

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT BROWN JR.,

Petitioner,

vs.

**EIGHTH JUDICIAL
DISTRICT COURT JUDGE;
THE HONORABLE
JACQUELINE BLUTH,
DISTRICT COURT JUDGE,**

Respondents,

and

THE STATE OF NEVADA,

Real Party in Interest.

Supreme Court No. **Electronically Filed**
Nov 18 2022 01:25 PM
District Court No. **Elizabeth A. Brown**
Clerk of Supreme Court

**PETITION FOR WRIT OF
MANDAMUS OR, IN THE
ALTERNATIVE, WRIT OF
PROHIBITION**

and

**MOTION FOR STAY OF
DEPOSITION**

APPENDIX

**PETITION FOR WRIT OF MANDAMUS OR IN THE
ALTERNATIVE, A WRIT OF PROHIBITION AND
MOTION FOR STAY OF PROCEEDINGS**

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INDEX

<u>DOCUMENT</u>	<u>PAGE NO.</u>
AMENDED INFORMATION (3/15/22)	1-6
NOTICE OF INTENT TO SEEK DEATH PENALTY (8/8/14)	7-27
STATE'S NOTICE OF MOTION AND MOTION FOR DEPOSITION (9/2/22)	28-39
OPPOSITION TO STATE'S MOTION FOR DEPOSITION (9/15/22)	40-51
REPORTER'S TRANSCRIPT OF HEARING ON SEPTEMBER 20, 2022 (5/28/09)	52-61
ORDER GRANTING MOTION FOR DEPOSITION AND ORDER DENYING MOTION TO STAY PROCEEDINGS (9/20/22)	62-65

CERTIFICATE OF MAILING

The undersigned does hereby certify that on November 18, 2022, a copy of the foregoing Appendix for Petition for Writ of Mandamus or in the Alternative Petition for Writ of Prohibition and Motion for Stay of Deposition was filed with the Nevada Supreme Court. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

Clark County District Attorney's Office
Regional Justice Center
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155

I further certify that on November 18, 2022, a copy of the foregoing Writ was mailed to the following:

The Honorable Jacqueline Bluth
Eighth Judicial District Court, Department 6
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101


CLARK W. PATRICK, ESQ.

Steven D. Grierson

1 AINF
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JAY P RAMAN
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8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

CASE NO: C-14-299234-1

11 -vs-

DEPT NO: VI

12 ROBERT BROWN JR.,
13 aka, Ariyl, #6006120,
14 Defendant.

AMENDED
INFORMATION

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

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

19 That ROBERT BROWN JR., aka, Ariyl, the Defendant(s) above named, having
20 committed the crimes of **INVASION OF THE HOME WHILE IN POSSESSION OF A**
21 **DEADLY WEAPON (Category B Felony - NRS 205.067 - NOC 50437); BURGLARY**
22 **WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony - NRS 205.060**
23 **- NOC 50426); MURDER WITH USE OF A DEADLY WEAPON (Category A Felony -**
24 **NRS 200.010, 200.030, 193.165 - NOC 50001); ATTEMPT MURDER WITH USE OF A**
25 **DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165 -**
26 **NOC 50031); POSSESSION OF FIREARM BY EX-FELON (Category B Felony - NRS**
27 **202.360 - NOC 51460); DISCHARGE OF FIREARM FROM OR WITHIN A**
28 **STRUCTURE (Category B Felony - NRS 202.287 - NOC 51445) and CHILD ABUSE,**

1 **NEGLECT, OR ENDANGERMENT WITH USE OF A DEADLY WEAPON (Category**
2 **B Felony - NRS 200.508(1); 193.165 - NOC 55228)**, on or about the 7th day of December,
3 2012, within the County of Clark, State of Nevada, contrary to the form, force and effect of
4 statutes in such cases made and provided, and against the peace and dignity of the State of
5 Nevada,

6 COUNT 1 - INVASION OF THE HOME WHILE IN POSSESSION OF A DEADLY
7 WEAPON

8 did then and there wilfully, unlawfully and feloniously forcibly enter an inhabited
9 dwelling, to-wit: 5421 East Harmon Avenue, Apartment No. E13, Las Vegas, Clark County
10 Nevada, without permission of the owner, resident, or lawful occupant, to-wit: NICHOLE
11 NICK, the Defendant did possess and/or gain possession of a deadly weapon consisting of a
12 firearm and/or knife during the commission of the crime and/or before leaving the structure.

13 COUNT 2 - BURGLARY WHILE IN POSSESSION OF A FIREARM

14 did then and there wilfully, unlawfully, and feloniously enter, while in possession of a
15 firearm, with intent to commit assault, battery, and/or murder, that certain building occupied
16 by NICHOLE NICK, located at 5421 East Harmon Avenue, Apartment No. E13, Las Vegas,
17 Clark County, Nevada, the Defendant did possess and/or gain possession of a deadly weapon
18 consisting of a firearm during the commission of the crime and/or before leaving the structure.

19 COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON

20 did then and there wilfully, feloniously, without authority of law, and with malice
21 aforethought, kill NICHOLE NICK, a human being, by shooting and/or stabbing the said
22 NICHOLE NICK to death with a deadly weapon, to wit: a firearm and/or a knife, said killing
23 having been: (1) willful, deliberate, and premeditated; and/or (2) committed during the
24 perpetration or attempted perpetration of Burglary and/or Home Invasion.

25 COUNT 4 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

26 did then and there, without authority of law, and malice aforethought, willfully and
27 feloniously attempt to kill ESTHER MAESTAS, a human being, by shooting the said
28 ESTHER MAESTAS multiple times, with a deadly weapon, to-wit: a firearm.

1 COUNT 5 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

2 did then and there, without authority of law, and malice aforethought, willfully and
3 feloniously attempt to kill KAYLA HIGGINS, a human being, by shooting at the said KAYLA
4 HIGGINS, with a deadly weapon, to-wit: a firearm.

5 COUNT 6 - POSSESSION OF FIREARM BY EX-FELON

6 did then and there wilfully, unlawfully, and feloniously own or have in his possession,
7 or under his control, a weapon, to-wit: a firearm, the said Defendant being an ex-felon, having
8 in 1998, been convicted of Carjacking and Inflict Corporal Injury on Spouse, felonies under
9 the laws of the State of California.

10 COUNT 7 - DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE

11 did then and there wilfully, unlawfully, maliciously and feloniously, while in, on or
12 under a structure, discharge a firearm within or from the structure; the structure being within
13 an area designated by a City or County Ordinance as a populated area for the purpose of
14 prohibiting the discharge of weapons; the Defendant committing the crime in the following
15 manner, to-wit: by the said Defendant discharging a firearm within Apartment No. E13,
16 located at 5421 East Harmon Avenue, Las Vegas, Clark County, Nevada.

17 COUNT 8 - DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE

18 did then and there wilfully, unlawfully, maliciously and feloniously, while in, on or
19 under a structure, discharge a firearm within or from the structure; the structure being within
20 an area designated by a City or County Ordinance as a populated area for the purpose of
21 prohibiting the discharge of weapons; the Defendant committing the crime in the following
22 manner, to-wit: by the said Defendant discharging a firearm within Apartment No. E13,
23 located at 5421 East Harmon Avenue, Las Vegas, Clark County, Nevada.

24 COUNT 9 - DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE

25 did then and there wilfully, unlawfully, maliciously and feloniously, while in, on or
26 under a structure, discharge a firearm within or from the structure; the structure being within
27 an area designated by a City or County Ordinance as a populated area for the purpose of
28 prohibiting the discharge of weapons; the Defendant committing the crime in the following

1 manner, to-wit: by the said Defendant discharging a firearm within Apartment No. E13,
2 located at 5421 East Harmon Avenue, Las Vegas, Clark County, Nevada.

3 COUNT 10 - DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE

4 did then and there wilfully, unlawfully, maliciously and feloniously, while in, on or
5 under a structure, discharge a firearm within or from the structure; the structure being within
6 an area designated by a City or County Ordinance as a populated area for the purpose of
7 prohibiting the discharge of weapons; the Defendant committing the crime in the following
8 manner, to-wit: by the said Defendant discharging a firearm within Apartment No. E13,
9 located at 5421 East Harmon Avenue, Las Vegas, Clark County, Nevada.

10 COUNT 11 - DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE

11 did then and there wilfully, unlawfully, maliciously and feloniously, while in, on or
12 under a structure, discharge a firearm within or from the structure; the structure being within
13 an area designated by a City or County Ordinance as a populated area for the purpose of
14 prohibiting the discharge of weapons; the Defendant committing the crime in the following
15 manner, to-wit: by the said Defendant discharging a firearm within Apartment No. E13,
16 located at 5421 East Harmon Avenue, Las Vegas, Clark County, Nevada.

17 COUNT 12 - DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE

18 did then and there wilfully, unlawfully, maliciously and feloniously, while in, on or
19 under a structure, discharge a firearm within or from the structure; the structure being within
20 an area designated by a City or County Ordinance as a populated area for the purpose of
21 prohibiting the discharge of weapons; the Defendant committing the crime in the following
22 manner, to-wit: by the said Defendant discharging a firearm within Apartment No. E13,
23 located at 5421 East Harmon Avenue, Las Vegas, Clark County, Nevada.

24 COUNT 13 - DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE

25 did then and there wilfully, unlawfully, maliciously and feloniously, while in, on or
26 under a structure, discharge a firearm within or from the structure; the structure being within
27 an area designated by a City or County Ordinance as a populated area for the purpose of
28 prohibiting the discharge of weapons; the Defendant committing the crime in the following

1 manner, to-wit: by the said Defendant discharging a firearm within Apartment No. E13,
2 located at 5421 East Harmon Avenue, Las Vegas, Clark County, Nevada.

3 COUNT 14 - DISCHARGE OF FIREARM FROM OR WITHIN A STRUCTURE

4 did then and there wilfully, unlawfully, maliciously and feloniously, while in, on or
5 under a structure, discharge a firearm within or from the structure; the structure being within
6 an area designated by a City or County Ordinance as a populated area for the purpose of
7 prohibiting the discharge of weapons; the Defendant committing the crime in the following
8 manner, to-wit: by the said Defendant discharging a firearm within Apartment No. E13,
9 located at 5421 East Harmon Avenue, Las Vegas, Clark County, Nevada.

10 COUNT 15 - CHILD ABUSE, NEGLECT, OR ENDANGERMENT WITH USE OF A
11 DEADLY WEAPON

12 did wilfully, unlawfully, and feloniously cause a child under the age of 18 years, to-wit:
13 KAYLA HIGGINS, being approximately 3 years of age, to suffer unjustifiable physical pain
14 or mental suffering as a result of abuse or neglect, and/or cause the said KAYLA HIGGINS to
15 be placed in a situation where she might have suffered unjustifiable physical pain or mental
16 suffering as a result of abuse or neglect, by pointing a handgun and/or shooting at the said
17 KAYLA HIGGINS and/or shooting Nichole Nick and Esther Maestas in her presence, using
18 a deadly weapon, to-wit: a handgun, during the commission of said crime.

19 DATED this 15th day of March, 2022.

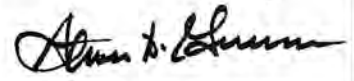
20 STEVEN B. WOLFSON
21 Clark County District Attorney
22 Nevada Bar #001565

23 BY /s/ Jay P. Raman
24 JAY P RAMAN
25 Chief Deputy District Attorney
26 Nevada Bar #0010193
27
28

Names of witnesses known to the District Attorney's Office at the time of filing this Information are as follows:

<u>NAME</u>	<u>ADDRESS</u>
BROCIUS, JOHN	4580 Ross Ave., LVN 89110
CUSTODIAN OF RECORDS	CLARK COUNTY CORONER'S OFFICE
ELLSWORTH, RUSSELL D.	LVMPD #13242
HOGANS, DWAYNE	District Attorney Process Server
KEHRLI, MONICA	525 South St., Ryan, IA 52330
MAESTAS, ESTHER	C/O DISTRICT ATTORNEY'S OFFICE
MARRIOTT, DEBORAH	District Attorney Investigator
MERRICK, FRED D.	LVMPD #7549
OLSON, ALANE DR.	ME #0068
PATTERSON, DEBRA	District Attorney Process Server
RAETZ, DEAN D.	LVMPD #4234
ROBERTSON, MARK	C/O DISTRICT ATTORNEY'S OFFICE
STANLAKE, CODY	525 Harris St., Apt. No. 317, Henderson, NV 89015

DA#12F19975X/cb/L5
LVMPD EV#1212074412
(TK)


CLERK OF THE COURT

NISD
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Nevada Bar #1565
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Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

ROBERT BROWN, JR.,
#6006120

Defendant.

CASE NO: C-14-299234-1

DEPT NO: XXIV

NOTICE OF INTENT TO SEEK DEATH PENALTY

COMES NOW, the State of Nevada, through STEVEN B. WOLFSON, Clark County District Attorney, by and through RICHARD SCOW, Chief Deputy District Attorney, pursuant to NRS 175.552 and NRS 200.033 and declares its intention to seek the death penalty at a penalty hearing. Furthermore, the State of Nevada discloses that it will present evidence of the following aggravating circumstances:

1. The murder was committed by a person who, at any time before a penalty hearing is conducted for the murder pursuant to NRS 175.552, is or has been convicted of a felony involving the use or threat of violence to the person of another. Nev. Rev. Stat. §200.033(2).

On August 14, 1998, the Defendant was convicted in Los Angeles Superior Court of Carjacking in violation of California Penal Code §215(a). Cal. Penal Code §215(a) provides in pertinent part:

"Carjacking" is the felonious taking of a motor vehicle in the possession of another, from his or her person or immediate

1 presence, or from the person or immediate presence of a passenger
2 of the motor vehicle, against his or her will and with the intent to
3 either permanently or temporarily deprive the person in possession
4 of the motor vehicle of his or her possession, **accomplished by
means of force or fear.**

5 (Emphasis added).

6 In July 1997, the Defendant beat his wife Tonya Brown with a broom stick, causing her
7 to seek refuge in a women's shelter. After the shelter, Tonya moved in with her cousin in
8 hopes the Defendant would not find her, which he eventually did.

9 On November 17, 1997, Tonya left her cousin's apartment and approached her parked
10 vehicle. The Defendant had been waiting at the car with a box-cutting knife and attacked her
11 as she approached. Tonya was able to enter her vehicle and lock the doors, but the Defendant
12 smashed the window and gained access by placing the knife against Tonya's throat and
13 threatening to kill her. As the Defendant got into the driver's seat, he stabbed Tonya multiple
14 times in the neck.

15 Witnesses saw the Defendant abduct Tonya and called the police while following the
16 vehicle. The witnesses observed the Defendant choke and stab Tonya multiple times as she
17 made attempts to escape from the vehicle.

18 Police officers were able to intercept the vehicle shortly after the abduction. They also
19 saw the Defendant attacking Tonya in the vehicle. After a short chase, the Defendant stopped
20 the vehicle at which time Tonya jumped out and ran hysterically to the police. Tonya was
21 covered in blood and had multiple stab wounds.

22 The Defendant was charged with Attempt Murder, Kidnapping, Carjacking, and
23 Assault with a Deadly Weapon Resulting in Great Bodily Injury.

24 The Defendant ultimately pled guilty to the Carjacking and was sentenced on August
25 14, 1998.

26 2. The murder was committed by a person who, at any time before a penalty
27 hearing is conducted for the murder pursuant to NRS 175.552, is or has been convicted of a
28 felony involving the use or threat of violence to the person of another. Nev. Rev. Stat.
§200.033(2).

1 On August 14, 1998, the Defendant was convicted in Los Angeles Superior Court of
2 Corporal Injury to Spouse in violation of California Penal Code §273.5(a). Cal. Penal Code
3 §273.5(a) provides in pertinent part:

4 (a) Any person who willfully inflicts corporal injury resulting in a
5 traumatic condition upon a victim described in subdivision (b) is
6 guilty of a felony, and upon conviction thereof shall be punished
7 by imprisonment in the state prison for two, three, or four years,
8 or in a county jail for not more than one year, or by a fine of up to
six thousand dollars (\$6,000) or by both that fine and
imprisonment.

9 In July 1997, the Defendant beat his wife Tonya Brown with a broom stick, causing her
10 to seek refuge in a women's shelter. After the shelter, Tonya moved in with her cousin in
11 hopes the Defendant would not find her, which he eventually did.

12 On November 17, 1997, Tonya left her cousin's apartment and approached her parked
13 vehicle. The Defendant had been waiting at the car with a box-cutting knife and attacked her
14 as she approached. Tonya was able to enter her vehicle and lock the doors, but the Defendant
15 smashed the window and gained access by placing the knife against Tonya's throat and
16 threatening to kill her. As the Defendant got into the driver's seat, he stabbed Tonya multiple
17 times in the neck.

18 Witnesses saw the Defendant abduct Tonya and called the police while following the
19 vehicle. The witnesses observed the Defendant choke and stab Tonya multiple times as she
20 made attempts to escape from the vehicle.

21 Police officers were able to intercept the vehicle shortly after the abduction. They also
22 saw the Defendant attacking Tonya in the vehicle. After a short chase, the Defendant stopped
23 the vehicle at which time Tonya jumped out and ran hysterically to the police. Tonya was
24 covered in blood and had multiple stab wounds.

25 The Defendant was charged with Attempt Murder, Kidnapping, Carjacking, and
26 Assault with a Deadly Weapon Resulting in Great Bodily Injury.

27 The Defendant ultimately pled guilty to the Corporal Injury to Spouse and was
28 sentenced on August 14, 1998.

1 3. The murder was committed by a person who, at any time before a penalty
2 hearing is conducted for the murder pursuant to NRS 175.552, is or has been convicted of a
3 felony involving the use or threat of violence to the person of another. Nev. Rev. Stat.
4 §200.033(2).

5 In this case, the Defendant committed the murder of Nichole Nick on December 7,
6 2012. The Defendant is also charged with the Attempt Murder with Use of a Deadly Weapon
7 of Esther Maestas committed on December 7, 2012. If the Defendant is convicted at trial of
8 the attempt murder of Esther Maestas, this will qualify as a conviction of a felony involving
9 the use or threat of violence to the person of another before a penalty hearing is conducted.

10 On Friday, December 7, 2012, the Las Vegas Metropolitan Police Department
11 ("LVMPD") call center received multiple telephone calls from residents at the Canyon Pointe
12 Apartments located at 5421 East Harmon Avenue, Las Vegas, Clark County, Nevada,
13 indicating glass breaking, a woman screaming, and a male entering Apartment E-13 through
14 the broken window. Callers subsequently informed the LVMPD that they heard gunshots after
15 the male entered Apartment E-13.

16 When officers arrived they observed a broken window with shards of glass next to the
17 doorway of Apartment E-13. Officers entered Apartment E-13 to find a white female adult
18 lying on the living room floor with apparent gunshot wounds to her abdomen, leg, and
19 shoulder. That woman was later identified as Esther Maestas. Esther informed the responding
20 officers that Robert Brown, the Defendant, had broken into the apartment and shot her and her
21 daughter. Esther indicated that Robert and Nichole had been arguing earlier in the evening.
22 She told officers that her daughter and granddaughter were in the bedroom.

23 Officers entered the only bedroom of the apartment to find a white female adult
24 deceased from several apparent gunshot wounds. She was later identified as Nichole Nick,
25 the daughter of Esther Maestas and the girlfriend of Robert Brown. In that same bedroom,
26 officers also located an uninjured juvenile female, who was later identified as three-year-old
27 Kayla Higgins, Nichole Nick's niece and Esther Maestas' granddaughter. Kayla had been
28 lying on a toddler bed that now had a bullet hole in it.

1 Nichole Nick was lying face up on the floor, twisted and bent slightly at the waist with
2 her back, right hip, and outside of right leg on the carpet. She had been rolled from her right
3 side to her back by officers so that they could check for her pulse. There was blood covering
4 her face and upper body as well as pooled on the carpet inside of her right elbow. Nichole
5 Nick suffered the following injuries; (1) a perforating gunshot entry-wound to her upper right
6 chest/shoulder and a corresponding gunshot exit-wound to her rear left side; (2) perforating
7 gunshot wounds to her upper left thigh; (3) a perforating wound to the back left of her head;
8 (4) a stab wound to her upper left chest; (5) a stab wound to her left armpit; (6) a stab wound
9 to the left side of her neck; (7) a stab wound to the upper left side of her back; (8) and several
10 lacerations to her upper left arm. Clark County Medical Examiner Dr. Alane Olson determined
11 that the cause of death was a gunshot wound to the chest with significant sharp force trauma
12 (stab wounds). The manner of death was homicide.

13 Medics were called for Esther Maestas and they subsequently removed her from the
14 scene prior to the arrival of homicide detectives. She was taken to Sunrise Hospital Emergency
15 Trauma Center where she was immediately taken into surgery.

16 Homicide Detectives D. Raetz, M. Gillis, J. McCarthy, and F. Merrick subsequently
17 responded to the scene. In the living room Detectives observed broken shards of glass in the
18 vicinity of the window, a Verizon Motorola cellular telephone on the south edge of the center
19 seat of the sofa, blood on a pillow of the sofa as well as on the north seat cushion and arm rest.

20 A pony wall separated the living room from the kitchen. On the pony wall Detectives
21 discovered a T-Mobile Samsung cellular telephone. Detectives located a Sprint HTC cellular
22 telephone on the table in the kitchen belonging to Nichole Nick, and a LG cellular telephone
23 in pieces on the floor near the table. The Sprint HTC cellular telephone had blood on the
24 screen of the telephone and the background wallpaper was a photograph of an individual,
25 which matched the driver's license belonging to Robert Brown.

26 The only bedroom and bathroom in the apartment were located off of the kitchen. In
27 the threshold to the bathroom, Detectives discovered blood on the floor of both sides of the
28 door as well as on the lower portions of the exterior of the bathroom door and the west door

1 frame and west wall of the hall. The bathroom itself was otherwise unremarkable. In the
2 bedroom, Detectives observed a toddler bed against the northwest corner and a twin bed at the
3 northeast corner. A blue multi-colored comforter was bunched up on the floor at the southwest
4 corner of the twin bed. Detectives observed blood on the floor at the south end of the bedroom,
5 on the east closet door, on the west portion of the vertical blinds of the window in the north
6 wall, on the sheet and pillow on the twin bed, the west side of the bed, the blue comforter, and
7 on the floor between the two beds.

8 Eight cartridge cases, seven bearing the "R-P 9mm LUGER" headstamps and one
9 bearing a "PMC 9MM LUGER" headstamp, were recovered from the floor of the bedroom.
10 Five were visible upon entering the room, and the other three were found when Detectives
11 moved items in the room.

12 There were multiple bullet holes through the bunched up comforter on the floor at the
13 southwest corner of the twin bed. There were two bullet holes in the mattress and box springs
14 of the bed. Detectives later recovered bullet fragments once the trajectories were traced. A
15 bullet also perforated the west closet door and penetrated into the south wall of the closet.
16 Detectives recovered bullet fragments from the floor of the interior of the wall. A bullet
17 perforated the west bed rail of the pink child's bed where Kayla Higgins had been sleeping
18 before perforating the west wall of the bedroom. That bullet was later recovered from the
19 neighboring apartment under the carpet of the northeast portion of the bedroom of Apartment
20 E-12.

21 The weapon used in the commission of the murder of Nichole Nick and the attempted
22 murders of Esther Maestas and Kayla Higgins was located by a man out walking his dog the
23 following morning. Gerald Juneman reported that he had found a handgun in the gutter of
24 Jimmy Durante Boulevard. He picked the gun up in a plastic shopping bag and took it home.
25 LVMPD Officers subsequently responded to the home to retrieve the weapon. Homicide
26 Detectives responded to Juneman's residence as well and ultimately recovered a Smith &
27 Wesson model 439, 9 mm semi-automatic, bearing serial #TBK5560 from the patrol officers.
28 It appeared as if the gun had been thrown from a moving vehicle as half of the right side wood

1 grip was missing, the magazine was jammed in the magazine well with the magazine floor
2 plate missing, and there was grass and leaf debris on the right side. The hammer of the gun
3 was down, the chamber and the magazine were empty, and the safety was engaged.

4 When Detectives responded to the location where the weapon had been found, they
5 located the missing portion of the wood grip, the magazine floor plate, and the spring. These
6 items were found spread in a line in the west gutter of Jimmy Durante Boulevard indicating
7 that the gun was thrown out of a moving vehicle traveling south on Jimmy Durante. The
8 location was south of both the crime scene and Brown's apartment.

9 All eight 9MM cartridge cases recovered from the crime scene were later determined
10 by LVMPD Forensic Scientist James Krylo to have been fired by the Smith & Wesson. The
11 three bullets recovered from the scene as well as a single bullet recovered at a later date from
12 the apartment by Esther Maestas were all marked with rifling characteristics similar to those
13 made by the Smith & Wesson pistol. However, these bullets could not be conclusively tied to
14 the pistol.

15 Esther Maestas was later interviewed at Sunrise Hospital on December 10, 2012. Esther
16 indicated that after Nichole and Kayla had gone to bed, Esther heard someone attempt to force
17 the apartment door open. The next thing Esther knew, the window next to the door was broken
18 out and the Defendant was coming inside the apartment. The Defendant was carrying a gun
19 in his right hand and something else in his left. Nichole came out of the bedroom and yelled
20 for Esther to call 911. The Defendant shot Esther then went into the bedroom. Esther heard
21 gunshots and followed the Defendant into the bedroom. Esther heard Kayla start crying and
22 saw the Defendant turn the gun towards Kayla, who was lying in the toddler bed. Esther and
23 Nichole both yelled at the Defendant not to shoot the baby. Nonetheless, a bullet hole was
24 found in the toddler bed. The Defendant then turned the gun and shot Esther before shooting
25 Nichole repeatedly. Esther later remembered that the Defendant shot her a few more times
26 when Esther was back in the living room.

27 A warrant was subsequently obtained for the Defendant's arrest. He was located in
28 California in January of 2014 and later extradited to Nevada.

1 The above outlined evidence will establish that the Defendant committed a felony
2 involving the use or threat of violence to the person of Esther Maestas on December 7, 2012.
3 If a jury in this case convicts the Defendant of that attempt murder, with or without the use of
4 a deadly weapon, it will be a qualifying felony conviction before any penalty hearing could be
5 held in this case and an aggravating circumstance pursuant to NRS 200.033(2).

6 4. The murder was committed by a person who, at any time before a penalty
7 hearing is conducted for the murder pursuant to NRS 175.552, is or has been convicted of a
8 felony involving the use or threat of violence to the person of another. Nev. Rev. Stat.
9 §200.033(2).

10 In this case, the Defendant committed the murder of Nichole Nick on December 7,
11 2012. The Defendant is also charged with the Attempt Murder with Use of a Deadly Weapon
12 of Kayla Higgins committed on December 7, 2012. If the Defendant is convicted at trial of
13 the attempt murder of Kayla Higgins, this will qualify as a conviction of a felony involving
14 the use or threat of violence to the person of another before a penalty hearing is conducted.

15 On Friday, December 7, 2012, the Las Vegas Metropolitan Police Department
16 ("LVMPD") call center received multiple telephone calls from residents at the Canyon Pointe
17 Apartments located at 5421 East Harmon Avenue, Las Vegas, Clark County, Nevada,
18 indicating glass breaking, a woman screaming, and a male entering Apartment E-13 through
19 the broken window. Callers subsequently informed the LVMPD that they heard gunshots after
20 the male entered Apartment E-13.

21 When officers arrived they observed a broken window with shards of glass next to the
22 doorway of Apartment E-13. Officers entered Apartment E-13 to find a white female adult
23 lying on the living room floor with apparent gunshot wounds to her abdomen, leg, and
24 shoulder. That woman was later identified as Esther Maestas. Esther informed the responding
25 officers that Robert Brown, the Defendant, had broken into the apartment and shot her and her
26 daughter. Esther indicated that Robert and Nichole had been arguing earlier in the evening.
27 She told officers that her daughter and granddaughter were in the bedroom.

28 ///

1 Officers entered the only bedroom of the apartment to find a white female adult
2 deceased from several apparent gunshot wounds. She was later identified as Nichole Nick,
3 the daughter of Esther Maestas and the girlfriend of Robert Brown. In that same bedroom,
4 officers also located an uninjured juvenile female, who was later identified as three-year-old
5 Kayla Higgins, Nichole Nick's niece and Esther Maestas' granddaughter. Kayla had been
6 lying on a toddler bed that now had a bullet hole in it.

7 Nichole Nick was lying face up on the floor; twisted and bent slightly at the waist with
8 her back, right hip, and outside of right leg on the carpet. She had been rolled from her right
9 side to her back by officers so that they could check for her pulse. There was blood covering
10 her face and upper body as well as pooled on the carpet inside of her right elbow. Nichole
11 Nick suffered the following injuries: (1) a perforating gunshot entry-wound to her upper right
12 chest/shoulder and a corresponding gunshot exit-wound to her rear left side; (2) perforating
13 gunshot wounds to her upper left thigh; (3) a perforating wound to the back left of her head;
14 (4) a stab wound to her upper left chest; (5) a stab wound to her left armpit; (6) a stab wound
15 to the left side of her neck; (7) a stab wound to the upper left side of her back; (8) and several
16 lacerations to her upper left arm. Clark County Medical Examiner Dr. Alane Olson determined
17 that the cause of death was a gunshot wound to the chest with significant sharp force trauma
18 (stab wounds). The manner of death was homicide.

19 Medics were called for Esther Maestas and they subsequently removed her from the
20 scene prior to the arrival of homicide detectives. She was taken to Sunrise Hospital Emergency
21 Trauma Center where she was immediately taken into surgery.

22 Homicide Detectives D. Raetz, M. Gillis, J. McCarthy, and F. Merrick subsequently
23 responded to the scene. In the living room Detectives observed broken shards of glass in the
24 vicinity of the window, a Verizon Motorola cellular telephone on the south edge of the center
25 seat of the sofa, blood on a pillow of the sofa as well as on the north seat cushion and arm rest.

26 A pony wall separated the living room from the kitchen. On the pony wall Detectives
27 discovered a T-Mobile Samsung cellular telephone. Detectives located a Sprint HTC cellular
28 telephone on the table in the kitchen belonging to Nichole Nick, and a LG cellular telephone

1 in pieces on the floor near the table. The Sprint HTC cellular telephone had blood on the
2 screen of the telephone and the background wallpaper was a photograph of an individual which
3 matched the driver's license belonging to Robert Brown.

4 The only bedroom and bathroom in the apartment were located off of the kitchen. In
5 the threshold to the bathroom, Detectives discovered blood on the floor of both sides of the
6 door as well as on the lower portions of the exterior of the bathroom door and the west door
7 frame and west wall of the hall. The bathroom itself was otherwise unremarkable. In the
8 bedroom, Detectives observed a toddler bed against northwest corner and a twin bed at the
9 northeast corner. A blue multi-colored comforter was bunched up on the floor at the southwest
10 corner of the twin bed. Detectives observed blood on the floor at the south end of the bedroom,
11 on the east closet door, on the west portion of the vertical blinds of the window in the north
12 wall, on the sheet and pillow on the twin bed, the west side of the bed, the blue comforter, and
13 on the floor between the two beds.

14 Eight cartridge cases, seven bearing the "R-P 9mm LUGER" headstamps and one
15 bearing a "PMC 9MM LUGER" headstamp, were recovered from the floor of the bedroom.
16 Five were visible upon entering the room, and the other three were found when Detectives
17 moved items in the room.

18 There were multiple bullet holes through the bunched up comforter on the floor at the
19 southwest corner of the twin bed. There were two bullet holes in the mattress and box springs
20 of the bed. Detectives later recovered bullet fragments once the trajectories were traced. A
21 bullet also perforated the west closet door and penetrated into the south wall of the closet.
22 Detectives recovered bullet fragments from the floor of the interior of the wall. A bullet
23 perforated the west bed rail of the pink child's bed where Kayla Higgins had been sleeping
24 before perforating the west wall of the bedroom. That bullet was later recovered from the
25 neighboring apartment under the carpet of the northeast portion of the bedroom of Apartment
26 E-12.

27 The weapon used in the commission of the murder of Nichole Nick and the attempted
28 murders of Esther Maestas and Kayla Higgins was located by a man out walking his dog the

1 following morning. Gerald Juneman reported that he had found a handgun in the gutter of
2 Jimmy Durante Boulevard. He picked the gun up in a plastic shopping bag and took it home.
3 LVMPD Officers subsequently responded to the home to retrieve the weapon. Homicide
4 Detectives responded to Juneman's residence as well and ultimately recovered a Smith &
5 Wesson model 439, 9 mm semi-automatic, bearing serial #TBK5560 from the patrol officers.
6 It appeared as if the gun had been thrown from a moving vehicle as half of the right side wood
7 grip was missing, the magazine was jammed in the magazine well with the magazine floor
8 plate missing, and there was grass and leaf debris on the right side. The hammer of the gun
9 was down, the chamber and the magazine were empty, and the safety was engaged.

10 When Detectives responded to the location where the weapon had been found, they
11 located the missing portion of the wood grip, the magazine floor plate, and the spring. These
12 items were found spread in a line in the west gutter of Jimmy Durante Boulevard indicating
13 that the gun was thrown out of a moving vehicle traveling south on Jimmy Durante. The
14 location was south of both the crime scene and Brown's apartment.

15 All eight 9MM cartridge cases recovered from the crime scene were later determined
16 by LVMPD Forensic Scientist James Krylo to have been fired by the Smith & Wesson. The
17 three bullets recovered from the scene as well as a single bullet recovered at a later date from
18 the apartment by Esther Maestas were all marked with rifling characteristics similar to those
19 made by the Smith & Wesson pistol. However, these bullets could not be conclusively tied to
20 the pistol.

21 Esther Maestas was later interviewed at Sunrise Hospital on December 10, 2012. Esther
22 indicated that after Nichole and Kayla had gone to bed, Esther heard someone attempt to force
23 the apartment door open. The next thing Esther knew, the window next to the door was broken
24 out and the Defendant was coming inside the apartment. The Defendant was carrying a gun
25 in his right hand and something else in his left. Nichole came out of the bedroom and yelled
26 for Esther to call 911. The Defendant shot Esther then went into the bedroom. Esther heard
27 gunshots and followed the Defendant into the bedroom. Esther heard Kayla start crying and
28 saw the Defendant turn the gun towards Kayla, who was lying in the toddler bed. Esther and

1 Nichole both yelled at the Defendant not to shoot the baby. Nonetheless, a bullet hole was
2 found in the toddler bed. The Defendant then turned the gun and shot Esther before shooting
3 Nichole repeatedly. Esther later remembered that the Defendant shot her a few more times
4 when Esther was back in the living room.

5 A warrant was subsequently obtained for the Defendant's arrest. He was located in
6 California in January of 2014 and later extradited to Nevada.

7 The above outlined evidence will establish that the Defendant committed a felony
8 involving the use or threat of violence to the person of Kayla Higgins on December 7, 2012.
9 If a jury in this case convicts the Defendant of that attempt murder, with or without the use of
10 a deadly weapon, it will be a qualifying felony conviction before any penalty hearing could be
11 held in this case and an aggravating circumstance pursuant to NRS 200.033(2).

12 5. The murder was committed by a person who knowingly created a great risk of
13 death to more than one person by means of a weapon, device or course of action which would
14 normally be hazardous to the lives of more than one person. Nev. Rev. Stat. §200.033(3).

15 In this case, the Defendant committed the murder of Nichole Nick on December 7,
16 2012. During the commission of that crime, the Defendant entered into a course of action
17 where he intentionally shot at multiple people including Nichole Nick, Esther Maestas, and
18 Kayla Higgins.

19 On Friday, December 7, 2012, the Las Vegas Metropolitan Police Department
20 ("LVMPD") call center received multiple telephone calls from residents at the Canyon Pointe
21 Apartments located at 5421 East Harmon Avenue, Las Vegas, Clark County, Nevada,
22 indicating glass breaking, a woman screaming, and a male entering Apartment E-13 through
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26 doorway of Apartment E-13. Officers entered Apartment E-13 to find a white female adult
27 lying on the living room floor with apparent gunshot wounds to her abdomen, leg, and
28 shoulder. That woman was later identified as Esther Maestas. Esther informed the responding

1 officers that Robert Brown, the Defendant, had broken into the apartment and shot her and her
2 daughter. Esther indicated that Robert and Nichole had been arguing earlier in the evening.
3 She told officers that her daughter and granddaughter were in the bedroom.

4 Officers entered the only bedroom of the apartment to find a white female adult
5 deceased from several apparent gunshot wounds. She was later identified as Nichole Nick,
6 the daughter of Esther Maestas and the girlfriend of Robert Brown. In that same bedroom,
7 officers also located an uninjured juvenile female, who was later identified as three-year-old
8 Kayla Higgins, Nichole Nick's niece and Esther Maestas' granddaughter. Kayla had been
9 lying on a toddler bed that now had a bullet hole in it.

10 Nichole Nick was lying face up on the floor; twisted and bent slightly at the waist with
11 her back, right hip, and outside of right leg on the carpet. She had been rolled from her right
12 side to her back by officers so that they could check for her pulse. There was blood covering
13 her face and upper body as well as pooled on the carpet inside of her right elbow. Nichole
14 Nick suffered the following injuries: (1) a perforating gunshot entry-wound to her upper right
15 chest/shoulder and a corresponding gunshot exit-wound to her rear left side; (2) perforating
16 gunshot wounds to her upper left thigh; (3) a perforating wound to the back left of her head;
17 (4) a stab wound to her upper left chest; (5) a stab wound to her left armpit; (6) a stab wound
18 to the left side of her neck; (7) a stab wound to the upper left side of her back; (8) and several
19 lacerations to her upper left arm. Clark County Medical Examiner Dr. Alane Olson determined
20 that the cause of death was a gunshot wound to the chest with significant sharp force trauma
21 (stab wounds). The manner of death was homicide.

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23 scene prior to the arrival of homicide detectives. She was taken to Sunrise Hospital Emergency
24 Trauma Center where she was immediately taken into surgery.

25 Homicide Detectives D. Raetz, M. Gillis, J. McCarthy, and F. Merrick subsequently
26 responded to the scene. In the living room Detectives observed broken shards of glass in the
27 vicinity of the window, a Verizon Motorola cellular telephone on the south edge of the center
28 seat of the sofa, blood on a pillow of the sofa as well as on the north seat cushion and arm rest.

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2 discovered a T-Mobile Samsung cellular telephone. Detectives located a Sprint HTC cellular
3 telephone on the table in the kitchen belonging to Nichole Nick, and a LG cellular telephone
4 in pieces on the floor near the table. The Sprint HTC cellular telephone had blood on the
5 screen of the telephone and the background wallpaper was a photograph of an individual,
6 which matched the driver's license belonging to Robert Brown.

7 The only bedroom and bathroom in the apartment were located off of the kitchen. In
8 the threshold to the bathroom, Detectives discovered blood on the floor of both sides of the
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12 northeast corner. A blue multi-colored comforter was bunched up on the floor at the southwest
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15 wall, on the sheet and pillow on the twin bed, the west side of the bed, the blue comforter, and
16 on the floor between the two beds.

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23 of the bed. Detectives later recovered bullet fragments once the trajectories were traced. A bullet
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26 bed rail of the pink child's bed where Kayla Higgins had been sleeping before perforating the
27 west wall of the bedroom. That bullet was later recovered from the neighboring apartment under
28 the carpet of the northeast portion of the bedroom of Apartment E-12.

1 The weapon used in the commission of the murder of Nichole Nick and the attempted
2 murders of Esther Maestas and Kayla Higgins was located by a man out walking his dog the
3 following morning. Gerald Juneman reported that he had found a handgun in the gutter of
4 Jimmy Durante Boulevard. He picked the gun up in a plastic shopping bag and took it home.
5 LVMPD Officers subsequently responded to the home to retrieve the weapon. Homicide
6 Detectives responded to Juneman's residence as well and ultimately recovered a Smith &
7 Wesson model 439, 9 mm semi-automatic, bearing serial #TBK5560 from the patrol officers.
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9 grip was missing, the magazine was jammed in the magazine well with the magazine floor
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13 located the missing portion of the wood grip, the magazine floor plate, and the spring. These
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16 location was south of both the crime scene and Brown's apartment.

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18 by LVMPD Forensic Scientist James Krylo to have been fired by the Smith & Wesson. The
19 three bullets recovered from the scene as well as a single bullet recovered at a later date from
20 the apartment by Esther Maestas were all marked with rifling characteristics similar to those
21 made by the Smith & Wesson pistol. However, these bullets could not be conclusively tied to
22 the pistol.

23 Esther Maestas was later interviewed at Sunrise Hospital on December 10, 2012. Esther
24 indicated that after Nichole and Kayla had gone to bed, Esther heard someone attempt to force
25 the apartment door open. The next thing Esther knew, the window next to the door was broken
26 out and the Defendant was coming inside the apartment. The Defendant was carrying a gun
27 in his right hand and something else in his left. Nichole came out of the bedroom and yelled
28 for Esther to call 911. The Defendant shot Esther then went into the bedroom. Esther heard

1 gunshots and followed the Defendant into the bedroom. Esther heard Kayla start crying and
2 saw the Defendant turn the gun towards Kayla, who was lying in the toddler bed. Esther and
3 Nichole both yelled at the Defendant not to shoot the baby. Nonetheless, a bullet hole was
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5 Nichole repeatedly. Esther later remembered that the Defendant shot her a few more times
6 when Esther was back in the living room.

7 A warrant was subsequently obtained for the Defendant's arrest. He was located in
8 California in January of 2014 and later extradited to Nevada.

9 The above outlined evidence will establish that the Defendant entered into a course of
10 action where he intentionally shot at multiple people including Nichole Nick, Esther Maestas,
11 and Kayla Higgins, an aggravating circumstance pursuant to NRS 200.033(3).

12 6. The murder was committed while the person was engaged, alone or with others,
13 in the commission of, or an attempt to commit or flight after committing or attempting to
14 commit invasion of the home or burglary, and the person charged killed or attempted to kill
15 the person murdered. Nev. Rev. Stat. §200.033(4).

16 In this case, on December 7, 2012, the Defendant broke through the window of Nichole
17 Nick's apartment wherein he committed the murder of Nichole Nick during the perpetration
18 of an invasion of the home and/or burglary.

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20 ("LVMPD") call center received multiple telephone calls from residents at the Canyon Pointe
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5 Nichole repeatedly. Esther later remembered that the Defendant shot her a few more times
6 when Esther was back in the living room.

7 A warrant was subsequently obtained for the Defendant's arrest. He was located in
8 California in January of 2014 and later extradited to Nevada.

9 The above outlined evidence will establish that the Defendant committed the murder of
10 Nichole Nick during the perpetration of an invasion of the home and/or burglary, an
11 aggravating circumstance pursuant to NRS 200.033(4).

12 In addition to the witnesses and evidence outlined above, the State will rely on the
13 autopsy report and findings of Dr. Alane Olson, the crime scene photographs from the Canyon
14 Pointe Apartments from December 7, 2012, from the location of the firearm, and from the
15 autopsy of Nichole Nick. The crime scene photographs, autopsy photographs, the autopsy
16 report of Dr. Olson, the police reports, and the witness statements have been or will be
17 provided to defense counsel. In filing this NOTICE, the State incorporates all pleadings,
18 witness lists, notices, and other discovery materials already provided to the Defendant by the
19 Office of the District Attorney as part of its open-file policy as well as any future discovery
20 received and provided to the Defendant.

21 DATED this 8th day of August, 2014.

22 Respectfully submitted,

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

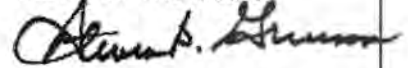
25
26 BY: /s/ Richard Scow
27 RICHARD SCOW
Chief Deputy District Attorney
Nevada Bar #9182
28

1 CERTIFICATE OF FACSIMILE TRANSMISSION

2 I hereby certify that service of the above and foregoing was made this 8th day of August,
3 2014, by facsimile transmission to:

4 JOSH TOMSHECK, ESQ.
5 FAX: (702) 731-6910

6 BY: /s/ J. Georges
7 Secretary for the District Attorney's Office



MOT
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAY P. RAMAN
Chief Deputy District Attorney
Nevada Bar #010193
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

ROBERT BROWN, JR., aka
Ariyl, #6006120

Defendant.

CASE NO: C-14-299234-1

DEPT NO: VI

**STATE'S NOTICE OF MOTION
AND MOTION FOR DEPOSITION**

DATE OF HEARING: 9/6/2022
TIME OF HEARING: 9:30 AM
HEARING REQUESTED

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JAY P. RAMAN, Chief Deputy District Attorney, and files this Notice Of Motion And Motion For Deposition.

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

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15 Nick suffered the following injuries: (1) a perforating gunshot entry-wound to her upper right
16 chest/shoulder and a corresponding gunshot exit-wound to her rear left side; (2) perforating
17 gunshot wounds to her upper left thigh; (3) a perforating wound to the back left of her head;
18 (4) a stab wound to her upper left chest; (5) a stab wound to her left armpit; (6) a stab wound
19 to the left side of her neck; (7) a stab wound to the upper left side of her back; (8) and several
20 lacerations to her upper left arm. Clark County Medical Examiner Dr. Alane Olson
21 determined that the cause of death was a gunshot wound to the chest with significant sharp
22 force trauma (stab wounds). The manner of death was homicide.

23 Medics were called for Esther Maestas and they subsequently removed her from the
24 scene prior to the arrival of homicide detectives. She was taken to Sunrise Hospital Emergency
25 Trauma Center where she was immediately taken into surgery.

26 Homicide Detectives D. Raetz, M. Gillis, J. McCarthy, and F. Merrick subsequently
27 responded to the scene. In the living room Detectives observed broken shards of glass in the
28 vicinity of the window, a Verizon Motorola cellular telephone on the south edge of the center

1 seat of the sofa, blood on a pillow of the sofa as well as on the north seat cushion and arm rest.

2 A pony wall separated the living room from the kitchen. On the pony wall Detectives
3 discovered a T-Mobile Samsung cellular telephone. Detectives located a Sprint HTC cellular
4 telephone on the table in the kitchen belonging to Nichole Nick, and a LG cellular telephone
5 in pieces on the floor near the table. The Sprint HTC cellular telephone had blood on the
6 screen of the telephone and the background wallpaper was a photograph of an individual,
7 which matched the driver's license belonging to Robert Brown.

8 The only bedroom and bathroom in the apartment were located off of the kitchen. In
9 the threshold to the bathroom, Detectives discovered blood on the floor of both sides of the
10 door as well as on the lower portions of the exterior of the bathroom door and the west door
11 frame and west wall of the hall. The bathroom itself was otherwise unremarkable. In the
12 bedroom, Detectives observed a toddler bed against the northwest corner and a twin bed at the
13 northeast corner. A blue multi-colored comforter was bunched up on the floor at the southwest
14 corner of the twin bed. Detectives observed blood on the floor at the south end of the bedroom,
15 on the east closet door, on the west portion of the vertical blinds of the window in the north
16 wall, on the sheet and pillow on the twin bed, the west side of the bed, the blue comforter, and
17 on the floor between the two beds.

18 Eight cartridge cases, seven bearing the "R-P 9mm LUGER" headstamps and one
19 bearing a "PMC 9MM LUGER" headstamp, were recovered from the floor of the bedroom.
20 Five were visible upon entering the room, and the other three were found when Detectives
21 moved items in the room.

22 There were multiple bullet holes through the bunched up comforter on the floor at the
23 southwest corner of the twin bed. There were two bullet holes in the mattress and box springs
24 of the bed. Detectives later recovered bullet fragments once the trajectories were traced. A
25 bullet also perforated the west closet door and penetrated into the south wall of the closet.
26 Detectives recovered bullet fragments from the floor of the interior of the wall. A bullet
27 perforated the west bed rail of the pink child's bed where Kayla Higgins had been sleeping
28 before perforating the west wall of the bedroom. That bullet was later recovered from the

1 neighboring apartment under the carpet of the northeast portion of the bedroom of Apartment
2 E-12.

3 The weapon used in the commission of the murder of Nichole Nick and the attempted
4 murders of Esther Maestas and Kayla Higgins was located by a man out walking his dog the
5 following morning. Gerald Juneman reported that he had found a handgun in the gutter of
6 Jimmy Durante Boulevard. He picked the gun up in a plastic shopping bag and took it home.
7 LVMPD Officers subsequently responded to the home to retrieve the weapon. Homicide
8 Detectives responded to Juneman's residence as well and ultimately recovered a Smith &
9 Wesson model 439, 9 mm semi-automatic, bearing serial #TBK5560 from the patrol officers.
10 It appeared as if the gun had been thrown from a moving vehicle as half of the right side wood
11 grip was missing, the magazine was jammed in the magazine well with the magazine floor
12 plate missing, and there was grass and leaf debris on the right side. The hammer of the gun
13 was down, the chamber and the magazine were empty, and the safety was engaged.

14 When Detectives responded to the location where the weapon had been found, they
15 located the missing portion of the wood grip, the magazine floor plate, and the spring. These
16 items were found spread in a line in the west gutter of Jimmy Durante Boulevard indicating
17 that the gun was thrown out of a moving vehicle traveling south on Jimmy Durante. The
18 location was south of both the crime scene and Brown's apartment.

19 All eight 9MM cartridge cases recovered from the crime scene were later determined
20 by LVMPD Forensic Scientist James Krylo to have been fired by the Smith & Wesson. The
21 three bullets recovered from the scene as well as a single bullet recovered at a later date from
22 the apartment by Esther Maestas were all marked with rifling characteristics similar to those
23 made by the Smith & Wesson pistol. However, these bullets could not be conclusively tied to
24 the pistol.

25 Esther Maestas was later interviewed at Sunrise Hospital on December 10, 2012.
26 Esther indicated that after Nichole and Kayla had gone to bed, Esther heard someone attempt
27 to force the apartment door open. The next thing Esther knew, the window next to the door
28 was broken out and the Defendant was coming inside the apartment. The Defendant was

1 carrying a gun in his right hand and something else in his left. Nichole came out of the
2 bedroom and yelled for Esther to call 911. The Defendant shot Esther then went into the
3 bedroom. Esther heard gunshots and followed the Defendant into the bedroom. Esther heard
4 Kayla start crying and saw the Defendant turn the gun towards Kayla, who was lying in the
5 toddler bed. Esther and Nichole both yelled at the Defendant not to shoot the baby.
6 Nonetheless, a bullet hole was found in the toddler bed. The Defendant then turned the gun
7 and shot Esther before shooting Nichole repeatedly. Esther later remembered that the
8 Defendant shot her a few more times when Esther was back in the living room.

9 A warrant was subsequently obtained for the Defendant's arrest. He was located in
10 California in January of 2014 and later extradited to Nevada. The Defendant was arraigned in
11 justice court on April 15, 2014. The case has languished in the judicial system for over 8 years
12 due to the Defendant's maneuvering to have counsel appointed, replaced, represent himself,
13 elect to have counsel, then represent himself. The Court issued a minute order on July 21, 2022
14 recapping this history:

15 "On Tuesday, July 19, 2022, the instant case came before the Court for Calendar Call. At that
16 time, Defendant indicated that he no longer wished to represent himself at trial. Though this
17 matter had been on Calendar multiple times for Status Check: Trial Readiness, the Defendant
18 had never once intimated his desire for counsel. Due to these representations, the July 25,
19 2022, jury trial was vacated and a Status Check was set for July 28, 2022 to confirm new
20 counsel. Due to the length and history of the case, the following record is necessary: On July
21 21, 2014, Defendant was arraigned, pled not guilty, and invoked his right to a speedy trial. At
22 that time, Defendant was represented by attorney Joshua Tomsheck. On August 21, 2014,
23 shortly after the State noticed their intent to seek the death penalty, attorney Drew Christiansen
24 was appointed to assist Mr. Tomsheck at trial. On September 9, 2014, Defendant waived his
25 speedy trial rights and stated that he had a motion to dismiss Mr. Tomsheck. Mr. Tomsheck
26 remained as counsel until April 9, 2015 when Judge Togliatti granted Defendant's motion to
27 withdraw. On May 14, 2015, attorney Amanda Gregory appeared as counsel of record for
28 Defendant. On April 16, 2016, attorney Andrea Luem also confirmed as counsel. On July 21,

1 2016, Ms. Gregory advised the Court that Defendant was refusing to meet with counsel. Judge
2 Togliatti required Defendant to meet with his counsel. On August 2, 2016, Defendant
3 represented for the first time that he wished to represent himself. The Court informed
4 Defendant that a Faretta Canvas would be needed and informed him that standby counsel was
5 not going to file and argue motions for him. Defendant stated he would be prepared for the
6 August 29, 2016 trial date. On August 5, 2016, the Court ordered Defendant be sent to
7 Competency Court and his counsel would remain in the interim. The Court determined
8 Defendant competent on September 6, 2016. On September 15, 2016, Judge Togliatti
9 dismissed Ms. Gregory and Ms. Luem and allowed Defendant to represent himself. Ms.
10 Gregory was appointed as standby counsel. On June 9, 2017, Defendant advised the Court that
11 he is requesting the appointment of new counsel. The Court granted Defendant's request and
12 attorneys Ivette Maningo and Patricia Palm were appointed on June 15, 2017. On February
13 27, 2019, Ms. Maningo represented that she received a motion from Defendant for her to
14 withdraw. Attorney Abel Yanez appeared for Defendant as well due to Ms. Palm leaving her
15 position. Judge Villani instructed counsel to resolve any issues with Defendant. On March 13,
16 2019, Judge Villani denied Defendant's Motion to Withdraw counsel, finding that Defendant
17 was wanting his counsel to do things that were not appropriate at this stage of the proceedings.
18 On August 14, 2020, Defendant filed another Motion to Dismiss Counsel, however, stated that
19 he did not want to represent himself. Judge Villani denied Defendant's Motion finding no basis
20 to remove counsel. On June 25, 2021, Judge Silva, finding no basis to appoint new counsel,
21 denied Defendant's Motion to Proceed In Pro Persona & Appoint New Stand-By Counsel. On
22 August 20, 2021, the Court conducted a second Faretta Canvas due to counsel's representations
23 that Defendant wished to represent himself. The Court allowed Defendant to represent himself
24 and appointed attorney Clark Patrick as stand-by counsel. On February 1, 2022, the Court
25 denied Defendant's Motion to Dismiss Stand By Counsel and Appoint Qualified Standby
26 Counsel of Foreign Law. On April 1, 2022, Mr. Patrick advised that he was having difficulty
27 communicating with Defendant. Defendant was refusing to be transported to Court, and thus,
28 the Court ordered Defendant to be transported by any means necessary. Between April 1, 2022

1 and July 19, 2022, the Court informed Defendant that he needed to be prepared for his trial
2 date on July 20, 2022. On July 19, 2022, Defendant informed the Court that he was not
3 comfortable representing himself at trial and wished to have new counsel appointed.
4 Defendant was told that this would be the last time he would have the opportunity to represent
5 himself. The Court expressed its frustration with the fact that this entire legal process has been
6 thwarted repeatedly by Defendant going back and forth between attorneys, stand by counsel,
7 and self representation. The Defendant was told that he needed to think long and hard
8 regarding whether or not he wanted to represent himself or have counsel appointed, because
9 whatever Defendant s choice would be, it would remain in effect. Defendant stated he
10 understood and chose to move forward with counsel. In total, Defendant has been appointed
11 seven attorneys. He has decided to represent himself on two separate occasions, ultimately
12 backing out of those decisions. As of the date of this minute order, Defendant has resided in
13 the Clark County Detention Center awaiting trial for exactly six (6) years. Thus, the Court has
14 determined that any further continuances without good cause shall be denied and that
15 Defendant s newly appointed counsel shall be his trial counsel, without exception.”

16 It should be noted that part of this delay can also be attributed to the shuffling of District
17 Court departments over the years. This case originated in Judge Bixler’s department, then went
18 to Judge Togliatti, then Judge Villani, and now Judge Bluth – with several other District Court
19 Judges hearing important dates over the course of this case’s history.

20 ARGUMENT

21 I. A DEPOSITION OF SEVERAL KEY WITNESSES SHOULD TAKE 22 PLACE FORTHWITH

23 The parties were informed that the trial setting of April 2022 was a firm setting. The
24 Defendant has his trial continued because of phantom discovery issues. The parties were
25 informed that the July 2022 was a firm setting. The Defendant then re-requested counsel, and
26 Clark Patrick, his standby counsel has stepped in now as his trial counsel, along with Randy
27 Pike. The State contemplated a deposition after the April date, but July was only 90 days after
28 April. Now, Clark Patrick has said it will take him a year-and-a-half to become ready to try

1 this case. This is simply an unreasonable delay, which is compounded by the copious
2 unreasonable delays that have transpired thus far. Additionally, several key witnesses have
3 health issues which, if this trial is in fact set for 1 ½ years from now, may not survive to testify.
4 It is a completed warranted and reasonable request to depose these witnesses now, in court, to
5 preserve their testimony should they later become unavailable.

6 7 **Depositions**

8 **NRS 174.175 When taken.**

9 1. If it appears that a prospective witness is an older person or a
10 vulnerable person or may be unable to attend or prevented from
11 attending a trial or hearing, that the witness's testimony is material
12 and that it is necessary to take the witness's deposition in order to
13 prevent a failure of justice, the court at any time after the filing of an
14 indictment, information or complaint may, upon motion of a
15 defendant or of the State and notice to the parties, order that the
16 witness's testimony be taken by deposition and that any designated
17 books, papers, documents or tangible objects, not privileged, be
18 produced at the same time and place. If the motion is for the
19 deposition of an older person or a vulnerable person, the court may
20 enter an order to take the deposition only upon good cause shown to
21 the court. If the deposition is taken upon motion of the State, the court
22 shall order that it be taken under such conditions as will afford to
23 each defendant the opportunity to confront the witnesses against him
24 or her.

25 2. If a witness is committed for failure to give bail to appear to
26 testify at a trial or hearing, the court, on written motion of the witness
27 and upon notice to the parties, may direct that the witness's
28 deposition be taken. After the deposition has been subscribed, the
court may discharge the witness.

3. This section does not apply to the prosecutor, or to an
accomplice in the commission of the offense charged.

4. As used in this section:

(a) "Older person" means a person who is 70 years of age or
older.

(b) "Vulnerable person" has the meaning ascribed to it in
subsection 7 of NRS 200.5092.

(Added to NRS by 1967, 1418; A 2009, 2552)

Any concerns about the use of this deposition should be put to rest by the following
statute:

1 **NRS 174.215 Use of deposition.**

2 1. At the trial or upon any hearing, a part or all of a deposition,
3 so far as otherwise admissible under the rules of evidence, may be
4 used if it appears:

5 (a) That the witness is dead;

6 (b) That the witness is out of the State of Nevada, unless it
7 appears that the absence of the witness was procured by the party
8 offering the deposition;

9 (c) That the witness cannot attend or testify because of sickness
10 or infirmity;

11 (d) That the witness has become of unsound mind; or

12 (e) That the party offering the deposition could not procure the
13 attendance of the witness by subpoena.

14 2. Any deposition may also be used by any party to contradict or
15 impeach the testimony of the deponent as a witness.

16 3. If only a part of a deposition is offered in evidence by a party,
17 an adverse party may require the party to offer all of it which is
18 relevant to the part offered and any party may offer other parts.

19 (Added to NRS by 1967, 1418; A 1989, 588) Emphasis added.

20 The State would only seek to use the deposed testimony if the witness is unavailable for any
21 of the reasons described by NRS 174.215.

22 Logistically, the State proposes that the deposition be taken in the courtroom with the
23 use of JAVS equipment and court reporter / recorder. Since it is of no additional expense,
24 videotaping of the deposition is preferable. A transcript of the deposition would also need to
25 be prepared for the possibility that the witness's testimony is needed, or should the Defendant
26 feel the need to impeach the witness when he does testify. The Defense counsel would be
27 present and have the opportunity to cross-examine witness. Should any objections be made
28 during the deposition, they would be addressed and testimony potentially redacted before trial.

 The State's request for deposition is being made in advance of any advisement of what
the next trial date will be, but if history serves as a guide the Defendant will make up any
excuse he possibly can to avoid the justice which has been earmarked for him,

//

//

1 II. THE FOLLOWING WITNESSES SHOULD BE DEPOSED AS SOON AS
2 POSSIBLE

3 A. Esther Maestas
4

5 Esther Maestas is one of the surviving victims, having witnessed the defendant brutally
6 attack and murder her daughter as well as shoot at her granddaughter, a toddler. She was shot
7 multiple times by the defendant, but thankfully survived.

8 She is 67 years old and has been in and out of the hospital due to liver damage, lupus,
9 renal failure, and stomach issues. She was last in the hospital in May of 2022 for these issues.
10 She would be considered a vulnerable person under NRS 174.175 and borderline older person.

11 B. John Brocius

12 John Brocius is the security guard who was first on scene and encountered the victims.
13 He is best able to describe how everything and everyone closest to the time of the shooting.
14 John is suffering from kidney failure and is on a transplant list. He would qualify as a
15 vulnerable person under NRS 174.175

16 C. Gerald Juneman

17 Gerald is the man who was walking his dog the next morning and found the murder
18 weapon in the gutter of the street. He is an 85 year old man. He is considered an older person
19 under NRS 174.175.

20 CONCLUSION

21 Based on the foregoing, the State respectfully requests that this Honorable Court to
22 GRANT the State's Motion for Deposition.

23 DATED this 2nd day of September, 2022.

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

27 BY /s/ Jay P. Raman
28 JAY P. RAMAN
Chief Deputy District Attorney
Nevada Bar #010193

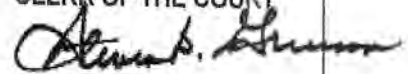
1 CERTIFICATE OF ELECTRONIC TRANSMISSION

2 I hereby certify that service of the above and foregoing was made this 2nd day of
3 September, 2022, by electronic transmission to:

4 CLARK W. PATRICK
5 cwpatricklaw@gmail.com

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

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14 Attorneys for Robert Brown

DISTRICT COURT
CLARK COUNTY, NEVADA

15 THE STATE OF NEVADA,

Plaintiff,

16 vs.

17 ROBERT BROWN, JR. #6006120

Defendant.

CASE NO. C-14-299234-1

DEPT NO. VI

OPPOSITION TO STATE'S MOTION FOR DEPOSITION

Date: September 20, 2022

Time: 9:30 a.m.

21 COMES NOW, Defendant Robert Brown, Jr. (Robert), by and through his attorneys Clark
22 W. Patrick, Esq., and Randall H. Pike, Esq., and submits the following in Opposition to the State's
23 Motion for Deposition. Defendant requests this Court deny the State's Motion as the bare
24 pleadings are insufficient to warrant a deposition and violate Robert's Confrontation Clause right
25 pursuant to the Sixth Amendment to the United States Constitution and Art I §§ 3, 7, and 8 of
26 Nevada Constitution.
27
28

1 This Opposition is made and based on the pleadings on file herein, the attached Points
2 and Authorities and any argument of counsel at the time of hearing of the motion.

3 4 ARGUMENT

5 The State's motion requests this court curtail one the most fundamental right afforded
6 the accused by the Constitution, the right of the accused to confront witnesses against them
7 before a live jury. The State's motion requesting this abridgment of a constitutional right is
8 made without a sworn affidavit. More than bald accusation must be shown this court before
9 such drastic remedy should ever be contemplated.

10 **A. Heightened Reliability is Required in Capital Cases—Requiring Heightened** 11 **Scrutiny by the District Court**

12 Due to the finality of the death penalty, the Supreme Court requires heightened
13 reliability in the decisions made by the jury and judge during the course of a capital trial. See,
14 e.g., Zant v. Stephens, 462 U.S. 862, 884 (1983). In Woodson v. North Carolina, 428 U.S. 280
15 (1976), the Court explained why the Constitution requires an individualized sentencing
16 determination in a capital case even though there is no parallel requirement in non-capital cases:

17 This conclusion rests squarely on the predicate that the penalty of death is qualitatively
18 different from a sentence of imprisonment, however long. Death, in its finality, differs
19 more from life imprisonment than a 100-year prison term differs from one of only a year
20 or two. Because of that qualitative difference, there is a corresponding difference in the
21 need for reliability in the determination that death is the appropriate punishment in a
22 specific case.

23 *Id.* at 305.

24 As the Supreme Court has observed upon appellate review, "the severity of the sentence
25 mandates careful scrutiny in the review of any colorable claim of error." Zant v. Stephens, 462
26 U.S. 862, 884-885 (U.S. 1983). In short, death is different. Thompson v. Oklahoma, 487 U.S.
27 815, 856 (1988) ("Under the Eighth Amendment, the death penalty has been treated differently
28 from all other punishments").

A corollary basic principles of modern death penalty jurisprudence is that "[sentencing]
juries be carefully and adequately guided in their deliberations." Gregg v. Georgia, 428 U.S.

1 153, 193 (1976). This is, in essence, the core holding of Furman v. Georgia, 408 U.S. 238
2 (1972): "where discretion is afforded a sentencing body on a matter so grave as the
3 determination of whether a human life should be taken or spared, that discretion must be
4 suitably directed and limited so as to minimize the risk of wholly arbitrary and capricious
5 action." Gregg, 428 U.S. at 189.

6 Accordingly, the defense urges this court to review the legal issues that will be
7 presented to it to ensure such a "heightened reliability" in the result of this capital litigation.
8 Unlike any other form of criminal litigation, capital litigation should be directed towards greater
9 reliability in the outcome of the case.

10
11 **B. The Motion Brought by the State Fails to Establish that the Witnesses will be**
12 **unavailable.**

13 The motion asserts "several key witnesses have health issues which, if this trial is in fact
14 set for 1 ½ years from now, may not survive to testify." The State has failed to offer anything
15 other than an unsworn, non-specific narrative of their own to support a showing of need of
16 exceptional circumstances for the deposition that they seek, absent an affidavit or medical
17 records. State's Motion 9.

18 **C. No evidence has been presented to show that the witnesses will not be able to**
19 **attend trial.**

20 Depositions should not be allowed in this case because the State has failed to establish
21 any of the named witness's inability to attend trial.

22 N.R.S. 174.175(1) states:

23 If it appears that a prospective witness ... may be unable to attend or prevented
24 from attending a trial or hearing, that his testimony is material and that it is
25 necessary to take his deposition in order to prevent a failure of justice, the court...
26 may upon motion of a defendant or of the state and notice to the parties
27 order that his testimony be taken by deposition... If the deposition is taken upon
28 motion of the state, the court shall order that it be taken under such conditions as
will afford to each defendant the opportunity to confront the witnesses against
him.

Here, the State speculates that the witnesses "may not survive to testify." State's Motion 9.

1 Such speculation does not meet the statute. It certainly doesn't give a basis to deny Robert
2 his right to confront witnesses against him before a live jury.

3 A generalized fear that a witness may be unable to attend trial is insufficient to justify
4 deposing a witness in a criminal case. Commonwealth v. Hilton, 19 Mass. L. Rep. 453 (Mass.
5 Super. 2005), citing U.S. v. Rosenstein, 303 F. Supp. 210, 212 (S.D.N.Y. 1969). In Hilton, the
6 defendant attempted to depose a homeless witness prior to trial pursuant to a Massachusetts
7 statute similar to NRS 174.175. Hilton, 19 Mass. L. Rep. 453 (Mass. Super. 2005). The court held
8 a deposition was not appropriate because the defendant did not establish the witness would likely
9 be unavailable for trial. Id. The court reasoned that the witness lived in the same general area
10 since the time of the crime, the witness could be contacted through his family, and a "generalized
11 fear" that the witness would disappear was insufficient to support a finding of unavailability. Id.

12 Similar to Hilton, the State only asserted its "generalized fear" that the witnesses would expire
13 and be unavailable for trial. Therefore, it has not sufficiently established the witnesses may be
14 unavailable for trial. However, unlike Hilton, where the defendant's fear of losing contact with
15 the witness was more substantial due to the witness being homeless, the State has been in constant
16 contact with the witness.

17 **D. The Witnesses have not Been Demonstrated to be "Unavailable as Witnesses"**
18

19 To date all the witnesses listed by the State have been available to testify. The NRS
20 defines "Unavailable Witness" in relevant part as follows:

21 1. A declarant is "unavailable as a witness" if the declarant is:
22

23 [. . .]

24 (b) Persistent in refusing to testify despite an order of the judge to do so;

25 [. . .]

26 2. A declarant is not "unavailable as a witness" if the declarant's exemption, refusal,
27 inability, or absence is due to the procurement or wrongdoing of the proponent of the
28 declarant's statement for the purpose of preventing the witness from attending or
testifying.

1 NRS 51.055

2 There is no foundation to assert that the witnesses should be deposed. The subject statute
3 does not exist as a fallback position for the State when it is inconvenient for them to procure the
4 attendance of a witness. This statute is a last resort under extraordinary circumstances and only
5 to be used upon a showing of good cause and a showing of the specific acts of the accused in an
6 attempt to procure the non-appearance of the witness.

7 The State seems to believe that because it may be difficult to secure these witnesses'
8 attendance at a jury trial; such is a sufficient reason under NRS 174.175 to allow depositions to
9 be had. Such is not the case; the State has to show that the witnesses will be unavailable. The
10 State asserts that the witnesses may "not survive to testify." Again, suppositions and the State's
11 level of confidence do not provide a sufficient legal basis for this Court to invoke the use of the
12 subject statute.

13 This Court should not grant the State's motion based upon its bare allegations.
14 "While depositions are allowable in criminal cases, the circumstances permitting its use must be
15 exceptional." McGuinness v. State, 589 P.2d 1032, 1033 (N.M. 1979). The necessity must be
16 clearly established, and the burden of showing that necessity is on the prosecution. Haynes v.
17 People, 265 P.2d 995 (Col. 1954). Here, the State has failed to offer anything other than an
18 unsworn narrative to support its request for a deposition. The Rules of the District Courts of the
19 State of Nevada mandate that "factual contentions involved in any pre-trial or post-trial motion
20 shall be initially presented and heard upon affidavits." D.C.R. 13(6). The rule further delineates
21 that the "court may set the matter for a hearing at a time in the future and allow oral
22 examination of the affiants to resolve factual issues shown by the affidavits to be in dispute."
23 Id. This Court cannot find that the witnesses may be unavailable to testify by relying on the
24 prosecutor's unsupported contentions. The defense very much disputes their allegations.

25 **E. Taking Depositions of the Witnesses Would Violate Robert's Confrontation Clause**
26 **Rights.**

27 From the founding of this country, the accused's right to confront witnesses against
28 them has been a protected right. It is so because:

1 The primary object of the [Confrontation Clause] was to prevent depositions or ex parte
2 affidavits . . . being used against the prisoner in lieu of a personal examination and
3 cross-examination of the witness in which the accused has an opportunity, not only of
4 testing the recollection and sifting the conscience of the witness, but of compelling him
5 to stand face to face with the jury in order that they may look at him, and judge by his
6 demeanor upon the stand and the manner in which he gives his testimony whether he is
7 worthy of belief."

8 Kentucky v. Stincer, 482 U.S. 730, 736-737 (U.S. 1987) (quoting Mattox v. United
9 States, 156 U.S. 237, 242-43); See also Kirby v. United States, 174 U.S. 47, 53 (1899).

10 The Confrontation Clause is part of our constitution to prevent trial by deposition and affidavit.

11 The rules of evidence and the N.R.S might have provisions which provide exceptions to that
12 right to live confrontation before a jury. The right to live confrontation, however, is the norm
13 and extraordinary circumstances must exist for the constitutional right to live confrontation to
14 be abridged or truncated by the courts.

15 When the Nevada Supreme Court addressed this issue, they affirmed the importance of
16 live, unfettered, face-to-face confrontation before the jury. Quoting the United States Supreme
17 Court, they noted, "[w]e have never doubted . . . that the Confrontation Clause guarantees the
18 defendant a face-to-face meeting with witnesses appearing before the trier of fact." Smith v.
19 State, 111 Nev. 499, 502 (Nev. 1995) (quoting Coy v. Iowa, 487 U.S. 1012, 1020 (1987)).

20 From the mid-1960s through the 1990s, the right to confront witnesses had been eroded
21 by the courts. See Ohio v. Roberts, 448 U.S. 56 (1980). More recently, the original purpose of
22 the Confrontation Clause has been reasserted in a series of United States Supreme Court cases.
23 See Crawford v. Washington, 541 U.S. 36 (2004); Davis v. Washington, 547 U.S. 813 (2006);
24 Giles v. California, 554 U.S. 353 (2008); Melendez-Diaz v. Massachusetts, 557 U.S.
25 305 (2009); Bullcoming v. New Mexico, 564 U.S. ____ (2011).

26 The witness stand is the place where witnesses give evidence. It is the place where the
27 witness exposes himself to the jurors, a group of strangers to the witness, and submits her
28

1 credibility to their judgment. The confrontation clause requires that a witness give a statement
2 under oath and submit to what has been termed the "ordeal of a cross-examination." See Mattox
3 v. United States, 156 U.S. 237, 244 (1895). It also requires that jury be able "to observe the
4 demeanor of the witness in making his statement, thus aiding the jury in assessing his
5 credibility." Maryland v. Craig, 497 U.S. 836, 845-846 (1990). Demeanor evidence is
6 importantly relevant on the issue of credibility. See California v. Green, 399 U.S. 149 (1979),
7 and jurors are to be so instructed. As explained by Judge Learned Hand, a witness's "demeanor
8 is a part of the evidence. The words used are by no means all that we rely on in making up our
9 minds about the truth of a question that arises in our ordinary affairs, and it is abundantly settled
10 that a jury is as little confined to them as we are. They may, and indeed they should, take into
11 consideration the whole nexus of sense impressions which they get from a witness. This we
12 have again and again declared and have rested our affirmance of finding of fact of a judge, or of
13 a jury, on the hypothesis that this part of the evidence may have turned the scale." Dyer v.
14 MacDougall, 201 F.2d 265, 269 (2nd Cir. 1952).

15
16
17 Demeanor evidence is of considerable legal consequence. It can have a dispositive effect
18 in the outcome of a case "in which the existence or nonexistence of a determinative fact depends
19 upon the credibility to be given to testimonial evidence." Harding v. Purtle, 275 Cal. App. 2d
20 396, 400, 79 Cal. Rptr. 772 (1969). Although demeanor evidence does not appear on the record,
21 and for that reason has led to the rule that the fact finder is the exclusive judge of credibility,
22 many is the case which is affirmed on appeal because the reviewing court necessarily deferred to
23 the finding to the trier of fact on issues of credibility. This is particularly true in Nevada whereas
24 a matter of Constitutional mandate the court may not weigh evidence in a criminal case.
25
26

27 "The primary object of the [Confrontation Clause] was to prevent depositions or ex-
28 parte affidavits... being used against the prisoner in lieu of a personal examination
and cross-examination of the witness in which the accused has an opportunity, not
only of testing the recollection and sifting the conscience of the witness, but of
compelling him to stand face to face with the jury in order that they may look at

1 **him, and judge by his demeanor upon the stand and the manner in which he gives**
2 **his testimony whether his is worth of belief."**

3 Kentucky v. Stincer, 782 U.S. 730, 736-37 (1987), quoting Mattox v. United States, 156 U.S.
4 237, 242-43 (1895).

5 Underlying both the constitutional principles and the rules of evidence is a preference for
6 live testimony. Live testimony gives the jury the opportunity to observe the demeanor of the
7 witness while testifying. United States v. Yida, 498 F.3d 945, 950 (9th Cir. 2007). William
8 Blackstone long ago recognized this virtue of the right to confrontation, stressing that through
9 live testimony, "and this [procedure] only, the persons who are to decide upon the evidence have
10 an opportunity of observing the quality, age, education, understanding, behavior, and inclinations
11 of the witness." 3 William Blackstone, *Commentaries on the Laws of England* 373-74 (1768).

12 More recently, the United States Court of Appeals for the Third Circuit voiced the
13 importance of observing, firsthand, a witness's demeanor while testifying:

14 Demeanor is of the utmost importance in the determination of the credibility of a
15 witness. The innumerable telltale indications which fall from a witness during the
16 course of his examination are often much more of an indication to judge or jury
17 of his credibility and the reliability of his evidence than is the literal meaning of
18 his words. Even beyond the precise words themselves lies the unexpressed
19 indication of his alignment with one side or the other in the trial. It is indeed rarely
20 that a cross-examiner succeeds in compelling a witness to retract testimony which
21 is harmful to his client, but it is not infrequently that he leads a hostile witness to
22 reveal by his demeanor -- his tone of voice, the evidence of fear which grips him
23 at the height of cross-examination, or even his defiance -- that his evidence is not
24 to be accepted as true, either because of partiality or overzealousness or
25 inaccuracy, as well as outright untruthfulness. The demeanor of a witness, as
26 Judge Frank said, is 'wordless language.'

27 Gov't of the Virgin Islands v. Aquino, 378 F.2d 540, 548 (3rd Cir. 1967) (quoting Broad. Music,
28 Inc. v. Havana Madrid Rest. Corp., 175 F.2d 77,80 (2nd Cir. 1949).

29 Courts have recognized that an experienced witness can be "cagey" under cross-
30 examination, United States v. cote, 2007 WL 1000849 (S.D.N.Y. 2007), can anticipate the reach
31 of a line of cross-examination and give nonresponsive and unwanted answers, People v. Auer,
32 393 Mich. 667, 674 (Mich. 1975), appear more comfortable in the presence of a jury than an
33 inexperienced witness, Ledesma v. State, 141 Tex. Crim. 37, 39, 181 S.W. 2d 705 (Tex. Crim.
34 App. 1944), and be rehearsed with the earlier videotaped deposition in preparation for live
35 testimony at a subsequent trial.

1 At bottom, live testimony gives juror's an opportunity to observe a witness's demeanor.
2 United States v. Yida, 498 F.3d 945, 950 (9th Cir. 2007). Live cross-examination also affords
3 the defense the ability to use their most current investigative information and all information the
4 defense learns up to and during the trial. In Yida, the Ninth Circuit found persuasive a
5 statement in an amicus brief from Professor Richard D. Friedman of the University of Michigan
6 Law School. Friedman explained that "[w]itnesses who testify live at the current trial speak as
7 of the current time," while witness testimony via "transcript speaks as of the time of the prior
8 proceeding and cannot be updated" the accused can only use recently acquired information in
9 cross-examining a witness if that testimony is live. The ability to cross-examine a witness at
10 trial using the most current investigative information available cuts to the heart of the Sixth
11 Amendment's confrontation clause. Yida, 498 F.3d 945, 951 (9th Cir. Cal. 2007).

14 **1. Giles v. California: The accused's Confrontation Right cannot be violated**
15 **absent a showing that the accused intended the unavailability of the witness.**

16 One of the more recent United States Supreme Court cases directly speaks to the issue
17 presented by the State's motion to depose these witnesses. See Giles v. California, 554 U.S.
18 353 (2008). In Giles, the court allowed prosecutors to introduce statements the murder victim
19 made to a police officer responding to a domestic violence call the decedent had previously
20 made against the defendant. Id. at 356. On that previous call, the decedent had informed the
21 responding officer that Giles had threatened to kill her. Id. at 357. The California trial court
22 admitted in this previous statement to police and Mr. Giles was convicted. Id.

24 On appeal the California Supreme Court noted that the California Code allowed in
25 previous statements by witnesses if the defendant caused the unavailability of the witness at
26 trial—otherwise known as the doctrine of “forfeiture by wrongdoing.” Id. Reasoning that Giles
27 had forfeited his right to confront the deceased by murdering her and thereby causing her
28 unavailability at trial, the California Supreme Court affirmed Giles' conviction. Id.

1 The Supreme Court reversed. The Court found that the Sixth Amendment provides that
2 in all prosecutions the accused has the right to confront witnesses against them. Further, such a
3 witness against the accused will ordinarily be present at trial for cross-examination. Id. at 358
4 (citing Crawford v. Washington, 541 U.S. 36, 68 (2004)). At bottom, the court wrote, “the
5 Confrontation Clause is most naturally read as a reference to the right of confrontation at
6 common law, admitting only those exceptions established at the time of the founding.” Id.
7 Crawford, at 54 (quotation marks omitted.). Pursuant to that principle, the court conducted a
8 historical analysis and concluded that the rule of forfeiture, historically, would not allow the
9 introduction of a statement because the witness was dead and allegedly killed by the accused.
10

11 Justice Scalia, writing for the majority, concluded that the rule of forfeiture was
12 historically used only when there was a showing that the accused acted with the purpose of
13 preventing the witness from testifying at trial. Giles 361-373. Giles was charged with the
14 murder of the woman whose statement was sought to be admitted, but, under common law
15 principles her statement would not have been admissible in court unless it could be shown that
16 Giles killed her with the specific purpose, she would be unavailable to testify at trial. As Justice
17 Scalia puts it:
18
19

20 The manner in which the rule was applied makes plain that uncontroverted testimony
21 would not be admitted without a showing that the defendant intended to prevent a
22 witness from testifying. In cases where the evidence suggested that the defendant had
23 caused a person to be absent but had not done so to prevent the person from testifying--
24 as in the typical murder case involving accusatorial statements by the victim--the
25 testimony was excluded unless it was confronted or fell within the dying-declarations
26 exception.

25 Giles v. California, 554 U.S. 353, 361-362 (U.S. 2008)

26 Like, Crawford, the Giles decision declines to extend exceptions to the Confrontation Clause,
27 “unheard of at the time of the founding or for 200 years thereafter.” Giles at 377.
28

NRS 174.175 is just such an exception. If it is applied as the state requests, based upon

1 the mere allegation that it is "entirely possible" that a witness's appearance at trial is "unlikely,"
2 Robert's Confrontation Clause right to confront witnesses against him before a live jury would
3 be severely truncated.

4 **2. NRS 174.175 and NRS 51.055 are the codification of a "forfeiture by**
5 **wrongdoing" rule, therefore, *Giles v. California*, controls their usage.**

6 Pursuant to the controlling holding in Giles for this court to limit Robert's confrontation
7 of witnesses against him, it must be shown that he personally has caused this alleged prevention
8 of the witnesses from testifying in the future. Without a specific finding that the witnesses
9 "may not survive to testify", any abridgment of Robert's right to confront them is
10 unconstitutional.
11

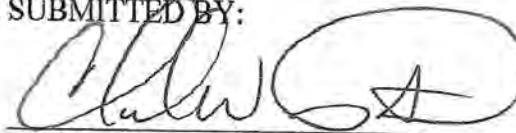
12
13 **CONCLUSION**

14 Based on the bare pleadings by the State, pursuant to the requirements of NRS 174.175,
15 their Motion should be denied. Based upon the Sixth Amendment to the United States
16 Constitution and Article I §§ 3, 7, and 8 of the Nevada Constitution, their motion should be
17 denied as it does not state facts sufficient to meet the requirements of Giles v. California.

18 Should this Honorable Court require a hearing on this matter, Robert Brown respectfully
19 request that the witness's physicians are available for cross-examination.
20

21 Dated: September 13, 2022.

22 SUBMITTED BY:

23 

24 CLARK W. PATRICK
25 Attorneys for Brown
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the Motion to Continue Trial was made on September 13, 2022, by Electronic Filing to:

DISTRICT ATTORNEY'S OFFICE
email: motions@clarkcountyda.com

RANDALL H. PIKE, ESQ.
Attorney for Brown
Email: thelawguynv@gmail.com

/s/ Clark W. Patrick

C. W. Patrick LAW, PLLC

0052

1 Las Vegas, Nevada; Tuesday, September 20, 2022

2 [Proceedings commenced at 9.33 a.m.]

3
4 THE COURT: Let's start with page 14 which is the Brown
5 matter. State of Nevada versus Robert Brown, Jr. C299234. He is
6 present, in custody. Mr. Patrick and Mr. Pike present on his behalf. Ms.
7 Mishler present on behalf of the State. This is State's Notice of Motion
8 and Motion for Deposition.

9 All right. So, Ms. Mishler, I just want to ask a few questions.
10 But just let me pull up my -- my notes real quick about each of the
11 individuals.

12 Okay. So, Juneman is 85 years of age.

13 MS. MISHLER: Yes.

14 THE COURT: So, he's over the -- the limit. And I'll hear from
15 defense in just one second. But -- so talk to me about -- so in the -- in
16 my notes I have that Maestas has -- she's been in and out of the
17 hospital and that she's 67, liver damage, has lupus, and renal failure and
18 stomach issues.

19 MS. MISHLER: Yes.

20 THE COURT: So can you tell me just like a little bit more, as
21 we sit here today, about what's going on with her health?

22 MS. MISHLER: I don't -- I don't actually have any further
23 details about her health. I just know that she -- she was hospitalized as
24 recently as, I think, it was May of this year. So, the State -- the State is
25 concerned, because of that, is concerned she may be unable to attend.

1 And particularly because all - all of these witnesses are material but her
2 testimony is particularly crucial because she's the surviving victim.

3 So the State is just particularly concerned about -- about her
4 availability to testify.

5 THE COURT: And then, I don't know if you pronounce it
6 Brocious or Broceus [phonically] he's the individual who finds the -- or
7 no, sorry, Juneman is the individual who finds the weapon.

8 MS. MISHLER: Sure. Correct.

9 THE COURT: He's the one who encounters the alleged
10 victims. Now, currently on the transplant list; is that right?

11 MS. MISHLER: Yes. And I do actually have more information
12 about Mr. Brocious' health. I have a letter from his -- from his physician.
13 We didn't -- we didn't attach it as an exhibit because it has a lot of
14 identifying information --

15 THE COURT: Yeah.

16 MS. MISHLER: -- from the physician. But I can -- I can show
17 that to defense counsel.

18 MR. PATRICK: Well, I mean, this has been on calendar for
19 weeks. We should have been able to see it and have --

20 MS. MISHLER: It's --

21 MR. PATRICK: -- our own expert look at it long before --

22 MS. MISHLER: -- it's very -- it's very brief.

23 MR. PATRICK: -- today.

24 MS. MISHLER: And it says -- it essentially corroborates
25 what's in the motion which is that he has stage IV liver cirrhosis,

1 thrombocytopenia, he has chronic hepatitis-B infection, he's -- he's
2 disabled and will be unable to work for the rest of his life. That's -- that's
3 the situation with Mr. Brocious. This is just confirmation of what's in the
4 motion.

5 THE COURT: Okay.

6 MS. MISHLER: And I can -- I can give this copy to Your
7 Honor.

8 THE COURT: Yeah. Can I see it?

9 MR. PATRICK: Well. Wait. Before we do that Judge. This
10 letter was written in 2019 and says nothing about his ability to come to
11 trial next year. It's --

12 THE COURT: Can I see it, please?

13 MS. MISHLER: Yes.

14 THE COURT: Thank you. Okay. So this is a letter,
15 December 19, 2019 from Physician Assistant Cassidy. And it says that
16 he was evaluated, the most recent appointment, at that time, was
17 12/18/19. Chronic hepatitis-B infection, stage IV liver cirrhosis, liver
18 fibrosis, thrombocytopenia, esophageal varices, a disabled veteran
19 unable to work for the remainder of the lifetime. He's currently under
20 the care of gastroenterologist at Digestive Associates for continued
21 treatment and observation.

22 Okay. Thank you.

23 All right. So, defense I've read your opposition and, I mean, I
24 just want to make sure we're clear and I think defense, I mean, the
25 State's not saying, hey, I want to use -- I want to have these guys and

1 use this at trial. It's say, hey, this trial is really old and it's been
2 continued due to the defense for years upon years upon years and we
3 just want to make sure that this is preserved, if by the time we get to trial
4 these individuals are deceased.

5 So, because when I was reading your opposition, it just
6 seemed more like this is a, you know, this is a confrontation issue, this
7 isn't fair. And I don't really get how it's a confrontation issue when that's
8 the whole point; right? Is that you're going to have the opportunity to
9 confront the witnesses, it's just not in front of the jury at the time. And,
10 listen, hopefully by the time we get to trial everybody is healthy and
11 everybody's there, but in this chance that they're not due to these health
12 conditions.

13 So, I guess, what is the -- what is the issue there?

14 MR. PATRICK: Okay. Well first of all, Your Honor, the
15 motion, I mean, it's a bare motion. There's no affidavit, there's no
16 declaration. We don't know anything other than the State may be or
17 supposedly they might not -- well, that applies to everybody that's in the
18 trial, every witness, Mr. Pike, myself, you. We could all die tomorrow
19 and not be available for trial. That is not a reason to do his deposition.

20 This is a death penalty case. We have to have heightened
21 scrutiny. And -- and in the State loves to say, well, this is such an old
22 case. Well, that may be true. But, it's not an old case for Mr. Pike and I,
23 we've been on the case for two months; okay? So, how old this case is
24 before we took over is completely irrelevant to our representation of Mr.
25 Brown.

1 We have no concrete evidence. We have a letter from 2019
2 that this guy is sick and can't work. Well, we're not asking him to go out
3 and work. We're asking him to come in and testify at a trial. There is,
4 you know, FaceBook pages and all, you know, people come in to court
5 that they want to see this. I mean, this is just a barebones thing. And
6 we may be able to confront the witness in a deposition, but, like I said,
7 we've been on the case for two months. What we don't know about the
8 case right now is more than we do know.

9 We set this trial early next year for the very reason of, A, I
10 know the Court wants to get this to trial, we thought we could be ready.
11 Not the year and a half that stated in their motion, but six months from
12 now; okay? So that takes out that whole argument.

13 But, what my opposition was saying is the demeanor of a
14 witness in front of the jury. The jury cannot see that from a video.
15 Between now, forcing us to do a deposition in a case we've had two
16 months and actually going to trial, who knows what we find and would
17 say, you know, we want to ask this witness this question, but now we
18 can't because the State's going to come in and say, oh, you know,
19 they're sick and we're going to use this deposition instead of bringing
20 them in.

21 It's -- it's a catch 22 for us because if we allow this to go
22 forward, I guarantee you that those witnesses will not be ready for trial
23 or be at trial and the State will just say, oh, we can use this deposition
24 that was premature and unthought out and we did not have proper time
25 to prepare for.

1 If the -- if the Court is even vaguely considering this, then what
2 we would request is, A, medical records from all these witnesses, and --
3 and enough time for us to go over them and hire our own expert to look
4 at the records. And then we would request a hearing with the witnesses
5 physicians to come in and say, hey, you know, you need to do this or
6 you don't, because otherwise it's going to add another 10 years to the --
7 to the appeals in this case because the Supreme Court is very clear that
8 the demeanor of a witness up on the stand at a trial and especially,
9 especially on a capital trial, the jury needs to see these witnesses. They
10 don't need to see a video of somebody taken six months before the trial
11 when we're not prepared to fully cross examine them.

12 So if the -- if the Court is considering granting this motion, then
13 we would request a hearing after we receive medical records with
14 enough time to meaningfully review them and possibly hire our own
15 expert to come in and see if these people are really going to die in the
16 next six months.

17 THE COURT: So, 174.1751 says, if it appears that a
18 perspective witness may be, may be unable to attend or prevented from
19 attending a trial or hearing and that that persons testimony is material
20 and that it is necessary to take this deposition in order to prevent a
21 failure of justice, the Court may, upon motion, decide that a deposition
22 be taken.

23 So there is -- I'm definitely not -- I've never seen any situation,
24 even in capital cases, where individuals have gotten experts to look at
25 witnesses medical records to see whether or not they're going to be

1 available or unavailable.

2 Listen to me. Here's the thing. The three people are clearly
3 material; Juneman found the weapon, Brocious has the contact with the
4 alleged victim's right afterwards, and then Maestas is literally the only
5 witness. So the fact that they're necessary, that's met.

6 I don't think that the bar is as high, respectfully, as defense is
7 making it. The idea is, are these people necessary and is there a
8 chance that they may be unable to attend. So -- but I do want to make
9 clear to the State, I'm granting the motion but I do want to make clear to
10 the State is that I think defense's concern is, okay, the Court allows this
11 hearing to happen and then you guys later at trial are like, well look,
12 they're sick, they can't come. I'm not saying that is or isn't your position,
13 but that definitely is the defense's fear.

14 In a capital case, honestly in any trial, it's the Court's
15 preference to have the witnesses here. So, not that I'm wishing this
16 upon them, but absent them literally being on their deathbed, I don't -- it
17 doesn't matter to me that we have their testimony. They're going to be -
18 - if they're alive they're going to be here to testify at the trial, with or
19 without the deposition.

20 MS. MISHLER: Yes, Your Honor.

21 THE COURT: That being said, I do believe that the defense
22 should have, you know, between 45 and 60 days to go through the
23 reports, go through the transcripts for these three witnesses. And so,
24 Krystal will be in contact with you guys to go over your schedule in
25 regards to setting the deposition testimony; okay?

1 MS. MISHLER: Yes, Your Honor.

2 THE COURT: Thank you.

3 MR. PATRICK: Your Honor?

4 THE COURT: Yes, sir.

5 MR PATRICK: May I have expedited transcripts on this and I
6 will be presenting an order to the Court as granting this motion. And
7 then I'd like to request a stay so we can take it up to the Supreme Court.

8 THE COURT: Yeah. So, you can get -- we'll need an order
9 for the expedited transcripts. Your request for the stay is denied. If the
10 Supreme Court would like to intervene on this matter then they will.

11 MR. PIKE: Your Honor, I also have one matter.

12 THE COURT: Yes.

13 MR. PIKE: During the time that Mr. Brown was representing
14 himself, he did file an interim appeal to the Court of Appeals raising the
15 issue of his claim of sovereign citizenship that was -- and he said that
16 you weren't the Judge that was here -- sitting here at that point in time.
17 There was another Judge that was sitting in. And there was not an
18 order prepared on that. The Court of Appeals sent back and said there
19 has to be an order prepared.

20 We weren't his attorneys, he was his attorney at that point in
21 time. And they requested an actual order. If I could prepare that and
22 under pro se and have him sign that and bring it to the Court --

23 THE COURT: Yeah.

24 MR. PIKE: -- as far as an order that way I can take care of
25 that. And he will -- that portion of his case will be resolved.

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THE COURT: Of course. That sounds good.

MR. PIKE: Thank you.

THE COURT: Thank you.

MR. PIKE: Okay. Thank you.

[Proceedings concluded at 9:45 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.



Velvet Wood
Court Recorder/Transcriber

ORDER

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Attorneys for Robert Brown

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ROBERT BROWN, JR. #6006120

Defendant.

CASE NO. C-14-299234-1

DEPT NO. VI

ORDER

This matter having come before the Court, Defendant present and represented by Clark W. Patrick, Esq., and Randall H. Pike, Esq., the State represented by the Clark County District Attorney's Office, the Court being fully advised in the premises, and good cause appearing, it is hereby

ORDERED, ADJUDGED AND DECREED the State's Notice of Motion and Motion for Deposition is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED the defense will have forty-five (45) to sixty (60) days to prepare for the depositions.

1
2 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the oral motion of
3 defense counsel to stay the proceedings in order to file a writ based on the granting of the Motion
4 to the Nevada Supreme Court is DENIED.
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8

9 DATED and DONE: September 20, 2022

Dated this 20th day of September, 2022

11 
12 DISTRICT COURT JUDGE

13 SUBMITTED BY:
14

CDB 8B2 E5B9 EFC1
Jacqueline M. Bluth
District Court Judge

kj

15 
16 CLARK W. PATRICK, ESQ.
17 C. W. Patrick LAW, PLLC
18 Attorneys for Brown
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1 CSERV

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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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6 State of Nevada

CASE NO: C-14-299234-1

7 vs

DEPT. NO. Department 6

8 Robert Brown, Jr.

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10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

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