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SPARKS MUNICIPAL COURT
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IN THE MUNICIPAL COURT OF THE CITY OF SPARKS
COUNTY OF WASHOE, STATE OF NEVADA

CITY OF SPARKS,

Plaintiff,

vs.

Case No. 10C002343

[REDACTED],
Defendant

REQUEST FOR SPEEDY TRIAL

The defendant in the above-captioned action hereby requests that this court immediately schedule for trial the city's complaint of December 18, 2010.

The defendant expressly asserts his right to a speedy trial and declines to waive said right.

[REDACTED]

[REDACTED]

[REDACTED]

Sparks, Nevada [REDACTED]

[REDACTED]

FILED
SPARKS MUNICIPAL COURT

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CLERK

1 [REDACTED]
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3 SPARKS, NEVADA [REDACTED]
4 [REDACTED]
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6 **IN THE MUNICIPAL COURT OF THE CITY OF SPARKS**
7 **COUNTY OF WASHOE, STATE OF NEVADA**

8
9 CITY OF SPARKS,

10 Plaintiff,

11 vs.

Case No. 10C002343

12 [REDACTED],
13 Defendant

14
15 **MOTION TO COMPEL DISCOVERY**

16 The defendant in the above-captioned action hereby moves this court to order
17 the plaintiff to disclose all evidence required by statute and case law, including specific
18 items of exculpatory evidence seized by the city.

19 **I. Points and Authorities**

20 **N.R.S. 174.235** directs the prosecuting attorney to disclose certain evidence upon
21 request of the defendant and excepts from its purview exculpatory evidence, which
22 must be disclosed according to constitutional case law. "The provisions of this section
23 are not intended to affect any obligation placed upon the prosecuting attorney by the
24 Constitution of this state or the Constitution of the United States to disclose exculpatory
25 evidence to the defendant."

26 **Brady v. Maryland** states "[T]he suppression by the prosecution of evidence
27 favorable to an accused upon request violates due process where the evidence is
28 material either to guilt or to punishment, irrespective of the good faith or bad faith of
the prosecution." **373 U.S. 83 (1963)**. "Brady and its progeny require a prosecutor to

1 disclose evidence favorable to the defense when that evidence is material either to guilt
2 or to punishment." State v. Huebler, 275 P.3d 91 (2012). "We recognize that the same
3 piece of evidence may be characterized as both exculpatory and impeachment
4 evidence." Id.

5 "Exculpatory evidence" is defined as "[e]vidence tending to establish a criminal
6 defendant's innocence." Black's Law Dictionary 637 (9th ed. 2009). "Impeachment
7 evidence" is defined as "[e]vidence used to undermine a witness's credibility." Id.

8 On August 24, 2012 the defendant requested from the city discovery including
9 specific items of exculpatory evidence seized by the city. (See Exhibit 1.) The city
10 replied with partial discovery on August 29, 2012 and said it "represents the entirety of
11 the discovery" in a cover letter. (See Exhibit 2.)

12 The city failed to provide "reports of [...] scientific tests or scientific experiments
13 made in connection with the particular case" as required by N.R.S. 174.235(1)(b). Other
14 documents provided by the city indicate blood was seized from the defendant and
15 submitted to the Washoe County Sheriff's Office Forensic Science Division as a
16 "Specimen for Toxicological Analysis," requesting "BAC/DRUG SCREEN" tests. These
17 tests results are not only required to be discovered by statute, but also by case law.

18 The city failed to provide "written or recorded statements made by a witness the
19 prosecuting attorney intends to call" as required by N.R.S. 174.235(1)(a). An inventory
20 report of the defendant's vehicle made by complainant Richard Gamwell is known by
21 the defendant to exist . The city has not yet disclosed its list of witnesses but one can
22 reasonably assume Gamwell will be a witness because he is the complainant, because
23 he was issued subpoenas to appear for the previous trial of this case, and because in
24 motions heard by this court the city described him as "directly involved with this
25 incident" and "directly involved with the incident."

26 The city failed to provide "Written or recorded statements or confessions made
27 by the defendant" as required by N.R.S. 174.235(1)(a). The undisclosed recorded
28

1 statements are hand-written notes within a spiral bound notebook and audio and video
2 digitally recorded to a video camera's memory card.

3 Witness testimony and a photograph exhibit from the trial of June 4, 2012
4 established as fact the defendant possessed a spiral bound notebook when he was
5 seized. Witness testimony and the city's audio-video exhibit from said trial established
6 the defendant desired and attempted to take his notebook with him when he was
7 coerced from his vehicle.

8 The aforementioned vehicle inventory report will list a video camera seized by
9 the city. The city has not provided discovery of the audio-video recording from this
10 camera, as required by N.R.S. 174.235(1)(a) and case law.

11 The hand-written notes and the audio-video recording are both exculpatory
12 evidence and will both serve as evidence to impeach the city's witnesses. The
13 toxicological report and inventory report are impeachment evidence.

14 II. No Rights are Waived

15 The filing of this motion shall not be construed as a waiver of the defendant's
16 right to a speedy trial of the new trial ordered August 20, 2012 by the Second Judicial
17 District Court of Nevada.

18
19 [REDACTED]

20
21 [REDACTED]

22 [REDACTED]

23
24 Sparks, Nevada [REDACTED]

25 [REDACTED]

Index of Exhibits

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Exhibit 1 Defendant's Request for Discovery, 1 page
Exhibit 2 Plaintiff's Reply to Discovery Request, 1 page

Exhibit 1

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Exhibit 1

August 24, 2012

Chester H. Adams
City Attorney
P.O. Box 857
Sparks, NV 89432-0857

Re: City of Sparks v. [REDACTED], #10-12603 (10C002343)

Dear Mr. Adams:

I hereby request discovery for the above case remanded to the Sparks Municipal Court from the Second Judicial District Court on August 20.

NRS 174.235 requires disclosure of written or recorded statements made by the defendant, and Brady and its progeny case law require disclosure of exculpatory evidence.

Please disclose the items of exculpatory evidence seized from me on December 18, 2010 which your office failed to disclose to defense counsel prior to the June 4, 2012 trial. These items are:

- spiral-bound notebook with loose papers
- Oregon Scientific video camera with SD memory card

The city's witness Brett Bindley, under oath, identified the notebook and papers in my possession while I was seized. The complainant, Richard Gamwell, inventoried the Oregon Scientific video camera from my seized vehicle.

Respectfully, [REDACTED]

Exhibit 2

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Exhibit 2



CHET ADAMS
CITY ATTORNEY

August 29, 2012

[REDACTED]
Sparks, NV [REDACTED]

Re: 10-12603

Dear [REDACTED],

Enclosed is a copy of the police report and a copy of the recording the City obtained from Youtube.com in the above case. This represents the entirety of the discovery on your case at this point. If you have any questions or concerns, please feel free to call our office.

Sincerely,

Erik Aaquist
Secretary

1 **CERTIFICATE OF MAILING**

2 I hereby certify that on the 5th day of September, 2012, I deposited for mailing in
3 the United States mail, a true and correct copy of the foregoing MOTION TO COMPEL
4 DISCOVERY in a sealed envelope, to the following:

5
6 Sparks City Attorney
7 Criminal Division
8 P.O. Box 857
9 Sparks, NV 89432-0857



10
11 Sparks, NV [redacted]

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FILED
SPARKS MUNICIPAL COURT

2012 SEP -5 PM 5:42

BY _____
CLERK

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6 **IN THE MUNICIPAL COURT OF THE CITY OF SPARKS**
7 **COUNTY OF WASHOE, STATE OF NEVADA**

8
9 CITY OF SPARKS,
10 Plaintiff,

11 vs.

Case No. 10C002343

12
13 Defendant

14
15 **MOTION TO DISMISS COMPLAINT**

16 The defendant in the above-captioned action hereby moves this court to dismiss
17 the city's complaint of December 18, 2010 and order the city to return to the defendant
18 all of his property seized on that date.

19 **I. Points and Authorities**

20 **A. The Defendant Was Denied a Speedy Trial**

21 This court scheduled a trial date of March 24, 2011, eighty-four days after the
22 defendant's arraignment of December 30, 2010. Nevada's statutory implementation of
23 the Sixth Amendment's guarantee of a speedy trial, N.R.S. 178.556, provides that, "If a
24 defendant whose trial has not been postponed upon the defendant's application is not
25 brought to trial within 60 days after the arraignment on the complaint for an offense
26 triable in a Justice or municipal Court, the court may dismiss the complaint."

27 The record shows the defendant did not file a motion to continue or otherwise
28 apply to postpone the trial prior to February 28, 2011, the sixty day statutory deadline.
The trial did not occur on or before the sixty day statutory deadline of February 28,

1 2011. The record shows no motions from the plaintiff until the city moved to continue
2 on March 8, 2011, after the statutory deadline.

3 Case law removes this court's discretion whether to dismiss and requires
4 dismissal of the city's complaint. "A dismissal is mandatory only if the State cannot
5 show good cause for the delay. Meegan v. State, 114 Nev. 1150, 1154, 968 P.2d 292, 294
6 (1998), quoting Anderson v. State, 86 Nev. 829, 834, 477 P.2d 595, 598 (1970).

7 The defendant attempted to assert his right to a speedy trial by filing a pleading
8 but the clerk of the court refused to file because the defendant was supposedly
9 represented by court-appointed counsel. However, in this court's ORDER
10 APPOINTING COUNSEL of December 30, 2010, the defendant is ordered to contact the
11 court-appointed attorney "AFTER February 21, 2011 [emphasis in original]." A
12 reasonable person not wishing to to be found in contempt would interpret that as an
13 order to not contact the attorney before that date. The defendant was effectively without
14 counsel during the intervening time period and barred by the court from acting on his
15 own behalf to assert his right to a speedy trial.

16 On December 1, 2011, this court issued an order granting a motion by attorney
17 Daniel McCormick and re-scheduled the trial. McCormick's motion form dated
18 November 30, 2011 did not move the court to continue the trial and in fact did not
19 specify the relief sought. The motion form includes an unsigned designation to
20 represent in the name of the defendant. There is no record of substitution of court-
21 appointed attorney David Spitzer by McCormick. Only Spitzer is named in this court's
22 December 30, 2010 ORDER APPOINTING COUNSEL. The defendant has never
23 communicated with McCormick and was not aware of his pleading until the defendant
24 obtained the court record on appeal. This court delayed the trial based on a defective
25 pleading from an attorney who did not represent the defendant.

26 The city's motions to continue were made in bad faith for the purpose of delay.
27 On March 8, 2011, the city sought to continue the trial "because Officer Atkins, one of
28 the primary officers on this case, will be out of town." On October 24, 2011, the city

1 sought to continue "because Officer Atkins, the primary officer on the case, will be out
2 of town." On March 13, 2012 the city sought to continue "because Officers Gamwell and
3 Atkins, two officers who were directly involved with this incident, will be out of town."
4 On April 11, 2012, the city sought to continue "because Officer Gamwell, an officer
5 directly involved with the incident, will be out of town." This court granted the city's
6 continuances except the last, which was opposed by the defendant's newly-retained
7 counsel. At all times the city had the power to compel the attendance of witnesses.

8 The city called neither Atkins nor Gamwell as a witness in the June 4, 2012 trial.
9 The city had no intention of calling witnesses whose criminal behavior and gross
10 misconduct would be exposed to the court during cross examination. The city used
11 them as excuses to delay the trial while trying to obtain a waiver of liability from the
12 defense.

13 **B. The Charging Instrument is Inadequate**

14 The complaint fails to state facts constituting a public offense, which is grounds
15 for dismissal under **N.R.S. 189.007**.

16 The city's complaint merely recites some language from **S.M.C. 9.03.020**, alleging
17 the defendant "did willfully hinder, delay or obstruct a public officer in the discharge of
18 his official powers or duties" but does not state facts essential to **S.M.C. 9.03.020**. "The
19 complaint is a written statement of the essential facts constituting the public offense
20 charged." **N.R.S. 171.102**. The city's complaint does not identify any public officer, by
21 name or office, and does not identify any supposed powers or duties being discharged.
22 The complaint does not factually state an actual instance of obstructing a particular
23 person or animal but instead offers a vague allegation that the defendant "did willfully
24 hinder, delay or obstruct [...] all of which are in violation" without offering specific
25 facts. The complaint fails to state which of these three elements was present.

26 **S.M.C. 9.03.020(A)** lists seven instances of obstructive actions, none of which are
27 alleged as facts in the complaint. Subsection (B) lists four non-exclusive examples of
28 obstructing by physical interference, none of which are alleged as facts in the complaint.

1 Subsection (C) states it is unlawful to "harm, injure or interfere with a police dog or
2 horse [...] to the extent that such conduct hinders delays or obstructs." Subsection (C) is
3 the only part of S.M.C. 9.03.020 that aligns with the "hinder, delay or obstruct"
4 language of the complaint, which does not specify whether a dog or a horse was
5 obstructed and does not specify whether the animal was harmed, injured, or interfered
6 with.

7 By failing to state facts constituting a public offense, the charging instrument fails
8 to provide adequate notice of the offense or offenses charged, thus depriving the
9 defendant of his due process rights. The "charging document must give adequate notice
10 to the defendant of the theories of prosecution." Koza v. State, 104 Nev. 262, 756 P.2d
11 1184 (1988).

12 II. No Rights are Waived

13 The filing of this motion shall not be construed as a waiver of the defendant's
14 right to a speedy trial of the new trial ordered August 20, 2012 by the Second Judicial
15 District Court of Nevada.

16
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18 

19
20 

21 

22 Sparks, Nevada 

23 

CERTIFICATE OF MAILING

I hereby certify that on the 5th day of September, 2012, I deposited for mailing in the United States mail, a true and correct copy of the foregoing MOTION TO DISMISS COMPLAINT in a sealed envelope, to the following:

Sparks City Attorney
Criminal Division
P.O. Box 857
Sparks, NV 89432-0857

[REDACTED]

[REDACTED]
Sparks, NV [REDACTED]

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CHET ADAMS
CITY ATTORNEY

September 06, 2012

[REDACTED]
Sparks, NV [REDACTED]

Re: Supplemental Discovery

Dear [REDACTED],

Enclosed are copies of the blood test results and a copy of the vehicle inventory form in your case. If you have any questions or concerns, please feel free to call our office.

Sincerely,

Erik Aaquist
Secretary

*City Hall: 431 Prater Way : P.O. Box 857 : Sparks, Nevada 89432-0857
Criminal: (775) 353-2320 FAX (775) 353-1617 :: Civil: (775) 353-2324 FAX (775) 353-1688*

WASHOE COUNTY SHERIFF'S OFFICE
MICHAEL HALEY, SHERIFF
FORENSIC SCIENCE DIVISION
911 PARR BLVD., RENO, NV 89512
(775) 328-2800

LABORATORY NUMBER: L6071-10-0
CONTROL NUMBER: T033823
SUBJECT: [REDACTED]
AGENCY: SPARKS P.D.
AGENCY CASE #: 10-12603
OFFICER: GAMWELL
COLLECTION DATE: 12/18/2010
COLLECTION TIME: 22:00

I, **Rachelle Spear**, hereby declare,

That I am employed as a Criminalist by the Washoe County Sheriff's Office Forensic Science Division;

That my professional and academic training and experience have qualified me to perform analyses so as to detect the presence and amount of alcohol in the blood or urine of a person;

That I have qualified as an expert witness in this field in a court of record in the Second Judicial District of the State of Nevada;

That on 12/20/2010 the Forensic Science Division received a sealed container with a sample bearing the name and/or identification listed above and that the evidence contained a **WHOLE BLOOD** specimen which was assigned the specimen ID: S201008580;

That on 12/21/2010 the analysis of the evidence was completed and I determined that the specimen contained:

Ethanol None Detected

That such specimen was returned to locked evidence storage and remains in the custody of the Toxicology Section of said Forensic Science Division.

I declare under penalty of perjury that the foregoing is true and correct.



Rachelle Spear, Criminalist



Executed on

WASHOE COUNTY SHERIFF'S OFFICE
MICHAEL HALEY, SHERIFF
FORENSIC SCIENCE DIVISION
911 PARR BLVD., RENO, NV 89512
(775) 328-2800

LABORATORY NUMBER: L6071-10-0
CONTROL NUMBER: T033823
SUBJECT: [REDACTED]
AGENCY: SPARKS P.D.
AGENCY CASE #: 10-12603
OFFICER: GAMWELL
COLLECTION DATE: 12/18/2010
COLLECTION TIME: 22:00

I, Dorothy M. Walrath, hereby declare,

That I am employed as a Forensic Technician II by the Washoe County Sheriff's Office Forensic Science Division;

That my professional and academic training and experience have qualified me to perform analyses so as to detect the presence and amount of alcohol or controlled substances in the *blood or urine of a person*;

That I have qualified as an expert witness in this field in the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Ninth Judicial District Courts of the State of Nevada;

That on 12/20/2010 the Forensic Science Division received a sealed container with a sample bearing the name and/or identification listed above and that the evidence contained a WHOLE BLOOD specimen;

That on 1/3/2011 the analysis of the evidence was completed and I determined that the specimen contained:

Amphetamine/Methamphetamine None Detected
Barbiturates None Detected
Benzodiazepines None Detected
Carisoprodol None Detected
Cocaine/Cocaine Metabolite None Detected
Methadone None Detected
Opiates None Detected
Oxycodone None Detected
THC-Metabolite None Detected
Zolpidem None Detected

SPARKS POLICE DEPARTMENT VEHICLE INVENTORY REPORT

IMPOUND RECOVERY EVIDENCE FORFEITURE

CASE NO. 10-12603

PRIMARY CODE	2ND CODE	3RD CODE	4TH CODE	CASE CROSS REF	DATE OF REPORT	TYPE OF REPORT
					<u>12-18-70</u>	

LOCATION OF OCCURRENCE (VEHICLE TOWED FROM) 3300 SAGE BLVD

HOW CALL RECEIVED: CRIMINAL OFFICER OTHER PERSON TELEPHONE MAIL OTHER SELF DETECTED UNASSIGNED

STATUS: A ACTIVE B CLOSED CLOSING FURTHER C UNPOLICED D UNPOLICED E COUNTRY F OTHER

CLERKED: A APPROVED B REJECTED C NO FOLLOWUP D STRIKE/STRIKE OUT E HAD TO BE RECALLED F HAD TO BE RECALLED G HAD TO BE RECALLED

VEH. LIC. NO.	STATE	YEAR	MAKE	MODEL	BODY STYLE	COLOR
	<u>NV</u>	<u>2003</u>	<u>TOYOTA</u>	<u>TRUCK</u>	<u>TRUCK</u>	<u>SLK</u>
VEHICLE IDENTIFICATION NUMBER			ODOMETER READING		NOTIFICATION OF STORAGE	
			<u>90413</u>		<input type="checkbox"/> CERTIFIED LETTER <input type="checkbox"/> IN PERSON	
REGISTERED OWNER			STREET ADDRESS		CITY	STATE
					<u>SPARKS</u>	<u>NV</u>

Has registered owner been notified of tow? YES NO X

Were photographs taken? YES NO Latent prints? YES NO By whom? _____

Other processing: YES NO If yes, describe: _____

Location of Keys: With Vehicle In Evidence Unknown

If stolen/embezzled, has reporting agency been advised of recovery? YES NO N/A

Original agency: _____ Case #: _____

VEHICLE INVENTORY

YES	NO	MARK	CONDITION	DAMAGED AREAS	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	RADIO/STEREO L.F. TIRE <input type="checkbox"/> GOOD <input checked="" type="checkbox"/> FAIR <input type="checkbox"/> POOR <input type="checkbox"/> MISSING		DAMAGED AREAS <input type="checkbox"/> 1) Front <input type="checkbox"/> 2) Right Side <input type="checkbox"/> 3) Left Side <input type="checkbox"/> 4) Floor <input type="checkbox"/> 5) Right Floor <input type="checkbox"/> 6) Left Floor <input type="checkbox"/> 7) Top <input type="checkbox"/> 8) Under Carriage <input type="checkbox"/> 9) Left Panel <input type="checkbox"/> 10) Right Panel <input type="checkbox"/> 11) None Visible
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	FRONT PLATE R.F. TIRE <input type="checkbox"/> GOOD <input checked="" type="checkbox"/> FAIR <input type="checkbox"/> POOR <input type="checkbox"/> MISSING		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	REAR PLATE L.R. TIRE <input type="checkbox"/> GOOD <input checked="" type="checkbox"/> FAIR <input type="checkbox"/> POOR <input type="checkbox"/> MISSING		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	BUMPER (FRONT) R.R. TIRE <input type="checkbox"/> GOOD <input checked="" type="checkbox"/> FAIR <input type="checkbox"/> POOR <input type="checkbox"/> MISSING		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	BUMPER (REAR) WHEELS <input type="checkbox"/> GOOD <input checked="" type="checkbox"/> FAIR <input type="checkbox"/> POOR <input type="checkbox"/> MISSING		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	BATTERY FENDERS <input type="checkbox"/> GOOD <input checked="" type="checkbox"/> FAIR <input type="checkbox"/> POOR <input type="checkbox"/> MISSING		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	HUB CAPS BODY HOOD <input type="checkbox"/> GOOD <input checked="" type="checkbox"/> FAIR <input type="checkbox"/> POOR <input type="checkbox"/> MISSING		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	SPARE TIRE TOP <input type="checkbox"/> GOOD <input checked="" type="checkbox"/> FAIR <input type="checkbox"/> POOR <input type="checkbox"/> MISSING		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	MOTOR GRILL <input type="checkbox"/> GOOD <input checked="" type="checkbox"/> FAIR <input type="checkbox"/> POOR <input type="checkbox"/> MISSING		
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	UPHOLSTERY <input type="checkbox"/> GOOD <input checked="" type="checkbox"/> FAIR <input type="checkbox"/> POOR <input type="checkbox"/> MISSING		

Other damage: _____

List property, tools, other items: PRO MAG LIGHT, Sunblinds, FIRE EXTINGUISHER, CLUB, 2 COATS, GLOVES, TRUCK AND COMPASS, ORTHOMEDIC (CANE?) ADDRESS, FULL THROAT ENERGY DRINK, BLACK SCRAPER

Vehicle towed by: CITY AND TOW Phone: 782-0127

Vehicle stored or impounded at: 3300 N. VIRGINIA ROAD

Release conditions: TO BE WITH PROOF OF INSURANCE

Vehicle Released To: CITY AND TOW SIGNATURE OF RESPONSIBLE PARTY STORING VEHICLE: [Signature] DATE: 12-18-70 TIME: 2:45

SUSPECT INFORMATION: COMPLETE SUSPECT/ARREST REPORT

Narrative: DRIVER LICENSE

CONTROLLED DOCUMENT NOT TO BE DUPLICATED

REPORTING OFFICER	BY	APPROVING SUPERVISOR
<u>[Signature]</u>	<u>[Signature]</u>	<u>[Signature]</u>

WHITE - SPD CANARY - TOW COMPANY PINK - OWNER

UNUSUAL DISCREPANCY OF THIS INVENTOR'S INFORMATION IS PROHIBITED BY SPARKS POLICE DEPARTMENT POLICY

1 Case No. 10 C 002343
2 Dept. No. Two

FILED
SPARKS MUNICIPAL COURT
2012 SEP -6 PM 3:16

BY *OS*

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4
5 **IN THE MUNICIPAL COURT OF THE CITY OF SPARKS**
6 **COUNTY OF WASHOE, STATE OF NEVADA**

7
8 CITY OF SPARKS,

9 Plaintiff,

10 vs.

11 


12 Defendant.

13 _____ /
14 **ORDER SETTING TRIAL DATE**

15 Pursuant to the Order of the Second Judicial District Court remanding this matter
16 for re-trial, trial in the above-captioned matter is reset for **October 23, 2012 at 9:00**
17 **a.m.**, Department Two.

18 IT IS SO ORDERED.

19
20 DATED this 6th day of September, 2012.

21
22 
23 James Spoo, Judge
24 Department Two

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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Sparks Municipal Court; that on the 6th day of September, 2012, I deposited for mailing in the United States Mail, Sparks, Nevada, a true and correct copy of the foregoing **ORDER** addressed to the following:



Sparks, NV [redacted]

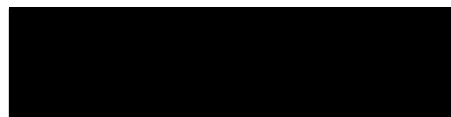
Sent via Inter-Office Mail:
Sparks City Attorney
Criminal Division


Angela Sullivan
Judicial Assistant

CERTIFICATE OF MAILING

I hereby certify that on the 5th day of September, 2012, I deposited for mailing in the United States mail, a true and correct copy of the foregoing REQUEST FOR SPEEDY TRIAL in a sealed envelope, to the following:

Sparks City Attorney
Criminal Division
P.O. Box 857
Sparks, NV 89432-0857



Sparks, NV

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1 CODE 3370
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 [REDACTED],

10 Appellant,

11 vs.

Case No. CR12-1018

12 Dept. No. 1

13 CITY OF SPARKS,

14 Respondent.
15
16 _____/

17 ORDER

18 On August 20, 2012, the Court issued an *Order* regarding Appellant [REDACTED]
19 [REDACTED]'s (1) *Motion for Extension of Time to File Opening Brief*; (2) *Motion to Compel Trial Court*
20 *to Transmit Transcripts*; and (3) *Motion to Strike Defective Transcript*.

21 On August 23, 2012, Judge James Spoo of the City of Sparks Municipal Court sent a letter to
22 the Court (attached hereto as "Exhibit 1"), requesting clarification of the Court's *Order*.
23 Specifically, Judge Spoo expresses concerns regarding the previously submitted transcript of
24 proceedings from the Sparks Municipal Court and the Court's August 23, 2012, *Order* directing the
25 Municipal Court to transmit a copy of "... Appellant's transcript, all other papers relating to his
26 case, and a certified copy of the docket"
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28

1 In the August 23, 2012, *Order* the Court found that the only remedy available to the appellant
2 pursuant to law, as a result of a defective transcript is a remand and new trial, which the Court
3 likewise ordered.

4 Judge Spoo now seeks clarification as to whether the Municipal Court is required to submit
5 another transcript, which will remain defective as a result of the recording device presently in use by
6 the Municipal Court.

7 The Court has reviewed the August 23, 2012, *Order* along with the request of Judge Spoo
8 and finds that based upon this record before the Court, there are apparently no further efforts that can
9 be made by the Municipal Court to recreate and transmit a complete record of the trial. Accordingly,
10 the Court amends its *Order* of August 23, 2012, and finds Appellant's *Motion to Compel Trial Court*
11 *to Transmit Transcripts* to be moot in light of the Court's *Order* granting Appellant's *Motion to*
12 *Strike Defective Transcript*.

13 Accordingly, the Court modifies its August 23, 2012, *Order* and grants in part and denies in
14 part the Appellant's *Motions*. This matter is hereby remanded to the Sparks Municipal Court for a
15 new trial because the transcript provided to the District Court by the Municipal Court was materially
16 defective and thus precluded the Appellant from the opportunity for a meaningful appeal.

17 IT IS SO ORDERED.

18 DATED: This 10th day of September 2012.

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21 DISTRICT JUDGE
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 10th day of September 2012, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:


Sparks, NV 
Appellant

Rosalba I. Arango-Johnson
Assistant City Attorney
P.O. Box 857
Sparks, NV 89432-0857
Attorney for Respondent

Judge James Spoo
The City of Sparks
Municipal Court, Department Three
1450 C Street
Sparks, NV 89431


Christine Kuhl

FILED
Electronically
09-10-2012:03:03:52 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3206021

EXHIBIT I



JUDGE JAMES SPOO
MUNICIPAL COURT DEPARTMENT 2

August 23, 2012

Janet Berry, District Judge
Second Judicial District Court
P.O. Box 30083
Reno, NV 89520

E-Mail Judge.Berry@washoecourts.us and U.S. Mail

RE: Request for Clarification of Order on Appeal, Case No. CR12-1018, [REDACTED],
Appellant vs. City of Sparks, Respondent

Hon. Judge Berry:

Clarification is respectfully requested, regarding the requirements of the Order of August 20, 2012 (reference copy attached, but not yet officially received pursuant to NRS 5.090(1)), resolving the appeal in this matter, as follows:

1. The Order directs the Municipal Court to transmit a copy of "... Appellant's transcript, all other papers relating to his case, and a certified copy of the docket ...", under NRS 189.030(1). Clarification is requested, in three respects regarding the instant transcript:
 - (1) The District Court is in possession of the specified documents, having been submitted previously, as the Order notes. Are additional copies now required?
 - (2) The previously submitted transcript has been declared to be defective. Is another copy thus required?
 - (3) A new trial has been ordered. Are the above-referenced documents, in particular, the transcript, now relevant?
2. Pursuant to NRS 4.410(2), referenced by the Court, the requesting party bears the cost of preparation of the transcript, as the Court has ordered. In view of the above requests for clarification (and for future purposes), how shall the requirement be interpreted requiring submission of the above-referenced documents within the 10-day period (NRS 189.030(1)), which was deemed violated, independently apparently of responsibility for payment, absent payment by the requesting party?

Judge Janet Berry
Order on Appeal / Case No. CR12-1018
August 23, 2012
Page 2

3. The standing practice of the Municipal Court upon appeal has been to submit the documents required under NRS 189.030(1), with the exception of the transcript, due to the obligation of the Defendant/Appellant to order and pay for same (from external providers as is customary), as above-referenced, and has, upon request, submitted the sound recording, under NRS 189.035(1), as the Court has referenced. Does submittal of the sound recording effectively fulfill the requirement of the statute, as set forth by the Court, that the Municipal Court transmit the transcript (absent timely payment for and submittal of same by Appellant)?

Thank you for the clarifications contained in the Order, and for clarification of these additional requests, so that this matter may proceed as ordered.

Respectfully,



James Spoo,
Municipal Judge

c: City of Sparks, City Attorney (w/o encl.)

██████████ (w/o encl.)

Encl. (Order on Appeal)

JS/as

1 **CHESTER H. ADAMS**, #3009
Sparks City Attorney
2 **ROSALBA I. ARANGO-JOHNSON**, #6366
Assistant City Attorney
3 P.O. Box 857
Sparks, Nevada 89432-0857
4 (775) 353-2324
Attorneys for Plaintiff
5

6 **IN THE MUNICIPAL COURT OF THE CITY OF SPARKS**
7 **COUNTY OF WASHOE, STATE OF NEVADA**

8 CITY OF SPARKS,

9 Plaintiff,

10C002343

10 v.

11

[REDACTED]

12 Defendant.
13 _____/

14 **OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COMPLAINT**

15 COMES NOW the City of Sparks, by and through its counsel of
16 record, CHESTER H. ADAMS, Sparks City Attorney and ROSALBA I. ARANGO-
17 JOHNSON, Assistant City Attorney, and herein file its Opposition to
18 Defendant's Motion to Dismiss Compliant.

19 Defendant went to trial on the charge of Obstructing a Public
20 Officer, a violation of SMC 9.30.020, on June 4, 2012. He was found
21 guilty and filed his Notice of Appeal in a timely manner. Before
22 Defendant filed his Opening Brief, the District Court ruled that the
23 transcript of the first trial was materially defective and remanded
24 the case for a new trial in the Sparks Municipal Court. Defendant now
25 wishes to argue issues from the first trial that were not preserved
26 for appeal, even had the parties proceeded to arguments appropriate
27 to an appeal of the first conviction.

28 ///

1 POINTS AND AUTHORITIES

2 1. Defendant is not entitled to dismissal of the charges for an
3 alleged violation of his right to a speedy trial when he has failed
4 to bring that issue properly before the court and has waived the
5 issue.

6 Defendant has been represented by counsel in all stages of the
7 case subsequent to the arraignment, to include the first trial. He
8 was first represented by David Spitzer by court appointment. On
9 January 17, 2012, a Substitution of Attorney was filed by Robert R.
10 Hager. At trial, Defendant was represented by Mr. Hager's associate,
11 Treva Hearne. Not only was no objection made to the dates set for
12 trial, but Defendant, by and through counsel, did not oppose
13 continuances requested by the City (March 8, 2011; October 25,
14 2011 and March 14, 2012). Additionally, Defendant filed his own
15 requests for a continuance of the trial (July 26, 2011; October 13,
16 2011; December 1, 2011 and February 6, 2012). One other continuance
17 was by stipulation of both parties on May 26, 2011. The City's last
18 request on March 14, 2012 was opposed by Defense counsel. Therefore,
19 not only did Defendant fail to object to postponement of the trial,
20 he himself was the source of its postponement on four separate
21 occasions.

22 Defendant cites NRS 178.556 to support his request for
23 dismissal. Subsection 2 states, " If a defendant whose trial has not
24 been postponed upon the defendant's application is not brought to
25 trial within 60 days after the arraignment on the complaint for an
26 offense triable in a Justice or Municipal Court, the court may
27 dismiss the complaint." The language of the statute is permissive.
28 The Court "may". The Court was not able to even consider the matter,

1 however, as the objection was never brought before the court.
2 Furthermore, Defendant waived the issue once the case was continued
3 upon his own application.

4 In order for Defendant to have been able to argue this issue in
5 his appeal he would have had to have objected. His failure to
6 object, in addition to his own postponement of the trial would have
7 precluded him from arguing the issue on appeal. Leonard v. State,
8 (117 Nev. 53, 17 P.3d 397, 2001 Nev. LEXIS 5, 117 Nev. Adv. Rep. 6
9 (Nev. 2001).

10 The case is now before the Court for a second time and, in
11 consistent with Defendant's Request for a Speedy Trial, is set for
12 trial on October 23, 2012.

13 **2. Defendant is not entitled to a dismissal of the charges based upon**
14 **an inadequate charging document.**

15 NRS 173.095(1) states, "The court may permit an indictment or
16 information to be amended at any time before verdict or finding if no
17 additional or different offense is charged and if substantial rights
18 of the defendant are not prejudiced." State law allows for any
19 deficiencies in a charging document to be cured where the defendant
20 is not prejudiced as late in the proceedings as just prior to a
21 verdict being handed down.

22 In this case Defendant cannot be prejudiced this early in the
23 proceedings. The trial is not set until October 23, 2012.
24 Additionally, Defendant cannot argue that he is unaware of the
25 factual circumstances related to the City's case as there has already
26 been a trial on the charge. He has had a preview, of sorts, of what
27 this case entails.

28 ///

1 The City is filing an Amended Complaint on the charge of
2 Obstructing concurrently with this Opposition as permitted under NRS
3 173.095(1).

4 **CONCLUSION**

5 Therefore, based upon the aforementioned Points and Authorities,
6 Exhibits and pleading filed in this matter, the City respectfully
7 requests that this Court deny Defendant's Motion to Dismiss
8 Complaint.

9 DATED this 17th day of September, 2012.

11 **CHESTER H. ADAMS**
12 Sparks City Attorney

13 By Rosalba I. Arango-Johnson
14 **ROSALBA I. ARANGO-JOHNSON, #6366**
15 Assistant City Attorney
16 ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the City Attorney's Office, Sparks, Nevada, and that on this date deposited for mailing at Sparks, Nevada, a true copy of the within **OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COMPLAINT** addressed to:

[REDACTED]
Sparks, NV [REDACTED]

DATED this 17th day of SEPTEMBER, 2012.


Erik Aagquist

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the City Attorney's Office, Sparks, Nevada, and that on this date I deposited for mailing at Sparks, Nevada, a true copy of the within **AMENDED CRIMINAL COMPLAINT** addressed to:

[REDACTED]
Sparks, NV [REDACTED]

DATED this 17th of SEPTEMBER, 2012.



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1 **CHESTER H. ADAMS, #3009**
Sparks City Attorney
2 **ROSALBA I. ARANGO-JOHNSON, #6366**
Assistant City Attorney
3 P.O. Box 857
Sparks, Nevada 89432-0857
4 (775) 353-2324
Attorneys for Plaintiff

5

6

IN THE MUNICIPAL COURT OF THE CITY OF SPARKS

7

COUNTY OF WASHOE, STATE OF NEVADA

8

CITY OF SPARKS,

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Plaintiff,

10C002343

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v.

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12

Defendant.

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REPLY TO DEFENDANT'S MOTION TO COMPEL DISCOVERY

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Defendant has asked the Court to compel the City to provide discovery in this matter. City contends that all evidence has been provided to Defendant. On August 28, 2012 the City received Defendant's initial request for discovery. On August 29, 2012, Defendant was provided with copies of the complaints, all reports, all statements, the property and evidence log and a copy of the YouTube video. On September 6, 2012, the City sent Defendant copies of the toxicologist's declaration and the Sparks Police Department Vehicle Inventory Report prepared by Officer Gamwell. Everything has been discovered to Defendant. The City has not withheld any information, documents or recordings from Defendant.

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1 POINTS AND AUTHORITIES

2 NRS 174.235 governs the City's obligation to provide Defendant
3 with copies or inspection of all evidence, no matter its form, that
4 the City will use in its case in chief. The evidence may already be
5 known to the City and within its possession, custody or control or
6 with the exercise of due diligence may become known to the City.

7 The City agrees that this duty applies whether the evidence is
8 inculpatory, exculpatory or a combination of the two. The City in
9 complying with its obligation does not attempt to characterize the
10 evidence, only provide it to Defendant. The true nature of the
11 evidence may not become known until trial, therefore, the simplest
12 way to comply is to provide everything that the City is able to
13 provide. The City, however, cannot create evidence that does not
14 exist or whose existence cannot be determined by the City.

15 1. Toxicologist's Declaration

16 The City was able to obtain the results of the blood test in
17 this case quickly once it was realized that we ourselves did not have
18 a copy of the test result and provide it to Defendant on September 6,
19 2012. See City's Letter of September 6, 2012 to Defendant is attached
20 hereto as Exhibit 1.

21 2. Sparks Police Department Vehicle Inventory Report

22 The City was able to obtain the Sparks Police Department Vehicle
23 Inventory Report prepared by Officer Gamwell quickly once it was
24 realized that we ourselves did not have a copy of the document and
25 provide it to the Defendant on September 6, 2012. See City's Letter
26 of September 6, 2012 to Defendant attached hereto as Exhibit 1.

27 ///

28 ///

1 3. A spiral bound notebook and audio/video recording on a memory
2 card Defendant alleges is in the possession, custody or control of
3 the City.

4 Defendant requests that the City provide evidence that the City
5 does not possess or have in its custody or control. Defendant
6 alleges that evidence in the form a spiral bound notebook and/or an
7 audio/video recording has not been discovered to Defendant. The City
8 contends that there is no basis for this accusation. The inventory
9 report that Defendant asked for and received on September 6, 2012,
10 indicates that there may have been a camera in the vehicle at the
11 time that the vehicle was impounded. There is no indication that a
12 spiral notebook was in the vehicle at the time of the impound.
13 Furthermore, the purpose of the inventory log is to document the
14 contents of the vehicle for purposed of an impound and is not a list
15 of the items taken into evidence. The items taken into evidence are
16 listed on the Chain of Custody Sparks Police Department Property and
17 Evidence form. These items were not booked into evidence. They are
18 not in the City's possession, custody or control and by their nature
19 (allegedly property of Defendant) cannot, with the exercise of due
20 diligence, become known to the City.

21 Defendant argues that "evidence" provided at the 1st trial proves
22 the existence of these items. First, this case has been remanded for
23 a new trial, reference to the first trial is inappropriate. The
24 first trial is no longer before this Court. And second, the
25 "evidence" Defendant refers to can be construed as self serving and
26 misleading. No foundation can be laid under the circumstances for
27 Defendant's assertion of what the aforementioned "evidence" may or
28 may not actually prove.

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CONCLUSION

Therefore, based upon the aforementioned Points and Authorities and Exhibit 1, the City respectfully requests that this Court deny Defendant's Motion to Compel Discovery.

DATED this 17th day of September, 2012.

CHESTER H. ADAMS
Sparks City Attorney

By Rosalba I. Arango-Johnson
ROSALBA I. ARANGO-JOHNSON, #6366
Assistant City Attorney
ATTORNEYS FOR PLAINTIFF

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EXHIBIT 1



CHEF ADAMS
CITY ATTORNEY

September 06, 2012

[REDACTED]
Sparks, NV [REDACTED]

Re: Supplemental Discovery

Dear Mr. [REDACTED]

Enclosed are copies of the blood test results and a copy of the vehicle inventory form in your case. If you have any questions or concerns, please feel free to call our office.

Sincerely,

Erik Aaquist
Secretary

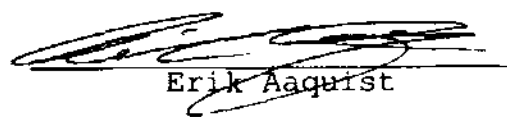
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CERTIFICATE OF MAILING

Pursuant to NRCF 5(b), I certify that I am an employee of the City Attorney's Office, Sparks, Nevada, and that on this date deposited for mailing at Sparks, Nevada, a true copy of the within **REPLY** addressed to:

[REDACTED]
[REDACTED]
Sparks, NV [REDACTED]

DATED this 17th day of SEPTEMBER, 2012.


Erik Aagquist

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IN THE MUNICIPAL COURT OF THE CITY OF SPARKS
COUNTY OF WASHOE, STATE OF NEVADA

CITY OF SPARKS,
Plaintiff,

v.

Case #10-12603

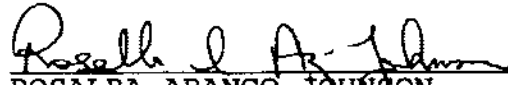
██████████,
Defendant.

NOTICE OF ADDITIONAL WITNESSES

COMES NOW, THE CITY OF SPARKS, by and through its attorney,
ROSALBA ARANGO-JOHNSON, Assistant City Attorney, and gives notice
that the following witness will be called for testimony in
addition to witnesses noted in the police report:

Karl Neiberlien
c/o Sparks Police Department
1701 E. Prater Way
Sparks, NV 89434

DATED this 18th day of September, 2012.



ROSALBA ARANGO-JOHNSON
Assistant City Attorney
City of Sparks

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the City Attorney's Office, Sparks, Nevada, and that on this date I deposited for mailing at Sparks, Nevada, a true copy of the within NOTICE OF ADDITIONAL WITNESSES addressed to:

[REDACTED]
[REDACTED]
Sparks, NV [REDACTED]

DATED this 18th day of September, 2012.



Erik Aaquist

September 21, 2012

Chester H. Adams
City Attorney
P.O. Box 857
Sparks, NV 89432-0857

Re: City of Sparks v. [REDACTED], #10-12603 (10C002343)

Dear Mr. Adams:

I hereby request additional discovery for the above case. Please disclose the following:

- The video recordings from the forward-facing cameras of the Nevada Highway Patrol vehicles at the roadblock near 3300 Sparks Blvd., Sparks, Nevada, on December 18, 2010, from the time of their arrival to the time of their final departure from the roadblock
- Names and addresses of all persons present at the aforementioned roadblock during its entire period of operation, other than those previously discovered
- Names and addresses of all persons who planned, configured, set up, approved, or supervised the aforementioned roadblock, other than those previously discovered
- Sparks Police Department documentation concerning administrative roadblock or "DUI checkpoint" planning, operation, supervision, policies, and procedures, as of December 18, 2010
- Documentation made by the Sparks Police Department incident to my seizure at the roadblock near 481 Los Altos Pkwy., Sparks, Nevada, on February 7, 2010
- The restraining order or protective order served by the Sparks Police Department to me during my seizure at the roadblock near 481 Los Altos Pkwy., Sparks, Nevada, on February 7, 2010
- Names and addresses of all persons present at the February 7, 2010 Los Altos Pkwy. roadblock during its entire period of operation
- Audio recordings of radio transmissions concerning me made via the Washoe County Regional Communications System at approximately 1730 hours on February 5, 2012

Previous counsel informed me your office denied the existence of police recordings from the 12/18/2010 roadblock. My conversations with NHP records custodians indicate otherwise. You may obtain the NHP dash cam video from Danielle Collins at NHP northern command (phone 688-2500). That is, if your witnesses haven't stolen it.

Sincerely,

[REDACTED]

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Case No. 10 C 002343
Dept. No. Two

FILED
SPARKS MUNICIPAL COURT
2012 SEP -6 PM 3:16

BY *OS*

**IN THE MUNICIPAL COURT OF THE CITY OF SPARKS
COUNTY OF WASHOE, STATE OF NEVADA**

CITY OF SPARKS,

Plaintiff,

vs.

[REDACTED]

Defendant.

ORDER SETTING TRIAL DATE

Pursuant to the Order of the Second Judicial District Court remanding this matter for re-trial, trial in the above-captioned matter is reset for **October 23, 2012 at 9:00 a.m.**, Department Two.

IT IS SO ORDERED.

DATED this 6th day of September, 2012.

James Spoo
James Spoo, Judge
Department Two

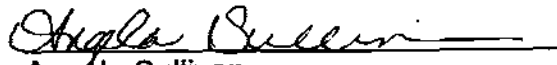
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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Sparks Municipal Court; that on the 6th day of September, 2012, I deposited for mailing in the United States Mail, Sparks, Nevada, a true and correct copy of the foregoing **ORDER** addressed to the following:

[REDACTED]
[REDACTED]
Sparks, NV [REDACTED]

Sent via Inter-Office Mail:
Sparks City Attorney
Criminal Division


Angela Sullivan
Judicial Assistant

FILED
SPARKS MUNICIPAL COURT
2012 SEP 19 PM 5:17
BY: JS
CLERK

Case No. 10 C 002343
Dept. No. Two

IN THE MUNICIPAL COURT OF THE CITY OF SPARKS
COUNTY OF WASHOE, STATE OF NEVADA

CITY OF SPARKS,

Plaintiff,

vs.

[REDACTED]

Defendant.

ORDER SETTING ARRAIGNMENT HEARING

IT IS SO ORDERED that the arraignment hearing on the enclosed amended complaint in the above-entitled matter is set for October 04, 2012, at 10:00 a.m., Department Two.

DATED this 19th day of September, 2012.

James Spoo
James Spoo, Municipal Judge
Department Two


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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Sparks Municipal Court; that on the 19th day of September, 2012, I deposited for mailing in the United States Mail, Sparks, Nevada, a true and correct copy of the foregoing **ORDER** addressed to the following:

[Redacted]
Sparks, NV [Redacted]

Sent via Inter-Office Mail:
Sparks City Attorney
Criminal Division


Angela Sullivan
Judicial Assistant

Certified Article Number

7160 3906 9848 1977 1560

SENDERS RECORD

AFFIDAVIT OF SERVICE

OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

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STATE OF NEVADA }

Case #: 10 C 002343

:ss.

COUNTY OF WASHOE }

Luke Elliott, Marshal SP222, being first duly sworn, deposes and says: That affiant is a citizen of the United States, over 18 years of age, not a party to the within entitled matter, and that in the County of Washoe, State of Nevada , personally served the described documents upon:

Person Served: [REDACTED]

Location Served: [REDACTED]

City of Reno, Nevada
on 10-4-12 at 1245

The document(s) served were:

Order Setting Arraignment Hearing, 10 C 002343

Order signed by James Spoo, Judge, Sparks Municipal Court dated September 19, 2012.

HEIDI SHAW
COURT ADMINISTRATOR

By: C. Elliott

Marshal

1 Case No. 10 C 002343
2 Dept. No. Two

FILED
SPARKS MUNICIPAL COURT
2012 OCT -6 AM 11:01

BY JS
CLERK

3
4
5 IN THE MUNICIPAL COURT OF THE CITY OF SPARKS
6 COUNTY OF WASHOE, STATE OF NEVADA
7

8 CITY OF SPARKS,

9 Plaintiff,

10 vs.

11 [REDACTED]

12 Defendant.

13 ORDER SETTING ARRAIGNMENT HEARING
14

15 IT IS SO ORDERED that the arraignment hearing on the enclosed amended complaint in
16 the above-entitled matter is set for October 08, 2012, at 9:00 a.m., Department Two.

17 DATED this 4th day of October, 2012.

18
19 James Spoo
20 James Spoo, Municipal Judge
21 Department Two
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AFFIDAVIT OF SERVICE

OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA }

Case #: 10 C 002343

:ss.

COUNTY OF WASHOE }

Luke Elliott, Marshal SP222, being first duly sworn, deposes and says: That affiant is a citizen of the United States, over 18 years of age, not a party to the within entitled matter, and that in the County of Washoe, State of Nevada , personally served the described documents upon:

Person Served:

[Redacted]

Location Served:

[Redacted]

City of Reno, Nevada
on 10-4-12 at 1245

The document(s) served were:

Order Setting Arraignment Hearing, 10 C 002343

Order signed by James Spoo, Judge, Sparks Municipal Court dated October 04, 2012.

HEIDI SHAW
COURT ADMINISTRATOR

By: C. Elliott

Marshal

1 Case No. 10 C 002343
2 Dept. No. Two

FILED
SPARKS MUNICIPAL COURT

2012 SEP 26 PM 4:25

3 IN THE MUNICIPAL COURT OF THE CITY OF SPARKS
4 COUNTY OF WASHOE, STATE OF NEVADA
5

6 CITY OF SPARKS,

Plaintiff,

7 vs.

8
9 [REDACTED]
10 Defendant.

11
12 **ORDER DENYING MOTION TO COMPEL DISCOVERY**

13 Having reviewed the briefs of the parties, together with the file and record herein, the Court
14 orders as follows.

15 Plaintiff has fully complied with all requirements of discovery in this matter. To the extent,
16 therefore, that Defendant requests more, his motion is denied.

17 IT IS SO ORDERED.

18 Dated this 26th day of September, 2012.

19
20 
21 James Spoo, Municipal Judge
22 Department Two
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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Sparks Municipal Court; that on the 26th day of September, 2012, I deposited for mailing in the United States Mail, Sparks, Nevada, a true and correct copy of the foregoing ORDER addressed to the following:

[REDACTED]
Sparks, NV [REDACTED]

Sent via Inter-Office Mail:
Sparks City Attorney
Criminal Division

Angela Sullivan
Angela Sullivan
Judicial Assistant



1 **AFFIDAVIT OF SERVICE**

2 **OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE**

3
4
5 STATE OF NEVADA }

Case #: 10 C 002343

6 :ss.

7 COUNTY OF WASHOE }

8
9 Luke Elliott, Marshal SP222, being first duly sworn, deposes and says: That affiant is a citizen of
10 the United States, over 18 years of age, not a party to the within entitled matter, and that in the
11 County of Washoe, State of Nevada , personally served the described documents upon:

12 Person Served: [REDACTED]

13 Location Served: [REDACTED]

14 City of RENO, Nevada
15 on 10-4-12 at 1245

16
17 The document(s) served were:

18 **Order Denying Motion To Compel Discovery, 10 C 002343**

19 **Order signed by James Spoo, Judge, Sparks Municipal Court dated September 26,**
20 **2012.**

21
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23 HEIDI SHAW
24 COURT ADMINISTRATOR

25 By: C. Elliott
26 Marshal

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1 Case No. 10 C 002343
2 Dept. No. Two

FILED
SPARKS MUNICIPAL COURT
2012 SEP 26 PM 4:25

3 IN THE MUNICIPAL COURT OF THE CITY OF SPARKS
4 COUNTY OF WASHOE, STATE OF NEVADA

5
6 CITY OF SPARKS,
7 Plaintiff,

8 vs.

9 [REDACTED],
10 Defendant.

11
12 **ORDER DENYING MOTION TO DISMISS COMPLAINT**

13 Having reviewed the briefs of the parties, the District Court's order for new trial, together
14 with the file and record herein, the Court orders as follows.

15 Defendant requests dismissal of the complaint, based upon a claim of untimely trial. The
16 record shows that at all times pertinent heretofore, Defendant was represented by legal counsel,
17 either court-appointed or of his choosing. At no time before or at trial was a demand for or failure
18 of the 60-day trial rule asserted by counsel, who had clear knowledge of the trial setting.
19 Defendant contends that he was provided an infeasible window in which to confer with counsel
20 before the 60 days had expired. That does not negate that counsel was appointed for him, and
21 that he was thereby represented for all relevant purposes, substantially in advance of the date he
22 was informed on which to contact counsel. He does not argue that he directed counsel to assert
23 the rule, and that counsel refused to do so.

24 The record additionally shows numerous continuances requested by both parties prior to
25 trial, largely granted under stipulations. No cognizable basis appears for Defendant's objection
26 regarding the participation, well beyond the date of any pending issue of speedy trial, by a
27 different court-appointed counsel, (who routinely jointly act as counsel in such matters).

28 Defendant next contends that the complaint insufficiently gave legal notice of the alleged

1 offense committed. Again, however, his contention was never timely raised, and is now cured, if
2 needed, by Plaintiff's filing of a new and more factually specific complaint alleging the same
3 offense, on which Defendant will be arraigned (set and noticed for October 4, 2012), and
4 subsequently tried at the new trial (set and noticed for October 23, 2012).

5 For these reasons, Defendant's demand to dismiss the complaint is itself untimely, moot,
6 non-germane, and barred by the failure to raise properly the speedy trial demand or sufficiency of
7 the complaint at any time previous hereto, including on appeal (which he could not have viably
8 achieved due to his failure to have raised the demand before or at trial). Any ostensible
9 abridgement of his right to a speedy trial, and none appears, or to adequate notice of the alleged
10 offense, would be further cured by the grant of the new trial. The motion is denied.

11 IT IS SO ORDERED.

12 Dated this 26th day of September, 2012.

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15 James Spoo, Municipal Judge
16 Department Two
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CERTIFICATE OF MAILING

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[REDACTED]
Sparks, NV [REDACTED]

Sent via Inter-Office Mail:
Sparks City Attorney
Criminal Division

Angela Sullivan
Angela Sullivan
Judicial Assistant

Certified Article Number
7160 3901 9848 1977 1676
SENDER'S RECORD

1 Case No. 10 C 002343
2 Dept. No. Two

FILED
SPARKS MUNICIPAL COURT
2012 OCT 31 AM 8:06

3 BY AS
4 CLERK

5 IN THE MUNICIPAL COURT OF THE CITY OF SPARKS
6 COUNTY OF WASHOE, STATE OF NEVADA

7 CITY OF SPARKS,

8 Plaintiff,

9 vs.

10 [REDACTED],

11 Defendant.

12 DECISION

13 Re-trial was held in this matter on October 23, 2012, the City being represented by
14 Rosalbo Arrango-Johnson, Assistant City Attorney, and Defendant representing himself.
15 Defendant was charged, under an amended complaint, with obstructing, based on his response to
16 officers from multiple jurisdictions at a DUI check point on December 18, 2010. Re-trial was
17 ordered by the District Court, due to a faulty recording of the trial.

18 **The Court Decides, as Follows:**

- 19 1. Defendant's challenge to the lawfulness of the check point has not been substantiated.

20 The check point was in all respects lawfully established and conducted, including the physical
21 layout and the actions of the police officers.

22 2. Defendant's conduct during the check point stop, initially and at the second-stage
23 detention, was continuously and clearly obstructive, without justification, to lawful procedures of
24 the officers, including: failure to roll down his window to communicate with officers after at least
25 10 requests, failure to open his door after repeated requests, failure to answer proper non-
26 incriminatory questions (including self-identification), deliberately evasive responses to questions,
27 failure to exit his vehicle, after repeated orders to do so, refusal of a field sobriety test and
28 preliminary breath test after verifiable indications of possible intoxication, and passive physical

1 resistance to arrest.

2 3. Defendant's obstruction may have arisen, in part, due to his assumption that the stop
3 was in the regular course, rather than pursuant to a lawful DUI check point. His assumption would
4 have been dispelled from the outset or at numerous points thereafter had he listened to officers'
5 explanations, answered non-custodial questions (as well as preliminary custodial questions
6 thereafter), and otherwise cooperated for his own benefit.

7 4. The officers' conduct was substantively additionally warranted due to the discovery of a
8 firearm on Defendant's person within his reach, which occurred while officers were required to
9 conduct Defendant's extraction from his vehicle, arising from his continuing obstruction. At that
10 point, the safety of officers. Defendant and others processing through the check point became
11 urgent, further invalidating Defendant's obstruction and necessitating officers' actions.

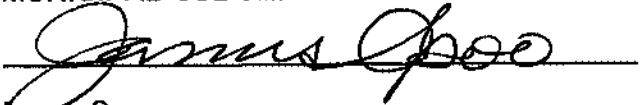
12 5. Defendant's behavior was motivated, in part, by the presence in his vehicle of one or
13 more video and/or audio recording devices, which he made operational from the beginning of the
14 stop, for undetermined reasons, and which were admitted into evidence.

15 6. Defendant attempted to show that his behavior was caused, in whole or in part, by fear,
16 but no basis for fear was proven, and his fear, if any, would have been caused by his own
17 repeated and increasing non-compliance after numerous opportunities were provided to him to
18 comply.

19 **Accordingly, and based upon the file and record herein, Defendant is found guilty**
20 **beyond a reasonable doubt of obstructing, as charged, under Sparks Municipal Code**
21 **9.03.020.**

22 DATED this 31st day of October 2012.

23 MUNICIPAL JUDGE:

24 
25 James Spoo

26
27
28

FILED
SPARKS MUNICIPAL COURT
2012 OCT 31 AM 9:45
BY *d&me*
CLERK

[REDACTED]

IN THE MUNICIPAL COURT OF THE CITY OF SPARKS
COUNTY OF WASHOE, STATE OF NEVADA

CITY OF SPARKS,
Plaintiff,

vs.

Case No. 10C002343

[REDACTED],
Defendant

NOTICE OF APPEAL AND REQUEST FOR TRANSMISSION

The defendant in the above-captioned action hereby gives notice of intent to appeal to the Second Judicial District Court from the final judgment of this court entered on the 31st day of October, 2012.

The defendant hereby requests this court transmit to the clerk of the district court the transcript of the case, all other records and papers relating to the case, including arraignment, and a certified copy of the docket.

DATED this 31st day of October, 2012.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

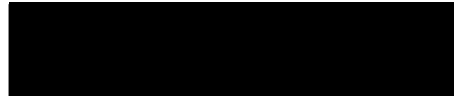
[REDACTED]

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CERTIFICATE OF MAILING

I hereby certify that on the 31st day of October, 2012, I deposited for mailing in the United States mail, a true and correct copy of the foregoing NOTICE OF APPEAL AND REQUEST FOR TRANSMISSION in a sealed envelope, to the following:

Sparks City Attorney
Criminal Division
P.O. Box 857
Sparks, NV 89432-0857



SPARKS MUNICIPAL COURT
1450 C STREET
SPARKS, NV 89431
PHONE (775) 353-2373
FAX (775) 353-2400
SPARKS, NV 89431
(775) 353-2286

Receipt Type **Case** Outstanding Amount **0.00**
Receipt Number **192992** Receipt Date **10/31/2012**

Case Number **10 C 002343**

Description **CITY OF SPARKS VS [REDACTED] [REDACTED]**

Action **OBSTRUCTING AN OFFICER**

Judge **SPOO, JUDGE JAMES**

Received From [REDACTED] [REDACTED]

On Behalf Of [REDACTED] [REDACTED]

Total Received	270.00
Net Received	270.00
Change	0.00

Receipt Payments	Amount	Reference Description
CASH	270.00	

Receipt Applications	Amount
COST	20.00
CASH BAIL DEPOSIT	250.00

Disbursement Accounts	Amount
2J APPEAL FEE	20.00
2J BAIL HOLDING	250.00

Deputy Clerk: **DSIPPLE** Transaction Date **10/31/2012 09:59:09**

Comments

APPEAL TO DISTRICT COURT

If you wish to appeal your case to the Second Judicial District Court, a *Notice of Appeal and Request for Transcript*, attached for your reference, must be completed and filed in the Sparks Municipal Court on or before the tenth (10th) day after a judgment has been rendered against you. You may also be required to post an appeal bail/bond. The Judge determines appeal bail/bond amounts. Check with the court clerk to determine the amount of your appeal bail/bond to be posted.

FEES FOR FILINGS STATED ABOVE ARE AS FOLLOWS:

- | | | |
|----|------------------------------------------------|---------|
| 1) | Preparation and transmittal fee: | \$10.00 |
| 2) | Notice of Appeal & Request for Transcript fee: | \$10.00 |
| 3) | Appeal bail/bond (if filed separately): | \$10.00 |

Once the proper documents have been filed with this court and the filing fees have been paid, it is the appellant's responsibility to arrange and pay for a certified transcript of the court proceedings. Said transcripts may be obtained through **Pam Longoni**, a certified transcriber. Instructions on how to obtain certified transcripts are attached for your reference.

The Municipal Court Clerk shall file the appeal documents with the Second Judicial District Court and notify the defendant and/or counsel via *Notice of Transmittal*, that the case has been forwarded to the Second Judicial District Court.

Once the appeal has been filed in District Court the case will be randomly assigned to one of ten departments. You will then be notified by District Court of the briefing schedule requirements. The briefing schedule dictates the time in which you have to arrange for a certified transcript of the lower court proceedings to be filed in District Court.

1 Case No.

2 Dept. No.

3
4 **IN THE MUNICIPAL COURT OF THE CITY OF SPARKS**
5 **COUNTY OF WASHOE, STATE OF NEVADA**
6

7 CITY OF SPARKS,

8 Plaintiff,

9 vs.

**NOTICE OF APPEAL
AND REQUEST FOR
TRANSCRIPT**

10
11 Defendant.
12 _____ /

13 TO: The City of Sparks

14
15 NOTICE IS HEREBY GIVEN that the above-named Defendant in the above-entitled
16 action, does hereby appeal to the Second Judicial District Court from the final judgment of
17 the Sparks Municipal Court in this action.

18 Defendant is appealing and specifically requests the transcriber to prepare
19 transcripts of the following proceedings to be included in the record on appeal:

20 Arraignment date: _____

21 Trial date: _____

22 Other (specific): _____

23 Date: _____

24
25 _____
26 Defendant Defense Attorney

27 Address: _____

28 _____

TRANSCRIPTS ON APPEAL/OTHERS

Effective June 2012

If you wish to order a transcript of your proceedings in Sparks Municipal Court, you may do so by contacting Pam Longoni, a certified transcriber, by email at plongoni@cccomm.net or by telephone @ (775) 530-5251.

The following information is provided to assist you in placing an order:

1. **Orders placed by email** should include the date of the court appearance, type of proceeding (trial, arraignment, etc.), department in which the proceeding was held, and must also include the appropriate deposit as indicated below. Payment may be made by cash or money order. No transcript will be prepared until the required deposit is received.
2. **COST:** Appeal transcripts are billed at \$4.10 per page, which includes an original (to be filed with District Court), one copy for the appellant, and one copy for opposing counsel. Transcripts ordered for the purposes other than appeal, where only an **original** transcript is required, are billed at \$3.75 per page.
3. **DEPOSITS:** Deposits are required as follows: \$75.00 for arraignment / sentencing; a minimum deposit of \$200.00 for any trial transcript; and a minimum of \$500.00 for longer trials (those lasting more than three hours). **NO TRANSCRIPT IS CONSIDERED TO BE OFFICIALLY ORDERED, AND COMMENCEMENT OF TRANSCRIPTION WILL NOT BEGIN, UNTIL RECEIPT OF REQUIRED DEPOSIT IS RECEIVED BY PAM LONGONI.**
4. **FOLLOW-UP on Transcript Preparation:** You will be notified when your transcript has been prepared. If the actual cost of the transcript is less than the amount of the paid deposit, a refund will be issued along with the transcript. **And, likewise, any outstanding balance due after completion of the transcript must be paid before the original is filed with District Court or any copies are released. No refunds of deposits will be given for transcripts once they have been prepared, and Pam Longoni is not responsible for the dismissal of any appeal by District Court if no original transcript was filed due to nonpayment of an outstanding balance.**
5. **QUESTIONS:** Pam Longoni will be happy to answer any questions you may have regarding the above information. Please contact her directly at (775) 530-5251.

TRANSCRIPT REQUEST FORM

Pam Longoni
1700 Sheckler Cut Off
Fallon, NV 89406
(775) 530-5251
plongoni@cccomm.net

If you are requesting transcription services, please complete the following information and deliver this form along with your CD to Pam Longoni.

REQUEST DATE: _____ DUE DATE: _____
ASAP (specific date): _____

PERSON REQUESTING TRANSCRIPT: _____

FIRM NAME: _____

FIRM ADDRESS: _____

PHONE NUMBER: _____

CASE NO: _____ JUDGE NAME/DEPT. NO: _____

PLAINTIFF: _____ DEFENDANT: _____

HOW MANY ATTORNEYS INVOLVED? _____
Names of counsel: _____

NOTICE OF APPEAL FILED: _____ Court _____
Case Number _____

REQUEST FOR:
____ Original only
____ Original and one copy
____ Original and two copies
____ Other: please list details: _____

INSTRUCTIONS FOR DELIVERY OF COMPLETED TRANSCRIPT (indicate where to send):
Original: _____
1st copy: _____
2nd copy: _____

PAYMENT DUE UPON RECEIPT OF TRANSCRIPT!