

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

JESUS NAJERA,

Petitioner,

vs.

THE HONORABLE CRYSTAL  
ELLER, EIGHTH JUDICIAL  
DISTRICT COURT JUDGE,  
DEPT. NO. 19,

Respondent,

STATE OF NEVADA,

Real Party in Interest.

Electronically Filed  
Apr 21 2023 11:13 AM  
Elizabeth A. Brown  
Clerk of Supreme Court

S. Ct. No.:

DIST. CT. NO. C-21-356361-1

**APPELLANT'S APPENDIX (AA)  
VOLUME 1 "INDEX"**

Document	Volume No.	Page Number
INDICTMENT	1	3-8
PETITION FOR WRIT OF HABEAS CORPUS	1	130-167
STATES RETURN TO WRIT OF HABEAS CORPUS	1	168-184
REPLY TO STATES RETURN TO NAJERA'S PETITION FOR WRIT OF HABEAS CORPUS	1	185-212
SIGNED ORDER	1	213-219

**PARIENTE LAW FIRM. P.C.**

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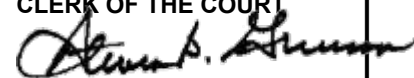
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TRANSCRIPT FROM NOVEMBER 18, 2020	1	9-92
TRANSCRIPT FROM MAY 26, 2021	1	93-129



**IND**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**TINA TALIM**  
Chief Deputy District Attorney  
Nevada Bar #09286  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

**JESUS NAJERA, #5339086**  
**EDUARDO FABIAN GARCIA #1489589,**  
**NORBERTO LEON MADRIGAL**  
**#1950096**

Defendant(s).

CASE NO: C-21-356361-1

DEPT NO: XVII

INDICTMENT

STATE OF NEVADA }  
COUNTY OF CLARK } ss.

The Defendant(s) above named, JESUS NAJERA, EDUARDO FABIAN GARCIA, NORBERTO LEON MADRIGAL, accused by the Clark County Grand Jury of the crime(s) of SALE OF CONTROLLED SUBSTANCE (Category B Felony - NRS 453.321 - NOC 51090), TRAFFICKING IN CONTROLLED SUBSTANCE (Category C Felony - NRS 453.339.1a - NOC 60433), CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES ACT (Category C Felony - NRS 453.401 - NOC 51306), UNLAWFUL PRODUCTION OR PROCESSING OF MARIJUANA (Category E Felony - NRS 453.3393 - NOC 58403) and POSSESSION OF CONTROLLED SUBSTANCE (Category E Felony - NRS 453.336 - NOC 51127), committed at and within the County of Clark, State of Nevada, on or between April 8, 2020 and April 30, 2020, as follows:

//

1 COUNT 1 - SALE OF CONTROLLED SUBSTANCE

2 Defendant EDUARDO FABIAN GARCIA did on or about April 8, 2020, willfully,  
3 unlawfully, and feloniously sell to LVMPD C.I., a controlled substance, to wit: Marijuana.

4 COUNT 2 - SALE OF CONTROLLED SUBSTANCE

5 Defendant EDUARDO FABIAN GARCIA did on or about April 13, 2020, willfully,  
6 unlawfully, and feloniously sell to LVMPD C.I., a controlled substance, to wit: Marijuana.

7 COUNT 3 - SALE OF CONTROLLED SUBSTANCE

8 Defendant EDUARDO FABIAN GARCIA did on or about April 22, 2020, willfully,  
9 unlawfully, and feloniously sell to LVMPD C.I., a controlled substance, to wit: Marijuana.

10 COUNT 4 - TRAFFICKING IN CONTROLLED SUBSTANCE

11 Defendants JESUS NAJERA, EDUARDO FABIAN GARCIA and NORBERTO  
12 LEON MADRIGAL did on or about April 30, 2020 willfully, unlawfully, feloniously, and  
13 knowingly or intentionally possess, either actually or constructively, 50 pounds or more but  
14 less than 1,000 pounds, to wit: approximately 81.23 pounds of Marijuana, or any mixture of  
15 substance consisting of approximately 81.23 pounds containing the controlled substance  
16 Marijuana, the Defendant(s) being criminally liable under one or more of the following  
17 principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by  
18 aiding or abetting in the commission of this crime, with the intent that this crime be committed,  
19 by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the  
20 other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the  
21 intent that this crime be committed, Defendants, JESUS NAJERA and/or EDUARDO  
22 FABIAN GARCIA and/or NORBERTO LEON MADRIGAL aiding or abetting and/or  
23 conspiring by Defendants, JESUS NAJERA and/or EDUARDO FABIAN GARCIA and/or  
24 acting in concert throughout.

25 COUNT 5 - TRAFFICKING IN CONTROLLED SUBSTANCE

26 Defendants JESUS NAJERA, EDUARDO FABIAN GARCIA and NORBERTO  
27 LEON MADRIGAL did on or about April 30, 2020, willfully, unlawfully, feloniously and  
28 knowingly or intentionally possess, either actually or constructively, 1 pound or more, but less

1 than 20 pounds, to wit: 2.25 pound(s) of Tetrahydrocannabinol, or any mixture of substance  
2 consisting of approximately 2.25 pound(s) containing the controlled substance  
3 Tetrahydrocannabinol, the Defendant(s) being criminally liable under one or more of the  
4 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or  
5 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be  
6 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise  
7 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this  
8 crime, with the intent that this crime be committed, Defendants, JESUS NAJERA and/or  
9 EDUARDO FABIAN GARCIA and/or NORBERTO LEON MADRIGAL aiding or abetting  
10 and/or conspiring by Defendants, JESUS NAJERA and/or EDUARDO FABIAN GARCIA  
11 and/or NORBERTO LEON MADRIGAL acting in concert throughout.

12 COUNT 6 - CONSPIRACY TO VIOLATE UNIFORM CONTROLLED SUBSTANCES  
13 ACT

14 Defendants JESUS NAJERA, EDUARDO FABIAN GARCIA and NORBERTO  
15 LEON MADRIGAL did on or about April 30, 2020 willfully, unlawfully, and feloniously  
16 conspire with each other to violate Uniform Controlled Substances Act, and in furtherance of  
17 said conspiracy, the defendants did commit the acts as set forth in Count 4 and 5, said acts  
18 being incorporated by this reference as though fully set forth herein.

19 COUNT 7 - UNLAWFUL PRODUCTION OR PROCESSING OF MARIJUANA

20 Defendant EDUARDO FABIAN GARCIA did on or about April 30, 2020, willfully,  
21 unlawfully, feloniously, and knowingly or intentionally manufacture, grow, plant, cultivate,  
22 harvest, dry, propagate and/or process Marijuana, involving more than 12 plants.

23 //

24 //

25 //

26 //

27 //

28 //


1 COUNT 8 - POSSESSION OF CONTROLLED SUBSTANCE

2 Defendant JESUS NAJERA did on or about April 30, 2020, willfully, unlawfully,  
3 feloniously, and knowingly or intentionally possess a controlled substance, to wit: Cocaine.

4  
5 DATED this 26<sup>th</sup> day of May, 2021.

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

9 BY

10   
11 TINA TALIM  
12 Chief Deputy District Attorney  
13 Nevada Bar #09286

14 ENDORSEMENT: A True Bill

15  
16   
17 Foreperson, Clark County Grand Jury

1 Names of Witnesses and testifying before the Grand Jury:

2  
3 Additional Witnesses known to the District Attorney at time of filing the Indictment:

4 CUSTODIAN OF RECORDS - CCDC

5 CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

6 CUSTODIAN OF RECORDS - LVMPD RECORDS  
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27 19BGJ223A-C/20F08565A-B; 20CR002883/mcb-GJ  
28 LVMPD EV# 200200027347  
(TK7)

1 Names of Witnesses and testifying before the Grand Jury:

2 HEFNER, AARON – LVMPD

3 MORRIS, ERICK - LVMPD

4 SNODGRASS, THEODORE - LVMPD

5 SOTO, JOSE – C/O CCDA, 200 Lewis Avenue, LV, NV 89101

6  
7 Additional Witnesses known to the District Attorney at time of filing the Indictment:

8 CUSTODIAN OF RECORDS - CCDC

9 CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

10 CUSTODIAN OF RECORDS - LVMPD RECORDS

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27 19BGJ223A-C/20F08565A-B; 20CR002883/mcb-GJ  
28 LVMPD EV# 200200027347  
(TK7)



EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID

DISTRICT COURT

THE STATE OF NEVADA,

Plaintiff,

VS.

JESUS NAJERA,  
EDUARDO FABIAN GARCIA,  
NORBERTO LEON MADRIGAL,

Defendants.

GJ Case No. 19BGJ223A-C  
DC Case No. C356361

Taken at Las Vegas, Nevada

Wednesday, November 18, 2020

8:32 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

# Volume 1

Reported by: Donna J. McCord, C.C.R. No. 337

00:00:59 1 GRAND JURORS PRESENT ON NOVEMBER 18, 2020:  
2  
3 STEVE LURVEY, Foreperson  
4 TIARA COSENTINO, Deputy Foreperson  
00:00:59 5 NOEL WELLMAN, Secretary  
6 DANIEL STACK, Assistant Secretary  
7 JOHN FINKOWSKI  
8 PAUL GILLENWATER  
9 MARK GOODMAN  
00:00:00 10 JEFFREY GRUBER  
11 TAMMY KRAUS  
12 JOHN PELKEY  
13 GERALD REID  
14 MANOLO SAEMZ  
00:00:00 15 SUSAN ZEMAN  
16  
17  
18  
19  
00:00:00 20 Also present at the request of the Grand Jury:  
21 Tina Talim  
22 Robert Stephens  
23 Chief Deputy District Attorneys  
24  
00:00:00 25

00:00:00

1

INDEX OF WITNESSES

2

EXAMINED

3

AARON HEFNER

8

4

JOSE SOTO

31

00:00:00

5

ERIK MORRIS

53

6

THEODORE SNODGRASS

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**INDEX OF EXHIBITS**

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3

**GRAND JURY EXHIBITS****IDENTIFIED**

4

EXHIBIT 1 - PROPOSED INDICTMENT

5

00:00:01

5

EXHIBIT 2 - INSTRUCTIONS

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6

EXHIBIT 3 - PHOTOGRAPH

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EXHIBIT 4 - PHOTOGRAPH

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EXHIBIT 5 - PHOTOGRAPH

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EXHIBIT 6 - PHOTOGRAPH

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00:00:01

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EXHIBIT 7 - PHOTOGRAPH

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EXHIBIT 8 - PHOTOGRAPH

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EXHIBIT 10 - PHOTOGRAPH

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13

EXHIBIT 11 - LAB REPORTS

27

14

EXHIBIT 13 - PHOTOGRAPHS

45

00:00:01

15

EXHIBIT 15 - PRELIMINARY FIELD TEST CHECKLIST  
AND PHOTOGRAPHS

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00:00:01

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00:00:02

1

LAS VEGAS, NEVADA, NOVEMBER 18, 2020

2

\* \* \* \* \*

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4

DONNA J. McCORD,

00:00:02

5

having been first duly sworn to faithfully

6

and accurately transcribe the following

7

proceedings to the best of her ability.

8

9

THE FOREPERSON: Let the record reflect

00:00:02

10

that I have canvassed the waiting area and no one has

11

appeared in response to Notice of Intent to Seek

12

Indictment.

13

MS. TALIM: Good morning, everybody. My

14

name is Tina Talim. I'm a Chief Deputy District

08:32:20

15

Attorney and this morning along with Robert Stephens who

16

is also a Chief Deputy District Attorney, we are going

17

to be presenting Grand Jury case number 19BGJ223A, B and

18

C. That's the State of Nevada versus Jesus Najera,

19

Eduardo Fabian Garcia and Norberto Leon Madrigal. I

08:32:45

20

would ask that a copy of the proposed Indictment be

21

admitted as Grand Jury Exhibit 1 and the record will

22

reflect that all members of the Grand Jury have a copy

23

of that proposed Indictment. Marked as Grand Jury

24

Exhibit 2 are the instructions pertaining to the

08:32:58

25

offenses listed in the proposed Indictment. If anyone

08:33:02 1 has any questions regarding the elements of the offenses  
2 or the instructions pertaining to the offenses, please  
3 ask those questions prior to your deliberations.

08:33:14 4 Just to go through this Indictment, Count 1  
5 charges Eduardo Garcia with sale of controlled  
6 substance. The same charge for the same defendant is  
7 reflected in Count 2 and Count 3. Count 4 charges all  
8 three defendants with trafficking in a controlled  
9 substance and that is for marijuana, 50 pounds or more.

08:33:34 10 Count 5 charges all three defendants with trafficking in  
11 a controlled substance. That is for THC between one  
12 pound or more and less than 20 pounds. Count 6 charges  
13 the three defendants with conspiracy to violate the  
14 uniformed controlled substances act as reflected in  
08:33:53 15 Counts 4 and 5. And then Count 7 reflects a charge of  
16 unlawful production or processing of marijuana. That  
17 pertains to defendant Eduardo Fabian Garcia.

08:34:09 18 A couple of housekeeping matters. I'm  
19 sorry, and Count 8 reflects a possession of controlled  
20 substance charging Jesus Najera with possession of  
21 cocaine. Before we get started I just wanted to let  
22 everybody know that we're going to ask that you withhold  
23 deliberations today. We will not be able to finish with  
24 our witnesses in the allotted time so we have time  
08:34:26 25 reserved in a couple of weeks where we will come back

08:34:29 1 and finish up presenting the case, so you will not be  
2 deliberating today. But again, if there are any  
3 questions regarding the instructions or the criminal  
4 offenses please ask those questions.

08:34:42 5 Also our first witness we will be calling  
6 is Detective Aaron Hefner. We're going to release him  
7 and then we'll call a second witness and then Detective  
8 Hefner will be recalled when we come back in a couple of  
9 weeks. So just so you know you will have enough

08:35:00 10 opportunity to ask Detective Hefner any questions. If  
11 it doesn't happen today you will be given another shot.  
12 Any questions regarding the charges as reflected in the  
13 proposed Indictment? Okay. Seeing no hands the State  
14 will call its first witness and that is Detective Aaron  
08:35:18 15 Hefner.

16 THE FOREPERSON: Raise your right hand.

17 You do solemnly swear that the testimony  
18 that you're about to give upon the investigation now  
19 pending before this Grand Jury shall be the truth, the  
08:35:45 20 whole truth, and nothing but the truth, so help you God?

21 THE WITNESS: Yes.

22 THE FOREPERSON: You're advised you're here  
23 today to give testimony in the investigation pertaining  
24 to the offenses of sale of controlled substance,  
08:36:05 25 trafficking in a controlled substance, conspiracy to

08:36:09 1 violate uniformed controlled substances act, unlawful  
2 production or processing of marijuana, possession of  
3 controlled substance involving Jesus Najera, Eduardo  
4 Garcia, Norberto Madrigal.

08:36:29 5 Do you understand this advisement?

6 THE WITNESS: Yes.

7 THE FOREPERSON: Please state your first  
8 and last name and spell both for the record.

9 THE WITNESS: My name is Aaron Hefner,  
08:36:35 10 A-A-R-O-N H-E-F-N-E-R.

11 THE FOREPERSON: Thank you.

12 **AARON HEFNER,**

13 having been first duly sworn by the Foreperson of the  
14 Grand Jury to testify to the truth, the whole truth  
08:36:41 15 and nothing but the truth, testified as follows:

16

17 EXAMINATION

18 BY MS. TALIM:

19 Q Sir, what do you do for a living?

08:36:45 20 A I work for the Las Vegas Metropolitan  
21 Police Department.

22 Q What is your current assignment?

23 A I'm currently assigned to Southeast 22,  
24 patrol.

08:36:50 25 Q And how long have you been employed with



08:36:51 1 Metro?

2 A About 11 years.

3 Q How long have you been on your current  
4 assignment?

08:36:55 5 A A couple months.

6 Q Okay. Prior to this particular assignment,  
7 specifically in February of this year, what was your  
8 assignment back then?

9 A I was a detective in the Criminal  
08:37:05 10 Intelligence Section.

11 Q What is the Criminal Intelligence Section?

12 A So that section specifically, the squad I  
13 was on, squad one, is called the Public Integrity Squad.  
14 We investigate crimes involving anyone that's considered  
08:37:19 15 to have public authority or political authority, so  
16 judges, doctors, police officers, crimes committed by  
17 people in those types of jobs.

18 Q And how long have you been on that  
19 assignment back in February of this year?

08:37:33 20 A I was there a little under two years so it  
21 had been a year, a year and a half at that time.

22 Q And around that time in February did you  
23 have an assigned partner?

24 A I did. I was working with Gary Chaney. He  
08:37:46 25 was another detective in the unit.

08:37:47 1 Q Okay. In February of this year then did  
2 you develop information that ultimately led you to  
3 investigate individuals, three of them, by the names of  
4 Jesus Najera, Eduardo Garcia and Norberto Madrigal?

08:38:02 5 A We did. We had received a very detailed  
6 tip alleging that the three were involved in a drug  
7 operation involving marijuana.

8 MS. TALIM: And I'm just going to admonish  
9 the Grand Jurors that that's not offered for the truth  
08:38:16 10 of the matter asserted because it is hearsay but it is  
11 offered to show why Detective Hefner did what he did as  
12 a result of obtaining that information.

13 BY MS. TALIM:

14 Q Detective, before we get into the specifics  
08:38:27 15 of your investigation, I'm going to have you describe or  
16 identify some individuals for us, if you will.

17 A Okay.

18 Q Showing you Grand Jury Exhibit 5, who is  
19 that?

08:38:39 20 A That's Norberto Madrigal.

21 Q And did you develop information that Mr.  
22 Madrigal was in the process of applying for a marijuana  
23 dispensary?

24 A Yes. Some of the information we had  
08:38:56 25 received is that he was in the process or possibly had

08:38:59 1 licenses for marijuana dispensaries.

2 Q And did you investigate that intel and  
3 actually learn that Mr. Madrigal did in fact have  
4 legitimate applications for dispensaries?

08:39:10 5 A Yes. It appeared that there were two  
6 applications that he was in the process of and had been  
7 trying to obtain for what looked like a few years.

8 Q I'm going to have you identify a couple of  
9 addresses associated with Mr. Madrigal. Showing you  
08:39:29 10 Grand Jury Exhibit 7, what is this?

11 A So that's a warehouse located at 800 West  
12 Mesquite. You can kind of basically see there, that's  
13 the Spaghetti Bowl so it's right under the Spaghetti  
14 Bowl. And specifically we're looking at the fenced-in  
08:39:47 15 property right under the overpass there, the warehouse,  
16 and the building's to the right of it.

17 Q So the warehouse would be the building  
18 reddish in color?

19 A Correct, that's the main warehouse and then  
08:39:57 20 also on the property are those buildings to the right.

21 Q Okay. And what type of business was set up  
22 there?

23 A At the time it was kind of vacant. It was  
24 in the process of being set up so it wasn't, it  
08:40:10 25 didn't look like there was any operational business at

08:40:14 1 the time we started investigating.

2 Q I'm going to show you Grand Jury Exhibit 6.  
3 What are we looking at?

4 A So that is the location of a hemp farm  
08:40:23 5 owned by Mr. Madrigal in Pahrump. I don't want to give  
6 you the incorrect address because it's actually two  
7 different addresses that the farm is located on but it's  
8 out in Pahrump.

9 Q And can you see hemp anywhere in that  
08:40:36 10 photo?

11 A So in that picture it looks like there's no  
12 hemp growing. There were weeds and there were rows set  
13 up where it looked like something had been formed or  
14 grown there but at the time it didn't appear  
08:40:47 15 operational.

16 Q Hemp is legal?

17 A Correct.

18 Q Okay. Now I want to show you Grand Jury  
19 Exhibit 4. Who is this?

08:41:01 20 A That is Eduardo Garcia, also goes by the  
21 nickname of Lalo.

22 Q Lalo, L-A-L-O?

23 A L-A-L-O.

24 Q Okay. And during the course of your  
08:41:11 25 investigation did you discover what Mr. Garcia's

08:41:14 1 occupation was at that time?

2 A Yes, Mr. Garcia works for the state,  
3 specifically for the prison system. He trains inmates  
4 to fight forest fire fires.

08:41:29 5 Q And identify for us who is depicted in  
6 Grand Jury Exhibit 3.

7 A That is Jesus Najera. He's a former LVMPD  
8 police officer.

9 Q Did you develop certain residences  
08:41:42 10 associated with Mr. Najera during the course of your  
11 investigation?

12 A Yes, Mr. Najera we discovered was living in  
13 an apartment, 1445 Stone Lake Cove. I believe the  
14 apartment number was 4101.

08:41:58 15 Q And that's in Henderson?

16 A Correct.

17 Q And then just backing up, Mr. Garcia,  
18 during the course of your investigation, did you develop  
19 an address associated as Mr. Garcia's residence?

08:42:13 20 A Yes, we found he was living at 2340 East  
21 Camaro and that's in Las Vegas. That's a large half  
22 acre ranch-style home, custom home.

23 Q Ultimately did you install or had  
24 installed, pursuant to your investigation, some cameras  
08:42:32 25 surrounding Mr. Garcia's residence?

08:42:35 1 A So we had cameras set up on the house on  
2 Camaro, a camera set up, and then also a camera set up  
3 watching the warehouse on Mesquite.

08:42:47 4 Q And I want to show you Grand Jury Exhibit  
5 Number 8. Is that another photo of that warehouse?

6 A Correct, that's a photo from the camera we  
7 had set up at the warehouse.

8 Q And this is a still from the camera?

9 A It is.

08:43:07 10 Q I'm going to zoom in on this. There looks  
11 to be a couple of vehicles at that warehouse property,  
12 correct?

13 A Correct.

08:43:21 14 Q Did any of those vehicles become relevant  
15 during the course of your investigation, specifically  
16 were they associated with any of the three people you've  
17 identified that you're here testifying about today?

18 A Yes. So the white Charger there, it's very  
19 distinct with a black racing stripe, that car is  
08:43:34 20 registered and belongs to Jesus Najera.

21 Q Okay.

22 A I believe from the photograph the car next  
23 to it is a blue Nissan that we observed Mr. Garcia  
24 driving several times.

08:43:45 25 Q During the course of this investigation?

08:43:46 1 A Correct.

2 Q And there are three individuals depicted in  
3 this still from the video, from that camera  
4 surveillance. Can you identify or were you able at the  
08:43:58 5 time to identify the people in this photo?

6 A Yes. So the three in the photo are Eduardo  
7 Garcia and Norberto Madrigal and Jesus Najera. We spent  
8 a lot of time watching them on camera and watching them  
9 in person. You could clearly tell from the video that  
08:44:11 10 it was them walking around there.

11 Q How long did your surveillance, and just  
12 approximate, at that warehouse and during the course of  
13 this investigation last?

14 A Several months, at least two to three  
08:44:24 15 months of physical and electronic surveillance.

16 Q And there was surveillance conducted at the  
17 warehouse, at Mr. Najera's apartment and Mr. Garcia's  
18 house?

19 A Correct.

08:44:39 20 Q Did you also develop during the course of  
21 your investigation, did you learn phone numbers that  
22 were associated with these three individuals?

23 A Yes, I did. We were given three phone  
24 numbers that we were able to verify belonged to those  
08:44:52 25 three.

08:44:53 1 Q Okay. And just because this will come  
2 relevant later on I'm going to ask you the specific  
3 numbers and to whom they belong.

4 A Okay.

08:45:01 5 Q (702)280-4438, was that a phone number you  
6 ultimately associated with Mr. Najera?

7 A That is.

8 Q Okay. (702)308-0688, was that number  
9 ultimately associated with Mr. Garcia?

08:45:19 10 A Yes.

11 Q (702)336-5100, was that a phone number  
12 associated with Mr. Madrigal?

13 A Yes.

08:45:36 14 Q And, Detective, I'm going to ask you a  
15 question, and again I'm going to admonish the Grand  
16 Jurors that this is not offered for the truth but it's  
17 offered to show the effect on the listener and why  
18 Detective Hefner does what he does after hearing the  
19 information.

08:45:47 20 Back in February you had intel that  
21 individuals were doing something that caused your  
22 section to launch an investigation?

23 A Yes.

24 Q Okay. Did that revolve around hemp?

08:46:03 25 A Yes.



08:46:04 1 Q The same hemp farm that we saw in that  
2 exhibit that was ultimately associated to Mr. Madrigal?

3 A Yes.

4 Q Okay. Describe for us just briefly, just  
08:46:13 5 enough so we get a sense of why this investigation was  
6 launched, the intel that you had.

7 A So we were told that the three were  
8 involved in taking hemp, which is legal, and kind of  
9 just to clarify, hemp and marijuana come from the same  
08:46:26 10 plants, they're the cannabis sativa and cannabis indica  
11 plants. And marijuana is not actually like a scientific  
12 name form, that's a nickname that we give to the plant  
13 that has THC in it which is an illegal substance which  
14 gives people euphoria or a high as you would call it.

08:46:46 15 The information that we received is that these three  
16 were taking hemp, which is legal, and then adding THC to  
17 it to in turn sell it off as marijuana.

18 Q And if you add THC to hemp, a legal  
19 substance, chemically if it meets the threshold for THC  
08:47:07 20 or marijuana, how is that substance then identified?

21 A So basically federally and in the State of  
22 Nevada the limit for hemp is 0.3 percent THC and  
23 anything above that is considered marijuana or an  
24 illegal substance. So if you were to take hemp and add  
08:47:24 25 any level of THC to it that got it above that, in any

08:47:28 1 sort of chemical analysis or test it would show up as  
2 marijuana.

3 Q And I just want to be sure, all of the  
4 items seized in this case that you believed to be  
08:47:38 5 marijuana, that was ultimately submitted to Metro's  
6 forensic lab for analysis?

7 A Correct.

8 Q Okay. Now, based on this intel that you  
9 had, did you initiate like a boots-on-the-ground  
08:47:57 10 investigation?

11 A Yes, we did. That was part of our job in  
12 the unit. We got a lot of tips and we take them all  
13 very seriously and have to follow up on them.  
14 Fortunately most of them turn out to be untrue, but this  
08:48:10 15 one the more we looked into it the more legitimate it  
16 seemed.

17 Q So I want to focus on some of the  
18 surveillance that was done in March, specifically of  
19 this year. You mentioned that there was a camera set up  
08:48:23 20 as well as actual live surveillance of that warehouse  
21 which was associated with Mr. Madrigal?

22 A Correct.

23 Q Okay. And we already saw the photo where  
24 you described Mr. Garcia, Najera and Madrigal all at  
08:48:36 25 that warehouse. Describe for us what you observed

08:48:41 1 during the course of that surveillance at the warehouse,  
2 specifically which individual showed up, how they gained  
3 access to it, that kind of a thing.

4 A Okay. And I don't want to get the date  
08:48:51 5 wrong, I believe it was March 17th, we had something  
6 interesting. Eduardo Garcia showed up to the warehouse  
7 and he was in a large kind of flatbed truck and he went  
8 to the gate, and we couldn't tell if he had a key or  
9 like a combination lock, but he let himself into it. So  
08:49:07 10 he had access to the warehouse which was typically  
11 locked off with an iron gate.

12 He went inside of the warehouse. He was  
13 there with another individual that wasn't one of the  
14 three and they began loading bags, large black garbage  
08:49:20 15 bags onto the back of this truck. They did that  
16 probably for at least an hour. They left and then about  
17 30, 45 minutes, came back and proceeded to do the same  
18 behavior, they loaded up the truck again and left.

19 Q They were taking things out of the  
08:49:35 20 warehouse or putting things in?

21 A They were taking things out of the  
22 warehouse.

23 Q And just to orient the Grand Jury I'm going  
24 to display Exhibit 7, a photo of the warehouse, right?

08:49:46 25 A Correct.

08:49:46 1 Q Okay. And Mr. Garcia did that multiple  
2 times?

3 A Correct. It was two trips in total.

08:49:58 4 Q Okay. And was he kept under surveillance  
5 when he left the warehouse? Did you know where he went?

6 A You know, that time we were not positive  
7 where he left to. We didn't have any sort of tracker on  
8 that truck and we weren't sure where he left to from  
9 there.

08:50:10 10 Q And what type of bags were they?

11 A They were large black plastic bags so like  
12 the full-size trash can bags.

13 Q And at this time there was no business  
14 operating out of the warehouse; is that right?

08:50:21 15 A No, it wasn't a functional business, it  
16 wasn't active, the only real behavior we saw would be  
17 one or all of these three coming and going from there.

18 Q Okay. And then could that have been  
19 March 7th?

08:50:38 20 A That sounds right. It was sometime in  
21 March.

22 Q Okay. And then that photo that we saw,  
23 Grand Jury Exhibit 8, was that photo taken March 8th, or  
24 rather that video?

08:50:53 25 A That sounds correct.

08:50:54 1 Q Okay. Was this sometime in March?

2 A It was in March.

3 Q And what did these individuals do at the  
4 warehouse that you observed on the camera or live?

08:51:07 5 A So it was interesting because they were  
6 discussing something and they all showed up relatively  
7 at the same time, so it wasn't one showed up and then  
8 the other, it looked like they were meeting there at a  
9 scheduled time. And then they began walking around the  
08:51:20 10 area, they were pointing out different things. They  
11 went back into the area where we saw those bags were  
12 taken from by Mr. Garcia, so it looked like they were  
13 setting up or planning something there.

14 Q How long were they there?

08:51:36 15 A I would say approximately an hour.

16 Q And were they going into the warehouse at  
17 all?

18 A So they walked to all different parts of  
19 it. Specifically they went back, if you can see where  
08:51:47 20 the white vehicle, it's kind of perpendicular in the  
21 photo, and you have the black open door behind it, they  
22 walked back into that area and that's the area where Mr.  
23 Garcia was removing the bags.

24 Q Okay. And what happened after that? Did  
08:52:04 25 they at some point leave?

08:52:06 1 A They all basically left at the same time.  
2 So it looked like a meeting, they met there, they  
3 discussed what they had to discuss and then they all  
4 left at relatively the same time.

08:52:14 5 Q So now you've seen the three individuals  
6 during the surveillance at the warehouse. There was  
7 also surveillance being done at Mr. Garcia's house?

8 A Correct.

08:52:28 9 Q Sometime in March did you learn that Mr.  
10 Najera, the former Metro police officer, visited Mr.  
11 Garcia at Mr. Garcia's residence?

12 A Yes, we had him show up at the residence.  
13 It looked like he took him to take a vehicle, to pick up  
14 a vehicle and drop them off.

08:52:47 15 Q But did you develop information that caused  
16 you to believe that Mr. Najera and Garcia were somehow  
17 related?

18 A Yes, we learned that Mr. Garcia was  
19 previously married to Najera's sister.

08:53:05 20 Q So at this point between the intel you  
21 received in February and then the follow-up surveillance  
22 and investigation that you did, did you and Detective  
23 Chaney then decide to introduce a confidential informant  
24 into this investigation?

08:53:25 25 A Yes, we did.

08:53:26 1 Q What was the purpose of introducing a  
2 confidential informant into this investigation?

3 A The allegation was that they were creating  
4 marijuana by lacing hemp and selling it, so we wanted to  
08:53:37 5 see if we could actually get them to sell us the product  
6 and then test it out to see if it were in fact an  
7 illegal substance.

8 Q Is it unusual for law enforcement,  
9 specifically Metro, to employ the services of a  
08:53:54 10 confidential informant to further an investigation?

11 A No, that's very common. Especially when  
12 you start talking about drug investigations it's a  
13 fairly common tactic.

14 Q As opposed to you going undercover and  
08:54:07 15 purchasing?

16 A Correct. And this case again is unique  
17 because we're investigating a police officer so  
18 introducing any undercover police officer can get  
19 difficult because we don't know if Najera had possibly  
08:54:20 20 seen this officer somewhere and then the investigation  
21 would be blown.

22 Q In this specific case did you utilize an  
23 individual named Jose Soto?

24 A Yes, we did.

08:54:32 25 Q And this individual Mr. Soto was employed

08:54:35 1 by Metro to see if he could purchase narcotics from this  
2 group?

3 A Correct.

4 Q This individual was paid?

08:54:43 5 A He was.

6 Q Okay. Let me just back up. In Nevada you  
7 can buy marijuana?

8 A Yes.

9 Q Okay. There are mechanisms for individuals  
08:54:57 10 to buy recreational marijuana?

11 A Correct.

12 Q As well as medicinal marijuana?

13 A There's legal dispensaries and any person,  
14 anyone over 18 can walk in and purchase marijuana.

08:55:06 15 Q From a legal dispensary?

16 A From a legal dispensary.

17 Q Okay. So in this case the information you  
18 had was marijuana was being sold outside the perimeters  
19 of a legal dispensary?

08:55:17 20 A Correct. We had a group of individuals  
21 that did not have a legal marijuana dispensary license  
22 and did not have any legitimate reason to be selling it.

23 Q So when you direct Mr. Soto to purchase  
24 marijuana during the course of this investigation, I

08:55:43 25 want to focus on April 8th, April 13th, and April 22nd.



08:55:48

1 A Okay.

2 Q Did those instances result in Mr. Soto  
3 purchasing from, and we'll have Mr. Soto testify, from  
4 Mr. Garcia items that were later submitted to the lab  
5 and resulted in a positive analysis as being marijuana?

08:56:04

6 A Yes.

7 Q Okay. Now, prior to you deploying Mr. Soto  
8 to buy narcotics, is Mr. Soto searched?

9 A Yes. So prior to any purchase of narcotics  
10 we would with meet with him at a predetermined location,  
11 we would check him and his vehicle to make sure there  
12 was no money, no drugs, nothing that we didn't want in  
13 there and then we would surveil him to the buy location.

08:56:21

14 The entire time we had eyes on him so he didn't stop, he  
15 didn't go anywhere else, to the location. We watched  
16 him at the location and actually had live audio and  
17 video recording of the interactions. And then once the  
18 deal was done we surveilled him back to the meet  
19 location, we recovered the narcotics and again we check  
20 him to make sure there was no money or drugs on him.

08:56:37

21 Q Okay. Let's talk about the money. So who  
22 gives Mr. Soto the funds that he then uses to purchase  
23 narcotics?

24 A So we use LVMPD buy money and this money is  
25 prerecorded in that we take it and before any purchase

08:56:54

08:57:12

08:57:14 1 is done we photograph it so that we have the serial  
2 numbers documented.

3 Q Why is that done?

4 A In case we recover money later on in the  
08:57:21 5 investigation we're able to track it.

6 Q And that was done in this case?

7 A Yes, it was.

8 Q The process of marking and photographing  
9 it?

08:57:34 10 A Yes, it was.

11 Q For all the April --

12 A Every buy that we did we photographed the  
13 money beforehand.

14 Q And then you described once Mr. Soto has  
08:57:42 15 his interaction with Mr. Garcia in this specific case  
16 you then meet up with Mr. Soto?

17 A Correct.

18 Q And you search him?

19 A We search him, we recover the items he  
08:57:55 20 purchased, the narcotics, and then we search him and his  
21 vehicle.

22 Q The items that you recover from Mr. Soto  
23 that you believed to be controlled substances, are they  
24 all impounded under a unique event number?

08:58:08 25 A Yes, they are.

08:58:09 1 Q Okay. Why is that done?

2 A So that we can keep track of it and keep it  
3 all together.

4 Q And then what do you do with the items  
08:58:17 5 impounded that you receive from Mr. Soto?

6 A So immediately after we recovered it and  
7 have a debrief with Mr. Soto and send him on his way,  
8 myself and Detective Chaney, we drove it to the evidence  
9 lab to be tested.

08:58:50 10 Q And I'm just going to show you Grand Jury  
11 Exhibit 11, and it's a three-page document stapled.  
12 What are those documents?

13 A So these are the lab reports for three of  
14 the purchases.

08:59:05 15 Q Okay. So let's look at page 1. The event  
16 number specific to this investigation is indicated as  
17 the primary case number on the upper right-hand section  
18 of this document?

19 A Correct.

08:59:34 20 Q So all the items impounded here in this  
21 investigation would be impounded under that event  
22 number?

23 A Correct.

24 Q Okay. So specifically page 1, is this the  
08:59:46 25 result of the items you received from Mr. Soto after he

08:59:51 1 purchased what ultimately tested positive as marijuana  
2 on April 8th?

3 A Yes.

4 Q Okay. Looking at page 2 of the same  
09:00:01 5 exhibit, is this the result of the final chemical  
6 analysis done on the items you recovered from Mr. Soto  
7 after deploying him as a confidential informant on  
8 April 13th?

9 A Yes.

09:00:17 10 Q And then page 3 of the same exhibit, is  
11 this the final chemical analysis for items you recovered  
12 from Mr. Soto, his confidential informant buy, on  
13 April 22nd?

14 A Yes.

09:00:32 15 Q Okay. And all three of these incidents  
16 resulted in you obtaining from Mr. Soto items that  
17 ultimately identified as marijuana?

18 A Yes, they tested positive as marijuana.

19 Q All right. I have no further questions of  
09:00:49 20 this witness at this time. As I mentioned earlier,  
21 Detective Hefner will be recalled at a later date.

22 THE FOREPERSON: Any questions?

23 By law these proceedings are secret and you  
24 are prohibited from disclosing to anyone anything that  
09:00:57 25 transpired before us including any evidence presented to

09:00:57 1 the Grand Jury, any event occurring or a statement made  
2 in the presence of the Grand Jury or any information  
3 obtained by the Grand Jury.

4 Failure to comply with this admonition is a  
09:00:57 5 gross misdemeanor punishable up to 364 days in the Clark  
6 County Detention Center and a \$2,000 fine. In addition  
7 you may be held in contempt of court punishable by an  
8 additional \$500 fine and 25 days in the Clark County  
9 Detention Center.

09:00:57 10 Do you understand this admonition?

11 THE WITNESS: Yes.

12 THE FOREPERSON: Thank you and you're  
13 excused.

14 THE WITNESS: Thank you.

09:01:34 15 MR. STEPHENS: Our next witness will be  
16 Jose Soto.

17 THE FOREPERSON: Raise your right hand,  
18 please. Right hand.

19 You do solemnly swear that the testimony  
09:02:15 20 that you're about to give upon the investigation now  
21 pending before this Grand Jury shall be the truth, the  
22 whole truth, and nothing but the truth, so help you God?

23 THE WITNESS: Yes, sir.

24 THE FOREPERSON: You're advised that you're  
09:02:28 25 here today to give testimony in the investigation

09:02:30 1 pertaining to the offenses of sale of controlled  
2 substance, trafficking in controlled substance,  
3 conspiracy to violate uniform controlled substances act,  
4 unlawful production or processing of marijuana,  
09:02:44 5 possession of controlled substance involving Jose  
6 Najera, Eduardo Garcia, Norberto Madrigal.

7 Do you understand this advisement?

8 THE WITNESS: Yes.

9 THE FOREPERSON: Please state your first  
09:02:58 10 and last name and spell both for the record.

11 THE WITNESS: Jose Soto. It's J-O-S-E,  
12 last name S-O-T-O.

13 THE FOREPERSON: Can you speak a little  
14 louder?

09:03:10 15 THE WITNESS: Jose, so J-O-S-E, last name  
16 S-O-T-O.

17 THE FOREPERSON: Thank you.

18 MR. STEPHENS: Thank you.

19 **JOSE SOTO,**

09:03:18 20 having been first duly sworn by the Foreperson of the  
21 Grand Jury to testify to the truth, the whole truth  
22 and nothing but the truth, testified as follows:

23 ///

24 ///

09:03:18 25 **EXAMINATION**

09:03:18

1 BY MR. STEPHENS:

2 Q Mr. Soto, were you working as a  
3 confidential informant for the Las Vegas Metropolitan  
4 Police Department between March and April of 2020?

09:03:29

5 A Yes.

6 Q And were you paid for your services there?

7 A Yes.

8 Q Okay. What was your purpose in working  
9 with the Metropolitan Police Department?

09:03:42

10 A They just needed my assistance on a case.

11 Q Okay. And what type of a case was it that  
12 you were assisting them on?

13 A They just told me it was a marijuana case.

14 Q Okay. Now, before we get too far into  
15 this, you have a prior conviction for attempt burglary  
16 in 2001 out of Nevada, correct?

09:03:55

17 A Correct.

18 Q All right. And that is a felony?

19 A Yes.

09:04:03

20 Q All right. Did the police officers tell  
21 you the names of the individuals that they were  
22 investigating?

23 A They just introduced me one of them as  
24 Lalo.

09:04:17

25 Q Lalo, okay. And did you later meet up with

09:04:20

1 Lalo?

2 A Yes.

3 Q I'm going to show you Exhibit 4. Is this  
4 the individual that you recognize as Lalo?

09:04:31

5 A Yes.

6 Q Do you know whether or not Lalo had any  
7 other partners or friends related to this investigation?

8 A Later on in the deal he did mention a  
9 businessman that was related to the Latin commerce,  
09:04:55 10 Chamber of Commerce, and a police officer.

11 Q We'll get there in one moment then. Now,  
12 did you ever make any purchases from Mr. Lalo?

13 A Yes.

14 Q And what types of purchases did you make?

09:05:09

15 A A couple pounds of marijuana a few times.

16 Q Okay. And did you always purchase it from  
17 Lalo?

18 A Yes.

09:05:22

19 Q As you were working this case, before you  
20 made those purchases were you searched by the police  
21 department?

22 A Every time.

23 Q Okay. And afterwards were you searched?

24 A Yes.

09:05:31

25 Q Were you ever given buy money from the



09:05:33 1 Metropolitan Police Department?

2 A Yes.

3 Q So you never made purchases with your own  
4 money?

09:05:40 5 A No.

6 Q I want to draw your attention to March 26th  
7 of 2020. Is that when you were first introduced to  
8 Lalo?

9 A I don't recall the date but, yeah, around  
09:05:51 10 there.

11 Q Okay. And do you recall where it is that  
12 you met Lalo?

13 A I met him at his house.

14 Q And that address would be at 2340 East  
09:06:02 15 Camaro, correct?

16 A I don't recall the address.

17 Q Fair enough.

18 A That should be.

19 Q That's all right. When you arrived there  
09:06:12 20 tell me how that interaction went.

21 A I was with another informant. He was the  
22 one that introduced me to him.

23 Q Okay.

24 A So he introduced me as a buyer from  
09:06:25 25 Arizona.

09:06:25 1 Q Okay. A buyer of --

2 A He told him that I had customers for a  
3 couple hundred pounds.

4 Q Of marijuana?

09:06:33 5 A Marijuana.

6 Q At this time that you met Lalo at his home,  
7 was there any other individuals besides you and the  
8 other individual?

9 A No, not that I seen.

09:06:44 10 Q Okay. During this interaction with Lalo  
11 did he discuss his partners with you then?

12 A He did some of it. I don't recall if it  
13 was in the first, second or third time I met up with  
14 him, but he did want to put me in as a partner because  
09:07:04 15 he said they had a few farms in Pahrump and they were  
16 going to start a grow here in town and that he needed  
17 somebody that could, you know, take care of selling the  
18 pounds.

19 Q Did he also introduce you to other partners  
09:07:21 20 that were not present at the residence?

21 A He mentioned them but he never introduced  
22 me to them.

23 Q Gotcha. Okay. And was it at this time  
24 that he told you that he had a partner that was a member  
09:07:33 25 of the Latin Chamber of Commerce?

09:07:36

1 A Yes.

2 Q And was it also at this time that he also  
3 told you that another partner was a police officer?

4 A Correct.

09:07:40

5 Q Okay. During this interaction with Lalo  
6 did he show you any videos of the product?

7 A He did show me a video of him spraying it  
8 with THC.

09:08:00

9 Q Okay. What was it that Mr. Garcia told you  
10 he was actually selling to you?

11 A He said it was hemp but he was spraying it  
12 with that and it would be even stronger than marijuana.

13 Q Okay. And did he tell you what chemical he  
14 was spraying it with? Was it THC?

09:08:17

15 A Yeah.

16 Q Okay. I'm going to show you Exhibit 10.  
17 Is this a still photo of the video that he showed you of  
18 the spraying?

19 A Yeah.

09:08:29

20 Q Did he explain to you how he was going to  
21 or how the spray would adhere or stick to the hemp?

22 A He mentioned that his sister was, you know,  
23 worked with a chemist and she came out with something  
24 that you could spray on it first and then they'll spray  
25 the oil and it will stick into it.

09:08:51

09:08:53 1 Q Okay. So by spraying it with THC oil you  
2 could make hemp have the effects of marijuana; is that  
3 how you understood that?

4 A Yes.

09:09:02 5 Q Okay. So during this interaction, at some  
6 point did Mr. Lalo give you any samples?

7 A The first time I saw him he did give me a  
8 sample.

9 Q Do you recall about how much the sample  
09:09:17 10 was, how much it weighed?

11 A I believe it was a pound.

12 Q Okay. And during that time did he make any  
13 statements to you about the strength of the marijuana or  
14 the hemp spray?

09:09:31 15 A He told me to try it, have my people try it  
16 and then I guess it wasn't strong enough so I told him I  
17 needed something a little bit stronger.

18 Q So initially when you took that he told you  
19 that if you needed it he could get you stronger?

09:09:50 20 A Yes, he said he could spray it as many  
21 times as I wanted to, it's just the price was going to  
22 go up a little bit.

23 Q Do you recall how this hemp marijuana was  
24 bagged?

09:10:02 25 A It was like in a turkey bag.

09:10:05 1 Q Did you say turkey bag?

2 A Yeah.

3 Q Okay. During this interaction at

4 Mr. Garcia's home, did he show you anything else growing

09:10:15 5 inside that home?

6 A He showed me like -- well, he didn't have

7 to show me, it was a table with like, I don't know how

8 many plants but it was full of plants, the table was

9 full of plants, marijuana plants.

09:10:29 10 Q Marijuana plants you said?

11 A Yeah, it looked to be marijuana plants.

12 Q Okay. And then did he show you any bins

13 containing anything else in them?

14 A He did. He had like a storage above the

09:10:44 15 ceiling and he showed me a box with some marijuana on it

16 and he had more bags on top.

17 Q And then did you guys discuss any future

18 purchases?

19 A I told him I had a customer maybe for like

09:10:59 20 250, 200 pounds. He said he had like, he had like 160

21 there and he could get like 250, no problem.

22 Q Okay. About how long did that interaction

23 take?

24 A I would say every time that I would go out

09:11:19 25 there with him it would be 15, 20 at the most minutes.

09:11:24 1 Q All right. Did you take that sample that  
2 he offered to you at the end of March, you took that  
3 from the home?

4 A I did.

09:11:31 5 Q Okay. And then did you give that to the  
6 detectives involved in the case?

7 A Correct.

8 Q At some point did you -- well, let me ask  
9 you more vaguely. What did you do next in that  
09:11:45 10 investigation?

11 A After the first sample?

12 Q Yeah, after the first sample, did you ever  
13 return that sample?

14 A We did return the sample. That's when I  
09:11:51 15 called him back and the detectives had told me that it  
16 wasn't strong enough so that's when I told him if we  
17 could get something a little bit stronger and he said it  
18 was no problem, he was going to spray it a few times  
19 more.

09:12:03 20 MR. STEPHENS: And as to what the  
21 detectives told Mr. Soto that would be hearsay but it's  
22 not offered for the truth of the matter asserted, it's  
23 simply to indicate as to what Mr. Soto would do next in  
24 the investigation.

25

09:12:12 1 BY MR. STEPHENS:

2 Q On April 1st of 2020, did you return that  
3 sample to Lalo?

4 A I don't recall the date but I did return it  
09:12:20 5 back.

6 Q Okay. And what did you tell Lalo you were  
7 doing with that sample, what did you request of him?

8 A I told him that I showed it to my people  
9 and my people said it was too weak, they needed  
09:12:34 10 something a lot stronger.

11 Q What did he tell you in return?

12 A He said he would spray it a few times more.  
13 He was going to charge me a little more because he was  
14 going to spray more oil on it.

09:12:45 15 Q Did he eventually return this sample back  
16 to you?

17 A He did. Well, not the sample, I bought a  
18 few pounds off of him.

19 Q Okay.

09:12:54 20 A I don't know if it was the same or  
21 different.

22 Q Gotcha. And would that purchase have  
23 occurred on or about April 8th?

24 A It could be.

09:13:05 25 Q Could be, okay. You don't remember the

09:13:07 1 dates specifically?

2 A I don't remember the dates.

3 Q Fair enough. Where was it that you made  
4 this second purchase?

09:13:13 5 A At his house.

6 Q Okay. And again do you recall the address  
7 of that specific home?

8 A No. I know it's off of Eastern.

9 Q In Las Vegas, Nevada?

09:13:25 10 A In Las Vegas, Nevada, yeah.

11 Q All right. And you said you bought  
12 two pounds off him?

13 A Yeah.

09:13:32 14 Q Do you recall how much you purchased that  
15 from him for?

16 A I believe it was a thousand dollars.

17 Q At this time did he again show you larger  
18 storages of marijuana in the home?

19 A Yeah, it was there all the time.

09:13:49 20 Q And it appeared to be marijuana to you?

21 A It was the same thing I was buying.

22 Q Did he ever discuss with you how his  
23 business was doing, this business of spraying the  
24 marijuana in the hemp, did he ever discuss his finances  
09:14:09 25 with you?



09:14:09 1 A He did mention that he was going through  
2 some rough times.

3 Q Okay. All right. When you made this  
4 two-pound purchase, did you again return that sample to  
09:14:20 5 the detectives in the case?

6 A Correct.

7 Q After that what happened in the  
8 investigation?

9 A After that I did a second buy out of the  
09:14:32 10 warehouse.

11 Q Okay. And do you recall that warehouse  
12 being located at 800 West Mesquite, Las Vegas, Nevada?

13 A Again I don't recall the address but it's  
14 right off the Spaghetti Bowl.

09:14:44 15 Q All right. Let me show though this exhibit  
16 here. This is Exhibit 7. This is an aerial view but is  
17 this the general location of where you went?

18 A Correct.

19 Q Okay. And would that have been -- how much  
09:14:57 20 were you intending to purchase at this location at this  
21 time?

22 A I believe about another two pounds off of  
23 him and I found out my customers would be in town  
24 somewhere around the weekend and I made a bigger order.

09:15:15 25 Q Okay. When you made this two-pound

09:15:19 1 purchase at this warehouse, were you actually on the  
2 property or were you outside the property? Where were  
3 you at?

09:15:28 4 A I didn't want to go inside because he  
5 mentioned he had cameras inside, and since there was a  
6 police officer involved I didn't want to risk going in  
7 there and get recognized.

8 Q Okay. So it would have been outside the  
9 gates somewhere?

09:15:38 10 A Outside the gate.

11 Q Then let me draw your attention, you said  
12 after this purchase you talked to him about a larger  
13 purchase, correct?

14 A Correct.

09:15:46 15 Q And what was that amount for?

16 A Two hundred fifty pounds.

17 Q And what was Mr. Lalo's comments regarding  
18 your 250-pound purchase?

19 A He said he would do it.

09:15:59 20 Q Did you guys set up a date on when that  
21 would occur?

22 A Yes.

23 Q Did that purchase, was it set up for  
24 April 26th of 2020?

09:16:11 25 A I don't recall the date but it was around

09:16:13 1 that time.

2 Q Okay. About how long did your entire  
3 investigation occur from the time you initially met Lalo  
4 to where you were kind of finished with your portion of  
09:16:29 5 the case, was it about a month's worth of time?

6 A Yes.

7 Q And this 250-pound purchase, did he  
8 indicate to you how this transaction would occur?

9 A It'll be simple, go to the warehouse and  
09:16:48 10 get them out of there, buy them there.

11 Q And was he referring to the same warehouse  
12 in Exhibit 7?

13 A Yes.

14 Q At that time did he request any assistance  
09:16:58 15 from you?

16 A I told him that -- the detectives told me  
17 if there was a chance for me to go in there and see when  
18 they were spraying. So I did mention to him that if I  
19 could go in there and make sure he sprays everything  
09:17:13 20 good for the buyers. So I went in the warehouse with  
21 him when he was spraying.

22 Q So you were present during the spray?

23 A Correct.

24 Q And we already showed you this exhibit but  
09:17:25 25 let me show it to you again here. This is Exhibit 10.

09:17:30 1 Can you describe for us how this spray occurred when you  
2 were present?

3 A Well, I walked in there. He went and got  
4 me out. When I parked I told him I was outside. He got  
09:17:41 5 me, we went inside, I followed him in. He had those  
6 trays in there on top of a table and maybe about 40, 50  
7 bags already bagged up and he was spraying whatever he  
8 was spraying on it.

9 Q Okay. Did you wear any protective  
09:18:01 10 equipment during the spray?

11 A I didn't. I was there for a short time. I  
12 told him I was getting a headache and I wanted to leave.

13 Q You mentioned that there was some that was  
14 already bagged. Can you describe how it was bagged,  
09:18:14 15 what type of bags they were?

16 A They were like clear plastic bags.

17 Q Okay. Were they similar to the initial  
18 purchase or the initial sample that he provided to you?

19 A Yes.

09:18:28 20 Q How long did you remain inside the  
21 warehouse?

22 A I would say about five minutes.

23 Q And after that what happened?

24 A After that I walked out and it got raided.

09:18:40 25 Q Okay. So did you ever finalize or complete

09:18:44 1 that 250-pound purchase?

2 A No.

3 Q Okay. And all these events that you've  
4 testified to occurred in Clark County, Nevada?

09:18:54 5 A Correct.

6 Q One moment. Just a few more questions. I  
7 want to talk to you a little bit about Lalo's residence,  
8 okay?

9 A Okay.

09:19:38 10 Q I'm going to show you what has been marked,  
11 this is a packet of photos, Exhibit 13. Do you  
12 recognize this residence?

13 A Yes, that's his garage.

14 Q That's Lalo's garage?

09:19:54 15 A Yes.

16 Q Okay. This is the second photo there. Do  
17 you recognize this photo?

18 A Yes.

19 Q And what are we looking at here?

09:20:04 20 A Those bags, I'm pretty sure they're the  
21 ones he showed me with marijuana in them.

22 Q And where were these bags located when you  
23 saw them?

24 A Above the ceiling in the attic.

09:20:18 25 Q Okay. Do you know what type of car Lalo

09:20:27 1 drove?

2 A I believe he drove a Nissan Sentra, blue  
3 Nissan Sentra.

09:20:37 4 Q Did you ever meet with him inside that  
5 Nissan Sentra?

6 A No, not inside.

7 Q Okay.

8 I have no further questions of this  
9 witness. Do any of the Grand Jurors have questions?

09:20:56 10 BY A JUROR:

11 Q I couldn't quite hear, what purchase price  
12 did you get for the two pounds?

13 A What price did I pay? A thousand dollars.

14 Q Five hundred a pound?

09:21:05 15 A Five hundred a pound.

16 THE FOREPERSON: Yes, sir.

17 BY A JUROR:

18 Q How many buys did you make for Metro?

19 A I did two buys.

09:21:13 20 THE FOREPERSON: Any other questions?

21 BY MR. STEPHENS:

22 Q Let me follow up with a little bit there.  
23 And then you set up this third buy for 250 pounds?

24 A Correct.

09:21:23 25 THE FOREPERSON: Any other questions?

09:21:24 1 MR. STEPHENS: I should ask one more just  
2 to follow up with your question also.

3 BY MR. STEPHENS:

4 Q Was there a purchase price indicated  
09:21:29 5 regarding the 250-pound purchase?

6 A I believe since I was going to get a bigger  
7 volume it was going to be around 350 or 400 a pound.

8 Q Okay. Three hundred fifty or 400 a pound,  
9 something like that?

09:21:42 10 A Three hundred fifty dollars or four hundred  
11 a pound.

12 Q Okay.

13 THE FOREPERSON: Any other questions?

14 MR. STEPHENS: One moment.

09:21:48 15 BY MR. STEPHENS:

16 Q All right. Let me clarify some of this  
17 with you here. So I just want to go through the  
18 different purchases that were made here. On April 1st,  
19 or at the beginning of April, you testified that you  
09:22:24 20 returned the sample that he provided you?

21 A Correct.

22 Q Okay. And you did not pay for that sample,  
23 correct?

24 A It was a free sample.

09:22:32 25 Q All right. So the next time I believe that

09:22:35 1 you would have went to his residence and you said you  
2 bought two pounds of marijuana?

3 A Correct.

4 Q Or hemp-sprayed marijuana?

09:22:45 5 A Yeah.

6 Q Did you do an additional two-pound  
7 purchase --

8 A Yes.

09:22:56 9 Q -- later? Okay. And then lastly, and let  
10 me clarify these dates with you here, if it will help  
11 you I can refer you to the police report that was  
12 drafted, did you also make a purchase on April 22nd,  
13 2020, for two pounds?

09:23:13 14 A I believe that's when I bought them in the  
15 warehouse.

16 Q You bought that one at the warehouse?

17 A Yes.

18 Q Okay. So how many purchases where you  
19 actually paid money to Lalo?

09:23:21 20 A Two.

21 Q Just two, not three?

22 A I believe it was only two.

23 Q One moment, I'm going to -- give me one  
24 moment here.

09:24:07 25 When you returned the sample, did you make



09:24:12 1 a purchase on that date when you returned the sample, if  
2 you remember?

3 A I don't remember.

4 Q Okay. Do you recall what detective it is  
09:24:35 5 that you met up with after these purchases?

6 A Yes, it was -- I don't know their names.

7 Q Fair enough. If I told you their name  
8 would you recognize them?

9 A Yeah.

09:24:49 10 Q Was one of them a Detective Hefner?

11 A I don't know them by name.

12 Q Okay. Did you see the individual that left  
13 the courtroom as you were coming in the courtroom?

14 A That was one of them.

09:25:00 15 Q That was one of them?

16 A Yeah.

17 Q And did you meet with him after each of the  
18 purchases?

19 A Correct.

09:25:04 20 Q Okay. And if he indicated in his report  
21 that there were three different purchases, do you  
22 believe his report would be accurate on that?

23 A Yes. Like I said, my memory sometimes -- I  
24 work a lot of cases and I forget. It could have been  
09:25:25 25 three but I only recall two.

09:25:28 1 Q Fair enough. Court's indulgence.

2 All right. Would it refresh your  
3 recollection to recall the amount of purchases if I  
4 showed you Detective Hefner's report?

09:26:14 5 A Yes.

6 Q All right. This was on April 8th of 2020,  
7 and I'm just going to draw your attention to this last  
8 portion down here. If you'll read that paragraph for  
9 me.

09:26:26 10 A That one paragraph?

11 Q Yeah.

12 A Do you want me to read it out loud?

13 Q No, to yourself, please.

14 Did you read that paragraph?

09:26:57 15 A Yes.

16 Q So on April 8th did you return a  
17 marijuana-looking substance to the detectives?

18 A Yes.

19 Q Okay. And then let me draw your  
09:27:05 20 attention also --

21 A Was it a single buy pound?

22 Q I can't answer that for you. But do you  
23 recall how much it was?

24 A I believe it was, you know, I kind of  
09:27:16 25 remember it was one pound that we bought the first time.

09:27:18 1 Q Okay. And then you believe that there were  
2 two separate two-pound buys after that?

3 A Yes.

4 Q Okay.

09:27:27 5 I'll pass the witness. Or sorry, I have no  
6 further questions of this witness. Does anyone else  
7 have questions of the witness?

8 THE FOREPERSON: Any questions?

9 By law these proceedings are secret and you  
09:27:35 10 are prohibited from disclosing to anyone anything that  
11 transpired before us including any evidence presented to  
12 the Grand Jury, any event occurring or a statement made  
13 in the presence of the Grand Jury or any information  
14 obtained by the Grand Jury.

09:27:35 15 Failure to comply with this admonition is a  
16 gross misdemeanor punishable up to 364 days in the Clark  
17 County Detention Center and a \$2,000 fine. In addition  
18 you may be held in contempt of court punishable by an  
19 additional \$500 fine and 25 days in the Clark County  
09:27:35 20 Detention Center.

21 Do you understand this admonition?

22 THE WITNESS: Yes.

23 THE FOREPERSON: Thank you and you're  
24 excused.

09:28:08 25 THE WITNESS: Thank you.

09:28:29

1 MS. TALIM: State's next witness is  
2 Detective Erik Morris.

3 THE FOREPERSON: Raise your right hand,  
4 please.

09:29:45

5 You do solemnly swear that the testimony  
6 that you're about to give upon the investigation now  
7 pending before this Grand Jury shall be the truth, the  
8 whole truth, and nothing but the truth, so help you God?

9 THE WITNESS: I do.

09:29:51

10 THE FOREPERSON: You're advised that you're  
11 here today to give testimony in the investigation  
12 pertaining to the offenses of sale of a controlled  
13 substance, trafficking in a controlled substance,  
14 conspiracy to violate uniform controlled substances act,  
15 unlawful production or processing of marijuana,  
16 possession of controlled substance involving Jesus  
17 Najera, Eduardo Garcia, Norberto Madrigal.

09:30:05

18 Do you understand this advisement?

19 THE WITNESS: Yes.

09:30:20

20 THE FOREPERSON: Please state your first  
21 and last name and spell both for the record.

22 THE WITNESS: Erik Morris, E-R-I-K  
23 M-O-R-R-I-S.

24 THE FOREPERSON: Thank you.

09:30:27

25 ///

09:30:27

1

**ERIK MORRIS,**

2

having been first duly sworn by the Foreperson of the

3

Grand Jury to testify to the truth, the whole truth

4

and nothing but the truth, testified as follows:

09:30:27

5

6

EXAMINATION

7

BY MS. TALIM:

8

Q Sir, how are you employed?

9

A I'm employed as a detective with the Las

09:30:32

10

Vegas Metropolitan Police Department.

11

Q How long have you been a police officer

12

with Metro?

13

A Twelve years.

14

Q How long have you been a detective?

09:30:39

15

A Five years.

16

Q What's your current assignment?

17

A Criminal Intelligence.

18

Q Okay. Back in February of this year you

19

were still assigned to Criminal Intelligence?

09:30:48

20

A Correct.

21

Q And did you work on an investigation with

22

Detective Chaney and Detective Aaron Hefner?

23

A Yes.

24

Q Was that an investigation looking into the

09:30:59

25

illegal production and sale of marijuana?

09:31:03 1 A Yes.

2 Q Okay. How many people are on your task  
3 force or in your group?

09:31:15 4 A It varies. Our actual squad has seven but  
5 oftentimes we'll utilize other people from our section  
6 or from the department if it's needed on a case.

7 Q Okay. Specific to the reason why you're  
8 testifying here this morning, were there a series of  
9 search warrants that were executed throughout the  
09:31:31 10 valley?

11 A There were.

12 Q Okay. That was specifically on April 30th  
13 of this year?

14 A Yes.

09:31:36 15 Q Okay. Were you, as part of your role on  
16 the Criminal Intelligence Unit working with Detectives  
17 Chaney and Hefner, were you tasked with responding to a  
18 search warrant being executed at a residence located at  
19 2340 East Camaro?

09:31:57 20 A I can't be certain of the numbers but, yes,  
21 it was at Camaro and Eastern I believe. But, yes, I was  
22 assigned to the Camaro address is what we called it on  
23 the briefing sheet.

24 Q Got it. And based on the fact that you  
09:32:09 25 were working with those detectives, did you have reason

09:32:11 1 to believe that there was, that you would discover  
2 marijuana and/or hemp pursuant to that search warrant  
3 execution?

4 A Yes.

09:32:21 5 Q Okay. Now, the actual execution of the  
6 search warrant, was that done by another unit?

7 A Us in conjunction with our narcotics unit.

8 Q Okay. And you responded specifically to  
9 that address while other detectives responded to  
09:32:34 10 different addresses related to this investigation?

11 A Correct.

12 Q Okay. I'm going to show you Grand Jury  
13 Exhibit 13 and it's a four-page exhibit. Just take a  
14 look at those, please. Are these photos of items that  
09:32:59 15 were recovered during the course of the execution of the  
16 search warrant?

17 A Yes, they are.

18 Q Okay. The house located at this residence,  
19 this is a single-story ranch-style?

09:33:14 20 A Yes.

21 Q And was the bulk of the items seized for  
22 evidentiary purposes recovered from the garage area of  
23 that residence?

24 A They were.

09:33:25 25 Q Okay. I'm going to show you page 1 of that

09:33:27 1 exhibit. What are we looking at?

2 A The garage area of the residence with the  
3 marijuana plants that were being grown.

09:33:36 4 Q What did you do with the plants that we see  
5 in this photo?

6 A The unit that got the plants, we actually  
7 called in the narcotics unit because they're trained  
8 specifically to handle grow operations. There's certain  
9 techniques that are used that you have training on that  
09:33:53 10 we don't have the training for. So narcotics was  
11 actually the ones that recovered those, and then  
12 afterwards I believe they are destroyed after they're  
13 documented.

09:34:02 14 Q Samples were collected of the different  
15 plants?

16 A Correct.

17 Q Okay. Were you present along with  
18 narcotics while this was happening?

19 A For the recovery, yes.

09:34:11 20 Q Okay. Page 2 of the same exhibit, what are  
21 we looking at?

22 A The rafter area of the garage. You can  
23 actually see in the bottom left corner there's, that's  
24 how you access the rafter area and that was two bags of  
09:34:33 25 at the time we believed were either hemp or sprayed hemp



09:34:37 1 turning it into marijuana, but the testing kits in the  
2 field would only test positive even if it was hemp. So  
3 it was a hemp or marijuana substance in those two bags.

4 Q There's a date and time stamp at the bottom  
09:34:53 5 of these photos, January 5th. That would not be  
6 accurate for when these photos were taken; is that  
7 right?

8 A Yeah, these photos were all taken by  
9 narcotics so those must have been just they didn't  
09:35:07 10 reset the camera after a battery change or something.

11 Q Okay. So page 3 of the same exhibit, are  
12 we looking now at what's inside the bags that we looked  
13 at in the previous photo?

14 A Correct.

09:35:16 15 Q Okay. And then that's the -- just describe  
16 what we're looking at.

17 A The green leafy substance which could be  
18 hemp or marijuana depending on, in this scenario that we  
19 have, whether or not it had been sprayed with the THC  
09:35:30 20 yet. So the raw product was the hemp, the finished  
21 product was the hemp-sprayed THC turning it into  
22 marijuana but they both look the same. The field test  
23 kits that we have do not differentiate between hemp and  
24 marijuana so it has to go to the lab for further  
09:35:44 25 testing.

09:35:45 1 Q And so you did have a field test kit that  
2 you were using at the time for marijuana?

3 A Correct.

09:35:54 4 Q Okay. But you just said that that field  
5 test kit would not produce an accurate result as to  
6 whether or not something -- this specific was marijuana?

7 A Correct.

8 Q And is that why the items in this case that  
9 were recovered from this residence were ultimately  
10 submitted to the forensic lab?

11 A For further testing, correct.

12 Q Okay. And then page 4 of the same exhibit,  
13 what are we looking at here?

14 A Paperwork in the name of Eduardo Garcia who  
09:36:24 15 was the -- he was a resident of the house, he was not  
16 the owner but that was his primary residence, so this is  
17 documentation showing that he had an interest in the  
18 residence.

19 Q And is that normal that you take documents  
09:36:37 20 or photographs of documents to show some type of  
21 possessory interest in a location?

22 A It is.

23 Q Okay. And this actually indicates Mr.  
24 Garcia's employment with the Nevada Division of  
09:36:49 25 Forestry; is that right?

09:36:50 1 A That is correct.

2 Q Fair to say there was quite a bit of items  
3 you believed to have evidentiary value recovered from  
4 this residence?

09:37:10 5 A Yes.

6 Q Well over 12 plants of marijuana?

7 A Yes.

8 Q Okay. And then the specific analysis of  
9 what we observed in those black trash bags, that wasn't  
09:37:26 10 done by you but it was ultimately done by Metro's lab?

11 A I believe so. I'm not sure what Detectives  
12 Chaney or Hefner did ultimately with that but I believe  
13 all of the evidence was submitted for forensic testing  
14 at a later date.

09:37:41 15 Q Okay, perfect. The items that were seized  
16 during the course of this search warrant execution, were  
17 they all impounded under a unique event number?

18 A Yes, they were.

19 Q And is that so when items are later  
09:37:53 20 recovered or looked through or tested you know where to  
21 look?

22 A Correct.

23 Q Okay. And then any items of evidentiary  
24 value recovered from this residence was turned over to  
09:38:04 25 the case agents?

09:38:06

1 A Correct.

2 Q And in this case that would have been  
3 Detective Hefner?

4 A Or Chaney.

09:38:10

5 Q Or Chaney?

6 A Uh-huh.

7 Q Okay, got it.

8 I have no further questions -- oh, no, no,  
9 no, I do, I do, I lied.

09:38:17

10 Same exhibit, so page 1 of this exhibit  
11 we're looking at plants, marijuana plants. Is there  
12 certain types of equipment used to enable the marijuana  
13 plants to flourish and grow?

14 A Yeah, the lighting up top that you can see  
09:38:40 15 is used primarily to provide, they're obviously not in  
16 sunlight so it gives them the UV lights I guess that  
17 they need to grow, and then I believe that there's also  
18 irrigation systems too that were utilized.

19 Q So fluorescent lights?

09:38:57

20 A The fluorescent lights are, they're  
21 necessary for the growth of the marijuana, yes.

22 Q And during the search of this residence did  
23 you also discover that there were chemicals that are  
24 normally associated with growing marijuana plants?

09:39:12

25 A So I believe that that was -- narcotics

09:39:15

1 had, obviously that's their specialty, they were the  
2 ones that they did. I do believe that they found some  
3 chemicals that were ordered for disposal at the scene.  
4 They documented what they were and then they were  
5 disposed of.

09:39:27

6 Q And that's what I was going to ask you.  
7 They were all impounded or documented and then disposed  
8 of according to OSHA standards?

9 A Correct.

09:39:36

10 Q Okay. I have no further questions for this  
11 witness.

12 THE FOREPERSON: Any questions? Yes, sir.

13 BY A JUROR:

09:39:51

14 Q The THC, is that the definition for some  
15 kind of a chemical name that's added to marijuana or  
16 hemp?

09:40:08

17 A So THC is the active chemical in marijuana.  
18 I'm not a chemist but from what I understand THC is the  
19 active chemical in marijuana which produces the effects  
20 of marijuana to be under the influence. In this case  
21 they had liquid THC that was separate from any plant and  
22 they would use that liquid THC to spray onto the hemp in  
23 effect turning it into marijuana.

24 THE FOREPERSON: Any other questions? Yes.

25

09:40:26

1 BY A JUROR:

2 Q What is the difference between hemp and  
3 marijuana?

09:40:38

4 A Hemp is an agricultural product in which  
5 you can use it to make a number of things from oils to  
6 lotions to rope to fabric. Marijuana is, from what I  
7 understand, structurally the same except it has the THC  
8 which can make the user intoxicated which is when  
9 somebody's high on marijuana. If you smoked the hemp  
10 you would not get high. When you smoke the marijuana or  
11 ingest it any other way, the THC in the marijuana, which  
12 is not in the hemp, is what gives you the intoxicating  
13 effect.

09:40:58

14 THE FOREPERSON: Any other questions?

09:41:10

15 BY A JUROR:

16 Q I don't know if you can answer this  
17 question, but the first person that testified, Soto, he  
18 said that when he brought the sample back to you guys it  
19 wasn't strong enough, so did that meet those levels to  
20 make it from hemp to marijuana or it was not?

09:41:23

21 MS. TALIM: And I'm not sure that Detective  
22 Morris can testify to that but Detective Hefner, when he  
23 is recalled, will be happy to answer that question.

24 THE FOREPERSON: Any other questions?

09:41:38

25 By law these proceedings are secret and you

09:41:38 1 are prohibited from disclosing to anyone anything that  
2 transpired before us including any evidence presented to  
3 the Grand Jury, any event occurring or a statement made  
4 in the presence of the Grand Jury or any information  
09:41:38 5 obtained by the Grand Jury.

6 Failure to comply with this admonition is a  
7 gross misdemeanor punishable up to 364 days in the Clark  
8 County Detention Center and a \$2,000 fine. In addition  
9 you may be held in contempt of court punishable by an  
09:41:39 10 additional \$500 fine and 25 days in the Clark County  
11 Detention Center.

12 Do you understand this admonition?

13 THE WITNESS: I do.

14 THE FOREPERSON: Thank you and you're  
09:42:12 15 excused.

16 THE WITNESS: Thanks.

17 MS. TALIM: State's next witness is Ricky  
18 Snodgrass.

19 THE FOREPERSON: Please raise your right  
09:42:42 20 hand.

21 You do solemnly swear that the testimony  
22 that you're about to give upon the investigation now  
23 pending before this Grand Jury shall be the truth, the  
24 whole truth, and nothing but the truth, so help you God?

09:42:52 25 THE WITNESS: I do.

09:42:56 1 THE FOREPERSON: You're advised you're here  
2 today to give testimony in the investigation pertaining  
3 to the offenses of sale of controlled substance,  
4 trafficking in a controlled substance, conspiracy to  
09:43:05 5 violate uniform controlled substances act, unlawful  
6 production or processing of marijuana, possession of  
7 controlled substance involving Jesus Najera, Eduardo  
8 Garcia and Norberto Madrigal.

9 Do you understand this advisement?

09:43:23 10 THE WITNESS: Yes.

11 THE FOREPERSON: Please state your first  
12 and last name and spell both for the record.

13 THE WITNESS: First name is Theodore,  
14 T-H-E-O-D-O-R-E, last name is Snodgrass,  
09:43:31 15 S-N-O-D-G-R-A-S-S.

16 THE FOREPERSON: Thank you.

17 **THEODORE SNODGRASS,**

18 having been first duly sworn by the Foreperson of the  
19 Grand Jury to testify to the truth, the whole truth  
09:43:35 20 and nothing but the truth, testified as follows:

21

22 EXAMINATION

23 BY MS. TALIM:

24 Q Sir, how are you employed?

09:43:37 25 A I'm currently employed with the Las Vegas



09:43:39 1 Metropolitan Police Department.

2 Q In what capacity?

3 A I'm a detective in the Criminal  
4 Intelligence Section.

09:43:44 5 Q How long have you been employed with Metro  
6 as an officer?

7 A Twelve years.

8 Q How long have you been with this particular  
9 detail?

09:43:51 10 A Just under two.

11 Q Okay. So directing your attention to  
12 February and into April of this year, you were on the  
13 same assignment?

14 A Correct.

09:43:59 15 Q And did you work with Detectives Hefner and  
16 Chaney?

17 A Yes.

18 Q And did you assist them in an investigation  
19 targeting individuals by the name of Garcia, Madrigal  
09:44:13 20 and --

21 A Najera.

22 Q -- Najera?

23 A Yes.

24 Q Okay. I want to direct your attention to  
09:44:24 25 April 30th of this year. Were you aware that there were

09:44:30 1 a series of search warrants authorizing the search of  
2 different locations throughout the valley associated  
3 with this investigation?

4 A Yes.

09:44:40 5 Q Okay. And specifically were you tasked  
6 with the search and collection of evidence at 1445 Stone  
7 Lake Cove, apartment 4101, in Henderson?

8 A Yes.

9 Q That's in Clark County?

09:44:56 10 A Correct.

11 Q Okay. Given that you worked with  
12 Detectives Hefner and Chaney on this case, were you  
13 aware of to whom that residence belonged?

14 A Yes.

09:45:09 15 Q And who was that?

16 A Jesus Najera.

17 Q And at that time he was a Metropolitan  
18 police officer?

19 A That's correct.

09:45:20 20 Q So you were tasked with the search and  
21 recovery of evidence at Mr. Najera's residence?

22 A Yes.

23 Q Okay. I want to show you Grand Jury  
24 Exhibit 15. Take a look at that exhibit, please, and  
09:45:31 25 it's a series of papers stapled together.

09:45:52

1 A Okay.

2 Q Did you in fact recover items that you  
3 believed to be cocaine from Mr. Najera's residence?

4 A Yes.

09:46:01

5 Q Did you perform a preliminary field test on  
6 those items?

7 A Yes.

8 Q Okay. I'm going to show you page 1 of this  
9 exhibit. Is this a copy of the preliminary field test  
10 checklist?

09:46:19

11 A Yes.

12 Q And you filled this out so this is your  
13 handwriting?

14 A Actually Detective Morris filled that out  
15 but I was present.

09:46:26

16 Q I'm sorry. Is your signature anywhere  
17 indicated on this?

18 A No, my signature is not on there. Again,  
19 it was Detective Morris. When we were impounding  
20 everything, the whole squad was impounding numerous  
21 things, but we were all there to observe and witness  
22 everything that was being impounded or tested.

09:46:39

23 Q Got it. So you didn't actually perform the  
24 test but you witnessed Detective Morris perform it?

09:46:52

25 A Correct.

09:46:52 1 Q Did Detective Morris do -- and you're  
2 certified to perform ODV tests?

3 A Yes.

4 Q Detective Morris is certified as well?

09:46:59 5 A Yes.

6 Q Okay. Did he do anything differently  
7 during the course of his performing this preliminary  
8 field test than you would have done?

9 A No.

09:47:07 10 Q Okay. All the steps and procedures were  
11 followed?

12 A Correct.

13 Q Okay. And did the test result in positive  
14 for the presence of cocaine?

09:47:18 15 A Yes.

16 Q All right. So the preliminary field test  
17 corroborated what you believed the items you recovered  
18 were?

19 A Was cocaine, yes.

09:47:30 20 Q Okay. Now, I'm just going to show you a  
21 series of photos since you actually responded to this  
22 apartment. Page 2 of the same exhibit, what is this a  
23 photo of?

09:47:45 24 A That's the safe that was located in  
25 Najera's closet.

09:47:47 1 Q Okay. The condition of this safe, is that  
2 the condition, or the condition that we see the safe in  
3 this photo, did it look the same as when you saw the  
4 safe in Mr. Najera's closet?

09:48:01 5 A No.

6 Q Did law enforcement actually have to bust  
7 the safe open?

8 A Yes.

9 Q Okay. Were items recovered from inside  
09:48:09 10 that safe that were ultimately handed over to the case  
11 agents in this case?

12 A Yes.

13 Q Did that include a series of U.S. currency  
14 bills?

09:48:20 15 A Yes.

16 Q Okay. I'm going to show you page 3 of that  
17 exhibit. Was this U.S. currency recovered from that  
18 safe?

19 A Yes.

09:48:32 20 Q The next page, again we're looking at U.S.  
21 currency that was recovered from the scene?

22 A Yes.

23 Q Okay. The next page, these are some  
24 documents including a passport, driver's license in  
09:48:48 25 whose name?

09:48:49 1 A In Jesus Najera.

2 Q All recovered from the residence?

3 A Yes.

4 Q Okay. Next page, are those screen shots of

09:48:59 5 Venmo or Zelle from Mr. Najera's phone?

6 A Yes.

7 Q And then finally, or no, not finally, but

8 this next page is a document, correct?

9 A Yes.

09:49:14 10 Q With a series of signatures on it?

11 A Yes.

12 Q This document was recovered again from

13 Stone Lake?

14 A Yes.

09:49:20 15 Q And I'm going to direct your attention to a

16 couple of things on this document. There's a

17 handwritten portion that says received 75,000 cash from

18 Manse, LLC, and Partners; do you see that?

19 A Yes.

09:49:40 20 Q There's a signature there?

21 A Yes.

22 Q I'm going to direct your attention further

23 down the document. There is a signature purporting to

24 be the signature of Jesus Najera; is that correct?

09:49:50 25 A Correct.

09:49:50 1 Q And you think that because his name is  
2 printed on top and there's a signature on the bottom?

3 A That is correct.

4 Q Okay. Directing your attention further  
09:49:59 5 down that document there's another name printed on there  
6 that says Eduardo Garcia, right?

7 A Correct.

8 Q Directing your attention further down the  
9 document there's another name printed on that and that  
09:50:12 10 is Norberto Madrigal?

11 A Correct.

12 Q And this document was recovered from Stone  
13 Lake?

14 A Correct.

09:50:19 15 Q Does it appear to be some type of contract  
16 or receipt?

17 A Yes.

18 Q Okay. Now, I'm going to show you the next  
19 photo as part of this exhibit. What are we looking at?

09:50:31 20 A This is the trunk of Jesus Najera's  
21 vehicle.

22 Q Okay. Anything of relevance in this trunk?

23 A So in our investigation you can see the  
24 blue box which is large turkey bags, that was part of  
09:50:45 25 our investigation and that was used to assist into THC

09:50:53 1 and the hemp that was being made.

2 Q If you know, were these turkey bags  
3 recovered from another location when these search  
4 warrants were executed?

09:51:04 5 A Yes.

6 Q From where?

7 A I believe at Mr. Garcia's house and I  
8 believe they were also at the warehouse.

9 Q And there is a vest or something in the  
09:51:14 10 trunk identifying or that states police, right?

11 A That's correct.

12 Q Okay. And the last picture of that exhibit  
13 is a close-up of those turkey bags?

14 A That is correct.

09:51:27 15 Q And then just the weight on that ODV, what  
16 was the weight of the cocaine recovered from  
17 Mr. Najera's residence?

18 A 1.1 grams.

19 MS. TALIM: I have no further questions of  
09:51:51 20 this witness.

21 THE FOREPERSON: Any questions?

22 By law these proceedings are secret and you  
23 are prohibited from disclosing to anyone anything that  
24 transpired before us including any evidence presented to  
09:51:57 25 the Grand Jury, any event occurring or a statement made



09:51:57 1 in the presence of the Grand Jury or any information  
2 obtained by the Grand Jury.

3 Failure to comply with this admonition is a  
4 gross misdemeanor punishable up to 364 days in the Clark  
09:51:57 5 County Detention Center and a \$2,000 fine. In addition  
6 you may be held in contempt of court punishable by an  
7 additional \$500 fine and 25 days in the Clark County  
8 Detention Center.

9 Do you understand this admonition?

09:52:27 10 THE WITNESS: Yes.

11 THE FOREPERSON: Thank you and you're  
12 excused.

13 THE WITNESS: Thank you.

14 MS. TALIM: That concludes the State's  
09:52:38 15 presentation of evidence for today. Once again I will  
16 remind you that we are not finished with our  
17 presentation. Detective Hefner will be back in a week  
18 or so and then we will ask you to withhold your  
19 deliberation and not deliberate until then. I  
09:52:54 20 appreciate it. Thank you.

21 (Proceedings continued.)

22 --oo0oo--  
23  
24  
25

09:52:55

1

**REPORTER'S CERTIFICATE**

2

3

**STATE OF NEVADA** )

: ss

4

**COUNTY OF CLARK** )

09:52:55

5

6

I, Donna J. McCord, C.C.R. 337, do hereby

7

certify that I took down in Shorthand (Stenotype) all of

8

the proceedings had in the before-entitled matter at the

9

time and place indicated and thereafter said shorthand

09:52:55

10

notes were transcribed at and under my direction and

11

supervision and that the foregoing transcript

12

constitutes a full, true, and accurate record of the

13

proceedings had.

14

Dated at Las Vegas, Nevada,

09:52:55

15

April 19, 2021.

16

17

/S/DONNA J. MCCORD

18

Donna J. McCord, CCR 337

19

09:52:55

20

21

22

23

24

09:52:55

25

09:52:55

1

## AFFIRMATION

2

Pursuant to NRS 239B.030

3

4

The undersigned does hereby affirm that the preceding

09:52:55

5

TRANSCRIPT filed in GRAND JURY CASE NUMBER 19BGJ223A-C:

6

7

8

X Does not contain the social security number of any  
person,

9

09:52:55

10

-OR-

11

\_\_\_\_ Contains the social security number of a person as  
required by:

12

13

A. A specific state or federal law, to-wit:  
NRS 656.250.

14

-OR-

09:52:55

15

B. For the administration of a public program  
or for an application for a federal or  
state grant.

16

17

18

/S/DONNA J. MCCORD  
Signature

April 19, 2021  
Date

19

09:52:55

20

Donna J. McCord  
Print Name

21

22

Official Court Reporter  
Title

23

24

25

<b>BY A JUROR: [5]</b> 46/9 46/16 61/12 61/24 62/14 <b>BY MR. STEPHENS:</b> <b>[5]</b> 30/25 38/24 46/20 47/2 47/14 <b>BY MS. TALIM: [4]</b> 8/17 10/12 53/6 64/22 <b>MR. STEPHENS: [5]</b> 29/14 30/17 38/19 46/25 47/13 <b>MS. TALIM: [7]</b> 5/12 10/7 51/25 62/20 63/16 72/18 73/13 <b>THE FOREPERSON:</b> <b>[33]</b> 5/7 7/15 7/21 8/6 8/10 28/21 29/11 29/16 29/23 30/8 30/12 30/16 46/15 46/19 46/24 47/12 51/7 51/22 52/2 52/9 52/19 52/23 61/11 61/23 62/13 62/23 63/13 63/18 63/25 64/10 64/15 72/20 73/10 <b>THE WITNESS: [21]</b> 7/20 8/5 8/8 29/10 29/13 29/22 30/7 30/10 30/14 51/21 51/24 52/8 52/18 52/21 63/12 63/15 63/24 64/9 64/12 73/9 73/12  <b>\$</b> <b>\$2,000 [4]</b> 29/6 51/17 63/8 73/5 <b>\$500 [4]</b> 29/8 51/19 63/10 73/7  - <b>--oo0oo [1]</b> 73/22 <b>-OR [2]</b> 75/10 75/14  / <b>/S/DONNA [2]</b> 74/17 75/18  <b>0</b> <b>0.3 percent [1]</b> 17/22 <b>0688 [1]</b> 16/8  <b>1</b> <b>1.1 grams [1]</b> 72/18 <b>10 [4]</b> 4/8 4/12 35/16 43/25 <b>11 [4]</b> 4/10 4/13 9/2 27/11 <b>12 [3]</b> 4/7 4/9 59/6 <b>13 [4]</b> 4/6 4/14 45/11 55/13 <b>13th [2]</b> 24/25 28/8 <b>14 [1]</b> 4/11 <b>1445 [2]</b> 13/13 66/6 <b>15 [3]</b> 4/15 37/25 66/24 <b>160 [1]</b> 37/20 <b>17th [1]</b> 19/5 <b>18 [4]</b> 1/15 2/1 5/1	24/14 <b>19 [2]</b> 74/15 75/18 <b>19BGJ223A [1]</b> 5/17 <b>19BGJ223A-C [2]</b> 1/9 75/5 <b>1st [2]</b> 39/2 47/18  <b>2</b> <b>20 [1]</b> 37/25 <b>20 pounds [1]</b> 6/12 <b>200 pounds [1]</b> 37/20 <b>2001 [1]</b> 31/16 <b>2020 [9]</b> 1/15 2/1 5/1 31/4 33/7 39/2 42/24 48/13 50/6 <b>2021 [2]</b> 74/15 75/18 <b>22 [1]</b> 8/23 <b>22nd [3]</b> 24/25 28/13 48/12 <b>2340 [3]</b> 13/20 33/14 54/19 <b>239B.030 [1]</b> 75/2 <b>25 [4]</b> 29/8 51/19 63/10 73/7 <b>250 [3]</b> 37/20 37/21 46/23 <b>250-pound [4]</b> 42/18 43/7 45/1 47/5 <b>26th [2]</b> 33/6 42/24 <b>27 [1]</b> 4/13 <b>280-4438 [1]</b> 16/5  <b>3</b> <b>30 [1]</b> 19/17 <b>308-0688 [1]</b> 16/8 <b>30th [2]</b> 54/12 65/25 <b>31 [1]</b> 3/4 <b>336-5100 [1]</b> 16/11 <b>337 [3]</b> 1/25 74/6 74/18 <b>35 [1]</b> 4/12 <b>350 [1]</b> 47/7 <b>364 [4]</b> 29/5 51/16 63/7 73/4  <b>4</b> <b>40 [1]</b> 44/6 <b>400 [2]</b> 47/7 47/8 <b>4101 [2]</b> 13/14 66/7 <b>4438 [1]</b> 16/5 <b>45 [2]</b> 4/14 19/17  <b>5</b> <b>50 [1]</b> 44/6 <b>50 pounds [1]</b> 6/9 <b>5100 [1]</b> 16/11 <b>53 [1]</b> 3/5 <b>5th [1]</b> 57/5  <b>6</b> <b>64 [1]</b> 3/6 <b>656.250 [1]</b> 75/13 <b>66 [1]</b> 4/15  <b>7</b> <b>702 [3]</b> 16/5 16/8 16/11 <b>75,000 [1]</b> 70/17 <b>7th [1]</b> 20/19	<b>8</b> <b>800 [2]</b> 11/11 41/12 <b>8:32 [1]</b> 1/16 <b>8th [6]</b> 20/23 24/25 28/2 39/23 50/6 50/16  <b>A</b> <b>A-A-R-O-N [1]</b> 8/10 <b>a.m [1]</b> 1/16 <b>AARON [6]</b> 3/3 7/6 7/14 8/9 8/12 53/22 <b>ability [1]</b> 5/7 <b>able [4]</b> 6/23 15/4 15/24 26/5 <b>about [20]</b> 7/18 9/2 14/17 19/16 23/12 25/21 29/20 36/9 36/13 37/22 39/23 41/22 42/12 43/2 43/5 44/6 44/22 45/7 52/6 63/22 <b>above [4]</b> 17/23 17/25 37/14 45/24 <b>access [3]</b> 19/3 19/10 56/24 <b>according [1]</b> 61/8 <b>accurate [4]</b> 49/22 57/6 58/5 74/12 <b>accurately [1]</b> 5/6 <b>acre [1]</b> 13/22 <b>act [5]</b> 6/14 8/1 30/3 52/14 64/5 <b>active [3]</b> 20/16 61/17 61/19 <b>actual [3]</b> 18/20 54/4 55/5 <b>actually [16]</b> 11/3 12/6 17/11 23/5 25/16 35/10 42/1 48/19 56/6 56/11 56/23 58/23 67/14 67/23 68/21 69/6 <b>add [2]</b> 17/18 17/24 <b>added [1]</b> 61/15 <b>adding [1]</b> 17/16 <b>addition [4]</b> 29/6 51/17 63/8 73/5 <b>additional [5]</b> 29/8 48/6 51/19 63/10 73/7 <b>address [8]</b> 12/6 13/19 33/14 33/16 40/6 41/13 54/22 55/9 <b>addresses [3]</b> 11/9 12/7 55/10 <b>adhere [1]</b> 35/21 <b>administration [1]</b> 75/15 <b>admitted [1]</b> 5/21 <b>admonish [2]</b> 10/8 16/15 <b>admonition [8]</b> 29/4 29/10 51/15 51/21 63/6 63/12 73/3 73/9 <b>advised [4]</b> 7/22 29/24 52/10 64/1 <b>advisement [4]</b> 8/5 30/7 52/18 64/9 <b>aerial [1]</b> 41/16 <b>affirm [1]</b> 75/4 <b>AFFIRMATION [1]</b> 75/1	<b>AFORESAID [1]</b> 1/4 <b>after [17]</b> 16/18 21/24 27/6 27/25 28/7 38/11 38/12 41/7 41/9 42/12 44/23 44/24 49/5 49/17 51/2 56/12 57/10 <b>afterwards [2]</b> 32/23 56/12 <b>again [14]</b> 7/2 16/15 19/18 23/16 25/19 40/6 40/17 41/4 41/13 43/25 67/18 69/20 70/12 73/15 <b>agents [2]</b> 59/25 69/11 <b>agricultural [1]</b> 62/4 <b>all [40]</b> 5/22 6/7 6/10 18/3 18/12 18/24 20/17 21/6 21/17 21/18 22/1 22/3 26/11 26/24 27/3 27/20 28/15 28/19 31/18 31/20 33/19 38/1 40/11 40/19 41/3 41/15 45/3 47/16 47/25 50/2 50/6 57/8 59/13 59/17 61/7 67/21 68/10 68/16 70/2 74/7 <b>allegation [1]</b> 23/3 <b>alleging [1]</b> 10/6 <b>allotted [1]</b> 6/24 <b>along [2]</b> 5/15 56/17 <b>already [4]</b> 18/23 43/24 44/7 44/14 <b>also [17]</b> 2/20 5/16 7/5 11/20 12/20 14/2 15/20 22/7 34/19 35/2 35/2 47/2 48/12 50/20 60/17 60/23 72/8 <b>always [1]</b> 32/16 <b>amount [2]</b> 42/15 50/3 <b>analysis [6]</b> 18/1 18/6 25/5 28/6 28/11 59/8 <b>and/or [1]</b> 55/2 <b>another [11]</b> 7/11 9/25 14/5 19/13 33/21 35/3 41/22 55/6 71/5 71/9 72/3 <b>answer [3]</b> 50/22 62/16 62/23 <b>any [52]</b> 6/1 7/2 7/10 7/12 11/25 14/14 14/16 17/25 17/25 20/7 23/18 24/13 24/22 25/9 25/25 28/22 28/25 29/1 29/2 32/6 32/12 34/7 35/6 36/6 36/12 37/12 37/17 43/14 44/9 46/9 46/20 46/25 47/13 51/8 51/11 51/12 51/13 59/23 61/12 61/21 61/24 62/11 62/14 62/24 63/2 63/3 63/4 72/21 72/24 72/25 73/1 75/8 <b>anyone [8]</b> 5/25 9/14 24/14 28/24 51/6 51/10 63/1 72/23 <b>anything [9]</b> 17/23 28/24 37/4 37/13 51/10 63/1 68/6 71/22 72/23	<b>anywhere [3]</b> 12/9 25/15 67/16 <b>apartment [5]</b> 13/13 13/14 15/17 66/7 68/22 <b>appear [2]</b> 12/14 71/15 <b>appeared [3]</b> 5/11 11/5 40/20 <b>application [1]</b> 75/15 <b>applications [2]</b> 11/4 11/6 <b>applying [1]</b> 10/22 <b>appreciate [1]</b> 73/20 <b>approximate [1]</b> 15/12 <b>approximately [1]</b> 21/15 <b>April [21]</b> 24/25 24/25 24/25 26/11 28/2 28/8 28/13 31/4 39/2 39/23 42/24 47/18 47/19 48/12 50/6 50/16 54/12 65/12 65/25 74/15 75/18 <b>April 13th [2]</b> 24/25 28/8 <b>April 1st [2]</b> 39/2 47/18 <b>April 22nd [3]</b> 24/25 28/13 48/12 <b>April 26th [1]</b> 42/24 <b>April 30th [2]</b> 54/12 65/25 <b>April 8th [5]</b> 24/25 28/2 39/23 50/6 50/16 <b>are [39]</b> 5/16 5/24 7/2 11/20 12/3 15/2 15/6 24/9 26/23 26/25 27/12 27/13 28/23 28/24 45/19 51/9 51/10 53/8 54/2 55/14 55/17 56/1 56/9 56/12 56/20 57/11 58/13 59/19 60/20 60/23 62/25 63/1 64/24 69/23 70/4 71/19 72/22 72/23 73/16 <b>area [9]</b> 5/10 21/10 21/11 21/22 21/22 55/22 56/2 56/22 56/24 <b>Arizona [1]</b> 33/25 <b>around [8]</b> 9/22 15/10 16/24 21/9 33/9 41/24 42/25 47/7 <b>arrived [1]</b> 33/19 <b>ask [11]</b> 5/20 6/3 6/22 7/4 7/10 16/2 16/14 38/8 47/1 61/6 73/18 <b>asserted [2]</b> 10/10 38/22 <b>assigned [4]</b> 8/23 9/23 53/19 54/22 <b>assignment [7]</b> 8/22 9/4 9/6 9/8 9/19 53/16 65/13 <b>assist [2]</b> 65/18 71/25 <b>assistance [2]</b> 31/10 43/14 <b>Assistant [1]</b> 2/6 <b>assisting [1]</b> 31/12 <b>associated [12]</b> 11/9 13/10 13/19 14/16
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<b>A</b> <b>associated...</b> [8] 15/22 16/6 16/9 16/12 17/2 18/21 60/24 66/2 <b>attempt</b> [1] 31/15 <b>attention</b> [10] 33/6 42/11 50/7 50/20 65/11 65/24 70/15 70/22 71/4 71/8 <b>attention also</b> [1] 50/20 <b>attic</b> [1] 45/24 <b>Attorney</b> [2] 5/15 5/16 <b>Attorneys</b> [1] 2/22 <b>audio</b> [1] 25/16 <b>authority</b> [2] 9/15 9/15 <b>authorizing</b> [1] 66/1 <b>aware</b> [2] 65/25 66/13	55/1 56/12 59/11 59/12 60/17 60/25 61/2 72/7 72/8 <b>believed</b> [6] 18/4 26/23 56/25 59/3 67/3 68/17 <b>belong</b> [1] 16/3 <b>belonged</b> [2] 15/24 66/13 <b>belongs</b> [1] 14/20 <b>besides</b> [1] 34/7 <b>best</b> [1] 5/7 <b>between</b> [5] 6/11 22/20 31/4 57/23 62/2 <b>bigger</b> [2] 41/24 47/6 <b>bills</b> [1] 69/14 <b>bins</b> [1] 37/12 <b>bit</b> [6] 36/17 36/22 38/17 45/7 46/22 59/2 <b>black</b> [5] 14/19 19/14 20/11 21/21 59/9 <b>blown</b> [1] 23/21 <b>blue</b> [3] 14/23 46/2 71/24 <b>boots</b> [1] 18/9 <b>boots-on-the-ground</b> [1] 18/9 <b>both</b> [5] 8/8 30/10 52/21 57/22 64/12 <b>bottom</b> [3] 56/23 57/4 71/2 <b>bought</b> [6] 39/17 40/11 48/2 48/14 48/16 50/25 <b>Bowl</b> [3] 11/13 11/14 41/14 <b>box</b> [2] 37/15 71/24 <b>briefing</b> [1] 54/23 <b>briefly</b> [1] 17/4 <b>brought</b> [1] 62/18 <b>building</b> [1] 11/17 <b>building's</b> [1] 11/16 <b>buildings</b> [1] 11/20 <b>bulk</b> [1] 55/21 <b>burglary</b> [1] 31/15 <b>business</b> [6] 11/21 11/25 20/13 20/15 40/23 40/23 <b>businessman</b> [1] 32/9 <b>bust</b> [1] 69/6 <b>buy</b> [12] 24/7 24/10 25/8 25/13 25/24 26/12 28/12 32/25 41/9 43/10 46/23 50/21 <b>buyer</b> [2] 33/24 34/1 <b>buyers</b> [1] 43/20 <b>buying</b> [1] 40/21 <b>buys</b> [3] 46/18 46/19 51/2	<b>came</b> [2] 19/17 35/23 <b>camera</b> [9] 14/2 14/2 14/6 14/8 15/3 15/8 18/19 21/4 57/10 <b>cameras</b> [3] 13/24 14/1 42/5 <b>can</b> [20] 11/12 12/9 15/4 20/12 21/19 23/18 24/7 24/14 27/2 30/13 44/1 44/14 48/11 56/22 60/14 62/5 62/8 62/16 62/22 71/23 <b>can't</b> [2] 50/22 54/20 <b>cannabis</b> [2] 17/10 17/10 <b>canvassed</b> [1] 5/10 <b>capacity</b> [1] 65/2 <b>car</b> [3] 14/19 14/22 45/25 <b>care</b> [1] 34/17 <b>case</b> [28] 1/9 1/9 5/17 7/1 18/4 23/16 23/22 24/17 26/4 26/6 26/15 27/17 31/10 31/11 31/13 32/19 38/6 41/5 43/5 54/6 58/8 59/25 60/2 61/20 66/12 69/10 69/11 75/5 <b>cases</b> [1] 49/24 <b>cash</b> [1] 70/17 <b>caused</b> [2] 16/21 22/15 <b>CCR</b> [1] 74/18 <b>ceiling</b> [2] 37/15 45/24 <b>Center</b> [8] 29/6 29/9 51/17 51/20 63/8 63/11 73/5 73/8 <b>certain</b> [4] 13/9 54/20 56/8 60/12 <b>CERTIFICATE</b> [1] 74/1 <b>certified</b> [2] 68/2 68/4 <b>certify</b> [1] 74/7 <b>Chamber</b> [2] 32/10 34/25 <b>chance</b> [1] 43/17 <b>Chaney</b> [10] 9/24 22/23 27/8 53/22 54/17 59/12 60/4 60/5 65/16 66/12 <b>change</b> [1] 57/10 <b>charge</b> [3] 6/6 6/15 39/13 <b>Charger</b> [1] 14/18 <b>charges</b> [5] 6/5 6/7 6/10 6/12 7/12 <b>charging</b> [1] 6/20 <b>check</b> [2] 25/11 25/19 <b>checklist</b> [2] 4/15 67/10 <b>chemical</b> [7] 18/1 28/5 28/11 35/13 61/15 61/17 61/19 <b>chemically</b> [1] 17/19 <b>chemicals</b> [2] 60/23 61/3 <b>chemist</b> [2] 35/23 61/18 <b>Chief</b> [3] 2/22 5/14 5/16	<b>clarify</b> [3] 17/9 47/16 48/10 <b>CLARK</b> [12] 1/2 29/5 29/8 45/4 51/16 51/19 63/7 63/10 66/9 73/4 73/7 74/4 <b>clear</b> [1] 44/16 <b>clearly</b> [1] 15/9 <b>close</b> [1] 72/13 <b>close-up</b> [1] 72/13 <b>closet</b> [2] 68/25 69/4 <b>cocaine</b> [5] 6/21 67/3 68/14 68/19 72/16 <b>collected</b> [1] 56/14 <b>collection</b> [1] 66/6 <b>color</b> [1] 11/18 <b>combination</b> [1] 19/9 <b>come</b> [4] 6/25 7/8 16/1 17/9 <b>coming</b> [2] 20/17 49/13 <b>comments</b> [1] 42/17 <b>commerce</b> [3] 32/9 32/10 34/25 <b>committed</b> [1] 9/16 <b>common</b> [2] 23/11 23/13 <b>complete</b> [1] 44/25 <b>comply</b> [4] 29/4 51/15 63/6 73/3 <b>concludes</b> [1] 73/14 <b>condition</b> [3] 69/1 69/2 69/2 <b>conducted</b> [1] 15/16 <b>confidential</b> [6] 22/23 23/2 23/10 28/7 28/12 31/3 <b>conjunction</b> [1] 55/7 <b>considered</b> [2] 9/14 17/23 <b>conspiracy</b> [5] 6/13 7/25 30/3 52/14 64/4 <b>constitutes</b> [1] 74/12 <b>contain</b> [1] 75/8 <b>containing</b> [1] 37/13 <b>Contains</b> [1] 75/11 <b>contempt</b> [4] 29/7 51/18 63/9 73/6 <b>continued</b> [1] 73/21 <b>contract</b> [1] 71/15 <b>controlled</b> [22] 6/5 6/8 6/11 6/14 6/19 7/24 7/25 8/1 8/3 26/23 30/1 30/2 30/3 30/5 52/12 52/13 52/14 52/16 64/3 64/4 64/5 64/7 <b>conviction</b> [1] 31/15 <b>copy</b> [3] 5/20 5/22 67/9 <b>corner</b> [1] 56/23 <b>correct</b> [62] 11/19 12/17 13/16 14/6 14/12 14/13 15/1 15/19 18/7 18/22 19/25 20/3 20/25 22/8 23/16 24/3 24/11 24/20 26/17 27/19 27/23 31/16 31/17 33/15 35/4 38/7 41/6 41/18 42/13 42/14 43/23 45/5 46/24 47/21	47/23 48/3 49/19 53/20 55/11 56/16 57/14 58/3 58/7 58/11 59/1 59/22 60/1 61/9 65/14 66/10 66/19 67/25 68/12 70/8 70/24 70/25 71/3 71/7 71/11 71/14 72/11 72/14 <b>corroborated</b> [1] 68/17 <b>COSENTINO</b> [1] 2/4 <b>could</b> [16] 15/9 20/18 23/5 24/1 34/17 35/24 36/2 36/19 36/20 37/21 38/17 39/24 39/25 43/19 49/24 57/17 <b>couldn't</b> [2] 19/8 46/11 <b>Count</b> [8] 6/4 6/7 6/7 6/7 6/10 6/12 6/15 6/19 <b>Count 1</b> [1] 6/4 <b>Count 2</b> [1] 6/7 <b>Count 5</b> [1] 6/10 <b>Count 7</b> [1] 6/15 <b>Count 8</b> [1] 6/19 <b>Counts</b> [1] 6/15 <b>Counts 4</b> [1] 6/15 <b>COUNTY</b> [12] 1/2 29/6 29/8 45/4 51/17 51/19 63/8 63/10 66/9 73/5 73/7 74/4 <b>couple</b> [9] 6/18 6/25 7/8 9/5 11/8 14/11 32/15 34/3 70/16 <b>course</b> [12] 12/24 13/10 13/18 14/15 14/25 15/12 15/20 19/1 24/24 55/15 59/16 68/7 <b>court</b> [7] 1/1 1/5 29/7 51/18 63/9 73/6 75/22 <b>Court's</b> [1] 50/1 <b>courtroom</b> [2] 49/13 49/13 <b>Cove</b> [2] 13/13 66/7 <b>creating</b> [1] 23/3 <b>crimes</b> [2] 9/14 9/16 <b>criminal</b> [7] 7/3 9/9 9/11 53/17 53/19 54/16 65/3 <b>currency</b> [3] 69/13 69/17 69/21 <b>current</b> [3] 8/22 9/3 53/16 <b>currently</b> [2] 8/23 64/25 <b>custom</b> [1] 13/22 <b>customer</b> [1] 37/19 <b>customers</b> [2] 34/2 41/23
<b>B</b> <b>back</b> [18] 6/25 7/8 9/8 9/19 16/20 19/15 19/17 21/11 21/19 21/22 24/6 25/18 38/15 39/5 39/15 53/18 62/18 73/17 <b>backing</b> [1] 13/17 <b>bag</b> [2] 36/25 37/1 <b>bagged</b> [4] 36/24 44/7 44/14 44/14 <b>bags</b> [20] 19/14 19/15 20/10 20/11 20/12 21/11 21/23 37/16 44/7 44/15 44/16 45/20 45/22 56/24 57/3 57/12 59/9 71/24 72/2 72/13 <b>based</b> [2] 18/8 54/24 <b>basically</b> [3] 11/12 17/21 22/1 <b>battery</b> [1] 57/10 <b>become</b> [1] 14/14 <b>been</b> [23] 5/5 8/13 8/25 9/3 9/18 9/21 11/6 12/13 20/18 30/20 41/19 42/8 45/10 49/24 53/2 53/11 53/14 57/9 57/19 60/2 64/18 65/5 65/8 <b>before</b> [15] 1/4 6/21 7/19 10/14 25/25 28/25 29/21 31/14 32/19 51/11 52/7 63/2 63/23 72/24 74/8 <b>before-entitled</b> [1] 74/8 <b>beforehand</b> [1] 26/13 <b>began</b> [2] 19/14 21/9 <b>beginning</b> [1] 47/19 <b>behavior</b> [2] 19/18 20/16 <b>behind</b> [1] 21/21 <b>being</b> [9] 11/24 22/7 24/18 25/5 41/12 54/18 56/3 67/22 72/1 <b>believe</b> [25] 13/13 14/22 19/5 22/16 36/11 40/16 41/22 46/2 47/6 47/25 48/14 48/22 49/22 50/24 51/1 54/21	<b>C</b> <b>C.C.R</b> [2] 1/25 74/6 <b>C356361</b> [1] 1/9 <b>call</b> [3] 7/7 7/14 17/14 <b>called</b> [4] 9/13 38/15 54/22 56/7 <b>calling</b> [1] 7/5 <b>Camaro</b> [6] 13/21 14/2 33/15 54/19 54/21 54/22	<b>came</b> [2] 19/17 35/23 <b>camera</b> [9] 14/2 14/2 14/6 14/8 15/3 15/8 18/19 21/4 57/10 <b>cameras</b> [3] 13/24 14/1 42/5 <b>can</b> [20] 11/12 12/9 15/4 20/12 21/19 23/18 24/7 24/14 27/2 30/13 44/1 44/14 48/11 56/22 60/14 62/5 62/8 62/16 62/22 71/23 <b>can't</b> [2] 50/22 54/20 <b>cannabis</b> [2] 17/10 17/10 <b>canvassed</b> [1] 5/10 <b>capacity</b> [1] 65/2 <b>car</b> [3] 14/19 14/22 45/25 <b>care</b> [1] 34/17 <b>case</b> [28] 1/9 1/9 5/17 7/1 18/4 23/16 23/22 24/17 26/4 26/6 26/15 27/17 31/10 31/11 31/13 32/19 38/6 41/5 43/5 54/6 58/8 59/25 60/2 61/20 66/12 69/10 69/11 75/5 <b>cases</b> [1] 49/24 <b>cash</b> [1] 70/17 <b>caused</b> [2] 16/21 22/15 <b>CCR</b> [1] 74/18 <b>ceiling</b> [2] 37/15 45/24 <b>Center</b> [8] 29/6 29/9 51/17 51/20 63/8 63/11 73/5 73/8 <b>certain</b> [4] 13/9 54/20 56/8 60/12 <b>CERTIFICATE</b> [1] 74/1 <b>certified</b> [2] 68/2 68/4 <b>certify</b> [1] 74/7 <b>Chamber</b> [2] 32/10 34/25 <b>chance</b> [1] 43/17 <b>Chaney</b> [10] 9/24 22/23 27/8 53/22 54/17 59/12 60/4 60/5 65/16 66/12 <b>change</b> [1] 57/10 <b>charge</b> [3] 6/6 6/15 39/13 <b>Charger</b> [1] 14/18 <b>charges</b> [5] 6/5 6/7 6/10 6/12 7/12 <b>charging</b> [1] 6/20 <b>check</b> [2] 25/11 25/19 <b>checklist</b> [2] 4/15 67/10 <b>chemical</b> [7] 18/1 28/5 28/11 35/13 61/15 61/17 61/19 <b>chemically</b> [1] 17/19 <b>chemicals</b> [2] 60/23 61/3 <b>chemist</b> [2] 35/23 61/18 <b>Chief</b> [3] 2/22 5/14 5/16	<b>clarify</b> [3] 17/9 47/16 48/10 <b>CLARK</b> [12] 1/2 29/5 29/8 45/4 51/16 51/19 63/7 63/10 66/9 73/4 73/7 74/4 <b>clear</b> [1] 44/16 <b>clearly</b> [1] 15/9 <b>close</b> [1] 72/13 <b>close-up</b> [1] 72/13 <b>closet</b> [2] 68/25 69/4 <b>cocaine</b> [5] 6/21 67/3 68/14 68/19 72/16 <b>collected</b> [1] 56/14 <b>collection</b> [1] 66/6 <b>color</b> [1] 11/18 <b>combination</b> [1] 19/9 <b>come</b> [4] 6/25 7/8 16/1 17/9 <b>coming</b> [2] 20/17 49/13 <b>comments</b> [1] 42/17 <b>commerce</b> [3] 32/9 32/10 34/25 <b>committed</b> [1] 9/16 <b>common</b> [2] 23/11 23/13 <b>complete</b> [1] 44/25 <b>comply</b> [4] 29/4 51/15 63/6 73/3 <b>concludes</b> [1] 73/14 <b>condition</b> [3] 69/1 69/2 69/2 <b>conducted</b> [1] 15/16 <b>confidential</b> [6] 22/23 23/2 23/10 28/7 28/12 31/3 <b>conjunction</b> [1] 55/7 <b>considered</b> [2] 9/14 17/23 <b>conspiracy</b> [5] 6/13 7/25 30/3 52/14 64/4 <b>constitutes</b> [1] 74/12 <b>contain</b> [1] 75/8 <b>containing</b> [1] 37/13 <b>Contains</b> [1] 75/11 <b>contempt</b> [4] 29/7 51/18 63/9 73/6 <b>continued</b> [1] 73/21 <b>contract</b> [1] 71/15 <b>controlled</b> [22] 6/5 6/8 6/11 6/14 6/19 7/24 7/25 8/1 8/3 26/23 30/1 30/2 30/3 30/5 52/12 52/13 52/14 52/16 64/3 64/4 64/5 64/7 <b>conviction</b> [1] 31/15 <b>copy</b> [3] 5/20 5/22 67/9 <b>corner</b> [1] 56/23 <b>correct</b> [62] 11/19 12/17 13/16 14/6 14/12 14/13 15/1 15/19 18/7 18/22 19/25 20/3 20/25 22/8 23/16 24/3 24/11 24/20 26/17 27/19 27/23 31/16 31/17 33/15 35/4 38/7 41/6 41/18 42/13 42/14 43/23 45/5 46/24 47/21	47/23 48/3 49/19 53/20 55/11 56/16 57/14 58/3 58/7 58/11 59/1 59/22 60/1 61/9 65/14 66/10 66/19 67/25 68/12 70/8 70/24 70/25 71/3 71/7 71/11 71/14 72/11 72/14 <b>corroborated</b> [1] 68/17 <b>COSENTINO</b> [1] 2/4 <b>could</b> [16] 15/9 20/18 23/5 24/1 34/17 35/24 36/2 36/19 36/20 37/21 38/17 39/24 39/25 43/19 49/24 57/17 <b>couldn't</b> [2] 19/8 46/11 <b>Count</b> [8] 6/4 6/7 6/7 6/7 6/10 6/12 6/15 6/19 <b>Count 1</b> [1] 6/4 <b>Count 2</b> [1] 6/7 <b>Count 5</b> [1] 6/10 <b>Count 7</b> [1] 6/15 <b>Count 8</b> [1] 6/19 <b>Counts</b> [1] 6/15 <b>Counts 4</b> [1] 6/15 <b>COUNTY</b> [12] 1/2 29/6 29/8 45/4 51/17 51/19 63/8 63/10 66/9 73/5 73/7 74/4 <b>couple</b> [9] 6/18 6/25 7/8 9/5 11/8 14/11 32/15 34/3 70/16 <b>course</b> [12] 12/24 13/10 13/18 14/15 14/25 15/12 15/20 19/1 24/24 55/15 59/16 68/7 <b>court</b> [7] 1/1 1/5 29/7 51/18 63/9 73/6 75/22 <b>Court's</b> [1] 50/1 <b>courtroom</b> [2] 49/13 49/13 <b>Cove</b> [2] 13/13 66/7 <b>creating</b> [1] 23/3 <b>crimes</b> [2] 9/14 9/16 <b>criminal</b> [7] 7/3 9/9 9/11 53/17 53/19 54/16 65/3 <b>currency</b> [3] 69/13 69/17 69/21 <b>current</b> [3] 8/22 9/3 53/16 <b>currently</b> [2] 8/23 64/25 <b>custom</b> [1] 13/22 <b>customer</b> [1] 37/19 <b>customers</b> [2] 34/2 41/23 <b>D</b> <b>DANIEL</b> [1] 2/6 <b>date</b> [10] 19/4 28/21 33/9 39/4 42/20 42/25 49/1 57/4 59/14 75/18 <b>Dated</b> [1] 74/14 <b>dates</b> [3] 40/1 40/2 48/10 <b>days</b> [8] 29/5 29/8 51/16 51/19 63/7 63/10

<p><b>D</b></p> <p><b>days...</b> [2] 73/4 73/7</p> <p><b>DC</b> [1] 1/9</p> <p><b>deal</b> [2] 25/18 32/8</p> <p><b>debrief</b> [1] 27/7</p> <p><b>decide</b> [1] 22/23</p> <p><b>defendant</b> [2] 6/6 6/17</p> <p><b>defendants</b> [4] 1/12 6/8 6/10 6/13</p> <p><b>definition</b> [1] 61/14</p> <p><b>deliberate</b> [1] 73/19</p> <p><b>deliberating</b> [1] 7/2</p> <p><b>deliberation</b> [1] 73/19</p> <p><b>deliberations</b> [2] 6/3 6/23</p> <p><b>department</b> [8] 8/21 31/4 31/9 32/21 33/1 53/10 54/6 65/1</p> <p><b>depending</b> [1] 57/18</p> <p><b>depicted</b> [2] 13/5 15/2</p> <p><b>deploying</b> [2] 25/7 28/7</p> <p><b>Deputy</b> [4] 2/4 2/22 5/14 5/16</p> <p><b>describe</b> [6] 10/15 17/4 18/25 44/1 44/14 57/15</p> <p><b>described</b> [2] 18/24 26/14</p> <p><b>destroyed</b> [1] 56/12</p> <p><b>detail</b> [1] 65/9</p> <p><b>detailed</b> [1] 10/5</p> <p><b>detective</b> [31] 7/6 7/7 7/10 7/14 9/9 9/25 10/11 10/14 16/14 16/18 22/22 27/8 28/21 49/4 49/10 50/4 52/2 53/9 53/14 53/22 53/22 60/3 62/21 62/22 65/3 67/14 67/19 67/24 68/1 68/4 73/17</p> <p><b>detectives</b> [12] 38/6 38/15 38/21 41/5 43/16 50/17 54/16 54/25 55/9 59/11 65/15 66/12</p> <p><b>Detention</b> [8] 29/6 29/9 51/17 51/20 63/8 63/11 73/5 73/8</p> <p><b>develop</b> [6] 10/2 10/21 13/9 13/18 15/20 22/15</p> <p><b>did</b> [120]</p> <p><b>didn't</b> [12] 11/25 12/14 20/7 25/12 25/14 25/15 37/6 42/4 42/6 44/11 57/9 67/23</p> <p><b>didn't look</b> [1] 11/25</p> <p><b>difference</b> [1] 62/2</p> <p><b>different</b> [9] 12/7 21/10 21/18 39/21 47/18 49/21 55/10 56/14 66/2</p> <p><b>differentiate</b> [1] 57/23</p> <p><b>differently</b> [1] 68/6</p> <p><b>difficult</b> [1] 23/19</p> <p><b>direct</b> [4] 24/23 65/24 70/15 70/22</p> <p><b>directing</b> [3] 65/11 71/4 71/8</p> <p><b>direction</b> [1] 74/10</p> <p><b>disclosing</b> [4] 28/24</p>	<p>51/10 63/1 72/23</p> <p><b>discover</b> [3] 12/25 55/1 60/23</p> <p><b>discovered</b> [1] 13/12</p> <p><b>discuss</b> [5] 22/3 34/11 37/17 40/22 40/24</p> <p><b>discussed</b> [1] 22/3</p> <p><b>discussing</b> [1] 21/6</p> <p><b>dispensaries</b> [3] 11/1 11/4 24/13</p> <p><b>dispensary</b> [5] 10/23 24/15 24/16 24/19 24/21</p> <p><b>display</b> [1] 19/24</p> <p><b>disposal</b> [1] 61/3</p> <p><b>disposed</b> [2] 61/5 61/7</p> <p><b>distinct</b> [1] 14/19</p> <p><b>DISTRICT</b> [5] 1/1 1/5 2/22 5/14 5/16</p> <p><b>Division</b> [1] 58/24</p> <p><b>do</b> [49] 7/17 8/5 8/19 8/19 19/17 21/3 27/4 27/4 29/10 29/19 30/7 32/6 33/11 36/9 36/23 38/9 38/23 40/6 40/14 41/11 42/19 45/11 45/16 45/25 46/9 48/6 49/4 49/21 50/12 50/22 51/21 52/5 52/9 52/18 56/4 57/23 60/9 60/9 61/2 63/12 63/13 63/21 63/25 64/9 68/1 68/6 70/18 73/9 74/6</p> <p><b>doctors</b> [1] 9/16</p> <p><b>document</b> [9] 27/11 27/18 70/8 70/12 70/16 70/23 71/5 71/9 71/12</p> <p><b>documentation</b> [1] 58/17</p> <p><b>documented</b> [4] 26/2 56/13 61/4 61/7</p> <p><b>documents</b> [4] 27/12 58/19 58/20 69/24</p> <p><b>does</b> [6] 16/18 16/18 51/6 71/15 75/4 75/8</p> <p><b>doesn't</b> [1] 7/11</p> <p><b>doing</b> [3] 16/21 39/7 40/23</p> <p><b>dollars</b> [3] 40/16 46/13 47/10</p> <p><b>don't</b> [18] 12/5 19/4 23/19 33/9 33/16 34/12 37/7 39/4 39/20 39/25 40/2 41/13 42/25 49/3 49/6 49/11 56/10 62/17</p> <p><b>done</b> [12] 18/18 22/7 25/18 26/1 26/3 26/6 27/1 28/6 55/6 59/10 59/10 68/8</p> <p><b>Donna</b> [7] 1/25 5/4 74/6 74/17 74/18 75/18 75/20</p> <p><b>door</b> [1] 21/21</p> <p><b>down</b> [5] 50/8 70/23 71/5 71/8 74/7</p> <p><b>drafted</b> [1] 48/12</p> <p><b>draw</b> [4] 33/6 42/11 50/7 50/19</p>	<p><b>driver's</b> [1] 69/24</p> <p><b>driving</b> [1] 14/24</p> <p><b>drop</b> [1] 22/14</p> <p><b>drove</b> [3] 27/8 46/1 46/2</p> <p><b>drug</b> [2] 10/6 23/12</p> <p><b>drugs</b> [2] 25/12 25/20</p> <p><b>duly</b> [5] 5/5 8/13 30/20 53/2 64/18</p> <p><b>during</b> [21] 12/24 13/10 13/18 14/15 14/25 15/12 15/20 19/1 22/6 24/24 34/10 35/5 36/5 36/12 37/3 43/22 44/10 55/15 59/16 60/22 68/7</p> <p><b>E</b></p> <p><b>E-R-I-K</b> [1] 52/22</p> <p><b>each</b> [1] 49/17</p> <p><b>earlier</b> [1] 28/20</p> <p><b>East</b> [3] 13/20 33/14 54/19</p> <p><b>Eastern</b> [2] 40/8 54/21</p> <p><b>EDUARDO</b> [14] 1/10 5/19 6/5 6/17 8/3 10/4 12/20 15/6 19/6 30/6 52/17 58/14 64/7 71/6</p> <p><b>effect</b> [3] 16/17 61/23 62/13</p> <p><b>effects</b> [2] 36/2 61/19</p> <p><b>EIGHTH</b> [1] 1/1</p> <p><b>either</b> [1] 56/25</p> <p><b>electronic</b> [1] 15/15</p> <p><b>elements</b> [1] 6/1</p> <p><b>else</b> [4] 25/15 37/4 37/13 51/6</p> <p><b>employ</b> [1] 23/9</p> <p><b>employed</b> [7] 8/25 23/25 53/8 53/9 64/24 64/25 65/5</p> <p><b>employment</b> [1] 58/24</p> <p><b>enable</b> [1] 60/12</p> <p><b>end</b> [1] 38/2</p> <p><b>enforcement</b> [2] 23/8 69/6</p> <p><b>enough</b> [9] 7/9 17/5 33/17 36/16 38/16 40/3 49/7 50/1 62/19</p> <p><b>entire</b> [2] 25/14 43/2</p> <p><b>entitled</b> [1] 74/8</p> <p><b>equipment</b> [2] 44/10 60/12</p> <p><b>ERIK</b> [4] 3/5 52/2 52/22 53/1</p> <p><b>Especially</b> [1] 23/11</p> <p><b>euphoria</b> [1] 17/14</p> <p><b>even</b> [2] 35/12 57/2</p> <p><b>event</b> [8] 26/24 27/15 27/21 29/1 51/12 59/17 63/3 72/25</p> <p><b>events</b> [1] 45/3</p> <p><b>eventually</b> [1] 39/15</p> <p><b>ever</b> [7] 32/12 32/25 38/12 40/22 40/24 44/25 46/4</p> <p><b>every</b> [3] 26/12 32/22 37/24</p>	<p><b>everybody</b> [2] 5/13 6/22</p> <p><b>everything</b> [3] 43/19 67/20 67/22</p> <p><b>evidence</b> [9] 27/8 28/25 51/11 59/13 63/2 66/6 66/21 72/24 73/15</p> <p><b>evidentiary</b> [3] 55/22 59/3 59/23</p> <p><b>EXAMINATION</b> [4] 8/17 30/25 53/6 64/22</p> <p><b>EXAMINED</b> [1] 3/2</p> <p><b>except</b> [1] 62/7</p> <p><b>excused</b> [4] 29/13 51/24 63/15 73/12</p> <p><b>executed</b> [3] 54/9 54/18 72/4</p> <p><b>execution</b> [4] 55/3 55/5 55/15 59/16</p> <p><b>exhibit</b> [49] 4/4 4/5 4/6 4/7 4/8 4/9 4/10 4/11 4/12 4/13 4/14 4/15 5/21 5/24 10/18 11/10 12/2 12/19 13/6 14/4 17/2 19/24 20/23 27/11 28/5 28/10 32/3 35/16 41/15 41/16 43/12 43/24 43/25 45/11 55/13 55/13 56/1 56/20 57/11 58/12 60/10 60/10 66/24 66/24 67/9 68/22 69/17 71/19 72/12</p> <p><b>Exhibit 1</b> [1] 5/21</p> <p><b>Exhibit 13</b> [1] 55/13</p> <p><b>Exhibit 15</b> [1] 66/24</p> <p><b>Exhibit 2</b> [1] 5/24</p> <p><b>Exhibit 3</b> [1] 13/6</p> <p><b>Exhibit 4</b> [2] 12/19 32/3</p> <p><b>Exhibit 5</b> [1] 10/18</p> <p><b>Exhibit 6</b> [1] 12/2</p> <p><b>Exhibit 7</b> [4] 11/10 19/24 41/16 43/12</p> <p><b>Exhibit 8</b> [1] 20/23</p> <p><b>EXHIBITS</b> [2] 4/1 4/3</p> <p><b>explain</b> [1] 35/20</p> <p><b>eyes</b> [1] 25/14</p> <p><b>F</b></p> <p><b>FABIAN</b> [3] 1/10 5/19 6/17</p> <p><b>fabric</b> [1] 62/6</p> <p><b>fact</b> [4] 11/3 23/6 54/24 67/2</p> <p><b>Failure</b> [4] 29/4 51/15 63/6 73/3</p> <p><b>Fair</b> [5] 33/17 40/3 49/7 50/1 59/2</p> <p><b>fairly</b> [1] 23/13</p> <p><b>faithfully</b> [1] 5/5</p> <p><b>far</b> [1] 31/14</p> <p><b>farm</b> [3] 12/4 12/7 17/1</p> <p><b>farms</b> [1] 34/15</p> <p><b>February</b> [8] 9/7 9/19 9/22 10/1 16/20 22/21 53/18 65/12</p> <p><b>federal</b> [2] 75/13 75/15</p>	<p><b>federally</b> [1] 17/21</p> <p><b>felony</b> [1] 31/18</p> <p><b>fenced</b> [1] 11/14</p> <p><b>fenced-in</b> [1] 11/14</p> <p><b>few</b> [7] 11/7 32/15 34/15 38/18 39/12 39/18 45/6</p> <p><b>field</b> [9] 4/15 57/2 57/22 58/1 58/4 67/5 67/9 68/8 68/16</p> <p><b>fifty</b> [3] 42/16 47/8 47/10</p> <p><b>fifty pounds</b> [1] 42/16</p> <p><b>fight</b> [1] 13/4</p> <p><b>filed</b> [1] 75/5</p> <p><b>filled</b> [2] 67/12 67/14</p> <p><b>final</b> [2] 28/5 28/11</p> <p><b>finalize</b> [1] 44/25</p> <p><b>finally</b> [2] 70/7 70/7</p> <p><b>finances</b> [1] 40/24</p> <p><b>fine</b> [8] 29/6 29/8 51/17 51/19 63/8 63/10 73/5 73/7</p> <p><b>finish</b> [2] 6/23 7/1</p> <p><b>finished</b> [3] 43/4 57/20 73/16</p> <p><b>FINKOWSKI</b> [1] 2/7</p> <p><b>fire</b> [1] 13/4</p> <p><b>fires</b> [1] 13/4</p> <p><b>first</b> [20] 5/5 7/5 7/14 8/7 8/13 30/9 30/20 33/7 34/13 35/24 36/7 38/11 38/12 50/25 52/20 53/2 62/17 64/11 64/13 64/18</p> <p><b>five</b> [4] 44/22 46/14 46/15 53/15</p> <p><b>flatbed</b> [1] 19/7</p> <p><b>flourish</b> [1] 60/13</p> <p><b>fluorescent</b> [2] 60/19 60/20</p> <p><b>focus</b> [2] 18/17 24/25</p> <p><b>follow</b> [4] 18/13 22/21 46/22 47/2</p> <p><b>follow-up</b> [1] 22/21</p> <p><b>followed</b> [2] 44/5 68/11</p> <p><b>following</b> [1] 5/6</p> <p><b>follows</b> [4] 8/15 30/22 53/4 64/20</p> <p><b>force</b> [1] 54/3</p> <p><b>foregoing</b> [1] 74/11</p> <p><b>forensic</b> [3] 18/6 58/10 59/13</p> <p><b>Foreperson</b> [6] 2/3 2/4 8/13 30/20 53/2 64/18</p> <p><b>forest</b> [1] 13/4</p> <p><b>Forestry</b> [1] 58/25</p> <p><b>forget</b> [1] 49/24</p> <p><b>form</b> [1] 17/12</p> <p><b>formed</b> [1] 12/13</p> <p><b>former</b> [2] 13/7 22/10</p> <p><b>Fortunately</b> [1] 18/14</p> <p><b>found</b> [3] 13/20 41/23 61/2</p> <p><b>four</b> [2] 47/10 55/13</p> <p><b>four-page</b> [1] 55/13</p> <p><b>free</b> [1] 47/24</p> <p><b>friends</b> [1] 32/7</p>
--	---	--	---	---

<b>F</b> <b>full</b> [4] 20/12 37/8 37/9 74/12 <b>full-size</b> [1] 20/12 <b>functional</b> [1] 20/15 <b>funds</b> [1] 25/22 <b>further</b> [12] 23/10 28/19 46/8 51/6 57/24 58/11 60/8 61/10 70/22 71/4 71/8 72/19 <b>future</b> [1] 37/17	<b>good</b> [2] 5/13 43/20 <b>GOODMAN</b> [1] 2/9 <b>got</b> [9] 17/25 18/12 44/3 44/4 44/24 54/24 56/6 60/7 67/23 <b>Gotcha</b> [2] 34/23 39/22 <b>grams</b> [1] 72/18 <b>GRAND</b> [43] 1/4 2/1 2/20 4/3 5/17 5/21 5/22 5/23 7/19 8/14 10/9 10/18 11/10 12/2 12/18 13/6 14/4 16/15 19/23 20/23 27/10 29/1 29/2 29/3 29/21 30/21 46/9 51/12 51/13 51/14 52/7 53/3 55/12 63/3 63/4 63/5 63/23 64/19 66/23 72/25 73/1 73/2 75/5 <b>grant</b> [1] 75/16 <b>green</b> [1] 57/17 <b>gross</b> [4] 29/5 51/16 63/7 73/4 <b>ground</b> [1] 18/9 <b>group</b> [3] 24/2 24/20 54/3 <b>grow</b> [4] 34/16 56/8 60/13 60/17 <b>growing</b> [3] 12/12 37/4 60/24 <b>grown</b> [2] 12/14 56/3 <b>growth</b> [1] 60/21 <b>GRUBER</b> [1] 2/10 <b>guess</b> [2] 36/16 60/16 <b>guys</b> [3] 37/17 42/20 62/18	9/18 9/23 10/15 11/3 11/8 18/13 20/7 20/18 21/21 24/21 24/22 25/3 26/1 27/7 28/19 31/15 36/2 36/15 37/6 39/22 41/19 42/8 46/8 46/9 48/1 49/24 51/5 51/7 53/11 53/14 54/25 56/9 56/10 57/9 57/19 57/23 58/1 59/3 60/2 60/8 61/10 65/5 65/8 68/8 69/6 72/19 <b>having</b> [5] 5/5 8/13 30/20 53/2 64/18 <b>he</b> [114] <b>He's</b> [1] 13/7 <b>headache</b> [1] 44/12 <b>hear</b> [1] 46/11 <b>hearing</b> [1] 16/18 <b>hearsay</b> [2] 10/10 38/21 <b>HEFNER</b> [19] 3/3 7/6 7/8 7/10 7/15 8/9 8/12 10/11 16/18 28/21 49/10 53/22 54/17 59/12 60/3 62/22 65/15 66/12 73/17 <b>Hefner's</b> [1] 50/4 <b>held</b> [4] 29/7 51/18 63/9 73/6 <b>help</b> [5] 7/20 29/22 48/10 52/8 63/24 <b>hemp</b> [37] 12/4 12/9 12/12 12/16 16/24 17/1 17/8 17/9 17/16 17/18 17/22 17/24 23/4 35/11 35/21 36/2 36/14 36/23 40/24 48/4 55/2 56/25 56/25 57/2 57/3 57/18 57/20 57/21 57/23 61/16 61/22 62/2 62/4 62/9 62/12 62/20 72/1 <b>hemp-sprayed</b> [2] 48/4 57/21 <b>Henderson</b> [2] 13/15 66/7 <b>her</b> [1] 5/7 <b>here</b> [17] 7/22 14/17 27/20 29/25 34/16 41/16 43/25 45/19 47/17 47/18 48/10 48/24 50/8 52/11 54/8 58/13 64/1 <b>hereby</b> [2] 74/6 75/4 <b>high</b> [3] 17/14 62/9 62/10 <b>him</b> [42] 7/6 22/12 22/13 25/10 25/11 25/13 25/14 25/16 25/18 25/20 25/20 26/18 26/19 26/20 27/7 28/7 33/13 33/22 34/2 34/14 35/7 36/7 36/16 37/19 37/25 38/15 38/16 39/7 39/8 39/18 40/12 40/15 41/23 42/12 43/16 43/18 43/21 44/4 44/5 44/12	46/4 49/17 <b>himself</b> [1] 19/9 <b>his</b> [19] 25/11 26/15 26/20 27/7 28/12 33/13 34/6 34/11 35/22 40/5 40/22 40/24 45/13 48/1 49/20 49/22 58/16 68/7 71/1 <b>home</b> [8] 13/22 13/22 34/6 37/4 37/5 38/3 40/7 40/18 <b>hour</b> [2] 19/16 21/15 <b>house</b> [8] 14/1 15/18 22/7 33/13 40/5 55/18 58/15 72/7 <b>housekeeping</b> [1] 6/18 <b>how</b> [35] 8/25 9/3 9/18 15/11 17/20 19/2 21/14 33/20 35/20 35/21 36/3 36/9 36/10 36/23 37/7 37/22 40/14 40/22 41/19 43/2 43/8 44/1 44/14 44/20 46/18 48/18 50/23 53/8 53/11 53/14 54/2 56/24 64/24 65/5 65/8 <b>huh</b> [1] 60/6 <b>hundred</b> [7] 34/3 42/16 46/14 46/15 47/8 47/10 47/10 <b>I</b> <b>I'll</b> [1] 51/5 <b>I'm</b> [34] 5/14 6/18 8/23 10/8 10/15 11/8 12/2 14/10 16/2 16/14 16/15 19/23 27/10 32/3 35/16 45/10 45/20 48/23 50/7 53/9 55/12 55/25 59/11 61/18 62/21 64/25 65/3 67/8 67/16 68/20 69/16 70/15 70/22 71/18 <b>identified</b> [4] 4/3 14/17 17/20 28/17 <b>identify</b> [5] 10/16 11/8 13/5 15/4 15/5 <b>identifying</b> [1] 72/10 <b>illegal</b> [4] 17/13 17/24 23/7 53/25 <b>immediately</b> [1] 27/6 <b>IMPANELED</b> [1] 1/4 <b>impounded</b> [7] 26/24 27/5 27/20 27/21 59/17 61/7 67/22 <b>impounding</b> [2] 67/19 67/20 <b>incidents</b> [1] 28/15 <b>include</b> [1] 69/13 <b>including</b> [5] 28/25 51/11 63/2 69/24 72/24 <b>incorrect</b> [1] 12/6 <b>INDEX</b> [2] 3/1 4/1 <b>indica</b> [1] 17/10 <b>indicate</b> [2] 38/23 43/8 <b>indicated</b> [5] 27/16 47/4 49/20 67/17 74/9 <b>indicates</b> [1] 58/23 <b>INDICTMENT</b> [7] 4/4	5/12 5/20 5/23 5/25 6/4 7/13 <b>individual</b> [8] 19/2 19/13 23/23 23/25 24/4 32/4 34/8 49/12 <b>individuals</b> [12] 10/3 10/16 15/2 15/22 16/21 21/3 22/5 24/9 24/20 31/21 34/7 65/19 <b>indulgence</b> [1] 50/1 <b>influence</b> [1] 61/20 <b>informant</b> [7] 22/23 23/2 23/10 28/7 28/12 31/3 33/21 <b>information</b> [12] 10/2 10/12 10/21 10/24 16/19 17/15 22/15 24/17 29/2 51/13 63/4 73/1 <b>ingest</b> [1] 62/11 <b>initial</b> [2] 44/17 44/18 <b>initially</b> [2] 36/18 43/3 <b>initiate</b> [1] 18/9 <b>inmates</b> [1] 13/3 <b>inside</b> [10] 19/12 37/5 42/4 42/5 44/5 44/20 46/4 46/6 57/12 69/9 <b>install</b> [1] 13/23 <b>installed</b> [1] 13/24 <b>instances</b> [1] 25/2 <b>instructions</b> [4] 4/5 5/24 6/2 7/3 <b>Integrity</b> [1] 9/13 <b>intel</b> [5] 11/2 16/20 17/6 18/8 22/20 <b>Intelligence</b> [6] 9/10 9/11 53/17 53/19 54/16 65/4 <b>intending</b> [1] 41/20 <b>Intent</b> [1] 5/11 <b>interaction</b> [7] 26/15 33/20 34/10 35/5 36/5 37/3 37/22 <b>interactions</b> [1] 25/17 <b>interest</b> [2] 58/17 58/21 <b>interesting</b> [2] 19/6 21/5 <b>intoxicated</b> [1] 62/8 <b>intoxicating</b> [1] 62/12 <b>introduce</b> [2] 22/23 34/19 <b>introduced</b> [5] 31/23 33/7 33/22 33/24 34/21 <b>introducing</b> [2] 23/1 23/18 <b>investigate</b> [3] 9/14 10/3 11/2 <b>investigating</b> [3] 12/1 23/17 31/22 <b>investigation</b> [41] 7/18 7/23 10/15 12/25 13/11 13/18 13/24 14/15 14/25 15/13 15/21 16/22 17/5 18/10 22/22 22/24 23/2 23/10 23/20 24/24 26/5 27/16 27/21 29/20 29/25 32/7 38/10
---	--	---	--	--

<b>I</b> <b>investigation...</b> [14] 38/24 41/8 43/3 52/6 52/11 53/21 53/24 55/10 63/22 64/2 65/18 66/3 71/23 71/25 <b>investigations</b> [1] 23/12 <b>involved</b> [4] 10/6 17/8 38/6 42/6 <b>involving</b> [6] 8/3 9/14 10/7 30/5 52/16 64/7 <b>iron</b> [1] 19/11 <b>irrigation</b> [1] 60/18 <b>is</b> [111] <b>it</b> [154] <b>it'll</b> [1] 43/9 <b>it's</b> [17] 11/13 12/6 12/7 14/18 16/16 21/20 23/12 27/11 30/11 36/21 38/21 38/22 40/8 41/13 54/6 55/13 66/25 <b>items</b> [21] 18/4 25/4 26/19 26/22 27/4 27/20 27/25 28/6 28/11 28/16 55/14 55/21 58/8 59/2 59/15 59/19 59/23 67/2 67/6 68/17 69/9 <b>its</b> [1] 7/14	<b>K</b> <b>keep</b> [2] 27/2 27/2 <b>kept</b> [1] 20/4 <b>key</b> [1] 19/8 <b>kind</b> [9] 11/12 11/23 17/8 19/3 19/7 21/20 43/4 50/24 61/15 <b>kit</b> [2] 58/1 58/5 <b>kits</b> [2] 57/1 57/23 <b>know</b> [18] 6/22 7/9 20/5 20/6 23/19 32/6 34/17 35/22 37/7 39/20 40/8 45/25 49/6 49/11 50/24 59/20 62/16 72/2 <b>KRAUS</b> [1] 2/11 <b>L</b> <b>L-A-L-O</b> [2] 12/22 12/23 <b>lab</b> [8] 4/13 18/6 25/4 27/9 27/13 57/24 58/10 59/10 <b>lacing</b> [1] 23/4 <b>Lake</b> [4] 13/13 66/7 70/13 71/13 <b>Lalo</b> [20] 12/21 12/22 31/24 31/25 32/1 32/4 32/6 32/12 32/17 33/8 33/12 34/6 34/10 35/5 36/6 39/3 39/6 43/3 45/25 48/19 <b>Lalo's</b> [3] 42/17 45/7 45/14 <b>large</b> [5] 13/21 19/7 19/14 20/11 71/24 <b>larger</b> [2] 40/17 42/12 <b>Las</b> [11] 1/14 5/1 8/20 13/21 31/3 40/9 40/10 41/12 53/9 64/25 74/14 <b>last</b> [10] 8/8 15/13 30/10 30/12 30/15 50/7 52/21 64/12 64/14 72/12 <b>lastly</b> [1] 48/9 <b>later</b> [9] 16/2 25/4 26/4 28/21 31/25 32/8 48/9 59/14 59/19 <b>Latin</b> [2] 32/9 34/25 <b>launch</b> [1] 16/22 <b>launched</b> [1] 17/6 <b>law</b> [7] 23/8 28/23 51/9 62/25 69/6 72/22 75/13 <b>leafy</b> [1] 57/17 <b>learn</b> [3] 11/3 15/21 22/9 <b>learned</b> [1] 22/18 <b>least</b> [2] 15/14 19/16 <b>leave</b> [2] 21/25 44/12 <b>led</b> [1] 10/2 <b>left</b> [9] 19/16 19/18 20/5 20/7 20/8 22/1 22/4 49/12 56/23 <b>legal</b> [9] 12/16 17/8 17/16 17/18 24/13 24/15 24/16 24/19 24/21 <b>legitimate</b> [3] 11/4 18/15 24/22	<b>LEON</b> [2] 1/11 5/19 <b>less</b> [1] 6/12 <b>level</b> [1] 17/25 <b>levels</b> [1] 62/19 <b>license</b> [2] 24/21 69/24 <b>licenses</b> [1] 11/1 <b>lied</b> [1] 60/9 <b>lighting</b> [1] 60/14 <b>lights</b> [3] 60/16 60/19 60/20 <b>like</b> [23] 11/7 11/25 12/11 12/13 17/11 18/9 19/9 20/11 21/8 21/12 22/2 22/13 36/25 37/6 37/7 37/14 37/19 37/20 37/20 37/21 44/16 47/9 49/23 <b>limit</b> [1] 17/22 <b>liquid</b> [2] 61/21 61/22 <b>listed</b> [1] 5/25 <b>listener</b> [1] 16/17 <b>little</b> [8] 9/20 30/13 36/17 36/22 38/17 39/13 45/7 46/22 <b>live</b> [3] 18/20 21/4 25/16 <b>living</b> [3] 8/19 13/12 13/20 <b>LLC</b> [1] 70/18 <b>loaded</b> [1] 19/18 <b>loading</b> [1] 19/14 <b>located</b> [7] 11/11 12/7 41/12 45/22 54/18 55/18 68/24 <b>location</b> [10] 12/4 25/10 25/13 25/15 25/16 25/19 41/17 41/20 58/21 72/3 <b>locations</b> [1] 66/2 <b>lock</b> [1] 19/9 <b>locked</b> [1] 19/11 <b>long</b> [12] 8/25 9/3 9/18 15/11 21/14 37/22 43/2 44/20 53/11 53/14 65/5 65/8 <b>look</b> [7] 11/25 27/15 55/14 57/22 59/21 66/24 69/3 <b>looked</b> [10] 11/7 12/13 18/15 21/8 21/12 22/2 22/13 37/11 57/12 59/20 <b>looking</b> [14] 11/14 12/3 28/4 45/19 50/17 53/24 56/1 56/21 57/12 57/16 58/13 60/11 69/20 71/19 <b>looks</b> [2] 12/11 14/10 <b>lot</b> [4] 15/8 18/12 39/10 49/24 <b>lotions</b> [1] 62/6 <b>loud</b> [1] 50/12 <b>louder</b> [1] 30/14 <b>LURVEY</b> [1] 2/3 <b>LVMPD</b> [2] 13/7 25/24 <b>M</b> <b>M-O-R-R-I-S</b> [1] 52/23	<b>made</b> [12] 29/1 32/20 33/3 40/3 41/3 41/24 41/25 47/18 51/12 63/3 72/1 72/25 <b>MADRIGAL</b> [19] 1/11 5/19 8/4 10/4 10/20 10/22 11/3 11/9 12/5 15/7 16/12 17/2 18/21 18/24 30/6 52/17 64/8 65/19 71/10 <b>main</b> [1] 11/19 <b>make</b> [13] 25/11 25/20 32/12 32/14 36/2 36/12 43/19 46/18 48/12 48/25 62/5 62/8 62/20 <b>MANOLO</b> [1] 2/14 <b>Manse</b> [1] 70/18 <b>many</b> [5] 36/20 37/8 46/18 48/18 54/2 <b>March</b> [11] 18/18 19/5 20/19 20/21 20/23 21/1 21/2 22/9 31/4 33/6 38/2 <b>March 17th</b> [1] 19/5 <b>March 26th</b> [1] 33/6 <b>March 7th</b> [1] 20/19 <b>March 8th</b> [1] 20/23 <b>marijuana</b> [73] 6/9 6/16 8/2 10/7 10/22 11/1 17/9 17/11 17/17 17/20 17/23 18/2 18/5 23/4 24/7 24/10 24/12 24/14 24/18 24/21 24/24 25/5 28/1 28/17 28/18 30/4 31/13 32/15 34/4 34/5 35/12 36/2 36/13 36/23 37/9 37/10 37/11 37/15 40/18 40/20 40/24 45/21 48/2 48/4 50/17 52/15 53/25 55/2 56/3 57/1 57/3 57/18 57/22 57/24 58/2 58/6 59/6 60/11 60/12 60/21 60/24 61/15 61/17 61/19 61/20 61/23 62/3 62/6 62/9 62/10 62/11 62/20 64/6 <b>marijuana-looking</b> [1] 50/17 <b>MARK</b> [1] 2/9 <b>marked</b> [2] 5/23 45/10 <b>marking</b> [1] 26/8 <b>married</b> [1] 22/19 <b>matter</b> [3] 10/10 38/22 74/8 <b>matters</b> [1] 6/18 <b>may</b> [4] 29/7 51/18 63/9 73/6 <b>maybe</b> [2] 37/19 44/6 <b>McCord</b> [7] 1/25 5/4 74/6 74/17 74/18 75/18 75/20 <b>me</b> [32] 24/6 31/13 31/23 33/20 33/22 33/24 34/14 34/22 35/7 36/7 36/15 37/6 37/7 37/15 38/8 38/15 39/13 41/15 42/11 43/16	43/17 43/25 44/4 44/5 45/21 46/22 47/16 48/10 48/23 50/9 50/12 50/19 <b>mechanisms</b> [1] 24/9 <b>medicinal</b> [1] 24/12 <b>meet</b> [7] 25/10 25/18 26/16 31/25 46/4 49/17 62/19 <b>meeting</b> [2] 21/8 22/2 <b>meets</b> [1] 17/19 <b>member</b> [1] 34/24 <b>members</b> [1] 5/22 <b>memory</b> [1] 49/23 <b>mention</b> [3] 32/8 41/1 43/18 <b>mentioned</b> [6] 18/19 28/20 34/21 35/22 42/5 44/13 <b>Mesquite</b> [3] 11/12 14/3 41/12 <b>met</b> [7] 22/2 33/12 33/13 34/6 34/13 43/3 49/5 <b>Metro</b> [7] 9/1 22/10 23/9 24/1 46/18 53/12 65/5 <b>Metro's</b> [2] 18/5 59/10 <b>Metropolitan</b> [7] 8/20 31/3 31/9 33/1 53/10 65/1 66/17 <b>minutes</b> [3] 19/17 37/25 44/22 <b>misdemeanor</b> [4] 29/5 51/16 63/7 73/4 <b>moment</b> [5] 32/11 45/6 47/14 48/23 48/24 <b>money</b> [10] 25/12 25/20 25/21 25/24 25/24 26/4 26/13 32/25 33/4 48/19 <b>month's</b> [1] 43/5 <b>months</b> [3] 9/5 15/14 15/15 <b>more</b> [12] 6/9 6/12 18/15 18/15 37/16 38/9 38/19 39/12 39/13 39/14 45/6 47/1 <b>morning</b> [3] 5/13 5/15 54/8 <b>MORRIS</b> [10] 3/5 52/2 52/22 53/1 62/22 67/14 67/19 67/24 68/1 68/4 <b>most</b> [2] 18/14 37/25 <b>Mr</b> [54] 10/21 11/3 11/9 12/5 12/25 13/2 13/10 13/12 13/17 13/19 13/25 14/23 15/17 15/17 16/6 16/9 16/12 17/2 18/21 18/24 20/1 21/12 21/22 22/7 22/9 22/10 22/16 22/18 23/25 24/23 25/2 25/3 25/4 25/7 25/8 25/22 26/14 26/15 26/16 26/22 27/5 27/7 27/25 28/6 28/12 28/16 31/2 35/9 38/21 38/23 58/23
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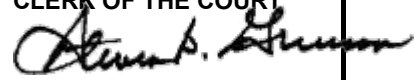


<b>M</b> <b>Mr...</b> [3] 69/4 70/5 72/7 <b>Mr. [8]</b> 22/11 32/12 36/6 37/4 42/17 66/21 67/3 72/17 <b>Mr. Garcia's [2]</b> 22/11 37/4 <b>Mr. Lalo [2]</b> 32/12 36/6 <b>Mr. Lalo's [1]</b> 42/17 <b>Mr. Najera's [3]</b> 66/21 67/3 72/17 <b>much [5]</b> 36/9 36/10 40/14 41/19 50/23 <b>multiple [1]</b> 20/1 <b>must [1]</b> 57/9 <b>my [10]</b> 5/13 8/9 31/10 36/15 39/8 39/9 41/23 49/23 67/18 74/10 <b>myself [1]</b> 27/8	45/2 46/6 46/8 50/13 51/5 60/8 60/8 60/8 60/9 61/10 67/18 68/9 69/5 70/7 72/19 <b>NOEL [1]</b> 2/5 <b>NORBERTO [10]</b> 1/11 5/19 8/4 10/4 10/20 15/7 30/6 52/17 64/8 71/10 <b>normal [1]</b> 58/19 <b>normally [1]</b> 60/24 <b>not [34]</b> 6/23 7/1 10/9 16/16 17/11 20/6 24/21 24/22 32/6 34/9 34/20 38/22 39/17 46/6 47/22 48/21 57/5 57/19 57/23 58/5 58/6 58/15 59/11 60/15 61/18 62/10 62/12 62/20 62/21 67/18 70/7 73/16 73/19 75/8	64/3 <b>offered [6]</b> 10/9 10/11 16/16 16/17 38/2 38/22 <b>officer [11]</b> 13/8 22/10 23/17 23/18 23/20 32/10 35/3 42/6 53/11 65/6 66/18 <b>officers [2]</b> 9/16 31/20 <b>Official [1]</b> 75/22 <b>oftentimes [1]</b> 54/5 <b>oh [1]</b> 60/8 <b>oil [3]</b> 35/25 36/1 39/14 <b>oils [1]</b> 62/5 <b>okay [127]</b> <b>once [3]</b> 25/17 26/14 73/15 <b>one [21]</b> 5/10 6/11 9/13 18/15 19/13 20/17 21/7 31/23 32/11 33/22 45/6 47/1 47/14 48/16 48/23 48/23 49/10 49/14 49/15 50/10 50/25 <b>ones [3]</b> 45/21 56/11 61/2 <b>only [4]</b> 20/16 48/22 49/25 57/2 <b>oo0oo [1]</b> 73/22 <b>open [2]</b> 21/21 69/7 <b>operating [1]</b> 20/14 <b>operation [1]</b> 10/7 <b>operational [2]</b> 11/25 12/15 <b>operations [1]</b> 56/8 <b>opportunity [1]</b> 7/10 <b>opposed [1]</b> 23/14 <b>order [1]</b> 41/24 <b>ordered [1]</b> 61/3 <b>orient [1]</b> 19/23 <b>OSHA [1]</b> 61/8 <b>other [14]</b> 21/8 32/7 34/7 34/8 34/19 46/20 46/25 47/13 54/5 55/9 61/24 62/11 62/14 62/24	69/16 69/20 69/23 70/4 70/8 <b>page 1 [5]</b> 27/15 27/24 55/25 60/10 67/8 <b>page 2 [3]</b> 28/4 56/20 68/22 <b>page 3 [2]</b> 28/10 57/11 <b>page 4 [1]</b> 58/12 <b>Pahrump [3]</b> 12/5 12/8 34/15 <b>paid [3]</b> 24/4 31/6 48/19 <b>papers [1]</b> 66/25 <b>Paperwork [1]</b> 58/14 <b>paragraph [3]</b> 50/8 50/10 50/14 <b>parked [1]</b> 44/4 <b>part [4]</b> 18/11 54/15 71/19 71/24 <b>particular [2]</b> 9/6 65/8 <b>partner [4]</b> 9/23 34/14 34/24 35/3 <b>partners [4]</b> 32/7 34/11 34/19 70/18 <b>parts [1]</b> 21/18 <b>pass [1]</b> 51/5 <b>passport [1]</b> 69/24 <b>patrol [1]</b> 8/24 <b>PAUL [1]</b> 2/8 <b>pay [2]</b> 46/13 47/22 <b>PELKEY [1]</b> 2/12 <b>pending [4]</b> 7/19 29/21 52/7 63/23 <b>people [9]</b> 9/17 14/16 15/5 17/14 36/15 39/8 39/9 54/2 54/5 <b>percent [1]</b> 17/22 <b>perfect [1]</b> 59/15 <b>perform [4]</b> 67/5 67/23 67/24 68/2 <b>performing [1]</b> 68/7 <b>perimeters [1]</b> 24/18 <b>perpendicular [1]</b> 21/20 <b>person [5]</b> 15/9 24/13 62/17 75/9 75/11 <b>pertaining [6]</b> 5/24 6/2 7/23 30/1 52/12 64/2 <b>pertains [1]</b> 6/17 <b>phone [5]</b> 15/21 15/23 16/5 16/11 70/5 <b>photo [18]</b> 12/10 14/5 14/6 15/5 15/6 18/23 19/24 20/22 20/23 21/21 35/17 45/16 45/17 56/5 57/13 68/23 69/3 71/19 <b>photograph [9]</b> 4/6 4/7 4/8 4/9 4/10 4/11 4/12 14/22 26/1 <b>photographed [1]</b> 26/12 <b>photographing [1]</b> 26/8 <b>photographs [3]</b> 4/14 4/15 58/20 <b>photos [6]</b> 45/11 55/14 57/5 57/6 57/8 68/21	<b>physical [1]</b> 15/15 <b>pick [1]</b> 22/13 <b>picture [2]</b> 12/11 72/12 <b>place [1]</b> 74/9 <b>Plaintiff [1]</b> 1/8 <b>planning [1]</b> 21/13 <b>plant [2]</b> 17/12 61/21 <b>plants [17]</b> 17/10 17/11 37/8 37/8 37/9 37/9 37/10 37/11 56/3 56/4 56/6 56/15 59/6 60/11 60/11 60/13 60/24 <b>plastic [2]</b> 20/11 44/16 <b>please [12]</b> 6/2 7/4 8/7 29/18 30/9 50/13 52/4 52/20 55/14 63/19 64/11 66/24 <b>point [4]</b> 21/25 22/20 36/6 38/8 <b>pointing [1]</b> 21/10 <b>police [20]</b> 8/21 9/16 13/8 22/10 23/17 23/18 31/4 31/9 31/20 32/10 32/20 33/1 35/3 42/6 48/11 53/10 53/11 65/1 66/18 72/10 <b>political [1]</b> 9/15 <b>portion [3]</b> 43/4 50/8 70/17 <b>positive [6]</b> 20/6 25/5 28/1 28/18 57/2 68/13 <b>possession [6]</b> 6/19 6/20 8/2 30/5 52/16 64/6 <b>possessory [1]</b> 58/21 <b>possibly [2]</b> 10/25 23/19 <b>pound [17]</b> 6/12 36/11 41/4 41/25 42/18 43/7 45/1 46/14 46/15 47/5 47/7 47/8 47/11 48/6 50/21 50/25 51/2 <b>pounds [14]</b> 6/9 6/12 32/15 34/3 34/18 37/20 39/18 40/12 41/22 42/16 46/12 46/23 48/2 48/13 <b>preceding [1]</b> 75/4 <b>predetermined [1]</b> 25/10 <b>preliminary [5]</b> 4/15 67/5 67/9 68/7 68/16 <b>prerecorded [1]</b> 25/25 <b>presence [5]</b> 29/2 51/13 63/4 68/14 73/1 <b>present [7]</b> 2/1 2/20 34/20 43/22 44/2 56/17 67/15 <b>presentation [2]</b> 73/15 73/17 <b>presented [4]</b> 28/25 51/11 63/2 72/24 <b>presenting [2]</b> 5/17 7/1 <b>pretty [1]</b> 45/20 <b>previous [1]</b> 57/13 <b>previously [1]</b> 22/19 <b>price [4]</b> 36/21 46/11 46/13 47/4
<b>N</b> <b>NAJERA [23]</b> 1/10 5/18 6/20 8/3 10/4 13/7 13/10 13/12 14/20 15/7 16/6 18/24 22/10 22/16 23/19 30/6 52/17 64/7 65/21 65/22 66/16 70/1 70/24 <b>Najera's [9]</b> 15/17 22/19 66/21 67/3 68/25 69/4 70/5 71/20 72/17 <b>name [21]</b> 5/14 8/8 8/9 17/12 30/10 30/12 30/15 49/7 49/11 52/21 58/14 61/15 64/12 64/13 64/14 65/19 69/25 71/1 71/5 71/9 75/20 <b>named [1]</b> 23/23 <b>names [3]</b> 10/3 31/21 49/6 <b>narcotics [12]</b> 24/1 25/8 25/9 25/19 25/23 26/20 55/7 56/7 56/10 56/18 57/9 60/25 <b>necessary [1]</b> 60/21 <b>need [1]</b> 60/17 <b>needed [6]</b> 31/10 34/16 36/17 36/19 39/9 54/6 <b>NEVADA [15]</b> 1/2 1/7 1/14 5/1 5/18 17/22 24/6 31/16 40/9 40/10 41/12 45/4 58/24 74/3 74/14 <b>never [2]</b> 33/3 34/21 <b>next [12]</b> 14/22 29/15 38/9 38/23 47/25 52/1 63/17 69/20 69/23 70/4 70/8 71/18 <b>nickname [2]</b> 12/21 17/12 <b>Nissan [4]</b> 14/23 46/2 46/3 46/5 <b>no [33]</b> 1/9 1/9 1/25 5/10 7/13 12/11 20/13 20/15 23/11 25/12 25/12 25/20 28/19 33/5 34/9 37/21 38/18 40/8	<b>notes [1]</b> 74/10 <b>nothing [9]</b> 7/20 8/15 25/12 29/22 30/22 52/8 53/4 63/24 64/20 <b>Notice [1]</b> 5/11 <b>November [3]</b> 1/15 2/1 5/1 <b>now [14]</b> 7/18 12/18 18/8 22/5 25/7 29/20 31/14 32/11 52/6 55/5 57/12 63/22 68/20 71/18 <b>NRS [2]</b> 75/2 75/13 <b>number [15]</b> 5/17 13/14 14/5 16/5 16/8 16/11 26/24 27/16 27/17 27/22 59/17 62/5 75/5 75/8 75/11 <b>Number 8 [1]</b> 14/5 <b>numbers [5]</b> 15/21 15/24 16/3 26/2 54/20 <b>numerous [1]</b> 67/20	<b>O</b> <b>observe [1]</b> 67/21 <b>observed [4]</b> 14/23 18/25 21/4 59/9 <b>obtain [1]</b> 11/7 <b>obtained [4]</b> 29/3 51/14 63/5 73/2 <b>obtaining [2]</b> 10/12 28/16 <b>obviously [2]</b> 60/15 61/1 <b>occupation [1]</b> 13/1 <b>occur [3]</b> 42/21 43/3 43/8 <b>occurred [3]</b> 39/23 44/1 45/4 <b>occurring [4]</b> 29/1 51/12 63/3 72/25 <b>ODV [2]</b> 68/2 72/15 <b>off [8]</b> 17/17 19/11 22/14 39/18 40/8 40/12 41/14 41/22 <b>offenses [8]</b> 5/25 6/1 6/2 7/4 7/24 30/1 52/12	<b>P</b> <b>packet [1]</b> 45/11 <b>page [18]</b> 27/11 27/15 27/24 28/4 28/10 55/13 55/25 56/20 57/11 58/12 60/10 67/8 68/22	<b>physical [1]</b> 15/15 <b>pick [1]</b> 22/13 <b>picture [2]</b> 12/11 72/12 <b>place [1]</b> 74/9 <b>Plaintiff [1]</b> 1/8 <b>planning [1]</b> 21/13 <b>plant [2]</b> 17/12 61/21 <b>plants [17]</b> 17/10 17/11 37/8 37/8 37/9 37/9 37/10 37/11 56/3 56/4 56/6 56/15 59/6 60/11 60/11 60/13 60/24 <b>plastic [2]</b> 20/11 44/16 <b>please [12]</b> 6/2 7/4 8/7 29/18 30/9 50/13 52/4 52/20 55/14 63/19 64/11 66/24 <b>point [4]</b> 21/25 22/20 36/6 38/8 <b>pointing [1]</b> 21/10 <b>police [20]</b> 8/21 9/16 13/8 22/10 23/17 23/18 31/4 31/9 31/20 32/10 32/20 33/1 35/3 42/6 48/11 53/10 53/11 65/1 66/18 72/10 <b>political [1]</b> 9/15 <b>portion [3]</b> 43/4 50/8 70/17 <b>positive [6]</b> 20/6 25/5 28/1 28/18 57/2 68/13 <b>possession [6]</b> 6/19 6/20 8/2 30/5 52/16 64/6 <b>possessory [1]</b> 58/21 <b>possibly [2]</b> 10/25 23/19 <b>pound [17]</b> 6/12 36/11 41/4 41/25 42/18 43/7 45/1 46/14 46/15 47/5 47/7 47/8 47/11 48/6 50/21 50/25 51/2 <b>pounds [14]</b> 6/9 6/12 32/15 34/3 34/18 37/20 39/18 40/12 41/22 42/16 46/12 46/23 48/2 48/13 <b>preceding [1]</b> 75/4 <b>predetermined [1]</b> 25/10 <b>preliminary [5]</b> 4/15 67/5 67/9 68/7 68/16 <b>prerecorded [1]</b> 25/25 <b>presence [5]</b> 29/2 51/13 63/4 68/14 73/1 <b>present [7]</b> 2/1 2/20 34/20 43/22 44/2 56/17 67/15 <b>presentation [2]</b> 73/15 73/17 <b>presented [4]</b> 28/25 51/11 63/2 72/24 <b>presenting [2]</b> 5/17 7/1 <b>pretty [1]</b> 45/20 <b>previous [1]</b> 57/13 <b>previously [1]</b> 22/19 <b>price [4]</b> 36/21 46/11 46/13 47/4

<p><b>P</b></p> <p>primarily [1] 60/15 primary [2] 27/17 58/16 Print [1] 75/20 printed [3] 71/2 71/5 71/9 prior [5] 6/3 9/6 25/7 25/9 31/15 prison [1] 13/3 probably [1] 19/16 problem [2] 37/21 38/18 procedures [1] 68/10 proceeded [1] 19/17 proceedings [9] 1/20 5/7 28/23 51/9 62/25 72/22 73/21 74/8 74/13 process [5] 10/22 10/25 11/6 11/24 26/8 processing [5] 6/16 8/2 30/4 52/15 64/6 produce [1] 58/5 produces [1] 61/19 product [5] 23/5 35/6 57/20 57/21 62/4 production [6] 6/16 8/2 30/4 52/15 53/25 64/6 program [1] 75/15 prohibited [4] 28/24 51/10 63/1 72/23 property [5] 11/15 11/20 14/11 42/2 42/2 proposed [5] 4/4 5/20 5/23 5/25 7/13 protective [1] 44/9 provide [1] 60/15 provided [2] 44/18 47/20 public [3] 9/13 9/15 75/15 punishable [8] 29/5 29/7 51/16 51/18 63/7 63/9 73/4 73/6 purchase [25] 24/1 24/14 24/23 25/9 25/22 25/25 32/16 39/22 40/4 41/4 41/20 42/1 42/12 42/13 42/18 42/23 43/7 44/18 45/1 46/11 47/4 47/5 48/7 48/12 49/1 purchased [3] 26/20 28/1 40/14 purchases [12] 27/14 32/12 32/14 32/20 33/3 37/18 47/18 48/18 49/5 49/18 49/21 50/3 purchasing [2] 23/15 25/3 purporting [1] 70/23 purpose [2] 23/1 31/8 purposes [1] 55/22 pursuant [3] 13/24 55/2 75/2 put [1] 34/14 putting [1] 19/20</p>	<p><b>Q</b></p> <p>question [4] 16/15 47/2 62/17 62/23 questions [25] 6/1 6/3 7/3 7/4 7/10 7/12 28/19 28/22 45/6 46/8 46/9 46/20 46/25 47/13 51/6 51/7 51/8 60/8 61/10 61/12 61/24 62/14 62/24 72/19 72/21 quite [2] 46/11 59/2</p> <p><b>R</b></p> <p>racing [1] 14/19 rafter [2] 56/22 56/24 raided [1] 44/24 raise [4] 7/16 29/17 52/3 63/19 ranch [2] 13/22 55/19 ranch-style [2] 13/22 55/19 rather [1] 20/24 raw [1] 57/20 read [3] 50/8 50/12 50/14 real [1] 20/16 reason [3] 24/22 54/7 54/25 recall [16] 33/9 33/11 33/16 34/12 36/9 36/23 39/4 40/6 40/14 41/11 41/13 42/25 49/4 49/25 50/3 50/23 recalled [3] 7/8 28/21 62/23 receipt [1] 71/16 receive [1] 27/5 received [6] 10/5 10/25 17/15 22/21 27/25 70/17 recognize [4] 32/4 45/12 45/17 49/8 recognized [1] 42/7 recollection [1] 50/3 record [7] 5/9 5/21 8/8 30/10 52/21 64/12 74/12 recording [1] 25/17 recover [4] 26/4 26/19 26/22 67/2 recovered [20] 25/19 27/6 28/6 28/11 55/15 55/22 56/11 58/9 59/3 59/20 59/24 68/17 69/9 69/17 69/21 70/2 70/12 71/12 72/3 72/16 recovery [2] 56/19 66/21 recreational [1] 24/10 reddish [1] 11/18 refer [1] 48/11 referring [1] 43/11 reflect [2] 5/9 5/22 reflected [3] 6/7 6/14 7/12 reflects [2] 6/15 6/19 refresh [1] 50/2 regarding [5] 6/1 7/3</p>	<p>7/12 42/17 47/5 registered [1] 14/20 REID [1] 2/13 related [4] 22/17 32/7 32/9 55/10 relatively [2] 21/6 22/4 release [1] 7/6 relevance [1] 71/22 relevant [2] 14/14 16/2 remain [1] 44/20 remember [5] 39/25 40/2 49/2 49/3 50/25 remind [1] 73/16 removing [1] 21/23 report [4] 48/11 49/20 49/22 50/4 Reported [1] 1/25 Reporter [1] 75/22 REPORTER'S [2] 1/20 74/1 reports [2] 4/13 27/13 request [3] 2/20 39/7 43/14 required [1] 75/12 reserved [1] 6/25 reset [1] 57/10 residence [23] 13/19 13/25 22/11 22/12 34/20 45/7 45/12 48/1 54/18 55/18 55/23 56/2 58/9 58/16 58/18 59/4 59/24 60/22 66/13 66/21 67/3 70/2 72/17 residences [1] 13/9 resident [1] 58/15 responded [3] 55/8 55/9 68/21 responding [1] 54/17 response [1] 5/11 result [6] 10/12 25/2 27/25 28/5 58/5 68/13 resulted [2] 25/5 28/16 return [8] 38/13 38/14 39/2 39/4 39/11 39/15 41/4 50/16 returned [3] 47/20 48/25 49/1 revolve [1] 16/24 Ricky [1] 63/17 right [31] 7/16 11/13 11/15 11/16 11/20 19/24 20/14 20/20 27/17 28/19 29/17 29/18 31/18 31/20 33/19 38/1 40/11 41/3 41/14 41/15 47/16 47/25 50/2 50/6 52/3 57/7 58/25 63/19 68/16 71/6 72/10 right-hand [1] 27/17 risk [1] 42/6 Robert [2] 2/21 5/15 role [1] 54/15 rope [1] 62/6 rough [1] 41/2 rows [1] 12/12</p>	<p><b>S</b></p> <p>S-N-O-D-G-R-A-S-S [1] 64/15 S-O-T-O [2] 30/12 30/16 SAEMZ [1] 2/14 safe [7] 68/24 69/1 69/2 69/4 69/7 69/10 69/18 sale [6] 6/5 7/24 30/1 52/12 53/25 64/3 same [22] 6/6 6/6 17/1 17/9 19/17 21/7 22/1 22/4 28/4 28/10 39/20 40/21 43/11 56/20 57/11 57/22 58/12 60/10 62/7 65/13 68/22 69/3 sample [19] 36/8 36/9 38/1 38/11 38/12 38/13 38/14 39/3 39/7 39/15 39/17 41/4 44/18 47/20 47/22 47/24 48/25 49/1 62/18 samples [2] 36/6 56/14 sativa [1] 17/10 saw [8] 17/1 18/23 20/16 20/22 21/11 36/7 45/23 69/3 says [2] 70/17 71/6 scenario [1] 57/18 scene [2] 61/3 69/21 scheduled [1] 21/9 scientific [1] 17/11 screen [1] 70/4 search [15] 26/18 26/19 26/20 54/9 54/18 55/2 55/6 55/16 59/16 60/22 66/1 66/1 66/6 66/20 72/3 searched [3] 25/8 32/20 32/23 second [5] 7/7 34/13 40/4 41/9 45/16 secret [4] 28/23 51/9 62/25 72/22 Secretary [2] 2/5 2/6 section [7] 9/10 9/11 9/12 16/22 27/17 54/5 65/4 security [2] 75/8 75/11 Seeing [1] 7/13 Seek [1] 5/11 seemed [1] 18/16 seen [3] 22/5 23/20 34/9 seized [3] 18/4 55/21 59/15 sell [2] 17/17 23/5 selling [4] 23/4 24/22 34/17 35/10 send [1] 27/7 sense [1] 17/5 Sentra [3] 46/2 46/3 46/5 separate [2] 51/2 61/21 serial [1] 26/1 series [6] 54/8 66/1</p>	<p>66/25 68/21 69/13 70/10 seriously [1] 18/13 services [2] 23/9 31/6 set [11] 11/21 11/24 12/12 14/1 14/2 14/2 14/7 18/19 42/20 42/23 46/23 setting [1] 21/13 seven [1] 54/4 several [2] 14/24 15/14 shall [4] 7/19 29/21 52/7 63/23 she [1] 35/23 sheet [1] 54/23 short [1] 44/11 shorthand [2] 74/7 74/9 shot [1] 7/11 shots [1] 70/4 should [2] 33/18 47/1 show [27] 10/11 12/2 12/18 14/4 16/17 18/1 22/12 27/10 32/3 35/6 35/7 35/16 37/4 37/7 37/12 40/17 41/15 43/25 45/10 55/12 55/25 58/20 66/23 67/8 68/20 69/16 71/18 showed [11] 19/2 19/6 21/6 21/7 35/17 37/6 37/15 39/8 43/24 45/21 50/4 showing [3] 10/18 11/9 58/17 signature [7] 67/16 67/18 70/20 70/23 70/24 71/2 75/18 signatures [1] 70/10 similar [1] 44/17 simple [1] 43/9 simply [1] 38/23 since [3] 42/5 47/6 68/21 single [2] 50/21 55/19 single-story [1] 55/19 sir [6] 8/19 29/23 46/16 53/8 61/12 64/24 sister [2] 22/19 35/22 size [1] 20/12 smoke [1] 62/10 smoked [1] 62/9 SNODGRASS [4] 3/6 63/18 64/14 64/17 so [89] social [2] 75/8 75/11 sold [1] 24/18 solemnly [4] 7/17 29/19 52/5 63/21 some [17] 10/16 10/24 13/24 18/17 21/25 34/12 36/5 37/15 38/8 41/2 44/13 47/16 58/20 61/2 61/14 69/23 71/15 somebody [1] 34/17 somebody's [1] 62/9 somehow [1] 22/16 something [13] 12/13</p>
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<p><b>S</b></p> <p><b>something...</b> [12] 16/21 19/5 21/6 21/13 35/23 36/17 38/17 39/10 47/9 57/10 58/6 72/9</p> <p><b>sometime</b> [3] 20/20 21/1 22/9</p> <p><b>sometimes</b> [1] 49/23</p> <p><b>somewhere</b> [3] 23/20 41/24 42/9</p> <p><b>sorry</b> [3] 6/19 51/5 67/16</p> <p><b>sort</b> [2] 18/1 20/7</p> <p><b>SOTO</b> [25] 3/4 23/23 23/25 24/23 25/2 25/3 25/7 25/8 25/22 26/14 26/16 26/22 27/5 27/7 27/25 28/6 28/12 28/16 29/16 30/11 30/19 31/2 38/21 38/23 62/17</p> <p><b>sounds</b> [2] 20/20 20/25</p> <p><b>Southeast</b> [1] 8/23</p> <p><b>Spaghetti</b> [3] 11/13 11/13 41/14</p> <p><b>speak</b> [1] 30/13</p> <p><b>specialty</b> [1] 61/1</p> <p><b>specific</b> [9] 16/2 23/22 26/15 27/16 40/7 54/7 58/6 59/8 75/13</p> <p><b>specifically</b> [15] 9/7 9/12 11/14 13/3 14/15 18/18 19/2 21/19 23/9 27/24 40/1 54/12 55/8 56/8 66/5</p> <p><b>specifics</b> [1] 10/14</p> <p><b>spell</b> [4] 8/8 30/10 52/21 64/12</p> <p><b>spent</b> [1] 15/7</p> <p><b>spray</b> [12] 35/21 35/24 35/24 36/14 36/20 38/18 39/12 39/14 43/22 44/1 44/10 61/22</p> <p><b>sprayed</b> [4] 48/4 56/25 57/19 57/21</p> <p><b>spraying</b> [10] 35/7 35/11 35/14 35/18 36/1 40/23 43/18 43/21 44/7 44/8</p> <p><b>sprays</b> [1] 43/19</p> <p><b>squad</b> [5] 9/12 9/13 9/13 54/4 67/20</p> <p><b>ss</b> [1] 74/3</p> <p><b>STACK</b> [1] 2/6</p> <p><b>stamp</b> [1] 57/4</p> <p><b>standards</b> [1] 61/8</p> <p><b>stapled</b> [2] 27/11 66/25</p> <p><b>start</b> [2] 23/12 34/16</p> <p><b>started</b> [2] 6/21 12/1</p> <p><b>state</b> [12] 1/7 5/18 7/13 8/7 13/2 17/21 30/9 52/20 64/11 74/3 75/13 75/16</p> <p><b>State's</b> [3] 52/1 63/17 73/14</p> <p><b>statement</b> [4] 29/1 51/12 63/3 72/25</p> <p><b>statements</b> [1] 36/13</p>	<p><b>states</b> [1] 72/10</p> <p><b>Stenotype</b> [1] 74/7</p> <p><b>Stephens</b> [2] 2/21 5/15</p> <p><b>steps</b> [1] 68/10</p> <p><b>STEVE</b> [1] 2/3</p> <p><b>stick</b> [2] 35/21 35/25</p> <p><b>still</b> [4] 14/8 15/3 35/17 53/19</p> <p><b>Stone</b> [4] 13/13 66/6 70/13 71/12</p> <p><b>stop</b> [1] 25/14</p> <p><b>storage</b> [1] 37/14</p> <p><b>storages</b> [1] 40/18</p> <p><b>story</b> [1] 55/19</p> <p><b>strength</b> [1] 36/13</p> <p><b>stripe</b> [1] 14/19</p> <p><b>strong</b> [3] 36/16 38/16 62/19</p> <p><b>stronger</b> [5] 35/12 36/17 36/19 38/17 39/10</p> <p><b>structurally</b> [1] 62/7</p> <p><b>style</b> [2] 13/22 55/19</p> <p><b>submitted</b> [4] 18/5 25/4 58/10 59/13</p> <p><b>substance</b> [24] 6/6 6/9 6/11 6/20 7/24 7/25 8/3 17/13 17/19 17/20 17/24 23/7 30/2 30/2 30/5 50/17 52/13 52/13 52/16 57/3 57/17 64/3 64/4 64/7</p> <p><b>substances</b> [6] 6/14 8/1 26/23 30/3 52/14 64/5</p> <p><b>sunlight</b> [1] 60/16</p> <p><b>supervision</b> [1] 74/11</p> <p><b>sure</b> [8] 18/3 20/8 25/11 25/20 43/19 45/20 59/11 62/21</p> <p><b>surrounding</b> [1] 13/25</p> <p><b>surveil</b> [1] 25/13</p> <p><b>surveillance</b> [11] 15/4 15/11 15/15 15/16 18/18 18/20 19/1 20/4 22/6 22/7 22/21</p> <p><b>surveilled</b> [1] 25/18</p> <p><b>SUSAN</b> [1] 2/15</p> <p><b>swear</b> [4] 7/17 29/19 52/5 63/21</p> <p><b>sworn</b> [5] 5/5 8/13 30/20 53/2 64/18</p> <p><b>system</b> [1] 13/3</p> <p><b>systems</b> [1] 60/18</p> <p><b>T</b></p> <p><b>T-H-E-O-D-O-R-E</b> [1] 64/14</p> <p><b>table</b> [3] 37/7 37/8 44/6</p> <p><b>tactic</b> [1] 23/13</p> <p><b>take</b> [10] 17/24 18/12 22/13 25/25 34/17 37/23 38/1 55/13 58/19 66/24</p> <p><b>taken</b> [5] 1/14 20/23 21/12 57/6 57/8</p> <p><b>taking</b> [4] 17/8 17/16 19/19 19/21</p>	<p><b>Talim</b> [2] 2/21 5/14</p> <p><b>talk</b> [2] 25/21 45/7</p> <p><b>talked</b> [1] 42/12</p> <p><b>talking</b> [1] 23/12</p> <p><b>TAMMY</b> [1] 2/11</p> <p><b>targeting</b> [1] 65/19</p> <p><b>task</b> [1] 54/2</p> <p><b>tasked</b> [3] 54/17 66/5 66/20</p> <p><b>techniques</b> [1] 56/9</p> <p><b>tell</b> [7] 15/9 19/8 31/20 33/20 35/13 39/6 39/11</p> <p><b>test</b> [13] 4/15 18/1 23/6 57/2 57/22 58/1 58/5 67/5 67/9 67/24 68/8 68/13 68/16</p> <p><b>tested</b> [5] 27/9 28/1 28/18 59/20 67/22</p> <p><b>testified</b> [7] 8/15 30/22 45/4 47/19 53/4 62/17 64/20</p> <p><b>testify</b> [6] 8/14 25/3 30/21 53/3 62/22 64/19</p> <p><b>testifying</b> [2] 14/17 54/8</p> <p><b>testimony</b> [8] 7/17 7/23 29/19 29/25 52/5 52/11 63/21 64/2</p> <p><b>testing</b> [4] 57/1 57/25 58/11 59/13</p> <p><b>tests</b> [1] 68/2</p> <p><b>than</b> [3] 6/12 35/12 68/8</p> <p><b>Thank</b> [13] 8/11 29/12 29/14 30/17 30/18 51/23 51/25 52/24 63/14 64/16 73/11 73/13 73/20</p> <p><b>Thanks</b> [1] 63/16</p> <p><b>that's</b> [29] 5/18 9/14 10/9 10/20 11/11 11/12 11/19 13/15 13/21 13/21 14/6 17/12 21/22 23/11 33/19 38/14 38/16 45/13 45/14 48/14 56/23 57/15 61/1 61/6 61/15 66/9 66/19 68/24 72/11</p> <p><b>THC</b> [20] 6/11 17/13 17/16 17/18 17/19 17/22 17/25 35/8 35/14 36/1 57/19 57/21 61/14 61/17 61/18 61/21 61/22 62/7 62/11 71/25</p> <p><b>their</b> [3] 49/6 49/7 61/1</p> <p><b>them</b> [26] 10/3 15/8 15/8 15/10 18/12 18/13 18/14 22/14 23/5 31/12 31/23 34/21 34/22 37/13 43/10 43/10 45/21 45/23 48/14 49/8 49/10 49/11 49/14 49/15 60/16 65/18</p> <p><b>then</b> [52] 6/15 7/7 7/7 9/8 10/1 11/19 13/17 14/2 17/16 17/20 19/16 20/18 20/22 21/7 21/9 22/3 22/21 22/23 23/6</p>	<p>23/20 25/13 25/17 25/22 26/14 26/16 26/20 27/4 28/10 32/11 34/11 35/24 36/16 37/12 37/17 38/5 42/11 46/23 48/9 50/19 51/1 56/11 57/15 58/12 59/8 59/23 60/17 61/4 61/7 70/7 72/15 73/18 73/19</p> <p><b>THEODORE</b> [3] 3/6 64/13 64/17</p> <p><b>there</b> [66] 7/2 9/20 11/5 11/12 11/15 11/22 11/25 12/12 12/12 12/14 14/10 14/18 15/2 15/10 15/16 18/19 19/13 20/9 20/13 20/17 21/8 21/13 21/14 22/2 22/6 24/9 25/11 25/13 25/20 31/6 32/11 33/10 33/19 34/7 37/21 37/25 40/19 42/5 42/7 43/10 43/10 43/17 43/17 43/19 44/3 44/6 44/11 44/13 45/16 46/22 47/4 49/21 51/1 54/8 54/11 55/1 59/2 60/11 60/23 65/25 67/18 67/21 70/20 70/23 71/5 72/9</p> <p><b>there's</b> [11] 12/11 24/13 56/8 56/23 57/4 60/17 70/16 70/20 71/2 71/5 71/9</p> <p><b>thereafter</b> [1] 74/9</p> <p><b>these</b> [21] 15/22 17/15 20/17 21/3 27/13 28/15 28/23 45/3 45/22 48/10 49/5 51/9 55/14 57/5 57/6 57/8 62/25 69/23 72/2 72/3 72/22</p> <p><b>they'll</b> [1] 35/24</p> <p><b>they're</b> [6] 17/10 45/20 56/7 56/12 60/15 60/20</p> <p><b>thing</b> [2] 19/3 40/21</p> <p><b>things</b> [7] 19/19 19/20 19/21 21/10 62/5 67/21 70/16</p> <p><b>think</b> [1] 71/1</p> <p><b>third</b> [2] 34/13 46/23</p> <p><b>those</b> [22] 6/3 7/4 9/17 11/20 14/14 15/24 21/11 25/2 27/12 32/20 44/5 45/20 54/25 55/14 56/11 57/3 57/9 59/9 62/19 67/6 70/4 72/13</p> <p><b>though</b> [1] 41/15</p> <p><b>thousand</b> [2] 40/16 46/13</p> <p><b>three</b> [25] 6/8 6/10 6/13 10/3 10/6 14/16 15/2 15/6 15/14 15/22 15/23 15/25 17/7 17/15 19/14 20/17 22/5 27/11 27/13 28/15 47/8 47/10 48/21 49/21 49/25</p> <p><b>three-page</b> [1] 27/11</p> <p><b>threshold</b> [1] 17/19</p> <p><b>through</b> [4] 6/4 41/1</p>	<p>47/17 59/20</p> <p><b>throughout</b> [2] 54/9 66/2</p> <p><b>TIARA</b> [1] 2/4</p> <p><b>time</b> [41] 6/24 6/24 9/21 9/22 11/23 12/1 12/14 13/1 15/5 15/8 20/6 20/13 21/7 21/9 22/1 22/4 25/14 28/20 32/22 34/6 34/13 34/23 35/2 36/7 36/12 37/24 40/17 40/19 41/21 43/1 43/3 43/5 43/14 44/11 47/25 50/25 56/25 57/4 58/2 66/17 74/9</p> <p><b>times</b> [7] 14/24 20/2 32/15 36/21 38/18 39/12 41/2</p> <p><b>Tina</b> [2] 2/21 5/14</p> <p><b>tip</b> [1] 10/6</p> <p><b>tips</b> [1] 18/12</p> <p><b>Title</b> [1] 75/22</p> <p><b>to-wit</b> [1] 75/13</p> <p><b>today</b> [9] 6/23 7/2 7/11 7/23 14/17 29/25 52/11 64/2 73/15</p> <p><b>together</b> [2] 27/3 66/25</p> <p><b>told</b> [19] 17/7 31/13 34/2 34/24 35/3 35/9 36/15 36/16 36/18 37/19 38/15 38/16 38/21 39/8 43/16 43/16 44/4 44/12 49/7</p> <p><b>too</b> [3] 31/14 39/9 60/18</p> <p><b>took</b> [4] 22/13 36/18 38/2 74/7</p> <p><b>top</b> [4] 37/16 44/6 60/14 71/2</p> <p><b>total</b> [1] 20/3</p> <p><b>town</b> [2] 34/16 41/23</p> <p><b>track</b> [2] 26/5 27/2</p> <p><b>tracker</b> [1] 20/7</p> <p><b>trafficking</b> [6] 6/8 6/10 7/25 30/2 52/13 64/4</p> <p><b>trained</b> [1] 56/7</p> <p><b>training</b> [2] 56/9 56/10</p> <p><b>trains</b> [1] 13/3</p> <p><b>transaction</b> [1] 43/8</p> <p><b>transcribe</b> [1] 5/6</p> <p><b>transcribed</b> [1] 74/10</p> <p><b>transcript</b> [3] 1/20 74/11 75/5</p> <p><b>transpired</b> [4] 28/25 51/11 63/2 72/24</p> <p><b>trash</b> [2] 20/12 59/9</p> <p><b>trays</b> [1] 44/6</p> <p><b>trips</b> [1] 20/3</p> <p><b>truck</b> [4] 19/7 19/15 19/18 20/8</p> <p><b>true</b> [1] 74/12</p> <p><b>trunk</b> [3] 71/20 71/22 72/10</p> <p><b>truth</b> [27] 7/19 7/20 7/20 8/14 8/14 8/15 10/9 16/16 29/21 29/22 29/22 30/21 30/21 30/22 38/22 52/7 52/8</p>
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<p><b>T</b></p> <p><b>truth...</b> [10] 52/8 53/3 53/3 53/4 63/23 63/24 63/24 64/19 64/19 64/20</p> <p><b>try</b> [2] 36/15 36/15</p> <p><b>trying</b> [1] 11/7</p> <p><b>turkey</b> [5] 36/25 37/1 71/24 72/2 72/13</p> <p><b>turn</b> [2] 17/17 18/14</p> <p><b>turned</b> [1] 59/24</p> <p><b>turning</b> [3] 57/1 57/21 61/23</p> <p><b>Twelve</b> [2] 53/13 65/7</p> <p><b>two</b> [24] 9/20 11/5 12/6 15/14 20/3 40/12 41/4 41/22 41/25 42/16 46/12 46/19 48/2 48/6 48/13 48/20 48/21 48/22 49/25 51/2 51/2 56/24 57/3 65/10</p> <p><b>two pounds</b> [4] 40/12 46/12 48/2 48/13</p> <p><b>two pounds off</b> [1] 41/22</p> <p><b>two-pound</b> [4] 41/4 41/25 48/6 51/2</p> <p><b>type</b> [7] 11/21 20/10 31/11 44/15 45/25 58/20 71/15</p> <p><b>types</b> [3] 9/17 32/14 60/12</p> <p><b>typically</b> [1] 19/10</p>	<p><b>up</b> [39] 7/1 11/21 11/24 12/13 13/17 14/1 14/2 14/2 14/7 18/1 18/13 18/19 19/2 19/6 19/18 21/6 21/7 21/13 22/12 22/13 22/21 24/6 26/16 29/5 31/25 34/13 36/22 42/20 42/23 44/7 46/22 46/23 47/2 49/5 51/16 60/14 63/7 72/13 73/4</p> <p><b>upon</b> [4] 7/18 29/20 52/6 63/22</p> <p><b>upper</b> [1] 27/17</p> <p><b>us</b> [11] 10/16 13/5 17/4 18/25 23/5 28/25 44/1 51/11 55/7 63/2 72/24</p> <p><b>use</b> [3] 25/24 61/22 62/5</p> <p><b>used</b> [4] 56/9 60/12 60/15 71/25</p> <p><b>user</b> [1] 62/8</p> <p><b>uses</b> [1] 25/22</p> <p><b>using</b> [1] 58/2</p> <p><b>utilize</b> [2] 23/22 54/5</p> <p><b>utilized</b> [1] 60/18</p> <p><b>UV</b> [1] 60/16</p>	<p><b>wanted</b> [4] 6/21 23/4 36/21 44/12</p> <p><b>warehouse</b> [34] 11/11 11/15 11/17 11/19 14/3 14/5 14/7 14/11 15/12 15/17 18/20 18/25 19/1 19/6 19/10 19/12 19/20 19/22 19/24 20/5 20/14 21/4 21/16 22/6 41/10 41/11 42/1 43/9 43/11 43/20 44/21 48/15 48/16 72/8</p> <p><b>warrant</b> [5] 54/18 55/2 55/6 55/16 59/16</p> <p><b>warrants</b> [3] 54/9 66/1 72/4</p> <p><b>wasn't</b> [9] 11/24 19/13 20/15 20/16 21/7 36/16 38/16 59/9 62/19</p> <p><b>watched</b> [1] 25/15</p> <p><b>watching</b> [3] 14/3 15/8 15/8</p> <p><b>way</b> [2] 27/7 62/11</p> <p><b>we'll</b> [4] 7/7 25/3 32/11 54/5</p> <p><b>we're</b> [8] 6/22 7/6 11/14 23/17 26/5 57/16 60/11 69/20</p> <p><b>weak</b> [1] 39/9</p> <p><b>wear</b> [1] 44/9</p> <p><b>Wednesday</b> [1] 1/15</p> <p><b>weeds</b> [1] 12/12</p> <p><b>week</b> [1] 73/17</p> <p><b>weekend</b> [1] 41/24</p> <p><b>weeks</b> [2] 6/25 7/9</p> <p><b>weighed</b> [1] 36/10</p> <p><b>weight</b> [2] 72/15 72/16</p> <p><b>well</b> [8] 18/20 24/12 37/6 38/8 39/17 44/3 59/6 68/4</p> <p><b>WELLMAN</b> [1] 2/5</p> <p><b>went</b> [11] 19/7 19/12 20/5 21/11 21/19 33/20 41/17 43/20 44/3 44/5 48/1</p> <p><b>were</b> [102]</p> <p><b>weren't</b> [1] 20/8</p> <p><b>West</b> [2] 11/11 41/12</p> <p><b>what's</b> [2] 53/16 57/12</p> <p><b>whatever</b> [1] 44/7</p> <p><b>when</b> [29] 7/8 20/5 23/11 24/23 33/7 33/19 36/18 38/14 38/16 41/3 41/25 42/20 43/17 43/21 44/1 44/4 45/22 48/14 48/25 49/1 57/6 59/19 62/8 62/10 62/18 62/22 67/19 69/3 72/3</p> <p><b>where</b> [18] 6/25 12/13 18/23 20/5 20/7 20/8 21/11 21/19 21/22 33/11 40/3 41/17 42/2 43/4 45/22 48/18 59/20 72/6</p> <p><b>whether</b> [3] 32/6 57/19 58/6</p> <p><b>which</b> [14] 17/8 17/13 17/13 17/16 18/21 19/2</p>	<p>19/10 57/17 61/19 62/4 62/8 62/8 62/11 71/24</p> <p><b>while</b> [2] 55/9 56/18</p> <p><b>white</b> [2] 14/18 21/20</p> <p><b>who</b> [7] 5/15 10/18 12/19 13/5 25/21 58/14 66/15</p> <p><b>whole</b> [9] 7/20 8/14 29/22 30/21 52/8 53/3 63/24 64/19 67/20</p> <p><b>whom</b> [2] 16/3 66/13</p> <p><b>whose</b> [1] 69/25</p> <p><b>why</b> [7] 10/11 16/17 17/5 26/3 27/1 54/7 58/8</p> <p><b>will</b> [19] 5/21 6/23 6/25 7/1 7/5 7/8 7/9 7/11 7/14 10/16 16/1 28/21 29/15 35/25 48/10 62/23 73/15 73/17 73/18</p> <p><b>wit</b> [1] 75/13</p> <p><b>withhold</b> [2] 6/22 73/18</p> <p><b>witness</b> [14] 7/5 7/7 7/14 28/20 29/15 46/9 51/5 51/6 51/7 52/1 61/11 63/17 67/21 72/20</p> <p><b>witnessed</b> [1] 67/24</p> <p><b>witnesses</b> [2] 3/1 6/24</p> <p><b>work</b> [4] 8/20 49/24 53/21 65/15</p> <p><b>worked</b> [2] 35/23 66/11</p> <p><b>working</b> [6] 9/24 31/2 31/8 32/19 54/16 54/25</p> <p><b>works</b> [1] 13/2</p> <p><b>worth</b> [1] 43/5</p> <p><b>wrong</b> [1] 19/5</p>	<p>31/6 31/8 33/3 33/6 42/11 42/18 43/2 43/4 47/2 50/2 50/7 50/19 52/3 52/20 53/16 54/2 54/3 54/15 63/19 64/11 65/11 65/24 67/12 67/16 70/15 70/22 71/4 71/8 73/18</p> <p><b>yourself</b> [1] 50/13</p>
<p><b>U</b></p> <p><b>U.S</b> [3] 69/13 69/17 69/20</p> <p><b>Uh</b> [1] 60/6</p> <p><b>Uh-huh</b> [1] 60/6</p> <p><b>ultimately</b> [12] 10/2 13/23 16/6 16/9 17/2 18/5 28/1 28/17 58/9 59/10 59/12 69/10</p> <p><b>under</b> [10] 9/20 11/13 11/15 20/4 26/24 27/21 59/17 61/20 65/10 74/10</p> <p><b>undercover</b> [2] 23/14 23/18</p> <p><b>undersigned</b> [1] 75/4</p> <p><b>understand</b> [10] 8/5 29/10 30/7 51/21 52/18 61/18 62/7 63/12 64/9 73/9</p> <p><b>understood</b> [1] 36/3</p> <p><b>uniform</b> [3] 30/3 52/14 64/5</p> <p><b>uniformed</b> [2] 6/14 8/1</p> <p><b>unique</b> [3] 23/16 26/24 59/17</p> <p><b>unit</b> [7] 9/25 18/12 54/16 55/6 55/7 56/6 56/7</p> <p><b>unlawful</b> [5] 6/16 8/1 30/4 52/15 64/5</p> <p><b>until</b> [1] 73/19</p> <p><b>untrue</b> [1] 18/14</p> <p><b>unusual</b> [1] 23/8</p>	<p><b>V</b></p> <p><b>vacant</b> [1] 11/23</p> <p><b>vaguely</b> [1] 38/9</p> <p><b>valley</b> [2] 54/10 66/2</p> <p><b>value</b> [2] 59/3 59/24</p> <p><b>varies</b> [1] 54/4</p> <p><b>Vegas</b> [11] 1/14 5/1 8/20 13/21 31/3 40/9 40/10 41/12 53/10 64/25 74/14</p> <p><b>vehicle</b> [6] 21/20 22/13 22/14 25/11 26/21 71/21</p> <p><b>vehicles</b> [2] 14/11 14/14</p> <p><b>Venmo</b> [1] 70/5</p> <p><b>verify</b> [1] 15/24</p> <p><b>versus</b> [1] 5/18</p> <p><b>very</b> [4] 10/5 14/18 18/13 23/11</p> <p><b>vest</b> [1] 72/9</p> <p><b>video</b> [6] 15/3 15/9 20/24 25/17 35/7 35/17</p> <p><b>videos</b> [1] 35/6</p> <p><b>view</b> [1] 41/16</p> <p><b>violate</b> [5] 6/13 8/1 30/3 52/14 64/5</p> <p><b>visited</b> [1] 22/10</p> <p><b>volume</b> [2] 1/21 47/7</p>	<p><b>W</b></p> <p><b>waiting</b> [1] 5/10</p> <p><b>walk</b> [1] 24/14</p> <p><b>walked</b> [4] 21/18 21/22 44/3 44/24</p> <p><b>walking</b> [2] 15/10 21/9</p> <p><b>want</b> [17] 12/5 12/18 14/4 18/3 18/17 19/4 24/25 25/12 33/6 34/14 42/4 42/6 45/7 47/17 50/12 65/24 66/23</p>	<p><b>Y</b></p> <p><b>yeah</b> [15] 33/9 35/15 35/19 37/2 37/11 38/12 40/10 40/13 40/19 48/5 49/9 49/16 50/11 57/8 60/14</p> <p><b>year</b> [10] 9/7 9/19 9/21 9/21 10/1 18/19 53/18 54/13 65/12 65/25</p> <p><b>years</b> [6] 9/2 9/20 11/7 53/13 53/15 65/7</p> <p><b>yes</b> [107]</p> <p><b>yet</b> [1] 57/20</p> <p><b>you</b> [334]</p> <p><b>you'll</b> [1] 50/8</p> <p><b>you're</b> [19] 7/18 7/22 7/22 14/17 29/12 29/20 29/24 29/24 51/23 52/6 52/10 52/10 54/7 63/14 63/22 64/1 64/1 68/1 73/11</p> <p><b>you've</b> [3] 14/16 22/5 45/3</p> <p><b>your</b> [46] 6/3 7/16 8/7 8/22 9/3 9/7 10/15 12/24 13/10 13/18 13/24 14/15 15/11 15/21 16/21 29/17 30/9</p>	<p><b>Z</b></p> <p><b>Zelle</b> [1] 70/5</p> <p><b>ZEMAN</b> [1] 2/15</p> <p><b>zoom</b> [1] 14/10</p>



EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
vs. ) GJ No. 19BGJ223A-C  
 ) DC No. C356361  
JESUS NAJERA, EDUARDO FABIAN )  
GARCIA, NORBERTO LEON MADRIGAL, )  
 )  
Defendants. )

Taken at Las Vegas, Nevada

Wednesday, May 26, 2021

11:07 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 2

Reported by: Danette L. Antonacci, C.C.R. No. 222

12:00 1 GRAND JURORS PRESENT ON MAY 26, 2021  
2  
3 STEVE LURVEY, FOREPERSON  
4 TIARA COSENTINO, Deputy Foreperson  
12:00 5 NOEL WELLMAN SMITH, Secretary  
6 DANIEL STACK, Assistant Secretary  
7 JOHN FINKOWSKI  
8 PAUL GILLENWATER  
9 MARK GOODMAN  
12:00 10 JEFFREY GRUBER  
11 JEFF HILL  
12 TAMMY KRAUS  
13 WILLIAM LISTON  
14 JOHN PELKEY  
12:00 15 GERALD REID  
16 MANOLO SAENZ  
17 SUSAN ZEMAN  
18 WALTER ZUKOWSKI  
19 Also present at the request of the Grand Jury:  
12:00 20 Tina Talim, Chief Deputy District Attorney  
21  
22  
23  
24  
25

12:00

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INDEX OF WITNESSES

Examined

AARON HEFNER

6

12:00

1

INDEX OF EXHIBITS

2

3

Grand Jury ExhibitsIdentified

4

6 - PHOTOGRAPH

19

12:00

5

9 - REPORT

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10 - LAB REPORT

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11 - LAB REPORT

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12:00

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LAS VEGAS, NEVADA, MAY 26, 2021

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\* \* \* \* \*

3

DANETTE L. ANTONACCI,

4

having been first duly sworn to faithfully

12:00

5

and accurately transcribe the following

6

proceedings to the best of her ability.

7

8

MS. TALIM: Good morning ladies and

9

gentlemen. My name is Tina Talim. I'm back on the

11:07

10

record to conclude the presentation of the State of

11

Nevada versus Jesus Najera, Eduardo Garcia, Norberto

12

Madrigal. There is are changes to the Indictment as

13

previously submitted. I will have a few additional

14

exhibits and one additional witness. Does anyone have

11:08

15

any questions so far as to the testimony previously

16

presented?

17

Seeing no hands. The State will recall

18

Aaron Hefner.

19

THE FOREPERSON: Raise your right hand

11:08

20

please.

21

You do solemnly swear the testimony you are

22

about to give upon the investigation now pending before

23

this Grand Jury shall be the truth, the whole truth, and

24

nothing but the truth, so help you God?

11:08

25

THE WITNESS: Yes.

11:08 1 THE FOREPERSON: Be seated.

2 You are advised that you are here today to

3 give testimony in the investigation pertaining to the

4 offenses of sale of controlled substance, trafficking in

11:08 5 controlled substance, conspiracy to violate Uniform

6 Controlled Substance Act, unlawful production or

7 processing of marijuana, possession of a controlled

8 substance, involving Jose Najera, Eduardo Garcia,

9 Norberto Madrigal.

11:09 10 Do you understand this advisement?

11 THE WITNESS: Yes.

12 THE FOREPERSON: Please state your first

13 and last name, spell both for the record.

14 THE WITNESS: My Name is Aaron Hefner.

11:09 15 That's A-A-R-O-N, H-E-F-N-E-R.

16 THE FOREPERSON: Thank you.

17 AARON HEFNER,

18 having been first duly sworn by the Foreperson of the

19 Grand Jury to testify to the truth, the whole truth,

11:09 20 and nothing but the truth, testified as follows:

21 EXAMINATION

22 BY MS. TALIM:

23 Q. So Detective, you previously testified back

24 in November of 2020 about an investigation where you

11:09 25 were in fact the case agent or one of the lead

11:09 1 detectives investigating the spraying of hemp with THC  
2 oil; correct.

3 A. Correct.

4 Q. So it's been awhile since you testified, so  
11:09 5 just real quickly I just want to ask you some questions  
6 to kind of refresh everyone's recollection.

7 This investigation involved three  
8 individuals?

9 A. Yes.

11:10 10 Q. That was Jesus Najera, Eduardo Garcia and  
11 Norberto Madrigal; correct?

12 A. Correct.

13 Q. And in the course of your investigation,  
14 and you've already testified as to the specific phone  
11:10 15 numbers, you developed phone numbers that were  
16 associated with each of those individuals; correct?

17 A. Correct.

18 Q. Once this investigation was concluded,  
19 specifically once search warrants were executed, did you  
11:10 20 then apply for search warrants for these particular  
21 numbers related to the individuals I previously  
22 mentioned?

23 A. Correct, we had search warrants for the  
24 phones of all the individuals involved. We actually  
11:10 25 recovered them either from the person or from their

11:10 1 residence.

2 Q. I'm going to take you back before the  
3 search warrants were executed on the specific phones,  
4 back for the physical search warrants that were executed  
11:10 5 at the various locations that we heard about through  
6 previous testimony. One of the search warrants that you  
7 applied for and obtained was related to Mr. Najera's  
8 residence; is that right?

9 A. Correct.

11:11 10 Q. And Mr. Najera, just to refresh everyone's  
11 recollection, was the former Metro police officer?

12 A. Correct.

13 Q. Were you present when that search warrant  
14 was executed?

11:11 15 A. No. We had our team split up so I wasn't  
16 at the search warrant at his apartment. I was present  
17 at the search warrant at the Mesquite address.

18 Q. Mesquite belonged to who?

19 A. It was a warehouse owned by Norberto  
11:11 20 Madrigal.

21 Q. Being the case agent in this case, when  
22 there was something of evidentiary value recovered from  
23 the different places where search warrants were  
24 executed, was that brought to your attention?

11:11 25 A. Yes. So the way it would work, we have a

11:11 1 team of six detectives, so I would assign a detective at  
2 each location to be in charge and they would call me and  
3 let me know of anything that was evidentiary or  
4 important, just so I was aware of it.

11:11 5 Q. I want to talk to you about the search  
6 warrant that was executed on Mr. Najera, the former  
7 Metro police officer, his residence.

8 A. Okay.

11:12 9 Q. Were there items -- and we've already heard  
10 testimony about the recovery of certain pieces of  
11 evidence. I want to direct your attention to some U.S.  
12 currency that was recovered from Mr. Najera's residence.  
13 Are you familiar with the fact that there was U.S.  
14 currency recovered from specifically a safe found in Mr.  
11:12 15 Najera's residence?

16 A. Yes. I don't want to quote the incorrect  
17 amount, but I believe it was \$500 that was money that we  
18 had used to purchase the narcotics. So prior to doing  
19 any purchase, we take the money, we photograph it and  
11:12 20 document the serial numbers on the bills so that we can  
21 trace it later.

22 Q. So let's talk specifically about what  
23 happened in this case. You utilized a confidential  
24 informant to make purchases of controlled substances  
11:12 25 throughout this investigation?

11:12 1 A. Correct.

2 Q. One of the confidential informant's  
3 interactions with Mr. Garcia, the firefighter, the  
4 confidential informant traded money for what he believed  
11:13 5 were narcotics; correct?

6 A. Correct.

7 Q. And Metro Police Department supplied the  
8 confidential informant with the currency used for this  
9 transaction?

11:13 10 A. Correct. Prior to the buy we search the  
11 informant to make sure that the informant didn't have  
12 any money and then we provided the informant with a  
13 thousand dollars of Metro buy money and all the money  
14 was recorded, again the serial numbers were  
11:13 15 photographed.

16 Q. And why is that done?

17 A. So we can trace the bills later so someone  
18 can't just say hey I found these bills or these were  
19 bills that I put there from my bank account.

11:13 20 Q. And specific to what we're talking about  
21 right now, the money that was recovered from Mr.  
22 Najera's residence, the confidential informant  
23 purchasing items he believed to be marijuana, from whom  
24 did he purchase those items?

11:14 25 A. So the purchase was made from Eduardo

11:14 1 Garcia at his residence.

2 Q. That's the firefighter?

3 A. Correct.

4 Q. And was Mr. Najera present during that

11:14 5 transaction?

6 A. No, he was not present during the  
7 transaction.

8 Q. Okay. But money that the confidential  
9 informant gave to Mr. Garcia was recovered pursuant to a  
11:14 10 search warrant from Mr. Najera's residence?

11 A. Correct.

12 Q. Okay. I want to talk to you about the  
13 first purchase where Metro utilized the confidential  
14 informant. That purchase you testified came below, was  
11:14 15 tested and the conclusion was the THC in that substance  
16 was below the threshold; is that right?

17 A. Correct.

18 Q. Just real briefly explain to us what that  
19 threshold is for the lab to determine or conclude that  
11:15 20 something is marijuana or isn't marijuana.

21 A. Okay. So legally in Nevada, it's the same  
22 as the federal standard, to be considered marijuana  
23 substance has to have over 0.3 percent THC. And so to  
24 kind of distinguish a little bit, hemp and marijuana are  
11:15 25 the same plant, they both come from. We have to think

11:15 1 of hemp and marijuana kind of as nicknames that we give  
2 these plants, those aren't scientific names. What makes  
3 something marijuana as we call it or an illegal  
4 substance is having the THC level above .03 percent. So  
11:15 5 the original sample we purchased failed to test at that  
6 threshold and from what our CI was told it was, it had  
7 been sprayed a couple months previously so it had been  
8 sprayed and sitting for awhile, it wasn't freshly  
9 sprayed. And in fact Mr. Garcia even offered to our CI  
11:15 10 hey, if that's not potent enough let me know and I'll  
11 get it resprayed for you.

12 Q. And that happened?

13 A. Correct.

14 Q. Now sorry, we're bouncing back and forth a  
11:16 15 little bit. I want to take you to the search warrant  
16 that was executed at the warehouse here on Mesquite.

17 A. Okay.

18 Q. You were present for the execution of that  
19 search warrant?

11:16 20 A. Yes.

21 Q. When that search warrant was executed, or  
22 prior to, did you have some belief based on your  
23 investigation who would be inside that warehouse?

24 A. From our previous investigation and  
11:16 25 surveillance we had done typically, the spraying had



11:16 1 been done by Mr. Garcia, so we believed that he would be  
2 there. Due to the size of it we thought maybe some of  
3 the other three might come to help just cause it was a  
4 large quantity that needed to be sprayed, it would have  
11:16 5 taken a single person a lot of time to do it. But we  
6 were confident Mr. Garcia would be inside and possibly  
7 others.

8 Q. And he was?

9 A. He was.

11:16 10 Q. And the search warrant was executed on  
11 April 30th; correct?

12 A. Correct.

13 Q. Now was there a deal set up for after  
14 April 30th or about April 30th for which you believed  
11:17 15 Mr. Garcia would be spraying the hemp?

16 A. Yeah. So basically the story, the deal  
17 that had been negotiated between our CI and Mr. Garcia,  
18 they bought samples to test out to see if the  
19 hypothetical buyers out-of-state would like it and if  
11:17 20 they did our CI was going to return to buy the entire  
21 quantity of it. And so our deal was for roughly 100 to  
22 120 pounds that they said they would have ready and  
23 sprayed for us that day.

24 Q. Now you mentioned Mr. Garcia was located  
11:17 25 inside of Mesquite.

11:17 1 A. Correct.

2 Q. Now what if anything of evidentiary value  
3 was seized from inside that warehouse?

4 A. So inside the warehouse we had bags of  
11:17 5 hemp, bags of sprayed marijuana, we had an entire setup  
6 that was a magnetic store, it looked almost like a  
7 science lab. It had a jar of THC oil in a magnetic  
8 stirrer being stirred, a spray gun, like to paint, that  
9 had been set up to spray this oil, there were turkey  
11:18 10 bags for packaging it. It was a whole lab set up to  
11 spray and distribute this marijuana.

12 Q. Now I'm going to show you State's Exhibit  
13 10. It's a series of pieces of paper stapled together  
14 for the record, the top of which contains a report of  
11:18 15 examination from Metro.

16 You mentioned that there was items you  
17 believed to be THC oil. Did you submit that item for  
18 testing?

19 A. We did.

11:18 20 Q. And is that depicted, a copy of that test  
21 depicted on the first page of this exhibit?

22 A. Yes, that appears that it would be item 17.

23 Q. What is the result of that test?

24 A. Cannabinol tetrahydrocannabinol, gross  
11:18 25 weight 1807.28 grams.

11:19 1 Q. And then is there anything else of  
2 evidentiary value on that report of examination?

3 A. So there's a second jar that looks to, it  
4 appears based on testimony was CBD or cannabiniol, so  
11:19 5 CBD oil.

6 Q. Is that legal or illegal to possess?

7 A. So that be would be a legal substance.  
8 That would be like the CBD oils that you would see at  
9 the store.

11:19 10 Q. Were there any items related to Mr. Najera  
11 recovered from inside the structure on Mesquite?

12 A. Yes. So there was a, I believe it was an  
13 Amazon, if not it was a packaging box that was addressed  
14 to Mr. Najera for a spray gun that was found inside the  
11:20 15 warehouse.

16 Q. Mr. Najera was not found inside the  
17 warehouse on this occasion?

18 A. He was not.

19 Q. I'm going to show you Grand Jury Exhibit 9.

11:20 20 Is this a report of items recovered not only from  
21 Mesquite but also from the Camaro address related to  
22 Mr. Garcia as well as a search warrant that was later  
23 executed on 268 Hickory Hollow?

24 A. Correct.

11:20 25 Q. I want to direct your attention to the

11:20 1 first 16 items. I'm sorry, not the first 16. Item 7,  
2 8,9, 10.1. Oh, items right there.

3 So the first up until items 1 through 10,  
4 would those be related to things recovered from

11:21 5 Mesquite?

6 A. Correct, those are appear to be the bags  
7 that were recovered, they were laid out in a couple of  
8 rows in the warehouse.

9 Q. And just so the grand jurors, if they want  
11:21 10 to review this later, are clear, I'm going to have you  
11 take this pen and mark items 1 through 10 and just note  
12 on that Mesquite somewhere on there so we know what  
13 relates to what.

14 Perfect.

11:21 15 And what was recovered from Mesquite that  
16 was of evidentiary value in this investigation?

17 A. They were bags of green leafy substance  
18 that were tested to contain cannabinal oil and  
19 tetrahydrocannabinol or THC.

11:22 20 Q. So did this appear to you to be the hemp  
21 plant originally that was sprayed with THC oil?

22 A. Correct.

23 Q. And is the lab report consistent with your  
24 belief in the investigation?

11:22 25 A. Yes.

11:22 1 Q. Now I want to direct your attention to  
2 items starting 7 from the bottom. And if you can just  
3 make a note of those. And those items, are they related  
4 to the search warrant executed at the firefighter's  
11:22 5 residence on Camaro?

6 A. Correct.

7 Q. Just mark that you can just circle it or  
8 something. Perfect.

9 And what if any items of evidentiary value  
11:22 10 were recovered from there?

11 A. So inside the residence there we found bags  
12 of unsprayed hemp and also Mr. Garcia had a marijuana  
13 grow where he was growing actual marijuana plants inside  
14 of his garage. He had mentioned to our CI that kind of  
11:23 15 the plan that they had was to grow hemp at their farm,  
16 grow a couple rows of hemp and hide a row of marijuana  
17 in there. So he was testing out a marijuana grow in the  
18 garage.

19 Q. And the net grams marijuana, is that --  
11:23 20 well, I mean it's written on there; correct?

21 A. Correct.

22 Q. All right. And then the plants, they were  
23 in excess of 12 plants?

24 A. Correct.

11:23 25 Q. Specifically were there 32 plants?

11:23 1 A. Yes.

2 Q. And then I want to take you to page 2 of  
3 that same exhibit. Lab items 24 to 37. So basically  
4 everything on the upper portion of that exhibit. Is

11:23 5 that items of evidentiary value recovered from 268  
6 Hickory Hollow and did that residence belong to  
7 Mr. Madrigal?

8 A. Yes, it did.

9 Q. What was recovered from Mr. Madrigal's  
11:23 10 residence?

11 A. So this was a couple days after that search  
12 warrant we did a warrant at Mr. Madrigal's house and in  
13 the upstairs loft area of the house were several bags of  
14 hemp and hemp sprayed THC.

11:24 15 Q. All legal?

16 A. Yes.

17 Q. So nothing illegal recovered from  
18 Mr. Madrigal's personal residence?

19 A. So the substances at the residence appear  
11:24 20 to have not been sprayed yet.

21 Q. And was that consistent with your  
22 investigation insofar as where these items were being  
23 sprayed?

24 A. Yes.

11:24 25 Q. Safe to say you didn't expect to find

11:24 1 finished product at Mr. Madrigal's house?

2 A. No. From our investigation it appeared  
3 oftentimes they would pick up unsprayed bags from  
4 Mr. Madrigal's house and take them to the warehouse to  
11:24 5 spray them. From what we know all the spraying was done  
6 inside the warehouse.

7 Q. Did you recover items of clothing,  
8 specifically a shirt and shoes, from Mr. Madrigal's  
9 residence?

11:25 10 A. Yes, we did. During a surveillance we  
11 observed Mr. Garcia show up to the warehouse, along with  
12 Mr. Madrigal. And our CI had received a picture and in  
13 the picture you could see a arm in a shirt and some  
14 shoes and a hand spraying hemp which was laid on out on  
11:25 15 baking sheets. So we didn't know who the person in the  
16 picture was and the physical build really didn't match  
17 Mr. Garcia, this person was skinnier. From surveillance  
18 we saw that Mr. Madrigal was there on property and  
19 appeared to be wearing the same clothing so part of our  
11:25 20 search warrant at his residence was for the shirt and  
21 shoes that were pictured in the photograph.

22 Q. I'm going to show you Grand Jury Exhibit 6  
23 again. The last document of that exhibit, is that the  
24 photo that was sent?

11:25 25 A. Yes, that is the photograph.

11:25 1 Q. Depicting a long sleeved shirt and shoes?

2 A. Correct.

3 Q. And items similar to those were recovered  
4 from Mr. Madrigal's residence?

11:26 5 A. Yes, they were.

6 Q. Did you submit, you did submit for chemical  
7 analysis on the items that appeared to be hemp from  
8 Mr. Madrigal?

9 A. Yes, we did.

11:26 10 Q. During the course of your investigation did  
11 you learn that Mr. Madrigal had actually applied for  
12 several marijuana dispensary and/or cultivation  
13 licenses?

14 A. Yes, we had learned that for, actually for  
11:26 15 several years he had been in the process or applying for  
16 different licenses. We contacted people at the State  
17 the Marijuana Control Board, to confirm that he had no  
18 active licenses and what we were informed of was he was  
19 in the process of obtaining a license at the warehouse  
11:27 20 to cultivate marijuana but had not been approved yet.

21 Q. And in fact Mr. Madrigal had licenses  
22 through, or applications for some type of marijuana  
23 businesses throughout the valley; is that right?

24 A. Correct.

11:27 25 Q. Including North Las Vegas?



11:27 1 A. He also had a location in North Las Vegas,  
2 I assume that would be like a retail store to actually  
3 sell, and then the warehouse was going to be a  
4 cultivation site.

11:27 5 Q. Would any of those sites be allowed to be  
6 in possession of the THC oil?

7 A. No. So the way it works with a cultivation  
8 license in Nevada, they call it from basically seed to  
9 leaf or pod, whatever you want to call it. It has to be  
11:27 10 grown inside the facility and sold out of that facility.  
11 So there would be no reason to bring in THC to create  
12 hybrid marijuana in that sense. That would be illegal  
13 and probably frowned upon by customers.

14 Q. So although Mr. Madrigal had made some  
11:28 15 attempts to establish these businesses, through the  
16 entire course of your investigation he was not licensed  
17 to engage in the cultivation or the sale of marijuana?

18 A. No, he was not.

19 Q. Do you have that exhibit? Thank you.

11:28 20 All right. Detective, I want to direct  
21 your attention now to the search warrants that were  
22 executed on the three phones. And just real quick again  
23 I'm just going to give you the last four digits so the  
24 grand jurors have some idea when we're looking at the  
11:28 25 text messages to whom the phones belong.

11:28 1 Mr. Najera's telephone number, the last  
2 four digits would be 4438?

3 A. Yes.

4 Q. And Mr. Madrigal would be 5100?

11:29 5 A. Correct.

6 Q. And Mr. Garcia's would be 0688?

7 A. Yes.

8 Q. In anticipation of your testimony in front  
9 of the Grand Jury, did you print out some of the, just  
11:29 10 some of the text messages based on that search warrant  
11 that you were allowed to review?

12 A. Yes, I did.

13 Q. And this packet, is this a copy of the text  
14 messages that you printed out in anticipation of your  
11:29 15 testimony?

16 A. Yes, it is.

17 Q. I'm not going to go through every single  
18 one of the text messages, but I do want to walk you and  
19 have you walk us through some of the text messages to  
11:29 20 let us know who is speaking with whom and just provide  
21 some context for the messages.

22 A. Okay.

23 Q. So looking at the first page of this  
24 exhibit, and there are actually page numbers on the  
11:29 25 bottom, so this is 477. What's being discussed here?

11:30 1 A. So these messages scan like an 18-month  
2 period, basically from start to finish of their hemp  
3 business to the idea of spraying the hemp with THC, to  
4 selling it, to the process of selling it. And  
11:30 5 specifically on this page they're talking about meeting  
6 with the CI and the return, the CI returning the hemp  
7 that wasn't strong enough for them.

8 Q. When you say they're talking, who is  
9 speaking to whom?

11:30 10 A. So what it is, it's a group thread so all  
11 three are on it, and different people will say different  
12 things, and then they all respond. It's almost like a  
13 group project that you have in school, like everyone has  
14 their difficult assignments and they're all chiming in  
11:30 15 with their input. In this message specifically, Eduardo  
16 Garcia, he says my ninjas -- and then this is in  
17 Spanglish, it says Jose arrived -- in Spanish -- he asks  
18 that we made a stronger pound. And then in parenthesis  
19 it says more THC.

11:31 20 Q. Let me stop you right there. Jose is the  
21 first name of your confidential informant?

22 A. That's correct, that's what they knew our  
23 CI as Jose.

24 Q. So in this text message they're discussing  
11:31 25 the first sale?

11:31 1 A. The first sale that we had where our CI had  
2 informed them hey, this sample wasn't strong enough, my  
3 people didn't like it, can you respray it.

4 Q. Okay. Go ahead.

11:31 5 A. So there they discuss respraying it and  
6 raising the price. Then Najera says stronger, how much,  
7 we'll spray it again, how much do we raise the price,  
8 500, 600, 700. And Garcia says I think 600. Norberto  
9 comes in and says 650, but did he test the first stuff.

11:32 10 So here you see kind of the three discussing the price,  
11 they know it's going to cost a little bit more to  
12 respray it so they want to figure out what they need to  
13 charge to cover their cost.

14 Q. I want to direct your attention then to the  
11:32 15 bottom of the third page which is 300. Just real  
16 briefly. Is it the same three individuals in the group  
17 chat again?

18 A. Yes, it is.

19 Q. And are they talking about spraying?

11:32 20 A. Yes.

21 Q. And do they actually mention a hundred  
22 pounds?

23 A. Yes.

24 Q. THC?

11:32 25 A. They do.

11:33 1 Q. Are there conversations in this exhibit  
2 about selling to individuals in Kansas?

3 A. Yes, there are. They discuss, initially  
4 our initial CI had informed us that they had tried to  
11:33 5 sell a large quantity to some individuals in Kansas and  
6 that when they got it prepped and ready the individuals  
7 weren't happy with the way that it was trimmed, so they  
8 were saying there were too many sticks and stems in the  
9 products and it just didn't look clean enough, they  
11:33 10 weren't happy with it and the deal fell through. So  
11 that's discussed in this text thread.

12 Q. Is it clear that all three individuals are  
13 communicating about the spraying of THC onto hemp?

14 A. Yes. There's even times where they  
11:33 15 communicate someone wanting to buy a small amount, a  
16 pound or two, and they differentiate between of the  
17 sprayed stuff or the unsprayed stuff. So they clearly  
18 know that there's two different things, the legal hemp  
19 and then the illegal THC sprayed hemp.

11:34 20 Q. Is there conversations that you printed out  
21 related specifically to Everclear?

22 A. Yes.

23 Q. How is that relevant in this investigation?

24 A. So what we had discovered through the text  
11:34 25 messages, the first time that they tried the spraying of

11:34 1 it, they applied the THC with coconut oil and I guess  
2 scientifically, I don't know the exact science of it,  
3 but it didn't adhere correctly, that's what our sample  
4 was bad. They talked to somebody else that said no, you  
11:34 5 have to mix it with Everclear, which is a very pure  
6 alcohol, let the alcohol evaporate off and the THC will  
7 stick behind. So they developed a new formula using the  
8 Everclear and they ran into an issue the day of the 30th  
9 when they knew they were going to have to spray the  
11:34 10 hundred pounds to sell to our the CI that they didn't  
11 have enough Everclear. So they were kind of frantic,  
12 texting each other trying to get Everclear. Just to  
13 remind you guys, this was kind of in the middle of the  
14 beginning of Covid and the pandemic so they were having  
11:35 15 trouble locating Everclear, a lot of stores were closed  
16 down, they were checking stores and they just couldn't  
17 get enough Everclear. So there was communication of  
18 checking different stores, contacting friends to see if  
19 they could find someone with a large amount of Everclear  
11:35 20 to be able to spray the entire product.

21 Q. And then was there also conversation about  
22 purchasing THC from an individual named Eli?

23 A. Correct.

24 Q. I'm going to show you, and it's marked as  
11:35 25 506, does Eli actually become a tangible person in this

11:35 1 case; do you come into contact with Eli?

2 A. Yes, he does. Eli was actually there the  
3 day we served the search warrant on the warehouse, Eli  
4 was there. And yes, there's messages asking if Eli's in  
11:35 5 town, if he can get the THC oil for them, and even  
6 talking about the price of \$5500 for the THC oil.

7 Q. And again it's Garcia, Madrigal and Najera?

8 A. Correct.

9 Q. Anybody else involved in these  
11:36 10 conversations?

11 A. Well, periodically a person will come and  
12 go that's helping them out, but these, through the  
13 18-month period of phone records that we have, these are  
14 the three mainstays that are there the entire time.

11:36 15 Q. I want to direct your attention to pages  
16 248, I'm sorry, no, page 310. Is there a text message  
17 from Mr. Najera to Mr. Garcia wherein Mr. Najera is  
18 telling Mr. Garcia he's trying to get into the gate?

19 A. Correct, there is.

11:36 20 Q. And what gate would that be?

21 A. There they would be talking about the gate  
22 to the warehouse.

23 Q. Turning the page to 311. Mr. Garcia and  
24 Najera are discussing seeds in the product?

11:36 25 A. Correct.

11:37 1 Q. How is that relevant?

2 A. This is talking about again the sale to  
3 Kansas where they hadn't properly cleaned it and there  
4 were seeds and stems in it and sticks so that's what  
11:37 5 they're discussing there.

6 Q. And so we're clear, there are monikers I  
7 guess associated with some of the numbers. For  
8 Mr. Garcia's number it pops up as Lalo.

9 A. Correct.

11:37 10 Q. And then is that how your confidential  
11 informant refers to Mr. Garcia as well?

12 A. So Lalo's a common nickname for Eduardo in  
13 Spanish. The bulk of these phone records come out of  
14 Najera's phone and so Lalo is family to Najera and so  
11:37 15 that's why he refers to him as the nickname, that's how  
16 he saved the contact in his phone.

17 Q. And how is Mr. Najera's contact saved?

18 A. So again it's his phone and he saved his  
19 name as Daddy in the phone.

11:38 20 Q. And Mr. Madrigal is saved how?

21 A. Norberto.

22 Q. First name?

23 A. Correct.

24 Q. I want to direct your attention to pages

11:38 25 marked 483, 484, 485, 486. Is it the same three



11:38 1 individuals talking about selling and spraying?

2 A. Yes, it is.

3 Q. Okay. Is there anything else relevant in  
4 that set of exhibits, I guess it's all relevant because  
11:39 5 you printed it out, but anything else specific you  
6 wanted to point the grand jurors' attention to?

7 A. Yeah. I thought it was interesting at one  
8 point Norberto is discussing with the group prices of  
9 marijuana per pound, and this is when they're trying to  
11:39 10 determine what they're going to sell their product for,  
11 and he makes the comment to them, well, no legal  
12 dispensary sells pounds at a time. And so I mean it  
13 clearly shows he knows what they're doing is illegal.  
14 Even if he was pretending that he was in the process of  
11:39 15 getting a license and was confused, he knows he can't  
16 sell a quantity like that, he knows it's illegal.

17 Q. Is it illegal?

18 A. Yes, it is.

19 Q. I just want to make clear one more thing.  
11:40 20 Mr. Madrigal initiated the process by way of applying  
21 for, filling out applications, paying for the operations  
22 to start legally?

23 A. Yes.

24 Q. Specific to cultivation and selling  
11:40 25 marijuana?

11:40 1 A. Yes.

2 Q. But he was never approved to do so by any  
3 agency in Clark County?

4 A. No. He had been trying for some time with  
11:40 5 different licenses and different locations. The  
6 warehouse we actually during surveillance watched an  
7 inspection take place with the city, it's a very  
8 difficult and detailed process to get through, and he  
9 never was approved for any sort of license to cultivate  
11:40 10 or to sell.

11 MS. TALIM: Okay. I have no further  
12 questions.

13 THE FOREPERSON: Yes, sir.

14 BY A JUROR:

11:41 15 Q. What was the approximate poundage that was  
16 recovered from the search warrant in the warehouse?

17 A. So roughly 100 pounds in the warehouse, 80  
18 to 100 pounds. I want to say at the Camaro house  
19 another 20 to 30 pounds. And probably about the same  
11:41 20 amount at Mr. Madrigal's home.

21 Q. Thank you.

22 THE FOREPERSON: Any other questions? Yes.

23 BY A JUROR:

24 Q. Was he denied a license and what was the  
11:41 25 reason if he was. ?

11:41 1 A. No, I don't believe he was denied. It's  
2 just, it's a long process to get approved for them,  
3 they're difficult to obtain.

4 Q. So he just never got that far?

11:41 5 A. He was impatient. He didn't want to wait  
6 it through.

7 Q. What is Everclear?

8 A. Everclear, it's an alcohol, it's a very  
9 high concentration of alcohol.

11:41 10 Q. Thank you.

11 BY A JUROR:

12 Q. You never said, unless I missed it, I don't  
13 remember you saying. Once upon it was tested, because  
14 the first sample did not meet the legal standard so it's  
11:42 15 still basically hemp, so the other stuff that was  
16 sprayed later on, did that stuff test at a higher level  
17 where it's considered to be --

18 A. Yes, it did. So from the subsequent buys  
19 after the first one, the two following that, they both  
11:42 20 tested over the threshold, and the hemp THC marijuana in  
21 the warehouse also tested above that.

22 Q. Okay. So what was found in the home of the  
23 Camaro, was that stuff over the legal threshold?

24 A. No, that was unsprayed.

11:42 25 Q. Unsprayed?

11:42 1 A. Unsprayed hemp.

2 Q. So are they being charged, I'm not sure  
3 cause it's been so long since we did the case, what I'm  
4 asking, the stuff there at the house that was not  
11:42 5 sprayed, is that part of being charged?

6 A. No, that's not what we're charging.

7 Q. I'm just trying to remember.

8 A. It's a precursor to what they were  
9 creating. It's not something we are charging with.

11:43 10 Q. When the CI made the first buy, what day  
11 was that, that was not strong enough?

12 A. Oh, I -- it was in March. I don't know if  
13 we have it there. It's so long ago, I don't want to  
14 give you a bad date.

11:43 15 BY MS. TALIM:

16 Q. Does March 26th sound familiar?

17 A. It does.

18 BY A JUROR:

19 Q. They're not being -- are they being charged  
11:43 20 on the first I see is on April 8th? Is that from the CI  
21 that they purchased?

22 A. So that --

23 Q. The first quantity that was not strong  
24 enough, that's not something they're being charged for?

11:43 25 MS. TALIM: Let me clarify. The March 26th

11:43 1 buy where it did not fire for marijuana, it did not test  
2 positive for marijuana, the defendants are not being  
3 charged with that.

4 A JUROR: Okay. It's been so long time,  
11:43 5 trying to remember.

6 THE WITNESS: Yes. We actually, we took  
7 that back to them and they resprayed it for us on the  
8 second buy.

9 A JUROR: Okay.

11:44 10 MS. TALIM: And let me just pick up where  
11 you left off if I may.

12 Q. Detective, I am going to show you Grand  
13 Jury Exhibit 11, and I'm not sure that we talked about  
14 it the last time and it has been awhile so if we did I  
11:44 15 apologize but let's just do it again.

16 The first page of this exhibit, is that a  
17 report of examination from the Las Vegas Metropolitan  
18 Police lab, forensic laboratory, and does that depict  
19 the analysis done on the substances that were purchased  
11:44 20 by the confidential informant on April 8th?

21 A. Yes.

22 Q. And is that positive for marijuana?

23 A. Yes. It's 62.82 grams of marijuana.

24 Q. Okay. And then page 2 of that same  
11:44 25 exhibit, is that another such report and is this

11:44 1 specifically related to the April 13th narcotics buy  
2 from, between the CI and Mr. Garcia?

3 A. Yes, it is.

4 Q. What's the result of that?

11:44 5 A. 946 grams of marijuana.

6 Q. And then page 3 of that same exhibit, is  
7 that related to the April 22nd confidential informant  
8 buy?

9 A. Yes, and the results are 1076 grams of  
11:45 10 marijuana.

11 MS. TALIM: Okay. I have no further  
12 questions?

13 THE FOREPERSON: Any other questions?

14 By law, these proceedings are secret and  
11:45 15 you are prohibited from disclosing to anyone anything  
16 that has transpired before us, including evidence and  
17 statements presented to the Grand Jury, any event  
18 occurring or statement made in the presence of the Grand  
19 Jury, and information obtained by the Grand Jury.

11:45 20 Failure to comply with this admonition is a  
21 gross misdemeanor punishable by up to 364 days in the  
22 Clark County Detention Center and a \$2,000 fine. In  
23 addition, you may be held in contempt of court  
24 punishable by an additional \$500 fine and 25 days in the  
11:45 25 Clark County Detention Center.

11:45 1 Do you understand this admonition?

2 THE WITNESS: Yes.

3 THE FOREPERSON: Thank you. You're  
4 excused.

11:45 5 THE WITNESS: Thank you.

6 MS. TALIM: That concludes the State's  
7 presentation of evidence in this case. Do any members  
8 of the Grand Jury have any questions related to the  
9 elements or the instructions previously provided?

11:46 10 Okay. See no hands so I'll submit the  
11 matter for your deliberation.

12 (At this time, all persons, other than  
13 members of the Grand Jury, exit the room at 11:46 a.m.  
14 and return at 11:47 a.m.)

11:47 15 THE FOREPERSON: Madame District Attorney,  
16 by a vote of 12 or more grand jurors a true bill has  
17 been returned against all defendants charging, against  
18 defendants charging in the crimes of all counts in Grand  
19 Jury case number 19BGJ223A-C. We instruct you to  
11:48 20 prepare an Indictment in conformance with the proposed  
21 Indictment previously submitted to us.

22 MS. TALIM: Thank you very much.

23 (Proceedings concluded.)

24 --oo0oo--

25

11:48

1

**REPORTER'S CERTIFICATE**

2

3

**STATE OF NEVADA** )

: ss

4

**COUNTY OF CLARK** )

11:48

5

6

I, Danette L. Antonacci, C.C.R. 222, do

7

hereby certify that I took down in Shorthand (Stenotype)

8

all of the proceedings had in the before-entitled matter

9

at the time and place indicated and thereafter said

11:48

10

shorthand notes were transcribed at and under my

11

direction and supervision and that the foregoing

12

transcript constitutes a full, true, and accurate record

13

of the proceedings had.

14

Dated at Las Vegas, Nevada,

11:48

15

June 11, 2021.

16

17

/s/ Danette L. Antonacci

18

19

---

Danette L. Antonacci, C.C.R. 222

11:48

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11:48

1

## AFFIRMATION

2

Pursuant to NRS 239B.030

3

4

The undersigned does hereby affirm that the  
preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER  
19BGJ223A-C:

11:48

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7

8

X Does not contain the social security number of any  
person,

9

11:48

10

-OR-

11

       Contains the social security number of a person as  
required by:

12

13

A. A specific state or federal law, to-  
wit: NRS 656.250.

14

-OR-

11:48

15

16

B. For the administration of a public program  
or for an application for a federal or  
state grant.

17

18

/s/ Danette L. Antonacci

19

Signature

6-11-21

Date

11:48

20

21

Danette L. Antonacci

Print Name

22

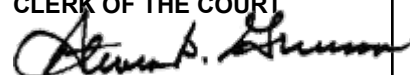
23

Official Court Reporter

Title

24

25



**PET**

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**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

vs.

JESUS NAJERA,

Defendant.

Case No: **C-21-356361-1**

Dept No: **17**

**(Hearing date requested)**

**PETITION FOR WRIT OF HABEAS CORPUS**

COMES NOW Defendant, JESUS NAJERA, by and through his attorneys of record, MICHAEL D. PARIENTE with JOHN G. WATKINS, of counsel, and moves this Honorable Court for an Order granting Mr. Najera's Petition for Writ of Habeas Corpus pursuant to NRS 34.724.

DATED this 4<sup>th</sup> day of July 2021.

*/s/Michael D. Pariente*

MICHAEL D. PARIENTE, ESQ.

Nevada Bar No.: 9469

JOHN G. WATKINS, ESQ., OF COUNSEL

3960 Howard Hughes Parkway, Suite 615

Las Vegas, Nevada 89169

(702) 966-5310  
Attorneys for Defendant

I

Your Petitioner/Defendant is being held to answer charges in the action filed under Case Number C-20-351506-1 in the Eighth Judicial Court of the State of Nevada, in and for the County of Clark, such action resulting in the imprisonment and/or restraint (constructive custody) of his liberty by Sheriff Joseph Lombardo and/or other persons unknown.

II

Your Petitioner/Defendant's imprisonment and/or restraint of his liberty is illegal as follows:

- A. COUNT 4, TRAFFICKING IN CONTROLLED SUBSTANCE IS IMPERMISSIBLE BECAUSE THE GRAND JURY WAS NOT TOLD THAT THAT LVMPD IMPROPERLY WEIGHED 81.23 POUNDS OF HEMP SPRAYED WITH THC OIL WHICH SHOULD NOT HAVE BEEN WEIGHED IN DETERMINING THE WEIGHT OF MARIJUANA IN VIOLATION OF NRS 453.096 AND *SESSIONS V. STATE*, 106 NEV. 186 (2017).
- B. COUNT 5, TRAFFICKING IN CONTROLLED SUBSTANCE IS IMPERMISSIBLE BECAUSE THE STATE PRESENTED NO EVIDENCE TO THE GRAND JURY THAT THE THC CAME FROM MARIJUANA AS DEFINED IN SECTION 1 OF NRS 453.906.
- C. COUNT 5, TRAFFICKING IN CONTROLLED SUBSTANCE, SHOULD BE DISMISSED BECAUSE THE STATE FAILED TO DEFINE IN ITS INSTRUCTIONS "CONCENTRATED CANNABIS" AND WRONGFULLY COMMINGLED THE ELEMENT OF "CONCENTRATED CANNABIS" WITH "THC," CHAPTER 453A.

- D. THE GRAND JURY INSTRUCTIONS ARE INCORRECT AND DO NOT DEFINE THE ELEMENTS OF COUNT 8, POSSESSION OF A CONTROLLED SUBSTANCE, AND DO NOT DEFINE OR EXPLAIN THE UNIFORM CONTROLLED SUBSTANCE ACT.**
- E. COUNT 8, POSSESSION OF A CONTROLLED SUBSTANCE, IS IMPERMISSIBLE AND MUST BE DISMISSED BECAUSE THE STATE HAS NOT DEMONSTRATED, EVEN BY SLIGHT OR MARGINAL EVIDENCE, THAT THE ALLEGED CONTROLLED SUBSTANCE WAS IN THE PETITIONER'S POSSESSION.**
- F. THE PROSECUTOR FAILED TO EXPLAIN ANY ELEMENTS OF THE COUNTS TO THE GRAND JURY.**
- G. MS. KELLY BURNS'S NRS 50.320 DECLARATION WAS INADMISSIBLE AT THE GRAND JURY PROCEEDING BECAUSE BURNS'S DECLARATION FAILS TO ESTABLISH THAT BURNS'S ALLEGED JANUARY 28, 2020 EIGHTH JUDICIAL DISTRICT COURT QUALIFICATION AS AN EXPERT WITNESS IS FOR MARIJUANA.**
- H. THE STATE ASKED IMPERMISSIBLE LEADING QUESTIONS OF KEY WITNESSES BEFORE THE GRAND JURY.**
- I. THE DETECTIVE'S INCORRECT AND CONTRADICTORY TESTIMONY ABOUT THE MAXIMUM LIMIT OF "THC" LEVELS IN HEMP WAS CONFUSING TO THE GRAND JURY WHEREIN HE FIRST TESTIFIED IT WAS .3% AND THEN SUBSEQUENTLY TESTIFIED IT WAS .03%. THE STATE FAILED TO CORRECT THE EGREGIOUS ERROR AND ONCE AGAIN VIOLATED ITS DUTY UNDER NRS 172.095(2).**

### **III**

Your Petitioner/Defendant does hereby expressly waive the sixty (60) day rule for bringing the accused to trial.

### **IV**

Your Petitioner/Defendant further consents that if the Petition is not decided within fifteen (15) days before the day set for trial, the Court may, without notice of hearing, continue the trial date indefinitely or to a date designated by the Court.

V

A previous Writ of Habeas Corpus has not been filed.

This Court has jurisdiction to hear the instant Petition for a Writ of Habeas Corpus. *See* NRS 172.155(2) and *Shelby v. Sixth Judicial District Court, ex rel. County of Pershing*, 82 Nev. 204, 414 P.2d 942 (1966). The Petition for Writ of Habeas Corpus is timely filed. JESUS NAJERA was arraigned on June 15, 2021. Twenty-one (21) day filing requirement in NRS 34.700 was interpreted to be triggered by the arraignment. *See Palmer v. Sheriff, White Pine County*, 93 Nev. 648, 572 P.2d 218 (1977).

WHEREFORE, your Petitioner/Defendant prays that the Writ of Habeas Corpus be issued.

**VERIFICATION**

STATE OF NEVADA )

: ss

COUNTY OF CLARK )

MICHAEL D. PARIENTE, ESQUIRE says: That your Declarant is the Attorney of Record for the Petitioner/Defendant JESUS NAJERA in the above entitled Writ and Defendant in the action as set forth herein, that Petitioner/Defendant

1 authorized the commencement of the instant Petition for Writ of Habeas Corpus.

2 Petitioner/Defendant JESUS NAJERA personally authorized his counsel,  
3 Michael D. Pariente, Esquire, to commence this action.  
4

5 DATED this 4<sup>th</sup> day of July, 2021.

6 I declare under penalty of perjury that the foregoing is true and correct,  
7

8 */s/ Michael D. Pariente*

9 \_\_\_\_\_  
10 MICHAEL D. PARIENTE, ESQ.  
11 Petitioner/Defendant

12 **NOTICE OF HEARING**

13 TO: STATE OF NEVADA, Respondent/Plaintiff

14 TO: DISTRICT ATTORNEY, Attorney for Respondent/Plaintiff

15 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the  
16 undersigned will bring the above and foregoing Petition on for hearing before the  
17 Court on the \_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_ m. in Department XVII of said  
18 Court.  
19  
20  
21

22 */s/ Michael D. Pariente*

23 \_\_\_\_\_  
24 MICHAEL D. PARIENTE, ESQ.  
25 Nevada Bar No.: 9469  
26 3960 Howard Hughes Pkwy, Suite 615  
27 Las Vegas, Nevada 8916  
28 (702) 966-5310  
Petitioner/Defendant

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**A. COUNT 4, TRAFFICKING IN CONTROLLED SUBSTANCE IS IMPERMISSIBLE BECAUSE THE GRAND JURY WAS NOT TOLD THAT THAT LVMPD IMPROPERLY WEIGHED 81.23 POUNDS OF HEMP SPRAYED WITH THC OIL WHICH SHOULD NOT HAVE BEEN WEIGHED IN DETERMINING THE WEIGHT OF MARIJUANA IN VIOLATION OF NRS 453.096 AND THE *SESSIONS V. STATE*, 106 NEV. 186 (2017). THE STATE’S IMPROPER WEIGHING VIOLATED *SESSIONS*, AND COUNT 4 MUST BE DISMISSED.**

Under NRS 453.06, Hemp is not included in the definition of marijuana.

Marijuana is statutorily defined. See *Williams v. State*, 118 Nev. 536, 547, 50 P.3d. 1116 (2002)(“... marijuana ... is defined in NRS 453.096.”). NRS 453.096 states,

**NRS 453.096 “Marijuana” defined.**

1. “Marijuana” means:

- (a) All parts of any plant of the genus *Cannabis*, whether growing or not;
  - (b) The seeds thereof;
  - (c) The resin extracted from any part of the plant, including concentrated cannabis;
- and
- (d) Every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin.

2. “Marijuana” does not include:

- (a) Hemp, as defined in NRS 557.160, which is grown or cultivated pursuant to the provisions of chapter 557 of NRS or any commodity or product made using such hemp; or
- (b) The mature stems of the plant, fiber produced from the stems, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stems (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. (emphasis added).

Those parts of the marijuana planted listed in section 2 of NRS 453.096 *are legal* in Nevada and *cannot* be the basis for a criminal charge involving marijuana.

The Nevada Supreme Court in *Sessions v. State*, 106 Nev. 186, 189, 789 P.2d 1242 (1990) held,

As we read the statute, subsection 2 of the statute excludes stems from the definition of marihuana and serves to modify and limit the all-inclusive definition provided in subsection 1. Even if there is any doubt as to the relationship between NRS 453.096(1) and NRS 453.096(2), *that doubt must be resolved in favor of the accused. Dumaine v. State*, 103 Nev. 121, 125, 734 P.2d 1230, 1233 (1987); *Sheriff v. Hanks*, 91 Nev. 57, 60, 530 P.2d 1191, 1193 (1975). Therefore, the state's argument that "marihuana" includes stems, roots, dirt, etc. is incorrect.

*Sessions v. State*, 106 Nev. 186, 189, 789 P.2d 1242, 1243 (1990).

Here, there is no dispute that LVMPD weighed seized hemp that had allegedly been sprayed with THC. This inclusion of the hemp in the weighing is direct violation of NRS 453.096 and *Sessions, supra*.

**B. COUNT 5, TRAFFICKING IN CONTROLLED SUBSTANCE IS IMPERMISSIBLE BECAUSE THE STATE PRESENTED NO EVIDENCE TO THE GRAND JURY THAT THE THC CAME FROM MARIJUANA AS DEFINED IN SECTION 1 OF NRS 453.906.<sup>1</sup>**

All parts of the cannabis sativa plant contain THC including those listed in NRS 453.096(2). THC and it is metabolite can be present in an oil from sources other than section 1 of NRS 453.096.

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<sup>1</sup> NRS 453.096 was amended by the Nevada Legislature this year. However, the changes to do not apply to Najera since Najera's conduct was alleged to have been committed in prior to enactment of the new legislation.



The U.S. Ninth Circuit Court of Appeal held in *Hemp Industries Association v. Drug Enforcement Administration*, 333 F.3d 1082 (9<sup>th</sup> Cir. 2003) “.... the statute controlling marijuana has excluded the oil and sterilized seed of the plant *Cannabis sativa* L., commonly known as hemp, from the definition of marijuana. *Hemp Indus. Ass’n v. Drug Enf’t Admin.*, 333 F.3d 1082, 1085 (9th Cir. 2003). The Court added, “Tetrahydrocannabinols (“THC”) is the active ingredient in marijuana. Hemp seeds and oil typically contain minuscule trace amounts of THC, less than 2 parts per million in the seed and 5 parts per million in the oil. Enhanced analytical testing indicates that “a ‘THC Free’ status is not achievable in terms of a true zero.” *Hemp Indus. Ass’n v. Drug Enf’t Admin.*, 333 F.3d 1082, 1085 (9th Cir. 2003).

It is uncontroverted the State must prove that the THC and its metabolite in the seized jar of oil came from marijuana as defined in section 1 of NRS 453.096. Absent such proof, the THC and its metabolite cannot be a basis to charge Najera with Count 5, Trafficking the oil. It is undisputed that the defendants were engaged in a hemp growing operation in Pahrump.<sup>2</sup> There is no probable cause to support Count 5. Therefore Count 5 must be dismissed.

**C. COUNT 5, TRAFFICKING IN CONTROLLED SUBSTANCE, SHOULD BE DISMISSED BECAUSE THE STATE FAILED TO DEFINE IN ITS INSTRUCTIONS “CONCENTRATED CANNABIS” AND**

<sup>2</sup> The State’s discovery indicates that there was discussion of 4,000 pounds of hemp being transported from in a truck from Pahrump where they were grown. It is undisputed the co-defendants were growing massive amounts of hemp which is not illegal. Therefore Count 5 must be dismissed.

1 **WRONGFULLY COMMINGLED THE ELEMENT OF**  
2 **“CONCENTRATED CANNABIS” WITH “THC,” CHAPTER 453A.**

3 **a. The State’s failure to instruct the Grand Jury on the meaning of**  
4 **“concentrated cannabis” violates NRS 172.095(2).**

5  
6 i. A grand jury uninformed on the law does not act as an informed  
7 body.

8  
9 The grand jury is the bulwark between the accused and the accuser. *State v.*  
10 *Babayon*, 106 Nev. 155, 170, 787 P.2d 805 (1990). The record must indicate that the  
11 grand jury acted as an **informed** body throughout the entire course of the proceedings.  
12 *Id.*, 106 Nev. at 170. To be informed, the grand jury must know the facts and the law.  
13 The duty to make sure that the grand jury is informed of the law falls upon the district  
14 attorney.<sup>3</sup> NRS 172.095(2) mandates,

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16  
17 Before seeking an indictment, or a series of a similar  
18 indictments, the district attorney **shall** inform the  
19 grand jurors of the **specific elements** of any public  
20 offense which they may consider as the basis of the  
21 indictment or indictments.

22 (emphasis added)

23 The prosecution failed to inform the grand jury on the law thereby failing to  
24 fulfill its legal obligations under NRS 172.095(2). Here, the prosecutor failed to  
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<sup>3</sup> The prosecutor also has the duty to present the facts in compliance with  
NRS 172.135.

1 inform the Grand Jury of the specific elements of “concentrated cannabis.” In fact,  
2 “concentrated cannabis” *doesn’t even appear in Count 5 of the indictment.*

3 The Court in *Babayon, supra* stated,  
4

5 It is incumbent on prosecutors who make presentations before grand juries to be  
6 adequately informed of the facts and to **have conducted sufficient legal**  
7 **research to enable them to properly inform the grand jury on the law** and  
8 to assist it in its investigation.

9 106 Nev. at 170. (cites omitted.) (emphasis added.)

10 Here, the State failed to conduct sufficient research to properly inform the  
11 Grand Jury on the law. Had they done so, they would have added the element  
12 “concentrated cannabis” to Count 5 of the indictment and explained to the Grand Jury  
13 that “concentrated cannabis” is an element of Trafficking in a Controlled Substance  
14 under NRS 453.339(1)(a).  
15

16 **b. The State improperly commingled the element “concentrated**  
17 **cannabis” from NRS 453.339(1)(a) by substituting it with NRS**  
18 **453A.155, the definition of THC. This does not charge a legal offense**  
19 **and fails to confer subject matter jurisdiction on the District Court**  
20 **(or any court).**

21 To legally charge a public offense<sup>4</sup>, there must be a formal accusation  
22

23 <sup>4</sup> This Court defined “legal” in *Gathrite v. Eighth Judicial District Court*, 135 Nev.,  
24 Adv. Op. 54, 451 P.3d 891 (2019) as “required or permitted by law; not forbidden or  
25 discountenanced by law; good and effectual by law” or “[p]roper or sufficient to be  
26 recognized by law; cognizable in the courts”, *citing Legal, Black’s Law Dictionary*  
27 (4<sup>th</sup> ed. 1951). *Id.*, 135 Nev., Adv. Op. 54 at 5. A legal charge is a violation of a public  
28 law. NRS 171.010. A public offense must be conduct “prohibited by some statute of  
this state.” NRS 193.050(1). There is no statute making the commingling of NRS  
453.339(1)(a) and NRS 453A.155 a public offense. Therefore, the charge filed against  
Najera in Count 5 of the Information is not a legal charge.

(indictment, information, or complaint) alleging the “elements” of the offense. *See, Post v. United States, infra; Albrecht v. United States, infra.* Each and every element of a public offense, not just some or most but all, must be alleged in the formal accusation to charge a legal offense. *Almendarez-Torres v. United States, infra; United States v. Cook, infra; Hamling v. United States, infra; Russell v. United States, infra and State v. Hancock, infra.* The “elements” of a statutory offense cannot be substituted with different “elements” from other statutes. An accusation which eliminates or substitutes the “elements” of the statutory offense by commingling separate and distinct statutes, here NRS 453.339(1)(a) and NRS 453A.155, does not charge a crime and fails to confer subject matter jurisdiction on a court. *See, fn.3; fn.6 ;fn.7 ; fn.21. See also, State v. Cimpritz*<sup>5</sup>. (“The elements necessary to constitute the crime must be **gathered wholly from the statute** and the crime must be described within the terms of the statute.”) *Id.*, 110 N.E. 2d at 417-18. (emphasis added.)

The Indictment filed against Najera substituted Tetrahydrocannabinol (THC) for the felony “element” of “concentrated cannabis.” As a result of the commingled “elements,” the Indictment does not charge a legal offense in Count 5<sup>6</sup> and fails to

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<sup>5</sup> 158 Ohio St. 490, 110 N.E. 2d 416 (1953)

<sup>6</sup> There is no statute criminalizing conduct by the commingling of NRS 453.339(1)(a) and NRS 453A.155 as alleged in Count 5 of the Indictment filed against Najera. *See again,* NRS 193.050(1). (“No conduct constitutes a crime unless

confer subject matter jurisdiction on the district court.<sup>7</sup>

The State's commingling of NRS 453.339(1)(a) and NRS 453A.155 fails to charge a legal offense and fails to confer subject matter jurisdiction on this court.

There is no statute creating an offense by commingling NRS 453.339(a)(a) and NRS 453A.155. Without such a statute, there is no crime. NRS 193.050(1).

A person can only be lawfully prosecuted “. . . by the laws of this state for a public offense . . .” NRS 171.010. A public offense is an act in violation of a penal law. *Black's Law Dictionary* 975 (5<sup>th</sup> ed. 1979). Conduct not statutorily forbidden is not a crime. *See again*, NRS 193.050(1). Crimes are enacted and defined by the lawmakers, not prosecutors. The legal definition of a crime is the legislative description of what conduct is forbidden. The constituent parts of a penal definition are the “elements” of the offense. *See, Cordova v. State*,<sup>8</sup> (“[t]he phrase ‘element of

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prohibited by some statute of this state or by some ordinance or like enactment of a political subdivision of this state.”).

7 A court cannot act without subject matter jurisdiction and, if it does, all its acts are void. *Rhode Island v. Massachusetts*, 37 U.S. 657, 718 (1938); *State Indus. System v. Sleeper*, 100 Nev. 267, 269, 679 P.2d 1273 (1984). Jurisdiction cannot be waived or created when none exist. *Vaile v. Dist. Ct.*, 118 Nev. 262, 276, 44 P.3d 506 (2002). Jurisdiction cannot be conferred upon the court by actions of the parties and principles of estoppel and waiver do not apply. *Richardson v. United States*, 943 F.2d 1107, 1113 (9<sup>th</sup> Cir.) (1991); *State of Nevada v. Justice Court*, 112 Nev. 803, 806, 918 P.2d 401 (1996). *See also, fn.21.*

8. 116 Nev. 664, 668, 6 P.3d 481 (2000), *citing People v. Hansen* 855 P.2d 1022 (Cal. 1994).

the offense’ signifies an essential component of the legal definition of the crime. . . .”) There must be an indictment, information or complaint filed against the person charged.

A formal accusation is essential for every criminal case. *Post v. United States*.<sup>9</sup> (“Criminal proceedings cannot be said to be brought or instituted until a formal charge is openly made against the accused . . . .”); *Albrecht v. United States*.<sup>10</sup> (“A person may not be punished for a crime without a formal and sufficient accusation even if he voluntarily submits to the jurisdiction of the court.”) To be sufficient, the formal accusation must charge a legal offense.

To charge a public offense, an indictment, information or complaint **must** allege every element of the offense. *See, Almendarez-Torres v. United States*.<sup>11</sup> (“An indictment **must** set forth each element of the crime that it charges.” (emphasis added.); *United States v. Cook*.<sup>12</sup> (“ . . . it is universally true that no indictment is sufficient if it does not accurately and clearly allege all the ingredients

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9. 161 U.S. 583, 587 (1896)

10. 273 U.S. 1, 7 (1927)

11. 523 U.S. 224, 228 (1998)

12. 17 Wall. 168, 174 (1872)

of which the offense is composed.”<sup>13</sup> See also, *Hamling v. United States*,<sup>14</sup>; *Russell v. United States*<sup>15</sup>. The Court in *State v. Hancock*,<sup>16</sup> recognized, “[a]n indictment, standing alone, **must contain: (1) each and every element of the crime charged . . .**” (emphasis added.) Therefore, a charging document which fails to allege each and every element of the offense and substitutes “elements” from other statutes *does not* charge a legal offense.

The failure to charge an offense and/or lack of jurisdiction can be raised any time. NRS 174.105(3) states,

Lack of jurisdiction or the failure of the indictment, information or complaint to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.<sup>17</sup>

13. This constitutional requirement applies to informations as well. See, NRS 173.075.

14. 418 U.S. 87, 117 (1974)

15. 369 U.S. 749, 763 (1962)

16. 114 Nev. 161, 164, 955 P.2d 183 (1998)

17 A court lacks subject matter jurisdiction if the formal accusation filed against the defendant does not charge an offense. See, *Williams v. Municipal Judge*, 85 Nev. 425, 429, 456 P.3d 440 (1969) (“ . . . without a formal and sufficient accusation . . . a court acquires no jurisdiction whatever . . .”). The Court in *State v. Ohio*, 181 Ohio App. 3d 86, 907 N.E. 2d 1238 (2009) noted “[a] valid complaint is a necessary condition precedent for the trial court to obtain jurisdiction in a criminal case.” *Id.*, 907 N.E. 2d at 1241. The Court in *Ex Parte Alexander*, 80 Nev. 354, 358, 393 P.2d 615 (1964) stated “[w]e are compelled to hold that the failure of the indictment to allege that the crime was committed in the State of Nevada was fatal and that the court never acquired jurisdiction to try the case, and that its judgment was void.” *Ex Parte Alexander* further stated, “ . . . the failure being fatal to the sufficiency of the information could not be cured by evidence tending to show where the crime was committed.” *Id.*, 80 Nev. at 358. See also, *State v. Cimpritz*, supra. (A judgment of

The Indictment filed against Najera does not charge a legal offense.

The State commingled two (2) separate and distinct statutes, NRS 453.339(1)(a) and NRS 453A.155, swapping out “concentrated cannabis” for “tetrahydrocannabinol” from both statutes to charge Najera. **Commingling “elements” and “definitions” from two (2) separate statutes does not charge a legal offense.** *Almendarez-Torres v. United States, supra; United States v. Cook, supra; Hamling v. United States, supra; Russell v. United States, supra and State v. Hancock, supra.* There can be no addition, deletion or substitution of “elements” for those “elements” comprising a NRS 453.339(1)(a) violation.<sup>18</sup> *See again, State v. Cimpirtz.* (“The elements necessary to constitute the crime must be **gathered wholly from the statute** and the crime must be described within the terms of the statute.”) *Id.*, 110 N.E. 2d at 417-18. (emphasis added.)

The elements for a felony Trafficking in Controlled Substance: Marijuana or Concentrated Cannabis (Category C Felony) under NRS 453.339(1)(a) are:

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conviction based on an indictment which does not charge an offense is void for lack of subject matter jurisdiction.) *Id.*, 110 N.E. 2d at 418.

18 The State’s commingling is paramount to “legislating” a crime, an act in the sole province of the legislature. *See, Nevada Const. art. 4 § 1; Galloway v. Truesdell*, 83 Nev. 13, 422 P.2d 237 (1967) (“ . . . legislative power is the power . . . to frame and enact laws, and to amend or repeal them.” *Id.*, 83 Nev. at 20. *See also, United States v. Davis*, 588 U.S. \_\_\_, 139 S. Ct. 2319 (2019). (“Only the people’s elected representatives in the legislature are authorized to ‘make an act a crime.’”) 139 S. Ct. at 2325.



1       **NRS 453.339   Trafficking in controlled substances: Marijuana or**  
2       **concentrated cannabis.**

3       1.   Except as otherwise provided in NRS 453.011 to NRS 453.552, inclusive, a  
4       person who knowingly or intentionally sells, manufactures, delivers or brings  
5       into this State or who is knowingly or intentionally in actual or constructive  
6       possession of marijuana or **concentrated cannabis** shall be punished, if the  
7       quantity involved:

8       (a) Is 50 pounds or more, but less than 1,000 pounds, of marijuana or 1 pound  
9       or more, but less than 20 pounds, of **concentrated cannabis**, for a category C  
10      felony as provided in NRS 193.130 and by a fine of not more than \$25,000.

11      (Boldness added.)

12      NRS 453A.155 which defines tetrahydrocannabinol is:

13      **NRS 453A.155**   “THC” defined. THC” means delta-9-tetrahydrocannabinol,  
14      which is the primary active ingredient in marijuana.

15      Had the State instructed the Grand Jury of the definitions of concentrated  
16      cannabis<sup>19</sup> and tetrahydrocannabinol and properly pled Count 5 as “concentrated  
17      cannabis; to wit, tetrahydrocannabinol),” this would be sufficient. Instead, the State  
18      never even listed the element “concentrated cannabis” in Count 5, much less  
19      defined it, and instead commingled, or substituted “tetrahydrocannabinol” without  
20      even defining it. **How was the Grand Jury to know tetrahydrocannabinol**  
21      **(THC) is listed as a form of “concentrated cannabis” when they were not given**  
22      **the definitions of either?**

23      \_\_\_\_\_  
24      19 NRS 453.042   “Concentrated cannabis” defined.   “Concentrated cannabis”  
25      means the extracted or separated resin, whether crude or purified, containing THC or  
26      CBD from marijuana.  
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The State’s commingling of the NRS 453.339(1)(a) and NRS 453A.155 does not charge a legal offense.<sup>20</sup> And the State failed to define “concentrated cannabis” and “tetrahydrocannabinol” violating its duty under NRS 179.095(2) because the district attorney “shall inform the grand jurors of the specific elements”. The word “shall” is mandatory. The Court in *Goudge v. State*, 128 Nev. 548, 287 P.3d 301 (2012) stated,

The use of the word “shall” in the statute divests the district court of judicial discretion. See NRS 0.025(1)(d); *see also Otak Nevada*, 127 Nev. at 598, 260 P.3d at 411. This court has explained that, when used in statute, the word “shall” imposes a duty on a party to act and prohibits judicial discretion and, consequently, mandates the result set forth by the statute. *Id.*; *see also Johanson v. Dist. Ct.*, 124 Nev. 245, 249-50, 182 P.3d 94, 97 (2008) (explaining that “ “shall” is mandatory and does not denote judicial discretion” (quoting *Washoe Med. Ctr. V. Dist. Ct.*, 122 Nev. 1298, 1303, 148 P.3d 790, 793 (2006))).

*Id.*, 128 Nev. at 553.

Again, the prosecution didn’t inform the Grand Jury on the law and fell short of its legal obligations under NRS 172.095(2). *See, Clay v. Eighth Jud. Dist. Ct.*, 129 Nev., 445, 305 P.3d 898 (2013). (When an offense contains technical elements, it is not compliance with NRS 172.095(2) by merely submitting instructions to the grand

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<sup>20</sup> Since there is no statute commingling the “THC charge” filed against Najera, Count 5 as indicted is null and void. The nullity would render an acquittal or conviction meaningless and without any affect whatsoever. For example, if the jury returned a verdict of NOT GUILTY on Count 5, the State could (and would) argue that jeopardy did not attach. The State would be correct.

jury and asking them if they have any questions.) No one can reasonably dispute that “concentrated cannabis” and “tetrahydrocannabinol” are technical. The State did not fulfill its legal obligation under NRS 172.095(2).

The prosecutor never read the charges to the grand jury. The prosecutor never provided a copy of all the charging statutes to the grand jury. The prosecutor never explained the “elements” of the offense to the grand jury nor provided definitions for those elements. This conduct was condemned in *Clay, supra*. And this conduct is prohibited in NRS 172.095:

**172.095. Charges to be given to grand jury by court; district attorney to inform grand jury of specific elements of public offense considered as basis of indictment**

1. The grand jury being impaneled and sworn, must be charged by the court. In doing so, the court shall:

- (a) Give the grand jurors **such information as is required by law** and any other information it deems proper regarding their duties and any charges for public offenses returned to the court or likely to come before the grand jury.
- (b) Inform the grand jurors of the provisions of NRS 172.245 and the penalties for its violation.
- (c) Give each regular and alternate grand juror a copy of the charges.
- (d) Inform the grand jurors that the failure of a person to exercise the right to testify as provided in NRS 172.241 must not be considered in their decision of whether or not to return an indictment.

2. Before seeking an indictment, or a series of similar indictments, **the district attorney shall inform the grand jurors of the specific elements** of any public offense which they may consider as the basis of the indictment or indictments.

Nev. Rev. Stat. Ann. § 172.095 (West)(boldness and emphasis added.)

1 Finally, the prosecutor didn't comply with NRS 172.095(1)(d) by failing to  
2 inform the grand jurors that the failure of Najera to exercise his right to testify must  
3 not be considered in their decision of whether or not to return an indictment.  
4

5 **D. THE GRAND JURY INSTRUCTIONS ARE INCORRECT AND**  
6 **DO NOT DEFINE THE ELEMENTS OF COUNT 8, POSSESSION**  
7 **OF A CONTROLLED SUBSTANCE, AND DO NOT DEFINE OR**  
8 **EXPLAIN THE UNIFORM CONTROLLED SUBSTANCE ACT.**

9 The three pages of Instructions given to the Grand Jury, are replete with errors  
10 and material omissions of key definitions necessary for the Grand Jury to fulfill its  
11 duty.

12 The Grand Jury Instructions begin with an incorrect definition of Cocaine as a  
13 Schedule 1 controlled substance when in fact it is a Schedule 2 controlled substance.  
14

15 Secondly, the Instructions tell the Grand Jury it is a felony for two or more  
16 persons to conspire to commit an offense which is a felony under the Uniform  
17 Controlled Substances Act but fail to define *what* is the Uniform Controlled  
18 Substances Act. In fact, no testimony was solicited from any of the witnesses who  
19 testified to *anything* about the Uniform Controlled Substances Act.  
20  
21

22 Third, as referenced in this Brief, the Instructions fail to define what is  
23 concentrated cannabis leaving the Grand Jury to guess as to its meaning.  
24

25 Fourth, the Instructions fail to define "possession". Black's Law definition of  
26 possession has been adopted by the Nevada Supreme Court:  
27

28 The law, in general, recognizes two kinds of possession: actual possession and  
constructive possession. A person who knowingly has direct physical control

over a thing, at a given time, is then in actual possession of it. A person, who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

*Palmer v. State*, 112 Nev. 763, 768, 920 P.2d 112, 115 (1996).

Fifth, the Instructions cite the language of the statute “Possession of a Controlled Substance With Intent to Sell”, yet none of the co-defendants are even charged with this offense!

**E. COUNT 8, POSSESSION OF A CONTROLLED SUBSTANCE, IS IMPERMISSIBLE AND MUST BE DISMISSED BECAUSE THE STATE HAS NOT DEMONSTRATED, EVEN BY SLIGHT OR MARGINAL EVIDENCE, THAT THE ALLEGED CONTROLLED SUBSTANCE WAS IN THE PETITIONER’S POSSESSION.**

*i. Constructive Possession*

To demonstrate that an accused was responsible for unlawful possession, the State must offer proof that the defendant exercised dominion and control over the contraband. *Glispey v. Sheriff, Carson City*, 89 Nev. 221, 223, 510 P.2d 623, 624 (1973) (citing *Doyle v. State*, 82 Nev. 242, 415 P.2d 323 (1966)). Where possession is alleged to be constructive, “possession may be imputed when the contraband is found in a location which is immediately and exclusively accessible to the accused and subject to [their] dominion and control.” *Glispey*, 89 Nev. at 223, 510 P.2d at 624.

The *Glispey* case involved an area accessible to multiple individuals - a prison restroom. The restroom in question was used by three individuals; following the third

individual's exit, the restroom was subject to a "shake down" and a bag of marijuana was found concealed in a paper towel receptacle. *Id.* Glispey was the third and final individual to use the restroom prior to the discovery of the drugs, and thus was charged with possession of a controlled substance and attempting to provide the drugs to an inmate. *Id.* At her preliminary hearing, the other two women who had used the restroom prior to Glispey testified that they did not place the drugs in the paper towel holder. *Id.* Glispey was ordered to stand trial on both charges, and she challenged the possession charge for insufficient probable cause. *Id.*

The Nevada Supreme Court granted Glispey's appeal and dismissed the possession charge. In its holding, the Nevada Supreme Court focused on the lack of evidence to establish Glispey's constructive possession:

In the instant case, it cannot be said that she constructively possessed the contraband. Defendant's access to the rest room was not exclusive nor did she maintain control over the location. Even if the accused did, in fact, place the marijuana in the paper towel receptacle, any subsequent intent to recover the marijuana would, from this record, be purely speculative, and could not sustain the requisite probable cause to hold her for trial for constructive possession.

89 Nev. at 224, 510 P.2d at 624.

To determine whether constructive possession may be imputed to an accused where the contraband in question is located in a shared space, courts may consider the totality of circumstances surrounding the alleged possession. For example, in *Miller v. Sheriff, Carson City*, 95 Nev. 255, 592 P.2d 952, a guard discovered an inmate "ducking down" in a restroom next to a trash can and heard a sound like "something

being thrown in a garbage can.” 95 Nev. at 256, 592 P.2d at 953. The inmate was the only person in the restroom at the time. *Id.* A search of the trash can yielded a vitamin bottle with marijuana. *Id.* When the officer searched the inmate’s locker, he found another vitamin bottle identical to the one discovered in the restroom’s trash can. *Id.*

Based on the totality of circumstances in that case, the Nevada Supreme Court upheld the lower court’s finding of probable cause:

Although entry to and exit from the restroom was through a connecting door to one of the facility's dormitories which housed numerous inmates, here, the totality of the circumstances, including appellant's being alone in the restroom, his crouching and ducking, the contemporaneous noise heard by the officer, appellant's hasty exit from the restroom, the finding of the similar bottle unlike any other observed by the officer in his five years at the institution, in our view, satisfies the requisite probable cause test delineated in N.R.S. 171.206.  
*Id.*

Based on the foregoing, the Nevada Supreme Court found that “the magistrate was entitled to conclude” that there was a probable cause showing of constructive possession.

In this case, State failed to establish that the Petitioner possessed the alleged cocaine, either actually or constructively. There is no testimony indicating the alleged cocaine was found in the Petitioner’s actual possession (on his person). Instead, Det. Snodgrass testified that the search of the apartment “recover[ed] items that you believed to be cocaine from Mr. Najera’s residence...” *Ex. C* at 67. As this is not sufficient for actual possession, the State must rely on establishing evidence of

constructive possession- specifically that the Petitioner exercised dominion and control over an area immediately and exclusively accessible to him.

Here, the State’s evidence suggests that the alleged cocaine was not found in an area that can be deemed as immediately and exclusively accessible to him. Indeed, no real evidence regarding the location, character, and circumstances of the alleged cocaine was presented at all, other than testimony that it was recovered “from [the Petitioner’s] residence.” No photographs were offered showing the alleged cocaine in situ, how it was discovered, etc. As such, the Petitioner is limited only to what evidence the State *did* present.

The State focused most of its attention on an area where the allegedly cocaine was presumably *not* found, but which presents elegant proof of “dominion and control over an area immediately and exclusively accessible to” the Petitioner: a safe located in what the State alleges was the Petitioner’s closet. In itemizing and eliciting testimony regarding the multiple items found in this safe, the one item *not* discussed as being found in the safe was the alleged cocaine.

The totality of circumstances does not support an inference that Najera constructively possessed the alleged cocaine. The State did not provide any evidence as to the location of the alleged cocaine, even as the State went into painstaking detail as to the location and character of other items found within the safe the State is attributing to Najera. The State’s failure to describe the location of the alleged cocaine fails to establish the requisite elements of a constructive possession theory-



specifically, the immediate and exclusive accessibility to the area containing the alleged cocaine (and again, the State never indicated where in the residence it was allegedly found, or if anyone else was present and had access to the area that would vitiate any claim of dominion and control).

As the State's evidence only shows that alleged cocaine was found "somewhere" in the residence, but not on Najera's person, the State must proceed on a constructive possession theory. With only evidence of the alleged presence of what it believes to be cocaine, and in contrast to the detail elicited about the location of every other item attributed to the Petitioner (what was found in the safe), the State failed to make even a slight or marginal showing required for a constructive possession theory.

The only "evidence" of possession presented to the Grand Jury of the alleged cocaine found in Najera's residence is as follows:

Q: Did in fact you recover items that you believed to be cocaine from Mr. Najera's residence?

Yes.

GJ, V-1, P. 67. ll. 2-4.

That's it! This is insufficient evidence for the Grand Jury to have found "possession." Once again, there was *no* evidence presented that Najera was the sole occupant of the home or that he didn't share the home with other persons.

Count 8 must be dismissed.

1                    **F. THE PROSECUTOR FAILED TO EXPLAIN ANY ELEMENTS OF**  
2                    **THE COUNTS TO THE GRAND JURY.**

3                    The prosecutor talked in generalities about the indictment:

4                    Prosecutor: Just to go through the Indictment, Count 1 charges Eduardo Garcia with  
5                    sale of controlled substance. The same charge for the same defendant is  
6                    reflected in Count 2 and Count 3. Count 4 charges all three defendants  
7                    with trafficking in a controlled substance and that is for marijuana, 50  
8                    pounds or more. Count 5 charges all three defendants with trafficking in  
9                    a controlled substance. That is for THC between one pound or more and  
10                  less than 20 pounds. Count 6 charges the three defendants with  
11                  conspiracy to violate the uniform controlled substances act as reflected in  
12                  Counts 4 and 5. And then Count 7 reflects a charge of unlawful  
13                  production or processing of marijuana. That pertains to defendant  
14                  Eduardo Fabian Garcia. A couple of housekeeping matters. I'm sorry,  
15                  and Count 8 reflects a possession of controlled substance charging Jesus  
16                  Najera with possession of cocaine. GJ, V-1, P. 6, ll. 4-21.

17                  This is insufficient and does not comply with NRS 172.095. The prosecutor  
18                  violated NRS 172.095(2): "Before seeking an indictment, or a series of similar  
19                  indictments, the district attorney **shall** inform the grand jurors of the **specific**  
20                  **elements** of any public offense which they may consider as the basis of the indictment  
21                  or indictments." (Boldness added.) This was not done.

22                  "When an offense contains technical elements, it is not compliance with NRS  
23                  172.095(2) by merely submitting instructions to the grand jury and asking them if they  
24                  have any questions." *Clay v. Eighth Jud. Dist. Ct.*, 129 Nev., 445, 305 P.3d 898  
25                  (2013). No one can reasonably dispute that terms such as "possession",  
26                  "tetrahydrocannabinol", and "concentrated cannabis" are complicated and technical.  
27                  The State did not fulfill its legal obligation under NRS 172.095(2).  
28

1 **G. MS. KELLY BURNS’S NRS 50.320 DECLARATION WAS**  
2 **INADMISSIBLE AT THE GRAND JURY PROCEEDING BECAUSE**  
3 **BURNS’S DECLARATION FAILS TO ESTABLISH THAT BURNS’S**  
4 **ALLEGED JANUARY 28, 2020 EIGHTH JUDICIAL DISTRICT**  
5 **COURT QUALIFICATION AS AN EXPERT WITNESS IS FOR**  
6 **MARIJUANA.**

7 **a. “Controlled substance” is a generic term which can mean any**  
8 **controlled substance such as heroin, cocaine, LSD, PCP, and a**  
9 **plethora of other controlled substances.**

10 The State may offer its evidence by affidavit/declaration in lieu of oral  
11 testimony. NRS 50.320(2) states:

12 An affidavit or declaration which is submitted to prove any fact set forth in  
13 subsection 1 must be admitted into evidence when submitted during any  
14 administrative proceeding, preliminary hearing or hearing before a grand jury.  
15 The court shall not sustain any objection to the admission of such an affidavit  
16 or declaration.

17 Subsection 1 of NRS 50.320 state in relevant part,

18 1. The affidavit or declaration of a chemist and any other person who has  
19 qualified in a court of record in this State to testify as an expert witness  
20 regarding the ... identity or quantity of a controlled substance alleged to have  
21 been in the possession of a person, which is submitted to prove:

22 (a) The quantity of the purported controlled substance; or

23 (b) The .... presence or absence of a controlled substance, chemical, poison,  
24 organic solvent or another prohibited substance, as the case may be, is  
25 admissible in the manner provided in this section.

26 Two requirements must be met before the affidavit/declaration is admissible at  
27 the grand jury: (1) court of record qualification as an expert or other qualified person  
28 who has qualified in this State as an expert witness regarding the identity or quantity

of marijuana, and (2) the person’s area of expertise must be marijuana testing. *See, generally, Valenti v. State, Dep’t of Motor Vehicles*, 131 Nev. 875, 362 P.3d 83 (2015) (“ ... Maloney’s affidavit [sic], which indicated that she was a chemist but failed to state whether she had been qualified in a Nevada court of record, was inadmissible at Valenti’s revocation hearing.”) 362 P.3d 88. *Valenti* involved the absence of the first requirement in NRS 50.320(1) i.e. court of record qualification as an expert. Najera’s case involves the absence of the second requirement in NRS 50.320(1) i.e. the person’s area of expertise not shown to be marijuana testing.

The testing of marijuana using Gas Chromatography – Mass Spectrometry (GC/MS), Macroscopic Examination, Microscopic Examination, and Color test(s) are completely different than testing other drugs such cocaine, heroin, crystal methamphetamines, PCP, and other controlled substances. The declaration in this case violates *Valenti, supra*, because it doesn’t state that Ms. Burns is an expert to testify regarding the identity of **marijuana**. Instead, her declaration says she’s qualified as an expert witness to testify “regarding the identity of *a* controlled substance.” (Italics added.) Which controlled substance? Her declaration doesn’t specify marijuana. It would have been sufficient if she had stated she was qualified as an expert to testify “regarding the identity of marijuana” or “regarding the identity of *all* controlled substances.” Instead, her declaration states “*a* controlled substance” which means “not any particular or certain one of a class or group: a man; a chemical; a house.” <https://www.dictionary.com/browse/a>

1                   **H. THE STATE ASKED IMPERMISSIBLE LEADING QUESTIONS OF**  
2                   **KEY WITNESSES BEFORE THE GRAND JURY.**

3                   The State is not free to present evidence in any manner it desires such as  
4                   leading questions. NRS 50.115(3)(a) provides that leading questions are generally  
5                   impermissible on direct examination “without permission of the court.” *Leonard v.*  
6                   *State*, 117 Nev. 53, 70, 17 P.3d 397 (2001).

7  
8  
9                   “When we speak of substantial evidence we refer to  
10                  something which has probative force. **Evidence in**  
11                  **‘parrot fashion’ by leading questions resolves it-**  
12                  **self into submitting to a court, indirectly by oath**  
13                  **of a witness the data and information in the mind**  
14                  **of the attorney.** Such information thus received could  
                    scarcely be elevated to the dignity of a factual found-  
                    ation and be characterized as substantial evidence.”

15                  Canepa v. Durham, 65 Nev. 428, 456 (dissent) (Nev.  
16                  1949). “It is sometimes discretionary to allow lead-  
17                  ing questions on the direct examination when it appears  
18                  that the witness is unable to understand otherwise, as  
19                  well as when he is hostile.” *State v. Williams*, 31 Nev.  
20                  360, 367 (Nev. 1909).

21                  (emphasis added)

22                  The “leading question” prohibition applies to grand jury proceedings. NRS  
23                  172.136(2) mandates, “[t]he grand jury can receive none but legal evidence, and the  
24                  best evidence in degree, to the exclusion of hearsay or secondary evidence.” In the  
25                  instant case, the prosecution used over 50 leading questions. The witnesses were not  
26                  hostile or confused.

1 Q: So the warehouse would be the building reddish in color?

2 GJ T, V-1, P. 11, ll. 17-18.

3  
4 Q: I'm going to zoom in on this. There looks to be a couple of vehicles at  
5 that warehouse, correct?

6 GJ T, V-1, P. 14, ll. 10-12.

7  
8 Q: (702)280-4438, was that a phone number you ultimately associated  
9 with Mr. Najera?

10 GJ T, V-1, P. 16, ll. 5-6.

11  
12 Q: Okay. (702)308-0688, what that number ultimately associated with  
13 Mr. Garcia?

14 GJ T, V-1, P. 11, ll. 8-9.

15  
16 Q. (702)336-5100, was that a phone number associated with Mr.  
17 Madrigal?

18 GJ T, V-1, P. 11, ll. 11-12.

19  
20 Q: Okay. Did that revolve around hemp?

21 GJ T, V-1, P. 16, ll. 24-25.

22  
23 Q: The same hemp that was ultimately associated to Mr. Madrigal?

24 GJ T, V-1, P. 17, ll. 1-2.

25  
26 Q: And Mr. Garcia did that multiple times?

27 GJ T, V-1, P. 20, ll. 1-2.

1 Q: And this time there was no business operating out of the warehouse,  
2 is that right?

3 GJ T, V-1, P. 20, ll. 13-14.

4  
5 Q: Okay. And then could that have been March 7?

6 GJ T, V-1, P. 20, ll. 18-19.

7  
8 Q: Okay. And that photo we saw, Grand Jury Exhibit 8, was that photo  
9 taken March 8<sup>th</sup>, or rather that video?

10 GJ T, V-1, P. 20, ll. 22-24.

11  
12 Q: Okay. Was this sometime in March?

13 GJ T, V-1, P. 21, line 1.

14  
15 Q: Sometime in March did you learn that Mr. Najera, the former Metro  
16 police officer, visited Mr. Garcia at Mr. Garcia's residence?

17 GJ T, V-1, P. 21, ll. 9-11.

18  
19 Q: So at this point between the intel you received in February and then  
20 the follow-up surveillance and investigation that you did, did you  
21 and Detective Chaney then decide to introduce a confidential  
22 informant into this investigation?

23 GJ T, V-1, P. 21, ll. 20-24.

24  
25  
26 Q: In this specific case, did you utilize an individual named Jose Soto?

27 GJ T, V-1, P. 22, ll. 22-23.

1 Q: And this individual Mr. Soto was employed by Metro to see if he  
2 could purchase narcotics from this group?

3 GJ T, V-1, P. 23, line 25, P. 24, ll. 1-2.

4  
5 Q: There are mechanisms for individuals to buy recreational marijuana?

6 GJ T, V-1, P. 24, ll. 6-7.

7  
8 Q: As well as medical marijuana?

9 GJ T, V-1, P. 24, ll. 9-10.

10  
11 Q: From a legal dispensary?

12 GJ T, V-1, P. 24, line 15.

13  
14 Q: Okay. So in this case the information you had was marijuana was  
15 being sold outside the perimeters of a legal dispensary?

16 GJ T, V-1. P.24, ll. 17-19.

17  
18 Q: Did those instances result in Mr. Soto purchasing from, and we'll  
19 have Mr. Soto testify, from Mr. Garcia items that were later  
20 submitted to the lab and resulted in a positive analysis as being  
21 marijuana?

22 GJ T, V-1. P.2, ll. 1-5.

23  
24  
25 Q: Okay. So specifically page 1, is this the result of the items you  
26 received from Mr. Soto after he purchased what ultimately tested  
27 positive as marijuana on April 8<sup>th</sup>?  
28



1 GJ T, V-1. P.24, ll. 24-25, P.25, ll. 1-2.

2 Q: Okay. Looking at Page 2 of the same exhibit, is this the result of the  
3 final chemical analysis done on the items you recovered from Mr.  
4 Soto after deploying him as a confidential informant on April 13<sup>th</sup>?

5 GJ T, V-1. P.28, ll. 4-8.

6  
7  
8 Q: And then page 3 of the same exhibit, is this the final chemical  
9 analysis for items you recovered from Mr. Soto, his confidential  
10 informant buy, on April 22<sup>nd</sup>?

11 GJ T, V-1. P.28, ll. 10-13.

12  
13 Q: Okay. And all three of these incidents resulted in you obtaining from  
14 Mr. Soto items that ultimately identified as marijuana?

15 GJ T, V-1. P.28, ll. 10-13.

16 Q: So you never made purchases with your own money?

17 GJ T, V-1. P.33. ll. 4-5.

18 Q: I want to draw your attention to March 26<sup>th</sup> of 2020. Is that when  
19 you were first introduced to Lalo?

20 GJ T, V-1. P.33. ll. 6-8.

21 Q: And that address would be at 2340 East Camaro, correct?

22 GJ T, V-1. P.33. ll. 11-12.

23  
24  
25 Q: And was it also at this time that he also told you that another  
26  
27  
28

1 partner was a police officer?

2 GJ T, V-1. P.35. ll. 1-2.

3  
4 Q: Okay. And did he tell you what chemical he was spraying it with?  
5 Was it THC?

6 GJ T, V-1. P.35. ll. 13-14.

7  
8 Q: And at this time did he again show you larger storages of marijuana  
9 in the home?

10 GJ T, V-1. P.40. ll. 17-18.

11  
12 Q: And it appeared to be marijuana to you?

13 GJ T, V-1. P.40. line 20.

14  
15 Q: Did that purchase, was it set up for April 26, of 2020?

16 GJ T, V-1. P.42. ll. 23-24.

17  
18 Q: Let me follow up with a little bit there. And then you set up this  
19 third buy for 250 pounds?

20 GJ T, V-1. P.46. ll. 22-23.

21  
22 Q: Okay. And then you believe there were two separate two pound buys  
23 after that?

24 GJ T, V-1. P.51. ll. 1-2.

25  
26 Q: Okay. And you responded specifically to that address while other  
27 detectives responded to different addresses related to this  
28

1 investigation?

2 GJ T, V-1. P.55. ll. 8-10.

3  
4 Q: Okay. And specifically were you tasked with the search and  
5 collection of evidence at 1445 Stone Lake Cove, apartment 4101, in  
6 Henderson?

7  
8 GJ T, V-1. P.66. ll. 5-7.

9 Q: And at that time he was a Metropolitan police officer?

10  
11 GJ T, V-1. P.66. ll. 17-18.

12 Q: So you were tasked with the search and recovery of evidence at Mr.  
13 Najera's residence?

14  
15 GJ T, V-1. P.66. ll. 20-21.

16 Q: Okay. All the steps and procedures were followed?

17  
18 GJ T, V-1. P.68. ll. 10-11.

19 Q: All right. So the preliminary field test corroborated what you  
20 believed the items you recovered were?

21  
22 GJ T, V-1. P.68. ll. 16-18.

23  
24 Q: And you think because his name is printed on the top and there's a  
25 signature on the bottom?

26  
27 GJ T, V-1. P.71. ll. 1-3.

28 Q: And there is a vest or something in the trunk identifying or that

1 states police, right?

2 GJ T, V-1. P.71. ll. 9-10.

3  
4 Q: Okay. And the last picture of that exhibit is a close-up of those  
5 turkey bags?

6 GJ T, V-1. P.71. ll. 12-13.

7  
8 Q: Now was there a deal set up for after April 30<sup>th</sup> or about April 30<sup>th</sup>  
9 for which you believed Mr. Garcia would be spraying the hemp?

10 GJ T, V-2. P.13. ll. 13-15.

11  
12 Q: Turning the page to 311. Mr. Garcia and Najera are discussing  
13 seeds in the product?

14 GJ T, V-2. P.27. ll. 23-24.

15  
16 **I. THE DETECTIVE'S INCORRECT AND CONTRADICTORY**  
17 **TESTIMONY ABOUT THE MAXIMUM LIMIT OF "THC"**  
18 **LEVELS IN HEMP WAS CONFUSING TO THE GRAND**  
19 **JURY WHEREIN HE FIRST TESTIFIED IT WAS .3% AND**  
20 **THEN SUBSEQUENTLY TESTIFIED IT WAS .03%. THE**  
21 **STATE FAILED TO CORRECT THE EGREGIOUS ERROR**  
22 **AND ONCE AGAIN VIOLATED ITS DUTY UNDER NRS**  
23 **172.095(2).**

24 When asked by a grand juror about the purchase of marijuana by  
25 confidential informant Jose Soto which was tested and found to be under  
26 the legal limit for THC, the detective gave confusing and conflicting  
27 answers rendering the grand jurors helplessly uninformed.  
28

Grand Juror: Just real briefly explain to us what that threshold is for the lab to determine or conclude that *something is marijuana or isn't marijuana*. (Italics added.)

Detective: Okay. So legally in Nevada, it's the same as the federal standard, to be considered marijuana substance has to have over .3 percent THC.

GJ T., V-2, P. 11, ll. 18-23.

But the detective then contradicted himself, adding to the confusion of the juror who specifically asked him to explain what is or what isn't marijuana.

Detective: What makes something marijuana as we call it or an illegal substance is having a THC level above .03 percent.

GJ T., V-2, P. 12, ll. 2-4.

There is a huge difference between .3 percent and .03 percent. One is correct and the other is incorrect. Which is the correct number? The Grand Jury was left to guess – is it .3 percent or .03 percent? The prosecutor never corrected the detective nor properly informed the Grand Jury as to the correct limit leaving them uninformed and thus violated NRS 172.095(2).

## CONCLUSION

This Court should grant Najera’s Petition for Writ of Habeas Corpus and dismiss all the following counts in the Indictment against Count 4 – Trafficking in a Controlled Substance, Count 5 – Trafficking in a Controlled Substance, Count 6 – Conspiracy to Violate Uniform Controlled Substances, and Count 8, Possession of a Controlled Substance.

Respectfully submitted,

*/s/ Michael D. Pariente*

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4<sup>th</sup> day of July, 2021, that I electronically filed the foregoing Petition with the Clerk of the Court by using the electronic filing system.

The following participants in this case are registered electronic filing system users and will be served electronically:

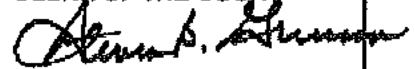
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*/s/Chris Barden*

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Chris Barden, an employee  
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7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 In the Matter of Application,

10 of

11 JESUS NAJERA,  
12 #5339086

13 for a Writ of Habeas Corpus.

CASE NO: C-21-356361-1

DEPT NO: XIX

14 **STATE'S RETURN TO WRIT OF HABEAS CORPUS**

15 DATE OF HEARING: 11/23/2021  
16 TIME OF HEARING: 11:00 A.M.

17 COMES NOW, JOE LOMBARDO, Sheriff of Clark County, Nevada, Respondent,  
18 through his counsel, STEVEN B. WOLFSON, Clark County District Attorney, through TINA  
19 TALIM, Chief Deputy District Attorney, in obedience to a writ of habeas corpus issued out of  
20 and under the seal of the above-entitled Court on the 4th day of July, 2021, and made returnable  
21 on the 23rd day of November, 2021, at the hour of 11:00 o'clock A.M., before the above-  
22 entitled Court, and states as follows:

23 A. Denies.

24 B. Denies.

25 C. Denies in part; admits in part. Respondent admits "concentrated cannabis  
26 was not defines in the instructions, but denies that dismissal of Count 5, Trafficking in  
27 Controlled Substance, is consequently warranted.



1 D. Denies in part; admits in part. Respondent admits the Grand Jury  
2 instructions do not define the elements of Count 8 nor define or explain the Uniform Controlled  
3 Substance Act, but denies the instructions are thusly incorrect.

4 E. Denies.

5 F. Admits.

6 G. Denies.

7 H. Denies in part; admits in part. Respondent admits to posing leading  
8 questions to key witnesses before the Grand Jury but denies that so doing is impermissible.

9 I. Denies in part; admits in part. Respondent admits the detective erred in  
10 his testimony but denies that the error was egregious or that the State's failure to correct it  
11 constitutes a violation of its duty under NRS 172.095.

12 F. The Petitioner is in the actual custody of JOE LOMBARDO, Clark  
13 County Sheriff, Respondent herein, pursuant to a Criminal Indictment, a copy of which is  
14 attached hereto as Exhibit 1 and incorporated by reference herein.

15 Wherefore, Respondent prays that the Writ of Habeas Corpus be discharged and the  
16 Petition be dismissed.

17 DATED this 3rd day of November, 2021.

18 Respectfully submitted,

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

21 BY /s/ Tina Talim  
22 TINA TALIM  
23 Chief Deputy District Attorney  
24 Nevada Bar #009286  
25  
26  
27  
28

1                   **POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S**  
2                   **PRE-TRIAL WRIT OF HABEAS CORPUS**

3                   **STATEMENT OF THE CASE**

4           On November 18, 2020 the State commenced its presentation of evidence to the Grand  
5 Jury in the instant case. Due to the shutdown of the grand jury, caused by the Covid-19  
6 pandemic, it was not until May 26, 2021 that the State continued and completed its presentation  
7 of evidence. On May 27, 2021 the Grand Jury returned an indictment charging: Defendant  
8 Eduardo Fabian Garcia with three (3) counts of Sale of Controlled Substance (Category B  
9 Felony) and one (1) count of Unlawful Production or Processing of Marijuana (Category E  
10 Felony); Defendants Eduardo Fabian Garcia, Jesus Najera, and Roberto Leon Madrigal with  
11 two (2) counts of Trafficking in Controlled Substance (Category C Felony) and one (1) count  
12 of Conspiracy to Violate Uniform Controlled Substances Act (Category C Felony); and  
13 Defendant Jesus Najera with one (1) count of Possession of Controlled Substance (Category  
14 E Felony).

15           Initial arraignment was set for June 10, 2021. Upon motion by defendants to continue  
16 the arraignment, it was continued to June 15, 2021. On July 4, 2021, defendant Jesus Najera  
17 filed a Petition for Writ of Habeas Corpus. On July 6, 2021, defendant Madrigal filed a Petition  
18 for Writ of Habeas Corpus, joining in Defendant Najera's Petition, raising additional  
19 arguments. Prior to the hearing date, parties stipulated, after defendant's Najera requested it,  
20 to extend the Writ argument. Parties agreed to extend the State's date to file the Return  
21 (September 20, 2021) and time for Defendants' Replies (October 20, 2021). The hearing was  
22 reset to November 19, 2021.

23  
24                   **STATEMENT OF FACTS**

25  
26           In February 2020, detectives Aaron Hefner and Gary Chaney of Las Vegas  
27 Metropolitan Police Department's (LVMPD) Criminal Intelligence Section (CIS) received  
28 information that Defendants Jesus Najera, Eduardo Fabian Garcia, and Norberto Leon

1   Madrigal were engaged in an operation involving the spraying of hemp with  
2   tetrahydrocannabinol (THC) that Defendants would sell as marijuana. *Tr. of Grand Jury, The*  
3   *State of Nevada v. Najera, Garcia, and Madrigal*, No. C356361 at 17:15-17 (Nev. 8th Jud.  
4   Dist., 2020). Detective Aaron Hefner's testimony clarified that while hemp and marijuana  
5   come from the same plant, marijuana is the nickname given only to plants that contain a certain  
6   amount of THC from which users derive a sense of euphoria. *Id.* at 17:9-14. Under Nevada  
7   State law the addition of THC to hemp in excess of the 0.3% THC limit produces a substance  
8   that is chemically analyzed as marijuana. *Id.* at 17:21-25; *Id.* at 18:1-2. The information  
9   detectives received also alleged that Defendant Madrigal was either in the process of obtaining  
10   or had obtained licenses for marijuana dispensaries. *Id.* at 10:24-25; *Id.* at 11:1. After launching  
11   an investigation into these allegations, detectives confirmed that Defendant Madrigal had two  
12   legitimate applications for marijuana dispensary licenses that had been processing for some  
13   years. *Id.* at 11:5-7. The investigation also revealed that Defendant Madrigal was associated  
14   with a warehouse located at 800 West Mesquite. *Id.* at 11:11-16. Detectives further learned  
15   that Defendants Najera and Garcia resided in apartment 4101 at 1445 Stone Lake Cove and at  
16   2340 East Camaro and respectively. *Id.* at 13:12-14; *Id.* at 13:20-22.

17       Surveillance was established at the residence and warehouse of Defendants Garcia and  
18   Madrigal respectively. *Id.* at 14:1-3. On March 7, 2020, Defendant Garcia arrived at the  
19   warehouse in a flatbed truck that he and an unidentified individual loaded with multiple black  
20   trash bags removed from the warehouse. *Id.* at 19:12-18. On March 8, 2020, Defendants  
21   Najera, Garcia, and Madrigal contemporaneously arrived at the warehouse wherein they  
22   engaged in discourse for approximately an hour. *Id.* at 21:5-15. During the investigation  
23   detectives engaged the services of confidential informant Jose Soto. *Id.* at 23:8-24. Defendant  
24   Garcia provided Mr. Soto with a sample of THC sprayed hemp in the pair's first meeting. *Id.*  
25   at 37:5-8. However, this tested below the 0.3% statutory limit for THC and Mr. Soto later  
26   returned it to Defendant Garcia. *Id.* at 38:14-18. The Defendants consequently are not charged  
27   for providing this sample. *Tr. of Grand Jury, The State of Nevada v. Najera, Garcia, and*  
28   *Madrigal*, No. C356361 at 33:1-3 (Nev. 8th Jud. Dist., 2021). On April 8<sup>th</sup>, 13<sup>th</sup>, and 22<sup>nd</sup> of

1 2020, Jose Soto purchased items from Defendant Garcia that tested positive as being  
2 marijuana. *Tr. of Grand Jury, The State of Nevada v. Najera, Garcia, and Madrigal*, No.  
3 C356361 at 24:23-25 (Nev. 8th Jud. Dist., 2020); *Tr. of Grand Jury, The State of Nevada v.*  
4 *Najera, Garcia, and Madrigal*, No. C356361 at 25:1-5 (Nev. 8th Jud. Dist., 2020). An exam  
5 by LVMPD's forensic laboratory of Mr. Soto's April 8<sup>th</sup> purchase yielded a positive result for  
6 marijuana that weighed 62.82 grams. *Tr. of Grand Jury, The State of Nevada v. Najera,*  
7 *Garcia, and Madrigal*, No. C356361 at 33:16-23 (Nev. 8th Jud. Dist., 2021). Mr. Soto's April  
8 13<sup>th</sup> purchase from Defendant Garcia tested positive for marijuana that weighed 946 grams.  
9 *Id.* at 34:5 Finally Mr. Soto's April 22<sup>nd</sup> purchase from Defendant Garcia tested positive for  
10 marijuana that weighed 1076 grams. *Id.* at 34:9-10.

11 Before every deployment Mr. Soto and his vehicle were searched to confirm the  
12 absence of any narcotics or undocumented funds. *Tr. of Grand Jury, The State of Nevada v.*  
13 *Najera, Garcia, and Madrigal*, No. C356361 at 25:9-20 (Nev. 8th Jud. Dist., 2020). Mr. Soto  
14 was also constantly surveilled during each trip to and from the buy location. *Id.* at 25:9-20.  
15 During these transactions Mr. Soto paid Defendant Garcia with LVMPD buy funds that were  
16 marked and photographed before each purchase. *Id.* at 26:4-13.

17 On April 30, 2020, a series of search warrants were executed throughout the valley. *Id.*  
18 at 55:7-14. The search of Defendant Garcia's residence produced bags of unsprayed hemp and  
19 32 marijuana plants. *Tr. of Grand Jury, The State of Nevada v. Najera, Garcia, and Madrigal*,  
20 No. C356361 at 17:11-25 (Nev. 8th Jud. Dist., 2021). In addition to official documents the  
21 search of Defendant Najera's residence revealed ODV positive cocaine that weighed 1.1  
22 grams. *Tr. of Grand Jury, The State of Nevada v. Najera, Garcia, and Madrigal*, No. C356361  
23 at 68:13-15 (Nev. 8th Jud. Dist., 2020); *Tr. of Grand Jury, The State of Nevada v. Najera,*  
24 *Garcia, and Madrigal*, No. C356361 at 72:18 (Nev. 8th Jud. Dist., 2020). Also recovered from  
25 Defendant Najera's residence was a safe containing documented LVMPD buy funds used by  
26 Mr. Soto to purchase narcotics from Defendant Garcia. *Tr. of Grand Jury, The State of Nevada*  
27 *v. Najera, Garcia, and Madrigal*, No. C356361 at 9:16-21 (Nev. 8th Jud. Dist., 2021). Pursuant  
28 to a search warrant officers recovered from Defendant Madrigal's warehouse bags of hemp

1 and sprayed marijuana and an apparent “science lab” containing a jar of THC oil, a gun for  
2 spraying, and turkey bags for packaging narcotics. *Tr. of Grand Jury, The State of Nevada v.*  
3 *Najera, Garcia, and Madrigal*, No. C356361 at 14:4-11 (Nev. 8th Jud. Dist., 2020).

4 After the execution of these search warrants, detectives secured a search warrant for the  
5 Defendants’ phone numbers. *Tr. of Grand Jury, The State of Nevada v. Najera, Garcia, and*  
6 *Madrigal*, No. C356361 at 7:18-24 (Nev. 8th Jud. Dist., 2021). Phone records spanning an 18-  
7 month period reveal text messages in which Defendants discussed *inter alia* the first  
8 transaction with Jose Soto, a prospective sale of THC sprayed hemp to individuals in Kansas,  
9 and the purchase of THC oil from individual known as Eli. *Id.* at 27:11-4; *Id.* at 24:1-3; *Id.* at  
10 25:3-10; *Id.* at 27:2-6. The text messages also reveal the Defendants’ “frantic” attempts to  
11 purchase Everclear, which is the pure alcohol that the Defendants mixed with THC to spray  
12 on hemp and allowed to evaporate so the THC would better adhere to the hemp. *Id.* at 26:11;  
13 *Id.* at 26:5-7.

14 I. **LEGAL STANDARD FOR DISCHARGE BY WRIT OF HABEAS CORPUS**

15 In the instant case, the provisions of NRS 34.500 that permit Defendant’s discharge by  
16 grant of Writ of Habeas Corpus are as follows:

17 NRS 34.500 Grounds for Discharge in Certain Cases

18 3. When the **process is defective** in some **matter of substance** required by  
19 law, rendering it void.

20 7. When the petitioner has been committed or indicted on a criminal  
21 charge...**without reasonable or probable cause.**

22 Where the alleged defectiveness of the process is attributable to governmental  
23 misconduct, the dismissal of an indictment is not warranted unless a defendant can  
24 demonstrate “substantial prejudice” that exists only when there is a “...reasonable probability  
25 that the outcome would have been different absent the misconduct”. *Lay v. State*, 110 Nev.  
26 1189, 1198, 886 P.2d 448, 454 (1994). With respect to Grand Jury proceedings the outcome  
27 of which there must be reasonable probability is the Grand Jury’s failure to indict any  
28 Defendant on any or all counts contained in the indictment.

1 As to a finding of probable cause to support an indictment, this has long been justified  
2 by the State's ability to substantiate it has presented "slight or even marginal" evidence.

3 *Sheriff, Washoe Cty. v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980).

## 4 ARGUMENT

5  
6 Defendants alleges that his imprisonment and/or restraint is unlawful for two reasons:  
7 (1) the State's presentation of evidence contained substantive procedural errors; and (2) the  
8 indictment, either in whole or in part, is not supported by probable cause. Yet even if the State  
9 made all alleged procedural errors, which the State does not concede, the relevant inquiries in  
10 this case remain (1) whether any alleged procedural error was sufficient to allow for a  
11 reasonable probability that the Grand Jury would not have indicted on any or all of the counts  
12 charged absent the error; and (2) whether any count charged is unsupported by probable cause.  
13 The State contends that any procedural error related to the Grand Jury proceedings was  
14 harmless because there is nothing to substantiate the reasonable probability of a contrary  
15 outcome in the absence thereof and all counts charged are supported by probable cause.

### 16 I. NO ALLEGED PROCEDURAL ERROR INVADED THE INTEGRITY OF 17 THE GRAND JURY

#### 18 a. Errors and/or Deficits in Grand Jury Instructions Must be Substantive

19 Although Nevada is one of several jurisdictions in which the prosecutor is required to  
20 instruct the Grand Jury on the elements of a crime, the Nevada Supreme Court has never  
21 defined the requirements of NRS 172.095(2). *Clay v. Eighth Judicial Dist. Court of State*, 129  
22 Nev. 445, 453, 305 P.3d 898, 904 (2013). However the New York test for a prosecutor's  
23 compliance with this statute has been found consistent with the Nevada Legislature's  
24 motivations for adopting NRS 172.095(2). *Id.* at 905. A prosecutor's Grand Jury instructions  
25 are thus substantively incomplete or incorrect only if the instructions affected the Grand Jury  
26 proceedings, where the effect must be compromising the integrity of the Grand Jury. *People*  
27 *v. Ramos*, 223 A.D.2d 495, 637 N.Y.S.2d 93, 93-94 (App. Div. 1st Dept. 1996). The Grand  
28 Jury's integrity is compromised only when it returns an indictment based on less than probable

1 cause". *Id.* Defendant's petition asserts that the Grand Jury could not have been familiar with  
2 the Uniform Controlled Substances Act (UCSA) or the phrase "concentrated cannabis".  
3 However, without substantiation that the specific Grand Jury to which the State presented its  
4 case lacked this understanding, this claim is purely speculative and provides no grounds for  
5 dismissal of the indictment.

6 Further Defendant Najera falsely asserts the Grand Jury instructions contain a  
7 commingling of the element "THC" with "concentrated cannabis". A proper reading of the  
8 proposed indictment confirms that the reality is instead an omission of "concentrated  
9 cannabis" prior to the specification of the form thereof that renders Defendants' in violation  
10 of NRS 453.339(1)(a) in the instant case. Thus, this omission falls under the examination of  
11 the indictment's sufficiency. The sufficiency of an indictment is to be determined under  
12 practical rather than technical considerations where the test is not whether the indictment could  
13 have been more definite and certain. *Laney v. State*, 86 Nev. 173, 178, 466 P.2d 666, 669  
14 (1970) (citing *Clay v. United States*, 326 F.2d 196 (10th Cir. 1963)). Instead, the question is  
15 whether the indictment is so insufficient as to fail to provide the accused with the adequate  
16 notice of the charged offense(s) required to permit the defendant to properly mount a defense.  
17 *Id.* There is no basis for asserting this claim at this juncture and the aforementioned  
18 examination is properly reserved for trial.

19 **b. Neither Detective's Misstatement nor the State's Failure to Correct it was**  
20 **Prejudicial**

21 The transcripts of the Grand Jury's proceedings confirm that Detective Aaron Hefner  
22 referred to the statutory limit for THC in three separate instances during his cumulative  
23 testimony; only once did Hefner err by misstating the limit is ".03 percent". *Tr. of Grand Jury,*  
24 *The State of Nevada v. Najera, Garcia, and Madrigal*, No. C356361 at 12:4 (Nev. 8th Jud.  
25 Dist., 2021). Neither this error nor the State's failure to correct it is fatal to the Grand Jury  
26 proceedings. In a criminal trial the examination of an alleged misstatement of the law remains  
27 restricted to the question of whether the misstatement caused the defendant to suffer any  
28 prejudice. *Standen v. State*, 101 Nev. 725, 727, 710 P.2d 718, 719 (1985). If there remains

1 substantial evidence to support a verdict absent the alleged misstatement, no prejudice may be  
2 found and thus no verdict overturned. *Bolden v. State*, 97 Nev. 71, 624 P.2d 20 (1981);  
3 *Mercado v. State*, 100 Nev. 535, 539, 688 P.2d 305, 308 (1984). The application of this test is  
4 more than equitable in the instant case since the burden of proof in a Grand Jury is considerably  
5 lower than that in a criminal trial and a Grand Jury target enjoys fewer rights than a criminal  
6 defendant. Defendant's petition provides no evidence that the grand jury even considered this  
7 lone misstatement, let alone relied thereupon when deciding to indict Defendants. There is  
8 therefore no means of substantiating the allegation that Defendants were prejudiced by the  
9 misstatement or the State's failure to correct it. Further a review of the indictment confirms  
10 that no count contained therein bears the statutory limit for THC. With respect to Defendant's  
11 marijuana product the counts reference only a "controlled substance". Thus, contrary to  
12 Defendant's petition, grand jurors were never made to speculate on the accurate statutory limit  
13 for THC because grand jurors were never asked to determine whether the marijuana produced,  
14 processed and sold by Defendants constituted a controlled substance. Rather the grand jurors  
15 were asked, with respect to Counts 1-7, to determine whether under the premise that  
16 Defendants' product constituted a controlled substance, the State presented the slight or  
17 marginal evidence to substantiate that Defendant(s): (1) produced and/or processed the  
18 controlled substance; (2) trafficked the controlled substance; and (3) conspired to violate the  
19 UCSA. There are consequently no grounds to suggest that the posited speculation of grand  
20 jurors ever transpired, let alone prejudiced Defendants.

## 21 **II. PROPER ADMISSION OF KELLY BURNS' NRS 50.320 DECLARATION**

22 Defendant's petition misapprehends applicable precedent. First *Valenti v. State, Dep't*  
23 *of Motor Vehicles* necessitates the invalidation of the chemist's affidavit because admission of  
24 an affidavit that fails to specify the chemist is properly qualified as an expert would result in  
25 absurd results like the revocation of drivers' licenses based on a lay-person's affidavit, which  
26 belies the plain meaning of NRS 50.320. 131 Nev. 875, 877, 362 P.3d 83, 84 (2015). This  
27 holding clarifies that the Court's concern is permitting laypeople's affidavits to carry the same  
28 evidentiary value as those of experts. The failure to specify which controlled substance(s) for



1 which Kelly Burns is an expert would not arouse this fear. Second even a finding that failure  
2 to satisfy either of the two requirements identified in *Valenti* would not render its holding  
3 applicable to the instant case. The *Valenti* court extended its holding to all administrative  
4 proceedings wherein the accused enjoys the right to confront and examine his accusers. *Id.*  
5 While it is proper to extend this Confrontation Clause based right to the accused in  
6 administrative hearings who face the potential loss of life, liberty, and/or property similar to  
7 that which criminal defendants face at trial, this extension is inappropriate to Grand Jury  
8 targets. The Nevada Supreme Court considered and declined to expand the rights of Grand  
9 Jury targets to render them "...coextensive with those of criminal defendants". *Gordon v.*  
10 *Ponticello*, 110 Nev. 1015, 1019, 879 P.2d 741, 744 (1994). Finally, even the improper  
11 expansion of the rights of Grand Jury targets would not necessitate dismissal of the indictment  
12 because the absence of Kelly Burns' declaration would not sufficiently diminish the State's  
13 case to the extent that the counts charged become unsupported by probable cause.

14 **III. NEITHER STATUTE NOR PRECEDENT PROSCRIBES THE STATE'S**  
15 **USE OF LEADING QUESTIONS BEFORE A GRAND JURY**

16 Defendant contends without legal authority that the State may not pose leading  
17 questions before the Grand Jury. The United States Supreme Court emphatically distinguished  
18 Grand Jury proceedings from criminal trials when it pronounced the Grand Jury process  
19 "generally is unrestrained by the technical procedural and evidentiary rules governing the  
20 conduct of criminal trials". *United States v. Calandra*, 414 U.S. 338, 343 (1974). NRS  
21 50.115(3)(a) provides:

22 NRS 50.115 Mode and Order of Interrogation and Presentation

23 3. Except as provided in subsection 4:

24 (a) Leading questions may not be used on the direct examination of a witness  
25 without the **permission of the court**.

(b) Leading questions are permitted on cross-examination.

26 Congruent with statutory interpretation's goal of advancing legislative intent, the Nevada  
27 Supreme Court has repeatedly rejected statutory interpretation that "...renders language  
28 meaningless or superfluous". *Figueroa-Beltran v. United States*, 467 P.3d 615, 621 (Nev.

2020); *Williams v. State Dep't of Corr.*, 133 Nev. 594, 402 P.3d 1260, 1262 (2017); *Hobbs v. State*, 127 Nev. 234, 242, 251 P.3d 177, 179 (2011). Further the Court has demonstrated it will adhere to the plain meaning rule and enforce a statute "as written" when the language is "clear and unambiguous". *Sheriff v. Witzenburg*, 122 Nev. 1056, 1061, 145 P.3d 1002, 1005 (2006); *Hobbs* at 237. NRS 50.115(3)(a)'s inclusion of the phrases "direct examination" and "permission of the court" renders clear that the applicability of its provisions is restricted to trials because Grand Jury proceedings include no court nor any incidence of direct examination. To broaden this statute's applicability to Grand Jury proceedings is to deprive both phrases of any value, disregard clear legislative intent, and eradicate precedential force.

#### IV. ALL CHARGES ARE SUPPORTED BY PROBABLE CAUSE

##### a. Standard for Sustaining a Grand Jury Indictment

During Grand Jury proceedings, there must be evidence adduced that establishes probable cause to believe that an offense has been committed and that the defendant has committed it. *Robertson v. Sheriff*, 85 Nev. 681, 683, 462 P.2d 528 (1969). The Nevada Supreme Court has explicitly held that the "full and complete exploration of all facets of the case" should be reserved for trial. *Marcum v. Sheriff*, 85 Nev. 175, 178, 451 P.2d 845, 847 (1969); see also, *Id.* at 529.

##### b. Defendants' Product Constitutes Marijuana and State Has Satisfied Its Burden that Defendants Trafficked this Controlled Substance

NRS 557.160 provides:

NRS 557.160 "Hemp" defined

1. "Hemp" means any plant of the genus *Cannabis sativa* L. and any part of such a plant, including, without limitation, the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts and salts of isomers, whether growing or not, with a **THC concentration** that does not exceed the maximum **THC concentration** established by the State Department of Agriculture for hemp.

2. "Hemp" does not include any commodity or product made using hemp.

NRS 453.096 provides:

NRS 453.096 "Marijuana" defined

1. "Marijuana" means:

- (a) All parts of any plant of the genus *Cannabis*, whether growing or not;
- (b) The seeds thereof;
- (c) The resin extracted from any part of the plant, including concentrated cannabis;
- (d) Every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin;
- (e) Any commodity or product made using hemp which **exceeds the maximum THC concentration** established by the State Department of Agriculture for hemp; and
- (f) Any product or commodity made from hemp which is manufactured or sold by a cannabis establishment **which violates any regulation** adopted by the Cannabis Compliance Board pursuant to paragraph (g) of subsection 1 of NRS 678A.450 relating to **THC concentration**.

2. "Marijuana" does not include:

- (a) Hemp, as defined in NRS 557.160, which is grown or cultivated pursuant to the provisions of chapter 557 of NRS;
- (b) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination; or
- (c) Any commodity or product made using hemp, as defined in NRS 557.160, which does not exceed the maximum **THC concentration** established by the State Department of Agriculture for hemp.

THC is defined as the most active of the principal constituents of marijuana. T. J. E. Schmidt, M.D., *Attorneys' Dictionary of Medicine*, (Matthew Bender). This definition combined with the five (5) aggregate uses between NRS 453.096 and 557.160 of the phrase "THC concentration" is consistent with the legislative intent to more closely regulate an "intoxicating" substance with a high propensity for addiction. THC. ARTICLE FOR CLE CREDIT: THE BRAIN DISEASE OF ADDICTION, 26 Nevada Lawyer 24.

1       *Sessions v. State* dictates that ambiguity between NRS 453.096(1) and NRS 453.096(2)  
2 must be resolved in favor of the accused, 106 Nev. 186, 189, 789 P.2d 1242, 1243 (1990), as  
3 dictated by the rule of lenity. However most statutory provisions bear some element of  
4 ambiguity. The rule of lenity is therefore inapplicable unless there is a "grievous ambiguity or  
5 uncertainty in the language and structure of the Act," *Huddleston v. United States*, 415 U.S.  
6 814, 831, 39 L. Ed. 2d 782, 94 S. Ct. 1262 (1974). Furthermore this "grievous ambiguity"  
7 must persist after the court has looked to every source from which the court can gain the  
8 requisite insight to resolve it, *United States v. Bass*, 404 U.S. 336, 347, 30 L. Ed. 2d 488, 92  
9 S. Ct. 515 (1971) (quoting *United States v. Fisher*, 6 U.S. 358, 2 Cranch 358, 386, 2 L. Ed.  
10 304 (1805)), such as legislative history, purpose and/or acquiesce. An examination of the  
11 statutory language reveals legislative purpose that invalidates the rule of lenity's application  
12 to the instant case.

13       While statutory language alone supports classifying Defendants' commodity as  
14 marijuana, there is additional support therefor. The State elicited Grand Jury testimony that  
15 confirms the Defendants' represented their product to be chemically equivalent to and/or  
16 stronger than marijuana. Specifically, Defendant Garcia told confidential informant Soto that  
17 his THC-sprayed hemp would be "even stronger than marijuana". *Tr. of Grand Jury, The State*  
18 *of Nevada v. Najera, Garcia, and Madrigal*, No. C356361 at 35:12 (Nev. 8th Jud. Dist., 2020).  
19 This representation is sufficient evidence to support the charge of trafficking in controlled  
20 substance because while a trial requires the State to prove beyond a reasonable doubt that the  
21 substance sold was in fact marijuana, a defendant's representation alone that he is selling  
22 marijuana is sufficient to satisfy the probable cause standard the State must satisfy before a  
23 grand jury. *Glosen v. Sheriff*, 85 Nev. 145, 451 P.2d 841 (1969).

24       **c. Circumstantial Evidence Properly Established Trafficking in Controlled**  
25       **Substance and Conspiracy to Violate the UCSA**

26       Convictions based on circumstantial evidence have been and are routinely upheld in  
27 Nevada. *See Gibson v. State*, 96 Nev. 48, 50 (1980); *Merryman v. State*, 95 Nev. 648, 649  
28 (1979); *Dutton v. State*, 94 Nev. 567, 568 (1978); *Edwards v. State*, 90 Nev. 255, 258 (1974);

1 *Goldsmith v. Sheriff*, 85 Nev. 295, 304 (1969). Circumstantial evidence is therefore sufficient  
2 to satisfy the lower standard of probable cause. *Howard v. Sheriff*, 93 Nev. 30, 559 P.2d 827  
3 (1977). The State elicited Grand Jury testimony of the following: (1) video depicting all  
4 Defendants arriving contemporaneously at the warehouse to engage in discussion and a survey  
5 of the land; (2) the proper search of the Mesquite warehouse led to the recovery of several  
6 bags of hemp, sprayed marijuana, and a production/processing set-up consisting of a jar of  
7 THC oil, a spray gun, and turkey bags for packaging narcotics; (3) Defendant Garcia was on  
8 the premises during the search of the Mesquite warehouse; (4) all Defendants participated in  
9 text message exchanges regarding their procurement of substances used in their illegal  
10 production of marijuana; and (5) recovery of a long-sleeved shirt and pair of shoes from  
11 Defendant Madrigal's residence that matched the shirt and shoes depicted in a photo of a hand  
12 spraying hemp. *Tr. of Grand Jury, The State of Nevada v. Najera, Garcia, and Madrigal*, No.  
13 C356361 at 21:5-15 (Nev. 8th Jud. Dist., 2020); *Tr. of Grand Jury, The State of Nevada v.*  
14 *Najera, Garcia, and Madrigal*, No. C356361 at 14:4-11 (Nev. 8th Jud. Dist., 2020); *Tr. of*  
15 *Grand Jury, The State of Nevada v. Najera, Garcia, and Madrigal*, No. C356361 at 13:5-9  
16 (Nev. 8th Jud. Dist., 2021); *Tr. of Grand Jury, The State of Nevada v. Najera, Garcia, and*  
17 *Madrigal*, No. C356361 at 26:11 (Nev. 8th Jud. Dist., 2021); *Tr. of Grand Jury, The State of*  
18 *Nevada v. Najera, Garcia, and Madrigal*, No. C356361 at 19:7-21 (Nev. 8th Jud. Dist., 2021).  
19 Defendants' interactions with one another in conjunction with their synchronized arrival in  
20 and tour of the warehouse permits the reasonable inference that Defendants' possessed the  
21 controlled substances contained therein. The direct evidence of the controlled substances'  
22 quantity supports the charge of trafficking in controlled substance. Finally, the consideration  
23 of reasonably inferred possession with direct evidence of the controlled substances' quantity  
24 allows for the reasonable inference that Defendants were acting in concert consistent with their  
25 conspiracy to violate the UCSA.

26 **d. Circumstantial Evidence Properly Established Constructive Possession**

27 Defendant's petition reflects misapprehension of the *Glispey v. Sheriff, Carson City*  
28 holding resulting from an improperly truncated citation thereto. 89 Nev. 221, 510 P.2d 623

1 (1973). First, in instructing on simple possession *Glispey* provides “For instance,  
2 possession may be imputed when the contraband is found in a location which is immediately  
3 and exclusively accessible to the accused and subject to her dominion and control”. *Id.* at 624.  
4 Again relying on the Nevada Supreme Court’s reverence of the statutory interpretation canon  
5 that preserves linguistic value, inclusion of the phrase “for instance” in conjunction with the  
6 word “may” clarifies that this is a discretionary sentiment; the Court is identifying one of  
7 potentially numerous means by which possession may be imputed. Mandatory language is  
8 evident in the dictate “The accused has constructive possession only if she maintains control  
9 or a right to control the contraband”. *Id.* It is this citation that restricts the determination of  
10 constructive possession. In the first part of the Grand Jury proceedings the State established  
11 Defendant Najera’s “residence” was located at 1445 Stone Lake. *Tr. of Grand Jury, The State*  
12 *of Nevada v. Najera, Garcia, and Madrigal*, No. C356361 at 13:9-13 (Nev. 8th Jud. Dist.,  
13 2020). The State further established Defendant Najera’s ownership of the residence by  
14 describing a safe located in the apartment that contained a US passport and driver’s license in  
15 Defendant Najera’s name. *Tr. of Grand Jury, The State of Nevada v. Najera, Garcia, and*  
16 *Madrigal*, No. C356361 at 70:1-2 (Nev. 8th Jud. Dist., 2021). This testimony coupled with the  
17 absence of any evidence to belie the contention constitutes circumstantial evidence that allows  
18 for the inference that Defendant Najera maintained control of his residence. The inference of  
19 Defendant Najera’s control of his residence establishes he had constructive possession of the  
20 ODV positive cocaine because the State may present circumstantial evidence from which  
21 “...the jury may draw reasonable inferences.” *Kinsey v. Sheriff*, 87 Nev. 361, 363, 487 P.2d  
22 340, 341 (1971).

23 Second Defendant’s argument ostensibly challenging the insubstantiality of evidence  
24 to support constructive possession is premised on authorities that are unanalogous to the instant  
25 case. *Glipsey* and *Miller v. Sheriff, Carson City* involve the disputed possession of narcotics  
26 recovered from a searched area that was designed to be and provably was accessible to multiple  
27 parties. 95 Nev. 255, 592 P.2d 952 (1979). The State’s introduction of official documents in  
28 Defendant Najera’s name was sufficient to allow for a reasonable inference that Defendant

1 Najera was the sole occupant of the residence. A sole occupant necessarily bears ownership of  
2 and/or dominion over his residence. A defendant's sole ownership of or dominion over a  
3 searched premises establishes a rebuttable presumption of the defendant's constructive  
4 possession of contraband recovered from said premises. *United States v. Kincaide*, 145 F.3d  
5 771, 782 (6th Cir. 1998); *United States v. Molina*, 443 F.3d 824, 829 (11th Cir. 2006); *United*  
6 *States v. Bustamante*, 493 F.3d 879, 889 (7th Cir. 2007), citing *United States v. Kitchen*, 57  
7 F.3d 516, 521 (7th Cir. 1995); *United States v. Brannon*, 218 F. App'x 533, 536 (7th Cir. 2007);  
8 *United States v. Wright*, 739 F.3d 1160, 1168 (8th Cir. 2014). The proper forum to rebut this  
9 presumption is a trial not a writ of *habeas corpus*.

10 Defendant Najera also claims that cocaine is a Schedule II offense. Defendant is  
11 incorrect. Under NRS 453.510 (1) and NRS 453.510 (8), free base cocaine (powder and crack)  
12 is a Schedule I controlled substance. Defendant is incorrect. Finally, Defendant's petition  
13 takes issue with the State's failure to disprove the possibility that Defendant Najera shared his  
14 residence with other persons. The State presented its theory of possession to the Grand Jury.  
15 The burden of refuting the State's theory or proving alternate theories of possession rests with  
16 the defense at trial because "the State need not negate all inferences which might explain away  
17 the criminal conduct but need only present enough evidence to support a reasonable inference  
18 that the accused committed the offense." *Kinsey* at 341; *Sheriff v. Milton*, 109 Nev. 412, 414,  
19 851 P.2d 417, 418 (1993). Defendant's pre-trial petition constitutes a thinly veiled attempt to  
20 ask the Court to preliminarily adjudicate factual disputes that may arise during trial. Such a  
21 request is contrary to the provinces of a Grand Jury and a petition for writ of *habeas corpus*.  
22 Defendant may appeal a conviction under the relevant statutes if Defendant continues to  
23 contend that his conduct does not contravene the relevant statutes' provisions. Presently there  
24 is no basis for the Defendant's Petition because the State presented the slight or marginal  
25 evidence required to sustain every charge contained in the Grand Jury indictment.

26 //

27 //

28 //

1 CONCLUSION

2 Based upon the foregoing, the State respectfully requests that Defendant's petition be  
3 denied and the writ discharged.

4 DATED this 3rd day of November, 2021.

5 Respectfully submitted,

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

9 BY /s/ Tina Talim  
10 TINA TALIM  
11 Chief Deputy District Attorney  
12 Nevada Bar #009286

13 CERTIFICATE OF ELECTRONIC TRANSMISSION

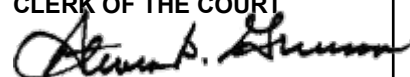
14 I hereby certify that service of the above and foregoing was made this 3rd day of  
15 November, 2021, by electronic transmission to:

16 MICHAEL PARIENTE  
17 michael@parientelaw.com

18 BY /s/ E. Del Padre  
19 E. DEL PADRE  
20 Secretary for the District Attorney's Office  
21  
22  
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24  
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28 TT/ed/HIDTA





**REP**

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**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

vs.

JESUS NAJERA,

Defendant.

Case No: **C-21-356361-1**

Dept No: **17**

**REPLY TO STATE'S RETURN TO NAJERA'S PETITION FOR  
WRIT OF HABEAS CORPUS**

COMES NOW Defendant, JESUS NAJERA, by and through his attorneys of record, MICHAEL D. PARIENTE with JOHN G. WATKINS, of counsel, and files this Reply to the State's Return to his Petition for Writ of Habeas Corpus pursuant to NRS 34.724.

DATED this 28<sup>th</sup> day of December 2021.



MICHAEL D. PARIENTE, ESQ.

Nevada Bar No.: 9469

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Attorneys for Defendant Najera

## **THE STATE'S ADMISSIONS AND CONFESSIONS OF ERROR**

The State admits in Paragraph F of its Return that it failed to explain any elements of the proposed counts to the grand jury. The State's failure is a violation of NRS 172.095(2), requiring dismissal of the indictment. The State's admission to this egregious error warrants the granting of Najera's Petition for Writ of Habeas Corpus.

The State never responded to Najera's contention that the grand jury was not admonished of his constitutional right to remain silent compelled by the statutory mandate NRS 172.095(1)(d); "Inform the grand jurors that the failure of a person to exercise the right to testify as provided in NRS 172.241 must not be considered in their decision of whether or not to return an indictment."

## **SUMMARY OF NAJERA'S REPLY**

**A. COUNT 4, TRAFFICKING IN CONTROLLED SUBSTANCE IS IMPERMISSIBLE BECAUSE THE GRAND JURY WAS NOT TOLD THAT THAT LVMPD IMPROPERLY WEIGHED 81.23 POUNDS OF HEMP SPRAYED WITH THC OIL WHICH SHOULD NOT HAVE BEEN WEIGHED IN DETERMINING THE WEIGHT OF MARIJUANA IN VIOLATION OF NRS 453.096 AND *SESSIONS V.***

1           **STATE, 106 NEV. 186 (2017).**

2           **B. COUNT 5, TRAFFICKING IN CONTROLLED SUBSTANCE IS**  
3           **IMPERMISSIBLE BECAUSE THE STATE PRESENTED NO**  
4           **EVIDENCE TO THE GRAND JURY THAT THE THC CAME FROM**  
5           **MARIJUANA AS DEFINED IN SECTION 1 OF NRS 453.906.**

6           **C. THE STATE FAILED TO INSTRUCT THE GRAND JURY ON THE**  
7           **LEGAL MEANING OF “CONCENTRATED CANNABIS”, A**  
8           **VIOLATION OF NRS 172.095(2). ALSO, THE STATE**  
9           **WRONGFULLY COMMINGLED THE ELEMENT**  
10           **“CONCENTRATED CANNABIS WITH “THC” (CHAPTER 453A)**  
11           **ANOTHER VIOLATION OF NRS 172.095(2).**

12           **D. THE STATE’S RETURN ADMITS THAT THE STATE DID NOT**  
13           **INFORM THE GRAND JURY OF THE SPECIFIC ELEMENTS OF**  
14           **THE PUBLIC OFFENSES, A VIOLATION OF NRS 172.095(2).**

15           **E. BURNS’ DECLARATION WAS INADMISSIBLE FOR**  
16           **NONCOMPLIANCE WITH NRS 50.320.**

17           **PETITIONER NAJERA’S SPECIFIC RESPONSES TO THE STATE’S**  
18           **RETURN**

19           *Lay v. State*, 110 Nev. 1189, 1198, 886 P.2d 448, 454 (1994), is  
20           inapposite. The State cherry picks language from *Lay, supra*, and implies  
21           that Najera can only have the counts in his indictment dismissed if he shows  
22           governmental misconduct. *State’s Return*, p. 6, ll. 26-28. This is not true,  
23           and the State knows it. Najera lays out all the different ways the State  
24           committed errors before the grand jury warranting the granting of his  
25           petition for writ of habeas corpus and the dismissal of the indictment  
26           petition for writ of habeas corpus and the dismissal of the indictment  
27           petition for writ of habeas corpus and the dismissal of the indictment  
28           petition for writ of habeas corpus and the dismissal of the indictment

1 against him. Najera can and should prevail under NRS 34.500(3) & (7).  
2 Under these two sections, prejudice is not a factor even though Najera was  
3 prejudiced by the State's failure to comply with the law before the grand  
4 jury.  
5

6 The *Lay* case, relied upon by the State, involved the testimony of  
7 witnesses who before the grand jury could not identify the defendant but  
8 at trial were able to identify the defendant. This is not the issue here as  
9 Najera has not alleged any of the State's witnesses didn't identify him  
10 before the grand jury.  
11

12 The State cites *Sheriff, Washoe Cty. v. Hodes*, 96 Nev. 184, 186, 606  
13 P.2d 178, 180 (1980) for the proposition that all it needs to do is present  
14 "slight or even marginal" evidence. *State's Return*, p. 7, ln. 3. "The sole  
15 function of this court is to determine whether *all* of the evidence received  
16 at the grand jury proceeding establishes probable cause to believe that an  
17 offense has been committed and that the defendants committed it." *State*  
18 *v. von Brincken*, 86 Nev. 769, 476 P.2d 733 (1970). *Sheriff, Washoe Cty. v.*  
19 *Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). The problem for the  
20 State is that it doesn't present *any* evidence on a number of counts to  
21 support the individual counts against Najera.  
22  
23  
24  
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26  
27

28 Under its "Argument" heading, the State pulls language out of thin

air untethered to any statute or case law suggesting it may abdicate its duty to follow its duty under 172.095 by suggesting “(1) whether any alleged procedural error was sufficient to allow for a reasonably probability that the Grand Jury would not have indicted on any or all of the counts charged absent the error; and (2) whether any count charged is unsupported by probable cause.” *State’s Return*, p. 7, ll. 10-12. It’s conclusory statement that “all counts charged are supported by probable cause” is not true because the State failed, for example, to define “concentrated cannabis.” *Clay* controls: The State has a duty to comply with NRS 172.095.

Because the failure to instruct the grand jury on the statutory definition of “physical injury” likely caused the grand jury to return an indictment on count one ***based on less than probable cause, the violation of NRS 172.095(2) requires dismissal of that count.***

*Clay v. Eighth Jud. Dist. Ct.*, 129 Nev. 445, 458, 305 P.3d 898, 906–07 (2013).(italics and boldness added.)

Under Section I, the State urges this Court to ignore the plain meaning of NRS 172.095(2). NRS 172.095(2) is clear on its face.

When interpreting a statute, legislative intent “is the controlling factor.” *Robert E. v. Justice Court*, 99 Nev. 443, 445, 664 P.2d 957, 959 (1983). The starting point for determining legislative intent is the statute's plain meaning; when a statute “is clear on its face, a court cannot go beyond the statute in determining legislative

intent.” *Id.*; see also *Catania*, 120 Nev. at 1033, 102 P.3d at 590 (“We must attribute the plain meaning to a statute that is not ambiguous.”).

*State v. Lucero*, 127 Nev. 92, 95, 249 P.3d 1226, 1228 (2011)

The State’s reliance on a New York case is meaningless and a desperate attempt to distract this Court from focusing on Nevada’s statute NRS 172.095(2).

Curiously, the State cites *Clay v. Eighth Judicial Dist. Court*, 129 Nev. 445, 453, 305 P.3d 898, 904 (2013) with an utterly fanciful interpretation of this case. *Clay*, as discussed earlier in Najera’s reply brief, involved a defendant who was charged with child abuse and neglect. The State in *Clay* didn’t instruct the Grand Jury of the definition of “physical injury”. The Nevada Supreme Court granted the Petition for Writ of Habeas Corpus and dismissed the indictment for this reason. This is exactly what this Court should do here is follow the Nevada Supreme Court’s holding in *Clay* because the State didn’t define “concentrated cannabis” nor the “Uniform Controlled Substances Act.” In *Clay*, which Najera repeats here, the State failed to provide definitions to the Grand Jury of “physical injury”:

Because the failure to instruct the grand jury on the statutory definition of “physical injury” likely caused the grand jury to return an indictment on count one based on less than probable cause, the

violation of NRS 172.095(2) requires dismissal of that count.

*Clay v. Eighth Jud. Dist. Ct.*, 129 Nev. 445, 458, 305 P.3d 898, 906–07 (2013).

The Court in *Clay, supra, citing People v. Calbred, inc.*, 402 N.E. 2d 1140, 1144 (N.Y. 1980) noted, “it may fairly be said that the integrity of [the grand jury] has been impaired” “[w]hen the District Attorney’s instructions to the Grand Jury are so incomplete or **misleading** as to substantially undermined [its] essential function.” *Id.*, 129 Nev. at 445 (emphasis added.) To be “informed,” the grand jury must not only know the facts but the law as well.

The duty to make sure that the grand jurors know the law falls upon the district attorney. NRS 172.095(2) mandates “[b]efore seeking an indictment, or a series of indictments, the district attorney **shall inform** the grand jurors of the specific elements of any public offense which they may consider as the basis of the indictment or indictments.”<sup>1</sup> (emphasis added.) *Clay* noted that the adoption of NRS 172.095(2) “was intended to add an element of fairness to grand jury proceedings by providing instruction in complex cases so that lay persons with no background in the

---

1. Unless the prosecutor’s duties are strictly enforced, the prosecutor becomes nothing less than “the fox guarding the henhouse.”

law would know what to look for from witnesses appearing before them.”  
Id., 129 Nev. 455-456.

The Nevada Supreme Court reversed the district court’s denial of Clay’s petition for writ of habeas corpus and entered an order granting it and thus dismissing the indictment. The same rule applies in Najera’s case. The State *admits* in its brief it didn’t provide these definitions such as “concentrated cannabis” and the “Uniform Controlled Substances Act” and therefore this Court should follow *Clay* and grant Najera’s Petition for Writ of Habeas Corpus because the failure to instruct the grand jury on the statutory definitions of “concentrated cannabis”, and the “Uniform Control Substances Act” “likely caused the grand jury to return an indictment on count one based on less than probable cause, the violation of NRS 172.095(2) requires dismissal of that count.” *Clay*, Id.

The State is incorrect that the Grand Jury instructions don’t contain a commingling of the element “THC” with “concentrated cannabis”. The State just doesn’t get it the big picture – they failed to define “concentrated cannabis” in violation of NRS 179.095(2). How was the Grand Jury to know what is concentrated cannabis without the State telling them as is their duty to comply with NRS 172.095(2)? The State didn’t do their job here just as they didn’t in *Clay, supra*, resulting in the indictment being



dismissed. This “sufficiency of the indictment” argument is nonsensical since *Clay* is controlling. The State failed to instruct the Grand Jury of the definition of “concentrated cannabis” and “the Uniform Controlled Substances Act” in Najera’s case just as it failed to instruct the Grand Jury of the definition of “physical injury” in *Clay, supra*. The result in *Clay* was a dismissal of the indictment and the result here must be a dismissal of the indictment. The State is asking this Court to ignore *Clay* and reward their sloppiness and complete abdication of their duty under NRS 179.05(2) by failing to instruct the Grand Jury of the definition of “concentrated cannabis” and the “Uniform Controlled Substances Act”.

The State goes off on a red herring citing *Laney v. State*, 86 Nev. 173, 178, 466 P.2d 666, 660 (1970) (citing *Clay v. United States*, 326 F.2d 196 (10<sup>th</sup> Cir. 1963)). Nothing in *Laney* says the State doesn’t have to comply with NRS 172.095. That case is also inapplicable because the defendant Laney never challenged the indictment until *after* the conviction. Najera is properly challenging the validity of the indictment with the timely filing of his Petition for Writ of Habeas Corpus. Moreover, *Laney* does not give the District Attorney a “pass” to ignore its duty under NRS 172.095, and

specifically NRS 172.095(2).<sup>2</sup>

The State already admitted they failed to explain *any* elements of the counts to the Grand Jury. “4. Admit.” *State’s Return*, p. 2, ln. 5. The District Attorney failed to comply with NRS 172.095(2). The result must be a dismissal of the counts 4-6, and 8 alone. Again, NRS 172.095(2) is clear on its face:

2. Before seeking an indictment, or a series of similar indictments, the *district attorney shall inform the grand jurors of the specific elements* of any public offense which they may consider as the basis of the indictment or indictments.

---

**2 NRS 172.095 Charges to be given to grand jury by court; district attorney to inform grand jury of specific elements of public offense considered as basis of indictment.**

1. The grand jury being impaneled and sworn, must be charged by the court. In doing so, the court shall:

(a) Give the grand jurors such information as is required by law and any other information it deems proper regarding their duties and any charges for public offenses returned to the court or likely to come before the grand jury.

(b) Inform the grand jurors of the provisions of NRS 172.245 and the penalties for its violation.

(c) Give each regular and alternate grand juror a copy of the charges.

(d) Inform the grand jurors that the failure of a person to exercise the right to testify as provided in NRS 172.241 must not be considered in their decision of whether or not to return an indictment.

***2. Before seeking an indictment, or a series of similar indictments, the district attorney shall inform the grand jurors of the specific elements of any public offense which they may consider as the basis of the indictment or indictments.***

(Added to NRS by 1967, 1408; A 1985, 554, 1028) (boldness and italics added).

1 NRS 172.095(2)(italics and boldness added).

2 **The Detective's confusing, misleading, contradictory, and**  
3 **inaccurate testimony.**  
4

5 The State admits the Detective gave conflicting and incorrect  
6 testimony of the statutory limits for THC in hemp. *State's Return*, p. 8, ll.  
7 22-23. The State's unfounded reasoning is that because the Detective  
8 testified three times correctly that the level is .3 and one time incorrectly  
9 the level is .03 that it shouldn't matter. What? Is there a scale or ratio of  
10 the number of times incorrect conflicting testimony is permissible? How  
11 do we know the jurors who heard the incorrect level didn't rely on that in  
12 their deliberations? The State cites no case law in support of its "some of  
13 our testimony was inaccurate and contradictory, but that's okay"  
14 argument and that this is somehow permissible. Oddly, the State relies on  
15 *Standen v. State*, 101 Nev. 724, 727, 710 P.2d 718, 719 (1985), but this  
16 case has nothing to do with indictments, grand jury testimony or grand  
17 jury instructions. *Standen, supra*, is about a jury instruction given by a  
18 judge during a murder conviction trial, not a grand jury proceeding. The  
19 State's citation to *Bolden v. State*, 97 Nev. 71, 624 p.2d 20 (1981); and  
20 *Mercado v. State*, 100 Nev. 535, 539, 688 P.2d 305, 308 (1984), are  
21 inapposite. *Bolden*, an opinion not even a half page in length, has nothing

to do with grand jury proceedings or grand jury instructions. It's an appeal from a criminal judgment of conviction:

A jury convicted Rudy Bolden of robbery. He seeks reversal on the sole ground that the evidence presented at his trial did not support the jury's verdict. We disagree and affirm Bolden's judgment of conviction.

*Bolden v. State*, 97 Nev. 71, 72, 624 P.2d 20, 20 (1981)fearfear

The State's reliance on *Mercado, supra*, is equally puzzling. *Mercado* was an appeal from a jury trial that had nothing to do with evidence presented to the grand jury. The State's attempt to conflate an indictment and a guilty verdict is nonsensical and disingenuous. Najera's writ has nothing to do with a jury verdict because he hasn't even been tried for the crimes for which he is charged. Comparing grand jury indictments to jury guilty verdicts is akin to comparing apples to oranges.

The State argues that Najera provides no evidence that the grand jury considered the misstatement of the .03 level given by the testifying detective. This is disingenuous. Najera is only provided with the transcript and there is no way for Najera to prove which jurors were confused by the *State's* confusing, inaccurate, and conflicting testimony. The grand jury is the State's entity to present legal evidence and seek valid indictments. Najera does not control the grand jury – it is the State

that does.

The grand jury is the bulwark between the accused and the accuser. *State v. Babayon*, 106 Nev. 155, 170, 787 P.2d 805 (1990). The record must indicate that the grand jury acted as an **informed** body throughout the entire course of the proceedings. *Id.*, 106 Nev. at 170. To be informed, the grand jury must know the facts and the law. The duty to make sure that the grand jury is informed of the law falls upon the district attorney.<sup>3</sup> NRS 172.095(2) mandates,

Before seeking an indictment, or a series of a similar indictments, the district attorney **shall** inform the grand jurors of the **specific elements** of any public offense which they may consider as the basis of the indictment or indictments.

(emphasis added.)

The prosecution failed to inform the grand jury on the law, failed to correct the grand jury as to the detective's conflicting and inaccurate testimony, thereby failing to fulfill its legal obligations under NRS 172.095(2).

The Court in *Babayon*, *supra* stated,

It is incumbent on prosecutors who make presentations before grand juries to be adequately informed of the facts and to **have conducted**

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<sup>3</sup> The prosecutor also has the duty to present the facts in compliance with NRS 172.135.

**sufficient legal research to enable them to properly inform the grand jury on the law** and to assist it in its investigation.

106 Nev. at 170. (cites omitted.) (emphasis added.)

Here, the State failed to conduct sufficient research to properly inform the grand jury on the law. Had they done so, they would have known the corrected detective's inaccurate, confusing, and contradictory testimony.

The State incorrectly implies Najera is named in counts 1-7 of the indictment. *State's Return*, P.9, ln. 15. Najera is only named in counts 4-6 and count 8 of the indictment. Finally, the State's sweeping and inaccurate assertion that "that Defendant(s): (1) produced and/or processed the controlled substance" – that's not true. It was hemp which was weighed, and hemp is *not* marijuana. The State alleges Tetrahydrocannabinol, but doesn't define it in violation of NRS 172.095(2). The State references Count 6 where it alleges the Defendants violated the Uniform Controlled Substances Act (USCA) and the grand jury found they violated this, but how could the grand jury find the defendants violated the USCA when the State never told the grand jury what is the USCA? Again, the State had the duty under NRS 172.095(2) to explain what the USCA is to the grand jury, but they didn't, and thus violated their duty

under NRS 172.095(2).

Again, the State is grasping at proverbial straws in a desperate and disingenuous effort to distract this Court from focusing on the egregious errors it committed in front of the Grand Jury that violate Nevada Supreme Court precedent and NRS 172.095.

Adding insult to injury, the State boldly claims, “There are consequently no grounds to suggest the posited speculation of grand jurors ever transpired, let alone prejudiced the Defendants.” How can the State claim this is true when the State failed under NRS 172.095(2) to properly define so many key terms for the grand jury? The massive train wreck that has become this botched grand jury charade is the fault of the State, and the State should not be rewarded for its extreme sloppiness and abdication of its duties under NRS 172.095.

**The Burns’ declaration.**

The State claims, “The failure to specify which controlled substances(s) for which Kelly Burns is an expert would not arouse this fear” – fear being results the State suggests such as the revocation of drivers’ licenses based on a lay-person’s affidavit. Where is the case law in of this flimsy, general statement that the affidavit or declaration need not be specific? Where are the statutes they rely on that the failure to specify

1 which controlled substances would not “arouse this fear”? They have  
2 neither because they have resorted to just “making it up” as they go along.

3  
4 The State’s attempt to distinguish *Valenti* as not controlling law for  
5 grand jury proceedings lacks merit. The requirements for admissibility of  
6 an affidavit/declaration under NRS 50.320 applies to “any administrative  
7 proceeding, preliminary hearing or hearing before a grand jury.” *Valenti’s*  
8 holding is not limited to administrative proceedings as erroneously urged  
9 by the State. It is more important that NRS 50.320 applies to grand jury  
10 hearings, because unlike administrative proceedings and preliminary  
11 hearings, a “target” before the grand jury has no right to cross-examine  
12 witnesses at grand jury hearings.  
13  
14  
15  
16

17 Rules of evidence apply in grand jury proceedings – NRS 172.136(2)  
18 mandates, “[t]he grand jury can receive *none but legal evidence*, and the  
19 best evidence in degree, to *the exclusion of hearsay* or secondary  
20 evidence.” The State has not shown the Burns’ declaration is admissible. If  
21 it’s not admissible, it is inadmissible hearsay with no chemical results  
22 admissible to be considered by the grand jury.  
23  
24

25 The State’s reliance on *Gordon v. Ponticello*, 110 Nev. 1015, 1019, 879  
26 P.2d 741, 744 (1994) has no relevance to the issue Najera complains –  
27 whether the State violated the rule against hearsay by submitting an  
28



inadmissible declaration in violation of *Valenti* and in violation of NRS 50.320. The State has not shown the declaration is admissible and this Court should grant the Petition for Writ of Habeas Corpus.

**The State continues with “making it up” as they go along claiming it is allowed to ask leading questions *ad nauseum* to grand jury witnesses.**

The State advances yet another bizarre argument arguing that it is free to submit leading questions to grand jury witnesses. Sadly for the State, this is not the law.

The presentation of evidence before the grand jury is controlled by law. NRS 172.135(1) states in pertinent part,

In the investigation of a charge, for the purpose of either presentment or indictment, the grand jury can receive no other evidence **than such as is given by witnesses** produced and sworn before them... (emphasis added).

NRS 172.135(1) prohibits the State from presenting evidence through leading questions. *See also*, NRS 50.115(3)(a) (Leading questions are generally impermissible on direct examination “without permission of the court.”)

The Court in *Leonard v. State*, 117 Nev. 53, 70, 17 P.3d 397 (2001) addressed leading questions stating,

“When we speak of substantial evidence we refer to something which has probative force. **Evidence in ‘parrot fashion’ by leading questions resolves itself into submitting to a court, indirectly by oath of a witness the data and information in the mind of the attorney.** Such information thus received could scarcely be elevated to the dignity of a factual foundation and be characterized as substantial evidence.” *Canepa v. Dunham*, 65 Nev. 428, 456 (dissent)(Nev. 1949). “It is sometimes discretionary to allow leading questions on the direct examination when it appears that the witness is unable to understand otherwise, as well as when he is hostile.” *State v. Williams*, 31 Nev. 360, 367 (Nev. 1909).

(emphasis added.)

“NRS 172.135(2) provides that only ‘legal evidence,’ may be presented to the grand jury.” *Gathrite v. Eighth Judicial District Court*, 135 Nev. 405, 406 (2019). (“‘Legal evidence’, for purposes of statute providing that only legal evidence may be presented to the grand jury means evidence that is admissible under the law. NRS 172.135(2)” *Id.*, HN 6.

The Court in *Gathrite, supra*, could not have been clearer that *only admissible evidence* may be received by the grand jury.

At the time NRS 172.135 was enacted, *Black's Law Dictionary* defined “legal” as “required or permitted by law; not forbidden or discountenanced by law; good and effectual in law” or “[p]roper or sufficient to be recognized by law; cognizable in the courts.” *Legal, Black's Law Dictionary* (4th ed. 1951). *Black's Law* further defined “legal evidence” as “all admissible evidence,” *Legal Evidence, id.*, and “admissible evidence” as evidence

that “is of such a character that the court or judge is bound to receive it; that is, allow it to be introduced,” *Admissible, id.* Putting these definitions together, we conclude that “legal evidence” as used in NRS 172.135(2) means evidence that is admissible under the law. *Accord Mott v. Superior Court*, 226 Cal.App.2d 617, 38 Cal. Rptr. 247, 248 (1964) (explaining that under a California statute that provided “none but legal evidence” may be presented to a grand jury, “a grand jury may receive only the same type of evidence which a court of law may entertain, i.e. legally competent evidence”); *see also* Sara S. Beale et al., *Grand Jury Law and Practice* § 4:21 (2d ed. 2018) (“Although there are generally no cases interpreting these provisions [that use the term ‘legal evidence’ in describing the evidence that a grand jury may consider], the general intent appears to be to require legally admissible evidence.”). That understanding of “legal evidence” also finds support in the rest of NRS 172.135(2), which excludes “hearsay or secondary evidence” from a grand jury proceeding.<sup>3</sup> *See* Beale, *supra*, § 4:21 (“This inference [that ‘legal evidence’ means legally admissible evidence] is strongest in the case of the statutes that specifically prohibit the admission of hearsay or secondary evidence.”).

*Gathrite v. Eighth Jud. Dist. Ct. In & For Cty. of Clark*, 135 Nev. 405, 408, 451 P.3d 891, 894 (2019).

The State provides no caselaw or statutory support for its baseless position that it is free to ask leading questions to the Grand Jury.

**The State’s blanket assertion that all charges against Najera are supported by probable cause is laughable and contrary to established Nevada Supreme Court caselaw and statutory authority.**

The State ignores the law and appears to argue, in essence, it doesn't matter what mistakes they've made before the grand jury because the "full and complete exploration of all facets of the case" should be reserved for trial. *State's Return*, P. 11. ll. 15-17. This is not the law. The State cites *Marcum v. Sheriff*, 85 Nev. 175, 178, 451 P.2d 845, 847 (1969) as authority, but this case has *nothing* to do with grand jury proceedings. Rather, this case dealt held that a preliminary hearing was not the appropriate forum for cross-examination about alleged entrapment which the Court held is an affirmative defense to be raised at trial. The State wants this Court to believe Najera's complained of constitutional errors by the State in the grand jury somehow are "facets of the case" which should be reserved for trial. The State is once again wrong and is purposefully trying to confuse this Court with meaningless and irrelevant case law about jury trials rather than focusing on caselaw and statutes that relate directly to their grand jury improprieties. Why is the State attempting this obfuscation? Because the State knows that caselaw and statutes, such as NRS 172.095, are not in their favor.

The State boldly asks this Court to do away with the rule of lenity and asks this Court to focus on federal case law which is inapposite here.

1 States are permitted to provide more protection than their federal  
2 counterparts:

3 Although the Nevada Constitution and the United States  
4 Constitution contain similar search and seizure clauses, the  
5 United States Supreme Court has noted that states are free to  
6 interpret their own constitutional provisions as providing greater  
7 protections than analogous federal provisions.

8 *Osburn v. State*, 118 Nev. 323, 325–26, 44 P.3d 523, 525 (2002).

9 The State purposefully does not cite any Nevada case law related to  
10 the “rule of lenity” yet it asks this Court to disregard “rule of lenity”.  
11 Just because the some of the defendants are alleged to have claimed the  
12 hemp sprayed with a concocted oil-based marijuana turn this hemp in to  
13 some super marijuana does not make it so. By analogy, Najera is 5’5” tall.  
14 He can claim to be 6’5” tall, but a ruler would show he’s not. As a society,  
15 defendants are not prosecuted for puffery of the purity of their marijuana  
16 but rather what they scientifically possessed. Under the State’s logic, a  
17 defendant trafficking in powdered sugar that he’s falsely passing off as  
18 cocaine would be indicted for trafficking cocaine.  
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24 Nevertheless, hemp is not marijuana. The State emphasizes in the  
25 definitions of hemp it cites that THC is contained in hemp, but the THC  
26 level is not high enough for the hemp to be categorized by law as  
27 marijuana. Again, this is another red herring where the State is  
28

attempting to argue because the defendants misrepresented the hemp to be marijuana that this elevates hemp to marijuana. *Glosen v. Sheriff*, 85 Nev. 145, 451 P.2d 842 (1969) cited by the State is in not controlling because the defendants were representing hemp as marijuana - not marijuana as marijuana.

**The State is wrong that “Circumstantial Evidence Properly Established Trafficking in Controlled Substance and Conspiracy to Violate UCSA.”**

The State makes the same unsupportable argument that a criminal conviction obviates the need for the State to comply with laws governing admissibility of evidence before the grand jury. The State repeatedly *ad nauseum* makes the inane argument that if a defendant is convicted with the higher standard of proof that this somehow satisfies the lower standard of probable cause. This is not so. The State doesn’t get a pass from complying with its duty under NRS 172.095(2) nor for example from its duty under *Clay, supra*, to give the grand jury the accurate definitions such as “concentrated cannabis” which they didn’t do. The State wants this Court to believe it can commit constitutional and statutory errors before the grand jury and but “all will be forgiven” if the defendant is convicted at trial since beyond a reasonable doubt is a higher standard

1 than probable cause. This is pure childlike, wishull fantasy thinking by  
2 the State and not reality.

3  
4 The State spends much of the State's Return, Page 14 arguing that  
5 the defendants were caught trafficking marijuana. Once again, the State  
6 and LVMPD weighed the *hemp, not the marijuana*. Hemp is *not*  
7 marijuana. The State remains *silent* on this issue in its Return because it  
8 knows LVMPD weighed bags of hemp, which under NRS 453.096(2),  
9 marijuana does not include hemp.

10  
11 **The State is incorrect that circumstantial evidence properly**  
12 **established constructive possession because no evidence was**  
13 **presented the alleged cocaine was found in a location which was**  
14 **immediately and exclusively accessible to Najera.**

15  
16 The State conveniently ignores the facts presented before the grand  
17 jury. The State never demonstrated actual or constructive possession of  
18 the cocaine found in Najera's residence because the State did not show  
19 Najera was the only person who had access to the residence. Moreover,  
20 the State never identified where the cocaine was found – specifically, no  
21 evidence was presented the alleged cocaine was immediately and  
22 exclusively accessible to Najera. The State references a safe containing  
23 some of Najera's possession, but the alleged cocaine was not found in the  
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safe. The record is unclear if the alleged cocaine was found in a common area, a guest's room, or even if it was found outside the house. The State's reliance on *Kinsey v. Sheriff*, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971) has no applicability here because *Kinsey* was shown to be the sole known occupant of the hotel room and the marijuana found was in a top drawer. In Najera's case, no testimony was presented that Najera was the sole known occupant of the home and no evidence was presented where the alleged cocaine was discovered. No evidence was presented to the grand jury that the alleged cocaine was found in a location which was *immediately and exclusively accessible* to Najera. The only testimony presented about the location of the alleged cocaine found as follows:

Q: Did in fact you recover items that you believed to be cocaine from Mr. Najera's residence?

A: Yes.

GJ, V-1, P.67. ll. 2-4.

This testimony is insufficient to show constructive possession because it fails to show the alleged cocaine was immediately and exclusively accessible to Najera.

The State submits that "official documents" in Najera's name was sufficient to allow for a reasonable inference that he was the sole occupant



1 of his residence, but the State cites no caselaw in support of its remarkable  
2 position. *State's Return*, P. 16, ln. 1. The State's reliance on the U.S.  
3 Sixth, Seventh, Eighth and Eleventh Circuits to argue that the State  
4 created a rebuttable presumption of constructive possession of alleged  
5 contraband is not controlling in Nevada and the State cites no Nevada  
6 caselaw in support of its position that constructive possession can be  
7 shown without testimony that the possessed item was immediately and  
8 exclusively to a defendant.

12 Possession may be actual or constructive. The accused has  
13 constructive possession only if she maintains control or a right to  
14 control the contraband. For instance, possession may be imputed  
15 when the contraband is found in a location which is ***immediately***  
16 ***and exclusively accessible*** to the accused and subject to her  
17 dominion and control.

19 *Glispey v. Sheriff, Carson City*, 89 Nev. 221, 223, 510 P.2d 623, 624  
20 (1973)(italics and boldness added).

22 The record is silent where the alleged cocaine is found and no  
23 evidence was presented that it was immediately and exclusively accessible  
24 to Najera. The State ignores this point and instead argues, "the State  
25 need not negate all inferences which might explain away the criminal  
26 conduct but need only present enough evidence to support a reasonable  
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inference that the accused committed the offense” but never addresses Najera’s point that the State failed to show the contraband was found in a location which is *immediately and exclusively accessible* to the accused *and* subject to his dominion and control. All the evidence presented as to the location of the alleged cocaine was that it was found at Najera’s residence but the grand jury was not told where it was found.

The State submitted no evidence that the cocaine found was in fact “free base cocaine” which would be a Schedule I controlled substance. But the State failed to present evidence that what was found was “free base cocaine”. Cocaine hydrochloride salt is a Schedule II substance under NAC 453.520(d). The State didn’t present evidence to the grand jury exactly what type of cocaine was found. Under U.S. DEA controlled substances, Cocaine is listed as a Schedule II substance.

### CONCLUSION

The State’s Return is replete with red herrings and numerous disingenuous positions not backed by controlling caselaw or statutory authority. By its own admission, the State admits to not complying with NRS 172.095(2) by not submitting any elements to the Grand Jury for its consideration. This fatal error in and of itself is enough for this Court to

1 grant Najera's Petition for Writ of Habeas Corpus.

2 Respectfully submitted,

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5 

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 28<sup>th</sup> day of December, 2021, that I electronically filed the foregoing Petition with the Clerk of the Court by using the electronic filing system.

The following participants in this case are registered electronic filing system users and will be served electronically:

Tina Talim – Chief Deputy District Attorney  
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Mayra Camarena, an  
employee  
of Pariente Law Firm, P.C.

1 **ORDR**

2 **DISTRICT COURT**  
3 **CLARK COUNTY, NEVADA**

4 STATE OF NEVADA,

5 Plaintiff(s),

6 vs.

7 JESUS NAJERA,

8 Defendant(s).

Case No.: C-21-356361-1  
Dept. No.: XIX

Hearing Date: March 2, 2023  
Hearing Time: 10:00 a.m.

9 **ORDER DENYING DEFENDANT JESUS NAJERA'S PETITION FOR WRIT OF**  
10 **HABEAS CORPUS**

11 The Court, having considered the pleadings and oral arguments in this case, enters this  
12 Order DENYING Defendant Jesus Najera's Petition for Writ of Habeas Corpus and makes the  
13 following Findings and Conclusions of Law:

14 A pre-trial habeas petition is designed for challenges on the basis of "alleged lack of  
15 probable cause" or "the court's right or jurisdiction to proceed to the trial of a criminal charge."  
16 NRS 34.700(1). In challenging the sufficiency of evidence for the issuance of an Indictment,  
17 NRS 172.155 states that "[t]he grand jury ought to find an indictment when all the evidence  
18 before them, taken together, establishes probable cause to believe that an offense has been  
19 committed and that the defendant has committed it." The United States Supreme Court has held  
20 that "[p]robable cause ... is not a high bar: It requires only the 'kind of 'fair probability' on  
21 which 'reasonable and prudent [people,] not legal technicians, act.'"  
22 *Kaley v. U.S.*, 571 U.S.  
23 320, 338, 134 S.Ct. 1090, 1103 (2014). A finding of probable cause "may be based on slight,  
24 even 'marginal' evidence ... because it does not involve a determination of the guilt or innocence  
25 of an accused." *Etcheverry v. State*, 107 Nev. 782, 785 n.2 (1991) (citing *Sheriff v. Hodes*, 96  
26 Nev. 184, 186 (1980)). Further, [t]he state need only present enough evidence to create a  
27 reasonable inference that the accused committed the offense with which he or she is charged."  
28 *State v. Boueri*, 99 Nev. 790, 795 (1983).

Petitioner argues invalidation of the Indictment on several different arguments and allegations of error. Each argument will be addressed by the Court herein.

**COUNT 4, TRAFFICKING IN CONTROLLED SUBSTANCE IS IMPERMISSIBLE BECAUSE THE GRAND JURY WAS NOT TOLD THAT THAT LVMPD IMPROPERLY WEIGHED 81.23 POUNDS OF HEMP SPRAYED WITH THC OIL WHICH SHOULD NOT HAVE BEEN WEIGHED IN DETERMINING THE WEIGHT OF MARIJUANA IN VIOLATION OF NRS 453.096 AND SESSIONS V. STATE, 106 NEV. 186 (2017).**

The Court DENIES the above argument set forth by Petitioner. The Court adopts the State's position and FINDS that the statutory language of NRS 453.096(1) and NRS 453.096(2) supports classifying Petitioner's commodity as marijuana under the facts of this case. The rule of lenity is inapplicable unless there is a "grievous ambiguity or uncertainty in the language and structure of the Act," *Huddleston v United States*, 415 U.S. 814, 831, 39 L. Ed. 2d 782, 94 S. Ct. 1262 (1974). This Court concludes that there is no "grievous ambiguity" between NRS 453.096(1) and NRS 453.096(2). Grand Jury testimony confirms that Defendants represented their product to be chemically equivalent to and/or stronger than marijuana. Specifically, Defendant Garcia told confidential informant, Soto, that the commodity would be "even stronger than marijuana." *Tr. Of Grand Jury, The State of Nevada v. Najera, Garcia and Madrigal*, No. C356361 at 35:12 (Nev. 8<sup>th</sup> Jud. Dist., 2020). Thus, the entire 81.23 pounds of hemp sprayed with THC oil was properly used in determining the weight of the marijuana violation under NRS 453.096.

**COUNT 5, TRAFFICKING IN CONTROLLED SUBSTANCE IS IMPERMISSIBLE BECAUSE THE STATE PRESENTED NO EVIDENCE TO THE GRAND JURY THAT THE THC CAME FROM MARIJUANA AS DEFINED IN SECTION 1 OF NRS 453.906; and**

**COUNT 8, POSSESSION OF A CONTROLLED SUBSTANCE, IS IMPERMISSIBLE AND MUST BE DISMISSED BECAUSE THE STATE HAS NOT DEMONSTRATED, EVEN BY SLIGHT OR MARGINAL EVIDENCE, THAT THE ALLEGED CONTROLLED SUBSTANCE WAS IN THE PETITIONER'S POSSESSION**

The Court DENIES the above arguments set forth by Petitioner. The State has satisfied its burden to establish trafficking in controlled substance by presenting sufficient evidence "to create a reasonable inference that the accused committed the offense with which he or she is

1 charged.” *State v. Boueri*, 99 Nev. 790, 795 (1983). In addition to scientific and statutory  
2 definitions, testimony confirmed that Petitioner represented their product as chemically  
3 equivalent to and/or stronger than marijuana. Circumstantial evidence properly established  
4 trafficking and conspiracy to violate the UCSA. Testimony showing Petitioners’ interactions  
5 with each other and the warehouse provided reasonable inference regarding the controlled  
6 substances therein. Direct evidence of the substances’ quantity supports trafficking.  
7 Circumstantial evidence properly established constructive possession. Petitioner misstates the  
8 *Glispey* holding. *Glispey v. Sheriff, Carson City*, 89 Nev. 221, 223, 510 P.2d 623, 624 (1973).  
9 The State established the location of Petitioner Najera’s “residence” and ownership of the  
10 residence, which allowed for the inference that Najera maintained control of that residence. This  
11 establishes constructive possession of the ODV positive cocaine. The cases cited by Petitioner  
12 are not analogous to the instant matter. Petitioner is incorrect in his claim that cocaine is a  
13 Schedule II offense, instead of Schedule I.  
14

15 **COUNT 5, TRAFFICKING IN CONTROLLED SUBSTANCE, SHOULD BE**  
16 **DISMISSED BECAUSE THE STATE FAILED TO DEFINE IN ITS INSTRUCTIONS**  
17 **“CONCENTRATED CANNABIS” AND WRONGFULLY COMMINGLED THE**  
18 **ELEMENT OF “CONCENTRATED CANNABIS” WITH “THC,” CHAPTER 453A**

19 **and**

20 **THE GRAND JURY INSTRUCTIONS ARE INCORRECT AND DO NOT DEFINE**  
21 **THE ELEMENTS OF COUNT 8, POSSESSION OF A CONTROLLED SUBSTANCE,**  
22 **AND DO NOT DEFINE OR EXPLAIN THE UNIFORM CONTROLLED SUBSTANCE**  
23 **ACT**

24 The Court DENIES the above arguments of Petitioner. The Court adopts the State’s  
25 position and FINDS Defendant’s assertion that the Grand Jury could not have been familiar with  
26 the Uniform Controlled Substances Act (UCSA) or the phrase “concentrated cannabis” is  
27 speculative, without support and substantiation that this specific jury lacked understanding, thus,  
28 providing no grounds for dismissal of the Indictment.

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**Crystal Eller**  
District Judge

Department Nineteen  
Las Vegas, NV 89155

1       **ALL COUNTS MUST BE DISMISSED BECAUSE THE RECORD IS SILENT AND**  
2       **DOES NOT SHOW THE GRAND JURY WAS ADMONISHED NOT TO CONSIDER**  
3       **NAJERA’S REFUSAL TO TESTIFY AGAINST HIM IN VIOLATION OF NRS**  
4       **172.095(1)(d)**

5       The Court DENIES Petitioner’s argument that the Grand Jury was not properly  
6       admonished, pursuant to NRS 172.095(1)(d), that Petitioner’s decision to not exercise his right  
7       to testify must not be considered in their decision to return an indictment. This Court considers  
8       any failure to issue the admonishment was harmless. Here, substantial, competent evidence was  
9       presented to the Grand Jury, establishing probable cause to indict. In light of the evidence and  
10      absent the error, the Grand Jury would still have indicted Petitioner. Thus, Petitioner was not  
11      prejudiced.

12       **THE PROSECUTOR FAILED TO EXPLAIN ANY ELEMENTS OF THE COUNTS**  
13       **TO THE GRAND JURY**

14      The Court DENIES the above arguments set forth by Petitioner. The Court adopts the  
15      State’s position and FINDS that although Nevada is one of several jurisdictions in which the  
16      prosecutor is required to instruct the Grand Jury on the elements of the crime, the Nevada  
17      Supreme Court has never defined the requirements of NRS 172.095(2). *Clay v. Eighth Judicial*  
18      *District Court of State* 129 Nev. 445, 453, 305 P.3d 898, 904 (2013). However, the New York  
19      test for a prosecutor’s compliance with this statute has been found consistent with the Nevada  
20      Legislator’s motivations for adopting NRS 172.095(2). *Id.* at 905. The prosecutor’s Grand Jury  
21      instructions are thus substantively incomplete or incorrect only if the instructions affected the  
22      Grand Jury proceedings, where the effect must be compromising the integrity of the Grand Jury.  
23      *People v. Ramos*, 223 A.D.2d 495, 637 N.Y.S.2d 93, 93-94 (App. Div. 1st Dept. 1996). “The  
24      Grand Jury’s integrity is compromised only when it returns an indictment based on less than  
25      probable cause” *Id.*

26      Here, Petitioner has not shown that any alleged shortcomings on behalf of the prosecution,  
27      whether regarding the Uniform Controlled Substances Act or the use of the term “concentrated  
28      cannabis,” actually affected the Grand Jury. Petitioner’s arguments amount to no more than  
speculation.



1       **MS. KELLY BURNS’ NRS 50.320 DECLARATION WAS INADMISSIBLE AT THE**  
2       **GRAND JURY PROCEEDING BECAUSE BURNS’ DECLARATION FAILS TO**  
3       **ESTABLISH THAT BURNS’ ALLEGED JANUARY 28, 2020, EIGHTH JUDICIAL**  
4       **DISTRICT COURT QUALIFICATION AS AN EXPERT WITNESS IS FOR**  
5       **MARIJUANA**

6       The Court DENIES the above arguments set forth by Petitioner. The Petition misstates the  
7       applicable law. Initially, the *Valenti* Court was concerned about permitting laypeople’s  
8       affidavits to carry the same evidentiary value as those of experts. *Valenti v. State, Dep’t of*  
9       *Motor Vehicles*, 131 Nev. 875, 362 P.3d 83 (2015). Here, the lack of specificity as to which  
10      the controlled substance Burns is an expert for, does not elicit the fear of improper evidentiary  
11      weighing, as articulated in *Valenti*. Further, *Valenti* only applies to hearings where the accused  
12      has the right to confront and examine their accusers. *Id.* Thus, its Confrontation Clause  
13      argument does not apply to Grand Jury proceedings.

14      **THE STATE ASKED IMPERMISSIBLE LEADING QUESTIONS OF KEY**  
15      **WITNESSES BEFORE THE GRAND JURY**

16      The Court DENIES the above arguments set forth by Petitioner. Neither statute nor  
17      precedent proscribe the State’s use of leading questions before a Grand Jury. Petitioner  
18      presents no legal authority preventing the use of leading questions. The U.S. Supreme Court  
19      has held that the grand jury process “generally is unrestrained by the technical procedural and  
20      evidentiary rules governing the conduct of criminal trials.” *United States v. Calandra*, 414 U.S.  
21      338, 343 (1974).

22      **THE DETECTIVE’S INCORRECT AND CONTRADICTORY TESTIMONY ABOUT**  
23      **THE MAXIMUM LIMIT OF “THC” LEVELS IN HEMP WAS CONFUSING TO**  
24      **THE GRAND JURY WHEREIN HE FIRST TESTIFIED IT WAS .3% AND THEN**  
25      **SUBSEQUENTLY TESTIFIED IT WAS .03%. THE STATE FAILED TO CORRECT**  
26      **THE EGREGIOUS ERROR AND ONCE AGAIN VIOLATED ITS DUTY UNDER**  
27      **NRS 172.095(2)**

28      The Court DENIES the above arguments set forth by Petitioner. Neither Det. Hefner’s  
misstatement nor the State’s failure to correct it was prejudicial. The Petition presents no  
evidence that the Grand Jury even considered the misstatement, let alone relied upon it.  
Petitioner has not substantiated his allegations.

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This Court FINDS probable cause existed for the Grand Jury to indict Petitioner Jesus Najera on all counts of the Indictment.

However, this Court recognizes it granted co-defendant Madrigal's Petition for Writ of Habeas Corpus which has resulted in the dismissal of Counts 4, 5, and 6 against all three co-defendants who are each named in Counts 4, 5, and 6, including the Petitioner herein, Jesus Najera.

**IT IS SO ORDERED.**

Dated this 7th day of April, 2023



**BA9 DFF 5C30 B5C2  
Crystal Eller  
District Court Judge**

**Crystal Eller**  
District Judge

Department Nineteen  
Las Vegas, NV 89155

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 State of Nevada

CASE NO: C-21-356361-1

7 vs

DEPT. NO. Department 19

8 Jesus Najera  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 4/7/2023

15 Michael Pariente

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17 Dept Law Clerk

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