

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 31 2023 01:57 PM  
Elizabeth A. Brown  
Clerk of Supreme Court


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

9                   **APPELLANT'S OPENING BRIEF**

10                   **Volume XIII**

11                   **Bates Nos.:**

12                   **AA002092 – AA002304**

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15   
16 C. BENJAMIN SCROGGINS, ESQ.

17 Nevada Bar No. 7902

18 **THE LAW FIRM OF**

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*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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Aaron Ford  
Alexander Chen

CERTIFIED this 21<sup>st</sup> day of August, 2023.

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

1 JEAN ORTH #96723  
2 P.O. BOX 650  
3 INDIAN SPRINGS, NEVADA 89070  
4 PRO SE

FILED  
MAY 02 2023  
CLERK OF COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 JEAN ROONEY ORTH,  
10 PETITIONER,  
11 VS.

CASE NO.

A-23-869964-W  
Dept. 10

12 BRIAN WILLIAMS, WARDEN,  
13 HIGH DESERT STATE PRISON,  
14 NEVADA,  
15 RESPONDENT.

PETITIONER'S APPENDIX OF  
EXHIBITS IN SUPPORT OF  
FIRST AMENDED PETITION  
FOR A WRIT OF HABEAS  
CORPUS (EXHIBITS 1 THRU 15)

CLERK OF THE COURT

APR 17 2023

RECEIVED

AA002092

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EXHIBIT ONE,

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 12/1/06) 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 if he had any contact with Sean 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 YD058V4H
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.

EXHIBIT TWO,

STATE OF NEVADA  
DEPARTMENT OF PUBLIC SAFETY  
DIVISION OF PAROLE AND PROBATION  
CR05-1498/L19-0135 & CR06-2177/L19-0135A

**PRIOR NOTICE OF CHARGES AND RECEIPT FOR DOCUMENTS**

I, Sean Orth do hereby acknowledge that the following charges have been brought against me:

**Alleged Violations**

You must complete a substance abuse evaluation within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider.

You must complete a mental health assessment within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider.

I, Sean Orth do hereby acknowledge that I have been informed that due to one or more of the following reasons listed below, my violation case is not entitled to be heard at an informal preliminary inquiry, but will be taken directly before the Court/Parole Board for a formal revocation hearing.

1. ☒ Defendant is not being held in detention by Parole and Probation on any of the violations charged above.
2. ☐ Defendant has one or more new convictions, which are included in the violations charged above. (NRS 176A.580 (4) / NRS 213.1511 (4))
3. ☐ Other (Describe) \_\_\_\_\_

I, Sean Orth

do hereby

(1) A copy of the Violation Report, and

(2) A copy of the Prior Notice of Charges and Receipt of Documents.

Witness

Sean Orth  
Defendant

1/8/21  
Date

EXHIBIT THREE.

**CENTRAL OFFICE**

1677 Old Hot Springs Rd., Ste. A  
Carson City, Nevada 89706  
<http://parole.nv.gov>  
(775) 687-5049  
Fax (775) 687-6736

CHRISTOPHER P. DERICCO, *Chairman*  
SUSAN JACKSON, *Member*  
MARY K. BAKER, *Member*  
SCOTT WEISENTHAL, *Member*

KATIE FRAKER, *Executive Secretary*

STATE OF NEVADA  
JOE LOMBARDU  
Governor



**LAS VEGAS OFFICE**

4000 S. Eastern Ave., Ste. 130  
Las Vegas, Nevada 89119  
<http://parole.nv.gov>  
(702) 486-4370  
Fax (702) 486-4376

CHRISTOPHER P. DERICCO, *Chairman*  
ERIC CHRISTIANSEN, *Member*  
DONNA VERCHIO, *Member*  
LAMICIA BAILEY, *Member*

**NEVADA BOARD OF PAROLE COMMISSIONERS**

January 30, 2023

Sean Orth, NDOC #96723  
High Desert State Prison  
P.O. Box 650  
Indian Springs, NV 89070-0650

Re: Your letter received January 23, 2023.

Mr. Orth,

I have reviewed your letter requesting a reconsideration of the revocation action. The Board does not relitigate court cases. You have been convicted of a new felony while on parole. Absent a procedural error or evidence being overturned, there is no basis for the Board to reconsider the revocation or length of denial. Under NRS 213.1519(5)(b)(1), a new felony or gross misdemeanor conviction is sufficient for a revocation of parole. At the time of your hearing, you had entered a plea of guilty to the new felony charge.

There will be no change to the Certification of Action and revocation period.

Signed,

A handwritten signature in cursive script that reads "Katie Fraker".

Katie Fraker  
Executive Secretary

EXHIBIT FOUR



**CENTRAL OFFICE**

1677 Old Hot Springs Rd., Ste. A  
Carson City, Nevada 89706  
<http://parole.nv.gov>  
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Fax (775) 687-6736

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SUSAN JACKSON, *Member*  
MARY K. BAKER, *Member*  
SCOTT WEISENTHAL, *Member*

KATIE FRAKER, *Executive Secretary*

STATE OF NEVADA  
JOE LOMBARDO  
Governor



**LAS VEGAS OFFICE**

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CHRISTOPHER P. DERICCO, *Chairman*  
ERIC CHRISTIANSEN, *Member*  
DONNA VERCHIO, *Member*  
LAMICIA BAILEY, *Member*

**NEVADA BOARD OF PAROLE COMMISSIONERS**

March 28, 2023

Sean Orth, NDOC #96723  
High Desert State Prison  
P.O. Box 650  
Indian Springs, NV 89070-0650

Re: Your letters received March 1, and March 9, 2023.

Mr. Orth,

You were charged by the Division of Parole and Probation with the alleged violation of laws on the Notice of Preliminary Inquiry Hearing that you signed on November 4, 2020.

Per NRS 213.142(2) and NRS 213.1519, the Board had the option of revoking your parole for up to five years since you are serving a life sentence. The Board considered the time you had been serving when making their decision on the revocation period.

**NRS 213.142 Rehearing to be scheduled if parole denied.**

1. Upon denying the parole of a prisoner, the Board shall schedule a rehearing. The date on which the rehearing is to be held is within the discretion of the Board, but, except as otherwise provided in subsection 2, the elapsed time between hearings must not exceed 3 years.

2. If the prisoner who is being considered for parole has more than 10 years remaining on the term of his or her sentence, not including any credits which may be allowed against his or her sentence, when the Board denies his or her parole, the elapsed time between hearings must not exceed 5 years.

(Added to NRS by 1973, 190; A 1995, 1360; ~~1999, 134~~)

There will be no change to the Certification of Action and revocation period.

Signed,

Handwritten signature of Katie Fraker in cursive script.

Katie Fraker  
Executive Secretary

EXHIBIT FIVE

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CITY OF HENDERSON MUNICIPAL COURT

CLARK COUNTY, NEVADA

CITY OF HENDERSON )

PLAINTIFF )

vs. ) Case No: 20CR007366

SEAN RODNEY ORTH )

DEFENDANT )

\_\_\_\_\_ )

PRELIMINARY HEARING

October 29, 2020

PRESENT:

COURT: - Hon. Douglas W. Hedger

FOR THE PLAINTIFF:

MS. MATHER: - Elaine Mather - Deputy City Attorney

FOR THE DEFENDANT:

MS. PURSER: - Anneliese Z. Purser - Public Defender

DEFENDANT: - Sean Rodney Orth

TRANSCRIBED BY: Humberto Rodriguez

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

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

5 CLERK: Thank you Judge.

6 COURT: Present and in custody. Hello Sir.

7 MS. MATHER: How you doing Judge?

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

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

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

15 COURT: And your stipulating to the facts?

16 MS. PURSER: Yes.

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

19 DEFENDANT: (INAUDIBLE) Your Honor, I  
20 haven't been in trouble for fifteen years.

21 (INAUDIBLE) It's hard for me to enter the plea.

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

25 DEFENDANT: Yes, sir.

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

3 DEFENDANT: Yes.

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

6 DEFENDANT: Yes.

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

10 DEFENDANT: No.

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

13 DEFENDANT: No contest.

14 COURT: You sure?

15 DEFENDANT: No contest, Your Honor.

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

18 DEFENDANT: (INAUDIBLE)

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

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

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

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

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

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

10 COURT: Why you run?

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

20 COURT: Okay.

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

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

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

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

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

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

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

24 DEFENDANT: Seventeen months ago, Your  
25 Honor.



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

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

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

7 DEFENDANT: No, not really.

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

16 DEFENDANT: Thank you.

17 COURT: That's all.

18 \*\*\*

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## 1 CERTIFICATE OF TRANSCRIBER

2 STATE OF NEVADA )

3 ) ss.


4 COUNTY OF CLARK )

5 I, HUMBERTO RODRIGUEZ, declare as follows:

6 That I transcribed the AUDIO FILE presented.

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

10  
11 Dated at Las Vegas, Nevada this 3rd day of  
12 November, 2022.



14 /s/Humberto Rodriguez

15 HUMBERTO RODRIGUEZ  
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EXHIBIT SIX.



Nevada Department of  
**Public Safety**  
Parole and Probation

Division of Parole and Probation

November 3, 2020

To the Honorable Board  
of Parole Commissioners  
Carson City, Nevada

☒ Parole ☐ Probation

Name: Orth, Sean  
AKA: Sean Rodney Orth  
File #: L19-0135  
CC #: CR05-1459  
NDOC #: 96723

Supervision Grant: 11/26/2018  
Original Expiration: LIFE  
Adjusted Expiration: LIFE

Crime: CT I: Habitual Criminal (Greater), CT III: Habitual Criminal (Greater), CT V: Habitual Criminal (Greater)  
Sentence: 120 MOS TO LIFE NDOC

**I. Violation(s) and Response to Imposed Sanctions:**

**Directives, Conduct, Controlled Substances, Intoxicants, Weapons, Special Condition (1), Special Condition (3)**

On November 28, 2018, Mr. Orth was granted an amazing opportunity of serving his lifetime prison sentence within the community. During his intake process the Division went over Mr. Orth's parole agreement and stressed the importance of abiding the rules and regulations of his parole agreement. Unfortunately, Mr. Orth continued in his life of crime; violated multiple clauses in his parole agreement and picked up new charges.

Mr. Orth obtained a Substance Abuse Evaluation through ROI on December 6, 2018 but failed to provide the Division with proof of completion of treatment. (Directives, Conduct, Special Condition 1: You must complete a substance abuse evaluation within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider)

*CHOW  
ANDON*

Mr. Orth obtained a Mental Health Evaluation through ROI on December 6, 2018 but failed to provide the Division with proof of completion of treatment. (Directives, Conduct, Special Condition 3: You must complete a mental health evaluation within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider)

On December 16, 2018, Mr. Orth made contact with the Las Vegas Metro Police Department during a routine traffic stop. During this traffic stop it was noted Mr. Orth was in the vehicle with convicted felon Martin, Angel (BIN: 1004427746), which violated the directives (association) clause of his parole agreement. Mr. Orth was admonished and advised to no longer associate with felons, in which Mr. Orth stated he understood. The Division was advised by staff from Samaritan House that Mr. Orth had returned under the influence of a controlled substance. Mr. Orth refused to provide a urine sample, but verbally admitted to ingesting Methamphetamines. Mr. Orth was subsequently terminated from the Samaritan House Sober Living Program. (Directives, Conduct, Controlled Substances)

On December 19, 2018, the Division received a telephone call from Mr. Orth who stated he traveled to Reno with a girlfriend for a few days. Although Mr. Orth is allowed to travel within the state, he was made aware that the Division must know if he would be sleeping at a different residence. Unfortunately, Mr. Orth did not update the Division of his overnight whereabouts. (Directives and

AA002113



Conduct)

On August 27, 2020, the Division received a phone call from LVMPD stating Mr. Orth was seen leaving 3617 Dutch Valley, which is a known criminal hot spot. Mr. Orth was taken into custody for traffic warrants out of Henderson. (Directives, Conduct, Laws)

On September 9, 2020, the Division made contact with Mr. Orth. A phone search was conducted, and it was evident that Mr. Orth had cleared out his text messages. A search of his room was conducted and there were numerous backpacks, in which one of them contained a Modelo beer. Mr. Orth denied ownership of the beer, but because it was in his room in a backpack he stated was his, he was admonished for it. There were female belongings in the room and when asked who the items belonged to he stated his girlfriend. Mr. Orth was asked where his girlfriend was and if she had a criminal history, he stated she was at the store and she was not a felon. Mr. Orth was questioned as to why his girlfriend would go to the store and leave her purse and he could not answer why. Officers of the Division left Mr. Orth's residence and quickly returned to provide him with a notice of graduated sanctions form. Officers observed Mr. Orth and a WFA walking down the stairs, surveillance was conducted on the residence and no one had entered the residence, so it was evident the WFA was in the home all along. After questioning Mr. Orth stated the WFA was in the adjacent (connected) room, hiding. A search of the adjacent room revealed aero soft pellet guns, and a hyperemic needle with a clear liquid substance and drug paraphernalia. A drug test was conducted, and Mr. Orth tested positive for Methamphetamine. The WFA was ran and it was discovered she was previously on community supervision. In an attempt to give Mr. Orth a second chance, he was given the following graduated sanctions:

- Proof of 15 job applications by September 16, 2020 or a full-time job
- Weekly reporting (with instructions to call the undersigned Officer every Friday)
- Curfew: 8pm to 6am

Mr. Orth was also directed and reminded once again to not have contact with any person that is convicted of a felony or the commission of a crime. Due to the numerous violations noted within the residence and Mr. Orth's inability to be transparent, Mr. Orth was given the directive to move no later than October 1, 2020. (Directives, Conduct, Intoxicants, Controlled Substances, Weapons)

Mr. Orth failed to report on the following dates: September 25, 2020 and October 2, 2020. Mr. Orth failed to provide the Division with proof of 15 job applications as previously instructed, and Mr. Orth failed to move as directed. On October 15, 2020, Mr. Orth contacted the Division stating he was still residing at the residence he was directed to move out. (Directives, Conduct)

As a last resort, the Division attempted to place Mr. Orth on intensive supervision but the Division could not make contact with Mr. Orth in person. An attempt to locate Mr. Orth was conducted on October 19, 2020, the light was on upstairs and a dog was heard barking, but no one answered. A notice was left on the door instructing Mr. Orth to report to the Division on October 20, 2020 and up to the date of this report no phone call has been received. (Directives, Conduct)

On October 28, 2020, Mr. Orth made contact with the Henderson Police Department as the suspect of an armed burglary. Mr. Orth was in a vehicle that was reported unlawfully taken the night prior. Upon arrival Mr. Orth was spotted in the vehicle and in an attempt to evade Officers he got out of the vehicle



Nevada Department of  
**Public Safety**  
Parole and Probation

Division of Parole and Probation  
**Non-Technical Violation Report**

while it was still in motion with a tan duffle bag in his possession. Officers initiated a foot pursuit after issuing commands for Mr. Orth to stop however he continued to run. HPD was eventually able to get Mr. Orth in custody and he was booked on the following new charges: Resist Pub Off (M) and Own/ Poss Gun By Prohibit Pers (F). During this incident it was discovered that Mr. Orth was previously associating with Louis Polanco (DOB: 09/06/1977), who has a significant number of arrests. Upon search of the tan duffle bag that was in Mr. Orth's possession, the following items were discovered: a black 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 chisel tool. (Directives, Conduct, Laws, Weapons)

Mr. Orth was put on an employment search in order to push him to obtain employment but failed to provide the Division with proof of 15 jobs applications for the month of September 2020. (Directives, Conduct)

Mr. Orth has failed to pay monthly supervision fees in the amount of \$30 as mandated by the Nevada Revised Statutes to defray the cost of supervision. He is currently \$216 in arrears towards this obligation. (Directives, Conduct)

Mr. Orth has failed to comply with the Provisions of his parole agreement due to the above listed violations.

**II. Custody Status:**

As of the date of this report, Mr. Orth is currently in custody at the Henderson Detention Center.

**III. Violation Hearing History:**

This is Mr. Orth's first time facing revocation proceedings since his parole date of 11/26/2018.

**IV. Mitigating Factors:**

Mr. Orth is a convicted habitual criminal who is well versed in the rules and regulations of laws and community supervision. Mr. Orth had all the tools of the Division at his disposal but chose to continue in his life of crime. Mr. Orth was given numerous chances by the Division through verbal admonishment as well as graduated sanctions. Mr. Orth's actions speak for themselves, it is clear Mr. Orth has no desire to be a productive member of our community.

**V. Recommendation:**

It is recommended a retake warrant be issued, and Mr. Orth's imposed lifetime sentence be imposed.

**VI. Current Level of Supervision:**

Maximum

Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.



Nevada Department of  
**Public Safety**  
Parole and Probation

**Division of Parole and Probation  
Non-Technical Violation Report**

Respectfully submitted:

Q. Pascala, DPS Officer II  
Division of Parole and Probation  
qpascala@dps.state.nv.us  
(702) 486-3651

Approved:

4608

M. LaPutt, DPS Sergeant  
Division of Parole and Probation  
mlaputt@dps.state.nv.us  
(702) 486-3001

OFFICE  
COPY

STATE OF NEVADA  
DEPARTMENT OF PUBLIC SAFETY  
DIVISION OF PAROLE AND PROBATION

NOTICE OF PRELIMINARY INQUIRY HEARING

You, ORTH, Sean

Number: L19-0135/96723

File/DOC

are advised that an informal Preliminary Inquiry Hearing pertaining to the following alleged violation(s) of your Parole/Probation condition(s) shall be conducted to determine if you shall be held in custody to answer said allegation(s) before the Court/Board at a formal Revocation Hearing:

Alleged Violation
Directives, Conduct, Special Conditions #1 & #3
Weapons, Laws
Controlled Substances
Intoxicants

Your Preliminary Inquiry Hearing is scheduled for November 13, 2020 1:30pm  
Date Time

at Clark County Detention Center  
Location

At this hearing, you have these due process rights: to speak in your own behalf; retain counsel, present letters, documents, or persons who can present relevant information, and; question any person giving adverse information against you, unless in the opinion of the hearing officer the individual would be subjected to risk of harm by disclosure of his/her identity.

You may waive this Preliminary Inquiry Hearing if you desire. Should you waive, your action shall in no way be considered an admission of guilt.

Please initial the appropriate response:

   I desire to have a Preliminary Inquiry Hearing at the date, time, and location indicated above.

   I will retain \_\_\_\_\_ Name \_\_\_\_\_  
\_\_\_\_\_ Address \_\_\_\_\_ to represent me.

   I wish to present the following witness(es) at my own expense:

Name

Address

So I waive my right to a Preliminary Inquiry Hearing and request to present my case directly to the Court/Board.

So I have received a copy of the alleged violation(s) of Parole/Probation, and this, my Notice of Rights.

Sean Orth  
Signature of Client

Number

11/8/2020  
Date

[Signature]  
Signature of Witness

DPS OFFICER  
Position

11/4/2020  
Date

(rev. 05/04/12) Form 40

AA002117



EXHIBIT 121 GHT.

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

EXHIBIT NINE

AA002120

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. 20CR001571  
10 SEAN ROCKEY 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  
20 APPEARANCES:  
21 For the State: ERICA MENDOZA  
22 Chief Deputy District Attorney  
23  
24 For the Defendant: IN PROPER PERSON  
25 Standby Counsel: KARA SIMMONS  
26 Deputy Public Defender  
27 Reported by: Lisa Brenske, CCR #186

12:00AM 1 WITNESSES  
2  
3 ALEX NELSON  
4 Direct Examination by Ms. Mendoza 34  
5 Cross-Examination by Defendant Orth 35  
6 Redirect Examination by Ms. Mendoza 36  
7 Recross-Examination by Defendant Orth 37  
8 Further Redirect Examination by Ms. Mendoza 38  
9  
10 KEVIN LAPEER  
11 Direct Examination by Ms. Mendoza 39  
12 Cross-Examination by Defendant Orth 40  
13 Redirect Examination by Ms. Mendoza 41  
14  
15 KARI LIPPISCH  
16 Direct Examination by Ms. Mendoza 42  
17 Cross-Examination by Defendant Orth 43  
18 Redirect Examination by Ms. Mendoza 44  
19 Recross-Examination by Defendant Orth 45  
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12:00AM 1 INDEX OF EXHIBITS  
2  
3 Exhibit Description Admitted  
4 STATE'S 1 PHOTOGRAPH OF DUFFEL BAG 65  
5  
6 STATE'S 2 - 5 JUDGMENTS OF CONVICTIONS 145  
7  
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12:00AM 1 HENDERSON, NEVADA, DECEMBER 9, 2020  
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THE COURT: Sean Orth, 20CR01571, 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 prelin depending how I rule up your motions, okay?

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

THE COURT: Of what?

DEFENDANT ORTH: The rule of witnesses.

To exclude them:

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

DEFENDANT ORTH: I received them today, your Honor.

THE COURT: Have you reviewed them?

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

THE COURT: I'm sorry?

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

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

11:06AM 1 Miss Mendoza intends to present anything by audio  
2 visual, correct?  
3 MS. MENDOZA: That is correct. And that  
4 was included in all initial discovery packets.  
11:07AM 5 DEFENDANT ORTH: I agree with that today,  
6 your Honor, but the thing is that in this notice of  
7 intent what the prosecutor is doing is they're telling  
8 defendants that they are subject to audio visual, the  
9 use of audio visual technology for the purpose of  
11:07AM 10 witness confrontation rights. They're basically saying  
11 they can present testimony. So we could have done that  
12 on November 17<sup>th</sup>. In fact, she states in her notice  
13 that pursuant to NRS 171.19752, if good cause otherwise  
14 exists, the magistrate must allow the witness to  
11:07AM 15 testify at the preliminary examination through the use  
16 of audio visual technology. She further goes on to  
17 state that her witnesses will be available no matter  
18 what jurisdiction they are in through audio visual  
19 technology.  
11:07AM 20 So on November 17<sup>th</sup> Officer Ozawa, who  
21 was in the city of Las Vegas at the time, which we know  
22 because she admitted that on record, was in the  
23 jurisdiction of Las Vegas, and he also could have  
24 appeared by audio visual technology. However, the  
11:08AM 25 prosecutor did not move to show cause to use audio

11:08AM 1 visual technology so Officer Ozawa was not here. The  
2 problem is is that we have the defendant who is accused  
3 by the police and he is asking for a preliminary  
4 hearing in the cases that I've presented especially  
11:09AM 5 under Terpsira 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  
11:09AM 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  
11:09AM 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 dunned with new discovery by a Detective Brandon  
3 Trotter of Henderson PD. He is actually the one who  
4 did the search and photograph of the duffel bag that  
5 Ozawa is going to 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.  
15 The patrolman sees 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 Brandon 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 come 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  
11:12AM 20 stated that Officer Ozawa was in fact in the city of  
21 Las Vegas. That is a matter of record. I didn't make  
22 it up. I remember it clearly.

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

12:12AM 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  
12:12AM 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  
12:13AM 20 don't mean to interrupt, your Honor.

21 THE COURT: Mm. 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  
12:13AM 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  
10 good case law. The Nevada Supreme Court has said that  
11 good cause is a legal reason. Being in contempt of  
12 court, and the statute states that if a person is  
13 subpoenaed and he does not obey it, he shall be deemed  
14 in contempt. Contempt is illegal, it is not a legal  
11:13AM 15 reason for a continuance. If I wouldn't have been  
16 ambushed with the motion, I would have filed my written  
17 motion and we would not have found good cause because  
18 under Hill versus Sheriff she has to make a statement  
19 that the witness's presence could not be obtained. His  
12:13AM 20 presence could have been obtained. He was under  
21 subpoena. He 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  
12:14AM 25 hours, and he's the one who is accusing me. All I'm





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 set 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 notion  
13 to continue at this particular time for the  
14 continuance -- I'm sorry -- your notion to dismiss for  
11:21AM 15 the continuance in this case.

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

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

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

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

6 Let me see what else you have here.

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

9 THE COURT: Was there any other discovery  
11:23AM 10 disputes that was in the notion 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 SPD DR  
11:24AM 25 number --

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  
11:22AM 20 continue the case, that's one thing that I was  
21 concerned about at the time. I went back and looked at  
22 the report. There was reference to, and you've read  
23 it. It's an allegation. Whether it's true or not, the  
24 reference was that you had fled and that was at least a  
11:22AM 25 basis of fact for you to know that that particular

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

6 Let me see what else you have here.

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8 portion of it, your Honor?

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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,  
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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 SPD 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  
11:25AM 15 radio or text messaging or body cam that occurred when  
16 they approached the house and they took that statement.

17 THE COURT: If I remember the report, that  
18 information became available and there was an attempt  
19 by Henderson Police Department to stop Mr. Orth I  
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 --

11:26AM 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 then 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?

11:27AM 11 MS. MENDOZA: Yes, your Honor.

11:27AM 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.

11:27AM 16 THE COURT: Okay.

11:27AM 17 MS. MENDOZA: Can I just clarify?

11:27AM 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 MSP, 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.

11:30AM 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 MRS 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.

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?

*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 fifth 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 CDC 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.

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

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

17 MS. MENDOZA: Detective Orava 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 Orava 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.

Orava

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 1589?

22 MS. MENDOZA: Yes. She was provided a  
23 packet of discovery that included an incident report  
24 from that event, his Washoe County SOCs, a number of  
11:38AM 25 CADs, audio of 911, photos. All kinds of things back

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

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

4 MS. SIMMONS: Your Honor, I was just  
11:38AM 5 doublechecking my emails. It was a 336-page document  
6 dump, but I did find the report here that I have  
7 provided to him.

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

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

12 THE COURT: Yes.

13 DEFENDANT ORTH: One last thing just for  
14 clarification on the record. You did a continuance for  
11:38AM 15 Officer Orava 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 Orava. Detective  
11:39AM 25 Lapeer was in sensitivity training -- I'm just

witness

10

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  
11:40AM 15 and they were both unavailable.  
16 DEFENDANT ORTH: One thing because I was  
17 not here when you made your ruling on the probable  
18 cause issue. I understand your probable cause issue on  
19 the warrant. Just so we understand --  
11:40AM 20 THE COURT: That's of your arrest. And  
21 I'm not making a determination that there's probable  
22 cause. What I'm saying is if there's probable cause,  
23 they can arrest you. They don't need to go get an  
24 arrest warrant.  
11:40AM 25 DEFENDANT ORTH: Well, your Honor, I would

11:40AM 1 like --  
2 THE COURT: Your objections are in your  
3 notions.  
4 DEFENDANT ORTH: I'd like to state -- I  
11:40AM 5 never got a chance to address that.  
6 THE COURT: Go ahead.  
7 DEFENDANT ORTH: In Terry versus Ohio the  
8 landmark decision it says at page -- it's Terry versus  
9 Ohio at 392 U.S. 1 (1968) at Page 35. We do not  
11:40AM 10 retreat from our holding that police must, whenever  
11 practicable, obtain advance approval of search and  
12 seizure through the warrant procedure. Or that  
13 emotional senses failure to comply with the warrant  
14 requirement can only be excused by exigent  
15 circumstances.  
16 In Barrios-Lowell 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 Hardeo 90 Nevada 10 at Page 14,  
11:41AM 25 (1974) stated the burden rests within those seeking the

11:41AM 1 exception to prove the exigent of the situation which  
2 made the course imperative -- made the course of  
3 obtaining a warrant imperative.  
4 At no time did NRS 171.124 in its  
11:42AM 5 description of probable cause upon an officer seeing  
6 something negate the officer's need to obtain a warrant  
7 when on October 27th they have a complaint, they have  
8 a warrant process, they can use a warrant process and  
9 they don't, and they stand around. Specifically they  
11:42AM 10 have to show how it was imperative that they could not  
11 go and get a warrant. They are not allowed to use  
12 their independent judgment.  
13 I also can give you State versus Lizoobe.  
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-I-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.  
 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  
 21 having been first duly sworn, did testify as follows:  
 22  
 23 DIRECT EXAMINATION  
 24 BY MS. MENDOZA:  
 25 Q. How are you employed?  
 A. I'm a police officer with the Henderson

11:46AM 1 Police Department.  
 2 Q. And were you working in that capacity on  
 3 October 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  
 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?



11:40AM 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.

11:40AM 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.

11:40AM 10 BY MS. MENDOZA:

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

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

11:40AM 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?

20 THE COURT: Yes.

11:40AM 21 BY MS. MENDOZA:

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

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

11:40AM 25 THE COURT: Review that and when you're

11:40AM 1 done just look up and tell us you're done.

2 THE WITNESS: Okay.

3 BY MS. MENDOZA:

11:40AM 4 Q. Does that refresh your recollection about  
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.

11:40AM 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  
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 QITH: Hearsay,

11:40AM 19 THE COURT: I'm going to sustain that one.  
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  
25 from other officers, correct?

11:40AM

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?

11:50AM 9 THE WITNESS: So at that point my trainee  
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  
15 heading in your direction?

11:50AM 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.

11:50AM 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  
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.

11:51AM 4 Q. So as the Malibu is driving there is two  
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  
20 from my patrol vehicle to the side of the gate so that  
21 if something -- if he did run 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  
25 had to exit your vehicle in case the vehicle continued

11:52AM

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  
 11:53AM 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?  
 11:53AM 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?  
 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  
 11:53AM 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 Behn and then Officer Brink.  
 8 THE COURT: Behn is H-E -- how do you  
 9 spell it?  
 11:54AM 10 THE WITNESS: H-E-H-H.  
 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 Behn and Officer  
 17 Brink.  
 18 Q. So can you describe for us where Mr. Orth  
 19 went and what he did after he exited the vehicle.  
 11:54AM 20 A. Due to my positioning I could only see  
 21 him -- once he exited the vehicle I had a visual of him  
 22 and then I lost sight of him. And it appeared he was  
 23 moving towards the back of the Chevy Malibu. And then  
 24 suddenly I got another -- I suddenly saw him once  
 11:55AM 25 again. He placed a brown duffel bag on top of a wall

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

11:56AM 5 Scoble, Officer Hegenebel 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 Hangan. 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

23

24

11:58AM 25

CROSS-EXAMINATION

BY DEFENDANT ORTH:

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

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

11:58AM 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.



11:56AM 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 Henebuel and that's the only ones I

6 recall.

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13 recall.

14 Q. And was he complying?

15 A. No, ma'am. He continued to flee.

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17 your taser?

18 A. Yes, ma'am.

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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

23

24

11:58AM 25

CROSS-EXAMINATION

BY DEFENDANT ORTH:

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

27 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?  
5 12:00PM 6 A. I don't know who did it, but I'm sure I  
7 know the officer.  
8 Q. But you don't have any facts known to  
9 them?  
10 A. No.  
11 12:00PM 12 Q. Do you know if they had a warrant for my  
13 arrest?  
14 A. I'm sorry?  
15 Q. Do you know if they had a warrant for my  
16 arrest?  
17 12:00PM 18 A. I was not aware of a warrant for arrest.  
19 Q. Do you know if they applied for a warrant  
20 for my arrest?  
21 A. I do not.  
22 12:00PM 23 Q. Do you know the victims in this case? Did  
24 you have a chance to speak with them?  
25 THE COURT: I need you to clarify. Who  
are you referring to?  
DEFENDANT ORTH: I'm speaking of the  
victims.  
12:00PM 26 THE COURT: The victims of what?

12:00PM 1 DEFENDANT ORTH: The alleged robbery  
2 victims.  
3 THE COURT: Okay.  
4 BY DEFENDANT ORTH:  
5 12:00PM 6 Q. Do you know who they are?  
7 A. I personally do not know them.  
8 Q. Did you speak to them personally?  
9 A. I did not.  
10 Q. So you have no facts from them  
11 specifically to form the basis of probable cause,  
12 correct?  
13 THE COURT: I need you to clarify your  
14 question. You're asking him whether he specifically  
15 has personal knowledge after having investigated that  
16 alleged crime the night before? Is that what you're  
17 asking?  
18 DEFENDANT ORTH: Yes, your Honor.  
19 THE COURT: And I think you said no,  
20 correct?  
21 THE WITNESS: I said no.  
22 THE COURT: All right.  
23 BY DEFENDANT ORTH:  
24 Q. When you say you lost sight of me, you  
25 were saying that the car sped up. Were you on the  
courtyard 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  
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.  
10 12:01PM 11 Q. So you're saying I jumped out of the car  
12 while it was moving?  
13 A. It came to a stop, the car continued to  
14 roll and you jumped out of the vehicle as the car was  
15 moving.  
16 12:01PM 17 Q. That's not what I'm asking. So the car  
18 came to a stop --  
19 A. Yes, it did.  
20 Q. -- I exited and then it continued rolling?  
21 A. Yes, it did.  
22 12:01PM 23 Q. So when you seen the duffel bag, you said  
24 it was on top of the wall?  
25 A. Yes, sir.  
Q. But prior to that you hadn't seen me with  
it?  
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?  
5 12:01PM 6 A. Yes, sir, I did.  
7 Q. In the pursuit?  
8 A. Yes, sir.  
9 Q. You didn't see me go onto the ground?  
10 A. I did not. I was probably lifting myself  
11 off the ground at that point.  
12 Q. Did you see all of the officers beating  
13 me?  
14 A. I did not.  
15 Q. You didn't see --  
16 12:01PM 17 THE COURT: Hang on. He said no. Next  
18 question.  
19 BY DEFENDANT ORTH:  
20 Q. Did you have body cam on?  
21 A. I did.  
22 Q. You did?  
23 A. I did have body cam.  
24 Q. Have you turned that body cam over to the  
25 State's district attorney's office?  
A. I believe they have access to that video.  
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 --  
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:  
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  
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.  
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 can't 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 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. Uh-huh.  
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?

#### FURTHER REDIRECT EXAMINATION

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  
20 rolling forward. So it comes to a complete stop, he  
21 starts exiting and then it starts rolling forward.  
22 MS. MENDOZA: Thank you.  
23 THE COURT: Is this witness free to go?  
24 MS. MENDOZA: Yes.  
12:07PM 25 THE COURT: Thank you for your testimony.

12:07PM 1 Call your next witness.  
2 MS. MENDOZA: State next calls Detective  
3 Kevin Lapeer.  
4 THE COURT: I'll have you remain standing  
12:08PM 5 and raise your right hand, detective.  
6 THE CLERK: Do you solemnly swear that the  
7 testimony that you are about to give will be the truth,  
8 the whole truth and nothing but the truth, so help you  
9 God?  
12:08PM 10 THE WITNESS: Yes.  
11 THE CLERK: Please be seated.  
12 Please state your first and last name and  
13 spell each for the record.  
14 THE WITNESS: Kevin Lapeer. K-E-V-I-N,  
12:08PM 15 L-A-P-E-E-R.  
16 THE COURT: Go ahead, State.  
17  
18 KEVIN LAPEER,  
19 having been first duly sworn, did testify as follows:  
20  
21 DIRECT EXAMINATION  
22 BY MS. MENDOZA:  
23 Q. How are you employed?  
24 A. I'm a detective with the Henderson Police  
25 Department.  
12:08PM 26 Q. Were you working in that capacity on

12:08PM 1 October 28<sup>th</sup> of this year around 7:11 a.m.?  
2 A. Yes, I was.  
3 Q. Were you actually on duty that morning?  
4 A. Yes.  
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.  
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?

11:09PM 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.  
 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 .30 gauge  
 12:10PM 5 Winchester, serial number is 1291469.  
 6 MS. MENDOZA: Pass the witness.  
 7 THE COURT: Mr. Orth.  
 8  
 9 CROSS-EXAMINATION  
 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:  
 20 Q. Did you have a chance to speak to Louie  
 12:10PM 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  
 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?  
 12:12PM 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  
 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  
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?

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  
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  
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 object hearsay as it  
4 relates right now whether there's probable cause. If  
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?

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  
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:

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?

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  
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  
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  
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.  
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  
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 Louis'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.

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  
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  
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.  
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 2-E-L-L, Number 2621.  
12:18PM 15 THE COURT: It purports to be by whom?  
16 DEFENDANT ORTH: By Jessie Caracciolo  
17 dated the 28<sup>th</sup> of October, the day of the incident.  
18 THE COURT: Are you familiar with that  
19 handwritten statement?  
12:18PM 20 THE WITNESS: I'm not.  
21 THE COURT: He is not familiar with it.  
22 MS. MENDOZA: Is there a time on it?  
23 DEFENDANT ORTH: 1:15.  
24 THE COURT: Mr. Lapeer says he is not  
12:18PM 25 familiar with that statement.

12:18PM 1 BY DEFENDANT ORTH:  
2 Q. So you never investigated this statement.  
3 So were you aware that this other officer was also  
4 speaking to Miss Caracciolo?  
12:19PM 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.  
10 Q. At any time did you provide Officer  
12:19PM 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 a lie --

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  
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 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  
20 there's maybe a timestamp on it when you actually  
21 upload it, but I'm unaware if there is.  
22 Q. You believe this officer here would also  
23 have entered this --  
24 THE COURT: What are referring to?  
25

12:21PM 1 BY DEFENDANT ORTH:  
2 Q. Do you believe Officer Zell's statement of  
3 Miss Caracciolo would have also been entered into your  
4 digital database?  
12:21PM 5 A. No. Patrol officers don't carry around  
6 recording devices. They have body cams and they have  
7 dash cams and things of that nature.  
8 Q. So do witness statements get uploaded to  
9 the system?  
12:21PM 10 A. To digital evidence? No. Because a  
11 written statement would be written. Digital evidence  
12 is digital.  
13 Q. Okay. So that would be within somebody  
14 else's knowledge, though?  
12:22PM 15 THE COURT: What are you referring to?  
16 DEFENDANT ORTH: Strike that question.  
17 BY DEFENDANT ORTH:  
18 Q. Let me ask you. Were you investigating  
19 that bag for evidence of a robbery?  
12:22PM 20 A. I wasn't investigating the bag. I was  
21 asked to execute the search warrant and that's what I  
22 did. I assisted Detective Lippisch with the execution  
23 of the search warrant.  
24 Q. So on that day, were you involved in the  
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 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 Lapeur, 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 AA002141  
23 firearm. So do you have any additional questions for  
24 Detective Lapeur? No hat on idea who is... --



judicial notice that you have not to date been arrested for the robbery that's associated with that event.

Correct? You'll stipulate to that, Miss Mendoza?

MS. MENDOZA: That he hasn't been arrested for that, yes.

THE COURT: Any additional questions, Mr. Orth?

BY DEFENDANT ORTH:

Q. Did you collect any other evidence in the case?

A. From the bag or aside from the bag?

Q. Any other evidence other than what we've discussed here today other than the bag?

A. Technically the recorded interview is considered evidence, so yes. The recorded interview that is in digital evidence, so yes. The digital recording.

DEFENDANT ORTH: No further questions.

THE COURT: Ms. Mendoza.

MS. MENDOZA: I just wanted to clarify.

REDIRECT EXAMINATION

BY MS. MENDOZA:

Q. When you talked to Jessie you said that

she described that Mr. Orth and Mr. Polanco went into a bedroom and she didn't see what happened in there, correct?

A. That's correct.

Q. Did she also tell you that she had only recently arrived at the apartment and Mr. Orth was already there when she arrived?

A. Yes.

Q. And I understand you indicated you were investigating — there was a robbery that occurred the night before, but then the morning you arrived there, there was also someone in possession of a stolen vehicle and this bag, correct?

A. That's correct.

Q. So it was a continuing investigation of both of these events, the night before and then what happened that morning, correct?

A. Correct.

Q. And you didn't arrive until after everything happened with the car after seven in the morning versus this officer who was there in the middle of the night before, correct?

A. Yeah, that's correct. I believe I was actually off duty when I arrived there. So it was after 7:00 a.m.

Q. You start your shift at seven. Is that what you're saying?

A. Yes, I do.

MS. MENDOZA: All right. No further questions.

THE COURT: Is this witness free to go?

MS. MENDOZA: I think maybe he should hang out.

THE COURT: Why don't you hang out for a little bit.

Who is next?

MS. MENDOZA: Detective Dippisch.

THE COURT: Jump up on the witness stand, raise your right hand and remain standing for me.

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

THE WITNESS: I do.

THE CLERK: Please be seated.

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

THE WITNESS: Karl, K-A-R-L. Dippisch.

L-I-P-P-I-S-C-H.

THE COURT: Go ahead, State,

KARL DIPPISCH  
having been first duly sworn, did testify as follows:

DIRECT EXAMINATION

BY MS. MENDOZA:

Q. Are you currently employed as a detective with the Henderson Police Department?

A. Yes, I am.

Q. Were you working in that position back on October 28th of this year around 7:15 in the morning?

A. Yes, I was.

Q. Around that time were you involved in a potential robbery investigation at 981 Whitney Ranch Drive?

A. Yes.

Q. Did you actually respond to that scene?

A. Yes, I did.

Q. And did you identify a potential suspect involved in that event?

A. Yes, I did.

Q. Who is that person?

A. His name is Sean Orth.

Q. Do you see him in the courtroom today?

A. Yes, I do.

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?  
5 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  
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.  
15 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  
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.  
25 12:28PM 25 Q. And did you also talk to him about

12:28PM 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?  
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  
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  
15 police officers.  
16 12:28PM 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?  
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  
25 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  
5 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  
10 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  
15 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  
20 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 1 bag.  
2 Q. But randomly decided there must be  
3 something bad in this bag?  
4 DEFENDANT ORTH: Objection, your Honor.  
5 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  
10 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  
15 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?  
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 12:32PM 24 decides to bring it inside. Can't not inside before

12:32PM 1 over, decides there's something bad in this bag, flees  
2 in the car with the bag, correct?  
3 A. Correct.  
4 Q. So you had talked to Mr. Orth about this  
12:32PM 5 bag. Had the officers when you first arrived on scene  
6 also alerted your attention to a bag that was in the  
7 area?  
8 A. Yes, they did. The officers, when I first  
9 responded, had told me that when Mr. Orth exited the  
10 vehicle, he exited the vehicle with a tan duffel bag  
11 which was in his hands as he exited. He then refused  
12 to comply with officers' commands and ran towards --  
13 walked or ran towards a block wall that would go out to  
14 Whitney Ranch. He threw the bag over the wall and then  
12:33PM 15 he jumped over the wall. And then as he was -- I was  
16 told as he was fleeing across Whitney Ranch he  
17 initially attempted to pick up the bag. However, kind  
18 of fumbled with picking it up and then left it behind.  
19 And so then when they took him into custody, they also  
12:33PM 20 secured the tan duffel bag.  
21 Q. So the bag was still in the area when you  
22 went out to Whitney Ranch?  
23 A. When I arrived they'd already secured it  
24 into a patrol vehicle just to make sure that no  
12:33PM 25 bystander or somebody didn't take it.

12:33PM 1 Q. So the bag was with patrol officers when  
2 you got there?  
3 A. Yes, it was.  
4 Q. Did you ultimately obtain a search warrant  
12:33PM 5 for that bag?  
6 A. Yes, I did.  
7 MS. MENDOZA: Permission to approach the  
8 witness?  
9 THE COURT: Yes.  
10 BY MS. MENDOZA:  
11 Q. Showing you what's been admitted as  
12 State's Exhibit 1. Do you recognize what we're looking  
13 at in this picture?  
14 A. Yes, I do.  
12:34PM 15 Q. What's that?  
16 A. That's the tan duffel bag and it's  
17 currently open.  
18 Q. Do you recognize this as the same tan  
19 duffel bag you got from the officers when you arrived  
12:34PM 20 there?  
21 A. Yes.  
22 Q. So did you ever go into that bag and see  
23 what's in there?  
24 A. I did not because I was actually not at  
12:34PM 25 the station when it was opened.

12:34PM 1 Q. Did you take the bag from the scene  
2 somewhere else?  
3 A. I took custody of the bag at the scene and  
4 I'm the one who brought it back and secured it at the  
12:34PM 5 police station.  
6 Q. Did you ultimately obtain a search warrant  
7 for that bag?  
8 A. Yes, I did.  
9 Q. And did you ask some other officers to  
12:34PM 10 assist you in searching that bag?  
11 A. Yes, I did.  
12 Q. Would that specifically be Detectives  
13 Ozawa and Lapeer?  
14 A. Yes.  
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

12:35PM 1 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.  
12:35PM 20 Q. What did they report to you if you  
21 remember?  
22 MS. MENDOZA: Objection. Vague.  
23 THE COURT: Let's see --  
24

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12:36PM 1 BY DEFENDANT ORTH:  
 2 Q. So who interviewed Lopez?  
 3 A. Detective Ozaña.  
 4 Q. And did Detective Ozaña 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 Ozaña tell you what this  
 12 person told him. Is that what your question is, Mr.  
 13 Orth?  
 14 BY DEFENDANT ORTH:  
 12:36PM 15 Q. Did Detective Zell tell you what Louis --  
 16 THE COURT: Hang on a second. You were  
 17 talking about Detective Ozaña 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 Ozaña. 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  
 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  
 2 825?  
 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?

39PM 1 A. Yes.  
2 Q. What was his name?  
3 A. I don't recall the patrol officer's name  
4 at this time.  
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.  
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  
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 bank 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 Osawa?  
17 THE COURT: From who?  
18 BY DEFENDANT ORTH:  
19 Q. Did you receive any information from  
20 Officer Osawa 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,  
25 Miss Mendoza?

1:41PM 1 MS. MENDOZA: Detective Osawa didn't  
2 interview Caracciolo.  
3 DEFENDANT ORTH: I will strike that  
4 question.  
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  
10 Jessie's statements were in conflict with Louis  
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  
15 relationship with the victim 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 him  
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  
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  
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: Osawa.  
13 THE COURT: No. Lapeer. This is the  
14 information that Detective Lapeer and whether Detective  
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 a --  
20 THE COURT: Go ahead, Miss Mendoza.  
21 MS. MENDOZA: There's something about  
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?  
25 DEFENDANT ORTH: My fault. I apologize.

12:43PM 1 BY DEFENDANT ORTH:  
2 Q. So did Mr. Polanco say his car was stolen  
3 in the robbery?  
4 A. Yes, he did.  
12:43PM 5 Q. Did he later change his story and say that  
6 he lent me the car?  
7 A. I do not recall if he did, but I did get  
8 information that he believed he was going to allow you  
9 to use the car, but I don't recall who said that.  
12:43PM 10 Q. Did he also say that he lent me the phone,  
11 his cell phone?  
12 A. He said that you had been allowed to use  
13 it.  
14 Q. Now, isn't it true that when you asked me  
12:43PM 15 what happened, I said I was returning home, that I was  
16 returning his car that I borrowed, and I borrowed his  
17 cell phone? Isn't that true?  
18 A. Yes, those were your statements.  
19 Q. And isn't it true that that information  
12:43PM 20 was relayed to the officers interviewing Mr. Polanco  
21 and then he changed his story and said yes, I did lend  
22 him the car and the phone?  
23 A. That information was relayed to  
24 detectives. However, I believe he still stated that  
12:43PM 25 you had stolen the vehicle and the phone.

12:43PM 1 that the way defendant characterizes it is that Jessie  
2 and Louis have conflicting statements. Specifically  
3 that Lewis says this robbery happened, that Jessie says  
4 she didn't see it happen. Now, that information is in  
12:43PM 5 the warrant. So that argument is completely gone.  
6 Now, what his second argument is that  
7 Detective Mippisch didn't include in the warrant that  
8 he received information that the car and phone were  
9 possibly lent to defendant, which is not in the  
12:43PM 10 warrant. However, that does not affect probable cause  
11 and I don't believe he can show there's an intentional  
12 misrepresentation here. So we shouldn't even --  
13 THE COURT: Do you have a copy of the  
14 search warrant?  
12:43PM 15 MS. MENDOZA: Yes.  
16 THE COURT: Let me have that.  
17 DEFENDANT ORTH: Can I clarify something,  
18 your Honor?  
19 THE COURT: What's that?  
12:43PM 20 DEFENDANT ORTH: Can I make a little  
21 clarification to make it easier?  
22 THE COURT: Not just yet, okay?  
23 I read the search warrant. Anything else,  
24 Miss Mendoza? I didn't know if you had any  
12:43PM 25 representations you want to make,

12:44PM 1 THE COURT: Let me ask you this. A lot of  
2 this I've been giving you some leeway to establish  
3 whatever record you want to make for the purposes of  
4 the search warrant. I'm not quite sure at this point  
12:44PM 5 whether the nature of the vehicle whether it was stolen  
6 or the nature of the phone and whether it was stolen is  
7 related to the search warrant for the firearm.  
8 So, Ms. Mendoza, do you have any position  
9 on that?  
10 MS. MENDOZA: Well, your Honor, as I  
11 stated from the beginning, I understand that a motion  
12 to suppress is appropriate in Justice Court. He's free  
13 to file that. However, my understanding is his  
14 position is that Detective Mippisch left material facts  
12:45PM 15 out of this warrant, and in order to even get into that  
16 at a hearing, he has to show, number one, that it was  
17 an intentional misrepresentation and, number two, that  
18 it affects probable cause, and he cannot show that.  
19 THE COURT: That's what I'm wondering, is  
12:45PM 20 what's been left out? Is that what your understanding  
21 is, Ms. Mendoza, that something was left out of the  
22 search warrant or that there wasn't probable cause if  
23 they had included all the relevant information?  
24 MS. MENDOZA: According to defendant  
12:45PM 25 there's two things that were left out. Number one,

12:45PM 1 MS. MENDOZA: Yes. I think --  
2 THE COURT: Mr. Orth, what do you want to  
3 tell me at this point?  
4 DEFENDANT ORTH: First of all, the warrant  
12:45PM 5 was for a robbery so we're allowed to ask questions  
6 about the robbery. The warrant was to seek evidence  
7 that pertained to the robbery. It's right on the cover  
8 of the search warrant affidavit. Questioning about the  
9 robbery.  
10 THE COURT: Okay.  
11 DEFENDANT ORTH: Also as you know the  
12 search warrant can be obtained using hearsay testimony.  
13 So he used hearsay testimony when it happened. Now,  
14 I'm just trying to show that he withheld the  
12:45PM 15 impeachment information that was known to him as  
16 hearsay so that he can manipulate the Court into  
17 issuing a warrant.  
18 THE COURT: Well, what I read in here is  
19 that he put Louis's statement and then he also put --  
12:45PM 20 who's the other one?  
21 MS. MENDOZA: Jessie.  
22 THE COURT: -- Jessie who said that she  
23 didn't say anything.  
24 DEFENDANT ORTH: That's not in the  
12:45PM 25 warrant.



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

12:52PM 1 DEFENDANT ORTH: Give me one second, your  
2 Honor.  
3 THE COURT: Yes.  
4 DEFENDANT ORTH: Page 3, Paragraph 3.  
12:52PM 5 MS. MEMOLA: Is it okay if I approach?  
6 THE COURT: Yes.  
7 BY DEFENDANT ORTH:  
8 Q. Sir, is that a sworn statement by you?  
9 A. This is my Declaration of Arrest, yes.  
12:52PM 10 Q. Would you please read the paragraph that  
11 I've directed you to.  
12 MS. MEMOLA: Objection. Improper  
13 hearsay.  
14 THE COURT: You asked him a question as to  
12:52PM 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. Lippelsh, and  
19 let me know when you're done and whether it refreshes  
12:52PM 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.  
12:52PM 25 THE COURT: Does it refresh your

12:52PM 1 recollection?  
2 THE WITNESS: Yes.  
3 THE COURT: What is your question,  
4 Mr. Orth?  
5 BY DEFENDANT ORTH:  
6 Q. Did Louis change position and say that he  
7 lent me the car?  
8 MS. MEMOLA: Objection. We need to  
9 clarify he did not talk to him.  
12:52PM 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?  
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 Louis and/or Jessie lent me the car?  
19 A. I learned that one of them had stated that  
12:52PM 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. MEMOLA: So you heard?  
12:52PM 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  
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.  
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.  
16 12:55PM 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?  
20 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.  
25 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  
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.  
10 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 12:57PM 15 prior night he was not allowed the access and he in  
16 fact stole the keys and the cell phone and the contents  
17 of the tan bag and left the residence.  
18 THE COURT: That was the allegation from  
19 the night before?  
20 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  
25 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.  
5 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  
10 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.  
15 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?  
20 12:58PM 20 A. I did not.  
21 Q. So was Deane'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?  
25 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.  
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  
10 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?  
15 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.  
20 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  
25 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  
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. MEMOZA: 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 1:51 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 justice?  
1:00PM 10 A. You were in custody for the resisting  
11 charge,  
12 Q. And misdeemeanor, and you had made the  
13 decision not to arrest me for robbery at that point,  
14 correct?  
1:00PM 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?  
2:00PM 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?  
2:00PM 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  
2:00PM 20 decision why wasn't there probable cause to arrest for  
21 robbery?  
22 MS. MEMOZA: Objection.  
23 THE COURT: It's kind of gotten to the  
24 point where it's irrelevant, Mr. Orth. With the search  
1:00PM 25 warrant they had probable cause to look for -- their

1:02PM 1 belief was potential for evidence from a robbery was  
2 included in the puffet 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  
1:02PM 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.  
1:02PM 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. MEMOZA: Objection. Vague. What  
17 recorded information omitted from what?  
18 THE COURT: What information?  
19 BY DEFENDANT ORTH:  
2:00PM 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  
1:00PM 25 that said she didn't see you commit an armed robbery? AA002150

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 lines 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 finding 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?  
 1:05PM 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?  
 1:05PM 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  
 1:05PM 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?  
 1:05PM 20 A. Specifically it came from the information  
 21 I was provided through other detectives as well as  
 22 officers go 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  
 1:05PM 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 detain  
 21 and arrest me for possession of a firearm.  
 22 THE COURT: Correct.  
 23 DEFENDANT ORTH: He hasn't --  
 1:07PM 24 BY DEFENDANT ORTH:  
 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  
5 bag.

1:07PM 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  
2:08PM 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  
1:08PM 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?

1:08PM 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  
1:08PM 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.

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 BY MS. MENDOZA: H. H. H.

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 RE-CROSS EXAMINATION

13 BY DEFENDANT ORTH:  
 14 Q. Did you tell the judge there was probable  
 1:11PM 15 cause to arrest me for robbery?  
 16 THE COURT: He's already answered that.  
 17 He just said that at the time there was not probable  
 18 cause to arrest you.  
 19 BY DEFENDANT ORTH:  
 20 Q. Did you tell the judge that?  
 21 THE COURT: He just told me right now.  
 22 BY DEFENDANT ORTH:  
 23 Q. So in your professional opinion is there  
 24 probable cause to not arrest me but there's probable  
 1:12PM 25

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  
 15 to arrest you for robbery. But he gets to do an  
 1:12PM 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,  
 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.  
 1:12PM 25 THE COURT: Any additional witnesses? Is

2:13PM 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

1:15PM 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.  
 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  
 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 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  
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 CR052177,  
9 Washoe County, conviction dated May of 2007. CR051459,  
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.  
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?  
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  
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  
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  
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  
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  
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  
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.  
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.  
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  
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  
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.  
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?  
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 evading  
1:23PM 10 statute? 202 --

11 MS. MENDOZA: 484B.

12 THE COURT: 202.484?

13 MS. MENDOZA: No. 484B as in boy 556.

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

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

24 THE COURT: Okay.

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

1:26PM 1 from Municipal Court and in that complaint it alleges  
2 that he disobeyed commands to stop from Officer Mangan  
3 or Lippisch and fled the scene. Obviously Officer  
4 Lippisch was not there and we heard testimony today  
1:26PM 5 that Officer Mangan was not there until after the  
6 vehicle pursuit ended. Officer Mangan was one of the  
7 officers who chased him on foot and he disobeyed their  
8 verbal commands to stop while they were running on  
9 foot. So the factual basis for the resisting is  
1:27PM 10 different than the factual basis for the evading.

11 THE COURT: Okay.

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

14 THE COURT: Mr. Orth.

1:27PM 15 DEFENDANT ORTH: All of the facts, your  
16 Honor, in both cases rise out of the same acts or  
17 transaction. The fleeing is included -- it's a  
18 continuing act and she's trying to separate. And  
19 technically today he said the car stopped and I got out  
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 with lights or sirens in the  
8 Municipal Court complaint.

9 DEFENDANT ORTH: It doesn't have to.

1:28PM 10 THE COURT: Hang on. Hang on. Hang on.  
11 So I think that the argument you're making is that you  
12 can do a misdemeanor resisting before you actually got  
13 in a vehicle and drove away and it was a whole separate  
14 crime, not that -- I think the argument you're making  
1:29PM 15 is that the facts alleged in the criminal complaint  
16 from Municipal Court would have related to attempts to  
17 stop before he got in the vehicle. Is that what you're  
18 saying?

19 MS. MENDOZA: After.

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

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

24 THE COURT: The testimony regarding Mangan

1:29PM 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 Kelson and who chased  
4 him on foot. And I specifically asked Officer Nelson  
1:30PM 5 when did Mangan arrive, and he said that he knew  
6 specifically that it was not until after the vehicle  
7 lights happened. And I think that Mr. Schifalacqua  
8 pled it that way.

9 THE COURT: It does say Officer Mangan  
1:30PM 10 and/or Officer Lippisch. Lippisch didn't come until  
11 afterward.

12 MS. MENDOZA: Correct.

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

16 MS. MENDOZA: Correct.

17 THE COURT: Mr. Orth.

18 DEFENDANT ORTH: Yes, sir. Well, first of  
19 all, in order for there to be a resist that means there  
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 I'm  
24 traveling in the vehicle. They didn't stop me and then

2:30PM 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  
20 were running and jumping over the wall. So I'm denying  
1:32PM 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 a misdemeanor evading and then  
8 there's a 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 what

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

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

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



1:25PM 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.)  
 1:30PM 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  
 1:35PM 10 felony possession and evading, has been committed.  
 11 There is sufficient evidence to believe the defendant  
 12 Mr. Orth committed said crimes. I hereby order said  
 13 defendant be bound over to the Eighth Judicial District  
 14 Court, State of Nevada to answer the charges on the  
 1:40PM 15 following date.  
 16 THE CLERK: December 18<sup>th</sup>, 8:00 a.m.,  
 17 lower level arraignment.  
 18 THE COURT: Now, I don't know if they are  
 19 going to be able to get you back down.  
 1:45PM 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.  
 1:48PM 25 THE COURT: Do you know what their

2:40PM 1 procedure is once he goes back? Does he go back  
 2 through quarantine?  
 3 THE OFFICER: I believe so. We were here  
 4 today to hear this so we are going to forward that  
 1:40PM 5 information to our office.  
 6 THE COURT: When is the date again?  
 7 THE CLERK: December 18<sup>th</sup>.  
 8 THE COURT: We can go into the next week  
 9 just to make sure.  
 1:45PM 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?  
 1:48PM 15 DEFENDANT ORTH: Thank you, Your Honor.  
 16 THE COURT: Good luck.  
 17  
 18 (The proceedings concluded.)  
 19  
 1:51PM 20 ATTEST: Full, true and accurate  
 21 transcript of proceedings.  
 22  
 23 /s/Lisa Brenske  
 24 LISA BRENSKE, CSH NO. 106  
 1:51PM 25

EXHIBIT TEN

AA002159

Type: ASSIST PD EMERGENCIES

Priority: 1

Address: 981 WHITNEY RANCH DR

Gross High: 1600 PATRICK LN

Location: THE MARLOW APTS

Area: S82

Map: 313165

Unit: E82

Console: COHCADWS91

07

Caller: JESSIE CARACELLO

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

Status: Closed

Disposition: CLEAR

City: HEN

Cross Low: 1500 PLAIN SIGHT AVE

Jurisdiction:

S/B: S82B

Latitude: 36.07744330

Officer: 1: E82, E82, E82

Operator: HP1366 DINKEL, A

Address: 981 WHITNEY RANCH DR

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

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

Phone:

Close: 10/28/2020 7:37:48

Audit Time

Audit Text

Operator Console

Name

10/28/2020 07:11:39

Incident Created

HP2689

COHCADWS9107

MANN, J

10/28/2020 07:11:39

PR MADE REPORT OF MALE BEING ON PROPERTY, PR SAYS HE IS ARMED, HES CURRENTLY AT PR'S DOOR. MALE TOOK PR'S 4135

HP2689

COHCADWS9107

MANN, J

10/28/2020 07:11:53

MALE IS STANDING AT PR'S DOOR, PR IS IN THE BATHROOM

HP2689

COHCADWS9107

MANN, J

10/28/2020 07:12:02

MALE IS SHAWN ORTH

HP2689

COHCADWS9107

MANN, J

10/28/2020 07:12:16

Dispatch: HP/2N11 (Officers: HP/DUFFY PHILIP)

HP1366

COHCADWS9113

DINKEL, A

10/28/2020 07:12:16

Dispatch: HP/2N71 (Officers: HP/MANGAN ASHLEY)

HP1366

COHCADWS9113

DINKEL, A

10/28/2020 07:12:16

Incident Status From: Initial To: Active

HP1366

COHCADWS9113

DINKEL, A

10/28/2020 07:12:16

\*Unit Status Change - From: AV To: D

HP1366

COHCADWS9113

DINKEL, A

10/28/2020 07:12:16

\*Unit Status Change - From: AV To: D

HP1366

COHCADWS9113

DINKEL, A

10/28/2020 07:12:16

Unit Mgmt - Loc Name: From: To: THE MARLOW APTS

HP1366

COHCADWS9113

DINKEL, A

10/28/2020 07:12:16

Unit Mgmt - Location: From: To: 981 WHITNEY RANCH DR

HP1366

COHCADWS9113

DINKEL, A

10/28/2020 07:12:16

Unit Mgmt - Apartment: From: To: 823

HP1366

COHCADWS9113

DINKEL, A

10/28/2020 07:12:16

Unit Mgmt - Zip Code: From: To: 89014

HP1366

COHCADWS9113

DINKEL, A

10/28/2020 07:12:16

Unit Mgmt - City: From: To: HEN

HP1366

COHCADWS9113

DINKEL, A

Thursday, November 12, 2020 10:33:10 AM

ORTH 20CRH001571 11-25-2



10/28/2020 07:14:14 Unit Mgmt - Building: From: To: B  
 10/28/2020 07:14:14 Unit Mgmt - Zip Code: From: To: 89014  
 10/28/2020 07:14:14 Unit Mgmt - City: From: To: HEN  
 10/28/2020 07:14:14 Unit Mgmt - Apartment: From: To: 823  
 10/28/2020 07:14:14 Unit Mgmt - Location: From: To: 981 WHITNEY RANCH DR  
 10/28/2020 07:14:35 Dispatch: HP/ZW41 (Officers: HP/MURPHY BROCKE)  
 10/28/2020 07:14:35 \*Unit Status Change - From: AV To: ER  
 10/28/2020 07:14:35 Unit Mgmt - Building: From: To: B  
 10/28/2020 07:14:35 Unit Mgmt - Zip Code: From: To: 89014  
 10/28/2020 07:14:35 Unit Mgmt - City: From: To: HEN  
 10/28/2020 07:14:35 Unit Mgmt - Location: From: To: 981 WHITNEY RANCH DR  
 10/28/2020 07:14:35 Unit Mgmt - Loc Name: From: To: THE MARLOW APTS  
 10/28/2020 07:14:35 Unit Mgmt - Apartment: From: To: 823  
 10/28/2020 07:14:42 MALE IS STILL KNOCKING ON THE DOOR  
 10/28/2020 07:14:52 UNITS ASKING IF MALE HAS THE 413 OUT OR JUST AT HIS SIDE  
 10/28/2020 07:14:53 UNK IF ANYONE ELSE IS WITH THE MALE  
 10/28/2020 07:15:12 \*\*PREV INC # 018\*\*  
 10/28/2020 07:15:34 PR NEVER SAW THE GUN ON HIM  
 10/28/2020 07:15:36 \*Unit Status Change - From: D To: ER  
 10/28/2020 07:16:18 \*Unit Status Change - From: ER To: AR  
 10/28/2020 07:16:18 \*Unit Status Change - From: ER To: AR  
 10/28/2020 07:16:19 PR KNOWS ITS THE MALE FROM SEEING HIM THROUGH THE PEEPHOLE  
 10/28/2020 07:16:53 Dispatch: HP/DL3 (Officers: HP/BALDINO PAUL)  
 10/28/2020 07:16:53 Dispatch: HP/T12 (Officers: HP/SCOBLE JASON)  
 10/28/2020 07:16:53 \*Unit Status Change - From: AV To: AR  
 10/28/2020 07:16:53 \*Unit Status Change - From: AV To: AR  
 10/28/2020 07:16:53 Unit Mgmt - Building: From: To: B  
 10/28/2020 07:16:53 Unit Mgmt - Loc Name: From: To: THE MARLOW APTS

Thursday, November 12, 2021 10:33:10 AM

ORTH 20CRH001571 11-25-22

08

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10/28/2020 07:16:53	Unit Mgmt - Apartment From: To: 823	HP1366	COHCADWS9113	DINKEL
10/28/2020 07:16:53	Unit Mgmt - Location: From: To: 981 WHITNEY RANCH DR	HP1366	COHCADWS9113	DINKEL
10/28/2020 07:16:53	Unit Mgmt - Zip Code: From: To: 89014	HP1366	COHCADWS9113	DINKEL
10/28/2020 07:16:53	Unit Mgmt - City: From: To: HEN	HP1366	COHCADWS9113	DINKEL
10/28/2020 07:16:53	Unit Mgmt - Building: From: To: 8	HP1366	COHCADWS9113	DINKEL
10/28/2020 07:16:53	Unit Mgmt - Zip Code: From: To: 89014	HP1366	COHCADWS9113	DINKEL
10/28/2020 07:16:53	Unit Mgmt - Loc Name: From: To: THE MARLOW APTS	HP1366	COHCADWS9113	DINKEL
10/28/2020 07:16:53	Unit Mgmt - Apartment From: To: 823	HP1366	COHCADWS9113	DINKEL
10/28/2020 07:16:53	Unit Mgmt - Location: From: To: 981 WHITNEY RANCH DR	HP1366	COHCADWS9113	DINKEL
10/28/2020 07:16:53	Unit Mgmt - City: From: To: HEN	HP1366	COHCADWS9113	DINKEL
10/28/2020 07:16:56	Unit Status Change - From: AR To: CR	HP1366	COHCADWS9113	DINKEL
10/28/2020 07:17:02	< PR IS IN THE BATHROOM, HER BOY IS AT THE DOOR AND SHE DOESNT KNOW IF HE CAN SEE ANY 413'S ON THE MALE >	HP2689	COHCADWS9107	MANN,
10/28/2020 07:17:35	411 VEH IS WHI CHEV MALIBU UNK BODY SHOP PLATES	HP1366	COHCADWS9113	DINKEL
10/28/2020 07:17:42	Dispatch: HP/2N51 (Officers: HP/BOWLER BRENT)	HP1545	COHMDT3161	BOWLER
10/28/2020 07:17:42	Unit Status Change - From: AV To: ER	HP1545	COHMDT3161	BOWLER
10/28/2020 07:17:42	Unit Mgmt - Location: From: To: 981 WHITNEY RANCH DR	HP1545	COHMDT3161	BOWLER
10/28/2020 07:17:42	Unit Mgmt - Building: From: To: 8	HP1545	COHMDT3161	BOWLER
10/28/2020 07:17:42	Unit Mgmt - City: From: To: HEN	HP1545	COHMDT3161	BOWLER
10/28/2020 07:17:42	Unit Mgmt - Zip Code: From: To: 89014	HP1545	COHMDT3161	BOWLER
10/28/2020 07:17:42	Unit Mgmt - Apartment: From: To: 823	HP1545	COHMDT3161	BOWLER
10/28/2020 07:17:42	Unit Mgmt - Loc Name: From: To: THE MARLOW APTS	HP1366	COHCADWS9113	DINKEL
10/28/2020 07:17:51	WHI CHEV MALIBU BACKING UP	HP1366	COHCADWS9113	DINKEL
10/28/2020 07:18:14	FTY, 2N71 & 2N41 ATT'G 487	HP1366	COHCADWS9113	DINKEL
10/28/2020 07:18:18	2N71 BLOCKING EXIT	HP1366	COHCADWS9113	DINKEL
10/28/2020 07:18:27	2N51 & 2N71 AT FRONT EXIT	HP1366	COHCADWS9113	DINKEL
10/28/2020 07:18:30	FEM IS ADV'G MALE IS STILL AT THE DOOR	HP2689	COHCADWS9107	MANN,
10/28/2020 07:18:39	QW:U;2N71 LASTNAME:ORTH, FIRSTNAME:SEAN, DOB:	HP1365	COHCADWS9104	GACEK,

Thursday, November 12, 2020 10:33:10 AM

ORTH 20CRH001571 11-25-2

EXHIBIT ELEVEN.

AA002164



02AWK

On 10-28-2020 at approximately 0855 hrs, I, Detective B. Trotter #1533 was assisting Detective Lippisch #1710 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 camera and told Louis it was illegal to record people. I asked Louis about the camera 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: 352439102839034

The cellular device, and later its 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 device:

(1) 17628850927

After acquiring the data, I subsequently booked the device into the Henderson Police Department Evidence Vault on 10/28/2020 at approximately 1858 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.



EXHIBIT TWELVE.

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

DR: 20-18994

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

**APPLICATION AND AFFIDAVIT  
PROBABLE CAUSE  
EXHIBIT 3**

DR: 20-18994

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

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

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

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

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

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

**APPLICATION AND AFFIDAVIT  
PROBABLE CAUSE  
EXHIBIT 3**

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

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

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

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

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

**APPLICATION AND AFFIDAVIT  
PROBABLE CAUSE  
EXHIBIT 3**

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

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

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

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

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

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

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

**APPLICATION AND AFFIDAVIT  
PREMESIS LOCATION TO WIT  
EXHIBIT 1**

**DR: 20-18994**

**2007 white Chevrolet Malibu bearing NV Body Shop plate 6528 (VIN: 1G1ZS57F57F256434)**

The 2007 white Chevrolet Malibu bearing NV Body Shop plate 6528 currently in the Henderson Police Department CSA secured garage.

**Tan duffel bag that had been in the possession of Sean Orth**

**Black LG cellular phone**

Louis' black LG cellular phone that had been in the possession of Sean Orth and is currently in Sean's property at the Henderson Detention Center, to be relocated the Henderson Police Department Main Station for a forensic search.

**APPLICATION AND AFFIDAVIT  
PREMESIS LOCATION TO WIT  
EXHIBIT 1**

**DR: 20-18994**

**2007 white Chevrolet Malibu bearing NV Body Shop plate 6528 (VIN: 1G1ZS57F57F256434)**

The 2007 white Chevrolet Malibu bearing NV Body Shop plate 6528 currently in the Henderson Police Department CSA secured garage.

**Tan duffel bag that had been in the possession of Sean Orth**

**Black LG cellular phone**

Louis' black LG cellular phone that had been in the possession of Sean Orth and is currently in Sean's property at the Henderson Detention Center, to be relocated the Henderson Police Department Main Station for a forensic search.

EXHIBIT THIRTEEN

AA002173



# Henderson Police Department

223 Lead Street, Henderson Nevada 89015

## Declaration of Arrest

DR#: 20-18994

Arrestee's Name: ORTH, SEAN RODNEY

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

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

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

### Details of Probable Cause

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

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

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

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

# Henderson Police Department

223 Lead Street, Henderson Nevada 89015

## Declaration of Arrest

DR#: 20-18994

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

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

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

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

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

# Henderson Police Department

223 Lead Street, Henderson Nevada 89015

## Declaration of Arrest

DR#: 20-18994

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

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

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

Due to the above facts Sean was transported to the Henderson Detention Center where he was booked accordingly for Resist Public Officer. A records search returned to reveal that Sean was also a convicted felon (trafficking controlled substance, ex-felon possesses 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).

EXHIBIT FOURTEEN

AA002178

# 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 [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.

*[Signature]*

*[Signature]*

*[Signature]*

20

AA002179

*[Signature]*

EXHIBIT FIFTEEN

AA002180

**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  
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



PPOW

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Sean Orth,

Petitioner,

vs.

Brian Williams, Warden at High Desert State  
Prison, NV,

Respondent,

Case No: A-23-869964-W  
Department 10

**ORDER FOR PETITION FOR  
WRIT OF HABEAS CORPUS**

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on May 02, 2023. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

**IT IS HEREBY ORDERED** that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

**IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on this Court's

Calendar on the 28th day of June, 2023, at the hour of

8:30 a.m. o'clock for further proceedings.

Dated this 8th day of May, 2023

  
District Court Judge

916 8E8 C4D0 0349  
Tierra Jones  
District Court Judge

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Sean Orth, Plaintiff(s)

CASE NO: A-23-869964-W

7 vs.

DEPT. NO. Department 10

8 Brian Williams, Warden at High  
9 Desert State Prison, NV,  
10 Defendant(s)

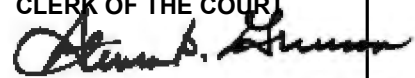
11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 Electronic service was attempted through the Eighth Judicial District Court's  
14 electronic filing system, but there were no registered users on the case.

15 If indicated below, a copy of the above mentioned filings were also served by mail  
16 via United States Postal Service, postage prepaid, to the parties listed below at their last  
known addresses on 5/9/2023

17 Sean Orth #96723  
18 HDSP  
19 P.O. Box 650  
Indian Springs, NV, 89070

20  
21  
22  
23  
24  
25  
26  
27  
28  
**AA002183**



**OPPS**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
ALEXANDER CHEN  
Chief Deputy District Attorney  
Nevada Bar #10539  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

SEAN ORTH

Petitioner,

-vs-

THE STATE OF NEVADA,

Respondent.

CASE NO: A-23-869964-W

(C-20-352701-1)

DEPT NO: X

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

DATE OF HEARING: JUNE 28, 2023

TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through ALEXANDER CHEN, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Petitioner's Petition for Writ of Habeas Corpus.

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

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AA002184

1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 Petitioner Sean Orth's Judgment of Conviction was filed on August 8, 2022. The JOC  
4 reflected one count of Stop Required on Signal of Police Officer, a felony, based upon a plea.  
5 The parties stipulated to a sentence of 12 to 30 months in the Nevada Department of  
6 Corrections consecutive to case CR05-1459 with zero days credit for served.

7 On May 2, 2023, Petitioner filed a pro per petition for writ of habeas corpus (post-  
8 conviction). This court then ordered a response on May 8, 2022. The undersigned counsel was  
9 made aware of this court's order on June 7, 2023.

10 ARGUMENT

11 Petitioner makes three challenges in his petition, and all of his challenges have to do  
12 with the procedures and decisions made by the Parole Board of Commissioners. A  
13 post-conviction petition for writ of habeas corpus is only available to challenge a judgment of  
14 conviction or sentence in a criminal case, or to challenge the computation of time a petitioner  
15 has served pursuant to a judgment of conviction. NRS 34.720. Petitioner's petition does not  
16 raise either of these narrow statutorily created topics for a post-conviction petition.

17 A challenge to the decisions made by the Parole Board is not a cognizable claim in a  
18 petition for writ of habeas corpus because it is an issue that does not have to do with the validity  
19 of her conviction in this case or computation of time he has served in prison. *See Bowen v.*  
20 *Warden of Nevada State Prison*, 100 Nev. 489 (1984) (court affirmed denial of petition  
21 challenging the constitutionality of a prison disciplinary hearing because it was not a  
22 cognizable claim). Here, the court imposed a lawful sentence from a stipulated plea. The Parole  
23 Board's decision whether to grant or deny him parole in a completely separate case does not  
24 in any way affect the validity of the Judgment of Conviction in this case.

25 The Parole Board's decision is incredibly discretionary. *Anselmo v. Bisbee*, 133 Nev.  
26 317 (2017). There is no due process or liberty interest in a release on parole unless a right is  
27 created by statute. *Id.*

28 //

However, if this court wishes to hear more on the issues raised in his petition, then the Parole Board is represented by the Nevada Attorney General's Office. Therefore, if Petitioner is able to present a cognizable claim, he needs to serve the Attorney General's Office to respond to the actions of the Parole Board.

## CONCLUSION

The State respectfully requests that this court deny Petitioner's petition for the reasons stated above.

DATED this 7th day of June, 2023.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #1565

BY /s/ ALEXANDER CHEN  
ALEXANDER CHEN  
Chief Deputy District Attorney  
Nevada Bar #10539

# CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 7th day of June, 2023, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

SEAN RODNEY ORTH #96723  
HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NV 89070-0650

BY /s/ A. Agustin  
Secretary for the District Attorney's Office



1 **NOTC**  
2 AARON D. FORD  
3 Attorney General  
4 Katrina A. Lopez (Bar No. 13394)  
5 Deputy Attorney General  
6 State of Nevada  
7 Office of the Attorney General  
8 555 E. Washington Ave., Ste. 3900  
9 Las Vegas, Nevada 89101-1068  
10 (702) 486-3770 (phone)  
11 (702) 486-2377 (fax)  
12 KSamuels@ag.nv.gov  
13 Attorneys for Respondents

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

10 SEAN ORTH,

11 Petitioner,

12 vs.

13 BRIAN WILLIAMS, WARDEN AT HIGH  
14 DESERT STATE PRISON, NV,

15 Respondent(s).

Case No. A-23-869964-W  
Dept No. X

Date of Hearing: 06/28/2023  
Time of Hearing: 8:30 am

16 **NOTICE OF MANUAL FILING OF EXHIBIT J, IN SUPPORT**  
17 **OF THE STATE'S MOTION TO DISMISS**

18 The undersigned, AARON D. FORD, Attorney General of the State of Nevada, by and through  
19 Deputy Attorney General KATRINA A. LOPEZ, hereby gives notice that Exhibit J, in support of the  
20 State's Motion to Dismiss, a DVD bearing copies of the videos of parole board hearings from January  
21 12, 2021 through March 22, 2022, is being manually filed with the Court and mailed to the Warden of  
22 High Desert State Prison.

23 Dated this 22<sup>nd</sup> day of June 2023.

24 Submitted by:

25 AARON D. FORD  
26 Attorney General

27 By: /s/ Katrina A. Lopez  
28 KATRINA A. LOPEZ  
Deputy Attorney General

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I electronically filed the foregoing *Notice of Manual Filing of Exhibit J, in*  
3 *Support of the State's Motion to Dismiss* with the Clerk of the Court by using the CM/ECF system on  
4 June 22, 2023.

5 I certify that some of the participants in the case are not registered electronic filing system users.  
6 I have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission  
7 or e-mail; or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days to  
8 the following unregistered participant:

9 Sean Orth, #96723  
10 c/o High Desert State Prison  
11 P.O. Box 650  
Indian Springs, Nevada 89070-0650

12 /s/ M. Landreth  
13 An employee of the Office of the Attorney General  
14  
15  
16  
17  
18  
19  
20  
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28

Orth v. Warden  
Sean Orth A-23-869964-W



Prepared by  
Marsha Landreth:  
6/22/2023

Exhibit J  
Parole Revocation Videos  
01/12/2021-03/22/2022





AARON D. FORD  
*Attorney General*

CRAIG A. NEWBY  
*First Assistant Attorney General*

CHRISTINE JONES BRADY  
*Second Assistant Attorney General*

TERESA BENITEZ-  
THOMPSON  
*Chief of Staff*

LESLIE NINO PIRO  
*General Counsel*

HEIDI PARRY STERN  
*Solicitor General*

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave., Suite 3900  
Las Vegas, Nevada 89101

June 22, 2023

Sean Orth,  
Offender ID #96723  
c/o High Desert State Prison  
P.O. Box 650  
Indian Springs, Nevada 89070-0650

**Re: First Amended Petition for Writ of Habeas Corpus  
A-23-869964-W, 8<sup>th</sup> Judicial District Court**

Dear Mr. Orth:

Attached are copies of our Response to your First Amended Petition for Writ of Habeas Corpus and the index and exhibits referenced in the Response. The video files are forwarded to the Warden on a CD. You will need to submit a kite to the Warden to arrange to have the videos played for you.

Sincerely,

/s/ Katrina A. Lopez

Katrina A. Lopez  
Deputy Attorney General  
Tel. (702) 486-3770  
ksamuels@ag.nv.gov

AARON D. FORD  
*Attorney General*

KYLE E. N. GEORGE  
*First Assistant Attorney General*

CHRISTINE JONES BRADY  
*Second Assistant Attorney General*



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave., Suite 3900  
Las Vegas, Nevada 89101

TERESA BENITEZ-  
THOMPSON  
*Chief of Staff*

LESLIE NINO PIRO  
*General Counsel*

HEIDI PARRY STERN  
*Solicitor General*

June 23, 2023

Via U.S. Mail

Warden Brian Williams  
High Desert State Prison  
P.O. Box 650  
Indian Springs, NV 89070

**Re: Sean Orth, Offender ID 96723**

Dear Warden Williams:

Enclosed, please find a CD which contains the videos of parole revocation hearings held in reference to Mr. Orth dated between January 12, 2021 through March 22, 2022. It is an exhibit to the response our office filed in response to a habeas petition he filed with the District Court. I have also enclosed a copy of the letter provided to Mr. Orth regarding this CD.

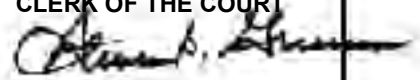
If and when Mr. Orth sends a kite, please arrange to have these videos played for him. He is not to be given possession of the CD under any circumstances. Please contact us with any questions.

Sincerely,

/s/ Katrina A. Lopez

Katrina A. Lopez  
Deputy Attorney General  
(702) 486-3770  
[ksamuels@ag.nv.gov](mailto:ksamuels@ag.nv.gov)

KAL:mll  
Atch



**MDSM**  
AARON D. FORD  
Attorney General  
Katrina A. Lopez (Bar No. 13394)  
Deputy Attorney General  
State of Nevada  
Office of the Attorney General  
555 E. Washington Ave., Ste. 3900  
Las Vegas, Nevada 89101-1068  
(702) 486-3770 (phone)  
(702) 486-2377 (fax)  
KSamuels@ag.nv.gov  
Attorneys for Respondents

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SEAN ORTH,

Petitioner,

vs.

BRIAN WILLIAMS, WARDEN AT HIGH  
DESERT STATE PRISON, NV,

Respondent(s).

Case No. A-23-869964-W  
Dept. No. X

Date of Hearing: 06/28/2023  
Time of Hearing: 8:30 a.m.

**MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS**

Respondents oppose Petitioner Sean Orth's *First Amended Petition for a Writ of Habeas Corpus (Post-Conviction)* filed on May 2, 2023. Respondents move to dismiss his amended petition because Orth fails to state a cognizable claim for habeas relief, any request for mandamus relief is moot, and his allegations are belied by the record.

This motion is made and based upon the papers and pleading on file herein and the following points and authorities.

DATED this 22<sup>nd</sup> day of June 2023.

AARON D. FORD  
Attorney General

By: /s/ Katrina A. Lopez  
Katrina A. Lopez  
Deputy Attorney General

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Sean Orth is currently incarcerated at High Desert State Prison (Exhibit A, *Inmate Search*). He  
3 is serving time for criminal acts he committed in 2005 and 2006 (Exhibit B, *Information for Case CR05-*  
4 *1459*) (Exhibit C, *Second Amended Information for Case CR06-2177*). The Second Judicial District  
5 Court adjudicated Orth guilty of Robbery with Use of a Deadly Weapon, Conspiracy to Commit Robbery  
6 with Use of a Deadly Weapon, and Eluding an Officer (Exhibit D, *Judgment of Conviction for CR05-*  
7 *1459*). The Court also adjudicated Orth guilty of Trafficking in a Controlled Substance and two counts  
8 of Ex-Felon in Possession of a Firearm (Exhibit E, *Judgment of Conviction for CR06-2177*). The Court  
9 sentenced Orth under the large habitual offender statute, imposing 6 concurrent sentences of life with  
10 the possibility of parole after 10 years (Exhibit D) (Exhibit E).

11 On November 26, 2018, the Board of Parole Commissioners (“the Board”) paroled Orth in CR05-  
12 1459 and CR06-2177 (Exhibit F, *Parole Agreement*).<sup>1</sup> After being paroled, Orth violated various terms  
13 and conditions of his parole including fleeing or attempting to elude law enforcement on November 3,  
14 2020 (Exhibit G, *Violation Report*)<sup>2</sup> (Exhibit H, *Amended Information for Case C-20-352701-1*). After  
15 his arrest, the Board and the Division of Parole and Probation issued a retake warrant returning Orth to  
16 High Desert State Prison (Exhibit I, *Retake Warrant*).

17 After waiving his preliminary inquiry, Orth continued his parole revocation hearing six times  
18 with counsel present at every hearing (Exhibit J, *Parole Revocation Hearings for 01/12/2021,*  
19 *03/02/2021, 4/20/2021, 11/9/2021, 12/21/2021 and 02/08/2022*). According to Orth’s counsel, Orth’s  
20 case in *C-20-352701-1* was pending adjudication and counsel advised Orth’s parole revocation hearing  
21 would not proceed while his pending criminal matter remained unresolved. *Id.*

22 ///

23 <sup>1</sup> Since Orth’s sentences carry a maximum life sentence, his parole expiration date is “life” in  
24 cases *CR05-1459* and *CR06-2177*.

25 <sup>2</sup> Orth’s other parole violations include: associating with convicted felons and failing to pay  
26 monthly supervision fees (directives), failing to provide updates regarding an overnight stay, proof of  
27 employment and remaining at a certain residence after being directed to move out (conduct), ingesting  
28 methamphetamines (controlled substances), having beer in his possession (intoxicants), possessing a  
firearm and ammunition (weapons), failing to provide proof of completion of mandatory substance abuse  
treatment (special condition 1) and failing to provide proof of completion of mandatory mental health  
treatment (special condition 3). *See Exhibit G*. The State withdrew the controlled substances and  
intoxicants violations due to insufficient evidence. *See Exhibit J, Parole Revocation Hearing for*  
*02/22/2022*.

1 On November 4, 2021, Orth pled guilty to the crime of Stop Required on Signal of Police Officer  
2 (Exhibit K, *Guilty Plea Agreement for Case C-20-352701-1*). Orth subsequently withdrew his counsel  
3 and represented himself (Exhibit J, *Parole Revocation Hearing for 02/22/2022*). Orth advised the Board  
4 that he was moving to withdraw his plea in *C-20-352701-1. Id.* The Board continued his hearing to allow  
5 Orth to litigate his issues in district court regarding his plea before proceeding with the revocation  
6 hearing.

7 On March 22, 2022, the Board held a parole revocation hearing and revoked Orth's parole to  
8 March 1, 2024, and restored all of Orth's forfeited statutory credit earned prior to the date of revocation  
9 (Exhibit L, *Certificate of Action*). On August 8, 2022, the Eighth Judicial District Court sentenced Orth  
10 to twelve to thirty months in prison to run concurrent with his life sentences (Exhibit M, *Judgment of*  
11 *Conviction for Case C-20-352701-1*).

12 On May 2, 2023, Orth filed a petition claiming that the Board deferred holding a timely parole  
13 revocation hearing and requested a recalculation of his credits earned toward cases CR05-1459, CR06-  
14 2177 and C-20-352701-1 based on the alleged delayed timeframe between his return to High Desert  
15 State Prison and his revocation hearing.

## 16 ARGUMENT

### 17 I. Orth Fails to State a Cognizable Claim for Habeas Relief.

18 NEV. REV. STAT. 34.720(1) allows a petitioner to seek habeas relief by challenging his judgment  
19 of conviction or sentence in a criminal case. NEV. REV. STAT. 34.720(2) also allows a petitioner to seek  
20 habeas relief by challenging the computation of time he served pursuant to a judgment of conviction.  
21 However, NEV. REV. STAT. 34.720 does not permit a petitioner to challenge the actions of the Board. *See*  
22 *Anselmo v. Bisbee*, 133 Nev. 317, 319, 396 P.3d 848, 850 (2017) (“[T]here is no applicable statutory  
23 vehicle through which [a petitioner] may challenge the Board's actions.”) (alterations added).

24 In this case, Orth is neither challenging his judgments of conviction or the sentences in his  
25 criminal cases nor the computation of time he served pursuant to his judgments of conviction. Instead,  
26 Orth is challenging the actions of the Board regarding the timeliness of his parole revocation hearing and  
27 the application of credits earned based solely on the timing of the Board's revocation hearing under NEV.  
28 REV. STAT. 213.1517(3) and (4). Because NEV. REV. STAT. 34.720 does not permit a petitioner to

challenge the actions of the Board, Orth fails to state a claim for post-conviction habeas relief. Therefore, this Court should dismiss Orth's amended petition because he fails to present a cognizable claim for habeas relief under NEV. REV. STAT. 34.720.

## **II. Any Request for Mandamus Relief is Moot.**

Conceivably, this Court could exercise its discretion to treat Orth's amended petition as a petition for writ of mandamus. But it would be futile for this Court to undertake such action because Orth's amended petition still fails to present a viable claim for mandamus relief.

The proper vehicle to remedy the Board's purported failure to comply with the timing requirements of Nev. Rev. Stat. 213.1517(3) and (4) – if such a failure occurred at all – would have been for Orth to file a petition for writ of mandamus requiring the Board to fulfill its statutory mandate to hold a timely revocation hearing. *See, e.g., Brewery Arts Center v. State Bd. Of Examiners*, 108 Nev. 1050, 1053-54, 843 P.2d 369, 372 (1992); *see also Anselmo*, 133 Nev. at 319, 396 P.3d at 850. That issue, however, is moot because the Board already held a hearing. *See, e.g., Personhood of Nevada v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (Recognizing that an issue is moot when the court can no longer grant effective relief). If Orth thought the Board was evading its duty to hold a timely hearing under NEV. REV. STAT. 213.1517, the time for him to file a mandamus petition was when the Board had not held a revocation hearing within the statutorily required sixty days of his return to High Desert State Prison, which expired on January 8, 2021 – Orth was returned to High Desert State prison on November 9, 2020, making January 8, 2021, the deadline for holding Orth's revocation hearing.<sup>3</sup>

And when it held the necessary hearing, the Board exercised its discretion to revoke Orth's parole until a specific date – March 1, 2024. The decision to revoke Orth's parole until the specified date of March 1, 2024, was well within the Board's discretion under NEV. REV. STAT. 213.1519(1)(b), even if the Board had held Orth's revocation hearing within 60 days of Orth's return to High Desert State Prison.

Orth cites no authority to the contrary. Instead, Orth's Exhibit 4 – a letter from the Board addressing a request from Orth for a change to the period of revocation – correctly cites statutes granting the Board the authority to revoke Orth's parole for up to 5 years because Orth committed a new felony offense. *See* NEV. REV. STAT. 213.1519(1)(b); NEV. REV. STAT. 213.142(2); and *Matter of Smith*, 506

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<sup>3</sup> The obvious explanation for Orth not filing such a petition which is discussed in more detail below, is that Orth requested the continuances of his revocation hearing. *See infra* Argument Part III.

1 P.3d 325, 328 n.3 (Nev. 2022), reinforces Respondents’ position because the Nevada Supreme Court  
2 expressly declined to address an argument that the state district court has no authority to recalculate the  
3 Board’s parole revocation if the Board did not hold a timely hearing under NEV. REV. STAT. 213.1517  
4 when deciding *Smith*, leaving that an open issue that is ripe for this Court’s consideration.

5 In other words, even if the Board held Orth’s revocation hearing by the statutory deadline of  
6 January 8, 2021, the Board could have revoked Orth’s parole until January 8, 2026, which is nearly two  
7 years beyond the March 1, 2024, date the Board selected. And Orth cites nothing to demonstrate that the  
8 Board would have selected a different date if the Board had conducted an earlier hearing. The best Orth  
9 can do is speculate as to what might have happened at an earlier hearing, but speculation about what the  
10 Board might do is no basis for granting relief. *See Niergarth v. State*, 105 Nev. 26, 29, 768 P.2d 882,  
11 884 (1989). Therefore, Orth’s amended petition should be dismissed because even if this Court considers  
12 it as a request for mandamus relief, he fails to plead a viable theory for mandamus relief.

### 13 **III. Orth’s Allegations are Belied by the Record.**

14 Even if Orth could challenge the Board’s decisions in a habeas petition, he cannot proceed to an  
15 evidentiary hearing on his amended petition if his factual allegations are “belied or repelled by the  
16 record.” *Hargrove v. State*, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984). Orth is correct that a parole  
17 revocation proceeding may involve a loss of liberty, and therefore requires certain procedural due  
18 process protections for the parolee. *Anaya v. State*, 96 Nev. 119, 122, 606 P.2d 156, 157 (1980); *see also*  
19 *Hornback v. Warden, Nevada State Prison*, 97 Nev. 98, 100, 625 P.2d 83,84 (1981). Still, as a parole  
20 revocation hearing differs from a criminal prosecution, the full panoply of constitutional protections  
21 afforded a criminal defendant do not apply. *Id.*; *see also Gagnon v. Scarpelli*, 411 U.S. 778 (1973);  
22 *Morrissey v. Brewer*, 408 U.S. 471 (1972). And Orth fails to show a violation of the flexible standard of  
23 due process that applies here.

24 The United States Supreme Court, in *Gagnon* and *Morrissey*, outlined the minimal procedures  
25 necessary to revoke parole. Those procedures include a preliminary inquiry to determine whether there  
26 is probable cause to believe the parolee violated the conditions of his parole, notice of the alleged parole  
27 violations, a chance to appear and speak on his own behalf and to bring in relevant information, an  
28 opportunity to question persons giving adverse information, and written findings by the hearing officer,

1 who must be “someone not directly involved in the case.” *Morrissey*, 408 U.S. at 485-87. If probable  
2 cause is found, the parolee is then entitled to a formal revocation hearing at which the same rights attach.  
3 *Gagnon*, 411 U.S. at 786. The function of the final revocation hearing is two-fold, as the parole board  
4 must determine whether the alleged violations occurred, and if “the facts as determined warrant  
5 revocation.” *Morrissey*, 408 U.S. at 480; *see also Anaya*, 96 Nev. at 122, 606 P.2d at 157.

6 As explained below, Orth’s claims of violations of due process are repelled by the record. Orth’s  
7 claims about the lack of notice and delays in his revocation hearing are inconsistent with the factual  
8 record, which shows that the Board delayed the revocation hearing at Orth’s request to allow for plea  
9 negotiations. Similarly, Orth’s claims addressing the preliminary inquiry also fail because Orth waived  
10 the preliminary inquiry. Because Orth’s claims are belied by the record, this Court should dismiss Orth’s  
11 amended petition.

12 **A. Orth’s Preliminary Inquiry.**

13 The purpose of the preliminary inquiry is to determine whether there is probable cause to believe  
14 a parolee violated the terms of his parole. NEV. REV. STAT. 213.15105. The United States Supreme Court  
15 has held that a parolee is entitled to notice, so that he may appear and speak on his own behalf during  
16 the inquiry and may also bring in relevant evidence if appropriate. Those mandates are codified at NEV.  
17 REV. STAT. 213.1511 thru 213.1515.

18 On November 4, 2020, Orth received his Notice of Rights, which included violations for  
19 directives, conduct, weapons, special condition 1 and special condition 3. *See Exhibit G*. Orth waived  
20 his right to a preliminary inquiry (Exhibit N, *Notice of Rights*) (Exhibit O, *Notice of Preliminary Inquiry*  
21 *Hearing*). After waiving his preliminary inquiry, Orth continued his parole revocation hearing six times  
22 with counsel present at every hearing. *See Exhibit J, Parole Revocation Hearings for 01/12/2021,*  
23 *03/02/2021, 4/20/2021, 11/9/2021, 12/21/2021 and 02/08/2022*. According to Orth’s counsel, Orth’s  
24 case in *C-20-352701-I* was pending adjudication and counsel advised Orth’s parole revocation hearing  
25 would not proceed while his pending criminal matter remained unresolved. *Id.* Thus, although the  
26 charges in the underlying criminal proceeding changed throughout plea negotiations, Orth always knew  
27 that the revocation proceeding was tied to the new criminal offenses that were the subject of the  
28 underlying criminal proceedings that led to his guilty plea. For those reasons, the record unequivocally



shows that Orth had proper notice of the basis for the revocation, and he waived his right to a preliminary inquiry.

**B. Orth's Parole Revocation Hearing.**

Orth subsequently withdrew his counsel and represented himself (Exhibit J, *Parole Revocation Hearing for 02/22/2022*). Orth advised the Board that he was moving to withdraw his plea in *C-20-352701-1. Id.* The Board continued his hearing to allow Orth to litigate his issues in district court regarding his plea before proceeding with the revocation hearing. The Board then held Orth's parole revocation hearing on March 22, 2022, because Orth still insisted on going forward after the Board advised him that his hearing regarding the withdrawing of his plea was set for the next week in district court (Exhibit J, *Parole Revocation Hearing for 03/22/2022*).

At the revocation hearing, Orth testified and presented evidence (Exhibit J, *Parole Revocation Hearing for 03/22/2022*). Then, after the Board deliberated, the Board revoked Orth's parole<sup>4</sup> through March 1, 2024, and restored his forfeited credits that were earned prior to his parole revocation (Exhibit L).

Since Orth received proper notice of his violation, waived his right to a preliminary inquiry, knowingly waived his parole revocation hearing within the time required by NEV. REV. STAT. 213.1517 with counsel present, and made representations that he wanted to withdraw his plea but insisted on proceeding with the revocation hearing despite the issues regarding his plea remaining unresolved, Orth fails to demonstrate a violation of his right to procedural due process. *See, e.g., Matter of Smith*, 506 P.3d at 328 n.2 ("We note, however, that a petitioner may not leverage an error he or she invited or waived. Thus, where a parolee delays the revocation hearing by requesting continuances pending the outcome of the parolee's new criminal charges, neither due process nor NRS 213.1517 will require the Parole Board to hold the revocation hearing within 60 days of the parolee's return to NDOC.") (citation omitted).

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<sup>4</sup> The Board determined that Orth violated the following terms and conditions of his parole: directives, conduct, weapons, special condition 1, and special condition 3. *See Exhibit J, Parole Revocation Hearing for 03/22/2022.* The Board also determined that Orth fled or attempted to elude law enforcement in *Case C-20-352701-1 (laws)* based on his guilty plea agreement. *Id.*

1 **CONCLUSION**

2 This Court should dismiss Orth's Petition because he failed to state a cognizable claim for habeas  
3 relief, any request for mandamus relief is moot, and his allegations are belied by the record.

4 Respectfully submitted this 22<sup>nd</sup> day of June 2023.

5 AARON D. FORD  
6 Attorney General

7 By: /s/ Katrina A. Lopez  
8 Katrina A. Lopez  
9 Deputy Attorney General  
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**AFFIRMATION**  
**(Pursuant to NRS 239B.030)**

The undersigned does hereby affirm that the foregoing document does not contain the social security number of any person.

Dated this 22<sup>nd</sup> day of June 2023.

AARON D. FORD  
Attorney General

By: /s/ Katrina A. Lopez  
Katrina A. Lopez  
Deputy Attorney General

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I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail; postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days to the following unregistered participant at his last known address:

/s/ M. Landreth  
An employee of the Office of the Attorney General



**EXHS**  
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Katrina A. Lopez (Bar No. 13394)  
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Las Vegas, Nevada 89101-1068  
(702) 486-3770 (phone)  
(702) 486-2377 (fax)  
KSamuels@ag.nv.gov  
Attorneys for Respondents

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

SEAN ORTH,

Petitioner,

vs.

BRIAN WILLIAMS, WARDEN AT HIGH  
DESERT STATE PRISON, NV,

Respondent(s).

Case No. A-23-869964-W  
Dept No. X

Date of Hearing: 06/28/2023  
Time of Hearing: 8:30 am

**RESPONDENTS' INDEX OF EXHIBITS**

Respondents, by and through counsel, AARON D. FORD, Attorney General of the State of Nevada, and Katrina A. Lopez, Deputy Attorney General, respectfully submit the following exhibits in response to Sean Orth's First Amended Petition for a Writ of Habeas Corpus (Post-Conviction) filed on May 2, 2023.

No.	DATE	DOCUMENT	AGENCY	CASE No.
A.		Inmate Search		
B.	07/07/2005	Information	Second Judicial District Court	CR05-1459
C.	12/11/2006	Second Amended Information	Second Judicial District Court	CR06-2177
D.	05/04/2007	Judgment of Conviction	Second Judicial District Court	CR05-1459
E.	05/04/2007	Judgment of Conviction	Second Judicial District Court	CR06-2177

No.	DATE	DOCUMENT	AGENCY	CASE No.
F.	11/26/2018	Parole Agreement	Board of Parole Commissioners	CR05-1459 CR06-2177
G.	01/07/2021	Violation Report	Nevada Department of Public Safety Division of Parole and Probation	CR05-1459 CR06-2177
H.	11/04/2021	Amended Information	Eighth Judicial District Court	C-20-352701-1
I.	11/10/2020	Retake Warrant	Board of Parole Commissioners; Nevada Department of Public Safety Division of Parole and Probation	CR05-1459 CR06-2177
J.	01/12/2021 - 03/22/2022	Parole Revocation Videos	Board of Parole Commissioners	CR05-1459 CR06-2177
K.	11/04/2021	Guilty Plea Agreement	Eighth Judicial District Court	C-20-352701-1
L.	03/22/2022	Certificate of Action	Board of Parole Commissioners	CR05-1459 CR06-2177
M.	08/08/2022	Judgment of Conviction	Eighth Judicial District Court	C-20-352701-1
N.	11/04/2020	Notice of Rights	Nevada Department of Public Safety Division of Parole and Probation	CR05-1459 CR06-2177
O.	11/04/2020	Notice of Preliminary Inquiry	Nevada Department of Public Safety Division of Parole and Probation	CR05-1459 CR06-2177

RESPECTFULLY SUBMITTED this June 22, 2023.

AARON D. FORD  
Attorney General

By: /s/ Katrina A. Lopez  
Katrina A. Lopez  
Deputy Attorney General

**AFFIRMATION**  
**(Pursuant to NRS 239B.030)**

The undersigned does hereby affirm that the foregoing document does not contain the social security number of any person.

Dated this 22<sup>nd</sup> day of June 2023.

AARON D. FORD  
Attorney General

By: /s/ Katrina A. Lopez  
Katrina A. Lopez  
Deputy Attorney General

## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing *Respondents' Index of Exhibits* with the Clerk of the Court by using the CM/ECF system on June 22, 2023.

I certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or via facsimile transmission or e-mail; or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days to the following unregistered participant:

Sean Orth, #96723  
c/o High Desert State Prison  
P.O. Box 650  
Indian Springs, Nevada 89070-0650

/s/ M. Landreth  
An employee of the Office of the Attorney General



# Exhibit A

## Inmate Search

Search By Offender ID

Offender ID:

-or-

Search By Demographics

First Name:  Wildcard %

Last Name:  Wildcard %

NOTICE:

The information provided here represents raw data. As such, the Nevada Department of Corrections makes no warranty or guarantee that the data is error free. The information should not be used as an official record by any law enforcement agency or any other entity.

Any questions regarding an inmate, please call Family Services at (775) 977-5707. Victims looking for inmate information please contact Victim Services at (775) 977-5733. Any questions regarding the web portal for law enforcement access to inmate information should be referred to Acting PIO Bill Quenga. email: wquenga@doc.nv.gov or (775) 977-5699

Currently the following web browsers are supported for the Inmate Search: Internet Explorer 11, Chrome, Firefox and Opera. If you are unable to view inmate photos, please use a supported browser.

Download Offender Data

[Demographic](#), [Alias](#), [Booking](#), [Parole](#), [Release](#)

Up to date as of 2023-05-09

Identification and Demographics

Name	Offender ID	Gender	Ethnic	Age	Height	Weight	Build	Complexion	Hair	Eyes	Institution	Custody Level	Aliases	Prior Felonies
SEAN RODNEY ORTH	96723	Male	NOT HISPANIC	50	6'1"	200lb	LARGE	FAIR	BLONDE	HAZEL	HIGH DESERT STATE PRISON	MEDIUM	SEAN R ORTH, SEAN MCKAK SEAN RODENY OATH SEAN R RODNEY MCELROY, JAMES JAMIE WEISS CHRISTOPHER DAVID DAVIS, MCELROY RODNEY, SEAN ORTH MCKAL, ORTHENG SEAN, DANIEL YOUNG BRIAN, SEAN ORTHENG RODNEY	YES

AA002207

ORTHENG  
BRIAN  
DANIEL  
YOUNG,  
WEISS JAMES

### Booking Information

Offense Code	Offense Description	Sent. Status	Sent. Min	Sent. Max	Sent. PED	Sent. MPR	Sent. County	Sent. PEXD	Sent. Type	Sent. RRD	Sent. Start Date
3476	HABITUAL CRIMINAL (GREATER)	Active	0 yr. 120 mo. 0 days		2024-03-01		WASHOE COUNTY COURTHOUSE		LIFE WITH PAROLE		2005-10-07
3476	HABITUAL CRIMINAL (GREATER)	Active	0 yr. 120 mo. 0 days		2015-10-06		WASHOE COUNTY COURTHOUSE		LIFE WITH PAROLE		2005-10-07
3476	HABITUAL CRIMINAL (GREATER)	Active	0 yr. 120 mo. 0 days		2015-10-06		WASHOE COUNTY COURTHOUSE		LIFE WITH PAROLE		2005-10-07
3476	HABITUAL CRIMINAL (GREATER)	Active	0 yr. 120 mo. 0 days		2015-10-06		WASHOE COUNTY COURTHOUSE		LIFE WITH PAROLE		2005-10-07
3476	HABITUAL CRIMINAL (GREATER)	Active	0 yr. 120 mo. 0 days		2015-10-06		WASHOE COUNTY COURTHOUSE		LIFE WITH PAROLE		2005-10-07
3476	HABITUAL CRIMINAL (GREATER)	Active	0 yr. 120 mo. 0 days		2018-10-01		WASHOE COUNTY COURTHOUSE		LIFE WITH PAROLE		2005-10-07
7612	FAIL TO STOP ON SIGNAL FROM OFFICER	Active	0 yr. 12 mo. 0 days	0 yr. 30 mo. 0 days	2023-07-31		CLARK COUNTY COURTHOUSE	2023-10-15	DETERMINATE		2022-08-01

### Inmate Photo



### Parole Hearing Details

Offender Book ID	Parole Hearing Date	Parole Hearing Location
75205	2015-07-29	PAROLE BOARD ROOM 301
75205	2015-10-12	PAROLE BOARD ROOM 201
75205	2017-07-19	PAROLE BOARD ROOM 201
75205	2018-07-18	PAROLE BOARD ROOM 301
75205	2021-01-12	PAROLE BOARD ROOM 301
75205	2021-03-02	PAROLE BOARD ROOM 301
75205	2021-04-20	PAROLE BOARD ROOM 301
75205	2021-11-09	PAROLE BOARD ROOM 301
75205	2021-12-21	PAROLE BOARD ROOM 301
75205	2022-02-08	PAROLE BOARD ROOM 301
75205	2022-02-22	PAROLE BOARD ROOM 301
75205	2022-03-22	PAROLE BOARD ROOM 301

AA002208



Exhibit B

Information

CR05-1459

# EXHIBIT 3

# EXHIBIT 3

ORIGINAL

FILED

DA # 344457

RPD RP05-018178/RP05-017226/SPD 05-005605

2005 JUL -7 AM 10:41

CODE 1800

Richard A. Gammick

#001510

P.O. Box 30083

Reno, NV 89520-3083

(775) 328-3200

Attorney for Plaintiff

RONALD A. LONGTIN, JR.

BY  DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE.

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

Case No. CR05-1459

v.

Dept. No. 9

SEAN RODNEY ORTH,

Defendant.

INFORMATION

RICHARD A. GAMMICK, District Attorney within and for the County of Washoe, State of Nevada, in the name and by the authority of the State of Nevada, informs the above entitled Court that SEAN RODNEY ORTH, the defendant above named, has committed the crimes of:

COUNT I. ROBBERY WITH THE USE OF A DEADLY WEAPON, a violation of NRS 200.380 and NRS 193.165, a felony, (F960) in the manner following:

That the said defendant, on the 2nd day of May A.D., 2005, or thereabout, and before the filing of this Information, at and within the County of Washoe, State of Nevada, did willfully and unlawfully take personal property, to wit: a safe containing jewelry

1 and/or papers and/or keys and/or a camera from the person and in the  
2 presence of ZACHARY ZAFRANOVICH, at 876 Pinewood Court, Sparks,  
3 Washoe County, Nevada, against his will, and by means of force or  
4 violence to his person and with the use of a handgun which the said  
5 defendant pointed a handgun at the victim and demanded money.

6 COUNT II. BATTERY WITH A DEADLY WEAPON, a violation of NRS  
7 200.481(2)(e), a felony, in the manner following:

8 That the said defendant, on the 2nd day of May A.D., 2005,  
9 or thereabout, and before the filing of this Information, at and  
10 within the County of Washoe, State of Nevada, did willfully and  
11 unlawfully use force and violence upon the person of ZACHARY  
12 ZAFRANOVICH at 876 Pinewood Court, Sparks, Washoe County, Nevada,  
13 with a deadly weapon, to wit: a handgun, by striking the victim in  
14 the head with the butt of the handgun.

15 COUNT III. CONSPIRACY TO COMMIT ROBBERY WITH THE USE OF A  
16 DEADLY WEAPON, a violation of NRS 199.480, NRS 200.380 and NRS  
17 193.165, a felony, in the manner following:

18 That the said defendant, on the 2nd day of May A.D., 2005,  
19 or thereabout, and before the filing of this Information, at and  
20 within the County of Washoe, State of Nevada, did willfully and  
21 unlawfully conspire with SHAELYNN LESTER and/or GEORGE KELLY and/or  
22 person or persons unknown to take personal property, to wit: a safe  
23 containing jewelry and/or papers and/or keys and/or a camera from the  
24 person and in the presence of ZACHARY ZAFRANOVICH, at [REDACTED]  
25 Court, [REDACTED] Washoe County, Nevada, against his will, and by means  
26 of force or violence to his person and with the use of a handgun in



1 that the said defendant obtained property and/or money from the  
2 victim with the use of a handgun.

3 COUNT IV. TRAFFICKING IN A CONTROLLED SUBSTANCE, a  
4 violation of NRS 453.3385(1), a felony, (F1050) in the manner  
5 following:

6 That the said defendant, on the 11th day of May A.D., 2005,  
7 or thereabout, and before the filing of this Information, at and  
8 within the County of Washoe, State of Nevada, did willfully,  
9 unlawfully, knowingly, and/or intentionally, sell, manufacture,  
10 deliver, or be in actual or constructive possession of 4 grams or  
11 more but less than 14 grams of a Schedule I controlled substance or a  
12 mixture which contains a Schedule I controlled substance, to wit:  
13 methamphetamine at 365 West Street #15, Reno.

14 COUNT V. ELUDING A POLICE OFFICER, a violation of NRS  
15 484.348, a felony, (F390) in the manner following:

16 That the said defendant, on the 11th day of May A.D., 2005,  
17 or thereabout, and before the filing of this Information, at and  
18 within the County of Washoe, State of Nevada, did willfully and  
19 unlawfully, while driving a motor vehicle, fail or refuse to bring  
20 his vehicle to a stop, or otherwise flee or attempt to elude a peace  
21 officer in a readily identifiable police vehicle, when given a signal  
22 to bring his vehicle to a stop, and further did operate said vehicle  
23 in a manner which endangered or was likely to endanger the person or  
24 property of another to wit: when the defendant was signaled by peace  
25 officers to stop, he drove his vehicle on a sidewalk, briefly feigned  
26 surrender, again drove on a sidewalk, then through downtown Reno at


1 extremely high speeds, running several stoplights and stop signs,  
2 weaving through traffic, attempting to hit pursuing police vehicles,  
3 and finally crashing his vehicle on California Avenue and/or Virginia  
4 Street.

5 COUNT VI. BEING AN EX-FELON IN POSSESSION OF A FIREARM, a  
6 violation of NRS 202.360, a felony, (F150) in the manner following:

7 That the said defendant, on the 5th day of May A.D., 2005,  
8 and/or the 2nd day of May A.D., 2005, or thereabout, and before the  
9 filing of this Information, at and within the County of Washoe, State  
10 of Nevada, did willfully, unlawfully, and knowingly, having been  
11 previously convicted in the County of Washoe, State of Nevada, of the  
12 crimes of GRAND LARCENY and BURGLARY, felonies under the laws of the  
13 State of Nevada, have in his possession and/or under his dominion,  
14 custody, control, and/or own a 9mm handgun.

15  
16 All of which is contrary to the form of the Statute in such  
17 case made and provided, and against the peace and dignity of the  
18 State of Nevada.

19 RICHARD A. GAMMICK  
20 District Attorney  
Washoe County, Nevada

21  
22 By   
23 MEGAN RACHOW  
#8231  
24 Deputy District Attorney

1 The following are the names and addresses of such witnesses as  
2 are known to me at the time of the filing of the within Information:

3  
4 RENO POLICE DEPARTMENT

5 DETECTIVE HARMON  
6 SERGEANT DAVE DELLA #0941  
7 DETECTIVE R. THOMAS #4042  
8 DETECTIVE JOE LEVER  
9 OFFICER JIM DOUGHERTY  
10 DETECTIVE DAVE KELLER

11 WASHOE COUNTY SHERIFF'S OFFICE

12 DEPUTY TONI LEON - FIS  
13 DEPUTY DEAN KAUMANS - FIS

14 SPARKS POLICE DEPARTMENT

15 DETECTIVE MIKE BROWN

16 WASHOE COUNTY CRIME LABORATORY

17 CHEMIST

18 BRENDA DUNNING, [REDACTED] Nevada

19 JOHN MCBREARTY, Security, Reno Regency, 200 E. 6th Street,  
20 Reno Nevada

21 WILLIAM MCCORMICK, 911 Parr Boulevard, Reno Nevada

22 JORGE MORENO

23 ///

24 ///

25 ///

26 ///

///

///

///

1 ZACHARY ZAFRANOVICH, [REDACTED]

Nevada [REDACTED]

2 KRISTY REYNOLDS, [REDACTED]

Nevada [REDACTED]

17 RICHARD A. GAMMICK  
18 District Attorney  
19 Washoe County, Nevada

20  
21 By



MEGAN RACHOW

#8237

Deputy District Attorney

24 PCN 85802332

25 PCN 8580232

26 07058178

Exhibit C

Second Amended  
Information  
CR06-2177

# EXHIBIT 44

# EXHIBIT 44

ORIGINAL

FILED

DA # 364466

RPD RP06-033832, CL 06-3856(9)

2006 DEC 11 AM 11:53

CODE 1800

Richard A. Gammick

#001510

P.O. Box 30083

Reno, NV 89520-3083

(775) 328-3200

Attorney for Plaintiff

RONALD A. LONGSTIN, JR.

BY J. Davis  
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF WASHOE.

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

Case No. CR06-2177

v.

Dept. No. 9

SEAN RODNEY ORTH,  
also known as  
CHRISTOPHER DAVID DAVIS,  
also known as  
JAMES JAMIE WEISS,  
also known as  
BRIAN DANIEL YOUNG,

Defendant.

SECOND AMENDED INFORMATION

RICHARD A. GAMMICK, District Attorney within and for the  
County of Washoe, State of Nevada, in the name and by the authority  
of the State of Nevada, informs the above entitled Court that SEAN  
RODNEY ORTH, also known as CHRISTOPHER DAVID DAVIS, also known as  
JAMES JAMIE WEISS, also known as BRIAN DANIEL YOUNG, the defendant  
above named, has committed the crimes of:

///

///

EXHIBIT 44

AA002220

6

CR06-2177  
STATE VS. SEAN RODNEY ORTH ( 6 Pages  
District Court 12/13/2006 05:01 PM  
Washoe County 3925

1           COUNT I. TRAFFICKING IN A CONTROLLED SUBSTANCE, a  
2 violation of NRS 453.3385(1), a felony, (F1050) in the manner  
3 following:

4           That the said defendant on the 21st day of August A.D.,  
5 2006, or thereabout, and before the filing of this Second Amended  
6 Information, at and within the County of Washoe, State of Nevada, did  
7 willfully, unlawfully, knowingly, and/or intentionally, sell,  
8 manufacture, deliver, or be in actual or constructive possession of 4  
9 grams or more but less than 14 grams of a Schedule I controlled  
10 substance or a mixture which contains a Schedule I controlled  
11 substance, to wit: methamphetamine at [REDACTED] Washoe  
12 County, Nevada.

13           COUNT II. POSSESSION OF A CONTROLLED SUBSTANCE FOR THE  
14 PURPOSE OF SALE, a violation of NRS 453.337, a felony, (F810) in the  
15 manner following:

16           That the said defendant on the 21st day of August A.D.,  
17 2006, or thereabout, and before the filing of this Second Amended  
18 Information, at and within the County of Washoe, State of Nevada, did  
19 willfully, unlawfully and knowingly have in his possession and under  
20 his dominion and control a Schedule I controlled substance, to wit:  
21 methamphetamine, for the purpose of and with the intent to sell said  
22 controlled substance.

23           COUNT III. POSSESSION OF A CONTROLLED SUBSTANCE, a  
24 violation of NRS 453.336, a felony, (F800) in the manner following:

25           That the said defendant on the 21st day of August A.D.,  
26 2006, or thereabout, and before the filing of this Second Amended



1 Information, at and within the County of Washoe, State of Nevada, did  
2 willfully, unlawfully and knowingly have in his possession a Schedule  
3 I controlled substance, to wit: methamphetamine at [REDACTED]  
4 [REDACTED] Washoe County, Nevada.

5 COUNT IV. BEING AN EX-FELON IN POSSESSION OF A FIREARM, a  
6 violation of NRS 202.360, a felony, (F150) in the manner following:

7 That the said defendant on the 21st day of August A.D.,  
8 2006, or thereabout, and before the filing of this Second Amended  
9 Information, at and within the County of Washoe, State of Nevada, did  
10 willfully, unlawfully, and knowingly, having been previously  
11 convicted in the County of Washoe, State of Nevada, of the crime of  
12 Eluding a Police Officer, a felony under the laws of the State of  
13 Nevada, have in his possession and under his dominion, custody,  
14 and/or control, a .40 caliber semi-automatic handgun.

15 COUNT V. BEING AN EX-FELON IN POSSESSION OF A FIREARM, a  
16 violation of NRS 202.360, a felony, (F150) in the manner following:

17 That the said defendant on the 21st day of August A.D.,  
18 2006, or thereabout, and before the filing of this Second Amended  
19 Information, at and within the County of Washoe, State of Nevada, did  
20 willfully, unlawfully, and knowingly, having been previously  
21 convicted in the County of Washoe, State of Nevada, of the crime of  
22 Eluding a Police Officer, a felony under the laws of the State of  
23 Nevada, have in his possession and under his dominion, custody,  
24 and/or control, a .357 Magnum revolver.

25 ///

26 ///

1            COUNT VI. BEING AN HABITUAL CRIMINAL, as defined in NRS  
2            207.010, (F155)

3            That the said defendant, SEAN RODNEY ORTH, also known as  
4            CHRISTOPHER DAVID DAVIS, also known as JAMES JAMIE WEISS, also known  
5            as BRIAN DANIEL YOUNG, is an habitual criminal in that the said  
6            defendant has, prior to the date alleged in the other count of this  
7            Information previously been convicted of the following criminal  
8            offenses:

9            No. 1: GRAND LARCENY

10           That on January 14, 1994, the said defendant, SEAN RODNEY  
11           ORTH, also known as CHRISTOPHER DAVID DAVIS, also known as JAMES  
12           JAMIE WEISS, also known as BRIAN DANIEL YOUNG, was convicted in the  
13           Second Judicial District Court of the State of Nevada of the crime of  
14           GRAND LARCENY, a felony under the laws of the situs of the crime or  
15           the State of Nevada.

16           No. 2: BURGLARY

17           That on January 14, 1994, the said defendant, SEAN RODNEY  
18           ORTH, also known as CHRISTOPHER DAVID DAVIS, also known as JAMES  
19           JAMIE WEISS, also known as BRIAN DANIEL YOUNG, was convicted in the  
20           Second Judicial District Court of the State of Nevada of the crime of  
21           BURGLARY, a felony under the laws of the situs of the crime or the  
22           State of Nevada.

23           No. 3: POSSESSION OF A SHORT-BARRELED SHOTGUN

24           That on October 27, 1998, the said defendant, SEAN RODNEY  
25           ORTH, also known as CHRISTOPHER DAVID DAVIS, also known as JAMES  
26           JAMIE WEISS, also known as BRIAN DANIEL YOUNG, was convicted in the

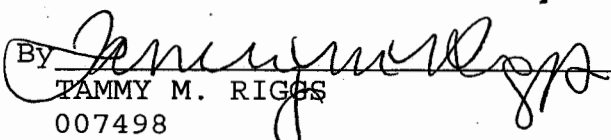
1 Second Judicial District Court of the State of Nevada of the crime of  
2 POSSESSION OF A SHORT-BARRELED SHOTGUN, a felony under the laws of  
3 the situs of the crime or the State of Nevada.

4 No. 4: ELUDING A POLICE OFFICER

5 That on December 10, 1998, the said defendant, SEAN RODNEY  
6 ORTH, also known as CHRISTOPHER DAVID DAVIS, also known as JAMES  
7 JAMIE WEISS, also known as BRIAN DANIEL YOUNG, was convicted in the  
8 Second Judicial District Court of the State of Nevada of the crime of  
9 ELUDING A POLICE OFFICER, a felony under the laws of the situs of the  
10 crime or the State of Nevada.

11  
12 All of which is contrary to the form of the Statute in such  
13 case made and provided, and against the peace and dignity of the  
14 State of Nevada.

15 RICHARD A. GAMMICK  
16 District Attorney  
17 Washoe County, Nevada

18 BY   
19 TAMMY M. RIGGS  
20 007498  
21 Deputy District Attorney  
22  
23  
24  
25  
26

1           The following are the names and addresses of such witnesses  
2 as are known to me at the time of the filing of the within  
3 Information:  
4

5   RENO POLICE DEPARTMENT

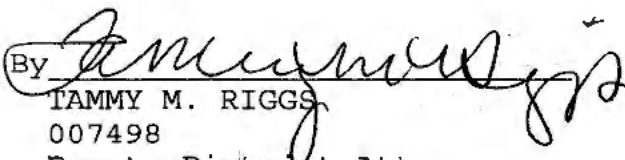
6   OFFICER JOE LEVER  
7   OFFICER ERIC KOCH  
8   OFFICER JOHN SILVER  
9   OFFICER KENNETH HARMON  
10  OFFICER SEAN SCHWARTZ  
11  SERGEANT MAC VENZON  
12  SERGEANT ROBERT VAN DIEST  
13  SERGEANT JOHN MANDAGARAN  
14  DETECTIVE REED THOMAS

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MARLA BARKER

ADAM RAY MEYERS, [REDACTED]

RICHARD A. GAMMICK  
District Attorney  
Washoe County, Nevada

By   
TAMMY M. RIGGS  
007498  
Deputy District Attorney

PCN RPD0604704C

09286832

AA002225

# Exhibit D

## Judgment of Conviction CR05-1459

# EXHIBIT 65a

# EXHIBIT 65a

ORIGINAL

CODE NO. 1850

FILED

MAY - 4 2007

RONALD A. LONGTIN, JR., CLERK

By: *[Signature]*

DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

Case No. CR05-1459

vs.

Dept. No. 9

SEAN RODNEY ORTH,

Defendant.

JUDGMENT

The Defendant having been found guilty by a jury, and no sufficient cause being shown by Defendant as to why judgment should not be pronounced against him, the Court rendered judgment as follows:

That Sean Rodney Orth is guilty of the crimes of Robbery With the Use of a Deadly Weapon, a violation of NRS 200.380 and NRS 193.165, a felony, as charged in Count I of the Information, Conspiracy to Commit Robbery With the Use of a Deadly Weapon, a violation of NRS 199.480, NRS 200.380 and NRS 193.165, a felony, as charged in Count III of the Information and Eluding a Police Officer, a violation of NRS 484.348, a felony, as charged in Count V of the Information, and the Court having adjudged the Defendant to be a Habitual Criminal as provided for under NRS 207.010, upon these felony convictions, followed by proof of six (6) prior felonies alleged in Count VII of the Amended Information, the Court hereby sentences the Defendant by imprisonment in the Nevada State Prison for the term of Life With the Possibility of Parole, with parole eligibility

CR05-1459  
STATE VS SEAN RODNEY ORTH (D. 2 PAGES)  
District Court 05/04/2007 11:26 AM  
Washoe County  
1 MI OPF7  
ncc

1 beginning after a minimum of ten (10) years has been served, as to Count I. As to Count III,  
2 the Defendant is punished by imprisonment in the Nevada State Prison for the term of Life  
3 With the Possibility of Parole, with parole eligibility beginning after a minimum of ten (10)  
4 years has been served, to run concurrently with Count I. As to Count V, the Defendant is  
5 punished by imprisonment in the Nevada State Prison for the term of Life With the  
6 Possibility of Parole, with parole eligibility beginning after a minimum of ten (10) years has  
7 been served, to run concurrently with Count III. The Defendant is further ordered to pay the  
8 statutory Twenty-Five Dollar (\$25.00) administrative assessment fee and restitution in the  
9 amount of Seventy Dollars (\$70.00). The Defendant is given credit for five hundred  
10 seventy-four (574) days time served.

11 DATED this 4th day of May, 2007.

12  
13   
14 DISTRICT JUDGE  
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# Exhibit E

## Judgment of Conviction CR06-2177

EXHIBIT 67

EXHIBIT 67

ORIGINAL

FILED

MAY - 4 2007

RONALD A. LONGIN, JR., CLERK

DEPUTY

CODE NO. 1850

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

Case No. CR06-2177

vs.

Dept. No. 9

SEAN RODNEY ORTH,

Defendant.

JUDGMENT

The Defendant having been found guilty by a jury, and no sufficient cause being shown by Defendant as to why judgment should not be pronounced against him, the Court rendered judgment as follows:

That Sean Rodney Orth is guilty of the crimes of Trafficking in a Controlled Substance, a violation of NRS 453.3385(1), a felony, as charged in Count I of the Amended Information and Being an Ex-Felon in Possession of a Firearm, a violation of NRS 202.360, a felony, as charged in Counts IV and V of the Amended Information, and the Court having adjudged the Defendant to be a Habitual Criminal as provided for under NRS 207.010, upon the above felony convictions, followed by proof of four (4) prior felonies alleged in Count VI of the Second Amended Information, the Court hereby sentences the Defendant by imprisonment in the Nevada State Prison for the term of Life With the Possibility of Parole, with parole eligibility beginning after a minimum of ten (10) years has been served, as to Count I. As to Count IV, the Defendant is punished by imprisonment in the Nevada State

EXHIBIT 67

1 Prison for the term of Life With the Possibility of Parole, with parole eligibility beginning after  
2 a minimum of ten (10) years has been served, to run concurrently with Count I. As to Count  
3 V, the Defendant is punished by imprisonment in the Nevada State Prison for the term of  
4 Life With the Possibility of Parole, with parole eligibility beginning after a minimum of ten  
5 (10) years has been served, to run concurrently with Count IV. The sentence herein shall  
6 run concurrently with the sentence imposed in CR05-1459. The Defendant is further  
7 ordered to pay the statutory Twenty-Five Dollar (\$25.00) administrative assessment fee, a  
8 Sixty Dollar (\$60.00) chemical analysis fee, a One Hundred Fifty Dollar (\$150.00) DNA  
9 testing fee and reimburse the County of Washoe the sum of Five Hundred Dollars (\$500.00)  
10 for legal representation by the Washoe County Public Defender's Office. The Defendant is  
11 given credit for five hundred seventy-four (574) days time served.

12 DATED this 4th day of May, 2007.

13   
14 \_\_\_\_\_  
15 DISTRICT JUDGE  
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# Exhibit F

Parole Agreement

CR05-1459

CR06-2177

State of Nevada  
Board of Parole Commissioners  
PAROLE AGREEMENT

Sean R Orth was sentenced in the State of Nevada to imprisonment in the Nevada Department of Corrections for the crime of CT: Habitual Criminal (Greater), CT: III Habitual Criminal (Greater), CT V: Habitual Criminal (Greater). The Board of Parole Commissioners, by virtue of the authority vested in it by the laws of the State of Nevada, hereby authorizes the Director of the Department of Corrections to allow said Sean R Orth on the 26th day of November, 2018, or as soon thereafter as a satisfactory program can be arranged and approved by the Division of Parole and Probation, to go upon parole outside the prison buildings and enclosure, subject to the following conditions:

**Parole Conditions**

- \* You must complete a substance abuse evaluation within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider.
- \* You are not permitted to enter a bar or lounge for any purpose except employment.
- \* You must complete a Mental Health assessment within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider.
- \* Directives: You shall follow the rules of the Division of Parole and Probation to include the following:
  - \* A. You shall not change your place of residence without first obtaining permission from the Division of Parole and Probation.
  - \* B. You shall report in person to the Division of Parole and Probation as instructed by the Division or its agent. You shall submit a written report each month on forms supplied by the Division. This report shall be true and correct in all respects.
  - \* C. You shall seek and maintain legal employment, or maintain a program approved by the Division of Parole and Probation and not change such employment or program without first obtaining permission. All terminations of employment or program shall be immediately reported to the Division.
  - \* D. You shall pay any court ordered restitution by making payments until the balance is paid in full. The minimum monthly payment shall be established by dividing the balance owed at the time of release on parole by the number of projected months to be served on parole. If, after dividing the total restitution owed by the number of projected months to be served on parole the monthly payment is equal to an amount less than \$50, the monthly payment shall be \$50 until the balance is paid in full.
  - \* E. Pay all applicable fines and fees on a schedule determined by the Division of Parole and Probation.
  - \* F. You shall not leave the state without first obtaining written permission from the Division of Parole and Probation.
  - \* G. You shall not associate with convicted felons, persons who are engaged in criminal activity, or other persons with whom your supervising officer instructs you not to associate.
  - \* H. You shall follow all the directives of your assigned Parole Officer.
- \* Controlled substances: You shall not use, purchase or possess any illegal drugs, or any prescription drugs, unless first prescribed by a licensed medical professional. You shall immediately notify the Division of Parole and Probation of any prescription received. You shall refrain from the use and possession of any synthetic/designer drug or any mind and/or body altering substance. You shall submit to drug testing as required by the Division or its agent.
- \* Recreational Marijuana: You shall not purchase, consume or have under your control marijuana in any form, except when such use is prescribed for use as a medicine in accordance with the provisions of chapter 453A of NRS.
- \* Intoxicants: You shall not purchase, consume or have under your control any alcohol beverage, unless specifically permitted by special condition of the Board. Upon the direction of the Division of Parole and Probation or other peace officer, you shall submit to a medically recognized test for blood/breath content.
- \* Weapons: You shall not possess, have access to, or have under your control, any type of weapon unless the item is used in conjunction with the duties of legitimate employment and has been approved in writing by the Division of Parole and Probation or its agent.
- \* Laws: You shall comply with all institutional rules, municipal, county, state, and federal laws and ordinances.
- \* Conduct: You shall comply with all the provisions stated on the parole agreement and your conduct shall justify the opportunity granted to you by this community supervision.

**Credits:** You shall receive no credit on this sentence during any period of time that you are absent from supervision and deemed to be an absconder. The projected parole expiration date is based upon the assumption that you will earn the maximum number of credits available to be earned while on parole. If you fail to work and/or program diligently, fail to keep current with any payments toward restitution and supervision fees or fail to comply with the terms of parole, you may not receive the additional credits off your sentence that have been projected on this document. The Nevada Department of Corrections (NDOC) is responsible for calculating and applying credits to the sentences of inmates and parolees. The projected parole expiration date on this document is subject to change based on credit earnings and/or adjustments as determined by the NDOC. Credits for good time earned on parole may be forfeited if you are found guilty of a violation. Pursuant to NRS 213.15185, all good time credits previously earned to reduce your sentence are forfeited upon revocation of parole.

This parole is granted to and accepted by you, subject to the conditions stated herein, and with the knowledge that the Board of Parole Commissioners has the power, at any time, in case of violation of the conditions of parole to cause your detention and/or return to prison.

Your Projected Parole Expiration Date based on maximum credit earning is: Life

Ashley Ingersoll  
For Chief Parole Officer

Dated: 11/3/2020

**AGREEMENT BY PAROLEE**

I do hereby waive extradition to the State of Nevada from any state in the United States, and from any territory or country outside the continental United States, and also agree that I will not contest any effort to return me to the United States or the State of Nevada. I shall submit my person, property, place of residence, vehicle, or areas under my control to search at any time of the day or night, with or without a search warrant or with or without cause, for evidence of a crime or violation of parole by a Parole Officer or any other Peace Officer. I have read or had read to me, the conditions of my parole, and I fully understand them and I agree to abide by and strictly follow them. I fully understand the penalties involved should I, in any manner, violate the foregoing conditions.

Parolee: \_\_\_\_\_ Date: \_\_\_\_\_ Witness: \_\_\_\_\_ Date: \_\_\_\_\_

The form design, content and conditions specified herein are approved by the Board of Parole Commissioners in accordance with the Parole Order which includes the parole conditions and authorizes release to parole. Information specific to the individual named on this form including sentence details, restitution owed, case number and projected expiration dates have been compiled by the Division of Parole and Probation, and do not

AA002235

\* necessarily reflect the approval of the Board of Parole Commissioners. Inquiries related to specific case/sentencing information should be addressed to the Department of Corrections or the Division of Parole and Probation.

# Exhibit G

## Violation Report

CR05-1459

CR06-2177





Nevada Department of  
**Public Safety**  
Parole and Probation

Division of Parole and Probation  
**Non-Technical Violation Report**

January 7, 2021

Maximum

To the Honorable Board  
of Parole Commissioners  
Carson City, Nevada

☒ Parole ☐ Probation

Name: Orth, Sean  
AKA: Sean Rodney Orth  
File #: L19-0135A  
CC #: CR06-2177  
NDOC #: 96723

Supervision Grant: 11/26/2018  
Original Expiration: LIFE  
Adjusted Expiration: LIFE

Crime: CT I: Habitual Criminal (Greater), CT IV: Habitual Criminal (Greater), CT V: Habitual Criminal (Greater)  
Sentence: 120 MOS TO LIFE NDOC

- I. Violation(s) and Response to Imposed Sanctions: <sup>5 6 7</sup>
1. Laws, Directives, Conduct, Controlled Substances, Intoxicants, Weapons, Special Condition (1) You must complete a substance abuse evaluation within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider. Special Condition (3) You must complete a Mental Health assessment within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider.
- B On November 28, 2018, Mr. Orth was granted an amazing opportunity of serving his lifetime prison sentence within the community. During his intake process the Division went over Mr. Orth's parole agreement and stressed the importance of abiding the rules and regulations of his parole agreement. Unfortunately, Mr. Orth continued in his life of crime; violated multiple clauses in his parole agreement and picked up new charges.

Mr. Orth obtained a Substance Abuse Evaluation through ROI on December 6, 2018 but failed to provide the Division with proof of completion of treatment. (Directives, Conduct, Special Condition 1: You must complete a substance abuse evaluation within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider)

Mr. Orth obtained a Mental Health Evaluation through ROI on December 6, 2018 but failed to provide the Division with proof of completion of treatment. (Directives, Conduct, Special Condition 3: You must complete a mental health evaluation within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider)

On December 16, 2018, Mr. Orth made contact with the Las Vegas Metro Police Department during a routine traffic stop. During this traffic stop it was noted Mr. Orth was in the vehicle with convicted felon Martin, Angel (BIN: 1004427746), which violated the directives (association) clause of his parole agreement. Mr. Orth was admonished and advised to no longer associate with felons, in which Mr. Orth stated he understood. The Division was advised by staff from Samaritan House that Mr. Orth had returned under the influence of a controlled substance. Mr. Orth refused to provide a urine sample, but verbally admitted to ingesting Methamphetamines. Mr. Orth was subsequently terminated from the Samaritan House Sober Living Program. (Directives, Conduct, Controlled Substances)

On December 19, 2020, the Division received a telephone call from Mr. Orth who stated he traveled to





Reno with a girlfriend for a few days. Although Mr. Orth is allowed to travel within the state, he was made aware that the Division must know if he would be sleeping at a different residence. Unfortunately, Mr. Orth did not update the Division of his overnight whereabouts. (Directives and Conduct)

On August 27, 2020, the Division received a phone call from LVMPD stating Mr. Orth was seen leaving [REDACTED] which is a known criminal hot spot. Mr. Orth was taken into custody for traffic warrants out of Henderson. (Directives, Conduct, Laws)

On September 9, 2020, the Division made contact with Mr. Orth. A phone search was conducted, and it was evident that Mr. Orth had cleared out his text messages. A search of his room was conducted and there were numerous backpacks, in which one of them contained a Modelo beer. Mr. Orth denied ownership of the beer, but because it was in his room in a backpack he stated was his, he was admonished for it. There were female belongings in the room and when asked who the items belonged to he stated his girlfriend. Mr. Orth was asked where his girlfriend was and if she had a criminal history, he stated she was at the store and she was not a felon. Mr. Orth was questioned as to why his girlfriend would go to the store and leave her purse and he could not answer why. Officers of the Division left Mr. Orth's residence and quickly returned to provide him with a notice of graduated sanctions form. Officers observed Mr. Orth and a WFA walking down the stairs, surveillance was conducted on the residence and no one had entered the residence, so it was evident the WFA was in the home all along. After questioning Mr. Orth stated the WFA was in the adjacent (connected) room, hiding. A search of the adjacent room revealed zero soft pellet guns, and a hyperemic needle with a clear liquid substance and drug paraphernalia. A drug test was conducted, and Mr. Orth tested positive for Methamphetamine. The WFA was ran and it was discovered she was previously on community supervision. In an attempt to give Mr. Orth a second chance, he was given the following graduated sanctions:

- Proof of 15 job applications by September 16, 2020 or a full-time job
- Weekly reporting (with instructions to call the undersigned Officer every Friday)
- Curfew: 8pm to 6am

Mr. Orth was also directed and reminded once again to not have contact with any person that is convicted of a felony or the commission of a crime. Due to the numerous violations noted within the residence and Mr. Orth's inability to be transparent, Mr. Orth was given the directive to move no later than October 1, 2020. (Directives, Conduct, Intoxicants, Controlled Substances, Weapons)

Mr. Orth failed to report on the following dates: September 25, 2020 and October 2, 2020. Mr. Orth failed to provide the Division with proof of 15 job applications as previously instructed, and Mr. Orth failed to move as directed. On October 15, 2020, Mr. Orth contacted the Division stating he was still residing at the residence he was directed to move out. (Directives, Conduct)

As a last resort, the Division attempted to place Mr. Orth on intensive supervision but the Division could not make contact with Mr. Orth in person. An attempt to locate Mr. Orth was conducted on October 19, 2020, the light was on upstairs and a dog was heard barking, but no one answered. A notice was left on the door instructing Mr. Orth to report to the Division on October 20, 2020 and up to the date of this report no phone call has been received. (Directives, Conduct)



On October 28, 2020, Mr. Orth made contact with the Henderson Police Department as the suspect of an armed burglary. Mr. Orth was in a vehicle that was reported unlawfully taken the night prior. Upon arrival Mr. Orth was spotted in the vehicle and in an attempt to evade Officers he got out of the vehicle while it was still in motion with a tan duffle bag in his possession. Officers initiated a foot pursuit after issuing commands for Mr. Orth to stop however he continued to run. HPD was eventually able to get Mr. Orth in custody and he was booked on the following new charges: Resist Pub Off (M) and Own/ Poss Gun By Prohibit Pers (F). During this incident it was discovered that Mr. Orth was previously associating with Louis Polanco (DOB: [REDACTED]), who has a significant number of arrests. Upon search of the tan duffle bag that was in Mr. Orth's possession, the following items were discovered: a black 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 chisel tool. (Directives, Conduct, Laws, Weapons)

Mr. Orth was put on an employment search in order to push him to obtain employment but failed to provide the Division with proof of 15 jobs applications for the month of September 2020. (Directives, Conduct)

Mr. Orth has failed to pay monthly supervision fees in the amount of \$30 as mandated by the Nevada Revised Statutes to defray the cost of supervision. He is currently \$216 in arrears towards this obligation. (Directives, Conduct)

Mr. Orth has failed to comply with the Provisions of his parole agreement due to the above listed violations.

**II. Custody Status:**

As of the date of this report, Mr. Orth is currently in custody at the Henderson Detention Center.

**III. Violation Hearing History:**

This is Mr. Orth's first time facing revocation proceedings since his parole date of 11/26/2018.

**IV. Mitigating Factors:**

Mr. Orth is a convicted habitual criminal who is well versed in the rules and regulations of laws and community supervision. Mr. Orth had all the tools of the Division at his disposal but chose to continue in his life of crime. Mr. Orth was given numerous chances by the Division through verbal admonishment as well as graduated sanctions. Mr. Orth's actions speak for themselves, it is clear Mr. Orth has no desire to be a productive member of our community.

**V. Recommendation:**

It is recommended a retake warrant be issued, and Mr. Orth's imposed lifetime sentence be imposed.

**VI. Current Level of Supervision:**

Maximum

Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.



Nevada Department of  
**Public Safety**  
Parole and Probation

**Division of Parole and Probation  
Non-Technical Violation Report**

Respectfully submitted:

Q. Pascual, DPS Officer II  
Division of Parole and Probation  
qpascual@dps.state.nv.us  
(702) 486-3651

Approved:

M. La'Putt, DPS Sergeant  
Division of Parole and Probation  
Mlaputt@dps.state.nv.us  
(702) 486-3001





November 3, 2020

To the Honorable Board  
of Parole Commissioners  
Carson City, Nevada

☒ Parole ☐ Probation

Name: Orth, Sean  
AKA: Sean Rodney Orth  
File #: L19-0135  
CC #: CR05-1459  
NDOC #: 96723

Supervision Grant: 11/26/2018  
Original Expiration: LIFE  
Adjusted Expiration: LIFE

Crime: CT I: Habitual Criminal (Greater), CT III: Habitual Criminal (Greater), CT V: Habitual Criminal (Greater)  
Sentence: 120 MOS TO LIFE NDOC

**I. Violation(s) and Response to Imposed Sanctions:**

**Directives, Conduct, Controlled Substances, Intoxicants, Weapons, Special Condition (1), Special Condition (3)**

On November 28, 2018, Mr. Orth was granted an amazing opportunity of serving his lifetime prison sentence within the community. During his intake process the Division went over Mr. Orth's parole agreement and stressed the importance of abiding the rules and regulations of his parole agreement. Unfortunately, Mr. Orth continued in his life of crime; violated multiple clauses in his parole agreement and picked up new charges.

Mr. Orth obtained a Substance Abuse Evaluation through ROI on December 6, 2018 but failed to provide the Division with proof of completion of treatment. (Directives, Conduct, Special Condition 1: You must complete a substance abuse evaluation within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider)

Mr. Orth obtained a Mental Health Evaluation through ROI on December 6, 2018 but failed to provide the Division with proof of completion of treatment. (Directives, Conduct, Special Condition 3: You must complete a mental health evaluation within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider)

On December 16, 2018, Mr. Orth made contact with the Las Vegas Metro Police Department during a routine traffic stop. During this traffic stop it was noted Mr. Orth was in the vehicle with convicted felon Martin, Angel (BIN: 1004427746), which violated the directives (association) clause of his parole agreement. Mr. Orth was admonished and advised to no longer associate with felons, in which Mr. Orth stated he understood. The Division was advised by staff from Samaritan House that Mr. Orth had returned under the influence of a controlled substance. Mr. Orth refused to provide a urine sample, but verbally admitted to ingesting Methamphetamines. Mr. Orth was subsequently terminated from the Samaritan House Sober Living Program. (Directives, Conduct, Controlled Substances)

On December 19, 2018, the Division received a telephone call from Mr. Orth who stated he traveled to Reno with a girlfriend for a few days. Although Mr. Orth is allowed to travel within the state, he was made aware that the Division must know if he would be sleeping at a different residence. Unfortunately, Mr. Orth did not update the Division of his overnight whereabouts. (Directives and



Conduct)

On August 27, 2020, the Division received a phone call from LVMPD stating Mr. Orth was seen leaving 3617 Dutch Valley, which is a known criminal hot spot. Mr. Orth was taken into custody for traffic warrants out of Henderson. (Directives, Conduct, Laws)

On September 9, 2020, the Division made contact with Mr. Orth. A phone search was conducted, and it was evident that Mr. Orth had cleared out his text messages. A search of his room was conducted and there were numerous backpacks, in which one of them contained a Modelo beer. Mr. Orth denied ownership of the beer, but because it was in his room in a backpack he stated was his, he was admonished for it. There were female belongings in the room and when asked who the items belonged to he stated his girlfriend. Mr. Orth was asked where his girlfriend was and if she had a criminal history, he stated she was at the store and she was not a felon. Mr. Orth was questioned as to why his girlfriend would go to the store and leave her purse and he could not answer why. Officers of the Division left Mr. Orth's residence and quickly returned to provide him with a notice of graduated sanctions form. Officers observed Mr. Orth and a WFA walking down the stairs, surveillance was conducted on the residence and no one had entered the residence, so it was evident the WFA was in the home all along. After questioning Mr. Orth stated the WFA was in the adjacent (connected) room, hiding. A search of the adjacent room revealed aero soft pellet guns, and a hyperemic needle with a clear liquid substance and drug paraphernalia. A drug test was conducted, and Mr. Orth tested positive for Methamphetamine. The WFA was ran and it was discovered she was previously on community supervision. In an attempt to give Mr. Orth a second chance, he was given the following graduated sanctions:

- Proof of 15 job applications by September 16, 2020 or a full-time job
- Weekly reporting (with instructions to call the undersigned Officer every Friday)
- Curfew: 8pm to 6am

Mr. Orth was also directed and reminded once again to not have contact with any person that is convicted of a felony or the commission of a crime. Due to the numerous violations noted within the residence and Mr. Orth's inability to be transparent, Mr. Orth was given the directive to move no later than October 1, 2020. (Directives, Conduct, Intoxicants, Controlled Substances, Weapons)

Mr. Orth failed to report on the following dates: September 25, 2020 and October 2, 2020. Mr. Orth failed to provide the Division with proof of 15 job applications as previously instructed, and Mr. Orth failed to move as directed. On October 15, 2020, Mr. Orth contacted the Division stating he was still residing at the residence he was directed to move out. (Directives, Conduct)

As a last resort, the Division attempted to place Mr. Orth on intensive supervision but the Division could not make contact with Mr. Orth in person. An attempt to locate Mr. Orth was conducted on October 19, 2020, the light was on upstairs and a dog was heard barking, but no one answered. A notice was left on the door instructing Mr. Orth to report to the Division on October 20, 2020 and up to the date of this report no phone call has been received. (Directives, Conduct)

On October 28, 2020, Mr. Orth made contact with the Henderson Police Department as the suspect of an armed burglary. Mr. Orth was in a vehicle that was reported unlawfully taken the night prior. Upon arrival Mr. Orth was spotted in the vehicle and in an attempt to evade Officers he got out of the vehicle





while it was still in motion with a tan duffle bag in his possession. Officers initiated a foot pursuit after issuing commands for Mr. Orth to stop however he continued to run. HPD was eventually able to get Mr. Orth in custody and he was booked on the following new charges: Resist Pub Off (M) and Own/ Poss Gun By Prohibit Pers (F). During this incident it was discovered that Mr. Orth was previously associating with Louis Polanco (DOB: [REDACTED]) who has a significant number of arrests. Upon search of the tan duffle bag that was in Mr. Orth's possession, the following items were discovered: a black 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 chisel tool. (Directives, Conduct, Laws, Weapons)

Mr. Orth was put on an employment search in order to push him to obtain employment but failed to provide the Division with proof of 15 jobs applications for the month of September 2020. (Directives, Conduct)

Mr. Orth has failed to pay monthly supervision fees in the amount of \$30 as mandated by the Nevada Revised Statutes to defray the cost of supervision. He is currently \$216 in arrears towards this obligation. (Directives, Conduct)

Mr. Orth has failed to comply with the Provisions of his parole agreement due to the above listed violations.

**II. Custody Status:**

As of the date of this report, Mr. Orth is currently in custody at the Henderson Detention Center.

**III. Violation Hearing History:**

This is Mr. Orth's first time facing revocation proceedings since his parole date of 11/26/2018.

**IV. Mitigating Factors:**

Mr. Orth is a convicted habitual criminal who is well versed in the rules and regulations of laws and community supervision. Mr. Orth had all the tools of the Division at his disposal but chose to continue in his life of crime. Mr. Orth was given numerous chances by the Division through verbal admonishment as well as graduated sanctions. Mr. Orth's actions speak for themselves, it is clear Mr. Orth has no desire to be a productive member of our community.

**V. Recommendation:**

It is recommended a retake warrant be issued, and Mr. Orth's imposed lifetime sentence be imposed.

**VI. Current Level of Supervision:**

Maximum

Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.



Nevada Department of  
**Public Safety**  
Parole and Probation

**Division of Parole and Probation  
Non-Technical Violation Report**

**Respectfully submitted:**

Q. Pascala, DPS Officer II  
Division of Parole and Probation  
qpascala@dps.state.nv.us  
(702) 486-3651

**Approved:**

4608

M. La'Putt, DPS Sergeant  
Division of Parole and Probation  
Mlaputt@dps.state.nv.us  
(702) 486-3001



State of Nevada  
Board of Parole Commissioners  
PAROLE AGREEMENT

Sean R Orth was sentenced in the State of Nevada to imprisonment in the Nevada Department of Corrections for the crime of CT: Habitual Criminal (Greater), CT: III Habitual Criminal (Greater), CT V: Habitual Criminal (Greater). The Board of Parole Commissioners, by virtue of the authority vested in it by the laws of the State of Nevada, hereby authorizes the Director of the Department of Corrections to allow said Sean R Orth on the 26th day of November, 2018, or as soon thereafter as a satisfactory program can be arranged and approved by the Division of Parole and Probation, to go upon parole outside the prison buildings and enclosure, subject to the following conditions:

**Parole Conditions**

- \* You must complete a substance abuse evaluation within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider.
- \* You are not permitted to enter a bar or lounge for any purpose except employment.
- \* You must complete a Mental Health assessment within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider.
- \* Directives: You shall follow the rules of the Division of Parole and Probation to include the following:
  - \* A. You shall not change your place of residence without first obtaining permission from the Division of Parole and Probation.
  - \* B. You shall report in person to the Division of Parole and Probation as instructed by the Division or its agent. You shall submit a written report each month on forms supplied by the Division. This report shall be true and correct in all respects.
  - \* C. You shall seek and maintain legal employment, or maintain a program approved by the Division of Parole and Probation and not change such employment or program without first obtaining permission. All terminations of employment or program shall be immediately reported to the Division.
  - \* D. You shall pay any court ordered restitution by making payments until the balance is paid in full. The minimum monthly payment shall be established by dividing the balance owed at the time of release on parole by the number of projected months to be served on parole. If, after dividing the total restitution owed by the number of projected months to be served on parole the monthly payment is equal to an amount less than \$50, the monthly payment shall be \$50 until the balance is paid in full.
  - \* E. Pay all applicable fines and fees on a schedule determined by the Division of Parole and Probation.
  - \* F. You shall not leave the state without first obtaining written permission from the Division of Parole and Probation.
  - \* G. You shall not associate with convicted felons, persons who are engaged in criminal activity, or other persons with whom your supervising officer instructs you not to associate.
  - \* H. You shall follow all the directives of your assigned Parole Officer.
- \* Controlled substances: You shall not use, purchase or possess any illegal drugs, or any prescription drugs, unless first prescribed by a licensed medical professional. You shall immediately notify the Division of Parole and Probation of any prescription received. You shall refrain from the use and possession of any synthetic/designer drug or any mind and/or body altering substance. You shall submit to drug testing as required by the Division or its agent.
- \* Recreational Marijuana: You shall not purchase, consume or have under your control marijuana in any form, except when such use is prescribed for use as a medicine in accordance with the provisions of chapter 453A of NRS.
- \* Intoxicants: You shall not purchase, consume or have under your control any alcohol beverage, unless specifically permitted by special condition of the Board. Upon the direction of the Division of Parole and Probation or other peace officer, you shall submit to a medically recognized test for blood/breath content.
- \* Weapons: You shall not possess, have access to, or have under your control, any type of weapon unless the item is used in conjunction with the duties of legitimate employment and has been approved in writing by the Division of Parole and Probation or its agent.
- \* Laws: You shall comply with all institutional rules, municipal, county, state, and federal laws and ordinances.
- \* Conduct: You shall comply with all the provisions stated on the parole agreement and your conduct shall justify the opportunity granted to you by this community supervision.

**Credits:** You shall receive no credit on this sentence during any period of time that you are absent from supervision and deemed to be an absconder. The projected parole expiration date is based upon the assumption that you will earn the maximum number of credits available to be earned while on parole. If you fail to work and/or program diligently, fail to keep current with any payments toward restitution and supervision fees or fail to comply with the terms of parole, you may not receive the additional credits off your sentence that have been projected on this document. The Nevada Department of Corrections (NDOC) is responsible for calculating and applying credits to the sentences of inmates and parolees. The projected parole expiration date on this document is subject to change based on credit earnings and/or adjustments as determined by the NDOC. Credits for good time earned on parole may be forfeited if you are found guilty of a violation. Pursuant to NRS 213.15185, all good time credits previously earned to reduce your sentence are forfeited upon revocation of parole.

This parole is granted to and accepted by you, subject to the conditions stated herein, and with the knowledge that the Board of Parole Commissioners has the power, at any time, in case of violation of the conditions of parole to cause your detention and/or return to prison.

Your Projected Parole Expiration Date based on maximum credit earning is: Life

Ashley Ingersoll  
For Chief Parole Officer

Dated: 11/3/2020

**AGREEMENT BY PAROLEE**

I do hereby waive extradition to the State of Nevada from any state in the United States, and from any territory or country outside the continental United States, and also agree that I will not contest any effort to return me to the United States or the State of Nevada. I shall submit my person, property, place of residence, vehicle, or areas under my control to search at any time of the day or night, with or without a search warrant or with or without cause, for evidence of a crime or violation of parole by a Parole Officer or any other Peace Officer. I have read or had read to me, the conditions of my parole, and I fully understand them and I agree to abide by and strictly follow them. I fully understand the penalties involved should I, in any manner, violate the foregoing conditions.

Parolee: \_\_\_\_\_ Date: \_\_\_\_\_ Witness: \_\_\_\_\_ Date: \_\_\_\_\_

The form design, content and conditions specified herein are approved by the Board of Parole Commissioners in accordance with the Parole Order which includes the parole conditions and authorizes release to parole. Information specific to the individual named on this form including sentence details, restitution owed, case number and projected expiration dates have been compiled by the Division of Parole and Probation, and do not

\* necessarily reflect the approval of the Board of Parole Commissioners. Inquiries related to specific case/sentencing information should be addressed to the Department of Corrections or the Division of Parole and Probation.

You, ORTH, Sean

Number: L19-0135/96723

File/NDOC

Alleged Violation
Directives, Conduct, Special Conditions #1 & #2
Weapons, Laws
Controlled Substances
Intoxicants

Your Preliminary Inquiry Hearing is scheduled for November 13, 2020 1:30pm

Date \_\_\_\_\_

Time

at Clark County Detention Center

### Location

**You may waive this Preliminary Inquiry Hearing if you desire. Should you waive, your action shall in no way be considered an admission of guilt.**

I desire to have a Preliminary Inquiry Hearing at the date, time, and location indicated above.

I will retain

Name \_\_\_\_\_

to represent me.

Address

I wish to present the following witness (es) at my own expense:

Name \_\_\_\_\_

Address

So I waive my right to a Preliminary Inquiry Hearing and request to present my case directly to the Court/Board.

So I have received a copy of the alleged violation(s) of Parole/Probation, and this, my Notice of Rights.

Sam  
Signature of Client

Number

Date \_\_\_\_\_

Signature of Witness

DPS OFFICER

Position

4/2020

Date \_\_\_\_\_



November 3, 2020

To the Honorable Board  
of Parole Commissioners  
Carson City, Nevada

☒ Parole ☐ Probation

Name: Orth, Sean  
AKA: Sean Rodney Orth  
File #: L19-0135A  
CC #: CR06-2177  
NDOC #: 96723

Supervision Grant: 11/26/2018  
Original Expiration: LIFE  
Adjusted Expiration: LIFE

Crime: CT I: Habitual Criminal (Greater), CT IV: Habitual Criminal (Greater), CT V: Habitual Criminal (Greater)  
Sentence: 120 MOS TO LIFE NDOC

**I. Violation(s) and Response to Imposed Sanctions:**

**Directives, Conduct, Controlled Substances, Intoxicants, Weapons, Special Condition (1), Special Condition (3)**

On November 28, 2018, Mr. Orth was granted an amazing opportunity of serving his lifetime prison sentence within the community. During his intake process the Division went over Mr. Orth's parole agreement and stressed the importance of abiding the rules and regulations of his parole agreement. Unfortunately, Mr. Orth continued in his life of crime; violated multiple clauses in his parole agreement and picked up new charges.

Mr. Orth obtained a Substance Abuse Evaluation through ROI on December 6, 2018 but failed to provide the Division with proof of completion of treatment. (Directives, Conduct, Special Condition 1: You must complete a substance abuse evaluation within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider)

Mr. Orth obtained a Mental Health Evaluation through ROI on December 6, 2018 but failed to provide the Division with proof of completion of treatment. (Directives, Conduct, Special Condition 3: You must complete a mental health evaluation within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider)

On December 16, 2018, Mr. Orth made contact with the Las Vegas Metro Police Department during a routine traffic stop. During this traffic stop it was noted Mr. Orth was in the vehicle with convicted felon Martin, Angel (BIN: 1004427746), which violated the directives (association) clause of his parole agreement. Mr. Orth was admonished and advised to no longer associate with felons, in which Mr. Orth stated he understood. The Division was advised by staff from Samaritan House that Mr. Orth had returned under the influence of a controlled substance. Mr. Orth refused to provide a urine sample, but verbally admitted to ingesting Methamphetamines. Mr. Orth was subsequently terminated from the Samaritan House Sober Living Program. (Directives, Conduct, Controlled Substances)

On December 19, 2020, the Division received a telephone call from Mr. Orth who stated he traveled to Reno with a girlfriend for a few days. Although Mr. Orth is allowed to travel within the state, he was made aware that the Division must know if he would be sleeping at a different residence. Unfortunately, Mr. Orth did not update the Division of his overnight whereabouts. (Directives and



Conduct)

On August 27, 2020, the Division received a phone call from LVMPD stating Mr. Orth was seen leaving [REDACTED] which is a known criminal hot spot. Mr. Orth was taken into custody for traffic warrants out of Henderson. (Directives, Conduct, Laws)

On September 9, 2020, the Division made contact with Mr. Orth. A phone search was conducted, and it was evident that Mr. Orth had cleared out his text messages. A search of his room was conducted and there were numerous backpacks, in which one of them contained a Modelo beer. Mr. Orth denied ownership of the beer, but because it was in his room in a backpack he stated was his, he was admonished for it. There were female belongings in the room and when asked who the items belonged to he stated his girlfriend. Mr. Orth was asked where his girlfriend was and if she had a criminal history, he stated she was at the store and she was not a felon. Mr. Orth was questioned as to why his girlfriend would go to the store and leave her purse and he could not answer why. Officers of the Division left Mr. Orth's residence and quickly returned to provide him with a notice of graduated sanctions form. Officers observed Mr. Orth and a WFA walking down the stairs, surveillance was conducted on the residence and no one had entered the residence, so it was evident the WFA was in the home all along. After questioning Mr. Orth stated the WFA was in the adjacent (connected) room, hiding. A search of the adjacent room revealed aero soft pellet guns, and a hyperemic needle with a clear liquid substance and drug paraphernalia. A drug test was conducted, and Mr. Orth tested positive for Methamphetamine. The WFA was ran and it was discovered she was previously on community supervision. In an attempt to give Mr. Orth a second chance, he was given the following graduated sanctions:

- Proof of 15 job applications by September 16, 2020 or a full- time job
- Weekly reporting (with instructions to call the undersigned Officer every Friday)
- Curfew: 8pm to 6am

Mr. Orth was also directed and reminded once again to not have contact with any person that is convicted of a felony or the commission of a crime. Due to the numerous violations noted within the residence and Mr. Orth's inability to be transparent, Mr. Orth was given the directive to move no later than October 1, 2020. (Directives, Conduct, Intoxicants, Controlled Substances, Weapons)

Mr. Orth failed to report on the following dates: September 25, 2020 and October 2, 2020. Mr. Orth failed to provide the Division with proof of 15 job applications as previously instructed, and Mr. Orth failed to move as directed. On October 15, 2020, Mr. Orth contacted the Division stating he was still residing at the residence he was directed to move out. (Directives, Conduct)

As a last resort, the Division attempted to place Mr. Orth on intensive supervision but the Division could not make contact with Mr. Orth in person. An attempt to locate Mr. Orth was conducted on October 19, 2020, the light was on upstairs and a dog was heard barking, but no one answered. A notice was left on the door instructing Mr. Orth to report to the Division on October 20, 2020 and up to the date of this report no phone call has been received. (Directives, Conduct)

On October 28, 2020, Mr. Orth made contact with the Henderson Police Department as the suspect of an armed burglary. Mr. Orth was in a vehicle that was reported unlawfully taken the night prior. Upon arrival Mr. Orth was spotted in the vehicle and in an attempt to evade Officers he got out of the vehicle



while it was still in motion with a tan duffle bag in his possession. Officers initiated a foot pursuit after issuing commands for Mr. Orth to stop however he continued to run. HPD was eventually able to get Mr. Orth in custody and he was booked on the following new charges: Resist Pub Off (M) and Own/ Poss Gun By Prohibit Pers (F). During this incident it was discovered that Mr. Orth was previously associating with Louis Polanco (DOB: 09/06/1977), who has a significant number of arrests. Upon search of the tan duffle bag that was in Mr. Orth's possession, the following items were discovered: a black 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 chisel tool. (Directives, Conduct, Laws, Weapons)

Mr. Orth was put on an employment search in order to push him to obtain employment but failed to provide the Division with proof of 15 jobs applications for the month of September 2020. (Directives, Conduct)

Mr. Orth has failed to pay monthly supervision fees in the amount of \$30 as mandated by the Nevada Revised Statutes to defray the cost of supervision. He is currently \$216 in arrears towards this obligation. (Directives, Conduct)

Mr. Orth has failed to comply with the Provisions of his parole agreement due to the above listed violations.

**II. Custody Status:**

As of the date of this report, Mr. Orth is currently in custody at the Henderson Detention Center.

**III. Violation Hearing History:**

This is Mr. Orth's first time facing revocation proceedings since his parole date of 11/26/2018.

**IV. Mitigating Factors:**

Mr. Orth is a convicted habitual criminal who is well versed in the rules and regulations of laws and community supervision. Mr. Orth had all the tools of the Division at his disposal but chose to continue in his life of crime. Mr. Orth was given numerous chances by the Division through verbal admonishment as well as graduated sanctions. Mr. Orth's actions speak for themselves, it is clear Mr. Orth has no desire to be a productive member of our community.

**V. Recommendation:**

It is recommended a retake warrant be issued, and Mr. Orth's imposed lifetime sentence be imposed.

**VI. Current Level of Supervision:**

Maximum

Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.





Nevada Department of  
**Public Safety**  
Parole and Probation

Division of Parole and Probation  
**Non-Technical Violation Report**

Respectfully submitted:

Q. Pascalau, DPS Officer II  
Division of Parole and Probation  
qpascalau@dps.state.nv.us  
(702) 486-3651

Approved:

M. La'Putt, DPS Sergeant  
Division of Parole and Probation  
Mlaputt@dps.state.nv.us  
(702) 486-3001

**State of Nevada  
Board of Parole Commissioners  
PAROLE AGREEMENT**

Sean R. Orth was sentenced in the State of Nevada to imprisonment in the Nevada Department of Corrections for the crime of CT I: Habitual Criminal (Greater), CT IV: Habitual Criminal (Greater), CT V: Habitual Criminal (Greater). The Board of Parole Commissioners, by virtue of the authority vested in it by the laws of the State of Nevada, hereby authorizes the Director of the Department of Corrections to allow said Sean R. Orth on the 26th day of November, 2018, or as soon thereafter as a satisfactory program can be arranged and approved by the Division of Parole and Probation, to go upon parole outside the prison buildings and enclosure, subject to the following conditions:

**Parole Conditions**

- \* You must complete a substance abuse evaluation within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider.
- \* You are not permitted to enter a bar or lounge for any purpose except employment.
- \* You must complete a Mental Health assessment within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider.
- \* Directives: You shall follow the rules of the Division of Parole and Probation to include the following:
  - \* A. You shall not change your place of residence without first obtaining permission from the Division of Parole and Probation.
  - \* B. You shall report in person to the Division of Parole and Probation as instructed by the Division or its agent. You shall submit a written report each month on forms supplied by the Division. This report shall be true and correct in all respects.
  - \* C. You shall seek and maintain legal employment, or maintain a program approved by the Division of Parole and Probation and not change such employment or program without first obtaining permission. All terminations of employment or program shall be immediately reported to the Division.
  - \* D. You shall pay any court ordered restitution by making payments until the balance is paid in full. The minimum monthly payment shall be established by dividing the balance owed at the time of release on parole by the number of projected months to be served on parole. If, after dividing the total restitution owed by the number of projected months to be served on parole the monthly payment is equal to an amount less than \$50, the monthly payment shall be \$50 until the balance is paid in full.
  - \* E. Pay all applicable fines and fees on a schedule determined by the Division of Parole and Probation.
  - \* F. You shall not leave the state without first obtaining written permission from the Division of Parole and Probation.
  - \* G. You shall not associate with convicted felons, persons who are engaged in criminal activity, or other persons with whom your supervising officer instructs you not to associate.
  - \* H. You shall follow all the directives of your assigned Parole Officer.
- \* Controlled substances: You shall not use, purchase or possess any illegal drugs, or any prescription drugs, unless first prescribed by a licensed medical professional. You shall immediately notify the Division of Parole and Probation of any prescription received. You shall refrain from the use and possession of any synthetic/designer drug or any mind and/or body altering substance. You shall submit to drug testing as required by the Division or its agent.
- \* Recreational Marijuana: You shall not purchase, consume or have under your control marijuana in any form, except when such use is prescribed for use as a medicine in accordance with the provisions of chapter 453A of NRS.
- \* Intoxicants: You shall not purchase, consume or have under your control any alcohol beverage, unless specifically permitted by special condition of the Board. Upon the direction of the Division of Parole and Probation or other peace officer, you shall submit to a medically recognized test for blood/ breath content.
- \* Weapons: You shall not possess, have access to, or have under your control, any type of weapon unless the item is used in conjunction with the duties of legitimate employment and has been approved in writing by the Division of Parole and Probation or its agent.
- \* Laws: You shall comply with all institutional rules, municipal, county, state, and federal laws and ordinances.
- \* Conduct: You shall comply with all the provisions stated on the parole agreement and your conduct shall justify the opportunity granted to you by this community supervision.

**Credits:** You shall receive no credit on this sentence during any period of time that you are absent from supervision and deemed to be an absconder. The projected parole expiration date is based upon the assumption that you will earn the maximum number of credits available to be earned while on parole. If you fail to work and/or program diligently, fail to keep current with any payments toward restitution and supervision fees or fail to comply with the terms of parole, you may not receive the additional credits off your sentence that have been projected on this document. The Nevada Department of Corrections (NDOC) is responsible for calculating and applying credits to the sentences of inmates and parolees. The projected parole expiration date on this document is subject to change based on credit earnings and/or adjustments as determined by the NDOC. Credits for good time earned on parole may be forfeited if you are found guilty of a violation. Pursuant to NRS 213.15185, all good time credits previously earned to reduce your sentence are forfeited upon revocation of parole.

This parole is granted to and accepted by you, subject to the conditions stated herein, and with the knowledge that the Board of Parole Commissioners has the power, at any time, in case of violation of the conditions of parole to cause your detention and/or return to prison.

Your Projected Parole Expiration Date based on maximum credit earning is: Life

Ashley Ingersoll Dated: 11/3/2020  
For Chief Parole Officer

**AGREEMENT BY PAROLEE**

I do hereby waive extradition to the State of Nevada from any state in the United States, and from any territory or country outside the continental United States, and also agree that I will not contest any effort to return me to the United States or the State of Nevada. I shall submit my person, property, place of residence, vehicle, or areas under my control to search at any time of the day or night, with or without a search warrant or with or without cause, for evidence of a crime or violation of parole by a Parole Officer or any other Peace Officer. I have read or had read to me, the conditions of my parole, and I fully understand them and I agree to abide by and strictly follow them. I fully understand the penalties involved should I, in any manner, violate the foregoing conditions.

Parolee: \_\_\_\_\_ Date: \_\_\_\_\_ Witness: \_\_\_\_\_ Date: \_\_\_\_\_

The form design, content and conditions specified herein are approved by the Board of Parole Commissioners in accordance with the Parole Order which includes the parole conditions and authorizes release to parole. Information specific to the individual named on this form including sentence details, restitution owed, case number and projected expiration dates have been compiled by the Division of Parole and Probation, and do not



\* necessarily reflect the approval of the Board of Parole Commissioners. Inquiries related to suspected errors in projected expiration dates of case/sentencing information should be addressed to the Department of Corrections or the Division of Parole and Probation.

STATE OF NEVADA  
DEPARTMENT OF PUBLIC SAFETY  
DIVISION OF PAROLE AND PROBATION  
CR05-1459/L19-0135 & CR06-2177/L19-0135A

**PRIOR NOTICE OF CHARGES AND RECEIPT FOR DOCUMENTS**

I, Sean Orth do hereby acknowledge that the following charges have been brought against me:

**Alleged Violations**

You must complete a substance abuse evaluation within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider.

You must complete a mental health assessment within 30 days of release from NDOC. Participate in treatment as instructed until released by a qualified treatment provider.

I, Sean Orth do hereby acknowledge that I have been informed that due to one or more of the following reasons listed below, my violation case is not entitled to be heard at an informal preliminary inquiry, but will be taken directly before the Court/Parole Board for a formal revocation hearing.

1. ☒ Defendant is not being held in detention by Parole and Probation on any of the violations charged above.
2. ☐ Defendant has one or more new convictions, which are included in the violations charged above. (NRS 176A.580 (4) / NRS 213.1511 (4))
3. ☐ Other (Describe) \_\_\_\_\_

I, Sean Orth

do hereby

(1) A copy of the Violation Report, and

(2) A copy of the Prior Notice of Charges and Receipt of Documents.

[Signature]  
Witness

Sean Orth  
Defendant

1/8/21  
Date

You, ORTH, Sean

Number: L19-0135A/96723

File/NDOC

Alleged Violation
Directives, Conduct, Special Conditions #1 & #3
Weapons, Laws
Controlled Substances
Intoxicants

AA002256

OFFICE  
COPY

STATE OF NEVADA  
DEPARTMENT OF PUBLIC SAFETY  
DIVISION OF PAROLE AND PROBATION

NOTICE OF RIGHTS

You, ORTH, Sean, are herein advised that your return to The Nevada Department of Corrections to answer charges of parole violation before the Nevada Board of Parole Commissioners was determined at your Preliminary Inquiry Hearing held on     , 20    , at     

(Place)

You are further advised of your rights as follows:

1. Representation by retained counsel of your own choice and at your own expense.      Yes ✓ No  
(If Yes, list name and address of attorney.) (Initial) SO

2. Representation as an indigent by the State Public Defender. ✓ Yes      No  
(Please indicate on attached Affidavit and Application for Appointment of Counsel.) (Initial) SO

3. If our alleged parole violation is not based on a new conviction, you may present witnesses to testify in your behalf and you may confront witnesses who testified against you. (Initial) SO

4. It will be your responsibility to notify and pay the expenses of witnesses testifying in your behalf. Provide the names below: (Initial) SO

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Name and agency of the witnesses you wish to confront: (If you intend to refute witness allegations, request they be present.) (Initial) SO

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. You may also present affidavits for the record. (Initial) SO

I hereby certify I have received the following documents:

A. Details and summary of alleged parole violations as charged.

B. Summary of Findings determined at my Preliminary Inquiry Hearing on:

\_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_  
(Place)

C. A copy of this, my Notice of Rights.

Signed Sean Orth

Date 11/4/20

Witness [Signature]

Date 11/4/2020

OFFICE  
COPY

STATE OF NEVADA  
DIVISION OF PAROLE AND PROBATION

PAROLE REVOCATION  
REQUEST FOR APPOINTMENT OF COUNSEL

TO: STATE OF NEVADA, DIVISION OF PAROLE AND PROBATION


STATE OF NEVADA  
COUNTY OF CLARK } vs. ORTH, Sean

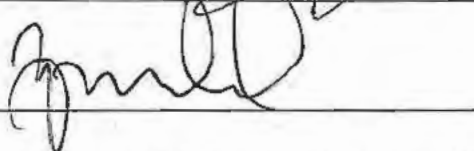
By affixing my signature below, I hereby declare that I am aware of my right to counsel at any parole revocation hearing, and with that in mind do hereby request the above entitled Court to appoint counsel to represent me. I base such request on the following facts I swear to be true and correct to the best of my knowledge:

1. Se I am indigent, and charged with revocation of parole from the Nevada Department of Corrections
2. 20 I am without means of employing an attorney.
3. Se I have no money with which to employ counsel; I have no property, real or personal, which could be sold or encumbered to provide funds for counsel; I am unable to borrow funds with which to employ counsel.

I hereby certify, under penalty of perjury, the above to be a true and accurate declaration of my ability to employ counsel.

Dated this 4<sup>th</sup> Day of November, 2020.

Signed 

Witnessed 

\*\*\*\*\* OR \*\*\*\*\*

WAIVER OF RIGHT TO COUNSEL

I, the undersigned, being aware of my right to counsel at the hearing for revocation of my parole, do hereby waive that right, and do so of my own free will.

Dated this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_.

Signed \_\_\_\_\_

Witnessed \_\_\_\_\_



## WARRANT FOR RETAKING A PAROLED PRISONER

**To any Parole Officer or any Peace Officer Authorized to Arrest or Serve Criminal Process:**

The undersigned, having probable cause to believe that SEAN ORTH, a paroled prisoner of the Nevada Department of Corrections, has violated the conditions of parole.

**NRS 179.209 PROHIBITS THIS PAROLEE FROM BEING ADMITTED TO BAIL.**

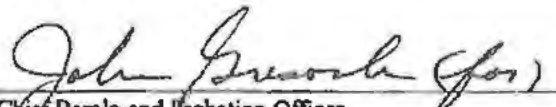
NOW, THEREFORE, pursuant to the provisions of, section 213.151 of Chapter 213, Nevada Revised Statutes, it is hereby ordered that said parolee be retaken and returned to the Nevada Department of Corrections and into the actual custody of the Director thereof, and you and each of you are hereby authorized and required to retake the parolee. For so doing, this warrant is legally sufficient.

Dated at Carson City, Nevada, this 10<sup>th</sup> day of November, 2020.

### BOARD OF PAROLE COMMISSIONERS

  
Member of the Board of Parole Commissioners

### DIVISION OF PAROLE AND PROBATION

  
Chief Parole and Probation Officer

### WARRANT DATA

Date of Arrest.....

By.....

Agency.....

**Henderson Police Department**  
**223 Lead Henderson, NV 89015**  
**Booking Custody Record**

DR NUMBER 20-18994	PRE BOOKING NUMBER: B1002010355	SCOPE	ARRESTED DATE AND TIME 11/03/2020 08:34:33
-----------------------	------------------------------------	-------	---

LOCATION OF CRIME [REDACTED] NV [REDACTED]	LOCATION OF ARREST [REDACTED] NV [REDACTED]
---	--

MIRANDA GIVEN	DATE AND TIME	GIVEN BY
---------------	---------------	----------

ARRESTING OFFICER 1710 - Lippisch, K.	TRANSPORT OFFICER 1710 - Lippisch, K.
--	--

PERSON 1	PERSON NAME (LAST, FIRST, MID, SUFFIX) ORTH, SEAN, RODNEY	SSN [REDACTED]	DOB [REDACTED]	AGE 48			
HEIGHT 6' 1"	WEIGHT 230	HAIR BLN - Blond	EYES HAZ - Hazel	RACE W - White	GENDER M - Male	STATE OF BIRTH	COUNTRY OF BIRTH

PERSON ADDRESS  
[REDACTED] NV (H)

PHONE TYPE M - Mobile	PHONE NUMBER [REDACTED]
--------------------------	----------------------------

VIOLATIONS	SEQUENCE	STATUTE	CLASS	NOC CODE	COUNT	WARRANT NUMBER	COURT
	001	202.360.1	B	51460	1		JC
B-51460-Own/poss gun by prohibit pers							

**PROBABLE CAUSE REVIEW**

The undersigned Magistrate has reviewed the Affidavit and Declaration of Probable Cause for the arrest of the above-named defendant without warrant for the charge(s) shown.

**FINDING**

I find there is sufficient probable cause, for the purpose of continued incarceration, to believe that charged crime(s) have been committed and that said defendant has committed such crime(s). THEREFORE, IT IS ORDERED that the defendant may be held in custody until bail is posted.

☐ BAIL: STANDARD   ☐ OTHER: \$

I find there is NOT sufficient probable cause shown to allow the defendant to be held in custody. THEREFORE, IT IS ORDERED that the defendant be immediately release from custody as to the charge(s). This order is without prejudice to the City or State to proceed with the charge(s) based upon additional evidence sufficient to establish probable cause.

☐ DPCH   ☐ OR RELEASE   ☐ COR RELEASE   ☐ IAD RELEASE

COMMENT:

RETURN DATE: NORMAL SCHEDULE ☐ FIRST AVAILABLE ☐ OTHER DATE: ☐

Signature of Magistrate: \_\_\_\_\_ Justice Court ☐ Municipal Court ☐ Date/Time:

11/3/2020 8:43:48 AM

AA002260

# Henderson Police Department

223 Lead Street, Henderson Nevada 89015

## Declaration of Arrest

DR#: 20-18994

Arrestee's Name: ORTH, SEAN RODNEY

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

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

THE UNDERSIGNED MAKE THE FOLOWING DECLARATIONS SUBJECT TO THE PENALTY OF PERJURY AND SAYS: That I am a Peace Officer with the Henderson PD, Clark County Nevada. I learned the following facts and circumstances which led me to believe that the above-named subject committed (or was committing) the above offense/offenses at the location of 9 [REDACTED]

NV [REDACTED] 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 [REDACTED] 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 [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, Sean was taken into custody for NRS 199.280.3 Resist Public Officer and secured in an HPD Patrol Vehicle.



# Henderson Police Department

223 Lead Street, Henderson Nevada 89015

## Declaration of Arrest

DR#: 20-18994

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

Trans Date

Trans Type

Amount

Fiscal Year

Active/Stale



# State of Nevada - Division of Parole and Probation

## Statement of Subject Supervision Fee Account

Subject ID Number: 10689

Fiscal Year: 2017

ORTH, SEAN RODNEY

SOC  
DOB

Current

Stale

Total Paid:

\$ 534.00

\$ 0.00

Total Due:

\$ 216.00

\$ 0.00

Date Last Activity: 11/01/2020

07/01/2008

Last Activity Type: Billing

FY Rollover

11/01/2020	Billing	30.00	2017	Active
10/01/2020	Billing	30.00	2017	Active
09/01/2020	Billing	30.00	2017	Active
08/01/2020	Billing	30.00	2017	Active
07/27/2020	Credit	98.00	2017	Active
07/27/2020	Credit	98.00	2017	Active
07/01/2020	Billing	30.00	2017	Active
06/24/2020	Credit	50.00	2017	Active
06/24/2020	Credit	50.00	2017	Active
06/01/2020	Billing	30.00	2017	Active
05/01/2020	Billing	30.00	2017	Active
04/01/2020	Billing	30.00	2017	Active
03/05/2020	Credit	13.00	2017	Active
03/01/2020	Billing	30.00	2017	Active
02/07/2020	Credit	35.00	2017	Active
02/07/2020	Credit	35.00	2017	Active
02/01/2020	Billing	30.00	2017	Active
01/01/2020	Billing	30.00	2017	Active
12/09/2019	Credit	35.00	2017	Active
12/01/2019	Billing	30.00	2017	Active
11/01/2019	Billing	30.00	2017	Active

Statement Created: 11/03/2020

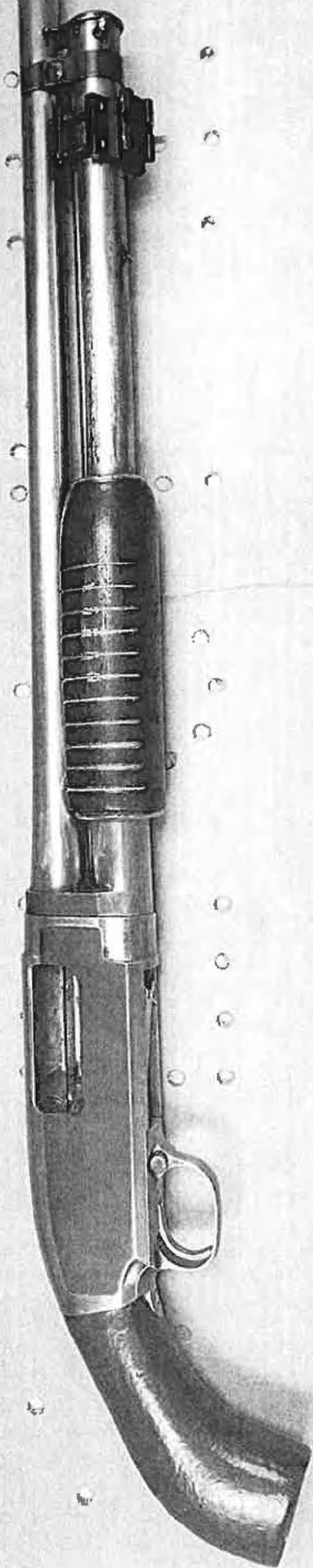
Page 1 of 3

AA002265

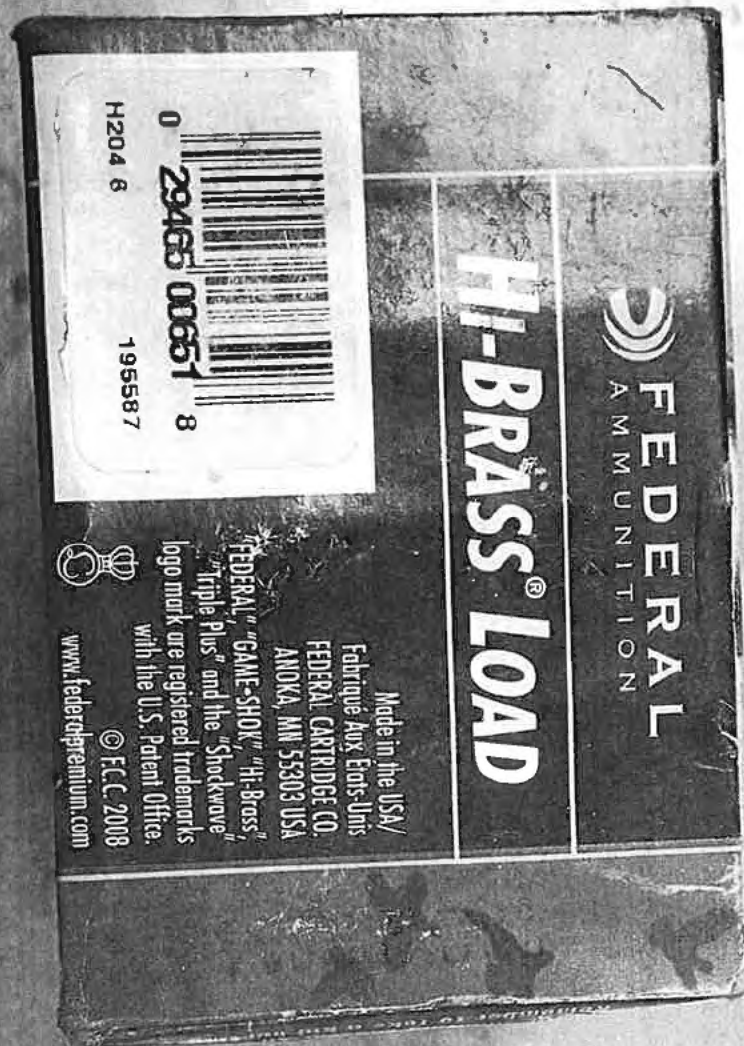
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09/23/2019	Credit	35.00	2017	Active
09/01/2019	Billing	30.00	2017	Active
08/01/2019	Billing	30.00	2017	Active
07/01/2019	Billing	30.00	2017	Active
06/01/2019	Billing	30.00	2017	Active
05/01/2019	Billing	30.00	2017	Active
04/01/2019	Billing	30.00	2017	Active
03/01/2019	Billing	30.00	2017	Active
02/01/2019	Billing	30.00	2017	Active
01/01/2019	Billing	30.00	2017	Active
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11/30/2018	Billing	30.00	2017	Active
06/25/2012		870.00	2012	Active
06/30/2009		870.00	2009	Active
06/18/2009		870.00	2009	Active
05/12/2009		270.00	2009	Active
06/30/2008		0.00	2008	Stale
04/01/2008	Stale Account	870.00	2008	Active
04/01/2008	Stale Account	870.00	2008	Stale
02/01/2001	Billing	30.00	2001	Active
01/01/2001	Billing	30.00	2001	Active
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04/01/2000	Billing	30.00	2000	Active
03/01/2000	Billing	30.00	2000	Active
02/01/2000	Billing	30.00	2000	Active

Trans Date	Trans Type	Amount	Fiscal Year	Active/Stale
01/01/2000	Billing	30.00	2000	Active
12/01/1999	Billing	30.00	2000	Active
11/01/1999	Billing	30.00	2000	Active
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09/01/1999	Billing	30.00	2000	Active
08/01/1999	Billing	30.00	2000	Active
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AA002268







AA002270

Lenovo

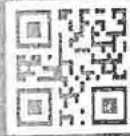




Contains Transmitter Module:

FCC ID: PD98265NG

IC: 1000M-8265NG



Lenovo 300a  
Model Name (型號): 81FY  
INPUT (電壓/電流): 20V ~ 2.25A  
Mfg Date: 18/08/21  
S/N: YD05BV4H

MTM: 81FY000BUS  
Manufactured for Lenovo PC HK Limited  
Made in China 中國製造  
MO: YDN0B8821008 Factory ID: GXSC



無線式計算機/筆記型電腦

Lenovo

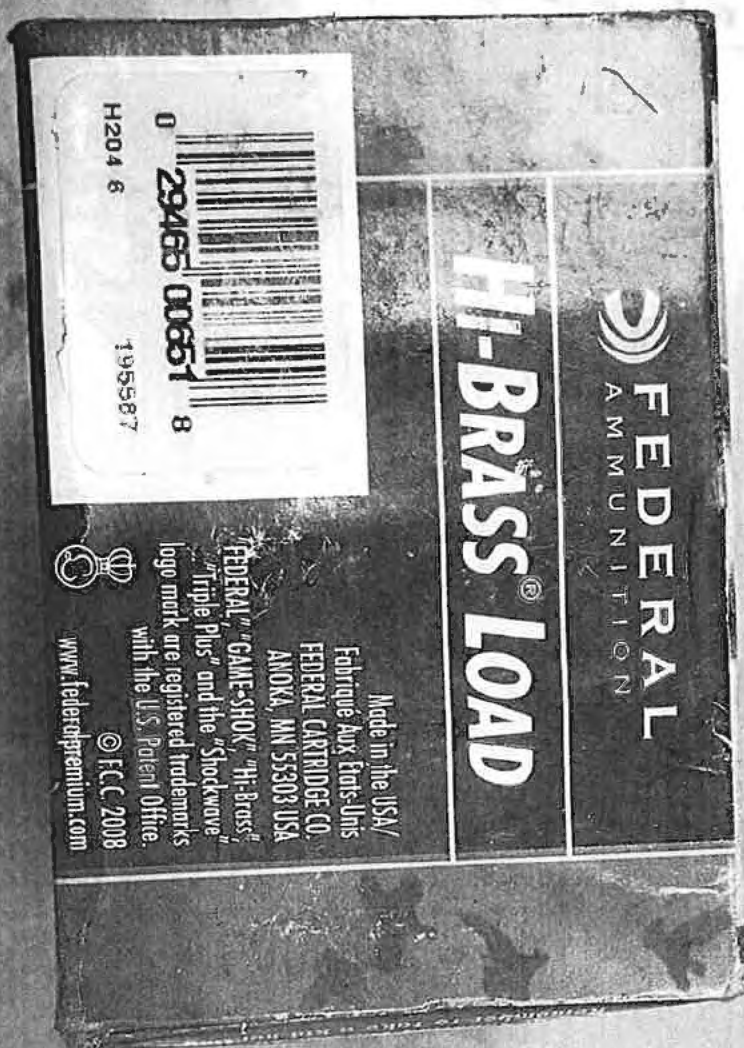


EU contact: Lenovo, Enstlenova 21, 851 01 Bratislava, Slovakia



AA002273







AA002275





AA002276

## Henderson Police

## Detention Center Inmate Information

Enter part of the name of the person you are searching for and press Enter or click S

Inmate Name (Blank for All):

orth, sean

Search

ORTH, SEAN RODNEY

Return

Age: 48

Booked: 10/28/20 10:03

Total Bond: \$5,640.00

[Court Date Link](#)

Total Cash-Only: \$0.00

Earliest Release: 11/22/20 03:00

**Charges**

199.280.3: RESIST PUB OFF  
202.360.1: OWN/POSS GUN BY PROHIBIT PERS

Bond	Cash	Both?
\$640.00	\$0.00	No
\$5,000.00	\$0.00	No

**Holds**

DONS / P&P



*Violation of  
Associates Clause*

Electronically Filed  
3/29/2018 9:55 AM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ANGEL MARTIN, #8385947

Defendant.

CASE NO. C-17-324774-1

DEPT. NO. III

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 ATTEMPT BURGLARY (Category C Felony - NRS 205.060, 193.330), thereafter, on the 20<sup>th</sup> day of March, 2018, the Defendant was present in court for sentencing with his counsel T. AUGUSTUS CLAUS, Esq., and good cause appearing.

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in addition to the \$25.00 Administrative Assessment fee, \$150.00 DNA Analysis fee, including testing to determine genetic markers, \$250.00 Indigent Defense Civil Assessment Fee, \$3.00 DNA Collection Fee, and a \$250.00 Fine, the Defendant is sentenced to a MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of THIRTY (30) MONTHS in the Nevada Department of Corrections (NDC), with ONE HUNDRED FORTY (140) DAYS credit for time served.

DATED this 20<sup>th</sup> day of March, 2018.

*[Signature]*  
DOUGLAS W. HERNDON  
DISTRICT JUDGE


msf

<input type="checkbox"/> Nolle Prosequi (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal
<input checked="" type="checkbox"/> Guilty Plea with Sent. (before trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction
<input type="checkbox"/> Other Method of Disposition	

AA002278

# Exhibit H

Amended Information  
C-20-352701-1



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

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

SEAN RODNEY ORTH,  
#6111549  
Defendant.

CASE NO: C-20-352701-1

DEPT NO: VI

A M E N D E D  
I N F O R M A T I O N

STATE OF NEVADA     )  
                                  ) ss.  
COUNTY OF CLARK    )

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

That SEAN RODNEY ORTH, the Defendant(s) above named, having committed the crimes of **STOP REQUIRED ON SIGNAL OF POLICE OFFICER (Category B Felony - NRS 484B.550.3b - NOC 53833)**, on or about the 3rd day of November, 2020, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did while driving a motor vehicle in the area of [REDACTED], 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

1 manner which endangered, or was likely to endanger any person other than himself/herself or  
2 the property of any person other than himself.

3  
4 STEVEN B. WOLFSON  
5 Clark County District Attorney  
6 Nevada Bar #001565

7 BY /s/ **ERIKA MENDOZA**  
8 ERIKA MENDOZA  
9 Chief Deputy District Attorney  
10 Nevada Bar #012520  
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27 20CRH001571/ed - GCU  
28 HPD EV#2018994; 2018989  
(TK)

# Exhibit I

Retake Warrant

CR05-1459

CR06-2177



## WARRANT FOR RETAKING A PAROLED PRISONER

**To any Parole Officer or any Peace Officer Authorized to Arrest or Serve Criminal Process:**

The undersigned, having probable cause to believe that SEAN ORTH, a paroled prisoner of the Nevada Department of Corrections, has violated the conditions of parole.

NRS 179.209 PROHIBITS THIS PAROLEE FROM BEING ADMITTED TO BAIL.

NOW, THEREFORE, pursuant to the provisions of, section 213.151 of Chapter 213, Nevada Revised Statutes, it is hereby ordered that said parolee be retaken and returned to the Nevada Department of Corrections and into the actual custody of the Director thereof, and you and each of you are hereby authorized and required to retake the parolee. For so doing, this warrant is legally sufficient.

Dated at Carson City, Nevada, this 10<sup>th</sup> day of November, 2020.

**BOARD OF PAROLE COMMISSIONERS**

  
Member of the Board of Parole Commissioners

**DIVISION OF PAROLE AND PROBATION**

  
Chief Parole and Probation Officer

**WARRANT DATA**

Date of Arrest.....

By.....

Agency.....

Exhibit J

Parole Revocation  
Videos

CR05-1459  
CR06-2177





AARON D. FORD  
*Attorney General*

CRAIG A. NEWBY  
*First Assistant Attorney General*

CHRISTINE JONES BRADY  
*Second Assistant Attorney General*

TERESA BENITEZ-  
THOMPSON  
*Chief of Staff*

LESLIE NINO PIRO  
*General Counsel*

HEIDI PARRY STERN  
*Solicitor General*

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave., Suite 3900  
Las Vegas, Nevada 89101

June 22, 2023

Sean Orth,  
Offender ID #96723  
c/o High Desert State Prison  
P.O. Box 650  
Indian Springs, Nevada 89070-0650

**Re: First Amended Petition for Writ of Habeas Corpus  
A-23-869964-W, 8<sup>th</sup> Judicial District Court**

Dear Mr. Orth:

Attached are copies of our Response to your First Amended Petition for Writ of Habeas Corpus and the index and exhibits referenced in the Response. The video files are forwarded to the Warden on a CD. You will need to submit a kite to the Warden to arrange to have the videos played for you.

Sincerely,

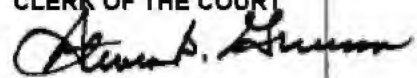
/s/ Katrina A. Lopez

Katrina A. Lopez  
Deputy Attorney General  
Tel. (702) 486-3770  
ksamuels@ag.nv.gov

# EXHIBIT K

## Guilty Plea Agreement

C-20-352701-1



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

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.
- 27  
28

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

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

### WAIVER OF RIGHTS

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

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.
2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.
3. The constitutional right to confront and cross-examine any witnesses who would testify against me.
4. The constitutional right to subpoena witnesses to testify on my behalf.
5. The constitutional right to testify in my own defense.
6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this conviction, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

VOLUNTARINESS OF PLEA

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

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

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

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

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

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

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

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

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

*Sean Orth*

SEAN RODNEY ORTH  
Defendant

AGREED TO BY:

/s/ Erika Mendoza

ERIKA MENDOZA  
Chief Deputy District Attorney  
Nevada Bar #012520

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



1 CERTIFICATE OF COUNSEL:

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

- 4 1. I have fully explained to the Defendant the allegations contained in the  
5 charge(s) to which guilty pleas are being entered.  
6 2. I have advised the Defendant of the penalties for each charge and the restitution  
7 that the Defendant may be ordered to pay.  
8 3. I have inquired of Defendant facts concerning Defendant's immigration status  
9 and explained to Defendant that if Defendant is not a United States citizen any  
10 criminal conviction will most likely result in serious negative immigration  
11 consequences including but not limited to:  
12 a. The removal from the United States through deportation;  
13 b. An inability to reenter the United States;  
14 c. The inability to gain United States citizenship or legal residency;  
15 d. An inability to renew and/or retain any legal residency status; and/or  
16 e. An indeterminate term of confinement, by with United States Federal  
17 Government based on the conviction and immigration status.

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

- 22 4. All pleas of guilty offered by the Defendant pursuant to this agreement are  
23 consistent with the facts known to me and are made with my advice to the  
24 Defendant.  
25 5. To the best of my knowledge and belief, the Defendant:  
26 a. Is competent and understands the charges and the consequences of  
27 pleading guilty as provided in this agreement,  
28 b. Executed this agreement and will enter all guilty pleas pursuant hereto  
voluntarily, and  
c. Was not under the influence of intoxicating liquor, a controlled  
substance or other drug at the time I consulted with the Defendant as  
certified in paragraphs 1 and 2 above.

Dated: This 4 day of October, 2021.

*Kara Gaston #14621*  
KARA GASTON-SIMMONS  
Standby Counsel

ed/GCU

1 INFM  
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, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

CASE NO: C-20-352701-1

11 -vs-

DEPT NO: VI

12 SEAN RODNEY ORTH,  
13 #6111549  
14 Defendant.

AMENDED  
INFORMATION

15 STATE OF NEVADA }  
16 COUNTY OF CLARK } ss.

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

19 That SEAN RODNEY ORTH, the Defendant(s) above named, having committed the  
20 crimes of **STOP REQUIRED ON SIGNAL OF POLICE OFFICER (Category B Felony**  
21 **- NRS 484B.550.3b - NOC 53833)**, on or about the 3rd day of November, 2020, within the  
22 County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such  
23 cases made and provided, and against the peace and dignity of the State of Nevada, did while  
24 driving a motor vehicle in the area of [REDACTED] Clark County, Nevada, willfully,  
25 unlawfully, and feloniously fail or refuse to bring said vehicle to a stop, or otherwise flee or  
26 attempt to elude a peace officer in a readily identifiable vehicle of any police department or  
27 regulatory agency, specifically HPD Officers P. Duffy and/or B. Brink and/or J. Hehn, after  
28 being given a signal to bring the vehicle to a stop, and did operate said motor vehicle in a

1 manner which endangered, or was likely to endanger any person other than himself/herself or  
2 the property of any person other than himself.

3  
4 STEVEN B. WOLFSON  
Clark County District Attorney  
5 Nevada Bar #001565

6  
7 BY /s/ ERIKA MENDOZA  
8 ERIKA MENDOZA  
Chief Deputy District Attorney  
Nevada Bar #012520  
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27 20CRH001571/ed - GCU  
28 HPD EV#2018994; 2018989  
(TK)

# EXHIBIT L

## Certificate of Action

CR05-1459

CR06-2177

STATE OF NEVADA  
BOARD OF PAROLE COMMISSIONERS  
CERTIFICATION OF ACTION  
PAROLE VIOLATION HEARINGS

ORTII, SEAN RODNEY	96723	096723	HDSP-U3-B-36-A	03/22/2022
INMATE NAME	NDOC NUMBER	BOOKING#	LOCATION	DATE
Affected Sentences (Controlling sentence denoted by *)				
Case #	Count	Offense Description		
051459	1	HABITUAL CRIMINAL (GREATER)		
051459	3	HABITUAL CRIMINAL (GREATER)		
062177	1	HABITUAL CRIMINAL (GREATER)		
051459	5	HABITUAL CRIMINAL (GREATER)		
062177	5	HABITUAL CRIMINAL (GREATER)		
062177	4	HABITUAL CRIMINAL (GREATER)		
Warrant # 45349	Warrant Date 11/10/2020	Arrest Date: 10/28/2020		
Was the PI Hearing conducted or waived? Waived		Was the notice of rights executed? Yes		
Counsel Type: Retained: Public Defender		Represented By: Self Represented		
Escaped Prisoner?	No	Stop Date:	Restart Date:	

CHARGES, PLEAS and FINDINGS			
Charges	Parolee Plea	Board Finding	Other Action
Directives	Guilty / <del>Not Guilty</del>	<del>Guilty</del> / Not Guilty	
Conduct	Guilty / <del>Not Guilty</del>	<del>Guilty</del> / Not Guilty	
Controlled Substance	<del>Guilty</del> / Not Guilty	<del>Guilty</del> / Not Guilty	
Intoxicants	<del>Guilty</del> / Not Guilty	<del>Guilty</del> / Not Guilty	Withdrawn by P&P
Weapons	Guilty / <del>Not Guilty</del>	<del>Guilty</del> / Not Guilty	Withdrawn by P&P
Laws	Guilty / <del>Not Guilty</del>	<del>Guilty</del> / Not Guilty	
Mand SA eval	Guilty / <del>Not Guilty</del>	<del>Guilty</del> / Not Guilty	
Mand MB Eval	Guilty / <del>Not Guilty</del>	<del>Guilty</del> / Not Guilty	

This is the ☐ 1st ☐ 2nd ☐ 3rd or ☐ 4th or more temporary revocation on this case(s) for the parolee.

ACTION (indicate one):

Continue on Parole:	WARRANT IS QUASHED. NDOC shall release the parolee from custody within 24 hours of this action. Parole is continued with the same conditions unless specified as follows:
Parole Credit Forfeiture:	The Board orders the forfeiture of _____ credits earned while on parole for having been found guilty of a violation of parole.
Parole is Temporarily Revoked.	WARRANT IS SUSTAINED. Parolee is temporarily returned to prison for reasons set forth in the retake warrant of which this order is part. Parolee shall be reinstated on parole and released from NDOC custody on _____. Parole is continued with the same conditions unless specified as follows: The Board has ordered the forfeiture of _____ good time credits (stat credits) earned on parole.
Parole is revoked with reinstatement of parole on:	WARRANT IS SUSTAINED. Parolee is returned to prison for reasons set forth in the retake warrant of which this order is part. Pursuant to NRS 213.1519, all good time credits (stat credits) earned prior to the date of revocation are hereby forfeited. <b>The Board has restored _____ credits.</b> The Board has further ordered the reinstatement of parole without an additional hearing, upon plan approval. The board has further ordered the reinstatement of parole without an additional hearing, upon plan approval. Parole is continued with the same conditions unless specified as follows:
✓ Parole is revoked to: 03/01/2024	WARRANT IS SUSTAINED. Parolee is returned to prison for reasons set forth in the retake warrant of which this order is part. Pursuant to NRS 213.1519, all good time credits (stat credits) earned prior to the date of revocation are hereby forfeited. <b>The Board has restored All credits.</b>
No Action Taken	

Evidence Relied Upon:	
<input checked="" type="checkbox"/>	Guilty Plea (where applicable)
<input checked="" type="checkbox"/>	Report of P&P: Violation Report dated 11/03/2020
<input checked="" type="checkbox"/>	Police Report: Henderson Police Department Declaration of Arrest Report dated 11/03/2020, P&P Supervision Fee Account dated 11/01/2020
<input checked="" type="checkbox"/>	Police Report: Henderson Police Department Booking Custody Record dated 11/03/2020
<input checked="" type="checkbox"/>	Other: CCDC Inmate Search dated 11/22/2020, District Court JOC dated 03/29/2018, Photographic Evidence (9 pages)
Name of P&P Division Representative: Officer Brown	
Names of Parole Board Panel Members Present: Bailey, Verchio, Christiansen	
Reason for Revocation (where applicable): The Board heard substantial evidence which was presented to prove that you violated the above conditions of your parole by: <b>OFFENDER COMMITTED A NEW CRIME AND SIGNED A PLEA AGREEMENT. NOT AMENABLE FOR SUPERVISION AT THIS TIME</b>	
The votes of the members who ratified the final action are on file with the Executive Secretary of the Board.	

FOR THE NEVADA BOARD OF PAROLE COMMISSIONERS

# EXHIBIT M

Judgment of Conviction  
C-20-352701-1

*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 1<sup>st</sup> 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.  
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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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AA002300

# EXHIBIT N

Notice of Rights  
CR05-1459  
CR06-2177

OFFICE  
COPY

STATE OF NEVADA  
DEPARTMENT OF PUBLIC SAFETY  
DIVISION OF PAROLE AND PROBATION

NOTICE OF RIGHTS

You, ORTH, Sean, are herein advised that your return to The Nevada Department of Corrections to answer charges of parole violation before the Nevada Board of Parole Commissioners was determined at your Preliminary Inquiry Hearing held on     , 20    , at     

(Place)

You are further advised of your rights as follows:

1. Representation by retained counsel of your own choice and at your own expense.      Yes ✓ No  
(If Yes, list name and address of attorney.) (Initial) SO

2. Representation as an indigent by the State Public Defender. ✓ Yes      No  
(Please indicate on attached Affidavit and Application for Appointment of Counsel.) (Initial) SO

3. If our alleged parole violation is not based on a new conviction, you may present witnesses to testify in your behalf and you may confront witnesses who testified against you. (Initial) SO

4. It will be your responsibility to notify and pay the expenses of witnesses testifying in your behalf. Provide the names below: (Initial) SO

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Name and agency of the witnesses you wish to confront: (If you intend to refute witness allegations, request they be present.) (Initial) SO

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. You may also present affidavits for the record. (Initial) SO

I hereby certify I have received the following documents:

A. Details and summary of alleged parole violations as charged.

B. Summary of Findings determined at my Preliminary Inquiry Hearing on:

\_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_  
(Place)

C. A copy of this, my Notice of Rights.

Signed Sean Orth

Date 11/4/20

Witness [Signature]

Date 11/4/2020

# EXHIBIT O

## Notice of Preliminary Inquiry

CR05-1459

CR06-2177

You, ORTH, Sean

Number: L19-0135/96723

File/NDOC

Alleged Violation
Directives, Conduct, Special Conditions #1 & #2
Weapons, Laws
Controlled Substances
Intoxicants

Your Preliminary Inquiry Hearing is scheduled for November 13, 2020 1:30pm

Dale

Time

at Clark County Detention Center

### Location

**You may waive this Preliminary Inquiry Hearing if you desire. Should you waive, your action shall in no way be considered an admission of guilt.**

I desire to have a Preliminary Inquiry Hearing at the date, time, and location indicated above.

I will retain

Name \_\_\_\_\_

to represent me.

Address

I wish to present the following witness (es) at my own expense:

Name \_\_\_\_\_

Address

50 I waive my right to a Preliminary Inquiry Hearing and request to present my case directly to the Court/Board.

So I have received a copy of the alleged violation(s) of Parole/Probation, and this, my Notice of Rights.

Sam  
Signature of Client

Number

Date \_\_\_\_\_

Signature of Witness

DPS OFFICER

Position

4/2020

Date \_\_\_\_\_