IN THE SUPREME COURT OF THE STATE OF NEVADA

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Apr 12 2023 11:09 AM
Elizabeth A. Brown
Clerk of Supreme Court

THE STATE OF NEVADA,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE CARLI KIERNY, DISTRICT JUDGE

Respondent,

and

AUNDREA HUGHES,

Real Party in Interest.

CASE NO:

D.C. NO: C-23-370882-1

PETITIONER'S APPENDIX

STEVEN B. WOLFSON
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State of Nevada

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Counsel for Real Party in Interest

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on this 12th day April, 2023. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
Nevada Attorney General

DARIN F. IMLAY
DEANNA KEANE
Counsel for Real Party in Interest

KAREN MISHLER
Chief Deputy District Attorney

I further certify that service of the above and foregoing was made this 12th day of April, 2023, by electronic email to:

JUDGE CARLI KIERNY
Email: McMahanA@clarkcountycourts.us

Carrie Connolly, Public Defender's Office
connolcm@ClarkCountyNV.gov

BY */s/ J. Hall*
Employee, District Attorney's Office

KM//jh

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Steven D. Grierson
CLERK OF THE COURT

IND

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHAEL ALLMON
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Nevada Bar #015169
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-

AUNDREA HUGHES, aka
ANDREA E. HUGHES, #8485077

Defendant.

CASE NO: C-23-370882-1

DEPT NO: II

I N D I C T M E N T

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

The Defendant above named, ANDREA E. HUGHES, accused by the Clark County Grand Jury of the crime(s) of ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.153, 193.165 - NOC 50031), CHALLENGE TO FIGHT WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.450 - NOC 50178), DISCHARGING WEAPON WHERE PERSON MIGHT BE ENDANGERED (Gross Misdemeanor - NRS 202.290 - NOC 51448), ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471 - NOC 50201), BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.481 - NOC 50223), CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON (Category C Felony - NRS 202.350 (1)(d)(3) - NOC 51459), and OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony - NRS 202.360 - NOC 51460), in the manner following, to-wit: That the said Defendant, on or about the 25th day of June, 2022, at and

within the County of Clark, State of Nevada,

COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did willfully, unlawfully, feloniously and with malice aforethought attempt to kill AVION ALEXANDER AKA AVIOUNE ALEXANDER, a human being, with use of a deadly weapon, to wit: a firearm, by shooting at and hitting him multiple times at close range.

COUNT 2 - CHALLENGE TO FIGHT WITH USE OF A DEADLY WEAPON

did willfully and unlawfully give, send or authorize any other person to give or send a challenge verbally or in writing to fight any other person, the person giving, sending or accepting the challenge to fight and/or act for another in giving, sending, or accepting, either verbally or in writing, a challenge to fight any other person by challenging AVION ALEXANDER to fight as AVION ALEXANDER was walking away , said fight involving the use of a deadly weapon, to wit: a firearm.

COUNT 3 - DISCHARGING WEAPON WHERE PERSON MIGHT BE ENDANGERED

did willfully and unlawfully discharge a firearm, air gun, or other weapon, in a public place, or in any place where any person might be endangered thereby, to wit: 1600 block of Stocker Street, North Las Vegas, Clark County, Nevada, although an injury does not result.

COUNT 4 - DISCHARGING WEAPON WHERE PERSON MIGHT BE ENDANGERED

did willfully and unlawfully discharge a firearm, air gun, or other weapon, in a public place, or in any place where any person might be endangered thereby, to wit: 1600 block of Stocker Street, North Las Vegas, Clark County, Nevada, although an injury does not result.

COUNT 5 - DISCHARGING WEAPON WHERE PERSON MIGHT BE ENDANGERED

did willfully and unlawfully discharge a firearm, air gun, or other weapon, in a public place, or in any place where any person might be endangered thereby, to wit: 1600 block of Stocker Street, North Las Vegas, Clark County, Nevada, although an injury does not result.

COUNT 6 - DISCHARGING WEAPON WHERE PERSON MIGHT BE ENDANGERED

did willfully and unlawfully discharge a firearm, air gun, or other weapon, in a public place, or in any place where any person might be endangered thereby, to wit: 1600 block of Stocker Street, North Las Vegas, Clark County, Nevada, although an injury does not result.

COUNT 7 - DISCHARGING WEAPON WHERE PERSON MIGHT BE ENDANGERED

did willfully and unlawfully discharge a firearm, air gun, or other weapon, in a public place, or in any place where any person might be endangered thereby, to wit: 1600 block of Stocker Street, North Las Vegas, Clark County, Nevada, although an injury does not result.

COUNT 8 - DISCHARGING WEAPON WHERE PERSON MIGHT BE ENDANGERED

did willfully and unlawfully discharge a firearm, air gun, or other weapon, in a public place, or in any place where any person might be endangered thereby, to wit: 1600 block of Stocker Street, North Las Vegas, Clark County, Nevada, although an injury does not result.

COUNT 9 - DISCHARGING WEAPON WHERE PERSON MIGHT BE ENDANGERED

did willfully and unlawfully discharge a firearm, air gun, or other weapon, in a public place, or in any place where any person might be endangered thereby, to wit: 1600 block of Stocker Street, North Las Vegas, Clark County, Nevada, although an injury does not result.

COUNT 10 - DISCHARGING WEAPON WHERE PERSON MIGHT BE ENDANGERED

did willfully and unlawfully discharge a firearm, air gun, or other weapon, in a public place, or in any place where any person might be endangered thereby, to wit: 1600 block of Stocker Street, North Las Vegas, Clark County, Nevada, although an injury does not result.

COUNT 11 - ASSAULT WITH A DEADLY WEAPON

did willfully, unlawfully, feloniously and intentionally place another person in reasonable apprehension of immediate bodily harm and/or did willfully and unlawfully attempt to use physical force against another person, to wit: AVION ALEXANDER AKA AVIOUNE ALEXANDER, with use of a deadly weapon, to wit: a firearm, by shooting at AVION ALEXANDER AKA AVIOUNE ALEXANDER but one or more shots missing AVION ALEXANDER AKA AVIOUNE ALEXANDER.

COUNT 12 - BATTERY WITH USE OF A DEADLY WEAPON

did willfully, unlawfully, and feloniously use force or violence upon the person of another, to wit: AVION ALEXANDER AKA AVIOUNE ALEXANDER, with use of a deadly weapon, to wit: a firearm, by shooting and hitting AVION ALEXANDER AKA AVIOUNE ALEXANDER.

COUNT 13 - CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON

did willfully, unlawfully and feloniously carry concealed upon his person, a firearm or other deadly weapon, to wit: an unknown make/model firearm.

COUNT 14 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

did willfully, unlawfully, and feloniously own, or have in his possession and/or under his custody or control, a firearm, to wit: an unknown make/model firearm, the Defendant being a convicted felon, having in 2021, been convicted of Conspiracy to Commit Robbery, in Case No. C-21-359496-1, in the Eighth Judicial District Court, Clark County, a felony under the laws of the State of Nevada.

DATED this 19th day of January, 2023.

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

BY ***/s/ Michael Allmon***
MICHAEL ALLMON
Deputy District Attorney
Nevada Bar #015169

ENDORSEMENT: A True Bill

/s/ Hillary Francois III
Foreperson, Clark County Grand Jury

Names of Witnesses and testifying before the Grand Jury:

ALEXANDER, AVIONE – C/O CCDA

COLDWELL, CHRISTOPHER – NLVPD – GANG DIVISION

KENNEDY, DAVID – NLVPD DETECTIVE

MILLER, JENNIFEER – NLVPD PATROL

SMITH, DAVE – NLVPD DETECTIVE

TORRES, SASHA – NLVPD CSA2

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

CUSTODIAN OF RECORDS - CCDC

CUSTODIAN OF RECORDS - NLVPD COMMUNICATIONS

CUSTODIAN OF RECORDS - NLVPD RECORDS

22BGJ090X/22CRN001049/ac-GJ
NLVPD EV#2206250011586
(TK)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor | **COURT MINUTES** | **February 08, 2023**

C-23-370882-1 State of Nevada
vs
Aundrea Hughes

February 08, 2023 **09:30 AM** **Indictment Warrant Return**

HEARD BY: Kierny, Carli **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Chambers, Jill

RECORDER: Kirkpatrick, Jessica

REPORTER:

PARTIES PRESENT:

Aundrea Hughes	**Defendant**
Deanna M. Keane	**Attorney for Defendant**
Michael Donovan Allmon	**Attorney for Plaintiff**
State of Nevada	**Plaintiff**

JOURNAL ENTRIES

DEFT. HUGHES ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter SET for trial.

COURT ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript.

Court noted that the Deft's bail amount set previously was $100,000.00.

CUSTODY

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Steven D. Grierson
CLERK OF THE COURT

0014
DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR NO. 5674
DEANNA KEANE, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 12045
PUBLIC DEFENDER'S OFFICE
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Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. AUNDREA HUGHES, Defendant.	CASE NO. C-23-370882-1 DEPT. NO. II **Hearing Date Requested:** DATE: March 27, 2023 TIME: 9:30 a.m.

PETITION FOR WRIT OF HABEAS CORPUS

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

The Petition of Aundrea Hughes submitted by DEANNA KEANE, Deputy Public Defender, as attorney for the above-captioned individual, respectfully affirms:

1. That she is a duly qualified, practicing and licensed attorney in the City of Las Vegas, County of Clark, State of Nevada.
2. That Petitioner makes application for a Writ of Habeas Corpus; that the place where the Petitioner is imprisoned actually or constructively imprisoned and restrained of his liberty is the Clark County Detention Center; that the officer by whom he is imprisoned and restrained is the Sheriff of Clark County Nevada.
3. That Petitioner consents that if Petition is not decided within 15 days before the date set for trial, the Court may, without notice of hearing, continue the trial indefinitely to a date designated by the Court.

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

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

DATED this 13th of March, 2023.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/*Deanna Keane*
DEANNA KEANE, #12045
Deputy Public Defender

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Steven D. Grierson
CLERK OF THE COURT

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Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. AUNDREA HUGHES, Defendant.	CASE NO. C-23-370882-1 DEPT. NO. II Hearing Date Requested: DATE: April 10, 2023 TIME: 9:30 a.m.

MOTION TO DISMISS

COMES NOW, the Defendant, AUNDREA HUGHES, by and through DEANNA KEANE, Deputy Public Defender, and hereby requests that this Court dismiss the Indictment due to the state's conscious indifference to procedure, or, in the alternative, to exclude all evidence in reference to the cellular phone located at the scene.

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 7th day of April, 2023.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/ *Deanna Keane*
DEANNA KEANE, #12045
Deputy Public Defender

DECLARATION

DEANNA KEANE makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am a Deputy Public Defender for the Clark County Public Defender's Office appointed to represent Defendant Aundrea Hughes in the present matter;

2. I am more than 18 years of age and am competent to testify as to the matters stated herein. I am familiar with the procedural history of the case and the substantive allegations made by The State of Nevada. I also have personal knowledge of the facts stated herein 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 5th day of April, 2023.

/s/ *Deanna Keane*
DEANNA KEANE

MEMORANDUM OF POINTS AND AUTHORITIES

I.

RELEVANT PROCEDURAL HISTORY

On July 25, 2022, the defendant, Audrea Hughes ("Aundrea") was arraigned on charges of ownership or possession of firearm by a prohibited person and carrying a concealed weapon in Justice Court and a preliminary hearing was set. On August 9, 2022, the date for preliminary hearing, the defendant was transported to another courtroom, and the defense requested a continuance for a status check on negotiations. After several continuances, the matter was reset for preliminary hearing. On November 3, 2022, the date set for the second preliminary hearing, the State dismissed pursuant to the Marcum notice previously served on the defense. The State presented their case to the Grand Jury on three separate dates: November 9, 2022, December 14, 2022, and January 18, 2023. On January 18, 2023, the Grand Jury returned a true bill for the crimes of attempted murder with use of a deadly weapon, challenge to fight with use of a deadly weapon, eight counts discharging weapon where person might be endangered, assault with a deadly weapon, battery with use of a deadly weapon, carrying concealed firearm of other deadly weapon, ownership or possession of a firearm by a prohibited person.

The defendant is on Probation in C-21-359496-1. All of the time he has served after having been arrested on this case, twice, is not going to any credit for time served.

On February 8, 2023, Aundrea was arraigned in District Court on the Indictment. At that time, he entered a plea of Not Guilty, and invoked his right to a speedy trial. Calendar Call was set on March 27, 2023 and trial date was set for April 3, 2023

Sometime in late February, the assigned District Attorney reached out to the undersigned asking for an agreement to continue the trial date. On February 28, 2023, the undersigned emailed the assigned Deputy District Attorney that Aundrea would not be waiving his speedy trial rights. On the same date, the Deputy District Attorney called the undersigned. After confirmation that the defense would not be waiving speedy trial rights, the Deputy District Attorney stated he would be filing a Motion to Continue.

On March 27, 2023, all parties appeared at Calendar Call and multiple Motions were addressed, including the defense's Motion to Exclude a Photograph. No Motion for Continuance had been filed by the State. The defense announced ready, as did the State, with the "caveat" that a necessary witness was unavailable, Detective Nutting. The State represented that this detective downloaded the Cellebrite, which was central to their case, and was needed for trial, but was on "pre-planned" vacation. The State offered the defense could stipulate to admission of the Cellebrite, or alternatively that the officer could testify by video. The defense declined to stipulate to admission of the Cellebrite, so the State orally requested that Detective Nutting be allowed to testify via Audiovisual equipment. The Court then offered the alternative of a one-week continuance to accommodate the Detective and preserve the defendant's due process rights, since he had invoked his right to a speedy trial within 60 days. At that time, the State declined the one-week continuance due to another important trial. The Court reminded the State that the defendant was invoked and advised them to "figure it out" and the Calendar Call was continued to March 29, 2023. The decision on the Defense's Motion to Exclude the photograph was also postponed for the State to come back with information as to when the photograph was *taken*.

On March 27, 2023, the State filed a Motion to Present Witness Jeremy Nutting, NLVPD#2794 Through Audio Visual Transmission. On March 29, 2023, the Court called the case, and the State represented that the Motion was now moot and was requesting the one-week continuance. The defense objected based on there being no *Hill* Motion or swearing-in of the District Attorney. The State represented a *Hill* Motion was filed that morning and the matter was set for Central Trial Readiness on April 5, 2023 with Jury Trial scheduled for April 10, 2023. The *Hill* Motion was not discussed, the defense was not given a copy in court, and was only able to review said Motion after pulling the copy through the portal. The State further represented that the photograph in question was taken approximately ten days prior to this incident and thus, ruled it would be allowed, commentating that if it were closer to the year, the Judge would not be inclined to allow it in.

On April 4, 2023, while reviewing the provided Cellebrite, the undersigned started noticed a discrepancy between the Cellebrite download with the two-page report provided. After reaching out to the IT department at the Public Defender's Office, at approximately 5:30 p.m. on the same date, the undersigned emailed the District Attorney asking if there was any chance the wrong thumb drive containing Cellebrite data was provided. On April 5, 2023 at 9:33 a.m., the State responded that it appeared it *was* the wrong Cellebrite and asked to meet at 11:30 a.m. on the same date. At that meeting, it was confirmed that the defense received the wrong Cellebrite data. The State and Defense disagreed on the significance of the issue, and the State promised to provide the correct Cellebrite data as soon as it was able. At 1:11 pm on the same date, the assigned Deputy District Attorney texted the undersigned informing that he had duplicated a copy of his Cellebrite flash drive. A flash drive was handed to the undersigned at 2:00 p.m. in the courtroom waiting for the Central Trial Readiness hearing. When the hearing was called, the undersigned informed the Court that the defense was ready, but the issue revolving around late-disclosed discovery needed to be addressed, since it would be the request of the defense to exclude the Cellebrite data. The State argued that the defense should have realized sooner that the Cellebrite data was incorrect, and it was the fault of the defense. The Court then trailed the matter to the end of the calendar to decide how to handle the situation. When the case was recalled, the Court vacated the trial date *sua sponte* stating that there was no way the defense could be ready, and that any requests needed to be handled by Judge Kierny. The Court also cited that the defendant had refused transport as was reported by transport officers.[1] Judge Jones advised defense that it would be wise to file any Motions so that Judge Kierny was aware of any issues that needed to be addressed. Judge Jones further commentated that if it was her case, she would be granting the Motion to Exclude. The matter was then set in Department 2 on April 10, 2022, 62 days after arraignment. After Court the assigned Deputy District Attorney offered to "tag" what he believed he was important to the defense. The defense made it clear this was not an appropriate remedy but would accept any tags.

[1] It is important to note that the undersigned called the defendant after court. He informed the undersigned that his roommate was transported instead of him and that he never refused transportation. His roommate told him that the mistake was noticed in holding.

II.

ARGUMENT

I. THE COURT SHOULD DISMISS THE INDICTMENT

A finding of conscious indifference is warranted when the State completely fails to comply with a procedural rule, *see Sheriff, Nye County v. Davis*, 106 Nev. 145 at 149, 787 P.2d 1241, at 1243; *McNair v. Sheriff*, 89 Nev. 434, at 439–40, 514 P.2d 11775, at 1178–79; *State v. Austin*, 87 Nev. 81, at 82–83, 482 P.2d 284, at 284–85; *Maes v. Sheriff*, 86 Nev. at 318–20, 468 P.2d at 332–33, or engages in outlandish or clearly deficient behavior that results in a delay of the proceedings, *see Joseph John H., a Minor v. State*, 113 Nev. 621, at 623–24, 939 P.2d 1056, at 1058; *Davis*, 106 Nev. at 149, 787 P.2d at 1243; *Watson v. Sheriff*, 93 Nev. 236, at 237–38, 562 P.2d 1133, at 1133–34; *Salas v. Sheriff*, 91 Nev. 802, 803–04, 543 P.2d 1343, 1343–44 (1975); *Broadhead v. Sheriff*, 87 Nev. 219, 220–23, 484 P.2d 1092, 1093–94 (1971). The Nevada Supreme Court explained that this rule applies if the prosecution shows either a conscious indifference to a defendant's procedural rights or "willful failure of the prosecution to comply with important procedural rules." *Bustos v. Sheriff*, 87 Nev. 622, 623–24, 491 P.2d 1279, 1280–81 (1971). The Court has further articulated that a defendant need not show that the prosecution acted intentionally or with "calculated bad faith." *State v. Lamb*, 97 Nev. 609, at 611, 637 P.2d 1201, at 1202 (1981).

A. The State Has Shown Conscious Indifference to the Defendant's Procedural Rights by Continuously Engaging in Behavior that Has Resulted in the Delay of the Proceedings and Has Interfered with the Defendant's Right to Effective Assistance Counsel, Warranting Dismissal

The State's cumulative actions should be considered by this court in consideration of dismissal. In *Sheriff, Clark Cnty. v. Roylance*, the Nevada Supreme Court held that it "[would] not disturb a decision of the district court that the prosecution exhibited conscious indifference to a defendant's important procedural rights if there is substantial evidence in the record to support the district court's determination." *Citing State v. Autry*, 103 Nev. 552, 746 P.2d 637 (1987); *see generally Sheriff, Nye County v. Davis*, 106 Nev. 145, 787 P.2d 1241 (1990); *Sheriff v.*

Menendez, 98 Nev. 430, 651 P.2d 98 (1982); *McNair v. Sheriff,* 89 Nev. 434, 514 P.2d 1175 (1973). *Sheriff, Clark Cnty. v. Roylance*, 110 Nev. 334, 337, 871 P.2d 359, 361 (1994).

1. The State Continues to Ignore the Defendant's Invoked Status and Right to a Speedy Trial

The Sixth Amendment to the United States Constitution provides, in pertinent part, "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." The right to a speedy trial is a fundamental right enforced against the states through the Fourteenth Amendment of the United States Constitution. *Barker v. Wingo*, 407 U.S. 514, 515 (1972). NRS 178.556 (1) states, in pertinent part "…If a defendant whose trial has not been postponed upon the defendant's application is not brought to trial within 60 days after the arraignment on the indictment or information, the district court may dismiss the indictment or information."

Here, the State was well-aware of the original trial date of April 3, 2023. In the State's *Hill* Motion filed March 29, 2023, it is sworn that the District Attorney's Office subpoenaed Detective Nuttig on March 3, 2023. It wasn't until March 24, 2023, in response to an email from the State, that Officer Nuttig notified the State he would be unavailable on a "preplanned" vacation.

The Affidavit alone shows a conscious indifference. Detective Nutting, an agent of the State, ignored the subpoena from the District Attorney and only notified the Deputy that he, a necessary witness, *specifically made alternate plans during the time he was subpoenaed.* This was only learned after the assigned Deputy District Attorney followed up with Detective Nutting three days before calendar call. In the three weeks between Detective Nutting being subpoenaed and the Deputy reaching out to him, he chose to do nothing to notify anyone of a conflict. Further, the Deputy District Attorney, having been informed on March 24, 2023, appeared at Calendar Call on March 27, 2023, making an oral request for stipulation from the defense, or alternatively, for testimony by Audio Visual Equipment. For three days, the District Attorney's Office was fully aware that Detective Nutting had no intention of complying with the subpoena and made no effort to notify any of the parties, the court, or file any Motion. Instead, the State brought up the importance of this witness due to his involvement with the Cellebrite download,

and his deliberate unavailability, in open court. Ultimately, the Court granted the one-week continuance due to the State's representations as to the necessity of this witness based on the importance of the Cellebrite data to the State's case.

Subsequently, the day before calendar call, the undersigned discovered that the Cellebrite data that the defense had spent countless hours reviewing, was not that of the phone located in this event. After an email, conversations with the assigned Deputy District Attorney can only be described as nonchalant on the part of the State. The Deputy District Attorney did not feel it was a major issue and offered a continuance, being fully aware of the defendant's invoked status. The State felt a continuance was the appropriate remedy and blamed the defense for not having realized earlier. At Central Trial Readiness, the State continued to blame the defense for the State's gross negligence when explaining the issue to the court. As a direct result of the State's failure to provide correct evidence, the trial date is now vacated, and the parties have no trial date set.

On April 10, 2023, it will be 62 days from the date of the defendant's arraignment, making it impossible for the State to bring the defendant to trial within 60 days.

2. The State Continues to Interfere With the Defendant's Right to Effective Assistance of Counsel.

The Sixth Amendment guarantees the right to effective assistance of Counsel.

After the Court continued the calendar call for two days, the State then filed its Motion to allow Detective Nutting to testify by Audio Visual Equipment. The defense then spent significant time researching and preparing a response to said Motion, only to find out at Calendar Call, on the record, that the State would be withdrawing the Motion and accepting the Court's offer to continue a week later. Not only causing a waste of counsel's time, but causing a scheduling conflict with defense co-counsel, and requiring alternate second chair to substitute in with a weeks notice.

In addition to this, defense counsel spent countless hours scouring the information on the provided Cellebrite for any relevant information. It is important to note that the Cellebrite provided to the defense included approximately five different Apple IDs, none of which were

tied to a name. There were over 30,000 photographs, many of them irrelevant photographs including brand logos, memes, and other random photos that appeared from the internet, messages, and emails, all grouped together. Very few photos contained actual people, and the photos did not depict the same people repeatedly. There was absolutely nothing on the phone that showed it belonged to any person. There was no reason for the defense to believe that the Cellebrite data provided was incorrect.

Preparing for a trial within 60 days is, admittedly, a large task. The time that the defense spends on tasks must be carefully allocated and the State has wasted the defenses time with an untimely Motion it ultimately withdrew, and providing the defense with incorrect discovery. And now, necessitating the filing of this last-minute Motion. The State's conscious indifference and gross negligence continues to put unnecessary barriers in place interfering with counsels ability to prepare for trial with full knowledge of relevant issues and evidence.

3. The Cumulative Actions of the State, As a Whole, Have Resulted the Violation of the Defendant's Procedural Rights and Warrants Dismissal

The Nevada Supreme Court has held that "[o]ur past decisions have been premised on our belief that 'criminal accusations should proceed or terminate on principles compatible with judicial economy, fair play and reason....'" *State v. Lamb*, 97 Nev. 609, 611, 637 P.2d 1201, 1202 (1981) *citing McNair v. Sheriff*, supra, 89 Nev. at 438, 514 P.2d at 1177. Failures to comply in important procedural rules need not be willful or intentional and the defense need not show bad faith. *State v. Austin*, 87 Nev. 81, 83, 482 P.2d 284, 285 (1971). "(T)he State's legal representatives (do not) have an unrestricted right to blunder interminably . . .." *Watson v. Sheriff, Elko Cnty.*, 93 Nev. 236, 238, 562 P.2d 1133, 1133 (1977) *citing State v. Austin*, 87 Nev. 81, 83, 482 P.2d 284, 285 (1971).

The Detective's willful unavailability and purposeful defiance of the subpoena, causing a continuance was in complete control of the State. The Court already allowed leniency to the State on this issue. The undersigned is not aware who is responsible for having given the wrong Cellebrite data. However, it can only be presumed that it was at the fault of the detective, the

staff of North Las Vegas, the District Attorney, or the staff of the District Attorney. Whoever is responsible, it is the fault of the State.

Further, the Defense had previously raised an issue around a photograph the State plans to use that appears to depict the defendant with a firearm. The photograph provided to the defense was clearly from Instagram, the copy provided showing the images associated with the app. However, the caption and date are deliberately cut out of the photograph provided to the defense. The defense has attained a screenshot of the original post from Instagram. The caption deliberately left out by detectives/ investigators along with the photograph is "Something I forgot to post old to me but new to you…[shh emojis]" and is dated as *posted* June 14, 2022, approximately 10 days before the incident. This is not insignificant since the defense has raised its doubts this photograph was taken at that time, due to the much younger appearance of the defendant in the Instagram photograph, versus now. Now, it is discovered that a caption specifically referencing its old age is deliberately cut out. While the defense has no evidence at this moment as to when the photograph was actually taken, the defense maintains it was very misleading and inappropriate to be provided the photograph (that the State plans to use at trial) without full context. The Detective or Investigator that attained this photograph undoubtedly knew better, and simply chose to disclose a portion of the Instagram post.

The cumulative actions of the State have amounted to conscious indifference. The officers purposeful neglect to make arrangements to appear for an invoked trial, or even notify anyone of his absence, should amount to cause for dismissal on its own. It is in addition to this, the incorrect Cellebrite was provided to the defense. After the State becomes aware it has provided incorrect evidence to the defense, the response continues to be blame the defense, insinuate that providing the correct Cellebrite only days before trial is appropriate, and alternatively offer a continuance.

It is important to note that the Defendant is prejudiced by the continuances. The defendant is in custody on this case, he is being held on a probation violation based solely on these allegations, and he is not earning any credit on the time he is serving on this case due to his status as a probationer. These continuous delays are not inconsequential. The defendant is

suffering real and actual harm solely at the fault of the State. As of August 10, 2023, it is estimated the defendant will have served 93 days on this case alone, none of which will be credited to him should he be convicted.

B. THE STATE HAS FAILED IN THEIR OBLIGATION TO PROVIDE TIMELY DISCOVERY

Nevada Rules of Criminal Procedure Rule 7 states, in pertinent part:

1. The parties, through their counsel, without order of the court, shall timely provide discovery of all information and material permitted by any applicable provision of the Nevada Revised Statutes…
2. The content, timing, manner, and sequence of any additional discovery shall be directed by the court at the initial appearance or as soon thereafter as reasonably practicable…
…
3. The court may impose appropriate sanctions for the failure of a party or counsel to comply with any discovery obligation imposed by law or ordered by the court.

Pursuant to NRS 174.285, the District Attorney is to turn over discovery no less than 30 days prior to trial.

The State failed to provide the correct Cellebrite data in a timely fashion and failed to provide the full context surrounding at least one photograph it plans to use at trial. Granting a continuance here will condone the State's willful disregard for the law, the very thing the State claims to be charged with enforcing, and will send the message that the State is above the law. Discovery is not a mere technicality: it is a crucial part of due process. Continuing this case, rather than dismissing it, will empower the State to violate the law with impunity and wield improper authority and power over defendants similarly situated. The State, by withholding discovery from defendants in advance of trial, will be able to realize a benefit of either ineffective assistance of defense counsel, or not having to be prepared to proceed with trial on the trial date. Dismissal is the only appropriate remedy.

///

II. IN THE ALTERNATIVE, THE COURT SHOULD EXCLUDE ANY AND ALL TESTIMONY AND EVIDENCE REFERENCING CELLEBRITE OR THE CELLULAR PHONE FOUND AT THE SCENE AND ANY PHOTOGRAPHS LOCATED IN THE TELEPHONE

The Defense requests that this Court exclude the late disclosed evidence. N.R.S. 174.285(2) requires that the State timely disclose evidence to the Defense. That statute mandates that "[a] party shall comply with a request made pursuant to NRS 174.234 . . . not less than 30 days before trial or at such reasonable later time as the court may permit."

The Defense is clearly prejudiced by the late disclosure of this evidence. The undersigned has had extremely limited time to view the late-disclosed Cellebrite. It is important for the Court to know that it is 17,876,301 KB. Simply pulling up the Cellebrite data took over 30 minutes. There are 46,959 images alone. The defense still has not been able to locate the photograph that was issue of the defense's Motion to Exclude in the limited amount of time since the data has been provided. This is of extreme importance because the State claims the photograph was *taken* approximately 10 days before the incident at issue. However, the defense has obtained the photograph with the caption that State actors specifically excluded.

If not excluded, the defendant will be forced to choose between his right to a speedy trial and his right to effective assistance of counsel.

All persons accused of a crime shall "have the assistance of counsel for his defense." U.S. Const. Amend. VI. If this assistance of counsel is ineffective, then the accused loses this most sacred of rights. *Strickland v. Washington*, 466 U.S. 688 (1984). Trial counsel must, at a minimum, make informed decisions about how to best represent his client. *Phillips v. Woodford*, 267 F.3d 966, 978 (9th Cir. 2002). In order to make informed decisions, trial counsel must be aware of all of the potentially admissible evidence in the case. Preparation for this trial and discussions with the defendant have all been made based on the Cellebrite data available to the defense. N.R.S. 174.295 provides that "[i]f at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with the provisions of N.R.S. 174.235 to 174.295, inclusive, the court may order the party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from

introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances." It is the sole fault of the State that the Defense did not receive the Cellebrite the State plans to use in its case-in-chief. Thus, the Defense requests that this Honorable Court order the aforementioned evidence excluded from trial.

III.

CONCLUSION

The cumulative actions of all State actors as a whole have shown a clear conscious indifference to the Defendant's procedural rights. In the alternative, all evidence and testimony referencing the cellular phone should be excluded.

DATED this 7th day of April, 2023.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/ *Deanna Keane*
DEANNA KEANE, #12045
Deputy Public Defender

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 10th day of April, 2023, at 9:30 a.m.

DATED this 7th day of April, 2023.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/ *Deanna Keane*
DEANNA KEANE, #12045
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and forgoing MOTION was served via electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountyda.com on this 7th day of April, 2023.

By: /s/ *Deanna Keane - PD*
An employee of the
Clark County Public Defender's Office

Electronically Filed
4/7/2023 5:13 PM
Steven D. Grierson
CLERK OF THE COURT

OPPS
STEVEN B. WOLFSON
Clark County District Attorney
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200 Lewis Avenue
Las Vegas, Nevada 89155-2212
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

AUNDREA HUGHES, aka,
Andrea E. Hughes, #8485077

Defendant.

CASE NO: C-23-370882-1

DEPT NO: II

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

DATE OF HEARING: APRIL 10, 2023
TIME OF HEARING: 9:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MICHAEL D. ALLMON, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion To Dismiss.

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.

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POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

The Defendant was arraigned on February 8, 2023. On March 2, 2023, the State provided Defendant an Examination Report for the North Las Vegas Police Department case number associated with this case, 2206250011586, completed by J. Nutting #2793 (attached as Exh. 1). That same day, the State provided a flash drive that it thought was the full Cellebrite download of the phone associated to the same examination for this case. The flash drive provided to Defendant and retained by the State are identical from the outside. The following day, March 3, 2023, the State sent Defendant an email (attached as Exh. 2) confirming that that it had provided "1 flash drive that is the Cellebrite data" with a picture of the flash drive attached in the email (also attached as Exh. 2).



On March 27, 2023, the Court held a hearing on Defendant's Motion in Limine to exclude a photograph. The State noted that the photograph that was being argued over was in a Cellebrite download. The State told the Court that it would review the Cellebrite download to get an exact date of the photo. On March 29, 2023, in the continued hearing on the motion in limine, the State provided the date of the photograph. Defendant then claimed to have never received that photograph in any other form. The State noted that it was from the

Cellebrite download of the phone which was provided to Defendant in a black flash drive. Defendant acknowledged that they had not gone through the flash drive at that time.

Six days later, the Defendant sent the State an email after hours at 5:30 p.m. on Tuesday, April 4, 2023 telling the State that they might have received the wrong Cellebrite download. The Defendant provided a picture of the initial report listing a different North Las Vegas Police Department event number and a different examiner. The State, immediately upon seeing the email on Wednesday morning, sent Defendant a response at 9:33 a.m., coordinating to meet with Defense Counsel at 11:30 a.m. (once the assigned prosecutor would be out of a grand jury that was at 10:00) to look at the Defendant's flash drive. The State looked at Defendant's copy and saw that it was in fact for another case number with a different examiner. The State then duplicated a copy of the flash drive in its file and notified Defendant that the duplicated flash drive was available at 1:11 p.m. Thus, in less than 6 working hours of being notified, the State had fixed the error.

II. ARGUMENT

A. The Discovery Issue was Inadvertent, Not Grounds for Dismissal or Exclusion

NRS 174.295(2) states:

> If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with the provisions of NRS 174.234 to 174.295, inclusive, the court may order the party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

Absent a "showing that the State has acted in bad faith, or that the non-disclosure results in substantial prejudice" a court order allowing more time for a defendant to review the material at issue is the appropriate remedy. Langford v. State, 95 Nev. 631, 635, 600 P.2d 231, 234 (1979). "[W]here the State's non-compliance with a discovery order is inadvertent and the court takes appropriate action to protect the defendant against prejudice, there is no error justifying dismissal of the case." State v. Tapia, 108 Nev. 494, 497, 835 P.2d 22, 24 (1992). "[T]he State having in *good faith attempted to comply*, [the Supreme

Court] deem[s] it an abuse of discretion to dismiss the charges." Id. at 498, citing, State v. Stiglitz, 94 Nev. 158, 161-62, 576 P.2d 746, 748 (1978) (original emphasis in Tapia).

In Langford, the State failed to disclose the mugbooks that a witness reviewed in identifying the defendant. 95 Nev. at 635. The inadvertent non-disclosure was realized during trial. Id. The court there remedied the issue by allowing defense enough to time to review the mugbooks before cross-examination. Id. The Court held that this alleviated any prejudice there may have been. Id.

In Tapia, the State disclosed a document on the second day of trial. Id. at 496. "[W]hen the State realized its error, it immediately retrieved the information and forwarded it to [the defendant]. Id. at 498. The Court noted that the relative strength or weakness of either party's case is not a factor in determining the remedy. Id. The Court concluded that "it was an abuse of discretion for the court to exclude the precursor document and to dismiss the case based upon a violation of the discovery order…" Id.[1]

Here, similar to Tapia, the appropriate remedy is not a dismissal of the case, or even exclusion of the evidence. Here, as in Tapia, the State immediately remedied its error once it was realized. Furthermore, the State provided the report elsewhere in discovery, making it clear what Cellebrite report it was referencing in this case. In discovery, in pdf form, the State provided Defendant with an examination report. (Exh. 1). This shows the event number of the report (which is the same event number as the Declaration of Arrest for this case) related to the Cellebrite download and that the examiner of the report was J. Nutting. It also listed the devices and usernames associated with the phone, including hughesaundrea7@gmail.com. This alerted Defendant to the report that the State was referencing when it discussed the Cellebrite data from the phone. That the contents and report on the flash drive were not for the same report that the State provided elsewhere in discovery was inadvertent and not in bad-faith. Furthermore, allowing Defense enough time to review it is the appropriate remedy and avoids substantial prejudice.

[1] The Court so held, despite its finding that the district court was proper in finding that the "prosecutor had not exercised due diligence in obtaining the documentation from the Peppermill." Id. at 497.

The record and actions of Defense Counsel further show the lack of substantial prejudice. The record and actions show that Defense Counsel did not review the flash drive for 27 days and only notified the State of the error, after hours, 33 days after receiving the flash drive. Thus, Defendant either did not review it, or did and decided to wait to ask the State to remedy its error. Under either possibility, Defendant cannot then claim substantial prejudice when the State fixed the error within six working hours.

Thus, within a matter of hours of being notified of the error, and within the same judicial day, the State "immediately retrieved the information and forwarded it" to the Defendant, thus remedying the inadvertent discovery issue. It would be an abuse of discretion to dismiss or exclude the evidence for this inadvertent discovery issue.[2]

B. The State has not Shown a Conscious Indifference

The State has acted diligently in this case. The State had just 24 days from arraignment (February 8, 2023) to the discovery deadline originally set (March 4, 2023) to provide discovery. The State provided nearly 900 pages of discovery, two discs of surveillance video, three discs of jail calls, a disc of photographs, and multiple links to download officer's body worn camera. The State has even gone beyond its statutory duty and re-delivered evidence in this case that Defendant failed to preserve. The State provided body worn camera in August. Defendant did not timely download that body worn camera and the email was no longer retained by Defense Counsel's email. The State, under no obligation to do so, re-delivered that body worn camera. The State inadvertently provided a flash drive that did not match the Cellebrite report that it provided to Defendant elsewhere in discovery.

As previously noted and ruled on by the Court in the State's Motion to Continue—in which it only requested a one-week continuance—the 60 day deadline for a speedy trial may be extended if the State has good cause for a continuance. Huebner v. State, 103 Nev. 29, 31, 731 P.2d 1330, 1332 (1987). A law enforcement witness's scheduled vacation at the time of trial is good cause for a continuance. Id. at 32.

[2] Defendant fails to cite a single case to the contrary. See, Cunningham v. State, 94 Nev. 128, 130, 575 P.2d 936, 938 (1978) (refusing to consider an issue without citation to a relevant authority).

There is no conscious indifference to important procedural rights when the State follows the procedures of a Hill or Bustos motion for a continuance. Sheriff, Clark Cnty. v. Simpson, 109 Nev. 430, 434, 851 P.2d 428, 431 (1993). In Simpson, the state informed the court that it was not able to proceed because it did not have a witness present. Id. at 431. When the deputy district attorney received the case and realized that the witness had not responded, the deputy district attorney made several unsuccessful phone calls to the witness and sent an investigator to try to serve the witness the night before. Id; id. at n.1. The investigator never contacted the witness; instead, the investigator left the subpoena with a woman that claimed to be a relative of the witness and said she would deliver it to the witness. Id. The Court therefore "conclude[d] that the district court could not have properly granted Simpson's petition for a writ of habeas corpus based on a finding of willful failure or conscious indifference on the part of the prosecutor." Id. at 434.

Here, the State sought a one-week continuance for a proper reason under Huebner. In doing so, the State filed a Hill motion. Thus, the discovery issue (addressed further previously) and the unavailability of the witness do not rise to the level of the prosecutor acting with conscious indifference to important procedural rules.

Furthermore, the State filed a motion seeking an alternative remedy to the unavailability of the witness: the State sought to have that witness testify remotely. To support this, the State made the following argument:

> "[I]n-person cross-examination may not be required under the Confrontation Clause if 'denial of such confrontation is necessary to further an important public policy and only where the reliability of the testimony is otherwise assured." Brown v. State, 138 Nev. Adv. Op. 44, 512 P.3d 269, 278 (2022), citing, Lipsitz, 135 Nev. at 136, 442 P.3d at 143. The Court in Brown was dealing with a witness that would testify to the same facts as here, that the witness extracted the contents of the phone using Cellebrite. Id. at 273. The state in Brown argued that the audiovisual testimony of the witness was necessary because the company had an employee shortage and re-scheduling the witness

would cost an extra $10,000. Id. The state further argued that two-way video testimony would not diminish the defendant's confrontation rights. Id. at 278. The district court admitted the testimony of the witness that did the Cellebrite extraction. Id. However, the District Court never made a finding of what public policy reason supported the audiovisual testimony. Id. The Supreme Court then held that argument was not made below sufficient to rule on the matter. Id. Notably, and importantly here, in this context, the Court hinted that it would find the audiovisual testimony acceptable for a witness that completed the Cellebrite report because it would be helpful in "protecting the defendant's right to speedy trial when a witness is unable to testify in person on the day set for trial" and this "supports the public policy prong." Id. at 279.

Here, for the same reasons, protecting the Defendant's speedy trial rights is best served by having the witness testify remotely. The other option is to continue the trial for good cause. See, Huebner v. State, 103 Nev. 29, 32-33, 731 P.2d 1330, 1332-33 (1987) (holding that a trial continuance for an officer's scheduled vacation was good-cause and did not violate his right to a speedy trial despite being continued past 60 days). Thus, rather than continue the trial for good cause, the State requests that having testify by audiovisual is the best remedy and does not affect his right to cross-examination.

Rather than show conscious indifference, this shows that the State has been diligent in fulfilling the procedural rights of the Defendant.

Furthermore, the discovery matter is more directly and appropriately dealt with within the framework of the discovery statute, NRS 174.295, and the cases interpreting that statute cited above.

Defendant has also raised the issue of untimeliness of motions while omitting the fact that Defendant has filed motions untimely. See, State's Opposition to Defendant's Motion in Limine (arguing that Defendant's motion filed 11 days before trial was untimely in violation of Nev. R. of Crim. Pract. 8). Nevertheless, the State has still responded despite having only

two judicial days to respond. In contrast, the State's motions and responses have been timely.

Thus, none of the issues raised by Defendant demonstrates that the State has acted with conscious indifference. Rather, the State's immediate action in remedying its error and filing the appropriate motion demonstrates that it has worked diligently to guarantee all important procedural rights of the Defendant. As noted below, Defendant has waived the right to a speedy trial, so many of Defendant's claimed violations of that right are inapplicable.

C. The Defendant has Waived the Right to a Speedy Trial

Defendant filed a Petition for a Pretrial Writ of Habeas Corpus under NRS 34.700. When a defendant files a petition for a writ of habeas corpus, they also waive their right to a speedy trial, under the same statute that allows the basis of the petition to be heard, NRS 34.700(1) (emphasis added):

> 1. Except as provided in subsection 3, a pretrial petition for a writ of habeas corpus based on alleged lack of probable cause or otherwise challenging the court's right or jurisdiction to proceed to the trial of a criminal charge may not be considered unless:
>
> (a) The petition and all supporting documents are filed within 21 days after the first appearance of the accused in the district court; and
>
> (b) **The petition contains a statement that the accused:**
>
> **(1) Waives the 60-day limitation for bringing an accused to trial; or**
>
> **(2) If the petition is not decided within 15 days before the date set for trial, consents that the court may, without notice or hearing, continue the trial indefinitely or to a date designated by the court.**

See also, e.g., Manley v. State, 115 Nev. 114, 125, 979 P.2d 703, 710 (1999) (holding that despite the claimed violation of his right to a trial within 60 days, there was no violation because he instructed his attorney to file a pretrial petition for a writ of habeas corpus).

Here, Defendant filed a Petition for a Pretrial Writ of Habeas Corpus on March 13, 2023. The Court held a hearing on the Pretrial Writ of Habeas Corpus on March 27, 2023, and issued a decision the same day.[3] Thus, the petition was decided less than 15 days before the date set for trial: seven days. Defendant continues to assert the right to a speedy trial

[3] The setting of the hearing on the Petition for Writ of Habeas Corpus 14 days later was appropriate because under Nevada Rules of Criminal Practice, R.9, the State has 10 days to file a Return to a Petition. The Court thus set the hearing two judicial days after the deadline for the State's Return.

despite waiving it. Because the Defendant filed a petition in which the right to a speedy trial was waived, and a decision was issued seven days before the setting of the trial, under NRS 34.700(1)(b)(2), the Defendant waived the right to a speedy trial. The Defendant cannot waive and assert the right to a speedy trial at the same time.

CONCLUSION

Because the Defendant has already waived the right to a speedy trial in 60 days and the remedy for the inadvertent non-disclosure that was not in bad-faith is to allow the Defendant as much time as Defendant needs to review the evidence, the motion to dismiss should be denied.

DATED this 7th day of April, 2023.

Respectfully submitted,

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

BY ***/s/ Michael D. Allmon***
MICHAEL D. ALLMON
Deputy District Attorney
Nevada Bar #15169

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this 7th day of April, 2023, by electronic transmission to:

DEANNA KEANE, PUBLIC DEFENDER
DEANNA.KEANE@CLARKCOUNTYNV.GOV

BY *s/ Andrea Carrera*
Andrea Carrera
Secretary for the District Attorney's Office

MDA/ac /HIDTA

EXHIBIT 1

North Las Vegas Police Department

Digital Forensics Lab

Examination Report

Case Number	2206250011586
Case Detective & P#	D. Kennedy #1483
Exam Completion Date	July 28, 2022
Examiner Name & P#	J. Nutting #2793
Agency	North Las Vegas Police Department
Description of Evidence	Apple iPhone SE (2020), SN: DX3HGD7KPLJM, IMEI: 352853885815817

Summary of Findings

I. Examiner Qualifications

I, Jeremy Nutting #2793, am a Digital Forensic Examiner with the North Las Vegas Police Department (NLVPD), currently assigned to the Digital Forensics Laboratory (DFL). I hold or have held the following relevant certifications:

Cellebrite Certified Operator (CCO) – 2021
Cellebrite Certified Physical Analyst (CCPA) – 2021
Forensic Explorer Introduction Training – 2021
Basic Computer Evidence Recovery Training – 2021
Magnet Certified Forensic Examiner (MCFE) – 2022
Berla iVe Certified Vehicle Systems Forensic Technician (CVST) – 2022
Berla iVe Certified Vehicle Systems Forensic Examiner (CVSE) – 2022

II. Search Authorization

Detective D. Kennedy #1483 secured an Apple iPhone SE (2020) in an NLVPD DFL locker. On June 27, 2022, I took custody of the device and signed the chain of custody on the evidence package. On June 29, 2022, Detective Kennedy provided me with a search warrant for the device signed by Judge Tyrrell of the North Las Vegas Justice Court.

III. Scope of Exam:

Detective Kennedy requested that I conduct a forensic examination of the Apple iPhone SE (2020) for:

(1) Digitally stored records of user and/or device created data, which may constitute evidence of Aundrea Hughes' involvement in the planning or commission of the crime(s) of Attempt Murder, which occurred on or about June 25, 2022.

(2) Digitally stored records of user and/or device created data, which would tend to establish the identity of persons who were in sole or joint control of the listed digital storage device.

IV. Approved Tools:

The following is a list of the specific tools used to forensically acquire the electronic storage device in this case:

- Cellebrite Physical Analyzer v. 7.56.0.20
- Cellebrite UFED 4PC v. 7.54.0.444
- Graykey OS 1.9.2.21411240; App 3.0.0

V. Evidence to be Examined:

The electronic storage devices consist of items in the custody of the North Las Vegas Police Department, under event number 2206250011586. Specifically, the items include the following:

Apple iPhone SE (2020), SN: DX3HGD7KPLJM, IMEI: 352853885815817

VI. Findings & Analysis

On June 25, 2022, Detective D. Kennedy #1483 secured a faraday bag containing an Apple iPhone SE (2020) smartphone in an NLVPD DFL locker. On June 27, 2022, I took custody of the device and signed the chain of custody on the evidence package. I placed the faraday bag into a Ramsey faraday enclosure and sealed the enclosure. I removed the device from the faraday bag and could see that Airplane Mode had already been enabled on the device. I ensured that the Wi-Fi and Bluetooth connections were disabled. The device was locked behind an unknown 6-digit passcode. I removed the device from the faraday enclosure.

The device was photographed with a Cellebrite Camera Kit.

The SIM card (ICCID 8901260668910290527) was ejected from the device and inserted into a Cellebrite Multi SIM Adapter. The adapter was plugged into my PC, where UFED 4PC was utilized to conduct a logical extraction of the SIM card. The SIM card extraction revealed a Mobile Station Integrated Services Digital Network (MSISDN) of 17028019478. This number is consistent with the phone number associated with the device.

I connected the device to a Graykey. The Graykey conducted an After First Unlock (AFU) extraction of the device totaling 48.70 GB.

The extracted data and photos were then uploaded into Cellebrite Physical Analyzer.

I have created a Cellebrite Reader Report and a Preliminary Device Report of the extraction utilizing the report feature built into Physical Analyzer. These reports were copied onto a server at the NLVPD Detective Bureau storage device for Detective Kennedy to review.

The Cellebrite Reader Report was designed to be used by investigators to conduct their own searches, filter out irrelevant data, and bookmark items that are significant to the investigation. In doing so, investigators can create their own forensic report supporting the charges under investigation.

The extractions and photos as well as generated reports were copied onto an evidence server at the NLVPD Detective Bureau.

Following my examination of the device, I powered off the device and placed the device into the evidence package with a copy of the search warrant. I sealed the evidence package and booked the device into evidence at the NLVPD Detective Bureau.

END OF REPORT.

2793

Signature: Date: 8/2/2022

J. Nutting #2793

Device Information

Name	Value
Legacy	
Phone Settings	
Message Retention Duration	Forever
Location Services Enabled	True
Find my iPhone enabled	True
Tethering	
Last Hotspot Activity	7/26/2022 2:41:52 PM(UTC+0)
Model number	D79AP
Last used MSISDN	+17028019478
Last user ICCID	8901260668910290527
Serial	DX3HGD7KPLJM
IMEI	352853885815817
Unique ID	00008030-001A08360E04C02E
IMEI2	352853886494141
AirDrop ID	6bf3ff1c5adb
Last Cloud Backup Date	6/23/2022 11:52:45 AM(UTC-7)
Time Zone	(UTC-08:00) Los_Angeles (America)
Apple ID	triggafoezz0105@icloud.com
Apple ID	hughesaundrea7@gmail.com
iCloud account present	True
Advertising Id (IDFA) #1	10E5F94A-A92A-448B-A57D-BE86D359ACDC
Device Name	iPhone
Bluetooth device address	<string>60:93:16:B6:85:A7</string>
MSISDN	17028019478
IMSI	310260661029052
OS Version	15.4
Detected Phone Model	iPhone SE (2nd generation)
Network Interfaces	
Wi-Fi MAC address	60:93:16:C5:F4:C4
MAC address	62:93:16:B9:B2:1D
MAC address	62:93:16:B9:B2:E2
MAC address	00:00:22:44:66:88
Logical (1)	
ICCID	8901260668910290527
IMSI	310260661029052
ACC	0x0004 = Class 2
Logical (2)	
ICCID	8901260668910290527
IMSI	310260661029052
ACC	0x0004 = Class 2

User Accounts (36)

#	Source	Account Name	User name	Service Type	Creation time	Entries
1	Accounts		local	iTunes Store	3/21/2022 10:39:34 AM(UTC-7)	
2	Accounts		local	iTunes Store (Sandbox)	5/27/2022 12:59:59 PM(UTC-7)	
3	Accounts		triggafoezz0105@icloud.com	iTunes Store		
4	Accounts		triggafoezz0105@icloud.com	Apple ID	6/2/2022 4:25:29 AM(UTC-7)	
5	Accounts		triggafoezz0105@icloud.com	IDMS	6/2/2022 4:32:38 AM(UTC-7)	
6	Accounts		triggafoezz0105@icloud.com	Messages	6/2/2022 4:32:40 AM(UTC-7)	
7	Accounts		triggafoezz0105@icloud.com	Game Center	6/2/2022 4:32:40 AM(UTC-7)	
8	Accounts		triggafoezz0105@icloud.com	CloudKit	6/2/2022 4:32:40 AM(UTC-7)	
9	Accounts		triggafoezz0105@icloud.com	iCloud	6/2/2022 4:32:40 AM(UTC-7)	
10	Accounts		triggafoezz0105@icloud.com	IMAPMail	6/2/2022 4:34:27 AM(UTC-7)	
11	Accounts		triggafoezz0105@icloud.com	Device Locator	6/2/2022 4:34:28 AM(UTC-7)	
12	Accounts		triggafoezz0105@icloud.com	Find My Friends	6/2/2022 4:34:28 AM(UTC-7)	
13	Accounts		hughesaundrea7@gmail.com	IDMS	6/3/2022 1:23:55 PM(UTC-7)	
14	Accounts		hughesaundrea7@gmail.com	Apple ID	6/3/2022 1:23:55 PM(UTC-7)	
15	Accounts		hughesaundrea7@gmail.com	iTunes Store		
16	Accounts		hughesaundrea7@gmail.com	Messages	6/3/2022 1:23:59 PM(UTC-7)	
17	Facebook Messenger					**User ID:** Facebook Id 100014248381112
18	Gmail		100311427278486070379			
19	Gmail		110214023206126802841			
20	Native Messages					**Phone:** Phone Number +17028019478
21	Instagram	#Slaughta4President™	spank.0gwoog.official			**User ID:** Instagram Id 49713962914 **Profile Picture:** Photo Url https://scontent-lax3-2.cdninstagram.com/v/t51.2885-19/289472544_764633901551975_5047649377216432803_n.jpg?stp=dst-jpg_s150x150&_nc_ht=scontent-lax3-2.cdninstagram.com&_nc_cat=111&_nc_ohc=ySoWtA0FjswAX-4Tkbj&edm=AEF8tYYBAAAA&ccb=7-5&oh=00_AT-vzU4aVVn2K8IYsvYdyiNfvDeJ7YmODbeRqEyrfm5mlg&oe=62BE8C04&_nc_sid=a9513d
22	Google Fit	8 Ball				**Email:** Email 8balltrigga@gmail.com
23	Gmail	8balltrigga@gmail.com	8balltrigga@gmail.com			
24	Cash app	Facebook				
25	Instagram	Genny	pimpcess._.genny			**User ID:** Instagram Id 4760102999 **Profile Picture:** Photo Url https://scontent-lax3-1.cdninstagram.com/v/t51.2885-19/198423171_772168323459857_7450601342394297298_n.jpg?stp=dst-jpg_s150x150&_nc_ht=scontent-lax3-1.cdninstagram.com&_nc_cat=105&_nc_ohc=rL_wulmQuC0AX93h_p7&edm=ANmP7GQBAAAA&ccb=7-5&oh=00_AT-6Vql65rO4brfbOGWL1LSGSsiH0_dV1GSRb7Ff-W5FBA&oe=62BB0A53&_nc_sid=276363

26	Gmail	hughesaundre ail.com	hughesaundrea7@gmail.com			**Profile Picture:** https://lh3.googleusercontent.com/a-/AOh14Giia_KmYOBXg8nemKXyQzRDjtClUgJTW1SxwlihPw=w120-h120
27	Facebook Messenger	InfanTrigga Foezz	infantriggafoezz			**Profile Picture:** profile_picture_url https://scontent.xx.fbcdn.net/v/t1.6435-1/122148626_976025419549062_88269055393707 86367_n.jpg?stp=cp0_dst-jpg_e15_p120x120_q65&_nc_cat=108&ccb=1-7&_nc_sid=dbb9e7&_nc_ohc=BTxHGdRKABAAX8P4f14&_nc_ad=z-m&_nc_cid=0&_nc_ht=scontent.xx&oh=00_AT-aCw4Cy2IOcgOuX0BeHKP9IFmAPbXumE8Aj1soKNg7Sw&oe=62B72A59 profile_picture_large_url https://scontent.xx.fbcdn.net/v/t1.6435-1/122148626_976025419549062_88269055393707 86367_n.jpg?stp=cp0_dst-jpg_e15_p200x200_q65&_nc_cat=108&ccb=1-7&_nc_sid=dbb9e7&_nc_ohc=BTxHGdRKABAAX8P4f14&_nc_ad=z-m&_nc_cid=0&_nc_ht=scontent.xx&oh=00_AT8gwXiHN-XMnJfK8OBspI8Mhys756gfWwZg8Nxym768Nw&oe=62B72A59 **User ID:** Facebook Id 100014248381112
28	Instagram	InfanTrigga Foezz	infantriggafoezz			**User ID:** Instagram Id 7766750479 **Profile Picture:** Photo Url https://scontent-lax3-1.cdninstagram.com/v/t51.2885-19/281359499_3114761144917 05_4277467215981918182_n.jpg?stp=dst-jpg_s150x150&_nc_ht=scontent-lax3-1.cdninstagram.com&_nc_cat=109&_nc_ohc=HoGuaRP1VLQAX8h85gE&edm=AJXOVykBAAAA&ccb=7-5&oh=00_AT-hpro_STwFhtzr6r_GuVqQ24g1O6SKIKtgLV17PPQGrQ&oe=62BD3ABB&_nc_sid=9c1db7
29	Google Fit	Ji Mj				**Email:** Email jimj20kk@gmail.com
30	Gmail	jimj20kk@gmail.com	jimj20kk@gmail.com			
31	Facebook	Litt Bamm				**User ID:** Facebook Id 100071275797141
32	Instagram	Litt Bamm	littbamm			**User ID:** Instagram Id 50182214710 **Profile Picture:** Photo Url https://scontent-lax3-2.cdninstagram.com/v/t51.2885-19/286018228_1067540050540422_8949211171003399018_n.jpg?stp=dst-jpg_s150x150&_nc_ht=scontent-lax3-2.cdninstagram.com&_nc_cat=106&_nc_ohc=18bU5h21e-gAX88lofc&edm=AJXOVykBAAAA&ccb=7-5&oh=00_AT8Mf9Zya26A9nt_rbqhzrfhfN9JXCOwpzbkpho4cZxvnA&oe=62BE7635&_nc_sid=9c1db7

33	Instagram	nkapbkashnk. ngnk	nkapbkashnk.da_youngnk			User ID: Instagram Id 44646649540 Profile Picture: Photo Url https://scontent-lax3-2.cdninstagram.com/v/t51.2885-19/286651004_760216191991499_7238484147341095O_n.jpg?stp=dst-jpg_s150x150&_nc_ht=scontent-lax3-2.cdninstagram.com&_nc_cat=111&_nc_ohc=9Z5nxXlvcOEAX-DnqeO&edm=AEF8tYYBAAAA&ccb=7-5&oh=00_AT941chs3snhS5awz0_h0Gzbb5WLnquZkEAax2d23BqnQg&oe=62BAB500&_nc_sid=a9513d
34	Find My	Trigga Foezz	triggafoezz0105@icloud.com			
35	ScreenTime	Trigga Foezz				
36	Google Fit	Trigga Foezz				Email: Email hughesaundrea7@gmail.com

EXHIBIT 2

Michael Allmon

From: Michael Allmon
Sent: Friday, March 3, 2023 4:56 PM
To: Deanna Keane
Cc: Corey Hallquist
Subject: RE: Discovery: Hughes C370882
Attachments: Image.jpeg

Deanna,

Attached is the image of the hard discs that we sent over yesterday.
2 discs labeled surveillance, 1 disc labeled photos, 1 disc with stickers that is the 911 and officer radio recording.
1 flash drive that is the Cellebrite data.

Additionally, waiting for you at DA Reception is:
All jail calls from the date of his arrest until 2/28/23.
BWC resent from what was provided in August of 2022.

If there is anything else that you would like, please send a specific request and we will get it for you.
Additionally, you are welcome to do a file review with us and look at everything that we have. Please just arrange a good time for all of us.

Thanks and have a good weekend.

Michael

From: Michael Allmon
Sent: Friday, March 3, 2023 4:39 PM
To: Deanna Keane <Deanna.Keane@ClarkCountyNV.gov>
Cc: Corey Hallquist <Corey.Hallquist@clarkcountyda.com>
Subject: RE: Discovery: Hughes C370882

From: Michael Allmon
Sent: Thursday, March 2, 2023 4:58 PM
To: Deanna Keane <Deanna.Keane@ClarkCountyNV.gov>
Cc: Corey Hallquist <Corey.Hallquist@clarkcountyda.com>
Subject: RE: Discovery: Hughes C370882

The disc of the BWC provided in August of 2022 will be at DA reception on Monday, unless you want to come get it right now.

From: Michael Allmon <Michael.Allmon@clarkcountyda.com>
Sent: Thursday, March 2, 2023 3:58 PM
To: Deanna Keane <Deanna.Keane@ClarkCountyNV.gov>


22CRH001040
HUGHES, ANDREA
SURVEILLANCE
VIDEOS
Incident: Illegal Shoo
Date of Incident: 06-25-
Time of Incident: 0008h
Location of Incident: 1608 St
D-R
Case Number: 22-11586
Recording Prepared By: Cortez
Date Prepared: 2-18-23
rth Las Vegas Police Department
DataStick Pro
C370882
ANDREA HUGHES
VIDEOS
COPY
16X
220625001115
CD-R
PHOTOS
NLVPD

EXHIBIT 3

Michael Allmon

From: Deanna Keane <Deanna.Keane@ClarkCountyNV.gov>
Sent: Tuesday, April 4, 2023 5:30 PM
To: Michael Allmon
Cc: Corey Hallquist; Mike Feliciano
Subject: Hughes Cellebrite
Attachments: SKM_C450i23040416470.pdf

CAUTION: This email originated from an **External Source**. Please **use caution** before opening attachments, clicking links, or responding to this email. **Do not sign-in with your DA account credentials.**

Hey Michael,

I have spent a lot of time going through the Cellebrite download. My IT spent about an hour yesterday going through the photos and we can't find that photo you plan to show of my guy with the gun. Also, I'm trying to figure out why the Apple IDs on the Cellebrite provided to me don't match the Cellebrite report I got. Upon further inspection, the phone type, Serial Number and IMEI don't match (report received in Disco attached and screenshot of Cellebrite from thumb drive below).

Is there any possibility I was given the wrong thumb drive with the wrong Cellebrite?
Or Am I missing something?

All Content | External Camera Media | Legacy

Extraction Summary

Extractions: 2



External Camera Media
Capture Images USB Camera
External Camera Media

Extraction start date/time
2/22/2023 12:45:44 PM(UTC-8)
Extraction end date/time
2/22/2023 12:47:14 PM(UTC-8)

Image Hashes

Hash data is available for this extraction.

Verify image hash

Case Information

Examiner name	B. Wheeler #2144
Case number	2301150000965
Organization	North Las Vegas Police Department

Device Info

Generate

Legacy

Advertising Id (IDFA) #1	4C52706B-1F3E-4646-8C4C-2B3A8EC4B8B0
Apple ID	haitibaby04@gmail.com
Apple ID	haiti24baby@icloud.com
Apple ID	ebkvroy@icloud.com
Apple ID	baby4haiti@icloud.com
Apple ID	hovaa_4bandit@icloud.com
Bluetooth device address	<string>04:4B:ED:59:FF:37</string>
Detected Phone Model	iPhone 6s
Device Name	Maine
iCloud account present	True
Model number	N71mAP
OS Version	15.5
Serial	C76QKNARGRYC
Unique ID	5e48fb94aade0af137d92864a71e39dd1ae69f62
Factory Reset	2020-04-22T05:42:06.000+00:00
IMEI	355428070432285
Last user ICCID	89011203000069526172

Network Interfaces

Bluetooth device address	04:4B:ED:59:FF:37

Phone Settings	
Message Retention Duration	365 Days
Location Services Enabled	True
Find my iPhone enabled	True
Tethering	
Last Hotspot Activity	4/27/2021 1:13:22 AM(UTC+0)
General	
Model number	N71mAP
IMEI	355428070432285
Serial	C76QKNARGRYC
Unique ID	5e48fb94aade0af137d92864a71e39dd1ae69f62
Apple ID	
1	haitibaby04@gmail.com
2	haiti24baby@icloud.com
3	ebkvroy@icloud.com
4	baby4haiti@icloud.com
5	hovaa_4bandit@icloud.com
iCloud account present	True
Advertising Id (IDFA) #1	4C52706B-1F3E-4646-8C4C-2B3A8EC4B8B0
Device Name	Maine
Factory Reset	2020-04-22T05:42:06.000+00:00
Bluetooth device address	<string>04:4B:ED:59:FF:37</string>
Last user ICCID	89011203000069526172
OS Version	15.5
Detected Phone Model	iPhone 6s
Physical SIM	
Last used MSISDN	7028090651
Last user ICCID	89011203000069526172
Sync Data	
Ringtone Size (bytes)	0
Ringtone Entries	0
Book Size (bytes)	4096
Book Entries	0
Storage capacity (Bytes)	57137233920
Storage available (Bytes)	18752004096
Network Interfaces	
Wi-Fi MAC address	04:4B:ED:59:FF:36

Deanna M. Keane, Esq.
Deputy Public Defender
309 S. Third St., Suite 226
Las Vegas, NV 89155
Ph: (702) 455-2541
Fax: (702) 384-1969

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Electronically Filed
04/10/2023 4:16 PM
CLERK OF THE COURT

ORDR

DARIN F. IMLAY, PUBLIC DEFENDER
NEVADA BAR NO. 5674
DEANNA KEANE, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 12045
PUBLIC DEFENDER'S OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. AUNDREA HUGHES, Defendant.	CASE NO. C-23-370882-1 DEPT. NO. II

ORDER DENYING MOTION TO DISMISS AND GRANTING DEFENDANT'S MOTION TO EXCLUDE CELLEBRITE DATA

THIS MATTER having come before the Court on April 10, 2023, and good cause appearing therefore,

IT IS HEREBY ORDERED that the Motion to Dismiss is DENIED for the reasons stated on the record by the Court at the April 10, 2023 hearing.

IT IS FURTHER ORDERED that the Motion to Exclude the Cellebrite data is GRANTED for the reasons stated on the record by the Court at the April 10, 2023 hearing.

DATED this 10th day of April, 2023.

Dated this 10th day of April, 2023

DISTRICT COURT JUDGE
D61 DAD BD53 374B
Carli Kierny
District Court Judge

Submitted by:
DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/ *Deanna Keane*
DEANNA KEANE, #12045
Deputy Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and forgoing COURT ORDER was served via electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountyda.com on this _____ day of April, 2023

By: /s/*Mariah Robinson*
An employee of the
Clark County Public Defender's Office

Case Name: Aundrea Hughes

Case No.: C-23-370882-1

Dept. No.: II

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada	CASE NO: C-23-370882-1
vs	DEPT. NO. Department 2
Aundrea Hughes	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 4/10/2023

Deanna Keane	Deanna.Keane@ClarkCountyNV.gov
Sunshine Casarez	sunshine.casarez@clarkcountynv.gov
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Dept2 Law Clerk	Dept02LC@clarkcountycourts.us
DC2 Law Clerk	dept02LC@clarkcountycourts.us
Mariah Robinson	Mariah.Robinson@clarkcountynv.gov
Deanna Keane, PD	DEANNA.KEANE@CLARKCOUNTYNV.GOV