9 A. No.
12:18PM 10 Q. At any time did you provide Officer
11 Lippisch information about the robbery and tell him
12 that Jessie's statements conflicted with that of
13 Mr. Polanco's?
14 A. No.
12:19PM 15 Q. You never said that?
16 A. I never interviewed Mr. Polanco. I told
17 you that earlier when you asked me the first time. I
18 didn't interview him.
19 Q. But the information that you learned from
12:19PM 20 Jessie you did give to Officer Lippisch?
21 A. That's correct.
22 Q. And also you provided him the recorded
23 interview?
24 A. Yes, I did.
12:19PM 25 Q. You did? Was that before the search

12:19PM 1 warrant?
2 THE COURT: When you say did he provide
3 the information to Mr. Lippisch, the taped statement
4 before the search warrant was executed?
12:19PM 5 DEFENDANT ORTH: It's two questions. Let
6 me reask.
7 BY DEFENDANT ORTH:
8 Q. So first of all did you reiterate the
9 information that you learned from Miss Caracciolo to
12:20PM 10 Officer Lippisch that day?
11 A. Yes, I did.
12 Q. And did you also provide to him the
13 recorded interview with Miss Caracciolo?
14 A. Personally to Detective Lippisch no, but
12:20PM 15 we have a system called digital evidence and upload
16 audio or video and things like that. So it gets
17 uploaded into a system that all detectives have access
18 to. So did I give it directly to Detective Lippisch?
19 No. Does he have access to it? Yes.
12:20PM 20 Q. Does the system or did you in any way
21 notify Detective Lippisch of that recorded interview?
22 A. What are you referring to?
23 Q. In other words, when you enter it into
24 your system, all these officers, does it notify them
12:20PM 25 that you've entered into the system?

12:20PM 1 A. No.
 2 Q. It's just there so if they open up the
 3 system, they see it?
 4 A. That's correct.
 12:20PM 5 Q. So you never personally told Officer
 6 Lippisch you have a recorded interview of Miss
 7 Caracciolo?
 8 A. Well, I told him I recorded an interview
 9 with her.
 12:21PM 10 Q. When was that?
 11 A. You were asking me did I give him the
 12 recorded interview and I said no, it was uploaded into
 13 digital evidence which is what we're supposed to do.
 14 Q. When did you upload it into digital
 15 evidence?
 16 A. I don't know.
 17 Q. Was it that day?
 18 A. It would be that day, maybe the next day,
 19 it could be the following day. I don't know. But
 12:21PM 20 there's maybe a timestamp on it when you actually
 21 upload it, but I'm unaware if there is.
 22 Q. You believe this officer here would also
 23 have entered this --
 24 THE COURT: What are referring to?
 25

12:21PM 1 BY DEFENDANT ORTH:
 2 Q. Do you believe Officer Zell's statement of
 3 Miss Caracciolo would have also been entered into your
 4 digital database?
 12:21PM 5 A. No. Patrol officers don't carry around
 6 recording devices. They have body cams and they have
 7 dash cans and things of that nature.
 8 Q. So do witness statements get uploaded to
 9 the system?
 12:21PM 10 A. To digital evidence? No. Because a
 11 written statement would be written. Digital evidence
 12 is digital.
 13 Q. Okay. So that would be within somebody
 14 else's knowledge, though?
 12:22PM 15 THE COURT: What are you referring to?
 16 DEFENDANT ORTH: Strike that question.
 17 BY DEFENDANT ORTH:
 18 Q. Let me ask you. Were you investigating
 19 that bag for evidence of a robbery?
 12:22PM 20 A. I wasn't investigating the bag. I was
 21 asked to execute the search warrant and that's what I
 22 did. I assisted Detective Lippisch with the execution
 23 of the search warrant.
 24 Q. So on that day were you involved in the
 12:22PM 25 investigation of a robbery of guns?

12:22PM 1 A. I was involved -- I was involved in
 2 assisting Detective Lippisch with an interview. So my
 3 ~~involvement of this case was an interview with Jessie~~
 4 ~~and I can't say her last name.~~
 12:22PM 5 THE COURT: What is it?
 6 DEFENDANT ORTH: Caracciolo.
 7 THE WITNESS: So my involvement was an
 8 interview with Miss Caracciolo ~~and the following day is~~
 9 ~~the execution of a search warrant for the duffel bag.~~
 12:23PM 10 BY DEFENDANT ORTH:
 11 Q. Why were you talking to Miss Caracciolo?
 12 A. I was asked to interview her.
 13 Q. Why?
 14 A. About the incident.
 12:23PM 15 Q. What incident?
 16 A. The incident that we were there for.
 17 Q. What incident was that?
 18 A. It would be -- I believe it started off as
 19 a robbery investigation.
 12:23PM 20 Q. So you were there for a robbery
 21 investigation, right?
 22 A. That's what I said.
 23 Q. Did you arrest me for robbery?
 24 A. I didn't arrest you.
 12:23PM 25 Q. Was I ever arrested by you at all?

12:23PM 1 A. No.
 2 Q. Do you know in the course of the
 3 investigation was I ever arrested for robbery at all?
 4 MS. MENDOZA: Objection. Relevance.
 12:23PM 5 THE COURT: I think we know you weren't.
 6 DEFENDANT ORTH: Here is the thing, your
 7 Honor, because here is what's going to happen. If I
 8 may, just for the search warrant purpose. This is what
 9 we're going to have. We're going to have Lippisch and
 10 Lippisch is going to say one thing and then we are
 11 going to have Officer Lapeer, okay? And we are going
 12 to be able to compare those things.
 13 THE COURT: Okay.
 14 DEFENDANT ORTH: So what we're asking
 12:24PM 15 Officer Lippisch basically is they are going to try to
 16 say well, he was acting -- he was using a warrant, but
 17 we want to know if Officer Lippisch knew there was
 18 something fishy with the robbery investigation. That's
 19 what basically we're getting at.
 12:24PM 20 THE COURT: Okay. Well, the warrant is
 21 going to have whatever the warrant has. Whatever the
 22 probable cause is that you're in possession of a
 23 firearm. So do you have any additional questions for
 24 Detective Lapeer? He has no idea what if anything you
 12:24PM 25 were arrested for, and for the record I'm taking

1:24PM 1 judicial notice that you have not to date been arrested
2 for the robbery that's associated with that event.
3 Correct? You'll stipulate to that, Miss
4 Mendoza?
2:24PM 5 MS. MENDOZA: That he hasn't been arrested
6 for that, yes.
7 THE COURT: Any additional questions, Mr.
8 Orth?
9 BY DEFENDANT ORTH:
2:24PM 10 Q. Did you collect any other evidence in the
11 case?
12 A. From the bag or aside from the bag?
13 Q. Any other evidence other than what we've
14 discussed here today other than the bag?
2:25PM 15 A. Technically the recorded interview is
16 considered evidence, so yes. The recorded interview
17 that is in digital evidence, so yes. The digital
18 recording.
19 DEFENDANT ORTH: No further questions.
2:25PM 20 THE COURT: Ms. Mendoza.
21 MS. MENDOZA: I just wanted to clarify.
22
23 REDIRECT EXAMINATION
24 BY MS. MENDOZA:
12:25PM 25 Q. When you talked to Jessie you said that

12:25PM 1 she described that Mr. Orth and Mr. Polanco went into a
2 bedroom and she didn't see what happened in there,
3 correct?
4 A. That's correct.
12:25PM 5 Q. Did she also tell you that she had only
6 recently arrived at the apartment and Mr. Orth was
7 already there when she arrived?
8 A. Yes.
9 Q. And I understand you indicated you were
10 investigating -- there was a robbery that occurred the
11 night before, but then the morning you arrived there,
12 there was also someone in possession of a stolen
13 vehicle and this bag, correct?
14 A. That's correct.
12:26PM 15 Q. So it was a continuing investigation of
16 both of these events, the night before and then what
17 happened that morning, correct?
18 A. Correct.
19 Q. And you didn't arrive until after
12:26PM 20 everything happened with the car after seven in the
21 morning versus this officer who was there in the middle
22 of the night before, correct?
23 A. Yeah, that's correct. I believe I was
24 actually off duty when I arrived there. So it was
12:26PM 25 after 7:00 a.m.

12:26PM 1 Q. You start your shift at seven. Is that
2 what you're saying?
3 A. Yes, I do.
4 MS. MENDOZA: All right. No further
12:26PM 5 questions.
6 THE COURT: Is this witness free to go?
7 MS. MENDOZA: I think maybe he should hang
8 out.
9 THE COURT: Why don't you hang out for a
12:26PM 10 little bit.
11 Who is next?
12 MS. MENDOZA: Detective Lippisch.
13 THE COURT: Jump up on the witness stand,
14 raise your right hand and remain standing for me.
12:27PM 15 THE CLERK: Do you solemnly swear that the
16 testimony that you are about to give will be the truth,
17 the whole truth and nothing but the truth, so help you
18 God?
19 THE WITNESS: I do.
12:27PM 20 THE CLERK: Please be seated.
21 Please state your first and last name and
22 spell each for the record.
23 THE WITNESS: Karl, K-A-R-L. Lippisch,
24 L-I-P-P-I-S-C-H.
12:27PM 25 THE COURT: Go ahead, State,

12:27PM 1 KARL LIPPISCH
2 having been first duly sworn, did testify as follows:
3
4 DIRECT EXAMINATION
5 BY MS. MENDOZA:
12:27PM 6 Q. Are you currently employed as a detective
7 with the Henderson Police Department?
8 A. Yes, I am.
9 Q. Were you working in that position back on
10 October 28th of this year around 7:15 in the morning?
11 A. Yes, I was.
12 Q. Around that time were you involved in a
13 potential robbery investigation at 981 Whitney Ranch
14 Drive?
15 A. Yes.
12:28PM 16 Q. Did you actually respond to that scene?
17 A. Yes, I did.
18 Q. And did you identify a potential suspect
19 involved in that event?
20 A. Yes, I did.
12:28PM 21 Q. Who is that person?
22 A. His name is Sean Orth.
23 Q. Do you see him in the courtroom today?
24 A. Yes, I do.
12:28PM 25 Q. Can you point him out and describe
something he's wearing,

12:28PM 1 A. He's sitting at the defendant table
2 wearing an orange jumpsuit.
3 Q. Where was Mr. Orth located when you first
4 arrived at that scene?
12:28PM 5 A. When I arrived he was in the back of a
6 Henderson patrol car.
7 Q. Did you end up talking to Mr. Orth?
8 A. Yes, I did.
9 Q. And did you specifically talk to him about
12:28PM 10 the events that led to his being in the patrol car?
11 A. Yes, I did.
12 Q. Prior to talking to him did you read him
13 his Miranda rights?
14 A. Yes, I did.
12:28PM 15 Q. What was his response when you first
16 started talking to him about Miranda?
17 A. When I initially had him in the vehicle
18 and told him I was giving Miranda, he stated he didn't
19 want me to read him his Miranda rights because he knew
12:28PM 20 if I did not it was inadmissible. I told him I would
21 not talk to him without reading Miranda. And then he
22 agreed to go with Miranda.
23 Q. So did you go forward with doing that?
24 A. Yes, I did.
12:29PM 25 Q. And did you also talk to him about

12:29PM 1 potentially recording the interview?
2 A. I did, and he refused to have it recorded.
3 Q. But did you go through with talking to him
4 not recording?
12:29PM 5 A. Yes, I did.
6 Q. So what did you talk to him about in terms
7 of what had happened that morning when the police tried
8 to stop him?
9 A. So I talked to him about the fact that he
12:29PM 10 was the driver of a white Chevy Malibu that had evaded
11 police officers and then the fact that he had jumped
12 out of the driver's seat of the vehicle with a tan
13 duffel bag and jumped over the wall and then attempted
14 to flee across Whitney Ranch where he was detained by
12:29PM 15 police officers.
16 Q. And did he indicate that when he was
17 fleeing from police officers there was anything going
18 on with those police vehicles that made him know that
19 they were trying to stop him?
12:30PM 20 A. Yes, he did. He initially stated that he
21 saw the two patrol vehicles as well as motor officers
22 in the complex. The two patrol vehicles were behind
23 them and they activated their emergency lights and
24 sirens. He initially believed that he needed to get
12:30PM 25 out of the way because they were there for a different

12:30PM 1 purpose.
2 So he then realized that they were not
3 coming past him and that they were actually following
4 him and at that time he realized that they were
12:30PM 5 attempting to stop him. However, he refused to stop.
6 He actually stated to me that he believed he was being
7 set up for something. And so that's when he attempted
8 to evade and flee towards the front of the complex.
9 Q. So he admitted that he was intentionally
12:30PM 10 not complying with the officers trying to stop him?
11 A. Yes, he did. He said he made the
12 conscious decision that he was going to try to get
13 away.
14 Q. Did he tell you anything about what he
12:30PM 15 thought the setup was related to?
16 A. He stated that he believed since in the
17 vehicle, really the only thing in there that he was
18 aware of was a tan duffel bag so he believed there must
19 be items in the tan duffel bag that would incriminate
12:31PM 20 him. And so that's when he was fleeing because he was
21 thought he was being set up because of something in the
22 bag.
23 Q. Did he say he knew anything about what was
24 in that bag before he was being pulled over?
12:31PM 25 A. He claimed to not know the contents of the

12:31PM 1 bag.
2 Q. But randomly decided there must be
3 something bad in this bag?
4 DEFENDANT ORTH: Objection, your Honor.
12:31PM 5 Speculation.
6 THE COURT: Overruled.
7 BY MS. MENDOZA:
8 Q. There must be something bad in this bag so
9 I'm going to flee in a vehicle and then on foot and I'm
12:31PM 10 going to bring the bag with me?
11 A. That's correct.
12 Q. Did he acknowledge that he had come from
13 Mr. Polanco's apartment?
14 A. Yes. He stated that he had come home to
12:32PM 15 that apartment in the morning and he had tried to go
16 inside. However, no one would let him inside the
17 apartment.
18 Q. And did he say anything about what if
19 anything he tried to bring to the apartment with him?
12:32PM 20 A. He stated that he had brought the bag from
21 the car up to the apartment when he approached the
22 door.
23 Q. The bag had been in the car, he randomly
24 decides to bring it inside, can't get inside, brings
12:32PM 25 the bag back to the car, then starts getting pulled

12:32PM 1 over, decides there's something bad in this bag, flees
2 in the car with the bag, correct?

3 A. Correct.

12:32PM 4 Q. So you had talked to Mr. Orth about this
5 bag. Had the officers when you first arrived on scene
6 also alerted your attention to a bag that was in the
7 area?

8 A. Yes, they did. The officers, when I first
9 responded, had told me that when Mr. Orth exited the
10 vehicle, he exited the vehicle with a tan duffel bag
11 which was in his hands as he exited. He then refused
12 to comply with officers' commands and ran towards --
13 walked or ran towards a block wall that would go out to
14 Whitney Ranch. He threw the bag over the wall and then
15 he jumped over the wall. And then as he was -- I was
16 told as he was fleeing across Whitney Ranch he
17 initially attempted to pick up the bag. However, kind
18 of fumbled with picking it up and then left it behind.
19 And so then when they took him into custody, they also
20 secured the tan duffel bag.

12:33PM 21 Q. So the bag was still in the area when you
22 went out to Whitney Ranch?

23 A. When I arrived they'd already secured it
24 into a patrol vehicle just to make sure that no
12:33PM 25 bystander or somebody didn't take it.

12:33PM 1 Q. So the bag was with patrol officers when
2 you got there?

3 A. Yes, it was.

12:33PM 4 Q. Did you ultimately obtain a search warrant
5 for that bag?

6 A. Yes, I did.

7 MS. MENDOZA: Permission to approach the
8 witness?

9 THE COURT: Yes.

12:34PM 10 BY MS. MENDOZA:

11 Q. Showing you what's been admitted as
12 State's Exhibit 1. Do you recognize what we're looking
13 at in this picture?

14 A. Yes, I do.

12:34PM 15 Q. What's that?

16 A. That's the tan duffel bag and it's
17 currently open.

18 Q. Do you recognize this as the same tan
19 duffel bag you got from the officers when you arrived
20 there?

21 A. Yes.

22 Q. So did you ever go into that bag and see
23 what's in there?

24 A. I did not because I was actually not at
12:34PM 25 the station when it was opened.

12:34PM 1 Q. Did you take the bag from the scene
2 somewhere else?

3 A. I took custody of the bag at the scene and
4 I'm the one who brought it back and secured it at the
12:34PM 5 police station.

6 Q. Did you ultimately obtain a search warrant
7 for that bag?

8 A. Yes, I did.

9 Q. And did you ask some other officers to
10 assist you in searching that bag?

11 A. Yes, I did.

12 Q. Would that specifically be Detectives
13 Ozawa and Lapeer?

14 A. Yes.

12:34PM 15 Q. And you indicated you were not present
16 when that bag was searched, correct?

17 A. Correct.

18 Q. Did Detective Lapeer and/or Ozawa report
19 back to you about what they had found in that bag?

12:35PM 20 A. Yes, they did.

21 Q. Did that include the Winchester shotgun?

22 A. Yes, it did.

23 MS. MENDOZA: Pass the witness.

24 THE COURT: Mr. Orth.

CROSS-EXAMINATION

2 BY DEFENDANT ORTH:

3 Q. Good morning, Detective Lippisch.

4 A. Good morning.

5 Q. So you were responding to a complaint of a
6 robbery, correct?

7 A. No. I was responding to a reported
8 suspect who had committed a robbery the night before
9 that was back on scene and attempting to get into the
10 location again.

11 Q. Okay. What investigation of witnesses did
12 you do in response to that?

13 A. I did not contact the witnesses.

14 Q. You didn't contact any witnesses?

15 A. I did not. Detectives that responded with
16 me contacted the witnesses.

17 Q. And those detectives reported to you,
18 correct?

19 A. Yes.

20 Q. What did they report to you if you
21 remember?

22 MS. MENDOZA: Objection. Vague.

23 THE COURT: Let's see --

24 DEFENDANT ORTH: I will itemize.

25 THE COURT: Let's be more specific.

12:36PM 1 BY DEFENDANT ORTH:
 2 Q. So who interviewed Louie?
 3 A. Detective Ozawa.
 4 Q. And did Detective Ozawa report what he had
 12:36PM 5 learned to you?
 6 MS. MENDOZA: Objection. Vague.
 7 THE WITNESS: Yes, he did. Portions of
 8 what he learned.
 9 MS. MENDOZA: Hang on a second.
 12:36PM 10 THE COURT: Hold on a second. I think the
 11 question is did Detective Ozawa tell you what this
 12 person told him. Is that what your question is, Mr.
 13 Orth?
 14 BY DEFENDANT ORTH:
 15 Q. Did Detective Zell tell you what Louie --
 16 THE COURT: Hang on a second. You were
 17 talking about Detective Ozawa a minute ago. Who are we
 18 talking about now?
 19 BY DEFENDANT ORTH:
 12:36PM 20 Q. So you're saying -- let me do this because
 21 we have a confusion of names. We're talking about
 22 Detective Ozawa. Are you also aware of a detective
 23 named Zell? Are you aware of Detective Zell?
 24 A. No.
 12:36PM 25 Q. You're not aware of him at all?

12:36PM 1 A. Could you spell that, please.
 2 Q. Z-E-L-L. A. Zell.
 3 A. Detective Zell, no.
 4 Q. You don't know who that is. Okay. So
 12:37PM 5 when you responded were you aware that Henderson Police
 6 Department had received a 911 call the night before?
 7 A. I know that officers responded to that
 8 scene the night before, yes.
 9 Q. And what do you know about that call?
 12:37PM 10 MS. MENDOZA: Objection. Vague.
 11 THE COURT: Well, be more specific in your
 12 question.
 13 BY DEFENDANT ORTH:
 14 Q. Can you tell me specifically what was the
 12:37PM 15 content of that call? Did you get the call yourself at
 16 any point?
 17 A. I did not hear the call, no.
 18 Q. You didn't go in and investigate the call?
 19 A. No, I did not. Patrol officers responded
 12:37PM 20 to that.
 21 Q. Are you in charge of the investigation of
 22 a robbery at 891 Whitney Ranch?
 23 A. Could you define what you mean by in
 24 charge, please.
 12:37PM 25 Q. Are you or you and other members

12:37PM 1 investigating a robbery at 891 Whitney Ranch, Number
 2 8237
 3 A. We were alerted to it in the morning and
 4 we did respond, yes.
 12:38PM 5 Q. So in your investigation did you
 6 investigate the information that was provided to police
 7 the night before?
 8 A. Yes, I did.
 9 Q. And was there any recorded information
 12:38PM 10 taken that night to your knowledge?
 11 MS. MENDOZA: Objection.
 12 BY DEFENDANT ORTH:
 13 Q. That you investigated.
 14 THE COURT: Hang on. What's the
 12:38PM 15 objection?
 16 MS. MENDOZA: I want him to clarify what
 17 he means by recorded.
 18 THE COURT: What are you asking?
 19 BY DEFENDANT ORTH:
 12:38PM 20 Q. Was there any body cam footage for the
 21 interview of the alleged victims the night before?
 22 A. I'm not aware if there is or is not.
 23 Q. Was there any recorded information by
 24 audio video of the victims or witnesses the night
 12:38PM 25 before?

12:39PM 1 A. Not that I'm aware of at this time.
 2 Q. Were there any written or recorded
 3 statements by the victims or witnesses the night
 4 before?
 12:39PM 5 A. Yes, there were.
 6 Q. Did you review them?
 7 A. I reviewed the report that was completed
 8 from the night before, yes.
 9 Q. Did you review the statements?
 12:39PM 10 A. Which statements are you referring to?
 11 Q. The actual statements.
 12 A. Which statements are you referring to?
 13 Q. The victims or witness statements from the
 14 night before.
 12:39PM 15 A. Are you talking about written statements,
 16 verbal statements?
 17 Q. Were there any written statements by
 18 Miss Caracciolo or Polanco provided to police the night
 19 before?
 12:39PM 20 A. I do not recall at this time.
 21 Q. So you didn't investigate that. Did you
 22 investigate a report by the officer who responded the
 23 night before?
 24 A. Yes, I did.
 12:39PM 25 Q. You did?

399PM 1 A. Yes.
 2 Q. What was his name?
 3 A. I don't recall the patrol officer's name
 4 at this time.
 399PM 5 Q. So it was a patrol officer?
 6 A. Yes, it was.
 7 Q. Did he have body cam on?
 8 MS. MENDOZA: Objection. Asked and
 9 answered.
 399PM 10 THE COURT: I think you said you don't
 11 know,
 12 THE WITNESS: Correct.
 13 BY DEFENDANT ORTH:
 14 Q. When did you review that police report?
 15 A. I reviewed it after responding in the
 16 morning.
 17 Q. So you were aware of those facts that
 18 morning. So in what capacity were you investigating
 19 that day, the October 28th on the morning of the
 20 arrest?
 21 MS. MENDOZA: Objection. Vague.
 22 THE COURT: I don't understand your
 23 question, in what capacity. His capacity as a
 24 detective?
 25

12:40PM 1 BY DEFENDANT ORTH:
 2 Q. What were you doing that morning?
 3 THE COURT: I think they've already
 4 testified that they went out because there was the
 12:40PM 5 allegation of a robbery the night before and they went
 6 out this morning because there was an allegation that
 7 the person who allegedly did the robbery the night
 8 before was back and had something to do with a stolen
 9 vehicle.
 10 Is that correct?
 11 THE WITNESS: Correct.
 12 THE COURT: That's what they went out that
 13 morning for. Those allegations,
 14 BY DEFENDANT ORTH:
 15 Q. That morning did you receive information
 16 from Officer Ozawa?
 17 THE COURT: From who?
 18 BY DEFENDANT ORTH:
 19 Q. Did you receive any information from
 12:40PM 20 Officer Ozawa after he interviewed Jessie Caracciolo?
 21 A. I believe --
 22 MS. MENDOZA: Objection. Misstates the
 23 facts. He needs to lay more foundation.
 24 THE COURT: Which facts is he misstating,
 12:41PM 25 Miss Mendoza?

12:41PM 1 MS. MENDOZA: Detective Ozawa didn't
 2 interview Caracciolo.
 3 DEFENDANT ORTH: I will strike that
 4 question.
 12:41PM 5 BY DEFENDANT ORTH:
 6 Q. Did Officer Lapeer interview Jessie
 7 Caracciolo?
 8 A. Detective Lapeer did, yes.
 9 Q. Did Detective Lapeer tell you that
 2:41PM 10 Jessie's statements were in conflict with Louie
 11 Polanco's statements?
 12 A. Some of them were, yes.
 13 Q. And what were they?
 14 A. The duration of the defendant's
 2:41PM 15 relationship with the victims was contradictory as well
 16 as the possibility of the use of a phone in the car.
 17 THE COURT: Use of a phone?
 18 THE WITNESS: Correct.
 19 BY DEFENDANT ORTH:
 20 Q. So specifically she said she knew me
 21 longer than Louis said?
 22 A. She stated that she knew you for
 23 approximately a week.
 24 Q. Didn't she also say that she did not see a
 2:42PM 25 weapon that night in my hand?

12:42PM 1 A. That's correct. She said that she did not
 2 see the weapon because she was not in the location that
 3 the robbery occurred.
 4 Q. Isn't it also true that she did not
 12:42PM 5 perceive anything to be a robbery although she was in
 6 the house?
 7 MS. MENDOZA: Objection. I want to
 8 clarify he did not hear this interview. We need to
 9 clarify that --
 10 THE COURT: This is information that was
 11 provided -- you're asking whether Mr. --
 12 DEFENDANT ORTH: Ozawa.
 13 THE COURT: No. Lapeer. This is the
 14 information that Detective Lapeer and whether Detective
 12:42PM 15 Lapeer provided that information to this detective, and
 16 the only reason I'm allowing that is whether it has
 17 anything to do with the application for the search
 18 warrant. Okay? So that's where we're at.
 19 MS. MENDOZA: There's --
 12:43PM 20 THE COURT: Go ahead, Miss Mendoza.
 21 MS. MENDOZA: There's comingling of
 22 Mr. Polanco's statement as well,
 23 THE COURT: All right. So you need to be
 24 more specific. What are you specifically asking?
 12:43PM 25 DEFENDANT ORTH: My fault. I apologize.

BY DEFENDANT ORTH:

Q. So did Mr. Polanco say his car was stolen in the robbery?

A. Yes, he did.

Q. Did he later change his story and say that he lent me the car?

A. I do not recall if he did, but I did get information that he believed he was going to allow you to use the car, but I don't recall who said that.

Q. Did he also say that he lent me the phone, his cell phone?

A. He said that you had been allowed to use it.

Q. Now, isn't it true that when you asked me what happened, I said I was returning home, that I was returning his car that I borrowed, and I borrowed his cell phone? Isn't that true?

A. Yes, those were your statements.

Q. And isn't it true that that information was relayed to the officers interviewing Mr. Polanco and then he changed his story and said yes, I did lend him the car and the phone?

A. That information was relayed to detectives. However, I believe he still stated that you had stolen the vehicle and the phone.

THE COURT: Let me ask you this. A lot of this I've been giving you some leeway to establish whatever record you want to make for the purposes of the search warrant. I'm not quite sure at this point whether the nature of the vehicle whether it was stolen or the nature of the phone and whether it was stolen is related to the search warrant for the firearm.

So, Ms. Mendoza, do you have any position on that?

MS. MENDOZA: Well, your Honor, as I stated from the beginning, I understand that a motion to suppress is appropriate in Justice Court. He's free to file that. However, my understanding is his position is that Detective Lippisch left material facts out of this warrant, and in order to even get into that at a hearing, he has to show, number one, that it was an intentional misrepresentation and, number two, that it affects probable cause, and he cannot show that.

THE COURT: That's what I'm wondering, is what's been left out? Is that what your understanding is, Ms. Mendoza, that something was left out of the search warrant or that there wasn't probable cause if they had included all the relevant information?

MS. MENDOZA: According to defendant there's two things that were left out. Number one,

that the way defendant characterizes it is that Jessie and Louis have conflicting statements. Specifically that Lewis says this robbery happened, that Jessie says she didn't see it happen. Now, that information is in the warrant. So that argument is completely gone.

Now, what his second argument is that Detective Lippisch didn't include in the warrant that he received information that the car and phone were possibly lent to defendant, which is not in the warrant. However, that does not affect probable cause and I don't believe he can show there's an intentional misrepresentation here. So we shouldn't even --

THE COURT: Do you have a copy of the search warrant?

MS. MENDOZA: Yes.

THE COURT: Let me have that.

DEFENDANT ORTH: Can I clarify something, your Honor?

THE COURT: What's that?

DEFENDANT ORTH: Can I make a little clarification to make it easier?

THE COURT: Not just yet, okay?

I read the search warrant. Anything else, Miss Mendoza? I didn't know if you had any representations you want to make,

MS. MENDOZA: Yes. I think --

THE COURT: Mr. Orth, what do you want to tell me at this point?

DEFENDANT ORTH: First of all, the warrant was for a robbery so we're allowed to ask questions about the robbery. The warrant was to seek evidence that pertained to the robbery. It's right on the cover of the search warrant affidavit. Questioning about the robbery.

THE COURT: Okay.

DEFENDANT ORTH: Also as you know the search warrant can be obtained using hearsay testimony. So he used hearsay testimony when it happened. Now, I'm just trying to show that he withheld the impeachment information that was known to him as hearsay so that he can manipulate the Court into issuing a warrant.

THE COURT: Well, what I read in here is that he put Louis's statement and then he also put -- who's the other one?

MS. MENDOZA: Jessie.

THE COURT: -- Jessie who said that she didn't say anything.

DEFENDANT ORTH: That's not in the warrant,

1:50PM 1 THE COURT: Yes, it is.
2 DEFENDANT ORTH: It is?
3 THE COURT: Yes.
4 DEFENDANT ORTH: It says Jessie gave
1:50PM 5 conflicting statements and that was it.
6 THE COURT: Hang on a second. Jessie
7 stated that she had not observed Sean with a handgun.
8 I don't have page numbers on it. It's the first full
9 paragraph. Jessie stated that she had not observed
2:50PM 10 Sean with a handgun and although she felt that what had
11 just transpired was odd, she did not know that Sean had
12 committed the robbery until Louis told her because she
13 had been seated in the kitchen when this occurred.
14 They included specifically in the warrant that she said
1:50PM 15 that she didn't see you with a handgun or didn't know
16 anything about the robbery until Louis told her.
17 DEFENDANT ORTH: Right. But what I'm --
18 excuse me. What I'm trying to get at the point raised
19 is that at that point when they are together and
2:50PM 20 questioning him, can I just go into the question here
21 on his affidavit for arrest?
22 THE COURT: I'm allowing you to get into
23 this information so that we can make a record because
24 I'm going to rule on your motion to suppress the search
2:51PM 25 warrant so we don't have to later deal with this in

12:51PM 1 District Court. So I'm allowing you to get into
2 whether there's lack of probable cause in the search
3 warrant to get into the duffel bag. You said that they
4 didn't include exculpatory information in the search
12:51PM 5 warrant, and so far from what I've read they did
6 include the conflicting statements. I just read it to
7 you.
8 DEFENDANT ORTH: Yes, you did, and I'm
9 going to get to the rest of it.
10 THE COURT: Let's kind of speed it up here
11 a little bit.
12 BY DEFENDANT ORTH:
13 Q. Isn't it true, sir, that you made a
14 Declaration of Arrest in this case?
12:51PM 15 A. Yes, I did.
16 Q. And in that Declaration of Arrest you
17 agreed that statements made by Jessie were in conflict
18 with the statements that Louie Polanco made?
19 A. Some of the statements made, yes.
12:52PM 20 Q. Now, isn't it true that you also stated
21 that Louis did admit that he lent me the car?
22 A. I would have to see my report.
23 Q. What I'm showing is a sworn statement, a
24 Declaration of Arrest by Detective Lippisch.
12:52PM 25 MS. MENDOZA: What page and paragraph?

2:52PM 1 DEFENDANT ORTH: Give me one second, your
2 Honor.
3 THE COURT: Yes.
4 DEFENDANT ORTH: Page 3, Paragraph 3.
2:53PM 5 MS. SIMMONS: Is it okay if I approach?
6 THE COURT: Yes.
7 BY DEFENDANT ORTH:
8 Q. Sir, is that a sworn statement by you?
9 A. This is my Declaration of Arrest, yes.
2:53PM 10 Q. Would you please read the paragraph that
11 I've directed you to.
12 MS. MENDOZA: Objection. Improper
13 hearsay.
14 THE COURT: You asked him a question as to
2:53PM 15 whether those witnesses told this detective that they
16 had let you use the car and the phone. So you're
17 directing him to Paragraph 3.
18 Read that to yourself, Mr. Lippisch, and
19 let me know when you're done and whether it refreshes
2:54PM 20 your recollection as to Mr. Orth's question.
21 BY DEFENDANT ORTH:
22 Q. Okay. So --
23 THE COURT: Hang on.
24 THE WITNESS: I have read the paragraph.
12:54PM 25 THE COURT: Does it refresh your

12:54PM 1 recollection?
2 THE WITNESS: Yes.
3 THE COURT: What is your question,
4 Mr. Orth?
12:54PM 5 BY DEFENDANT ORTH:
6 Q. Did Louis change position and say that he
7 lent me the car?
8 MS. MENDOZA: Objection. We need to
9 clarify he did not talk to him.
12:54PM 10 DEFENDANT ORTH: Okay. Let me do this.
11 BY DEFENDANT ORTH:
12 Q. Isn't it true that you learned information
13 from other officers that Louis had changed his story
14 and had admitted that he lent me the car?
12:54PM 15 A. Based on this paragraph it is not specific
16 to who said that they lent you the car.
17 Q. Did you learn information from other
18 detectives that Louie and/or Jessie lent me the car?
19 A. I learned that one of them had stated that
12:55PM 20 they had allowed you access to the vehicle.
21 Q. Isn't it true that one of them also stated
22 that they had allowed me to use the cell phone?
23 A. Yes.
24 MS. MENDOZA: So you heard?
12:55PM 25 THE WITNESS: Correct.

12:55PM 1 BY DEFENDANT ORTH:
 2 Q. At that point in your professional
 3 experience did you feel that these people were telling
 4 you completely -- did you feel that the entire truth
 12:55PM 5 was being told as far as a robbery is concerned?
 6 MS. MENDOZA: Objection. Personal opinion
 7 is not relevant.
 8 THE COURT: I will let him answer.
 9 You can answer.
 12:55PM 10 DEFENDANT ORTH: I will rephrase.
 11 THE COURT: Hold on.
 12 THE WITNESS: I believe the fact that they
 13 had stated that you had stolen the car and the phone
 14 the night before was relevant even though that you had
 15 possibly had access to it prior.
 12:56PM 16 BY DEFENDANT ORTH:
 17 Q. Hold on. You're changing your statement.
 18 You're saying access prior. Where does it say access
 19 prior in your report?
 12:56PM 20 A. In that paragraph it does not.
 21 Q. Right. So you're changing it, right?
 22 You're changing your sworn statement to now say that
 23 they were saying that they lent it to me before?
 24 MS. MENDOZA: Objection. Misstates.
 12:56PM 25 DEFENDANT ORTH: I don't understand. He's

12:56PM 1 changing directions, your Honor. Here's what's
 2 happening.
 3 THE COURT: Hang on a second.
 4 What happened? Give me a summary of
 12:56PM 5 exactly what happened and what everybody said.
 6 THE WITNESS: So --
 7 MS. MENDOZA: From your recollection,
 8 THE COURT: Whatever your investigation
 9 showed as to what happened when and give me a timeline.
 12:56PM 10 THE WITNESS: Okay. So the investigation
 11 revealed that, depending on who you spoke with, the
 12 defendant had been staying at the apartment for
 13 approximately a week and in that week had possibly had
 14 access to use the car and the cell phone. However, the
 15 prior night he was not allowed the access and he in
 16 fact stole the keys and the cell phone and the contents
 17 of the tan bag and left the residence.
 18 THE COURT: That was the allegation from
 19 the night before?
 12:57PM 20 THE WITNESS: Correct.
 21 THE COURT: So when he asked you questions
 22 about either one of these witnesses being reinterviewed
 23 and talking about that he had permission to use the car
 24 or to have the phone, when one of those witnesses told
 12:57PM 25 one of the detectives who was interviewing them, when

12:57PM 1 were they referring to him having had permission? Was
 2 it before the alleged robbery or are they effectively
 3 saying it wasn't a robbery and that he had permission?
 4 That's my question.
 12:57PM 5 THE WITNESS: Prior to the robbery.
 6 THE COURT: Okay. So those witnesses then
 7 went back around and said well, maybe he had permission
 8 to have the vehicle and the phone at some date prior to
 9 the robbery. That's your understanding of what the
 12:58PM 10 statements of the witnesses to these detectives was?
 11 THE WITNESS: Correct.
 12 THE COURT: Not that a robbery didn't
 13 occur?
 14 THE WITNESS: Correct.
 12:58PM 15 THE COURT: Anything else?
 16 DEFENDANT ORTH: Yes.
 17 BY DEFENDANT ORTH:
 18 Q. So in your investigation did you go inside
 19 the apartment?
 12:58PM 20 A. I did not.
 21 Q. So was Ozawa's interview with Louis
 22 Polanco made available to you before the warrant?
 23 A. The entire contents, no, it was not.
 24 Q. So his summary was?
 12:58PM 25 A. The information he provided to me, yes.

12:58PM 1 Q. You have a digital database which these
 2 statements are placed into by the other detectives,
 3 right?
 4 A. Yes.
 12:58PM 5 Q. So that all of the cumulative knowledge
 6 and all of the cumulative facts are within that
 7 database via a summary by the officer or an actual
 8 recording of that witness, correct?
 9 A. We have multiple locations that things are
 12:59PM 10 documented, yes, and stored.
 11 Q. And that next day did you look into that
 12 database?
 13 MS. MENDOZA: Objection. Vague.
 14 THE COURT: Look into it for what purpose?
 12:59PM 15 DEFENDANT ORTH: For the purpose of
 16 investigating all the information known to all the
 17 other officers.
 18 THE COURT: On what day?
 19 DEFENDANT ORTH: October 28th.
 12:59PM 20 THE WITNESS: On October 28th I used the
 21 information provided directly to me by the officers --
 22 or the detectives for my investigation.
 23 BY DEFENDANT ORTH:
 24 Q. And you're the one who created the
 12:59PM 25 application for the search warrant, correct?

12:59PM 1 A. Yes.
2 Q. You simply copy and pasted your
3 Declaration of Arrest into the affidavit for search
4 warrant; is that correct?
1:00PM 5 A. No.
6 Q. You didn't?
7 A. No.
8 Q. What did you omit?
9 A. I didn't omit anything. The search
1:00PM 10 warrant was completed before the Declaration of Arrest.
11 Q. Okay. So the search warrant affidavit
12 was -- how long after you seized the item did that
13 occur?
14 MS. MENDOZA: Objection. Vague.
1:00PM 15 BY DEFENDANT ORTH:
16 Q. How long --
17 THE COURT: Hang on a second. You said
18 when did he create the search warrant affidavit after
19 he seized --
1:00PM 20 BY DEFENDANT ORTH:
21 Q. After you had me under arrest in your
22 vehicle when did you create the search warrant
23 affidavit?
24 A. I applied for the search warrant that day,
1:00PM 25 the 28th. I do not know the exact time.

1:00PM 1 THE COURT: For the record it's a court
2 document. October 28th it was signed by looks like
3 Judge Gibson at 3:51 p.m. Does that sound correct on
4 October 28th?
1:00PM 5 THE WITNESS: That does.
6 THE COURT: That's the timestamp I have.
7 BY DEFENDANT ORTH:
8 Q. So at that point you already had me in
9 jail for obstructing resist?
1:01PM 10 A. You were in custody for the resisting
11 charge.
12 Q. And misdemeanor, and you had made the
13 decision not to arrest me for robbery at that point,
14 correct?
1:01PM 15 A. At that time the robbery investigation was
16 still ongoing.
17 Q. Okay. So would you agree that you did not
18 have probable cause at that point to arrest me for
19 robbery?
1:01PM 20 A. At the time that I applied for the search
21 warrant I did not have probable cause to arrest you for
22 the robbery.
23 Q. When did you create a Declaration of
24 Arrest?
1:01PM 25 A. I don't remember the exact day.

1:02PM 1 Q. Did you create it after you applied for
2 the search warrant?
3 A. Yes.
4 Q. Why did you include in your Declaration of
1:02PM 5 Arrest that Jessie and Louie changed their stories, but
6 you didn't include that when you made your search
7 warrant affidavit to the judge?
8 A. The paragraph you just had me read from
9 the declaration talked about the changing of the
1:02PM 10 stories. I wrote that synonymous with the conflicting
11 stories.
12 Q. Why didn't you tell the judge you didn't
13 have probable cause to arrest me for robbery?
14 A. I was not writing an arrest warrant. I
1:02PM 15 was writing a search warrant.
16 Q. So to clarify, why didn't you have
17 probable cause -- why did you not have probable cause
18 on the robbery? Did you feel they weren't trustworthy?
19 Did you feel there was too much conflict? In making a
1:03PM 20 decision why wasn't there probable cause to arrest for
21 robbery?
22 MS. MENDOZA: Objection.
23 THE COURT: It's kind of gotten to the
24 point where it's irrelevant, Mr. Orth. With the search
1:03PM 25 warrant they had probable cause to look for -- their

1:03PM 1 belief was potential for evidence from a robbery was
2 included in the duffel bag. They don't have to have
3 probable cause that a robbery occurred to arrest you to
4 have probable cause to believe that there may be
1:03PM 5 evidence of a crime in a location that they're
6 searching for. So you're complaining two different
7 things.
8 DEFENDANT ORTH: Let me bring a little bit
9 of a halt to this.
1:03PM 10 THE COURT: That would be great.
11 BY DEFENDANT ORTH:
12 Q. So, sir, you would agree that you have
13 omitted the recorded information from Jessie Caracciolo
14 that was provided to police that day when you made your
1:04PM 15 search warrant, correct?
16 MS. MENDOZA: Objection, Vague. What
17 recorded information omitted from what?
18 THE COURT: What information?
19 BY DEFENDANT ORTH:
20 Q. If there was a recorded statement made by
21 Miss Caracciolo to police, would you agree that you
22 omitted that from your search warrant affidavit?
23 THE COURT: What statement? Do they have
24 a statement specifically from her in the search warrant
1:04PM 25 that said she didn't see you commit an armed robbery?

1:04PM 1 It's specifically in the search warrant.
 2 DEFENDANT ORTH: We don't have those
 3 recorded interviews because the State refused --
 4 THE COURT: He wrote it in the search
 1:04PM 5 warrant.
 6 MS. MENDOZA: That's also untrue. They
 7 have those.
 8 THE COURT: I know. He wrote it in the
 9 search warrant affidavit. He specifically said in
 1:04PM 10 there that this other lady --
 11 DEFENDANT ORTH: No, he has not. Your
 12 Honor --
 13 THE COURT: I read it to you. I don't
 14 know how many times I have to.
 1:04PM 15 DEFENDANT ORTH: He just said he didn't go
 16 over the interview.
 17 THE COURT: I just -- he put in the search
 18 warrant -- we're not doing this anymore. I'm making my
 19 ruling on the search warrant. We're done. This has
 1:04PM 20 gone on way too long. There is nothing wrong with the
 21 search warrant at this point.
 22 MS. SIMMONS: The only thing that I would
 23 add if I were permitted to ask questions, which is to
 24 clarify, is that if he were to go through --
 1:04PM 25 MS. MENDOZA: She's standby.

1:05PM 1 THE COURT: That's all right.
 2 What is your question?
 3 MS. SIMMONS: If I were to go through and
 4 show both the declaration side by side with the arrest
 1:05PM 5 affidavit, that is the only paragraph that was missing
 6 or added or changed afterwards.
 7 THE COURT: Okay.
 8 MS. SIMMONS: And so that is exculpatory
 9 information that should have been provided to the judge
 1:05PM 10 which is one of Mr. Orth's arguments.
 11 THE COURT: All right. That is going to
 12 be a basis you can file a writ or appeal based on that
 13 one paragraph that is incredibly vague as to when they
 14 were referring to the permission that he had to have
 1:05PM 15 the vehicle which I think I clarified with this
 16 particular witness because I needed the clarification.
 17 So I take your point. I'm not suppressing the search
 18 warrant. I don't think there's anything wrong with the
 19 search warrant. I think the relevant information was
 1:05PM 20 in the search warrant based on the timing of the
 21 investigation.
 22 No more questions about the search
 23 warrant. Do you have anything else about probable
 24 cause in this case, Mr. Orth?
 1:05PM 25 DEFENDANT ORTH: Sure.

1:05PM 1 BY DEFENDANT ORTH:
 2 Q. So at any point were you aware that the
 3 alleged victim said there was a green duffel bag that
 4 was stolen, not a brown one?
 1:06PM 5 A. I don't recall the exact color that was
 6 given. I went from the information that was provided
 7 in the calls for service in the officer's report.
 8 Q. You weren't aware that they described it
 9 as a green bag?
 1:06PM 10 MS. MENDOZA: Objection. Hearsay.
 11 THE COURT: Sustained.
 12 BY DEFENDANT ORTH:
 13 Q. So you're saying you're basing the color
 14 off of who? The color of the bag that was stolen in
 1:06PM 15 robbery, who did you base that off?
 16 A. All the information that I was provided
 17 prior and when responding.
 18 Q. So you don't know off the top of your
 19 head?
 1:06PM 20 A. Specifically it came from the information
 21 I was provided through other detectives as well as
 22 officers on scene that recovered the bag as well as the
 23 officers that saw you exit the vehicle with the bag,
 24 and as well as the officer's report from the night
 1:06PM 25 before when the robbery was reported.

1:07PM 1 Q. So you're saying that you did base it off
 2 the information based on what was told to you the night
 3 before?
 4 A. Not what was told to me, no.
 1:07PM 5 THE COURT: Mr. Orth, what's the point of
 6 your question?
 7 BY DEFENDANT ORTH:
 8 Q. Here's the point. You see me with the
 9 brown duffel bag. Now, where did you learn that the
 1:07PM 10 brown duffel bag was stolen in the robbery?
 11 THE COURT: We've already gone over this.
 12 I believe it was in the search warrant, correct?
 13 MS. MENDOZA: I think we're still getting
 14 to search warrant issues.
 1:07PM 15 THE COURT: Right. And I've already made
 16 the ruling on the search warrant.
 17 DEFENDANT ORTH: We're talking about
 18 probable cause.
 19 THE COURT: Right.
 1:07PM 20 DEFENDANT ORTH: Probable cause to seize
 21 and arrest me for possession of a firearm.
 22 THE COURT: Correct.
 23 DEFENDANT ORTH: He hasn't --
 24 BY DEFENDANT ORTH:
 1:07PM 25 Q. Did you see me with a gun?

1:07PM 1 THE COURT: He doesn't have to. We've
2 already gone over this. He's got information from the
3 other witnesses who have testified to include an
4 officer who saw you get out of the vehicle with the
1:07PM 5 bag.

6 DEFENDANT ORTH: Nobody has testified to a
7 brown bag.

8 THE COURT: They just did. They just did.
9 The first witness came in here and testified to it.
1:07PM 10 We're not going to keep covering --

11 DEFENDANT ORTH: Getting out of the car
12 with the bag, your Honor. We're talking about the
13 night before.

14 THE COURT: We're not talking about the
1:08PM 15 night before. We're talking about the bag that you
16 were seen with by the first officer that testified,
17 that's the bag they searched and that's the bag that
18 they found the firearm in. As we sit here today I'm
19 not going to continue this probable cause hearing when
1:08PM 20 I have probable cause. The first witness Mr. Nelson
21 came in and said he saw you get out of the vehicle with
22 this duffel bag that ultimately was searched. This was
23 the duffel bag. He saw you having it. He saw you walk
24 with it. He saw you put it on the wall. He saw you
1:08PM 25 jump over the wall with the bag. They did a search

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

4 BY DEFENDANT ORTH:

1:08PM 5 Q. Let me ask you this. Do you have any
6 facts that I had knowledge of what was in that bag, the
7 mens rea? Do you have any facts that I knew what was
8 in that Louis Polanco's bag?

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

1:08PM 10 Q. No. Do you have any evidence that I knew
11 what was in that bag?

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

14 Q. Do you have any evidence that I had
1:09PM 15 knowledge that there was a gun in that bag?

16 THE COURT: Asked and answered. Next
17 question.

18 BY DEFENDANT ORTH:

19 Q. Is that no?

1:09PM 20 THE COURT: He just said that you
21 specifically said you didn't know.

22 BY DEFENDANT ORTH:

23 Q. So lastly, I told you that I was coming
24 back home, I was returning a car and I was returning a
1:09PM 25 cell phone. Was that consistent with what you learned

1:09PM 1 in the course of your investigation?

2 A. No.

3 MS. MENDOZA: Objection. Relevance. And
4 vague.

1:09PM 5 THE COURT: What's the relevance?

6 DEFENDANT ORTH: I'm telling him the
7 truth.

8 THE COURT: Okay.

9 DEFENDANT ORTH: And he's not telling the
1:09PM 10 Court exactly what's going on when he gets a search
11 warrant to make it seem like I'm lying.

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

1:10PM 15 DEFENDANT ORTH: No more questions, your
16 Honor.

17 THE COURT: Okay. Anything on redirect?

18 MS. MENDOZA: Just so the record is clear,
19 I'm not conceding to any issues regarding the search
1:10PM 20 warrant. If we were continuing that argument, I would
21 ask more questions, but since we're not I won't.

22 REDIRECT EXAMINATION

23 BY MS. MENDOZA:

1:10PM 24 Q. I just want to clarify. So patrol

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

3 A. Correct.

4 Q. Now, let's say Mr. Orth never returned to
1:10PM 5 the apartment. Would that have been routed to the
6 robbery detectives and eventually a robbery detective
7 would have followed up for continued investigation?

8 A. It would depend on patrol's involvement
9 and they are able to -- if they want to retain the
1:10PM 10 report for the investigation because it's something
11 that's within their capabilities, they're able to go
12 ahead and investigate it. However, if it's beyond
13 their scope, it would be routed to a robbery detective.

14 Q. So either it would have stayed with
1:11PM 15 patrol, or if robbery took over, you guys would have
16 gone out and done subsequent investigation, correct?

17 A. Yes.

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

20 A. Yes.

1:11PM 21 Q. -- of interviewing witnesses and figuring
22 out if there's physical evidence and things like that,
23 correct?

24 A. Yes.

1:11PM 25 MS. MENDOZA: No further questions, your

1:11PM 1 Honor.
 2 THE COURT: Anything else in regard to
 3 what she just asked?
 4 DEFENDANT ORTH: Because you have to take
 1:11PM 5 his veracity --
 6 THE COURT: His what?
 7 DEFENDANT ORTH: His credibility and his
 8 veracity.
 9 THE COURT: Veracity. You're only allowed
 1:11PM 10 to ask questions based on what she asked questions
 11 about. So go ahead.
 12
 13 RE-CROSS EXAMINATION
 14 BY DEFENDANT ORTH:
 1:11PM 15 Q. Did you tell the judge there was probable
 16 cause to arrest me for robbery?
 17 THE COURT: He's already answered that.
 18 He just said that at the time there was not probable
 19 cause to arrest you.
 1:11PM 20 BY DEFENDANT ORTH:
 21 Q. Did you tell the judge that?
 22 THE COURT: He just told me right now.
 23 BY DEFENDANT ORTH:
 24 Q. So in your professional opinion is there
 1:12PM 25 probable cause to not arrest me but there's probable

1:12PM 1 cause to search?
 2 THE COURT: That's a legal determination
 3 and the fact of the matter is yes, that's true. So you
 4 don't have to answer the question.
 1:12PM 5 Anything else? Any other questions? He's
 6 investigating to develop probable cause.
 7 DEFENDANT ORTH: Right.
 8 THE COURT: So there's things called
 9 reasonable suspicion, he gets to investigate, he has
 1:12PM 10 reason to believe there might be evidence of a crime.
 11 It's probable cause to believe there's evidence of a
 12 crime in a bag. He gets to investigate it. Turns out
 13 if there wasn't a gun in there or whatever else, that
 14 might help him decide that there's not probable cause
 1:12PM 15 to arrest you for robbery. But he gets to do an
 16 investigation and there's clearly probable cause in
 17 this case for him to have executed the search warrant
 18 based upon the statements that were made.
 19 And including your particular actions,
 1:12PM 20 Mr. Orth, in running and jumping over a fence, running
 21 with a duffel bag that has a shotgun in it. So yeah,
 22 that's the law. Okay. Any additional questions,
 23 Mr. Orth?
 24 DEFENDANT ORTH: No.
 1:13PM 25 THE COURT: Any additional witnesses? Is

1:13PM 1 this witness free to go?
 2 MS. MENDOZA: I'm going to let him and
 3 Detective Lapeer go.
 4 THE COURT: You guys are good to go.
 1:13PM 5 Did you have some exhibits that you
 6 marked?
 7 MS. MENDOZA: Yes. The JOCs. And I have
 8 some more than what's listed in the complaint.
 9 THE COURT: You have more what? I'm
 1:13PM 10 sorry.
 11 MS. MENDOZA: I have more JOCs than what's
 12 listed in the complaint. So if I can just make a
 13 record.
 14 THE COURT: All right. I have in my hand
 1:14PM 15 State's Exhibits 2, 3, 4, 5. Have you seen these, Mr.
 16 Orth?
 17 DEFENDANT ORTH: I have, your Honor.
 18 THE COURT: State, what amendments do you
 19 want to make based on your exhibits?
 1:14PM 20 MS. MENDOZA: So the one listed in there
 21 in the count is the 2007 robbery and some of the
 22 charges are completed and it doesn't have the case
 23 number. So for the one that's already listed, it
 24 should read 2007 robbery with a deadly, conspiracy
 1:14PM 25 robbery with a deadly, alluding of a police officer and

1:15PM 1 that's Case Number CR05 --
 2 THE COURT: Hang on. I'm going to have
 3 you start over. Line 19, defendant being a convicted
 4 felon, 2007 been convicted of robbery with a deadly
 1:15PM 5 weapon. Which case number are we talking?
 6 MS. MENDOZA: CR051459.
 7 THE COURT: Is it three counts?
 8 MS. MENDOZA: Yes. Robbery with a deadly,
 9 conspiracy robbery with a deadly and eluding.
 1:15PM 10 THE COURT: You have Washoe County on
 11 that.
 12 MS. MENDOZA: Yes. And I would also add,
 13 going to the next one would be CR -- is the easiest way
 14 for me to do it is to tell you the case number first?
 1:16PM 15 THE COURT: Yes.
 16 MS. MENDOZA: The next one would be
 17 CR062177, and that's a 2007 trafficking controlled
 18 substance and possession of firearm by prohibited
 19 person.
 1:16PM 20 THE COURT: Will you get me a second
 21 amended and refill it out and forward it to us. Just
 22 say it on the record and then I want you to email me a
 23 second amended. It'll be for the record when we bind
 24 it over. What I want is the original second amended in
 1:17PM 25 the file.

1:17PM 1 MS. MENDOZA: You want it with you guys as
2 opposed to just by interlineation?

3 THE COURT: Yes. There's enough of it
4 there that I think it's better to just have a clean
1:17PM 5 copy that we're arguing off of. So if you can email it
6 to us and then email it to Miss Simmons so that she has
7 a copy of it. It's just what you're adding is the
8 content of the judgment of convictions in CR062177,
9 Washoe County, conviction dated May of 2007. CR051459,
1:17PM 10 the conviction from May of 2007. And then CR98-2523
11 from December of 1998, and CR98-2037 from October of
12 1998. So the convictions associated with those four
13 dates, correct?

14 MS. MENDOZA: Yes, your Honor.

1:18PM 15 THE COURT: All right. Go ahead.

16 MS. MENDOZA: I'll reserve for rebuttal.
17 I just want to make clear that assuming you are to find
18 probable cause today, you are finding probable cause on
19 all those prior felonies?

1:18PM 20 THE COURT: You're making this amendment.
21 It would be based on an amended Count 1 with these
22 additional.

23 DEFENDANT ORTH: My only objection is --

24 THE COURT: Hang on. I have Miss Simmons.

1:18PM 25 MS. SIMMONS: Just a quick question.

1:18PM 1 After speaking with Mr. Orth he wanted to know so he
2 has the opportunity and the right to present testimony.
3 He did want to ask your Honor to consider bifurcating
4 so he can try to get Louis Polanco and Jessie
1:18PM 5 Caracciolo here and Officer Zell.

6 THE COURT: Well, you've already made an
7 effort today on his behalf twice.

8 MS. SIMMONS: I know for a fact that my
9 investigator attempted prior to the first preliminary
1:18PM 10 hearing date back on November 17th. I don't know what
11 additional efforts she made since then. I just know at
12 that time she was unable to reach them.

13 THE COURT: So they've been unable to be
14 reached today and I think you said you made an attempt
1:19PM 15 before the first preliminary hearing as well.

16 MS. SIMMONS: Yes.

17 THE COURT: So we've had two different
18 attempts at two different preliminary hearings. What
19 record are you trying to establish with these
1:19PM 20 additional witnesses?

21 I'm assuming you're resting at this point
22 with those amendments, correct?

23 MS. MENDOZA: Yes.

24 THE COURT: All right. Yes, sir.

1:19PM 25 DEFENDANT ORTH: I have no objection as

1:19PM 1 long as they satisfy that they are court sealed
2 documents as the statute requires.

3 THE COURT: They are.

4 DEFENDANT ORTH: And as to the
1:19PM 5 bifurcation, as you heard today we have Officer Zell
6 who nobody knows nothing about. He is the one who
7 actually took the written statements by Caracciolo and
8 Polanco.

9 THE COURT: The arguments you're making
1:19PM 10 relate to the suppression of the search warrant. I've
11 already made my ruling on the suppression of the search
12 warrant.

13 DEFENDANT ORTH: I understand that. I
14 just received these in discovery this morning.

1:20PM 15 THE COURT: I understand.

16 DEFENDANT ORTH: When they were describing
17 it, they were describing that a green duffel bag was
18 stolen, not a tan one. So why we're searching a tan
19 duffel bag I don't know.

1:20PM 20 THE COURT: Honestly I don't even think
21 they needed a search warrant. You happen to be in
22 possession of that bag when you were running away. I
23 don't know that you had a privacy interest in that bag.
24 I think they could have opened the bag. That's my
1:20PM 25 ruling. They didn't even need a search warrant, but

1:20PM 1 they got a search warrant and there's probable cause in
2 the search warrant for entering the duffel bag and
3 looking into it. Because what you're saying is it
4 wasn't even your bag. So what was your privacy
1:20PM 5 interest in it? None. They didn't need a search
6 warrant to get in that bag. They didn't need a search
7 warrant.

8 DEFENDANT ORTH: She hasn't raised that.

9 THE COURT: I'm making the ruling. That's
1:20PM 10 my job. I'm the judge. I make the decision as to what
11 the law is. There was probable cause in the search
12 warrant for getting into that bag. I don't think they
13 even needed to get a search warrant. I think it was
14 almost purely prophylactic and that's my ruling today.
1:21PM 15 So I'm not going to allow a continuance for any
16 additional witnesses with regard to the search warrant
17 at this time.

18 You're standby counsel. Do you want to
19 talk to him about his right to testify?

1:21PM 20 MS. SIMMONS: I will do that. But also I
21 have a question. Are we going to set another date as
22 to the double jeopardy argument?

23 THE COURT: We can take that up now. So
24 go ahead.

1:21PM 25 MS. SIMMONS: Your Honor, I informed him

1:21PM 1 of his right. He has decided he will follow his own
2 advice and not testify.

3 THE COURT: Good advice, Mr. Orth.

4 State, he's brought to your attention the
1:21PM 5 resisting in the city. I have it here.

6 MS. MENDOZA: I have them both printed
7 out.

8 THE COURT: I have it here. NRS 199.280
9 is resisting. The elements are -- what's my evading
10 statute? 202 --

11 MS. MENDOZA: 484B.

12 THE COURT: 202.484?

13 MS. MENDOZA: No. 484B as in boy 550.

14 THE COURT: So the Blockburger test citing
1:25PM 15 LaChance v. State, 321 P.3d 919. The offense in
16 question, that being a violation of 484B.550, cannot be
17 committed without committing resisting under NRS
18 199.280. The real question is can you commit evading
19 without at the same time committing resisting under NRS
1:26PM 20 199.280. What's your argument?

21 MS. MENDOZA: So before you even get to
22 Blockburger, there's a factual issue here that I think
23 is being confused.

24 THE COURT: Okay.

1:26PM 25 MS. MENDOZA: I gave you the complaint

1:26PM 1 from Municipal Court and in that complaint it alleges
2 that he disobeyed commands to stop from Officer Mangan
3 or Lippisch and fled the scene. Obviously Officer
4 Lippisch was not there and we heard testimony today
1:26PM 5 that Officer Mangan was not there until after the
6 vehicle pursuit ended. Officer Mangan was one of the
7 officers who chased him on foot and he disobeyed their
8 verbal commands to stop while they were running on
9 foot. So the factual basis for the resisting is
10 different than the factual basis for the evading.

11 THE COURT: Okay.

12 MS. MENDOZA: They're based on two
13 different acts.

14 THE COURT: Mr. Orth.

1:27PM 15 DEFENDANT ORTH: All of the facts, your
16 Honor, in both cases rise out of the same acts or
17 transaction. The fleeing is included -- it's a
18 continuing act and she's trying to separate. And
19 technically today he said the car stopped and I got out
20 of the car. Well, we're talking about two different
21 things. First we'll talk about the double jeopardy.
22 They all rise out of the same transaction. It's a
23 lesser included offense. An obstruct and resist arrest
24 is a lesser included offense. Based on the facts,
1:28PM 25 especially if you read the facts that they sought the

1:28PM 1 guilty plea for the Municipal Court. In fact, they
2 were including the fleeing in the vehicle, lights, all
3 that, as facts to get me to plead guilty to that. So
4 for her to now try to separate the incidents is
1:28PM 5 contrary to LaChance.

6 MS. MENDOZA: It says nothing about
7 fleeing in a vehicle or lights or sirens in the
8 Municipal Court complaint.

9 DEFENDANT ORTH: It doesn't have to.

10 THE COURT: Hang on. Hang on. Hang on.
11 So I think that the argument you're making is that you
12 can do a misdemeanor resisting before you actually got
13 in a vehicle and drove away and it was a whole separate
14 crime, not that -- I think the argument you're making
1:29PM 15 is that the facts alleged in the criminal complaint
16 from Municipal Court would have related to attempts to
17 stop before he got in the vehicle. Is that what you're
18 saying?

19 MS. MENDOZA: After.

1:29PM 20 THE COURT: Oh, I'm sorry. After. Right.
21 So after he got out of the vehicle --

22 MS. MENDOZA: The evading is over by the
23 time that resisting occurs.

24 THE COURT: The testimony regarding Mangan
1:29PM 25 was when did he arrive?

1:29PM 1 MS. MENDOZA: She arrived after he was out
2 of the vehicle. She's one of the officers who was on
3 the other side of the fence with Nelson and who chased
4 him on foot. And I specifically asked Officer Nelson
1:30PM 5 when did Mangan arrive, and he said that he knew
6 specifically that it was not until after the vehicle
7 lights happened. And I think that Mr. Schifalacqua
8 pled it that way.

9 THE COURT: It does say Officer Mangan
10 and/or Officer Lippisch. Lippisch didn't come until
11 afterward.

12 MS. MENDOZA: Correct.

13 THE COURT: So the allegation was Mangan
14 who he did testify came after and there was a foot
1:30PM 15 pursuit, correct?

16 MS. MENDOZA: Correct.

17 THE COURT: Mr. Orth.

18 DEFENDANT ORTH: Yes, sir. Well, first of
19 all, in order for there to be a resist that means there
20 is an arrest occurring. So the arrest is occurring
21 when they stop me with the lights. That's when it
22 starts. So they're saying that the act occurs -- the
23 resisting arrest when they go to stop me. And then I'm
24 traveling in the vehicle. They didn't stop me and then
1:30PM 25 I jumped in the vehicle and then went down and got of

1:30PM 1 the vehicle and then jumped out of the vehicle and ran.
2 They're trying to stop me and they're saying that I'm
3 evading arrest. The arrest occurred in the vehicle
4 when the lights went on and they tried to stop me and I
1:31PM 5 actually stopped. I acquiesced to their stop and then
6 I chose to flee.

7 So what I'm trying to say is that the
8 fleeing through the whole thing is one occurrence and
9 not -- there is not a separation in the acts.

1:31PM 10 THE COURT: I'm going to rule that based
11 on the way he pled it, it would involve two separate
12 acts. One was the evading under 484B.550 and then
13 there's a subsequent misdemeanor act when you exited
14 the vehicle after stopping it. I'm going to find that
1:31PM 15 there's essentially a break when you stopped the
16 vehicle and then decided to flee on foot and they are
17 two separate and distinct crimes. One would have been
18 the evading while you were in the vehicle and then the
19 separate one would have been the resisting when you
1:32PM 20 were running and jumping over the wall. So I'm denying
21 your motion at this time to find double jeopardy with
22 regard to the evading charge.

23 MS. MENDOZA: Just so the record is clear.
24 The State is not conceding that they would merge under
1:32PM 25 Blockburger. I just think it's easier and more

1:32PM 1 straightforward.

2 THE COURT: That's what I'm going to rule
3 today.

4 MS. MENDOZA: In the future I don't want
1:32PM 5 anyone to claim that --

6 THE COURT: Well, I mean, he can file
7 whatever motions he wants to file in District Court as
8 to whether --

9 MS. MENDOZA: I just want the record to be
1:32PM 10 clear that that's not what I was referring to.

11 THE COURT: Well, you're also suggesting
12 that there's a different element. But I'm not even
13 going to get to that. I'm ruling that it's two
14 separate acts and two separate crimes and that they
1:32PM 15 don't overlap.

16 So you're waiving and reserving.

17 Mr. Orth, did you want to make any
18 arguments about probable cause at this point with
19 regard to Count 1 and Count 2?

1:32PM 20 DEFENDANT ORTH: First of all, your Honor,
21 as you heard the officer said I stopped and got out of
22 the car and that I ran and he's saying then the car
23 traveled on its own. So any endangerment was not part
24 of the flee if you go under what theory you just
1:33PM 25 presented, correct?

1:33PM 1 THE COURT: I'm sorry?

2 DEFENDANT ORTH: There is no endangerment
3 because the car stopped. I get out and then I'm
4 resisting arrest according to the Court at that point a
1:33PM 5 misdemeanor. So any endangerment of the car
6 traveling -- there is no endangerment. There is no
7 felony evading. There's misdemeanor evading and then
8 there's felony evading and the officer says that I
9 stopped the car, got out and walked out and he doesn't
1:33PM 10 know if the car malfunctioned, he doesn't know if it
11 just wasn't placed into gear or if it accidentally
12 traveled forward and there was danger. But that's
13 where the danger allegedly comes in. So the car
14 stopped 10 to 15 feet before him because he's got his
1:33PM 15 lights on and he said he could not detect speed, et
16 cetera, and his cameras could not. He felt it was
17 about 20 miles an hour on private property. There is
18 no speed limits. So I'm not in excess of the speed
19 limit within the curtilage, so there is no
1:34PM 20 endangerment.

21 So the best thing shown is if they want to
22 go under your theory is misdemeanor evade. They do not
23 have probable cause to bind me over of the felony
24 evade. Secondly, I would argue that -- and that's just
1:34PM 25 going under the Court's theory that there was --

1:34PM 1 THE COURT: It's not my theory.

2 DEFENDANT ORTH: -- a separate act.

3 So as to the probable cause for the gun
4 there was no probable cause admitted for the truth as
1:34PM 5 to the arrest portion. Nobody came in here and stated
6 they had probable cause to arrest me. It was all
7 objected to under hearsay and it was not asserted as
8 the truth. So all the State failed to show probable
9 cause for the arrest as I raised in my motion and she
1:34PM 10 had a chance to answer it in her written motion and in
11 this hearing. So all I did is I objected to hearsay
12 and she says it's not admitted for the truth. So we
13 don't have probable cause to arrest me on the record.
14 No evidence.

1:35PM 15 THE COURT: Probable cause to arrest you
16 for what?

17 DEFENDANT ORTH: Robbery. For anything.
18 Why did you stop me?

19 THE COURT: You are not charged with
1:35PM 20 robbery. You have to get that out of your brain. You
21 are going to have a hard time in this case going
22 forward if you can't get it out of your brain.

23 DEFENDANT ORTH: It's the product of an
24 illegal stop, your Honor. You stop me, you haven't
1:35PM 25 provided probable cause for the stop. If you haven't

1:35PM 1 provided probable cause for the stop, I can flee an
2 unreasonable stop. State versus Lizonbe. You have to
3 prove an exception. You have to prove probable cause
4 to stop me. You can't stop me and then say well, we
1:35PM 5 found a gun and we did a search and you fled and so now
6 we have probable cause. What was the probable cause
7 for the stop? That has to come first. That's Terry
8 vs. Ohio.

9 THE COURT: Hang on a second. Terry vs.
1:35PM 10 Ohio talks about a reasonable suspicion to detain you
11 for investigation. You're wrong on the law. I
12 appreciate that you've been doing a lot of work on
13 this. But you've decided to represent yourself and you
14 keep misrepresenting what the law is. I appreciate you
1:36PM 15 think you know. If I were you, I would be utilizing
16 the services of Miss Simmons who actually went to law
17 school and is a very good attorney and wouldn't make
18 incorrect legal arguments. You've continued through
19 this whole thing, and I've given you a lot of leeway to
20 make the arguments you're making. I've given you a ton
21 of time. I spent a lot of effort on this case. You
22 keep making wrong legal arguments.

23 ~~So at a minimum~~ they attempted to make a
24 reasonable suspicion stop on you which is Terry v.
1:36PM 25 Ohio, it is not probable cause. You're stating the

1:36PM 1 wrong things. So they attempted to investigate and you
2 fled and they have the right to stop you and they don't
3 have to have a warrant. They are investigating
4 allegations of a robbery. They have the right to stop
1:36PM 5 you and investigate. And you had a duffel bag in your
6 hand that you jumped over a wall with and that anybody
7 that picked up that duffel bag would know there was a
8 gun in it. I can sit and look at it. It's not like
9 it's a little .380. It's a double barrel rifle. So
1:37PM 10 they had the right to investigate, they had the right
11 to stop you and they didn't have to have probable cause
12 at that point because you were fleeing and they were
13 trying to do an investigation. So they had the right
14 to stop you without probable cause."

1:37PM 15 They also have the right to get a search
16 warrant if they believe there's evidence -- hang on a
17 second. Listen to me. They have a right to get a
18 search warrant if they have probable cause to believe
19 there's evidence associated with their investigation.
1:37PM 20 They don't actually have to have the ability to arrest
21 you for that underlying crime to do any sort of
22 investigation to get search warrants. Could you
23 imagine that? They'd have to wait until they could
24 actually arrest somebody on a murder charge before they
1:37PM 25 investigated whether a murder occurred? Of course not.

1:37PM 1 And so you're wrong on the law.

2 And if you would listen to your attorney
3 and going forward if you would allow me to appoint you
4 an attorney, you'd probably do yourself a world of
1:38PM 5 benefit. But as you're going right now you are not
6 qualified to continue to represent yourself and make
7 incoherent, non legal arguments and I'm just telling
8 you that. You may think you've got it down, but you
9 don't.

1:38PM 10 So anything else, Mr. Orth?

11 DEFENDANT ORTH: One last thing. Your
12 Honor is taking all the testimony as the truth of the
13 matter and not as hearsay, correct? To reach that
14 conclusion you just came to. Nobody testified probable
1:38PM 15 cause to stop me, right? So the only way to get around
16 that were --

17 THE COURT: I just gave you what the law
18 is and you completely ignored everything I just said.

19 DEFENDANT ORTH: I did understand you.

1:38PM 20 But he has to take the testimony to find --

21 THE COURT: They saw you with the bag and
22 they are allowed to rely on what the other
23 investigations as told to them to further their
24 investigation. And so you are being charged with
1:38PM 25 fleeing and possessing a gun. You are not being

1:38PM 1 charged with robbery, and until you get over that, you
2 are never going to get anywhere with this case.

3 Any other arguments?

4 DEFENDANT ORTH: My last argument. I
1:39PM 5 understand what you're saying. You're misunderstanding
6 my argument. My understanding is before you stop me,
7 you have to have a reason.

8 THE COURT: They did have a reason.

9 DEFENDANT ORTH: What was it?

1:39PM 10 THE COURT: The allegations that you
11 committed a robbery and that you fled from them and
12 that you had a bag that possibly contained a gun. They
13 had all that information.

14 DEFENDANT ORTH: That occurs after the
1:39PM 15 stop. That's a product of the stop.

16 THE COURT: No, it doesn't. That's not
17 true and I don't believe they even needed a search
18 warrant.

19 Anything else, Ms. Mendoza?

1:39PM 20 MS. MENDOZA: Your Honor, the clerk just
21 informed me that the JOCs weren't admitted. I thought
22 we did that when --

23 THE COURT: You move to admit them,
24 correct?

1:39PM 25 MS. MENDOZA: Yes. And as I recall he

1:39PM 1 said he had no objection.
 2 THE COURT: They're admitted.
 3 MS. MENDOZA: Thank you.
 4 (State's Exhibits 2 - 5 were admitted.)
 1:39PM 5 THE COURT: Anything else, Ms. Mendoza?
 6 MS. MENDOZA: No, Your Honor.
 7 THE COURT: It appears to me from the
 8 complaint on file herein and from the testimony adduced
 9 at the preliminary examination that a crime, that being
 1:39PM 10 felony possession and evading, has been committed.
 11 There is sufficient evidence to believe the defendant
 12 Mr. Orth committed said crimes. I hereby order said
 13 defendant be bound over to the Eighth Judicial District
 14 Court, State of Nevada to answer the charges on the
 1:40PM 15 following date.
 16 THE CLERK: December 18th, 8:00 a.m.,
 17 lower level arraignment.
 18 THE COURT: Now, I don't know if they are
 19 going to be able to get you back down.
 1:40PM 20 Does the State need to prepare an order to
 21 get him back down?
 22 MS. MENDOZA: I'll do an order to
 23 transport. I don't know if every time he comes here he
 24 is going to have to sit through quarantine again.
 1:40PM 25 THE COURT: Do you know what their

1:40PM 1 procedure is once he goes back? Does he go back
 2 through quarantine?
 3 THE OFFICER: I believe so. We were here
 4 today to hear this so we are going to forward that
 1:40PM 5 information to our office.
 6 THE COURT: When is the date again?
 7 THE CLERK: December 18th.
 8 THE COURT: We can go into the next week
 9 just to make sure.
 1:40PM 10 THE OFFICER: It's okay.
 11 THE COURT: We'll keep that date. That'll
 12 be your date for your entry of plea in District Court.
 13 Good luck. And seriously rethink getting an attorney,
 14 okay?
 1:40PM 15 DEFENDANT ORTH: Thank you, Your Honor.
 16 THE COURT: Good luck.
 17
 18 (The proceedings concluded.)
 19 * * * * *
 1:41PM 20 ATTEST: Full, true and accurate
 21 transcript of proceedings.
 22
 23 /S/Lisa Brenske
 24 LISA BRENSKE, CSR No. 186
 1:41PM 25

EXHIBIT SEVEN

AA002007

MUNICIPAL COURT OF THE CITY OF HENDERSON
IN THE COUNTY OF CLARK, STATE OF NEVADA

CITY OF HENDERSON, NEVADA,

Plaintiff,

vs.

SEAN RODNEY ORTH,

Defendant.

2020 OCT 29 A 9:28
CRIMINAL COMPLAINT

CASE NO.
20CR007866 (PCN 1)

Nicholas G. Vaskov, Esq., City Attorney

The defendant has committed the crime of:

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

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

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



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

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

EXHIBIT EIGHT

AA002009

Henderson Police Department

223 Lead Street, Henderson Nevada 89015

Declaration of Arrest

DR#: 20-18994

Arrestee's Name: ORTH, SEAN RODNEY

Date and time of Arrest: 10/28/2020 7:19:48 AM

Charge(s)	Degree	NRS/MC
Resist pub off	M	199.280.3

THE UNDERSIGNED MAKE THE FOLOWING DECLARATIONS SUBJECT TO THE PENALTY OF PERJURY AND SAYS: That I am a Peace Officer with the Henderson PD, Clark County Nevada. I learned the following facts and circumstances which led me to believe that the above-named subject committed (or was committing) the above offense/offenses at the location of 981 Whitney Ranch Dr Henderson, NV 89014 And that the offense approximately occurred at 10/28/2020 7:19:48 AM

Details of Probable Cause

On 10/28/2020 at approximately 0711 HPD Units were dispatched to The Marlow Apartments, 981 Whitney Ranch Drive #823, reference a reported armed robbery suspect who was currently at the location. Dispatch advised that the person reporting had stated that the suspect who had committed an armed robbery at the location the night before (reported under HPD DR#20-18988) was currently at their door, possibly armed, and was most likely driving their white Chevrolet Malibu with unknown "Body Shop" plates that he had unlawfully taken the night before.

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

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

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

Henderson Police Department

223 Lead Street, Henderson Nevada 89015

Declaration of Arrest

DR#: 20-18994

Arrestee's Name: ORTH, SEAN RODNEY

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

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

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

Details of Probable Cause

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

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

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

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

Henderson Police Department

223 Lead Street, Henderson Nevada 89015

Declaration of Arrest

DR#: 20-18994

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

I was later advised by Detectives Ozawa and LaPeer that Louis and Jessie had differentiating accounts of what had occurred over the past week, however they both stated that Sean had left the apartment the prior evening with a tan duffel bag that contained property that belonged to them (Louis and Jessie), not Sean. Louis stated that Sean had displayed a handgun and told Louis that he was taking Louis' guns and laptop, and then had directed Louis to the master bedroom where the items were placed into the tan duffel bag. Sean then left the residence with the items that did not belong to him which included: Louis' black and red Smith and Wesson MMP Shield 9mm handgun (unknown serial #), Jessie's Winchester Model 12 20 Gauge Shotgun (unknown serial #), and Louis' Military ID. Sean exited the apartment, walked to Louis' 2007 white Chevrolet Malibu with NV Body Shop plate 6528, entered the driver side of the vehicle, and drove away. Louis advised that in addition to the above items Sean was also in possession of his laptop and cellular phone.

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

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

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

Henderson Police Department

223 Lead Street, Henderson Nevada 89015

Declaration of Arrest

DR#: 20-18994

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

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

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

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

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

On 10/29/2020 the search warrant was served on the items previously listed. The following items were located in the tan canvas bag: black Fuel motorcycle helmet, Winchester Model 12 .20 gauge shot gun (SN: 1291469), Federal Ammunition Hi-Brass .20 gauge ammunition live rounds (25 count), Surefire tactical light w/ mount, vice grips, Lenovo Laptop, and a Grace USA chisel tool.

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

Henderson Police Department

223 Lead Street, Henderson Nevada 89015

Declaration of Arrest

DR#: 20-18994

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

Lippisch, K.
Declarant's Name

IZHABIT TEM

AA002016

JUSTICE COURT, HENDERSON TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

SEAN RODNEY ORTH

Defendant.

CASE NO: 20CRH001571

DEPT NO:

DA CASE NO: 202047706C

AMENDED
CRIMINAL COMPLAINT

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

COUNT 1 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

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

COUNT 2 - STOP REQUIRED ON SIGNAL OF POLICE OFFICER

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

V:\2020\47706\202047706C-ACOM-(SEAN RODNEY ORTH)-001.DOCX

AA002017

EXHIBIT LEVEN

1 3. Discovery Related to Stop Required Charge

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

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

OZAWA

On 10-28-2020 at approximately 0855 hrs I, Detective Ozawa P#1531 was assisting Detective Lippisch in a robbery investigation that occurred at the Marlow Apartments located at 981 Whitney Ranch Drive, Henderson, NV 89014. I was tasked with interviewing the victim (Louis Polanco DOB [redacted] of the incident.

I made contact with Louis at his apartment (#823) and asked Louis if he would speak with me inside my Detective vehicle and he advised yes. I escorted Louis to my vehicle and he sat in the front passenger seat. I explained to Louis that I wanted to talk to him about what happened and that I was going to digitally record the interview. Louis gave consent for me to record the interview. During Louis' interview, I had to ask Louis to clarify details because Louis would give details out of chronological order.

Louis advised that he first met the suspect, who he identified as "Sean O" because he did not remember Sean's last name, on Sunday 10-25-2020 at approximately 2300 hrs when Sean came over to his apartment with Louis' friend "Benny." Louis stated that Benny lives out of town and had come to Nevada and contacted him through Instagram and asked if Louis wanted to hangout. Louis told Benny yes, and Benny said he would come over to his apartment and they could hang out and Benny would give Louis a tattoo. Benny came over with Sean on 10-25-2020 at approximately 2300 hrs and they all hung out together and drank alcohol. Louis advised that Sean fell asleep and Benny wanted to leave and Louis told Benny that Sean could sleep at his apartment. Benny left Louis' apartment at approximately 0300 hrs on 10-26-2020. After Benny left, Louis went to bed and when Louis woke up later in the morning, Sean was already gone. Louis did not know when Sean left or where Sean went.

Louis stated that he did not have any contact with Benny or Sean for the rest of Monday (10-26-2020). Then on Tuesday (10-27-2020) between the hours of 1400 to 1500 hrs, Sean came to Louis' apartment. Louis let Sean inside his apartment and when Sean came in, he pulled up his shirt and Louis observed a gun in his waistband. Sean then tells Louis to sit down and to give him Louis' computer and cell phone. Sean then tells Louis that he wanted to erase the video on his cameras and told Louis it was illegal to record people. I asked Louis about the cameras and he advised that he has Cox Homelife and he has a camera inside his room. Louis advised that Sean pulled his camera from inside his room to disconnect the camera.

After a few minutes, Louis' son (Christian Polanco) came home and was crying. Louis advised that his son was crying because he had broken a glass bottle and some neighbors yelled at him. After some more time had passed, Henderson Police knocked on Louis' apartment door. Sean told Louis to stay seated and Sean answered the door and spoke with Officers. This incident was documented under HPD incident number HP201027000845.

At approximately 1800 hrs, Louis advised that his girlfriend (Jessie Caracciolo DOB [redacted]) came to the apartment. Sean then told Louis to talk with him in Louis' room and Louis walked into his bedroom with Sean. Sean asked Louis why Jessie was at his apartment, and Louis told him that she is his girlfriend. Sean then tells Louis to give him all his guns, and Louis puts a short barrel shotgun that belongs to Jessie and a handgun (Smith and Wesson Shield) that belongs to Louis in a sand colored duffel bag. After Louis packed the duffel bag, he walked out of the apartment with Sean and put the duffel bag in Louis' car (white Chevrolet Malibu) and Sean drove off with Louis' vehicle. Louis advised that the white Chevrolet Malibu belonged to a body shop that was loaning him the vehicle because the body shop was working on Louis' car (Gray BMW 328i). Louis also stated that prior to Sean stealing his car, Sean told him, "Don't call the cops or I'll blow up your home." This is why Louis did not call the Police right after the incident occurred.

Louis then called the Police later in the evening and Louis made contact with Police and a report was taken and documented under HPD report # 20-18989. Louis was then advised that if Sean returns, he needed to contact the Police right away and Louis advised okay.

I asked Louis what was stolen from him, and he advised that his cell phone, laptop, Winchester Shotgun and a Smith and Wesson handgun. I asked Louis to describe Sean and he advised that Sean was a white male, approximately six foot in height, 200 lbs and had a shaved head. The last clothing description that Louis could remember was Sean was wearing a blue shirt, blue pants and a blue hoodie. After speaking with Louis, I talked to Detective LaPeer who was also assisting Detective Uppisch and interviewed Christian and Jessie. Detective LaPeer advised me of what Christian and Jessie stated, which was inconsistent with Louis' statements. See Detective LaPeer's interview narrative for exact details of the interviews. Detective LaPeer stated that Jessie had advised that Louis had let Sean borrow his Chevrolet Malibu and had let Sean borrow his cell phone.

I then spoke with Louis one more time outside his apartment. I advised Louis his statement was slightly different from Jessie's statement. I asked Louis why his statement would be different from Jessie's and he advised he did not know why. I asked Louis if he ever let Sean borrow his vehicle and cell phone and Louis stated no. Louis stated that he did let Sean use his phone when he first met Sean and Sean used it to call unemployment. I advised Louis that he first advised me that he met Sean on Sunday night at 2300 hrs, so the unemployment office would be closed and he could not give a reason for letting Sean use his phone to call unemployment on a day that it was closed.

I asked Louis if he met Sean or Benny anywhere else prior to coming to his apartment on 10-25-2020 and he advised no. I asked Louis if he went anywhere during the past three days, and he advised that he had went to a PT's Bar on Saturday night and remembers talking to a female that night. I asked if Benny or Sean were at the bar and he advised no. The interview was then ended with Louis and Detective LaPeer and I left the apartment.

1	Date:	Officer:	Subject:
	12/08/2020	TROTTER, BRANDONN	Digital Investigation

On 10/28/2020 I, Detective B. Trotter #1533 was contacted by Detective K. Lippisch #1710, regarding a request that I perform a digital analysis and examination for the following listed cell phone. I was provided the cellular phone at approximately 1730 hours. I was additionally provided with a search warrant signed and approved by the Honorable Judge David S. Gibson of the Henderson Justice Court, providing authority for a search of the device.

Device:
(1) Black LG Cellular Phone - Model: LM-Q710MS - Serial Number: 903CYGW293903 - IMEI: 352439102939034

The cellular device, and later it's SIM card, were connected to a Cellebrite Universal Forensic Extraction Device (UFED) for PC utilizing forensically accepted techniques, and the data was acquired from them.

The following phone number was reported by the devices:
(1) 17026650927

After acquiring the data, I subsequently booked the device into the Henderson Police Department Evidence Vault on 10/29/2020 at approximately 1859 hours.

A portable forensic reporting application was later generated for the device by a Cellebrite Physical Analyzer software program. A copy of the reporting application was subsequently provided to Detective Lippisch for review and further investigation.

A copy of the above-mentioned data will be maintained on a locked, isolated and air gapped, external Computer Crimes Evidence Storage System at the Henderson Police Department Main Station.

Documentation of the device examined will be later uploaded to the Henderson Police Department Digital Evidence Database.

PA 111

EXHIBIT TWELVE

AA002021

EXHIBIT THIRTEEN

AA002022

On 10/28/20, I Detective K. LaPeer #1446 assisted Det K. Lippisch #1710 with a robbery investigation. I was tasked with conducting interviews with witnesses or family members of the victim.

At 0853 hours, I conducted a recorded interview with Jessie Caracciolo (DOB 7/11/81) who is the victim's girlfriend. Jessie advised that she arrived at Louis's apartment at 1830 hours and was greeted at the door by Sean and Christian, and that Sean asked, "Why are You Here". Jessie stated that Louis looked at her and she could tell something was wrong, but that Sean asked Louis to go to his bedroom and they did.

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

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

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

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

Jessie claimed to have very little knowledge of Sean other than seeing him sleeping on Louis's couch a few days prior and this incident in question. I ended the interview at this point.

I then conducted a recorded interview with Christian Polanco (DOB 12/1/08) who is the son to Louis. Christian advised that Sean did not live at the apartment like Sean was claiming, but Christian advised that Sean has been at the apartment for the last three days, and furthermore that he and Louis met Sean approximately 10 days ago.

Christian advised that his father seemed anxious and nervous while Sean was at the house the night of the incident, but stated that it was normal practice that Louis and Sean would enter Louis's bedroom and talk and hang out in there.

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

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

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

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

Christian advised that Sean could borrow his dad's car that Jessie claimed was stolen. Christian advised that Sean would drive the car for a couple of days before he returned it. Christian then stated that Sean has access to Louis's cellular phone and his bank accounts as well. It became evident that Sean was more of a friend than a suspect who committed a robbery.

Jessie then stated that Sean had access to Louis's Navy Credit Union and USAA credit union accounts. Jessie advised that last night they called and put a stop to his accounts. Jessie stated that several charges were found on Louis's account on 10/25 and 10/26.

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

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

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

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

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

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

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

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

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

BLHUBT FOURTEEN

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

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

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

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

EXHIBIT FIFTEEN

Steven B. Wolfson

1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 NOREEN DEMONTE
6 Chief Deputy District Attorney
7 Nevada Bar #008213
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

CASE NO: C-20-352701-1

12 SEAN RODNEY ORTH,
13 #6111549

DEPT NO: VI

14 Defendant.

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

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

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

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

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1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

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

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

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

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

25 On December 18, 2020, Defendant was arraigned in District Court and pled not guilty.
26 On February 3, 2021, Defendant filed a Petition for Writ of Habeas Corpus. On February 19,
27 2020, the State filed the State's Return to Writ of Habeas Corpus.

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1 On March 16, 2021, Defendant requested the Public Defender be appointed as counsel
2 as he no longer wished to represent himself. On March 30, 2021, Defendant waived his right
3 to a speedy trial. Additionally, at that time the Court denied Defendant's pro per Writ and
4 defense counsel was given time to file a supplemental Petition for Writ of Habeas Corpus
5 ("Petition"). On April 20, 2021, Defendant filed a Supplemental Petition which was denied
6 on June 1, 2021.

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

8 Defendants filed a Motion to Dismiss on September 13, 2021, another Motion to
9 Dismiss, Petition for Writ of Habeas Corpus, and the Instant Motion to Suppress on September
10 The State's response to the instant Motion follows.

11 12 STATEMENT OF THE FACTS

13 On October 28, 2020, Henderson Police Officer Alex Nelson ("Officer Nelson")
14 responded to 981 Whitney Ranch Drive, in reference to a call about a subject in possession of
15 a firearm and a potential robbery that had occurred the night before. Preliminary Hearing
16 Transcript ("PHT") p. 39-40. When Officer Nelson arrived other officers inside the complex
17 advised that they had eyes on a vehicle which was failing to yield to them. PHT p. 42. Officer
18 Nelson could hear sirens activated in the background. Id. At that time, Officer Nelson
19 positioned his patrol vehicle in front of the exit and entrance gate of the complex, to block the
20 path of the vehicle. PHT p. 43. Eventually Officer Nelson saw a Chevy Malibu ("the car")
21 heading in his direction. Id. He observed the car make a left turn and accelerate at a high rate
22 towards his location. PHT p. 43. Following directly behind the car were two clearly
23 identifiable police vehicles with their red and blue light and sirens activated. PHT p. 43-44.
24 Officer Nelson had to move away from his patrol vehicle to the side of the gate so he would
25 not be injured. PHT p. 44. Defendant had accelerated after the turn and was picking up speed,
26 in such a way that made Officer Nelson concerned enough to get out of the way. PHT p. 60.
27 Defendant was driving in such a way that Officer Nelson had concerns that Defendant might
28 cause injury to property or someone in the area. Id. Eventually the car stopped, and Defendant

1 exited from the driver's door. PHT p. 45. The car continued to move forward until it hit the
2 gate, it appeared as it had not been placed in park. Id. The officers that were pursuing
3 Defendant exited their vehicles and issued commands for Defendant to stop. PHT p. 46.
4 Officer Nelson recognized the officers as Officer Hehn, Officer Brink, and Officer Duffy. PHT
5 p. 47. Officer Nelson saw Defendant place a brown duffle bag ("the bag") on top of a wall
6 that separated the apartment complex and the street and saw Defendant jump over that wall
7 with the bag. PHT p. 48. A foot pursuit was initiated, and Officer Nelson ran towards
8 Defendant. Id. Defendant continued to run as officers were issuing him commands to stop.
9 Id. Once Officer Nelson got close enough, he attempted to deploy his taser, which was
10 ineffective. Id. Officer Nelson lost footing and fell, as he got up saw that another officer had
11 Defendant on the ground. PHT 49.

12 Henderson Police Department Detective Karl Lippisch ("Detective Lippisch") arrived
13 on scene and contacted Defendant, who was sitting in the back of a patrol car. PHT p. 84-85.
14 Initially Defendant did not want his Miranda rights to be read to him, that way any statements
15 made by him would be inadmissible. PHT p. 85. After being told by Detective Lippisch that
16 he would not speak to Defendant without reading him his Miranda rights, Defendant agreed
17 to have his Miranda rights read to him. Id. However, Defendant did not want the interview
18 to be recorded. PHT p. 86. Defendant stated that initially he thought the patrol cars were in
19 the apartment complex for a different purpose. PHT p. 86-87. However, Defendant realized
20 they were attempting to stop him, but he refused to stop. PHT p. 87. Defendant admitted that
21 he attempted to evade and flee to try to get away. Id. Defendant stated that he believed he was
22 being set up for something in the bag. Id. Defendant claimed he did not know the contents of
23 the bag. PHT p. 87-88. Ultimately Detective Lippisch obtained a search warrant for the bag.
24 PHT p. 90. He took the bag from the scene to the police station and secured it. PHT p. 91.
25 Henderson Police Department Detective Kevin Lapper ("Detective Lapeer") executed the
26 search warrant on the bag. PHT p. 64. Inside the bag he located a .20-gauge Winchester
27 shotgun. PHT p. 66.

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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

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

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

8 "This does not mean 'truthful' in the sense that every fact recited in the warrant
9 affidavit is necessarily correct, for probable cause may be founded upon hearsay
10 and upon information received from informants, as well as upon information
11 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."

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

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

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

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

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

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

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

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

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

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

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

21 DATED this 1st day of October, 2021.

22 Respectfully submitted,

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

26 BY /s/ Noreen DeMonte
27 NOREEN DEMONTE
28 Chief Deputy District Attorney
Nevada Bar #008213

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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

EXHIBIT SIXTEEN

AA002036



Office of the Public Defender

309 S. 3rd Street • Las Vegas NV 89101

(702) 455-4685 • Fax (702) 455-5112

Darin F. Imlay, Public Defender

F. Virginia Eichacker, Assistant Public Defender • Jason Frierson, Assistant Public Defender

September 21, 2021

Sean Rodney Orth, #96723
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

RE: State of Nevada v. Sean Rodney Orth
Case No. C-20-352701-1

Dear Mr. Orth:

Enclosed herein please find a copy of the discovery materials we have received regarding your case. **DO NOT SHOW YOUR DISCOVERY TO ANYONE EXCEPT YOUR ATTORNEY.** Remember this is confidential material prepared strictly for you.

Your discovery includes the following things (though they may not be in that order when mailed to you) as they were labeled and provided to our office:

1. Booking Custody Record and Declaration of Arrest
2. Custody Records for Ex-Felon in Possession of a Firearm and Resisting Arrest
3. Declarations of Arrest for both charges
4. HDM pictures
5. Condratovich pictures
6. Suspect at HDC pictures
7. Vehicle pictures
8. ALM11 pictures
9. Lab processing pictures
10. Vehicle at scene pictures
11. CAD
12. CCDC Records through 11/30/20
13. L. Polanco & J. Caracciolo transcripts 10/28/20
14. CSA – jail
15. CSA – vehicle
16. Digital Extraction
17. JC Search Warrant
18. Evidence Impound Report – DNA
19. Evidence Impound Report – Vehicle
20. Gia Carlyn voluntary statement
21. Incident report – Lippisch
22. Incident report – Zell

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PA 538

23. J. Caracciolo transcripts
24. J. Caracciolo voluntary statement
25. Lab processing report
26. Latent prints report
27. L. Polanco Transcripts (1)
28. L. Polanco Transcripts (2)
29. L. Polanco Voluntary statement
30. NCIC guns
31. NCIC vehicle
32. Parole violation report
33. Request for Digital Extraction
34. Search Warrant Affidavit
35. Tow Receipt
36. Unknown report – car
37. Unknown report – stolen car

See also court minutes from district court as well as the witness notices already filed in this case by the District Attorney.

Sincerely,

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER



Kara M. Gaston
Deputy Public Defender

/kmg

Enclosure

FRUIT SEVENTEEN

1 TRAN

2 CASE NO. C352701-1

3

4 IN THE JUSTICE'S COURT OF HENDERSON TOWNSHIP

5 COUNTY OF CLARK, STATE OF NEVADA

6

7 STATE OF NEVADA,)

8 Plaintiff,)

9 vs.)

9) CASE NO. 20CRH001571

10 SEAN RODNEY ORTH,)

11 Defendant.)

12

13 REPORTER'S TRANSCRIPT

14 OF

15 CONTINUATION OF PRELIMINARY HEARING

16 BEFORE THE HONORABLE SAMUEL G. BATEMAN

17 JUSTICE OF THE PEACE

18

TUESDAY, NOVEMBER 17, 2020

19

20 APPEARANCES:

21

21 For the State: ERIKA MENDOZA
22 Chief Deputy District Attorney

23

23 For the Defendant: IN PROPER PERSON

24

24 Standby Counsel: KARA SIMMONS
25 Deputy Public Defender

25 Reported by: Lisa Brenske, CCR #186

HENDERSON, NEVADA, NOVEMBER 17, 2020

* * * * *

:51AM 5 THE COURT: Sean Orth, 20CRH1571.

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

8 MS. SIMMONS: Your Honor, apparently our
9 office was appointed as standby counsel. Mr. Orth did
:52AM 10 a Faretta motion and he was allowed to represent
11 himself. But I have been assisting him, and the
12 district attorney provided me with the motion that I
13 provided him this morning.

14 THE COURT: Okay.

:52AM 15 MS. MENDOZA: Your Honor, that's correct.
16 I also filed an amended criminal complaint adding stop
17 required on signal of a police officer which I provided
18 to Miss Simmons last week.

19 THE COURT: Okay. So I didn't realize
:52AM 20 this. So hang on one second.

21 Is it Mr. Orth?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Looks like you decided you
24 wanted to represent yourself; is that correct?

:52AM 25 THE DEFENDANT: Yes, your Honor.

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

3 THE DEFENDANT: Yes, sir.

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

8 THE DEFENDANT: Yes, sir.

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

11 MS. MENDOZA: Your Honor, I didn't learn
12 that I was going to need the continuance until after I
13 talked to Miss Simmons yesterday at which point I knew
14 she wasn't going to be able to get ahold of Mr. Orth
:53AM 15 again. So I just gave her the Hill motion this
16 morning.

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

21 THE DEFENDANT: I do.

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

24 MS. MENDOZA: Yes.

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

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

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

:53AM 5 MS. MENDOZA: Correct.

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

8 THE DEFENDANT: I do, sir.

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

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

17 MS. SIMMONS: I did.

18 THE COURT: You did talk to Miss Simmons?

19 THE DEFENDANT: Yes. And I'd like to

:54AM 20 respond.

21 THE COURT: Go ahead.

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

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

:54AM 1 Ms. Mendoza?

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

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

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

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

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

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

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

23 THE COURT: No, no. Go ahead.

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

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

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

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

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

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

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

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

16 THE COURT: Go ahead.

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

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

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

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

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

11 THE COURT: What's your other motion?

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

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

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

24 MS. MENDOZA: No, I can.

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

1 respond. Sounds like it'll take a little bit of time.

2 (Other matters heard.)

3 THE COURT: Back to Mr. Orth.

4 Ms. Mendoza, you have the case there?

5 MS. MENDOZA: Yes. Do you want it back?

6 THE COURT: Yes, I do actually want it
7 back.

8 Can you tell me what your response first
9 is to Mr. Orth's arguments? Let me see if I can't

10 narrow it a little bit. Looks to me from your motion
11 that you're alleging that both Detective Ozawa and
12 Detective Lapeer could probably testify to the
13 allegation that they located the firearm in relation to
14 the defendant; is that correct?

15 MS. MENDOZA: I need one or the other.

16 THE COURT: One or the other. So either
17 one of those two can testify. And so it looks to me
18 like what you've written here is that you first learned
19 from Lapeer on the 12th and so you probably didn't

20 file a motion at that time because you assumed
21 Detective Ozawa could also do it, you didn't need
22 Lapeer if Ozawa showed up. But now then on the 16th
23 you found out that Detective Ozawa was out of town.

24 You also wrote in here that he will be out
25 town and I think Mr. Orth was concerned about whether

:25AM 1 he was out of town today.

2 MS. MENDOZA: Well, when I talked to Mr.
3 Ozawa -- sorry, I'm looking at our conversation.

4 THE COURT: Yes. Did you email Mr. Ozawa
:26AM 5 or did you speak to him?

6 MS. MENDOZA: I emailed him the sub and
7 then when we were talking about whether or not he was
8 available today, I was texting him.

9 THE COURT: Okay.

:26AM 10 MS. MENDOZA: That was our conversation
11 yesterday. And he said I'm actually on vacation and
12 I'm leaving tomorrow morning. So he was talking about
13 this morning.

14 THE COURT: Leaving this morning?

:26AM 15 MS. MENDOZA: Correct. And then as to
16 sounds like your next question I asked when are you
17 coming back. Judge will ask if you're available, and
18 he said he'll be back on November 24th. So that's
19 less than 15 days from today.

:26AM 20 THE COURT: He informed you that he was
21 leaving this morning?

22 MS. MENDOZA: Correct.

23 THE COURT: So did I surmise correctly
24 from your motion as to how things went down?

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

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

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

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

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

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

:28AM 25 rule to get around the five days.

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

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

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

16 THE COURT: Go ahead.

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

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

:29AM 1 could not have made a motion for continuance if they
2 said they were not available. So she made -- she
3 subpoenaed them right on the fifth day. He said I
4 can't come. Minimally she could have filed a motion.
:29AM 5 She could have spoke to Officer Ozawa then and found
6 out if he was available and made her motion then. She
7 has not stated that she did any investigation on the
8 12th when she found out that Mr. Lapeer was not
9 available. So any showing of cause that she's doing
:30AM 10 now she could have done in a motion, but she didn't
11 even look into it. She didn't call Mr. Ozawa and say
12 sir, can you be available? So she has not shown cause
13 to make a motion on short notice. She could have made
14 this motion on time and she could have subpoenaed these
:30AM 15 officers long before the 12th.

16 MS. MENDOZA: Your Honor, in terms of when
17 I subpoenaed the officers, I would note that I received
18 this file on the 6th. And I reviewed it. And the
19 arrest report that's included in the file doesn't
:30AM 20 identify what officers searched the bag or even what
21 officers were involved in the evading. So --

22 THE COURT: Let me guess. It says
23 officers.

24 MS. MENDOZA: Correct.

:30AM 25 THE COURT: So here's the deal. I don't

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

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

21 When's our next 15-day setting?

22 THE CLERK: November 30th.

23 THE COURT: You're still in CCDC?

24 He's in CCDC, Miss Simmons?

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

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

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

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

9 THE COURT: Are they all officers?

:32AM 10 MS. MENDOZA: Yes.

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

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

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

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

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

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

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

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

9 THE COURT: I'm assuming there's some
:33AM 10 Blockburger issues there that I'd have to take a look
11 at, but I need to see something.

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

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

19 THE COURT: I understand.

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

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

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

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

7 THE COURT: Well, I would request --

8 MS. MENDOZA: I will do my best.

9 THE COURT: -- that you contact an
:34AM 10 individual by the name of Marc Schifalacqua --

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

12 THE COURT: -- and see if you can get us
13 the information we need on that, because it's arguably
14 a constitutional issue that we're going to have to end

:34AM 15 up taking care of one way or the other. I'm assuming,
16 Mr. Orth, that you would agree -- I mean, you objected
17 to the continuance. I'm going to grant the
18 continuance. I want you to acquiesce to us setting it
19 on the 3rd so we can get that information regarding the
:35AM 20 potential for a double jeopardy, issue, all right?

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

24 THE COURT: No.

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

:35AM 1 fine.

2 THE COURT: You're still invoked. Just
3 for purposes of the calendar I will set it on the 3rd.
4 We are going to take up the issue with regard to the --

:35AM 5 I'm assuming it would only relate to Count 2, Ms.
6 Mendoza, and if you could please communicate with
7 Mr. Schifalacqua and get that relevant information, I'd
8 appreciate it. We are going to reset the preliminary
9 hearing for December 3rd. I'll see you then, Mr.

:35AM 10 Orth.

11 THE DEFENDANT: Thank you.

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

14 MS. MENDOZA: Thank you.

:35AM 15 THE CLERK: December 3rd, 9:30.

16

17 (The proceedings concluded.)

18

19 * * * * *

:35AM 20

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

23

24 /S/Lisa Brenske

:35AM 25 LISA BRENSKE, CCR No. 186

Heather S. Smith

CLERK OF THE COURT

JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

SEAN RODNEY ORTH
#6111549; #96723

Defendant.

CASE NO. C-20-352701-1

DEPT. NO. X

JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

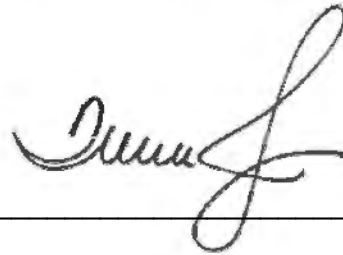
The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of STOP REQUIRED ON SIGNAL OF POLICE OFFICER (Category B Felony) in violation of NRS 484B.550.3b; thereafter, on the 1st day of August, 2022, Pro Se Defendant was present in court for sentencing with standby counsel, MARCUS KENT KOZAL, Esq., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in addition to the \$25.00 Administrative Assessment Fee plus \$3.00 DNA Collection Fee, the Defendant is sentenced as follows: a MAXIMUM of THIRTY (30) MONTHS with a

1 MINIMUM parole eligibility of TWELVE (12) MONTHS in the Nevada Department of
2 Corrections (NDC); CONCURRENT to CR051459; with ZERO (0) DAYS time served
3 credits. As the \$150.00 DNA Analysis Fee and Genetic Testing has been previously
4 imposed, the Fee and Testing in the current case are WAIVED.
5
6
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8 Dated this 8th day of August, 2022

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A handwritten signature in black ink, appearing to read 'Tierra Jones', is written over a horizontal line.

DFB 19B 618F 5960
Tierra Jones
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 State of Nevada

CASE NO: C-20-352701-1

7 vs

DEPT. NO. Department 10

8 Sean Orth
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 8/8/2022

15 Public Defender

pdclerk@clarkcountynv.gov

16 DA Motions

Motions@clarkcountyda.com

17 Dept Law Clerk

dept17lc@clarkcountycourts.us

18 Dept10 Law Clerk

dept10lc@clarkcountycourts.us

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AA002060

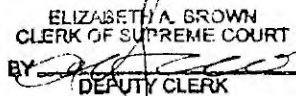
IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN RODNEY ORTH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85229

FILED

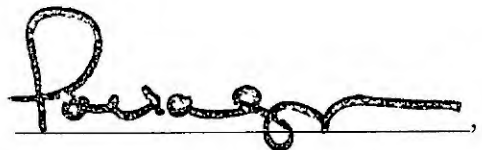
SEP 02 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER OF LIMITED REMAND
FOR DESIGNATION OF COUNSEL*

This is a pro se appeal from a judgment of conviction. This court remands this appeal to the district court for the limited purpose of securing counsel for appellant. *See Evitts v. Lucey*, 469 U.S. 387 (1985). If appellant is indigent, the district court shall have 28 days from the date of this order to appoint counsel for appellant. Otherwise, within 28 days from the date of this order, the district court shall order that appellant must retain counsel and that retained counsel must enter an appearance in the district court on appellant's behalf within 28 days from the date of the district court's order. Within 7 days from the appointment or appearance of counsel, the district court clerk shall transmit to the clerk of this court (1) a copy of the district court's written or minute order appointing appellate counsel; or (2) a copy of the notice of appearance filed by retained counsel.

It is so ORDERED.

 C.J.

cc: Hon. Tierra Danielle Jones, District Judge
Sean Rodney Orth
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN RODNEY ORTH,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 85229

FILED

OCT 04 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER SETTING BRIEFING SCHEDULE

This is an appeal from a judgment of conviction. Pursuant to a limited remand, the district court has appointed attorney C. Benjamin Scroggins as counsel for appellant. Accordingly, the clerk of this court shall add Mr. Scroggins as counsel of record for appellant in this appeal.

This court sets the briefing schedule as follows. Appellant shall have 21 days from the date of this order to file and serve a transcript request form or certificate that no transcripts will be requested, *see* NRAP 9, and a docketing statement, NRAP 14. Appellant shall have 120 days from the date of this order to file and serve the opening brief and appendix. Thereafter, briefing shall proceed as provided in NRAP 31(a)(1).

It is so ORDERED.

[Signature] C.J.

cc: The Law Firm of C. Benjamin Scroggins, Esq.
Sean Rodney Orth
Attorney General/Carson City
Clark County District Attorney

1 SEAN RODNEY ORTH #96723
2 POST OFFICE BOX 650
3 INDIAN SPRINGS, NEVADA 89070
4 PRO SE

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MAY 02 2023
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

A-23-869964-W
Dept. 10

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10 SEAN RODNEY ORTH,
11 PETITIONER,

CASE NO. _____

12 VS.

13 BRIAN WILLIAMS, WARDEN,
14 HIGH DESERT STATE PRISON,
15 NEVADA,

1ST AMENDED PETITION FOR
A WRIT OF HABEAS CORPUS
(POST-CONVICTION).

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19 SEAN RODNEY ORTH, PETITIONER HEREIN, IS UNLAWFULLY IMPRISONED
20 BY BRIAN WILLIAMS, WARDEN AT HIGH DESERT STATE PRISON IN
21 INDIAN SPRINGS, NEVADA, FOR WHICH PETITIONER SEEKS THE RELIEF
22 SOUGHT BELOW IN THIS PETITION FOR A WRIT OF HABEAS CORPUS (POST-
23 CONVICTION)

24 THIS PETITION IS SUPPORTED BY ALL PAPERS, PLEADINGS AND DOCUMENTS
25 IN THE RECORD OF THIS CASE, THE POINTS AND AUTHORITIES BELOW AS
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A. GROUNDS FOR RELIEF:

GROUNDS ONE: PETITIONER IS UNLAWFULLY IMPRISONED IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, NEV. CONST. ART. 1 § 8 AND NRS. 213 ET SEQ.¹

PETITIONER WAS CONVICTED AND SENTENCED AS A HABITUAL CRIMINAL FOR CONVICTIONS OF ROBBERY, CONSPIRACY, EVADE, TRAFFICKING IN CONTROLLED SUBSTANCE AND EX-FELONY IN POSSESSION OF FIREARM IN STATE OF NEVADA V. SEAN ROBBIE ORTH, CASE NO. CROS-1459/CROB-2177. PETITIONER WAS SENTENCED TO CONCURRENT TERMS OF TEN YEARS TO LIFE IN PRISON IN 2007.

IN NOVEMBER 2017 PETITIONER WAS PAROLED BY THE NEVADA BOARD OF PAROLE COMMISSIONERS.

PETITIONER WAS SUCCESSFULLY ON PAROLE NEARLY TWO YEARS WHEN ON OCTOBER 28, 2020 MR. LOUIS POLANCO CONTACTED CITY OF HENDERSON POLICE DEPARTMENT ("HPD" HEREIN) CLAIMING PETITIONER ROBBED HIM AT GUNPOINT THE PREVIOUS DAY. ABOUT 7 A.M. PETITIONER WAS STOPPED IN THE APARTMENT COMPLEX MR. POLANCO LIVED AND HAD RENTED APARTMENT SPACE TO PETITIONER. UPON BEING STOPPED HPD DETECTIVES ARRIVED ON SCENE, INTERVIEWED MR. POLANCO, HIS SON AND HIS GIRLFRIEND JESSIE CANALCICLO. HPD DETECTIVE KEVIN LAPERR WROTE A REPORT MEMORIALIZING DETECTIVES BELIEF THE ROBBERY ALLEGATIONS WERE FABRICATED STATING "IT BECAME EVIDENT SEAN WAS MORE OF A FRIEND THAN A SUSPECT WHO COMMITTED ROBBERY."²

1. PETITIONER SUBMITS AN APPENDIX OF EXHIBITS REFERRED TO HEREIN,
2. EXHIBIT 1 (REPORT BY HPD DETECTIVE KEVIN LAPERR)

PETITIONER WAS TAKEN TO THE CITY OF HENDERSON JAIL AID ON A CHARGE OF RESIST PUBLIC OFFICER, A MISDEMEANOR UNDER NRS 199.280(3).

ON OCTOBER 24, 2020 PETITIONER APPEARED IN MUNICIPAL COURT, HENDERSON TOWNSHIP IN THE CITY OF HENDERSON V. SEAN RODNEY ORTH, CASE NO. 20CR007366. PETITIONER WAS SERVED A DECLARATION OF ARREST ACCUSING PETITIONER OF COMMITTING RESIST PUBLIC OFFICER BY PETITIONER FAILING TO YIELD TO MARKED PATROL UNITS WITH LIGHTS AND SIREN ACTIVATED, DRIVING DANGEROUSLY BY ACCELERATING TOWARDS THE EXIT GATE BLOCKED BY A PATROL UNIT AND JUMPING OUT OF THE VEHICLE LEAVING IT TO CRASH. PETITIONER DISAGREED WITH POLICE'S ACCUSATIONS BUT IN A CONSIDERED PLEA AGREEMENT BELIEVED BY PETITIONER TO END THE SITUATION PETITIONER PLEADED NO CONTEST AND WAS SENTENCED TO THIRTY DAYS IN JAIL.

ON NOVEMBER 5, 2020 THE STATE CHARGED PETITIONER WITH PREPARING PERSON CARRYING OR POSSESSING A FIREARM, A FELONY UNDER NRS 202.360 CLAIMING BY DECLARATION OF ARREST PETITIONER DID ROB MR. POLANO OF A SAND COLORED DUFFLE BAG CONTAINING A 20 GAUGE SHOTGUN THAT WAS IN PETITIONER'S POSSESSION WHEN STOPPED. PETITIONER APPEARED IN JUSTICE COURT, HENDERSON TOWNSHIP THAT DAY IN STATE OF MICHIGAN V. SEAN RODNEY ORTH, CASE NO.

ON NOVEMBER 16, 2020 THE PROSECUTOR AMENDED THE COMPLAINT IN JUSTICE COURT TO ADD THE CHARGE STOP RECALLED AT SIGNAL OF POLICE, A FELONY UNDER NRS 484B.550.

PETITIONER WAS RETURNED TO HIGH DESERT STATE PRISON ON OR ABOUT NOVEMBER 9, 2020 FOR THE VIOLATION CASE. PETITIONER HAS BEEN IN PRISON SINCE.

ON JANUARY 8, 2021 THE NEVADA DIVISION OF PAROLE AND PROBATION SERVED ON PETITIONER A NOTICE OF CHARGES STATING PETITIONER WAS ONLY CHARGED BY THE DIVISION FOR NOT COMPLETING COUNSELING AND THE NOTICE SPECIFIED PETITIONER WAS NOT BEING HELD ON A PAROLE HOLD FOR PAROLE VIOLATIONS.³ PETITIONER WAS NOT RELEASED.

THE 1st-DEGREE OWNING / POSSESSING A FIREARM AND STOP REQUIRED CHARGES WERE BOUND OVER TO ~~THE DISTRICT COURT~~ THIS HONORABLE COURT ON DECEMBER 9, 2020 AND PROCEEDED IN STATE OF NEVADA V. JEAN ROONEY ORTH, CASE NO. C-20-352701-1.

ON NOVEMBER 4, 2021 PETITIONER AGREED IN A CONDITIONAL PLEA AGREEMENT TO PLEAD GUILTY TO THE STOP REQUIRED VIOLATION, THE STATE WOULD DISMISS THE FIREARM CHARGE, PETITIONER WOULD BE SENTENCED TO TWELVE TO THIRTY MONTHS IN PRISON.

ON MARCH 1, 2022 PETITIONER WAS MADE TO APPEAR BEFORE THE NEVADA BOARD OF PAROLE COMMISSIONERS IN A REVOCATION HEARING. THE BOARD GAVE PETITIONER VERBAL NOTICE THE BOARD WAS CONSIDERING A NON-TECHNICAL VIOLATION OF PAROLE FOR THE PENDING STOP REQUIRED CHARGE.

3. EXHIBIT 2 (NOTICE OF CHARGES).

PETITIONER OBJECTED TO PROCEEDING ON ANYTHING OTHER THAN THE TECHNICAL VIOLATIONS ARGUING PETITIONER WAS NOT ADJUDGED GUILTY AND SENTENCED FOR STOP REQUIRED AND PETITIONER WAS CHALLENGING THE CHARGE AS VIOLATIVE OF DOUBLE JEOPARDY AND LISTED OTHER VIOLATIONS AND MISCONDUCT TO THE NEVADA SUPREME COURT (NO. 84180). THE BOARD PROCEEDED AND FOUND A NON-TECHNICAL VIOLATION OF PAROLE FOR THE PENDING STOP REQUIRED CHARGE AND SANCTIONED PETITIONER TO A TWO YEAR REVOCATION PERIOD BEGINNING THAT DAY ENDING MARCH 1, 2024. THE BOARD DID NOT CREDIT THE SIXTEEN MONTHS OF IMPRISONMENT BETWEEN ~~REVOCATION~~ OCTOBER 28, 2020 AND MARCH 1, 2022.

PETITIONER WAS SENTENCED TO TWELVE TO THIRTY MONTHS IN PRISON FOR THE STOP REQUIRED VIOLATION ON AUGUST 1, 2022.

PETITIONER HAS APPEALED TO THE NEVADA BOARD OF PAROLE COMMISSIONERS AND RELIEF WAS DENIED.⁴

PETITIONER'S REVOCATION OF PAROLE LIBERTIES AND IMPRISONMENT IS UNLAWFUL AS FOLLOWS.

I. THE NEVADA BOARD OF PAROLE COMMISSIONERS' DEFERRING TAKING ACTION FOR SIXTEEN MONTHS, FROM NOVEMBER 1, 2020 TO MARCH 1, 2022 VIOLATES NRS 213.1517(3).

BECAUSE PETITIONER WAS RETURNED TO THE CUSTODY OF NEVADA

4. EXHIBIT 3 (Decision Denying Appeal to NEVADA BOARD OF PAROLE COMMISSIONERS).

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DEPARTMENT OF CORRECTIONS (NDOC) ON OR ABOUT NOVEMBER 9, 2020 THE BOARD OF PAROLE COMMISSIONERS WAS REQUIRED TO CONDUCT REVOCATION PROCEEDINGS WITHIN SIXTY DAYS UNDER NRS 213.151(3)

NRS 213.151 PROVIDES:

3. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION 4, IF A DETERMINATION HAS BEEN MADE THAT PROBABLE CAUSE EXISTS FOR THE CONTINUED DETENTION OF A PAROLED PRISONER, THE BOARD SHALL CONSIDER THE PRISONER'S CASE WITHIN 60 DAYS AFTER HIS RETURN TO THE CUSTODY OF THE NEVADA DEPARTMENT OF CORRECTIONS OR HIS OR HER PLACEMENT IN RESIDENTIAL CONFINEMENT.

1d.

PETITIONER'S SITUATION MIRRORS THE EVENTS IN STATE V. SMITH, 506 P.3d 325 (NEV. 2022) UPHOLDING GRANTING OF PETITIONER'S POST-CONVICTION PETITION FOR A WRIT OF HABEAS CORPUS FINDING BOARD EXCEEDED ITS AUTHORITY BY DEFERRING THE REVOCATION HEARING BEYOND 60 DAYS AFTER INMATE'S RETURN TO THE CUSTODY OF NDOC).

IN SMITH A RETAKE WARRANT WAS ISSUED BY THE BOARD APRIL 2018, SMITH WAS RETURNED TO PRISON IMMEDIATELY AND INCLUDING SIXTY DAYS THE BOARD HAD TO HOLD A REVOCATION HEARING, TO JUNE 2018, THE SMITH COURT UPHOLD THE DISTRICT COURT'S ORDER GRANTING THE PETITION AND ORDERED SMITH'S REVOCATION DATE TO REFLECT THE JUNE 2018 DATE AND THE DATE SMITH BEGAN SERVING HIS NEW SENTENCE TO REFLECT THE JUNE 2018 DATE. 506 P.3d AT 329. MINIMALLY, THE SAME IS REQUIRED HERE.

PETITIONER WAS RETURNED TO PRISON ON OR ABOUT NOVEMBER 9,

2020, UNDER THE SIXTY DAY LIMIT TO HOLD A REVOCATION HEARING UNDER NRS 213.1517(3), CALCULATED FROM TIME OF ARRIVAL IN NDOC CUSTODY, THE CRITICAL DATE TO HOLD A REVOCATION HEARING WAS JANUARY 8, 2021 WHICH IS SIXTY DAYS FROM PENITENT'S NOVEMBER 9, 2020 RETURN TO NDOC CUSTODY.

THE SMITH THE NEVADA SUPREME COURT UPHOLD THE DISTRICT COURT'S ORDER GRANTING THE WRIT FOR AN IDENTICAL SITUATION IN THIS CASE AND THE DISTRICT COURT'S DECISION THAT SMITH'S ONE YEAR REVOCATION OF PAROLE FOR HIS NEW BURGLARY CONVICTION AND THE START DATE DATE OF HIS SENTENCE ON THE BURGLARY CONVICTION TO REFLECT JUNE 12, 2018 WHICH WAS SIXTY DAYS FROM SMITH'S RETURN TO NDOC CUSTODY:

"HERE THE PAROLE BOARD ISSUED A REVOKED WARRANT IN APRIL 2018, AT WHICH POINT SMITH WAS RETURNED TO CUSTODY OF NDOC AND RETURNED TO INCARCERATION AT THE PRISON. HIS PAROLE REVOCATION HEARING WAS CONTINUED UNTIL AFTER ADJUDICATION OF HIS NEW CRIMINAL CHARGES IN JUNE 2019 - WITH IN EXCESS OF SIXTY DAYS ALLOWED BY NRS 213.1517. WE THEREFORE CONCLUDE THAT THE PAROLE BOARD EXCEEDED ITS AUTHORITY UNDER STATUTE AND THE DISTRICT COURT PROPERLY ORDERED NDOC TO REFLECT A PAROLE REVOCATION DATE OF JUNE 12, 2018 AND TO ENSURE THAT ANY CREDITS, EXPIRATION OF HIS PAROLE REVOCATION CASE AND START DATE OF THE SENTENCE FOR HIS NEW BURGLARY CASE REFLECT JUNE 12, 2018, PAROLE REVOCATION DATE."

SMITH, 506 P.3d AT 328.

Applying SMITH. PENITENT'S PAROLE REVOCATION CASE SHOULD SHOW
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AN EXPIRATION DATE OF JANUARY 8, 2021 AS SHOULD PETITIONER'S START DATE FOR THE TWELVE TO THIRTY MONTH SENTENCE FOR THE STOP REQUIRED CONVICTION IMPOSED BY THIS COURT AUGUST 1, 2022 IN STATE V. ORTH, C-20-352701-1. PETITIONER WOULD HAVE ALREADY EXPIRED THE NEW PRISON SENTENCE AND IS UNLAWFULLY IMPRISONED AT HOSP CURRENTLY SERVING THE TWO YEAR SANCTION IMPOSED BY THE BOARD MARCH 1, 2022 TO END MARCH 1, 2024 FOR THE STOP REQUIRED CHANGE. Id.

THE BOARD DEFERRED ACTION SEVENTEEN MONTHS ILLEGALLY AND GAVE NO CREDIT TIME SERVED TOWARDS THE SANCTION.

PETITIONER MOVES THIS HONORABLE COURT TO INTERVIEW. THE BOARD OF COMMISSIONERS DENIED PETITIONER'S APPEALS OF THE SANCTION AND ILLEGALITIES REFUSING TO ACKNOWLEDGE AND APPLY Smith's HOLDING.

PETITIONER RESPECTFULLY MOVES FOR AN EMERGENCY STAY, TO ALLOW AN EMERGENCY RESPONSE TO AFFORD OPPORTUNITY FOR RESPONSE TO CONFIRM OR DENY THE FACTS AND CLAIMS, AS PETITIONER IS SUFFERING IRREPARABLE HARM BEING UNLAWFULLY IMPRISONED.

6. EXHIBIT 3 (DECISION OF NEVADA BOARD OF PAROLE COMMISSIONERS DENYING APPEAL OF REVOCATION SANCTION #1); EXHIBIT 4 (DECISION OF NEVADA BOARD OF PAROLE COMMISSIONERS DENYING APPEAL OF REVOCATION SANCTION #2). (8)

II. PETITIONER'S PAROLE REVOCATION SANCTION OF TWO YEARS

FOR THE PENDING STOP REQUIRED CHARGE VIOLATES DUE PROCESS

MINIMAL DUE PROCESS REQUIREMENTS MUST BE PROVIDED PETITIONER TO REVOKE PETITIONER'S LIBERTY INTERESTS IN STAYING FREE ON PAROLE WHICH INCLUDE BEING GIVEN SPECIFIC NOTICE OF WHAT VIOLATION IS ALLEGED AND THE RIGHT TO PRESENT WITNESSES AND EVIDENCE, TO CONFRONT THE STATE'S WITNESSES AND TO HAVE PROBABLE CAUSE A VIOLATION HAS OCCURRED BY AN INDEPENDENT INQUIRY OFFICER PRIOR TO A REVOCATION HEARING AND TO BE AFFORDED THE SAME DUE PROCESS IN A SUBSEQUENT REVOCATION HEARING. MORRISSEY V. BREWER, 408 U.S. 471, 489 (1972); NRS 213.1513(1)(2) THROUGH NRS 213.1519.

PETITIONER WAS SERVED THE NOVEMBER 4, 2020 VIOLATION REPORT AND NOTICE OF PRELIMINARY INQUIRY RIGHTS.¹³ THIS VIOLATION REPORT COULD ONLY ACCUSE A "LAWS AND CONDUCT" VIOLATION FOR THE PREVIOUS MISDEMEANOR CONVICTION FOR RESIST PUBLIC OFFICER ON OCTOBER 29, 2020.¹⁴ AS IT WAS THE ONLY CHARGE THAT EXISTED AT THE TIME OF THE NOVEMBER 4, 2020 VIOLATION REPORT. PETITIONER WAS NOT EVEN CHARGED WITH THE FELONY STOP REQUIRED CHARGE UNTIL NOVEMBER

13. EX. 6.

14. EX. 2.

16, 2020 WHEN THE PROSECUTOR AMENDED THE COMPLAINT IN JUSTICE COURT TO CHARGE IT¹⁵ THEN ON JANUARY 8, 2021 THE DIVISION OF PAROLE AND PROBATION GAVE "NOTICE OF CHARGES" IN THIS "REVOCATION CASE" REVOKING THE CHARGES TO TECHNICAL VIOLATIONS FOR NOT COMPLETING COUNSELING.¹⁶ AT NO TIME AFTER, OR BEFORE, STOP REQUIRED WAS CHARGED ON NOVEMBER 16, 2020 AND BEFORE THE MARCH 1, 2022 REVOCATION HEARING WAS STOP REQUIRED NOTICED AS A VIOLATION OF PAROLE. VERBAL NOTICE THE BOARD WOULD BE CONSIDERING PETITIONER'S GUILTY PLEA TO STOP REQUIRED ENTERED NOVEMBER 4, 2021¹⁷ WAS GIVEN IN THE MARCH 1, 2022 REVOCATION HEARING AND OVER PETITIONER'S OBJECTION THE BOARD SANCTIONED PETITIONER TO A TWO YEAR REVOCATION OF PAROLE LIBERTIES BEGINNING THAT DAY AND ENDING MARCH 1, 2024 FOR THE STOP REQUIRED GUILTY PLEA.¹⁸

THE TWO YEAR SANCTION FOR STOP REQUIRED OCCURRED IN REVOCATION PROCEEDINGS MARCH 1, 2022 WHICH WAS PRIOR TO CONVICTION AND SENTENCE FOR ~~PAR~~ STOP REQUIRED IMPOSED AUGUST 1, 2022.¹⁹ BECAUSE PROCEEDINGS BY THE BOARD WERE PRIOR TO CONVICTION THE PRESUMPTION PROBABLE CAUSE EXISTED FOR STOP REQUIRED AND ALL DUE PROCESS RIGHTS IN A PRELIMINARY FINDING HEARING WERE REQUIRED TO BE AFFORDED PETITIONER. A "CONVICTION" OF A NEW CRIME CONSTITUTES MOODY V. DAGGETT, 429 U.S. 78, 86, N.7 (1976); NRS 213.151(4)(SAME).

15. EX. 8.

16. EX. 2.

17. REVOCATION PROCEEDINGS ARE STORED ON DISC WHICH PETITIONER CANNOT POSSESS.

18. EX. 3.

THE PROCEDURE AND OUR PROCESS REQUIREMENTS TO REVOKE PAROLE LIBERTIES REQUIRES THE STOP REQUIRED VIOLATION TO BE SPECIFICALLY NOTICED AS A VIOLATION AND IT WAS NOT. MORRISSEY, 408 U.S. AT 489 (PAROLEE MUST BE GIVEN NOTICE OF VIOLATION BEFORE A REVOCATION HEARING); NRS 213.1513(1)(C) (THE BOARD OR DETAINING AUTHORITY SHALL GIVE THE ARRESTED PAROLEE ADVANCE NOTICE OF (C) WHAT VIOLATIONS OF THE CONDITIONS OF HIS OR HER PAROLE HAVE BEEN ALLEGED"). Please consider CARSON V. TAYLOR, 540 F.2d 1156, 1160 (2nd CIR. 1976) (NOTICE INADEQUATE WHEN EXAMINER INQUIRED INTO ALLEGED UNAUTHORIZED TRAVEL BECAUSE UNAUTHORIZED TRAVEL WAS NOT NOTICED AS A VIOLATION); U.S. V. HAUSER, 155 F.3d 1090, 1093 (9th CIR. 1998) (NOTICE INADEQUATE BECAUSE IT ONLY ALLUDED TO "ANOTHER FEDERAL, STATE OR LOCAL CRIME" THAT HAD BEEN COMMITTED WITHOUT STATING SPECIFIC STATUTE UNDER WHICH GOVERNMENT WAS CHARGING PAROLEE). THE TWO YEAR PAROLE REVOCATION SANCTION FOR STOP REQUIRED BEING CHARGED WAS ILLEGALLY IMPOSED.

ADDITIONALLY, PETITIONER SUBMITS THAT THE BOARD ONLY OBTAINS AUTHORITY TO PROCEED ON ANY ONE VIOLATION ONLY AFTER A PRELIMINARY HEARING IS CONDUCTED AND AN INDEPENDENT DECISION AS TO WHETHER THERE IS PROBABLE CAUSE FOR A VIOLATION TO PROCEED TO A REVOCATION HEARING. MORRISSEY, 408 U.S. AT 487 (PROBABLE CAUSE A VIOLATION OCCURRED MUST BE DETERMINED BY AN OFFICER INDEPENDENT OF THE ACCUSATIONS WHO THEN SUBMITS THE VIOLATION TO THE BOARD FOR REVOCATION CONSIDERATION); NRS 213.1513(2) (IF THE INQUIRING OFFICER DETERMINES THERE IS PROBABLE CAUSE

HIS OR HER DETERMINATION IS SUFFICIENT TO WARRANT THE PAROLEE'S CONTINUED DETENTION AND RETURN TO PRISON PENDING THE BOARD'S HEARING); NRS 213.1515 (1) (b) ("UPON COMPLETION OF THE INQUIRY THE INQUIRING OFFICER SHALL: (b) DETERMINE WHETHER THERE IS PROBABLE CAUSE TO HOLD THE PAROLEE FOR A BOARD HEARING ON PAROLE REVOCATION").

PETITIONER WAS DENIED RIGHT TO PRESENT WITNESSES AND EVIDENCE, TO CONFRONT THE STATES WITNESSES AND EVIDENCE AND HAVE PROBABLE CAUSE A VIOLATION OF PAROLE OCCURED FOR THE STOP REQUIRED CHARGE AS REQUIRED BY NRS 213.1513 (1)(2) AND THUS THE BOARD'S REVOCATION OF PAROLE FOR TWO YEARS TO MARCH 1, 2024 SANCTIONED IN THE MARCH 1, 2022 REVOCATION HEARING FOR STOP REQUIRED WAS ILLEGALLY IMPOSED.

IN REGARDS TO ANY TECHNICAL VIOLATIONS FOR NOT GOING TO COUNSELING NOTICED IN THE JANUARY 8, 2021 NOTICE OF CHARGES²⁰ OR ANY OTHER TECHNICAL VIOLATION PETITIONER COULD NOT BE SANCTIONED ~~TO~~ A REVOCATION OF PAROLE BECAUSE PETITIONER HAD NOT BEEN ~~MAINTAINED~~ SUBMITTED TO THE BOARD PREVIOUSLY FOR A VIOLATION AND GRADUATED SANCTIONING PROCESS HAD NOT BEEN EXHAUSTED FIRST. NRS 213.15101 (6) ("THE DIVISION MAY NOT SEEK REVOCATION OF PAROLE FOR A TECHNICAL VIOLATION OF THE CONDITIONS OF PAROLE UNTIL ALL GRADUATED SANCTIONS ARE EXHAUSTED.")

20. NRS 213.1519 (5)(b)(1) - (5) ~~DEFINING~~ "TECHNICAL VIOLATION" AS ANY VIOLATION OF PAROLE NOT CONSTITUTING ABSCONDING OR COMMISSION OF A NEW FELONY OR GROSS MISDEMEANOR, DOMESTIC BATTERY, HARASSMENT, CRIMES OF VIOLENCE DEFINED IN NRS 200.408 AND CRIMES UNDER NRS 484C.110, NRS 484C.120)

It is critical to point out that not going to counseling was alleged as a technical violation in the November 4, 2020 violation report with multiple technical violations claimed to have occurred during two years on parole (not previously accused or adjudicated at the time).²² Then on January 8, 2021 the Division of Parole gave a new "notice of charges" that gave notice that only the counseling violations would be proceeding to a revocation hearing.²³ All other charges were dismissed in the Division's new notice of charges in this "revocation case".²³

The January 8, 2021 notice also gave notice petitioner is not held by the Division of Parole and probation on the violations alleged.²⁴ After probable cause a violation has occurred has been determined petitioner may only be held imprisoned, parole suspended, until the next meeting of the Board. NRS 213.1517 (1)(c) (where the inquiring officer has determined that there is probable cause for a hearing by the Board, the chief may, after consideration of the case and pending the next meeting of the Board: (c) suspend his or her parole and return the parolee to confinement"). The next meeting of the Board after the November 4, 2020 violation report and notice of preliminary inquiry hearing²² would be December 2020 or January 2021 and on January 8, 2021 notice was given

21. Ex. 2.

22. Ex. 6.

23. Ex. 2.

24. Id.

PETITIONER'S REVOCATION CASE CONSISTED OF TWO COUNSELING VIOLATIONS FOR WHICH THE DIVISION OF PAROLE AND PROBATION NO LONGER WAS HOLDING PETITIONER FOR ²⁵ THE JANUARY 8, 2021 NOTICE ²⁵ MAKES SENSE (PETITIONER IS NOT TO BE FURTHER HELD FOR PAROLE VIOLATIONS) GIVEN THE CHIEF'S AUTHORITY TO ONLY SUSPEND PETITIONER'S PAROLE LIBERTIES UNTIL THE NEXT MEETING OF THE BOARD NRS 213.1517(1)(c).

THE SANCTION OF TWO YEARS LOSS OF PAROLE FOR THE STOP REQUIRED CHARGE IN THE MARCH 1, 2022 REVOCATION HEARING WAS ILLEGALLY IMPOSED AND CAUSED PETITIONER'S UNLAWFUL REVOCATION OF PAROLE ~~LIBERTIES~~ AND TO BE UNLAWFULLY IMPRISONED.

III. PETITIONER WAS DENIED THE OPPORTUNITY TO PRESENT EVIDENCE AND WITNESSES TO PROVE A VIOLATION OF PAROLE FOR STOP REQUIRED AND TO PRESENT MITIGATING EVIDENCE TO PERSUADE A LESSER PUNISHMENT OR NO PUNISHMENT AT ALL BY BEING DENIED OUR PROCESS AS ASSERTED IN ARGUMENT II.

AT FIRST GLANCE THE APPEARANCE IS PETITIONER GOT HIMSELF IN SOME SERIOUS TROUBLE WHILE ON PAROLE THAT INCLUDED FELONY GUN AND EVADING CHARGES. HOWEVER, IF PETITIONER WAS SO MISFEAROUS PETITIONER WOULD HAVE NO GRIPE. HOWEVER, BOTH FELONY CHARGES ARE INITIATED ON PERJURIOUS TESTIMONY AND EXTREMELY DEFENDABLE

AS APPEARS BELOW. FIRST IT IS PARAMOUNT TO EXPLAIN THAT PETITIONER WAS TAKEN BACK TO NDOC CUSTODY AND KEPT IN LOCKDOWN CONDITIONS THE SEVENTEEN MONTHS THE BOARD CHOSE TO DEFER ACTION ILLEGALLY AND DENIED MEANTIME ACCESS TO ANY LAW LIBRARY²⁶, THE PROSECUTORS WITHHELD BODYCAM / DASHCAM VIDEO FROM THE DEFENSE THE ENTIRE TIME UP TO THE DAY OF SENTENCING FOR RESIST²⁷ AND THIS HONORABLE COURT MADE A COURT ORDER AT THE EX PARTE REQUEST OF THE PROSECUTOR THAT COUNSEL IN STANDING CAPACITY NOT SIT AT THE DEFENSE TABLE OR ASSIST OR ADVISE PETITIONER ON SEPTEMBER 7, 2021.²⁸ THIS WAS THE SITUATION AT CALENDAR CALL OCTOBER 2021. ANY OPPORTUNITY TO DEFEND IN A TRIAL WAS DELIBERATELY REFUSED PETITIONER WHICH IS A MATTER OF RECORD. ANY OBTAINED GUILTY PLEA TO STOP REQUIRED WAS THE RESULT OF THE HINDRANCES TO PETITIONER'S SELF REPRESENTATION.

SET ASIDE THE RIGHTS OF PETITIONER IN THE STATE PROSECUTION. HAD PETITIONER BEEN AFFORDED A PRELIMINARY INQUIRY HEARING OR GIVEN NOTICE STOP REQUIRED WAS A VIOLATION OF RIGHTS BEING CONSIDERED PETITIONER COULD HAVE EXERCISED HIS RIGHTS TO PRESENT WITNESSES AND EVIDENCE IN REVOCATION HEARING TO DEFEND THE VIOLATION ACCUSED OR TO PRESENT MITIGATING EVIDENCE TO PURSUANT A LESSER PUNISHMENT OR NO PUNISHMENT AT ALL FOR IMPOSED BY PRESENTING THE FOLLOWING.

26. PETITIONER MOTIONED THIS HONORABLE COURT FOR LAW LIBRARY ACCESS OR AN ALTERNATIVE SEPTEMBER 14, 2021 IN STATE V. ORTA, C-20-352701-1 AFTER THIS COURT ORDERED STANDING COUNSEL NOT ASSIST OR ADVISE PETITIONER OR SIT AT THE DEFENSE TABLE ON SEPTEMBER 7, 2021 (MINUTE ORDER). THE

FIRST, THE EX-FELON CUMING POSSESSING A FIREARM CHARGE IS INITIATED UPON DELIBERATELY PROVIDED PERJURIOUS TESTIMONY.

WHEN STOPPED BY HPD OCTOBER 28, 2020 IN MR. POLANCO'S APARTMENT COMPLEX HPD DETECTIVES KARL LIPPISCH, DENNIS OZAWA AND KEVIN LAPEER ARRIVED. DETECTIVE OZAWA WAS TASKED WITH INTERVIEWING MR. POLANCO WHICH HE WROTE A REPORT ABOUT.²⁹ DETECTIVE LAPEER WAS TASKED WITH INTERVIEWING MR. POLANCO'S GIRLFRIEND JESSIE CARRACCILO WHICH HE WROTE A REPORT ABOUT.³⁰ DETECTIVE LIPPISCH DID NOT INTERVIEW

COURT DENIED THE MOTION IN THE HEARING HELD OCTOBER 12, 2021 HOLDING THE COURT HAD NO AUTHORITY TO ORDER NDOC TO PROVIDE LAW LIBRARY ACCESS.

27. AT THE PRELIMINARY HEARING HELD DECEMBER 9, 2020 FOR STOP REQUIRED PETITIONER OBJECTED TO NOT RECEIVING BODYCAM VIDEO AND WENT TO ASK HPD NELSON IF HE WORE BODYCAM OR RECORDED VIDEO WHICH HPD NELSON TESTIFIED THAT HE DID. EX. 9 (PAC) AT 19, 55-56. IN THIS COURT PETITIONER MOVED TO COMPEL DISCLOSURE OF BODYCAM DASH CAM VIDEO SEPTEMBER 14 AND 21, 2021. THE STATE DID NOT DENY NON-DISCLOSURE IN OPPOSITIONS FILED OCTOBER 1, 2021 AND THE COURT DENIED THE MOTIONS IN THE HEARING HELD OCTOBER 12, 2021 (C-20-352701-1). DISCOVERY WAS DENIED THE DEFENSE UP TO THE GUILTY PLEA NOVEMBER 4, 2021 INCLUDING A GUILTY PLEA ON IVER OF CALIFORNIA CALL.

27. PLEASE SEE EX. 9 AT 19, 23-24; MOTION FOR ORDOX FILED SEPTEMBER 14, 2021.

28. EXHIBIT 12 (MINUTE ORDER, SEPTEMBER 2, 2021)

29. EX. 11.

30. EX. 1.

THE POLANCO'S AND MS. CARACCILO WHICH HE HAS TESTIFIED TO.³¹

AFTER INTERVIEWING WITNESSES DETECTIVE LAPEER REPORTED THE ROBBERY ALLEGATIONS BY MR. POLANCO WERE FABRICATED ON OCTOBER 28, 2020.³²

IN HIS INTERVIEW WITH DETECTIVE OLIVER OCTOBER 28, 2020 MR. POLANCO CLAIMED PETTIONER ROBBED HIM AT GUNPOINT IN THE BEDROOM OF HIS APARTMENT THE PREVIOUS DAY, PETTIONER MADE HIM ~~RELEASED~~ PUT FIREARMS AND A LAPTOP IN A "SAND COLORED DUFFLE BAG" AND MADE MR. POLANCO WALK THE DUFFLE BAG DOWN TO HIS WHITE MAHIZO AND MADE HIM PUT THE DUFFLE BAG IN THE TRUNK BEFORE STEALING THE MAHIZO.³³ HOWEVER, MS. CARACCILO, MR. POLANCO'S GIRLFRIEND, WAS PRESENT AT THE DINING ROOM TABLE WHEN PETTIONER DROVE TO MR. POLANCO IN HIS BEDROOM WHICH SHE TOLD DETECTIVE LAPEER.³⁴ MS. CARACCILO TOLD DETECTIVE LAPEER PETTIONER WAS NOT ARMED AND STATED SHE WITNESSED PETTIONER LEAVE THE APARTMENT ALONE WITH A GREEN DUFFLE BAG.³⁴ MR. POLANCO'S CLAIM HE PUT THE .20 GAUGE SHOTGUN AND LAPTOP IN A SAND COLORED DUFFLE BAG THAT PETTIONER MADE HIM PUT IN THE TRUNK DURING A ROBBERY AND I MADE HIM WALK DOWN TO THE CAR WITH ME WHEN I LEFT TO DO SO IS ABSOLUTELY IMPEACHED BY MS. CARACCILO'S EYEWITNESS ACCOUNT STATED TO DETECTIVE LAPEER.³⁴

31, EX. 9 (PHT) AT 101.

32, EX. 1 AT 1.

33, EX. 11 AT 1.

34, EX. 1 AT 1.

MR. POLANCO DID PUT A .20 GAUGE SHOTGUN IN THE SAND COLORED DUFFLE BAG WITH A LAPTOP AND PUT IT IN THE TRUNK OF THE MALIBU WHICH HE HIMSELF TOLD DETECTIVE OZAWA.³⁵ HOWEVER, MR. POLANCO DID SO AT ANOTHER TIME AND NOT DURING A ROBBERY OR UNDER DURESS AS HE CLAIMED.³⁵ WHICH MS. LANDELO'S ACCOUNT MAKES CLEAR.³⁶ THE FIREARM AND LAPTOP WERE STAGED IN PERROWER'S POSSESSION WHEN MR. POLANCO LOANED PERROWER THE MALIBU. THIS WAS AN ATTEMPT TO LOOSEN THE FAKE ROBBERY ALLEGATIONS. PERROWER ~~WAS STOPPED~~ WAS STOPPED IN THE MALIBU WITH POSSESSION OF THE SAND COLORED BAG THAT CONCEALED THE .20 GAUGE FIREARM AND LAPTOP LATER FOUND IN THE SEARCH OF THOSE ITEMS.³⁷ PERROWER'S DEFENSE TO THE FIREARM POSSESSION WAS MERE POSSESSION, MR. POLANCO PICTURED ALL OF THIS. HE KNEW I WOULD BE STOPPED IN POSSESSION. PERROWER HAD THE MALIBU AND SAND COLORED SEALED UP DUFFLE BAG OVERNIGHT, WAS RETURNING THE MALIBU TO MR. POLANCO THAT CONTAINED SAND BAG NOT KNOWING MR. POLANCO WAS AWAITING PERROWER'S ARRIVAL TO HAVE HAD AN ARREST PERROWER AS A ROBBER.

DETECTIVE KARL LIPPSCH IS A LIAR, MANIPULATOR AND HE DID CONCOCT HIS OWN VERSION OF EVENTS TO CREATE A FALLACY PROBABLY CAUSE EXISTED TO SEARCH, SEIZE AND ARREST OR PROSECUTE PERROWER FOR ILLEGAL GUN POSSESSION WHICH IS UNDENIABLE AS FOLLOWS.

35. EX. 11 AT 1.

36. EX. 1 AT 1.

37. id.

DETECTIVE LIPPISCH TESTIFIED IN A DECLARATION OF ARREST FOR
PROHIBITED PERSON OWNING/POSSESSING A FIREARM THAT HE SEIZED
THE SAND COLORED DUFFLE BAG AND MARIJUANA FROM THE COMPLEX WITH-
OUT FIRST OBTAINING A WARRANT AND HAD THEM TAKEN TO HPD
HEADQUARTERS.³⁸

THEN EIGHT HOURS AFTER THE 7:16:14 A.M. STOP OF PETITIONER³⁹
DETECTIVE LIPPISCH APPLIED FOR A SEARCH WARRANT AT 3:51 P.M.⁴⁰ AND
DECIDED TO TESTIFY BY AFFIDAVIT IN THE APPLICATION AS THOUGH A ROBBERY
OF MR. POLANCO DID OCCUR, THAT PETITIONER ROBBED MR. POLANCO OF
THE SAND COLORED DUFFLE BAG ~~WHICH WAS~~ WHICH WAS
COOPERATED BY MS. CARACCILO STATING TO DETECTIVES THAT SHE WITNESSED
PETITIONER TAKE THE SAND COLORED DUFFLE BAG FROM THE APARTMENT AT
THE TIME OF THE ROBBERY.⁴¹ THE AFFIDAVIT IN SUPPORT OF APPLICATION FOR
SEARCH WARRANT CLAIMED RELIANCE ON DETECTIVES OZAWA AND LAPERA WHO
COMMUNICATED THE INFORMATION TO DETECTIVE LIPPISCH.⁴²

THERE IS NO LOGICAL WAY THAT DETECTIVES LAPERA AND OZAWA ACTUALLY INTER-
VIEWED THE POLANCO'S AND MS. CARACCILO AND DETERMINE THE ROBBERY ALLEG-
ATIONS FABRICATED WHICH THEY REPORT THAT DAY.⁴³ BUT TURN AROUND
AND TELL DETECTIVE LIPPISCH A ROBBERY DID OCCUR AND THE INFORMATION
FROM MR. POLANCO WAS BOTH TRUTHFUL AND COOPERATED BY MS.
CARACCILO. THREE DETECTIVES ON-SCENE INVESTIGATING CANNOT CONCLUDE
WITH TWO KNOWING THE ROBBERY ALLEGATIONS ARE FABRICATED AND THE

38. EX. 13 (DECLARATION OF ARREST BY HPD DETECTIVE KARL LIPPISCH).

39. EX. 10 (CAO REPORT) AT 7:16:14 A.M.

40. EX. 9 (PHF) AT 114.

41. EX. 13 (DECLARATION OF ARREST) AT 2.

THIRD DON'T KNOW. DETECTIVE LYNNISCH TESTIFIED FALSELY CLAIMING A ROBBERY OCCURRED BASED ON WHAT HE WAS TOLD BY ~~OTHER DETECTIVES~~ OTHER DETECTIVES WHO REPORTED THE TRUTH OF WHAT THEY LEARNED WHICH WAS THE OPPOSITE OF WHAT DETECTIVE LYNNISCH TESTIFIED TO TO OBTAIN A SEARCH WARRANT SEEKING TO SEARCH THE SUNO COLORED DUFFLE BAG FOR EVIDENCE OF A ROBBERY.⁴⁴

THEN ON NOVEMBER 5, 2020 DETECTIVE LYNNISCH DOUBLES DOWN AND FALSELY TESTIFIES TO THE SAME EXACT FALSEHOODS CLAIMING PERSON-ER STOLE THE SUNO COLORED DUFFLE BAG WITH THE GUN IN IT IN THE ROBBERY AND HAD IT IN MY POSSESSION WHEN STOPPED AND MS. CARACCILO COOPERATED MR. POLINCO WHEN TELLING DETECTIVES SHE WITNESSED ME TAKE THE BAG FROM THE APARTMENT TO CHARGE ME BY SWORN TESTIMONY IN A DECLARATION OF ARREST FOR EX-FELON OWNING OR POSSESSING A FIREARM.⁴⁵

42. EX. 13 AT 2.

43. EX. 1 AT 1; EX. 11 AT 1.

44. EX. 12 (Application FOR SEARCH WARRANT)

45. EX. 13 (Declaration OF ARREST)

HAD PETITIONER BEEN GIVEN AN OPPORTUNITY IN REVOCATION PROCEEDINGS PETITIONER WOULD HAVE EXPOSED THE DISHONESTY AND FALSE TESTIMONY BY DETECTIVE LIPPISCH TO INITIATE PROSECUTION FOR THE FIRMAM CHARGE BY CALLING DETECTIVES AS A WITNESS AND SUBMITTING THE ABOVE EVIDENCE.

THE FELONY STOP REQUIRED PROSECUTION IS EXTREMELY IMPRACTICABLE AS FOLLOWS.

PETITIONER WAS NOT CHARGED FOR RESIST FOR FIGHTING POLICE. DETECTIVE LIPPISCH SWORE BY DECLARATION OF ARREST PROMADIZ CAUSE EXISTED FOR RESIST UPON UNNAMED OFFICERS ACCUSING PETITIONER DRIVE DANGEROUSLY TOWARDS THE COMPLEX'S EXIT THAT WAS BLOCKED BY A HAD UNIT AND JUMPING OUT OF THE CAR LEAVING IT TO CRASH WHILE FAILING TO YIELD AT SIGNAL OF OFFICERS.⁴⁶

ON OCTOBER 29, 2020 PETITIONER APPEARED IN MUNICIPAL COURT AND WAS SERVED THE DECLARATION OF ARREST BY DETECTIVE LIPPISCH, DISAGREED WITH HIS CLAIMS AND ON ADVICE OF COUNSEL PLEA NO CONTEST TO RESIST FOR A SHORT JAIL SENTENCE TO RESOLVE THE SITUATION. COVID-19 PROTOCOL DELAYED TRIALS FOR AT LEAST EIGHT WEEKS AND A NO BAIL PLEA HOLD WAS PLACED ON PETITIONER. EITHER WAY, PETITIONER DID PLEAD NO CONTEST AND ACCEPTS THAT PUNISHMENT.

ON NOVEMBER 16, 2020 THE PROSECUTOR AMENDED THE JUSTICE COURT COMPLAINT TO ADD FELONY STOP REQUIRED ON SIGNAL OF POLICE FOR

46. EX. 14 (DECLARATION OF ARREST - MUNI COURT).

47. EX. 5 (TOP, OCTOBER 29, 2020 PLEA COLLOQUY (SENTENCING TRANS.)).

THE SAME EVENT.⁴⁸ THE PROSECUTOR CHARGED PETTYMORER WITH
FELONY EVASION NOVEMBER 16, 2020 HIMSELF AND THEN LATER TOLD
THE JUSTICE COURT SITE DID NOT OBTAIN WPD REPORTS UNTIL NOVEMBER
17, 2020.⁴⁹ THE PROSECUTOR CHARGED FELONY EVASION WITHOUT
THE WPD REPORTS ??

ON DECEMBER 9, 2020 THE STATE CALLED WPD ALEX NELSON TO
TESTIFY TO THE FELONY STOP REQUIRED CHANGE.⁵⁰ WPD NELSON
TESTIFIED HE BLOCKED THE EXIT GATE OF THE COMPLEX AND
PETTYMORER ACCELERATED TOWARDS THE GATE MAKING HIM FEEL
HE "COULD" BE IN DANGER "IF" PETTYMORER CRASHED INTO THE
GATE.⁵¹ HOWEVER, THE HYPOTHETICAL WAS DISASSEMBLED IN CROSS-
EXAMINATION WHEN WPD NELSON TESTIFIED PETTYMORER FULLY STOPPED
THE MAHABU TEN TO FIFTEEN YARDS BEFORE THE GATE AND NO ONE
WAS IN DANGER WHEN PETTYMORER EXITED THE CAR.⁵² AT THIS POINT
THERE WAS NO ENDANGERMENT "IF" PETTYMORER RAN INTO THE GATE
BECAUSE I STOPPED WELL BEFORE IT.

WPD NELSON ALSO TESTIFIED TWICE PETTYMORER DID JUMP OUT OF A
MOVING VEHICLE LEAVING IT TO CRASH INTO THE GATE.⁵³ HOWEVER,

48. EX. 8 (AMENDED COMPLAINT),

49. EX. 9 (PHT) AT 19-20.

50. Id. AT 42-62.

51. Id. AT 43-44, 47-48.

52. Id. AT 61-62.

53. Id. AT 46, 55.

IN CROSS-EXAMINATION HPO NELSON ADMITTED BODYCAM VIDEO WAS RECORDED⁵⁴ AND THEN HPO NELSON CHANGED HIS TESTIMONY TESTIFYING PERMITTER FULLY STOPPED THE VEHICLE TEN TO FIFTEEN YARDS PRIOR TO THE GATE AND NO ONE WAS IN DANGER WHEN PERMITTER EXITED THE STOPPED VEHICLE.⁵⁵

Q. ... I STOPPED AND EXITED THE CAR. HOW FAR WAS THE VEHICLE FROM YOU AT THAT POINT? ... A. MAYBE TEN TO FIFTEEN YARDS ... Q. SO THEN IT CAME TO A STOP; RIGHT? A. UH-HUH. Q. NOBODY WAS IN DANGER WHEN IT CAME TO A STOP; AT THAT POINT IT STOPPED; RIGHT? A. I STILL FELT I COULD BE IN DANGER, BUT ONCE IT STOPPED, NO. A. AND THEN I EXITED THE VEHICLE? A. YES.⁵⁵

HPO NELSON'S TESTIMONY IS NOT CREDIBLE WHERE WHEN TESTIFYING IN DIRECT EXAMINATION PERMITTER EXITED THE VEHICLE WHILE IT WAS MOVING LEAVING IT TO CRASH BUT THEN CHANGE ORANCE AFTER ANSWERING THERE IS A VIDEO AND TESTIFY NO ONE WAS IN DANGER WHEN PERMITTER STOPPED AND EXITED THE CAR TEN TO FIFTEEN YARDS BEFORE THE GATE.

AS IT TURNS OUT HPO COMMUNICATIONS RECORDED THAT MAY EVIDENCE HPO NELSON WAS NOT THE OFFICER WHO BLOCKED THE EXIT GATE.

HPO RECORDED COMMUNICATIONS/CAD REPORTS IDENTIFIES HPO PHILIP DUFFY AS "HP/ZULI"⁵⁶, HPO ASHLEY MURKIN AS "HP/ZNTI"⁵⁶ AND HPO BRENT BOWLER AS "HP/ZNSI"⁵⁷

54. Ex. 9 (PHF) at 55-56.

55. Id. at 61-62.

56. Ex. 10 (CAD Report) at 21-22. Am.

AT 7:18:14 A.M. HPD DUFFY (ZNU) ~~SAID~~ RADIOED HE WAS ATTEMPTING
A STOP OF MY VEHICLE⁵⁷, FOUR SECONDS LATER AT 7:18:18 A.M. HPD ASHLEY
MANGAN (ZNT1) RADIOED "BLOCKING EXIT"⁵⁷. IT IS UNDENIABLE HPD ASHLEY
MANGAN BLOCKED THE EXIT NEAR SIMULTANEOUS TO THE RADIO CALL A STOP WAS
INITIATED. WE KNOW THIS TO BE TRUE ALSO BECAUSE HPD BOWLER (ZNS1) RADIOED
NINE SECONDS LATER AT 7:18:27 A.M. THAT HE WAS WITH HPD MANGAN (ZNT1)
"AT FRONT EXIT"⁵⁷. HPD NELSON IS NOT EVEN IN THE COMMUNICATIONS UP TO
THAT POINT WHERE HPD MANGAN (ZNT1) RADIOED IT WAS SHE WHO WAS "BLOCKING
EXIT" AT 7:18:18 A.M.⁵⁷

IT WAS THE TESTIMONY OF HPD NELSON AT THE PRELIMINARY HEARING THAT HE
BLOCKED THE GATE UPON HEARING OFFICER'S RADIO PERMOTION WAS REFUSING
TO STOP.⁵⁸ HPD COMMUNICATIONS EVIDENCE THIS IS FALSE. NOBODY RADIOED PERMOTION
HE WAS REFUSING TO STOP WHEN HPD MANGAN BLOCKED THE GATE AT 7:18:18.⁵⁷

HPD NELSON TESTIFIED HE BLOCKED THE EXIT GATE WHEN THE STOP WAS INITIATED⁵⁸
AND HPD ASHLEY MANGAN WAS NOWHERE IN SIGHT UNTIL AFTER THE VEHICLE
STOP AND HE DIDN'T KNOW WHEN SHE ARRIVED.⁵⁸ THIS IS EVIDENCED TO
BE FALSE TESTIMONY BY THE COMMUNICATIONS DISCUSSED ABOVE THAT
MEMORIALIZES HPD MANGAN (ZNT1) AS "BLOCKING EXIT" AT 7:18:18 A.M.⁵⁷
AND NOT HPD NELSON.

Why Lie?

HPD MANGAN WAS ONE OFFICER NAMED IN THE MULTIPLE COURT COMPLAINT
THAT I ALLEGEDLY DISOBEYED COMMANDS TO STOP FROM OR FLEW FROM,⁶⁰ THE

57. Ex. 10 at 9.

58. Ex. 9 (part) at 42-43, 49-50
24

PROSECUTOR USED HPO NELSON'S TESTIMONY HPO MANGAN WAS NOT PRESENT UNTIL AFTER THE VEHICLE STOP TO MAKE A NICHE LEGAL ARGUMENT AND CONVINCE THE JUSTICE COURT DOUBLE JEOPARDY DOES NOT APPLY FOR THE RESIST CONVICTION BECAUSE HPO MANGAN ARRIVED AFTER THE VEHICLE STOP AND THUS RESIST WAS CHARGED BY HPO MANGAN FOR ACTS ON FOOT AFTER THE VEHICLE STOP SEPERATE FROM ACTS CONSTITUTING EVADE. ^{ON 61}

PETITIONER ASSESS THERE IS ABSOLUTELY NO REASON HPO MANGAN WOULD RADE SHE WAS BLOCKING THE EXIT GATE FOUR SECONDS AFTER THE STOP WAS INITIATED IF THAT IS NOT EXACTLY WHERE SHE WAS. IT IS IMPOSSIBLE HPO NELSON BLOCKED THE EXIT GATE WHEN THE STOP WAS INITIATED BUT DID NOT SEE HPO MANGAN UNTIL AFTER THE VEHICLE STOP. PETITIONER WAS PRE SE, HPO NELSON AND THE PROSECUTOR WID NOT THINK OF THE CAD REPORT THAT MEMORIALIZED WHAT TRULY OCCURED THAT DAY IN REAL TIME WHEN THEY HAD HPO NELSON APPEAR AND TESTIFY FALSELY THAT HE BLOCKED THE EXIT GATE AND NOT HPO MANGAN TO SUPPORT AN OPPOSITION TO DOUBLE JEOPARDY BEING APPLIED WHICH ONLY AN ATTORNEY COULD DRUM UP.

HAD PETITIONER BEEN GIVEN AN OPPORTUNITY TO CALL HPO MANGAN AND HPO BOWLER AS WITNESSES OR PRESENT THEIR BODYCAM VIDEO AND THE CAD REPORT AND/OR HPO NELSON ~~IN COURT~~ IN REVOCATION PROCEEDINGS PETITIONER WOULD HAVE SHOWN HPO NELSON GAVE FALSE TESTIMONY CAUSING A BUND OVER ON A FELONY STOP REQUIRRED CHARGE AND NO FELONY OCCURED. THE OFFICERS ACTUALLY ON SCENE 60. EX. 15.

61. EX. 9 (PH) AT 134-138.

62. PETITIONER HAS SINCE OBTAINED THE MULTIPLE COURT TRANSCRIPTS

NEVER CHARGED ME WITH FELONY EVASION, NOR DID HPO NELSON WHO WAS NOT AT THE GATE HE CLAIMED TO BE PREVENTING PUTTING HIM IN DANGER "IF" I RAMMED THE GATE.

PETITIONER DOES NOT ADDRESS THE TECHNICAL VIOLATIONS IN THE NOVEMBER 7, 2020 VIOLATION REPORT⁶³ BECAUSE THEY WERE DISMISSED ~~AND~~ UPON AMENDMENT OF THE VIOLATIONS ALLEGED IN THE JANUARY 9, 2021 NOTICE OF CHARGES⁶⁴ AND BECAUSE THEY ULTIMATELY DID NOT GET REFERRED TO AS A CAUSE FOR REVOCATION BUT IN THIS SWORN PETITION INFORMS THE COURT THAT IN THE MARCH 1, 2022 REVOCATION HEARING IT WAS NOTICED TO THE BOARD BY THE ~~STAFF~~ PAROLE OFFICER PRESENT THERE WAS "NO EVIDENCE" PETITIONER EVER SUBMITTED A BARRY UNINE ~~AS~~ AS ACCUSED AND PETITIONER HAD LETTERS BY MY EMPLOYERS DESCRIBING WORK HISTORY AND THEIR DESIRE TO IMMEDIATELY EMPLOY ME. IT IS UNFORTUNATE AND EMBARRASSING TO EVEN HAVE TO APPEAR BEFORE ANY BOARD. PETITIONER WAS WITHOUT NOTICE STOP REQUIRED WAS A VIOLATION TO PRESENT THIS EVIDENCE.

AND SEEMS TO VOID THE STOP REQUIRED CONVICTION AS VIOLATIVE OF DOUBLE JEOPARDY FOR THE RESIST CONVICTION DEFEATED IN THIS COURT BY THE PROSECUTOR'S FRAUD AND OMITTING THE RELEVANT RECORD PETITIONER COULD NOT OBTAIN ILLEGALLY IMPRISONED WITH A COURT ORDER PETITIONER'S ATTORNEY NOT ASSIST OR ADVISE PETITIONER IN THE PROCEEDINGS REPRESENTED PRO SE IN THE DIRECT APPEAL. NO. 85299, PETITIONER'S PAROLE WAS REVOKED FOR STOP REQUIRED BEING CHARGED THAT ALL ALONG VIOLATED DOUBLE JEOPARDY WHICH IS BELIEVED TO COME TO A DECISION HOLDING AS MUCH.

B. Conclusion.

SHOULD THIS HONORABLE COURT NOT AGREE THE ABOVE REQUESTED RELIEF OR WITH THE OTHER CLAIMS. PETITIONER REQUESTS THIS HONORABLE COURT TO GRANT A BRIEF EMERGENCY HEARING TO PRODUCE HPO MANGIAN AND HPO BOWLER TO TESTIFY TO THE HPO COMMUNICATION AND THEIR ACCOUNT OF THE OCCURRENCE AND TO PRESENT RECORDS USED TO DEMONSTRATE PREJUDICE DID OCCUR BY THE DUE PROCESS DENIED PETITIONER.

PETITIONER PRAYS AN EMERGENCY RESPONSE FROM RESPONDENT TO ADMIT OR DENY THE CLAIMS WILL BE ORDERED, RESPONDING TO PETITIONER'S REQUEST HERE THAT AN EMERGENCY ORDER STAYING ANY FURTHER IMPRISONMENT ON THE REVOCATION SANCTION OR NEW SENTENCE IN C-20-352701-1 GIVEN THE YEARS OF CONFINEMENT THAT EXCEEDS LEGAL LIMITS OF SANCTIONS IMPOSED AND CAUSES IRREPARABLE HARM TO PETITIONER BY UNLAWFUL AND VERY DANGEROUS IMPRISONMENT AT HOSP.

PETITIONER PRAYS THIS HONORABLE COURT WILL GRANT THE RELIEF REQUESTED ON THE MERITS OF THE CLAIMS PRESENTED AND GRANT THAT RELIEF THIS HONORABLE COURT DEEMS APPROPRIATE.

PETITIONER SWEARS UNDER PENALTY OF PERJURY THE ABOVE INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEFS EXCEPT WHERE SHOWN BY OTHERS.

Sworn this 13th day of April 2023.

Sean O'Neil

AA002089

Sean O'Neil

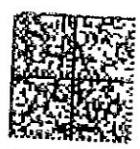
CERTIFICATE OF SERVICE

I, SEAN ORTH, DO HEREBY CERTIFY THAT ON April 9, 2023
I DID SERVE & GIVE AND CORRECT COPY OF THE FOREGOING
PETITION FOR A WRIT OF HABEAS CORPUS (1ST AMENDED) TO
AARON FORW, NEVADA ATTORNEY GENERAL, 100 N. CANSON
STREET, CARSON CITY NEVADA 89701.

Sean Orth

Dear Henry Oct 26 2023
PO Box 650
Indian Springs Nevada
89070

Clerk of the Court
For the District Court,
Clark County, Nevada
200 Lewis Ave, 3rd Floor
Las Vegas, NV 89101
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