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6 *Attorneys for Defendant*

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 THE STATE OF NEVADA, )  
10 Plaintiff, ) CASE NO. C-21-361498-1  
11 v. ) DEPT. NO. XVIII  
12 AARON QUINCY INGRAM, )  
13 Defendant, ) DATE: November 7, 2022  
14 ) TIME: 9:30 a.m.

15 **MOTION TO DISMISS OR IN THE ALTERNATIVE GIVE CURATIVE JURY**  
16 **INSTRUCTION PURSUANT TO SANBORN V. STATE**

17 COMES NOW, the Defendant, AARON QUINCY INGRAM, by and through  
18 DAN J. CHO, Deputy Public Defender and hereby requests that this Court dismiss the case  
19 based on the violation of due process or, in the alternative, give a jury instruction at trial pursuant  
20 to *Sanborn v. State*, 107 Nev. 933 (1991).

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

23 DATED this 31st day of October, 2022.

24 DARIN F. IMLAY  
25 CLARK COUNTY PUBLIC DEFENDER

26  
27 By: /s/Dan J. Cho  
DAN J. CHO, #14355  
28 Deputy Public Defender



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **FACTS**

3 On January 26th, 2020, the Defendant Aaron Quincy Ingram (hereinafter “Mr. Ingram”)  
4 was stopped and arrested by Officers Cordero and Eduardo of the Las Vegas Metropolitan Police  
5 Department (hereinafter “LVMPD”) and later charged with the offenses that comprise the instant  
6 case.

7 Officers Cordero and Eduardo had been dispatched to a Wienerschnitzel located at 3201  
8 N. Rancho Drive in response to reports of a reckless driver. The person reporting, Mark  
9 Anderson, informed the officers that he gotten into an argument with a black male adult between  
10 40 to 50 years in age in the restaurant parking lot, and that man had threatened him with a  
11 firearm. Mr. Anderson further told the officers that the man had been driving a white car and had  
12 driven away in the car after the confrontation.  
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14 Officers Cordero and Eduardo would later see Mr. Ingram standing at a bus stop in the  
15 vicinity and believed that he matched the description provided by Mr. Anderson. It should be  
16 noted that Mr. Ingram waiting at a bus stop and not sitting in a white car. It should be further  
17 noted that at the time of the incident, Mr. Ingram was twenty-nine years old. Mr. Anderson  
18 would later confirm to the officers during a show-up identification that Mr. Ingram was not the  
19 man who had threatened him with a firearm.  
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21 The officers decided to conduct a stop on Mr. Ingram and activated their vehicle sirens.  
22 As they drove toward Mr. Ingram, they saw him throw something away in the garbage can next  
23 to the bus stop. Despite being some distance away inside their vehicle with its sirens activated,  
24 the officers supposedly heard that item make a thumping noise from the can. Though they had  
25 not seen what the item was, Officer Cordero would later testify at preliminary hearing that this  
26 entire interaction had been captured by their activated body cameras. However, Mr. Ingram  
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1 would later be informed by the State that the body camera footage capturing the entirety of his  
2 initial interaction with police had been deleted.

3 After stopping Mr. Ingram, Officer Eduardo reportedly recovered a gun from the garbage  
4 can. LVMPD personnel would later seize and photograph the firearm for later forensic  
5 examination. However, LVMPD neglected to inventory, photograph, or otherwise preserve the  
6 other items that were in the same garbage can for later examination and/or testing.  
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### 8 ARGUMENT

9 The State intends to present forensic evidence at trial indicating that a swab of the firearm  
10 at issue detected a mixture DNA profile in which it is highly probable that it originated at least  
11 partially from Mr. Ingram. However, “increasingly, the question of relevance to the trier of fact  
12 has shifted from who the DNA is from, to how and when it got to the area from which it was  
13 collected.” Roland A.H. van Oorschot, et al., *DNA Transfer in Forensic Science: Recent*  
14 *Progress to Meeting Challenges*, Genes, 12 (2021). Mr. Ingram’s theory of defense hinges on the  
15 question of secondary transfer of his DNA from the item he had thrown away to the firearm that  
16 was tested. However, his ability to adequately present this theory of defense is severely curtailed  
17 by the failure to preserve Officers Cordero and Eduardo’s body camera footage as well as the  
18 failure to record, inventory, and otherwise preserve the other items in the trash can that was the  
19 vehicle through which the secondary transfer of his DNA occurred. Pursuant to case law, this  
20 failure to preserve exculpatory evidence warrants dismissal of the case as it constitutes bad faith  
21 and caused undue prejudice to Mr. Ingram’s defense.

22 Alternatively, Mr. Ingram requests that this Court instruct the jury at trial that because of  
23 the State’s failure to preserve both the body camera footage as well as the other items in the trash  
24 can, there is an irrebuttable presumption that the evidence lost would have been favorable to Mr.  
25 Ingram.

26 Due process requires the State to preserve material evidence. *State v. Hall*, 105 Nev. 7, 9,  
27 768 P.2d 349, 350 (1989). The Nevada Supreme Court has consistently held that to establish a  
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1 violation of due process “resulting from the State’s loss or destruction of evidence, a defendant  
2 must demonstrate either (1) that the State lost or destroyed the evidence in bad faith, or (2) that  
3 the loss unduly prejudiced the defendant and the evidence possessed exculpatory value that was  
4 apparent before the evidence was destroyed.” *Sheriff v. Warner*, 112 Nev. 1234, 1239-40, 926  
5 P.2d 775, 778 (1996). Dismissal is the appropriate remedy where the State has failed to preserve  
6 potentially exculpatory evidence and the State acted in bad faith or the defendant has been  
7 prejudiced by the loss. *Howard v. State*, 95 Nev. 580, 582, 600 P.2d 214, 216 (1979); *Daniels v.*  
8 *State*, 114 Nev. 261, 267, 956 P.2d 111, 115 (1998).

9 “Bad faith” can manifest either as intentional deception or dishonesty, or an intentional  
10 failure to meet an obligation or duty. In *Crockett v. State*, the Nevada Supreme Court reversed a  
11 murder conviction and dismissed the indictment where the government admittedly did not  
12 properly preserve a vaginal swab, and a sperm slide, which easily could have been preserved,  
13 was intentionally, though not maliciously, discarded. 95 Nev. 859, 865, 603 P.2d 1081-82  
14 (1979). The Court commented that scientific verification was forever foreclosed, and the State  
15 could not be permitted to “benefit from its own faulty procedures by urging factual possibilities  
16 which proper procedures might well have foreclosed.” *Id.* The Court held, “We cannot permit  
17 speculative inferences adverse to [the defendant] to be derived from the absence of evidence  
18 which the State should have preserved.” *Id.*

19 A demonstration of bad faith is not required to find a due process violation. Prejudice  
20 alone is sufficient to warrant dismissal. *See Howard v. State*, 95 Nev. at 582. A defendant bears  
21 the burden of demonstrating prejudice, and must do so by showing that the State could have  
22 “reasonably anticipated that the evidence sought would be exculpatory and material to [his]  
23 defense.” *Boggs v. State*, 95 Nev. 911, 913, 604 P.2d 107, 108 (1979).

24 In *Boggs*, the Nevada Supreme Court explained that it is not sufficient that the defense  
25 demonstrate “merely a hoped-for conclusion” from examination of the lost or destroyed  
26 evidence, nor is it sufficient for a defendant to show only that examination of the evidence would  
27 be helpful in preparing his defense. *Id.* For example, in *Boggs*, police officers lost the names and  
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1 addresses of three passengers who were present in a stolen vehicle that the defendant was found  
2 driving. *Id.* The Court held that the mere showing of the defendant's inability to contact these  
3 three passengers, without more, was insufficient to demonstrate prejudice; the defendant failed to  
4 demonstrate that these witnesses would have provided material, exculpatory information. *Id.*

5 In contrast, in *Howard v. State*, the Nevada Supreme Court reversed the defendant's  
6 conviction for burglary where the State collected and failed to preserve his shoes. 95 Nev. at 582.  
7 There, a witness described the clothing that the perpetrator had been wearing at the time of the  
8 offense and testified that he saw the perpetrator run across red gravel. *Id.* When Howard was  
9 arrested, his shoes and clothing were not considered by the police to be evidence and were  
10 purportedly placed in a personal property bag at the county jail. *Id.* At trial, Howard sought to  
11 introduce his shoes into evidence to establish he was not person who ran across the red gravel.  
12 *Id.* When the personal property bag was produced, however, it contained no shoes. *Id.* The  
13 Nevada Supreme Court held that even though there was no suggestion of bad faith by the State,  
14 the defendant was prejudiced by the loss because the evidence was material to his identification  
15 defense. *Id.* As such, dismissal of the case was appropriate.

16 Even where dismissal is not deemed an appropriate remedy, "the State cannot be allowed  
17 to benefit by its failure to preserve evidence, particularly when the State's case is strengthened  
18 by the absence of the evidence." *Warner*, 112 Nev. at 1242 (citing *Sanborn v. State*, 107 Nev.  
19 399, 408, 812 P.2d 1279, 1286 (1991)). In *Sanborn v. State*, mishandling of a gun resulted in a  
20 loss of evidence of blood and fingerprints. While the Nevada Supreme Court concluded the  
21 particular circumstances of that case did not warrant dismissal of all charges, the Court instructed  
22 the district court on remand that it must instruct the jury that evidence from the weapon was  
23 irrebuttably presumed to be favorable to the defendant.

24 In the instant case, the State intends to present evidence suggesting the presence of Mr.  
25 Ingram's DNA on the firearm recovered from the trash can. The purpose of this evidence is to  
26 support their theory that Mr. Ingram had handled the firearm and was the source of primary  
27 DNA transfer from his person to the firearm. However, scientific literature recognizes the  
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1 possibility of secondary DNA transfer. Secondary transfer occurs when DNA is transferred from  
2 one object or person to another via intermediate object/person. Cynthia M. Cale, et al., *Could*  
3 *Secondary DNA Transfer Falsely Place Someone at the Scene of a Crime?*, J Forensic Sci, Vol.  
4 61, No. 1, 196, 196 (2016). Secondary transfer has been replicated in laboratory settings<sup>12</sup> and  
5 recognized in other criminal cases<sup>3</sup>.

6 It is not disputed by either party that Mr. Ingram threw something away in the trash can  
7 from which officers later allegedly recovered a firearm. It is also not disputed by either party that  
8 there were other items inside the trash can as well. The question then is whether Mr. Ingram was  
9 the primary source of the DNA detected on the firearm or whether secondary transfer occurred  
10 through the vector of the item he had thrown away. Officer Cordero testified that he had not been  
11 able to see in moment what Mr. Ingram had thrown in the trash can but that the discarding was  
12 captured by his activated body cam. The body camera footage would then be an objective  
13 recording of what Mr. Ingram had in his hand. Unfortunately, the failure to preserve that footage  
14 denies Mr. Ingram the opportunity to present that exculpatory evidence to the jury. Further, the  
15 presence of Mr. Ingram's DNA on other items in the trash can would support Mr. Ingram's  
16 contention that he had thrown away a separate item and through secondary transfer, his DNA  
17 was transferred onto the firearm which was already in the trash can. However, the failure to  
18 preserve those items for future testing forever forecloses from him the opportunity for scientific  
19 verification as the Nevada Supreme Court observed in *Crockett*.

20 Even if the Court chooses not to find bad faith in the State's conduct, "the State cannot be  
21 allowed to benefit by its failure to preserve evidence, particularly when the State's case is  
22 strengthened by the absence of evidence." *Warner* 112 Nev. at 1242 (citing *Sanborn*). it is

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24 <sup>1</sup> See Cale, et al., *DNA Transfer*, supra. (study where subjects were asked to shake hands for two minutes and then  
separately handle a knife. In 85% of cases, the DNA of the other person was transferred to the knife)

25 <sup>2</sup> See also Mariya Goray & Roland A.H. van Oorschot, *The Complexities of DNA Transfer During a Social Setting*,  
Legal Medicine 17, 82 (2015) (study where subjects shared a jug of juice poured into individual cups but avoided  
26 directly touching each other. After twenty minutes, half of the subjects had another person's DNA on their hand and  
one-third of the cups bore the DNA of a volunteer who had not touched them, suggesting that the jug was the likely  
27 vector of DNA transfer and that these types of objects could serve as "reservoirs" of material for secondary transfer.)

28 <sup>3</sup> See Katie Worth, *Framed for Murder by His Own DNA*, The Marshall Project (2018),  
<https://www.themarshallproject.org/2018/04/19/framed-for-murder-by-his-own-dna>

1 undeniable that the loss of the body camera footage and the other items in the trash can unduly  
2 prejudices Mr. Ingram. He is limited in his ability to rebut the State's theory of prosecution.  
3 Furthermore, the exculpatory value of the body camera footage and the items in the trash can are  
4 clear. The body camera footage would present clear visual evidence that the item that Mr.  
5 Ingram discarded into the can was not a firearm and the examination of the other items for his  
6 DNA profile would show that secondary transfer had occurred, spreading his DNA onto all the  
7 items in the can.

### 8 CONCLUSION

9 The Court should dismiss this case under the standards set forth in *Warner, Sanborn, et*  
10 *al.* The State violated Mr. Ingram's due process rights when LVMPD both fail to record or  
11 otherwise preserve the other items in the trash can for future testing. It also violated Mr.  
12 Ingram's rights when LVMPD failed to preserve the recordings from Officers Cordero and  
13 Eduardo's activated body cameras. Both of which would have been clearly exculpatory to Mr.  
14 Ingram, particularly as neither officer had seen what Mr. Ingram had deposited into the trash can.

15 Even if this court does not find an adequate showing of bad faith, Mr. Ingram has  
16 suffered from undue prejudice from the loss of the exculpatory evidence. The exculpatory value  
17 of the lost evidence is apparent; Mr. Ingram does not have an objective recording that  
18 demonstrates that he did not have a firearm in his hand and he has lost the opportunity to present  
19 evidence to the jury that secondary transfer spreading his DNA to the other items in the trash can  
20 occurred. Accordingly, Mr. Ingram requests dismissal.

21 Alternatively, if the Court does not find dismissal appropriate, Mr. Ingram requests that  
22 this Court give a *Sanborn* instruction at trial, instructing the jury that it must be irrebuttably  
23 presumed that evidence derived from the body camera footage and testing of the other items in  
24 the trash can would have been favorable to Mr. Ingram. This instruction would be necessary to  
25 ensure that the State does not benefit from its failure to preserve evidence.

26 DATED this 31st day of October, 2022.

27 DARIN F. IMLAY  
28 CLARK COUNTY PUBLIC DEFENDER



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By: /s/Dan J. Cho  
DAN J. CHO, #14355  
Deputy Public Defender

1 **NOTICE OF MOTION**

2 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

3 YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the  
4 above and foregoing MOTION on for hearing before the Court on the 7th day of November,  
5 2022, at 9:30 a.m.

6 DATED this 31st day of October, 2022.

7 DARIN F. IMLAY  
8 CLARK COUNTY PUBLIC DEFENDER

9  
10 By: /s/Dan J. Cho  
11 DAN J. CHO, #14355  
12 Deputy Public Defender

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14 **CERTIFICATE OF ELECTRONIC SERVICE**

15 I hereby certify that service of the above and forgoing MOTION was served via  
16 electronic e-filing to the Clark County District Attorney's Office at [motions@clarkcountyda.com](mailto:motions@clarkcountyda.com)  
17 on this 31st day of October, 2022.

18 By: /s/Dan J. Cho - PD  
19 An employee of the  
20 Clark County Public Defender's Office  
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