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CANAL TOWNSHIP JUSTICE COURT

CLERK

1 Case No. 22-CR-150

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6 **IN THE JUSTICE COURT OF CANAL TOWNSHIP**
7 **IN AND FOR THE COUNTY OF LYON, STATE OF NEVADA**
8

9 THE STATE OF NEVADA,
10 Plaintiff,

11 vs.

12 TROY E. DRIVER,
13 Defendant.
14

15 **MOTION TO DISMISS**

16 COMES NOW, Defendant, Mr. TROY E. DRIVER, by and through his attorneys of
17 record, Mario R. Walther, Esq. of Walther Law Offices, PLLC, and Moria E. Desmarais, Esq. and
18 Richard P. Davies, Esq. of The Law Office of Richard P. Davies, Esq., and hereby moves this
19 Honorable Court for an Order Dismissing Count I, First Degree Murder with the Use of a Deadly
20 Weapon, a violation of NRS 200.010, NRS 200.030, NRS 200.030(1)(a), as charged in the
21 Amended Criminal Complaint, on file herein.

22 This Motion is based on the following Memorandum of Points & Authorities, all
23 attachments thereto, all statutory, constitutional, and case-based provisions cited therein – mainly,
24 Martinez Guzman v. Second Judicial District Court in & for the County. of Washoe, 496 P.3d 572,
25 137 Nev. Adv. Op. 61 (2021), as well as any oral argument that this Court may deem necessary.
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1 **I. Background**

2 The Amended Criminal Complaint, filed April 5, 2022, charges Mr. TROY E. DRIVER
3 (“Mr. Driver”) as follows:

- 4 i. COUNT I: First Degree Murder with the Use of a Deadly Weapon, a violation of
5 NRS 200.010, NRS 200.030, NRS 200.030(1)(a), and NRS 193.165, a
6 category A felony;
- 7 ii. COUNT II: Kidnapping in the First Degree, in violation of NRS 200.310 and NRS
8 200.320, a category A felony;
- 9 iii. COUNT III: Robbery, in violation of NRS 200.380, a category B felony;
- 10 iv. COUNT IV: Burglary of a Motor Vehicle, in violation of NRS 205.060(1)(c), a
11 category E felony; and
- 12 v. COUNT V: Destroying Evidence, in violation of NRS 199.220, a gross
13 misdemeanor.

14 The Amended Criminal Complaint further alleges that on or about March 12, 2022, Mr.
15 Driver entered the vehicle of the alleged victim, Ms. NAOMI IRION (“Ms. Irion”), while it was
16 outside the Walmart located at 1550 E. Newlands Driver, Fernley, Lyon County, Nevada. Ms. Irion
17 is alleged to have been inside the vehicle and then later found deceased in a rural part of Churchill
18 County, Nevada.

19 For the reasons set forth, *infra*, Count I, First Degree Murder with the Use of a Deadly
20 Weapon should be dismissed for lack of jurisdiction as the proper venue is the Tenth Judicial
21 District, Churchill County, Nevada.

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1 **II. Applicable Standard**

2 **a. Jurisdiction of the Justice Court to Enter Judgment on a Motion to Dismiss**

3 In the State of Nevada, Justice Courts are courts of limited jurisdiction and hold only the
4 authority granted to them by statute. Parsons v. State, 116 Nev. 928, 933, 10 P.3d 836, 839 (2000)
5 (as cited by Alomair v. Just. Ct. ex rel. Twp. of Goldfield, 130 Nev. 1147 (2014)).¹ Explicitly,
6 Justice Courts have jurisdiction over all misdemeanor offenses, NRS 4.370(3), as well as the
7 jurisdiction to conduct preliminary examinations in gross misdemeanor and felony complaints.
8 NRS 171.196. Except as otherwise provided by statute, this authority is limited to those crimes
9 committed within the county. NRS 4.370(4).

10 The Supreme Court of The State of Nevada has recognized the Justice Courts' authority to
11 entertain a motion to dismiss on a felony and/ or gross misdemeanor complaint, so long as statute
12 delineates the authority over the issues contained therein. E.g., Koller v. State, 122 Nev. 223, 229,
13 130 P.3d 653, 657 (2006) (holding that Justice Courts have jurisdiction over motions to dismiss for
14 violations of the Interstate Agreement on Detainers (also known as "IAD") and/or NRS 171.070; cf.
15 State v. Justice Court of Las Vegas Twp. (Richmond), 112 Nev. 803, 806, 919 P.2d 401, 402 (1996)
16 (concluding that justice courts lack jurisdiction to order discovery as no statute provides for such).

17 **b. Venue in Criminal Proceedings**

18 As a general rule, jurisdiction is proper in the county where a crime occurs. Martinez
19 Guzman v. Second Jud. Dist. Ct. in & for Cnty. of Washoe, 137 Nev. Adv. Op. 61, 496 P.3d 572,
20 575 (2021) quoting Zebe v. State, 112 Nev. 1482, 1484-85, 929 P.2d 927, 929 (1996) ("[E]ach
21 county will have independent jurisdiction over a criminal offender for conduct occurring in that
22 county.").

23 However, pursuant to NRS 171.030, the jurisdiction for a single charge may be proper in
24 more than one (1) county...

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26 _____
27 ¹ Pursuant to the Nevada Rules of Appellate Procedure (NRAP), mainly NRAP 36, inclusive,
28 Alomair is not strictly cited as legal authority, but rather, as a more recent discussion on the cited,
long-standing principles of Nevada law.

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When a public offense is committed in part in one county and in part in another or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, the venue is in either county.

When evaluating whether there are sufficient “acts or effects thereof constituting or requisite to the consummation of the offense,” venue cannot be solely based on intent formulating in one county or a preparatory act occurring there. Martinez Guzman, 137 Nev. Adv. Op. 61, 496 P.3d at 577. Instead, in order for jurisdiction to be proper in a county other than where the crime occurred, there must exist evidence of intent *and* a preparatory act in that other county. Id.

The State bears the burden of proving that venue is proper and it must do so by a preponderance of the evidence. Id., 137 Nev. Adv. Op. 61, 496 P.3d at 576 (citing McNamara v. State, 132 Nev. 606, 615-16, 377 P.3d 106, 113 (2016). Further, “venue may be established by circumstantial evidence.” Id. (quoting James v. State, 105 Nev. 873, 875, 784 P.2d 965, 967 (1989)).

III. Argument

a. Statute provides The Canal Township Justice Court with the authority to enter judgment on Defendant’s Motion to Dismiss.

Pursuant to NRS 4.370(4), “the jurisdiction of justices of the peace extends to the limits of their respective counties.” Inversely, the Justice Court does not have jurisdiction over crimes which occur outside the county. Cf. id. Accordingly, this Court has the authority to deny a probable cause inquiry and grant a motion to dismiss as to counts alleged to have occurred in another county.

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1 **b. Count I should be dismissed as jurisdiction is proper in The Tenth Judicial**
2 **District Court.**

3 **i. The homicide occurred in Churchill County, Nevada, making it the**
4 **proper venue.**

5 On March 29, 2022, The Churchill County Sheriff's Office received information from Lyon
6 County Sheriff's Office which led them to rural, mining land located in Churchill County, Nevada.
7 Investigators encountered a burial site, which appeared to be recently disturbed. Fenner Report, at
8 LYDA 0110.

9 The excavation uncovered a deceased individual, later identified as Ms. Irion. Ms. Irion
10 suffered a suspected gunshot wound to the posterior of her head and possibly her thoracic cavity.
11 *Id.* The injury to her back was notably covered with dirt and debris, likely to be consistent with an
12 active wound taking on mud. *See id.* at 0112. The reports from Churchill County Sheriff's Office
13 state that the "lividity" was consistent with the positioning of her body when discovered, "which
14 indicates the decedent was not moved after death."² *Id.*

15 By way of the Amended Criminal Complaint, April 5, 2022, the State concedes that Ms.
16 Irion was shot and died in Churchill County, Nevada, stating: "... the Defendant did kill NAMOI
17 IRION with a deadly weapon, namely a firearm, by shooting her, thereby inflicting mortal injuries
18 upon said victim, all of which occurred at or near a rural portion of northern Churchill County,
19 Nevada..." Amended Criminal Complaint, pg. 1, ln. 26-28.

20 As the county encompassing the site of the crime, Churchill County is the proper
21 jurisdiction in accordance with Martinez Guzman, 137 Nev. Adv. Op. 61, 496 P.3d at 575 (further

22 ² Lividity, or *livor mortis*, is the postmortem settling and/or pooling of blood and organs within a
23 body.² The Use of Post-Mortem Lividity to Determine Sleep Position in Sudden Unexpected Deaths
24 in Infancy, *Acta Paediatrica*, May 2019, Vol. 109, Issue 6, Pages 1162-1165. Lividity can assist
25 in determining time-of-death as well as determining where a person died, including whether a body
26 was moved.² *See* Estimation of Time Since Death from Postmortem Lividity, *Indian Journal of*
27 *Forensic Medicine & Toxicology*. Oct-Dec 2019, Vol. 13, Issue 4, Pages 164-166.

1 citation omitted). Further, the homicide occurring in Churchill County makes The New River
2 Township Justice Court proper as the Justice of the Peace there is the only Justice of the Peace with
3 the authority granted under NRS 4.370(4), i.e., the statute, *supra*, which limits his or her jurisdiction
4 to the bounds of the county.

5 There is neither doubt nor disagreement that Churchill County is a proper venue for the
6 alleged murder. However, by charging Mr. Driver in Lyon County for an act committed in
7 Churchill County, the State seeks to improperly confer jurisdiction under NRS 171.030, inclusive.

8 **ii. There is no evidence that the suspect had the intent to commit murder**
9 **and engaged in a preparatory act requisite to the consummation of the**
10 **murder while in Lyon County, Nevada.**

11 The State asserts, by way of the Amended Criminal Complaint, that Mr. Driver completed
12 preparatory acts to the alleged murder in Lyon County. Presumably, the preparatory act would be
13 the alleged kidnapping (Count II), said to have occurred on March 12, 2022 outside the Fernley
14 Walmart. However, this alone is insufficient. Martinez Guzman, 137 Nev. Adv. Op. 61, 496 P.3d
15 at 577. For jurisdiction to be proper in Lyon County, Nevada, the assailant would have had to have
16 kidnapped Ms. Irion in said county with the intent to later murder her. Id. However, the Amended
17 Criminal Complaint does not assert that there existed a simultaneous act and intent of such a
18 degree. Accordingly, and as a preliminary matter, Count I fails on its face as it does not meet the
19 requirements for conferring jurisdiction under NRS 171.030.

20 Moreover, the State will not be able to prove, by even a preponderance of the evidence, that
21 Mr. Driver kidnapped Ms. Irion. Without meeting that burden, the State can prove neither (a) the
22 intent nor (b) the preparatory act necessary to confer jurisdiction to Lyon County – and both are
23 necessary. Martinez Guzman, 137 Nev. Adv. Op. 61, 496 P.3d at 577.

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1 **IV. Conclusion**

2 Based on the foregoing, Count I, First Degree Murder with the Use of a Deadly Weapon
3 should be dismissed for lack of jurisdiction as the proper venue is the Tenth Judicial District,
4 Churchill County, Nevada. It is undeniably the situs of this crime and there is insufficient evidence
5 to connect the intent of the accused *and* an act or effect requisite to the consummation of that
6 offense to Lyon County, Nevada.

7 **AFFIRMATION PURSUANT TO NRS 239B.030**

8 Pursuant to NRS 239B.030, the undersigned hereby affirms that this document does not
9 contain the Social Security number of any person.

10 DATED THIS 20th day of JUNE, 2022.

11 By 

12 **MORIA E. DESMARAIS, ESQ.**

13 NSB 14861

14 **RICHARD P. DAVIES, ESQ.**

15 NSB 9382

16 The Law Office of Richard P. Davies, Esq.

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19 Phone: (775) 360 – 6894

20 **MARIO R. WALTHER, ESQ.**

21 NSB 13780

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23 15 W. Main Street

24 Dayton, NV 89403

25 (775) 246 – 7721

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the date listed below, I caused to be delivered a true and correct copy
3 of the foregoing document via postal mail, in the ordinary course of business, and with sufficient
4 postage addressed to:

5 **STEPHEN B. RYE, ESQ. & BRIAN C. HASLEM, ESQ.**
6 **THE OFFICE OF THE LYON COUNTY DISTRICT ATTORNEY**
7 31 S. Main Street
8 Yerington, NV 89447

9 I also emailed a copy of the same as allowed by The Office of The Lyon County District
10 Attorney.

11 DATED THIS 20TH day of JUNE, 2022.

12 By: Moria E. Desmarais
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