

No. 86112

IN THE NEVADA SUPREME COURT

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Elizabeth A. Brown
Clerk of Supreme Court

James Howard Hayes,

Appellant,

v.

State of Nevada,

Respondent.

On Appeal from the Order Denying
Motion to Correct Illegal Sentence
Eighth Judicial District, Clark County (C-16-315718-1)
Honorable Monica Trujillo, District Court Judge

**Petitioner-Appellant's Appendix
Volume 2 of 3**

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Dated July 7, 2023.

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Martin L. Novillo

Martin L. Novillo
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2023, I electronically filed the foregoing with the Clerk of the Eighth Judicial District Court by using the Court's electronic filing system.

Participants in the case who are registered users in the electronic filing system will be served by the system and include: Alexander Chen, Alexander.Chen@clarkcountynyda.com, Motions@clarkcountynyda.com.

I further certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days, to the following people:

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---	--

/s/ Kaitlyn O'Hearn
An Employee of the
Federal Public Defender
District of Nevada

1 question, yeah, I mean, just a matter of time.
2 That's one of the biggest problems with identity
3 theft is that eventually, usually, you're reimbursed
4 but not for your time.

5 MS. TAYLOR: Right.

6 VENIREPERSON: So, you know, it's an
7 additional commitment of time and a significant one.
8 I can see how that could happen.

9 MS. TAYLOR: What about if you're
10 maybe the owner of, like, a small business. You're
11 the owner of a big business. But what if you're the
12 owner -- who's a small business owner? Raise your
13 hand. I'm talking about, like, only a few employees.
14 I mean, what happens, juror number -- what number are
15 you?

16 VENIREPERSON: 42.

17 MS. TAYLOR: What if you're not there
18 to run the company? I mean, can that present a
19 problem sometimes?

20 VENIREPERSON: Payroll on Friday for
21 the guys that want me to sign the check, yes.

22 MS. TAYLOR: I'm not saying -- I'm not
23 asking what you guys would do. I'm just asking: Can
24 you think of a reason why the owner of that credit
25 card, who got reimbursed, wasn't out any money, why

1 they might not decide to show up and testify? Can
2 you think of reason why? That's all. Everybody, can
3 you kind of agree with that?

4 All right. What I want to know is who
5 out there is going to say, you know what, I
6 understand, Katie. I understand why a victim may not
7 come to testify. You know, they're not out any
8 money. They're running a business. They're head of
9 the company, different state or something like that.
10 But since we're here in this court and listening to
11 trial, I'm going to have to hear from that victim
12 before I find anybody guilty. Who here thinks that
13 way? And it's fine if you do. It's perfectly fine
14 if you do. I just need to know right now. You would
15 just not be able to? Juror number?

16 VENIREPERSON: 25.

17 ~~MS. TAYLOR: 25. Okay. So, what I'm~~
18 saying is if I -- we're able to prove to you through
19 other means that the owner of the credit card didn't
20 give permission to the defendant to use the credit
21 card and you believed it, you would still require me
22 to actually bring that person to court to testify
23 before you were able to find him guilty; is that
24 right?

25 VENIREPERSON: Yes.

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1 MS. TAYLOR: You're Juror No. 25?

2 VENIREPERSON: Uh-huh.

3 MS. TAYLOR: What if the -- okay. But
4 can you think of a situation -- I mean, if we had to
5 do that in every single case, I mean, what if the
6 victim died? Completely unrelated. Just something
7 to think about.

8 VENIREPERSON: Okay.

9 MS. TAYLOR: And Juror No. 9?

10 VENIREPERSON: I think I would rather
11 hear from the person.

12 MS. TAYLOR: I know you'd rather hear
13 from the person.

14 VENIREPERSON: Well, I would.

15 MS. TAYLOR: You would require, even
16 if I were able to put on other evidence showing that
17 he didn't have permission to use a credit card,

18 you're telling me that you -- and you believed that
19 evidence beyond a reasonable doubt, you're telling me
20 that you would have to actually have the person in
21 court to testify? Would you actually require that?

22 VENIREPERSON: Yeah, I think I would.

23 MS. TAYLOR: Juror No. 9. Okay. Who
24 else? Who agrees with Juror No. 9 and 25? Please
25 raise your hand.

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1 VENIREPERSON: I kind of feel the same
2 way.

3 MS. TAYLOR: Juror number?

4 VENIREPERSON: 10.

5 MS. TAYLOR: And Juror No. 11?

6 VENIREPERSON: (Nods head
7 affirmatively.)

8 MS. TAYLOR: Who else agrees with --
9 juror number?

10 VENIREPERSON: 51.

11 MS. TAYLOR: 51. Basically you're
12 saying, Look, I understand. I understand there's
13 reasons why the victim might not come, but just when
14 we're talking about me, in order for me to be able to
15 find a person guilty, I'd have to have that person
16 physically present in court. Okay.

17 Who else? Juror number?

18 VENIREPERSON: 33.

19 MS. TAYLOR: 33. Okay. Anybody else?
20 All right. Okay. Thank you very much for your
21 honesty.

22 All right. I'd like to talk to you a
23 little bit about the -- the Judge talked about how
24 there's two different cases. There's two different
25 charges. It might be that there's two different

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1 victims also, too.

2 What that means -- and the Judge said
3 that they're separate verdicts, which means the 12 of
4 you, if you get selected to go back there, it's
5 possible that you could find him guilty on one charge
6 and not guilty on the other. It's possible you could
7 find him guilty on both. It's also possible that you
8 could find him not guilty on both charges, okay?

9 Now, the punishment -- I want to just
10 kind of clear this up real quick. The punishment is
11 6 months to 2 years, okay? Let's say hypothetically
12 you were to find him guilty on both charges. Okay?
13 The next question I always get is: Well, is that 6
14 months to 2 years and the next one starts over 6
15 months to 2 years? Do we get to stack the
16 punishments?

17 And the answer is no. The answer is
18 you will have separate verdicts and you can maybe
19 assess his punishment at one number on one verdict
20 and another number on the other verdict. And what
21 will end up happening is the time will run
22 concurrent. Okay? So, if you do 6 months on one and
23 6 months on the other, it doesn't equal a year. It
24 equals 6 months. Does that make sense? Everybody
25 kind of understand that?

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1 Same thing. If you did 2 years and 2
2 years or something like that, the answer is -- he
3 doesn't get 4. He'll get 2. Everybody kind of
4 understand? Okay. Good.

5 THE COURT: Ms. Taylor, you have five
6 minutes.

7 MS. TAYLOR: Thank you.

8 All right. I'd like to talk a little
9 bit about -- it is our burden of proving to you our
10 case. And I want to talk to you a little bit about
11 something that -- sometimes you hear on TV or
12 something like that, Oh, that's just circumstantial,
13 you know, that's just circumstantial. I just
14 discount that circumstantial evidence.

15 I want to put together an example for
16 you. Juror number -- Juror No. 4, do you have any
17 children?

18 VENIREPERSON: Yes.

19 MS. TAYLOR: Okay. Are they grown now
20 or --

21 VENIREPERSON: One's grown. Two are
22 still in high school.

23 MS. TAYLOR: Okay. Back when your
24 kids were little, I'm going to say -- let's say you
25 have a dog and you walk in the kitchen and you know

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1 that there's a cake -- there was a cake, a chocolate
2 cake sitting on the counter, okay, and there's a
3 piece of chocolate cake that's missing from this
4 cake, okay?

5 Your kid -- do you have a boy or girl?

6 VENIREPERSON: Girl.

7 MS. TAYLOR: Your little girl is
8 sitting there and she's looking at you and batting
9 her eyes and she's saying, Daddy, I don't know what
10 happened to the chocolate cake.

11 Maybe she's got a friend over and the
12 friend is saying, Well, you know, the dog ate it.
13 That's what happened to the chocolate cake. The dog
14 ate it.

15 Let me give you an example. The
16 friend's testimony that the dog ate the cake is what
17 ~~we would consider direct evidence, okay? That is~~
18 direct from her mouth. That is direct evidence. But
19 let's say you see that there's a plate with a fork
20 sitting in the sink, okay? Is that maybe
21 circumstantial evidence that maybe the dog didn't eat
22 the cake? Everybody kind of agree with that? Is
23 that pretty good?

24 Let's say your daughter's got a little
25 bit of chocolate icing on her mouth. Is that also

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1 maybe a little bit of circumstantial evidence that
2 maybe she's the one that ate the cake?

3 VENIREPERSON: Sure.

4 MS. TAYLOR: Yeah? Okay.

5 In that case, would you consider that
6 circumstantial evidence to be potentially better than
7 the direct evidence?

8 VENIREPERSON: Possibly so.

9 MS. TAYLOR: Okay. All right. So, my
10 point is -- now, we can prove our case beyond a
11 reasonable doubt based entirely on circumstantial
12 evidence. And if you think about identity theft,
13 think about it, most of the time you're not going to
14 have a victim sitting there saying, I saw this person
15 get online, type in these numbers, use this person's
16 identity to place this order. Everybody kind of
17 understand? Like, that's just not going to happen.
18 We're not going to have witnesses that can testify to
19 that.

20 So, you may be in it -- you may get
21 some circumstantial evidence to try to piece this
22 case together.

23 All right. Knowing that, is anybody
24 here that's going to tell me, you know, you know
25 what? You know what? I understand about the

1 circumstantial evidence, I understand the State can
2 prove their case in circumstantial evidence. But I
3 personally am going to need someone -- I'm going to
4 need some sort of direct evidence. I cannot find a
5 person guilty based on just a crumb on their mouth or
6 something like that. Who here feels that way?

7 Juror No. 9.

8 Anybody else? Juror number?

9 VENIREPERSON: 20.

10 MS. TAYLOR: Juror No. 20. Okay.

11 Anybody else?

12 All right. Okay. And anybody here
13 that just feels like you just can't sit in judgment
14 of another person? Anybody feel that way? For
15 religious or moral reasons or anything? Anybody feel
16 that way? No? Okay.

17 ~~And the last thing, I just want to hit~~
18 on very quickly is our burden -- have you ever
19 heard -- who here watches the CSI and the lawyer
20 shows? Come on. Admit it.

21 VENIREPERSON: Yeah, we do.

22 MS. TAYLOR: All right. I know.

23 They're somewhat addictive. You may have heard on
24 those shows, you may have heard somebody talk about,
25 Well, just beyond a shadow of a doubt or something

1 like that. And I'd like to point out that that is
2 not the burden. We do not have to prove this beyond
3 a shadow of a doubt. Beyond a reasonable doubt.

4 And when you're asked to determine
5 reasonable doubt, it's one that's based on common
6 sense. You basically have to just use your common
7 sense. You're not going to be a hundred percent
8 sure. You're going to have to use your common sense.
9 And decide it is what you think it is. If you think
10 he's guilty, you find him guilty.

11 Now, there is no doubt Mr. Lannie, I'm
12 sure, is going to hop up here in a second and he'll
13 probably pull out these big charts that I've seen
14 before and talk about the burden of proof. I've seen
15 him. I know he probably will, okay?

16 And it is true. The burden of proof
17 is the highest burden of proof because we're in a
18 criminal court. But there is no number that you can
19 assign to it. You can't say, I got to be 90 percent
20 sure, 95 or 75. It is what you think it is. And you
21 have to base your verdict on common sense.

22 There is -- there's no, like, piece of
23 the pie chart to give you a visual. It's what you
24 think it is. Okay?

25 And it definitely is the highest

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1 burden of the law and it should be and we will, I
2 believe, meet our burden in this case.

3 So, with that said, I think I'm going
4 to sit down and let Mr. Lannie take it over from
5 here. Thank you very much.

6 MR. LANNIE: May it please the Court?

7 THE COURT: Certainly.

8 **VOIRE DIRE BY THE DEFENSE**

9 MR. LANNIE: Ladies and gentlemen of
10 the jury, my name's Andrew Lannie and I office in
11 Baytown, Texas. And I welcome the opportunity of
12 representing James Hayes in connection with this
13 case.

14 I'm sure on the break a lot of y'all
15 went out in the hall and said, That defense attorney
16 sure looks old. I am old. I've been practicing in
17 Baytown for 40 or more years. But by the same token,
18 I still try cases.

19 One thing that the Court has indicated
20 to you, that this is a criminal case. It's not a
21 civil case.

22 How many have sat on a civil case?

23 I'm guessing by the number of hands
24 probably 15 people.

25 I think most of y'all will be

1 interested to know that of the -- we have cards here,
2 which have given us a lot of information about your
3 personal background and circumstances. I've reviewed
4 those cards and of those cards, I think about 48
5 people here have not had prior criminal jury service.

6 Also, I think about 12 people have
7 indicated on the cards that y'all have had prior
8 criminal jury service. And I think there are three
9 of you that didn't answer one way or the other.

10 VENIREPERSON: Maybe I had both of
11 them.

12 MR. LANNIE: That's not unusual, okay?

13 VENIREPERSON: Okay.

14 MR. LANNIE: One of the things that I
15 want to tell you now: That the jury is here to
16 solely determine the facts. You're not here to
17 ~~determine the law of the case, okay?~~

18 The law of the case is within the
19 province of the Court. And the Judge has indicated
20 to you that the State of Texas is a moving party in
21 this case. By law they're permitted to put all of
22 their testimony on first before we ever have an
23 opportunity to put on any witnesses.

24 The Court has indicated to you that --
25 well, I'm going to indicate to you now that this is

1 what we call a bifurcated trial. In other words, the
2 first aspect of the trial is to determine the guilt
3 or innocence of my defendant. Assuming that a guilty
4 verdict is returned, then the second phase of the
5 trial is to determine the punishment.

6 Now, the phase of the trial that we're
7 in now here is called the voir dire. That's --
8 we're -- both the State and I are entitled to ask you
9 questions to determine whether or not you would be a
10 suitable juror in this type of case.

11 So, the State has also indicated and
12 the Court has also indicated to you that neither of
13 us have any opportunity to go into the facts with you
14 at this time. You'll hear the facts from the witness
15 stand.

16 Once you hear the facts from the
17 ~~witness stand, you've got three options. You can~~
18 believe everything a witness says, if you choose to
19 do so, you can believe a part of that testimony of
20 that witness, if you choose to do so, and reject any
21 part that's incredible of belief, or if you feel that
22 the testimony is totally incredible of belief, you
23 can reject everything a witness testifies to in this
24 case.

25 So, those are the options that are

1 available to you. And that's a decision that you'll
2 have to make at the time that the testimony comes in.

3 One of the things I want to point out
4 is that some of you may be of the opinion that, you
5 know, if we're chosen as jurors in this case, it
6 would be real advantageous to us to go ahead and give
7 us a copy of the written charge and let us know what
8 the law is so at the time we're determining the
9 facts, sir, we would know what would happen.

10 That's not possible. One of the main
11 reasons is that in most criminal cases, I have not
12 talked to all of the witnesses as the State of Texas
13 has and by the same token, they have not talked to
14 the witnesses that I have.

15 At least a part of the charge here
16 must be based upon the evidence that comes in during
17 the course of the trial. So, we haven't got to that
18 point yet. So, we can't give you a written charge
19 prior to the time that all of the evidence is in
20 because there's certain potential defenses that a
21 person may have that will come out in the evidence
22 that you're entitled to ask an instruction in the
23 charge.

24 I'm just pointing that out to you at
25 this time. So, it's obvious that all of you aren't

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1 going to make it to this jury. But there will be a
2 selection process. At the close of my voir dire, the
3 Court will afford us an opportunity to go over the
4 jury list and determine those jurors who we feel
5 would be suitable jurors in this case.

6 Now, what we're here for now is to
7 determine whether or not that we can select 12
8 impartial jurors. That means that we -- we want to
9 avoid having any juror on the panel that is
10 prejudiced. And why is that? If I ask each one of
11 y'all a question as to whether or not you're a
12 prejudiced person, you'd probably say, Well, I'm not,
13 you know. I'm not prejudiced.

14 Prejudice, in one sense of the word,
15 is having the ability to make your mind up before you
16 hear the facts. So, that is prejudice. If you are
17 of that mind-set now, well, then, you would be a
18 prejudiced juror and that's something we need to go
19 into and I'll go into with -- into that with you in a
20 very short time.

21 At least as we sit here right now,
22 except for this lady and one other person, do all of
23 you feel like at least at this time we're starting
24 off even? You haven't heard any testimony. You
25 don't know what the case is about. You don't know

1 what the facts are about.

2 So, then, under the law, I presume
3 that y'all are not entitled to have made a decision
4 at this point in time. Is there any person on the
5 panel here -- again, raise your hand -- and I know
6 you have indicated that. And, ma'am, your name is?

7 VENIREPERSON: Hightower.

8 MR. LANNIE: Give me your juror
9 number.

10 VENIREPERSON: 14.

11 MR. LANNIE: 14. And you said you've
12 already made your mind up?

13 VENIREPERSON: Yeah.

14 MR. LANNIE: I'm not going to ask you
15 which way. All right. There was one person back in
16 the back. I didn't get that name and I didn't get
17 that number. Would you indicate by a show of hands?
18 Yes, sir.

19 VENIREPERSON: 19. Last name Berhanu.

20 MR. LANNIE: All right. And you're --
21 I'm going to have to have your help. What's your
22 juror number?

23 VENIREPERSON: 19.

24 MR. LANNIE: 19. And you have
25 indicated that --

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1 VENIREPERSON: My mind made up
2 already.

3 MR. LANNIE: You made your mind up
4 already?

5 VENIREPERSON: Yes, sir.

6 MR. LANNIE: All right. Would you
7 call yourself a prejudiced person?

8 VENIREPERSON: In a way, yes.

9 MR. LANNIE: Huh?

10 VENIREPERSON: Yes.

11 MR. LANNIE: Okay. So, you're able to
12 make your mind up without hearing anything?

13 VENIREPERSON: Sometimes, yeah.

14 MR. LANNIE: Is there any other person
15 on any row here that has a mind-set now that you've
16 made your mind up as to the outcome of this case
17 without having heard any testimony?

18 All right.

19 VENIREPERSON: Wait a minute now. I
20 didn't say my mind -- I said I was -- when I said
21 that he need to be punished, not rehabilitated --

22 MR. LANNIE: Excuse me. Let's stop.
23 What's your juror number?

24 VENIREPERSON: 12.

25 MR. LANNIE: All right. What is your

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1 name?

2 VENIREPERSON: Lightfoot.

3 MR. LANNIE: Lightfoot.

4 VENIREPERSON: And I mean, the Judge
5 say that he done did it more than one time. So,
6 that's the reason why I say punishment. So, that
7 don't mean that I'm prejudiced, do it?

8 MR. LANNIE: Well, are you willing to
9 hear all of the facts of the case?

10 VENIREPERSON: Yes.

11 MR. LANNIE: To make your mind up?

12 VENIREPERSON: Yes.

13 MR. LANNIE: Before you determine
14 whether my client is guilty or innocent?

15 VENIREPERSON: Yes.

16 MR. LANNIE: Okay. So, then I assume
17 you would be a satisfactory juror. I see nothing
18 wrong.

19 VENIREPERSON: Yeah, but she said that
20 he done did it more than one time. So, made me
21 answer should we make them be punished or
22 rehabilitated --

23 MR. LANNIE: She was talking about --
24 I don't think she went into his criminal history. I
25 think you may have misunderstood that. What she

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1 said, I believe, is that there are two charges here
2 and that you would consider each one of them
3 separately.

4 Now, that's what she said. I am
5 fairly positive that if -- that you have
6 misunderstood --

7 VENIREPERSON: Maybe I misunderstood.

8 MR. LANNIE: You misunderstood her
9 comments.

10 VENIREPERSON: I thought this was not
11 his first time doing that.

12 MR. LANNIE: No, no. Forgive me. I
13 believe you're wrong. Okay?

14 VENIREPERSON: Okay, then. I'm wrong.

15 MR. LANNIE: I hate to disagree with
16 you before I ever put you on the jury.

17 ~~VENIREPERSON: She said that.~~

18 VENIREPERSON: That's the way I took
19 it. Second offense.

20 THE COURT: I'm sorry. You know where
21 I think the confusion is? Ms. Taylor was asking
22 where they -- if they thought punishment,
23 rehabilitation or deterrence was important if a
24 person had been convicted before?

25 VENIREPERSON: No. She said it.

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1 VENIREPERSON: That's not what she
2 said.

3 VENIREPERSON: She said it was only
4 hypothetical.

5 THE COURT: Okay. Only one person can
6 talk at a time. I don't want there to be any
7 confusion.

8 VENIREPERSON: She said she'd give us
9 a freebie.

10 VENIREPERSON: No. 42. I understand
11 her to have said he had committed another offense and
12 that this was a similar offense.

13 THE COURT: Wait. Was that when she
14 was talking about the -- what your thoughts were on
15 punishment?

16 THE JURORS: Yes.

17 MR. LANNIE: May I approach the bench,
18 Judge?

19 THE COURT: No. Let me just clear
20 that up so that there's not anything that --

21 VENIREPERSON: She said I'll give you
22 a freebie.

23 THE COURT: Her question was: How
24 would you feel in general? What do you feel the
25 purpose of the punishment scheme is?

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1 VENIREPERSON: Huh-uh.

2 THE COURT: And then she's -- okay.
3 Then -- then there was a misunderstanding with what
4 she said.

5 VENIREPERSON: Uh-huh.

6 VENIREPERSON: Is this a second
7 offense?

8 THE COURT: That is not an issue for
9 your consideration. She was trying to get a feel for
10 where you stood about punishment.

11 I only know this because she asks that
12 question all the time.

13 VENIREPERSON: Yeah.

14 MR. LANNIE: Judge --

15 THE COURT: So, please don't take
16 that, ladies and gentlemen -- let me just clear that
17 up in case there's any -- in case anybody took from
18 that something more than it was. We're not talking
19 about this case. She's not talking about this case.
20 Her question went to if you were assessing punish --
21 if you got to choose what the purpose of punishment
22 was, what do you believe the purpose to be? And she
23 also added and you were to determine it's not a first
24 offense. Okay? So, just so everyone's clear. She's
25 not talking about this case at all.

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1 Yes, ma'am.

2 VENIREPERSON: I was -- I had a
3 misunderstanding. I didn't know if your question was
4 punishment or rehab if it was the first offense or if
5 it had been a habitual. I didn't know which question
6 you asked.

7 THE COURT: You're talking about
8 Ms. Taylor; is that right?

9 VENIREPERSON: Yes.

10 THE COURT: Okay. All right. Yes,
11 ma'am. In the pink shirt. Give me your last name
12 and juror number?

13 VENIREPERSON: Chism, 22. I took it
14 as being a second offense, also, because of the
15 wording of: Here's a freebie for you.

16 THE COURT: Okay. And having heard
17 her ask that question a number of times and many
18 other prosecutors before her, because it is a very
19 common question that they ask, please do not take
20 that as any indication of anything about this
21 particular case. So, please --

22 VENIREPERSON: That means they won't
23 tell us nothing yet.

24 THE COURT: That question is a global
25 question, just where you stand and just so --

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1 knowing -- and I -- so, please do not take that to be
2 anything more than just a: Where do you stand on
3 this issue, at all. I just want to make sure. I
4 know you're shaking your head at me, but that's --
5 please don't take it as anything more than what it
6 is. Okay?

7 Yes, ma'am.

8 VENIREPERSON: So, 36, Lay. So, in
9 light of that, then I would change my opinion as far
10 as punishment then and go back to probation because
11 now you're telling me it's not his --

12 THE COURT: Oh, please. You know
13 what? Here's where -- I know where the confusion is.

14 VENIREPERSON: I don't understand why
15 people are confused. It wasn't --

16 THE COURT: The confusion is: Her
17 question had nothing to do with this case.

18 VENIREPERSON: Right.

19 THE COURT: It was in general if you
20 were allowed to be the Governor of the -- for the
21 day, what would you think was the most important
22 accomplishment of punishment. Okay? I'm just
23 changing her words. Like I said, I've heard this a
24 million times.

25 So that it was a general of, if you

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1 got to pick the purpose of punishment -- not in this
2 case, but in any case, would you think it would be
3 punishment or rehabilitation. Okay? So, please
4 don't take that to be anything about this case.
5 We're not allowed to talk about this case. Okay? I
6 want to be clear on that. Everybody with me? Okay.
7 It may cause you to want to change your answers, but
8 you know what? That's her fault for not getting the
9 question out as she -- not getting it across to y'all
10 as she should have. So, whatever answer you gave,
11 she's got to go with what you gave her.

12 MR. LANNIE: My I proceed?

13 THE COURT: Yes.

14 MR. LANNIE: Would all of the members
15 of the jury agree that once you throw a skunk into
16 the jury box, it's pretty hard to get rid of the
17 smell?

18 VENIREPERSON: Yeah.

19 MR. LANNIE: Okay. I share the
20 Court's statement there that there were global
21 questions given to you on punishment and guilt or
22 innocence, but this being a bifurcated trial, I don't
23 think at this juncture, punishment is at issue in the
24 case because you haven't heard any testimony.

25 So, the only thing we're here for now,

1 if you can -- if you can focus your mind, the only
2 thing we're here for in this phase of the trial is to
3 determine whether my client is guilty or innocent.
4 So, I agree with the Court that that should not be
5 considered and that perhaps that may have been a
6 global statement made by the DA and perhaps there
7 were other global statements made there that actually
8 don't pertain to this case. She's just trying to
9 determine your mind-set as to what you would do, both
10 in the trial -- in the guilt or innocence phase and
11 also the punishment phase.

12 But I think it's a two-step process.
13 The first step of this process is whether or not my
14 client is guilty or innocent and not whether he
15 should be punished in any appropriate fashion.

16 One thing I mentioned that -- earlier,
17 ~~that the person -- we're here to determine whether or~~
18 not a juror has a prejudice that might prevent that
19 juror from being fair and impartial to both sides.

20 I've indicated to you that the State
21 puts their evidence on first. We can't put on any
22 evidence until the State rests its case.

23 Now, there is a presumption of
24 innocence at this point in time. When you look at my
25 client, in spite of the two people here who may have

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1 thoughts to the contrary, my client is presumed to be
2 innocent.

3 That's true in this case and in every
4 criminal case. It's not relegated just to this case.
5 The presumption -- the presumption of innocence
6 continues throughout the trial until the last witness
7 is heard. And at that time you'll be sent back into
8 the jury room, if you're selected on the panel, to
9 determine the guilt or innocence.

10 Now, one thing I want to bring out at
11 this time, too, is that you're entitled to reject any
12 evidence that you hear from the witness stand, that
13 you believe is incredible of belief.

14 There's two types of evidence. One
15 type is competent evidence. Competent evidence is
16 evidence which establishes a fact by a certain
17 certainty and incompetent evidence is evidence that
18 some person may testify to that they didn't actually
19 see, touch or feel, and that is commonly called
20 hearsay. Hearsay evidence is incompetent evidence.

21 So, we're here today to determine
22 whether or not the State, by competent evidence, will
23 introduce evidence to show that my client is guilty
24 on either one of the charges beyond a reasonable
25 doubt and I'll go into that again with you just in a

1 minute.

2 As the Court has indicated to you,
3 that the courts in Texas have struggled for years to
4 determine what is reasonable doubt.

5 I can't tell it to you because they've
6 never defined it. I can't tell it to you. I can
7 simply tell you what it is not -- what it is not.
8 And that's one of the things I want to go into at
9 this time.

10 And, yes, I do have a chart. I don't
11 know whether all of you can see from --

12 THE COURT: Deputy Blahuta -- if you
13 want to use that? We have this if you would like to
14 use it, Mr. Lannie --

15 MR. LANNIE: Yeah, I would.

16 THE COURT: -- to set your chart on.

17 ~~I'll have Deputy Blahuta bring it up for you.~~

18 Wherever you want to set it up that's
19 comfortable for everybody to see, feel free to do
20 that.

21 MR. LANNIE: I really don't think
22 there's going to be a perfect place to put this. Can
23 all of you see it on the far side?

24 THE COURT: If y'all need to stand up,
25 feel free to do that.

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1 MR. LANNIE: I'm sorry?

2 THE COURT: I just let them know if
3 they needed to stand up, they're certainly welcome to
4 do that.

5 MR. LANNIE: Let me turn it a little
6 bit more that way.

7 THE COURT: Or you can borrow my
8 glasses I got from Sam's.

9 VENIREPERSON: Move those chairs out
10 of the way.

11 MR. LANNIE: I'm going to go through
12 all of these different stages and I think it will
13 make more sense when we're talking about it.

14 As I indicated to you, we can't tell
15 you what reasonable doubt is, but certainly we can
16 tell you what reasonable doubt is not.

17 For instance, if at the end of the
18 trial of this case, if the State has not proved all
19 of the elements of the case, if there's no evidence
20 there of proof of all the elements of the case, then
21 you have to bring back a verdict of not guilty.
22 Anybody quarrel with that? I don't think so.

23 All right. Let's go to the second
24 stair step. If -- let's say there's a scintilla of
25 evidence. Let's say there's a fragment of evidence

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1 there that my client is guilty of one or -- either
2 one of these charges. Well, then, do you understand
3 at that time that you still must bring back a verdict
4 of not guilty?

5 And let's take the third stair step.
6 If there is some evidence that's been introduced in
7 the course of the trial, which you believe is
8 competent, some evidence, which you believe is
9 competent evidence and is credible evidence, how many
10 here feel that you're entitled to bring back a
11 verdict of guilty in this case?

12 If you have any thoughts on that,
13 please raise your hand and we'll discuss that on a
14 one-on-one.

15 All right. The next stair step is if
16 there's a preponderance of the evidence that my
17 client has committed these offenses, which all the
18 elements have been proved beyond a reasonable doubt,
19 then are you entitled to bring back a guilty verdict?

20 One of the things I want to point out
21 in this instance is how many people here have sat on
22 a civil jury before? Tell me. Okay. I'm getting a
23 quick count. Probably about nine.

24 If you will recall, in a civil case,
25 the burden of proof of the party who has filed the

1 lawsuit and who's the moving party in the case, it
2 must be proved -- a fact must be proved by a
3 preponderance of the evidence. That is the greater
4 weight of the credible evidence. So, I assume if we
5 assign a percentage to it, that if you have proof up
6 to that -- that ranges up to 51 percent, that the --
7 that plaintiff has sustained a loss and is entitled
8 compensation or certain other facts are proved, well,
9 then, you're entitled to bring a verdict back.

10 In this instance, you cannot bring the
11 burden -- a guilty verdict back simply on a
12 preponderance of the evidence that my client has
13 committed either of the offenses.

14 Now, let's carry it to the hardest
15 one. If there is clear and convincing evidence that
16 my client has committed the offenses that is alleged
17 in the charge and have been proved by clear and
18 convincing evidence, how many on the jury panel --
19 raise your hand if you feel that should be sufficient
20 evidence to convict somebody?

21 All right. This is a tough one. I'll
22 admit it's one of the tougher issues we deal with.
23 I'm only bringing this out because it's one measure
24 of evidence that is used by the courts and by the
25 lawyers. You must have clear and convincing evidence

1 if -- in a case where someone is seeking to take away
2 the custody of a -- or terminate custody of a
3 biological child, that's the only incident. That is
4 the only instance, I think, that that's peculiar to.
5 But, anyway, one of the things we have to bring out.

6 Another thing is if the State has
7 proved all of the elements of the case by credible
8 evidence, then and in such event, well, then, you're
9 mandated to bring back a guilty verdict in this case,
10 once you've heard all the evidence.

11 Now, there's one thing that's
12 important is that reasonable doubt. Let's talk about
13 it a minute.

14 Reasonable doubt is not a group
15 concept. Do you understand if you're selected as one
16 of the 12 people who are going to try this case, that
17 reasonable doubt is not a group concept? It's an
18 individual concept. In other words, each individual
19 jurors are entitled to review the evidence in their
20 mind and to determine whether or not the State has
21 proved all of the elements of the case.

22 The Court indicated to you early on
23 that if there are six elements in a case, then, and
24 the State's not proved but five of them, that you
25 would have to bring back a not guilty verdict.

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1 Here's another thing that's important.
2 We're not here today to determine whether my client
3 is innocent or guilty. Does that make sense to you?
4 Do you have a problem with that? If you have a
5 problem with that, raise your hand.

6 We're here to determine whether my
7 client is guilty or not guilty of the charges that
8 are alleged against him. And it's important for you
9 at this time to determine -- to realize that the
10 indictments in this -- in this criminal case and all
11 criminal cases are not evidence. It's merely a
12 charging instrument there to indicate to the
13 defendant that -- it's a charging instrument to
14 notify him of the type of charge that he's charged
15 with.

16 I'm sure, back in the old days and, in
17 ~~fact, under -- now, some days they're holding people~~
18 for years without ever telling them what they're
19 guilty of. But that's coming under the National
20 Defense Act. And in some countries they do that.
21 But not in the United States. If you're going to be
22 charged with an offense, it must be -- an instrument
23 must be given to you within a specific period of time
24 to indicate the matter for which you're charged.

25 All right. And I've just got a couple

1 more things on the -- for all of the panel.

2 Do all of you understand that in the
3 guilt phase of the trial are -- if it goes to
4 punishment, in the punishment phase of the trial,
5 that the verdict of the jury must be unanimous?

6 Now, that means that all 12 people
7 would have to unanimously agree as to whether or not
8 my client or any person charged in a criminal case is
9 guilty. We don't have a 10-2 verdict in a criminal
10 case. It must be unanimous. And that's the
11 important thing when you get ready to consider the
12 fact that reasonable doubt is an individual concept.

13 You may have 11 people go back in that
14 jury room and decide that the person is guilty, but
15 there may be one person, there may be one resolute
16 juror who goes back there and says, I've heard the
17 ~~evidence and I cannot find the person guilty.~~ Do you
18 understand that you have that right?

19 So, what's your remedy? Well, of
20 course, you know, I don't think it would get physical
21 back there, but certainly you have a right to your
22 mind-set. So, that -- your verdict must stand alone.
23 Your verdict must stand alone.

24 And that makes it extremely difficult
25 because here -- being a juror's a hard job. You

1 don't know it. It is. We're asking you all to hear
2 all of the evidence and, in all likelihood, it may be
3 disputed. May be conflicting evidence. We're asking
4 you to hear that, yet we're asking -- we're telling
5 you that your verdict has to be your individual
6 verdict and that the verdict must be unanimous, but
7 by the same token, we're going to ask you to go back
8 there and talk about the case and come out here and
9 speak as one mind, speak with one mind and with --
10 with one verdict.

11 So, that's difficult. That's very
12 difficult, especially bearing -- bear in mind that on
13 this jury panel here, there's the -- all of the
14 jurors here, I'm sure, have different educational
15 levels. You have different life experiences. So,
16 we're going to ask you to hear the evidence and
17 collectively think as one person. That's going to be
18 a difficult job. There's no question about it.

19 So, what's your remedy? What if
20 you're the sole person that goes back there on guilt
21 or innocence and you have a mind-set, based on the
22 verdict, that a person is not guilty? What's your
23 remedy?

24 You have the right to stay there till
25 hell freezes over before you come out with a guilty

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1 verdict. And, so, I just wanted to point that out to
2 you at this time.

3 Now, that clears up all of the
4 boilerplate stuff that we're going into. And it's
5 important to me at this time to determine those
6 people who have been -- excuse me -- those people who
7 have been a victim of identity theft, either you
8 personally, your wife, family member or somebody
9 close to you. And I think the first person we spoke
10 about was James Shaefer?

11 VENIREPERSON: Yes, sir.

12 MR. LANNIE: That's right. You have
13 been guilty (sic) of --

14 VENIREPERSON: My wife.

15 MR. LANNIE: -- identity theft.

16 VENIREPERSON: My wife.

17 MR. LANNIE: Wife has. Based upon
18 that fact, do you think that fact alone might tend to
19 have you believe the evidence put on by the State and
20 disbelieve any evidence put on by my client?

21 VENIREPERSON: Yes.

22 MR. LANNIE: Okay. All right. And
23 that's -- I'm going to take y'all -- you're Sue
24 Crawford, right?

25 VENIREPERSON: (Nods head

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1 affirmatively.)

2 MR. LANNIE: You've been a victim?

3 VENIREPERSON: Yes.

4 MR. LANNIE: The fact that you've been
5 a victim, do you feel that that would be -- would be
6 uppermost in your mind and it would be something that
7 you would consider, which might tend for you to bring
8 back a verdict one way or the other?

9 VENIREPERSON: This happened to me
10 three times and I wasn't very happy.

11 MR. LANNIE: Uh-huh. You're not
12 happy.

13 VENIREPERSON: No.

14 MR. LANNIE: You wasn't happy then.
15 You're still not happy.

16 VENIREPERSON: No.

17 MR. LANNIE: Okay. I don't -- I
18 certainly don't blame you. You've answered the
19 question. I'll accept that answer.

20 All right. Let's take the rest of the
21 front row. We're coming down now to Mr. Noel?

22 VENIREPERSON: Noel, yeah.

23 THE COURT: Counsel, I need you to
24 give me their numbers, please?

25 MR. LANNIE: Huh?

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1 THE COURT: I need their number.

2 VENIREPERSON: No. 3.

3 THE COURT: I need their number.

4 MR. LANNIE: I meant to mention that,
5 too, and I didn't do it. I'll start doing it, Judge.

6 One of the reasons we want your
7 numbers is we're not trying to dehumanize you at this
8 time. Because this lady is taking everything down.
9 All of your names are spelled differently. If she
10 has your juror number, then she can correspond the
11 name to the appropriate juror number. So, that way,
12 in the unlikely event that this case might be
13 reviewed by an upper court then, at least we'd have
14 it in the record as to what juror spoke what words.
15 That's the reason we're doing it.

16 I'm going to take the rest of the
17 front row and I'll ask your numbers as we go through
18 it, but how many have been, on the front row, have
19 been a victim of identity theft?

20 All right. Lady?

21 VENIREPERSON: No. 6. Redworth.

22 MR. LANNIE: You're Glenda Redworth?

23 VENIREPERSON: Yes.

24 MR. LANNIE: You have been a victim,
25 correct?

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1 VENIREPERSON: Yes.

2 MR. LANNIE: All right. And the next
3 lady?

4 VENIREPERSON: 7, Fetty.

5 MR. LANNIE: All right. You're --

6 VENIREPERSON: Michael Ann.

7 MR. LANNIE: I thought Michael Fetty
8 was a boy's name. That's your name?

9 VENIREPERSON: That's my name.

10 MR. LANNIE: I see you're a girl.

11 Sometimes the numbers -- sometimes the cards get
12 mixed up. Is that called Michael or Michael?

13 VENIREPERSON: It's Michael.

14 MR. LANNIE: Uh-huh. Did your dad
15 name any of the boy children Sue?

16 VENIREPERSON: There are no boy
17 children.

18 MR. LANNIE: All right. Let's go down
19 this way a little bit further. Do we have any more
20 along this row?

21 Down on the end? I see a show of
22 hands. Your number, ma'am?

23 VENIREPERSON: 15. It wasn't me
24 directly. It was my husband.

25 MR. LANNIE: Excuse me. Let's get

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1 your name first. You're Deborah Rappaport?

2 VENIREPERSON: Yes.

3 MR. LANNIE: Your husband has been
4 guilty of --

5 VENIREPERSON: No. My husband was --

6 MR. LANNIE: Your husband --

7 VENIREPERSON: It was his identity
8 that was stolen.

9 MR. LANNIE: Your husband's a victim
10 of identity theft. Okay.

11 Let's go to the second row.

12 THE COURT: Mr. Lannie, you have about
13 five minutes left.

14 MR. LANNIE: All right. Thank you,
15 Judge.

16 Let's go to the second row. Let's
17 start over here.

18 VENIREPERSON: 16, Kerbow.

19 MR. LANNIE: 16, I'm going to have to
20 move through this pretty quickly. This is important,
21 okay. I think you realize why it is. You're called
22 Kerbow?

23 VENIREPERSON: Kerbow.

24 MR. LANNIE: Kerbow?

25 VENIREPERSON: Kerbow.

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1 MR. LANNIE: Kerbow.
2 Okay. Next?
3 VENIREPERSON: 18, Golinkin.
4 MR. LANNIE: Okay. Next?
5 VENIREPERSON: 19.
6 MR. LANNIE: 19. Got you.
7 And on 18, you gave your name, didn't
8 you?
9 VENIREPERSON: Golinkin.
10 MR. LANNIE: Your first name is
11 Webster?
12 VENIREPERSON: Webster, correct.
13 MR. LANNIE: 19, your name is?
14 VENIREPERSON: First name, Debebe,
15 Berhanu, B-E-R-H-A-N-U.
16 MR. LANNIE: You're Debra, correct?
17 ~~VENIREPERSON: Debebe.~~
18 MR. LANNIE: I'm going to leave that
19 where it is. I'm not going into that.
20 Anyone else on the second row? All
21 right. And you're Sherri?
22 VENIREPERSON: Yes.
23 MR. LANNIE: In fact, you're Sherri
24 Dotson, correct?
25 VENIREPERSON: Correct.

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1 MR. LANNIE: You've been a victim of
2 identity theft.

3 VENIREPERSON: Yes. I had two
4 separate incidents.

5 MR. LANNIE: Two. I'm going to write
6 "two" down there, so we'll know about that.

7 Let's go further down this row and see
8 what we come up with.

9 All right. You're?

10 VENIREPERSON: 25.

11 MR. LANNIE: You're No. 25. And your
12 name is?

13 VENIREPERSON: Michael Poole.

14 MR. LANNIE: Michael Poole. You're
15 one of the people that states that you were not --
16 that you'd have to hear evidence from a victim before
17 you would determine whether or not a violation of the
18 law may or may not have occurred, correct?

19 VENIREPERSON: Right.

20 MR. LANNIE: I picked that up when
21 Kate was talking to you.

22 All right. Next?

23 VENIREPERSON: I'm No. 26,
24 Christiansen, my last name.

25 MR. LANNIE: All right. Thank you.

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1 VENIREPERSON: And --

2 MR. LANNIE: How many times?

3 VENIREPERSON: It was just my wife's
4 purse was stolen, but it was a substantial amount of
5 money, both a full checkbook was used, used her ID
6 and credit cards.

7 MR. LANNIE: Uh-huh. Do you ever
8 think about capping the person who did it?

9 VENIREPERSON: If I could find out who
10 it was.

11 MR. LANNIE: Okay. Next?

12 VENIREPERSON: 29, Nelda Blanco.

13 MR. LANNIE: Nelda Blanco. Okay. Got
14 you. How many times?

15 VENIREPERSON: Once.

16 MR. LANNIE: Next? Daniel? You
17 didn't have any problem?

18 VENIREPERSON: No.

19 MR. LANNIE: Not yet anyway.

20 VENIREPERSON: I hope not.

21 MR. LANNIE: Let's go back to the
22 third row back here. I see a show of hands on the
23 third row. And your name, sir, is what?

24 VENIREPERSON: Art Money, 32.

25 MR. LANNIE: Huh?

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1 VENIREPERSON: Art Money, 32.

2 MR. LANNIE: What's your juror number?

3 VENIREPERSON: 32.

4 MR. LANNIE: Oh, 32. Do you know it's
5 odd that on this sheet I've got, all the numbers are
6 cut off. So, I can't really tell you what number you
7 are. I'm going to guess with you. You're --

8 VENIREPERSON: Art Money, M-O-N-E-Y.

9 MR. LANNIE: Oh, Arthur Money?

10 VENIREPERSON: Yes. That would be it.

11 MR. LANNIE: Okay. And your juror
12 number is?

13 VENIREPERSON: 32.

14 MR. LANNIE: I think you'll agree with
15 me your number is cut off of there. That's the
16 reason. If I'm doing it, it's not hereditary.

17 Next on the third row?

18 VENIREPERSON: 35, Beeler.

19 MR. LANNIE: 35?

20 VENIREPERSON: Uh-huh. B-E-E-L-E-R.

21 MR. LANNIE: What is your name?

22 VENIREPERSON: Leona Beeler,

23 B-E-E-L-E-R.

24 MR. LANNIE: Okay. Thank you.

25 VENIREPERSON: Uh-huh.

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1 MR. LANNIE: Next? Anybody on that
2 row?

3 All right. Now we got the lady in the
4 red dress. What is your number?

5 VENIREPERSON: 39, Rowland.

6 MR. LANNIE: 39. And you're Diane
7 (sic) Rowland?

8 VENIREPERSON: Uh-huh.

9 MR. LANNIE: Okay. How many times?

10 VENIREPERSON: Once.

11 MR. LANNIE: Once. Next we have David
12 Gray? No, not David.

13 VENIREPERSON: 41, Zedaker.

14 MR. LANNIE: Robert?

15 VENIREPERSON: Yes.

16 MR. LANNIE: Robert, your number is

17 41?

18 VENIREPERSON: Yes.

19 MR. LANNIE: State your last name
20 again?

21 VENIREPERSON: Zedaker.

22 MR. LANNIE: All right. Thank you.

23 Let's go down to -- I'm a' thinking.

24 Okay. You're Mr. Randy?

25 VENIREPERSON: James Smith, 43.

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1 MR. LANNIE: James Smith.

2 VENIREPERSON: Wife and daughter,
3 stolen purses.

4 MR. LANNIE: Okay. You know there are
5 a lot of James Smiths in the world?

6 VENIREPERSON: About 2,000.

7 MR. LANNIE: There's a lot of James in
8 China, too.

9 VENIREPERSON: It's easy to get my
10 identity.

11 MR. LANNIE: Let's go down the rest of
12 that row. Anybody else? Your name, ma'am?

13 VENIREPERSON: Chappell, 45.

14 MR. LANNIE: 45?

15 VENIREPERSON: Uh-huh. I raised my
16 hand before. It's my son.

17 MR. LANNIE: We're moving along real
18 good now. Maybe I'll get it done within my five
19 minutes.

20 Let's go down to the next row, the one
21 lady on the end?

22 VENIREPERSON: (Shakes head
23 negatively.)

24 MR. LANNIE: Your name, sir?

25 VENIREPERSON: Shuptrine, 47.

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1 MR. LANNIE: All right. 47, victim of
2 identity theft or somebody close to you, correct?

3 VENIREPERSON: My sister's lost her
4 wallet; so, she's open to it right now. She lost her
5 driver's license, social security card. I've had a
6 neighbor that's been hit by it.

7 MR. LANNIE: I'm always losing things,
8 but most of the time it's my fault. I'll lose checks
9 and my driver's license --

10 VENIREPERSON: Whenever you lose it at
11 college or something, you never know who's going to
12 pick it up. That's how a lot of it ends up.

13 MR. LANNIE: You're 47?

14 VENIREPERSON: Yes, sir.

15 MR. LANNIE: That's Mathew?

16 VENIREPERSON: Shuptrine.

17 MR. LANNIE: Okay. Let's come down
18 this way. Lady back on the back, black-haired lady.
19 What is your name?

20 VENIREPERSON: 51, Lopez.

21 MR. LANNIE: 51, Lopez. Okay. Well,
22 I've got Stacey Fletcher there, but you're --

23 VENIREPERSON: Isela Lopez.

24 MR. LANNIE: Isela Lopez, okay. Some
25 of these are not even numbered in different spaces.

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1 That accounts for that, I guess.

2 All right. Anybody else on that row?

3 Anybody in the right corner? Let's take you.

4 VENIREPERSON: 55.

5 MR. LANNIE: Huh?

6 VENIREPERSON: 55.

7 MR. LANNIE: 55?

8 VENIREPERSON: Quiroz.

9 MR. LANNIE: Your name?

10 VENIREPERSON: Quiroz, Q-U-I-R --

11 MR. LANNIE: Robert Quiroz?

12 VENIREPERSON: Right.

13 MR. LANNIE: Did I pronounce that

14 right?

15 VENIREPERSON: Sure did.

16 MR. LANNIE: Back in that corner.

17 Anybody else?

18 VENIREPERSON: 63, John Goss. Goss,

19 63.

20 MR. LANNIE: Give me your number,

21 John.

22 VENIREPERSON: 63.

23 MR. LANNIE: 6?

24 VENIREPERSON: 63.

25 MR. LANNIE: 53.

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1 VENIREPERSON: 63.

2 MR. LANNIE: Okay. I don't have you
3 charted. I guess I left it off of the chart. So,
4 63. Okay.

5 Anyone over in that far corner? Way
6 back in the corner we have a guy in a blue shirt
7 and --

8 VENIREPERSON: Yeah. No. 60, last
9 name is Arcy. And I have had a couple of incidents.

10 MR. LANNIE: Okay. Ladies and
11 gentlemen, of those people here who have indicated
12 that y'all have been victims of identity theft,
13 what's uppermost in our mind here today is to select
14 a jury with -- for at least prior to the time you
15 hear the evidence in this case, that both sides are
16 starting off even. It's not fair if -- I think
17 you'll agree it wouldn't be fair -- it would be an
18 unlawful burden if I had to prove facts of the other
19 case that y'all were involved in and -- to satisfy
20 those facts as well as the facts of this case.

21 So, of those people I've asked, do
22 any -- do each of you feel like that, at least at
23 this point in time, that you would tend to
24 disbelieve -- believe the State and disbelieve the
25 defendant based on the experiences that y'all have

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1 had? If there's anybody here -- well, let me put it
2 another way. Does everyone here that I've talked to
3 here believe that you can be fair and impartial?

4 Now, I know there's two people,
5 Mr. Quiroz and another one here, do feel that -- and
6 another lady, somebody back here -- incidentally,
7 there was someone back here earlier that indicated
8 you cannot be fair and impartial in this type of
9 case. Seemed like there was a show of hands and I
10 didn't get the name.

11 Okay. Well, I will pass over that for
12 a minute.

13 Are you Ms. Monks?

14 VENIREPERSON: Uh-huh.

15 MR. LANNIE: Your husband's a lawyer?

16 VENIREPERSON: (Nods head

17 affirmatively.)

18 MR. LANNIE: He's a very good friend
19 of mine. We talked about setting an office up in a
20 tent for a very long time. We haven't yet. He's a
21 lot of fun to be around.

22 I think that concludes the voir dire
23 that we have with reference to this particular case
24 and based on the information we have, we'll go ahead
25 and make our selections.

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1 THE COURT: Thank you, Mr. Lannie.
2 And may I see the lawyers at the
3 bench.

4 (At the bench, on the record.)

5 THE COURT: All right. Mr. Lannie,
6 Ms. Taylor is going to give me the numbers of the
7 people she wants to challenge for cause. After she
8 does that, if you will give me your numbers of the
9 people you want to challenge. If there's any you're
10 in agreement with, if you will give me that number,
11 I'll know that y'all are in agreement.

12 Whenever you're ready, Ms. Taylor.

13 MS. TAYLOR: Juror No. 9, Juror No.
14 10, Juror No. 11.

15 MR. LANNIE: Excuse me. I'm going to
16 have to ask you again. No. 9, you want to challenge
17 that one for cause?

18 THE COURT: No. 9, 10 and 11 so far.

19 MS. TAYLOR: 12, 14, 19, 25.

20 THE COURT: 25?

21 MS. TAYLOR: (Nods head
22 affirmatively.)

23 MR. LANNIE: I've got 19.

24 MS. TAYLOR: Hang on. Hang on. Hang
25 on. 33. 33 has a conviction, by the way, also.

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1 MR. LANNIE: What's that number, Kate?
2 I can't hear you.

3 MS. TAYLOR: 33.

4 MR. LANNIE: 33.

5 MS. TAYLOR: 48.

6 THE COURT: 48?

7 MS. TAYLOR: (Nods head
8 affirmatively.) 51, 55.

9 MR. LANNIE: Judge, I'm having a hard
10 time.

11 THE COURT: I'll go over them in just
12 a second. That should help.

13 MR. LANNIE: The numbers are cut off
14 my sheet. I'm having to estimate what number it is.
15 I did get 38. Is that right?

16 THE COURT: No. I'll go over them in
17 just a second just to make sure I got them all.

18 MS. TAYLOR: 59.

19 THE COURT: Okay. I have 9, 10, 11,
20 12.

21 MR. LANNIE: Excuse me, Judge. Let's
22 start over, okay?

23 THE COURT: 9, 10, 11, 12.

24 MR. LANNIE: 9, 10, 11 and 12.

25 THE COURT: 14, 19, 25, 33, 48.

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1 MR. LANNIE: Judge, let's go back to
2 19. Start over there for me.

3 THE COURT: 25.

4 MR. LANNIE: 25?

5 THE COURT: 33.

6 MR. LANNIE: 33.

7 THE COURT: 48.

8 MR. LANNIE: Got to go to the second
9 page. 48 is cause. Okay.

10 THE COURT: 51.

11 MR. LANNIE: Don't have problem with
12 that.

13 THE COURT: 55. And 59.

14 MR. LANNIE: Okay.

15 THE COURT: If you want to give me
16 whoever you want to challenge and any numbers that
17 you're in agreement on, that would be great.

18 MR. LANNIE: Judge, I don't think I
19 went into their factual circumstances with enough
20 detail that I have that type of information that I
21 can successfully challenge those jurors. So, if you
22 want to take them off, take them off.

23 THE COURT: Oh, no, no. Here's what I
24 want to know. Anybody that you want to challenge for
25 cause, I need to know their number.

1 MR. LANNIE: Oh, you need to know --

2 THE COURT: If there's somebody's
3 number that she's given me and you're in agreement
4 with that, if you will give me that number as well
5 and I'll go down and rule.

6 MR. LANNIE: I don't have any problem
7 that she's got cause with those people.

8 THE COURT: You're in agreement with
9 all of hers?

10 MR. LANNIE: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. LANNIE: I'd like to challenge for
13 cause Robert Quiroz and I'm not sure what his number
14 is. I'm looking for it.

15 THE COURT: I believe he is 55.
16 Somehow I lost my sheet.

17 MR. LANNIE: I think he's in the 50s.
18 I'm not sure.

19 THE COURT: Just a second. I can give
20 it to you.

21 MR. LANNIE: Quiroz. Here it is.
22 There's no number by the --

23 THE COURT: 55.

24 MR. LANNIE: 55?

25 THE COURT: Uh-huh. We already have

1 that, uh-huh.

2 Names are fine. I can handle that.
3 If you don't have the numbers on your list.

4 MR. LANNIE: Uh-huh. Judge, that's
5 the only one I had clear-cut notes on.

6 THE COURT: Okay. All right.

7 MS. TAYLOR: Judge, what do you want
8 to do about the ones that were talking about their
9 prior commitments? 18 and --

10 THE COURT: I want to do these first.

11 MS. TAYLOR: And 23. Okay.

12 MR. LANNIE: We've had so many
13 sprinkled in here with prior identity thefts, it
14 really don't make no difference to me.

15 MS. TAYLOR: I know.

16 MR. LANNIE: I don't have a choice.

17 ~~I'll take my strikes as far as they go and that's it.~~

18 THE COURT: That gets us through 40.
19 That gets us through 40. So, I guess the only real
20 issue is 18?

21 MS. TAYLOR: 18 and 23.

22 THE COURT: Well, 23 I'm not worried
23 about. That scheduling problem is resolving itself
24 because of our scheduling issues tomorrow anyway.
25 Okay? So, that's not going to be a problem.

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1 MR. LANNIE: I would renew an
2 objection to him. That's one of the ones I would
3 object to.

4 THE COURT: Who?

5 MR. LANNIE: No. 18.

6 THE COURT: You want to offer him up
7 for cause? I mean, do you want to challenge him for
8 cause?

9 MR. LANNIE: I'll pass, Judge.

10 THE COURT: No, you don't.

11 MR. LANNIE: I don't.

12 THE COURT: Okay. Well, then, I guess
13 he's on.

14 MS. TAYLOR: All right.

15 THE COURT: He's part of the mix.

16 MR. LANNIE: I'm going to use all my
17 strikes up. When I use up 12 of them, we'll take the
18 next ones.

19 THE COURT: If you want to challenge
20 him for cause, I'm sure she'll agree to that.

21 MR. LANNIE: No.

22 MS. TAYLOR: You don't want to agree
23 to him just to not --

24 MR. LANNIE: Huh?

25 MS. TAYLOR: That's fine.

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1 MR. LANNIE: I would like to get him
2 off.

3 THE COURT: That's what we're saying.

4 MR. LANNIE: I challenge him for
5 cause. He's in a business. He says --

6 THE COURT: All right. Do you have
7 any objection to that?

8 MS. TAYLOR: No.

9 MR. LANNIE: Okay. That will take him
10 off then.

11 THE COURT: Okay. He's the only one
12 then. Everybody else is out of range or off.

13 Okay. Here is your strike lists. And
14 I just want to go over, for the record, but what
15 Chandra did was she put the new numbers because
16 remember they started with 64, which is what caused
17 some confusion. She renumbered them for you,

18 beginning with No. 1. So, here's -- if you can
19 follow along with me, the numbers that are gone.

20 9, 10, 11, 12, 14, 19, 25, 33, 48, 51,
21 55 and 59. We are only going through Juror No. 40.

22 MS. TAYLOR: 41? Now that we struck
23 18.

24 THE COURT: Did I leave 18 off?

25 Did I strike 18 on there?

1 MS. TAYLOR: 18 is struck.

2 THE COURT: Don't have the list.

3 MR. LANNIE: 41 is off.

4 THE COURT: 41 is who we're going
5 through. We go through No. 41. 41. If y'all will
6 make your strikes, please.

7 (End of discussion at the bench.)

8 (Lawyers make strikes.)

9 THE COURT: Ladies and gentlemen, the
10 clerk is going to call out the names -- excuse me --
11 the names of those of you who've been selected. If
12 you would, come up and have a seat in the jury box.
13 It does not matter where you sit.

14 THE CLERK: Juror No. 2, Sue Crawford;
15 Juror No. 4, William Taylor; Juror No. 17, Stepheny
16 Chen; Juror No. 21, Dorothy Braun; Juror No. 27,
17 Sharon Chen; Juror No. 28, Anna Rushing; Juror No.
18 31, Maria Castro; Juror No. 34, Ruben Lopez; Juror
19 No. 35, Leona Beeler; Juror No. 36, Virginia Lay;
20 Juror No. 37, Victoria Richardson; and Juror No. 39,
21 Diana Rowland.

22 THE COURT: Does either side have any
23 objection to the jury as seated?

24 MS. TAYLOR: None from the State.

25 THE COURT: Defense?

1 MR. LANNIE: None, Your Honor.

2 THE COURT: All right. Ladies and
3 gentlemen in the audience, that is good news. You
4 are excused with our thanks, with the exception of
5 Mrs. Monks. Come up.

6 *(The remainder of the jury panel exits*
7 *the courtroom.)*

8 THE COURT: All right. Ladies and
9 gentlemen in the jury box, I have really good news
10 for you. Is there only -- oh, God. I thought there
11 was only one man on the jury. There's two.
12 Goodness.

13 All right. While y'all have been
14 being selected, the bailiffs ordered lunch for you.
15 So, it is back -- not in my jury room because there's
16 still a jury in there -- in Judge McSpadden's, which
17 is, I hate to say, much nicer than mine because he
18 has no children, okay? That's where all my money
19 goes.

20 Anyway, either Deputy Ray or Deputy
21 Jircik will take you over there to Judge McSpadden's
22 jury room. Please take as much time as you like to
23 eat lunch. I know y'all have had a long day. Feel
24 free to walk downstairs and get a breath of fresh air
25 if you want to do that.

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1 They will show you how to let us know
2 when you all are ready to begin. We're just going to
3 take a couple of witnesses today. We're not going to
4 work till 5:00 because I know it's been a very long
5 day.

6 I know y'all probably need to make
7 some phone calls. Please, you're welcome to call
8 anybody you need to call. Don't tell them what the
9 case is about, who the defendant is, or anything you
10 think you may know after the jury selection process.
11 I'll have some more instructions for you when you get
12 back from lunch. I know you guys are starving.
13 So --

14 A JUROR: Do you know about how long
15 this will be so I can call in and get my substitute
16 ready and different things ready for the next couple
17 days?

18 THE COURT: I would say Friday, just
19 to be on the safe side, okay?

20 All right. So, y'all let us know, but
21 do not rush. Take as much time as you need for
22 lunch.

23 (Jury not present.)

24 (Lunch recess.)

25

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APP298


Voir Dire
February 28, 2007

1 STATE OF TEXAS
2 COUNTY OF HARRIS

3 I, Carrie Scardaville Logan, Official Court
4 Reporter in and for the 185th District Court of
5 Harris County, State of Texas, do hereby certify that
6 the above and foregoing contains a true and correct
7 transcription of all portions of evidence and other
8 proceedings requested in writing by counsel for the
9 parties to be included in this volume of the
10 Reporter's Record in the above-styled and numbered
11 cause, all of which occurred in open court or in
12 chambers and were reported by me.

13 I further certify that this Reporter's Record of
14 the proceedings truly and correctly reflects the
15 exhibits, if any, offered by the respective parties.

16 WITNESS MY OFFICIAL HAND this the 9 day
17 of April, 2007.

18
19 
Carrie Scardaville Logan, CSR
Texas CSR 3150
Official Court Reporter
185th District Court
Harris County, Texas
1201 Franklin
Houston, Texas 77002
Telephone: 713.755.0816
23 Expiration: 12/31/08
24
25

-	114/22 115/8	16/24 16/25 17/2 17/3 17/4
- [219]	afford [1] 79/3	17/9 17/10 17/10 17/14
A	after [12] 11/22 11/24	18/2 18/18 20/11 26/11
a -- [2] 26/4 95/2	13/15 14/4 14/21 16/7	26/15 26/21 28/17 28/17
a' [1] 108/23	17/18 19/6 25/6 47/15	29/11 29/16 32/22 33/11
A-L-I [1] 22/21	114/7 123/10	34/9 34/21 42/8 48/21
ability [1] 79/15	afternoon [3] 21/14 23/4	58/13 58/17 58/17 61/18
able [18] 10/18 37/5 39/10	40/25	63/12 63/24 64/5 65/25
50/7 56/7 56/12 57/22 58/4	again [6] 19/9 41/2 80/5	66/7 70/16 76/23 77/13
59/17 59/21 61/6 64/19	90/25 108/20 114/16	77/20 79/9 79/24 80/4
66/15 66/18 66/23 67/16	against [4] 8/9 30/20	81/14 81/15 81/17 84/6
68/14 81/11	42/14 96/8	85/17 86/20 88/2 88/24
about [107] 4/11 5/11 7/3	agree [9] 66/3 71/22 88/15	89/15 89/21 90/11 93/12
7/5 7/13 8/1 9/6 10/17	89/4 97/7 107/14 112/17	97/8 99/20 102/15 102/19
10/18 11/9 11/20 14/24	119/20 119/22	106/17 112/22 114/9 116/16
15/4 15/17 16/4 16/14	agreement [5] 114/10	117/6 120/7 121/22 124/15
17/16 19/2 20/12 20/23	114/11 116/17 117/3 117/8	any -- [2] 85/17 112/22
21/25 22/4 22/6 24/14	agrees [2] 67/24 68/8	anybody [52] 8/20 9/16
24/15 25/12 25/14 25/17	ahead [3] 13/13 78/6	18/12 18/24 20/23 21/10
26/16 27/1 28/12 29/3 29/9	113/24	22/2 22/4 22/7 22/15 23/14
30/7 30/17 31/5 31/7 32/19	ahold [1] 58/15	24/14 24/18 25/15 29/3
33/19 33/23 34/24 35/18	air [2] 59/15 122/24	30/17 31/5 33/7 33/17
36/12 37/20 38/10 38/14	airline [1] 59/15	33/24 36/9 37/20 38/2 38/8
39/12 39/14 47/7 47/18	Alac [1] 28/16	38/11 39/13 39/18 43/18
47/25 55/18 55/20 56/7	Ali [1] 22/20	56/16 58/22 58/24 61/25
59/10 60/6 60/24 61/2	alibi [3] 23/16 23/17	62/3 63/7 66/12 68/19
61/22 61/22 62/4 62/23	24/16	72/23 73/8 73/11 73/12
64/2 65/9 65/13 67/7 68/14	all [179]	73/14 73/15 85/17 92/22
68/23 68/23 70/9 70/10	all -- [1] 61/14	108/1 109/12 111/2 111/3
72/12 72/13 72/25 73/24	alleged [2] 94/16 96/8	111/17 113/1 116/24 123/8
74/14 76/2 76/4 76/6 79/25	allowed [2] 87/20 88/5	anymore [1] 12/22
80/1 82/23 84/14 85/10	almost [2] 40/25 41/16	Anyone [2] 104/20 112/5
85/19 85/19 85/25 86/7	alone [3] 97/22 97/23	anything [19] 4/20 9/6
86/20 88/4 88/5 92/13	99/18	13/15 35/6 41/11 48/21
93/23 95/12 98/8 98/18	along [5] 29/8 61/24	49/8 58/18 62/3 63/9 63/13
99/10 103/12 105/6 106/8	102/20 109/17 120/19	73/15 81/12 84/20 86/20
109/6 113/19 118/8 118/8	already [13] 20/9 33/2	87/2 87/5 88/4 123/9
118/23 123/9 123/14	33/3 33/5 33/13 33/22	anyway [4] 95/5 106/19
about -- [5] 47/7 60/6	33/24 34/6 34/20 80/12	118/24 122/20
62/23 70/9 82/23	81/2 81/4 117/25	anywhere [1] 40/12
above [1] 124/6	also [17] 8/9 10/6 13/14	apologize [1] 24/12
above-styled [1] 124/10	18/22 21/22 38/23 40/6	apparently [1] 62/16
above-titled [1] 1/14	69/1 69/7 71/25 76/6 77/11	APPEARANCES [1] 2/1
absorb [2] 62/9 62/19	77/12 85/23 86/14 89/11	APPELLATE [1] 1/3
abuse [6] 5/18 28/1 28/6	114/25	approach [1] 84/17
31/1 36/19 38/5	although [1] 40/13	appropriate [3] 20/13
accept [1] 100/19	always [10] 8/6 14/14	89/15 101/11
accommodate [2] 21/18	14/20 24/9 33/6 33/15 34/1	Arcy [1] 112/9
21/21	58/20 69/13 110/7	are [74] 4/5 4/14 4/22
accomplishment [1] 87/22	am [5] 12/14 32/21 73/3	7/16 10/17 11/14 12/1 14/5
accountants [1] 35/13	75/16 83/4	14/8 15/5 17/21 21/12
accounts [1] 111/1	amount [1] 106/4	21/14 27/21 27/22 29/7
accusing [1] 31/21	and -- [4] 106/1 112/7	29/12 30/20 31/10 32/15
across [1] 88/9	112/19 118/9	33/6 33/10 33/19 35/4
act [2] 12/6 96/20	Andrew [4] 2/12 8/19 9/1	36/17 36/22 45/6 45/22
actually [8] 13/24 56/1	75/10	47/9 47/18 47/22 48/7
60/16 66/22 67/20 67/21	Ann [1] 102/6	48/14 49/13 59/5 62/2
89/7 90/18	Anna [1] 121/17	64/20 65/14 70/19 70/21
add [1] 39/6	another [11] 11/4 13/2	76/8 77/8 77/25 77/25
added [1] 85/23	30/13 69/20 73/14 84/11	79/16 80/1 80/3 82/8 83/1
addictive [1] 73/23	95/6 96/1 113/2 113/5	87/15 93/19 94/8 95/16
additional [1] 65/7	113/6	95/19 95/23 96/8 96/11
admit [2] 73/20 94/22	answer [14] 10/4 11/7	97/3 101/9 102/16 107/5
admitted [1] 10/24	11/13 12/16 12/24 34/13	107/7 109/4 110/25 112/15
advantageous [1] 78/6	61/6 69/17 69/17 70/2 76/9	113/13 114/11 115/13 118/2
advice [1] 11/10	82/21 88/10 100/19	120/19 120/21 122/4 123/2
affect [1] 9/7	answered [1] 100/18	123/12
affirmatively [11] 5/24	answering [1] 7/11	are -- [1] 97/3
7/22 23/13 46/23 50/22	answers [1] 88/7	area [1] 32/10
60/9 68/7 100/1 113/17	anticipate [1] 21/3	aren't [1] 78/25
	any [72] 4/20 6/8 14/23	argue [1] 41/11
	15/21 16/5 16/16 16/20	around [5] 13/12 23/11

A		attorney -- [1] 8/16	97/10 97/15 97/15 98/2
around... [3] 27/6 32/18		Attorney's [2] 2/3 41/3	98/3 98/5 98/6 98/17 100/5
113/21		audience [1] 122/3	100/5 100/6 101/12 107/10
Art [3] 106/24 107/1 107/8		available [3] 20/6 39/9	112/17 112/17 113/3 113/8
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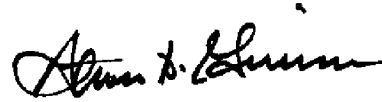
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[6] 91/11 95/20 96/2 96/6 97/7 105/17</p> <p>which [19] 5/4 13/9 20/3 48/14 60/24 62/1 69/3 76/2 80/15 86/5 90/16 93/7 93/8 93/17 96/24 100/7 120/16 122/16 124/11</p> <p>while [6] 29/22 30/1 39/17 56/24 57/10 122/13</p> <p>who [53] 6/25 8/24 9/25 12/1 12/12 14/5 14/8 15/1 15/8 15/10 15/12 20/12 21/23 22/2 27/2 27/3 27/4 32/17 32/25 33/1 33/10 33/24 35/14 38/2 38/8 38/11 39/13 55/21 58/13 59/18 63/19 65/25 66/4 66/12 67/23 67/24 68/8 68/17 73/6 73/19 79/4 89/25 93/25 95/16 97/16 99/6 99/6 106/8 106/9 112/11 119/4 121/4 123/9</p> <p>who's [10] 9/14 18/12 20/12 32/19 32/20 32/20 58/23 65/12 94/1 110/11</p> <p>who've [4] 13/20 31/13 44/19 121/11</p> <p>whoever [2] 8/13 116/16</p> <p>whole [1] 15/2</p> <p>whose [2] 61/15 64/18</p> <p>why [16] 15/14 18/9 26/14 50/8 64/18 64/18 64/21 65/24 65/25 66/2 66/6 68/13 79/10 82/6 87/14 103/21</p> <p>wife [10] 9/17 56/2 56/3 60/16 60/18 99/8 99/14 99/16 99/17 109/2</p> <p>wife's [2] 56/8 106/3</p> <p>wild [1] 29/21</p> <p>will [33] 7/6 7/9 11/17 12/2 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<p>worried [1] 118/22</p> <p>would [75] 6/13 7/8 8/21 8/22 9/7 11/5 13/25 17/13 18/9 21/6 25/6 26/7 37/12 38/23 39/8 39/9 40/3 40/14 47/23 49/14 50/1 50/11 50/16 61/11 61/18 61/23 64/17 64/19 65/23 66/14 66/21 67/10 67/14 67/15 67/20 67/21 67/22 71/17 72/5 77/9 78/6 78/9 78/9 79/5 79/17 80/17 81/6 82/17 83/2 84/24 87/9 87/21 88/2 88/2 88/14 89/9 91/13 91/15 95/25 97/7 97/20 100/5 100/5 100/6 100/7 105/17 107/10 112/17 112/23 116/17 119/1 119/2 120/1 121/12 123/18</p> <p>wouldn't [3] 24/4 64/21 112/17</p> <p>Wow [1] 43/21</p> <p>write [2] 10/2 105/5</p> <p>writing [1] 124/8</p> <p>written [4] 5/2 48/8 78/7 78/18</p> <p>wrong [3] 82/18 83/13 83/14</p> <tr> <td data-bbox="690 1165 1079 1207">Y</td><td data-bbox="1079 1165 1487 1207"></td></tr> <tr> <td data-bbox="690 1207 1079 1898"> <p>y'all [27] 6/22 7/12 13/2 13/10 15/16 19/13 25/13 39/16 39/18 47/22 75/14 75/25 76/7 79/11 80/3 88/9 91/24 99/23 112/12 112/19 112/25 114/11 121/5 122/13 122/23 123/6 123/20</p> <p>y'all -- [1] 99/23</p> 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CLERK OF THE COURT

JOC

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES HOWARD HAYES, JR.
#2796708

Defendant.

CASE NO. C315125-1

DEPT. NO. XX

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crime of BURGLARY (Category B Felony) in violation of NRS 205.060; and the matter having been tried before a jury and the Defendant having been found guilty of the crime of BURGLARY (Category B Felony) in violation of NRS 205.060; thereafter, on the 23rd day of February, 2017, the Defendant was present in court for sentencing with counsel TYLER GASTON, Deputy Public Defender, and good cause appearing,

1 THE DEFENDANT IS HEREBY ADJUDGED guilty of said crime as set forth in
2 the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee plus
3 \$3.00 DNA Collection Fee, the Defendant is SENTENCED as follows: a MAXIMUM of
4 SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of TWENTY-ONE (21)
5 MONTHS in the Nevada Department of Corrections (NDC), with FIFTY-FIVE (55) DAYS
6 MONTHS in the Nevada Department of Corrections (NDC), with FIFTY-FIVE (55) DAYS
7 credit for time served. As the \$150.00 DNA Analysis Fee and Genetic Testing have
8 been previously imposed, the Fee and Testing in the current case are WAIVED.

9 DATED this 6TH day of March, 2017

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14 ERIC JOHNSON
15 DISTRICT COURT JUDGE
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1 **NOTC**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL R. DICKERSON
6 Deputy District Attorney
7 Nevada Bar #013476
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 JAMES HOWARD HAYES, aka,
13 James Howard Hayes, Jr., #2796708
14 Defendant.

CASE NO: C-16-315718-1

DEPT NO: XII

15 **AMENDED NOTICE OF INTENT TO SEEK PUNISHMENT AS**
16 **A HABITUAL CRIMINAL**

17 TO: JAMES HOWARD HAYES, aka, James Howard Hayes, Jr., Defendant; and

18 TO: JESSICA W. MURPHY, Deputy Public Defender, Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that pursuant to NRS
20 207.010, the STATE OF NEVADA will seek punishment of Defendant JAMES HOWARD
21 HAYES, aka, James Howard Hayes, Jr., as a habitual criminal in the event of a felony
22 conviction in the above-entitled action.

23 That in the event of a felony conviction in the above-entitled action, the STATE OF
24 NEVADA will ask the court to sentence Defendant JAMES HOWARD HAYES, aka, James
25 Howard Hayes, Jr. as a habitual criminal based upon the following felony convictions, to-wit:

26 ///

27 ///


1 1. That on or about 2007, the Defendant was convicted in the State of Texas,
2 for the crime of CREDIT CARD ABUSE (Felony) in Case No. 108378501010.

3 2. That on or about 2011, the Defendant was convicted in the State of
4 Nevada, for the crime of ATTEMPT POSSESSION OF CREDIT OR DEBIT CARD
5 WITHOUT CARDHOLDER'S CONSENT (Category E Felony) in Case No. C270308.

6 3. That on or about 2017, the Defendant was convicted in the State of
7 Nevada, for the crime of BURGLARY (Category B Felony) in Case No. C315125.

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

10 BY


11 MICHAEL R. DICKERSON
12 Deputy District Attorney
 Nevada Bar #013476

13
14 **CERTIFICATE OF ELECTRONIC FILING**

15 I hereby certify that service of AMENDED NOTICE OF INTENT TO SEEK
16 PUNISHMENT AS A HABITUAL CRIMINAL, was made this 29th day of August, 2017,
17 by Electronic Filing to:

18 JESSICA W. MURPHY, Deputy Public Defender
19 EMAIL: murphyjw@clarkcountynv.gov;
20 pdclerk@clarkcountynv.gov

21 
22 Secretary for the District Attorney's Office

23
24
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26
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28 13F10723Xpm/L-2

ORIGINAL

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

NOV 07 2018

BY: 
TIA EVERETT, DEPUTY

1 **GPA**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL DICKERSON
6 Deputy District Attorney
7 Nevada Bar #013476
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 JAMES HOWARD HAYES, aka
13 James Howard Hayes, Jr.,
14 #2796708

Defendant.

CASE NO: C-16-315718-1

DEPT NO: XIX

GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty, pursuant to North Carolina v. Alford, 400 U.S. 25 (1970),
17 to: **ATTEMPT GRAND LARCENY (Category D Felony/Gross Misdemeanor - NRS**
18 **205.220.1, 205.222.2, 193.330 - NOC 56025/56026)**, as more fully alleged in the charging
19 document attached hereto as Exhibit "1".

20 My decision to plead guilty by way of the Alford decision is based upon the plea
21 agreement in this case which is as follows:

22 The State has agreed to make no recommendation at the time of sentencing. The State
23 has no opposition to probation with the only condition being thirty (30) days in the Clark
24 County Detention Center (CCDC), with thirty (30) days credit for time served.

25 I agree to the forfeiture of any and all weapons or any interest in any weapons seized
26 and/or impounded in connection with the instant case and/or any other case negotiated in
27 whole or in part in conjunction with this plea agreement.

28 ///

C-16-315718-1
GPA
Guilty Plea Agreement
4794960

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APP324

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

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

12 CONSEQUENCES OF THE PLEA

13 By pleading guilty pursuant to the Alford decision, it is my desire to avoid the
14 possibility of being convicted of more offenses or of a greater offense if I were to proceed to
15 trial on the original charge(s) and of also receiving a greater penalty. I understand that my
16 decision to plead guilty by way of the Alford decision does not require me to admit guilt, but
17 is based upon my belief that the State would present sufficient evidence at trial that a jury
18 would return a verdict of guilty of a greater offense or of more offenses than that to which I
19 am pleading guilty.

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

22 I understand that as a consequence of my plea of guilty by way of the Alford decision
23 the Court may elect to treat this offense as a felony or as a gross misdemeanor. If the Court
24 elects to treat this offense as a felony I may be imprisoned in the Nevada Department of
25 Corrections for a minimum term of not less than one (1) year and a maximum term of not more
26 than four (4) years. In addition, I may be fined up to \$5,000.00. I further understand that the
27 minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of
28 imprisonment. If the Court elects to treat this offense as a gross misdemeanor, I may be

1 imprisoned in the Clark County Detention Center for a period of not more than three hundred
2 sixty-four (364) days. In addition, I may be fined up to \$2,000.00. I understand that the law
3 requires me to pay an Administrative Assessment Fee.

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

8 If the Court elects to treat this offense as a felony or as a gross misdemeanor, I
9 understand that I am eligible for probation for the offense(s) to which I am pleading guilty. I
10 understand that, except as otherwise provided by statute, the question of whether I receive
11 probation is in the discretion of the sentencing judge.

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

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

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

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

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

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

27 I understand that if the offense(s) to which I am pleading guilty was committed while I
28 was incarcerated on another charge or while I was on probation or parole that I am not eligible

1 for credit for time served toward the instant offense(s).

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

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

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

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

20 WAIVER OF RIGHTS

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

- 23 1. The constitutional privilege against self-incrimination, including the right
24 to refuse to testify at trial, in which event the prosecution would not be
allowed to comment to the jury about my refusal to testify.
- 25 2. The constitutional right to a speedy and public trial by an impartial jury,
26 free of excessive pretrial publicity prejudicial to the defense, at which
27 trial I would be entitled to the assistance of an attorney, either appointed
or retained. At trial the State would bear the burden of proving beyond
a reasonable doubt each element of the offense(s) charged.
- 28 3. The constitutional right to confront and cross-examine any witnesses who
would testify against me.

- 1 4. The constitutional right to subpoena witnesses to testify on my behalf.
2 5. The constitutional right to testify in my own defense.
3 6. The right to appeal the conviction with the assistance of an attorney,
4 either appointed or retained, unless specifically reserved in writing and
5 agreed upon as provided in NRS 174.035(3). I understand this means I
6 am unconditionally waiving my right to a direct appeal of this conviction,
7 including any challenge based upon reasonable constitutional,
 jurisdictional or other grounds that challenge the legality of the
 proceedings as stated in NRS 177.015(4). However, I remain free to
 challenge my conviction through other post-conviction remedies
 including a habeas corpus petition pursuant to NRS Chapter 34.

8 VOLUNTARINESS OF PLEA

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

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

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

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

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

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

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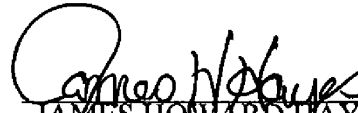
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1 I am not now under the influence of any intoxicating liquor, a controlled substance or
2 other drug which would in any manner impair my ability to comprehend or understand this
3 agreement or the proceedings surrounding my entry of this plea.

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

6 DATED this 7 day of ~~September~~^{NOVEMBER}, 2018.

7
8 
9 JAMES HOWARD HAYES, aka
10 James Howard Hayes, Jr.
Defendant

11 AGREED TO BY:

12 
13 MICHAEL R. DICKERSON
14 Deputy District Attorney
Nevada Bar #013476

1 CERTIFICATE OF COUNSEL:

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

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

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

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

25 Dated: This 7 day of ^{NOVEMBER}~~September~~, 2018.

26 
ATTORNEY FOR DEFENDANT

27
28 cg/L2

1 AINF
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL DICKERSON
6 Deputy District Attorney
7 Nevada Bar #013476
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 JAMES HOWARD HAYES, aka,
13 James Howard Hayes Jr., #2796708

14 Defendant.

CASE NO. C-16-315718-1

DEPT NO. XIX

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 JAMES HOWARD HAYES, aka, James Howard Hayes Jr., the Defendant(s)
20 above named, having committed the crime of **ATTEMPT GRAND LARCENY (Category**
21 **D Felony/Gross Misdemeanor - NRS 205.220.1, 205.222.2, 193.330 - NOC 56025/56026),**
22 on or about the 9th day of April, 2013, within the County of Clark, State of Nevada, contrary
23 to the form, force and effect of statutes in such cases made and provided, and against the peace
24 and dignity of the State of Nevada, did willfully, unlawfully, feloniously, and intentionally,
25 with intent to deprive the owner permanently thereof, attempt to steal, take and carry away
26 lawful money of the United States in an amount of \$650.00, or greater, owned by another

27 ///

28 ///

EXHIBIT "L" 99


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APP331

1 person, to wit: JOSHUA JARVIS, by attempting to steal lawful money of the United States,
2 an iPhone and other personal items from the said JOSHUA JAVIS.

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

6 BY



7 MICHAEL DICKERSON
8 Deputy District Attorney
9 Nevada Bar #013476
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26 DA#13F10723X /cmj/L2
27 LVMPD EV#1304090843
28 (TK3)

LAS VEGAS JUSTICE COURT
FILED IN OPEN COURT

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

JAN 29 2019

BY: [Signature]

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES HOWARD HAYES, aka,
James Howard Hayes, Jr. #2796708,

Defendant.

CASE NO: 19F01534X

DEPT NO: 14

CRIMINAL COMPLAINT

The Defendant above named having committed the crime of BURGLARY (Category B Felony - NRS 205.060 - NOC 50424), in the manner following, to wit: That the said Defendant, on or about the 26th day of January, 2019, at and within the County of Clark, State of Nevada, did willfully, unlawfully, and feloniously enter a hotel room, owned or occupied by MIRAGE HOTEL & CASINO, located at 3400 South Las Vegas Boulevard, Las Vegas, Clark County, Nevada, with intent to commit larceny.

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

[Signature]
01/28/19

19F01534X
CRM
Criminal Complaint
10463973



19F01534X/cb
LVMPD EV# 190100120467
(TK14)

EXHIBIT(S) LIST

Case No.: ~~C294640~~ C315718

Hearing / Trial Date: ~~8/23/2018~~

Dept. No.: 19

Judge: William Kephart

Court Clerk: Tia Everett /Shannon Emmons

Plaintiff: The State of Nevada

Recorder / Reporter: Christine Erickson

Counsel for Plaintiff:	Michael Dickerson & William Roles
-------------------------------	--

VS.

Defendant: James Howard Hayes

Counsel for Defendant: Michael Sanft

HEARING / TRIAL BEFORE THE COURT

STATE'S EXHIBITS

[illegible]

Rev. 03/2016

APP334



CASE No. 1083785
INCIDENT NO./TRN: 903747201X-A001

THE STATE OF TEXAS

v.

JAMES HAYES

STATE ID No.:TX04418157

§ IN THE 185TH DISTRICT
§ COURT
§
§ HARRIS COUNTY, TEXAS
§
§

12

JUDGMENT OF CONVICTION BY JURY

Judge Presiding: HON. SUSAN BROWN

Date Judgment Entered: 3/2/2007

Attorney for State: K. TAYLOR

Attorney for Defendant: A. LANNIE

Offense for which Defendant Convicted:
CREDIT/DEBIT CARD ABUSE

Charging Instrument:
INDICTMENT

Statute for Offense:
N/A

Date of Offense:
9/7/2006

Degree of Offense:
STATE JAIL FELONY

Plea to Offense:
NOT GUILTY

Verdict of Jury:
GUILTY

Findings on Deadly Weapon:
N/A

Plea to 1st Enhancement Paragraph: **N/A**

Plea to 2nd Enhancement/Habitual Paragraph: **N/A**

Findings on 1st Enhancement Paragraph: **N/A**

Findings on 2nd Enhancement/Habitual Paragraph: **N/A**

Punished Assessed by:
JURY

Date Sentence Imposed:
3/2/2007

Date Sentence to Commence:
3/2/2007

Punishment and Place of Confinement: **2 YEARS STATE JAIL DIVISION, TDCJ**

THIS SENTENCE SHALL RUN CONCURRENTLY.

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A .

Fine:
\$ 10,000.00

Court Costs:
\$ 271.40

Restitution:
\$ N/A

Restitution Payable to:

☐ VICTIM (see below) ☐ AGENCY/AGENT (see below)

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was **N/A** .

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

From 9/8/2006 to 9/9/2006 From 2/14/2007 to 3/2/2007 From to

Time Credited:

From to From to From to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A DAYS NOTES: N/A

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in Harris County, Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

☒ Defendant appeared in person with Counsel.

☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and ORDERED it entered upon the minutes of the Court.

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

Hayes
1083785

Punishment Assessed by Jury / No election (select one)

- ☒ **Jury.** Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.
- ☐ **Court.** Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.
- ☐ **No Election.** Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court **FINDS** Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court **FINDS** the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

- ☒ **Confinement in State Jail or Institutional Division.** The Court **ORDERS** the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the **Director, State Jail Division, TDCJ**. The Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the **Harris County District Clerk's office**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.
- ☐ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant immediately committed to the custody of the **Sheriff of Harris County, Texas** on the date the sentence is to commence. Defendant shall be confined in the **Harris County Jail** for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the **Harris County District Clerk's office**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.
- ☐ **Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY**. The Court **ORDERS** Defendant to proceed immediately to the **Office of the Harris County**. Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

- ☒ The Court **ORDERS** Defendant's sentence **EXECUTED**.
- ☐ The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

Furthermore, the following special findings or orders apply:

Signed and entered on March 2, 2007

X *S. Brown*
HON. SUSAN BROWN
JUDGE PRESIDING

Ntc Appeal Filed: MAR 02 2007 Mandate Rec'd: 4/29/08 Affirmance

After Mandate Received, Sentence to Begin Date is: 3/2/2007

Def. Received on 03/02/07 at 1155 (AM) PM

By: G. Blakely #1630, Deputy Sheriff of Harris County

Clerk: chaves / 4/19/09 SW
LCBT-CA

Jail Credit Remains the Same.



Right Thumbprint





I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office
this February 22, 2019

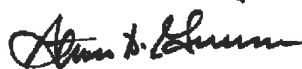
Certified Document Number: 40486771 Total Pages: 2

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com



APP338



CLERK OF THE COURT

JOC

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES HOWARD HAYES, JR.
#2796708

Defendant.

CASE NO. C315125-1

DEPT. NO. XX

JUDGMENT OF CONVICTION
(JURY TRIAL)

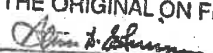
The Defendant previously entered a plea of not guilty to the crime of BURGLARY (Category B Felony) in violation of NRS 205.060; and the matter having been tried before a jury and the Defendant having been found guilty of the crime of BURGLARY (Category B Felony) in violation of NRS 205.060; thereafter, on the 23rd day of February, 2017, the Defendant was present in court for sentencing with counsel TYLER GASTON, Deputy Public Defender, and good cause appearing,

1 THE DEFENDANT IS HEREBY ADJUDGED guilty of said crime as set forth in
2 the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee plus
3 \$3.00 DNA Collection Fee, the Defendant is SENTENCED as follows: a MAXIMUM of
4 SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of TWENTY-ONE (21)
5 MONTHS in the Nevada Department of Corrections (NDC), with FIFTY-FIVE (55) DAYS
6 MONTHS in the Nevada Department of Corrections (NDC), with FIFTY-FIVE (55) DAYS
7 credit for time served. As the \$150.00 DNA Analysis Fee and Genetic Testing have
8 been previously imposed, the Fee and Testing in the current case are WAIVED.

9 DATED this 6th day of March, 2017

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14 ERIC JOHNSON
15 DISTRICT COURT JUDGE
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25 CERTIFIED COPY
26 DOCUMENT ATTACHED IS A
27 TRUE AND CORRECT COPY
28 OF THE ORIGINAL ON FILE

CLERK OF THE COURT

MAR 06 2019



ORIGINAL

FILED

FEB 16 2012

John J. Schuman
CLERK OF COURT

1 **AJOC**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **200 Lewis Avenue**
6 **Las Vegas, Nevada 89155-2212**
7 **(702) 671-2500**
8 **Attorney for Plaintiff**

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

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

10 **-vs-**

11 **JAMES HOWARD HAYES, JR.,**
12 **#2796708**

13 **Defendant.**

Case No: C270308-1

Dept No: XX

C-11-270308-1
AJOC
Amended Judgment of Conviction
1772473



14 **AMENDED JUDGMENT OF CONVICTION**
15 **(PLEA OF GUILTY)**

16 The Defendant previously appeared before the Court with counsel and entered a plea
17 of guilty to the crime(s) of ATTEMPT POSSESSION OF CREDIT OR DEBIT CARD
18 WITHOUT CARDHOLDER'S CONSENT (Category E Felony/Gross Misdemeanor), in
19 violation of NRS 193.330, 205.690; thereafter, on the 23rd day of August, 2011, the
20 Defendant was present in court for sentencing with his counsel, DIANE DICKSON, Deputy
21 Public Defender, and good cause appearing,

22 THE DEFENDANT IS HEREBY ADJUDGED guilty of said Felony offense(s) and,
23 in addition to the \$25.00 Administrative Assessment Fee and a \$150.00 DNA Analysis fee
24 including submission to testing to determine genetic markers, the Defendant is sentenced as
25 follows: to a MINIMUM of NINETEEN (19) MONTHS and a MAXIMUM of FORTY-
26 EIGHT (48) MONTHS in the Nevada Department of Corrections (NDC); SUSPENDED;

27 ///

28 **RECEIVED**

FEB 07 2012

CLERK OF THE COURT

RECEIVED

FEB 13 2012

DEPT. 20

PAWPDOCSJUDG023\02392302.doc

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APP342

1 placed on PROBATION for an indeterminate period not to exceed FIVE (5) YEARS.

2 CONDITIONS:

3 1. Abide by any curfew imposed by probation officer.

4 2. No contact whatsoever with the named victim in this case.

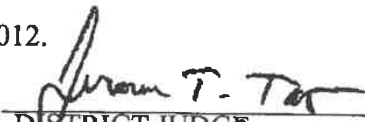
5 3. Enter and complete any evaluations and/or counseling deemed necessary.

6 4. Search: person, residence, vehicle, and/or any area in his possession, custody, and/or
7 control for any controlled substances, contraband, and/or financial information specifically
8 credit cards and/or property belonging to other people.

9 5. Complete 16 hours of community service work each month during the term of probation,
10 unless employed full time.


11 THEREAFTER, on the 19th day of January, 2012, the Defendant being present in
12 court with his counsel, DIANNE DICKSON, Deputy Public Defender, and pursuant to
13 request, COURT ORDERED, PROBATION REINSTATED with the ADDED
14 CONDITION of THIRTY (30) DAYS FLAT TIME from TUESDAY January 17, 2012, in
15 the Clark County Detention Center (CCDC). FURTHER, upon release, Defendant shall
16 receive a DISHONORABLE DISCHARGE.

17 DATED this 14th day of February, 2012.

18 
19 DISTRICT JUDGE

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24 DEC 07 2016

25 CERTIFIED COPY
26 DOCUMENT ATTACHED IS A
27 TRUE AND CORRECT COPY
28 OF THE ORIGINAL ON FILE


CLERK OF THE COURT

10F23923X: ckb





CASE No. 1083786
INCIDENT NO./TRN: 903747201X-A002

THE STATE OF TEXAS

V.

JAMES HAYES

STATE ID No.:TX04418157

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IN THE 185TH DISTRICT

COURT

HARRIS COUNTY, TEXAS

p2

JUDGMENT OF CONVICTION BY JURY

Judge Presiding:	HON. SUSAN BROWN	Date Judgment Entered:	3/2/2007
Attorney for State:	K. TAYLOR	Attorney for Defendant:	A. LANNIE
<u>Offense for which Defendant Convicted:</u>			
FRAUDULENT USE/POSSESSION OF IDENTIFYING INFORMATION			
<u>Charging Instrument:</u>		<u>Statute for Offense:</u>	
INDICTMENT		N/A	
<u>Date of Offense:</u>			
9/7/2006			
<u>Degree of Offense:</u>		<u>Plea to Offense:</u>	
STATE JAIL FELONY		NOT GUILTY	
<u>Verdict of Jury:</u>		<u>Findings on Deadly Weapon:</u>	
GUILTY		N/A	
Plea to 1 st Enhancement Paragraph:	N/A	Plea to 2 nd Enhancement/Habitual Paragraph:	N/A
Findings on 1 st Enhancement Paragraph:	N/A	Findings on 2 nd Enhancement/Habitual Paragraph:	N/A
<u>Punished Assessed by:</u>	<u>Date Sentence Imposed:</u>	<u>Date Sentence to Commence:</u>	
JURY	3/2/2007	3/2/2007	
<u>Punishment and Place of Confinement:</u>			
2 YEARS STATE JAIL DIVISION, TDCJ			

THIS SENTENCE SHALL RUN CONCURRENTLY.

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A .

<u>Fine:</u>	<u>Court Costs:</u>	<u>Restitution:</u>	<u>Restitution Payable to:</u>
\$ 10,000.00	\$271.20	\$ N/A	<input type="checkbox"/> VICTIM (see below) <input type="checkbox"/> AGENCY/AGENT (see below)

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was N/A .

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

From 9/8/2006 to 9/9/2006	From 2/14/2007 to 3/2/2007	From to
From to	From to	From to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A DAYS NOTES: N/A

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in Harris County, Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

☒ Defendant appeared in person with Counsel.

☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and ORDERED it entered upon the minutes of the Court.

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

Hayes
1083786

Punishment Assessed by Jury / Court / No election (select one)

- ☒ **Jury.** Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.
- ☐ **Court.** Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.
- ☐ **No Election.** Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court FINDS Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court FINDS the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

- ☒ **Confinement in State Jail or Institutional Division.** The Court **ORDERS** the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the **Director, State Jail Division, TDCJ**. The Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the **Harris County District Clerk's office**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.
- ☐ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant immediately committed to the custody of the Sheriff of Harris County, Texas on the date the sentence is to commence. Defendant shall be confined in the **Harris County Jail** for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the **Harris County District Clerk's office**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.
- ☐ **Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY**. The Court **ORDERS** Defendant to proceed immediately to the **Office of the Harris County**. Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

- ☒ The Court **ORDERS** Defendant's sentence **EXECUTED**.
- ☐ The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

Furthermore, the following special findings or orders apply:

Signed and entered on March 2, 2007

X *S. Brown*
HON. SUSAN BROWN
JUDGE PRESIDING

Ntc Appeal Filed: MAR 02 2007 Mandate Rec'd: _____

After Mandate Received, Sentence to Begin Date is: _____

Def. Received on 03/02/07 at 1155 AM PM
By: G. Blahuta #1630 Deputy Sheriff of Harris County

Clerk: chaves 4/1/99 SW
LCBT=CH



Right Thumbprint



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office
this February 22, 2019

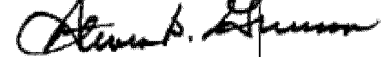
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Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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APP348



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

JAMES HOWARD HAYES,

Defendant.

CASE NO. C-16-315718-1

DEPT. XIX

BEFORE THE HONORABLE WILLIAM D. KEPHART,
DISTRICT COURT JUDGE

WEDNESDAY, MARCH 06, 2019

**TRANSCRIPT OF HEARING
SENTENCING**

APPEARANCES:

For the State:

MICHAEL DICKERSON, ESQ.
WILLIAM ROWLES, ESQ.
Deputy District Attorneys

For the Defendant:

MICHAEL W. SANFT, ESQ.

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

TRANSCRIBED BY: MANGELSON TRANSCRIBING

1 Las Vegas, Nevada, Wednesday, March 06, 2019

2

3 [Case called at 9:52 a.m.]

4 THE COURT: State of Nevada versus James Howard
5 Hayes. This is C315718.

6 MR. SANFT: I apologize, Your Honor. We're waiting for
7 Mr. Dickerson on that particular case. It's a -- it's his case, so --

8 UNIDENTIFIED SPEAKER: Well --

9 MR. SANFT: -- I'm going to go find him.

10 UNIDENTIFIED SPEAKER: -- it is -- according to this is his
11 case, but Court's indulgence.

12 [Colloquy between Counsel]

13 UNIDENTIFIED SPEAKER: Yeah, we're going to need Mr.
14 Dickerson.

15 THE COURT: All right.

16 UNIDENTIFIED SPEAKER: I'm going to text him right now.

17 THE COURT: Okay. All right.

18 MR. SANFT: And Mr. Dickerson, just for the Court's
19 edification, is in Doug Smith's courtroom right now so I'm going to
20 go downstairs and --

21 THE COURT: All right. Thanks, Mike.

22 [Matter trailed at 9:53 a.m.]

23 [Matter recalled at 10:32 a.m.]

24 THE COURT: State of Nevada versus James Hayes. It's
25 C315718.

1 MR. DICKERSON: Good morning, Your Honor. Mike
2 Dickerson and William Rowles on behalf of the State.

3 MR. SANFT: Good morning, Your Honor. Michael Sanft
4 on behalf of Mr. Hayes, who's present and in custody.

5 THE COURT: All right. This time is set for sentencing.
6 Mr. Hayes, did you receive a copy of the Pre-Sentence
7 Investigation Report dated December 18th, 2018?

8 THE DEFENDANT: Yes, I'm read -- on it now, sir.

9 THE COURT: Okay. Do you need some more time to read
10 that?

11 THE DEFENDANT: No, I'm fine.

12 THE COURT: All right. Is there anything in the report that
13 you think's incorrect?

14 THE DEFENDANT: Yes.

15 THE COURT: And what is that?

16 THE DEFENDANT: They have crimes on here that
17 occurred after the date of this crime from 2013; that was the date of
18 this crime. They have 2016 crimes. And then the crimes in Texas,
19 they don't -- they have them here as a felony, but they don't carry
20 any prison time, mandatory supervision, nor parole. They're in
21 Texas, what they call a state jail crime which is what you have here
22 as a gross misdemeanor, where it doesn't carry any prison time,
23 mandatory supervision, not parole.

24 THE COURT: Okay. So you're saying convicted of
25 fraudulent use or possession of identifying information in Texas is a

1 gross misdemeanor?

2 THE DEFENDANT: Is a state jail crime --

3 THE COURT: So -- but it's not --

4 THE DEFENDANT: -- where it doesn't carry any --

5 THE COURT: Not a felony.

6 THE DEFENDANT: No, it doesn't carry any prison time.

7 THE COURT: So you go -- because you go to jail for two

8 years, you understand anything over a year is considered a felony --

9 THE DEFENDANT: Yeah, but it was --

10 THE COURT: -- because the United States Supreme Court

11 has said that. Any --

12 THE DEFENDANT: Yeah, but it was two cases; they both

13 was a year a piece. It was the credit card --

14 THE COURT: I see one count.

15 THE DEFENDANT: The credit card abuse and the

16 fraudulent use or possession was one case.

17 THE COURT: Okay. So you got two years for one count

18 and two years for the second count. Two different case numbers,

19 1083785 and 1083786. Two different cases it says.

20 THE DEFENDANT: Yeah, I went to trial on it, and it was

21 just one conviction.

22 THE COURT: Okay. Well what I have in front of me is

23 three judgment of convictions. I have a judgment of conviction

24 from the case that's in Harris County, Texas, in Case Number

25 1083786. And the -- it went to jury trial.

1 MR. DICKERSON: I've got this one too.

2 THE COURT: And --

3 MR. DICKERSON: I also have one more, Your Honor. I
4 apologize.

5 THE COURT: For fraudulent use or possession of
6 identifying information.

7 I have another one from February 16th, 2012, it's C270308
8 and it is a charge of attempt possession of credit or debit card
9 without owner's consent; felony conviction here in the state of
10 Nevada.

11 Another conviction in the state of Nevada for March 13th,
12 2017, in C315125 for burglary.

13 THE DEFENDANT: And that was after the date of this
14 crime, Your Honor.

15 THE COURT: Yeah. No, I see that. Let's see when the
16 crime was committed though. Let's see. Okay.

17 And then I have the other one is 1087 -- that's the same
18 thing. You handed me two of the same thing.

19 MR. DICKERSON: One has -- they have different charges
20 on them I believe, Your Honor.

21 THE COURT: No. No, it says fraudulent use or possession
22 of identifying information.

23 MR. DICKERSON: Oh, sorry. I got the credit card --

24 THE COURT: The other charge is --

25 MR. DICKERSON: -- abuse one here for you.

1 THE COURT: -- convicted of credit -- I mean, is credit card
2 abuse is what the other one is.

3 Okay. The other one is 1083785. It's a felony conviction
4 out of the state of Texas for credit or debit card abuse. So three of
5 them that they provided, it's Exhibits 1, 2, and 4 are all convictions
6 that happened prior to this pointed event. And then the fourth one
7 they provided me is a conviction that happened March 13th, 2017,
8 for a 2016 event; correct?

9 MR. DICKERSON: Correct, Your Honor.

10 THE COURT: All right. So I'll file those.

11 Okay. So anything else -- Mr. Hayes, anything else with
12 regards to the Pre-Sentence Investigation Report?

13 THE DEFENDANT: No, not at this time. No.

14 THE COURT: Okay. According to the agreement that you
15 entered into is that the State will be making no recommendation at
16 time of sentencing. Is that still the State's position?

17 MR. DICKERSON: It's not, Your Honor. We're -- we've
18 regained the right to argue given that the Defendant in this
19 particular case was released on this case after his plea. He ended
20 up picking up new charges, a new door-push burglary. He was
21 found over in -- by the Justice Court on the charge of burglary and
22 unlawful possession of a hotel room key. That is an offense from
23 January of -- January 26th, 2019, Your Honor. Based upon his
24 failure to stay out of trouble, we've regained the right to argue.

25 THE COURT: All right. So I'll hear from the State and

1 then I'll hear from you and your attorney, okay?

2 THE DEFENDANT: No problem.

3 THE COURT: Go ahead.

4 MR. DICKERSON: The Defendant was given a substantial
5 benefit in this case. The negotiation to take the charge that we
6 allowed him to plea to, the attempt, and basically have the
7 opportunity to end his prison time, end his parole, and end this
8 case and start life anew, but this particular Defendant can't do that.
9 It's because he is a habitual criminal; to the tee, he is a habitual
10 criminal.

11 This is an individual who came to the state of Nevada
12 some time after 2006. We first have him here as early as 2010,
13 committing felony crimes. When he was here in 2010, he went to
14 the Cosmopolitan Hotel. Ultimately this is his first felony conviction
15 here in the state of Nevada for attempt possession of credit debit
16 card without the cardholder's consent. There he gets caught
17 stealing a woman's purse in the casino of the Cosmopolitan Hotel.

18 Ultimately, when police come in contact with him, they
19 find that he has this bag in his possession. Inside that bag were
20 high-powered cameras, Nintendo DS and games, all kinds of things
21 that the Defendant said he was holding for his nephews. Well, just
22 a little bit further investigation revealed that that was actually --
23 those were all items that were stolen from a room that same day in
24 the Cosmopolitan Hotel.

25 So in 2010, he's committing door-push burglaries at the

1 Cosmopolitan Hotel. Ultimately, he's convicted of a felony for the
2 attempt possession of credit card or debit card without cardholder's
3 consent in that case.

4 Then we move forward, and we have that 2011 conviction
5 here. This is a conviction stemming from the Defendant going into
6 a convenience store and stealing a tip jar from the employees there.
7 So his theft crimes continue.

8 And on into this case where we have a 2013 Excalibur
9 Hotel, victims are asleep in their room and the Defendant yet again
10 is doing a door-push burglary. He goes in, in the early morning
11 hours. We have our primary victim who makes contact with the
12 Defendant is sleeping in one bed, there's a female sleeping in the
13 other bed. As the Defendant is in there, he starts rummaging
14 through their luggage, which ultimately the victims found that
15 property was missing, specifically money.

16 But unbeknownst to the Defendant, he had just entered
17 the room of an individual who is a member of the military and part
18 of the Special Forces. That's when that individual grabbed the
19 Defendant, sat him down on the bed, pulled out his wallet with his
20 ID, took a picture of the Defendant and his ID and then let him go.
21 An arrest warrant issues for the Defendant based upon that case
22 and he's picked up on that warrant in 2016, when he's found at the
23 Harrah's Hotel in a door-push burglary again.

24 In 2016, the Harrah's Hotel security was doing an integrity
25 operation for their rooms where they had set up cameras in the

1 hallway and the rooms and they basically set up what would
2 amount to a bait room because this is a prevailing problem on the
3 Strip. Individuals like the Defendant going around pushing on
4 doors, going in and stealing all kinds of things from the guests at
5 these hotels. Well, turns out there, Defendant goes into the room
6 and begins stealing things.

7 This case -- that case went to trial. Defendant testified at
8 that trial. He testified to a ridiculous story that the jury did not buy,
9 and he was ultimately convicted. He was convicted of burglary
10 there, he was sentenced to a significant amount of jail time or
11 prison time for that, 21 to 72 months. He's currently on parole for
12 that. And so it was him being on parole, then taking the
13 negotiations in this case and being out of custody.

14 He did have the opportunity to start everything new, but
15 he couldn't do that because ultimately January 26th, 2019, there he
16 goes again, another door-push burglary. This time he's at the
17 Mirage Hotel, walks into a man's room, also in the early morning
18 hours. That individual wakes up, sees the Defendant, the Defendant
19 backs out of the room, says I'm sorry, goes down in to the lobby.

20 Once security makes contact with the Defendant, the
21 Defendant gives a ridiculous story once again about how he's
22 meeting some friend down there. They take him out -- he said he's
23 meeting a friend in the valet. They take him out to the valet, there's
24 no friend in the valet, they do a search of him, they find the room
25 key on him, the Defendant has never been a guest of the Mirage

1 Hotel and he wasn't currently a guest at the Mirage Hotel.

2 It's just a pattern and practice of this particular habitual
3 criminal that this is what he does. He victimizes the tourists that
4 come to our city. He victimizes the lifeblood of this city by going
5 down to the Strip and committing door-push burglaries. We can
6 only speculate as to how many he's done and hasn't gotten caught
7 for. But taking a look at his criminal history for what he's been
8 convicted of makes it clear that he is a career thief.

9 We've provided to you the judgments of conviction, four
10 of them to be exact. I know that he is objecting to the burglary
11 conviction from 2016 because he was convicted of that after the
12 crime in this case had occurred. I don't think any of that matters
13 because what we are asking for today is the maximum under the
14 small habitual sentencing; 8 to 20, to run consecutive to the time
15 that he's going to be serving once his parole is revoked on C315125.

16 So we're asking for 8 to 20 years. This is an individual
17 who, even given the opportunity to get his life on track, won't do it
18 because he is in fact the definition of a habitual criminal and a
19 career thief. So for that reason, Your Honor, we ask that you
20 sentence him under the small habitual, 8 to 20 years.

21 THE COURT: All right. Thank you.

22 All right. Mr. Hayes, did you want to address the Court --

23 THE DEFENDANT: Yes, sir.

24 THE COURT: -- before I impose sentence here? Okay.

25 THE DEFENDANT: I understand the State's position but

1 the crime that they are using to open this door, the victim took the
2 stand under oath, under the penalty of perjury --

3 THE COURT: You didn't mean to say that as a pun, did
4 you? The crime they're using to open this door?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay.

7 THE DEFENDANT: They're -- allowing them to argue
8 against the stipulated agreement.

9 THE COURT: Okay.

10 THE DEFENDANT: That victim got on the stand under
11 oath, testified 100 percent that I was not the perpetrator of that
12 crime.

13 THE COURT: Okay.

14 THE DEFENDANT: And that's what I'll -- I'll submit on
15 that. My attorney can go from there.

16 THE COURT: Mr. Sanft, do you have anything you want to
17 say about the sentence here?

18 MR. SANFT: Well, I think what Mr. Hayes is trying to tell
19 the Court is that we did a preliminary hearing in this case. The
20 victim did identify somebody else in the courtroom as the person
21 that walked into his room. My client has been adamant that he had
22 permission to be at the Mirage, that he was one of the other people
23 that were doing a promotion, and the promoter that he was
24 working for at the time had five rooms at the Mirage.

25 The testimony at the time of the preliminary hearing from

1 the Mirage security was they never verified the room key. They
2 didn't verify if the room key went to a room, they didn't verify
3 which room it was and whether or not Mr. Hayes had permission to
4 be at the Mirage. So we have issues with regards to trial in this
5 matter that I think I'm going to be able to explore.

6 THE COURT: It was bound over?

7 MR. SANFT: It was bound up, yeah.

8 THE COURT: The Court found that there was sufficient
9 evidence to hold him?

10 MR. SANFT: That is correct, Your Honor.

11 THE COURT: Okay.

12 MR. SANFT: And the reason for that is because the victim
13 in this case, even though he ID'd someone else, described clothing
14 that was worn by the person that came into his room that was
15 consistent with what Mr. Hayes was wearing at the time that he was
16 detained by security from the Mirage.

17 THE COURT: Okay.

18 MR. SANFT: But once again, my bigger problem is it's not
19 like he was wearing something that was unique that, you know,
20 was something that no one else could have been wearing on that
21 particular night.

22 And in addition to that, like I said, the main issue that we
23 have here is even the victim testified that once the door was open
24 and Mr. Hayes realized he was in the wrong place, he apologized to
25 the person that was on the bed and he pulled out of the room. That

1 could have happened, and I think we have issues with that for trial.

2 The problem is -- in this case is, is that, you know, he has
3 a criminal history, he had a wonderful negotiation. The negotiation
4 was he comes back today, he'd get the gross misdemeanor with
5 credit for time served. Obviously, I think Mr. Hayes is a lot more
6 smarter and he would have known that hey, you can't commit a
7 new crime while he's awaiting sentencing.

8 And as a result of that, we're asking the Court to do one of
9 two things. Either sentence him, but not to the habitual. So I don't
10 know what the -- I guess it would be a felony in this case with
11 whatever the range is in this case. Or in the alternative, stay the
12 sentence until such time as we go to trial in the other case.

13 THE COURT: Yeah, but Mike, if I do that then it
14 completely strikes the guilty plea agreement in light of the fact that
15 he entered into an agreement that says that if an independent
16 magistrate by affidavit review, confirms probable cause against me
17 for new charges, including reckless driving, first of all that's
18 happened.

19 MR. SANFT: Yes.

20 THE COURT: Second of all, the independent magistrate
21 has reviewed a preliminary hearing and has made a finding that
22 there was sufficient evidence to hold him for trial.

23 MR. SANFT: That is correct.

24 THE COURT: If it would have said I don't violate this
25 unless I'm found guilty of new charges, then I would agree with

1 you.

2 MR. SANFT: Well, it --

3 THE COURT: I would agree with you completely. But the
4 problem is, and you know, as well as I do, that -- and first of all, I
5 have concerns about the fact that he's there, concerns about the
6 misrepresentations that he made out -- truly if he's there for
7 purposes of waiting for somebody at the valet and they can't find
8 anybody to do that then there's questions about that.

9 MR. SANFT: Sure.

10 THE COURT: And then your -- and then it -- lo and behold,
11 the one person that we know based on his priors has been door-
12 pushing, doing that in the casinos, just happens to be partially even
13 identified maybe, if I even give you that much --

14 MR. SANFT: Sure.

15 THE COURT: -- as a person that was in another person's
16 room in the middle of the morning.

17 MR. SANFT: Well here --

18 THE COURT: So --

19 MR. SANFT: Again --

20 THE COURT: -- that there alone -- I mean, and if the Court
21 accepts and allows this other bad acts to come in on that, that may
22 be something that -- that may be enough to push it over, I don't
23 know.

24 MR. SANFT: Well --

25 MR. ROWLES: Judge, if I just could correct a quick factual

1 thing. It's not like the witness never identified the Defendant.

2 There was a show-up done at the time of the arrest.

3 THE COURT: Okay.

4 MR. ROWLES: He identified him at the show-up. It wasn't
5 just a situation in which they said he was wearing --

6 THE COURT: Okay.

7 MR. ROWLES: -- a white jacket, they arrested the guy with
8 the white jacket. They detained him, the victim said, that's him. It's
9 not unusual for someone who's only seen --

10 THE COURT: Yeah.

11 MR. ROWLES: -- an individual for a couple of seconds to
12 not identify in court but a show-up was done --

13 THE COURT: Okay.

14 MR. ROWLES: -- so this isn't a mis --

15 THE COURT: Yeah, see that's --

16 MR. ROWLES: -- [unintelligible].

17 THE COURT: That's way different.

18 MR. SANFT: Here's the thing though --

19 MR. DICKERSON: That show-up form --

20 MR. SANFT: -- this --

21 MR. DICKERSON: -- though was attached to the State's
22 Motion to Revoke Bail, so the Court has that, Defense has had that.
23 Specifically in there, the Defendant is identifying -- Mr. Hayes says I
24 was asked to identify a suspect, he appeared to be the man that
25 entered my room at approximately 2:00 a.m. He was also wearing

1 the same white jacket I saw. I am approximately 80 percent sure
2 that that is the same person.

3 THE COURT: Okay. So a jury may accept that as 80
4 percent and when -- encoupled with other circumstances, you
5 know, but that's not the issue now.

6 MR. SANFT: I know. And I understand the Court's
7 position with regards to like obviously he's already passed the
8 probable cause issue on his other case.

9 THE COURT: Uh-huh.

10 MR. SANFT: I'm just saying that this is kind of a unique
11 situation for this Court because from what I understand that new
12 case tracks up to this department. So the Court has -- this Court has
13 an opportunity to hear the evidence as it will be presented in front
14 of this jury and make a determination at that point based upon what
15 the testimony will be, not necessarily about what the
16 representations are at this particular point or what we believe the
17 evidence will show. And I think that puts you in a whole completely
18 different spot compared to it going up to some other department.

19 THE COURT: Yeah, but Mike, you know as well as I do
20 that there's a number of individuals -- and you hear this all the time
21 about individuals that are wrongfully convicted. They don't ever
22 talk about individuals that are found not guilty because the State
23 didn't reach their burden of probable -- I mean, reach their burden
24 of beyond a reasonable doubt.

25 MR. SANFT: Right.

1 THE COURT: But knowing full well -- I mean, even with
2 individuals that confesses to it -- we've had those type of cases
3 where the jury's found them not guilty but that's by the standard of
4 beyond a reasonable doubt. That's not the fact to say that they
5 didn't do it, but by the -- in the eyes of the law they didn't do it, but
6 not in the eyes of maybe the creator, if we want to look at it that
7 way.

8 MR. SANFT: Right.

9 THE COURT: And that's not what I'm dealing with here.
10 I'm dealing with an individual that is -- what I have here is enough
11 information based on what's been presented here to give the State
12 the opportunity to make the argument.

13 MR. SANFT: Fair.

14 THE COURT: And he's challenged that. He's challenged
15 that himself. He's smart enough to know about this. He's a smart
16 individual and probably that's why he's gotten himself in so much
17 trouble is that he's too smart for himself.

18 MR. SANFT: Sure.

19 THE COURT: And those are the individuals that I have
20 concern about.

21 MR. SANFT: Well and once again, I agree there's a
22 difference between an acquittal and innocence, right? There's a --

23 THE COURT: Right.

24 MR. SANFT: -- a huge difference. And it goes to the issue
25 of the standard beyond a reasonable doubt.

1 THE COURT: Right.

2 MR. SANFT: Now with that being said, I'm not going to
3 deliberate on this anymore. If the Court is inclined to go ahead and
4 put forward sentencing today --

5 THE COURT: Yeah, that's what we're doing.

6 MR. SANFT: Okay. Then at this point what I'm asking for
7 is not the habitual in this case.

8 THE COURT: Okay.

9 MR. SANFT: And if the Court is inclined to file the
10 habitual then what I'm asking for is the minimum sentence under
11 the habitual which is either 5 to 12 and a half. However, what I'm
12 asking for is a sentence just to have him find -- be found guilty on
13 the felony and I think would be -- the maximum on that case would
14 be a 19 to 48. That's what I'm asking for in this case.

15 THE COURT: Okay, I got you.

16 All right. Mr. Hayes, I do believe that the State has
17 satisfied any obligations statutorily under 207.010 to support their
18 claim for habitual treatment. I am going to adjudicate you guilty in
19 this matter based on your plea of November 7th, 2018, and you are
20 going to be treated as a -- under the small habitual 207.010(a). I'm
21 sentencing in addition to a \$25 administrative assessment, I'm
22 going to waive the genetic testing that was previously ordered and
23 I'm going to order an \$3 DNA administrative assessment fee.

24 You're sentenced here today to 60 months minimum, 174
25 months maximum. And that will run consecutive to C315125, and

1 you'll receive -- they say ten days credit, that'd be -- how, if he was
2 on parole? So I'll give him ten days credit.

3 MR. SANFT: And Your Honor, if I recalculate this and
4 come up with another number, we'll put it back on calendar.

5 THE COURT: Okay. That's fine.

6 MR. DICKERSON: Thank you, Your Honor.

7 THE COURT: All right. Thank you.

8 [Hearing concluded at 10:53 a.m.]

9 * * * * *

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

23

24

25



Brittany Mangelson
Independent Transcriber

1 NOAS

2 Name: Hayes, James H # 1175077

3 Address: P.O. Box 650

4 City/State/Zip: Indian Springs, NV 89070

5 Phone: 323 471 7514

FILED

MAR 28 2019

Alma L. Williams
CLERK OF COURT

6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
7 STATE OF NEVADA IN
8 AND FOR THE COUNTY OF CLARK

9 State of Nevada

10 Plaintiff,

11 v.

CASE NO. C-16-315718-1

DEPT. NO. XIX

12 James H Hayes # 2796908

13 Defendant.

14 NOTICE OF APPEAL

15 Notice is hereby given that James H Hayes, Defendant above-named,
16 hereby appeals to the Supreme Court of Nevada from Final Judgment for
17 conviction of Attempt Grand Larceny NRS 205.222.2
18

19 entered in this action on the 20th day of March, 2019.
20 6th March

21 DATED this 20th day of March, 2019.

22 *James H Hayes*
23 Defendant's Signature

C-16-315718-1
NOASC
Notice of Appeal (criminal)
4829176



24 NOTE: list either the Final Judgment or an Order (describe it) on the lines above.

25 MAR 28 2019

26 ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

PAGE 1 of 4

APP368

5

Now comes the appellant, James H. Hayes, respectfully moves this Honorable court, pursuant to the United States Const and the Nevada Const. to overrule and dismiss the judgement entered against him in the above captioned case.

WHEREAS, the state violated the United States Const. 5th, 6th, 8th and 14th amendments in the judgement of conviction for attempt grand larceny by subjecting appellant to double jeopardy through prosecution or punishment twice for the same offense. WHERE the state at preliminary hearing prosecuted appellant by the way of Criminal Complaint for the crimes of burglary and attempt grand larceny and at the conclusion of the hearing only the charge of burglary was bound over to district court leaving the charge of attempt grand larceny dismissed for no corpus delicti, slight or marginal evidence to proceed to district court for the first time appellant was put in jeopardy the second time appellant was subjected to jeopardy was when the burglary charge was dismissed in District court and the state proceeded by charging and convicting appellant for the crime of attempt grand larceny. Which is clearly being prosecuted or punish twice for the same offense.

WHEREAS, the state violated the United States Const. 8th amendment by adjudicating the appellant as a habitual

criminal that easily "shock the conscience" as being disproportionate to the crime convicted attempt grand larceny which is a clear miscarriage of justice.

Whereas, appellant's criminal history at the time and date of the ispe dit event was credit card abuse and fraudulent use/pass of identifying information that is a state jail crime in Texas that does not carry a prison sentence, mandatory supervision, nor parole and is not a category A, B, C, D, or E felony it's a state jail crime that carries only jail time equivalent to what Nevada ~~is~~ ^{was} a gross misdemeanor that appellant was convicted of in September 2006. In December 2010 appellant was convicted of a category E felony (attempt pass of credit or debit card without cardholders consent) here in Nevada and received a dishonorable discharge in February 2012.

Whereas, the state violated United States Const. amendments 6 and 14 where the state breached the Guilty Plea Agreement on impeachable and highly suspect evidence that allegedly took place January 2019 that greatly prejudice the appellant, whereby, the victim testified at preliminary hearing under oath facing the penalty of perjury that the appellant was not the perpetrator who committed the alleged event and 100% sure not 80%. So there was NO corpus delicti

or slight or marginal evidence leaving no causation for the state to breach the terms and spirit of agreement that does not serve the interests of justice. In addition, the sentencing Judge Kaptert considered a conviction that took place after the time and date that the adjudicated crime occurred namely a burglary conviction that took place in April 2016 to the extreme detriment of appellant.

WHEREAS, appellant never violated a provision of a statute that would have allowed the district court to not stand by the sentence agreed upon by the parties set forth in the guilty plea agreement. Furthermore, the appellant was never given notice that the district court would seek habitual treatment if appellant violated a provision of a statute making this an illegal sentence. Finally, the 2013 conviction can not be consecutive to the 2016 conviction due to the fact that the appellant made parole in October 2018 on the 2016 conviction and released from custody and not cell parole.

Dated this 20th day of March, 2019. I James H Hayes, do solemnly swear, under the penalty of perjury, that the above Notice of Appeal is accurate, correct, and true to the best of my knowledge. NRS. 171.02 and NRS 208.165

Respectfully submitted

James H Hayes #1175077
appellant

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P.O. Box 6508
Indian Springs, NV
89070

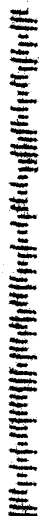
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Supreme Court of the State of Nevada
Attn: "Clerk of the Court"

Capital Complex
Carson City, Nevada

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**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

JAMES HOWARD HAYES, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 78590
District Court Case No. C315718

NOTICE TO REQUEST ROUGH DRAFT TRANSCRIPTS

TO: Sanft Law, P.C. \ Michael W. Sanft

To date, the appellant has failed to request transcripts in this appeal. Please file and serve a Rough Draft Transcript Request Form or, alternatively, a certificate that preparation of transcripts is not requested within 10 days from the date of this notice. See NRAP 3C(d)(3). Failure to request transcripts in compliance with NRAP 3C(d)(3) may result in the imposition of sanctions. See NRAP 3C(n).

DATE: April 17, 2019

Elizabeth A. Brown, Clerk of Court

By: Linda Hamilton
Deputy Clerk

Notification List

Electronic

Sanft Law, P.C. \ Michael W. Sanft

Clark County District Attorney \ Steven S. Owens, Chief Deputy District Attorney

Attorney General/Carson City \ Aaron D. Ford, Attorney General

Steven D. Grierson, Eighth District Court Clerk

19-16959

APP373

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES HOWARD HAYES, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78590

FILED

MAY 31 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER CONDITIONALLY IMPOSING SANCTIONS

This appeal was docketed in this court on April 17, 2019. Because the notice of appeal was not accompanied by the rough draft transcript request form, *see* NRAP 3C(d)(3)(A)(ii), on April 17, 2019, this court issued a notice directing appellant's counsel, Michael W. Sanft, to file the rough draft transcript request form within 10 days or face sanctions.¹ *See* NRAP 3C(n). To date, Mr. Sanft has not complied or otherwise communicated with this court. Further, the fast track statement and appendix are now overdue.

This court concludes that Mr. Sanft's failure to file the rough draft transcript request form, fast track statement, and appendix warrants the *conditional* imposition of sanctions. *See id.* Within 14 days from the date of this order, Mr. Sanft shall pay the sum of \$250 to the Supreme Court Law Library and provide this court with proof of such payment. Mr. Sanft shall have 14 days from the date of this order to file 2 file-stamped copies of the rough draft transcript request form, proof of service of the rough draft transcript request form or a certificate that no transcripts are being

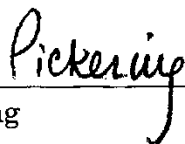
¹A copy of the notice is attached.

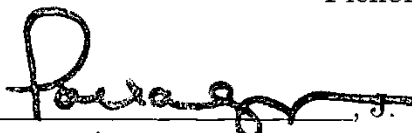
19-23767


requested, and the fast track statement and appendix. See NRAP 3C(d)(3)(A)(iii), (D); NRAP 3C(e). If the required documents are timely filed, the conditional sanction will be automatically vacated. If the required documents are not timely filed, the sanction will no longer be conditional and must be paid.

Failure to comply with this order or any other filing deadlines will result in the removal of Mr. Sanft as counsel of record in this appeal. See NRCP 3C(n). Further, because it appears that Mr. Sanft's conduct in this appeal may constitute violations of RPC 1.3 (diligence), 3.2(a) (expediting litigation), and 8.4 (misconduct), failure to comply with this order or any other filing deadlines will also result in Mr. Sanft's referral to the State Bar of Nevada for investigation pursuant to SCR 104-105.

It is so ORDERED.


_____, J.
Pickering


_____, J.
Parraguirre


_____, J.
Cadish

cc: Sanft Law, P.C.
Michael W. Sanft
Attorney General/Carson City
Clark County District Attorney
Supreme Court Law Librarian

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

JAMES HOWARD HAYES, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 78590
District Court Case No. C315718

NOTICE TO REQUEST ROUGH DRAFT TRANSCRIPTS

TO: Sanft Law, P.C. \ Michael W. Sanft

To date, the appellant has failed to request transcripts in this appeal. Please file and serve a Rough Draft Transcript Request Form or, alternatively, a certificate that preparation of transcripts is not requested within 10 days from the date of this notice. See NRAP 3C(d)(3). Failure to request transcripts in compliance with NRAP 3C(d)(3) may result in the imposition of sanctions. See NRAP 3C(n).

DATE: April 17, 2019

Elizabeth A. Brown, Clerk of Court

By: Linda Hamilton
Deputy Clerk

Notification List

Electronic

Sanft Law, P.C. \ Michael W. Sanft

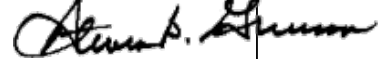
Clark County District Attorney \ Steven S. Owens, Chief Deputy District Attorney

Attorney General/Carson City \ Aaron D. Ford, Attorney General

Steven D. Grierson, Eighth District Court Clerk

19-16959

APP376



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 JAMES HAYES,

12 Defendant.

CASE NO.: C-16-315718-1

DEPT. XIX

13
14 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE
15 MONDAY, JUNE 3, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING RE:**
17 **DEFENDANT'S PRO PER MOTION TO WITHDRAW COUNSEL**

18 APPEARANCES:

19 For the Plaintiff:

FRANK R. LOGRIPPO, ESQ.
Deputy District Attorney

20 For the Defendant:

MICHAEL W. SANFT, ESQ.

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25 RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER

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Las Vegas, Nevada; Monday, June 3, 2019

[Proceeding commenced at 9:54 a.m.]

THE COURT: State of Nevada versus James Hayes. This
C315718.

Mr. Hayes is not present. He's in Nevada Department of
Corrections. He's filed pro per motion to have Mr. Sanft withdrawn in
the matter.

I'm going to grant that.

MR. SANFT: Your Honor, here's my problem with that.

THE COURT: Okay.

MR. SANFT: I would love for you to grant that. The Supreme
Court has now filed a request --

THE COURT: Okay.

MR. SANFT: -- and issued conditional sanctions against me
for not filing a response because I had sent Mr. Hayes a letter saying --

THE COURT: On the petition?

MR. SANFT: -- I didn't think he had a basis.

Yes, he filed his own petition to the Supreme Court with
regards to an appeal and now I'm in a little bit of a fight with the
Supreme Court over it.

THE COURT: All right.

MR. SANFT: So, I have to stay on the case.

THE COURT: Well, when we get -- well, he's -- okay.

So, you're dealing with --


1 MR. SANFT: So, he pled in my case --
2 THE COURT: Right. No, I know that.
3 MR. SANFT: And you sentenced him and here we are. So,
4 he filed an appeal. According to the Supreme Court, I have to perfect
5 that appeal even though I've let my client know that I don't believe there
6 was a basis since he pled to it.
7 THE COURT: Okay.
8 MR. SANFT: And the Supreme Court is still issuing sanctions
9 against me -- conditional sanctions saying, get this thing done --
10 THE COURT: Okay.
11 MR. SANFT: -- otherwise we're going to sanction you, and so
12 I got to do it.
13 THE COURT: All right. Okay. Well, since it is there and I'm
14 not going to take jurisdiction on it then since he's got it in the Supreme
15 Court. And so --
16 MR. SANFT: Yes, Your Honor.
17 THE COURT: So, we do have a petition that he's filed that's
18 scheduled for August 12th, but until I hear further then -- do you have
19 any kind of a -- status time that you need to -- status check that you
20 need to get things in or --
21 MR. SANFT: The order was issued on last Friday.
22 THE COURT: Okay.
23 MR. SANFT: And it's for two weeks for me to file the notice --
24 THE COURT: Okay.
25 MR. SANFT: -- the request for a rough draft transcripts, and --

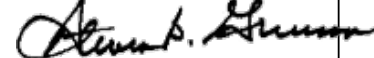
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THE COURT: All right.
MR. SANFT: -- the case appeal statement.
THE COURT: Put this on for 30 days.
THE CLERK: 30 days?
THE COURT: Yup. All right.
THE CLERK: That's going to be July 15th, 8:30.
MR. SANFT: Thank you, Your Honor.
THE CLERK: Just continue the motion?
THE COURT: Yes, continue the motion.

[Proceeding concluded at 9:56 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.


Brittany Amoroso
Court Recorder/Transcriber



Michael W. Sanft (8245)
SANFT LAW
2880 W. Sahara Ave
Las Vegas, Nevada 89102
(702) 497-8008 (office)
(702) 297-6582 (facsimile)
michael@sanftlaw.com

Attorneys for Defendant/Appellant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

vs.

JAMES HOWARD HAYES, JR.,

Defendant.

Case No. : C-16-315718-1

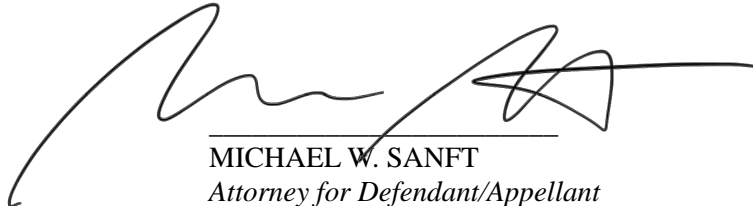
Dept. No.: 19

CERTIFICATE THAT NO TRANSCRIPT IS BEING REQUESTED

Notice is hereby given that Defendant/Appellant JAMES HOWARD HAYES, JR., is not requesting the preparation of transcripts for this appeal.

DATED this 14th day of June, 2019.

SANFT LAW



MICHAEL W. SANFT
Attorney for Defendant/Appellant

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

JAMES HOWARD HAYES, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 78590
District Court Case No. C315718

NOTICE OF DEFICIENT FAST TRACK DOCUMENT/CRIMINAL

TO: Sanft Law, P.C. \ Michael W. Sanft

The fast track statement you submitted is being returned for the following reason(s):

Document is not double-spaced. NRAP 3C(h)(1); NRAP 32(a)(4)

Please correct the deficiencies and return the document to this office for filing within 5 days of the date of this notice.

DATE: June 17, 2019

Elizabeth A. Brown, Clerk of Court

By: Joan Hendricks
Deputy Clerk

Notification List

Electronic

Clark County District Attorney \ Steven S. Owens, Chief Deputy District Attorney

19-26143

APP382

1 Michael W. Sanft (8245)
2 **SANFT LAW**
3 2880 W. Sahara Ave.
4 Las Vegas, Nevada 89102
5 (702)497-8008 (office)
6 (703)297-6582 (facsimile)
7 michael@sanftlaw.com
8 *Attorney for Appellant*

Electronically Filed
Jun 18 2019 01:25 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

9
10 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

11 JAMES HOWARD HAYES, JR.,

Case No. : 78590

12 Appellant,

13 vs.

FAST TRACK STATEMENT

14 STATE OF NEVADA,

15 Respondent.
16

17 1. **Name of party filing this fast track statement:** JAMES
18 HOWARD HAYES, JR.

19 2. **Name, law firm, address, and telephone number of attorney**
20 **submitting this fast track statement:** Michael Sanft, Esq., SANFT LAW,
21 2880 West Sahara Avenue, Las Vegas, Nevada 89102; (702) 497-8008.
22

23 3. **Name, law firm, address, and telephone number of appellate**
24 **counsel if different from trial counsel:** n/a
25
26
27
28

1 4. **Judicial district, county, and district court docket number of**
2 **lower court proceedings:** Eighth Judicial District, Clark County, Docket No.
3 C-16-315718-1
4

5 5. **Name of judge issuing decision, judgment, or order appealed**
6 **from:** The Honorable William Kephart.
7

8 6. **Length of trial.** If this action proceeded to trial in the district
9 court, how many days did the trial last? Appellant pled guilty pursuant to the
10 Alford decision. There was no trial.
11

12 7. **Conviction(s) appealed from:** Count 1- Attempt Grand Larceny
13

14 8. **Sentence for each count:** Appellant was sentenced under the
15 small Habitual Statute to 60 to 174 months.

16 9. **Date district court announced decision, sentence, or order**
17 **appealed from:** March 6, 2019.
18

19 10. **Date of entry of written judgment or order appealed from:**
20 March 12, 2019.
21

22 (a) If no written judgment or order was filed in the district
23 court, explain the basis for seeking appellate review: n/a

24 11. **If this appeal is from an order granting or denying a petition**
25 **for a writ of habeas corpus, indicate the date written notice of entry of**
26 **judgment or order was served by the court:** n/a
27
28

1 (a) Specify whether service was by delivery or by mail: n/a
2
3 12. **If the time for filing the notice of appeal was tolled by a post-**
4 **judgment motion,**
5 (a) specify the type of motion and the date of filing of the
6 motion:n/a
7
8 (b) date of entry of written order resolving motion: n/a
9
10 13. **Date notice of appeal filed:** April 29, 2019
11
12 14. **Specify statute or rule governing the time limit for filing the**
13 **notice of appeal, e.g., or other:** NRAP 4(b), NRAP 3C(e).
14
15 15. **Specify statute, rule or other authority which grants this court**
16 **jurisdiction to review the judgment or order appealed from:** NRS
17 177.015(3).
18
19 16. **Specify the nature of disposition below, e.g., judgment after**
20 **bench trial, judgment after jury verdict, judgment upon guilty plea, etc.:**
21 Judgment upon guilty plea.
22
23 17. **Pending and prior proceedings in this court.** List the case name
24 and docket number of all appeals or original proceedings presently or
25 previously pending before this court which are related to this appeal (e.g.,
26 separate appeals by co-defendants, appeal after post-conviction proceedings):
27 None.
28

1 **18. Pending and prior proceedings in other courts.** List the case
2 name, number and court of all pending and prior proceedings in other courts
3 which are related to this appeal (e.g., habeas corpus proceedings in state or
4 federal court, bifurcated proceedings against co-defendants): State of Nevada
5 v. James Hayes, C-19-338412-1, Eighth Judicial District Court, Department
6
7 19.

8
9 **19. Proceedings raising same issues.** List the case name and docket
10 number of all appeals or original proceedings presently pending before this
11 court, of which you are aware, which raise the same issues you intend to raise
12 in this appeal: None.

13
14 **20. Procedural history.** Briefly describe the procedural history of the
15 case (provide citations for every assertion of fact to the appendix, if any, or to
16 the rough draft transcript): Information, filed June 17, 2016 (A001-A003);
17 Guilty Plea Agreement, dated November 7, 2018 (A004-A012); Judgment of
18 Conviction, dated March 12, 2019 (A013); and Notice of Appeal filed pro se
19 on March 28, 2019 (A014-A18).

20
21
22 **21. Statement of facts.** Briefly set forth the facts material to the issues
23 on appeal: Appellant entered into a guilty plea agreement pursuant to *North*
24 *Carolina v. Alford* for one count of Attempt Grand Larceny, a category D
25 felony (A004-A012). The State agreed to not oppose probation with the only
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1 condition that Appellant serve thirty days in the Clark County Detention
2 Center with thirty days credit for time served (A004). Appellant further
3 waived his right to a direct appeal of his conviction and the assistance of an
4 attorney, “unless specifically reserved in writing and agreed upon as provided
5 in NRS 174.035(3)”(A008).
6

7
8 Before sentencing and after he was released on parole, Appellant was
9 arrested and charged with a new incident involving Burglary and Unlawful
10 Use of Hotel Key in Case No. C-19-338412-1 (A019-A021). The new case
11 allowed the State under the terms of the guilty plea agreement to argue for any
12 lawful sentence, including for the habitual criminal (A005). The Court
13 sentenced Appellant under the small habitual statute to five (5) to fourteen and
14 a half (14.5) years in prison (A013). Appellant then filed an appeal pro se
15 (A014-A018).
16
17

18 **22. Issues on appeal.** State concisely the principal issue(s) in this
19 appeal: The principal issue is cruel and unusual punishment. Appellant was
20 judged too harshly, even if he committed the same type of crimes shortly after
21 being released from prison and while he awaited sentencing. Even though he
22 legally qualified to sentencing under the habitual statute, the sentence
23 constitutes cruel and unusual punishment.
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1 **23. Legal argument, including authorities:** The Eighth Amendment
2 to the United States Constitution provides, “Excessive bail shall not be
3 required, nor excessive fines imposed, nor cruel and unusual punishments
4 inflicted.” U.S. Const. amend. VIII; *McConnell v. State*, 120 Nev. 1043, 1063,
5 102 P.3d 606, 620 (2004). Similarly, article 1, section 6 of the Nevada
6 Constitution provides: “Excessive bail shall not be required, nor excessive
7 fines imposed, nor shall cruel or unusual punishments be inflicted” Nev.
8 Const. art. 1, § 6.

9
10 The Eighth Amendment of the United States Constitution forbids an
11 extreme sentence that is grossly disproportionate to the crime. *Chavez v. State*,
12 125 Nev. Adv. Rep. 29, 213 P.3d 476, 489 (2009) (citing *Harmelin v.*
13 *Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion)). Regardless of its
14 severity, a sentence that is within the statutory limits is cruel and unusual
15 punishment if the statute fixing punishment is unconstitutional or the sentence
16 is so unreasonably disproportionate to the offense as to “shock the
17 conscience.” *Id.*, 213 P.3d at 489 (quoting *Blume v. State*, 112 Nev. 472, 475,
18 915 P.2d 282, 284 (1996)). This Court affords the district court wide discretion
19 in its sentencing decision. *Id.*, 213 P.3d at 490. Therefore, this Court will
20 refrain from interfering with the sentence imposed “[s]o long as the record
21 does not demonstrate prejudice resulting from consideration of information or
22 accusations founded on facts supported only by impalpable or highly suspect
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1 evidence.” Id., 213 P.3d at 490 (quoting *Silks v. State*, 92 Nev. 91, 94, 545 P.2d
2 1159, 1161 (1976)).

3
4 Here, the sentence imposed upon Appellant by the district court
5 constitutes cruel and unusual punishment, because it was grossly
6 disproportionate to the crime, and, therefore, shocks Appellant’s conscience.
7 While the sentence at issue fell within the statutorily established range of
8 punishment, the lengthy prison sentence imposed upon Appellant by the
9 district was grossly disproportionate to the crime. Admittedly, even though
10 Appellant was just released from prison, and committed the same type of
11 burglary as what he was awaiting sentencing on, these facts do not justify the
12 district court’s decision to subject Appellant to habitual criminal treatment.
13 The district court abused its discretion by imposing on Appellant a sentence
14 that was so unreasonably disproportionate to the offense.
15
16
17

18 24. **Preservation of issues.** State concisely how each enumerated issue
19 on appeal was preserved during trial. If the issue was not preserved, explain
20 why this court should review the issue: There was no trial.
21

22 25. **Issues of first impression or of public interest.** Does this appeal
23 present a substantial legal issue of first impression in this jurisdiction or one
24 affecting an important public interest: If so, explain: No.
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1 complete to the best of my knowledge, information, and belief.

2 DATED this 18th day of June, 2019.

3 SANFT LAW

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A handwritten signature in dark ink, appearing to read 'Michael W. Sanft', is written over a horizontal line. The signature is fluid and cursive, with a large initial 'M' and a stylized 'S'.

MICHAEL W. SANFT
2880 West Sahara Avenue
Las Vegas, Nevada 89102
Tel: (702) 497-8008
michael@sanftlaw.com
Attorney for Appellant

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3. Finally, I hereby certify that I have read this appellate brief, but to the best of my knowledge, information, and belief, cannot certify that it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

SANFT LAW

APP392

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ROUTING STATEMENT

NRAP 28(a)(5) mandates that an appellant’s brief contain a routing statement setting forth the following:


whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeal under NRAP 17, and citing the subparagraph(s) of the Rule under which the matter falls

NRAP 17(b) provides that the Court of Appeals “shall hear and decide only those matters assigned to it by the Supreme Court.” NRAP 17(b)(1) further provides that any direct appeal from a judgment of conviction based on a plea of guilty are presumptively assigned to the Court of Appeals.

The foregoing Appellant’s Fast Track Statement should be assigned to the Court of Appeals, because this matter involves a direct appeal from a judgment of conviction based on a plea of guilty.

DATED this 18th day of June, 2019.

SANFT LAW



MICHAEL W. SANFT
2880 West Sahara Avenue
Las Vegas, Nevada 89102
Tel: (702) 497-8008
michael@sanftlaw.com
Attorney for Appellant

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