IN THE SUPREME COURT OF THE STATE OF NEVADA

SEAN RODNEY ORTH,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No.: 85229

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

APPELLANT'S OPENING BRIEF
Volume V
Bates Nos.:
AA000849 – AA00914

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IN THE SUPREME COURT OF THE STATE OF NEVADA

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

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CERTIFICATE OF SERVICE

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

Aaron Ford
Alexander Chen

CERTIFIED this __ day of August, 2023.

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

Sean Rodney Orth #96723
P.O. Box 650
Indian Springs Nevada 89070
Pro Se

FILED
SEP 21 2021
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

October 12, 2021
11:00 AM

THE STATE OF NEVADA,
PLAINTIFF.
Case No. C-20-352701-1
vs.
SEAN RODNEY ORTH,
Dept No. XVIII
DEFENDANT.

NOTICE OF MOTION.

MOTION TO DISMISS CHARGES FOR VIOLATION TO THE DOUBLE JEOPARDY CLAUSES OF THE CONSTITUTIONS OF NEVADA AND THE UNITED STATES.

RECEIVED
SEP 21 2021
CLERK OF THE COURT

Comes Now, Sean Orth, Defendant appearing herein Pro Se, who respectfully moves this honorable court to dismiss the charge of Failing to Stop, a felony under NRS 484B.550(1)(2)(3)(b) as violature of the Double Jeopardy Clauses of the constitutions of Nevada and the United States.

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

MEMORANDUM OF POINTS AND AUTHORITIES.

A. STATEMENT OF FACTS.

On October 28, 2020 Louie Polanco called City of Henderson Police Department (HPD herein) reporting he was robbed by Defendant the day before. The robbery was a fake call. For sake of brevity Defendant points to the magistrate in Justice Court, Henderson Township taking judicial notice Defendant was not arrested in connection with the robbery allegations. Ex. 1 (Excerpt, Trans-Crpt of Proceedings ("TOP" herein) at 81-82.

On October 28, 2020 HPD Detective Karl Lypusch, who was not present at the actual seizure of Defendant exercised the fellow officer rule[1] and charged Defendant with Resist Public Officer, a misdemeanor violation of NRS 199.280(3). In the Declaration of Arrest Detective asserted he had probable cause to arrest Defendant for Resist Public Officer because Defendant "failed to yield to HPD Patrol Officer who were initiating a lawful stop" Ex. 2 (Declaration of Arrest)

On October 29, 2020 A complaint was filed in the Municipal Court, Henderson Township case no. 20CR00736 (RHL) charging Resist Public Officer. Ex. 3 (Complaint).

---

1. An officer need not be present to arrest and charge a suspect and may do so based on facts known to a fellow officer. please see generally. U.S. v. Hensley, 469 U.S. 221, 230-233 (1985)

Based on the Declaration of Arrest Defendant entered into a plea negotiation with Plaintiff and pleaded no contest to Resist in Municipal Court on or about October 30, 2020 [redacted] and was sentenced to a jail term.[2]

The patrol officers never charged me with Failing to Stop, a felony of NRS 484B.550(1)(2)(3)(b). Detective Lippisch falsely testified in the Declaration of Arrest in this court that I jumped out of a moving car. Ex. 5 (Declaration of Arrest)[3]. Based on this Declaration of Arrest by Detective Lippisch the prosecutor amended the complaint to change the felony Failing to Stop charge [redacted] on November 16, 2020 Ex. 6 (Amended complaint). Then on November 17, 2020 the prosecutor informed the court she only had the Declaration of Arrest by Detective Lippisch and did not know the names of the officers involved in the arrest and she did not know about the Resist charge. Ex. 7 (TOP November 17, 2020) at 13, 16. Then on December 4, 2020 the prosecutor argued that she didn't even have the HPD reports until [redacted] after the November 17, 2020 hearing. Ex. 1 at 22.

2. This honorable court has not previously considered the municipal court Declaration of Arrest (Ex. 2) or the sentencing transcripts. Defendant respectfully request a transcript be provided Defendant and considered here.

3. HPD Nelson initially testified at the preliminary that I jumped out of the car while it was moving. Ex. 1 at 55 but after asked if he wore body cam HPD Nelson changed his testimony and testified I fully stopped the car before I exited the car and no one was in danger when I stopped the car and exited. Id at 61-62.

Although the prosecutor herself charged Defendant based solely on Detective Lippisch's Declaration of Arrest (Ex. 7 at 13) the prosecutor successfully argued to that same court the Resist Charge was not relevant to the Failing to Stop charge in this court because Detective Lippisch was not present when the Failing to Stop occured. Ex. 1 at 134. Then the prosecutor argued the half truth when arguing the municipal court complaint did not mention lights and sirens or being in a vehicle. Ex. 1 at 135. It is a half truth because the Declaration of Arrest gave notice the Resist Charge was charged because Defendant "failed to yield to LVPD Patrol officers initiating a lawful Stop" Ex. 2.

B. LEGAL ARGUMENTS.

I. THE FAILING TO STOP FELONY IN THIS HONORABLE COURT VIOLATES THE DOUBLE JEOPARDY CLAUSES OF THE CONSTITUTIONS OF NEVADA AND THE UNITED STATES.

Nevada adopts the test in Blockburger v. United States, 284 U.S. 299, 304 (1932) when resolving disputes under the Double Jeopardy Clause.

"The Blockburger test asks whether the offense in question cannot be committed without committing the lesser offense. A person cannot be punished for a greater and lesser offense."
Lachance v. State, 130 Nev. 263, 273 (2014)

First, police have authority and a legal duty to seize a person based on reasonable suspicion they committed or are about to commit a crime. Terry v. Ohio, 392 U.S. 1, 20-21 (1968) or to arrest if police have probable cause. Md. v. Pringle, 540 U.S. 366 (2003); See also NRS 171.123 (Detention Statute); NRS 171.124 (Arrest Statute). A traffic stop falls within the purview of the 4th Amendment. Brendlin v. Cal., 551 U.S. 249, 256-258 (2002).

As such an officer has a legal duty to conduct a traffic stop if he has a reasonable suspicion or probable cause a crime has or is about to be committed. If a person "fails" to bring his vehicle to a stop when the officer is executing his legal duty to seize, or if the driver "attempts to elude," he committed the crime of Failing to Stop. NRS 484B.550(1) "Except as otherwise provided in this section the driver of a motor vehicle on a highway or premises which the public has access who willfully fails or refuses to bring his vehicle to a stop, or who otherwise flees or attempts to elude a peace officer in a ~~appa~~ readily identifiable police vehicle of any police or regulatory agency, when given a signal to stop is guilty of a misdemeanor.)

Therefore a person cannot commit Failing to Stop under NRS 484B.550

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4. A person must be violating subsection 1 for the felony element to apply. NRS 484B.550(3)(b) "If while violating the provisions of subsection 1 the driver of the motor vehicle: (b) operates the vehicle in a manner which endangers or is likely to endanger any other person or the property of another person is guilty of a category B felony).

without committing Resist Public Officer under NRS 199.280.3 which provides "a person who in any case under any circumstance otherwise specifically provided for, willingly resists, delays or obstructs a peace officer in discharging or attempting to discharge any legal duty of his or her office" is guilty of resisting a public officer." id.

For the prior conviction of Resisting in Municipal court the Failing to Stop Charge in this honorable court violates the Double Jeopardy Clause and must be dismissed.

It should be helpful an officer of the law himself chil recognize that "failing to yield to HPD Patrol officers initiating a lawful stop" was probable cause to arrest for Resisting under NRS 199.280.3. Ex. 3 (Declaration of Arrest). Defendant prays this honorable court will also find the same and determine Resist is a lesser included offense of Failing to Stop.

C. Conclusion.

Wherefore, Defendant prays this honorable court will dismiss the Failing To Stop Charge for the reasons above.

Respectfully Submitted, this 3rd day of September 2021.

Sean Orth
Defendant

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

Sean Orth

Certificate of Service.

I Sean Orth do hereby certify that on. I did mail a true and correct copy of this motion to dismiss charges to Clark County District Attorney, Cecilia Mendoza. Deputy Chief District Attorney. 200 Lewis Ave, Las Vegas, Nevada 89101.

Sean Orth
Defendant.

Certificate of Service

Pursuant to NRCP Rule 5(b), I do hereby certify that on September 9, 2021 I deliver a true and correct copy of the foregoing Motion to Dismiss the Charges to Erika Mendoza, Chief Deputy District Attorney, Clark County, 200 Lewis Ave Las Vegas Nevada 89101.

EXHIBIT 1

TRAN

CASE NO. C352701-1

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

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

REPORTER'S TRANSCRIPT
OF
PRELIMINARY HEARING
BEFORE THE HONORABLE SAMUEL G. BATEMAN
JUSTICE OF THE PEACE

WEDNESDAY, DECEMBER 9, 2020

APPEARANCES:
For the State: ERIKA MENDOZA
Chief Deputy District Attorney

For the Defendant: IN PROPER PERSON
Standby Counsel: KARA SIMMONS
Deputy Public Defender

Reported by: Lisa Brenske, CCR #186

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HENDERSON, NEVADA, DECEMBER 9, 2020

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

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

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

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

THE COURT: Of what?

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

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

DEFENDANT ORTH: I received them today, your Honor.

THE COURT: Have you reviewed them?

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

THE COURT: I'm sorry?

11:25AM 1 MS. MENDOZA: In the Declaration of Arrest
2 it discussed the content of the interviews the robbery
3 detective did with them.
4 THE COURT: Right. So at the
11:26AM 5 November 17th preliminary hearing your intent was to
6 present evidence, if you had the witnesses at the time
7 available, regarding Mr. Orth's possession of the bag
8 and the alleged fleeing. You at that time had no
9 intention of presenting any witnesses associated with
11:26AM 10 the alleged robbery or --
11 MS. MENDOZA: I was not going to call any
12 lay witnesses. I would have the officers testify that
13 the reason they responded was because of this report,
14 but of course that's not for the truth of the matter
11:26AM 15 asserted.
16 THE COURT: So under 171.1965, that's the
17 discovery statute at preliminary hearings, Miss Mendoza
18 would only have to turn over to you five days in
19 advance of the preliminary hearing any of the evidence
11:26AM 20 that is identified in that statute if she's in
21 possession of it at the time, and it sounds like you
22 weren't in possession of it on the 17th, the reports
23 regarding the alleged robbery from that event; is that
24 correct?
11:27AM 25 MS. MENDOZA: The reports regarding the

11:27AM 1 alleged robbery I was not in possession of that
2 morning. I believe I received them that afternoon. I
3 know I was not in possession of that them that morning
4 because I have an email to Miss Simmons on the
11:27AM 5 afternoon of the 16th saying I haven't gotten them
6 yet. And I came straight here the morning of the
7 17th. I didn't go to the office the morning of the
8 17th until after I was here.
9 THE COURT: Do you have those reports now
11:27AM 10 and have you provided those to Mr. Orth?
11 MS. MENDOZA: Yes, your Honor.
12 THE COURT: Are you intending to present
13 any witnesses associated with the alleged robbery in
14 Event Number 1989?
11:27AM 15 MS. MENDOZA: No.
16 THE COURT: Okay.
17 MS. MENDOZA: Can I just clarify?
18 THE COURT: Go ahead.
19 MS. MENDOZA: So I had requested
11:27AM 20 everything above and beyond my discovery obligation
21 because I know where this is going, I might as well do
22 it now even though I'm not legally obligated. As of
23 that first preliminary hearing setting I didn't have
24 everything. After I returned I had a packet from
11:28AM 25 Henderson records that contained a bunch of reports. I

11:28AM 1 started working on copying them for Miss Simmons. I
2 was in the process of doing that. On the 18th I had
3 to leave work because I had COVID symptoms. On the
4 19th I tested positive for COVID.
11:28AM 5 THE COURT: That's all in the report. I
6 read your opposition. I've read it. I'm saying that
7 you did not have the report at the time and on the
8 17th were you to go forward, you weren't going to
9 present -- and you didn't charge him with robbery.
11:28AM 10 MS. MENDOZA: Correct.
11 THE COURT: So at this point I don't see
12 there being a discovery violation because it -- if they
13 are putting witnesses up that have made statements and
14 it's in those reports, then you're entitled to have
11:28AM 15 that information and you're entitled to have it five
16 days before the preliminary hearing. As I sit here
17 right now I don't have any indication that that's what
18 they intended to do, Mr. Orth, and if they did or they
19 did it today and they haven't provided you the
11:29AM 20 information, but as of right now the charges haven't
21 changed. And it doesn't look like she's going forward
22 with regard to whatever those allegations were. So I
23 don't find any discovery violation at this point with
24 regard to that event number.
11:29AM 25 I wanted to go back and also state with

11:29AM 1 regard just to include in the record that under State
2 v. Nelson 118 Nevada 399, in terms of continuances that
3 courts are required to take into consideration the
4 totality of the circumstances and apply the rules
11:29AM 5 firmly, consistently but realistically. So I think
6 that goes to the allegations about the unavailability
7 of the witnesses. I think I complied with the rules
8 and interpreted them and applied them realistically
9 under the circumstances. I would have preferred you
11:29AM 10 not have been shipped up to NSP, but that's what ended
11 up happening. And it's not something that I asked them
12 to do. I think I remembered at the time hopefully
13 trying to keep him here, but unfortunately that didn't
14 work out. So I don't see any other arguments with
11:30AM 15 regard to the motion to dismiss for any discovery
16 issues or the continuance that I haven't taken up.
17 There were two motions to dismiss. One of
18 your motions was regard to the resisting charge; is
19 that right, Mr. Orth?
11:30AM 20 DEFENDANT ORTH: One of them is, your
21 Honor.
22 THE COURT: I don't think that was in your
23 actual motion that you filed just yet. Is there an
24 actual motion that you filed with regard to double
11:30AM 25 jeopardy on the misdemeanor resisting in Municipal

11:59AM 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?

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

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

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

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

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

THE COURT: Good advice, Mr. Orth.

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

MS. MENDOZA: I have them both printed out.

THE COURT: I have it here. NRS 199.280 is resisting. The elements are -- what's my evading 1:23PM statute? 202 --

MS. MENDOZA: 484B.

THE COURT: 202.484?

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

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

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

THE COURT: Okay.

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

1:26PM from Municipal Court and in that complaint it alleges that he disobeyed commands to stop from Officer Mangan or Lippisch and fled the scene. Obviously Officer Lippisch was not there and we heard testimony today 1:26PM that Officer Mangan was not there until after the vehicle pursuit ended. Officer Mangan was one of the officers who chased him on foot and he disobeyed their verbal commands to stop while they were running on foot. So the factual basis for the resisting is 1:27PM different than the factual basis for the evading.

THE COURT: Okay.

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

THE COURT: Mr. Orth.

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

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

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

DEFENDANT ORTH: It doesn't have to.

1:28PM THE COURT: Hang on. Hang on. Hang on. So I think that the argument you're making is that you can do a misdemeanor resisting before you actually got in a vehicle and drove away and it was a whole separate crime, not that -- I think the argument you're making 1:29PM is that the facts alleged in the criminal complaint from Municipal Court would have related to attempts to stop before he got in the vehicle. Is that what you're saying?

MS. MENDOZA: After.

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

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

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

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

THE COURT: It does say Officer Mangan 1:30PM and/or Officer Lippisch. Lippisch didn't come until afterward.

MS. MENDOZA: Correct.

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

MS. MENDOZA: Correct.

THE COURT: Mr. Orth.

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

said he had no objection.

THE COURT: They're admitted.

MS. MENDOZA: Thank you.

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

1:39PM THE COURT: Anything else, Ms. Mendoza?

MS. MENDOZA: No, Your Honor.

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

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

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

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

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

THE COURT: Do you know what their

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

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

THE COURT: When is the date again?

THE CLERK: December 18th.

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

THE OFFICER: It's okay.

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

DEFENDANT ORTH: Thank you, Your Honor.

THE COURT: Good luck.

(The proceedings concluded.)

* * * * *

ATTEST: Full, true and accurate transcript of proceedings.

/S/Lisa Brenske

LISA BRENSKE, CSR No. 186

EXHIBIT 2

Henderson Police Department

223 Lead Street, Henderson Nevada 89015

Declaration of Arrest

DR#: 20-18994

Arrestee's Name: ORTH, SEAN RODNEY

Date and time of Arrest: 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 duffle bag as he fled and he threw it over the property wall just before he climbed over the same wall, running out to Whitney Ranch Drive.

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

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

Lippisch, K.
Declarant's Name

MUNICIPAL COURT OF THE CITY OF HENDERSON

IN THE COUNTY OF CLARK, STATE OF NEVADA.

FILED

2020 OCT 29 A 9:28

MUNICIPAL COURT

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

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

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

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

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

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

EXHIBIT 3

COPY

MUNICIPAL COURT OF THE CITY OF HENDERSON

IN THE COUNTY OF CLARK, STATE OF NEVADA

FILED

2020 OCT 29 A 9:28

MUNICIPAL COURT
HENDERSON

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

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

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

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DISTRICT COURT
CLARK COUNTY, NEVADA

October 12, 2021
11:00 AM

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

Case No. C-20-352701-1
Dept. No. XVIII

PETITION FOR A WRIT OF HABEAS CORPUS

Comes now, Sean Rodney Orth, Defendant appearing pro se who respectfully seeks issuance of Writ of Habeas Corpus and respectfully requests this honorable court set a date for hearing.

Defendant does waive right to trial in 60 days as required to file this petition.

Defendant is held at High Desert State Prison in Indian Springs, Nevada and for the reasons shown herein is unlawfully imprisoned and otherwise restrained of his liberties in violation of the laws and Constitutions of Nevada and the United States as set forth in the grounds herein.

GROUND ONE: THE STATE FAILED TO SHOW LEGAL JUSTIFICATION FOR PETITIONERS STOP IN MOTION TO SUPPRESS PROCEEDINGS IN THE JUSTICE COURT. THE MAGISTRATE ERRED WHEN NOT SUPPRESSING THE EVIDENCE.

ON October 28, 2020 Louie Polanco reported to City of Henderson Police Department (HPD herein) at 12:30 a.m. that he was robbed at 9:30 p.m. the previous night. HPD Patrolman Aaron Zell responded. At 1:15 a.m. HPD Zell obtained a written statement from Mr. Polanco stating he had been robbed by Sean Orth (Petitioner herein) at "around 2 p.m." the previous day, two firearms, a laptop, a cell phone, a white chevy malibu were claimed taken. Ex. 2. HPD Zell also obtained a written statement from Ms. Jessie Caracciolo, Mr. Polanco's girlfriend, stating she came to the apartment about 6:30 p.m. the previous day and petitioner let her [redacted] in, Petitioner and Mr. Polanco spoke in the bedroom alone for a few minutes, Petitioner exited the room, petitioner left carrying a green duffle bag, Ms Caracciolo did not see a robbery and did not see Petitioner with a gun. Ex. 2.

HPD Zell employed the assistance of Las Vegas metropolitan police Department (LVMPD herein) at 1:54 a.m. and asked them to drive through 10xx Y Missouri Meadows, Las Vegas, to attempt to locate the malibu, an address petitioner was moving out of to move in to Mr. Polanco's apartment. Ex. 1 (HPD communications ("CAD.") at 1:54 a.m. No vehicle was located. The home has a two car garage.

At 2:34 a.m. HPD Tell entered a synopsis of some information he learned from Mr. Polanco, including that firearms and the Malibu were taken, and only State detectives would follow up in the morning. Ex. 1.

HPD Tell did not communicate to LVMPD I was armed and dangerous or to make contact at my residence, nor did he state I was wanted, or that there was cause to seize me. I was on parole (my last felony 15 years ago, I was free two years without violation before this fallacy). No communication to parole was made to make contact with me, that I was accused, that I was armed.

The cell phone alleged stolen was not called [redacted]. Mr. Polanco told police he had Cox Homelife and two cameras hooked up, one in the living room, one in the bedroom. I allegedly ripped the one out in the [redacted] bedroom. Ex. 7 at 4, 31. One [redacted] call to Cox Homelife's (24) hour customer assistance would have verified or dispelled any suspicion, the later in this case. "It is incumbent upon law enforcement officials to make a thorough investigation and exercise a reasonable judgement before invoking the awesome power of arrest and detention" Moore v. Marketplace Restaurant, 754 F.2d 1336, 1345-1346 (9th Cir. 1985). "A police officer may not close his or her eyes to facts that would clarify the circumstances of arrest. Reasonable avenues of investigation must be pursued especially when, as here, it is unclear that a crime had even taken place" Beaver v. Huccal, 113 F.3d 646, 650 (8th Cir. 1989).

After consulting the prosecutor the magistrate took judicial notice Petiti-

tioner was not arrested in connection with Mr. Polanco's robbery allegations. Preliminary Hearing Transcripts (PHT herein), December 9, 2020, at 81-82.[1]

HPD Zell never testified in this case. Thus the magistrate below never could have legally determined cause to seize without "weighing the collective knowledge of all officers involved in the case" Doiman v. State, 107 Nev. 408, 413-414 (1991). Nor could the court determine whether the officers actions (discussed next) were reasonable which is based on the "totality of the circumstances" State v. Lisenbee, 116 Nev. 1124, 1128 (2000)(citing Alabama v. White, 496 U.S. 325 (1990)).

II. THE TESTIMONY OF HPD ALEX NELSON WAS INSUFFICIENT TO SHOW CAUSE TO SEIZE PETITIONER.

HPD Patrolman Alex Nelson was not called to support legal justification for Petitioner's seizure. In cross-examination HPD Nelson testified he had a reasonable suspicion to stop petitioner because: 1. Petitioner was suspected of a robbery that occurred the night before and was possibly leaving in a car stolen in the robbery; 2. The victim on the phone was advising petitioner was at the door armed. PHT at 52. The State has never argued this to be legal justification for

1. Petitioner filed a motion to suppress evidence in the Justice Court on December 1, 2020 which was opposed December 8, 2020. The December 9, 2020 prelim. doubled as an evidentiary hearing for the motion to suppress. Petitioner discusses the litigation below.

my seizure but because the magistrate did (PHT at 131-134) I explain why it was not.

CAD was not introduced nor was the testimony of HPD Dispatch officer and therefore the magistrate again did not have the collective knowledge of all officers involved. Delaman at 413-414 or the "totality of the circumstances" Lisenbee at 1128.

HPD Nelson testified he was unaware of the specific facts for the robbery, unaware of facts learned in the previous investigation (by HPD Zell). PHT at 52. HPD Nelson testified he was listening to a summary of the statements made to dispatch. id at 52, 59. Dispatch refers to HPD Zell's incident number earlier that morning. Ex. 1 (CAD) at 7:13:15 a.m. In order to have a reasonable suspicion an officer must be able to "point to specific and articulable facts that warrant the intrusion." Terry v. Ohio, 392 U.S. 1, 20 (1968). However, "assuming police make a stop on objective reliance on a flyer or bulletin we hold the evidence uncovered in the course of the stop is admissible if police who issued the flyer or bulletin possessed a reasonable suspicion." U.S. v. Hensley, 468 U.S. 221, 223 (1985). In reaching their decision the Hensley court agreed with the District Court's decision the St. Bernard officer who issued the bulletin had a reasonable suspicion for his fellow officers to rely upon because the St. Bernard officer testified to the facts learned from the informant who provided facts Hensley was involved in a robbery which was determined to have indicia of reliability for the admission the informant was a participant in the robbery who provided detailed information. id at 233-34. No such testimony by HPD Zell or dispatch occurred in this case and therefore

HPD Nelson's testimony is insufficient to show a reasonable suspicion because it ultimately claims reliance upon HPD Cell. To be clear, this case has a robbery call, but it was responded to and did not result in that officer claiming there was a reasonable suspicion or probable cause to arrest and there was no arrest on the robbery which the magistrate took judicial notice of, then the prosecutor never argued or showed the seizure of me was legally justified but then the magistrate found there was reasonable suspicion and officers could rely on other officers investigations. id at 131-134. This ruling erroneously applies collective or imputed knowledge doctrine.

HPD Nelson's testimony dispatch communicated that I was at the door armed and the next communication was that I was leaving (AA1 at 52) is perjury. It is true that the caller, Ms. Caracciolo, did say I was at the door armed at first but then units asked if I had the gun out or at my side and Ms. Caracciolo told dispatch, who communicated such to the ~~other~~ officers, that she did not see the gun nor could she say her unnamed boyfriend could who watched me through the peephole. Ex. 1 (CAD) at 7:11:19, 7:14:32, 7:15:34, 7:16:19, 7:16:56. Basically, Ms. Caracciolo did state I was armed but then told police she had no basis for saying such. This is not a reasonable suspicion. In Florida v. J.L., 529 U.S. 266, 271-273 (2008) the Supreme Court emphasized that Terry did not create a "firearm exception" to the reliability requirement. id. "Such an exception would enable a person to set in motion an intrusive, embarassing police search of the targeted person simply by placing an anonymous call ~~[illegible]~~ falsely reporting the target's unlawful carrying of a gun." id.

[redacted]

Although Petitioner's objection to hearsay was sustained here, HPD Nelson testified that his actions of placing his vehicle at the exit gate (in the travel lane) as a blockade was because he heard sirens activated over his radio and officer communicating I refused to stop. PHT at 42-43. This is a lie exposed by CAD. At 7:17:51 an officer states "WHITE CHEVY MALIBU BACKING UP", At 7:18:14 an officer states "ATT'G 487 (STOP)", four seconds later at 7:18:18 (without any other communication) [redacted] it is communicated "2N BLOCKING GATE" Ex. 1 (CAD).

HPD Nelson initially testified that I jumped out of the Malibu while driving, while the car was moving. Id at 55. However, Petitioner elicited that HPD Nelson wore body cam. Id at 56-57. HPD Nelson then testified I brought the vehicle fully to a stop, I only exited once the vehicle stopped and [redacted] no one was [redacted] in danger when I exited the vehicle. Id at 61-62. This is quite a big difference than dangerously jumping out of a moving car to allow it to crash. [redacted]

4. In CAD an officer does state (30) seconds later that "JUST TRIED TO HIT TOM UNITS". Id. Fortunate for Petitioner there is dash cam. Petitioner is not charged with such, no officer testified to such under penalty of perjury and no officer claims such for the reason I was seized.

HPD Nelson's testimony was not that I was speeding when I came into his view but as I turned left towards the exit gate I "accelerated". he already had abandoned his vehicle but moved away from it so "if" I rammed the gate he would not be injured. id at 52. In cross examination HPD Nelson admitted he could not say what speed I accelerated to but I stopped 10 to 15 yards before the gate. id at 61-62.

The officers behind me never charged me with failing to stop, nor did HPD Nelson. On November 16, 2020 the prosecutor amended the complaint adding the charge Failing to Stop. Exhibit. The next day the prosecutor informed the court the report she received did not provide the names of the officers related to the evade. Ex. 18 (Transcript of Proceedings ("TOP") November 17, 2020) at 13. At the prelim the prosecutor then informed the court she did not receive the HPD reports until after the November 17, 2020 hearing (one day after she charged me). PH at 22.

Petitioner shows in Ground Three below there was insufficient evidence shown for Failing to Stop.

"THE STATE FAILED TO RAISE AND PROVE AN EXCEPTION TO THE WARRANT REQUIREMENT OF U.S.C.A. AM. 4.

It is the state's burden to raise and prove a specific exception to the warrant requirement where a warrantless seizure occurs. Nelson v. State, 96 Nev. 363 (1980).

Plaintiff failed to secure petitioner's presence for a prelim. scheduled for December 3, 2020. without petitioner present, who was representing the case pro se, the magistrate and Standby Counsel had the following exchange:

THE COURT: THE issue that I saw he brought up the best as I can read them... it looks like he argued that there was a Fourth Amendment violation for his arrest without a warrant. That is something I am not going to take up because they can arrest him. As best as I can tell his motion to Suppress argued he shouldn't have been arrested without a warrant, but I think pursuant to NRS 171.124 they can do a pc arrest based on that Statute. So unless there is something - that's one I probably wouldn't take up before a preliminary hearing. If it heard a preliminary hearing. And its more like a probable cause issue. So you can take that up with him.

Ex. 19 (GOP, December 3, 2020) at 5.

Standby Counsel never contacted me and at all times has acted in a manner to hinder my representation. I had the court clarify at the December 9, 2020 hearing:

THE DEFENDANT: One thing because I was not here when you made the ruling on the probable cause issue... so we understand

THE COURT: THAT WAS OF YOUR ARREST and I am not making a determination there is probable cause. What I am saying is that if there is they can arrest you. They don't need to get an arrest warrant.

PHT at 33.

In Petitioner's December 1, 2020 Petitioner's motion to suppress: petitioner asserted that the seizure of me was unreasonable and without warrant in violation of U.S.C.A. Am. 4, Nev. Const. art. 1 § 18. Petitioner's motion lets squarely with law. Riley v. Cal., 573 U.S. 373, 381 (2014) (The 4th Amendment requires warrant for all searches and seizures "absent a specific exception to the warrant requirement"); Mo. v. McNeely, 569 U.S. 141, 148 (2013) (The 4th Amendment classifies warrantless searches and seizures as unreasonable unless a specific exception applies.); Katz v. U.S., 389 U.S. 347, 357 (1967) (The 4th Amendment creates a presumptive warrant requirement for all searches and seizures unless a specific exception applies).

"police must whenever practicable obtain advance judicial approval of searches and seizures through the warrant procedure" Terry v. Ohio, 392 U.S. 1, 20 (1968). The State must show the situation which made the course of [obtaining a warrant] impractical" State v. Hardin, 90 Nev. 10, 14 (1974). Certainly a piece of property does not have more protection when seized than a citizen does when s/he is seized. The 4th Amendment protects people, not places. Katz, 389 U.S. at 360-361. If the exception is probable cause under NRS 171.124 or reasonable suspicion under NRS 171.123 the State has a burden of raising them (Nelson, 94 Nev. at 363) which possibly would make obtaining a warrant impractical (Hardin 90 Nev. at 14).

The magistrates decision quite simply was "If" police had probable cause they could make a warrantless arrest. PHT at 33.

This put the State on notice that the State had the burden to prove probable cause for the arrest. This is consistent with law. Md. v. Pringle, 540 U.S. 366, 370 (2003)("warrantless arrest of individual in public place for felony" is consistent with the 4th Amendment if the arrest is supported by probable cause").

At the time of the December 3, 2020 hearing the State had not even filed an opposition. The prosecutor was also well aware that the December 3, 2020 hearing was ex parte without petitioner present as petitioner pro se was counsel of record, you will. In the December 8, 2020 Opposition to Defendant's Motion to Suppress Evidence the prosecutor latched onto the magistrate's comments on December 3, 2020 as a pretext for a judge declining to argue that there was legal justification for the seizure because the magistrate commented it "probably" would not take the issue up "unless there was something". Please see Opposition at 4.

Especially after clarification in the December 9, 2020 hearing that the court was not making a determination on December 3, 2020 that there was probable cause to seize me (App. at 33) the State had a burden to raise and prove an exception to the warrant requirement under Nelson, 94 Nev. 363 and failed to show one which required suppression of the evidence as the evidence, namely the firearm (discussed below), and all information learned subsequent to the seizure, was obtained in violation of U.S.C.A. Am. 4, Nev. const. art. 1 § 18 and therefore is barred from use in State courts. Mapp. v. Ohio, 367 U.S. 641, 655 (1961)(Barring use of evidence in State courts obtained in violation of the 4th Amendment).

It is critical this issue be resolved as it undermines the State's Failing to Stop charge. "when officers without reasonable suspicion or probable cause approach an individual the individual has a right to ignore police and go about his business" Ill. v. Wardlow, 528 U.S. 119, 125 (2000). Any claim that petitioner was in flight is a fallacy and the Failing to Stop is the product of an illegal seizure. Also, flight cannot retroactively validate the initial purpose of the stop. State v. Lisenbee, 116 Nev. 1124 (2000).

Lastly, as explained above HPD Nelson blocked the entrance and exit gate to the entire complex. Numerous officers lay siege upon the complex. I argued I was seized at gunpoint. PHT at 33. The State made no opposition to these arguments. HPD Nelson testified I stopped the car completely and exited the car when it was safely stopped. PHT at 61-62. HPD Nelson testified he lost sight of me for 2 to 3 seconds when I exited the car. id at 47-48. I was seized by the vehicle used as a blockade and then I exited and the State never showed the officers actions were reasonable. Brendlin v. Cal., 551 U.S. 249, 256-258 (2007)(A traffic stop constitutes a seizure for purpose of the 4th Amendment); U.S. v. Stover, 808 F.3d 991, 997-998 (4th Cir. 2015)(Seizure when uniformed officers placed his vehicle to block defendant's vehicle with lights and sirens activated)

"The investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion" Florida v. Royer, 460 U.S. 491, 500 (1982). "The use of firearms, handcuffs, and other forceful tactics generally suggests an arrest" Cortez v. McCauley

was that there was no legal justification for the stop. Had Det. Lippisch been allowed to continue it was likely he would have explained why there was not cause to arrest on the robbery allegations. The magistrates refusal to allow further cross-examination violates petitioner's right to due process and to cross-examine evidence, right to prove my claim in violation of NRS 171.196(5), 171.196. U.S.C.A. Am. 5, 6 and 14.

The magistrate refused to hear the collective knowledge of all officers involved. Dolman, 107 Nev. at 413-414 on the reasonableness of police's actions under the totality of the circumstances. Lisenbee, 116 Nev. at 1128 (citing White, 496 U.S. 325).

* THERE IS CAUSE AND PREJUDICE TO HEAR THIS GROUND

Petitioner filed an amended habeas petition on January 12, 2021 which the court determined was properly before it denying Plaintiff's procedural bar arguments, made in the return, at the March 30, 2021 hearing. Petitioner reluctantly surrendered self-representation in the hearing after the court stated Petitioner's petition was properly before it. Plaintiff and warden had been hindering petitioners representation in violation of due process and his self representation rights U.S.C.A. Am. 6 and 14 as will appear below. These issues were in fact brought up in Grand 5 of the January 12, 2021 pro per habeas petition.

These hindrances ultimately caused petitioner to invoke right to counsel and relinquish control of the case because representing myself under such conditions would have been impossible. At the time, March 30, 2021, Covid-19 restrictions were in full effect in this state and the lockdown conditions and closure of the law library by the warden made petitioner have extreme reservations about being able to effectively represent the case. Petitioner was in (24) hour lockdown segregation conditions, legal calls allowed on tuesdays if even then and use of the phone in daytime hours was extremely limited. The catastrophic blow however was legal visits being prohibited by warden. Warden has failed to create procedure, policy or practice for prisoners to buy, or be allowed to use in the alternative, equipment to listen to or view audio/video recordings disclosed by the prosecutor. A tablet or like device with appropriate software and no internet connection that could be purchased or checked out would allow a prisoner to access downloaded legal research materials and allow transfer of discloseable recordings rather simple.

Either way, petitioner is not the first prisoner invoking the right of self-representation guaranteed by the 6th Amendment to the United States Constitution. Petitioner is in prison awaiting adjudication of these charges only, as a potential parole violation. Petitioner's last felony nearly (15) years ago and free for nearly the last (2) years without violation before running into the machinations of Mr. Polanco.

without long preamble Petitioner is a pretrial detainee entitled to a fair process and trial as well as equal protection under the law. Petitioner's above-described hinderences are valid ones. Please consider Milton v. Morris, 767 F.2d 1443, 1446-1447 (9th cir. 1985) (Due process violated when State unjustifiably hindered self-representation by denying defendant meaningful access to telephone and current legal research materials); Tate v. Wood, 963 F.3d 20, 26 (2nd cir. 1992) (remanded to determine whether due process violated by defendant's confinement in segregation between arraignment and plea because no opportunity to prepare own defense)

Additionally, under right of access to the courts the Supreme court has made it clear that Prisoner's have a right to legal assistance which can be provided by State prisons by granting prisoners either meaningful access to a law library or in the alternative persons trained in law to assist them in preparing petitions. Bounds v. Smith, 430 U.S. 817, 821-28 (1977), overruled in part by Lewis v. Casey, 518 U.S. 343, 354 (1996).

Warden's lockdown, closure of access to the law library at all, and attorneys, systematically disables all ability of all litigating prisoners to proceed effectively in whatever phase of litigation they are in. Such lockdown conditions assuredly void the right of access to the courts under the minimal requirements set forth by the Supreme court in Bounds, 430 U.S. at 821-828. Please compare to ~~Hay~~ Hebbe

v. Pliler, 627 F. 338, 340, 341-343 (9th cir. 2010) (lack of access to legal assistance found where prisoner alleged denial of access to law library during 7 month prison lockdown.).

As this honorable court can glean from Attorney Simmons recent objections to the extent of her assistance in standby capacity assistance from Attorney Simmons where warden prohibits her visitation and extremely limited phone contact the assistance on return was extremely limited. Prohibiting her visit and/or access to my evidence coerced the decision to relinquish control of the case because it was unknown when Covid-19 would lift.

As such, petitioner submits it would be judicially economic and would cure any injury to my right of self-representation to grant me leave to proceed upon this habeas petition. Any decisions of Attorney Simmons were not mine. She was entitled to her strategy. I only resubmit my claim that Failing to Stop being prosecuted here violates the Double Jeopardy Clause, in below Ground 4, which was litigated in Attorney Simmons petition unsuccessfully [redacted] and do so only because both attorneys in their litigation managed to omit the Declaration of Arrest in the Municiple court Resist Public Officer charge which gave notice the Resist charge was being charged because I "Failed to yield to HPD Patrol Officers who initiated a lawful felony stop" Ex. 13. The Declaration of Arrest was litigated in the January 12, 2021 pro per petition and defeats Plaintiff's claims the Resist charge

"is completely seperate" from the failing to stop charge in this honorable court (Ex 25 at 7). Petitioner's pro per January 17, 2021 petition was pending at the time of relinquishing self representation and fairness would be to allow petitioner to represent those claims.

GROUND TWO: PLAINTIFF WITHHELD FAVORABLE EVIDENCE FROM THE DEFENSE IN JUSTICE COURT PROCEEDINGS.

DISCLOSURE DUTIES:

NRS 171.196(1)(a) requires the prosecutor to disclose any recorded statements of a witness or any reports of such statements, in the possession of the prosecutor, "not less than 5 judicial days" before the preliminary examination. Id. These provisions were violated as will appear.

Exculpatory evidence and evidence that impeaches a government witness is required to be disclosed without request. U.S. v. Bagley 473 U.S. 667, 676, 682 (1985) (citing Brady v. Maryland, 373 U.S. 83, 88 (1963)). "Evidence is material within the meaning of Brady when there is a reasonable probability that had the evidence been disclosed the results of the proceedings would have been different." Cone v. Bell, 556 U.S. 449, 469-70 (2009).

Materiality under Bagley is evaluated in distinct, cumulative analysis which "suppressed evidence is considered collectively, not item by item." Kyles v. Whitely, 514 U.S. 419, 436 (1995). Petitioner filed a motion to suppress on December 1, 2020 and the withheld evidence discussed below evidences police did not have probable cause or reasonable suspicion to seize and search the tan duffle bag and the search which is alleged to produce a 12 gauge shotgun was conducted and the product of an illegal warrantless seizure in violation of U.S.C.A. Amd. 4, Nev. Const. art. 1 § 18 requiring

the evidence be suppressed as it is barred from use in State courts as obtained in violation of U.S.C.A. Am. 4. Mapp v. Ohio,

• PROOF OF NONDISCLOSURE OF THE EVIDENCE.

At the December 9, 2020 hearing I complained that the interviews of witnesses related to the robbery or reports about the interviews had not been disclosed and I did not know which officer did what. PHT at 19-20. The prosecutor argued she did not have the reports or interviews until after the November 17, 2020 hearing and she did not intend to pursue the robbery or call the witnesses. Id at 21-22. The court found no discovery violation because they were not in the prosecutors possession or intended to be used by her. Id at 23-24.

The court had the prosecutor clarify what discovery was disclosed and the prosecutor listed the following disclosure to Standby counsel Attorney Kerra Simmons:

MRS. MENDOZA: She was provided a packet of discovery that included an incident report from the event, his was Doc County VOC's, a number of CADS, audio of 911, photos, all kinds of things back on November 25th. PHT at 31-32.

Petitioner later obtained e-mails between Attorney Simmons and the prosecutor where on December 2, 2020 the prosecutor informed Attorney Simmons she had a disk containing interviews available for pick-up,

Attorney Simmons sent a runner, the disk was not available which Attorney Simmons advised the prosecutor of and the prosecutor responded a P.D. runner had picked it up. Ex. 17 (emails). The defense did not receive the interviews or reports of the interviews. The court can note interviews and reports were not listed in the presentor's list of items disclosed at the December 9, 2020 hearing. Id at 31-32.

The State transcribed interviews of Jessie Caraccilo (Ex. 5), Jessie and Christian Polanco (Lanes teenage son) (Ex. 6) and interviews of Lavie Polanco (Ex. 7 and 8) were not disclosed until after Petitioner relinquished self representation on March 30, 2021 and the reports of these interviews conducted by Detectives Dennis Ozawa and Kevin Lepper (Ex. 10 and 11) were not disclosed as required by NRS 174.1965(1)(a) or in advance of the December 9, 2020 hearing. These pieces of evidence are material as they demonstrate Police had no probable cause or reasonable suspicion to search and seize the tan duffle bag and serve to impeach the credibility of the detectives and prosecutor and all evidence they handled.

" THE RECORDED INTERVIEWS WERE MATERIAL TO THE DEFENSE.

In the second issue in the December 1, 2020 Motion to Suppress Evidence I ~~was~~ showed that Detective Karl Lippisch

interviewed me and then stated in a Declaration of Arrest that he asked Detectives Ozawa and Lopez to reinterview Jessie Carucciolo and Louie Polanco to clarify previous statements they made and according to the declaration "they" did admit Petitioner had been allowed access to the cell phone and vehicle said to be stolen and that Petitioner had been spending time at the apartment about a week. Ex. 16. Petitioner showed the warrant application to search also made by Detective Lippisch (Ex. 12) and argued the statements in the Declaration of Arrest were omitted from the search warrant application and undermined probable cause as stated in the application.

Petitioner asks this honorable court that the recorded interviews of Louie, Jessie and Christian (Ex. 5-8) and the reports of those interviews by Detectives Ozawa and Lopez (Ex. 10-11) were necessary to litigate the issue presented which was that Det. Lippisch omitted information learned in the interviews when applying for the search warrant application as were the reports of Detectives Ozawa and Lopez who did the interviews and relayed the information to Detective Lippisch according to the Declaration of Arrest. Ex. 16.

In the recorded interview of Louie Polanco he told Detectives Ozawa and Lopez that he just met me Sunday night (Oct. 25) at 11:00 p.m., I fell asleep and when he awoke Monday I was gone but I returned to rob him on tuesday at around 2 p.m. Ex. 7 at 21, 24-25, 28-30; Ex. 8 at

5, 10 and 11.

Detective Lippisch testified in his warrant application I told him I had been spending time at the apartment about a week. Ex. 12 at 7. Christian corroborated me and impeached Louie telling Detective Lapeer he and his dad knew me about (10) days, I was at the apartment nearly the entire last week, for the last 3 days straight, we played football a couple of times, he considered me a friend. Ex. 6 at 2-4, 5, 14.

Second, HPD Zell reported Louie told him I awoke (mon.) and took his car unlawfully then returned to rob him. Ex. 4. This is in serious conflict with the story told to Detectives Ozawa and Lapeer which was that Louie woke up monday and I was gone, he did not see me monday, I took the car tuesday. Ex. 8 at 5, 10.

Third, Louie told Detectives Ozawa and Lapeer he never let me use the white malibu before I took it in the robbery on tuesday. Ex. 8 at 5 and 6. Detective Lippisch testified in his warrant application I told him that I had been allowed to use the malibu on previous occassions. Ex. 12 at 7. Christian corroborated me and impeached Louie. Christian told Detective Lapeer I had used the malibu numerous times in the previous week. Ex. 6 at 15-16.

Fourth, Louie stated I stole the cell phone in my possession when I robbed him. Ex. 2, Ex. 7 at 27-28. Detective Lippisch testified I told him I was given the phone to use. PHT at 101. Christi-

and Jessie corroborated me and impeached Louie. Christian and Jessie told Detective Lapeer Louie gave me the phone because I needed one. Ex. 6 at 16, 19-20.

Fifth, Jessie told Detective Lapeer she did not see me with a gun, nor did she see a robbery. Ex. 5 at 4-6. Christian told Detective Lapeer he did not see anything out of the ordinary that day. Ex. 6 at 14.

Sixth, Jessie told Detective Lapeer that she and Louie called his bank and reported two withdrawals on Oct. 25 and 26 were unauthorized and that Louie's phone and laptop were taken (i.e. access to accounts obtained through stolen electronics). Ex. 6 at 19-20. The robbery of electronics was not said to have occurred until tuesday at around 2 p.m. Oct. 27 and Detective Lapeer immediately stated the robbery couldn't have happened yesterday. Id at 20-21.

Christian also told Detective Lapeer his father told him a man robbed him and his accounts a year prior (similar allegations). Ex. 6 at 6.

Mr. Polanco received a lot of money for me to move in, he got my belongings, he used the fake robbery allegations to have his bank return money to his account alleging them unauthorized. Louie used my post and he stayed the car in his plot which appears next.

Seven, Louie told detectives I made him put the laptop, gun, phone in a tan duffle bag and told him to take it down to the mailbox, place the bag in the trunk, give me the keys which he did. Ex. 7 at 27-28, Ex. 8 at 7-8. Louie is impeached by Jessie who told HPD Zell in a sworn written statement that I left and I was carrying a green duffle bag. Ex. 3. Then in a seperate interview Jessie told Detective Lapeer that I left the apartment and I was carrying a green duffle bag which she did not know what it contained. Ex. 5 at 6.

If I made Louie take the duffle bag to the trunk Jessie would have seen it and said so. Louie and Jessie's statements conflict because Louie did put the bag in the trunk at some point but not because he was forced to. He staged the car with the bag. Detective Lapinsch testified I told him the tan bag was left in the trunk of the car, I had it all night, tried to return the car and bag in the morning, Louie refused to answer I put it back in the car and left to the store. Ex. 12 at 7. My statement and Jessie's are consistent, we impeach Louie that the bag or property within was stolen.

Detective Lapeer condemned Louies robbery allegations after interviewing Jessie, Christian and Louie (Ex. 5, 6, 8) in a report:

"It became evident Sean was more of a friend than a suspect who committed robbery. It became clear Louis laptop was not stolen when Sean left the apartment carrying a green duffle bag. Sean had the laptop since Sunday... Jessie advised that

Lovie gave Sean the phone because he needed one. Sean had the phone since Monday... Ex. 10.

• DETECTIVE LIPPISCH CREATED THE FAMILY THAT JESSIE CORROBORATED LOVIE'S CLAIM I LEFT CARRYING A TAN DUFFLE BAG.

In his warrant application Detective Lippisch testified:

"I was later advised by Detectives Ozawa and Lapeer that Lovie and Jessie... both stated Sean left the apartment carrying a tan duffle bag that contained their belongings..." Ex. 12 at 6.

Jessie told Detective Lapeer that Petitioner left carrying a green duffle bag and she did not know what it contained. Ex. 5 at 6. Detective Lippisch falsely testified that Jessie corroborated Lovie that I left carrying a tan duffle bag. Ex. 12 at 6.

Detective Lippisch testified to a new disclosure at the December 9, 2020 hearing where he testified he read HPD Zell's report prior to the search warrant application. PHT at 96, 119. That being

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. Petitioner communicated with standby counsel, sent her some reports with notes. Counsel vows to return them soon. If not attached here the State has them and I will attach with the reply.

So Detective Lippisch would know from reading HPD Zells report that Jessie told HPD Zell that I left carrying a green duffle bag Ex. 4. Detective Lippisch omitted this information in the warrant application. Ex. 12.

TO create the fallacy that Jessie cooberated Louie statement I left the apartment carrying a tan bag containing their belongings Det. Lippisch has to commit two acts which evidence his false testimonies were deliberate: 1. Det. Lippisch had to omit from the warrant application that Jessie told HPD Zell I left carrying a green duffle bag which HPD Zell reported and Det. Lippisch read (Ex. 3, 4; PHT at 96, 119); and 2. Detective Lippisch had to testify falsely that Jessie told Detectives Lepper and Ozana identical statements that I did leave carrying a tan bag with their belongings which is contrary to what Jessie said to Detective Lepper which Detective Lepper reported (Jessie stated I left with a green duffle bag)(Ex. 5 at 6, Ex. 10, Ex. 12 at 6).

Because I was stopped with a tan bag Detective Lippisch had to create the fallacy Jessie cooberated Louie that I took the tan bag in the robbery so he could claim the bag was evidence of a "Robbery w/use of a Deadly weapon" Ex. 12 (warrant application). A Search warrant may issue to search for property "stolen" or "embezzled" "in violation of the laws of the State of Nevada or the United States" NRS 179.035. The Supreme Court defines probable cause to search as "a fair probability that contraband or evidence of a crime will be found in a particular place" Ill. v. Gates, 462 U.S. 213, 238 (1983). The tan duffle bag was not taken in the robbery which I told police

and Jessie told police twice.

It is clear from the Declaration of Arrest that Detectives Lippisch, Lapeer and Olana were discussing the information learned in the interviews. Ex. 16 (Detective Olana and Lapeer told Detective Lippisch Lane and Jessie admitted I was allowed access to the mauve cellphone as well as the fact that I was spending time at the apartment for about a week). Detective Lippisch did not interview the robbery witnesses (PHT at 92) which gives him the ability to manipulate the warrant issuing magistrate with a few details twisted in his favor. It's absurd to even think highly trained detectives were unaware of the fallacy being created to obtain a warrant which the Detective Lapeer would execute and if these arguments arose he'd be able to claim he executed an warrant.

However, HPD Detective Lippisch testified in his warrant application that he seized the tan bag and white chevy malibu from the apartment complex without obtaining a warrant first and moving the evidence to police's storage and the station. Ex. 12 at 8. The warrantless seizure was unreasonable. Katz, 389 U.S. at 357. Additionally Petitioner was stopped at 7:18 a.m., Ex. 1 (CAD) and the warrant was not obtained until eight and a half hours later at 3:51 p.m. Ex. 12. It was unreasonable as an a detention or probable cause seizure of the tan bag or car, moving them from the complex to secrecy of the police station and not obtaining a warrant in that time. Barrios-Lomelli v. State, 113 Nev. 952 (1992) (Applying (60) minute detention limit of NRS 171.123 to apply to seizure of property, Lomelli's car, and if telephonic warrant not obtained in (60) minutes further

detention is unreasonable); U.S. v. Place, 492 U.S. 696, 706-707 (1983) (It was unreasonable to detain luggage for 90 minutes and police moving luggage to different airport)

Petitioner did argue at the prelim the State would have to show an exception to the warrant requirement for seizure of any property such as the car which the court agreed. PHT at 35-36. The State has the burden to raise an exception to the warrant requirement. Nelson, 96 Nev. 363, and also "must show the situation which made the course [of obtaining a warrant] imperative" State v. Hardin, 90 Nev. 10, 14 (1974); Welsh v. Wisconsin, 466 U.S. 740, 750 (1984) (police have a heavy burden to prove an exigency that allows an exception to the warrant requirement). The State would not be able to show probable cause or exigent circumstances.

The evidence was obtained in violation of U.S.C.A. Am. 4 and Nev. Const. art. 1 § 18 which requires the evidence be excluded. The evidence is barred from use in State courts. Mapp v. Ohio, 367 U.S. 643, 655 (1961)

- DETECTIVE LAPEER COMMITTED PERJURY TO CONCEAL THE EXCULPATORY INFORMATION IN THE INTERVIEWS AND REPORT HE WROTE CONDEMNING THE ROBBERY ALLEGATIONS.

At the prelim petitioner asked Det. Lapeer if Jessie's statements contradicted with Lavie's and Detective Lapeer testified he only interviewed Jessie and did not have a chance to speak to

Louie (i.e. Det. Lapeer would not know if Louie and Jessies stories conflicted because he only interviewed Jessie). PHT at 66, 75. This is false testimony proven by the interviews of Jessie, Louie and Christian Detective Lapeer conducted (Ex. 5, 6 and 8). Detective Lapeer questioned Louie in the reinterview. Ex. 8 at 10.

The prosecutor filed an opposition to the Motion to Suppress on December 8, 2020 wherein the prosecutor argued contrary to the evidence in her possession when she argued falsely:

1. "Regardless of whether Mr. Polanco previously allowed Defendant to use his car and cell phone, the totality of evidence leading up to the search warrant support a finding of probable cause that he would be in possession of evidence related to robbery; and

2. Officers had Mr. Polanco's statement that Defendant threatened him with a firearm and took his property, to include a tan duffle bag containing firearms. Ms. Caracciolo then saw the Defendant leave the apartment with the bag in question"

Opposition to Defendant's Motion to Suppress Evidence, December 8, 2020, at 6.

These arguments are contrary to the information [redacted] in the interviews of Jessie, Christian and Louie Detective Lapeer conducted and his report as highlighted above in this ground (Ex. 5, 6, 8, 10). The prosecutor could not make her false arguments if she disclosed to the court in her opposition the interviews and reports in her possession because they undermine the false arguments completely.

One day after the prosecator concealed the interviews of Jessie, Christian and Louie and Det. Lapeer's report (Ex. 5, 6, 8, 10) from the court and defense in the December 8, 2020 opposition Detective Lapeer concealed the same exculpatory information by testifying falsely he only interviewed Jessie (PHT at 66, 75)

The prosecator was aware of the interviews which we know because of the December 2, 2020 e-mails. Ex. 17.

This case is one where the exclusionary rule is purposed for.

PETITIONER HAS STANDING.

First, Plaintiff has never argued petitioner's lack of standing. However, the justice court magistrate stated he did not know if I had standing because I stated the bag was not mine. PHT at 132. Petitioner addresses this ruling.

In his search warrant application Det. Lippisch testifies that I told him the duffle bag was left in the trunk, I had sole possession of it all night. I returned to the apartment to return it but as it turns out Louie was refusing to retake possession of it to let me leave with it knowing police are on their way. See Ex. 12 (warrant application) at 7. There was no guarantee I was ever

going to return when he refused to retake possession of it. Louie surrendered his possessory interest in the duffle bag. I was not in unlawful possession of the bag. Although I explained the bag had belonged to Louie I admitted I possessed it all night and I took it out of the car and kept it with me, the bag was kept closed.

"A subjective expectation of privacy is demonstrated by actions to keep objects... private." 49 Geo. L.J. Ann. Rev. Crim. Proc. (2020) at p. 7, ¶¶ 14. A warrant is needed before police can open a closed container because by concealing the contents from plain view the possessor creates a reasonable expectation of privacy. Robbins v. Cal., 453 U.S. 420 (1981), overruled on other grounds by U.S. v. Ross, 456 U.S. 798 (1982).

I respectfully point out that what I have said in this case was cooberated and was honest. The officers who have testified are impeached. I do not at all agree with what police say and proven it dishonest. The bag was taken from my possession by use of force. I did not intentionally or willingly relinquish my possessory or privacy interest in the duffle bag. See generally Johnson v. Zerbst, 304 U.S. 458, 464 (1938) (A waiver of a constitutional right must be knowingly and intelligently waived); U.S. v. Jacobsen, 466 U.S. 109, 113 (1984) (A seizure occurs when a governmental intrusion meaningfully interferes with an

individuals possessory interests)

* MATERIALITY OF SUPPRESSED EVIDENCE SHOWN ALSO SERVES AS CAUSE AND PREJUDICE TO OVERCOME ANY PROCEDURAL BAR / COLLATERAL ESTOPPEL ISSUES.

Petitioner submits that the withheld evidence has been demonstrated material as there is a reasonable likelihood the evidence would have been suppressed if petitioner was given the evidence timely. Cone, 556 U.S. 469-470.

Petitioner also submits that the evidence being withheld adversely effected strategic choices I made. HAD I had the interviews I would have litigated everything I have in this petition. I would not have relinquished self-representation and thereby not lost control of the case.

Also, under the same Brady/Bagley standard, materiality shown from the withheld evidence ~~the same~~ also serves to demonstrate cause and prejudice to overcome any perceived procedural bar under NRS 34. Mazzan v. Warden, 116 Nev. 48 (2000)

Petitioner prays this honorable court will find that the evidence must be suppressed, namely the gun, and the charges dismissed.

GROUND THREE: THERE IS INSUFFICIENT EVIDENCE TO PROSECUTE FAILING TO STOP, A FELONY UNDER NRS 484B.550(1)(2)(3)(b).

On November 16, 2020 the prosecutor filed an amended complaint charging Petitioner with "specifically" Failing to Stop at Signal of "HPD Hehn, Brink or Duffy" in violation of NRS 484B.550(1)(2)(3)(b). Ex. 16. These officers never charged me nor did they ever testify in the court below.

On November 17, 2020 the prosecutor informed the court she had received the file on November 6th and the report in the file "doesn't identify what officers are involved in the evading". Ex. 18 (TOP, November 17, 2020) at 13. The prosecutor then informed the court she was unaware of the Resist charge in Municiple court[5]. Id at 16. Then on December 9, 2020 the prosecutor informed the court that she did not even have the HPD reports until after the November 17th hearing. PHT at 22.

The prosecutor called HPD Patrol Officer Alex Nelson as witness.

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5. Petitioner was charged in Municiple court, Henderson Township with Resist Public Officer, a misdemeanor violation of NRS 199.280(3). The Declaration of Arrest gave notice Petitioner was charged with Resist because I "Failed to yield to HPD Patrol Officers initiating a lawful felony stop" Ex. 13.

HPD Nelson initially testified Petitioner jumped out of the Chevy Malibu while driving, while the car was moving.'

Q. So you indicated that he actually exited the white Malibu as the Malibu was still driving, correct?
A. Yes ma'am
Q. And the Malibu actually crashed into the gate?
A. Yes ma'am.
PHT at 46.

Q. So you're saying I jumped out of the car while it was still moving?
A. It came to a stop, the car continued to roll and you jumped out of the vehicle while it was still moving.
Id at 55.

HPD Nelson changed his testimony in cross-examination after Petitioner asked if he had body cam activated which he answered he did. Id at 56. HPD Nelson then testified I fully stopped the vehicle and exited the vehicle when it was safely stopped;
Q. So then it came to a stop?
A. Uh-huh.
Q. Nobody was in danger when it came to a stop at that point when it stopped?
A. I still felt I could have been in danger, but once it stopped, no.

Q. no one was in danger at that point it stopped, correct?

A. Huh-uh

Q. And then I exited the vehicle?

A. Yes.

Id at 61-62

HPD Nelson did not testify I was speeding when I came into his view. HPD Nelson's testimony was that as I turned left towards the exit I accelerated. Id at 44. HPD Nelson testified he repositioned himself away from his ~~vehicle~~ vehicle so that "if he did ram through the gate I would not be injured." Id. These worries soon came to rest as HPD Nelson testified that petitioner brought the vehicle safely to a stop. 10 to 15 yards before the gate. Id at 61. HPD Nelson could not give an exact speed petitioner accelerated to. Id.

Petitioner could not have left the car in gear and completely stopped. If in gear the car would never completely stop and would roll at idol speed.

There was no evidence the car or gate was damaged when the car slowly rolled forward and nudged it. The car began to roll only after I brought it fully to a stop and as officer Nelson testified to no one was in danger when I exited the car. Id at 61-62.

The Failing to Stop Statute does not discuss leaving a car in gear or not et cetera. But it does state that in order for the

felony to apply a person must be violating the provisions of Subsection 1 when endangering other persons or property. NRS 484B.550(3)(b)("... if while violating the provisions of subsection 1 the driver of the motor vehicle: (b) operates the vehicle in a manner which endangers or is likely to endanger any other person or the property of another person, the driver is guilty of a category B felony...")

At that point HPD Nelson testified I safely brought the vehicle to a stop and exited (PHT at 61-62) I no longer was violating the provisions of subsection 1 which requires I willfully fail or refuse to bring the vehicle to a stop. NRS 484B.550(1)("Except as otherwise provided in this section the driver of a motor vehicle on a highway or premises which the public has access who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude a peace officer in a readily identifiable police vehicle of any police or regulatory agency, when given a signal to bring the vehicle to a stop, is guilty of a misdemeanor")

Petitioner's standby counsel refuses to send petitioner the Findings of Facts, Conclusions of Law. Plaintiff chatted for the court to sign or the transcripts of the Judges ruling. Petitioner only remembers the Judge stating I left the car in gear leaving it traveling dangerously or something to that effect. There was no actual danger. HPD Nelson put his vehicle in a travel lane as a blockade only because he wanted to stop petitioner by creating a trap. He moved position so he wouldn't be in danger "if" I rammed the gate. PHT at 44. I did not.

The prosecutor argued the evade was over once I stopped the

the vehicle and the magistrate agreed. PHT at 135, 137. As such any rolling was not intentional nor evidence that could amount to Failing To Stop, felony under NRS 484.550(1)(2)(3).

It is error to hold petitioner for trial for Failing To Stop as insufficient evidence is shown as required by NRS 171.206.

GROUND FOUR: THE FAILING TO STOP CHARGE VIOLATES THE DOUBLE JEOPARDY CLAUSE.

After being stopped petitioner was taken to the jail in Henderson and charged with Resist Public Officer, a misdameanor violation of NRS 199.280 which provides "A person who in any case or under any circumstance otherwise specifically provided for, willingly resists, delays or obstructs a peace officer in discharging or attempting to discharge any legal duty of his or her office" is guilty of resisting a public officer.

In the Declaration of Arrest it stated:

"Due to the fact Sean failed to yield to HPD patrol officers who initiated a lawful stop on a suspect in a felony crime, the fact Sean fled from officers after jumping ~~overcoming~~ out of the suspect vehicle, and the fact 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" Ex. 13.

Due to this notice I did plead no contest and was sentenced to a jail sentence on October 30, 2020.

It is helpful that an officer of the law, a detective no less, does himself read Resist Public Officer under NRS 199.280.3 to read that failing to yield to patrol officers initiating

a stop can be the basis for probable cause to arrest under NRS 171.280.3.

The complaint charging Failing to Stop under NRS 484B.550(1)(2)(3)(b) contains the same language as the Municipal Court Declaration of Arrest. The Failing to Stop Complaint reads, in part, "Defendant did willfully and feloniously fail or refuse to bring his vehicle to a stop. Ex. 15.

Nevada has adopted the test under Blockburger v. United States, 284 U.S. 299, 304 (1932) when resolving Double Jeopardy Clause issues:

"The Blockburger test asks whether the offense in question cannot be committed without committing the lesser offense. A person cannot be convicted of both a greater and lesser offense"

Lachance v. State, 130 Nev. 263, 273 (2014)

A person is seized for purpose of the 4th amendment in a traffic stop whether it be for reasonable suspicion or probable cause. Brendlin v. Cal., 551 U.S. 249, 256-258 (2007); NRS 171.124, 171.123. Any resist, delay or obstruct of a traffic stop would constitute Failing to Stop under NRS 484B.550(1)(2)(3)(b). A person cannot "willfully fail or refuse to bring his vehicle to a stop" or "attempt to elude or flee" without resisting, delaying or obstructing he or she in discharging "a legal duty of his or her

office." Resist under NRS 199.280 is a lesser included offense of Failing to Stop under NRS 484B.550(1)(2)(3)(6) under the Blockburger test.

Petitioner prays this honorable court will dismiss the Failing to Stop charge.

C. Conclusion.

Wherefore, petitioner prays that this honorable court will suppress the gun and any information obtained as the product of petitioners seizure or seizure of property, or any such other relief the court deems appropriate.

Petitioner does hereby swear under penalty of perjury the above information is mine, except where relied upon others, which is true and correct to the best of my knowledge and belief:

Sworn, September 1, 2024.

Sean Orth

Sean Orth

Petitioner

Pro Per

This document does not contain the name and Social Security number of any person.

Sean Orth.

Certificate of Service,

Pursuant to NRCP Rule 5(b), I do hereby certify that on September 2, 2014 I did mail a true and correct copy of the foregoing Petition for a Writ of Habeas Corpus to Clark County District Attorney, % ERIKA Mendoza, 200 Lewis Ave LV, NV. 89101.

Sean Smith

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Sean Orth 96723
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