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Electronically Filed  
Aug 19 2013 12:29 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

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**APPELLANT'S APPENDIX- VOLUME I – PAGES 001-249**

Attorney for Appellant

### Counsel for Respondent

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**BENNETT GRIMES**  
**Case No. 62835**

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FILED  
JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

1  
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3 THE STATE OF NEVADA,

4 Plaintiff,

5 -vs-

6 BENNETT GRIMES #2762267,

7 Defendant.

JUL 26 8 39 AM '11  
JUSTICE COURT  
LAS VEGAS, NEVADA  
BY RC DEPUTY

CASE NO: 11F13012X

DEPT NO: 4

CRIMINAL COMPLAINT

8  
9 The Defendant above named having committed the crimes of ATTEMPT MURDER  
10 WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.330,  
11 193.165), BURGLARY (Felony - NRS 205.060), and BATTERY WITH USE OF A  
12 DEADLY WEAPON CONSTITUTING DOMESTIC VIOLENCE (Felony - NRS 200.481;  
13 200.485; 33.018), in the manner following, to-wit: That the said Defendant, on or about the  
14 22nd day of July, 2011, at and within the County of Clark, State of Nevada,

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

16 did then and there, without authority of law, and malice aforethought, willfully and  
17 feloniously attempt to kill ANIKA GRIMES, a human being, by stabbing at and into the  
18 body of the said ANIKA GRIMES, with a deadly weapon, to-wit: a knife.

19 COUNT 2 - BURGLARY

20 did then and there wilfully, unlawfully, and feloniously enter, with intent to commit  
21 assault or battery and/or to commit substantial bodily harm and/or murder, that certain  
22 building occupied by ANIKA GRIMES, located at 4325 West Desert Inn, Las Vegas, Clark  
23 County, Nevada.

24 COUNT 3 - BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING  
25 DOMESTIC VIOLENCE

26 did then and there wilfully, unlawfully, and feloniously use force or violence upon  
27 the person of his spouse, former spouse, or any other person to whom he is related by blood  
28 or marriage, a person with whom he is or was actually residing, a person with whom he has

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1 had or is having a dating relationship, a person with whom he has a child in common, the  
2 minor child of any of those persons or his minor child, to-wit: ANIKA GRIMES, with use  
3 of a deadly weapon, to-wit: a knife, by stabbing at and into the body of the said ANIKA  
4 GRIMES with said knife.

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

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27 11F13012X/cas  
28 LVMPD EV# 1107223412  
(TK8)



NOTICE OF WITNESSES

[NRS 174.234]

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TO: Defendant or attorney of record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF  
NEVADA intends to call the following witnesses:

NAME

ADDRESS

CUSTODIAN OF RECORDS

Communication Bureau  
Law Enforcement Agency – Clark County, Nevada

These witnesses are in addition to those witnesses noted in the discovery or other  
documents provided.

DATED this 25<sup>th</sup> day of July, 2011.

ORIGINAL

FILED IN OPEN

COURT ON

2-25-11

COURT CLERK

JUSTICE COURT, LAS VEGAS TOWNSHIP

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

BENNETT GRIMES #2762267,

Defendant.

CASE NO: 11F13012X

DEPT NO: 4

*Amended.*  
CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of ATTEMPT MURDER WITH USE OF A DEADLY WEAPON IN VIOLATION OF TEMPORARY PROTECTIVE ORDER (Felony - NRS 200.010, 200.030, 193.330, 193.165; NRS 193.166), BURGLARY IN VIOLATION OF TEMPORARY PROTECTIVE ORDER (Felony - NRS 205.060; NRS 193.166), and BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY HARM IN VIOLATION OF TEMPORARY PROTECTIVE ORDER (Felony - NRS 200.481; 200.485; 33.018; NRS 193.166), in the manner following, to-wit: That the said Defendant, on or about the 22nd day of July, 2011, at and within the County of Clark, State of Nevada,

COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON IN VIOLATION OF TEMPORARY PROTECTIVE ORDER

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill ANIKA GRIMES, a human being, by stabbing at and into the body of the said ANIKA GRIMES, with a deadly weapon, to-wit: a knife, in violation of a Temporary Order for Protection against Domestic Violence issued by the District Court, Family Division, of the State of Nevada in Case No. T-11-134754-T.

*while in poss. of DW*  
COUNT 2 - BURGLARY IN VIOLATION OF TEMPORARY PROTECTIVE ORDER

did then and there wilfully, unlawfully, and feloniously enter, with intent to commit assault or battery and/or to commit substantial bodily harm and/or murder, that certain

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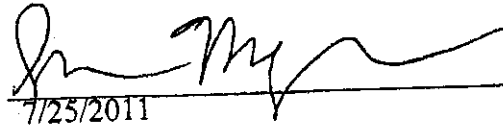
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1 building occupied by ANIKA GRIMES, located at 4325 West Desert Inn, Las Vegas, Clark  
2 County, Nevada, in violation of a Temporary Order for Protection against Domestic  
3 Violence issued by the District Court, Family Division, of the State of Nevada in Case No.  
4 T-11-134754-T.

5 COUNT 3 - BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING  
6 DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY HARM  
7 IN VIOLATION OF TEMPORARY PROTECTIVE ORDER

8 did then and there wilfully, unlawfully, and feloniously use force or violence upon  
9 the person of his spouse, former spouse, or any other person to whom he is related by blood  
10 or marriage, a person with whom he is or was actually residing, a person with whom he has  
11 had or is having a dating relationship, a person with whom he has a child in common, the  
12 minor child of any of those persons or his minor child, to-wit: ANIKA GRIMES, with use  
13 of a deadly weapon, to-wit: a knife, by stabbing at and into the body of the said ANIKA  
14 GRIMES with said knife, in violation of a Temporary Order for Protection against Domestic  
15 Violence issued by the District Court, Family Division, of the State of Nevada in Case No.  
16 T-11-134754-T.

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

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21 7/25/2011

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26 11F13012X/cas  
27 LVMPD EV# 1107223412  
28 (TK8)

NOTICE OF WITNESSES

[NRS 174.234]

TO: Defendant or attorney of record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF  
NEVADA intends to call the following witnesses:

NAME

ADDRESS

CUSTODIAN OF RECORDS

Communication Bureau  
Law Enforcement Agency - Clark County, Nevada

These witnesses are in addition to those witnesses noted in the discovery or other  
documents provided.

DATED this 25<sup>th</sup> day of July, 2011.

# JUSTICE COURT, LAS VEGAS TOWNSHIP

STATE VS. GRIMES, BENNETT

CASE NO. 11F13012X

PAGE: 1

DATE, JUDGE  
OFFICERS OF COURT  
PRESENT

APPEARANCES - HEARING

CONTINUED TO:

JULY 26, 2011	CRIMINAL COMPLAINT FILED COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON COUNT 2 - BURGLARY COUNT 3 - BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING DOMESTIC VIOLENCE	TAC
JULY 27, 2011 M.SARAGOSA S.MORGAN, DA M.LEONARD, CR M.KRAUS, CLK	INITIAL ARRAIGNMENT DEFENDANT NOT PRESENT IN COURT**IN CUSTODY COUNTS 1 & 2** DEFENDANT REFUSED TO BE TRANSPORTED  DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF COUNTS 1 & 2 NO BAIL POSTED COUNT 3	7/28/11 10:45 #4 CRB
JULY 28, 2011 M.SARAGOSA S.MORGAN, DA PD (APPOINTED) M.LEONARD, CR M.KRAUS, CLK	CONTINUED INITIAL ARRAIGNMENT DEFENDANT PRESENT IN COURT**IN CUSTODY COUNTS 1 & 2** DEFENDANT ADVISED OF CHARGES/WAIVES READING OF COMPLAINT PRELIMINARY HEARING DATE SET  DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF COUNTS 1 & 2 NO BAIL POSTED COUNT 3	8/11/11 9:30 #4 CRB
AUGUST 11, 2011 M. SARAGOSA S. MORGAN, DA ROGER HILLMAN, PD K. MACDONALD, CR M. KRAUS, CLK	TIME SET FOR PRELIMINARY HEARING DEFENDANT PRESENT IN COURT **IN CUSTODY** COUNTS 1 & 2 MOTION BY DEFENSE TO CONTINUE, GRANTED  DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF COUNTS 1 & 2 NO BAIL POSTED COUNT 3	8/25/11 9:30 #4 MRK

# JUSTICE COURT, LAS VEGAS TOWNSHIP

STATE VS. GRIMES, BENNETT

CASE NO. 11F13012X

PAGE: 2

DATE, JUDGE  
OFFICERS OF COURT  
PRESENT

APPEARANCES - HEARING

CONTINUED TO:

AUGUST 25, 2011  
L. MARQUIS FOR  
M. SARAGOSA  
S. MORGAN, DA  
ROGER HILLMAN, PD  
M. LEONARD, CR  
M. KRAUS, CLK

TIME SET FOR PRELIMINARY HEARING  
DEFENDANT PRESENT IN COURT \*\*IN CUSTODY\*\* COUNTS 1, 2  
STATE FILES AN AMENDED CRIMINAL COMPLAINT IN OPEN COURT  
COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON IN  
VIOLATION OF TEMPORARY PROTECTIVE ORDER  
COUNT 2 - BURGLARY WITH USE OF A DEADLY WEAPON IN VIOLATION  
OF TEMPORARY PROTECTIVE ORDER  
COUNT 3 - BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING  
DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY HARM IN  
VIOLATION OF TEMPORARY PROTECTIVE ORDER  
STATE WITNESSES - ANEKA LASHAWN GRIMES - WITNESS ID DEFT  
BOBBY HOFFMAN - WITNESS ID DEFT

STATE RESTS  
DEFENDANT ADVISED OF HIS STATUTORY RIGHT TO MAKE A SWORN OR  
UNSWORN STATEMENT, TO WAIVE MAKING A STATEMENT, AND/OR OF  
HIS RIGHT TO CALL WITNESSES  
DEFENDANT WAIVES HIS RIGHT TO MAKE A STATEMENT  
DEFENSE RESTS

MOTION BY DEFENSE TO SET BAIL, GRANTED  
BAIL RE-SET: COUNT 1 - \$750,000/\$750,000  
COUNT 2 - \$15,000/\$15,000  
COUNT 3 - \$250,000/\$250,000

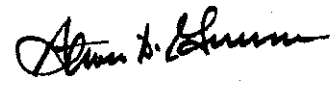
DEFENDANT TO HAVE NO CONTACT WITH VICTIM  
DEFENDANT BOUND OVER TO DISTRICT COURT AS CHARGED  
DEFENDANT TO APPEAR IN THE LOWER LEVEL ARRAIGNMENT  
COURTROOM A  
DATE SET

DEFENDANT REMANDED TO THE CUSTODY OF THE SHERIFF

EVIDENCE - #1 - DOCUMENT - OFFERED - ADMITTED

9/8/11 10:30 DC  
ARRAIGNMENT

MRK

  
CLERK OF THE COURT

**INFO**

DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
SHAWN MORGAN  
Deputy District Attorney  
Nevada Bar #0010935  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**LA. 09/20/2011**  
**1:30 PM**  
**PD**

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

THE STATE OF NEVADA,

Plaintiff,

-vs-

BENNETT GRIMES,  
#2762267

Defendant.

Case No: C-11-276163-1  
Dept No: XII

**INFORMATION**

STATE OF NEVADA }  
COUNTY OF CLARK } ss.

DAVID ROGER, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That BENNETT GRIMES, the Defendant(s) above named, having committed the crimes of **ATTEMPT MURDER WITH USE OF A DEADLY WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (Felony - NRS 200.010, 200.030, 193.330, 193.165, 193.166); BURGLARY WHILE IN POSSESSION OF A FIREARM IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (Felony - NRS 205.060, 193.166) and BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY HARM IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (Felony - NRS 200.481.2e; 193.166)**, on or about the 22nd day of July, 2011, within the

County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON IN VIOLATION OF TEMPORARY PROTECTIVE ORDER

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill ANIKA GRIMES, a human being, by stabbing at and into the body of the said ANIKA GRIMES, with a deadly weapon, to-wit: a knife, in violation of a Temporary Order for Protection against Domestic Violence issued by the District Court, Family Division, of the State of Nevada in Case No. T-11-134754-T.

COUNT 2 - BURGLARY IN VIOLATION OF TEMPORARY PROTECTIVE ORDER

did then and there wilfully, unlawfully, and feloniously enter, with intent to commit assault or battery and/or to commit substantial bodily harm and/or murder, that certain building occupied by ANIKA GRIMES, located at 4325 West Desert Inn, Las Vegas, Clark County, Nevada, in violation of a Temporary Order for Protection against Domestic Violence issued by the District Court, Family Division, of the State of Nevada in Case No. T-11-134754-T.

COUNT 3 - BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY HARM IN VIOLATION OF TEMPORARY PROTECTIVE ORDER

did then and there wilfully, unlawfully, and feloniously use force or violence upon the person of his spouse, former spouse, or any other person to whom he is related by blood or marriage, a person with whom he is or was actually residing, a person with whom he has had or is having a dating relationship, a person with whom he has a child in common, the minor child of any of those persons or his minor child, to-wit: ANIKA GRIMES, with use of a deadly weapon, to-wit: a knife, by stabbing at and into the body of the said ANIKA GRIMES with said knife, in violation of a Temporary Order for Protection against Domestic

///

///

///



1 Violence issued by the District Court, Family Division, of the State of Nevada in Case No.  
2 T-11-134754-T.

6 BY

*David Roger*

DAVID ROGER  
DISTRICT ATTORNEY  
Nevada Bar #002781

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

12 NAME

ADDRESS

13 BREWER, MICHAEL

LVMPD #8426

14 CUSTODIAN OF RECORDS

CCDC

15 CUSTODIAN OF RECORDS

LVMPD COMMUNICATIONS

16 CUSTODIAN OF RECORDS

LVMPD RECORDS

17 GALLUP, BRADLEY

LVMPD #8729

18 GRIMES, ANIKA

C/O CC DISTRICT ATTORNEY

19 HODSON, RODNEY

LVMPD #3711

20 HOFFMAN, BOBBY

LVMPD #10069

21 KNEPP, ELAINE/OR DESIGNEE

D.A. INVESTIGATOR

22 NEWMAN, STEPHANIE

16041 KNOLL VIEW CIR VICTORVILL CA

23 TAVAREZ, MICHELLE

LVMPD #8518

24 TOMAINO, DANIEL

LVMPD #8278

27 DA#11F13012X/ts  
28 LVMPD EV#1107223412  
(TK4)

70  
**FILED**

SEP 14 2011

HK  
*Heather Kordenbrock*  
CLERK OF COURT

1  
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5 **DISTRICT COURT**  
6 **CLARK COUNTY, NEVADA**

\*\*\*\*

7 STATE OF NEVADA  
8 VS  
9 BENNETT GRIMES

CASE NO: C-11-276163-1

Department 12

10  
11 **NOTICE OF CHANGE OF HEARING**  
12

13 The hearing on the Initial Arraignment, presently set for September 08, 2011, at  
14 1:30 PM, has been moved to the, 20th day of September, 2011 at 1:30 PM and  
15 will be heard by Judge Melisa De La Garza.

16 STEVEN D. GRIERSON, CEO/Clerk of the Court

17 By: *Heather Kordenbrock*

18 Heather Kordenbrock,  
19 Deputy Clerk of the Court

20 C-11-276163-1  
21 NOCH  
22 Notice of Change of Hearing  
23 1608780



**RECEIVED**

SEP 14 2011

CLERK OF THE COURT

2

CERTIFICATE OF MAILING

I hereby certify that on the 14th day of September, 2011:

☐ I mailed, via first-class mail, postage fully prepaid the foregoing Notice of

Change of Hearing to:

David J Roger

Clark County District Attorney

200 Lewis Avenue 3rd Floor

Las Vegas NV 89155

Public Defender

No Known Address

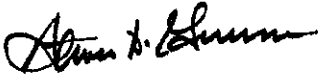
☒ I placed a copy of the foregoing Notice of Change of Hearing in the appropriate attorney folder located in the Clerk of the Court's Office:

David J. Roger

Public Defender



Heather Kordenbrock,  
Deputy Clerk of the Court

  
CLERK OF THE COURT

1 **INFO**  
2 **DAVID ROGER**  
3 **Clark County District Attorney**  
4 **Nevada Bar #002781**  
5 **SHAWN MORGAN**  
6 **Deputy District Attorney**  
7 **Nevada Bar #0010935**  
8 **200 Lewis Avenue**  
9 **Las Vegas, Nevada 89155-2212**  
10 **(702) 671-2500**  
11 **Attorney for Plaintiff**

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

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

11 **-vs-**

12 **BENNETT GRIMES,**  
13 **#2762267**  
14 **Defendant.**

**Case No: C-11-276163-1**  
**Dept No: XII**

**AMENDED**  
**INFORMATION**

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

17 **DAVID ROGER, District Attorney within and for the County of Clark, State of**  
18 **Nevada, in the name and by the authority of the State of Nevada, informs the Court:**

19 **That BENNETT GRIMES, the Defendant(s) above named, having committed the**  
20 **crimes of ATTEMPT MURDER WITH USE OF A DEADLY WEAPON IN**  
21 **VIOLATION OF A TEMPORARY PROTECTIVE ORDER (Felony - NRS 200.010,**  
22 **200.030, 193.330, 193.165, 193.166); BURGLARY WHILE IN POSSESSION OF A**  
23 **FIREARM IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (Felony -**  
24 **NRS 205.060, 193.166) and BATTERY WITH USE OF A DEADLY WEAPON**  
25 **CONSTITUTING DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL**  
26 **BODILY HARM IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER**  
27 **(Felony - NRS 200.481.2e; 193.166), on or about the 22nd day of July, 2011, within the**  
28 **County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such**

cases made and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON IN  
VIOLATION OF TEMPORARY PROTECTIVE ORDER

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill ANIKA GRIMES, a human being, by stabbing at and into the body of the said ANIKA GRIMES, with a deadly weapon, to-wit: a knife, in violation of a Temporary Order for Protection against Domestic Violence issued by the District Court, Family Division, of the State of Nevada in Case No. T-11-134754-T.

COUNT 2 - BURGLARY WHILE IN POSSESSION OF A FIREARM IN VIOLATION OF  
A TEMPORARY PROTECTIVE ORDER

did then and there wilfully, unlawfully, and feloniously enter, with intent while in possession of a firearm, to commit assault or battery and/or to commit substantial bodily harm and/or murder, that certain building occupied by ANIKA GRIMES, located at 4325 West Desert Inn, Las Vegas, Clark County, Nevada, in violation of a Temporary Order for Protection against Domestic Violence issued by the District Court, Family Division, of the State of Nevada in Case No. T-11-134754-T.

COUNT 3 - BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING  
DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY HARM  
IN VIOLATION OF TEMPORARY PROTECTIVE ORDER

did then and there wilfully, unlawfully, and feloniously use force or violence upon the person of his spouse, former spouse, or any other person to whom he is related by blood or marriage, a person with whom he is or was actually residing, a person with whom he has had or is having a dating relationship, a person with whom he has a child in common, the minor child of any of those persons or his minor child, to-wit: ANIKA GRIMES, with use of a deadly weapon, to-wit: a knife, by stabbing at and into the body of the said ANIKA GRIMES with said knife, in violation of a Temporary Order for Protection against Domestic

///

///

///

1 Violence issued by the District Court, Family Division, of the State of Nevada in Case No.  
2 T-11-134754-T.  
3  
4  
5

6 BY



DAVID ROGER  
DISTRICT ATTORNEY  
Nevada Bar #002781

7  
8  
9  
10 Names of witnesses known to the District Attorney's Office at the time of filing this  
11 Information are as follows:

12 NAME

ADDRESS

13 BREWER, MICHAEL

LVMPD #8426

14 CUSTODIAN OF RECORDS

CCDC

15 CUSTODIAN OF RECORDS

LVMPD COMMUNICATIONS

16 CUSTODIAN OF RECORDS

LVMPD RECORDS

17 GALLUP, BRADLEY

LVMPD #8729

18 GRIMES, ANIKA

C/O CC DISTRICT ATTORNEY

19 HODSON, RODNEY

LVMPD #3711

20 HOFFMAN, BOBBY

LVMPD #10069

21 KNEPP, ELAINE/OR DESIGNEE

D.A. INVESTIGATOR

22 NEWMAN, STEPHANIE

16041 KNOLL VIEW CIR VICTORVILL CA

23 TAVAREZ, MICHELLE

LVMPD #8518

24 TOMAINO, DANIEL

LVMPD #8278

25  
26  
27 DA#11F13012X/ts  
28 LVMPD EV#1107223412  
(TK4)

FILED

OCT 4 1 50 PM '11

TRAN  
CASE NO. C-11-276163-1  
DEPT. NO. 4

IN THE JUSTICE COURT OF LAS VEGAS  
COUNTY OF CLARK, STATE OF NEVADA

*Shawn A. Morgan*  
CLERK OF THE COURT

C-11-276163-1  
TRAN  
Recorders Transcript of Hearing  
1636614



THE STATE OF NEVADA,  
Plaintiff,

CASE NO. 11F13012X

vs.

BENNETT GRIMES,

Defendant.

ORIGINAL

REPORTER'S TRANSCRIPT  
OF  
PRELIMINARY HEARING

BEFORE THE HONORABLE LINDA NORVELL MARQUIS  
JUSTICE OF THE PEACE PRO TEM

AUGUST 25, 2011  
9:30 A.M.

APPEARANCES:

For the State: SHAWN A. MORGAN, ESQ.  
DEPUTY DISTRICT ATTORNEY

For the Defendant: R. ROGER HILLMAN, ESQ.  
DEPUTY PUBLIC DEFENDER

Reported by: MARCIA LEONARD, CCR 204

CLERK OF THE COURT

OCT 04 2011

RECEIVED

39

I N D E XWITNESSES FOR THE STATEPAGE**ANEKA GRIMES**

Direct Examination by Mr. Morgan

6

Cross-Examination by Mr. Hillman

15

**BOBBY HOFFMAN**

Direct Examination by Mr. Morgan

24

Cross-Examination by Mr. Hillman

32

E X H I B I T SSTATE'SADMITTED

1

Temporary Protective Order

27



1 LAS VEGAS, CLARK COUNTY, NEVADA,

2 AUGUST 25, 2011, 9:30 A.M.

3 P R O C E E D I N G S

4  
5 THE COURT: Bennett Grimes, 11F13012X.

6 MR. HILLMAN: I think that's going to go,  
7 Judge.

8 THE COURT: All right. Counsel, approach.  
9 (Thereupon, a brief discussion was held at the  
10 bench.)

11 THE COURT: Bennett Grimes, 11F13012X.

12 And, Counsel, I don't have to leave at  
13 one, so we have all the time in the world.

14 MR. HILLMAN: Okay.

15 MR. MORGAN: Perfect, Judge.

16 THE COURT: I have a 1:30 calendar.

17 MR. MORGAN: I do have housekeeping  
18 matters.

19 THE COURT: Sure.

20 MR. MORGAN: Did you get a copy of the  
21 Amended Criminal Complaint?

22 THE COURT: I do have a copy of the  
23 Amended Criminal Complaint.

24 Does Counsel have a copy of it?

25 MR. HILLMAN: Yes.

1 MR. MORGAN: He does, Judge, and I just  
2 noticed that I forgot to write "amended" on it. So ...

3 THE COURT: Okay. I'll go ahead and write  
4 it in on my copy.

5 MR. MORGAN: Thank you, Judge.

6 THE COURT: Counsel, you would note that  
7 on your copy as well?

8 MR. MORGAN: This is what happens when my  
9 secretary is out sick for the day, and I do this  
10 myself.

11 I also missed a second amendment on Count  
12 Two. The State had intended to make it burglary while  
13 in possession of a deadly weapon and in violation of a  
14 temporary protective order.

15 THE COURT: So line 26 should read, "Count  
16 Two, burglary while in possession" --

17 MR. MORGAN: While in possession of a  
18 deadly weapon in violation of a temporary protective  
19 order.

20 THE COURT: All right.

21 MR. MORGAN: And those would be the two  
22 additional amendments to the Amended Criminal  
23 Complaint.

24 THE COURT: All right. Counsel, have you  
25 got those?

1 MR. HILLMAN: Yes, I do, Judge.

2 THE COURT: All right.

3 MR. MORGAN: And the State would call  
4 Aneka Grimes.

5 THE COURT: Aneka Grimes.

6 And are we going to invoke the  
7 exclusionary rule, Counsel?

8 MR. HILLMAN: Yes, ma'am.

9 THE COURT: All right. We have that  
10 witness out. There's nobody else.

11 Miss Grimes, come up here to the witness  
12 stand, remain standing, and raise your right hand to be  
13 sworn.

14 THE CLERK: Do you solemnly swear to tell  
15 the truth, the whole truth, and nothing but the truth,  
16 so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Please be seated. Speak into  
19 the microphone and state your whole name and spell it,  
20 please.

21 THE WITNESS: Aneka Lashawn Grimes.

22 A-N-E-K-A, L-A-S-H-A-W-N, G-R-I-M-E-S.

23 MR. MORGAN: May I proceed, Judge?

24 THE COURT: Please.

25 ANEKA GRIMES,

1 called as a witness by the State, having been first duly  
2 sworn, testified as follows:

3  
4 DIRECT EXAMINATION

5 BY MR. MORGAN:

6 Q. Miss Grimes, did you say your name was

7 A-N-E-K-A?

8 A. Uh-huh.

9 Q. That's a yes?

10 A. Yes.

11 MR. MORGAN: Judge, I'm going to ask the  
12 Complaint to reflect the proper spelling of her name as  
13 well?

14 THE COURT: All right. That will be lines  
15 22, 23, one of the second page, 11 and 12 of the second  
16 page.

17 MR. MORGAN: Thank you, Judge.

18 BY MR. MORGAN:

19 Q. Good morning, Aneka. Do you know a person  
20 by the name of Bennett Grimes?

21 A. Yes.

22 Q. Do you see him in court here today?

23 A. Yes.

24 Q. Can you please point to him for me and  
25 describe what he's wearing?

1 A. Gray jumpsuit, I guess.

2 MR. MORGAN: Record reflect identification  
3 of the defendant?

4 THE COURT: What color did you say it was?

5 THE WITNESS: It looks gray to me.

6 THE COURT: Point to him.

7 THE WITNESS: Right there.

8 THE COURT: The record will so reflect.

9 BY MR. MORGAN:

10 Q. How do you know him?

11 A. He's my husband.

12 Q. Were you guys married back on July 22,

13 2011?

14 A. No, December 18, 2004.

15 Q. Okay. But on -- you were still married on  
16 July 22, 2011?

17 A. Yes, yes.

18 Q. Okay. On that date, were you living at  
19 9325 West Desert Inn Road, Apartment 173?

20 A. Yes.

21 Q. Is that in Las Vegas, Clark County,  
22 Nevada?

23 A. Yes.

24 Q. Okay. What was your -- what was the --  
25 where were you at in your marriage with Mr. Grimes at

1 that time?

2 A. I wanted to separate from Bennett.

3 Q. Okay. And what steps did you take to  
4 separate?

5 A. At that point, I had asked him to leave my  
6 house. I also got a restraining order against him for  
7 him to leave.

8 Q. Okay. Now, on the 22nd, had you had  
9 contact with him on that day?

10 A. No.

11 Q. When was the last time you had contact  
12 with him prior to the 22nd?

13 A. When the restraining order was served.

14 Q. Okay. Did you actually talk to him or  
15 were you just there when it was served on the day that  
16 it was served?

17 A. I was there.

18 Q. Okay. How long prior to the 22nd was  
19 that?

20 A. Maybe like two weeks maybe.

21 Q. Okay. Who were you with on the 22nd?

22 A. My mother.

23 Q. And did there come a time where you guys  
24 came to your house?

25 A. Yes.

1 Q. What happened when you got home?

2 A. I came home. And my mom came in after me.  
3 At that point, I guess Bennett shoved his way through  
4 the door. There was kind of like a verbal altercation  
5 between the three of us.

6 Q. Okay. I'm going to stop you quickly. As  
7 you were approaching your house --

8 A. Uh-huh.

9 Q. -- did you see Bennett at all?

10 A. No.

11 Q. And you went into the house first?

12 A. Yes.

13 Q. And then your mom came in second?

14 A. Yes.

15 Q. And then at that point is when he came in  
16 the door?

17 A. Yes.

18 Q. Okay. What happened when he came inside?

19 A. There was a verbal altercation. My mom  
20 said to him -- I guess she called my dad. During that  
21 time, my dad had called the police.

22 MR. HILLMAN: Objection, hearsay.

23 MR. MORGAN: I'll --

24 THE COURT: Strike that.

25 MR. MORGAN: I'll withdraw that question.

1 THE WITNESS: Okay.

2 BY MR. MORGAN:

3 Q. I only want you to testify as to what you  
4 did and what you know. Okay?

5 A. Okay.

6 Q. So while you're in the living room, were  
7 you in the living room with Mr. Grimes?

8 A. Yes.

9 Q. And did your mom stay in the room the  
10 whole time?

11 A. No, she was in the living room also.

12 Q. Did there come a time where she left?

13 A. Uh-huh.

14 Q. And that's a yes?

15 A. Yes.

16 Q. And while you guys are in the living room,  
17 what are you guys talking about, you and the defendant?

18 A. Bennett wanted to have a conversation with  
19 us to try to I guess resolve some stuff between us so  
20 there was "I love your daughter." So we sit down and  
21 have a conversation. "Why are you already doing this  
22 to me?" Stuff like that.

23 Q. What was his demeanor like?

24 A. He seemed like pleading kind of like. In  
25 a pleading state and maybe a little upset.



1 Q. Okay. Now, I just want to back up to the  
2 initial point where he came in the door. Describe that  
3 for the Judge.

4 A. Describe how he came in the door?

5 Q. Was he welcome and just walked right in?

6 A. No, he shoved his way into the door. Like  
7 I guess he -- I was already in the house. So I didn't  
8 really see how it happened. My mom did.

9 MR. HILLMAN: I am going to object  
10 hearsay.

11 THE WITNESS: I can't say.

12 BY MR. MORGAN:

13 Q. Okay. Well, did there come a time where  
14 you actually came to the door?

15 A. Yes.

16 Q. Okay. When you came to the door, what was  
17 going on?

18 A. We were trying to push the door closed.

19 Q. And he's on the other side pushing it  
20 open?

21 A. Yes.

22 Q. Okay. And then he eventually made his way  
23 in?

24 A. Yes.

25 Q. Was that with your consent or not?

1 A. No.

2 Q. Okay. And then when he gets inside, you  
3 say he starts pleading with you?

4 A. Yes.

5 Q. How long does the conversation last?

6 A. Maybe like five minutes.

7 Q. Okay. What happened to end the  
8 conversation?

9 A. To end the conversation?

10 Q. Well, did there come a time where you  
11 called the police?

12 A. Yes, I did.

13 Q. And describe what happened.

14 A. I was just standing on my bar, and I had  
15 first text a friend of mine, and then after that, I  
16 called the police.

17 Q. And was the defendant in your general area  
18 while you were doing that?

19 A. He was still standing at the door.

20 Q. Okay. The front door?

21 A. Yes.

22 Q. What happened next?

23 A. Then I opened the balcony door. I was  
24 just walking around the house, and then I went back to  
25 my bar. At that time Bennett came over and grabbed a

1 knife from my kitchen area where I had dried my dishes.  
2 And he pulled me over to the front door on top of me  
3 and then started stabbing.

4 Q. What was going on right before he grabbed  
5 the knife?

6 A. Nothing.

7 Q. Nothing?

8 A. No.

9 Q. Were the police there?

10 A. No, not yet.

11 Q. Okay. Did you guys hear any noises?

12 A. I didn't hear anything.

13 Q. Okay. Did the defendant say anything  
14 right before he got the knife?

15 A. The only thing he said was "okay."

16 Q. And then you said he grabbed a knife out.  
17 What kind of knife was it?

18 A. A steak knife.

19 Q. Okay. About how long was the knife, if  
20 you can remember?

21 A. Like this (indicating).

22 Q. And you're indicating about how many  
23 inches would you say that is?

24 A. I don't know. I don't know.

25 Q. Okay. Fair enough.

1                   And you said the steak knife had a  
2 serrated edge?

3           A.     Uh-huh.

4           Q.     Yes?

5           A.     Yes.

6           Q.     Now, when you grabbed the knife, was he on  
7 one side of the bar and you on the other or were you  
8 both on the same side?

9           A.     No, we were on the same side.

10          Q.     Okay. Just describe what he -- how he  
11 grabs you?

12          A.     I don't even remember.

13          Q.     Okay.

14          A.     All I know is I was grabbed, and I ended  
15 up on the floor in front of the door. And at that  
16 point, that's when the stabbing started.

17          Q.     Okay. Where did he stab you?

18          A.     My arm. My chest. My neck. My head. My  
19 face. My back.

20          Q.     Do you know how many times he stabbed you?

21          A.     Twenty.

22          Q.     And as you stand here today, what injuries  
23 do you still have as a result of that?

24          A.     I can't straighten my arm. I can no  
25 longer use my thumb. Just a lot of pain and stuff like

1 that. I have to have surgery on my thumb.

2 Q. Okay. And do you have scars as a result  
3 of that?

4 A. Uh-huh.

5 Q. Is that a yes?

6 A. Yes.

7 Q. How does the stabbing stop?

8 A. The police came in at that time, and they  
9 had to tackle him off of me.

10 Q. About how much time would you say passed  
11 from the time he went into the house until he grabbed  
12 the knife?

13 A. Maybe like eight minutes.

14 MR. MORGAN: I'll pass the witness, Judge.

15 THE COURT: Counsel?

16 MR. HILLMAN: Thank you.

17

18 CROSS-EXAMINATION

19 BY MR. HILLMAN:

20 Q. Ms. Grimes, when were you and Bennett  
21 first married?

22 A. December 18th of 2004.

23 Q. And what was the address where this  
24 incident occurred?

25 A. 9325 West Desert Inn.

1 Q. Had you and Bennett lived there together?

2 A. On and off, yes.

3 Q. So you guys had been together and broken  
4 up, gotten back together before; is that correct?

5 A. Yes.

6 Q. Now, on this date, which I believe was the  
7 22nd of July, do you remember about what time this  
8 happened?

9 A. Maybe like 6:30 p.m.

10 Q. And you and your mom had been away from  
11 the apartment; is that right?

12 A. Yes.

13 Q. Where were you at?

14 A. I was purchasing a vehicle.

15 Q. How long had you been gone?

16 A. All day.

17 Q. Okay. And you stated you walked up to the  
18 door and unlocked the door; is that correct?

19 A. Yes.

20 Q. And you went into the apartment?

21 A. Yes.

22 Q. When was the first time you noticed that  
23 Bennett was there?

24 A. When my mom yelled for me.

25 Q. And was that immediately upon entry into

1 the apartment or was it a second or two later?

2 A. Maybe a couple seconds later.

3 Q. Do you remember what she said?

4 A. She just yelled my name.

5 Q. Okay. Then did you go back to the door?

6 A. Yes.

7 Q. And what happened then?

8 A. We tried to close the door on him.

9 Q. And what was he saying?

10 A. I don't remember if he was saying  
11 anything.

12 Q. And how long were you at the door?

13 A. Maybe like a minute or two.

14 Q. And he was trying to get in and you  
15 weren't letting him in; is that correct?

16 A. Yes, that's correct.

17 Q. And I think you said that you then went  
18 and opened the patio door; is that right?

19 A. A little while after that, yeah, I opened  
20 the patio door.

21 Q. When you say a little while, how much  
22 longer?

23 A. Maybe like six minutes after he had  
24 entered the house.

25 Q. Okay. So, then, if I understand this

1 correctly, after about a minute you left and he came in  
2 the house; is that right?

3 A. Yes.

4 Q. Did you ever tell him not to come in again  
5 after that or did you just give up?

6 A. I just gave up at that point.

7 Q. Okay.

8 A. We asked him to leave several times,  
9 but ...

10 Q. So for six minutes then, where were you  
11 at --

12 A. Walking.

13 Q. -- before you opened the patio?

14 A. Just walking around my living room.

15 Q. Okay. And what was Mr. Grimes doing at  
16 that time?

17 A. Standing at the front door just pleading  
18 basically.

19 Q. And how far did he come into the apartment  
20 at that time?

21 A. He was standing just at the door. That's  
22 it.

23 Q. So heels at the door pretty much?

24 A. Yes.

25 Q. And so you went and opened the patio



1 doors; is that right?

2 A. Yes.

3 Q. And then what happened at that point in  
4 time?

5 A. My mom walked over to the patio door. At  
6 that point, I went to my bar. That's when I text my  
7 friend and I called the police. And then maybe a  
8 minute after that, Bennett walked over to the bar where  
9 I was standing and grabbed the knife.

10 Q. Does the bar separate the living area from  
11 the kitchen?

12 A. Yes.

13 Q. And where is the sink at in relationship  
14 to the bar?

15 A. Right on the opposite side.

16 Q. I'm sorry, I couldn't hear you.

17 A. Right on the opposite side. So like this  
18 would be the bar. The sink would be right there.

19 Q. So ...

20 THE COURT: I'm sorry, I just -- we're  
21 talking about like a breakfast bar, not a separate bar  
22 from the kitchen. It's just like a --

23 THE WITNESS: Yeah.

24 THE COURT: -- counter?

25 THE WITNESS: Yeah, like a counter.

1 THE COURT: I'm sorry. Go ahead.

2 BY MR. HILLMAN:

3 Q. So the sink is on the counter next to the  
4 bar; is that correct? Or is the sink against the wall?

5 A. The sink is right behind the bar.

6 Q. Okay. Is there any separation between the  
7 bar and the sink?

8 A. No. They are connected.

9 Q. And so your testimony is then that Bennett  
10 walked to the bar and grabbed a knife; is that correct?

11 A. Yes.

12 Q. And then he grabbed you; is that correct?

13 A. Yes.

14 Q. And you don't remember how he grabbed you?

15 A. I don't remember. I just know I was  
16 grabbed.

17 Q. You don't remember if it was by the arm or  
18 the hand?

19 A. (Witness shakes head.) No.

20 Q. And what did he say?

21 A. "Okay."

22 Q. And then he walked you to the doorway?

23 A. It was kind of like a tackle I would say  
24 because I ended up on the floor, so ...

25 Q. Where is the doorway in relationship to

1 the bar?

2 A. Maybe like 5 feet away.

3 Q. But he would have walked from the doorway  
4 to the bar, correct?

5 A. Yes.

6 Q. And then where were you standing?

7 A. On the bar.

8 Q. You were standing on the kitchen side of  
9 the bar or the living room side of the bar?

10 A. The living room side of the bar.

11 Q. Okay. And then somehow you got back to  
12 the front door; is that correct?

13 A. I ended up back at the front door.

14 Q. When was the first time he stabbed you  
15 with the knife? Do you remember where you were at?

16 A. The front door.

17 Q. At the front door?

18 A. Yes.

19 Q. And were you standing up?

20 A. No, I was on the ground.

21 Q. Okay. So you ended up on the ground; is  
22 that correct?

23 A. Yes, that's correct.

24 Q. And do you remember how long that took?

25 A. To end up on the ground?

1 Q. Yes.

2 A. A second or two.

3 Q. Okay. Was there ever any time when you  
4 had the knife in your hand?

5 A. No.

6 Q. When the police arrived, do you remember  
7 where you were?

8 A. On the ground.

9 Q. You were on the ground?

10 A. Yes.

11 Q. And Mr. Grimes was also on the ground at  
12 the same time?

13 A. Yes.

14 Q. Do you remember how long that attack  
15 lasted?

16 A. No. It seemed like maybe a couple  
17 minutes.

18 Q. Okay. Do you remember where your mother  
19 was at the time this happened?

20 A. I don't know where she was. I was being  
21 attacked. I couldn't see anything.

22 Q. But at some point in time, the police  
23 arrived, and they pulled Mr. Grimes off of you; is that  
24 correct?

25 A. That is correct.

1 MR. HILLMAN: I have no further questions  
2 at this time.

3 THE COURT: State, do you have any other  
4 questions?

5 MR. MORGAN: No, Judge.

6 THE COURT: Ms. Grimes, you are free to  
7 go. You can step down. Wait in the hallway.

8 THE WITNESS: Thank you.

9 MR. MORGAN: State is going to call  
10 Officer Hoffman.

11 THE COURT: Step up here and raise your  
12 right hand and be sworn.

13 THE CLERK: Do you solemnly swear to tell  
14 the truth, the whole truth, and nothing but the truth,  
15 so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Please be seated. State your  
18 name for the record and spell it.

19 THE WITNESS: My name is Bobby Hoffman.  
20 B-O-B-B-Y, H-O-F-F-M-A-N.

21 MR. MORGAN: May I proceed, Judge?

22 THE COURT: Please.

23  
24 / / /

25 BOBBY HOFFMAN,

1 called as a witness by the State, having been first duly  
2 sworn, testified as follows:

3  
4 DIRECT EXAMINATION

5 BY MR. MORGAN:

6 Q. Good afternoon, sir. Can you tell me what  
7 you do for a living?

8 A. I work for Las Vegas Metropolitan Police  
9 Department.

10 Q. How long have you been with Metro?

11 A. Just over four years.

12 Q. What's your current assignment?

13 A. I currently work out of Enterprise Area  
14 Command, which is the southwest part of town.

15 Q. Okay. And directing your attention to  
16 July 22, 2011, was that your same assignment?

17 A. Yes, it is.

18 Q. Were you working that day?

19 A. Yes, I was.

20 Q. Did you have occasion to be dispatched to  
21 9325 West Desert Inn Road, Apartment 173?

22 A. Yes.

23 Q. That's in Las Vegas, Clark County, Nevada?

24 A. Yes, it is.

25 Q. Was that the first time that you had been

1 dispatched to that location?

2 A. No, it was not.

3 Q. When -- if you can recall, when were you  
4 previously dispatched to that location?

5 A. It was probably a week and a half, I  
6 believe, eight, nine days prior. I received a call  
7 there that I was assigned to serve an extended  
8 temporary protection order.

9 Q. Can you recall the last date, the exact  
10 date that you went to that location previously?

11 A. I cannot, not the exact.

12 Q. Would it refresh your recollection to  
13 review the arrest report in this case?

14 A. Yes, it would.

15 MR. MORGAN: If I could approach, Judge?

16 THE COURT: Please.

17 BY MR. MORGAN:

18 Q. After reviewing this report, does that  
19 refresh your recollection?

20 A. Yes, it does.

21 Q. What date did you respond to that address?

22 A. July 8th.

23 Q. Of 2011?

24 A. Of 2011, yes.

25 Q. Okay. What did you do when you responded

1 on the 8th?

2 A. I made contact with the PR, which is the  
3 person reporting, which is Ms. Aneka Grimes. She was  
4 sitting out by her vehicle waiting for officers to  
5 arrive.

6 She had a -- paperwork from the courts  
7 stating that she needed to file an extended temporary  
8 protection order against her current husband, which is  
9 Bennett Grimes.

10 Myself and another officer responded to  
11 it. We went up to the door. He was not there.  
12 According to her, she didn't see him leave or anything,  
13 so we didn't know if he was inside or not. We hung  
14 around for about ten minutes.

15 He actually came around the corner from  
16 the corner store I believe is what he told us. And I  
17 believe he went to go get cigarettes or, you know,  
18 whatever he was doing. So right there outside, we sat  
19 him down, we explained what was going on, and we served  
20 him with the ETPO.

21 Q. Do you see the person who you served in  
22 court here today?

23 A. Yes, I do.

24 Q. Can you point to him and describe what  
25 he's wearing for me?



1 A. Blue shirt.

2 MR. MORGAN: Record reflect  
3 identification?

4 THE COURT: The record will so reflect.

5 MR. MORGAN: May I approach, Judge?

6 THE COURT: Yes.

7 BY MR. MORGAN:

8 Q. Showing you what's been marked as State's  
9 Proposed Exhibit 1, do you recognize this document?

10 A. Yes.

11 Q. What is it?

12 A. It's a temporary protection order.

13 Q. Is it against the defendant, Bennett  
14 Grimes?

15 A. Yes.

16 Q. Is this a fair and accurate depiction of  
17 the document that you served on him on July 8, 2011?

18 A. Yes.

19 MR. MORGAN: Judge, I would move for  
20 admission of State's Proposed 1 at this time?

21 THE COURT: Counsel?

22 MR. HILLMAN: No objection.

23 THE COURT: It will be admitted.

24 (State's Exhibit 1 was admitted.)

25

1 BY MR. MORGAN:

2 Q. Okay. Now, let's fast forward a couple  
3 weeks later to July 22nd. You said you were  
4 dispatched to the same address?

5 A. Yes, I was.

6 Q. What was the nature of your dispatch?

7 A. The nature was a domestic violence call.

8 Q. And what happened when you arrived?

9 A. I was not the first arriving officer. The  
10 first arriving officer was Michelle Tavares (phonetic).  
11 She is a plain clothes unit.

12 Due to her being in a plain car and plain  
13 clothes, she was able to get a good eye on the  
14 apartment that was on the first floor in the corner.

15 Myself and another officer in uniform  
16 arrived where she stated to us that she continued  
17 hearing arguing and yelling. At that point, we decided  
18 to approach the house to make contact.

19 As we are approaching, there was a female  
20 that walked out onto the balcony of the said address,  
21 of the target address, and said that Mr. Grimes was  
22 inside and he was very aggravated and that he might  
23 run. And if she -- if we could place one officer at  
24 that balcony.

25 Q. Was this the same person that you made

1 contact with that you identified as Aneka Grimes a  
2 couple weeks earlier?

3 A. No, it was not.

4 Q. Okay. Did you identify that person?

5 A. Later on I identified her as Stephanie  
6 Newman, her mother.

7 Q. Aneka's mother?

8 A. Aneka's mother, yes.

9 Q. So she tells you this. What do you do in  
10 response?

11 A. In response, I send the plain clothes  
12 unit, along with a uniformed officer to the front door.  
13 And I hang out, being a uniformed officer as well, on  
14 the back, in the back door or on the balcony.

15 Q. The balcony?

16 A. Uh-huh.

17 Q. Are you on the outside of the balcony, or  
18 did you jump the wall and go on the balcony proper?

19 A. Currently, at this point, I'm on the  
20 outside of the balcony.

21 Q. Okay. What do you hear next? What  
22 happens? What happened next?

23 A. As I'm standing there talking to the mom,  
24 the mom ends up walking back inside. I hear what I  
25 believe turns from just arguing and yelling to pretty

1 much screaming, and hearing a female yell an ouch.

2 Q. What do you do?

3 A. At that point, I jump over the balcony.  
4 The sliding glass door is already open. I make entry  
5 into the house for exigent circumstances.

6 Q. What do you see when you enter the  
7 apartment?

8 A. Where I am positioned at, I observe the  
9 female that I first spoke to. She was holding onto  
10 another female. I could not see her face. Their backs  
11 were to us. And Mr. Grimes was facing me, with the  
12 other -- with a female in his -- pretty much in a  
13 headlock, and it appeared to me that he was punching  
14 her in the face.

15 Q. Now, the woman that he has in a headlock,  
16 are they facing each other as he's got her in a  
17 headlock?

18 A. Yes, they are.

19 Q. Okay. So how is he punching her? Where  
20 is he punching her?

21 A. He's got her almost bent over. He's got  
22 her in a headlock, and just -- with his right arm,  
23 just -- just hitting is what I believed was happening  
24 to the face, torso, and upper body.

25 Q. Okay. What do you do next?

1           A.     At that point, I threw everything out the  
2 door, and I run towards the suspect to intervene. When  
3 I get about a foot and a half away from him, I realize  
4 that he's not punching her, that he is actually  
5 extracting a knife from the female where I luckily was  
6 able to grab hold of his wrist before he could insert  
7 it into her once again.

8                     And with my momentum, I took him to the  
9 ground where I kept hold of his right wrist and used my  
10 firearm to tell him to stop and to drop the knife, and  
11 we take him into custody.

12           Q.     Do you see the person in court here today  
13 that you saw stabbing the woman and eventually tackled  
14 to the ground?

15           A.     Yes, I do.

16           Q.     Can you point to him and describe what  
17 he's wearing for me?

18           A.     Blue shirt.

19                     MR. MORGAN: Record reflect identification  
20 of the defendant?

21                     THE COURT: It will so reflect.

22           BY MR. MORGAN:

23           Q.     And that's the same person that you  
24 previously served with a protective order a couple  
25 weeks prior?

1 A. That is correct.

2 MR. MORGAN: Pass the witness, Judge.

3 THE COURT: Counsel, do you have any  
4 questions?

5  
6 CROSS-EXAMINATION

7 BY MR. HILLMAN:

8 Q. Officer Hoffman, you stated that you  
9 arrived on the scene and went to the balcony; is that  
10 correct?

11 A. After the mother walked outside the  
12 balcony and asked one of us to stand by, yes.

13 Q. And who was the other officer that was  
14 with you beside Tavares?

15 A. Officer Brad Gallup (phonetic).

16 Q. And he went to the front door; is that  
17 correct?

18 A. They were on their way. Michelle Tavares  
19 and Brad Gallup were on their way to the front door.

20 Q. How far was the front door from where you  
21 were at?

22 A. Fifteen feet.

23 Q. And what did Aneka Grimes' mother say to  
24 you, other than that? Anything?

25 A. No, just that he might possibly flee when

1 he sees that we're here.

2 Q. Okay. How long were you there before you  
3 heard the female yell ouch?

4 A. It could be a matter of seconds after I  
5 was done talking with Stephanie.

6 Q. So you jumped into the balcony then and  
7 went into the house; is that right?

8 A. That's correct.

9 Q. At any time did Aneka Grimes' mother tell  
10 you not to come in?

11 A. No.

12 Q. And when you went into the apartment, you  
13 say you saw Bennett Grimes with Aneka Grimes in a  
14 headlock; is that correct?

15 A. Yes.

16 Q. And I didn't understand the positioning of  
17 the two. Could you explain that to me, please?

18 A. Pretty much the way it was is where I was  
19 facing, I was facing Stephanie's back. She was holding  
20 on to Aneka's back. Bennett Grimes was facing me.

21 Q. Okay.

22 A. So it's pretty much a single file line  
23 almost.

24 Q. And they were standing?

25 A. Yes. Aneka was actually like bent over,

1     though.

2             Q.     Okay. But no one was on the ground?

3             A.     No. At this point, no.

4             Q.     At any point in time, did you threaten to  
5     shoot Mr. Grimes if he moved again?

6             A.     Yes, I did.

7             Q.     When did you first see the knife?

8             A.     When I was about a foot and a half away  
9     from him.

10            Q.     Can you describe how you took him down?

11            A.     Pretty much by sheer momentum. As I was  
12     running towards him, and I saw the knife in his hands,  
13     I reached my arm out, grabbed onto his right wrists,  
14     and with my body's momentum, forced him down to the  
15     ground into the corner of the front door and like I  
16     believe a closet.

17            Q.     Do you remember which hand you grabbed his  
18     knife hand with?

19            A.     It was my left hand to his right hand.

20            Q.     And do you remember what part of your body  
21     hit his part of the body when you took him to the  
22     ground?

23            A.     I'm pretty sure I brought my knee up. And  
24     pretty much my right forearm.

25            Q.     Okay. Did you strike him with your knee?



1           A.     If I actually struck him, I do not know.  
2     There was no complaint of injury, though.

3           MR. HILLMAN: I have no further questions.

4           THE COURT: Anything further?

5           MR. MORGAN: No, Judge.

6           THE COURT: All right, sir, thank you.

7     You are free to go.

8           State, do you have any other questions --  
9     any other witnesses?

10          MR. MORGAN: No, Judge. The State would  
11     rest at this time.

12          THE COURT: Counsel, do you have any  
13     witnesses?

14          MR. HILLMAN: No. I have explained to  
15     Mr. Grimes his right to testify and present witnesses  
16     and evidence. Based upon my advice, he will decline to  
17     do so. I will submit it.

18          THE COURT: Thank you, Counsel.

19          Any closing, State?

20          MR. MORGAN: I would reserve for rebuttal,  
21     if any.

22          THE COURT: Counsel, any closing?

23          MR. HILLMAN: I'll also submit it, Judge.

24          THE COURT: State, do you submit it, or is  
25     there anything else?

1 MR. MORGAN: No, Judge.

2 THE COURT: All right. Mr. Grimes, based  
3 on the testimony and evidence the Court has heard  
4 today, I'm going to hold -- find that there was enough  
5 evidence to bind you over to district court on Count  
6 One, attempt murder with use of a deadly weapon in  
7 violation of a temporary protective order; Count Two,  
8 burglary in possession of a deadly weapon in violation  
9 of a temporary protective order; and Count Three,  
10 battery with use of a deadly weapon constituting  
11 domestic violence resulting in substantial bodily harm  
12 and violation of a temporary protective order.

13 Your district court date will be --

14 THE CLERK: December 8th, 10:30. Lower  
15 level district court arraignments.

16 THE COURT: Counsel, I'm looking at the  
17 minutes to see if there is a no contact order. I don't  
18 see one.

19 MR. MORGAN: The State would request one,  
20 and I would also inquire as to his current bail status.

21 THE COURT: All right. Let's deal with  
22 the no contact order first.

23 In reference to the no contact order,  
24 Mr. Grimes, I'm going to issue a no contact order.  
25 That means you're not allowed to have any contact with

1 Aneka Grimes. That means no letters from the jail. No  
2 text messages, if for some reason you're released. No  
3 third-party attempted contacts. That means you can't  
4 contact somebody else and try to have them contact her  
5 or call a three-way from the jail.

6 Do you understand, Mr. Grimes?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: No contact whatsoever.

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: As to bail, State, this is  
11 what I have in my file. It may be wrong. It says  
12 there is no bail currently on the attempt murder.

13 MR. HILLMAN: Right.

14 THE COURT: And there is 5,000 on the  
15 burglary and violation of the protective order.

16 MR. HILLMAN: We would ask the Court to  
17 set a bail today.

18 THE COURT: Certainly. Let's hear bail  
19 arguments.

20 State?

21 MR. MORGAN: Judge, I would ask for a  
22 million dollars as to Count One and \$250,000 as to the  
23 amended Count Three.

24 I think that the defendant is clearly a  
25 danger to the community after being served with a

1 protective order, and then his reaction to that is  
2 coming back and nearly killing the victim.

3 The only reason that she's not dead today  
4 is miraculous luck that the injuries didn't cause more  
5 damage than they did, and the fact that Officer Hoffman  
6 intervened when he did.

7 The defendant didn't voluntarily stop. He  
8 had to have the knife removed from his hand forcibly,  
9 and he was taken to the ground. This case could very,  
10 very, very easily have been a murder, and I would have  
11 grave concerns for the victim's safety should he get  
12 out of custody.

13 I would submit it at that.

14 THE COURT: Counsel?

15 MR. HILLMAN: Judge, I think that a  
16 million dollars and \$250,000 is obsessive. Mr. Grimes  
17 himself has a disability. He's got a withered right  
18 leg due to a gunshot wound. So he has some physical  
19 disabilities himself.

20 I think that future hearings are going to  
21 show that Ms. Grimes attacked Mr. Grimes before with a  
22 knife. Also Ms. Grimes filed a sexual assault  
23 allegation against Mr. Grimes, which she later  
24 recanted, and which was later dismissed.

25 I would ask for bail on the attempt murder

1 with use perhaps in the amount of \$50,000. Couple that  
2 with the stay-away order and perhaps a house arrest  
3 order. That would be my request.

4 THE COURT: Counsel, I'm looking at his  
5 intake services sheet. It shows a 2000 battery  
6 domestic violence. I am assuming that was not with  
7 Mrs. Grimes -- Ms. Grimes?

8 MR. MORGAN: I don't have that  
9 information, Judge, but based on the testimony --

10 THE COURT: They were married in '04.  
11 Okay.

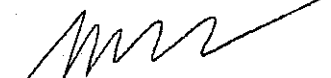
12 This is what I'm going to do. As to Count  
13 One, I am going to set bail at \$750,000. Count Two is  
14 currently set at \$5,000. I'm going to raise it to  
15 \$15,000. And on Count Three, I'm going to set it at  
16 \$250,000.

17 MR. MORGAN: Thank you, Judge.

18 THE COURT: Thank you.

19  
20 \* \* \* \* \*

21 ATTEST: Full, true and accurate transcript.

22  
23   
24 MARCIA LEONARD, CCR 204

25

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13

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*Ann D. Lohman*  
CLERK OF THE COURT

1 0014  
2 PHILIP J. KOHN, PUBLIC DEFENDER  
3 NEVADA BAR NO. 0556  
4 309 South Third Street, Suite #226  
5 Las Vegas, Nevada 89155  
6 (702) 455-4685  
7 Attorney for Defendant

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 In the Matter of the Application of,  
9  
10 Bennett Grimes,  
11 for a Writ of Habeas Corpus.

CASE NO. C276163-1

DEPT. NO. XII

DATE: November 3, 2011  
TIME: 8:30 a.m.

PETITION FOR WRIT OF HABEAS CORPUS

12  
13 TO: The Honorable Judge of the Eighth Judicial District Court of  
14 The State of Nevada, in and for the County of Clark

C-11-276163-1  
PWKC  
Petition for Writ of Habeas Corpus  
1849684



15 The Petition of Bennett Grimes submitted by R. ROGER HILLMAN, Deputy Public  
16 Defender, as attorney for the above-captioned individual, respectfully affirms:

17 1. That he/she is a duly qualified, practicing and licensed attorney in the City of  
18 Las Vegas, County of Clark, State of Nevada.

19 2. That Petitioner makes application for a Writ of Habeas Corpus; that the place  
20 where the Petitioner is imprisoned actually or constructively imprisoned and restrained of his liberty  
21 is the Clark County Detention Center; that the officer by whom he is imprisoned and restrained is  
22 Doug Gillespie, Sheriff.

23 3. That the imprisonment and restraint of said Petitioner is unlawful in that: Charges  
24 as filed in the Information in the instant case do not reflect the charges at the bind-over, nor the facts  
25 presented at the Preliminary Hearing. The heading of the information charges Grimes with Burglary  
26 While in Possession of a Firearm in Violation of a Temporary Protective Order. (Felony NRS  
27 205.060, 193.166), as well as other charges.  
28

4. That Petitioner waives his right to be brought to trial within 60 days.

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CLERK OF THE COURT

MCW

1           5. That Petitioner consents that if Petition is not decided within 15 days before the  
2 date set for trial, the Court may, without notice of hearing, continue the trial indefinitely to a date  
3 designated by the Court.

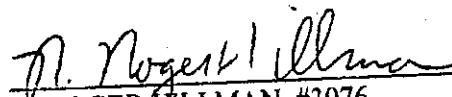
4           6. That Petitioner personally authorized his aforementioned attorney to commence this  
5 action.

6           WHEREFORE, Petitioner prays that this Honorable Court make an order directing  
7 the County of Clark to issue a Writ of Habeas Corpus directed to the said Doug Gillespie, Sheriff,  
8 commanding him to bring the Petitioner before your Honor, and return the cause of his  
9 imprisonment.

10           DATED this 12th of October, 2011.

11                   PHILIP J. KOHN  
12                   CLARK COUNTY PUBLIC DEFENDER

13  
14           By:

  
15           R. ROGER HILLMAN, #3076  
16           Deputy Public Defender  
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## DECLARATION

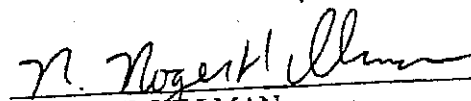
R. ROGER HILLMAN makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and I am familiar with the facts and circumstances of this case.

2. That I am the attorney of record for Petitioner in the above matter; that I have read the foregoing Petition, know the contents thereof, and that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true; that Petitioner, BENNETT GRIMES, personally authorizes me to commence this Writ of Habeas Corpus action.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 12th day of October, 2011.

  
R. ROGER HILLMAN



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**MEMORANDUM OF POINTS AND AUTHORITIES**  
**IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

COMES NOW the Petitioner, BENNETT GRIMES, by and through his counsel, R. ROGER HILLMAN, the Clark County Public Defender's Office, and submits the following Points and Authorities in Support of Defendant's Petition for a pre-trial Writ of Habeas Corpus.

**STATEMENT OF FACTS**

On August 25, 2001 a preliminary hearing was held before the Honorable Linda Norvell Marquis. At that hearing, the State presented two witnesses, the alleged victim, and a police officer. Throughout the Preliminary Hearing, there is no mention of a rifle, gun, or any other type of firearm. The only weapon mentioned is a steak knife, described as a 'steak knife' (PHT, pp 34, 31, 13, and 20). After the Preliminary Hearing, Grimes was bound over on "...attempt murder with use of a deadly weapon in violation of a temporary protective order; Count Two, burglary in possession of a deadly weapon in violation of a temporary protective order; and Count Three, battery with use of a deadly weapon constituting domestic violence resulting in substantial bodily harm and violation of a temporary protective order." (PHT p.36).

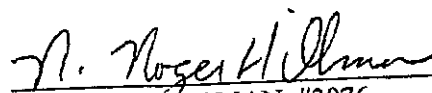
**ARGUMENT**

NRS 173.035(3) states: "The information must be filed.... Each information must set forth the crime committed according to the facts." Further, Hicks v. Sherriff, 464 P.2d 462, 86 Nev. 67 (1970) holds that, for a charge to stand, the facts presented to the lower court must establish the corpus dilecti of the crime. In the instant case, there is no evidence presented to the Lower Court indicating that a firearm was present, used, or seen by any of the parties present at the time of the alleged crime. Therefore, the charge of Burglary While in Possession of a Firearm in Violation of a Temporary Protective Order should be dismissed.

DATED this 12th of October, 2011.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By:

  
R. ROGER HILLMAN, #3076  
Deputy Public Defender

NOTICE

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the foregoing PETITION FOR WRIT OF  
HABEAS CORPUS will be heard on 3rd day of November, 2011, at 8:30 a.m. in Department No.  
XII District Court.

DATED this 12th day of October, 2011.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By: R. Roger Hillman  
R. ROGER HILLMAN, #3076  
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing PETITION FOR WRIT OF  
HABEAS CORPUS is hereby acknowledged this 12 day of October, 2011.

CLARK COUNTY DISTRICT ATTORNEY

By: Jackie Maga

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*Ann L. Blum*  
CLERK OF THE COURT

1 ORDR  
2 PHILIP J. KOHN, PUBLIC DEFENDER  
3 NEVADA BAR NO. 0556  
4 309 South Third Street, Suite #226  
5 Las Vegas, Nevada 89155  
6 (702) 455-4685  
7 Attorney for Defendant

DISTRICT COURT  
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 v.

10 BENNETT GRIMES,

11 Defendant.

CASE NO. C276163-1

DEPT. NO. XII

12 ORDER

13 The Petition of BENNETT GRIMES submitted by R. ROGER HILLMAN, Deputy  
14 Public Defender, as attorney for the above-captioned individual, having been filed in the above-  
15 entitled matter,

16 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that you, STEVE  
17 GRIERSON, Clerk of the Eighth Judicial District Court of the State of Nevada, in and for the  
18 County of Clark, issue a Writ of Habeas Corpus.

19 DATED AND DONE at Las Vegas, Nevada, this 13 of October, 2011.

20  
21 *[Signature]*  
22 DISTRICT COURT JUDGE

23 Submitted By:  
24 PHILIP J. KOHN  
25 CLARK COUNTY PUBLIC DEFENDER

26 By *[Signature]*  
27 R. ROGER HILLMAN, #3076  
28 Deputy Public Defender

C-11-276163-1  
ORDR  
Order  
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CLERK OF THE COURT

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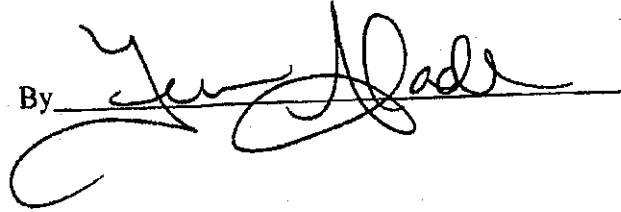
RECEIPT OF COPY

RECEIPT OF COPY of the foregoing Order is hereby acknowledged this 14th day

of October, 2011.

CLARK COUNTY DISTRICT ATTORNEY

By



Case Name: BENNETT GRIMES

Case No.: C276163-1

Dept. No.: XII

ORIGINAL

FILED

OCT 14 3 14 PM '11

1 WRTH  
2 PHILIP J. KOHN, PUBLIC DEFENDER  
3 NEVADA BAR NO. 0556  
4 309 South Third Street, Suite #226  
5 Las Vegas, Nevada 89155  
6 (702) 455-4685  
7 Attorney for Defendant

DISTRICT COURT  
CLERK OF THE COURT  
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,  
8 Plaintiff,

CASE NO. C276163-1  
DEPT. NO. XII

10 BENNETT GRIMES,  
11 Defendant.

WRIT OF HABEAS CORPUS

14 To: Clark County Sheriff  
15 Clark County, Nevada

16 GREETINGS:

17 We command that you have the body of the above-captioned person, by you  
18 imprisoned and detained, as it is alleged, together with the time and cause of such imprisonment and  
19 detention, by whatever name said above-captioned person shall be called or charged, before the  
20 Honorable Melissa Saragosa, District Court Judge, at his/her chambers or his/her courtroom in the  
21 County Courthouse Building in the City of Las Vegas, County of Clark, State of Nevada, on  
November 3, 2011 at the hour of 8:30 a.m., to do and receive that which shall then and there be  
considered concerning the said above-captioned person; and have you then and there this Writ.

DATED AND DONE this \_\_\_\_\_ of October, 2011.

STEVE GRIERSON, COUNTY CLERK

C-11-276163-1  
WHC  
Writ of Habeas Corpus  
1657312



By: *Jennifer Arevalo*  
DEPUTY JENNIFER AREVALO

OCT 14 2011

RECEIPT OF COPY

RECEIPT OF COPY of the foregoing Writ of Habeas Corpus is hereby  
acknowledged this 14th day of October, 2011.

CLARK COUNTY SHERIFF

CLARK COUNTY DISTRICT ATTORNEY

By:

*Karna Ring*

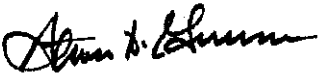
By:

*James H. Hade*

Case Name: BENNETT GRIMES

Case No.: C276163-1

Dept. No. XII

  
CLERK OF THE COURT

**INFO**  
DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
SHAWN MORGAN  
Deputy District Attorney  
Nevada Bar #0010935  
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-

BENNETT GRIMES,  
#2762267

Defendant.

Case No: C-11-276163-1  
Dept No: XII

**SECOND AMENDED  
INFORMATION**

STATE OF NEVADA }  
COUNTY OF CLARK } ss.

DAVID ROGER, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That BENNETT GRIMES, the Defendant(s) above named, having committed the crimes of **ATTEMPT MURDER WITH USE OF A DEADLY WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (Felony - NRS 200.010, 200.030, 193.330, 193.165, 193.166); BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (Felony - NRS 205.060, 193.166) and BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY HARM IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (Felony - NRS 200.481.2e; 193.166)**, on or about the 22nd day of July, 2011, within the County of Clark, State of Nevada, contrary to the form, force and

1 effect of statutes in such cases made and provided, and against the peace and dignity of the  
2 State of Nevada,

3 COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON IN  
4 VIOLATION OF TEMPORARY PROTECTIVE ORDER

5 did then and there, without authority of law, and malice aforethought, willfully and  
6 feloniously attempt to kill ANEKA GRIMES, a human being, by stabbing at and into the  
7 body of the said ANEKA GRIMES, with a deadly weapon, to-wit: a knife, in violation of a  
8 Temporary Order for Protection against Domestic Violence issued by the District Court,  
9 Family Division, of the State of Nevada in Case No. T-11-134754-T.

10 COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON IN  
11 VIOLATION OF A TEMPORARY PROTECTIVE ORDER

12 did then and there wilfully, unlawfully, and feloniously enter, and thereafter gain  
13 possession of a deadly weapon, to-wit: a knife, with intent to commit assault and/or battery  
14 and/or to commit substantial bodily harm and/or murder, that certain building occupied by  
15 ANEKA GRIMES, located at 4325 West Desert Inn, Las Vegas, Clark County, Nevada, in  
16 violation of a Temporary Order for Protection against Domestic Violence issued by the  
17 District Court, Family Division, of the State of Nevada in Case No. T-11-134754-T.

18 COUNT 3 - BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING  
19 DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY HARM  
20 IN VIOLATION OF TEMPORARY PROTECTIVE ORDER

21 did then and there wilfully, unlawfully, and feloniously use force or violence upon  
22 the person of his spouse, former spouse, or any other person to whom he is related by blood  
23 or marriage, a person with whom he is or was actually residing, a person with whom he has  
24 had or is having a dating relationship, a person with whom he has a child in common, the  
25 minor child of any of those persons or his minor child, to-wit: ANEKA GRIMES, with use  
26 of a deadly weapon, to-wit: a knife, by stabbing at and into the body of the said ANEKA

26 //

27 //

28 //



1 GRIMES with said knife, resulting in substantial bodily harm to the said ANEKA GRIMES,  
2 in violation of a Temporary Order for Protection against Domestic Violence issued by  
3 the District Court, Family Division, of the State of Nevada in Case No. T-11-134754-T.  
4  
5

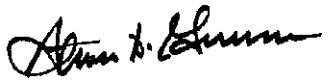
6  
7 BY

  
DAVID ROGER  
DISTRICT ATTORNEY  
Nevada Bar #002781

8  
9  
10  
11 Names of witnesses known to the District Attorney's Office at the time of filing this  
12 Information are as follows:

<u>NAME</u>	<u>ADDRESS</u>
BREWER, MICHAEL	LVMPD #8426
CUSTODIAN OF RECORDS	CCDC
CUSTODIAN OF RECORDS	LVMPD COMMUNICATIONS
CUSTODIAN OF RECORDS	LVMPD RECORDS
GALLUP, BRADLEY	LVMPD #8729
GRIMES, ANIKA	C/O CC DISTRICT ATTORNEY
HODSON, RODNEY	LVMPD #3711
HOFFMAN, BOBBY	LVMPD #10069
KNEPP, ELAINE/OR DESIGNEE	D.A. INVESTIGATOR
NEWMAN, STEPHANIE	16041 KNOLL VIEW CIR VICTORVILL CA
TAVAREZ, MICHELLE	LVMPD #8518
TOMAINO, DANIEL	LVMPD #8278

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26  
27 DA#11F13012X/ts  
28 LVMPD EV#1107223412  
(TK4)

  
CLERK OF THE COURT

RWHC  
DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781  
SHAWN MORGAN  
Deputy District Attorney  
Nevada Bar #0010935  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
State of Nevada

DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of Application,  
of  
BENNETT GRIMES,  
#2762267  
for a Writ of Habeas Corpus.

Case No. C-11-276163-1  
Dept No. XII

RETURN TO WRIT OF HABEAS CORPUS

DATE OF HEARING: 11-3-11

TIME OF HEARING: 8:30 A.M.

COMES NOW, DOUGLAS C. GILLESPIE, Sheriff of Clark County, Nevada,  
Respondent, through his counsel, DAVID ROGER, District Attorney, through SHAWN  
MORGAN, Deputy District Attorney, in obedience to a writ of habeas corpus issued out of  
and under the seal of the above-entitled Court on the 14th day of October, 2011, and made  
returnable on the 3rd day of November, 2011, at the hour of 8:30 o'clock A.M., before the  
above-entitled Court, and states as follows:

1. Respondent admits the allegations of Paragraphs one and two of the Petitioner's  
Petition for Writ of Habeas Corpus.

3. Paragraphs four, five, and six do not require admission or denial.

3. Paragraphs four, five, and six do not require admission or denial.

4. The Petitioner is in the actual custody of DOUGLAS C. GILLESPIE, Clark County Sheriff, Respondent herein, pursuant to a Criminal Information, a copy of which is attached hereto as Exhibit 1 and incorporated by reference herein.

Wherefore, Respondent prays that the Writ of Habeas Corpus be discharged and the Petition be dismissed.

DATED this 25th day of October, 2011.

Respectfully submitted,

DAVID ROGER  
Clark County District Attorney  
Nevada Bar #002781

BY /s/ Shawn Morgan  
**SHAWN MORGAN**  
 Deputy District Attorney  
 Nevada Bar #0010935

### POINTS AND AUTHORITIES

## STATEMENT OF FACTS

Bennett Grimes (hereinafter "Defendant") is currently charged by way of Amended Information with one count of Attempt Murder With Use Of A Deadly Weapon In Violation Of A Temporary Protective Order (Felony - Nrs 200.010, 200.030, 193.330, 193.165, 193.166); Burglary While In Possession Of A Deadly Weapon In Violation Of A Temporary Protective Order (Felony - Nrs 205.060, 193.166) And Battery With Use Of A Deadly Weapon Constituting Domestic Violence Resulting In Substantial Bodily Harm In Violation Of A Temporary Protective Order (Felony - Nrs 200.481.2e; 193.166). The charges stem from Defendant's conduct on July 22, 2011.

Prior to that day, Defendant and the victim in this case, Aneka Grimes, had been married for over six years. Preliminary Hearing Transcripts ("PHT") p. 7. They separated in

1 2011 and Aneka obtained a Temporary Protective Order on July 7, 2011. Defendant was  
2 served with the Order on July 8, 2011.

3 On July 22, 2011, Aneka and her mother arrived home from buying a new car. Id. at  
4 8. Upon entering Aneka's apartment, Defendant forced the door open behind them and  
5 gained entry into the residence. Id. at 9. Defendant began arguing with Aneka in an attempt  
6 to reconcile their relationship. Id. at 10. While they were arguing, Aneka's mother called  
7 her husband, who then called the police. Id. at 9. Just prior to police arriving, Defendant  
8 snapped. Id. at 13. He grabbed a steak knife from the kitchen and attacked Aneka. Id. He  
9 put her in a headlock and began stabbing her. Id. Defendant stabbed Aneka twenty (20)  
10 times in the chest, neck, arms, back, face, and head. Id. at 14. His attempt to kill her was  
11 only thwarted when Las Vegas Metropolitan Police Department Officer Bobby Hoffman saw  
12 Defendant attacking Aneka and tackled him to the ground as he was attempting to plunge the  
13 knife into Aneka's neck. Id. at 30-31.

#### 14 ARGUMENT

#### 15 **THE STATE PRESENTED SUFFICIENT EVIDENCE TO HOLD DEFENDANT TO** 16 **ANSWER ON THE CHARGED OFFENSES**

17 Defendant alleges that Count 2 of the Amended Information should be dismissed  
18 because there was no testimony regarding a firearm elicited at the preliminary hearing.  
19 However, Defendant cites to authority to support his position, nor is dismissal of the count  
20 the appropriate remedy.

21 Defendant is correct that he did not use a firearm in the commission of this crime; he  
22 stabbed his wife in the neck, face, and head with a knife. After the preliminary hearing,  
23 Defendant was bound over to District Court on the crime of Burglary While in Possession of  
24 a Deadly Weapon in Violation of a Temporary Protective Order. Inadvertently, when the  
25 Information was prepared in this case, it was changed to Burglary While in Possession of a  
26 Firearm in Violation of a Temporary Protective Order. To correct this error, the State will  
27 file a Second Amended Information concurrently with the filing of the instant response. See  
28 State's Exhibit 1. The Second Amended Information corrects any factual discrepancies

1 between the preliminary hearing and the charging document. Upon the filing of the Second  
2 Amended Information, Defendant's issues with the charging document will be moot and his  
3 writ should therefore be denied.

4 **CONCLUSION**

5 Based on the argument as set forth above, the State respectfully requests that this  
6 Court DENY Defendant's petition for writ of habeas corpus.

7 DATED this 25<sup>th</sup> day of October, 2011.

8 Respectfully submitted,

9 DAVID ROGER  
10 Clark County District Attorney  
11 Nevada Bar # 002781

12 BY /s/ Shawn Morgan  
13 SHAWN MORGAN  
14 Deputy District Attorney  
15 Nevada Bar #0010935

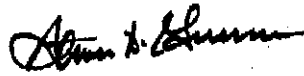
16 **CERTIFICATE OF FACSIMILE TRANSMISSION**

17 I hereby certify that service of Return to Writ of Habeas Corpus, was made this 26th  
18 day of October, 2011, by facsimile transmission to:

19  
20 RALPH R. HILLMAN, Deputy Public Defender  
21 FAX #455-5112  
22

23  
24 BY /s/ J. Robertson  
25 Employee of the District Attorney's Office  
26

27 SM/jr  
28

  
CLERK OF THE COURT

1 **INFO**  
2 **DAVID ROGER**  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 **SHAWN MORGAN**  
6 Deputy District Attorney  
7 Nevada Bar #0010935  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 BENNETT GRIMES,  
13 #2762267

14 Defendant.

Case No: C-11-276163-1  
Dept No: XII

**SECOND AMENDED  
INFORMATION**

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

17 DAVID ROGER, District Attorney within and for the County of Clark, State of  
18 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That BENNETT GRIMES, the Defendant(s) above named, having committed the  
20 crimes of **ATTEMPT MURDER WITH USE OF A DEADLY WEAPON IN**  
21 **VIOLATION OF A TEMPORARY PROTECTIVE ORDER (Felony - NRS 200.010,**  
22 **200.030, 193.330, 193.165, 193.166); BURGLARY WHILE IN POSSESSION OF A**  
23 **DEADLY WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER**  
24 **(Felony - NRS 205.060, 193.166) and BATTERY WITH USE OF A DEADLY**  
25 **WEAPON CONSTITUTING DOMESTIC VIOLENCE RESULTING IN**  
26 **SUBSTANTIAL BODILY HARM IN VIOLATION OF A TEMPORARY**  
27 **PROTECTIVE ORDER (Felony - NRS 200.481.2e; 193.166), on or about the 22nd day of**  
28 July, 2011, within the County of Clark, State of Nevada, contrary to the form, force and

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**EXHIBIT "1"**

1 effect of statutes in such cases made and provided, and against the peace and dignity of the  
2 State of Nevada,

3 COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON IN  
4 VIOLATION OF TEMPORARY PROTECTIVE ORDER

5 did then and there, without authority of law, and malice aforethought, willfully and  
6 feloniously attempt to kill ANEKA GRIMES, a human being, by stabbing at and into the  
7 body of the said ANEKA GRIMES, with a deadly weapon, to-wit: a knife, in violation of a  
8 Temporary Order for Protection against Domestic Violence issued by the District Court,  
9 Family Division, of the State of Nevada in Case No. T-11-134754-T.

10 COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON IN  
11 VIOLATION OF A TEMPORARY PROTECTIVE ORDER

12 did then and there wilfully, unlawfully, and feloniously enter, and thereafter gain  
13 possession of a deadly weapon, to-wit: a knife, with intent to commit assault and/or battery  
14 and/or to commit substantial bodily harm and/or murder, that certain building occupied by  
15 ANEKA GRIMES, located at 4325 West Desert Inn, Las Vegas, Clark County, Nevada, in  
16 violation of a Temporary Order for Protection against Domestic Violence issued by the  
17 District Court, Family Division, of the State of Nevada in Case No. T-11-134754-T.

18 COUNT 3 - BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING  
19 DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY HARM  
IN VIOLATION OF TEMPORARY PROTECTIVE ORDER

20 did then and there wilfully, unlawfully, and feloniously use force or violence upon  
21 the person of his spouse, former spouse, or any other person to whom he is related by blood  
22 or marriage, a person with whom he is or was actually residing, a person with whom he has  
23 had or is having a dating relationship, a person with whom he has a child in common, the  
24 minor child of any of those persons or his minor child, to-wit: ANEKA GRIMES, with use  
25 of a deadly weapon, to-wit: a knife, by stabbing at and into the body of the said ANEKA

26 //

27 //

28 //

1 GRIMES with said knife, resulting in substantial bodily harm to the said ANEKA GRIMES,  
2 in violation of a Temporary Order for Protection against Domestic Violence issued by  
3 the District Court, Family Division, of the State of Nevada in Case No. T-11-134754-T.  
4  
5  
6

7 BY

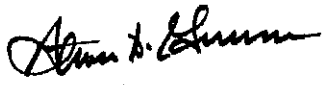
*David Roger*  
DAVID ROGER  
DISTRICT ATTORNEY  
Nevada Bar #002781

8  
9  
10 Names of witnesses known to the District Attorney's Office at the time of filing this  
11 Information are as follows:  
12

13	<u>NAME</u>	<u>ADDRESS</u>
14	BREWER, MICHAEL	LVMPD #8426
15	CUSTODIAN OF RECORDS	CCDC
16	CUSTODIAN OF RECORDS	LVMPD COMMUNICATIONS
17	CUSTODIAN OF RECORDS	LVMPD RECORDS
18	GALLUP, BRADLEY	LVMPD #8729
19	GRIMES, ANIKA	C/O CC DISTRICT ATTORNEY
20	HODSON, RODNEY	LVMPD #3711
21	HOFFMAN, BOBBY	LVMPD #10069
22	KNEPP, ELAINE/OR DESIGNEE	D.A. INVESTIGATOR
23	NEWMAN, STEPHANIE	16041 KNOLL VIEW CIR VICTORVILL CA
24	TAVAREZ, MICHELLE	LVMPD #8518
25	TOMAINO, DANIEL	LVMPD #8278

26  
27 DA#11F13012X/ts  
28 LVMPD EV#1107223412  
(TK4)



  
CLERK OF THE COURT

NWEW1  
MARY-ANNE MILLER  
Interim Clark County District Attorney  
Nevada Bar #001419  
SHAWN MORGAN  
Deputy District Attorney  
Nevada Bar #10935  
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-

BENNETT GRIMES,  
#2762267

Defendant.

CASE NO: C-11-276163-1

DEPT NO: XII

NOTICE OF WITNESSES  
[NRS 174.234(1)(a)]

TO: BENNETT GRIMES, Defendant; and  
TO: PUBLIC DEFENDER, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF  
NEVADA intends to call the following witnesses in its case in chief:

<u>NAME</u>	<u>ADDRESS</u>
BODDIE, CHRIST	LVMPD #8914
BREWER, MICHAEL	LVMPD #8426
BROWNLEE, TRACY	LVMPD #9975
CRICKETT, LORI	LVMPD #3631
CRUZ, CELINA	LVMPD #9600
CUSTODIAN OF RECORDS OR DESIGNEE	Clark County Detention Center, 330 S. Casino Center Blvd., Las Vegas, NV

1	CUSTODIAN OF RECORDS	LVMPD Communications, 400 E. Stewart, Las
2	OR DESIGNEE	Vegas
3	CUSTODIAN OF RECORDS	LVMPD Dispatch, 400 E. Stewart, Las Vegas, NV
4	OR DESIGNEE	
5	CUSTODIAN OF RECORDS	LVMPD Records, 400 E. Stewart, Las Vegas, NV
6	OR DESIGNEE	
7	DELZER, KENNY	LVMPD #6841
8	DIAZ, SAM	LVMPD #12886
9	EMBREE, CHRIST	LVMPD #4108
10	GALLUP, BRADLEY	LVMPD #8729
11	GRIMES, ANIKA	C/O CC DISTRICT ATTORNEY
12	HODSON, RODNEY	LVMPD #3711
13	HOFFMAN, BOBBY	LVMPD #10069
14	KNEPP, ELAINE/OR DESIGNEE	D.A. INVESTIGATOR
15	LANG, JEFFREY	LVMPD #9662
16	NEWMAN, EARL	16041 KNOLL VIEW CIR VICTORVILL CA
17	NEWMAN, STEPHANIE	16041 KNOLL VIEW CIR VICTORVILL CA
18	PERKINS, MICHAEL	LVMPD #4242
19	TAVAREZ, MICHELLE	LVMPD #8518
20	THAXTON, STEVEN	LVMPD #4464
21	TOMAINO, DANIEL	LVMPD #8278
22	ZINGER, JUSTIN	LVMPD #9206
23	ZUCARO, MARC	LVMPD #13208
24	//	
25	//	
26	//	
27	//	
28	//	

These witnesses are in addition to those witnesses endorsed on the Information and any other witness for which a separate Notice has been filed.

MARY-ANNE MILLER  
Interim Clark County District Attorney  
Nevada Bar # 001419

BY

/s/ Shawn Morgan  
SHAWN MORGAN  
Deputy District Attorney  
Nevada Bar # 10935

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of NOTICE OF WITNESSES, was made this 30<sup>th</sup> day of January, 2012, by facsimile transmission to:

PD SAXE  
455-5112

BY /s/ J. Serpa  
J. Serpa  
Employee of the District Attorney's Office

  
CLERK OF THE COURT

1 NWEW  
2 MARY-ANNE MILLER  
3 Interim Clark County District Attorney  
4 Nevada Bar #001419  
5 SHAWN MORGAN  
6 Deputy District Attorney  
7 Nevada Bar #10935  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 BENNETT GRIMES,  
13 #2762267

Defendant.

CASE NO: C-11-276163-1  
DEPT NO: XII

NOTICE OF EXPERT WITNESSES  
[NRS 174.234(2)]

17 TO: BENNETT GRIMES, Defendant; and

18 TO: PUBLIC DEFENDER, Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF  
20 NEVADA intends to call the following witnesses in its case in chief:

21 1. MARSCHNER, JULIE P#8806 - Forensic Scientist II or Designee -  
22 Las Vegas Metropolitan Police Department; will testify as an expert in forensic analysis and  
23 DNA technology and will give scientific opinions related thereto. She is expected to testify  
24 regarding the DNA profiling analysis and related procedures she performed in this case.

25 2. GAUTHIER, KELLIE M. P#8691 - Forensic Scientist II or Designee -  
26 Las Vegas Metropolitan Police Department; will testify as an expert in forensic analysis and  
27 DNA technology and will give scientific opinions related thereto. She is expected to testify  
28 regarding the DNA profiling analysis and related procedures she performed in this case.

1 The substance of each expert witness' testimony and a copy of all reports made by or  
2 at the direction of the expert witness has been provided in discovery.

3 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

4 BY /s/ Shawn Morgan  
5 SHAWN MORGAN  
6 Deputy District Attorney  
7 Nevada Bar #0010935

8  
9 CERTIFICATE OF FACSIMILIE TRANSMISSION

10 I hereby certify that service of Notice of Expert Witnesses, was made this 31<sup>st</sup>  
11 day of January, 2012, by facsimilie transmission to:

12 PD SAXE  
13 455-5112

14 BY: /s/ J. Serpa  
15 J. Serpa  
16 Employee of the District Attorney's Office  
17  
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**LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
FORENSIC LABORATORY  
STATEMENT OF QUALIFICATIONS**

Date: 01/15/08

Name: Julie Marschner P#: 8806 Classification: Forensic Scientist II

Current Discipline of Assignment: Biology/DNA

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Blood Alcohol	
Toolmarks		Breath Alcohol	
Trace Evidence		Arson Analysis	
Toxicology		Firearms	
Latent Prints		Crime Scene Investigations	
Serology	X	Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	X
Quality Assurance		Technical Support /	

EDUCATION			
Institution	Dates Attended	Major	Degree Completed
Virginia Commonwealth University	08/2003 - 12/2004	Forensic Science	M.S.
CA Polytechnic State University, San Luis Obispo	06/1997 - 06/2001	Biological Sciences	B.S.

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
Internship: Virginia Department of Forensic Science - Forensic Biology and DNA Section	Richmond, VA	6/04 to 08/04
Orientation for Civilian Employees	Las Vegas, NV	10/05
Drivers Training II	Las Vegas, NV	10/05
11 th National CODIS Conference	Arlington, VA	11/05
National Institute of Justice Expert Systems Testbed Project	Huntington, WV	2/06
American Academy of Forensic Sciences 58 <sup>th</sup> Annual Meeting	Seattle, WA	2/06
Serological Techniques and DNA Screening - Colleen Proffitt, MFS	Las Vegas, NV	5/06
Bode Advanced DNA Technical Workshop	Captiva Island, FL	06/06

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
Bode Workshop - "Presenting Statistics in the Courtroom"	Captiva Island, FL	06/06
Differential Extraction	Las Vegas, NV	06/06
Complex Mixture Interpretation	Lakewood, CO	08/06
17 <sup>th</sup> International Symposium on Human Identification	Nashville, TN	10/06
Advanced Topics in Statistics	Nashville, TN	10/06
CODIS 5.7.3 Software Training	McLean, VA	11/06
Forensic Population Genetics and Statistics	Las Vegas, NV	11/27/06
13 <sup>th</sup> National CODIS Conference	Burlingame, CA	10/07
FBI DNA Auditor Training	Burlingame, CA	10/07
COURTROOM EXPERIENCE		
Court	Discipline	Number of Times
Clark County District Court	Biology/DNA	4
EMPLOYMENT HISTORY		
Employer	Job Title	Date
Las Vegas Metropolitan Police Department Forensic Lab	Forensic Scientist	07/2005 - Present
Perlegen Sciences, Mountain View, CA	Research Assistant II	07/2001 - 08/2003
PROFESSIONAL AFFILIATIONS		
Organization	Date(s)	
American Academy of Forensic Sciences - Trainee Affiliate in Criminalistics	02/07 - Present	

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)

PUBLICATIONS / PRESENTATIONS
None

OTHER QUALIFICATIONS:
None

[FL 11/00]



**LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
FORENSIC LABORATORY  
STATEMENT OF QUALIFICATIONS**

Date: 11/13/07

Name: Kellie M. (Wales) Gauthier P#: 8691 Classification: Forensic Scientist II

Current Discipline of Assignment: DNA / Biology

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Blood Alcohol	
Toolmarks		Breath Alcohol	
Trace Evidence		Arson Analysis	
Toxicology		Firearms	
Latent Prints		Crime Scene Investigations	
Serology	X	Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	X
Quality Assurance		Technical Support / DNA	X
EDUCATION			
Institution	Dates Attended	Major	Degree Completed
University of West Florida	8/98 - 5/02	Biology	B.S.
ADDITIONAL TRAINING / SEMINARS			
Course / Seminar	Location	Dates	
Applied Biosystems Training on 3130xl Genetic Analyzer	Las Vegas, NV	11/01/07	
Workshop: Forensic DNA Profiling	Las Vegas, NV	01/25-26/07	
Workshop: Forensic Population Genetics and Statistics	Las Vegas, NV	11/27/06	
FBI CODIS Training	McLean, VA	11/06	
Conference: Bode Advanced DNA Technical Workshop	Captiva Island, FL	06/06	
Workshop: Presenting Statistics in the Courtroom	Captiva Island, FL	06/06	
Training: Differential Extraction	Las Vegas, NV	06/06	
Training: Serological Techniques and DNA Screening - Colleen Proffitt, MFS	Las Vegas, NV	5/06	

ADDITIONAL TRAINING / SEMINARS		
Course / Seminar	Location	Dates
Conference: American Academy of Forensic Sciences 58 <sup>th</sup> Annual Meeting	Seattle, WA	2/20/06-2/25/06
Seminar: Racial Profiling SNP's	Seattle, WA	2/23/06
Seminar: The Atypical Serial Killer	Seattle, WA	2/22/06
Seminar: Bioterrorism Mass Disasters	Seattle, WA	2/21/06
Workshop: Sexual Homicide - Fantasy Becomes Reality	Seattle, WA	2/21/06
Workshop: Advanced Topics in STR DNA Analysis	Seattle, WA	2/20/06
National Incident Management System (NIMS) an Introduction	Las Vegas, NV	8/05
Drivers Training II	Las Vegas, NV	7/05
Workshop: Future Trends in Forensic DNA Technology - Applied Biosystems	Orlando, FL	9/04
Workshop: Southern Association of Forensic Scientists (SAFS) - Paternity Index DNA Statistics	Orlando, FL	9/04
Workshop: Forensic Epidemiology - Joint Training for Law Enforcement Hazardous Materials and Public Health Officials on Investigative Response to Bio-terrorism	Orlando, FL	7/04
Forensic Technology Training - Florida Department of Law Enforcement	Orlando, FL	4/04
Biology Discipline Meeting	Tampa, FL	3/04
Workshop: Future Trends in Forensic DNA Technology - Applied Biosystems	Orlando, FL	9/03
COURTROOM EXPERIENCE		
Court	Discipline	Number of Times
Clark County: Justice, District	DNA	6
EMPLOYMENT HISTORY		
Employer	Job Title	Date
Las Vegas Metropolitan Police Department	Criminalist I	5/05 - present
Florida Dept. of Law Enforcement	Forensic Technologist	8/03 - 5/05

PROFESSIONAL AFFILIATIONS	
Organization	Date(s)
American Academy of Forensic Sciences - Trainee Affiliate	10/06 - present
PUBLICATIONS / PRESENTATIONS	
None	
OTHER QUALIFICATIONS:	
None	

[FL 11/00]

ORIGINAL

FILED

FEB 09 2012

*John L. Miller*  
CLERK OF COURT

1 EXPT

2 MARY-ANNE MILLER  
3 Clark County District Attorney  
4 Nevada Bar #001419  
5 SHAWN MORGAN  
6 Deputy District Attorney  
7 Nevada Bar #0010935  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 BENNETT GRIMES,  
13 #2762267

14 Defendant.

Case No. C-11-276163-1

Dept No. XII

15  
16 **EX PARTE MOTION FOR RELEASE OF MEDICAL RECORDS**

17 COMES NOW, the State of Nevada, by MARY-ANNE MILLER, District  
18 Attorney, through SHAWN MORGAN, Deputy District Attorney, and moves this Honorable  
19 Court for an Order Releasing evidence being held by UNIVERSITY MEDICAL CENTER  
20 (UMC) consisting of medical records for patient: ANEKA GRIMES, DOB: 11/29/1982,  
21 admitted on or about 7/22/11 AND BENNETT GRIMES, DOB: 8/30/1979, admitted on  
22 or about 7/22/11, to be released to a representative of the DISTRICT ATTORNEY'S  
23 OFFICE for the purpose of prosecuting the above referenced case. These records are  
24 necessary to establish the degree and substance of the injuries inflicted upon the said.  
25 Movant represents that the information sought is relevant and material to a legitimate law  
26 enforcement inquiry; that the request is specific and limited in scope to the extent reasonably

27  
28 **RECEIVED**

FEB 9 2012

CLERK OF COURT

C-11-276163-1  
EXMT  
Ex Parte Motion  
1788689




1 practicable in light of the purpose for which the information is sought; and that identified  
2 information could not reasonably be used.

3  
4  
5 DATED this 30<sup>th</sup> day of January, 2012.

6 MARY-ANNE MILLER  
7 Clark County District Attorney  
8 Nevada Bar #001419

9 BY

  
10 SHAWN MORGAN  
11 Deputy District Attorney  
12 Nevada Bar #0010935  
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ORIGINAL

FILED

FEB 09 2012

*John J. Blum*  
CLERK OF COURT

1 **ORDR**

2 MARY-ANNE MILLER  
3 Clark County District Attorney  
4 Nevada Bar #001419  
5 SHAWN MORGAN  
6 Deputy District Attorney  
7 Nevada Bar #0010935  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,  
13 Plaintiff,

Case No. C-11-276163-1  
Dept No. XII

14 -vs-

15 BENNETT GRIMES,  
16 #2762267  
17 Defendant.

18 **ORDER RELEASING MEDICAL RECORDS**

19 Upon the ex parte application and representation of MARY-ANNE MILLER, Clark  
20 County District Attorney, by and through SHAWN MORGAN, Deputy District Attorney,  
21 that certain evidence in Case No.C-11-276163-1, held in the custody of UNIVERSITY  
22 MEDICAL CENTER (UMC) needs to be released to a representative of the DISTRICT  
23 ATTORNEY'S OFFICE for the purpose of prosecuting the above referenced case. These  
24 records are necessary to establish the degree and substance of the injuries inflicted upon the  
25 said.

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RECEIVED

FEB 9/2012

CLERK OF THE COURT

C-11-276163-1  
ORDR  
Order  
1768687



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FEB 01 2012

DEPARTMENT 12

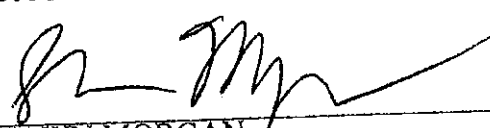
1 IT IS HEREBY ORDERED that the evidence in the custody of the UNIVERSITY  
2 MEDICAL CENTER (UMC), consisting of medical records for patient: ANEKA GRIMES,  
3 DOB: 11/29/1982, admitted on or about 7/22/11 AND BENNETT GRIMES, DOB:  
4 8/30/1979, admitted on or about 7/22/11, be released to a representative of the DISTRICT  
5 ATTORNEY'S OFFICE.

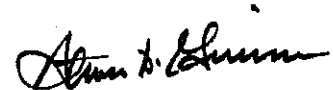
6 DATED this 9 day of <sup>February</sup>~~January~~, 2012.

7   
8 DISTRICT JUDGE

9  
10 MARY-ANNE MILLER  
11 DISTRICT ATTORNEY  
12 NEVADA BAR #001419

13 BY

  
14 SHAWN MORGAN  
15 Deputy District Attorney  
16 Nevada Bar #0010935  
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CLERK OF THE COURT

1 NWEW  
2 STEVEN B. WOLFSON  
Interim Clark County District Attorney  
Nevada Bar #001565  
3 SHAWN MORGAN  
Deputy District Attorney  
4 Nevada Bar #10935  
200 Lewis Avenue  
5 Las Vegas, Nevada 89155-2212  
(702) 671-2500  
6 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 BENNETT GRIMES,  
13 #2762267

Defendant.

CASE NO: C-11-276163-1  
DEPT NO: XII

15 SUPPLEMENTAL NOTICE OF EXPERT WITNESSES  
16 [NRS 174.234(2)]

17 TO: BENNETT GRIMES, Defendant; and

18 TO: PUBLIC DEFENDER, Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF  
20 NEVADA intends to call the following witnesses in its case in chief:

21 1. DR. CHAD WASDEN or Designee - This witness is a medical doctor  
22 employed by the University Medical Center (UMC). He will testify to the medical treatment  
23 and injuries of Bennett Grimes.

24 2. DR. BEVERLY HUGHES or Designee - This witness is a medical  
25 doctor employed by the University Medical Center (UMC). She will testify to the medical  
26 treatment and injuries of Bennett Grimes.

27 //

28 //



3. DR. DEBORAH KUHLS or Designee - This witness is a medical doctor employed by the University Medical Center (UMC). She will testify to the medical treatment and injuries of Aneka Grimes.

4. DR. RACHEL WEBER or Designee - This witness is a medical doctor employed by the University Medical Center (UMC). She will testify to the medical treatment and injuries of Aneka Grimes.

The substance of each expert witness' testimony and a copy of all reports made by or at the direction of the expert witness has been provided in discovery.

A copy of each expert witness' curriculum vitae, if available, is attached hereto.

BY /s/ Shawn Morgan  
**SHAWN MORGAN**  
 Deputy District Attorney  
 Nevada Bar #0010935

**CERTIFICATE OF FACSIMILIE TRANSMISSION**

I hereby certify that service of Notice of Expert Witnesses, was made this 22nd day of February, 2012, by facsimilie transmission to:

PD HILLMAN  
455-5112

BY: /s/ J. Serpa  
J. Serpa  
Employee of the District Attorney's Office

*Curriculum Vitae*  
**DEBORAH A. KUHLS, M.D.**

**HOME ADDRESS**

10216 Narra Place  
Las Vegas, NV 89144  
(702) 528-3442 (Cell)

**OFFICE ADDRESS**

Chief, Section of Critical Care  
University of Nevada School of Medicine  
2040 W. Charleston Boulevard, Suite 302  
Las Vegas, NV 89102  
Office: (702)671-2248  
Fax: (702) 385-9399  
Email: [dkuhls@med.unr.edu](mailto:dkuhls@med.unr.edu)

**EDUCATION**

1979 - 1982

BA Villanova University, Villanova, PA  
Magna cum Laude. Phi Beta Phi Honorary Society.

1987 - 1989

University of Pennsylvania, Philadelphia, Pa  
Post Baccalaureate Premedical Program.

1989 - 1993

MD Medical College of Pennsylvania, Philadelphia, PA  
Doctor of Medicine.

**TRAINING**

1993 - 1995

Resident in General Surgery, PGY 1-2  
Medical College of Pennsylvania,  
Philadelphia, PA

1995 - 1996

Clinical Fellow in Surgical Critical Care  
Hahnemann University,  
Philadelphia, PA

1996 - 1999

Resident General Surgery  
Albert Einstein College of Medicine,  
Montefiore Medical Center  
Bronx, NY

1999 - 2000

Fellow in Critical Care and Trauma,  
University of Maryland,  
R Adams Cowley Shock Trauma Center,  
Baltimore, MD

**ACADEMIC APPOINTMENTS**

8/2000 to Present

University of Nevada at Las Vegas  
Assistant Professor of Surgery  
Chief, Section of Critical Care

9/2002 to Present

Medical Student Clerkship Director  
3<sup>rd</sup> and 4<sup>th</sup> year clerkships

## **HOSPITAL APPOINTMENTS**

8/2000 to Present

Attend Surgeon, Trauma and Critical Care  
Medical Director, Trauma Intensive Care Unit (14-bed ICU)  
Attending Surgeon, General Surgery  
University Medical Center, Las Vegas, NV

## **LICENSURE AND CERTIFICATION**

Board Certified in General Surgery (#47327)

2002 Board Certified in Surgical Critical Care (#056359)

- Diplomat, National Board of Medical Examiners
- Nevada State Medical License #9489

1993 – Present ATLS Provider Certification

1993 – Present ACLS Provider Certification

## **HONORS AND AWARDS**

Phi Beta Phi Honorary Society

Villanova University

1989 – 1993

Student Government Association

Medical College of Pennsylvania

- Honor Court Representative  
Medical College of Pennsylvania

1991-1992

Student Delegate to AAMC Annual Conference

1991 – 1993

Class President

Medical College of Pennsylvania

- Selected by Surgery Clerkship Director to attend the American College of Surgeons Annual Meeting, New Orleans
- Eva Fernandez Fox Award for person integrity, stability, responsibility and loyalty to the Medical College of Pennsylvania

1993

Elizabeth D. Labovitz Award for Excellence in Renal Physiology, Medical College of Pennsylvania

2000

Administrative Fellow, University of Maryland

- Certificate of Appreciation, U.S. Army Special Operations Command

2000

2<sup>nd</sup> Place Award, Resident Trauma Paper Competition, Region IX American College of Surgeons, Committee on Trauma. Kuhls DA, Malone DA, Napolitano LM. Predictors of mortality in adult trauma patients: The physiologic trauma score (PTS, a model including SIRS Score, GCS and age) is equivalent to TRISS.

## **PROFESSIONAL SOCIETY MEMBERSHIPS**

1994 – American College of Surgeons  
1993 – American Medical Association  
1993 – Association of Women Surgeons  
2000 – Society of Critical Care Medicine  
2000 – Southwest Surgical Association  
2001 – Nevada Committee on Trauma  
2002 – Nevada State Medical Association  
2002 – Clark County Medical Society  
2003 – Eastern Association for the Surgery of Trauma

## **ACADEMIC COMMITTEE APPOINTMENTS**

University of Pennsylvania, Philadelphia, PA  
Admission Committee, College of General Studies  
1991 – 1993      Medical College of Pennsylvania, Philadelphia, PA  
Medical Education Task Force  
Curriculum Evaluation Committee  
Patient Satisfaction Committee  
Family Medicine Department Chair Search Committee  
  
2002 – Present      University of Nevada School of Medicine, LCME Committee  
  
2002 - Present      University of Nevada School of Medicine, Compliance  
Committee

## **HOSPITAL COMMITTEE APPOINTMENTS**

2001 – Present      University Medical Center, Performance Improvement  
Committee  
2002 – Present      University Medical Center, Special Care Committee  
2002 – Present      University Medical Center, Chief, Nutrition Sub-Committee,  
Pharmacy and Therapeutics Committee  
2002 – Present      University Medical Center, Infection Control Committee  
2002 – Present      University Medical Center, Patient Safety Committee  
Regional and National Committee Memberships  
2000 – Present      American College of Surgeons, Council of Representatives  
of the Candidate and Associate Society, Elected Member at  
Large.  
2001 – Present      Eastern Association for the Surgery of Trauma Multi-  
Institutional Trial Committee and Injury Prevention  
Committee  
2001 – Present      National Healthcare Standards Leadership Committee,  
Family Violence Prevention Fund  
2001 – Present      Nevada Network Against Domestic Violence Healthcare  
Standards Leadership Team  
2002 – Present      National Advisory Committee, Suicide Prevention Research  
Center

2002 – Present American College of Surgeons, Certified Faculty Ultrasound Instructor  
 2002 – Present Vice Chair, State of Nevada Committee on Trauma  
 2002 – Present Trauma Advisory Board, Ortho Biotech Products

### **VOLUNTEER/COMMUNITY SERVICE**

2003 Nevadans Intro Medicine Program. Worked with undergraduates interested in possibly becoming a physician

### **RESEARCH EXPERIENCE**

1988 University of Pennsylvania, Philadelphia, PA  
 One semester project studying the reproductive cycle of *Strongyloides stercoralis*

1989 Medical College of Pennsylvania, Philadelphia, PA  
 Summer Research Fellowship, marital satisfaction in Long-married couples

1997 – 1999 Jacobi Medical Center, The Albert Einstein School of Medicine. Clinical Research on gastric tonometry and transpulmonary lactate measurements in SICU patients with PA catheters

1998 – 1999 Jacobi Medical Center, The Albert Einstein School of Medicine Clinical research on negative trauma laparotomies and the role of laparoscopy in penetrating trauma.

1999 – 2000 University of Maryland, Baltimore, MD  
 SIRS Score as a predictor of ICT resource utilization, resuscitation requirements and outcome in trauma patients.

1999 – 2000 University of Maryland, Baltimore, MD  
 Impact of blood transfusion on outcome in critically ill trauma patients

2000 – Present University of Nevada School of Medicine, Las Vegas, NV  
 Clinical Research projects include ARDS and the role of Peep, immune-enhanced enteral feeding in severely injured trauma patients, the impact of antibiotic rotation on resistant bacterial infections, anemia and the role of recombinant erythropoietin in severely injured trauma patients

2001 – 2004 Suicide Prevention Research Center, Trauma Institute  
 University of Nevada School of Medicine, Las Vegas, NV  
 Collaborator on a grant from the Center for Disease Control and Prevention  
 Focus on data-driven suicide epidemiology and prevention

### **PRESENTATIONS**

1. Kuhls DA. Marital satisfaction in long-married couples: the role of social networks. Paper Presentation at Student Research Forum, Medical College of Pennsylvania, February, 1991

2. Kuhls DA. Focused ultrasonography in adult trauma. Grand Rounds presentation, Montefiore Medical Center, January 1999
3. Kuhls DA, Simon RJ. Negative laparotomy rates: Are we getting better? Poster Presentation at the Annual Meeting of the American Association for the Surgery of Trauma, Boston, MA, September 1999
4. Kuhls DA, Simon RJ. Negative laparotomies for trauma: Is there a role for laparoscopy? Paper presentation, American College of Surgeons Committee on Trauma Resident Paper Competition, Baltimore, MD, October 1999
5. Malone DL, Kuhls DA, Napolitano L et al. Back to basics: Validation of the admission Systemic Inflammatory Response Syndrome (SIRS) Score in predicting outcome in trauma. Winner, regional Military Trauma Center Paper Competition, September 2000
6. Browder TD, Kuhls DA, Fildes JJ. Nonoperative management of hepatic and splenic on Trauma Region IX Resident Paper Competition, December 2000
7. Kuhls DA, Malone DL, Napolitano LM et al. Predictor of forality in trama patients: The Physiologic Trauma Score (A model including systemic inflammatory response syndrome, Revised Trauma Score an Age) is equivalent to TRISS. American Coullge of Surgeon sSurgical Forum, October 2000
8. Kuhls DA, Landry, Va, Rabeau, JA Snavely, E, Fildes JJ: Hispanic ethnicity, male gender and age are determinants of restraint use and hospital resource utiliation in Nevada Pediatric trauma patients. Poster presentation at the Eastern Association for the Surgery of Trauma, 2002
9. Browder LK, Kuhls DA, Frisch D, Martinez J, Fildes JJ: the effect of antibiotic rotation on multidrug resistans pneumonia in a trauma intensive care unit. American College of Surgeons Committee on Trauma Region IX Resident PaperCompetition, December 2002
10. Kuhls DA, Domestic Violence: What is the Physician's Role? Nevada Academy of Family Physicians annual meeting, September 2002
11. Kuhls DA, Fullerton L, Fildes JJ, Shires GT: East response to suicide as a public health problem. Injury Prevention Committee, Eastern Association for the Surgery of Trauma, 2003
12. Shapiro AM, Kuhls DA, Coates JE, McIntyre D, Fildes JJ: Develoment of rare post-traumatic post-embolization splenic pseudocyst: etiology and management. Case Presentation at the 55<sup>th</sup> Annual Meeting of the Southwestern Surgical Congress, April 2003
13. MacIntyre D, Spinale R, Coates JE Kuhls DA, Fildes JJ: Evacuation of venous congestion from traumatic hand-injured patients on warfarin with the use of hirudo medicinalis. Poster Presentation at the 55<sup>th</sup> Annual Meeting of the Southwestern Surgical Congress, April 2003. Included on Top Ten Resident Posters.
14. Browder LK, Kuhls DA, Larson, JL, Frisch D, Martinez J, Fildes JJ: The effect of antibiotic rotation on multidrug resistan pneumonia in a trauma

- intensive care unit. George C. Bierkamper Student Research Convocation, University of Nevada, 2003
15. Browder LK, Kuhls DA, Frish D, Martinez J, Fildes JJ: The effect of antibiotic rotation on gram-negative, multidrug-resistant (MDR) pneumonia in trauma critical care patients. Submitted to American College of Surgeons, Surgical Forum for oral presentation, 2003

#### **PUBLISHED ABSTRACTS**

1. Kuhls DA, Simon RJ. Negative Laparotomy Rates: Are We Getting Better? Proceeding of the 59<sup>th</sup> Annual Meeting of the American Association for the Surgery of Trauma, September 1999
2. Kuhls DA, Malone DL, Napolitano LM et al. Predictors of mortality in trauma patients: The Physiologic Trauma Score (A model including systemic inflammatory response syndrome, Revised Trauma Score and Age) is equivalent to TRISS. Owen H. Wangenstein Surgical Forum, Volume LI, October 2000
3. Browder T, Kuhls DA, Fildes JJ: Severe head injury and nonoperative management for blunt liver and spleen trauma. Proceedings of the Sixty-First Annual Meeting of the American Association for the Surgery of Trauma, 2001
4. Rabin J, Kuhls DA, Simon RJ: The impact of increased utilization of laparoscopy on negative laparotomy rates after penetrating trauma. Proceedings of the Sixty-first Annual Meeting of the American Association for the Surgery of Trauma, 2001
5. Malone DL, Kuhls DA, Napolitano LM et al. Back to Basics: Validation of the admission systemic inflammatory response syndrome (SIRS) score in predicting outcome in trauma. Proceedings of the 14<sup>th</sup> Scientific Assembly of the Eastern Association for the Surgery of Trauma, January 2001
6. Malone DL, Kuhls DA, Napolitano LM et al. Blood Transfusion in the first 24 hours is associated with systemic inflammatory response syndrome (SIRS) and worse outcome in trauma. Proceeding of the Society for the Critical Care Medicine Annual Meeting, February 2002
7. Rendon LR, Coates JE, Kuhls DA, Fildes JJ: the usefulness of MR Imaging of the cervical spine in patients with negative plain radiographs and/or CT Imaging Proceeding of the 31st Annual Meeting of Western Trauma Association, 2002
8. Kuhls DA, Landry VA, Rabeau JA, Snively E, Fildes JJ: Hispanic ethnicity, male gender and age are determinants of restraint use and hospital resource utilization in Nevada pediatric trauma patients. Proceeding of the Fifteenth Scientific Assembly of the Eastern Association for the Surgery of Trauma, 2002
9. Shapiro AM, Kuhls DA, Coates J, MacIntyre D, Fildes JJ: Development of rare post-traumatic post-embolization splenic pseudocyst: etiology and management. Presented at the 55<sup>th</sup> Annual Meeting of The Southwestern Surgical Congress, 2003

## INVITED LECTURES

1. L. Fullerton-Gleason, D. Kuhls. The epidemiology of suicide death in the intermountain west: overview. Sponsored by the College of Health and Human Service, New Mexico State University, Las Cruces, NM. March 16, 2004

## ORIGINAL REPORTS

1. Malone DL, Kuhls DA, Napolitano LM et al. Back to basics: Validation of admissions systemic inflammatory response syndrome (SIRS) score in predicting outcome in trauma. *J Trauma* 2001 Sept;51(3):458-63
2. Simon RJ, Rabin J, Kuhls DA: Impact of Increased Use of Laparoscopy on Negative Laparotomy Rates after Penetrating Trauma. *J Trauma*, 2002 Aug;53(2):297-302
3. Kuhls DA, Malone DL, Napolitano LM et al. Predictors of mortality in trauma patients: The Physiologic Trauma Score is equivalent to TRISS. *J Am Coll Surg* June 2002, 194(6):695-704
4. Malone DL, Kuhls DA, Napolitano LM et al. Blood Transfusion in the first 24 hours and associated with systemic inflammatory response syndrome (SIRS) and worse outcome in trauma. Submitted to Critical Care Medicine.
5. Kuhls DA, Fullerton L, Rabeau JA, Landry VA, Snaveley E, Fildes JJ: Hispanic ethnicity, male gender and age are determinants of restraint use and hospital resource utilization in Nevada pediatric trauma patients. Paper in progress.
6. Rendon LR, Kuhls DA, Coates JE, Fullerton-Gleason L, Fildes JJ: The utility of magnetic resonance imaging of the cervical spine in trauma patients with negative plain radiographs and/or computed tomography imaging. Paper in progress
7. Browder LK, Larson JL, Kuhls DA, Frisch D, Martinez JG, Fildes JJ: Effect of antibiotic rotation on the development of multidrug-resistant bacterial pneumonia in trauma critical care patients. Paper in progress

## FUNDED CLINICAL STUDIES

### PRINCIPAL INVESTIGATOR

1. Principal Investigator: A Prospective, randomized, double blinded, multicenter trial assessing the safety and efficacy of sequential (intravenous/oral) BAY 12-8039 (moxifloxacin\_ 400 mr every 24 hours compared to intravenous piperacillin/tazobactam 3.375 grams every 6 hours followed by oral amoxicillin/clavulanic acid suspension 800 mg every 12 hours for the treatment of patients with complicated intra-abdominal infections, 2001-2
2. Principal Investigator: Occupant Protection/Child Passenger Safety grant to study socioeconomic, educational, ethnic, gender and other factors associated with child passenger restraint use and non-use. Grant from Nevada Office of Traffic Safety, 2002



3. Principal Investigator: Adjuvant nutrition for critically ill trauma patients. Grant from Metabolic Technologies, Inc. with subsidiary NIH funding Prospective, randomized, blinded study to evaluate immune-enhanced additives to standard tube feedings and the impact on infection, inflammation and outcome variables, 2002-4

#### **CO-INVESTIGATOR**

1. Collaborator on grant from the Center for Disease Control and Prevention to focus on data-driven suicide epidemiology and prevention, 2001 to present
2. A Phase II, Multicenter, Randomized, Double-Blind, Placebo-Controlled, Parallel-Group, Dose-Ranging Evaluation of the Safety and Efficacy of a-hANP Infusion in Patients with Acute Respiratory Distress Syndrome (ARDS). (A. Barber, Principal Investigator) 2000 - present. Protocol # SPI-001
3. Open-Label, Comparative, Randomized, Multicenter Phase III Study of Intravenous treatment of Synercid 7.5mg/kg q 8 hours plus Aztreonam 2g q 8 hours versus Standard Therapy in the Treatment of 250 adult Evaluable Hospitalized Patients with Nosocomial Pneumonia due, at least in part, to Gram Positive Cocci. (A. Barber, Principal Investigator) 2000-present. Protocol #RP59500V-311
4. Prospective Study on Contrast CT Evaluation of Brain for Brain Death, 2003-4
5. Prospective Study on efficacy of oral contrast in abdominal CT Scans of Adult Trauma Patients, 2002-3

#### **OTHER EMPLOYMENT**

1987 - 1989

University of Pennsylvania, Philadelphia, PA  
Assistant Director, Penn Partners mentoring Program  
targeting minority children interested in medicine

1991

University of Pennsylvania, Philadelphia, PA  
Academic Advisor College of General Studies

Mellon Bank (East), NA, Philadelphia PA  
Middle management position reporting to Executive Vice President. Managed professional unit with product development, project management, strategic planning and marketing responsibilities

DEBORAH A. KUHLS, M.D.  
Curriculum Vitae  
Page - 8 -

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*Ann D. Schum*  
CLERK OF THE COURT

0026  
PHILIP J. KOHN, PUBLIC DEFENDER  
NEVADA BAR NO. 0556  
309 South Third Street, Suite 226  
Las Vegas, Nevada 89155  
(702) 455-4685  
Attorney for Defendant

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

BENNETT GRIMES,  
Defendant.

CASE NO. C276163-1

DEPT. NO. XII

DATE: March 13, 2012  
TIME: 8:30 a.m.

MOTION TO CONTINUE TRIAL DATE

COMES NOW the Defendant, BENNETT GRIMES, by and through his attorney, R. ROGER HILLMAN, Deputy Public Defender, and respectfully moves this court for an order vacating the March 27, 2012 trial date and requesting a new trial setting on a date convenient to the court.

This Motion is made based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, Memorandum of Points and Authorities in support hereof, and oral argument at the time set for hearing this Motion.

DATED this 24th day of February, 2012.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

C-11-276163-1  
MTCT  
Motion to Continue Trial  
1780683



By *R. Roger Hillman*  
R. ROGER HILLMAN, #3076  
Deputy Public Defender

CLERK OF THE COURT

FEB 27 2012

RECEIVED

DECLARATION

R. ROGER HILLMAN makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and I am familiar with the facts and circumstances of this case.

2. This case was reset for trial when I was absent from the office on medical leave.

3. The case was set for trial on March 27, 2012.

4. I have a medical procedure scheduled for March 27, 2012.

5. This procedure is critical to my health, and will take most of the day.

6. If problems are found, I would be unavailable for the rest of the week, if not longer.

7. This motion is made in good faith and not for purpose of delay.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 24th day of February, 2012.

  
R. ROGER HILLMAN

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**NOTICE OF MOTION**

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the foregoing Motion to Continue Trial

Date will be heard on March 13, 2012, at 8:30 am in Department No. XII of the District Court.

DATED this 24th day of February, 2012.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

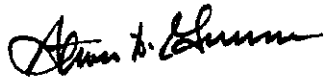
By *N. Roger Hillman*  
R. ROGER HILLMAN, #3076  
Deputy Public Defender

**RECEIPT OF COPY**

RECEIPT OF COPY of the above and foregoing Motion to Continue Trial Date is  
hereby acknowledged this 27<sup>th</sup> day of February, 2012.

CLARK COUNTY DISTRICT ATTORNEY

By *Erin McCally*

  
CLERK OF THE COURT

1 NWEW  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 SHAWN MORGAN  
6 Deputy District Attorney  
7 Nevada Bar #10935  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,  
13 Plaintiff,

14 -vs-

15 BENNETT GRIMES,  
16 #2762267

17 Defendant.

CASE NO: C-11-276163-1

DEPT NO: XII

18 **SECOND SUPPLEMENTAL NOTICE OF EXPERT WITNESSES**  
19 [NRS 174.234(2)]

20 TO: BENNETT GRIMES, Defendant; and

21 TO: PUBLIC DEFENDER, Counsel of Record:

22 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF  
23 NEVADA intends to call the following witnesses in its case in chief:

24 1. BROWNLEE, TRACY, LVMPD #9975, Las Vegas Metropolitan  
25 Police Department or Designee, will testify as an expert in the area of crime scene  
26 investigation and the identification, documentation, collection and preservation of evidence  
27 and will give opinions related thereto.

28 2. RENHARD, LOUISE, LVMPD #5223, Las Vegas Metropolitan  
Police Department or Designee, will testify as an expert in the area of crime scene  
investigation and the identification, documentation, collection and preservation of evidence  
and will give opinions related thereto.

1 The substance of each expert witness' testimony and a copy of all reports made by or  
2 at the direction of the expert witness has been provided in discovery.

3 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

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

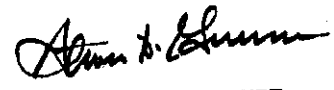
7 BY /s/ Shawn Morgan  
8 SHAWN MORGAN  
9 Deputy District Attorney  
10 Nevada Bar #10935

11 **CERTIFICATE OF FACSIMILIE TRANSMISSION**

12 I hereby certify that service of Second Supplemental Notice of Expert Witnesses, was  
13 made this 29<sup>th</sup> day of May, 2012, by facsimilie transmission to:

14 PUBLIC DEFENDER  
15 455-5112

16  
17 BY: /s/ J. Serpa  
18 J. Serpa  
19 Employee of the District Attorney's Office  
20  
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CLERK OF THE COURT

1 MDIS  
2 PHILIP J. KOHN  
3 PUBLIC DEFENDER  
4 NEVADA BAR NO. 0556  
5 NADIA HOJJAT  
6 DEPUTY PUBLIC DEFENDER  
7 NEVADA BAR NO. 12401  
8 309 South Third Street, Suite 226  
9 Las Vegas, Nevada 89155  
10 (702) 455-4685  
11 Nadia.Hojjat@ClarkCountyNV.gov  
12 Attorney for Defendant

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 v.

13 BENNETT GRIMES,

14 Defendant.

CASE NO. C-11-276163-1

DEPT. NO. XII

DATE: June 7, 2012

TIME: 8:30 a.m.

MOTION FOR DISCOVERY

16 COMES NOW, the Defendant, BENNETT GRIMES, by and through NADIA  
17 HOJJAT, Deputy Public Defender and hereby requests that the Court order the State of Nevada to  
18 produce the discovery discussed herein pursuant to NRS 174.235; NRS 174.285; Kyles v. Whitley,  
19 514 U.S. 419 (1995); Brady v. Maryland, 373 U.S. 83 (1963) (and their progeny).

20 This Motion is made and based upon all the papers and pleadings on file herein, the  
21 attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

22 DATED this 25th day of May, 2012.

23 PHILIP J. KOHN  
24 CLARK COUNTY PUBLIC DEFENDER

25  
26 By: /s/ Nadia Hojjat  
27 NADIA HOJJAT, #12401  
28 Deputy Public Defender

## DECLARATION

NADIA HOJJAT makes the following declaration:

1. I am an attorney licensed to practice law in the State of Nevada and I am the Deputy Public Defender representing Defendant Bennett Grimes in this case;

2. I am familiar with the procedural history and the substantive allegations made by the State in this case and I either have personal knowledge of the facts that follow, or I have been informed of these facts and believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 25th day of May, 2012.

/s/ Nadia Hojjat  
NADIA HOJJAT



## MEMORANDUM OF POINTS AND AUTHORITIES

### ARGUMENT

#### I. The State is Required to Provide Defendant with Discovery under Nevada Statute, as well as the United States and Nevada Constitutions

##### A. Nevada Statutory Requirements

Under NRS 174.235, the State is required to disclose evidence relating to the prosecution of a defendant that is within the possession, custody or control of the State, including:

- written or recorded statements or confessions made by the defendant;
- written or recorded statements made by a witness the prosecuting attorney intends to call during the case in chief of the State;
- results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection with the particular case; and
- books, papers, documents, tangible objects, or copies thereof, which the prosecuting attorney intends to introduce during the case in chief of the State.

NRS 174.235(1)(a)-(c).

The District Court has authority to order the production of any non-privileged materials in the possession, control or custody of the State<sup>1</sup> under NRS 174.235 if the evidence sought is "material to the preparation of the defense". Riddle v. State, 96 Nev. 589, 590, 613 P.2d 1031 (1980).

NRS 174.235 should be read to create an affirmative duty for the State to disclose *any* statement allegedly made by the defendant, or for which the defendant can be held vicariously liable. Courts have recognized that there is a fundamental fairness involved in "granting the accused equal access to his own words, no matter how the Government came by them." *See, e.g., U.S. v. Caldwell*, 543 F.2d 1333, 1353 (D.D.C. 1974). This "fairness" should extend not only to oral statements, but statements for which the defendant is vicariously liable, as well. Under NRS

<sup>1</sup> The State must turn over any documents, papers, or books related to the case that are in the possession, control and custody of any government agent or agency. *See Kyles v. Whitley*, 514 U.S. 419, 437-38 (1995) (stating that exculpatory evidence "cannot be kept out of the hands of the defense just because the prosecutor does not have it").

1 51.035(3)(a)(e), a defendant can be vicariously liable for a statement made by a third party. *See*  
2 *also Fields v. State*, 220 P.3d 709 (Nev. 2009) (finding evidence of defendant's silence admissible  
3 following his wife's complaint that she was in jail because his conduct constituted an adoptive  
4 admission). Thus, NRS 174.235 should be construed to include within the definition of a  
5 defendant's "statement," both the words actually uttered by the defendant and any statements for  
6 which the defendant may be held vicariously liable.

#### 7 8 B. Constitutional Requirements

9 The United States and Nevada constitutions require the State to provide the defense with all  
10 favorable evidence in its actual or constructive possession prior to trial. *See Kyles v. Whitley*, 514  
11 U.S. 419 (1995); *Brady v. Maryland*, 373 U.S. 83, 86 (1963); *Jimenez v. State*, 112 Nev. 610, 618  
12 (1996). Failure to do so results in a violation of the Due Process clauses of the Fifth and  
13 Fourteenth Amendments of the United States Constitution, and Article I, Section 8 of the Nevada  
14 Constitution. This rule applies regardless of how the State has chosen to structure its overall  
15 discovery process. *See Strickler v. Greene*, 527 U.S. 263 (1999); *Kyles*, 514 U.S. 419; *Brady*, 373  
16 U.S. at 86; *Jimenez*, 112 Nev. at 618. The withholding of exculpatory evidence constitutes a due  
17 process violation regardless of the prosecutor's motive for withholding the evidence. *Wallace v.*  
18 *State*, 88 Nev. 549, 551-52, 501 P.2d 1036 (1972).

19 Under the law, the State must turn over all evidence that is (1) favorable to the accused, in  
20 that it is exculpatory or impeachment evidence, and (2) within the actual or constructive  
21 possession of anyone acting on behalf of the State. *See Banks v. Dretke*, 540 U.S. 668, 691  
22 (2004).

#### 23 24 II. The State Must Turn Over All Information that is *Favorable* to the Accused, Whether or Not It Is the Subject of a Specific Discovery Request

25 The State's constitutional obligation to produce material evidence exists whether or not the  
26 defendant has filed a discovery motion or made specific discovery requests. *See, e.g., Kyles v.*  
27 *Whitley*, 514 U.S. 419, 434-35 (1995); *Pennsylvania v. Ritchie*, 480 U.S. 39, 57 (1986); *United*  
28 *States v. Bagley*, 473 U.S. at 667, 682, 685 (1985); *State v. Bennett*, 119 Nev. 589 (2003);

1 Jimenez, 112 Nev. at 618; Roberts v. State, 110 Nev. 1121 (1994). Given the important rights  
2 involved and the strong potential for reversal if those rights are violated, the U.S. Supreme Court  
3 has long counseled that "the prudent prosecutor will resolve doubtful questions in favor of  
4 disclosure." U.S. v. Agurs, 427 U.S. 97, 108 (1976).

5 A. Evidence "favorable to the accused" includes all information material to the issue of  
6 guilt or punishment, including impeachment evidence

7 The Nevada Supreme Court has directly addressed what is considered "favorable to the  
8 accused." In Mazzan v. Warden, the Court stated:  
9

10 Due process does not require simply the disclosure of "exculpatory" evidence.  
11 Evidence also must be disclosed if it provides grounds for the defense to attack the  
12 reliability, thoroughness, and good faith of the police investigation, to impeach the  
13 credibility of the state's witnesses, or to bolster the defense case against  
14 prosecutorial attacks. Furthermore, "discovery in a criminal case is not limited to  
investigative leads or reports that are admissible in evidence." Evidence "need not  
have been independently admissible to have been material." (internal citations  
omitted).

15 116 Nev. 48, 67 (2000).

16 See also, Strickler, 527 U.S. at 281-82 (stating that a Brady violation occurs when (1)  
17 evidence is favorable to the accused because it is exculpatory or impeaching; (2) evidence was  
18 suppressed by the State, either willfully or inadvertently; and (3) prejudice ensued). In Mazzan,  
19 the Supreme Court provided a non-exclusive list of the type of evidence that the State must turn  
20 over:  
21

- 22 1) Forensic testing which was ordered but not completed, or which was completed but did  
23 not inculcate the defendant (e.g., fingerprint analysis that returned as "inconclusive");
- 24 2) Criminal records or other evidence concerning State's witnesses which might show  
25 bias, motive to lie, or otherwise impeach credibility (e.g., civil litigation);
- 26 3) Evidence that the alleged victim in the instant case has claimed to be a victim in other  
27 cases;
- 28 4) Leads, evidence, or investigations that law enforcement discounted or failed to pursue;

- 1       5) Evidence that suggests an alternate suspect, or calls into question whether a crime  
2             actually occurred;
- 3       6) Anything that is inconsistent with prior or present statements of a State's witness,  
4             including the initial failure to make a statement which is later made or testified to.

5       In addition to the specific types of evidence listed above and discussed in Mazzan, the State is  
6       obligated to turn over to Defendant any exculpatory or mitigation evidence.

7             1.     Exculpatory Evidence

8       Exculpatory evidence is that which tends to favor the accused. Brady, 373 U.S. at 87.  
9       Impeachment evidence, therefore, is exculpatory evidence within the meaning of Brady. See  
10      Giglio v. United States, 405 U.S. 150, 154 (1972). In other words, the State's duty to disclose  
11      extends to evidence bearing on the credibility of its witnesses. The Nevada Supreme Court has  
12      interpreted the meaning of evidence "favorable to the accused" as evidence that "provides grounds  
13      for the defense to attack the reliability, thoroughness, and good faith of the police investigation, to  
14      impeach the credibility of the state's witnesses" or evidence that may "bolster the defense case  
15      against prosecutorial attacks." Mazzan, 116 Nev. at 67.

16      To be clear, exculpatory material includes all information that would tend to affect the  
17      reliability and credibility of a witness. Thus, information within government control, which shows  
18      that a witness gave inconsistent statements, had motive to lie, tried to recant, expressed reluctance  
19      to testify against the accused, received benefits as a result of his or her accusation, or other types of  
20      information affecting credibility and reliability, is Brady material and must be disclosed.

21             2.     Mitigation Evidence

22      Brady material applies not only to evidence regarding the defendant's innocence or guilt,  
23      but also to **mitigation** evidence. For example: the victim of a robbery identifies a defendant as one  
24      of two people who robbed her. The victim also tells police that this defendant actively prevented  
25      his co-defendant from hitting her during the robbery. Although the victim's statement would  
26      clearly go to establishing the defendant's guilt, it would *also* constitute Brady material because, if  
27      he is ultimately convicted, the defendant's effort to aid the victim might justify the mitigation of  
28      his sentence. Anything which could convince the court to impose less than a maximum sentence

1 or rebut alleged aggravating circumstances is relevant to punishment and, therefore, **must** be  
2 produced by the State. See Jimenez, 112 Nev. at 619.

3 B. The State's disclosure obligation is the same regardless of the specificity of the  
4 defendant's requests

5 The State's constitutionally-mandated Brady obligation arises regardless of whether a  
6 Defendant specifically requests certain favorable evidence. See U.S. v. Bagley, 473 U.S. 667, 682  
7 (1985) (plurality) (finding the prosecution's constitutional duty to disclose favorable evidence is  
8 governed by the materiality standard and not limited to situations where a defendant requests  
9 favorable evidence); see also, Kyles, 514 U.S. at 433 (stating that "regardless of request, favorable  
10 evidence is material. . ."). The State must disclose all material evidence favorable to the defense,  
11 regardless of the nature of the instant request. Additionally, as more fully addressed below, the  
12 prosecutor must meet with detectives, crime scene analysts, investigators, and any other State  
13 actors and potential witnesses prior to trial to determine whether they possess evidence favorable  
14 to the accused. See, e.g., Strickler, 527 U.S. at 281.

15 III. **The State is Responsible for All Evidence in Its Actual or Constructive Possession, and**  
16 **has an Affirmative Duty to Obtain Such Evidence**

17 In Kyles, the United States Supreme Court held that prosecutors have an **affirmative**  
18 **obligation** to obtain Brady material and provide it to the defense, even if the prosecutor is initially  
19 unaware of its existence. 514 U.S. at 433 (emphasis added). The Supreme Court noted that the  
20 affirmative duty "to disclose evidence favorable to a defendant can trace its origins to early 20<sup>th</sup>  
21 century strictures against misrepresentation and is of course most prominently associated with this  
22 Court's decision in Brady v. Maryland. . ." Id. at 432. As the Supreme Court made clear, this  
23 obligation exists even where the defense does not make a request for such evidence. Id.

24 In finding that the State had breached its duty to Kyles, the Court discussed the  
25 prosecutor's "affirmative duty" in detail:

26 This in turn means that the individual prosecutor has a **duty to learn** of any  
27 favorable evidence known to the others acting on the government's behalf in the  
28 case, **including the police** . . . Since then, the prosecutor has the means to  
discharge the government's Brady responsibility if he will, any argument for  
excusing a prosecutor from disclosing what he does not happen to know about

boils down to a plea to substitute the police for the prosecutor, and even for the courts themselves, as the final arbiter's of the government's obligation to ensure fair trials.

Kyles, 514 U.S. at 437-38 (citations and footnotes omitted) (emphasis added).

The Nevada Supreme Court addressed the prosecutor's affirmative duty in State v. Jimenez, stating that, "It is a violation of due process for the prosecutor to withhold exculpatory evidence, and his **motive for doing so is immaterial.**" 112 Nev. at 618 (emphasis added). Furthermore, the affirmative obligation exists even if law enforcement personnel withhold "their reports without the prosecutor's knowledge," because "the state attorney is charged with **constructive knowledge and possession** of evidence withheld by other state agents, such as law enforcement officers." Id. at 620. This existence of an "affirmative duty" means that individual prosecutors cannot use ignorance as an excuse for failing to meet discovery obligations. A lack of subjective knowledge on the part of a particular prosecutor does not excuse or assuage a discovery violation because the individual prosecutor is legally *responsible* for contacting all State agents to determine if they are in possession of Brady material.

The constructive knowledge imputed to a prosecutor applies even if the evidence is being held by an out-of-jurisdiction agent that is cooperating with local law enforcement. In State v. Bennett, the Nevada Supreme Court ruled, "In this case, a Utah police detective was aware of the evidence. We conclude that it is appropriate to charge the State with constructive knowledge of the evidence because the Utah police assisted in the investigation of this crime. . . ." 119 Nev. at 603. Thus, out-of-state police agencies, probation officers, welfare workers, employees of Child Protective Services, jail personnel, and the like are *all* potential State agents from whom the prosecution must affirmatively collect Brady material. "Exculpatory evidence cannot be kept out of the hands of the defense just because the prosecutor does not have it, where an investigative agency does." U.S. v. Zuno-Acre, 44 F.3d 1420, 1427 (9th Cir. 1995).

When prosecutors fail to uphold this affirmative obligation, they violate constitutional due process. *See* U.S. Const. amend. V, XIV; Nev. Const. Art. 1, §8.

1 **IV. The State Cannot Rely on an "Open File" Policy to Satisfy the Constitutional Duty to**  
2 **Obtain and Turn Over Discovery**

3 Prosecutors often respond to discovery motions by referencing their "open file policy" and  
4 stating that the requested material is not in their file. The prosecutor's affirmative duty to turn  
5 over Brady material, however, extends to all exculpatory and mitigation evidence in the possession  
6 of *any* state agent or agency even if the evidence does not exist in the prosecutor's file. See  
7 Strickler v. Greene, 527 U.S. 263 (1999); Bennett, 119 Nev. at 603. In Strickler v. Greene, the  
8 United States Supreme Court explicitly held that a prosecutor's open file policy **does not** substitute  
9 for or diminish the State's affirmative obligation to seek out and produce Brady material. 527 U.S.  
10 at 283. Thus, despite its "open file policy," the prosecution must actively work to discover, obtain,  
11 and produce Brady material, whether it is in the actual possession of the prosecutor, the police  
12 department, or any other entity acting on behalf of the State.

13 **V. Defendant's Specific Discovery Requests**

14 The following specific requests are meant to help assist the State in its duty to find and turn  
15 over the required material. The requests are not in any way intended to be a limit on, or a  
16 substitute for, the duties described above. The State must produce:

17 **1. Any and all notes and records of any physical examinations, scientific**  
18 **tests or scientific experiments done in connection with this case<sup>2</sup>**

19 This includes any photographs, videos, or audio recordings. It also includes  
20 all documents recording what physical evidence was taken in the case,  
21 where it was stored, and any related chain of custody documents. In  
22 addition, the request encompasses any reports and/or results from any  
23 medical, pathological, toxicological, chemical, biochemical, laboratory,  
24 forensic or scientific examinations, investigations or analyses.

25 Specifically, the defense is requesting the results of any fingerprint analysis  
26 that was done in this case. Additionally, the defense is requesting all results  
27 of the DNA analysis that was done in this case including the identities of all  
28 individuals who's DNA was found at the scene of the incident.

<sup>2</sup> This is required under NRS 171.1965 1(b) and NRS 174.235 1(b).

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2. Any and all records and notes regarding any benefits or assistance given to any informant or witness related to the case, as well as any other evidence of bias of State informants or witnesses

This includes any monetary benefits received, services or favors, or promises of favorable treatment. This also includes an estimate of future benefits to be received during or after the trial.<sup>3</sup>

3. Any and all notes of interviews of any witnesses and any potential witnesses in the case<sup>4</sup>

This includes any and all audio and video recordings of such interviews and any notes of interviews that were not later recorded, such as notes of patrol officers, notes of phone calls made to potential witnesses, or attempts to contact such witnesses. The State must produce any police reports, notes, or other documents that contain information pertaining to this case or any witnesses in this case, no matter what the form or title of the report.

4. Any evidence that any State informant or witness was intoxicated or impaired at the time of the incident about which the witness will testify<sup>5</sup>

This includes evidence that the informant or witness was under the influence of alcohol, narcotics, or any other drug, or that the witness' faculties were impaired in any way.

5. Any information that the alleged victim or any State witness was or is a police informant<sup>6</sup>

This includes information that the witness or alleged victim acted as a police informant from the time of the incident in this case up to and including the day(s) of trial. If any witness is, or has been, an informant, then Defendant requests disclosure of:

- a) the length and extent of the witness' informant status;
- b) the nature and assistance provided by the informant in the past, including the number of occasions and the form of help;
- c) the monetary amounts paid to the informant;

<sup>3</sup> This is relevant to issues regarding possible bias, credibility, motive to lie, and impeachment. See Davis v. Alaska, 415 U.S. 308 (1974).

<sup>4</sup> NRS 174.235; Kyles, 514 U.S. 419, Brady, 373 U.S. 83 (and their progeny).

<sup>5</sup> Id.

<sup>6</sup> NRS 174.235; Kyles, 514 U.S. 419, Brady, 373 U.S. 83 (and their progeny).



1 d) non-monetary assistance provided to the informant, including, but  
2 not limited to, assistance in avoiding or minimizing harm from  
3 pending charges against the informant;

4 e) all benefits or promises of benefits,<sup>7</sup> or statements that benefits  
5 would not be provided without cooperation, that were made to the  
6 informant in connection with the case, whether or not fulfilled;

7 6. Any information related to the case given by anyone to any police  
8 department or crime tip organization such as Crime Stoppers, and any  
9 reward or benefit received for such tip<sup>8</sup>

10 7. The State must disclose whether its attorneys, officers or any other  
11 witnesses have cooperated with or been interviewed by any media  
12 organizations, the extent of the cooperation, and whether the  
13 cooperation is ongoing or planned for the future<sup>9</sup>

14 This includes, but is not limited to, newspapers and periodicals, radio  
15 programs, television shows, Internet and interactive media, or any other  
16 form of broadcast. The defendant requests full disclosure of:

17 a) Any contract or agreement, official or unofficial, between  
18 the State and any reporters or media organizations;

19 b) Any materials, including but not limited to: police reports  
20 and other official discovery, video, audio, written contracts,  
21 scripts, and instructions or other communications that have  
22 passed between the State and any reporters or media  
23 organizations. For example:

24 1) If a police officer was interviewed by show  
25 like, "Dateline NBC," the State must reveal  
26 the existence of that interview and produce  
27 the contents;

28 <sup>7</sup> "Benefits" refers to any monetary compensation or assistance of the police, the prosecutor, or the  
court concerning pending charges against the informant, or any other sort of consideration of  
value.

<sup>8</sup> NRS 174.235; Kyles, 514 U.S. 419, Brady, 373 U.S. 83 (and their progeny).

<sup>9</sup> The statements of potential state witnesses and investigators must be turned over under Kyles,  
514 U.S. 419, Brady, 373 U.S. 83 (and their progeny), and Davis, 415 U.S. 308, because they may  
contain prior inconsistent statements, evidence of bias or lack of credibility, or proof of payment or  
remuneration. The chance to appear on television or be featured in the newspaper is a "reward or  
benefit" in itself that *must* be disclosed, regardless of whether money has changed hands. The  
defendant is not aware whether any of this exists, but if the defendant is forced to "discover" it by  
*turning on the television*, then the State will have violated constitutional due process.

- 2) If the television show "COPS" takes video of a possible crime scene and provides the State with a copy of the raw recording, the State must turn it over to the defense;
- 3) If the TV show, "Another 48 Hours" has been provided special access to the investigation, the State must reveal this and turn over any fruits of this special access, such as, real-time video from the 911 call; recordings of the **initial** interviews with State witnesses (the ones that are *not* recorded by police), any video of the defendant's arrest, video from surveillance cameras, any "behind the scenes" footage of the police conducting their investigation, etc.;
- 4) Any shooting schedules or proposed scripts created by the media organization and provided to the State or any State actor.

8. **Any information regarding the criminal history of the alleged victim and/or any material witness in the case<sup>10</sup>**

This includes any juvenile record, misdemeanors, or any other information that would go to the issue of credibility, veracity and bias, whether or not the information is admissible by the rules of evidence.<sup>11</sup> This request encompasses records<sup>12</sup> showing that:

- a an informant or State's witness had an arrest, guilty plea, trial, or sentencing pending at the time of the incident in the present case and/or has or had one or more since that date;

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<sup>10</sup> NRS 174.235; Kyles, 514 U.S. 419, Brady, 373 U.S. 83 (and their progeny).

<sup>11</sup> The State is usually under the mistaken impression that they must only disclose felony convictions from the last 10 years that can be used as impeachment under NRS 50.095. However, in Davis, 415 U.S. 308, the U.S. Supreme Court found that a witness can be attacked by "revealing possible biases, prejudices, or ulterior motives of the witnesses as they may relate directly to the issues or personalities on the case at hand. The partiality of a witness is...always relevant as discrediting the witness and affecting the weight of his testimony." Id. at 354. The Court found that the State's policy interest in protecting the confidentiality of a juvenile offender's record must yield to the defendant's right to cross examine as to bias. Id. at 356. *See also*, Lobato v. State, 120 Nev. 512 (2004) (discussing the "nine basic modes of impeachment"). Therefore, juvenile records, misdemeanors and older criminal records may yield information relevant to many forms of impeachment other than that outlined in NRS 50.095.

<sup>12</sup> With respect to this information, Defendant requests the charges, docket numbers, dates of conviction, and jurisdictions for all such cases.

- b an informant or State's witness was on juvenile or criminal parole or probation at the time of the incident in the present case and/or has been since;
- c an informant or State's witness has, or has had, any liberty interest that the witness might believe or might have believed to be affected favorably by State action;
- d deals, promises, or inducements that have been made to any informant or State's witness in exchange for his testimony.

9. **Any notes of any statements by the defendant, to include any notes of patrol officers or other agents of the State who have had contact with the defendant in this case<sup>13</sup>**

This includes any statement allegedly made by the defendant, or for which the defendant can be held vicariously liable.<sup>14</sup>

10. **All relevant reports of chain of custody and all reports of any destruction of evidence or failure to collect and/or preserve evidence in the case<sup>15</sup>**

Specifically, the defense is requesting all information on the chain of custody of the knife allegedly involved in the incident, as well as any and all reports about any scientific testing performed on the knife, such as DNA or fingerprinting.

11. **All statements made by any material witnesses in the case, and any inconsistent statements made by a material witness<sup>16</sup>**

This includes any inconsistent statements made to any employee or representative of the District Attorney's office, the police department, or any other State actor. The request also encompasses any prior inconsistent

<sup>13</sup> NRS 171.1965 1(a); NRS 174.235 1(a).

<sup>14</sup> Under NRS 51.035(3)(a)(e), a defendant can be vicariously liable for a statement made by a third party. Thus, NRS 174.235 should be construed to include within the definition of a defendant's "statement," both the words actually uttered by the Defendant and any statements for which the defendant may be held vicariously liable. See U.S. v. Caldwell, 543 F.2d 1333, 1353 (D.D.C. 1974) (finding that there is a fundamental fairness involved in "granting the accused equal access to his own words, no matter how the Government came by them").

<sup>15</sup> Destruction of evidence can result in dismissal of the case or a jury instruction stating such evidence is presumed favorable to the accused. Sanborn v. State, 107 Nev. 399, 409 (1991); Sparks v. State, 104 Nev. 316, 319 (1988); Crockett v. State, 95 Nev. 859, 865 (1979).

<sup>16</sup> NRS 174.235; Kyles, 514 U.S. 419, Brady, 373 U.S. 83 (and their progeny).

statement that the witness' trial testimony will not reflect, and the failure of any witness to provide the police or the State with information testified to at trial.

The defense is also requesting the text messages sent by Aneka Grimes on her phone in the minutes before the incident allegedly occurred.

**12. Any information tending to show the unreliability of a State informant or witness in the case<sup>17</sup>**

This includes information that would tend to discredit the testimony of a State informant or witness, including any citizen complaints against the officers involved in this incident.

**13. Any and all notes and reports of any experts in the case, to include mental health workers and crime scene investigators<sup>18</sup>**

This includes any preliminary reports or notes that were omitted from the final report(s).<sup>19</sup> In addition, Defendant requests disclosure of any rebuttal experts the State may call in response to experts that may testify during Defendant's case-in-chief.<sup>20</sup>

**14. All updated witness contact information in the case, including the witnesses' last known address and phone number<sup>21</sup>**

**15. Any and all books, papers, documents, and tangible objects related to the case<sup>22</sup>**

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<sup>17</sup> Id.

<sup>18</sup> NRS 174.235; Kyles, 514 U.S. 419, Brady, 373 U.S. 83 (and their progeny).

<sup>19</sup> NRS 174.235 2(a)(b)(c).

<sup>20</sup> In Grey v. State, the Nevada Supreme Court stated that "Once a party in a criminal case receives notice of expert witnesses, the receiving party must provide reciprocal notice if that party intends to present expert rebuttal witnesses." 124 Nev. 110, 178 P.3d 154 (2008). Additionally, the Supreme Court noted that, in cases where the prosecution has been provided with the names, curriculum vitae, and reports of all of the defense's expert witnesses, there is no reason for the prosecution to be uncertain about their need for expert witnesses. Thus, the court held that the prosecution must provide the names, curriculum vitae, and reports of all rebuttal experts to the defense in a timely manner before trial. Id. at 161.

<sup>21</sup> NRS 174.234; 174.235.

<sup>22</sup> NRS 174.235; Kyles, 514 U.S. 419, Brady, 373 U.S. 83 (and their progeny).

1           16.   **Any and all electronic communications in the case, as well as any reports**  
2                   **related to those communications**<sup>23</sup>

3                   Specifically, all 911 telephone calls related to this case made by Aneka Grimes, her  
4                   parents, the defendant Bennett Grimes, or any witness, as well as the radio runs and  
5                   ambulance runs related to this case.

6           17.   **Any and all photographs, video recordings, and/or audio recordings related to**  
7                   **the case within the possession, control, or control of the State**<sup>24</sup>

8           18.   **Any and all documents and notes pertaining to the identification of Defendant**  
9                   **as a suspect**<sup>25</sup>

10                   Specifically, if any statements were made by any of the witnesses about the facts of  
11                   the case during any identification process that may have occurred.

12                   DATED this 25th day of May, 2012.

13                                   PHILIP J. KOHN  
14                                   CLARK COUNTY PUBLIC DEFENDER

15                                   By: /s/ Nadia Hojjat  
16                                   NADIA HOJJAT, #12401  
17                                   Deputy Public Defender

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26                   \_\_\_\_\_  
27                   <sup>23</sup> Id.

28                   <sup>24</sup> Id.

<sup>25</sup> Id.

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**NOTICE OF MOTION**

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion For Discovery on for hearing before the Court on the 7th day of June, 2012, at 8:30 a.m., in Department No. XII of the District Court.

DATED this 25th day of May, 2012.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Nadia Hojjat  
NADIA HOJJAT, #12401  
Deputy Public Defender

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that service of MOTION FOR DISCOVERY, was made this 25TH day of May, 2012 to:

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE  
PDMotions@ccdancv.com

By: /s/ S. Ruano  
Employee of the Public Defender's Office

  
CLERK OF THE COURT

1 **RSPN**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 SHAWN MORGAN  
6 Deputy District Attorney  
7 Nevada Bar #10935  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 BENNETT GRIMES,  
13 #2762267

14 Defendant.

CASE NO: C-11-276163-1

DEPT NO: XII

15 **STATE'S RESPONSE TO DEFENDANT'S MOTION FOR DISCOVERY**

16 DATE OF HEARING: June 7, 2012

17 TIME OF HEARING: 8:30 AM

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
19 District Attorney, through SHAWN MORGAN, Deputy District Attorney, and hereby  
20 submits the attached Points and Authorities in Opposition to Defendant's Motion For  
21 Discovery.

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

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1 POINTS AND AUTHORITIES

2 STATEMENT OF FACTS

3 Bennett Grimes (hereinafter "Defendant") is currently charged by way of Second  
4 Amended Information with one count of Attempt Murder With Use Of A Deadly Weapon In  
5 Violation Of A Temporary Protective Order; Burglary While In Possession Of A Deadly  
6 Weapon In Violation Of A Temporary Protective Order; and Battery With Use Of A Deadly  
7 Weapon Constituting Domestic Violence Resulting In Substantial Bodily Harm In Violation  
8 Of A Temporary Protective Order. The charges stem from Defendant's conduct on July 22,  
9 2011.

10 Prior to that day, Defendant and the victim in this case, Aneka Grimes, had been  
11 married for over six years. Preliminary Hearing Transcripts ("PHT") p. 7. They separated in  
12 2011 and Aneka obtained a Temporary Protective Order on July 7, 2011. Defendant was  
13 served with the Order on July 8, 2011.

14 On July 22, 2011, Aneka and her mother arrived home from buying a new car. Id. at  
15 8. Upon entering Aneka's apartment, Defendant forced the door open behind them and  
16 gained entry into the residence. Id. at 9. Defendant began arguing with Aneka in an attempt  
17 to reconcile their relationship. Id. at 10. While they were arguing, Aneka's mother called  
18 her husband, who then called the police. Id. at 9. Just prior to police arriving, Defendant  
19 snapped. Id. at 13. He grabbed a steak knife from the kitchen and attacked Aneka. Id. He  
20 put her in a headlock and began stabbing her. Id. Defendant stabbed Aneka twenty (20)  
21 times in the chest, neck, arms, back, face, and head. Id. at 14. His attempt to kill her was  
22 only thwarted when Las Vegas Metropolitan Police Department Officer Bobby Hoffman saw  
23 Defendant attacking Aneka and tackled him to the ground as he was attempting to plunge the  
24 knife into Aneka's neck. Id. at 30-31.

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## **ARGUMENT**

### **I.**

#### **THE STATE IS AWARE OF ITS STATUTORY AND CONSTITUTIONAL DISCOVERY OBLIGATIONS**

Defendant has made a number of general and specific discovery requests which are purportedly based upon case law within and without the State of Nevada. The State intends to comply with all the requests that are within the ambit of either the discovery statutes of Nevada and/or the constitutional requirements imposed by Brady and its progeny. The State does not intend to comply; and, furthermore, the State objects to all requests that fall outside of those legal requirements.

##### **A. Discovery Required By Statute**

The State clearly has no objection to a strict compliance with the provisions and requirements outlined in the criminal discovery statutes. See, NRS 174.233, et seq.

##### **B. Disclosure Required By Brady V. Maryland.**

The State recognizes, and readily accepts, its continuing disclosure obligations as defined in Brady v. Maryland, 83 S. Ct. 1194 (1963), and its interpretive progeny. Pursuant to Brady, the State is required to disclose evidence that is favorable to the defense if it is material either to guilt or punishment. Lay v. State, 116 Nev. 1185, 1194, 14 P.3d 1256, 1262 (2000). The State's failure to do so violates the Defendant's due process rights, regardless of the State's motive. Id. Following a specific discovery request, evidence is deemed material if there is a reasonable possibility that the evidence would have affected the outcome, i.e. it undermines the confidence of the outcome in the proceeding. Id.

"The character of a piece of evidence as favorable will often turn on the context of the existing or potential evidentiary record." Id. Furthermore, it is the prosecutor's responsibility to determine whether evidence is material and should be disclosed. Id. (citing Kyles v. Whitley, 514 U.S. 419, 439-440, 115 S.Ct. 1555 (1995)). As such, a prosecutor who is "anxious about tacking too close to the wind will disclose a favorable piece of evidence." Id. And, this is as it should be because such disclosure serves to justify trust in the prosecutor as "the representative of a sovereignty...whose interest...in a criminal

1 prosecution is not that it shall win a case, but that justice shall be done.” Id. However,  
2 **Brady does not impose upon the State an obligation “to disclose evidence which is**  
3 **available to the defendant from other sources, including diligent investigation by the**  
4 **defense.”** Steese v. State, 114 Nev. 479, 495, 960 P.2d 321, 331 (1998).

5 In addition, the State acknowledges that its Brady obligations not only apply to  
6 materials in its possession, but also extends to materials in the hands of its agents.  
7 Nevertheless, the State maintains that rather than being accountable for all evidence in the  
8 hands of all State agencies (as Defendant alleges), it is only accountable for that evidence in  
9 the hands of State agencies who are actually acting on its behalf in the investigation and  
10 prosecution of the case. See, Kyles v. Whitley, 514 U.S. 419, 437, 115 S.Ct. 1555, 1567  
11 (1995)(“This in turn means that the individual prosecutor has a duty to learn of any favorable  
12 evidence known to the others *acting on the government’s behalf in the case, including the*  
13 *police.*”); Carriger v. Stewart, 132 F.3d 463, 479 (9<sup>th</sup> Cir. 1997)(“[T]he prosecution has a  
14 duty to learn of any exculpatory evidence known to others *acting on the government’s*  
15 *behalf.*”). Moreover, “[w]hile the prosecution must disclose any information within the  
16 possession or control of law enforcement personnel,...it has no duty to volunteer information  
17 that it does not possess or of which it is unaware.” United State v. Hsieh Hui Mei Chen, 754  
18 F.2d 817, 824 (9<sup>th</sup> Cir. 1985). **Additionally, the State has no “duty to compile**  
19 **information or pursue an investigative lead simply because it could conceivably develop**  
20 **evidence helpful to the defense...”** Evans v. State, 117 Nev. 609, 627, 28 P.3d 498, 511  
21 (2001).

22 Furthermore, while the State acknowledges its discovery obligations under Brady and  
23 the applicable rules of discovery, the State submits that its obligations under Brady and the  
24 rules of discovery are not without limitation. See, e.g., Weatherford v. Bursey, 429 U.S.,  
25 545, 559, 97 S.Ct. 837, at 845-846 (1977)(There is no general constitutional right to  
26 discovery in a criminal case and Brady did not create one;...‘the Due Process Clause has  
27 little to say regarding the amount of discovery which the parties must be afforded...’). In  
28 addition, courts are limited in their authority to order the disclosure of evidence beyond what

1 is statutorily mandated. See, Franklin v. District Court, 85 Nev. 401, 402-403, 455 P.2d 919,  
2 920-921(1969)("The new criminal code [deals] with criminal discovery...and those  
3 provisions represent the legislative intent with respect to the scope of allowable pre-trial  
4 discovery and are not lightly to be disregarded.").

5 More specifically, in the case of Riddle v. State, 96 Nev. 589, 613 P.2d 1031 (Nev.  
6 1980) the Nevada Supreme Court reaffirmed the strictures of the provisions of our discovery  
7 statutes by making the following statement:

8 The trial court is vested with the authority to order the discovery and  
9 inspection of materials in the possession of the State. The exercise of the  
10 court's discretion however is **predicated on a showing that the evidence  
11 sought is material to the presentation of the defense and the existence of  
12 the evidence is known or, by the exercise of due diligence may become  
13 known to the District Attorney.**

14 Id. at 390 (emphasis added).

15 In Mazzan v. Warden, 116 Nev. 48, 993 P.2d 25 (2000), the Nevada Supreme Court  
16 stated:

17 Brady and its progeny require a prosecutor to disclose evidence favorable to  
18 the defense when that evidence is **material** either to guilt or to punishment.  
19 See Jimenez v. State, 112 Nev. 610, 618-19, 918 P.2d 687, 692 (1996).  
20 In other words, evidence is material if there is a reasonable probability that the  
21 result would have been different if the evidence had been disclosed. Id.

22 Id. at 66, 36 (emphasis added).

23 In determining its materiality, the undisclosed evidence must be considered  
24 collectively, not item by item. Kyles v. Whitley, 514 U.S. at 436, 115 S.Ct.  
25 1555. "[T]he character of a piece of evidence as favorable will often turn on  
26 the context of the existing or potential evidentiary record." Id. at 439, 1555.

27 Id. at 66-67, 36.

28 In sum, there are three components to a Brady violation: the evidence at issue  
is favorable to the accused; the evidence was withheld by the state, either  
intentionally or inadvertently; and prejudice ensued, i.e., the evidence was  
material. Strickler v. Greene, 527 U.S. 263, 119 S.Ct. 1936, 1948, (1999).

Id. at 67, 37 (emphasis added).

Based upon the foregoing, this Court is respectfully requested to continue to adhere to  
the clear legislative scheme regarding criminal discovery embodied in Nevada's statutes, the

1 interpretation thereof by the Supreme Court of this State, and the opinions of the United  
2 States Supreme Court in this area.

## 3 II.

### 4 SPECIFIC RESPONSES TO THE DEFENDANT'S REQUESTS

#### 5 Request No. 1

6 The State is not aware of any records regarding evidence impound and scientific tests  
7 that have not already been provided to the defense. Specifically, there has been no  
8 fingerprint analysis conducted in this case and the DNA results have already been provided.  
9 If the State should learn of additional documentation surrounding these examinations, they  
10 will be provided to defense counsel.

#### 11 Request No. 2

12 Aside from the statutorily mandated witness fees, no witnesses have been promised  
13 any form of compensation for their testimony.

#### 14 Request No. 3

15 The State is not aware of any statements or recorded interviews of any testifying  
16 witnesses in this case which have not already been provided. If the State should learn of  
17 such statements, they will be provided to defense counsel.

#### 18 Request No. 4

19 The State is not aware of any information to support that any witness was intoxicated  
20 at the time of the incident.

#### 21 Request No. 5

22 The State is not aware of any information to support that any witness was or is an  
23 informant.

#### 24 Request No. 6

25 The State is not aware of any information obtained from a police department crime tip  
26 organization.

#### 27 Request No. 7

28 The State is not aware of any witness cooperation with the media.

1 **Request No. 8**

2 Defendant requests all prior criminal histories of all witnesses. That request  
3 encompasses juvenile records, misdemeanors, or any other information, whether or not the  
4 information is admissible by the rules of evidence. This request is overly broad, unduly  
5 burdensome, and applies to information not admissible in any forthcoming trial. Under NRS  
6 50.095, evidence that a witness has been convicted of a crime (if it is punishable by more  
7 than one year) is admissible to impeach the credibility of that witness. Evidence of the  
8 conviction may be admissible if a period of ten years has not passed from the date of release  
9 of the witness from confinement or the expiration of the period of his parole, probation or  
10 sentence, whichever is the later date. See NRS 50.095(1)(2). That statute does not make  
11 admissible a witness' prior arrests that did not result in a conviction or an arrest and  
12 conviction of a crime that is merely a misdemeanor.

13 Nonetheless, Nevada case law and NRS 50.085(3) permits questioning of a witness in  
14 relation to arrests/convictions for crimes not amounting to felonies which bear on the  
15 honesty or truthfulness of a witness. See, Butler v. State, 120 Nev. 879, 890-91, 102 P.3d 71  
16 (2004)("This court has held that "NRS 50.085(3) permits impeaching a witness on cross-  
17 examination with questions about specific acts as long as the impeachment pertains to  
18 truthfulness or untruthfulness...[but] if the witness denies a specific act on cross-  
19 examination, the State may not introduce extrinsic evidence to the contrary.") However, no  
20 statute or case law in the jurisdiction permits unlimited questioning of a witness in regard to  
21 his/her criminal background beyond that permitted by NRS 50.095 and 50.085(3).  
22 Furthermore, records pertaining to juvenile records are sealed and not discoverable.  
23 Moreover, counsel has not established that the evidence is material to the issue of guilt or  
24 punishment.

25 In light of the above-cited legal authority, in the event that the State learns that one of  
26 its testifying witnesses has a felony conviction or an arrest/conviction for a crime bearing on  
27 honesty or truthfulness, such evidence will be disclosed. However, the State objects to the  
28 requests for information which extend beyond the ambit of the State's burden as outlined by

1 case law and statute. Last, should the State learn of any criminal proceeding that may bear  
2 on bias, interest and motive, it will be disclosed.

3 **Request No. 9**

4 The State is not aware of any statements made by the Defendant in this case. If the  
5 State should learn of any such statements, they will be provided to defense counsel.

6 **Request No. 10**

7 The State is not aware of any records regarding chain of custody that have not already  
8 been provided to the defense. If the State should learn of additional documentation  
9 surrounding the physical evidence in the case, they will be provided to defense counsel.

10 **Request No. 11**

11 The State is not aware of any additional statements made by the witnesses in the case  
12 that have not already been provided to the defense. If the State should learn of any additional  
13 statements, they will be provided to defense counsel.

14 **Request No. 12**

15 The State is not aware of any information tending to show the unreliability of the  
16 State's witnesses. If the State should learn of such information, it will be provided to  
17 defense counsel.

18 **Request No. 13**

19 The State is not aware of any notes kept by the experts in this case. If the State learns  
20 of the existence of any such items AND they are exculpatory, the State will disclose them.  
21 Otherwise, pursuant to the above-cited case law and Statutes, the State has no obligation to  
22 disclose them.

23 **Request No. 14**

24 The State will not disclose the contact information of the victim in this case given the  
25 nature of the offense and the close relationship between the victim and Defendant. If the  
26 defense wishes to attempt to speak with the victim, the State and defense can arrange for a  
27 pre-trial conference to do so.

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1 **Request No. 15**

2 The State is not aware of any books, papers, documents, and tangible objects related  
3 to the case that have not already been provided to the defense. If the State should learn of  
4 any additional items, they will be provided to defense counsel.

5 **Request No. 16**

6 The 911 calls and related reports have already been disclosed to the defense.

7 **Request No. 17**

8 The photographs and audio recordings related to this case have already been provided  
9 to the defense. The State is not aware of any video recordings related to this case.

10 **Request No. 18**

11 The State is not aware of any documents related to the identification of the Defendant  
12 that have not already been provided to the defense. If the State should learn of any additional  
13 items, they will be provided to defense counsel.

14 **CONCLUSION**

15 To the extent that Defendant's requests comply with the mandates of the Constitution  
16 and applicable statutes, and to the extent that the State has access to such materials, the State  
17 intends to comply with such requests. However, as to those requests that exceed the scope of  
18 the discovery statutes, the State objects. Furthermore, the State respectfully submits that  
19 Brady and its interpretive progeny squarely place the burden of determining what evidence is  
20 exculpatory and subject to disclosure pursuant to Brady on the shoulders of the State. See,  
21 Lay v. State, 116 Nev. at 1194, 14 P.3d at 1262.

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1 In light of the foregoing, the State requests that the Court DENY Defendant's Motion  
2 to the extent that the specific requests exceed the scope of the Nevada Revised Statutes  
3 Discovery Statutes and Brady.

4  
5 DATED this 5<sup>th</sup> day of June, 2012.

6 Respectfully submitted,

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

10 BY /s/ Shawn Morgan

11 SHAWN MORGAN  
12 Deputy District Attorney  
13 Nevada Bar #10935

14 **CERTIFICATE OF FACSIMILE TRANSMISSION**

15 I hereby certify that service of State's Response to Defendant's Motion for Discovery,  
16 was made this 5th day of June, 2012, by facsimile transmission to:

17 PD HOJJAT  
18 366-0692

19 PD HILLMAN  
20 455-5112

21 BY: /s/ J. Serpa

22 J. Serpa  
23 Employee of the District Attorney's Office  
24  
25  
26  
27

28 SM/js



  
CLERK OF THE COURT

1 MOT  
2 PHILIP J. KOHN, PUBLIC DEFENDER  
3 NEVADA BAR NO. 0556  
4 309 South Third Street, Suite 226  
5 Las Vegas, Nevada 89155  
6 (702) 455-4685  
7 Attorney for Defendant

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DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

BENNETT GRIMES,

Defendant.

CASE NO. C-11-276163-1

DEPT. NO. XII

DATE: June 19, 2012

TIME: 8:30 a.m.

**DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO GATHER EVIDENCE**

COMES NOW, the Defendant, BENNETT GRIMES, by and through Deputy Public Defender NADIA HOJJAT, and hereby files this motion for an Order dismissing the charges against Defendant Bennett Grimes based upon the State's failure to gather evidence.

This Motion is made and based upon all the papers and pleadings on file, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 5th day of June, 2012.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By /s/ Nadia Hojjat  
NADIA HOJJAT, #12401  
Deputy Public Defender

## **STATEMENT OF FACTS**

Mr. Grimes is currently being charged with one count of Attempt Murder With Use of a Deadly Weapon In Violation of a Temporary Protective Order, one count of Burglary With Possession of a Deadly Weapon in Violation of a Temporary Protective Order, and one count of Battery With Use of a Deadly Weapon Constituting Domestic Violence Resulting in Substantial Bodily Harm in Violation of a Temporary Protective Order. A trial is to be held on June 19, 2012 regarding the aforementioned charges.

The deadly weapon alleged in all of the counts above is a black handled steak knife. The source and handling of the knife will be material facts in dispute in trial. The knife has been in the custody of the Las Vegas Metropolitan Police Department since the time of the alleged incident on July 22, 2011. The knife had apparent blood and fingerprints on it when the police took it into evidence.

No testing was ever conducted to determine who the blood or fingerprints belonged to. Per the State, no fingerprint testing of any kind has ever been conducted on the knife. Additionally, during DNA testing of the knife, state agents deliberately avoided testing the visible blood on the knife to determine who it belonged to.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **THE STATE'S FAILURE TO GATHER EVIDENCE**

The Supreme Court of Nevada has previously addressed the State's failure to gather evidence. The Nevada Supreme Court adopted a two-part test, developed by the New Mexico Supreme Court, in the event that the State failed to gather evidence. (see State v. Ware, 118 N.M. 319, 881 P.2d 679 (N.M. 1994)).

"The first part requires the defense to show that the evidence was 'material,' meaning that there is a reasonable probability that, had the evidence been available to the defense, the result of the proceedings would have been different." State v. Daniels, 114 Nev. 261, 267, 956 P.2d 111 (1998). "If the evidence was material, then the court must determine whether the failure to gather

1 evidence was the result of mere negligence, gross negligence, or a bad faith attempt to prejudice  
2 the defendant's case." Id. at 267.

3  
4 "When mere negligence is involved, no sanctions are imposed, but the defendant can still  
5 examine the prosecution's witnesses about the investigative deficiencies." Id. at 267. "When  
6 gross negligence is involved, the defense is entitled to a presumption that the evidence would have  
7 been unfavorable to the state." Id. at 267. "In cases of bad faith, dismissal of the charges may be  
8 an available remedy based upon an evaluation of the case as a whole." Id. at 267.

### 9 10 MATERIAL EVIDENCE

11 In order to satisfy the first prong of the Daniels test, the evidence must be material. In  
12 Daniels, appellant was convicted of two counts of first-degree murder with use of a deadly weapon  
13 and two counts of robbery with use of a deadly weapon. Id. Appellant relied on a voluntary  
14 intoxication defense at trial, and thereafter challenged the conviction because the State did not take  
15 a blood sample for testing after his arrest which could have proven that he was intoxicated. Id.  
16 The Daniels Court found that such evidence was not material because appellant was not arrested  
17 until 6 hours after the alleged ingestion of drugs, and because such drugs would have only been  
18 detected in the blood for "a few hours" after ingestion. Id. As such, the evidence was not material  
19 because of the speculative nature as to whether it would have prevented a conviction.

20 In the case at hand, fingerprints and blood on the knife are material, as it would affect the  
21 proceedings and could lead to differing results. Specifically, proof that the alleged victim, Aneka  
22 Grimes, held the knife when she has clearly stated she did not would both impeach her and prove  
23 that Bennett Grimes was acting in self defense. Likewise, if Bennett Grimes' blood was on the  
24 knife, it would show that he had been injured with it, again providing strong proof of self-defense.

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## BAD FAITH

1 Because the initial prong of the test had not been satisfied, the Daniels Court did not reach  
2 the second part of the analysis. They did note, however, that appellant failed to establish  
3 negligence, gross negligence, or bad faith in the State's failure to gather blood evidence. Id. at  
4 268. In doing so, the Court deemed that a Detective's decision not to order blood tests was not  
5 unjustified because of his deference to a nurse's professional judgment that appellant was not  
6 under the influence, and because of appellant's own assertions that he was not intoxicated at the  
7 time of his arrest. Id.

8 In the case at hand, bad faith exists. In adopting the two part test, the Daniels Court  
9 concluded that "police officers generally have no duty to collect all potential evidence from a  
10 crime scene," but "this rule is not absolute." Id. at 268 (citing State v. Ware, 118 N.M. 319, 881  
11 P.2d 679 (N.M. 1994)).

12 According to the police reports provided by the State, the officer who impounded the knife,  
13 Officer L. Renhard, clearly observed blood and fingerprints on the knife. Indeed, the Crime Scene  
14 Investigation Evidence Impound Report states that there was, "...apparent blood and visible prints  
15 on the blade."

16 Additionally, blood was found on Mr. Grimes and he had an injury for which he was  
17 transported to the hospital. Police even documented his injuries by taking pictures of them. Clearly  
18 both Mr. Grimes and the victim, Aneka Grimes, were injured in the encounter. Proof of who  
19 initiated the violence must be collected by police when there is evidence suggesting both parties  
20 are injured. Yet here, the report states that the blood and fingerprints on the knife were "apparent"  
21 and "visible" and yet neither was collected or tested.

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CONCLUSION

In light of the two part test to determine when dismissal of charges is warranted due to the State's failure to gather evidence, the charges must be dismissed. In the alternative, the Court should instruct the jury to presume that Aneka Grimes' fingerprints were on the knife handle and that Bennett Grimes' blood was on the knife blade.

DATED this 5th day of June, 2012.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By /s/ Nadia Hojjat  
NADIA HOJJAT, #12401  
Deputy Public Defender

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**NOTICE OF MOTION**

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion to Dismiss on for hearing before the Court on the 19th day of June, 2012, at 8:30 a.m., in District Court Department XII.

DATED this 5th day of June, 2012.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By /s/ Nadia Hojjat  
NADIA HOJJAT, #12401  
Deputy Public Defender

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that service of DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO GATHER EVIDENCE, was made this 5TH day of June, 2012 to:

CLARK COUNTY DISTRICT ATTORNEY'S OFFICE  
PDMotions@ccdancv.com

By: /s/ S. Ruano  
Employee of the Public Defender's Office

ORIGINAL

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

JUN 12 2012

BY   
SUSAN IOVANOVICH, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

CASE NO. C276163-1

DEPT. NO. XII

BENNETT GRIMES,  
Defendant.

DATE: June 12, 2012  
TIME: 8:30 a.m.

MOTION TO CONTINUE TRIAL DATE

COMES NOW the Defendant, BENNETT GRIMES, by and through his attorney, R. ROGER HILLMAN, Deputy Public Defender, and respectfully moves this court for an order vacating the June 19, 2012 trial date and requesting a new trial setting on a date convenient to the court.

This Motion is made based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, Memorandum of Points and Authorities in support hereof, and oral argument at the time set for hearing this Motion.

DATED this 12th day of June, 2012.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

C-11-276163-1  
MTCT  
Motion to Continue Trial  
1873227



By   
R. ROGER HILLMAN, #3076  
Deputy Public Defender

DECLARATION

R. ROGER HILLMAN makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and I am familiar with the facts and circumstances of this case.

2. Communication between your Declarant and Defendant had broken down over the past few weeks to the point where your Declarant was considering withdrawing from Defendant's case, as effective representation was no longer possible.

3. In a visit with Defendant on June 8, 2012, that communication was at least partially restored.

4. In discussing the case with Defendant, your Declarant realized that there are outstanding discovery issues that need to be finalized, and minor investigation to be completed.

5. Those remaining items cannot be completed before the commencement of trial.

6. Your Declarant would not be able to effectively represent Mr. Grimes without the additional investigation completed, and the time needed to finalize that investigation.

7. Defendant has waived his speedy trial rights, and is in favor of continuing the case for effective preparation for trial.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 12th day of June, 2012.

  
R. ROGER HILLMAN



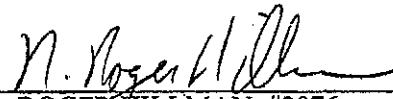
1 **NOTICE OF MOTION**

2 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

3 YOU WILL PLEASE TAKE NOTICE that the foregoing Motion to Continue Trial  
4 Date will be heard on June 12, 2012, at 8:30 am in Department No. XII of the District Court.

5 DATED this 12th day of June, 2012.

6 PHILIP J. KOHN  
7 CLARK COUNTY PUBLIC DEFENDER

8  
9 By   
10 R. ROGER HILLMAN, #3076  
11 Deputy Public Defender  
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19 **RECEIPT OF COPY**

20 RECEIPT OF COPY of the above and foregoing Motion to Continue Trial Date is  
21 hereby acknowledged this \_\_\_\_\_ day of June, 2012.

22 CLARK COUNTY DISTRICT ATTORNEY

23  
24 By \_\_\_\_\_  
25  
26  
27  
28

  
CLERK OF THE COURT

1 **OPPS**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 AGNES BOTELHO  
6 Deputy District Attorney  
7 Nevada Bar #11064  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,

12 -vs-

13 BENNETT GRIMES,  
14 #2762267

Defendant.

CASE NO: C-11-276163-1

DEPT NO: XII

15 STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO  
16 GATHER EVIDENCE

17 DATE OF HEARING: 07/19/2012  
18 TIME OF HEARING: 8:30 A.M.

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
20 District Attorney, through AGNES BOTELHO, Deputy District Attorney, and hereby  
21 submits the attached Points and Authorities in Opposition to Defendant's Motion To Dismiss  
22 For Failure To Gather Evidence.

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

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1 POINTS AND AUTHORITIES

2 STATEMENT OF FACTS

3 Bennett Grimes (hereinafter "Defendant") is currently charged by way of Second  
4 Amended Information with one count of Attempt Murder With Use Of A Deadly Weapon In  
5 Violation Of A Temporary Protective Order; Burglary While In Possession Of A Deadly  
6 Weapon In Violation Of A Temporary Protective Order; and Battery With Use Of A Deadly  
7 Weapon Constituting Domestic Violence Resulting In Substantial Bodily Harm In Violation  
8 Of A Temporary Protective Order. The charges stem from Defendant's conduct on July 22,  
9 2011.

10 Prior to that day, Defendant and the victim in this case, Aneka Grimes, had been  
11 married for over six years. Preliminary Hearing Transcripts ("PHT") p. 7. They separated in  
12 2011 and Aneka obtained a Temporary Protective Order on July 7, 2011. Defendant was  
13 served with the Order on July 8, 2011.

14 On July 22, 2011, Aneka and her mother arrived home from buying a new car. Id. at  
15 8. Upon entering Aneka's apartment, Defendant forced the door open behind them and  
16 gained entry into the residence. Id. at 9. Defendant began arguing with Aneka in an attempt  
17 to reconcile their relationship. Id. at 10. While they were arguing, Aneka's mother called  
18 her husband, who then called the police. Id. at 9. Just prior to police arriving, Defendant  
19 snapped. Id. at 13. He grabbed a steak knife from the kitchen and attacked Aneka. Id. He  
20 put her in a headlock and began stabbing her. Id. Defendant stabbed Aneka twenty (20)  
21 times in the chest, neck, arms, back, face, and head. Id. at 14. His attempt to kill her was  
22 only thwarted when Las Vegas Metropolitan Police Department Officer Bobby Hoffman saw  
23 Defendant attacking Aneka and tackled him to the ground as he was attempting to plunge the  
24 knife into Aneka's neck. Id. at 30-31.

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**ARGUMENT**

**I. DEFENDANT'S MOTION SHOULD BE DENIED BECAUSE HE FAILS TO SHOW THAT THE STATE FAILED TO GATHER EVIDENCE**

In the instant case, Defendant argues that failed to gather evidence by not submitting the steak knife Defendant used to stab Aneka twenty (20) times for DNA or fingerprint analysis. This argument lacks merit.

"In a criminal investigation, police officers generally have no duty to collect all potential evidence." Randolph v. State, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001). In this case, it is important to note two points. First, it is clear that neither the State nor the Las Vegas Metropolitan Police Department have a duty to collect and test all evidence. Second, the State in no way failed to preserve evidence, as the knife used in this horrific attack has been impounded as evidence and is thus available for testing, should the Defendant desire to have such testing conducted and if Defendant should believe that such testing is material to his defense. The State is under no obligation to investigate Defendant's case or to conduct testing that would assist Defendant in proffering a self-defense claim.

**II. DEFENDANT'S MOTION SHOULD BE DENIED BECAUSE HE FAILS TO SHOW THAT THE FINGERPRINT OR DNA ANALYSIS IS MATERIAL EVIDENCE**

In the instant case, Defendant argues that "fingerprints and blood on the knife are material, as it would affect the proceedings and could lead to different results" and "provid[e] strong proof of self-defense." This argument lacks merit and the State disagrees with Defendant's analysis.

In order for the Court to find that some form of sanctions against the State are warranted, Defendant must satisfy a two part test. Randolph v. State, 117 Nev. 970, 987, 36 P.3d 424, 435 (2001). He must first show that the evidence was material. Evidence will be deemed material if "there is a reasonable probability that the result of the proceedings would have been different if the evidence had been available." Id. "Second, if the evidence was material, the court must determine whether the failure to gather it resulted from negligence, gross negligence, or bad faith." Id.

1 In this case, the Defendant fails to show that the DNA and/or fingerprint testing  
2 would yield material evidence, even in light of his alleged self-defense claim. Neither DNA  
3 nor fingerprint testing would impeach Aneka and "prove that Bennett Grimes was acting in  
4 self-defense," as it cannot explain away the fact that Defendant stabbed Aneka twenty (20)  
5 times in the neck, chest, and back and was seen by responding officers stabbing Aneka when  
6 they entered the home nor can such testing provide a definitive answer as to who held the  
7 knife first or identify the initial aggressor, as Defendant claims in his motion.

8 Moreover, the existence of Aneka's fingerprint on the knife does not prove  
9 Defendant's alleged self-defense claim. Aneka's fingerprint could very well be on the knife  
10 for various reasons, such as the fact that the knife belonged to her and was located in her  
11 kitchen, or that she may have grabbed the knife in an effort to defend herself from the  
12 vicious attack. In addition, the fact that Aneka's blood may be on the knife only proves the  
13 obvious, which is that she suffered substantial injury due to Defendant's brutal attack and  
14 her blood transferred to the weapon he used.

15 Lastly, the existence of Defendant's blood on the knife does not immediately  
16 establish a self-defense claim either, as he most likely received his injuries from the very  
17 knife he used to attack Aneka and sustained said injuries during the attack. It is highly  
18 probable that Defendant's injury was the result of the fact that he used a steak knife to  
19 repeatedly stab Aneka and may have cut himself as he attacked her. Also, it is reasonable  
20 that Defendant would have blood on his person, as he had just stabbed his wife twenty (20)  
21 times.

22 In this case, it is clear that there is no reasonable probability that the result of the  
23 proceedings would be different if the testing is conducted or the evidence is made available.  
24 Again, if the Defendant believes that such evidence is material to his case in chief, the  
25 evidence has been preserved and is available for him to conduct the testing he is seeking.

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1       **III.   DEFENDANT'S MOTION SHOULD BE DENIED BECAUSE HE FAILS**  
2       **TO SHOW THAT THE STATE ACTED IN BAD FAITH BY NOT**  
3       **TESTING THE KNIFE FOR APPARENT AND VISIBLE BLOOD AND/OR**  
4       **FINGERPRINTS**

5       In the instant case, Defendant's argues that the State acted in bad faith by failing to  
6       gather and/or preserve and/or collect "proof of who initiated the violence when there is  
7       evidence suggesting that both parties are injured." This argument is entirely without merit.

8       As stated above, this Court need not reach the second prong of the analysis because  
9       Defendant fails to show that the requested testing is material. Should this Court choose to  
10      reach the second prong of the test, it is important to note that dismissal is only a proper  
11      remedy if Defendant can prove that the State acted in bad faith and the Court decides that  
12      such a remedy is proper based on the case as a whole. Randolph v. State, 117 Nev. 970, 987,  
13      36 P.3d 424, 435 (2001). As explained below, dismissal is not appropriate because there is  
14      no evidence of bad faith in this case.

15      As already stated above, the State did gather, preserve and collect the knife Defendant  
16      used to attempt to kill Aneka. Thus, the evidence Defendant wishes to test is still available  
17      and the State did not act in bad faith. Again, the State elected not to test the knife for  
18      fingerprint and DNA evidence as it is not material to the State's case and in no way would  
19      such evidence prove "who initiated the violence." Such a conclusion is for the trier of fact to  
20      decide after hearing all of the evidence in this case. It is a rather bold claim to assert that the  
21      State acted in bad faith in this particular case. While apparent and visible fingerprints and  
22      blood were noted on the knife, the State's decision not to submit the knife for fingerprint or

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1 DNA testing is not indicative of any kind of bad faith. The evidence was not lost or  
2 destroyed or made unavailable to Defendant and it is certainly not bad faith to refuse to  
3 conduct Defendant's investigation for him. As such, Defendant's motion should be denied.

4 DATED this 18<sup>TH</sup> day of July, 2012.

5 Respectfully submitted,

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

9 BY /s/ Agneg Botelho  
10 AGNES BOTELHO  
11 Deputy District Attorney  
12 Nevada Bar #11064

13 CERTIFICATE OF ELECTRONIC FILING

14 I hereby certify that service of the above and foregoing, was made this 18<sup>th</sup> day of  
15 July, 2012, by Electronic Filing to:

16  
17 R. HILLMAN, Deputy Public Defender

18 E-mail Address: hillmaRR@clarkcountyNV.gov

19 pdclerk@clarkcountyNV.gov  
20

21  
22 By: /s/ D. Jason

23 Secretary for the District Attorney's Office  
24

25  
26  
27  
28 AG/djj

  
CLERK OF THE COURT

1 NWEW  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 AGNES BOTELHO  
6 Deputy District Attorney  
7 Nevada Bar #011064  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,  
13  
14 Plaintiff,

CASE NO: C-11-276163-1

15 -vs-

DEPT NO: XII

16 BENNETT GRIMES,  
17 #2762267

18 Defendant.

SUPPLEMENTAL NOTICE OF EXPERT WITNESSES  
[NRS 174.234(2)]

19 TO: BENNETT GRIMES, Defendant; and

20 TO: PUBLIC DEFENDER, Counsel of Record:

21 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF  
22 NEVADA intends to call the following witnesses in its case in chief:

23 OLSON, ALANE M., M.D., Medical Examiner, Clark County Coroner's Office:

24 She is an expert in the area of forensic pathology. She is expected to testify regarding  
25 the classification of wounds as offensive or defensive.

26 TELGENHOFF, GARY DEAN, M.S., D.O., Medical Examiner, Clark County  
27 Coroner's Office: He is an expert in the area of forensic pathology. He is expected to testify  
28 regarding the classification of wounds as offensive or defensive.

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1 The substance of each expert witness' testimony and a copy of all reports made by or  
2 at the direction of the expert witness has been provided in discovery.

3 A copy of each expert witness' curriculum vitae, if available, is attached hereto.  
4

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

8 BY /s/ Agnes Botelho  
9 AGNES BOTELHO  
10 Deputy District Attorney  
11 Nevada Bar #011064

12 CERTIFICATE OF ELECTRONIC FILING

13 I hereby certify that service of the above and foregoing, was made this 19<sup>th</sup> day of  
14 September, 2012, by Electronic Filing to:

15 PUBLIC DEFENDER

16 E-mail Address: pdclerk@clarkcountynv.gov  
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20

21 By: /s/ D. Jason

22 Secretary for the District Attorney's Office  
23  
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*Curriculum Vitae*  
**ALANE M. OLSON, M.D.**  
Clark County Coroner's Office  
1704 Pinto Ln.  
Las Vegas, NV 89106  
702-455-1862  
e-mail: [alo@co.clark.nv.us](mailto:alo@co.clark.nv.us)

**EMPLOYMENT**

9/12/05 Clark County Coroner's Office  
7/1/00-9/9/05 Ellen G.I. Clark, M.D., P.C., Washoe County  
Coroner/Medical Examiner's Office

**EDUCATION**

7/99-6/00 Forensic Pathology Fellowship: Milwaukee County Medical  
Examiner's Office/MCWAH  
7/94-6/99 Residency in combined Anatomic and Clinical Pathology:  
Oregon Health Sciences University, Portland, OR  
5/94 MD degree: University of Nevada School of Medicine, Reno,  
NV  
6/87 Bachelor of Science: Microbiology, University of Idaho,  
Moscow

**PROFESSIONAL ACTIVITIES**

2001 Co-author, Liquid Petroleum Explosion without Fire,  
American Board of Medico legal Death Investigators  
Newsletter.  
2000 Co-author, elder abuse presentation, given at September  
meeting of National Association of Medical Examiners,  
Indianapolis, IN  
1999-2000 Team Teacher and laboratory instructor, MCW sophomore  
Pathology course  
1995-1999 Laboratory instructor, Oregon health Sciences University  
Medical School sophomore Pathology course  
1955-1999 Team teacher, Oregon Health Sciences University Medical  
Technologist School Pathophysiology course  
1998-1998 Autopsy instructor, Oregon Health Sciences University  
Department of Pathology, incoming residents and student  
fellows  
1997 Hematopathology in-service lecture, Kaiser Permanente  
Regional Laboratory

## LICENSURE

1995-1999

State of Oregon

1999-present

State of Wisconsin

2000-present

State of Nevada

## PROFESSIONAL BOARD CERTIFICATION

Anatomic and Clinical Pathology

Forensic Pathology

Curriculum Vitae

Alan M. Olson

Page 2 of 2

# CURRICULUM VITAE

**GARY DEAN TELGENHOFF, M.S., D.O.**

Home Address:

1700 Alta Drive  
Apt. 1071 Las  
Vegas, NV 89106  
(702) 383-7016

Office Address:

Office of the Coroner/Medical Examiner  
1704 Pinto Ln.  
Las Vegas, NV 89106  
(702) 455-3210  
E-mail: [gte@co.clark.nv.us](mailto:gte@co.clark.nv.us)  
Fax: (702) 455-0416

## CERTIFICATIONS

- National Osteopathic Boards, parts I, II & III.
- Anatomic Pathology, American Board of Pathology

## LICENSURE

- State of Ohio and Nevada

## EMPLOYMENT

- Deputy Medical Examiner/Forensic Pathologist – Clark County Coroner's Office.  
Las Vegas, Nevada 8/1/98 – Present.
- Deputy Coroner/Forensic Pathologist – Montgomery County Coroner's Office  
Dayton, Ohio 7/1/97 – 6/30/98.

## EDUCATION

FELLOWSHIP:

- Forensic Pathology, Montgomery County Coroner's  
Office, Dayton, Ohio 7/97 – 6/30/98.

#### RESIDENCY:

- Pathology (AP)  
Medical College of Ohio at Toledo and Mercy Hospital  
Toledo, Ohio 8/95 – 6/97.
- Elective, Forensic Pathology (6 months)  
Lucas County Coroner's Office  
Toledo, Ohio.
- Pathology (AP/CP)  
Cleveland Clinic Foundation  
Cleveland, Ohio, 7/93 – 6/95.
- Forensic Training (1 month)  
Cayahoga County Coroner's Office  
Cleveland, Ohio.

#### INTERNSHIP:

- Transitional/rotating  
Ingham Medical Center  
Lansing, Michigan, 7/92 – 6/93.

#### MEDICAL SCHOOL:

- 9/88 – 6/92  
D.O.  
College of Osteopathic Medicine  
Michigan State University  
East Lansing, Michigan  
95<sup>th</sup> percentile.

#### GRADUATE SCHOOL:

- 8/86 – 10/89  
M.S. Biology/Physiology  
Eastern Michigan University  
Ypsilanti, Michigan

#### UNDERGRADUATE:

- 9/75 – 6/79  
B.A. Biology/Chemistry  
Spring Arbor College  
Spring Arbor, Michigan,

Magna Cum Laude.

### OTHER:

Electron Microscopy: Eastern Michigan University, 1988. Autopsy Electives, medical school and internship, Sparrow Hospital and Ingham Medical Center, Lansing, Michigan, 1989, 1993. Electronics: Wexford/Missaukee Vocational School, 1975.

### ABSTRACTS:

- **Telgenhoff GD, Nine, JS.** "A Fatal Automobile Accident Following an Anaphylactic Reaction to Bee Venom." Submitted for poster presentation at The *American Academy of Forensic Sciences, March 1998 meeting.*

### RESEARCH:

- **Telgenhoff GD, Renk C.** "The Effect of Exercise Stress on the Mitogen-Stimulated Proliferation of Peripheral Blood Lymphocytes." Eastern Michigan University. Funded by the School of Clinical Laboratory Sciences, Department of Biology and the National Science Foundation. 10/89.

### HONORS AND AWARDS:

- **Dean's List:** four years undergraduate, one-year post-graduate and two years graduate.
- **National Dean's List:** 1979, 1987, 1988.

### FORMAL PRESENTATIONS:

- **"Electrical Injury; a forensic perspective."** Scientific Day, Medical College of Ohio, 5/97.
- **"Coccidioidomycosis; review and update."**  
Grand Rounds; Medical College of Ohio, 9/95.  
Grand Rounds; Cleveland Clinic Foundation, 4/95
- **"IgM Nephropathy; a distinct Clinicopathologic entity?"**  
Grand Rounds; Medical College of Ohio, 3/97.  
Grand Rounds; Cleveland Clinic Foundation, 5/94.
- **"Primary, Diffuse, Leptomeningeal Gliomatosis."**  
Scientific Day, Medical College of Ohio, 4/96.
- Numerous microbiology, internal medicine, hematology, surgical, tumor board, radiology, and morbidity and mortality conferences:  
Medical College of Ohio, Mercy Hospital, Toledo 8/95 – 6/97.  
Cleveland Clinic Foundation, Cleveland, 7/93 – 6/95.

### CONFERENCES AND COURSES ATTENDED:

- Practical Homicide Investigation, Las Vegas, Nevada, 5/99.
- Second Annual Pediatric Forensic Issues, San Diego, California. 10/98.

- Evidence Technician Course, Montgomery County Crime Lab, Dayton, Ohio. 10/1/97 – 10/31/97.
- American Academy of Forensic Sciences:
  - Nashville, Tennessee. 2/96.
  - San Francisco, California. 2/98.
- American Society of Clinical Pathologists:
  - Orlando, Florida. 5/95.

#### TEACHING APPOINTMENTS:

- **Staff Instructor of Medical Students, Residents, Law enforcement students, Pathology assistant and investigation reservists.**  
Clark County Coroner's Office. 8/1/98 – present.
- **Clinical Faculty, Pathology:** School of Medicine, Wright State University. Dayton, Ohio. 7/97 – 6/98.
- **Resident Instructor of Pathology Laboratories:** Medical College of Ohio, Toledo, Ohio. 8/95 – 6/97.
- **Resident Instructor of Medical Technology Students:** Cleveland Clinic Foundation, Cleveland, Ohio. 7/93 – 6/95.
- **Resident Instructor of Medical Students:** Cleveland Clinic Foundation, Cleveland, Ohio. 7/93 – 6/95.
- **Teaching Assistant:** Medical students, histology. College of Osteopathic Medicine, Michigan State University, 9/88 – 12/88.
- **Medical Student Tutor:** Histology, Immunology, Physiology and Neuroanatomy. College of Osteopathic Medicine, Michigan State University, 9/88 – 6/90.
- **Graduate Teaching Assistant of Nursing Students:** Human Gross Anatomy, physiology and histology. Eastern Michigan University, Ypsilanti, Michigan. 9/86 – 6/88.
- **Teaching Assistant:** Genetics, Microbiology, Botany. Spring Arbor College, Spring Arbor, Michigan. 9/78 – 6/79.

#### OTHER EXPERIENCE:

- **Cardiac Research Assistant:** Cleveland Clinic Foundation, 7/93 – 6/95.
- **Autopsy Pathologist ("moon-lighting"):** Cleveland, Ohio, 7/94 – 6/95.
- **Autopsy Assistant (diener):** Veteran's Administration Hospital, Ann Arbor, Michigan, 1988.
- **Phlebotomist:** Veteran's Administration Hospital, Ann Arbor, Michigan, 1988.

#### PROFESSIONAL ORGANIZATIONS:

- Member, National Association of Medical Examiners (NAME).
- Provisional Member, American Academy of Forensic Sciences (AAFS).
- American Society of Clinical Pathologists (ASCP).

COMMITTEE APPOINTMENTS:

- Child Death Review Board, Las Vegas, Nevada, 8/98 – present.

OTHER EMPLOYMENT/EXPERIENCE:

- Full-time, professional musician, 1979 – 1989.
- Part-time, professional musician, 1994 – present.

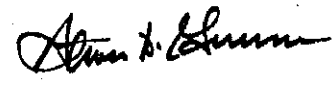
INTERESTS:

Photography, music, travel, hiking, camping, downhill and cross-country skiing, oil and acrylic painting.

PERSONAL:

- **Birthdate** 8/3/57
- **Birthplace** Cadillac, Michigan
- **Marital Status** Single



  
CLERK OF THE COURT

NWEW  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
AGNES BOTELHO  
Deputy District Attorney  
Nevada Bar #011064  
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-

BENNETT GRIMES,  
#2762267

Defendant.

CASE NO: C-11-276163-1

DEPT NO: XII

SUPPLEMENTAL NOTICE OF EXPERT WITNESSES  
[NRS 174.234(2)]

TO: BENNETT GRIMES, Defendant; and

TO: PUBLIC DEFENDER, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF  
NEVADA intends to call the following witnesses in its case in chief:

OLSON, ALANE M., M.D., Medical Examiner, Clark County Coroner's Office:

She is an expert in the area of forensic pathology. She is expected to testify regarding  
the classification of wounds as offensive or defensive.

TELGENHOFF, GARY DEAN, M.S., D.O., Medical Examiner, Clark County  
Coroner's Office: He is an expert in the area of forensic pathology. He is expected to testify  
regarding the classification of wounds as offensive or defensive.

///

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1 The substance of each expert witness' testimony and a copy of all reports made by or  
2 at the direction of the expert witness has been provided in discovery.

3 A copy of each expert witness' curriculum vitae, if available, is attached hereto.

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

8 BY /s/ Agnes Botelho  
9 AGNES BOTELHO  
10 Deputy District Attorney  
11 Nevada Bar #011064

12 CERTIFICATE OF ELECTRONIC FILING

13 I hereby certify that service of the above and foregoing, was made this 19<sup>th</sup> day of  
14 September, 2012, by Electronic Filing to:

15 PUBLIC DEFENDER

16 E-mail Address: pdclerk@clarkcountynv.gov

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20 By: /s/ D. Jason  
21 Secretary for the District Attorney's Office  
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*Curriculum Vitae*  
**ALANE M. OLSON, M.D.**  
Clark County Coroner's Office  
1704 Pinto Ln.  
Las Vegas, NV 89106  
702-455-1862  
e-mail: [alo@co.clark.nv.us](mailto:alo@co.clark.nv.us)

**EMPLOYMENT**

9/12/05

7/1/00-9/9/05

Clark County Coroner's Office  
Ellen G.I. Clark, M.D., P.C., Washoe County  
Coroner/Medical Examiner's Office

**EDUCATION**

7/99-6/00

Forensic Pathology Fellowship: Milwaukee County Medical  
Examiner's Office/MCWAH

7/94-6/99

Residency in combined Anatomic and Clinical Pathology:  
Oregon Health Sciences University, Portland, OR

5/94

MD degree: University of Nevada School of Medicine, Reno,  
NV

6/87

Bachelor of Science: Microbiology, University of Idaho,  
Moscow

**PROFESSIONAL ACTIVITIES**

2001

Co-author, Liquid Petroleum Explosion without Fire,  
American Board of Medico legal Death Investigators  
Newsletter.

2000

Co-author, elder abuse presentation, given at September  
meeting of National Association of Medical Examiners,  
Indianapolis, IN

1999-2000

Team Teacher and laboratory instructor, MCW sophomore  
Pathology course

1995-1999

Laboratory instructor, Oregon health Sciences University  
Medical School sophomore Pathology course

1955-1999

Team teacher, Oregon Health Sciences University Medical  
Technologist School Pathophysiology course

1998-1998

Autopsy instructor, Oregon Health Sciences University  
Department of Pathology, incoming residents and student  
fellows

1997

Hematopathology in-service lecture, Kaiser Permanente  
Regional Laboratory

**LICENSURE**

1995-1999

1999-present

2000-present

State of Oregon

State of Wisconsin

State of Nevada

**PROFESSIONAL BOARD CERTIFICATION**

Anatomic and Clinical Pathology

Forensic Pathology

Curriculum Vitae

Alane M. Olson

Page 2 of 2

# CURRICULUM VITAE

**GARY DEAN TELGENHOFF, M.S., D.O.**

Home Address:

1700 Alta Drive  
Apt. 1071 Las  
Vegas, NV 89106  
(702) 383-7016

Office Address:

Office of the Coroner/Medical Examiner  
1704 Pinto Ln.  
Las Vegas, NV 89106  
(702) 455-3210  
E-mail: [gte@co.clark.nv.us](mailto:gte@co.clark.nv.us)  
Fax: (702) 455-0416

## CERTIFICATIONS

- National Osteopathic Boards, parts I, II & III.
- Anatomic Pathology, American Board of Pathology

## LICENSURE

- State of Ohio and Nevada

## EMPLOYMENT

- Deputy Medical Examiner/Forensic Pathologist – Clark County Coroner's Office.  
Las Vegas, Nevada 8/1/98 – Present.
- Deputy Coroner/Forensic Pathologist – Montgomery County Coroner's Office  
Dayton, Ohio 7/1/97 – 6/30/98.

## EDUCATION

FELLOWSHIP:

- Forensic Pathology, Montgomery County Coroner's  
Office, Dayton, Ohio 7/97 – 6/30/98.

#### RESIDENCY:

- Pathology (AP)  
Medical College of Ohio at Toledo and Mercy Hospital  
Toledo, Ohio 8/95 – 6/97.
- Elective, Forensic Pathology (6 months)  
Lucas County Coroner's Office  
Toledo, Ohio.
- Pathology (AP/CP)  
Cleveland Clinic Foundation  
Cleveland, Ohio, 7/93 – 6/95.
- Forensic Training (1 month)  
Cayahoga County Coroner's Office  
Cleveland, Ohio.

#### INTERNSHIP:

- Transitional/rotating  
Ingham Medical Center  
Lansing, Michigan, 7/92 – 6/93.

#### MEDICAL SCHOOL:

- 9/88 – 6/92  
D.O.  
College of Osteopathic Medicine  
Michigan State University  
East Lansing, Michigan  
95<sup>th</sup> percentile.

#### GRADUATE SCHOOL:

- 8/86 – 10/89  
M.S. Biology/Physiology  
Eastern Michigan University  
Ypsilanti, Michigan

#### UNDERGRADUATE:

- 9/75 – 6/79  
B.A. Biology/Chemistry  
Spring Arbor College  
Spring Arbor, Michigan,

Magna Cum Laude.

#### OTHER:

Electron Microscopy: Eastern Michigan University, 1988. Autopsy Electives, medical school and internship, Sparrow Hospital and Ingham Medical Center, Lansing, Michigan, 1989, 1993. Electronics: Wexford/Missaukee Vocational School, 1975.

#### ABSTRACTS:

- **Telgenhoff GD, Nine, JS.** "A Fatal Automobile Accident Following an Anaphylactic Reaction to Bee Venom." Submitted for poster presentation at The *American Academy of Forensic Sciences, March 1998 meeting.*

#### RESEARCH:

- **Telgenhoff GD, Renk C.** "The Effect of Exercise Stress on the Mitogen-Stimulated Proliferation of Peripheral Blood Lymphocytes." Eastern Michigan University. Funded by the School of Clinical Laboratory Sciences, Department of Biology and the National Science Foundation. 10/89.

#### HONORS AND AWARDS:

- **Dean's List:** four years undergraduate, one-year post-graduate and two years graduate.
- **National Dean's List:** 1979, 1987, 1988.

#### FORMAL PRESENTATIONS:

- **"Electrical Injury; a forensic perspective."** Scientific Day, Medical College of Ohio, 5/97.
- **"Coccidioidomycosis; review and update."**  
Grand Rounds; Medical College of Ohio, 9/95.  
Grand Rounds; Cleveland Clinic Foundation, 4/95
- **"IgM Nephropathy; a distinct Clinicopathologic entity?"**  
Grand Rounds; Medical College of Ohio, 3/97.  
Grand Rounds; Cleveland Clinic Foundation, 5/94.
- **"Primary, Diffuse, Leptomeningeal Gliomatosis."**  
Scientific Day, Medical College of Ohio, 4/96.
- Numerous microbiology, internal medicine, hematology, surgical, tumor board, radiology, and morbidity and mortality conferences:  
Medical College of Ohio, Mercy Hospital, Toledo 8/95 – 6/97.  
Cleveland Clinic Foundation, Cleveland, 7/93 – 6/95.

#### CONFERENCES AND COURSES ATTENDED:

- Practical Homicide Investigation, Las Vegas, Nevada. 5/99.
- Second Annual Pediatric Forensic Issues, San Diego, California. 10/98.

- Evidence Technician Course, Montgomery County Crime Lab, Dayton, Ohio. 10/1/97 – 10/31/97.
- American Academy of Forensic Sciences:
  - Nashville, Tennessee. 2/96.
  - San Francisco, California. 2/98.
- American Society of Clinical Pathologists:
  - Orlando, Florida. 5/95.

#### TEACHING APPOINTMENTS:

- **Staff Instructor of Medical Students, Residents, Law enforcement students, Pathology assistant and investigation reservists.**  
Clark County Coroner's Office. 8/1/98 – present.
- **Clinical Faculty, Pathology:** School of Medicine, Wright State University. Dayton, Ohio. 7/97 – 6/98.
- **Resident Instructor of Pathology Laboratories:** Medical College of Ohio, Toledo, Ohio. 8/95 – 6/97.
- **Resident Instructor of Medical Technology Students:** Cleveland Clinic Foundation, Cleveland, Ohio. 7/93 – 6/95.
- **Resident Instructor of Medical Students:** Cleveland Clinic Foundation, Cleveland, Ohio. 7/93 – 6/95.
- **Teaching Assistant:** Medical students, histology. College of Osteopathic Medicine, Michigan State University, 9/88 – 12/88.
- **Medical Student Tutor:** Histology, Immunology, Physiology and Neuroanatomy. College of Osteopathic Medicine, Michigan State University, 9/88 – 6/90.
- **Graduate Teaching Assistant of Nursing Students:** Human Gross Anatomy, physiology and histology. Eastern Michigan University, Ypsilanti, Michigan. 9/86 – 6/88.
- **Teaching Assistant:** Genetics, Microbiology, Botany. Spring Arbor College, Spring Arbor, Michigan. 9/78 – 6/79.

#### OTHER EXPERIENCE:

- **Cardiac Research Assistant:** Cleveland Clinic Foundation, 7/93 – 6/95.
- **Autopsy Pathologist ("moon-lighting"):** Cleveland, Ohio, 7/94 – 6/95.
- **Autopsy Assistant (diener):** Veteran's Administration Hospital, Ann Arbor, Michigan, 1988.
- **Phlebotomist:** Veteran's Administration Hospital, Ann Arbor, Michigan, 1988.

#### PROFESSIONAL ORGANIZATIONS:

- Member, National Association of Medical Examiners (NAME).
- Provisional Member, American Academy of Forensic Sciences (AAFS).
- American Society of Clinical Pathologists (ASCP).



COMMITTEE APPOINTMENTS:

- Child Death Review Board, Las Vegas, Nevada, 8/98 – present.

OTHER EMPLOYMENT/EXPERIENCE:

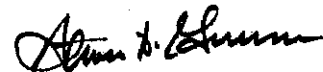
- Full-time, professional musician, 1979 – 1989.
- Part-time, professional musician, 1994 – present.

INTERESTS:

Photography, music, travel, hiking, camping, downhill and cross-country skiing, oil and acrylic painting.

PERSONAL:

- **Birthdate** 8/3/57
- **Birthplace** Cadillac, Michigan
- **Marital Status** Single

  
CLERK OF THE COURT

1 NOTC  
2 PHILIP J. KOHN, PUBLIC DEFENDER  
3 NEVADA BAR NO. 0556  
4 309 South Third Street, Suite #226  
5 Las Vegas, Nevada 89155  
6 (702) 455-4685  
7 Attorney for Defendant

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

10 THE STATE OF NEVADA, )

11 Plaintiff, )

12 v. )

13 BENNETT GRIMES, )

14 Defendant. )

CASE NO. C276163-1

DEPT. NO. XII

15 **DEFENDANT'S NOTICE OF WITNESSES, PURSUANT TO NRS 174.234**

16 TO: CLARK COUNTY DISTRICT ATTORNEY:

17 Defendant endorses the State's Witnesses as noticed in the State's Notice of  
18 Witnesses filed with the Court on January 31, 2012, February 22, 2012, and May 29, 2012.

19 You, and each of you, will please take notice that the Defendant, BENNETT  
20 GRIMES, intends to call the following witness in his case in chief:

21 KEVIN GENE, Clark County Public Defender, Investigator

22 KRIS SOONTHORNSAWAD, American Medical Response

23 JOCLYN FORNERO, American Medical Response

24 DATED this 2nd day of October, 2012.

25 PHILIP J. KOHN  
26 CLARK COUNTY PUBLIC DEFENDER

27 By: /s/R. Roger Hillman  
28 R. ROGER HILLMAN, #3076  
Deputy Public Defender

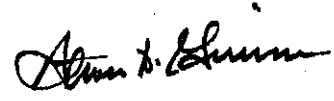
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**CERTIFICATE OF ELECTRONIC SERVICE**

A COPY of the above and foregoing DEFENDANT'S NOTICE OF WITNESSES;  
PURSUANT TO NRS 174.234 was served via electronic e-filing to the District Attorney's Office at  
PDMotions@ccdany.com on this 2nd day of October, 2012.

By /s/Cheryl Misuraca  
An employee of the Clark County Public  
Defender's Office

Case Name: Bennett Grimes  
Case No.: C276163-1  
Dept. No.: XII

  
CLERK OF THE COURT

NWEW  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
AGNES BOTELHO  
Deputy District Attorney  
Nevada Bar #011064  
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-

BENNETT GRIMES,  
#2762267

Defendant.

CASE NO: C-11-276163-1

DEPT NO: XII

SUPPLEMENTAL NOTICE OF WITNESSES  
[NRS 174.234(1)(a)]

TO: BENNETT GRIMES, Defendant; and

TO: PUBLIC DEFENDER, Counsel of Record:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF  
NEVADA intends to call the following witnesses in its case in chief:

NAME

ADDRESS

ROBISON, Melanie

AMR

WHITE, Chase

AMR

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1        These witnesses are in addition to those witnesses endorsed on the Information and  
2 any other witness for which a separate Notice has been filed.

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

7  
8                               BY /s/ Agnes Botelho  
9                               AGNES BOTELHO  
10                               Deputy District Attorney  
11                               Nevada Bar #011064

12                               CERTIFICATE OF ELECTRONIC FILING

13                               I hereby certify that service of the above and foregoing, was made this 4<sup>th</sup> day of  
14 October, 2012, by Electronic Filing to:

15  
16                               PUBLIC DEFENDER

17                               E-mail Address: pdclerk@clarkcountynv.gov

18  
19                               By: /s/ D. Jason

20                               Secretary for the District Attorney's Office

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28        djj/L-2

ORIGINAL

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

PHILIP J. KOHN, PUBLIC DEFENDER  
NEVADA BAR NO. 0556  
309 South Third Street, Suite 226  
Las Vegas, Nevada 89155  
(702) 455-4685  
Attorney for Defendant

OCT 02 2012

DISTRICT COURT  
CLARK COUNTY, NEVADA

BY:   
SUSAN JOVANOVIICH, DEPUTY

THE STATE OF NEVADA,  
  
Plaintiff,  
  
v.  
  
BENNETT GRIMES,  
  
Defendant.

CASE NO. C276163X

DEPT. NO. XII

DATE: October 9, 2012  
TIME: 8:30 a.m.

**DEFENDANT'S MOTION IN LIMINE TO PRECLUDE INTRODUCTION OF  
TEMPORARY PROTECTIVE ORDER AT TRIAL**

COMES NOW, the Defendant, BENNETT GRIMES, by and through NADIA HOJJAT, Deputy Public Defender and hereby moves this honorable court to preclude the prosecuting attorney from introducing any reference to the temporary protective order issued against him.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 1<sup>st</sup> day of October, 2012.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By:   
NADIA HOJJAT, #12401  
Deputy Public Defender

C-11-276163-1  
MOT  
Motion  
1975484



DECLARATION

NADIA HOJJAT makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and the Defendant has represented the following facts and circumstances of this case.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 1<sup>st</sup> day of October, 2012.

  
NADIA HOJJAT

## FACTS AND ARGUMENT

Mr. Grimes is currently being charged with one count of Attempt Murder With Use of a Deadly Weapon In Violation of a Temporary Protective Order, one count of Burglary With Possession of a Deadly Weapon in Violation of a Temporary Protective Order, and one count of Battery With Use of a Deadly Weapon Constituting Domestic Violence Resulting in Substantial Bodily Harm in Violation of a Temporary Protective Order. A trial is to be held on October 9, 2012 regarding the aforementioned charges.

The defense moves to preclude any mention of the temporary protective order at trial. If the defense's motion is granted, Mr. Grimes will stipulate that he had a Temporary Protective Order issued against him in the state of Nevada to stay away from the victim in this case, Aneka Grimes.

In Edwards v. State, 132 P.3d 581, 122 Nev. Adv. Rep. 34 (2006), the Nevada Supreme Court held that a person charged with ex-felon in possession of a firearm may stipulate to the existence of an underlying felony conviction in order to keep the facts of the conviction from being introduced at trial. The Court held that the nature and quantity of the previous convictions serve to unfairly prejudice the defendant, while providing little or no actual probative value.

Similarly here, the fact of the Temporary Protective Order provides no actual probative value to the charges alleged, but will serve to unfairly prejudice the defendant. The fact of a Temporary Protective Order is often interpreted by lay individuals to mean that the person has a history of violence or abuse. It is not well known outside the legal community that the issuance of a TPO can result from simple harassment, or even from a failure on the defendant's part to show up to court on the specified date for the hearing. Most people do not know that a TPO can be issued without any prior violence or abuse. Thus, once the fact of the TPO is introduced, the jury will be inclined to believe the worst of Mr. Grimes based solely on the fact of the TPO, rather than fairly evaluating the facts of the case at hand.

Additionally, introducing the facts of the TPO will inevitably lead to even further prejudice during the trial. The jury will wonder what behavior, precisely, the defendant engaged in to have a TPO issued against him. If the jurors are permitted to submit questions to the Court, one of them will likely ask what that behavior was. If the behavior is told to the jurors, Mr. Grimes will be



1 further prejudiced. If the behavior is *not* told to the jurors, they will wonder why they cannot know  
2 and they will be pondering the unknown facts of the TPO for the rest of the trial and wondering  
3 how horrendous his behavior must have been for the information to be kept from them.  
4

### 5 CONCLUSION

6 Based on this, the defense offers to stipulate to the Temporary Protective Order, and  
7 requests that this court prohibit the government from referencing it during Mr. Grimes' trial.  
8

9  
10 DATED this 1<sup>st</sup> day of October, 2012.

11 PHILIP J. KOHN  
12 CLARK COUNTY PUBLIC DEFENDER

13 By 

14 NADIA HOJJAT, #12401  
15 Deputy Public Defender  
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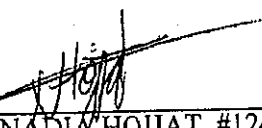
**NOTICE OF MOTION**

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing MOTION IN LIMINE TO PRECLUDE INTRODUCTION OF TEMPORARY PROTECTIVE ORDER on for hearing before the Court on the 9th day of October, 2012, at 8:30 a.m.

DATED this 1<sup>st</sup> day of October, 2012.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By   
NADIA HOJJAT, #12401  
Deputy Public Defender

**RECEIPT OF COPY**

RECEIPT OF COPY of the above and foregoing DEFENDANT'S MOTION IN LIMINE TO PRECLUDE INTRODUCTION OF TEMPORARY PROTECTIVE ORDER is hereby acknowledged this \_\_\_\_\_ day of October, 2012.

CLARK COUNTY DISTRICT ATTORNEY

By \_\_\_\_\_

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

OCT 10 2012

BY,   
SUSAN JOVANOVIĆ, DEPUTY

C-11-276163-1  
AINF  
Amended Information  
1981077



DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BENNETT GRIMES,  
#2762267

Defendant.

Case No: C-11-276163-1  
Dept No: XII

THIRD AMENDED  
INFORMATION

STATE OF NEVADA

COUNTY OF CLARK

} ss.

Steven B. Wolfson <sup>ML</sup>

~~DAVID ROGER~~, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That BENNETT GRIMES, the Defendant(s) above named, having committed the crimes of ATTEMPT MURDER WITH USE OF A DEADLY WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (Felony - NRS 200.010, 200.030, 193.330, 193.165, 193.166); BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (Felony - NRS 205.060, 193.166) and BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY HARM IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (Felony - NRS 200.481.2e; 193.166), on or about the 22nd day of July, 2011, within the County of Clark, State of Nevada, contrary to the form, force and

PAWPDOCS\INFA\13\11301204.DOC

3

1 effect of statutes in such cases made and provided, and against the peace and dignity of the  
2 State of Nevada,

3 COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON IN  
4 VIOLATION OF TEMPORARY PROTECTIVE ORDER

5 did then and there, without authority of law, and malice aforethought, willfully and  
6 feloniously attempt to kill ANEKA GRIMES, a human being, by stabbing at and into the  
7 body of the said ANEKA GRIMES, with a deadly weapon, to-wit: a knife, in violation of a  
8 Temporary Order for Protection against Domestic Violence issued by the District Court,  
9 Family Division, of the State of Nevada in Case No. T-11-134754-T.

10 COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON IN  
11 VIOLATION OF A TEMPORARY PROTECTIVE ORDER

12 did then and there wilfully, unlawfully, and feloniously enter, and thereafter gain  
13 possession of a deadly weapon, to-wit: a knife, with intent to commit assault and/or battery  
14 and/or to commit substantial bodily harm and/or murder, that certain building occupied by  
15 ANEKA GRIMES, located at 9325 West Desert Inn, Apt. 173, Las Vegas, Clark County,  
16 Nevada, in violation of a Temporary Order for Protection against Domestic Violence issued  
17 by the District Court, Family Division, of the State of Nevada in Case No. T-11-134754-T.

18 COUNT 3 - BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING  
19 DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY HARM  
IN VIOLATION OF TEMPORARY PROTECTIVE ORDER

20 did then and there wilfully, unlawfully, and feloniously use force or violence upon  
21 the person of his spouse, former spouse, or any other person to whom he is related by blood  
22 or marriage, a person with whom he is or was actually residing, a person with whom he has  
23 had or is having a dating relationship, a person with whom he has a child in common, the  
24 minor child of any of those persons or his minor child, to-wit: ANEKA GRIMES, with use  
25 of a deadly weapon, to-wit: a knife, by stabbing at and into the body of the said ANEKA  
26 GRIMES with said knife, resulting in substantial bodily harm to the said ANEKA GRIMES,

27 ///

28 ///

1 in violation of a Temporary Order for Protection against Domestic Violence issued by the  
2 District Court, Family Division, of the State of Nevada in Case No. T-11-134754-T.

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

6  
7 BY Agnes Botelho  
8 AGNES BOTELHO  
9 Deputy District Attorney  
Nevada Bar #011064  
10

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

13	<u>NAME</u>	<u>ADDRESS</u>
14	BREWER, MICHAEL	LVMPD #8426
15	CUSTODIAN OF RECORDS	CCDC
16	CUSTODIAN OF RECORDS	LVMPD COMMUNICATIONS
17	CUSTODIAN OF RECORDS	LVMPD RECORDS
18	GALLUP, BRADLEY	LVMPD #8729
19	GRIMES, ANIKA	C/O CC DISTRICT ATTORNEY
20	HODSON, RODNEY	LVMPD #3711
21	HOFFMAN, BOBBY	LVMPD #10069
22	KNEPP, ELAINE/OR DESIGNEE	D.A. INVESTIGATOR
23	NEWMAN, STEPHANIE	16041 KNOLL VIEW CIR VICTORVILL CA
24	TAVAREZ, MICHELLE	LVMPD #8518
25	TOMAINO, DANIEL	LVMPD #8278

26  
27 DA#11F13012X/djj/L-2  
28 LVMPD EV#1107223412  
(TK4)

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INST

ORIGINAL

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

OCT 15 2012

BY,   
SUSAN JOVANOVICH, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

C-11-276163-1  
INST  
Instructions to the Jury  
1982980



THE STATE OF NEVADA,

Plaintiff,

-vs-

BENNETT GRIMES,

Defendant.

CASE NO: C-11-276163-1

DEPT NO: XII

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

MICHELLE LEAVITT  
DISTRICT JUDGE  
DEPARTMENT TWELVE  
LAS VEGAS, NEVADA 89155

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If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

1  
2 An Information is but a formal method of accusing a person of a crime and is not of  
3 itself any evidence of his guilt.

4 In this case, it is charged in a Third Amended Information that on or about the 22nd  
5 day of July, 2011, the Defendant committed the offenses of ATTEMPT MURDER WITH  
6 USE OF A DEADLY WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE  
7 ORDER (Felony - NRS 200.010, 200.030, 193.330, 193.165, 193.166); BURGLARY  
8 WHILE IN POSSESSION OF A DEADLY WEAPON IN VIOLATION OF A  
9 TEMPORARY PROTECTIVE ORDER (Felony - NRS 205.060, 193.166) and BATTERY  
10 WITH USE OF A DEADLY WEAPON CONSTITUTING DOMESTIC VIOLENCE  
11 RESULTING IN SUBSTANTIAL BODILY HARM IN VIOLATION OF A TEMPORARY  
12 PROTECTIVE ORDER (Felony - NRS 200.481.2e; 193.166), to-wit:

13 COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON IN  
14 VIOLATION OF TEMPORARY PROTECTIVE ORDER

15 did then and there, without authority of law, and with malice aforethought, willfully  
16 and feloniously attempt to kill ANEKA GRIMES, a human being, by stabbing at and into the  
17 body of the said ANEKA GRIMES, with a deadly weapon, to-wit: a knife, in violation of a  
18 Temporary Order for Protection against Domestic Violence issued by the District Court,  
19 Family Division, of the State of Nevada in Case No. T-11-134754-T.

20 COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON IN  
21 VIOLATION OF A TEMPORARY PROTECTIVE ORDER

22 did then and there willfully, unlawfully, and feloniously enter, and thereafter gain  
23 possession of a deadly weapon, to-wit: a knife, with intent to commit assault and/or battery  
24 and/or to commit substantial bodily harm and/or murder, that certain building occupied by  
25 ANEKA GRIMES, located at 9325 West Desert Inn, Apt. 173, Las Vegas, Clark County,  
26 Nevada, in violation of a Temporary Order for Protection against Domestic Violence issued  
27 by the District Court, Family Division, of the State of Nevada in Case No. T-11-134754-T.  
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1 COUNT 3 - BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING  
2 DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY HARM  
3 IN VIOLATION OF TEMPORARY PROTECTIVE ORDER

4 did then and there willfully, unlawfully, and feloniously use force or violence upon  
5 the person of his spouse, former spouse, or any other person to whom he is related by blood  
6 or marriage, a person with whom he is or was actually residing, a person with whom he has  
7 had or is having a dating relationship, a person with whom he has a child in common, the  
8 minor child of any of those persons or his minor child, to-wit: ANEKA GRIMES, with use  
9 of a deadly weapon, to-wit: a knife, by stabbing at and into the body of the said ANEKA  
10 GRIMES with said knife, resulting in substantial bodily harm to the said ANEKA GRIMES,  
11 in violation of a Temporary Order for Protection against Domestic Violence issued by the  
12 District Court, Family Division, of the State of Nevada in Case No. T-11-134754-T.

13 It is the duty of the jury to apply the rules of law contained in these instructions to the  
14 facts of the case and determine whether or not the Defendant is guilty of one or more of the  
15 offenses charged.  
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2 To constitute the crime charged, there must exist a union or joint operation of an act  
3 forbidden by law and an intent to do the act.

4 The intent with which an act is done is shown by the facts and circumstances  
5 surrounding the case.

6 Do not confuse intent with motive. Motive is what prompts a person to act. Intent  
7 refers only to the state of mind with which the act is done.

8 Motive is not an element of the crime charged and the State is not required to prove a  
9 motive on the part of the Defendant in order to convict. However, you may consider  
10 evidence of motive or lack of motive as a circumstance in the case.

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2 The Defendant is presumed innocent until the contrary is proved. This presumption  
3 places upon the State the burden of proving beyond a reasonable doubt every material  
4 element of the crime charged and that the Defendant is the person who committed the  
5 offense.

6 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a  
7 doubt as would govern or control a person in the more weighty affairs of life. If the minds of  
8 the jurors, after the entire comparison and consideration of all the evidence, are in such a  
9 condition that they can say they feel an abiding conviction of the truth of the charge, there is  
10 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or  
11 speculation.

12 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a  
13 verdict of not guilty.  
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2       You are here to determine whether the State of Nevada has met its burden of proof as  
3 to the Defendant from the evidence in the case. You are not called upon to return a verdict  
4 as to any other person. So, if the evidence in the case convinces you beyond a reasonable  
5 doubt of the guilt of the Defendant, you should so find, even though you may believe one or  
6 more persons are also guilty.  
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2 The evidence which you are to consider in this case consists of the testimony of the  
3 witnesses, the exhibits, and any facts admitted or agreed to by counsel.

4 There are two types of evidence; direct and circumstantial. Direct evidence is the  
5 testimony of a person who claims to have personal knowledge of the commission of the  
6 crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof  
7 of a chain of facts and circumstances which tend to show whether the Defendant is guilty or  
8 not guilty. The law makes no distinction between the weight to be given either direct or  
9 circumstantial evidence. Therefore, all of the evidence in the case, including the  
10 circumstantial evidence, should be considered by you in arriving at your verdict.

11 Statements, arguments and opinions of counsel are not evidence in the case.  
12 However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation  
13 as evidence and regard that fact as proved.

14 You must not speculate to be true any insinuations suggested by a question asked a  
15 witness. A question is not evidence and may be considered only as it supplies meaning to  
16 the answer.

17 You must disregard any evidence to which an objection was sustained by the court  
18 and any evidence ordered stricken by the court.

19 Anything you may have seen or heard outside the courtroom is not evidence and must  
20 also be disregarded.

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The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

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2 A witness who has special knowledge, skill, experience, training or education in a  
3 particular science, profession or occupation is an expert witness. An expert witness may  
4 give his opinion as to any matter in which he is skilled.

5 You should consider such expert opinion and weigh the reasons, if any, given for it.  
6 You are not bound, however, by such an opinion. Give it the weight to which you deem it  
7 entitled, whether that be great or slight, and you may reject it, if, in your judgment, the  
8 reasons given for it are unsound.

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The elements of an attempt to commit a crime are:

- 1) the specific intent to commit the crime;
- 2) performance of some act towards its commission; and
- 3) failure to consummate its commission.



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Attempted murder is the performance of an act or acts which tend, but fail, to kill a human being, when such acts are done with express malice, namely, with the deliberate intention unlawfully to kill.

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Express malice is that deliberate intention unlawfully to take away the life of a human, which is manifested by external circumstances capable of proof.

Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

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Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention, but denotes rather an unlawful purpose and design in contradistinction to accident and mischance.

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2 The intention to kill may be ascertained or deduced from all the facts and  
3 circumstances, such as the use of a weapon calculated to produce death, the manner of its  
4 use, and the attendant circumstances characterizing the act.  
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If you find that the State of Nevada did not prove beyond a reasonable doubt that the Defendant had the specific intent to murder Aneka Grimes, you must find him not guilty of Count 1.

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"Deadly Weapon" means:

(a) Any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; or

(b) Any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

1  
2 If you find beyond a reasonable doubt that the defendant committed Attempt Murder  
3 with the Use of a Deadly Weapon, then you are instructed that the verdict of Attempt Murder  
4 with the Use of a Deadly Weapon is the appropriate verdict.

5 If, however, you find that a deadly weapon was not used in the commission of the  
6 Attempt Murder, but you do find that an Attempt Murder was committed, then you are  
7 instructed that the verdict of Attempt Murder without the Use of a Deadly Weapon is the  
8 appropriate verdict.

9 You are instructed that you cannot return a verdict of both Attempt Murder with the  
10 Use of a Deadly Weapon and Attempt Murder without the Use of a Deadly Weapon.  
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Every person who enters any apartment or house, with the intent to commit assault or battery on any person and/or any felony therein is guilty of Burglary.



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"Assault" means:

- (1) Unlawfully attempting to use physical force against another person; or
- (2) Intentionally placing another person in reasonable apprehension of immediate  
bodily harm.

INSTRUCTION NO. 20

1  
2 It is not necessary that the State prove the defendant actually committed an assault or  
3 battery and/or a felony in the apartment or home after he entered in order for you to find him  
4 guilty of burglary. The gist of the crime of burglary is the unlawful entry with criminal  
5 intent. Therefore, a burglary was committed if the defendant entered the building with the  
6 intent to commit assault or battery and/or a felony regardless of whether or not that crime  
7 occurred.  
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INSTRUCTION NO. 21

The intent with which entry was made is a question of fact which may be inferred from the defendant's conduct and all other circumstances disclosed by the evidence.

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Every person who unlawfully breaks and enters or unlawfully enters any apartment or house may reasonably be inferred to have broken and entered or entered it with intent to commit grand or petit larceny, assault or battery on any person or a felony therein, unless the unlawful breaking and entering or unlawful entry is explained by evidence satisfactory to the jury to have been made without criminal intent.

INSTRUCTION NO. 23

Every person who, in the commission of a burglary, commits any other crime, may be prosecuted for each crime separately.

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Every person who commits the crime of burglary, who has in his possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure, or upon leaving the structure, is guilty of burglary while in possession of a weapon.

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If you find the defendant guilty of Burglary, you must also determine whether or not a deadly weapon was used in the commission of this crime.

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If you find that the State did not prove beyond a reasonable doubt that Bennett  
Grimes entered the apartment with the intent to commit an assault/battery or felony therein,  
you must find him not guilty of Count II.



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"Battery" means any willful and unlawful use of force or violence upon the person of another.

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Battery Constituting Domestic Violence occurs when an individual commits a battery upon his spouse, former spouse, any other person to whom he is related by blood or marriage, a person with whom he is or was actually residing, a person with whom he has had or is having a dating relationship, or a person with whom he has a child in common.

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"Substantial Bodily Harm" means:

1. Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or
2. Prolonged physical pain.

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"Prolonged Physical Pain" necessarily encompasses some physical suffering or injury that lasted longer than the pain immediately resulting from the wrongful act.

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Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 32

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In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the State of Nevada has met its burden of proof.

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When you retire to consider your verdict, you must select one of your member to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

1  
2 Now you will listen to the arguments of counsel who will endeavor to aid you to  
3 reach a proper verdict by refreshing in your minds the evidence and by showing the  
4 application thereof to the law; but, whatever counsel may say, you will bear in mind that it is  
5 your duty to be governed in your deliberation by the evidence as you understand it and  
6 remember it to be and by the law as given to you in these instructions, with the sole, fixed  
7 and steadfast purpose of doing equal and exact justice between the Defendant and the State  
8 of Nevada.

GIVEN:

  
DISTRICT JUDGE



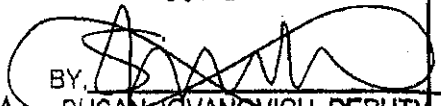
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FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

OCT 15 2012

VER

DISTRICT COURT  
CLARK COUNTY, NEVADA

BY:   
SUSAN JOVANOVIH, DEPUTY

THE STATE OF NEVADA,  
Plaintiff,

CASE NO: C-11-276163-1

-VS-

DEPT NO: XII

BENNETT GRIMES,

Defendant.

C-11-276163-1

VER  
Verdict  
1983651



VERDICT

We, the jury in the above entitled case, find the Defendant BENNETT GRIMES, as follows:

**COUNT 1** - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON IN  
VIOLATION OF A TEMPORARY PROTECTIVE ORDER

*(please check the appropriate box, select only one)*

- ☒ Guilty of Attempt Murder with Use of a Deadly Weapon in Violation of a Temporary Protective Order
- ☐ Guilty of Attempt Murder in Violation of a Temporary Protective Order
- ☐ Not Guilty

We, the jury in the above entitled case, find the Defendant BENNETT GRIMES, as follows:

**COUNT 2** - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON IN  
VIOLATION OF A TEMPORARY PROTECTIVE ORDER

*(please check the appropriate box, select only one)*

- ☒ Guilty of Burglary While in Possession of a Deadly Weapon in Violation of a Temporary Protective Order
- ☐ Guilty of Burglary in Violation of a Temporary Protective Order
- ☐ Not Guilty

1 We, the jury in the above entitled case, find the Defendant BENNETT GRIMES, as  
2 follows:

3 **COUNT 3** - BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING  
4 DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY  
5 HARM IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER

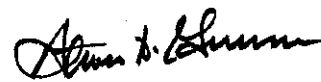
6 *(please check the appropriate box, select only one)*

- 7 ☒ Guilty of Battery with Use of a Deadly Weapon Constituting Domestic  
8 Violence Resulting in Substantial Bodily Harm in Violation of a  
9 Temporary Protective Order  
10 ☐ Guilty of Battery Domestic Violence Resulting in Substantial Bodily Harm  
11 in Violation of a Temporary Protective Order  
12 ☐ Guilty of Battery Domestic Violence with Use of a Deadly Weapon in  
13 Violation of a Temporary Protective Order  
14 ☐ Guilty of Battery Domestic Violence in Violation of a Temporary  
15 Protective Order  
16 ☐ Guilty of Battery in Violation of a Temporary Protective Order  
17 ☐ Not Guilty

18 DATED this 15<sup>th</sup> day of October, 2012  
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21 NEE  
22 FOREPERSON  
23 Kirk Sanford  
24 Jury #12  
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28

1 PHILIP J. KOHN, PUBLIC DEFENDER  
2 NEVADA BAR NO. 0556  
3 309 South Third Street, Suite 226  
4 Las Vegas, Nevada 89155  
5 (702) 455-4685  
6 Attorney for Defendant

  
CLERK OF THE COURT

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DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

BENNETT GRIMES,

Defendant.

CASE NO. C-11-276163-1

DEPT. NO. XII

DATE: November 6, 2012  
TIME: 8:30 a.m.

MOTION FOR NEW TRIAL

COMES NOW, the Defendant, BENNETT GRIMES, by and through R. ROGER HILLMAN, Deputy Public Defender and hereby files this motion for a new trial based on the Court's failure to notify the parties that the jury had a question concerning the law.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 22nd day of October, 2012.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By: /s/R. Roger Hillman  
R. ROGER HILLMAN, #3076  
Deputy Public Defender

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 STATEMENT OF THE CASE

4 Trial in this matter began on October 10, 2012. A verdict was returned in the afternoon on  
5 October 15, 2012. After the verdict was read, the Court notified all counsel that the Court had  
6 received a note from the jury regarding the Burglary change (with enhancements). The Court  
7 marked the note, and placed it in evidence. The Court also stated that it would have only referred  
8 the jury to the instructions given to jury, but made no contact with the jury. The note had to do  
9 with when the intent to commit a crime must form, where before or after entry. In retrospect,  
10 Defendant feels that more clarification would have aided the jury in coming to an accurate verdict.

11 II.

12 ARGUMENT

13 WHETHER THE COURTS FAILURE TO NOTIFY THE PARTIES THAT A  
14 JURY HAD A QUESTION REGARDING THE LAW ON THE BURGLARY  
15 INSTRUCTION DEPRIVED GRIMES OF HIS CONSTITUTIONAL RIGHTS TO  
16 A FAIR TRIAL AND DUE PROCESS OF LAW UNDER ARTICLE I,  
17 SECTIONS 3 AND 8 OF THE NEVADA CONSTITUTION AND THE FIFTH  
AND FOURTEENTH AMENDMENTS OF THE FEDERAL CONSTITUTION?

18 A district judge has responsibility to notify the parties concerning a jury's question of the  
19 jury instructions. The note should be made part of the record and the parties should have the  
20 opportunity to address what, if any, response should be given to the jury's inquiry. The court's  
21 failure to follow proper procedures rendered the trial constitutionally infirm and requires that  
22 Reyes receive a new trial.

23 NRS 175.451 provides:

24 After the jury have retired for deliberation, if there is any  
25 disagreement between them as to any part of the testimony, or if they  
26 desire to be informed on the point of law arising in the cause, they  
27 must require the officer to conduct them into court. Upon their  
28 being brought into court, the information required shall be given in  
the presence of, or after notice to, the district attorney and the  
defendant or his counsel.

1 The mandatory word "shall" applies to the presence of counsel if the information requested  
2 by the jury is given. Tellis v. State, 84 Nev. 587, 445 P.2d 938 (1968). A district judge commits  
3 error by not notifying the parties regarding a jury question. Varnier v. State, 97 Nev. 486, 634 P.2d  
4 1205 (1981). It is a proper procedure to make counsel aware and inquire into whether or if any  
5 response counsel may have regarding a jury note from the foreman. See, Daniel v. State, 78 P.3d  
6 890, 119 Nev. Adv. Op. 56 (Nov. 3, 2003). A district court errs by "failing to notify counsel  
7 before communicating to the jury on a substantive matter." See, NRS 175.451; Cavanaugh v.  
8 State, 102 Nev. 478, 484, 729 P.2d 481, 484-85 (1986).

9 In the case at bar, the juror(s) had difficulty following the law regarding the language of the  
10 Burglary charge. The note clearly indicates that at least one juror was confused as to when intent  
11 need be formed in order for a Burglary to occur. Although notified of the note, no response was  
12 given, and counsel feels that further direction would have been helpful in reaching a correct verdict  
13 in this case. This violates NRS 175.451.

#### 14 CONCLUSION

15 Based on the foregoing, Grimes should be entitled to a new trial.

16  
17 DATED this 22nd day of October, 2012.

18 PHILIP J. KOHN  
19 CLARK COUNTY PUBLIC DEFENDER

20 By /s/R. Roger Hillman  
21 R. ROGER HILLMAN, 3076  
22 Deputy Public Defender  
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**NOTICE OF MOTION**

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 6th day of November, 2012, at 8:30 a.m. in District Court Department XII.

DATED this 22nd day of October, 2012.

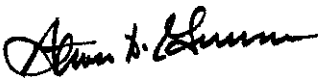
PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By: /s/ R. Roger Hillman  
R. ROGER HILLMAN, #3076  
Deputy Public Defender

**CERTIFICATE OF ELECTRONIC SERVICE**

A COPY of the above and foregoing MOTION FOR NEW TRIAL was served via electronic e-filing to the District Attorney's Office at PDMotions@ccdancv.com on this 22nd day of October, 2012.

By /s/ Cheryl Misuraca  
An employee of the Clark County Public  
Defender's Office

  
CLERK OF THE COURT

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
PATRICK BURNS  
Deputy District Attorney  
Nevada Bar #11779  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-0968  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BENNETT GRIMES,  
#2762267

Defendant.

Case No. C-11-276163-1

Dept No. XII

**STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR A NEW TRIAL**

DATE OF HEARING: November 6, 2012  
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney,  
by and through PATRICK BURNS, Deputy District Attorney, and files this STATE'S  
OPPOSITION TO DEFENDANT'S MOTION FOR A NEW TRIAL. This opposition is  
made and based upon all the papers and pleadings on file herein, the attached points and  
authorities in support hereof, and oral argument at the time of hearing, if deemed necessary  
by this Honorable Court.

///

///

1  
2 POINTS AND AUTHORITIES

3 MEMORANDUM OF POINTS AND AUTHORITIES

4 STATEMENT OF THE CASE

5 On September 14, 2011, the State of Nevada charged Defendant Bennett Grimes  
6 (Grimes) with Attempt Murder with Use of a Deadly Weapon; Burglary While in Possession  
7 of a Deadly Weapon; and Battery Constituting Domestic Violence with a Deadly Weapon  
8 Resulting in Substantial Bodily Harm in Violation of Temporary Protective Order Against  
9 Domestic Violence. Trial commenced on October 10, 2012, and concluded on October 15,  
10 2012, with the jury returning a guilty verdict on all three counts. The jury deliberated  
11 approximately two hours before returning its verdict. On October 23, 2012, Grimes filed a  
12 motion for a new trial arguing the Court violated NRS 175.451 by failing to contact and call  
13 the parties into court upon receiving a note from the jury inquiring about the Burglary  
14 offense's intent element. The Court did not respond to that note because it requested  
15 information already found in the jury's instructions.

16 ARGUMENT

17 NRS 175.451, governing "Return of jury for information," provides:

18 After the jury have retired for deliberation, if there is any disagreement  
19 between them as to any part of the testimony, or if they desire to be informed  
20 on any point of law arising in the cause, they must require the officer to  
21 conduct them into court. Upon their being brought into court, *the information*  
22 *required shall be given in the presence of, or after notice to, the district*  
*attorney and the defendant or the defendant's counsel.*  
(emphasis added).

23 Grimes's motion has no merit. He claims that Tellis and Varner stand for the proposition  
24 that "[a] district judge commits error by not notifying the parties regarding a jury question.  
25 That line of authority establishes no such rule; Varner stated that "in regards to this statute  
26 that the mandatory word 'shall' applies to the presence of counsel *if the information*  
27 *requested is given.*" Varner v. State, 97 Nev. 486, 634 P.2d 1205 (1981) (citing Tellis v.  
28



1 State, 84 Nev. 587, 445 P.2d 938 (1968) (emphasis added). The statute does not require the  
2 Court to consult with the parties everytime it receives some communication from the jury,  
3 although if the Court is going to provide additional information to the jurors, the parties must  
4 be present. Here, this latter circumstance did not arise because the Court did not respond to  
5 the question and correctly determined that the jury did not require additional information.

6 Upon the settling of jury instructions, counsel for both parties were afforded all the  
7 opportunity necessary to submit instructions on the Burglary offense. The jury required no  
8 further instruction than what had already been provided. Moreover, there could be no  
9 possible error warranting a new trial for violation of NRS 175.451 because the Court  
10 provided no further additional information to the jurors, relegating them instead to  
11 reconsulting their jury instructions. Even had the Court affirmatively communicated to the  
12 jurors that the answer to their question lay in the jury instructions already provided, there  
13 would be no error warranting a new trial because that directive would have been legally  
14 correct. Cf. Daniel v. State, 119 Nev. 498, 78 P.3d 890 (2003) (trial court's error in failing to  
15 notify counsel before communicating to the jury on a substantive matter is harmless when  
16 the instructions given are correct), cert. denied 124 S.Ct. 2161, 541 U.S. 1045 (2003);  
17 Cavanaugh v. State, 729 P.2d 481, 102 Nev. 478 (1986) (trial court's instructing jury,  
18 without contacting counsel, to refer to instruction on executive clemency, in response to  
19 question as to whether one sentenced to life imprisonment without possibility of parole  
20 might somehow be paroled was improper, but error was harmless, because instruction was  
21 correct); Varner, *supra*. Thus, Grimes's motion lacks any merit whatsoever and should be  
22 denied.

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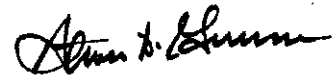
DATED this 5<sup>th</sup> day of November, 2012.

BY /s/ Patrick Burns  
**PATRICK BURNS**  
 Deputy District Attorney  
 Nevada Bar #11779

I hereby certify that service of the above and foregoing, was made this 5<sup>th</sup> day of November, 2012, by Electronic Filing to:

E-mail Address: [pdclerk@clarkcountyNV.gov](mailto:pdclerk@clarkcountyNV.gov)

4

  
CLERK OF THE COURT

1 **NOTC**

2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 AGNES BOTELHO  
6 Deputy District Attorney  
7 Nevada Bar #011064  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,  
13  
14 Plaintiff,

15 -vs-

16 BENNETT GRIMES,  
17 #2762267  
18 Defendant.

CASE NO: C-11-276163-1  
DEPT NO: XII

19 NOTICE OF INTENT TO SEEK PUNISHMENT AS  
20 A HABITUAL CRIMINAL

21 TO: BENNETT GRIMES, Defendant; and  
22 TO: PUBLIC DEFENDER, Counsel of Record:

23 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that pursuant to NRS  
24 207.010, the STATE OF NEVADA will seek punishment of Defendant BENNETT  
25 GRIMES, as an habitual criminal as said Defendant has been found guilty of ATTEMPT  
26 MURDER WITH USE OF A DEADLY WEAPON IN VIOLATION OF A TEMPORARY  
27 PROTECTIVE ORDER (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165,  
28 193.166); BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON IN  
VIOLATION OF A TEMPORARY PROTECTIVE ORDER (Category B Felony - NRS  
205.060, 193.166) and BATTERY WITH USE OF A DEADLY WEAPON  
CONSTITUTING DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY

///

1 HARM IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER (Category B Felony  
2 - NRS 200.481.2e, 193.166); in the above-entitled action.

3 That since the Defendant has been found guilty of ATTEMPT MURDER WITH USE  
4 OF A DEADLY WEAPON IN VIOLATION OF A TEMPORARY PROTECTIVE ORDER  
5 (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165, 193.166); BURGLARY  
6 WHILE IN POSSESSION OF A DEADLY WEAPON IN VIOLATION OF A  
7 TEMPORARY PROTECTIVE ORDER (Category B Felony - NRS 205.060, 193.166) and  
8 BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING DOMESTIC  
9 VIOLENCE RESULTING IN SUBSTANTIAL BODILY HARM IN VIOLATION OF A  
10 TEMPORARY PROTECTIVE ORDER (Category B Felony - NRS 200.481.2e,  
11 193.166),the STATE OF NEVADA will ask the court to sentence the Defendant as an  
12 Habitual Criminal based upon the following felony convictions, to-wit:

13 1. That in 2000, the Defendant was convicted in the State of California for the  
14 crime of INFLICT CORPORAL INJURY ON SPOUSE, in Case No. FSB026485.

15 2. That in 2004, the Defendant was convicted in the State of California the for  
16 the crime of INFLICT CORPORAL INJURY ON SPOUSE, in Case No. FSB044772.

17  
18 STEVEN B. WOLFSON  
19 Clark County District Attorney  
20 Nevada Bar #001565

21 BY /s/ Agnes Botelho  
22 AGNES BOTELHO  
23 Deputy District Attorney  
24 Nevada Bar #011064

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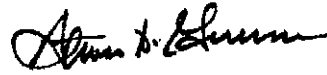
CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of State's Notice of Intent to Seek Punishment as a habitual Criminal, was made this 22<sup>nd</sup> day of October, 2012, by Electronic Filing to:

PUBLIC DEFENDER  
E-mail Address: pdclerk@ClarkCountyNV.gov

By: /s/ D. Jason  
Secretary for the District Attorney's Office

djj/L-2

  
CLERK OF THE COURT

JOC

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO C276163-1

-vs-

DEPT. NO. XII

BENNETT GRIMES  
#2762267

Defendant.

JUDGMENT OF CONVICTION  
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of  
COUNT 1 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON IN VIOLATION  
OF A TEMPORARY PROTECTIVE ORDER (Category B Felony) in violation of NRS  
200.010, 200.030, 193.330, 193.165, 193.166, COUNT 2 – BURGLARY WHILE IN  
POSSESSION OF A DEADLY WEAPON IN VIOLATION OF A TEMPORARY  
PROTECTIVE ORDER (Category B Felony) in violation of NRS 205.060, 193.166,  
COUNT 3 – BATTERY WITH USE OF A DEADLY WEAPON CONSTITUTING  
DOMESTIC VIOLENCE RESULTING IN SUBSTANTIAL BODILY HARM IN  
VIOLATION OF A TEMPORARY PROTECTIVE ORDER (Category B Felony) in  
violation of NRS 200.481.2e, 193.166; and the matter having been tried before a jury

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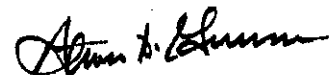
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1 and the Defendant having been found guilty of said crimes; thereafter, on the 12<sup>th</sup> day  
2 of, February, 2013, the Defendant was present in court for sentencing with his counsel,  
3 ROGER HILLMAN, Deputy Public Defender, and good cause appearing,

4 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses. AS TO  
5 COUNTS 2 and 3 – Defendant is ADJUDGED guilty under the SMALL HABITUAL  
6 Criminal Statute and, in addition to the \$25.00 Administrative Assessment Fee, and  
7 \$150.00 DNA Analysis Fee including testing to determine genetic markers, the  
8 Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows:  
9 AS TO COUNT 1 - to a MAXIMUM of TWENTY (20) YEARS with a MINIMUM parole  
10 eligibility of EIGHT (8) YEARS PLUS a CONSECUTIVE term of a MAXIMUM of  
11 FIFTEEN (15) YEARS with a MINIMUM parole eligibility of FIVE (5) YEARS in the  
12 Nevada Department of Corrections (NDC) for use of a deadly weapon; COURT  
13 considered factors outlined in NRS 193.165 subsection 1; AS TO COUNT 2 - to a  
14 MAXIMUM of TWENTY (20) YEARS with a MINIMUM parole eligibility of EIGHT (8)  
15 YEARS, Count 2 to run CONCURRENT with COUNT 1; AND AS TO COUNT 3 - to a  
16 MAXIMUM of TWENTY (20) YEARS with a MINIMUM parole eligibility of EIGHT (8)  
17 YEARS, Count 3 to run CONSECUTIVE to Counts 1 and 2 with FIVE HUNDRED  
18 EIGHTY-ONE (581) DAYS credit for time served.  
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23 DATED this 19 day of February, 2013.  
24  
25

26   
27 MICHELLE LEAVITT  
28 DISTRICT JUDGE

  
CLERK OF THE COURT

1 NOAS  
2 PHILIP J. KOHN, PUBLIC DEFENDER  
3 NEVADA BAR No. 0556  
4 309 South Third Street, Suite 226  
5 Las Vegas, Nevada 89155  
6 (702) 455-4685  
7 Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA, )

8 Plaintiff, )

CASE NO. C-11-276163-1

9 v. )

DEPT. NO. XII

10 BENNETT GRIMES, )

11 Defendant. )

NOTICE OF APPEAL

12  
13 TO: THE STATE OF NEVADA

14 STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY,  
15 NEVADA and DEPARTMENT NO. XII OF THE EIGHTH JUDICIAL  
16 DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE  
17 COUNTY OF CLARK.

18 NOTICE is hereby given that Defendant, Bennett Grimes,  
19 presently incarcerated in the Nevada State Prison, appeals to the  
20 Supreme Court of the State of Nevada from the judgment entered  
21 against said Defendant on the 21st day of February, 2013 whereby  
22 he was convicted of Ct. 1 - Attempt Murder With Use of a Deadly  
23 Weapon in Violation of Temporary Protective Order; Ct. 2 -  
24 Burglary While in Possession of a Deadly Weapon In Violation of a  
25 Temporary Protective Order; Ct. 3 - Battery With Use of a Deadly  
26 Weapon Constituting Domestic Violence Resulting in Substantial  
27 Bodily Harm in Violation of a Temporary Protective Order and  
28 sentenced to Cts. 2 and 3 - Guilty under the Small Habitual  
Criminal Statute and in addition to the \$25 Admin. fee; \$150 DNA  
analysis fee; genetic testing; Ct. 1 - 8-20 years plus a



1 consecutive term of 5-15 years with a minimum parole eligibility  
2 of 5 years in prison for use of a deadly weapon; Court considered  
3 factors outlined in NRS 193.165 subsection 1; as to Ct. 2 - 8-20  
4 years in prison; Ct. 2 to run concurrent with Ct. 1; as to Ct. 3 -  
5 8-20 years; Ct. 3 to run consecutive to Cts. 1 and 2; 581 days  
6 CTS.

7 DATED this 18<sup>th</sup> day of March, 2013.

8 PHILIP J. KOHN  
9 CLARK COUNTY PUBLIC DEFENDER

10 By: /s/ P. David Westbrook  
11 P. DAVID WESTBROOK, #9278  
12 Deputy Public Defender  
13 309 S. Third Street, Ste. 226  
14 Las Vegas, Nevada 89155  
15 (702) 455-4685  
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DECLARATION OF MAILING

1 Carrie Connolly, an employee with the Clark County  
2 Public Defender's Office, hereby declares that she is, and was  
3 when the herein described mailing took place, a citizen of the  
4 United States, over 21 years of age, and not a party to, nor  
5 interested in, the within action; that on the 18th day of March,  
6 2013, declarant deposited in the United States mail at Las Vegas,  
7 Nevada, a copy of the Notice of Appeal in the case of the State of  
8 Nevada v. Bennett Grimes, Case No. C-11-276163-1, enclosed in a  
9 sealed envelope upon which first class postage was fully prepaid,  
10 addressed to Bennett Grimes, c/o High Desert State Prison, P.O.  
11 Box 650, Indian Springs, NV 89018. That there is a regular  
12 communication by mail between the place of mailing and the place  
13 so addressed.  
14

15 I declare under penalty of perjury that the foregoing is  
16 true and correct.

17 EXECUTED on the 18<sup>th</sup> day of March, 2013.

18  
19 /s/ Carrie M. Connolly  
20 An employee of the Clark County  
21 Public Defender's Office  
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**September 20, 2011**

C-11-276163-1      State of Nevada  
                                 vs  
                                 Bennett Grimes

**September 20, 2011    1:30 PM      Initial Arraignment**

**HEARD BY:**    Togliatti, Jennifer

**COURTROOM:**    RJC Lower Level  
                                 Arraignment

**COURT CLERK:**    Sharon Chun

**RECORDER:**    Kiara Schmidt

**REPORTER:**

**PARTIES**

**PRESENT:**      Grimes, Bennett      Defendant  
                                 Hillman, Ralph R.      Attorney

**JOURNAL ENTRIES**

- ALSO PRESENT: Shawn Morgan, Assistant District Attorney.

Upon Deft's questioning, Mr. Morgan stated that an Enhancements had been added to Count 2 and the spelling of the victim's name has been corrected on the Information.

DEFT. GRIMES ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial.

**CUSTODY**

12/6/11 8:30 AM CALENDAR CALL (DEPT 12)

12/13/11 1:30 PM JURY TRIAL (DEPT 12)

PRINT DATE:    03/20/2013

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Minutes Date:    September 20, 2011

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**November 03, 2011**

C-11-276163-1      State of Nevada  
                                 vs  
                                 Bennett Grimes

**November 03, 2011      8:30 AM      Petition for Writ of Habeas  
Corpus**

**HEARD BY:**    Leavitt, Michelle

**COURTROOM:**    RJC Courtroom 14D

**COURT CLERK:**    Monique Alberto

**RECORDER:**    Kerry Esparza

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Grimes, Bennett	Defendant
	Ponticello, Frank M.	Attorney
	Public Defender	Attorney
	Saxe, Benjamin	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

**- DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS**

COURT noted Deft's Petition for Writ of Habeas Corpus is on in error and ORDERED, matter OFF CALENDAR. At the request of counsel, COURT ORDERED, trial date VACATED and RESET. Upon Court's inquiry, Deft. WAIVED the 60-Day Rule.

**CUSTODY**

3/20/12 8:30 A.M. CALENDAR CALL

3/27/12 1:30 P.M. JURY TRIAL

**PRINT DATE:**    03/20/2013

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**Minutes Date:**    September 20, 2011

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

<b>Felony/Gross Misdemeanor</b>	<b>COURT MINUTES</b>	<b>March 20, 2012</b>
C-11-276163-1	State of Nevada vs. Bennett Grimes	

**March 20, 2012**      **8:30 AM**      **Calendar Call**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Susan Jovanovich

**RECORDER:** Kerry Esparza

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**March 20, 2012**

C-11-276163-1      State of Nevada  
                                 vs  
                                 Bennett Grimes

**March 20, 2012      8:30 AM      Motion to Continue Trial**

**HEARD BY:**    Leavitt, Michelle

**COURTROOM:**    RJC Courtroom 14D

**COURT CLERK:**    Susan Jovanovich

**RECORDER:**    Kerry Esparza

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**March 20, 2012**

C-11-276163-1      State of Nevada  
vs  
Bennett Grimes

**March 20, 2012      8:30 AM      All Pending Motions**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Susan Jovanovich

**RECORDER:** Kerry Esparza

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Diefenbach, Lauren R	Attorney
	Grimes, Bennett	Defendant
	Public Defender	Attorney
	Schifalacqua, Marc M.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- CALENDAR CALL...DEFENDANT'S MOTION TO CONTINUE TRIAL DATE

COURT ORDERED, Motion GRANTED as unopposed; trial date VACATED AND RESET.

CUSTODY

6/12/12 8:30 A.M. CALENDAR CALL

6/19/12 1:30 P.M. TRIAL BY JURY



**DISTRICT COURT  
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****June 07, 2012**

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C-11-276163-1      State of Nevada  
                                 vs  
                                 Bennett Grimes

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**June 07, 2012      8:30 AM      Motion for Discovery**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Susan Jovanovich

**RECORDER:** Kerry Esparza

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Botelho, Agnes M.	Attorney
	Hojjat, Nadia	Attorney
	Imlay, Darin F.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Deft. not present. Mr. Hillman advised Deft. refused to be transported to Court today. SO NOTED.  
Statements by counsel. COURT ORDERED, as follows:

As to: 1. Any and all notes and records of any physical examinations, scientific tests, or specific experiments done in connection with this case.

Motion GRANTED to the extent that the material exists, as State has already handed over all of this discovery to the defense.

As to: 2. Any and all records and notes regarding any benefits or assistance given to any informant or witness related to the case, as well as any other evidence of bias of State informants or witnesses.

Motion GRANTED.

As to: 3. Any and all notes of interviews of any witnesses and any potential witnesses in the case.

PRINT DATE: 03/20/2013

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Minutes Date: September 20, 2011

Motion GRANTED to the extent the material exists, as the State filed a response to this issue stating they have complied with the request.

As to: 4. Any evidence that any State informant or witness was intoxicated or impaired at the time of the incident about which the witness will testify.

Motion GRANTED. Court NOTED, State is not aware of the information, however, the State will provide this discovery to defense, if available.

As to: 5. Any information that the alleged victim or any State witness was or is a police informant.

Motion GRANTED. Court NOTED, State is not aware of the information, however, the State will provide this discovery to defense, if available.

As to: 6. Any information related to the case given by anyone to any police department or crime tip organization such as Crime Stoppers, and any reward or benefit received for such tip.

Motion GRANTED.

As to: 7. The State must disclose whether its attorneys, officers or any other witnesses have cooperated with or been interviewed by any media organizations, the extent of the cooperation, and whether the cooperation is ongoing or planned for the future.

Motion GRANTED to the extent that the material exists.

Ms. Hojjat argued in support of relief requested on any information regarding criminal history of the alleged victim, citing Brady and the Kyles case law. Further arguments as to admissibility and relevancy. Following colloquy, counsel advised defense is seeking to have the State run the NCIC scope on the alleged victim, pursuant to the Kyles and Giglio cases.

As to: 8. Any information regarding criminal history of the alleged victim and / or any material witness in the case.

Motion GRANTED IN PART only as to prior felonies or crimes involving honesty, including truthful or untruthfulness, to the extent that the material exists; Motion DENIED IN PART on the remaining relief.

As to: 9. Any notes of any statements by the Deft. to include any notes of patrol officers or other agents of the State who have had contact with the Deft. in this case.

Motion DENIED as the State had informed the Court these notes do not exist.

As to: 10. All relevant reports of chain of custody and all reports of any destruction of evidence or failure to collect and / or preserve evidence in the case.

Motion GRANTED to the extent that the material exists.

As to: 11. All statements made by any material witnesses in the case, and any inconsistent statements made by a material witness.

Motion GRANTED. Following arguments by counsel, COURT FURTHER ORDERED, Motion No. 11 DENIED as to the State having to issue a subpoena for this material, as the defense may issue one.

As to: 12. Any information tending to show the unreliability of a State informant or witness in the case.

Motion GRANTED.

As to: 13. Any and all notes and reports of any experts in the case, to include mental health workers and crime scene investigators.

Motion GRANTED only to the extent it is required by statute only.

As to: 14. All updated witness contact information in the case, including the witnesses' last known address and phone number.

Motion DENIED; the defense may contact the witness through the State, and schedule an appointment to have an interview with the witness, if necessary.

As to: 15. Any and all books, papers, documents, and tangible objects related to the case.

Motion GRANTED.

As to: 16. Any and all electronic communications in the case, as well as any reports related to those communications.

Motion GRANTED.

As to: 17. Any and all photographs, video recordings, and / or audio recordings related to the case within the possession, control, or control of the State.

Motion GRANTED to the extent that the material exists.

As to: 18. Any and all documents and notes pertaining to the identification of Deft. as a suspect.

Motion GRANTED.

Moving counsel to prepare the orders.

CUSTODY

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 12, 2012

C-11-276163-1      State of Nevada  
                                 vs  
                                 Bennett Grimes

June 12, 2012      8:30 AM      Calendar Call

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Jovanovich

RECORDER: Kerry Esparza

REPORTER:

**PARTIES**

<b>PRESENT:</b>	Grimes, Bennett	Defendant
	Hillman, Ralph R.	Attorney
	Morgan, Shawn A.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Mr. Hillman requested the trial date be continued. Deft's Motion To Continue Trial Date FILED IN OPEN COURT. Arguments by State in opposition to the continuance. Mr. Hillman argued as to additional discovery being sought on Deft's medical condition, text messages being sought, and self-defense scenario. Mr. Morgan argued no mitigation evidence was submitted. Following further arguments, COURT ORDERED, Deft's Motion GRANTED; trial date VACATED AND RESET. Court advised Deft. to let his attorney know where to obtain the medical records being sought. Deft. acknowledged.

**CUSTODY**

8/21/12 8:30 A.M. CALENDAR CALL

8/28/12 1:30 P.M. TRIAL BY JURY

PRINT DATE: 03/20/2013

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Minutes Date: September 20, 2011

July 19, 2012.

July 19, 2012                      8:30 AM                      Motion to Dismiss

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Susan Jovanovich; Sharon Coffman; Aaron Carbajal; Vanessa Ward; Ying Pan

**RECORDER:** Kerry Esparza

**REPORTER:**

## PARTIES

**PRESENT:**

Botelho, Agnes M.  
Grimes, Bennett  
Hillman, Ralph R.  
State of Nevada

Attorney  
Defendant  
Attorney  
Plaintiff

## JOURNAL ENTRIES

- Mr. Hillman requested an opportunity to file a Reply and review the Opposition filed by the State.  
Court ORDERED, matter CONTINUED.

CUSTODY

7/31/2012 8:30 AM DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO GATHER EVIDENCE

PRINT DATE: 03/20/2013

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Minutes Date:

September 20, 2011

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor      COURT MINUTES      July 31, 2012**

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C-11-276163-1      State of Nevada  
vs  
Bennett Grimes

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**July 31, 2012      8:30 AM      Motion to Dismiss**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Susan Jovanovich; Sharon Coffman; Vanessa Ward; Aaron Carbajal; Ying Pan

**RECORDER:** Kerry Esparza

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Diefenbach, Lauren R	Attorney
	Grimes, Bennett	Defendant
	Morgan, Shawn A.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Ms. Diefenbach advised parties stipulated to continue this matter. COURT SO ORDERED.

**CUSTODY**

8/9/12 8:30 AM DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO GATHER EVIDENCE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 14, 2012**

C-11-276163-1      State of Nevada  
                                 vs  
                                 Bennett Grimes

**August 14, 2012      8:30 AM      Motion to Dismiss**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Susan Jovanovich

**RECORDER:** Kerry Esparza

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Botelho, Agnes M.	Attorney
	Grimes, Bennett	Defendant
	Hojjat, Nadia	Attorney
	Imlay, Darin F.	Attorney
	Morgan, Shawn A.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- CONFERENCE AT BENCH. Based on representations made by counsel at the Bench, COURT ORDERED, matter CONTINUED for determination to be made to the Court as to whether or not the defense is seeking to have the alleged weapon tested. FURTHER, trial date VACATED AND RESET on the next criminal stack, due to Mr. Hillman being assigned to this case, and currently out of the office.

**CUSTODY**

8/23/12 8:30 A.M. DEFENDANT'S MOTION TO DISMISS OR FAILURE TO GATHER EVIDENCE

10/02/12 8:30 A.M. CALENDAR CALL

10/09/12 1:30 P.M. TRIAL BY JURY

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Minutes Date:

September 20, 2011





**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 23, 2012**

C-11-276163-1      State of Nevada  
                                 vs  
                                 Bennett Grimes

**August 23, 2012      8:30 AM      Motion to Dismiss**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Susan Jovanovich

**RECORDER:** Kerry Esparza

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Diefenbach, Lauren R	Attorney
	Grimes, Bennett	Defendant
	Morgan, Shawn A.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Ms. Diefenbach advised this case is assigned to Ms. Hojjat, who is seeking to be present to handle these proceedings, and requested a continuance. Additionally, Mr. Hillman is currently out of the office. Statements by Deft. Colloquy. Mr. Morgan advised State is seeking to discuss the issues with opposing counsel, and also requested a continuance. COURT SO ORDERED.

**CUSTODY**

9/13/12 8:30 A.M. DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO GATHER EVIDENCE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 13, 2012

C-11-276163-1      State of Nevada  
                                 vs  
                                 Bennett Grimes

September 13, 2012      8:30 AM

Motion to Dismiss

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Jovanovich

RECORDER: Kerry Esparza

REPORTER:

**PARTIES**

PRESENT:	Botelho, Agnes M.	Attorney
	Grimes, Bennett	Defendant
	Hillman, Ralph R.	Attorney
	Hojjat, Nadia	Attorney
	Morgan, Shawn A.	Attorney
	Public Defender	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Ms. Hojjat argued regarding visible blood on the weapon in question, being a knife. Upon Court's inquiry, counsel advised defense is not seeking to test the weapon. Arguments by counsel as to burden shifting, fingerprints on the weapon, and the State having had the obligation to test the knife. Ms. Hojjat argued defense was seeking what the test results would have been, if the weapon was tested one year ago. Further arguments. Thereafter, Ms. Hojjat requested a jury instruction be given. Court advised counsel this issue can be presented at time of trial; and stated there is no rule indicating that State is required to test every single piece of evidence. Ms. Hojjat advised defense believes the fingerprints on the knife belong to the victim. Ms. Botelho argued in opposition to the motion, and noted the State has no obligation to test every single piece of evidence, as this is basically an assumption that the defense believes this knife needed to be tested by the State. Additionally, if the defense wanted to test the weapon, they could have done so. Further arguments by counsel regarding Brady evidence State has obligation to collect. COURT ORDERED, Motion DENIED. State to prepare the order. Ms. Hojjat requested to make a record on this issue for preservation; and

PRINT DATE: 03/20/2013

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Minutes Date: September 20, 2011

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 10, 2012**

C-11-276163-1      State of Nevada  
   vs  
   Bennett Grimes

**October 10, 2012      10:30 AM      Motion in Limine**

**HEARD BY:** Leavitt, Michelle

**COURTROOM:** RJC Courtroom 14D

**COURT CLERK:** Susan Jovanovich

**RECORDER:** Kerry Esparza

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

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

2  
3                   BENNETT GRIMES                   )

No. 62835

4                                   Appellant,                   )

5                   vs.                   )

6                   THE STATE OF NEVADA,                   )

7                                   Respondent.                   )

8  
9                                   **APPELLANT'S APPENDIX – VOLUME I– PAGES 001-249**

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16                                   **CERTIFICATE OF SERVICE**

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18           Supreme Court on the 19<sup>th</sup> day of Aug, 2013. Electronic Service of the  
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24                   BENNETT GRIMES  
25                   NDOC No. 1098810  
26                   c/o HIGH DESERT STATE PRISON  
27                   P. O . BOX 650  
28                   INDIAN SPRINGS, NV 89070

BY 

Employee, Clark County Public Defender's Office