

IN THE SUPREME COURT OF THE STATE OF NEVADA

Henry Aparicio,)	Supreme Court Case No.: 84300
Appellant)	
)	Electronically Filed
vs.)	Aug 01 2022 01:26 p.m.
)	Elizabeth A. Brown
)	Clerk of Supreme Court
The State of Nevada,)	APPELLANT'S APPENDIX INDEX
Respondent.)	Vol. I
)	Pages 001-215
)	

Appendix Index (Chronological)

<u>Document Name</u>	<u>Date</u>	<u>Bates No.</u>
Justice Court Docket	07/01/2018	001-003
Motion to Exclude Evidence of Retrograde Extrapolation	07/05/2018	004-009
State's Response to Motion to Exclude Evidence of Retrograde Extrapolation	07/11/2018	010-021
Petition for Writ of Habeas Corpus	07/20/2018	022-046
Minutes, Motion to Exclude Evidence of Retrograde Extrapolation	07/23/2018	047-048
State's Return to Petition for Writ of Habeas Corpus	07/24/2018	049-058
Motion to Disqualify Judge Smith and Affidavit in Support	02/06/2019	059-103
State's Opposition to Motion to Disqualify	02/26/2019	104-112
Motion to Strike State's Opposition to Motion to Disqualify	02/27/2019	113-120
Minutes, Motion to Disqualify	03/19/2019	121-121
Decision and Order on Motion to Disqualify	04/05/2019	122-127
Motion to Reconsider Decision and Order	04/05/2019	128-131
Minutes, Motion to Reconsider	04/15/2019	132-132
Motion to Continue Trial	07/24/2019	133-138
Motion to Rehear Motion in Limine and	07/24/2019	139-144

Request for Investigative Fees		
Minutes, Calendar Call	07/31/2019	145-145
Guilty Plea Agreement	08/01/2019	146-156
Victim Impact Letters	10/11/2019	157-257
Objection to Victim Impact Letters	10/17/2019	258-262
Transcripts, Sentencing	10/18/2019	263-326
Judgment of Conviction	10/29/2019	327-328
Supreme Court Order Remand for Sentencing in Front of New Judge	10/07/2021	329-338
Transcripts, Sentencing	01/25/2022	339-414
Amended Judgment of Conviction	01/26/2022	415-418

REGISTER OF ACTIONS
CASE No. 18F09022X

State of Nevada vs. APARICIO, HENRY

§
§
§
§

Case Type: **Felony**
 Subtype: **DUI Case**
 Date Filed: **05/21/2018**
 Location: **JC Department 13**

PARTY INFORMATION

Defendant **APARICIO, HENRY**

Lead Attorneys
Damian Sheets
Retained
 702-598-1299(W)

State of Nevada

CHARGE INFORMATION

Charges: APARICIO, HENRY	Statute	Level	Date
1. DUI of alcohol and/or controlled or prohibited substance, resulting in death [53908]	484C.430	Felony	05/16/2018
2. DUI of alcohol and/or controlled or prohibited substance, resulting in death [53908]	484C.430	Felony	05/16/2018
3. Reckless driving, r/DoSBH [53896]	484B.653.6	Felony	05/16/2018
4. Reckless driving, r/DoSBH [53896]	484B.653.6	Felony	05/16/2018
5. Reckless driving, r/DoSBH [53896]	484B.653.6	Felony	05/16/2018
6. DUI of alcohol and/or controlled or prohibited substance, result in substantial bodily harm [53906]	484C.430	Felony	05/16/2018

EVENTS & ORDERS OF THE COURT

DISPOSITIONS

- 06/04/2018 **Disposition** (Judicial Officer: Baucum, Suzan)
1. DUI of alcohol and/or controlled or prohibited substance, resulting in death [53908]
Bound Over to District Court as Charged (PC Found)
 2. DUI of alcohol and/or controlled or prohibited substance, resulting in death [53908]
Bound Over to District Court as Charged (PC Found)
 6. DUI of alcohol and/or controlled or prohibited substance, result in substantial bodily harm [53906]
Bound Over to District Court as Charged (PC Found)
 3. Reckless driving, r/DoSBH [53896]
Bound Over to District Court as Charged (PC Found)
 4. Reckless driving, r/DoSBH [53896]
Bound Over to District Court as Charged (PC Found)
 5. Reckless driving, r/DoSBH [53896]
Bound Over to District Court as Charged (PC Found)

OTHER EVENTS AND HEARINGS

- 05/16/2018 **Bail Set - No Bail**
Ct1: \$0 Cash/\$0 Surety Set in Court
- 05/16/2018 **CTRACK Track Assignment JC11**
- 05/16/2018 **Bail Set - No Bail**
Ct2: \$0 Cash/\$0 Surety Set in Court
- 05/16/2018 **Bail Set - No Bail**
Ct3: \$0 Cash/\$0 Surety Set in Court
- 05/16/2018 **Standard Bail Set**
Ct4: \$5000 Cash/\$5000 Surety
- 05/16/2018 **Standard Bail Set**
Ct5: \$5000 Cash/\$5000 Surety
- 05/16/2018 **Standard Bail Set**
Ct6: \$5000 Cash/\$5000 Surety
- 05/16/2018 **Nevada Risk Assessment Tool**
- 05/16/2018 **Not Released NPR**
- 05/16/2018 **Arrest Report**
- 05/16/2018 **CTRACK Case Modified**
Judge/BAS;
- 05/16/2018 **CTRACK Case Modified**
Jurisdiction/DA;
- 05/17/2018 **Initial Appearance Justice Court (PC Review)** (9:00 AM) (Judicial Officer Baucum, Suzan)
05/17/2018 Reset by Court to 05/17/2018
Result: Signing Completed
- 05/17/2018 **Probable Cause Review Packet - Initial Appearance Court**
- 05/17/2018 **Media Request for Electronic Coverage**
of Court proceedings received and filed

05/17/2018 **Order Regarding Media Request for Electronic Coverage Filed**
Kristen DeSilva of Fox 5 KVVU

05/17/2018 **Probable Cause Found**

05/17/2018 **Bail Reset - Cash or Surety**
Counts: 001; 002; 003; 004; 005; 006 - \$0.00/\$0.00 Total Bail

05/17/2018 **Minute Order - Department 13**

05/18/2018 **72 Hour Hearing (7:30 AM)** (Judicial Officer Baucum, Suzan)
In Custody
Result: Matter Heard

05/18/2018 **72-Hour Hearing Completed**

05/18/2018 **Counsel Confirms as Attorney of Record**
D. Sheets, Esq.

05/18/2018 **Motion to Continue - State**
for 5 days - Objection by Defense - Motion Granted

05/18/2018 **Motion by Defense for an O.R. Release**
Objection by State - Motion Denied

05/18/2018 **Oral Motion**
by State for \$500,000 / \$500,000 Total Bail with House Arrest and Alcohol Monitoring - Objection by Defense - Motion Granted

05/18/2018 **Bail Reset - Cash or Surety**
Counts: 001; 002; 003; 004; 005; 006 - \$500,000.00/\$500,000.00 Total Bail

05/18/2018 **Release Order - Court Ordered Bail AND House Arrest**
Counts: 001; 002; 003; 004; 005; 006

05/18/2018 **Bail Condition - SCRAM**
Defendant to be released to Bail and House Arrest and SCRAM

05/18/2018 **Defendant Identified as a Veteran**

05/18/2018 **Side Bar Conference Held**

05/18/2018 **Continued for Status Check on filing of Criminal Complaint**

05/18/2018 **Minute Order - Department 13**

05/21/2018 **CANCELED Status Check on Filing of Criminal Complaint (7:30 AM)** (Judicial Officer Baucum, Suzan)
Criminal Complaint Filed
In Custody

05/21/2018 **Initial Appearance (7:30 AM)** (Judicial Officer Baucum, Suzan)
In Custody
Result: Matter Heard

05/21/2018 **Criminal Complaint**
Filed in open Court

05/21/2018 **Initial Appearance Completed**
Advised of Charges on Criminal Complaint, Waives Reading of Criminal Complaint

05/21/2018 **Discovery Given to Counsel in Open Court**

05/21/2018 **Plea of Not Guilty Entered**

05/21/2018 **Oral Motion**
by Defense to Reduce Bail - Objection by State - Motion Denied

05/21/2018 **Bail Stands - Cash or Surety**
Counts: 001; 002; 003; 004; 005; 006 - \$500,000.00/\$500,000.00 Total Bail

05/21/2018 **Release Order - Court Ordered Bail AND House Arrest**
Counts: 001; 002; 003; 004; 005; 006

05/21/2018 **Bail Condition - SCRAM**
Defendant to be released to Bail and House Arrest and SCRAM

05/21/2018 **Minute Order - Department 13**

05/23/2018 **Media Request for Electronic Coverage**
of Court proceedings received and filed

05/23/2018 **Order Regarding Media Request for Electronic Coverage Filed**

05/24/2018 **CANCELED Status Check on Filing of Criminal Complaint (7:30 AM)** (Judicial Officer Baucum, Suzan)
Vacated
In Custody

05/24/2018 **Motion for Disclosure of Non-Public Information**
FOX 5-KVVU

05/24/2018 **Motion for Disclosure of Non-Public Information**
Las Vegas Review-Journal

05/24/2018 **Motion for Disclosure of Non-Public Information**
KTNV

05/24/2018 **Motion for Disclosure of Non-Public Information**
Las Vegas Sun

05/24/2018 **Motion for Disclosure of Non-Public Information**
KLAS-TV

05/24/2018 **Redacted paperwork approved by Judge**

05/24/2018 **Miscellaneous Filing**
Legal-Review Form

05/25/2018 **Motion for Disclosure of Non-Public Information**
KSNV

05/29/2018 **Media Request for Electronic Coverage**
of Court proceedings received and filed

05/29/2018 **Order Regarding Media Request for Electronic Coverage Filed**
Larry Ish of KTNV

06/04/2018 **Preliminary Hearing (8:00 AM)** (Judicial Officer Baucum, Suzan)
In Custody
Result: Matter Heard

06/04/2018 **Preliminary Hearing Held**
Motion to Exclude Witnesses by Defense - Motion Granted States Witnesses: 1. Brandon MacAuley - Identifies Defendant 2. Keith Richard Sonetti - Identifies Defendant 3. Jeisel Antonio Morales 4. Kaitlynn Garduno 5. Matthew Ware - Identifies Defendant 6. Corey Staheli 7. Khadija Deliei 8. Edward Aaron Contreras, Jr. 9. Kenneth Salisbury 10. Karl Atkinson State Rests. Defendant Advised of His Statutory Right to call witnesses, present evidence and/or to testify on his own behalf. Defendant understands his rights and following the advice of his defense counsel, waives his rights at preliminary hearing. Defense Rests. Motion to Dismiss by Defense - Argument Against Said Motion by State - Motion Denied

06/04/2018 **Bound Over to District Court as Charged**

06/04/2018 | **District Court Appearance Date Set**
Jun 6 2018 10:00AM: In Custody

06/04/2018 | **Bail Stands - Cash or Surety**
Counts: 001; 002; 003; 004; 005; 006 - \$500,000.00/\$500,000.00 Total Bail

06/04/2018 | **Release Order - Court Ordered Bail AND House Arrest**
Counts: 001; 002; 003; 004; 005; 006

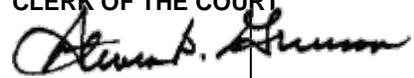
06/04/2018 | **Bail Condition - SCRAM**
Defendant to be released to Bail and House Arrest and SCRAM

06/04/2018 | **Case Closed - Bound Over**

06/04/2018 | **Minute Order - Department 13**

06/04/2018 | **Certificate, Bindover and Order to Appear**

06/06/2018 | **Bind Over Receipt**



1 MOT
2 MAYFIELD GRUBER & SHEETS
3 Damian Sheets, Esq.
4 Nevada Bar No. 10755
5 Kelsey Bernstein, Esq.
6 Nevada Bar No. 13825
7 726 S. Casino Center Blvd.
8 Las Vegas, Nevada 89101
9 Telephone: (702) 598-1299
10 Facsimile: (702) 598-1266
11 dsheets@defendingnevada.com
12 Attorney for Defendant
13 Henry Aparicio

14 **EIGHTH JUDICIAL DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 State of Nevada,
17 Plaintiff
18 vs.
19 Henry Aparicio,
20 Defendant

21) Case No.: C-18-332496-1
22) Dept. No: VIII
23)

24) **DEFENDANT'S MOTION IN LIMINE TO**
25) **EXCLUDE EVIDENCE OF RETROGRADE**
26) **EXTRAPOLATION**
27)
28)

29 COMES NOW, Defendant Henry Aparicio, by and through his attorney of record,
30 DAMIAN SHEETS, ESQ. of the firm Mayfield Gruber & Sheets, hereby submits this
31 Defendant's Motion in Limine to Exclude Evidence of Retrograde Extrapolation.

32 ///

33 ///

34 ///

1 **NOTICE OF HEARING**

2 TO: THE STATE OF NEVADA, Plaintiff; and

3 TO: DEPUTY DISTRICT ATTORNEY:

4 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the
5 above and foregoing motion on for hearing on the **16th** day of **July**, 2018, at
6 the hour of **8am**, before the above-entitled Court, or as soon thereafter as counsel can be
7 heard.

8
9 DATED this 5 day of July, 2018.

10
11 MAYFIELD GRUBER & SHEETS
12 Respectfully Submitted By:

13 /s/ Damian Sheets
14 DAMIAN SHEETS, ESQ.
15 Attorney for Defendant
16
17
18
19
20
21
22
23
24
25
26
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 Defendant Henry Aparicio is charged with Driving Under the Influence of Alcohol
4 Resulting in Death, as well as a litany of similar lesser included offenses. He pled Not Guilty
5 to the charges on or about June 6, 2018 and invoked his right to a speedy trial. Calendar
6 Call is currently scheduled for August 8, 2018, with trial on August 13, 2018.
7

8 On or about June 27, 2018 the State filed a Supplemental Notice of Witness and/or
9 Expert Witness List, and added Mr. Raymond C. Kelly as an expert to testify on many topics,
10 including retrograde extrapolation. As part of its discovery disclosures, the State also
11 provided a report by Dr. Kelly that attempts to use retrograde extrapolation to establish
12 Mr. Aparicio's blood alcohol content at the time of the accident (two blood samples were
13 taken, however they are both outside of two hours).
14

15 The law is clear that retrograde extrapolation is not appropriate in this case. The
16 landmark Nevada case on point, *State v. Dist. Ct. (Armstrong)*, 127 Nev. 927, 936, 267 P.3d
17 777, 783 (2011), held that retrograde extrapolation is **not** admissible unless the calculation
18 takes into account the following factors:
19

20 We agree that achieving a reliable retrograde extrapolation calculation
21 requires consideration of a variety of factors. The following factors are
22 relevant to achieving a sufficiently reliable retrograde extrapolation
23 calculation: (1) gender, (2) weight, (3) age, (4) height, (5) mental state,
24 (6) the type and amount of food in the stomach, (7) type and amount of
25 alcohol consumed, (8) when the last alcoholic drink was consumed, (9)
26 drinking pattern at the relevant time, (10) elapsed time between the
27 first and last drink consumed, (11) time elapsed between the last drink
28 consumed and the blood draw, (12) the number of samples taken, (13)
the length of time between the offense and the blood draws, (14) the
average alcohol absorption rate, and (15) the average elimination rate.
We observe, as the *Mata* court did, that not every personal fact about

1 the defendant must be known to construct a reliable extrapolation, 46
2 S.W.3d at 916-17, but rather those factors must be balanced. *Id.*

3 In this case, the State’s “expert” in retrograde extrapolation relied on “Mr. Aparicio’s
4 body weight and gender” plus his two BAC test results taken outside of two hours. The
5 result took into consideration only two of the fifteen factors articulated by the Nevada
6 Supreme Court. Even presumably fixed values, such as “the average elimination rate”
7 (factor number 15) was not used, as the report uses an improper linear elimination rate
8 from guidelines published in 1994 for use in extrapolation from single-same cases;¹ not
9 only are virtually none of the individual factors taken into consideration, which is
10 “required” per *Armstrong*, but even the known variables are derived from extremely
11 outdated sources.
12

13
14 Furthermore, it does not take an expert to realize the serious flaw in Dr. Kelly’s
15 ultimate result. In addition to using an improper linear elimination model, the rate of
16 dissipation was calculated not by using fixed and known values, but actually Mr. Aparicio’s
17 two existing BAC measurements;² Dr. Kelly simply took the two existing inadmissible BAC
18 results, calculated the difference between those two values, and used *that* to extrapolate
19 into a BAC value which purportedly reflects Mr. Aparicio’s BAC at the time of the accident.
20 This is, from a scientific perspective, nonsensical.
21
22
23

24
25 ¹ Gullberg, RG, and Jones, AW, “Guidelines for estimating the amount of alcohol consumed from a single
26 measurement of blood alcohol concentration: re-evaluation of Widmark’s equation,” *Forensic Sci. Int’l*, 69:
27 119-130, 1994.

28 ² In his report, Mr. Kelly writes, “In making the calculation, I utilized the alcohol metabolic rate derived from
the difference between his two measured BAC values obtained one hour apart.” He then concedes that the
difference between these two values, which formed the basis for his extrapolated result, is actually **almost
double** the “mean value for males in the population” that would typically be used.

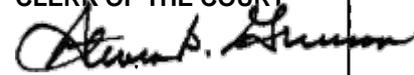
1 Mr. Aparicio's two BAC results, which reflect a specific dissipation rate for that hour
2 only, cannot be used as a basis for linear extrapolation of the entire period of alcoholic
3 consumption. For example, if Mr. Aparicio had two different drinks with varying alcohol
4 contents or drank more than exactly one drink per hour, a linear regression model
5 (without taking into account any of the factors articulated in *Armstrong*) is fundamentally
6 unreliable.
7

8 Not only is it unreliable, it is *precisely why* the *Armstrong* case exists – a linear
9 regression model does not work because of the sheer number of variables, fifteen at a
10 minimum, that would affect the ultimate result. Of those fifteen listed by the Supreme
11 Court, only Mr. Aparicio's body weight and gender were taken into consideration. That is
12 insufficient as a matter of law, and therefore the Defense respectfully requests this Court
13 preclude any reference to or results of retrograde extrapolation in this case.
14
15

16 DATED this 5 day of July, 2018.

17 By:
18 MAYFIELD GRUBER & SHEETS

19 By: /s/ Damian Sheets
20 Damian Sheets, Esq.
21 Nevada Bar No. 10755
22 726 S. Casino Center Blvd.
23 Las Vegas, Nevada 89101
24
25
26
27
28



1 **RSPN**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHARLES MARTINOVSKY
6 Chief Deputy District Attorney
7 Nevada Bar #007439
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

CASE NO: C-18-332496-1

12 HENRY APARICIO, aka,
13 Henry Biderman Aparicio, #6069038

DEPT NO: VIII

14 Defendant.

15 **STATE'S RESPONSE TO DEFENDANT'S MOTION TO EXCLUDE EVIDENCE OF**
16 **RETROGRADE EXTRAPOLATION**

17 DATE OF HEARING: JULY 16, 2018
18 TIME OF HEARING: 8:00 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through CHARLES MARTINOVSKY, Chief Deputy District Attorney, and
21 hereby submits the attached Points and Authorities in Response to Defendant's Motion to
22 Exclude Evidence of Retrograde Extrapolation.

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

26 ///

27 ///

28 ///

1 FACTS.

2 On May 15, 2018, the Defendant and his girlfriend, Morgan Hurley, entered Dave and
3 Buster's restaurant at about 5:30 P.M. Video evidence shows the two drinking inside the bar.
4 Receipts from the tab indicate that the TWO (2) ordered the first drink at 5:37 P.M. The video
5 shows that Morgan was drinking a Caribbean Lit, and the Defendant was drinking shots of
6 Patron Silver. The bar tab indicates that by 7:21 P.M., the pair had ordered TEN (10) shots of
7 Patron Silver, THREE (3) Caribbean Lit Drinks, and they had not ordered any food. Video
8 evidence shows the pair then entering Casa Del Matador, also located in Downtown
9 Summerlin, shortly after they had left Dave and Buster's. The Defendant worked at this
10 establishment at the time. The tab from Casa Del Matador indicates that the pair consumed
11 SIX (6) more shots of Tequila. The pair also ordered Goat Cheese Jalapeno, but they did not
12 order any other food. The tab closed at 8:52 P.M., and video evidence shows the Defendant
13 and Morgan stumbling out of the Casa Del Matador shortly after paying the tab. The video
14 evidence also shows a bar tender helping the Defendant out of the bar and then returning to
15 the bar. Shortly after this, the same bartender left the bar to speak with the Defendant as he
16 entered the driver's side of the red Mercedes involved in the collision.

17 At about 9:08 P.M., the Defendant crashed into the back of the victims' car when they were
18 stopped facing East at a red light on Sahara and Hualapai. The speedometer on the Defendant's
19 car was stuck at 100 mph. The collision accelerated the victim's car from zero to over 50 mph.
20 The collision killed both occupants. Body camera evidence from Officer Sonetti from shortly
21 after the collision shows the Defendant sitting on the curb just outside the red Mercedes, crying
22 and pleading with the officer to save the passenger of the red Mercedes. The body camera
23 also shows that Morgan Hurley was unconscious in the passenger seat of the red Mercedes
24 which had just crashed into the victims' car.

25 Police obtained a search warrant, and got one blood sample from the Defendant at 1:47 and
26 another at 2:47. Chemical analysis indicates the Defendant's BAC was .204 at the first draw,
27 and .178 at the second.

28 Dr. Ray Kelly reviewed the reports and evidence from the case. He calculated that the

1 Defendant's BAC was over .32 at the time of driving. Dr. Kelly based his conclusions on the
2 Defendant's height and weight, as well as the other evidence in the case such as the driving
3 pattern, the consumption pattern at the bar, and the Defendant's behavior at the scene and his
4 performance on the HGN.

5
6 **ARGUMENT.**

7 State v. Dist. Ct (Armstrong), 127 Nev. 927 (2011) does not support the Defendant's
8 argument. First of all, the court did not establish a rule of law that all courts must exclude
9 retrograde evidence whenever the blood draw or draws occur beyond TWO (2) hours from the
10 time of driving. On the contrary, the Supreme Court merely held that the District Court did not
11 abuse its discretion when it excluded the evidence of retrograde extrapolation. The court
12 stated, "Under the circumstances presented, we cannot say that the District Court manifestly
13 abused or arbitrarily or capriciously exercised its discretion, that is, applied a clearly erroneous
14 interpretation of the law or one not based on reason or contrary to the evidence or established
15 rules of law." Armstrong, at 937. Hence, this court has its own discretion to admit evidence of
16 retrograde extrapolation as it sees fit.

17 Second, the facts of this case present sufficient evidence upon which to base a retrograde
18 extrapolation. In Armstrong, the State's expert knew only that the Defendant consumed TWO
19 (2) beers between 5 P.M. and 10 P.M. and weighed 212 pounds. Crucially, in Armstrong police
20 obtained only one blood sample. The court stated, "Here, significant personal characteristics,
21 such as the amount of food, if any, in Armstrong's stomach – a factor Armstrong's expert
22 testified was the most important and the State's expert acknowledged significantly affects
23 alcohol absorption – were unknown. And the single blood draw makes it difficult to determine
24 whether Armstrong was absorbing or eliminating alcohol at the time of the blood draw. The
25 admission of retrograde extrapolation evidence when a single blood draw was taken more than
26 two (2) hours after the accident and the extrapolation calculation is insufficiently tethered to
27 individual factors necessary to achieve a reliable calculation potentially invites the jury to
28 determine Armstrong's guilt based on emotion or an improper ground – that the Defendant

1 had a high blood alcohol level several hours later – rather than a meaningful evaluation of the
2 evidence.” Armstrong, at 937.

3 In contrast to the facts of Armstrong, the State possesses lots of information upon which to
4 base the retrograde extrapolation. First and foremost, the state has TWO (2) blood draws taken
5 ONE (1) hour apart which clearly demonstrate that the Defendant was eliminating alcohol at
6 the time of the draw. Second, the state knows the Defendant height and weight and age. Third,
7 the State possesses video and receipts from the bars where the Defendant was drinking which
8 indicate how much he drank and ate from 5:37 PM until 8:52 PM, TWENTY (20) minutes
9 before the collision. See Exhibits 1 and 2. Fourth, the state has body camera evidence which
10 indicates the Defendant’s demeanor right after the collision.

11 Furthermore, Anderson v. State, 109 Nev. 1129 (1994), clearly holds that evidence of
12 retrograde extrapolation is clearly admissible if the State possesses TWO (2) blood draws
13 without more. In that case, the state charged the Defendant with DUI Death. The State
14 presented retrograde extrapolation evidence to the jury. Dan Berkabile testified that he relied
15 upon a standard metabolic rate of .02 per hour, and TWO (2) blood samples to estimate that
16 the Defendant’s BAC was over the legal limit at the time he was driving. Anderson, at 1132.

17 After the jury convicted the Defendant, he challenged the verdict claiming the evidence
18 presented did not support the result. The Court rejected this claim. The court stated,
19 “Furthermore, Dan Berkabile, a forensic chemist, testified that after testing the blood samples
20 taken on the night in question, he extrapolated backwards to estimate Anderson’s blood
21 alcohol level at the time of the accident; he estimate Anderson’s blood alcohol level to have
22 been 0.128.” Anderson, 1138.

23 CONCLUSION

24 The Court should reject the Defendant’s arguments. Armstrong does not support the
25 Defendant’s position. At best the Court holds that the District Court did not abuse its discretion
26 when it excluded evidence of retrograde extrapolation. This is hardly a ringing endorsement
27 of the holding nor does it establish a rule of law which all courts must follow. Second, the
28 State knows with great precision how much the Defendant ate and drank from 5:37 PM until

1 8:52 PM, TWENTY (20) minutes before he killed the victims. The State obtained TWO (2)
2 blood draws, ONE (1) hour apart, and knows the Defendant's height and weight. Also,
3 Anderson v. State, 109 Nev. 1129 (1994), basically holds that the state can admit retrograde
4 extrapolation based on a standard metabolic rate so long as the State has two blood draws one
5 hour apart.

6 DATED this 11th day of July, 2018.

7 Respectfully submitted,

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

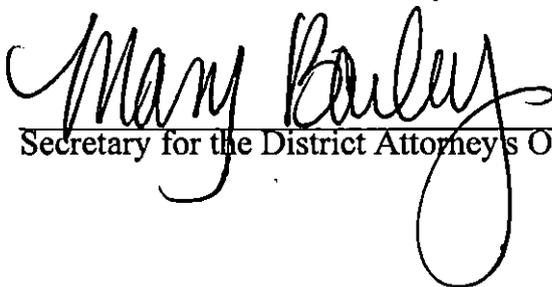
10 BY


11 CHARLES MARTINOVSKY
12 Chief Deputy District Attorney
Nevada Bar #007439

13 CERTIFICATE OF ELECTRONIC FILING

14 I hereby certify that service of State's Response to Defendant's Motion to Exclude the
15 Evidence of Retrograde Extrapolation was made this day of July, 2018, by Electronic Filing
16 to:

17 DAMIEN SHEETS, ESQ.
18 EMAIL: dsheets@defendingnevada.com

19 
20 Secretary for the District Attorney's Office
21
22
23
24
25
26
27

28 17F05727X/CM/mlb/vcu

Casa Del Matador
1770 Festival Plaza Dr
Suite 109
702-228-2766

180515-4422

Server: Asa 05/15/2018
8/1 8:52 PM
Guests: 1
#20096

Reprint #: 3

2 Casamigos Reposado (@12.00)	24.00
Don Julio 1942	22.00
Dos Artes Extra Anejo	23.00
Goat Cheese Jalapeno	11.00

Top Shelf Tuesday	-6.00
Top Shelf Tuesday	-6.00
Top Shelf Tuesday	-22.50

Subtotal	45.50
Tax	3.75

Total 49.25

Visa #XXXXXXXXXXXX4991 37.35

Tip 10.00

Total 47.35

Auth:000328

Cash 11.90

Thank you for being our guest!!
Join our Loyalty Program and start earning rewards!
Download the free Thanx app, or sign up at:
[@matador_restaurants](http://www.thanx.com/thematador)

--- Check Closed ---

EXHIBIT "1"



180515-4422

May 24, 2018

Detective Atkinson

Las Vegas Metropolitan Police Department
Traffic Bureau/Fatal Detail
5880 Cameron Street
Las Vegas, NV 89118

Detective Atkinson:

Please find the enclosed guest checks and flash drive pertaining to the activities of identified suspects in your investigation. The flash drive contains video of the front entry from the time entered until the time they left. The bar camera contains all interactions with the bartender and the Winner's Circle camera shows the redemption of coupons for the ball you see them leave with. If you have any questions, you may contact me at 469-323-5982 or 214-904-2225.

Sincerely,

James H. Brussow
James H. Brussow
Director of Security
Dave & Buster's Inc.

Check Detail

Check	Table	Check Opened	Minutes	Guests	Reference Info	Location	Employee
9127		5/15/2018 5:30 PM	1.83	0		Summerlin	Emilymarie Javelosa
		5/15 5:31 PM	1		RCH \$20 PCARD	20.00	Front Desk
		5/15 5:31 PM			191598704		Front Desk
		5/15 5:31 PM	1		SUPER CHARGE 20	3.00	Front Desk
		5/15 5:31 PM			191598704		Front Desk
		5/15 5:31 PM	1		eTicket Selected		Front Desk
		5/15 5:31 PM			191598704		Front Desk
		5/15 5:31 PM	1		RCH \$20 PCARD	20.00	Front Desk
		5/15 5:31 PM			191598704		Front Desk
		5/15 5:31 PM	1		SUPER CHARGE 20	3.00	Front Desk
		5/15 5:31 PM			191598704		Front Desk
		5/15 5:31 PM	1		eTicket Selected		Front Desk
		5/15 5:31 PM			191598704		Front Desk
		5/15 5:32 PM			G105-05_20FOR20/94	(20.00)	Front Desk
		5/15 5:32 PM			Visa	26.00	Front Desk
		5/15 5:32 PM			*****7962		Front Desk
					Sub Total	26.00	
					Tax	0.00	
					Service Charge	0.00	
					Check Total	26.00	

Check Detail

Check	Table	Check Opened	Minutes	Guests	Reference Info.	Location	Employee
5828	811	5/15/2018 5:37 PM	6.98	0		Summerlin	John Raniola
		5/15 6:37 PM	1		CARIBBEAN LIT	5.00 Viewpoint Bar	John Raniola
		5/15 6:37 PM	1		PATRON SILVER	5.00 Viewpoint Bar	John Raniola
		5/15 6:37 PM	1		dub soda	Viewpoint Bar	John Raniola
		5/15 5:40 PM	1		PATRON SILVER	5.00 Viewpoint Bar	John Raniola
		5/15 6:40 PM	1		dub soda	Viewpoint Bar	John Raniola
		5/15 5:43 PM			Visa	26.24 Viewpoint Bar	John Raniola
		5/15 5:43 PM			\$ Charged Tip	10.00 Viewpoint Bar	John Raniola
		5/15 5:43 PM			*****7982	Viewpoint Bar	John Raniola
					Sub Total	15.00	
					Tax	1.24	
					Service Charge	10.00	
					Check Total	26.24	

Check Detail

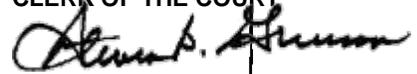
Check	Table	Check Opened	Minutes	Guests	Reference Info	Location	Employee
5835	810	5/15/2018 6:08 PM	43.73	0	morgan hurley	Summerlin	John Ranola
		5/15 6:08 PM	1	PATRON SILVER	5.00	Viewpoint Bar	John Ranola
		5/15 6:08 PM	1	club soda		Viewpoint Bar	John Ranola
		5/15 6:08 PM	1	CARIBEAN LIT	5.00	Viewpoint Bar	John Ranola
		5/15 6:12 PM	1	PATRON SILVER	5.00	Viewpoint Bar	John Ranola
		5/15 6:12 PM	1	club soda		Viewpoint Bar	John Ranola
		5/15 6:50 PM	1	CARIBEAN LIT	5.00	Viewpoint Bar	John Ranola
		5/15 6:50 PM	1	PATRON SILVER	5.00	Viewpoint Bar	John Ranola
		5/15 6:50 PM	1	club soda		Viewpoint Bar	John Ranola
		5/15 6:50 PM	1	PATRON SILVER	5.00	Viewpoint Bar	John Ranola
		5/15 6:50 PM	1	up		Viewpoint Bar	John Ranola
		5/15 6:50 PM	1	PATRON SILVER	5.00	Viewpoint Bar	John Ranola
		5/15 6:50 PM	1	up		Viewpoint Bar	John Ranola
		5/15 8:51 PM		Visa	37.89	Viewpoint Bar	John Ranola
		5/15 8:51 PM		*****7982		Viewpoint Bar	John Ranola
				Sub Total	35.00		
				Tax	2.89		
				Service Charge	0.00		
				Check Total	37.89		

Check Detail

Check	Table	Check Opened	Minutes	Guests	Reference:Info	Location	Employee
4630		5/15/2018 6:38 PM	0.02	1		Summerlin	Kiosk 01
		5/15 6:38 PM	1		KIOSK RCH \$25 PC	25.00 Kiosk	Kiosk 01
		5/15 6:38 PM			191598704	Kiosk	Kiosk 01
		5/15 6:38 PM	1		KIOSK SUPER 25	4.00 Kiosk	Kiosk 01
		5/15 6:38 PM			191598704	Kiosk	Kiosk 01
		5/15 6:38 PM			Visa	29.00 Kiosk	Kiosk 01
		5/15 6:38 PM			*****4991	Kiosk	Kiosk 01
		5/15 6:38 PM			191598704	Kiosk	Kiosk 01
					Sub Total	29.00	
					Tax	0.00	
					Service Charge	0.00	
					Check Total	29.00	

Check Detail

Check	Table	Check Opened	Minutes	Guests	Reference Info	Location	Employee
6647	816	5/15/2018 7:14 PM	6.60	0		Summerlin	John Raniola
		5/15 7:15 PM	1	PATRON SILVER	9.99	Viewpoint Bar	John Raniola
		5/15 7:15 PM	1	club soda		Viewpoint Bar	John Raniola
		5/15 7:15 PM	1	PATRON SILVER	9.99	Viewpoint Bar	John Raniola
		5/15 7:16 PM	1	up		Viewpoint Bar	John Raniola
		5/15 7:15 PM	1	PATRON SILVER	9.99	Viewpoint Bar	John Raniola
		5/15 7:15 PM	1	up		Viewpoint Bar	John Raniola
		5/15 7:21 PM		Visa	40.44	Viewpoint Bar	John Raniola
		5/15 7:21 PM		\$ Charged Tip	8.00	Viewpoint Bar	John Raniola
		5/15 7:21 PM		*****4991		Viewpoint Bar	John Raniola
				Sub Total	29.97		
				Tax	2.47		
				Service Charge	8.00		
				Check Total	40.44		



1 PET
2 MAYFIELD GRUBER & SHEETS
3 Damian Sheets, Esq.
4 Nevada Bar No. 10755
5 Kelsey Bernstein, Esq.
6 Nevada Bar No. 13825
7 726 S. Casino Center Blvd.
8 Las Vegas, Nevada 89101
9 Telephone: (702) 598-1299
10 Facsimile: (702) 598-1266
11 dsheets@defendingnevada.com
12 Attorney for Defendant-Petitioner
13 Henry Aparicio

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

11 The State of Nevada,) Case No.: C-18-332496-1
12 Plaintiff-Respondent,) Dept. No: VIII
13 vs.)
14 Henry Aparicio,) **DEFENDANT'S PETITION FOR WRIT OF**
15 Defendant-Petitioner.) **HABEAS CORPUS (PRE-TRIAL)**
16)
17)

18 COMES NOW, Petitioner Henry Aparicio, by and through his attorney of record,
19 DAMIAN SHEETS, ESQ. of the firm Mayfield Gruber & Sheets, hereby submits this
20 Defendant's Pre-Trial Petition for Writ of Habeas Corpus.

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

24 ///

25 ///

1 **NOTICE OF MOTION**

2
3 TO: STATE OF NEVADA, Plaintiff,
4 TO: CLARK COUNTY DISTRICT ATTORNEY

5
6 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will
7 bring the forgoing Petition on for hearing before this court on the 6th day of
8 August 2018, at the hour of 8:00 a. m, or as soon thereafter as counsel may
9 be heard.

10 DATED this 20 day of July, 2018.

11 MAYFIELD GRUBER & SHEETS

12 Respectfully Submitted By:

13 /s/ Damian Sheets

14 DAMIAN SHEETS, ESQ.

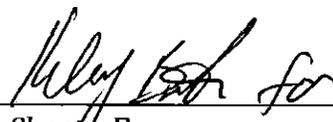
15 Attorney for Defendant
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **PETITION FOR WRIT OF HABEAS CORPUS**

2
3 The Petition of Henry Aparicio (hereinafter "Petitioner") submitted by Damian
4 Sheets, Esq., retained counsel and attorney of record for the above-captioned Petitioner,
5 respectfully shows:

- 6 1. That Counsel for Petitioner is a duly qualified, practicing and licensed
7 attorney in the State of Nevada;
8
9 2. That Petitioner's restrained of his liberty via custodial restraint within the
10 state of Nevada as a result of the instant criminal charges;
11
12 3. That the restraint of said Petitioner is unlawful and violates Petitioner's
13 rights in the Nevada and United States Constitutions for lack of probable
14 cause;
15
16 4. That Counsel for Petitioner is personally authorized by the Petitioner to
17 commence this action;
18
19 5. Petitioner hereby waives his right under Nevada law to a trial within 60
20 days; and
21
22 6. That this is a first Petition for Writ of Habeas Corpus heretofore filed on
23 behalf of the Petitioner in this particular case.

24 DATED this 20 day of July, 2018.

25 By: 
26 Damian Sheets, Esq.
27 Nevada Bar No. 10755
28 726 S. Casino Center Blvd.
Las Vegas, Nevada 89101

DECLARATION OF COUNSEL

1. I am an attorney duly-licensed to practice law in the State of Nevada;
2. I have been retained by the Petitioner to represent him, in the instant matter;
3. I am familiar with the facts and circumstances of this case;
4. I am the attorney of record for the Petitioner in the above matter;
5. I have read the foregoing Petition, know the contents thereof, and that the same is true of my own knowledge, except for those matters therein stated on information and belief, and, as to those matters, I believe them to be true;
6. Petitioner, Henry Aparicio, personally authorized me to commence this action for a Petition for Writ of Habeas Corpus; and
7. I declare under penalty of perjury pursuant to Nevada Statute that the foregoing is true and correct to the best of my knowledge.

DATED this 20 day of July, 2018.


DAMIAN SHEETS, ESQ.

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Petition for Writ of Habeas Corpus.....3
Declaration of Counsel.....4
Table of Contents.....5
Table of Authorities.....6
Memorandum of Points and Authorities.....7
I. Statement of the Case.....7
II. Statement of Facts.....7
III. Standard of Review for Writ of Habeas Corpus.....9
Argument.....10
I. MR. APARICIO WAS NOT SHOWN BY SLIGHT OR MARGINAL EVIDENCE TO
HAVE BEEN DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A VEHICLE.....10
II. THE JUSTICE COURT ERRONEOUSLY ADMITTED BLOOD ALCOHOL
TEST RESULTS, WITHOUT EXTRAPOLATION, TAKEN OUTSIDE OF TWO
HOURS.....17
Conclusion.....23
Verification.....24
Certificate of Service.....25

TABLE OF AUTHORITIES

CASES

Anderson v. State, 109 Nev. 1129, 865 P.2d 318 (1993).....20

Eureka Cty. Bank Habeas Corpus Cases, 35 Nev. 80 (1912).....9

Goldsmith v. Sheriff of Lyon Cty., 85 Nev. 295, 454 P.2d 86 (1969).....21

Grace v. Eighth Jud. Dist. Ct., 132 Nev. Adv. Op. 51, 375 P.3d 1017 (2016).....21, 22

Patterson v. State, 298 P.3d 433 (Nev. 2013).....22

Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001).....9

Rogers v. State, 105 Nev. 230, 773 P.2d 1226 (1989).....11

Sheriff v. Burcham, 124 Nev. 1247, 198 P.3d 326 (2008).....20, 21

State v. Dist. Ct. (Armstrong), 127 Nev. 927, 267 P.3d 777 (2011)18, 19, 20, 21

OTHER SOURCES

NEVADA REVISED STATUTES, SEC. 34.360.....9

NEVADA REVISED STATUTES, SEC. 34.500.....10

NEVADA REVISED STATUTES, SEC. 34.530.....9

NEVADA REVISED STATUTES, SEC. 34.700.....9

NEVADA REVISED STATUTES, SEC. 484C.110.....9

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. Statement of the Case**

4 Defendant Henry Aparicio is charged with Driving Under the Influence of Alcohol
5 Resulting in Death, as well as a litany of similar lesser included offenses, as a result of a
6 fatal automobile collision. He pled Not Guilty to the charges on or about June 6, 2018 and
7 invoked his right to a speedy trial. Calendar Call is currently scheduled for August 8, 2018,
8 with trial on August 13, 2018.
9

10 Transcripts of the preliminary hearing were filed on July 9, 2018. The instant
11 Petition follows, averring that Petitioner is being held without probable cause in violation
12 of the Nevada Constitution, and therefore the case must be dismissed as a matter of law.
13

14 **II. Statement of the Facts**

15
16 This Writ is comprised of only two issues: one is the introduction of non-
17 extrapolated blood alcohol results that were taken outside of two hours; and the other is
18 the distinct lack of evidence presented that could place Mr. Aparicio in actual physical
19 control of the vehicle. Notably, *not a single testifying witness, including those who directly*
20 *witnessed the crash, could place Mr. Aparicio behind the wheel. Without even a scintilla of*
21 *evidence to establish that Mr. Aparicio was ever in actual physical control of a vehicle, it*
22 *was error as a matter of law to find sufficient probable cause to bind the case over to*
23 *District Court.*
24
25

26 While the standard in a preliminary hearing is only slight or marginal evidence, by
27 necessity that includes slight or marginal evidence of each element necessary to establish a
28

1 criminal act. In this case, the record during the preliminary hearing was entirely devoid of
2 any evidence to establish that Mr. Aparicio was in actual physical control of a vehicle, a
3 well-known predicate requirement to all claims of Driving Under the Influence.
4 Additionally, the State was permitted to introduce the results of a blood draw taken over
5 four hours after the accident, which was similarly erroneous under controlling Nevada law.
6

7 In the instant case, a two-car collision with a red Mercedes Benz and a white Toyota
8 Prius occurred on May 15, 2018 around 9:00pm (Preliminary Hearing Transcript, 7).
9 Several people witnessed the collision; Mr. Aparicio is alleged to have driven the red
10 vehicle, and the two occupants in the white vehicle were found to be deceased before
11 emergency personnel arrived (73). However, according to the preliminary hearing
12 testimony, nobody could identify Mr. Aparicio as the driver, and significantly, Mr. Aparicio
13 was found *outside* the vehicle on the back *passenger* side, sitting on the curb (32). A female
14 occupant of the red vehicle was found hunched over on the floor of the passenger seat (31).
15 Both the female and Mr. Aparicio were transported to University Medical Center, at which
16 time an officer from the Las Vegas Metropolitan Police Department conducted the
17 horizontal gaze nystagmus test while Mr. Aparicio was strapped to the hospital bed in a
18 trauma ward waiting area (60).
19
20
21

22 When Mr. Aparicio was released from UMC, he was transported to the Clark County
23 Detention Center. Two blood draws occurred one hour apart, with the first being at
24 1:47a.m., roughly 4 hours and 39 minutes after the collision (45; 122).
25
26
27
28

1 **III. Standard of Writ of Habeas Corpus**

2
3 “The right to seek the remedy of habeas corpus is protected by the Nevada
4 Constitution.” *Pellegrini v. State*, 117 Nev. 860, 870, 34 P.3d 519, 526 (2001). An individual
5 may petition a court of competent jurisdiction to challenge the legality of their custody or
6 incarceration via a Petition for Writ of Habeas Corpus. “The judge before whom a writ of
7 habeas corpus is returned shall proceed to hear and examine the return, and in a summary
8 way to hear such allegation and proof as may be produced against such imprisonment or
9 detention or in favor of the same and to dispose of such party as the justice of the case may
10 require.” *Eureka Cty. Bank Habeas Corpus Cases*, 35 Nev. 80, 100 (1912).

11
12 Pursuant to NRS 34.360, “Every person unlawfully committed, detained, confined
13 or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of
14 habeas corpus to inquire into the cause of such imprisonment or restraint.” Additionally,
15 NRS 34.530 states that “Any person who is imprisoned or detained in custody on any
16 criminal charge before conviction for want of bail may file a petition for a writ of habeas
17 corpus for the purpose of giving bail, upon averring that fact in the person’s petition,
18 without alleging that the person is illegally confined.”
19
20

21 Pre-trial Petitions are permitted within 21 days of the Defendant’s first appearance
22 in District Court or 21 days after the filing of the transcript of the defendant’s preliminary
23 hearing; this time may be extended by the Court upon a showing of good cause. *See* NRS
24 34.700. The express purpose of a pre-trial Petition is to challenge a defendant’s detention
25 “based on alleged lack of probable cause or otherwise challenging the court’s right or
26 jurisdiction to proceed to the trial of a criminal charge.” *Id.* A court should grant a Petition if
27
28

1 it appears the petitioner "has been committed or indicted on a criminal charge, including a
2 misdemeanor... or any ordinance adopted by a city or county to regulate traffic, without
3 reasonable or probable cause." NRS 34.500(8).
4

5
6 **ARGUMENT**

7
8 **I. MR. APARICIO WAS NOT SHOWN BY SLIGHT OR MARGINAL EVIDENCE TO
9 HAVE BEEN DRIVING OR IN ACTUAL PHYSICAL CONTROL OF A VEHICLE**

10 As stated above, one of the two issues raised here is that Mr. Aparicio was never
11 shown, even by slight or marginal evidence, to have ever been in actual physical control of
12 the vehicle involved in the subject collision. Two vehicles were involved, which for ease of
13 reference throughout the preliminary hearing were referred to as the "red car" (which Mr.
14 Aparicio is alleged to have driven) and the "white car." There can be no question that being
15 in actual physical control of a vehicle is a necessary element of a DUI charge:
16

- 17
18 1. It is unlawful for any person who:
19 (a) Is under the influence of intoxicating liquor;
20 (b) Has a concentration of alcohol of 0.08 or more in his or her
21 blood or breath; or
22 (c) Is found by measurement within 2 hours after driving or being
in actual physical control of a vehicle to have a concentration of alcohol
of 0.08 or more in his or her blood or breath,

23 **to drive or be in actual physical control of a vehicle** on a highway or
24 on premises to which the public has access. NRS 484C.110 (emphasis
added).

25 If there is no evidence presented that a defendant was ever driving or in actual
26 physical control of a vehicle, by law there cannot be probable cause that he committed a
27

1 DUI offense because a material element of the charge cannot be established. *Rogers v. State*,
2 105 Nev. 230, 232, 773 P.2d 1226, 1227 (1989). By definition, the complete absence of
3 evidence would preclude a proper finding of slight or marginal evidence required in order
4 to bind over a defendant answer the charges in District Court. If the State did not present
5 slight or marginal evidence to support a material element of the charges, then matter
6 should have been dismissed.
7

8 Although it is difficult to fully articulate the absence or omission of a particular
9 point, in this case each witness who testified at Mr. Aparicio's preliminary hearing also
10 stated under oath that they could not identify the driver of the vehicle. The salient facts and
11 admissions for each witness are as follows:
12

13
14 Witness 1: Brandon McCauley

- 15 • Lay witness, stopped at a red light when accident occurred directly in front of him
16 (Preliminary Hearing Transcripts, hereinafter "PHT," 11: 18);
17 • Was not able to turn around to return to the scene until 10 minutes after collision
18 (PHT 15: 3);
19 • "Q: Okay. And when you that car drove past you, you didn't see who was behind the
20 wheel of the car - and I'm referring to the red car - isn't that correct?
21 A: That is correct.
22 Q: And you didn't see who was operating the vehicle?
23 A: That's correct.
24 Q: Okay. And when you returned you didn't see anybody behind the wheel of that
25 vehicle; isn't that correct?
26 A: That's correct" (PHT 21: 17).

27 Witness 2: Keith Richard Sonetti

- 28 • Police Officer with Las Vegas Metropolitan Police Department, en route to an
unrelated call when he came across the accident scene (PHT 25: 1);
• When he approached the red vehicle, Mr. Aparicio was on the back passenger side
sitting on the curb (PHT 28: 23);

1 • "Q: Officer, you have no personal knowledge of who was operating that motor
2 vehicle; isn't that right?

3 A: No, sir.

4 Q: Is that incorrect or is that correct?

5 A: That's correct, sir" (PHT 34: 15).

6 Witness 3: Jeisel Morales

7 • Emergency medical technician, directly witnessed the collision occur (PHT 37: 19);
8 • "Q: Is it fair to say that your attention was really solely focused on that white car;
9 isn't that correct?

10 A: Yes.

11 Q: Okay. So you didn't actually see who was behind the wheel of that red car prior to
12 the collision; isn't that correct?

13 A: Like I said, it initially -

14 Q: Isn't that correct?

15 A: Yes" (PHT 39: 18).

16 Witness 4: Katlynn Garduno

17 • Medical technician at the Clark County Detention Center (PHT 41: 25);
18 • Conducted Mr. Aparicio's blood draw at CCDC after he was released from the
19 hospital (PHT 43: 23);

20 • "Q: Okay. And did you hear the officer talking to him about anything that night?

21 A: The only thing that I heard was that he had stated to the officer - okay. I'm sorry.
22 He'd state to the officer that he was not driving multiple different times and then
23 turn around and ask the officer did I run the red light. That's the only conversation
24 he really had that I can remember.

25 Q: Okay. And you don't know what the officers had told him prior to taking him in,
26 correct?

27 A: No.

28 Q: So you don't know if the officers had said, hey, you were driving the vehicle; isn't
that right?

A: I have no idea.

...

Q: Okay. And was that one officer or more than one officer?

A: It was two officers.

1 Q: Okay. And they specifically told you that they were trying to prove that he was
2 operating the vehicle, correct?

3 A: Correct" (PHT 48: 3; 50: 15).

4 Witness 5: Matthew Ware

5 • Police Officer with Las Vegas Metropolitan Police Department, first made contact
6 with Mr. Aparicio in a waiting room at UMC Trauma (PHT 52: 6).

7 • "Q [Direct Examination]: Did he make any spontaneous statements about what
8 happened?

9 A: He did.

10 Q: What did he say?

11 A: He stated that I killed two people, kind of like it was a question. He kind of said it
12 like he was asking a question.

13 MR. MARTINOVSKY: All right. No further questions.

14 Q: [Cross Examination]: Sir, he actually asked did I really kill two people; is that
15 correct?

16 A: I don't exactly remember the verbiage.

17 Q: But you remember them as a question, correct?

18 A: Correct.

19 Q: It wasn't the statement that I killed two people?

20 A: As far as I can recall, yes.

21 ...

22 Q: And you've seen a lot of vehicular collisions, correct?

23 A: Yes.

24 Q: You've seen head trauma, correct?

25 A: Yes.

26 Q: That's going to affect people's memory; isn't that correct?

27 A: Possibly.

28 Q: Okay. So if somebody doesn't remember and is told something happened, they
might ask a question like that; isn't that correct?

A: Could be.

Q: You don't actually know if my client was driving the motor vehicle; isn't that
correct?

A: I don't know.

Q: Okay. Because my client never actually admitted to you that he was driving the
motor vehicle, correct?

A: That's correct" (PHT 56: 1; 57: 20).

1
2 Witness 6: Corey Staheli

- 3 • Police Officer with Las Vegas Metropolitan Police Department, first made contact
4 with Mr. Aparicio at UMC Trauma (PHT 59: 17);
5 • Conducted only one field sobriety test, the HGN, while Mr. Aparicio was immobilized
6 strapped in a hospital bed (PHT 60: 5);
7 • “Q: And NHTSA says you’re supposed to take into account all physical circumstances
8 prior to assessing someone’s nystagmus; isn’t that correct?”

9 A: Yes.

10 Q: Like if somebody’s been involved in a car accident, correct?

11 A: Yes.

12 Q: If someone’s sustained an injury; isn’t that correct?

13 A: Yes.

14 ...

15 Q: And there was an allegation that my client had been injured in that accident; isn’t
16 that correct?

17 A: Yes.

18 Q: Okay. And you’re aware through your training per the National Highway Safety
19 Administration that injuries to the head, accidents, whiplash cause natural
20 nystagmus. Isn’t that correct?

21 A: At times.

22 Q: Okay. And you didn’t conduct any other field sobriety test, correct?

23 A: Correct” (PHT 65: 12; 69: 25).

24 Witness 7: Khadija Bilali-Azzat

- 25 • Lay witness who discovered accident on his way home from work and stopped to
26 assist (PHT 72: 16);
27 • Approached the white car only (PHT 73: 3).

28 Witness 8: Edward Aaron Contreras

- Police Officer with Las Vegas Metropolitan Police Department, dispatched to
accident location and later made contact with Mr. Aparicio at the Clark County
Detention Center (PHT 79: 17);
• Obtained Mr. Aparicio’s consent for blood draw (PHT 79: 21);
• “Q: Okay. My client never made any admissions to you?”

1 A: No" (PHT 81: 18).

2 Witness 9: Kenneth Salisbury

- 3
- 4 • Police Officer with the Las Vegas Metropolitan Police Department Fatal Detail assigned to investigate the collision (PHT 82: 20);
 - 5 • "Q: Let me ask you this, sir: How many bodies did you see in the vehicle?

6 A: In which vehicle?

7 Q: The red one.

8 A: None.

9 Q: Okay. Now you don't know who was in the vehicle at this time; isn't that correct?

10 A: Definitely? No.

11 Q: Okay. Because you've been told by other officers who was in that vehicle; isn't that correct?

12 A: Correct" (PHT 94: 23).

13 Witness 10: Karl Atkinson

- 14 • Police Officer with the Las Vegas Metropolitan Police Department Fatal Detective assigned to investigate the collision (PHT 100: 13);
- 15 • "Q: What did you observe when you arrived?

16 A: I arrived just before 10:00pm. We were notified around 9:15pm that there was a two-person fatal collision at that intersection. Upon my arrival, I parked on the south side of the intersection facing northbound on Hualapai so I wouldn't disturb any of the debris that was left in the intersection. From where I parked, I couldn't actually see the vehicles or if there were occupants at the time because there was a county fire rescue unit - an engine blocking my view of the [white] Prius" (PHT 101: 7).

17
18
19
20
21 Of the ten witnesses presented by the State, *not a single one* could place Mr. Aparicio
22 behind the wheel of the car. Even the purportedly circumstantial evidence does not support
23 this finding by slight or marginal evidence; the State will likely argue that three excerpts of
24 testimony allow them to meet this burden. The first is that the female occupant of the
25 vehicle was found on the floorboard of the passenger side of the vehicle. However, the data
26 and crash reconstruction expert was unable to tell if anyone was wearing their seatbelts
27
28

1 during the collision, and without this data even the State's witness conceded it is probable
2 that bodies will shift position following a major impact.

3 Second is the blood trail out of the driver's side of the red vehicle. However, no test
4 results were provided that indicate whose blood it actually is; furthermore, there appears
5 to be a substantial blood trail leading out of the vehicle, and yet Mr. Aparicio's external
6 injuries are limited to bruising and a busted lip. Third is Mr. Aparicio's questions to the
7 Officers, asking if he ran the red light or if he killed anyone. However, the cross-
8 examination during the preliminary hearing makes it quite clear that these were *questions*,
9 not statements, and thus likely the result of him being subsequently told of his alleged
10 involvement by police, rather than from personal knowledge. This is further supported by
11 the testimony of the medical technicians, who both stated that at that point the police
12 officers had deliberately set out to prove that he was the driver of the vehicle. However,
13 and perhaps most importantly, when the Officers asked Mr. Aparicio if he was driving that
14 night multiple times, on each occasion he said *no*.

15 The State's conclusory speculations that would tie Mr. Aparicio as the driver of the
16 vehicle are not evidence at all, but just that - a tower of speculations, theories and
17 assumptions. The only evidence that was offered by the testifying witnesses did *nothing* to
18 place Mr. Aparicio behind the wheel of the car. Because the State provided no evidence of
19 actual physical control, as a matter of law they cannot have sufficient slight or marginal
20 evidence to bind him over for DUI. Therefore, Mr. Aparicio respectfully requests this case
21 against him be dismissed.
22
23
24
25
26
27
28

1 **II. THE JUSTICE COURT ERRONEOUSLY ADMITTED BLOOD ALCOHOL TEST**
2 **RESULTS, WITHOUT EXTRAPOLATION, TAKEN OUTSIDE OF TWO HOURS**

3
4 Given that the admitted blood alcohol test results played a significant part in the
5 finding of probable cause, erroneous admission of those results likewise casts doubt on the
6 legitimacy and validity of the ultimate probable cause finding. When the State sought to
7 admit the original two blood alcohol test results (each taken outside of two hours), Defense
8 Counsel strenuously objected; the following colloquy ensued:

9
10 MR. SHEETS: ... Pursuant to State versus District Court Armstrong case
11 the Nevada Supreme Court makes it very clear that unextrapolated
12 results are not proper and, in fact, extrapolated results are only proper
13 when there are 15 factors that are considered. We have heard zero
14 testimony as to that occurring. In fact, the only testimony that we have
15 heard today is that a blood draw occurs 4 hours and 39 minutes after a
16 supposed collision, Your Honor. So we have a very real issue.

17 I do have that briefed. I'd ask Your Honor if you're not inclined to grant
18 that today to allow me to submit that brief to you this afternoon. But I
19 think the law is clear in Armstrong. It prohibits the admission of
20 unextrapolated data. There is no statute that allows him to present that.
21 There is no basis for establishing relevancy because they haven't
22 provided any testimony that establishes the results outside the per se
23 period of two hours have any connection to this matter whatsoever.

24 ...
25 MR. MARTINOVSKY: Actually, Armstrong is not very clear on this. The
26 holding of Armstrong is simply that we are not going to overturn Judge
27 Miley's ruling because it was not arbitrary and capricious. That's what
28 the case says. That's number one.

 Number two - so any District Court judge who wants to make their own
determination as to whether or not the alcohol content of a driver is
relevant in a DUI case can make their own determination. And I quite
frankly can't think of anything which would be more relevant for a DUI
case than the blood alcohol. That's number two. So first thing is all they
said was that she had did not abuse her discretion.

 Number three, Anderson specifically says that the retrograde
extrapolation is admissible.

1
2 Number four, we're all talking about a trial. This is a prelim. And there's
3 a case specifically on point, Sheriff versus Burcham, 124 Nevada 1247
4 2009, specifically says that at a hearing where the issue is slight to
5 marginal evidence such as this one the State doesn't need to call a
6 retrograde expert. It only needs to present two blood draws one hour
7 apart and that the trier of fact when the burden is slight or marginal
8 evidence does need to call (PHT 122: 7).

9 Defense is grateful to the State for itemizing their arguments in favor of submission,
10 as that makes it significantly easier to evaluate and analyze each reason proffered. The
11 State's first ground in support of admission holds: "Armstrong is not very clear on this. The
12 holding of Armstrong is simply that we are not going to overturn Judge Miley's ruling
13 because it was not arbitrary and capricious" (PHT 123: 9). To the contrary, the law is
14 astoundingly clear. While it is true that the ultimate holding in *Armstrong* was that Judge
15 Miley did not abuse her discretion – which is correct, considering that abuse of discretion is
16 the standard of review for evidentiary rulings on appeal – that does not entitle the State to
17 simply disregard the Supreme Court's basis for that ruling. Otherwise, *no* evidentiary ruling
18 would hold precedential value.

19 Simply because the Supreme Court held that Judge Miley was not arbitrary and
20 capricious (based on the reasoning provided by the Supreme Court) does not create a free-
21 for-all for every District Court Judge to consider the issue *de novo*, which is precisely what
22 the State argues. As stated, the law in *Armstrong* is clear as day:

23
24 **We agree that achieving a reliable retrograde extrapolation**
25 **calculation requires consideration of a variety of factors.** The
26 following factors are relevant to achieving a sufficiently reliable
27 retrograde extrapolation calculation: (1) gender, (2) weight, (3) age, (4)
28 height, (5) mental state, (6) the type and amount of food in the
stomach, (7) type and amount of alcohol consumed, (8) when the last

1 alcoholic drink was consumed, (9) drinking pattern at the relevant
2 time, (10) elapsed time between the first and last drink consumed, (11)
3 time elapsed between the last drink consumed and the blood draw,
4 (12) the number of samples taken, (13) the length of time between the
5 offense and the blood draws, (14) the average alcohol absorption rate,
6 and (15) the average elimination rate. *State v. Dist. Ct. (Armstrong)*,
7 127 Nev. 927, 936, 267 P.3d 777, 783 (2011) (emphasis added).

8 The State is not permitted to ignore the Supreme Court's mandate at their whim.
9 The *Armstrong* case set forth a very clear and **mandatory** rule of law, and that rule of law is
10 applicable in all cases relying on retrograde extrapolation, including this one. Therefore,
11 the State's argument that *Armstrong* is somehow unclear on the issue is patently without
12 merit.

13 As their second basis for admission, the State claims that the judge can make their
14 own determination of whether the blood alcohol content is relevant. This is true, as Judges
15 at all levels are entitled to make evidentiary rulings in cases he or she presides over; such is
16 an inherent aspect of the judicial function. However, the law does *not* permit the Judge to
17 stand in the place of a retrograde extrapolation expert to find that the results are
18 sufficiently reliable without considering any of the factors articulated in *Armstrong*. That is
19 precisely what occurred here.

20 The State introduced two bare BAC results, with nothing more. These results are
21 themselves inadmissible per statute (outside of two hours) and relevant only for
22 extrapolation purposes; by introducing these results, the State is asking the Court to act as
23 a retrograde expert and themselves determine if the extrapolated result both demonstrates
24 that the defendant was above .08 at the time of driving and that the result is sufficiently
25 reliable to be admitted in a court of law. These two determinations are necessary in order
26
27
28

1 for the results to be lawfully admitted. However, these conclusions, which require expert
2 testimony by default, are beyond the expertise of the Justice Court to decide. A Justice of the
3 Peace is not a retrograde extrapolation expert, and has no legal authority to conclude from
4 the two inadmissible BAC tests alone what the extrapolated result would be, or that this
5 result is scientifically reliable to admit; to this end, the Nevada Supreme Court's ruling in
6 *Armstrong* is controlling and dispositive. This reasoning applies whether admission is
7 sought at a preliminary hearing or trial.
8

9 This leads into the State's third and fourth grounds for admission. Ground three is
10 simply that "Anderson specifically says that the retrograde extrapolation is admissible."
11 Clearly, this is inaccurate as a blanket conclusion because *Armstrong* specifically held that it
12 was *not* admissible without considering the listed 15 factors. Presumably, the State is
13 referring to *Anderson v. State*, 109 Nev. 1129, 865 P.2d 318 (1993). To the extent *Anderson*
14 discussed admissibility of retrograde extrapolation, it was explicitly superseded by
15 *Armstrong*. In fact, even *Armstrong* incorporated and referred to *Anderson*, but only as part
16 of a string citation discussing *relevance*, not admissibility.¹ The State's universal conclusion
17 on admissibility of extrapolation results is simply no longer good law post-*Armstrong*.
18
19

20 Lastly, the fourth ground for relief draws a distinction between admission at a
21 preliminary hearing versus admission at a trial, citing to *Sheriff v. Burcham*, 124 Nev. 1247,
22

23
24 ¹ "Although we have not addressed the admissibility of retrograde extrapolation as a matter of law, we have
25 alluded to its relevance in prosecutions for driving under the influence. See, e.g., *Sheriff v. Burcham*, 124 Nev.
26 1247, 1261, 198 P.3d 326, 335 (2008) (holding that State was not required to present retrograde
27 extrapolation evidence to obtain grand jury indictment where grand jury could reasonably infer from two
28 blood alcohol tests taken within reasonable time after driving that defendant's blood alcohol concentration
was .08 or higher when he was driving); *Anderson v. State*, 109 Nev. 1129, 1135, 865 P.2d 318, 321 (1993)
(pointing to retrograde extrapolation evidence in concluding that State presented sufficient evidence to
support conviction)." *Armstrong*, 127 Nev. 927, 933, 267 P.3d 777, 780-81 (2011)

1 198 P.3d 326 (2008). Ironically enough, the very same string citation dealing exclusively
2 with relevance listed not only *Anderson*, but *Burcham* as well. Once again, the State's
3 argument was explicitly superseded by *Armstrong*.

4
5 *Armstrong* succinctly states, "achieving a reliable retrograde extrapolation
6 calculation requires consideration of a variety of factors." It does not state that
7 admissibility *at trial* is dependent on these factors. It does not state that consideration of
8 these factors is discretionary. It states that consideration of the fifteen factors is *required* in
9 order to achieve a *reliable* extrapolation result. Therefore, if the listed factors are not
10 considered, per the Supreme Court in *Armstrong*, the result is deemed unreliable.

11
12 Furthermore, on its face this legal mandate is a **universal statement** and not
13 limited to specific stages of criminal proceedings, such as a preliminary hearing versus a
14 trial. In essence, the State argued that reliable evidence is a privilege limited to trial only,
15 and the State is free and clear to admit unreliable results simply because the hearing is not
16 a trial. This violates the universal holding in *Armstrong*, violates the Defendant's rights to
17 Due Process under the Constitution, and violates basic precepts of justice and fundamental
18 fairness. The need for reliable evidence is not a concept limited solely to trial, nor should it
19 be.
20

21
22 Nevada law has explicitly recognized time and again that constitutional mandates do
23 not disappear simply because it is a preliminary hearing. *Goldsmith v. Sheriff of Lyon Cty.*, 85
24 Nev. 295, 303, 454 P.2d 86, 91 (1969) (holding that the evidence presented a preliminary
25 hearing "must consist of legal, competent evidence"); *Grace v. Eighth Jud. Dist. Ct.*, 132 Nev.
26 Adv. Op. 51, 375 P.3d 1017, 1020 (2016) (permitting Justice Courts to suppress unlawful
27
28

1 evidence introduced at preliminary hearing); *Patterson v. State*, 298 P.3d 433, 435 (Nev.
2 2013) (recognizing preliminary hearing as “critical stage” in criminal proceedings).
3 Additionally, given that the *Armstrong* case was an appeal from an evidentiary ruling based
4 on unfair prejudice, there can be little argument that admissibility of retrograde
5 extrapolation results is evidentiary in nature. Its admission is governed by the rules of
6 evidence, whether admission is sought at a preliminary hearing or a trial.
7

8 On this point, the Nevada Supreme Court has held that unless otherwise exempted,
9 Nevada rules of evidence do apply at preliminary hearings. *Grace v. Eighth Jud. Dist. Ct.*, 132
10 Nev. Adv. Op. 51, 375 P.3d 1017, 1020 (2016) (“First, the rules of evidence apply at
11 preliminary hearings.”). Certain types of inadmissible evidence have been statutorily
12 exempted for purposes of preliminary hearing, but unless the law has been updated very
13 recently, retrograde extrapolation is not one of them. Therefore, the rules of evidence
14 applicable to retrograde extrapolation as set forth in *Armstrong* apply with equal force at
15 both a preliminary hearing and a trial.
16
17

18 Significantly, the State in Mr. Aparicio’s hearing *did not even admit the extrapolation*
19 *result* – they only admitted the inadmissible test results outside of two hours, and asked the
20 Court to infer and speculate as to their admissibility for extrapolation without even
21 knowing the actual extrapolated BAC number. As stated above, the Justice Court is not an
22 expert in extrapolation and so lacks the legal authority to determine how these two
23 baseline tests interact to create a final extrapolation at the time of the accident.
24

25 In summation, by admitting nothing but two otherwise inadmissible test results, the
26 State asked the Justice Court to 1) use these two values to independently formulate an
27
28

1 opinion as to the BAC at the time of the accident (which itself requires an expert
2 calculation); and 2) formulate a subsequent opinion as to the reliability of that result
3 (sufficient to warrant admissibility) without any consideration of the *Armstrong* factors.
4 With nothing more, admitting the BAC results for the Justice Court's substantive
5 consideration was erroneous as a matter of law.
6

7
8 **CONCLUSION**
9

10 For these reasons and those stated above, Mr. Aparicio respectfully request this
11 Court dismiss this case for lack of probable cause and/or remand for a new preliminary
12 hearing based on the erroneous admission of inadmissible blood alcohol results for the
13 purposes of extrapolation.
14

15
16 Dated this 20 day of July, 2018.
17

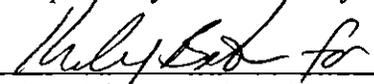
18 
19 Damian Sheets, Esq.
20 Nevada Bar No. 10755
21 726 S. Casino Center Blvd., Ste. 211
22 Las Vegas, Nevada 89101
23
24
25
26
27
28

VERIFICATION OF DAMIAN SHEETS, ESQ.

1. I am an attorney at law, admitted to practice in the State of Nevada.
2. I am the attorney handling this matter on behalf of Petitioner.
3. The factual contentions contained within the above Petition are true and correct to the best of my knowledge.

Dated this 20 day of July, 2018.

Respectfully Submitted By:


DAMIAN SHEETS, ESQ.
Attorney for Petitioner

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

July 23, 2018

C-18-332496-1 State of Nevada
vs
Henry Aparicio

July 23, 2018 8:00 AM Deft.'s Motion in Limine to Exclude Evidence of
Retrograde Extrapolation

HEARD BY: Smith, Douglas E. COURTROOM: RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Trisha Garcia

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- Charles Martinovsky, Chf Dep DA, present on behalf of the State and Damian Sheets, Esq., present on behalf of Deft. Aparicio, who is also present.

This is the time set for hearing on Deft.'s Motion in Limine to Exclude Evidence of Retrograde Extrapolation. Upon Court's inquiry, Mr. Sheets advised that he would submit on his Motion; he believes retrograde extrapolation is not appropriate in this case. The State's expert in this case relied on the Deft.'s body weight and gender plus his two (2) BAC test results and did not take into consideration the many other factors listed in State v. District Court (Armstrong). Mr. Martinovsky submitted the matter.

Court noted that retrograde extrapolation is admissible in this case pursuant to State v. District Court (Armstrong). The State has evidence that confirms what the Deft. drank between 5:37 p.m. and 8:52 p.m., when he was at Dave and Buster's restaurant. After leaving Dave and Buster's, the Deft. went to Casa Del Matador, where he worked. The Deft. had more to drink and he also ordered Goat Cheese Jalapeno. At 8:52 p.m., the bartender helped the Deft. out of the bar and then later returned to talk to him as he was getting into his car because he was too intoxicated. At 9:08 p.m. the Deft. crashed into

PRINT DATE: 08/07/2018

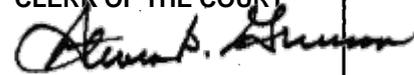
Page 1 of 2

Minutes Date: July 23, 2018

the back of the victims' car, which was stopped at a red light on Sahara and Hualapai. The Deft.'s BAC was extremely high. The State, however, knew exactly how much the Deft. drank and ate between the hours of 5:37 p.m. and 8:52 p.m. and obtained two (2) blood draws one (1) hour apart. State v. District Court (Armstrong) holds that retrograde extrapolation can also be based on standard metabolic rate and is extremely appropriate in this particular case. Therefore, COURT ORDERED, the Deft.'s Motion is DENIED. The State shall prepare Findings of Fact and Conclusions of Law consistent with their Opposition and this Court's decision.

Mr. Sheets advised that he file a Petition for Writ of Habeas Corpus and, therefore, the Deft. will be WAIVING his speedy trial right; the trial date currently set for August 13, 2018, will need to be continued. The Writ is set for hearing on August 6, 2018; colloquy. COURT ORDERED, the hearing date on the Writ will STAND; Court directed Mr. Marlinovsky to file the State's Return so Mr. Sheets can file his Reply, if necessary. A new trial date will be set after argument on the Writ.

CLSTODY



1 **RSPN**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHARLES MARTINOVSKY
6 Chief Deputy District Attorney
7 Nevada Bar #007439
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

CASE NO: C-18-332496-1

12 HENRY APARICIO, aka,
13 Henry Biderman Aparicio, #6069038

DEPT NO: VIII

14 Defendant.

15
16 **STATE'S RETURN TO DEFENDANT'S PETITION FOR**
17 **WRIT OF HABEAS CORPUS**

18 DATE OF HEARING: JULY 16, 2018
19 TIME OF HEARING: 8:00 AM

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
21 District Attorney, through CHARLES MARTINOVSKY, Chief Deputy District Attorney, and
22 hereby submits the attached Points and Authorities in Response to Defendant's Petition for
23 Writ of Habeas Corpus.

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

27 ///

28 ///

1 FACTS.

2 On May 15, 2018, the Defendant and his girlfriend, Morgan Hurley, entered Dave and
3 Buster's restaurant at about 5:30 P.M. Video evidence shows the two drinking inside the bar.
4 Receipts from the tab indicate that the two ordered their first drinks at 5:37 P.M. The video
5 shows that Morgan was drinking a Caribbean Lit, and the Defendant was drinking shots of
6 Patron Silver. The bar tab indicates that by 7:21P.M., they pair had ordered 10 shots of Patron
7 Silver, 3 Caribbean Lit Drinks, and they had not ordered any food. Video evidence shows the
8 pair then entering Casa Del Matador, also located in downtown Summerlin, shortly after they
9 had left Dave and Buster's. The Defendant worked at this establishment at the time. The tab
10 from Casa Del Matador indicates that the pair consumed 6 more shots of Tequila. The pair
11 also ordered Goat Cheese Jalapeno, but they did not order any other food. The tab closed at
12 8:52 P.M., and video evidence shows the Defendant and Morgan stumbling out of the Casa
13 Del Matador shortly after paying the tab. The video also shows a bar tender helping the
14 Defendant out of the bar. That same bar tender then returns to the bar. Shortly after this, the
15 same bar tender leaves the bar to speak with the Defendant as he entered the driver's side of
16 the red Mercedes which shortly thereafter caused the collision which killed the victims.

17 At about 9:08 P.M., the Defendant crashed into the back of the victims' car when they
18 were stopped facing East at a red light on Sahara and Hualapai. The speedometer on the
19 Defendant's car was stuck at 100 mph. The collision accelerated the victim's car from zero to
20 over 50 mph. The collision killed both occupants.

21 Brandon McCauley testified that he left Downtown Summerlin at around 8:30 P.M. He
22 witnessed a red vehicle pass him and exceeding the speed limit as he was driving East on
23 Sahara. Mr. McCauley testified that the red car did not stop at the red light at the intersection
24 of Sahara and Hualapai but slammed into the back of a white car which was stopped for the
25 red light at the intersection. PHT, p. 9-11. Shortly after the collision, Mr. McCauley went to
26 the red car which had caused the collision. Mr. McCauley saw a group of people holding the
27 Defendant down near the red vehicle. PHT, p. 12 - 13.

28 ///

1 Mr. McCauley reiterated on cross examination that the group of people where
2 'apprehending' the Defendant. Mr. McCauley testified that 'Because I—well, initially after I
3 saw the accident, like when the civilians were apprehending the guy next to you, he looked
4 intoxicated. He just looked out of it. And he was being apprehended over the red car, so I just
5 assumed that he was the driver.' PHT, p 22 line 23-25 – PHT p. 23 lines 1-2.

6 Officer Sonetti testified to two very important pieces of information. First, when he
7 arrived on scene, Morgan Hurley was slumped down in the passenger seat of the red vehicle.
8 PHT, p. 26-line 23- p. 27 line 3. Second, the Defendant was sitting on the curb crying, and
9 asking Officer Sonetti to save the passenger. PHT, p. 28 lines 14-25.

10 Katlynn Garduno drew the Defendant's blood. She remembered performing the blood
11 draw on the Defendant. Katlynn testified that she heard the Defendant asking one of the
12 officers if he had run the red light. Katlynn testified as follows:

13 "Q: Did the Defendant make any statements to you about the collision?

14 A: He (the Defendant) didn't make it directly to me, but he did ask the officer if he had ran the
15 red light." PHT, p. 46, lines 19-22.

16 Officer Ware also testified that the Defendant asked if he had killed two people. Officer
17 Ware conducted the blood draws with Katlynn Garduno. Officer Ware testified that "He (the
18 Defendant) stated that I killed two people, kind of like it was a question. He kind of said it
19 like he was asking a question." PHT, p. 56 lines 1-10. On cross, Officer Ware again reiterated
20 that the Defendant asked if he had killed two people. PHT, p. 56, lines 14-25.

21 Officer Staheli testified that the Defendant had dried blood on his lip and his nose. PHT,
22 p. 62, Lines 12-16. State's exhibit #2 showed the injuries on the Defendant's face.

23 Detective Ken Salisbury testified that the ACM data indicated that the collision accelerated
24 the victims' car from zero MPH to 58.4 MPH. PHT, p. 86 lines 1-6.

25 Detective Atkinson testified to several key pieces of information. First, Detective
26 Atkinson found a woman's purse on the floorboard of the red Mercedes. The purse contained
27 numerous pieces of identification for Morgan Hurley. PHT, P. 103. Detective Atkinson also
28 testified that his speed analysis indicated that the Defendant was driving over 100 miles per

1 hour when he ran into the back of the victims' car while it was stopped for the red light at the
2 intersection of Hualapai and Sahara. PHT, p. 115, line 7. Detective Atkinson testified that
3 he found blood on the driver's side door, blood on the exterior of the driver's side of the vehicle
4 proceeding along the outside of the vehicle and leading towards the passenger side of the
5 vehicle. Detective Atkinson also found blood on the outside of the passenger door. PHT, p.
6 105 p.12-19. Detective Atkinson testified that he found a bloody rag on the driver's seat and
7 blood on the driver's side airbag. PHT, p. 108 lines 3-12. Detective Atkinson testified that
8 the backs of the front seats did not have any blood or marks on them. PHT, p. 107 lines 7-12.
9 Detective Atkinson testified that his inspection of the vehicle indicated that the rear seats of
10 the vehicle were unoccupied. He drew this conclusion from the following. First, the collision
11 threw glass all over the inside of the Defendant's car. The glass evenly coated the back seats.
12 Second, rear seat belts were locked and not extended, indicating that they had not been used.
13 PHT, p. 106 p. 20-25.

14 Police obtained a search warrant, and got one blood sample from the Defendant at 147
15 A.M. and another at 2:47 A.M. Chemical analysis indicates the Defendant's BAC was .204 at
16 the first draw, and .178 at the second.

17 Dr. Ray Kelly reviewed the reports and evidence from the case. He calculated that the
18 Defendant's BAC was over .32 at the time of driving. Dr. Kelly based his conclusions on the
19 Defendant's height and weight, as well as the other evidence in the case such as the driving
20 pattern, the consumption pattern at the bar, and the Defendant's behavior at the scene and his
21 performance on the HGN.

22 ARGUMENT.

23 I.RELEVANT LAW.

24 "Probable cause to support a criminal charge 'may be based on slight, even 'marginal'
25 evidence,...because it does not involve a determination of the guilt of an accused.'" Sheriff
26 Washoe County v. Steward, 109 Nev. 831, 835 (1993), citing Sheriff v. Hodes, 96 Nev. 184,
27 186 (1980). The state may even establish probable cause to hold a Defendant for trial when
28 the evidence conflicts with itself: "The fact that this testimony is in direct conflict with that of

1 another witness is of no import at this stage of the proceedings. The magistrate could, and did,
2 determine that the evidence supported an inference of criminal conduct by the accused, thereby
3 leaving the ultimate question of credibility to the trier of fact." State v. Badillo, 95 Nev. 593
4 (1979). To commit an accused for trial, the State is not required to negate all inferences which
5 might explain his conduct, but only to present enough evidence to support a reasonable
6 inference that the accused committed the offense. Kinsey v. Sheriff, Washoe County, 87 Nev.
7 361 (1971).

8 II. THE STATE DEMONSTRATED BY SLIGHT TO MARGINAL EVIDENCE THAT
9 THE DEFENDANT WAS DRIVING THE VEHICLE.

10 All the evidence established sufficient facts for the trier of fact to draw the reasonable
11 inference that the Defendant was driving the car. First, the evidence regarding the how the car
12 was occupied allows the court infer reasonably that the Defendant was driving the red vehicle.
13 The Defendant was clearly involved in the collision: he had cuts to his face, he was at the
14 scene, and he was expressing concern for the passenger, Morgan Hurley. The fact that he was
15 distraught and expressing concern for the passenger clearly indicates that he was in the vehicle.
16 Yet, the Defendant was not sitting in the passenger seat because Morgan Hurley was slumped
17 over in the passenger seat. Morgan's purse was also stowed neatly under the front passenger
18 area indicating that the force of the collision did not propel her into the front seat from some
19 other part of the vehicle. Further, the Defendant was not sitting in the back seat. Detective
20 Atkinson testified that the evidence suggested that no one was sitting in the back seat: the
21 broken glass from the collision was evenly distributed on the rear seats, the rear seat belts had
22 not been used, and the back of the front seats did not have any blood on them. Had someone
23 been sitting in the back seat, unrestrained, they severity of the collision means they would have
24 hit the back seats with great force and left blood or marks on them. Had someone been sitting
25 in the rear seats, the glass broken in the collision would not have been evenly distributed over
26 the rear seats. But backs of the front seats did not have blood or impact marks on them, and
27 the glass was evenly distributed on the back seats. Hence, the only reasonable inference is that
28 the Defendant was driving the red Mercedes at the time of the collision.

1 Equally important, two witnesses (Katlynn Garduno and Officer Ware) testified that
2 the Defendant asked if he had killed two people. The fact that the Defendant asked such a
3 question allows one to reasonably infer that it constitutes slight to marginal evidence that the
4 Defendant confessed. For, had the Defendant not been driving, he wouldn't have asked the
5 question.

6 Third, the injuries on the Defendant's face are consistent with the conclusion that he
7 was driving the vehicle. The Defendant had fresh cuts on his nose and lips. Detective
8 Atkinson found a bloody rag in the driver's seat and blood on the driver's air bag and a trail
9 of blood leading from the driver's side around the back of the car to the passenger side. Since
10 the passenger was slumped over in the passenger seat, she did not leave the bloody rag or trail
11 of blood. The cuts on the Defendant's face, when combined with the trail of blood leading
12 from the driver's side of the vehicle to the passenger side of the vehicle indicate that he was
13 driving but exited to check on the passenger immediately after the collision. The fact that he
14 implored Officer Sonetti to save the passenger corroborates this inference.

15 Finally, Brandon McCauley testified that a group of people were apprehending the
16 Defendant and holding him at the scene shortly after the collision. In fact, Brandon testified
17 that he thought the Defendant was the driver, and was intoxicated. This testimony indicates
18 that the Defendant attempted to flee the scene, which indicates consciousness of guilt.
19 Consciousness of guilt indicates that the Defendant was driving.

20 All the aforementioned evidence certainly establishes a slight to marginal inference that
21 the Defendant was driving at the time he crashed into the back of the victims' car.

22 **II. THE COURT PROPERLY ADMITTED AND RELIED UPON TWO BLOOD**
23 **SAMPLES AT THE PRELIM.**

24 Sheriff v. Burcham, 124 Nev. 1247 (2009) is exactly on point. The case specifically
25 holds that the state can present two blood samples taken one hour apart, and nothing more, at
26 a hearing when the standard of proof requires slight to marginal evidence to establish the
27 Defendant was greater than .08 when driving. The facts of the case are as follows. Burcham
28 was driving his car between 6:15AM and 6:30 AM when he rear ended the victim's car. The

1 collision killed the victim, a certain Dylan Whisman. Police obtained one blood sample at
2 7:15 A.M., and another at 8:22A.M. The results were a .07 and a point .04, respectively. The
3 state indicted Burcham. At the Grand Jury, the state presented both blood samples, but did not
4 call an expert to testify about the BAC at the time of driving. Burcham convinced the District
5 Court that the state should have called an expert to the grand jury to testify about the retrograde
6 extrapolation. Burcham relied upon Mata v. State, 46 S.W.3d 902 (Tex.Crim.App.2001).
7 Mata had held that the complexity of performing a retrograde extrapolation at trial meant that
8 state needed to call an expert to the grand jury to testify about retrograde extrapolation. The
9 State appealed the District Court's ruling.

10 The Supreme Court held that the state did not need to call an expert to the grand jury
11 to testify about a retrograde extrapolation. The Supreme Court held that so long as the state
12 presented two samples, taken one hour apart, and the second one was lower, the state did not
13 need to call an expert to testify about a retrograde extrapolation. The court held, "Similarly,
14 in this case, the two BAC tests suggested that Burcham's BAC was dropping and that it court
15 have therefore been 0.08 when he was driving. We conclude that because the State's burden
16 at a grand jury proceeding is to present slight or marginal evidence to support an inference
17 that the accused committed the crime charged, specific scientific evidence and expert
18 testimony concerning retrograde extrapolation are not required. Such a requirement would
19 place a tremendous burden on the State to produce, during grand jury proceedings, evidence
20 addressing the man factors involved with retrograde extrapolation, as discussed above."

21 Burcham, at 1261.

22 Furthermore, Burcham specifically approves of retrograde extrapolation at trial. The
23 court stated that "In Anderson v. State, this court recognized the use of retrograde
24 extrapolation to estimate a Defendant's BAC at the time of an accident. In that case, a
25 forensic chemist testified that the standard metabolism rate of alcohol is approximately 0.02
26 percent per hour, and he extrapolated backwards to estimate that the Defendant's BAC was
27 0.128 when he was driving." Burcham, at 1258.

28 ///

1 Finally, Burcham expressly stated that it was considering whether the state must present
2 expert testimony regarding retrograde extrapolation at a grand jury and not at trial. The court
3 stated, “We conclude that Mata is unpersuasive here because the Mata court addressed whether
4 expert testimony on retrograde extrapolation was reliable in a jury trial, not whether expert
5 testimony should be required when the State relies on retrograde extrapolation in grand jury
6 proceedings.” Burcham, at 1259.

7 State v. Dist. Ct (Armstrong), 127 Nev. 927 (2011) does not support the Defendant’s
8 argument. This case holds that the District Court had discretion to admit evidence as it sees
9 fit. Armstrong stated the holding as follows: “Under the circumstances presented, we cannot
10 say that the district court manifestly abused or arbitrarily or capriciously exercised its
11 discretion, that is, applied a clearly erroneous interpretation of the law or one not based on
12 reason or contrary to the evidence or established rules of law.” Armstrong, at 937. Later,
13 Armstrong expressly stated the narrow scope of its holding in the case at bar. The court stated
14 expressly that each district court must determine, when the state only has one blood draw, the
15 admissibility of retrograde evidence on a case by case basis. The Court stated, “There may be
16 circumstances consistent with this opinion in which a calculation based on the results of a
17 single blood sample is reliable and whose relevance is not substantially outweighed by the
18 danger of unfair prejudice; that is up to the district court to determine on a case – by – case
19 basis.” Armstrong, at 937. The Supreme Court merely held that the Court did not abuse its
20 discretion when it excluded the retrograde extrapolation.

21 These block quotations reveal three more important points regarding the holding of
22 Armstrong. First, the holding specifically concerns only single blood draw extrapolation, not
23 those based upon 2 blood draws. Since there are two blood draws in the case at bar, Armstrong
24 does not even apply. Second, the court specifically stated the state may actually admit
25 retrograde evidence even when it only has one blood draw so long as it possesses enough
26 information. Finally, Armstrong address the admissibility of retrograde extrapolation at trial,
27 not a preliminary hearing or a grand jury. Since the issue in this Petition concerns the
28 admissibility of two blood draws at a prelim, Armstrong does not apply.

1 CONCLUSION

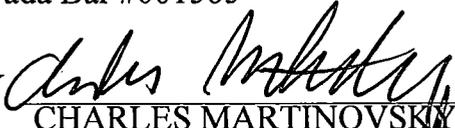
2 The court should reject the Defendant's arguments. First, the state presented sufficient
3 evidence at the prelim to allow the court to draw the reasonable inference that slight to
4 marginal evidence indicated the Defendant was driving the red Mercedes. Second, the state
5 properly admitted two blood samples taken one hour apart to allow the court to hold the
6 Defendant to answer for all theories of liability. Sheriff v. Burcham, 124 Nev. 1247 (2009) is
7 exactly on point and basically constitutes black letter law that the state does not need to present
8 an expert to testify regarding retrograde extrapolation at a prelim so long as it has two blood
9 samples taken one hour apart and the second one is lower than the first.

10 Finally, Armstrong does not support the Defendant's position. At best the court holds
11 that the District Court did not abuse its discretion when it excluded evidence of retrograde
12 extrapolation. This is hardly a ringing endorsement of the holding nor does it establish a rule
13 of law which all courts must follow. On the contrary, Armstrong specifically indicates that,
14 when a court is considering whether to admit retrograde evidence when the state only has one
15 blood draw, each court must address the issue on a case by case basis. Furthermore, Armstrong
16 specifically discusses the admissibility of retrograde extrapolation testimony at trial when the
17 state only has one blood sample. Neither of those conditions obtain here: the state had two
18 blood samples, and admitted them at the prelim.

19 DATED this 24th day of July, 2018.

20 Respectfully submitted,

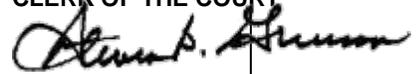
21 STEVEN B. WOLFSON
22 Clark County District Attorney
23 Nevada Bar #001565

24 BY 
25 CHARLES MARTINOVSKI
26 Chief Deputy District Attorney
27 Nevada Bar #007439

28 ///

///

///



1 MOT
2 MAYFIELD GRUBER & SHEETS
3 Damian Sheets, Esq.
4 Nevada Bar No. 10755
5 Kelsey Bernstein, Esq.
6 Nevada Bar No. 13825
7 726 S. Casino Center Blvd.
8 Las Vegas, Nevada 89101
9 Telephone: (702) 598-1299
10 Facsimile: (702) 598-1266
11 dsheets@defendingnevada.com
12 Attorney for Defendant
13 Henry Aparicio

9 **EIGHTH JUDICIAL DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 State of Nevada,) Case No.: C-18-332496-1
12 Plaintiff) Dept. No: VIII
13 vs.) **MOTION FOR DISQUALIFICATION AND**
14 Henry Aparicio,) **AFFIDAVIT IN SUPPORT**
15 Defendant)
16 _____)

17 COMES NOW, Defendant Henry Aparicio, by and through his attorney of record,
18 DAMIAN SHEETS, ESQ. of the firm Mayfield Gruber & Sheets, hereby submits this Motion
19 for Disqualification and Affidavit in Support.
20

21 Pursuant to NRS 1.235(5)(a), upon the filing of the instant Motion and Affidavit,
22 Defendant respectfully requests this Court “immediately transfer the case to another
23 department of the court, if there is more than one department of the court in the district, or
24 request the judge of another district court to preside at the trial or hearing of the matter.”
25

26 ///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF THE CASE**

3 Following a full and contested preliminary hearing in the Las Vegas Justice Court,
4 Defendant Henry Aparicio was bound over to the Eighth Judicial District Court, Department
5 8, to answer for the charges of Driving Under the Influence Resulting in Death (and other
6 lesser included offenses). The Information was filed on June 5, 2018.

7
8 On July 5, 2018, Defense filed a Motion in Limine to Exclude Evidence of Retrograde
9 Extrapolation. In this case, Mr. Aparicio’s blood draw occurred outside of two hours, and
10 the State provided, through discovery, an expert retrograde extrapolation report. The
11 Motion to Exclude this report argued that the State’s expert improperly used a linear
12 retrogression model, taking into account only “Mr. Aparicio’s body weight and gender” to
13 reach its conclusion, i.e. the extrapolated blood alcohol content measurement. Defense
14 argued this conclusion was reached in direct violation of the Nevada Supreme Court’s
15 holding in *State v. Dist. Ct. (Armstrong)*, 127 Nev. 927, 936, 267 P.3d 777, 783 (2011), which
16 articulated no less than fifteen distinct factors to consider before an extrapolation can be
17 scientifically and legally reliable. In response, the State argued that *Armstrong* is not
18 applicable to this case because more than one blood draw was obtained. The State also
19 presented additional information regarding what Mr. Aparicio ate and drank, but this
20 information was only recently disclosed and not used by the expert in reaching the
21 extrapolation result. The Court denied the Motion, ruling that it was “perfectly reasonable”
22 to conduct a retrograde extrapolation using the information presented. Additionally, in
23 reaching its conclusion, the Court made several statements that were immediately
24
25
26
27
28

1 concerning. Specifically, the Court stated “And he was doing over a 100 miles an hour,
2 killed two people.”

3
4 Shortly thereafter, on July 20, 2018, Defense filed a Petition for Writ of Habeas
5 Corpus challenging the probable cause at the preliminary hearing. Specifically, although
6 approximately 15-20 people witnessed the auto collision, not a single person could identify
7 Mr. Aparicio as the driver. Another female was also present in the vehicle; she was found
8 unconscious on the passenger seat, but testimony during the preliminary hearing revealed
9 that she was not wearing a seatbelt and there was also damage to the windshield. The
10 Court denied the Petition, claiming that Mr. Aparicio’s presence on the curb outside of the
11 vehicle following the accident was sufficient probable cause that he was the driver of the
12 vehicle; notably, the State conceded immediately after this ruling that Mr. Aparicio’s mere
13 presence alone would actually *not* be sufficient probable cause.
14

15
16 Given that the Court had previously ruled the State’s expert report on retrograde
17 extrapolation was permissible despite relying on only two of the fifteen required
18 *Armstrong* factors, Defense thereafter submitted an ex parte request for investigative fees
19 for the Defense to hire a rebuttal expert or investigator, attaching financial disclosures to
20 support a finding of indigency. The Court summarily denied the request in chambers.
21

22 Specifically, the Order states:

23
24 THE COURT HEREBY FINDS, pursuant to the Ex Parte Motion, that
25 Defendant provided a total monthly income in the amount of \$1,084,
26 total monthly debts in the amount of \$1,515, and total assets in the
27 amount of \$400,
28

1 THE COURT HEREBY ORDERS Defendant's Ex Parte Motion for
2 Authorization of Employment of Investigator and Payment of Fees is
3 **DENIED** for an insufficient showing of indigency.

4 Without the availability to funds to hire an investigator or expert witnesses, Defense
5 Counsel ran into extreme difficulty findings experts willing to participate with such limited
6 available funding. Therefore, the Defense was forced to file a Motion to Continue the Trial
7 Date. The Motion was granted, and Calendar Call is currently set in this matter on July 31,
8 2019; jury trial is scheduled to begin on August 5, 2019.

9
10 **II. PROCEDURE FOR DISQUALIFICATION**

11
12 The grounds to request disqualification of a judge other than a Supreme Court
13 Justice or Judge on the Court of Appeals is set forth in NRS 1.230-.235; NRS 1.230(1) states:
14 "A judge shall not act in such an action or proceeding when the judge entertains actual bias
15 or prejudice for or against one of the parties to the action." It is on this basis that the instant
16 Motion for Disqualification is sought.

17
18 Procedurally, the party seeking disqualification must file an Affidavit specifying the
19 facts upon which disqualification is sought and serve the documents upon the judge sought
20 to be disqualified. Pursuant to NRS 1.235(1)(a), the request must be filed not less than 20
21 days before the date set for trial or hearing of the case. Trial in this matter is set for August
22 5, 2019, and therefore the instant Motion is timely.

1 **III. STANDARD FOR DISQUALIFICATION**

2
3 “Quite simply and quite universally, recusal was required whenever impartiality
4 might reasonably be questioned.” *Liteky v. United States*, 510 U.S. 540, 548, 114 S. Ct. 1147,
5 1154 (1994). “[A defendant] is entitled to a neutral and detached judge in the first
6 instance.” *Matter of Ross*, 99 Nev. 1, 13, 656 P.2d 832, 839 (1983); see also, *Ward v. Vill. Of*
7 *Monroeville, Ohio*, 409 U.S. 57, 59, 93 S.Ct. 80, 82 (1972). The concept of a neutral and
8 unbiased decisionmaker has been a cornerstone of American law since its inception.
9

10 Comments made by the Court which show bias, prejudice or any similar concept of
11 pre-disposition which call into question the neutrality of a trial may be grounds for
12 reversal. *Holderer v. Aetna Cas. & Sur. Co.*, 114 Nev. 845, 963 P.2d 459 (1998). In *Rudin v.*
13 *State*, 120 Nev. 121, 86 P.3d 572 (2004), the Nevada Supreme Court also held that
14 comments which “reflect any animus” towards one party are problematic. *See also, Leonard*
15 *v. State*, 114 Nev. 1196, 1211, 969 P.2d 288, 298 (1998) (“While the court may have
16 displayed some irritation with defense counsel, the clear intent of its remarks was to save
17 time; it was not directing animus towards defense counsel”).
18

19 Statements which “express an opinion as to the merits or the outcome of any
20 ongoing proceedings” is similarly problematic. *Goldman v. Bryan*, 104 Nev. 644, 651, 764
21 P.2d 1296, 1300 (1988). “Remarks of a judge made in the context of a court proceeding are
22 not considered indicative of improper bias or prejudice unless they show that the judge has
23 closed his or her mind to the presentation of all the evidence.” *Cameron v. State*, 114 Nev.
24 1281, 1282, 968 P.2d 1169, 1170 (1998). A judge must remain “open-minded enough to
25
26
27
28

1 refrain from finally deciding a case until all of the evidence has been presented” in order to
2 remain impartial. *Id.* at 1283.

3 To support disqualification, the moving party must point to facts in the record “to
4 suggest that the district court’s decision was colored by bias or a lack of impartiality.”
5 *Rudin*, 120 Nev. at 142. Particular attention will be paid when improvident conduct by the
6 district court judge would prejudice the litigant’s rights to a fair trial. *Parodi v. Washoe Med*
7 *Ctr., Inc.*, 111 Nev. 365, 366, 892 P.2d 588, 589 (1995). In *Parodi*, the Nevada Supreme
8 Court found error because “the totality of the conduct may have a prejudicial effect on the
9 jury’s view” of the case. *Id.* at 369. See also, *Leonard v. State*, 114 Nev. 1196, 1213 (1998).

12 IV. GROUNDS FOR DISQUALIFICATION IN THIS CASE

13
14 With all due respect, Defense believes there are sufficient grounds on the record in
15 this case to question the impartiality of the District Court, and therefore Defense requests
16 reassignment to a new department. The grounds will be presented chronologically, and
17 represent both a combination of the formal rulings made as well as the statements by the
18 Court, while on the record, in Mr. Aparicio’s matter.

19 1. *Motion in Limine to Exclude Retrograde Extrapolation*

20
21
22 On this issue, the Court ignored Nevada Supreme Court precedent to allow the
23 admission of an expert conclusion based on information, disclosed after the fact, that was
24 **not** known to or considered by the expert when performing the retrograde extrapolation.
25
26
27
28

1 Summarily, the expert's extrapolation result was ruled admissible based on information
2 that the expert did not ever have access to when calculating that result.

3
4 Generally speaking, retrograde extrapolation is a mathematical process that uses
5 blood alcohol results taken outside of two hours to "guess" or "extrapolate" what the blood
6 alcohol results would have been had they been taken within the two hour window.
7 However, the process for reverse engineering a person's blood alcohol content for a
8 criminal matter is not a simple task, as the results depend on the person's gender, height,
9 weight, age, what they drank, when they drank, what they ate, when they ate, how much
10 time had elapsed, etc.
11

12 This basic premise is reflected in the Nevada Supreme Court's holding in *State v.*
13 *Dist. Ct. (Armstrong)*, 127 Nev. 927, 936, 267 P.3d 777, 783 (2011), wherein the Court held
14 that retrograde extrapolation is **not** admissible unless the calculation takes into account
15 the following factors:
16

17 We agree that achieving a reliable retrograde extrapolation calculation
18 requires consideration of a variety of factors. The following factors are
19 relevant to achieving a sufficiently reliable retrograde extrapolation
20 calculation: (1) gender, (2) weight, (3) age, (4) height, (5) mental state,
21 (6) the type and amount of food in the stomach, (7) type and amount of
22 alcohol consumed, (8) when the last alcoholic drink was consumed, (9)
23 drinking pattern at the relevant time, (10) elapsed time between the
24 first and last drink consumed, (11) time elapsed between the last drink
25 consumed and the blood draw, (12) the number of samples taken, (13)
26 the length of time between the offense and the blood draws, (14) the
27 average alcohol absorption rate, and (15) the average elimination rate.
28 We observe, as the *Mata* court did, that not every personal fact about
the defendant must be known to construct a reliable extrapolation, 46
S.W.3d at 916-17, but rather those factors must be balanced. *Id.*

26 In this case, the extrapolation result reached by the State's expert only took into
27 account Mr. Aparicio's body weight and gender, using a linear model which actually
28

1 *excluded* consideration of all of the above-listed factors. In fact, per the State’s report, the
2 expert used a linear rate that was published over 25 years ago to reach its conclusion.

3
4 In response to the Defense Motion, the State argued that it was *now* in possession of
5 receipts which purportedly showed what Mr. Aparicio ate and drank the night of the
6 accident. However, this information gathered *after* the expert reached the extrapolation
7 result utilizes multiple assumptions – for example, assuming that Mr. Aparicio drank the
8 purchased beverages instead of his partner, and assuming that he consumed the entirety of
9 menu items purchased instead of partial portions. Additionally, this information is entirely
10 irrelevant to the reliability of the underlying extrapolation result because *the expert did not*
11 *have this information when calculating the extrapolated blood alcohol result.* The Court ruled
12 that information now possessed by the State, yet was never provided to the expert,
13 somehow makes the expert’s conclusion more reliable as a matter of law. It is the Defense’s
14 position that it is arbitrary and capricious to rule that the expert’s conclusion, which by
15 itself failed to abide by the requirements in *Armstrong*, is more reliable based on
16 subsequent information that was not provided to that expert.
17
18

19 In conjunction with the Court’s ruling, statements made on the record are also
20 gravely concerning to the Defense with respect to Mr. Aparicio’s ability to receive a fair
21 trial. Specifically, *the Court stated on the record that Mr. Aparicio killed two people.* The crux
22 of this entire case is identity – Mr. Aparicio never said he was the driver, none of the 15+
23 witnesses could place him behind the wheel, and another individual was also present in the
24 vehicle during the collision. The Court’s statement that Mr. Aparicio was not only driving
25 but had killed two people is a clear pre-disposition before the close of evidence in this case.
26
27
28

1 After making this statement, the Court held that it was going to deny the Motion to
2 Exclude because “retrograde extrapolation is extremely reasonable in this particular case.”
3 The Court failed to articulate how the extrapolation survives analysis under *Armstrong* and
4 failed to address the Defense arguments entirely before making its ruling. After the fact,
5 Defense tried to create a record as to the basis for the denial, and the Court continually cut
6 off Counsel’s arguments:
7

8
9 MR. SHEETS: ... just so the record is clear, I think our position was that
10 the report didn’t indicate that he had used any of the facts that we’re
11 talking about [the receipts], the time he had drank, what he had eaten. I
12 don’t think the expert’s report –

13 THE COURT: Thank you.

14 MR. SHEETS: And that was kind of our biggest thing and it didn’t –

15 THE COURT: All right (Transcripts, July 23, 2018, 4: 1).

16 2. *Petition for Writ of Habeas Corpus*

17 Defense would also strongly encourage this Court to view the JAVs recordings for
18 July 23, 2018 and August 8, 2018. The general demeanor, tone and facial expressions of the
19 District Court during these hearings is also significant in this case. For example, this Court
20 should review the hearing on July 23, 2018 to see firsthand the District Court’s demeanor
21 when the Court stated that Mr. Aparicio killed two people, and then also when the Court
22 learned that Defense had filed a Petition for Writ of Habeas Corpus to challenge the
23 probable cause finding at Mr. Aparicio’s preliminary hearing. Specifically, the Court audibly
24 scoffed at the notion that the Defense would file a Writ, creating a direct insinuation that
25 the Court believed a writ would have no merit prior to one ever being filed.
26
27
28

1 On that note, the Petition for Writ of Habeas Corpus presented only one issue –
2 there was no evidence presented whatsoever, let alone slight or marginal, that Mr. Aparicio
3 was the driver of the vehicle. Prior to the hearing on the matter, however, the Court was
4 notably disdainful towards Defense Counsel:
5

6 MR. SHEETS: Your Honor, I can tell Your Honor that for some reason I
7 didn't receive a copy of the State's response. I did download it when I
8 got on Odyssey on Monday.

9 THE COURT: You must have had time because you didn't show up for
10 court.

11 MR. SHEETS: I had five separate district courts on that day so-

12 THE COURT: I don't care.

13 MR. SHEETS: So, I mean, I can argue it orally or if you want my Reply
14 Your Honor, or if you want –

15 THE COURT: You can argue it (Transcripts, August 8, 2012, 2: 16).

16 In their response to the Habeas Petition, the State argued that *Armstrong* did not
17 apply to this case at all because the holding was limited to single-blood draw cases only.
18 Defense responded that this is an improper limitation of the *Armstrong* holding, but the
19 Court did not consider the argument. Instead, the Court found that Mr. Aparicio's presence
20 on the curb outside of the vehicle following the accident was sufficient probable cause that
21 he was the one driving the vehicle.
22

23 MR. SHEETS: She [the other occupant] was in the passenger seat but
24 there was also –

25 THE COURT: Oh.

26 MR. SHEETS: - a discussion about how she wasn't a seat – how she
27 wasn't wearing a seatbelt, Your Honor, and there was damage to the
28 windshield.

1 THE COURT: Please.

2
3 MR. SHEETS: So there's no evidence that would have suggested that she
4 couldn't have been ejected from that driver's seat and into the
5 passenger seat.

6 ...
7 THE COURT: Slight even marginal evidence is all that has to be shown
8 at a preliminary hearing.

9 MR. SHEETS: Right. But there has to be slight or marginal evidence -

10 THE COURT: There was.

11 MR. SHEETS: - sitting next to a car I don't believe creates the -

12 THE COURT: Well -

13 MR. SHEETS: - slight or marginal evidence -

14 THE COURT: - I think you're wrong (Transcripts, August 8, 2018, 6: 14;
15 8: 11).¹

16 Additionally, Defense Counsel reiterated that, at the previous hearing on the Motion
17 to Exclude the Retrograde Extrapolation, "Your Honor had mentioned at the last hearing
18 that I was present at, that my client killed two people, I think for purposes of preliminary
19 hearing we have to look at what was presented to that particular court. And Your Honor
20 was referencing things that were not part of the preliminary hearing at that prior hearing."
21 (Transcripts, August 8, 2018, 5: 1). The Court declined to clarify or provide context to its

22
23
24
25 ¹ Defense Counsel will note that the State provided supplemental argument regarding probable cause *after*
26 the District Court had made this ruling; however, since the instant Motion for Disqualification does not seek
27 to readdress the merits of the District Court's ruling except as it relates to disqualification, for purposes of
28 this Motion it should be noted that the Court made this ruling prior to the State's additional argument, and
therefore did not take the subsequent argument into consideration. However, it is noteworthy that **the State
also conceded during their argument that mere presence alone would not be sufficient probable
cause**, which directly contradicts the District Court's finding (9: 8).

1 earlier statement that would suggest it was anything other than a pre-disposition as to Mr.
2 Aparicio's guilt.

3
4 *3. Order Denying Investigative Fees*

5
6 This is perhaps the most egregious and concerning action by the District Court to
7 warrant disqualification. Following the District Court's decision to allow the State's
8 retrograde extrapolation expert, Defense Counsel filed an Ex Parte Motion for
9 Authorization of Employment of Investigator and Payment of Fees. This investigation was
10 necessary both for the general needs of the defense, as well as to rebut the State's expert
11 conclusion which the District Court had just permitted.

12
13 Mr. Aparicio provided financial disclosures that listed income in the amount of
14 \$1,084 per month, debts in the amount of \$1,515 per month, and assets in the amount of
15 \$400. Therefore, Mr. Aparicio presented a *negative* debt to income ratio, which on its face is
16 sufficient to qualify for government assistance. Despite these disclosures, which were
17 recognized by the Court, the Court nonetheless still denied the request for investigative
18 fees based on "an insufficient showing of indigency." Not only did the District Court just
19 permit an expert opinion that was contrary to controlling precedent, but the same Court
20 then excluded the Defense from employing an investigator to rebut that opinion based on a
21 lack of indigency when the Court also recognized Mr. Aparicio's negative debt to income
22 ratio.
23

24
25 The District Court's ruling to deny investigative fees marked the culmination of a
26 series of rulings and statements which demonstrate an arbitrary and capricious handling of
27
28

1 the case. The District Court's statements on the record, especially when viewed through
2 JAVs video, facially indicate a bias and animus against the Defendant in this case. In fact, the
3 Court stated on the record that Mr. Aparicio killed two people; there are fewer ways to
4 express a pre-disposition of guilt prior to the presentation of evidence. The District Court
5 was also very disrespectful towards Defense Counsel, often cutting him off when trying to
6 make a record of the Court's ruling.
7

8 The District Court's demeanor, coupled with rulings that are both contrary to law
9 and without legal foundation, have served to deprive Mr. Aparicio of a fair trial before the
10 trial has even commenced. The lack of impartiality, as noted on the record through the
11 transcripts and Order attached, is sufficient to warrant disqualification. The Court's
12 decision to deny the request for investigative fees directly inhibits the ability for Mr.
13 Apricio to pursue a complete defense to his case, in part because Mr. Aparicio now cannot
14 rebut the State's expert which the Court had ruled was admissible.
15
16

17
18 ///

19
20 ///

21
22 ///

23
24 ///

1 Therefore, under the law governing disqualification as set forth by both the United
2 States Supreme Court and the Nevada Supreme Court, Defense respectfully requests this
3 matter be reassigned to a new department. Additionally, Defense would request an
4 opportunity to renew the Motions filed in this case before a new judge, as the rulings made
5 by the District Court have a direct impact on the evidence which can be presented at trial.

6
7 DATED this 4 day of February, 2019.

8 By:
9 MAYFIELD GRUBER & SHEETS

10 By: /s/ Damian Sheets
11 Damian Sheets, Esq.
12 Nevada Bar No. 10755
13 726 S. Casino Center Blvd.
14 Las Vegas, Nevada 89101

1 **AFFIDAVIT IN SUPPORT OF DISQUALIFICATION**

2 STATE OF NEVADA)

3)ss.

4 COUNTY OF CLARK)

5 **DAMIAN R. SHEETS**, being first duly sworn, deposes and says:

- 6 1. That I am a duly licensed attorney in good standing able to practice law in the State
- 7 of Nevada.
- 8 2. That I represent Henry Aparicio, the named defendant in the Eighth Judicial District
- 9 Court, case no. C-18-332496-1.
- 10 3. That Mr. Aparicio’s case was assigned to Department 8 of the Eighth Judicial District
- 11 Court following a contested preliminary hearing.
- 12 4. That on numerous occasions, the District Court has displayed an animosity and pre-
- 13 disposition towards both myself and Mr. Aparicio in this matter, to wit:
- 14 a. By arbitrarily and capriciously ruling that the State’s expert opinion was
- 15 legally reliable based on information subsequently disclosed that was not
- 16 used to formulate that opinion;
- 17 b. By prohibiting me from creating a record as to the Court’s ruling;
- 18 c. By stating on the record that my client killed two people, thereby creating
- 19 a pre-disposition of guilt;
- 20 d. By making numerous statements, facial expressions, and intonations that
- 21 strongly imply an animosity towards myself and Mr. Aparicio;
- 22 e. By concluding that slight or marginal evidence existed that Mr. Aparicio
- 23 was driving the vehicle only due to his presence outside the vehicle after
- 24 the accident, although the State later conceded that “mere presence alone
- 25 is not enough” at the same hearing;
- 26 f. By allowing the State’s expert to testify as to retrograde extrapolation and
- 27 thereafter denying the Defense request for investigative fees to rebut this
- 28 expert;
- g. By finding “an insufficient showing of indigency” when Mr. Aparicio has a
- negative debt to income ratio by approximately -\$400/month;
- h. By making rulings and decisions which directly inhibit Mr. Aparicio’s
- ability to pursue a full and complete defense, and thereby prejudicing his
- trial;
- i. By any and all grounds as provided above in the instant Motion.
- 5. That I respectfully request this matter be reassigned to a new department in the
- Eighth Judicial District Court.

25 ///

27 ///

1 6. That I have read the above Motion for Disqualification, and I affirm the facts and
2 information presented to be true to the best of my recollection.

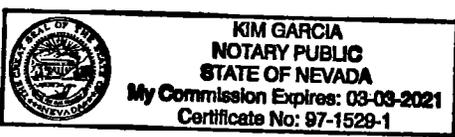
3
4 I declare under penalty of perjury that the foregoing is true and correct.

5
6 Executed on 2/11/19
(Date)

(Signature)

7 Kim Garcia

8 Notary Public
9 County of Clark



10 State of Nevada

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF COUNSEL**

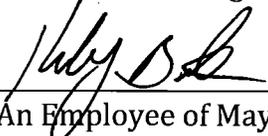
2 Pursuant to NRS 1.235(1), I hereby certify and affirm that the instant Motion and
3 Affidavit is filed in good faith and not interposed for the purpose of delay.
4

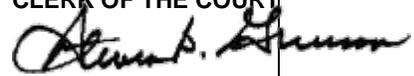
5 Dated this 1 day of February, 2019.

6 By: 
7 Damian Sheets, Esq.
8 Nevada Bar No. 10755
9 726 S. Casino Center Blvd.
10 Las Vegas, Nevada 89101

11 **CERTIFICATE OF SERVICE**

12 I HEREBY CERTIFY that on the 4 day of February, 2019 I served a true and
13 correct copy of the foregoing Motion to Disqualify and Affidavit in Support, upon the Eighth
14 Judicial District Court, Department 8, Hon. Douglas Smith, by serving him personally or by
15 leaving it at his chambers with a person of suitable age and discretion employed therein.
16

17 
18 An Employee of Mayfield Gruber & Sheets
19
20
21
22
23
24
25
26
27
28



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

HENRY APARICIO,
AKA HENRY BIDERMAN APARICIO,

Defendant.

CASE#: C-18-332496-1

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE
WEDNESDAY, JUNE 13, 2018

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
STATUS CHECK: TRIAL SETTING**

APPEARANCES:

For the State:

CHARLES S. MARTINOVSKY, ESQ.
Chief Deputy District Attorney

For the Defendant:

DANIEL F. LIPPMANN, ESQ.

RECORDED BY: GINA VILLANI, COURT RECORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Las Vegas, Nevada, Wednesday, June 13, 2018

[Hearing began at 9:13 a.m.]

THE COURT: C332496, Henry Aparicio.

THE MARSHAL: I called the attorney's office. I called both attorneys, left messages, the office was going to try to get ahold of them.

THE COURT: Do we have -- I have an updated sheet but. What's his name?

THE MARSHAL: I called Lippmann and I called Sheets.

THE COURT: Lippmann, do we have Lippmann's cell?

THE MARSHAL: Yeah.

[Colloquy between the Court and the Marshal]

[The Court makes telephone call]

[Hearing trailed at 9:15 a.m.]

[Hearing recalled at 9:25 a.m.]

THE COURT: C332496, Henry Aparicio.

MR. LIPPMANN: Aparicio.

THE COURT: Aparicio. How was that, better?

MR. LIPPMANN: Better.

THE COURT: All right. Let me get to page 10.

This is a status check on a trial setting. He is in custody. I don't know what his bail status is. I would like to know what his bail status is because this is driving under the influence with death.

MR. MARTINOVSKY: It's a half a million dollars.

THE COURT: Pardon?

1 MR. MARTINOVSKY: Half-million.

2 THE COURT: All right.

3 MR. MARTINOVSKY: It's alleged two deaths and a
4 substantial.

5 THE COURT: So why is it a status check on a trial setting?

6 MR. MARTINOVSKY: We went last Wednesday down on the
7 lower lever, after the prelim, and he invoked but they said he was going
8 to have to waive. I guess your first trial setting was August 30th. So then
9 Damian asked -- Mr. Sheets asked to come up here.

10 THE CLERK: August 13th.

11 MR. MARTINOVSKY: August 13th was the first trial setting.

12 THE COURT: All right.

13 MR. MARTINOVSKY: He didn't wanna. I don't know.

14 THE COURT: Well, you know what, that's the sad part of it is,
15 we have civil and we have criminal. And we're going to have to waive it,
16 whether he waives it or not. I guess you could be ready in a week. I can
17 try the case in a week.

18 MR. LIPPMANN: Given the nature of the case, given that
19 there is still outstanding discovery, I'm sure Mr. Sheets would request it
20 not be set in a week.

21 THE COURT: All right.

22 MR. LIPPMANN: But by August 13th waiving by one week --

23 THE CLERK: Three days.

24 THE COURT: Three days.

25 MR. LIPPMANN: Three days, Your Honor.

1 THE COURT: All right.

2 MR. LIPPMANN: I don't see an issue with that.

3 [Colloquy between the Court and the Clerk]

4 THE CLERK: So then he'd have to wait 10 days. If he -- if it --
5 from the date of arraignment.

6 MR. LIPPMANN: Regardless, the Court can't accommodate
7 within the 60. So waiving by 10 is what's needed.

8 THE COURT: All right. You don't want to waive by 10 but we
9 have civil that we can't set. So unless you go in two weeks, you've got
10 to have it set in August.

11 Do you understand?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Okay.

14 THE CLERK: So that's August 8th for calendar call; August
15 13th for jury trial.

16 THE COURT: Thank you.

17 MR. LIPPMANN: Thank you.

18 MR. MARTINOVSKY: I'm sorry, Madam Clerk, what time is
19 the jury trial?

20 THE CLERK: 8 o'clock for calendar call; 9:30 for trial.

21 MR. MARTINOVSKY: Thank you.

22 THE COURT: And give defense all *Brady* and statutory,
23 *Giglio* discovery.

24 MR. MARTINOVSKY: Yes, Your Honor.

25 Just for the record, we are -- I've spoken to the lab they're

1 testing DNA from the vehicle. I do have -- I just spoke to Mr. Lippmann.
2 I have a video from Dave and Buster's, but I have to -- I just got it last
3 night. So I'm going to make a copy.

4 I also have the coroner's reports. Those are being copied
5 today. I'll get those today.

6 And I have a stack of receipts from Casa Del Matador and
7 also from Dave and Buster's. And a bunch of handwritten statements
8 that we had gotten after the preliminary hearing, because people -- this
9 was one of the rare cases that went within two weeks of the actual
10 event.

11 So I told him I didn't want to give him all this today since I just
12 got the video and the coroner's reports. So I'll bring that over Thursday or
13 Friday.

14 THE COURT: Okay.

15 MR. LIPPMANN: That's fine, Your Honor.

16 MR. MARTINOVSKY: Thank you.

17 ///

18 ///

19 ///

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

And the DNA as soon as it's available.

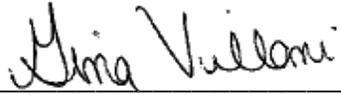
THE COURT: All right.

MR. MARTINOVSKY: Thank you.

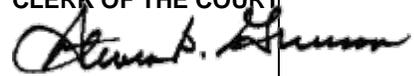
[Hearing concluded at 9:29 a.m.]

* * * * *

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



Gina Villani
Court Recorder/Transcriber



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

CASE#: C-18-332496-1
DEPT. VIII

vs.

HENRY APARICIO,
AKA HENRY BIDERMAN
APARICIO,
Defendant.

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE
MONDAY, JULY 16, 2018

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
DEFENDANT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF
RETROGRADE EXTRAPOLATION**

APPEARANCES:

For the State: KELSEY EINHORN, ESQ.
Deputy District Attorney

For the Defendant: DAMIAN R. SHEETS, ESQ.

RECORDED BY: GINA VILLANI, COURT RECORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Las Vegas, Nevada, Monday, July 16, 2018

[Hearing began at 9:13 a.m.]

THE COURT: C332496, Henry Ar -- Aparicio.

MR. SHEETS: Aparicio.

THE COURT: Aparicio.

It's your motion.

MR. SHEETS: Yes. Good morning, Your Honor.

With the Court's permission, I didn't get the -- the State's response until late week, if we could move this one week for me to do a reply.

THE COURT: Yeah, I haven't -- I haven't seen the State's response so.

MS. EINHORN: I'll make sure both parties receive that, Your Honor.

THE COURT: I've got a copy.

MS. EINHORN: Oh, okay.

THE COURT: I just hadn't had a chance to read it.

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. EINHORN: What was the date again?

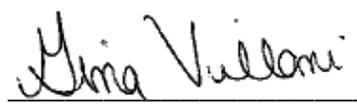
THE CLERK: July 21st.

MR. SHEETS: Thank you very much, Your Honor.

[Hearing concluded at 9:13 a.m.]

* * * * *

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



Gina Villani
Court Recorder/Transcriber

1 Las Vegas, Nevada, Monday, July 23, 2018

2
3 [Hearing began at 9:07 a.m.]

4 THE COURT: C332496, Henry Aparicio.

5 All right. It's your motion, Counsel.

6 MR. SHEETS: Yes, Your Honor.

7 THE CLERK: Can we have appearances.

8 MR. SHEETS: Damian Sheets on behalf of Mr. Aparicio
9 who's present in custody.

10 MR. MARTINOVSKY: Charles Martinovsky for the State,
11 7439.

12 MR. SHEETS: Your Honor, we filed our motion, the State filed
13 the opposition. I won't belabor you. I think we laid it all out in the
14 motion, the opposition.

15 THE COURT: Yeah, the motions are well written. I reviewed
16 the cases that were cited to.

17 Does the State want to say anything? They're not going to --
18 do you want to submit it?

19 MR. MARTINOVSKY: Yes, Your Honor.

20 THE COURT: One of the things in the case, I believe it was
21 *Armstrong* 127 Nevada 927 in 2011, that talked about retrograde
22 extrapolation. Not only did they take in the identifiers for this Defendant
23 but they took into account -- I mean they have -- they know from 5:30 to
24 8:30 what he drank and what he ate because he was at Dave and
25 Buster's. And I believe it was at that point that Dave -- that the

1 bartender at Dave and Buster's walked him out to his car because he
2 was too intoxicated and put him behind the wheel.

3 So they know how much he had to drink and eat then.
4 Nothing to eat and lots to drink. Then he went to the restaurant, I
5 believe he was the manager of, and they know that he bought six shots
6 of tequila and he finished that at about, as I recall, five -- I can't find my
7 notes right now -- but it was five minutes to 9:00. By 9:08 he had run
8 into the back of that Prius. His blood alcohol content was extremely high
9 in retrograde but they knew exactly what he drank, when he drank, and
10 how much food. And at that restaurant, I think he ordered jalapeno
11 poppers. And if he ate all of them, he had not much in his body.

12 But he hit that Prius, and I read the police reports on that, and
13 it knocked that Prius from zero to 50 miles an hour. It was stopped at a
14 light at Sahara and Hualapai. And I believe the car -- and it'll have -- it
15 was a newer Mercedes, the red Mercedes, that the black box in the
16 newer cars can tell you to the second how fast you were driving when
17 that airbag deployed. And he was doing over a 100 miles an hour, killed
18 two people.

19 Extrapolation, retrograde extrapolation is extremely
20 reasonable in this particular case. The Defendant's motion to -- in limine
21 to exclude evidence of retrograde extrapolation is denied. The State will
22 prepare a findings of fact, conclusions of law consistent with their
23 opposition and this Court's decision today.

24 Thank you.

25 MR. SHEETS: And if I could -- and I'm not trying to get Your

1 Honor to change your mind -- just so the record is clear, I think our
2 position was that the report didn't indicate that he had used any of those
3 factors that we're talking about, the time he had drank, what he had
4 eaten. I don't think the expert's report --

5 THE COURT: Thank you.

6 MR. SHEETS: -- and that was kind of our biggest thing and it
7 didn't --

8 THE COURT: All right.

9 MR. SHEETS: A couple of housekeeping issues though,
10 since I've got the State here, we did file our petition for a writ, Your
11 Honor, consistent with that. We're obviously waiving our right to a
12 speedy trial. I was gonna ask if maybe we can go ahead and continue
13 the trial now. And I know Mr. Martinovsky would like to set a specific
14 schedule for responding to the writ because he's gonna be out of the
15 jurisdiction as well. So I wonder if we could just kind of clean that up
16 while we're here. I don't know if Your Honor's --

17 THE COURT: You filed the writ?

18 MR. SHEETS: We did. It was filed late --

19 THE COURT: Challenging what?

20 MR. SHEETS: The probable cause from the preliminary
21 hearing.

22 MR. MARTINOVSKY: It was filed on Friday.

23 Mr. SHEETS: Yes.

24 THE COURT: It was filed on Friday?

25 MR. MARTINOVSKY: Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: How much time do you need to respond?

MR. MARTINOVSKY: I already -- I mean, I don't need much time. I just -- I'm not gonna be here next week because I'll be in Disney. So if we could just set -- I don't know how you want -- and his didn't have a date on it. His motion didn't have a -- it hadn't been calendared yet as far as I could see.

MR. SHEETS: I don't -- I don't know. I was out of the jurisdiction on Friday.

THE COURT: I haven't see that so.

MR. SHEETS: I'm fine with whatever schedule the State wants to be on.

THE CLERK: It's scheduled for hearing on August 6th.

THE COURT: All right.

MR. MARTINOVSKY: Oh, that's fine.

THE COURT: All right. We're gonna argue August 6. You file a response by then, you file a reply by then, we're going to have the argument. We don't -- and we can deal with resetting the trial at that time.

///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. MARTINOVSKY: Thank you, Your Honor.

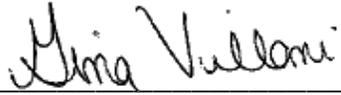
MR. SHEETS: Thank you, Your Honor.

THE COURT: Thanks.

[Hearing concluded at 9:12 a.m.]

* * * * *

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



Gina Villani
Court Recorder/Transcriber

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Las Vegas, Nevada, Wednesday, August 8, 2018

[Hearing began at 8:47 a.m.]

THE COURT: C332496, Henry Aparicio.

Are you ready to go to trial?

MR. SHEETS: This is argument for writ today, Your Honor.

THE COURT: No, that was -- you didn't show up for the argument on the writ.

MR. SHEETS: So did Your Honor summarily deny the writ then at that point?

THE COURT: No, I don't -- I don't remember if it's on --

[Colloquy between the Court and the Clerk]

THE COURT: All right. Argue your writ.

MR. SHEETS: I had it on for argument and resetting of the trial date.

Your Honor, I can tell Your Honor that for some reason I didn't receive a copy of the State's response. I did download it when I got on Odyssey on Monday.

THE COURT: You must had time because you didn't show up for court.

MR. SHEETS: I had five separate district courts on that day so.

THE COURT: I don't care.

MR. SHEET: So, I mean, I can argue it orally if you want my reply Your Honor, or if you want --

1 THE COURT: You can argue it.

2 MR SHEETS: Okay. So after having read the State's
3 response, Your Honor, I do have a couple of brief points that I kind of
4 want to address.

5 First of all, I think that the State's response doesn't properly
6 apply *Armstrong* and it doesn't properly interpret *Armstrong*. And with all
7 due respect to Mr. Martinovsky, who I think is a very fine attorney; I just
8 think that the picture that he's painting regarding *Armstrong* and how it
9 applies almost kind of improperly narrows the scope of what *Armstrong*
10 is about.

11 If you would believe the State's response, *Armstrong* should
12 only apply two cases where there are -- there's only one blood draw.
13 And I don't think that *Armstrong* at all lays out that proposition. I think, in
14 fact, the crux or the underlying meat of the *Armstrong* ruling is
15 specifically addressing whether or not the physical factors exist that can
16 be used to properly extrapolate blood when they don't have a three
17 blood draw extrapolation. And I think that's where we're looking at it
18 differently.

19 The State would have you think that, oh, because there's two
20 all of a sudden an extrapolation can be done. That's not what *Armstrong*
21 is addressing. *Armstrong* was addressing the fact that extrapolation is a
22 medical science that requires medical, physical data when turning
23 around and calculating that extrapolation. And absent that concrete
24 medical data, you do not have what you need for that extrapolation to be
25 legally admissible because there are questions as to its reliability and

1 questions as to its authenticity.

2 And in this case I think that's exactly what applies. The State
3 would have the Court believe that the evaluator factored all these things
4 in; however, the report that Your Honor has does not factor those things
5 in.

6 The State would also have you believe that simply because
7 there's a receipt that says drinks were bought that that's evidence that
8 there were receipts -- that was evidence that my client specifically
9 engaged in drinks. But what we're doing is we're creating a whole lot of
10 assumption.

11 So in this particular circumstance as it was presented for the
12 preliminary hearing, we have a situation where I believe there's been an
13 improper use of *Armstrong*. There's an improper reliance on *Armstrong*.
14 And in this particular matter, the State's trying to completely remove
15 *Armstrong* because they know that *Armstrong* has a direct negative
16 impact on their case. And so if they can try to improperly restrict
17 *Armstrong* to only single blood draw situations, they're ignoring the
18 complete discussion that underlies that entire case talking about the
19 physical information that needs to be asked for, that needs to be
20 obtained, and needs to be used in the calculation of this extrapolation.

21 And in this particular case, he's talking about using a simple
22 linear extrapolation, that's what his report says. And it doesn't factor in
23 any of that physical information. That is exactly why *Armstrong* applies.
24 Because when this is not done, that is not a proper extrapolation.

25 Additionally, with regards to the actual physical control, there

1 has -- while Your Honor has heard argument and Your Honor had
2 mentioned at the last hearing that I was present at, that my client killed
3 two people, I think that for the purposes of preliminary hearing we have
4 to look at what was presented to that particular court. And Your Honor
5 was referencing things that were not part of the preliminary hearing at
6 that prior hearing. This writ deals specifically with that. And what we
7 had was every single witness say that they did not see or know who was
8 operating the motor vehicle.

9 Now, the State, you know, says, oh, he was there; he must
10 have been operating the motor vehicle. Well, they had a witness testify
11 who was there. So how do we know he wasn't operating the motor
12 vehicle? They had a girl that was there. For the purposes of preliminary
13 hearing, there was no evidence. In fact, when asked there was no
14 statement by any of the witnesses that the person who was in the
15 passenger seat of the car couldn't have been the person in the driver
16 seat of that car.

17 THE COURT: Except she was unconscious --

18 MR. SHEETS: Well, of course she was --

19 THE COURT: -- when the police got there.

20 MR. SHEETS: That -- that's --

21 THE COURT: He was out on the curb crying.

22 MR. SHEETS: He was out on the curb, correct, Your Honor.
23 He was being massaged.

24 But that doesn't mean that he was operating that motor
25 vehicle. That's --

1 THE COURT: All right.

2 MR. SHEETS: -- that's the problem. When -- even by the
3 testimony of the witnesses when officer's arrived there were -- there
4 were a -- quite a -- quite a few people. There were a ton of people there.
5 And, in fact, even the independent witness that comes out says that
6 there were a -- quite a few people here.

7 Now, the State tried to illicit the term that the witness was
8 implying that my client was a suspect, I objected, and that was then
9 removed, that qualifier. So what you have is a guy who responds to the
10 scene -- or a lay person who's on the scene who says, listen, there's a
11 whole bunch of people around, there's one guy that's being held by a
12 bunch of other people, but he wasn't in the car and can't use the term
13 suspect, and there were all these other people there and then there was
14 a girl in the car. The girl was unconscious in the car but there was also
15 damage to the windshield. And when specifically --

16 THE COURT: Where was she sitting in the car?

17 MR. SHEETS: She was in the passenger seat but there was
18 also --

19 THE COURT: Oh.

20 MR. SHEETS: -- a discussion about how she wasn't a seat --
21 how she wasn't wearing a seatbelt, Your Honor, and there was damage
22 to the windshield.

23 THE COURT: Please.

24 MR. SHEETS: So there's no evidence that would have
25 suggested that she couldn't have been ejected from that driver's seat

1 and in the passenger seat.

2 The fact of the matter is there was a single person within that
3 motor vehicle. Not one, not one of the officers testified that my client
4 admitted to being the operator of the motor vehicle. Not one of the
5 witnesses testified that they saw my client inside that motor vehicle. So
6 what we have is we have to have evidence. There has to be cognizable
7 evidence that my client is in that driver's seat. And at that preliminary
8 hearing there was no evidence whatsoever presented that puts my client
9 in that seat. The only assumption that we're making is because he's
10 sitting in proximity to the car he must, he must have been the one that
11 was operating or in actual physical control of the motor vehicle.

12 The case law is very clear. You cannot operate on a hunch
13 and that's exactly what they're doing. I suspect that he was in the car
14 because he was sitting -- because he's sitting next to the car. And that's
15 just not enough. The case law is very clear and the evidence presented
16 at the preliminary hearing is what Your Honor has to base your opinion
17 on when --

18 THE COURT: Sure.

19 MR. SHEETS: -- when having this particular ruling. And there
20 is just not sufficient evidence to do that. Not one of the witnesses asked
21 to directly on cross. They supposedly, according to one of the
22 witnesses, there are these 20 people, 15 to 20 people that are around
23 this car, not one of them comes to testify at the preliminary hearing say I
24 saw this guy behind the wheel. In fact, the one guy who gets there
25 right -- pretty much right after the accident doesn't see him behind the

1 wheel either.

2 At the preliminary hearing they don't have any blood on the
3 car, they don't have, you know, they don't have any DNA on the car,
4 they don't have any DNA on the airbag. They have none of that
5 information.

6 THE COURT: All of your argument is really addressed at a
7 jury question.

8 MR. SHEETS: Quite frankly, Your Honor, that's not a jury
9 question, that's a preliminary hearing question whether sufficient to the
10 evidence was provided.

11 THE COURT: Slight even marginal evidence is all that has to
12 be shown at a preliminary hearing.

13 MR. SHEETS: Right. But there has to be slight or marginal
14 evidence --

15 THE COURT: There was.

16 MR. SHEETS: -- sitting next to a car I don't believe creates
17 the --

18 THE COURT: Well --

19 MR. SHEETS: -- slight or marginal evidence.

20 THE COURT: -- I think you're wrong.

21 MR. SHEETS: Well, you know, because if we base our
22 standard on that, Your Honor, then any of the other 10 to 15 people
23 there around the car could have also have been charged with the same
24 thing based on that standard, Your Honor.

25 Based on that, I'd submit.

1 THE COURT: All right. Mr. Martinovsky?

2 MR. MARTINOVSKY: Well, Your Honor, as to the *Armstrong*
3 issue, there's a case right on point, *Burcham*, which basically says that
4 at prelim because the standard is so low the State can admit two
5 different blood samples taken an hour apart without calling an expert to
6 testify. That's black letter law.

7 And then as to the identification of the Defendant as the driver,
8 obviously it's slight to marginal. Mere presence is alone is not enough
9 but we have two witnesses testify that he said, did I kill two people?

10 We have a detective who testified that we have a girl in the
11 passenger seat but she wasn't just there, her purse was tucked
12 underneath the passenger seat with all her identification. And the
13 detective testified no one was in the backseat because of the distribution
14 of the glass, the Defendant had injuries on his face consistent with
15 having been in a collision. There was blood on the steering wheel and
16 he was expressing concern for the passenger saying, go save her, go
17 save her.

18 As well as the fact that Brandon McCauley said that he saw a
19 crowd of people, and his words from Mr. Sheets' question, and
20 McCauley's words were there were a crowd of people apprehending
21 him.

22 THE COURT: All right.

23 MR. MARTINOVSKY: So I think that because of the evidence
24 it's slight to marginal and we did present more than just mere presence.

25 THE COURT: Thanks.

1 Based on pleadings and argument, it's clear, crystal clear to
2 the Court that there was slight even marginal evidence that was
3 presented at the justice court. It was crystal clear that the testing of the
4 blood was -- would satisfy *Armstrong*. Absolutely crystal clear.

5 The writ is denied. The State will prepare a findings of fact,
6 conclusions of law consistent with their opposition.

7 Now what about the trial date?

8 MR. SHEETS: Your Honor, we're waiving speedy. So if we
9 can set it in the ordinary course, I'd be looking for something after the
10 first of the year, please.

11 THE COURT: Is that what you want to do after -- under the
12 circumstances and after discussing the matter fully with your attorney,
13 Mr. Aparicio?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: All right. You're satisfied that's in your best
16 interest?

17 THE DEFENDANT: Yes Your Honor.

18 THE COURT: All right. Speedy trials waived, we'll set it in
19 January.

20 THE CLERK: Is it a week?

21 MR. MARTINOVSKY: It's a week.

22 THE CLERK: Okay. So January 23rd calendar call; January
23 28th.

24 MR. MARTINOVSKY: Thank you.

25 MR. SHEETS: And, Madam Clerk, what are the times on

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

those?

THE CLERK: 8 o'clock and 9:30.

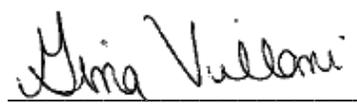
MR. SHEETS: Thank you very much, Your Honor.

MR. MARTINOVSKY: Thank you.

[Hearing concluded at 8:58 a.m.]

* * * * *

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



Gina Villani
Court Recorder/Transcriber

1 ORD
2 MAYFIELD GRUBER & SHEETS
3 Damian Sheets, Esq.
4 Nevada Bar No. 10755
5 Kelsey Bernstein, Esq.
6 Nevada Bar No. 13825
7 726 S. Casino Center Blvd.
8 Las Vegas, Nevada 89101
9 Telephone: (702) 598-1299
10 Facsimile: (702) 598-1266
11 dsheets@defendingnevada.com
12 Attorney for Defendant
13 Henry Aparicio

11 **EIGHTH JUDICIAL DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

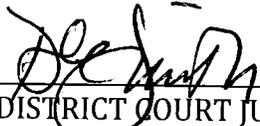
13 The State of Nevada) Case No. C-18-332496-1
14 Plaintiff,)
15 vs.) Dept. No. VIII
16 Henry Aparicio,) **ORDER DENYING EX PARTE MOTION FOR**
17 Defendant.) **AUTHORIZATION OF EMPLOYMENT OF**
) **INVESTIGATOR AND PAYMENT OF FEES**

18
19 This matter having been filed before the Court, Defendant having submitted an Ex
20 Parte Application for Authorization of Employment of Investigator and Payment of Fees,
21 the Court has considered the pleadings, papers and documents on file herein and, by
22 summary disposition and without oral argument, hereby finds and orders,
23

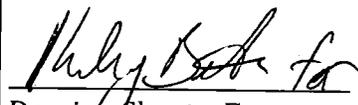
24 THE COURT HEREBY FINDS, pursuant to the Ex Parte Motion, that Defendant
25 provided a total monthly income in the amount of \$1,084, total monthly debts in the
26 amount of \$1,515, and total assets in the amount of \$400,
27
28

1 THE COURT HEREBY ORDERS Defendant's Ex Parte Motion for Authorization of
2 Employment of Investigator and Payment of Fees is **DENIED** for an insufficient showing of
3 indigency;
4

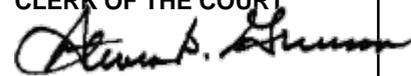
5
6 DATED this 2 day of August, 2018.
7

8
9 
DISTRICT COURT JUDGE

10 Respectfully Submitted By:

11 
12 Damian Sheets, Esq.
13 Attorney for Defendant
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ndp



1 **OPPS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHARLES MARTINOVSKY
6 Deputy District Attorney
7 Nevada Bar #007439
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

CASE NO: C-18-332496-1

12 HENRY APPARICIO, aka,
13 Henry Biderman Aparicio, #6069038,

DEPT NO: XXX

14 Defendant.

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISQUALIFY JUDGE**
16 **SMITH.**

17 DATE OF HEARING: MARCH 19, 2019
18 TIME OF HEARING: 9:00 A.M.

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
19 District Attorney, through CHARLES MARTINOVSKY, Deputy District Attorney, and
20 hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to
21 Disqualify Judge Smith.

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

25 ///

26 ///

27 ///

28 ///

1 FACTS.

2 On May 15, 2018, the defendant and his girlfriend, Morgan Hurley, entered Dave and
3 Buster's restaurant at about 5:30 P.M. Video evidence shows the two drinking inside the bar.
4 Receipts from the tab indicate that the two ordered their first drinks at 5:37 P.M. The video
5 shows that Morgan was drinking a Caribbean Lit, and the defendant was drinking shots of
6 Patron Silver. The bar tab indicates that by 7:21P.M., they pair had ordered 10 shots of Patron
7 Silver, 3 Caribbean Lit Drinks, and they had not ordered any food. Video evidence shows the
8 pair then entering Casa Del Matador, also located in downtown Summerlin, shortly after they
9 had left Dave and Buster's. The defendant worked at this establishment at the time. The tab
10 from Casa Del Matador indicates that the pair consumed 6 more shots of Tequila. The pair
11 also ordered Goat Cheese Jalapeno, but they did not order any other food. The tab closed at
12 8:52 P.M., and video evidence shows the defendant and Morgan stumbling out of the Casa
13 Del Matador shortly after paying the tab. The video also shows a bar tender helping the
14 defendant out of the bar. That same bar tender then returns to the bar. Shortly after this, the
15 same bar tender leaves the bar to speak with the defendant as he entered the driver's side of
16 the red Mercedes which shortly thereafter caused the collision which killed the victims.

17 At about 9:08 P.M., the defendant crashed into the back of the victims' car when they were
18 stopped facing East at a red light on Sahara and Hualapai. The speedometer on the defendant's
19 car was stuck at 100 mph. The collision accelerated the victim's car from zero to over 50 mph.
20 The collision killed both occupants.

21 Brandon McCauley testified that he left Downtown Summerlin at around 8:30 P.M. He
22 witnessed a red vehicle pass him and exceeding the speed limit as he was driving East on
23 Sahara. Mr. McCauley testified that the red car did not stop at the red light at the intersection
24 of Sahara and Hualapai but slammed into the back of a white car which was stopped for the
25 red light at the intersection. PHT, p. 9-11. Shortly after the collision, Mr. McCauley went to
26 the red car which had caused the collision. Mr. McCauley saw a group of people holding the
27 defendant down near the red vehicle. PHT, p. 12 - 13.

1 Mr. McCauley reiterated on cross examination that the group of people where
2 'apprehending' the defendant. Mr. McCauley testified that 'Because I—well, initially after I
3 saw the accident, like when the civilians were apprehending the guy next to you, he looked
4 intoxicated. He just looked out of it. And he was being apprehended over the red car, so I just
5 assumed that he was the driver.' PHT, p 22 line 23-25 – PHT p. 23 lines 1-2.

6 Officer Sonetti testified to two very important pieces of information. First, when he
7 arrived on scene, Morgan Hurley was slumped down in the passenger seat of the red vehicle.
8 PHT, p. 26-line 23- p. 27 line 3. Second, the defendant was sitting on the curb crying, and
9 asking Officer Sonetti to save the passenger. PHT, p. 28 lines 14-25.

10 Katlynn Garduno drew the defendant's blood. She remembered performing the blood
11 draw on the defendant. Katlynn testified that she heard the defendant asking one of the officers
12 if he had run the red light. Katlynn testified as follows:

13 "Q: Did the defendant make any statements to you about the collision?

14 A: He (the defendant) didn't make it directly to me, but he did ask the officer if he had
15 ran the red light." PHT, p. 46, lines 19-22.

16 Officer Ware also testified that the defendant asked if he had killed two people. Officer
17 Ware conducted the blood draws with Katlynn Garduno. Officer Ware testified that "He (the
18 defendant) stated that I killed two people, kind of like it was a question. He kind of said it like
19 he was asking a question." PHT, p. 56 lines 1-10. On cross, Officer Ware again reiterated that
20 the defendant asked if he had killed two people. PHT, p. 56, lines 14-25.

21 Officer Staheli testified that the defendant had dried blood on his lip and his nose. PHT,
22 p. 62, Lines 12-16. State's exhibit #2 showed the injuries on the defendant's face.

23 Detective Ken Salisbury testified that the ACM data indicated that the collision
24 accelerated the victims' car from zero MPH to 58.4 MPH. PHT, p. 86 lines 1-6.

25 Detective Atkinson testified to several key pieces of information. First, Detective
26 Atkinson found a woman's purse on the floorboard of the red Mercedes. The purse contained
27 numerous pieces of identification for Morgan Hurley. PHT, P. 103. Detective Atkinson also
28 testified that his speed analysis indicated that the defendant was driving over 100 miles per

1 hour when he ran into the back of the victims' car while it was stopped for the red light at the
2 intersection of Hualapai and Sahara. PHT, p. 115, line 7. Detective Atkinson testified that
3 he found blood on the driver's side door, blood on the exterior of the driver's side of the vehicle
4 proceeding along the outside of the vehicle and leading towards the passenger side of the
5 vehicle. Detective Atkinson also found blood on the outside of the passenger door. PHT, p.
6 105 p.12-19. Detective Atkinson testified that he found a bloody rag on the driver's seat and
7 blood on the driver's side airbag. PHT, p. 108 lines 3-12. Detective Atkinson testified that
8 the backs of the front seats did not have any blood or marks on them. PHT, p. 107 lines 7-12.
9 Detective Atkinson testified that his inspection of the vehicle indicated that the rear seats of
10 the vehicle were unoccupied. He drew this conclusion from the following. First, the collision
11 threw glass all over the inside of the defendant's car. The glass evenly coated the back seats.
12 Second, rear seat belts were locked and not extended, indicating that they had not been used.
13 PHT, p. 106 p. 20-25.

14 Police obtained a search warrant, and got one blood sample from the defendant at 147
15 A.M. and another at 2:47 A.M. Chemical analysis indicates the defendant's BAC was .204 at
16 the first draw, and .178 at the second.

17 Dr. Ray Kelly reviewed the reports and evidence from the case. He calculated that the
18 defendant's BAC was over .32 at the time of driving. Dr. Kelly based his conclusions on the
19 defendant's height and weight, as well as the other evidence in the case such as the driving
20 pattern, the consumption pattern at the bar, and the defendant's behavior at the scene and his
21 performance on the HGN.

22 POINTS AND AUTHORITIES

23 Cameron v. State, 114 Nevada 1281 defines the relevant law on this issue. Cameraon
24 holds that Canon 3B5 and NRS 1.230 prohibit improper judicial bias. The court in Cameron
25 clearly states that said statutes prohibit bias against a class or party. A judge may hold a
26 specific general opinion regarding a legal or social matter that relates to the case before him.
27 Having such an attitude does not establish in that judge improper bias or prejudice. "Neiher
28 bias nor prejudice refers to the attitude that a judge may hold about the subject matter of a

1 lawsuit. That a judge has a general opinion about a legal or social matter that relates to the
2 case before him or her does not disqualify the judge from presiding over the case.” Cameron,
3 1283. Further, comments made by a judge do not indicate improper bias or prejudice unless
4 they show that the judge has closed his or her mind to the presentation of all the evidence.
5 Cameron, at 1283.

6 The defendant has not presented any evidence that Judge Smith is impartial or biased
7 to any class of persons or party. Judge Smith denied the defendant’s motion to exclude
8 retrograde extrapolation. The defendant argues that since case law clearly excludes all
9 retrograde extrapolation, Judge Smith must harbor bias against his client. The court should
10 reject this claim, because it is patently false. Contrary to the defendant’s argument, State v.
11 Dist. Ct (Armstrong), 127 Nev. 927 (2011) does not support the defendant’s argument. The
12 court did not establish a rule of law that all courts must exclude retrograde evidence whenever
13 the blood draw or draws occur beyond 2 hours from the time of driving. The Supreme Court
14 merely held that the District Court did not abuse its discretion when it excluded the evidence
15 of retrograde extrapolation. The court stated, “Under the circumstances presented, we cannot
16 say that the district court manifestly abused or arbitrarily or capriciously exercised its
17 discretion, that is, applied a clearly erroneous interpretation of the law or one not based on
18 reason or contrary to the evidence or established rules of law.” Armstrong, at 937. Hence,
19 every court has its own discretion to admit evidence of retrograde extrapolation as it sees fit.

20 Second, the facts of this case present sufficient evidence upon which to base a
21 retrograde extrapolation. In Armstrong, the state’s expert knew only that the defendant
22 consumed 2 beers between 5 pm and 10 pm and weighed 212 pounds. Crucially, in Armstrong
23 police obtained only one blood sample. The court stated, “Here, significant personal
24 characteristics, such as the amount of food, if any, in Armstrong’s stomach – a factor
25 Armstrong’s expert testified was the most important and the State’s expert acknowledged
26 significantly affects alcohol absorption – were unknown. And the single blood draw makes it
27 difficult to determine whether Armstrong was absorbing or eliminating alcohol at the time of
28 the blood draw. The admission of retrograde extrapolation evidence when a single blood draw

1 was taken more than two hours after the accident and the extrapolation calculation is
2 insufficiently tethered to individual factors necessary to achieve a reliable calculation
3 potentially invites the jury to determine Armstrong's guilt based on emotion or an improper
4 ground – that the defendant had a high blood alcohol level several hours later – rather than a
5 meaningful evaluation of the evidence.” Armstrong, at 937.

6 In contrast to the facts of Armstrong, the state possesses lots of information upon which
7 to base the retrograde extrapolation. First and foremost, the state has two blood draws taken
8 one hour apart which clearly demonstrate that the defendant was eliminating alcohol at the
9 time of the draw. Second, the state knows the defendant height and weight and age. Third,
10 the state possesses video and receipts from the bars where the defendant was drinking which
11 indicate how much he drank and ate from 537 pm until 852 pm, 20 minutes before the
12 collision. See Exhibits 1 and 2. Fourth, the state has body camera evidence which indicates
13 the defendant's demeanor right after the collision.

14 Furthermore, Anderson v. State, 109 Nev. 1129 (1994), clearly holds that evidence of
15 retrograde extrapolation is clearly admissible if the state possesses 2 blood draws without
16 more. In that case, the state charged the defendant with dui death. The state presented
17 retrograde extrapolation evidence to the jury. Dan Berkabile testified that he relied upon a
18 standard metabolic rate of .02 per hour, and two blood samples to estimate that the defendant's
19 BAC was over the legal limit at the time he was driving. Anderson, at 1132.

20 After the jury convicted the defendant, he challenged the verdict claiming the evidence
21 presented did not support the result. The court rejected this claim. The court stated,
22 “Furthermore, Dan Berkabile, a forensic chemist, testified that after testing the blood samples
23 taken on the night in question, he extrapolated backwards to estimate Anderson's blood
24 alcohol level at the time of the accident; he estimate Anderson's blood alcohol level to have
25 been 0.128.” Anderson, 1138.

26 Second, the defendant claims that the court denied the defendant's petition for writ of
27 habeas corpus without any legal justification. Hence, the defendant argues that Judge Smith
28 harbors bias against the defendant. This claim is false. The state clearly presented slight to

1 marginal evidence that the defendant drove the vehicle which killed the victims. All the
2 evidence established sufficient facts for the trier of fact to draw the reasonable inference that
3 the defendant was driving the car. First, the evidence regarding the how the car was occupied
4 allows the court infer reasonably that the defendant was driving the red vehicle. The defendant
5 was clearly involved in the collision: he had cuts to his face, he was at the scene, and he was
6 expressing concern for the passenger, Morgan Hurley. The fact that he was distraught and
7 expressing concern for the passenger clearly indicates that he was in the vehicle. Yet, the
8 defendant was not sitting in the passenger seat because Morgan Hurley was slumped over in
9 the passenger seat. Morgan's purse was also stowed neatly under the front passenger area
10 indicating that the force of the collision did not propel her into the front seat from some other
11 part of the vehicle. Further, the defendant was not sitting in the back seat. Detective Atkinson
12 testified that the evidence suggested that no one was sitting in the back seat: the broken glass
13 from the collision was evenly distributed on the rear seats, the rear seat belts had not been
14 used, and the back of the front seats did not have any blood on them. Had someone been
15 sitting in the back seat, unrestrained, the severity of the collision means they would have hit
16 the back seats with great force and left blood or marks on them. Had someone been sitting in
17 the rear seats, the glass broken in the collision would not have been evenly distributed over
18 the rear seats. But backs of the front seats did not have blood or impact marks on them, and
19 the glass was evenly distributed on the back seats. Hence, the only reasonable inference is
20 that the defendant was driving the red Mercedes at the time of the collision.

21 Equally important, two witnesses (Katlynn Garduno and Officer Ware) testified that
22 the defendant asked if he had killed two people. The fact that the defendant asked such a
23 question allows one to reasonably infer that it constitutes slight to marginal evidence that the
24 defendant confessed. For, had the defendant not been driving, he wouldn't have asked the
25 question.

26 Third, the injuries on the defendant's face are consistent with the conclusion that he was
27 driving the vehicle. The defendant had fresh cuts on his nose and lips. Detective Atkinson
28 found a bloody rag in the driver's seat and blood on the driver's air bag and a trail of blood

1 leading from the driver's side around the back of the car to the passenger side. Since the
2 passenger was slumped over in the passenger seat, she did not leave the bloody rag or trail of
3 blood. The cuts on the defendant's face, when combined with the trail of blood leading from
4 the driver's side of the vehicle to the passenger side of the vehicle indicate that he was driving
5 but exited to check on the passenger immediately after the collision. The fact that he implored
6 Officer Sonetti to save the passenger corroborates this inference.

7 Finally, Brandon McCauley testified that a group of people were apprehending the
8 defendant and holding him at the scene shortly after the collision. In fact, Brandon testified
9 that he thought the defendant was the driver, and was intoxicated. This testimony indicates
10 that the defendant attempted to flee the scene, which indicates consciousness of guilt.
11 Consciousness of guilt indicates that the defendant was driving.

12 All the aforementioned evidence certainly establishes a slight to marginal inference that
13 the defendant was driving at the time he crashed into the back of the victims' car.

14 The state was not involved in any way with the denial of the defendant's motion for
15 investigator fees so it cannot respond on that issue.

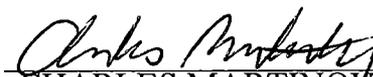
16 **CONCLUSION**

17 For the foregoing reasons, the court should deny the defendant's claim that Judge Smith
18 harbors bias against his client. Strong legal and factual bases supported Judge Smith's rulings.
19 The defendant has not presented any evidence that Judge Smith harbors bias against him.

20 DATED this 26th day of February, 2019.

21 Respectfully submitted,

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

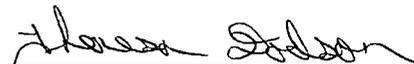
25 BY 
26 CHARLES MARTINOVSKY
27 Deputy District Attorney
28 Nevada Bar #007439

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

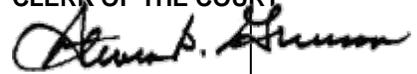
CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of the above and foregoing State's Opposition to Defendant's Motion to Disqualify Judge Smith was made this 26th day of February, 2019, by facsimile transmission to:

DAMIAN SHEETS, ESQ.
FAX: (702) 598-1266

BY: 
Theresa Dodson
Secretary for the District Attorney's Office

CM/td/vcu



1 REQ
2 MAYFIELD GRUBER & SHEETS
3 Damian Sheets, Esq.
4 Nevada Bar No. 10755
5 Kelsey Bernstein, Esq.
6 Nevada Bar No. 13825
7 726 S. Casino Center Blvd.
8 Las Vegas, Nevada 89101
9 Telephone: (702) 598-1299
10 Facsimile: (702) 598-1266
11 dsheets@defendingnevada.com
12 Attorney for Defendant
13 Henry Aparicio

9 **EIGHTH JUDICIAL DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 State of Nevada,) Case No.: C-18-332496-1
12 Plaintiff) Dept. No: VIII
13 vs.) **REQUEST TO STRIKE AFFIDAVIT IN**
14 Henry Aparicio,) **RESPONSE TO DISQUALIFICATION**
15 Defendant) **and**
16) **REQUEST TO STRIKE STATE'S**
17) **OPPOSITION TO MOTION FOR**
18) **DISQUALIFICATION**

17
18 COMES NOW, Defendant Henry Aparicio, by and through his attorney of record,
19 DAMIAN SHEETS, ESQ. of the firm Mayfield Gruber & Sheets, hereby submits this Request
20 to Strike Affidavit in Response to Disqualification and Request to Strike State's Opposition
21 to Motion for Disqualification.
22

23 ///

24
25 ///

1 A. Request to Strike Answer to Affidavit in Support of Disqualification

2
3 Pursuant to statute, the challenged judge had 5 judicial days after the affidavit is
4 filed to submit a written answer to said affidavit. In the instant matter, the challenged
5 judge did not file his answer until February 21, 2019, over two weeks after the Motion and
6 supporting Affidavit were filed. Therefore, the answer submitted by Judge Smith on
7 February 21, 2019 must be stricken as untimely.
8

9 No entities, including the courts, are above the requirements of statutory
10 compliance to which all other parties are held. “[W]here the language of an enactment is
11 clear and unambiguous, the statute must be held to mean what it clearly expresses, and no
12 room is left for construction. There is no safer or better settled canon of interpretation.”
13 *Hand v. Cook*, 29 Nev. 518, 528, 92 P. 3, 4 (1907). With regards to statutory time
14 constraints, the law under the Nevada Supreme Court requires strict compliance.
15

16 Unless a statute setting forth a clear time constraint allows a caveat that would
17 accept substantial compliance, such as the one year time limit on a petition for writ of
18 habeas corpus which may be extended for good cause shown, statutory time and manner
19 restrictions are strictly construed. “Although statutes allowing for a “reasonable time” to
20 act are subject to interpretation for substantial compliance, those with set time limitations
21 are not. Our interpretation of the statute's timing requirements and our conclusion that
22 those requirements must be complied with strictly is consistent with the general tenet that
23
24
25
26
27
28

1 "time and manner" requirements are strictly construed..." *Leven v. Frey*, 123 Nev. 399, 407-
2 08, 168 P.3d 712, 718 (2007).¹

3
4 In the alternative, were Judge Smith's Answer to be considered on the merits, the
5 Defense would respond briefly as follows (the substantive response to Mr. Aparicio's
6 Motion to Disqualify can be found in paragraphs 6-9 of the Answering Affidavit):

- 7 • Paragraph 6 states the purported legal basis on the Motion in Limine; as Defense
8 went into thorough detail on the legal analysis in its original Motion, the same
9 points will not be belabored here.
- 10 • Paragraph 7 states that the Petition for Writ of Habeas Corpus was denied because
11 "Defendant raised the same argument unsuccessfully raised in his Motion in
12 Limine." This is factually incorrect. Defendant's Motion in Limine to Exclude
13 Retrograde Extrapolation was based on the expert extrapolation report
14

15
16
17 ¹ The Nevada Supreme Court case *Leven v. Frey* also sets forth numerous cases from other jurisdictions as
18 support for the position that clear time constraints in statutes require strict compliance:

19 *Daugherty v. Dearborn County*, 827 N.E.2d 34, 36 (Ind. Ct. App. 2005) (explaining that a statute with a built-in
20 180-day time limit for serving notice of a tort claim was subject to strict compliance, even though other
21 aspects of the statutory scheme were subject to review for substantial compliance); *Schooler v. Iowa Dept. of*
22 *Transp.*, 576 N.W.2d 604, 607-08 (Iowa 1998) (concluding that failing to serve notice within a statute's thirty-
23 day time limitation precluded condemnees from appealing an award made in a condemnation proceeding and
24 the condemnees' argument that they substantially complied with the notice requirement was unavailing since
25 it would require the court to ignore the clear language of the statute); *Kirkpatrick v. City of Glendale*, 99
26 S.W.3d 57, 60 (Mo. Ct. App. 2003) (indicating that giving notice of a tort claim within ninety days, as set forth
27 by statute, was a condition precedent to maintaining a tort action, which condition must be complied with
28 strictly, while the statute's other requirements, governing the form of notice, were subject to review for
substantial compliance); *Regency Investments v. Inlander Ltd.*, 2004 PA Super 274, 855 A.2d 75, 79 (Pa. Super.
Ct. 2004) (concluding that the doctrine of substantial compliance does not apply when the timeliness of
serving notice is at issue, and thus, the trial court properly struck a mechanics' lien claim since notice of the
claim was not served until one month after the statutory time period allowed for service); *American Standard*
Homes Corp. v. Reinecke, 245 Va. 113, 425 S.E.2d 515, 518, 9 Va. Law Rep. 776 (Va. 1993) (indicating that,
unless a lien is perfected within the time outlined by statute, it is lost); *Marsh-McLennan Bldg., Inc. v. Clapp*, 96
Wn. App. 636, 980 P.2d 311, 313 n.1 (Wash. Ct. App. 1999) (explaining that an unlawful detainer statute's
time requirements for filing a notice must be complied with strictly, while substantial compliance with the
statute's requirements regarding the form and content of the notice was sufficient).

1 subsequently provided to the Defense after the State filed its Notice of Expert
2 Witness; the Motion alleged that the extrapolation report did not comply with the
3 requirements of *Armstrong*. The Writ Petition, on the other hand, challenged the
4 Justice Court's introduction of the raw blood results, taken outside of two hours, at
5 the preliminary hearing (as the blood was used as a basis for a finding of probable
6 cause). The two challenges are distinct, as one relates to the improper introduction
7 of blood results outside of two hours without extrapolation, and the other
8 challenges the subsequent extrapolation results which are improperly calculated.
9 The Court's Answer further cites to unspecified slight or marginal evidence as
10 grounds in support of its ruling; however, the Court relied on the same basis the
11 State subsequently conceded was insufficient (that Mr. Aparicio was found outside
12 the vehicle as slight or marginal evidence that he was driving). While the State made
13 subsequent arguments in support of their position, it is the Court's decision *at the*
14 *time it was made* that is the source of Mr. Aparicio's instant challenge. The
15 Answering Affidavit further fails to state what slight or marginal evidence was relied
16 upon in rendering the decision to deny relief.

- 17 • Paragraph 8 states that Mr. Aparicio's request for investigative fees was denied
18 "based on the totality of the circumstances." The circumstances are relatively
19 minimal: the State's retrograde extrapolation expert was allowed (over Defense
20 objection), Mr. Aparicio sought a rebuttal expert, Mr. Aparicio provided detailed
21 financial affidavits of his inability to independently retain an expert (which the
22 Court accepted), Mr. Aparicio had a *negative* monthly debt-to-income ratio, and the
23
24
25
26
27
28

1 Court denied him investigative fees due to an “insufficient showing of indigency.”
2 There are no other circumstances which exist to create a “totality” that would justify
3 the Court’s ruling.
4

- 5 • Paragraph 9 claims that the Court’s statements that Mr. Aparicio killed two people
6 (among others) do not show bias because they “were not made before jurors, were
7 not made to establish judicially noticed facts or laws of the case, and are not
8 dispositive of the outcome in this case.” However, this is also incorrect; the Court’s
9 statements were dispositive of the outcome in this case because they were given as
10 *the basis* for its ruling to deny relief *on a retrograde extrapolation issue*. The
11 statements were not made in a probable cause challenge hearing, or under other
12 circumstances which permit the Court to accept them as true for the purpose of
13 granting or denying relief. Instead, the Court took these factual statements as true to
14 form a basis to permit retrograde extrapolation evidence. These statements
15 communicated the Court’s basis to deny relief on an issue that was completely
16 unrelated to the underlying facts of the case (whether or not the retrograde
17 extrapolation satisfied *Armstrong*). Therefore, as the Court’s statements were used
18 as the basis to deny relief on an issue independent of the facts of the case, it most
19 certainly was dispositive of the outcome and has a very significant effect on the
20 remainder of Mr. Aparicio’s criminal proceedings.
21
22
23

24
25 ///

26
27 ///

1 B. Request to Strike State’s Opposition to Motion for Disqualification

2
3 There is no authority which grants the State standing to oppose a disqualification
4 request. The statute, as cited above, is unambiguous that the *challenged judge* may file an
5 answer, not the State of Nevada (or any party to the underlying proceedings). As the statute
6 is clear as to who may file a response, it may not be expanded to permit another entity such
7 a right that does not exist. “This court has, for more than a century, recognized that the
8 Legislature’s ‘mention of one thing or person is in law an exclusion of all other things or
9 persons.’” *Butler v. State*, 120 Nev. 879, 902, 102 P.3d 71, 87 (2004) (citing *V. & T. R.R. Co. v.*
10 *Elliott*, 5 Nev. 358, 364 (1870)).

11
12 Additionally, the State’s Opposition would only exacerbate the most natural
13 consequence of the filing: although the State and the Court are separate entities, for the
14 State to defend the Court’s conduct defies the required impartiality between them. A
15 request for disqualification is a procedural mechanism exclusively between the moving
16 party and the challenged judge; the State has no standing to defend the challenged judge, or
17 else it creates a substantial appearance of impropriety. The State’s Opposition creates a
18 situation where the State of Nevada is acting as the representative of the tribunal, without
19 any entitlement to do so, and thereby also creates a conflict of interest. The Court is capable
20 of representing itself though whatever means it avails when challenged for bias, and the
21 State is not a party to these proceedings.

22
23
24 ///

25
26
27 ///

C-18-332496-1 State of Nevada
 vs
 Henry Aparicio

March 19, 2019 09:00 AM Motion to Recuse

HEARD BY: Bell, Linda Marie COURTROOM: RJC Courtroom 17A

COURT CLERK: Estala, Kimberly

RECORDER: Vincent, Renee

REPORTER:

PARTIES PRESENT:

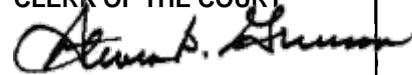
Charles Martinovsky	Attorney for Plaintiff
Damian R. Sheets	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Defendant not present.

Argument by Counsel. COURT ORDERED, matter UNDER ADVISEMENT.

CUSTODY



1 DAO

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4
5 STATE OF NEVADA,

6 Plaintiff,

Case No. C-18-332496-1

7 vs.

Dept. No. VIII

8 HENRY APARICIO,

9 Defendant.

10 DECISION AND ORDER

11 Henry Aparicio filed a Motion to Disqualify Judge Douglas Smith based on comments Judge
12 Smith made during a hearing and Judge Smith's denial of Mr. Aparicio's ex parte request for
13 investigative fees. Mr. Aparicio also argues that the State does not have standing to make any
14 arguments and that I should strike Judge Smith's affidavit for untimeliness. Mr. Aparicio's Motion is
15 denied because it is moot.

16 **I. Factual and Procedural Background**

17 On June 5, 2018, Mr. Aparicio was charged with Driving Under the Influence Resulting in
18 Death along with other lesser included offenses in district court by way of information. On July 23,
19 2018, during a Motion in Limine to Exclude Evidence of Retrograde Extrapolation, Judge Smith
20 stated on the record that Mr. Aparicio "was doing over 100 miles an hour, and killed two people."

21 Mr. Aparicio then filed an ex parte request for investigative fees for the Defense to hire a
22 rebuttal expert. Judge Smith denied this request.

23 On February 6, 2019, Mr. Aparicio filed a Motion for Disqualification and Affidavit in
24 Support. On February 21, 2019, Judge Smith filed an Affidavit in Response to Mr. Aparicio's
25 Request to Disqualify him. On February 26, 2019, the State of Nevada filed an Opposition to
26 Defendant's Motion to Disqualify Judge Smith. On February 27, 2019, Mr. Aparicio filed a Request
27 to Strike Affidavit in response to Disqualification and Request to Strike State's Opposition to
28 Motion for Disqualification.

RECEIVED
LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII
APR - 2 2019
CLERK OF THE COURT

RECEIVED
APR 05 2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II. Discussion

NRS 1.230 provides the statutory grounds for disqualifying district Court judges. The statute in pertinent part provides:

1. A judge shall not act in an action or proceeding when the judge entertains actual bias or prejudice for or against one of the parties to the action.
2. A judge shall not act as such in an action or proceeding when implied bias exists in any of the following respects:
 - (a) When the judge is a party to or interested in the action or proceeding.
 - (b) When the judge is related to either party by consanguinity or affinity within the third degree.
 - (c) When the judge has been attorney or counsel for either of the parties in the particular action or proceeding before the court.
 - (d) When the judge is related to an attorney or counselor for either of the parties by consanguinity or affinity within the third degree. This paragraph does not apply to the presentation of ex parte or contested matters, except in fixing fees for an attorney so related to the judge.

The Revised Nevada Code of Judicial Conduct provides substantive grounds for judicial disqualification. Pursuant to NCJC 2.11(A):

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

- (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might be reasonably questioned. Ybarra v. State, 127 Nev. 47, 50-51 (2011). The test for whether a judge's impartiality might be reasonably questioned is objective and courts must decide whether a reasonable person, knowing all the facts, would harbor reasonable doubts about a judge's impartiality. Id. at 51.

The burden is on the party asserting the challenge to establish sufficient factual and legal grounds warranting disqualification. Las Vegas Downtown Redevelopment Agency v. District Court, 116 Nev. 640, 643 (2000). A judge has a duty to preside to the conclusion of all proceedings, in the absence of some statute, rule of court, ethical standard, or compelling reason otherwise. Id. at 643. A judge is presumed to be unbiased. Millen v. District Court, 122 Nev. 1245, 1254 (2006). A

1 judge is presumed to be impartial, and the burden is on the party asserting the challenge to establish
2 sufficient factual grounds warranting disqualification. Yabarra, 127 Nev. at 51.

3 The Nevada Supreme Court has stated “rulings and actions of a judge during the course of
4 official judicial proceedings do not establish legally cognizable grounds for disqualifications.” In re
5 Pet. To recall Dunleavy, 104 Nev. 784, 789 (1988). The personal bias necessary to disqualify must
6 ‘stem from an extrajudicial source and result in an opinion on the merits on some basis other than
7 what the judge learned from participation in the case.” Id. at 790 “To permit an allegation of bias,
8 partially founded upon a justice’s performance of his [or her] constitutionally mandated
9 responsibilities, to disqualify that justice from discharging those duties would nullify the court’s
10 authority and permit manipulation of justice, as well as the court.” Id.

11 The Nevada Supreme Court has noted that while the general rule is that what a judge learns
12 in his or her official capacity does not result in disqualification, “an opinion formed by a judge on
13 the basis of facts introduced or events occurring in the course of the current proceedings, or of prior
14 proceedings, constitutes a basis for a bias or partiality motion where the opinion displays ‘a deep-
15 seated favoritism or antagonism that would make fair judgment impossible.” Cameron v. State, 114
16 Nev. 1281, 1283 (1998). However, “remarks of a judge made in the context of a court proceeding
17 are not considered indicative of improper bias or prejudice unless they show that the judge has
18 closed his or her mind to the presentation of all the Evidence.” Id.

19 **A. Judge Smith’s Affidavit will not be stricken due to public policy concerns.**

20 Mr. Aparicio bases his request to strike Judge Smith’s Affidavit based on NRS 1.235(6).
21 NRS 1.235(6) states:

22 “A judge may challenge an affidavit alleging bias or prejudice by filing a written
23 answer with the clerk of the court within 5 judicial days after the affidavit is filed,
24 admitting or denying any or all of the allegations contained in the affidavit and setting
forth any additional facts which bear on the question of the judge’s disqualification.”

25 Mr. Aparicio argues that NRS 1.235(6), read literally and plainly, states that a judge must challenge
26 an affidavit within five days. Taken with NRS 1.235(5), which states that a judge must immediately
27 transfer the matter should a party file a motion for disqualification, this would suggest that if a judge
28 fails to file an affidavit within five days, the proper remedy is reassignment.

1 Taken in a vacuum, Mr. Aparicio’s argument holds some merit. However, a judge has a duty
2 to sit. Las Vegas Downtown Redevelopment Agency v. District Court, 116 Nev. 640, 643 (2000).
3 The decision to take a judge off a case cannot be done lightly. Interpreting NRS 1.235(6) as
4 mandating reassignment when a judge fails to file an appropriate affidavit within the time limit
5 would directly conflict with the duty to sit, as a judge might be forced to recuse as a result of
6 excusable neglect, a heavy calendar, or seeking advice.

7 In addition, NRS 1.235(6) does not contain mandatory language. NRS 1.235(6) states that a
8 judge “may challenge an affidavit alleging bias” by filing a response within five days. Compare this
9 language with NRS 1.235(5) which states that a judge “against whom an affidavit alleging bias or
10 prejudice is filed shall proceed no further with the matter.” Using permissive language in NRS
11 1.235(6) is intentional, especially considering the mandatory language in NRS 1.235(5). Thus, an
12 appropriate interpretation of the issue when taking both the duty to sit and lack of mandatory
13 language into consideration is that there may be some delay in challenging an affidavit so long as it
14 is reasonable and in substantial compliance with the statute.

15 In this case, the Motion to Disqualify was filed February 6, 2019. Using the rules for
16 counting calendar days there were in place at that time, NRS 1.235 dictated that Judge Smith could
17 file a response by February 13, 2019. Judge Smith waited until February 21, 2019 to do so, which
18 constitutes a little over a week delay. This is not unreasonable, and does not warrant striking Judge
19 Smith’s affidavit as he was in substantial compliance.

20 **B. The State’s Opposition will not be stricken as they have standing.**

21 Mr. Aparicio argues that the State lacks standing to challenge the request to disqualify. Mr.
22 Aparicio argues that NRS 1.235 does not have any provision for a non-judge to challenge a
23 disqualification. Mr. Aparicio also argues that allowing the State to file Oppositions in these
24 proceedings automatically creates an appearance of impropriety.

25 While NRS 1.235 does not have any provision for a non-judge to challenge disqualification,
26 it also does not bar any other party from filing relevant pleadings. As the State would be directly
27 affected by a reassignment, the State naturally has standing as it has a stake in which judge hears the
28 case, just as Mr. Aparicio does. In addition, the State could have theoretically moved to disqualify

1 Judge Smith. If a party has standing for moving to disqualify a judge, it is logical that party also
2 would have the ability to oppose such a motion.

3 The State opposing Motions to Disqualify does not create an appearance of impropriety.
4 Defending or criticizing a judge's actions or rulings during a proceeding is routine. Such defenses or
5 criticisms are found in Motions for Reconsideration, Writs of Habeas Corpus, or at various points
6 during the proceedings where a party is attempting to make a record for an appeal. As these
7 instances of defenses are common and routine in most cases, and judges are presumed unbiased,
8 then a judge is presumed unbiased even where a party defends the judge's actions because they are
9 found in a large number of cases. Millen v. District Court, 122 Nev. 1245, 1254 (2006). As the State
10 has standing and it would not create an appearance of impropriety, I am not striking its response.

11 **C. Judge Smith's imminent retirement renders this Motion moot.**

12 Judge Smith announced that he will retired on April 12, 2019. There are no hearings
13 scheduled before April 12, 2019. Thus, this Motion is moot because Mr. Aparicio will have a
14 different judge for the next hearing.

15 **III. Conclusion**

16 Judge Smith's imminent retirement renders Mr. Aparicio's request moot. As such, it si
17 denied.

18
19 DATED this day of March 29, 2019.

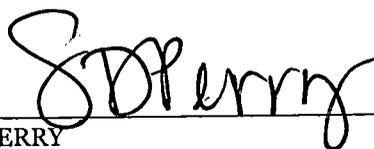
20
21 
22 _____
LINDA MARIE BELL
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
DA's Office	Counsel for State
Damian R. Sheets, Esq. 726 S. Casino Center BLVD STE 211 Las Vegas, NV 89101	Counsel for Defendant
The Honorable Judge Douglas Smith	Judge

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII



SYLVIA PERRY
JUDICIAL EXECUTIVE ASSISTANT, DEPARTMENT VII

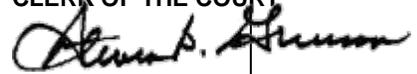
AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number C332496 DOES NOT contain the social security number of any person.

/s/ Linda Marie Bell
District Court Judge

Date: 03/21 2019



1 MOT
2 MAYFIELD GRUBER & SHEETS
3 Damian Sheets, Esq.
4 Nevada Bar No. 10755
5 Kelsey Bernstein, Esq.
6 Nevada Bar No. 13825
7 726 S. Casino Center Blvd.
8 Las Vegas, Nevada 89101
9 Telephone: (702) 598-1299
10 Facsimile: (702) 598-1266
11 dsheets@defendingnevada.com
12 Attorney for Defendant
13 Henry Aparicio

9 **EIGHTH JUDICIAL DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 State of Nevada,
12 Plaintiff

) Case No.: C-18-332496-1
) Dept. No: VIII
)

13 vs.

) **MOTION TO RECONSIDER DECISION AND**
) **ORDER FILED APRIL 5, 2019**
)

14 Henry Aparicio,
15 Defendant

)
)
)
)

16
17 COMES NOW, Defendant Henry Aparicio, by and through his attorney of record,
18 DAMIAN SHEETS, ESQ. of the firm Mayfield Gruber & Sheets, hereby submits this Motion to
19 Reconsider Decision and Order filed April 5, 2019.
20

21 ///

22
23 ///

24
25
26 ///

1 **NOTICE OF HEARING**

2 TO: THE STATE OF NEVADA, Plaintiff; and

3 TO: DEPUTY DISTRICT ATTORNEY:

4 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the
5 above and foregoing motion on for hearing on the ____ day of _____, 2019, at
6 the hour of _____, before the above-entitled Court, or as soon thereafter as counsel can be
7 heard.

8
9 DATED this 5 day of April, 2019.

10
11 MAYFIELD GRUBER & SHEETS
12 Respectfully Submitted By:

13 /s/ Damian Sheets
14 DAMIAN SHEETS, ESQ.
15 Attorney for Defendant
16
17
18
19
20
21
22
23
24
25
26
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 Defendant Henry Aparicio is charged with Driving Under the Influence of Alcohol
4 Resulting in Death, as well as a litany of similar lesser included offenses. He pled Not Guilty
5 to the charges on or about June 6, 2018 and invoked his right to a speedy trial. Calendar
6 Call is currently scheduled for August 8, 2018, with trial on August 13, 2018.
7

8 Mr. Aparicio filed a Motion to Disqualify Judge Douglas Smith based on bias
9 exhibited on the record and in pleadings. Subsequent to filing the Motion, Judge Smith
10 announced an early retirement date of April 12, 2019. Based on this announcement, the
11 Decision and Order filed on April 5, 2019 regarding the Motion to Disqualify was denied as
12 moot because Mr. Aparicio will have a different judge for the next hearing.
13

14 However, the issue of bias in the pleadings still needs to be addressed, as Mr.
15 Aparicio alleged that bias by Judge Smith manifested in several adverse rulings that worked
16 to Mr. Aparicio's extreme detriment. Such rulings include Motions in Limine, a pre-trial
17 Petition for Writ of Habeas Corpus, and a request for investigative fees, all of which were
18 alleged to have been tainted with bias. Each of these rulings also has a substantial impact
19 on the direction, outcome and strategy of this case. Therefore, a formal decision on bias is
20 necessary to the extent that Mr. Aparicio would be entitled to have his pleadings re-heard
21 before a neutral magistrate.
22

23 ///

24
25
26 ///

1 For these reasons, Mr. Aparicio respectfully requests the Chief Judge reconsider the
2 Decision and Order that denies the Motion as moot only insofar as it bears on Mr. Aparicio's
3 ability to have his pleadings fully and fairly litigated before a new judge.
4

5 DATED this 5 day of April, 2019.

6 By:
7 MAYFIELD GRUBER & SHEETS

8 By: /s/ Damian Sheets
9 Damian Sheets, Esq.
10 Nevada Bar No. 10755
11 726 S. Casino Center Blvd.
12 Las Vegas, Nevada 89101

13 **CERTIFICATE OF SERVICE**

14 I HEREBY CERTIFY that on the 5 day of April, 2019 I served a true and correct copy
15 of the foregoing Defendant's Motion to Reconsider, upon each of the parties by electronic
16 service through Wiznet, the Eighth Judicial District Court's e-filing/e-service system,
17 pursuant to N.E.F.C.R.9; and by depositing a copy of the same in a sealed envelope in the
18 United States mail, Postage Pre-Paid, addressed as follows:

19 Clark County District Attorney's Office
20 200 Lewis Ave., 3rd Floor
21 Las Vegas, NV 89155
22 motions@clarkcountyda.com
23 pdmotions@clarkcountyda.com

24 Eighth Judicial District Court, Department 8, Hon. Judge Smith
25 Eighth Judicial District Court, Department 7, Hon. Judge Bell

26 /s/ Kelsey Bernstein
27 An Employee of Mayfield Gruber & Sheets

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 15, 2019

C-18-332496-1 State of Nevada
vs
Henry Aparicio

April 15, 2019 8:00 AM **Defendant's Motion to Reconsider Decision and
Order filed April 5, 2019**

HEARD BY: Barker, David

COURTROOM: RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Rubina Fedra

PARTIES**PRESENT:**

JOURNAL ENTRIES

- Dena Rinetti, Chf Dep DA, present on behalf of the State and Damian Sheets, Esq., present on behalf of Deft. Aparicio, who is also present.

This is the time set for hearing on Deft's Motion to Reconsider Decision and Order Filed April 5, 2019. Court noted that Judge Bell filed a Decision and Order on April 5, 2019, to the Deft's Motion to Disqualify Judge Smith, which was DENIED. Later that same day, Mr. Sheets filed a Motion to Reconsider Decision and Order filed April 5, 2019; this Court will not entertain the substance of said motion at this time.

Mr. Sheets advised that this matter is assigned to Charles Martinovsky, Chf Dep DA, but he is out of the jurisdiction so he is present to make representations; he believes this Motion should be heard by Judge Bell. Court noted that since Judge Bell issued the original Order on Mr. Sheet's challenge to Disqualify Judge Smith, this Motion should be transferred to her for consideration. Therefore, COURT ORDERED, the Motion is TRANSFERRED to Department VII for further proceedings.

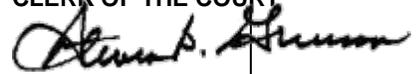
CUSTODY

CONTINUED TO: 04/23/19 9:00 AM (DEPARTMENT VII)

PRINT DATE: 04/22/2019

Page 1 of 1

Minutes Date: April 15, 2019



1 MOT
2 MAYFIELD GRUBER & SHEETS
3 Damian Sheets, Esq.
4 Nevada Bar No. 10755
5 Kelsey Bernstein, Esq.
6 Nevada Bar No. 13825
7 726 S. Casino Center Blvd.
8 Las Vegas, Nevada 89101
9 Telephone: (702) 598-1299
10 Facsimile: (702) 598-1266
11 dsheets@defendingnevada.com
12 Attorney for Defendant
13 Henry Aparicio

9 **EIGHTH JUDICIAL DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 State of Nevada,) Case No.: C-18-332496-1
12 Plaintiff) Dept. No: VIII
13 vs.) **MOTION TO CONTINUE TRIAL**
14 Henry Aparicio,) **Hearing Requested**
15 Defendant)
16 _____)

17 COMES NOW, Defendant Henry Aparicio, by and through his attorney of record,
18 DAMIAN SHEETS, ESQ. of the firm Mayfield Gruber & Sheets, hereby submits this
19 Defendant's Motion to Continue Trial.
20

21 This Motion is made and based upon the Points and Authorities attached hereto and
22 any arguments deemed necessary by this Honorable Court, and further is brought in good
23 faith and not for the purpose of delay.
24

25 ///

27 ///

1 **NOTICE OF MOTION**

2
3 TO: State of Nevada, Plaintiff;

4 TO: Clark County District, Attorney for Plaintiff.
5

6 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the
7 foregoing Motion on for hearing before this court, on the ____ day of _____,
8 2019, at the hour of ____:____ __.m., or as soon thereafter as counsel may be heard.

9 DATED this 24 day of July, 2019

10
11 MAYFIELD, GRUBER & SHEETS

12
13 BY ____/s/ Damian Sheets
14 DAMIAN R. SHEETS, ESQ.
15 Nevada Bar No. 10755
16 726 S. Casino Center Blvd., Suite 211
17 Las Vegas, Nevada 89101
18 (702) 598-1299
19 *Attorney for Defendant*
20
21
22
23
24
25
26
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 The Defendant in this matter, Henry Aparicio, is charged with Driving Under the
4 Influence Resulting in Death and other similar lesser-included offenses. Calendar call is
5 currently scheduled for July 31, 2019 with jury trial set to begin on August 5, 2019.

6
7 Previous requests to continue this matter have been filed to permit Mr. Aparicio to
8 secure a rebuttal expert to the State's disclosed retrograde extrapolation expert; however,
9 given his custody status and the Court's prior denial of his request for investigative fees,
10 neither Mr. Aparicio nor his family have the financial ability to secure an expert witness. As
11 a result, his Counsel's ability to defend him in this case has been directly impaired by Judge
12 Smith's ruling denying him said fees, compounded by Chief Judge Bell's ruling that the issue
13 of bias was moot after Judge Smith announced his retirement. Under the circumstances,
14 Counsel's desire and ability to properly represent Mr. Aparicio has been rendered
15 ineffective.
16

17 The unfortunate circumstances surrounding this case have prompted Mr. Aparicio
18 to file a Motion with this Court requesting an opportunity to readdress the previous rulings
19 by Judge Smith in this case under its overarching constitutional authority. Specifically, the
20 Motion requests the matters be readdressed to comport with fundamental Due Process
21 considerations which Mr. Aparicio has, to this point in time, been entirely denied.
22

23 Additionally, in the most recent Notice of Witness list filed by the State, the State
24 lists no less than *fifty-five* individual witnesses; given Judge Smith's decision to deny Mr.
25 Aparicio any financial assistance with his case whatsoever, Mr. Aparicio has similarly been
26 unable to secure an investigator to thoroughly interview and/or assess the anticipated
27
28

1 testimony of the numerous witnesses contained in the State's list. Furthermore, given that
2 roughly ten lay witnesses testified in the preliminary hearing, and yet *not a single one* could
3 put Mr. Aparicio behind the wheel of a vehicle, the ability to anticipate and prepare an
4 adequate defense to these witness's testimony, including for purposes of impeachment,
5 becomes vital. In this manner, Judge Smith's ruling has also directly impacted and limited
6 Counsel's ability to properly represent him or prepare a defensive strategy to this case.
7

8 These issues are precisely why Mr. Aparicio has filed the request to readdress the
9 prior rulings made by Judge Smith. If that request is denied, further emergency relief will
10 likely be sought with the appellate courts. The simple fact is that, if the trial were to
11 proceed, Mr. Aparicio would be forced to go to trial with a very limited and arguably
12 judicially-created ineffective defense, with his hands proverbially tied behind his back.
13

14 This Motion to Continue Trial is made pursuant to the Court's authority to grant a
15 continuance for good cause as set forth in *Benson v. Benson*, 66 Nev. 94, 99, 204 P.2d 316,
16 318-19 (1949) and *Higgs v. State*, 126 Nev. 1, 9, 222 P.3d 648, 653 (2010).
17

18 DATED this 24 day of July, 2019.
19

20 By:
21 MAYFIELD GRUBER & SHEETS

22 By: /s/ Damian Sheets
23 Damian Sheets, Esq.
24 Nevada Bar No. 10755
25 726 S. Casino Center Blvd.
26 Las Vegas, Nevada 89101
27
28

1 **CERTIFICATE OF SERVICE**

2

3 I HEREBY CERTIFY that on the 24 day of July, 2019 I served a true and correct copy

4 of the foregoing Defendant's Motion to Continue Trial, upon each of the parties by

5 electronic service through Wiznet, the Eighth Judicial District Court's e-filing/e-service

6 system, pursuant to N.E.F.C.R.9; and by depositing a copy of the same in a sealed envelope

7 in the United States mail, Postage Pre-Paid, addressed as follows:

8 Clark County District Attorney's Office

9 200 Lewis Ave., 3rd Floor

10 Las Vegas, NV 89155

11 motions@clarkcountyda.com

12 pdmotions@clarkcountyda.com

13 /s/ Kelsey Bernstein

14 An Employee of Mayfield Gruber & Sheets

15

16

17

18

19

20

21

22

23

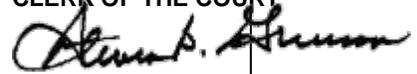
24

25

26

27

28



1 MOT
2 MAYFIELD GRUBER & SHEETS
3 Damian Sheets, Esq.
4 Nevada Bar No. 10755
5 Kelsey Bernstein, Esq.
6 Nevada Bar No. 13825
7 726 S. Casino Center Blvd.
8 Las Vegas, Nevada 89101
9 Telephone: (702) 598-1299
10 Facsimile: (702) 598-1266
11 dsheets@defendingnevada.com
12 Attorney for Defendant
13 Henry Aparicio

9 **EIGHTH JUDICIAL DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 State of Nevada,
12 Plaintiff

) Case No.: C-18-332496-1
) Dept. No: VIII
)

13 vs.

) **MOTION TO REHEAR MOTION IN LIMINE**
) **AND REQUEST FOR INVESTIGATIVE FEES**

14 Henry Aparicio,
15 Defendant

) **Hearing Requested**
)

16
17 COMES NOW, Defendant Henry Aparicio, by and through his attorney of record,
18 DAMIAN SHEETS, ESQ. of the firm Mayfield Gruber & Sheets, hereby submits this Motion to
19 Rehear and Reconsider Motions in Limine and Request for Investigative Fees.
20

21 ///

22
23 ///

24
25
26 ///

1 **NOTICE OF HEARING**

2 TO: THE STATE OF NEVADA, Plaintiff; and

3 TO: DEPUTY DISTRICT ATTORNEY:

4 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the
5 above and foregoing motion on for hearing on the ____ day of _____, 2019, at
6 the hour of _____, before the above-entitled Court, or as soon thereafter as counsel can be
7 heard.

8
9 DATED this 24 day of July, 2019.

10
11 MAYFIELD GRUBER & SHEETS

12 Respectfully Submitted By:

13 /s/ Damian Sheets
14 DAMIAN SHEETS, ESQ.
15 Attorney for Defendant
16
17
18
19
20
21
22
23
24
25
26
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 Defendant Henry Aparicio is charged with Driving Under the Influence of Alcohol
4 Resulting in Death, along with similar lesser included offenses. Calendar Call is currently
5 scheduled for July 31, 2019, with trial on August 5, 2019. A Motion to Continue is being
6 filed concurrently herewith.

7
8 Mr. Aparicio filed a Motion to Disqualify Judge Douglas Smith based on bias
9 exhibited on the record and in pleadings. Oral argument on the Motion was heard before
10 the Honorable Chief Judge Bell, but Judge Bell withheld decision on the matter until after
11 Judge Smith announced an early retirement date of April 12, 2019. Based on this
12 announcement, Judge Bell declared the Motion was moot in a Decision and Order filed on
13 April 5, 2019. The Court found the bias issue was moot because Mr. Aparicio will have a
14 different judge for the next hearing.

15
16 Counsel for Mr. Aparicio filed a Motion to Reconsider the Decision because the bias,
17 if it did exist, would have infected the entirety of the proceedings, including numerous
18 evidentiary rulings that have a substantial bearing on the direction and strategy of this
19 case. For example, Judge Smith granted, without limitation, the State's ability to introduce
20 blood alcohol content taken outside of the two hours that arguably does not comply with
21 Nevada case law and is based on a purported retrograde extrapolation formula used in the
22 1990s. When Mr. Aparicio requested financial assistance to obtain a rebuttal expert,
23 despite showing a negative income to debt ratio, Judge Smith denied Mr. Aparicio's request
24 based on "an insufficient showing of indigency." Judge Smith effectively permitted the State
25
26
27
28

1 to admit evidence *carte blanche*, and then subsequently prevented Mr. Aparicio from
2 rebutting that evidence in any meaningful way.

3
4 However, at the hearing on the Motion to Reconsider filed before Judge Bell, she
5 declined to alter the ruling that the issue of bias was moot, and further ruled that she
6 lacked jurisdiction to order the rehearing or reconsideration of previously ruled upon
7 motions. While the Chief Judge believes she may not have the jurisdiction to order the
8 Court to rehear the previously filed Motions, as the trial Court, this Court can grant such
9 relief under its overarching constitutional authority.

10
11 The right to a neutral and fair magistrate is rooted in the Due Process Clause of the
12 Fourteenth Amendment. “[A defendant] is entitled to a neutral and detached judge in the
13 first instance.” *Matter of Ross*, 99 Nev. 1, 13, 656 P.2d 832, 839 (1983); see also, *Ward v. Vill.*
14 *Of Monroeville, Ohio*, 409 U.S. 57, 59, 93 S.Ct. 80, 82 (1972). “It is axiomatic that [a] fair trial
15 in a fair tribunal is a basic requirement of due process.” *Caperton v. A. T. Massey Coal Co.*,
16 556 U.S. 868, 876, 129 S. Ct. 2252, 2259 (2009). “A fair trial in a fair tribunal is a basic
17 requirement of due process. Fairness of course requires an absence of actual bias in the trial
18 of cases.” *In re Murchison*, 349 U.S. 133, 136, 75 S. Ct. 623, 625 (1955).

19
20 Additionally, the Court has the inherent power to correct errors of constitutional
21 magnitude. “The power of this court to address plain error or issues of constitutional
22 dimension sua sponte is well established.” *Pellegrini v. State*, 117 Nev. 860, 882, 34 P.3d
23 519, 533-34 (2001); *Emmons v. State*, 107 Nev. 53, 60-61, 807 P.2d 718, 723 (1991); see
24 also *Edwards v. State*, 107 Nev. 150, 153 n.4, 808 P.2d 528, 530 n.4 (1991). “When
25 the constitution commands how a right may be exercised, it prohibits the exercise of that
26
27
28

1 right in some other way. If exercised at all it must be exercised as commanded by
2 the constitution. 'A state constitution is also binding on the courts of the state, and on every
3 officer and every citizen. Any attempt to do that which is prescribed in any other manner
4 than that prescribed, or to do that which is prohibited, is repugnant to that supreme and
5 paramount law, and invalid.'" *Porch v. Patterson*, 39 Nev. 251, 269, 156 P. 439, 445 (1916).
6

7 Given the constitutional magnitude of the issues presented, the Trial Court has the
8 inherent jurisdiction to correct any such constitutional flaw. Although the Chief Judge
9 declined to rule one way or the other with regards to bias, there is little doubt that *this*
10 Court has the power to rehear motions if the prior rulings do not comply with the
11 requirements of Due Process. In this case, there is at least one major, glaring example of
12 how the prior Judge denied Mr. Aparicio Due Process: After permitting the State to
13 introduce expert testimony of retrograde extrapolation, the Judge denied Mr. Aparicio's
14 request for financial assistance to obtain a rebuttal expert despite the Judge's
15 *acknowledgement* of Mr. Aparicio's negative debt-to-income ratio. Mr. Aparicio has been
16 denied any ability to rebut evidence presented by the State which, at face value, is wholly
17 rebuttable and central to the State's case. There is little question that Mr. Aparicio's
18 financial inability to secure a rebuttal expert will have a significant impact on the
19 proceedings and outcome of this trial; Mr. Aparicio should not have to endure an inherently
20 unconstitutional trial or conviction in order to raise the matter on appeal when this Court
21 has the inherent power to correct the errors that are present immediately before it.
22
23
24
25
26
27
28

C-18-332496-1 State of Nevada
 vs
 Henry Aparicio

July 31, 2019 08:30 AM Calendar Call

HEARD BY: Silva, Cristina D. COURTROOM: RJC Courtroom 11B

COURT CLERK: Emmons, Shannon

RECORDER: Villani, Gina

REPORTER:

PARTIES PRESENT:

Charles Martinovsky	Attorney for Plaintiff
Damian R. Sheets	Attorney for Defendant
Henry Aparicio	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Arguments by Mr. Sheets regarding the case history with Judge Smith. State announced ready and advised this trial will last ten (10) days with at least thirty (30) witnesses. Mr. Sheets argued he will be ineffective if the trial moves forward as scheduled as he has another trial at the same time. Colloquy regarding subpoena returns. CONFERENCE AT BENCH. COURT ORDERED, matter SET for status check.

CUSTODY

08/01/2019 9:00 AM STATUS CHECK: TRIAL READINESS

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

AUG 01 2019

BY: *Louisa Garcia*
LOUISA GARCIA, DEPUTY

1 **GPA**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHARLES MARTINOVSKY
6 Chief Deputy District Attorney
7 Nevada Bar #007439
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

C-18-332496-1
GPA
Guilty Plea Agreement
4863026



9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 HENRY APARICIO, aka,
13 Henry Biderman Aparicio, #6069038,
14 Defendant.

CASE NO: C-18-332496-1

DEPT NO: IX

15 GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty to: **COUNT 1 - DRIVING UNDER THE INFLUENCE**
17 **RESULTING IN DEATH (Category B Felony - NRS 484C.110, 484C.430, 484C.105 -**
18 **NOC 53908); COUNT 2 - DRIVING UNDER THE INFLUENCE RESULTING IN**
19 **DEATH (Category B Felony - NRS 484C.110, 484C.430, 484C.105 - NOC 53908) and**
20 **COUNT 3 - RECKLESS DRIVING (Category B Felony - NRS 484B.653 - NOC 53896),**
21 as more fully alleged in the charging document attached hereto as Exhibit "1".

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

24 The State will retain the right to argue as to Counts 1 and 2; but no opposition to
25 concurrent service of time between the Reckless Driving count and the two (2) counts of
26 Driving Under The Influence Resulting In Death.

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 to which I am pleading guilty, including the use of any prior convictions I may have to
8 increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without the
9 possibility of parole, life with the possibility of parole after ten (10) years, or a definite twenty-
10 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 to which I now plead as set forth in Exhibit "1".

16 **As to Count 1**, I understand that as a consequence of my plea of guilty, the Court must
17 sentence me to imprisonment in the Nevada Department of Corrections for a minimum term
18 of not less than TWO (2) years and a maximum term of not more than TWENTY (20) years.
19 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum
20 term of imprisonment. I understand I will be fined a minimum of \$2,000.00 and a maximum
21 of \$5,000.00.

22 **As to Count 2**, I understand that as a consequence of my plea of guilty, the Court must
23 sentence me to imprisonment in the Nevada Department of Corrections for a minimum term
24 of not less than TWO (2) years and a maximum term of not more than TWENTY (20) years.
25 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum
26 term of imprisonment. I understand I will be fined a minimum of \$2,000.00 and a maximum
27 of \$5,000.00.

28 **As to Count 3**, I understand that as a consequence of my plea of guilty, the Court must

1 sentence me to imprisonment in the Nevada Department of Corrections for a minimum term
2 of not less than ONE (1) years and a maximum term of not more than SIX (6) years. The
3 minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of
4 imprisonment. I understand I will be fined a minimum of \$2,000.00 and a maximum of
5 \$5,000.00.

6 Further, pursuant to NRS 484C.460 I understand the Court must order the installation
7 of a breath ignition interlock device at my own expense in any vehicle I own or operate, as a
8 condition to the reinstatement of my driving privileges, for not less than twelve (12) months
9 and not more than thirty-six (36) months upon my release from prison, residential confinement,
10 confinement in a treatment facility, or from parole or probation.

11 I understand that as a consequence of my plea in the instant case, that if I should be
12 convicted of any subsequent Driving Under the Influence offense, regardless of when that
13 offense takes place, that conviction shall be a felony punishable by imprisonment in the
14 Nevada Department of Corrections for a minimum of two (2) years and a maximum of fifteen
15 (15) years, and a fine of not less than \$2,000.00 and not more than \$5,000.00. I further
16 understand that such imprisonment will not be suspended nor will that fine be excused. In
17 addition, the Department of Motor Vehicles will revoke or suspend my license for at least three
18 (3) years and impose a \$35 civil penalty. I understand the Department of Motor Vehicles may
19 also suspend the registration on any vehicles I own or operate.

20 I understand that if I am convicted of three (3) Driving Under the Influence offenses
21 during my lifetime, including the offense to which I am pleading guilty today, and I
22 proximately cause the death of another person while driving under the influence of alcohol,
23 liquor, a controlled substance, and/or a prohibited substance, then I can be prosecuted for
24 Vehicular Homicide. I understand that I would then be subject to imprisonment in the Nevada
25 Department of Corrections for: (a) life with the possibility of parole after a minimum of ten
26 (10) years has been served; or (b) a definite term of twenty-five (25) years with the possibility
27 of parole after a minimum of ten (10) years has been served.

28 I further understand and agree, that as a consequence of accepting the negotiations in

1 the instant case, I will not ask for nor receive treatment under NRS 458.300 et seq.

2 I understand that the law requires me to pay an Administrative Assessment Fee and a
3 \$60.00 Chemical Analysis Fee.

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

8 **As to Count 1**, I understand that I am not eligible for probation for the offense(s) to
9 which I am pleading guilty.

10 **As to Count 2**, I understand that I am not eligible for probation for the offense(s) to
11 which I am pleading guilty.

12 **As to Count 3**, I understand that I am eligible for probation for the offense to which I
13 am pleading guilty. I understand that, except as otherwise provided by statute, the question of
14 whether I receive probation is in the discretion of the sentencing judge.

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

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

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

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

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

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

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

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

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

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

19 WAIVER OF RIGHTS

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

- 22 1. The constitutional privilege against self-incrimination, including the right
23 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.
- 24 2. The constitutional right to a speedy and public trial by an impartial jury,
25 free of excessive pretrial publicity prejudicial to the defense, at which
26 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.
- 27 3. The constitutional right to confront and cross-examine any witnesses who
28 would testify against me.

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

3 DATED this 1 day of ~~July~~, 2019.

4 *Asst*

5 *Henry Aparicio*
6 HENRY APARICIO, aka.
7 Henry Biderman Aparicio
8 Defendant

8 AGREED TO BY:

9 *Charles Martinovskiy*

10 CHARLES MARTINOVSKY
11 Chief Deputy District Attorney
12 Nevada Bar #007439

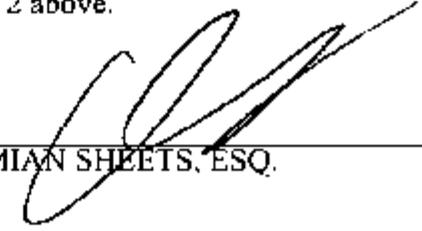
1 CERTIFICATE OF COUNSEL:

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 1 day of ~~July~~, 2019.

August



DAMIAN SHEETS, ESQ.

ld/vcu

1 **AINF**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHARLES MARTINOVSKY
6 Chief Deputy District Attorney
7 Nevada Bar #007439
8 200 Lewis Avenue
9 Las Vegas, Nevada 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 HENRY APARICIO, aka,
13 Henry Biderman Aparicio, #6069038,

14 Defendant.

CASE NO. C-18-332496-1

DEPT NO. IX

13 AMENDED
14 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 HENRY APARICIO, aka, Henry Biderman Aparicio, the Defendant(s) above
20 named, having committed the crimes of **DRIVING UNDER THE INFLUENCE**
21 **RESULTING IN DEATH** (Category B Felony - NRS 484C.110, 484C.430, 484C.105 -
22 **NOC 53908**) and **RECKLESS DRIVING** (Category B Felony - NRS 484B.653 - **NOC**
23 **53896**), on or about the 15th day of May, 2018, within the County of Clark, State of Nevada,
24 contrary to the form, force and effect of statutes in such cases made and provided, and against
25 the peace and dignity of the State of Nevada,

26 COUNT 1 - DRIVING UNDER THE INFLUENCE RESULTING IN DEATH

27 did then and there willfully and unlawfully drive and/or be in actual physical control of
28 a vehicle on or off a highway at West Sahara Avenue and South Hualapai Way, Las Vegas,

EXHIBIT "1"

w:\2018\2018P09022\18P09022-AINF-(Aparicio_Henry)-001.docx

1 Clark County, Nevada, Defendant being responsible in one or more of the following ways
2 and/or under one or more of the following theories, to wit: 1) while under the influence of
3 intoxicating liquor to any degree, however slight, which rendered him incapable of safely
4 driving and/or exercising actual physical control of a vehicle, 2) while he had a concentration
5 of alcohol of .08 or more in his blood, and/or 3) when he was found by measurement within
6 two (2) hours after driving and/or being in actual physical control of a vehicle to have a
7 concentration of alcohol of .08 or more in his blood, Defendant, while driving and/or in actual
8 physical control of a vehicle, failing to pay full time and attention to his driving, failing to
9 exercise due care, and/or failing to drive in a careful and prudent manner, which acts, or
10 neglect of duties, proximately caused the vehicle Defendant was driving and/or in actual
11 physical control of, to strike and collide with a vehicle being driven or occupied by DAMASO
12 PUENTE, said collision proximately causing death to DAMASO PUENTE.

13 COUNT 2 - DRIVING UNDER THE INFLUENCE RESULTING IN DEATH

14 did then and there willfully and unlawfully drive and/or be in actual physical control of
15 a vehicle on or off a highway at West Sahara Avenue and South Hualapai Way, Las Vegas,
16 Clark County, Nevada, Defendant being responsible in one or more of the following ways
17 and/or under one or more of the following theories, to wit: 1) while under the influence of
18 intoxicating liquor to any degree, however slight, which rendered him incapable of safely
19 driving and/or exercising actual physical control of a vehicle, 2) while he had a concentration
20 of alcohol of .08 or more in his blood, and/or 3) when he was found by measurement within
21 two (2) hours after driving and/or being in actual physical control of a vehicle to have a
22 concentration of alcohol of .08 or more in his blood, Defendant, while driving and/or in actual
23 physical control of a vehicle, failing to pay full time and attention to his driving, failing to
24 exercise due care, and/or failing to drive in a careful and prudent manner, which acts, or
25 neglect of duties, proximately caused the vehicle Defendant was driving and/or in actual
26 physical control of, to strike and collide with a vehicle being driven or occupied by CHRISTA
27 PUENTE, said collision proximately causing death to CHRISTA PUENTE.

28 ///

1 COUNT 3 - RECKLESS DRIVING

2 did then and there willfully, unlawfully, and feloniously drive a motor vehicle at West
3 Sahara Avenue and South Hualapai Way, Las Vegas, Clark County, Nevada, with willful or
4 wanton disregard for the safety of persons or property, by driving said vehicle without paying
5 full time and attention to his driving, and/or failing to exercise due care, and/or failing to drive
6 in a careful and prudent manner, and/or by traveling at a high rate of speed and/or failing to
7 slow down for traffic, thereafter crashing into and/or rear-ending a vehicle in which DAMASO
8 PUENTE was seated, which acts, or neglect of duties, proximately causing the death of
9 DAMASO PUENTE and/or CHRISTA PUENTE.

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

13 BY *Charles Martinovsky*
14 CHARLES MARTINOVSKY
15 Chief Deputy District Attorney
16 Nevada Bar #007439

17
18
19
20
21
22
23
24
25
26
27 DA#18F09022X/td/vcu
28 LVMPD EV#1805154422
(TK11)

September 30, 2019

Victim Impact Statement for fatal victims

Dámaso and Christa Puente

Sentencing of Henry Aparicio #C-18-332496-1

To Your Honor, Judge Cristina Silva

My name is Ian Malone and I'm one of Christa's older brothers. I'm writing to you today in an attempt to share some of the experiences and feelings that my family and I have gone through since the crash on May 15, 2018. What words I put on paper won't come close to telling the whole story, but I'll do my best to express the pain and misery that we've all felt for the past year and a half, and I'll try to convey the goodness that was taken out of the world that night.

Christa was born when I was 3 years old. I don't have any memories that far back so when I think of our family it was always my older brother, myself, and my two little sisters. It took getting older for me to realize how lucky we were growing up. We had parents that gave us their time and love, and we had siblings that cared about and loved each other. Christa was the baby of the family and was truly the best of all of us. It's no surprise that she grew up to be an oncology nurse, and that she spent her adult life bettering the lives of those in pain. The kindest and brightest person anyone could ever hope to meet, always laughing from my earliest memories of her to my last.

I also had an older sister that I never got a chance to know because she was taken away from us in a car accident before I was born. I never met Christine, but I know the effect that her death had on my mother. She was hit by a car near her home in California nearly 40 years ago and that's been a pain that my mother has carried with her for all that time. That sadness has never gone away, and the loss of her first child will never be less painful. I have a child of my own now, and though I understand the sense of loss and pain that my mother has lived through

twice, and now my father with her, I pray I never have to experience what it's really like to lose a child. My father said to me a few times over the years, before the accident, that a parent should never have to bury their child. It's the worst nightmare of any family and living through it is far worse than I could have possibly imagined.

When I think of my brother-in-law Dámaso, the first thing that always comes to mind is how funny he was. His sense of humor was pervasive and constant. I don't have a single sad, or even serious, memory of him before the accident. Anyone lucky enough to know him will speak to how incredible a person he was to be around. But more importantly to me, he was a perfect husband to my little sister. It's a common thing between Dom and Christa's friends and family to refer to them as Romeo and Juliet because none of us has seen a couple so truly devoted and crazy about each other. I don't remember how long ago I met Dámaso, it must be 17 or 18 years now, but from the start it was clear that we could trust him with the baby of our family. They remain the most perfect couple I've known, or seen in a movie, or read about in a fairy tale. After 7 years of dating and 9 years of marriage the new feeling of love and joy never wore off for them. They remained a perfect love story until the last moment. As painful as their deaths have been, it's made worse by the knowledge that they were finally ready to start having children. We can only guess about what bright, beautiful, and loving children they would have raised. The world not only lost two perfect souls on the night of the accident, but all their future children and grandchildren. They would have been so good at parenthood, but they were robbed of the chance to raise children. My parents were robbed of the chance to see those grandchildren grow up. My siblings and I were robbed of our future nieces and nephews.

I wish I could have another year or month or day to spend with them. I didn't get enough time over the last 10 years. As it sometimes happens in adult life we moved to different parts of the country. We could talk on the phone and no matter the time apart or the distance we would pick up right where we left off as if we had just seen each other yesterday. But there's no substitute for being in the same room with them. Now I regret every time I left town and didn't go to see them. Every vacation, every weekend off work, every trip I took could have been a chance to spend time with them. Now that the chances have forever run

out, I feel those lost opportunities like a weight on my chest. I wish I had a chance to thank Christa for being the perfect baby sister and I wish I had a chance to thank Dámaso for being so, so good to her.

The morning of May 16, 2018 I received a voicemail from the Las Vegas coroner's office asking me to return a call to them about a case involving Christa Puente. That was all the message said but a terrible, surreal feeling came over me. Logically I knew that there was only one reason I'd be getting a message like that, but like anyone would I was hoping for another explanation. Since my sister was a nurse, I was holding out hope that it was something to do with that. I called the number they left me and while I was being transferred to the person dealing with the case, my phone died. Since I was in a store at the time, I went to buy a portable charger to turn my phone back on, my mind spinning the whole time, hoping and dreading. When I was able to call back and get transferred back to the correct person I was walking to my car. They asked me if I knew Christa Puente and when I told them that she was my sister they informed me that she and her husband had been in a car accident in Las Vegas the evening before and had been killed on impact. With that the hope died and the misery began.

I wasn't able to drive my car because I was crying so I had to ride in the passenger seat while my girlfriend drove me home. I knew I was the first to find out about the accident, so I had to tell my family. I consider these the most painful moments of my life. I tried calling my parents, then my sister, then my brother, none of whom answered. For the time I was alone with a terrible secret that I didn't want to share and that I didn't want to be true. When my father did call me back, he was with my mother. I told him about the accident and he dropped the phone and just repeated "No, No, No" over and over. I could hear my mother asking him what was wrong, but he wasn't able to answer her, so she picked up the phone and I repeated the heart-wrenching news to her. I was in a daze at the time and I don't remember what I was doing. I know I was in my car, listening to my mother scream "Another one, another one", and I don't know anything else about the next few hours. When I was able to drive, I went to my parents and got them on a flight to Las Vegas so that they could go identify the body of their youngest child.

In the past year and a half since the accident I've never told the full story of that morning to anyone. The telling is still too painful. I'm putting it into this letter because its something I hope will influence the sentencing of Henry Aparicio. I should have written an impact statement before now but every time I sat down to work on it, I stopped immediately. I never got a single word on the paper. I put it off so long that now I'm perversely writing a statement about the impact of my sister's death on her 35th birthday. My son shares her September 30th birthday and what once was a great day in our family will always be tinged with a sadness in knowing what we're missing and what we were cheated out of that night.

My immediate family has gotten together several times since the funeral that saw my sister and her soulmate buried. It still doesn't feel real that that's all of us now. There's such a huge, glaring hole that used to be filled by the warmth, laughter, and humor of Dom and Christa. I will never get used to them not being there, and while its possible for me to think fondly about the wonderful people they were, it will always be in a past tense. In the present, I still hurts every time I think about it. In the present my mother still cries herself to sleep every night, and cries herself awake every morning, because she gave birth to three beautiful daughters and now she has one. In the present, my father will never see his youngest child again. I've only touched on my family's heartache in this letter, but Damaso and Christa had so many dear friends, co-workers, and patients that were also crushed by Mr. Aparicio's actions that night.

I am hoping, Your Honor, that you will sentence Henry Aparicio to the maximum sentence for each count with which he is charged and that those sentences will run consecutively. This is not just because of the personal pain and misery that he has caused me, but because he is a dangerous person. If it wasn't my sister and her husband that died that night, it surely would have been someone else's son/daughter/mother/father/sister/brother. It is a very serious thing that he chose to drive after drinking so heavily, but more than that, he turned his vehicle into a deadly weapon and guaranteed that he would kill someone when he accelerated to over 100 mph on Sahara Ave. It was not just the alcohol that murdered my sister and her husband. Henry Aparicio was not just another drunk driver. He would have killed someone that night if he had been completely sober driving at those speeds. What he showed was a complete

lack of regard and disrespect for life to everyone around him. A person like that belongs in prison for the maximum amount of time because he is a danger to all of those around him. I would never wish the pain and heartache that he has caused my family on any other.

I wish that I could express my thoughts better than I have because as I read them over the words on the page do no justice to the pain and outrage of the experience. I just don't know any better way to tell it. But I want to thank you Judge Silva for taking the time to read this letter and consider my thoughts and feelings in this grave matter.

Respectfully,

Ian Malone

Sentencing of Henry Aparicio #C-18-332496-1

Fatal Victims: Damaso and Christa Puente

Judge: Cristina D. Silva

September 20, 2019

To: The Honorable Judge Cristina D. Silva

My name is Dan Wilson and I am the oldest brother of Christa Malone Puente. I have held off writing this Victim's Impact Statement as long as I could have, I guess to reserve myself the extra pain it will no doubt bring by writing it.

Christa was the youngest of our family, my mom's baby girl. I am 10 and a half years older than Christa so there was quite an age difference between us. I think that difference in age allowed me to see clearer what an amazing person she was and how she had grown to be a person that one could only sit back and admire. Her smile could calm you and brighten your day. She was surely a ray of light in the dark world in which we live. Christa was extremely caring for others and a very unselfish person. I think creating joy and happiness in others is what truly made her happy.

My sister had also found her soulmate in Damaso Puente. Those two together lived a real-life Romeo and Juliet love story. They were two hearts that had become one, a beautiful sight to behold just watching them together. They were, together, so full of life and love, a bond most can just dream of. Hanging out with the two of them was such a privilege. They could both make you laugh all day long and completely forget anything that might be troubling you. Just their faces they would make back and forth to each other, I'll just miss that so much.

On the morning of May 16, 2018 I was working in St. Louis which is where I live. My cell phone starting ringing and the caller ID said Dan Malone, my step-dad. I answered the call and all he said was my name. My heart dropped in my chest and a lump formed in my throat, I knew there was something very wrong. My first thought was is my mom okay, because surely she would be calling if it was something else. My dad said to me that there had been a terrible accident and that Christa and Dom had been killed the night before in Las Vegas. I knew then why my mom had not been the one to contact me. I'm sure at that point she would not have been able to say those words to me. Shock, disbelief, pain and tears came instantly at the same exact moment. I could not complete my duties on the job, I knew

that for certain. I called my boss for a replacement and did the best I could do to drive home, trying to see straight through the tears and crying.

The moment that I was told of the deaths of my baby sister and her incredible husband I felt cheated. Cheated of time, cheated of being able to see them again and cheated out of goodbyes. I will never again be able to be comforted by my sisters smile, completely lose myself in the laughter they both would induce upon me and never again be astonished by experiencing the deep, deep love they showed for each other and the ones around them.

All that I feel now is heartache and utter loss. Still I wake up each morning and try to convince myself this heinous crime did not happen, that Christa and Dom can't possibly be gone. But on my drive to work I realize it is real, they were both taken from us. I hate driving now, especially alone. For me, it is the time I think of them most with no one there to talk of something else, anything else. It is there in the truck, thinking of them, that I hurt most. There are other times as well that I think of them, but for sure those two hours of the day five and six times a week. Reliving this crime of Christa and Dom being stolen from us physically hurts my chest so bad that it actually hurts my back. Lumps in the throat and random tears fall without warning.

Sometimes I feel that I'm being selfish by feeling sorry for myself that I'll never see Christa and Dom again. I feel as if I shouldn't have the right to mourn for them so much because of the impact that it has had on my mom and dad. I think to myself that if it hurts me this bad, what must it be like for them. I never want to know their pain. I have three children of my own and I don't know that I would be strong enough to continue on with the loss of one of my children. And for my sweet mother, it is the second child that has been taken from her. We lost my older sister, Christine in 1978. She was killed in California by a hit and run driver while riding her bike in a quiet neighborhood. I was only four years old and too young to fully understand what had happened, but I do remember the effect on my mother. Every night, which seemed like for years, she would cry, cry from deep in her heart. I remember it waking me up and I would go into her room and try and comfort her. And now it has happened again. Another child, another sweet, innocent girl taken from her. This time we know for sure it was preventable.

When Henry Aparicio decided to drive completely and utterly intoxicated on the night of May 15, 2018, he also made the decision to take the lives of Christa and Dom. Sure, he didn't know them, but he did indeed murder them. If it hadn't been them, it would surely have been another family mourning the loss of a loved one. I look at it like this. There's not much of

a difference between driving intoxicated at speeds of 100 mph and shooting bullets into a crowd. The chances of someone getting seriously hurt or killed is extremely high in both cases. So when Mr. Aparicio got into that car in his condition and drove that recklessly he accomplished the results that were so likely to happen. He killed my sister and he killed Damaso. He took away my mom and dad's baby girl. He stole my brother and sister's best friend. He ended the beautiful love story between Christa and Dom. He never let me see or visit them again. He destroyed my kids' relationship with their Aunt and Uncle. He brought darkness by taking our ray of sunshine.

Personally, I don't feel as if Mr. Aparicio deserves to ever get out of prison for the two acts of murder he committed. Dear Judge I ask you to please sentence Mr. Aparicio to the maximum penalty for each count he is charged and that the sentencing for each count run consecutively. Mr. Aparicio has taken from this world two of the most beautiful souls most of us have ever or will ever be lucky enough to know. I hope he stays in prison long enough to feel a fraction of the pain that he has induced upon us. That will take quite some time.

Thank you, your honor, for taking the time to listen to my thoughts and concerns. I wish that I had the ability to convert the feelings in my heart to paper more clearly but this seems to be the best I can do to share my feelings and emotions with you.

Respectfully,
Dan Wilson
(loving brother of Christa Malone Puente)

August 29, 2019

Sentencing of Henry Aparicio #C-18-332496-1

Fatal victims: Damaso and Christa Puente

Honorable Judge Cristina Silva,

My name is Makenzey Wilson. Christa is my aunt, and ever since I have been able to remember, Damaso has been my uncle. Even before the two of them were married, I thought of him as family. I do not remember a time when the two of them were not together and I would not have it any other way. Although I have not gotten to see them as often in recent years, some of my greatest childhood memories are from the time I spent visiting them in Vegas. When I found out the two of them had passed away on May 15, 2018, I was in shock. I heard the news from my mother and I was not able to have an emotional response other than shock for a whole day, but when I did, I thought about the fact that I would never get to spend times like that with them ever again.

There is never really a day I do not think about the fact that my aunt and uncle are both gone from my life. I will never get to longboard around parking lots with Damaso like my sister and I did when we were kids. I will never get to see Christa's smile, which lit up every room and made everyone a little happier. It will not feel the same when my dad, Christa's brother, tells me how much I remind him of her, because I am clumsy and messy just like she was when she was younger. It hurts me to think about those things, and it makes me wish I could have spent every minute with them while they were here. Due to living multiple states away, I had not seen them in a few years, though I thought about it frequently. Now, the opportunity to change that has

been taken away from me. In addition to mourning their death, I am also mourning the memories I will not get to make with them in the future.

Thoughts like those play in my head on a loop, and they make me cry as I type them out because somehow it makes them feel more real. Those thoughts are not the only new experience I have had since they passed. Driving and being in cars has always made me on edge, but since the passing of Christa and Damaso, it has been made even harder. I cannot stop thinking about the worst possible scenarios that could take place. It is so easy for someone to make a careless decision such as the one made in this case before getting behind the wheel of a car. I think about that constantly, as well as all the other possibilities of what could go wrong while on the road. I have grown more and more anxious every time I close the door after getting into a car. Anytime a car gets a little too close, my heart starts beating at a rapid rate and I suddenly feel a lump in my throat as these thoughts go through my mind. I feel extreme stress the second anyone goes over the speed limit. This has even stopped me from getting a driver's license of my own up until this point. The fact that I am too anxious to drive on my own puts more stress on me because it limits what I can do since I live in an area where driving places is the only way to get almost anywhere.

In addition to my own struggles, I have had to watch the rest of my family struggle through this loss as well. My father is not one to talk about his emotions very often, but I can tell he has been different since the incident. Something like losing a sibling is not something you ever get over, and it changes who you are as a person for your entire life. My siblings are also affected, although my brother in a different way. He is younger than my sister and I are and he never got the same opportunities and chances to get to know his own aunt and uncle the way that we did, and now he never will.

Due to the actions of the defendant, my family, myself, and all of the people who were touched by the lives of Christa and Damaso are forced to mourn the loss of their lives. Due to the impact of his actions, I ask that the defendant, Henry Aparicio, be sentenced to the maximum penalty for each of his crimes, and that his sentences run consecutively. Although this cannot bring back the lives of Christa or Damaso, it can assure that he is not able to cause this kind of devastation to anyone else for many years to come.

Judge Silva, I thank you for taking the time to allow me to express my feelings, thoughts and concerns.

Respectfully,

Makenzey Wilson

Sentencing of Henry Aparicio #C-18-332496-1

Fatal victims: Damaso and Chrisa Puente

Judge: Cristina Silva

September 22, 2019

Your Honor,

My name is Peggy Buell. I am Christa Puente's Grandmother. I am 87 years old and this is my second granddaughter whose life has been cut short dying in an automobile wreck.

I was living with my daughter Diane Malone, her husband, Dan and my granddaughter Christa and her husband Damaso Puente when the horrific death of my beloved granddaughter occurred. When my daughter received the news she was overcome with such devastation I have no words that can even express the emotional and physical trauma she has sustained. For the next several weeks to months there was so much chaos and grief that the entire household seemed surreal. I seemed to be the one that helped to support my daughter and tried to comfort her but it was impossible! There was nothing that could take the nightmare away. I hardly slept and cried most of the time along with my daughter Diane.

I eventually had to move in with my granddaughter for a while then moved to Fenton Missouri to be close to my son. My entire life was turned upside down and the stress has caused me to become more and more forgetful. Now I am becoming unable to sometimes remember the death and each time someone talks about Christa I have to be reminded again and experience the nightmare over and over like it just happened. The stress is unbearable for this old person.

I pray that Your Honor finds the maximum penalty of 8-20 years be given for each count to run consecutively. Henry Aparicio has ripped out a piece of my soul and left my family in ruins.

Thank you Judge Silva for taking the time to consider my thoughts and concerns.

Sincerely,

Peggy Buell, Christa's Grandmother

Sentencing of Henry Aparicio #C-18-332496-1

Fatal victims: Damaso and Chrisa Puente

Judge: Cristina Silva

September 20, 2019

Your Honor Cristina Silva,

My name is Elaine Babor and I am Christa Puente's Aunt, Diane Malone's only sister.

I was at home when my mother called me to tell me that Christa and Damaso were dead. I was in total disbelief as to how this could possibly be true. My sister has already lost a daughter to an automobile accident and now this. It just couldn't be, I must be hearing it wrong but I'm not. I was told a drunk driver rear ended them while they were innocently sitting at a traffic light.

Christa was the light of the family, the most gentle loving soul and oh that smile of her's melted my heart. I never heard a cross word or a negative thought about anyone or anything from her in her life. As a little girl she was always the kindest and most gentle when playing with her cousins. They lived just up the street from me and I always loved seeing her happiness. It would just light up my day.

Christa was always wanting to help others and her dream of becoming a nurse and doing what she did best, helping others with her love, kindness and caring nature became reality. She spent many years going to school and finally got her nursing degree only to have her passion for others cut so short. No one will ever know the true impact she might have made on many others with her skills and love.

Christa's mother, Diane is my younger sister and I now am watching her deal with a death of her second daughter and I do not believe she will ever be able to live with this tragedy. Up until this point in time she has been on a mission to bring justice for her daughter and son-in-law and when the sentencing is over I fear for

her very life. When I talk with her she is a shell of a person and cries every day and has no thoughts except for Christa. She is in a nightmare day in and day out and cannot cope with anything except thinking of Christa's death which is consuming her.

Diane now lives in the home Christa and Damaso had shared for so many years and finds no direction to her life. In the past year and a half she meanders through the house and finds only empty memories of the happy home that once was. Diane is unable to cope with daily living and she feels dead inside. She has placed pictures, plants and many loving things given by so many from the funeral to the family in remembrance of Christa and Damaso all over the house and you can't go into any room without feeling their presence and their death. She is unable to move even a step forward in doing anything to pick up the pieces left by Christa.

I pray for my sister Diane daily for her peace and comfort but I know there is none. It is a life sentence and I feel in my heart that my sister will never recover from this horrible tragedy that Henry Aparicio caused. I fear for my sister's life as I know she is so desperate to join Christa in heaven and be with her again.

With his decision to drink and drive he has destroyed the lives of many innocent people not limited to the two he killed. There is no future for my sister to love grandchildren and enjoy large family gatherings for the holidays and special events. Christa's brothers Dan and Ian, and sister Anna will never know nieces and nephews that could have been. Christa's death has left a huge hole in the middle of a loving family.

Christa's father, Dan is a quiet man but now that quiet man is mostly silent. Hardly speaking even one word ever.

I now only see the devastation that Henry Aparicio has caused to each and every member of our small family. Because Henry Aparicio chose to drive drunk that night two wonderful people are dead. Not only did he choose to drive drunk at many times the legal limit he denied being the driver and lied over and over again about driving the car and murdering my niece and her husband. He has shown no remorse at all and has not accepted responsibility for their deaths.

I know he has agreed to a plea only to try to save himself. He is an evil person with no regard for the families he has destroyed.

I hope this impact letter helps you to understand the depth of pain and suffering and loss this family feels every hour of every day for the rest of our lives. Henry Aparicio will never understand the true impact he has made on so many lives and how he has forever destroyed so many more lives than just the two lives he took that night. He lives and they are dead.

Your Honor, I respectfully ask you to sentence Mr. Aparicio to the maximum sentence of 8 to 20 years for each count, to run consecutively to help keep him from the possibility of destroying any more lives and the families left behind. He chose to drive drunk and should pay the maximum penalty for that choice.

Thank you for your time to consider my thoughts about the impact this has made on my family.

Respectfully,

Elaine Babor, Aunt to Christa Puente

Sentencing of Henry Aparicio #C-18-332496-1

Fatal victims: Damaso and Chrisa Puente

Judge: Cristina Silva

September 20, 2019

Your Honor Cristina Silva,

My name is Michelle Kujath. I am Christa's cousin.

Christa was a very beautiful person. I remember when I was fourteen, I had gone to stay with my Aunt Diane and my Uncle Dan for the summer to babysit for them. Ian, Anna, and Christa. I had a great time with them all! Christa was the baby and the most work, but she was always so bubbly and adorable with those great, big, beautiful eyes and her big smile.

Our family will never be the same!

Every time I saw her after that summer, she was always happy and so sweet.

I will miss her very much. I will always miss her and Damaso together and how happy they always were together.

I strongly request the maximum penalty of 8-20 years be given for each count to run consecutively!!!!!!

Thank you for your time.

Respectfully,

Michelle Kujath

Sentencing of Henry Aparicio #C-18-332496-1

Fatal Victims: Damaso and Christa Puente

Judge: Cristina Silva

Your Honor,

My name is Patricia Hussey and Christa Puente is my cousin. I'm not sure exactly how to write this letter but it needs to be written. The devastation Christa and Damaso's murder has had on this family is hard to put in words.

I was an older cousin of Christa's. I didn't really have the fortune to grow up with Christa as little children but fortunately, I had a job that sent me to Las Vegas twice a year when we were adults. While out there, I stayed with Aunt Diane each time and got to know Christa very well. She was one of the most selfless people I have ever had the pleasure to know. She was genuine and beautiful and had such a contagious smile. It felt so good to finally know my little cousin. They flew to Missouri to be part of my wedding. Damaso did the videography because that was his passion. It was wonderful to share that special day with them.

Through family, I always stayed up on what those two were up to. I had just found out they were going to inquire about adopting a child. I always wished all the best for them, as they deserved a great LIFE. Two such loving, selfless, giving, caring souls should have.

There has not been 1 day since their horrible murders, that I have not thought about them and their parents. I pray every night to God to please give them strength to get through this tragedy. As I can not fathom the pain they feel. I pray every day for Christa's Mom, my Aunt Diane, that she will make it through. This is the second child that I have had to see my Aunt lose. Her oldest and now her youngest. I worry that the pain will consume her and be too much for her to bear.

This is a constant thought in my brain, every day, caused by the selfish, murderous act that Mr. Aparicio committed. He CHOSE to drink way too much at the restaurant, he CHOSE to get in the car behind the wheel, HE CHOSE TO MURDER MY COUSIN AND HER HUSBAND!

Christa and Damaso did not have a choice!!

Please, your Honor, I am asking that you give Mr. Henry Aparicio the maximum penalty of 8-20 years to be given for each count to run consecutively.

I would like to thank you, your Honor, for taking your time to consider my thoughts and concerns.

Respectfully,

Patricia Hussey

Christa's Cousin

Sentencing of Henry Aparicio #C-18-332496-1

Fatal victims: Damaso and Chrisa Puente

Judge: Cristina Silva

September 20, 2019

Your Honor Cristina Silva,

My name is Nancy Metts. I am Christa's first cousin, and Diane and Dan's niece.

From the time she was born, Christa was always smiling. Just being around her, your day would become so much better.

I remember when I went home my parents were sitting on the porch and my mom was crying. She began to tell me that Christa and Damaso were in a car accident and they were dead! Devastated!! This couldn't be real, maybe they have mixed something up because there is no way that two people like Christa and Damaso could be dead! I just started sobbing! Our family will NEVER be the same again! Their lives were stolen from us!

I have watched my Aunt go down a hole that no one wants to endure. Her baby was just taken from her! My Aunt doesn't sleep. She is in constant reminder of this horrible nightmare that she cannot wake up from. My Grandmother watches her daughter go thru the most horrific thing, and she can't do anything to fix it. Everyday is a struggle to overcome!

Christa and Damaso's life were a gift that most people inspire to be. I will never get to see that smile of hers again! My family will forever be altered by this!

I request the MAXIMUM PENALTY of 8-20 years be given for each count to run consecutively!

Thank you very much for taking the time to consider my thoughts.

Respectfully,

Nancy Metts

Sentencing of Henry Aparicio #C-18-332396-1

Fatal victims: Damaso and Christa Puente

Judge: Cristina Silva

Dear Judge Silva,

My name is Jessica Henry and I am first cousin to Christa Puente. I was devastated when my mother called me and told me that Christa and Damaso had been killed by a drunk driver.

This tragic disaster has impacted my life and will forever. My little cousin Christa was a sweet, loving, self-less soul. A very important piece of our family puzzle that will be lost forever and our family will never be whole again.

I have watched my Aunt Diane, Christa's mother lose a part of herself that will never heal. Losing a child is a mother's worst nightmare that you never awaken from and losing my cousin is a forever nightmare for me as well. The smallest of things triggers the horror of it over and over again. I think of my little cousin so happy as a little girl then grow into such a loving soul so happy in life. I grieve for losing her and I see the sorrow in her mother's face and how it overwhelms her constantly and I know it will never go away. My Grandmother has to watch her own daughter go through this daily along with the hurt it bestowed on her own heart as well.

For me it's not just losing my cousin but also losing a part of my Aunt, my Grandmother and every member of our small family. I watch the grief affect every member of my family and the lose just grows.

This will forever affect each member of Christa's family forever. It will not just go away. It's a life sentence of sorrow.

Please consider the maximum penalty for each count to run consecutively for Henry Aparicio as it's a life sentence for Christa and Damaso's families.

Thank you for considering my thoughts.

Respectfully,

Jessica Henry

September 22, 2019

Sentencing of Henry Aparicio Case # 18-332496-1

Fatal victims: Damaso and Christa Puente

Judge: Cristina Silva

Honorable Cristina Silva,

My name is William Buell. I am Christa Puente's uncle. I am the brother of Christa's mother.

We all lived near one another on a small farm in Missouri for many years after Christa was born. We were all very close and my sister and her children experienced love, life and happiness to the fullest. The smiles of Christa were continuous and contagious since the time she could walk. She brought love and joy to everyone.

Christa's mother, father, family and friends will never experience the joy of being in her presence again. Knowing how this "joy of life," Christa, was taken away from this world is devastating.

This disregard for other people's lives and the unremorseful attitude of Henry Aparicio is a confirmation of what he would bring to everyone. Maybe someday he can receive forgiveness from God, but Henry Aparicio needs to suffer the consequences of his own actions. We can only make this world a better place when people know that they have to take personal responsibility for their own behavior.

The consequences of Henry Aparicio's behavior is a loss for a lifetime. The restitution that he owes could never equal those heartbreaking losses of both Christa and Damaso.

For this reason, I am asking you, Judge Cristina Silva, to issue the maximum penalty of 8-20 years be given for each count to run consecutively.

Thank you for taking the time to read this and consider my thoughts pertinent to this case.

Respectfully,

A handwritten signature in blue ink that reads "William M. Buell". The signature is written in a cursive style with a large, sweeping initial 'W'.

William M Buell

September 22, 2019

Sentencing of Henry Aparicio Case # 18-332496-1
Fatal victims: Damaso and Christa Puente
Judge: Cristina Silva

Dear Honorable Cristina Silva,

My name is Kerry Buell. I am Christa Puente's aunt. Christa's mother is my husband's sister.

I was at a Red Cross blood drive and had just starting my donation when my phone rang. It was my husband. I will *never* forget the tone of his voice when he said, "Whatever you're doing; stop. I have to tell you something." I braced myself for what I could tell was horrible news and walked to the corner of the room. Nothing could have prepared me for his next words. "Christa and Damaso were hit by a drunk driver last night." I remember losing my breath. "They were both killed instantly." I remember crying in that public place in a way that was impossible to control.

On May 15th, 2018, our family experienced a devastating loss and we were all changed forever by the senseless, selfish, evil act of Henry Aparicio.

Your honor, Christa was an uncommonly beautiful soul. She grew up playing with my four children and was at our home often. My children loved her dearly; as did I. Christa's heart was huge and she was truly a joy and a blessing to be with.

She loved her husband, Damaso, profoundly. At their wedding, I remember thinking that I had never seen a couple look more in love than they did. It was beautiful to witness.

The world lost two loving, kind, giving people at the hands of a man with no remorse for his reprehensible actions. Christa and Damaso's families will never experience the joy of their presence again in our lifetimes. We have received a life sentence of separation.

My hope and prayer is that Henry Aparicio never inflicts this pain on another family. Your honor, I respectfully request that you give Henry Aparicio the maximum penalty of 8-20 years for each count to run consecutively.

Thank you, your honor, for reading this letter and for considering my thoughts.

Respectfully


Kerry Buell

Sentencing of Henry Aparicio #C-18-332496-1

Fatal victims: Damaso and Christa Puente

To the Honorable Judge Silva,

My name is Jonathan Buell. Christa Puente is my first cousin on my father's side. We grew up together as little kids in Grubville, MO. Christa was my first friend and playmate that I have memory of. We spent countless hours and days playing together. Outside in the woods, playing pretend, picking blackberries, riding bikes and always sledding in the wintertime. Inside watching movies, playing with toys or putting on little performances for our siblings, parents and grandparents. The memories I have of our time together as children are precious and fill my heart with joy.

Christa and her family moved from Grubville around the time she was starting high school. I was sad, but they were only about an hour away, so I still got to see her from time to time. I remember thinking it was pretty cool that my older cousin still wanted to hang out with me even though I know she had lots of other things she could be doing. We were family, we were friends and we would always have a connection.

Not too long after high school Christa moved to Las Vegas. The other side of her immediate family is from there. With her being there and studying to be a nurse, and myself back in Missouri doing high school and eventually college, we naturally drifted apart. Such is life. I have always regretted deeply that we didn't keep in contact more during those years. I hadn't seen Christa in a few years when I heard news that she was getting married. I was so happy for her and so glad I was able to attend her wedding. Christa and Damaso's story is heart-warming and their wedding was absolutely beautiful. They were both so happy, so in love and so full of life. I can still see Christa's smile from that day. It never left her face.

Fast-forward 5 years and my now wife and I are moving to Los Angeles. It's only a half day drive to Las Vegas and the prospect of being able to see my family there more often was very exciting. That first year of my move out west I spent Thanksgiving with Christa and Damaso, as well as my grandmother and aunt and uncle who were living there. We had such a great time and even though we had a lot of catching up to do and learning who each other were now as adults, I felt like my desire to re-kindle the friendship we had as children was shared by Christa.

The next Fourth of July Christa and Damaso were in LA on a trip and stayed at my house one night when I was having a BBQ get together. I felt so blessed that they had come. I felt so happy that we were becoming friends again. I felt so excited for the trip we had planned that day to attend the Blues v. Golden Knights hockey game the upcoming season. But that never happened. And it never will. That summer BBQ was the last time I saw, and ever will see, Christa and Damaso. At least in this life.

Your Honor, I respectfully ask that the maximum sentences of 8-20 years be given to Henry Aparicio. His senseless, immoral act of violence stole the lives of two people who

couldn't have deserved their fate any less. He is alive today and they are gone. That injustice can never fully be righted, but I plead to you to give Henry Aparicio the maximum penalty the law allows. The family and friends of Christa and Damaso will never fully recover from this loss, but knowing he is off the streets will keep him from hurting anyone else.

Christa and Damaso's close friends and family have been eternally devastated by this incident. I have seen firsthand the infinite pain Christa's parents, siblings, etc. have been going through. You can see it in their eyes and hear it in their voices. That pain will never go away. At the funeral I heard numerous co-workers of Christa's speak about the void that will never be filled at the hospital. She was an amazing nurse and her work was only getting started. She had a long career ahead of helping sick people that will now never be. Henry Aparicio stole that from her when he decided to drive drunk, having no regard for human life. Your Honor, I ask you to do what you can to give Christa, Damaso and their loved ones justice.

Christa was born a kind, caring, fun-loving and all around wonderful human being. I can't think of one instance where she ever did or said anything mean. I have loving memories that will always stay with me, but I should have had so many more. Her infectious smile and laugh will never leave my mind, but we all should have been able to experience it for decades longer. She was a joy in the truest sense of the word. The impact of her death will never be fully known because her influence would have had no bounds.

Thank you, Judge Silva, for taking the time to hear my thoughts and concerns.

Respectfully,

Jonathan Buell

9/17/2019

Sentencing of Henry Aparicio Case # 18332496X, Date of Sentencing October 18, 2019

Fatal victims: Damaso and Christa Puente

Judge: Cristina D. Silva

Honorable Cristina D. Silva,

My name is Ryan Jeffrey Buell and I am 1st cousin to Christa. We grew up together on the same street in rural Missouri outside of St. Louis. When Christa moved with her family to Las Vegas, we didn't get to see them as much anymore. I had visited Christa the year before she died, and that was really the 1st time I ever got to spend any significant amount of time with Damaso as an adult...but I could tell immediately that they were great together, and very much in love.

I was in my office, as I am now, and my dad (Christa's uncle – brother to Diane) got a call from my 85 year old grandma (his mother)...and I could tell from the other room that something awful had happened. My stomach dropped. A couple minutes later, I walked over and my dad told me that Christa and Damaso had been killed by a drunk driver in a car accident, and that it was all over the news.

I live in a different city from my cousins, but we grew up together. I am who I am today because of our childhood years together. I have very great memories of my cousin Christa, making home movies with my brother around the house. I think this is in part why she fell in love with Damaso, who was a videographer and film maker...and why my brother Jonathan decided to move out to LA to pursue an acting career. She was such a beautiful child, and soul.

When my Grandpa had terminal cancer, Damaso came to his house and made a special video for our family so my grandpa could give his last bit of wisdom before he passed away, and it was shown at my grandpa's funeral. Christa and Damaso were incredibly considerate and loving people, and they both made the world a brighter place. Since the accident, my aunt Diane isn't doing very well at all. She will never be okay. Her daughter was taken from her.

This wasn't merely a crazy fluke accident. It wasn't expected or typical. This was a severe lack of judgement on the part of the defendant. Does he regret what he did...I don't know. If free today, would he change how he is living today? I don't believe so. He will have to live with what he did for the rest of his life....but living with the knowledge of a sin committed isn't punishment enough.

If he is let out on the streets prematurely, he will likely do it again. Please don't let this happen. The only way to prevent this from happening to someone else is to let Henry Aparicio grow up before he is released back into the world, if that ever can happen.

I believe the maximum penalty of 8-20 years should be given for each count to run consecutively.

Thank you, Judge Cristina Silva, for taking the time to consider my thoughts and concerns.

Respectfully,



Ryan J Buell

Sentencing of Henry Aparicio #C-18-332496-1

Fatal victims: Damaso and Christa Puente

Judge: Cristina Silva

Your Honor,

Will the carnage of drunk driving and the intense grief of the victim's loved ones ever end? Probably not! Not unless there are technological developments or ways to force the servers to become more responsible and proactive and to play a role in stopping these preventable tragedies.

At a time when drinking in businesses can be easily tracked and monitored and when obtaining rides for intoxicated drivers is more simple than ever - it is simply not happening!

We are Norman and Marla Jahn. Christa was Marla's niece. The last time we saw her was at her wedding because we moved out of state. From joyous memories of that day to reading about a double fatal traffic accident in the Las Vegas news before we knew who was involved! The shock of every parent's nightmare was even more profound when we learned details and then had to inform Christa's grandmother (Annabelle Malone) who was living with us at the time of the fatalities.

Norm was a career police officer serving over 21 years in Las Vegas. He used to visit Christa at her valet parking job at Bills Gambling Hall. Christa was interested in riding along. Instead of pursuing a career as a police officer she entered another 'helping profession' - she became a nurse.

Christa and Damaso were two of the most incredible people that blessed the lives of those they met. It is such a tragedy that these two beautiful people lost their lives so early in life. They were so successful in all they did and there was certainly more 'good' they would have contributed to Las Vegas and our society.

Nothing will reduce the impact of drunk driving if those responsible even get the idea that they can deny that they were involved! Henry Aparicio attempted to slither his way out of being held accountable which greatly added to the grief of Christa and Damaso's loved ones. Drunk drivers who kill in so many cases will not be deterred if they think they can make up stories, deny their role, and use this tactic to get a plea deal. We were both sick to our stomachs to see the media coverage of how he was denying that he was driving!

Christa and Damaso Puente filled so many friends and relatives with happiness and positivity. In order to do them and their lives 'justice' please hand down the maximum penalty of 8-20 years for each count to run consecutively.

Judge Silva, thank you for taking the time to consider our thoughts and concerns as well as those of so many others living through this preventable crime!

Respectfully,

Norman & Marla Jahn
1925 Riverside Drive
Sault Ste. Marie, Michigan 49854
(702) 401-8210

Sentencing of Henry Aparicio #C-18-332496-1
Fatal Victims: Damaso and Christa Puente
Judge: Cristina Silva

To the Honorable Judge Silva,

My name is Melody Malone, and I am the aunt of the beautiful, gifted, lovely soul, Christa Puente. There are people in this world that *do* good, and there are people who are *no* good, and then there are people like Christa, who are *just good*, inherently good. There are too few inherently good people in this world, too few Christa Puentes, and now even one less. Christa did good and was good. She gave to all within her influence. She lifted others with her generous smile and kind heart. I've seen firsthand the devastating effects this unfathomable loss has had on her family. Her's is a family that loves deeply, impeding and prolonging the healing process. Her sweet mother has had to bear this type of particular burden twice, as she first lost a daughter many years before Christa was born. Wounds like that never fully heal, and this second travesty not only opened a new, cavernous wound, but it also mercilessly ripped open the old one. I just returned from visiting my precious daughter who lives across the country from me. My heart swelled with aching pain when it came time to say goodbye. My only consolation was knowing that we would talk often, everyday, and that I will see her again during the holidays. Still yet, my last text to her before boarding the plane was: "My heart still hurts." I can't imagine the pain in Diane's heart knowing she will never get to talk to her daughter on the phone again, she will not be seeing her over the holidays or any day for that matter, she will never get to put her arms around her and say, "I love you," she will never see the grandchildren that Christa and Damaso planned to have. No, she will never have her daughter again. The pain that comes from that thought alone breaks my heart. I speak from the perspective of a mother, but Christa's passing has also devastated her devoted, loving father, brother, sister and other extended family members.

Your Honor, no one will ever take drunk driving seriously until the judicial system takes it seriously. I plead with you, Judge Silva, to take this seriously and hold Mr. Aparicio accountable for his actions. I plead with you to issue the maximum penalty possible of 8-20 years for each occurrence to run consecutively. Please bestow some peace on this family.

Respectfully,

Melody Malone

Sentencing of Henry Aparicio #C-18-332496-1
Fatal victims: Damaso and Christa Puente
Judge: Cristina Silva

Honorable Judge Silva,

My name is Master Sergeant John Ryan Flanagan. I have served eighteen years in the United States Air Force, and for the past six years I have been assigned to Nellis Air Force Base here in Las Vegas. As proud as I am of my service to this great country, one of my crowning achievements since residing in Las Vegas was my acceptance and continued enrollment in the William S. Boyd School of Law.

Several years ago during my first semester at Boyd through mutual friends from the Boyd, I met Damaso and Christa Puente. This group of people took me in as one of their friends, and over the next few years it became more like a family. We did holidays, birthdays, kid's events, and regularly just a Sunday dinner. Because I am stationed so far from my own family the amount of joy these two people brought to a tired military non-commissioned officer was immense. Being able to have a group of people who accepted me as a member of their own is one of the best things that a troop can have when we are stationed so far from home. Their loss has impacted me tremendously.

I am writing this at work on Nellis Air Force base, and I am in charge of lots of Airmen who every single week we preach the dangers of drink and driving. When we raise our hand and volunteer for military service we are saying that we will hold ourselves to a higher standard than the civilian population. We are saying that believe in the constitution, the laws, and will defend them with our lives.

This is why it troubles me greatly that Henry Aparicio was prior military. It troubles me greatly that this man raised his hand and believed in the constitution, believed in the laws of this nation, then willingly and knowingly, with the full plan in his own mind, would go to a bar get shit faced drunk, then get behind the wheel of a car and drive and speeds in excess of 100 mph.

THIS IS NOT WHAT THE MILITARY TEACHES

Over the last eighteen years, it has been preached, horrifying examples told and retold, and punishments handed down in the form of military confinement and dishonorable discharge. Every single military member gets these same briefings every week they are in. Every single service has the same briefings every week. Every single military member knows the dangers of drinking and driving, and every single service members is told to have a plan or they could kill someone or kill themselves. **Henry Aparicio does not represent any of the military's core values.** If him or his lawyer tries to represent that Your Honor should go lighter on Henry Aparicio because of his military service. I would strongly disagree. He should be held to a higher standard for these reasons. He signed up to be held to these higher standards. He failed to meet those standards, and did so with knowing intent to go to the bar, not have a plan to get home safely, then he got into car and drove at excessive speeds. The intent to not have a plan when visiting a bar where his was going to drink at, and then driving his car at excessive speeds, and killing two of my dear friends is appalling to every military member worldwide. We have great pride in what we do, and killing civilians is the gravest of treason.

I know before this case was circulated to you it was before the Honorable Judge Douglas Smith. I had the great privilege of interning my 1L year in Judge Smith's chambers as a legal intern. I learned more about the law that summer than I could in hours and hours of torts class. One of the things I learned after watching court every day for months was Judge Smith sentencing practices which were always critiqued as being on the high side. I'm absolutely sure that Your Honor has her own standards and guidelines. However, I would implore Your Honor to uphold Judge Smith's ideals when it came to sentencing in this matter, and sentence Henry Aparicio to maximum for both Crista and Damaso needless deaths. I realize this is Henry Aparicio first DUI, but I promise you this was not the first time he drove drunk, it is not the first time he knew his actions could kill someone or himself, it's not the first time he intend to go to the bar and drive home drunk. He was told while he was in the military of the dangers, and he intended to do it anyway.

I request the maximum penalty of 20 years for Crista Puente and 20 years for Damaso Puente to run consecutively. Once again Henry Aparicio does not represent any of the Military Values, and it would be a mark against all of who honorably serve for Your Honor to take a lighter sentence because of his prior service.

Thank you Your Honor for taking time to consider my thoughts,

Respectfully,

//signed//

Master Sergeant John Ryan Flanagan

Sentencing of Henry Aparicio #C-18-332496-1

Fatal victims: Damaso and Christa Puente

To the Honorable Cristina D Silva:

My name is Kerry Giles. I am a charge nurse at Mountain-View Hospital where I worked with Christa Puente for three years on the Oncology unit.

I was not at work on May 16, 2018 but was told by one of my co-workers around 1000 that Christa had not shown up for work and they were working short. My co-worker stated that several of them had called and sent her texts but she hadn't responded. I thought that to be very unusual that Christa was a no call no show. She was a very responsible person that cared for her patients and co-workers and it was strange that she hadn't realized that she was working that day and that she wasn't answering calls. As the day went on, I had not forgotten that Christa did not show up. I sent a text to my co-worker around two that afternoon to see if anyone had gotten a hold of her. I was told no and that Christa still had not reached out. At the time I had a weird feeling in my stomach that something was wrong as that was just not like Christa to do this. At approximately 4:15 pm on May 16, I was out with friends and I received a call from another charge nurse at Mountain-View Hospital that worked with us. She was hysterically crying and told me that Christa and her husband Damaso had been in a car wreck the night before and were both killed. I was stunned and almost in shock. I had had a feeling that something was wrong but I had no idea it would be this news. I told my friends I needed to leave and I drove straight to Mountain-View Hospital as I felt a strange need to be around my co-workers as we were all grieving for the same thing. The mood at the hospital was so strange and the nurses on my floor had all been crying yet they were carrying on with work as they had no choice. I put on scrubs and decided to help them as I knew that's what Christa would have wanted. We had long term patients that had been told of Christa's death and they were also crying. This terrible news was a huge shock to our entire floor including our patients.

Christa Puente had come to our Oncology unit three years prior as a new graduate nurse. She quickly developed into a very good nurse. She had an extremely calm demeanor and in a high stress profession this is rare. One thing I remember well about Christa is that no matter what she always had a smile on her face. One day, about two months prior to her death, we moved our unit from one floor to another. It was a very stressful day that I'm sure most of us working that day would like to forget. Around 5:00 pm, Christa had come up to the desk to inform me of something and she was smiling. I asked her how she was still smiling after all the stress we had been through that day (when most of the nurses working were crying) and she just laughed and said "I don't know. What're you going to do?". That was Christa. Always smiling and continuing on with her work despite the stress. Christa was a very caring oncology nurse. She loved her patients and they loved her. When we held a vigil for her a week after her death at the crash site, there were three patients in attendance, along with several physicians and

almost the entire Oncology unit. When her funeral was held a month after her death, the entire Oncology unit was there minus a few that had to work that night. She was an extremely good nurse despite only being out of school for three years. Her co-workers loved her, her patients loved her and it was a huge blow to our unit when she was killed by Henry Aparicio because he chose to drive drunk.

After Christa's death our Oncology unit began to fall apart. Nurses who had worked on the unit for 10+ years were leaving one by one. Some nurses stated they needed to do something different and the oncology unit was too stressful for them after Christa's death. Some said they wanted to move on and do something different with their life as they realized that life was short and you could be gone in an instant. There are only a few of us left on the unit since Christa's death. Most nurses working there now never knew Christa or the impact she had on our lives. Her picture still sits in our breakroom as a reminder to us of how much she meant to us, to our unit, and to our patients. Even now, a year and a half after her death, we still get emotional when talking about her. The fact that Henry Aparicio chose to drive drunk and take the life of our co-worker and her husband has completely torn our Oncology unit apart.

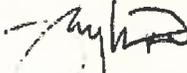
Every now and then Christa's mom comes to our unit to see us. We can see the toll this has taken on her. She looks exhausted and sad every time I see her. Last November, Christa's mom walked with us in the Leukemia/Lymphoma Light the Night walk in Christa's honor. She even wore the same hat that Christa had worn the year before. She wanted to make sure that Christa was represented in the walk with her team. I know it was hard for her and I know it's hard for her to be around us as it only brings memories of Christa being with us. She is torn apart by Christa and Damaso's death as we all are.

My final thoughts on Christa are that she was a very caring, loving, talented person who cared about her family, friends, co-workers, and patients. She was dedicated to her job and her oncology patients. She loved her co-workers and always brought a huge smile to work with her. She brightened our unit up every single day and now that she's gone there's a huge hole and sadness at work that will never be refilled. I miss her terribly and am angry that Henry Aparicio chose to drive drunk and take her from this life.

Your honor, I am asking that you please consider the maximum penalty for Henry Aparicio and please consider that each count run consecutively. He knew what he was doing that night when he chose to drink. He could have requested a cab, gotten an Uber ride, or a ride from a friend but he chose to drive drunk instead at excessive speeds and killed two fantastic people. In addition to that he never admitted fault nor did he show any kind of remorse. I am asking you please consider the maximum penalty for justice for my friend Christa and her husband Damaso Puente.

Thank you, Judge Silva, for taking the time to consider my thoughts and concerns.

Respectfully,



Kerry Giles, RN

Thought you might like this. Christa was a great nurse!

Received:  Tuesday, October 9, 2018 5:38 PM

From: Giles Kerry Kerry.Giles@hcahealthcare.com

To: DanDiane80@protonmail.ch DanDiane80@protonmail.ch

CC: DanDiane80@icloud.com DanDiane80@icloud.com

Kerry Giles, BSN, RN-BC
5S Oncology Charge RN
MountainView Hospital



Christa (forgive me if spelling is wrong) was another amazing, beautiful nurse that I remember fondly. As I cried my eyes out I never expected a nurse to be so caring and gentle as she held my hand and reassured me about my treatment. She was with me twice, even took my calls after I left the hospital and needed to ask questions about my aftercare. I was devastated to find out she had passed so suddenly. I'm sure her family and friends suffered much more from her loss - but this sweet young woman was an outstanding nurse and personally deeply affected me in the brief time I knew her.

Sentencing of Henry Aparicio #C-18-332496-1
Fatal victims. Damaso and Christa Puente
Judge: Cristina Silva

Dear Honorable Judge Silva;

My name is Jessica Povey and I am an Oncology Certified Nurse at MountainView Hospital on the oncology unit where Christa once worked. I only worked with her for a year and half but her impact on myself, our co-workers and her patients is immeasurable. She had a passion for oncology and cancer patients. She was always making sure each of her patients felt like they were her only patient. She made a point to spend time in each room and create a connection with each patient. She would learn about their stories, their families and what their passions were. She was always a leader for our Light the Night Walk for the Lymphoma and Leukemia Society. She would be the first person to donate money, treats for our bake sales and volunteer her time for all of our fundraisers. There was never a time that she wasn't smiling. Her laugh was infectious and I always knew it was going to be a great day on the unit when I saw Christa when I clocked in for the day.

I can very clearly remember the day that I found out that she had been killed. I was at work and I had noticed she was not there when I clocked in, she was always at work before me. I figured she must be stuck in traffic. During report several night shift nurses were asking where Christa was and I realized she still had not arrived. I then went to our charge nurse and told her Christa wasn't here yet. We both agreed it was strange and decided that we would both try to reach her thinking maybe her alarm didn't go off, or she miss read her schedule or stuck in traffic. I text her several times with no response, so I called her and left several messages with no return call. I was beginning to worry as this was not like Christa and I was getting a very sick, sinking feeling that something was very wrong. I did remember her telling me she had been going out of town so in a last ditch attempt I sent her several messages on social media asking her to call me or text or anything and that I was worried and just needed to know she was okay. There was no response. At this point it was late morning and I noticed several people from our HR department come up to the unit and then our charge nurse was asked to go to the director's office. I knew something very bad had happened and I knew it was Christa. After a little while the entire staff was asked to come into the breakroom and other staff from other units arrived to help take care of our patients. We were told there had been an accident and that Christa and her husband had not survived, we were given minimal details about the accident but were told that it was likely a drunk driver and that they had died on impact. Although we all wondered if they felt anything or if they suffered in anyway, we will never know. We then had to return to work, it was one of the most difficult things to do. We had to push our pain, our tear and our anger aside and care for our patients as if nothing had happened. We were blessed to work with a team that rallied together to care for our patients because that is what Christa would have wanted. I remember telling several of our long term patients that had close connections with Christa what had happened. We cried together, we grieved together knowing that there would always be a hole on our unit where Christa should have been.

After Christa was taken from us our unit fell apart, it was never the same. The enthusiasm, joy and laughter was gone. Most of the staff that worked with Christa have left. The long term patients who still get admitted to our unit point out the difference. There is and will always be something missing with

Christa gone. I remember the last conversation I had with Christa. We were at lunch break together and we were talking about having children, we both were struggling with conceiving and sharing our frustrations and sympathy for one another. She was the eternal optimist I remember her telling me "don't worry, it will happen I know!" and I told her the same thing. The difference being that I did have a son but she never got the chance. Her opportunity to have a family was taken that day she was killed. She never got to be the mother she always wanted to be.

Judge Silva the world is a less bright without Christa. I request of you the maximum penalty of 8-20 years to be given for each count to run consecutively. As 16-40 year for the loss of both Christa and Damaso is too lenient for the loss of two incredible individuals and upstanding members of our community.

Thank you Judge Silva for taking the time to consider my thoughts and concerns.

Respectfully,

A handwritten signature in black ink, appearing to read "Jessica Povey". The signature is fluid and cursive, with the first name being the most prominent.

Jessica Povey, RN, OCN, RN-BC

Tammie Lewis
8420 Viansa Loma Ave.
Las Vegas, NV. 89149
(702) 250-4901
Tammielou1@icloud.com

Sentencing of Henry Aparicio #C-18-332496-1
Fatal victims: Damaso and Christa Puente
Judge: Cristina Silva

Your Honor,

My name is Tammie Lewis and I was one of Christa's coworkers and friends. I am forever grateful that Christa came into my life. I am sure you probably hear that statement a lot but it is so true. It is almost like she was this pure Angel sent down to show us all of the things we were missing inside of ourselves. She was one of those people that we all aspire to be. Smart, funny, genuine, ethical, devoted, healthy... the perfect person. She was the employee you could count on to pull everyone together. I can still see her face like it was yesterday, her big smile, she was always smiling. In the years we spent working together at Mountain View Hospital, I never saw Christa so much as complain. Crazy that she is gone, crazy that the man she loved is gone as well. They were trying to start a family of their own. Christa was so excited at the thought of being a mother. Sadly, they were unable to make that dream become a reality.

I remember very clearly the day after she was killed. I received a phone call at approximately 9:30am on May 16, 2018 from a fellow charge nurse, Tammie Garcia. They were calling to see if people could come into work and to let me know that Christa had not shown up for her scheduled shift that morning. We discussed how completely out of character this was and wondered what had happened. Having worked as a charge nurse on many shifts with Christa I too knew that something very important must have happened to keep her from even calling. I heard back from Tammie at 4:30pm that Christa and Damaso had been hit and killed by a drunk driver the previous night. My heart literally broke at that moment. The most perfect precious person had been taken from us. You had to know Christa to realize she really was that person. I remember thinking the thought in my head at the candlelight vigil that, 'only the good die young.' I was told that the hospital had set up trauma specialists to come in for our unit and given details about the times.

I can tell you that still to this day, most of the nurses on that floor have not been able to properly grieve the death of our sweet friend. It is difficult for me to explain what a huge void her death has left in the Oncology unit at the hospital. Christa was not just beloved by her coworkers and friends but also the patients who we become very close to. Being an Oncology nurse is different than other types of nursing because due to the intense nature of the treatment you build much more personal relationships. It was extraordinarily difficult to explain to her many terminally ill patients that she had been killed by a drunk driver. To those fighting with everything they have for just a little more time, the thought of a being killed by a drunk while just on a night out is unfathomable. Christa is quite honestly missed as much for her compassion and caring as for her experience as a nurse. Our halls of 5 South Oncology have not been the same without this dear spirit. I wish you could have met her. No doubt she would have left your heart feeling genuine compassion.

I ask that this man, Henry Araricio, be sentenced to the maximum penalty for each count to be run consecutively.

Thank you, Judge Silva, for taking the time to consider my thoughts and concerns.

Respectfully,

Tammie Lewis
Tammie Lewis, RN-BC





VICTIM IMPACT STATEMENT FOR
Sentencing of Henry Aparicio #C-18-332496-1
Fatal Victims: Damaso and Christa Puente
Judge Cristina D. Silva

Honorable Judge Cristina Silva,

I have found this letter extremely challenging to write today. Not a day goes by that I do not think of my friends Christa and Damaso and I have no idea how a letter is enough to convey the hurt and pain that will always be in my heart after May 15, 2018.

Christa was the most selfless person I have ever met, dedicating her life to her passion of helping others. I was always amazed at her gracefulness in every challenging situation she faced. She was never judgmental, she got along with everyone, and she didn't have a mean bone in her body. Christa and I both worked the night shift at Mountain View hospital, and we spent countless hours sharing life experiences and getting to know one another. She had been with Damaso for so many years of her life, and I was always asking her for relationship advice since she seemed to have it all figured out. Dam was one of the most wonderful husbands I have ever encountered. Just an all-around good person, and he loved Christa from the depth of his heart. Christa and I talked a lot those nights about having kids and how her and Dam were hoping to get pregnant soon. I think about those conversations mostly now that they're gone and so many of our friends are moving on with their lives and starting families. It's impossible not to feel extreme sadness in this tragedy knowing that two people who would have made the most amazing parents in the world will never get that opportunity now.

Christa and I shared the same birthday week as well, only two days apart, so we celebrated our birthdays together with our group of friends. Celebrating my birthday, without Christa, will never be the same. That week will always be something I shared with my friend and I will always feel like there is something miss now. I still have every photo I own of Christa and Dam hanging in my kitchen, so that I see their smiling faces every day. I am not sure that I will ever find peace with the loss of these two souls, but I do believe that the man responsible for their murder should be punished to the maximum sentence. Those of us that have survived their death are currently serving a lifetime sentence; forced to learn how to move on and never given the choice. This tragedy has impacted the entire community and this man responsible has shown no remorse. I pray that their families are given justice for this awful tragedy. There is no amount of time enough for what has been done, but I pray that justice prevails, and this man is locked up for the maximum sentence allowed.

Sincerely,

Tamara Komes

October 1, 2019



Sentencing of Henry Aparicio #C-18-332496-1
Fatal Victims: Damaso and Christa Puente
Judge: Cristina Silva

To the Honorable Judge Silva,

My name is Tammie Garcia and I was the charge nurse of the Oncology unit that Christa worked on prior to her tragic death . I clearly remember that day when I learned of Christa's and Damaso's horrific tragedy. I was at work and Christa was actually scheduled to come to work that day. I remember thinking that it's not like her not to show up to work or be late. She was always so responsible and hardworking. I attempted to call her several times, of course with no answer. My fellow co-workers attempted as well to reach out to her , we all became a little worried and then thought maybe she just left her phone somewhere or maybe she just looked at her schedule wrong and thought she was off that day and maybe went out of town. As the day went on I was in a meeting when my Director had called me and told me to come to her office when I was done. When I walked in there was two people from human resources there with my director and she was crying. At that moment my I just knew something bad had happened and I just started to cry hysterically, and I just said " please don't tell me something bad happened to Christa?" Then, one of them said there was an accident, and neither Christa or her husband survived. Everyone was asked to come in the breakroom and then in one horrible moment ,it seemed as if our lives were changed forever. The grief and sadness was overwhelming and staff actually came in on their day off just to come in and help out because we were all crying in devastation.It was almost impossible to care for our patients. One of our very special Leukemia patients that Christa had taken care of cried as we delivered the news to him and his mother. We all gathered in his room and his mom recited a special prayer for Christa and Damaso.

Our unit has seen several nurses come and go through the years, but I can honestly say in the eighteen years that I have been there, only a very few are as special as Christa. We truly miss her positive energy that she brought to our unit. Patient's loved her, doctors loved her, we loved her. To care for cancer patients take a special person like Christa and our unit has never been the same since she was taken away from us. She was a beautiful ,smart and caring person who had the most wonderful relationship with her husband Damaso. She talked about her dreams of traveling to Europe and starting a family, but those dreams have been taken away by someone else's choice to drink and drive. We as her Oncology family here at Mountainview Hospital are asking for the maximum sentence of 8-20 years for each count to run consecutively for the sentencing of the senseless deaths of our beautiful Christa and her husband Damaso.

Thank you Judge Silva for taking the time to consider my thoughts and concerns.

Respectfully,

Tammie Garcia

26 September 2019

Victim Impact Statement

Cecille Shappee for Damaso and Christa Puente

Your Honor:

My name is Cecille Shappee. I am a registered nurse, and Christa was a colleague of mine, working at the Oncology unit of Mountain View Hospital. I transferred over two years ago to the unit as a novice nurse trying to grasp all that I can learn about cancer. Christa works day shift; I work nights. My transition from my previous unit of post-surgical was quite different from what I began to experience in oncology, and Christa was one of the few that made my transition better than I imagined it to be.

Christa was an honest and hardworking nurse. She was a very accommodating and understanding individual that even when I have not had the chance to fulfill everything I needed to do during my shift, she will smile at you and say “don’t worry, I’ll take care of it.” So she does. Christa had been open to us about her hopes; her dream was to start a family with her husband, Damaso. For us who knew that dream, we were all just ecstatic for her and even gave her “nurse tips.” That dream was cut short. On the night of May 15, 2018, the ten o’clock news showed an active investigation that just occurred. I saw a totaled Prius car being pulled up to a tow truck; two individuals were lost. Only when I got to work the next day did I found out that it was Christa and Damaso who died that night in that fatal accident.

It was a devastating loss for our oncology unit that night. We lost a colleague, a friend, and a skilled oncology nurse who had cared for so many of our cancer patients. However, losing Christa and Damaso was more dreadful for their families. They lost a daughter and a son. They also lost a future family. It was heartbreaking for them because this was an event that neither Damaso or Christa had any control over.

Your Honor, with due respect, I ask that you, please consider the maximum penalty of 18-20 years for each count and have them run consecutively.

Thank you, Judge Silva, for taking the time to consider my thoughts and concerns.

Respectfully,

Cecille D. Shappee, RN

On Sat, Sep 28, 2019 at 10:28 PM, <groysden@cox.net> wrote:

29 September 2019

Victim Impact Statement

Cirila Roysden for Damaso and Christa Puente

Your Honor:

My name is Cirila Roysden, and I am a nurse who had worked with Christa Puente for 5 yrs. Christa was a colleague who I appreciated very much. I miss her smile, her enthusiasm about life. She has a lot to offer to our patients because of her compassion and love. It was such a big loss for the nursing community to have a life of the nurse like Christa to be ended drastically. Christa has so many plans in the future as a nurse. She worked full time and continued to go to school to be a nurse who conducts research in nursing. She had much potential, her smile is infectious, she can never hurt a fly. She is a loving daughter, a devoted wife, a dependable and hardworking nurse and so much more. We still are grieving in our hearts in our department. Damaso and Christa's pictures stays in our breakroom for us to always remember them in our hearts and we will never forget the audacity and the negligence of the person that took their life.

Your Honor, with due respect, I ask that you consider giving the maximum penalty of 18 to 20 years for each count and have them run consecutively.

Thank you, Judge Silva, for taking the time to read and reconsider my petition on behalf of Damaso and Christa Puente.

Respectfully,

Cirila Roysden,RN

Sentencing of Henry Aparicio #C-18-332496-1
Fatal victims: Damaso and Christa Puente
Judge: Cristina D. Silva

Your Honor,

My name is Ian Flowers and I'm writing this to share with you some information regarding my relationship with Christa and the type of person I knew her to be.

Christa was a Nurse and I first met her in March 2016 when I assumed the role of Nursing director on Christa's unit. Christa was an oncology Nurse and took care of patients with cancer. She was simply one of the very best at what she did and treated everyone she met with kindness and compassion. She truly cared for her patients and coworkers and her high level of character was evident every day.

I first learned of Christa and Damaso's passing through one of Christa's close friends and coworkers on our unit. It was devastating news for so many people and still hurts to this day. There is a void at our hospital and in our hearts that will never be filled because Henry Aparicio chose to drive drunk. I'm requesting the maximum penalty of 8-20 years be given for each count to run consecutively.

Thank you Judge, for taking the time to consider my thoughts and concerns.

Respectfully,

Ian Flowers

Sentencing of Henry Aparicio #C-18-332496-1

Fatal victims: Damaso and Christa Puente

Judge: Cristina Silva

You Honor,

My name is Alejandra Barragan. I am a registered nurse, and Christa was a colleague of mine at Mountainview Hospital's oncology unit. Christa came to the oncology unit as a newly graduate nurse. Christa was an honest, reliable oncology nurse. It was always a pleasure to work with her. Christa was very caring. Christa was the type of nurse that would sit next to patients to comfort them after they found out about their cancer diagnosis, which is not an easy thing to do, it just came natural to her.

I first learned about Christa's and her husband death the day after it happened via a phone call from my oncology director. I was in shock and could not believe what I was hearing. That night I could barely sleep. The next day, I was scheduled to work. As I was walking in the parking lot towards the hospital building, I still could not believe it. Our usual morning huddle was overwhelmingly filled with sadness. Christa's senseless death left a void on our unit, things would never be the same for us. Christa's dream of advancing her nursing career would never happen as her dreams were cut short on May 15, 2018.

Your Honor, with due respect, I ask you to please consider the maximum penalty for each count and have them run consecutively.

Thank you, Judge Silva, for taking the time to consider my thoughts and concerns.

Respectfully,

Alejandra Barragan, BSN

Sentencing Henry Aparicio #C-18-332496-1
Fatal Victims: Damaso & Christa Puente
Judge: Cristina D. Silva

Dear Judge Cristina D. Silva,

My name is Giovanni Hernandez, and Christa was a friend who I met while volunteering in the oncology unit of Mountain View Hospital in the month of October in 2017.

When I first began volunteering at a hospital, I was only beginning to make the decision that I wanted a career in the medical field. On meeting Christa, she was very friendly, a little sassy, and overall genuine; we got on like a house on fire. Christa was instrumental in sparking my decision to go to school to become a nurse, and she was always willing to teach me new things, including how to read the EKG monitor and using an infrared vein finder when attaching an IV. She was a compassionate character who took her job seriously, but she still knew how to have fun with it. I wanted to be just like her.

I learned of Christa's death one morning when I entered the hospital only to be told by our charge nurse that Christa and her husband had passed away. As a volunteer who was not wholly necessary to the team, I decided to call it an early day; I did not feel up to the task of performing any work with a smile on my face. The days that would follow were surreal, as I had difficulty coming to terms with the idea that Christa would simply not be showing up to work as usual. As a nurse and a friend, she had the largest impact on my life compared to anyone else in the oncology unit, and it felt impossible to believe that the one nurse who really inspired me had so quickly been taken away from my life. Even today, Christa continues to be a powerful drive for me to continue my education to become a nurse – it was because of her that I felt ready to take a small step into the field and become a certified nursing assistant.

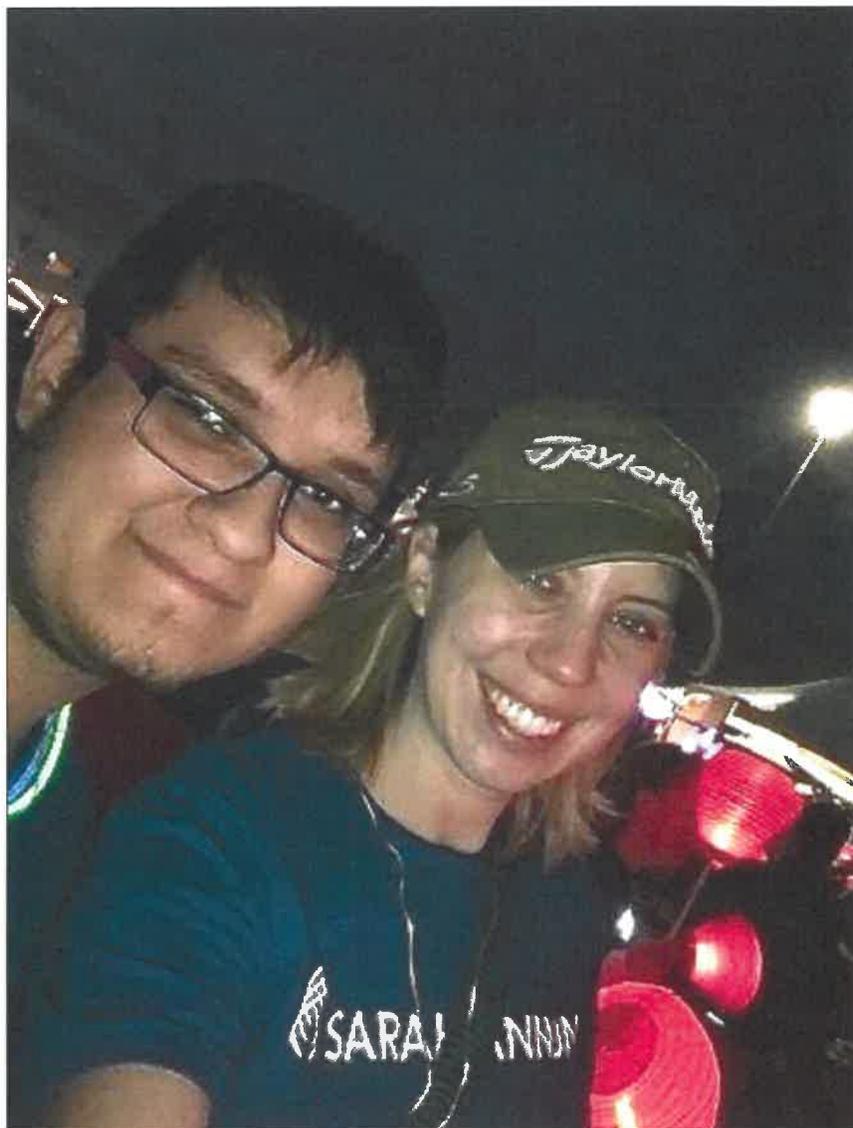
I had the pleasure of meeting Christa's parents during vigils and the funeral held for the couple. Christa's mother, Diane, seems to be bearing majority of the emotional weight, and understandably so. Between volunteer hours and clinicals, many patients I have met were terminal or coming to their age limit, but there was always time for them to say goodbye to their loved ones. Knowing Christa and Damaso had so quickly left this world in the span of a single night with no warning leaves many, including myself, with regrets of not having gotten the chance to see or talk to them for the last time.

The decision to drink and drive will never be an acceptable decision and should not be taken lightly. In a single night, Mr. Aparicio took two incredibly beloved lives and that has affected many lives more. I would like to request Mr. Aparicio does not receive anything less than the maximum prison sentence of 20 years. He must be held accountable for his carelessness and lack of compassion for humanity. At the very least, Mr. Aparicio will have a chance to continue life after his sentence, which is not something that can be said about the innocent couple that were simply unlucky and in his path.

Thank you for taking time to read through my statement, Your Honor.

Respectfully,

Giovanni Hernandez



Victim Impact Statement

Case #: C-18-332496-1

Honorable Judge Cristina Silva,

If you did not know Damaso and Christa, it would be easy to mistake them for a new couple. Christa clutched to his arm, glancing at Damaso in adoration. Damaso, holding her close, her protector. They were inseparable from the moment they met. They personified a steady, resilient, confident, and inspirational love that got stronger over time. People gravitated towards them just to get an essence of what they were about. Because of them, I know what love is. Without them, I would have never met my wife with whom I have a beautiful daughter.



It is difficult to write this impact statement without writing a complete biography of their lives because I was blessed to have shared memories in many of their chapters. Damaso and I met about 17 years ago working valet at a local casino. From our first meeting, I was drawn to his friendly, confident, and most importantly authentic demeanor. We soon became close friends and I consider him one of my brothers. We had the opportunity to stand next to each other in our weddings and I always envisioned him at my daughter's wedding. Damaso was the older brother I never had. His independent spirit was uplifting and fueled my propensity to better myself by finishing Graduate School. He always told me it was never too late to chase your dreams. By his example, I understood that pursuing something I am passionate about was far more significant than seeking money or status. I am saddened that he did not get to see me obtain my Master's degree this past December and that I did not get to see him continue his passion for film making.



Reflected in his work and personal relationships, Damaso had the ability to bring out the best of people. He had no problem breaking the ice in a room full of strangers. Damaso could easily have a casual conversation with a stranger about the weather and have that evolve into a 2-hour conversation about politics, philosophy, music, and every Quentin Tarantino movie. In his presence, I felt comfortable and assured that he would not tell me the things I wanted to hear. Instead, he told me the things I had to hear; forever giving me valuable



perspective on significant matters in my life. Those long nights sitting in his garage having conversations until the early morning hours are now forever taken from me.

In many ways, Christa was the opposite of Damaso. Unlike him, she was not the one to initiate a conversation in a room full of strangers. She preferred to be in the background. This did not make her less impactful than Damaso. Instead, she taught me that strength is not measured by the volume of words spoken but by the value of the message delivered. When she spoke, it mattered, and you listened. If you spent a few moments with her, it was obvious why Damaso was the way he was. She was the foundation to his world. She had the ability to soften the hardest of hearts and be your beacon of light during the hardest of times. Because of her, there was no feat that was too big for them to conquer together. Regardless of what was thrown at them, everyone knew that Christa could devise a strategy for success. Her career as an oncology nurse was fitting because in the middle of your worst day, she could lift your spirits, restore hope, and refocus your direction if you just followed her lead.



Over 13 years ago, Christa introduced me to her best friend from high school, Jessica. As cliché as it may sound, the first time I met her, I knew she would be the one I wanted to marry. She was not



the “stereotypical” woman I dated, she did not live in Nevada, and we were quite opposite. There was something about her that had me gravitating towards her. I knew that I found my “Christa”. I believe that we are a collective reflection of those who are significant in our lives. Christa was the full package and those attributes reflected on my wife. Knowing Christa, I understood which attributes embody a strong, independent, inspiring, and loving partner. I am eternally grateful to her for not only introducing us but also helping her move to Las Vegas to finish college. We have been together ever since.

Together, Damaso and Christa showed us the formula for a striving and resilient relationship. They made numerous sacrifices so that they both could realize their dreams. Damaso worked multiple jobs so that Christa could finish nursing school. When she was done, she encouraged him to leave his job to pursue his dreams as an independent film maker; working graveyard shifts as an oncology nurse. No matter how hard, they remained on course. When Jessica and I did the same for each other, we knew it would be possible because Damaso and Christa had done it and because of it, they were a stronger couple.

The defendant's actions robbed us of a lifetime of memories because of his arrogance and disregard of others. His actions after the crash further exacerbated the pain and agony. He denied everyone the opportunity to commence some semblance of closure with each subsequent court filing. It was not until the 11th hour, right before the start of the trial, that he finally decided to plead guilty. His allocution, empty and insincere, was an insult to the memory of Damaso and Christa, their friends and family, and to the court. He did not accurately portray his actions before and after he killed Damaso and Christa. He deserves the **maximum** sentence because this was not a random occurrence of chance. **His many choices** before and after he murdered my friends afford him this harsh sentence. These are the facts:

- He admitted that he was celebrating the graduation of his then girlfriend. This was **NOT** a random night of partying. He should have planned accordingly. He **CHOSE** to drive to and from the celebration even though the defendant lived about 2 miles away. In the time that it took him to walk to his car, he could have reserved a ride for him and his girlfriend via Uber, Lyft, or taxi.
- The defendant and his girlfriend consumed about **20 drinks** in approximately **3 hours**. The defendant's BAC was estimated to be **over 0.32** when he killed Damaso and Christa.
- He **CHOSE** to not take responsibility for the crime and instead **CHOSE** to erroneously claim that he was not behind the wheel of the car; dragging out court proceedings in excess of a year after he killed Damaso and Christa. Amidst numerous witness statements and a robust investigation, this was the angle he **CHOSE** to take.

Because of these actions, our numerous plans of adventures together are over. No longer will we celebrate our March birthdays; something we have done for over 16 years. Damaso and Christa were trying to have a baby and we were all anticipating our kids growing up together. My daughter still asks, "Why did that man have to hurt Damaso and Christa? Why did they have to go to heaven?". I wish I had the words to explain the defendant's actions, but I never will. I wish she could experience Damaso and Christa like we all did. We are better people because of them; their impression forever stamped in our hearts. I see the effects of the defendant's actions on my wife and close friends every day. The life and energy have been taken away from their parents. Since their deaths, there has never been a time when I did not see Christa's mom in tears. We want to live our best lives and not take anything for granted to honor them. Unfortunately, it has been difficult for us to leave the house. Pursuing justice for Damaso and Christa has taken a toll on us spiritually and physically.

Once benign tasks such as running to the grocery store, taking my daughter to school, or going on a road trip, are now met with reluctance and fear of being the next victim. Often, I freeze while I am

going through a street intersection. Over a year later, I still have sleepless nights where I find myself reliving their deaths. I often think, "Did they feel any pain? What were they talking about before they were killed? Can they hear me when I talk to them? Why did this happen to them?"

Your Honor, I understand there is no sentence that can take away the pain and loss of Damaso and Christa, but you have an opportunity to ensure that the defendant will not hurt another family for a very long time and their deaths were not in vain. Hopefully through their deaths and the defendant's sentence, others will be encouraged to make more responsible decisions. Please consider sentencing the defendant to the maximum allowable sentence to run consecutively.

Your Honor, thank you for your time and consideration.

Sincerely,


Jorge L. Bertran



Victim Impact Statement

Sentencing of Henry Aparicio #C-18-332496-1

Fatal Victims: Damaso and Christa Puente

Judge: Cristina Silva

Honorable Judge Silva,

"They're not here anymore." *They're not here anymore.* Those are the words from my husband, Jorge, that have echoed in my mind every single day since May 16th, 2018. Every single day I live with those words and the vision of a beautiful couple, Damaso and Christa, leaving this earth together side by side, just as they'd lived for nearly 16 years.

I was at work when Jorge told me that Christa and Damaso had been killed by a drunk driver the night before. My heart broke at that moment and will never fully recover. I also realized in that moment why I had an unread message from Christa's mom, Diane, asking me to call her ASAP. So, I did, and amongst tears and info about her and Christa's



dad, Dan, catching the next flight home to Las Vegas, she asked me to go to the house and check on the dogs who had been alone all night. Jorge immediately picked me up with Maya, our daughter, and that's what we did. We walked in to the home of our best friends, to the sight of their 3 dogs unknowingly waiting on their people who would never greet them again. I sat down on the couch and saw a piece of paper...Christa's handwriting with a list of meals she was planning dated out a couple weeks. Weeks she would never see. Weeks her and Damaso were obviously planning to continue their journey to eating healthier. I think of this often, how all the plans for my life and my family could be shattered instantly by the selfishness of another person.

Christa and Damaso are impossible to describe in mere words. Their adoration for one another was obvious and enviable. The gaze in their eyes toward each other was still there just the same as it was in the beginning. They had so many bold dreams, some that came true, and plenty more they were working towards. Professional dreams, family

dreams, artistic dreams. They never hesitated to take chances, and whether their intentions worked out or not, they always had fun trying just because they were in it together. Even with normal life stresses, they always seemed stress free because of their optimism. They were truly the best kind of people...funny, compassionate, loyal, honest, and humble; and the goodness in the world is at a great imbalance without them. Christa and Damaso were happy, admired, and the friends I knew I was lucky to have.



Their impact on my life, individually and as a couple, is immeasurable, which is why life without them is so difficult. I could go on forever about the experiences Christa and I have had together in our nearly 20-year friendship. She was the friend I needed most for all those years, and still need. There is no one person on this earth, outside of my



immediate family, that has had a greater impact on my life or that I have shared more of life with. Memories of her, millions it seems, literally surround me every day. When she and her family moved to Las Vegas our sophomore year of high school, I made the road trip with them. Between that trip and subsequent visits, but primarily with the inspiration and support of Christa and Damaso, I was eventually drawn to move to Las Vegas too. And so, one summer, they showed up at my door in Illinois, helped me pack up my car, and they whisked me away on an adventure that changed the course of my life forever. Life with them was full of fun and spontaneity. Damaso became like a brother, protective and genuinely caring. I was always interested in his opinion on nearly every topic, because he always had new perspective to offer. Together, they were an example of true love, and I am forever grateful for them introducing me to mine, Jorge. So many of life's special moments have included all of us. We stood by their side at their wedding, just as they stood by us at ours. But it is the simple day to day experiences with all of us together I cherish and miss most. Jorge and I consider them family, and we should

be growing old with them. The most special outcome of their introducing us? Our beautiful daughter, Maya, who is now without their influence in her life.

In a new reality without Christa and Damaso: Vacationing in Maui where our wedding took place, and looking at our wedding photos is bittersweet. I must answer questions from my 4-year old, "Why are Christa and Damaso in Heaven?" "Why did someone hurt them?" Since I work at the same hospital as Christa, I avoid the unit she worked on because I can't stomach being there when she's not. I walk outside on



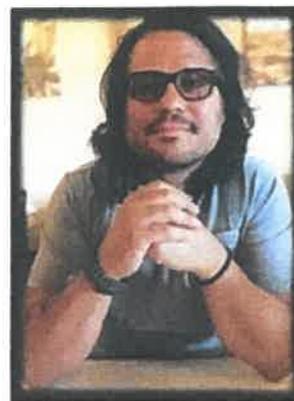
dry summer evenings and wish for their laughter and storytelling for hours on end on the patio. I watch movies and wonder if they would have liked them. I answer the questions "Why did you move to Vegas?" and "How did you meet your husband?" and I cry, because the answer is always them. I used to love telling our story and how our lives intertwined so perfectly, but now the story has a heart wrenching page that can never turn. I wait at stoplights, glancing in the rear view, praying they never saw what was coming. I panic if my husband or daughter are driving somewhere without me there and I don't hear from them when I think I should. My head goes to places it shouldn't have to. I hear my daughter say, "Drive safe!" as I leave for work knowing that driving safe didn't make any difference for Christa and Damaso as they sat innocently at that stop light.

I have also witnessed the devastation inflicted on the Malone and Puente families. I've seen their overwhelming sadness. I've seen their grief worsen due to the disregard for life and lack of accountability of the defendant. Each of their youngest children and the dreams they were supposed to witness were stolen from them. It is extremely difficult knowing that that nothing can take away their pain and emptiness. Nothing can take away the life sentence they're now forced to endure.

I was shocked and saddened to learn that the recidivism rate for drunk driving is ~30%, making the likelihood the defendant will reoffend extremely concerning. I firmly believe that the most effective way to lessen the risk the defendant poses to society in the future, is to sentence him to the maximum penalty allowable by law. I ask that his sentences, one for Damaso and one for Christa, run consecutively. The defendant has shown his true colors through this process. He has not shown remorse, and even on the day he pleaded guilty, after 14 months of denying he was driving the car, his own words to the court were about how "It was the worst day of MY life." He has proven to be everything opposite of Damaso and Christa, and his actions and choices before and after he killed my friends have only shown selfishness and disregard for their lives and those who love them. He has forced us to relive the nightmare at each court date, allowing arguments he knew were not true. He deserves no leniency. Christa and Damaso deserve justice. Those of us still living deserve a world that is safe from such senseless tragedy. The death of Christa and Damaso will not be in vain if a precedent is set that will deter others from making such reckless and irresponsible decisions. Thank you, Judge, for your time and consideration.

Respectfully,

Jessica Bertran
Jessica Bertran



Sentencing of Henry Aparicio #C-18-332496-1

Fatal victims: Damaso and Christa Puente

Dear Judge Silva:

It's never a good thing when you answer a phone call and you're told that you better sit down "I have some horrible news." That's essentially how the conversation started between my wife Linda and the caller Jorge Bertran, our son-in-law, who was calling from Las Vegas on May 16, 2018.

"Christa and Damaso were killed last night by a drunk driver while sitting at a stoplight," Jorge said, having gone through the previous night's horror and misery shared by the young couple's relatives and friends.

As soon as Linda got off the phone with Jorge, she came into the living room where I was recuperating from prostate surgery and gave me the horrible news. I couldn't help but cry.

That's how we got the news of this nightmare that has remained with us ever since. The horror of it all came in bits and pieces for weeks afterward ... and we still hear things over 14 months later in 2019, disturbing things about the carnage. You do not want to dwell on it, but you can't help it. You hope and pray that it was all instantaneous ... if there is God, any kind of god, at least give them that you think. And make yourself try to believe it.

Of course you cry, if you knew Christa and Damaso you have to cry. Sometimes I wonder about the ocean of tears that must have been cried at their deaths and continues to rise on an undiminished tide of emotions now closing in on a year and a half later. Is this ocean testament to what this couple meant or is it merely a pool of heartbreak and distress. Maybe it's all of that and more.

Christa and Damaso Puente were personal friends. My wife Linda and I had known Christa from the time she and our daughter Jessica were teenage high school classmates at Columbia High School in Columbia, Illinois. It is no small thing that it was Christa's connection that brought Jessica to Las Vegas to ultimately meet and marry Jorge Bertran (a friend of Christa and Damaso's) and expand their family with their beautiful four-year-old daughter Maya.

When our four-year-old granddaughter Maya mentions Christa and Damaso (friends of her mother and father's), and how they are in heaven, not to be seen by her on earth again, these senseless deaths tear at aging hearts such as ours. Christa and Damaso should be here to watch and help mold Maya for the future, long after we ourselves are gone. They should be here for Jessica and Jorge, to grow old together and share memories of their youth. What's more they should be here to have and raise their own children in the midst of loving family and friends ... all denied to them so callously by all the consideration it takes to raise another glass or bottle to drunken lips.

Linda and I were fortunate to inherit both Christa and Damaso as friends of our own through their connection to Jessica and Jorge. Our world is now much smaller and more isolated without the presence of this wonderful couple. To see them together was truly a joy. They were a team, each making the other better and able to contribute their skills to benefit us all. We lost that bright future of their contributions. And Judge Silva, I can't overemphasize this, YOUR world is smaller, too, as it could easily have been Christa to provide medical care to you or a loved one in her role as nurse and YOU no longer have the opportunity to enjoy Damaso's uplifting creativity in the realm of writing and small or very possibly big screen visual medium projects within his horizon.

The last time Linda and I saw Christa and Damaso was while entering the Sprouts grocery store on Lake Mead, near where they lived. We had a quick conversation in the "cart lobby" where they were exiting, Damaso munching on some healthy veggies supporting his then recent and successful weight loss efforts, as we quickly said our hellos, how you doings and goodbyes. I thought at the time, I wish we had gotten there earlier because I would have liked paying for their groceries that day. You see, Damaso had volunteered to create a video for me months earlier at no cost, although it took his time and Cactusboy Productions professional talents. The wonderful favor paid off and generated attention that I had turned into cash. As we left one another, I thought to myself, "Groceries are cheap, I want to do more than just that. I'll write him a check later and they can use it for whatever they like." And that's how we parted and that's what was on my mind when we did. Of course, later never came.

Judge Silva, the guilty defendant, who you are about to sentence, willingly took the lives of Christa and Damaso Puente on May 15, 2018 and Linda and I urge you to impose the maximum penalty to run consecutively for each of their deaths. The guilty defendant made a deal with the devil the Tuesday night he chose to drive drunk and recklessly with no consideration to the possible horrific consequences of his actions. There is a price to

be paid for such actions and he is in arrears. Christa and Damaso, and those relatives and friends of that innocent couple, were unwitting partners in the guilty defendant's devil deal that night and OUR SENTENCE, the sentence of all Christa and Damaso's many relatives and friends, unlike his, goes on without possible parole or end.

Judge Siva, thank you for considering our impact statement prior to the guilty defendant's sentencing. Linda and I consider ourselves secondary victims compared to those many relatives and close, intimate friends of Christa and Damaso who have been completely devastated by this tragedy that was completely avoidable. Linda and I will soon be 70 years old. We have seen our share of tragic occurrences with our own immediate circle of relatives and friends over seven decades, but the deaths of Christa and Damaso has hit us especially hard because of what they meant to us and what we know they meant to so very many others.

Sincerely yours,

Linda A. Peach *Roger Peach*

Linda A. Peach

Roger Peach

3601 Lisandro St., Unit 102

Las Vegas, NV 89108

PS: Linda and I spend about 5 months each year in Las Vegas to be near the Bertran family. In the 14-plus months it has taken to get to this point of a guilty plea and sentencing, I often find myself sitting at Las Vegas stoplights, looking in my rearview mirror. I'm looking for that vehicle coming at me doing 100 m.p.h. in a 45 m.p.h. speed zone. Why does someone do that on a city street? What gives them the insane disregard for such action? As I sit at stoplights, I know I'm at the mercy of the driver behind me, just as Christa and Damaso were at the mercy of the guilty defendant. No mercy was granted. The guilty defendant saw to that.