

COMMISSION ON JUDICIAL SELECTION APPLICATION

EIGHTH JUDICIAL DISTRICT
DEPARTMENT VII

REVISED

10:59 am, Jan 18, 2023

By

Lindsey Moors



Personal Information

1.	Full Name	Lindsey Davis Moors
2.	Have you ever used or been known by any other legal name (including a maiden name)? If so, state name and reason for the name change and years used.	Lindsey Davis Joseph (My maiden name was used from 1983-2014 when I got married, when it changed to current name, and has remained that name since.)
3.	How long have you been a continuous resident of Nevada?	I have been a Nevada Resident since 2011. Although I lived in the State of California from September 2017 until January 2019, I was able to maintain my Nevada residency due to my husband's military status and the Serviceman's Civil Relief Act.
4.	City and county of residence	Las Vegas, Clark County
5.	Age	39

Employment History

6. Please start with your current employment or most recent employment, self-employment, and periods of unemployment for the last 20 years preceding the filing of this Application.

Current or Last Employer	Clark County District Attorney's Office
Phone	(702)671-2624
Physical Address & Website	200 Lewis Avenue, Las Vegas, NV 89101 https://www.clarkcountynv.gov/government/departments/district_attorney
Date(s) of Employment	01/2019 – current
Supervisor's Name and Title	Stacey Kollins, Chief Deputy District Attorney, Team Chief, Sexual Victim's Unit
Your Title	Chief Deputy District Attorney
Describe Your Key Duties	Prosecution of crimes in Clark County against children and victims of sexual abuse. Duties include preliminary hearings, jury trials, bench trials, filing of motions, argument on motions, sentencing, probation revocations, grand jury proceedings, legal research and writing, and extensive victim contact. I have further involvement with investigators, clerical staff, legal support staff, and law enforcement daily.
Reason for Leaving	This is my current job.

Previous Employer	Riverside County District Attorney's Office
Phone	(951)955-9369
Address & Website	3960 Orange Street, Riverside, CA 92501 https://rivcoda.org/

Date(s) of Employment	09/2017-01/2019
Supervisor's Name and Title	Jennifer Chang, Chief Deputy District Attorney
Your Title	Deputy District Attorney
Describe Your Key Duties	Duties include handling arraignments, felony settlement conferences, preliminary hearings, jury trials, trial readiness conferences, motion work, sentencing, plea negotiating, interviewing witnesses, working with law enforcement agencies and investigators, probation revocations, and legal research and writing.
Reason for Leaving	Returning to Clark County.

Previous Employer	Clark County District Attorney's Office
Phone	(702)671-2624
Address & Website	200 Lewis Avenue, Las Vegas, NV 89101 https://www.clarkcountynv.gov/government/departments/district_attorney
Date(s) of Employment	10/2011-08/2017
Supervisor's Name and Title	Eric Bauman, Chief Deputy District Attorney, Team Chief, Vehicular Crimes Unit
Your Title	Chief Deputy District Attorney
Describe Your Key Duties	Duties included; handling arraignment and District Court Calendars, conducting preliminary hearings, grand jury proceedings, 22 felony jury trials, countless non-jury bench trials, interviewing witnesses, working with law enforcement agencies and investigators, handling a search warrant phone, handling DUI causing substantial bodily harm or death phone, motion work, appellate arguments (two Nevada Supreme Court Arguments, one En Banc), probation revocation hearings, status checks, restitution hearings, legal research and writing, handling serious offender program for DUIs, handling media cases, practiced in front of non-lawyer Justices of the Peace, writs of habeas corpus, wire-tap cases, plea negotiating, and mentoring younger attorneys.
Reason for Leaving	My husband is a United States Air Force Pilot who was transferred to California.

Previous Employer	Tharpe & Howell, LLP
Phone	(702)858-1013
Address & Website	6897 W. Charleston Blvd, Las Vegas, NV 98117 https://tharpe-howell.com/ (no longer a Las Vegas location)
Date(s) of Employment	06/2011-10/2011
Supervisor's Name and Title	Byron Ames, Managing Partner
Your Title	Associate Attorney

Describe Your Key Duties	Duties included legal research and writing, evaluation of claims and client counseling in insurance defense, composing civil pleading documents, trial preparation, and all-around civil litigation work.
Reason for Leaving	To take a job at the Clark County District Attorney's Office.

- Unemployment period 03/2011-06/2011 waiting for Nevada Bar Results to Post.

Previous Employer	Klamath County District Attorney's Office
Phone	(541)883-5147
Address & Website	316 Main Street #1/2, Klamath Falls, OR 97601 https://www.klamathcounty.org/676/About-Us
Date(s) of Employment	08/2010-03/2011
Supervisor's Name and Title	Ed Caleb, District Attorney
Your Title	Deputy District Attorney
Describe Your Key Duties	General misdemeanor deputy district attorney practice to include motions, jury trials, civil commitments, legal research and writing and criminal court calendar work.
Reason for Leaving	To move to Las Vegas where my boyfriend (now husband) was stationed with the United States Air Force.

Previous Employer	Joseph Law Firm
Phone	(541)963-4901
Address & Website	901 Washington Ave, La Grande, OR 97850 https://www.josephlawfirm.net/
Date(s) of Employment	08/2009-08/2010
Supervisor's Name and Title	Steven Joseph, Firm Partner/Owner
Your Title	Law Clerk
Describe Your Key Duties	General legal practice in a small town. Helped with legal research and writing, complaint, motion, and general civil litigation pleadings while awaiting results from the Oregon Bar Exam.
Reason for Leaving	To take a Deputy District Attorney Position at the Klamath County District Attorney's Office after passing the Oregon Bar Exam.

Previous Employer	Spalding Laboratories
Phone	(805)481-6761
Address & Website	760 Printz Road, Arroyo Grande, CA 93420 https://spalding-labs.com/

Date(s) of Employment	01/2005-08/2009 (seasonally)
Supervisor's Name and Title	Tom Spalding, Owner
Your Title	Sales Associate
Describe Your Key Duties	On-line biological fly control sales. I worked this job seasonally starting in college and through law school and while I was taking my first bar exam.
Reason for Leaving	Passed the bar exam and was able to secure a full-time legal job.

Previous Employer	Oz Fitness
Phone	(541)741-2444
Address & Website	3000 Gateway Street, Springfield, OR 97477 (no longer in business, no website)
Date(s) of Employment	10/2008-03/2009
Supervisor's Name and Title	Chris Parazoo, Front Desk Manager
Your Title	Front Desk Attendant
Describe Your Key Duties	Traditional front desk duties of a health and fitness club.
Reason for Leaving	To begin my seasonal work with Spalding Laboratories.

Previous Employer	Yakima City Attorney's Office
Phone	(809)575-6033
Address & Website	200 South Third Street, Yakima, WA 98901 https://www.yakimawa.gov/services/city-attorney/
Date(s) of Employment	06/2008-09/2008
Supervisor's Name and Title	Cynthia Martinez, Chief City Attorney
Your Title	Rule 9 Legal Intern
Describe Your Key Duties	General certified law student duties to include arraignment, misdemeanor jury trials, legal research and writing, and numerous court appearances.
Reason for Leaving	To finish third year of law school.

Previous Employer	Annapurna Outdoor Shop
Phone	+61 8 8223 4633
Address & Website	210 Rundle St, Adelaide SA 5000, Australia https://www.annapurna.com.au/
Date(s) of Employment	07/2007-11/2007
Supervisor's Name and Title	N/A, Store Manager

Your Title	Sales Associate
Describe Your Key Duties	Sales associate in an outdoor store during a law school study abroad program in Australia.
Reason for Leaving	To return to the United States and Law School after a semester study abroad in Australia.

Previous Employer	Joseph Law Firm
Phone	(541)963-4901
Address & Website	901 Washington Ave, La Grande, OR 97850 https://www.josephlawfirm.net/
Date(s) of Employment	12/2005-08/2006
Supervisor's Name and Title	Steven Joseph, Firm Partner/Owner
Your Title	Legal Secretary
Describe Your Key Duties	Secretarial services for general legal practice in a small town. Helped with legal research and writing, complaint, motion, and general civil litigation pleadings.
Reason for Leaving	To start law school in Eugene, Oregon.

Previous Employer	A F Pony Farm
Phone	(979)282-8280
Address & Website	977 W. Business 59 R Highway, Pierce, TX 77467 (no website)
Date(s) of Employment	09/2005-11/2005
Supervisor's Name and Title	Steven Armour, Owner
Your Title	Horse Trainer/Polo Groom
Describe Your Key Duties	Took care of and trained string of polo ponies for a professional polo player and his patron on his horse ranch.
Reason for Leaving	To go home and get ready to start law school.

Previous Employer	4-B Welding & Repair Inc.
Phone	(775)397-8619
Address & Website	HC 31 Box 35, Elko, NV 89801 (no website)
Date(s) of Employment	06/2005-09/2005
Supervisor's Name and Title	Sandy Davis, Co-Owner
Your Title	Child Care/Horse Trainer
Describe Your Key Duties	Training young horses and babysitting two twin girls.
Reason for Leaving	To return home at conclusion of summer job.

Previous Employer	Card de A
Phone	(310)792-1355
Address & Website	265 Ave Del Norte, Redondo Beach, CA 90277 (no website)
Date(s) of Employment	09/2004-12/2004
Supervisor's Name and Title	Kevin Arai, Owner
Your Title	Sales Associate
Describe Your Key Duties	Sales associate at a gift store/card shop.
Reason for Leaving	To begin my seasonal work with Spalding Laboratories.

Previous Employer	Fitzgerald Flowers
Phone	(541)963-2126
Address & Website	1414 Adams Avenue, La Grande, OR 97850 https://www.fitzgeraldflowers.com/
Date(s) of Employment	05/2004-09/2004
Supervisor's Name and Title	Julie Bodfish, Owner
Your Title	Sales Associate
Describe Your Key Duties	Sales associate at a flower and gift shop.
Reason for Leaving	It was the end of a summer job.

Previous Employer	Dollar Rent-a-Car
Phone	(866)434-2226
Address & Website	Sacramento Airport, Sacramento, CA 95837 https://www.dollar.com/
Date(s) of Employment	09/2003-05/2004
Supervisor's Name and Title	N/A, N/A
Your Title	Sales Associate
Describe Your Key Duties	General rental car agent duties at the airport.
Reason for Leaving	Leaving school job to return home for the summer.

- Unemployment Period – 06/2003-09/2003 – I served as a Pendleton Roundup Princess for the 2003 Pendleton Roundup Rodeo and was unable to have a job due to our extensive summer travel schedule.

Previous Employer	Papa John's Pizza
Phone	(530)753-7888
Address & Website	662 G Street, Davis, CA 95618 https://www.papajohns.com/

Date(s) of Employment	9/2002-06/2003
Supervisor's Name and Title	N/A, N/A
Your Title	Delivery Driver
Describe Your Key Duties	Delivering pizzas.
Reason for Leaving	Returning home for summer after school job.

Educational Background

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.

La Grande High School
 708 K. Ave # 100
 La Grande, OR 97850
 1997-2001
 High School Diploma
 Graduated

Eastern Oregon University
 One University Blvd
 La Grande, OR 97850
 1999-2001
 No Degree Received
 Took college classes while in high school then stopped taking classes when I left for college.

Washington State University
 1500 Glenn Terrell Mall
 Pullman, WA 99163
 2001-2002
 No Degree Received
 Did one year at Washington State prior to Transferring to University of California at Davis for better educational opportunities.

University of California at Davis
 1 Shields Ave
 Davis, CA 95616
 2002-2005
 Bachelor of Arts – Philosophy
 Minor in Native American Studies
 Graduated.

8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.

In high school I was heavily involved with FFA (Future Farmers of America), FBLA (Future Business Leaders of America), Teen Court (a teen run court system of justice for minor offenders where teens are the attorneys etc.), Mock Trial, high school basketball, high school horse polo, 4-H showing horses, showing Steers and Hogs in FFA, STARS (Students Today Aren't Ready for Sex – an abstinence program sponsored by Oregon's First Lady at the time).

In college I was heavily involved with my college horse polo team where I made the All-West All Stars team all three years that we competed at the National Collegiate Polo Championships. Our polo team won the Western Regionals all three years I was playing at U.C. Davis. I was also involved with the running of the polo club as the Vice President. Additionally, I was involved with Mock trial, and the Sacramento Start program, an after-school program for at risk youth.

9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

University of Oregon School of Law
1515 Agate Street
Eugene, OR 97403
2006-2009
Juris Doctorate Awarded May 2009 – Criminal Law Certificate
Graduated
80/180 rank (approximate)

Study Abroad
University of Adelaide
Adelaide SA 5005, Australia
Fall Semester 2007
No Degree awarded
Did a semester study abroad in Australia while in Law School through a special program between the two universities that I had to be selected for that also had a GPA requirement.

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

I was employed part time during the entirety of law school, and full time during the summer of 2008. The following is where I was employed during law school.

Previous Employer: Spalding Laboratories

From: 01/2005 To: 08/2009 (seasonally)

Specific Duties: On-line biological fly control sales. I worked this job seasonably starting in college and through law school and while I was taking my first bar exam.

Previous Employer: Oz Fitness

From: 10/2008 To: 03/2009

Specific Duties: Traditional front desk duties of a health and fitness club.

Previous Employer: Yakima City Attorney's Office

From: 06/2008 To: 09/2008

Specific Duties: General certified law student duties to include arraignments, misdemeanor jury trials, legal research and writing, and numerous court appearances.

Previous Employer: Annapurna Outdoor Shop

From: 07/2007 To: 11/2007

Specific Duties: sale associate in an outdoor store during a study abroad in Australia.

11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, and extracurricular activities.

In law school I was involved with Moot Court, the Defense Clinic, and the Prosecution Clinic. In the Defense Clinic I was able to represent and defend indigent clients, specifically in numerous DUI cases. In the Prosecution Clinic I was able to successfully try my first jury trial with a guilty verdict for reckless endangerment. I was involved with a fundraising effort annually for victims of natural disasters through hosting and playing in a flag football game as well.

Law Practice

12. State the year you were admitted to the Nevada Bar.

2011

13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission.

2009 – California

2010 – Oregon

2017 - Washington

14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations.

No

15. Estimate what percentage of your work over the last five years has involved litigation matters, distinguishing between trial and appellate courts. For judges, answer questions 16-20 for the five years directly preceding your appointment or election to the bench.

80 % litigation matters, 20% resolution of cases prior to litigation matters. No significant portion of my practice has been related to appellate work.

16. Estimate percentage of time spent on:

Legal Discipline	Percentage of Practice
Domestic/family	0
Juvenile matters	0
Trial court civil	0
Appellate civil	0
Trial court criminal	95
Appellate criminal	5
Administrative litigation	0
Other: Please describe	0

17. In the past five years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials?

100% were set for jury trials unless they resolved prior to jury trial.

18. Give the approximate number of jury cases tried to a conclusion during the past five years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period.

10 jury trials.

Approximately 20 non-jury trials.

19. List courts and counties in any state where you have practiced in the past five years.

Clark County – Nevada.

Riverside County – California.

20. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), complete the following tables:

Case 1 RIF1702960
Case name and date: People of the State of California v. Jesus Esparza & Victor Mendez (November 2018)
Court and presiding judge and all counsel: Riverside Superior Court (unknown Judge and Defense Attorneys)
Importance of the case to you and the case's impact on you: This was a very serious violent carjacking case where the victim was taken at gun point, threatened with death, driven around to several ATMs in the area and ultimately left in a remote area. The case was solved by a Gang Detective in Los Angeles County recognizing one of the Defendants based on a photo from one of the ATMs that was released to the local media. This was the last case I tried in Riverside County prior to moving back to Las Vegas. After I secured the guilty convictions on both Defendants, I made sure that a sentencing memorandum was filed and followed up on the case to learn the results of sentencing. Defendants both received substantial sentences based on the severity of the crime and their prior criminal records.
Your role in the case: I was the solo prosecutor who handled all aspects of the case from preliminary hearing to jury trial and would have handled sentencing but for returning to Las Vegas prior to the scheduled sentencing date.

Case 2 C331026
Case name and date: State of Nevada v. Cristobal Benavides (April 29, 2019)
Court and presiding judge and all counsel: District Court 6 (Jacqueline Bluth) – Defense Counsel Special Public Defenders Daniel Page and Amy Coffee, co-counsel Chief Deputy District Attorney Jennifer Clemons
Importance of the case to you and the case's impact on you: While I had done several sexual assault trials relating to adult victims, this was my first child sexual assault case that led me to pursue my current position on the Special Victim's Unit team in the Clark County District Attorney's Office. We had a difficult case where the only evidence of guilt was the testimony of a very young child that was the result of a delayed disclosure. We were successful in gaining a conviction and trying the first case in front of newly appointed District Court Judge Jacqueline Bluth.
Your role in the case: I was second chair to Chief Deputy District Attorney Jennifer Clemons.

Case 3 C337017
Case name and date: State of Nevada v. Devohn Marks (July 8, 2019)
Court and presiding judge and all counsel: District Court 5 (Carolyn Ellsworth) – Defense Counsel Jess Matsuda, co-counsel Chief Deputy District Attorney Nicole Cannizarro
Importance of the case to you and the case’s impact on you: This was an 8-count robbery case involving multiple victims that were held at gunpoint at a local bar. The state was able to successfully use a co-conspirator as a cooperating witness at trial. During the trial there was extensive technical testimony with regards to cell phone towers and placements within the Las Vegas Valley, as well as the questioning of a co-conspirator. Several of the victims were quite elderly and unhealthy and had been badly injured. Defendant was found guilty on all counts and is currently serving a lengthy sentence in the Nevada Department of Corrections.
Your role in the case: I was lead counsel with Chief Deputy District Attorney Nicole Cannizarro.

Case 4 C333893
Case name and date: State of Nevada v. Shelbe Rivera (March 1, 2021)
Court and presiding judge and all counsel: District Court 12 (Michelle Leavitt) – Defense Counsel Jess Marchese, co-counsel Deputy District Attorney Ann Dunn
Importance of the case to you and the case’s impact on you: This was my first case tried during the COVID-19 pandemic and was conducted in one of the two COVID-19 equipped courtrooms. The logistics alone of putting this case on was quite a learning experience. I took a younger deputy on the case with me, and we were able to secure a second-degree murder but mentally ill conviction. It was also my first case of defending against the defense of not guilty by reason of insanity. Additionally, the preparation process was very intensive in securing our expert and utilizing his expert testimony effectively in our case in chief and in conjunction with cross examining the Defense’s expert.
Your role in the case: I was lead counsel along with Deputy District Attorney Ann Dunn.

Case 5 C336181
Case name and date: State of Nevada v. Eric Chu (August 9, 2021)
Court and presiding judge and all counsel: District Court 10 (Tierra Jones) – Defense Attorney Michael Sanft, co-counsel Chief Deputy District Attorney Michelle Jobe
Importance of the case to you and the case’s impact on you:

This was my first child homicide case. There was a lot of highly technical testimony from various medical providers to include remote testimony as it was also still during the COVID 19 pandemic. I was able to question several medical providers and learn extensive amounts about traumatic brain injury. We additionally had a co-defendant testify who I was able to question during our case in chief, the mother of the child, while the Defendant was the father. We were successful in securing a first-degree murder conviction.

Your role in the case:

I was second chair to Chief Deputy District Attorney Michelle Jobe.

21. Do you now serve, or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience.

No

22. Describe any pro bono or public interest work as an attorney.

I haven't had much opportunity to do pro-bono work, other than speaking at various high schools and fulfilling my duties on the Search and Seizure Board in the Clark County District Attorney's Office.

23. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

I am not currently involved with any bar associations other than maintaining my compliance with requirements in the four states in which I am barred. (Oregon, California, Nevada, and Washington)

24. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past five years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge?

In the past five years I have had the opportunity to attend many CLES.

I have attended the following: Legislative Updates 2019, Discrimination, Harassment & Bullying Awareness, Mindfulness for Attorneys, Introduction to the Hope for Prisoners Program, Sovereign Citizens: Updates & Current Trends in Clark County, Project Safe Neighborhood, Metro's Office of Community Engagement, Financial Forgery Labs, Wellness Workshop, LVMPD Financial Crimes, Nevada Dept. of Corrections Office of Inspector General, Compassion Fatigue, Overview of Community Court, Metro Forfeitures of Property Seized, TacticID Technology & Preliminary Field Tests of Controlled Substances, Clark County Post-Marijuana Legalization, How to Effectively Work with Metro's Forensic Lab, Bundy, Brady, & Blind Spots in Ethics, Child Abuse - Injuries, Mechanisms, & Defenses, Top 10 Things Defense Attorneys Wish We Understood, What You Need to Know About the Dept of Parole & Probation, Batson, Legislative Changes

Going Into Effect 7/1/20, 2021 Legislative Update, Facial Recognition - Update from LVMPD, APA Use of Experts in Child Sexual Abuse Cases, APA Medical Findings in Child Sex Abuse Cases - What Every Prosecutor Should Know, APA Prosecuting Child Sexual Abuse Cases with Limited Evidence, APA Corroborating Evidence Overview in Child Abuse Prosecutions, APA The Evolution of Child Pornography & The Child Pornography Offender, APA It Really Didn't Happen Recantations in Child Sexual Abuse Cases, APA Delayed Disclosures of Sexual Abuse Building the Case, APA The Process of Disclosure in Children, Multiple Co-Defendant Prosecutions, Implicit Bias, Implicit Bias Part II, New DDA Prosecutor Wellness, and many others.

25. Do you have Professional Liability Insurance, or do you work for a governmental agency?

I work for a governmental agency.

Business & Occupational Experience

26. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.

I have listed my previous work history for the past 20 years, which includes all jobs that I have had during that time. Most of those jobs were jobs on the way to becoming a lawyer and as such I have nothing further to provide here.

27. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? If so, please provide details as to:

No.

- a. the nature of the business – N/A
- b. the nature of your duties – N/A
- c. the extent of your involvement in the administration or management of the business – N/A
- d. the terms of your service – N/A
- e. the percentage of your ownership N/A

28. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership.

N/A

Civic Professional & Community Involvement

29. Have you ever held an elective or appointive public office in this or any other state?

No

Have you been a candidate for such an office?

Yes

If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

I applied for appointment to District Court IX in 2022 and was one of the two applicants that were forwarded to the Governor for consideration. Maria Gall was appointed to the position ultimately.

I ran in the general election for District Court XVII in 2022, however, was unsuccessful. Jennifer Schwartz won the general election over Adam Ganz and myself.

30. State significant activities in which you have taken part, giving dates and offices or leadership positions.

I would direct the committee's attention to question 32 below.

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

I have not had the privilege yet to teach at a Law School or provide lectures to bar associations or CLEs but would welcome the opportunity.

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

I would reference my previous reference to CLEs attended in the past five years with regards to education. As a prosecutor in Oregon, I was selected to attend the Prosecutors Boot Camp at the National Advocacy Center in South Carolina, the premier federal training institution for teaching legal and leadership skills.

While I am not in the military branch myself, I did apply for a position with the Air National Guard JAG (Judge Advocate General Corp) while I was a prosecutor in Oregon and had the privilege of being selected after a rigorous application process to include the physical portion required in the military. After careful consideration with my boyfriend, now husband, who is in the Air Force, I decided to decline the offer and pursue my career as a prosecutor as we were concerned with being stationed on the same base. I participate in other military functions along with my husband and his involvement as a Lieutenant Colonel in the United States Air Force.

Locally I have been involved with the Animal Foundation as a volunteer here in Nevada and the Animal Shelter in Riverside County. During my time in Las Vegas and California I have been an avid Mock Trial supporter to include helping coach teams, and judging Regional and State competitions at the high school, college, and law school level.

Within the District Attorney's Office, I am an acting member of our Union and on our board for

Search and Seizure. As a result of being on this board I have the benefit of helping educate law enforcement at all levels through conducting trainings. I am currently the Downtown area command District Attorney Contact to provide assistance and training when the need arises to this area command. I also handle one of the search warrant phones for the District Attorney's Office for several weeks out of the year, as all search warrants drafted by law enforcement in Clark County from the Las Vegas Metropolitan Police Department are run through the District Attorney's Office.

I also return annually to my hometown area of Pendleton, Oregon and volunteer my time with the Pendleton Roundup and Happy Canyon Night Pageant, an entirely volunteer run organization.

33. List honors, prizes, awards, or other forms of recognition.

Other than the honor I get from working a job that I love; I haven't really been in a position for prizes or awards in my chosen career.

34. Have you at any time in the last 12 months belonged to, or do you currently belong to, any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.

No

35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.

N/A

36. During the past ten years, have you been registered to vote?

Yes

Have you voted in the general elections held in those years?

Yes

37. List avocational interests and hobbies.

My husband and I are very active and enjoy being outside with our three dogs as much as possible. We even did an Iron Man in 2018 in Houston, Texas. During the winter we are avid snow skiers at Lee Canyon and other locations. During the summer we travel back to the pacific northwest to participate in polo tournaments and spend time with my extended family. We also enjoy wakeboarding on Lake Mead during the summer months. I have really taken to marathons in the past several years.

I qualified for and ran the Boston Marathon in 2021 and 2022. We enjoy the National Finals Rodeo held in Las Vegas annually and make as many country concerts as we can. We enjoy spending time with my husband's family in Albuquerque for the Balloon Fiesta annually in the fall. Additionally, when I was in college I served as a Pendleton Roundup Princess for my hometown rodeo and my family still has extensive involvement with this community-based event that we return for to help with every year.

Conduct

38. Have you read the Nevada Code of Judicial Conduct and are you able to comply if appointed?

Yes

39. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges, and dispositions.

No

40. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to the corresponding question in the confidential section.

No

41. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.

No

42. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.

No

43. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.

No

44. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?

No

45. Are you aware of anything that may require you to recuse or disqualify yourself from hearing a case if you are appointed to serve as a member of the judiciary? If so, please describe the circumstances where you may be required to recuse or disqualify yourself.

I would need to recuse myself from any case that I had involvement with while working for the District Attorney's Office.

Other

46. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result.

Commission for Appointment for District Court IX, May 2022. I was selected as one of the two finalists who were forwarded to the Governor for consideration for appointment. Ultimately, Maria Gall was appointed.

47. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what education, experience, personality or character traits you possess, or have acquired, that you feel qualify you as a supreme court justice. In so doing, address appellate, civil (including family law matters), and criminal processes (including criminal sentencing).

Please see attached.

48. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.

I believe my application and attached personal statement speak to my abilities to serve as a Judicial Officer. As the granddaughter of two World War II Veterans, civic service has been deeply instilled in my family from a young age. My father was on our local city council, school board, and board of trustees for the local college. Both my brother and I pursued degrees in law and both work in public interest law, him as a defense attorney, and myself as a prosecutor. I am pleased to also report that because of my over ten years of public service I have had my federal student loans forgiven.

49. Attach a sample of no more than ten pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past five years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.

Please see attached.

Personal Statement - “Miss Moors, why should this case be treated as a felony and not a misdemeanor.” Judge Diaz sat waiting in his chambers for my answer.

I had just began working at the Riverside County District Attorney’s Office in 2017. I was sitting in the Chambers of Judge Diaz, the judge who I was to regularly appear in front of. With me was my boss, and the defense attorney. Who could have possibly thought that such a simple question would lead to me ultimately leaving California to return to Las Vegas in less than 18 months? This simple question coupled with the idea of Justice that I was supposed to be seeking as a prosecutor leads me to explain further why I have found myself back in Clark County seeking to serve my community in another way, as a District Court Judge.

Merriam Webster defines Justice as “conformity to truth, fact, or reason.” Keeping this in mind, I need to explain the legal issue I was facing. In California, there is a category of crime referred to as a “wobbler.” We have a similar category of crime in Nevada. In Nevada, a “wobbler” is a crime that can be treated as a gross misdemeanor, or a felony. In California, a “wobbler” is a crime that can be treated as a misdemeanor, or a felony, as there are no gross misdemeanors in California.

In Nevada, the “wobbler” crime is usually used as a negotiating tool. Say for example, you have the crime of Battery with Substantial Bodily Harm. This felony is a C felony bearing a penalty range of one to five years in the Nevada Department of Corrections. If the prosecutor handling this case deems that justice would be served by an offer, they might offer a plea agreement. A common plea in this scenario would be for the defendant to plead guilty to an Attempted Battery with Substantial Bodily Harm. This crime is a “wobbler” and can either be treated as a D felony with it a penalty range of one to four years in the Nevada Department of Corrections, or it can be treated as a gross misdemeanor with a penalty range of up to 364 days in the Clark County Detention Center.

In California, the “wobbler” crime often comes into play not at the plea-bargaining stage, but at the pleading stage. When a district attorney is charging a case, there are certain crimes that qualify as “wobblers” and when charging that case, that district attorney is tasked with the choice of charging the

crime as a misdemeanor or as a felony. In California, a violation of Penal Code 69 is one such “wobbler.” Penal Code 69 defines the crime of Resisting a Public Officer and is the crime that brings me back to Judge Diaz’s question.

Prior to this meeting with the judge, I had been reviewing my cases and spoke with my immediate boss and inquired as to why we had charged a felony on this case. The facts of the resisting didn’t seem egregious to me, no weapon was used, and no threats were made toward an officer. These factors indicated to me that the case should have been charged as a misdemeanor or at least be resolved to a misdemeanor. Upon speaking with my boss, he informed me I should speak to his supervisor about the case.

I then went and spoke to my boss’s boss about my case. I explained to him the many reasons I believed that the interests of justice dictate that I should resolve this case to a misdemeanor, even argued it should have been charged as a misdemeanor. His response dictated the next year and a half of my life.

“Push for the felony anyways.”

I thought to myself, “Push for the felony anyways!?” How in the world could this man with close to 30 years of experience possibly have said this to me? For the first time, I began to feel that Riverside County was not the place for me. In the six years preceding this day, while at the Clark County District Attorney’s office, I had NEVER, I repeat, NEVER been asked by a superior to do something that I believed was unethical. And now we return to Judge Diaz’s chambers.

When asked why this case should be a felony, I knew that Judge Diaz was seeing in this case what I had seen, the fact that it should be a misdemeanor and not a felony. However, my office was pushing for a felony, and I was in the position of being asked by the Judge point blank why this case should be treated as a felony. I was and am very well aware of my duty of candor to the court, and accordingly, I gave the only answer I could.

“I don’t believe it should be treated as a felony, I believe it should be a misdemeanor, but I have been told by my superiors to push for the felony” I said.

Yes, I said that sentence in front of my boss.

Needless to say, I was not his favorite employee after that date, but it didn't matter. I wasn't going to compromise what I knew was right because I was "told to." So how does this story relate to what sets me apart from the other candidates? Well, it says it all, quite frankly. After this experience in Riverside County, I spent the next year finding a way to get my husband transferred back to Las Vegas as a United States Air Force pilot (no easy task, might I add), so that I could come back to an office where justice really is the primary goal. Where I was doing what is mandated of a prosecutor, seeking justice.

Since that time, my husband and I have been back in Las Vegas for over three years where I have had the privilege of seeking justice for one of our most vulnerable populations, our children, through prosecuting cases on the Sexual Victim's Unit. I know that the duty of a judge, the duty of a prosecutor, and the duty of a defense attorney, both in civil and criminal cases are different. In reviewing the Nevada Code of Judicial Conduct, I was drawn to the preamble, which states in pertinent part, "the judiciary plays a central role in preserving the principles of JUSTICE and the rule of law." There's that word again, JUSTICE.

I come from a family of lawyers. My father is a general defense attorney doing primarily family matters who has been practicing for nearly 50 years. My brother is the virtual equivalent of a public defender in a town too small to have a public defender's office. I am admitted to practice law in four states and have practiced law in all four of those states. Although my primary experiences come through criminal law, I have done over a year and a half working on family law and other general civil areas of the law. Justice: that's what makes me the best candidate. Justice caused my husband and I to leave a place where it was not being served. Justice is what has been instilled in my brother and I from my father at a very young age. My integrity is reinforced by the schooling and diverse areas of law I have been fortunate enough to practice in four states. I am the best candidate to ensure that District Court VII does its part in preserving the principles of justice and the rule of law as mandated by the Nevada Code of Judicial Conduct.

Writing Sample

POINTS AND AUTHORITIES

1. The Evidence Adduced at the Grand Jury was Sufficient to Sustain a Charge Against Defendant for Murder with Use of a Deadly Weapon

The evidence adduced at the grand jury was sufficient to sustain a charge against Defendant for murder with use of a deadly weapon and accordingly, this writ should be denied.

NRS reads in pertinent part:

Degrees of murder; penalties.

1. Murder of the first degree is murder which is:
 - (a) Perpetrated by means of poison, lying in wait or **torture**, or by any other kind of **willful, deliberate and premeditated killing**;
 - (b) Committed in the perpetration or attempted perpetration of sexual assault, kidnapping, arson, **robbery**, burglary, invasion of the home, sexual abuse of a child, sexual molestation of a child under the age of 14 years, child abuse or abuse of an older person or vulnerable person pursuant to NRS 200.5099;

Accordingly, the State must show through slight or marginal evidence at the grand jury that the Defendant murdered the victim through torture, during the act of a robbery and/or through any other willful, deliberate, and premeditated type killing.

Furthermore, the State must also show that a deadly weapon was used under NRS 193.165(1), which states that any person who uses a deadly weapon in the commission of a crime is subject to a sentence enhancement. An unarmed offender “uses” a deadly weapon in the commission of a crime and is therefore subject to an enhanced sentence under NRS 193.165 when “the unarmed offender is liable as a principal for the offense that is sought to be enhanced, another principal to the offense is armed with and uses a deadly weapon in the commission of the offense, and the unarmed offender had knowledge of the use of the deadly weapon.” *Brooks v. State*, 124 Nev.Adv.Op. 19, 180 P.3d 657, 661 (2008). So, in this case, regardless of if it was Defendant

Melendez-Varela or Defendant Lanza-Martinez that wielded the rock in this matter, they, along with Defendant Martinez-Aguilar are equally liable for the deadly weapon enhancement purpose.

Additionally, “‘Torture involves a calculated intent to inflict pain for revenge, extortion, persuasion or for any sadistic purpose’ and ‘intent to inflict pain beyond the killing itself.’” *Hernandez v. State*, 118 Nev. 513, 532-533, 50 P.3d 1100 (2002). The State may rely upon circumstantial evidence and the circumstances leading up to the killing to prove torture-murder. *See id.* at 532-33, at 1113. There is no requirement that the State proceed under a single theory of prosecution for murder. *Moore v. State*, 116 Nev. 302, 304, 997 P.2d 793, 794 (2000).

Additionally, *Byford v. State*, 116 Nev. 215, 994 P.2d 700 (2000) reads in pertinent part:

in maintaining that no evidence of torture exists here, Byford ignores the circumstances of the killing. Evidence indicated that Byford and Williams resented Wilkins because of perceived slights they had received from her. Thus revenge of a sort appears to have been their primary reason for shooting her. After shooting her in the back, Williams lied to Wilkins--who was under the influence of LSD--denying that he had shot her and telling her that he had only shot around her. When she realized she had been shot and asked why, he said because she was "a bitch" and then walked behind her and shot her again repeatedly. We conclude that the jury could have reasonably found that this behavior had a vengeful, sadistic purpose and was intended to inflict pain beyond the killing itself and therefore constituted torture.

Id. at 239-240. Clearly, in the instant case, we have a case with factual similarities to *Byford*.

Defendants in this case caused more pain than was necessary when victim was hit on the head with a rock by either Defendant Melendez-Varela (as stated by Defendant Martinez-Aguilar and Defendant Lanza-Martinez from observing him do so) or Defendant Lanza-Martinez (as stated by Defendant Melendez-Varela from observing him do so) and then drug into the water and ultimately held under the water by Defendant Melendez-Varela and Defendant Lanza-Martinez (as stated by all co-defendants).

Just as the jury found evidence of torture in *Byford*, a jury can decide whether victim Domingo Alva Gonzalez was killed for **revenge** based on how he was treated by Defendant

Martinez-Aguilar. Just as the jury found evidence of torture in *Byford*, a jury can decide whether victim Domingo Alva Gonzales was killed to extort and or persuade him to give his truck to Defendant Lanza-Martinez. When looking at whether a victim was tortured the courts have historically looked to the intent of the Defendant, and intent is the most basic and prominent jury question. Accordingly, because evidence was adduced at the grand jury that was sufficient to sustain a charge against the Defendant for murder with use of a deadly weapon, this writ should be denied.

2. The Evidence Adduced at the Grand Jury was Sufficient to Sustain a Charge Against Defendant for First Degree Kidnapping

The evidence adduced at the grand jury was sufficient to sustain a charge against Defendant for first degree kidnapping and accordingly, this writ should be denied. What occurred in this case meets the definition of first degree kidnapping as defined in NRS 200.310 (1), which provides:

A person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away a person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person for ransom, or reward, or for the purpose of committing . . . extortion or robbery upon or from the person, or for the purpose of killing the person or inflicting substantial bodily harm upon the person. . . is guilty of kidnapping in the first degree which is a category A felony.

Courts have not established a bright line rule as to when the crimes of robbery and other enumerated crimes above merge with the charge of first-degree kidnapping. Accordingly, application of the facts to the requirements of kidnapping and robbery and murder should be left to a jury. Whether the detention of the victim is incidental to the robbery and whether it increased the risk of harm to the victim are questions of fact to be determined by the trier of fact in all but the *clearest cases*. *Mendoza v. State*, 122 Nev. 267, 130 P.3d 176 (2006); *Pascua v. State*, 122 Nev. 1001, 145 P.3d 1031 (2006); *Sheriff v. Medberry*, 96 Nev. 202, 204, 606 P.2d 181, 182 (1980) (emphasis added).

In this case, the victim Domingo Alva Gonzalez was inveigled or persuaded to do something by means of flattery or deception by all three co-defendants when they proceeded to get

the victim drunk and drive him to a remote location. Knowing that Defendant Lanza-Martinez indicated that all three of the co-defendants had discussed the killing of the victim prior to this event occurring. Defendant Melendez-Varela even went to so far as to pay for the case of beer to inveigle the victim to this remote location where he was ultimately murdered and robbed. Accordingly, because evidence was adduced at the grand jury that was sufficient to sustain a charge against the Defendant for first degree kidnapping, this writ should be denied.

3. The Evidence Adduced at the Grand Jury was Sufficient to Sustain a Charge Against Defendant for Robbery

The evidence adduced at the grand jury was sufficient to sustain a charge against Defendant for robbery, accordingly this writ should be denied. Robbery is a general intent crime which is meant to include all violent takings from the person or presence of another. *Litteral v. State*, 97 Nev. 503, 634 P.2d 1226 (1981), *overruled*, *Talancon v. State*, 102 Nev. 294, 721 P.2d 764 (1986), *overruled in part*, *Barton v. State*, 117 Nev. 686, 30 P.3d 1103 (2001); *Hickson v. State*, 98 Nev. 78, 640 P.2d 921 (1982). Defense claims that “Detective Mogg testified that Joselin told him she ended up with the deceased’s television and some of his clothing.” (Defendant’s Pre-Trial Petition for Writ of Habeas Corpus, hereinafter referred to as “PTPWHC;” page 21 lines 2-4).

However, all three co-defendants lived together at the time they were arrested and coincidentally were all in constructive possession of all the victim’s items as well as the victim’s truck. Furthermore, we know that all three co-defendants were aware that the murder and robbery of the victim was going to take place, and all actively participated to effectuate that goal. We know through all co-defendant’s firsthand accounts that Defendant Melendez-Varela helped to ultimately drown the victim and left in the victim’s truck that was taken from the victim on that evening. Accordingly, because evidence was adduced at the grand jury that was sufficient to sustain a charge against the Defendant for robbery, this writ should be denied.

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4. The Evidence Adduced at the Grand Jury was Sufficient to Sustain a Charge Against Defendant for Conspiracy to Commit Murder, Conspiracy to Commit Kidnapping, Conspiracy to Commit Robbery, and Conspiracy to commit Burglary

The evidence adduced at the grand jury was sufficient to sustain a charge against Defendant for conspiracy to commit murder, conspiracy to commit kidnapping, conspiracy to commit robbery, and conspiracy to commit burglary and accordingly, this writ should be denied. Conspiracy is an agreement between two or more persons for an unlawful purpose. *Peterson v. Sheriff*, 95 Nev. 522, 598 P.2d 623 (1979). Conspiracy is rarely supported by direct proof and is instead usually established by inference from the conduct of the parties. *Gaitor v. State*, 106 Nev. 785, 790 n. 1, 801 P.2d 1372, 1376 n. 1 (1990). In particular, a conspiracy conviction may be supported by “a coordinated series of acts,” in furtherance of the underlying offense, “sufficient to infer the existence of an agreement.” *Id.* An agreement between the parties may also be inferred by their conduct before, during, and after the crime. *Thomas v. State*, 114 Nev. 1127, 1143-44, 967 P.2d 1111, 1123 (1998).

In this case we know that all parties were apprised of the impending murder and robbery of the victim several weeks prior to the actual murder. Defendant Lanza-Martinez said that he, Defendant Martinez-Aguilar, and her cousin Defendant Melendez-Varela discussed killing the victim a couple days prior to doing so. GJT 55. This discussion resulted in all three parties tricking the victim to going to several areas (kidnapping), and ultimately robbing the victim of his truck.

Later we know that all three parties went to victim’s home where Defendant Melendez-Varela and Defendant Lanza-Martinez did burglarize the victim while Defendant Martinez-Aguilar waited in the getaway car. This was confirmed by the decedent’s former roommate Javier Vasquez-Valencia’s testimony. Furthermore, several items of the victim and the victim’s truck were located at the home that all three co-defendants’ shared and had access to. Accordingly, because evidence was adduced at the grand jury that was sufficient to sustain a charge against the

Defendant for conspiracy to commit murder, conspiracy to commit kidnapping, conspiracy to commit robbery and conspiracy to commit burglary this writ should be denied.

B. THE INDICTMENT OF DEFENDANT SHOULD NOT BE DISMISSED BECAUSE THE GRAND JURY DID NOT IMPROPERLY CONSIDER HEARSAY STATEMENTS OF DEFENDANT'S CO-DEFENDANTS

The indictment should not be dismissed because the grand jury properly considered hearsay statements of defendant's co-defendants. As Defense indicates, generally, an out of court statement offered to prove the truth of the matter asserted is inadmissible hearsay. NRS 51.035. However, if offered against a party, a statement made by a co-conspirator of a party during the course and in furtherance of a conspiracy is not hearsay. NRS 51.035(3)(e).

Hearsay statements may be admitted into evidence, where the statement is made by a co-conspirator of a party during the course and in furtherance of the conspiracy. The amount of independent evidence necessary to prove the existence of a conspiracy may be slight, and it is enough that only prima facie evidence of the fact is produced. *Fish v. State*, 92 Nev. 272, 549 P.2d 338 (1976); *Peterson v. Sheriff, Clark County*, 95 Nev. 522, 598 P.2d 623 (1979); *Carr v. State*, 96 Nev. 238, 607 P.2d 114 (1980).

1. The Evidence Adduced at the Grand Jury was Sufficient to Prove, for Purposes of Admitting Hearsay Statements of Co-Conspirators, that a Conspiracy Existed and that Defendant Participated in a Conspiracy

Evidence adduced at the Grand Jury was sufficient to prove for purposes of admitting hearsay statements of co-conspirators that a conspiracy existed, and that Defendant participated in a conspiracy. Defendant Lanza-Martinez said that he, Defendant Martinez-Aguilar, and her cousin Defendant Melendez-Varela discussed killing the victim a couple days prior to doing so. GJT 55. These discussions were made during the course of the conspiracy and clearly in furtherance of said conspiracy.

Additionally, the grand jury was more than instructed on the law with regards to hearsay and conspiracy. The grand jury was instructed specifically that:

Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if the act or the declaration is in furtherance of the object of the conspiracy.

The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators. Every conspirator is legally responsible for a specific intent crime of a co-conspirator so long as the specific intent crime was intended by the Defendant. A conspirator is also legally responsible for a general intent crime that follows as one of the probable and natural consequence of the object of the conspiracy even if it was not intended as part of the original plan and even if he was not present at the time of the commission of such act.

First Degree Kidnapping, Burglary, and First Degree Murder are specific intent crimes. Robbery is a general intent crime.

Any evidence of a statement made by one alleged conspirator shall not be considered by you as evidence against another alleged conspirator. It is your duty to give separate, personal consideration to the case of each individual defendant. When you do so, you should analyze what the evidence shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely against some other defendant or defendants. Each defendant is entitled to have his case determined from his own acts and statements and the other evidence in the case which may be applicable to him.

A copy of grand jury exhibit 2 that was provided to all members of the grand jury contained all the relevant instructions in written form. Should the court like to view these instructions, a court order can be granted to unseal these exhibits so that the court can see how well members of the Grand Jury were instructed on this area of law.

As this Court is fully aware, it is presumed that the Grand Jurors followed the instructions given to them. “A jury is presumed to follow its instructions.” *Weeks v. Angelone*, 528 U.S. 225, 234 (2000) (citing *Richardson v. Marsh*, 481 U.S. 200, 211(1987)). Furthermore, the United States Supreme Court has held “[w]e normally presume that a jury will follow an instruction to disregard inadmissible evidence presented to it, unless there is an “overwhelming probability” that the jury will be unable to follow the court's instructions.” *Richardson v. Marsh*, 481 U.S. 200, 208 (1987). There is no argument or indication that there was an overwhelming probability that this jury did

not follow the instructions given to them. Accordingly, as evidence was adduced that a conspiracy existed and that Defendant participated in said conspiracy, this writ should be denied in its entirety.

2. The Evidence Adduced at the Grand Jury was Sufficient to Prove the Existence of a Conspiracy in which the Defendant participated and was Sufficient to Prove that Said Statements were made During the Course of a Conspiracy and in Furtherance of a Conspiracy

Evidence adduced proved the existence of a conspiracy in which the Defendant participated in and that statements were made during the course of the conspiracy and in furtherance of said conspiracy. Pursuant to NRS 51.035(3)(e), in determining the admissibility of the extra-judicial statements of co-conspirator, it is necessary that the co-conspirator who uttered the statement be a member of the conspiracy at the time the statement was made; it does not require the co-conspirator against whom the statement is offered to have been a member at the time the statement was made. *McDowell v. State*, 103 Nev. 527, 746 P.2d 149 (1987).

Defense states that “Joselin’s purported statements to police admitting that she assisted Esdras in his plan to kill the deceased, did not further any alleged conspiracy. Likewise, the statements attributed by the police to Esdras in his statement to them furthered no conspiratorial purpose. How could confessing a crime further a goal of a criminal conspiracy? Unless of course the goal of the conspiracy is to get caught and charged, which is not criminal in nature. If there ever was a conspiracy it was long over by the time Joselin and Esdras were making their statements to police.” (PTPWHC; page 26, lines 14-22)

However, Defense fails to point out that Defendant Lanza-Martinez said that he, Defendant Martinez-Aguilar, and her cousin Defendant Melendez-Varela discussed killing the victim a couple days prior to doing so. GJT 55. These discussions were made during the course of the conspiracy and clearly in furtherance of said conspiracy. The grand jury was more than instructed on their ability to only judge each confession with regards to each co-defendant and nothing more, but the confessions were not all the discussions that were made by defendants. Statements made while in the conspiracy and in furtherance of the conspiracy can be, and were, considered by the grand jury in this matter. Accordingly, as evidence was provided that proved the existence of a

conspiracy in which the Defendant participated in and that statements were made during the course of the conspiracy and in furtherance of said conspiracy, the instant writ should be denied.

3. The State Properly Instructed the Grand Jury on the Applicable Law Regarding the Admissibility of Hearsay Statements Against Co-Conspirators

The State properly instructed the grand jury on the applicable law with regards to admissibility of hearsay statements against co-conspirators. As stated above, the grand jury was more than instructed on the applicable law regarding hearsay statements against co-conspirators. In addition to the instructions mentioned above, an entire exhibit of jury instructions was provided to all members of the grand jury. This is in addition to the general instruction book that the members of the grand jury are well aware of and acquainted with. Accordingly, the State properly instructed the grand jury on the applicable law with regards to admissibility of hearsay statements against co-conspirators.

C. INCLUDING THE BURGLARY CHARGE, ALL OTHER CHARGES AGAINST THE DEFENDANT MUST NOT BE DISMISSED AS THEY WERE NOT BASED ON UNCORROBORATED TESTIMONY OF ALLEGED ACCOMPLICES

Including the burglary charge, all other charges against the Defendant must not be dismissed as they were not based on uncorroborated testimony of alleged accomplices. In general, Nevada does not distinguish between an aider and abettor of a crime and an actual perpetrator of a crime; both are equally culpable under the law. *Sharma v. State*, 118 Nev. 648, 652, 56 P.3d 868, 870 (2002). However, to proceed under an “aiding and abetting theory,” the State must prove that a defendant had the requisite intent to aid his cohort in the commission of the charged crime. *Id.*; *Bolden v. State*, 121 Nev. 908, 124 P.3d 191 (2005). A defendant’s conduct before, during and after the crime are also circumstances from which the jury may infer his participation in the criminal act. *Robertson v. Sheriff*, 85 Nev. 681, 683, 462 P.2d 528, 529 (1969). Furthermore, corroborating evidence must independently connect the Defendant with the offense, in addition to

testimony from the accomplice himself. *Heglemeier v. State*, 111 Nev. 1244, 1250, 903 P.2d 799, 803 (1995).

In the instant case, Defendant Melendez-Varela indicated that Defendant Lanza-Martinez hit the victim over the head with a rock and then called for help of Defendant Melendez-Varela. He further indicated that they both held the victim down under the water until he stopped moving and had drown. We also have a body that matches the location this crime occurred at and has injuries like what Defendant Melendez-Varela indicated the victim would have, and accordingly, any statements that were used are not uncorroborated. The victim's car was later found in front of the home that all three co-defendants shared, and the victim's items were found within that home that was accessible to all co-defendants. Accordingly, as all charges were not based on uncorroborated testimony of alleged accomplices, the charges must not be dismissed.

III. CONCLUSION

Because the State did prove through slight or marginal evidence that the Defendant was the perpetrator of the instant crimes, the State respectfully requests that this Honorable Court DENY Defendant's Petition and discharge the Writ in its entirety.